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⇔49619-379⇔
Rudy Davis
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Case 1:13

I can assure you we've already done that. We've had several sessions with counsel, after hours and so we'll do it as expeditiously as we can so -- but all I'm saying to the jurors is to make sure you have something to pass a little bit of the time. I know you get along well, because I can hear as I go down the hall past the jury room, but --

MR. BOSTIC: Your Honor, I apologize, we are going to switch orders here and we will call on behalf of David Matusiewicz, Michael O'Rourke.

THE COURT: That's fine. I've been explaining to the jury the difficulties of scheduling witnesses, Mr. Bostic, so we certainly understand.

MICHAEL T. O'ROURKE,
the deponent herein, having first been duly sworn on oath, was examined and testified as follows:

BY MR. BOSTIC:

- Q. Good morning, Mr. O'Rourke.
- A. Good morning.

*Rudy + Erin -
Thank you both so very much! I am working on the next packets to send. Really enjoying reading Pilgrim's progress before bed. It might take me a month. I appreciate the message very much. Hoping to get some answers very soon about visitation. everything is*

A5156

like pulling teeth
here... never easy.

Hoping to phone you
both again soon!

onward christian
soldiers!

Peace & Blessings

Amy

God bless you
both!!
😊

Q. How are you today, sir?

A. Very well, sir. Thank you.

Q. Now, sir, state your name for the record so we have it clear for the jury?

A. Michael O'Rourke.

Q. And how are you employed?

A. I'm a private investigator.

Q. And are you an employee or an employer?

A. I'm an employer, yes.

Q. And what's the name of your private investigative services?

A. O'Rourke Investigative Associates, Inc.

Q. And are you solo or how many people do you have working for you?

A. Approximately 40 employees.

Q. Approximately 40 employees. And all conducting investigations or some support?

A. Some support staff and some investigators, yes.

Q. Okay. How many investigators do you have?

A. Say 32.

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Q. 32. And the investigators that you have, what's their general experience and background?

A. Primarily manage a group of retired FBI, state police and municipal police, military investigators.

Q. And how long have you been running O'Rourke Investigative Associates, Inc.?

A. 17 years.

Q. 17 years. And with respect to your own background, do you have any law enforcement experience in your own background?

A. I do not.

Q. Okay. Have you ever, prior to opening up your investigation firm, were you employed in any investigative capacity?

A. I was. I was a contract investigator and special process server for family court for 11 years.

Q. Now, in order to be an investigator in the State of Delaware and to have a firm, are there any licensing requirements that you have?

A. Yes. Title 24 Chapter 13.

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Q. And in connection with David Matusiewicz, there came a point in time that you were retained to do certain investigative work on behalf of David Matusiewicz; is that right?

A. That's correct, yes.

Q. And would it be fair to say that was in connection with a child custody type hearing at that time?

A. Yes, sir.

Q. And it was in the vicinity of 2005, 2006?

A. January 2006, yes.

Q. Okay. Now, with respect to that investigation, and the work that you did then, who hired you?

A. Mark Sisk, a Delaware attorney.

Q. That was an attorney who represented David Matusiewicz at the time?

A. Yes, that's correct.

Q. You see David Matusiewicz in the courtroom today?

A. I do.

Q. He's the gentleman here with the glasses sitting next to Ms. Chavar?

A. He is.

Q. Okay. Now, in connection with doing the investigative work at that time, were you called upon to do certain surveillances?

A. Yes.

Q. Okay. And those were in connection with Christine Belford?

A. That's correct.

Q. Okay. And did you employ Mr. Phillips?

A. I did.

Q. And did -- Mr. Phillips actually conducted that surveillance on your behalf; is that right?

A. Yes, that's correct.

Q. And what's Mr. Phillips' background?

A. United States Marine Corp, active marine corp. He came to work for me as a surveillance agent.

Q. Now, I believe also you were requested and pulled certain, I guess investigative reports, not credit reports, but background reports on individuals connected to

Christine Belford at the time?

A. That's correct, yes.

Q. Okay. Do you remember the names of the individuals for whom you pulled reports at this point?

A. Yes, I believe it was -- it was her father, James.

Q. What about a Mr. Purcell?

A. Yes, not in 2006, but yes.

Q. Okay. Now, I'm talking about what you did on behalf of David Matusiewicz, but we'll get to that particularly. Now, with respect to the surveillance and the reports that you pulled, how does that comport to -- strike that. Were you ever involved in doing investigative work in connection with child custody matters prior to working on behalf of David Matusiewicz?

A. Yes.

Q. And what type of documents and investigations or things were you called upon to collect in connection with that type of matter?

A. We would serve subpoenas for medical records, school records, psychology

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records, any kind of hospital records, any kind of supporting documentation that would help assist proving neglect, abandonment.

Q. In connection with those other matters were you also called upon to conduct surveillances?

A. Yes.

Q. Were you also called upon to pull the type of reports that we talked about, background reports on individuals?

A. Yes.

Q. And do you have an understanding of how or the relevancy of such reports in connection with child custody matters?

A. Yes, it would help gauge the integrity, credibility, criminal history, any type of history to help them evaluate their ability to raise children.

Q. So the work that you did on behalf of David Matusiewicz, how, if any, did that differ from what you've done in similar cases in the past?

A. Very similar, yes.

Q. Do you understand -- or strike

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that. We talked about you being licensed to operate as an investigator in the State of Delaware. Was a gathering of these materials and documents and these things and these surveillance, are they sanctioned or prescribed by your licensing requirement here in Delaware?

A. They are sanctioned.

Q. Okay.

A. Specifically under Title 24

Chapter 13.

Q. So in other words, are these things that you're permitted to do?

A. Yes.

Q. Okay. With respect to the investigative work that you did in connection with the Christine Belford, did David Matusiewicz ever ask you to do anything improper or illegal or inconsistent with your license?

A. No.

Q. Did you ever do anything improper or illegal or inconsistent with your license?

A. No, sir.

Q. Now, there came a time in 2013 after the shooting incident at the courthouse

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that you were contacted by the federal government?

