

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA, : 18-CR-204(NGG)

Plaintiff , :
-against- : United States Courthouse
Brooklyn, New York

KEITH RANIERE, et al., :
Defendant. : May 28, 2019
9:30 o'clock a.m.

- - - - - X

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE NICHOLAS G. GARAUFI
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government: RICHARD P. DONOGHUE
United States Attorney
BY: MOIRA K. PENZA
TANYA HAJJAR
MARK LESKO
Assistant United States Attorneys
271 Cadman Plaza E, Brooklyn, NY

For the Defendant: BRAFMAN & ASSOCIATES, P.C.
767 Third Avenue, New York, NY

BY: MARC A. AGNIFILO, ESQ.
TENY ROSE GERAGOS

DEROHANNESIAN & DEROHANNESIAN
677 Broadway, Albany, NY 12207

BY: PAUL DerOHANNESIAN, II, ESQ.
DANIELLE R. SMITH, ESQ.

Court Reporter: Charleane M. Heading
225 Cadman Plaza East
Brooklyn, New York
(718) 613-2643

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 (In open court; outside the presence of the jury.)

2 THE COURT: Everyone in the audience may be seated.

3 All right. Appearances, please.

4 MS. PENZA: Moira Penza, Tanya Hajjar and Mark Lesko
5 for the United States. Good morning, Your Honor. Also at
6 counsel table is Special Agent Michael Weniger with the FBI
7 and paralegal specialist Teri Carby.

8 THE COURT: Good morning everyone.

9 MR. AGNIFILO: Good morning, Your Honor. Marc
10 Agnifilo, Teny Geragos, Paul DerOhannesian, Danielle Smith
11 with Keith Ranieri at counsel table.

12 THE COURT: Okay. Good morning, everyone. Please
13 be seated.

14 Does anyone have anything before we start?

15 MS. PENZA: Just briefly, Your Honor, in response to
16 your question on the Daubert hearing?

17 THE COURT: Yes.

18 MS. PENZA: We expect on Friday to file a very brief
19 motion for reconsideration. We believe that the need for the
20 Daubert hearing may be obviated by a brief supplemental report
21 that Dr. Hughes is putting together. We'll submit that on
22 Friday, but we would be prepared to go forward with the
23 Daubert hearing next week otherwise.

24 THE COURT: Well, that would be on Tuesday because
25 we don't have court on Tuesday.

1 MS. PENZA: Understood, Your Honor.

2 THE COURT: So what I would like to do is by next
3 Monday at noon, I would like a response from the defense so we
4 can make a decision as to what to do.

5 MR. AGNIFILO: That's fine, Your Honor.

6 THE COURT: Is that all right?

7 MR. AGNIFILO: Yes.

8 MS. PENZA: Thank you, Your Honor.

9 THE COURT: Okay. Thank you very much.
10 All right. Daniela is on direct, correct?

11 MS. PENZA: Yes, Your Honor.

12 THE COURT: All right. Let's move forward. Let's
13 bring the witness into the courtroom.

14 MS. PENZA: Thank you.

15 (Witness resumes the stand.)

16 THE COURT: Please bring in the jury.

17 (Jury enters.)

18 THE COURT: Please be seated.

19 Good morning, members of the jury.

20 THE JURY: Good morning.

21 THE COURT: All right. We will continue with the
22 direct examination of Daniela.

23 You may proceed, Ms. Penza.

24 MS. PENZA: Thank you, Your Honor.

25

Daniela - direct - Penza

2485

1 DANIELA ,

2 called as a witness, having been previously duly

3 sworn, was further examined and testified as follows:

4 DIRECT EXAMINATION (Continued)

5 BY MS. PENZA:

6 Q Good morning, Daniela.

7 THE COURT: By the way, you are still under oath.

8 Do you understand?

9 THE WITNESS: Yes.

10 A Good morning.

11 Q Daniela, last week, we ended by talking about your sister
12 Camila. While your sister Camila was under 18, did she ever
13 have any medical issues?

14 A Yes.

15 Q Can you explain?

16 A She had -- she had appendicitis. She was, she had
17 appendicitis and she had to have a surgical, severe surgical
18 procedure when she was -- it was around 2007, early 2007.

19 Q Do you remember how old Camila was at the time?

20 A She would have been 16.

21 Q You said it was appendicitis. Do you remember what
22 actually happened?

23 A Yes, I was with her. We were together in the house and
24 she had pain. She had pain and I, I remember at the time I
25 thought maybe it was because of laxatives or things she was

Daniela - direct - Penza

2486

1 taking at the time because she was taking a lot of things to
2 lose weight and she had been complaining about pain.

3 I think I remember, like, my, my parents were in
4 town but they were at an intensive. They were away from the
5 house. We were alone all day, and she had been complaining
6 about very severe pain to the point where she could not stand
7 up straight, like she was bent with pain. And I remember
8 talking to my mother and telling my mother and they took her
9 to the hospital.

10 When they took her to the hospital, as I remember,
11 they realized she had appendicitis but also that she had, she
12 had waited too long. I remember thinking, wow, she went
13 through a lot of pain because there was already -- there was a
14 condition. It's actually not only inflamed but it explodes
15 and it contaminates everything. So she had that already.
16 That's what I remember.

17 Q And you said she had surgery?

18 A Yes.

19 Q What do you remember from the, about the surgery?

20 A I remember, I remember it was very expensive. She didn't
21 have health insurance. I remember it was long. We were
22 worried and there was -- I remember her wound. I remember
23 after the surgery, there was a big, like, a big hole in, in
24 the, and it needed to be, like, drained every certain period
25 of time like throughout the day.

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2487

1 Q Can you explain where on her body the wound was?

2 A Yes. It was in her, you know, in the lower -- I don't
3 know what that part is called.

4 THE COURT: Abdomen.

5 A In her lower abdomen. In the --

6 THE COURT: You can stand up and show on your body
7 where it was.

8 A Okay. So in her lower abdomen. (Indicating.)

9 THE COURT: On the right side, correct?

10 THE WITNESS: Yes, as I remember, on the right side.

11 A And like a big slit. It was, like, a slit that was wide
12 open. It was wide open. I remember my mom used to take --
13 may I sit down now?

14 THE COURT: Yes, you may sit.

15 A It was very hard to see. It used to be, like -- it had
16 white stuff and it was, like, blood-ish stuff and it had to be
17 drained constantly because it had become infected so they
18 would take, like, cotton and substances and, like, put it in
19 and, like, to drain it and take all this stuff out. It was --
20 I remember Cami was in a lot of pain. She was in a lot of
21 pain and my mom was able to do this. My grandfather had been
22 a doctor and at some point in her life, she wanted to be a
23 nurse but, but I remember thinking it would be hard to help
24 her but it would be hard to be Cami with all that pain all the
25 time because it took weeks and weeks and weeks for that to

Daniela - direct - Penza

2488

1 heal.

2 Q Do you remember how wide the wound was?

3 A I remember it at least an inch, if not a little more.

4 Q And did that create a scar?

5 A Yes.

6 Q Had you seen -- have you seen Camila's abdomen recently?

7 A Yes, I have.

8 Q And does Camila still have that scar?

9 A Yes, she does.

10 Q So if there is an image of Camila and her abdomen and
11 that scar is not visible, how old would Camila have to be?

12 MR. AGNIFILO: I object to the form of the question.

13 THE COURT: Could you restate the question?

14 Q How old would Camila be if there's a picture of her
15 abdomen and there's no scar showing?

16 MR. AGNIFILO: I object to the form of the question.

17 THE COURT: You'll have to ask it differently.

18 Q Daniela, you've seen Camila's abdomen?

19 A Yes.

20 Q You saw it before she had the surgery?

21 A Yes.

22 Q And you've seen it after the surgery?

23 A Yes.

24 Q Do you know -- if you saw an image of Camila where there
25 is no scar on her abdomen, would you know how old she was?

Daniela - direct - Penza

2489

1 A Yes.

2 Q How old would she be?

3 A She would be 16 or younger.

4 MS. PENZA: Your Honor, I'd like to move into
5 evidence Government's Exhibit 1529 which was on consent of the
6 defense.

7 MR. AGNIFILO: No objection.

8 THE COURT: I'm sorry. The number again? 1629?

9 MS. PENZA: 1529.

10 THE COURT: Without defense objection, correct?

11 MR. AGNIFILO: Yes, Judge.

12 THE COURT: All right. Yes. Government
13 Exhibit 1529 is received into evidence. You may publish it to
14 the jury.

15 (So marked.)

16 Q Daniela, I'm showing you what's in evidence as Government
17 Exhibit 1529. Can you read the "from" and "to" lines on this
18 e-mail?

19 A Yes. This is from thegreathead@gmail.com on behalf of
20 Daniela, Dani, something, at gmail.com, to Flintlock,
21 kunterre@nycap.rr.com.

22 Q When was this e-mail sent?

23 A June 26, 2007.

24 Q And we talked about this before, but whose e-mail address
25 is kunterre@nycap.rr.com?

Daniela - direct - Penza

2490

1 A That is an e-mail that Keith used.

2 Q And in your e-mails, would that e-mail address sometimes
3 come up as "Flintlock"?

4 A Yes, it would.

5 Q Why is that?

6 A I imagine that's how it was registered on the contact
7 information.

8 Q And the subject line says, "About VC." What is "VC"?

9 A It stands for -- that's what Keith nicknamed my sister,
10 Virgin Camila. Also, at times, he called her VC.

11 Q Now, this e-mail was sent on June 26, 2007. Last week
12 when you were testifying, you talked about certain milestones
13 in your relationship with the defendant. When was -- where
14 does June 26, 2007 fit in?

15 A This is after I had a fight with Keith and we didn't
16 speak any longer.

17 Q Can you read this e-mail, please?

18 A Yes.

19 I cannot tell VC because I technically don't know
20 what is going on but if you could find a way, please tell her
21 having an alarm set on her phone that reads PILL is not a good
22 idea. Sorry to write to you about this, but with my parents
23 here and VC otherwise off meds I think it is an unnecessary
24 risk. D.

25 Q What did you mean in that e-mail? Can you explain that

Daniela - direct - Penza

2491

1 e-mail?

2 A Yes. So my sister had an alarm on her phone to remind
3 her to take the pill, birth control pill, and I was worrying
4 for protecting Keith, my parents didn't know it was supposed
5 to be a secret. I knew -- Cami didn't know I knew so that's
6 what that e-mail is about.

7 Q Can you describe -- I'm sorry. One more question,
8 Daniela.

9 This e-mail address, on June 26, 2007, how old was
10 Camila?

11 A She was 17 in a few months, in a couple of months.

12 Q Daniela, can you describe -- we've talked a little bit
13 about your legal status in the United States. Can you
14 describe what your siblings' status in the United States was?

15 A Yes. So once they came, once they came in without my
16 parents, their status was that they were on a visitor's visa,
17 much like I had had before, and I believe at least once, they
18 renewed it the way I used to, going back after six months, but
19 after that, they overstayed their, their stay, their allowed
20 stay, and their status expired and there was a time when they
21 were in the country illegally in that way.

22 Q The decision to stay illegally in the United States, was
23 anyone else in the NXIVM community ever involved in that as to
24 your siblings?

25 A Yes.

Daniela - direct - Penza

2492

1 Q Can you explain?

2 A Yes. There were a few people involved but as I recall,
3 the way in which they ended up extending or, rather, their
4 stay expired is because they were offered help to extend, to
5 ask for an extension on their visa, and through Keith and
6 through a lawyer and through I remember at the time Kristin,
7 they said they had hired people who would file an extension
8 and that they were okay to stay. That ended up not being
9 true. Nothing had been filed. So by the time that they
10 realized and we realized, they were already illegally in the
11 country.

12 Q Was there ever an instance where your brother Adrian
13 planned to leave the United States because otherwise he was
14 going to be overstaying?

15 A Yes.

16 Q Can you explain what happened?

17 A Yes.

18 MR. AGNIFILO: Your Honor, I'm sorry, I object
19 unless the witness has personal knowledge of these things.

20 THE WITNESS: I do have personal -- I'm sorry.

21 THE COURT: No, don't answer.

22 MS. PENZA: I can ask another question, Your Honor.

23 THE COURT: Why don't you ask another question.

24 Q Daniela, were you personally aware of the circumstance in
25 which your brother was encouraged to stay in the United States

Daniela - direct - Penza

2493

1 once he was illegally here?

2 A Yes.

3 Q Can you explain, please?

4 A Yes. My brother wanted to leave so as not to break the
5 rules and he had a conversation with Keith.

6 Q Were you present for that conversation?

7 A Yes.

8 Q Can you explain where this conversation took place?

9 A Yes. It took place at the gym during a volleyball night.
10 He had -- as I remember, he had a plane to catch, he had his
11 plane ticket and he wanted to leave, and Keith talked him out
12 of it. He told him that he should stay, that it would be
13 harder to come back if he left, that they had ways and they
14 had people who could help him, you know, solve it without
15 having to leave. And my, my brother presented quite a bit of
16 resistance but in the end, he listened to Keith.

17 Q Was any of that night that you're talking about, was
18 anybody else involved in those conversations with your
19 brother?

20 A Yes. Pam was there and she also talked to my brother
21 about it at length. My brother really liked Pam, we all
22 really liked Pam and listened to her.

23 Q And how about your -- how about your sister Camila, at
24 what point were you aware that she was illegally in the
25 country?

Daniela - direct - Penza

2494

1 A I don't remember the exact timing of that. I remember
2 that there was a lawyer, all of the sudden, there was a lawyer
3 involved and there was a big fuss about who had been at fault.
4 I remember that Loreta had been involved, a lawyer called
5 Jonathan had been involved and my parents got involved
6 because, you know, nobody intended for that situation to
7 happen. Somebody had not done their job. They had been
8 promised that extensions would be filed and they weren't or
9 they weren't done correctly, I don't know what the details
10 were, but they were now illegally in the country and they had
11 to figure that out.

12 Q Did you -- later, when you were in touch with Camila,
13 when you were in touch with Camila later, did you later
14 understand her to be out of status in the United States?

15 A Yes. Yes. In fact, Cami never did leave the country
16 again after that first overstay. She was too fearful to leave
17 and not be able to come back and many strategies were devised
18 and a lot of help was offered but she never became regular
19 again with her status, legal status.

20 MS. PENZA: Your Honor, may I have the ELMO just for
21 the witness, please?

22 THE COURT: Go ahead.

23 Q Daniela, I'm showing you what's been marked for
24 identification as Government Exhibit 1554. I'm going to show
25 you the three pages to this document.

Daniela - direct - Penza

2495

1 Are you familiar with this document?

2 A Yes, I think so. It's hard to see but I think I know.

3 Q We can squeeze in the middle little bit?

4 MS. PENZA: Your Honor, may I approach and show the
5 document?

6 THE COURT: Yes, you may.

7 (Pause.)

8 Q Do you recognize it generally?

9 A Yes.

10 Q And can you just explain generally what this document is?

11 A Yes. This is an exchange with lawyers and people from
12 ESP who were supposed to be helping in the status of my
13 siblings culminating with my father being aware that they're
14 out of status.

15 MS. PENZA: Your Honor, the government offers
16 Government Exhibit 1554 into evidence.

17 MR. AGNIFILO: One second, Your Honor.

18 THE COURT: Sure.

19 (Pause.)

20 MR. AGNIFILO: I have no objection.

21 THE COURT: All right. Government Exhibit 1554 is
22 received into evidence.

23 MS. PENZA: Thanks, Your Honor.

24 (So marked.)

25 Q Daniela, I'm showing you what is marked in evidence as

Daniela - direct - Penza

2496

1 Government Exhibit 1554. Turning to the -- turning to the
2 third page, the e-mail, the letter of the e-mail, the
3 signature block says Jonathan Ware, Esquire. Do you know who
4 Jonathan Ware, Esquire is?

5 A Yes. He was the immigration lawyer.

6 Q And turning to the second page, to the start of that
7 e-mail that ends with his signature block, can you see the
8 beginning of that e-mail?

9 A Yes.

10 Q And that's sent from Jonathan Ware. And who is it sent
11 to?

12 A To NSalzman, which is Nancy Salzman, @NXIVM.com,
13 kristinandkeith@gmail.com, and an e-mail at sagitta.com.

14 Q What is sagitta.com?

15 A That's the name of my father's business.

16 Q And does your father have an e-mail address that ends in
17 that?

18 A Yes.

19 Q And the e-mail is addressed to Hector, Nancy and Kristin,
20 correct?

21 A Correct.

22 Q Can you read this e-mail?

23 A Yes.

24 Hector, Nancy and Kristin, I hope you are all well.
25 I'm writing this message at Lisa's request to follow up on the

Daniela - direct - Penza

2497

1 discussions I've had with her regarding the legal strategy for
2 mitigating any potential negative consequences to Adrian and
3 Camila in terms of their ability to return to the United
4 States in valid immigration status. I want to make sure that
5 we are in alignment on our approach.

6 I see two distinct issues which I feel should be
7 approached separately. The first issue is using NXIVM's
8 connections to people of influence in the government to assist
9 in documenting the fact that Adrian and Camila became out of
10 status because they did not timely receive notices of
11 approval/requests for additional evidence and, therefore,
12 should not be subject to any bar from returning to the U.S. I
13 feel that this is an appropriate strategy.

14 There is a second issue of how to return Adrian and
15 Camila to valid immigration status. In my professional
16 option, our best bet given the options available to us at this
17 time would be to seek USCIS approval for Adrian and Camila to
18 return to the U.S., with Hector as L-2 dependents provided
19 that we obtain a favorable adjudication of Hector's pending
20 L-1 petition. Once Hector's petition is approved, we will be
21 able to submit dependent petitions on behalf of Adrian, Camila
22 and Adriana. Given our present timeline and the fact that
23 USCIS requested additional evidence in connection with
24 Hector's case, we should expect a decision in Hector's case
25 sometime in early January. If everything runs smoothly, we

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2498

1 could have Adrian and Camila back in the U.S. by the end of
2 February, 1st of March.

3 Q So, at this time, Daniela, although it says "back in the
4 U.S.," are Camila and Adrian actually in the United States?

5 A Yes, I believe they are.

6 I feel that it would be undesirable from a strategy
7 standpoint at this time for Adrian and Camila to seek
8 readmission to the U.S. in B-1 status and want to make sure we
9 are in alignment on this issue. If they do so, based upon my
10 understanding of the family's immigration history, I felt they
11 will encounter significant difficulty which will be difficult
12 to overcome.

13 In 2004, Hector and Adriana were stopped at the
14 border, questioned by U.S. Customs and Border Protection
15 extensively and gave sworn statements to border protection
16 officers. Their immigration file contains negative history
17 which indicates the children were enrolled at one time in
18 public school in New York. If this is correct, the children
19 would have been in violation of their B-1 status. As a
20 non-immigrant, one is not permitted to enroll in public school
21 in the U.S.

22 Given the overstay situation, the government will
23 scrutinize any attempt on their part to reenter the U.S.
24 extremely closely. Both Adrian and Camila will likely be
25 subject to detailed examinations and extensive questioning at

Daniela - direct - Penza

2499

1 the border about their prior activities in the U.S., Example,
2 did they go to public school, did they work, why are they
3 seeking re admission, et cetera.

4 In determining whether to readmit them to the U.S.,
5 USCIS will refuse to do so if it is determined that they
6 violated their prior status. Provided Hector is admitted in
7 L-1 status, we will have additional public policy arguments
8 that the children should be admitted in order to keep the
9 family together. We would not otherwise have these arguments
10 if they seek admission in B-1 status.

11 Q Okay, Daniela. At this time, had your brother and
12 sister, Adrian and Camila, had they been working for the NXIVM
13 community?

14 A Yes, they had.

15 Q Okay. What had Adrian been doing?

16 A I know he had been working for Clare and I think he was
17 at that point already part of the video team maybe.

18 Q What did that mean, being part of the video team?

19 A They worked to film trainings and events, mostly
20 trainings.

21 Q Do you know how much he was working at that time?

22 A He's a hard working guy, like, you know, like, a full
23 working day.

24 Q How about Camila, what was she doing for work at this
25 time?

Daniela - direct - Penza

2500

1 A She had been working as a maid cleaning Nancy's house.

2 Q Did she end up doing other work for the community as
3 well?

4 A At some point, she started working for rainbow. I don't
5 remember the exact transition date for that.

6 Q Then there's another e-mail in the chain so the last
7 e-mail started there and there's another e-mail. So I'm going
8 to move to the beginning of that e-mail and can you start
9 there.

10 A Yes.

11 Hector, I hope you are well. I am writing to you to
12 follow up my message of last week, which appears below. When
13 I wrote this message last Friday, I was under the impression
14 that Adrian and Camila had already left the U.S. I had a
15 conversation with Loreta Garza last night, and I learned that
16 they are still physically present in the U.S.

17 As a follow up to my conversation with Loreta, I
18 want to make sure we are in alignment on our strategy. I also
19 want to make sure that you clearly understand my
20 recommendations and the potential implications for Adrian and
21 Camila if they continue to remain in the U.S. I am
22 significantly concerned that if they do not make plans to
23 leave the U.S. immediately, it may have considerable long-term
24 effects of their ability to return in the future in another
25 valid status.

Daniela - direct - Penza

2501

1 I want to reiterate this to make sure that you have
2 a full understanding of the situation in case it wasn't clear
3 from my earlier communications. Because we know that Adrian
4 and Camila are now out of status, from a procedural
5 standpoint, the only way for them to return to proper status
6 is to have them leave the country and apply for reentry in
7 another valid status. The longer they remain in the U.S.
8 without being in proper status, the more difficult it will be
9 for them to return. If they accrue more than 180 days in
10 unlawful presence, which USCIS and State Department will most
11 likely assert began as of the expiration date of their last
12 B-1 extensions, they will be subject to a three-year bar from
13 returning to the U.S.

14 Although I have been in contact with Steve Pigeon's
15 office, who in turn has connections with Hillary Clinton,
16 please do not make the mistake of thinking we can return
17 Adrian and Camila to a valid status by appealing to these
18 political connections.

19 Q Can I stop you for a second, Daniela.

20 Do you know who Steve Pigeon is?

21 A I had heard his name but, no, I thought he was a lawyer
22 for NXIVM.

23 Q Do you remember in what context you had heard his name?

24 A Yes. I had heard it from the conversations between Keith
25 and Kristin that were, you know, open cases, legal strategy.

Daniela - direct - Penza

2502

1 Q And then can you read -- did you have an understanding of
2 connections with the Clintons?

3 A I heard a name mentioned. I did have an understanding of
4 trying to gain, in gaining political connections and political
5 favors through those connections.

6 Q And can you continue reading, please?

7 A Yes.

8 In my professional opinion with 12 years of
9 immigration practice, I do not view this as a viable strategy.
10 These political connections can be very helpful to us,
11 however, in liaising with USCIS, where the issue of the three
12 year bar is concerned, if the USCIS asserts that Adrian and
13 Camila are subject to the same when they apply for
14 readmission. I feel this is our best approach in asking for
15 Mr. Pigeon's assistance.

16 At this time, the best scenario for returning Adrian
17 and Camila to valid status is:

18 Bullet point: Having them immediately return to
19 Mexico. Another bullet point: Obtaining approval of your
20 primary L-1 intracompany transferrer visa. Another bullet
21 point: Subsequent to obtaining approval of your L-1 visa,
22 filing for L-2 dependent visas on behalf of your children
23 under 21, Adrian and Camila, and Adriana.

24 As I mentioned in my message below, in determining
25 whether to readmit a non-immigrant to the U.S., a major factor

Daniela - direct - Penza

2503

1 the USCIS relies on is whether the visa holder maintained
2 her/his prior immigration status, which would include
3 departing on time when her/his visa expires or if the visa
4 holder becomes aware that he or she is out of status. In my
5 professional opinion, the best action Adrian and Camila can
6 take at this time is to show good faith in complying with the
7 terms of their earlier admittance in B-1 status by returning
8 to Mexico and seeking reentry in another valid status.

9 I would much appreciate if -- I would much
10 appreciate it if you could send me a return message just so I
11 know you understand my recommendations. I will also be glad
12 to answer any questions you may have. With warm regard,
13 Jonathan.

14 Q And then did your father respond to the message?

15 A Yes. This is his response.

16 Q And can you -- before we read the response, it's from
17 your father to Jonathan Ware, is that correct?

18 A Yes, that's correct.

19 Q And can you go through the e-mail addresses of the people
20 who are copied?

21 A Yes. So first one copied is my mother's e-mail address,
22 theinnerwitch@gmail.com, the second is my brother Adrian's,
23 dofito@gmail.com, the third is Camila's address, vcbaby@gmail
24 and the fourth and last is Lisa Derks, lderks@nycap.rr.com.

25 Q Who is Lisa Derks?

Daniela - direct - Penza

2504

1 A Lisa Derks was a student in NXIVM who also ended up
2 working or at least was working at the time in the so-called
3 legal team with Kristin.

4 Q Okay. And then can you read your father's e-mail
5 address, your father's e-mail?

6 A Yes.

7 It says: Jonathan, I understood what you wrote. I
8 asked Lisa about the kids' B-1 visa extension expiration and
9 no answer received yet. I am aware of the issue and
10 forwarding this mail to the kids to immediately return to
11 Mexico if no other choice is workable for the time being. I
12 am on the road but tonight I will send you what I have about
13 the USCIS request. So please send me an e-mail tomorrow to
14 review USCIS request of info. Sincerely, Hector.

15 Q And was this e-mail then forwarded to anyone else?

16 A Yes.

17 Q Okay. Who forwarded the e-mail?

18 A My mother.

19 Q And it was forwarded on the same day that the original
20 e-mail had been written?

21 A That looks correct, yes.

22 Q And who was it forwarded to?

23 A It's forwarded to me, my personal e-mail address,
24 thegreatehead@gmail.com, to my sister's Marianna's e-mail
25 address, themightyrunner@gmail, to Pam Arstakaitis' e-mail

Daniela - direct - Penza

2505

1 address, vivajness@gmail.com, and to Keith's e-mail,
2 keithraniere@yahoo.com.

3 Q Is that another e-mail address that the defendant used?

4 A Yes.

5 Q I'd like to go back to the time after you crossed over
6 illegally into the United States.

7 At that time, can you describe any changes in your
8 relationship with the defendant?

9 A Yes. I -- our relationship became much closer. I was
10 fully immersed in the community around Keith, the inner
11 circle, and I didn't, I didn't realize fully at the time but I
12 was completely dependent.

13 Q Can you explain what you mean by that?

14 A Well, at first, it wasn't evident because there was -- it
15 just wasn't evident. It was just, like, normal, it was just
16 spending more time together and while everything was going
17 well, there was no, there were no signs of the clear
18 dependency that I had, but as time progressed, it would be, to
19 put it mildly, brought to my attention, but more accurately
20 held over my head, the fact that they, they had brought me
21 into the country, that I was there illegally, that I was a
22 liability, and so it became a huge thing they held over me.

23 Q So would the story of having brought you over illegally
24 come up frequently?

25 A Yes, in -- yes.

Daniela - direct - Penza

2506

1 Q In what sorts of contexts?

2 A In two different kinds of contexts. One would be the
3 playful triumphant, like, we did this thing and we were
4 victorious context and that was sort of in the setting of
5 playful banter.

6 Q And who would participate in that?

7 A The people in the inner circle who were aware. So
8 obviously Keith, Kathy Russell, Pam would be there, people who
9 were aware of what had happened and how it had gone down. In
10 stark contrast would be a completely different context in
11 which it would come up. It would come up on, when I wasn't
12 doing my program or I wasn't doing something that I, they
13 thought I should be doing when, you know, really as an act of
14 discipline, in any kind of act of discipline, it would be
15 brought up that I was there thanks to them bringing me into
16 the country.

17 Q Now, when you first came back, I think you talked a
18 little bit about the fact that you were now spending a lot of
19 time at 3 Flintlock, is that right?

20 A Yes, that's right.

21 Q And can you describe what the day-to-day conversations
22 are like in 3 Flintlock?

23 A In general, in the house, all right, so at the time in
24 3 Flintlock, there are several people living there. So in one
25 room, it's Karen Unterreiner, in another room, it's Kristin

Daniela - direct - Penza

2507

1 Keefe, in the third bedroom there, Pam Cafritz lived with my
2 sister Marianna, and Keith sort of lived downstairs in the
3 coach and like migrated around spending time with different
4 women, but that was, like, his control center.

