

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
Defendant.)	October 10, 2019
)	7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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P R O C E E D I N G S

October 10, 2019

7:31 a.m.

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

THE COURT: Good morning, everybody. Please be seated.

All right, a few matters. First, you may have noticed that I inadvertently tried to cut five hours from each of your time. That, I think, was just a dream as opposed to something I intended to do. So the time entries will be corrected in the next section of the minutes.

Also, with respect to Mr. Millen's motion on not talking to witnesses, I am going to relax that for the long breaks that we have. So the three-day break that we have coming up, I will relax that rule; and then the week break. And then I'm really hoping that we're not going over Veterans Day. But if we are, I would also relax my rule for that as well.

With respect to the audio issues. I'm going to allow the disputed audio of 5070, which shows waiters and others in the vicinity of the table while Dr. Nucatola and Mr. Daleiden were discussing abortion procedures. And it's relevant, I think, to the recording claims.

I'm not going to admit the disputed audio at 5107, except at the very outset of that clip. Only Doctors Felczer and

1 Gatter were shown. The prior video shown to the jury showed
2 where they were sitting. So the audio is not relevant to the
3 recording claims, and is excluded under 403.

4 I'm not going to admit the disputed audio from 5749 and
5 5220. The context of those videos at restricted conferences
6 and receptions is different than at a restaurant where the
7 people present are not restricted. The content of the audio of
8 these videos is not necessary to the recording claim and is
9 excluded under 403.

10 I'm going to take up the plaintiffs' motion to exclude
11 witnesses tomorrow. I'm not going to do that today.

12 The defendants' motion to admit evidence, I think I've
13 dealt with the primary issues. And the arguments have been, I
14 think, made. So it's -- it's denied, except as otherwise
15 noted. The audio of recordings made once the project began are
16 not relevant because it's the reasonable belief prior to the
17 recordings that counts.

18 Litigating the truth of whether the crimes were
19 committed -- whether crimes were committed by Planned
20 Parenthood as shown in the videos is a different case than this
21 one. And it is one that is not going to be litigated here.
22 We're just going to litigate the issues that exist in this
23 case.

24 Now, I thought that the parties were going to stipulate
25 regarding the law enforcement contacts that Mr. Daleiden had

1 prior to the release of the videos. What's the status of that?

2 **MS. BOMSE:** Good morning, Your Honor. Amy Bomse.

3 So the status is that defendants sent over to plaintiffs a
4 lengthy proposed stipulation. And plaintiffs responded that
5 that was not acceptable, and proposed an alternative. And we
6 haven't heard further from defendants. So currently there is
7 no stipulation.

8 And it's my sense that it's not going to be possible for
9 the two sides to stipulate. We have extremely different views,
10 not only of what should be told -- well, of what should be told
11 to the jury, and indeed, what those contacts with law
12 enforcement really mean.

13 It's plaintiffs' view that the evidence shows that the
14 contacts with law enforcement were not -- are not evidence of
15 the innocence of plaintiff -- of defendants' intentions, but
16 indeed, a furtherance of the same effort to harm Planned
17 Parenthood, because of the selection of the particular law
18 enforcement.

19 So that's where we are.

20 **THE COURT:** All right.

21 Mr. LiMandri, do you want to respond to that?

22 **MR. LIMANDRI:** Well, sure.

23 I've never heard of a situation where the reporting to law
24 enforcement is evidence of a further crime. As we suggested in
25 opening, and we intend to argue of course in closing, who in

1 their right mind would engage in a bunch of illegal activity
2 and then take the evidence of that and bring it to law
3 enforcement, if they thought they were engaged in illegal
4 activity? It certainly doesn't make sense.

5 We endeavored to craft a stipulation that we thought was
6 reasonable. Plaintiffs' stipulation had built into it, we
7 thought, inappropriate bias, such as they only took it to law
8 enforcement that were pro-life, that type of thing. I don't
9 think we should be characterizing law enforcement or judges or
10 any government officials in that capacity when they are
11 discharging their official duties.

12 But nonetheless, we think it's very important, based upon
13 the Court's prior rulings, to show motive and intent, as well
14 as strategies our clients chose to employ, to show that they
15 did take the videos to law enforcement before the first video
16 was published, Your Honor.

17 So I don't think we need to get into a lot of detail as to
18 what they took, or necessarily who they spoke to. But I think
19 it is important to show that it was -- my understanding --
20 about ten different law enforcement agencies, to show that
21 they, you know, weren't necessarily just going with someone
22 that someone knew or something like that.

23 **THE COURT:** So my idea was that you would stipulate
24 to the date and contact, and have a pretty clean line. If you
25 can't do that for whatever reasons, why don't you submit to me

1 your proposed stipulations, and I'll try and craft something.
2 And then we can take it from there.

3 **MR. LIMANDRI:** We'll do that. And it is our
4 understanding that date and contact would probably be
5 sufficient for our purposes, Your Honor.

6 **MS. BOMSE:** Your Honor, if I could just make one more
7 point.

8 In our view, we have not actually -- there has been
9 testimony to date, fairly substantial testimony about law
10 enforcement. There was significant testimony elicited from
11 Mr. Lopez. No objection from plaintiffs.

12 From plaintiffs' point of view, the appropriate
13 instruction to the jury is not as to the fact of law
14 enforcement. That can come in through evidence. But to the
15 jury, that the jury should not concern itself with what -- what
16 happened after the contacts with law enforcement. Because I
17 think that's really the Court's concern.

18 The initial concern was excluding evidence of the contacts
19 with law enforcement because then the jury would wonder what
20 happened. And they're not going to be told that.

21 At this point, there's already been evidence of contacts
22 with law enforcement. Plaintiffs haven't objected. Indeed,
23 plaintiffs believe that the evidence of the contact with law
24 enforcement, including the communications between defendants
25 about who to go to, is extremely relevant.

1 And so we will submit to the Court our proposal. But I
2 think in plaintiffs' view, the appropriate instruction to the
3 jury is not as to the fact of reach-out to law enforcement, but
4 as to the fact that the jury should not concern itself with
5 what happened afterwards.

6 **MR. LIMANDRI:** We don't have --

7 **THE COURT:** Jury instructions are another question.
8 I'm just trying to figure out --

9 **MS. BOMSE:** Well, stipulation.

10 **THE COURT:** I want to deal with this piece of
11 evidence. If you're saying that -- that the suggestion is not
12 a good one, and you want Mr. Daleiden to testify with respect
13 to each of his contacts, I bet you the defendants would think
14 that was a lovely idea. So -- but I'm trying to -- I'm trying
15 to get this -- this point to the jury.

16 So, so I'm sticking with my suggestion. And if you can't
17 agree, give me your separate suggestions by the end of
18 tomorrow.

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

20 **MR. LIMANDRI:** We'll do that, Your Honor. Thank you.

21 **THE COURT:** All right. Exhibit 72.

22 **MR. KOZINA:** Oh, I'm sorry. Your Honor, if you don't
23 mind --

24 **THE COURT:** Mr. Kozina, come on up.

25 **MR. KOZINA:** Thank you. I'll walk this way.

1 Your Honor, I didn't have a chance to say this, as the
2 Court was -- went on to another matter. I just want to put
3 just a matter on the record.

4 The Court has indicated -- and I'm not going to be arguing
5 with this right now -- but that the information that was
6 available to the defendants before they began is the
7 limitation. And I would suggest that there was an
8 ever-expanding body of evidence that was developed that would
9 form further basis for the defendants' belief in the project.

10 And I just want to put that on the record, and I thank the
11 Court.

12 **THE COURT:** Thank you.

13 **MR. KOZINA:** Thank you.

14 **MR. JONNA:** Your Honor, may I make one quick point?

15 **THE COURT:** Of course.

16 **MR. JONNA:** First of all, I have a question,
17 Your Honor. Paul Jonna.

18 It wasn't clear to some people on our team whether the
19 jury saw the video where the audio wasn't shown. Was that just
20 shown to the witness and counsel?

21 **THE COURT:** Say it again?

22 **MR. JONNA:** When Mr. Lopez was testifying, there were
23 two clips where you allowed the video to be played without
24 audio. And it wasn't clear to me if that was shown to the
25 jury.

1 **THE COURT:** Yes. The -- I'll double-check. But my
2 recollection is that it was.

3 **MR. JONNA:** Okay.

4 **THE COURT:** In fact, I'm sure it was. But -- was
5 that not obvious in the transcript?

6 **MR. JONNA:** I'll have to double-check. I know that
7 there was some confusion on our side.

8 **THE COURT:** Okay.

9 **MR. JONNA:** I'll double-check. The only other point
10 I was going to make very briefly is that I'm not -- you know,
11 we dispute that there should be any distinction between
12 conferences and receptions in public restaurants. And the
13 legal standard of whether there's a reasonable expectation of
14 privacy, regardless of the different jurisdictions, I think
15 certainly, you know, it's still relevant to show that there's
16 people nearby, and that these are crowded areas. And the
17 context of those statements, for all the reasons we have
18 already discussed in briefing, I think we should be able to
19 make those same arguments, regardless of whether it's a
20 restaurant or a conference.

21 It's certainly -- the plaintiffs have taken the position
22 that these are private conferences, and that it doesn't matter.
23 But that's hotly disputed. So I just wanted to make that
24 point.

25 **THE COURT:** All right.

1 **MR. LIMANDRI:** Your Honor, I wasn't sure if you were
2 going to allow me to briefly argue that one motion. I know you
3 have heard this issue before. You indicated when we were last
4 here, that I could argue it today but --

5 **THE COURT:** You can. I'm just -- I'm a little
6 concerned about timing. So if you think -- if you've got a lot
7 to say, we can save it. If you have a little bit to say, you
8 can go ahead.

9 But there -- I do have a couple of other things.

10 **MR. LIMANDRI:** I understand. Not a lot to say,
11 because a lot has already been said on it.

12 But after the due-process issue that we raised, certainly
13 the defendants' credibility has been called into question
14 pretty much with every witness. I'm not sure if the
15 plaintiffs, by eliciting all the pro-life activities of the
16 defendants, intend to call them into disrepute in certain
17 jurors' eyes who expressed in voir dire concern about that type
18 of activity. That would be inappropriate.

19 Of course, there's nothing unlawful or wrongful about
20 exercising -- for example, with Mr. Rhomberg petitioning for
21 elections to have certain ballot propositions or whatever pass.

22 But to the extent the defendants' credibility is being put
23 in question on these activities, and then as to what they did
24 with the videos, I believe that due process would require the
25 jury to actually see the videos, to see if, in fact, there was

1 illegal activity that was going beyond just the strategies the
2 defendants chose to employ.

3 I also believe it does open the door to be asking the
4 defendants -- which the plaintiffs are doing, and
5 understandably -- but nonetheless: What illegal activities do
6 you think you're going to find and that you did find, and why.
7 Because again, the defendants are basically saying what they
8 thought they were going to find and what they thought they
9 found without any evidence that they actually did so. And I
10 think that is opening the door in large respect, to not allow
11 them to corroborate what in fact, that they said.

12 Another very important point that I think has not been
13 sufficiently made -- and we saw that with Ms. Tosh's testimony,
14 Your Honor, when she would not admit that there was nothing in
15 the content of the videos that would or should have encouraged
16 any third parties to engage in any wrongful conduct towards the
17 plaintiffs, including any type of real threats or violence, she
18 kept saying: No, it was at least an indirect threat.

19 Again, as to the causation and damages issues, Your Honor
20 which the Court has left open with respect to every cause of
21 action, as I understand the Court's rulings, I don't know how
22 the jury can't make the determination as to whether the videos
23 were or were not the cause of some harm. That would really be
24 more in the line of non-recoverable reputational damages, as
25 opposed to some type of intrusion expenses the plaintiffs would

1 have incurred, even if the videos were never published, when
2 you have plaintiffs' witnesses talking about the content of the
3 videos causing them to take these types of measures.

4 So I think from a causation standpoint it is absolutely
5 essential that the plaintiffs -- excuse me -- the defendants be
6 able to put this evidence on.

7 There's also the rule of completeness that we mentioned in
8 Evidence Code -- I'm sorry, under Federal Rule of Evidence 106.
9 And we cited a couple of Ninth Circuit cases on point, *Vallejos*
10 and *Doral* (Phonetic) that specifically state if one party uses
11 a portion of a document or a video, the other party should be
12 able to use other portions.

13 Mr. Jonna already addressed the expectation-of-privacy
14 issue. I think the state-of-mind issue has been sufficiently
15 covered, so I don't need to go through that again, as to the
16 defendants' continuing belief.

17 As Mr. Millen did point out, though, with regard to the
18 federal RICO, if there has to be a continuing pattern and
19 practice showing the continuation of the videos, I think would
20 go directly towards the defendants' ability to prove that there
21 was no continuing practice of illegal activity with respect to
22 what they were actually doing in terms of the videos that were
23 displayed.

24 And then finally, the 403 issue. We believe that the
25 probativity/prejudice balance at this point definitely tips in

1 favor of the defendants. Because the jury is hearing over and
2 over about these videos, but not being able to see crucial
3 parts, whereas plaintiffs are playing what they want to that's
4 favorable to them, we're being deprived the opportunity to play
5 what is favorable to the defendants, and we believe essential
6 to certain of their defenses, including causation and damages.

7 So those are the key points. Due to the time issue, I'll
8 stop there. I appreciate the opportunity to make a record on
9 those points, Your Honor.

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

11 **MS. BOMSE:** And Your Honor, plaintiffs intend to
12 submit something in writing because -- to respond to these
13 statements, just to preserve the record, and because they are
14 important issues that we understand are being raised. But, not
15 at this time.

16 Thank you, Your Honor.

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

18 Let me go on to Exhibit 72.

19 So first, it's a document that is covered by the NAF
20 preliminary injunction. And I have sealed it. It remains
21 sealed. And the parties, if they're going to use documents,
22 the exhibits that are part of that injunction should be very
23 careful about their presentation.

24 Second, the plaintiffs stipulated to its admissibility.

25 Third, with Mr. Rhomberg, it was only used to refresh

1 recollection.

2 Fourth, at the end of the day, the defendants asked for
3 its admission. I wouldn't have granted it, because it hadn't
4 been used with the jury. And I don't typically allow exhibits
5 that the jury hasn't seen to be admitted, but Mr. Kamras agreed
6 to its admission. And I admitted it.

7 Fifth, now the plaintiffs confess error, and want to
8 withdraw the stipulation and their agreement to admit it in
9 full, limited to cover the email on the first page.

10 Sixth, I have excluded the videos under 403. And the
11 excerpts of the videos in Exhibit 72 are not relevant to the
12 issues in this case. So, because Exhibit 72 wasn't published
13 to the jury or even admitted in front of the jury, I'm going to
14 change my ruling; not admit it.

15 (Trial Exhibit 72 removed from evidence.)

16 **THE COURT:** Ms. Short, if you want to introduce it in
17 evidence, you may. I would redact Pages 4230 to 4234, under
18 Rule 403.

19 And I don't see that there's any prejudice to the
20 defendants, because this is consistent with my rulings from the
21 motion in limine until today. I understand that the defendants
22 want that in. But those reasons I think are for -- have been
23 well-argued up until this time.

24 **MR. LIMANDRI:** I understand Your Honor's ruling.
25 Appreciate your expressing it to us in that manner.

1 Let me just say that up until now, everything the parties
2 have stipulated to have simply gone into evidence, without
3 question. Both parties did stipulate to the admissibility of
4 this exhibit, and all pages of the exhibit.

5 There was an attempt to use it to refresh the witness's
6 recollection, which abysmally failed. The witness said he had
7 no recollection to refresh. So it was not used for that
8 purpose. If it was, then the witness would read it, and the
9 counsel would take it back, and testimony that would go in
10 would be the refreshed recollection, not the content of the
11 document.

12 But because the witness had no recollection to refresh,
13 counsel actually had the witness read a portion of one of the
14 pages of the very document that is now supposed to be excluded.
15 Reading it is a form of publication, whether or not it's
16 displayed. That's my understanding, anyhow.

17 And again, he did read from the attachment, just not --
18 not just the cover email. And then it was admitted into
19 evidence without objection. So ordinarily, we would be
20 entitled to use it. So we'd like to lodge our objection and
21 make a record.

22 In Evidence, quote, 101, we should be able to -- not the
23 Evidence Code, but just Evidence 101, you know, you don't
24 refresh a witness's recollection in that manner. And if you
25 stipulate to admit something into evidence that you've used,

1 you shouldn't be able to say: Oh, I made a mistake, I want a
2 do-over. That's unprecedented, in my experience.

3 So we wanted to make that -- and again, the rule of
4 completeness, which we argue with regard to the videos and
5 cited those two Ninth Circuit cases. If they want to use part
6 of a document, they risk that we're going use the other part.

7 Thank you, Your Honor.

8 **THE COURT:** All right.

9 Mr. Kamras?

10 **MR. KAMRAS:** Yes, Your Honor.

11 In fact, what I did, in reading from the transcript, is I
12 asked to see whether the document would refresh his
13 recollection.

14 Specifically I said (As read):

15 "...and see if that refreshes your recollection about
16 whether you knew in fact that CMP had established a
17 front organization called BioMax."

18 And then the witness responded, talking about the
19 document. I did not ask the witness to read anything about the
20 document. I didn't ask him -- I didn't, myself, read the
21 document. And there was no objection with respect to what the
22 witness's answer was. And so I certainly didn't elicit that
23 from him.

24 As we said in my -- or as I said in my letter, we don't --
25 I didn't use it; I didn't introduce it. Other than to refresh,

1 I didn't introduce it.

2 If they want to introduce the portion consistent with
3 Your Honor's ruling, the portion that was used to refresh his
4 recollection, we'll stipulate to that. But the rest --

5 **THE COURT:** It doesn't matter whether you stipulate
6 to it or not. I've just ruled on it.

7 **MR. KAMRAS:** Okay. I wasn't sure whether there was
8 -- to the extent that you were reconsidering any decision.
9 Okay. And with that, I'll submit.

10 **THE COURT:** Thank you.

11 Ms. Short.

12 **MS. SHORT:** Yes, Your Honor.

13 I just did want to point out about, that this particular
14 exhibit to the attachment to that email was -- in fact has been
15 put into evidence -- twice filed by Planned Parenthood in the
16 record in both motions for summary -- in their oppositions to
17 both motions for summary judgment, and without any attempt to
18 seal it.

19 And it is actually on the charts that you have of -- that
20 big motion-to-seal chart with -- because plaintiffs did not
21 make any attempt to seal it. It was only the, you know, NAF
22 who had asked for it to be sealed.

23 And we had actually worked out or we were -- we had
24 suggested a compromise or -- you know, at this point I have to
25 admit the details in my mind are a little fuzzy. But I mean,

1 the point was Planned Parenthood, plaintiffs -- why would we
2 seal something that -- you know, features, like, for instance
3 Dr. Nucatola, what her quote was from this, when they -- when
4 plaintiffs weren't seeking to seal it?

5 What more interest does NAF have in sealing it than the
6 plaintiffs would, themselves?

7 And the same for several of the other quotes.

8 **THE COURT:** The sealing issues, I don't want to get
9 bogged down.

10 **MS. SHORT:** I just wanted to bring that to your
11 attention, yeah.

12 **THE COURT:** I appreciate it. And as I say, both
13 sides -- everybody -- should be very concerned about following
14 the Court's orders with respect to the preliminary injunction
15 materials. And the failure to do that is concerning.

16 **MS. SHORT:** Okay. Just so we understand the rules
17 going forward, is the rule -- will the rule be that if an
18 attorney does read from an exhibit in order to refresh a
19 witness's recollection, that it will be considered to be
20 published to the jury?

21 **THE COURT:** No. The rule is, if you're -- if you
22 want to -- you can refresh somebody's recollection with a shoe,
23 that has nothing to do with any evidence. But if it refreshes
24 the person's recollection, that's great. The shoe doesn't come
25 into evidence. So that's -- that's the -- that's the rule.

1 You can ask questions that are related to the documents,
2 but you've got to move -- if the matter is going to be
3 published to the jury, if the document is going to come in, it
4 needs to be moved into evidence.

5 And if the question -- if there's a question that's
6 raised, and there's no objection, then I probably won't stop
7 you. And if there's an objection, I'll rule on it.

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

9 **THE COURT:** All right. The final issue is there's
10 been a motion to exclude Melissa Fowler. And I need a response
11 to that, a written response. I don't want an oral response.
12 And I'd like that by the end of the day.

13 **MS. BOMSE:** Your Honor, I understand the Court's
14 ruling. Melissa Fowler was going to take the stand today.
15 Does that change the Court's request?

16 **THE COURT:** Um, and -- and the plaintiffs decided --
17 haven't filed anything? Weren't planning to file anything?

18 **MS. BOMSE:** I'm not sure when that motion came in.
19 It was quite late. And I'm happy to respond to it orally.

20 **THE COURT:** When is Ms. Fowler -- is she going to
21 testify before the first break?

22 **MS. BOMSE:** Depends on how long Mr. Rhomberg goes.
23 We did plan to have her as our next witness. She's been
24 disclosed. We disclosed the fact she was going to testify
25 quite a while ago to the defendants. And this is --

1 **THE COURT:** Okay, why don't you make your response.

2 **MS. BOMSE:** Okay.

3 So Your Honor, the defendants raise two issues. They want
4 to exclude Ms. Fowler from talking about the history of
5 violence and harassment of abortion providers, and also the
6 increase in that harassment after the videos.

7 With respect to the increase in incidents after July 15th,
8 that's acceptable. I won't be eliciting testimony about that.

9 With respect to her knowledge of the history of
10 harassment, that is relevant. I don't intend to spend a lot of
11 time on it. But it's relevant to the security that was
12 provided at the NAF conferences, and why NAF takes that so
13 seriously, including all the ways in which NAF ensures the
14 conferences are secure.

15 And that is a critical part of our case in the sense that
16 the willingness of our clients to speak with the defendants was
17 in significant part because they had been admitted to NAF,
18 which is understood to be, really, the gold standard of
19 conference security.

20 So, so I think that portion is relevant. And the motion
21 should be denied as to the -- as to that.

22 **THE COURT:** All right. Well, so, let me just tell
23 you my reaction to this, before I heard argument from the
24 plaintiffs was, Ms. Short.

25 It seems to me that Ms. Fowler can testify, with an

1 adequate foundation, of her personal knowledge what the
2 security protocols and procedures were, why they were put into
3 place and, and for whose benefit they are. Those all seem
4 relevant to me.

5 I don't think the -- Ms. Bomse has agreed; I don't think
6 increase-in-security issues are relevant after the fact. But I
7 think the others are. She's not testifying as an expert;
8 there's going to be an expert who's going to be testifying
9 about that, but -- about the violence-related issues. But she
10 can certainly testify as to why NAF, why they put those
11 protocols in place.

12 **MS. SHORT:** Your Honor, that's our point. We do not
13 see -- as you say, the fundamental issue is: Were those
14 security protocols in place. Either they were, or they
15 weren't. And she can testify what they were, you know, and how
16 long they'd had them, and anything like that.

17 But NAF's mental state as to why they put those protocols
18 in place is simply irrelevant, and is prejudicial. I mean, you
19 have to -- weighing the probative -- any probative value would
20 be outweighed by the prejudice of painting pro-lifers as
21 violent people, violent criminal people.

22 I just don't see the relevance of the why, when she can
23 testify as to the what. What were the security protocols in
24 place. That's all that needs to come in. Because that
25 would -- that would assure, you know, the evidence -- if they

1 want to say: Well, providers knew this, or anything like that.
2 All you need is the what. Not the why.

3 **THE COURT:** All right. Well, I'm going to allow her
4 to testify with respect to her personal knowledge of why NAF
5 put those protocols in place. I think that's a relevant part
6 of this case.

7 Mr. Mihet. You have 30 seconds before the jury --

8 **MR. MIHET:** I know it's late, Your Honor.

9 With respect to 5107, which I understood Your Honor to say
10 would be excluded.

11 **THE COURT:** Yeah.

12 **MR. MIHET:** There is a portion of that video when
13 there is discussion, and there is, in fact, a waiter by the
14 table.

15 Is the Court excluding the entire video? Or only the
16 portion that does not involve the waiter?

17 **THE COURT:** Well, that portion was like two seconds.
18 And, and you already -- we already showed the jury the rest of
19 the video. So they have that.

20 So, if you really wanted it, then we could -- I would not
21 exclude it. There'd be a different basis for allowing that.
22 So I would allow it. And -- but then you'll have to just
23 recreate it for me, so that it only includes the part about the
24 waiter.

25 **MR. MIHET:** With the waiter. Very well.

1 And just, mechanically speaking, when we proffer a video
2 and Your Honor excludes it, if there should happen to be an
3 appeal in this case, do we need to do anything else to make
4 sure that the excluded video is part of the record for the
5 appeal?

6 **THE COURT:** I wouldn't think so. Because you'll have
7 the video; you'll have the transcript. I wouldn't think so.
8 And, and that would -- whatever we need to do to preserve that
9 for you, we will do.

10 **MR. MIHET:** Okay. When Ms. Merritt testified about
11 the video at the beginning of the lunch with Dr. Nucatola, we
12 had some issues with the freeze-frame, and the timestamp was
13 mirrored. We couldn't specify for the record what exactly she
14 was looking at.

15 We printed a freeze-frame shot of that picture. And I'd
16 like to show it to Ms. Merritt when she takes the stand, just
17 to clear the record as to what it is that she was referring to
18 when she testified about the gentleman seated in the booth
19 adjacent to her.

20 Would the Court allow me to do that?

21 **THE COURT:** Show it to the plaintiffs. That's --
22 that seems fine, but I -- I'm not quite focusing on what you're
23 trying to do. So...

24 **MR. MIHET:** All right. One more thing.

25 **THE COURT:** Uh-huh.

1 **MR. MIHET:** It's my understanding when Ms. Merritt
2 testifies again, her testimony will be limited to these two
3 issues we just talked about. I tried to confirm that with the
4 plaintiffs, and they were a little bit cagey. So I just want
5 to make sure we're not going to get into other aspects of the
6 testimony that could have been gotten into.

7 **THE COURT:** Well, my understanding is that you're
8 going to play the video -- I'm not sure that there's much more
9 to happen, besides getting that audio in front of the jury,
10 which is --

11 **MR. MIHET:** That's my intent, to -- and I'll ask her
12 a few questions about that, but we're not going to get into
13 other aspects about --

14 **THE COURT:** That's certainly -- that is certainly the
15 case.

16 Ms. Mayo?

17 **MS. MAYO:** I do have a very serious issue to raise
18 about Ms. Merritt's testimony. And I know that we're out of
19 time, but, so I wanted to lay down a marker that we could do
20 that at some point before she's called to testify again about
21 the video. And it will take more time than we have available
22 right now.

23 **THE COURT:** All right. So let's -- I'll look forward
24 to this discussion after the first break. Or at the first
25 break.

1 **MR. KOZINA:** If the Court would permit me to address
2 the issue of personal knowledge on the part of Ms. Fowler, I
3 think it would be appropriate before she gets on the stand and
4 starts saying "I know this, that and the other thing," that we
5 have a hearing before this Court, outside the presence of the
6 jury, to determine exactly what the basis is for her personal
7 knowledge.

8 If it's all speculation, if it's all hearsay, if it's not
9 based on her personal observations, she shouldn't be allowed to
10 get up there and say "I have this personal knowledge of this
11 long history of anti-abortion violence." Because you can't
12 unring the bell.

13 **THE COURT:** Thank you.

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

15 **THE COURT:** She is going to be testifying about what
16 NAF's -- the reasons why NAF put the procedures in place.
17 She's not testifying as an expert in this case. But she is
18 going to be testifying -- she is entitled to testify on that.

19 So to the extent that you object to that, that's
20 overruled.

21 **MR. KOZINA:** Okay, appreciate that.

22 **THE COURT:** Okay. Thank you.

23 So I will be back as soon as we have the jury.

24 (Recess taken from 8:04 a.m. to 8:11 a.m.)

25

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

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

4 **THE COURT:** All right. Let's get the jury.
5 Or let's get the water.

6 **THE CLERK:** I'll get the water, and then the jury.

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

9 **THE COURT:** All right. Please be seated, everybody.
10 Ladies and gentlemen, good morning. Thank you for
11 fighting through all of the difficulties of our times and being
12 here promptly. This is great.

13 Let me just advise everybody, it is possible at some point
14 this morning the lights in here will flash. There is some sort
15 of safety check that's going on. It is only a test. And it's
16 not anything to be concerned about. But if that happens,
17 you'll know what it is.

18 So we were just at the beginning of Mr. Rhomberg's direct
19 examination. Ms. Short?

20 **ALBIN RHOMBERG,**

21 called as a witness for the Plaintiffs, having previously duly
22 affirmed to tell the truth under penalty of perjury, testified
23 further as follows:
24
25

DIRECT EXAMINATION

1
2 **BY MS. SHORT**

3 **Q.** Now, Mr. Rhomberg, in our last episode, you left us at the
4 end of your education in the Midwest. At a certain point, did
5 you return to school after that?

6 **A.** Well, it was in the immediate time we were just talking
7 about when you -- when we ended. That is, that time while I
8 was teaching at the University -- well, at that time it was
9 called Wisconsin State University, Superior. I did send a note
10 or a letter to William Pickering, the director of the jet
11 propulsion lab at Cal Tech. And that had to do with an idea of
12 using internal transference (Inaudible) a man to maintain
13 orientation of spacecraft. And that was based upon what in
14 fact is what is used by cats to land on their feet.

15 So he promptly sent me a response. And at that point, I
16 was invited to work at that jet propulsion lab. Later they
17 called it -- they had what they called summer faculty fellows.
18 I was there for a number of summers. Yes.

19 **Q.** Okay. And then at some point did you resume your effort
20 to get a Ph.D.?

21 **A.** Yes.

22 **Q.** And where did you apply to get a -- where were you
23 studying to get a Ph.D.?

24 **A.** University of California, San Diego, Applied Physics and
25 Information Science, so-called APIS Department in San Diego --

1 or La Jolla.

2 **Q.** And did you ultimately get your Ph.D.?

3 **A.** No.

4 **Q.** And why not?

5 **A.** Well, because -- again, through some other graduate
6 students, I then sort of inadvertently discovered that the
7 University was using what they called a student registration
8 fee to provide and pay for hundreds of abortions on the campus.
9 And this was quite a shocking revelation to many people.

10 At that point, I went to the medical school library. I
11 didn't know much about this sort of thing. And as I mentioned
12 before, I had seen the pictures at the library in Madison. In
13 this case, I looked for information about pictures of abortion.
14 And I have to admit, I was -- as I was horrified by the
15 pictures of the effects of nuclear weapons, I was horrified to
16 see these horrible pictures of torn-up babies' bodies and so
17 on.