A. That's correct, and the state police.

Q. I'm sorry, I didn't hear you.

A. And the state police.

Q. Okay. And what did they request of you in connection of that contact, concerning your files?

A. Everything in my possession and an interview.

Q. Okay. And did you have any obligation prior to turning over your file to any law enforcement individual?

A. I did, yes.

Q. And what's that obligation, sir?

A. I needed -- it's attorney work product, so I needed permission from the attorney to disseminate my file.

Q. And did you seek that permission from the attorney?

A. I did. I contacted Mark Sisk immediately.

Q. And what, if anything, did Mr.

sisk instruct you to do?

A. To go to Gander Hill Prison and visit Mr. Matusiewicz and ask his permission.

Q. Okay. And did you do that?

A. Yes.

Q. And so you had a conversation with David Matusiewicz, which would determine whether or not you release his file, would that be fair to say --

MR. WEEDE: I think we're getting into hearsay, so I'll just object now to table it.

THE COURT: As part of the course of events, without getting into substance, Mr. O'Rourke, was the file turned over to state police.

THE WITNESS: Yes, Your Honor, it was.

MR. BOSTIC: Your Honor, may I see the Court at sidebar, please.

(Sidebar discussion.)

MR. BOSTIC: All right. It's my understanding that Mr. O'Rourke needed David's approval to release the files to the government.

THE COURT: Right.

MR. BOSTIC: And I want to ask him whether or not he spoke to David to get that approval. I'm not going to ask him what he said, but I want to ask that question.

THE COURT: All right. I'm just going to allow it.

MR. WEEDE: Okay. I didn't hear what he said, but --

THE COURT: He was going to ask him did David Matusiewicz give his permission and the answer is yes, that's as far as it's going to go.

BY MR. BOSTIC:

Q. Mr. O'Rourke, when you met with David Matusiewicz about the release of his file, did he give you approval to release to the federal government? Did he give you approval to do so?

A. Yes, he did.

MR. BOSTIC: I have nothing else, Your Honor.

THE COURT: All right. Will there be cross by the Government before cross by the

defense, Mr. Weede?

MR. WEEDE: Your Honor, if I may.

BY MR. WEEDE:

Q. Mr. O'Rourke, how are you?

A. Very well, sir. Thank you.

Q. Good, good. You spoke about being licensed in the State of Delaware?

A. Yes.

Q. Right. Now, we're going to hear a little bit from, I believe, Mr. Edelin about some things you did in connection with Tom Matusiewicz and Lenore Matusiewicz. Do you recall those series of events?

A. Yes.

Q. All right. And I'm going to save some of these questions for after Mr. Edelin talks --

MR. BOSTIC: Objection, Your Honor. It's beyond my scope.

MR. WEEDE: I'm going to ask one simple follow up to whether or not --

THE COURT: I think he's previewing what he expects to ask later. We'll see where it goes.

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MR. WEEDE: Thank you, Your Honor.

BY MR. WEEDE:

Q. Was Tom Matusiewicz, to your knowledge, ever a licensed private investigator?

A. Not to my knowledge.

MR. BOSTIC: Again, Your Honor, move to strike because it's all beyond my scope.

MR. WEEDE: Your Honor, he asks about James Belford's background check which was precisely when he was in Tom Matusiewicz's employ.

THE COURT: I have a suspicion we'll get to everything. Why don't you get going and I assume the rest of this will be more tailored to this direct.

MR. WEEDE: Yes, Your Honor.

BY MR. WEEDE:

Q. Mr. O'Rourke, with regard to your employment by Mr. Sisk?

A. Sisk.

Q. Am I saying that right?

A. Yes.

Q. And it's fair to say it's typical of your employ to be employed by an attorney?

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A. It is typical, yes.

or?

Q. In fact, would you say 99 percent of the time you're employed by an attorney?

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A. Yes.

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Q. About that. And with regard to the kind of the theme that Mr. David Matusiewicz was pursuing, in terms of what he was directing you to do, what was the theme of the evidence he was asking you to gather?

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A. At the time he had, he had custody of the children. He was attempting to secure that for a custody hearing that was coming up sometime that spring, so he was looking for evidence to help support his perspective that he was the better parent.

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Q. Okay. All right. And you have a lot of experience in forming this type of work, right?

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A. I do, yes.

Q. How much would you say of your business deals with custody proceedings?

A. Maybe 8 to 10 percent, maybe.

Q. 80 --

A. 8 to 10 percent, a small portion.

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Q. Okay. But what you do see when you're in custody proceedings, is it's, that's the chance that whatever parent hires you has to get out all the dirty laundry about the other parent, right?

A. That's accurate, yes.

Q. And fair to say it can be kind of sordid proceedings?

A. That's also true, yes.

Q. So at this point in time David is asking you to get whatever you can on Christine Belford, correct?

A. That's correct, yes.

Q. And that information ultimately was presented to the family court in connection with these custody proceedings, correct?

A. That's accurate, yes.

Q. And ultimately that family court concluded that the, Christine Belford and David Matusiewicz would have joint custody, correct?

A. Yes, sir, yes.

Q. And in fact, some of the information that you gathered from your investigative work and when I say your, I'm

talking about your company's work, right?

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A. Yes.

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Q. That was also presented at the

termination of parental rights proceedings in 2010 and 2011, correct?

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A. Yes, sir.

Q. And in the end, that court

ultimately terminated David's parental rights?

A. That's true.

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Q. All right. Now, in connection

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with, I believe, and again maybe I'm jumping the gun here, but you were also approached by Amy Matusiewicz?

MR. IBRAHIM: Objection. I have

no questions of this witness.

MR. WEEDE: Your Honor, let's see

if Mr. Edelin opens the door on that. We have the e-mails. We specifically asked about the 2013 time frame.

THE COURT: Let's not make the

trailer better than the movie. Let's wait and see where we go.

MR. WEEDE: That's all we have.

Actually, can I confer with counsel? All right.

