

27178-2
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 - Excluding Testimony of Desiree Capuano)

COPY

**BAN ON PUBLICATION - INHERENT
JURISDICTION**

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**BAN ON PUBLICATION - 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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BAN ON PUBLICATION - INHERENT JURISDICTION

1 Vancouver, B.C.
2 June 12, 2017
3

4 (JURY OUT)
5

6 THE CLERK: In the Supreme Court of British Columbia,
7 at Vancouver, this 12th day of June, 2017.
8 Calling the matter of Her Majesty the Queen
9 against Patrick Henry Fox, My Lady.
10 MR. MYHRE: My Lady, Mark Myhre appearing for the
11 Crown.
12 MR. LAGEMAAT: My Lady, my name is Lagemaat, L-a-g-e-m-
13 a-a-t, first initial T., and as you're aware, I've
14 been appointed under 486.3(2) to cross-examine the
15 complainant, and with leave of the court I ask
16 that an articling student can be up here to assist
17 with note-tasking, and her name -- last name is
18 Chatha.
19 THE COURT: Just hold on for a moment, please. My
20 computer is frozen.
21 MR. LAGEMAAT: Sorry.
22 THE COURT: Yes. Thank you.
23 MR. LAGEMAAT: And her last name is Chatha, spelled
24 C-h-a-t-h-a, first initial M., articling student.
25 THE COURT: All right. Thank you. No objection?
26 MR. MYHRE: Thanks, My Lady.
27 THE COURT: And, Mr. Fox, generally in the trial you
28 are representing yourself, I understand?
29 THE ACCUSED: Yes.
30 MR. MYHRE: My Lady, there are a couple of things we
31 should address at the outset before the jury comes
32 in.
33 THE COURT: Well, I've got a couple of things, as well,
34 but go ahead.
35 MR. MYHRE: The first is the publication ban. There is
36 a publication ban existing from the Provincial
37 Court proceedings under s. 486.5 of any
38 information that could identify the complainant.
39 I've discussed this with the complainant. She
40 does not want a publication ban. And, so, in my
41 submission, that can be rescinded.
42 THE COURT: I thought I made such an order, or perhaps
43 I just asked whether there was such an order in
44 place and I was told that there was last time we
45 were in court. I just want to make sure that if
46 the ban is to be rescinded that it's rescinded,
47 all versions of the ban are rescinded. All right.

(Jury Out)
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1 And that's definitely her wish?
2 MR. MYHRE: Yes.
3 THE COURT: All right. Any submissions on that, Mr.
4 Fox? Now, who do I ask, Mr. Lagemaat?
5 MR. LAGEMAAT: I'm going to just ask you a couple of
6 questions once we get through this about your
7 intended role of me here in this trial. But it's
8 my understanding I'm here merely to cross-examine
9 the complainant.
10 THE COURT: All right. Mr. Fox, any difficulty with
11 that?
12 THE ACCUSED: No, no. In fact, I fully support that.
13 THE COURT: All right. So, the ban that was previously
14 made under s. 486 point, help me here, Mr. Myhre,
15 I've got it --
16 MR. MYHRE: Point 5.
17 THE COURT: Point 5 of the *Criminal Code*, that
18 restricted the publication of any information
19 identifying Ms. Capuano is rescinded. There is
20 nonetheless a ban that remains in place, a
21 standard ban that applies as a matter of law, that
22 anything that takes place in the courtroom in the
23 absence of the jury, the subject of anything that
24 takes place in the absence of the jury, may not be
25 published in any way until the jury, the *Criminal*
26 *Code* says, has retired to consider its verdict.
27 All right.
28 MR. MYHRE: The next matter, I'd like to deal with a
29 couple of evidentiary issues of things that I
30 don't understand to be disputed by Mr. Fox. And
31 the first one is, you may recall at the pretrial
32 conference Mr. Fox --
33 THE COURT: Can this be done after we've dealt with the
34 jury, and remember, we have two alternates here
35 who may or may not be needed.
36 MR. MYHRE: Yes.
37 THE COURT: All right.
38 MR. MYHRE: Just, then, on the subject of the jury, I
39 understand that Your Ladyship would like me just
40 to canvass the witness list again at some point
41 with them?
42 THE COURT: At some point, yes, but not yet.
43 MR. MYHRE: And the last thing about the jury, in my
44 submission, there should be a caution about going
45 online and doing their own research.
46 THE COURT: There will be.
47 MR. MYHRE: Then that's all for the moment, My Lady.

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1 THE COURT: I understand there was such a caution at
2 the jury selection, and that the jury was advised
3 in fairly strong terms about that after they were
4 selected.

5 Two issues concerning jurors that I need to
6 discuss with you. One of them relates to juror
7 11, and I'm using the number as selected. So, of
8 the 12, juror 11. And there's a note from a
9 medical doctor indicating that the juror, for
10 medical reasons, is considered unfit to start jury
11 duty.

12 Now, Mr. Fox, you're entitled to see this
13 note if you wish to do so. I can assure you that
14 the medical reasons are such that it would not be
15 appropriate for the juror to serve. Do you wish
16 to see this note?

17 THE ACCUSED: No. No, I don't think that's necessary.

18 THE COURT: All right. Mr. Myhre?

19 MR. MYHRE: No, My Lady.

20 THE COURT: So, I will excuse juror 11 and we'll need
21 to draw on one of the alternates. Madam

22 Registrar, this note should be marked as an
23 exhibit for identification, but sealed, please.

24 THE CLERK: That's Exhibit A for identification.

25 THE COURT: Please.

26

**MARKED A FOR IDENTIFICATION: Work Absence
Certificate for Juror 11 dated June 2, 2017**

27

28
29
30 THE COURT: The next juror issue relates to juror 12,
31 and I'm going to give you copies of the letter
32 that I've received, Mr. Fox and Mr. Myhre. I've
33 blanked out the name of the juror. Madam
34 Registrar, this -- this could be the original
35 without the name blanked out. It can be Exhibit
36 B.

37 THE CLERK: That's Exhibit B for I.D., My Lady.

38 THE COURT: And should also be sealed, please.

39

**MARKED B FOR IDENTIFICATION: Letter from
employer re Juror 12 dated June 9, 2017**

40

41
42
43 THE COURT: The issue as I see it with this request is
44 that it comes from an employer, and clearly it's
45 the employer's interests that are put forward as
46 the reason to excuse the juror and not anything
47 emanating from the juror.

4
(Jury Out)
Proceedings

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1 The only thing that relates directly to the
2 juror is that the employer seems to assume that if
3 the juror is serving on the jury he will
4 nonetheless continue to work on evenings and
5 weekends in order to keep the workload above water
6 during the trial. That's not a desirable
7 situation because, as we all know, jury duty can
8 be much more demanding than people expect it to
9 be. I would not like to see a situation where a
10 person is essentially keeping their fairly
11 demanding job going while also serving as a juror,
12 and I would imagine it would be open to the court,
13 although I'd appreciate submissions on this, to
14 direct that the juror not do that.

15 Nonetheless, we have a request from the
16 employer saying that because this juror is a
17 valuable employer -- employee, the employer
18 requests that the juror be released.

19 Do you have submissions on this, Mr. Myhre,
20 Mr. Fox? I'd appreciate your submissions.

21 THE ACCUSED: I have no objection.

22 THE COURT: No objection to?

23 THE ACCUSED: To excluding the juror.

24 THE COURT: All right.

25 MR. MYHRE: I don't, either, My Lady. It seems like a
26 very difficult position to put this person in. I
27 would only say that if Your Ladyship does decide
28 to keep this juror on that, I'm not sure about a
29 direction, as in a court order, but Your Ladyship
30 might phrase something to him that he can then
31 take back to his employer if he needs to. But
32 ultimately, I think it would have to be up to him,
33 whether he or she tries to fulfil their
34 obligations at work.

35 THE COURT: All right. I think I'm inclined to ask the
36 juror some questions and get the juror's own view
37 as to whether he wishes to serve or not, and what
38 he contemplates taking place. So, perhaps what
39 we'll do, first I will ask the other juror, 11, to
40 come in briefly, and I will excuse him.

41 Good morning, sir. I've received a note
42 written by your physician. I have described it
43 only very, very general terms, no details, to
44 counsel and to Mr. Fox. I'm of the view that you
45 should be discharged from jury duty, if that is
46 what you wish?

