

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
)	Wednesday
Defendant.)	October 23, 2019
)	7:30 a.m.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

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PROCEEDINGS

P R O C E E D I N G S

October 23, 2019

7:31 a.m.

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

THE CLERK: Please come to order.

THE COURT: Good morning, everybody.

(Counsel greet the Court)

THE COURT: Please be seated.

All right. Mr. Breen?

MR. BREEN: Good morning, Your Honor.

THE COURT: Good morning.

MR. BREEN: And, our letter was a -- was a continuation of a theme that obviously we have been discussing nearly every day. And the -- I want to just -- in terms of where we were, Your Honor had referred to the fact a line had been drawn, pretrial. And we understand that. We objected, but a line was drawn.

And this Court in the pretrial proceedings, you know, instructed the plaintiffs -- when asked about the various things, the plaintiffs got up, and: Scout's honor, we're not going to go into these areas.

And it is the defense's position that whatever line was drawn pretrial, the plaintiffs have danced on the line, leapt over the line, but here we are, halfway through, and there is

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1 no line anymore that we can see. As a general matter.

2 And, and Your Honor, just even the -- even the questioning
3 of Mr. Daleiden yesterday further reinforced that -- that
4 belief in our minds. And again, the context here is we're
5 ruling a *Food Lion* defense. So we're saying -- you know, the
6 plaintiffs have disclaimed their publication damages.

7 In *Food Lion*, the District Court instructed the jury:
8 Treat the factual claims of the videos as true. Here we've
9 taken a different approach. And in terms of trying to keep
10 anything involving the publication or factual claims of the
11 videos out from the jury, the Court has avoided making that
12 instruction to the jury. We -- we still would contend it needs
13 to be made, and probably is going to have to be made at this
14 point.

15 But then, looking at the state of the evidence -- and
16 we've pointed out to the Court, chapter and verse, of the
17 various places where we believe that doors have been opened --
18 it's not just that. It's the fact that on the state of the
19 current evidence, as best we can tell, the sworn evidence right
20 now is that the videos are misleading. That's the only thing
21 in there.

22 And I know that in the response, the plaintiffs had noted:
23 Well, there are only four -- four different places that you are
24 complaining about. So four independent witnesses making
25 statements about the -- the nature of the videos.

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1 A good trial lawyer on closing doesn't need four. I mean,
2 all you need is Dr. Gatter saying they were misleadingly
3 edited. That is the only sworn evidence in the record right
4 now.

5 So from the defense perspective, we tried to highlight for
6 the Court the places where it was actually elicited by the
7 plaintiffs. Certainly, there was cross-examination. And there
8 was -- there was a concession in the plaintiffs' responsive
9 filings, that, that: Yes, it did occur, how -- you know,
10 Dr. Gatter, it was accidental. It was volunteered.

11 Now, we've had a full day of deposition of Dr. Gatter. We
12 had her a few weeks ago at the preliminary hearing. We've now
13 had her here. So however it came out, it came out.

14 And we know that as well, even Ms. Bonner, when I
15 cross-examined her, she mentioned, you know: I talked to the
16 entire staff about the videos. You know, and on and on about
17 this.

18 So we've seen that coming forward, so we would
19 respectfully contend that we need to be able to repair the
20 damage that was brought in by plaintiffs' own witnesses, their
21 own questioning.

22 And we do, now that -- the plaintiffs had said: Well, you
23 know, you got to cross-examine.

24 We get to cross-examine on an area that we were told:
25 Scout's honor, we're not getting into, coming into their case.

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1 It's their case, they can do it, this is -- you know, but you
2 gave them the judicial finger wag: Do this, and you're going
3 to have an issue. You're not going to like the results. So
4 that's where we are today.

5 I did want to note as well, we have laid a lot of this out
6 in our papers, but you've got knowledge and intent of the
7 defendants, you've got -- now the credibility of the Human
8 Capital Project generally, we're hearing this in questioning.
9 I know Mr. Millen had started to flag that yesterday, based on
10 some of the questioning of Mr. Daleiden. And I can even hear
11 the closing argument now about, you know, the production
12 schedule. It was week after week after week, and you were
13 targeting. And it was confusing. You know, shock.

14 I'm sitting there, going that sounds a lot like you are
15 going into the content of the videos. And that's what I'm
16 hearing from the questioning by plaintiffs' very able counsel,
17 all of that being laid out in the closing argument.

18 As well, we've got our reasonableness of damages. And the
19 plaintiffs now, if you listen to the testimony, they are
20 conflating the publication-related damages and the -- the
21 finding out about the infiltration damages.

22 And we were -- you know, we had filed the motion in limine
23 on the way in -- because publication is not supposed to be part
24 of this case, we had filed the motion on the way in. We said:
25 Look, please, no victim impact statements, none of this

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1 business of how you -- you know, how the public reaction
2 impacted you.

3 And then we hear -- we see Dr. Nucatola, we spent a full
4 day of deposition with her, prelim, and I -- she's crying on
5 the stand. And, look, you know, it's a free country. But
6 that's the plaintiffs' case. That's what they're doing to us
7 right now.

8 And so from our perspective, again, running a *Food Lion*
9 defense, we see this case as now where the District Judge in
10 *Food Lion* instructed the jury: Hey, you consider it to be true
11 for the purposes of this case, the factual claims.

12 We're now -- and we were in a neutral position, coming
13 into this trial. We're now in the opposite position
14 (Indicating). Where the entire project credibility is being
15 undercut.

16 They spent -- and this -- getting to Mr. Daleiden, they
17 spent two full days attacking Mr. Daleiden's credibility, over
18 and over again, including in a number of places. Questions
19 like asking about the needle in a haystack. So implying or
20 allowing -- trying to get the jury to take an inference that
21 Mr. Daleiden wasn't finding a lot. That he was just doing a
22 fishing expedition. Again, for ill purpose.

23 You know, going into the pathology lab. The questioning
24 about Tram Nguyen. So at the Planned Parenthood facility in
25 Texas, they asked him questions: Well, you went into the

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1 pathology lab, didn't you?

2 Now, that only matters if you're trying to make the point
3 that: Oh, they were just trying to do a shock-value project,
4 and not actually get after something you need. In that
5 pathology lab, you did see things that were shocking, as some
6 of that video made it into the public release. They were
7 literally playing with fetal tissue and organs -- and I hate to
8 use that word -- that are being considered for sale.

9 And so, that was shocking to the public. But we would say
10 appropriately so, because the conduct there was not -- not of
11 public value, and not in accord with the law.

12 And Your Honor, I also wanted to note the -- the detail --
13 this detailed talk about the production schedule which they got
14 into with Mr. Daleiden, I don't know how that gets -- that's in
15 there, unless they're intending on talking about the
16 publication on the closing argument, talking about trying to
17 undermine the good faith of the project and of Mr. Daleiden in
18 the closing argument.

19 They're continuing to use this word "targeting." And of
20 course, "targeting" could have an innocuous meaning, but where
21 you're talking about a case where it's about threats coming
22 from members of the public, "targeting" has a much different
23 meaning in this context.

24 The other side also highlighted the fact, they said: Oh
25 you mentioned in your pre -- you know, your prospectus, you

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1 want to get "gotcha" videos. Oh, you want to get "gotcha"
2 videos, don't you?

3 So, Judge, we're hearing this and going -- I can hear the
4 closing argument now. And they're going to go after the
5 project, the content of the videos, and what they did. And so
6 this is -- this is really what we're trying to get after.

7 And I understand that -- you know, we had a clip of
8 Dr. Nucatola played, that the plaintiffs are very -- objected
9 to. But it was played solely for the purpose of showing there
10 were 30 waiters that went by during a sensitive discussion.
11 Not for showing that there was value to the underlying project,
12 or that Mr. Daleiden did actually find some things. And that
13 that -- that video was not misleadingly edited; it were the
14 doctor's own words, and what have you.

15 And I would say, Your Honor, when I see the tears on the
16 stand, I should respectfully be able to impeach those crocodile
17 -- well, respectfully, our characterization would be crocodile
18 tears, with what was actually said and what was the truth of
19 the matter, of the underlying truth of the matter. We put the
20 rest in our papers, Your Honor, but I did want to put that on
21 the record.

22 And I would just say this. You know, Your Honor, you
23 mentioned early on: I've drawn a line; maybe somebody else
24 will say I drew it in the wrong spot. But we're halfway
25 through trial. And everyone knows that line is no longer here.

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1 And through no fault of the Court. It's plaintiffs' case.
2 They can do what they want. But they have not obeyed your
3 line.

4 So at this point, well, why don't we just say let's just
5 go and put on our case. Let us show the videos. The jurors,
6 they're big boys and girls; they'll be able to take it properly
7 into account. We'll ask for an instruction about the truth
8 down the road, and I believe we already had. But let's just
9 let us put on this case, because your line, due to the
10 plaintiffs' actions, is no longer present.

11 Thank Your Honor.

12 **THE COURT:** All right.

13 Mr. Kamras.

14 **MR. KAMRAS:** First, I object strenuously to
15 Mr. Breen's characterization of any tears as crocodile tears.
16 This whole argument is farce, frankly. And we know that.

17 Their intent is to show videos in order to inflame the
18 jury. We know that, because Mr. LiMandri, in arguing for the
19 admission of the 20/20 video, told Your Honor it was the
20 impetus for what his client did. The impetus. That's not what
21 his client testified to.

22 What his client testified to is that he learned about all
23 of this through the Congressional transcript. And it was only
24 through the transcript that he learned about the video.

25 And then, they rushed through their cross of Mr. Daleiden

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1 so they could show that video, and then ended early with a
2 comment to plaintiffs' counsel (Indicating), to the effect of:
3 Well, that's a nice little thing to leave the jury with this
4 evening. That's what's going on here.

5 Now, Your Honor set out some guidelines at the beginning
6 of this trial that what is relevant here is the intent of
7 Mr. Daleiden and the defendants. And that is what plaintiffs
8 have tried in this case. And over 11 or 12 days of trial
9 testimony, Mr. Breen has been able to identify two -- actually,
10 he has been able to identify one instance.

11 I identified for the record and for Your Honor the other
12 instance in which one of plaintiffs' witnesses brought out
13 testimony -- in one case, one word, in another case, a phrase,
14 about the contents of the videos being misleading. That's not
15 our case. We're not going to talk about the videos being
16 misleading in closing.

17 We have assiduously adhered to the Court's orders. And if
18 there's any door-opening here, it's certainly not of our doing.

19 Now, as to some of the more specific comments that
20 Mr. Breen raised, this is not a *Food Lion* case. Your Honor
21 precluded damages relating from publication. That's not what
22 we're, obviously, seeking. We substantially limited our
23 damages, consistent with the Court's orders.

24 The damages, as Your Honor now knows from Mr. Galloway's
25 testimony, are in very substantial part, over 80 percent,

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1 directly tied to the infiltration and the attempt to prevent
2 future infiltration by Daleiden or people working with Daleiden
3 or others.

4 The remaining costs are the security costs that are for
5 witnesses who were targeted. Mr. Breen objects to that term.
6 That's the term that, in fact, was in the Court's orders, and
7 which we have adhered to.

8 He also talks about -- I don't know, something about a
9 confidentiality -- you know, the problem with the pathology
10 lab, testimony about the pathology lab.

11 The testimony about the pathology lab was quite clear that
12 it was about the confidentiality. There's no one else in the
13 pathology lab. It's inside a PPGC clinic. That's why we
14 elicited testimony about the pathology lab. It goes directly
15 to the confidentiality and the privacy of the communications.

16 We've obviously addressed, frankly, I think any other
17 remaining issues in our papers. And I don't think that there's
18 any credible claim here that plaintiffs have opened the door to
19 anything. And on that basis, we submit.

20 **THE COURT:** All right.

21 **MR. BREEN:** Your Honor --

22 **MR. LIMANDRI:** Your Honor, if I just may make an
23 objection?

24 At the end of the day, yeah, I showed the video. I
25 intended to do that all along. I've got no apologies for that.

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1 And then we went right into a couple of other matters. I don't
2 recall saying anything to the plaintiffs' counsel. I don't
3 know if they overheard some comments, talking to defense
4 counsel.

5 I don't think it's a big deal; I just don't like people
6 saying I did something that I don't have a specific
7 recollection of doing. It would not be --

8 **MR. KAMRAS:** It was your co-counsel.

9 **MR. LIMANDRI:** Hold on.

10 It would not be my practice to rub the nose of opposing
11 counsel into a piece of evidence. I just don't practice law
12 that way.

13 So I don't know what he thinks he heard or who he thinks I
14 said it to. I deny that statement. Not because it's a big
15 deal in terms of what it would mean, ordinarily; I just think
16 it would be unprofessional. And I don't practice law that way.
17 So I'm objecting to that statement.

18 **MR. KAMRAS:** You're right. We agree it's
19 unprofessional. It wasn't you. It was your co-counsel. But I
20 wasn't going to identify the person on the record.

21 **THE COURT:** So, I am so not interested in that
22 particular part of the argument. I used to try cases. I know,
23 you know, it's -- it's fine. That -- I'm not concerned about
24 that.

25 All right. Mr. Breen, did you want to say one more thing?

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1 **MR. BREEN:** Again, Your Honor, just in looking back
2 to Page 6 of the other side's response where they lay out the
3 testimony from Dr. Gatter, you know, that on -- that they
4 elicited from their witness, the video was edited to show the
5 worst parts of the conversation: Had a negative impact on me,
6 negative impact on Planned Parenthood and their mission. You
7 know, et cetera. Talk about negative impact on patients
8 because clinics are being closed as a result of this video.

9 That's clearly publication. And it clearly goes to the
10 content. And the content of the video will help the jury to
11 understand the context of that testimony.

12 And my problem is, on closing, I -- I understand what
13 counsel is saying. But on closing, that's in the record.

14 And yes -- and then further down on that page, they noted
15 that we were -- they said we successfully elicited relevant
16 testimony, so in our recross of Tosh, our Bonner cross, that we
17 were able to show -- and then on Fowler cross, that we were
18 able to show that they had not -- they couldn't recall the
19 videos; they needed to see the videos in order to substantiate
20 their claims.

21 All that does is supports our position. That you've now
22 got this testimony in the record, and -- and yes we're trying
23 to cross it and trying to undercut it. But without actually
24 having the videos available to us to use and -- and indicate,
25 we can't effectively do so. That is the most probative

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1 evidence.

2 And again, we're in the setting of a *Food Lion* type case.
3 We've got punitive damages being sought. We've got videos at
4 issue. *Food Lion* is settled law now, 25 or more years later.
5 And just to say that somehow that we can't even show the
6 videos, when their credibility and the credibility of the
7 project and the credibility of my client has now been attempted
8 to be undermined by the testimony, we just would respectfully
9 urge that at this point the Court's line at the beginning of
10 trial is gone because of the action of the plaintiffs. And so
11 we should be able to proceed as we would like in order to
12 defend ourselves and rehabilitate the project.

13 Thank you.

14 **THE COURT:** Thank you, Mr. Breen.

15 Ms. Short?

16 **MS. SHORT:** Yes. I just wanted to clear up something
17 about the 20/20 video, the implication that Your Honor was
18 somehow duped into letting that be shown.

19 I think Mr. Kamras is misreading Mr. Daleiden's testimony.
20 When he referred to reading Congressional testimony, he's
21 referring to the testimony in 2000, in the Congressional
22 hearing that was held that was referenced at the end of that
23 video.

24 The fact that Mr. Daleiden was aware of that 20/20 video
25 when he released the project is evident on the face of the

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1 project. The Nucatola video begins with twenty seconds from
2 that 20/20 clip.

3 **THE COURT:** So let me just -- let me stop the
4 conversation about the 20/20 video. I allowed it. And it's
5 in. There's -- I'm not going to look into the hearts and minds
6 of how -- why people are doing the things that they do in this
7 case. I'm just -- I'm going to keep moving down the road.

8 So, so I really don't --

9 **MR. KAMRAS:** I wasn't going to address that
10 particular issue, but it is a related issue. Not as to the
11 hearts and minds of anybody.

12 **THE COURT:** Okay. What were you --

13 **MR. KAMRAS:** What I was going to say is that the
14 problem with its admission as now things stand is that there is
15 -- I mean, talking about prejudice, there is now in front of
16 the jury clearly incorrect statements of the law.

17 And what is going to happen if there are additional tapes
18 shown, specifically the tapes that the defendants created, is
19 that they are going to -- the jury is going to take in their
20 minds the edited portions of those tapes, and they are going to
21 view it in the lens of the 20/20 video.

22 So, let me give you a specific example. The 20/20 video
23 says incorrectly, as a matter of federal law, that an abortion
24 cannot be changed in any way for purposes of procuring fetal
25 tissue. That's not what the federal law says. We've had lots

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1 of deposition testimony and lots of briefing about this issue.
2 But the jury, of course, doesn't understand the intricacies of
3 that law.

4 And so now they're going to show video in which -- they
5 actually already have shown video in the raw footage, and
6 they're going to show -- if they want, if they get their
7 'druthers, they're going to show more video in which doctors
8 are talking about changes in technique. Which is permissible,
9 as a matter of federal law.

10 But that's going to completely be missed by the jury. And
11 they're going to connect the dots between a misstatements of
12 law in the 20/20 video and what the doctors are saying. So
13 that's a completely new level of prejudice that hasn't
14 previously existed in the case, but now will, if they are
15 entitled to show additional video of the sort that they want to
16 show.

17 And as I've said before, it is simply not part of the
18 case. And we haven't argued that as part of the case. We have
19 assiduously kept it out of the case.

20 **MR. BREEN:** Your Honor, just very briefly, the
21 solution to this would have been a defamation claim. And they
22 did not bring one.

23 And actually, I have the -- the counsel disagree on this
24 issue of technique. The 20/20 video actually even included
25 this business about technique in there. It's mentioned in

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1 there. But the United States Congress, at least that we've
2 relied upon, they don't agree with the distinction of the
3 Planned Parenthood physicians that a technique change, such as
4 moving from a electric aspiration, a manual aspiration which is
5 shown in the 20/20 video and is shown actually in Dr. Gatter's
6 CMP video, they've -- Congress doesn't agree, necessarily, or
7 at least the Congressmen who are in the majority who issued the
8 reports and the criminal referrals, they don't agree with that.

9 So we are not planning on getting into the deep details of
10 that. It's just -- again, from *Food Lion*, the instruction from
11 the Court to the jury was: For the purposes of this case,
12 consider the factual claims to be true. So, that was fine in
13 *Food Lion*. There's no reason why there's extra prejudice here
14 by saying: Mr. Daleiden thought he was going to find legal
15 violations; he believed they were legal violations. That's
16 good faith. Doesn't have anything to do with the claims, but
17 it didn't have anything to do with the claims in *Food Lion*
18 either, you know, where it was was Food Lion mishandling food,
19 what have you.

20 So we are in a similar position, Your Honor.

21 **THE COURT:** All right. So, I disagree with you,
22 Mr. Breen, you will be surprised to know.

23 **MR. BREEN:** Wouldn't be the first -- yes.

24 **THE COURT:** I don't believe that any doors have been
25 opened. I have instructed before, and I'll remind the jury at

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1 the end of the case, and I'll look for limiting instructions
2 and curative instructions, to the extent that they are
3 necessary from both parties.

4 But I've instructed that what the videos show and prove is
5 hotly contested outside the courtroom, and it's not an issue
6 here. Whether it was legal to take them in the first place is
7 the issue, as is whether the damages that are not shielded by
8 the First Amendment were caused.

9 Testimony on how the plaintiffs' witnesses felt has been
10 relevant to why the plaintiffs acted as they did once the
11 infiltration was discovered. Whether anyone thinks that the
12 videos were manipulated or, on the other hand, show criminal
13 conduct is irrelevant. And I'm going to tell the jury, as I've
14 told them before, to disregard it.

15 So, thank you for your argument.

16 **MR. BREEN:** Thank you.

17 **THE COURT:** It's on the record.

18 **MR. BREEN:** Thank you.

19 **THE COURT:** I read the link that Ms. Trotter provided
20 regarding Dr. Karpen. It seems completely consistent with what
21 I read with reference to Dr. Gosnell.

22 So do you want to speak to that, Mr. LiMandri?

23 **MR. LIMANDRI:** Only to raise -- I raised it because I
24 anticipated the Court might view it that way. And the only
25 response we would have is the same one we would have with

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1 regard to Gosnell.

2 We have to show a violent felony against a person. And
3 it's hard for us to do that when we can't put on evidence
4 regarding our client's mental state regarding actual -- what
5 would be viewed by most people as violence. They may not view
6 other things as violence that technically would be, under the
7 law.

8 **THE COURT:** So let me just point out, the intent here
9 and the reason that, among others, that the Dr. Karpen evidence
10 isn't admissible, it's not relevant to something that Planned
11 Parenthood did, or the purpose of the Human Capital Project,
12 which was to investigate fetal tissue trafficking. Those cases
13 involve something else.

14 So I just don't see how they are relevant.

15 **MR. LIMANDRI:** Understood. Thank you, Your Honor. I
16 won't press the matter further.

17 There is a couple of other procedural matters, if I might
18 get some assistance from the Court.

19 But first I guess I should put on the record, as the Court
20 indicated, those video clips that we would proffer into
21 evidence if we, had the opportunity, and the Court's ruling on
22 opening the door issue been different.

23 As it is, I think I've got two short video clips I will
24 show that is prior to the first recording in California. And I
25 don't think they are going to be controversial. One longer

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1 audiotape, I haven't had a chance to discuss with Ms. Mayo.
2 And then a screenshot, which I don't think any of that is too
3 controversial. I don't know; you'll hear from her.

4 But these other ones are post-the first recording in
5 California, and they do involve issues the Court has addressed
6 in its motions in limine rulings, including selling fetal
7 tissue for profit, a change in abortion procedures in order to
8 get more marketable fetal tissue and organs, and then the --
9 more specifically, born-alive infant issues.

10 So I will not be showing those clips. But for the record,
11 I would have and am proffering the exhibits, all videos: 5496,
12 5220, 5091, 5126, 5128-3, 5130, 5121, 5241, 5242, 5168, 5196,
13 5191, 5269, 5840 and --

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

15 **MR. LIMANDRI:** I'm sorry.

16 **THE COURT:** 5269?

17 **MR. LIMANDRI:** 5840 --

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

19 **MR. LIMANDRI:** -- and 5760 are the ones that we would
20 have shown, and are not going to show, given the Court's
21 ruling.

22 And I just had a couple of procedural questions, if it's
23 okay with the Court.

24 **THE COURT:** Okay.

25 **MR. LIMANDRI:** We had indicated that we have

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1 preferred to divide up the presentation of issues in
2 Mr. Daleiden's examination by the defense, where I would go
3 first on certain issues, and I'm doing that. And then
4 Ms. Dhillon would handle the contact issues. The Court
5 indicated it had no problem with that.

6 But inasmuch as we want to go chronologically, if we do,
7 that'd inquire me to finish up. And I don't know if that's --
8 hopefully not a problem for the Court, but I could come back
9 after she questions him to finish the questioning. As opposed
10 to my doing all my questioning, and then her -- it doesn't
11 change anything --

12 **THE COURT:** Yeah, I don't think -- as long as you're
13 not bouncing back and forth. If you do that once, that's fine.

14 **MR. LIMANDRI:** We're going to do it once, and we're
15 not going cover the same issues.

16 **THE COURT:** Okay.

17 **MR. LIMANDRI:** Thank you.

18 And then finally, as to the manner in which the Court
19 would prefer that I have Mr. Daleiden's driver's license passed
20 to the jury, should I give it to one of the court staff to give
21 to the jury?

22 How, mechanically --

23 **THE COURT:** Oh, um, you can hand it to the first
24 person.

25 **MR. LIMANDRI:** Okay. Fair enough. I wanted to ask

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1 first or I could give it to your court clerk there

2 (Indicating), if that's --

3 **THE COURT:** No.

4 **MR. LIMANDRI:** Okay. I'll just give it to the first
5 juror in the seat closest to me (Indicating).

6 **THE COURT:** Yeah, that's fine.

7 **MR. LIMANDRI:** Thank you, Your Honor.

8 **MS. BOMSE:** On that topic, Your Honor, may I just ask
9 through the Court, do the defense plan to also show
10 Ms. Merritt's driver's license to the jury?

11 **MR. LIMANDRI:** I was not planning to. I wasn't --
12 only the one he made.

13 **THE COURT:** They don't have to. If you want to show
14 it, that's okay. You can do the same thing.

15 **MR. LIMANDRI:** I don't -- I don't have it here.

16 **MS. BOMSE:** Well, I believe we subpoenaed both the
17 driver's licenses, and have never -- issued a trial subpoena.
18 So we would request that that trial subpoena be responded to,
19 and that we have the opportunity to show the jury Ms. Merritt's
20 driver's license.

21 **MR. LIMANDRI:** That's fine. You're entitled to. I'd
22 have to get it; it's in my files at the hotel.

23 **MS. BOMSE:** Okay.

24 **MR. LIMANDRI:** But I'm not in a position to do that
25 today.

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1 **MS. BOMSE:** Well, we'll have to work that out.

2 **THE COURT:** That's fine. But do produce it, so that
3 the jury can see that as well.

4 **MR. LIMANDRI:** I'm happy to do that, Your Honor.

5 I did want to ask about Janet Smith. She's been calling.
6 I wasn't sure if you made a final ruling or you want to hear
7 from Mr. Daleiden, as to whether or not she may still be
8 permitted to testify.

9 **THE COURT:** Yeah, no, she -- I tried to make a final
10 ruling, if I wasn't clear. She won't be testifying. But
11 Mr. Daleiden can discuss what she said.

12 **MR. LIMANDRI:** The only thing I would say on that is
13 I didn't think there's any surprise in her testimony. She said
14 exactly what we said she would say, before the Court permitted
15 us to bring her out from Michigan and have her be deposed.

16 It was basically the morality of an undercover video
17 project, and lying, which went to our -- I felt, our client's
18 mental state, particularly with punitive damages being in play,
19 and reprehensibility of his conduct being at issue.

20 So I was just a little surprised that we went through all
21 that time and expense. She came and said exactly what we said
22 she would say. And now she's being excluded.

23 It just -- I don't mean to be disrespectful. It seems
24 unfair for us to have -- plus, we went through hundreds of
25 emails we had to exchange with them, that she had been on the

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1 email list. And I'm not sure why they had us do all that work,
2 when it was a foregone conclusion, apparently, she was never
3 going to testify.

4 **THE COURT:** Well, her testimony became clear to me,
5 once it was explained to me exactly what it was. It's not
6 rele- -- it's relevant in his -- to his state of mind. And he
7 can talk -- he can testify about his consideration of the moral
8 and religious part of it. But it's not related to the legal
9 issues that are involved in the case. So, he can testify for
10 his state of mind.

11 And that was the ruling that I made.

12 **MR. LIMANDRI:** All right. Thank you, Your Honor.

13 **MS. MAYO:** And Your Honor, just very briefly on the
14 video and audio clips, I have conferred with Mr. LiMandri. And
15 I think the only dispute is going -- potentially going to be on
16 the audio file, which they are cutting.

17 And I understand that Mr. LiMandri will not be playing it
18 before the first break? So that we can resolve it perhaps over
19 the break?

20 **MR. LIMANDRI:** I will do that, if that's what --

21 (Mr. Daleiden enters the courtroom)

22 **THE COURT:** Mr. Daleiden, if you don't mind, if you
23 could just stay out for just a moment. Thank you.

24 (Mr. Daleiden exits the courtroom)

25 **MR. LIMANDRI:** We have cut it, I believe, given them

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1 the timestamps. If you can resolve it, whether or not you're
2 not going to object, I would like to play it in chronological
3 order, and as part of that ARHP conference which he attended
4 first. So I can't, given the order of my outline, say it's
5 going to be before the first break. But if that's what's
6 necessary, then I will come back to it.

7 **MS. MAYO:** Well, for the record, and for Your Honor's
8 consideration, our objection to it is that it's an audiotape of
9 a discussion between Susan Merritt and Brianna Baxter. And the
10 -- the person that they're speaking to is a Dr. Ruth Arick.
11 I'm not certain how you spell her name, but I believe it is
12 pronounced "Arick." And she's not a Planned Parenthood
13 employee. She's some -- she has a consulting business.

14 The clip that they want to play does not discuss Planned
15 Parenthood, anything about Planned Parenthood. And it's a
16 13-minute clip. So I haven't heard the whole thing; I've seen
17 the transcript. I -- I don't think it's particularly relevant
18 to Mr. Daleiden's consideration of any crimes being committed
19 by Planned Parenthood or Planned Parenthood affiliates or
20 doctors.

21 But --

22 **THE COURT:** Well, if the only objection is that it's
23 going to take a while, I'm not -- I think they can go ahead and
24 do that.

25 **MS. MAYO:** Yeah, well, okay. Foundation -- for the

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1 record, foundation and lack of relevance would be my objection.

2 There's also discussions -- use of Digoxin and various
3 abortion procedures in there. So those would be my --

4 **MR. LIMANDRI:** Prior to April, 2015. And he was
5 talking to someone who was involved with the fetal tissue
6 business as a consultant, was explaining how it works.

7 And this was, again, before the first video recording in
8 California. And it very much informed his mental state as to
9 whether or not this was a investigation that needed to be
10 pursued, as to how it was being handled in that industry.

11 It was known Planned Parenthood was -- you know, being the
12 largest abortion provider in the country, and being involved
13 with the fetal tissue business, that this certainly informed
14 his state of mind as to whether or not this is an investigation
15 that should be pursued for that purpose. And this person, to
16 my understanding, had direct knowledge of how it was being
17 handled at Planned Parenthood clinics, as well.

18 And Mr. Daleiden, if not present in the conversation, was
19 there at the conference, directing the people who were doing
20 the undercover operation there, and listening to the
21 audiotapes. And he can certainly lay a foundation as to how it
22 informed his state of mind in that regard.

23 **MS. BOMSE:** Your Honor, this is entirely new to us.
24 It may well be that in the 700 hours of video and audiotape, it
25 was buried somewhere in there. It was never brought out at

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1 Mr. Daleiden's deposition or in any of the interrogatory
2 responses, that this conversation with this individual was
3 critical to his intent and state of mind.

4 So, at a minimum, we need an opportunity to hear the whole
5 thing, and respond to it. I mean this -- literally, now, we
6 are hearing a new person who apparently was part of this
7 forming of the state of mind. We have not had any opportunity
8 to prepare for this.

9 So at least, we would request that it be something we can
10 address at the next break, after we have heard the whole thing.

11 **THE COURT:** Why don't you wait on that.

12 **MR. LIMANDRI:** That's fine.

13 **THE COURT:** Through the first break.

14 **MR. LIMANDRI:** In that regard, though, I will say,
15 about half the stuff that's been played here I've never seen
16 before. And some of the stuff, David Daleiden, he's said:
17 Gee, I don't remember that.

18 I mean, saying: That was produced but we're not readily
19 familiar with it, I mean, that's a theme that's been resonating
20 with many of us throughout the trial. I don't think that's an
21 objection.

22 My understanding, it was timely produced. And they've got
23 a whole team of people going through whatever they think is
24 favorable to them, for Pete's sake. So --

25 **MS. BOMSE:** No. The argument is that it was never --

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1 we -- we spent two days with Mr. Daleiden. And the Court has
2 in front of it 50 pages of deposition testimony about the bases
3 for his conclusion that we were engaged in some illegal
4 conduct. This was never addressed.

5 That's the objection. Not -- not anything else.

6 **MR. MIHET:** I would just -- a point for the record,
7 that the audio was played at the preliminary hearing before
8 Judge Hite. Mr. Daleiden provided extensive testimony in that
9 proceeding about what the audio -- how the audio impacted his
10 investigation.

11 And it was Ms. Bomse and her colleagues that had coverage
12 during that entire proceeding. Particularly during
13 Mr. Daleiden's testimony. So this is not the first time that
14 Planned Parenthood is hearing about this.

15 **MR. LIMANDRI:** And with the permission of Judge Hite,
16 that transcript was sent to them. I read it. I don't
17 remember, reading a 300-page transcript, this particular piece
18 of evidence either. But it was made available, and they have
19 it. So there's no surprise there.

20 **THE COURT:** So, so let's take this up after the first
21 break. Provide it to them, and then --

22 **MR. LIMANDRI:** Yes, Your Honor.

23 **THE COURT:** I think Mr. Daleiden is likely to be on
24 the stand for a little while.