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I spoke with Mille O'Rourke regarding custody & guardianship of the girls after the shooting to see if he would recommend an attorney. He recommended David Schamers.

Your Honor, if I may just one more follow up question?

THE COURT: You may.

BY MR. WEEDE:

Q. Mr. O'Rourke, now my co-counsel reminds me, in 2006 and 2007, at the time period where your firm is being asked to do surveillance on Ms. Belford, at the time where your firm is sending out subpoenas, at the time when you're trying to gather as much information as possible about Ms. Belford to show she's an unfit mother, at this point has David Matusiewicz ever made any allegations of sexual misconduct against Ms. Belford?

A. No.

MR. WEEDE: That's all I have, Your Honor.

THE COURT: Mr. Edelin -- do you want to?

MR. BOSTIC: I'll wait until Mr. Edelin is finished.

THE COURT: All right. Mr. Edelin, you have the floor.

BY MR. EDELIN:

Q. Mr. O'Rourke, good morning.

A. Good morning, sir.

Q. How are you, sir?

A. Very well. Thank you.

Q. I think we met for the first time
a couple days ago last week?

A. Yes, we did.

Q. Good to see you again.

A. You as well.

Q. Sir, my understanding is there was
testimony earlier on in the case that you had
occasion to meet Tom and Lenore at Ms. Belford's
property, do you remember that?

A. You're speaking about December 1st
of 2012, correct.

Q. Yes, sir. I believe that's the
date. My understanding is you accompanied or
escorted Tom up to the door to return some
items?

A. Yes, that's correct.

Q. My understanding, sir, from the
testimony is that Ms. Lenore was in the car, but
she did not accompany you to the door?

A. That's correct.

Q. I believe my recollection of the testimony is that Ms. Lenore stayed within her car, which was parked outside on the street, but outside of the development?

A. It was actually in the development in the very first street at the bottom of the hill on the right-hand side. It was the first turnoff that was available inside the subdivision.

Q. Okay. And then at some point Tom got out of that car, got in your car and then you all drove to where the home was?

A. Yes.

Q. Okay. And it's fair to say you had a very brief interaction with Ms. Lenore?

A. Yes, very brief.

Q. Hi, how are you, went on about your business with Tom?

A. Yeah, just being polite.

MR. EDELIN: Thank you, sir.

Thank you, Your Honor.

THE COURT: All right. Mr. Ibrahim, I understand you have no questions.

MR. IBRAHIM: I have no questions.

The door is still closed.

MR. WEEDE: Do I get to cross the witness?

MR. BOSTIC: Whatever, you can cross.

MR. WEEDE: Okay. Whatever the Court --

THE COURT: We have been inconsistent in our methodology, counsel. So go ahead, Mr. Weede, and then we'll allow Mr. Bostic to come back and redirect.

MR. WEEDE: Thank you, Your Honor.

BY MR. WEEDE:

Q. Hello again. At the time when Tom and Lenore Matusiewicz met with you on December 1st, 2011, did they tell you that they had -- they were gathering information in any way with a legal proceeding?

A. They -- he was still trying to gather information for grandparent rights or some type of custody rights, yes, I knew that.

Q. Okay. And that goes back to some e-mails you had with Tom going back to April 2011, is that ringing a bell?

A. Yes.

Q. And at that point, I don't think there's any dispute, there was actually a case pending in Delaware Family Court, but did he tell you that his petition for grandparent visitation rights, his and Lenore's, was dismissed by the family court in November of 2011?

A. No, I was not aware of that Tom gave you that he wanted to go to 15 Donegal Court, Christine Belford's residence?

A. He wanted to trade a family heirloom quilt that Nana had knit, something that was important to the children when they were younger, wanted to trade that for a SKIA machine, from what I understand was some type of electrical stimulation device used by autistic children and also asked if there were any home movies or photographs or something else they would could have that she would be willing to share.

Q. This is an afghan?

A. Yes, approximately three feet by four feet, lavender, gray and white.

Q. And this was a family heirloom?

A. It was obviously hand made, yeah.

Q. Did it smell like anything?

A. It did. It had a distinct odor of kerosene.

Q. All right. Now, you know, to each his own, would that be an heirloom you would keep?

MR. BOSTIC: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WEEDE:

Q. Now, is it fair to say that Tom also took some photos of the residence when he was with you?

A. He did, yes, sir.

Q. All right. And there's basically the front of the house?

A. Yes.

Q. Does that sound right?

A. Yes.

Q. All right. And after this trip, does Tom ask you to run some tags for some cars?

A. Yes, he did, one tag actually.

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Q. And what did you do?

A. I told him that I couldn't do it, it was a violation of the driver's privacy protection act of 1994. That he would have to engage the services of an attorney so I would have a lawful purpose in order to run the registration with the Delaware DMV.

Q. And it's fair to say that he also continued to ask you for information as it pertained to Christine Belford and family members; is that right?

A. Yes.

Q. And this was the context of running a background check on Christine Belford's father, James Belford, correct?

A. Yes.

Q. All right. Can I have Government exhibit 576, please? Now, you at this point had already told Mr. Matusiewicz that you couldn't run tags without an attorney, but first of all, what are we looking at here?

A. Like me to describe it?

Q. Yes, please.

A. This is an e-mail from Tom

Matusiewicz, that's his e-mail A1BBQ. Actually wrote it Christmas day to my e-mail address and he had some requests. Now, this was four weeks after that occurrence in Donegal Court.

Q. All right. I'd like you to focus on paragraph two, if you could?

A. Yes, what vehicles currently are registered to Christine Belford, 15 Donegal Court, Newark, Delaware. One is the new one we saw in the driveway at the residence, you already have temp Delaware tag on the 2011 Chevy Equinox 4 door black sedan. Second vehicle maybe a newer black Chevy Suburban. She had a 2010 Honda Odyssey, color purple. Don't know if she still has it.

Q. Did you run tags on any of those vehicles?

A. No, sir.

Q. Why not?

A. Again, I didn't have a permissible purpose. I can't tell you if I even responded to this, I don't know.

MR. IBRAHIM: What was that exhibit number?