47 A JUROR: Yes, it is.

5
(Jury Out)
Proceedings

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1 THE COURT: And there's no objection to that. And, so,
2 I thank you for coming this morning. I discharge
3 you from jury duty and wish you well.
4 A JUROR: Thank you, My Lady.
5 THE COURT: Thank you. And juror 12, please. Sir,
6 thank you. I have a letter from your employer
7 asking that you be released from jury duty. I've
8 read the letter. I've discussed it with counsel
9 and Mr. Fox. It looks to me as though the
10 employer is considering the interests of the
11 company rather than your interests, or your duty
12 to serve as juror, as all citizens are required to
13 do from time to time.
14 The request that you be released from jury
15 duty, is that your request or is that your
16 employer's request?
17 A JUROR: Well, I think both, because I didn't know
18 [indiscernible/not at microphone].
19 THE COURT: I'm sorry, I'm having trouble hearing.
20 A JUROR: Okay. Because originally I thought it would
21 be two weeks, the trial [indiscernible/not at
22 microphone] for the last week I have to take care
23 of my [indiscernible].
24 THE COURT: If you were serving as a juror, would you
25 expect to also be working for your employer?
26 A JUROR: Yes, because the contract we just signed is a
27 really big contract [indiscernible/not at
28 microphone]. That's why I told my [indiscernible]
29 and try to get the project [indiscernible].
30 THE COURT: That's not really a very viable situation.
31 Serving as a juror, the hours are not particularly
32 long, as you know, but it -- experience tells that
33 it's much more tiring than people expect. We
34 certainly hear that from jurors after a trial.
35 They find it very, very surprising how tiring the
36 process is. So, it's not really reasonable or
37 viable to expect to be able to carry a job as well
38 as doing jury duty.
39 Do you have any additional submissions, Mr.
40 Myhre?
41 MR. MYHRE: No, My Lady.
42 THE COURT: Mr. Fox?
43 THE ACCUSED: I do not.
44 THE COURT: All right. I'm going to discharge you as a
45 juror. To be quite candid, I'm not pleased about
46 doing so because I do detect that your employer is
47 putting the interests of the company far ahead of

BAN ON PUBLICATION - INHERENT JURISDICTION

1 your duty to the country to serve as a juror from
2 time to time.
3 And, nonetheless, I'm concerned that your
4 employer would be putting you in a difficult
5 position if you were to serve as a juror. And
6 with the additional difficulty with childcare,
7 although that's one that might well be able to be
8 sorted out. But taking everything into account,
9 and given that we do have alternate jurors here, I
10 am going to discharge you. So, you're free to
11 leave. Thank you.
12 MR. MYHRE: My Lady, did this get marked?
13 THE COURT: I think it did, as Exhibit B, sealed. So
14 the copies should, I think, come back, please.
15 Thank you.
16 All right. Is there anything else we should
17 deal with before we begin with the jury, and we
18 need to substitute the alternates in.
19 MR. MYHRE: There were the two evidentiary things that
20 I wanted to deal with, but we could do that now or
21 after the charge.
22 THE COURT: After the preliminary instructions. How
23 long do you think it will take to deal with them?
24 MR. MYHRE: Less than five minutes.
25 THE COURT: All right. I think we'll go ahead now,
26 deal with the preliminary instructions and, Mr.
27 Myhre, you were going to read a list of witnesses.
28 MR. MYHRE: Yes.
29 THE COURT: All right. So, at what point do we do
30 that? I think what we might do is bring the jury
31 and the alternates in, substitute in the
32 alternates, do the arraignment, I'll make the
33 preliminary instructions, and in the course of
34 those I'll ask you to read out the list of
35 witnesses, and then we'll take a break, and that
36 will give an opportunity for any jurors to raise a
37 concern arising from the list of witnesses, if
38 there is such a concern. Does that sound
39 reasonable?
40 MR. MYHRE: Yes. My Lady, could I just poke my head
41 outside and tell the complainant that she won't be
42 needed for at least 45 minutes from now?
43 THE COURT: Certainly. It will be about an hour.
44 MR. MYHRE: Thank you.
45 THE COURT: All right. Ready?
46 MR. MYHRE: Yes.
47 THE COURT: Could we have the jury with the alternates,

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 please?

2

3

(JURY IN)

4

5 THE SHERIFF: The jury, My Lady. It will just be a
6 moment, My Lady.

7 THE COURT: All right. Good morning, members of the
8 jury. Please have a seat. My name is Madam
9 Justice Heather Holmes. Thank you for coming this
10 morning. I understand two of you are the
11 alternate jurors who were selected at the jury
12 selection. I did not preside at the jury
13 selection, a different judge did.

14 And I understand that of the two alternate
15 jurors you took your oath as jurors at that time.
16 Am I correct in that understanding? Thank you.
17 And thank you for stepping in and joining the
18 jury. And you are now at this point members of
19 the jury, just like everyone else.

20 Madam Registrar, can you begin with the
21 putting in charge, please, and then I will make
22 some preliminary remarks.

23 THE CLERK: Members of the jury, the accused stands
24 charged by the name of Patrick Henry Fox.

25

26

Patrick Henry Fox stands charge that,

27

28

Count 1: Between January 11, 2015 and May
29 27, 2016, inclusive, at or near Burnaby and
30 Surrey, in the Province of British Columbia,
31 did without lawful authority and knowing that
32 another person was harassed or being reckless
33 as to whether the other person was harassed,
34 engage in conduct that caused the other
35 person, Desiree Capuano, to reasonably fear
36 for her safety or the safety of anyone known
37 to her, contrary to Section 264 of the
38 *Criminal Code*.

39

40

41

Count 2: Between May 18, 2016 and June 3,
42 2016, inclusive, at or near Burnaby, in the
43 Province of British Columbia, being the
44 holder of an authorization or a licence under
45 which he may possess a prohibited firearm,
46 restricted firearm or non-restricted firearm,
47 prohibited weapon, prohibited device, or
prohibited ammunition, did possess firearms,

42

43

44

45

46

47

Proceedings**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 at a place indicated on the authorization or
2 licence as being a place where he may not
3 possess it, or at a place other than that
4 indicated on the authorization or licence as
5 being a place where he may possess it, or at
6 a place other than that where it may be
7 possessed under the *Firearms Act*, contrary to
8 Section 93(1) of the *Criminal Code*.
9

10 And upon these charges he has been arraigned, and
11 upon his arraignment has pleaded not guilty to
12 each charge, and for his trial has put himself on
13 his country, which country you are.

14 You are charged, therefore, as to inquire
15 whether he is guilty of the offences, or either of
16 them, whereof he stands charged, or not guilty,
17 and to harken to the evidence.

18 THE COURT: Members of the jury, I'm going to make some
19 preliminary remarks to give you an idea of what to
20 expect in the trial as far as the procedure that
21 we'll follow. My remarks are reproduced in
22 writing. I'm going to give you copies of the
23 written version of them, but you can follow along
24 with if you wish. What I say to you is the
25 official version, not what you see in the written
26 version, but some people find it easier to take
27 things in if they have a written version, as well.
28 I will ask that you not read ahead of me as I go
29 through these.

30 Mr. Sheriff, there are 12 copies there. I
31 have copies here for Mr. Myhre, Mr. Fox. One
32 should be marked as the next exhibit for
33 identification, and Mr. Lagemaat can have one if
34 he wishes.

35 THE CLERK: That would be Exhibit C, My Lady.

36 THE COURT: Thank you.

37

38 **MARKED C FOR IDENTIFICATION: Document titled**
39 **"Opening Instructions to the Jury"**

40

41 **OPENING REMARKS TO JURY BY COURT:**

42

43 THE COURT: Members of the jury, you've been chosen to
44 decide this case. The oath or affirmation you've
45 taken requires you to listen closely to the
46 evidence that will be presented, and to decide the
47 case solely on that evidence and the instructions

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 that I will give you.

2 I'll now describe your duties as jurors and
3 the procedure that we'll follow during the trial.
4 I will also explain to you some of the rules of
5 law that apply in this case.

6 During and at the end of the trial I will
7 give you specific and detailed instructions about
8 the rules of law that apply to this case. You
9 must listen carefully to all of these
10 instructions.

11 As to your duties, you are the sole judges of
12 the facts. You must decide this case solely on
13 the evidence presented to you in this courtroom.
14 And I'm going to come back to that because it's
15 extremely important, as are all the other
16 instructions I give you.

17 I am the sole judge of the law, and it is
18 your duty to accept the law as I explain it to
19 you. You must choose your own ideas about what
20 the law is or should be, and you must not rely on
21 information about the law from any other source.

22 So, what is evidence? To decide what the
23 facts are in this case you must consider only the
24 evidence presented in the courtroom. Evidence is
25 the testimony of witnesses who will be testifying
26 from the witness box here, and things that are
27 entered as exhibits, and from time to time we'll
28 do that. We'll give them an exhibit number, and
29 at the end of the trial you'll have them with you
30 in the jury room.

31 The evidence may also consist of admissions.
32 The evidence includes, and I'm speaking here of
33 testimony given by witnesses, it includes what
34 each witness says in response to questions asked.
35 The questions are not evidence unless the witness
36 agrees that what is asked is correct. Only the
37 answers are evidence.

38 The Crown and the defence may agree about
39 certain facts. When that happens no evidence is
40 required. Whatever they agree about is a fact in
41 this case. That is called an admission.

42 There are also some things that are not
43 evidence. You must not consider or rely upon them
44 to decide this case. If I instruct you to
45 disregard any evidence it is your duty to do so.
46 In particular, the charge in the indictment,
47 actually, two charges in the indictment that you

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 have heard read out is not evidence.
2 What the lawyers or Mr. Fox say when we speak
3 to you during the trial is not evidence. What
4 people outside this courtroom say or have said
5 about this case is not evidence. And that
6 includes what may be said in radio, television,
7 newspaper, internet reports about the case, or
8 what you may have heard about the case from other
9 people. That is not evidence. You must ignore it
10 completely. You must avoid all media coverage of
11 this case. You must consider only the evidence
12 presented to you in this courtroom.
13 Now, sometimes evidence can be presented only
14 for a specific purpose and not for other purposes,
15 and if that happens in this trial I will tell you
16 about how you may use the particular evidence in
17 deciding this case, and how you may not use it in
18 deciding the case. You must consider the evidence
19 only for the purpose I describe. You must not use
20 it for any other purpose.
21 I'm going to talk now about direct and the
22 circumstantial evidence. Suppose the question is
23 whether it was raining outside. A witness
24 testifies that he or she saw it raining outside.
25 That is direct evidence of the fact that it was
26 raining.
27 Contrast that with a witness who testifies
28 that he or she saw someone enter the courthouse
29 wearing a raincoat, carrying an umbrella, both the
30 raincoat and the umbrella dripping wet. You might
31 infer from that testimony that it was raining
32 outside. That is circumstantial evidence of the
33 fact that it was raining outside.
34 Exhibits may also provide direct or
35 circumstantial evidence. In making your decision
36 you can take both kinds of evidence into account.
37 Your job is to decide what conclusions you will
38 reach based upon the evidence as a whole, direct
39 and circumstantial.
40 Keep an open mind as the evidence is being
41 presented. Do not be influenced by sympathy for
42 or prejudice against anyone. During the trial you
43 may discuss the case amongst yourselves, but only
44 when all of you are together in the jury room.
45 You must not, however, come to any conclusions
46 about the case until you've heard all of the
47 evidence, and listen to the closing addresses for

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 both sides, and receive my instructions about the
2 law. Keep an open mind.