5 The day-to-day was, so early in the morning,
6 usually, the first conversation as I remember would be
7 Kristin. Kristin would be coming downstairs in her bathrobe,
8 rollers in her head, preparing the coffee, and would sit down
9 to report to Keith all of the things, the legal things that
10 were happening and he would give her instructions. Like, that
11 was one of, like, the main events of the morning, he would be
12 there for that. There were other times maybe throughout the
13 day she would stop by and they would talk about something, but
14 that was the allotted time they had to review this.

15 In the morning, he also did the stock market. Keith
16 had, like, a lot of phone conversations doing stuff with the
17 stock market. I remember "futures" and "OJ" and words like
18 that that were said over the phone and it sounded like the
19 person he was working with, like, they were very friendly.

20 Q Were you able to hear from those conversations who he was
21 talking to?

22 A Yes. There was a man named Yuri. He's the one that he,
23 he was talking to a lot and it seemed to be very friendly.
24 He'd ask him about his family and they would have very
25 friendly conversations.

Daniela - direct - Penza

2508

1 Karen was kind of just like there briefly in the
2 morning and worked outside all day long at the center, came
3 back late at night, watched some TV, went to her room. She
4 was pretty stealthy and didn't have a big presence in the
5 house.

6 Marianna and Pam were almost always upstairs. He
7 would go up there when he wanted to sleep. That's what I
8 understood.

9 (Continued on next page.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Daniela - direct - Penza

2509

1 BY MS. PENZA: (Continued.)

2 Q What other types of -- I think you talked a little bit
3 about them last week, but the other types of categories of
4 conversations that would happen in the house.

5 A There would be people that would come. So I would say
6 there were times where there was, like, curriculums discussed
7 or trainings discussed and sometimes people would stop by and
8 talk about that, particularly when there was an intensive
9 going on or there was, like, a new release of, like, new
10 curriculum he would be, like, debriefing after, like, every
11 session.

12 That would happen -- he was around at the house to
13 receive phone calls from Nancy or from whomever. It was
14 mostly Nancy who was releasing the new material and then at
15 the end of the day she would stop by and they would have a
16 big -- they called it debriefing. These were the things about
17 curriculums. As I said before there was either playful banter
18 or very -- very sexual, like, talk, which, you know, was only
19 when certain people were around that they could have that.
20 What else? There were disciplining talks and arguments with
21 women. I would say that's a whole separate category.

22 So, most of that happened on the phone. At least
23 that's what I presenced (sic) that's what I could see of it.
24 It would be very long conversations, very rough conversations
25 to discipline someone, you know, what they're doing wrong and

Daniela - direct - Penza

2510

1 you shouldn't say that, think that, just disciplining.

2 Q So, the conversations are with the defendant and the
3 woman who needs discipline or with someone else who is going
4 to do the disciplining?

5 A Actually, both. So, when a person -- when a woman was
6 going off -- when a woman was having an issue, when something
7 was wrong, there was often, like disciplining one-on-one, so
8 it would be a conversation just with one-on-one, sometimes,
9 and I imagined always that if the issue was large enough or if
10 Keith could not handle it, he would call on other women. So
11 Lauren or Pam or Nancy so that they -- he would have a
12 conversation with them about the issue that the woman was
13 having so that they would go and basically execute the
14 disciplining as opposed to him doing it personally.

15 Q At this time what are you doing or work in the community?

16 A At that time I was doing odd jobs here and there. As I
17 mentioned before, my mom told me about a few jobs. I found a
18 way to make a little money. There was a point when I did a
19 website for Pam, for Jness, and I got paid a good amount of
20 money for that and it lasted a long time.

21 Q How much was it?

22 A \$3,000.

23 Q How did she pay it?

24 A Cash. That lasted me for a long time. And somewhere in
25 there there was a transition because I had no way to make

Daniela - direct - Penza

2511

1 money. I had no job and I had no status that that's when the
2 book reports were presented to me as here, you can make money
3 doing this.

4 Q Were you paid for any of those?

5 A No.

6 Q Were you doing other work around -- were you doing other
7 types of work?

8 A Yes, I was doing a lot of activities, a lot of
9 not-for-pay work. As I mentioned before, there was not only,
10 like, the executive library, the organizing, there were also
11 passing projects. So, for example, there would be a video
12 that I needed to transcribe or there would be V Week coming up
13 and there was a video that needed to be edited and I would
14 spend days and days and hours and hours editing that. So
15 there was always a project that needed, you know, to be worked
16 on and, so, I was doing all of those odd things.

17 Q Other than the money for Jness website, were you paid for
18 any of that?

19 A No.

20 Q And then you mentioned, I think before, you also would do
21 cleaning and organizing?

22 A Yes.

23 Q I think you also talked about your recording of the
24 defendant; is that right?

25 A Yes.

Daniela - direct - Penza

2512

1 Q How would that actually take place while you were at
2 Flintlock?

3 A Well, when I'm at Flintlock, it would be turning on and
4 off the recorder when things were happening. Many times it
5 would be during walks. It would be he's walking with somebody
6 else and I would go along and record. That would be each
7 recording. And then it became a little more formalized and
8 there was video recording and that was, more scheduled. So if
9 someone was going to have a class or he was going to have a
10 specific interaction. If I wasn't around -- if I was around I
11 would just go and do it. If I wasn't around, they would call
12 me over to go and do that.

13 Q Were you paid for any of that?

14 A No.

15 Q At Flintlock would you record the defendant the entire
16 time, like basically all day?

17 A With some exceptions, but throughout the day, yes,
18 constantly.

19 Q Okay. So what were the exceptions?

20 A The exceptions were anything related -- anything related
21 to legal stuff. When there was, for example, the interactions
22 with Kristin. At first, I would outright be instructed to
23 stop recording and eventually I got it. Meaning if she's
24 around, that's the type of conversation that would happen and
25 I would stop recording. Really, that was the one major

Daniela - direct - Penza

2513

1 exception.

2 Q Would anyone else have been present on these, what you're
3 calling legal conversations other than you with the defendant
4 and Kristin -- and that's Kristin Keefe?

5 A Yes, Kristin Keefe. Yeah, a few people would be around
6 that were allowed listen to that type of stuff or that
7 participated. The only ones that I observed were Nancy
8 Saltzman -- Karen could be there if those conversations
9 happened, but she basically turned out -- but she was okay to
10 hear those things, but that would also participate Nancy.

11 Q Now, just to go back to the stock market conversations
12 for a second, did you ever observe the defendant's reactions
13 to any of those conversations?

14 A Yes.

15 Q And was there a time when he was upset?

16 A There was a time when I knew something, yeah -- yeah.

17 Q And so what was he saying?

18 A I remember, and it was not just on one occasion. It was
19 some separate occasions. Like, there would be, like, the
20 sense that what's -- almost like a conspiracy, that there was
21 a conspiracy going on like that something had gone wrong and
22 he was either speaking to Yuri about it or speaking to
23 somebody else about it as to this is strange; this should not
24 have gone wrong, there's something else there. And I don't
25 remember specifically, like, what it was. I wasn't paying

Daniela - direct - Penza

2514

1 very much attention to it, but I did have a distinct
2 understanding of those exchanges.

3 Q Did you understand anything about how much money the
4 defendant was making or losing?

5 A No.

6 Q Now, you talked about -- you've been using the word
7 "legal" and, like, these legal conversations. Can you
8 describe in a little more detail what types of conversations
9 you would be there for between the defendant and Kristin
10 Keefe?

11 A Yes. So, when I say "legal," I mean a few different
12 things. So -- and they were mostly with Kristin Keefe so
13 there were quite a few that it was, like, the three of them,
14 Nancy also; not just Nancy and Keith would talk about it. But
15 mostly Kristin because she lived there. So there were
16 different types. One of the types was I knew they had a group
17 of lawyers. So Kristin, as I understood, was in charge of,
18 like, making sure that filings were done for the different
19 cases that they had, different documentation -- just, like,
20 very procedural stuff. And she would be working with Nxivm's
21 lawyers on that and she would report on the results.

22 And there was, like, an upper level of the lawyers
23 or just political figures, I wasn't sure, that they had. But
24 that was more, like, almost, like -- almost like PR. It was
25 almost like, they were -- as I understood, they were

Daniela - direct - Penza

2515

1 lobbyists. That's how I can describe what I understood at the
2 time; that they were there to gain them political favor. To
3 get them to succeed in the cases they were bringing up or just
4 to lobby for the company.

5 A separate type of legal matter that they handled
6 was, I would say, quite the opposite from legal. It would be
7 the illegal stuff. And the illegal stuff would be they hired,
8 like, agencies, I don't know -- like agents do, or, like, a PI
9 agency or something like that. And the discussion about that
10 would be what information to get from whom, how much it would
11 cost, if they got it, if she reviewed it, what that meant.
12 And, in that, get access to people's e-mails accounts, get
13 access to people's records. So all of that -- all of that I
14 would clump under the legal part of legal. And I think that's
15 it.

16 Q Did you ever remember -- were there ever any discussions
17 about obtaining people's bank records?

18 A Yes.

19 Q What do you remember about that?

20 A I remember they were going back and forth, Kristin asking
21 him who they should get stuff for -- like, on. I remember --
22 I don't know why I remember. I remember they were, like,
23 faxing the information back and forth. I remember, like, a
24 fax. And, I remember them discussing -- like, he would ask
25 how much is this, how much is that. It was bank records and

Daniela - direct - Penza

2516

1 it was, like, information, like personal, like, personal
2 records on different people, yes.

3 Q Who was deciding -- in these conversations who was
4 deciding who there was -- who was going to be investigated?

5 A Keith.

6 MR. AGNIFILO: Object to the form of the question.

7 THE COURT: Well, the answer is out. So, overruled.

8 BY MS. PENZA:

9 Q The defendant would?

10 A Yes.

11 Q And can you explain a little bit about how that back and
12 forth would work?

13 A Yes. So, the interactions were obviously Kristin, like,
14 was actually out in the field, like, doing the work. Like,
15 she was is the one actually doing the things, but she would
16 also -- she would always be there going back to Keith and
17 reporting on what was happening. So he was fully aware of
18 everything that was happening and he would be the one thinking
19 about the things. And then when they interacted, clearly she
20 presented certain options and this is going on, this is going
21 on with so-and-so. So it would be all of the specifics and
22 Keith would be the one do decide. So he would have the last
23 say.

24 He would say, okay, I think you're right I think you
25 should do this or he would come up to the idea or he would

Daniela - direct - Penza

2517

1 tell her you should try to do this or you should try to get
2 that. But it was very clear to me that it was Keith that was
3 making all of the decisions.

4 MR. AGNIFILO: Your Honor, could we have a sidebar
5 for a second?

6 THE COURT: Sure

7 (Sidebar held outside of the hearing of the jury.)

8

9 (Continued on next page.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Sidebar

2518

1 (The following sidebar took place outside the
2 hearing of the jury.)

3 THE COURT: Okay, go for it.

4 MR. AGNIFILO: This general conclusion that she's
5 saying, well, Keith would do. If she wants to refer to a
6 specific conversation in a specific point in time when she
7 claims she and Keith were speaking, that's one thing but for
8 her to just editorialize generally about her conclusions about
9 generic conversations without any specificity to time is
10 improper and I object to the entire line.

11 MS. PENZA: Your Honor, I think that we have set the
12 stage of when the time period is. She's discussing the time
13 period when she has come back from -- from crossing the
14 border. She's laid the foundation that she's basically
15 sitting there day in and day out. I don't think it's fair for
16 her to describe a specific conversation. She's described this
17 is literally every day. It's back and forth.

18 MR. AGNIFILO: Keep it down.

19 MS. PENZA: He reprimanded me.

20 MR. AGNIFILO: I did not reprimand it. I suggest
21 that we speak softly.

22 THE COURT: Okay. Anything else?

23 MS. PENZA: No, Your Honor.

24 THE COURT: Do you have anything more on this line
25 of questioning?

1 MS. PENZA: There's a little bit more, Your Honor.
2 She's about to talk about her own involvement in these very
3 types of things.

4 THE COURT: The point being made is that a general
5 discussion -- you've laid a foundation, but try to be as
6 specific as possible as to when certain things happened. You
7 know, we have the general idea that she was taping, audio
8 taping, the discussions with Kristin and the general framework
9 of what they were discussing. But, if you could, be specific
10 as to certain issues. Try to get details as to when they
11 happened. That would be helpful.

12 MS. PENZA: I will do that, Your Honor.

13 MR. AGNIFILO: Thank you.

14 THE COURT: You're welcome. Let's move on.

15 (Sidebar ends.)

16

17 (Continued on next page.)

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2520

1 (Continuing.)

2 THE COURT: All right. Let's proceed.

3 MS. PENZA: Thank you, Your Honor.

4 BY MS. PENZA:

5 Q The time frame that we were just talking about when you
6 would hear these back and forth conversations between the
7 defendant and Kristin Keefe, can you try and put a little
8 bit -- can you put bookends on that?

9 A Yes. So that would be when I was clearly still having a
10 talking conversation and relationship with Keith. So that
11 would be before the fall of 2006. That would be the top
12 bookend. And the bottom bookend would be -- I mean, I started
13 hanging out at Flintlock before 2004. But it really -- I
14 became more to be approved for everything after I crossed
15 illegally.

16 So, firm bookends I would say from late 2004 to late
17 2006. A little bit -- I was still around before 2004, but I
18 don't have, a firm, like, lapse of time for that.

19 Q Did you have an understanding of why Kristin was the
20 person who was out in the field?

21 A Yes.

22 Q Can you explain?

23 A Well, she was very smart. She was very loyal to Keith
24 and she -- she had conversations with me and Pam about it. It
25 seemed to me at the time she considered herself, like -- like

Daniela - direct - Penza

2521

1 she was fighting for the mission. I remember she once told me
2 she would take a bullet for Keith. Like she was a front line
3 of, like, everything that they were doing that she was -- so I
4 think she prided herself in -- in being able to help and --
5 but you know she also was very smart and very, very able.
6 That's what I saw.

7 Q Did the defendant -- where would she go? When you say in
8 "the field." Did you have an understanding of where she was
9 going?

10 A I had an understanding.

11 Q What would she say?

12 MR. AGNIFILO: Your Honor, I'm going to object to
13 this as hearsay. Overruled.

14 MS. PENZA: Thank you, Your Honor.

15 A She -- I mean, she would go out and, like -- as I
16 understood it from the conversations that I heard and what she
17 would talk about it. She would like recounting -- Kristin was
18 a great storyteller and when we were in the close circle and
19 mostly just when it was Pam, like, it was when it was that
20 hermetic, but those stories were obviously very sensitive.
21 She loved telling stories of what she would do and especially
22 when it was, like, borderline -- like getting illegal and
23 something she was trying to achieve and she would recount it.

24 As I understood, she used to go and see the lawyers
25 and she was present in the court things and all of that, like,

Daniela - direct - Penza

2522

1 legal stuff. There was also, like, as I said this other part
2 that wasn't just, you know, this strict procedural stuff.

3 So, as I understood it, she, like, went around, you
4 know, like, doing little missions to gather information, to
5 find out things. She seemed to be very good at that and that
6 was part of what she was doing.

7 Q Did she report on those missions to the defendant?

8 A Yes. He was the first person, like, she always went back
9 and, like, reported to him. Even conversations she had with
10 Nancy she would go and report to him.

11 Q Did the defendant ever go out into the field?

12 A No.

13 Q Did you have an understanding of why?

14 A Yes. Yes. And this was with everything. His name was
15 on nothing. He would not ever be the one executing any of his
16 plans but with the legal stuff in particular there was --
17 like, there was a distinct awareness between everybody
18 involved so there was no mistake that some of what they were
19 doing was illegal. There was the distinct awareness of that.
20 There was full --

21 MR. AGNIFILO: Your Honor, I object.

22 THE COURT: Sustained. You will disregard the last
23 answer.

24 BY MS. PENZA:

25 Q When you say -- Daniela, how did you come to the

Daniela - direct - Penza

2523

1 understanding that there was an awareness of what was
2 happening was illegal?

3 MR. AGNIFILO: I object to the whole line, Judge.

4 THE COURT: Well, you can answer that.

5 A There would be a focus on protecting Keith and him not be
6 the one to -- to be, like, that's where conversations with
7 Kristin about she would take a bullet for Keith. She was the
8 one who would take the fall if something happened, like, and
9 she was willing to do all of that for the mission and Keith.
10 That's how it was so clear that she knew that -- they knew
11 what they were doing -- that some of what they were doing at
12 least was not kosher.

13 Q Did you, yourself, have conversations with the
14 defendant -- and we'll go into the details in a minute, but
15 did you, yourself, have conversations with the defendant about
16 illegal activities?

17 A Yes.

18 Q You mentioned other types of information that the
19 defendant and others were trying to gather on people and you
20 mentioned passwords. Can you explain that a little bit more?

21 A Yes. So there was a time when they were trying to get
22 access to a woman's e-mail address. I remember who this
23 person was and her name was Kristin Snyder and Keith wanted to
24 gain access to her e-mail account because something happened
25 and he had a theory and he was trying to disprove it, like,

Daniela - direct - Penza

2524

1 disprove what had happened.

2 And, as I remember, Kristin had found a service
3 where they could pay a certain very large amount and they
4 could obtain the password for any e-mail address so I remember
5 that attempt.

6 Q What do you remember about those discussions
7 specifically?

8 A I remember the -- about those discussions specifically, I
9 remember it was a very large amount of money they were willing
10 pay for a password.

11 Q Do you remember the amount?

12 A \$24,000 was the amount. I remember -- that was the
13 shocking part for me. I remember the situation was that --
14 and it was going all around, like, ESP the center because this
15 woman had taken some ESP classes and what I remember, what I
16 understood this woman was a student from Alaska or had come
17 from Alaska and she had disappeared and she had left a note
18 attributing, I think, like a suicide or something like that to
19 the company and that was obviously very destructive to the
20 company.

21 And I think Keith believed this was a plot to create
22 negative publicity for ESP and that she was alive, so they
23 were trying to gain access to her e-mail to prove that she was
24 alive.

25 Q When you say the defendant believed that, did the

Daniela - direct - Penza

2525

1 defendant actually say that to you?

2 A Yes.

3 Q And he would be saying that in these conversations with
4 Kristin as well?

5 A Yes.

6 Q How long was -- how long was the time period of this back
7 and forth about Kristin Snyder and her password?

8 A It was very short. It was a matter of days, weeks.

9 Q Now, do you remember anyone else that the defendant was
10 trying to gather information on?

11 A Information in general, it was a long list of people. I
12 was a long list of people.

13 Q Who stands out?

14 A Who stands out? Okay. Rick Ross.

15 Q Who was Rick Ross?

16 A Rick Ross was a person who had -- I believe he, like, was
17 the programmer and had zoned in on ESP and had gotten his
18 hands on some of the curriculum and was, like, publishing it
19 and they had a case, like, a big case. I think I remember
20 like on copyright or something against him. There was Toni
21 Natalie who understood had been in business with Keith, had
22 been part of, like, an older CBI and either another business
23 and on that business he had stolen from Keith so I don't know
24 who was suing who, but they had some legal stuff open with
25 her. There was a lawyer who at first was working with them

Daniela - direct - Penza

2526

1 who then became part of the list of enemies, of people they
2 were trying to get information on and his name was Joe O'Hara.

3 So, Joe O'Hara, like, first was on ESP's side and
4 was working with them and then I don't even remember the
5 transition point, but all of a sudden he had done something
6 bad and he was out to get them so he was also part of that
7 group. Later on there would be other people in that similar
8 situation.

9 Q Do you remember a specific conversation -- do you
10 remember the specific conversation between the defendant and
11 Kristin Keefe, when there was a discussion about the paying
12 the \$24,000?

13 A Yes. I remember -- I remember those conversations. I
14 remember Keith saying it was worth it. You know, like, and
15 that maybe if they could get that and it was good, you know,
16 there was a risk of not being able to -- you send the wire
17 into oblivion and obviously these people are doing illegal
18 things and so maybe you will get it and maybe you won't. I
19 remember him saying it was, like, worth the amount and, like,
20 maybe if it worked it would be a good thing because they could
21 get more and that was a conversation that they had.

22 Q So, was somebody -- was the defendant -- was there
23 discussion about how the \$24,000 would actually be
24 transferred?

25 A There was. I don't remember how it was actually

Daniela - direct - Penza

2527

1 transferred, but, there was.

2 Q So after you were present for this conversation about
3 obtaining -- and did they actually obtain that password?

4 A Yes, they were successful and they obtained that password
5 as I remember.

6 Q After that incident where they obtained this password and
7 you heard these conversations, did you have a conversation
8 with the defendant about it?

9 A Yes.

10 Q And can you explain what that conversation was?

11 A That first conversation was firmly centered on the large
12 amount that they were willing to pay for a password and that I
13 thought it was a lot of money.

14 Q Why were you focused on the amount of money?

15 A Many reasons. I mean, it was -- well, because of my
16 particular position at the time, that was a lot of money, but
17 also how easily they were to willing to spend it versus how
18 easy I think it would be to get somebody to do it for less
19 money. So it was a lot of money for that. And that's what
20 the conversation centered around. And he asked if maybe I
21 could find somebody who could do it and that first
22 conversation went like that and -- and I looked for someone
23 who might do it.

24 Q How did you -- can you explain the process of you trying
25 to find someone to do it?

Daniela - direct - Penza

2528

1 A Well, yeah, well the reason he thought I may have someone
2 was because I had been in a life where I had a group of
3 friends who were very smart and it's people at that level tend
4 to gravitate towards computers. And so maybe I knew someone
5 who knew someone who could do it. So I contacted two of my
6 friends that I knew who were very proficient in computers that
7 I knew from high school that were, like, the really smart
8 guys. So I contacted two of them. One of them told me, no.
9 I really don't know. I don't know anybody. I can't do it and
10 I don't know anybody. And my other friend, he put me in touch
11 with someone who could do it.

12 Q Who did he put you in touch with?

13 A The Dark Lord was his nickname. So I contacted The Dark
14 Lord and I sent him the e-mail address that I needed the
15 password for.

16 Q Who gave you the e-mail address?

17 A The e-mail address, Keith. And then -- I actually got
18 the correct typing of the e-mail address from an e-mail from
19 Kristin, but these were the people that Keith had said he
20 would like the passwords on. I sent one of the addresses to
21 the Dark Lord and he wrote back asking me if that was my -- if
22 that e-mail address belonged to me and I told him very
23 honestly, I said no. And he said, Then I can't help you.

24 Q Did you report -- did you report this back-and-forth with
25 your other friend who knew the Dark Lord to the defendant?

Daniela - direct - Penza

2529

1 A Yes.

2 Q And how did the defendant respond?

3 A It became, like, a main topic of conversation between us,
4 it would become even more. So, after I had no success finding
5 someone who could do it, he floated the idea of, well, do you
6 think you could do it? Well, how hard can it be? And -- and
7 I took it as a challenge.

8 Q So, what were the next steps that you took?

9 A I started researching and started thinking how I would do
10 it and I started discussing my ideas and I started discussing
11 it with Keith and looking online. Different methods, reading
12 forums, reading threads and I advanced very rapidly. I
13 downloaded a few pieces of software. I played with them and I
14 started testing and pretty quickly I zoned in on a strategy
15 that I thought would be successful and I thought I could, in
16 all likelihood, get a password -- hack a computer and get a
17 password.

18 Q So once you felt you had reached that stage, did you
19 discuss that with the defendant?

20 A Well, yes. For the period of my research where I was,
21 like, figuring out how do I solve this. If I needed to do
22 this how would I do this. It was very animated. It was a
23 very exciting subject to tackle. It had an end point. Once I
24 knew I could do it I had -- I had a lot of reservations; some
25 of which I had brought up in the past with Keith, but now it

Daniela - direct - Penza

2530

1 was -- I was faced with, okay, I can hack someone and what
2 that meant for me, what that meant for him. What that meant
3 in general.

4 So I had extreme reservations about it and I
5 talked -- you know, what I'm trying to say is, okay, now I
6 know how to do this and now I have -- I have, you know,
7 specific people that he wants to hack, that they want to hack.
8 Like, that was a big jump for me. The one thing figuring out
9 how to do it and then actually doing it.

10 So I had a big conversation with him about that and
11 my conversation was very specifically, this is wrong, right.
12 This is what was way, way -- what held more weight at time was
13 this is illegal. This is unethical. I'm like, this is not
14 okay.

15 Q You're saying this to the defendant?

16 A To him. Right, this is my concerns this is unethical,
17 this is illegal. This is wrong. ESP is supposed to teach
18 ethics and, you know, bring good things in the world and you
19 are the leader of this organization, like, how come? How do
20 we get to do this? Why are we breaking the rules? Like, I
21 didn't understand, you know. It didn't seem, like, okay to me
22 and then I had that conversation with him.

23 Q And how did the defendant respond?

24 A He gave me a very specific, very convincing response.
25 This is what he told me at the time. He said it's like

Daniela - direct - Penza

2531

1 something out of game theory. So you have ESP, us, the good
2 guys. We are doing good things. We're going to go by the
3 rules. We're going to be good people and there are certain
4 things that we're not willing to do because they're wrong and
5 they're unethical. So we have a certain number of options of
6 choices we can take.

7 And then you have these bad people, the
8 suppressives; the people who are out to get us and destroy the
9 good things in the world and these people have no ethics and
10 these people don't care. These people are going to do
11 everything we're going to do and then more. They're going to
12 break the rules and do illegal things and destroy. These bad
13 people have all the options in the world and we have only
14 these options.

15 So the bad people are always going to win so you
16 have to believe that what we're doing here, what we're doing
17 here is trying to build a better world and we're going to do
18 unethical things ethically because we, we're good. We want to
19 do good. Ultimately this is to do good. So we're going to
20 have to break some rules in order to make that happen.

21 Q So after you had that conversation with the defendant --
22 did you push back at all?

23 A That made sense to me and I believed, like, he was doing
24 something good and ESP was trying to defend itself from the
25 bad guys. That made sense to me.

Daniela - direct - Penza

2532

1 Q After that conversation with the defendant, what
2 happened?

3 A After that conversation with the defendant, Keith, I
4 proceeded. I -- I -- I tried first to hack into Joe O'Hara's
5 e-mail address.

6 Q Who gave you the e-mail address?

7 A There were two e-mail addresses. There were two targets.
8 Keith had told me those targets and -- and I needed to get
9 right. So they were in writing. The actual e-mail with the
10 writing came from Kristin. And the first one that he told me
11 was Joe O'Hara. So it was Joe O'Hara and then there was
12 another one, Kim Snyder, was the second e-mail that I was
13 given. The first target was Joe O'Hara and I started -- you
14 know, I had devised an entire method and I proceeded to
15 attempt.

16 Q What computer were you using?

17 A So, once it was settled, both the method and my ethical
18 stand with regard to it, then I planned and I was very
19 cautious and so I told Keith I needed a computer, a dark
20 computer, one that was not linking me to anybody. He told me
21 that I could get the money from Pam and she gave me \$500 and
22 bought a refurbished computer from an independent store in
23 Troy. It was a Dell laptop computer. So that computer had
24 self-everything, not linked to me and not linked to anybody
25 and in that computer, I installed the software that I needed.

Daniela - direct - Penza

2533

1 From that computer using WiFi that was not my local network or
2 anybody in the company. I set up servers for the purposes of
3 the methods that I had devised.

4 Q So we're going to go very slowly. So, first with the --
5 you said you didn't use your local WiFi. What do you mean by
6 that?

7 A So, right. So an internet network, WiFi, either, like,
8 landline or WiFi is identifiable. You know, there's an IP
9 address, a specific number assigned to it so I was very
10 cautious not to use any internet connections that might be
11 traced back to me or back to ESP.

12 Q And, so, what internet connections would you use?

13 A I would use public ones. At the time, WiFi was not as
14 pervasive as it is now. It would be public libraries, parking
15 lots of hotels. Sometimes I could pick up a connection from
16 the side of the street and see if the connection was open and
17 I would use that.

18 Q Would you go to these locations yourself?

19 A No, sometimes they would drive me.

20 Q When you say "they," who is they?

21 A Kristin would drive me. I remember Kristin would drive
22 me. At other times I remember other people, but mostly it
23 would be Kristin because I was aware of it.

24

25 (Continued on Following page.)

Daniela - direct - Penza

2534

1 EXAMINATION CONTINUES

2 BY MS. PENZA:

3 Q Just as an aside, did the defendant drive?

4 A In general?

5 Q Yes.

6 A I never saw him drive, no.

7 Q Now, did you have a car in the Albany area?

8 A Not for that period of time.

9 Q So when did you -- just, I know we're going off topic for
10 a second, but when did you have a car and when didn't you?

11 A When I first went to Albany, I did not have a car for the
12 first period. I would say loosely, six months. I was --
13 Loreta was driving me around when I needed to.