MR. WEEDE: 576.

BY MR. WEEDE:

Q. Now, there have been some pages that have been shown to the jury from a red notebook. And I just want to ask you?

MR. BOSTIC: Objection, Your Honor. It's beyond my scope and I believe Mr. Edelin's scope.

THE COURT: I see this as beyond the scope.

MR. WEEDE: Your Honor, it goes into whether or not Mr. O'Rourke --

THE COURT: Why don't we continue this at sidebar.

(Sidebar discussion.)

MR. WEEDE: Your Honor, if I may. This goes directly -- it's my understanding that the proctored relevance of this witness is to put a gloss on certain things that David did, certain things Lenore did and certain things Tom did in connection with their legitimacy in terms of investigation. The point of the red notebook is, is that Tom did not engage Michael O'Rourke with regard to numerous different types of

investigative activities. I think that needs to be borne out to the extent the jury is going to be confused that this is something that Tom was either doing with O'Rourke's permission or in connection with him generally.

THE COURT: So you're saying that because Tom Matusiewicz on his own under took other types of, quote, investigation, unquote, that showed up in Government Exhibit 60, the red notebook, that you should inquire of this witness whether he was involved in that?

MR. WEEDE: Correct.

THE COURT: Defense, what say you?

MR. BOSTIC: The Government cannot retry the case through every witness, however remote in terms of the testimony from what they are trying to ask. And this is exactly that.

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

MR. WEEDE: All right. May I have a moment, Your Honor?

THE COURT: You may.

MR. WEEDE: Your Honor, that's all I have.

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THE COURT: All right. Any redirect?

MR. BOSTIC: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. BOSTIC:

Q. So it's clear -- do you know what, I'm not going to ask that. I'll ask this question instead.

Are you licensed by the State of Delaware to conduct child sexual allegation investigations?

A. Yes, I am.

Q. And are you permitted to -- and how would you go about, if you were told about allegations -- strike that.

How would -- would you yourself conduct an interview on behalf of the state that would ordinarily be done by Children Advocacy Center?

MR. WEEDE: Objection. Beyond the scope of cross.

THE COURT: I think there was a question raised about whether Mr. Matusiewicz

reported sexual abuse suspicions to the witness.
I'll just wait and see how far it goes,
Mr. Weede. I'll give you some leeway,
Mr. Bostic, but we'll see how far.

MR. BOSTIC: Thank you.

BY MR. BOSTIC:

Q. My question again is would you be
the individual that the statutes require under
the CAC to conduct an interview with respect to
a child regarding child sexual abuse?

MR. WEEDE: Objection. Nothing
about the CAC was mentioned.

THE COURT: I'll allow that answer
in.

Go ahead, Mr. O'Rourke.

A. Just so I'm clear, on behalf of
the state you're asking?

Q. Yes.

A. No, sir.

Q. That was what my question was
getting to.

And final question. Again, in
connection with the work that you did on behalf
of David Matusiewicz, at no time did he ask you

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to do anything improper or inconsistent with the other cases you worked on regarding child custody?

A. No, sir.

MR. BOSTIC: Thank you.

THE COURT: Mr. Edelin, anything?

MR. EDELIN: No, sir. Thank you.

THE COURT: Government, anything more for Mr. O'Rourke?

MR. WEEDE: One moment, Your Honor.

THE COURT: Okay.

MR. BOSTIC: Your Honor, I have nothing further. Thank you.

MR. WEEDE: Your Honor, just so we can put an end to this.

CROSS-EXAMINATION

BY MR. WEEDE:

Q. Regardless of any CAC interviews, Mr. O'Rourke, there were never any allegations made to you about Ms. Belford engaging in any sexually inappropriate behavior with regard to her kids; correct, in the context of the custody dispute?

A. In 2006?

Q. 2006? 2007?

A. No, sir.

MR. WEEDE: Thank you.

THE COURT: I was about to ask, is Mr. O'Rourke excused?

MR. BOSTIC: Your Honor, I thought the government had cut the witness off.

BY MR. BOSTIC:

Q. And I'm curious to know, were you aware of any allegation of child sexual abuse?

A. I was.

Q. And by whom were they made and when?

A. It was after David was returned from, I can say this, from Nicaragua, an attorney he engaged, Ed Medrano from Texas, Ed Medrano is the one that spoke of those allegations.

MR. BOSTIC: Thank you. I have nothing else.

THE COURT: All right. At this time I think the witness is excused. Thank you, sir.

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1 THE COURT: Counsel, do you all
2 need a minute to confer on stipulations?

3 MS. CHAVAR: We're in the signing
4 process, Your Honor. Just a few minutes.

5 THE COURT: All right. Then I
6 will retire and you will let my court staff know
7 when you're ready and we will reconvene in a
8 moment.

9 MS. CHAVAR: Thank you.

10 (Short recess.)

11 THE COURT: I understand that
12 overnight there's been further discussion about
13 stipulations and we've spent some time this
14 morning finalizing stipulations; is that
15 correct.

16 MR. McCALL: Yes, Your Honor.

17 MR. BOSTIC: Yes, Your Honor.

18 MR. EDELIN: Yes, Your Honor.

19 MR. IBRAHIM: Yes, Your Honor.

20 THE COURT: In terms of
21 proceeding, how do you want to present
22 stipulations to the jury? We're still in the
23 defense case.

24 MS. CHAVAR: Yes, Your Honor. So

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if we could just read them to the jury.

THE COURT: All right. Is there anything we need to do? We have a lot of work to do later this morning in terms of jury instructions and Rule 29. Is there anything else we need to do?

MR. McANDREWS: There is. Your Honor, we need to strike the language in the testimony of Michael Solon.

THE COURT: Do you want to do that here or at sidebar?

MR. IBRAHIM: Right here.

MR. McANDREWS: Your Honor, I'll identify it for the record. It's the transcript of the proceeding, June 19th, 2015. Page 2,826, the question begins at Line 22 and reads question, and in the course of working with her, she had a reputation for being a peaceful, honest, law abiding person, correct? Answer carries over to page 2,827, line 1, yes, sir. And I believe that's the only language that we would strike.