3 Some of your family, friends, fellow workers,
4 or others, may ask you about jury duty. You must
5 not talk to them about the case, nor should you
6 discuss the case with anyone involved in it,
7 whether Mr. Fox, Ms. Capuano, who is the
8 complainant in this case, friends or family of
9 either of them, or with any of the witnesses, or
10 the investigating officers, or the lawyers, or any
11 of the friends or families of any of those people.

12 Now, if you see any of those people around
13 the courthouse you may give a very short, polite
14 greeting, a nod hello, but do not talk about the
15 case to anyone except your fellow jurors. Best
16 advice is keep your greetings very short and say
17 nothing more to anyone with any involvement in the
18 case.

19 If anyone approaches you to discuss any part
20 of the case please tell that person that you
21 cannot discuss it. You can say the judge has told
22 you that you must not. If the person doesn't
23 stop, please tell me about it and I'll deal with
24 it.

25 When you arrive at the courthouse each
26 morning and return after lunch, please go straight
27 to the jury room. Likewise, when you leave at
28 lunchtime or at the end of the day, please leave
29 directly from the jury room. Do not linger around
30 the halls or other places before or after the
31 court sittings.

32 Finally, remember your role is as jurors, not
33 lawyers, or researchers, or investigators. You
34 must not investigate or seek out any information
35 or do any research about the case, or about the
36 people involved in the case, or about the law that
37 applies to the case. Do not consult other people
38 or other sources of information, whether printed
39 or electronic.

40 Now, you will hear that this case involves a
41 website, and emails, and blog postings. Do not,
42 and I say this as firmly as I can, do not seek out
43 any information about that website. Do not go on
44 the internet looking about it. You are to decide
45 this case based on the evidence presented in this
46 courtroom.

47 Do not use the internet or electronic device

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 in connection with this case in any way, and that
2 includes chat rooms, Facebook, Myspace, Twitter,
3 apps, any electronic social network. I'm sure
4 that list is out of date by now. It covers --
5 it's meant to cover everything.

6 Do not read or post anything about this
7 trial. Do not engage in tweeting or texting about
8 this trial. Do not discuss or read anything about
9 this trial on a blog. Do not discuss this case by
10 email. You must decide this case solely on the
11 evidence you hear in the courtroom. What you may
12 see or hear in the media, or from any other source
13 outside the courtroom, is not evidence and you
14 must ignore it. We count on you to follow this
15 advice, these instructions, so that the trial is a
16 fair one.

17 I'll talk to you now briefly about the
18 procedure we'll follow in the trial. Crown
19 counsel is Mr. Mark Myhre. The Crown prosecutes
20 the case. Mr. Fox is on trial in this case. He
21 will be conducting his own defence in the trial,
22 except that Mr. Tony Lagemaat will be conducting
23 on Mr. Fox's behalf the cross-examination of the
24 Crown's first witness. And Mr. Lagemaat has,
25 assisting him here today, an articling -- his
26 articling student, and I'm pronouncing this
27 correctly, Ms. Chatha?

28 MS. CHATHA: Chatha.

29 THE COURT: Chat?

30 MS. CHATHA: Ms. Chatha.

31 THE COURT: Can you spell it for me again?

32 MS. CHATHA: Sure. C-h-a-t-h-a.

33 THE COURT: Ah, that's where I went wrong. Thank you.

34 CHATHA: You're welcome.

35 THE COURT: And my apologies.

36 The Crown will present its evidence first
37 because it has the burden of proving the charge.
38 Before presenting evidence the Crown may make an
39 opening address to you about the case.

40 After the opening address the Crown will call
41 witnesses to the witness box. Various things may
42 also be filed in evidence as exhibits. Facts that
43 are admitted by the defence may also be part of
44 the Crown's evidence.

45 All persons charged with an offence are
46 presumed to be innocent under our law. This means
47 that they do not have to prove their innocence.

Opening Remarks to Jury by Court**BAN ON PUBLICATION - INHERENT JURISDICTION**

1 They do not have to testify or present evidence.
2 The law requires the Crown to prove the charge
3 beyond a reasonable doubt.
4 If the defence does choose to present
5 evidence it may also make an opening address. In
6 making their opening addresses the Crown and the
7 defence may summarize the evidence they intend to
8 present and refer to some principles of law. But
9 remember that what they say about the evidence is
10 not itself evidence for you to consider in
11 deciding the case. What they say about the law is
12 only meant to help you understand the issues to
13 which the evidence may relate. I will explain to
14 you which principles of law apply to your
15 decision, and it is your duty to follow my
16 instructions.
17 When the Crown or the defence ask questions
18 of witnesses they have to follow certain rules.
19 One set of rules applies when they question
20 witnesses they have called, they have called, and
21 these questions are called examination in chief or
22 direct examination.
23 Another set of rules applies when they
24 question witnesses that the other side has called,
25 and these questions are called cross-examination.
26 Examination in chief or direct examination always
27 comes first, then the other side has an
28 opportunity to cross-examine the same witnesses,
29 the same witness, I should say.
30 After a witness has been cross-examined the
31 side who first called that witness may be
32 permitted to ask additional questions to clarify
33 or explain matters that have come up in cross-
34 examination, and this is called re-examination.
35 Now, notetaking. We depend on the memory and
36 judgment of all jurors to decide the case. If you
37 want to take notes during the trial to help you
38 remember what a witness said you are free to do
39 so, but remember that you may find it difficult to
40 take detailed, accurate notes, and at the same
41 time pay close attention to what witnesses are
42 saying and how they are saying it.
43 If you take notes do not be distracted from
44 your duty to observe the witnesses. You may
45 always ask to hear a recording of a witness'
46 testimony, or have some evidence read back to you,
47 but you will only have one chance to observe the

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1 appearance and behaviour of the witnesses when
2 they testify.

3 To protect the secrecy of your work you must
4 not take your notes with you at the end of our
5 sittings each day. We will make arrangements to
6 keep the notes in a secure place and return them
7 to you when we resume sitting the following day.
8 If you decide not to take notes you must still
9 listen carefully to the evidence.

10 Now, from time to time during the trial you
11 may be asked to go to the jury room while counsel
12 and Mr. Fox and I discuss legal issues. There was
13 an issue this morning that I needed to discuss,
14 and that's why we began a little late this
15 morning. It's normal, and it should not concern
16 you. We will do our best to minimize those
17 occasions, but they do arise. I ask you simply to
18 be patient if and when this happens, and I assure
19 that if at any time you are excluded from the
20 courtroom it's because it's necessary for that to
21 take place.

22 When all of the evidence has been presented
23 the Crown and the defence will each address you in
24 a final address. They will tell you their
25 positions and they'll refer to some of the
26 evidence that they say you should rely on to reach
27 the conclusion they suggest. They may also refer
28 to some of the rules of law to help you understand
29 their positions better, but again, it's for me as
30 the trial judge to tell you what rules of law
31 apply and what they mean. You must follow my
32 instructions on the law. If there is difference
33 between what I say and what Mr. Myhre or Mr. Fox
34 says about the law you must follow my
35 instructions.

36 And after that will come my summing up or
37 final instructions which will include a review of
38 some of the evidence given during the trial. But
39 you should always remember that it is only your
40 memory and understanding of the evidence that
41 counts in this case, not mine, and not that of
42 counsel. You are the judges of the facts.

43 Next I want to speak to you about assessing a
44 witness' testimony. It will be up to you to
45 decide how much or little of the testimony of any
46 witness you will believe or rely on. You may
47 believe some, none or all of the evidence given by

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1 a witness. You must ask yourself whether the
2 witness is truthful, and whether the witness is
3 reliable, and I'll give you a few questions to
4 consider during your discussions. These are not
5 all the factors but are some of them. Did the
6 witness have a good opportunity to observe the
7 event that he or she described? How long was the
8 witness watching or listening? Did anything
9 interfere with the witness' ability to observe?
10 Was there anything else happening at the same time
11 that might have distracted the witness? Did the
12 witness have a good memory?

13 Keep in mind the length of time that has
14 passed since the date of the alleged offence. Was
15 there something specific that helped the witness
16 remember the details of the event that he or she
17 described? Was there something unusual or
18 memorable about the event so that you would expect
19 the witness to remember the details? Or was the
20 event relatively unimportant at the time so that
21 the witness might easily have forgotten or be
22 mistaken about some of the details? Was any
23 inability or difficulty that the witness had in
24 remembering events genuine, or was the witness'
25 memory selective in order to avoid answering
26 questions?

27 Was the witness able to communicate clearly
28 and accurately? What was the witness' manner when
29 he or she testified? But do not jump to
30 conclusions, however, based entirely on the
31 witness' manner. Looks can be deceiving. Giving
32 evidence in a trial is not a common experience for
33 many witnesses. People react and appear
34 differently.

35 Witnesses come from different backgrounds.
36 They have different intellects, abilities, values
37 and life experiences. There are simply too many
38 variables to make the manner in which a witness
39 testifies the only or the most important factor in
40 your decision.