14 Then I believe it was when my sister Marianna moved
15 in with me, I bought a used Ford Explorer and I used that
16 until it broke. It was very, very old, it was \$800. And I
17 had to -- couldn't even find a signal of how much gas was in
18 it, and one day it just broke down on the highway.

19 After that I had a Honda Civic, and that was all of
20 my driving or all of my possession of a car would have been
21 before I crossed over illegally. After I was illegally in the
22 country, I didn't have a car. I didn't drive. Nothing was in
23 my name. I never, ever exposed myself in any way.

24 Q When you say you never exposed yourself, what do you
25 mean?

Daniela - direct - Penza

2535

1 A I mean I had no bank accounts, no e-mail going to my
2 house in my name. Absolutely nothing with my name on it. I
3 would even be very aware and careful if I was walking, walking
4 alone where I was walking so I wouldn't be, I imagine,
5 stopped, you know, asked -- so I was invisible.

6 Q What was your fear, what were you worried about?

7 A I was -- I was -- immigration. For -- I mean, even since
8 I was younger, I knew that immigration in the U.S. is very
9 strict. Then I completely confirmed it. I was stopped, you
10 know, at the airport, my visa was drawn. I was -- I was -- I
11 had a very healthy fear for -- for -- for immigration in the
12 law. It was just something I was always very aware.

13 Sometimes it would just be like a police car, like driving
14 past me when I was alone, my heart would jump. It was just
15 something I was very aware that I was illegal in the country.

16 Q So going back to once you're -- you're making the
17 attempts regarding Joe O'Hara, can you walk us through all of
18 the other steps you took regarding that first e-mail account?

19 A Yes. So I'll just say it generally, and then I'll say
20 the steps.

21 So the general idea was to send an infected e-mail
22 to the user, to the target, that would be embedded with --
23 like in a Trojan way, would be embedded with software that
24 would record all the key strokes, sometimes screenshots, and
25 send it to a server that I had access to so that I could gain

Daniela - direct - Penza

2536

1 access to everything being typed and from there retrieve the
2 password, user name and password.

3 More specifically, I started by first having an
4 application that could mask an e-mail address, so that it
5 would bypass any spam filters and so that it would entice the
6 user to open it, so it didn't look like -- like a bunch of
7 garbage at a bunch of garbage.com. So, first I'd have to mask
8 the e-mail address and I'd have to make sure it bypasses spam
9 folders. And I also, at the time it was possible, I would
10 code it in a way that it would self-destroy if it wasn't
11 opened in a certain amount of time, so that there would be no
12 evidence sitting there in someone's inbox of any attempt to
13 break into their privacy.

14 So, the second step would be actually grabbing the
15 software that logs the key strokes. It's called a key-logger,
16 and any other surveillance software that I was going to use,
17 and embed it onto a regular-looking file, which would be an
18 Excel spreadsheet. It could be an image. It could be
19 anything. Once it's embedded, then the e-mail is created and
20 then I send it to the targets and --

21 Q Can I ask -- I just wanted to ask you one question.

22 So, when you -- the software, itself, where do you
23 get the software?

24 A The software I got from the Internet and I manipulated it
25 myself.

Daniela - direct - Penza

2537

1 Q What does that mean?

2 A I changed the code so that it does what I want it to do.
3 So, yeah, I -- I used different software at different times.
4 For the first time, as I remember, I was looking -- I was
5 using both a key-logger and screenshot capture so that I could
6 have two points of information.

7 Q And so then, once you have the software the way you want
8 it, then you embed it in a normal-looking file?

9 A Yes.

10 Q And so what is the point of that?

11 A The point of that is to -- for the target to open it when
12 they receive the e-mail. At the moment one clicks on the
13 infected file in a way that doesn't show, if I did my job
14 correctly, to the user, it installs itself in a stealth way.
15 So that also means that the infected file needs to bypass any
16 anti-virus software, which is also a difficult thing to do and
17 it's a multistep process, but that's the idea. Once the
18 target has clicked on it and it's installed, it doesn't do
19 anything else. On your computer you see nothing else. You
20 click on it, then nothing happens, and it's just like a bad
21 file.

22 And from that moment, once the computer -- the
23 software has been deployed, the software, what it will do is,
24 it will be recording everything you type on your keyboard, and
25 in some cases it will take a screenshot of the computer every

Daniela - direct - Penza

2538

1 once in a while and save it on the local memory. And the
2 software I had -- I had used and I had coded -- what it did is
3 it was like every hour, for example, it would open that
4 communication to the server and upload all that information to
5 a remote server and delete it from the -- you could delete it
6 from the local computer. What I would be checking would be
7 not the actual computer infected but the server where the
8 information was being uploaded.

9 Q And are you paying for access to that server?

10 A No. All the services that I decided to use were free,
11 therefore, anonymous. So I created a set of e-mail accounts
12 that are the ones that I opened those services for, so
13 everything I was very cautious.

14 Q Along the way, as you're developing these steps, are you
15 discussing them with anyone?

16 A With Keith. It was our little project.

17 Q Did the defendant contribute anything specific to these
18 discussions?

19 A Yes. I mean specifically -- I think remember at least
20 the self-destroy was his idea.

21 Q And so what is the point of the self-destroy?

22 A It's so evidence doesn't sit on an inbox. So if I send
23 an e-mail and it's infected and either it doesn't work or it's
24 not opened or it goes without notice, then it's just sitting
25 there and it's, you know, it's a risk. So for it to be able

Daniela - direct - Penza

2539

1 to just disappear or destroy itself, it's very convenient so
2 that you don't have that open risk there.

3 Q Any of the work that you're doing, are you doing any of
4 it at 3 Flintlock?

5 A Yes, the testing. I mean I was spending almost every
6 waking moment I had there. So I would be testing offline, so
7 I would not be connected to wifi. But a lot of the testing,
8 for example, infecting myself with a key-logger and then
9 testing it, see how it worked, see how it looked like, all of
10 that I was doing mostly there.

11 Q And as you're testing it, are you communicating the
12 results of your testing to the defendant?

13 A Yes.

14 Q And what's his reaction?

15 A I -- I -- I thought he was pleased with me.

16 Q So what were the actual steps you took for this first --
17 so you described generally the process; are those steps you
18 took for this first e-mail account?

19 A They were exactly those, yes.

20 Q And what happened?

21 A I was unsuccessful.

22 Q So what exactly? So what did you -- you end up sending
23 these e-mails?

24 A I end up sending a series of mails with infected files
25 and it never worked. It never works. I don't know why. I

Daniela - direct - Penza

2540

1 can imagine why. Either it went to a spam folder or maybe
2 Mr. O'Hara caught on to it and went, oh, no, this is an
3 infected file. Or maybe he did get it, did click on it and
4 maybe his anti-virus software stopped it. It could be any of
5 those things.

6 Q Apart from the conversations that you would hear between
7 the defendant and Kristin Keeffe and Nancy Salzman about Joe
8 O'Hara, did you personally have any involvement with Joe
9 O'Hara?

10 A No, I did not.

11 Q Did you ever meet him?

12 A No. I remember having seen him, so I remember he had
13 like white hair and a white beard. He looked like Santa Claus
14 to me. He was like a big guy. I remember having seen him at
15 the center, maybe in a meeting with them when he was like
16 doing work with them, but I never actually was introduced
17 before.

18 Q So what happened -- when you would have the discussions
19 with the defendant, where were most -- most of these
20 conversations would take place at 3 Flintlock?

21 A Or during walks around 3 Flintlock and back.

22 Q So what happened after that?

23 A Well, I was clearly unsuccessful and Keith came up with a
24 plan. I don't remember exactly how it came about, but he told
25 me that there was this guy who worked with Joe, or for Joe,

Daniela - direct - Penza

2541

1 who they had access to, I -- I believe he was doing -- he was
2 working for Joe and maybe like was also doing some work in the
3 accounting of ESP. It was something like that. So he says --
4 so he came up with this plan where Kathy Russell, who was a
5 person who was working with this man whose name was James
6 Loperfido, she -- he talked to Kathy. So Kathy would make an
7 appointment with him at the 455 New Karner Road center, which
8 is where the ESP center was. And for me to take that
9 opportunity to infect his computer, like, live, like right
10 there.

11 So, yeah.

12 Q What would be the strategic difference or the -- is the
13 likelihood of success different if you're going to do what the
14 defendant had now planned for Mr. Loperfido?

15 A If one has physical access, it's infallible. Like the
16 success rate is a hundred percent because the main problem in
17 infecting a computer remotely is gaining the access. So,
18 whether it be via e-mail or you're gonna like, you know,
19 through the wifi, it's something very sophisticated. So if I
20 have access to a computer, all I have to do is plug in a USB
21 and deploy it myself. And in the event -- in the event that
22 an anti-virus would try to stop it, I can also disable it
23 right then and there. So there is no failing with that.

24 Q Before that day had you ever heard of James Loperfido?

25 A No. Never.

Daniela - direct - Penza

2542

1 Q So what happened after the defendant communicated this
2 plan to you?

3 A Kathy did exactly as it was planned and I did exactly as
4 it was planned. So --

5 Q Go through it slowly.

6 A Yes. So, Kathy made an appointment with Mr. Loperfido at
7 the center. He attended. I remember I drove in with Kathy
8 and I was just in a separate room, a separate person, just
9 hanging out at the center. And they were working and she was
10 communicating with me and she was supposed to tell me when she
11 was gonna take him away and distract him from his laptop. He
12 had a laptop and he was working in one of the rooms with
13 Kathy.

14 So, she would take him away for what should be a
15 considerable amount of time so I would have enough room to
16 deploy, install and get out of there, and she did exactly so.
17 She gave me a sign, took him out of the room to like a
18 separate wing of the center, and I went to his computer. I
19 had a USB prepared with all the software and I deployed it.

20 Q When you say you had a USB prepared with all the
21 software, can you describe that?

22 A Yes. So for each different attack that I would do, I had
23 specific software, but also I had a specific server account
24 set up. Again, very cautious, so that this particular
25 computer would upload the information I was gathering to a

Daniela - direct - Penza

2543

1 specific server.

2 So all of that had to be set up in advance, which I
3 did.

4 Q And what do you remember about this specific software?

5 A This specific software was log the key strokes and also
6 took a snapshot of the screen every, like, minute or
7 30 seconds. It would just take a snapshot of the screen and
8 save it.

9 Q Logging the key strokes, what exactly is the point of
10 that?

11 A The point of logging the key strokes is -- other than,
12 you know, writing whatever you write on your computer, it is
13 necessary to access an e-mail account or any other kind of
14 account for one to type the password.

15 So, the point of the key log is exactly that, to be
16 able to at some point where the person is going to log into
17 their e-mail address or is going to log into some kind of
18 anything that requires a login, to capture that user name and
19 password so that, for example, if they've got an external
20 account, for example, Gmail, Hotmail, AOL, then a lot of
21 people maybe have Outlook on their computers or some other
22 kind of server where they're used to accessing it, but it can
23 also be accessed directly going to Gmail.com or Hotmail.com or
24 AOL.com.

25 So gaining simply their user name and password

Daniela - direct - Penza

2544

1 allowed me to then be accessing their e-mail in other forms.

2 Q So was it successful with James Loperfido?

3 A Yes.

4 Q So what happened right afterwards?

5 A Right afterwards, I -- I remember I gave the good news to
6 Keith and then I proceeded to go and check the first uploads
7 to the server just to make sure that it was, indeed,
8 successful. And it was.

9 Q And how did the defendant react?

10 A I thought he was pleased.

11 Q So you checked the server -- you checked the server that
12 night?

13 A That afternoon, yes.

14 Q And eventually -- eventually, what happened?

15 A So eventually, I started gathering more information and I
16 got e-mail -- user names and passwords to virtually everything
17 he was signing into and including his e-mail address. And so
18 I had access now to his e-mail address.

19 Eventually, what happened is I -- I killed the
20 entrance to, you know, to the -- from the computer to the
21 server because this attack, in particular, was designed to be
22 getting all the screenshots from his computer and they were
23 accumulating very rapidly and, I believe, making his computer
24 very slow. So it had become a risk, so I just shut that down
25 remotely and just kept the access to his e-mail address, which

Daniela - direct - Penza

2545

1 is what I was checking periodically.

2 Q When you say it became a risk, what do you mean?

3 A Well, that he might find that he had been hacked. So if
4 your computer is slow, what do you do? You might take it to a
5 technician or you might run, like, another anti-virus because
6 you think there is something going on and you might discover
7 that you have been hacked.

8 So anything that creates that risk, I eliminated.

9 Q So, after some period of time, you did get his user name
10 and password?

11 A Yes.

12 Q And so what would -- what was the process then?

13 A The process was to access his e-mail address. I --
14 again, with all the precautions I had spelled out before,
15 which was I would go to -- with my -- the computer that was
16 anonymous, I would go to a wifi network that was public and I
17 would check his e-mail address. I would try to do it at times
18 where I thought people would not check their e-mail address.
19 Because, essentially, what I would do is I would go into the
20 e-mail and I would read -- click on one e-mail, read it, see
21 if it was relevant. If it was relevant, I would copy/paste it
22 into a text file, a separate text file in my computer, and
23 then I would mark it as unread and then I would read the
24 following one. And so on and so on and so on.

25 So at the end of any time where I went and checked

Daniela - direct - Penza

2546

1 for information into the e-mail address, I would have like a
2 series of text files with different relevant e-mails.

3 Q What was the point of marking the e-mails as unread?

4 A So that he wouldn't notice that I was -- that somebody
5 else was checking his e-mail.

6 There is two reasons. The person might be checking
7 their e-mail address directly, in which case they will clearly
8 know that there is an e-mail that they haven't read, which had
9 been read. That's extremely suspicious.

10 In a different instance, if a person is using an
11 application like Outlook, then those applications tend to have
12 rules. Like, they will check your e-mail server and if any
13 e-mails are new, like marked as unread, then it will download
14 those e-mails and those are the ones you're gonna get. If
15 something is marked as read, then those applications typically
16 will not download it because they think that those have
17 already been downloaded. So then what the user would -- would
18 keep getting is: I'm not getting e-mails, I'm not getting
19 e-mails, and that might be suspicious and, again, might lead
20 to him realizing that he's been hacked.

21 Q What time of day would you typically go through this
22 process of reading the e-mails?

23 A Late at night.

24 Q Why is that?

25 A Outside working hours, which is when I think people are

Daniela - direct - Penza

2547

1 checking their e-mails or I thought people were checking their
2 e-mails.

3 Q So you said you would copy, paste and create text files?

4 A Yes.

5 Q What would you do then?

6 A I would bring them to Keith.

7 Q How would you bring them to Keith?

8 A In a USB drive.

9 Q And did you ever observe the defendant reviewing those?

10 A Yes. He would use the little laptop computer that he had
11 at the coffee table on the stack of books in front of his
12 couch and he would plug it in and he would review the e-mails.

13 Q Did you ever give -- was it always the same process of
14 putting the e-mails onto a USB?

15 A To a USB, yes, but there were times where I handed them
16 to Kristin and sometimes they would just be handed to Kristin.
17 Sometimes, you know -- yeah, it would actually be that way or
18 for Kristin needs to see it; many times he would see it first
19 and then she would keep it. So -- but it was just a tool
20 though.

21 Q Do you remember for how long you surveilled James
22 Loperfido?

23 A Not exactly. But it was, I would say, not weeks, not
24 months, I would say a year or years.

25 Q Did you ever access anyone else's e-mail account?

Daniela - direct - Penza

2548

1 A Yes.

2 Q When was that?

3 A I think that was -- wait, I don't remember the exact
4 date. I think 2005 or 2006.

5 Q Was this in relation to the time that you accessed James
6 Loperfido?

7 A After. So after James Loperfido I accessed somebody
8 else's account. Yes.

9 Q Whose account was that?

10 A Edgar Bronfman.

11 Q Who was Edgar Bronfman?

12 A Clare's father.

13 Q And what did you know about Edgar Bronfman at that point
14 in time?

15 A Hum, I knew -- I knew vaguely who he was. I knew he was
16 a rich, powerful man. I also knew he had taken ESP classes
17 and Nancy was coaching him. So, for a little while there, he
18 was like a star student of sorts, like they were very proud
19 that Edgar was in ESP, was being coached by Nancy. Like it
20 was like a big name, right, and it was a big deal. And then,
21 all of a sudden -- I don't know exactly what happened, but
22 then Edgar Bronfman was not -- no longer on the ESP side, he
23 was in the ESP enemy side.

24 I remember vague details, but, you know, I wasn't
25 very keyed into that.

Daniela - direct - Penza

2549

1 Q Do you remember were there any concerns about anything
2 Edgar Bronfman had said?

3 A Yes. I mean there was something very specific he said to
4 media outlets.

5 Q What you do you remember about that?

6 A I remember there was a Forbes article that came out where
7 he said: It's a cult. And I don't remember if that was the
8 breaking point, but certainly that was a big deal also.

9 Q Does that -- does the -- do you remember what publication
10 that was in?

11 A Forbes.

12 Q And do you -- does that -- do you actually have a memory
13 of that article coming out?

14 A When that article came out, yes, I remember they bought a
15 lot of those magazines, like boxes. Like there were like --
16 it was -- it was -- it was weird because it was -- it was -- I
17 wasn't sure if it was a negative or positive article from
18 reading it. It seemed really -- but he was on the front page
19 and everybody was like very enthusiastic about it.

20 Q Who was on the front page?

21 A Keith was.

22 Q But that was the article where there was the statement
23 from Edgar Bronfman?

24 A Yes, that's what I remember.

25 Q And you said, at some point, Edgar shifted to the enemy

Daniela - direct - Penza

2550

1 side; is that what you said?

2 A Yes.

3 Q What is this concept of the enemy side, what was your
4 understanding from the defendant?

5 A Yes. There were -- there was this series of people that
6 can be listed, there was a series of people who were out to
7 destroy Keith, out to destroy ESP. And I make that
8 distinction because, to me, it was clear that Sir Rick Ross
9 wanted to destroy ESP, Toni Natale wanted to destroy Keith.
10 You know like -- some of it seemed like, you know, like,
11 that's my -- that's my understanding of it.

12 And so like Joe O'Hara, I didn't know what had
13 happened, but he wanted to destroy ESP, and I understood it
14 was the same for Edgar Bronfman.

15 Q And so how were you approached about Edgar Bronfman's
16 e-mail account?

17 A It was Keith who -- I mean, Keith was the one who I was
18 working with. I did not have a relationship with Clare and,
19 in fact, did not have a lot of interaction with her about
20 that. It was Keith who asked me and --

21 Q What did he say?

22 A That, you know, I don't remember the exact words, but,
23 you know, that it would be good if they, you know, had access
24 to his e-mail address.

25 MS. PENZA: Your Honor, would this be a good time to

Daniela - direct - Penza

2551

1 take a break?

2 THE COURT: All right, let's take our mid-morning
3 break.

4 All rise for the jury.

5 (Jury exits.)

6 (In open court - jury not present.)

7 THE COURT: The witness may stand down. Do not
8 discuss your testimony with anyone.

9 (Witness steps down.)

10 THE COURT: Everyone else may be seated.

11 Ms. Penza, about how much more time on direct do you
12 have?

13 MS. PENZA: I think it's at least through the end of
14 the day, Your Honor.

15 THE COURT: At least through the end of the day?

16 MS. PENZA: Yes.

17 THE COURT: And?

18 MS. PENZA: I'll be able to judge much better by our
19 mid-afternoon break, but probably no later than the morning
20 tomorrow.

21 THE COURT: All right, just let me know.

22 MS. PENZA: Absolutely, Your Honor.

23 THE COURT: All right, we will take our ten-minute
24 break. Thank you, everyone.

25 MS. PENZA: Thank you.

Daniela - direct - Penza

2552

1 (Judge NICHOLAS G. GARAUFIS exited the courtroom.)

2 (Recess taken.)

3 (Judge NICHOLAS G. GARAUFIS entered the courtroom.)

4 (In open court - jury not present.)

5 THE COURT: All right, let's bring in the defendant,
6 please.

7 Bring in the witness, please.

8 (Defendant entered the courtroom.)

9 THE COURT: Please bring in the jury.

10 (Witness resumed the stand.)

11 (Jury enters.)

12 THE COURT: Please be seated. I remind the witness
13 she is still under oath.

14 THE WITNESS: Yes, sir.

15 THE COURT: Ms. Penza, you may continue your direct
16 examination.

17 MS. PENZA: Thank you, Your Honor.

18 EXAMINATION CONTINUING

19 BY MS. PENZA:

20 Q Daniela, we were talking about Edgar Bronfman's e-mail
21 account.

22 What were the next steps you remember after his
23 e-mail account was mentioned to you?

24 A The advantage with that attack was that it was Clare's
25 father, so I did not have to send any e-mails myself or take

Daniela - direct - Penza

2553

1 care of that part myself. I did have contact with Clare
2 because I was gonna set up the file to the server and give her
3 a file for her to send to her father.

4 Q Can you describe those interactions with Clare Bronfman?

5 A I don't remember them very clearly. I -- I think they
6 were just brief; me handing over a USB with a file in it so
7 she would attach it and send it to her father.

8 Q Do you remember how you actually -- how you embedded the
9 software?

10 A Yes. I remember this particular instance it was an
11 image, like an image of her choice. Like I said, the
12 advantage was that I didn't have to worry about bypassing spam
13 or masking the e-mail address so it seemed familiar because it
14 was gonna come from his daughter. So, she picked the image.
15 She knew what, you know, he would open, something that was
16 familiar I imagine, and if that e-mail -- in that image she
17 gave me I embedded the software that was gonna be deployed.

18 Q Did you embed the same software that you had used for
19 James Loperfido's account?

20 A It was a different one.

21 Q Why?

22 A I had learned.

23 Q So what did you do differently this time?

24 A It wasn't a -- a -- it wasn't gonna generate the very
25 heavy files. It was, I believe, much more stealthy and so it

Daniela - direct - Penza

2554

1 had higher -- you know, it would have higher rate of success.

2 Q So you give the image to Clare Bronfman?

3 A Right.

4 Q And then what happens?

5 A What I learned happened was that she -- she sent the
6 e-mails to her father.

7 Q She told you this?

8 A I don't know if she told me that or Keith told me that.

9 Q Okay.

10 A I don't remember exactly. But that she sent e-mails, I
11 understood several ones, and they were not -- I remember the
12 point was that it wasn't that it hadn't been successful, but
13 rather that he wasn't opening them. So that was an issue and
14 so there was nothing really for me to do. The point there
15 was, you know, to get him to actually open it so that it would
16 infect the computer.

17 And I believe so what ended up happening is, and
18 again I wasn't there for that, but from the stories afterwards
19 that I heard from -- I believe from Kristin and from talking
20 to Keith, what she did is actually she visited her father and
21 did, essentially, what I had done with the attack on James
22 Loperfido's computer, which is physically go and like plug it
23 in, click on it and infect the computer locally.

24 Q And so you said you learned that from the defendant or
25 Kristin Keeffe, but did you actually gain access at that

Daniela - direct - Penza

2555

1 point?

2 A Yes.

3 Q So what happened?

4 A So what Clare did worked and I started getting the
5 information. I checked it. There was like success reported
6 that she had done it. So I checked the server and, indeed, I
7 am receiving information. So I start monitoring the -- the
8 uploads to the server with the key strokes, everything that's
9 being logged.

10 And very rapidly, as I remember, I get the user name
11 and password that I'm looking for, which was, as I remember,
12 his AOL account. And -- I mean, this was a high profile
13 person as I understood, so immediately after I had that access
14 I killed the back door. So I just -- I just deleted the rest.
15 I didn't need to have more key logs being uploaded, nothing.
16 Once I had the user name and password, I killed that entrance.

17 Q Were you able to -- do you remember anything from his
18 user name or password?

19 A I do. I remember it was an AOL account and I remember
20 the password was miles75.

21 Q Did you discuss the fact that you had been able to --
22 once you got his user name and password, what would you do?

23 A As I did before, I would access in this case his AOL
24 account directly via AOL, and I would read all of his
25 correspondence.

Daniela - direct - Penza

2556

1 Q And did you discuss the fact that you had accessed his --
2 had accessed Edgar Bronfman's e-mail account with anyone?

3 A Yes, with Keith.

4 Q And what was his reaction?

5 A I thought he was pleased.

6 Q And so what happened after that, what is the process of
7 you monitoring?

8 A The process of me monitoring is -- it wasn't on a
9 schedule. I would check it regularly, mostly at the request
10 of Keith.

11 So, all of this, you know, was as I understood and
12 as it was told to me at the time, it was, you know, for -- for
13 the legal battles, for the legal cases. It was to aid them in
14 whatever problems it is they were facing from these people.
15 So there were -- most of the times, I would be asked by Keith:
16 Is there anything new on the -- on the key-loggers? You know,
17 have you found something? Have you checked? When was the
18 last time you checked?

19 So I would, you know -- it wasn't like -- what I'm
20 trying to say, it wasn't every Friday afternoon or it wasn't
21 no periodic way, but rather it was constantly and often at the
22 request when something important was happening, it's happening
23 and they needed it.

24

25 (Continued on the following page.)

Daniela - direct - Penza

2557

1 BY MS. PENZA: (Continuing)

2 Q And how -- for how long did you continue this process of
3 monitoring Edgar Bronfman's e-mails?

4 A I don't remember exactly but, again, it wasn't days or
5 weeks or months. It was a really long time.

6 Q Why did you stop monitoring Edgar Bronfman's e-mail?

7 A I remember suspecting that he had found something was
8 wrong and I got a little bit scared and I stopped, you know, I
9 stopped checking.

10 Q At any point in time, did anyone ask you about the fact
11 that you had stopped checking?

12 A Yes.

13 Q Who?

14 A Keith.

15 Q And what did you tell him?

16 A I told him precisely that, that I had stopped checking
17 and that -- I believe I told him I had lost access.

18 Q What do you remember from reading Edgar Bronfman's
19 e-mails? Would you copy and paste all of them? How would it
20 work?

21 A No, I would check and maybe I also misstated that part
22 before because it was the same for James Loperfido. So I
23 always checked the e-mails coming in but also I want to make
24 clear, I was also checking all the e-mails in the Outlooks,
25 everything in the sent folder which is everything relevant

Daniela - direct - Penza

2558

1 because most, if not all, services log every e-mail going out
2 as well.

3 So I would be -- I would check, methodically check
4 e-mail by e-mail all of the e-mail coming in and all of the
5 e-mail going out for the last period since I had last checked
6 which I just, you know, kept in memory. And I would not save
7 every e-mail. I mean, a lot of the e-mail is, as I'm sure, as
8 I get, a little bit spam, some of it is, like, news, some of
9 it is newsletters that he signed up for. So those, almost
10 right away I knew what they were, but all the personal or
11 business e-mails, I would go through all of them, and not all
12 of them were relevant.

13 So there were communications between him and his
14 family. There were a lot of e-mails about scheduling, whether
15 he was going to travel to this place or that place. There was
16 a great deal of, like, political e-mails. I noticed he was a
17 very -- he was a man with very good manners. It seemed he
18 always sent, like, thank you e-mails after, like, meeting
19 someone or, like, having an event and running into someone.
20 Like, he followed up on things like that at a very personal
21 level. I remember that.

22 And there was, you know, some -- there was, like,
23 some degree of legal strategizing but from reading his
24 e-mails, I became aware he was involved with the WJC, World
25 Jewish Congress. So that, there was a lot of those e-mails

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2559

1 going back and forth amongst a group of people. I did not
2 consider those relevant to, you know, the ESP cases, but there
3 was a big volume of communications.

4 Q And how would you transmit these -- would you transmit,
5 would you transmit the information that you learned from Edgar
6 Bronfman's account to the defendant?

7 A Yes.

8 Q And how would you do that?

9 A In the same manner. I would save them in text files
10 which I would then save into USB drive and I would, you know,
11 I would -- at one point, and I would give it to him and he
12 would check it.

13 The transition of me having a fight with him when we
14 stopped talking to each other happened somewhere in between.
15 And so there was -- as of that cutoff point, there was a time
16 where he was still requesting for me to check on all these
17 accounts and, obviously, since we weren't talking and we
18 weren't seeing each other, I stopped handing the USB drive to
19 him and I would be handing it to Kristin who would hand it to
20 him.

21 Q And were some of those communications about continuing to
22 check, would those sometimes come through Kristin as well?

23 A Yes.

24 Q Did there come a time when you ever accessed, when you
25 ever used the type of software you're describing to gain

Daniela - direct - Penza

2560

1 information on anyone else?