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THE COURT: Agreed, Mr. Ibrahim?

MR. IBRAHIM: That is agreed.

Remember this is referring to my coworkers/friends testifying to my character as "peaceful, honest, law abiding" that the government wouldn't allow due to the 1x my brother called me from a payphone in central America + I didn't report that to the police because I didn't know where they were. Also because I was sending David's money from his investment out of the country since 2006.

They say that is has they tracked David. My sending money to different banks in different countries since 2006 doesn't mean I had any clue where David, Mom and the children were. Just like the lawyer said they never charged or convicted me of any involvement in the kidnapping of the children, because I wasn't involved. If they thought I was involved they should have indicted me as well.

1 THE COURT: All right. Is there
2 anything else that needs my attention before we
3 bring in the jury?

4 MS. CHAVAR: No, Your Honor.

5 MR. EDELIN: Your Honor, is it the
6 Court's intention once the stipulations are read into
7 the record to have Defense rest?

8 THE COURT: Right. And I'll see
9 counsel at sidebar at that point.

10 MR. IBRAHIM: I do have one
11 stipulation to read, so I'll go after Mr. Bostic
12 or Ms. Chavar.

13 THE COURT: Is there any rebuttal
14 from the Government?

15 MR. McCALL: No, Your Honor.

16 MR. EDELIN: So you'll see us at
17 sidebar before we formally rest?

18 THE COURT: Right.

19 MR. McCALL: I want to read three
20 exhibits into the record. Government Exhibits
21 73A through M, 74A through K, 728A and B, 240A
22 through F.

23 MR. IBRAHIM: Along those same
24 lines, Your Honor, I provided your deputy a list

1 of the exhibits that were moved in for
2 organizational purposes. I have them all here
3 on this sheet and I just ask that they -- my
4 understanding they were moved in as we went.

5 THE COURT: Purposes of the
6 record?

7 MR. IBRAHIM: They are all moved
8 in exhibits, Amy Gonzalez D1 through 31.

9 THE COURT: All right. And I
10 assume there's no objection from the Government?

11 MR. McCALL: No, Your Honor.

12 MR. BOSTIC: During the course we
13 moved in exhibits that were published and I
14 think they are a matter of record and we're
15 ready to go forward.

16 THE COURT: All right. Again,
17 Government, any objection?

18 MR. McCALL: No, Your Honor.

19 THE COURT: All right. Mr.
20 Edelin.

21 MR. EDELIN: Your Honor, I used
22 pages I think I referenced bates numbers but
23 they were from exhibits that were already in, so
24 I think --

1 THE COURT: That was my sense, Mr.
2 Edelin, right. It would seem to me the record
3 is now in order and we can bring back the jury
4 and proceed to read into the record the various
5 stipulations that are relevant and then at that
6 point before the defense formally rests, I will
7 see counsel at sidebar, all right. So with that
8 I ask Ms. Strickland to please bring in the
9 jury.

10 (Jury enters.)

11 THE COURT: Good morning, ladies
12 and gentlemen of the jury. Please be seated.

13 THE JURY: Good morning.

14 THE COURT: First thing first,
15 have we ordered you lunch?

16 THE JURY: Yes.

17 THE COURT: A great deal of work
18 has been going on in your absence both lastnight
19 and this morning, during which time counsel has
20 diligently worked to find areas of agreement and
21 stipulations. I mentioned to you yesterday we
22 saved a good three witnesses and in point of
23 fact, barring any unforeseen circumstance, I
24 believe we'll be in a position simply to

1 introduce some additional stipulation to you
2 this morning, all right. And after which I will
3 see the lawyers. I asked you to bring your
4 books and crossword puzzles because we're going
5 to have other legal work to do this morning. I
6 know at one point you watched me bring a rule
7 book to sidebar and the real rule book is here
8 members of the jury, this is just the USA Today
9 version, all right. So there's a great many
10 legal principles that we will be debating in
11 preparation for closing argument and my giving
12 you final instructions, because the law is an
13 organic being. Indeed, just on June 1st of this
14 year a new decision came down in the United
15 States Supreme Court arising out of a Federal
16 Judge's trial in Philadelphia, Judge Stegel,
17 that went through our Court of Appeals and 8 to
18 1 the Supreme Court actually agreed on something
19 8 to 1. What lawyers do is they are scripture
20 scholars. They look at the text and say what
21 lesson does this case teach us for this case. I
22 will tell you the last e-mail crossed my screen
23 at 10:50 last night, all right. So if we go
24 back to revolutionary time, I'm fond of doing,

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1 the musket smoke did not clear till this
2 morning. With that we're going to have further
3 legal debate in your absence, but I've told you
4 we've been working hard on that and we're going
5 to be ready to go, so you will get the closing
6 argument today. What time do you have lunch
7 coming Ms. Strickland?

8 MS. STRICKLAND: 11:30, I think.

9 THE COURT: 11:30. Then you're
10 going to see lunch on the early side. At a
11 minimum you will hear counsel's closing
12 arguments today. We might or might not hear
13 from me, but we are at the end stage of the
14 case, and with that I will turn back to the
15 defense side of the courtroom and I will ask
16 counsel to present whatever additional evidence
17 by way of stipulation you have.

18 MS. CHAVAR: Your Honor, if I
19 could go to the podium?

20 THE COURT: You may.

21 MS. CHAVAR: Thank you. Good
22 morning. The following stipulations have been
23 entered by all the parties. The docket entries
24 in the matter of United States versus David

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David was trying to get Laura evaluated for sexual abuse that the courts + also to explain that just 1 of the reasons he left with the girls.

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Matusiewicz would reflect that on November 25th, 2009, David Matusiewicz through his counsel filed a sealed motion requesting that a psychological evaluation as pertaining to the sexual abuse allegations of his daughter, Laura Matusiewicz, be conducted. The basis for this motion was to gather potential information that he could use in mitigation at his up coming sentencing hearing.