41 Was the witness forthright and responsive to
42 questions, or was the witness evasive, hesitant or
43 argumentative? Did the witness give his or her
44 testimony fairly, or was it tainted by self-
45 interest or bias? Does the evidence disclose any
46 reason why the witness might tend to favour the
47 Crown or Mr. Fox?

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1 Was the witness' testimony consistent with
2 the testimony of other witnesses? As you know,
3 people hear and see things differently. This
4 means we should not be surprised to find
5 discrepancies in their testimony. Minor
6 discrepancies are often unimportant, but you may
7 attach greater importance to more significant
8 discrepancies.

9 Are there any inconsistencies in the witness'
10 own testimony? If so, do these inconsistencies
11 make the testimony more or less believable and
12 reliable? Are the inconsistencies about something
13 important or minor details? Could they be honest
14 mistakes? Could they be deliberate lies? Are
15 there explanations for them? Do the explanations
16 make sense?

17 You must not decide an issue by simply
18 counting which side has more witnesses. You may
19 decide that the testimony of fewer witnesses is
20 more reliable than the evidence of a larger
21 number. It is the force of the evidence that
22 counts, not the number of witnesses.

23 Consider these questions in the context of
24 the whole of the evidence, use your common-sense
25 to decide how much weight or importance you wish
26 to give to the testimony of the witnesses.

27 I'll turn now to the fundamental principles
28 that apply. The first and most important
29 principle of law applicable to every criminal case
30 is the presumption of innocence. Mr. Fox enters
31 the proceedings presumed to be innocent, and the
32 presumption of innocence remains throughout the
33 case, unless the Crown on the evidence put before
34 you satisfies you beyond a reasonable doubt that
35 he is guilty.

36 Two rules flow from the presumption of
37 innocence. One is that the Crown bears the burden
38 of proving guilt. The other is that guilt must be
39 proven beyond a reasonable doubt. These rules are
40 inextricably linked with the presumption of
41 innocence to ensure that no innocent person is
42 convicted.

43 The burden of proof rests with the Crown and
44 never shifts. There's no burden on Mr. Fox to
45 prove that he is innocent. Mr. Fox does not have
46 to prove anything. There may be minor
47 circumstances arising in this case that -- I'll

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1 back up and correct that.

2 There may be subsidiary issues arising in
3 this case in which there is a different burden of
4 proof, and if that arises I will give you a
5 specific instruction about it at the time.

6 Now, what does the expression "beyond a
7 reasonable doubt" mean? A reasonable doubt is not
8 an imaginary or frivolous doubt. It is not based
9 on sympathy for or prejudice against anyone
10 involved in the proceedings. Rather, it is based
11 on reason and common-sense. It is a doubt that
12 arises logically from the evidence or from an
13 absence of evidence.

14 It is virtually impossible to prove anything
15 to an absolute certainty, and the Crown is not
16 required to do so. Such a standard would be
17 impossibly high. However, the standard of proof
18 beyond a reasonable doubt falls much closer to
19 absolute certainty than it does to probable guilt.
20 You must not find Mr. Fox guilty unless you are
21 sure he is guilty. Even if you believe that Mr.
22 Fox is probably guilty or likely guilty, that is
23 not sufficient. In those circumstances you must
24 give the benefit of the doubt to Mr. Fox and find
25 him not guilty because the Crown has failed to
26 satisfy you of his guilt beyond a reasonable
27 doubt.

28 I will explain to you later in the trial the
29 essential elements that the Crown must prove
30 beyond a reasonable doubt to establish Mr. Fox's
31 guilt. Those are essential elements of the
32 offences that are charged.

33 For the moment, the important point for you
34 to understand is that the requirement of proof
35 beyond a reasonable doubt applies to each of those
36 essential elements, but it does not apply to
37 individual items of evidence. You must decide,
38 looking at the evidence as a whole whether the
39 Crown has proven Mr. Fox's guilt beyond a
40 reasonable doubt.

41 If you have a doubt -- I'll back up and
42 correct that. If you have a reasonable doubt
43 about Mr. Fox's guilt arising from the evidence,
44 the absence of evidence, or the credibility, or
45 the reliability of one or more of the witnesses,
46 then you must find Mr. Fox not guilty.

47 So, in short, the presumption of innocence

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1 applies at the beginning and continues throughout
2 the trial, unless you're satisfied after
3 considering the whole of the evidence that the
4 Crown has displaced the presumption of innocence
5 by proof of guilt beyond a reasonable doubt.

6 If, based upon the evidence, you are sure
7 that Mr. Fox is guilty of the offence with which
8 he's charged you must convict him of that offence
9 since that demonstrates that you are satisfied of
10 his guilt beyond a reasonable doubt. If you have
11 a reasonable doubt whether Mr. Fox is guilty of
12 the offence with which he's charged you must give
13 him the benefit of that doubt and find him not
14 guilty.

15 Now, you've heard the indictment read. Mr.
16 Fox is charged with two offences. I'll be telling
17 you more about the charges later in the trial, and
18 about the elements of the offences, or what Crown
19 must prove beyond a reasonable doubt in order to
20 prove the offences charged.

21 For present purposes I'll give you only a
22 very brief summary. Count 1 is a charge of
23 criminal harassment. It alleges that Mr. Fox
24 engaged in conduct that caused Desiree Capuano to
25 reasonably fear for her safety or the safety of
26 someone known to her. Ms. Capuano is Mr. Fox's
27 former spouse or partner. Mr. Fox is alleged to
28 have used emails and a website between January
29 2015 and May 2016 to incite fear on her part.

30 Count 2 is a charge of possessing firearms at
31 a place other than where authorized to do so. It
32 is alleged in this charge that Mr. Fox was
33 licensed to possess certain firearms, but that
34 between May 18 and June 3rd, 2016 he had the
35 firearms at a place that was not one where he was
36 authorized to have them.

37 After all of the evidence has been presented
38 I will give you complete instructions on the law
39 that applies to the essential elements of the
40 offences charged, and to any other issues that you
41 must consider. You will -- I'm going to ask you
42 to strike out the next few lines which shouldn't
43 be there. As I said, you have to follow what I'm
44 saying, not what I've said -- not what's in the
45 written document.

46 Later I will ask you to choose one juror to
47 act as your foreperson. The foreperson will lead

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1 your discussions and will announce your verdict in
2 the courtroom at the end of the case. You do not
3 have to choose that person immediately. As the
4 trial continues, however, please think about which
5 one of you would be best suited to perform that
6 role. Get to know each other a little before you
7 choose your foreperson.

8 Secrecy. All juror discussions are secret,
9 except for telling me about any problems you must
10 not tell anyone anything about your discussions,
11 unless that information was disclosed in open
12 court. To do so would be a criminal offence. You
13 should feel confident that what happens in the
14 jury room will always be private. This is to
15 encourage full and frank discussion with your
16 fellow jurors. In other words, you need not worry
17 that something you say in the jury room will be
18 repeated anywhere else.

19 If something happens during the course of the
20 trial that may affect your ability to do your duty
21 as a juror please write it down, put it in a
22 sealed envelope and deliver it to Mr. Sheriff who
23 will give it to me.

24 If at any time you have trouble seeing or
25 hearing any part of the proceedings please let me
26 know. Just put up your hand, make sure you get
27 noticed and tell me.

28 We will be starting each day at ten o'clock,
29 sitting through until lunch at 12:30. We'll have
30 a 15-minute break usually around ten past 11:00.
31 We're going to have one a little bit later today.
32 The precise time will vary a bit from day-to-day
33 by a few minutes. In the afternoon we'll start at
34 two o'clock, we'll continue until 4:00, again with
35 a 15-minute break usually around three o'clock.

36 There may be occasions when we'll need to go
37 a little longer, perhaps a little earlier,
38 depending on the witness schedule. Sometimes we
39 will -- it's difficult to know precisely how long
40 a witness will be in their evidence, and we
41 obviously want to accommodate witnesses within
42 reason.

43 The Crown and the defence will do their best
44 to make sure that each day is filled. Sometimes
45 it doesn't work out that way for reasons that we
46 simply can't foresee.

47 From time to time it may be necessary for you

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1 to go somewhere, do something during the hours
2 when we would normally be sitting. If it's
3 important we will do our best to help you out.
4 But please remember that we have to try this case
5 within a reasonable time and in an organized way,
6 and a fair way. So if something of this nature
7 does come up, please let me know as soon as
8 possible in a written note given to Mr. Sheriff
9 and he'll give it to me.

10 Finally, in conclusion, it's your duty to
11 watch and listen to all of the proceedings,
12 including the addresses, the evidence, and my
13 instructions. You must listen to and observe
14 these proceedings without prejudice, or bias, or
15 sympathy.

16 At the end of each day you're free to go
17 until the next day. You do not have to stay
18 together. But when all of the evidence has been
19 presented and Crown counsel and Mr. Fox have
20 addressed you, and I've told you about the legal
21 principles that apply in my final instructions to
22 you, then you go to the jury room together to
23 decide the case, and at that point you are
24 sequestered, which means you must stay together
25 until you've reached our verdict. Meals and
26 overnight accommodation will be arranged for you
27 if necessary.

28 I will do my best to give you advanced notice
29 as this trial goes along of when that stage --
30 when we will likely reach that stage so that you
31 will not -- it will not come as a surprise to you
32 without notice.

33 One more thing before we break. I'm going to
34 ask Crown counsel to read aloud the names of the
35 witnesses who will be called for the Crown. I
36 know this was done at the jury selection, but I
37 understand there may have been some witnesses left
38 off the list.

