

27178
Vancouver Registry

In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MADAM JUSTICE HOLMES AND JURY)

Vancouver, B.C.
June 12, 2017

REGINA

v.

PATRICK HENRY FOX

PROCEEDINGS AT TRIAL
(Excerpt - Testimony of Desiree Capuano)

COPY

**BAN ON PUBLICATION;
INHERENT JURISDICTION**

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INHERENT JURISDICTION**

Crown Counsel:

M. Myhre

Appearing on his own behalf:

P. Fox

Defence Counsel:

**A.J. Lagemaat
M. Chatha, A/S**

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RULINGS

Nil

Proceedings

BAN ON PUBLICATION; INHERENT JURISDICTION

1 Vancouver, B.C.
2 June 12, 2017

3
4 (EXCERPT COMMENCING AT 12:18:30 P.M.)

5
6 (JURY IN)

7
8 THE CLERK: If you could stand, please?

9
10 DESIREE CAPUANO
11 a witness called for the
12 Crown, affirmed.
13

14 A Yes, ma'am.

15 THE CLERK: Please state your full name and spell your
16 last name for the record.

17 A Desiree Capuano, C-a-p-u-a-n-o.

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: Now, before you start, Mr. Myhre, I would
20 just like to say a couple of things to the jury
21 about some of the procedures we're following.

22 You're going to have to move out of my way,
23 please. Thank you.

24 Members of the jury, you may have noticed
25 that Ms. Capuano, who is the next witness, is
26 testifying behind a screen that has been placed
27 next to her, but in a fashion that allows you to
28 see her, and also has with her a support person.

29 MR. MYHRE: Ms. Michelle Vickers.

30 THE COURT: All right. Thank you. Who is someone Ms.
31 Capuano knows and who will play absolutely no part
32 in Ms. Capuano's testimony.

33 These procedures, using the screen and having
34 a support person with Ms. Capuano are used simply
35 to give her, as a witness, a comfortable situation
36 in which to testify. The fact that we're using
37 these procedures has nothing to do with the guilt
38 or innocence of Mr. Fox. These procedures are not
39 evidence of anything. The fact that the
40 procedures are used must not affect your
41 assessment of the evidence in any way. Thank you.

42 Ms. Capuano's just shifted over a little bit
43 in the witness box. All right.

44 Now, with Mr. Myhre standing where he's now
45 standing, does that obscure anybody's view?

46 MR. MYHRE: You can see around me? Okay.

47 THE COURT: Thank you.

Desiree Capuano (for Crown)
in chief by Mr. Myhre
BAN ON PUBLICATION; INHERENT JURISDICTION

1

2 EXAMINATION IN CHIEF BY MR. MYHRE:

3

4 Q Ms. Capuano, you are 36 years old?

5 A Yes.

6 Q You were born in Florida, you grew up in Alaska
7 and then Washington?

8 A Yes.

9 Q And you currently {GR} in Arizona?

10 A Yes.

11 Q Generally speaking, you work in the IT field?

12 A Yes.

13 Q You live, right now, with your partner, James
14 Pendleton?

15 A Yes.

16 Q You've been dating -- or you started dating him in
17 July of 2014?

18 A Yes.

19 Q And you moved in together in the summer of 2015?

20 A Yes.

21 Q You have two sons, {SC} and {GR}?

22 A Yes.

23 Q {GR}'s 16?

24 A Yes.

25 Q {SC} is 13?

26 A Yes.

27 Q And I understand that in January of 2000, you met
28 a person named Richard Riess at a bar in Phoenix?

29 A Yes.

30 Q You were 19?

31 A Yes.

32 Q And how old was Richard?

33 A Twenty-five. 24, 25.

34 Q At some point, Richard Riess stopped using the
35 name Richard Riess?

36 A Yes.

37 Q Roughly, when was that?

38 A The summer of 2014.

39 Q And what name did he start using?

40 A Patrick Fox.

41 Q In March of 2000, you became pregnant with
42 Richard's child?

43 A Yes.

44 Q The two of you got married in Las Vegas in August
45 of 2000?

46 A Yes.

47 Q And {GR} was born somewhat prematurely in

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in chief by Mr. Myhre
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- 1 September of 2000?
- 2 A Very prematurely.
- 3 Q You separated from Mr. Fox, or Mr. Riess, in 2001?
- 4 A Yes.
- 5 Q Or the two of you separated. There was a custody
- 6 battle over {GR} at that point in time?
- 7 A Yes.
- 8 Q There were court hearings involved?
- 9 A Yes.
- 10 Q And at the end of it, I understand there was a
- 11 joint custody order where {GR} was to go back
- 12 and forth between your home in Florida, and
- 13 Richard's home in California?
- 14 A Yes.
- 15 Q What was your belief about your marital status
- 16 with Richard at the end of the court proceedings?
- 17 A I was under the impression that the divorce
- 18 proceedings were included with the custody so that
- 19 had been taken care of. I was young and naive,
- 20 but --
- 21 Q You were 21 when the custody --
- 22 A Yes.
- 23 Q -- was resolved? I understand that very shortly,
- 24 within about a month, or so, you did not have the
- 25 funds to fly {GR} back from California?
- 26 A Correct.
- 27 Q And that Richard ended up with custody by default?
- 28 A Yes.
- 29 Q And not long after that, Richard stopped
- 30 communicating with you?
- 31 A Yes.
- 32 Q And you were unable to reach {GR}?
- 33 A Yes.
- 34 Q In 2002, you married a man named Michael Capuano?
- 35 A Yes.
- 36 Q You had your son {SC} with him in 2003?
- 37 A Yes.
- 38 Q I understand the next time you had contact with
- 39 {GR} was in 2005?
- 40 A Yes.
- 41 Q And that Richard had brought {GR} to see your
- 42 mother?
- 43 A Yes.
- 44 Q They had a series of visits, your mother and
- 45 {GR} did?
- 46 A Yes.
- 47 Q But they didn't leave any contact information?

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in chief by Mr. Myhre
BAN ON PUBLICATION; INHERENT JURISDICTION**

- 1 A No.
- 2 Q Did you want to have contact with {GR}?
- 3 A Yes.
- 4 Q Were you doing anything to try to get in contact
5 with him?
- 6 A After 2005, when the phone number didn't work, I
7 did reach out to various sources, legal sources,
8 but never made any progress with finding him.
- 9 Q When you say various sources, who are you
10 referring to?
- 11 A Lawyers, I spoke with attorneys, I spoke with
12 police in various states, Missing Persons, CPS.
13 Q That's Child Protection Services?
- 14 A Correct, sorry, Child Protection Services, yes. I
15 left my information with Child Protective Services
16 in Arizona and California every six months.
- 17 Q So in 2005, did you have any interaction with
18 {GR}?
- 19 A After the phone call, no. I spoke with him on the
20 phone once in 2005 while he was at my mother's
21 house.
- 22 Q I understand that you spoke to him on the phone
23 again in 2007?
- 24 A Correct.
- 25 Q The circumstances of that were that Richard had
26 contacted your mom?
- 27 A Yes.
- 28 Q Asking for your contact information so {GR}
29 could contact you?
- 30 A Correct.
- 31 Q And then {GR} did phone you?
- 32 A Correct.
- 33 Q In 2009, you separated from Michael Capuano?
- 34 A Yes.
- 35 Q And then I understand that in 2011, Richard sent
36 you a letter, inviting you to re-establish some
37 contact with {GR} --
- 38 A Correct.
- 39 Q -- and apologizing for withholding him from you?
- 40 A Yes.
- 41 Q There were a few letters back and forth and then
42 eventually he gave you {GR}'s contact
43 information?
- 44 A Correct.
- 45 Q And it was then that you learned that {GR} was
46 actually living with a friend of Richard's named
47 Liz Munoz, in the Los Angeles area?

