

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE

PLANNED PARENTHOOD FEDERATION OF)	
AMERICA, INC., et al.,)	
)	
Plaintiffs,)	
vs.)	No. C 16-0236 WHO
)	
CENTER FOR MEDICAL PROGRESS,)	
et al.,)	San Francisco, California
)	Thursday
Defendant.)	October 31, 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 31, 2019

7:32 a.m.

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(Proceedings held in open court, outside
the presence and hearing of the jury.)

THE COURT: Be seated, everybody.

First is, during the last week one of our jurors broke her
arm, had surgery, and I have let her go for the remainder of
the trial. It's juror No. 17, who, I think, is the woman who
is sitting on the far left in the front.

So there are two matters. The first one is Mr. Daleiden's
testimony regarding contacts with other defendants.

You know, there has been a lot of testimony about that
already, and it's been brought out by both sides. And after
the testimony of Mr. Daleiden, we're going to consider what
adverse inferences are appropriate. The jury is going to weigh
those against the credibility of Mr. Daleiden's testimony and
consider all the other evidence in the case. So I'm not
inclined to grant the plaintiffs' motion.

This is not an opportunity for Mr. Daleiden to repeat all
of the testimony that he's already given with respect to his
investigation, or anything else for that matter.

But with respect to the adverse inferences, after
Mr. Daleiden finishes testifying, I want the plaintiffs to look
at the stipulations that were made after they filed docket 838,

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1 consider the testimony and the stipulations that the defendants
2 agreed to, and then advise the defendants and the Court what
3 inferences they still wish to have. Then I'm going to allow
4 the defendants to make an argument inference by inference, if
5 they think that whatever inferences the plaintiffs are -- still
6 seek have not been established, and then I'll rule on that and
7 we'll move forward.

8 With respect to the Motion in Limine regarding Mr. Cohen,
9 I'm going to deny it again. There is sufficient testimony that
10 the history of anti-abortion violence was the -- was a
11 significant factor in the security measures implemented before
12 the alleged infiltration and that that history relates to the
13 damages resulting from the infiltration.

14 So those are the issues that I had.

15 Ms. Short.

16 **MS. SHORT:** I have a question.

17 **THE COURT:** Come on in.

18 **MS. SHORT:** Yes.

19 **THE COURT:** Good morning.

20 **MS. SHORT:** As you noticed, our motion dealt with two
21 aspects of Mr. Cohen's testimony. One was the history and the
22 other one was his understanding of the increase in threats post
23 release. Plaintiffs did not address that. Can we consider
24 that granted? Conceded?

25 **THE COURT:** Well, let's hear from the plaintiffs on

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1 that topic. I suspect not.

2 **MS. BOMSE:** That's correct. Amy Bomse.

3 No. Plaintiffs don't concede that Mr. Cohen's testimony
4 concerning his understanding of the increase in security
5 incidents after the videos came out is irrelevant.

6 The only rationale put forward in defendants' papers was
7 that the statistics on which Mr. Cohen relies are statistics
8 that were published after the damages were incurred. That's,
9 of course, true. They couldn't have been published at the time
10 that the increase was occurring because it had to be tracked
11 first.

12 It simply corroborates the impression that -- that
13 plaintiffs' witnesses, percipient witnesses have testified to
14 to some degree and which Mr. Cohen may testify. It certainly
15 will not be the centerpiece of his testimony.

16 **THE COURT:** Who is -- are you going to be putting in
17 the AIMS reports and those documents? And if so, with whom?

18 **MS. BOMSE:** No. I don't think we intend to put in
19 the AIMS reports.

20 At this stage the only document I would intend to put in
21 actually is a NAF -- one of NAF's annual reports reflecting its
22 statistics on violence, and that would be it.

23 **THE COURT:** So with respect to any of those, any
24 evidence related to that, who is going to be -- is there
25 anybody else who is going to be speaking to that?

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1 **MS. BOMSE:** Yes. Michelle Davidson, who is the
2 Director of Security at NAF, who is actually the creator of
3 those statistics.

4 **THE COURT:** Then why do you need Mr. Cohen to testify
5 about that information? Because, frankly, I didn't focus on
6 that portion of your motion and -- and the only thing I've
7 really focused on with Mr. Cohen, and I think what I have so
8 far ruled on, was the anti-abortion -- the history.

9 **MS. BOMSE:** Right.

10 **THE COURT:** So why is he a good person to be
11 testifying about that?

12 **MS. TROTTER:** It's not the centerpiece, as I said.
13 And, in fact, what the Court's ruling was was that he could
14 testify to the history of anti-abortion violence and his
15 understanding as to whether there was an increase.

16 If the Court -- again, for the third time, it's definitely
17 not the centerpiece. Ms. Davidson can testify to it. She is
18 the actual author of the report. And so, frankly, it doesn't
19 make too much of a difference to the plaintiffs.

20 **THE COURT:** Okay. Well, I don't want to cut you off
21 of that evidence if that's what I said, and I just don't
22 remember at the moment. I'll go back and take a look at that.

23 What's the expectation for the length of Mr. Daleiden's
24 testimony? Is he going to be done today, do you think, or will
25 he be around for awhile?

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1 **MR. LIMANDRI:** I would think he would finish today,
2 Your Honor. I'm not sure how much Ms. Dhillon has.

3 **MS. DHILLON:** Your Honor, I probably have 45 minutes
4 or less.

5 **MR. LIMANDRI:** I'm thinking about the same, Your
6 Honor.

7 **THE COURT:** I suspect that there may be other people
8 who have questions as well.

9 **MR. MIHET:** Not a lot, but a little.

10 **THE COURT:** All right. So I will go take a quick
11 look at that, that issue.

12 **MS. BOMSE:** That's fine, Your Honor.

13 **MS. SHORT:** As long as you're looking at the issue, I
14 would like to point out that the statistics that apparently the
15 plaintiffs plan to put into evidence would include a number
16 of -- would include the Planned Parenthood Rocky Mountain
17 fatalities and injuries.

18 And so that is going to be highly problematic, to put in a
19 sheet with those statistics with those numbers there, which
20 are, you know, again, Planned Parenthood Rocky Mountain. I
21 don't know how plaintiffs plan to deal with that.

22 **MS. BOMSE:** I actually think we could cut through
23 this all right now.

24 We are content to put in the NAF statistics for the
25 year -- through the year 2014 to explain what NAF does in terms

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1 of tracking incidents of violence and disruption.

2 The post video reaction really is not the center of this
3 case. And if it would end this issue and make everyone's lives
4 easier, I'm perfectly content to agree that we're not going to
5 put in the statistics for the year following the videos and
6 Mr. Cohen won't testify to it and neither will Ms. Davidson.

7 **THE COURT:** Okay.

8 **MS. SHORT:** We just won, huh?

9 **THE COURT:** I don't see things as winning or losing.

10 (Laughter.)

11 **THE COURT:** We move things along in the trial.

12 **MS. SHORT:** I just wanted to be clear that they will
13 not -- neither will be testifying as to his understanding or
14 the statistics.

15 Okay. Thank you. Post release.

16 **THE COURT:** Okay.

17 **MS. SHORT:** Thank you.

18 **MR. LIMANDRI:** So while we're talking about
19 Mr. Cohen, I just wanted to make sure, since in preparing for
20 his cross-examination I see a central theme throughout
21 basically all of his opinions, is that anti-abortion
22 harassment, as he calls it or even protesting can be a form of
23 terrorism. And he uses the word "terrorism" a lot.

24 He really says that we need to be using that word to
25 heighten public consciousness that people who are opposed to

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1 abortion, you know, even people promoting legislation that
2 would restrict abortion can incite violence.

3 He uses the word "terrorism" quite a bit and quite
4 purposefully. As I recall Your Honor's rulings, we have it
5 here, that that's not to be used. We have been careful in
6 terms of terminology, not using things like murder and stuff,
7 and I just want to make sure that's not going to be an issue.

8 I'm sure the other side wants to follow your rulings as
9 much as we do, but I'm just concerned the expert, that's very
10 much a central theme of his testimony.

11 **MS. BOMSE:** He won't be using that word. It is in
12 the title of his book. So if he states the name of his book,
13 the name of his book is -- there is a colon, and it's
14 "Anti-Abortion Terrorism in the United States" or something
15 like that.

16 So I would expect him to say the name of his book, but
17 other than that, there are plenty of other appropriate words
18 that he can use to describe what's going on.

19 **THE COURT:** All right.

20 **MR. LiMANDRI:** Can't he just say he wrote a book on
21 anti-abortion?

22 **THE COURT:** You know, Mr. LiMandri --

23 **MR. LiMANDRI:** Okay.

24 **THE COURT:** -- I think try as you might, I'm not sure
25 that all of your witnesses have been able to completely follow

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1 the instructions, and I think that's just sort of the nature of
2 things. So that's fine.

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

4 **THE COURT:** Thank you.

5 All right. I will see you at 8:00 o'clock.

6 (Whereupon there was a recess in the proceedings
7 from 7:43 a.m. until 8:02 a.m.)

8 **THE COURT:** Are we ready for the jury?

9 **MR. MILLEN:** Your Honor, at the break there is
10 something I would like to address the Court about regarding
11 Michelle Davidson, but at the break.

12 **THE COURT:** Okay. That sounds good.

13 Do we have Mr. Daleiden here?

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

15 **THE COURT:** Good morning, Mr. Daleiden. Why don't
16 you come on up, and we'll get moving.

17 (Jury enters the courtroom at 8:03 a.m.)

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

19 Good morning, ladies and gentlemen. Welcome back. I'm
20 sorry to report to you, as you have noted, I think, that one of
21 your colleagues has broken her arm and is no longer -- I
22 excused her from further service.

23 But we're moving on. And Mr. Daleiden is still on the
24 stand and Ms. Dhillon is asking questions.

25 So please go ahead.

CROSS EXAMINATION RESUMED

1
2 **BY MS. DHILLON**

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

4 **A.** Good morning.

5 **Q.** Just before the break last week, do you recall that we
6 were discussing the second of the three Planned Parenthood
7 conferences that BioMax attended?

8 **A.** Yes, I believe I recall that.

9 **Q.** And was that the MeDC conference in 2015?

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

11 **Q.** Could you please turn to Exhibit 1912 in your binder, to
12 which the parties have stipulated admissibility.

13 **THE COURT:** It's admitted, and you can use it.

14 **MS. DHILLON:** Thank you.

15 (Document displayed)

16 **BY MS. DHILLON**

17 **Q.** Now, Mr. Daleiden, do you recognize this exhibit?

18 **A.** Yes, I believe I do.

19 **Q.** And what is it?

20 **A.** This looks like the printout of the BioMax registration
21 information for the MeDC conference that I would have filled
22 out online prior to -- about a month or so prior to attending
23 the conference.

24 **Q.** Okay. And do you see a box that says "Registrants" on the
25 first page of this exhibit?

DALEIDEN - CROSS / DHILLON

1 A. Yes, I do.

2 Q. And do you see -- is Brianna Allen of BioMax there listed
3 as the exhibitor?

4 A. Yes, it's correct.

5 Q. Did you register BioMax using the character of Brianna
6 Allen?

7 A. Yes, I did.

8 Q. And, Mr. Daleiden, if you can turn to the next page of
9 this document, Page 2?

10 (Document displayed)

11 Q. And at the top do you see a fee indicated there?

12 A. Yes, I do. I see the basic corporate exhibitor fee.

13 Q. And what is that fee for the jury?

14 A. So that's a \$3,500 registration fee to be a regular
15 corporate exhibitor. There was a cheaper price for
16 non-profits, but BioMax is an LLC, so we had to do the regular
17 \$3,500 charge.

18 Q. And did you cause BioMax to pay that fee of \$3,500?

19 A. Yes, I did.

20 Q. And has Planned Parenthood ever refunded that registration
21 fee to BioMax?

22 A. No, never.

23 Q. And on Page 3, if you could turn to Page 3 under the
24 heading of "Miscellaneous" right at the bottom of that page?

25 A. Yes, I see that.

DALEIDEN - CROSS / DHILLON

1 Q. Do you see a checkmark next to "Acknowledgment of Terms
2 and Conditions"?

3 A. Yes, I see that.

4 Q. Prior to the break we had looked at a prior registration,
5 and you had described the drop-down terms and conditions.

6 Was this "Acknowledgment of Terms and Conditions," to your
7 recollection, a similar electronic drop-down document that you
8 saw?

9 A. Yes, I believe so.

10 Q. And did you have a chance to review those terms and
11 conditions prior to acknowledging them?

12 A. Yes, I did briefly.

13 Q. Okay. And if you could turn to Exhibit 1915, which is
14 already in evidence? It should be next in your binder.

15 (Document displayed)

16 Q. Is that the "Sponsorship/Exhibitor/Advertising Terms and
17 Conditions" for the MeDC conference?

18 A. Yes, it is.

19 Q. Is this the document that you just described that you
20 looked at prior to acknowledging it?

21 A. Yes, it is.

22 Q. Okay. And are these similar to the terms and conditions,
23 to your recollection, of the Forum event that you had
24 previously registered BioMax for?

25 A. Yes, they are.

DALEIDEN - CROSS / DHILLON

1 Q. And looking at this document, can you tell the jury what
2 sections of this three-page document you believe applied to
3 BioMax's registration at this event?

4 A. I believe that the -- the section beginning on the second
5 page that refers to "Exhibit Space" is the section that applies
6 to BioMax's exhibit at the MeDC conference.

7 Q. Okay. So for clarity, not any other aspect of this
8 document; correct?

9 A. Just the "Exhibit Space" section, which looks like it may
10 continue onto the second page.

11 Q. And potentially how about the "Legal and Compliance Terms
12 and Conditions" as well?

13 A. That's correct, yeah. That looks like the legal and
14 compliance terms for exhibitors specifically.

15 Q. Okay. And under "Exhibit Space" do you see a number of
16 terms and conditions regarding the flameproof nature of the
17 exhibits, lighting, some of the other issues that we went
18 through with the prior event? Do you recall that?

19 A. Yeah, I recall that.

20 Q. And to your knowledge, did BioMax comply with all of the
21 "Exhibit Space" terms and conditions specified on this exhibit,
22 1915?

23 A. Yes, we did.

24 Q. During the course of the MeDC conference, did any of the
25 organizers of that event from Planned Parenthood take issue

DALEIDEN - CROSS / DHILLON

1 with any of the contents of the exhibit at the BioMax booth?

2 **A.** No, not at all. To the contrary, they thanked us for the
3 contents of the exhibit at the booth.

4 **Q.** Okay. Did any of the attendees take issue with the
5 quality or the content of the terms -- of the materials
6 presented at the BioMax booth?

7 **A.** No, not at all.

8 **Q.** Okay. What did you believe the purpose of this BioMax
9 sponsorship and exhibitor terms and conditions was?

10 **A.** I thought the purpose was to have an orderly exhibit hall.
11 That's why they don't want to have flammable liquids or people
12 smoking in the exhibit hall.

13 **Q.** Did you believe that the obligations in this agreement
14 regarding being an exhibitor applied to BioMax even after the
15 conference was over?

16 **A.** No. That would be completely illogical. There wouldn't
17 be a BioMax exhibit booth after the conference was over.

18 **Q.** Did you understand when you signed this and signed up to
19 exhibit that potentially years later Planned Parenthood might
20 be able to object to the contents of the exhibit?

21 **A.** No, not at all.

22 **Q.** Did anybody at Planned Parenthood ask you, BioMax, for a
23 copy of the materials that you intended to exhibit at the
24 conference prior to attending the conference?

25 **A.** No, not at all.

DALEIDEN - CROSS / DHILLON

1 Q. And did anybody at Planned Parenthood ask you to leave
2 behind a copy of the exhibitor materials for their records?

3 A. No.

4 Q. Okay. And do you believe at the end of that MeDC
5 conference that BioMax had fulfilled all of its obligations
6 under Exhibit 1915?

7 A. Yes. Absolutely.

8 Q. Okay. Now, I have nearly similar questions with respect
9 to the next Planned Parenthood Federation conference you
10 attended, the National Conference. So if you could please turn
11 to Exhibit 658 in your binder?

12 (Witness complied.)

13 MS. DHILLON: Your Honor, Exhibit 658 is not
14 stipulated by the parties, but it is a Trial Exhibit offered by
15 the plaintiffs, according to our records, and there is a Trial
16 Exhibit sticker on it.

17 So if I may lay some foundational questions?

18 THE COURT: Why don't you lay a foundation and then
19 we'll see.

20 MS. DHILLON: Yes, Your Honor.

21 BY MS. DHILLON

22 Q. Mr. Daleiden, can you take a look at this exhibit, which
23 is in the form as you see it redacted? Do you recognize seeing
24 this document in its unredacted form?

25 A. You know, off the top of my head, I'm not sure, since this

1 version is redacted.

2 Well, you know, I do see -- I see amidst all the
3 redactions, I see a brianna@biomaxps.com email address at the
4 very top. So that would tell me that, yes, I believe I did see
5 some version of this document. I don't know why the email from
6 Brianna would be redacted on there, but...

7 **Q.** This is the version we have as a Trial Exhibit. So do you
8 recognize that email address as one that you used during the
9 course of the events at issue in this lawsuit?

10 **A.** Yeah. Yeah, I do.

11 **MS. DHILLON:** Your Honor, may I move this exhibit?

12 **MS. TROTTER:** We object, Your Honor, as to the
13 redaction, which I don't have the original of the document, and
14 this was not produced by plaintiffs in this form. So we don't
15 know where the redaction even originated.

16 **THE COURT:** All right. So do you have an objection
17 to the content of -- regardless of who did the redactions or
18 where they come from, which is irrelevant as far as I'm
19 concerned, do you have an objection to what's in this document?

20 **MS. TROTTER:** Well, we have an objection to having a
21 redacted document not knowing what the redaction is and the
22 purpose of it.

23 **THE COURT:** Okay.

24 **MS. TROTTER:** And what may be material to
25 understanding the contents.

DALEIDEN - CROSS / DHILLON

1 **THE COURT:** Do we have the underlying document?

2 **MS. DHILLON:** Your Honor, this is the March trial
3 exhibit. I do not have that unredacted version. It wasn't a
4 document that defendants --

5 **THE COURT:** All right. So I'm going to conditionally
6 allow this document and if the -- if the plaintiffs -- if any
7 party provides me with the actual document, then we can put
8 that into evidence and we'll strike this one, but unless there
9 is a better -- go ahead.

10 **MS. TROTTER:** Your Honor, we don't believe that this
11 document was actually produced in this case. It's from a
12 different proceeding.

13 **MS. DHILLON:** Again, I'm not -- well...

14 **MR. LIMANDRI:** My understanding, Your Honor, is the
15 document in question has a Planned Parenthood Bates stamp
16 number.

17 **THE COURT:** I'm going to conditionally allow the
18 document and if there is -- because a sufficient foundation has
19 been laid.

20 And if the complete document is located and you want to
21 use that, then I'll deal with that issue later.

22 (Trial Exhibit 658 conditionally received in evidence)

23 **THE COURT:** Please go ahead.

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

25 **MS. DHILLON:** Your Honor, we will be happy to

DALEIDEN - CROSS / DHILLON

1 substitute the full one as soon as we find it.

2 Thank you.

3 **BY MS. DHILLON**

4 **Q.** So, Mr. Daleiden, do you recognize this document, having
5 had a chance to take a look at it?

6 **A.** I generally recognize this -- this email with this
7 schedule for the PPFA National meeting, yes.

8 **Q.** Okay. And based on the email address that you identified
9 as having been one that you used at the time being on this
10 document, does it refresh your recollection as to whether you
11 would have received this document in some form?

12 **A.** As to whether or as to when I would have received it?

13 **Q.** Whether first.

14 **A.** I believe so. I don't know why plaintiffs have redacted
15 what BioMax would have apparently sent to Planned Parenthood
16 here, but this does appear to be emails that BioMax would have
17 received in the course of beginning to -- in the course of
18 registering for --

19 **MS. TROTTER:** Objection. Objection.

20 **THE COURT:** Excuse me.

21 **MS. TROTTER:** Objection, Your Honor. Move to strike.

22 **THE COURT:** Your motion is granted.

23 Ladies and gentlemen, the fact that there are redactions
24 in documents during the course of discovery in cases where
25 there is sensitive information is something that happens all

DALEIDEN - CROSS / DHILLON

1 the time.

2 This question of what's under here, this isn't a mystery.
3 There is a document that will probably be here. You should not
4 ascribe anything at all and you should disregard the fact that
5 there are redactions in documents, and references to one side
6 being concerned about whether there's a redaction or not are
7 absolutely irrelevant to this proceeding.

8 **BY MS. DHILLON**

9 **Q.** Setting aside who redacted this document, it looks like an
10 email that was redacted based on what I can see.

11 Looking at the heading of the document, which is not
12 redacted, the subject line, Mr. Daleiden, do you see that,
13 "Early Bird Pricing Extended"?

14 **A.** Yes, I see that.

15 **Q.** Does that refresh your recollection as to whether this
16 document pertains to the 2015 PPFA National Conference?

17 **A.** Generally, I believe that it does.

18 **Q.** Okay. Thank you.

19 And do you recall sitting here whether you spoke with
20 anybody from Planned Parenthood in order to obtain this email?

21 **A.** I don't believe that I spoke to anyone in order to obtain
22 this email.

23 I believe that, as I testified previously, BioMax was
24 placed on some kind of PPFA email list, and so we received this
25 in just the general course of their advertising for exhibitors

DALEIDEN - CROSS / DHILLON

1 for their conference.

2 **Q.** Do you recall who would have sent you this document from
3 Planned Parenthood?

4 **A.** Off the top of my head, no. I would have to see the
5 unredacted version of the document.

6 **Q.** Okay. On Page 2 of the document the document has a
7 signature block "Coordinator, Brand Engagement." Does that
8 refresh your recollection as to who might have given you this
9 document?

10 **A.** No. Off the top of my head, I don't know who the
11 coordinator of brand engagement is at PPFA.

12 **Q.** Okay. Thank you.

13 So if I could ask you to turn to Exhibit 1917 in your
14 binder?

15 (Witness complied.)

16 **MS. DHILLON:** Your Honor, the parties have stipulated
17 to the admissibility of this document.

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

19 (Trial Exhibit 1917 received in evidence)

20 **MS. DHILLON:** Thank you, Your Honor.

21 (Document displayed)

22 **BY MS. DHILLON**

23 **Q.** Mr. Daleiden, do you recognize Exhibit 1917?

24 **A.** Yes, I do.

25 **Q.** And what is it?

DALEIDEN - CROSS / DHILLON

1 **A.** This looks like the -- like the printout of the
2 registration, of BioMax's registration for the PPFA National
3 Conference in 2015.

4 **Q.** And is this a document that you personally had a hand in
5 completing?

6 **A.** Yes, it is.

7 **Q.** And can you please tell us what your role was with respect
8 to the registration that we see here?

9 **A.** Sure. I'm the one who filled out the registration online,
10 on the online registration portal.

11 **Q.** Okay. And do you see a line which says "Commercial
12 Exhibitor" sort of two-thirds of the way down?

13 **A.** Yes, I do.

14 **Q.** And is commercial exhibitor the type of registration that
15 you had BioMax complete for purposes of this event?

16 **A.** Yeah. That's the registration -- that's the category that
17 BioMax registered under.

18 **Q.** And is the fee listed on this document accurate, \$3,280?

19 **A.** Yes, I believe it is.

20 **Q.** Did BioMax pay that fee?

21 **A.** Yes, we did.

22 **Q.** And was that fee ever refunded to BioMax?

23 **A.** No, it was not.

24 **Q.** And could you please turn to Exhibit 1919, which is next
25 in your binder?

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1 **MS. DHILLON:** And, Your Honor, the parties have also
2 stipulated to the admissibility of this document.

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

4 (Trial Exhibit 1919 received in evidence)

5 (Document displayed)

6 **BY MS. DHILLON**

7 **Q.** Mr. Daleiden, this is a one-page document which has the
8 terms and conditions click box; do you see that?

9 **A.** Yes, I see that.

10 **Q.** And it's -- I think this is a multi-generation copy. It's
11 very faint.

12 But do you recall clicking the box acknowledging the terms
13 and conditions for this event?

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

15 **Q.** Okay. Do you recall whether this, like the previous two
16 Planned Parenthood events, was a sort of pull-down, click,
17 acknowledgment type -- acknowledgment of terms and conditions?

18 **A.** Yeah. I think it was the same.

19 **Q.** Okay. And if we can take a look at -- let me see here.
20 Sorry.

21 (Brief pause.)

22 **Q.** I would like you to take a look at Exhibit 1920, which is
23 already in evidence and it should be in your binder next.

24 (Document displayed)

25 **Q.** Do you see that?

DALEIDEN - CROSS / DHILLON

1 A. Yes, I see that.

2 Q. Now, Exhibit 1920, what is Exhibit 1920?

3 A. It looks like these are the "Exhibitor Terms and
4 Conditions" for exhibitors at the PPFA National meeting.

5 Q. Does it differ in any regard from the two prior Planned
6 Parenthood events terms and conditions that we've seen
7 previously, which had multiple parts?

8 A. Specifically as it regards exhibitors, no, not to my
9 knowledge.

10 Q. Okay. So this document has a portion entitled "Exhibit
11 Space" at the beginning of the document; correct?

12 A. That's correct.

13 Q. And then there is a second portion entitled "Legal and
14 Compliance Matters;" correct?

15 A. Yes, I see that.

16 Q. Did you look at these two sections prior to consenting to
17 the contents of this document?

18 A. Yes, I did very briefly, because I recognized that it was
19 basically the same as the prior two PPFA meetings that we
20 exhibited at.

21 Q. Did you attend -- "you" being BioMax, attend the National
22 Conference for Planned Parenthood in 2015 in any capacity other
23 than as an exhibitor?

24 A. No.

25 Q. And did BioMax, during the course of exhibiting at the

DALEIDEN - CROSS / DHILLON

1 PPFA National conference, comply with the terms and conditions
2 in this exhibit?

3 **A.** Yes, we did.

4 **Q.** Did anybody at Planned Parenthood complain during the
5 course of the event about the contents of your exhibit?

6 **A.** No, not at all.

7 **Q.** Did any attendee at the event complain about the contents
8 of your exhibit, to your knowledge?

9 **A.** No, never.

10 **Q.** Did Planned Parenthood keep a copy of the -- did Planned
11 Parenthood ask you for a copy of the exhibit materials?

12 **A.** No, they did not.

13 **Q.** And did you understand that -- did you understand that --
14 anything about the duration of your obligations on behalf of
15 BioMax under this contract?

16 **A.** It seemed very clear that this was just a -- this was just
17 a basic conduct agreement for -- you know, for an orderly
18 exhibit hall at the conference, like all the other ones.

19 **Q.** Okay. Did any of these Planned Parenthood exhibitor
20 agreements that we've looked at during your testimony prohibit
21 recording or videotaping in any way?

22 **A.** No, none of them did.

23 **Q.** Did they prohibit dissemination of conference information
24 in any way, to your recollection?

25 **A.** No, not to my recollection at all.

DALEIDEN - CROSS / DHILLON

1 Q. Okay. And I'm going to ask you to turn to the next
2 exhibit, the final exhibit in your binder. It is
3 Exhibit 100503-3. Do you see that?

4 A. Yes, I see that.

5 MS. DHILLON: And, Your Honor, the parties have not
6 stipulated to the admissibility of this document, so I'd like
7 to lay a foundation, if I may.

8 THE COURT: All right. You can lay a foundation.

9 MS. TROTTER: There is no objection.

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

11 (Trial Exhibit 100503-3 received in evidence)

12 MS. DHILLON: Thank you.

13 (Document displayed)

14 BY MS. DHILLON

15 Q. Mr. Daleiden, do you recognize this exhibit?

16 A. Yes, I do.

17 Q. And can you describe for the jury what is this exhibit?

18 A. Sure. So this is a sign that was prominently posted at
19 the exhibit hall and elsewhere at the Planned Parenthood
20 National meeting that we exhibited at in Washington D.C. in
21 March of 2015.