18 So at that point I was not willing -- plus I was a
19 Catholic and I knew the Catholic moral teaching -- to
20 participate in such a program.

21 **Q.** And so what steps did you take, then, to protest that use
22 of the student fees?

23 **A.** Well, one of my fellow graduate students was on the
24 graduate student council. He was the one who discovered it.
25 And a number of students, including incoming students,

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1 registered a protest saying they didn't want to pay that fee,
2 so-called registration fee.

3 **Q.** And, and at a certain point, did you file a lawsuit over
4 that?

5 **A.** Well, that was some time later. The fact of the matter is
6 the administration said that anybody who took that position
7 couldn't attend university. They couldn't be registered. Or
8 if they were incoming students, they couldn't be admitted to
9 the University, because that was a mandatory condition of being
10 a student there.

11 **Q.** And since you would not accept that condition, then you
12 did not complete your Ph.D.

13 **A.** Well, I -- I wasn't allowed to be registered except
14 temporarily. Then there was a litigation that extended over
15 some time.

16 **Q.** Okay. Thank you. Now, I believe you saw the exhibit that
17 the plaintiffs put up on the --

18 **A.** However, I did get a master's degree there, and did have
19 all of the work completed, all the course work, all the exams.
20 I was working on the thesis level. So I had completed all of
21 the work for a Ph.D. And I had a master's degree from the
22 University of California, San Diego, at that time.

23 **Q.** Thank you. You -- if you recall the exhibit that
24 plaintiffs displayed the first day of trial, which describes
25 you as, quote, a veteran of the pro-life movement in

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1 California, an expert at acquiring hidden and hard-to-access
2 documentation about the abortion industry, and I believe -- do
3 you consider that to be an accurate description?

4 **A.** Yes.

5 **Q.** Can you describe some of the methods you used to acquire
6 hidden hard-to-access documentation about the abortion
7 industry?

8 **A.** Well, just as in scientific resource, you have to get to
9 primary sources. You have to go to where the evidence is. You
10 have to talk to people. And if you -- if that's the district
11 attorney or the medical examiner or some person in a foreign
12 country, you have to go there. You can't -- sometimes you can,
13 of course, conduct research.

14 At that time, the internet was very primitive, by the way.
15 Nowadays it is amazing what's on the internet. But there
16 wasn't such a thing then.

17 You would look in newspaper archives. But ultimately
18 speaking, you have to go and get the information from the
19 original sources, primarily -- that's primarily people who
20 either know it, or have access to it.

21 **Q.** And what sort of steps do you take to preserve or document
22 that hard-to-access information?

23 **A.** Well, if the information is in printed form, the Xerox was
24 developed in that ancient time; you made copies on a Xerox
25 machine. Or other means of recording. You had cameras and so

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1 on. Back then, cameras had film in them, though. Sounds very
2 ancient, but they had film in them.

3 And you take pictures and you make prints, and you send
4 them around by putting them in envelopes with actual postage
5 stamps on them or other means like that. Or you carry them and
6 give them to somebody in order to make the information that you
7 have gathered known to the people who you want to presumably
8 bring about changes.

9 **Q.** What do you -- do you consider -- what do you consider to
10 be one of the most significant acquisitions of hidden or
11 hard-to-access information in your career?

12 **A.** Well, the most -- probably that obtained, I would say,
13 worldwide attention was the information about the more than
14 16,000 aborted babies' bodies found in a modular shipping
15 container in Los Angeles. That was -- it was in the
16 newspapers, but rather sketchy at first. It said there were a
17 few hundred. But anyway, that was rather shocking.

18 So I attempted to find out more information. I went to
19 the District Attorney's Office and talked to the head of the
20 medicolegal section of the Los Angeles District Attorney's
21 Office.

22 **Q.** And then, where did you go from there?

23 **A.** Well, there were other sources of information, including
24 the location where the cargo container had been -- had been
25 repossessed, actually. And so I talked to people connected

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1 with that.

2 And other people were involved in doing this. We found
3 the name of the person who had collected them, so I went to his
4 home with another interested person who had a -- video cameras
5 at that time weren't hidden; they were huge boxes that were
6 carried on your shoulder, so nothing hidden about it. And had
7 an interview with his wife, for example.

8 And then, ultimately speaking, went to the board of
9 supervisors, since they had political control, and had a
10 resolution passed, that the ones -- the larger ones that were
11 pretty near birth, that there should be an autopsy to see if
12 they might have been killed after birth. In short, perhaps to
13 see if their lungs had air in them.

14 So the board of supervisors of Los Angeles County voted
15 unanimously -- I think there was five of them. They voted
16 unanimously to request that such an autopsy be done.

17 And so at that point you have to have the necessary
18 people, board-certified pathologists and other people who would
19 be able to properly perform and record the autopsy. So -- and
20 I accompanied them as a photographer. I had quite an
21 experience with photography and scientific work and otherwise.

22 So we went to the -- on the appropriate time, we went to
23 the medical examiner's office and had a long interview with the
24 chief medical examiner, Thomas Noguchi.

25 So, ultimately speaking, we had this unanimous resolution

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1 from the board of supervisors, so ultimately we were admitted
2 to the autopsy area. And autopsies were performed, opening the
3 chests of these -- in some cases these babies were seven, eight
4 months old. And we -- you know, as much as close to four
5 pounds. They were fully developed. Some were very much
6 dismembered; others were partially and/or completely intact.
7 They looked like, you know, they could easily -- the
8 pathologist determined that none of them had any defects.
9 These were all determined to be elective abortions. So he took
10 tissue from their lungs and, and in each case, I took pictures
11 of the -- I was a photographer. And they had actually two
12 other photographers. So that was the evidence.

13 Unfortunately, after the autopsy was completed, it took --
14 took almost a whole day, and there had been to be a break for
15 lunch, which was rather difficult for me. I'm not used to that
16 kind of environment. Terrible. Flies and stench and so on
17 there. But apparently, some people don't bother that; they
18 want to have lunch.

19 Afterwards, the pathologist took the samples. And within
20 a short period of time, someone broke into his office and stole
21 the samples that he had obtained from the autopsy. So the only
22 physical evidence we really had as far as -- was the large
23 numbers of color photos that I had taken, close-up photos of
24 the victims. So they were later published and distributed.
25 There was a -- various efforts to suppress that.

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1 And then subsequent to that, the effort was then the
2 question of: How would you dispose of the 16,000 bodies? A
3 group wanted to have them -- they claimed they were medical
4 waste. They weren't even bodies, and they didn't want them to
5 be buried, or they didn't want them to be cremated. They said
6 that would be wrong because it was waste; they had to be
7 incinerated.

8 So there was about a three-year court battle. And
9 ultimately at the end of that, there was finally arranged a
10 burial. Had to be in a non-religious cemetery. The Catholic
11 cemetery offered free space, but they were buried in the Odd
12 Fellows Cemetery in a common -- well, in several coffins,
13 which, I was there at the time when they were transferred into
14 the -- 16,000 bodies had to be removed. Each -- each -- each
15 container had the name -- even the name of the mother; the
16 source of payment. So they all had to be taken out of those
17 containers, after the federal government had photographed every
18 single container, for questions of who paid for them.

19 In fact, they were properly -- improperly paid for, the
20 au- -- pathology, by the federal government, in part.

21 So at that point, they had a burial in the cemetery there.
22 As far as I know, that's the largest mass burial of that sort
23 in the world. And it's in East Los Angeles. Someone later on
24 put a rather large flat marker there. And, and like many of
25 those sites, there's, like, annual remembrances.

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1 Q. Thank you. Do you know if those -- as part of your
2 investigation, did you uncover any evidence as to the purpose
3 for those 16,000 aborted fetuses being gathered in that one
4 place, being collected in that way?

5 A. Well, other people worked on that. There was even someone
6 who wrote a whole book about that, to try to find out the
7 motive and so on. And as near as we can determine --

8 MR. KAMRAS: Hearsay, to the extent the witness is
9 testifying on the basis of the book.

10 THE WITNESS: I'm not testifying about the book.

11 MS. SHORT: Shh.

12 THE COURT: All right. So the question is whether
13 you uncovered evidence with respect to this. And so if you
14 could testify on that, that would be great.

15 THE WITNESS: Yes. Well, as near as we were able to
16 find out the reason. And we found that there had been a
17 previous incident with this particular individual, who had what
18 he called Medical Analytical Laboratory, MAL. His name was
19 Marvin Weisberg. He had previously had difficulty. And there
20 was a smaller number that were found in an office in
21 Los Angeles.

22 It appeared that, as far as we were able to determine
23 directly at that time, the money he made from picking these --
24 being -- eventually kind of picking these up at Los Angeles
25 areas' abortion clinics, he was not very prudent. And he'd

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1 previously actually, afterwards, had them incinerated. But the
2 incineration company had rebelled because he had then acquired
3 a lot of unpaid bills.

4 So it appeared that he had purchased on time this cargo
5 container. And then he didn't make payments on the cargo
6 container. That's what happened when it was repossessed, and
7 came to public attention.

8 So he said that he was financially, obviously,
9 irresponsible, and apparently had some weaknesses. A cocaine
10 habit or whatever. And the money went -- maybe the money went
11 up his nose. And so at that point, he lost control of it.

12 **BY MS. SHORT**

13 **Q.** Okay. Thank you. Now, Mr. Rhomberg, fast-forwarding a
14 number of years, have you encountered in this millennium a
15 situation where you suspected that a clinic was procuring
16 tissue from aborted fetuses for research purposes?

17 **A.** Yes. It was obvious there were quite a few places were
18 doing that. The reason again, the primary source of
19 information -- the initial source of information again was
20 people who would know.

21 These were people that are sometimes designated, depending
22 on what side you look at, as "Sidewalk counselors." These are
23 people that stand around -- typically women that do this --
24 that communicate with people that are going into the building.
25 If the building is a single-purpose building, then of course

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1 they may be communicating with people who are going in to see
2 their lawyer or their dentist or whatever, but -- and in
3 general they offer them help, indicating that if they have some
4 need that's causing them to consider killing their unborn
5 child, that they will offer them various kinds of assistance.

6 And these people, of course, as you can imagine, some of
7 them have been doing it for years. So they, typically
8 speaking, know everybody that works in the clinic. And they
9 know their hours, they know their cars. Obviously, if they're
10 standing there year after year.

11 And some of those people were saying that something new
12 was happening relatively at that time that --

13 **Q.** Excuse me. Could you say as to what time this is?

14 **THE COURT:** Okay, and let's proceed by questions and
15 answers, if we can, instead of narratives.

16 **MS. SHORT:** All right.

17 **BY MS. SHORT**

18 **Q.** About what -- what time -- when you say "at this time,"
19 what is "this time"?

20 **A.** Well, you said "this millennium" so I guess we are talking
21 about 2000, on. It may have preceded that.

22 But, but it was always a question on the part of them
23 standing there, is: What happens to the bodies? So there was
24 companies that seemed to be more or less just disposal
25 companies. One called Stericycle was a nationwide one. They

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1 would come once a week. They would have special hazardous
2 waste containers with red designated bags, and so on. And they
3 were presumably removing them for some sort of -- I think they
4 would refer to it as "infectious waste disposal."

5 **Q.** Sorry. But at a certain point did you -- you mentioned
6 the sidewalk counselors. Did you get some tip from sidewalk
7 counselors that -- who noticed some unusual activity that might
8 relate to fetal tissue procurement?

9 **A.** Yes. They started to notice that there was a new
10 phenomenon. The usual morning ritual of, you know, the staff
11 arriving, and then later on the -- the abortionists arriving.
12 Then in midmorning, they would see a new group of people would
13 come. Sometimes one or two or three would come in mid-morning.
14 And they had containers. Sometimes they had bags of ice. They
15 had other tools and equipment. And they were going into the
16 abortion clinics in midmorning. So obviously, there was
17 something new going on.

18 And of course, we had already heard from rumors and so on
19 in the San Francisco area that there was a company there, it
20 was called ABR, that was -- there were these rumors that they
21 were collecting the bodies for sale or for distribution in some
22 way.

23 So this was -- for example, in Sacramento, they saw that
24 there was a place called Choice Medical Group. It was a chain.
25 It was based in San Jose. And the people were seeing this

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1 going on there. So it was clear what it was about.

2 And then in the afternoon, at a regular-appointed time, a
3 FedEx truck would come and would remove various numbers of --
4 the special refrigerated gel-pack containers would be taken
5 out, and it was -- they came out of the door of the clinic, and
6 went into the FedEx truck. So it was pretty apparent to
7 anybody that this particular place was harvesting -- whatever
8 word you want to use -- was trafficking in the baby parts.

9 In some cases, the people noticed that the parts went out
10 before the mother went out. She would come -- times, come
11 staggering out later, typically throwing up in the bushes and
12 being helped out of the place, after the baby parts had already
13 gone into the FedEx truck.

14 **Q.** And without getting into all the details of your -- how
15 you conducted this investigation, did you discover where some
16 of those Fed Ex packages were heading?

17 **A.** Yes. Yes. It was, you know, getting some of my -- first
18 of all, where they came from. Because this was a multi-use
19 building, but it had a public lobby and so on, they didn't have
20 to be too skillful to realize about the time they were shipped
21 out, you could go in the lobby or the elevator, and you could
22 see the FedEx driver come with his little trolley or her little
23 trolley, and comes out of the door of the abortion facility,
24 and takes them out and puts them in the truck.

25 So -- but, you know. And eventually, of course, there's

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1 both ends of the system. You can look in the literature
2 then -- by this time the computer is well developed. You can
3 see there's actually a federal agency which has to do with
4 biologics for medical research. And you can look in the
5 literature, and you can see various researchers give credits to
6 where they got the fetal parts that they used in their
7 research. So you kind of connect the two ends.

8 And we realized that one, for example, was a research
9 being done on baldness. That could be just vanity. On the
10 other hand, we do know that patients receiving therapy --
11 there's many reasons for baldness. And they were attempting --
12 they were using fetal -- they were scalping the babies and
13 taking their scalps and grafting them on to immune-suppressed
14 mice, and then using various pharmaceuticals on these humanized
15 mice to test the effect upon preventing or, I suppose you might
16 say, treating baldness.

17 So that's just an example. There are, of course, many
18 other examples. And you could -- anybody who wants to can look
19 this up in the literature.

20 **Q.** In conducting either of these investigations that we just
21 discussed, and uncovering this hard-to-access information, did
22 you have to use an assumed name?

23 **A.** No.

24 **Q.** At any time, when you have investigated or acquired
25 information about the abortion industry, have you used an

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1 assumed name?

2 **A.** No.

3 **Q.** Mr. Rhomberg, about how many times did you meet in person
4 with Mr. Daleiden before the -- when you -- the time you
5 described yesterday when you first met with him in 2013, and
6 the release of the CMP videos?

7 **A.** Meeting with him personally, face to face, that was a
8 period of about 30 months. In which I was primarily in
9 Sacramento, and he was in Southern California. I don't think
10 more than -- face to face, maybe no more than two times. Maybe
11 not even that.

12 **Q.** Thank you. Now, you mentioned you thought, believed at
13 that first meeting that he handed you a copy of the project
14 proposal that he had.

15 **A.** Yes.

16 **Q.** If you recall, at either -- any of those subsequent
17 meetings, in-person meetings, if they occurred at all, did he
18 hand you any papers?

19 **A.** Hm, I don't remember. Because there was some email
20 exchanges which we discussed in my testimony on Tuesday. But,
21 um, in general, not, because we didn't meet face to face.

22 **Q.** Right. And then, were you in the habit of mailing any
23 papers back and forth?

24 **A.** By this time, mail had become old-fashioned. I think most
25 of the time communications were with email and perhaps

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1 attachment to emails.

2 **Q.** So to the best of your recollection, other than that first
3 time when he handed you the project proposal (Indicating),
4 all -- any exchange of documents between you two would have
5 been by email. Is that correct?

6 **A.** As far as I can remember at this point, I would -- I think
7 that's correct.

8 **Q.** Now, I would like you to look at one of those emails.
9 Could you look at Exhibit 380 in the binder you have there.

10 **A.** Maybe before we do that, you did -- talking about my
11 education, I also worked in the manned space program for some
12 time also. That was -- that was somewhat at -- during that
13 same transition to studying applied physics. That was in the
14 astronaut center. And that came about because of inviting
15 people to contribute ideas for educational work in the space
16 program.

17 And I did contribute, I think, I think, 17 ideas for
18 Apollo 17, and I was invited and spent some months actually in
19 the astronaut offices in the Johnson Space Flight Center and
20 other NASA locations. So that was about that same time.

21 **Q.** Thank you. I'm sorry for skipping over that.

22 **A.** Yeah.

23 **Q.** Now, have you got Exhibit 380 there?

24 **A.** 38- what?

25 **Q.** 380.

RHOMBERG - CROSS / SHORT

1 A. Yes, I see that.

2 Q. Now, I would like to -- if you recall, you looked at this
3 email with Mr. Kamras yesterday? Or two days ago, I should
4 say.

5 A. Yes, okay.

6 THE COURT: Jean?

7 THE CLERK: Admitted?

8 THE COURT: Yes, 380's admitted.

9 BY MS. SHORT

10 Q. Now, at the top of the page is your response to an email
11 from Mr. Daleiden, correct?

12 (Document displayed)

13 A. Correct.

14 Q. And now Mr. Daleiden's email begins at the bottom of that
15 page.

16 A. Uh-huh.

17 Q. Which unfortunately is obscured by the exhibit sticker.

18 And Mr. Kamras read the first sentence and a half of that,
19 Mr. Daleiden's email (As read):

20 "Yes, I'm completely exhausted and still processing
21 everything. She bought it all, hook, line and
22 sinker..."

23 Now the sentence doesn't end there, does it?

24 A. No.

25 Q. No. Could you read the rest of the sentence.

1 A. It says then, again (As read):

2 "She bought it all, hook, line and sinker..."

3 And, continues:

4 "...and admitted PP..."

5 That's Planned Parenthood, I think that's Federation of
6 America.

7 "...knows the potential for illegality/unethics but
8 has a don't-ask/don't-tell policy going so far as to
9 choose to keep NOTHING..."

10 All in capitals.

11 "...in writing about fetal tissue because it's too
12 dangerous. If something happens, they want the
13 affiliates to take the fall.

14 "She admitted she converts fetuses to breech position
15 in order to extract more intact and get better
16 tissue, but believes this is not a change of
17 procedure that would require further consent from the
18 patient. This is the first 4...

19 That's a numeral.

20 "... steps of a partial-birth abortion, and she
21 described a skewed understanding of the PBA..."

22 Partial-birth abortion.

23 "...Ban Act. She committed to introducing us to at
24 least 10 other PP..."

25 Planned Parenthood.

RHOMBERG - CROSS / SHORT

1 "...medical directors, including OC..."

2 That would be, I guess, Orange County.

3 "...AZ..."

4 Is Arizona.

5 "...and TX."

6 Is Texas.

7 "She wants us to do a meet-and-greet with local
8 affiliates. She loves us and is a smart and funny
9 lady but completely self-deceived and in denial about
10 what she's doing."

11 Period. End of message.

12 **Q.** So in your response to Mr. Daleiden, when you said -- was
13 your response to simply the first line and a half? Or to the
14 entire email?

15 **A.** Well, obviously, it was to the entire email. The first
16 line is just a personal comment about being exhausted and so
17 on. And a general statement. No. Obviously, I was responding
18 to what -- the complete message that I had received on that
19 occasion from David Daleiden.

20 **Q.** And in particular, in the fourth paragraph of your email,
21 you said:

22 "She knows that she and her team need to be discreet
23 about records, etc."

24 Was that in response to something that Mr. Daleiden had
25 written you?

RHOMBERG - CROSS / SHORT

1 A. Yes, yes.

2 Q. And which particular part of Mr. Daleiden's email was that
3 in response to?

4 A. Well, the -- I'm looking here at the exact words.

5 (Witness examines document)

6 A. Well, the very first thing where she puts it, where she
7 says, she says the -- where she says -- admitted Planned
8 Parenthood national, Planned Parenthood Federation (As read):

9 "...knows the potential for illegality/unethics, but
10 has a don't ask/don't tell policy. Going so far as
11 to choose to keep NOTHING..."

12 That's all capital letters.

13 "...in writing about tissue, fetal tissue because
14 it's too dangerous. If something happens they want
15 the affiliates to take the fall."

16 So in other words, if there was something happened, they
17 would blame it on just the local office or the local abortion
18 facility, rather than imply that there was any national
19 significance to it, such as from Planned Parenthood Federation
20 of America. So that's pretty clear. And then the other was
21 more technical details.

22 But again, if you're trying to find out about this, that
23 means that you're going to have to -- you're going to have to
24 investigate it in some way directly to get the information.

25 Because you've already received information that there's --

RHOMBERG - CROSS / SHORT

1 basically that there are no records. That deliberately, there
2 are no records.

3 You see that in my efforts when I went to Germany and so
4 on, went to Dachau. You can see, the whole concealment was
5 very much part of it. So, you know, unfortunately, you know,
6 there was a horrible war. And subsequent information has come
7 to light.

8 **Q.** Thank you. Could you turn to Exhibit 83, now.

9 **A.** Yes.

10 **Q.** Now, that is the email that's entitled -- the subject line
11 is:

12 "Please give me a call. Re: Planned Parenthood's Top
13 Doctor, Praised By CEO, Uses Partial-Birth Abortions
14 to Sell Baby Parts."

15 This is Exhibit 83. Correct?

16 **A.** You're looking at the top of the page?

17 **Q.** The subject line.

18 **A.** Oh, the subject line. Yes, I see the subject line,
19 uh-huh. Uh-huh.

20 **Q.** All right. Now, as Mr. Kamras pointed out yesterday
21 (sic), that you noted that there were over 700,000 views on the
22 8 minute 52 second Nucatola NUKE?

23 **A.** Right, uh-huh.

24 **Q.** And:

25 "It should exceed 1 million views by tomorrow

1 evening!!!"

2 Do you know if it did exceed 1 million views?

3 **A.** Well, the last time I looked, that first video. And that
4 video has received more views than any other videos. I think,
5 the last time I looked, it's over -- it's over 3 million views
6 now, but of course it's pretty much drawn it in current years.
7 But yes, it was -- I think it -- very promptly that it
8 received. And then it went up to now 3 million views.

9 That's 3 million views on the CMP website. The total
10 number of views, of course, in all sorts of secondary thing, it
11 might be tens of millions.

12 **Q.** Was that something you saw as desirable?

13 **A.** Well, the whole intention of the project was to discover
14 the truth, and then inform the public. In a democracy,
15 presumably, then if this is not acceptable, there can be some
16 sort of a change brought about by legislation, or in some cases
17 maybe judicial actions or I don't -- prosecutions, or maybe --
18 of the existing laws, or maybe that needs to have new laws.
19 And so on.

20 **Q.** And in the very next line, you say (As read):

21 "At 9:54 there were 22,963 views on the full 2 hour
22 40 minute (sic) 22 second video."

23 What video are you referring to there?

24 **A.** Well, from the beginning, on my -- even regular media,
25 because if you look at the news, of course, everybody knows if

RHOMBERG - CROSS / SHORT

1 you've ever seen it gathered, you've been to events and seen
2 cameras, all the material they bring in, of course, is -- the
3 news editors assemble that, and put that on whatever it is, the
4 half-hour news. That's CBS or NBC news, or a look at the
5 evening news. or whatever. And of course, behind that, of
6 course, is the -- whatever the cameramen took.

7 In this particular case, as I think has already been
8 testified here, repeatedly, because of the nature of the
9 technology, the people who had the hidden cameras basically
10 turned them on at the beginning of the event, and left them on
11 continuously while the data was being recorded.

12 So in this case, it was -- a decision was made in order to
13 try to lend authenticity to it, and unlike -- it's not possible
14 with the usual news, but with the internet, you can put the
15 entire video up there for the whole meeting. The lunch
16 actually lasted close to three hours. So, this would be the
17 entire video, if someone would care to look at it.

18 Now, that doesn't mean, by the way, that everyone that
19 goes to that place, all 22,963 people turned it on and sat
20 there for two hours, 42 minutes, and 22 seconds, and looked at
21 the whole thing. But if they wanted to, they could see,
22 uninterrupted, from when they walked into the restaurant until
23 they left. And if the person had it on -- usually, if there
24 was some sort of break, usually it was left on too. So, that's
25 what that -- that's what that refers to.

RHOMBERG - CROSS / SHORT

1 And the reason I put it in there, it seemed to me pretty
2 remarkable because you see 717,000 had looked at the edited,
3 and 22,000 had actually decided to take a look at the full
4 thing. That's --

5 **THE COURT:** So Mr. Rhomberg, let me stop you for a
6 second, because I think you have gone on past the question.

7 **THE WITNESS:** Okay.

8 **THE COURT:** Let's do this by questions and answers.

9 **THE WITNESS:** Okay.

10 **BY MS. SHORT**

11 **Q.** Now, in your testimony yesterday with Mr. Kamras, he asked
12 you whether you had ever told Mr. Daleiden not to do undercover
13 recordings. And you responded "Didn't come up."

14 Is there some reason why Mr. Daleiden making undercover
15 recordings would -- would -- you know, just being told
16 "undercover recordings," that would not have alarmed you or
17 caused you to say: Wait, stop, don't do that?

18 **A.** I don't think so, because from the beginning, I was
19 impressed by how much David Daleiden was checking with multiple
20 lawyers and so on, it seemed to be, about every aspect of the
21 thing from when he first approached me.

22 Even in -- also, and not only that, but he'd gotten in
23 touch with different moral theologians about the moral aspects
24 as well as the legal aspects of what he was doing. So I was
25 quite impressed that he was very thorough and careful about

RHOMBERG - CROSS / SHORT

1 that.

2 **Q.** Thank you. Now, in any conversation or communication you
3 had with Mr. Daleiden, from the time of early 2013 until the
4 release of the videos in July, 2015, did he ever discuss with
5 you getting IDs made for use in the investigation?

6 **A.** Not specifically. I wasn't -- as far as I can remember, I
7 was not aware of that aspect at all. In that timeframe.

8 **Q.** Did he ever discuss making an ID for himself for the
9 investigation?

10 **A.** No. As I specified, as I kind of talked about it before,
11 I kind of was under the assumption that -- of course, it was my
12 own experience when I went to the medical examiner's office, I
13 mean all the people there, including myself, we went in. To be
14 honest with you, I don't know if they even asked us to look at
15 identification. But we certainly didn't conceal it at all. We
16 had no any false identification. From my own experience, I
17 tended to assume that that was very likely what he was doing.

18 **Q.** When was the first time, if you recall, that you learned
19 about the identification documents that we saw on the screen at
20 the beginning of the proceedings here?

21 **A.** Well, the first time I saw those -- whatever you want to
22 call them, novelty IDs or whatever, I think it was -- surely it
23 was after the time the videos came out, sometime. The first
24 time I actually saw them, I think that they were posted on the
25 internet. I don't know if there was even any litigation.

RHOMBERG - CROSS / SHORT

1 I think that since they were scanned, as I understood, at
2 the Planned Parenthood Gulf Coast facility, I think the
3 plaintiffs in this case put them up on the internet. I think I
4 actually saw them on the Planned Parenthood site, if I remember
5 correctly.

6 **Q.** So that was some time after the videos were released?

7 **A.** Yeah, after. Quite a bit after.

8 **Q.** Okay. Now, if you would turn for a moment to Exhibit 338.
9 And this is the Form 1023 IRS application.

10 (Request complied with by the Witness)

11 **A.** Yes, I see it, uh-huh.

12 (Document displayed)

13 **THE COURT:** So that hasn't been admitted, right? So
14 let's not show it.

15 (Document taken off display)

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

17 Go ahead.

18 **MS. SHORT:** Oh.

19 **THE CLERK:** I think it is in.

20 **MR. KAMRAS:** I think it was.

21 **THE COURT:** Was it ultimately admitted? Okay, I take
22 it back.

23 **MR. KAMRAS:** It was. It was admitted, Your Honor,
24 yes.

25 **THE COURT:** Okay. My apologies. Let's put it back

1 on.

2 (Document displayed)

3 **THE WITNESS:** This is the one that has the six tabs?

4 **BY MS. SHORT**

5 **Q.** Yes, correct. And my question is, Mr. Kamras represented
6 to you that you had been shown this document at your deposition
7 last March or earlier this year. Correct?

8 (Witness examines document)

9 **A.** Um --

10 **Q.** During your testimony on Tuesday?

11 **A.** Yes, I think it was shown at the deposition, and of
12 course, Mr. Kamras brought it up on Tuesday.

13 **Q.** Prior to your deposition, do you recall if you ever saw
14 that document before?

15 **A.** No, I don't think I ever saw this document before.

16 **Q.** Did you ever file any papers about the Center for Medical
17 Progress with any government agency, the IRS, or the California
18 Secretary of State?

19 **A.** No. All that was, I would say, was delegated or relegated
20 to the chief executive officer's role.

21 **Q.** Chief executive officer being Mr. Daleiden?

22 **A.** Yeah, that was Mr. Daleiden.

23 **Q.** And did you ever see these papers before they were filed?
24 Any -- any other papers filed with any government agency before
25 they were filed?

RHOMBERG - CROSS / SHORT

1 A. Not that I remember.

2 Q. Did you ever file any papers for BioMax with any
3 government entity?

4 A. No.

5 Q. And did you ever see any such papers before they were
6 filed?

7 A. No. Not until after -- you know, after the videos were
8 released and so on.

9 Q. Um --

10 A. As far as I remember.

11 Q. Now, Mr. Rhomberg, you testified yesterday that you had
12 the title of chief financial officer for the Center for Medical
13 Progress. When did you first learn that there were bank cards
14 for BioMax and Center for Medical Progress?

15 Let me just -- let me narrow that down.

16 Did you -- were you aware that there were bank cards for
17 Center for Medical Progress and BioMax prior to the release of
18 the videos?

19 A. No, I was not aware of that.

20 Q. Okay.

21 A. I hadn't seen any cards, and was not aware of that.

22 Q. Prior to the release of the videos, had you ever seen any
23 financial or bank records for BioMax, LLC?

24 A. No.

25 Q. And prior -- have you ever seen any financial -- prior to

RHOMBERG - CROSS / SHORT

1 the release of the videos, did you see any financial or bank
2 records for the Center for Medical Progress?

3 **A.** I think maybe before the videos came out, since it was --
4 they had to file a 990 report, which tax-exempt organizations
5 have to file with the IRS.

6 And those are public records, so you can look them up on
7 the internet. Anybody can look them up.

8 **Q.** Do you recall seeing anything like that?

9 **A.** I think I may have looked at them. I wasn't involved in
10 preparing them. But I think I may have looked at, because
11 those were available to anybody who had a computer.