2 A Yes.

3 Q When was that?

4 A That was after 2006. It could have been 2007, '8, maybe
5 even '9. I hacked my sister's computer, my sister Marianna.

6 Q How did that happen?

7 A My sister was having issues, I was told. I believe it
8 was Pam who told me. And she was throwing a big tantrum,
9 like, it had been, I remember it had been days and it was
10 obviously an issue with Keith and he was asking for me. What
11 she told me is they, they, Pam and Keith, suspected that she
12 was, like, rekindling, like, having a relationship with one of
13 her ex-boyfriends and they wanted to monitor her
14 communications and, and they asked me to, to hack into her
15 computers so I could give them access to, I remember, her
16 Facebook account and her e-mail address.

17 Q And so what were the actual logistics and how was it
18 explained? Who explained it to you?

19 A Pam, Pam explained it to me. I remember talking to her.
20 There was a degree of follow-up with Keith via e-mail at the
21 time. So it was direct communications from both of them and
22 it was quite specific because they needed to give me access to
23 go to Flintlock and infect the computers that she was using
24 and they needed to tell me which computers she was using and
25 the computers that I would infect for her instructions, I

Daniela - direct - Penza

2561

1 would encourage her to use those computers so the key
2 logger -- I was going to use just a simple key logger --
3 would, you know, capture her user name and password and
4 everything she was doing.

5 Q Do you remember what the computers were?

6 A I think one of them was a Mac computer and the other one
7 was a big PC computer that was in the house.

8 Q And do you -- did you actually go over and do this?

9 A Yes.

10 Q And were there specific steps taken so that you would be
11 able to go over there?

12 A Yes. Well, as any other times I would visit Flintlock,
13 because I was not talking to Keith, he was not talking to me,
14 then, you know, he needed to make sure he wasn't there. So
15 there was a very logistical aspect of making sure it was okay
16 for me to go to Flintlock and Keith wasn't going to be there.
17 And also they told me which computers it was that they wanted
18 infected that she was going to be using and that all happened.

19 Q You did that?

20 A Yes.

21 Q How did you feel about doing that?

22 A I felt and feel really bad.

23 Q Why?

24 A Because I breached my sister's privacy. I mean, back
25 then, I thought, and I really thought, I was helping her.

Daniela - direct - Penza

2562

1 Like, you know, the way I understood it then, it was presented
2 to me was she was having an issue and there was, like, an
3 issue she needed to overcome and, you know, knowing what they
4 were going to know, they were going to be able to help her out
5 of that issue which was destructive. Everything that I heard,
6 that's what it was. And even then, knowing that, I felt bad
7 because, you know, it's a person I love and I never thought I
8 was going to, you know, breach into someone's privacy. Now I
9 feel even worse.

10 Q Do you remember, were you having any interaction -- you
11 weren't speaking to the defendant in person at the time. Were
12 you having any interactions with Marianna at the time?

13 A Yes, there were some. I mean, I spoke to my sister. I
14 didn't see her very often but there were interactions, yes.

15 Q Around that time, was there a specific incident that
16 involved you?

17 A Yes.

18 Q Can you explain what happened?

19 A I don't remember exactly what the circumstances were but
20 she became really mad at me. I don't remember if it was
21 jealousy or it was something else, but she -- I was, I think,
22 in Flintlock and she called the police on me. Like, it was
23 really -- it was, it was a big deal and I remember not
24 understanding why she was so upset at me and what had happened
25 but it was like big, yeah.

Daniela - direct - Penza

2563

1 Q Did the defendant ever talk to you about that incident or
2 did anyone else -- did they e-mail you about the incident?

3 A We were having e-mail communications at the time. I, I
4 think I remember mention of it, like that it was really bad
5 and that it was, it was just really bad, but I don't remember
6 exactly the direction where he was guiding it.

7 Q Did you discuss it with anyone else at the time?

8 A With Pam.

9 Q Did Pam have any thoughts about it?

10 A The general idea that I had was that my sister was going
11 through, like, a really hard time and that she was having a
12 lot of issues and that we needed to help her.

13 Q And so did you, did you actually gain access to your
14 sister's computers?

15 A Yes.

16 Q And what happened?

17 A I sent that access to Keith as requested.

18 Q Did you continue to access her computer once -- did you
19 do the same thing you had done with Edgar Bronfman and James
20 Loperfido where you would monitor and send the information to
21 the defendant?

22 A No, I did not want to surveil her. I did not want to
23 read her personal communications. I -- that's not something I
24 wanted to do. So all I did is I, I sent the, you know, the
25 user names and passwords, what was needed to access to Keith

Daniela - direct - Penza

2564

1 and said I'm not going to read, I'm not going to read what's
2 going on. I don't want to read my sister's private life.

3 Q Looking back, how do you feel about the other e-mail
4 accounts that you accessed?

5 A I know what I did was wrong. I mean, it's, it's plain
6 and simple illegal. I feel bad for that reason. I am -- I
7 regret that I bought Keith's story about the mission and the
8 good and, you know, means justify the end or whatever excuse
9 he had. About my sister's, however, I felt bad at the time.
10 I could not justify it at the time and now I feel even worse
11 because I know that those issues are not what I thought they
12 were, much like mine, so I feel bad that I contributed to the
13 abuse and manipulation of my own sister.

14 Q I'm going to switch topics in a second but you mentioned
15 a little bit ago various legal cases that they were involved
16 in, the defendant and others were involved in.

17 Did you ever hear the name Stephanie Franco?

18 A Yes.

19 Q Can you describe what was going on with Stephanie, what
20 you would hear from the defendant and others about Stephanie
21 Franco?

22 MR. AGNIFILO: Objection as to others, Your Honor.

23 THE COURT: Sustained.

24 Q What would you hear from the defendant?

25 A What I heard from Keith was that -- so Stephanie Franco

Daniela - direct - Penza

2565

1 was somehow related to, I think, Michael Sutton. They were
2 both students of ESP and Stephanie Franco had been the one who
3 had leaked or given the information to Rick Ross and that was
4 the core of the lawsuit and legal battle that ensued. I also
5 knew that in, that they couldn't find her signed
6 confidentiality agreement.

7 Q When you say "they," who do you mean?

8 A They -- I, I -- okay. "They," I would mean Nancy, Keith,
9 Kristin, upper management, I did. I say they because we spent
10 hours on end going through the filing room looking for that
11 confidentiality agreement and to my knowledge, it was never
12 found.

13 Q What was your understanding of the importance of finding
14 the confidentiality agreement?

15 A What I understood was that, you know, I like, I didn't
16 have then -- I don't have very much now but, you know, that's
17 where the person signed -- we all signed it. I signed one.
18 You signed that you're bound now by confidentiality and that's
19 your actual signature. So this person went through the ESP
20 program, had the materials, they had a case that was open.
21 And they couldn't find this critical piece of paper which is
22 where she had signed the confidentiality of all that material.
23 So it was, like, a key piece that pulled all of it together.

24 Q How long did you and the people that you named spend
25 looking for this piece of paper?

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2566

1 A . I think a few weeks. It was a long period of time.
2 It was several weeks but every -- the filing room was a mess
3 but after that, new procedures were instituted, but at the
4 time -- I mean, I never, I never learned or found out that
5 confidentiality agreement had been found.

6 Q Okay. During the time period when you, before you had
7 the falling out with the defendant, we talked a little bit
8 about your access to 8 Hale Drive.

9 A Yes.

10 Q Can you just describe what you would do at 8 Hale Drive?

11 A Yes. Eight Hale Drive was also interchangeably called
12 the executive library. This is the place where all of Keith's
13 media, books, CD's and videos were stored. They were all
14 arranged and stored there. I was the one who personally
15 brought all of the books from Flintlock that were there at the
16 time to the executive library and once they had all been
17 migrated to the executive library and he kept ordering books
18 online, I would go and grab them from Flintlock and I would
19 bring them to the executive library and I would organize them,
20 books, media, videos.

21 At the executive library, I did the catalog for the
22 books which in time became a little more sophisticated than
23 the Excel spreadsheet. I had special software and I would
24 grab relevant information and summaries and, like, a cover of
25 the books so one can virtually go through the library. I

Daniela - direct - Penza

2567

1 devised, like, a special system to organize it and with the
2 music and the videos, I would do something different.

3 So with the music, I was digitizing the music so
4 that it could be played not only on a CD player which was the
5 most popular medium at the time, but, like, on an iPod. And
6 there was a very specific thing that I did because when I
7 discussed it with Keith -- so Keith liked music very much and
8 it was very important to him that it was stored in, like, a
9 high fidelity format. This is something he wanted. So I did
10 some research and I found this, it's call FLAC format. So
11 it's, like, a very high fidelity format and I was going
12 through the process of taking, it was hundreds, maybe a
13 thousand albums and one by one, digitizing them in FLAC
14 format.

15 Q Other than that, what else would you be doing at 8 Hale?

16 A What else would I be doing at 8 Hale?

17 Q Did you ever have access to 8 Hale for any other reasons?

18 A Yes. When I was with Keith, there were other activities
19 that I was there for. When he had a class, so, like, a piano
20 lesson or a singing lesson, I would be called over to
21 videotape it, like record it. Same if he had a meeting but
22 those were a little rare, like to have a meeting at Hale, but
23 it did happen. And also, a couple of times, we had sexual
24 encounters there.

25 Q Do you know who decided who would have access to 8 Hale?

Daniela - direct - Penza

2568

1 A Yes.

2 Q Who was that?

3 A Keith.

4 Q Did you yourself have to ask permission to go to 8 Hale?

5 A Every time.

6 Q Did you ever observe anyone else ask permission to go to
7 8 Hale?

8 A Yes.

9 Q Did the defendant have any electronics at 8 Hale?

10 A Yes.

11 Q Can you describe what those electronics were?

12 A Yes. There was a PC. So a computer. One of the --
13 well, back then, there was an older one but it was one where
14 there's like a screen and it's all separated. It was like a
15 tower processor. It was a Dell computer. That was, like, the
16 main computer there. There were a couple of hard drives.
17 Those were the ones I was using for the digitizing and they
18 were connected to the computer.

19 So there was, like, dark with a blue LED, if I
20 remember correctly, WD, Western Digital dark hard drive, and
21 there was, like, a C drive. They were rare at the time. They
22 were very expensive. Like, over one terabyte was a very
23 expensive storage device and they were needed for the music.
24 There were also a camera. There was a big camera. It was a
25 big professional camera that he had gotten before that was

Daniela - direct - Penza

2569

1 stored at 8 Hale at the time and --

2 Q Had you ever -- the camera that you're describing, the
3 big professional camera, had you ever seen that camera before?

4 A Yes, it was the same camera that he had taken pictures of
5 me with.

6 Q And had you seen the defendant with that camera any other
7 times?

8 A Around the time that he took pictures of me, yes. After
9 that, no.

10 Q What else was there, what other electronics?

11 A Strictly speaking, electronics? There were devices that
12 were placed on the top of the white board that were set up to
13 digitize whatever was written on the white board.

14 Q And other than the large professional camera, were there
15 any other cameras?

16 A I think there was, like, a smaller, not professional,
17 like, Canon Shot or something like that, camera. I think that
18 was also there.

19 Q You may have already said this but do you remember the
20 brand of the computer?

21 A Yes. It was a Dell computer.

22 Q Do you remember what types of FLAC files, what some of
23 the FLAC files that you actually converted?

24 A Like the actual music?

25 Q Uh-huh.

Daniela - direct - Penza

2570

1 A It was a ton of music. Yes. So, I mean, I would guess
2 more than a thousand albums, easy, easy. A lot of classical
3 music, full compositions. All of Beethoven's symphonies,
4 various versions. There was Bach, various versions. There
5 were Mozart for Babies, Chopin for Babies, Debussy for Babies.
6 There was a lot of jazz, Keith Jarrett, A Melody At Night With
7 You, Live at La Scala.

8 I would indulge in listening to all these albums
9 while I was digitizing them so I would -- when I was working
10 at the executive library, digitizing them takes a long time
11 because it's a very heavy file format. That type of file
12 contains the most data one can get from a CD so it's rather
13 heavy files and it takes a long time for the computer to
14 process it. So, you know, I listened to a lot of these albums
15 and read a lot of books while I was doing that at the
16 executive library. And it was some of his favorite music
17 which was Yes and Genesis, he had several albums of that, and
18 there was some, like, I think a few collections of speeches.
19 So there's what a wide variety of music that I was digitizing
20 and sound.

21 Q Do you know whether the defendant ever used the computer
22 and hard drives himself?

23 A Yes.

24 Q Can you explain?

25 A Well, I, saw him use them, like access the library and

Daniela - direct - Penza

2571

1 the information. But there was also a time where I, like, I
2 went through the computer and I found some of his personal
3 files.

4 Q Why were you going through his computer?

5 A He had told me that he had noticed, like, something
6 funky. I don't remember exactly but the gist of it is, like,
7 he thought there was something wrong with the computer and
8 maybe it was a virus, maybe it was something because the
9 computer had done something funky. So, I mean, I was the one
10 who took care of the networking computers and that stuff. So
11 I -- he gave me his password. There was a password.

12 I had to scan the computers and so I went into --
13 and I never understood this, into anybody's files, into his
14 files but this time, I actually needed to go through all of
15 their computers and I found the set of files in the scan that
16 were -- I don't remember exactly if they were, like, in the
17 trash or they were in a hidden folder, not in the normal
18 structure of my PC, My Documents, like, not visible. Like it
19 was a backup or a trash. It was, like, a separate file
20 structure that it was under and I, and I -- you know, I
21 clicked through it and I quickly realized what it was and this
22 was. I clicked on, I think, a few, like -- I vaguely remember
23 and there was pictures of naked women, women that I knew Keith
24 was with. I, you know -- so that's it. So I didn't use that.

25 Q Did any of them stand out to you? Did any of the women

Daniela - direct - Penza

2572

1 stand out to you?

2 A There was one that I distinctly remember because I didn't
3 know Keith was having sex with her.

4 Q And who was that?

5 A Monica Duran.

6 Q Now, when you did this scan, this was on the computer
7 itself, not the hard drive?

8 A Yes, the computer itself.

9 Q And you mentioned backups. Is that something that you
10 had -- did you set up backups?

11 A I was one, yes. So I was the one in charge of the
12 computers and I, I'm very cautious with backups especially
13 because it housed, you know, so much information, some
14 information easy to -- I mean, hard to replicate. So, yes,
15 there were backups set up. I believe actually one of those
16 hard drives I set up specifically for backups at some point,
17 yes.

18 Q And you would communicate with the defendant about
19 everything you were doing with his computer?

20 A Yes.

21 Q Where was the -- so after you saw those folders, what did
22 you do next?

23 A Well, I'm sorry? I couldn't hear you.

24 Q After you saw those folders, what did you do?

25 A I, I went to Keith and I talked to him about them.

Daniela - direct - Penza

2573

1 Q Why?

2 A I had a couple of concerns. I mean, finding them was
3 alarming and my reasons were, first of all, I, I knew had
4 taken pictures of me so I asked him to delete my pictures.
5 You know, I didn't click through it so I don't remember having
6 seen myself. I remember that -- I mean, I don't want to see
7 pictures of naked women, but I remember going to him and I
8 also remember, my approach when I went and told him was almost
9 like in a I'm-looking-out-for-you kind of way, like, you
10 really shouldn't have that there, you know, you really should
11 be more careful. You know, I found it. Anybody else could
12 find it. You shouldn't have that.

13 Q Do you know whether the defendant deleted your pictures?

14 A I don't. I asked him to but I don't know for sure.

15 Q Did you ever look on the computer to see if they had been
16 deleted?

17 You have to --

18 THE COURT: You have to answer yes or no.

19 A No, not that I remember.

20 Q I'm going to go back for a second to the topic we were
21 talking about, the various legal matters and the passwords
22 that you had talked about accessing. That category of
23 information -- and we'll look at some e-mails.

24 A Okay.

25 MS. PENZA: May I have the ELMO just for the

Daniela - direct - Penza

2574

1 witness, Your Honor?

2 THE COURT: Yes, you may. Go ahead:

3 Q Daniela, are you familiar with this e-mail?

4 A Yes.

5 Q Okay. And is this an e-mail from Kristin Keefe to you
6 copying Nancy Salzman on August 29, 2005?

7 A Yes, it is.

8 MS. PENZA: Your Honor, the government offers
9 Government Exhibit 1590 into evidence.

10 MR. AGNIFILO: No objection.

11 THE COURT: All right. Government Exhibit 1590 is
12 received in evidence.

13 (Continued on next page.)

14

15

16

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2575

1 BY MS. PENZA: (Continuing.)

2 (Exhibit published.)

3 Q Daniela, can you read this e-mail?

4 A Yes. It says, "Hi Danny. I figure you are the most
5 likely of the gang to check your e-mail first. Can you report
6 to Keith and Nancy on the following for me: Nothing new on
7 our legal fronts. Some suspicious car activity around the
8 house Friday night, but nothing else since. I've conferred
9 with Judd yesterday and today on the missing data on why
10 Joe has done -- why Joe has done what he has done."

11 Q Sorry, Daniela, do you have an understanding of who Joe
12 is?

13 A Joe O'Hara.

14 Q Do you know who Judd is?

15 A I don't remember.

16 Q You can keep reading.

17 A "Judd does not think Doug is blackmailing Joe."

18 Q Do you know who Doug is?

19 A I imagine Doug Rudnick. "He thinks Joe is a crook who
20 just could not keep up the facade anymore, and he thought he
21 could bully his way out of what he did to us. Judd is still
22 thinking on it. I made the point that I don't think Joe is
23 that stupid and he is acting like someone who wants to get
24 caught. Judd said he thinks Joe is just crazy. The judge
25 will be setting the hearing date today or (probably) Friday or

Daniela - direct - Penza

2576

1 next Tuesday. (Nancy especially will want to know this.)
2 Judd expects to settle with Joe this week before the hearing.
3 Otherwise there will be no way to avoid Keith being deposed or
4 called as a witness in the Ross case short of settling the
5 case. He thinks trying to fight that is tricky at best, but
6 will think of it some more. I referred him to Nancy to
7 discuss it in more detail. I have spoken to Nardello Schwartz
8 on the newswire data and I'm waiting to hear back on a time to
9 conference with them today. I will be going to the Albany
10 airport at 5 to check on a suspicious flight and I'm following
11 up on some other leads today too. Neither of the suspicious
12 trips have been cancelled yet and communications evidenced.
13 Heidi is returning to AK on September 6th in spite of keeping
14 the flight arrangements to FL on the 10th. On a different
15 note, my mother called yesterday and told me she had a massive
16 heart attack and could go at any time. She wants to see me
17 before she dies. I was planning on coming to Silver Bay for
18 the day yesterday, but was on the phone with -- for two or
19 three hours yesterday and I'm trying to block the conversation
20 and decide what to do. I've decided not to go down
21 immediately and I'm following up on everything we are working
22 on today, but may go tonight after my airport adventure.
23 Depending on what happens, I plan to be at Silver Bay tonight
24 or tomorrow after I come back. Love to all. Hope you are
25 having fun. If I miss the triathlon tomorrow, good luck to

SN

OCR

RPR

Daniela - direct - Penza

2577

1 you Mariana and Dan. Love, Kristin."

2 Q August 29, 2005 do you have an understanding of where you
3 are?

4 A Yes. So what I remember is we're all at V Week. We're
5 at V Week and at V Week there used to be really spotty, rare
6 WiFi reception. So one needed to really be connected to the
7 internet to check the e-mail and -- so we were Silver Bay.

8 Q Do you have an understanding of why this is being sent to
9 you?

10 A Yes.

11 Q Can you explain?

12 A So, I am one of the very few people who's aware or
13 approved to, like, be present for all of these types of
14 conversations and communications. Kristin is trying to get a
15 message to Keith and Nancy and it's unlikely that they would
16 check their e-mail as often I would be checking my e-mail so
17 she's reporting through me.

18 Q Do you understand the details of everything that's being
19 discussed here?

20 A No, not everything.

21 Q So what would your role have been upon reading this?

22 A To print it and hand it to Keith or Nancy or just tell
23 them Kristin wrote something important.

24 MS. PENZA: Your Honor, may I have one moment to
25 confer with defense counsel?

Daniela - direct - Penza

2578

1 THE COURT: Sure.

2 (Pause in proceedings.)

3 MS. PENZA: Thank you, Your Honor. On consent of
4 the defense, the Government moves into evidence Government
5 Exhibit 1514, 1514-A, 1515, 1516, 1517, 1518, 1519, 1520,
6 1521, 1522, 1523, 1525, and 1525-A.

7 MR. AGNIFILO: We do consent, Your Honor.

8 THE COURT: All right. Government Exhibits 1514,
9 1514-A, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523,
10 1525 and 1525-A are received in evidence.

11 (Government Exhibits 1514, 1514-A, 1515, 1516, 1517,
12 1518, 1519, 1520, 1521, 1522, 1523, 1525 and 1525-A received
13 in evidence.)

14 MS. PENZA: Thank you, Your Honor.

15 (Exhibit published.)

16 BY MS. PENZA:

17 Q Daniela, I'm showing you what's in evidence as Government
18 Exhibit 1514. Do you recognize this e-mail?

19 A Yes.

20 Q And underneath -- I'm going to put what's in evidence as
21 Government Exhibit 1514-A.

22 (Exhibit published.)

23 Q Is Government Exhibit 1514-A a translation of Government
24 Exhibit 1514?

25 A Yes.

Daniela - direct - Penza

2579

1 Q Can you read Government Exhibit 1514-A?

2 A Yes. So this is -- just the in-line text or the from and
3 to as well?

4 Q The from and to as well.

5 A This is from Leonardo Icaza. E-mail leomcho@gmail.com to
6 my both of my e-mail addresses. The subject line is, "What
7 e-mail? 1, I did not receive the e-mail. 2, 3, I don't think
8 they apply since I didn't receive the e-mail. Ha ha. P.S., I
9 like your saying on messenger" and a smiley face.

10 Q Can you explain what's happening in this e-mail?

11 A Yes, so I have contacted this friend to find out if he
12 can or knows someone who can obtain a password for an e-mail
13 account and I contacted him via messenger or via e-mail and he
14 didn't receive my e-mail. That's what I think is happening.

15 Q Is this one of the people you described earlier as one of
16 your early attempts to find someone else could get passwords
17 for an e-mail account?

18 A Yes, yes.

19 Q I'm showing you what's in evidence as Government Exhibit
20 1515.

21 (Exhibit published.)

22 Q Do you know what this is?

23 A Yes.

24 Q Can you -- can you read it, please?

25 A Yes. This is an e-mail to me from Kristin Keefe that

Daniela - direct - Penza

2580

1 contains the two e-mail addresses that are the targets to
2 obtain the passwords for these accounts.

3 Q What is the date on this e-mail?

4 A It's November 3, 2005.

5 Q And did you have an understanding of who Kim Snyder was?

6 A Not completely. I imagine she was related to Kristin
7 Snyder.

8 Q Showing you what's in evidence as Government Exhibit
9 1516.

10 (Exhibit published.)

11 A Yes.

12 Q Can you read this?

13 A Yes. This is an e-mail from me to myself with a subject
14 line "Retrieve lost password" and it contains a series of
15 links. This is when I was doing research online to figure out
16 how to hack into those e-mail addresses.

17 Q And when you -- what are the three different types of
18 e-mails that you have?

19 A So, they're grouped. This is the key logger which is the
20 software that logs the key scripts. And there's one that says
21 "Crack AOL" which seems to be like a specifically -- a
22 specific software to attack AOL accounts through, it says
23 remote password cracker. So maybe it's like a brute force
24 type attack and then there's two -- two links under the
25 headline "Paid services." And if it's self-explanatory, then

Daniela - direct - Penza

2581

1 I would imagine it's paid software."

2 Q So what is going on here?

3 A So sending e-mails to myself is something I tended to do.

4 This is the product of my research. So what's happening is

5 I'm looking up online all of these different things, looking

6 up different threats and isolating the different methods that

7 I think would work.

8 Q I'm showing you what's in evidence as Government Exhibit

9 1517. Can you -- and I'm sorry, the e-mail we just looked at,
10 that was on November 4, 2005; correct?

11 A Yes.

12 (Exhibit published.)

13 Q Looking at the next e-mail can you read the top part?

14 A Yes. This is an e-mail from myself to myself again on
15 November 6, 2005, subject line "Test 2" and there's an image
16 attachment.

17 Q Why -- what is your understanding of this language "test
18 2"?

19 A It's -- I'm sending myself a test and that is an image
20 that I recognized. That's an image that I had in my computer
21 so what I'm doing is I'm maybe testing the embedding of the
22 software.

23 Q The subject is Test 2 and in the body Test 2 and there is
24 there's an attachment that's titled white dress JPEG?

25 A Yes.

Daniela - direct - Penza

2582

1 Q And this is the image that you recognize?

2 A Yes.

3 Q Would you actually embed software in this image like you
4 were describing before?

5 A Yes, yes.

6 (Exhibit published.)

7 Q Showing you what's in evidence as Government Exhibit
8 1518, you read this e-mail?

9 A Yes. This is an e-mail from me to Keith at his address
10 kunterre@nycap.rr.com. And, so this has some more about some
11 key log software.

12 Q And the subject line is Magic Lantern?

13 A Yes.

14 Q And was that a type of software?

15 A Yes.

16 Q And if we look at the second paragraph it says, "Magic
17 Lantern Keystroke Logging Program is one of the several
18 enhancements to Carnivore discovered by the public in
19 mid-November 2001"?

20 A Yes.

21 Q And then it goes on to provide more information about --
22 about the key logger?

23 A That's correct.

24 Q And why are you sending this to the defendant?

25 A Because this is what we're discussing at the time, all

Daniela - direct - Penza

2583

1 the time. So, I mean, this is one example of written
2 communication where I'm sending that to him, but really our
3 conversations in the house and on walks it's all surrounding
4 this topic at the moment.

5 (Exhibit published.)

6 Q I'm showing you what's in evidence as Government Exhibit
7 1519. Are you familiar with this e-mail?

8 A Yes.

9 Q Okay. Can you explain what's going on in this e-mail?

10 A Yes. It's an e-mail sent to me by some service, it seems
11 to me. I registered for a special service that masks the
12 sender. So it would be to use as a complementary to one of my
13 methods to send an e-mail.

14 Q And this is on November 7, 2005?

15 A That's right.

16 Q Showing you what's in evidence as Government Exhibit
17 1520 --

18 (Exhibit published.)

19 Q Did you receive this e-mail?

20 A Yes.

21 Q And this is also from November 7, 2005?

22 A That is correct.

23 Q And can you describe what this e-mail is?

24 A Yes. This is another e-mail from myself to myself with
25 subject line "E-Mail Services." So this looks to be a list of

Daniela - direct - Penza

2584

1 links resulting of my research to complete the part of the
2 attack that is the sending of the e-mail. So this is some --
3 self-destructing-email. So e-mail -- remailers. That's the
4 one that masks the sender. Fakemail also masks the sender.
5 Trashmail, that deletes it. So this is the product of
6 research on trying to bypass spam, trying to get the target to
7 believe it's a familiar sender and possibly destroy the e-mail
8 once it's not being used.

9 Q Showing you what's in evidence as Government Exhibit
10 1521.

11 (Exhibit published.)

12 Q This is an e-mail from November 20, 2005. Are you
13 familiar with this e-mail?

14 A Yes.

15 Q Starting at the bottom, can you explain what's happening?

16 A Yes. So this is an e-mail from a person named Ankit
17 Fadia to Edgar Boone, eboone@nxivm.com. That is his personal
18 e-mail address with the subject line "Hello" and -- I mean,
19 it's just an e-mail to Edgar making contact at the bottom it
20 says, "Hackingmobilephones.com."

21 Q And the next e-mail?

22 A The next e-mail it's -- it's Edgar Boone writes, "Ankit
23 just a reminder for the software. Thank you, Edgar Boone."
24 So I imagine there's been a request for software from Ankit.

25 Q And does Ankit respond?

Daniela - direct - Penza

2585

1 A Ankit responds to Edgar Bloom on November 19th, "Go to
2 lostpassword.com and download, yes, like a set of
3 instructions.

4 Q And does that end up getting forwarded to you?

5 A This next one is forwarded to Loretta and then Loretta
6 forwards it to me, yes.

7 Q And is Loretta, Loretta Garza?

8 A That is right.

9 Q Showing you what's in evidence as Government Exhibit
10 1522.

11 (Exhibit published.)

12 Q Are you familiar with this e-mail?

13 A Yes.

14 Q And what is this?

15 A This is another e-mail from me to myself on November 24,
16 2005 with another product of my research. It seems another
17 utility to recover a password.