25 **MR. LIMANDRI:** Certainly past the first break,

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1 Your Honor.

2 **THE COURT:** Yeah.

3 Mr. Mayer.

4 **MR. MAYER:** Yes. Your Honor, this may be premature,
5 but we were wondering what the Court's timetable was for
6 addressing the jury instructions and the verdict form.

7 **THE COURT:** I had a feeling that you would be
8 thinking about that.

9 Is the defense about to wrap up at this point? He'll be
10 the last witness, and then we can go right into jury
11 instructions?

12 **MR. LIMANDRI:** We're only going to wrap up if the
13 Court is going to grant us a directed verdict.

14 **THE COURT:** So what I was thinking was to look at
15 this after Mr. Daleiden has finished testifying. And, and then
16 inquire where everybody is. I'm thinking certainly by the
17 beginning of the week following, when we get back.

18 So after the Thursday-Friday sessions, in that week
19 following, we will be dealing with jury instructions. And I'm
20 just not sure when. But I would be thinking about perhaps that
21 Monday or Tuesday afternoon, but I don't have a firm --

22 **MR. MAYER:** Terrific. Thank you, Your Honor.

23 **THE COURT:** Is that helpful? All right. We will be
24 back when the jury's ready.

25 (Recess taken from 8:08 a.m. to 8:13 a.m.)

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

3 **THE COURT:** Okay, everybody come to order. Oh, good.
4 Thank you.

5 Are we ready for the jury?

6 **MS. DHILLON:** Yes.

7 **MR. LIMANDRI:** Yes, Your Honor.

8 **THE COURT:** Okay.

9 (The following proceedings were held in the presence
10 of the Jury)

11 **THE COURT:** All right. Please be seated, everybody.
12 Good morning, ladies and gentlemen. Welcome back.
13 Mr. LiMandri, are you ready to proceed?

14 **MR. LIMANDRI:** Yes, Your Honor.

15 **DAVID DALEIDEN,**

16 called as a witness for the Plaintiffs, having been duly sworn,
17 testified as follows:

18 **MR. LIMANDRI:** Thank you, Your Honor.

19 **CROSS-EXAMINATION RESUMED**

20 **BY MR. LIMANDRI**

21 **Q.** Good morning, Mr. Daleiden.

22 **A.** Good morning.

23 **Q.** When we started yesterday, I didn't have the opportunity
24 to go through some basic background information. And some of
25 this we heard a couple of days ago, but I would like to make

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1 sure I cover it, to be complete.

2 Would you please tell us where you grew up?

3 **A.** Sure. I grew up in the greater Sacramento area. Most of
4 the time in Davis, California. Just about 80 miles east of
5 here, on I-80.

6 **Q.** And where did you go to high school, sir?

7 **A.** I went to high school at Davis Senior High School,
8 graduated class of 2007.

9 **Q.** And from there, did you go to college?

10 **A.** Yeah I went directly to Claremont McKenna College in
11 southern California, and I graduated in three years, in 2010.

12 **Q.** What was your degree?

13 **A.** I was a government major.

14 **Q.** You got a bachelor of arts?

15 **A.** Yes, exactly.

16 **Q.** Okay. And what was your first full-time job after
17 graduating from college?

18 **A.** After graduating, my first full-time job was as the
19 Director of Research at Live Action.

20 **Q.** When did you start that, sir? What year?

21 **A.** So I -- I started as the Director of Research for Live
22 Action in 2008, although it was part-time at that time because
23 I was still in school. And then it became full-time after I
24 graduated in the summer of 2010.

25 **Q.** Okay. And how would you describe yourself in terms of the

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1 kind of work you do? What would you consider your proper job
2 title to be?

3 **A.** Currently? Or at Live Action?

4 **Q.** Well, have you always worked basically in the same
5 capacity?

6 **A.** Um, more or less, yeah. My -- my, so my job as research
7 director at Live Action, I was in charge of doing a lot of the
8 background research, legal research, to prepare different
9 investigative-journalism studies, undercover-video journalism
10 studies.

11 And that has obviously continued to be much my role as the
12 head of Center for Medical Progress for the past five or six
13 years, so for my entire professional life it's always been --
14 I've always been employed in some kind of citizen-reporter or
15 citizen-journalism capacity, focusing on investigative
16 research.

17 **Q.** What would you call an -- a citizen journalist, how would
18 you describe that?

19 **A.** Yeah. I think a citizen journalist is -- or a citizen
20 reporter is someone who is a private citizen or independent
21 person who's involved in gathering facts and reporting facts
22 that are of newsworthy significance. And we would call them a
23 citizen journalist or a citizen reporter in distinction to
24 maybe a professional journalist or a professional reporter who
25 works for an established large or legacy news organization.

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1 But they are both -- they're -- you know, the First Amendment
2 -- they're -- under the First Amendment, journalism and a free
3 press and free speech is all of our rights. It doesn't just
4 belong to one professional class.

5 **Q.** You don't need to have some type of card, if such a thing
6 exists, to be a professional journalist in order to have First
7 Amendment --

8 **MS. TROTTER:** Objection, leading.

9 **MR. LIMANDRI:** I didn't finish.

10 **THE COURT:** Sustained. Ask the question. Go ahead,
11 Mr. LiMandri.

12 **MR. LIMANDRI:** Sure.

13 **BY MR. LIMANDRI**

14 **Q.** Do you have an understanding as to whether or not someone
15 needs to have some type of a card saying you're a professional
16 journalist or not, in order to be protected by the First
17 Amendment?

18 **MS. TROTTER:** Objection, leading.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** No. Journalism, reporting on the facts
21 as you observe them, and publishing that, that's everyone's
22 right to do that, under the First Amendment.

23 **BY MR. LIMANDRI**

24 **Q.** Mr. Daleiden, tell us why it is that you got into pro-life
25 work.

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1 **A.** So I've cared about -- I've cared about the pro-life
2 issue, abortion policy in our country, how we regard and how we
3 treat children in the womb for really, I mean, almost half of
4 my life at this point. Probably a solid 15 years. It's been
5 really important to me for a long time, because I am the child
6 of a crisis pregnancy. And so to some degree, the story of
7 coming into the world in kind of an unexpected or unplanned
8 kind of situation is my story.

9 And I've just always -- I've always felt really strongly
10 that it's not a -- nobody's ever going to pretend that that's
11 an easy or a perfect situation, but I have always felt very
12 strongly that everyone deserves a chance to make of their lives
13 what you want to. And to fight for something better or to --
14 to -- you know, to do the best you can in a bad situation. And
15 so that -- that's just -- that's something that I think -- I
16 think that's something that killing a child in the womb,
17 abortion, takes that opportunity away.

18 And so I've just always felt really strongly about that.

19 **Q.** Okay. Thank you.

20 Can you tell us more specifically what type of projects
21 you were involved in when you worked as a research director at
22 Live Action?

23 **A.** Sure. So as Director of Research at Live Action, there
24 were several different national-scope or multi-state undercover
25 investigations that we worked on while I was there from 2008 to

1 2013.

2 The first big one that we started on in the summer of
3 2008, which is when I first started working with them, was a
4 multi-state investigative audit of the plaintiffs' compliance
5 with mandatory reporting laws for child sexual abuse and child
6 abuse.

7 And that was later expanded in 2011 to sort of -- a sort
8 of -- I would call it maybe redone or expanded version of that
9 undercover investigation, where we were actually checking their
10 -- how they would respond to an undercover scenario, with
11 individuals posing as a child-sex-trafficking ring inside the
12 clinic.

13 And so we documented and reported on many, many Planned
14 Parenthood clinics around the country that were not following
15 mandatory reporting laws --

16 **MS. TROTTER:** Objection, Your Honor. 403. And move
17 to strike as to the specific --

18 **THE COURT:** Sustained.

19 **BY MR. LIMANDRI**

20 **Q.** Were there any prosecutions that took place as a result of
21 the work that you did at Live Action with undercover
22 journalism?

23 **MS. TROTTER:** Objection, Your Honor. 403.

24 **MR. LIMANDRI:** Goes to strategies.

25 **THE COURT:** Sustained. Overruled. You're overruled.

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1 Go ahead.

2 **BY MR. LIMANDRI**

3 **Q.** Okay. Was there any undercover work done when you were at
4 Live Action, involving any Planned Parenthood clinics in
5 California?

6 **A.** While I was at Live Action, no. There was -- in 2007,
7 which was before I became Director of Research, the founder, my
8 friend Lila Rose, had started off doing an undercover filming
9 at two Planned Parenthood clinics in Los Angeles, on the same
10 lines of auditing their compliance with mandatory reporting
11 laws for child abuse.

12 And that was actually an undercover filming inside the
13 clinic space, inside two Planned Parenthoods in California, in
14 Los Angeles.

15 And my understanding is that plaintiffs, Planned
16 Parenthood Los Angeles, were --

17 **MS. TROTTER:** Objection, Your Honor. This is 4034
18 and it lacks foundation.

19 **THE COURT:** And I think the question was answered.

20 **MR. LIMANDRI:** Okay.

21 **THE COURT:** So, sustained.

22 **BY MR. LIMANDRI**

23 **Q.** Given the fact that there was undercover work here in
24 California with the same Live Action organization you worked
25 with, are you aware of any lawsuit being brought against them

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1 or any action taken against them for doing that type of
2 undercover work at Planned Parenthood clinics in California?

3 **A.** No, there was nothing --

4 **MS. TROTTER:** Objection. 402 and 403.

5 **MR. LIMANDRI:** (Inaudible)

6 **THE COURT:** This line of questioning -- let's
7 focus -- let's get to this case. Other investigations that may
8 or may not have occurred, that happened years ago, are just not
9 relevant to this proceeding.

10 **BY MR. LIMANDRI**

11 **Q.** While you were at Live Action, did you have occasion to do
12 research into whether or not infants were born alive after
13 surviving an abortion?

14 **A.** Yes. That was the final project that I worked on at Live
15 Action before I left in January of 2013. For the last part of
16 2012, basically the late fall and early winter of 2012 at Live
17 Action, I worked on an undercover journalism study that they
18 did particularly focusing on later-term abortion clinics around
19 the country. And --

20 **MS. TROTTER:** Objection, Your Honor. 403 and 402.

21 **MR. LIMANDRI:** Your Honor --

22 **THE COURT:** Oh, yeah. Overruled.

23 You can continue.

24 **THE WITNESS:** And the focus of it was on what those
25 clinics would do in a situation if a fetus -- if a late-term

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1 fetus, 21, 22, 23, 24 weeks along, up to six months or older,
2 how those clinics would respond if the infant was born alive
3 during the process of the abortion.

4 And we recorded multiple later-term abortion clinics, many
5 of them National Abortion Foundation members, saying that they
6 would either let -- let the viable or peri-viable fetus die, or
7 some --

8 **MS. BOMSE:** Objection, Your Honor. 403.

9 **MR. LIMANDRI:** Your Honor, it goes to the 633.5
10 defense.

11 **THE COURT:** At this point, I'm going to sustain the
12 objection.

13 **MR. LIMANDRI:** Okay.

14 **BY MR. LIMANDRI**

15 **Q.** Let's talk about what investigation you did prior to
16 April, 2014, when the first undercover video was taken in
17 California.

18 And we have a graphic that I'll ask Willow to display,
19 Exhibit 7129, that will hopefully assist in your description of
20 the investigation that you did on this issue, you have been
21 describing before April, 2014.

22 **MR. LIMANDRI:** Are you able to display 7129?

23 (Document displayed)

24 **MR. LIMANDRI:** There it is. Okay.

25 **THE CLERK:** Is this all right for the jury?

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1 **THE COURT:** So, yes. So this is a demonstrative, and
2 it's fine.

3 **THE CLERK:** Okay.

4 (Document displayed to the jury)

5 **BY MR. LIMANDRI**

6 **Q.** All right. We had occasion to speak briefly -- you have
7 it in front of you, Mr. Daleiden?

8 **A.** Yes, I do.

9 **Q.** Okay -- yesterday about the Congressional investigation in
10 the year 2000 and the testimony of Dean Alberty. And I believe
11 you said at that time you read that Congressional testimony, is
12 that correct?

13 **A.** Yes, that's correct.

14 **Q.** And then, I believe you also testified you saw the 20/20
15 video which was based on the same testimony, same set of
16 circumstances. Would that be correct?

17 **A.** Yes, that's correct.

18 **Q.** Okay. And that -- that took place in what year that you
19 became aware of that particular investigation and that 20/20
20 report?

21 **A.** That was in the summer of 2010.

22 **Q.** Okay. And based upon that information, did you decide
23 whether you were going to do further investigation or not?

24 **A.** Yeah. Based on what I learned from the sworn testimony
25 and the Congressional hearing from 2000, and also the

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1 allegations and the evidence that was presented in the 20/20 --
2 in the ABC 20/20 broadcast, and then just even some of the
3 initial research that I was able to do, looking into what
4 information was still available from those two -- those two
5 initial sources and the things that directly came out of them
6 in the summer of 2010, that information affected me really,
7 really strongly. And I was very convinced that the issue of
8 fetal trafficking was something that needed to be followed up
9 on.

10 I was really shocked that no major news organization or no
11 major advocacy organization had done anything to follow up on
12 it, really, for about ten years at that point.

13 And I thought that it was an issue that deserved to be --
14 deserved to be the top of the headlines, and deserved to have a
15 really thorough and comprehensive investigation done on it to
16 go even sort of deeper and bigger and broader than what was
17 done previously in 2000.

18 And, and so, and so just as an initial step in 2020 -- I'm
19 sorry -- in 2010, in the year 2010, I felt like I really needed
20 to drill down and learn as much as I could about it. And I
21 very quickly learned that there was not a whole lot of
22 information available at that time, because nobody had really
23 followed up and so it just seemed like a really serious issue
24 that -- that deserved more attention and more investigation
25 than it had gotten so far.

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1 Q. Okay. Thank you.

2 Let's -- looking at this roadmap, if you want to call it
3 that, the next icon reflected is a Life Dynamics investigative
4 report. Tell us how that figured into your state of mind
5 regarding whether or not there was -- what we have called a
6 violent felony against persons.

7 A. Definitely. So the reporting by the organization Life
8 Dynamics, which is another citizen reporting/citizen journalism
9 kind of organization, they -- their investigation and report,
10 the ABC 20/20 report, and the Congressional investigation and
11 hearing in March of 2000 all kind of happened around the same
12 time.

13 And so there were -- it was all of -- all of that
14 information sort of came from the same Planned Parenthood
15 clinic in Kansas. A lot of primary-source documentation that
16 came out of that clinic. So there was a lot of very disturbing
17 information that was in there, in terms of later abortions,
18 five- and six-month-old abortions on healthy fetuses.

19 MS. TROTTER: Objection, Your Honor. 403. Move to
20 strike.

21 THE COURT: Overruled. Let's not have a narrative.
22 But --

23 MR. LIMANDRI: Okay.

24 THE COURT: Yeah.

25

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1 **BY MR. LIMANDRI**

2 **Q.** Why don't you finish up with the Life Dynamics
3 investigative report and what information you gleaned from
4 that, and then we will go to the next one.

5 **A.** Sure. So going into the Life Dynamics documentation was
6 sort of like going into a lot of the -- just a lot of the
7 references or footnotes, maybe, for some of the Congressional
8 testimony, and also for the ABC 20/20 broadcast.

9 And so just looking at all of that showed that there was a
10 -- there was a clear and big demand and financial incentive for
11 later abortions of, you know, fetuses old enough to be viable,
12 healthy fetuses for healthy, viable organs.

13 And so it reinforced for me the testimony and the
14 allegations in the Congressional hearing and in the 20/20
15 report because there was a lot -- you know, there were hundreds
16 of pages of primary-source documentation that were presented
17 there with the invoices and everything else.

18 And the invoices for human body parts just seemed to fly
19 directly in the face of the federal law on selling human body
20 parts. And it just seemed to particularly highlight the -- the
21 assault on human dignity that I thought was represented by
22 organ trafficking from aborted fetuses.

23 **BY MR. LIMANDRI**

24 **Q.** Thank you.

25 The next item was *Beyond Abortion: A Chronicle of Fetal*

1 *Experimentation* book. Is that a book that you read?

2 **A.** Yes, it is.

3 **Q.** And this was all in this timeframe between 2010 and 2014.
4 Correct?

5 **A.** Yeah. I found that book in the summer of 2010, as well.
6 *Beyond Abortion: A Chronicle of Fetal Experimentation* is a --
7 you could place it as maybe one of the earliest kind of
8 detailed exposés of fetal trafficking. It's just the collected
9 written research of Suzanne Rini, an investigative reporter
10 from the East Coast.

11 And that book just collected a lot of the published
12 literature, published scientific literature that had been done
13 or that had been -- experimentation that had been done using
14 aborted fetal organs and tissues and sometimes live aborted
15 fetuses from the late 1960s up through the late 1980s, which
16 was when that book was published. I think there was a
17 republished edition of it, slightly updated, in the mid-1990s.

18 And so, there -- I mean, there were tons of just horrific
19 experiments documented, done at Amer- -- prestigious American
20 research universities, funded by the National Institutes of
21 Health, but documented in Susan Rini's research and in that
22 book. Many of them experiments that required fetuses delivered
23 alive in an abortion, sometimes very late-term fetuses.

24 **MS. TROTTER:** Objection, Your Honor, 403. Move to
25 strike --

DALEIDEN - CROSS / LIMANDRI

1 **THE COURT:** So we'll strike that, the last sentence.
2 If we could proceed, again, by questions and answers.

3 **MR. LIMANDRI:** Okay.

4 **THE COURT:** And not by narrative.

5 And ladies and gentlemen, this testimony is being offered
6 for Mr. Daleiden's state of mind. And the reasons that he went
7 into the investigation that he did. And it's not offered for
8 the truth of the things that he is discussing.

9 Go ahead.

10 **MR. LIMANDRI:** Thank you, Your Honor.

11 **BY MR. LIMANDRI**

12 **Q.** Did you also talk to Mark Crutcher?

13 **A.** Yes, I did. I spoke to Mike Crutcher about the
14 investigation that he and his organization, Life Dynamics, had
15 done in 2000. I spoke with him for about three hours on the
16 phone in -- I think it was June, maybe the beginning of July,
17 in 2010.

18 And I was just probing to find out as much as I could
19 about the documentation that they had published in their
20 report, some of the information that had come up in the ABC
21 20/20 broadcast, and really just trying to -- I was trying to
22 get oriented in the whole -- in the whole issue and all the
23 different themes involved, because it was -- you know, there
24 was not -- you know, there -- you know, there was this, you
25 know, this book here from Suzanne Rini, there was this old ABC

DALEIDEN - CROSS / LIMANDRI

1 20/20 broadcast, there was this one Congressional hearing. And
2 then there were all these sort of invoices and documents, and
3 just a lot of paper. But -- and that was -- that was sort of
4 the extent of it.

5 And then there was a lot of published scientific
6 literature on the internet. But that was -- that was pretty
7 much the extent of the universe of the information that was
8 available, or at least easily available at that time in the
9 summer of 2010, about the --

10 **Q.** Let me ask you another question.

11 **A.** Yeah.

12 **Q.** I'm sorry. Before the Judge tells me to ask a question.
13 And also, my co-counsel has said we're both talking too fast.
14 So we've been admonished from both sides of the bench here. So
15 we'll try to slow down, and we'll try to do a little bit more
16 of a question-and-answer format.

17 You've mentioned several citizen reporters or journalists
18 that did investigations similar to yours before yours. Are you
19 aware of any of them ever being sued?

20 **A.** No, I'm not.

21 **MS. TROTTER:** Objection, Your Honor. Relevance, 403.

22 **MR. LIMANDRI:** State of mind, Your Honor.

23 **THE COURT:** No. Sustained, on motion. And the
24 question and answer will be stricken.

25 **MR. LIMANDRI:** Okay.

DALEIDEN - CROSS / LIMANDRI

1 BY MR. LIMANDRI

2 Q. Let's talk about literature, the next icon on the roadmap.

3 One of the things reflected there is the CDC. You
4 understand that to be a federal government agency, the Center
5 for Disease Control?

6 A. Yes, I do.

7 Q. Okay. Did you review any statistical information or
8 reports from them?

9 A. Definitely. In this -- I mean, in the summer of 2010, I
10 reviewed more information from -- probably from the National
11 Institutes of Health, and from some of the research agencies.

12 The -- the -- a lot of the CDC research are -- just
13 published statistics on infants born alive after an abortion,
14 is information that I reviewed in 2012, working on the Live
15 Action investigation.

16 Q. Okay. In terms of the literature, did you look at any
17 scientific studies, including an artificial placenta study?

18 A. Yeah. So, in the summer of 2010, like I said, one of
19 the -- kind of the last bucket of information that was
20 available at that time on the harvesting and use of aborted
21 fetal organs and tissues was just a lot of the published
22 scientific literature on different studies and different
23 experimentation that was done with fetal body parts, or as
24 documented in Suzanne Rini's book, some of the experimentation
25 actually done with live aborted fetuses.

DALEIDEN - CROSS / LIMANDRI

1 So after seeing a lot of that reflected in the reports
2 from the year 2000, and also seeing all the -- the references
3 cited in Suzanne Rini's book, I tried to -- I just tried to
4 follow the rabbit trail as far as I could go, looking up some
5 of these old studies. You know, there were several that Rini
6 had cited about that -- that actually required live aborted
7 fetuses for the experimentation they were doing.

8 **MS. TROTTER:** Objection, Your Honor. 403. Move to
9 strike.

10 **THE COURT:** The last sentence will be stricken.

11 And let's -- I -- we don't need a narrative in answer to
12 every question. If you can stick with a question that
13 Mr. LiMandri asks, I think this will move a lot quicker.

14 **BY MR. LIMANDRI**

15 **Q.** I skipped over what you learned from the Center for
16 Disease Control. Did they have actual statistics on infants
17 that were born alive, surviving abortions?

18 **MS. TROTTER:** Objection. Asked and answered, and
19 leading.

20 **MR. LIMANDRI:** He didn't --

21 **THE COURT:** Overruled.

22 **THE WITNESS:** Yes, they did.

23 **BY MR. LIMANDRI**

24 **Q.** Okay. And what information did you learn in that regard?

25 **A.** So there was a CDC report that became available I believe

DALEIDEN - CROSS / LIMANDRI

1 in late 2012, that documented over a period of years -- it was
2 something like five to ten years -- slightly under 1,000, I
3 think it was 900 or so, infants who -- who were alive after a
4 -- after a late-term abortion.

5 **Q.** What's your understanding at that time you were doing this
6 investigation, if an infant survives an abortion, as to whether
7 or not medical care is supposed to be provided to them?

8 Did you have an understanding?

9 **MS. TROTTER:** Objection. Lacks foundation. 403 and
10 402.

11 **THE COURT:** Sustained.

12 **BY MR. LIMANDRI**

13 **Q.** You talked about the artificial placenta study.

14 **MR. LIMANDRI:** I'm going to ask to be displayed
15 Exhibit 24, previously admitted in evidence by the plaintiffs.

16 (Document displayed)

17 **BY MR. LIMANDRI**

18 **Q.** And it begins on the first page with an email, March 13 --
19 excuse me, March 20, 2013. And references the attachment which
20 we have seen several times in your examination by opposing
21 counsel.

22 On Page 2 of 4 of that Exhibit 24, which has again been
23 admitted into evidence, it will be at the bottom of the page.
24 It will say Page 2 of 4 -- 14, but I believe it's the third
25 actual page in the document.

1 **MR. LIMANDRI:** Could we go to the next page?

2 (Document displayed)

3 **BY MR. LIMANDRI**

4 **Q.** Does the illustration there reflect the study that you
5 were referring to as artificial placenta study?

6 **A.** Yeah. So one of the -- one of the main studies that
7 Suzanne Rini talked about in her book was a study from the late
8 1960s that was done in Washington, D.C. in the United States,
9 trying to develop basically an artificial placenta or even an
10 artificial -- kind of an artificial womb system for late-term
11 fetuses.

12 **MS. TROTTER:** Objection, Your Honor. 403. Move to
13 strike.

14 **MR. LIMANDRI:** Your Honor, it's an exhibit that you
15 have already passed on, that we're entitled to show. And it
16 was -- this exhibit was used with the jury yesterday by
17 opposing counsel. It's in evidence.

18 **THE COURT:** It is in. And the objection is
19 overruled.

20 But let's focus on the questions that you're asking, and
21 the answers. We don't need extended dialogue on this
22 particular --

23 **BY MR. LIMANDRI**

24 **Q.** In this particular experiment, since you were
25 investigating violence against a person, whether it was a

DALEIDEN - CROSS / LIMANDRI

1 situation where the infant was born alive and placed in an
2 artificial placenta?

3 **A.** They used about eight different fetuses like that. One of
4 them was six months old. He's the one who is reflected in this
5 photo, which is an actual screenshot from a scan of the
6 research study.

7 **MS. TROTTER:** Objection, Your Honor. 403.

8 **THE COURT:** And lack of knowledge. Sustained.

9 **MR. LIMANDRI:** Okay.

10 **BY MR. LIMANDRI**

11 **Q.** Did you read the actual study, itself, which we have
12 previously marked for identification as Exhibit 4008?

13 **A.** Yes, I did. I read it very carefully.

14 **Q.** And did reading that study, going beyond what you read
15 from others, going to primary sources, did that help inform
16 your state of mind as to whether there was violent felonies
17 against a person?

18 **A.** Yes, it did.

19 **MR. LIMANDRI:** Your Honor, can I display Exhibit
20 4008? It's a better-quality picture than the one that has
21 already been admitted into evidence.

22 **MS. TROTTER:** Your Honor, we don't have that exhibit.

23 **THE COURT:** Nor do I.

24 **MR. LIMANDRI:** It's the same -- oh, I'm sorry. There
25 are our exhibit books. I meant to give them to you at the

1 outset.

2 (Document tendered)

3 (Document handed up to the Court)

4 **MS. TROTTER:** Objection, Your Honor. 403.

5 **MR. LIMANDRI:** Page 6 of the exhibit is the same
6 picture that's in Exhibit 24.

7 **THE COURT:** I'm going to sustain the objection.

8 **BY MR. LIMANDRI**

9 **Q.** At some point in your -- oh, before I get to that, moving
10 back to Exhibit 7129, please. We're going to get back to the
11 roadmap exhibit.

12 How did the artificial placenta study inform your belief
13 as to whether further investigation was necessary at that
14 point?

15 (Document displayed)

16 **A.** Sure. So the nature of that study is they were submerging
17 these born-alive infants that they obtained from late-term
18 abortions --

19 **MS. TROTTER:** Objection, Your Honor. 403. Move to
20 strike.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** They were submerging them in a tank of
23 artificial amniotic fluid, to see how long they could keep them
24 alive. Some of these fetuses, again, were six months old, of a
25 viable age that you would expect that if an infant was born

DALEIDEN - CROSS / LIMANDRI

1 alive premature like that, they would be rushed to a NICU, to a
2 neonatal intensive care unit. Instead, in this experiment,
3 they were submerged in a tank, and they would see how long they
4 could keep them alive for until they drowned.

5 So that informed my suspicions that fetal experimentation
6 was a way that exploited even infants born alive, and that
7 potentially viable infants could be killed through fetal
8 experimentation.

9 **MS. TROTTER:** Objection, Your Honor. 403. Move to
10 strike.

11 **THE COURT:** Yeah. I will strike it. Let's -- let's
12 keep moving through the sources of Mr. Daleiden's information,
13 and why he went --

14 **BY MR. LIMANDRI**

15 **Q.** Let's look at the next --

16 **THE COURT:** Just a second.
17 Why he went into the CMP investigation.

18 **MR. LIMANDRI:** Okay.

19 **MR. MIHET:** That was the question, Your Honor.

20 **THE COURT:** Thank you, Mr. Mihet, for your thoughts.

21 (Reporter interruption)

22 **MR. LIMANDRI:** He said that was the question. And
23 that was the intent of my question.

24 **BY MR. LIMANDRI**

25 **Q.** Let's look at the next icon, Advanced Biosciences

DALEIDEN - CROSS / LIMANDRI

1 Resources. What is that organization?

2 **A.** So Advanced Biosciences Resources is a name that came up
3 frequently, as I was starting to review the available
4 scientific literature in the summer of 2010.

5 And so what I discovered from reviewing that body of
6 research was that Advanced Bioscience Resources, or ABR, was
7 one of the main supplier companies of aborted fetal organs and
8 tissues for experimentation. And so they were the same kind of
9 organization like the companies Opening Lines and Anatomic Gift
10 Foundation that had been documented in the ABC 20/20 report,
11 and that had had all of these whistleblower allegations coming
12 out about them in the Congressional hearings in March of 2000.

13 And even though ABR has around since 1989, which is the
14 year that I was born, they were not mentioned in the 2000
15 exposés or hearings or anything like that. So they had just
16 sort of completely flown under the radar.

17 But here, I was seeing in the present day, at that time in
18 2010, that they seemed to be one of the major players in this
19 industry, operating according to a business model that looked
20 identical to what was very criticized and very troublesome in
21 the year 2000 --

22 **MS. TROTTER:** Objection, Your Honor. 403. Move to
23 strike. This is like a narrative at this point.

24 **THE COURT:** Overruled, but it is a narrative. So if
25 we can move along.

DALEIDEN - CROSS / LIMANDRI

1 **MR. LIMANDRI:** Okay.

2 **BY MR. LIMANDRI**

3 **Q.** Based upon what you learned about what we call ABR,
4 Advanced Bioscience Resources, what did you do next in your
5 investigation?

6 **A.** So I tried to find out as much as I could about Advanced
7 Bioscience Resources. And there wasn't really a lot of
8 information because they didn't even have a website. And they
9 still, to this day, I think, don't have a website.

10 But what I did see in one or two news articles that were
11 -- that had come out sort of, you know, some time between 2000
12 with the initial exposé and 2010, when I was looking for
13 everything, is that they had, for at least a time, been
14 partnered with plaintiffs Planned Parenthood Mar Monte. And so
15 that had been one of their sources of aborted fetal tissues and
16 organs.

17 **Q.** Okay. These organizations like ABR or the ones that you
18 mentioned that were involved in the 20/20 study, would they be
19 middlemen? How would you describe them?

20 **A.** Yeah. I would describe them as middleman wholesalers of
21 aborted fetal organs and tissues.

22 So the abortion clinic, like the plaintiffs, would be the
23 supplier of aborted fetal organs and tissues, or even whole
24 aborted fetuses. And the middleman wholesalers would embed
25 their technicians inside the clinic, like we saw in the ABC

1 20/20 episode.

2 And they would receive --

3 **MS. TROTTER:** Objection, Your Honor; narrative. Move
4 to strike. And 403.

5 **THE COURT:** Overruled. But again, if we can
6 encapsulate the question.

7 **BY MR. LIMANDRI**

8 **Q.** Can you briefly conclude your answer on that particular
9 issue regarding the middlemen?

10 **A.** Sure. So the middleman companies like ABR or Opening
11 Lines or AGF, like we saw from the ABC 20/20 episode, would
12 embed their technicians inside of the abortion clinics that
13 they were partnered with. And those technicians would receive
14 order lists each day that they were in there from whoever their
15 research clients were, for the specific kinds of fetal body
16 parts that they were looking for.

17 And so they would receive those lists inside the clinic,
18 and then be hunting around to fulfill those orders.

19 **MS. TROTTER:** Objection, Your Honor. Narrative.
20 403.

21 **MR. LIMANDRI:** Your Honor, he's only responding to my
22 question.

23 **THE COURT:** Overruled. But, let's -- let's move
24 along.

25

DALEIDEN - CROSS / LIMANDRI

1 **BY MR. LIMANDRI**

2 **Q.** All right. The next icon is News Media Reports.

3 Was there anything you learned in that regard that
4 informed your state of mind regarding this investigation?

5 **A.** Yes. So, there were -- like I mentioned, there were --

6 **THE COURT:** Just a second.

7 That question calls for a narrative. Let's get -- let's
8 be specific, and go to -- go to specifics that Mr. Daleiden can
9 respond to.

10 **MR. LIMANDRI:** Okay.

11 **BY MR. LIMANDRI**

12 **Q.** What specific news media reports can you refer to that
13 informed your state of mind?

14 **A.** So there was the reporting, like I mentioned, that
15 identified Advanced Bioscience Resources --

16 **THE COURT:** Excuse me.