39 MR. MYHRE: Yes. Thank you, My Lady. So, the
40 witnesses that I expect you will hear from at this
41 trial are Desiree Capuano, Corporal Brent Wilcott,
42 Constable Jason Potts, Constable Jean-Philippe
43 Dupont, Manvir Mangat, and U.S. Agent Frank
44 Spizuoco.

45 THE COURT: Thank you, Mr. Myhre. Thank you, members
46 of the jury, for your attention to my opening
47 remarks. We'll take the morning break now and

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1 we'll resume -- maybe a little longer of a break
2 than usual because there is a matter that I need
3 to discuss with -- with counsel and Mr. Fox.
4 Thank you.

5
6 (JURY OUT)

7
8 THE COURT: Mr. Myhre, do you wish to raise the
9 evidentiary issues now just in --
10 MR. MYHRE: We could do it now or after the break,
11 whatever Your Ladyship prefers.
12 THE COURT: Well, when do you need a determination on
13 them?
14 MR. MYHRE: Before the opening address.
15 THE COURT: Then I think now is better if it can be
16 done briefly.
17 MR. MYHRE: It's fairly straightforward. I'm just
18 thinking of streamlining things a little bit. I
19 understand from the last pretrial conference that
20 Mr. Fox doesn't have any issue with the accuracy
21 of the website content that we've put in the book
22 of documents.
23 And, so, I wonder if we could simply, if it's
24 admitted that that's accurate, if that could be
25 marked as an exhibit?
26 THE COURT: Accurate in what sense? I think that's
27 important to specify. Accurate in representing
28 documents taken from the website and representing
29 emails sent and received?
30 MR. MYHRE: Simply that they are accurate excerpts from
31 the website.
32 THE COURT: That's ambiguous. Accurate as to their
33 content, accurate as to what they -- what they
34 are? Do you mean authentic?
35 MR. MYHRE: Simply that -- I'm not sure how to express
36 it, I guess. If you went to the website it would
37 look as it appears in these books.
38 THE COURT: Accurate representations of what appears --
39 appeared on the website as of a particular date?
40 MR. MYHRE: Yes, I suppose as of the dates that are
41 given on the various documents that are here.
42 THE COURT: Well, is that clear on each document?
43 MR. MYHRE: Or perhaps we could say accurate as of May
44 26th, 2016.
45 THE ACCUSED: I would agree that the content, the
46 specific content that Mr. Myhre is referring to
47 would be accurate, yes. I do have a concern,

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1 though, that he's being very selective in the
2 content that he's choosing to put before the jury.
3 So I don't believe that it's -- that it gives an
4 accurate depiction of the website or of the gist
5 of the website.
6 THE COURT: Can we say accurate representations of some
7 of the material that appeared on the website?
8 THE ACCUSED: Yes.
9 THE COURT: But I think we do need an as of date.
10 THE ACCUSED: What Mr. Myhre proposed, I believe, May
11 26th, 2016. The website content has not changed
12 since I've been in custody, and that was May 27th,
13 2016. So, from that date up to today there should
14 be no changes on the website.
15 THE COURT: I see. Is that an acceptable way of
16 expressing it?
17 MR. MYHRE: I believe so, My Lady.
18 THE COURT: Is that going to be presented as an
19 admission, a formal admission?
20 MR. MYHRE: I'm in Your Ladyship's hands on that. I
21 could put something in writing.
22 THE COURT: It doesn't have to be in writing. And
23 also, presumably it doesn't apply to the emails?
24 MR. MYHRE: These emails are excerpts from the website,
25 and so they are -- the admission would cover that
26 the emails as presented in these excerpts are
27 accurate depictions of what appeared on the
28 website as of May 27th, 2016, which would not
29 necessarily include that the content is what
30 actually was exchanged between the parties at
31 whatever date, simply that, well, no more than the
32 admission is, that it accurately depicts what was
33 on the website as of May 27th.
34 THE COURT: All right. Anything additional, Mr.
35 Lagemaat?
36 MR. LAGEMAAT: Yes, My Lady, before you make a decision
37 on this I do have a brief submission and I do
38 believe it concerns me. The *Criminal Code*
39 specifies I'm here to cross-examine the
40 complainant, and I would like direction from the
41 court the role you would like me to take in the
42 direct examination, if any? And if you do want me
43 to take an active role in objecting if there's
44 something I determine not admissible in direct
45 evidence, then I would have a submission on the
46 admission of the book as a whole, whether I see
47 certain things that may be more prejudicial in the

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1 book.
2 And if you do not wish me to take any role in
3 the direct examination, then Mr. Fox, I'm not sure
4 if he has submissions on that, or if he wants the
5 book admitted as a whole. I mean, the wording of
6 the *Criminal Code*, s. 486, says "appoint counsel
7 to conduct the cross-examination." I expect there
8 will be some issues in direct examination where,
9 if I was counsel, I would oppose. If I was
10 counsel for the accused, I mean.
11 THE COURT: Is it appropriate for me to ask Mr. Fox for
12 his views on --
13 MR. LAGEMAAT: Yes, I -- I would expect -- I would
14 expect that, My Lady.
15 THE COURT: -- on this? Do you understand the issue
16 Mr. Lagemaat is raising?
17 THE ACCUSED: I do, yes. I would ask -- what I would
18 like is, before making any submissions on this
19 topic, the opportunity to confer briefly with Mr.
20 Lagemaat.
21 THE COURT: All right. That seems reasonable.
22 THE ACCUSED: Unfortunately, given my circumstances,
23 being in the jail, we haven't had a lot of time to
24 confer prior to this. I just need a couple of --
25 a couple of minutes.
26 THE COURT: All right. Does that seem appropriate, Mr.
27 Myhre?
28 MR. MYHRE: Yes, My Lady. Thank you.
29 THE COURT: All right. So we'll come back to that.
30 Was there another issue?
31 MR. MYHRE: There is another issue. So, an issue, as
32 Your Ladyship knows, that arises with the screen
33 is the issue of identity. I don't understand
34 there to be any dispute. Maybe we could canvass
35 this with Mr. Fox at some point after Ms. Capuano
36 has actually testified that the person who's
37 sitting here is the person that she'll be
38 referring to as Richard Riess or Patrick Fox. So,
39 the Crown would seek that admission, that Mr. Fox
40 is the person being referred to as Richard Riess
41 or Patrick Fox by Desiree Capuano.
42 THE COURT: All right. Is that something that might
43 usefully be discussed, Mr. Lagemaat, Mr. Fox,
44 while we're stood down?
45 MR. LAGEMAAT: I'd like to be a little bit careful, My
46 Lady, as I don't see it as my role to give advice
47 on a proper trial issue such as identity.

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1 THE COURT: Well, presumably it relates to the direct
2 examination of Ms. Capuano.
3 MR. LAGEMAAT: Okay. I will have that discussion, My
4 Lady.
5 THE COURT: All right. Mr. Fox, were you about to say
6 something else?
7 THE ACCUSED: No, no, I agree with that. That's fine.
8 THE COURT: All right. Anything else before we stand
9 down? No?
10 MR. LAGEMAAT: No, thank you.
11 THE COURT: All right. Thank you.
12 MR. LAGEMAAT: Yes, perhaps we should take a little bit
13 longer than the standard 15 minutes? I understand
14 I can meet with Mr. Fox right behind the door
15 there, but --
16 THE COURT: I'm wondering whether we should -- we're
17 taking a little longer. That takes us to noon.
18 Then there are going to be submissions, and I'll
19 need to make a decision on a couple of these
20 things. I'm wondering whether we should send the
21 jury for an early lunch.
22 MR. LAGEMAAT: There's more issue I need to -- I need
23 to bring up, My Lady, is that when I took this
24 appointment, I have a matter on Wednesday morning
25 that I could not get anyone in my firm, or a
26 student, to speak to. I have to be there. So I'm
27 going to ask My Lady to stand this down for
28 Wednesday morning. I do not expect to be as long
29 in cross-examination as Mr. Fox had estimated.
30 I'm hoping that's not going to be a problem.
31 THE COURT: You're hoping that Wednesday morning is not
32 going to be a problem?
33 MR. LAGEMAAT: Yes. I have -- I could potentially be
34 here by 11:00. I don't expect to lose the whole
35 morning, but I -- I can -- it's a matter in
36 Surrey, it won't be long, in Provincial Court, and
37 I could tell the court that I need to be called
38 first because I'm in the middle of this trial.
39 But it's a matter I cannot get anyone else to
40 appear in.
41 THE COURT: Is it a matter that could be adjourned?
42 MR. LAGEMAAT: It -- it's -- it's a matter that's taken
43 a long time to get into court, and there's been
44 two missed appearances already. It's a civil
45 matter to do with service and I fear adjourning it
46 would create problems down the road. But if My
47 Lady wants me to look into it I can see.

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1 THE COURT: Is there some way that we can find a way to
2 fill that time with something that doesn't involve
3 Mr. Lagemaat?

4 MR. MYHRE: I could look into the possibility, My Lady,
5 certainly.

6 THE COURT: If that could be done by agreement, and if
7 it wouldn't disturb the jury's ability to follow
8 the flow of the evidence by interrupting it with
9 something else. It may be that it's not going to
10 be a fruitful idea, but I just raise it.

11 All right, we will -- ah, where were we? I
12 was wondering whether I should ask the jury to
13 come back, say, at 1:30 and we'll start in the
14 afternoon, or is there a reasonable prospect of us
15 getting to the Crown opening this morning?

16 MR. LAGEMAAT: I don't need a break, My Lady. So I
17 think 15 minutes would be enough for me to go
18 behind the door and meet with Mr. Fox.