12 But generally speaking, they're not filed until -- there's
13 usually at least a year after the close of the year when you
14 get to file them as extensions. So, that being the case, the
15 one for maybe the first year which I guess would be 2013 -- I'm
16 not really sure if I ever saw it before -- before the videos
17 came out.

18 **Q.** But other than, again, the IRS forms, I'm talking just
19 about bank records.

20 **A.** Bank -- no, I don't -- before the videos came out, I
21 didn't see any bank records. That was -- that was a CEO
22 function.

23 **Q.** When was the first time you met Adrian Lopez? Or let me
24 -- have you met Adrian Lopez?

25 **A.** Yes, he was here yesterday (sic), but I met him before

RHOMBERG - CROSS / SHORT

1 that. They had some focus groups that were done about a little
2 over a year, I believe, after the videos came out. I think it
3 was in September, 2016, about three years ago. And two of
4 those were in Los Angeles. And he attended those focus groups.
5 And I believe that's the first time and maybe the only time I
6 met him before I saw him here in the court.

7 **Q.** And did you ever meet Sandra Susan Merritt prior to the
8 release of the videos?

9 **A.** No, certainly not. I didn't have any idea who she was. I
10 mean, of -- of course, when the videos came out, I could hear
11 her voice, but she didn't appear in any of the videos. She was
12 obviously one of the people, you might say, behind the camera.
13 But I didn't know who she was. And I didn't meet her for -- I
14 didn't -- no, not before the videos came out.

15 **Q.** So prior to the release of the videos, had you ever even
16 heard her name?

17 **A.** No. You mean her real name.

18 **Q.** Her real name.

19 **A.** No.

20 **Q.** I guess even "Susan Tennenbaum," you had not heard that
21 before -- prior to the release of the video.

22 **A.** If you listen to the videos, I think occasionally she
23 might have introduced herself. I think if you listening to the
24 whole videos, I believe she introduced herself.

25 **Q.** Correct, yeah.

RHOMBERG - CROSS / SHORT

1 **A.** Yes, but she didn't use her real name.

2 **Q.** Mr. Rhomberg, did you ever see or hear about in the NAF
3 exhibitor agreements or confidentiality agreements, that are
4 part of this lawsuit?

5 **A.** Not until later.

6 **Q.** And "later" being after the release of the videos?

7 **A.** Yes, uh-huh.

8 **Q.** Same question about the PPFA exhibitor agreements. Had
9 you ever heard about or seen them prior to the litigation
10 beginning?

11 **A.** Prior to the litigation?

12 **Q.** Well, prior to the release of the videos.

13 **A.** Not as far as I can remember.

14 **Q.** Okay. And, are you aware that there's also Planned
15 Parenthood -- Planned Parenthood of Gulf Coast also has a claim
16 based on a nondisclosure agreement?

17 **A.** I'm aware of that now, yes.

18 **Q.** Did you ever see or hear about that nondisclosure
19 agreement prior to the release of the videos?

20 **A.** No, I didn't. I don't know whether it was mentioned on
21 any of the videos, but I -- frankly I have never gone through
22 the full hours of videos and so on and so forth, I don't think
23 all the videos, myself, have ever listened to the full three
24 hours or whatever.

25 **Q.** Okay. Now, Mr. Rhomberg, Tuesday in responding to

RHOMBERG - CROSS / SHORT

1 questions from Mr. Kamras about Mr. Daleiden's reference to
2 "gotcha" videos in his project proposal, --

3 **A.** Yes.

4 **Q.** -- you mentioned a similar project into fetal tissue
5 trafficking. And you said that David's project seemed to be a
6 continuation of that. What, what did you mean by that?

7 **A.** Well, there was -- there were a number of previous
8 projects. One of them was on the television network. It's a
9 program that's called "20/20." It's kind of one of the
10 investigative journalism programs, I think it was around the
11 year 2000.

12 And there was -- one of the well-known reporters named
13 Chris Wallace was involved with that. And they had gotten some
14 similar type of videos. I think there was a man named -- a
15 doctor named -- I think his name was Les Brown. And there was
16 another technician, I think his name was Alberty. And I think
17 there was some involvement with Mark Crutcher, who had an
18 organization called Life Dynamics. I can't remember all the
19 details. But that was broadcast, you know, on main network
20 television.

21 And a segment of that, the initial sort of introductory
22 part which showed Chris Wallace talking to, at that time, the
23 chief executive officer of Planned Parenthood -- her name was
24 Gloria Feldt -- about this. And if anybody looks at the video,
25 you can see that she says that certainly any such thing should

RHOMBERG - CROSS / SHORT

1 be investigated, and if there's wrongdoing, the president of
2 Planned Parenthood says, people should be prosecuted.

3 So that particular video clip, that clip was then used as
4 the introductory clip to the video you just referred to that
5 has 3 million views. And so, that was part of that.

6 And then, you can see on the internet, the interview with
7 this doctor in a restaurant is -- that, I think you can open
8 your computer and see that now. The doctors being interviewed
9 in this case by a journalist from one of the stations or one of
10 the -- you know, national television thing as part of an
11 investigation.

12 He's very blunt about his desire to profit, and saying he
13 can provide tissue, and urging people to invest in the
14 business. That it's a real -- big growth. He particularly
15 mentions in Mexico that he can have a copious supply. And that
16 it's a bonanza, sort of like -- I think he refers to it almost
17 as a gold mine.

18 So that's available. And that was done, I think, around
19 2000 or 2002 or something around that period of time. And that
20 was made available. And there was a Congressional
21 investigation at that time. Some of this information was
22 input, because, again, people were shocked about it.

23 **Q.** So when you mentioned about using that clip at the
24 beginning of the Nucatola NUKE video, there was an effort to
25 connect those two --

RHOMBERG - REDIRECT / KAMRAS

1 (Document displayed)

2 Q. And unfortunately, our trial tech is -- is sick today. So
3 we're doing this a little bit old-school, as they say.

4 A. Uh-huh.

5 Q. That -- this is the email in which Mr. Daleiden was
6 reporting on his lunch with Dr. Nucatola. Is that right?

7 A. Yes, uh-huh.

8 Q. So this was already more than a year after the Center for
9 Medical Progress project had begun. Correct?

10 A. Yeah. Yes, this was about roughly a year and a half
11 after. Uh-huh.

12 Q. Okay. So this is after you had gotten Mr. Daleiden's
13 project proposal?

14 A. Yes, uh-huh.

15 Q. And after you had agreed to participate in the project?

16 A. Yes.

17 Q. After you had agreed to be the chief financial officer of
18 Center for Medical Progress?

19 A. Yeah, that was from the beginning.

20 Q. And this was after Mr. Daleiden had already begun filming
21 at some of the conferences. Correct?

22 A. Well, I don't know the sequence. This might have been the
23 first video that he did. I don't know. Maybe he had done some
24 other ones. At that time, I don't know whether I would have
25 known that. But it was -- this was a video that he had just

RHOMBERG - REDIRECT / KAMRAS

1 done at that time. I have to admit, my memory, the sequence of
2 the locations, the conferences and the lunches -- and those
3 were the locations that he did -- that he made videos at.

4 Well, and site visits. There were three categories. He
5 went to sites, and then he had lunches, and then he had --
6 well, he had a dinner, too. And then he went to conferences.

7 But as I sit here, I can't tell you the temporal sequence
8 them. I don't know where this came in the order. But you're
9 correct, it was about a year and a half after the beginning.

10 **Q.** Thank you. Towards the outset of your testimony earlier
11 today, you discussed an event in which there was a discovery of
12 roughly 16,000 aborted fetuses. Do you recall this testimony?

13 **A.** I'm -- could you repeat the question? I don't quite --

14 **Q.** Sure. Just trying to orient you. Earlier today, you will
15 recall that you testified regarding a discovery of roughly
16 16,000 aborted fetuses.

17 **A.** Yes, yes, yes. Uh-huh.

18 **Q.** And that was in the early 1980s, correct?

19 **A.** I think that the discovery was around 1982.

20 **Q.** Yeah. And the photos that you took were not of abortions
21 that had been conducted by Planned Parenthood.

22 **A.** As far as I know, those abortions were not done by Planned
23 Parenthood.

24 **Q.** Okay. And there was also no indication that the remains
25 that had been discovered were used for fetal tissue research.

RHOMBERG - REDIRECT / KAMRAS

1 Correct?

2 **A.** As far as I know, they hadn't been -- it wasn't clear what
3 the purpose in collecting them. They had been collected and
4 stored by Mr. Melvin Weisberg in his backyard, in this cargo
5 container in his backyard.

6 **Q.** And this person that you have just referred to, he's not
7 affiliated with Planned Parenthood.

8 **A.** Not that I know. I mean, currently? I don't even know if
9 he's alive.

10 **Q.** At the time.

11 **A.** At the time. I don't know.

12 **Q.** And in fact, he ran some sort of pathology business.
13 Isn't that right?

14 **A.** I think it would be called a fake pathology business.

15 **Q.** But nonetheless, it was -- it was pathology-related. Is
16 that right?

17 **A.** That's how he presented it to some extent, yes.

18 **Q.** Okay. And you were -- as you testified, you were -- when
19 you later took pictures, I understand you did this in the
20 medical examiner's office, is that right?

21 **A.** Yeah, medical examiner's office in Los Angeles.

22 **Q.** And your testimony is that you were authorized to gain
23 access to the medical examiner's office. Is that right?

24 **A.** Yes.

25 **Q.** And so you were granted access to that facility.

RHOMBERG - REDIRECT / KAMRAS

1 **A.** It was a little bit complicated, but yes. We didn't -- we
2 didn't sneak in or we didn't -- you know, you can look on the
3 internet; it says that I broke into the medical examiner's
4 office. That's sheer nonsense. It's a very high-security
5 place, by the way.

6 **Q.** Was it important to you that you not break into the
7 medical examiner's office?

8 **A.** I had no idea of breaking into the medical examiner's
9 office at all. Kind of a fantastic idea.

10 **Q.** So your testimony is that you gained access, lawfully.

11 **A.** Exactly. Completely lawfully.

12 **Q.** Because you were granted access.

13 **A.** The board of supervisors unanimously voted to a resolution
14 to have an autopsy done.

15 **Q.** You did not gain access by using a fake company.

16 **A.** No.

17 **Q.** You did not gain access to that medical examiner's office
18 in 1982 by using a fake ID.

19 **A.** No.

20 **Q.** You did not gain access to that medical examiner's office
21 in 1982 by signing any confidentiality agreements.

22 **A.** No.

23 **Q.** Okay. But that's not the case here in this -- in this
24 case, right? Here, Mr. Daleiden did go undercover. Right?

25 **MS. SHORT:** Objection, argumentative.

RHOMBERG - REDIRECT / KAMRAS

1 **THE COURT:** Overruled. You can answer if you know.
2 And strike the beginning of that question.

3 Would you reask it?

4 **MR. KAMRAS:** Sure.

5 **BY MR. KAMRAS**

6 **Q.** Here, you know that Mr. Daleiden did go undercover.
7 Right?

8 **A.** Yes. In -- when you say "undercover" -- well, I certainly
9 know after the fact; I know. I mean, that's evident from --
10 simply from the fact that I'm sitting here.

11 **Q.** Well, in fact, you knew during the project, right, that
12 Mr. Daleiden was using a fake name.

13 **A.** No, I don't think I knew he was using a fake name. I
14 think we had a lot of discussion of that on Tuesday.

15 **Q.** Well, you just testified that you watched some of the
16 videos before they were released. Right?

17 **A.** That was very shortly before they were released. And
18 again, to be aware of what names were used and so on, so forth,
19 I may have been aware at that point. That was, you know, two
20 years after the project started, or two and a half years after
21 the project started.

22 **MR. KAMRAS:** Ms. Short?

23 (Document tendered)

24 **MR. KAMRAS:** Do you have any objection?

25 (Off-the-Record discussion between counsel)

RHOMBERG - REDIRECT / KAMRAS

1 **MS. SHORT:** Well, again, I haven't had any chance to
2 compare this to the videos; this is the first time I'm seeing
3 this right now. So --

4 **MR. KAMRAS:** Certified transcript.

5 **MS. SHORT:** No objection.

6 **THE COURT:** All right.

7 **MR. KAMRAS:** Can you please play Exhibit 6103.

8 **THE COURT:** So it's admitted.

9 **THE CLERK:** Do you want sound?

10 **THE COURT:** Yes.

11 **THE CLERK:** Okay.

12 **MS. TROTTER:** Ms. Davis, is there a way of switching
13 off ELMO?

14 **THE CLERK:** Oh yes, sorry.

15 (Portion of videotape played in open court, not
16 reported)

17 **BY MR. KAMRAS**

18 **Q.** Mr. Rhomberg, do you recognize the person who was shown in
19 that clip?

20 **A.** Yeah.

21 **Q.** Who is it?

22 **A.** Sitting right there (Indicating). It's David Daleiden.

23 **Q.** And that was Mr. Daleiden calling you. Correct?

24 **A.** Seems so. I don't know the date of that, though.

25 **Q.** Do you recall last Tuesday, you talked about how

RHOMBERG - REDIRECT / KAMRAS

1 Mr. Daleiden had called you from the Planned Parenthood Gulf
2 Coast clinic?

3 **A.** Yes, I remember that, I told you I -- I remember. I
4 wouldn't necessarily call it to mind, but yes.

5 **Q.** And that was, in fact, the call that you received from
6 Mr. Daleiden at the Gulf Coast clinic, wasn't it?

7 **A.** I would assume so.

8 **Q.** And how -- how was it that Mr. Daleiden referred to
9 himself?

10 **A.** He calls himself on the video there, "Sarkis."

11 **Q.** And that is not Mr. Daleiden's name, is it?

12 **A.** No.

13 **Q.** So you did, in fact, know during the Human Capital
14 Project, the Center for Medical Progress project, that
15 Mr. Daleiden was using a false name.

16 **A.** When you say "know," I mean, at the time I was receiving
17 that call I'm afraid I wasn't really paying a great deal of
18 attention to it. It was very brief. And I really can't -- I
19 don't know that -- I don't -- you -- I don't know. I don't
20 know the date of that call. It was some time before the
21 release of the videos. That was the call -- as he says, that's
22 from Texas.

23 **MR. KAMRAS:** No further questions.

24 **THE COURT:** Anything further, Ms. Short?

25 **MS. SHORT:** Yes, just very briefly, Your Honor.

RHOMBERG - RECROSS / SHORT

RECROSS-EXAMINATION

1
2 **BY MS. SHORT**

3 **Q.** Mr. Rhomberg, when Mr. Kamras asked you about didn't you
4 see some preview videos from Mr. Daleiden, any of those preview
5 videos, those were not the full, two-hour, start-to-finish
6 videos.

7 **A.** No, no.

8 **Q.** They would have just been selected clips of the videos.

9 **A.** That's right, uh-huh.

10 **Q.** And in the clip that he just showed you, I don't know, is
11 it up there? That was from April of 2015, correct?

12 **A.** Well, I don't have it in my memory. But if I remember, I
13 think the Houston site visit of the Planned Parenthood facility
14 in Houston was one of the last places before the videos were
15 released.

16 If you have the evidence there that it's April I couldn't
17 recall to my memory, but I'll agree with you that I assume that
18 would be April. That would be a few months before the videos
19 came out.

20 **MS. SHORT:** Okay, thank you.

21 **THE WITNESS:** Yeah.

22 **THE COURT:** All right.

23 **MR. KAMRAS:** Nothing further.

24 **THE COURT:** Mr. Rhomberg, you can step down. Thank
25 you. And you are excused.

FOWLER - DIRECT / BOMSE

1 **THE WITNESS:** Uh-huh.

2 (Witness excused)

3 **MS. BOMSE:** Your Honor, plaintiffs call Melissa
4 Fowler.

5 **MELISSA FOWLER,**

6 called as a witness for the Plaintiffs, having been duly sworn,
7 testified as follows:

8 **THE CLERK:** Please state your full name for the
9 Record and spell it for the court reporter.

10 **THE WITNESS:** Okay. Hi. My name is Melissa Fowler,
11 M-E-L-I-S-S-A, Fowler, F as in Frank, O-W-L-E-R.

12 **MS. BOMSE:** Your Honor, may I approach the witness?

13 **THE COURT:** Sure.

14 **DIRECT EXAMINATION**

15 **BY MS. BOMSE**

16 **Q.** Good morning, Ms. Fowler.

17 **A.** Good morning.

18 **Q.** Would you please tell the jury where you work?

19 **A.** I work at the National Abortion Federation.

20 **Q.** And what is your job title?

21 **A.** I am the vice-president of external relations.

22 **Q.** And would you tell the jury, please, about your
23 educational background.

24 **A.** Sure. I went to Texas A & M University in Texas, and I
25 have a bachelor of science in journalism.

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1 Q. And, how long have you worked at the National Abortion
2 Federation?

3 A. So this month is actually my thirteenth anniversary there.

4 Q. And -- congratulations. Prior to working at NAF, would
5 you tell us what jobs that you held after you graduated from
6 college?

7 A. Sure. So, after college, I was living in Dallas. And I
8 actually worked at a Planned Parenthood clinic for a surgical
9 center that did abortions and vasectomies. And I did that for
10 about a year, and really loved it, but was looking to do
11 something with my degree, and also to move.

12 And so I moved to the East Coast, and worked briefly for a
13 publishing house. And then eventually went back to Texas, and
14 worked for a nonprofit there, doing communications work.

15 Q. And at some point did you move on from the work that you
16 were doing in Texas at -- I'm sorry, did you say where you
17 worked when you moved back to Texas?

18 A. I didn't, no. I worked for a nonprofit called Children at
19 Risk in Houston.

20 Q. And what was Children at Risk?

21 A. So they were a nonprofit that deals with child welfare.
22 They issue a report every year on the wellbeing of children,
23 based on a few indicators that they track. Based on education,
24 health and well-being.

25 Q. And at some point did you move on from your job at

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1 Children at Risk?

2 **A.** I did.

3 **Q.** And where did you go then?

4 **A.** From there I went to D.C., and started working at NAF.

5 **Q.** Okay. And that was in 2006?

6 **A.** Yes.

7 **Q.** And what was your first job when you began working at NAF?

8 **A.** So, I was hired as the communications coordinator.

9 **Q.** Okay. And at some point did you receive a promotion from
10 communications coordinator?

11 **A.** Yes. I was promoted to communications director in May of
12 2009.

13 **Q.** Okay. And what were your general job responsibilities as
14 director of communications?

15 **A.** So we handle all press inquiries for the organization. We
16 did social media. We write press statements. Any external
17 communications.

18 **Q.** Okay. I probably should ask you this before we go on with
19 your career. What is NAF?

20 **A.** Oh, okay. So NAF is the professional membership
21 association for abortion providers. And we have members in the
22 United States, Canada, Mexico City and Columbia.

23 **Q.** Thank you. And at some point did you receive a further
24 job change or promotion from your director of communications?

25 **A.** Yes. In 2013, I took over the membership department and

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1 became the senior director of communications and membership.

2 **Q.** Okay. And does that -- does that remain -- well, what is,
3 what is your current job?

4 **A.** So earlier this year, in April, my title changed and I
5 took over the development department as well, and am now the
6 vice-president for external relations.

7 **Q.** Okay. So do you still remain overseeing and at the head
8 of communications?

9 **A.** Yes.

10 **Q.** And membership, as well?

11 **A.** Yes.

12 **Q.** Okay. Do you have any other areas of responsibility at
13 NAF besides membership and communications?

14 **A.** Well, now, development as well.

15 **Q.** Okay. Thank you.

16 You said that NAF is a professional association of
17 abortion providers. How long has NAF been around?

18 **A.** Since 1977.

19 **Q.** And what type of individuals or organizations would be
20 members of NAF?

21 **A.** So we have individuals who might be clinicians that
22 provide abortion care, students, researchers, advocates in the
23 field. And then we also have facilities. So Planned
24 Parenthood affiliates, independent abortion providers, doctors
25 offices, hospitals or universities that provide abortion care

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1 would also join NAF.

2 And then we have some organizational members who would be
3 people like the ACLU, NARAL, Planned Parenthood Federation of
4 America, that would join NAF in that capacity.

5 Q. So you said that Planned Parenthood Federation of America
6 is a NAF member?

7 A. Yes, it is.

8 Q. And some affiliates of Planned Parenthood are also members
9 of NAF?

10 A. Yes.

11 Q. And does NAF have a vetting process before one can join
12 NAF?

13 A. Yes.

14 Q. Can you describe that vetting process for me with respect
15 to individuals?

16 A. Sure. So if an individual wants to join NAF, they fill
17 out an extensive application. We ask them for information,
18 including three references which we want to be NAF members or
19 people that are known in our community. And then we check
20 those references, and talk to those people about how they know
21 this person.

22 Today, we would verify their identity. We get their date
23 of birth or their home address, and run an identity check on
24 them.

25 Part of the application is signing a confidentiality

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1 agreement saying that they, one, agree with the values of our
2 organization and our mission, and they want to join and go
3 through this application process, and that they will keep any
4 information that they get from NAF confidential.

5 And then after we verify those things, if they're a
6 clinician, we would run a check on them in the national
7 practitioner database, which is a system that would tell us if
8 they have had any malpractice claims, any issues with their
9 license, anything like that. Based on that report, we might
10 have additional conversations with them or their employer.

11 And then after that, they could be approved for
12 membership.

13 **Q.** Sounds like a rather extensive process.

14 **A.** It is.

15 **Q.** You said when you were answering my question that you
16 would get the date of birth, and do that sort of check now. Is
17 that something that you've always done?

18 **A.** No. It's not.

19 **Q.** When was that put in place?

20 **A.** It was after 2015.

21 **Q.** And what happened in 2015 that caused you to put that in
22 place?

23 **A.** It was after the release of the videos, when we realized
24 that we had been infiltrated.

25 **Q.** And now, switching to entity membership, can you describe

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1 what kind of vetting process NAF performs when it's an entity
2 that's applying for membership?

3 **A.** Sure. So it's a much longer process, and it can take
4 months for someone to go through. So someone from the clinic
5 would fill out an application, which would collect all the
6 logistical information about the clinic, their location, their
7 hours of operation, their services they provide.

8 We also are looking for their boards, their governing
9 bodies, anyone that has any oversight over their policies and
10 procedures. We would ask for information on all of their
11 clinicians, including, like, their license numbers and date of
12 birth, again, to run the same national practitioner database
13 check on them.

14 And then after we do those things, they do also have to
15 give us three references which are NAF members, are people
16 known to us in the community. We check those references.

17 And then a member of our medical team, usually two
18 clinicians, will go to that clinic, and do a two-day site visit
19 while they're there to observe how they do procedures, how they
20 operate the facility. And give them a report after that.

21 And then once that process is complete and we're sure that
22 they're in compliance with our clinical policy guidelines --
23 which we publish every year, and they set the standards of care
24 for abortion in North America. So that's what we're measuring
25 when we're doing the site visit.

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1 And once we are sure that they are in compliance with
2 those, and all the other application boxes have been checked,
3 and references checked, then they would be approved for
4 membership.

5 **Q.** You mentioned a site visit. Who at NAF would perform that
6 site visit?

7 **A.** So it would be someone from our medical team. Usually two
8 clinicians, usually advanced-practice clinicians or physicians.

9 **Q.** And you mentioned in your answer to me something you
10 called "clinical policy guidelines." What are those?

11 **A.** So since 1996, we've been publishing evidence-based
12 guidelines for abortion care. They're publicly available.
13 They're on our site. And they're reviewed every year by our
14 board. And that's what our members ensure that they're
15 complying with.

16 **Q.** And does NAF have some mechanism by which it continues to
17 ensure compliance with those standards by your members?

18 **A.** Yes. So after you join NAF, every facility has a followup
19 site visit every one to three years, where the clinicians come
20 out and do the same thing again. And also they spend some time
21 doing training for staff. You can elect to have us help you
22 run emergency drills or do something like that while we're
23 there. And to provide some free hands-on consulting and
24 training while we're doing that.

25 And then every single year, the medical directors of the

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1 facilities have to sign a compliance agreement certifying that
2 they remain in compliance with our CPGs.

3 **Q.** Can you tell me what services NAF offers its members? Why
4 would someone want to be a member of NAF?

5 **A.** Sure. So, you know, we provide quality assurance. And
6 some of that medical training and technical assistance, like at
7 the site visits.

8 We also are the only accredited body that does
9 abortion-exclusive online and continuing medical education,
10 both in person at our meetings, and through online modules. So
11 there's a big education component for our members.

12 We provide security services to our members. We have a
13 team of people that will go to clinics and do on-site
14 assessments and trainings for staff. And then we'll respond if
15 they have an emergency.

16 We run a group purchasing program that actually is -- we
17 work with some preferred vendors to help our members be able to
18 find and afford the supplies that they need to run their
19 clinics.

20 So, many things. We do referrals through our hotline for
21 them. So, helping women get to the clinics and find them.

22 **Q.** Terrific. So you mentioned a couple of things there.
23 One, you mentioned the continuing medical education. And, and
24 you mentioned meetings.

25 What are the meetings you were referring to?

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1 **A.** So we have an annual meeting every year in the spring,
2 where we bring together our membership and do about four days
3 of continuing medical education.

4 **Q.** Okay. And we will talk more about your meetings, I
5 promise you.

6 **A.** Sure.

7 **Q.** You also mentioned that one of the benefits that NAF
8 provides its members has to do with security.

9 **A.** Yes.

10 **Q.** Is that a benefit that the members make use of?

11 **A.** Absolutely. It's one of the most utilized benefits. We
12 are one of the only places that abortion providers can go for
13 that kind of security support. And it's offered free as a
14 benefit of their membership.

15 **Q.** Okay. And who provides that, that security support for
16 your members?

17 **A.** So we have a team in our security department. It's four
18 people right now who provide those -- that on-site assistance
19 and training.

20 **Q.** Okay. And so you referred to an on-site -- on-site
21 assessment? Was that right?

22 **A.** Yes.

23 **Q.** And what's that?

24 **A.** So our security team will go and visit clinics, and they
25 do an assessment of their security. Of the physical security,

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1 of the procedures they have in place. They might make
2 recommendations on, you know, things where they need to lock a
3 door or install a camera.

4 And then they would also do trainings for staff, to run
5 drills on a variety of scenarios.

6 **Q.** Okay. Do you also provide any security assistance to
7 individuals at their homes?

8 **A.** We do. So sometimes clinic staff or doctors will request
9 that when the team is there, that they also go to their home
10 and do an assessment.

11 **Q.** All right. And does the security department at NAF
12 provide guidance to its members on ways to stay safe?

13 **A.** Yes. They do. When they do that home consultation, they
14 might advise about things like, you know, varying the route you
15 drive to work, or things like that.

16 **Q.** Would you say that one of the services or benefits that
17 NAF members receive from being a member of NAF is -- relates to
18 community?

19 **A.** Absolutely. Yes. That's something that we hear a lot.
20 For some of our providers, they might be the only clinic in
21 their entire state. So they don't really have peers or
22 colleagues they can call if they have a question, or they are
23 facing a challenge.

24 But NAF is that place for them, where they can come
25 together with other providers.

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1 Q. And going back to the security that you mentioned, why
2 does NAF put such a focus on security?

3 A. Because many of our providers have been targeted, they
4 have been the targets of violence or harassment at their homes,
5 at clinics and other places.

6 MR. KOZINA: Objection. No personal knowledge; lacks
7 foundation.

8 MS. SHORT: And move to strike the answer.

9 THE COURT: All right. Do you want to lay a
10 foundation?

11 MS. BOMSE: Sure.

12 BY MS. BOMSE

13 Q. Ms. Fowler, do you work with the security team at NAF?

14 A. I work very closely with them, yes.

15 Q. And does NAF -- so how is it that you -- you know about
16 the threats and harassment that your members face?

17 A. I've had members call me and tell me; I've seen --

18 MR. KOZINA: Hearsay.

19 THE COURT: Overruled.

20 THE WITNESS: I've seen emails they've received.

21 I've been -- I've gone on-site when there has been an incident
22 of major violence at a clinic.

23 BY MS. BOMSE

24 Q. And does NAF track clinic violence?

25 A. Yes, we do.

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1 Q. Okay. And how do you do that?

2 A. We ask our members to submit monthly reports on the
3 violence and harassment that they're facing.

4 Q. Okay. And does NAF --

5 MR. KOZINA: Objection. Hearsay. Move to strike.

6 THE COURT: Overruled.

7 BY MS. BOMSE

8 Q. What does NAF do with that information?

9 A. So we use it to compile statistics that we release
10 publicly, and use with law enforcement.

11 Q. And do you have a role in producing that, that report?

12 A. I assist with the report. And then my team helps with the
13 distribution of that report.

14 Q. Now I want to shift our attention to the annual meetings.

15 A. Okay.

16 Q. What's -- what's the purpose of those meetings?

17 A. So they have a couple of purposes. You know, one, it's
18 our biggest event, to showcase and provide continuing medical
19 education.

20 So it's four full days of workshops, panel discussions,
21 concurrent discussions, hands-on training, where doctors can
22 get CME credit. So that's a big benefit to our members.

23 But --

24 Q. Let me stop you right there.

25 A. Yeah.

1 Q. What is CME?

2 A. Sure. It's continuing medical education.

3 Q. Okay. And is that something that -- what is continuing
4 medical education?

5 A. So clinicians and physicians need to maintain and get a
6 certain number of hours of CME credits each year to maintain
7 their license, and to stay current in the field.

8 Q. Is it easy to get continuing medical education related
9 specifically to abortion care?

10 A. It's not, no. We are one of the only people -- the only
11 group that I know of that provides that kind of training
12 exclusively in abortion.

13 Q. Okay. And so -- I cut you off then. So go on and
14 continue to describe, if you would, the purposes of the annual
15 meetings.

16 A. So it's also a really important time for our members to
17 network and to come together and to have a community. You
18 know, a lot of people talk about it's their favorite part of
19 the year, it's the reason they're part of NAF, is because they
20 want to be part of that community. So there is a lot of
21 networking; there's a lot of talking. We have members that
22 have been members for 30 years, so they have known each other a
23 really long time, so it's kind of like a reunion.

24 But the community aspect is really important. And it's
25 one of the things that people -- when they do their evaluations

1 at the end of the meeting, many people say it's their
2 number-one reason for coming.

3 **Q.** And do you personally work at those events?

4 **A.** I do.

5 **Q.** And have you done so since you began in 2006?

6 **A.** I have.

7 **Q.** Okay. Does NAF advertise the annual meetings?

8 **A.** Not publicly, no.

9 **Q.** And are NAF meetings open to the public?

10 **A.** They're not.

11 **Q.** What is the reason that NAF doesn't advertise its
12 conferences? Presumably you could easily attract people if you
13 did that.