22 Q. Can you read for us the short paragraph that is in this
23 exhibit?

24 A. Sure. This is a Planned Parenthood sign, and after it
25 says "Crowd Photography Release Notice, it says:

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1 "Planned Parenthood is photographing and/or
2 recording this event and all attendees. By entering
3 you agree to allow Planned Parenthood to take pictures
4 and video of you and to use those images for any
5 purpose, including advertising purposes, to promote
6 the Planned Parenthood mission. If you have any
7 concerns about this, please let our staff know or feel
8 free to exit the premises."

9 Q. Now, did you personally recall seeing this document during
10 the time you were exhibiting at the National conference?

11 A. Yes, I do. I think I may have videotaped this document.

12 Q. And did you, in fact, see any photographs at the event?

13 A. Yes, I did, quite a few.

14 Q. And during the course of your exhibiting at that event,
15 did you see anybody objecting to being photographed?

16 A. No, not at all.

17 Q. What did you understand that exhibit to mean with respect
18 to somebody attending the National event?

19 A. I understood that everyone attending the National event
20 was potentially being video recorded and that everyone who was
21 attending knew that -- that they were -- knew and was
22 consenting to being video recorded.

23 Q. For all purposes; correct?

24 A. Correct.

25 Q. Now, how big was this sign?

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1 **A.** This was a pretty big sign. I would say this was
2 approximately 3 feet tall. It was kind of like a stand-up sign
3 in the middle of the walkway.

4 **Q.** It was resting on the floor?

5 **A.** That's correct.

6 **Q.** It was pretty easy to see?

7 **A.** Very easy to see.

8 **Q.** Did anybody in the BioMax group object to being videotaped
9 or filmed?

10 **A.** No. Neither Adrian nor I objected to being videotaped at
11 the conference.

12 **Q.** Okay. Now, I have some questions about the Planned
13 Parenthood conferences themselves, the check-in aspects.

14 Was the check-in process for these three Planned
15 Parenthood conferences, Forum, MeDC and the National, pretty
16 similar?

17 **A.** Yeah, they were all pretty much the same.

18 **Q.** Can you describe what the check-in process was, to your
19 recollection?

20 **A.** Yeah. So the check-in process was -- was very simple at
21 the Planned Parenthood conferences. You would just go to the
22 main mezzanine level of the conference, which was where there
23 was a PPFA registration table for exhibitors. There may have
24 been a particular table for exhibitors different from just
25 regular attendees, and we would just present a photo ID in

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1 order to -- in order to get matched with the badges that we had
2 previously purchased and they would give us our whole exhibitor
3 packet. So, you know, a tote bag, swag bag for items that
4 other exhibitors would be handing out, a conference schedule
5 and things like that.

6 That was pretty much the same for those three Planned
7 Parenthood conferences.

8 **Q.** Was there typically more than one person sitting at the
9 check-in table?

10 **A.** I would say generally there was no more than two people at
11 the check-in table.

12 **Q.** And was there a specific space for exhibitors only
13 typically?

14 **A.** As I recall, I believe that the -- that the check-in
15 tables that we went to were specifically for exhibitors. That
16 may have changed depending on the conference.

17 The PPFA National Conference may have had it all in one,
18 at one big check-in booth, whereas MeDC was just for
19 exhibitors.

20 **Q.** Okay. I appreciate that these are events that took place
21 several years ago, but can you recall whether the check-in area
22 was ever very crowded at the time that you, on behalf of
23 BioMax, went in to register for -- check-in, rather, for one of
24 these conferences, Planned Parenthood conferences?

25 **A.** It varied, depending on the conferences. I remember it

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1 being particularly crowded at the PPFA National conference.

2 I remember it being somewhat busy for Miami, insofar as I
3 remember a lot of hotel workers setting things up and it just
4 seemed like there was a lot of set-up activity going on.

5 And MeDC, I remember there being a few different
6 functionaries in the exhibit hall. I don't know if they were
7 hotel workers or Planned Parenthood workers or exhibitors. I
8 would have to rely on the videotape.

9 **Q.** Okay. For each of these Planned Parenthood conferences,
10 do you recall ever having to actually physically remove your
11 identification from your wallet to show it to anybody?

12 **A.** Never. We always left our IDs in the -- in the little
13 viewer window in the wallet and just held it out to show them.

14 **Q.** Okay. Now, I want to ask you a few questions about this
15 identification that you have just described to -- that you
16 showed to get into these conferences.

17 Was it the same ID that you showed to get into all of the
18 events at issue in this lawsuit?

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

20 **Q.** Okay. And how did -- did you make that identification?

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

22 **Q.** And I want to ask you a few questions about how you made
23 it. First of all, did that identification have a photograph on
24 it?

25 **A.** Yes, it did.

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1 Q. And what age were you when that photograph was taken?

2 A. I was 15 when that photograph was taken. That is my
3 original -- my original photograph from when I first got my
4 driver's license.

5 Q. And how did -- what equipment did you use to make the
6 identification that we're describing being used to attend these
7 conferences?

8 A. So the question was what equipment?

9 Q. What equipment did you use?

10 A. I used a -- a home ink jet printer. It was maybe three or
11 four years old at that point.

12 Q. Was it a color printer?

13 A. It was a color DPI printer.

14 Q. And that's a dot matrix type printer?

15 A. That's correct.

16 Q. And what kind of paper did you use for the identification?

17 A. As I recall, it was basic copy paper.

18 Q. And so did you use some software to make the document?

19 A. I believe I used a basic -- like, a basic Paint or
20 Illustrator program.

21 Q. Okay. And did you -- after printing this document, this
22 -- there is a front and a back; correct?

23 A. That's correct.

24 Q. And did you do anything to make this document more secure,
25 like laminate it?

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1 **A.** Yes. I laminated it with a home laminator kit from Office
2 Max.

3 **Q.** Did you trim the laminated document?

4 **A.** Yes. I -- prior to laminating it, I cut the -- I cut
5 the -- you know, the mock-up picture of the ID out of the copy
6 paper with -- by hand with a pair of scissors, and then I
7 trimmed the lamination with a pair of scissors as well after
8 that.

9 **Q.** Okay. And we've seen photocopies of this document before.
10 Do you recall it having a black strip on the back?

11 **A.** It had a -- a black strip printed onto the back as well
12 with just black printer ink, yes.

13 **Q.** And that's something you printed as well in the same
14 process that you just described; correct?

15 **A.** That's correct.

16 **MS. DHILLON:** Your Honor, I'd like to approach the
17 witness with this document and ask him to identify it for the
18 record.

19 **THE COURT:** All right. Show it to counsel.

20 **MS. DHILLON:** I believe I've shown it to counsel
21 previously.

22 (Document was shown to the counsel and then tendered
23 to the witness.)

24 **BY MS. DHILLON**

25 **Q.** I'm going to ask you a question.

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1 Mr. Daleiden, can you take a look at what I've just handed
2 you and identify it for the record?

3 **A.** Yes. This is -- this is the actual mock photo ID for
4 Robert Sarkis that I used for all the conferences at issue in
5 this case.

6 **Q.** And how do you know that's the actual one?

7 **A.** Because I -- I produced this in discovery in this case
8 myself. This is -- this was maintained in my -- in my
9 undercover materials.

10 After I completed the -- after we completed the project
11 and the project release, I transferred this document to my
12 counsel shortly after all the litigation began, about four
13 years ago.

14 **MS. DHILLON:** Your Honor, may I publish this document
15 to the jury?

16 **THE COURT:** Don't you want to identify it as an
17 exhibit?

18 **MS. DHILLON:** Yes.

19 **THE COURT:** What number would it be?

20 **MS. DHILLON:** I would like to identify it as the
21 actual physical version of what has previously been identified
22 as Exhibit 7127, so if we could call it 7127-1?

23 **THE COURT:** Yes.

24 (Trial Exhibit 7127-1 marked for identification)

25 **MS. DHILLON:** Your Honor, may I?

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1 **THE COURT:** You may. And you may hand it to the
2 jury.

3 (Exhibit 7127-1 published to the jury)

4 **MS. DHILLON:** Your Honor, may I retrieve?

5 **THE COURT:** You may collect it, yeah.

6 **MS. DHILLON:** I'll give this to Ms. Davis?

7 **THE COURT:** Yes.

8 (Whereupon document was tendered to the Clerk.)

9 **BY MS. DHILLON**

10 **Q.** Mr. Daleiden, when you were making this identification,
11 did you do anything to check about the propriety of making this
12 document that you intended to use with respect to the project?

13 **A.** Yes, I did.

14 **Q.** What did you do?

15 **A.** So I actually -- before creating it or constructing it, I
16 actually called the local police department, the Huntington
17 Beach Police Department, and I told them that I needed to have
18 a prop photo ID basically for a filming project. And I said I
19 don't want to run afoul of any laws about counterfeiting
20 documents or forging anything, and so I said, you know, can you
21 guys let me know kind of like where do the boundaries lie with
22 something like that?

23 And they told me, well, we can't give you legal advice,
24 but they said what we can tell you is that -- is that for us,
25 the crime in using a fake ID has to do with the way that it's

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1 used. If it's used for an actual government purpose, like
2 purchasing an age restricted item, like alcohol or cigarettes,
3 or trying to register to vote or presenting it to a police
4 officer at a traffic stop.

5 They said for just a regular movie kind of filming
6 project, that's an artistic use and that's not something that's
7 going to involve any fake ID laws.

8 **Q.** And did you use the identification that we've just passed
9 around and the jury just examined for any government related
10 purpose?

11 **A.** No, none whatsoever.

12 **Q.** Did you, for example, need to use this ID to purchase
13 alcohol?

14 **A.** No.

15 **Q.** Did you already have a valid identification for that
16 purpose?

17 **A.** That's correct, I did.

18 **Q.** Did you use this identification to travel?

19 **A.** No.

20 **Q.** To check into a hotel even?

21 **A.** Generally, no.

22 **Q.** Did you use it to -- did you ever present this to a peace
23 officer for purposes of driving or any other event like that?

24 **A.** No, not at all.

25 **Q.** Okay. And did you put any type of features on this

DALEIDEN - CROSS / DHILLON

1 document, like a holographic image; apply anything like that to
2 it?

3 **A.** No, no.

4 **Q.** Okay. And was the document that you used or the prop, as
5 you described it, that you used to get into these events, was
6 it expired at all times when you used it?

7 **A.** Umm, the expiration date that was listed on it, yes, was
8 expired by the dates of any of the events at issue that it was
9 used for.

10 **Q.** Okay. Thank you.

11 And, Mr. Daleiden, the use for which you made this prop,
12 as you described it, is completed; correct?

13 **A.** That's correct.

14 **Q.** And you had no further use for it after you attended the
15 last event at issue in this case; correct?

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

17 **Q.** Now, so for clarity, that's the NAF 2014 event and the NAF
18 2015 event, the Planned Parenthood Forum event in 2014, Planned
19 Parenthood MeDC 2015, Planned Parenthood National 2015, and
20 then a couple of clinic visits; correct?

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

22 **Q.** And you presented that identification at all of those
23 clinic visits; correct?

24 **A.** Correct. Yeah. We were never asked for ID at Planned
25 Parenthood of the Rocky Mountains in Denver.

1 We were asked for identification at Planned Parenthood
2 Gulf Coast in Houston.

3 **Q.** Okay. Thank you.

4 And at the -- well, I'll ask you about the Planned
5 Parenthood Gulf Coast visit in a moment.

6 In your use of identifications in going about your life,
7 for example, getting into a bar, what -- what does somebody --
8 what does a bouncer typically do in taking a look at that ID
9 before letting you into a bar that's age restricted?

10 **A.** Sure. So typically in my experience a bouncer at a bar,
11 when they ask to check your ID at the beginning, they will at
12 least sort of shine with a flashlight and look at particular
13 authentication features on the -- on the ID. I don't know all
14 the -- what those are. I've never been a bouncer.

15 And generally I've also had the experience that they will
16 actually have a card scanner, like a driver's license scanner
17 or some other kind of ID scanner at the bar. And so I've
18 frequently had the experience where they will actually scan my
19 California driver's license, and anybody who is entering,
20 before actually letting you in.

21 **Q.** Do bars sometimes have a book of how state IDs look, to
22 compare how the identification that's presented to them may
23 look?

24 **A.** Yeah --

25 **MS. TROTTER:** Objection. Lacks foundation.

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1 **A.** Yeah, I've seen that before.

2 **THE COURT:** Sustained.

3 **BY MS. DHILLON**

4 **Q.** Have you ever seen, when attempting to get into a bar, a
5 book that a bouncer refers to to check the validity of the type
6 of ID that's being presented?

7 **A.** Yes, I have.

8 **Q.** Okay. Did you ever attempt to test how good this ID was
9 prior to using it in this project?

10 **A.** I tested it during the project at one point actually.

11 **Q.** Can you describe what happened when you tested this
12 document?

13 **A.** Sure. There was a -- there was one evening after the --
14 after the Forum conference in Miami, and so I tried to use --
15 to use the Robert Sarkis photo ID to enter the bar in Miami.
16 The bouncer took one look at it. I don't know that he even
17 shined his flashlight on it. He just looked at it, and he
18 laughed, and he handed it back to me and said: Get lost. Get
19 out of here.

20 **Q.** So you were not, in fact, able to use this identification
21 for purposes of getting into an age restricted place; correct?

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

23 **Q.** Okay. Before I leave the topic of these events and move
24 to the final topic today for my examination, you interacted
25 with Nichelle Davis for purpose of registering BioMax for the

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1 National Abortion Federation conferences; correct?

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

3 **Q.** And we've seen her testimony by video in this trial.

4 And you also -- did you interact with Ms. Vikky Graziani,
5 who you mentioned previously, for purposes of the Planned
6 Parenthood events?

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

8 **Q.** And during the course of your interactions with these two
9 ladies, would you say that they seemed -- did they ever mention
10 security or confidentiality to you?

11 **A.** No, neither of them ever mentioned that to me.

12 **Q.** Were they more concerned about the sale of exhibitor
13 booths at these two -- for these two companies?

14 **MS. TROTTER:** Objection. Argumentative. Lacks
15 foundation.

16 **THE COURT:** And leading. Sustained.

17 **BY MS. DHILLON**

18 **Q.** What was the main subject matter that you discussed with,
19 first, Ms. Davis?

20 **A.** With Nichelle Davis the main subject matter that we
21 discussed was -- was just registering BioMax to be an exhibitor
22 with NAF.

23 **Q.** And same question with Ms. Graziani. What was the sort of
24 general gist of your conversations with her regarding attending
25 these conferences?

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1 **A.** It was really solely about getting BioMax registered,
2 generally as quickly as possible.

3 **Q.** Okay. And in the course of these five events that we've
4 talked about, BioMax -- did BioMax pay approximately \$16,000
5 for attending these events?

6 **A.** Yes, that sounds about right.

7 **Q.** Okay. Now, you mentioned that you visited the Planned
8 Parenthood Gulf Coast Clinic in Houston. Who initiated that
9 visit?

10 **A.** I believe that I initiated the request to do the site
11 visit.

12 **Q.** And can you tell us how that came about?

13 **A.** Sure. So, I mean, most immediately it just came about as
14 a -- you know, via an email request to Melissa Farrell, the
15 Director of Research for Planned Parenthood Gulf Coast.

16 **Q.** Was that by email or in person?

17 **A.** It was by email.

18 **Q.** And how did you come to have Ms. Davis' email address?

19 **A.** Ms. Farrell's email address?

20 **Q.** Ms. Farrell, I'm sorry.

21 **A.** I had her email because the medical director of Planned
22 Parenthood Gulf Coast, Paul Fine, gave it to me at the MeDC
23 conference. Although it wasn't -- it was -- it matched the
24 same format as all the other Planned Parenthood Gulf Coast
25 email addresses that we had from either -- from other people's

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1 business cards or anything else, so it was not like it was
2 particularly difficult to obtain.

3 Q. Do you recall what communications you had with Ms. Farrell
4 prior to physically attending the site of the PPGC clinic?

5 A. Yeah. We had a series of email exchanges, just in a
6 running email thread, for maybe about a month before the site
7 visit.

8 Q. And did that culminate in an invitation to attend the
9 clinic?

10 A. Yes, it did.

11 Q. And was there any document that you were asked to sign
12 prior to attending that site visit?

13 A. Yes. There was a Non-Disclosure Agreement.

14 Q. Okay. And I'd like to ask you to take a look at
15 Exhibit 447 in your binder, which is already admitted into
16 evidence.

17 (Document displayed)

18 Q. Mr. Daleiden, is this document -- can you identify this
19 as -- can you identify this document, please?

20 A. Yes. This looks like the Non-Disclosure Agreement that I
21 executed with Planned Parenthood Gulf Coast prior to doing the
22 site visit.

23 Q. And is it dated April 4th, 2015?

24 A. Yes, it is.

25 Q. And there is some handwriting on this -- on this document.

DALEIDEN - CROSS / DHILLON

1 Can you tell us whose handwriting this is?

2 **A.** Yes. This is my handwriting.

3 **Q.** So how did you get this document?

4 **A.** So this document was emailed to me as a blank document by
5 Melissa Farrell.

6 **Q.** And did -- so it was blank. So in Paragraph 2, which now
7 says "scientific research programs" in handwriting, was that
8 blank when you received it?

9 **A.** Yes. That was blank when I received it.

10 **Q.** Did you understand that it was your role to fill out what
11 the subject matter of this Confidentiality Agreement was?

12 **A.** Yes, I did.

13 **Q.** And after you filled this document out, did you sign it?

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

15 **Q.** And it is signed by recipient BioMax on behalf of Susan
16 Tennenbaum. Is that something that you signed?

17 **A.** Yes. That's my handwriting.

18 **Q.** Okay. And did you then -- how did you communicate this
19 signed document to Planned Parenthood Gulf Coast?

20 **A.** I scanned it and I emailed it back to Melissa Farrell.

21 **Q.** And we see on the last page of this Exhibit 2 signatures.
22 You've described one of them.

23 How did you receive the signature back from -- the fully
24 completed document from PPGC?

25 **A.** I actually never received the completed or executed

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1 agreement from Planned Parenthood Gulf Coast. The first time
2 that I ever saw Melaney Linton's signature on here was when
3 plaintiffs produced it in this case.

4 **Q.** Okay. So after you filled in what you described as the
5 purpose of the Confidentiality Agreement and sent it in, that
6 was the last you ever saw this document prior to this
7 litigation; correct?

8 **A.** That's correct.

9 **Q.** And to your knowledge, there is no other Confidentiality
10 Agreement associated with your visit to PPGC; correct?

11 **A.** Correct. There is no other agreement.

12 **Q.** Okay. Now, you filled in the term "scientific research
13 programs" as the transaction, in quotation marks -- or I don't
14 know. There is a transaction in quotation marks and there is a
15 purpose in quotation marks in Paragraph 2 of Page 1 of this
16 document. What did you mean by that?

17 **A.** When I wrote in "specific research programs" in this
18 document, I wrote that in to specifically limit the scope of
19 the kind of -- whatever kind of confidential information either
20 party would be disclosing or would want to disclose as
21 confidential in the meeting that we were going to have with
22 them.

23 So by "scientific research programs" I meant specific
24 information about a specific -- any specific scientific study
25 that would involve specific human research subjects in that

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1 study.

2 And so I -- I wrote that in to really keep it very tight
3 and limited to what information could be considered
4 confidential under this agreement.

5 **Q.** Okay. Did anyone at PPGC ever tell you what they thought
6 "scientific research programs" meant prior to your visit?

7 **A.** Specifically in reference to this after I wrote it in?
8 After the document? No, they never asked me about it and never
9 questioned it.

10 **Q.** Okay. Now, after you sent this document in, do you recall
11 how soon after that you actually attended the PPGC clinic?

12 **A.** Yeah. The site visit meeting was on April 9th. So it
13 would have been five days after, after filling this out.

14 **Q.** Okay. And before I leave this document, I'm going to ask
15 you to take a look at Paragraph 3 of the document. And when
16 you have had a chance to take a look at it, I'm going to ask
17 you to take a look the definition of "confidential
18 information."

19 When you signed this document, had you read it thoroughly
20 prior to signing it?

21 **A.** Yes. I read it very thoroughly.

22 **Q.** How many minutes would you say you took preparing to sign
23 it?

24 **A.** I probably spent up to a solid hour on this agreement
25 beforehand.

DALEIDEN - CROSS / DHILLON

1 Q. And why did you spend so much time taking a look at
2 document?

3 A. Because this is a -- you know, very different from any of
4 the -- you know, any of the exhibitor agreements at the
5 conferences.

6 This is an actual Non-Disclosure Agreement that, to me,
7 looks like it has the same provisions in the Non-Disclosure
8 Agreements that I'm familiar with, that I've used in my career
9 going back, you know, ten years at this point.

10 So -- and so I wanted to treat it with that level of
11 seriousness and make sure that the class of information that it
12 covered was very specifically circumscribed and very
13 specifically limited, which the -- you know, by the nature of
14 this being an actual Non-Disclosure Agreement that -- that
15 checks all the boxes that an agreement like that normally does
16 in my experience. There is actually, you know, the tools and
17 the definitions and everything within this agreement to limit
18 the scope of what it's meant to cover and make that clear for
19 everybody who is a -- who is a -- everybody who is a party to
20 it.

21 Q. Okay. So I want to take you through the definition of
22 confidential information in this document. And we're looking
23 at the second sentence of paragraph number one in this first
24 page of this document.

25 Do you see where it says:

DALEIDEN - CROSS / DHILLON

1 "In particular, quote, confidential information,
2 close quote, shall be deemed to include (1) all
3 written information of the disclosing party; and (2,)
4 all oral information of the disclosing party."

5 Do you see that first?

6 **A.** Yes, I see that.

7 **Q.** And then comma:

8 "...which in either case is identified at the
9 time of disclosure as being of a confidential or
10 proprietary nature."

11 Do you see that?

12 **A.** Yeah, I see that.

13 **Q.** And so did you understand -- what did you understand that
14 to mean in terms of who would identify that, so far that we've
15 read, as confidential?

16 **A.** Yes. So I understood that if a party under this agreement
17 was disclosing information that that party believed was
18 confidential information and wanted it to be information that
19 was kept confidential under this agreement, that they would
20 specifically flag that information as confidential information
21 before disclosing it to us.

22 **Q.** And, again, all of that would have to also fall under the
23 category of scientific research programs; correct?

24 **A.** Yes.

25 **MS. TROTTER:** Objection. Leading.

1 **THE COURT:** Sustained.

2 **BY MS. DHILLON**

3 **Q.** What did you understand that to mean with respect to the
4 definition you wrote in regarding the subject matter of this
5 agreement?

6 **A.** So I understood that if Planned Parenthood Gulf Coast or
7 Melissa Farrell was going to disclose information about a
8 specific scientific research project or a specific scientific
9 research program that they had going on to actually do research
10 with human subjects, that Melissa Farrell or someone else at
11 PPGC would specifically flag that information as confidential
12 information under the agreement before disclosing it to me.

13 **Q.** Okay. And then I'm going to look at the rest of the
14 sentence that I was in the middle of, which goes on to say:

15 "...or is reasonably understood by the recipient
16 to be confidential under the circumstances of the
17 disclosure."

18 Do you see that?

19 **A.** Yeah.

20 **Q.** And same question: What did you understand that phrase to
21 mean with respect to information that was exchanged in the
22 course of your site visit?

23 **A.** I understood that to mean that if there was -- you know,
24 maybe if there was information that was given to us, like, in a
25 document form that had a -- that had a confidential label on it

DALEIDEN - CROSS / DHILLON

1 or that came from a binder that was labeled confidential or
2 something like that, that -- you know, that without a --
3 without a verbal flagging that this is information that we're
4 presenting to you, we want it to be kept confidential under the
5 agreement, that still given the circumstances of the nature of
6 how that information was produced, that it would be objectively
7 very reasonable and obvious that it was -- it was part that
8 proprietary information.

9 **Q.** So if I have it correct, if I understand your testimony,
10 in order to be confidential under this document that you
11 signed, was it your understanding that the information first
12 had to be about a specific scientific research program;
13 correct?

14 **MS. TROTTER:** Objection. Asked and answered, and
15 leading.

16 **THE COURT:** Sustained.

17 **MS. DHILLON:** Okay.

18 **BY MS. DHILLON**

19 **Q.** Let me ask it a different way. If somebody conveyed
20 information to you that they didn't flag to be confidential and
21 it wasn't about a scientific research program and you didn't
22 understand it to be confidential, is it your understanding that
23 it would be confidential under this agreement?

24 **MS. TROTTER:** Objection. Asked and answered.
25 Leading.

DALEIDEN - CROSS / DHILLON

1 **THE COURT:** Overruled. You can answer.

2 **A.** No, not at all. My understanding is that information like
3 that would not be covered in any way, shape or form by this
4 agreement because it doesn't fit any of those categories or
5 check boxes called out in the agreement itself.

6 **BY MS. DHILLON**

7 **Q.** Okay. Now, we've seen Ms. Farrell's testimony in this
8 case. Did Ms. Farrell ever say to you, to your recollection:
9 The information that we're about to discuss is confidential?

10 **A.** No, she never said that. In fact, she said the opposite.

11 **Q.** Did Ms. Farrell ever discuss with you any specific
12 scientific research program, according to the definition that
13 you ascribed to this document?

14 **A.** No. Never.

15 **Q.** And did you, without her saying it, understand that
16 anything she said to you was confidential?

17 **A.** No. She specifically told us that we wouldn't be talking
18 about confidential information at that meeting.

19 **Q.** Okay.

20 **MS. DHILLON:** I am going to ask that we play Trial
21 Exhibit 5302-3, which is -- I guess we should just play it
22 without audio first to -- for the witness to identify it.

23 **THE COURT:** Okay. So this is a clip that we haven't
24 used before?

25 **MS. DHILLON:** That's correct, Your Honor.

DALEIDEN - CROSS / DHILLON

1 **THE COURT:** All right.

2 **MS. BOMSE:** What number is it again?

3 **THE COURT:** 5302-3.

4 **MS. TROTTER:** I don't believe that we have seen this
5 before.

6 **MS. DHILLON:** All of these clips were in the Dropbox
7 last week.

8 Your Honor, I have a very short transcript.

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

11 **MS. TROTTER:** There is no objection to this.

12 **THE COURT:** So you can use the video -- you can use
13 the audio.

14 **MS. DHILLON:** Willow, you can play the audio?

15 **THE COURT:** And it's admitted.

16 (Trial Exhibit 5302-3 received in evidence)

17 (Videotape played with audio in open court, not
18 reported)

19 **BY MS. DHILLON**

20 **Q.** Mr. Daleiden, what's happening in that video that we just
21 saw?

22 **A.** Sure. So that's the very beginning of the site visit that
23 we had at Planned Parenthood Gulf Coast with Melissa Farrell on
24 April 9th.

25 **Q.** And were you in that video?

DALEIDEN - CROSS / DHILLON

1 **A.** Yes, I was.

2 **Q.** And was Ms. Merritt playing the role of Susan Tennenbaum
3 in that video?

4 **A.** Yes, she was.

5 **Q.** And Ms. Farrell said, "We're not going to be asking you
6 anything confidential." Did you hear that?

7 **A.** Yes, I heard that.

8 **MS. TROTTER:** Objection. Mischaracterizes the
9 evidence.

10 **THE COURT:** Yet. And then let's go on to the next
11 one.

12 **MS. DHILLON:** Yet.