On November 25 the, 2009, the Government filed a motion under seal opposing the request for a psychological evaluation of Laura Matusiewicz, arguing in part that the Court did not have jurisdiction to enter such an order.

On December 2nd, 2009, the court denied the motion and on May 3rd, 2011, David Matusiewicz filed a brief and memorandum pursuant to Title 28 United States Code Section 2255 seeking to have his 2009 conviction vacated on the basis that his lawyer Herbertro Medrano was ineffective.

On July 2nd, 2014, the Court issued a memorandum and opinion denying the 28

United States Code Section 2255 petition to vacate the 2009 conviction, finding that it lacked merit.

You heard testimony from Katie Moffa that prior to 2006, while living in the Middletown house with David Matusiewicz and her mother Christine Belford, she knew David Matusiewicz to own guns. Sometime in early 2006 David Matusiewicz's guns were turned over to the New Castle County Police by his father, Thomas Matusiewicz. The .45 caliber Glock 21 that David Matusiewicz purchased in 1997 was not turned over to New Castle County Police in 2006.

The 1996 Honda Civic, parked at the Mitchell residence in Elkton, Maryland, on February 11, 2013, was registered through the Division of Motor Vehicles for the State of South Dakota to owner Thomas Matusiewicz. The 1987 Honey motorhome parked in the yard of the Edcouch, Texas residence on February 11, 2013, was registered through the Division of Motor Vehicles for the State of South Dakota to owner Thomas Stanley Matusiewicz.

And finally, if called to testify,

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This was not the motor home David left the country in. That was left in Nicaragua.

This was my father's old 1987 motorhome that I've seen driven locally on the road about 3K only, most of the time to the repair shop as Rene Flores testified.

This is not the "escape vehicle" the government wants you to believe is some master getaway plan.

This is referring to 2006 when Christine filed the false PFA against David and had him picked up at his optometric practice and taken for an emergency psychological evaluation with Dr. Cuba. Dr. Cuba said that David was fine, but he was more concerned about Christine's erratic behavior. Dr. Cuba recommended any guns be removed from the home so Christine would not have access to them. As suggested, Tom removed any guns from Dave + Chris' home. Tom took the guns directly from Dave + Chris' house to a different location. Christine made a call

to the police regarding the guns since David was staying at Lee + Tom's home in Smyrna, DE + wasn't allowed to be around any guns according to the Contingency PFA that David nor his lawyer knew about. The police arrived at Lee + Tom's home to have David surrender all of his guns. The police arrested David in front of his crying children because he couldn't produce these guns that were in Dad's possession.

Dad turned the guns over to the police the next day and David was released. This arrest record was expunged because he shouldn't have been arrested for this in the 1st place.

Dad did not turn the 45 caliber glock that belonged to David over to the police back then.

This is the same gun he gave to

stipulation
should
have also
read that
David was
not arrested
in Nicaragua
with any
weapons as
Mr. Bostic
discussed.

Deputy United States Marshal William David would
testify that law enforcement agents did not
seize the motorhome that David Matusiewicz was
living in while in Nicaragua and law enforcement
did not return that motorhome to the United
States. Thank you.

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THE COURT: All right.

Mr. Ibrahim, you have a stipulation as well?

MR. IBRAHIM: Yes. Good morning.

I just have a few folks, about seven of them the
government has been kind enough to stipulate to
their testimony. These folks in McAllen, Texas,
would have testified via video teleconferencing,
pardon me for reading to you.

The United States, by and through
Assistant United States Attorneys Jamie McCall,
Ed McAndrew and Shawn Weede, hereby enter into
the following agreement with Amy Gonzalez.

If called to testify, the below
listed individuals will testify as follows:

William Restrepo, R-E-S-T-R-E-P-O,
M.D. Dr. Restrepo is board certified in
nephrology and works at Knapp Medical Center and
Doctors Hospital Renaissance in Edinburg. He

1 would testify that Amy Gonzalez is a nurse who
2 worked with him at Knapp and also at neighboring
3 hospitals. Amy is a hard working, competent
4 nurse.

5 The second individual, another
6 doctor, Sandra Esquivel, E-S-Q-U-I-V-E-L, M.D.,
7 and initials FACS, Fellow of the American
8 College of Surgeons. Dr. Esquivel is a board
9 certified general surgeon who works at Knapp
10 Medical Center. Dr. Esquivel has known Amy for
11 approximately six years to date and has worked
12 with Amy treating dialysis patients.

13 Dr. Esquivel would testify that Amy is a very
14 dedicated hard-working nurse who is very
15 attentive to her patients and always willing to
16 help out her fellow nurses. Amy is a very hard
17 working and dedicated mother as well.

18 Next, Joselina D. Murillo,
19 J-O-S-E-L-I-N-A, middle initial D, last name
20 M-U-R-I-L-L-O, a registered nurse. Nurse
21 Murillo is the patient care coordinator in the
22 Hemodialysis Unit at Rio Grande Regional Medical
23 Center in McAllen, Texas.

24 Ms. Murillo will testify that she

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1 has known Amy for about two years and found her
2 to be a very hard working and caring nurse.

3 Martin Cavazos, C-A-V-A-Z-O-S, Jr.
4 Mr. Cavazos, Jr. is a patient care tech at Knapp
5 Medical Center. He has known Amy for
6 five-and-a-half years and has worked with her in
7 the Hemodialysis Unit. Mr. Cavazos will testify
8 that Amy would take good care of her patients
9 and treated them like they were her own family
10 members. Amy worked well with her coworkers.

11 Jaime G. Guajardo, J-A-I-M-E,
12 middle initial G, G-U-A-J-A-R-D-O. Mr. Guajardo
13 is a biomedical engineer at Knapp Medical Center
14 and has worked with Amy and would testify that
15 Amy has shown nothing but compassion for her
16 patients.

17 Baldomero Mendez. Mr. Mendez is a
18 biomedical equipment technician at Knapp Medical
19 Center and has worked with Amy Gonzalez for two
20 years in the Dialysis Unit. Mr. Mendez would
21 testify that Amy is a compassionate, hard
22 working and caring nurse who always puts her
23 patients' needs and well being on top of her
24 priorities.