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- 1 A Correct.
- 2 Q And then you drove to California and you actually
3 met with {GR} in June of 2011?
- 4 A Yes.
- 5 Q That was the first time you'd seen him since 2001?
- 6 A Yes.
- 7 Q And I understand that initially it was going well,
8 but then very short in -- in July of 2011, Liz
9 told you that she was concerned that you were
10 going to take {GR}, and she told you that she
11 was going to, essentially, hide him from you?
- 12 A Yes.
- 13 Q I understand that after that, you got some legal
14 advice?
- 15 A Yes.
- 16 Q You then drove to California and with the
17 assistance of police, took custody of {GR}?
- 18 A Yes.
- 19 Q Then in October 2011, Richard filed for custody of
20 {GR} in California?
- 21 A Yes.
- 22 Q In November, without having heard from you, I
23 understand that the judge in California ordered
24 that {GR} should be immediately returned to
25 California?
- 26 A Yes.
- 27 Q There was a court hearing where you were heard
28 then?
- 29 A Yes.
- 30 Q In November 2011, and at the end of that, the
31 order was for joint custody with Richard having
32 primary physical custody and a visitation plan
33 where {GR} would visit you on school breaks?
- 34 A Correct.
- 35 Q And how did you feel about that arrangement?
- 36 A I was okay with that arrangement. That was what
37 {GR} said he wanted so --
- 38 Q And you flew {GR} to Arizona for winter
39 break --
- 40 A Yes.
- 41 Q -- over the winter 2012 into January 2013?
- 42 A Yes. Multiple visits throughout 2012, but, yes,
43 also for that one.
- 44 Q And so then again in the summer of 2012 --
- 45 A Yes.
- 46 Q -- he flew to Arizona --
- 47 A Yes.

Desiree Capuano (for Crown)
in chief by Mr. Myhre
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1 Q -- and stayed with you for a period of time?
2 A Yes.
3 Q In October -- on October 2nd, 2012, your then-
4 partner, Chris Lochner [phonetic] got into some
5 trouble with police?
6 A Yes.
7 Q They found a gun that he had stolen and put into
8 your attic?
9 A Yes.
10 Q And he was arrested?
11 A Yes.
12 Q And I understand you separated from Mr. Lochner on
13 that day?
14 A Absolutely.
15 Q And I understand that soon after that, Child
16 Protective Services came to your home?
17 A Yes.
18 Q You later learned from Richard that that was at
19 Richard's instigation?
20 A Yes.
21 Q They actually did a drug test on your hair, I
22 think, they took a sample?
23 A Yes. Yes, they did.
24 Q And eventually Child Protection Services didn't
25 intervene in your home?
26 A No.
27 MR. MYHRE: My Lady, I think this is probably an
28 opportune time for a break.
29 THE COURT: Members of the jury, we'll take the lunch
30 break at this point, and I'll ask you to come
31 back, please, at two o'clock. Thank you.
32
33 (JURY OUT)
34
35 THE COURT: Anything we need to deal with?
36 MR. MYHRE: No, My Lady.
37 THE COURT: Okay. Thank you. We'll resume at 2:00.
38 A Thank you.
39
40 (WITNESS STOOD DOWN)
41
42 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
43 (PROCEEDINGS RECONVENED)
44
45 [PROCEEDINGS IN ABSENCE OF JURY FROM 2:04:22
46 TO 2:20:56 P.M.]
47

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1 (JURY IN)

2
3 THE COURT: Thank you. Members of the jury, I
4 understand there has been some difficulty hearing,
5 in particular Mr. Myhre's questions, and we turned
6 the lectern a little bit, hoping that his voice
7 will project out, and Mr. Myhre has agreed to
8 speak more loudly than he did before.

9 MR. MYHRE: If there's any difficulty, please alert the
10 judge and I'll address it, but thank you.

11

12 **DESIREE CAPUANO, recalled.**

13

14 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**

15

16 Q Ms. Capuano, when we left off before the lunch
17 break, we had sort of come through a very brief
18 summary of the history involving (GR) and
19 yourself and Richard Riess up to 2012?

20 A Yes.

21 Q I'm going to skip ahead from 2012 for a moment,
22 and then we're going to end up going back to 2013,
23 but in March of 2014, you became aware of the
24 existence of a website, www.desireecapuano.com?

25 A Yes.

26 Q You've been to that website?

27 A I have. I have seen it.

28 Q You haven't gone through every last bit of it?

29 A No.

30 Q You're generally aware of some of what's on it?

31 A Yes.

32 Q In preparation for this trial, I showed you a book
33 that I see you have on your lap?

34 A Yes.

35 Q It's titled, "Excerpts from
36 www.desireecapuano.com"?

37 A Yes.

38 Q You reviewed the book?

39 A I have.

40 Q And based on what you've seen of the website, as
41 well as what you know of your own email
42 correspondence with Richard, are what is -- is
43 what's shown in this book accurate? Does it
44 accurately depict the website and your emails?

45 A There have been some modifications to the emails,
46 but for the content, it -- it seems fairly
47 accurate.

**Desiree Capuano (for Crown)
in chief by Mr. Myhre
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1 Q So we'll get to that in a second.
2 MR. MYHRE: My Lady, at this stage, I'd like to tender
3 this book as an exhibit. I have a fresh copy that
4 I'll give to Ms. Capuano.
5 THE COURT: All right. Can copies go to members of the
6 jury at this point?
7 MR. MYHRE: Yes.
8 THE COURT: Members of the jury, Mr. Sheriff is going
9 to distribute copies to you. We're short one copy
10 and so I'm going to ask that two of you share for
11 now, and there will be another copy made
12 available, probably by tomorrow. And then I'm
13 going to say something to you about this book of
14 documents.
15 THE COURT: And this is an admission. You remember I
16 spoke to you about things that are agreed as
17 between the Crown and the defence and you can
18 treat them as fact. It is agreed that the
19 material in this book is an accurate
20 representation of some of the material that
21 appeared on the website that you've heard about as
22 of May 26th, 2016. So I'll say that again. It's
23 agreed that the material in the book you have just
24 been given is an accurate representation of some
25 of the material that appeared on the website as of
26 May 26th, 2016.
27 MR. MYHRE: Thank you, My Lady, and can we mark this as
28 an exhibit before I forget?
29 THE COURT: All right. So that's going to be
30 Exhibit 1, I take it?
31 THE CLERK: Exhibit 1 on the trial proper, My Lady.
32
33 **EXHIBIT 1: Brief titled "Excerpts from**
34 **www.desireecapuano.com"**
35
36 THE COURT: Members of the jury, the copies you've been
37 given are for your reference. The version that
38 Ms. Capuano has just been given will be the
39 official exhibit and it will go with you at the
40 end of the trial into the jury room, but you've
41 got those copies to follow along with now during
42 the trial.
43 MR. MYHRE:
44 Q Ms. Capuano, could I take you to Tab 8, please?
45 A Yes.
46 Q This is a list of emails, mostly purporting to be
47 between yourself and Patrick. In terms of the

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- 1 number and the dates of these emails, we can see
2 they start at the top. The most recent would be
3 May 20th, 2016, and then on the last page, the
4 last one listed is October the 10th, 2011?
- 5 A Yes.
- 6 Q As far as you've been able to tell, is that an --
7 accurate in terms of the number of emails that
8 went back and forth between you and Richard?
- 9 A Yes. Yeah.
- 10 Q Do you think there are any emails, or email chains
11 missing from this list?
- 12 A There -- there might be. I -- I haven't looked,
13 compared.
- 14 Q And then as far as the dates that are on these
15 emails and the dates of the other emails in this
16 book that you've reviewed, do the dates appear to
17 be accurate, as far as you can tell?
- 18 A Yes.
- 19 Q Okay. Now, I'd like you to go to the very end,
20 the last page of Tab 8, and I'm going to suggest
21 that if you flip forward from -- forward in time
22 from that point of view or that point, there are,
23 roughly, 13 pages on a list of emails before you
24 get to October 2012 --
- 25 A Yes.
- 26 Q -- about 13 pages. And there are about 35 emails
27 a page --
- 28 A Yes.
- 29 Q -- and so that's, roughly, 450 emails between
30 October 2011 and October 2012?
- 31 A Yes.
- 32 Q Does that sound, roughly, accurate in terms of the
33 number of communications that were going back and
34 forth between yourself and Richard at that time?
- 35 A Yes.
- 36 Q In a couple of sentences, could you characterize
37 the tone of these email communications between
38 yourself and Richard during that timespan?
- 39 A Between 2011 and 2012?
- 40 Q Yes.
- 41 A Many of the emails from Richard were demanding,
42 ordering, threatening to take me back to court,
43 telling me that -- in -- insulting. They were
44 mean and -- and -- and hostile, and aggressive in
45 nature.
- 46 Q Okay. We're going to go back to some of the high-
47 level events that took place for a minute. I