13 **BY MS. DHILLON**

14 **Q.** And did she go on to ever say: Now we are discussing
15 something confidential?

16 **A.** No. Never.

17 **Q.** Okay. She suggested that the door be left open. Did you
18 hear that?

19 **A.** Yes. I heard that and I saw that when I was there on
20 April 9th.

21 **Q.** Did she ever ask that that door be closed?

22 **A.** Never.

23 **Q.** Okay.

24 **MS. DHILLON:** I'm going to ask the -- to play a
25 second clip from the same time period. It's Trial

DALEIDEN - CROSS / DHILLON

1 Exhibit 5302-4.

2 Dorothy, do you have the transcript?

3 (Whereupon document was tendered to the Court and
4 counsel.)

5 **MS. TROTTER:** No objection.

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

7 (Trial Exhibit 5302-4 received in evidence)

8 **THE COURT:** Go ahead.

9 (Videotape played with audio in open court, not
10 reported)

11 **BY MS. DHILLON**

12 **Q.** Mr. Daleiden, you were present for that part of the
13 exchange that was just portrayed on the video; correct?

14 **A.** Yes, I was.

15 **Q.** And what was being discussed in that short video exchange?

16 **A.** I think that they were discussing what kind of
17 over-the-counter allergy medication would be good for
18 Ms. Merritt.

19 **Q.** Did you consider that to be a confidential communication?

20 **A.** No.

21 **Q.** Did Ms. Farrell identify it as such?

22 **A.** No, she did not.

23 **Q.** And was there other conversation of this nature regarding
24 the weather or allergies or, for example, the prevalence of
25 cattle in Texas during your exchanges with Ms. Farrell?

DALEIDEN - CROSS / DHILLON

1 A. Yeah. There was lots of conversation like that.

2 Q. And during the course of your time -- now sticking at the
3 clinic itself as opposed to the subsequent lunch. At any point
4 in time did Ms. Farrell ever say something to the nature of:
5 Let's get down to business and talk about something
6 confidential?

7 A. No.

8 Q. Okay. And did you ever understand her to communicate
9 anything confidential during that physical time at the clinic
10 itself?

11 A. No, never.

12 Q. Now, did you go to lunch with Ms. Farrell and Ms. Merritt
13 as part of the site visit?

14 A. Yes, I did.

15 Q. Okay. And whose idea was that?

16 A. Off the top of my head, I think that that was Melissa
17 Farrell's idea. She may have mentioned it in one of the emails
18 actually prior to -- prior to the site visit or it may have
19 just come up organically during the meeting. I can't remember
20 off the top of my head.

21 Q. Okay. And what do you recall about that the lunch? First
22 of all, where did it take place?

23 A. It took place at a very crowded seafood restaurant, kind
24 of around the corner from the Planned Parenthood Gulf Coast
25 offices.

DALEIDEN - CROSS / DHILLON

1 Q. And did Ms. Farrell select that location?

2 A. Yes. She's the one who chose the location.

3 Q. How far was it from the clinic?

4 A. I would say it was probably no more than a mile away, give
5 or take.

6 Q. Did you drive there together?

7 A. Yeah. We drove there together.

8 Q. And whose vehicle did you drive in?

9 A. You know, off the top of my head, I don't remember. I
10 would have to rely on the video.

11 Q. And how long was that -- was the lunch that occurred after
12 you arrived at this restaurant?

13 A. You know, I would rely on the video for that as well. I
14 would estimate the lunch was anywhere from 45 minutes to an
15 hour and a half long.

16 Q. Okay. And I'm going to ask you about that.

17 MS. DHILLON: But before we get to that, I'd like to
18 play Trial Exhibit 5307-4, which is another very short video
19 clip that was previously produced. And there is a transcript.

20 (Whereupon document was tendered to the Court and
21 counsel.)

22 (Brief pause.)

23 MS. TROTTER: Your Honor, we object on 402 and 403
24 grounds.

25 THE COURT: All right. Well, let's hold onto this

DALEIDEN - CROSS / DHILLON

1 one, and why don't you proceed to the next one?

2 **MS. DHILLON:** Okay. Well, this is close to the end
3 of my examination. May I --

4 **THE COURT:** I'll let you pop back up after
5 Mr. LiMandri comes.

6 **MS. DHILLON:** Okay.

7 **BY MS. DHILLON**

8 **Q.** So I may have to come back to this document that I just
9 referenced, Mr. Daleiden, but going back to the topic of what
10 you discussed at that lunch, and I'm going to ask you some
11 focused questions about that.

12 You mentioned the lunch was an hour and a half long;
13 correct?

14 **A.** Give or take, yes.

15 **Q.** At this lunch did you discuss any specific medical or
16 scientific research project that BioMax intended to do?

17 **A.** No, we did not.

18 **Q.** Okay. And did Ms. Farrell mention that the lunch was
19 confidential?

20 **A.** No, she did not.

21 **Q.** Did Ms. Farrell imply through her body language that the
22 comments that she was about to make were confidential?

23 **A.** No, not at all.

24 **Q.** Okay. Were there a number of waiters around during the
25 lunch?

DALEIDEN - CROSS / DHILLON

1 **A.** There was tons of waitstaff and tons of patrons seated
2 adjacent to us.

3 **Q.** How would you describe the audible nature -- how noisy was
4 it?

5 **A.** It was very noisy insofar as you could hear multiple
6 conversations taking on -- multiple conversations taking place
7 around you and right next to you.

8 **Q.** Okay.

9 **MS. DHILLON:** Your Honor, while we're not playing the
10 one that we just looked at potentially, I'd like to ask to play
11 Exhibit 5307-3.

12 (Whereupon document was tendered to the Court and
13 counsel.)

14 **MS. DHILLON:** Very short transcript.

15 **MS. TROTTER:** No objection.

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

17 (Trial Exhibit 5307-3 received in evidence)

18 **MS. DHILLON:** Willow if could you play that one, with
19 audio, please.

20 (Videotape played with audio in open court, not
21 reported)

22 **BY MS. DHILLON**

23 **Q.** Mr. Daleiden, do you recognize that as a portion of the
24 conversation you had at lunch with Ms. Farrell?

25 **A.** Yes, I do.

DALEIDEN - RECROSS / LIMANDRI

1 Q. And did that video clip accurately depict what the
2 ambiance of the restaurant was at the time?

3 A. Yes, it did, from that perspective of the camera. There
4 is even more -- there are other perspectives that show even
5 more how many people were in that restaurant.

6 Q. And was it relatively similar throughout the meal?

7 A. Yes. As I recall, it was an extremely crowded restaurant
8 throughout the time that we were there.

9 Q. Okay. And to be clear, at no point in the meal did
10 Ms. Farrell ever communicate that any part of it was
11 confidential; correct?

12 A. Never.

13 MS. DHILLON: Your Honor, with the exception of the
14 one exhibit that we discussed, I would yield to Mr. LiMandri.

15 THE COURT: Okay.

16 MS. DHILLON: Thank you, Mr. Daleiden.

17 THE COURT: Mr. LiMandri.

18 RECROSS-EXAMINATION

19 BY MR. LIMANDRI

20 Q. Good morning, Mr. Daleiden.

21 A. Good morning.

22 Q. Ms. Dhillon was asking you about largely the contract
23 claims. I'm going to cover with you the rest of the claims,
24 starting with the recording claims.

25 Can you tell us when you were editing the CMP videos --

DALEIDEN - RECROSS / LIMANDRI

1 the jury has seen some of those already -- did you ever alter
2 any of the words that were actually spoken by the plaintiffs?
3 By that I mean, did you dub any words into the video? Did you
4 try to splice portions of the video together mid sentence?

5 Did you try to manipulate the video in any way to change
6 the words that were actually spoken by any of the plaintiffs
7 that are depicted in the videos?

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

9 **THE COURT:** Overruled.

10 **A.** No, never.

11 **BY MR. LIMANDRI**

12 **Q.** And did you always make full-length videos available to
13 the public so if someone wanted to see what was being said in
14 context to make sure that something wasn't, you know, being
15 pieced together in a misleading way, did you make those
16 full-length videos available?

17 **A.** Yes. I always made the full video of the full
18 conversation with the Planned Parenthood representative
19 available on YouTube.

20 **Q.** And when you were recording people, was one of the reasons
21 you left the recorder continuously running so that there would
22 be no question that you weren't just recording certain portions
23 of conversations?

24 **MS. TROTTER:** Objection. Leading.

25 **THE COURT:** Sustained.

DALEIDEN - RECROSS / LIMANDRI

1 **BY MR. LIMANDRI**

2 **Q.** What was the purpose of continuing to keep the recorder
3 running when you were speaking to various people?

4 **A.** As I've testified previously, it's -- that's in order to
5 have a complete and accurate forensic record of the entire
6 conversation or conversations that are going on, so that nobody
7 could accuse you of or question whether the entire conversation
8 was actually recorded or actually represented on the videotape.

9 **Q.** Did you always try to record people in what would be
10 considered a public setting as opposed to a private setting?

11 **A.** Yes, always.

12 **MS. TROTTER:** Objection. Leading.

13 **THE COURT:** Yes. Sustained.

14 **BY MR. LIMANDRI**

15 **Q.** When you were deciding where you were going to record
16 people, what would be the determining factor?

17 **A.** I specifically chose places of public accommodation;
18 restaurants that were open to the public, hotel areas that were
19 accessible to the public, things like that.

20 **Q.** Did you have opportunities at times to record people in
21 private settings where you thought you might be able to get
22 good information for the investigation?

23 **A.** Yes, I did.

24 **Q.** And did you do that?

25 **A.** No, I did not.

DALEIDEN - RECROSS / LIMANDRI

1 Q. Can you give any examples?

2 A. Sure. So, for example, at the -- at the two lunch
3 meetings in California at issue, so our lunch meeting with
4 Dr. Nucatola at the Craft Restaurant in Los Angeles and then
5 our lunch meeting with Dr. Mary Gatter at the a/k/a Bistro in
6 Pasadena, both of those restaurants had private meeting rooms
7 available that we could have reserved ahead of time, where you
8 would have a completely private room. The doors would be
9 closed to it. It would just be a hermetically sealed little
10 chamber for you to have your confidential conversation or
11 business event or whatever.

12 And I specifically chose not to reserve those spaces and
13 not to have a conversation or a lunch meeting with -- with
14 Dr. Gatter or Dr. Nucatola in those spaces because I wanted to
15 make sure that the conversation was happening in a place where
16 the public could overhear.

17 Q. Okay. Did you ever record anybody who was revealing what
18 you considered to be personal or private facts about their
19 lives?

20 A. No, not to my knowledge.

21 Q. Did you ever record anybody who was revealing what you
22 would consider to be some type of, you know, trade secret or
23 some type of legally protected information in terms of
24 copyrights, trademarks, that sort of thing?

25 A. No.

DALEIDEN - RECROSS / LIMANDRI

1 Q. Did you ever record anybody after they said: You know, I
2 want this to be off the record? Anything like that?

3 A. No. Nobody ever said anything like that.

4 Q. What steps did you do personally, as opposed to talking to
5 others, in order to make sure that you weren't violating any
6 type of state recording or federal recording laws?

7 A. So I have been familiar with the various state recording
8 laws for close to a decade at this point because of my prior
9 work with the organization Live Action. Then in setting out to
10 do this undercover investigation for the Center for Medical
11 Progress I sort of refreshed a lot of my background knowledge
12 and a lot of my background research.

13 So I've always been very conscious from the very beginning
14 and throughout of the different rules regarding conversations
15 that are in a public area that can be overheard by people
16 versus conversations that are truly private and in a private
17 space.

18 Q. Did you record people in any clinic settings that were a
19 two-party state situation? In other words, where you needed
20 permission from the other person before you recorded them?

21 MS. TROTTER: Objection. Lacks foundation. Calls
22 for a legal conclusion.

23 THE COURT: Sustained. And it would also call for a
24 legal conclusion.

25 MR. LIMANDRI: Okay.

DALEIDEN - RECROSS / LiMANDRI

1 **BY MR. LiMANDRI**

2 **Q.** Based upon your understanding, for example, when you
3 recorded people in Texas and in Colorado in a clinic setting,
4 why did you feel comfortable doing that?

5 **A.** Sure. Because, to my understanding, in Texas and Colorado
6 you're allowed to record even a private conversation --

7 **MS. TROTTER:** Objection.

8 **A.** -- so as long as you're a participant in the conversation.

9 **MS. TROTTER:** This is a legal opinion. Move to
10 strike the entire line of questioning.

11 **MR. LiMANDRI:** It's mental state, Your Honor.

12 **THE COURT:** The objection is sustained.

13 Ladies and gentlemen, I'll be the one who instructs you on
14 what the law is in the states that apply in this case.

15 **MR. LiMANDRI:** Thank you, Your Honor.

16 **BY MR. LiMANDRI**

17 **Q.** Let me ask you this. Did you record anybody in any clinic
18 settings in states other than Texas and Colorado?

19 **A.** No.

20 **Q.** When you were recording people, be it at a conference or
21 in a restaurant, did you always try to make any determination
22 whether there were other people around so that it would not be
23 considered confidential?

24 **MS. TROTTER:** Objection. Leading.

25 **THE COURT:** Sustained.

DALEIDEN - RECROSS / LIMANDRI

1 **BY MR. LIMANDRI**

2 **Q.** What did you do when you recorded people at a conference
3 or a restaurant type setting, if anything, in order to try to
4 ensure it would not be considered confidential?

5 **MS. TROTTER:** Same objection.

6 **THE COURT:** Sustained.

7 **BY MR. LIMANDRI**

8 **Q.** Did the presence of other people in restaurants or
9 conferences enter into your thought process at all when you
10 were making your recordings?

11 **MS. TROTTER:** Same objection.

12 **THE COURT:** Overruled.

13 **A.** Yes, it did. I always tried to make recordings in
14 situations -- only in situations where there were other people
15 around who could overhear the conversation.

16 **BY MR. LIMANDRI**

17 **Q.** When you were recording specific people, as opposed to
18 people just coming up to your table at the conferences, what
19 was the determining factor as to why certain people would be
20 recorded rather than others, if you had a choice to make in the
21 matter?

22 **A.** Could I get that question one more time?

23 **Q.** Yeah. Sure. It's not a good question.

24 What made you decide whether you were going to record one
25 person or another?

DALEIDEN - RECROSS / LiMANDRI

1 **MS. TROTTER:** Objection. Vague and ambiguous.

2 **THE COURT:** Overruled.

3 The last two questions were fine, Mr. LiMandri. Go ahead.

4 **MR. LiMANDRI:** Well, I'm not always on my mark.

5 **BY MR. LiMANDRI**

6 **Q.** Did you seek out individuals to record or did you have
7 some other thought process in mind when you were deciding if
8 you were going to record one particular person or another?

9 **A.** Sure. So I wouldn't say that I sought out individuals as
10 individuals per se or as individual people.

11 I sought out certainly specific officers or specific
12 people in specific leadership roles with the plaintiffs
13 because, as part of the investigation, you know, we were
14 specifically looking into and trying to document Planned
15 Parenthood's corporate and business participation in the
16 harvesting and trafficking of aborted fetal tissue.

17 So I wanted to make sure that the information and the
18 commentary that we were getting on that subject was coming from
19 people in leadership roles and in positions of authority with
20 the organization so that the information would be -- would be
21 valid as to what was actually going on.

22 **Q.** Thank you.

23 Okay. I'm going to ask you about a couple of the lunch
24 meetings. Ms. Dhillon, I think, showed you a couple of video
25 clips. I've got a couple short video clips only as well. The

DALEIDEN - RECROSS / LiMANDRI

1 first one is the Nucatola lunch. It's 5074-2.

2 **MR. LiMANDRI:** I don't believe there is any dialogue.
3 I think it's just background noise, Your Honor. I'm not sure
4 if it's been shown, but I don't think there's any objection.

5 **THE COURT:** Hang on. We'll find out.

6 **MR. LiMANDRI:** 5074-2.

7 **MS. TROTTER:** No objection.

8 **THE COURT:** All right. Go ahead. Admitted.

9 (Trial Exhibit 5074-2 received in evidence)

10 **MR. LiMANDRI:** Thank you.

11 (Videotape played with audio in open court, not
12 reported)

13 **BY MR. LiMANDRI**

14 **Q.** It's pretty short.

15 Basically, is that you walking into the restaurant?

16 **A.** Well, that is a -- that is a very short clip of me
17 approaching the booth where we had our conversation, where we
18 had our meeting with Dr. Nucatola.

19 **Q.** And what was significant about that video, in your
20 opinion?

21 **A.** Well, you would have to focus on the very first second of
22 that video. And, frankly, you would want to focus on the five
23 seconds before that video actually began.

24 But it's very clear on the videotape. As I'm walking up
25 to that booth, you can hear the conversation that Dr. Nucatola

DALEIDEN - RECROSS / LiMANDRI

1 is having with Ms. Merritt from at least 10 to 15 feet away, if
2 not farther, as you were approaching that booth.

3 **MS. TROTTER:** Objection. Mischaracterizes the
4 evidence.

5 **THE COURT:** Overruled.

6 **BY MR. LiMANDRI**

7 **Q.** Okay. I want to show you a document that's been
8 previously admitted into evidence by the plaintiffs,
9 Exhibit 380.

10 (Document displayed)

11 **Q.** It's my understanding that this -- these are emails
12 regarding that particular lunch --

13 **THE COURT:** Is this in evidence?

14 **MR. LiMANDRI:** Yes, Your Honor. It's been admitted
15 when the plaintiffs examined Mr. Daleiden.

16 **THE COURT:** Go ahead.

17 **MR. LiMANDRI:** Okay.

18 **BY MR. LiMANDRI**

19 **Q.** Referring to the email at the bottom of the first page
20 from you dated July 26, 2014, it says:

21 "Hi, Albin. Yes, I'm completely exhausted and
22 still processing everything. She bought it all hook
23 line and sinker and admitted PP National knows the
24 potential for illegality/unethics, but has a Don't
25 Ask, Don't Tell policy, going so far as to choose to

DALEIDEN - RE CROSS / LIMANDRI

1 keep nothing in writing about fetal tissue because
2 it's too dangerous. If something happens, they want
3 the affiliates to take the fall."

4 What did you mean by that, Mr. Daleiden?

5 **A.** By the whole paragraph?

6 **Q.** By that statement, yeah. The portion of the paragraph
7 that I read.

8 **A.** Sure. So that's -- that's my big picture summary of the
9 conversation that we had with Dr. Nucatola written just, you
10 know, really a matter of hours after getting back from that
11 lunch meeting.

12 And my big take-aways from the meeting were Dr. Nucatola
13 as the Senior Director of Medical Services for Planned
14 Parenthood National told us that -- that Planned Parenthood
15 affiliates were trading fetal body parts on --

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

17 **THE COURT:** Sustained.

18 **BY MR. LIMANDRI**

19 **Q.** You testified that Dr. Nucatola was the medical director
20 for Planned Parenthood Federation of America. Do you know if
21 she played any role in the drafting of their medical standards
22 and guidelines?

23 **A.** Yes. She was the one who was in charge of drafting
24 basically the -- the "how to" clinical manual for all Planned
25 Parenthoods across the country.

1 Q. Okay. We saw a portion of that luncheon video before.

2 (Document displayed)

3 Q. Does the next paragraph on the same document, which is
4 Exhibit 380, Page 2, Paragraph 2, does that second paragraph
5 there address what we saw in the video?

6 A. Yes, it does.

7 Q. Okay. It states:

8 "She admitted she converts fetuses to breech
9 position in order to extract more intact and get
10 better tissue, but believes this is not a change of
11 procedure that would require further consent from the
12 patient. This is the first four steps of a
13 partial-birth abortion, and she described a skewed
14 understanding of the PBA Ban Act."

15 What do you understand the PBA Ban Act to be?

16 A. That's the --

17 **MS. TROTTER:** Objection, Your Honor. 402, 403.

18 **THE COURT:** Sustained.

19 So, ladies and gentlemen, to bring you back to the initial
20 instructions that I gave you, this case is about the strategies
21 employed by the defendants. It's not about the abortion
22 procedures. It's not about the content of the videos after the
23 first video was taken.

24 So sustained.

25

1 **BY MR. LIMANDRI**

2 **Q.** Let's talk a little bit about the lunch with Dr. Gatter.
3 We saw a video on that previously, so I won't be replaying it.

4 How would you describe the restaurant that it was in? Was
5 it empty? Was it crowded? How would you have described the
6 setting?

7 **A.** Sure. Well, it certainly wasn't empty. There were two
8 people sitting at the -- and it actually was not a particularly
9 large restaurant. There were two people sitting at the bar,
10 which was a -- which was a very large wrap-around bar which was
11 more or less adjacent to the area of the booths that we were
12 sitting in with Dr. Gatter. There were two patrons sitting at
13 the bar when we walked in. And then the booth that we sat at
14 was directly adjacent to the kitchen access area, where the
15 waiters were constantly coming in and out, carrying food to the
16 different tables and servicing the different tables.

17 So it was -- it was a restaurant that was open to the
18 public, and the public was certainly there, and nobody sitting
19 there could reasonably expect that the things they were saying
20 wouldn't be overheard by other patrons.

21 **Q.** Thank you.

22 **MR. LIMANDRI:** With respect to the site visit that
23 you had at the Planned Parenthood clinic in Colorado, I want
24 to, if I may, Your Honor, publish just a single screenshot,
25 which is Exhibit 5292.

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1 I don't believe there is an objection.

2 **MS. TROTTER:** Give me just one second, counsel.

3 **MR. LIMANDRI:** Sure.

4 **MS. TROTTER:** I'm not sure which -- 52?

5 **MR. LIMANDRI:** 92.

6 **MS. TROTTER:** Hold on.

7 (Brief pause.)

8 **MS. TROTTER:** No objection.

9 **THE COURT:** All right, go ahead. It's admitted.

10 (Trial Exhibit 5292 received in evidence)

11 **MR. LIMANDRI:** If we can go ahead.

12 (Document displayed)

13 **BY MR. LIMANDRI**

14 **Q.** Okay, what's the significance of what we are looking at
15 with Exhibit 5292 on the screen, Mr. Daleiden?

16 **A.** So these are examples of the signs that plaintiff Planned
17 Parenthood Rocky Mountains had posted at the entrance to their
18 clinic where we had our site visit with them on April 7, 2015,
19 where they announced that they were recording all of the
20 conversations that could take place at their clinic.

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

22 **A.** Because that told me that everybody who entered that
23 building was on notice that their conversations were being
24 recorded.

25 **Q.** Did anyone place any conditions on you or on BioMax before

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1 you entered the Planned Parenthood Rocky Mountain headquarters?

2 **A.** No. None, whatsoever.

3 **Q.** Who did you meet with while you were there?

4 **A.** We met with Dr. Savita Ginde, who was the vice-president
5 and medical director of Planned Parenthood of Rocky Mountains.
6 And we also met with J.R. Johnstone, who was the research
7 coordinator.

8 **Q.** Did the research coordinator give you any information?

9 **A.** Yes, he did. He actually -- he actually opened up on his
10 laptop the patient schedule for the day, and displayed that to
11 us. And I was pretty shocked by that because that was a
12 completely improper disclosure of HIPAA-protected information.

13 **MS. TROTTER:** Objection, move to strike, 402, 403.

14 **THE COURT:** Sustained.

15 **BY MR. LIMANDRI**

16 **Q.** Let's talk about the Texas site visit which would be
17 Planned Parenthood Gulf Coast. And again, Ms. Dhillon asked
18 you a few questions about that already, so I don't need to
19 spend much time on it.

20 I have one final short video, 5307, which I don't believe
21 has any dialogue -- it's just a clip -- I think that shows
22 background noise while they're, I believe, entering -- 5307.

23 **THE COURT:** We have had a few of those.

24 **MR. LIMANDRI:** We have. It's the last one.

25 **THE COURT:** I'm just wondering whether there was a

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1 number attached to it. 5307 --

2 **MR. LIMANDRI:** I think this is the initial one
3 entering, so I don't believe there is a number attached to it,
4 Your Honor.

5 (Note handed to counsel)

6 **MR. LIMANDRI:** Oh, I'm mistaken. 5307-1.

7 **MS. TROTTER:** No objection.

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

9 (Trial Exhibit 5307-1 received in evidence)

10 **BY MR. LIMANDRI**

11 **Q.** While we are looking at that, let me ask you some
12 questions.

13 How would you describe the restaurant? Was it crowded?
14 Was it empty? Where the conversation took place with Melissa
15 Farrell.

16 **A.** It was an extremely crowded restaurant.

17 **Q.** What was the purpose of your going to the Planned
18 Parenthood location in Texas?

19 **A.** The purpose of our site visit to Planned Parenthood Gulf
20 Coast in Houston was to continue, continue our undercover
21 investigation of their participation in harvesting and
22 trafficking in fetal body parts and even potentially in whole
23 fetuses.

24 And also specifically with Planned Parenthood of Gulf
25 Coast as an affiliate that does abortions up to six months,

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1 that was --

2 **MS. TROTTER:** Objection, Your Honor; move to strike.
3 402, 403.

4 **THE COURT:** Yeah, the testimony will be stricken.
5 It's also been asked and answered, so it's --

6 **BY MR. LIMANDRI**

7 **Q.** What type of identification did they inquire to enter the
8 clinic at Planned Parenthood of Gulf Coast?

9 **A.** The sign on the desk, at the check-in desk in the lobby of
10 Planned Parenthood of Gulf Coast asked just for identification.
11 It didn't even say "photo identification," it just said: You
12 must present identification when you check in.

13 **Q.** We were shown a video earlier in the case where you went
14 through a security point and it set off the buzzer. Was that
15 this location?

16 **A.** Yes, that was at Planned Parenthood of Gulf Coast.

17 **Q.** Okay. At any time were you asked to empty your pockets
18 and try to determine what set off the security buzzer?

19 **A.** No. The security guard actually told us to go around the
20 metal detector and not even go through it, because we already
21 had a meeting with Melissa Farrell, and I, being kind of
22 clumsy, just walked straight through it.

23 **MS. TROTTER:** Objection, Your Honor, move to strike
24 as non-responsive to the question.

25 **THE COURT:** Overruled.

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1 **BY MR. LIMANDRI**

2 **Q.** Were you finished with your answer?

3 **A.** So I walked straight through the metal detector even when
4 he told me to go around it, and set it off I think twice by
5 walking through it and then walking back out of it. And I was
6 not asked to check anything.

7 **MR. LIMANDRI:** Do we have that 5307-1 clip available?
8 Okay, why don't we go ahead and play that now.

9 (Videotape played with audio)

10 **BY MR. LIMANDRI**

11 **Q.** Okay. Did you continue the conversation you started with
12 Melissa Farrell in her office setting, in that public
13 restaurant?

14 **A.** Yes, we did.

15 **Q.** Were you basically talking about the same matters?

16 **A.** Yes, we were.

17 **Q.** After you visited Planned Parenthood Gulf Coast did you
18 send them a contract that -- a potential contract with pricing
19 for fetal tissue and organs?

20 **A.** Yes, I sent them a draft contract after that for \$750 per
21 fetal liver.

22 **Q.** Did you receive any information following that from Tram
23 Nguyen as to whether they had any interest in pursuing that
24 contract?

25 **A.** I've since learned that Tram Nguyen forwarded that

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1 contract to her supervisor and said she wanted to move forward
2 with it.

3 **MS. TROTTER:** Objection, Your Honor. 402, 403, and
4 the Court's prior order.

5 **THE COURT:** So I think the answer was not responsive,
6 so I'm going to strike the answer and you can try it again.

7 **MR. LIMANDRI:** Okay.

8 **THE COURT:** Did he get any information directly from
9 Tram Nguyen.

10 **BY MR. LIMANDRI**

11 **Q.** Did you receive any information from anyone at any time as
12 to whether or not there appeared to be any interest in pursuing
13 that contract?