And lastly, Sabino Garza.

Mr. Garza has worked with Amy Gonzalez for about five years at Knapp Medical Center. Mr. Garza would testify that Amy has always been a very good coworker, loving and caring to her coworkers and patients.

Thank you for your time.

That's all I have, Your Honor.

THE COURT: All right. Counsel, I think at this point I'll see all of you briefly at side-bar.

(Side-bar discussion:)

THE COURT: The defense has not formally rested because as I know Mr. Edelin reported to us this morning, there was some question raised at the last minute by his client, Ms. Matusiewicz, Lenore Matusiewicz for the record. Mr. Edelin thinks it's advisable for the Court to colloquy Ms. Matusiewicz and the question I have is if I were to do it in a global and noninvasive way, might I do it of all three defendants so as to not single her out.

Obviously it's outside the hearing of the jury. I know the other defendants said

1 no. This is the question I have crafted and I
2 ask for your consideration.

3 Let me now address the defendants.
Each of you has a right to testify, a right not
to testify under the Fifth Amendment. You have
very capable counsel and I know you have
consulted with them. It's my understanding you
have elected not to testify and done so
voluntarily. If that is incorrect, this is your
opportunity to be heard.

This is
the reason
I told
everyone
now to
agree to
testify on
your own
behalf OR
YOUR VOICE
WILL NEVER
BE HEARD...

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11 That's what I propose to ask.

12 MR. IBRAHIM: The only thing that
13 I would ask that you include in there that their
14 decision not to testify is based on
15 recommendation of counsel.

16 THE COURT: Are you all right if I
17 do it globally in that way?

18 MR. BOSTIC: Yes.

19 MS. CHAVAR: Yes.

20 THE COURT: What we will do is
21 excuse the jury. Do we need to bring the jury
22 back and have you rest, or can we do it on the
23 record outside of the presence of the jury?

24 MR. McANDREW: I'm okay with that,

Your Honor.

1
2 THE COURT: Is defense okay with
3 that?

4 MR. IBRAHIM: I would prefer to
5 formally rest in front of the jury and then we
6 can do the colloquy, however you want to do it.

7 MR. McANDREW: That's a
8 technicality.

9 THE COURT: That's a technical
10 problem that is of concern to me, otherwise I
11 would do it that way, but I don't know that we
12 can. I just don't know whether we try the
13 jury's patience if we march them out and march
14 them back in just to say we rested.

15 MR. IBRAHIM: Here is my concern.
16 In terms of the record, the jury hear that the
17 government has rested and also that the defense
18 has rested.

19 THE COURT: We can do that before
20 closing, instead of bringing them back.

21 MR. IBRAHIM: Yes, perfect.

22 THE COURT: Why don't we do it
23 that way. If we have a plan, I will excuse the
24 jury and I will engage in the colloquy.

1 (End of side-bar.)

2 THE COURT: Members of the jury,
3 we are now going to send you back to the jury
4 room while we have a great legal debate. All
5 right. And so again, I thank you for your
6 patience. I assure you, it's important work
7 we'll be doing. We will call upon you later.
8 So with that, let's rise in honor of our jury.

9 (Jury leaving the courtroom at
10 9:42 a.m.)

11 THE COURT: All right. Please be
12 seated.

13 Counsel, as previously done in
14 criminal cases, I like to just take a moment,
15 please, and address the defendants as a group.

16 Mr. Matusiewicz, Ms. Matusiewicz
17 and then Ms. Gonzalez. All right. As I'm sure
18 you are aware, each of you has a right to
19 testify, or a right not to testify under the
20 Fifth Amendment and I will of course instruct
21 the jury that exercising that right may not in
22 any way be held against you.

23 You have very capable counsel and
24 I know you have conferred with your lawyers, and

I understand that based upon the recommendations of your counsel, you have decided to exercise your Fifth Amendment right not to testify, and that you have done so voluntarily. All right. And so I put that on the record just to make sure. If I'm incorrect in that, this would be your opportunity to be heard.

All right. And hearing that I am not incorrect, I will take it that you have voluntarily exercised your right, it's just my role as the Judge to make certain that we confirm that. Thank you for your attention.

Counsel, when the jury comes back, I will then have the defense formally rest and the government formally rest, and we will proceed with closing argument. But I understand at this point that there may be motions under Rule 29 that counsel wishes to present. And we may proceed in any order.

MR. IBRAHIM: I'll go first, if that's okay.

THE COURT: All right.

MR. IBRAHIM: Your Honor, pursuant to Federal Rule 29, I would move the Court to

All of the lawyers were trying to decide which one of us should testify and then they decided that none of us should & we followed their recommendation.

1 dismiss the indictment against Amy Gonzalez. I
2 would renew my basis that was presented to the
3 Court pretrial.

4 What I would ask the Court to
5 consider at this point now that evidence has
6 been submitted to trial and in light of recent
7 Supreme Court decisions, when the Court looks at
8 the evidence that has been presented against Amy
9 Gonzalez, it's a hybrid type of evidence. And
10 focusing on initially at the YouTube videos, I
11 would suggest to the Court that the evidence
12 that was presented by the government regarding
13 the YouTube videos, particularly given the basis
14 by which that information was developed, this
15 wasn't a circumstance where Amy Gonzalez
16 conducted this surveillance and prepared a
17 report, it was truly a situation where a lawful
18 licensed investigator conducted an investigation
19 created a video. All that was done by
20 Ms. Gonzalez was that video was posted to
21 YouTube and it was posted in a format that is
22 protected by her free speech.

23 In that document, what was also
24 posted as a polygraph exam, the polygraph exam

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Amy
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1 was in evidence as Exhibit 144. It's a document
2 that is done by a licensed Texas polygrapher.
3 And again, that information was put on there and
4 it was not directed at anyone in particular.