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- 1 understand that in October of 2012, Richard told
2 you that he had a job offer from a company in
3 Vancouver and he wanted your permission to take
4 {GR} to Vancouver with him?
- 5 A Yes.
- 6 Q You didn't want that?
- 7 A Correct.
- 8 Q Why?
- 9 A I was scared that if he took my son to Canada, I
10 would not see him again.
- 11 Q And in October 2012, Richard filed a motion with
12 the court in California seeking permission to take
13 {GR} to Canada and suspend all visitation with
14 you?
- 15 A Yes.
- 16 Q At that time, your understanding of Richard's
17 legal status in the country was that he wasn't
18 legally allowed to be there?
- 19 A Correct.
- 20 Q And I understand that in November, you called an
21 FBI tip line and told them that you believed
22 Richard was in the country illegally?
- 23 A Yes.
- 24 Q And why did you call the tip line and tell them
25 that?
- 26 A With the intent that he would be deported.
- 27 Q And you told them that if they didn't do anything
28 about it, you would contact the media?
- 29 A Yes.
- 30 Q In early January of 2013, {GR} was staying with
31 you for his winter break?
- 32 A Yes.
- 33 Q And you got a call from Liz Munoz, who told you
34 that Richard had been arrested and detained by the
35 immigration authorities?
- 36 A Yes.
- 37 Q And it was your belief at that time that Richard
38 had been deported?
- 39 A Yes.
- 40 Q Richard then filed a motion with the court in
41 California that was to be heard on March the 20th,
42 or was that already a scheduled hearing?
- 43 A That was already a scheduled hearing.
- 44 Q So there was a hearing scheduled for March 20th,
45 2013 to discuss the issue of custody?
- 46 A Yes.
- 47 Q And did that -- was that to be a mediation?

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- 1 A Yes.
- 2 Q And did it go ahead?
- 3 A No, it was taken off the calendar.
- 4 Q Why?
- 5 A He was removed from the country.
- 6 Q And I understand that on March the 20th, you got a
7 call from the mediator at the court --
- 8 A Yes.
- 9 Q -- who told you that Richard was actually present
10 at the court for the mediation?
- 11 A Yes.
- 12 Q And you then called the FBI?
- 13 A Yes.
- 14 Q And you later learned that Richard was deported
15 again on that date?
- 16 A Yes.
- 17 Q And so then I understand that from that point on,
18 (GR) lived with you?
- 19 A Yes.
- 20 Q Okay. We're going to go back to the book now and
21 go through some of the chronology of what happened
22 from there while also looking at some of the email
23 correspondence between yourself and Richard.
24 Could we go to Tab 9, please? And Ms. Capuano,
25 could you go to the second page, the email that
26 the subject line is, "Last attempt at an amicable
27 resolution"?
- 28 A Yes.
- 29 Q So I want to ask you a couple general questions
30 about this email and all the emails that are in
31 this book. First of all, were you using the
32 web -- or, sorry, the email address,
33 desiree.capuano@gmail.com?
- 34 A Yes.
- 35 Q And was Richard using the address,
36 patrick@desireecapuano.com?
- 37 A No.
- 38 Q What email address was he using?
- 39 A Richardriess@gmail.com.
- 40 Q And if we just look down to the second line of the
41 content of the email, it says [as read in]:
42
- 43 On Sunday, July 21st, 2013, Patrick wrote,
44 "Desiree" . . .
45
- 46 Et cetera. Did the word "Patrick" appear in this
47 email when you received it in 2013?

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in chief by Mr. Myhre
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1 A No.
2 Q What did it say there?
3 A "Richard."
4 Q Other than those differences, the emails that you
5 reviewed in here, do they appear to be accurate
6 copies of the actual correspondence between
7 yourself and Richard?
8 A Most of them had my son also included when he sent
9 them to me.
10 Q And by included, what do you mean?
11 A CC'd on the emails.
12 Q And are you referring to {GR} ?
13 A Yes.
14 Q And then just as far as the dates that are listed,
15 do those appear to be accurate to you?
16 A Yes, the dates do.
17 MR. MYHRE: Okay. At this point, I'd like to invite
18 the jury to review the email, "Last attempt at an
19 amicable resolution." And the way that I intend
20 to proceed by reviewing these emails is to have
21 the members of the jury read the email and then
22 I'll be asking Ms. Capuano a few questions about
23 it. And so maybe just look up at me when you're
24 done reading and I'll start with the questions.
25 THE COURT: Mr. Myhre, this a public trial so
26 everything has to be on the record.
27 MR. MYHRE: This is -- it is an exhibit, My Lady.
28 THE COURT: It is. Is it publicly available?
29 A It's on the website.
30 MR. MYHRE: I would think the members of the public
31 could apply for access to it.
32 THE COURT: Well, I'm not sure we can proceed in the
33 way you're suggesting. Can you not direct her
34 attention to specific portions?
35 MR. MYHRE: It does seem to me that the jury will have
36 to look at this book at some point. It's an
37 exhibit and it will --
38 THE COURT: I think we need to address this so --
39 MR. MYHRE: Very good.
40 THE COURT: Members of the jury, I'm going to ask you
41 to retire to the jury room briefly. Leave all
42 your materials, please, in the courtroom. Nobody
43 will go near them. Thank you.
44
45 (JURY OUT)
46
47 THE COURT: Now, is this a discussion that should be in

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1 Ms. Capuano's presence?

2 MR. MYHRE: I don't think that will be a problem, My
3 Lady.

4 MR. LAGEMAAT: I have no objection to that.

5 THE COURT: All right.

6

7 [PROCEEDINGS IN ABSENCE OF JURY FROM 2:38:12
8 TO 2:44:32 P.M.]

9

10 (JURY IN)

11

12 THE COURT: Thank you, members of the jury.

13

14 **EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:**

15

16 Q So Ms. Capuano, when we left off, we were talking
17 about the email titled, "Last attempt at an
18 amicable resolution," dated June -- or, sorry,
19 July 21st, 2013?

20 A Yes.

21 Q Could you summarize what this email is about?

22 A This email in particular is about Richard's demand
23 that I return [GR] to him immediately,
24 otherwise he threatens very negative
25 repercussions.

26 Q Sorry, he threatens?

27 A Oh, repercussions.

28 Q And what kind of repercussions? And if there's a
29 particular sentence you think --

30 A Okay.

31 Q -- illustrates that, please read it out.

32 A It -- it would be easier.

33 Q Okay. Tell us where it is and read it out for us,
34 please.

35 A It's the third paragraph, starting on the fourth
36 sentence [as read in]:

37

38 And let me be perfectly clear, if we go down
39 that road, every aspect of your life will be
40 scrutinized. His investigator will research,
41 document and record everything you are doing
42 and have done for the past 10 years. Every
43 disciplinary action or behavioural report
44 about [SC] will be brought up. Every single
45 time you, Michael, Christopher, your mother,
46 your brother or anyone else close to you has
47 ever interacted with any law enforcement

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1 officer, not paid a bill on time, will be
2 scrutinized. Every past and present employer
3 and landlord will be interviewed. Every
4 person you've lived with or associated with
5 will be questioned. Every tax return, every
6 credit card bill, every bank account, every
7 medical record including psychological and
8 psychiatric for all relevant people in your
9 life will be found and picked apart. Medical
10 records are confidential but investigators
11 always have a way around that. Every time
12 [SC] choked a kid at school will be found.
13 Every person you've ever had a relationship
14 with or slept with, or even just had a drink
15 with will be found and questioned. Each
16 person that comes to your home or whose home
17 you go to, every person you've worked with,
18 will be researched and questioned. Every
19 person you have ever betrayed, lied to,
20 deceived, misled, will be located and
21 interviewed.