14 **THE COURT:** So if -- ask the question -- so I'm going
15 to strike the question. Did he receive any information from
16 Planned Parenthood -- from Tram Nguyen or anybody from Planned
17 Parenthood?

18 **MR. LIMANDRI:** That is a better question.

19 **THE COURT:** Okay.

20 **BY MR. LIMANDRI**

21 **Q.** Can you answer the question as to whether you received any
22 information from Tram Nguyen or anyone from Planned Parenthood,
23 as to whether there was any interest in pursuing that contract?

24 **A.** Yes. I received from plaintiffs in this case, Planned --
25 Tram Nguyen forwarding that email to her supervisor, saying

1 that she wanted to move forward with that contract to sell
2 fetal livers for \$750 apiece.

3 Q. Thank you. I want to switch gears. Take a look at a
4 document that has been already admitted into evidence by
5 plaintiffs as Exhibit No. 68.

6 I want to ask you a couple of questions, and then I
7 believe we have a stipulation that we can see about having
8 read.

9 (Document displayed)

10 Q. Exhibit 68, the first page is May 7, 2015, and it says
11 "Latest Roadmap."

12 And I want to go to the next page, which is 1 of 6.

13 (Document displayed)

14 Q. In looking at the last sentence of the first full
15 paragraph on Page 1 of 6 there -- so go to the top of the page
16 and the last sentence of that first full paragraph, please.

17 (Document displayed)

18 Q. It says (As read):

19 "We map out a project release in June with 1) ongoing
20 law enforcement involvement, 2) Congressional
21 hearings/investigation of Planned Parenthood's fetal
22 tissue supply, and 3) pro-life coalition media
23 campaign to coordinate media release and support
24 hearings."

25 Were these always the goals that you had, including: Map

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1 out a project release with ongoing law enforcement involvement?

2 **A.** Yes.

3 **Q.** And that was your plan from the beginning?

4 **A.** Yes.

5 **Q.** Okay.

6 **MR. LIMANDRI:** And then let's go to the next page.

7 (Document displayed)

8 **BY MR. LIMANDRI**

9 **Q.** There is a heading "Coordination with Law Enforcement."

10 I'm not going to read all that.

11 But did you actually list in your roadmap for the project
12 what various plans you had in terms of your coordinating with
13 law enforcement?

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

15 **MS. TROTTER:** Your Honor, I object to this line of
16 questioning, which is going back over material that
17 Mr. LiMandri already did with this witness.

18 **THE COURT:** I think, are you setting up --

19 **MR. LIMANDRI:** Yes.

20 **THE COURT:** Okay. So, so why don't we do that, and
21 then we will take the break.

22 **MR. LIMANDRI:** That's right. That was going to be
23 the next thing I asked the Court.

24 **THE COURT:** Okay.

25 **MR. LIMANDRI:** If this is the appropriate time, with

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1 the stipulation. And I'll let Your Honor handle that.

2 **THE COURT:** All right.

3 So ladies and gentlemen, the parties agree in this case
4 that Mr. Daleiden made the following contacts with members of
5 law enforcement, and provided members of law enforcement with
6 documents and recordings made by the Center for Medical
7 Progress.

8 No. 1. In approximately September, 2014, David Daleiden
9 provided information to the Maricopa County, Arizona District
10 Attorney's office regarding StemExpress, other tissue
11 procurement organizations and various non-Planned Parenthood
12 abortion clinics.

13 No. 2. On March 19 (sic), 2015, David Daleiden spoke on
14 the phone with officials from the Oklahoma Attorney General's
15 office regarding non-Planned Parenthood organizations in
16 Oklahoma.

17 No. 3. On May 21 and 22, 2015, David Daleiden met with
18 officials from the El Dorado County, California Sheriff's
19 office and the El Dorado County, California District Attorney's
20 Office regarding StemExpress. Defendant Albin Rhomberg was
21 also in attendance on May 21.

22 No. 4. In approximately May 2015, David Daleiden gave
23 other people information to provide to the Orange County
24 District Attorney's Office regarding DaVinci Biosciences,
25 DV Biologics and various non-Planned Parenthood abortion

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1 clinics.

2 No. 5. In May and June 2015, David Daleiden spoke with
3 various members of Congress and their staff to explain the
4 results of CMP's investigation.

5 No. 6. Prior to June 26, 2015, David Daleiden spoke with
6 officials from the Maricopa County, Arizona District Attorney's
7 Office and Arizona Attorney General's office regarding
8 StemExpress, other tissue procurement organizations, PPFA,
9 various non-Planned Parenthood abortion clinics, Tissue
10 BioSource and Advanced Tissue Services.

11 No. 7. On June 26, 2015, David Daleiden spoke on the
12 phone with officials from the Michigan Attorney General's
13 office regarding StemExpress, Planned Parenthood Federation of
14 America, Planned Parenthood Mid-South Michigan and Northland
15 Family Planning.

16 No. 8. On July 3, 2015, David Daleiden spoke on the phone
17 with officials from the Texas Attorney General's office
18 regarding StemExpress, Planned Parenthood Gulf Coast, Planned
19 Parenthood Center for Choice, and Planned Parenthood Federation
20 of America.

21 All right. So those are agreements of the parties, and
22 you may accept them as facts in this case.

23 And now we will take a break. And we will be back in
24 approximately 15 minutes. Please remember the admonitions.

25 (Jury excused)

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

3 **THE COURT:** All right. Please be seated, everybody.
4 Mr. Daleiden, stay here for just a second.

5 All right. First, 5307-4.

6 **MS. DHILLON:** Yes, Your Honor.

7 **THE COURT:** That was -- I assume that's a clip from
8 the lunch?

9 **MS. DHILLON:** Correct, Your Honor. It's the same
10 series. And the -- the purpose was to show what type of
11 information -- which was, I think, generic, frankly -- was
12 being discussed in a public place. With no expression of
13 confidentiality.

14 **MS. TROTTER:** Plaintiffs have no claim as to the
15 conversation at the lunch. So 402, 403.

16 **THE COURT:** And so, it's the -- we've already seen
17 the -- we have seen three or four clips from that lunch which
18 showed the -- the noise and those sorts of issues. And you've
19 already made -- you've made the point that there was no
20 confidential communication discussed so -- throughout the
21 entire day. So this would seem to be cumulative. And I'll
22 sustain the objection.

23 **MS. DHILLON:** Your Honor, just for the record, I just
24 want to point out that Ms. Farrell testified in the video clip
25 that everything discussed was confidential. So this was by way

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1 of rebutting that.

2 So that's actually part of testimony in the record, her
3 testimony, that it's all -- "I thought it was all
4 confidential." But if Your Honor's ruling remains that it's
5 cumulative, I'll accept that. But that was the point for which
6 it was offered, Your Honor.

7 **THE COURT:** Okay. So it went to a different point.

8 **MS. STERK:** Your Honor, Ms. Farrell did not testify
9 that everything was confidential. She, in fact, was asked
10 about which specific things she thought under the agreement
11 were confidential, and she listed different things she thought
12 were confidential. She never said that everything she talked
13 about's confidential.

14 **THE COURT:** All right. I'll stay where I am. Thank
15 you.

16 **MS. DHILLON:** Thank you, Your Honor.

17 **THE COURT:** Then -- let's see. Mr. Millen wanted to
18 say something. But I also had a question. I overruled the
19 objection with respect to the -- Ms. Nguyen's comments and --
20 after Mr. Daleiden was there. And it was not clear to me from
21 the questioning whether that was information that was obtained
22 during the litigation, or prior to.

23 And the question that I was going to was prior to, and --
24 but I didn't understand from Mr. Daleiden's answer, what the
25 answer was.

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1 **MR. LIMANDRI:** I believe that the Court has ruled we
2 can play that portion of the Tram Nguyen video dealing
3 specifically with that. So if that had happened, obviously,
4 before he spoke, then there would be that foundation for it,
5 regardless. The jury's going to hear that, if I'm not
6 mistaken.

7 **THE COURT:** But answer -- my question is: Did he
8 receive -- did Mr. Daleiden receive the information regarding
9 what Ms. Nguyen did or did not want -- was or was not
10 interested in, through the litigation? Or did he get it
11 directly prior to the litigation?

12 **MR. LIMANDRI:** I wasn't exactly sure of the answer.
13 But I think the way I understood it, he got it through the
14 litigation.

15 Am I correct on that?

16 **THE WITNESS:** Yes, that's correct.

17 **THE COURT:** Okay. All right. So I'm going to strike
18 that portion of the testimony. And I'll tell the jury.

19 **MR. LIMANDRI:** As I indicated, I think it's going to
20 come in anyhow, but --

21 **THE COURT:** That may well be true. But -- and that's
22 had a different issue.

23 **MR. LIMANDRI:** Okay. Fair enough. Thank you.

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

25 And then Mr. Millen, did you want to address --

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

2 The defense never took Michelle Davidson's deposition. So
3 -- not here to make a big deal out of that, but the Court
4 should know that.

5 We understood that the AMES reports and things which serve
6 as some sort of a basis -- even though we have lots of
7 objections, but intellectually, we get the idea that there's
8 some sort of recording of bad things that happen around
9 clinics.

10 So the idea in our minds has been that somehow that would
11 somehow be used -- because Michelle Davidson from NAF, our
12 understanding is, gets statistics from PPFA.

13 At this point, given that the plaintiffs are not going to
14 be putting in these AMES reports, and not even attempting on
15 the PPFA side to do things, we really believe that a separate
16 -- wouldn't be too long -- but short voir dire of Ms. Davidson
17 should be done because she's trying to do something very
18 interesting as a non-expert, which is to get in statistics that
19 are simply based upon what she has heard others have heard.

20 And to simply do it in the middle of question by question
21 I don't think -- I don't think gives enough guidance to the
22 parties, and I think it allows in some very, you know, 402, 403
23 things that should not come in.

24 So for that reason we would request -- I mean, I'm
25 thinking ten minutes would be enough to voir dire her outside

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1 the presence of the jury as to this particular topic. Because
2 I don't think any of it's admissible, given that she's not a
3 declared expert in statistics.

4 **THE COURT:** Ms. Bomse.

5 **MS. BOMSE:** So we actually -- I'm racking my brain
6 for when it was, but we filed a declaration with the Court --
7 no, we filed a brief, describing -- laying the foundation for
8 -- for Ms. Davidson to testify about these statistics. So
9 that's been addressed in great detail. Ms. Davidson can
10 testify ably about what NAF does to collect these statistics.
11 What's been represented by counsel is not accurate. They have
12 a process, and she will testify to it.

13 This witness was on our disclosures from early on. There
14 was a decision not to depose her. And I don't think there's
15 any need for any out-of-the-jury voir dire of Ms. Davidson.
16 She can be cross-examined.

17 **THE COURT:** When do you expect her? When will she be
18 up?

19 **MS. BOMSE:** It's either the end of today or tomorrow.
20 We're -- depending on how things move along. More likely,
21 tomorrow morning.

22 **THE COURT:** Okay. All right. So, I'll go back and
23 take a look at that.

24 My inclination is not to have any separate voir dire. And
25 that if the foundation isn't laid, then she won't be about able

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1 to testify. And if the foundation is laid, she will be.

2 But, but I'll take a look at what's been written.

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

4 **MR. MILLEN:** Thank you.

5 **THE COURT:** Thank you.

6 **MS. TROTTER:** Your Honor, just one other quick thing?

7 **THE COURT:** Yeah.

8 **MS. TROTTER:** Counsel produced the Robert Sarkis ID.

9 We still have not received the other identifications.

10 **MR. LIMANDRI:** I have it.

11 **MS. TROTTER:** Oh, okay. So if --

12 **THE COURT:** So, yeah. So hand it over, Mr. LiMandri.

13 (Request complied with by Mr. LiMandri)

14 **MR. MILLEN:** Your Honor, on that last point,

15 Ms. Bomse had mentioned a document that laid a foundation. Can
16 I trouble her to direct the Court and Counsel to that? I think
17 she just mentioned a document.

18 (Off-the-Record discussion between counsel)

19 **MS. BOMSE:** My recollection, it was in the motions in
20 limine.

21 **MR. MILLEN:** Oh.

22 **THE COURT:** That was where I was --

23 **MR. MILLEN:** Okay, thank you.

24 **THE COURT:** All right. We will be in recess for as
25 long as it takes the court reporter to get ready.

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1 (Recess taken from 9:43 a.m. to 9:56 a.m.)

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

4 **THE COURT:** Mr. Daleiden?

5 Okay. Let's get the jury.

6 **MS. DHILLON:** Your Honor, before we get the jury, we
7 worked out one of the exhibit issues, if I can put that on the
8 record?

9 **THE COURT:** All right. Be seated, everybody.

10 **MS. DHILLON:** There was an issue about the redacted
11 exhibit, you may recall.

12 **THE COURT:** Yes.

13 **MS. DHILLON:** And Ms. Trotter looked at it and said
14 it was fine to be admitted as presented earlier.

15 **THE COURT:** And the number --

16 **MS. DHILLON:** It was Exhibit 658, Your Honor.

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

18 (Trial Exhibit 658 received in evidence) 658

19 **MR. LIMANDRI:** Your Honor, so you know what I'm
20 doing, if you're going to strike that, that answer, my
21 understanding, admitted into evidence already is Exhibit 1823,
22 which is where he's sending the contract to Tram Nguyen. And
23 then 1824 is where -- part of the same email chain -- she
24 forwards it on. And that is already in evidence.

25 So --

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1 **THE COURT:** Okay, but that still doesn't -- that
2 doesn't give him personal knowledge of that. And it wasn't a
3 direct relationship to Planned Parenthood.

4 **MR. LIMANDRI:** I understand with regard to the
5 question, but I didn't want to you think I'm doing anything
6 underhanded. I think it would be appropriate for me, since
7 it's in evidence, and the email chain has his original email,
8 to ask if his understanding that's what they were referring to.
9 And it is in evidence.

10 **THE COURT:** Again, it has the same problem with
11 personal knowledge. So, that -- that -- that would be
12 stricken, if you did that.

13 **MR. LIMANDRI:** Okay. I won't do it.

14 **THE COURT:** You can use it in other ways at other
15 times, but not with this witness.

16 **MR. LIMANDRI:** I'm sure. Thank you, Your Honor.

17 **THE COURT:** All right.

18 (The following proceedings were held in the presence
19 of the Jury)

20 **THE COURT:** All right. Please be seated, everybody.
21 Ladies and gentlemen, before Mr. LiMandri continues,
22 Exhibit No. 658 was the exhibit which had some redactions in
23 it, and I said it was conditionally admitted. Now it's
24 admitted in full.

25 And then I overruled an objection of the plaintiffs

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1 towards the end of that -- of Mr. Daleiden's testimony before
2 the break, related to communications with Tram Nguyen or
3 Planned Parenthood after he sent the contract to them.

4 And I have listened to a little more argument, and I'm
5 sustaining that objection, and striking the testimony about
6 anything that happened after -- that Mr. Daleiden said, after
7 he sent that contract.

8 And then there was another video clip that Ms. Dhillon
9 wanted to play that I said we would look at later. And I have
10 sustained the objection to that as well.

11 So, moving right along. Go ahead, Mr. LiMandri.

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

13 **CROSS-EXAMINATION RESUMED**

14 **BY MR. LIMANDRI**

15 **Q.** Mr. Daleiden, just before the last break, His Honor read a
16 list of your contacts with law enforcement.

17 My question for you: Did all of those contacts take place
18 before the first CMP video was released on July 15, 2015?

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

20 **Q.** Okay. And what was your purpose in releasing those CMP
21 videos at that time? Did you have any clear goals or focus in
22 mind as to what you wanted to accomplish by releasing those
23 videos?

24 **A.** Are you asking me in general, releasing them? Or
25 releasing them specifically on July 14th, 2015?

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1 Q. I didn't mean specifically on that date. I mean your
2 goals in general.

3 A. Sure. So my goal in releasing the videos publicly was to
4 report on our findings to the public and -- and to hopefully
5 generate more pressure for law enforcement and others in
6 positions of authority and official capacity to -- to take
7 action, to correct the problems that were documented by the
8 videos.

9 Q. Did you have a belief that the videos contained evidence
10 of a crime?

11 A. Yes.

12 MS. TROTTER: Objection. Leading.

13 THE COURT: Overruled.

14 MS. TROTTER: Move to strike.

15 THE COURT: That's all right.

16 BY MR. LIMANDRI

17 Q. Did -- who do you believe was the person or persons that
18 would have committed those crimes?

19 A. I --

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

21 THE COURT: Sustained.

22 BY MR. LIMANDRI

23 Q. Did you think CMP had committed any crimes when you gave
24 those videos to law enforcement?

25 A. No, I did not.

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1 Q. After you released these videos to the public, did you
2 receive any death threats?

3 A. Um, yes. I received a handful of death threats after
4 releasing the videos.

5 Q. What form did they take?

6 A. Most of them were in the form of emails that were sent
7 into the CMP email account. There was a handful of voicemails,
8 as well.

9 Q. Did you hire private security?

10 A. No, I did not.

11 Q. Did you sue anybody?

12 A. No, I did not.

13 Q. Okay. I want to talk about the fraud claims. Did you
14 believe that the undercover operation was in fact a legitimate
15 journalistic project?

16 A. Yes, I do believe that.

17 Q. Why do you believe that?

18 A. Because we gathered facts and reported on true facts, and
19 reported our findings accurately after gathering them.

20 Q. Did anyone from Planned Parenthood admit to you, before
21 the release of the videos, that they were aware there had been
22 prior intrusions at any Planned Parenthood facilities or
23 conferences?

24 A. They didn't call them "intrusions." They -- but Deb
25 VanDerhei, the vice-president of abortion at PPFA, told me and

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1 Sandra at NAF in 2015 that Planned Parenthood was aware that
2 they had been the subject of undercover video reporting
3 previously.

4 **Q.** The fact that Planned Parenthood receives public funding,
5 did that enter into your determination at all as to whether you
6 had the right to investigate them?

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

8 **THE COURT:** Overruled.

9 **THE WITNESS:** Yes. I think that Planned Parenthood,
10 being a massively publicly government-funded entity, should be
11 subject to a much higher standard of public scrutiny than a
12 completely private organization.

13 **BY MR. LIMANDRI**

14 **Q.** Did you keep your identity secret and use this mock
15 driver's license to hide any wrongdoing on your part?

16 **A.** No.

17 **Q.** Why did you do that?

18 **A.** We used pseudonyms and character identities in the
19 undercover project in order to protect our ability to engage in
20 undercover reporting.

21 **Q.** Did you know that your identity -- true identity would
22 eventually be brought to light when you released the videos?

23 **A.** Yes, of course.

24 **Q.** Did you have any type of financial motive in this
25 undercover operation?

DALEIDEN - CROSS / LIMANDRI

1 **A.** No.

2 **MS. TROTTER:** Objection, asked and answered.

3 **THE COURT:** Overruled.

4 **BY MR. LIMANDRI**

5 **Q.** Did you actually complete any transactions with Planned
6 Parenthood or anyone else to buy or sell fetal tissue?

7 **A.** No.

8 **Q.** Did you give your -- well, did you actually go into the
9 clinics at some points where fetal tissue was being brought
10 out?

11 **A.** Yes.

12 **Q.** Did you give your undercover investigators any specific
13 instructions what to do in certain circumstances involving the
14 fetal tissue being brought to them?

15 **A.** Yes, I did.

16 **Q.** What did you tell them?

17 **MS. TROTTER:** Objection, Your Honor. 402, 403.

18 **THE COURT:** Sustained.

19 **BY MR. LIMANDRI**

20 **Q.** Did you give any instructions specifically with regard to
21 if they came in contact with an intact fetus that was alive?

22 **A.** Yes.

23 **MS. TROTTER:** Same objection, Your Honor. Move to
24 strike.

25 **MR. LIMANDRI:** It's for the purposes of the

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1 investigation and strategies, Your Honor.

2 **THE COURT:** I think we've gone into that in -- over
3 two days. So, sustained.

4 **BY MR. LIMANDRI**

5 **Q.** As to this particular point, would you have terminated the
6 investigation immediately, and taken steps, if you were
7 confronted with a situation where there was a born-alive fetus?

8 **A.** If we encountered --

9 **MS. BOMSE:** Same objection, Your Honor. Move to
10 strike.

11 **THE COURT:** Yeah. Sustained. The testimony will be
12 stricken.

13 And let's move on, Mr. LiMandri.

14 **BY MR. LIMANDRI**

15 **Q.** Did you feel there was any other way to get what you call
16 this truthful information to light other than through the
17 undercover operation you conducted?

18 **A.** I felt like this was the best way to do it.

19 **Q.** Did you learn anything from the experience of the 20/20
20 videos which you had watched in 2010 about what you felt you
21 needed to do in order to have more of an impact?

22 **MS. TROTTER:** Objection, Your Honor. 402, 403.

23 **THE COURT:** Well, it's been asked and answered. We
24 have gone over the 20/20 video in some detail. Sustained.

25

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1 BY MR. LIMANDRI

2 Q. Let's talk about the civil RICO claim. Did you
3 mass-manufacture fake drivers' licenses?

4 A. No, I did not.

5 Q. Did you ever try to manufacture any driver's license for a
6 commercial purpose?

7 A. No.

8 Q. Did you self-manufacture anything more than the one
9 driver's license that was displayed to the jury?

10 A. As far as a complete -- a complete ID document that was
11 actually used, just that one.

12 Q. And I think there was testimony that you purchased two
13 others?

14 A. That's correct.

15 Q. You got those from Craigslist?

16 A. I got them from a local individual who I found on
17 Craigslist.

18 Q. Okay. And again, did you use those for a commercial
19 purpose at all?

20 A. No.

21 Q. Did you modify any information on that mock driver's
22 license between the time the original one expired and you got
23 an actual valid new one in the mail?

24 Did you alter anything on the mock driver's license,
25 number or anything of that nature?

DALEIDEN - CROSS / LIMANDRI

1 **A.** The question is just: Did I change anything about what
2 was on --

3 **Q.** Right.

4 **A.** Yeah, so I specifically -- in the design for all the
5 different -- for all the different mock photo IDs, I
6 specifically edited the driver's license number on them so it
7 would be completely out of sequence with the numbers and the
8 letters, so that it would not be a valid California driver's
9 license number format. So there would be no question that it
10 could never be used to drive, never be presented to a police
11 officer, never be used to vote or anything like that.

12 It was specifically scrambled, you could say, so that it
13 would not be a valid government document.

14 **Q.** When did your actual original valid driver's license
15 expire?

16 **A.** I believe it expired, the one that the Robert Sarkis ID,
17 it was modeled after?

18 **Q.** Yeah, the one it was modeled after, your actual one. Do
19 you know?

20 **A.** Off the top of my head, I believe that it expired at the
21 end of 2013. So on January 1st, 2014, it was no longer a valid
22 driver's license.

23 **Q.** Is that your birthday, January 1st?

24 **A.** That's my birthday, January 1, 1989.

25 **Q.** Did you have your actual new driver's license in hand when

1 you made the mock driver's license?

2 **A.** Yes, I believe I did.

3 **Q.** Were the mock drivers' licenses that we have talked about,
4 the one you made and the two that you got from the guy you
5 found on Craigslist, were they only used in the context of this
6 one undercover operation?

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

8 **Q.** Okay. So did you engage in a pattern of repeat projects
9 in using them?

10 **A.** No.

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

12 **THE COURT:** Sustained.

13 **BY MR. LIMANDRI**

14 **Q.** Did you believe you were operating an organized crime
15 syndicate for profit?

16 **A.** No.

17 **MS. TROTTER:** Objection, 402, 403.

18 **THE COURT:** No, overruled.

19 **BY MR. LIMANDRI**

20 **Q.** Go ahead.

21 **A.** No, not at all.

22 **Q.** Let's talk about the trespass claims. Were you -- did you
23 ever go on any of the property of Planned Parenthood or any of
24 the conferences that they sponsored or any of the NAF
25 conferences, that you were not invited to attend?

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1 A. No.

2 Q. Did you always pay for the conferences as an exhibitor?

3 A. Yes, we did.

4 Q. Did you ever receive any refunds?

5 A. No, we never received a refund.

6 Q. Did you ever break any doors or windows or damage any
7 property or injure any person?

8 A. No, never.

9 Q. Okay. I want to ask some questions regarding the
10 conspiracy claim.

11 Did Albin Rhomberg or Troy Newman do any undercover work
12 for CMP or BioMax?

13 A. No, they did not.

14 Q. Did Mr. Rhomberg or Mr. Newman attend any conferences or
15 meetings on behalf of CMP or BioMax?

16 A. No, they did not.

17 Q. Did Mr. Rhomberg or Mr. Newman record any individuals on
18 behalf of CMP or BioMax?

19 A. No, they did not.

20 Q. Prior to the release of the CMP videos, did you ever tell
21 Mr. Rhomberg or Mr. Newman that you were going to use any fake
22 IDs during the undercover investigation?

23 A. No, I did not.

24 Q. Prior to the release of the videos, did you ever discuss
25 the concept of using fake IDs with either Mr. Rhomberg or

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1 Mr. Newman?

2 **A.** No, I don't believe I did.

3 **Q.** Prior to the release of the videos, did you ever tell
4 Mr. Rhomberg or Mr. Newman that you had made or were acquiring
5 any fake IDs?

6 **A.** No.

7 **Q.** Prior to the release of the videos, did you share any
8 information with Mr. Rhomberg or Mr. Newman about the IDs that
9 were going to be used during the investigation?

10 **A.** No, I did not.

11 **Q.** Did Mr. Rhomberg or Mr. Newman direct or control the
12 undercover operation?

13 **A.** No.

14 **Q.** Did Ms. Merritt or Mr. Lopez direct or control the
15 undercover operation?

16 **A.** No, they did not.

17 **Q.** Did Mr. Rhomberg or Mr. Newman direct, oversee or control
18 your day-to-day activities in the context of the undercover
19 investigation?

20 **A.** No, not at all.

21 **Q.** Did Ms. Merritt or Mr. Adrian Lopez direct, oversee or
22 control any of your day-to-day activities?

23 **A.** No.

24 **Q.** Did Mr. Rhomberg or Mr. Newman direct, oversee or control
25 the daily activities of any other individuals involved in the

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1 CMP investigation?

2 **A.** No, not at all.

3 **Q.** Did Ms. Merritt or Mr. Lopez direct, oversee or control
4 the daily activities of any other individual involved with the
5 CMP investigation?

6 **A.** No, not at all.

7 **Q.** Were Mr. Rhomberg or Mr. Newman very involved at all
8 during the time that CMP was conducting this undercover
9 investigation?

10 **A.** No, they really weren't.

11 **MS. TROTTER:** Objection, vague and ambiguous.

12 **THE COURT:** Yeah, sustained.

13 Can you be a little more specific?

14 **MR. LIMANDRI:** I think I can't be more specific than
15 the last few questions.

16 **BY MR. LIMANDRI**

17 **Q.** Were they basically in the background, and you told them
18 what you wanted to tell them when you wanted to tell them --

19 **A.** Exactly.

20 **MS. TROTTER:** Same objections, and leading.

21 **THE COURT:** Overruled.

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

23 **BY MR. LIMANDRI**

24 **Q.** Did Mr. Lopez and Ms. Merritt basically do what they were
25 told by you with respect to the undercover investigation?

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1 A. Yes, that's correct.

2 Q. Was everything that you did in the context of the
3 undercover investigation under the auspices of BioMax?

4 A. Yes.

5 Q. And was BioMax a legally constituted limited liability
6 corporation in California?

7 A. Yes, and it remains so today.

8 Q. Did you, alone, hire the investigators?

9 A. Yes.

10 Q. Did you, alone, sign up and pay for the conferences?

11 A. Through BioMax, yes.

12 Q. Yes. Now, there was some testimony previously that there
13 were some CMP and BioMax debit cards issued to people
14 associated with CMP and BioMax. What was the purpose of doing
15 that?