17 Let's -- could you identify what the report is that
18 you're referring to? The specific report, first. The question
19 was: What were the reports. Do that first.

20 And then Mr. LiMandri can ask you: So, what did this
21 report say? What did that report say? And that is the way
22 that I would like to go through this question and answer
23 period.

24 Okay?

25 **THE WITNESS:** Okay.

DALEIDEN - CROSS / LIMANDRI

1 So I don't remember the original source of that report.
2 It was reprinted in a couple of different advocacy organization
3 blogs from, I think, the year 2002. But it was a report
4 identifying Advanced Bioscience Resources as having had Planned
5 Parenthood Mar Monte, which is a plaintiff in this lawsuit, as
6 one of their main sources for aborted fetal organs and tissue.

7 **BY MR. LIMANDRI**

8 **Q.** Okay. Let's go to the next icon which is the "Too Many"
9 report -- actually, no, following the roadmap it would be the
10 StemExpress icon.

11 Would you tell us, please, who and what StemExpress is.

12 **A.** So, StemExpress is another middleman wholesaler company
13 like ABR, like Opening Lines or AGF from the ABC 20/20 report.
14 And StemExpress was a much newer kind of startup company that I
15 first learned about in the summer of 2011.

16 So I started looking into a lot of these issues in the
17 summer of 2010. And then in the summer of 2011, after learning
18 about -- reviewing some of the scientific literature, looking
19 at these different news reports, discovering ABR is like a
20 company that's been doing this a long time but nobody talked
21 about for ten years --

22 **MS. TROTTER:** Objection, Your Honor. Narrative,
23 unresponsive to the question. Move to strike.

24 **THE COURT:** Yeah. Let's go on to the next question.

25

DALEIDEN - CROSS / LIMANDRI

1 **BY MR. LIMANDRI**

2 **Q.** Was StemExpress in the same business, basically, as ABR?

3 **A.** Yes, they were.

4 **Q.** Okay. The roadmap mentions Dr. Ronald Berman, along with
5 StemExpress. What is your understanding of who he was, first
6 of all, then I'll ask you the next question.

7 **A.** Dr. Ronald Berman was both an abortion provider at Planned
8 Parenthood Mar Monte and also the medical director of
9 StemExpress.

10 **Q.** How was that significant to your investigation, if at all?

11 **A.** It was incredibly significant to my investigation.
12 Because it looked like a huge conflict of interest that
13 Dr. Berman was both getting paid by Planned Parenthood
14 Mar Monte to do abortions, and also getting paid by StemExpress
15 to be their medical director and make sure that StemExpress was
16 a successful business.

17 **Q.** Did you continue to investigate this issue regarding the
18 born-alive infants with respect to looking further into
19 StemExpress?

20 **A.** Yes, I did.

21 **MS. TROTTER:** Objection, Your Honor, mischaracterizes
22 the testimony. Move to strike.

23 **THE COURT:** Overruled.

24 You can answer.

25 **THE WITNESS:** Yes, I did.

DALEIDEN - CROSS / LIMANDRI

1 **BY MR. LIMANDRI**

2 **Q.** What did you do in that regard?

3 **A.** A couple of different things. One of the first things
4 that I did is I tried to find out as much about Dr. Berman's
5 work as I could.

6 And so I discovered a -- I discovered a research study
7 that Dr. Berman had actually published earlier in his career,
8 where he was advocating the use of a particular kind of drug to
9 do second-trimester abortions through labor induction rather
10 than --

11 **MS. TROTTER:** Objection, Your Honor. 403. Move to
12 strike.

13 **MR. LIMANDRI:** Your Honor, we need to put on a
14 defense here.

15 **THE COURT:** Overruled.

16 Go ahead.

17 **MR. LIMANDRI:** Okay.

18 **THE WITNESS:** And the kind of drug that he was
19 advocating for specifically was Prostaglandin F2-alpha, which I
20 recognized because it had been mentioned in Suzanne Rini's book
21 previously as a drug that was very helpful for speeding up the
22 labor induction time, so you would be more likely to -- to get
23 a -- to get a fetus that was still alive in a later-induction
24 abortion, using Prostaglandin F2-alpha. And so Suzanne Rini
25 had really fingered that particular drug in her book as

DALEIDEN - CROSS / LIMANDRI

1 something that was a key part of live fetal experimentation.

2 And so I thought it was really interesting and significant
3 that Dr. Berman, the medical director of StemExpress, abortion
4 provider at their supplier, Planned Parenthood Mar Monte, --

5 **MS. TROTTER:** Objection, Your Honor.

6 **THE WITNESS:** -- had been advocating the use of that
7 drug.

8 **MS. TROTTER:** 403. Move to strike.

9 **THE COURT:** Sustained. Let's move on.

10 **BY MR. LIMANDRI**

11 **Q.** Was there a SARTA conference where you gained information?

12 **A.** Yeah. So in the summer of 2012 -- and the reason this
13 sort of proceeds by summers is at the time I was still working
14 as the Director of Research for Live Action, so there were, you
15 know, many other projects and investigations that Live Action
16 was working on, that I was working on for them. But my real
17 kind of passion and conviction starting in 2010 was the
18 fetal-trafficking issue, specifically.

19 And so I sort of piecemeal -- each summer there was time
20 when I would be able to sort of come back to it, and try and
21 see: Okay, what else more can we find out about it now, or
22 what else more can I learn about it?

23 So in the summer of 2010, StemExpress was presenting at
24 the -- it was --

25 **MS. TROTTER:** Objection, Your Honor, move to strike.

DALEIDEN - CROSS / LIMANDRI

1 Non-responsive to the question.

2 **MR. LIMANDRI:** It's important to his investigation.

3 **MS. TROTTER:** Also not disclosed.

4 **MR. LIMANDRI:** That's not a proper objection.

5 **THE COURT:** I'll sustain the objection on the
6 question.

7 Let's go -- let's go back to the question and --

8 **MR. LIMANDRI:** Okay.

9 **BY MR. LIMANDRI**

10 **Q.** What did you learn at the SARTA conference that was
11 important to your mental state and your investigation?

12 **THE COURT:** So I listened to StemExpress's
13 presentation at the SARTA conference in Sacramento. And it was
14 a presentation by their -- their chief scientific officer,
15 their science director, Dr. Joshua Woods.

16 And he had said StemExpress was founded in 2010, with a
17 \$15,000 startup loan. And that in just two years, they had
18 passed the million-dollar mark in revenues as a company.

19 And I spoke with him after his presentation, directly, and
20 was just asking him basic questions about their business and
21 about the sort of the market in aborted fetal tissue. And he
22 told me that what he believed the biggest barrier in their
23 market was -- was supply chain access.

24 **MS. TROTTER:** Objection, Your Honor. 403. Move to
25 strike.

DALEIDEN - CROSS / LIMANDRI

1 **THE COURT:** Overruled.

2 **THE WITNESS:** By which he meant their actual access
3 to get into the abortion clinics and get the fetal body parts.
4 And so I understood from that, that there was incredible market
5 demand from these outside middleman companies to get access to
6 aborted fetuses within the clinics.

7 **MR. LIMANDRI:** Okay. Let's take another look at
8 Exhibit 24. It's been admitted into evidence.

9 (Document displayed)

10 **MR. LIMANDRI:** Page 4 of 14 at the bottom of the
11 page.

12 (Document displayed)

13 **BY MR. LIMANDRI**

14 **Q.** Can you tell us what significance this illustration has?
15 Is this a document that you originally located on your
16 own?

17 **A.** Yes. It's -- it is.

18 **Q.** And how did you find it, and what is it?

19 **A.** So this is a -- this is just a small cropped version of a
20 full screenshot that I took in 2012 of a special order form on
21 StemExpress's website, where they had a drop-down menu order
22 form for fetal organs and tissues.

23 You have one drop-down menu for the kind of body part you
24 wanted. They had about 50 to a hundred different body parts
25 listed. You could get a heart, you could get a heart with

DALEIDEN - CROSS / LIMANDRI

1 veins and arteries still attached, you could get a brain, you
2 could get kidneys, you could get genitals. You could get the
3 scalp. Really, anything you could imagine.

4 Then they had a second drop down menu for the gestational
5 age that you wanted of the fetus for it to come from. And then
6 they had a field where you would enter in the number of
7 specimens that you were requesting.

8 And then they had radio buttons where you could choose the
9 kind of shipping you wanted. If you wanted Fed Ex same day,
10 Fed Ex overnight, Fed Ex ground. If you wanted a courier to
11 drive it to you locally within the Northern California region
12 on the same day.

13 **Q.** All right.

14 **A.** So that's what it was.

15 **Q.** And remember, try to slow down a little bit.

16 With regard to the same topic and the same exhibit, 24, we
17 can go to Page 9 of 14.

18 (Document displayed)

19 **Q.** And enlarge the inset illustration. I'm sorry, it's a
20 faint copy. I don't know how well you can read it.

21 But, is this another document that you obtained in your
22 investigation?

23 **A.** That is a document from the March, 2000, Congressional
24 investigation and the early Life Dynamics exposé.

25 **Q.** And what does it reflect?

DALEIDEN - CROSS / LIMANDRI

1 **A.** That's a -- that's a price list for many different kinds
2 of fetal body parts. I believe that's from the company Opening
3 Lines.

4 **Q.** I see. And would someone just place an order for one or
5 more body parts, if they were willing to pay that particular
6 price?

7 **MS. TROTTER:** Objection, Your Honor. Leading; 403.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** Could I get the question again? I
10 didn't hear the first part of it.

11 **BY MR. LIMANDRI**

12 **Q.** Sure. If someone wanted to purchase one or more body
13 parts and they're willing to pay that price, they would be able
14 to presumably obtain it from one of these companies that is in
15 this business?

16 **A.** That's correct.

17 **MS. TROTTER:** Objection, Your Honor. Foundation.
18 Move to strike.

19 **THE COURT:** This is, again, the understanding that
20 Mr. Daleiden had with respect to this. Not offered for the
21 truth.

22 Overruled.

23 **BY MR. LIMANDRI**

24 **Q.** Let's take a look at the same exhibit, Page 5 of 14,
25 please.

DALEIDEN - CROSS / LIMANDRI

1 By the way, this exhibit we're looking at which you were
2 asked about yesterday, is this all part of the project proposal
3 that you had done in or about early 2013?

4 **A.** Yes. These pages are all from a project proposal document
5 that I wrote in February of 2013. The original project
6 proposal was not addressed to Troy Newman; it was a general
7 project proposal that was for -- distributed or provided to
8 many potential donors for CMP's undercover project.

9 But I did the -- the initial draft of this project
10 proposal that was just text, I think, at the very beginning of
11 February 2013. And then -- and I spent about a week kind of
12 sprucing it up and adding in a lot of these images. The
13 screenshots from the StemExpress drop-down menu, the selections
14 from the artificial placenta study and things like that.

15 So this is an example of one copy of the final version of
16 that project proposal that I wrote in early 2013.

17 **Q.** In your investigation of StemExpress, did you see any
18 literature published by them whereby StemExpress offered to
19 return a portion of fees that it obtained from end users to the
20 clinics where they obtain the fetal tissue and organs?

21 **A.** Yes, I did.

22 **Q.** Okay. What document did you see in that regard?

23 **A.** So as I started to look into StemExpress in the summer of
24 2011, one of the first things that I noticed that was a big red
25 flag for me was on their website in their "About Us" section,

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1 they said that they would, quote, return a portion of their
2 researcher fees to the clinics that they worked with.

3 So that would mean that a portion of the fees that they
4 get from the number of organs and tissues they sell, they would
5 return a percentage of that to the abortion clinic.

6 **MS. TROTTER:** Objection, Your Honor. Lacks
7 foundation. Move to strike. Speculation.

8 **THE COURT:** Again, ladies and gentlemen, the
9 objection is overruled. This is -- it goes to his state of
10 mind.

11 **MR. LIMANDRI:** We have that page from the website
12 that would further lay the foundation for that information.
13 It's Exhibit 7125 in the notebook. It's a little over one
14 page, Your Honor. If I could display that.

15 **MS. TROTTER:** Your Honor, you overruled my objection.
16 So we would object to a further exhibit on this, on 403.

17 **THE COURT:** Yes. And that objection is sustained.

18 **BY MR. LIMANDRI**

19 **Q.** Did you become aware of any scientific studies being done
20 at Stanford involving fetal tissue and organs that StemExpress
21 supplied?

22 **A.** Yes, I did.

23 **Q.** And was that published in professional medical journal?

24 **A.** Yes, it was.

25 **Q.** And what journal was that?

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1 **A.** It was the journal *Circulation*.

2 **Q.** Do you reference that on Page 5 of Exhibit 24?

3 (Document displayed)

4 **A.** I believe I do.

5 (Document displayed)

6 **Q.** Let's take a look at -- again, it's at the bottom of Page
7 5 of 14. On that particular exhibit.

8 (Document displayed)

9 **Q.** And you will see in the left column, about two thirds of
10 the way down, or halfway down, "The Scientific Community."

11 Is this what you wrote about that particular study?

12 **A.** Yes, it is.

13 **Q.** And what information were you trying to convey at that
14 time?

15 What did you say in your report regarding that study?

16 **A.** Sure. So in this project proposal for donors, I described
17 to them this study published in 2012 in the American Heart
18 Association's journal *Circulation*, where these Stanford
19 researchers said that they had obtained fetal hearts from
20 StemExpress. And they identified StemExpress as a commercial
21 vendor of fetal tissue. And they said that they had connected
22 these fetal hearts to a machine called a Langendorff perfusion
23 apparatus.

24 And I didn't know what that was, even though I had taken
25 German in high school for six years. So I looked up what is a

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1 Langendorff perfusion apparatus. And from other scientific
2 literature describing how to use it, and some of the companies
3 that manufacture them, what I learned is that Langendorff
4 perfusion is a way to keep a heart beating once it's been cut
5 out of an organism's body.

6 And so this study was describing taking beating fetal
7 hearts, hooking it up to a Langendorff perfusion, and flushing
8 different nutrients through them, and keeping it beating long
9 enough to have viable cardiac stem cells, heart stem cells that
10 they could harvest from it.

11 So that's what I was describing in this project proposal,
12 is what I learned about that study.

13 **Q.** Did this study specifically state they got the human fetal
14 hearts from StemExpress?

15 **A.** Yes. It explicitly cited StemExpress as the source of the
16 human fetal hearts that would be connected to Langendorff
17 perfusion.

18 **Q.** And did you learn about that in that time frame where
19 StemExpress was obtaining human fetal hearts?

20 **MS. TROTTER:** Objection, Your Honor. Leading.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** Yes. In that time frame -- actually,
23 in 2011 when I first learned about StemExpress, StemExpress --
24 the reason that I found out about it is because somebody
25 forwarded me a Craigslist advertisement StemExpress had posted

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1 for harvesting technicians, procurement technicians. And they
2 said in this job posting that they needed them to work inside
3 of Planned Parenthood clinics to harvest tissue.

4 **Q.** Okay. Now, with regard to this Langendorff perfusion
5 technique and keeping human fetal hearts alive, did you speak
6 to --

7 **MR. LIMANDRI:** And referring back to Exhibit 7129,
8 please, Willow, staying on track with our roadmap.

9 (Document displayed)

10 **BY MR. LIMANDRI**

11 **Q.** Did you talk to any specialists in the field regarding
12 that particular topic to inform yourself as to what was
13 involved in that process?

14 **A.** Yes, I did.

15 **Q.** Who did you speak to in that regard?

16 **A.** I spoke to Dr. Theresa Deisher.

17 **Q.** And who was she?

18 **A.** Dr. Deisher is a stem cell scientist and stem cell expert
19 who -- actually, her educational background is from Stanford
20 University. And I first connected with her either in 2010 or
21 2011, while I was working at Live Action. Lila and I would
22 both speak to her from time to time.

23 And initially, I was just trying to sort of, again, orient
24 myself in the -- as far as the science goes, because I was
25 doing a lot of scientific literature review on different

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1 experiments that required aborted fetal organs and tissues.

2 But then specifically, when I read about this study in the
3 journal *Circulation* with the fetal hearts from StemExpress
4 being connected to Langendorff perfusion, I wanted to talk to
5 Dr. Deisher specifically about that study, and make sure that I
6 was understanding it correctly, and find out anything more
7 about it that maybe I didn't know.

8 And so I spoke with her in 2012 about that study. And she
9 told me that the --

10 **THE COURT:** Mr. LiMandri, if you could ask your
11 question.

12 **MR. LIMANDRI:** Sure. Thank you, Your Honor.

13 **BY MR. LIMANDRI**

14 **Q.** What did Doctor -- you're not going to be surprised by
15 this next question.

16 What did Dr. Deisher tell you in that regard about the
17 Langendorff perfusion study in the *Circulation* magazine study
18 that you -- or journal study that you spoke about?

19 **A.** Dr. Deisher told me that the most horrific aspect of fetal
20 experimentation is that most of the -- of the organ and tissue
21 demand would require -- would require fetuses delivered alive
22 from the abortion, fetuses delivered intact and alive, to
23 harvest the body parts with the freshness and the viability.
24 And in the case of a Langendorff perfusion study, to have a
25 heart that was still beating, because you'd cut it out of a

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1 living fetus.

2 **Q.** Did Dr. Deisher actually do scientific experimentation at
3 Stanford, to your knowledge?

4 **A.** I believe she did.

5 **Q.** Okay. Was there any other people with a medical or
6 scientific background that you also spoke to, to confirm
7 whether this information was accurate?

8 **A.** Yes, there were.

9 **Q.** Can you tell us who any of those people were?

10 **A.** Yeah. I spoke with Dr. William Hurlbut, who is a
11 neuroscientist at Stanford University who has done stem cell
12 research in the past, as well.

13 And Dr. Hurlbut --

14 **MS. TROTTER:** Objection, Your Honor. Move to strike,
15 based on Your Honor's orders.

16 **THE COURT:** Yeah, I think you've --

17 **MR. LIMANDRI:** Okay.

18 **THE COURT:** I think he's -- he's answered
19 appropriately up to this point. So, who's next?

20 **MR. LIMANDRI:** Thank you, Your Honor.

21 **BY MR. LIMANDRI**

22 **Q.** Moving along on our roadmap, there will be no surprise
23 that next I'll be asking about the Grantham Collection.

24 **THE COURT:** I don't mean to cut you off.

25 If there were other doctors that you talked with that you

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1 wanted to mention and who they were, you should go ahead and do
2 that.

3 **THE WITNESS:** Yeah. I also spoke with Dr. Stephen
4 McCurdy from UC Davis.

5 **BY MR. LIMANDRI**

6 **Q.** Okay. And without going into the substance of that
7 conversation, do you know what kind of doctor he is?

8 **A.** Yeah. He is an internal medicine specialist.

9 **Q.** He's a medical doctor. And Dr. Deisher is a Ph.D.
10 scientist. Correct?

11 **A.** That's correct.

12 **Q.** And Dr. Hurlbut, I think you said, was a medical doctor, a
13 neuroscientist?

14 **A.** Yeah, neurobiology, yeah.

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

16 All right, tell us how the Grantham Collection video
17 informed your state of mind with regard to this investigation.

18 **A.** Sure. So the Grantham Collection is an online repository
19 of very high-quality images of children killed by abortion.
20 And also some video imaging.

21 So the Grantham Collection was something I was aware of
22 while I was working at Live Action. And they actually had a
23 video of a late-second-trimester fetus that had been delivered
24 alive, born alive during an abortion and was still moving
25 afterwards, so was still alive. So that just was very clear

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1 visual documentation for me, in the process of doing all this
2 other research. That an infant, a premature infant or a
3 second-trimester fetus --

4 **MS. TROTTER:** Objection, Your Honor --

5 **THE WITNESS:** -- being born alive through an
6 abortion.

7 **MS. TROTTER:** Move to strike. Narrative, 403.

8 **THE COURT:** Yeah. The last phrase will be stricken.
9 Please go ahead.

10 **BY MR. LIMANDRI**

11 **Q.** Do I understand that you had actual photographic or
12 videographic evidence from the Grantham Collection video of an
13 infant that had been born alive following an abortion?

14 **A.** That's correct.

15 **MS. TROTTER:** Objection, Your Honor. This is asked
16 and answered. 403. Move to strike the question and the
17 answer.

18 **THE COURT:** No, it's just clarification. Overruled.

19 **BY MR. LIMANDRI**

20 **Q.** And for clarification, the scientific journal study in
21 *Circulation* magazine, you understood that was also photographic
22 evidence of an infant that had been born alive after an
23 abortion?

24 **A.** Photographic. And written -- written documented evidence,
25 you know, from the researchers, themselves, said that these

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1 fetuses were alive when they obtained them.

2 **Q.** And Dr. Deisher and Dr. Hurlbut and Dr. McCurdy all
3 confirmed to you that that type of experimentation with
4 born-alive infants had been going on?

5 **MS. TROTTER:** Objection, Your Honor. Move to strike.
6 The question violates the Court's order.

7 **THE COURT:** And asked and answered. Let's move on.

8 **MR. LIMANDRI:** All right.

9 **BY MR. LIMANDRI**

10 **Q.** Let's go on to the Live Action research that you did, more
11 specifically, with regard to this particular issue of
12 born-alive infants, and how that informed your state of mind
13 with regard to whether you were going to do an official CMP
14 investigation later.

15 **A.** Definitely. So in -- as Director of Research for Live
16 Action, helping them develop the -- the last undercover
17 investigation that I worked on with them, which was infanticide
18 in late-term abortion clinics, I did a lot of background
19 research, not just on this CDC statistics that I had mentioned
20 were available, but also reading through a lot of abortion
21 training textbooks, to see what the professional abortion
22 industry would say about later abortions, and the possibility
23 of infants being delivered alive. Position papers from the
24 Society of Family Planning, which hosts the -- the Planned
25 Parenthood forum conference that we'll talk about more in this

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1 case. And, as well as just other published scientific
2 literature about the percentage frequency of an infant being
3 delivered alive in a late-term abortion.

4 **Q.** Okay. Let's take a look at the next icon, involving
5 Dr. Katherine Sheehan. Her witness testimony. Can you please
6 tell us what that refers to?

7 **A.** Yes. So around the same some time that I was doing that
8 research for Live Action in 2012, I -- I came across the
9 transcripts from a lot of the civil lawsuit trials that many of
10 these plaintiffs actually had filed challenging the federal ban
11 on partial birth abortion. And Dr. Katherine Sheehan, who was
12 the medical director of plaintiff's Planned Parenthood of
13 Pacific Southwest, gave extensive testimony in those cases. So
14 I read the transcripts of her testimony.

15 And she said, under oath, that approximately 1 percent of
16 the time when she was doing later second-trimester cases at
17 Planned Parenthood Pacific Southwest, she would get a
18 completely intact fetus. Not the normal dismemberment
19 procedure they would use with forceps, but she would get the
20 fetus to come out completely intact and whole, including the
21 head and everything, approximately 1 percent of the time.

22 And she also testified that they did not always use the
23 chemical digoxin as a feticide or a way to kill the fetus
24 before the abortion; that that was something that was left up
25 to the decision of the patient, whether they wanted to kill the

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1 fetus before with digoxin, or withhold digoxin.

2 So that testimony from Dr. Sheehan to me made it look
3 like, you know, with Planned Parenthood Pacific of Southwest
4 doing over 10,000, 15,000 abortions a year, that
5 percentage-wise, you know, even if 1 percent is --

6 **MS. TROTTER:** Objection, Your Honor. Lacks
7 foundation. 403. 402.

8 **THE COURT:** Yeah. I think you have answered the
9 question.

10 **MR. LIMANDRI:** Okay.

11 **THE COURT:** Next question.

12 **BY MR. LIMANDRI**

13 **Q.** You mentioned digoxin. Is that what is called a feticide?

14 **A.** Yes. Digoxin for adult people is used as a heart
15 medication, but when delivered to a fetus, it kills the fetus.

16 **Q.** Okay. And would that be an alternative to -- a
17 dismemberment, more likely to have a fetus born --

18 **MS. TROTTER:** Objection, Your Honor. The witness has
19 testified to this already. Move to strike, 403.

20 **MR. LIMANDRI:** I'm trying to clarify the testimony,
21 Your Honor.

22 **THE COURT:** Okay. Finish the question and then --

23 **MR. LIMANDRI:** Okay.

24 **BY MR. LIMANDRI**

25 **Q.** Is a fetus that is given digoxin as opposed to being

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1 dismembered, is it more likely to be an intact fetus?

2 **MS. TROTTER:** Objection, Your Honor. Lacks
3 foundation, asked and answered, 403, 402.

4 **THE COURT:** Sustained.

5 **BY MR. LIMANDRI**

6 **Q.** If a fetus is not given digoxin and not dismembered, is it
7 more likely to be born alive, in your understanding, as part of
8 your investigation?

9 **MS. TROTTER:** Same objections, Your Honor.

10 **THE COURT:** Sustained.

11 **BY MR. LIMANDRI**

12 **Q.** Let's look at the -- I skipped over, looks like, "1,200
13 Too Many report"? Can you tell us what that is, please?

14 **A.** Yeah, that was a final report that Live Action published
15 shortly after I had left in early 2013, but it drew on a lot of
16 the -- on a lot of the -- a lot of the background research that
17 I had done in late 2012 in preparation for the infanticide
18 investigation.

19 And so that report that Live Action published represents
20 sort of a repository of a lot of the documentation, like the
21 CDC statistics and the practice guidelines from the Society of
22 Family Planning, and the information from abortion training
23 textbooks and things like that about the frequency of infants
24 born alive after a late-term abortion.

25 **Q.** Before we move on, what did Dr. Sheehan's testimony that

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1 you read specifically inform you about PPSW, Planned Parenthood
2 of Pacific Southwest?

3 **MS. TROTTER:** Objection, Your Honor. Asked and
4 answered.

5 **THE COURT:** Sustained.

6 **BY MR. LIMANDRI**

7 **Q.** Let's talk about the "Project Proposal" icon, which is
8 next after Dr. Sheehan's testimony.

9 Does that look familiar to you?

10 **THE COURT:** The icon?

11 **BY MR. LIMANDRI**

12 **Q.** I believe this icon is actually the project proposal that
13 we have been talking about. Your project proposal.

14 **A.** So, yes. So the phrase "Project Proposal" -- or,
15 Undercover Project to Expose Fetal Trafficking is the title of
16 the project proposal that I wrote in February 2013. It did not
17 have a cover, a turquoise cover page like this. But I'm
18 familiar with the document. I wrote it, in February, 2013.

19 **Q.** Okay. And what was your purpose of writing it at that
20 time?

21 **A.** So my purpose in writing that at February, 2013, um, that
22 was a project proposal that was specifically written for
23 potential donors to CMP's undercover work.

24 And I had actually been advised by Mark Crutcher that I
25 should write a very kind of detailed project proposal for

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1 donors that was very specific as to particular goals and
2 advantages that they could expect from investing in that
3 investigative journalism study like this, or contributing to a
4 project like that.

5 And that's something you see in the nonprofit world a lot,
6 is that donors, especially larger donors, want to have a really
7 clear sense of what they can hope to achieve by giving to a
8 specific project. So that was the purpose of this project
9 proposal, was to write something that was very clear and crisp
10 and detailed for them.

11 And especially, again, the whole phenomenon of fetal
12 trafficking being something that had not really been covered a
13 lot since the year 2000. And something that is somewhat
14 complex, with lots of different levels with the supplier and
15 the middleman and the user and the different scientific
16 research and the different abortion issues.

17 And there's just so many different pieces, that can get
18 very overwhelming for somebody very quickly. So that's why I
19 tried to -- to boil it down as much as I could in a single
20 project proposal for potential donors.

21 **Q.** And is that what we have already looked at with Exhibit
22 24?

23 **A.** I don't have the exhibit numbers memorized, but we have
24 shown it on the screen this morning.

25 **Q.** Well, let's take a look at the second page of Exhibit 24,

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1 again, which is in evidence.

2 (Document displayed)

3 **MR. LIMANDRI:** This one's actually -- the second
4 page, not the numbered second page. So let's go back one.

5 (Document displayed)

6 **MR. LIMANDRI:** There you go.

7 **BY MR. LIMANDRI**

8 **Q.** Is this the project proposal we are talking about?

9 **A.** Yes. This is one copy of that document from early 2013.

10 **Q.** Okay. And at the last sentence of the second paragraph,
11 you were asked about this in questioning by opposing counsel,
12 where it says in the last sentence (As read):

13 "By exposing one of the most sickening abuses of the
14 abortion industry, this project aims to ignite public
15 outrage against the abortion industry, permanently
16 damage Planned Parenthood's brand, and prompt
17 defunding and criminal prosecutions."

18 What did you mean by using the phrase "ignite public
19 outrage"? Are you trying to suggest any type of violent
20 activity?

21 **A.** No. Of course not. So by "ignite public outrage,"
22 "public outrage" for me is a phrase that I was using to mean
23 public pressure. To, you know, to spark public pressure or to
24 -- to inspire public pressure for public authorities to enforce
25 the laws on fetal trafficking, and also to bring policy change,

1 to the degree that it was necessary.

2 And I started off this whole sentence with the phrase --
3 with the operative phrase "By exposing one the most sickening
4 abuses of the abortion industry," so everything else that I
5 wrote in this sentence is not happening in a vacuum. It's
6 completely predicated on the goal of documenting very, very
7 clearly bad things and criminal things going on in the space of
8 trafficking fetuses, fetal organs and fetal tissues. None of
9 the rest of this makes sense or would even be appropriate
10 without that first part of the sentence, that "By documenting,
11 exposing and reporting..."

12 **Q.** And if we skip ahead to Page 11 of 14, you were asked
13 about certain goals that are referenced in this project
14 proposal.

15 (Document displayed)

16 **Q.** And again, No. 2 uses some of the same language:

17 "Create public outrage at Planned Parenthood and
18 liberal university professors."

19 What did you mean by the phrase "liberal university
20 professors" in this context?

21 **A.** So that is an example of the audience that this project
22 proposal was written for. This document isn't a manifesto or a
23 public call to action. This is -- this is a donor proposal
24 document that was given to potential donors. The audience of
25 which was -- was largely conservative Catholic or very orthodox

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1 Catholic people who have strong pro-life views.

2 And so I was using the sort of language that I thought
3 would -- would appeal to them, and would help them understand
4 what they could -- how -- how this project might be relevant
5 and responsive to their beliefs, and their interests.

6 And by "liberal university professors" I don't mean -- I
7 did not mean, like, liberal arts professors or humanities
8 people. This was specifically referring to taxpayer-funded
9 researchers at major research universities who were the -- who
10 were the end users of fetal organs and tissues.

11 **Q.** You also say:

12 "Deliver a major public relations blow to Planned
13 Parenthood."

14 The third goal. Again, was this intended to help change
15 policy and enforce laws?

16 **A.** Definitely. And it's -- and it's directly predicated -- I
17 mean, all of these points are directly predicated on the
18 foundational goal of documenting and exposing actual problems
19 and actual evidence of crimes within the space of harvesting
20 and trafficking aborted fetal organs and tissues.

21 **Q.** The next goal, No. 4, says:

22 "Promote state funding (sic) efforts for Planned
23 Parenthood."

24 You were asked about an IRS form that you filed, and -- as
25 to whether or not you had indicated CMP was an advocacy

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1 organization. And I believe you stated what it -- the goal was
2 medical -- what was the exact goal that you put on the form?
3 "Medical ethics research"?

4 Can you explain what the purpose of CMP was, and how you
5 described it on that form?

6 **A.** Sure. Well, the purpose of Center for Medical Progress,
7 like the purpose of the incorporation, is to monitor and report
8 on medical ethics and advances. And I intentionally chose
9 something very broad, because I didn't want to limit Center for
10 Medical Progress to just focusing on one -- you know, one
11 narrow kind of issue, or even just focusing -- certainly not to
12 focus only on one project. You know, we've been a little
13 distracted for the past four years or so here, given what's --
14 what's now going on in this courtroom.

15 But -- um -- but the -- but -- but I -- in -- in
16 incorporating CMP that way, I wanted to leave the door open for
17 us to do a lot of other kinds of work, primarily focusing on
18 bioethical issues, because I think that is really important. I
19 think bioethical issues that impact human dignity, that's
20 really what I'm passionate about, and that's what I'm
21 interested in.

22 So, certainly, like I testified yesterday, I think medical
23 ethics and advances certainly encompasses abortion care and the
24 abortion industry. And the -- and fetal experimentation, fetal
25 stem cell research, all those different issues.