19 THE COURT: All right. We'll take the normal break.

20
21 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
22 (PROCEEDINGS RECONVENED)

23
24 (JURY OUT)
25

26 THE COURT: Where are we on these issues?

27 MR. LAGEMAAT: I think we're left with -- there's a few
28 things that can't be decided until I know my role
29 in the direct examination.

30 THE COURT: Have you discussed your concerns with Mr.
31 Myhre?

32 MR. LAGEMAAT: Yes, I have. We've discussed it
33 previous to today, too. It's my position, My
34 Lady, that the wording of the *Criminal Code* is
35 that I am here purely to cross-examine the
36 complainant. And if I'm to take part in the
37 direct examination there will be other issues
38 arising that I'm not -- don't want to have to deal
39 with. I would prefer to just remain as -- to
40 cross-examine. That's my position on that issue,
41 My Lady.

42 And -- and I've discussed with Mr. Fox, he's
43 prepared to be active in the direct examination
44 if -- if required.

45 THE COURT: All right. Mr. Myhre, do you have a
46 submission? Mr. Lagemaat, you're really -- I'm
47 trying to situate this. You're really seeking

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1 direction as to how you wish --

2 MR. LAGEMAAT: Exactly, My Lady.

3 THE COURT: -- how the court wishes you to proceed?

4 MR. LAGEMAAT: Exactly.

5 THE COURT: And there's no particular issue you're
6 raising now, but you were saying that you expect
7 that if you were appearing as defence counsel, or
8 in a role akin to that, you would have some issues
9 that you'd raise during the direct examination?

10 MR. LAGEMAAT: That's -- that's correct, My Lady.

11 And -- and a difficulty might be where issues I
12 might have as defence counsel might have to do
13 with other matters than the cross-examination of
14 the complainant. They might come up in my mind to
15 do with other issues that don't concern me in the
16 cross-examination. So, it might be, at times,
17 difficult to draw that line.

18 THE COURT: All right. Thank you. Mr. Myhre?

19 MR. MYHRE: My Lady, it seems to me that we could
20 proceed on the basis that if Mr. Fox sees fit to
21 object he could make an objection on the
22 understanding that then we would have to stand
23 down and deal with it. And if that becomes a
24 problem, because you could see how there would be
25 the potential for somebody to really disrupt the
26 trial with spurious objections, then we could
27 revisit this issue.

28 But, as we've seen Mr. Fox's behaviour in
29 court, he's been very polite and has not been
30 disruptive of the court proceedings.

31 THE COURT: I think the issue is a bit more
32 fundamental, which is for Mr. Lagemaat, how is he
33 to participate? Is he to participate as though he
34 were defence counsel, or in a more limited role,
35 simply conducting the cross-examination, which
36 obviously requires him to pay attention to the
37 direct examination and to understand the case, but
38 not to play -- do you have a submission on that?

39 MR. MYHRE: It seems to me ambiguous, My Lady. I don't
40 know -- I don't know the answer to that one. I
41 mean, we have -- the only case that we have that I
42 have seen that relates to defence counsel's role,
43 or, sorry, appointed counsel's role is that case
44 that we saw in the 486.3 application from Justice
45 Cote where he talks for a few paragraphs, and
46 essentially likens the appointed counsel's role to
47 defence counsel's role. But I don't think Justice

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1 Cote in that judgment actually addressed whether
2 there was any scope for how that affected the
3 direct examination of the complainant.

4 THE COURT: All right. Thank you. Mr. Lagemaat, you
5 indicated that you view your role as more limited,
6 and as defence counsel, and in the absence of any
7 different submissions that's how I view it, too.
8 It's the language of the *Criminal Code*.

9 The place in which it appears in the *Criminal*
10 *Code*, or the provision that empowers a court to
11 appoint counsel to conduct a cross-examination,
12 indicates that it's a measure intended to -- as a
13 form of protection for certain witnesses. The
14 appointment is not as defence counsel, it's not as
15 *amicus curiae*. While it may be helpful to Mr. Fox
16 to have you as a source of information from time
17 to time if you're willing to assist him, I don't
18 see that form of assistance as intrinsic to your
19 role as appoint -- as counsel appointed to cross-
20 examine. Is that sufficiently --

21 MR. MYHRE: Yes, I understand, My Lady, and I can say
22 some of the issues I would have raised in the
23 evidence Mr. Fox does not take issue with, so --

24 THE COURT: Now, what about the other issue of -- of
25 the identity?

26 MR. MYHRE: I understand that Mr. Fox doesn't admit
27 that he is the person Ms. Capuano refers to as
28 Richard Riess or Patrick Fox, and so the Crown
29 will be considering how to deal with that.

30 THE COURT: All right.

31 MR. MYHRE: Your Ladyship, I think it might be worth
32 addressing one of the issues that my friend sees
33 so that it's all out on the record.

34 In these excerpts Mr. Fox details how certain
35 events unfolded where Ms. Capuano took custody of
36 their son, {GR}, while he was incarcerated, and
37 I think my friend had some concerns about that
38 fact being before the jury. It seems to me that
39 that is part of the narrative here and the jury
40 can get an instruction about the lack of
41 significance of that fact.

42 And I also expect Mr. Fox, as -- as I believe
43 we've canvassed at a previous pretrial conference,
44 does have a criminal record related to that, and
45 the Crown will be putting it to him if he
46 testifies, and he has always indicated his
47 intention to testify.

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1 And, so, for those reasons the Crown doesn't
2 have any concerns about the prejudicial nature of
3 that fact. So I think we should canvass with Mr.
4 Fox if he has a view on that.
5 THE COURT: Could you say it again, the evidence about?
6 MR. MYHRE: The fact that he was incarcerated in --
7 between 2009 and 2011.
8 THE COURT: And the reason for the -- that
9 incarceration?
10 MR. MYHRE: My understanding is that there was an
11 eventual conviction for perjury. That fact, I
12 don't think, comes into the evidence, and I don't
13 think it's in the website, and it wouldn't be
14 before the jury unless Mr. Fox testified.
15 THE COURT: So, I need more of an understanding about
16 why that's part of the narrative, a necessary part
17 of the narrative?
18 MR. MYHRE: First of all, it's part of the website
19 excerpts. Mr. Fox, as you know, has a background
20 section, roughly 20 pages long, where he details
21 the whole history from his perspective of this
22 custody battle over {GR} and his interactions
23 with Ms. Capuano.
24 Where that becomes relevant is that when Ms.
25 Capuano eventually took custody of {GR} it was
26 in part due to the fact that Mr. Fox was in
27 custody, and so she was able to do that.
28 Essentially, she went to the home of a family
29 friend who she learned was looking after {GR}
30 and took custody of him. And, so, if that fact
31 wasn't before the jury they might wonder, well,
32 where was Mr. Fox? In addition, it's already in
33 the website.
34 THE COURT: All right. Mr. Fox, what's your view on
35 whether that should be before the jury or not?
36 THE ACCUSED: Generally, I would be of the opinion that
37 the period of time that I was in custody in the
38 U.S., which was actually 2007 to 2011, would be
39 prejudicial. But I do -- realistically, I have a
40 bit of a -- not a concern, but realistically, I
41 believe that most of the jurors are probably going
42 to be somewhat aware of that because it is going
43 to be out there, even though I realize they were
44 admonished not to do that research.
45 And I would have a bit of a concern that --
46 THE COURT: I think -- stop, Mr. Fox.
47 THE ACCUSED: Sorry.

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1 THE COURT: Please make your submissions on the basis
2 that the jurors will follow the instructions --
3 THE ACCUSED: Okay.
4 THE COURT: -- they're given. So, make it on the basis
5 -- what we're trying to do here, and remembering
6 that the jurors have been told they're to judge
7 this case on the evidence presented in the
8 courtroom. And what we're trying to do now is
9 discuss what evidence should appropriately be
10 presented in the courtroom.
11 THE ACCUSED: Well, given that, I think that putting
12 the fact that I was in custody in the U.S. I think
13 would be prejudicial. And as Mr. Myhre had
14 mentioned, Ms. Capuano did take custody of our son
15 three weeks prior to me being released from
16 Homeland Security custody, not on criminal
17 matters, but I was purely in [indiscernible]
18 custody. Part of the reason she did so, and this
19 will come up in her testimony, was because she
20 knew that I was going to be released, and Family
21 Court at that time, three months later, ordered
22 her to return {GR} to my custody.
23 I mean, I think she's -- I think if the jury
24 is going to be aware of that time that I was in
25 custody, it's going to bring up a lot of other
26 questions which then might cause us to get off-
27 track.
28 So, I would be of the opinion that that
29 information probably should not be important at
30 this time.
31 THE COURT: Do you have a suggestion, Mr. Myhre?
32 MR. MYHRE: Yes, I'll just rip the first few pages out
33 of the background in this book of excerpts. I
34 have no problem with that. And then I'll be --
35 I'll be fairly leading when I'm questioning Ms.
36 Capuano about that and I'll just let her know this
37 is not something we're going to bring up with the
38 jury. I have no issue with the jury not being
39 presented with that if Mr. Fox is opposed.
40 THE COURT: All right.
41 THE ACCUSED: I would like to recommend or suggest
42 possibly maybe redacting this specific information
43 rather than removing the first few pages because
44 there is other information in those first few
45 pages which I believe is relevant. For example,
46 the circumstances under which Ms. Capuano and I
47 separated and I had custody, et cetera, because