14 **A.** Right. Because we want them to be safe spaces for
15 members, where they won't be harassed or targeted, and where
16 they can be free to have really candid conversations, and to
17 feel like they're in a safe space, both physically from any
18 threats of harm, and in terms of what they might want to talk
19 about, or just to be -- feel safe.

20 **Q.** And what are the mechanisms by which the steps -- the
21 steps that NAF takes in order to ensure that it is a safe space
22 for attendees?

23 **A.** So we start by we don't put any information on our public
24 website. We don't advertise the meeting.

25 In a lot of other professional societies this would be the

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1 biggest event of the year. We would have media there. It
2 would be all over our website. We would want as many people as
3 possible to come.

4 So as a common person it's very different. If someone
5 calls, we wouldn't confirm or tell you the date or location of
6 the meeting, because it's something that we keep confidential.

7 We only --

8 **Q.** Let me ask you, if I just phoned up NAF and said, "When is
9 your next annual meeting," what response would I get?

10 **A.** First, we would ask who you are and how you heard about us
11 and the meeting. We would ask if you're a member. If you're a
12 member, we would ask for your member number.

13 We would most likely take down your information and try to
14 call you back, hopefully, at the clinic or a way where we could
15 verify that that's actually where you work. And we would look
16 you up in our database to confirm that that's your member
17 number and that you are who you say you are.

18 **Q.** You mentioned a member number. What's that?

19 **A.** So when you join NAF, every individual and facility is
20 assigned a membership number.

21 **Q.** And I guess the member number is one used if you want to
22 call up and ask a question?

23 **A.** Yes.

24 **Q.** And it's --

25 **A.** It's also used when you register for the meeting, you have

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1 to put your number in.

2 **Q.** Okay. And were there any other uses that NAF makes of the
3 number?

4 **A.** Yes. So if we send anything through physical mail to a
5 clinic, we have a special place on the label where we'll put
6 their membership number. And that way they know that it's a
7 legitimate communication from NAF.

8 Because we have had instances in the past where people who
9 oppose abortion have mailed things to the clinic trying to make
10 it look like it was coming from NAF, anthrax, threat letters,
11 things like that. So we had to come up with a system so
12 members would know what we're mailing is actually a true
13 communication from NAF.

14 **Q.** Okay. Thank you.

15 So going back to discussion of the annual meeting. Are
16 only members allowed to attend the annual meeting?

17 **A.** No. So NAF members can attend. Any staff at a Planned
18 Parenthood affiliate, regardless of their NAF membership, can
19 attend.

20 Then we do allow some other people from the community to
21 go through a vetting process.

22 **Q.** Okay. What sort of vetting process do members of the
23 community who want to attend a NAF conference go through?

24 **A.** So you would have to give us a letter of reference or
25 sponsorship from a current member, and we would verify that and

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1 talk to that person before we approved you.

2 **Q.** Okay. And does NAF allow exhibitors at the conference?

3 **A.** We do. We have a small number of exhibitors.

4 **Q.** What's the reason that you have exhibitors at your
5 conferences?

6 **A.** Well, one reason is, you know, most of them are vendors
7 that provide some type of good or service that an abortion
8 provider would need. And so we want to find a way to connect
9 our members with those vendors, who would know are willing to
10 work with them and who have products that they need. It's also
11 used to help defer some of the meeting costs.

12 **Q.** And are you personally involved in the planning of NAF
13 meetings?

14 **A.** I am.

15 **Q.** Can you describe generally what's involved in planning a
16 NAF annual meeting?

17 **A.** So we do a call for proposals and sessions. We appoint
18 every year a planning committee, which is made up of members,
19 and I help select that committee.

20 And then we have a series of phone calls with that
21 committee where they go through all the sessions and they pick
22 which ones we're going to take. They decide about how many
23 speakers we'll add, faculty, things of that nature.

24 And then we work with a graphic designer to come up with
25 all of the collateral for the meetings; so the program, the

1 email headers, things of that nature. And then we send out
2 announcements to our members about it.

3 **Q.** Are NAF annual meetings held at hotels generally?

4 **A.** Yes.

5 **Q.** And how far in advance would you select the hotel where a
6 NAF meeting will take place?

7 **A.** We select it years out. Right now we're looking for the
8 sites for 2022 and 2023, but in the time I've been at NAF some
9 years we have had them booked out five years in advance.

10 **Q.** And who are involved from NAF in selecting the hotel?

11 **A.** So we have a team that runs our meetings, an in-house team
12 of people. They are involved.

13 And then our security team is also involved from the very
14 beginning. They do site visits at all the hotels, and they
15 have to approve a hotel before we would pick it.

16 **Q.** So if -- if a -- if you identify a hotel that you would
17 like to hold a conference at and your security team goes out
18 and sees it and doesn't think it's appropriate, has there ever
19 been an instance where they have been overridden?

20 **A.** They have not been overridden, no. Security has to sign
21 off on the hotel.

22 **Q.** Okay.

23 **THE COURT:** Is this a good time to break?

24 **MS. BOMSE:** It would be great.

25 **THE COURT:** Okay. Ladies and gentlemen, we'll take

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1 our first break in the morning. I think this will take about
2 15 minutes, so please remember the admonitions.

3 (Jury exits the courtroom at 9:40 a.m.)

4 **THE COURT:** Ms. Fowler, you can step down. Actually,
5 if you would step outside for a moment.

6 (Witness exits the courtroom)

7 **THE COURT:** Ms. Mayo and Mr. Mihet, if you would.

8 **MS. MAYO:** Your Honor, I would also ask that
9 Ms. Merritt be excluded from the courtroom to discuss the issue
10 that I raised earlier this morning.

11 **THE COURT:** All right. We'll do that.

12 Ms. Merritt, if you wouldn't mind stepping out for a
13 moment?

14 (Ms. Merritt exits the courtroom)

15 **MS. MAYO:** Your Honor, if you will recall,
16 Ms. Merritt testified this past Friday, and that morning
17 counsel provided us with some transcripts of clips, video clips
18 that they intended to use during Ms. Merritt's testimony.
19 There were some objections to some of them, which you ruled on
20 this morning.

21 Others, and in particular the first video clip that was
22 shown to her, we did not object based on the transcript because
23 it was something -- the conversation was talking about a valet
24 or something, where is the valet.

25 During Ms. Merritt's testimony, the video was played and

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1 that -- you may recall this video clip. It was someone handing
2 to Ms. Merritt a badge, which she then put in her purse and
3 then walks through the exhibit area at the 2014 NAF conference.

4 Now, that video was then used to question Ms. Merritt
5 about badges and security. And the first line of questioning
6 was that someone had given her the badge. She had put it into
7 her purse, and it was -- the inference and the testimony that
8 followed was that that was Ms. Merritt's badge; and that when
9 she then put the badge in her purse and was allowed to walk
10 through the full hallway and get back to the exhibit room and
11 the BioMax table, that she was not stopped by security or asked
12 to show her badge because the badge was in her purse.

13 Later in the testimony counsel went back to that and added
14 onto that and said: Did that refresh your recollection,
15 Ms. Merritt, about how you obtained your badge?

16 And Ms. Merritt testified that that refreshed her
17 recollection that Brianna Baxter had gone, picked up her badge,
18 and given it to Ms. Merritt. Ms. Merritt then put it in her
19 purse. And it reinforced the earlier testimony.

20 There was interesting that testimony in that video clip
21 that was very troubling to us, and so we went back and we
22 looked at the full videotape and, in fact, the clip before it.
23 And what the video actually shows, and it's very clear on the
24 tape and on a certified transcript of the tape that I have, was
25 that Ms. Baxter took off her own conference badge and her

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1 lanyard, and there was a discussion between Ms. Merritt and Ms.
2 Baxter that Ms. Merritt was going to take possession of
3 Ms. Baxter's badge and keep that because Ms. Baxter was leaving
4 the conference and not coming back and, therefore, did not need
5 it to -- she didn't need it to get out, so she -- Ms. Merritt
6 would carry her badge.

7 And you can see in the videotape that it's Ms. Baxter's
8 badge that she put in her purse, walked back to the room and
9 when she gets back to the room, we checked the video of Mr.
10 Daleiden's camera, and Ms. Merritt comes back to the conference
11 room at the same time stamp. Ms. Merritt is wearing her own
12 badge.

13 And so we believe that a false narrative has -- on two
14 significant security points there: Registering and getting the
15 badge and walking through the long conference hall and getting
16 back into the exhibitor room, that those two points were
17 falsely portrayed to the jury.

18 I have a thumb drive with the longer clip. We didn't --
19 there is a portion of the clip where Ms. Merritt is waiting for
20 Ms. Baxter to return from the ladies' room. It's kind of long.
21 We didn't cut that out because we didn't want to, you know,
22 alter the clip in any way.

23 I also have the transcript of the videotape and the
24 transcript from Friday's testimony, and I would like the Court
25 to review those.

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1 **THE COURT:** All right. What are you asking me to do?

2 **MS. MAYO:** Well, if Ms. Merritt is going to be
3 allowed to come back on the stand, I'm not certain that this
4 will cure the issue, but we should be able to show her the
5 longer tape and cross-examine her on what the tape actually
6 shows.

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

8 **MR. MIHET:** Ms. Mayo had an opportunity for a full
9 and vigorous cross examination of Ms. Merritt when she was on
10 the stand, and she did not cross-examine her on these points.

11 I've not yet reviewed the transcript that she proposes.
12 She could have shared this with me before today, and she did
13 not.

14 I'm not familiar with any of the things that she's talking
15 about, so I'm not prepared to discuss those with the Court at
16 this time. At the very least I think the videos would still
17 show that Ms. Baxter was able to move in and around the areas
18 without a badge.

19 But my point is these arguments could have and should have
20 been made when Ms. Merritt was on the stand before, not now.

21 **THE COURT:** And is Ms. Baxter going to testify?

22 **MR. MIHET:** Not to my knowledge.

23 **MS. MAYO:** No, Your Honor.

24 **MR. MIHET:** And they certainly could have called her.

25 **THE COURT:** All right. So why don't you provide me

1 with the information, and I'll take a look at it and whether --
2 and then -- and give to it Mr. Mihet so he can take a look at
3 it and we can discuss the matter further.

4 And we can hold off on your client testifying and showing
5 the video for until we've resolved this particular issue.

6 **MS. MAYO:** Your Honor, I should clarify, Ms. Baxter
7 took the Fifth at her deposition. So we were not able to
8 question her about it.

9 I have the Court's -- the video clip on the thumb drive,
10 the transcript of the video clip and the transcript of the
11 testimony on Friday.

12 I would also point out that while I did have an
13 opportunity to cross-examine Mrs. Merritt on Friday, I was not
14 given -- first of all, I was not given the actual clip. I was
15 just given a transcript Friday morning, the same day that she
16 took the stand. So it -- I had to go back and put all the
17 issue together.

18 **THE COURT:** If you would provide Mr. Mihet with the
19 clip also?

20 **MS. MAYO:** I just did.

21 **THE COURT:** Okay.

22 **MR. MIHET:** I would just note also that same exact
23 clip was played at the preliminary hearing. It received top
24 billing there, and Planned Parenthood had its people in the
25 audience there at that time as well.

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1 **THE COURT:** All right. Well, I'll take a look at
2 this and we'll discuss it later.

3 **MS. MAYO:** Thank you.

4 And, Your Honor, I would also ask that counsel, or frankly
5 anyone in the courtroom, be instructed not to discuss with
6 Ms. Merritt what we've just discussed in here.

7 **THE COURT:** I agree, until this is resolved. So that
8 goes for members of the audience, and it goes for the parties,
9 and it goes for the lawyers. Don't discuss this piece of
10 information with the witness.

11 And we'll be in recess for about seven more minutes.

12 (Whereupon there was a recess in the proceedings
13 from 9:49 a.m. until 10:02 a.m.)

14 **THE COURT:** All right. Please be seated everybody.
15 Ms. Bomse, please go ahead.

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

17 **BY MS. BOMSE**

18 **Q.** Ms. Fowler, right in front of you there there's a little
19 binder. Do you see that?

20 If I could ask you to open it and turn to the tab for the
21 exhibit that's been marked Exhibit 565. Are you there?

22 **A.** Okay.

23 **Q.** Great. Do you recognize Exhibit 565?

24 **A.** I do.

25 **Q.** And can you just say generally what it is?

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1 **A.** So it's an agenda for an all-hands meeting that we hold
2 with staff usually a few weeks to a month before an annual
3 meeting.

4 **Q.** And were you present at this particular meeting?

5 **A.** I was.

6 **Q.** And is that -- are the all-hands meetings, is that
7 something that NAF does regularly before annual meetings?

8 **A.** Yes.

9 **Q.** Okay. And have you been present at these all-hands
10 meetings in the past as well?

11 **A.** I have.

12 **Q.** Okay. And is an agenda typically prepared?

13 **A.** Yes.

14 **Q.** Okay. And is it prepared fairly close to the time that
15 the meeting is actually going to occur?

16 **A.** Yes.

17 **MS. BOMSE:** Your Honor, I move into evidence
18 Exhibit 565.

19 **THE COURT:** Any objection?

20 **MS. DHILLON:** No objection, Your Honor.

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

22 (Trial Exhibit 565 received in evidence).

23 (Document displayed)

24 **BY MS. BOMSE**

25 **Q.** Okay. So at the top of this exhibit it indicates that

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1 it's the "Staff Contingent Meeting" and it says it goes from
2 3:00 to 6:00. Is that typical?

3 **A.** Yes.

4 **Q.** Do they sometimes go over?

5 **A.** Sometimes.

6 **Q.** And if we look down the agenda to Item No. 2, I see that
7 it says "Security" there, and then there is a name in
8 parentheses "Michelle D". Who is that?

9 **A.** So she's our security director.

10 **Q.** Okay. And under that there is a list of four items:
11 Radios, emergency codes, social media and photos, and room
12 sweeps.

13 Can you explain what's being referred to with each of
14 those items?

15 **A.** Sure. So when we're on-site for the meeting, the staff
16 that are on the floor wear radios. And so this is something
17 that most people haven't done before. They are big black
18 radios you wear, like, on the back of your pants. And they
19 have an ear piece that goes through up here, and then there is
20 a wire that goes down here where the microphone is
21 (indicating).

22 And so Michelle goes over some basic rules about, you
23 know, how to use the radio, what you need to wear to clip it
24 on, things like that. Where to pick up your radios when you
25 get on-site, things of that nature.

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1 We also use emergency codes so if there were some type of
2 incident, they might say it's a Code Orange or code this. So
3 they go over what codes they are going to use so that staff are
4 familiar with those in case they hear them or need to use them.

5 We also go over the reminder that we don't allow social
6 media or photography at the conference --

7 **THE COURT:** So wait for questions.

8 **MS. BOMSE:** That's fine.

9 **THE WITNESS:** Oh, okay. I'm sorry.

10 **MS. BOMSE:** It's my fault because I asked her about
11 all four items.

12 **BY MS. BOMSE**

13 **Q.** So it's a wonderful place to stop because I'm -- I want to
14 get you to explain what you mean when you say you don't allow
15 social media at the conference.

16 **A.** Right. So we have signs posted everywhere to remind
17 people that they are not to post about being at the NAF meeting
18 and their location while they are there.

19 We send an email reminder to attendees the week of the
20 meeting reminding them not to post that they are traveling to
21 San Francisco or things like that and advising them about
22 turning off location services on their phones.

23 **Q.** And why do you do that?

24 **A.** To protect the security and confidentiality of the
25 meeting. We don't want 400 abortion providers to post that

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1 they are going to be at this hotel at this date.

2 **Q.** And why was it a concern if 400 abortion providers posted
3 that they were all going to be in one room?

4 **A.** Because if someone wanted to really devastate abortion
5 access in this country, they could do something to that
6 conference, and there would be, you know, many of the doctors
7 that provide this service all in one space and they could be
8 harmed at one time.

9 **Q.** Okay. And room sweeps, what does that refer to?

10 **A.** So staff are assigned to monitor the rooms where sessions
11 are happening. There is one staff person every session.

12 And at the end of the session it's the staff person's job
13 to sweep the room, to go through and make sure that they picked
14 up any piece of paper, any scratch piece of paper, any
15 materials left behind; programs, bags, scarves, things of that
16 nature.

17 We collect those and take them to NAF registration before
18 anyone from the hotel would go in the room. So we do our own
19 sweep to make sure that all of our meeting materials and, you
20 know, any little scrap of paper is out of that room.

21 **Q.** Okay. And why do you want to collect all these scraps of
22 paper? What's the concern that you're addressing?

23 **A.** Well, we don't know what's on them. They could be copies
24 of the session presentation, notes people wrote to each other.
25 They could have personal information on them. And so we want

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1 to make sure that we handle them appropriately.

2 **Q.** Okay. And I'm going to move on to a different part of
3 this agenda.

4 **A.** Okay.

5 **Q.** So on Page 2 of this document there is a section that
6 starts with Roman numeral IV, "On-Site Training for Room
7 Monitors and Registration Staff."

8 I'd like to ask you about what's being discussed at the
9 meeting in terms of registration area responsibilities?

10 **A.** Okay. So we go over with staff how the registration
11 process works.

12 We go over the system of how people have to sign a
13 Confidentiality Agreement. They have to show I.D. to whoever
14 is working registration, and they have to do those things
15 before they are given their badge and their bag, which has the
16 conference materials in it.

17 **Q.** Okay. So does the staff receive training before they sit
18 at the registration desk?

19 **A.** They do. So during this meeting, they go over all of
20 those things. And then the staff that will be primarily
21 assigned to registration once they get on-site, they go through
22 a mini training in the actual space so they can show them,
23 like, here are where the forms are. Here are where the pens
24 are. Here are where these badges are. And they can actually
25 walk the physical area where they will be doing it.

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1 Q. Okay. And is it a NAF policy that anyone who is seeking
2 admission into the NAF conference sign an NDA?

3 A. Yes.

4 Q. And I used a term there "NDA." A Confidentiality
5 Agreement?

6 A. Yes.

7 Q. Okay. And is it also NAF's policy that anyone seeking
8 admission is required to show identification?

9 A. Yes.

10 Q. Is that photo identification?

11 A. Yes.

12 Q. And is it NAF's policy that you must be wearing a badge
13 before you enter the meeting space?

14 A. Yes.

15 Q. Okay. And who -- who at the meetings would check for --
16 whether someone is wearing a badge?

17 A. Everyone is looking for that. I see other attendees
18 reminding people to put it back on.

19 As NAF staff, we certainly would remind someone to put
20 their badge on. And it's one of the main things that the
21 security staff is looking for.

22 Q. Who are the security staff at NAF meetings?

23 A. So on-site at the meeting we have our own in-house staff,
24 and then we have a lead team that's made up of other
25 professionals.

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1 Right now it's made up of law enforcement professionals
2 from across the country. So a homicide detective from Montana
3 and a couple of people that work for a private security firm
4 that we have been working with for the past few years that come
5 and lead security on-site and form what we call our lead team.

6 Then to supplement we also usually hire off-duty police
7 officers in whatever city we're in to help work meeting
8 security on the floor.

9 **Q.** Okay. And in terms of admitting individuals to the
10 conference and whether or not they are wearing their badge, are
11 there any exceptions to that rule? For example, if someone was
12 really well known?

13 **A.** No. I have had to ask very well-known providers to go and
14 get their I.D. and show me. I have had to ask people I know
15 very well and worked with for many years. Everyone has to show
16 I.D.

17 **Q.** And then once they have shown the I.D., they get their
18 badge?

19 **A.** Yes.

20 **Q.** And do they have to show their badge?

21 **A.** They have to have it on in the meeting areas, yes.

22 **Q.** Okay. And what's the point of the requirement that
23 everyone be wearing their badge?

24 **A.** It's an easy way to recognize that someone has been
25 through the registration process. They have been vetted, and

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1 they are a meeting attendee that should be in that space.

2 Q. Okay. And where was the NAF 2014 annual meeting held?

3 A. It was here in San Francisco.

4 Q. All right. And do you remember the hotel?

5 A. Yes. It was the Westin St. Francis.

6 Q. All right. Now, if I could get you to turn in the little
7 binder there to Exhibit 729.

8 (Witness complied.)

9 Q. Ms. Fowler, have you seen 729 before?

10 A. Yes.

11 Q. And what is that document?

12 A. So it's a floor plan of the different spaces where we had
13 meeting rooms and held functions at the Westin St. Francis.

14 Q. And you've been to that part of the St. Francis?

15 A. I'm sorry. Which part of the St. Francis?

16 Q. Well, you have been to the St. Francis?

17 A. I have.

18 Q. You were there for the 2014 meeting?

19 A. I was.

20 Q. I'm sorry. It seemed like a really obvious question,
21 but...

22 And focusing your attention on the document there on the
23 mezzanine and second floor depictions; do you see that?

24 A. I do.

25 Q. And do those look like accurate representations of those

1 portions of the hotel?

2 **A.** Yes.

3 **Q.** Okay.

4 **MS. BOMSE:** We would offer Exhibit 729.

5 **MS. DHILLON:** No objection, Your Honor.

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

7 (Trial Exhibit 729 received in evidence).

8 (Document displayed)

9 **BY MS. BOMSE**

10 **Q.** All right. I'm going to ask you if you can look at the
11 mezzanine floor and explain to me where registration was at
12 this particular meeting?

13 **A.** So at this meeting registration would have been off in the
14 bottom left in the Georgian room.

15 **Q.** So right here (indicating)?

16 **A.** Yes.

17 **Q.** And is this on the ground floor?

18 **A.** No. It's called the mezzanine level, but I guess it's
19 also like for, like, the second floor. It's one flight up from
20 the ground floor.

21 **Q.** Was there an exhibitor hall at this meeting?

22 **A.** Yes.

23 **Q.** And can you tell the jury where on the -- on this diagram
24 the exhibitor hall was?

25 **A.** So it would have been behind the Colonial room and then

1 the Italian room.

2 **Q.** So these two here (indicating)?

3 **A.** Yes.

4 **Q.** And do you recall between the -- was there a guard between
5 the entryway to the exhibitor hall, getting into the exhibitor
6 hall?

7 That was poorly expressed, but where was the guard
8 positioned?

9 **A.** So we would have had a security person standing outside,
10 sort of that corner over by the Georgian room, so that if
11 someone walked out there, they could direct them to
12 registration if they were a meeting attendee or they could ask
13 them to leave and go out of the space. And that would be
14 before you got into that sort of mirrored hallway that would
15 lead you down to the exhibit hall.

16 And then during high trafficked areas, we would probably
17 also have a guard down all the way to the right in front of
18 that last door, the Italian room. But you would have also had
19 to, you know, get past the guard outside of registration before
20 you got access to the exhibit hall, that hallway.

21 **Q.** So someone who wasn't wearing a badge, if they were
22 seeking to go past the registration area and into the exhibitor
23 hall, what would have happened?

24 **A.** Security would have immediately stopped them and asked
25 them, you know, if they were a meeting attendee, where their

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1 badge was; what their business was in the hotel.

2 **Q.** And then did NAF rent out the entire mezzanine floor for
3 its meeting?

4 **A.** I believe we had all of the meeting rooms on that floor.
5 They kind of wrap around, but we had those rooms.

6 **Q.** All right.

7 **MS. BOMSE:** Your Honor, would it be possible to have
8 Ms. Fowler come down and mark on the exhibit where the security
9 guard was and guard registration?

10 **THE COURT:** Why don't you have her mark it from here,
11 and then you can display it.

12 **MS. BOMSE:** I can put it up?

13 **THE COURT:** Yes.

14 **MS. BOMSE:** Excellent.

15 (Brief pause.)

16 **THE COURT:** I think there is a way that you can --

17 **THE WITNESS:** Is there a way to touch?

18 **THE COURT:** -- touch where that is. You can do it
19 that way. But if you need it written...

20 If you hit the screen, you can erase everything.

21 **THE WITNESS:** I have got it.

22 (Laughter.)

23 **THE COURT:** Okay. So ask a question.

24 **MS. BOMSE:** Sure.

25

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1 **BY MS. BOMSE**

2 **Q.** Ms. Fowler, can you mark on the physical exhibit where
3 registration is? Just maybe even put an "R" -- actually, just
4 use the piece of paper. That's probably better.

5 **A.** Okay.

6 (Witness complied.)

7 **Q.** And then can you just put an "X" where you recall seeing a
8 guard?

9 (Witness complied.)

10 **Q.** And can you mark where else you generally are aware there
11 was a guard near the exhibitor hall?

12 **A.** Okay, okay.

13 (Witness complied.)

14 **Q.** All right. So as you now marked it up, there is an "R" in
15 the Georgian room, and that's the registration; is that
16 correct?

17 **A.** Yes.

18 **Q.** And this "X" near the elevators, what's that represent?

19 **A.** So a security guard would have been there, where they
20 would be able to move to the left and see the stairs and then
21 also move to the right and see registration.

22 **Q.** Okay. And there is also an "X" sort of to the end of that
23 hall near to the Italian room. What does that represent?

24 **A.** So during -- for serving high trafficked areas we would
25 have had someone else there verifying badges.

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1 Q. Okay.

2 MS. BOMSE: Your Honor, we move this marked up
3 exhibit as 729-A.

4 MS. DHILLON: No objection, your Honor.

5 THE COURT: It's admitted.

6 (Trial Exhibit 729-A received in evidence))

7 BY MS. BOMSE

8 Q. Ms. Fowler, can you turn in your book now to Exhibit 8015?

9 (Witness complied.)

10 MS. BOMSE: Your Honor, Exhibit 8015 is stipulated
11 and I move it into evidence.

12 THE COURT: All right.

13 MS. DHILLON: No objection.

14 THE COURT: It's admitted.

15 (Trial Exhibit 8015 received in evidence)

16 (Document displayed)

17 BY MS. BOMSE

18 Q. Ms. Fowler, have you seen what's been marked as
19 Exhibit 8015 before?

20 A. Yes.

21 Q. Okay. And what is that document?

22 A. So it's our exhibitor prospectus for our 2014 annual
23 meeting.

24 Q. And what's an exhibitor prospectus?

25 A. So it's a document that we would give to exhibitors that

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1 would outline the different sponsorship opportunities,
2 information about the meeting, and it actually contains the
3 form where they would register and apply for exhibit space.

4 **Q.** Okay. And if you could turn to -- there aren't numbers.

5 **A.** No.

6 **Q.** -- in this document, but I believe it's the eighth page
7 in.

8 **A.** Okay.

9 **Q.** Are you at the "Application and Agreement"? Is that the
10 page I've sent you to?

11 **A.** Yes.

12 (Document displayed)

13 **Q.** All right. And can you just explain to the jury what sort
14 of information you're seeking here in this application?

15 **A.** So it would be information listing the name and the
16 contact information for the company that wanted to exhibit and
17 how they would want their name listed in the program or on the
18 sign in their booth.

19 It contains a place for them to list the names of people
20 who would be coming on-site to exhibit as representatives of
21 that organization, including, like, their title and how they
22 like their badges to be printed.

23 We would ask -- it asks about any products or services
24 they are exhibiting, if they have any exhibitors they don't
25 want to be placed next to, and then it gives them the option to

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1 select a sponsorship level or additional things they could
2 purchase, like an ad in the program.

3 **Q.** And I should have asked you this before, but how does one
4 qualify to be an exhibitor at a NAF conference?

5 **A.** So, you know, we don't do a big mailing. We don't go out
6 and really recruit new exhibitors.

7 Most of our exhibitors are either member clinics, who
8 might be exhibiting about their services, or they are vendors
9 who are already a part of our group purchasing program who
10 we've worked with for a long time who provide some kind of
11 specific product, like, medical supplies or medications that
12 would be wanting to exhibit.

13 So if one were to contact us from a different company that
14 we don't know, the first question would be: How have you even
15 found out about NAF and the meeting? And we would ask to get a
16 reference from them and other people they've worked with.
17 Especially if they've worked with members, we would want to
18 talk to those members and find out what their experience was
19 working with this vendor.

20 **Q.** Let me stop you there. Is there someone at NAF -- and now
21 I want to focus on this period that we're looking at, 2014 and
22 also 2015. Was there someone who was in charge of the
23 exhibitor space?

24 **A.** Yes.

25 **Q.** And who was that?

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1 **A.** It was a woman named Michelle Davis, and she was our group
2 purchasing manager.

3 **Q.** And was it Michelle Davis who was in charge of this
4 vetting process that you're describing?

5 **A.** Yes.

6 **Q.** I cut you off, if there was more to what you wanted to
7 describe.

8 Okay. Now, going back to the prospectus, if you could
9 turn the page.

10 (Document displayed)

11 **Q.** And what is the page that we're now looking at?

12 **A.** So this is the Exhibitor Rules and Regulations that we ask
13 the person submitting this to sign on behalf of the company.

14 **Q.** Okay. And is that a requirement to register?

15 **A.** Yes.

16 **Q.** If you weren't willing to sign this agreement, would you
17 be allowed to register?

18 **A.** No.

19 **Q.** And are you familiar with these rules that govern
20 exhibitors?

21 **A.** I am.

22 **Q.** Okay. I'm going to attempt to focus in on this a little
23 bit.

24 **A.** Okay.

25 (Brief pause.)

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1 Q. All right. If I could get you to look at Paragraph 8 of
2 the list of terms?

3 A. Okay.

4 Q. Paragraph eight states that:

5 "All exhibiting company representatives must be
6 registered for the NAF annual meeting."

7 How does that exhibiting company representative get
8 registered?

9 A. So the next page of the prospectus is the registration
10 form that they would complete.

11 Q. And then paragraph eight goes on to say that:

12 "They must wear identifying badges as required by
13 NAF."

14 And is that NAF's policy?

15 A. Yes.

16 Q. And by signing this agreement was the exhibitor agreeing
17 to comply with that term?

18 A. Yes.

19 Q. And then it says:

20 "Such identification will be required to gain
21 entry to the exhibit area and all meeting rooms."

22 Do you see that?

23 A. I do.

24 Q. And is that also NAF's requirement?

25 A. It is.

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1 Q. And then I'm going to have you look at Paragraph 17.

2 A. Okay.

3 Q. All right. Paragraph 17 states:

4 "In connection with NAF's annual meeting,
5 exhibitor understands that any information NAF may
6 furnish is confidential and not available to the
7 public."

8 Was that NAF's rule?

9 A. Yes.

10 Q. Okay. And then it states:

11 "The Exhibitor agrees that all written
12 information provided by NAF or any information which
13 is disclosed orally or visually to exhibitor, or any
14 other exhibitor or attendee, will be used solely in
15 conjunction with the exhibitor's business and will be
16 made available only to exhibitor's officers,
17 employees, and agents."

18 What's the purpose of that provision?

19 A. It's to protect the security and confidentiality of the
20 information at our meetings and our members.

21 Q. And why is it that representatives --

22 **MR. KOZINA:** Move to strike. There is no foundation
23 she was the drafter of this agreement.