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1 As far as -- as far as the state defunding efforts issue,
2 you know, like I said previously, all of these goals are, you
3 know, listed here as goals. This is a listing for potential
4 donors. This is not a -- a -- not every single one of these
5 points is on the same level. And some of them are probably
6 better described as advantages, or as outcomes, or potential
7 outcomes, rather than a specific goal, you know, because it's
8 not necessarily all things that are directly within our control
9 or within our ability to enact.

10 **Q.** Let me ask you this. Is, in fact, CMP a 501(3) (sic)
11 organization?

12 **A.** Center for Medical Progress is a 501(c)(3), that's
13 correct.

14 **Q.** And you were asked questions about whether or not, as a
15 nonprofit, you can do issue advocacy. Do you have an
16 understanding as to whether or not a nonprofit can, in fact, do
17 issue advocacy if they're not spending more than a substantial
18 portion of their revenues?

19 Do you have an understanding on that, one way or the
20 other?

21 **MS. TROTTER:** Objection. Leading.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** Sure. So a 501(c)(3) nonprofit can
24 certainly do education around specific issues. And educational
25 advocacy around specific issues, raising public awareness,

1 things like that.

2 A 501(c)(3), to my understanding, is not supposed to be
3 directly involved in electioneering, for example. Or, you
4 know, actually, like, endorsing or -- different candidates or
5 trying to affect a specific election.

6 501(c)(3)s are also generally not supposed to be
7 advocating for specific legislation, so, endorsing a specific
8 bill that's in a congress or in a state legislature. Although,
9 it is my understanding that even if a 501(c)(3) can engage in a
10 certain amount of legislative -- legislative -- specific
11 legislative-related activity, if it doesn't exceed a certain
12 minority percentage of their overall revenues or overall
13 activities.

14 So, you know, again, I just think -- you know, promoting
15 something, you know, meaning providing information into the
16 public discourse that has a trickle-down effect for it is
17 different from -- I think that's very different from a goal of,
18 you know: We're going to pass this bill.

19 **BY MR. LIMANDRI**

20 **Q.** Okay.

21 **A.** That's what a 501(c)(3) is prohibited from.

22 **Q.** So as far as your understanding is concerned, has CMP been
23 in compliance with the IRS guidelines?

24 **A.** Yeah, absolutely.

25 **Q.** And you were asked about a form that BioMax signed that

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1 was part of the undercover operation, or you signed for BioMax.
2 Was that signed under penalty of perjury? That one form?

3 **THE COURT:** Could you be specific about the form you
4 are referring to?

5 **MR. LIMANDRI:** Sure. The form was 364. We can
6 display that. That was entered into evidence, I believe by the
7 plaintiffs, Exhibit 364.

8 **THE COURT:** As long as Mr. Daleiden knows what it is,
9 that's --

10 **MR. LIMANDRI:** It's not in there. It was a
11 plaintiffs' exhibit. It's been admitted into evidence.

12 Oh, you've got it, Your Honor. I'm sorry.

13 Can we display it?

14 (Document displayed)

15 **BY MR. LIMANDRI**

16 **Q.** Okay. I believe you were asked if you signed that form
17 as part of the undercover operation?

18 **A.** Yes.

19 **Q.** Does it say anywhere there, you're signing it under
20 penalty of perjury?

21 **A.** No. I reviewed this form very carefully for the
22 organization of BioMax in late 2013, when I filled it out. And
23 there's no requirement on it. Actually, this is different from
24 the CMP incorporation. For the CMP incorporation, there was, I
25 believe, a requirement to sign under penalty of perjury for

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1 organizing an LLC.

2 At this time, in 2013, in the state of California, there
3 was no requirement that this form be submitted under penalty of
4 perjury. And there was -- there's no requirement that the
5 organizer of the LLC listed be an actual -- you know, that you
6 use your legal name in order to form it, so long as there is a
7 valid agent for service of process, which there was, so that if
8 we were sued, the agent could respond and communicate that.

9 But it is my understanding that it's a long-established
10 common-law rule that people can give and receive property under
11 an assumed name. And so this LLC was the Center for Medical
12 Progress's corporate property that was formed under a
13 pseudonym, under an assumed name. Like people using d/b/a's
14 all the time.

15 **Q.** Now, you have been asked multiple questions about using
16 assumed names, or having a BioMax website, BioMax business
17 cards, things of that nature. Was that all part of the
18 undercover operation?

19 **A.** Yes, that's correct.

20 **Q.** Were you purposely trying not to be found out to be doing
21 an undercover operation, so you can find out information
22 consistent with the investigation that you have been
23 describing?

24 **A.** That's correct. We were trying to protect our ability to
25 engage in First Amendment-protected reporting.

DALEIDEN - CROSS / LIMANDRI

1 Q. Before we leave this page of Exhibit 24, which was Page 11
2 of 14, there's a couple more goals on this page I wanted to ask
3 you about.

4 MR. LIMANDRI: If we can return, please, Willow, to
5 Exhibit 24, Page 11 of 14. I got sidetracked there a little
6 bit; I'm sorry.

7 (Document displayed)

8 BY MR. LIMANDRI

9 Q. The next goal in order was No. 5:

10 "Initiate criminal prosecution of clinics and
11 wholesalers."

12 No. 6:

13 "Initiate regulatory proceedings against clinics and
14 doctors."

15 Were these always goals from the outset, if the
16 investigation were to show there had been criminal wrongdoing,
17 to have the law enforced?

18 A. Yes, definitely.

19 Q. And did you actually --

20 MR. LIMANDRI: Turning to Page 7 of 14 of the same
21 exhibit, please, Willow.

22 (Document displayed)

23 BY MR. LIMANDRI

24 Q. Looking at the bottom of this page -- or this exhibit in
25 evidence, it begins the discussion of various federal and then

DALEIDEN - CROSS / LIMANDRI

1 state laws.

2 Did you actually do research into these laws, so that you
3 had a better understanding of what it is you were trying to
4 investigate to determine whether or not there had been
5 violations, and whether or not they should be brought to the
6 attention of law enforcement?

7 **A.** Yes, I did.

8 **Q.** Okay. Does that include what you've listed here at the
9 bottom of Page 7 of 14 for Exhibit 24 -- I'm not going read the
10 full federal statute, but the title is "Prohibition Against
11 Fetal Tissue Purchase." And it reads (As read):

12 "The sale or purchase of human fetal tissue 'for
13 valuable consideration' is a felony under federal law
14 and punishable by up to ten years in prison, and/or a
15 fine of up to \$250,000 for individuals, and \$500,000
16 for corporations."

17 Did you write that?

18 **A.** Yes, I wrote that.

19 **Q.** And that was your understanding of one of the laws you
20 wanted to investigate, to see if that was being violated?

21 **A.** That's correct.

22 **Q.** And would that also be true of the next law, which has the
23 title "Prohibition Against Human Organ Purchase," and it says
24 (As read):

25 "The sale or purchase of human fetal organs..."

DALEIDEN - CROSS / LIMANDRI

1 Again:

2 "... 'for valuable consideration' including tissue is
3 a felony and punishable by up to 5 years in prison
4 and/or a fine of up to \$50,000."

5 What did you understand as part of your investigation and
6 forming your state of mind as to what "for valuable
7 consideration" meant?

8 **A.** So "valuable consideration" as I understood at the time,
9 as I understand it today, basically means the *quid pro quo* of a
10 transaction or what the store of value is in a transaction
11 that's being traded over.

12 And so a prohibition on the transfer or sale or purchase
13 of a human organ for valuable consideration or a fetal organ
14 for valuable consideration, technically, to my understanding,
15 means that the -- the actual human body part, whether from a
16 fetus or an adult, should not be the *quid pro quo* in a monetary
17 transaction. Or in any transaction.

18 It should not be -- you know, you shouldn't be putting
19 dollars and cents value or a market value on human body parts,
20 because that incentivizes people to be separated from their
21 body parts. Right? It's a huge ethical and legal and giant
22 human rights problem. Because if you make -- if you start
23 saying that a fetus's or an adult's body parts are
24 independently market valuable, then you're creating market
25 incentives for human body parts to be cut out and made

DALEIDEN - CROSS / LIMANDRI

1 available to the market.

2 An easier way to think about it or a sort of easy way to
3 try to prove a --

4 **MS. TROTTER:** Objection, Your Honor. Narrative.
5 Move to strike.

6 (Multiple speakers)

7 (Reporter interruption)

8 **THE COURT:** I said "Sustained. Let's move on." Just
9 as Mr. LiMandri said it.

10 **MR. LIMANDRI:** Yes.

11 **BY MR. LIMANDRI**

12 **Q.** The next statute that was listed as Aiding and Abetting
13 Federal Crimes (As read):

14 "Anyone would who aids, abets, or counsels a federal
15 crime to be committed may be punished as if they had
16 committed the crime, themselves."

17 So did you investigate whether or not these laws were
18 being violated, and whether people were helping other people to
19 violate the laws?

20 **A.** Yes. Definitely. So, you know, as we saw in the ABC
21 20/20 broadcast, and as a lot of my research was already
22 telling me in early 2013, fetal trafficking is a complex issue
23 where you have abortion clinics like Planned Parenthood as a
24 supplier, you have middlemen like ABR and StemExpress and
25 others.

DALEIDEN - CROSS / LIMANDRI

1 And so it looks like there's a lot of coordination and a
2 lot of cooperation between these different entities to make
3 fetal organs and tissues available for sale to various other
4 entities. And so --

5 **Q.** That's fine.

6 **A.** Yeah.

7 **Q.** I don't want to cut off and -- let's talk about the next
8 statute. "Federal Funding of Life Fetal Research." And again,
9 in each case, you are listing the actual statute in terms of
10 the citation. But it reads (As read):

11 "The Department of Health and Human Services may not
12 conduct or fund any research or experimentation upon
13 a live *ex utero* fetus."

14 I assume that means a fetus that is out of the mother's
15 body. Is that your understanding?

16 **A.** Yes, that's my understanding.

17 **Q.** Okay.

18 "...unless the research will protect the life/health
19 of the particular fetus. For research conducted on
20 fetuses *in utero*, the risk standard must be the same
21 for fetuses that will be carried to term and those
22 who will be aborted."

23 So you understand this statute to say that research should
24 not be conducted on live fetuses?

25 **MS. TROTTER:** Objection, Your Honor. Lacks

DALEIDEN - CROSS / LIMANDRI

1 foundation, and leading.

2 **THE COURT:** It is leading, but --

3 **BY MR. LIMANDRI**

4 **Q.** What was your understanding of that statute?

5 **A.** So my understanding was that the federal government
6 prohibits federal funds from being spent on live fetal
7 experimentation or on any fetal experimentation that sort of
8 requires the fetus to be delivered alive.

9 And then, comparing that to what Dr. Deisher told me, that
10 a lot of the fetal organs that would be most useful for
11 research or most in demand for research would require the fetus
12 to be delivered alive, it seemed like a big contradiction to me
13 and again a big red flag that the government had been setting
14 its face against this research, and yet, a lot of the published
15 studies seems to require some of the very things that were
16 prohibited.

17 **Q.** Okay. Let's look at one other thing on this page,
18 sticking to Paragraph 2. It specifically mentions things that
19 are required and prohibited. And it says (As read):

20 "The abortionist signs a statement declaring consent
21 for the abortion was obtained before consent to
22 donate the tissue..."

23 And also it mentions:

24 "The timing and method of the abortion was not
25 altered to obtain the tissue..."

DALEIDEN - CROSS / LIMANDRI

1 What was your understanding of what that meant, about the
2 timing and method of the abortion was not to be altered to
3 obtain the tissue?

4 **A.** My understanding -- and this is not a direct quote from
5 the statute. The statute directly actually says:

6 "The timing, method or procedures used to do the
7 abortion..."

8 But my understanding of that is that there's not supposed
9 to be -- the abortion, or even in general, the medical care of
10 a patient is not supposed to be changed for non-medical
11 reasons.

12 And especially in the case of an abortion, the way that
13 the abortion is done should not be changed solely for the
14 non-medical reason of obtaining body parts for sale and
15 experimentation.

16 **Q.** And so was that a part of your investigation into whether
17 infants were born alive, as to whether or not the procedure was
18 changed to do the abortion so as to procure better body parts?

19 **A.** Yes, it was.

20 **Q.** Okay. And to leave off with this Exhibit 24, if we can
21 skip ahead to Pages 12 of 14.

22 (Document displayed)

23 **Q.** At the bottom of the page, it lists consultants. We have
24 already heard of Mr. Newman. And also it says "Mark Crutcher,"
25 I think you mentioned him. And then "Dr. Theresa Deisher."

PROCEEDINGS

1 You described her as:

2 "President of AVM Biotech, a biotechnology company,
3 focused on ethical..."

4 And then the next page says:

5 "...life-affirming regenerative medicine and drug
6 development. Theresa is an expert in the underside
7 of the regenerative medicine industry."

8 So you were informing potential donors that you had
9 consulted with experts in the field? Is that the purpose of
10 that?

11 **A.** That's correct.

12 **Q.** Okay. Let's go back to Exhibit 7129, and see if we can
13 finish up with our roadmap exhibit. I think we're getting
14 towards the end of that.

15 **THE COURT:** Do you think this is a good time for a
16 break?

17 **MR. LIMANDRI:** Sure. That would be fine, Your Honor.
18 Thank you.

19 **THE COURT:** Okay. Why don't we do that.

20 So ladies and gentlemen, let's take our first break in the
21 morning for ten minutes. Please remember the admonitions.

22 (Jury excused)

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

25 **THE COURT:** All right. We will be in recess.

PROCEEDINGS

1 **MR. LIMANDRI:** Thank Your Honor.

2

3 (Recess taken from 9:37 a.m. to 9:50 a.m.)

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

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

7 **THE COURT:** All right. Are we ready to go?

8 **MS. BOMSE:** Your Honor, two quick points before we
9 get the jury.

10 **THE COURT:** Okay. Please be seated, everybody.

11 **MS. BOMSE:** Your Honor, on the slide that's being
12 shown, the roadmap here, there's an icon of Perrin Larton and
13 Linda Tracy.

14 My understanding, based on counsel's representations, is
15 that Linda Tracy's relevance is only as to her expectation of
16 privacy at NAF meetings, which is what the Court ordered. So
17 it would be our expectation that nothing contrary to that would
18 be stated on the stand.

19 **THE COURT:** Okay.

20 **MS. BOMSE:** And we renew our objection to the playing
21 of the audio clip.

22 **THE COURT:** All right. Do you have a transcript for
23 me, or something that I can look at?

24 **MR. LIMANDRI:** I do.

25 **MS. BOMSE:** Well, yes, we have a --

PROCEEDINGS

1 (Off-the-Record discussion between counsel)

2 **MR. LIMANDRI:** This is the only -- audiographic or
3 videographic -- or in this case, audiographic evidence of state
4 of mind that we have.

5 **THE COURT:** I understand that.

6 **MR. LIMANDRI:** Okay.

7 **THE COURT:** I can't rule on something without knowing
8 what's there.

9 **MR. LIMANDRI:** Sure, you can.

10 **THE COURT:** I mean, I could, but --

11 **MR. MIHET:** With respect to Ms. Larton and Ms. Tracy,
12 this witness is going to testify as to what he learns from them
13 prior to the first recording in California, that that was
14 relevant to his state of mind and his investigation.

15 That's a separate issue as to why we're seeing seeking to
16 depose Ms. Tracy, which is to obtain evidence as to her
17 reasonable expectation of privacy at the NAF conference. So I
18 don't understand Your Honor to limit us to asking this witness
19 about the NAF conference. We can ask him about what he learned
20 from her, prior to first recording.

21 **THE COURT:** Yeah, that's my understanding of --

22 **MR. MIHET:** Okay.

23 **THE COURT:** I don't remember Ms. Tracy. I remember
24 Ms. Larton, and that's certainly true for her. And I would
25 think that the same reasoning would apply, unless there is

PROCEEDINGS

1 something else that I'm missing.

2 **MR. MIHET:** I thought Ms. Bomse was arguing for
3 something else.

4 **THE COURT:** I think she might have been.

5 **MR. MIHET:** Okay.

6 **THE COURT:** But I'm just not sure. Ms. Bomse, do you
7 want to remind me about something that I've ruled on?

8 **MS. BOMSE:** It's never been brought to our attention
9 that Ms. Tracy made any statements to Mr. Daleiden, as opposed
10 to Ms. Larton. We all have access to the same recording of
11 Ms. Tracy.

12 But, but no, I think that Mr. Mihet is right, that the --
13 that the focus was on what she would say in her deposition.

14 **THE COURT:** Okay. So, so -- so who handed me this
15 (Indicating), and what am I supposed to look at?

16 **MR. LIMANDRI:** Your Honor, it starts with the first
17 pink line and ends with the second pink line. The transcript
18 is longer than the actual recording we would intend to play.

19 **THE COURT:** Let me just take a quick look.

20 **MS. BOMSE:** And Your Honor --

21 **THE COURT:** Let me read this, if I may, and then we
22 can talk about it.

23 **MS. BOMSE:** Sure.

24 (A pause in the proceedings)

25 **THE COURT:** All right. Ms. Bomse, did you want to

PROCEEDINGS

1 say something about this?

2 **MS. BOMSE:** Yes, Your Honor. This is a recording
3 that does not -- is an individual talking, doesn't have any
4 connection to Planned Parenthood. In fact, they are
5 specifically talking about clinics that are not Planned
6 Parenthood clinics.

7 Again, this is not a conversation that was disclosed in
8 any of the prior lengthy exposition as to what the basis for
9 this investigation was. And we object to it on 403 grounds,
10 and on relevance, and lack of prior disclosure.

11 And I'm happy to identify the specific parts that concern
12 us, for the record. It's difficult because this -- but in any
13 event, it's at 31:11 through 18.

14 **THE COURT:** I'm not sure that I can -- okay. 31.

15 **MS. BOMSE:** And continuing on at 32, Lines 12 through
16 18. These are discussions of -- by someone who we don't know
17 who it is, of abortion procedure.

18 And then there's further discussion of a particular
19 practitioner and how he performs abortions at 35:15 to 22.
20 That's not a Planned Parenthood physician. Has no relevance to
21 our clients. It's --

22 **THE COURT:** So, I understand that. I think those
23 points can be brought out on cross-examination. I acknowledge
24 your point regarding disclosure. But I'm going to allow it
25 anyway.

DALEIDEN - CROSS / LIMANDRI

1 So, you can play it.

2 **MR. LIMANDRI:** Thank Your Honor.

3 **MS. BOMSE:** Thank Your Honor.

4 **THE COURT:** Yeah. Are we ready for the jury now?

5 **MR. LIMANDRI:** Yes, Your Honor.

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

8 **THE COURT:** All right. Please be seated, everybody.
9 Mr. LiMandri, please go ahead.

10 **MR. LIMANDRI:** Thank you, Your Honor.

11 **CROSS-EXAMINATION RESUMED**

12 **BY MR. LIMANDRI**

13 **Q.** When we were last looking at this roadmap exhibit, which
14 is 7129, the next item up was discussions you had with Perrin
15 Larton and Linda Tracy. Again, discussions that would have
16 taken place before April, 2014.

17 Can you tell us when you spoke to Perrin Larton, and
18 where?

19 **A.** Sure. So after CMP had been incorporated, and -- and the
20 project had kind of begun full-time in earnest with some donors
21 contributing after the project proposal document and everything
22 like that, in June of 2013, with a friend, I attended the --
23 the 2013 annual meeting of the International Society for Stem
24 Cell Research because I saw that Advanced Bioscience Resources
25 was going to have an exhibit booth there, and they were going

DALEIDEN - CROSS / LIMANDRI

1 to be in the exhibit hall.

2 So I attended there to start to meet and interview the
3 principals of Advanced Biosciences Resources to begin the
4 investigation that way.

5 I had been, a couple of months prior --

6 (Alarm sounds)

7 **THE COURT:** This is a test, this is only a test.

8 This happens on Tuesdays at this time, most of the time. But I
9 think it was also a sign.

10 (Laughter)

11 **THE COURT:** So I think, Mr. Daleiden, you had
12 answered the question that you were asked. And Mr. LiMandri
13 will ask you a new question.

14 **BY MR. LIMANDRI**

15 **Q.** Having placed the conversation in time and place, can you
16 tell us what information that you learned in the conversation
17 with Perrin Larton that was significant to your investigation
18 and in forming your mental state as to the crime of violence
19 against a person?

20 **A.** Yes. Perrin Larton, as the procurement manager of
21 Advanced Bioscience Resources, told me in my conversation with
22 her at ISSCR at their booth in 2013 that as procurement
23 manager, in her work inside the clinics that ABR harvested
24 organs from, she had sometimes seen patients come in for an
25 abortion. And they would get out of the abortion room -- out

DALEIDEN - CROSS / LIMANDRI

1 of the operating room, very, very quickly, much faster than she
2 was expecting, while she was waiting for the fetal tissue
3 afterwards. And she would be told that the patient had
4 actually suddenly delivered the fetus in the operating room.

5 And so -- and so she would just get a completely intact
6 fetus for procurement in those situations. And she said that
7 in -- as a contrast to -- she told me normally, obviously, the
8 goal in a later abortion is not to have a live birth, but then
9 she told me this story about these cases of the patient
10 delivering very quickly in the operating room, as a contrast to
11 what normally happens in an -- in a later abortion where you
12 don't have a life birth. So --

13 **Q.** Was it your understanding that ABR was procuring fetal
14 tissue and organs from Planned Parenthood at that time?

15 **MS. TROTTER:** Objection, leading. Lacks foundation.

16 **THE WITNESS:** I understood --

17 **THE COURT:** Overruled. You can answer.

18 **THE WITNESS:** At that time -- in June of 2013, I
19 understood that ABR had procured fetal organs and tissues from
20 Planned Parenthood, from plaintiffs Planned Parenthood
21 Mar Monte. I did not know at that time if the relationship
22 with Mar Monte continued.

23 I also had some sense that ABR was working with many
24 different clinics around the country, and I wasn't sure which
25 ones were from Planned Parenthood and which were not. I

DALEIDEN - CROSS / LIMANDRI

1 learned from Perrin Larton in that conversation in June, 2013,
2 that one of their main harvesting sites was in San Diego. And
3 I strongly suspected at that time in June 2013 that that was
4 plaintiffs Planned Parenthood of Pacific Southwest, although I
5 did not confirm that until a couple of months later in 2013.

6 **Q.** Was it your understanding from what she told you, if the
7 woman delivered the fetuses before it can be aborted, they
8 were, in some cases at least, alive fetuses?

9 **A.** Yes. It was my understanding --

10 **MS. TROTTER:** Objection, Your Honor. 403. Move to
11 strike.

12 **THE COURT:** It's been asked and answered. Sustained.

13 **BY MR. LIMANDRI**

14 **Q.** Was it your understanding that the fetuses that she was
15 describing that were born were still used for harvesting fetal
16 tissue and organs?

17 **MS. TROTTER:** Same objection.

18 **THE COURT:** If you know the answer to that question,
19 you can answer.

20 **THE WITNESS:** Can I get the question one more time?

21 **BY MR. LIMANDRI**

22 **Q.** Was it your understanding from what she described, that
23 the fetuses that were born in that manner were still given up
24 to have harvesting of tissue and organs?

25 **A.** Yeah. In the context of the conversation that I had with

DALEIDEN - CROSS / LIMANDRI

1 her, she was describing a situation where she was specifically
2 waiting for the abortion to finish so that she could procure
3 the fetal organs and tissues afterwards. And she described
4 being surprised that the patient was out of the operating room
5 in three minutes, because that seemed like too short a time.
6 And so she's wondering, you know: Where's my fetal tissue?
7 Because I'm waiting here, and she's gone in three minutes;
8 what's going on?

9 And then the clinic told her: Well, the fetus was already
10 in the vaginal canal; when we put her in the stirrups, it just
11 fell out.

12 And so my understanding is that this -- she was describing
13 a harvesting case. A case where she was waiting for the fetus
14 for harvesting. That would mean that the digoxin had not been
15 used; the feticide could not be used because that would fill
16 the fetus and spoil the organs before they could be harvested.

17 **MS. BOMSE:** Objection, Your Honor. Lacks foundation,
18 403. Move to strike.

19 **THE COURT:** Overruled.

20 **BY MR. LIMANDRI**

21 **Q.** You can finish.

22 **THE COURT:** I think he has. Let's go on.

23 **MR. LIMANDRI:** Okay.

24 **BY MR. LIMANDRI**

25 **Q.** Let's talk about Linda Tracy and what you learned from

DALEIDEN - CROSS / LIMANDRI

1 her.

2 **A.** Sure. So, Linda Tracy, I had met sort of by -- by
3 telephone, or was connected to a couple months prior, after a
4 -- after a film festival screening for a documentary on later
5 abortion or on late-term abortion that I attended in April,
6 2013, at UC Berkeley. And so, some people there connected me
7 to Linda Tracy.

8 I was sort of practicing some of the undercover character
9 at that time for the investigation. And --

10 **THE COURT:** Mr. LiMandri -- yeah. Thank you.

11 **BY MR. LIMANDRI**

12 **Q.** Who was Linda Tracy? Who did she work for? What did she
13 do? Do you know?

14 **A.** Sure. So Linda Tracy is the CEO and founder of Advanced
15 Bioscience Resources. So I'd been sort of remotely connected
16 to her a couple of months prior to June 2013. And then at the
17 ABR booth, at their exhibit booth at ISSCR in 2013, I actually
18 met her.

19 After I had been talking to Perrin Larton for maybe
20 approximately 20 minutes or so, Linda came to the booth. And
21 so I was talking to both of them. And --

22 **Q.** Tell me what you learned from Linda Tracy.

23 **A.** So, Linda -- Linda corroborated some of what Perrin said
24 about fetuses that could -- could fall out and just be
25 available intact in some -- in certain cases.

DALEIDEN - CROSS / LIMANDRI

1 And she also told me about another -- so this would now
2 sort of be, I guess, the third middleman wholesaler company
3 that I was learning about at this time. She told me about a
4 company called Novogenix Laboratories that was based in
5 Los Angeles, and was connected to fetal organ and tissue
6 harvesting and sales. And so that was the first time I heard
7 of this company, Novogenix. And I would later learn more about
8 that as the investigation went on.

9 **Q.** What did you do with that information regarding Novogenix
10 which you learned from Perrin Larton and Linda Tracy?

11 **A.** I looked them up. I found their website. I saw that they
12 were based in southern California, in Los Angeles. And so that
13 naturally made me wonder if they were working with Planned
14 Parenthood in Los Angeles, or if they were working with other
15 abortion clinics in southern California; how big their supply
16 network was. Things like that.

17 **Q.** Did you find information in that regard?

18 **A.** No. They didn't put any of that on their website, so I
19 did not learn about those details about Novogenix until later
20 in the undercover investigation.

21 **Q.** Thank you for that.

22 Let's talk about the AHRP 2013 interviews. Can you tell
23 us what AHRP is first, please? And then I'll ask another
24 question.

25 **A.** ARHP stands for the Association of Reproductive Health

DALEIDEN - CROSS / LIMANDRI

1 Professionals, which I believe is no longer an existing
2 organization. They closed down, like a year or so ago.

3 But at that time, at this time in 2013, I understood ARHP,
4 from what they advertised publicly on their website, they held
5 a conference every year. And they advertised this conference
6 as sort of a -- like an intake point or an entry point for sort
7 of mainstream people to come further into the world of abortion
8 practice. And so ARHP was sort of like the entry-level
9 abortion conference, in a way.

10 **Q.** And did you attend that conference?

11 **A.** So for their annual meeting in September, 2013, Sandra
12 Merritt working for CMP and Brianna Baxter, posing as Susan
13 Tennenbaum and Brianna Allen, attended ARHP in September 2013
14 in Denver, Colorado, representing BioMax Procurement Services.

15 I was on site at the hotel, although I did not actually go
16 undercover during that meeting. So I was sort of like mission
17 control from the hotel room.

18 And Susan and Brianna would go down, and they had their
19 video cameras on, and they would be doing the undercover
20 investigation at that conference for -- I think it was about
21 three days that it lasted, and then I was in the hotel room,
22 and I would receive the footage when they would come back, and
23 we would talk about what they found, and sort of identify where
24 they should go next.

25 **Q.** Okay. We'll talk about that more in a minute.

DALEIDEN - CROSS / LIMANDRI

1 But I wanted to ask you, did you also do some
2 investigation regarding PPGC before April, 2014?

3 **A.** Yes, I did. Plaintiff Planned Parenthood Gulf Coast.

4 **Q.** And what did you find out in that regard?

5 **A.** So Planned Parenthood Gulf Coast was very interesting, at
6 this -- in this timeframe of kind of 2010 to 2013. Because on
7 their website, on the Planned Parenthood website, they had a
8 page for their research department at Planned Parenthood Gulf
9 Coast. And they listed all the different services that the
10 research department could provide. And one of them was the
11 provision of fetal tissue.

12 And I just thought that was really interesting and
13 significant, that Planned Parenthood of Coast was openly
14 advertising on their website that they could supply aborted
15 fetal tissue. And that made me think that Gulf Coast probably
16 had a -- probably did this all the time, that they had a big
17 experience with that, because it was something they were openly
18 advertising on the internet.

19 **Q.** Did you learn any additional information about that
20 program at that time?

21 **A.** Yes, I did.

22 **Q.** What did you learn?

23 **A.** I learned -- in 2011, I learned that Planned Parenthood
24 Gulf Coast had had a relationship for several years with a
25 local biotech company in Houston called Amphioxus Cell

DALEIDEN - CROSS / LIMANDRI

1 Technologies. And I was told that Amphioxus would come into
2 Planned Parenthood Gulf Coast or --

3 **MS. TROTTER:** Objection, Your Honor, and move to
4 strike, based on the Court's prior rulings.

5 **THE COURT:** Sustained.

6 **MR. LIMANDRI:** Okay.

7 **BY MR. LIMANDRI**

8 **Q.** Did some of the fetal tissue companies -- we saw a price
9 list. Did they oftentimes pay per specimen, price per -- per
10 specimen?

11 **MS. TROTTER:** Objection, Your Honor. Lacks
12 foundation.

13 **THE COURT:** Sustained.

14 **BY MR. LIMANDRI**

15 **Q.** Okay. Do you know if Planned Parenthood was paid in some
16 of its locations per fetal tissue, or per fetal specimen?

17 **MS. TROTTER:** Objection, Your Honor. Lacks
18 foundation.

19 **THE COURT:** Sustained.

20 **BY MR. LIMANDRI**

21 **Q.** Let's take a look, if we could, please, at Exhibit 683,
22 which was admitted into evidence yesterday on plaintiffs'
23 examination, calling specific attention to Page 3.

24 (Document displayed)

25 **MR. LIMANDRI:** I said "683," but -- is that correct?

DALEIDEN - CROSS / LIMANDRI

1 If we go to the third page of 683.

2 **BY MR. LIMANDRI**

3 **Q.** And you will see at the bottom of the page, you wrote as
4 "Robert Sarkis" to Dr. Mary Gatter. And said the
5 second-to-the-last sentence on that page (As read):

6 "If I recall correctly, I think you said your
7 affiliate goes up to sixteen weeks now? Are you
8 partnered with anyone for specimen donation
9 currently?"

10 And then she responds in the next email.

11 **MS. TROTTER:** Objection, Your Honor. Based on timing
12 of the emails contained in the exhibit, lacks relevance, and
13 403.

14 **MR. LIMANDRI:** This is in evidence, Your Honor.

15 **THE COURT:** Yeah, overruled.

16 (Document displayed)

17 **BY MR. LIMANDRI**

18 **Q.** Her response to you, which is, yeah, dated December 14,
19 2014, states in the parenthetical at the end, the third line
20 down (As read):

21 "And BTW..."

22 I believe that's "by the way."

23 "...when she writes that 'a portion of the fee will
24 be returned to you' how does that work? In the past
25 when I participated in tissue donation programs,

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1 there was a set fee per specimen. Are you handling
2 that in some different way? Thanks, Mary Gatter."

3 Did you take from that that her Planned Parenthood
4 affiliate had been paid per specimen for fetal tissue and
5 organs?

6 **A.** Yes, I did.

7 **MS. TROTTER:** Objection, Your Honor, and move to
8 strike, as to time. There's no time connection between this
9 and the events that --

10 **THE COURT:** There's a different time. There's --
11 that's true. This document is in evidence.