22
23 Q Okay. And we see your response above [as read
24 in]:

25
26 You do what you feel you need to.

27
28 A Yes.

29 Q How would you characterize your response?

30 A I was not going to send my son to Canada.

31 Q Why not?

32 A Again, I felt that if he went up to Canada, I
33 would not see him again and I had custody of our
34 child in the United States.

35 Q Okay. And how did Richard's words that you read
36 out make you feel?

37 A Scared.

38 Q Scared of what?

39 A That he would do this and that I would have to
40 somehow try to fix whatever damage was caused.

41 Q Okay. Now, if we flip back to the previous page,
42 there's an email titled, "One more thing," dated
43 July 21st, 2013, at 11:29 a.m. When was this sent
44 in relation to the email we just looked at?

45 A Same day.

46 Q And I see Mr. Fox's -- or, sorry, Mr. Riess's
47 words there, the third line down [as read in]:

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- 1
2 And when I say I'm willing to lose
3 everything, I mean it. Another difference is
4 that I really don't have anything to lose at
5 this point.
6
- 7 How did you take those words?
8 A I -- I didn't know what to mean -- make of them.
9 I -- it was -- it was just another threat, that he
10 would give up everything to get what he wanted.
11 Q Did {GR} visit Richard at all in Canada in
12 2013?
13 A No. Not until winter break.
14 Q When was that?
15 A December through January 2013 to 2014.
16 Q And was the court involved in that?
17 A Yes.
18 Q Was -- so there -- was there a court order that
19 said --
20 A Yes.
21 Q -- you will send {GR} to Canada?
22 A For these days.
23 Q Okay. If we could go to Tab 10, please, the first
24 email titled, "Your silence," dated March 23rd,
25 2014. And this is Mr. Riess telling you that all
26 of your email correspondence has been posted to a
27 website?
28 A Correct.
29 Q Prior to receiving this email, were you aware of
30 the existence of a website?
31 A I had just found out about it.
32 Q Okay. Tell the jury how you found out about the
33 website?
34 A An email was sent to my work colleagues under the
35 name Desiree Capuano with information between
36 Richard and I, and it had a link to the website.
37 Work colleagues informed me of the email, they
38 informed me of the website, and steps had to be
39 taken to make sure that we secured our network
40 against him, but that's how I found out about the
41 website.
42 Q I understand that at that time you were working
43 for a company called The Apollo Group?
44 A Yes.
45 Q When did you start working with them?
46 A 2008.
47 Q And the Apollo Group owns and operates a number of

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- 1 on-line and physically-situated universities?
2 A Yes.
3 Q Including --
4 A University of Phoenix.
5 Q University of Phoenix. Other than the fact of
6 telling you about this website, is there anything
7 in this email that particularly troubled you?
8 A The whole thing was troubling. The -- the second
9 paragraph was particularly troubling [as read in]:
10
11 It's unfortunate that most people do not want
12 to be the source of another person's
13 embarrassment when they're face to face with
14 that person so they will not tell you that
15 they've seen your website and read your
16 emails. Instead, they'll pretend they had no
17 idea that your website even existed. Then,
18 behind their back -- your back, they'll
19 snicker and joke amongst themselves about
20 what a fool you are and how terrible it is
21 that what you did to your son and how you --
22 and what you continue to do to your son. And
23 when you walk in the room, they'll smile
24 politely and act like your friend.
25
26 Q Okay.
27 A He's talking -- referring to my work colleagues.
28 Q And why do you find that portion significant?
29 A Because at that point, I didn't know if it was
30 true.
31 Q Sorry, to be clear, if what was true?
32 A If my work colleagues were lying to me and reading
33 the website, and talking about me behind my back.
34 Q And how did that make you feel at work?
35 A Humiliated.
36 Q The second-last paragraph reads [as read in]:
37
38 Gee, I hope this doesn't give you a complex.
39 I hate to think of you sitting in a meeting
40 wondering how many of your colleagues have
41 seen pictures of you in your underwear.
42
43 Do you know what Richard was referring to?
44 A It's a picture of me in my -- my bathrobe that he
45 had our son take and then send to him.
46 Q Do you remember the circumstances of how that
47 photo was taken?

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- 1 A I do. I had just gotten out of the shower, I had
2 my bathrobe on. {GR} came in laughing while he
3 was on the phone and said he wanted to take a
4 picture, and I told him I had just gotten out of
5 the shower. He said that was fine, he really
6 wanted to take a picture. He's my son and, of
7 course, so he took a picture and it ended up on
8 the website.
- 9 Q Around that time, you also became aware that there
10 was a LinkedIn profile in your name that you
11 hadn't set up?
- 12 A Correct.
- 13 Q Tell the jury how you found out about that and
14 what it was.
- 15 A I had a project manager, work associate come to me
16 one day and she said, "It's none of my business
17 and I don't judge anybody, but you may not want to
18 put out on LinkedIn that you're a stripper." And
19 I said, "Excuse me," and she said, "Yes, you're
20 LinkedIn profile says you're a stripper and a drug
21 user," and I went to my LinkedIn profile and I saw
22 my main profile, which was fine, and then I saw
23 underneath it a secondary profile that was created
24 and many of my work associates had already
25 connected with the secondary profile. It had the
26 name of a strip club that I apparently worked at
27 and I like to sit around and watch UFC and drink
28 beer and get high in front of my kids.
- 29 Q Okay. What did you do about it?
- 30 A I called LinkedIn and I told them about the
31 situation, and they researched it. They got it
32 taken down. I contacted my work associates and I
33 told them not to connect to that LinkedIn profile,
34 that that was not me. And once it was down, I
35 thought I was done.
- 36 Q Do you remember if that was before or after you
37 found out about the website?
- 38 A It was before.
- 39 Q Okay. So then you subsequently found out about a
40 website?
- 41 A The individuals that had connected to the LinkedIn
42 profile received the first email from Richard,
43 pretending to be me, that had the link to the
44 website in it.
- 45 Q Okay. If we could flip to the next email, it's
46 titled, "Cease and desist," April 28th, 2014. And
47 you emailed Richard [as read in]:

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1
2 Please stop emailing my coworkers' personal
3 email accounts that you managed to obtain
4 through my LinkedIn account pretending to be
5 me. This is harassment and will be treated
6 as such if you do not cease. Your continued
7 attacks have made me fearful for myself and
8 for our son. Moreover, your aggressive
9 behaviour has made it impossible for us to
10 communicate, co-parent or work together to
11 provide a safe, nurturing and positive
12 environment for G, which is all that you and
13 I should be concerned with. I am willing to
14 work with you in regards to G, but not in
15 this hostile environment you have created.
16 Desiree.

17
18 Is that --

19 A Yes.

20 Q -- an accurate copy of the email that you sent to
21 Richard on that day?

22 A Yes.

23 Q When you sent this email to Richard, did you write
24 "[GR]," or did you write "G*"?

25 A I wrote "[GR]."

26 Q Okay. And you told Richard at that point that you
27 were fearful for yourself and your son?

28 A Yes.

29 Q Why were you fearful?

30 A At that point, he had my home address, he had my
31 home phone number, he had my work address, he had
32 my work phone number, he had my income and expense
33 declaration, he had a lot of things that could
34 potentially cause risk to myself and my family up
35 on the website.

36 Q When you say risk, what kind of risk, at the time
37 you wrote this email, was in your mind?

38 A Honestly, just that all of this information was
39 out there. I didn't know who could read it, I
40 didn't know who would take interest in it, I
41 didn't know who would pay attention to it. It was
42 also an attempt to get me fired from my job, and
43 which would have meant that I had no income to
44 provide for my children.