16 A. Sure. So that's not correct. They were not issued to
17 people. These were Center for Medical Progress and BioMax
18 Procurement Services debit cards on the CMP and BioMax bank
19 accounts. The cards were owned by the companies and it was the
20 companies' money.

21 Q. Were any funds of any person other than CMP or BioMax ever
22 at issue with regard to those debit cards?

23 A. No, never.

24 Q. Did you, or to your knowledge, any of the other defendants
25 ever intend to break any laws?

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1 A. No.

2 Q. Were there other undercover investigators that were
3 equally as involved as Adrian Lopez and Susan Merritt that are
4 not named defendants? For example, Brianna Allen.

5 A. Yes.

6 MS. TROTTER: Objection, 402.

7 THE COURT: Overruled.

8 BY MR. LIMANDRI

9 Q. If we can take a look at what's previously been marked --
10 it's the last exhibit I'm going to show, Your Honor, I'm almost
11 done -- exhibit 366. It's been previously admitted.

12 (Document displayed)

13 Q. So there's three business cards there. The last one is
14 "Brianna Allen"?

15 A. Yes.

16 Q. Did she also have a fake driver's license?

17 A. Yes, Brianna Baxter did.

18 Q. Okay. And she -- she is not a defendant in this case, is
19 she?

20 A. That's correct.

21 Q. Now, Mr. Lopez never used another name or a fake driver's
22 license, isn't that true?

23 A. That's correct. He used his legal birth name and his
24 actual California driver's license to enter the conferences.

25 Q. Do you know if he even knew about any fake IDs?

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1 **A.** I don't believe that he did. Or at least, not
2 specifically.

3 **Q.** Did Susan Merritt ever use a fake driver's license in a
4 Planned Parenthood conference?

5 **A.** No. She never attended the Planned Parenthood
6 conferences.

7 **Q.** Okay. A couple more questions, and we're done.
8 (Document taken off display)

9 **Q.** Did the defendants, any of them, including you, ever
10 incite others to take any action against Planned Parenthood in
11 the way of any type of physical or violent acts at all?

12 **A.** No, of course not.

13 **Q.** Did you always denounce any acts of violence?

14 **A.** Absolutely.

15 **Q.** Okay. Finally, are you proud of the work you did for CMP
16 with this undercover investigation?

17 **A.** Yes, I am.

18 **Q.** Why?

19 **A.** Because we documented and exposed these plaintiffs
20 trafficking in fetal body parts.

21 **MR. LIMANDRI:** No further questions at this time.

22 Thank Your Honor.

23 **THE COURT:** All right.

24 **MR. LIMANDRI:** Thank you, Mr. Daleiden.

25 Mr. Mihet.

CROSS EXAMINATION

1
2 **BY MR. MIHET**

3 **Q.** Good morning, Mr. Daleiden. As you know, I represent
4 Ms. Merritt. And I have a few questions for you as well.

5 Towards the end of the 20/20 video that we watched last
6 week, Gloria Feldt, who was then the president of Planned
7 Parenthood, says that where there is wrongdoing, it should be
8 prosecuted, and people who are doing that kind of thing should
9 be brought to justice.

10 What impact, if any, did that statement have on your state
11 of mind as to whether or not a followup investigation was
12 necessary or proper?

13 **A.** Sure. So I agreed with that statement. And looking at
14 it, looking at companies like Advanced Bioscience Resources
15 that were working with plaintiff Planned Parenthood Pacific
16 Southwest on the exact same business model as the companies
17 involved in the 20/20 exposé, it looked like people were
18 continuing to do really questionable and illegal activity with
19 harvesting and selling fetal body parts. And no one was
20 following up on it and nobody was enforcing the law, so it felt
21 like it really deserved to have a very in-depth and
22 comprehensive exposé done on it, and done even bigger than
23 before in the 20/20 exposé.

24 **Q.** And by the time you had seen that video and that statement
25 in 2010, were you aware of anybody that had been investigated

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1 and held accountable in the prior ten years that that video had
2 been published?

3 **A.** No. It looked like there had been zero followup,
4 whatsoever.

5 **Q.** Did you have an understanding as to whether or not Gloria
6 Feldt was excluding Planned Parenthood from her statement,
7 meaning she was saying if somebody's involved in wrongdoing
8 they should be investigated, but not if they work for Planned
9 parenthood?

10 **MS. TROTTER:** Objection, Your Honor. Lacks
11 foundation. Argumentative.

12 **THE COURT:** Sustained. He can't say what was in her
13 mind.

14 **BY MR. MIHET**

15 **Q.** All right. Now, there was some reference while
16 Ms. Trotter was questioning you about some references you made
17 in preparatory documents leading up to the undercover
18 investigation with respect to obtaining traditional "Gotcha"
19 videos.

20 Do you remember those references?

21 **A.** Yes. I believe I remember that phrase.

22 **Q.** So what did you mean when you made the reference to
23 traditional "Gotcha" videos?

24 **A.** Yeah.

25 **MS. TROTTER:** Objection, Your Honor. Asked and

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1 answered.

2 **THE COURT:** Overruled. I'll allow it.

3 But we have heard a lot about this, Mr. Mihet.

4 **MR. MIHET:** All right.

5 **THE COURT:** But you may answer that question.

6 **THE WITNESS:** Okay. I meant standard undercover
7 video reporting.

8 **BY MR. MIHET**

9 **Q.** In your mind, was the undercover portion of the 20/20
10 video a traditional "Gotcha" video?

11 **A.** Yes, of course.

12 **MS. TROTTER:** Objection, Your Honor. 402, 403, and
13 asked and answered.

14 **THE COURT:** The latter is true. But, overruled.

15 But let's -- let's move to something new.

16 **MR. MIHET:** Very well.

17 **BY MR. MIHET**

18 **Q.** Now, you shared with the jury last week the research that
19 you did into the fetal tissue procurement industry prior to
20 your first recording in California.

21 Do you remember that?

22 **A.** Yes, I do.

23 **MR. MIHET:** Willow, could we show that demonstrative
24 real quick of the investigative roadmap.

25 **MS. TROTTER:** Your Honor, I object to this as

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1 cumulative and 403, and all of this ground having been covered
2 by Mr. LiMandri. It is not focused on Ms. Merritt.

3 **MR. MIHET:** Just one or two questions generally, as
4 it relates to Ms. Merritt, Your Honor.

5 **THE COURT:** I'll allow it, but I'm very conscious of
6 what Ms. Trotter has just said.

7 **MR. MIHET:** Okay.

8 (Document displayed)

9 **BY MR. MIHET**

10 **Q.** So my question to you is prior to the first video
11 recording in California, did you share with Ms. Merritt
12 everything that is in this demonstrative exhibit, everything
13 that you had done to investigate the fetal tissue procurement
14 market up to that point?

15 **A.** Yes, I did.

16 **MS. TROTTER:** Objection, Your Honor, relevance and
17 hearsay.

18 **THE COURT:** Overruled.

19 **BY MR. MIHET**

20 **Q.** Now, you mentioned that certain operational details of the
21 undercover aspect, you kept on a need-to-know basis with your
22 various investigators.

23 Did I hear that correctly?

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

25 **Q.** And what were you referring to when you were talking about

1 that?

2 **A.** Sure. So that, that would mean sort of the overall plan
3 of the undercover project, scheduling things, and any sort of
4 concepts that I had under development.

5 The information specifically on that need-to-know-basis
6 idea, the information that my undercover investigators needed
7 to know was the background information about the subject
8 matter, which is all the stuff that's reflected in this
9 demonstrative, not all of the sort of corporate details and
10 fundraising and other stuff going on and sort of the
11 big-picture superstructure of the project.

12 **Q.** Now, Ms. Merritt, was she an employee or an independent
13 contractor of CMP?

14 **A.** She was an independent contractor.

15 **Q.** And was she hired to do a specific task?

16 **A.** Yes. Just like all of the undercover investigators, they
17 were all independent contractors hired to do specific
18 undercover events.

19 **Q.** And was the task that she was hired to do, was to play the
20 role of Susan Tennenbaum at a handful of in-person meetings and
21 conferences that she attended?

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

23 **Q.** Now, who retained control over the overall character of
24 Susan Tennenbaum?

25 **A.** The Center for Medical Progress retained control of that.

DALEIDEN - CROSS / MIHET

1 Q. And who retained control over the emails and the written
2 communications involving Susan Tennenbaum?

3 A. CMP, through me as the -- as the -- as the lead on the
4 project, and as the chief executive officer.

5 Q. So to the extent the jury has seen any emails that were
6 purportedly authored by Susan Tennenbaum, those would have been
7 written by whom?

8 A. They would have been written by me.

9 Q. To your knowledge, would Ms. Merritt have seen or approved
10 those emails?

11 A. No.

12 Q. Okay. Was Ms. Merritt involved in the creation of BioMax?

13 A. No.

14 Q. Was she involved or did you share with her any of the
15 Secretary of State filings involving BioMax?

16 A. No.

17 Q. Was Ms. Merritt an employee of BioMax?

18 A. Um, no, she was an independent contractor of the Center
19 for Medical Progress.

20 Q. Okay. Did Ms. Merritt have any access to BioMax emails or
21 BioMax letterhead?

22 A. No, I don't believe she had any direct access.

23 Q. Did Ms. Merritt have any authority to bind BioMax to any
24 contracts?

25 A. No.

DALEIDEN - CROSS / MIHET

1 Q. Did Ms. Merritt sign any contracts on behalf of BioMax?

2 A. No.

3 Q. So all of the contracts that the jury has seen in this
4 trial that were from BioMax that were purportedly signed by a
5 Susan Tennenbaum would have been signed by whom?

6 A. Yes, I signed all those.

7 Q. And just taking one example, the PPGC non-disclosure
8 agreement, you have already testified that you signed that
9 document?

10 A. Yes, that's correct.

11 Q. My question to you is: Prior to signing that document,
12 did you ever share it with Ms. Merritt and ask her to review
13 it?

14 A. No.

15 Q. To your knowledge, did Ms. Merritt -- was she aware of the
16 contents of that contract while the investigation was going on?

17 A. No, I don't believe she was.

18 Q. To your knowledge, did Ms. Merritt ever agree to be bound
19 by any of the terms of that contract?

20 A. Not to my knowledge.

21 Q. And would that same be true for all of the BioMax
22 agreements that the jury has seen in this trial?

23 A. Yes, that's correct.

24 Q. Now, you were shown by Ms. Trotter Exhibit 684, which was
25 a BioMax brochure. I would like to ask Willow to go to the

1 last page of that exhibit.

2 **MR. MIHET:** This has been admitted already,
3 Your Honor.

4 (Document displayed)

5 **MR. MIHET:** And if you could, bring up the second
6 paragraph of that?

7 (Document displayed)

8 **BY MR. MIHET**

9 **Q.** Now, Ms. Trotter had directed your attention to the
10 language in this paragraph where it says:

11 "Why pay to have your surgical tissue thrown away?
12 We collect it for free..."

13 Do you recall that -- those -- that series of questions?

14 **A.** Yes, I do.

15 **Q.** Now, I don't believe Ms. Trotter asked you about the next
16 sentence after that, which says:

17 "BioMax returns a portion of our researcher fees to
18 the clinics and hospitals that work with us."

19 Did I read that correctly?

20 **A.** Yes, you did.

21 **Q.** What was the objective in including that language in this
22 BioMax publication?

23 **A.** The --

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

25 **THE COURT:** Yeah; overruled.

1 **THE WITNESS:** The objective was to include
2 specifically -- specifically criminal transaction over fetal
3 body parts, a per-volume kickback based on the number of body
4 parts sold. And to test -- to test the plaintiffs' reaction
5 and engagement with a business proposal of that nature.

6 **MS. TROTTER:** Objection. Move to strike, under 403.

7 **THE COURT:** Overruled.

8 **BY MR. MIHET**

9 **Q.** And during the course of the undercover investigation, did
10 anyone come to you to question the legitimacy of BioMax on the
11 basis of this language (Indicating) or any other language?

12 **A.** No, I think only Dr. Gatter wanted to make sure that she
13 would still get her per-specimen fee based on that language.
14 But that was the only question we got about it.

15 **MS. TROTTER:** Objection, move to strike as
16 non-responsive, 403.

17 **THE COURT:** Sustained.

18 (Document taken off display)

19 **THE COURT:** And the testimony will be stricken.

20 **MR. MIHET:** Can we at least have the "No" portion of
21 the answer?

22 **THE COURT:** "No" works.

23 **MR. MIHET:** Okay.

24 **BY MR. MIHET**

25 **Q.** Now, you already testified very recently that Ms. Merritt

DALEIDEN - CROSS / MIHET

1 did not attend any of the Planned Parenthood conferences. And
2 I just want for the record to be clear.

3 Did she attend the Planned Parenthood MeDC conference in
4 Orlando?

5 **A.** No, she did not.

6 **Q.** Did she attend the Planned Parenthood forum conference in
7 Miami?

8 **A.** No, she did not.

9 **Q.** How about the Planned Parenthood annual conference in
10 Washington, D.C.?

11 **A.** No.

12 **Q.** To your knowledge, did she sign any Planned Parenthood
13 contracts, exhibitor agreements or the like?

14 **A.** No. None of them.

15 **Q.** To your knowledge, did she use any identification to gain
16 access to any Planned Parenthood conferences?

17 **A.** Never.

18 **Q.** To your knowledge, did she see any of the Planned
19 Parenthood contracts, and agree to be bound by them during the
20 course of the investigation?

21 **A.** No, I don't think she ever did.

22 **Q.** Okay. Now, I believe you testified last week that you
23 felt that you were on a shoestring budget during the undercover
24 investigation.

25 Did I recall that correctly?

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

2 **Q.** Now, is that why you sometimes took a little longer to pay
3 Ms. Merritt than she would have liked, as we have seen some
4 evidence of that in this trial?

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

6 **Q.** Now, did some of the investigative tasks that Ms. Merritt
7 participated in involve overnight trips?

8 **A.** Yes, they did.

9 **Q.** And during those trips, was she away from her home and her
10 regularly-paying job?

11 **A.** Yes, she was.

12 **Q.** And how was her compensation, the few hundred bucks that
13 you were paying her, determined?

14 **A.** Yeah. We primarily negotiated it based on the
15 lost-opportunity cost that she would have for her regular --
16 her regular jobs and clients that she wouldn't be able to see
17 during that time.

18 **Q.** And in discussing, you know, her need to be compensated
19 for the work that she would miss, did Ms. Merritt ever give you
20 any indication that she was looking at this project as a
21 get-rich scheme, like her ship had come in, or anything along
22 those lines?

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

24 **THE WITNESS:** No, not at all.

25 **THE COURT:** It is leading. Sustained.

DALEIDEN - CROSS / MIHET

1 **BY MR. MIHET**

2 **Q.** Did she give you any indication that she was looking at
3 this project as a means for financial gains and benefit?

4 **MS. TROTTER:** Same objection. Leading.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** No.

7 **BY MR. MIHET**

8 **Q.** All right. Now, you have already testified about your
9 attempts to comply with the various recording laws and about
10 giving up some opportunities to record in private places.

11 Do you recall that testimony?

12 **A.** Yes, I do.

13 **Q.** I would like to just direct your attention to a
14 previously-admitted exhibit, which is 8016. We'll display it
15 for you.

16 **MR. MIHET:** Willow, if you could display 8016 and
17 then go the second page, the bottom, the very bottom email
18 portion from Dr. Gatter.

19 (Document displayed)

20 **MR. MIHET:** There you go.

21 **BY MR. MIHET**

22 **Q.** Just taking a quick look at this portion of Exhibit 8016,
23 can you tell the jury what this is?

24 **A.** Yes. So, after the lunch meeting that we had with
25 Dr. Mary Gatter in Pasadena, Dr. Gatter was inviting me and

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1 Sandra and presumably anybody else from BioMax to go and do a
2 site visit at her abortion clinic in Pasadena. The same as the
3 site visits that we actually ended up doing in Denver and in
4 Houston for Planned Parenthood of Rocky Mountains and Planned
5 Parenthood Gulf Coast.

6 **Q.** And that would be the Lake Street site that she is
7 referring to?

8 **A.** Yes, I believe so, that would be the flagship clinic for
9 Planned Parenthood Pasadena.

10 **Q.** Did you believe at the time that you received this
11 invitation, that going into that particular site would lead to
12 further information that would be useful to your undercover
13 investigation?

14 **A.** Yes. I thought that it certainly would.

15 **Q.** And with that knowledge in mind, did you then take
16 Dr. Gatter up on her invitation and actually proceed with the
17 site visit?

18 **A.** No, I did not.

19 **Q.** Why not?

20 **A.** Because I didn't think that there was any way to do an
21 in-clinic undercover video recording in the state of California
22 that would comply with the California video recording law. I
23 thought that was only something that we could do in-clinic, in
24 states like Texas or Colorado.

25 **Q.** So did you and Ms. Merritt attempt to record any

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1 confidential communications without consent in California?

2 **A.** No.

3 **Q.** And to your knowledge as the leader of the undercover
4 investigation, did any other defendant intend to record any
5 confidential communications without consent in California?

6 **A.** No, they did not.

7 **Q.** Let's talk about one of my favorite subjects, wine.

8 Ms. Trotter asked you a number of questions about the wine that
9 was served at the lunch with Dr. Nucatola.

10 Do you remember those questions?

11 **A.** Yes, I do.

12 **MS. TROTTER:** Objection. Mischaracterizes the
13 questions. Move to strike.

14 **THE COURT:** All right. No, I will not grant that.
15 Go ahead.

16 **BY MR. MIHET**

17 **Q.** All right. I believe she asked you something to the
18 extent of you wanted Ms. Merritt to select wine so that
19 Dr. Nucatola would be comfortable, I think is what I heard. Is
20 that your recollection?

21 **A.** Yes. I remember that.

22 **Q.** So I believe you agreed with that question. And my
23 question to you is: What did you mean by your testimony when
24 you said -- when you said that?

25 **A.** Sure. By "comfortable" and I said both comfortable for

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1 Dr. Nucatola and comfortable for the investigators, but
2 primarily I meant for it to be a comfortable setting that
3 looked and felt like a professional and like a -- like a
4 high-quality and successful setting, like a setting with, you
5 know, with the successful business that was going to lead to
6 successful outcomes for both parties.

7 **Q.** Did you mean by that, that you were attempting to trick
8 Dr. Nucatola into becoming intoxicated so that she would
9 provide to you information that she would not otherwise
10 provide?

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

12 **THE WITNESS:** No, not at all.

13 **THE COURT:** Yeah, sustained.

14 **BY MR. MIHET**

15 **Q.** How much wine was consumed at that lunch?

16 **A.** I believe it was just one bottle.

17 **Q.** And was it consumed by three people?

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

19 **Q.** Did -- to your knowledge, did Dr. Nucatola drive herself
20 to and from that lunch?

21 **A.** Yes, she did.

22 **Q.** Did Dr. Nucatola at any time give you any indication that
23 she didn't have all of her faculties about her during the lunch
24 conversation?

25 **A.** No, not at all.

DALEIDEN - CROSS / MIHET

1 Q. Did Dr. Nucatola -- well, I think that's good.

2 Now, I believe that you've already testified that there
3 were a number of people -- let me ask you this. I believe we
4 heard Dr. Nucatola, herself, in her testimony, when she was
5 describing the setup of the restaurant and the booth where you
6 guys were seated, she made reference to the private room that
7 was behind the booth.

8 Do you recall that testimony?

9 A. Yes, I believe I remember that.

10 Q. So my question to you is: Did she at any time ask you or
11 the restaurant staff to move this, this supposedly confidential
12 conversation, into that private room that she saw there?

13 A. No. Not at all.

14 Q. And I believe you have already testified that there were,
15 you know, lots of people milling around your lunch booth. Do
16 you believe that your lunch conversation could be heard by
17 non-participants to --

18 A. I'm certain it could be overheard. I was afraid we were
19 going to get kicked out of the restaurant for having a graphic
20 conversation in public.

21 MR. MIHET: I would like to ask Willow to display
22 Exhibit 7106, previously admitted, which was the freeze-frame
23 of the gentleman that was seated next to your booth.

24 THE COURT: That's fine.

25 (Photograph displayed)

DALEIDEN - CROSS / MIHET

1 **BY MR. MIHET**

2 **Q.** My question to you, Mr. Daleiden, did you see that
3 gentleman seated next to your booth during your lunch
4 conversation with Dr. Nucatola?

5 **A.** Yes, I did.

6 **Q.** And given what you testified about, about how, you know,
7 you could hear conversations ten to 15 feet away, is there any
8 doubt in your mind that that gentleman seated at that booth
9 right next to you could overhear your conversation with
10 Dr. Nucatola?

11 **MS. TROTTER:** Objection. Calls for speculation and
12 mischaracterizes the testimony.

13 **THE COURT:** The same -- yeah, it's sustained. And
14 also asked and answered.

15 Let's move somewhere new.

16 **MR. MIHET:** I don't think --

17 **THE COURT:** Mr. Mihet.

18 **MR. MIHET:** All right.

19 **BY MR. MIHET**

20 **Q.** Did Dr. Nucatola ever do anything to indicate that she did
21 not want her conversation with you to be overheard by this
22 gentleman?

23 **A.** No.

24 **MS. TROTTER:** Objection. Asked and answered.

25 **THE COURT:** Sustained.

DALEIDEN - CROSS / MIHET

1 **BY MR. MIHET**

2 **Q.** What did Dr. Nucatola's willingness to discuss fetal
3 tissue procurement within earshot of this gentleman
4 (Indicating) and others lead you to believe as to whether or
5 not this communication was confidential?

6 **MS. TROTTER:** Objection, argumentative.

7 **THE COURT:** I'll allow him to answer the question.
8 But then let's move to something new, please.

9 **MR. MIHET:** Okay.

10 **THE WITNESS:** Sure. It led me to believe that there
11 was nothing confidential about the conversation that we were
12 having.

13 **BY MR. MIHET**

14 **Q.** At the lunch with Dr. Gatter, was there any wine served?
15 (Photograph removed from display)

16 **A.** No, there was not.

17 **Q.** Just iced tea and water?

18 **A.** I don't remember what I drank, but I do believe that
19 Dr. Gatter drank an iced tea.

20 **Q.** Did Dr. Gatter or her lunch companion give you any
21 indication that either one of them did not have their faculties
22 about them during that conversation?

23 **A.** No.

24 **Q.** Okay. Now, you were asked about the conversation at PPGC
25 with Dr. Farrell. And we've established that neither her or

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1 anyone else ever indicated to you that: Now we're going to
2 start talking about confidential matters. Right?

3 **A.** That's correct.

4 **Q.** So my question to you is, during the entirety of your
5 undercover investigation, did anyone that you were recording
6 ever say to you that: Now we're going to discuss things that
7 are secret or confidential?

8 **A.** No. They never did.

9 **Q.** Do you remember having any conversation with Linda Tracy
10 and Perrin Larton at the 2014 NAF conference?

11 **A.** Yes, I do.

12 **Q.** And where was that conversation at?

13 **A.** That was at the BioMax booth at the entrance to the
14 exhibit hall by the -- by the hallway on the mezzanine.

15 **Q.** And do you remember the subjects, generally speaking, that
16 you discussed with them?

17 **A.** Yeah. We talked about competition, marketplace
18 competition for selling fetal tissue. And we talked about
19 ABR's -- Advanced Bioscience Resource's history in the
20 business.

21 **Q.** Was your conversation with Ms. Tracy and Ms. Larton
22 similar to the other conversations you had with people at the
23 NAF conference in that exhibitor hall?

24 **A.** Yes. It was basically the same --

25 **MS. TROTTER:** Objection. Vague and ambiguous.

DALEIDEN - CROSS / SHORT

1 watched a video of the deposition of Deborah VanDerhei?

2 **A.** Yes, I do.

3 **Q.** A video of her deposition being taken? Yes?

4 **A.** Yes.

5 **Q.** And she was asked about her conversation with you at the
6 MeD DC conference in Florida? MeDC, excuse me.

7 **A.** Yes.

8 **Q.** And during that testimony, she was questioned about
9 whether a woman who was standing behind her at the booth next
10 to the BioMax booth could overhear your conversation with her.

11 Do you recall that testimony?

12 **A.** Yes, I remember that testimony.

13 **Q.** And that woman was standing behind her, wasn't she?

14 **MS. TROTTER:** Objection, Your Honor. This lacks
15 foundation. And is irrelevant, as to him repeating testimony
16 of other witnesses.

17 **THE COURT:** I'll wait to see where this is going.
18 Overruled, at the moment.

19 **MS. SHORT:** My next question was going to be the name
20 of the woman, just to make the conversation easier.

21 **BY MS. SHORT**

22 **Q.** The woman's name was Lisa David, is that correct?

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

24 **Q.** And during Ms. VanDerhei's testimony, she stated that,
25 with 100 percent accuracy, that woman could not overhear your

DALEIDEN - CROSS / SHORT

1 conversation.

2 **MS. TROTTER:** Your Honor, objection. Counsel is
3 testifying.

4 **THE COURT:** Where are we going with this?

5 **MS. SHORT:** I'm going to ask Mr. Daleiden if he knows
6 as a matter of fact with 100 percent accuracy that she could
7 overhear the conversation.

8 **THE COURT:** It would seem unlikely that anybody would
9 know that, except for the person who's listening. But go
10 ahead. You can -- go ahead.

11 **MS. SHORT:** Okay.

12 **BY MS. SHORT**

13 **Q.** So, Mr. Daleiden, do you know with 100 percent accuracy
14 that Ms. David could overhear your conversation?

15 **A.** Yes, I know with 100 percent accuracy that Lisa David
16 overheard my conversation with Deborah VanDerhei.

17 **Q.** How do you know that?

18 **A.** I know that for two reasons. Number one, because when Deb
19 VanDerhei was explaining that Jen Russo, the medical director
20 of plaintiff Planned Parenthood Orange County at the time, that
21 she had bangs, and that was how we could recognize her, Lisa
22 David in the background made a "bangs" sign with her hand,
23 indicating -- mimicking the same gesture that Deb VanDerhei was
24 making.

25 And then number two, Adrian and I had a conversation with

DALEIDEN - REDIRECT / TROTTER

1 Lisa David immediately afterwards, after Deb VanDerhei had
2 left, where Lisa David indicated that she had been listening in
3 and she had overheard the subject matter we'd been talking
4 about.

5 **Q.** Okay. And did you also -- did you notice what Ms. David
6 was doing during your conversation with Ms. VanDerhei?

7 **A.** Yes. I believe, during our conversation, she was working
8 on her laptop, but she was also -- she kept cocking her head
9 towards us and turning and looking at us, which indicated to me
10 that she was listening.

11 **Q.** And did she make some summation of the conversation for
12 you, when she first initiated her conversation with you after
13 Ms. VanDerhei had left?

14 **MS. TROTTER:** Objection. Leading.

15 **THE COURT:** Overruled.

16 You can answer.

17 **THE WITNESS:** I believe that she said that she
18 thought it was a fascinating subject.

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

20 **THE COURT:** Anybody else?

21 (No response)

22 **THE COURT:** All right. Mrs. Trotter.

23 **MS. TROTTER:** Yes, thank you.

24 **REDIRECT EXAMINATION**

25 **BY MS. TROTTER**

DALEIDEN - REDIRECT / TROTTER

1 Q. Good morning, Mr. Daleiden.

2 A. Good morning.

3 Q. You testified during your counsel's examination of you
4 that what made you decide to do the CMP project was that you,
5 quote (As read):

6 "...wanted to document and expose the plaintiffs' in
7 this case participation in the harvesting and sale of
8 aborted fetal organs and tissues for profit against
9 the law."