12 The question was leading. So let's start again.

13 **BY MR. LIMANDRI**

14 **Q.** What did you understand her to mean by what she wrote that
15 I just read into the record?

16 **A.** I understood that Dr. Gatter was confirming in this email
17 that when she had previously done tissue procurement at Planned
18 Parenthood Los Angeles, they were paid per fetal specimen.

19 **Q.** And what is that concept significant to you?

20 **A.** It was very significant to me.

21 **Q.** Why is that?

22 **A.** Because, number one, that means that the *quid pro quo* in
23 the transaction is over the fetal tissue, over the fetal body
24 part, or potentially, over the entire fetus, itself. So that
25 puts a direct market incentive on the -- the quantity or the

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1 volume of fetal tissue that the Planned Parenthood clinic can
2 provide to the middleman wholesaler company.

3 A financial incentive for a higher quantity of body parts
4 or a higher quantity of usable specimens would then mean an
5 incentive for intact fetuses to be delivered.

6 **Q.** Thank you. Okay. Let's go back to Exhibit 7129, and we
7 will finish up with the roadmap, please.

8 (Document displayed)

9 **Q.** What else did you learn at the ARHP conference in 2013?

10 **A.** So I learned quite a few different things at ARHP in 2013.
11 The first thing that I learned just from the process of
12 registering Susan and Brianna to attend that meeting is that it
13 seemed like there was no screening or vetting whatsoever to
14 attend an abortion industry conference.

15 We registered them on the internet. It was an open online
16 registration, advertised to the public. Just pay the fee, and
17 they let them come in. They didn't even check Susan's ID or
18 have her sign anything when she came in, is what she told me.

19 And once we were there at the ARHP 2013 meeting, there
20 were several different significant things that happened,
21 several different significant conversations that were recorded,
22 and that I reviewed the recordings afterwards.

23 The first was -- was that Susan and Brianna met two
24 representatives from the National Abortion Federation, Jennifer
25 Hart and Sandy Fulkerson Schaeffer, who were there as

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1 exhibitors for the National Abortion Federation. And they met
2 Susan and Brianna, and they invited the two of them to join
3 NAF's group purchasing program. They said they really liked
4 the idea of the business model that they were describing for
5 BioMax, as a new startup, to come in inside the clinics and
6 harvest tissue, and then return a portion of the fees to the
7 clinic in exchange.

8 So they said they really liked that, thought that a lot of
9 their members would be interested. And, said that Susan and
10 Brianna should have BioMax join the group purchasing program
11 and get in touch with the group purchasing manager at NAF, to
12 come in and exhibit at the next NAF meeting, which they told
13 them would be in April in San Francisco.

14 And this is -- you know, as -- as Susan and Brianna
15 basically coming in as people off the street, with no prior
16 relationship at all with anybody at ARHP. And they were
17 telling them that that the meeting would be in April in
18 San Francisco.

19 The second really significant conversation that we
20 recorded at ARHP was a conversation that Susan and Brianna had
21 with a woman named Ruth Arick, who said that she was a business
22 consultant for abortion clinics across the country. So
23 basically, someone who used to run clinics, herself, in the
24 past, and was now coaching people on how to run, like, a
25 bigger, more successful abortion clinic.

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1 And they had a really extensive conversation for about 12
2 to 15 minutes with Ruth Arick about the -- just the different
3 kind of business requirements for a successful fetal organ and
4 tissue procurement program to be operating inside an abortion
5 clinic.

6 And Ruth Arick confirmed a lot of the allegations from the
7 ABC 20/20 episode, as well as a lot of the issues that I have
8 been looking into at that time. She told them explicitly on
9 the recording that --

10 **Q.** Why don't we listen to the recording, and then I might
11 have some followup questions. It's been marked for
12 identification as Exhibit 5915.

13 **MR. LIMANDRI:** I propose at this time that we play
14 from minute marks 2501 to 3801, Your Honor. It's an audiotape,
15 not a videotape.

16 **THE COURT:** All right.

17 **MR. LIMANDRI:** Thank you.

18 **THE COURT:** It's admitted. Go ahead.

19 (Trial Exhibit 5915 received in evidence)

20 (Audiotape played, not reported)

21 **THE COURT:** Mr. LiMandri, I'm not following this.

22 Could you stop the recording for just a second?

23 (Audiotape stopped)

24 **MR. LIMANDRI:** Is it not tracking?

25 **THE COURT:** Maybe I'm looking at the wrong thing, but

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1 I thought we were starting at 2501.

2 **MR. LIMANDRI:** That was my intention, 2501 to 3801.

3 So we have to try to synch the transcript with the audio.

4 Are we able to do that? Or should I come back? I can
5 come back if you need a couple more minutes.

6 **MR. MIHET:** I think that is.

7 (A pause in the proceedings)

8 **BY MR. LIMANDRI**

9 **Q.** While we're waiting for them, Mr. Daleiden, to see if they
10 can get the transcript and the audio in synch, it might save
11 some time if you tell us your understanding of the significance
12 of what we hope to be able to play, in terms of how it formed
13 your state of mind in this investigation.

14 **A.** Sure. So like I was saying, Ruth Arick confirmed a lot of
15 the major points from the ABC 20/20 broadcast, as well as the
16 other things that I've been hearing and researching for the
17 past couple of years there.

18 She told Susan and Brianna that in order to have a
19 successful fetal tissue procurement business, they should find
20 clinics with abortion doctors who were willing to change the
21 way that they were doing the abortions. She said specifically
22 to find doctors who were willing to over-dilate the patients
23 before the abortion, so to do a bigger degree of dilation than
24 what they would normally do, just for the reason that you would
25 be able to get more intact fetal specimens that way.

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1 Ruth Arick specifically told us that that would be a --
2 that that could potentially present a risk to the patient, and
3 so some doctors might be uncomfortable with that, but basically
4 you should do it anyway if you're trying to get intact fetal
5 specimens. She said that some researchers were seeking
6 completely intact fetuses at different gestational ages.

7 She also said that the chemical digoxin was being used a
8 lot by a lot of different clinics, because they were worried
9 about the federal ban on partial-birth abortion, they were
10 worried about infants being born alive in later procedures, so
11 they were using digoxin to kill the fetuses ahead of time.
12 But, she said, so that's another thing you have to look for;
13 find the clinics that aren't using digoxin at the gestational
14 ages you want because that's -- you know, that's how you're
15 going to get the fresh and viable fetal tissue that researchers
16 want.

17 **MR. LIMANDRI:** I think we can stop there and,
18 hopefully, the video is ready to play.

19 Thank you, Your Honor.

20 **THE COURT:** The audio. Yes, go ahead.

21 (Audiotape played in open court, not reported)

22 **BY MR. LIMANDRI**

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

24 **BY MR. LIMANDRI**

25 **Q.** There was a couple terms there I'm not sure there were

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1 self-evident. They used the term "Dig," what's that short for?

2 **A.** "Dig" is short for Digoxin, for the feticide chemical
3 that's used to kill the fetus before the abortion is done.

4 **Q.** Okay. And they used the term "PBA." What is that short
5 for?

6 **A.** PBA stands for partial-birth abortion, meaning the federal
7 law against performing a partial-birth abortion on a living
8 fetus.

9 **Q.** Okay. And I feed to confirm the speaker was, in fact,
10 who?

11 **A.** The speaker -- well, you heard a couple of speakers on
12 there, but the abortion side speaker was Ruth Arick, who is a
13 consultant with Choice Pursuits Consulting. I think they are
14 based out of Florida.

15 And then you also heard Sandra Merritt posing at Susan
16 Tennenbaum, and Brianna Baxter posing as Brianna Allen.

17 **Q.** Was it Ruth Arick then who said that some of the
18 physicians are willing to change the abortion procedure?

19 **A.** That's correct. That's what Ruth said.

20 **Q.** Okay. Let's go back to Exhibit 7129 and see if we can
21 finish that up.

22 Was there anyone else that you met at that ARHP
23 conference? I had some other names in my outline, including
24 Dr. Lisa Harris, but I wasn't sure if I had her in the right
25 place.

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1 **A.** Yes. There were a couple of other people that we met
2 during that conference and what they said was significant to
3 the investigation. The first was Dr. Lisa Harris, who was a
4 medical director for Planned Parenthood of Michigan, and I
5 believe actually one of the Reputation.com invoices that these
6 plaintiffs are suing for.

7 And Dr. Harris told us at -- told Susan and Brianna at
8 the ARHP -- or told Susan at the ARHP meeting that her Planned
9 Parenthood clinic Ann Arbor, Michigan was one of the places
10 where they did a lot of fetal tissue collection for different
11 local researchers and local experiments, but she said that it's
12 something that is kept very, very quiet. And so it's something
13 that -- so to me, that sounded like it's something that's
14 widespread and a lot of people know that it's going on, but
15 it's being kept very quiet and that's why you have -- we
16 haven't seen anything about it in the news now for about the
17 was 13 years basically.

18 And so that was just -- you know, it was significant to me
19 because the conversation with Ruth Arick, you know, happened in
20 a crowded exhibit hall that was just right off from the lobby
21 of this hotel; that, again, this was a conference where anybody
22 from the outside could pay \$400 and come and attend. And they
23 were willing to have conversations like this in this incredibly
24 open space and, yet, they aren't being public about it in terms
25 of they weren't disclosing the facts of these programs going on

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1 to the general public elsewhere.

2 **Q.** Thank you.

3 Did you also talk to a Katharine Sheehan and a Mary
4 Fristad (phonetic spelling) there at that conference?

5 **A.** Yes, yes. So Susan and Brianna also met a woman named
6 Mary Fristad, who I recognized her name as someone who had
7 worked at Planned Parenthood Federation of America at their
8 Consortium of Abortion Providers group focusing on expanding
9 their abortion programs in different states.

10 And Mary Fristad told them that she had previously done
11 clinical work at Planned Parenthood Pacific Southwest and they
12 had done a lot of fetal tissue procurement there at Planned
13 Parenthood in San Diego. And she directed them to talk to
14 Dr. Katharine Sheehan, who was the medical director for many
15 years and I guess had just retired, like, that weekend of the
16 conference.

17 And so Dr. Sheehan was there. Susan and Brianna met
18 Dr. Sheehan. I recognized her name from the -- from the sworn
19 testimony that she had given in court previously during the
20 partial-birth abortion cases.

21 And Dr. Sheehan confirmed directly for Susan and Brianna
22 on the video recording that they then gave to me that
23 plaintiffs Planned Parenthood Pacific Southwest had been
24 working with Advanced Bioscience Resources for over ten years
25 at that point, and she said that they had just renegotiated

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1 their contract because ABR was doing big government level
2 collections of aborted fetal organs and tissues.

3 And I thought that that was really weird, that they would
4 talk about renegotiating a contract with a middleman wholesaler
5 company when the law says you're just supposed to, you know,
6 get reimbursed for your actual costs for fetal tissue. It
7 didn't make sense to me that you would have a renegotiation if
8 it -- it should be pretty obvious. If there is an agreement to
9 reimburse costs, then you would expect that just to continue
10 regardless. Why would there be a renegotiation unless you were
11 trying to get more money for the body parts?

12 And then hearing about big government level collections,
13 that -- that reminded me of the -- at the ISSCR meeting, at the
14 stem cell meeting where ABR had been exhibiting, there was a
15 lot of conversations about something called GCMP [sic], for
16 different stem cells and human biological specimens and
17 tissues. It stands for Current Good Manufacturing Practices --

18 **Q.** We're going to need to move on.

19 Is there just a final point you wanted to make on that
20 issue?

21 **A.** Which is something that requires very fresh, high quality
22 like transplantable grade fetal organs.

23 **MS. TROTTER:** Objection, Your Honor. Move to strike
24 this narrative.

25 **THE COURT:** Sustained.

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1 **BY MR. LIMANDRI**

2 **Q.** Was there anything else that happened at that ARHP
3 conference that was significant to informing your mental state
4 and your investigation, or have you now talked about all of
5 that?

6 **A.** Those are -- those are all the main points that I remember
7 sitting rear right now.

8 **Q.** Okay, good. Thank you.

9 Let's finish up then with our road map, Exhibit 7129.

10 (Document displayed)

11 **Q.** It mentions next Holly O'Donnell. Can you tell us who she
12 was, without getting into what she told you at this point?

13 **A.** Yeah. Holly O'Donnell was a very special girl who was a
14 local Sacramento person. She was, I think, a year younger than
15 me. She worked for StemExpress as a procurement technician,
16 working inside clinics of plaintiffs Planned Parenthood
17 Mar Monte and Planned Parenthood Northern California.

18 I found Holly through a Facebook search in October of 2013
19 for people who either were working at StemExpress or who had
20 just recently worked at StemExpress. So she had quit in, I
21 guess, April of 2013.

22 So I had about a two-hour long phone conversation with her
23 at the beginning of October 2013.

24 **Q.** Okay. Without getting into the content of anything
25 further, was she able to confirm or corroborate what you had

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1 already learned and discussed with the jury this morning?

2 **A.** Yes, every word of it.

3 **Q.** Okay. And did you talk with anyone else from StemExpress
4 to confirm whether what Holly O'Donnell had told you was true?

5 **A.** Yes, I did.

6 **Q.** Who else did you speak to?

7 **A.** I spoke to several different people all before April 2014,
8 which was the first NAF conference in this case.

9 I spoke to Christie Rebolcaba, who was the laboratory
10 manager of StemExpress, and Christie confirmed for me that not
11 only was Dr. Ronald Berman from Planned Parenthood Mar Monte
12 the medical director for StemExpress, but the entire
13 StemExpress laboratory and their office in Placerville was
14 being run under his medical license.

15 Christie Rebolcaba also told me --

16 **MR. LIMANDRI:** I don't remember your ruling on that.
17 Can we explore what this person told him?

18 **THE COURT:** I haven't heard -- at the moment I
19 haven't heard anything about this person, so I don't know
20 anything about her.

21 **MR. LIMANDRI:** Okay.

22 **BY MR. LIMANDRI**

23 **Q.** What else can you tell us about this person?

24 **A.** About what she told me or about who she is?

25 **Q.** Who is she.

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1 **A.** So Christie Rebolcaba had worked for a really big biotech
2 company called Genentech for many years and had done a lot of
3 stem cell work with them. And so that's why StemExpress had
4 hired her on, to run the stem cell isolation laboratory inside
5 StemExpress's office in Placerville.

6 So sometimes StemExpress would sell a whole fetal organ
7 and sometimes they would take the body part back to their
8 laboratory, pull all the stem cells out of it, put it in a vial
9 and sell the vial for -- for even higher prices.

10 **Q.** Had she been able to corroborate what you had previously
11 learned in your investigation?

12 **A.** Yes, she was.

13 **Q.** Was there anyone else from StemExpress that you spoke to
14 in that regard?

15 **A.** Yes, there were.

16 **Q.** Who else?

17 **A.** I also spoke with Bob Reboin, who was at the time the --
18 well, he quit as well, actually, in the fall of 2013, but he
19 had been the marketing director for StemExpress.

20 **MS. TROTTER:** Objection, Your Honor. Lack of
21 disclosure and move to strike.

22 **THE COURT:** All right. If these weren't disclosed,
23 let's push on.

24 **MR. LIMANDRI:** I don't know if they were or not at
25 this point. I know Kristen Leu was.

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1 BY MR. LIMANDRI

2 Q. Tell us who she was?

3 A. Kristen Leu was another former StemExpress employee. They
4 had a lot of turnover there. She had been -- I believe her
5 exact title was Procurement Liaison Manager. And she described
6 that to me as basically being in charge of fetal tissue
7 procurement in sort of the Bay Area region for -- for
8 StemExpress.

9 Q. And did she also confirm the same information you learned
10 from Holly O'Donnell?

11 A. Yes, and she went even further.

12 Q. Okay. And that corroborated what you had investigated up
13 to this point in time as well?

14 A. Yes, it did.

15 Q. Okay. And this investigation had been going on for how
16 long at this point?

17 A. At this point -- so I met Holly and spoke with Christie
18 and Bob in October of 2013, and I think I probably continued
19 speaking with them through November of 2013.

20 I spoke with Kristen Leu in either December of 2013 or
21 January of 2014.

22 And I spoke with Sarah Heuston, the former procurement
23 manager for StemExpress. So she would have been the parallel
24 for StemExpress of Perrin Larton for ABR. I spoke with Sarah
25 Heuston in February of 2014.

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1 Q. This was all before --

2 MS. TROTTER: Objection. It's not disclosed.

3 THE COURT: All right. Let's stick with people who
4 were disclosed.

5 MR. LIMANDRI: He was deposed for two days, Your
6 Honor. I don't remember who all --

7 THE COURT: I'm sure you do --

8 MR. LIMANDRI: I don't.

9 THE COURT: I have great confidence in your ability
10 as a lawyer, Mr. LiMandri. I'm sure you know what happened in
11 the depo.

12 MR. LIMANDRI: I appreciate that.

13 BY MR. LIMANDRI

14 Q. I know you spoke to Holly O'Donnell and Kristen Leu, and
15 they did corroborate what you had found.

16 Tell me, was all of this prior to the first undercover
17 video in California in February 2014?

18 A. Yes, that's correct. All of this was prior to the first
19 undercover filming in California in April of 2014.

20 Q. Okay. And you were deposed for two full days; correct?

21 A. Yes. In this case I was. They took my deposition for two
22 full days.

23 Q. Did you try at that time to disclose all the information
24 to the best of your memory at that time?

25 A. Yes. And they sometimes cut me off, the same way that

1 they do here.

2 **Q.** That's fine.

3 Let's talk a little bit -- we have one more person on the
4 road map and then we're done with it. Who was Dr. Janet Smith?

5 **A.** So Dr. Janet Smith is a Vatican level moral theologian in
6 the Catholic church. She's a -- she's someone that I was
7 connected to through some friends back in 2013. I had actually
8 met her briefly as a teenager in 2005, but professionally
9 connected to in 2013, and Dr. Smith is someone that I wanted
10 to --

11 **Q.** Of course you can tell me --

12 **A.** -- or, I guess --

13 (Simultaneous crosstalk.)

14 **Q.** I've got to ask you a question, but you can talk about
15 what she said.

16 Okay. Why did you consult with Dr. Smith? And then we'll
17 get into what your discussion was.

18 **A.** Sure. I consulted with Janet Smith for two reasons.

19 The first reason was that there was -- there was a certain
20 concern among a lot of the -- not a lot, but among some, a
21 sector of the potential donors for the Center for Medical
22 Progress. There had been a lot of debate online in the sort
23 of -- in their sort of circles.

24 At the time that I was finishing up my work at Live Action
25 and then transitioning to the Center for Medical Progress,

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1 there had been a lot of, like, lively discussion about the
2 ethics of undercover work basically, and is it permissible?
3 You know, are police allowed to do it? Is it okay for
4 reporters to do it? You know, thou shalt not lie. Like, is it
5 always a lie? Is it always wrong? Is it always sinful? Is it
6 always disrespectful to whoever is the subject of the
7 undercover investigation?

8 There had been a lot of sort of fraught discussion about
9 that among different circles in some of these, like, sort of
10 Catholic blogosphere places in late 2011 throughout 2012.

11 So some of these potential donors were concerned about
12 that and wanted to go a little deeper and understand a little
13 bit more before -- before making the decision about whether or
14 not to support another big undercover journalism project.

15 **Q.** Why did you seek out Janet Smith? Why was she the person?

16 **A.** So Janet Smith is a -- is a highly respected and highly
17 published Catholic moral theologian. She's Vatican level. She
18 sat on multiple, like, top level Vatican, like, commissions on
19 different things.

20 So she -- she was a very good source of authority for
21 people who were trying to understand, you know, what are the
22 ethics about -- you know, can some lies or some falsehoods
23 actually be virtuous and actually be something that helps
24 somebody? Can they be necessary to save a life, or things like
25 that. Where does it cross the line? Where does it become

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1 something that, you know, there is no way that it's charitable.
2 There is no way that it's good, and it's definitely something
3 bad that nobody should ever do.

4 And so Dr. Smith was very helpful at kind of sorting out
5 those different pieces. And it's not something that I -- I
6 didn't -- I've always been comfortable with the ethics and the
7 morality of undercover work. I think it's a really important
8 tool and a really important kind of -- special kind of
9 communication that we use and broadly accept in society for
10 specific reasons.

11 But consulting with Dr. Smith was very helpful to find a
12 way to explain that to people in a way that -- that was -- in a
13 way that was just very sort of contained and made sense.

14 **Q.** So what was your basic take-away from your discussions
15 with her as to righteousness of the undercover operation that
16 you were intending to go forward with at that point?

17 **A.** Well, as regards the use of undercover tactics
18 specifically, my -- my main take-away was that -- was that we
19 don't always communicate with each other in a literal
20 one-equals-one or one-plus-one-equals-two kind of way. There
21 is lots of different genres of communication, if you will.
22 There is poetry. There is acting. There is metaphor.

23 And -- and so -- and even though in general our speech and
24 our communication is used to communicate the truth to one
25 another, sometimes you can -- you can -- you need to hide the

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1 truth for a certain amount of time in order to more powerfully
2 communicate the truth later on.

3 I think that that's the -- sort of the very granular
4 dynamics of how undercover work works and why it's important
5 and why it's very good.

6 **Q.** Did you consider this a life-and-death issue basically?

7 **A.** Definitely. And -- and one of the -- yes. And that sort
8 of ties into the second consideration or the second reason why
9 I was talking to Dr. Smith, which was about in a -- when you're
10 dealing with -- if you're investigating a life-or-death kind of
11 situation or a situation where people's lives are on the line,
12 how -- in trying to document and expose the activity going on,
13 how close can you actually get to that activity before you
14 become a part of it and before you become a participant in it?

15 Because that was something that I always wanted to be
16 careful about as well ethically; that I didn't want to be put
17 in a situation where my undercover investigators would be
18 actually creating a reason for somebody's abortion to happen,
19 let's say, when otherwise it might not have been. I didn't
20 want to become a participant in creating extra market forces
21 for certain abortions to happen when maybe they weren't going
22 to or people were on the fence.

23 **Q.** Thank you.

24 All right. So you did actually launch the Human Capital
25 Project, as it's become known, at what month and year?

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1 **A.** The Human Capital Project, as it's become known -- you
2 know, it wasn't called the Human Capital Project at that time,
3 but I launched full-time into doing this undercover project in
4 January 2013.

5 And then after, you know, all of the things that we've
6 discussed here in this last line for 2013, then we actually did
7 the first undercover recording in California, the first
8 undercover video in California and the first undercover video
9 that's at issue in this lawsuit in April of 2014 at NAF in
10 San Francisco.

11 **Q.** What was your entire budget to do this complete undercover
12 operation that we have been talking about in court the past few
13 weeks?

14 **A.** So from January 2013 to July of 2015, when we released the
15 first video, the entire project was done on a total of
16 approximately \$120,000 for those 30 months.

17 **Q.** Okay. Did you go into this for the money at all?

18 **A.** No.

19 **Q.** Has it been -- it's a nonprofit; correct?

20 **A.** That's correct.

21 **Q.** And have you been -- basically, did you depend on
22 donations to fund it?

23 **A.** Yes, that's correct.

24 **Q.** Would you call it on shoestring-type budget that you had
25 to operate on?

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1 **A.** Absolutely. Center for Medical Progress did this
2 undercover project on a shoestring budget and very piecemeal in
3 some ways, too, because sometimes -- you know, sometimes there
4 would be -- sometimes there would be donors who would write a
5 significant check, you know, \$5,000, \$10,000, and that would be
6 enough to do a specific conference, undercover event or
7 purchase more equipment to do some of the -- some of the
8 undercover lunch meetings and things like that.

9 And then there would be long stretches of time when we
10 couldn't do a whole lot because there wasn't a whole lot of
11 funding. We had to conserve that for whenever the next big
12 thing was going to be.

13 So it was definitely on a shoestring budget, very
14 piecemeal, but we were able to do that, and I'm very proud of
15 it.

16 **Q.** You didn't hire professional actors, I take it; did you?
17 You met Adrian Lopez at Starbucks.

18 **A.** Correct. No, I -- we did not hire professional actors to
19 go undercover.

20 We hired people who were very intelligent and very brave
21 and very, very skilled at -- at being able to go into tough
22 situations and have tough conversations and weren't afraid to
23 do that in order to -- in order to document the truth about
24 these plaintiffs trafficking in baby body parts.

25 **Q.** Were these people that did the undercover work, were they

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1 employees or what you call independent contractors?

2 **A.** They were all independent contractors.

3 **Q.** Okay. And were they informed of what everyone else was
4 doing from project to project or did they work independently
5 under your direction?

6 **A.** No. This was all -- everything about this project was
7 strictly on a need-to-know basis, and that even included the
8 directors, the Board directors for Center for Medical Progress.

9 So this was my masterpiece, I consider it, and this was my
10 project. There were very, very distinct levels or circles of
11 involvement and knowledge that each people involved had. It's
12 not because I'm ashamed of what I was doing, but it's
13 because -- it's because that's an actual operational security
14 kind of thing.

15 Lila and I had been instructed years ago at Live Action by
16 former law enforcement people that --

17 **MS. TROTTER:** Objection, Your Honor. Move to strike
18 the narrative.

19 **THE COURT:** You've gone beyond the scope of the
20 question. Strained.

21 **BY MR. LIMANDRI**

22 **Q.** Were you informed by law enforcement some years ago when
23 you worked at Live Action as to how to go about this type of
24 work without violating the law?

25 **MS. TROTTER:** Objection, Your Honor. Relevance.

DALEIDEN - CROSS / LIMANDRI

1 403.

2 **THE COURT:** It's okay. You may answer. Overruled.

3 **A.** So what we were -- what we were informed about was that a
4 good rule of thumb was that for every person that you tell
5 about an undercover project like this before you release it,
6 you should estimate that it's going to lose about 50 percent of
7 its efficacy for each person that you tell.

8 So that's why it's done on a need-to-know basis with the
9 team that you're working with. And so -- you know, so
10 there's -- you know, there is sort of one level of knowledge
11 that the people that actually wore cameras and went to the
12 conferences or went to the meetings had, you know, based on how
13 I trained them in order to actually run the scenario and
14 fulfill their role.

15 There's another level of knowledge that people who are
16 more peripherally involved, like corporate board directors, you
17 know, would have knowing there is an undercover investigation
18 going on; but as far as all the specific details and who is
19 going where at what time and stuff like that, they weren't
20 involved in that.

21 **Q.** Okay.

22 **MR. LIMANDRI:** I'm going to look at two exhibits and
23 then I will be done with my portion, Your Honor.

24 The first one has been admitted into evidence by
25 plaintiffs as Exhibit 123. And if we can display that?

DALEIDEN - CROSS / LIMANDRI

1 (Document displayed)

2 **BY MR. LIMANDRI**

3 **Q.** The bottom of the first page is "Ethical Themes." And I
4 think you just talked about the confidential nature of the
5 industry.

6 And you also had at the top of the next page, did you
7 draft these "Ethical Themes"?

8 **A.** Yes, I did.

9 **Q.** And were these all issues that you felt you needed to
10 explore and investigate?

11 **A.** Yes, absolutely.

12 **Q.** Okay. That included number two:

13 "Illegal exploitation of women."

14 Number three:

15 "The dehumanization of unborn because their
16 humanity is so valuable to science."

17 And we'll stop at number four:

18 "Scientific exploitation creating demand and
19 security for legal abortion."

20 Were these all themes that you tried to carry through on
21 your investigation?

22 **A.** Yes, they were.

23 **Q.** And under the road map level one, to finish with this
24 exhibit, it says:

25 "Legal boundaries for moles."

DALEIDEN - CROSS / LIMANDRI

1 Are the moles the undercover investigators?

2 **A.** Sort of. At this stage -- because this is sort of a
3 collection of notes that I wrote in late 2012. So this is
4 very, very early stage. I don't know that I was making a huge
5 distinction between different kinds of undercover
6 investigators.

7 So people who would go in representing a company like
8 BioMax versus people who might actually want to get a job at a
9 real tissue procurement organization or something like that,
10 that's something that ultimately we didn't end up doing.

11 I didn't send anybody in as a, quote/unquote, mole into an
12 actual -- into an established fetal tissue company like
13 StemExpress or ABR because it was -- it looked incredibly
14 legally complex. If there would be a way that was appropriate
15 to do that, and it was certainly incredibly ethically fraught
16 and complex as well, which is one of the things that I talked
17 about with Dr. Smith. So that was not -- that was not a
18 mechanism of investigation that we ended up using to actually
19 recruit and send in a mole.

20 We did have a lot of informants though that came to me
21 after the fact. People like Holly O'Donnell and Bob Reboin,
22 Christie Rebolcaba.

23 **Q.** Thank you.

24 Did you always try to conduct this investigation in what
25 you understood to be a legal and ethical way?

DALEIDEN - CROSS / LIMANDRI

1 **A.** Yes, absolutely.

2 **Q.** And the last exhibit I wanted to ask you about that was
3 admitted into evidence is 245.

4 You were asked about the "Target Lines," I believe, or at
5 least affiliate targets. What do you mean by "Target Lines"?

6 And let me ask you: Were there certain questions you
7 asked the people who were doing the undercover investigation
8 that they should focus on?

9 **A.** Yes.

10 **Q.** What were those?

11 **A.** So very -- there is a couple of different ways we had
12 those. So -- could you repeat the question again? I want to
13 be directly responsive.

14 **Q.** The investigator training -- let me ask it that way. Did
15 you seek to train your investigators in such a way that they
16 would do a legal and ethical investigation?

17 **A.** Yes.

18 **Q.** And did you tell them there are certain questions that
19 they should ask in order to try to elicit the information you
20 needed?

21 **A.** That was sort of in two steps.

22 So first they were given basic themes or sort of -- and so
23 in this email it's reflected as target lines that were kind of
24 like check boxes that we needed to hit in the conversations.

25 And then from there, once they understood the -- the basic

DALEIDEN - CROSS / LIMANDRI

1 constellation of themes or topics that we needed to hit, then
2 we would develop specific questions or specific lines of
3 questions that they should take the conversations down in order
4 to explore those areas.

5 **Q.** What would those questions be, for example?

6 **A.** So -- so there would be sort of a level of introductory
7 level questions. For example, asking about the -- the
8 gestational age to which a given abortion provider or abortion
9 clinic would do abortions up to, as well as their general
10 volume of procedures at that gestational age, and when or if
11 they started using Digoxin.

12 Those three kind of basic intake questions were all geared
13 to identify the abortion providers and the abortion clinics
14 that would be likely -- that would be likely participants for
15 fetal tissue harvesting and organ trafficking.

16 Then there would be sort of a deeper level of questioning
17 once you get through those about the specific abortion
18 procedures that they were using for those cases, what level of
19 cervical dilation they were achieving. Because that was what
20 Ruth Arick had told us was one of the big factors and one of
21 the things that you could -- that the provider could directly
22 alter or change in their normal medical practice in order to
23 effect the kind of fetal specimens that you were getting.

24 And then as the investigation developed, we could get more
25 specific with -- you know, so some of these themes on here, you

DALEIDEN - CROSS / DHILLON

1 see the theme about -- about haggling over the price per
2 specimen. Whether the price per specimen is based on market
3 value, as opposed to an actual hard cost reimbursement. So
4 things like that.

5 **MR. LIMANDRI:** I believe that's all the questions I
6 have for Mr. Daleiden at this time, Your Honor.

7 I would like to pass the witness to our attorney Harmeet
8 Dhillon, who is going to be asking questions specifically on
9 the contract issues. Then I'll finish up, with the Court's
10 permission, when she's done. Thank you, Your Honor.

11 Thank you Mr. Daleiden.

12 **CROSS-EXAMINATION**

13 **BY MS. DHILLON**

14 **Q.** Good morning, Mr. Daleiden.

15 **A.** Good morning.

16 (Whereupon binder was tendered to the witness.)

17 **Q.** I just handed you a binder that's going to include several
18 of the documents that we're going to go over during my part of
19 this examination.

20 **A.** Okay.

21 **Q.** Mr. Daleiden, do you have personal knowledge about the
22 formation of the corporation BioMax we have been talking about
23 the last couple of days?

24 **A.** Yes, I do.

25 **Q.** Okay. Can you tell us how BioMax was founded?

DALEIDEN - CROSS / DHILLON

1 **A.** Sure. So BioMax was organized by the Center for Medical
2 Progress as a corporate LLC property for us to have as a -- as
3 a vehicle for doing large parts of the -- of the undercover
4 investigation of fetal trafficking. And within the mechanism
5 of its formation was a filing the standard California Secretary
6 of State form for organizing a limited liability company.