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1 there is that dispute, her story versus my story.
2 THE COURT: Is that doable over the lunch hour? No?
3 MR. MYHRE: So, My Lady, and my response to that is
4 that Mr. Fox, if he chooses to testify, will have
5 that opportunity.
6 THE COURT: All right. So, over the lunch hour you're
7 going to revise the books that will be given to
8 the jury, Mr. Myhre. The parties will be -- is
9 there something you need to discuss? If there
10 is --
11 THE ACCUSED: No, I don't think --
12 THE COURT: No. I don't want to force you ahead if
13 there's something that needs to be discussed about
14 this.
15 MR. MYHRE: Pardon me, My Lady. I just suggested to
16 Mr. Fox that I'd just rip out a single page that I
17 think deals with that period of time. So then the
18 jury sees some of the background, maybe a missing
19 page.
20 THE COURT: Very well.
21 THE ACCUSED: I don't oppose that.
22 THE COURT: I'm sorry, I didn't hear?
23 THE ACCUSED: I don't oppose that. Sorry, My Lady.
24 THE COURT: All right. Can you tell me which page that
25 is, or perhaps when you come back and if you're
26 confident that's what you're doing.
27 Now, what about references to the children by
28 name in this trial, is that an issue?
29 THE ACCUSED: I have an objection to that.
30 MR. MYHRE: I should canvass that with Ms. Capuano.
31 THE COURT: All right.
32 MR. MYHRE: It seems to me that that information is
33 already widely disseminated both through this
34 website and the news reporting, but I should
35 double check that.
36 THE COURT: Very well. Mr. Myhre, Mr. Fox is trying to
37 get your attention on that point, I think.
38 MR. MYHRE: Mr. Fox just asked me to canvass it with
39 {GR}, as well. So I'll try to do that.
40 THE COURT: Is there anything else we need to deal with
41 before I ask the jury to come in, and Mr. Myhre,
42 you'll make your opening address, I take it.
43 Anything else?
44 THE ACCUSED: No.
45 THE COURT: Mr. Lagemaat?
46 MR. LAGEMAAT: No.
47 THE COURT: Everything fine from your --

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1 MR. MYHRE: Nothing else, My Lady.
2 THE COURT: All right.
3 MR. MYHRE: My Lady, I will be -- as you can see, I've
4 set up the podium right there. I'm slightly
5 concerned that it may block that juror's view.
6 But if that is the case, then we could maybe
7 rectify that over the lunch hour. I sat in that
8 chair and it seemed to me if I leaned slightly to
9 the right I could see the witness box, but I won't
10 know for sure until that person actually sits
11 there and I'm standing in front of him.
12 THE COURT: I would think you'd need to move it more
13 to -- toward the bench. Is that what you meant by
14 the right?
15 MR. MYHRE: Well, yeah, but the problem is there is a
16 step there.
17 THE COURT: Ah. Well, you'll need to do a test run
18 over the lunch hour. All right. Ready?
19 MR. MYHRE: Yes.
20 THE COURT: Please.

21
22 (JURY IN)

23
24 THE SHERIFF: The jury, My Lady.
25 THE COURT: Thank you, members of the jury. Mr. Myhre
26 is now going to make the Crown's opening address
27 to you.
28

29 **OPENING REMARKS TO JURY BY CROWN:**

30
31 MR. MYHRE: Ladies and gentlemen, as you know, I am
32 presenting the case to you against Patrick Fox,
33 and in the next five minutes here I'm going to
34 give you a fairly brief overview of the witnesses
35 I expect you're going to hear from, and the
36 purpose is to give you context, so that when you
37 actually hear them you'll have some idea of how it
38 fits in. What I say to you in the next few
39 minutes is not the evidence. The evidence is what
40 you hear from those witnesses.
41 The first witness, and the central witness in
42 this matter, of course, is Desiree Capuano. She's
43 a 36-year-old mother of two. She works in the IT
44 field. She lives in Arizona.
45 You're going to hear that in the year 2000,
46 when she was 19, she met Mr. Fox, who was then 26
47 years old. They soon became pregnant, they got

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1 married, and in September of 2000 they had a child
2 whose name is {GR}.

3 And you're going to hear over the course of
4 this trial, I expect, two different versions of
5 the events that took place between then and 2011,
6 and you're going to hear that in 2011 to 2014
7 there was a bitter custody dispute. Ms. Capuano
8 will tell you her version of events, and you'll
9 also be presented with excerpts from a website
10 that contain Mr. Fox's version of events.

11 At the end of the custody battle Ms. Capuano
12 had custody of {GR}, and Mr. Fox stated that it
13 was his goal to do everything in his power to make
14 her life as miserable as possible, hopefully so
15 miserable she would commit suicide. He did this
16 in two ways; through the tone and content of his
17 email communications with her, and through a
18 website that he created, www.desireecapuano.com.
19 And you're going to be spending most of her
20 testimony the rest of today and into tomorrow
21 going through some of the emails and some of the
22 website. As we go through them Ms. Capuano is
23 going to tell you how these emails and the website
24 affected her, and what she tried to do to get them
25 to stop.

26 The remaining witnesses in the Crown case are
27 fairly brief. You'll hear from RCMP Constable
28 Jean-Philippe Dupont about a warning that Mr. Fox
29 was given in the summer of 2015.

30 In relevance to the s. 93 charge you'll hear
31 from Manvir Mangat, the owner of a business called
32 "The Packaging Depot" about boxes Mr. Fox shipped
33 between March and May of 2016 to an address in
34 California.

35 You'll hear from U.S. ATF Agent Frank
36 Spizuoco, that he attended that residence and
37 found four handguns registered to Mr. Fox,
38 concealed inside a desktop computer. And you will
39 also listen to an audio-recording of Mr. Fox's
40 interrogation by the RCMP on June 16th, 2016 in
41 which he admitted shipping his firearms to the
42 United States, admitted to being the author of the
43 website, and admitted that his intention was to
44 ruin Ms. Capuano's life.

45 A brief word of caution, you're going to hear
46 a lot about the interactions between these two
47 people. What you hear about your history is meant

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1 to give you context for what followed, and there's
2 a potential to be sidetracked about who really did
3 what to who in 2001, 2005, 2012.

4 At the end of the day the issues that you'll
5 have to decide, of course, are whether it's proven
6 beyond a reasonable doubt that Mr. Fox -- that his
7 actions between January the 11th, 2015 and May the
8 27th, 2016, that is the website that he created,
9 the emails that he sent, caused her to have, that
10 is Ms. Capuano, legitimate fear for her safety,
11 and fear for safety encompasses a person's bodily
12 and mental wellbeing.

13 You'll have to decide whether in May of 2016
14 he possessed his firearms in a place that he
15 wasn't authorized to. So, as we go through email
16 after email, and through the website in some
17 detail, don't lose sight of those fine questions.

18 So, without further delay, then, the Crown's
19 first witness is Desiree Capuano. My Lady, I
20 wonder if I could just have a brief word with her
21 outside?
22

23 [TESTIMONY OF DESIREE CAPUANO]

24
25 (JURY OUT)

26
27 THE COURT: Anything we need to deal with?

28 MR. MYHRE: No, My Lady.

29 THE COURT: Okay. Thank you. We'll resume at 2:00.

30 A Thank you.
31

32 (WITNESS STOOD DOWN)

33
34 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

35 (PROCEEDINGS RECONVENED)
36

37 MR. MYHRE: Pardon me, My Lady. I just wanted to
38 confirm with Mr. Fox before I ripped a bunch of
39 pages out, so we did that and we've just completed
40 it.

41 THE COURT: All right. Good. Now, I've had a note
42 from one of the jurors saying that they are having
43 trouble hearing Mr. Myhre in your questioning.

44 MR. MYHRE: Right.

45 THE COURT: And the ask -- the request is that you
46 speak up, not looking down at your paper, or that
47 you use a microphone. So, there is a microphone

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1 there. I don't know whether that's an amplifying
2 one.
3 THE CLERK: It doesn't amplify, My Lady, it just
4 records.
5 THE COURT: Are there any amplifying ones around?
6 MR. MYHRE: My Lady, just a suggestion, but I could
7 move this podium to right here so I don't
8 completely have my back to the jury when I'm
9 speaking.
10 THE COURT: I don't want you in a position where you're
11 able to see notes that the jurors might be making.
12 That might make them uncomfortable.
13 MR. MYHRE: Okay. Well, I can try to speak up,
14 certainly.
15 THE COURT: Can you perhaps turn a little bit at an
16 angle so that you can -- that might help a little
17 bit. Madam Registrar, the note should be the next
18 exhibit for identification, please.
19 THE CLERK: It's Exhibit D for I.D., My Lady.
20 THE COURT: Thank you.

21
22 **MARKED D FOR IDENTIFICATION: Note from juror**
23 **re being unable to hear**

24
25 MR. MYHRE: Your Honour, the Crown would like to
26 request a publication ban as it relates to {SC}
27 and {GR} Capuano.
28 THE COURT: Can you give me the section number?
29 MR. MYHRE: 486.5, My Lady.
30 THE COURT: Does that apply only to witnesses?
31 MR. MYHRE: In respect of a victim or a witness. (2)
32 allows for a justice system participant.
33 Certainly, on a common-sense point of view, at
34 least on the Crown theory, {SC} and {GR} are
35 victims, but I don't think they are in the
36 technical not named complainants in the
37 indictment, obviously.
38 THE COURT: Mr. Fox, do you have any submission to
39 make?
40 THE ACCUSED: I have no opposition to such a
41 publication ban on the children's names. I
42 personally would never publish their name. Well,
43 I've never published {GR}'s name. I can't say
44 that about {SC}. But, no, I support the ban in
45 matters relating to these proceedings, I guess.
46 THE COURT: Yes. All right. I'm going to make the
47 order, subject to it -- subject to any application

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1 by anyone for the ban to be lifted, and that
2 application can be made at any time, any
3 appropriate time on notice.