18 Q Showing you what's in evidence as Government Exhibit
19 1523?

20 (Exhibit published.)

21 A This is an e-mail from myself to myself on December 17th,
22 2005 with the subject line misspelled "Software" with two
23 links that respond to -- to software and then to hack
24 passwords.

25 Q I'm showing you what's in evidence as Government Exhibit

Daniela - direct - Penza

2586

1 1525?

2 (Exhibit published.)

3 Q Do you see that?

4 A Yes.

5 Q And then 1525-A.

6 (Exhibit published.)

7 A Yes.

8 Q Is 1525-A a translation of 1525?

9 A Yes.

10 Q Starting at the bottom can you read this chain?

11 A Yes. This is an e-mail from Farouk.

12 Q Who is Farouk?

13 A Farouk Rojas was an ESP student and member of the
14 community.

15 Q And can you read what it says?

16 A Yes. It says -- Farouk wrote, "And why haven't you
17 downloaded the demo? It appears that it doesn't have any use
18 restrictions?"

19 Q Do you know what he means there?

20 A Yes. As I remember, I was trying to have access to a
21 certain piece of software and I was trying to get his help to
22 obtain, like, a cracked version of it so I wouldn't have to
23 purchase this so that it wouldn't be traceable and when I
24 asked that, it seems he's not understanding why I want it to
25 be untraceable.

Daniela - direct - Penza

2587

1 Q Okay. And then does the e-mail -- do you continue to
2 communicate with him about this?

3 A Yes. It appears that way. So. He writes, "Again it
4 seems --- I'm writing back okay, okay. Now all of that is
5 done. The problem isn't in the restrictions on the program
6 itself, but in fact the legal restrictions in general. In
7 fact, I'm not worried read about the company that created the
8 software wanting to track it. The only risk is if anybody
9 wanted to, the transaction can be traced to the person owning
10 f the credit card. That's all. In fact, even that is quite
11 difficult, but it is a possibility. Understand this. The
12 software would be installed and directed from an anonymous
13 computer but if it was ever detected, the only information
14 they would have would be the product ID number (embedded in
15 the program) and from that, the history of the transaction. I
16 hope this is clear enough. If you have any problem with that
17 or have any kind of difficulty please let me know. I can find
18 otherwise. Danny.

19 Q So what are you communicating to Farouk?

20 A That I need the software to not be traceable.

21 Q And then there is a continuing communication back and
22 forth?

23 A Yes.

24 Q And ultimately you say, "Farouk, I still haven't received
25 anything. Send it to me as soon as you can," and he says, "I

Daniela - direct - Penza

2588

1 had resent it to you. I don't understand why you are not
2 receiving my messages"?

3 A Yes.

4 Q Do you know anything else about this interaction?

5 A No, I don't.

6 Q I'm showing you what's in evidence as Government Exhibit
7 1526?

8 (Exhibit published.)

9 Q Are you familiar with this document?

10 A Yes.

11 Q Can you explain what this is?

12 A So, this is an e-mail from myself to myself, e-mailing me
13 the results of a successful deployment. So the subject line
14 is "Testing self extract. Current user: Administrator" and
15 there's an attachment key log to ESP. And I believe this must
16 have been a computer I tested and infected successfully and
17 the file that is the outcome of the log.

18 Q Turning to the second page is this the only information
19 that's on the text file?

20 A Yes. So then this may be an infected file for testing.
21 Like a text file that's infected. That would be all.

22 MS. PENZA: Your Honor, I think Mrs. Carby has
23 informed me that I may have missed two exhibits to move in on
24 consent. I think the one I just showed, 1526, and also
25 Government Exhibit 1527.

Daniela - direct - Penza

2589

1 THE COURT: Any objection to those two?

2 MR. AGNIFILO: One second, Judge.

3 THE COURT: Sure.

4 (Pause in proceedings.)

5 MR. AGNIFILO: No objection.

6 THE COURT: All right. Government Exhibits 1526 and
7 1527 are received in evidence.

8 (Government Exhibit 1526 and 1527 received in
9 evidence.)

10 MS. PENZA: Thank you, Your Honor.

11 BY MS. PENZA:

12 Q Daniela, I'm showing you what's in evidence as Government
13 Exhibit 1527.

14 (Exhibit published.)

15 Q Are you familiar with this document?

16 A Yes, I am.

17 Q And can you -- this is from you to you on January 16,
18 2006?

19 A Yes.

20 Q The subject line is D-1. Do you know what that means?

21 A I -- no. I would suspect it's -- not exactly, but the
22 attachment is called Downloads 1 so maybe it's just shorthand
23 for that.

24 Q And then these letters that are in the body of the e-mail
25 FSDVSDF, does that mean anything?

Daniela - direct - Penza

2590

1 A That means nothing. That is a habit I have of typing
2 something on the in-line text because I know that if I don't,
3 the computer will prompt me, ask me, are you sure you want to
4 send without anything in the body. But it's more work to not
5 put anything in the in-line text, but it means nothing.

6 Q Then turning to the second page, can you explain what
7 this attachment is?

8 A Yes. This is a compendium of all the information
9 retrieved from the James Loperfido hack. This is a very
10 clean, cleaned up, file. So I have it here organized by
11 the -- it seems the date and maybe even time of the capture
12 and the -- and then there's information that the key log
13 captures automatically, like the IP address, and the key
14 strokes pertaining to that and what I remember about this file
15 is typically files that is the output of a key logger is a
16 very noisy file. It has all the key strokes including spaces,
17 delete, backwards.

18 So I had to go and clean it up and retrieve only
19 what's really important. In this case there's different
20 websites that are accessed and different passwords are
21 captured. So, for example, in line two, there is a password
22 captured Cinefile, in line three.

23 Q Can you circle that for us?

24 A Yes. It's right there. The second line there's another
25 password captured. It's quality and on the different line

Daniela - direct - Penza

2591

1 that's a different capture altogether, cinefile, and so on.
2 So, like, the first part of the line will -- will tell you
3 which application it was captured in so the first few lines
4 are all in Explorer. So these are passwords and user names
5 for specific websites. Further along we can see that there's
6 one for Quickbooks. I can try and -- there. And it has some
7 instant messenger applications. So it seems like some AOL
8 services there and then again in Explorer, there is more
9 passwords captured here. Whoops. Here. And here. And
10 there's the e-mail address and there's user names. So this is
11 what this particular software rendered from what I retrieved
12 from the server.

13

14 (Continued on the following page.)

15

16

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2592

1 EXAMINATION CONTINUES

2 BY MS. PENZA:

3 Q Okay, so here we have you circled another password that
4 was captured, loper?

5 A Yes.

6 Q And you captured another one down here, and are these
7 all -- cinefile, is that --

8 A Yes, they are repetitive. A lot of people use the same
9 passwords for many different applications, which is a big
10 mistake. But if one observes carefully you will see that
11 there are many different services accessed with the same
12 password, but they're all different.

13 Q So just going down further, there is a payroll service
14 and there is a password captured?

15 A Yes, XVCJGA9Z.

16 Q Another cinefile and another one that plays on loper,
17 right?

18 A Yes, that's loper3.

19 Q And the next page, another page the same type of
20 information?

21 A Yes.

22 Q And then there is another password; is that right,
23 ecv5180?

24 A That's correct.

25 Q That appears again here (indicating)?

Daniela - direct - Penza

2593

1 A Yes.

2 Q Now, would you always e-mail yourself these types of
3 files?

4 A No. In fact, that was a big mistake. That's not
5 something I ever did. I thought I was very cautious. I was
6 very cautious, like nothing was on my personal e-mail address,
7 nothing was on my personal network. And those types of files
8 would be just handed over in a USB, not e-mailed. I would
9 never e-mail those.

10 MS. PENZA: Your Honor, I think the next -- I think
11 it may be a good time to break for lunch.

12 THE COURT: All right, it is about time for lunch,
13 so we will take one hour for lunch.

14 All rise for the jury, please.

15 (Jury exits.)

16 (In open court - jury not present.)

17 THE COURT: The witness may stand down. Please do
18 not discuss your testimony with anyone.

19 (Witness steps down.)

20 THE COURT: We will take an hour for lunch.

21 (In open court - jury not present.)

22 (The defendant exited the courtroom.)

23 (Judge NICHOLAS G. GARAUFGIS exited the courtroom.)

24

25 (Luncheon recess now taken.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A F T E R N O O N S E S S I O N

(Judge NICHOLAS G. GARAUFIS entered the courtroom.)

(In open court - jury not present.)

THE COURT: Let's bring in the witness, please.

MS. PENZA: Your Honor.

THE COURT: Before we bring in the witness?

MS. PENZA: Yes.

THE COURT: Let's wait for the defendant.

Please be seated in back.

(Defendant entered the courtroom.)

THE COURT: All right, yes.

MS. PENZA: Yes, Your Honor. I understand that defense counsel has an objection to two of the exhibits that were ones I plan on using, basically right now with the witness.

THE COURT: Well, maybe I should see them then. What are they?

MS. PENZA: They are two e-mails that copy log files, so the same type of file that Daniela testified to regarding James Loperfido. There were two additional log files sent later in 2008 that are the log files of the key strokes from her sister, Marianna, and that she was sending to the defendant. So, in the Government's view, this is the *actus reus* of the crime, this is the crime, and so it

1 absolutely should come into evidence.

2 THE COURT: Yes.

3 MR. AGNIFILO: Our position, I don't -- the *actus*
4 *reus* of the crime is that the crime occurred and that they got
5 content. As she said, with the other witnesses, the --
6 putting the key strokes of this person into evidence is, A,
7 it's -- it's -- it's elicited. I mean, they're basically
8 putting in something that this person never intended the world
9 to see, so I think that there could be privacy implications
10 for this person. I don't know --

11 THE COURT: I'm sure there are privacy implications,
12 yes.

13 MR. AGNIFILO: I'm not sure why they're picking this
14 one person to put her key logs in, into evidence.

15 THE COURT: Okay. Good to know.

16 Yes?

17 MS. PENZA: Well, Your Honor, I think that obviously
18 there is tons of privacy implications all over this case.
19 This is no more -- this is certainly nowhere close to other
20 things that are being entered in this case, and these are the
21 actual log files. This is the exact product that the
22 defendant asked her to get and that she is then sending to the
23 defendant. This is the exact most -- this is the most perfect
24 evidence of this crime being committed and the defendant's
25 involvement in it.

1 THE COURT: Anything else?

2 MR. AGNIFILO: We are not saying that they didn't
3 get content. We're conceding they got content. I don't think
4 that they should be able to put the content in, it's -- it's
5 hacked material, and I just don't think that there is any
6 reason for it to come in. I think it's unduly prejudicial to
7 put the content in. It's secret words of someone who has --

8 THE COURT: I understand.

9 MR. AGNIFILO: -- never wanted this to be public.

10 THE COURT: Well, all right, I am going to overrule
11 the objection. You may place those.

12 What are the numbers of those?

13 MS. PENZA: This is Government Exhibits 1539 and
14 1540.

15 THE COURT: 15 --

16 MS. PENZA: 1544, excuse me, Your Honor.

17 THE COURT: 1539 and 1544 will be admitted -- oh,
18 you can object at the time --

19 MR. AGNIFILO: That's fine.

20 THE COURT: -- in front of the jury, just the way
21 that you now objected.

22 MR. AGNIFILO: Sure.

23 THE COURT: If that's what you wish to do.

24 MR. AGNIFILO: It doesn't matter. I mean, Your
25 Honor knows I've objected, I preserved the issue. If you want

1 me to object --

2 THE COURT: You've preserved. Of course, everything
3 is preserved.

4 MR. AGNIFILO: That's fine. Thank you, Judge.

5 MS. PENZA: Thank you, Your Honor.

6 THE COURT: All right.

7 Please bring in the witness.

8 (Witness entered the courtroom resumed the stand.)

9 THE COURT: Please bring in the jury.

10 (Jury enters.)

11 THE COURT: Please be seated.

12 I remind the witness that she is still under oath.

13 You may continue your examination of your witness,

14 Ms. Penza.

15 MS. PENZA: Thank you, Your Honor.

16 (Continued on the following page.)

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2598

1 **DANIELA,**

2 called as a witness by the Government, having been
3 previously duly sworn/affirmed was examined and testified
4 further as follows:

5 DIRECT EXAMINATION CONTINUING

6 BY MS. PENZA:

7 Q Good afternoon, Daniela.

8 A Good afternoon.

9 Q Now, when we last left off we were looking at some
10 e-mails that you had exchanged in the 2005-2006 time period
11 regarding the key logging you described earlier. Correct?

12 A Yes.

13 Q Did you also have e-mail correspondence regarding the
14 key-logging you described as to your sister, Marianna?

15 A Yes.

16 Q And can you just describe generally what type of e-mails
17 you exchanged about that?

18 A Yes. The exchange included she's asking me for status,
19 she's asking me if I was able to gain access to her computer,
20 and my replies were replies with the status, whether I had
21 been able to get something. It was coordinating and reporting
22 whether she was using the computer where I had installed it
23 and that they needed to encourage her to use that computer so
24 I could capture something, as well as the actual information
25 that I retrieved from the computer.

Daniela - direct - Penza

2599

1 Q Daniela, November 2008, what is -- at that time, what is
2 the status of your relationship with the defendant?

3 A I have not talked to him in about two years and all of
4 our communications are via e-mail.

5 Q I am showing --

6 MS. PENZA: Your Honor, may I have the ELMO --
7 actually, Your Honor, may I just approach the witness?

8 THE COURT: Yes, you may.

9 BY MS. PENZA:

10 Q Daniela, I am showing you what are marked for
11 identification purposes as Government Exhibit 1539, 1540,
12 1544, 1591 and 1592.

13 Can you just take a look at those for a second?

14 A Yes. (Witness complies.)

15 Q Are those all documents you are familiar with?

16 A Yes.

17 Q Are those all e-mail chains between you and the defendant
18 in early November 2008?

19 A Yes, they are.

20 MS. PENZA: Your Honor, the Government offers
21 Government Exhibits 1539, 1540, 1544, 1591 and 1592 into
22 evidence.

23 MR. AGNIFILO: One second, Judge.

24 (Pause.)

25 MR. AGNIFILO: Judge, can we just go to the side for

Daniela - direct - Penza

2600

1 a second? We will just take a second.

2 THE COURT: Yes, sure.

3 (Sidebar held.)

4

5 (Continued on following page.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Sidebar

2601

1 (The following sidebar occurred outside the hearing
2 of the jury.)

3 THE COURT: Yes.

4 MR. AGNIFILO: This wasn't the stuff on your list,
5 so we don't have copies of it.

6 MS. PENZA: These were, I think, on last week's
7 list. So these have been -- if you don't -- you don't have
8 copies of these?

9 MS. GERAGOS: We just got copies of these from
10 Mrs. Carby.

11 MR. AGNIFILO: All right. All right, that's fine.
12 No objection. No objection.

13 THE COURT: Except the objection you have already
14 stated?

15 MR. AGNIFILO: That's right, the objection already
16 stated. Nothing new.

17 THE COURT: So let me just, 1539, 1544, 1540, 1591
18 and 1592 are admitted into evidence. 1539 and 1544 over the
19 objection of the defense?

20 MR. AGNIFILO: Yes, thank you, Judge.

21 THE COURT: Thank you very much.

22 (Sidebar concluded.)

23

24 (Continued on the following page.)

25

Daniela - direct - Penza

2602

1 (In open court - jury present.)

2 THE COURT: All right, Government's Exhibit 1539,
3 1544, 1540, 1591, 1592 are received in evidence.

4 (Government's Exhibits 1539, 1540, 1544, 1591 and
5 1592 were received in evidence.)

6 THE COURT: You may publish.

7 MS. PENZA: Thank you, Your Honor.

8 EXAMINATION CONTINUING

9 BY MS. PENZA:

10 Q One more question before we look at some of the e-mails,
11 Daniela.

12 At this time -- we will go into more detail later,
13 but what is the general nature of the back and forth you're
14 having with the defendant at this time, aside from the key
15 logging?

16 A Aside from the key logging?

17 Q In November 2008.

18 A In November 2008, well, the nature of our conversations
19 were instructions from him to me about what to do about what
20 he said was my ethical breach.

21 Q Okay.

22 A And I --

23 Q So, is it fair to say that, interspersed within the
24 conversation about the key-logging in November of 2008, there
25 is more back and forth about the falling out that you and the

Daniela - direct - Penza

2603

1 defendant had later on in time?

2 A Yes.

3 Q Okay. So for now, when we go through these e-mails, I am
4 just going to point you to the portions about the key-logging.

5 A Understood.

6 Q So I am showing you what is in evidence as Government
7 Exhibit 1539.

8 (Exhibit published.)

9 A Okay.

10 Q And if we go to the -- just looking at the front page of
11 that e-mail.

12 A Yes.

13 Q Saturday, November 1st, 2008.

14 A Yes.

15 Q Is that an e-mail from the defendant?

16 A Yes, that's an e-mail from Keith to me.

17 Q On November 1st, 2008?

18 A That is correct.

19 Q And starting -- can you read the second and third
20 sentences?

21 A Yes.

22 Did you find out yesterday what's up computer-wise
23 from your key-logger? Additionally, whatever happened to the
24 other accounts?

25 Q What do you understand the defendant to be saying there?

Daniela - direct - Penza

2604

1 A He's asking me here about the key-logger on my sister.
2 And then asking me about the other two hacks that I had done
3 and what the status is on those.

4 Q And who are those other, the other accounts, what is your
5 understanding of who those other?

6 A That would be Edgar Bronfman and James Loperfido's
7 accounts.

8 Q And this "what's up computer-wise from your key-logger,"
9 that's what you understand to be Marianna's?

10 A That is correct.

11 Q And then you respond, can you read your response?

12 A Yes. I respond: The first -- the first -- there's two
13 responses, sorry. Saturday November 1, 2008 at 10:22 a.m.?

14 Q Yes.

15 A I am on my way to Flintlock right now to check my
16 computer. The other accounts, I haven't check in a long time.
17 I stopped checking them when I became aware they were
18 suspecting of a hacker. And although it end up it wasn't my
19 work, but I never did go back. I could check if I still have
20 access ultra-carefully (in parentheses, question mark close
21 parentheses).

22 Q So what are you conveying to -- so that first sentence,
23 I'm on my way to Flintlock right now to check the computer,
24 what does that mean?

25 A That means I am about to go and check the key-logger on

Daniela - direct - Penza

2605

1 the computer I implanted on my sister's.

2 Q And then the second paragraph, what are you conveying
3 there?

4 A The second paragraph is referring to James Loperfido's
5 and Edgar Bronfman's accounts, and I am telling him that I
6 have not been checking them in the fear that I had that they
7 had been compromised.

8 Q Is that what you explained to us earlier today, that you
9 did have that fear?

10 A That's right.

11 Q Okay. And then can you read the top e-mail?

12 A Yes.

13 It's an e-mail from me to Keith, with an attachment
14 named out_log file dot txt.

15 It says: I am cleaning up the text file from Pam's
16 computer for you. I am attaching it to you in its raw state
17 if you'd like to give it a go. Seems Monkey has been using
18 the big computer more. Pam must have forgotten to encourage
19 Monkey to use the little one.

20 Q Who is Monkey?

21 A Monkey is the nickname we used for my sister, Marianna.

22 Q And did you actually attach the raw-state file to this
23 e-mail ?

24 A Yes.

25 Q And is this what a raw-state log file looks like?

Daniela - direct - Penza

2606

1 A Yes.

2 Q So can you walk us -- can you walk us through what we're
3 seeing here?

4 A Yes. So, more or less, this is a funky one. So some of
5 it is self-explanatory. Some of it -- sorry, isn't. So first
6 line it's just the first initial log, I think. The next --
7 the second one is noise, third one noise, fourth one noise.
8 Then you can see she's typing pamelarunner, and then the next
9 one is -- it may be an enter logKext. Then, on the seventh
10 line, it's a good example of just the user repeatedly pressing
11 the arrow key down, down, down, down, down.

12 Q Here (indicating)?

13 A Yes. So it's kind of visually self-explanatory to a
14 degree.

15 The next line it seems she's just clicking away.
16 The next line I see, with some information, is not here. This
17 is just a bunch of noise.

18 Q Okay. So, sorry, Daniela, I have one question.

19 A Yes.

20 Q At the very top, what is this first line?

21 A Daemon starting up.

22 I would imagine that's the initiation of the log.
23 And these things are usually time stamped and date stamped.

24 Q And so this one is time stamped -- sorry, this one is
25 time stamped October 30th, 2008?

Daniela - direct - Penza

2607

1 A That seems correct, yes.

2 The rest of the information on this file, except for
3 the very bottom, seems to be a lot of just motions on the
4 keyboard that are not actual typing. Could be mistakes, could
5 be noise, or it could be someone just playing around with the
6 keyboard, which is most likely what happened.

7 There is a little bit of typing by the end and it
8 says: Hardware electrolog, electrologfreihofer, pamelarunner,
9 www.my, and then a key stroke down. So that may be someone
10 typing a domain name.

11 Q And then if we go to the next page.

12 A Okay. Okay, so here we have some actual information.
13 Here is -- this is -- this is a password in an e-mail address.
14 In this case I know the password because this -- I know this
15 was a password that Keith used for another one of his
16 computers.

17 THE COURT: Just circle it.

18 A Sorry.

19 THE COURT: Go ahead.

20 A Wait.

21 Q I don't think it's --

22 A This. (So marked.) Alyxa1a.

23 Q So here where it says alyxa1a?

24 A That would be the password where it ends, and then
25 kunterre@nycap.rr.com is the e-mail address.

Daniela - direct - Penza

2608

1 Q So over here where it has that, that's the e-mail
2 address?

3 A Yes.

4 Q Whose e-mail address is that again?

5 A That's Keith's e-mail address.

6 Q And this is a password that you were familiar with from
7 other places?

8 A Yes. Then it continues: Themightyrunner, and the small
9 imtheonlymonkey. I know that mightyrunner was her user name
10 for her Gmail account, so maybe what's following is the
11 password. And, again, it's imtheonlymonkey, then the another
12 domain starts being typed www.f and then again -- key-loggers
13 are not precise. Like the way everything is logged is very
14 noisy. So that's why it needs to be cleaned up.

15 Then again, themightyrunner# delete at Gmail.com.
16 Again, imtheonlymonkey, so that my might be a password because
17 it's being repeated now three times after e-mail addresses.
18 Then pamela cafritz, that's actually just typing, and again
19 domain www.g-o-t-o-s-c-a, gotosca, command, some
20 unintelligible, RECONDITAA ARMONIA.

21 And here there's a few more lines that I recognize
22 as opera arias: CVISSI D"ARTE, LUCEVAN LE STELLE -- lyrics.
23 She's looking for lyrics. There's toska. Tosca again.
24 Again, pamelarunner, I believe that was maybe Pam's e-mail
25 address or one of her user names.

Daniela - direct - Penza

2609

1 Q And is this so -- if you were at -- when you are actually
2 gathering this type of information and you see a raw file like
3 this, what is it that you're trying to extract from it?

4 A In this case, because I am trying to gain access to a
5 specific account, basically her Gmail, I'm just looking for
6 user names and passwords.

7

8 (Continued on the following page.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2610

1 BY MS. PENZA: (Continuing)

2 Q Okay. So, in this case, you're not looking for access to
3 the defendant's account?

4 A Well, Keith's?

5 Q Right.

6 A No.

7 Q So this first one where you see an e-mail address and a
8 password, would that -- that's not what you're looking for at
9 this point in time?

10 A No. I'm looking for Marianna's. So I can see that
11 Marianna is gaining access to his account or trying to type in
12 his user name and password and I didn't know if she had access
13 to it. She's certainly trying, but that's not what I was
14 looking for. I was looking for Marianna's user names and
15 passwords.

16 Q Okay. And then if we go down further, can you walk us
17 through -- so then there's more lyrics, is that right?

18 A That's what it looks like, but then there's some actual
19 typing.

20 So it seems like she's typing a letter and it says,
21 after Pamela Runner: Tosca, how well you know the art of
22 capturing women's hearts. Let her eyes be black once.

23 Jealous? It may be misspelled. Yes, yes, I feel you, I
24 commend you incessantly, Tosca. I know you would forgive me
25 if you knew my grief.

1 So that may be just lyrics.

2 Your storming anger and your pulsing love.

3 Then, again, there's an attempt to -- or -- it could
4 be an attempt. It could be a successful entry into the e-mail
5 account kunterre@nycap.rr.com, which is Keith's e-mail
6 address.

7 Q That's here?

8 A Yes, and the password Alex A1A again.

9 And then three times in a row, Keith, Keith,
10 Keith -- with exclamation marks at the end -- I'm sorry.

11 Q And so in between, as the writing continues, there's a
12 lot of, like, what appear to be deletes?

13 A Yes.

14 Q What is happening? Can you tell what's happening there?

15 A Yes. And, again, it's not 100 percent accurate so
16 sometimes it can be off, but when looking at a file, it's
17 helpful if one imagines, like, live what is going on on the
18 keyboard.

19 So when I'm reading this, I'm seeing what the person
20 is doing on the keyboard. So you might mistype something.
21 You type delete and you type it again. That's going to be
22 recorded as one activity, each one, and that's why the file
23 tends to be very noisy. It's not the final output. It's just
24 recording each and every keystrokes.

25 Sometimes an application can kind of interact with

1 the key log application in a negative way and it generates
2 more noise than it needed. So, for example, and this is
3 probably not the best example, but maybe the mouse motion
4 creates part of a log so that it will be more noisy than
5 actually it is just from the keystrokes and sometimes an
6 application might create some additional noise. So not
7 everything is necessarily 100 percent accurate so it's
8 spliced.

9 Q Okay. Would you -- would something like this appear --
10 if I'm typing a letter and I'm going back and typing again, is
11 this, is that something that would show up as well?

12 A Yes. Like here right now, just from this page, I can
13 imagine she was going to the browser, looking at domains,
14 maybe, like, getting a lyric, maybe moving on, like, to a
15 different application, maybe in Word and then started typing a
16 letter and, you know, moved on back to the internet
17 application. So one can do several things at a time but you
18 will just see one plain string of characters.

19 Q Okay. And then the language continues?

20 A Yes.

21 So it continues after Keith, Keith, Keith, with
22 delete, delete, delete, I'm sorry. Thank you for your letter.
23 I L-0 -- delete, delete, delete, delete -- won't, sorry,
24 won't -- many deletes -- wanted to send you -- many deletes.
25 I hope -- no. Hope you are feeling B-R-Y, delete, T, delete

1 E-T-T-E-R. Continues unintelligible.

2 Wanted you to know that. I think -- maybe
3 misspelled. I'm thinking of you, your health, my P -- delete,
4 delete, delete -- my part here. I'm sorry. I hope we can get
5 you out of this one sooner rather than later. I apologize for
6 all the pain I case -- maybe "cause" -- you on a daily basis.

7 Q And so fair to say it goes on and she's continuing to
8 write in this way of writing, deleting, writing?

9 A Yes, and -- yes. Let's see. Literature here.

10 So this seems like a letter she's writing to Keith.
11 It says: So you took it and ran with it? What about all the
12 times I said I didn't want you to have those relationships. I
13 hope you start feeling better soon. It -- question mark.
14 What about all the times I expressed to you my opposition to
15 the situation? What a -- delete -- what about when you ask me
16 about starting a relationship with Camila and I said no --
17 delete -- question mark -- delete, delete -- you don't feel
18 well and things are worse that I can imagine and, again --
19 delete strokes. Thank you for taking the time and your energy
20 to write me. I keep the good part in my heart. More deletes.
21 As usual, I'll choose to only keep the good part in my heart.
22 I pro -- delete, -- I liked heart, for myself to recite very
23 close to my heart. The other parts, I don't know what to do
24 with them.

25 Q All right. And then fair to say it continues the same,

1 the same kind of letter writing?

2 A Yes. Yes. It continues and, again, there's another
3 attempt on the top to enter that account.

4 Once beautiful. I want you to know. Delete. Don't
5 care to have the conversation with you anymore. Forgive me.
6 That paralyzed of the watercolor paints. I'm staying for
7 three months so Pam can get stronger to what -- deletes --
8 have some time to -- delete -- less dependent and more stable.
9 I'll -- delete -- be working on myself too. Three months is
10 a -- maybe "long time" misspelled. Bunch of characters. I'm
11 leaving doors opens. The door open to the possibility I might
12 like life again. As per tonight, all I see is darkness, a
13 dark and ugly cold night. Us, and I -- us get involved with
14 the -- delete -- was that shelping (sic) you heal all, yes,
15 struggle with myself. Just -- parentheses -- pointless. And
16 parentheses, cold.