7 **Q.** Okay. And I believe we've seen an exhibit, I think this
8 morning and yesterday as well, which was a form that was filled
9 out. Did you fill out that form to form BioMax, you
10 personally?

11 **A.** Yes. I personally filled it out.

12 **Q.** And did the Board of Directors of the Center for Medical
13 Progress vote on the creation of BioMax?

14 **A.** No.

15 **Q.** So was that your personal decision and yours alone?

16 **A.** It was my decision as CEO of the Center for Medical
17 Progress.

18 **Q.** Okay. And throughout the course of its life has BioMax
19 paid taxes to the State of California?

20 **A.** Yes. BioMax has paid approximately six years of LLC taxes
21 to the State of California.

22 **Q.** So from the year 2013 through the present; is that
23 correct?

24 **A.** That's correct.

25 **Q.** Okay. And is BioMax currently a corporation under

DALEIDEN - CROSS / DHILLON

1 California law, to your knowledge?

2 **A.** It is currently a limited liability company under
3 California law.

4 **Q.** Okay. You've testified that you formed BioMax to carry
5 out investigative journalism projects; is that correct?

6 **A.** I testified that BioMax was organized as a vehicle through
7 which to -- as a vehicle to use to do large parts of the
8 undercover work.

9 **Q.** Okay. You've discussed so far today -- this is a
10 foundational question -- there was an event that Brianna and
11 Ms. Merritt attended as representatives of BioMax. That was
12 the ARHP in September; do you recall that?

13 **A.** Yeah, the ARHP meeting. Yes.

14 **Q.** And how did it come about that your colleagues attended as
15 representatives of BioMax in 2013 before it was recognized by
16 the Secretary of State?

17 **A.** Well, the -- the concept of BioMax was certainly in
18 formation as a start-up company; that CMP would be starting up
19 in the late fall of 2013.

20 I don't remember off the top of my head the exact date of
21 when I filled out and mailed in the paperwork, but the
22 paperwork was either in the process of being filled out or had
23 actually been sent in by the time that -- that Susan and
24 Brianna were attending the ARHP meeting in September 2013.

25 But given that the formation of BioMax was literally in

DALEIDEN - CROSS / DHILLON

1 process at that time, I believe that they actually represented
2 to the people at that meeting, they actually told them that --
3 you know, that we are forming a start-up right now.

4 **Q.** Okay.

5 **A.** So I think like most -- like most early start-ups.

6 **Q.** Was BioMax officially recognized by the Secretary of
7 State, to your recollection, by the time the events at issue in
8 this lawsuit began?

9 **A.** Yes, it was.

10 **Q.** Okay. And has BioMax always been a valid and active LLC
11 from 2013 to the present?

12 **A.** Almost. There was a brief period of time where its status
13 was suspended earlier this year because of some issues with --
14 with keeping up with filings, because I had received some not
15 so helpful guidance or -- about what to do while the different
16 litigation was pending, where BioMax was actually a defendant.
17 But aside from, I think, a brief suspension of three days or
18 something, three days later it came back and was revived.

19 **Q.** Okay. And did the Secretary of State take any money that
20 you had to tendered to renew the status of BioMax?

21 **A.** Just the standard filing fees and any back taxes that were
22 owed, and I -- I forget if there was a -- I don't believe that
23 there was a penalty fee, or if there was, it was not very
24 large.

25 **Q.** Okay. So did the Secretary of State give you any grief

DALEIDEN - CROSS / DHILLON

1 about that short period of time during which the company was
2 not registered?

3 **MS. TROTTER:** Objection, Your Honor. Argumentative.
4 Lacks foundation.

5 **THE COURT:** Overruled.

6 **A.** No, not at all. I think they were -- they were happy to
7 revive it for me.

8 **BY MS. DHILLON**

9 **Q.** Okay. Thank you.

10 **MS. DHILLON:** I'm going to ask Willow to put up a
11 timeline slide that will help guide us through the next few
12 questions.

13 (Document displayed)

14 **BY MS. DHILLON**

15 **Q.** Okay. Now, I believe you previously testified so far that
16 you founded Center for Medical Progress in March 7th 2013, and
17 that BioMax was then recognized by the Secretary of State later
18 that year.

19 At what point in time did the title the Human Capital
20 Project that you mentioned several times come into being?

21 **A.** So that title, the Human Capital Project, actually I
22 developed that pretty late. That was in approximately May of
23 2015. It may have been as late as June of 2015. And that was
24 to have a title for the public release of the project.

25 So it was not known -- all this undercover work was not

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1 known as the Human Capital Project until after pretty much all
2 of it had been completed.

3 I don't know that it's a -- it's not, you know, a huge
4 issue. I think we all kind of know what we're talking about,
5 but it does -- sometimes it's something that I need to be aware
6 of when I'm -- sometimes it's -- it's helpful to -- I -- at the
7 time that most of these events happened or at the time that,
8 you know, any given document was written here, I wasn't
9 necessarily thinking about this as the Human Capital Project.
10 I was thinking about it as the project.

11 **Q.** Okay. For purposes of my asking you questions here today,
12 if I reference the project without the terms "Human Capital,"
13 will you understand that to be the time prior to the release of
14 the videos?

15 **A.** Yes, that's correct.

16 **Q.** Okay. What do you understand Center for Medical Progress'
17 role to be with respect to the project?

18 **A.** Center for Medical Progress funded the entire project and
19 created the concept for it and was the owner of the
20 intellectual property generated in it and is the entity that
21 publicly released the project.

22 **Q.** Okay. Did the Center for Medical Progress attend any of
23 the abortion conferences at issue in this case?

24 **A.** No.

25 (Document displayed)

DALEIDEN - CROSS / DHILLON

1 Q. And on the slide which has just been updated we see a
2 number of events. There is a NAF Annual Meeting in 2014. Did
3 Center for Medical Progress attend that event?

4 A. No. BioMax was the exhibitor at the NAF 2014 meeting.

5 Q. And same for the NAF 2015 conference at the end of that
6 slide; is that correct?

7 A. That's correct.

8 Q. And in between did the Center for Medical Progress attend
9 the PPFA Forum conference in Miami in 2014?

10 A. No.

11 Q. And did the Center for Medical Progress attend the PPFA
12 MeDC conference in Orlando in 2015?

13 A. No.

14 Q. And did the Center for Medical Progress attend the PPFA
15 National Conference in Washington, D.C. in March of 2015?

16 A. No.

17 Q. Did the Center for Medical Progress attend any of the
18 clinic visits that we have heard about during the testimony in
19 this case?

20 A. No. The clinic visits were carried out by independent
21 contractors.

22 Q. Okay. Did the Center for Medical Progress register for
23 any of the abortion conferences on the slide that's in front of
24 us right now?

25 A. No. BioMax registered for the conferences.

DALEIDEN - CROSS / DHILLON

1 Q. Okay. Did the Center for Medical Progress sign any of the
2 contracts that are at issue in the litigation that we're here
3 about today?

4 A. No. BioMax was signing the contracts, for BioMax to sign
5 up as an exhibitor at the conferences.

6 Q. So before we talk about them in detail, I want to
7 summarize this contract so the jury understands what we're
8 talking about.

9 So first, were there Exhibitor Agreements for the National
10 Abortion Federation conferences 2014 and 2015?

11 A. Yes, there were.

12 Q. And so that's two contracts for the National Abortion
13 Federation; correct?

14 A. That's correct.

15 Q. And were there also Confidentiality Agreements associated
16 with the National Abortion Federation events in 2014 and 2015?

17 A. Yes, there were.

18 Q. And was there -- were there Exhibitor Agreements for the
19 Planned Parenthood conferences?

20 A. Yes, there were.

21 Q. So was there an Exhibitor Agreement for PPFA Forum in
22 2014?

23 A. Yes.

24 Q. And was there also an Exhibitor Agreement for the MeDC
25 conference in 2014?

DALEIDEN - CROSS / DHILLON

1 A. Yes.

2 Q. I'm sorry, 2015.

3 And was there also an Exhibitor Agreement for the Planned
4 Parenthood Federation National Conference in 2015?

5 A. Yes, there was.

6 Q. Was there any other contracts that you're aware of with
7 respect to the conferences?

8 A. No, not with respect to the conferences.

9 Q. And was there a Confidentiality Agreement associated with
10 the PPGC site visit?

11 A. There was a Non-Disclosure Agreement, yes.

12 Q. Okay. Did -- withdrawn.

13 Who signed the six contracts for the National Abortion
14 Federation and the Planned Parenthood conferences?

15 A. BioMax Procurement Services.

16 Q. Did the Center for Medical Progress sign any of those
17 contracts?

18 A. No.

19 Q. And with respect -- same question with respect to the PPGC
20 Non-Disclosure Agreement. Did Center for Medical Progress sign
21 that contract?

22 A. No. That was an agreement between BioMax and plaintiff
23 Planned Parenthood Gulf Coast.

24 Q. So to summarize it, did Center for Medical Progress sign
25 any of the contracts we've gone over so far?

DALEIDEN - CROSS / DHILLON

1 **A.** No, it did not.

2 **MS. DHILLON:** We had a slide up just now which had
3 disappeared, but if we could put that back up?

4 (Document displayed)

5 **BY MS. DHILLON**

6 **Q.** Does this slide accurately show in time all of the
7 contracts that are at issue in this case?

8 **MS. TROTTER:** Objection. Vague and ambiguous.

9 **THE COURT:** Overruled.

10 **A.** So, yes, I believe it does.

11 **BY MS. DHILLON**

12 **Q.** Okay. Now, I'm going to turn to the National Abortion
13 Federation contracts that you've identified here this morning.

14 I'm going to start with the 2014 National Abortion
15 Federation meeting here in San Francisco. Did you understand
16 that the National Abortion Federation conferences were private?
17 Did you consider them to be private?

18 **A.** No. I considered them to be open to -- open to members of
19 the public, maybe the same way that a movie theater is open to
20 members of the public. You have to pay in order to get in.

21 **Q.** Did you have to do -- you, personally, have to do any
22 investigative work to find out that there was going to be a
23 National Abortion Federation conference in San Francisco in
24 2014?

25 **A.** We knew that there would be a National Abortion Federation

1 conference in the spring. We didn't find out it was going to
2 be in April in San Francisco until Jennifer Hart and Sandy
3 Fulkerson-Schaeffer told that to the BioMax representatives at
4 the ARHP meeting.

5 **Q.** All right. So is that information that those two ladies
6 shared with the BioMax representatives something that they
7 spontaneously volunteered at that ARHP conference?

8 **A.** Yes, they did.

9 **MS. TROTTER:** Objection. Leading.

10 **THE COURT:** Overruled.

11 **MS. DHILLON:** Okay.

12 **BY MS. DHILLON**

13 **Q.** Okay. At the time that that information was volunteered
14 to the BioMax representatives, had these -- was there any
15 mention, to your knowledge, of these -- of the NAF conference
16 in 2014 being confidential?

17 **A.** No, there was no mention of that whatsoever.

18 **Q.** Was there any mention, to your knowledge, of the NAF 2014
19 conference being private?

20 **A.** No, there was no mention that whatsoever.

21 **Q.** And was there any communication to your colleagues that
22 the NAF 2014 conference was highly exclusive?

23 **A.** No, they didn't say that.

24 **Q.** Okay. Was the ARHP conference that we're talking about
25 the first conference that any BioMax representatives had ever

DALEIDEN - CROSS / DHILLON

1 attended?

2 **A.** Yes, it was.

3 **Q.** So did the -- did BioMax then have any history of
4 attending abortion conferences prior to the ARHP conference?

5 **A.** No, it did not.

6 **Q.** Okay. Now, you mentioned that, to your understanding, to
7 get into the NAF conference you had to register; correct?

8 **A.** That's correct.

9 **Q.** How did BioMax obtain the registration materials to
10 register for the National Abortion Federation conference in
11 2014?

12 **A.** They were emailed to us by NAF's Group Purchasing Manager
13 at the time, Nichelle Davis.

14 **Q.** Okay. And did Ms. Davis -- how did Ms. Davis know who to
15 email those materials to?

16 **A.** So after the ARHP meeting in September 2013, BioMax
17 emailed Jennifer Hart and Sandy Fulkerson-Schaeffer and --
18 following up on their suggestion that we should email them and
19 ask to be -- about the group purchasing program and ask about
20 exhibiting at the 2014 meeting in San Francisco.

21 And so from what I understand from looking at the email
22 thread, Sandy and Jennifer forwarded that email to Nichelle.
23 And then Nichelle emailed back to us and said, basically:
24 Great. Here is a copy of the exhibitor prospectus. That had
25 all the information about the dates and times and location of

DALEIDEN - CROSS / DHILLON

1 the meeting and the hotel and all that. Said: Take a look at
2 this and, you know, if you want to do it, then fill it out and
3 we'll get you signed up.

4 **Q.** Okay. And when you say BioMax emailed NAF, did you send
5 that email?

6 **A.** Yes. I personally am the one who sent that email.

7 **Q.** Okay. And did you use one of the character names in this
8 scenario in order to do that?

9 **A.** Yes. It was sent from the Brianna Allen email account,
10 brianna@biomaxps.com.

11 **Q.** Now, Ms. Davis, did she -- do you recall how long it took
12 for her to respond to that initial inquiry?

13 **A.** Off the top of my head, I don't recall, but I don't think
14 that it was very long. It was -- it was pretty quick.

15 **Q.** And you mentioned that she sent an exhibitor prospectus.
16 Now, did Ms. Davis send you any documents with that initial
17 email to BioMax indicating that the conference was private?

18 **A.** No, none whatsoever.

19 **Q.** Did she mention confidentiality in the materials that were
20 sent in the exhibitor prospectus?

21 **A.** No, she did not.

22 **Q.** Did she request any references from people in the abortion
23 industry in order to proceed to the next step of registering
24 for the 2014 conference?

25 **A.** No, she didn't. And we would have had none to give at

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1 that point.

2 Q. Okay.

3 THE COURT: Ms. Dhillon, when you come to a good
4 spot, why don't we take a break?

5 MS. DHILLON: Let me ask one more question, Your
6 Honor.

7 THE COURT: Okay.

8 BY MS. DHILLON

9 Q. Now, did BioMax go on to register as an exhibitor for the
10 2014 conference?

11 A. Yes, we did.

12 Q. I'm talking about the NAF conference.

13 How much in advance of that NAF 2014 conference did that
14 registration occur?

15 A. The registration occurred a couple of months before the
16 actual conference. So we filled out the NAF exhibit space
17 application and Exhibitor Agreement in February of 2014, and
18 submitted it in February 2014, and the conference was in April.

19 Q. Okay. And besides the documents that you have described
20 so far, there were no Confidentiality Agreements as part of
21 what you signed; correct?

22 A. That's correct.

23 MS. DHILLON: This would be a good time, Your Honor.

24 THE COURT: All right. So ladies and gentlemen,
25 we'll take our second break. Please remember the admonitions.

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1 About ten minutes.

2 (Jury exits the courtroom at 11:17 a.m.)

3 **THE COURT:** All right. We'll be in recess.

4 (Whereupon there was a recess in the proceedings

5 from 11:18 a.m. until 11:31 a.m.)

6 **MS. MAYO:** One reminder, Your Honor. You had said in
7 ruling on the Janet Smith issue that you were going to give the
8 jury some direction about considering moral law versus the law
9 as instructed by the Court.

10 **THE COURT:** Okay. I'm not sure that the testimony
11 deserves any sort of an instruction at this point.

12 Ms. Dhillon, are you ready to go?

13 **MS. DHILLON:** I am, Your Honor.

14 **THE COURT:** Let's get the jurors.

15 (Jury enters the courtroom at 11:33 a.m.)

16 **THE COURT:** All right. Please be seated, everybody.
17 When you're ready.

18 **BY MS. DHILLON**

19 **Q.** Okay. We're going to proceed.

20 Mr. Daleiden, I'm going to ask you to take a look at
21 Exhibit 414.

22 **MS. DHILLON:** And, Your Honor, this is not admitted
23 or stipulated. I want to lay the foundation first.

24 **A.** All right. I have it.

25

DALEIDEN - CROSS / DHILLON

1 **BY MS. DHILLON**

2 **Q.** Exhibit 414, if you could take a look at last page of that
3 document?

4 **A.** Okay.

5 **Q.** And, Mr. Daleiden, is this a document that you're familiar
6 with and did you write some of the emails in this email chain?

7 **A.** Yes, it is and yes, I did.

8 **Q.** Okay.

9 **MS. DHILLON:** Your Honor, I move that this
10 Exhibit 414 be admitted and published to the jury.

11 **MS. TROTTER:** No objection.

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

13 (Trial Exhibit 414 received in evidence)

14 (Document displayed)

15 **BY MS. DHILLON**

16 **Q.** Mr. Daleiden, before the break you testified that you sent
17 an email to somebody to start the process of getting the
18 materials for NAF 2014; do you recall that?

19 **A.** Yes.

20 **Q.** And is the last email in the chain in 2414 an email that
21 you sent as Brianna, the assistant for Susan Tennenbaum?

22 **A.** You mean, the most recent or the oldest in the chain?

23 **Q.** The oldest in the chain.

24 **A.** So the oldest in the chain I have here is an email from
25 Nichelle Davis on February 21st. There would have been a whole

DALEIDEN - CROSS / DHILLON

1 chain of emails previous to this in late 2013 and early 2014.

2 Q. I see a one-page document in your binder. That looks like
3 it's incomplete. One second.

4 (Brief pause.)

5 Q. So while we're getting the full exhibit for you, do you
6 recall that this email chain started with Brianna sending an
7 email to Sandy and Jennifer. Do you have that document?

8 A. I don't believe I have that document, but I do recall that
9 document and that email generally.

10 Q. Okay. While we're looking for that document so we don't
11 make any --

12 (Whereupon document was tendered to the witness.)

13 MS. DHILLON: Thank you, Your Honor.

14 THE COURT: Yes.

15 BY MS. DHILLON

16 Q. If you could turn to that last page of Exhibit 414?

17 A. I have it.

18 Q. Do you recognize the email with the time stamp of
19 November 27, 2013 at 6:08 p.m.?

20 A. Yes, I recognize that email.

21 Q. Can you describe what that communication is?

22 A. So this email is the first email that we sent to Sandy and
23 Jennifer after meeting them at the ARHP conference in
24 September 2013.

25 So this is the first email contact that we made with them

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1 after that conference, sending them an email to follow up on
2 the exhibitor group purchasing issue that they had mentioned at
3 the ARHP conversation.

4 **Q.** Okay. And stepping back. Was the ARHP conference, to
5 your knowledge, something that was open to anybody in the
6 public to attend if they paid the registration fee?

7 **A.** Yes, it was.

8 **Q.** To your knowledge, was there any special vetting or
9 vouching required to attend that conference?

10 **A.** No. I registered Susan and Brianna for that conference,
11 and there was no vetting or vouching or screening whatsoever.

12 **Q.** Okay. Did either of the recipients of that email respond
13 to the inquiry from Brianna from BioMax?

14 **A.** Yes. I believe that Jennifer was the first to respond.

15 **Q.** Okay.

16 **MS. DHILLON:** And if we can focus on that email dated
17 December 2nd, 2013 at 3:51 a.m. from Jennifer Hart? If we
18 could focus on that on the monitor?

19 (Document displayed)

20 **BY MS. DHILLON**

21 **Q.** Is this email what you recall Ms. Hart responding to you
22 as Brianna?

23 **A.** Yes. I recall this email.

24 **Q.** And does Brianna copy -- does Ms. Hart copy somebody on
25 the email?

DALEIDEN - CROSS / DHILLON

1 **A.** Yes. Jennifer said that she was copying Nichelle Davis,
2 the Group Purchasing Manager for NAF on this email.

3 **Q.** Okay. Did you, as Brianna, then respond to Nichelle?

4 **A.** Yes, I did.

5 **Q.** Okay. And eventually did Nichelle, as a result of this
6 back and forth in Exhibit 2014, send you any materials to
7 register for the NAF 2014 conference?

8 **A.** Yes, she did. It looks like on January 2nd, 2014 Nichelle
9 sent us the exhibitor prospectus.

10 **Q.** Okay. Now, I'm going to turn you to the page Bates
11 numbered CM-00350, which is the fifth page of this exhibit.

12 And did you -- throughout this document are you Brianna Allen
13 in this email exchange?

14 **A.** Yes. I sent all of the Brianna Allen emails in this email
15 chain.

16 **Q.** Okay. And after the initial exchange where you were
17 introduced, was it you, Brianna Allen, communicating with
18 Nichelle Davis?

19 **A.** Yes, it was.

20 **Q.** Okay. Did these other -- withdrawn.

21 After you received the materials from Ms. Davis, did you
22 have some questions for Ms. Davis about registering?

23 **A.** Yes, I did.

24 **Q.** Can you recall what questions you might have had with
25 regard to registering for the conference?

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1 **A.** In general, I remember the exact registration papers
2 portion of the Exhibitor Agreement being -- or of the exhibitor
3 prospectus being kind of confusing in the way that it was
4 phrased in lots of different places, especially even in sort
5 of, most importantly, the payment portion of it at the end.

6 As I recall, the way that the document was laying out
7 registering as an exhibitor versus how many complimentary
8 exhibitor -- how many complimentary passes to attend the
9 meeting you would get as an exhibitor representing your
10 organization exhibiting versus pre-conference sessions and
11 pre-conference workshops and how many of those you wanted to
12 optionally pay to attend.

13 The way that all those prices were calculated together and
14 how -- how exactly to arrive at the total price was actually
15 surprisingly very confusing for me, and so I had to email
16 Nichelle to confirm exactly, like, what does this mean? How
17 much do we owe you? That sort of thing.

18 **Q.** Okay. And before I ask you next, what was your impression
19 of Nichelle Davis' role in the organization, National Abortion
20 Federation, as a result of this back and forth?

21 **MS. TROTTER:** Objection. Lacks foundation.

22 **THE COURT:** That's okay. Overruled.

23 **A.** I was told in the emails that she was the new Group
24 Purchasing Manager for NAF and that she was in charge of the --
25 of the entire exhibit hall at the conference. So in charge of

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1 all the exhibitors.

2 And I sort of got the impression from this, since I
3 understood the conference primarily as a trade show, I thought
4 she was actually in charge of the entire conference.

5 **BY MS. DHILLON**

6 **Q.** Okay. I want to focus your attention on the same exhibit
7 that we're looking at, the bottom of the fourth page, Bates
8 numbered CM-00350, falling over to the top of the next page.

9 **MS. DHILLON:** If we can blow up that whole email, if
10 possible?

11 (Document displayed)

12 **BY MS. DHILLON**

13 **Q.** Is this Ms. Allen's response to you regarding what exactly
14 you would get as an exhibitor at the conference?

15 **A.** So I am having --

16 **Q.** It's also on the screen.

17 **A.** Yeah. I'm having trouble with this exhibit because there
18 are multiple Bates numbers on each page and so I'm not sure
19 which --

20 **Q.** I think if you focus on the screen, that's accurate.

21 **A.** Yes. So this is the response that Nichelle Davis sent
22 back to me in response to my questions about exactly how much
23 do we owe you and what are we entitled to for that amount of
24 money and all of that.

25 **Q.** Okay. At the top of the previous page -- actually,

1 withdrawn.

2 What did you understand Ms. Allen to mean when she wrote
3 something about providing access to the -- to the conference?
4 And that's at the top that second part of the email in
5 question. What did you understand that to mean?

6 **THE COURT:** Ms. Davis?

7 **MS. DHILLON:** Ms. Davis, I beg your pardon.

8 **A.** Yeah. So I understood that Nichelle Davis was telling us
9 that our completion of the exhibitor application, our payment
10 of the full -- our payment of the full amount was entitling us
11 to receive one complimentary registration with access to the
12 exhibit hall and the conference sessions. So the regular
13 scheduled part of the conference on Monday and Tuesday.

14 **BY MS. DHILLON**

15 **Q.** Okay. Did Ms. Davis mention any other requirements
16 besides paying the fee and filling out that registration form
17 as obligation in order to get access to the conferences
18 described?

19 **A.** No, she did not.

20 **Q.** And if you can turn to Page 2 of the same exhibit, please?

21 (Document displayed)

22 **Q.** Did Ms. Davis make reference to you receiving a
23 confirmation email?

24 **A.** Yes. I believe I see that at the bottom of the page, on
25 February 21st.

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1 Q. And did you, as Brianna Allen, receive a confirmation
2 email on behalf of BioMax?

3 A. Yes. I believe that the -- the Brianna email address
4 received the confirmation email.

5 Q. Okay. And then just finally looking at the first page of
6 this exhibit and the top email, which would be the most recent
7 in time, did Ms. Davis send you, copying actually at this point
8 other people, an exhibitor kit?

9 A. Yes. We received a copy of the exhibitor kit.

10 Q. What is the exhibitor kit?

11 A. The exhibitor kit -- actually, if you're someone who
12 exhibits at conferences, I personally feel like it's one of the
13 most annoying kind of not helpful things. It is a separate,
14 basically, catalog of all the different bells and whistles that
15 you can pay to attach to your exhibit.

16 So if you want different kinds of -- anything from, like,
17 different kinds of special trash cans to chairs to display,
18 like, rods and things to stick things on. Just all kinds of
19 different, like, bells and whistles. Apparently, they can get
20 very elaborate, depending on the display and the kind of people
21 doing it.

22 But in my experience, I have come to learn that sometimes
23 those exhibitor kits, they make it seem like you're getting a
24 certain basic setup with, like, a table and two chairs and a
25 basic waste basket, but sometimes they expect you to mark out

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1 even the basic stuff and then charge you for that. So that has
2 actually caused me some consternation over the years and grief.

3 So the exhibitor kit is just a -- it's basically a
4 glorified furniture catalog.

5 **Q.** And so this exhibit, which is an email thread,
6 Exhibit 414, it starts in November 2013 with an email from you
7 to a couple of people who attended the ARHP conference, and
8 then it goes all the way to March 31st, 2014. Do you see that?

9 **A.** Yes, I see that.

10 **Q.** And did you correspond with Ms. Davis about the attendance
11 requirements for this event over the course of several months?

12 **A.** I don't know that we corresponded about that topic. You
13 know, really sort of serially over the months. I think we --
14 you know, we had our primary exchange about it in the -- in the
15 emails that we discussed here in January, 2014 and
16 February 2014.

17 And then after that, she didn't bring up any further
18 requirements or anything else that we should be aware of.

19 **Q.** Okay. So at the time of this final exchange with her
20 sending you the exhibitor kit, had BioMax sent in an
21 application to attend the NAF 2014 conference?

22 **A.** Yes. We had sent in an application and payment.

23 **Q.** And payment. And had BioMax also provided the names of
24 the attendees who were going to attend on behalf of BioMax to
25 the NAF 2014 conference?

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1 **A.** Yes, we had.

2 **Q.** And throughout this process did Ms. Davis tell you that
3 there were any other requirements to attending the 2014
4 conference?

5 **A.** No, she did not.

6 **Q.** In fact, sending the exhibitor kit, did you understand
7 that to mean that you had been approved to attend the
8 conference?

9 **A.** Yes.

10 **Q.** Okay. Was BioMax able to attend the NAF 2014 conference
11 after submitting the registration form and paying the
12 registration fee and giving the names of the attendees?

13 **A.** I understood that we were, although events were a little
14 different when we showed up on-site.

15 **Q.** Okay. What happened when your BioMax team showed up
16 on-site to attend the NAF 2014 conference that you had paid for
17 and registered for?

18 **A.** So when we showed up, the first thing that happened is we
19 actually asked a security guard where we needed to go, because
20 we just walked into the hotel lobby and weren't sure what to
21 do. And the security guard said -- and we said: Excuse me,
22 we're here for the NAF meeting.

23 And the security guard said. Oh, great. Just head
24 straight up these stairs into the mezzanine level. That's
25 where it is. Just make sure you have your badges out, but

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1 you're good to go. All the sessions are going to be up there.
2 And enjoy yourself basically.

3 And so we thought, that's simple. But we don't have out
4 badges yet. Where do we go? I thought it was interesting that
5 they were ushering us up the stairs from the lobby to the
6 mezzanine. All we had to say is "we're here with NAF" and
7 they're ready to take us there without having -- without having
8 badges or anything like that.

9 So we went up to the mezzanine level where the check-in
10 desk was for the NAF conference, and we went over to the
11 check-in place to get our bags and confirm that our exhibit
12 booth would be 306, like Nichelle had said, find out where 306
13 was which Nichelle said in the email, and to get our actual
14 badges and conference programs and everything.

15 The NAF representatives at the registration desk said:
16 Okay, we need to check your photo ID and we need you to sign
17 this -- we need you to sign this.

18 And they handed us a one sheet of paper with, you know,
19 what looked like some kind of rules or regulations or
20 another -- you know, some kind of extra thing.

21 **Q.** Let me ask you about that, but before we get to that, I
22 would like to have you take a look at Trial Exhibit 370.

23 **MS. DHILLON:** I believe that's the judge's binder.
24 May I approach, Your Honor?

25 **THE COURT:** Yes, you may.

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1 You're welcome to it, if you don't have all the exhibits.
2 (Brief pause.)
3 (Document displayed)

4 **BY MS. DHILLON**

5 **Q.** Mr. Daleiden, are you familiar with this document, Trial
6 Exhibit 370?

7 **A.** Yes, I am.

8 **Q.** Is this a document you signed?

9 **A.** Yes, it is.

10 **Q.** Did you sign it as one of the characters in the scenario
11 that you testified about here today?

12 **A.** Yes, I did.

13 **Q.** Okay. I want to draw your attention to Paragraph 3 of
14 this exhibit.

15 Okay. Can you see Paragraph 3?

16 **A.** Yes, I can.

17 **Q.** And did you read this exhibit, which is entitled "Exhibit
18 Rules and Regulations," prior to sending in this paperwork?

19 **A.** Yes, I did. It was difficult because the print was so
20 extremely minisculely small, but I did read it to the best of
21 my ability.

22 **Q.** Okay. And was the print similar in size to what we see
23 here in this exhibit in real life?

24 **A.** Yes. This was -- this is the actual -- this faithfully
25 represents the size and clarity of it.

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1 Q. Okay. And did you understand that there came a point in
2 time after which the exhibitor fee which was paid became
3 non-refundable?

4 A. Yes, I did.

5 Q. And is that reflected here in Paragraph 3?

6 A. Yes, it is.

7 Q. Okay. And did you understand that if you decided to
8 cancel your BioMax attendance after March 21st, 2014, that you
9 would give up that exhibitor fee that was paid?

10 A. Yes, I did.

11 Q. Do you recall how much that exhibitor fee was
12 approximately?

13 A. It was approximately \$3,200.

14 Q. Okay. Now, still staying on this document, the "Exhibitor
15 Rules and Regulations," I'm going to ask you to take a look at
16 Paragraph 13 of the same document.

17 Can you see that? Can you read it? It's pretty small.

18 A. Yeah, I see that.

19 Q. What does the Exhibitor Agreement say with respect to
20 photography being permitted at this event?

21 A. It says that photography is actually authorized and
22 permitted for exhibitors to photographically record their
23 exhibit space.

24 Q. Did you understand that, therefore, if you, as an
25 exhibitor for BioMax, took photographs at the exhibitor booth

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1 that BioMax was assigned, that would be okay under this
2 contract?

3 **A.** Yes.

4 **Q.** Does -- and I want to also focus your attention to
5 paragraph -- the unnumbered paragraph right before the
6 signature block that says:

7 "I agree to comply with Exhibitor Rules and
8 Regulations."

9 Do you see that?

10 **A.** Yeah, I see that.

11 **Q.** Okay. And do you see where it says:

12 "I also agree to hold in trust and confidence any
13 confidential information received."

14 Do you see that?

15 **A.** Yeah, I see that.

16 **Q.** Did you understand what "confidential information" meant
17 when you signed this agreement?

18 **A.** For the purposes of this agreement, no, I really didn't.
19 I had a sort of a vague idea of what seemed like the most
20 logical meaning of it, but I didn't -- there was nothing here
21 or in any of the materials that Nichelle gave to me or anybody
22 else at NAF that clearly flagged this is a confidential
23 document or this is a confidential piece of information that --
24 to which confidentiality language would apply.