4 Although it may not be expressly provided for
5 in the *Criminal Code* the court has an inherent
6 jurisdiction, particularly in relation to the
7 interests of children, and these young people
8 will -- would be considered children.

9 Given the nature of some of the evidence that
10 may relate to them, in my view, it would be my
11 view based on what has been brought to my
12 attention thus far, it will -- would not be in
13 their interests for their names to be published.

14 So, there will be a ban on the publication of
15 any information identifying the -- well, it can't
16 be put in those terms, the same terms Mr. Myhre's
17 s. 486.5 operates, otherwise it wouldn't be
18 possible to publish the -- Mr. Fox's name or Ms.
19 Capuano's name. They're the only two children
20 they have. Or the only two children of Ms.
21 Capuano.

22 So, how do you propose that it be framed?
23 MR. MYHRE: I would be content if it just was that
24 their names not be published.

25 THE COURT: All right. The names of Ms. Capuano's to
26 children, one of those also being Mr. Fox's child,
27 are not to be published in connection with any
28 publication relating to these proceedings.

29 Any submissions about that form of order, Mr.
30 Myhre?

31 MR. MYHRE: No.

32 THE COURT: Mr. Fox?

33 THE ACCUSED: No, My Lady.

34 THE COURT: All right. Are we ready for the jury?

35 MR. MYHRE: I just want to mention this book. So, this
36 is going to be gone through with -- with Ms.
37 Capuano in the next portion of her evidence. Can
38 Your Ladyship -- or do we need to tell the jury
39 that it's admitted that this is an accurate copy
40 of the website as it existed on May 27th, 2016?

41 THE COURT: That is admitted?

42 MR. MYHRE: I thought that was the end of the
43 discussions we had this morning?

44 THE COURT: There's been nothing further since this
45 morning, is -- is that correct?

46 MR. MYHRE: There's been nothing further since this
47 morning.

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1 THE COURT: All right. Then I'll say something about
2 that to the jury at the time you hand the books
3 out.
4 MR. MYHRE: Now, My Lady, I don't have an extra copy
5 for you because you have that copy, but I should
6 alert you to the pages to take out.
7 THE COURT: Please.
8 MR. MYHRE: It just occurred to me, I had intended for
9 the exhibit copy to be the copy Ms. Capuano has,
10 so I'll have to do the same thing with her.
11 THE COURT: All right.
12 MR. MYHRE: It also occurred to me that Ms. Capuano has
13 probably done some highlighting in her book. I
14 don't see that as being an issue, but I want to
15 let Your Ladyship know that.
16 THE COURT: In the orig -- what you're proposing be the
17 original exhibit?
18 MR. MYHRE: Be the exhibit.
19 THE COURT: Well, that would be the copy that the jury
20 will end up with in the jury room. Is that your
21 intention?
22 MR. MYHRE: Yes. Realistically, it's hard to imagine
23 them looking at a copy other than their own copy,
24 which they will likely potentially have made notes
25 in.
26 THE COURT: Is there any possibility that she may have
27 annotated anything in addition to highlighting?
28 MR. MYHRE: That's possible.
29 THE COURT: Well, that's not acceptable for that to go
30 to the jury.
31 MR. MYHRE: Okay. I'll have to check that.
32 THE COURT: Have you got an extra copy?
33 MR. MYHRE: I'm afraid I don't.
34 THE COURT: Well, I think we're going to have to ask
35 two jurors to share. Ask -- you use a clean copy
36 as the one that Ms. Capuano will be asked to look
37 at and will become an exhibit. But we can't be
38 giving an annotated copy to the jury.
39 MR. MYHRE: I'll have to canvass that, find out if
40 that's happened.
41 THE COURT: And you'll have to have an extra copy made
42 overnight and we'll just tell the jury you haven't
43 got enough.
44 So, what are the pages that --
45 MR. MYHRE: At tab 6, the fourth page that begins with,
46 "Desiree returns to Phoenix" at the top.
47 THE COURT: Yes.

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1 MR. MYHRE: That's been ripped out.
2 THE COURT: All right.
3 MR. MYHRE: And then the last two full pages at tab 9
4 have been taken out. So, both double-sided pages
5 have been removed.
6 THE COURT: All right. And that's it?
7 MR. MYHRE: Yes. There's a request from Ms. Capuano
8 that if -- if it's possible that Mr. Fox not be in
9 the room when she's brought in. So, I wonder
10 if -- ordinarily, if we were going straight into
11 her evidence I would just have her sitting in,
12 but, of course, we had to canvass these issues.
13 Would it be possible to have Mr. Fox returned to
14 the cell briefly while we bring her in, have Mr.
15 Fox come back? It's a few extra minutes, but I'm
16 going to have to go canvass the issue of the book
17 with her right now, as well.
18 THE COURT: All right. We'll stand down very briefly.
19
20 (PROCEEDINGS ADJOURNED)
21 (PROCEEDINGS RECONVENED)
22
23 (JURY IN)
24
25 [TESTIMONY OF DESIREE CAPUANO CONTINUING]
26
27 (JURY OUT)
28
29 THE COURT: Now, is this a discussion that should be in
30 Ms. Capuano's presence?
31 MR. MYHRE: I don't think that will be a problem, My
32 Lady.
33 THE ACCUSED: I have no objection to that.
34 THE COURT: All right. Can you give me a bit more
35 detail about the process you're intending to
36 follow, and why, please?
37 MR. MYHRE: Yes. So, each of these emails, as we've
38 just covered with Ms. Capuano, is a communication
39 between herself and Richard Riess, and she's
40 testified that they, as far as she can tell,
41 appear to be accurate, with the exceptions she's
42 mentioned, and they are tendered because they are
43 relevant to the harassment. I mean, some of these
44 emails are -- many of these emails are the
45 harassment, and a few are also there for context.
46 And, so, I guess it would be an option -- we
47 have to make sure the jury reads it. It would be

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1 an option for them to retire for that purpose, I
2 suppose, because it's evidence. But it would make
3 a lot more sense, I think, for them to look at
4 each one and hear what this meant to Ms. Capuano,
5 if it's relevant to the criminal harassment, how
6 it made her feel, or if it needs some explaining
7 otherwise.
8 THE COURT: The trial needs to be conducted in public,
9 and to say, "Please look down" and read something
10 that is not on the record, and then ask Ms.
11 Capuano how that made her feel does not give the
12 public the information that made her feel a
13 certain way.
14 MR. MYHRE: I see.
15 THE COURT: And it may be true that, yes, exhibits can
16 be applied for and released in certain
17 circumstances. That's -- that's a cumbersome
18 process. It's not clear when an application can
19 be made. But then, numerous copies are
20 circulating, which may not --
21 MR. MYHRE: My Lady, I think --
22 THE COURT: -- be the best method of proceeding.
23 MR. MYHRE: Having heard your concern, maybe it can be
24 addressed this way. I could ask Ms. Capuano to
25 summarize, "What's this email about," in a couple
26 of sentences, and --
27 THE COURT: Why can't you just read it out?
28 MR. MYHRE: The simple answer is there are a lot of
29 them and it's very cumbersome. Ms. Capuano could
30 then be asked, "Did this have an impact on you,
31 and what words here were significant," and she can
32 tell the jury that and highlight, "It was this
33 sentence" or "these sentences."
34 THE COURT: Well, that's a different way of proceeding.
35 It seems to me you've got several options. You
36 can either read aloud the portions that you're
37 going to ask Ms. Capuano to comment on so that
38 it's before the jury and it's before the public,
39 then you ask her to comment. Or you present a
40 particular email and say, "Is it one you'd seen
41 before, and if it is, was there a particular
42 portion that troubled you, and if so, where" --
43 "what portion was it, and she essentially takes us
44 to the portion," and then it needs to be, at the
45 very minimum, summarized, but probably read into
46 the record.
47 But we can't be conducting a trial on the

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1 basis of a book of material that isn't before the
2 public in any way at all.
3 MR. MYHRE: I'm content to proceed in that fashion, My
4 Lady.
5 THE COURT: Mr. Fox, you were on your feet earlier, and
6 I -- I know you have a concern.
7 THE ACCUSED: Yes, yes, thank you, My Lady. I did have
8 a bit of concern with the approach of Mr. Myhre
9 for some other party reading off just what he
10 considers the pertinent segments because I think
11 that's going to then continue the situation of
12 having fragments out of context.
13 Now, when Ms. Capuano would've received the
14 email she would've read the entire email. If she
15 were only looking at specific sentences and
16 ignoring the rest of it, that wouldn't have made a
17 lot of sense.
18 I mean, her fear, if she had any fear, it
19 should have been based on the entire email.
20 THE COURT: All right. That's probably a matter for
21 either cross-examination, or argument, or both.
22 Given the volume of material there's no way all of
23 it can be read aloud in the trial.
24 THE ACCUSED: Right.
25 THE COURT: We'd be here for years. But I have your
26 concern, but in connection with this particular
27 point, I don't see it as necessary that the entire
28 content be read out each time. But there are
29 other ways to address the concern that you've
30 raised.
31 All right. Could we have --
32 THE ACCUSED: I think that's clear.
33 THE COURT: -- the jury back, please?
34
35 (JURY IN)
36
37 [TESTIMONY OF DESIREE CAPUANO CONTINUING]
38
39 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
40 (PROCEEDINGS RECONVENED)
41
42 [TESTIMONY OF DESIREE CAPUANO CONTINUING]
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44 (WITNESS STOOD DOWN)
45
46 (JURY OUT)
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Proceedings

BAN ON PUBLICATION - INHERENT JURISDICTION

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

Transcribers: D. MacFie

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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.



Dianne MacFie
Court Transcriber