17 Q Okay. If we move -- so this continues.

18 A Yes. It says I --

19 Q Then if we look at the end.

20 A At the end, at the very end. They are -- so there's
21 another attempt to access Keith's account.

22 Then there is later, pamelacafritz@gmail.

23 Q So is this the other attempt on the defendant's account?

24 A Yes.

25 Q And then there is --

1 A There seems to be a log-in on pamelacafritz@gmail.com.

2 Q Is that where the pen is?

3 A Yes. That's one.

4 There's also one on themightyrunner. That one, the
5 one that's next to themightyrunner. Oh my one god. That
6 looks to be a password. So those two are repeated. That
7 looks to be a password.

8 Q And so when you see this type of information, what is
9 that? When you are engaging in this process, what is that
10 type of information?

11 A That most likely means that that is a user name and
12 password just from my experience.

13 Q And that was -- that was your sister Marianna's gmail
14 account?

15 A Yes.

16 Q Themightyrunner@gmail.com?

17 THE COURT: And which exhibit is that that you were
18 showing?

19 MS. PENZA: Your Honor, that is the attachment to
20 Government Exhibit 1539.

21 THE COURT: All right. Thank you.

22 MS. PENZA: You're welcome.

23 Q And that e-mail, that ends on, that's November 1, 2008 at
24 4:27 p.m. Is that right?

25 A That's correct.

1 Q When you would communicate with the defendant over
2 e-mail, were there occasions where you and he would respond to
3 different e-mail chains?

4 A Yes, in a different thread.

5 Q So can you explain what that means?

6 A Yes. So there was a high volume of e-mails. So
7 sometimes there would be a conversation. You know, like, I
8 send an e-mail, he replies. I send an e-mail, he replies.
9 Sometimes he would initiate, like later on, grab onto one of
10 the older threads and reply on that, grab one of the previous
11 ones and reply again or even like the same one and reply once
12 from this last e-mail and then reply from it again so it would
13 generate two threads.

14 Q So is it fair to say sometimes you will be having an
15 e-mail conversation with the defendant but then there will be
16 an answer or something else on a different e-mail thread?

17 A Yes.

18 Q And sometimes you'll be talking about the same topics on
19 two different e-mail threads?

20 A Yes. Yes. When one is e-mailing live, it makes a little
21 more sense, but trying to read it is a bit difficult.

22 Q Looking at Government Exhibit, Government Exhibit 1540,
23 and going to the middle of page two of this e-mail, and I'm
24 going to ask you to look at Sunday, November 2nd, at
25 12:39 p.m.

1 A Yes.

2 Q Okay. So this is -- so the e-mail we just looked at was
3 November 1st. This was the next day. And what does the
4 defendant, does the defendant write to you?

5 A He writes to me: Happy anniversary. Tell me anything
6 you haven't. Did you get any key log info? Love.

7 Q Now, when you -- when he says "happy anniversary" there,
8 can you explain what that means?

9 A Yes. "Happy anniversary" refers to the anniversary,
10 refers to the first time that we had sex. November 2nd is the
11 Day of the Dead. And that's the, you know, that was the
12 anniversary of our relationship.

13 Q And that's the day you described at Rome Plaza?

14 A Yes.

15 Q As I recall -- you don't have the exact date but that was
16 the date you settled on?

17 A My birthday is October 26th and it happened more or less
18 a week after so that's the date, yes, that I settled on.

19 Q Okay. Now, you then respond.

20 A Yes.

21 Q You respond at 7:48 p.m. on November 2nd?

22 A Yes.

23 Q And we'll not go through the whole e-mail but, again, on
24 page two of Government Exhibit 1540, can I have you read from,
25 "Now, change of subject"?

1 A Yes.

2 Now, change of subject. Key log info I sent
3 contains a few passwords. I tried them on Gmail and Facebook
4 with no success. Heads up, she typed your e-mail at
5 nycap.rr.com, and the A, asterisk, asterisk, asterisk, A,
6 password of yours several times. The rest of the info in the
7 file is a letter for you she typed which I assume you've
8 gotten, and a few Google searches for opera arias, perhaps
9 looking for advice from fellow psycho girlfriend Tosca.
10 Question mark. I cleaned up the file halfway not knowing
11 whether you'd still want it or not. Let me know if you do.

12 Q Can you explain how that e-mail relates to the log file
13 we just looked at?

14 A Yes. This is a description of what the log file was
15 which is precisely there were several user names and
16 passwords. I am saying that none of them actually give me
17 access. I am warning him that she's accessing his personal
18 e-mail address and I described some of the content of the rest
19 of the key log, like the searches.

20 Q How do you feel looking back at that e-mail?

21 A My loyalty was misplaced. I -- Marianna -- okay. How do
22 I feel looking at this e-mail? I helped Keith spy on my
23 sister and I even mock her a little bit here and I kept my
24 loyalty to Keith even against my very own sister and at this
25 point, I haven't even talked to Keith in two years and, I

1 mean, I haven't talked to my sister in many more years than
2 that, but this is, this is an unforgivable breach of privacy.

3 Q Why do you think you were willing to do that at that
4 time?

5 MR. AGNIFILO: Object, Your Honor.

6 THE COURT: Overruled.

7 A I was trying to, like, even in keeping e-mailing Keith,
8 keeping on checking on key loggers, everything I was doing is
9 I was trying, I was trying to -- I was still very dependent,
10 my entire life was very dependent on Keith. You know, he held
11 the access for everything that I wanted and I didn't have and
12 I thought, like, doing things like that for him, you know,
13 would relieve the situation that I was in.

14 Q Okay. I'm showing you now what's in evidence as
15 Government Exhibit 1544. I'm going to start on the eighth
16 page of that document. November 2nd, 10:47 p.m.

17 This is from, this is from the defendant to you?

18 A Yes. This is an e-mail from Keith to me.

19 Q Okay. And, again, let's concentrate on the key log here
20 parts. Can you read the second paragraph, please?

21 A Yes.

22 It says: BTW -- which stands for "by the way" --
23 WRT -- "with regard to" -- key log, is there any additional
24 ones? You gave me one file. The, is at least one viable
25 password change in that file. The new gmail account.

1 Additionally, I changed my other passwords. What about the
2 other key log from the past? There are some potentially
3 important things recently.

4 Q Can you explain what you understood by that e-mail?

5 A Yes. So it seems like here, like, he's looking for,
6 like, more information since this is just the one file. He is
7 reporting back that he did change all these passwords so I
8 suppose that was a concern and he's asking me about James
9 Loperfido and Edgar Bronfman's accounts, explaining that there
10 are some things they're interesting in, he's interested in
11 recently.

12 Q And then --

13 A I mean, specifically what I understood from that, as I
14 understood from the past, is that there was something going on
15 with a case or some development and he was asking me, like,
16 that was the timing of it.

17 Q Now, then there's a response from you, November 3, 2008,
18 8:46 a.m.

19 A Okay.

20 Q And there's a response. Can you start where this is?

21 A Yes.

22 KLG -- "key log" -- for our close friend, I will
23 check later today. Will let you know. KLG -- "key log" --
24 for our not so close friend I will also check today, will also
25 let you know.

1 Q So what did you mean there?

2 A The key log for our close friend would be Marianna, my
3 sister. That was an intrusion that was local. I directly
4 went on her computer. It was closer. And our not so close
5 friend I believe referred to Edgar Bronfman.

6 Q Okay. And then moving to the first page of Government
7 Exhibit 1544.

8 A Yes.

9 Q This is from you to the defendant on November 3, 2008 at
10 11:19 p.m., is that right?

11 A Yes.

12 Q Okay. And if you could start reading at "My."

13 A My sister's Facebook info. U -- which stands for
14 "user" -- name, e-mail as always, P -- which stands for
15 "password" -- oh my 8 god. I don't really want to look into
16 it. This is between you and her. I have the latest raw text
17 file I am attaching. I don't read through it, just look to
18 find user password zones. I haven't found the one for gmail.
19 There's a bunch of combos I need to try. I will let you know.
20 Didn't find anyone to drive me to a distant location today to
21 try other KLGS -- "key loggers" -- D.

22 Q Can you explain what's happening there?

23 A Here, it seems I've succeeded in gaining access to my
24 sister's Facebook account and I'm handing it to Keith. I am
25 telling him that I wasn't going to, I wasn't going to surveil

1 her. I was just giving him the user name and I was giving him
2 the access. And I attached the file and he was asking, I
3 think, before for the gmail which I wasn't able to get at that
4 time and also the other key loggers, I needed -- it seems I
5 didn't find anyone to go drive me to find the WiFi to check.

6 Q Turning now to Government Exhibit 1591, then turning to
7 the third page of that document, starting here, is there an
8 e-mail from the defendant to you?

9 A Yes.

10 Q Okay. And this is November 5, 2008 at 4:30 p.m.?

11 A Yes, that's correct.

12 Q And what did the defendant write?

13 A It says: Where are you? Did you get any KYLG -- "key
14 log" -- stuff? What else is hanging?

15 Q And can you read your response?

16 A I reply seven minutes later.

17 I am at home. Bad news about the KYLG -- "key
18 logger." I can no longer get through. Kristin will give you
19 the details and options. The one in closer proximity I have
20 not checked. Apparently the machine is not being used.
21 Already talked to Pam but I do not think she will make it
22 happen.

23 Q What did you mean there? Can you explain that?

24 A Yeah. I mean the part about the key logger on Edgar
25 Bronfman which is what we're talking about, I am reporting I

1 have no access to it and that I've given all the details to
2 Kristin to report to him because it was more than I would
3 write. Then I referred to the one in closer proximity which
4 was my sister Marianna's accounts and I'm reporting I haven't
5 checked but that the computer that was infected is not being
6 used so I cannot keep checking it.

7 Q Okay. And then the defendant, does he respond to you,
8 November 5, 2008 at 5:05 p.m.?

9 A Yes.

10 Q And can you just read the second sentence?

11 A Yes.

12 The closer proximity machine I think is in use.

13 Q And is that in response to what you were, what you had
14 said regarding the computer you had infected on Marianna?

15 A Yes.

16 Q And then you respond at 5:11 p.m., is that right?

17 A Yes.

18 Q Okay. And what do you say?

19 A I talked to Pam an hour ago. She said machine has not
20 been used.

21 Q Okay. And then at 5:14 p.m., what does -- how does the
22 defendant respond? All right. You can start at "With regard
23 to."

24 A With regard to key log, can't you get the downloads
25 anymore?

1 Q Okay. And then moving to the bottom of the second page,
2 is this your response at 5:19 p.m.?

3 A Yes.

4 Q Okay. And then back to the third page, did you respond
5 to the defendant's question?

6 A Yes.

7 It says: And that is right. I can get no
8 downloads. Never did get those safely. I had a normal way
9 in.

10 That one?

11 Q Yes.

12 A Yes, that's exactly right.

13 Q So what were you saying there?

14 A I was -- well, he asked the downloads which I never -- to
15 be precise, for the hacked into Edgar Bronfman's account, I
16 never really did get downloads. After the first download, I
17 got the user name and password and I killed the upload, which
18 would be the download, entry. I would just be surveilling his
19 e-mail address directly.

20 Q And then?

21 A Oh, there --

22 Q And does the defendant respond?

23 A Yes. He asked --

24 Q And is this within a minute of your e-mail to him?

25 A Within minutes, yes, it seems like.

1 He asks: Why no downloads?

2 Q And how do you respond?

3 A I replied right way.

4 Killed that entrance as soon as I got the info I
5 needed since it was very visible and thus very vulnerable.

6 Q And so what were you conveying there?

7 A I was refreshing his memory that there were never any
8 downloads after the first intrusion.

9 Q And now I'm showing you what's in evidence as Government
10 Exhibit 1592. And if you look at the time, if you look --
11 first, going back to 1591, can you describe the subject line?

12 A Yes. It seems to be replying and it has, in characters,
13 a little kissy mouth emoji face, like an X in the mouth.

14 Q Okay. And then looking at Government Exhibit 1592, is
15 that the same subject line?

16 A Yes, it is.

17 Q Is this an example of one of the places where you and the
18 defendant are speaking on two different threads?

19 A Yes, it is.

20 Q And just looking on November 4, 2008 at 7:35 p.m., can
21 you read the second part of this sentence from the defendant?

22 A Yes.

23 It says -- well, it says: Please tell me them.

24 Also any more on our friend's key log or the other?

25 Q Okay. And then how did you respond?

1 A Key logs, no more on our friends but I should actually be
2 there checking right now. The other I haven't found a way to
3 do it. My limited contact with people outside my little
4 circle leaves me very few choices and I need help getting to a
5 relatively far away location for safety. Was planning on
6 asking Kristin tomorrow to help me arrange it.

7 Q And so what are you conveying there to the defendant?

8 A I am conveying that I haven't done it and the reasons
9 why.

10 Q Just going back very briefly to Government Exhibit 1544,
11 did this exhibit have an attachment?

12 A Yes. The name of the attachment is "out_logfile.2.txt."

13 Q And this was the e-mail we looked at before where you
14 said you were attaching the latest raw text file, is that
15 right?

16 A That's right.

17 Q Just look at that very quickly and showing you the last,
18 last ten pages of Government Exhibit 1544, is this the log
19 file you sent the defendant?

20 A Yes, it looks like it.

21 Q And the same type of information that we saw last time?

22 A Yes, it is.

23 (Continued own next page.)

24

25

Daniela - direct - Penza

2627

1 BY MS. PENZA:

2 Q And was this a document where you obtained her Facebook
3 password from?

4 A Yes, I believe so.

5 Q So going back now to before you had your falling out with
6 the defendant, did there ever come a time -- you told us last
7 time that you had an early discussion with the defendant about
8 conception; is that right?

9 A Yes.

10 Q At any point while you were having sex with the
11 defendant, did you use any kind of contraception?

12 A No.

13 Q Why not?

14 A Well, he had said that about going on the pill and he
15 wasn't using any other kind of contraception.

16 Q At that time when you were having sex with the defendant,
17 would he ask you where you were on your menstrual cycle?

18 A Yes.

19 Q And did you have an understanding of what his purpose in
20 doing that was?

21 A I thought that he was asking precisely -- you know,
22 there's a thing in Mexico called the rhythm. And he would
23 ask -- he would ask, you know, when is the last time you had
24 your period, you know, but he also knew that I was very
25 irregular, but I thought that that's the reason why he was

Daniela - direct - Penza

2628

1 asking and that he was, you know, sort of gauging that.

2 Q Did there ever come a time when you became pregnant?

3 A Yes.

4 Q When was that?

5 A That was in 2006. The second semester of 2006.

6 Q What do you mean by second semester?

7 A Well, the second part of the year. Like, the later part
8 of the year. It wasn't early 2006. It was later in 2006.

9 Q And how did you realize you were pregnant?

10 A I -- I felt different and maybe I just knew, but it
11 jumped into my head what if I'm pregnant.

12 Q So what did you do?

13 A I went to Wal-Mart and I bought a pregnancy test and I
14 used it and I confirmed it.

15 Q How did you feel?

16 A Terrified. I panicked. I was scared.

17 Q How old were you at the time?

18 A I was 20 -- 20 -- somewhere around my 20s. Maybe 20 or
19 21.

20 Q What were you terrified of?

21 A Having a baby with Keith. I didn't want to have a baby
22 and I didn't want to have a baby with Keith.

23 Q Why?

24 A And he had -- he had in the past always, like, joked
25 about it. Oh, we'll have babies. We'll have babies with

Daniela - direct - Penza

2629

1 really big heads, really smart babies. There was a point in
2 conversations with him -- I even researched eugenics because
3 he would mention things like that, but I didn't want to -- my
4 relationship with Keith was not something I -- I liked Keith.
5 I thought -- I idolized him. I thought he was a great man,
6 but he was with a lot of other women and he was with my
7 sisters and that was not something that I wanted the world to
8 know. You know, that was something that caused me a lot of
9 shame.

10 So I could not imagine having a baby with him. I
11 could not -- and I also was very young and I didn't feel ready
12 but mostly I didn't want to have a baby with Keith.

13 Q Did you tell anyone?

14 A No. Well, I told Keith.

15 Q Did you tell your parents?

16 A No.

17 Q Why not?

18 A The fact that I was having sex with him was a secret. I
19 could not tell them that I was pregnant.

20 Q What about your sisters?

21 A We didn't talk about anything related to that.

22 Q So, you told the defendant?

23 A Yes.

24 Q And can you describe what state you were in when you
25 conveyed this to the defendant?

Daniela - direct - Penza

2630

1 A Well, I was -- I was, as you would imagine, very
2 emotional. And I was -- I was, I would say panicky and it was
3 a big -- I mean it's big -- it's huge -- it's a huge thing and
4 so I went to tell him and -- and -- and he was very -- and he
5 was very calm and collected. Like, to him it was not like --
6 I was not like what it felt like for me.

7 He didn't react to it. He was -- his response was
8 very surprising to me. I'm sure he asked me a few questions.
9 I don't remember those exactly, but I do remember he said,
10 well, we've already talked about this. We've already talked
11 about what you do if this happens. And we had never talked
12 about that before, never. I would have known.

13 So he very matter of factly (sic) stated that we
14 already talked about that if I got pregnant, I would have an
15 abortion. So that interaction was very shocking to me and I
16 was very emotional and I was very scared but it's also what I
17 wanted. I could not imagine having a baby. So I didn't push
18 back. Even though I knew we did not have that conversation.
19 I did not want to have the baby so it was right in line with
20 what I wanted in that moment, but it was surprising to hear
21 him say that.

22 Q What else did the defendant say?

23 A Well, we talked about it. He, you know, calmed me down a
24 little bit but he said. You know, he normalized it. He
25 calmed me down and he told me it's -- sort of like it's not

Daniela - direct - Penza

2631

1 the end of the world. He shared with me other women who had
2 had abortions in an effort to make it normal.

3 Q Who did he mention?

4 A He mentioned Pam. He mentioned my sister Mariana and
5 with the intended effect to make it seem, I believe, like more
6 normal, which it wasn't. I mean, I come from a different
7 place with different values, so it didn't help but my decision
8 had been made any ways.

9 Q Did he talk through any logistics with you?

10 A Yes. So he -- he -- he told me that, you know, this was
11 no big deal. Pam was going to take care of it. He was going
12 to pay for it. That -- it was very smooth. Like, you're
13 going to do this, this is going to happen and everything is
14 going to be fine. The logistics were that he was going to
15 tell Pam and nobody else would know except Pam, himself,
16 Keith, and me. And Pam was going to take me to the doctor and
17 Pam was going to accompany me throughout that and she was
18 going to, you know, get it done.

19 Q What happened next?

20 A It went exactly as he had told me. I went to -- I went
21 to the gynecologist with Pam. I believe that was the
22 gynecologist that she had been to before.

23 Q Before you got to the gynecologist, did you have any
24 conversations with Pam?

25 A Yes.

Daniela - direct - Penza

2632

1 Q Okay. Can you describe those?

2 A Yes. It was kind of like -- yeah, like, they were going
3 to ask me a series of questions and we had a conversation of
4 what I should answer.

5 Q When you say "they were going to ask me a series of
6 questions," what do you mean?

7 A At the clinic. You know, there would be a questionnaire
8 that I needed to fill out and they were going to ask some
9 standard questions that she seemed very familiar with. So it
10 was like crafting a cover story. Okay, so this is what you're
11 going to say and, I mean, at this time, you know, there are
12 issues as to -- as technical as my status in the country and
13 what I should say about that and also I remember about, you
14 know, they're going to ask about the father. You know, what
15 do I say about that so it was talked out before and I remember
16 being a little nervous going in.

17 Q Had you ever been to a gynecologist before?

18 A No.

19 Q Did Pam tell you what to say in response to the questions
20 that you were expecting?

21 A Yes.

22 Q What did she tell you to say?

23 A There's parts of it I don't remember, but it was
24 something like for -- for, like, my status that I was in the
25 country temporarily, that I wasn't a resident, that there was

Daniela - direct - Penza

2633

1 something technical about that and regarding them asking about
2 the father of the child, that I was in a long-term stable
3 relationship. It was something like that.

4 Q Was there a discussion about what you would say about the
5 age of the father of your child?

6 A There wasn't so much a discussion about, like, the
7 specifics of they asked me that, it was just very clear that,
8 you know, under no circumstances was to be named Keith or to
9 be told those details.

10 Q Was there discussion about what you would say Pam's role
11 in your life was?

12 A Yes. She was a family friend. That's like, you know,
13 that she was a friend of the family. It was something like
14 that.

15 Q Do you remember where the doctors office was?

16 A Yes. It was on the same exit as the center except
17 instead of taking a right turn there, you take a left and go
18 straight. I remember the name of the doctor and the clinic.
19 It was Dr. McGuinness.

20 Q How did you feel when you walked into the clinic office?

21 A I remember I was very nervous and I was scared. I mean,
22 there was -- I was scared in general. I mean, I -- it's no
23 small thing. For me it's no small thing. It's not a small
24 thing and on top of it I was nervous for the things I had to
25 say and what was going to happen and that seemed risky.

Daniela - direct - Penza

2634

1 Q When you went in, did Pam stay with you?

2 A Yes.

3 Q So what happens?

4 A So as I remember, first, like I walk in and I had to fill
5 out the questionnaire and she's there with me, that happens.

6 And then I go in and for the period where there's like --

7 there's like a nurse or a technician. There's someone there

8 that's asking me questions. Pam was there for that and --

9 yeah, she was there for that.

10 Q Were they the same types of questions that Pam had
11 coached you on?

12 A Yes.

13 Q So did the -- was this a medical abortion where you used
14 pills?

15 A Yes.

16 Q And did the process start that day?

17 A I don't think so. I don't remember that it started that
18 day. I remember having to go back to the clinic at least once

19 and I think what actually happened is they gave me the

20 prescription or the medicine and the instructions to take it

21 at a certain date and then that would begin something and that

22 first date they did do an ultrasound and other things. They

23 had to do some things first. And, yes, they had to do an

24 ultrasound because there was a device that was very invasive

25 and then I think they needed to wait for those results to

Daniela - direct - Penza

2635

1 determine what was going to be done.

2 Q Okay.

3 A And then that proceeded.

4 Q Okay. When you were prescribed the medication, were
5 there P instructions given about who should stay with you?

6 A Yes. So, I remember because I was scared about that.
7 There were risks about, you know, the pain and the bleeding
8 needed to be monitored so the instruction was that I -- like I
9 needed to be with someone. I needed to have company
10 throughout to make sure that I was okay and there were, like,
11 pain patches that were prescribed and those pills and the
12 instruction was that I needed to be monitored, that I needed
13 to have -- throughout the entire process because things could
14 go wrong.

15 Q Was Pam present when that conversation took place?

16 A Yes.

17 Q Okay. When you did go through the process, were you --
18 were you with anybody?

19 A No. I was -- I was alone.

20 Q Can you just describe generally what that was like for
21 you?

22 A Yes. So I took the medicine and there was a lot of pain
23 and I was incredibly emotional. I was incredibly emotional
24 and I remember those days as horrible because I was in
25 physical pain, I was scared, I was, like, really troubled by,

Daniela - direct - Penza

2636

1 you know, by what I was doing. I knew my decision but it
2 wasn't an easy decision and it's -- it's just not an easy
3 concept for me and I was completely alone. You know, Keith
4 didn't visit me, not once. Pam wasn't there with me. Nobody
5 knew about it. I was all alone in -- I was all alone
6 throughout it. I was checking in with Pam on the phone and
7 I'm sure with Keith too but I was alone throughout the entire
8 process.

9 Q Once you were -- once the abortion had happened, did you
10 talk to the defendant any further about it?

11 A Yes. I mean, that was eventually over and I quickly
12 recovered. It was just, like, a lot of intense pain and a lot
13 of process but I quickly recovered but I remember just a few
14 days after, a few days after we were on a walk and he told me
15 this was a great opportunity for me to lose weight and get
16 fit. I was like -- I said what do you mean. He said when a
17 woman gets pregnant, their hormones and their metabolism
18 change so that it's easier for a woman to lose weight and to
19 get fit, muscle mass and all of this. He said, in fact, there
20 are Olympic athletes get pregnant on purpose just to have
21 abortions as part of their training. He said that to me.

22 Q How did you feel when the defendant said that to you?

23 A Shock.

24 Q Did you ever learn that either of your sisters got
25 pregnant again -- sorry. Did you ever learn that Mariana got

Daniela - direct - Penza

2637

1 pregnant again?

2 A Yes.

3 Q How did you learn that?

4 A I learned that from Pam.

5 Q Can you describe the conversation. I remember learning
6 from Pam and telling her what's going on. Like why is she
7 pregnant again. I knew at the time that Mariana was taking
8 birth control. How is it possible that she's pregnant again?
9 I was upset. You know, like, that was the second time she was
10 going to be pregnant and she was going to have an abortion and
11 it was ver, she's going to have an abortion. And I remember
12 she told me --

13 MR. AGNIFILO: Your Honor, I'm going to object.

14 THE COURT: Sustained.

15 MS. PENZA: Your Honor, may we approach?

16 THE COURT: Sure

17 (Sidebar held outside of the hearing of the jury.)

18 (Continued on next page.)

19

20

21

22

23

24

25

Sidebar

2638

1 (The following sidebar took place outside the
2 hearing of the jury.)

3 THE COURT: Yes.

4 MS. PENZA: Yes, Your Honor. Your Honor, the
5 statement that Daniela -- that I was about to elicit from
6 Daniela is about Mariana's eating disorder and their awareness
7 of the fact that Mariana had bulimia and she was throwing up
8 the pill and this -- this environment where Daniela is being
9 held by Pam and the bulimia and eating disorders and total
10 obsession about her weight is part of the means and methods.
11 It's one sentence and then we're going to be moving on from
12 that.

13 MR. AGNIFILO: My objection is a hearsay objection.
14 I have a standing objection to all of the abortion stuff and
15 we'll get back into that. If she wants to call Mariana, she
16 can call Mariana.

17 MS. PENZA: No, this is about Pam. Pam is the
18 co-conspirator.

19 THE COURT: If it's something that Pam told her, you
20 can put it in.

21 MS. PENZA: Thank you, Your Honor.

22 (Sidebar ends.)

23 (Continued on next page.)
24
25

Daniela - direct - Penza

2639

1 BY MS. PENZA: (Continuing.)

2 Q Daniela what did Pam tell you?

3 A She told me that her thought that she had thrown up the
4 pill because she was still throwing up and she was bulimic.
5 So that's how she had gotten pregnant.

6 Q Did you have a further conversation at that time with Pam
7 about Mariana's bulimia?

8 A Yes.

9 Q What was the response?

10 A It was too light for my taste. It just what was
11 happening. So, she wasn't taking it very seriously.

12 THE COURT: I am sorry, who wasn't taking it
13 seriously?

14 THE WITNESS: Pam was not taking it very seriously.

15 THE COURT: Okay.

16 MS. PENZA: Thank you, Your Honor.

17 BY MS. PENZA:

18 Q Did you ever learn that your sister Camilla was pregnant?

19 A Yes.

20 Q Do you remember how you found out?

21 A I don't remember exactly who told me. I don't recall if
22 it was Cami. I don't remember if it was Pam.

23 Q And when was it that you found out that Camilla was
24 pregnant?

25 A I -- it was after I had had my pregnancy and it was --

Daniela - direct - Penza

2640

1 Cami was a few months over 18. It was 2008.

2 Q At that time when Camilla gets pregnant, what is your
3 relationship with the defendant?

4 A I'm -- we're not talking. It's been since 2006, late
5 2006. So that was, like, mid 2008 so we hadn't talked for a
6 long time.

7 Q So what happens after you find out that Camilla is
8 pregnant?

9 A I find out she's pregnant and I want to be there for her
10 and it's -- I'm recruited to help.

11 Q Who recruits you?

12 A Pam.

13 Q And what is your conversation with Pam?

14 A That, you know, she's going to have an abortion.

15 Q That Camilla is going to have an abortion?

16 A Uh-huh.

17 THE COURT: Just say yes or no.

18 A Yes, yes. And I remember -- you know, I'm recruited to
19 be part of the process. I'm brought along and I want to be
20 there for my sister, too. I think that I can relate and I
21 love my sister. So -- and I don't know how it happens or who
22 has a conversation but she's okay without -- with me knowing
23 and me being there for her so, you know, it starts and it's
24 similar to what I went through.

25 Q So what do you mean by that? What are the similarities?

Daniela - direct - Penza

2641

1 A The similarities is, you know, it's the same clinic. Pam
2 is going to see it through and I know that Cami is talking to
3 Keith about that, but I'm not present for any of that. I just
4 want to give her her space and be there for her and make sure
5 she's not going through it alone the way I went through it
6 alone.