24 **THE COURT:** She can testify as to her understanding.

25 Overruled.

1 **BY MS. BOMSE**

2 **Q.** Ms. Fowler, do you have an understanding as to why this
3 provision allows exhibitors to share this -- the information
4 that they receive at the meetings with their employees or
5 officers and agents?

6 **A.** Yes.

7 **Q.** And why is that?

8 **A.** Because -- and the same language is in our Confidentiality
9 Agreement. We want -- if a clinic owner comes to the meeting,
10 we want them to be able to go back to their clinic and share
11 the things that they learned with their staff. And that
12 benefits our mission and helps improve the quality of care.

13 So we don't want to restrict that type of sharing of
14 information as long as it's done within the confines of our
15 agreement.

16 **Q.** Okay. Thank you.

17 Let's look, if we could, at Paragraph 19. Paragraph 19
18 states:

19 "By signing this agreement, the exhibitor affirms
20 that all information contained herein and contained in
21 any past or future correspondence with either NAF or
22 in any publication, advertisement, and/or exhibits
23 displayed at, or in connection with, NAF's annual
24 meeting is truthful, accurate, complete and not
25 misleading."

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1 And was that one of NAF's requirements?

2 **A.** Yes.

3 **Q.** And at the bottom in italics, right above where the
4 exhibitor was required to sign, it states:

5 "I agree to comply with Exhibitor Rules and
6 Regulations (1 through 20) and I also agree to hold in
7 trust and confidence any confidential information
8 received in the course of exhibiting at the NAF annual
9 meeting."

10 Was that NAF's policy?

11 **A.** Yes.

12 **Q.** And by signing this agreement was it your understanding
13 that the exhibitor was agreeing that they would comply with
14 that requirement?

15 **A.** Yes.

16 **Q.** All right. We're going to turn now to Exhibit 102.

17 **A.** I don't have a 102. I have a 1012.

18 **Q.** Hold on a moment. I've got the wrong number in my notes
19 here.

20 **A.** Okay.

21 (Brief pause.)

22 **Q.** It's 1012.

23 **A.** Okay.

24 **Q.** Sorry. And have you seen 1012 before?

25 **A.** Yes, I have.

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1 Q. Okay. And what is it?

2 A. So it's the Confidentiality Agreement that we used on-site
3 at our 2014 meeting.

4 Q. Okay.

5 MS. BOMSE: And this exhibit is also stipulated, and
6 I would move it into evidence.

7 MS. DHILLON: No objection, Your Honor.

8 THE COURT: Okay. It's admitted.

9 (Trial Exhibit 1012 received in evidence).

10 (Document displayed)

11 BY MS. BOMSE

12 Q. Okay. So this is the Confidentiality Agreement that was
13 used at the 2014 NAF annual meeting?

14 A. Yes.

15 Q. Okay. And when does NAF obtain signatures on this
16 document?

17 A. On-site at registration.

18 Q. And why not include it with the registration packet that
19 you sent to members?

20 A. I think there's several reasons.

21 One, the logistics of just collecting those and verifying
22 that everyone had signed it.

23 And, also, we want everyone, when they get on-site, to
24 sign it there and affirm that they are going to comply with it.

25 Q. Okay. Does NAF keep these Confidentiality Agreements?

1 **A.** Yes.

2 **Q.** Okay. Now, the agreement starts out at the top there by
3 stating:

4 "It is NAF policy that all people attending its
5 conference (attendees) sign this Confidentiality
6 Agreement."

7 And was that indeed NAF's policy?

8 **A.** Yes.

9 **Q.** And then it goes on to list the terms of attendance. And
10 the first term is:

11 "Attendees are prohibited from making video,
12 audio, photographic, or other recordings of the
13 meetings or discussions at this conference."

14 And was that one of the requirements of admission?

15 **A.** Right.

16 **Q.** Yes?

17 **A.** Yes.

18 **Q.** And the second term of the Confidentiality Agreement, it
19 says that:

20 "All information made available by NAF or any
21 conference participant is provided" --

22 Sorry. I'm trying to read from two places.

23 Well, number two states that:

24 "NAF conference information includes all
25 information distributed or otherwise made available at

1 the conference."

2 And was that your understanding of what was included with
3 the NAF conference information?

4 **A.** Yes.

5 **Q.** Okay. And that included:

6 "Information in written materials, discussions,
7 workshops or provided by any other means."

8 Correct?

9 **A.** Right. And by any conference participants.

10 **Q.** Thank you.

11 And then it goes on to state that:

12 "The information is provided to attendees to help
13 enhance the quality and safety of services provided by
14 NAF members and other participants."

15 What's your understanding of what that means?

16 **A.** A lot of the content is about best practices, research,
17 things like that. We want people to be able to apply what
18 they've learned and use it to help provide high quality care.

19 **Q.** Okay. And number three discusses:

20 "Disclosure of NAF materials to third parties."

21 And this, I believe, is the same concept that you and I
22 were just discussing, that:

23 "Attendees may not disclose any NAF conference
24 information to third parties without first obtaining
25 NAF's express written consent."

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1 And that's -- is that NAF's policy?

2 **A.** Yes.

3 **Q.** And then it goes on to say that:

4 "An attendee may distribute NAF conference
5 information to attendee's employees without written
6 consent."

7 And is that for the reason you described before?

8 **A.** Yes.

9 **Q.** Okay. And the last line above the place for the signature
10 states:

11 "By signing below, you agree to comply with all
12 of the terms of this agreement."

13 Is that right?

14 **A.** Yes.

15 **Q.** Okay. And was it your understanding that if someone was
16 signing the agreement, they were agreeing to comply with its
17 terms?

18 **A.** Yes.

19 **Q.** Okay. What's the point of this Confidentiality Agreement?

20 **A.** To protect the safety and confidentiality of our meeting
21 and the materials and members there.

22 **Q.** I'm sorry. And the second part was?

23 **A.** The materials and our members who are there.

24 **Q.** Okay. In what way does the Confidentiality Agreement
25 protect the members who are present at the meeting?

1 **A.** It prohibits someone from sharing presentations they give,
2 their names, who was there, personal information that might be
3 shared at the meeting.

4 **Q.** Okay. Do you believe that having an individual
5 Confidentiality Agreement, does that contribute to the safe
6 space that you were talking about before?

7 **A.** Absolutely.

8 **MR. KOZINA:** Calls for speculation. She's asking for
9 belief.

10 **THE COURT:** Overruled.

11 **MS. BOMSE:** Let me ask the question again.

12 **BY MS. BOMSE**

13 **Q.** Is it your understanding, as someone who has worked at NAF
14 for 13 years, that having each attendee -- including
15 exhibitors; right?

16 **A.** Right.

17 **Q.** -- sign an individual Confidentiality Agreement enhances
18 the safe space, creation of a safe environment, as you
19 testified before?

20 **A.** Yes.

21 **MS. DHILLON:** Objection. Leading.

22 **THE COURT:** It was. Sustained.

23 **MS. BOMSE:** Okay.

24 **MS. SHORT:** Move to strike the response.

25 **THE COURT:** The response will be stricken. Try

1 again.

2 **MS. BOMSE:** That's fine.

3 **BY MS. BOMSE**

4 **Q.** And how -- how does this Confidentiality Agreement
5 contribute to the NAF environment, the NAF annual meeting
6 environment?

7 **A.** Well, all of our attendees have signed it, and they know
8 that everyone else has signed it. So it helps them feel like
9 it's a safe space because they and everyone around them have
10 signed a Confidentiality Agreement.

11 **MS. SHORT:** Objection. Lacks foundation as to her
12 knowledge.

13 **MR. KOZINA:** Speculation. Move to strike.

14 **THE COURT:** Overruled.

15 **BY MS. BOMSE**

16 **Q.** Was there also an NAF annual meeting held in 2005 -- well,
17 maybe there was.

18 **A.** Yes.

19 **Q.** And was there one held in 2015?

20 **A.** Yes.

21 **Q.** Okay. And where was that?

22 **A.** That was in Baltimore.

23 **Q.** And can you please turn to Exhibit 567?

24 (Witness complied.)

25 **Q.** Do you have that one?

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1 **A.** I do.

2 **Q.** And do you recognize it?

3 **A.** Yes.

4 **Q.** All right.

5 **MS. BOMSE:** Your Honor, Exhibit 567 is also
6 stipulated to and I would move it into evidence.

7 **MS. DHILLON:** No objection, Your Honor.

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

9 (Trial Exhibit 567 received in evidence).

10 (Document displayed)

11 **BY MS. BOMSE**

12 **Q.** So what is this document that we're looking at here,
13 Ms. Fowler?

14 **A.** So this is the exhibitor prospectus for the 2015 meeting.

15 **Q.** Okay. Similar to the exhibitor prospectus that we looked
16 at before?

17 **A.** Very similar, yes.

18 **Q.** And if could you flip through it and let me know: Do you
19 see the Rules and Regulations in that document?

20 **A.** Yes.

21 (Document displayed)

22 **Q.** And does -- were the same Rules and Regulations that we
23 discussed with respect to the 2014 agreement, were those also
24 in place in 2015?

25 **A.** Yes.

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1 Q. Okay. And if you could turn to Exhibit 248 in your
2 binder?

3 (Witness complied.)

4 MS. BOMSE: And 248 is already in evidence.

5 (Document displayed)

6 BY MS. BOMSE

7 Q. And what is -- do you recognize Exhibit 248?

8 A. Yes.

9 Q. Okay. And this is the Confidentiality Agreement for the
10 2015 annual meeting; is that right?

11 A. Yes, that's correct.

12 Q. And were the same terms that we've just discussed for
13 2014, were they also in place in 2015?

14 A. Yes.

15 Q. Okay. At some point, Ms. Fowler, did you learn that the
16 NAF 2014 and 2015 annual meetings had been infiltrated by an
17 anti-abortion group?

18 A. Yes.

19 Q. And when did that happen?

20 A. When the videos were released, I was contacted by a member
21 of our Board who had seen the video and was concerned that they
22 might have been at our meeting as well.

23 Q. Was the first video that was released, was that recorded
24 at your meeting?

25 A. No, I don't believe so.

1 Q. So eventually did you learn that, in fact, the people who
2 made the first videos that were released were, in fact, at some
3 of NAF's meetings?

4 A. Yes.

5 Q. Can you describe -- was there a reaction on the part of
6 the NAF membership to learning that the NAF annual meetings had
7 been infiltrated?

8 A. Yes. I mean, people were shocked. They were disturbed.
9 They were scared.

10 Q. Did -- was it expressed to you that there were members who
11 were reluctant to come to annual meetings after that, learning
12 of the infiltration?

13 A. Yes.

14 Q. Okay. And what --

15 MS. SHORT: Objection. Leading.

16 THE COURT: The answer is out. Overruled.

17 MS. BOMSE: Thank you.

18 BY MS. BOMSE

19 Q. Did NAF make any changes to its vetting practices with
20 respect to exhibitors?

21 A. Yes, and with respect to meeting attendees as well.

22 Q. What were those changes generally?

23 A. Generally, more extensive in requiring background checks
24 and identification checks, and for exhibitors a corporate due
25 diligence check.

FOWLER - CROSS / DHILLON

1 **Q.** Is there -- are there any changes that -- at the meeting
2 site?

3 **A.** Yes. We now -- actually, in addition to looking at the
4 photo I.D., we scan and make a copy of the I.D. that we keep
5 with the Confidentiality Agreements.

6 **Q.** Okay. Any other changes? Any changes to the badges?

7 **A.** Umm, not necessarily to the badges. We did hire
8 additional security for the meetings the year right after
9 because those dates and information had been included in the
10 programs that the defendants had access to.

11 **Q.** Okay. And do members still continue to come to NAF
12 meetings?

13 **A.** They do.

14 **Q.** Okay. Thank you. I have no further questions.

15 **THE COURT:** Ms. Dhillon.

16 **CROSS-EXAMINATION**

17 **BY MS. DHILLON**

18 **Q.** Good morning, Ms. Fowler. I'm Harmeet Dhillon. I'm the
19 lawyer for some of the defendants in this case.

20 **A.** Okay.

21 **Q.** Ms. Fowler, you just testified you were in charge of
22 communications at NAF during the 2014, 2015 period in question;
23 correct?

24 **A.** Correct.

25 **Q.** Did you have any responsibility for the conference

1 security in that role?

2 **A.** Not in that role, no. I worked closely with them, but not
3 in that role.

4 **Q.** Okay. Have you ever served as a director of security at
5 NAF?

6 **A.** No, I have not.

7 **Q.** Have you ever been in charge of security at NAF?

8 **A.** Not in charge, no.

9 **Q.** Okay. Have you ever served in any capacity in the
10 security department at NAF?

11 **A.** Not aside from working closely with them, no.

12 **Q.** Okay. And have you ever had had any responsibility for
13 developing any security measures for the NAF conferences?

14 **A.** No.

15 **Q.** Do you know how many security personnel hired by NAF were
16 on-site during the 2014 conference in San Francisco?

17 **A.** I don't know that number off the top of my head, no.

18 **Q.** Okay. Do you know how many security personnel were
19 employed on-site by NAF for the 2015 conference?

20 **A.** No, I do not.

21 **Q.** Okay. Do you know what training NAF staff were given
22 regarding checking identifications?

23 **A.** I'm not sure what you mean by that.

24 **Q.** Okay. Were NAF staff responsible for checking people in?
25 For example, Ms. Davis, who you mentioned, checking in

1 exhibitors; correct? You remember that testimony?

2 **A.** Correct. Yes.

3 **Q.** Was Ms. Davis given any training by NAF as to how to check
4 an I.D.?

5 **A.** We go over that in the all-hands meeting, that you're
6 required to do it. You're required to look at the I.D. and
7 verify that that's the person in front of you, yes.

8 **Q.** In other words, look and see if the photograph appears to
9 be the same as the person on the I.D.?

10 **A.** Yes.

11 **Q.** Anything else?

12 **A.** We're just required to check the I.D. that they are
13 showing.

14 **Q.** Okay. So was there any indication -- or any training,
15 rather -- withdraw that.

16 Was there any training given to NAF personnel required to
17 check IDs about checking the authenticity of an identification?

18 **MS. BOMSE:** Objection. Vague.

19 **THE COURT:** Overruled.

20 **BY MS. DHILLON**

21 **Q.** Do you understand my question?

22 **A.** Yeah. I'm not sure how someone would check to see if an
23 I.D. is fake or not.

24 **Q.** Okay. Thank you.

25 You testified, Ms. Davis [sic] that currently NAF requires

1 numerous references for membership; you remember that
2 testimony?

3 **A.** Yes.

4 **Q.** And isn't it true that at the time of the 2014 conference
5 there were no references required for exhibitors; correct?

6 **A.** That's not correct.

7 **Q.** Okay. Were there written references required for
8 exhibitors in 2014?

9 **A.** Written references, no, but they were -- Michelle would
10 have asked for a reference.

11 **Q.** Okay. Do you know what references Ms. Davis actually
12 asked for from exhibitors in 2014?

13 **A.** Yes.

14 **Q.** Okay. For example, with respect to BioMax, do you know
15 what references Ms. Davis requested for BioMax in 2014?

16 **A.** I know she spoke to someone from a clinic, and she could
17 not recall which clinic.

18 And she also spoke to NAF staff, who had referred her to
19 -- or referred BioMax to her from meeting them at a prior
20 conference.

21 **MS. SHORT:** Objection. That was -- objection.

22 Hearsay.

23 **THE COURT:** Overruled.

24 **BY MS. DHILLON**

25 **Q.** And my follow-up question is: Besides those oral

1 communications, was there any other reference checking
2 conducted by Ms. Davis of BioMax for 2014?

3 **A.** She looked at their website and then talked to our staff
4 and another clinic.

5 **Q.** Okay. Was any check done of BioMax's physical facilities?

6 **A.** Not that I know of.

7 **Q.** Isn't it true that BioMax didn't have any physical
8 facilities in 2014?

9 **MS. BOMSE:** Objection. Lacks foundation.

10 **THE COURT:** Overruled. She can say if she doesn't
11 know.

12 **THE WITNESS:** I don't know.

13 **BY MS. DHILLON**

14 **Q.** Do you know whether BioMax ever had any physical
15 facilities?

16 **A.** I do not.

17 **Q.** Have you personally ever looked at BioMax's website?

18 **A.** No, I have not.

19 **Q.** In 2014 were the steps that you just described with
20 respect to BioMax, a couple of oral communications with staff,
21 the full extent of the vetting required for exhibitors?

22 **A.** Well, again, in talking to another clinic that they had
23 given as a reference.

24 **Q.** Okay. Is it fair to say, Ms. Fowler, that NAF's reference
25 checking policies are significantly stronger now than they were

1 in 2014 or 2015?

2 **A.** Yes.

3 **Q.** Is that as a result of the videos that BioMax put out?

4 **A.** It would be a result of the infiltration into our meeting.

5 **Q.** Is there any other reason why you increased security?

6 **A.** We would have increased it because our providers were
7 experiencing an increase in harassment.

8 **Q.** Okay. Given the history of violence that you testified
9 about against abortion providers, why didn't NAF have better
10 identification checking procedures in 2014?

11 **A.** Why didn't we have better?

12 **Q.** That's my question.

13 **A.** I mean, we asked people to show us a photo I.D. We look
14 at the photo I.D.

15 **MS. DHILLON:** Move to strike as nonresponsive
16 returns, Your Honor.

17 **THE COURT:** Overruled. You can keep asking her
18 questions.

19 **BY MS. DHILLON**

20 **Q.** Ms. Davis -- Ms. Fowler, rather, given the history of
21 violence, would you agree that you were asking for
22 identification for some security purpose; correct?

23 **A.** Yes.

24 **Q.** Why not take the step of using state of the art card
25 scanners at that time, given the threat that you have

1 articulated?

2 **A.** I'm not sure. We do a third assessment at the meeting,
3 and I believe our security staff felt that looking at the I.D.
4 was adequate.

5 **Q.** In light of what has happened with the videos being taken
6 and then being released to the public, would you agree that
7 prior to the release of those videos NAF's security and vetting
8 procedures were inadequate?

9 **A.** I mean, they obviously failed and that's why we're here
10 today, so...

11 **Q.** Thank you.

12 Did you have any role in personally vetting Mr. David
13 Daleiden for the 2014 NAF meeting?

14 **A.** I did not.

15 **Q.** Did you have any role in vetting any of the defendants in
16 this case who attended the NAF conferences in 2014 or 2015?

17 **A.** I did not.

18 **Q.** Ms. Fowler, have you looked at the driver's license that
19 Mr. Daleiden utilized in 2014 to gain access to the NAF
20 conference?

21 **A.** I believe I've seen a photocopy of it, yes.

22 **Q.** Okay. And did you notice in that photocopy of that
23 driver's license that Mr. Daleiden's appeared to be a teenager
24 in that photo?

25 **A.** I don't remember what the photo looked like. I'm sorry.

FOWLER - CROSS / DHILLON

1 Q. Okay. Did you notice in taking a look -- withdrawn.

2 Is it true that in 2014 BioMax had never previously rented
3 space to exhibit at a NAF conference?

4 A. They had not.

5 Q. Okay. In 2014 did NAF use any heightened procedures to
6 screen new exhibitors to its conferences?

7 A. We did not use any heightened measures, no.

8 Q. Okay. And is it true that in 2014 there were only two new
9 exhibitors, BioMax and StemExpress; correct?

10 A. I believe so. I would have to compare the prospectus --
11 or the list from years past, but I believe so.

12 Q. Were there any new exhibitors in 2015?

13 A. I don't remember.

14 Q. Okay. If the exhibitors had all been the same as the
15 prior year, would NAF have done any particular vetting for all
16 of the exhibitors in 2015?

17 A. If they had all been the same, they would have been vetted
18 before. So, no, we wouldn't have done additional vetting on
19 past exhibitors.

20 Q. Okay. Ms. Fowler, would it be accurate if your colleague,
21 Ms. Davis, described the vetting in 2014 as extensive, private,
22 an exclusive process?

23 A. I believe that would be accurate, as it's not open to just
24 anyone in the public.

25 Q. So you think it's very fair that the security procedures

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1 that you described here, taking a look at a website and talking
2 to, say, two NAF personnel and an outside clinic person, to be
3 an extensive vetting process?

4 **A.** I think it's more extensive than other conferences, yes.

5 **Q.** Okay. Were you satisfied with how extensive the vetting
6 procedures were in 2014?

7 **A.** I don't know that I had a determination that I was
8 satisfied or not. It's -- those procedures are set by our
9 security department.

10 **Q.** And in retrospect, do you think the security procedures
11 were adequate?

12 **A.** We obviously admit that they failed, and that's why we're
13 here.

14 **Q.** Okay. Now, you described extensive vetting procedures
15 this morning that are required to be an exhibitor: To be a
16 member, three references, some checking, some site visits;
17 correct?

18 **A.** Correct.

19 **Q.** Are any of those types of procedures used today for
20 exhibitors? For example, site visits of potential exhibitors?

21 **A.** No.

22 **Q.** Are three written references required for exhibitors
23 today?

24 **A.** No.

25 **Q.** Do you have any knowledge of the exhibitor's vetting

1 requirements today in NAF?

2 **A.** Yes.

3 **Q.** What are they?

4 **A.** So they are similar to what they were in 2014. Now we
5 require that the -- on the exhibitor form that the company --
6 the representative provides a date of birth or home address,
7 and we run an identity check on that.

8 We run with an outside firm a much more thorough corporate
9 due diligence check to make sure that the corporation is, in
10 fact, a real corporation with those officers and directors.
11 And that's done by an outside firm that we hire.

12 **Q.** Is there any reason why any of the security procedures
13 that you just described couldn't have been used in 2014 or 2015
14 by NAF?

15 **A.** No. And now we also don't allow vendors to attend our
16 educational sessions. This is something else.

17 **Q.** Okay. Was the technology that's in use today that you
18 just described available in 2014? Do you have any knowledge of
19 that?

20 **A.** I don't have knowledge of that. I'm not sure.

21 **Q.** Okay. Ms. Fowler, do you know whether any exhibitor in
22 recent years has actually failed the vetting process that NAF
23 has in place for exhibitors?

24 **A.** Not to my knowledge, but, again, it's a very small pool of
25 people. It might be one to two a year that would apply as new.

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1 And some of those it might be a case where it's a clinic, a
2 member clinic that has never exhibited before, who would, I
3 guess, technically be considered a new exhibitor, but not new
4 to us.

5 **Q.** Okay. So setting aside members who clearly go through a
6 more extensive vetting procedure, are you aware of any
7 exhibitor who applied to be an exhibitor at a NAF conference
8 who was rejected?

9 **A.** I'm not aware of any, no.

10 **Q.** Ms. Fowler, were your NAF staff who checked people in
11 asked, as part of their security procedure, to vet anything
12 that they found to be suspicious?

13 **A.** Staff and members are always told that if you see
14 something suspicious, to go to security or your supervisor.

15 **Q.** And in 2014 do you recall whether any of the NAF staff or
16 members flagged any particular attendees at these conferences
17 suspicious in any way?

18 **A.** Not that I recall, no.

19 **Q.** The same question for 2015. Do you recall whether anybody
20 was flagged by members or by staff as suspicious in any way?

21 **A.** Not that I recall.

22 **Q.** Okay. Do you have any evidence, Ms. Fowler, that
23 Mr. Daleiden or any of his companions damaged any physical
24 property at a NAF conference?

25 **A.** Not that I know of.

FOWLER - CROSS / DHILLON

1 Q. Did they steal any physical property, to your knowledge,
2 at a NAF conference?

3 A. Well, I mean, they stole meeting materials and programs
4 that they should not have had access to.

5 Q. Did they pay a fee to attend as exhibitors?

6 A. Yes, using a fake company.

7 Q. Did NAF keep the money that they paid, the \$3,000-plus for
8 each of these two conferences?

9 A. Yes.

10 Q. Okay. So NAF did not -- did NAF consider refunding that
11 money?

12 A. I'm not sure. That would not have been my decision.

13 Q. Okay. Now, let's -- before I get to that, do you know
14 whether the security team at NAF had any interaction with
15 exhibitors during the check-in of BioMax in 2014?

16 A. With BioMax specifically, I don't know. Security is
17 on-site when exhibitors check in. And, in fact, we have a bomb
18 sniffing dog that has to go through and sweep the room and
19 sweep any exhibitor's materials.

20 So they do interact with exhibitors, but I'm not sure
21 about BioMax specifically.

22 Q. Are you aware of whether the check-in staff for exhibitors
23 at the 2014 conference requested assistance from security with
24 checking any exhibitors in?

25 A. Not to my knowledge.

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1 Q. And the same question in 2015. Was the security staff
2 summoned to checking in people or participate in the check-in
3 process for exhibitors?

4 A. Someone from security would have been in the registration
5 area, but not, to my knowledge, that they were summoned for
6 that specific purpose.

7 Q. When you specifically pointed to an -- when you were
8 looking at one of the exhibits that Ms. Bomse showed you where
9 the personnel would have been stationed; correct?

10 A. Yes.

11 Q. And that was outside the exhibitor check-in area, correct?

12 A. Yes.

13 Q. Not in the check-in area; correct?

14 A. Correct.

15 Q. Okay. Do you know or have any familiarity with what
16 vetting NAF security did with respect to hotel employees for
17 your conferences?

18 A. I know they worked very closely with the hotel staff and
19 hotel security and advised the hotel that their staff need to
20 be made aware of the meeting and the content; that if someone
21 has an issue or we have any concerns, that we would let them
22 know and that hotel person should be removed from the area.

23 Q. So do you know whether in 2014 any of the hundreds of
24 hotel personnel who worked in the Westin St. Francis Hotel for
25 this conference were removed from the area of the NAF events?

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1 **A.** Not that I know of in 2014, no.

2 **Q.** In 2015 were hotel personnel removed from servicing the
3 event in Baltimore?

4 **A.** They are only allowed in at certain times, but I don't
5 know of anyone that was removed, no.

6 **Q.** Okay. So is it -- does NAF security, to your knowledge,
7 rely on the hotel security to identify whether any hotel
8 personnel are a security risk to the NAF conference?

9 **A.** Yes. We require -- we rely on the hotel security and --
10 to trust and vet their staff.

11 **Q.** Okay. Do you know whether as part of the security
12 procedures that -- whether hotel personnel who serviced the NAF
13 events are required to sign any type of Confidentiality
14 Agreement related to the NAF events?

15 **A.** They are not.

16 **Q.** Do you know whether the hotels themselves have any
17 Confidentiality Agreements of any type with their personnel?
18 Do you know one way or the other?

19 **A.** I don't know one way or the other about every hotel that
20 we're at, no.

21 **Q.** Okay. Do you know about any of the hotels that you have
22 been at, whether any hotel personnel who service NAF events are
23 required to sign any type of Confidentiality Agreement?

24 **A.** I do not.

25 **Q.** Ms. Bomse showed you an exhibit. It should be in your

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1 binder at Exhibit 729. If you could take a look at it, please?

2 **A.** She took -- I don't have it any more. It's --

3 **Q.** So if we could turn to the second page of that exhibit?

4 (Document displayed)

5 **Q.** And I see a notation at the top of this page entitled
6 "Public Space Capacity."

7 Do you know sitting here today whether all of these spaces
8 that are listed on this page, were they reserved by NAF for
9 this conference?

10 **A.** I know we used many of these rooms. I can't say for sure
11 that we used every one.

12 **Q.** Okay. So is it fair to say that many of the spaces in the
13 hotel that are listed here were spaces that were open to the
14 public?

15 **A.** They would not have been open to the public during our
16 conference, no.

17 **Q.** But to answer my question. You just said only some of
18 these were used; correct?

19 **A.** I can't say for sure that we didn't use all of them. I
20 know we used many rooms, so...

21 **Q.** Sitting here today, you don't know whether NAF used all of
22 the public facilities in the hotel for its conference or not?

23 **A.** I don't know. We don't -- sometimes we don't reserve
24 every single meeting space in the hotel, so I can't say for
25 sure this year whether we used every single meeting room. I

1 know we used many of those rooms.

2 **Q.** Okay. So turning back to the first page of this exhibit,
3 which is a series of maps or plats of the public facilities,
4 does that refresh your recollection as to whether NAF utilized
5 all of these spaces exclusively for purposes of the conference?

6 (Whereupon document was tendered to the witness.)

7 **THE WITNESS:** Thank you.

8 **A.** We -- we put this -- this would have been in the program,
9 so we would have had some kind of event. Our members would
10 have needed to know where these rooms were.

11 **MS. DHILLON:** Move to strike as nonresponsive, Your
12 Honor, the answer.

13 **THE COURT:** Well, I think she was getting to your
14 answer. So -- your question, so why don't you finish? Follow
15 up with that.

16 **MS. DHILLON:** Okay.

17 **BY MS. DHILLON**

18 **Q.** My question to you, Ms. Fowler, is whether these
19 facilities that are identified on this page of this exhibit,
20 729, were exclusively used by NAF to the exclusion of the
21 public during the NAF 2014 conference?

22 **A.** Yes. The ones on this map would have been, where we would
23 have had sessions and where we would have our meeting space.

24 **Q.** And would that include the hallways and the vestibules and
25 the areas adjoining the elevators?

1 **A.** It depends on the layout of where they were on the floor.
2 There are often places where those hallways take place past the
3 barricade where our security are already.

4 **Q.** Okay. So taking a look, for example, at -- can you see
5 numerous elevator banks depicted on this page of this exhibit?

6 **A.** Yes.

7 **Q.** In just about every one of these images there's is
8 elevator banks; correct?

9 Can you identify whether NAF security was preventing
10 people, members of the public who were not wearing badges, from
11 accessing the elevators in any of these elevator banks?

12 **A.** They wouldn't have been preventing them from accessing
13 elevators; but if they got off on our floor, they would have
14 spoken to them and redirected them out of our space, if they
15 weren't attendees.

16 **Q.** Okay. So are you saying that all of these facilities were
17 exclusively used by NAF at the conference?

18 **A.** These meeting rooms, yes.

19 **Q.** I'm not referring only to the meeting rooms. I'm
20 referring to all the spaces depicted on the page of the
21 exhibit.

22 **A.** Yes. That's where we would have set up our meeting space.

23 **Q.** Okay. Now, Ms. Fowler, did you ever personally
24 communicate with Mr. Daleiden or any of the defendants prior to
25 the 2014 conference?

FOWLER - CROSS / DHILLON

1 **A.** No, I did not.

2 **Q.** Have you communicated with any of them directly since the
3 2014 conference?

4 **A.** No.

5 **Q.** Or the 2015 conference?

6 **A.** I had a conversation with Adrian Lopez in 2015. That's
7 all.