25 **Q.** Does this "Exhibitor Rules and Regulations," which

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1 Ms. Davis provided you, does it define confidential information
2 anywhere?

3 **A.** No. It never explicitly defines it the way that I'm used
4 to, because I have been using NDAs since I was at Live Action.

5 **Q.** Did Nichelle Davis ever explain to you what confidential
6 information meant in the context of this agreement?

7 **A.** No, she did not.

8 **Q.** Did Nichelle Davis ever place any sort of a phone call to
9 BioMax prior to -- prior to BioMax showing up at the NAF 2014
10 conference?

11 **A.** No, she did not.

12 **Q.** Did Ms. Davis ever ask you for references?

13 **A.** No, she did not.

14 **Q.** Or do you know if she ever asked any of the other BioMax
15 representatives for references prior to their attendance at the
16 NAF 2014 conference?

17 **A.** I know for a fact that she did not, because I was the sole
18 point of contact through the Brianna Allen email.

19 **Q.** Okay. Now, you mentioned a -- what happened when you went
20 up to get your badges at the NAF 2014 conference, and I stopped
21 you.

22 Did Ms. Davis hand you the other document that you
23 mentioned?

24 **A.** No, she did not.

25 **Q.** Who was the person that gave you that other document?

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1 **A.** I do not recall her name off the top of my head. She was
2 just a -- seemed like a low-level NAF functionary who was
3 working at the -- at the registration desk.

4 **Q.** So she didn't identify herself or what her role was?

5 **A.** Correct.

6 **Q.** And did she say what it was she was handing you?

7 **A.** I don't believe that they specifically said what the
8 agreement was. I think they handed it to us and said: And we
9 need you to sign this.

10 **Q.** Okay. Now, you've dealt with Confidentiality Agreements
11 previously before you showed up at that desk; correct?

12 **A.** Yes, that's correct.

13 **Q.** And can you tell us whether the Center for Medical
14 Progress ever entered into Confidentiality Agreements with
15 anybody?

16 **A.** Yes. CMP has -- has confidentiality provisions and
17 separate confidentiality NDAs that we've used with our
18 contractors before; that we've used with some potential donors
19 or potential consultants before discussing really in depth the
20 undercover project with them.

21 And then I'm also familiar with using them from my work at
22 Live Action from 2008 to 2013.

23 **Q.** So it's fair to say that you were quite familiar with
24 Confidentiality Agreements in general. You had an
25 understanding of what that meant in general; correct?

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1 A. Yes. I felt like I was and feel like I do.

2 Q. Okay. I'm going to ask that you turn to Exhibit 352 in
3 your binder, which is a document that's been previously
4 admitted in this case.

5 Do you have it in front of you?

6 A. Yes, I do.

7 (Document displayed)

8 Q. What is Exhibit 352?

9 A. This is basically the standard independent contractor
10 agreement that CMP would use for our undercover investigators.

11 Q. And was this document used with numerous individuals at
12 the Center for Medical Progress?

13 A. Yes, it was.

14 Q. Okay. I'm going to ask you to turn to Paragraph 9 of this
15 exhibit, which is found on the third to last page, Bates number
16 CM-03691.

17 (Document displayed)

18 Q. Do you see --

19 A. Yeah, I have it.

20 Q. -- the heading "Confidential Information"?

21 A. Yes.

22 Q. Do you see that Paragraph 9, which has been blown up for
23 our benefit on the screen there. Does it define confidential
24 information?

25 A. Yes, it does.

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1 Q. And how does it define confidential information?

2 A. It defines confidential information by calling out very
3 specific types of information that may be disclosed to the
4 contractor during the time that they are working with the
5 Center for Medical Progress on this specific project.

6 And so it calls out those specific categories of
7 information so that they can be aware of them and so that
8 when -- they will be prepared.

9 When that kind of information is disclosed to them and
10 identified for them on disclosure, that they will know that
11 that's confidential proprietary information for CMP that
12 they're supposed to hold confidential for the pendency of the
13 agreement.

14 Q. For example, does it define confidential information to
15 include certain special techniques that are used in the work of
16 CMP?

17 A. Yes, it does.

18 Q. And does it define it as including business plans?

19 A. Yes, it does.

20 Q. Models and strategies?

21 A. Yes.

22 Q. Journalistic notes?

23 A. Yes.

24 Q. Okay. Did you present this document prior to it being
25 signed to potential independent contractors for the Center for

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1 Medical Progress?

2 **A.** Yes, I did.

3 **Q.** Did you present this to them prior to engaging in any sort
4 of a formal relationship with them?

5 **A.** Could you ask that one more time?

6 **Q.** Did you present this to them prior to engaging in any sort
7 of a formal relationship with them?

8 **A.** Yes.

9 **Q.** So in other words, you didn't present it to them after
10 they had already agreed to work for you and do certain tasks;
11 correct?

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

13 **Q.** And did you spend some time going over this document and
14 its significance in the Center for Medical Progress business
15 with people you asked to sign it?

16 **A.** Yes.

17 **Q.** And approximately how many minutes would you spend
18 discussing this agreement or talking about its significance to
19 you, Center for Medical Progress, prior to somebody considering
20 it?

21 **A.** Yes. So at the first time that I would actually sign a --
22 sign any kind of Non-Disclosure Agreement with someone who was
23 going to work with CMP or someone who was going to work with
24 Live Action, previously when I was their director of research,
25 because for some people, like, for example, Sandra Merritt or

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1 Adrian Lopez, they participated in multiple -- multiple
2 undercover events during the investigation, like multiple
3 conferences or multiple meetings. And so each of those was
4 paid and contracted separately.

5 So sometimes, you know, this -- multiple iterations of
6 this agreement was used, or in the case of someone like Sandra,
7 at the very beginning, in the fall of 2013, there was an
8 original Non-Disclosure Agreement that we signed before getting
9 into the details.

10 So whatever the point was that I first was signing
11 something with one of these individuals that had
12 confidentiality or nondisclosure language in it, what I would
13 do is I would -- I would point out to them the kinds of
14 information that we would be getting into or that would be
15 discussed in our working relationship that CMP wanted to keep
16 confidential. And then any time, you know, if that would come
17 up later in the relationship, I would specifically flag it as:
18 This is confidential information that we want to keep
19 confidential. The language "confidential" would be used on
20 certain documents that contained information like that that was
21 sensitive.

22 So in -- in my entire professional practice of using
23 agreements like this, you know, dating back to as early as -- I
24 think probably 2009 is the first time that we were using them
25 at Live Action, we had a very clear practice where, number one,

1 the document itself would clearly identify and call out the
2 types of information that would be covered by it as
3 confidential.

4 And number two, the person being contracted with would be
5 specifically instructed that this information we are about to
6 disclose to you is confidential and is covered under this
7 agreement.

8 **Q.** Okay. So to my question. Is this something you discussed
9 for some minutes with somebody who might be asked to sign it?

10 **A.** Yes. That would be generally at least a 15-minute
11 conversation and could go for much longer, depending on the
12 scope of the information that we were talking about.

13 **Q.** Did you answer somebody's questions before they were asked
14 to sign it?

15 **A.** Yes, we did.

16 **Q.** And were there sometimes people who you presented this
17 Confidentiality Agreement to who said: No thanks, this is not
18 for me?

19 **A.** Yes.

20 **Q.** And did you, Center for Medical Progress, as CEO alter
21 your interaction with that person based on their disinclination
22 to sign that agreement?

23 **A.** Yes, I did.

24 **MS. TROTTER:** Objection. Leading.

25 **THE COURT:** Overruled.

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1 **A.** Yes. That would directly affect -- we saw the
2 Non-Disclosure Agreements, both at Live Action and my practice
3 at CMP, as these were to provide both legal and psychological
4 barriers to -- to the improper disclosure of confidential
5 information.

6 **BY MS. DHILLON**

7 **Q.** Okay. Now, back to the NAF sign-in, where you were trying
8 to get your badges that you had paid for a couple months
9 earlier.

10 Did anybody at NAF's sign-in table, any of the tables
11 there, spend any time discussing what is this document they are
12 asking you to sign?

13 **A.** I think they spent all of approximately two seconds
14 telling us what their -- what their summary -- what their
15 summation is of what that document meant.

16 **Q.** What do you recall them telling you in that brief
17 interaction?

18 **A.** So I recall the workers at the NAF registration desk in
19 April 2014 at the Westin Hotel in San Francisco, I think it was
20 Susan asked them: What does this document mean?

21 And they said: It means you have to be super secret and
22 don't say National Abortion Federation. Say National Asparagus
23 Foundation or National -- I think I said, like, National
24 Association of Fortune Tellers or something like that. And
25 they sort of laughed about it and that was it.

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1 So I understood from that interaction that they were
2 saying that the purpose of the NAF Confidentiality Agreement,
3 this one page, like, rules sign on. For one person sign on
4 that I agree while I'm attending, these are the rules. I
5 understood that as basically a location secrecy agreement; that
6 nobody was going to, like, call in protestors or call in other
7 people or flag publicly while the meeting is going on: Hey,
8 you know, there is 700 abortion providers in this hotel right
9 now.

10 And I thought that was reasonable and I thought that made
11 sense to me. So we agreed -- I was okay with that. And I
12 never -- I never called anybody in from outside the public to
13 disrupt the meeting while it was going on.

14 **Q.** And did your BioMax colleagues also maintain the
15 confidentiality of what the event was they were attending
16 during the course of the event?

17 **A.** Yes, they did.

18 **Q.** Okay. To the best of your knowledge.

19 I want to turn you back to Exhibit 370, which we
20 previously looked at. We looked at the first page of that
21 exhibit entitled "Exhibit Rules and Regulations."

22 I will wait until you flip to the second page of that
23 document, if you would please.

24 **A.** Okay.

25 **Q.** And what is the second page of this document entitled?

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1 **A.** The second page of this document is "Application and
2 Agreement for Exhibit Space." This is actually the first page
3 of this three-page series as it was printed in the exhibitor
4 prospectus. For some reason in the litigation the plaintiffs
5 early on switched it around, but this was actually the first
6 page.

7 **Q.** Okay. These three pages were all together in some order;
8 correct?

9 **A.** This is the first one. The rules and regulations was the
10 second one and the payment form was the third one.

11 **Q.** Okay. And you -- you filled out this form; correct?

12 **A.** Yes, I did.

13 **Q.** Okay. And on the third page it says the total amount due
14 to NAF is \$3,235; Do you see that?

15 **A.** Yes.

16 **Q.** This is the amount that would have become non-refundable
17 after that date in the first page of this agreement?

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

19 **Q.** Did you ever -- after the dispute between the parties in
20 this case started, did you ever receive -- you, BioMax, ever
21 receive a refund of that amount of money?

22 **A.** No. NAF has never refunded that to us to this day.

23 **Q.** So NAF kept that money, as well as the 2015 conference?

24 **A.** That's correct. NAF kept money from both conferences.

25 **Q.** Totaling over \$6,000; correct?

DALEIDEN - CROSS / DHILLON

1 **A.** That's correct.

2 **Q.** Now, did BioMax also attend the 2015 conference in
3 Baltimore for the National Abortion Federation?

4 **A.** Yes, we did.

5 **Q.** And you also personally attended that as Robert Sarkis?

6 **A.** Yes, I did.

7 **Q.** Was the registration process similar to the one that we've
8 just gone through in some detail here?

9 **A.** Yes. It was even more streamlined because Nichelle
10 already knew us. I think she had even sort of been looking out
11 for us, if we wanted to be -- be a repeat exhibitor.

12 **Q.** Did BioMax approach NAF about exhibiting in 2015 or was it
13 the other way around?

14 **A.** I -- you know, my memory is a little hazy about that at
15 this point from the emails, I believe it looks like we sent the
16 first email saying: Hey, is it too late?

17 And Nichelle said something like: No, it's not. You
18 know, get it in now. It's going to be great.

19 I had the sense from it that they were just sort of
20 waiting for us to sign up. I know we had been talking about it
21 with some Planned Parenthood people at that point.

22 That's what I mean by a kind of more streamlined process.
23 You know, we -- it was sort of a -- we had not necessarily been
24 planning on attending in April 2015, as there had been a lot of
25 other things going on in the first part of 2015; but, you know,

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1 last minute I decided, yeah, it sounds like a good idea. I
2 emailed Nichelle last minute and it was no problem.

3 **Q.** I'm going to ask you to take a look at Exhibit 242 in your
4 binder, which the parties have stipulated to the admissibility
5 of.

6 (Witness complied.)

7 **Q.** Mr. Daleiden, your name is on this document as Robert
8 Sarkis; do you see that?

9 **A.** Yes, I see that.

10 **Q.** Do you recognize this document as something that you
11 previously participated in this email exchange?

12 **A.** Yes.

13 **Q.** Okay.

14 **MS. DHILLON:** Your Honor, I would like to move this
15 exhibit into evidence.

16 **MS. TROTTER:** No objection.

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

18 (Trial Exhibit 242 received in evidence)

19 (Document displayed)

20 **BY MS. DHILLON**

21 **Q.** Mr. Daleiden, I'm going to ask you to take a look at the
22 first to the last page of this exhibit, which chronologically
23 is -- actually, skip that. That's not -- I don't have a
24 question on that page.

25 If you could take a look at the second page of this

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1 exhibit, which is, for the record, Bates No. CM-01117? Do you
2 see that, an email exchange with Nichelle Davis and Brianna
3 Allen?

4 **A.** Yes, I see that.

5 **Q.** Okay. And starting at the bottom of that page, which
6 would be the first one chronologically, were you also at this
7 time Brianna Allen in this exchange?

8 **A.** Yes. I sent this email.

9 **Q.** Okay. And when was this email sent?

10 **A.** This was sent on February 10th, 2015.

11 **Q.** So was that approximately two months prior to the 2015 NAF
12 conference?

13 **A.** Yes, it was.

14 **Q.** And what is happening in this email exchange?

15 **A.** So in this email exchange BioMax emailed Nichelle Davis
16 and said: We're interested in -- you know, we would really
17 like to attend NAF again and have a booth again. And we asked
18 for the information on exhibiting, so presumably the exhibitor
19 prospectus again.

20 And Nichelle replied, it looks just like -- like seven
21 minutes later and sent us a copy of the exhibitor prospectus.

22 And then -- now it's -- this sort of refreshes my
23 recollection. We -- that first part of 2015 was a very, very
24 busy time for -- for the whole undercover project. We were
25 doing --

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1 **THE COURT:** Excuse me, Mr. Daleiden. Can we just go
2 questions and answers, please?

3 **MS. DHILLON:** Yes, Your Honor.

4 **BY MS. DHILLON**

5 **Q.** I think you've answered the question.

6 **A.** Okay.

7 **Q.** So next question is: Did Ms. Allen send you, as Brianna,
8 a -- did Ms. Davis send you a prospectus as she had done the
9 previous year?

10 **A.** Yes, she did.

11 **Q.** Okay. And did she ask you any questions, by the way, in
12 2014 about whether you or your colleagues were pro-choice?

13 **A.** No. She never asked anything like that. And the
14 exhibitor prospectus even never mentioned that as any kind of
15 consideration or requirement for attending NAF.

16 **Q.** When you were signing into the NAF 2014 conference, did
17 anybody there at any of the sign-in tables ask you: Are you
18 pro-choice?

19 **A.** No, they did not.

20 **Q.** Did Ms. Davis or anybody at NAF sort of check in with you
21 in 2015 as they were giving you materials to see if you were
22 pro-choice?

23 **A.** No.

24 **Q.** Okay. Was that question ever asked of you in any of your
25 interactions with NAF: Were you pro-choice?

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1 **A.** Never.

2 **Q.** Okay. Now, did Ms. Davis respond at the top of this page
3 of the exhibit, Page 2 of this exhibit that we're looking at?
4 What did she respond to you?

5 **A.** So -- so after Nichelle had sent us the exhibitor
6 prospectus in February, like I said, it was an extremely busy
7 time, so we didn't actually reply to her at all. I was too
8 busy with all the different Planned Parenthood conferences and
9 some of the other undercover stuff.

10 And so Nichelle then actually followed up with us towards
11 the end of March, on March 23rd, and told us that she was
12 holding a booth for us, but we hadn't actually completed the
13 registration yet.

14 **Q.** Okay.

15 **A.** And that was her response.

16 **Q.** So she sent you the prospectus on February 10th, 2015;
17 correct?

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

19 **Q.** And then you didn't respond; correct?

20 **A.** That's correct.

21 **Q.** And then she sent you a second follow-up email several
22 weeks later? Actually, about six weeks later; correct?

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

24 **Q.** And did Ms. Davis say that she's holding a booth for
25 BioMax; correct?

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1 **A.** That's correct.

2 **Q.** And what did you do on behalf of BioMax in response to
3 that?

4 **A.** So then it was either -- it looks like from the email it
5 was probably shortly thereafter I realized that I was having
6 trouble for some reason using the online registration mechanism
7 that NAF had. So I had to do it really the old-fashioned way,
8 and I just sent in the list of people who would be representing
9 BioMax as exhibitors. And then asked Nichelle, you know,
10 what's the best way to do it.

11 And so I guess we ended up registering via paper and
12 actually mailing in the paper exhibit registration the same way
13 as we did in 2014.

14 **Q.** Okay. During the registration process for BioMax for
15 2015, did Ms. Davis mention any other documents besides the --
16 the application and the Exhibitor Agreement?

17 **A.** No, she did not.

18 **Q.** Okay. Did she mention any particular concerns about
19 confidentiality around the 2015 conference?

20 **A.** No, not at all.

21 **Q.** Did anybody say to you that there was anything
22 particularly secret or select about the location of the 2015
23 conference prior to your showing up there?

24 **A.** No.

25 **Q.** Was any type of confidentiality communicated to you

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1 regarding the 2015 conference that was unusual compared to
2 other conferences you've attended?

3 **A.** Not that I recall.

4 **Q.** Okay. I'd like to ask you, to your recollection, what
5 happened when you and your colleagues -- by the way, who
6 attended the 2015 conference on behalf of BioMax?

7 **A.** So the 2015 conference was attended by myself as Robert
8 Sarkis, Sandra Merritt as Susan Tennenbaum, Adrian Lopez as
9 Adrian Lopez, and Anna Bettisworth as Rebecca Wagner.

10 **Q.** And can you describe for us what happened when you went to
11 pick up your badges in the -- at the 2015 conference?

12 **A.** Sure. So in 2015 it was in some ways even more confusing
13 than 2014. When we went to the -- we went to the registration
14 area and there were clearly two different registration spots in
15 the registration area. There was one that looked like -- I
16 think there was one that said, I think, exhibitors and then one
17 that was for attendees.

18 So we went to the exhibitor table and we were looking for
19 Nichelle and Nichelle wasn't there. I think some of this is
20 captured on video that we might have watched yesterday, but
21 somebody flagged Nichelle to come over to the exhibitor
22 registration place.

23 So she recognized us. She was happy to see us. She did
24 not ask for photo ID. She did not ask us to sign anything.
25 She just started handing the exhibitor packets, plus the

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1 badges, to everybody who was there. She had Susan's and she
2 had -- I believe she had Rebecca's, but she didn't have mine
3 for some reason and so that was confusing. And I don't know
4 about Adrian's.

5 We at least got Susan's from the exhibitor table from
6 Nichelle with no check-in other than she recognized us on-site
7 because she knew us.

8 So that -- from that I thought that, apparently, the
9 system was different in 2015 or, you know, maybe it never
10 really was much of a system to begin with, but...

11 **Q.** So if I understand you correctly, I'm not clear, did you
12 show your ID, Robert Sarkis ID in 2015?

13 **A.** No, never.

14 **Q.** And in 2014 did you take your ID out and show to it any
15 person to examine?

16 **A.** I did not take it out in 2014. I took my wallet out and
17 the ID document was in the little plastic viewer window of the
18 wallet, and so I held it like that for them to look at. And
19 the lady glanced at it for, I think, all of one second -- it's
20 actually on video, you can count it, 1,001 -- and from about
21 two feet away and said that's fine.

22 **Q.** In 2015 she recognized you and no ID was requested;
23 correct?

24 **A.** Correct.

25 **Q.** Were you asked to sign any additional documents on-site,

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1 starting with you, Robert Sarkis, at the 2015 conference?

2 **A.** I was actually at the end of the conference asked very
3 specifically to sign some kind of continuing education funding
4 or sponsorship document that to this day I'm very confused
5 about why they, like, sort of shoved it in my face on the last
6 day and said: Please sign this. We need it for all
7 exhibitors.

8 I know it's an exhibit in this case. I don't think it's
9 come up in anything. But that was something different from
10 2014. And I think it has to do with just the -- I think it's
11 something very technical about the continuing education credits
12 at the conferences, which is something that BioMax was not
13 involved in, which is why it didn't make a lot of sense, but...

14 **Q.** So focusing back on the sign-in on the day that you got
15 your badges, were you asked -- were you, Robert Sarkis, asked
16 to sign any additional documents?

17 **A.** I -- I do not believe I was specifically asked to sign any
18 additional documents.

19 I recognize from a video that there was a NAF registration
20 person who made some reference to -- for the attendees at the
21 attendee check-in to -- to sign the Confidentiality Agreement
22 and photo ID, but Nichelle was handing out the exhibitor badges
23 without any of that.

24 **Q.** If I understand correctly, was there a separate place that
25 attendees, members of NAF or other attendees went to check-in

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1 compared to the exhibitors?

2 **A.** That's correct. They were on two opposite sides of the
3 room.

4 **Q.** So not just different parts of the same table, but
5 different parts of --

6 **A.** No, no. Completely opposite sides of a large ballroom.

7 **Q.** So some people were being asked to sign some sort of
8 additional documentation, but you were not; correct?

9 **A.** Correct.

10 **Q.** Okay. I'm going to ask you -- now we're going to talk
11 about these NDA documents. If you could turn to Exhibit 1012
12 in your binder, please?

13 (Witness complied.)

14 **A.** I have it.

15 **Q.** I believe you've seen this document before, but is this a
16 series of Confidentiality Agreements?

17 **A.** Yes, I believe it is.

18 **Q.** Okay. And if we can turn to the third page of that
19 document, which is the Robert Sarkis Confidentiality Agreement.

20 Is this a document that you recall signing in 2014 at the
21 NAF conference?

22 **A.** Yes, I do.

23 **THE CLERK:** Is this admitted?

24 **MS. DHILLON:** So, I didn't make that clear. Yes, it
25 is admitted.

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1 (Document displayed)

2 **BY MS. DHILLON**

3 **Q.** And in 2014 did each of your colleagues who attended the
4 conference, Ms. Allen and Ms. Merritt, sign these documents?

5 **A.** Yes, they did.

6 **Q.** But in 2015 there is no such document for you; correct?

7 **A.** Correct.

8 **Q.** Okay. When you were asked -- how long did you take before
9 you -- after receiving this document in 2014 before you signed
10 it?

11 **A.** Probably no more than 15 seconds.

12 **Q.** Okay. And this is after the explanation you were given
13 that this was a location secrecy document; correct?

14 **A.** That's correct.

15 **Q.** Did you have any reaction to this document? Did you scan
16 it before you read it -- you signed it?

17 **A.** Yeah. I scanned it before I read it. Keeping in mind,
18 you know, basically scanning it in light of what the NAF
19 representative had just said to me, which was implying that it
20 was -- it was specifically for -- for keeping the location and
21 the occurrence of the conference secret and discreet while it
22 was going on.

23 And so scanning through on it, it looked like on its face
24 it was directly contradictory to the Exhibitor Agreement that I
25 had already filled out and then signed two months prior. The

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1 Exhibitor Agreement, for example, explicitly permits exhibitor
2 photography. This one seems to, you know, have a question
3 about it or a prohibition on it. But it says it's for
4 attendees, and we're exhibitors.

5 So it just seemed like -- to me, looking at it in the
6 light of a -- what the NAF registration people had told us,
7 that this is about discretion while you're here at the meeting,
8 to me this looked like basically conduct rules for while we
9 were attending; and at most, if there was something that
10 somebody at NAF had a problem with during our attendance, then
11 we would just get kicked out of the meeting. So it seemed like
12 a discretion -- like, a behavioral discretion kind of
13 acknowledgment.

14 **Q.** Was there a distinction in your mind at the time you were
15 presented with this document between attendees of the
16 conference and exhibitors of the conference?

17 **A.** Yeah. It seemed like there was some kind of difference.
18 I didn't completely understand how NAF was developing those
19 categories or what went into it.

20 It had been confusing to me from the beginning in the
21 exhibitor -- in the exhibitor prospectus, which is why I
22 emailed Nichelle about the total price that we owed and for
23 different check boxes and all of that.

24 So -- you know, so we paid the amount of money they were
25 asking for, but I didn't necessarily understand all of the way

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1 that they classified things, even up to coming to the meeting.

2 **Q.** Okay. Did anyone from the National Abortion Federation
3 express to you that anybody besides the National Abortion
4 Federation was supposed to be a party to this agreement, the
5 Confidentiality Agreement in this exhibit?

6 **A.** No, not at all. They didn't even act like they were a
7 party to it necessarily. It was just presented like an
8 acknowledgment of -- of location secrecy.

9 **Q.** And looking at the bottom of this document, it's only
10 signed by you, as Robert Sarkis, correct, not by any National
11 Abortion Federation representative?

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

13 **Q.** During the -- did you understand this document to mean
14 that this was something that you could enforce against other
15 people attending the National Abortion Federation conference?

16 **A.** No. I almost understood it as -- as sort of an
17 acknowledgment that if -- you know, they could kick us out of
18 the meeting if they needed to and we -- and we wouldn't contest
19 being kicked out if they thought our behavior was improper.

20 **Q.** Did you at any point in time when attending -- signing
21 up -- step back. Withdraw this.

22 During the time period before you showed up in
23 San Francisco to attend this NAF 2014 conference, did you
24 understand this National Abortion Federation conference to be
25 part of the Planned Parenthood organization at all?

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1 **A.** No. I understood it to be completely separate.

2 **Q.** Does -- do any of the documents that you recall signing on
3 behalf of BioMax to attend this conference mention Planned
4 Parenthood in any way?

5 **A.** No, I don't believe they did.

6 **Q.** Did they mention any affiliate of Planned Parenthood?

7 **A.** No, certainly not.

8 **Q.** Any particular abortion providers who provide services at
9 Planned Parenthood affiliates?

10 **A.** The only -- the closest thing to anything like that would
11 be the draft -- or just the schedule, the proposed schedule of
12 the meeting; but that wasn't available at the time that the
13 exhibitor prospectus was given to us. I think it was still in
14 development.

15 So, you know, certain presenters were sometimes mentioned
16 with their affiliation, but other than that nothing.

17 **Q.** At the time that you filled out the exhibitor prospectus,
18 did you know who any of the presenters were going to be at the
19 National Abortion Federation 2014 conference?

20 **A.** No, I did not.

21 **Q.** Do you recall when you got that draft agenda?

22 **A.** As I recall, it was -- it was pretty late. It was not
23 available until, like, right before the meeting.

24 **Q.** Okay. Did you ever get a list of attendees at the NAF
25 2014 conference?

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1 **A.** No, I did not.

2 **Q.** Okay. Sometimes at conferences you get emailed a list of
3 people's contact information. That never happened for the NAF
4 2014 conference; correct?

5 **A.** Correct. We never got a list of attendees.

6 **Q.** And did you ever get a list of attendees prior to the NAF
7 2015 conference?

8 **A.** No, we did not.

9 **Q.** Did you get a list of attendees at the NAF 2015 conference
10 at the conference?

11 **A.** No.

12 **Q.** And did you ever get a list of NAF 2015 conference
13 attendees after the conference?

14 **A.** No, we did not.

15 **Q.** Okay. Still staying on this document. If we could take a
16 look at Paragraph 2 of this agreement?

17 (Document displayed)

18 **Q.** And do you see where it says:

19 "NAF conference information includes all
20 information distributed or otherwise made available by
21 NAF or any conference participants."

22 Do you see that?

23 **A.** Yes, I see that.

24 **Q.** Did that phrase any "conference participants" have any
25 significance to you as to who could enforce this agreement?

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1 A. No. It -- it really didn't.

2 Q. I mean, you knew there were going to be people at the
3 conference; right?

4 A. Right.

5 Q. But did you have an understanding that this was a contract
6 between you and every other person attending the conference
7 even though you didn't know who they were?

8 A. No, not at all.

9 Q. Okay. Did you have any understanding when you were
10 presented with this document prior to signing it, how long this
11 Confidentiality Agreement was meant to be in effect?

12 A. Based on what the NAF representatives told us at the
13 registration desk, it sounded to me like it was meant to be in
14 effect for the duration of the meeting itself. Because I
15 understood it as an acknowledgment of, you know, sort of
16 behavioral discretion while at the meeting and not calling
17 attention to the meeting while it was going on and not
18 disrupting it.

19 Q. In that example that you gave us of National Asparagus
20 Federation, or foundation, that's an actual example that the
21 NAF people gave you; right?

22 A. Yes. They are the ones who said say National Asparagus
23 Foundation.

24 Q. Did they say after the event was over you were prohibited
25 from telling people that you had been at a National Abortion

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1 Federation conference?

2 **A.** No, they never said that.

3 **Q.** Did you understand that from any sort of body language
4 they conveyed to you in giving you this document?

5 **A.** No. And I had seen online previously abortion providers
6 reporting that they had been at the NAF conference, were
7 presented this paper at a NAF conference after the fact, things
8 like that.

9 **MS. TROTTER:** Objection. Move to strike. Hearsay.
10 Irrelevant otherwise.

11 **THE COURT:** I'm going to overrule the objection.

12 Ladies and gentlemen, Mr. Daleiden is not giving you legal
13 instruction on what the contract means. He is telling you what
14 his perspective was at the time.

15 **MS. DHILLON:** That's what I'm asking, Your Honor.
16 Thank you.

17 **BY MS. DHILLON**

18 **Q.** Is the Center for Medical Progress a party to this
19 document, NAF Confidentiality Agreement?

20 **A.** No, it is not.

21 **Q.** Is it mentioned anywhere in this agreement?

22 **A.** No, it's not.

23 **Q.** Do you know whether Center for Medical Progress was ever
24 asked to sign a National Abortion Federation Confidentiality
25 Agreement?

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1 A. It never was.

2 Q. And is the same for 2015? Do you know if the Center for
3 Medical Progress was ever asked to sign a Confidentiality
4 Agreement in connection with the NAF 2015 conference?

5 A. We never were.

6 Q. Okay. Now, now staying on the NAF conferences. You
7 attended both the 2014 and 2015 conferences; correct?

8 A. Yes.

9 Q. In the character of Robert Sarkis?

10 A. Yes.

11 Q. On your way between entering the St. Francis Hotel and
12 picking up your badge, how many security guards do you recall
13 encountering?

14 A. Could you ask me the first part of that question again? I
15 need to get the geometry.

16 Q. The revolving doors and entering the hotel, between that
17 point and the point of picking up your badges, do you recall
18 how many security guards you encountered?

19 A. I think we encountered one.

20 Q. And was that a hotel security guard or a National Abortion
21 Federation security guard?

22 A. I do not remember for sure. I think it could have been
23 either one.

24 Q. Was it on the ground floor in the lobby of the hotel?

25 A. I believe that was actually on the mezzanine level, if I'm

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1 recalling the video correctly. We actually walked up the
2 stairs from the lobby and encountered them on the mezzanine
3 level.

4 **Q.** Okay. And after picking up your badges, did you then go
5 to the exhibitor hall?

6 **A.** Yes, we did.

7 **Q.** Okay. And did you encounter security guards between the
8 time you picked up your badges and the time you entered the
9 exhibitor hall?

10 **A.** Off the top of my head, I don't remember at which points
11 we would have encountered security guards and which ones we
12 didn't.

13 I would look to the video footage for that because most of
14 it was recorded. What I do remember is that there were times
15 when there were guards and there were other times where there
16 were no guards whatsoever.

17 **Q.** Okay. Did you have conferences -- did you have
18 conversations with people you met at the NAF 2014 conference in
19 areas of the hotel accessible to hotel guests?

20 **A.** Yes, I did.

21 **Q.** So can you give us an example of one of those?

22 **A.** Yeah. I had conversations in the -- partial conversations
23 in the elevator while hotel guests were coming in and out of
24 the elevator, and also a conversation in the hotel lobby, and
25 also some conversations on the stairs.

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1 There is a very large wide staircase between the -- the
2 main lobby that opens up to Union Square at the St. Francis and
3 the mezzanine level where the conference is. We had some
4 conversations on the stairwell actually. Then most of the
5 conversations were on the mezzanine floor level.