45 Q You perceived it that way?

46 A Yes.

47 Q Did you do anything within your company to try to

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- 1 prevent this kind of thing from happening?
2 A Yes.
3 Q What happened -- what did you do?
4 A It was known as "the Desiree Situation" and I had
5 many meetings with our legal department, our
6 security department, our technology department to
7 block access to the website, to block the email
8 addresses that were coming in, and then the legal
9 department actually worked with GoDaddy in an
10 attempt to take down the website.
11 Q GoDaddy was the Internet --
12 A Provider.
13 Q -- host --
14 A Yes.
15 Q -- hosting website at the time?
16 A Yes.
17 Q Okay. I think we'll go back to that in a little
18 bit. If we could flip to the next email, it's a
19 response to "Cease and desist," the same date.
20 And I'd like to ask you about a couple of things.
21 So we see a line along the left-hand side and
22 that's essentially your email that you had sent to
23 Richard?
24 A Yes.
25 Q And then below that where there is no line, that's
26 Richard's response?
27 A Yes.
28 Q And so in response to what you said, "This is
29 harassment," the response from Richard was,
30 "Technically, it's not." He goes on to say, at
31 the bottom of that paragraph [as read in]:
32
33 There's no private or confidential
34 information being released. Anything which
35 has been or will be published or distributed
36 as either your own words or is completely
37 true, therefore, there is no libel and no
38 basis for a claim of harassment.
39
40 A Correct.
41 Q So what did you understand from that?
42 A That he was telling me that he would -- he would
43 not stop, and that I had no basis for a claim of
44 harassment.
45 Q If I could take you to the next email dated
46 May 2nd, 2014, titled, "Reciprocity." So here,
47 Richard alleges in the first paragraph, he says

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1 [as read in]:

2
3 It also occurs to me that if what you allege
4 is true, and I have, in fact, contacted some
5 of your associates to provide them
6 information which may be damaging to your
7 reputation, then that is merely the same
8 thing you had done when you contacted Steve,
9 my rabbi, et cetera, is it not?

10
11 Did you contact somebody named Steve who was --
12 you understood to be Richard's rabbi?

13 A No, Steve was not Richard's rabbi, Steve Riess is
14 Richard's father. I never contacted a rabbi.

15 Q Did you contact Richard's father?

16 A Yes.

17 Q Did you ask his father for any assistance?

18 A Not at that time. No, not at that time.

19 Q The last paragraph, Richard wrote [as read in]:

20
21 Moreover, when I informed the court of your
22 actions and requested it order you to desist,
23 it refused to get involved.

24
25 What did you understand him to be referring to and
26 what did that mean to you?

27 A Honestly, I have no idea. He -- he made claims
28 that I contacted a bunch of his associates and
29 rabbis, but I didn't even know these people, or
30 who they were, or how to get a hold of them, and I
31 certainly never contacted anyone.

32 Q But specifically with his mentioning here, ". . .
33 I informed the court of your actions and requested
34 it order you to desist, it refused to get
35 involved," do you know what he's talking about?

36 A In the custody court, he told the custody judge
37 that I had contacted these people.

38 Q And did the court refuse to get involved?

39 A There was no evidence.

40 Q Okay. The next email, "Re waiver of rights, dated
41 May 22nd, 2013," and this email chain starts at
42 the bottom of the page with an email from Richard
43 on May 21st, 2014, and he wrote to you [as read
44 in]:

45
46 I hereby serve notice that effective
47 immediately, I waive all my rights with

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1 respect to {GR}.

2

3 And he goes on to try to be explicit that he's
4 saying he's waiving all of his legal rights to
5 custody of {GR}.

6 A Visitation and communication.

7 Q Okay. And we see your response above that. With
8 respect to communication, you say [as read in]:

9

10 I see no reason for anything to change with
11 respect to the communication between you and
12 your son.

13

14 And then on number 3, visitation:

15

16 I don't know how else to explain to you that
17 I think it is important for {GR} to spend
18 time with you.

19

20 So how would you characterize your response to
21 Richard saying he gives up all legal rights?

22 A He had talked about it before so this wasn't the
23 first time that he'd brought it up. It was the
24 first time that he told the lawyer, but at this
25 point, my job as a mom is to make sure that my
26 child has both of his parents so I never -- I
27 wasn't going to restrict their communication. It
28 wasn't restricted at that point. There was no
29 reason to restrict it just because he said this.
30 And he was supposed to get on a plane in a couple
31 days and go see his father so my only concern with
32 this email was did he still want his son for the
33 visitation?

34 Q Okay. And which you address in point number 3(a),
35 you tell him [as read in]:

36

37 If you're unable or unwilling to have {GR}
38 at any time, he can stay with me.

39

40 A Yes.

41 Q You also go on to express a concern in (b):

42

43 Let me be as blunt about this as I can. If
44 you take my son across international borders
45 using anything but his given name and ID
46 issued to him by the United States Federal
47 Government, I will use everything in my power

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1 to see justice done.

2

3 A Yes.

4 Q [As read in]:

5

6 That said, I agree to fly our son to
7 California and agree to fly him to Canada.

8

9 A Yes.

10 Q Your concern there was what?

11 A He was using a different name. He was trying to
12 indicate that my child's name should be a
13 different last name, and he indicated he wanted to
14 believe -- if I'm not mistaken, in this one he was
15 indicating that he was going to be going with my
16 son from California to Canada and I didn't want to
17 lose track of my son. I just wanted to make sure
18 that everything was documented properly.

19 Q So you made an allusion to this -- oh, I
20 understand by this time, then, Richard was no
21 longer going by the name Richard?

22 A I believe so. He had -- he had told me that he
23 had -- he was Patrick Fox.

24 MR. MYHRE: Okay. This might -- there are a few more
25 questions on that line, but it might be a good
26 time for the break, My Lady.

27 THE COURT: All right. Members of the jury, we'll take
28 the afternoon break.

29

30 (JURY OUT)

31

32 THE COURT: Anything to address? All right. Thank
33 you.

34

35 (WITNESS STOOD DOWN)

36

37 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

38

39 (PROCEEDINGS RECONVENED)

40

41 MR. MYHRE: I have concerns about it being on the
42 record.

43 THE COURT: Yes, thank you.

44

45 (JURY IN)

46

47

DESIREE CAPUANO, recalled.

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1 THE COURT: Thank you. Go ahead.

2

3 EXAMINATION IN CHIEF BY MR. MYHRE, CONTINUING:

4

5 Q Ms. Capuano, when we left off, you had just
6 mentioned that at some point, Richard started
7 referring to himself as Patrick Fox?

8 A Correct.

9 Q And that was -- was that, roughly, around the time
10 of this May 22nd email?

11 A It was summer of 2014.

12 Q And how did that happen from -- as far as you were
13 concerned?

14 A It was -- it was very abrupt. There was no
15 documentation to show a name change. There was
16 nothing that I was given to indicate that -- in
17 any way that he was anybody other than Richard
18 Riess until he just said, "I'm Patrick Fox."

19 Q Okay. And did that concern you at all?

20 A Yes.

21 Q Why?

22 A Because this is a different identity, a different
23 identity that was not tied to anything of his past
24 or the child, the custody agreement, or anything
25 else.

26 Q Specifically with regards to (GR) visiting, did
27 that cause you any concern?

28 A Yes. The custody agreement that said he had
29 visitation was to Richard Riess. The birth
30 certificate of my son has the father listed as
31 Richard Riess. The passport that my son has says
32 his father is Richard Riess. And with all of the
33 documentation showing who his father is, if he
34 went out to Canada and he's in the custody of
35 someone named Patrick Fox, who has no
36 documentation that he's also Richard Riess, then
37 if anything were to happen, they would have no
38 idea who my child was supposed to be with. And
39 being that he's in another country, I would have
40 very limited ability to help.