8 **Q.** Okay. Did you personally review any of the applications
9 or agreements submitted by the defendants to attend the 2014
10 conference prior to the attendance at the 2014 conference?

11 **A.** No, I did not.

12 **Q.** Okay. Did you review any of the applications or
13 agreements submitted by the defendants prior to the 2015
14 conference?

15 **A.** No, I did not.

16 **Q.** Okay. Is it fair to say that the group purchasing
17 manager, Ms. Davis, would have been the one who received that
18 paperwork?

19 **A.** Yes.

20 **Q.** Was she also the person responsible for checking it for
21 completeness?

22 **A.** Yes.

23 **Q.** Okay. Ms. Fowler, Ms. Davis did report directly to you;
24 correct?

25 **A.** Correct.

FOWLER - CROSS / DHILLON

1 Q. Okay. Did you give her any training with respect to
2 identifying any potential problematic applications that might
3 be submitted for exhibitors?

4 A. I didn't directly. She had some overlap with the person
5 who had had that position previously. He held it for about ten
6 years and was retiring, and so she trained with him before he
7 left.

8 Q. Okay. Were exhibitors asked to verify whether they were
9 pro-choice before being allowed to exhibit at a NAF conference?

10 A. We don't ask if someone is specifically pro-choice. We
11 ask in some of the agreements that you agree with the values
12 and mission and purpose of the organization.

13 Q. Okay. Is it ever asked whether they are pro-choice or
14 not?

15 A. No.

16 Q. Okay. Is that something that you changed after the
17 infiltration, as you call it?

18 A. No, it's not.

19 Q. Okay. Now, Ms. Fowler, is it true that exhibitors fill
20 out the application to attend as exhibitors approximately two
21 months before a conference?

22 A. That sounds about right. It has to be done months before,
23 yes.

24 Q. And are they also accepted as exhibitors weeks before the
25 conference?

1 **A.** I'm not sure how many weeks, but yes before the
2 conference.

3 **Q.** And they have to make payment weeks before the conference;
4 correct?

5 **A.** Correct.

6 **Q.** Okay. And yet you have them sign the Confidentiality
7 Agreement that we looked at earlier today on-site?

8 **A.** That's correct.

9 **Q.** And if confidentiality is so important, why is it that the
10 Confidentiality Agreement is not part of the package of
11 documents they are required to sign before they are accepted as
12 an exhibitor?

13 **A.** Well, confidentiality is covered in the Exhibitor
14 Agreement, the Rules and Regulations, I think twice that they
15 sign when they submit the application and payment.

16 **Q.** Well, if that's the case, then why are they asked to sign
17 an additional document on-site?

18 **A.** There are a variety of reasons for that. For one, one
19 person is usually filling out the application for exhibit
20 space, but then two or three might actually come on-site. And
21 so we want those people who are actually attending the
22 conference to also sign the Confidentiality Agreement when they
23 are there.

24 **Q.** Are there other reasons?

25 **A.** I think just from a logistics standpoint, we want to make

FOWLER - CROSS / DHILLON

1 sure that everyone who shows up to the conference has signed it
2 there.

3 **Q.** And how do you verify, how do you keep track of that; that
4 everybody who is an attendee at the conferences actually signs
5 an Exhibitor Agreement?

6 **A.** An Exhibitor Agreement? Do you mean a Confidentiality
7 Agreement?

8 **Q.** I'm sorry. I misspoke. Confidentiality Agreement of the
9 same form as Exhibit 1012, which Ms. Bomse showed you earlier.

10 **A.** Yes. So staff -- it's our policy and staff are trained
11 that someone has to hand you this and show you their I.D.
12 before they get the badge. And so that's how we confirm that
13 it's signed.

14 **Q.** So at -- is there any verification done, for example, at
15 the end of a day to make sure that all of those Confidentiality
16 Agreements were actually received back and signed?

17 **A.** No, because the process is that someone would not be
18 handed a badge unless they handed you the agreement.

19 **Q.** Okay. So in this case has NAF verified that every single
20 person who attended the 2014 conference actually signed a
21 Non-Disclosure Agreement, like Exhibit 1012?

22 **A.** We have compiled and produced those in our lawsuit, yes.

23 **Q.** Okay. And is it your -- do you have knowledge of whether
24 100 percent of the attendees at that conference, including
25 people who claim they were videotaped, actually signed a

1 Confidentiality Agreement of the nature of Exhibit 1012?

2 **A.** It's our policy, and I have every reason to believe that
3 every attendee had to sign one to get in. We had a slightly
4 lower number that we were able to produce, which doesn't
5 account for staff and Board who are counted in the attendee
6 number and who signed separate Confidentiality Agreements, so
7 we don't sign the ones on-site.

8 **Q.** So if I understand you correctly, in fact, there are many
9 people who attend this conference who actually don't sign
10 Exhibit 1012?

11 **A.** Absolutely not. I would not say there are many people at
12 all, no.

13 **Q.** Okay. But there are some; correct?

14 **A.** Staff and Board would not sign this specific
15 Confidentiality Agreement because we sign different
16 Confidentiality Agreements with the organization.

17 **Q.** Okay. Thank you for explaining that.

18 Looking back at Exhibit 1012, which we were just looking
19 at, is the Planned Parenthood Federation of America mentioned
20 anywhere in that document?

21 **A.** No. No members are mentioned anywhere in the document.

22 **Q.** Is Planned Parenthood Federation of America mentioned in
23 the exhibitor prospectus documents that we looked at earlier?

24 **A.** I think they might be mentioned in the "Who Can Attend"
25 section; that anyone from Planned Parenthood affiliates are

FOWLER - CROSS / DHILLON

1 eligible to attend the meeting. I'd have to look.

2 **Q.** How about the Exhibitor Agreement? Is Planned Parenthood
3 mentioned in the Exhibitor Agreement anywhere?

4 **A.** Not that I know of, no.

5 **Q.** Okay. Ms. Fowler, is it NAF's policy to give notice to
6 exhibitors in advance of who will be attending the conferences?

7 **A.** Do you mean, like, attendees?

8 **Q.** Like a list of attendees.

9 **A.** No.

10 **Q.** How about on-site? Are exhibitors given a list of who is
11 attending the conference?

12 **A.** No.

13 **Q.** Okay. Are exhibitors given a list after they leave of
14 who's attending the conference?

15 **A.** No.

16 **Q.** So is it fair to say that exhibitors are never given a
17 list of who attended that conference; correct?

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

19 **Q.** Okay. When NAF asks people to sign the Non-Disclosure
20 Agreements, for example, Exhibit 1012, do the exhibitors get
21 anything in addition, in exchange for signing that document?

22 **A.** I'm not sure what you mean by what they would get in
23 addition to that.

24 **Q.** So they sign an Exhibitor Agreement a couple months before
25 the event; correct?

1 **A.** Correct.

2 **Q.** And they pay a fee; correct?

3 **A.** Yes.

4 **Q.** And they are approved as exhibitors sometime before the
5 event; correct?

6 **A.** Correct.

7 **Q.** And when they sign the Non-Disclosure Agreement that we've
8 looked at today on-site, do they get anything in addition to
9 what they already received before?

10 **A.** Well, they would get access and entry into the conference
11 and their conference badge and bag.

12 **Q.** Do they get anything else besides those?

13 **A.** Not that I know of.

14 **Q.** Okay. We take a look at -- let me turn to the correct
15 exhibit here.

16 (Brief pause.)

17 **Q.** Ms. Fowler, if you could take a look at Exhibit 8015,
18 which is the exhibitor prospectus.

19 I'm going to have you turn to the second to last page,
20 which is a document that Ms. Bomse had you look at. It's the
21 Exhibitor Rules and Regulations.

22 **A.** Yes.

23 **Q.** Okay. Now, in this document I'm going to direct your
24 attention to Paragraph 13. And it states that:

25 "Photography of exhibits by anyone other than NAF

1 or the signed exhibitor being photographed is strictly
2 prohibited."

3 Do you see that?

4 **A.** I do.

5 **Q.** Does this document, Exhibitor Rules and Regulations say
6 anything about videotaping any part of the proceedings at the
7 NAF conference?

8 **A.** No. That's covered by the Confidentiality Agreement.

9 **Q.** Okay. Thank you.

10 Now, this makes reference to a NAF photographer -- well,
11 it makes reference to NAF being allowed to photograph the
12 exhibitor space. Do you see that in Paragraph 13?

13 **A.** Yes.

14 **Q.** And, in fact, NAF had a photographer on-site photographing
15 the exhibit space; correct?

16 **A.** Yes, we did.

17 **Q.** And does the NAF photographer who is on-site and allowed
18 to take photographs of the space, did they also photograph
19 continuing medical education sessions?

20 **A.** No, they do not.

21 **Q.** So what was a NAF photographer photographing, to your
22 knowledge, at the 2014 event?

23 **A.** So the photographer attends the welcome reception, the
24 opening plenary, and then the membership luncheon where we give
25 awards.

FOWLER - CROSS / DHILLON

1 Q. Okay. And what happens with the photographs that your
2 official photographer takes?

3 A. They sit in the NAF office and we have them for historical
4 purposes.

5 Q. Okay. Are they ever circulated to NAF attendees?

6 A. Some of the pictures, as you'll see, appear in the
7 exhibitor prospectus, but that's all.

8 Q. Okay. So, for example, you -- in this exhibitor
9 prospectus there is some promotional photographs. Is that the
10 extent to which these types of photographs that the official
11 photographer takes are used?

12 A. I might use them in member relations things. For example,
13 if a member dies and we have a memorial service, I might use a
14 photo of them from a previous meeting. That's really the
15 extent of how I've used them.

16 Q. Is there any kind of a NAF newsletter that is sent out
17 that might contain photographs of attendees at the conference?

18 A. No. We do email updates, but we don't have a newsletter,
19 no.

20 Q. And the email updates that you mentioned, are there any
21 images taken from NAF conferences that are circulated to email
22 recipients?

23 A. Not as far as I know, no.

24 Q. Okay. Do you know whether Ms. Davis, who reported to you,
25 the group purchasing manager, explained or discussed any of the

1 terms of the Exhibitor Rules and Regulations with new
2 exhibitors; for example, BioMax?

3 **A.** Not to my knowledge.

4 **Q.** Was it her role to explain NAF's important terms to new
5 exhibitors who might not be familiar with NAF's protocols?

6 **A.** If someone were to read the agreement and have a question,
7 she would likely refer them to our counsel to answer that.

8 **Q.** Okay. So it wasn't her role to explain any terms or
9 conditions to exhibitors?

10 **A.** If they had a question, she would explain that or refer
11 them to counsel.

12 **Q.** Okay. Are written letters of reference now required for
13 NAF exhibitors prior to being accepted as exhibitors for your
14 conferences?

15 **A.** No.

16 **Q.** And why isn't that additional security measure required?

17 **A.** I think because we feel confident with the due diligence
18 check and background check that we have the outside security
19 firm running.

20 **Q.** So today you're quite confident that the security measures
21 you have in place are much better than ones you had prior to
22 the videos being released; correct?

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

24 **Q.** Okay. Is there any indication in the NAF Confidentiality
25 Agreement, Exhibit 1012, that it applies to NAF

FOWLER - CROSS / DHILLON

1 confidentiality -- sorry, NAF conferences in the future?

2 **A.** Not that I know of, no. People sign it at that
3 conference.

4 **Q.** Okay. And were you -- lay a foundation here.

5 Was the CEO of NAF at the time of the 2014 and 2015
6 conferences a lady named Vicki Saporta?

7 **A.** Yes.

8 **Q.** Did you report to her directly?

9 **A.** Yes.

10 **Q.** And when she left NAF last year, did you temporarily serve
11 in any leadership role, filling her role while she was -- while
12 her replacement was being identified?

13 **A.** I worked with the Board as the lead staff person in charge
14 for about two months while we were looking for an interim CEO,
15 yes.

16 **Q.** Okay. So were you the interim CEO?

17 **A.** I was not, no.

18 **Q.** Did you have any additional title, like, executive
19 director or anything like that?

20 **A.** No, I did not.

21 **Q.** Were you the highest ranking NAF executive during that
22 transition period?

23 **A.** Our senior staff were the same rank, so I would be the
24 same rank as our general counsel, our CFO, other people who
25 were there at the time.

1 Q. Okay. Ms. Fowler, is NAF a plaintiff in this lawsuit?

2 A. In this lawsuit? I don't believe so. I think our
3 lawsuits are joined, but not in this lawsuit.

4 Q. Is NAF a plaintiff in a different lawsuit against some of
5 the defendants in this case?

6 A. Yes.

7 Q. Okay. And, in fact, you've submitted a number of
8 declarations in that other lawsuit that your employer has
9 against the defendants in the this case; correct?

10 MS. BOMSE: Objection. Relevance.

11 THE COURT: Overruled. It may go to issues. We'll
12 see.

13 BY MS. DHILLON

14 Q. Okay. I don't know if I received an answer.

15 A. Could you repeat the question? I'm sorry.

16 Q. The question was: Did you, in your capacity as an
17 executive at NAF, submit multiple declarations in a different
18 lawsuit that your employer NAF has against some of the
19 defendants in this case?

20 A. Yes.

21 Q. Okay. And isn't it true that your employer NAF has a
22 vested interest in the outcome of this lawsuit because it's
23 also suing numerous defendants in this case, correct?

24 A. I wouldn't say that we have a vested interest because of
25 that, no.

FOWLER - CROSS / DHILLON

1 Q. Do you have a vested interest in the outcome of this
2 lawsuit as an officer of NAF?

3 A. I mean, we are concerned about the safety of our members,
4 and so we are, of course, concerned about the outcome of this
5 lawsuit and our lawsuit as well.

6 Q. Isn't it true that there is a -- that NAF has an interest
7 in the outcome of this lawsuit because this lawsuit is seeking
8 financial compensation from the defendants in this case?

9 A. That has nothing to do with our involvement in this
10 lawsuit, no.

11 Q. I see. Have you viewed the Center for Medical Progress
12 videos that are at issue in this case, Ms. Fowler?

13 A. Not recently, but I have reviewed many hours of video,
14 yes.

15 Q. Okay. Would you agree that nothing in the CMP videos
16 calls for violence against any person or damage to any
17 property?

18 A. I would not agree with that, no.

19 Q. What in the videos that you've seen calls for violence
20 against any person or damage to any property?

21 A. I think when you demonize people and tell lies about them,
22 we have seen that that rhetoric has consequences and that some
23 people will use it as a call to action against abortion
24 providers.

25 Q. Okay. Did you see anything specific in any video that is

1 at issue in this lawsuit or in the lawsuit that your employer
2 has filed that specifically, within the terms of that video,
3 call for any violence against anybody?

4 **A.** Again, I think they demonize and tell lies about
5 providers, yes.

6 **MS. DHILLON:** Move to strike, Your Honor.

7 **THE COURT:** Overruled.

8 **MS. DHILLON:** Okay.

9 **THE COURT:** And -- well, never mind. Go ahead.

10 **MS. DHILLON:** Okay.

11 **BY MS. DHILLON**

12 **Q.** Is it your position, Ms. Fowler, that NAF is entitled to
13 prevent the disclosure of statements made at its conferences
14 that might concern criminal activity?

15 **A.** I don't know that's my position. We want to protect the
16 confidentiality of our members.

17 **Q.** Okay. If somebody were discussing criminal activity at a
18 NAF conference, would it be your position that the
19 Non-Disclosure Agreement that we've discussed extensively this
20 morning would prevent an attendee from reporting that activity
21 to the police?

22 **MS. BOMSE:** I think this calls for conclusions of an
23 expert and not a percipient witness.

24 **THE COURT:** For any number of reasons it's sustained.

25 **MS. DHILLON:** Okay.

FOWLER - CROSS / DHILLON

1 **BY MS. DHILLON**

2 **Q.** Do you have any opinion --

3 **MS. DHILLON:** I'll withdraw. Thank you, your Honor.

4 **BY MS. DHILLON**

5 **Q.** Would it be -- are you familiar, Ms. Fowler, with an
6 undercover video that was taken in 2000 of an abortion provider
7 that was later part of a 20/20 expose of partial-birth abortion
8 practices?

9 **MS. BOMSE:** Objection. Relevance.

10 **THE COURT:** Where are we going with this,
11 Ms. Dhillon?

12 **MS. DHILLON:** I beg your pardon?

13 **THE COURT:** This seems far beyond the scope of what
14 she's been testifying about, so I'm confused about where this
15 cross going.

16 **MS. DHILLON:** Let me link it up, Your Honor.

17 Ms. Fowler has testified about prior acts of violence
18 against the abortion community, and she's testified about the
19 need for security at the conferences.

20 So I think it's important to know whether she's aware of
21 prior infiltrations that have occurred against the abortion
22 provider community.

23 **THE COURT:** Okay, okay.

24 **BY MS. DHILLON**

25 **Q.** Are you familiar with that undercover video, Ms. Fowler?

FOWLER - CROSS / DHILLON

1 **MS. BOMSE:** Before we go on, I just want to
2 understand.

3 Is counsel representing that there was -- that the topic
4 that she's discussing is an infiltration of abortion providers?
5 Is that the basis for the --

6 **THE COURT:** That's the -- I don't want to have
7 speeches before the jury.

8 **MS. BOMSE:** I just wanted clarity.

9 **THE COURT:** So you're -- if that is an objection,
10 that's overruled.

11 **MS. BOMSE:** Okay.

12 **BY MS. DHILLON**

13 **Q.** Are you familiar with the video? Let's start with that.

14 **A.** I know this incident, but not very many details, no. It
15 was before I was at NAF.

16 **Q.** Have you ever seen the video in question? Connie Chung?
17 Chris Wallace?

18 **A.** No, I have not.

19 **Q.** Abortion provider talking about selling fetal tissue?

20 **A.** No, I have not.

21 **Q.** Okay. Are you aware of any infiltrations, to use the term
22 that you've used, that have occurred against members like
23 Planned Parenthood from people who are opposed to abortion?

24 **THE COURT:** At what point in time?
25

1 **BY MS. DHILLON**

2 **Q.** At any point in time during the 13 years, Ms. Fowler, that
3 you have been at NAF?

4 **A.** I'm aware of cases where people have gone into clinics
5 posing as patients and done sting videos and things like that,
6 yes.

7 **Q.** Okay. With that background, I come back to the question
8 of why NAF didn't have up-to-date security procedures, such as
9 card scanners that you've described they have now? Wasn't
10 security a concern in 2014?

11 **MS. BOMSE:** I think this has been asked and answered.

12 **THE COURT:** Overruled.

13 **A.** Again, I'm not sure what security technology was at that
14 time, so I can't say for sure.

15 **BY MS. DHILLON**

16 **Q.** So this is five years ago. You don't know whether card
17 scanners were available at, for example, airports? Did you
18 travel during that time period?

19 **A.** Yes. I would have traveled during that time period.

20 **Q.** Okay. Have you had occasion to have your I.D. scanned in
21 an airport?

22 **A.** Yes.

23 **Q.** Okay. But you don't know, sitting here today, whether
24 five years ago that was technology that was available?

25 **A.** I don't know when that was available and for public use or

FOWLER - CROSS / DHILLON

1 if that was a security standard at the time, no, I don't.

2 **Q.** Okay. I mentioned your -- the investigation by 20/20 that
3 uncovered certain practices in the abortion industry. Did that
4 undercover investigation have an impact on NAF?

5 **MS. BOMSE:** I move to strike the introductory
6 statement.

7 **THE COURT:** Overruled.

8 The question is: Did the 20/20 investigation have an
9 impact on NAF?

10 **THE WITNESS:** I'm not sure. I can't speak to that.
11 I wasn't at the organization then.

12 **BY MS. DHILLON**

13 **Q.** Was it ever discussed during the 13 years that you have
14 been at NAF?

15 **A.** I haven't discussed it, no.

16 **Q.** Okay. You mentioned, Ms. Fowler, people posing as
17 patients going into Planned Parenthood facilities and doing
18 sting videos. Do you remember that testimony a couple minutes
19 ago?

20 **A.** Yes.

21 **Q.** Did that type of activity have any impact on NAF and its
22 concerns about security?

23 **A.** I mean, it certainly had an impact on how our security
24 staff would advise and train clinics when they would go out and
25 do site visits.

1 Q. Okay. And in response to those multiple infiltrations,
2 did NAF increase its security procedures in response to any of
3 those incidents?

4 A. We advised clinics about their own security procedures,
5 since those incidents happened at clinics.

6 Q. Okay. But you do not view that as a concern that would
7 affect the broader NAF abortion community; correct?

8 A. I mean, I do think it affects the broader community. It's
9 different than someone coming to our meeting.

10 Q. Okay. So is it fair to say from your answer that you
11 didn't view the multiple infiltrations that we've discussed
12 here prior to the 2014 conferences as being something that
13 would cause NAF to increase its security for its conferences?

14 A. Again, it's a different thing. We would advise members to
15 increase their security at the facility where these incidents
16 have taken place with people posing as patients. But patients
17 don't attend our meetings, so it did not directly relate in
18 that way.

19 Q. Do you know whether any members of NAF ever sued ABC over
20 the 20/20 video that we have discussed here?

21 A. Not to my knowledge.

22 Q. And do you know whether any members of NAF sued the people
23 posing as patients who made sting operation videos of Planned
24 Parenthood facilities after that happened?

25 A. Not to my knowledge.

FOWLER - CROSS / KAMRAS

1 Q. Okay. Is it fair to say that this pair of lawsuits that
2 we've discussed here this morning are the only lawsuits that
3 you're aware of of NAF or other abortion providers in the
4 network suing undercover operatives who went undercover to
5 expose practices at NAF or other abortion providers?

6 A. I'm not sure I know of any lawsuits, no.

7 Q. Thank you.

8 MS. DHILLON: I have no further questions, Your
9 Honor.

10 THE COURT: All right. Well, why don't we take our
11 second break for the morning. We'll take ten minutes. Please
12 remember the admonitions.

13 (Whereupon there was a recess in the proceedings
14 from 11:27 a.m. until 11:39 a.m.)

15 THE COURT: All right. Please be seated, everybody.

16 MR. KOZINA: Your Honor.

17 THE COURT: Mr. Kozina.

18 MR. KOZINA: Thank you very much.

19 CROSS-EXAMINATION

20 BY MR. KOZINA

21 Q. Good morning, Ms. Fowler. How are you today?

22 A. Good morning. I'm fine, thank you.

23 Q. Listening to your testimony, you used a term, "abortion
24 care." Why not just "abortion"? Who are you caring for?

25 A. We're caring for the patients that choose that. It's a

FOWLER - CROSS / KAMRAS

1 healthcare service, and that's how we refer to it.

2 Q. Okay. And that phrase is deliberately chosen. Correct?

3 "Abortion care."

4 A. Yes.

5 Q. Okay. Now, you were in the commissions department dealing
6 with social media during the 2013-2015 time period, is that
7 correct?

8 A. The department does the social media, yes. I have a staff
9 person that works for me that does that.

10 Q. Sure. You weren't in charge of membership at that time?

11 A. In 2013, I was, yes.

12 Q. 2013, you were. Okay.

13 A. Yes.

14 Q. So you went all the way back, 2013 to 2015, you were in
15 charge of membership?

16 A. In 2013 I was in charge of communications and membership,
17 yes.

18 Q. And also in 2015?

19 A. Yes. Since 2013, yes.

20 Q. You weren't in charge of security, though, correct?

21 A. That's correct.

22 Q. All right. Now you mentioned that your organization does
23 site visits for its affiliates or its membership? Is that
24 correct?

25 A. That's correct.

FOWLER - CROSS / KAMRAS

1 Q. You're aware that Planned Parenthood has its own way of
2 doing an audit of its affiliates. Do you guys also then go to
3 the Planned Parenthood affiliates and do site visits?

4 A. We do. For some of them. It's not required, but they
5 could elect to have us come do a site visit.

6 Q. Okay. And do you provide an assessment, based upon your
7 site visit?

8 A. Yes.

9 Q. And do you provide a written assessment?

10 A. I'm sorry?

11 Q. Do you provide a written assessment?

12 A. Yes, we do.

13 Q. And do you give that written assessment to Planned
14 Parenthood Federation of America?

15 A. No. We would give it to the affiliate.

16 Q. The affiliates. Okay. And can you tell me, in terms of
17 the university hospitals, that I believe may be part of the
18 your membership, do you do the same thing?

19 A. Yes. We do a site visit.

20 Q. And do you share a written assessment with anybody at the
21 university?

22 A. We would share it with the clinic that's applying.

23 Q. Do you share it with the administration and the board of
24 trustees? Those who make decisions concerning the day-to-day
25 operation of the university?

FOWLER - CROSS / KAMRAS

1 **A.** We would not, no.

2 **Q.** All right. As far as security.

3 **A.** Uh-huh.

4 **Q.** Do you do site visits to assess security for Planned
5 Parenthood affiliates?

6 **A.** We do if they request it, yes.

7 **Q.** Has anybody requested it?

8 **A.** Yes.

9 **Q.** Okay. Who?

10 **A.** We have done security work with Planned Parenthood Gulf
11 Coast many times over the years.

12 **Q.** How about, say, University of California San Francisco?
13 University of California has its own police department. Takes
14 care of its own security. Are you telling me you also do
15 security visits there?

16 **A.** We did a security visit at San Francisco General Hospital,
17 yes.

18 **Q.** San Francisco General Hospital. But a UC facility --

19 **A.** It's part of UCSF, yes.

20 **Q.** They're affiliated with it, correct?

21 **A.** Yes. They're part of the university, yes.

22 **THE COURT:** Mr. Kozina, just slow a little bit.

23 **MR. KOZINA:** I will. I appreciate that.

24 **THE COURT:** Okay.

25

1 **BY MR. KOZINA**

2 **Q.** Now, do you recall in the case that was discussed, the
3 other case, are you familiar with an attorney named Linda
4 "Shawstak," or Shostak?

5 **A.** Yes.

6 **Q.** How about attorney, Mr. Foran? Do you know him as well?

7 **MS. BOMSE:** I think this is going beyond the scope.

8 **THE COURT:** Where are we going, Mr. Kozina?

9 **MR. KOZINA:** Your Honor, as an offer of proof, we are
10 going with respect to the number of attendees who attended the
11 2014-2017 NAF events. And there were responses that were
12 provided with regard to those numbers in --

13 **THE COURT:** Well, let's get to the numbers as opposed
14 to the --

15 **MR. KOZINA:** Well --

16 **THE COURT:** I don't think the lawyers would be
17 relevant. So let's get to -- let's get to the meat of your
18 question.

19 **MR. KOZINA:** The meat of the question is I want to
20 make sure that she's the one who verified the responses. So I
21 want to make sure that she verified certain responses
22 concerning those numbers.

23 **THE COURT:** Show her the responses and ask whether
24 she verified them.

25 **MR. KOZINA:** May we publish to her the specific

1 document that we will be referencing?

2 **THE COURT:** Ask her the question whether she verified
3 it. If she doesn't know, then you might show her the document
4 to refresh her recollection.

5 **MR. KOZINA:** Fair enough.

6 **BY MR. KOZINA**

7 **Q.** Do you recall verifying responses to requests -- to
8 interrogatories that were sent to NAF that contained questions
9 about attendees at the 2014-2015 NAF conference?

10 **A.** Yes. I verified the interrogatories in our case.

11 **Q.** Right. And in that verification, you understood that was
12 under penalty of perjury, correct?

13 **A.** Yes.

14 **Q.** And it was based upon your own personal knowledge.
15 Correct?

16 **A.** Correct.

17 **Q.** Okay. So is it true that in 2014, NAF conference, there
18 were 865 individual who attended?

19 **A.** Yes.

20 **Q.** And when you say "attendees," did you define those to mean
21 that it included all participants at the NAF annual meeting?

22 **A.** Yes. That number includes all participants at the
23 meeting.

24 **Q.** Okay. Then you also responded to a subsequent question
25 that you had 797 of the confidentiality agreements in your

1 possession. Do you recall that?

2 **A.** Yes.

3 **Q.** Okay. You also indicated that there were some people who
4 were exempt from signing those. There was 23 staff members and
5 two board members. Do you recall that?

6 **A.** Yes.

7 **Q.** Okay. So we do the math. We find that there was 43
8 confidentiality agreements that are not in NAF's possession.
9 Is that correct?

10 **A.** At the time of that discovery, yes.

11 **Q.** Okay. And in 2015, there were 724 attendees. Do you
12 recall that?

13 **A.** Yes.

14 **Q.** All right. And you had 653 confidentiality agreements in
15 your possession. Do you recall that?

16 **A.** Yes.

17 **Q.** Okay. And if we add the 40 people who were exempt from
18 that, it means you are missing 31. Is that correct?

19 **A.** That's correct.

20 **Q.** So it's true before, when you testified -- if I understood
21 correctly -- that you had all these confidentiality agreements
22 in your possession, that you were in error when you said that?

23 **A.** I'm sorry; I don't understand the question.

24 **Q.** If I understood your testimony before, you were asked if
25 you had these confidentiality agreements in your possession,

1 and you said: We had them all.

2 So that was a mistake on your part? Or an error on your
3 part?

4 **MS. BOMSE:** I believe counsel is misrepresenting what
5 the witness said.

6 **THE COURT:** She will be able to clear that up.

7 **MR. KOZINA:** Thank you.

8 **THE WITNESS:** I believe what I said is I have every
9 reason to believe that every single person that attended the
10 meeting signed it. There are things -- if someone didn't show
11 up to the meeting at that time, we didn't necessarily go
12 through and track how many people didn't show up who had
13 registered. So that could account for some of the missing
14 ones. Others might have been lost in transit from
15 San Francisco to D.C.

16 **BY MR. KOZINA**

17 **Q.** Okay, let's go back just a little bit.

18 **A.** Okay.

19 **Q.** You defined "attendees" to include all participants at the
20 NAF annual meeting. So are you telling me that "participants"
21 meant people who didn't come?

22 **A.** Uh, no, it would have included people that came; yes.

23 **Q.** So those numbers I gave you, which you agree, --

24 **A.** Uh-huh.

25 **Q.** -- based what you provided to me, indicate these

1 confidentiality agreements that we are speaking of related to
2 the people who were actually at the meeting.

3 **A.** Yes, but I do believe there could have been some people
4 that didn't show up that had registered and we made badges for
5 that might have been in that number.

6 **Q.** Or didn't sign the agreement. Correct?

7 **A.** No. It's our policy that everyone signs the agreement.

8 **Q.** Well, without having those before you, ma'am, or having
9 reference to them, would you agree with me that you cannot
10 testify, based on your personal knowledge, that everybody who
11 went to that meeting signed a confidentiality agreement?

12 **A.** I can testify that that's our policy. And I have every
13 reason to believe that it was followed.

14 **Q.** You're doing that based on custom and habit, correct?