7 Q Did you actually go to the doctor's office with Camila?

8 A Yes, I remember. I think I remember I did, yeah.

9 Q And was anyone else with you as well?

10 A Yeah, Pam.

11 Q Before going there, the way you described before, the
12 discussion you had with Pam in advance of going for your
13 abortion, was there any similar discussion with Camilla?

14 A Yes, there was also a crafting of a cover story, but this
15 one seemed a lot more sensitive because my sister, you know,
16 was very young. So, it seemed a little more -- I mean, I was
17 nervous again, but it also seemed -- you know, it was -- it
18 was clear that it was important that those things, you know,
19 we got right.

20 Q Were you able to observe anything about Pam's demeanor in
21 this situation?

22 A Yeah. I thought she was nervous too. You know. I don't
23 know if because this time I was paying attention. Last time I
24 was in a terrified state and when I was with her she was
25 smooth and knew her way around, but this time she seemed a

Daniela - direct - Penza

2642

1 little nervous.

2 Q So then what happened?

3 A So went to the clinic and, you know, there's the same
4 type of concerns, the same type of talk about what she should
5 say and what should she do and all of these things and it was
6 tense. It was a tense environment and we all went into the
7 examination room. I remember that. So I went in with Cami,
8 Pam was with us and the nurse or technician was there and sure
9 enough, you know, she started asking all of these questions
10 and -- and there was something that caused some alarm in this
11 person, I don't remember who it was, but that was asking the
12 questions.

13 And I don't remember exactly what it was, but I
14 remember feeling like she's asking -- she's asking a lot of
15 questions now and in this -- in this examination that they're
16 conducting something happened, like, they pulled up a file or
17 maybe the technician -- if something happened, I don't
18 remember what, but this person mentioned that, you know, I
19 remember that I had had an abortion, not somebody else's
20 abortion but it was my abortion, and it was raising all kinds
21 of flags.

22 Q I want to stop you for a second.

23 A Yes.

24 Q So while you're there for the process of Camilla's
25 abortion, someone in the office mentions that you had had an

Daniela - direct - Penza

2643

1 abortion?

2 A Not saying straight up, but as cause for concern. That's
3 how I remember it and as I remember it, it happened -- I mean,
4 there was all of these questions which is exactly what we
5 should have prepared for that Pam was preparing us for that or
6 for that not to happen and I remember I mentioned to Pam,
7 "Should she have disclosed that?" And Pam snapped and said
8 no, she shouldn't. And she made a big fuss about it; that
9 no, she shouldn't and she pushed back against what was
10 happening. No, she shouldn't have done that. It's very bad.
11 It's against the rules.

12

13 (Continued on the following page.)

14

15

16

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2644

1 EXAMINATION CONTINUES

2 BY MS. PENZA:

3 Q Was Pam doing that at the office?

4 A Yes.

5 Q That happened at the clinic on that visit?

6 A I remember her raising her voice by the counter, even as
7 we were leaving.

8 Q Do you remember her saying anything else?

9 A I just remember her being very upset and that -- and when
10 Pam got really upset, she just would go over the same thoughts
11 over and over again. Keith used to call it she was looping.
12 She was looping and looping and looping out loud. So I
13 remember she just kept repeating those things, and she -- that
14 fuss she made was very effective, so that the technician went
15 like, ah, she really should not have said anything. There was
16 something about like patient confidentiality that she was
17 talking about that she should not have disclosed in front of
18 one patient somebody else's -- you know, some other patient's
19 information. And she had been right about that.

20 And so, you know, kind of diffused, you know, the
21 tense situation that was going the other way in questioning
22 Cami and what she was doing and what was going on.

23 Q What happened after that?

24 A We left, Cami, Pam and myself all in the same car the way
25 we arrived. And I think they dropped me off and I went to --

Daniela - direct - Penza

2645

1 they dropped me off and they went to Flintlock and I was just
2 trying to give my sister her space to process all that.

3 Q In the car did Marianna discuss what had happened with
4 anyone else?

5 A I'm sorry, Marianna?

6 Q I'm sorry, excuse me. Did Pam discuss what had happened
7 with anyone else?

8 A Yes. I remember she called Keith and I remember that
9 happened, like -- like before she drove because she couldn't
10 be driving and talking, you know, because she was looping. So
11 it was a quick phone call and it was something like: We'll
12 talk about it. Like, okay, we'll talk about it when I get
13 back. Just, it's done, calm down; just, you know,
14 everything's gonna be okay. And the rest of the conversations
15 I didn't hear because I wasn't present for them.

16 Q Were you with Camila during the process of her abortion?

17 A Yes.

18 Q How was that for Camila?

19 A It was hard. I remember she was in a lot of pain. I
20 remember there were limitations to the type of pain medicine
21 she could have, so I remember her just being in a lot of pain
22 and not being able to like really take something to make it
23 feel better. And --

24 Q Did you have a frame of reference for her pain tolerance
25 at that point?

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2646

1 A Yes, so I -- I knew she had gone through the awful
2 appendix thing and I remember thinking, oh my gosh, she can
3 take a lot of pain. And so seeing her in pain, I knew that
4 she was not exaggerating. I mean she could take a lot of
5 pain, so she's in pain, it's a lot -- a lot of it.

6 And also, I think that I mean all I can do is
7 compare it to me, right, my experience. So I think that for
8 her it was harder, like in an emotional way. I don't think
9 she was very clear on whether -- or at least that's what I
10 sensed, on whether, you know, like the decision to keep the
11 baby or not keep the baby, like maybe that wasn't so easy for
12 her. Like for her it wasn't as clearcut as maybe it had been
13 for me. So, I think she struggled emotionally and physically
14 a lot.

15 Q Looking back, what is your impression of Pam's role in
16 this process of your abortion?

17 MR. AGNIFILO: I object.

18 THE COURT: Overruled. You may answer that, and
19 then we are going to take a break.

20 BY MS. PENZA:

21 Q Looking back, what is your impression of Pam's role in
22 the process of your abortion and Camila's abortion?

23 THE COURT: Can we take that in two questions?

24 Q Looking back, what is your view of Pam's role in your
25 abortion?

Daniela - direct - Penza

2647

1 A I -- I -- I -- I think she was there to facilitate it.
2 She was the -- she seemed very well-versed in it and -- and,
3 you know, she was like a handler. You know, like -- like she
4 knew what needed to be done and to, like, make sure it was
5 done right.

6 So, and -- you know, at the time I thought it was --
7 it felt like she was taking care of me, but really now looking
8 back I think she was making sure that there were no
9 liabilities; that there was -- like the risk was minimized,
10 you know, in the different sense on the exposure of the -- of
11 the, you know, of the status, for example, in my -- in my
12 instance, or that there would be too many questions about, you
13 know, who's the father, who's this, who's that. So she was
14 there to make sure that didn't happen.

15 Q What about her role -- looking back what's your
16 impression of her role vis-à-vis Camila's?

17 A Well, when I went through the process with Cami and Pam
18 was there, that was confirmed. You know, that -- that -- that
19 her -- that her role was to facilitate having those abortions.
20 That her role was to make sure that it went well, that it
21 didn't get back to Keith, in a way. You know, like that she
22 would shield Keith, you know, in this activity that went on,
23 you know.

24 Here you have two sisters, one that is really young,
25 and the other one that, you know, like -- and I actually don't

Daniela - direct - Penza

2648

1 know about how the process was like for Marianna, I don't know
2 if it was the same clinic, but at least talking about Cami and
3 me, a lot of questions are raised from that. So Pam -- Pam's
4 role was very clear in that she told us what to say, told us
5 what to do. And yes, cared for us and, you know, made sure we
6 had the medicine, but really it was to make sure that
7 everything went according to plan.

8 Q Thank you.

9 THE COURT: All right, we are going to take our mid-
10 afternoon break.

11 All rise for the jury.

12 (Jury exits.)

13 (In open court - jury not present.)

14 THE COURT: The witness may stand down. Please do
15 not discuss your testimony with anyone.

16 We will take a ten-minute break.

17 (Judge NICHOLAS G. GARAUFIS exited the courtroom.)

18 (Recess taken.)

19 (Judge NICHOLAS G. GARAUFIS entered the courtroom.)

20 (In open court - jury not present.)

21 THE COURT: Let's bring in the witness, please.

22 (Defendant entered the courtroom.)

23 (Witness entered the courtroom and resumed the
24 stand.)

25 THE COURT: Please bring in the jury.

Daniela - direct - Penza

2649

1 (Jury enters.)

2 THE COURT: Please be seated.

3 All right, Ms. Penza, you may continue your
4 examination of the witness.

5 The witness is reminded she is still under oath.

6 MS. PENZA: Thank you, Your Honor.

7 EXAMINATION CONTINUING

8 BY MS. PENZA:

9 Q Daniela, we've talked a number of times about the fact
10 that at some point you had a falling-out with the defendant?

11 A Yes.

12 Q When was that?

13 A That was late 2006.

14 Q How did the falling out happen?

15 A I -- I kissed Ben Myers.

16 Q Who is Ben Myers?

17 A Ben Myers was a student at ESP, was also an employee of
18 ESP. He worked in the IT Department under Karen and with
19 Steve Ose.

20 Q What was your level of interaction with Ben Myers?

21 A It was just friendly. I would see him at community
22 events, when there were some. He went to all the volleyball
23 games, so I would see him there, and that was it, or in some
24 kind of work setting, which there weren't many of them. To
25 make a contrast, we never, like, did any activities apart from

Daniela - direct - Penza

2650

1 that together. Like there wasn't coffee, there wasn't a party
2 that -- so it was just friendly in the community interactions.

3 Q Do you know how old Ben was at that time?

4 A Yeah, he was just a few years older than I was.

5 Q And did you have things in common with Ben Myers?

6 A Yes, computers. And -- yeah, like the geeky thing of the
7 computers and at that time I was trying to get into Star Trek.
8 So he was part of the Star Trek club.

9 Q What was the Star Trek club?

10 A So one of the community events, and it was, I think,
11 strictly for like geeks, because really it was Karen, Steve
12 Ose, Ben and myself, we would get together be like once a week
13 and watch Star Trek.

14 Q Now, you said you kissed Ben Myers. What happened --
15 what happened before that?

16 A Right, so -- so I -- it happened one night at Star Trek.
17 I had never felt attracted to him before. It was really just
18 like a friendly relationship, like with anybody else at ESP,
19 and one night at Star Trek everybody left and we were the only
20 ones there and we were talking. And we were like next to each
21 other and -- and we almost kissed. I felt -- felt something.
22 I -- like I felt something for him and I think he felt
23 something for me and there was this, like, brand new feeling
24 for me of attraction, which was -- it was new. That's all I
25 can say. And -- and it was an intense moment. It was an

Daniela - direct - Penza

2651

1 intense night. Nothing happened. We didn't even kiss, but it
2 was like really close. So there was like this tension that --
3 that build up and that happened there that night.

4 Q So what were your thoughts about that feeling that you
5 were having?

6 A Ah, I don't know that I had any thoughts. It was all
7 feeling. It was -- honestly, it was very exciting. I never
8 had those feeling before for men, for a woman, for a man in my
9 case it turned out to be. And it felt wonderful. It felt --
10 it felt -- it just felt really nice. You know, like this
11 tingly thing that happened inside my body and this like wild
12 attraction, very -- very physical and at the same time like
13 very lovely. So I was very -- I was very surprised and very
14 happy by it, yeah.

15 Q Did you -- after that first night, did you tell anybody
16 about this feeling that you experienced?

17 A Yes.

18 Q Who did you tell?

19 A Keith.

20 Q Why did you tell the defendant?

21 A I guess in all my innocence I, you know, I -- I was -- he
22 was my best friend. I think that's pretty much it. I had
23 nobody else to tell, and I -- it never crossed my mind to hide
24 it. It was this brand new discovery I thought I had made, you
25 know, like this thing for a long time before that I thought I

Daniela - direct - Penza

2652

1 was kind of asexual. Like, you know, I wasn't -- you know, I
2 obviously was doing things to Keith and I was doing things
3 with Keith, but even before him, like it was not something
4 that I ever had felt before. So it was like this lovely
5 discovery in myself and it was about me. I didn't even
6 consider, you know, what it meant, you know, about him or
7 anything else.

8 So I was just there to tell him, I -- this happened
9 and this is how I felt. And kind of like, you know, more like
10 as a friend, kind of like, you know, share it. Figure it out.

11 Q Did you -- was that -- did you tell him that night?

12 A Yes.

13 Q When you described it to the defendant, did you describe
14 it the way you've just described it to us?

15 A Yeah, I believe so.

16 Q And how did the defendant react?

17 A It was clear to me that it was not good. Like it was
18 a -- it was a bad thing. I had done something bad. It was --
19 in like complete contrast with what I was feeling was his
20 reaction to it.

21 And I remember feeling like, oh, you know, like it
22 was a huge -- like, oh, shit, you know. And there was --
23 there was a conversation about it, and maybe even a couple of
24 conversations after that where he said: I -- you know, I
25 caused those feelings, that I could choose who to have them

Daniela - direct - Penza

2653

1 for and I wasn't having them for him, for Keith. So there was
2 like this -- this -- this drift. So I didn't -- I really
3 didn't push back much at all that I remember. It was like I
4 understood that he didn't think it was something good and I
5 just, like, stepped back for a little bit.

6 Q How did you feel about how the defendant reacted to what
7 you had shared?

8 A I felt -- hmm, I felt -- hmm, I wouldn't say
9 disappointment. I felt -- I felt a little bit confused, I
10 think. I think it would be fair to say I felt confused. I
11 felt -- so it didn't help me at all to understand what was
12 happening, which is kind of what I was seeking, but he put up
13 a wall of: Don't go there, that's not good. Like that's how
14 I feel his reaction was.

15 So, you know -- but this that I just felt was
16 like -- I mean it was amazing to me. Like, I was like --
17 probably like at the time it was the most amazing thing I had
18 ever felt like inside of me, in my young adult like. It was
19 like a huge -- you know, like this huge thing and he's like,
20 no. His reaction shouldn't have, but it surprised me, I
21 guess, like totally surprised me.

22 Q After that conversation with the defendant, did the
23 defendant say anything to you about Ben Myers?

24 A Yes. I mean he said more about him in the -- in the
25 conversations that would follow, but honestly in that first

Daniela - direct - Penza

2654

1 conversation, in the string of conversations after we almost
2 kissed, what I can remember is just what he told me about me
3 that, you know, because for me it was like this wonderful
4 thing and maybe this is love, maybe this is like -- what is
5 this wonderful thing?

6 And his -- his direction was: No, no, no, no, no,
7 that's not what it is. You are making it up. You cause every
8 single feeling you have and you should have that for me, not
9 for him. But I didn't pay much attention as to what he was
10 saying about him. I was still very much focused in what I was
11 feeling and what I thought of it.

12

13 (Continued on the following page.)

14

15

16

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2655

1 BY MS. PENZA: (Continuing)

2 Q So what happened next?

3 A I mean I listened to Keith. He -- I listened to
4 everything he had told me, but this had not gone away. And I
5 think it was, like, the next week and the next Star Trek, I
6 saw Ben again and I was very curious about it and I was very
7 excited honestly to see him and -- I remember I even, like,
8 not exactly dressed up but dressed nice.

9 Q Do you remember what you were wearing?

10 A Yes. I was -- it was, like, fall so it was a little
11 chilly and I was wearing a long sleeve top, white top,
12 crewneck, and I was wearing a Ralph Lauren, like, long skirt
13 with two buttons on the side. I thought I looked nice.

14 And I went to Star Trek and I was looking forward to
15 it and I was looking forward to seeing him and just like the
16 week prior. I saw Ben there and we were the last ones to
17 leave and we stayed for a while and we talked and we got
18 closer and he kissed me. And we kissed and, you know, we were
19 on the couch where we used to watch Star Trek and we, I think
20 the slang word is we made out. But, you know, it was -- it
21 was very -- it was very nice.

22 So that night, we kissed, we made out, and I
23 realized that all of this that I was feeling was something
24 that I wanted, you know -- it made me feel, oh, it made me
25 feel so many wonderful things. And it was, it -- it felt

Daniela - direct - Penza

2656

1 real. It felt true. It felt nice. So, and I liked the way,
2 I liked the way I felt with him and I liked what happened. I
3 mean, granted, I was, what, 21 years old maybe? Maybe old for
4 that first experience but I, I was feeling it and I really
5 liked it and I think I realized what that was and I'm, like, I
6 want this.

7 Q So what did you do?

8 A So that night, I went straight to Keith to talk to him,
9 to tell him about what happened. It was never my intention to
10 hide anything or to, you know, make it seem like something
11 else, and to, like, to figure out -- like, to me, it was,
12 like, all right.

13 So, obviously, I have this relationship with Keith,
14 I have promised to be with him forever, and, you know, now
15 I've discovered this thing and I want to be with, with Ben.
16 And, you know, I'm not sure that I would say, the exact word
17 to say, oh, I was in love with Ben. I had this huge crush and
18 he had awoken this thing in me and I had feelings for him and
19 I wanted more of that. And, you know, in my mind, it was kind
20 of simple. It was, well, I'm going to talk to Keith and,
21 like, like, almost, like, negotiate, like, okay, so I want to
22 be with Ben and began, you know -- be friends and everything.
23 We have, we can still have -- and, you know, I remember, like,
24 all the things I was thinking I was going to say and I did end
25 up saying. And so I went to him to have this honest

Daniela - direct - Penza

2657

1 conversation with him and I didn't think it was going to be
2 easy but that's what I went to tell him.

3 Q You went directly after this second Star Trek night?

4 A Yes.

5 Q And where did you go?

6 A To 3 Flintlock.

7 Q So what happened?

8 A My universe exploded. When I told Keith, that moment is
9 the moment when my life went -- and I didn't even -- he, he
10 was, he was angry. I had never seen him angry. He was -- it
11 was dramatic. It was irrational. It was illogic. I remember
12 that night and I remember there was no reasoning with him.

13 And I was -- I thought what I was trying to say,
14 what I was trying to get through to him was something simple,
15 you know, maybe not easy. You know, maybe like now, looking at
16 it from now, like, I'm breaking up with him. Like, let's be
17 friends. You know, like -- not like something that's the end
18 of the world, but it was this huge, huge fight. It was, like,
19 loud. I had never seen Keith that way. And, you know, the
20 actual conversation, which escalated to argument than
21 conversation over the course of the night, he said things
22 like, you know, I wasn't pure anymore and I had been this
23 specialist thing and, you know, I held so much promise for him
24 and I had destroyed everything, that I had destroyed the
25 thought object of him.

Daniela - direct - Penza

2658

1 Q What is a thought object?

2 A A thought object is an ESP term. It's a little
3 complicated to explain, but the thought object is basically,
4 as I understand it -- so I had an idea. There's a world that
5 we all share and we live in the reality of things. And then
6 we have the way we see the reality, all of us, and that
7 includes this, particular people, particular things, how we
8 have it in our minds and how we perceive it which is not
9 necessarily the same as reality.

10 So, for example, so I have a certain idea of what,
11 you know, Moira is like. I'm sorry to use your first name.
12 But, and everybody has an idea of what that person is like
13 and it's not the same as reality because that's constructed
14 based on our perceptions, right? And every person has the
15 ability to change that inner, inner Moira in their head based
16 on their thoughts about the real Moira.

17 So the thought object is this construct that is not
18 necessarily linked to reality and the concept in ESP is one
19 must be honorable because one can't destroy the thought object
20 of someone simply by your thoughts about them and your
21 feelings about them. And so that's how it works.

22 So, for instance, if I think ill of you and you
23 haven't done anything to, for me to think ill of you, then
24 it's dishonorable for me to be thinking those thoughts because
25 I'm changing my thought object of you. Likewise, if I go and

Daniela - direct - Penza

2659

1 tell, gossip to someone about you and it's not true, it's
2 dishonorable, and they change the way, oh, you know, they
3 think about that person, then their inner Moira, their thought
4 object changes and that's dishonorable. So the concept of
5 thought object in ESP was tightly related to, you know,
6 damaging and ethical breaches because something you did could
7 affect the thought object of somebody else and now you had to
8 go and reconstruct that in every person because you did
9 something that caused everybody to think ill of someone else
10 so now you have to go and repair that.

11 So in this case, when I'm talking to Keith, he is
12 telling me that the way I think of him, I've changed forever
13 and I've destroyed it and that is my fault and that is an
14 ethical breach for me and that's what he's referring to.

15 Q And is that -- we'll go back to the fight that night, but
16 is that something that would become something that the
17 defendant was focused on later on, this idea of the thought
18 object of him in your mind and in others' minds?

19 A It was, yes. It was very heavily the focus of, of a lot
20 of what would happen in the coming years, yes.

21 Q So back to that night, what else is happening?

22 A Well, I remember it was a very intense back and forth and
23 I used, to the best of my understanding, you know, the
24 relationship as I knew it to make him understand.

25 So, for example, I had -- so the way I saw it, Keith

Daniela - direct - Penza

2660

1 didn't really love me. Keith loved my sister Marianna. Keith
2 loved Pam. He spent a lot of time with them. He spent time
3 with me but it wasn't romantic, it wasn't sexual. I mean he
4 had me give him oral sex but that was very robotic and
5 mechanical. He never napped with me, slept with me, never
6 kissed me, fondled me, had affection for me. So it was clear
7 to me and I saw him do it with other women and I saw he loved
8 other women and that's how I felt it.

9 So now I had found someone felt something like that
10 about me and I felt it about them so I could have love too and
11 I was trying to explain that to him and tell him, You don't
12 love me anyway. Like, why are you -- why can't we just be
13 friends? You can still teach me. We can still do science
14 together. We can still do great things together. And he,
15 like -- there was just no reasoning with him. He would not
16 let it go. It was: No, you can't, you're destroying me, I've
17 done everything for you and you are now damaging me, you're
18 hurting my heart, you're hurting me, you know, you are going
19 to kill me. Like, all these, like, huge, huge dramatic things
20 that I was trying to -- and obviously it wasn't happening.

21 I'm talking about it very calmly now. It was a very
22 heated exchange and I am, to the best of my ability, to the
23 best of my logical understanding of things, trying to, like --
24 basically, it felt like a battle where I'm trying to make him
25 understand my point and there's just no getting through to

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2661

1 him.

2 Q Did the defendant make any threats towards you?

3 A Yes. Well, of, of conditional things that I wouldn't
4 have if I didn't, you know, basically -- he wanted me to
5 reverse all of that, to walk it back. And, you know, he, he
6 said that I -- like, everything that I have built so far that
7 was going to happen was going to disappear. Like, I wouldn't
8 have any of that. That -- I mean, it was all very
9 conditional. It was, and I couldn't understand why, and I
10 couldn't -- he couldn't tell me why it was not possible to
11 have a relationship with him without the sex and the romance
12 and that -- sex, really, because there was no romance --
13 without the sexual part of it. And, you know, he said a lot
14 of things that didn't make sense to me.

15 Q You mentioned he said that you were hurting him. Can you
16 describe that the part of the fight?

17 A Yes. So, and I even remember I mentioned that back then.
18 He would often use this, which, to me, is a mystical notion,
19 the fact that when someone that he was having sex with was
20 doing something bad with respect to him, he would hurt. Like,
21 he would often say his heart is what hurt, like, physically,
22 and he was hurting and he had the chills and he was hurting
23 and he was ill because I was causing it.

24 And I remember in that conversation, I remember
25 telling him, because here I am having this argument with him

Daniela - direct - Penza

2662

1 and I thought that, I thought I understood what my role was in
2 his life and I thought he was my best friend and I thought I
3 was his best friend, you know, like, we shared a lot of time
4 together, we talked about a lot of things. I saw his life
5 with all these other women. And during the course of this
6 argument, he's using with me all the, all the same techniques
7 that he uses to discipline all of his women.

8 I remember standing there telling him, Hey, don't
9 use that on me. I'm your friend. I've seen you use this with
10 everybody else, you know. Like, you're trying to make me
11 crazy. You're saying something to me that isn't. You're
12 telling me this, I'm hurting, you're using all these acts of
13 discipline that I've seen you use. It's me. I'm your friend.

14 I couldn't get through but I, I was trying. You
15 know, that's just, that was the negotiation that I was failing
16 to, to, you know, that I was attempting to get at and he, he
17 was very dramatic about it. So he was, like, everything is
18 going to be over, which scared me because I -- well, I wanted
19 to, I wanted -- he still held everything. I still idolized
20 him. He was still very important. I cared about him. I
21 cared about him but I, with this interaction with Ben, I had
22 realized that, you know, there's care and there's sexual
23 attraction and that's not something I had for Keith, you know.

24 So, I was trying to make sense so that's still
25 myself and I was trying to make sense of it with him in the

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2663

1 most, you know, if you will, honorable way, like
2 straightforward, honest, like, this is how I feel, this is
3 what it is, but there was no getting anywhere with him.

4 Q Did the defendant use any specific words to describe you
5 during that, during that interaction?

6 A Yes. So anything that was related to me backing down or
7 me hanging onto the idea that I liked Ben and that that was a
8 reason, he would say I was prideful. He would say, That's
9 your pride, you know, that's your pride talking, that's your
10 ugly pride, you're hanging onto that and you're choosing your
11 pride as opposed to us, which is, you know, not something --
12 it's precisely what I was trying to explain to him. But he,
13 he called me prideful, you know, destructive. He told me
14 about my soul and that, you know, my soul would, like, I will
15 lose my soul, essentially, which is not something that I
16 subscribe to so it didn't -- it wasn't very transcendental for
17 me.

18 And, you know, during the course of this discussion,
19 this argument, at some point, we moved, we walked over to
20 Hale. So we were at Hale discussing some more and it wasn't
21 getting anywhere. He was just trying to, he was trying to --
22 by calling me prideful and by, like, obscuring things with,
23 like, You're being destructive and you never really did your
24 program and all these different things, trying to obscure what
25 me, what for me was, initially, like a very simple matter that

Daniela - direct - Penza

2664

1 I wanted to resolve with him. And so it got escalated and
2 escalated more and more and we got, we were at Hale and
3 that's --

4 THE COURT: Where were you? I'm sorry.

5 THE WITNESS: Hale, 8 Hale Drive, so the other
6 property.

7 THE COURT: Hale Drive?

8 THE WITNESS: Yes. It was a few meters away so it
9 was a short walk from Flintlock.

10 A And we continued discussing -- I remember discussing by
11 the piano. That's where I told him, Don't treat me like --
12 don't do the things you do to your women. It's me. It's me.
13 You can talk to me. You know, we can figure this out in a
14 logical way.

15 But he was making no sense to me. And, you know, he
16 was managing to confuse me with some of the things but I
17 thought I had a very clear idea of what I wanted to get at and
18 I didn't want to walk out of there without an answer, you
19 know.

20 Q Why not just back down and leave it alone?

21 A I mean, like, say, Okay, fine, I'll do whatever you want?

22 Q In that moment. Why not?

23 A Because, because I was -- I was very clear about what I
24 felt and about what I wanted and, I mean, honestly, I
25 trusted -- Keith was like a logical, rational person. Like,

Daniela - direct - Penza

2665

1 in my mind, there had been no space for, you know, the notion
2 that I was on this unbreakable relationship. I thought it was
3 something that could be, you know, worked out. So, you know,
4 why not? You know, he's perfectly reasonable. I'm perfectly
5 reasonable. This is not like a huge, like, super complicated
6 issue.

7 You know, things needed to be talked out and -- but
8 there was no resolving it, not one way or another. It wasn't,
9 like, okay, fine, you want this, then you can't have anything.
10 That wasn't an option. It was just a grilling of, you know,
11 you have to stop wanting that. No, you have to stop saying
12 that, that's prideful. No, you're wrong. You say you feel
13 that about Ben but you're wrong. You don't even know what you
14 feel. You're not honest with yourself. You don't feel that
15 about Ben. So they were trying to make me crazy about feeling
16 what I was not feeling. So, honestly, maybe I was stubborn
17 but I couldn't let it go. I was very clear what I felt and
18 what I thought about it.

19 So the argument continued. We walked back to
20 Flintlock and he still, you know, wasn't giving me an answer.
21 There was no resolution to it and it was still very illogical,
22 still very pushing against what I knew was real versus, you
23 know, Oh, that's just your pride, that's your pride talking.
24 So there was a point where he wanted the conversation to stop
25 and I didn't want to stop. I would not let it go. And I

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2666

1 remember, back at Flintlock, Karen was there and Pam was
2 there. I remember Karen was there and Pam was there. I only
3 remember because she later repeated part of the conversation
4 because she overheard it from the top of the stairs. She
5 would do that sometimes. She would eavesdrop on the
6 conversations.