41 Q Okay. If we could turn to the next email, please,
42 dated June 24th, 2014. In this email, in the
43 first paragraph, Richard wrote [as read in]:

44

45 I would like to congratulate you on turning
46 our intelligent, inquisitive, generally
47 proactive son [et cetera et cetera] . . .

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1 into a lethargic, uninterested, unmotivated
2 slug.

3
4 A Yes.

5 Q And then it goes on to give reasons why he's
6 saying that?

7 A Yes.

8 Q And then the second last paragraph, at the bottom
9 second-last sentence [as read in]:

10
11 You turned him into a white trash trailer
12 park pothead boozier. People like you, white
13 trash, are a blight on society and an
14 infection that needs to be lanced.

15
16 And then right at the last line on this page says:

17
18 P.S. you will notice I've cc'd {GR} on
19 this.

20
21 Now, we don't see {GR}'s name at the top. Do
22 you remember if {GR} was actually cc'd on his
23 email?

24 A Yes, he was.

25 Q Okay. Did this email bother you at all?

26 A My son was 14 years old. I had him with me all
27 the time so I was familiar with how teenage boys
28 behave. They're, for the most part, unmotivated
29 so all this did was illustrate to me that he
30 wasn't familiar with typical behaviour of teenage
31 boys.

32 Q Now, specifically with reference to "white trash,"
33 "trailer park," were those terms you'd ever heard
34 from Richard before?

35 A Oh, yes.

36 Q Could you give the jury some idea of the frequency
37 of which you heard that from Richard?

38 A There's about 400 emails and in -- and in a vast
39 percentage, there is some slight indicating that
40 I'm white trash.

41 Q If we could turn to the next email, please?

42 "Waiver of rights," dated July 21st, 2014. The
43 second paragraph, Richard writes [as read in]:

44
45 I also want to be clear that this is not a
46 surrender on my part. I have not given in or
47 given up on anything. That family court case

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1 was getting in my way and had become a
2 nuisance so it had to be severed so I could
3 proceed with my plans.
4

5 Down a few lines [as read in]:
6

7 I explicitly stated, "Wanted," so that the
8 court would have no choice but to grant the
9 request unless you objected, which, of
10 course, you wouldn't because you're an idiot
11 and you have no idea when you're being
12 played, probably due to your narcissism.
13

14 What did you understand Richard to be referring to
15 when he said -- when he talked about his plans?

16 A The plan to destroy my life.

17 Q And so how did this email make you feel?

18 A The -- the part of this email that hurt me the
19 most was where he indicated that he told {GR}
20 that he waived his rights to him and that {GR}
21 seemed taken aback. And it was confusing to me
22 how he cannot understand that any child would be
23 upset when his father told him he was waiving his
24 rights to him, especially because it was getting
25 in the way of his plans to destroy me.

26 Q And could you just explain why that hurt you?

27 A It hurt my son.

28 Q The next email dated the next day, July 22nd,
29 2014, titled, "Telephone communication regarding
30 {GR} ," Richard wrote [as read in]:
31

32 It's obvious from how you conducted yourself
33 on the telephone a few moments ago that
34 you're afraid of and intimidated by me.
35

36 And then he goes down -- on -- if we go to the
37 fourth paragraph:
38

39 Anyway, I couldn't understand a thing you
40 said on the phone because you were trying so
41 hard to say only and exactly what you had
42 rehearsed beforehand while, at the same time,
43 trying not to cry, presumably out of fear and
44 anxiety, and you were all muffled and shit.
45

46 Do you know what phone call he was referring to?

47 A I -- I -- I don't remember exactly.

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- 1 Q Do you remember calling him and having something
2 rehearsed to say and trying not to cry?
3 A Yes. Yes, I do. I don't remember the
4 circumstances.
5 Q How frequently in this period of time did you
6 communicate with Richard over the telephone?
7 A I think are were a total of three times.
8 Q In what time period?
9 A The whole six years. More so in the beginning.
10 Q When you say the beginning, are you referring
11 to --
12 A 2011.
13 Q 2011. If we could go to the next email, please,
14 dated the same day, titled, "Forward Reforward
15 Income Expense Declaration," and Richard writes
16 [as read in]:
17
18 As you can see from the attached screenshot,
19 it seems you've requested that
20 desireecapuano.com be blocked by Apollo's
21 internal network. While I'm assuming you've
22 requested it, what's the matter, are you
23 embarrassed and/or ashamed of the things
24 you've done?
25
26 It goes on:
27
28 There's a few easy workarounds and I'll be
29 sure to implement before the next update is
30 posted to the site.
31
32 And then below that, there's forwarded an email
33 from a David Shroads at Western International
34 University. Do you know who Western International
35 University is?
36 A It's a college owned by Apollo.
37 Q And what did you understand to have been the
38 subject of this email from David Shroads?
39 A I believe Richard sent out a mass communication to
40 people that worked for Apollo or any of the
41 subsequent universities owned by Apollo, including
42 the income and expense declaration that I was
43 required to provide at the custody court.
44 Q And so at the top when Richard writes [as read
45 in]:
46
47 . . . it seems you've requested that

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- 1 desireecapuano.com be blocked by Apollo's
2 internal network.
3
4 Had you requested that?
5 A I didn't have to request it, the company blocked
6 it.
7 Q Okay. The next email dated the same day, titled,
8 "Forward forward medical marihuana program ID."
9 And this is an email, at the top, from Richard to
10 you, but it starts, if we look at the bottom just
11 where there are the little arrows [as read in]:
12
13 On July 22nd, 2014, at 5:02, Desiree Capuano
14 wrote: "Please note, as attached, I do have
15 a medical marihuana card so my use of
16 marihuana is legal and I don't have to
17 explain it or justify it to anyone and what I
18 do in my own home around my own kids is my
19 own business. Desiree Capuano.
20
21 Did you write that email?
22 A No.
23 Q Okay. What did you understand -- sorry, let's
24 just go up a little bit. Then there's an email,
25 Dawn Foster to Desiree Capuano [as read in]:
26
27 What the hell is this? Is he harassing you
28 again?
29
30 Do you know Dawn Foster?
31 A Yes.
32 Q Who is that?
33 A She was my co-worker. She was on my team.
34 Q Okay. And so what do you know about this email on
35 July -- the one at the bottom, "Please note I do
36 have a medical marihuana card"?
37 A I know that he sent it, signed by me, to make it
38 look like it was from me to my work associates.
39 So he sent out another email again to my
40 colleagues, and I only knew about that because she
41 forwarded it over to me.
42 Q Do you have a medical marihuana card?
43 A Yes.
44 Q When did you get that?
45 A 2012.
46 Q Okay. If we then go and look at what Richard
47 wrote to you at the top, in the second paragraph,

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1 he states [as read in]:

2

3 You do realize that the passive dissemination
4 of already publicly-available truthful
5 information, for example, court documents and
6 their attached exhibits is not harassment,
7 right?

8

9 Down:

10

11 Because telling the truth is not illegal and
12 is not harassment.

13

14 And then in the PS section:

15

16 In case you're wondering, from what I'm told,
17 that original message was sent to 681
18 recipients.

19

20 A Yes.

21 Q Okay. How did that make you feel?

22 A Mortified.

23 Q And Ms. Capuano, just as an aside, if you ever see
24 a point in an email where you think something's
25 inaccurate or it's been edited from the actual
26 emails that you received and sent to Richard,
27 please alert us to that.

28 A Okay.

29 Q I take it so far, they've appeared to be accurate?

30 A They have.

31 Q Okay. If we could go to the next email, please?
32 Dated the next day, "Request for a status update"
33 [as read in]:

34

35 Hello, Desiree, it has been a little over a
36 year-and-a-half now since you filed your
37 false report against me to ICE --

38

39 What's ICE?

40 A Immigration Custody.

41 Q

42 -- claiming I was an illegal alien . . .

43

44 Et cetera. Et cetera. He goes on to detail some
45 of the things he's been doing as a parent,
46 criticizing you as a parent.