10 Close quote.

11 Do you recall that testimony?

12 A. Yes, I do.

13 Q. And you testified that this issue first came across your
14 radar in the summer of 2010. Correct?

15 A. Yes. That's correct.

16 Q. In the summer of 2010, you testified that you read the
17 entire transcript of a Congressional hearing on the issue.
18 Correct?

19 A. Yes, that's correct.

20 Q. I'm not sure if you have the appropriate binder so I'm
21 going to get you the exhibits.

22 MS. TROTTER: Your Honor, may I approach?

23 THE COURT: Please.

24 (Binder handed up to the Court)

25

DALEIDEN - REDIRECT / TROTTER

1 **BY MS. TROTTER**

2 **Q.** I would like you, Mr. Daleiden, to take a look at Exhibit
3 8033 in your binder.

4 (Request complied with by the Witness)

5 **Q.** You recognize Exhibit 8033 as the cover page and excerpts
6 of the transcript of the Congressional hearing which you read
7 in its entirety in the summer of 2010?

8 **A.** Um, yes, this appears to be the -- the transcript. It
9 appears to be a little shorter than the final -- I don't think
10 this is the full transcript, because I see the page numbers,
11 you know, skipping.

12 It's not consecutive numbers, so this is not the complete
13 transcript. But this is selections from the Congressional
14 transcript that I reviewed.

15 **Q.** Yes, it's the cover page and excerpts of the transcript
16 which you read in its entirety. Correct?

17 **A.** Yes.

18 **MS. TROTTER:** Your Honor, plaintiffs would move
19 Exhibit 8033 into evidence.

20 **THE COURT:** Any objection?

21 **MR. LIMANDRI:** We object. It's not a complete
22 document, and we don't know what parts are missing. I think
23 under Federal Rule of Civil Procedure 106, the rule of
24 completeness, I think it would require that they put into
25 evidence the complete transcript, or not at all.

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1 **MR. MIHET:** Moreover, Your Honor, given plaintiffs'
2 objection to the introduction of other portions of the
3 pre-recorded knowledge that -- the source documents,
4 themselves, we would object on that basis as well.

5 **THE COURT:** So I'm -- I'm going to hold on making a
6 determination. And perhaps this document can be used in other
7 ways, without having it admitted.

8 **BY MS. TROTTER**

9 **Q.** Mr. Daleiden, the Congressional hearing that you read the
10 entire transcript of was a hearing that was held on March 9,
11 2000. Correct?

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

13 **Q.** And the hearing had a title, "FETAL TISSUE: IS IT BEING
14 SOLD IN VIOLATION OF FEDERAL LAW." Correct?

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

16 **Q.** And one of the main witnesses at the Congressional hearing
17 was a gentleman by the name of Dean Alberty. Correct?

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

19 **Q.** His full legal name is Lawrence Dean Alberty, Jr.
20 Correct?

21 **A.** That sounds familiar to me, although I did not remember
22 that until you just refreshed my recollection.

23 **Q.** And indeed, Mr. Alberty is on the demonstrative exhibit
24 that was referred to during the trial as the roadmap that you
25 testified about when your counsel was doing his examination of

DALEIDEN - REDIRECT / TROTTER

1 you, correct?

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

3 **Q.** In fact, he is first in place there, correct?

4 **A.** Yes. His sworn Congressional testimony and the sworn
5 Congressional testimony that we have here, this was -- this was
6 the first thing chronologically that I reviewed.

7 **Q.** And you testified as well that it was through the
8 Congressional testimony that you read the entire transcript of
9 that you learned that ABC, through its 20/20 program, had done
10 a news story on the subject matter. Correct?

11 **A.** I believe I said that I -- I sort of learned about them
12 all at once. I mean, they all sort of came in in a package in
13 the materials I was reviewing on the internet in June, 2010.

14 **Q.** Well, I would like to read from your testimony in trial.
15 This is going to be the transcript, October 22nd, at Page 2302.

16 **MS. TROTTER:** If I can provide this to the Court.

17 (Document handed up to the Court)

18 **BY MS. TROTTER**

19 **Q.** And we're at Page 2302, Lines 13 through 21.

20 **MR. LIMANDRI:** It's not impeaching.

21 **THE COURT:** That's okay. That wouldn't make any
22 difference for a defendant. So, overruled on that ground.

23 Go ahead.

24 (Document displayed)

25

1 BY MS. TROTTER

2 Q. (As read)

3 "QUESTION: Okay. Did that -- how did that segment
4 and Congressional testimony influence your thinking
5 regarding your plans for this project?

6 "ANSWER: So there was a -- through the Congressional
7 transcript, I learned that ABC's 20/20 program had
8 actually done their own -- their own news story on the
9 topic of fetal trafficking right at the same time, in
10 March of 2000, and they had both done interviews with
11 whistleblowers, including one of the individuals who
12 testified at the Congressional hearing."

13 That was your sworn testimony before the jury. Correct?

14 A. Yes, that's correct.

15 Q. And in fact, during your counsel's examination of you,
16 your counsel actually played for the jury the 20/20 segment.
17 Correct?

18 A. Yes, that's correct.

19 Q. And one of the principal people who was interviewed in the
20 20/20 video was the gentleman, Dean Alberty. Correct?

21 A. Yes, that's correct.

22 (Document removed from display)

23 Q. And in the 20/20 video, Mr. Alberty said that the prices
24 charged by the tissue procurement organizations he worked for
25 represented, quote, greed (Indicating quotation marks).

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1 Do you recall that statement Mr. Alberty made in the 20/20
2 video?

3 **A.** Yes, I recall that.

4 **Q.** But when you read the entire Congressional hearing
5 transcript, you saw that Mr. Alberty had signed an affidavit
6 under penalty of perjury that was at odds with that statement
7 that he made on 20/20, right?

8 **A.** I don't know that I would describe it as at odds, but I
9 did see that Mr. Alberty had been induced to sign an affidavit,
10 yes.

11 **Q.** Well, you recall that Mr. Alberty in the -- he read the
12 entire transcript, right?

13 **A.** Yes, I did.

14 **Q.** And the affidavit was part of the record that you read,
15 correct?

16 **A.** Yes, it was.

17 **Q.** And you recall that in the affidavit, Mr. Alberty signed
18 it under penalty of perjury, and said (As read):

19 "I am generally familiar with the state and federal
20 laws that limit the ability to charge a fees for
21 tissue procurement. I have no personal knowledge of
22 any instances in which an employer of mine charged
23 any fees or received compensation for retrieving
24 fetal tissue in violation of any of these laws."

25 You recall reading that as part of your review of the

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1 entire transcript, correct?

2 **A.** I do recall reading that.

3 **Q.** You read that back in the summer of 2010 when you read the
4 transcript. Correct?

5 **A.** Yes, I did.

6 **Q.** That was prior to the time that you launched the project.
7 Correct?

8 **A.** Yes, it was.

9 **Q.** Now, in the 20/20 program, Mr. Alberty also said that
10 abortions were altered in order to get better tissue. Do you
11 recall that?

12 **A.** Yes, I recall that.

13 **Q.** But in Mr. Alberty's sworn affidavit that you reviewed
14 that was part of the Congressional hearing transcript, he
15 stated, quote (As read):

16 "I know of no instances in which a doctor was asked
17 or otherwise decided to perform a different type of
18 abortion procedure solely for the purposes of
19 obtaining fetal tissue."

20 Do you recall that?

21 **A.** Um, I do recall reading that.

22 **Q.** And you read that at the time in the summer of 2010 when
23 you first learned about this Congressional hearing that had
24 occurred in March of 2000. Correct?

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

DALEIDEN - REDIRECT / TROTTER

1 Q. Now, you are aware, Mr. Daleiden, having read the entire
2 transcript of the Congressional hearing, that Mr. Alberty was
3 questioned by various Congresspeople at the hearing about
4 contradictions between statements he had made on videotape and
5 sworn statements that he had made in his affidavit and in
6 deposition.

7 Do you recall that?

8 A. Yes, I was aware of that.

9 Q. You recall, in fact, that Congressman Waxman asked
10 Mr. Alberty, quote (As read):

11 "So your statements under oath seem to contradict
12 statements that you gave for purposes of a propaganda
13 piece, in which you appeared and were paid for
14 appearing by an anti-abortion organization. Is that
15 an accurate statement?"

16 You recall Mr. Waxman asking Mr. Alberty that question at
17 the hearing.

18 A. I recall one of the veiled accusations that were levied
19 against Mr. Alberty at that hearing, yes.

20 Q. And you recall Mr. Alberty's response to Congressman
21 Waxman's question, in which Mr. Alberty responded, quote:

22 "That is an accurate statement. When I was under
23 oath I told the truth. Anything I said on the video
24 when I'm not under oath, that's a different story."

25 You recall reading Mr. Alberty's response to Congressman

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1 Waxman, correct?

2 **A.** I do recall reading Mr. Alberty's responses to the
3 questions he was receiving.

4 **Q.** And you read all of that in the summer of 2010 before the
5 time that you launched the CMP project. Correct?

6 **A.** Yes, I did.

7 **Q.** You recall reading as part of your review of the
8 Congressional transcript a statement from Republican
9 then-Congressman Richard Burr at the hearing. Correct?

10 **A.** I'm sure I would have read it. I couldn't tell you off
11 the top of my head what he said.

12 **Q.** Well, you recall that Congressman Burr told Mr. Alberty at
13 the hearing, quote (As read):

14 "I have found there to be so many inconsistencies in
15 your testimony, between that and tapes and
16 testimonies prior to this, whether they were under
17 oath or not under oath, your credibility as far as
18 this member is concerned, is shot."

19 You recall reading that statement by Congressman Burr.

20 **A.** Yes, I remember that statement.

21 **Q.** And you read that in the summer of 2010, years before you
22 launched the CMP project. Correct?

23 **A.** Yes, I did.

24 **Q.** Now, Mr. Daleiden, you knew from the Congressional hearing
25 transcript that you reviewed that this matter that the hearing

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1 was the subject of was referred to the FBI and the Department
2 of Justice. You recall reading that in the transcript.

3 **A.** I do recall reading about some kind of -- some kind of
4 referral. A lower-case-r referral. I don't recall the level
5 of formality that it was at, or anything like that.

6 **Q.** But you spent some time, in fact, a lot of time,
7 researching. When you first came across this information in
8 the summer of 2010, you spent time researching to find out all
9 you could about what had transpired. Correct?

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

11 **Q.** Both during the hearing and after the hearing, about the
12 subject matter. Correct?

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

14 **Q.** And in fact, Mr. Daleiden, you are aware from your review
15 of the Congressional transcript, that the Department of Justice
16 publicly stated that they were looking into the matter. Back
17 in 2000.

18 **A.** If that was in the transcript, then yes, I would have been
19 aware of that at that time. Although also at that time, to my
20 knowledge, there was no -- there was no followup from what had
21 -- you know, whatever had been -- had been referred in 2000.
22 For ten years.

23 **Q.** And, and so you researched for any information on what had
24 transpired between the year 2000 and the year 2010 when you
25 first came across the Congressional transcript. Correct?

DALEIDEN - REDIRECT / TROTTER

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

2 **Q.** And you looked for any news that you could find about what
3 happened to this. Correct?

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

5 **Q.** I mean, you were concerned about what you had read and
6 what you had seen in the 20/20 piece. Correct?

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

8 **Q.** You thought that this -- this was illegal conduct that you
9 were witnessing being talked about. Correct?

10 **A.** Are you asking me about specifically what was reported in
11 the Congressional transcript? Or in the general --

12 **Q.** In the 20/20, in the 20/20 video. You thought that there
13 was some indications, at least, of illegal conduct. Right?

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

15 **Q.** And it concerned you. Correct?

16 **A.** Yes.

17 **Q.** And you were concerned that there was nothing that seemed
18 to have transpired after the hearing. Correct?

19 **A.** That's correct.

20 **MS. TROTTER:** Your Honor, I would like to mark
21 several exhibits.

22 **THE COURT:** All right.

23 **MS. TROTTER:** For the record. And I will provide
24 Your Honor a copy of them.

25 **THE COURT:** Okay. Ms. Davis?

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1 (Document handed up to the Court)

2 **MS. TROTTER:** And we have provided a copy to counsel.

3 (Document tendered)

4 **MS. TROTTER:** So I will provide them by exhibit
5 number in the binder that I've provided to the Court and to
6 opposing counsel.

7 I would like to mark Exhibits 8028, 8029, 8034, 8035,
8 8036, 8037, 8038, 8059, 8063, 8064, 8065, 993-A, 993-C, 993-E,
9 993-H, and 993-I.

10 (Trial Exhibits 8028, 8029, 8034, 8035, 8036, 8037,
11 8038, 8059, 8063, 8064, 8065, 993-A, 993-C, 993-E,
12 993-H, and 993-I marked for identification.)

13 **MS. TROTTER:** And with marking those, Your Honor, we
14 would -- plaintiffs would move all of those exhibits into
15 evidence, relying on evidentiary Rule 902. And they are not
16 hearsay, as they are not offered for the truth of the matters
17 asserted, but rather, go to defendants' state of mind.

18 **MR. LIMANDRI:** We object, Your Honor. We believe
19 they are hearsay. We haven't had a chance to review them.
20 They're scientific studies. We were not able to put scientific
21 studies in that he reviewed. And they're more prejudicial than
22 probative.

23 As well, there is no foundation that this witness is even
24 aware of any of these articles --

25 **THE COURT:** Yeah. Certainly, at this time, there is

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1 no foundation.

2 **MR. MIHET:** And Your Honor, I would note that the
3 plaintiffs are knocking on the very door that they erected, and
4 they are getting ready to demolish it. So --

5 **THE COURT:** Thank you, Mr. Mihet.

6 So your motion to admit all of these is, at the moment,
7 overruled.

8 **MS. TROTTER:** Perhaps we can take up the evidentiary
9 issue at a break, Your Honor.

10 **THE COURT:** Okay, that's fine.

11 **BY MS. TROTTER**

12 **Q.** Mr. Daleiden, when you were doing your extensive research
13 to find out why, to your dismay, there appeared to be no news
14 as to what transpired between the Congressional hearings in
15 March of 2000 and the summer of 2010, you looked for news
16 articles as part of your research. Correct?

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

18 **Q.** And in fact, you found news articles reporting on the fact
19 the FBI had -- was investigating the issue that had been raised
20 at the Congressional hearing. Correct?

21 **A.** Um, I -- I am not sure if I found news articles from --
22 from -- describing an active FBI investigation in, like, the
23 year 2000, 2001, 2002. I'm not sure.

24 **Q.** Well, you recall finding news articles that reported --
25 after the hearing concluded, you recall coming across news

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1 articles that reported on the hearing. Correct?

2 **A.** Um, yes. In fact, I think I found the transcript of the
3 hearing and the style of the hearing because of news articles
4 reporting on both the hearing and the 20/20 investigation in
5 the same article.

6 **Q.** And those news articles that you came across, some of them
7 spoke to the fact that Mr. Alberty's credibility had been
8 questioned at the Congressional hearing. Correct?

9 **A.** Um, I don't know if I would have seen that in those
10 articles. I relied primarily on those articles just to try to
11 orient myself in the primary source data that was actually out
12 there, both, you know, an ABC 20/20 report that had video
13 camera interviews with a variety of people, and then a
14 Congressional hearing transcript that had sworn testimony
15 extensively in it.

16 **Q.** In your review of news articles, you came across articles
17 that were put out from Associated Press. Correct? The wire
18 service.

19 **A.** Probably, but I couldn't name one for you off the top of
20 my head right now.

21 **Q.** You saw several news article that had been published after
22 the Congressional hearings about the subject matter of the
23 Congressional hearings. Correct?

24 **A.** In general, yes. But I couldn't tell you what article
25 specifically I saw, and in what order.

DALEIDEN - REDIRECT / TROTTER

1 Q. Well, you saw some articles that reflected that there was
2 some investigation that was being conducted by the FBI into the
3 issues that were raised at the Congressional hearing. Correct?

4 MR. MIHET: Objection. Asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: No, I'm not sure that I saw articles
7 from the immediate aftermath of the hearing talking about an
8 active FBI investigation. That does not sound very familiar to
9 me.

10 BY MS. TROTTER

11 Q. Well, let's not look at the immediate aftermath. Let's
12 look at the time period for two years after the March, 2000,
13 hearing.

14 During that time period, from March, 2000, let's say to
15 the end of 2002, you saw news articles that mentioned that the
16 FBI had conducted or was conducting an investigation into the
17 issues that were raised at the hearing. Correct?

18 A. Sitting here, off the top of my head, I don't really
19 remember what news articles I would have reviewed from that
20 time period. So I don't know; if there's something that I
21 produced in discovery or that plaintiffs produced that -- if
22 there's a document that would refresh my recollection, but I
23 really, off the top of my head, I don't remember those articles
24 very specifically.

25 From the materials that I've reviewed that I've testified

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1 about that I reviewed in the summer of 2010, I remember very
2 clearly --

3 **THE COURT:** Mr. Daleiden, just stick with the
4 question.

5 So, ask the next question.

6 **MS. TROTTER:** Your Honor, may I approach?

7 **THE COURT:** Yeah. Go ahead.

8 **BY MS. TROTTER**

9 **Q.** Mr. Daleiden, I would like you to take a look at the
10 binder that I have provided to you. It has various tabs.

11 (Request complied with by the Witness)

12 **Q.** And feel free to take a look through the various tabs and
13 the documents that are behind the tabs.

14 **MR. MIHET:** Objection, Your Honor. How long is this
15 going to take?

16 **THE COURT:** That's not an objection that --

17 **MR. LIMANDRI:** I've got an objection --

18 **THE COURT:** -- that I can find at the moment.

19 **MR. LIMANDRI:** Rule of Evidence 403, undue
20 consumption of time, confusion --

21 **THE COURT:** Overruled at the moment.

22 (Witness examines documents)

23 **BY MS. TROTTER**

24 **Q.** Mr. Daleiden, what tab are you up to at this point?

25 **A.** I am up to Tab 8035, I guess.

DALEIDEN - REDIRECT / TROTTER

1 Q. The tabs that you have reviewed so far, do those refresh
2 your recollection as to some of the news articles that you came
3 across in your extensive research about what happened after the
4 Congressional hearing?

5 A. So the vast majority of these articles are from, like, a
6 Lexis-Nexis service or something like that, not generally
7 open-source accessible on the internet. So no, these are not
8 articles that I would have seen at that time. I didn't have
9 and I still don't have a Lexis-Nexis subscription.

10 And many of these articles are actual, like, scanned
11 microfilm photocopies of, like, paper -- newspaper copies. So
12 this would not have been stuff that I would have had access to
13 just online, open-source, in June of 2010. So most of these
14 are new to me.

15 Some of the information is somewhat familiar. But these
16 specific articles, no, these don't look like the articles that
17 I reviewed in the summer of 2010. And it would be cool to sit
18 down and look through them a little bit more. But these
19 documents don't really reflect what was in my mind in the
20 summer of 2010.

21 Q. But you saw news articles. Correct?

22 MR. LIMANDRI: Objection, Your Honor, asked and
23 answered.

24 THE COURT: Sustained.

25

DALEIDEN - REDIRECT / TROTTER

1 **BY MS. TROTTER**

2 **Q.** As part of your research that you conducted to get to the
3 bottom of what had happened at the Congressional hearing, you
4 researched and did find news articles. Correct?

5 **MR. LIMANDRI:** Asked and answered.

6 **MR. MIHET:** Asked and answered.

7 **THE COURT:** Sustained.

8 **BY MS. TROTTER**

9 **Q.** The news articles that you did find contained reference to
10 an FBI investigation. Correct?

11 **MR. LIMANDRI:** Asked and answered, Your Honor.

12 **MR. MIHET:** Same objection.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** I do not -- the news articles that I
15 remember seeing in the summer of 2010, no, I don't remember
16 them referencing an FBI investigation, specifically. The news
17 articles that I saw were primarily about the Congressional
18 hearings and the ABC 20/20 broadcast.

19 And there was specifically a news article that I think I
20 referenced in my -- in my prior testimony or that I tried to
21 reference in my prior testimony, that linked Advanced
22 Bioscience Resources with plaintiffs Planned Parenthood
23 Mar Monte. And that's the extent of what I remember about the
24 news articles.

25

DALEIDEN - REDIRECT / TROTTER

1 **BY MS. TROTTER**

2 **Q.** So in none of the extensive research that you conducted
3 did you find any reference to the fact that the FBI had found
4 no violations of law as a result of its investigation.

5 **MR. MIHET:** Objection, move to strike. Assumes facts
6 not in evidence, lacks foundation.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** I remember finding a news article from
9 -- I feel like it was around, like, 2007 or 2008, I remember
10 the date being, describing a -- describing a declination of
11 prosecution from a U.S. Attorney's office in Kansas. And it
12 was very short and very perfunctory, the description of -- you
13 know, sort of treated the whole thing like old news. And that
14 was confusing to me.

15 And that was the whole point that I've testified about for
16 like almost four days now, that it was kind of mind-boggling to
17 me that there were serious sworn allegations, sworn testimony
18 at a Congressional hearing about infanticide that was never
19 recanted in that affidavit. And yet, there had been no -- no
20 prosecution; it seemed like no serious investigation from law
21 enforcement.

22 **BY MS. TROTTER**

23 **Q.** Mr. Daleiden, you've testified under oath that in the
24 summer of 2010 when you were doing your investigation, there
25 was no news that you could find about what had happened between

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1 March of 2000 and 2010.

2 That's been your sworn testimony, correct?

3 **A.** My sworn testimony is that between 2000 and 2010, it
4 looked like there had been no followup from any major news
5 organization or any major advocacy organization about the
6 overall issue of trafficking in aborted fetal body parts.

7 **MS. TROTTER:** I would like to read from
8 Mr. Daleiden's sworn testimony in another matter at Page 887,
9 Lines 21 through 26.

10 **MR. JONNA:** What is the date?

11 **MS. TROTTER:** The date is September 13, 2019.

12 **THE COURT:** And it was 887 --

13 **MS. TROTTER:** 887, Lines 21 through 26.

14 **MR. LIMANDRI:** We don't have that.

15 (Document tendered)

16 **MR. LIMANDRI:** Can you tell me the page number again?

17 Oh I got it. Thank you.

18 **THE COURT:** All right. Are you set?

19 **MR. MIHET:** What lines?

20 **MS. TROTTER:** 21 through 26.

21 **MR. MIHET:** Your Honor, I think in context it should
22 start at Line 13.

23 **MR. JONNA:** What page, counsel?

24 **MS. TROTTER:** 887.

25 **MR. LIMANDRI:** 887. No objection.

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1 **THE COURT:** Okay, but Mr. Mihet suggests starting at
2 Line 13. I think maybe we should start at Line 7.

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

4 **MS. TROTTER:** That's fine, Your Honor.

5 **THE COURT:** Go ahead.

6 **MS. TROTTER:** So we are going read from 887, Line 7
7 through 26 (As read):

8 **"QUESTION:** What did you do next in your
9 investigation?

10 **"ANSWER:** That would have been in the summer of 2010.
11 I basically started scouring the internet, published
12 scientific literature, certainly anything cited in
13 Suzanne Rini's book, trying to do a deep dive and get
14 -- gather together as much information as I could
15 about this subject. I was real surprised in 2010 that
16 it had been -- at that time had been about ten years
17 since the Congressional hearings in March of 2000
18 where Dean Alberty testified and since the 20/20
19 broadcast. And in those ten years, no major
20 journalism organization, no major advocacy
21 organization, no one had followed up on these issues
22 that sounded really, really serious and that sounded
23 like there were violent crimes occurring within them.

24 **"QUESTION:** To your knowledge, there was no referral
25 from the Congressional hearings involving Mr. Alberty

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1 to the Department of Justice for criminal charges?

2 **"ANSWER:** I believe there may have been a referral,
3 but there was no -- there was no news whatsoever in
4 the ten years from 2000 to 2010 to whatever became of
5 that."

6 **BY MS. TROTTER**

7 **Q.** Do you recall giving that sworn testimony in another
8 proceeding in September of this year?

9 **A.** Yes. I believe by "no news whatsoever," I was trying to
10 -- talking about there being no explanation for why there was
11 no followup into the serious sworn allegations about
12 infanticide in abortion clinics.

13 **Q.** But in fact, as you just testified, you did come across
14 news that the Department of Justice, the U.S. Attorney, had
15 concluded that there was no wrongdoing.

16 **MR. MIHET:** Objection. Misstates the witness's
17 testimony.

18 **THE COURT:** Overruled.

19 **THE WITNESS:** No. What I came across was a very
20 short news article that was specifically -- as I remember it
21 sitting here today, was specifically about a decision not to
22 prosecute on the sole violation -- I don't even know if it was
23 a decision not to prosecute; it was a decision not to move
24 forward or something, specifically on the issue of profiteering
25 on the sale of fetal tissue. So, completely removed from all

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1 the allegations of non-consensual changes to patients'
2 abortions, completely removed from the allegations of
3 infanticide or trafficking in living fetuses, and completely
4 removed from the allegations of partial-birth abortion.

5 And I think that my testimony here, which is -- my prior
6 testimony that we just looked at on the exhibit here was
7 specifically about the issues of the violent crimes within the
8 harvesting and sale of fetal tissue, not just on the sole issue
9 of the finances of the transactions. Which is what I
10 understand the -- whatever conclusion or sort of non-conclusion
11 came from the DOJ in the -- in 2007 or whatever year it was,
12 that that was solely confined to the financial aspect.

13 **BY MS. TROTTER**

14 **Q.** But in fact, Mr. Daleiden, you had -- when you were
15 reviewing in the summer of 2010, the Congressional testimony,
16 you were aware of Mr. Alberty's recanting of the statements he
17 had made on video, and you were aware of his sworn affidavit
18 about him not being aware, having personal knowledge about
19 changes in abortion procedures, for example.

20 **A.** Like I said, I was aware of Mr. Alberty's affidavit and
21 the circumstances surrounding his being induced to sign that
22 affidavit. And, and I was aware that he never recanted his
23 sworn testimony of seeing fetuses cut open with their hearts
24 still beating, inside of the Planned Parenthood in Kansas.

25 **MS. TROTTER:** Objection, and move to strike the

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1 non-responsive --

2 **THE COURT:** We'll strike the last two sentences.

3 **BY MS. TROTTER**

4 **Q.** Mr. Daleiden, the 20/20 segment was -- the subject matter
5 of it was about profiteering from fetal tissue. Correct?

6 **A.** That was one of the subject matters. It was largely about
7 fetal trafficking and crimes associated with it, including
8 non-consensual experimental changes to patient care for solely
9 the reason to harvest more marketable fetal tissue.

10 **Q.** And the U.S. government had said that profiteering had not
11 happened, based on its investigation, correct?

12 **A.** Off the top of my head, I don't remember if the news
13 article that I reviewed about whatever U.S. Attorney decision
14 came down in 2007 or 2008, I don't know that it even
15 necessarily went that far.

16 It just -- as I recall, just said that the -- that the
17 case was not moving forward, or they didn't have evidence, or
18 something like that. It was not -- it was a sort of, like,
19 non-conclusion conclusion that raises more questions than it
20 answers.

21 **Q.** But that was all -- this was information that you had
22 prior to the launch of the project. Correct?

23 **A.** Yes. Correct. This is one of the things that motivated
24 me to do the project.

25 **THE COURT:** Ms. Trotter, is this a good time to take

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1 a break?

2 **MS. TROTTER:** I'm about to move to another exhibit,
3 so we could probably take a break now.

4 **THE COURT:** Okay. Ladies and gentlemen, let's take a
5 break. Please remember the admonitions.