7 So, you know, I was insisting to get some kind of a
8 resolution. He kept calling me prideful and destructive, even
9 for just doing that and he locked himself up in the bathroom.
10 There's a front bathroom in Flintlock and just -- which I
11 thought was very childish, you know, like, he locked himself
12 up. I want to talk to you. We're having a conversation. You
13 know, let's just finish this. Give me an answer. I want to
14 know. I want to resolve this. It wasn't even I wanted to
15 know. It was I wanted to not feel crazy because it was
16 supposed to be much more simple.

17 So he locked himself up in the bathroom. I remember
18 Karen asked me to leave and I was like, No, I, you know, this
19 is -- I want to figure this out. This still makes no sense to
20 me. And I remember he stayed there in the bathroom locked in
21 for, like, a little while and then he, like, sneaked out and
22 ran upstairs and I ran right after him. Like, you know, I
23 ran, like, I chased him still wanting to just finish that, you
24 know, to just come to a conclusion, whatever that was.

25 I remember we were in Pam's room where I approached

Daniela - direct - Penza

2667

1 him and he grabbed me. Like, he grabbed me by the arm or
2 something and like threw me over the air like onto the floor
3 and there was like a mattress on the floor. And I remember,
4 like, he had never been violent with me and I just remember,
5 like, I landed on the mattress, you know, and it's, like -- it
6 was, like, a thin -- I just land on the mattress and that
7 was -- and he just walked out, ran out, and that was the end
8 of that argument.

9 You know, I just stayed there, like, okay, and
10 that's how, that's how it ended.

11 (Continued on next page.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CMH

OCR

RMR

CRR

FCRR

Daniela - direct - Penza

2668

1 BY MS. PENZA: (Continuing.)

2 Q When was the next time you spoke to the defendant in
3 person again?

4 A I've never.

5 Q In addition, you mentioned that you cared for the
6 defendant at that point in time?

7 A Yes.

8 Q In addition to your affection for the defendant, what
9 other roles did the defendant have in your life at that point?

10 A Roles? Keith's role in my life was very large. He
11 occupied a very big space. He -- he was the one person I most
12 looked up to. I thought he was a great man. You know, I was
13 documenting him. That's the degree of greatness that I
14 thought he held. I thought in my life he held a position of
15 power. He was the person I most listened to, but also the
16 person who exerted the most power in my life. I was highly
17 dependent on him and his community which he controlled and he
18 was also my only friend. Like, there was nobody else for me
19 to talk to at that point. I had a coach. I didn't talk to my
20 mother anymore. My relationships was secret and, therefore, a
21 large part of my life was.

22 My best friend, who was my sister Mariana, wasn't my
23 best friend anymore. We didn't have any of those
24 conversations so he was basically my entire life. You know,
25 he still held the promise of teaching me. He still held the

Daniela - direct - Penza

2669

1 promise of doing science together, whatever I think that is
2 now but that was the promise of me moving in that direction
3 with him so his role in my life was all-encompassing.

4 Q Looking back, what is your thought of the defendant's use
5 of the word "pride" during that fight?

6 A During that fight and I think for the remaining of any
7 other communications in the future, my pride was a catchall
8 phrase for me liking Ben, for what I felt for Ben and
9 intermittently also just to -- to, like, name anything I would
10 do that he didn't like I was doing, it would just be called
11 pride. You want to eat ice cream, that's your pride. You
12 want to be with Ben, that's your pride. You think you're
13 right, that's your pride. That's a catchall word conveniently
14 enough.

15 Q Did your impression of the defendant change after that
16 night?

17 A Yes.

18 Q How so?

19 A There were a few key things that were -- that were very
20 shocking for me about that -- about that final argument,
21 fight, if you will. And that completely contradicted the idea
22 that I had about Keith. One of them is throughout he
23 basically -- basically -- I don't know how else to say it, but
24 he was talking shit about Ben and, you know, it wasn't that he
25 was talking ill about Ben but rather than Keith was speaking

Daniela - direct - Penza

2670

1 with dishonor which was a concept in ESP where you don't speak
2 with dishonor about other people and he was like -- it was
3 just flowing out of him. He was angry; like, visibly
4 red-in-the-face angry. I have never seen him have a strong
5 emotion like that and he was irrational and illogical in our
6 arguments. Perhaps that's what surprised me the most and the
7 way he treated me.

8 You know, the kind of -- some of it, it would take
9 me a while to process and look back and like -- but right then
10 and there was a shift in the way he was talking and the way he
11 was thinking and his emotional state. Like the drama that
12 he -- it was a very dramatic response that he had. So, my --
13 my perception of him definitely shifted.

14 Q You mentioned him speaking dishonorably about Ben. Is
15 that during the course of that fight?

16 A Yes.

17 Q And what sorts of things was he saying about Ben?

18 A Basically that he was lesser than him. He was saying --
19 not even between the lines just straight up that he was, like,
20 mediocre. That he was, like, nothing much. And, again, it
21 wasn't so much that I felt protective of Ben which I'm sure I
22 did a little bit, like, okay, that's not necessary, but I was
23 hearing Keith, the Vanguard, like talking shit about someone
24 else. Yeah, so it was surprising.

25 Q So what was it that was so surprising about that?

Daniela - direct - Penza

2671

1 A I think, and I can say this now but I didn't grasp it
2 fully then, I want to make it clear, that Keith was a regular
3 man, a fallible human and all of those characteristics that I
4 attributed to him of, like, a better being in a way, wasn't
5 true.

6 Q So what happened after you left?

7 A So, I left. And about a day went by and I remember,
8 like, Pam attempted to talk to me, but, you know, I was very
9 upset about everything that had happened and I remember that
10 later, like, the next night Pam called me and she said -- she
11 said -- she asked me, You know, he's going to teach you a
12 lesson at Hale. You need to come and videotape it.

13 Q Who was going to be teaching a lesson at Hale?

14 A Keith. Keith is going to be teaching a lesson at Hale.
15 You need to come videotape it and I was like, no, I just had
16 this huge fight with him. Nothing is resolved and what
17 happened is very disturbing to me and Pam I knew was the
18 master appeaser of situations. So I kind of understand what
19 her role is. So she keeps asking me and I refused and she
20 said, Dani, are you really going to throw it all away. You
21 know, just, you know -- basically, like, you know, swallow
22 your pride and come do this and everything will get back to
23 normal and you'll resolve it. And I said, no, she said why
24 not and I told her. I told her that Keith is not the man that
25 I thought he was.

Daniela - direct - Penza

2672

1 Q So at that point in time, how old was the defendant,
2 approximately?

3 A 45, 40-something, 50? I'm not sure.

4 Q And you said you were how old?

5 A 21, I think.

6 Q And Ben is approximately how old?

7 A I would say 27, 28, I think.

8 Q And after that night and this phone call with Pam, what
9 happens?

10 A People are working on me.

11 Q What does that mean?

12 A People -- I mean, I've seen this happen before. To me
13 it's no -- there's no question about it. You know, now I'm
14 the person having a problem as I have seen before and my
15 coach. Mainly my coach, Karen, is, like, working on me. You
16 know, you need to fix this with Keith, you need to do this.
17 So it's like a big push for me to -- like I've done something
18 bad, I need to fix it. That's the clear narrative there and
19 it's not that simple for me.

20 At the time, I remember after the fight with Keith,
21 I -- I thought about what I wanted to do because this was
22 certainly, you know, a before and after and I thought about
23 going back to Mexico at times and I even went as far as to --
24 you know, packing my stuff, wiping my computers and but people
25 were sent to work on me and discouraged me from doing that, so

Daniela - direct - Penza

2673

1 talked me out of leaving; No, you can't leave things the way
2 you are. You destroyed so much. You need to fix it. You
3 know, when you burn someone's house down you are supposed to
4 repair it. You're not supposed to just leave.

5 There would be a lot of -- they called it coaching,
6 but really it was this -- they were working on me to, you
7 know, do the right thing but really it was to apologize; it
8 was my fault, make it better, get back to Keith.

9 Q So you mentioned Karen as someone who is working on you?

10 A Yes.

11 Q Anyone else working on you?

12 A For that early stage which is, like, right after the
13 fight, I mean, I had talks with Pam, but Pam was not like, as
14 I said before, I believe she wasn't, like, a tekkie -- she
15 wasn't going to EM me and set a goals program. It was more,
16 like, appeasing, but mostly it was Karen. Mostly it was
17 Karen.

18 Q Later on down the road would other people become involved
19 in this working on you?

20 A Yes.

21 Q As you describe it?

22 A Yes. I'm sorry?

23 Q I was using your phrase. Were other people involved in
24 this concept of working on you?

25 A Yes.

Daniela - direct - Penza

2674

1 Q Who else?

2 A From the period that I had the fight with Keith to the
3 period before they put me in the room, there was a progression
4 and in that whole lapse, which was a number of years, there
5 was Karen, there was Nancy -- very little, but there was some
6 Lauren and my family became involved in the latest stage.

7 Q Was there -- Karen was in the house when you had the
8 fight with Keith; is that right?

9 A Yes.

10 Q And when you were talking to Karen would she -- was it --
11 would she discuss Ben with you?

12 A Not -- not -- no, not in the clear way, no.

13 Q And, so, what -- how would she communicate these things
14 to you?

15 A She worked on me and she worked on my pride. It was like
16 a euphemism that was used for you chose Keith over Ben -- you
17 chose Ben over Keith. It was never spoken of that clearly.
18 It was never like, so you don't want to be with Keith, let's
19 work on that. It was never clear. Not even with Keith was it
20 clear. It was always, well, you're very destructive. You
21 need to work on that. You're very prideful. Let's EM that.
22 What about your pride. Oh, you think you're right. Let's
23 work on that. So it was very confusing, all of that.

24 Q Was -- did you have explicit conversations with the
25 defendant about Ben?

Daniela - direct - Penza

2675

1 A Prior to the fight?

2 Q After the fight.

3 A After the fight? E-mail conversations, yes. I mean, we
4 never had a conversation again. I think that's a bit of an
5 understatement. I would say that the entire communication
6 over the following year that was via e-mail, it was all about
7 Ben. It was all about, like, to a level of terrifying detail
8 it was about Ben; everything that happened with Ben, what I
9 felt about Ben; what he felt about Ben, what I should do about
10 Ben. It was all about that.

11 Q So, after the fight, just taking a step back, how does
12 your life change?

13 A My life changed completely overnight. Just like sex with
14 Keith meant access, just not being with Keith meant just loss
15 of access, isolation. The -- it was very clear that it was
16 not only Keith but it was Keith's community. So overnight I
17 couldn't go to the volleyball games. Overnight I couldn't go
18 to the community events. Overnight I couldn't be anywhere
19 that Keith was but also not with the community. So it was
20 like immediate isolation or like a shunning of sorts. It was
21 overnight.

22 And that's just as far as the actual, like, physical
23 state of me, but also it was my daily life changed. I used to
24 spend every waking moment working on this, working on that,
25 documenting him and all of these things. Funny enough I was

Daniela - direct - Penza

2676

1 still expected to go work to the executive library. Funny
2 enough I was still expected to provide the information from
3 the key loggers, but everything else in my life was completely
4 different.

5 Q Were there other jobs that you continued to have to do?

6 A Yeah, I think there was -- other than the ones I
7 mentioned, the book reports.

8 Q That's something that continued while you were having
9 this -- while you were in this period of not speaking in
10 person to the defendant?

11 A Yes.

12 Q And how would -- how would this work be communicated to
13 you, these things you were supposed to be doing?

14 A Well, the ones where it required, like, access to
15 Flintlock or to Hale, then Pam, Kristin, Karen who lived at
16 Flintlock would call me over or communicate with me, Hey,
17 Daniela there's books here. Hey, Daniela there's things to be
18 done here. They would coordinate, Keith is not around; come
19 at this time come, at that time. But if I knew I had to do
20 it, I would call and coordinate that. The same with the work
21 that I was doing at the executive library.

22 Q Over that time period you said that there were periods of
23 e-mail communication with the defendant?

24 A Yes.

25 Q Can you just explain generally what that was?

Daniela - direct - Penza

2677

1 A Yes, so a few months -- so it was a good number of
2 months. I don't even remember exactly when, but after the
3 fight I was encouraged to write to Keith, to write an e-mail
4 to Keith and he -- and he replied and so an e-mail exchange
5 started. So -- and then we started communicating via e-mail.

6 Q And over that time period how many e-mails -- can you
7 estimate how many e-mails you think you exchanged with the
8 defendant?

9 A Thousands. Thousands and thousands and thousands.

10

11 (Continued on the follow page.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Daniela - direct - Penza

2678

1 EXAMINATION CONTINUES

2 BY MS. PENZA:

3 Q And what -- were there specific things that were
4 discussed in these e-mails?

5 A Yes. So, I mean, the main topic was Ben in excruciating
6 detail. And -- and, you know, he gave me specific
7 instructions of what to do, what to say, what not to do, where
8 to go, where not to go, you know, and -- but acts of
9 discipline. Many times it was just like you should not have
10 done that, you should have done this, based on what I had
11 reported. So it was constantly me reporting and asking what I
12 should do.

13 Q You mean in your own interactions with Ben?

14 A Yes.

15 Q So after this fight with the defendant, did you continue
16 to see Ben?

17 A For a little bit.

18 Q Approximately how many times did you interact
19 romantically with Ben?

20 A A handful more.

21 Q And, I'm sorry, did you go beyond making out?

22 A No, there was beyond making out. Strictly speaking,
23 there was some touching, but there was nothing else.

24 Q So that's as far as it got with Ben?

25 A Yes.

Daniela - direct - Penza

2679

1 Q Compared to what actually happened with Ben, how would
2 you compare what happened with Ben to the level of discussion
3 that you had with the defendant over the next two years about
4 what happened with Ben?

5 A I would describe it as being an absurd disproportion.
6 The amount of -- the amount of detail he requested from me --
7 and I mean just ridiculous detail -- was absurd, and he would
8 constantly ask me, did you tell me everything? Tell me more.
9 Tell me where -- tell me what happened. Tell me what he said.
10 Send me the conversations that you had over Chats. Tell me
11 where he touched you and what -- what he touched, how many
12 times, what you felt, how you felt it, when you -- every
13 single thing.

14 Q And would he repeat the same questions over --

15 A Over and over. Over and over, over the course of those
16 years.

17 Q What was his purported reason for asking these types of
18 intimate details over and over again?

19 A He said what -- and, again, these were his reasons --
20 that I needed to fix my thought object of everything that had
21 happened and he was gonna help me do that. That was like the
22 general. So under the guise of he's gonna help me fix this,
23 there is this, I don't know, harassment of all these
24 excruciating details. Kind of parallel to it, there was like
25 the constant demand for: You need to be vulnerable. You need

Daniela - direct - Penza

2680

1 to have full disclosure with me. The only way you're gonna
2 get through this is if you tell me everything. Tell me your
3 fantasies. Tell me your fantasy -- like just everything.
4 Just tell me everything. Every single -- and write to me all
5 the time. You don't write enough. It's never enough. You
6 haven't written. It's been so many hours, you haven't
7 written.

8 And when it was about Ben, it was just the same
9 questions: I thought you told me everything. Why haven't you
10 told me everything? Have you told me everything? Why don't
11 you -- tell me more. Tell me something you haven't told me
12 before. It was constant.

13 Q During this -- during this time period, was there -- so
14 taking the time period from fall 2006 to when you are put in
15 the room, when was it that you were put in the room?

16 A It's March 9th, 2010.

17 Q So during that time period of over two years, you told us
18 about some of the initial things that happened.

19 Can you give an overview of what the next two-plus
20 years would be like for you?

21 A Yes. So -- so it was like three-plus years.

22 Q Sorry.

23 A Right? It's a long time.

24 No, I remember because I remember at some point
25 coming to the realization, and I think even writing Keith

Daniela - direct - Penza

2681

1 saying, wow, I've now spent more time having an e-mail
2 relationship with you than an actual relationship. So it was
3 longer than the three years that I actually had a relationship
4 with him.

5 So the progression, again, what happened. There was
6 -- after the fight, there was a period of like no
7 communication with him. It was -- I was being coached,
8 coached to like not leave. Coached to stay. Coached to do
9 the right thing. Coached to work on my pride, work on my
10 program, get back on track.

11 Then the e-mail communication starts with Keith and
12 that is, I mean that's -- I mean by no means that's like an --
13 like an easy -- it's like, to me it's a roller-coaster, you
14 know, of -- of -- you know, there was like -- through the
15 coaching and through the grilling and through like the beating
16 me up with all these people working on me. There were times
17 when I was, you know, completely confused and like bought into
18 the: Oh, this is my pride. I'm just so destructive. I'm so
19 bad, My God, I've hurt Keith so bad, you know, I need to make
20 this right. And I would go like into overdrive, like I to
21 need to do my program. I need to lose weight. I need to do
22 book reports. I need to do all these things. And I could get
23 in the groove of that, but, you know, that was a complete -- I
24 mean, that was unfounded. You know, that -- so, eventually,
25 it would be like down again. Like no, I don't want this life.

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2682

1 You know, what am I doing here? What, am I like in e-mail
2 communication with this guy that doesn't care about me? This
3 is not about this; you know, this is about what I felt and
4 this is about I have dreams. You know, I want to study. I
5 want to have a life. I want to have friends. I feel
6 isolated. I did not sign up for a monk life. You know, I
7 don't want to be reporting my weight. And they would say I
8 get really defiant.

9 And -- you know, and Keith would like, through his
10 e-mails, he would essentially like beat me up, you know, into
11 submission, basically. Like, you know: No, that's bad. You
12 shouldn't do that. You shouldn't think that. You should
13 be -- you know, you should be loving to me. You should be --
14 you should be writing me more. You should be reporting all
15 the time. You should be working on this.

16 And, you know, and then I would like, my coach: You
17 should be humble; that's, you know, like you shouldn't be
18 prideful. So I would say: Well, maybe I'm not right, maybe
19 they're right. Maybe they do want to help me, maybe I'm crazy
20 and I don't want to be helped. And so it would be like a
21 constant roller-coaster.

22 Like the e-mails with Keith were crazy, you know,
23 like they were crazy, incessant requests for information, but
24 also for me to do things and -- and like instructions for me
25 to -- you know, I wasn't allowed -- at some point I remember

Daniela - direct - Penza

2683

1 thinking, well, my weight never stopped being like a main
2 focus of everything. So every e-mail, what's your weight?
3 What's your weight? What did you -- are you fasting? Are you
4 still fasting? Did you break your fast? What's your weight?
5 How much have you weighed? What's the last, you know, you've
6 ever weighed?

7 You know, like all these incessant questions. And I
8 remember at some point amongst all these years I thought it
9 would be a very good idea if I started running and I trained
10 for a race. Huge ethical breach. That's indulgent, Dani, you
11 know, that -- if you have an ethical breach, you need to fix.
12 You can't be indulging on running. You know. And I remember
13 like getting very defiant and then they would come and EM me,
14 because I'd be like: But that's part of my program, like
15 isn't that how I'm gonna fix it?

16 And certainly, during the progress of those years,
17 it became very clear that everything I did, everything I did,
18 was considered indulgent and an act of pride. Basically,
19 anything I did that was not, you know, like pleasing Keith
20 was: You're being indulgent. It's an act of pride. You --
21 you know, you want to go out and have a cup of coffee; that's
22 indulgent, that's an act of pride. You want to help your
23 siblings pass the GED test; that's indulgent, that's an act of
24 pride. With someone who is really focused on fixing a
25 mistake, it would be doing anything but fixing that mistake.

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2684

1 So all of this, I was very confused at the time.
2 You know, between the EMs and between these e-mails and
3 between what I felt, it was, like I said, a roller-coaster of
4 emotions. And so those -- that escalated. And coupled with
5 the fact that I had given no avenue to make any money, I was
6 illegally in the country. I had no way to make money. I had
7 at some point, I believe, like given some kind of ultimatum;
8 you can only make money doing book reports. You cannot do
9 anything else for money.

10 So I was like cornered and I couldn't do anything
11 else, and so I started having issues with what do I eat? Like
12 as simple as that. You know, what do I do for, you know, like
13 I can't possibly pay rent, you know, that was very quickly --
14 I mean, very early on. So just the way I would describe those
15 years leading up to being put in the room, it's like my world
16 closed in on me. Like every -- like -- and as it got closer
17 and closer, like as time progressed, like there was like Nancy
18 working with me and then: You're indulgent about this. You
19 can't go run. You're indulgent about this, you cannot go to a
20 community event. You're indulgent about this, you can't
21 have -- you know, you can't go out and have like something to
22 eat.

23 And then at some point things got really bad, I
24 guess, and my family became involved. And it was like this
25 big ultimatum and my family became involved, and then my world

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2685

1 closed in even more. They took my iPod. They took my
2 computer. They took my phone. They took my -- everything I
3 owned, my books, everything I had in my shelf, my papers,
4 everything. To the point where I was sleeping in a sleeping
5 bag on the floor of my living room and having to do 15-minute
6 reality checks to report in -- and that is every 15 minutes I
7 had to write what I was doing. Every 15 minutes. Every 15
8 minutes, this was a thing. And I had to do that.

9 I woke up, I was like, I guess earning my keep in my
10 father's condo, which was 12 Wilton Court, by cleaning the
11 bathroom, by cleaning the kitchen, by making juices, and I had
12 to, like, do my program and I needed to do book reports and I
13 needed to do a fast and I couldn't eat. And even if I could,
14 you know, like what would I eat? And everything got -- just
15 every single degree of freedom that I had I lost. Every
16 single one. And everything I did was bad. Everything I did
17 was indulgent. Everything I did was an act of pride.

18 And when I raised my voice to say: I can't
19 understand, I don't do this. That's your pride. That's your
20 pride talking. You know, shut that down. So it was an
21 impossible situation that I could not get out of. And at the
22 point towards the end of this, this lapse of years, and the
23 e-mails are still coming and all of that, it's very -- before
24 I lost my computer and it just, you know, came to the point
25 where I was like -- I was, I mean honestly, I was -- I was by

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2686

1 no means like rational at that point. I was going crazy.

2 And I remember at some point I was hungry and I ate
3 some food from the refrigerator at the house, my -- the house
4 where I was living, you know, from my parents' house. And
5 that was really bad. They said consequences. They put a lock
6 on the refrigerator so I couldn't even eat anymore, and I had
7 nothing that I could eat and I had no way to make money. And
8 this was -- at some point I did something, I don't even
9 remember what it was. I'm sure it was something indulgent and
10 prideful, and they locked me out of the house for -- during
11 winter. Like, for a few days, I don't even remember how many.

12 But -- so things escalated so much and they
13 escalated, they recruited my family to work on me. My family
14 had no idea what had happened. You know, they didn't know,
15 oh, this was about Keith versus Ben. They didn't have that
16 clarity at all, they were just told: Your daughter is
17 prideful and destructive. You didn't teach her cause and
18 effect. You're the parent, it's your responsibility. You
19 should help fix her. In fact, it's your ethical breach too
20 because she's destroying our community. So they were involved
21 to like come fix me. And, so, they were like setting all
22 these consequences and having these meetings with, like, Keith
23 and, like getting these messages through my sister Marianna
24 about what to do with me.

25 So those few years are a progression of -- of

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2687

1 confusion for me, yes; but also, a loss of every single one of
2 my freedoms until I had no choice.

3 MS. PENZA: Your Honor, I think this a good place to
4 stop.

5 THE COURT: All right, members of the jury, we are
6 going to recess for the evening.

7 Let me remind you that it is very important that you
8 follow my instruction that you not discuss this case with
9 anyone, not your family, your friends or business associates
10 and not with your fellow jurors.

11 In addition, you must not read, listen to, watch or
12 access any accounts of this case on any form of media, such as
13 newspapers, TV, radio, podcasts or the Internet, and you
14 should not research or seek any outside information about any
15 aspect of the case. Do not communicate with anyone about the
16 case on your phone, whether it's through e-mail, text
17 messaging or any other means, through any blog or website or
18 by way of any social media, including Facebook, Twitter,
19 Instagram, YouTube or other similar sites. You must not
20 consider anything you may have read or heard about the case
21 outside this courtroom, whether you read it before or during
22 jury selection, or during this trial. And do not attempt any
23 independent research or investigation about the case. And do
24 not visit any of the locations identified on the questionnaire
25 or discussed during the course of the jury selection process

SAM

OCR

RMR

CRR

RPR

Daniela - direct - Penza

2688

1 and this trial.

2 I want to thank you for your attention today. As I
3 have said before, please leave your notes in the jury
4 deliberation room and pick them up in the morning.

5 Have a good evening, get some rest. We will see you
6 tomorrow at 9:30.

7 All rise for the jury.

8 (Jury exits.)

9 THE COURT: The witness may stand down. Please do
10 not discuss your testimony with anyone. We will see you
11 tomorrow morning at 9:30 a.m.

12 (Witness steps down and exits the courtroom.)

13 THE COURT: Everyone may be seated.

14

15 (Continued on the following page.)

16

17

18

19

20

21

22

23

24

25

1 THE COURT: All right. Ms. Penza?

2 MS. PENZA: Yes, Your Honor. I believe we will go
3 into the early afternoon on Daniela's direct.

4 THE COURT: Until the early afternoon?

5 MS. PENZA: Yes.

6 THE COURT: All right. Okay. About how long do you
7 think, at this point, not putting any pressure on you to give
8 me an exact answer, Mr. Agnifilo?

9 MR. AGNIFILO: Three or four hours.

10 THE COURT: All right. So we will go into the
11 following day. We will go into Thursday.

12 MR. AGNIFILO: Can I throw out a proposal?

13 THE COURT: You want to throw out a proposal? Yes,
14 of course, you may always throw out an idea. Have you got an
15 idea?

16 MR. AGNIFILO: It's an idea.

17 I'm getting the sense that this trial seems on the
18 long end and I'm wondering what options there would be in
19 terms of the workday to try to keep it at six weeks because
20 we're in the fourth week.

21 THE COURT: This is the fourth week.

22 MR. AGNIFILO: Yes. So if the government tells me
23 they're going to rest in two weeks, I'll withdraw my idea and
24 sit back down, but that's not the sense I get.

25 MS. PENZA: I think we've spoken to Mr. Agnifilo

1 about this. If it changes at all, it's going to change
2 moderately. We are still on relatively the same estimate that
3 we were before. Obviously, the fact that we have a few
4 shorter weeks affects that, but we certainly don't think we
5 should be going longer trial days.

6 THE COURT: Well, next week, we have only three
7 days.

8 MS. PENZA: Yes, Your Honor.

9 THE COURT: But here is what I suggest. What I
10 suggest is we see this week out and then decide whether we
11 ought to elongate the day after I speak to the jury because
12 this is a very attentive jury. They are always here on time
13 and they are always ready to come out whenever we are ready
14 for them so I want to be respectful of the jury but I also
15 understand that we are trying to get this trial done before
16 the last week of June. Right?

17 MS. PENZA: Your Honor, we are going to be finished
18 well before that.

19 THE COURT: Well, no, no, I'm not worried about you
20 being finished. I am worried about should there be a defense
21 case and also importantly, there are a lot of issues that you
22 are placing before this jury and there is a lot of testimony
23 and so there's no, I have no way of assessing whether the
24 deliberations will take a short period, a medium period or a
25 long period and so I think that's the basic concern, that the

1 defense has, you now, beyond the testimony and beyond the
2 closings, you know, what kind of a deliberation period are we
3 going to have. I think that's, I think that's a reasonable
4 concern.

5 So let's do that. You know, I'll keep, let's keep
6 the issue open until next week and then we will see.

7 MR. AGNIFILO: Very good. Thank you.

8 THE COURT: All right.

9 Okay. Anything else from the government for today?

10 MS. PENZA: No, Your Honor.

11 THE COURT: Anything else from the defense?

12 MR. AGNIFILO: Nothing from us, Judge.

13 THE COURT: All right. I have another matter so
14 when you leave, please leave quietly. Thank you.

15 (Matter adjourned to May 29, 2019 at 9:30 a.m.)

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES:

DANIELA

DIRECT EXAMINATION (Continued) 2485

BY MS. PENZA

EXHIBITS:

Government Exhibit 1529 2489

Government Exhibit 1554 2495

Government Exhibits 1514, 1514-A, 2578

1515, 1516, 1517, 1518, 1519, 1520,
1521, 1522, 1523, 1525 and 1525-A

Government Exhibit 1526 and 1527 2589

Government Exhibits 1539, 1540, 2602

1544, 1591 and 1592

* * * *