6 **Q.** And that was, to your recollection, open to guests of the
7 hotel?

8 **A.** The elevator bank opens right up to the mezzanine level.
9 So I -- I would describe the geometry of those spaces as
10 directly adjacent, even open to the spaces where the public
11 is -- is moving around the hotel.

12 **Q.** Okay. Now, I'm not asking you about conversations you may
13 have had with your fellow BioMax colleagues, but conversations
14 you had with people who were meeting at the NAF conference for
15 the first time.

16 When engaging in conversations with these individuals in
17 some of the public places that you've just described, did any
18 of them ever say: Look, we can't talk here. This is private.
19 We have to go to a private space to talk?

20 **A.** No. They never said things like that.

21 **Q.** Okay. Do you recall during the NAF 2014 conference
22 anybody who you were engaged in conversation with saying: We
23 can't talk here. We have to go to a secure space to talk?

24 **A.** No. I don't remember anybody saying anything like that.

25 **Q.** And in the NAF 2015 conference as well, do you recall

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1 anybody ceasing a conversation that you were engaged in saying:
2 We can't talk here. It's too public?

3 **A.** No.

4 **MS. DHILLON:** I'm going to ask, Your Honor, to play
5 Trial Exhibit 5840. It's a clip that's been provided to
6 opposing counsel on the 20th of this month. It doesn't have a
7 transcript because it's sort of in an unintelligible public
8 space.

9 **MS. BOMSE:** I don't think we are aware of that clip.

10 **MS. DHILLON:** It was in a Dropbox.

11 **MS. TROTTER:** One moment, Your Honor.

12 (Discussion held off the record between plaintiffs'
13 counsel.)

14 **THE COURT:** While we're waiting, ladies and
15 gentlemen, let's all stand up.

16 (Everybody stands.)

17 **THE COURT:** I usually do this during trial to get
18 people's blood circulating.

19 Nobody in the gallery has to stand up.

20 (Laughter.)

21 (Brief pause.)

22 **THE COURT:** All right. Please be seated, everybody.
23 Thank you.

24 **MS. DHILLON:** Your Honor, may we show this exhibit
25 only to counsel, who apparently haven't had time to look at it

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1 yet with no sound?

2 **THE COURT:** No sound, not to the jury or to the
3 public, yes.

4 **MS. DHILLON:** It's brief, fairly brief.

5 **THE COURT:** Okay.

6 (Videotape played without audio for the witness and
7 counsel only.)

8 **MS. TROTTER:** No objection, Your Honor.

9 **THE COURT:** All right. It's admitted. 5840 is
10 admitted.

11 (Trial Exhibit 5840 received in evidence)

12 **MS. DHILLON:** If we could please play this exhibit
13 with sound for the jury and the Court.

14 (Videotape played with audio in open court, not
15 reported)

16 **BY MS. DHILLON**

17 **Q.** Mr. Daleiden, do you recognize what's being depicted in
18 the exhibit that was just played for the Court?

19 **A.** Yes, I do.

20 **Q.** What is depicted in this exhibit?

21 **A.** That is -- that is an off-site reception from the 2015 NAF
22 meeting in Baltimore, Maryland. So it was actually an evening
23 reception that didn't even take place at the hotel. It was a
24 separate off-site location.

25 **Q.** And did you take that video?

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1 **A.** I would have to watch it again. I may have. I don't know
2 if I saw my hands or anything in there to verify that it was me
3 or somebody else.

4 **Q.** Okay. Do you recall attending something that looked like
5 that yourself?

6 **A.** Yes, I do recall attending something like that.

7 **Q.** Was it very loud like that?

8 **A.** Yes, it was very loud like that.

9 **Q.** And that was part of the NAF 2015 conference; correct?

10 **A.** I don't know if it would be properly described as part of,
11 insofar as it was like a separate off-site gathering. But in a
12 general sense, it took place during the -- you know, during the
13 time of the conference and -- and attendees and exhibitors were
14 invited there.

15 **Q.** Okay. So this is something that you were entitled to
16 attend as part of your conference registration for the NAF 2015
17 conference; correct?

18 **A.** As far as I understand, yes.

19 **Q.** I'm going to turn to the Planned Parenthood Federation
20 contracts next.

21 Did BioMax attend the three Planned Parenthood Federation
22 conferences that we went over when I began asking you
23 questions: The Forum conference, the MeDC conference for
24 medical directors, and the -- and National Conference?

25 **A.** Yes, it did.

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1 Q. Okay. And did you personally, as Robert Sarkis, attend
2 all three of those conferences?

3 A. Yes, I did.

4 Q. How did BioMax learn about the first of those conferences,
5 the Forum conference in 2014?

6 A. Yeah. So the Forum conference that was in Miami in 2014,
7 we learned about that because Dr. Nucatola actually invited us
8 to it the very first time she met us at the NAF meeting in 2014
9 in San Francisco. She brought one of the exhibitor
10 prospectuses for that meeting down from her room and gave it to
11 us at our exhibit booth and said: We really think you should
12 come exhibit here.

13 Q. So Dr. Nucatola had brochures for it in her room?

14 A. Yes, she did.

15 Q. And then she made a point of bringing it to you at sort of
16 a subsequent time after meeting you initially?

17 A. Yes.

18 Q. And what did she tell you about the conference?

19 A. She said that this would -- she said it would be sort of
20 similar to NAF, but for Planned Parenthood medical directors in
21 particular. And so she thought it would be a really good
22 opportunity for a fetal tissue procurement organization.

23 Q. It sounds to me like she physically actually handed you
24 some materials; correct?

25 A. Yes, she did.

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1 Q. Did you consider it to be National Abortion Federation
2 materials that were being handed to you at that National
3 Abortion Federation conference?

4 A. No, not at all. Those were -- I don't know if they were
5 even technically Planned Parenthood materials because it was a
6 conference put on in conjunction with the Society for Family
7 Planning. It was a completely separate organization.

8 Q. Okay. What did you do with those materials?

9 A. I took them back to my room and put them in my luggage and
10 took them home with me.

11 Q. Okay. And did BioMax take any action to register for that
12 conference?

13 A. Not at that time. It was something that I sort of sat on
14 and kind of thought about. And then when we had lunch with
15 Dr. Nucatola later in July of 2014, she really made it a point
16 to emphasize: I really think you guys should come and exhibit
17 at this meeting. And so after a three-hour lunch, she
18 convinced me, so... So ultimately we did.

19 Q. So prior to that conversation at lunch with Dr. Nucatola,
20 you hadn't formed an opinion about whether BioMax would attend
21 or not; correct?

22 A. That's correct.

23 Q. Okay. Did Dr. Nucatola tell you anything about the cost
24 to attend the conference?

25 A. No, she didn't.

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1 Q. Okay. So after that lunch that you mentioned where
2 Dr. Nucatola mentioned it a second time, what steps did you on
3 behalf of BioMax take to attend that conference?

4 A. So after she mentioned it, I went and looked up the actual
5 online registration portal for the -- for the Forum conference
6 in Miami. Like most conferences, it was one of those Event.com
7 or Onlineevent.com registration things.

8 And so that was a -- so as far as I recall, that was an
9 online -- you know, thinking about it now, I may have had to
10 send an email to Vikky Graziani first asking for how do we
11 register, because that was a sort of -- it was not a very
12 robust exhibitor prospectus. It wasn't as long and didn't have
13 as much information as the NAF exhibitor prospectus.

14 So I think that I had to -- I think it wasn't clear how to
15 register. I think I had to email Vikky first.

16 Q. Who is Vikky Graziani?

17 A. Vikky Graziani, as far as I understand, is, like, an
18 events coordinator for PPFA.

19 Q. And was her name in that prospectus that Dr. Nucatola gave
20 you?

21 A. Either her name or, like, a generic -- it might have been
22 a generic email contact, like, Events@PPFA.org or something
23 like that.

24 Q. Okay. At any point, you navigated to an online
25 registration form for the 2014 North American Forum on Family

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1 Planning?

2 **A.** That's correct.

3 **Q.** Okay. If you could take a look at Exhibit 1907 in your
4 binder?

5 (Witness complied.)

6 **Q.** Do you recognize that document?

7 **A.** More or less. To me looks like a printout of the
8 information that I would have entered in to the online
9 registration form. So as I encountered it and filled it out,
10 it would have been a -- it would have been an actual form,
11 like, internet form with spaces to fill things in and
12 everything.

13 This looks likes a straight up, like, text document
14 printout of the -- the data set that that form generated.

15 **Q.** Okay.

16 **MS. DHILLON:** Your Honor, the parties have stipulated
17 to the admissibility of this document. May I move it into
18 evidence, please?

19 Thank you.

20 **THE COURT:** Yes, you may. 1907 is admitted.

21 (Trial Exhibit 1907 received in evidence)

22 **BY MS. DHILLON**

23 **Q.** Mr. Daleiden, did you fill out this form, to your
24 recollection, as Brianna Allen.

25 (Document displayed)

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1 **A.** To my recollection, yes, I did.

2 **Q.** And if we could turn to Page 2 of this exhibit, there is a
3 subheading entitled "Agenda." Do you see Basic Corporate
4 Exhibitor Fee of \$3,000?

5 **A.** Yes.

6 **Q.** And do you see two badges being registered there?

7 **A.** Yes, I do.

8 **Q.** Is that for you and Mr. Lopez?

9 **A.** Yep.

10 **Q.** Do you recall when you were signing up for this basic
11 exhibitor -- corporate exhibitor package, whether there were
12 any other forms that you were asked to fill out online?

13 **A.** I don't believe there were any other forms besides just
14 the basic forms asking for the information that's reflected in
15 this printout.

16 **Q.** For example, was there anything on the sign-in section
17 that asked you for references?

18 **A.** No. There was no references section.

19 **Q.** Was there anything asking you whether you were pro-choice?

20 **A.** No, there was not.

21 **Q.** Okay. Was there even anything asking you what your
22 company did?

23 **A.** No, I don't think there was even that.

24 **Q.** Okay. What happened next in the registration process
25 after you filled out this form and clicked "Send" or "Okay" or

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1 whatever the button said?

2 **A.** I think in conjunction with filling out this form, you
3 filled out the payment information and everything. It was --
4 it was all very simple and streamlined, more similar to
5 registering for the ARHP meeting than for the NAF meeting that
6 was kind of clunky and paper based.

7 **Q.** So do you recall paying for this NAF -- sorry, Planned
8 Parenthood Forum conference at the same time you filled out the
9 exhibit that we just looked at?

10 **A.** Yes, yes. It was all in one submission.

11 **Q.** Did you then hear from any representative of PPFA with
12 respect to whether your application was approved?

13 **A.** Yeah. I think we got a confirmation email and, like, a
14 final registration email probably, you know, anywhere from one
15 day to, you know, a couple of weeks after this.

16 **Q.** Okay. And you don't see Center for Medical Progress
17 mentioned anywhere in that application, do you?

18 **A.** No, I don't.

19 **Q.** And you don't see any other parties mentioned besides the
20 fact that it's a North American Forum on Family Planning, do
21 you?

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

23 **Q.** Do you even see the words "Planned Parenthood" anywhere in
24 this application?

25 **A.** No, not in this document, that's correct.

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1 Q. Okay. Did BioMax pay that \$3,000 fee mentioned in the
2 exhibit that we just saw?

3 A. Yes, I believe we did.

4 Q. And did BioMax ever get refunded that money?

5 A. No.

6 Q. I'm going to focus your attention on Page 3 of that
7 exhibit.

8 Do you see sort of the third line on that page a checkmark
9 next to a line that says "Acknowledgment Terms/Conditions" or
10 "Terms/Cond"?

11 A. Yes, I see that.

12 Q. Do you understand -- do you have any understanding of what
13 the significance is of that?

14 A. Yeah. I think that means that BioMax agreed to the terms
15 and conditions that were presented in the online form.

16 Q. And how did you acknowledge those terms and conditions?

17 A. I think it was with a check box.

18 Q. Okay. Did you have to physically check that off?

19 A. I think I had to physically click on the mouse to
20 digitally check the box, yes.

21 Q. Okay. Did you read the terms and conditions prior to
22 physically clicking that to finish the registration process?

23 A. Yeah, more or less. I certainly skimmed them for a couple
24 of minutes.

25 Q. Okay. I'm going to ask you to take a look at

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1 Exhibit 1910, which should be the next document in your binder,
2 which has already been admitted into evidence.

3 (Document displayed)

4 **Q.** Mr. Daleiden, after you have had a chance to look at it,
5 does this look like the "Sponsor/Exhibitor Terms and
6 Conditions" related to the 2014 Forum, PPFA conference?

7 **A.** Yes, it does.

8 **Q.** How much time did you spend looking at this; do you
9 recall?

10 **A.** Probably no more than three minutes, if that.

11 **Q.** So if we can take a look at beginning of the first page of
12 this document entitled "Sponsor/Exhibitor/Advertisement
13 Package;" do you see that?

14 **A.** Yeah, I see that.

15 **Q.** Did this entire document apply to BioMax's attendance as
16 an exhibitor at the Forum conference?

17 **A.** I didn't think so when I saw it, because we weren't
18 sponsors and we weren't submitting any advertisements to the
19 program.

20 **Q.** Can you tell the jury which part of this document you
21 believe applied to your organization, BioMax?

22 **A.** Yeah. I would have thought that only the second section
23 on the second page that begins with "Exhibit Space" would have
24 applied to us.

25 **Q.** Okay. And does the "Exhibit Space" section of this

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1 document, which goes on for a little bit over a page, does it
2 go through various terms and conditions to be an exhibitor at
3 the conference?

4 **A.** Yes, it does.

5 **Q.** Now, does this document mention any particular affiliates
6 of Planned Parenthood?

7 **A.** No, it doesn't.

8 **Q.** Does it mention any particular providers of abortion
9 services?

10 **A.** No, it doesn't.

11 **Q.** Does this section regarding exhibit space talk about the
12 specific physical requirements of an exhibit at the Forum
13 conference?

14 **A.** Yes, it does.

15 **Q.** Okay. So if you can just take us through what you
16 understood the requirements to be of an exhibitor based on this
17 document?

18 **A.** Sure.

19 **Q.** At a high level.

20 **A.** Yeah. So at a high level I basically understood this as
21 agreeing not to go overboard with the exhibitor kit that I
22 mentioned previously that they send you, the sort of glorified
23 catalog for all different kinds of exhibit booth furniture. At
24 some conferences people will get very elaborate. They will
25 have, like, flashing lights and all kinds of different crazy

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1 display things to try to attract more people to the table.

2 So I understood this as basically, you know, another --
3 actually kind of similar to some of the -- you know, kind of
4 analogous to some of the NAF agreements insofar as it's a
5 regulation for, you know, not causing a disturbance at the
6 meeting for the time that you're there exhibiting.

7 **Q.** So does -- for example, just to directing your attention
8 to -- well, first directing your attention to Paragraph 4 of
9 the "Exhibit Space" section, this requires that you wear a
10 badge during your attendance; is that correct?

11 **A.** Yes, I see that.

12 **Q.** And did you and your colleagues attending on behalf of
13 BioMax wear badges during the conference?

14 **A.** Yes, we did.

15 **Q.** And looking at Paragraph 6, does it say that display
16 materials have to be flame proof?

17 **A.** Yes, I see that.

18 **Q.** Were BioMax's materials flame proof?

19 **A.** I guess they were at flame proof as everybody else's
20 materials. I think everybody had paper brochures and stuff
21 there, which in theory are flammable, but I doubt that's what
22 this was referring to.

23 **Q.** Nothing did catch fire during the exhibit; correct?

24 **A.** Correct, correct.

25 **Q.** Did BioMax use any unusual lighting effects?

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1 **A.** No.

2 **Q.** And during the time that you were an exhibitor, or BioMax
3 was an exhibitor, did any representatives of the Planned
4 Parenthood organization complain about the quality of your
5 booth?

6 **A.** No. Actually, I mean, several Planned Parenthood
7 providers thanked us for being there and were excited about the
8 information that we were providing them.

9 **Q.** What type of information were you providing at the booth?

10 **A.** We were providing them information about the proposed
11 BioMax business model for harvesting and selling fetal tissue
12 from Planned Parenthood clinics.

13 **Q.** Okay. And I never asked you this question with respect to
14 the NAF 2014 conference, but what was the booth about there at
15 2014?

16 **A.** This -- the same thing. BioMax, as a very young and very
17 new start-up company, was exploring the market in aborted fetal
18 tissue and was -- was having discussions with -- and
19 explorations of the level of interest and engaging in that kind
20 of -- that kind of business model with the people at NAF.

21 **Q.** Did you use the same or similar materials between the NAF
22 2014 conference and the next conference in time, which was this
23 PPFA Forum conference?

24 **A.** Yes. We had the exact same materials.

25 **Q.** Okay. Did anybody at either of these two conferences that

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1 I've just described say to you that your materials were
2 misleading in any way?

3 **A.** No, they did not.

4 **Q.** Did they take issue with the educational nature of the
5 materials displayed at your BioMax booth?

6 **A.** No. If anything, they thanked us for teaching them
7 something new about stem cells.

8 **Q.** And was the information that you have provided regarding
9 stem cells accurate?

10 **A.** To the best of my knowledge, yes. I tried to be as
11 accurate as possible describing the current state of the
12 scientific literature as I had reviewed it.

13 **Q.** Okay. I'm going to direct your attention to Paragraph 13
14 of this terms and conditions document, which states that the:

15 "Character of exhibits is subject to the approval
16 of PPFA."

17 Do you see that?

18 **A.** Yeah, I see that.

19 **Q.** Did anybody at PPFA review your materials prior to their
20 display at the BioMax booth?

21 **A.** No, they did not.

22 **Q.** Did anybody at PPFA ever review the materials in any sort
23 of formal capacity during the exhibit?

24 **A.** No.

25 **Q.** And same question back -- I forgot to ask you this with

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1 respect to NAF. Did anybody at the National Abortion
2 Federation review the materials prior to your displaying them?

3 **A.** No, never.

4 **Q.** Okay. Even during the many days of the conference?

5 **A.** That's correct. Even during all four days of the
6 conference, nobody reviewed that.

7 **Q.** Sometimes conferences ask that you provide a copy for
8 posterity. Were you required to do that, provide a copy of
9 your materials that you were exhibiting at the NAF 2014
10 conference to the National Abortion Federation?

11 **A.** No, we were not.

12 **Q.** And same question with respect to the Forum conference.
13 Were you asked to provide a copy of those either for approval
14 or for recordkeeping to PPFA?

15 **A.** Same answer. No, we never were.

16 **Q.** In fact, did they seem to have any concern about the
17 content of your materials at all?

18 **A.** No, not at all.

19 **Q.** Okay. I'm going to turn your attention on the same
20 exhibit to the "Legal and Compliance Matters" section at the
21 bottom of Page 3 of this exhibit.

22 What did you understand Paragraph 1 to indicate with
23 respect to the timing of canceling your attendance at the
24 event, on behalf of BioMax?

25 **A.** I basically understood that once we submitted the

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1 application and paid, we were locked in.

2 **Q.** Okay. Did you understand that anybody besides PPFA and
3 BioMax was a party to this registration terms and conditions
4 agreement?

5 **A.** No, I did not.

6 **Q.** Did you understand that this agreement was for the benefit
7 of any third parties?

8 **A.** No.

9 **Q.** Okay. Did you on behalf of BioMax learn in advance of
10 attending the PPFA conference who the other exhibitors were?

11 **A.** No.

12 **Q.** Okay. And same question as to any of the other
13 categories. Any of the sponsors, did you ever get a list of
14 who the sponsors were?

15 **A.** No. I don't believe we received a list of sponsors.

16 **Q.** And certainly not attendees; correct?

17 **A.** Certainly not attendees.

18 **Q.** Okay. Does the "Sponsor Exhibitor Package Terms and
19 Conditions" prohibit video recording?

20 **A.** No, it does not.

21 **Q.** Does this document prohibit photography anywhere?

22 **A.** No, it does not.

23 **Q.** Does this document prohibit the publication or
24 distribution of information gleaned at the PPFA conference
25 anywhere?

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1 A. No, it does not.

2 Q. Does the conference say anything about monetary damages
3 being obtained for breaching the contract?

4 A. No, it does not.

5 Q. Does it even -- okay, withdraw.

6 Do you believe that anybody who attended the conference on
7 behalf of BioMax violated any of the terms and conditions of
8 this contract?

9 A. No, I don't believe anyone violated the terms of this
10 contract.

11 Q. Okay. Did you engage in discussions with people who had
12 came to your booth?

13 A. Yes, I did.

14 Q. Okay. And did some of them talk about the stem cell
15 materials that you had provided information about?

16 A. Yes, they did.

17 Q. Did any of the people who approached and came to your
18 booth complain about the information being inaccurate or not
19 educational?

20 A. No.

21 Q. Okay. Was there any vetting that PPFA did to clear you
22 for attending the PPFA conference? And "you" being BioMax.

23 A. No, none whatsoever.

24 Q. Okay.

25 **THE COURT:** You're asking for his understanding?

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1 **MS. DHILLON:** Correct, Your Honor.

2 **BY MS. DHILLON**

3 **Q.** What type of security did you encounter at the PPFA Forum
4 conference?

5 And let's start with just breaking it down so we don't get
6 a long answer. What about when you came to get your badges,
7 what was it like?

8 **A.** I don't recall any security when we came to get our
9 badges. I just remember there being a registration table,
10 like, a main registration table. I believe that was on the
11 mezzanine level of the hotel as well, and that's where we
12 picked up our badges for the Miami Forum.

13 **Q.** Okay. And then during the course of the conference, did
14 you see security guards?

15 **A.** I remember -- I remember a few security guards sort of
16 spaced throughout, for whatever reason especially the poster
17 section, like, the scientific poster section, which was in one
18 wing of the mezzanine level. The mezzanine level of this hotel
19 was incredibly large and very, very kind of connected to the
20 lobby.

21 So I remember, in particular, like, a handful. Maybe no
22 more than three or four guards in the poster area. And I don't
23 really clearly recall any other security guards at the Miami
24 Forum. I would have to rely on the video and what the video
25 captured in order to go into any more detail.

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1 Q. Okay. You mentioned at the NAF 2014 conference that when
2 you signed in, folks told you to keep the fact that it was a
3 National Abortion conference secret.

4 Did a similar conversation occur to you with respect to
5 the PPFA Forum conference when you signed in?

6 A. No, I don't remember any conversation like that
7 whatsoever.

8 Q. And besides signing in, during the course that entire PPFA
9 conference, the Forum conference, did any representatives of
10 Planned Parenthood admonish you or your colleagues that the
11 existence of this conference or anything about it needed to be
12 kept confidential?

13 A. No. I mean, we didn't even sign in. First of all, there
14 was no signing of anything at the beginning of the Forum.

15 But no, nobody gave us any instructions about keeping
16 anything confidential. If anything, we were encouraged to
17 network with and talk with as many people as we could and
18 continue the conversations elsewhere as much as we could.

19 Q. How were you encouraged to do that?

20 A. Dr. Nucatola had been -- had really strongly encouraged us
21 to come to the Forum because of all the different people that
22 she wanted us to meet from all around the country to talk about
23 selling fetal tissue.

24 And the -- I mean, during the Forum itself, I feel like
25 half of my time was spent her, you know, taking me and Adrian

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1 around to meet all the different people that she wanted us to
2 meet and us talking about how we would try and make this
3 business model kind of bigger and more expansive.

4 And it was all about expanding and getting bigger. It
5 wasn't about keeping things hidden or secret or tied up in a
6 little box, so...

7 **Q.** Okay. So, all right.

8 So besides the PPFA conference, which you -- BioMax
9 attended, did you then attend another Planned Parenthood
10 conference on behalf of BioMax?

11 **A.** Yes, I did.

12 **Q.** What was the next BioMax -- what was the next Planned
13 Parenthood conference that BioMax attended?

14 **A.** The next conference was the Planned Parenthood Medical
15 Directors Council, or MeDC, and that was in Orlando, Florida at
16 the very end of February 2015.

17 **Q.** How did you learn about that conference?

18 **A.** So I actually learned about that conference because, I
19 guess, PPFA put BioMax on some kind of email distribution list
20 after the Forum. And so this -- I was not planning on it.
21 Didn't even know about it.

22 And all of a sudden one morning either in December or
23 January we got an email to the BioMax account from PPFA saying:
24 Hey, everybody. You know, we have this MeDC conference coming
25 up. You know, another great exhibiting opportunity for you to

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1 get up there and network and meet people.

2 So I took a look at it and it looked like something that
3 would be important for -- for the ongoing project, and so -- so
4 we signed up and registered, much the same way as the Forum at
5 that point.

6 **Q.** Okay.

7 **MS. DHILLON:** Your Honor, I would like to introduce
8 an exhibit. It will be brief. I think we can finish within
9 the time we have allotted for today.

10 **THE COURT:** Okay.

11 **BY MS. DHILLON**

12 **Q.** If you can take a look, Mr. Daleiden, at Exhibit 238 in
13 your binder?

14 (Witness complied.)

15 **Q.** Do you see a three-page document there, which is a series
16 of emails, really four pages?

17 **A.** Yes. I see that.

18 **Q.** Okay. And is this -- can you identify this document for
19 us, please?

20 **A.** Yes. I believe that this is the -- the initial email and
21 then the email thread that I just described of PPFA announcing
22 to a bunch of exhibitors, including -- a bunch of past
23 exhibitors, including BioMax and whoever else was on their
24 email list for this, that they have this upcoming exhibitor
25 opportunity with the MeDC conference.

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1 **MS. DHILLON:** Okay. Your Honor, I would like to move
2 Exhibit 238 into evidence, please.

3 **THE COURT:** Any objection?

4 **MS. TROTTER:** No objection.

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

6 (Trial Exhibit 238 received in evidence)

7 (Document displayed)

8 **BY MS. DHILLON**

9 **Q.** Mr. Daleiden, is this email thread on the other side of it
10 from Vikky Graziani?

11 **A.** Yes, it is.

12 **Q.** And what is -- what was Vikky Graziani's role with Planned
13 Parenthood Federation of America at the time that you received
14 an email from her?

15 **A.** So according to her email signature, I guess she was the
16 Administrative Manager for Medical Services.

17 In practice, I guess what I would deduce from that, in my
18 experience of it, was that she was, I guess, the conference
19 lady -- or the conference organizer for the medical conferences
20 at Planned Parenthood.

21 **Q.** Was she sort of the equivalent of Nichelle Davis in your
22 mind?

23 **A.** Yeah. In my mind she was the equivalent of Nichelle
24 Davis.

25 **Q.** Okay. You first received an email from her on or about

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1 December 15, 2014; is that correct?

2 **A.** Yes, that is correct.

3 **Q.** And did you respond to that email?

4 **A.** Yes, I did.

5 **Q.** Two months later?

6 **A.** Yes. Apparently, I responded two months later.

7 **Q.** And how long did Ms. Graziani take to respond?

8 **A.** It looks like it took her all of five minutes to respond.

9 **Q.** And in that response did she send you the exhibitor
10 registration information for the -- for that conference?

11 **A.** Yes. It looks like she sent me the link to the online
12 event registration page.

13 **Q.** Okay. And then following up, did she also tell you at the
14 bottom of Page 1 that the registration was closing in two days?

15 **A.** Yes. It looks like we kind of delayed and weren't sure
16 whether or not we were going to do this, and so she reminded
17 us.

18 **Q.** And did you then complete the registration for that
19 conference within that deadline?

20 **A.** Yes, I did.

21 **Q.** Okay.

22 **MS. DHILLON:** Your Honor, I think this would be a
23 natural point to stop.

24 **THE COURT:** Okay, this is a natural spot.

25 So, ladies and gentlemen, you will miss us for a week and

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1 so we will be back next Thursday at the same time.

2 I'm going to read -- you can all sit down for the moment.

3 I'm going to read you again the instruction -- what I keep
4 referring to as the admonitions -- because I think at this
5 point you've got a long break and it's very important that you
6 remember these things. So we're moving along in this trial.
7 There is still more to come.

8 So keep an open mind throughout the trial and do not
9 decide what the verdict should be until you and your fellow
10 jurors have completed your deliberations at the end of the
11 case.

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

17 Thus, until the end of the case or unless I tell you
18 otherwise, do not communicate with anyone in any way and do not
19 let anyone else communicate with you in any way about the
20 merits of the case or anything to do with it.

21 This includes discussing the case in person, in writing,
22 by phone or electronic means, by email, text messaging or any
23 internet chat room, blog, website or application, including but
24 not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn,
25 Snapchat or any other form of social media.

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1 This applies to communicating with your fellow jurors,
2 until I give you the case for deliberation, and it applies to
3 communicating with everyone else, including your family
4 members, your employer, the media or press and the people
5 involved in the trial. Although you may notify your family and
6 employer that you've -- that you're seated as a juror and how
7 long you expect the trial to last. But if you're asked or
8 approached in any way about your jury service or anything to do
9 with the case, you must respond that you have been ordered not
10 to discuss the matter and then report the contact to the Court.

11 Because you'll receive all the evidence and legal
12 instruction you properly may consider to return a verdict, do
13 not read, watch or listen to any news or media accounts or
14 commentary about the case or anything to do with it.

15 Do not do any research, such as consulting dictionaries,
16 searching the internet, or other -- or using other reference
17 materials, and do not make any investigation or in any other
18 way try to learn about the case on your own.

19 Do not visit or view any place discussed in the case and
20 do not use internet programs or other devices to search for or
21 view any place discussed during the trial.

22 Also, do not do any research about the case, the law or
23 the people involved, including the parties, the witnesses or
24 the lawyers until you have been excused as jurors. If you
25 happen to read or hear anything touching on the case in the

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1 media, turn away and report it to me immediately.

2 These rules protect each party's right to have the case
3 decided only on the evidence that's presented here in court.
4 Witnesses here in court take an oath to tell the truth, and the
5 accuracy of their testimony is tested through the trial
6 process. If you do any research or investigation outside the
7 courtroom or gain any information through improper
8 communications, then your verdict may be influenced by
9 inaccurate, incomplete or misleading information that has not
10 been tested by the trial process.

11 Each of the parties is entitled to a fair trial by an
12 impartial jury and if you decide the case based on information
13 not presented in court, you will have denied the parties a fair
14 trial.

15 Remember, you've taken an oath to follow the rules, and
16 it's very important that you follow the rules. A juror who
17 violates these restrictions jeopardizes the fairness of these
18 proceedings and a mistrial could result that would require the
19 entire trial process to start over.

20 If any juror is exposed to any outside information, please
21 notify the Court immediately.

22 So those were the admonitions I gave you at the beginning.
23 They will remain the admonitions throughout the case. I just
24 wanted to remind you of them while you enjoy a week of the rest
25 of your life, and then I will look forward to seeing you a week

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1 from tomorrow at the same time.

2 Thanks very much. You're excused.

3 (Jury exits the courtroom at 1:04 p.m.)

4 **THE COURT:** All right. We're in recess until a week
5 from Thursday morning.

6 Mr. Millen.

7 Please be seated everybody.

8 **MR. MILLEN:** One housekeeping matter. I was
9 approached by someone who asked a question as to the exhibits
10 which have been admitted, which, of course, are not the NAF
11 exhibits, but any other exhibit admitted in the case. The
12 question was: Is this now a public document that can -- you
13 know, I can have a copy of?

14 And I didn't know what the Court's position was on that
15 and so I would be interested in hearing the Court's position on
16 that, what its instruction is.

17 **THE COURT:** Well, that's an interesting question. I
18 think my instruction is that until the end of the case, even
19 though they are public documents, the idea of having more
20 ability to communicate about them that might infect the trial
21 in some way would -- is concerning to me.

22 So unless I direct otherwise, unless there's -- and then I
23 think the best and the safest course is they are admitted in
24 the trial. They are part of the record here, but don't copy
25 them for others.

DALEIDEN - CROSS / DHILLON

1 **MR. MILLEN:** Thank you.

2 **THE COURT:** Okay. Thanks very much.

3 (Whereupon at 1:06 p.m. further proceedings were
4 adjourned until Thursday, October 31, 2019 at
5 7:30 a.m.)

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I N D E X

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(RECALLED)

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Cross-Examination Resumed by Mr. LiMandri

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Cross-Examination Resumed by Mr. LiMandri

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Cross-Examination by Ms. Dhillon

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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

Wednesday, October 23, 2019