6 (Jury excused)

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

9 **MR. KOZINA:** Your Honor?

10 **THE COURT:** Mr. Daleiden, if you wouldn't mind
11 stepping outside for a moment.

12 Please be seated, everybody.

13 (Request complied with by the witness)

14 **THE COURT:** Hang on just a second, Mr. Kozina, but
15 don't go away.

16 **MR. KOZINA:** I won't. I promise.

17 **THE COURT:** I was pretty sure that was true.

18 Ms. Trotter, did you want to make an argument with respect
19 to these articles?

20 **MS. TROTTER:** Yes, Your Honor. And as a -- as a
21 first matter, the newspaper articles are self-authenticating,
22 so therefore, no foundation as to this witness authenticating
23 was necessary under the federal rules. So that's the first
24 piece.

25 The second piece is: Well, what about hearsay? And the

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1 response to that, this is not -- they're not offered for the
2 truth of the matter asserted. The witness has testified he did
3 extensive research. These are articles from the time period
4 that he said he was researching. And they would go to his
5 state of mind. He need not testify or admit that he saw any of
6 them.

7 The fact that they are there -- and there's several of
8 them -- is sufficient and admissible as to his state of mind.
9 Not for the truth of the matter asserted.

10 And I would refer Your Honor to a few cases. *Franklin v.*
11 *Duncan*, which, the cite is 884 F. Supp. 1435, at 1454. And
12 that's out of this district, the Northern District of
13 California.

14 And this is a quote (As read):

15 "Respondent argues that Exhibit KKK was not
16 admissible because petitioner did not lay a proper
17 foundation by proving that Franklin-Lipsker had
18 actually read any of the newspaper articles. Such a
19 foundation is not required."

20 Another cite, *United States versus Secor*, 280 F. Supp.
21 343 at 352. This is out of the Southern District of New York.

22 Quote (As read):

23 "The government relied on its evidence, Government's
24 Exhibits 5, 6, 7, 8, that there had been a great deal
25 of publicity in the year preceding defendant's arrest

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1 in newspapers of general circulation in the New York
2 area and in defendant's immediate residential locale
3 about the wagering tax laws to support an inference
4 of knowledge on defendant's part."

5 Close quote.

6 Again, not material that the defendant doesn't admit to
7 having seen the articles, the. Government was allowed to put
8 in the evidence, based upon the fact that these were newspapers
9 of general circulation that the defendant arguably did see,
10 even if he doesn't admit it, in order to create an inference as
11 to his state of mind. And again, not offered for the truth of
12 the matter asserted.

13 But, this witness has testified extensively as to his
14 state of mind. I mean, that's the whole basis of the 633.5
15 defense. And Your Honor allowed the 20/20 video to be played,
16 and various other testimony about articles and conversations
17 with third parties. Again, not offered for the truth of the
18 matter asserted, but going to the defendant's state of mind.
19 And this is the flip side of that.

20 **THE COURT:** Okay. I understand what your argument
21 is. I'm not going to rule on this. I'm not going to change my
22 ruling at the moment. I will take a look at it this
23 afternoon -- or actually, tomorrow morning -- at some point
24 before I see you again after the sun rises. So I'll allow the
25 defendants to make -- do any sort of research. So I'll just --

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1 I'll -- we'll stay where we are at this point.

2 **MR. LIMANDRI:** You don't want to hear from me at this
3 point?

4 **THE COURT:** No, because I'm sure you'll have a more
5 refined view after you do some research.

6 **MR. LIMANDRI:** I will. But I will point out, we did
7 give them well in advance of Mr. Daleiden taking the stand, all
8 of the exhibits that we intended to use. We've seen none of
9 these before today. So clearly, there's a due-process issue in
10 even raising this in this context at this time. And to suggest
11 that someone's mental state should be informed based upon
12 things they did not see and did not know and could not
13 reasonably have been expected to know strikes me as bizarre and
14 extreme.

15 Especially since we came prepared, having given them in
16 advance actual scientific articles he did see and did research.
17 And this Court ruled, and understandably, that I could not
18 admit those into evidence. That he could only talk about them
19 to the extent that it did inform his mental state at that time.

20 So for all of those reasons, preliminarily, I don't even
21 see how this is a legitimate issue for discussion. But we
22 would like to see the cases that they're citing, that we could
23 more appropriately and more fully respond.

24 **THE COURT:** Good, okay. So let's do that, and we'll
25 take it up tomorrow morning. And if Mr. Daleiden finishes

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1 before that -- he'll be around, so we can bring him back.

2 And Mr. Kozina?

3 **MR. KOZINA:** Yes, waiting in the wings, Your Honor.

4 Is a practical matter, in terms of the Fifth Amendment
5 inference process, does the Court have a timetable, in other
6 words, when the plaintiffs to prepare their portion and when we
7 are to respond?

8 **THE COURT:** Well, they have prepared something.

9 **MR. KOZINA:** Uh-huh.

10 **THE COURT:** Which is whatever the docket number is.
11 The question in my mind is whether the plaintiffs want -- think
12 that each of the inferences is necessary, or whether they're
13 going revise them. And hopefully, they know that now.

14 If they don't know that now, they should know it as
15 quickly as possible so that the defense has a chance to respond
16 to it, and argue about it, before we deal with any testimony
17 with respect to Mr. Newman.

18 **MS. TROTTER:** Understood, Your Honor. We will
19 endeavor to, at the end of this court day, go back and look at
20 what was initially filed on the adverse inferences, and see if
21 there might be modifications. And we'll provide that to
22 defendants.

23 **THE COURT:** Okay. Provide that to the defendants.
24 And then the -- it sounds like you'll have the weekend, anyway,
25 to deal with that.

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1 **MR. KOZINA:** I appreciate that. I just want to make
2 sure. When the Court first mentioned this today, it advised
3 that the plaintiffs would have to go through the testimony,
4 through the proffered stipulations as well, in order to come up
5 with a final proposal to the Court. I want to be sure we
6 adhere to that process.

7 **THE COURT:** Well, so the process is things that have
8 happened since the adverse inferences were -- the amended
9 adverse inferences were produced have included some
10 stipulations that the defendants have been willing to make.

11 **MR. KOZINA:** Uh-huh.

12 **THE COURT:** And then you have all been sitting
13 through testimony. It doesn't require the plaintiffs to go
14 line by line of the testimony. All they need to do is think
15 about what the evidence is, think about what the questions were
16 that weren't answered because of the invocation of the Fifth
17 Amendment, and then proceed that way.

18 **MR. KOZINA:** I appreciate that. So they will make
19 the first presentation.

20 **THE COURT:** Yes.

21 **MR. KOZINA:** And then we will have an opportunity to
22 respond. Correct?

23 **THE COURT:** Exactly correct.

24 **MR. KOZINA:** Thank you.

25 **MS. TROTTER:** Thank Your Honor.

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1 **THE COURT:** We will be in recess again until the
2 court reporter is ready to go back.

3 (Whereupon there was a recess in the proceedings
4 from 11:28 a.m. until 11:41 a.m.)

5 **THE COURT:** Okay. Please be seated everybody.
6 Ms. Trotter, go ahead.

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

8 **BY MS. TROTTER**

9 **Q.** Mr. Daleiden, we've added another binder in front of you
10 that wasn't there before. You have seen that binder before
11 though earlier in your testimony.

12 I'd like you to turn to Exhibit 67, which is already
13 admitted into evidence.

14 **MS. TROTTER:** And, Ken, if you could go to the second
15 page of the exhibit?

16 (Document displayed)

17 **BY MS. TROTTER**

18 **Q.** Now, Mr. Daleiden, Exhibit 67 is one of the project
19 proposals that you prepared. This particular one was sent to,
20 I believe, Mr. Newman? I don't have it in front of me.
21 Mr. Rhomberg; correct?

22 **A.** That's correct. This was basically the very first draft
23 of the project proposal that was -- that I shared with Albin in
24 early February 2013.

25 **Q.** And one of the reasons that you prepared the project

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1 proposals in February of 2013 is that you wanted to write
2 something for potential donors to CMP that was very specific as
3 to particular goals and advantages that they could expect from
4 contributing to the project; correct?

5 **A.** That was basically the main purpose in putting together
6 these project proposals.

7 These really -- I mean, these were not training documents
8 for the investigators. I actually didn't show these proposals
9 to the investigators, and it wasn't even really -- it wasn't
10 anything that, you know, convinced Albin or anybody that this
11 needed to be done.

12 This was -- these documents were written in early 2013. I
13 wrote this for potential donors.

14 **Q.** And you wanted to prepare something for the potential
15 donors that was very clear and crisp and detailed; correct?

16 **A.** Yes.

17 **MS. TROTTER:** Now, Ken, if you could pull up the
18 demonstrative, Exhibit 7129?

19 (Document displayed)

20 **BY MS. TROTTER**

21 **Q.** Now, as of the time that you wrote the project proposals
22 in February of 2013, your testimony is that you had been
23 informed by all of the things that appear on the demonstrative
24 before the project proposal, which is on the last line before
25 the "Perrin Larton and Linda Tracy Interviews;" correct?

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1 **A.** Yes, that's correct, except for speaking with Dr. Janet
2 Smith. I think she and I began talking probably in either late
3 2012 or in early 2013, maybe kind of contemporaneous with
4 drafting this project proposal.

5 **Q.** But all of the other things, starting about Dean Alberty
6 and going all the way to "Dr. Sheehan Witness Testimony" were
7 things that had informed your state of mind prior to drafting
8 the project proposals?

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

10 **Q.** Now, if you take a look at Exhibit 67, which is in your
11 binder, nowhere in Exhibit 67 did you mention Dean Alberty
12 anywhere; correct?

13 **A.** I may not have mentioned him by name, but --

14 **Q.** Yes, I'm talking about by name. Mr. Alberty's name is not
15 in the project proposal; correct?

16 **A.** To the best of my knowledge, Mr. Alberty's name is not in
17 the project proposal.

18 **Q.** Nor is the Congressional hearing mentioned in the project
19 proposal; correct?

20 **A.** That's correct. This is a --

21 **Q.** Nor is 20/20 mentioned in the project proposal?

22 **MR. MIHET:** Objection, Your Honor.

23 **MR. KOZINA:** Objection. The witness should be
24 allowed to complete his response.

25 **THE COURT:** I think the -- if the witness would

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1 confine his answer to the question, then I'm sure that if there
2 is more that needs to be added, your counsel will ask you about
3 it.

4 **THE WITNESS:** Sorry.

5 **BY MS. TROTTER**

6 **Q.** Nor is 20/20 mentioned in your project proposal; correct?

7 **A.** By name 20/20 is not mentioned in this project proposal.

8 **Q.** Nor are the CDC statistics mentioned in your project
9 proposal?

10 **A.** That's correct.

11 **Q.** Nor is the publication "1200 Too Many" mentioned in your
12 project proposal?

13 **A.** Correct.

14 **Q.** Nor the Grantham collection?

15 **A.** Correct.

16 **Q.** Nor does Dr. Ronald Berman's name appear in the project
17 proposal?

18 **A.** His name does not appear in this project proposal.

19 **Q.** Nor does Dr. Katharine Sheehan's name appear in your
20 project proposal?

21 **A.** Her name does not appear in this proposal for potential
22 donors.

23 **Q.** Now, I now want to move to the "Circulation" article.

24 As part of your research for the Human Capital Project,
25 you have testified that you reviewed scientific articles;

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1 correct?

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

3 **Q.** And one of those articles was published in a journal
4 called "Circulation" that was published in July of 2012?

5 **A.** Yes, that is correct.

6 **Q.** And one of the reasons that you relied on that article was
7 that the article said that the researchers who were writing
8 about the study contained in that article had obtained fetal
9 hearts from the company StemExpress; correct?

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

11 **Q.** And you relied on it because you saw a statement in the
12 article that StemExpress was a, quote, commercial vendor;
13 correct?

14 **A.** That was one of the reasons I relied on it, yes.

15 **Q.** And you also relied on it because the article said that
16 the hearts underwent something called Langendorff perfusion;
17 correct?

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

19 **Q.** Now, the "Circulation" article didn't mention Planned
20 Parenthood; correct?

21 **A.** Yes, that's correct. It did not name Planned Parenthood
22 in the article.

23 **Q.** And it did not name Dr. Nucatola; correct?

24 **A.** That's correct. It did not name Dr. Nucatola.

25 **Q.** And it didn't name Dr. Mary Gatter; correct?

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1 A. No, it did not.

2 Q. And it didn't name Dr. Savita Ginde; correct?

3 A. No, it did not.

4 Q. And the "Circulation" article didn't say that the hearts
5 that were obtained from StemExpress had come from Planned
6 Parenthood; correct?

7 A. It just said they came from StemExpress, which, to my
8 knowledge, was solely working with Planned Parenthood at that
9 time.

10 Q. The article did not say that the hearts that had been
11 obtained from StemExpress had originated at Planned Parenthood;
12 correct?

13 A. I took the article as an indication that that was where
14 they came from, but it did not --

15 Q. That's not my question.

16 A. It did not say that. It did not -- it did not name
17 Planned Parenthood as a source.

18 Q. The article did not say that fetal hearts were still
19 beating when they were removed from the fetus; correct?

20 A. It said that they were connected to a Langendorff
21 apparatus, which --

22 Q. But --

23 A. -- to my understanding --

24 Q. -- my question was very specific --

25 (Simultaneous crosstalk.)

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1 **MR. MIHET:** Objection, Your Honor.

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

3 The objection is overruled. Let's not talk over each
4 other and let's react -- answer the question specifically.
5 And, again, if there is more explanation that's necessary, that
6 will come, I'm sure.

7 **THE WITNESS:** All right.

8 **BY MS. TROTTER**

9 **Q.** Focusing on the words in the "Circulation" article, the
10 exact words in the "Circulation" article.

11 The "Circulation" article did not say the hearts that were
12 involved in that study were still beating when they were
13 removed from a fetus or a human body; correct?

14 **A.** It said that they were connected to Langendorff.

15 **Q.** But it did not say -- so the answer to my question is yes,
16 that's correct?

17 **A.** I think the answer depends on how much or what you
18 understand Langendorff perfusion, the name Langendorff
19 perfusion --

20 **Q.** Mr. Daleiden, with all due respect. I'm not asking about
21 your understanding about Langendorff perfusion.

22 I'm asking about the article "Circulation" that you read
23 and what statements, direct quotes and statements were in the
24 article. Are you with me?

25 **A.** Yes. And I just think that some --

DALEIDEN - REDIRECT / TROTTER

1 Q. So let me ask the question again so that it's very clear
2 and precise.

3 My question is: The article in "Circulation" did not say
4 that fetal hearts were still beating when they were removed
5 from a fetus; correct?

6 A. I think that you can say something like that with
7 technical words that mean more -- you know, that carry more
8 meaning than just the lay way that you just broke it down.

9 So I think the Langendorff perfusion --

10 Q. All right. So --

11 A. -- means exactly what you just said.

12 Q. So you've answered the question as best you can.

13 A. Yeah.

14 Q. The article did not say that there were fetuses that were
15 born alive anywhere; correct?

16 A. The article said that fetal hearts were connected to
17 Langendorff perfusion.

18 Q. But can you answer my question? The article did not say
19 that fetuses were born alive anywhere; correct?

20 A. What I'm telling you --

21 **THE COURT:** Mr. Daleiden, the answer that -- to this
22 question is whether those words were used, not how you
23 understood the words in the article.

24 So were the words used, that Ms. Trotter just asked?

25 **THE WITNESS:** The words that Ms. Trotter just used

DALEIDEN - REDIRECT / TROTTER

1 were not printed in the article, that's correct.

2 **BY MS. TROTTER**

3 **Q.** Now, in the "Circulation" article, you saw something
4 referred to as the Stanford Investigational Research Board, or
5 IRB. Do you recall seeing that mentioned in the article?

6 **A.** IRB generally stands for Institutional Review Board. But,
7 yes, I recall seeing that mentioned in the article.

8 **Q.** And you understand that Institutional Review Boards at
9 Universities, part of their mission is to ensure that there is
10 compliance of university research departments, both in terms of
11 the law as well as ethics; correct?

12 **A.** That is one of the -- one of the many themes that we were
13 investigating in our undercover project, yes.

14 **Q.** And the "Circulation" article specifically states that the
15 study that was reported in the article was conducted with,
16 quote, institutional approval, close quote, from the Stanford
17 IRB; correct?

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

19 **Q.** Now, you spoke with Dr. Theresa Deisher regarding
20 Langendorff perfusion prior to the time that you wrote the
21 project proposal; correct?

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

23 **Q.** Now, Dr. Deisher is pro-life; correct?

24 **A.** To the best of my knowledge, I believe she identifies as
25 pro-life.

DALEIDEN - REDIRECT / TROTTER

1 Q. And Dr. Deisher advocates, for example, using vaccines
2 because some vaccines are created using DNA from fetal cells;
3 correct?

4 A. I don't really know the details of her vaccine advocacy or
5 what she says about it.

6 Q. You understand that Dr. Deisher advocates against using
7 fetal tissue in research under any circumstances, correct?

8 A. I believe that generally she shares the ethical problems
9 that I and many people have with exploiting aborted fetal
10 tissue for experimentation.

11 Q. Dr. Deisher is not a medical doctor; correct?

12 A. I believe she is a bioscience PhD, not a medical doctor.

13 Q. To your knowledge, Dr. Deisher did not speak with any of
14 the authors of the article that was published in "Circulation"
15 that we have been discussing; correct?

16 MR. MIHET: Objection, your Honor. This goes beyond
17 the scope of what the Court has permitted this witness to
18 testify regarding Dr. Deisher.

19 THE COURT: I'm hearing that. So I'm going to
20 overrule the objection, but I understand that there may be
21 examination that goes further into this.

22 A. To my knowledge, she has pretty extensive academic ties at
23 Stanford. So I see her as someone who -- you know, who is
24 pretty qualified to talk about research at Stanford and the
25 Stanford research community, but I don't know who specifically

DALEIDEN - REDIRECT / TROTTER

1 who she knows and who she talks to.

2 **BY MS. TROTTER**

3 **Q.** You didn't speak to -- yourself, to any of the authors of
4 the "Circulation" article; correct?

5 **A.** No, I don't believe I ever did.

6 **Q.** Now, one of the other materials that you say that you
7 relied upon prior to the time that you wrote the project
8 proposal was a book by a Suzanne Rini; is that right?

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

10 **Q.** That book is entitled "Beyond Abortion"?

11 **A.** "Beyond Abortion: A *Chronicle* of Fetal Experimentation."

12 **Q.** And that book was first published in the 1980's; correct?

13 **A.** That's correct.

14 **Q.** And then it was re-published in 1993?

15 **A.** Approximately, to the best of my knowledge.

16 **Q.** And Ms. Rini is pro-life; correct?

17 **A.** To the best of my knowledge, I believe so.

18 **Q.** Ms. Rini's book doesn't mention Planned Parenthood;
19 correct?

20 **A.** I don't know off the top of my head. I would be surprised
21 if they didn't come up somewhere in the book.

22 **Q.** But you don't know specifically Planned Parenthood
23 appearing anywhere?

24 **A.** I couldn't give you a citation from her book where she
25 specifically mentioned Planned Parenthood for something.

DALEIDEN - REDIRECT / TROTTER

1 Q. Suzanne Rini is not a doctor; correct?

2 A. No, I don't believe so.

3 Q. Suzanne Rini is not a scientist; correct?

4 A. That's correct. She's a journalist.

5 Q. Now, none of the studies that Ms. Rini has in her book are
6 from later than 1985; correct?

7 A. I don't know off the top of my head how -- you know, how
8 contemporaneously they continue with the updated edition of it,
9 but, in general, I understand the studies that she cited to be
10 contemporaneous with when she was publishing.

11 Q. In the 1980's?

12 A. That's correct.

13 Q. Now, after the time that Ms. Rini wrote the book, the laws
14 relating to born alive fetuses changed. That's your
15 understanding, correct?

16 A. You would have to ask me specifically about which laws.
17 There are both state and federal laws about how an infant born
18 alive in an abortion should be treated.

19 Q. The federal.

20 A. Yes, that's correct. The federal Born Alive Infants
21 Protection Act wasn't passed until 2001 or 2002, I think.

22 Q. Now, I'm going to turn to a different -- different
23 subject.

24 The ID that you created that had the name Robert Sarkis on
25 it, you used that identification to check into at least one

DALEIDEN - REDIRECT / TROTTER

1 hotel for one of the conferences at issue in this case;
2 correct?

3 **A.** Off the top of my head, I don't really remember. I think
4 that most of the -- I do remember most of the hotel
5 reservations being made under Adrian's name, at least for the
6 Planned Parenthood conferences. And then I also remember
7 reserving certain hotel rooms actually just under -- under my
8 name, under David Daleiden.

9 So that's why -- and if you're asking about my testimony
10 earlier today, I said generally I don't believe that -- that I
11 used that ID to check in for any hotel. It's possible that we
12 might have for a hotel room, but I -- I couldn't really tell
13 you one way or the other.

14 **MS. TROTTER:** Your Honor, I'd like to identify for
15 the record identification provided by opposing counsel. I'm
16 going to mark it in a series with the other ID as
17 Exhibit 7127-2.

18 **THE COURT:** Okay.

19 (Trial Exhibit 7127-2 marked for identification)

20 **MS. TROTTER:** And may I approach the witness?

21 **THE COURT:** This was the one that was just provided?

22 **MS. TROTTER:** Yes.

23 **THE COURT:** Go ahead.

24 (Whereupon document was tendered to the witness.)

25 **MR. LIMANDRI:** It's not the one just provided. It's

DALEIDEN - REDIRECT / TROTTER

1 Susan Merritt; correct?

2 **MS. TROTTER:** The one that we discussed earlier.

3 **THE COURT:** Okay.

4 **BY MS. TROTTER**

5 **Q.** Mr. Daleiden, I've handed you what's been marked as
6 Exhibit 7127-2. That is the identification that you obtained
7 from the gentleman you found on Craigslist in the name of Susan
8 Tennenbaum; correct?

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

10 **MS. TROTTER:** May I approach, Your Honor?

11 **THE COURT:** Yes.

12 **MS. TROTTER:** Thank you.

13 (Whereupon document was returned to counsel.)

14 **MS. TROTTER:** Your Honor, plaintiffs would move
15 Exhibit 7127-2 into evidence.

16 **MR. LIMANDRI:** No objection.

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

18 (Trial Exhibit 7127-2 received in evidence)

19 **MS. TROTTER:** And request permission to provide it to
20 the jury.

21 **THE COURT:** Absolutely.

22 (Exhibit 7127-2 published to the jury)

23 **MS. TROTTER:** I'll provide to it Ms. Davis. Thank
24 you.

25

DALEIDEN - REDIRECT / TROTTER

1 (Whereupon document was tendered to the Clerk.)

2 **BY MS. TROTTER**

3 **Q.** Now, Mr. Daleiden, I want to turn to PP Gulf Coast and
4 your visit to PP Gulf Coast. You recorded the entire meeting
5 at PP Gulf Coast; correct?

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

7 **Q.** You recorded in the offices, correct?

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

9 **Q.** And you recorded in the pathology lab; correct?

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

11 **Q.** Now, you testified during your counsel's examination that
12 when the videos were released to the public, you posted full
13 footage of each conversation that you taped; correct?

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

15 **Q.** Now, you didn't post full footage of the -- all of the
16 footage that you had taken at the Planned Parenthood
17 conferences, for example; correct?

18 **A.** When CMP has released videos from the Planned Parenthood
19 conferences, we have published the full footage of the
20 conversation with the Planned Parenthood representative that we
21 were releasing.

22 **Q.** But -- but not of all of the footage that you took at the
23 conferences; correct?

24 **A.** Correct. We have not published -- made full publications
25 of the Planned Parenthood conferences from start to finish.

DALEIDEN - REDIRECT / TROTTER

1 Q. And you didn't, for example, post footage of your
2 individual conversations with Mr. Lopez that were recorded;
3 correct?

4 A. Correct.

5 Q. Or Ms. Merritt; correct?

6 A. Correct.

7 Q. Now, I want to turn to NAF for a moment. When you arrived
8 at NAF in 2014 and were handed the Confidentiality Agreement to
9 sign, you didn't say to the person who handed you the
10 agreement: I'm not signing that and I want a refund of my
11 exhibitor fee; correct?

12 A. Correct. I did not say that.

13 Q. And you didn't refuse to sign the document; correct?

14 A. That's correct.

15 Q. During your counsel's examination of you, you testified
16 that there was a three-day period of time where BioMax's status
17 was suspended earlier this year; do you recall that testimony?

18 A. Yes, I believe it was approximately three days.

19 Q. And you testified that the Secretary of State of
20 California was, quote, happy to revive, close quote, BioMax's
21 status for you; correct?

22 A. I don't know if I said the Secretary of State or the
23 Franchise Tax Board, but it was the revivor -- the revival or
24 revivorship, I'm not sure what it's called in noun form, was
25 done at the Franchise Tax Board offices. They faxed the

DALEIDEN - REDIRECT / TROTTER

1 information back and forth between the Secretary of State to,
2 you know, handle both points of it.

3 **Q.** In fact, Mr. Daleiden, BioMax was suspended by the State
4 of California two years ago in 2017; correct?

5 **A.** No, I don't believe that's correct.

6 **Q.** I'd like you to take a look -- and I'm not sure which
7 binder, because you've got four of them there, but I want to
8 refer you to Exhibit 8060.

9 (Brief pause.)

10 **Q.** Do you have 8060 in front of you?

11 **A.** Yes, I do.

12 **Q.** And Exhibit 8060 is a Certificate of Status from the
13 California Secretary of State; correct?

14 **A.** That is what it appears to be.

15 **Q.** And the entity name on it is BioMax Procurement Services,
16 LLC; do you see that?

17 **A.** Yes, I see that.

18 **Q.** And you'll see underneath there there is an entity file
19 date 10/11/2013; do you see that?

20 **A.** Yes, I see that.

21 **Q.** That's the day that you actually formed BioMax with the
22 Secretary of State back in 2013; correct?

23 **A.** Or that's the date when the Secretary of State actually
24 endorsed the organization of BioMax. I believe that we sent
25 the forms in sometime prior to that.

DALEIDEN - REDIRECT / TROTTER

1 **MS. TROTTER:** Your Honor, plaintiffs would move 8060
2 into evidence.

3 **MR. LIMANDRI:** No objection.

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

5 (Trial Exhibit 8060 received in evidence)

6 (Document displayed)

7 **BY MS. TROTTER**

8 **Q.** Now, Mr. Daleiden, you'll see underneath what we were just
9 looking at there are some columns, Date and Action and then
10 Date and Action. Do you see where I am?

11 **A.** Yeah, I see that.

12 **Q.** And the first date listed is October 9, 2017. Do you see
13 that?

14 **A.** Yeah, I see that.

15 **Q.** And next to that, under the column that says Action it
16 says "SOS Suspended." Do you see that?

17 **A.** Yes. I see that.

18 **Q.** And that's Secretary of State suspended; correct?

19 **A.** That appears to be what it says.

20 **Q.** And then next to that, on that same line there is the date
21 May 1, 2018; correct?

22 **A.** Yes, I see that.

23 **Q.** And next to that, under the Action column it says "FTB
24 Suspended;" correct?

25 **A.** Yes, I see that.

DALEIDEN - REDIRECT / TROTTER

1 Q. Referring to the Franchise Tax Board of California;
2 correct?

3 A. Yes, I believe that's what it says.

4 Q. And then on the next line, the first date that appears is
5 July 12, 2019; correct?

6 A. Yes, I see that.

7 Q. That was just this past summer; right?

8 A. Yes.

9 Q. And it says "FTB Revivor;" correct?

10 A. Yes.

11 Q. And that's when the Franchise Tax Board revived BioMax
12 Procurement Services; correct?

13 A. Yes, that's correct.

14 Q. And then there is the same date, July 12, 2019, "SOS
15 Revivor;" do you see that?

16 A. Yes, I see that.

17 Q. That's when the California Secretary of State revived
18 BioMax; correct?

19 A. Yes, that's correct.

20 Q. Now, you also testified during your counsel's examination
21 that BioMax had paid six years -- every year, six years' of
22 taxes to the State of California; correct?