15 **A.** Based on our policy, and that we follow our policies and
16 procedures.

17 **Q.** I understand that. But would you agree with me, since you
18 don't have a number of those agreements, you have no way of
19 knowing if they were signed, as you sit here today.

20 **A.** I believe they were signed and that we can -- cannot
21 locate them, yes.

22 **MR. KOZINA:** Move to strike, not responsive, says
23 "belief."

24 **THE COURT:** Overruled.

25 **MR. KOZINA:** Thank you.

1 **BY MR. KOZINA**

2 **Q.** Without using the word "belief," do you have personal
3 knowledge --

4 **A.** Uh-huh.

5 **Q.** -- personal knowledge -- as to whether or not those
6 missing confidentiality agreements were actually signed?

7 **A.** I don't have personal knowledge they were signed, aside
8 from that being our procedure.

9 **Q.** Okay, I appreciate that.

10 **MR. KOZINA:** Next couple of questions -- and wait
11 until I finish before you tell me I have to stop, okay?

12 **BY MR. KOZINA**

13 **Q.** Have you ever purchased a car?

14 **A.** Have I ever purchased a car?

15 **Q.** Yes.

16 **A.** No, I have not.

17 **Q.** Have you ever purchased anything that had a contract
18 attached to the purchase?

19 **A.** Hm. Uh, I'm not sure. I mean, not that I can recall, a
20 contract.

21 **Q.** Ever sign an agreement (Indicating)?

22 **A.** I have signed an agreement, yes.

23 **Q.** Did you read every paragraph in every contract that you've
24 ever read -- that you've ever signed, excuse me?

25 **A.** Given that I can't recall a specific agreement I've

1 signed, it's hard to say if I read every line of it.

2 **Q.** Okay. All right. Now, are you familiar with the
3 practice, if at all, of car dealers when they're having people
4 sign agreements, they point out very specific material matters.

5 **A.** I'm not familiar with that process. Again, I've never
6 purchased a car or been in those negotiations.

7 **Q.** From your testimony, I was not led to understand that you
8 have a process whereby prior to the execution of the
9 confidentiality agreement, someone says: Look, be aware of
10 this, be aware of that, be aware of that, before you sign.

11 You don't do that, do you?

12 **A.** We give it to them, and trust that people will read it and
13 sign it.

14 **Q.** I didn't hear that. Say it again?

15 **A.** I said we give the people the contract, and trust that
16 they will read it and sign it.

17 **Q.** You trust, but you don't point out to them the
18 important -- significant aspects of that agreement. Am I
19 correct?

20 **A.** I don't know that Nichelle did that, no. I know that we
21 give people the contracts.

22 **Q.** You also testified that the videos demonized NAF. Is that
23 correct?

24 **A.** I said they demonized abortion providers.

25 **Q.** What were the lies in those videos?

FOWLER - CROSS / LIMANDRI

1 **A.** I don't know that we're allowed to talk about them here.

2 **Q.** In other words, I'm asking if you can -- those that you're
3 aware of. Were there any lies?

4 **A.** Yes.

5 **Q.** What were the lies?

6 **A.** I believe it's a lie to say that Planned Parenthood sells
7 baby parts.

8 **Q.** Okay. And you base that on what?

9 **THE COURT:** Ms. Bomse?

10 **MS. BOMSE:** Your Honor, may we approach?

11 **THE COURT:** No. But this --

12 **MR. KOZINA:** I'll stop right there, Your Honor.

13 **THE COURT:** I think I would stop where you are.

14 **MR. KOZINA:** Thank you very much, Judge.

15 **THE COURT:** Okay. Thank you.

16 **CROSS-EXAMINATION**

17 **BY MR. LIMADRI**

18 **Q.** Good morning, Ms. Fowler.

19 **A.** Good morning.

20 **Q.** I'm Charles LiMandri. I also represent some of the
21 defendants in this case.

22 Just to be more specific on questions that were being
23 asked of you a moment ago, isn't it true you have no personal
24 knowledge as to whether or not the plaintiffs were involved in
25 selling fetal tissue for a profit?

1 You have no personal knowledge to state whether that is a
2 lie or not. Correct?

3 **A.** I have no personal knowledge -- no.

4 **Q.** Okay. And you have no personal knowledge as to whether or
5 not the plaintiffs were engaged in altering abortion
6 procedures, including doing partial-birth abortions, to obtain
7 better fetal tissue samples. You have no personal knowledge of
8 that, either, correct?

9 **MS. BOMSE:** Objection. 403 grounds, relevance,
10 motion in limine.

11 **THE COURT:** Sustained.

12 **BY MR. LIMADRI**

13 **Q.** You have no personal knowledge as to whether anything
14 being said on the videos regarding the practices of Planned
15 Parenthood were true or not. Correct?

16 **A.** I mean, I have personal knowledge because I've talked to
17 people at Planned Parenthood who dispute those claims. And
18 people in those videos.

19 **Q.** So the personal knowledge you have is from the people who
20 are denying what's depicted in the videos, but you don't know
21 whether they are telling the truth or not, do you?

22 **A.** I wouldn't say they're denying what's depicted in the
23 videos. They're denying the way they have been misleadingly
24 edited, and used.

25 **Q.** Has NAF done any investigation -- since they're so

FOWLER - CROSS / SHORT

1 concerned about the quality of practices of its members, has
2 NAF done any investigation to determine whether or not the
3 statements that are made on the videos are true or accurate,
4 regarding the practices we're discussing?

5 **MS. BOMSE:** This question goes beyond the scope.

6 **THE COURT:** It does. And so the objection is
7 sustained.

8 And we have gone over this as recently as this morning,
9 Mr. LiMandri.

10 **MR. LIMADRI:** No further questions. Thank you.

11 **CROSS-EXAMINATION**

12 **BY MS. SHORT**

13 **Q.** Good morning, Ms. Fowler.

14 **A.** Good morning.

15 **Q.** I would like to have you look again at Exhibit 1012, which
16 is the confidentiality agreement.

17 **A.** Okay.

18 **MS. SHORT:** If you can bring it up here.

19 (Document displayed)

20 **BY MS. SHORT**

21 **Q.** Do you have it there?

22 **A.** Yes.

23 **Q.** If you notice actually that first line there (As read):

24 "It is NAF policy that all people attending its
25 conferences sign this confidentiality agreement."

FOWLER - CROSS / SHORT

1 Now, when we said "all people attending its conferences,"
2 each person who attended had to individually sign the
3 confidentiality agreement. Is that correct?

4 **A.** Yes.

5 **Q.** And NAF would not allow a single representative of an
6 entity to sign on behalf of all -- of other staff members or
7 whatever of that entity, is that correct?

8 **A.** That's correct.

9 **Q.** Okay. And, because NAF viewed this as an agreement
10 between the individual and NAF. Is that correct?

11 **A.** Yes. That's correct.

12 **Q.** Now, there is no documentary evidence of Ms. Davis's
13 vetting of BioMax, is that correct? Is that what I understood
14 from your testimony?

15 **A.** That's correct.

16 (Document taken off display)

17 **Q.** So all NAF has is Ms. Davis's word that she took those
18 other steps of checking the website and checking with another
19 provider. Is that correct?

20 **A.** Her word, and she gave that testimony at deposition, under
21 oath. So, yes.

22 **Q.** Yes. And Ms. Davis is the one who is -- would be held
23 responsible for the fact that NAF -- I mean -- excuse me --
24 that BioMax was able to infiltrate the NAF conference. Is that
25 correct?

FOWLER - CROSS / SHORT

1 **A.** I don't know that we assigned her the responsibility. It
2 was her job to vet people for the conference -- for --
3 exhibitors for the conference.

4 **Q.** Okay. Now, if I could direct your attention to Exhibit
5 565.

6 (Document displayed)

7 **A.** Yes.

8 **Q.** And I would like to point out, there are a couple of names
9 here, like, in III, it says:

10 "On-site logistics (JENN)."

11 Do you see that?

12 **A.** Yes.

13 **Q.** And that was Jennifer Hart, correct?

14 **A.** That's correct.

15 **Q.** And then on the next page, 4 b, it says "SANDY." And that
16 is Sandy Fulkerson; is that correct?

17 **A.** Yes, that's correct.

18 **Q.** So both Ms. Hart -- her and Ms. Fulkerson are people who
19 are integral to NAF's security planning for its meetings; is
20 that correct?

21 **A.** Well, they were integral to the meeting planning at the
22 time in 2014.

23 **Q.** Now, isn't it true that at a meeting approximately five
24 months before this meeting took place, in October -- or
25 September of 2013, Ms. Fulkerson and Ms. Hart ran into --

FOWLER - CROSS / SHORT

1 encountered BioMax representatives at a meeting of the ARHP,
2 Association of Reproductive Health Professionals?

3 **A.** Yes. That's correct.

4 **Q.** And at that meeting, they told the two representatives
5 that NAF was holding a meeting in April, 2014, in
6 San Francisco?

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

8 **Q.** And at that time, they gave Ms. Merritt a card telling her
9 to contact Nichelle Davis in order to apply to be an exhibitor
10 at the meeting? Is that correct?

11 **A.** I believe that's correct, in the course of their
12 conversation about exhibiting at ARHP, yes.

13 **Q.** And as -- and then the next -- then Ms. Davis received
14 emails from a representative of BioMax asking to exhibit at the
15 -- the NAF meeting, is that correct?

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

17 **Q.** And at that time, referred to their contact with
18 Ms. Fulkerson and Ms. Hart, is that correct?

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

20 **Q.** So that is the only documentary evidence we have of how --
21 of any vetting by NAF of BioMax before admitting them to the
22 meeting, correct?

23 **A.** Yes. When Jenn and Sandy met them at another reproductive
24 health conference in our community, they felt like they had
25 been vetted, and were safe. They were incorrect. But --

1 Q. Thank you.

2 A. That's what they felt.

3 Q. Now did NAF -- does NAF tell its members that they vet
4 exhibitors?

5 A. It's not a secret. If someone were to ask us the -- the
6 protocol, we would tell them. I'm not sure that we ever send
7 them anything specific to tell them how, or that we do vet
8 exhibitors, no.

9 People have an expectation in a NAF meeting that we vet
10 people and it's a safe space.

11 Q. But NAF doesn't affirmatively state to its members that it
12 vets exhibitors. Is that correct?

13 A. I don't believe we specifically discuss or tell members
14 about our exhibitor-vetting procedures, no.

15 MS. SHORT: Thank you very much.

16 CROSS-EXAMINATION

17 BY MR. MIHET

18 Q. Good afternoon, Ms. Fowler.

19 A. Hi, there.

20 Q. As the head of communications in charge of public
21 relations at NAF, it's your job to make sure that NAF's message
22 and messaging makes it out to the media and to the public.
23 Correct?

24 A. Yes. With the team.

25 Q. And it's also your job at NAF whenever there is a

1 public-relations crisis, to come in and to help fix that
2 crisis. Correct?

3 **A.** I would be involved. We might also have other assistance.
4 But yes, I would be involved.

5 **Q.** And as your job in fixing public-relations crises for NAF,
6 your job is to help spin the messaging for the public in a way
7 that makes or puts NAF in the best light possible to the
8 public. Correct?

9 **A.** I would not agree with that assessment, no.

10 **Q.** Your job is not to put NAF in the best light possible to
11 the public?

12 **A.** I think my job is to promote our members and to promote
13 the organization. I would not necessarily agree with the way
14 that you are characterizing it, no.

15 **Q.** Okay. Your job, when the videos that are the subject of
16 this case were released, was to help fix that public-relations
17 crisis for NAF, was it not?

18 **A.** Not necessarily. When the first video broke, I was out of
19 the country for two weeks.

20 **Q.** Whenever you returned back, you were called in to help fix
21 the public-relations crisis for NAF, were you not?

22 **A.** I would not say that is what I was called in to do. I was
23 assisting at that point with our lawsuit and with member
24 communications. But we -- I was never asked to fix a
25 public-communications crisis.

1 Q. Were you asked to provide public messaging in a way that
2 puts NAF in the best light possible vis-à-vis the videos that
3 were released in 2015?

4 A. I was never asked to do that. No. I issued press
5 statements about the videos, press statements about our
6 lawsuit. But I was never asked to issue a press statement to
7 put us in the best possible light, and the rest of things that
8 you said.

9 Q. The press statements that you released about the videos,
10 it was your job to make NAF look as good as -- as possible in
11 light of the circumstances to the public, was it not?

12 MS. BOMSE: These questions are both beyond the scope
13 and they've now been asked and answered.

14 THE COURT: I think this is his last one, as I could
15 tell. And you are overruled.

16 You may answer.

17 THE WITNESS: Okay. I'm sorry; can you repeat now?

18 MR. MIHET: Madam Reporter, can you -- I don't think
19 I could do as good a job as you could in repeating that
20 question.

21 (Pending question read back by the Reporter)

22 THE WITNESS: No. I would not say that was my job.
23 No.

24 BY MR. MIHET

25 Q. What was your job?

FOWLER - REDIRECT / BOMSE

1 **A.** We were making a statement of what our position in
2 reaction to the video would be. And that's what we did.

3 **Q.** So your job was to convey NAF's position and reaction to
4 the public.

5 **A.** Yes.

6 **Q.** That was your job --

7 **A.** Our position and reaction.

8 **Q.** That was your job back then, and that remains your job
9 today, doesn't it?

10 **A.** Yes. I'm still involved in communications.

11 **MR. MIHET:** Thank you.

12 **THE WITNESS:** Sure.

13 **THE COURT:** Ms. Bomse.

14 **REDIRECT EXAMINATION**

15 **BY MS. BOMSE**

16 **Q.** Ms. Fowler, you testified in response to questions from
17 Ms. Dhillon that there -- the staff at the hotel are only
18 allowed in to NAF meeting spaces at certain times. Can you
19 explain that?

20 **A.** Sure. So when we're on-site at the hotel, our meeting
21 staff and security staff are on radio. And we give one of
22 those radios to the hotel staff. So if we need them for some
23 reason, if we need to adjust the temperature in a room, or get
24 extra chairs or food, we would call the hotel staff and ask
25 them to meet our meeting representative at the designated

FOWLER - REDIRECT / BOMSE

1 location. And then they would come, and they would deal with
2 whatever needed to be dealt with. And then they would leave.
3 There aren't hotel staff, you know, really walking around our
4 meeting area. They're not in session rooms when the panels and
5 the CME sessions are going on.

6 They do provide food service as a couple of functions
7 during the meeting. One would be at the welcome reception for
8 two hours on Sunday night. And then one is our membership
9 luncheon on Monday. And that luncheon is a seated, plated
10 luncheon. When attendees come into the room, salad is set.
11 Once they finish the salad, the hotel staff would serve the
12 entree.

13 And then it's actually my job to make sure that once all
14 the attendees have had their entree set for them, that then all
15 the hotel staff, the service staff, leave the room. And then
16 once I've verified that they've all left the room, then I would
17 signal to our board chair or president, who would then start
18 the luncheon.

19 So we don't do any award presentations, speeches, remarks
20 in the luncheon room until the hotel staff who have been
21 serving food have left the room.

22 **Q.** And these limitations on when hotel staff can be present
23 and not present, are those discussed in advance with the hotel?

24 **A.** Yes.

25 **Q.** With respect to the NAF confidentiality agreements that

FOWLER - REDIRECT / BOMSE

1 are signed by every attendee, is it your understanding that NAF
2 attendees can -- are allowed to disclose NAF confidential
3 information publicly after the meeting is over?

4 **A.** We don't want people to talk about the meeting after the
5 meeting is over, but there have been cases where people have,
6 yes.

7 **Q.** So, I don't think I asked my question quite correctly.

8 **A.** Okay.

9 **Q.** So the confidentiality agreements that we have spent a lot
10 of time on today, they limit what is allowed to be disclosed to
11 the third parties, correct?

12 **A.** Correct.

13 **MR. MIHET:** Objection, leading.

14 **THE COURT:** Overruled.

15 **MS. BOMSE:** Thank you.

16 **BY MS. BOMSE**

17 **Q.** Does that limitation last only for the length of the
18 meeting? Or does it last, going forward?

19 **A.** Oh. I'm sorry. Yes. It lasts, going forward. Unless
20 they get written permission from us. From NAF.

21 **Q.** So someone who was at NAF and signed such an agreement
22 would be still limited from -- or prevented -- prohibited from
23 disclosing any confidential information a year later?

24 **MR. MIHET:** Objection, leading.

25 **THE COURT:** Sustained.

1 **BY MS. BOMSE**

2 **Q.** A year later, would someone who had signed a
3 confidentiality agreement still be restricted in what they
4 could do with that information?

5 **A.** They would be.

6 **Q.** What about two years later?

7 **A.** Yes.

8 **Q.** Okay. You testified when I was asking you questions about
9 the reactions of NAF members that was expressed to you when the
10 video came out. And one thing that you said was that people
11 were scared. Do you remember that?

12 **A.** Yes.

13 **Q.** At that the point when people were expressing to you that
14 they were scared, had any videos that had been taken -- that
15 were recorded at NAF meeting been released?

16 **A.** At that point, no.

17 **Q.** You were asked a few questions about NAF's photographer.

18 **A.** Yes.

19 **Q.** Is the photographer using a hidden camera?

20 **A.** No.

21 **Q.** So when the photographer is taking a picture of someone
22 who's somewhere in the NAF meeting, does the person who's being
23 photographed know that they are being photographed?

24 **A.** Yes.

25 **Q.** Do you recall the photographer who was at the 2014 annual

FOWLER - REDIRECT / BOMSE

1 meeting?

2 **A.** I do.

3 **Q.** And what particularly do you recall about that?

4 **A.** So the exhibit hall was very dark. And so this particular
5 photographer had, you know, a large camera around his neck,
6 which is typical. But then he was also carrying, like, a
7 tripod with, like, a shade for lighting (Indicating). And so
8 it was very obvious when he was taking a photo because he would
9 come in with this big stand, have it -- holding it up, and take
10 a picture (Indicating). So it was very clear where he was, and
11 what he was photographing.

12 And he also signed a confidentiality agreement.

13 **Q.** You were asked some questions about interrogatory
14 responses --

15 **A.** Yes.

16 **Q.** -- that were asked of NAF in a separate lawsuit. Do you
17 recall that?

18 **A.** Yes.

19 **Q.** And the basic subject of those questions was there were
20 more attendees than confidentiality agreements that NAF was
21 able to locate at a certain point. Correct?

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

23 **Q.** And what's your understanding as to why that is?

24 **A.** The understanding is that, you know, they must have gotten
25 lost either on-site in packing, or shipping back, or --

FOWLER - REDIRECT / BOMSE

1 **MR. KOZINA:** Objection. Speculation. Move to
2 strike.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** Or were in -- you know, when we moved
5 and gathered them -- in another cabinet, and we weren't able to
6 locate all of them. It was a small percentage of the total.

7 **BY MS. BOMSE**

8 **Q.** Thank you. You were also asked a question about whether
9 there are heightened vetting measures for new members, new --
10 new potential exhibitors. And I just wanted to clarify.

11 Where you're an exhibitor who's exhibited at NAF at a
12 prior year, is there new vetting that takes place for the
13 second visit?

14 **A.** Not typically. So when we instituted the new policy to do
15 the more extensive background check, we did go ahead at that
16 time and do all of our previous exhibitors. And so those
17 people have had that check run now. If they would return
18 again, we wouldn't run it again.

19 **Q.** So when you do the vetting, it's with respect to a new --
20 someone who hasn't exhibited at NAF before.

21 **A.** That's correct.

22 **Q.** You were asked about hotel staff. And in particular, you
23 were asked whether in 2014, any hotel staff person was ever --
24 was removed for behaving inappropriately or expressing views
25 that were not consistent with NAF's. Do you recall that?

FOWLER - REDIRECT / BOMSE

1 **A.** Yes.

2 **Q.** Have there been any times in any of the meetings that you
3 are aware of where hotel personnel were removed from the
4 meeting?

5 **A.** Yes.

6 **Q.** Can you describe that?

7 **A.** I know of an instance in 2016 where a hotel staff person
8 was -- came into the meeting area, not into a room, and were
9 saying things that made people uncomfortable. And we talked to
10 management. They were asked to leave.

11 I know of another case in 2018 where a front desk staff
12 person --

13 **MR. MIHET:** Objection, Your Honor. Relevance. This
14 is post-release conduct.

15 **THE COURT:** It is post-release conduct. I think the
16 question, though, that was posed during Ms. Dhillon's
17 examination went beyond. And it was from all 13 years that
18 she'd been there. So, overruled.

19 **THE WITNESS:** So in 2018, there was an issue with an
20 employee at the front desk who had said to someone who asked
21 what the conference was there, had said the name. And they
22 were reprimanded for doing so, and told not to do so. And I
23 don't know what further disciplinary action took place. But I
24 know that our security was involved.

25

FOWLER - REDIRECT / BOMSE

1 **BY MS. BOMSE**

2 **Q.** Okay. And you were also asked whether it was Ms. Davis,
3 who was the group purchasing manager back in 2014, who was to
4 blame for the BioMax representatives managing to infiltrate
5 your conference. Do you remember that?

6 **A.** Yes.

7 **Q.** And you stated that NAF didn't assign blame to any
8 particular NAF personnel.

9 **A.** That's correct.

10 **Q.** Does NAF have a view as to who was to blame for NAF being
11 infiltrated?

12 **A.** I would blame the defendants who launched the conspiracy
13 and infiltrated us.

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

15 **MR. KOZINA:** Objection, move to strike.

16 **THE COURT:** And the grounds would be?

17 **MR. KOZINA:** Speculation.

18 **THE COURT:** Oh. Overruled.

19 **MR. KOZINA:** There's no personal knowledge,
20 Your Honor.

21 **THE COURT:** Mr. LiMandri.

22 **MR. LIMADRI:** A couple of followup if I may,
23 Your Honor. Thank you.

24 **THE COURT:** Just to make sure: Is everybody passed
25 up until Mr. LiMandri?

FOWLER - RECROSS / KOZINA

1 (Off-the-Record discussion between counsel)

2 **THE COURT:** So, I want to go in the same order that
3 you did before. So, Ms. Dhillon has nothing.

4 Mr. Kozina.

5 **MR. KOZINA:** Ask a couple of questions, Your Honor.

6 **THE COURT:** Go ahead.

7 **MR. KOZINA:** Thank you; I'm sorry.

8 **THE COURT:** No prelude.

9 **MR. KOZINA:** I have a simple habit of messing up
10 reporters.

11 **RECROSS - EXAMINATION**

12 **BY MR. KOZINA**

13 **Q.** So I want to understand this clearly.

14 **A.** Okay.

15 **Q.** In response to Ms. Bomse's questions as to the forms, you
16 said: Well, they could have been left in a cabinet or
17 something of that nature, and been mislaid. Am I correct about
18 that?

19 **A.** Yes.

20 **Q.** Okay. Is that a guess on your part?

21 **A.** Is it a -- guess?

22 **Q.** Is it a guess as to what happened to these forms?

23 **A.** I mean, I can't say I know for sure what happened to them,
24 but that would be my -- to the best of my knowledge, what we
25 would assume has happened.

FOWLER - RECROSS / KOZINA

1 Q. Okay, ma'am. Wouldn't you agree with me that something as
2 important as these confidentiality agreements, you would want
3 to gather them up, put them in one secure spot, and make sure
4 that you were aware of their location at all times?

5 Would you agree that would have been proper practice?

6 A. I would absolutely agree that we should have them and know
7 where they are, yes.

8 Q. But they're not. Correct?

9 A. Well, people mess up things, and there obviously have been
10 flaws in the system. So --

11 Q. Okay. Flaws in the system; people mess up. And you're
12 certain that this is not just simply that these confidentiality
13 forms were never signed.

14 A. It is our policy that they're signed and -- you know. And
15 so I believe that that policy was followed.

16 Q. And that is the sole basis upon which you are making the
17 assertion that these forms were signed. Because it is the
18 policy. Is that correct?

19 A. Because it's the policy, and it's what's done in practice,
20 in accordance with that policy.

21 Q. Yes or no: Is it done solely because that is what the
22 policy is? It's not done because you actually saw these
23 things, and know they were signed; is that correct?

24 MS. BOMSE: He's asked this question, and she
25 answered it.

FOWLER - RECROSS / SHORT

1 admitted. Isn't that correct?

2 **A.** He was asked if he signed it, and he lied, so yes. The
3 procedure was followed, that he was asked if he had it, and
4 then he had lied about it. So he did not sign one.

5 **Q.** So he was admitted without signing one. Correct?

6 **A.** Because he lied, and violated the policy, yes.

7 **Q.** And the same for Susan Merritt, under the name "Susan
8 Tennenbaum." Wasn't she admitted without signing the
9 confidentiality agreement?

10 **A.** I can't remember from year to year. I think it's possible
11 in 2015, yes.

12 **Q.** And Anna Davin, using the name "Rebecca Wagoner," she was
13 admitted without signing a confidentiality agreement in 2015.
14 Is that correct?

15 **A.** I'm not for sure about that, about hers. I would have to
16 look. I don't know.

17 **Q.** So you admit that there was some uncertainty in your mind
18 as to whether, in fact, everybody who was admitted actually
19 signed confidentiality agreements. Is that correct?

20 **A.** I believe that I know of the one instance where he lied
21 when asked if he had signed it, and said he had signed one
22 already.

23 **Q.** But you don't know about the other two.

24 **A.** I don't know, no.

25 **MS. SHORT:** Thank you.

MORAN - DIRECT / STERK

1 Q. Are you married?

2 A. I am married.

3 Q. Do you have children?

4 A. I have two children. Two great kids.

5 Q. How old are your children?

6 A. Thirty-four and 36.

7 Q. What do they do for a living?

8 A. One is a physician. Works for University of California
9 San Diego as a faculty member, dual appointment. A little
10 bragging here; I'm sorry.

11 The other is a deputy sheriff.

12 Q. And you said that you worked at Planned Parenthood of the
13 Pacific Southwest. Is that right?

14 A. Yes, that's true.

15 Q. If I refer to that as "PPPSW," will you understand what I
16 am talking about?

17 A. A lot of P's, but I'll -- yeah.

18 Q. And what is your job at PPPSW?

19 A. I'm an associate medical director.

20 Q. Are you a doctor?

21 A. I'm sorry. Yes. I'm a medical doctor.

22 Q. Where did you go to college?

23 A. I went to the University of California at Santa Barbara.

24 Q. What did you study there?

25 A. I studied mathematics. I have a degree in mathematics.

MORAN - DIRECT / STERK

1 Q. And after college, what did you do next?

2 A. I wanted to go to medical school, so I had to take the
3 premed classes. I did that at the University of California,
4 Berkeley.

5 Q. And after taking your premed classes, did you go to
6 medical school?

7 A. Yes, I went to University of Maryland School of Medicine
8 in Baltimore.

9 Q. When did you graduate?

10 A. In 1980.

11 Q. After finishing medical school, did you do a residency or
12 internship?

13 A. After medical school, I went right into a four-year OB/GYN
14 residency, yes.

15 Q. And where was that?

16 A. That was also in Baltimore. It was at Union Memorial
17 Hospital in Baltimore.

18 Q. After completing your residency, where did you work?

19 A. I received a scholarship to pay for my medical school by
20 the United States Navy, and I worked for the United States Navy
21 for three years.

22 Q. What was your job in the United States Navy?

23 A. I was an OB/GYN doctor.

24 (Reporter interruption)

25

MORAN - DIRECT / STERK

1 **BY MS. STERK**

2 **Q.** And when you were an OB/GYN for the Navy, where were you
3 stationed?

4 **A.** I was stationed at Subic Bay Naval Hospital in the
5 Republic of the Philippines.

6 **Q.** After you -- how long were you working for the Navy?

7 **A.** I worked for a total of three years.

8 **Q.** What did you do after that?

9 **A.** I went into private practice in Coronado, California, in
10 San Diego County.

11 **Q.** How long were you in private practice for?

12 **A.** From 1987 to 1995.

13 **Q.** While you were in private practice, what type of medicine
14 did you practice?

15 **A.** I was full -- general, OB/GYN. A majority of my time was
16 spent doing obstetrics.

17 **Q.** When did you start working at PPPSW?

18 **A.** In -- February 1, 2002.

19 **Q.** Are there multiple clinics that PPPSW has?

20 **A.** There are, I believe, a total of 18 clinics at PPPSW,
21 yeah.

22 **Q.** And which clinic did you say you worked at?

23 **A.** Primarily I worked at the First Avenue Clinic, in
24 San Diego City.

25 **Q.** And what's the general geographic area that PPPSW covers?

MORAN - DIRECT / STERK

1 **A.** On various occasions I would work in Riverside, Rancho
2 Mirage, or El Centro in the Imperial Valley.

3 **Q.** What are the services that PPSW offers?

4 **A.** The majority of their services are contraceptive in
5 nature. We also do a lot of sexually-transmitted disease
6 screening and treatment.

7 We, of course, do breast, breast exams, and order
8 mammograms. We do HIV prevention. And we also treat
9 precancerous lesions of the cervix. That takes a significant
10 amount of my time. And we do abortions. Yeah.

11 **Q.** You said that you started -- what was your role when you
12 first started at PPSW?

13 **A.** Well, my title was associate medical director. And I
14 essentially have the very same role I have today. Doing a
15 little more general gynecology now than I did then.

16 **Q.** Have you ever attended any conferences hosted by Planned
17 Parenthood?

18 **A.** I attended many conferences hosted by Planned Parenthood.

19 **Q.** When would you say is the first time, first year that you
20 attended a conference hosted by Planned Parenthood?

21 **A.** If you include the national medical committee, that would
22 have been 2014.

23 **Q.** Have you ever attended the medical -- Planned Parenthood
24 medical directors's conference?

25 **A.** I attended every single medical directors conference after

MORAN - DIRECT / STERK

1 its initiation. I can't recall the specific year. It may have
2 been 2005.

3 Q. And will you understand if I call that conference "MeDC"?

4 A. I will understand, yes, I will.

5 Q. Is that what you would call it?

6 A. That is what I would call it. MeDC.

7 Q. When you attend the MeDC conferences, does PPSW pay for
8 you to travel to those conferences?

9 A. Absolutely, pay for a hotel, transportation.

10 Q. Why is it that you attend the MeDC conferences?

11 A. The same reason I attend any medical conference. I --
12 physicians go to conferences to listen to the cutting edge of
13 medical science. To gather information. And to bring it back
14 and to put it into practice. To become a better doctor.
15 Provide better medical care.

16 Q. When you attended the MeDC conference in -- let me take
17 this back. Did you attend the MeDC conference in 2015?

18 A. I did.

19 Q. And when you attended that conference, did you have to
20 register in advance?

21 A. I did have to register in advance.

22 Q. And how did you register in advance? What did you have to
23 do?

24 A. Well, "MeDC" stand for Medical Director Conference. So
25 you had to be a medical director to be invited. After a while

MORAN - DIRECT / STERK

1 they did allow mid-levels, a few of them, to go. So they had a
2 list of all the medical directors.