47 A

Yes.

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- 1 Q And then the last paragraph [as read in]:
2
3 And for all the 1200 or so people that have
4 been bcc'd on this message, I wonder if
5 you've told them about . . .
6
7 And then a number of alleged misdeeds on your
8 part.
9 A Yes.
10 Q Do you know whether this was actually bcc'd to
11 1200 people?
12 A I don't know.
13 Q And just over the page, the first full paragraph:
14
15 Since you decided to stop all communication
16 around the time your website was set up and
17 all your emails to me have been made public,
18 I'm bcc'ing this message to all the
19 recipients that may be associated with you.
20
21 And then he provides your -- or he provides a
22 phone number, an email address and a physical
23 address, and then the website.
24 Now, was that your phone number -- were those
25 your phone numbers at the time?
26 A Yes.
27 Q Was that your actual home address at the time?
28 A Yes.
29 Q Now, in this email, Richard references you
30 stopping all communication with him?
31 A Yes.
32 Q Is that -- was that true?
33 A Yes.
34 Q And why did you do that?
35 A Communication with him wasn't going anywhere and
36 all communication was being put up on one side. I
37 wasn't going to give him anything else.
38 Q I'm sorry, Ms. Capuano, I just couldn't quite hear
39 that.
40 A I wasn't going to give him anything else that he
41 could use against me.
42 Q In the summer of 2014, did {GR} visit with
43 Richard in Canada?
44 A Yes.
45 Q Roughly, what time period?
46 A I don't remember the exact dates. It was sometime
47 between May and July.

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in chief by Mr. Myhre
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- 1 Q And for, roughly, how long?
2 A I think it was about six weeks.
3 Q Could we flip to the next email dated the same day
4 re -- or "Forward re medical marihuana program
5 ID." And Richard writes to you [as read in]:
6
7 It seems from the number of responses I've
8 received today that people are not as
9 supportive of you as you think.
10
11 And then at the end of that paragraph:
12
13 You have to realize that most people will be
14 nice to your face and then look down on you
15 when you leave the room.
16
17 And then the next paragraph:
18
19 I told you I will destroy you slowly and
20 incrementally and legally. I will do so
21 simply by using your own actions and words
22 against you. I gave you two years to provide
23 me an amount of evidence against you.
24
25 How did those words make you feel?
26 A Terrified. I was pretty sure that my
27 communications to him were reasonable, but in his
28 hands, who knows.
29 Q And he goes in the next paragraph down, the third
30 sentence [as read in]:
31
32 And it's only a matter of time until your
33 current employer realizes how full of shit
34 you are and cuts you loose.
35
36 In your mind, did these emails that came from
37 Richard have an impact on your employment at
38 Apollo?
39 A I had support from Apollo, but because of this, I
40 was always more the security threat than anybody
41 else.
42 Q And do you feel that that impacted you in the
43 future, not at this time, but later on?
44 A Yes.
45 Q Could you tell the jury how?
46 A In 2015, Apollo went through layoffs and they were
47 only allowed to keep so many members of each team

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in chief by Mr. Myhre
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1 and even though I had been there for seven-and-a-
2 half years, I was one of the ones let go, and
3 another colleague of mine wasn't. And I -- I was
4 informed through her that the security risks were
5 part of the reason I was selected to be let go.
6 Q When were you let go?
7 A It was September 30th of 2015.
8 Q And then the next paragraph down [as read in]:
9
10 Don't think for one second that anything will
11 ever be more important to me than destroying
12 you. Every moment of my life is focused on
13 the single goal.
14
15 Did you believe that statement?
16 A Yeah. In this email, I also got the impression
17 that he had hired an investigator who was then
18 following me and tracking me.
19 Q Can you point the jury to the spot here where you
20 got that impression?
21 A
22 And you insisted I was full of shit when I
23 informed you about the investigator. As soon
24 as he provides me the name and contact
25 information about your druggie friends and
26 dealers, they'll be smiling right up there on
27 your site alongside you.
28
29 Okay. How did this, telling you there was an
30 investigator, make you feel?
31 A I was always looking around, always. I didn't --
32 I didn't have anything to hide, but thinking that
33 somebody's following you, thinking that somebody's
34 trying to get information about you makes you look
35 around.
36 Q Sorry, makes you?
37 A Look around.
38 Q This insinuation that you have druggie friends and
39 dealers, was that something you had heard from
40 Richard before?
41 A Yes, which didn't make sense.
42 Q Do you know why or from your perspective why that
43 was being said?
44 A I assume that he thought that I had druggie
45 friends. I have a medical marihuana card, I go to
46 a store and buy it. I pay taxes on it so I'm --
47 and I guess he assumed.

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in chief by Mr. Myhre
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- 1 Q Was there anything involving your former partner,
2 Chris Lochner?
- 3 A Yes. That probably had a lot to do with it.
4 He -- he was arrested for using drugs and he knew
5 people. I was not associated with them.
- 6 Q And we went over this pretty quickly this morning,
7 but do you remember when you separated from Chris
8 Lochner?
- 9 A Yeah, October 2nd of 2012.
- 10 Q Okay. The next email, please? Oh, sorry, was
11 there something else?
- 12 A Yeah. He -- he indicates that if he was really
13 motivated, he would do this. I -- I didn't think
14 that it would require him to be motivated. I took
15 this as part of something that he had planned on
16 doing [as read in]:
17
- 18 I would send your resume to every recruiting
19 firm and HR department in Phoenix and Tampa,
20 along with your bio. You will never be able
21 to get another job in IT. It's only a matter
22 of time until your current employer realizes
23 how full of shit you are.
24
- 25 Q I'm sorry, you started by saying how you took
26 that. How did you take that, I just missed that.
- 27 A As part of a plan of things that he intended to
28 do.
- 29 Q Okay. The next email, please, titled, "Use of
30 graphs and access statistics," dated July 24th,
31 2014. Just at the top, Richard writes [as read
32 in]:
33
- 34 As promised here, the usage graphs for the
35 site showing the spikes which follow each
36 time something was published about you.
37
- 38 He goes on to say in the fourth paragraph:
39
- 40 I have not received a single critical email.
41
- 42 And then in the fifth paragraph:
43
- 44 A quick scan of the log reports shows the
45 following are some of the most frequently
46 accessed URLs, and I note in there there's a
47 -- one that's titled "Mugshot." He's

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1 labelled one as, "The picture of you in bed."

2

3 And then he goes on to say [as read in]:

4

5 There also seems to be a lot of interest in
6 the pictures of your bedroom.

7

8 And so did you understand Richard, here, to be
9 referring to the usage statistics for the website,
10 desireecapuano.com?

11 A Yes.

12 Q And how did it make you feel to know that --

13 A He was taunting me, knowing I couldn't do anything
14 about it.

15 Q And how did that make you feel?

16 A Powerless.

17 Q In particular, did it bother you that there might
18 be a picture of you in bed, or pictures of your
19 bedroom on a public website?

20 A Yes.

21 Q Okay. The next email dated July 31st, 2014, if I
22 could just take you to the second page of this
23 email? It appears -- it starts with an email from
24 Richard, saying [as read in]:

25

26 Desiree, please be advised due to my lack of
27 interest in dealing with GoDaddy, I intend to
28 transfer the hosting of the aforementioned
29 domain and all services thereto related to my
30 own servers which are based outside the US
31 and will, therefore, not only -- not be
32 subject to US laws and regulations, but will
33 also be under the exclusive control and
34 authority of, well, me.

35

36 So what did you understand him to be referring to?

37 A Well, he was trying to indicate that he was going
38 to take down the website from GoDaddy and host it
39 himself. He tried to make it seem like it was his
40 idea, but I -- I know that Apollo Group's legal
41 department was working with GoDaddy at that time.

42 Q Okay. Now, if we go back to the other page, this
43 appears to be an email from Richard or Patrick to
44 a Detective Tuchfarber. Do you know who that is?