23 A. I testified that BioMax had paid six years' worth of
24 taxes.

25 Q. Each year for six years?

DALEIDEN - REDIRECT / TROTTER

1 **A.** No. I said that we had paid six years' worth of taxes.

2 **Q.** In fact, you hadn't paid any of those taxes until the --
3 this past summer of 2019; correct?

4 **A.** We had -- I had -- I had received instructions to treat
5 BioMax as -- simply as a non-profit corporate property for the
6 Center for Medical Progress as a 501(c)(3) and when -- I became
7 aware this summer, in July of 2019, for the very first time
8 that BioMax was suspended by the Secretary of State or the
9 Franchise Tax Board. I received no notification of that in
10 2017 or 2018. This is the first time that I have ever seen
11 these dates anywhere.

12 As recently as July, the beginning of July of 2019,
13 BioMax's status still read as current and active on the
14 Secretary of State website when I would go to check it.

15 But so when all that did come to my attention as a
16 suspension that took place in -- in July of 2019, not in 2017
17 and not in 2019 -- or not in 2017 or 2018, when I became aware
18 of all that and talked to LLC experts and people who could
19 actually tell me what to do, yes, part of -- part of paying --
20 part of all of the revivor process for BioMax included paying
21 six years' worth of taxes to the Franchise Tax Board this
22 summer.

23 **Q.** So I'd like you to turn in your binder to Exhibit 8069.

24 (Witness complied.)

25 **Q.** Exhibit 8069 is the BioMax application to be revived by

DALEIDEN - REDIRECT / TROTTER

1 the Franchise Tax Board; correct?

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

3 **MS. TROTTER:** Your Honor, plaintiffs would move
4 Exhibit 8069 into evidence.

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

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

7 (Trial Exhibit 8069 received in evidence)

8 (Document displayed)

9 **BY MS. TROTTER**

10 **Q.** Now, Mr. Daleiden, I want to focus your attention first on
11 the entity name and address block. It's sort of in the middle
12 of the -- middle of the page.

13 The entity name says BioMax Procurement Services LLC;
14 right?

15 **A.** Yeah.

16 **Q.** And then there is an address, 15333 Culver Drive, and then
17 the abbreviation for suite, 340-819; correct?

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

19 **Q.** And that address in Irvine is the same address as the
20 address for the Center for Medical Progress; correct?

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

22 **Q.** And then you signed this application that was filed with
23 the Franchise Tax Board? That's your name written; right?

24 **A.** Yes.

25 **Q.** And your signature below that?

DALEIDEN - REDIRECT / TROTTER

1 A. Yes.

2 Q. And you signed under your CEO title with the Center for
3 Medical Progress; correct?

4 A. Yes, that's correct.

5 Q. I'd like you to now turn to the second page of the
6 exhibit.

7 (Document displayed)

8 Q. And there are some payments that are reflected on that
9 page; do you see that?

10 A. Yes, I see that.

11 Q. And they are six separate payments for six separate years,
12 from 2013 to 2018; correct?

13 A. Yes, that's correct.

14 Q. And the amounts that are reflected there on each of those
15 line items, those amounts consist of, in part, a mandatory \$800
16 per year LLC tax; right?

17 A. Yes.

18 Q. And then the remainder of each of those amounts are for
19 interest and penalties for late submission; correct?

20 A. Yes, that's correct.

21 Q. None of those amounts that are reflected in any of the six
22 line items are taxes that are payable on some revenues or
23 income of BioMax; correct?

24 A. That's correct.

25 Q. There is a check that is reflected in the bottom half of

DALEIDEN - REDIRECT / TROTTER

1 the page, and this was a cashier's check that you had prepared
2 to send to the Franchise Tax Board for payment of the back
3 taxes; correct?

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

5 **Q.** The total amount of the check was \$6,571.35; correct?

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

7 **Q.** And that was -- according to the check itself, that was a
8 purchase that was made by the Center for Medical Progress;
9 correct?

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

11 **Q.** Not BioMax; correct?

12 **A.** BioMax is owned by the Center for Medical Progress.

13 **Q.** You testified during your counsel's examination that the
14 Center for Medical Progress did the entire project prior to the
15 release of the videos for a total of \$120,000; correct?

16 **A.** I think I testified that the total budget of the project
17 was \$120,000, that's correct.

18 **Q.** During the -- the very first video was released during the
19 year -- calendar year 2015; correct?

20 **A.** Could you ask me that one more time?

21 **Q.** Sure. The first publicly released video of the project
22 was released during the calendar year 2015; correct?

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

24 **Q.** And during that calendar year that the first video was
25 released, the Center for Medical Progress received nearly a

DALEIDEN - REDIRECT / TROTTER

1 half a million dollars in contributions and grants; correct?

2 **A.** I think that our total, our -- our total contribution
3 receipts in 2015 were around \$460,000, the vast majority of
4 which came after the release of the first video. So the second
5 half of the year.

6 **Q.** I'd like you to turn to Exhibit 397.

7 (Witness complied.)

8 **Q.** Exhibit 397 is a -- what's called a Form 990 that was
9 prepared on behalf of the Center for Medical Progress; correct?

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

11 **Q.** And that's for the calendar year 2015; correct?

12 **A.** Yes.

13 **MS. TROTTER:** Your Honor, plaintiffs would move
14 Exhibit 397 into evidence.

15 **MR. LIMANDRI:** Your Honor, I'm going to object. All
16 of this is beyond the scope of my cross-examination and it's
17 not relevant. I didn't get into any of this.

18 **THE COURT:** Overruled on that because the budget was
19 discussed. So I'll allow it.

20 It's admitted.

21 (Trial Exhibit 397 received in evidence).

22 (Document displayed)

23 **BY MS. TROTTER**

24 **Q.** The Center for Medical Progress continued to have prepared
25 for it Form 990s beyond 2015; correct?

DALEIDEN - REDIRECT / TROTTER

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

2 **Q.** And the Center for Medical Progress had prepared for it a
3 Form 990 for 2016?

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

5 **Q.** I'd like you to take a look at Exhibit 398.

6 (Witness complied.)

7 **Q.** Exhibit 398 is the Center for Medical Progress 990 for the
8 calendar year 2016; correct?

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

10 **MS. TROTTER:** Plaintiffs would move Exhibit 398 into
11 evidence.

12 **MR. LIMANDRI:** Object on relevance, Your Honor. 403.

13 **THE COURT:** Sustained.

14 What's the relevance of this document?

15 **MS. TROTTER:** Well, Your Honor, on opposing counsel's
16 examination there was testimony about not doing any of this for
17 money, et cetera. So we're, I think, entitled to provide
18 information with respect to the finances.

19 **MR. LIMANDRI:** It's a non-profit, Your Honor. We
20 could not ask --

21 **THE COURT:** Yeah. I'm not allowing this into
22 evidence. Sustained.

23 **BY MS. TROTTER**

24 **Q.** You testified during Ms. Dhillon's examination that Center
25 for Medical Progress did not register for or attend the

DALEIDEN - REDIRECT / TROTTER

1 conferences that are at issue in this case; do you recall that
2 testimony?

3 **A.** Yes.

4 **Q.** You testified that it was BioMax that registered and
5 attended; correct?

6 **A.** Yes.

7 **Q.** Ms. Merritt was an independent contractor with a contract
8 with Center for Medical Progress; correct?

9 **A.** To attend on behalf of BioMax, that's correct.

10 **Q.** She didn't have an independent contractor agreement with
11 BioMax Procurement Services, LLC; correct?

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

13 **Q.** Mr. Lopez didn't have an independent contractor agreement
14 with BioMax Procurement Services, LLC; correct?

15 **A.** That's correct.

16 **Q.** He had an independent contractor agreement with the Center
17 for Medical Progress; correct?

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

19 **Q.** Ms. Bettisworth didn't have an independent contractor
20 agreement with BioMax; correct?

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

22 **Q.** She had an independent contractor agreement with the
23 Center for Medical Progress; correct?

24 **A.** To attend on behalf of BioMax, that's correct.

25 **Q.** BioMax never had any employees; correct?

DALEIDEN - FURTHER RECROSS / LiMANDRI

1 A. Not formal employees, no.

2 Q. BioMax never had any independent contractors; correct?

3 A. Correct.

4 MS. TROTTER: One moment, Your Honor.

5 (Discussion held off the record amongst plaintiffs'
6 counsel.)

7 MS. TROTTER: No further questions, Your Honor.

8 Thank you.

9 THE COURT: All right. Mr. LiMandri.

10 FURTHER RECROSS-EXAMINATION

11 BY MR. LiMANDRI

12 Q. Good afternoon, Mr. Daleiden.

13 A. Hi.

14 Q. Now, you were asked some questions about Mr. Alberty's
15 testimony before Congress.

16 Is it your understanding that he actually recanted
17 anything he said or that he -- rather, he said he had no
18 personal knowledge of certain matters that he was asked about?

19 MS. TROTTER: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. LiMANDRI

22 Q. What's your understanding of the nature of the so-called
23 recantation?

24 A. My understanding is that Mr. Alberty didn't recant any
25 actual allegations.

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 My understanding is that he signed an affidavit clarifying
2 that he didn't have personal knowledge or expertise about
3 issues like the finances of a given clinic or a given tissue
4 procurement organization. And he didn't have medical expertise
5 in terms of how an abortion procedure is typically done versus
6 could possibly be changed versus what a particular abortion
7 provider decided to do or was asked specifically to do for a
8 specific patient.

9 And furthermore my understanding is that Mr. Alberty never
10 recanted, signed any kind of affidavit questioning or walking
11 back or in any way modifying his sworn testimony to Congress;
12 that he had seen 24-week old twins drowned in the Planned
13 Parenthood in Kansas and that sometimes he cut open the chests
14 of fetuses and saw that their hearts were still beating when he
15 was harvesting from them.

16 **Q.** Now, did you also talk to Mark Crutcher from Life
17 Dynamics, who was in charge of that investigation involving
18 Mr. Alberty back in the 2000 time frame?

19 **A.** Yes, I did. I talked to Mark very extensively.

20 **Q.** And did he produce documentation that confirmed that, in
21 fact, fetal tissue was being sold for a profit?

22 **A.** Yes, he did.

23 **Q.** Including we saw in Exhibit 24 -- I don't know if we need
24 to show it again, but on Page 9 of 14 I remind you there was a
25 menu that had actually pricing of fetal organs; do you remember

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 that?

2 **A.** Yes.

3 **Q.** Was that from the investigation in that time frame that
4 was actually shown on the 20/20 video?

5 **A.** Yes, it is.

6 **Q.** And we saw the 20/20 video. Is there any recantation as
7 to whether or not the doctor featured in that video, a doctor
8 Miles Jones, that he was admitting that they were projecting
9 profits of potentially \$50,000 a week? Do you remember that on
10 the video?

11 **A.** Yeah. Yes, I remember that.

12 **Q.** That's not recanted by anybody, was it?

13 **A.** I think that if Mr. Alberty was clarifying that he didn't
14 have personal knowledge of the finances, he certainly couldn't
15 say that he had any personal knowledge to recant of Miles
16 Jones' own statements on the undercover video.

17 **Q.** And with regard to change in abortion procedures, we saw a
18 gentleman being interviewed. I believe it's from a company
19 called AGF. He said that they were donating special syringes
20 for the abortion procedures so they could get better fetal
21 tissue; do you remember that?

22 **A.** Yes. That was James Bradley, who -- Bardsley, who helped
23 train Linda Tracy, the founder of Advanced Bioscience Resources
24 that works with plaintiffs Planned Parenthood of Pacific
25 Southwest.

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 Q. And there was no recantation of his statements that we all
2 saw and heard on the video, that that sometimes prolonged the
3 abortion procedure and made it more uncomfortable; is that
4 correct?

5 A. Correct.

6 Q. Now, have you heard of the term "prosecutorial
7 discretion"?

8 A. Yes, I have.

9 Q. Are you aware that prosecutors can sometimes decide not to
10 prosecute cases, even if there was wrongful conduct involved?

11 MS. TROTTER: Objection. Leading and lacks
12 foundation.

13 THE COURT: Sustained.

14 BY MR. LIMANDRI

15 Q. You don't know if the failure to prosecute anybody back in
16 that 2000 time frame was due to a lack of wrongful conduct or
17 some political decision? You have no idea one way or the
18 other, do you?

19 MS. TROTTER: Same objection.

20 THE COURT: The question is whether he -- that he
21 doesn't know?

22 MR. LIMANDRI: Right.

23 THE COURT: Okay. That's okay. You may answer that
24 question.

25 A. Correct. As I testified earlier today, the news article

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 that I remember seeing about the end of --

2 **THE COURT:** Just answer that short question. You
3 don't know.

4 **THE WITNESS:** Correct. And I --

5 **THE COURT:** Okay.

6 **MR. LIMANDRI:** Fair enough. Thank you, Your Honor.

7 **BY MR. LIMANDRI**

8 **Q.** Thank you, Mr. Daleiden.

9 With regard to the project proposal, you were asked about
10 a similar version in the same time frame. Again, the project
11 proposal was Exhibit 24.

12 And I could pull it up again, but to save time did that,
13 in fact, include information on the article in "Circulation"
14 magazine that was on the diagram we showed the jury of things
15 you relied on and believed in?

16 **A.** Yes. But the project proposal was forward looking and
17 future looking as a proposal for potential donors.

18 It was not a historical overview of the controversy in
19 fetal tissue trafficking up until that point or an exposition
20 on what had been discovered so far. It was a proposal for what
21 needed to be done in the future. That's why a lot of other
22 things were not included.

23 **Q.** The project proposal that we showed the jury as
24 Exhibit 24, it mentioned the Suzanne Rini and her book. That
25 was one of the things you said that you had researched?

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 **A.** Yes, because I thought that the Suzanne Rini book -- I
2 thought that Suzanne Rini's work really captured the moral
3 heart of the problem with fetal trafficking. And so that was
4 why I was including that in that forward-looking proposal for
5 donors as part of why they should care.

6 **Q.** You were asked by Ms. Trotter if you're aware if laws
7 changed in regard to protection of born alive infants.

8 Have you had an understanding as to whether or not it's
9 always been the law that if an infant is born alive, whether
10 it's intended or not, it's still considered a person? Do you
11 have an understanding whether that's always been the case?

12 **A.** Certainly under many state laws, yes. There has always
13 been protections for infants born alive in the process of a
14 late-term abortion.

15 **Q.** You were asked about whether or not the article that was
16 from the experiments done at Stanford with the Langendorff
17 perfusion and the fetal hearts from StemExpress, whether there
18 was any mention of Planned Parenthood.

19 Were you able to independently confirm where StemExpress
20 was obtaining fetal tissue and organs at that time?

21 **A.** Yes, I was.

22 **Q.** And where were they obtaining at that time?

23 **A.** They were obtaining fetal organs and tissues from
24 plaintiffs Planned Parenthood Mar Monte and plaintiffs Planned
25 Parenthood Northern California.

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 Q. And were you able to confirm, in consultation with experts
2 at the time who were familiar with the Langendorff perfusion,
3 as to whether or not the fetal hearts would have to be beating
4 when they were removed from the infant if they were going to be
5 used for that type of procedure?

6 MS. TROTTER: Objection. Leading.

7 THE COURT: Overruled. You can explain your
8 understanding.

9 A. Yes. My -- my understanding was that Langendorff
10 perfusion basically translates as beating hearts.

11 Q. Okay. Without having to pull up the exhibit again, did
12 you actually put in that project proposal as to people you
13 consulted with, including the names of Dr. Theresa Deisher and
14 Mr. Mark Crutcher?

15 A. Could you ask me that question one more time?

16 Q. Yeah. You were asked about what was in the project
17 proposal and what wasn't. In the version I showed you from the
18 same time frame, Exhibit 24, which I have here, did you
19 actually list the names of Theresa Deisher and Mark Crutcher?

20 A. Yes. In the full final version of that project proposal
21 that was -- that was completed by the end of February 2013, I
22 listed both of those individuals as people I was consulting
23 with for their expertise on the different issues involved.

24 Q. And Dr. Deisher was at Stanford and was familiar with the
25 Langendorff perfusion?

DALEIDEN - FURTHER RECROSS / LiMANDRI

1 **A.** Yes, she was.

2 **Q.** The jury was shown the driver's license you got from the
3 gentleman that you located on Craigslist, which has been marked
4 as Exhibit 7127-2.

5 Does that appear to you to be firmer than the one that
6 you, yourself, made? More firm, like a real driver's license?

7 **A.** So actually, to me, that driver's license is much too
8 firm. It's a very rigid kind of PVC plastic.

9 And maybe even more significantly, the two -- the two mock
10 driver's licenses don't match each other in the coloration and
11 the thickness and the weight and the feel. So anyone who
12 examined the two of them together would know that there were --
13 would know that they were not authentic.

14 **Q.** Did the Susan Tennenbaum one look discolored, kind of
15 yellow-ish, compared to a normal driver's license?

16 **A.** Yeah, definitely.

17 **Q.** Okay. You were shown Exhibit 8060 by Ms. Trotter, which
18 was documentation regarding the status of BioMax, which
19 apparently was procured only two days ago, showing that there
20 was a suspension, apparently you were unaware of, as were we,
21 back in 2017.

22 **THE COURT:** Mr. LiMandri. Mr. LiMandri, if you would
23 just ask a question and not testify.

24 **MR. LiMANDRI:** Okay.

25

DALEIDEN - FURTHER RECROSS / LIMANDRI

1 BY MR. LIMANDRI

2 Q. Were you ever made aware by any official notification or
3 anything you could even see on the website that there was any
4 suspension prior to the time frame of July 2019?

5 A. No. I had reviewed the public records for BioMax
6 available on the California Secretary of State's website
7 frequently throughout the past four years, including as
8 recently as right before the 4th of July weekend this summer.
9 And as recently as that time the Secretary of State listed
10 BioMax as active and current for its status. And it was only
11 after checking the week after that that I saw that it had been
12 suspended.

13 When I visited the Franchise Tax Board in person in
14 Santa Ana, they gave me a document that listed the issue notice
15 date of the suspension as July 10th, 2019.

16 Q. So prior to today and prior to what you were just shown
17 for the first time, you had no information that there was any
18 suspension prior to July 10, 2019?

19 A. That's correct.

20 Q. But in any event, was BioMax, from the documentation you
21 were shown even today, in good standing throughout the entire
22 course of the CMP investigation?

23 A. Yes, that's correct.

24 Q. Okay. And it's in good standing now?

25 A. Yes, it is.

DALEIDEN - RECROSS / MIHET

1 Q. And you've paid all the taxes promptly that they indicated
2 should be paid?

3 MS. TROTTER: Objection. Leading.

4 THE COURT: Overruled.

5 BY MR. LIMANDRI

6 Q. You were shown information about CMP and the money that it
7 generated from donations. CMP is a non-profit; correct?

8 A. Yes, that's correct.

9 Q. That money doesn't go to you; does it?

10 A. No, it doesn't.

11 Q. In fact, you're just a salaried employee?

12 A. That's correct.

13 MR. LIMANDRI: I have nothing further. Thank you,
14 Your Honor.

15 Thank you, Mr. Daleiden.

16 THE COURT: All right.

17 RECROSS EXAMINATION

18 BY MR. MIHET

19 Q. Mr. Daleiden, in the 20/20 video at one point Chris
20 Wallace, the reporter, says:

21 "Alberty's allegations are only part of the
22 story. Some of the most troubling evidence we found
23 came from our undercover conversation with Dr. Jones."
24 Had you seen that part of the video?

25 A. Yes, I did.

DALEIDEN - RECROSS / MIHET

1 Q. And by "Dr. Jones," did you understand that he was
2 referring to Miles Jones, the doctor from Open Lines that had
3 been recorded undercover at that restaurant meeting?

4 A. Yes.

5 Q. Now, in the video Dr. Miles Jones refers to the human
6 fetus as a "golden goose" and he says that he could make up to
7 \$2,500 profit per fetus --

8 MS. TROTTER: Objection --

9 BY MR. MIHET

10 Q. Did you ever --

11 MS. TROTTER: -- 402 and 403.

12 THE COURT: You can finish your question, but I do
13 think that you've now gone beyond the scope of the -- of even
14 the cross. So --

15 MR. MIHET: Can I finish?

16 THE COURT: Go ahead.

17 BY MR. MIHET

18 Q. Did he ever retract those particular statements?

19 THE COURT: Okay. So --

20 MS. TROTTER: Objection. Beyond the scope.

21 THE COURT: I'll sustain the objection, beyond the
22 scope.

23 MR. MIHET: Okay.

24 BY MR. MIHET

25 Q. In the video Chris Wallace said that he showed what he had

DALEIDEN - RECROSS / MIHET

1 found to an Arthur Caplan, the Director of the University of
2 Pennsylvania Center for Bioethics. Do you remember that part
3 of the video?

4 **A.** Yes, I do.

5 **MS. TROTTER:** Objection. Beyond the scope.

6 **THE COURT:** Sustained.

7 **BY MR. MIHET**

8 **Q.** Did Mr. Caplan retract any of the statements that he made?

9 **THE COURT:** Sustained.

10 I think -- we've gone into the 20/20 video in some great
11 detail and it did not come up in the -- in this -- on these
12 topics in the cross.

13 **MR. MIHET:** So do I understand the Court's ruling to
14 mean I cannot ask about whether any of the other statements
15 were retracted, whether they were --

16 **THE COURT:** That would be correct. But if you want
17 to talk about Mr. Alberty, I think that's fair game.

18 **MR. MIHET:** Okay.

19 **BY MR. MIHET**

20 **Q.** Mr. Daleiden, based on all of the statements in the 20/20
21 video that had not been retracted, what was the understanding
22 that you had following your review of that video with respect
23 to whether or not illegal actions were taking place in the
24 fetal tissue procurement market and whether they needed to be
25 investigated?

DALEIDEN - RE CROSS / MIHET

1 **MS. TROTTER:** Objection. Beyond the scope. 403.

2 **THE COURT:** Sustained.

3 **BY MR. MIHET**

4 **Q.** I thought we already established there were some
5 conferences that you attended without Ms. Merritt?

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

7 **Q.** And so were there instances where you had to present an
8 ID, where only your ID was presented and not also
9 Ms. Merritt's?

10 **A.** Yes.

11 **Q.** And in any of those instances did anyone looking at your
12 homemade ID have the same reaction that the bar bouncer had,
13 which is to tell you to take a hike because it's clearly a
14 fake?

15 **A.** Well, no. At the Planned Parenthood conferences that I
16 attended with Adrian, that Ms. Merritt did not attend, so those
17 were the conferences where the only mock driver's license
18 presented was mine. Adrian used his real one.

19 Like I testified previously, I didn't actually remove the
20 Robert Sarkis ID from my wallet. I just held it like this
21 (indicating) and showed it to Vikky Graziani from about 2 feet
22 away.

23 **Q.** And did Ms. Graziani or anyone else ever ask you to remove
24 the ID from your wallet and to present it to them for even a
25 cursory inspection?

DALEIDEN - RECROSS / MIHET

1 **A.** No. They never asked to handle or even cursorily inspect
2 the document. They were solely trying to match it up with the
3 name on the badge that we previously purchased.

4 **Q.** Okay.

5 **MR. MIHET:** Your Honor, based on the questioning of
6 the witness by the plaintiffs, I would ask the Court to
7 reconsider the decision of whether we could admit the
8 "Circulation" article that was discussed.

9 Perhaps we can --

10 **THE COURT:** We can take that up.

11 **MR. MIHET:** Okay.

12 **BY MR. MIHET**

13 **Q.** One last question. To your knowledge, Mr. Daleiden, is
14 Dean Alberty the only person to retract a statement that was
15 made in the 20/20 video?

16 **A.** I don't remember if he retracted any statements. To my
17 knowledge, Dean Alberty is the only person involved in the sort
18 of initial exposure and controversy in the year 2000, who --
19 who signed any kind of affidavit, you know, with any further
20 kind of weighing or factoring of what he had said previously.

21 **Q.** Thank you, sir.

22 **THE COURT:** Ms. Trotter, anything further?

23 (Off-the-Record discussion between counsel)

24 **MS. TROTTER:** Your Honor, can we have a quick sidebar
25 on one issue that I would like to do out of the hearing of the

DALEIDEN - RECROSS / MIHET

1 jury?

2 **THE COURT:** Um, yes.

3 **MS. TROTTER:** Or if we can reserve the possibility of
4 calling -- I know Mr. Daleiden will be here to address it at a
5 later point.

6 **THE COURT:** There are a couple of issues that are
7 hanging. So, so, I would -- I would prefer that we just keep
8 the train moving.

9 **MS. TROTTER:** Fair enough. If we could do just
10 subject to recall, depending on Your Honor's ruling.

11 **THE COURT:** Okay. Otherwise, are you done?

12 **MS. TROTTER:** Yes.

13 **THE COURT:** Okay. Mr. Daleiden, you can step down.

14 **THE WITNESS:** Thank you.

15 (Witness excused)

16 **MS. TROTTER:** Your Honor, in the interest of time,
17 I'm going to move along.

18 We have a videotape presentation, a witness by videotaped
19 deposition. Mr. Cronin. It's about 30 minutes long. Can we
20 go over just a bit to try to conclude it?

21 **THE COURT:** All right. All right. Let's do that.

22 **MS. TROTTER:** Start it right now?

23 **MS. STERK:** And for the record, the breakdown of time
24 is 25 minutes and 43 seconds for plaintiffs, five minutes and
25 five seconds for the defendants.

DALEIDEN - RECROSS / MIHET

1 **THE COURT:** Okay.

2 **MS. STERK:** And Exhibits 582 and 583, we would like
3 to admit prior to showing this video.

4 **THE COURT:** 582 and 583?

5 **MS. STERK:** Correct.

6 **MR. JONNA:** I don't know what they are.

7 **THE COURT:** Which ones are they?

8 Did the defendants have an objection to these? Or do you
9 know what they are?

10 **MR. LIMANDRI:** I don't know what they are. Sorry,
11 Your Honor.

12 **THE COURT:** Okay.

13 **MR. LIMANDRI:** I'm told they're okay, so we will not
14 object.

15 **THE COURT:** Okay. They're admitted. And let's
16 proceed.

17 (Trial Exhibits 582 and 583 received in evidence)

18 **PHILLIP S. CRONIN, PLAINTIFFS' WITNESS, BY VIDEOTAPED TESTIMONY**

19 (Videotaped deposition played in from 12:38 p.m. to.
20 1:09 p.m.)

21 **THE COURT:** All right. Ladies and gentlemen, I
22 apologize for holding you over. But it's all in the service of
23 completing the time and the time's -- within the time that we
24 need to do. So please remember the admonitions. And I'll look
25 forward to seeing you in the morning.

PROCEEDINGS

1 (Jury exits the courtroom at 1:09 p.m.)

2 **THE COURT:** All right, we will be in recess.

3 **MR. LIMANDRI:** Your Honor, am I able to talk to my
4 client? Or is he subject to recall?

5 **THE COURT:** You are entitled to talk to your client.
6 And if there's more to talk with him about -- you can talk with
7 him.

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

9 (Whereupon at 1:10 p.m. further proceedings
10 were adjourned until Friday, November 1, 2019,
11 at 7:30 a.m.)

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I N D E X

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Belle Ball

Belle Ball, CSR 8785, CRR, RMR, RPR

Thursday, October 31, 2019