3 And you received an invitation, and you accepted the
4 invitation, and essentially filled in a lot of personal
5 information so they knew what phone to call and where your
6 address was, and where you worked for Planned Parenthood. Like
7 that.

8 **Q.** And so for the attendees of the MeDC conference, you could
9 only register if you'd first received an invitation?

10 **A.** The question again? Sorry.

11 **Q.** For the attendees of the MeDC conference, you could only
12 register if you received an invitation.

13 **A.** Yes. If you received an invitation. That's correct.

14 **Q.** So to your knowledge, were all of the attendees at the
15 MeDC conference Planned Parenthood employees?

16 **A.** They were -- to my knowledge, all of the attendees were
17 Planned Parenthood employees, yes.

18 **Q.** And approximately how many people attended the MeDC
19 conference in 2015?

20 **A.** Well, the -- initially, I think there was only maybe 35,
21 but it did grow. There's only perhaps 68 or 70 affiliates.
22 That makes 68 or 70 medical directors. There are a few, few
23 affiliates like San Diego, Riverside and -- I'm sorry -- PPSW
24 that is very -- are very large, and they have a couple of
25 affiliate -- associate medical directors. And so...

MORAN - DIRECT / STERK

1 Q. You said that only Planned Parenthood employees could be
2 attendees, to your understanding. Were there any non-Planned
3 Parenthood people who were also allowed into the conference
4 space?

5 A. Uh, the defenders were not employees of Planned
6 Parenthood.

7 Q. And so there were exhibitors that were also at the
8 conference?

9 A. Exhibitors, yes. They had an exhibitor hall.

10 Q. And do you know what the process was to become an
11 exhibitor at the MeDC conference?

12 A. I did not know the process that was -- they undertook to
13 be a vendor.

14 Q. And without knowing what the process was to become an
15 exhibitor -- well, strike that.

16 Q. At the MeDC conference, did you -- what did you have to do
17 to get into the conference?

18 A. Excuse me?

19 Q. What did you have to do to get into the MeDC conference?

20 A. Oh, to get into the arena you had to have -- you were
21 given a badge when you registered on the first day and you had
22 to have that badge. There was a -- one way in and you had to
23 show your badge.

24 Q. And so when you first walked in, did you have to show a
25 photo I.D.?

MORAN - DIRECT / STERK

1 **A.** Yeah. Even though you had registered, even though the
2 group of people you knew most of them by a first name basis,
3 you still had to pull out your government issued I.D. and show
4 that you were the person.

5 Then they checked it against the ones that had been --
6 said that would come and then they issued the I.D., the
7 conference I.D., and then the various booklets and pamphlets
8 associated with the conference, yeah.

9 **Q.** After you received the badge that you just discussed, what
10 did you do with it?

11 **A.** I received the badge. I put it around my neck and entered
12 the conference area.

13 We were given instructions that we were to wear the badge
14 when we went into the conference, but when we left the
15 conference area, we were to take the badge off.

16 **Q.** And how did you know that it was a requirement for
17 everybody who was going to the conference to wear a badge?

18 **A.** Well, I experienced the -- myself and everyone inside the
19 arena had a badge. So if someone didn't have a badge, it would
20 be very unusual. And if I didn't recognize their face, I would
21 point it out to the organizers.

22 **Q.** Did you ever enter a conference space without a badge on
23 or the MeDC conference without a badge on?

24 **A.** Never. I never entered the MeDC conference without a
25 badge on.

MORAN - DIRECT / STERK

1 Q. Did you see anyone checking badges when you entered?

2 A. Yes, absolutely. They wouldn't let you in the area. They
3 are very strict about it.

4 Q. And what happened if you lost your badge?

5 A. Well, of course, you would have to notify security right
6 away, because someone might be able to use that badge to get in
7 to the arena. They would be on the look out for somebody who
8 was trying to say they were Thomas Moran.

9 Q. Was that part of the instructions that you received when
10 you got your badge?

11 A. Yes. They were very strict about the badge and how we
12 were to wear it when we went in and take it off when we were
13 out.

14 Q. Was the conference space at the MeDC conference in 2015
15 open to the public?

16 A. No, it wasn't open to the public.

17 Q. And so once you entered through the entranceway that you
18 talked about, did you think that that was a private space?

19 A. Absolutely. I thought it was a secure private space.

20 Q. Once you entered through the conference entrance, was it
21 one room or was it a number of rooms?

22 A. Initially I think it was just one room in 2004, but -- and
23 later there were several different rooms.

24 Q. And why were there several different rooms?

25 A. They would have different talks in different locations of

1 different topics and you could -- sometimes between 10:00 and
2 11:00 you could choose between three different topics to see.

3 **Q.** And for the spaces that had speakers or lecturers, was
4 there any other security checks?

5 **A.** Yes. You were -- first they would check your badge when
6 you walked into the arena, but then when you went into an
7 individual lecture, they would also check your badge. When you
8 went into the exhibitor hall, they would check your badge.

9 **Q.** When you were at the MeDC conference in 2015, did you
10 believe that you could have conversations regarding abortion
11 within that space?

12 **A.** Absolutely.

13 **Q.** And why did you believe that?

14 **A.** I was talking to fellow medical directors and Planned
15 Parenthood employees, and in the exhibitor hall I was talking
16 to exhibitors who had been vetted by Planned Parenthood.

17 **Q.** You spoke about exhibitors. I know earlier you said that
18 you weren't exactly sure what the vetting process was for
19 exhibitors.

20 Why did you think that you could speak to exhibitors about
21 topics like abortion?

22 **A.** I had been -- 2015, I had been working for Planned
23 Parenthood for 13 years and they are extremely vigilant about
24 protecting the employees' confidentiality, their privacy and
25 their security and, also, of course, for the patients' privacy,

1 security.

2 Sometimes I feel I worked for the CIA. The window
3 separating the waiting area from the reception area is
4 bulletproof windows. The walls are lined with Kevlar. The
5 guards are armed guards. So I feel very safe.

6 **MS. SHORT:** Objection, Your Honor. Nonresponsive.
7 He was asked about vetting, and now he's talking about physical
8 security.

9 **THE COURT:** Sustained.

10 **MS. SHORT:** Move to strike his --

11 **THE COURT:** We'll strike after the CIA.

12 (Laughter.)

13 **BY MS. STERK**

14 **Q.** How did the size of the MeDC conference -- you said only
15 the medical directors. How did the size of that affect your
16 belief that the space was private?

17 **A.** I believe I said before that I knew most of the attendees
18 by their first name and by their face. It was a very congenial
19 get-together, a time that you could relax and discuss issues
20 that were unique to Planned Parenthood medical directors.

21 **Q.** Did you believe that it was important for a conference
22 like MeDC to take place in a private space?

23 **A.** Absolutely.

24 **Q.** Why is that?

25 **A.** Well, although abortion is a -- you know, is a small

MORAN - DIRECT / STERK

1 percentage of what we do, it's emotionally charged. It's
2 politically charged. And in order to talk about abortion
3 freely, you need a secure private space.

4 **Q.** You said that abortion is an emotionally charged topic.

5 **A.** Yes.

6 **Q.** What was it specifically or what in your experience has
7 specifically led you to believe that?

8 **A.** So how did I come to believe that abortion was emotionally
9 charged?

10 **Q.** Let me be a little more clear.

11 Have you ever experienced in your practice any
12 particular -- experienced or seen in your practice any
13 particular threats or harassment towards abortion providers?

14 **A.** Practically --

15 **MR. MIHET:** Objection. Relevance.

16 **THE COURT:** Overruled. You can answer.

17 **MR. MIHET:** And 403.

18 **THE COURT:** Again, this is his personal experience.

19 Overruled.

20 **A.** Almost every day that I come to the clinic I have to drive
21 through protesters.

22 **BY MS. STERK**

23 **Q.** Was that true before 2015?

24 **A.** Yes. That was true before 2015, yeah.

25 **Q.** Did you expect when you were at MeDC to be taped,

1 videotaped by anyone?

2 **A.** I -- I did not expect to be videotaped.

3 **Q.** When you went to MeDC, did you meet any of the defendants
4 in this case?

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

6 **Q.** When you went to MeDC in 2015, did you meet any of the
7 defendants in this case?

8 **A.** Did I meet the defendants in this case? I certainly
9 couldn't pick their faces out in a lineup, but I believe I met
10 two of the defendants, yeah.

11 **MS. STERK:** I would like to have the witness take a
12 look at video 6116. I believe we provided it to the defendant.

13 **MR. LIMANDRI:** Can I see the transcript?

14 **MS. STERK:** Yes.

15 **THE COURT:** Let's not play it right now.

16 **MS. STERK:** Please don't play it.

17 (Videotape removed from display.)

18 **MS. STERK:** This is for the Court.

19 (Whereupon document was tendered to the Court.)

20 **THE COURT:** Okay. So this is only being shown at the
21 moment to the witness and counsel.

22 **MS. STERK:** Yes. Okay.

23 **MS. TROTTER:** Ms. Davis, are the juror screens off
24 now?

25 **THE CLERK:** Yes.

MORAN - DIRECT / STERK

1 **MS. STERK:** We apologize for any technical
2 difficulties.

3 **BY MS. STERK**

4 **Q.** If you can take a look at your screen, Dr. Moran, there
5 will be a video that plays.

6 (Videotape played without audio for the witness and
7 counsel only.)

8 **BY MS. STERK**

9 **Q.** Dr. Moran, do you recognize where that video was taken, or
10 do you recognize the video?

11 **A.** I recognize the video.

12 **Q.** Do you recognize where it was taken?

13 **A.** I believe that was taken at the MeDC meeting in February
14 of 2015.

15 **Q.** And is that you on the left-hand side of the video?

16 **A.** That is me on the left-hand side.

17 **MS. STERK:** At this time I would like to admit
18 Exhibit 6116.

19 **MR. LIMANDRI:** No objection.

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

21 (Trial Exhibit 6116 received in evidence)

22 **MS. STERK:** Can you please play the video from the
23 beginning for the jury?

24 (Videotape played in open court, not reported)

25

MORAN - DIRECT / STERK

1 **BY MS. STERK**

2 **Q.** Dr. Moran, in that video you said that you were at the
3 MeDC conference 2015?

4 **A.** Yes.

5 **Q.** And do you know who you were talking to who was not shown
6 on the camera?

7 **A.** I believe Daleiden.

8 **Q.** I'll ask you this: Did you recall how he introduced
9 himself on the video?

10 **A.** I think his last name started with an "S" or something
11 like that.

12 **Q.** Was it Robert Sarkis?

13 **A.** I believe so, yes. Yeah.

14 **Q.** And do you remember why -- where within the conference you
15 were where that video was taken?

16 **A.** I believe we were in a corner, corner of the conference
17 room -- corner of the exhibit hall, sorry.

18 **Q.** Thank you.

19 And was the person who you were talking to who you
20 couldn't see on the video one of the exhibitors?

21 **A.** He was one of the exhibitors, yes.

22 **Q.** Do you remember what -- what exhibitor, what the company
23 was that they were exhibiting?

24 **A.** Med -- Med something. It was some -- yeah.

25 **MS. STERK:** Can you actually play the very beginning

MORAN - DIRECT / STERK

1 of that clip again? It might be helpful.

2 (Videotape played in open court, not reported)

3 **A.** Robert Sarkis.

4 **BY MS. STERK**

5 **Q.** So reviewing that video, do you recall now how the person
6 who is speaking behind the camera introduced himself?

7 **A.** He introduced himself as Robert Sarkis.

8 **Q.** And did you hear him say that he was from BioMax as well?

9 **A.** Yeah. He was a biomass disposal company of some sort.

10 **Q.** Why was it that you went to speak with people within the
11 exhibitor space?

12 **A.** Well, the -- one of the organizers of the conference had
13 said -- had instructed the conference in general that in the
14 exhibiting hall there were supporters of Planned Parenthood,
15 and he encouraged us to see what they had to offer.

16 He also had some kind of a flyer that said they dealt with
17 medical waste, which Planned Parenthood of the Pacific
18 Southwest might be able to make use of them. I don't know.

19 **Q.** There was another person in the video standing next to
20 you. Did you see that?

21 **A.** Yes. That was Dr. Sean Nguyen.

22 **Q.** Who is Dr. Sean Nguyen?

23 **A.** Dr. Sean Nguyen is the other associate medical director.
24 He works primarily in Riverside. I work primarily in
25 San Diego.

MORAN - DIRECT / STERK

1 Q. Was there anyone else at the BioMax table that you
2 couldn't quite see in that video behind the camera?

3 A. There was no one else that I recall, no -- oh, I'm sorry.
4 He had a colleague. Robert Sarkis had a colleague. I believe
5 he was a male.

6 Q. Do you remember his name?

7 A. No. No. No.

8 Q. When you were watching the video, did you see Dr. Nguyen
9 have something around his neck?

10 A. Sure. He had the VIP badge for the MeDC meeting, just
11 like I had my I.D. badge around my neck.

12 Q. And that was the I.D. badge that you talked about earlier
13 that you needed to have to get into the conference --

14 A. You wouldn't have been able to --
15 (Simultaneous crosstalk.)

16 Q. Sorry, Dr. Moran. Slow down just a little bit so the
17 court reporter can get it.

18 A. He wouldn't have been able to get into the exhibitor hall
19 without that badge.

20 Q. In the clip do you recall saying that both you and
21 Dr. Nguyen worked at abortion clinics?

22 A. Primarily that's the majority of what we do, yes.

23 Q. And do you remember saying that in the clip that we just
24 watched?

25 A. I don't recall saying that specifically.

MORAN - DIRECT / STERK

1 Q. Do you recall seeing it in the video that you just
2 watched?

3 A. The --

4 Q. And let me know if you want me to play it again.

5 A. You better play it again.

6 MS. STERK: Would you mind playing it again?

7 (Videotape played in open court, not reported)

8 A. Sounds as if I said two different abortion clinics
9 110 miles away.

10 BY MS. STERK

11 Q. Dr. Moran, do you have a social media presence?

12 A. No, I don't. I -- a little embarrassing. I was in a rock
13 and roll band in high school, and I -- the band had played at a
14 reunion, high school reunion, and we had some photos and
15 videos. So I do -- I think if you Google my name, you might
16 find me a member of the London Beats.

17 (Laughter.)

18 Q. And when you -- or have you ever put out online that you
19 are an abortion provider?

20 A. I have never done that.

21 Q. And why have you not done that?

22 A. For the same -- we talked about this a little before.
23 It's an emotionally and politically charged subject and, you
24 know, I don't want to draw attention to myself in that sense.

25 Q. And why was it that you felt comfortable telling Robert

MORAN - DIRECT / STERK

1 Sarkis, who you just heard on the video, that you worked in an
2 abortion clinic?

3 **A.** I was among friends. I was among -- well, mostly medical
4 directors of Planned Parenthood, employees of Planned
5 Parenthood, and people who had been vetted by Planned
6 Parenthood. This was a safe space for me.

7 **Q.** And you talked about Dr. Nguyen earlier. Do you know if
8 he has a social media presence?

9 **A.** I don't know that for certain. I doubt it.

10 **Q.** Do you know if he puts out online that he's an abortion
11 provider?

12 **A.** I never Googled his name, but I would -- it would be
13 unbelievable to me. I'm sure he doesn't have a social media
14 presence saying he's an abortion provider.

15 **Q.** And why would that be unbelievable to you?

16 **MS. SHORT:** Objection.

17 **MR. MIHET:** Objection.

18 **MS. SHORT:** Calls for speculation.

19 **MR. MIHET:** Join.

20 **THE COURT:** Sustained.

21 **A.** So --

22 **BY MS. STERK**

23 **Q.** So don't answer.

24 **A.** I can't answer. Sorry. Sustained. Overruled.

25 **Q.** Have you ever spoken -- when you were telling Robert

MORAN - DIRECT / STERK

1 Sarkis on that video that you were an abortion provider, did
2 you expect to be recorded?

3 **A.** I did not expect to be recorded, no.

4 **Q.** And when you were having this conversation that we just
5 watched, did you believe that Mr. Sarkis was who he said he
6 was?

7 **A.** He said his name was Robert Sarkis. I believed he was
8 Robert Sarkis.

9 **Q.** Was there anything that Mr. Sarkis did or said that made
10 you believe that he wasn't who he was?

11 **A.** Nothing.

12 **Q.** And was there anything that gave you the impression that
13 he or his colleague that you said was at the table were
14 recording?

15 **A.** Absolutely not.

16 **Q.** Did you see a video camera when you were speaking to
17 Mr. Sarkis?

18 **A.** I did not.

19 **Q.** And did you see -- did he ask if he could record you?

20 **A.** He did not.

21 **Q.** If he had asked if he could record his conversation with
22 you, would you have agreed to do that?

23 **A.** I would have been shocked and gone immediately to
24 security.

25 **Q.** And if you had known that he was an anti-abortion activist

MORAN - DIRECT / STERK

1 at the MeDC conference, would you have spoken to him?

2 **A.** No.

3 **Q.** Dr. Moran, you're aware that CMP released its first video
4 on July 14th, 2015; is that right?

5 **A.** I'm aware of that, yeah.

6 **Q.** When did you first find out about that video?

7 **A.** Must have been within a couple days of it being released.

8 **Q.** Were you in the first video that was released?

9 **A.** I was not in the first video.

10 **Q.** At some point did you learn that the people you met that
11 we saw on the video were the people who had released those
12 videos?

13 **A.** At some point I did, yes.

14 **Q.** And when you first -- when did you learn that?

15 **A.** Must have been within a week of viewing the video.

16 **Q.** And at that point did you know whether you had been taped
17 or not?

18 **A.** I did not know if I had been taped or not. I was -- you
19 know...

20 **Q.** How did you feel when that first video came out?

21 **MS. SHORT:** Objection. 403.

22 **THE COURT:** Overruled. You can answer.

23 **A.** I was anxious. I was afraid, primarily for the provider
24 that was in the first video.

25 And secondarily, I was anxious for myself. Did they video

1 me? You know, what did I say? Would they put my name on the
2 internet as an abortion provider?

3 **BY MS. STERK**

4 **Q.** Why was it concerning for you that they may put your name
5 on the internet?

6 **A.** Why was it concerning?

7 **Q.** Why was it concerning to you that somebody who taped you
8 might put your name out on the internet?

9 **A.** Why was it concerning? Well, this is a -- abortion is an
10 emotionally charged topic. People have very, very strong
11 feelings one way or the other.

12 I believe in the first video they put the provider's name.
13 I believe they had her address. It was like they were putting
14 her up as a target. Yeah.

15 **Q.** Do you know if you're -- the video of you that we just
16 watched or any part of videos of you that defendants may have
17 taken were put online?

18 **A.** It's my understanding it was never put online.

19 **Q.** And what was the tone at your affiliate, PPPSW, after this
20 first video came out?

21 **A.** It was --

22 **MS. SHORT:** Objection. Vague.

23 **THE COURT:** Can you be a little more specific?

24 **MS. STERK:** Sure.

25

1 **BY MS. STERK**

2 **Q.** When the first video came out in July 2015, was -- were
3 your colleagues anxious as you were?

4 **MS. SHORT:** Objection. Leading.

5 **THE COURT:** It is. Sustained.

6 **BY MS. STERK**

7 **Q.** At PPPSW after the first video came out, did you speak to
8 others within your affiliate about their reaction to the
9 videos?

10 **MR. KOZINA:** Hearsay.

11 **THE COURT:** Overruled.

12 **A.** I felt -- the entire staff knew about the video. The
13 entire staff had seen the video; not as a group, but
14 individually they did it. And there was anxiety on their part,
15 too.

16 If there was going to be a target, they -- they had
17 protestors almost every day out in front of our clinic.

18 Also, there was a little bit of distrust in the clinic.
19 You know, if you can't go to a Planned Parenthood conference
20 and speak in confidence. Maybe there is a mole inside of the
21 clinic working. Maybe what you say in clinic would end up on
22 the internet that afternoon or that evening. And, yeah...

23 **BY MS. STERK**

24 **Q.** You spoke earlier about Dr. Nguyen, who is also on the
25 video with you. Have you ever seen him consent to having

1 pictures of him taken?

2 **A.** No.

3 **MS. SHORT:** Objection. Vague as to time and to
4 place.

5 **THE COURT:** You can tease that out at
6 cross-examination. Overruled.

7 **A.** I've never heard him -- him being asked to consent to be
8 videoed. And I'm sure if he was, he would be just as shocked
9 or more shocked that someone would ask that question.

10 **MR. MIHET:** Objection. Move to strike. Calls for
11 speculation.

12 **THE COURT:** We'll strike the last sentence regarding
13 Dr. Nguyen.

14 **BY MS. STERK**

15 **Q.** Within your own clinic or within PPSW, has there ever
16 been an instance in which doctor -- you've seen Dr. Nguyen
17 reject being photographed?

18 **A.** Yes.

19 **Q.** And when was that?

20 **A.** The new medical director assumed her job and she wanted to
21 have some publicity shots done of the group of doctors, the
22 medical director. And at that point there were three associate
23 medical directors. And Dr. Nguyen refused to be in the
24 picture.

25 **Q.** Did he tell you why he refused to be in the picture?

MORAN - CROSS / LIMANDRI

1 **A.** He -- there was some family members who didn't actually
2 know he worked for Planned Parenthood.

3 **Q.** Since the videos have been released or since 2015, has
4 your behavior changed in any way?

5 **A.** Has my?

6 **Q.** Behavior.

7 **A.** Behavior. There is always that cloud, what you say may
8 end up on the internet that evening. So there is always that
9 hesitation.

10 **MS. STERK:** No further questions.

11 **THE COURT:** All right. Cross-examination.

12 **CROSS-EXAMINATION**

13 **BY MR. LIMANDRI**

14 **Q.** Good afternoon, Dr. Fowler [sic]. I'm Charles LiMandri.
15 I represent some of the defendants in this case.

16 **A.** I'm sorry. My name is Dr. Moran.

17 **Q.** Dr. Moran. That's what I said.

18 **A.** I thought you said Fowler.

19 **Q.** Oh, I'm sorry. I'm still thinking of the last witness.
20 I apologize, Dr. Moran.

21 Doctor, I believe you testified on direct examination that
22 abortion is a small percentage of what Planned Parenthood does.
23 Are you aware that Planned Parenthood does over 300,000
24 abortions per year?

25 **A.** I'm aware of the approximate number, yes.

MORAN - CROSS / LIMANDRI

1 Q. And you have been working at Planned Parenthood how long
2 did you say, over 15 years?

3 A. Seventeen years.

4 Q. Seventeen, okay. I believe you also said that you saw
5 protestors even before the videos were released in July 2015.
6 Protestors were a regular occurrence outside the Planned
7 Parenthood abortion clinic at PPPSW; correct?

8 A. At the surgical site. That I know for certain, yeah.

9 Q. And as far as you know, that's lawful activity. They are
10 entitled to do that; correct?

11 A. Yes.

12 Q. All right. Have you ever Googled yourself to see how many
13 times you're mentioned on the internet as working at Planned
14 Parenthood as an abortion doctor?

15 A. I have Googled myself.

16 Q. Okay. So you're aware then there is up to a dozen or so
17 times, if someone Googles your name, it is readily apparent
18 that you work at Planned Parenthood and perform abortions;
19 right?

20 A. Well, to be honest, I Googled my name and I have to say I
21 was a little disappointed with the results. There was hardly
22 anything mentioned.

23 I do believe it said I was -- I was working for Planned
24 Parenthood. It also said I was -- had privileges at Sharp
25 Medical -- with the Sharp hospital system.

MORAN - CROSS / LIMANDRI

1 But I don't recall any specific reference to abortion
2 provider in all of Google. Although if you tell me it's there,
3 I believe you.

4 **Q.** Well, you didn't see the reference where you were sued for
5 a surgical procedure performed at Planned Parenthood in 2004?
6 We just Googled it ourselves just now.

7 **A.** Well, I was sued. I did not see that reference.

8 **Q.** Okay. But that would be a public filing; correct?

9 **A.** Absolutely, yes.

10 **Q.** Okay.

11 **A.** Yeah.

12 **Q.** And have you ever Googled Dr. Nguyen? We just did that,
13 too. His name is also mentioned as working at Planned
14 Parenthood. Would that surprise you?

15 **A.** I have not ever Googled Dr. Nguyen.

16 **Q.** All right. But in any event, you did admit, Dr. Moran,
17 that the video that was taken of you at the Planned Parenthood
18 MeDC conference, that was actually never made public; right?

19 **A.** As far as I'm aware.

20 **Q.** Right.

21 **A.** That was never made public.

22 **Q.** So if people know you're an abortion doctor, it's not
23 because of anything that my client did; right?

24 **MS. STERK:** Objection. Calls for speculation.

25 **THE COURT:** Overruled. You can answer, if you know.

MORAN - CROSS / LIMANDRI

1 A. If people know -- could you restate the question one more
2 time?

3 BY MR. LIMANDRI

4 Q. Sure. Assuming that, as you've admitted, this video -- by
5 the way, what was it, a five-minute video that you saw?

6 A. I believe so. I believe so, yeah.

7 Q. That five-minute video was never even made public. So if
8 people know you're an abortion doctor, they know that
9 presumably by going on the internet or some other way than
10 learning it from my client; right?

11 A. It was kind of a complicated question, but I believe what
12 you said is true, yes.

13 Q. Thank you, Doctor.

14 And isn't it true is that the mere fact that that video
15 was taken and not published, you've received no negative
16 reaction from anybody because of that video; right?

17 A. Not as far as I'm aware, no.

18 Q. Okay. Thank you, Doctor.

19 Also, isn't it true that before that video was taken at
20 that conference, you had never heard of BioMax; right?

21 A. I had never heard of BioMax.

22 Q. Right. You never heard of David Daleiden; right?

23 A. Never heard of David Daleiden.

24 Q. And they did not come seek you out? They did not target
25 you and try to bring you to the table? You walked over there

MORAN - CROSS / LIMANDRI

1 on your own voluntarily; isn't that true, Doctor?

2 **A.** They had an interesting flyer. I was encouraged by the
3 organizers to support the people who were supporting us.

4 **Q.** And during that conversation -- I could play it if you'd
5 like -- you volunteered that there was a demand for human fetal
6 livers in the work you did at Planned Parenthood; right?

7 **A.** I believe that was in reference to the tissue procurement
8 company that was currently associated with Planned Parenthood.

9 **Q.** Right. At that time you were already working at ABR. It
10 was a tissue procurement company. And as a result of abortions
11 that would be performed there, including abortions you did,
12 they would sometimes place a demand for certain organs;
13 correct?

14 **A.** That was certainly my understanding, yeah.

15 **Q.** Yes.

16 **A.** Whether it was liver or -- I said liver.

17 **Q.** Yes.

18 **A.** I said liver. But whether it was actually -- they wanted
19 a liver or a kidney or a -- I don't know, intestines, I'm not
20 really -- never got really privy to the list they were looking
21 for.

22 **Q.** Thank you, Doctor.

23 And you expressed an interest in BioMax potentially being
24 in a position to take the biowaste, all the different aborted
25 baby parts. I think you said there are, like, barrels or

MORAN - CROSS / LIMANDRI

1 buckets of them or something you want to get rid of; right?

2 **A.** What I was referring to is biomedical waste.

3 **Q.** Okay, biomedical waste. Would that be the left-overs from
4 abortions?

5 **A.** That would be -- you know, the overwhelming --

6 **MS. STERK:** Objection, Your Honor.

7 **THE COURT:** He referred to waste earlier in the
8 direct testimony, so you can respond.

9 Finish the -- finish the answer to the question.

10 **A.** The majority of what Planned Parenthood does is
11 contraception and cancer screening, pre-cancerous treatment.
12 An enormous amount of -- well, we see a quarter million patient
13 visits a year.

14 We are a medical service provider and we generate a large
15 volume of medical waste. Only a very small portion of it is
16 embryonic tissue.

17 **Q.** I see. So you generate a lot of waste with contraception
18 procedures?

19 **A.** Okay. If you want me to list specifically --

20 **Q.** No. I think we get the point. Thank you, Doctor.

21 **A.** Okay.

22 **THE COURT:** Mr. LiMandri, is this a good place to
23 break for the day?

24 **MR. LIMANDRI:** I'm almost done. Maybe three more
25 questions.

MORAN - CROSS / LIMANDRI

1 **THE COURT:** Okay. Three more questions and we'll
2 finish you.

3 **BY MR. LIMANDRI**

4 **Q.** At no time did you feel you needed to lower your voice in
5 talking to my clients because you thought it was a confidential
6 communication; would that be true?

7 **A.** I think that would be true, yeah.

8 **Q.** And you didn't indicate at any time that you considered
9 what you were discussing confidential; wouldn't that be true as
10 well?

11 **A.** I was speaking in a secure environment to people who were
12 supporters of Planned Parenthood and --

13 **Q.** So the answer would be yes, you did not at any time tell
14 my clients you considered this discussion about, you know,
15 fetal tissue and livers and such to be confidential; wouldn't
16 that be true, Doctor? "Yes" or "no."

17 **A.** I never felt I would be betrayed.

18 **Q.** Doctor, the question, "yes" or "no." You never told my
19 client you considered it a confidential communication; correct?

20 **A.** I didn't -- I didn't --

21 **Q.** Can you answer it "yes" or "no," please, Doctor?

22 **A.** Sometimes -- okay. So can you restate the question?

23 **Q.** Yeah. Last question and we can all go home for the day.

24 Isn't it true that you never told my clients in the
25 discussion you had with them in that short five minute video

MORAN - CROSS / LIMANDRI

1 that you considered the discussion to be confidential; correct?

2 **A.** I never stated that to him.

3 **Q.** Thank you very much. I appreciate it.

4 Thank you, Your Honor.

5 **THE COURT:** All right. So, ladies and gentlemen,
6 we'll break for the day. Please remember the admonition.

7 Come back tomorrow and we'll fight through whatever issues
8 you have in getting from your home here. I appreciate your
9 work.

10 Just keep an open mind. We still have a ways to go, but
11 we're moving right along.

12 We're adjourned for the day.

13 (Jury exits the courtroom at 1:01 p.m.)

14 **THE COURT:** All right. We'll be in recess.

15 (Whereupon at 1:02 p.m. further proceedings were
16 adjourned til Friday, October 11, 2019 at 7:30 a.m.)

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EXHIBITS

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>	<u>VOL.</u>
72 removed from evidence		795	5
565		875	5
567		901	5
729		883	5
729-A		887	5
1012		895	5
6116		986	5
8015		887	5

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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 10, 2019