45 A Yes.

46 Q Who is that?

47 A He is a detective at the Phoenix Police

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- 1 Department. I called the Phoenix Police when I
2 found out about the website and they opened a case
3 and this was the person that was assigned to the
4 case, and he responded to Richard's initial email.
5 Q Okay. And just to be clear, you say you contacted
6 the Phoenix Police Department when you found out
7 about the website. Why did you contact them?
8 A I figured there had to be something that could be
9 done about it. He was contacting my people I work
10 with, my place of employment. He had my personal
11 information up on this website. It felt like the
12 right thing to do.
13 Q From your perspective, did the Phoenix Police
14 Department have any success in getting any of this
15 to stop?
16 A No, the detective made an arrangement with Richard
17 that Richard would stop his harassment as long as
18 the detective investigated my drug use.
19 Q Did the -- was that something communicated to you
20 by the detective?
21 A Yes.
22 Q Did the detective investigate your drug use?
23 A I had a medical marijuana card so insofar as he
24 saw that, yeah. He'd also been to the home, he
25 had seen everything.
26 Q Okay. And did Richard stop the harassment?
27 A For a little while, yes.
28 Q For how long?
29 A I'm not sure exactly.
30 Q And so when you say stopped, do you mean -- what
31 do you mean?
32 A He stopped emailing the people I worked with.
33 Q Do you know whether or not in that period of time
34 he took the website down?
35 A I -- I think it was down shortly after, but I
36 think that's because GoDaddy took it down.
37 Q If we could go to the next email, then. Moving
38 ahead in time to December of 2014, Richard writes
39 to you [as read in]:
40
41 You don't mind if I post that telephone call
42 on the website, do you?
43
44 Do you know what he's referring to?
45 A I -- I called him and spoke with him about
46 something.
47 Q Do you know whether he recorded your phone calls?

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1 A I -- I have no proof he recorded it, but I
2 believed he did, and I believe that they're up on
3 the website so I haven't listened to them on the
4 website so for myself, I don't know if they're
5 there.

6 Q Why do you believe they're on the website?

7 A I think he told me.

8 Q Richard goes on, in the third paragraph, there [as
9 read in]:

10
11 As I was saying when you hung up, a very
12 white trash response to losing a debate, by
13 the way, if you don't allow {GR} to
14 proceed with the visitation as previously
15 agreed, you are actually helping my cause. I
16 know that the best way to hurt you
17 permanently is emotionally, not through your
18 reputation, finances or career. Remember, I
19 told you many months ago that the other stuff
20 I was doing was just to distract you? And
21 what could be more effective than for your
22 child to utterly despise you because of your
23 own actions? By telling {GR} he could not
24 visit for the entire break, then completely
25 revoking that for no reasonable cause, you
26 have completely obliterated the last shred of
27 respect and tolerance he had for you. And
28 there's the other aspect, the court. You
29 see, the court has never seen you try to
30 interfere with visitation before because
31 there's always been an order compelling you.
32 Now I can show the court that you absolutely
33 agreed in writing to the visit, then after I
34 paid for the plane tickets, you refused for
35 what the court will consider a very
36 unacceptable reason. You see, you don't
37 think things through. You're a fool,
38 Desiree, that's why you are where you are.
39

40 A I remember what the call was about.

41 Q What was the call about?

42 A It -- it was about {GR} travelling to Canada
43 and being in Richard's custody without him having
44 documentation showing that he was Richard Riess.
45 And I was telling him that I was not going to
46 allow {GR} to travel to Canada unless he had
47 some documentation showing that he was Richard

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1 Riess.
2 Q Okay. And how did you feel about Richard's
3 comment, ". . . the best way to hurt you
4 permanently is emotionally"?

5 A I knew that's what he was trying to do, and it
6 worked a lot. I know that he was using my son to
7 hurt me.

8 Q Okay. And I'll ask you more about that a little
9 bit later.

10 MR. MYHRE: I did want to get to the last email, but I
11 note the time, My Lady. There's one more email in
12 2014.

13 THE COURT: Go ahead.

14 MR. MYHRE:

15 Q So if we could flip to that last 2014 email, it's
16 titled, "The ugly proof," dated December 17th. Do
17 you remember whether or not [REDACTED] was cc'd on
18 this email?

19 A I don't remember.

20 Q Could I ask you to check that overnight?

21 A Absolutely.

22 Q And so here, Richard tells you he's attaching his
23 BCID, right in the first sentence there [as read
24 in]:

25

26 . . . birth certificate, PAL, and just for
27 good measure, a copy of my most recent
28 paycheque.

29

30 Now, Richard goes on to say in the last paragraph
31 on that page, I'm going to start reading partway
32 into it:

33

34 If you think I'm lying and don't really have
35 a PAL, you can check with [REDACTED].

36

37 What's a PAL, or what did you understand it to be?

38 A -- a gun licence, a Canadian gun licence.

39 Q

40 You need a PAL to get a membership at a
41 shooting range, which he can tell you I have,
42 or I can scan the membership card for you. I
43 can also send you pictures of my pistols and
44 his rifle, which I wouldn't be able to get
45 without a PAL. Face it, man, my name is
46 Patrick, and I have a squeaky clean
47 background and I'm an upstanding member of

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- 1 society who makes pretty decent money and
2 ██████████ (GR) likes me more than he likes you. You
3 have been played, you're a sucker. For
4 years, I was paying a salary in your name
5 through my corporations. You do remember
6 Vertical Inversion Systems, right?
7
- 8 What is that?
9 A It's a company that he incorporated when -- when
10 we were together.
11 Q [As read in]:
12
- 13 And not withholding taxes. You've got
14 thousands in back taxes which eventually the
15 IRS is going to go looking for and if they
16 don't, they're just a phone call away. I'm
17 methodical and think things through. I look
18 at the long-term. Sometimes my plans take
19 years to complete, but I always see them
20 through. PS, I emphasize the PAL because
21 it's hard to get, involves an extensive
22 background check and requires a clean record
23 and proof of good moral standing and
24 psychological stability. If there was any
25 truth to your claims, I would never be able
26 to get it. Do not take any statements or
27 references to firearms above as being in any
28 way threatening. I would never use a firearm
29 offensively or to threaten someone. They are
30 for sport and target practice only.
31
- 32 Did you know, before this email, that Richard had
33 guns in Canada?
34 A I know that he had taken ██████████ (GR) to a shooting
35 range. I did not know that he had guns.
36 Q And so we see Richard explicitly told you why he
37 was telling you about the guns?
38 A That's what he says.
39 Q Okay. How did that make you feel?
40 A He also told me I shouldn't feel offended when he
41 calls me white trash so I didn't really take that
42 at face value.
43 Q Okay. Did knowing that he had guns, or learning
44 that he actually had guns cause you any concern?
45 A Terribly, yes.
46 Q Why?
47 A The birth certificate that was attached in this

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BAN ON PUBLICATION; INHERENT JURISDICTION**

1 email was from Florida so the birth certificate he
2 sent me said that he was Patrick Fox from the
3 United States, but then he sends me a gun licence
4 that says he can purchase firearms in Canada under
5 a name that's not his. The ability to do things
6 with those firearms and not have them traced back
7 to Richard Riess is very easy.

8 Q Was there anything else about this email that you
9 found significant?

10 A No, I -- there's a paragraph where, again, he's
11 calling me a lousy mother and that he does more
12 for our son than I do, but aside that, no.

13 MR. MYHRE: This might be a good time, then, My Lady.

14 THE COURT: All right. Thank you. Members of the
15 jury, thank you very much for you attention
16 through the day today. We're finished for the day
17 and I'll ask you all to be back and ready to
18 continue at the usual time tomorrow. Thank you.

19

20 (WITNESS STOOD DOWN)

21

22 (JURY OUT)

23

24 (PROCEEDINGS ADJOURNED TO JUNE 13, 2017, AT
25 10:00 A.M.)

26

27

28

29 Transcriber: I. Lim

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I hereby certify the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability.



I. Lim
Court Transcriber