5 Now, one of the things we learned
6 at trial was, in fact, Ms. Belford not only
7 viewed it, but commented on it. And the nature
8 of her comments themselves reflected entirely
9 what YouTube and that posting was designed to
do, open up a debate about a subject matter that
was reflected in my client's position based on
the questions asked of her.

Ms. Belford chose to respond to
that and indeed refuted and made commentary that
with the initials LMAO, which was testified to
by Mr. Solon as to what that meant, that it is
clear that that was a forum protected by the
First Amendment. So to have that evidence go
out to the jury as information would be in
violation, I would suggest to the Court, of what
was presented and protected in *Elonis* in the
sense that that was presented not with any
intent by Ms. Gonzalez to create any kind of
threat or fear or harassment whatsoever. And

Why weren't
harassment or
stalking charges
brought then?
Christine clearly saw
the postings and
commented LMAO.
Is that the
response of someone
in great fear?

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1 subjectively when that was posted, her only
2 purpose was to exercise her First Amendment
3 right.

4 There is additional evidence that
5 is presented in the form of e-mails that are
6 internal e-mails. When I suggest an internal
7 E-mail, an E-mail between my client and other
8 people that are her friends and family. I would
9 suggest to the Court that those private
10 communications are protected by the First
11 Amendment. It's the opportunity for my client
12 to express her feeling amongst individuals close
13 to herself.

14 These were not directed to anyone
15 outside that circular group, and for those
16 reasons, those e-mails do not reflect or cannot
17 convey an objective intent truly, they were
18 subjective, they were personal type e-mails.

19 The last set of information is
20 documents that were sent and published by my
21 client. And largely, Judge, those were greeting
22 cards. It was a rosary.

23 And, for example, you have a
24 situation when Amy Gonzalez contacts, and I'm

not going to try, I'm just going to call her
Mrs. B, the woman who was a CC director at
St. John the Beloved, and she indicates she got
a voicemail, but that was it. There was no
further pursuit by Amy Gonzalez, but what you
did hear and what has been presented in evidence
is there was a thank you card that was sent
ultimately where Ms. Belford, Ms. Belford
accepted the rosary and gave it to her daughter.

So at the end of the day, Judge,
for Rule 29 purposes, the government has a
highbred grouping of evidence that ought to be
parsed, that parts should not go out to the
jury, and to the extent that that evidence
serves as the basis for a Rule 29 or rather the
government's case against Amy Gonzalez as far as
either the conspiracy or the cyber stalking,
which I suggest are really the same, since she
is not charged with the interstate stalking, she
is charged with consistorial acts, based on
those communications and the YouTube that there
is insufficient evidence to be sent to the jury
to put Amy Gonzalez at risk of up to life
imprisonment for the charges she's facing.

Think about it...
people that are
so deathly afraid
& fearful of you,
are they going
to send you a
Thank you card?

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THE COURT: All right. I'll hear from the government.

MR. McANDREW: Thank you, Your Honor.

Your Honor, I begin with a standard under Rule 29, and the standard is one, this is a question of sufficiency of the evidence to go to the jury. And the Court is required to view the evidence in a light most favorable to the government including all reasonable inferences that can be drawn from it.

The real question is whether there is sufficient evidence on each of the elements of crime to proceed to the jury. We are not in the business at this point of weighing the evidence or assessing the credibility of the witnesses.

And the defendant's burden is according to the Third Circuit very heavy, and confined to cases of Rule 29 relief particularly at this stage of the case for the prosecution failure is clear.

The Court has the option here of deferring the motion until after the return of

Why does everything have to be viewed in light most favorable to the government? They don't want to lose.

6

the verdict with no prejudice to the defense because the standard would be to take a snapshot of the evidence as it existed at the close of evidence, actually the close of the government's case as well, and evaluate on that standard.

I'm not going to go through the elements unless Your Honor wants me to of the crimes, but for purposes -- I'll try to cut to the chase.

The interstate elements as I'll call them under both statutes, really aren't in dispute. The fact that there is interstate travel, the fact that there was the use of interstate facilities and interstate commerce.

There is I will submit ample evidence of reasonable fear and substantial emotional stress as a result of the conduct. We heard from Katy Moffa, Laura Matusiewicz, the jury heard the voice of Christine Belford, the e-mails of Christine Belford discussing that fear and emotional distress.

What we're really left with is the criminal intent element. And that is actually the element that takes this case, for present

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According to AUSA Burke in David's sentencing for International Parental Kidnapping in 2009 he states, "The impact that had on Ms. Belford from her statements & in her victim impact statement that she sent to the court through probation, she noted that even to this day & into the future, she will be waiting, wondering whether there will be retaliation from David; will he abduct the girls again?"

I don't want to sound insensitive, but fear is just as contagious as joy. Christine feared David would take the kids away again. If she truly feared David or any of us why didn't she file a PFA (Protection From Abuse) against us, which she was well aware how to do. If she truly felt fearful, harassed or stalked why didn't she have us charged & convicted for doing so?

1 purposes at least, out of the purview of the
 2 First Amendment. And that's because under the
 3 statute, and I'll distinguish *Elonis* in a
 4 minute, we have to specifically address and
 5 prove to the jury and have them find unanimously
 6 that we have satisfied by a reasonable doubt the
 7 standard of showing a criminal intent to do one
 8 of the following things, harass, place under
 9 surveillance with intent to injure, harass, kill
 10 or intimidate, cause substantial emotional
 11 distress, injure or kill, any one of those
 12 suffices. If you just take harassment, because
 13 it's about the lowest level, and if you look at
 14 the record that includes I believe over 600
 15 exhibits at this point, there are numerous
 16 communications between and among the
 17 coconspirators and out to third parties and the
 18 digital public at large.

When
 does
 harassment
 equal
 a LIFE
 sentence?

19 That the jury could find were
 20 published and sent out to a third person for the
 21 purpose of harassing Ms. Belford. Now, the
 22 defense is obviously of the view that it wasn't
 23 for purposes of harassment, that it was just for
 24 purposes of conveying information Mrs. Gonzalez

1 believed should be shared. That's fine, but at
2 this stage of the proceeding there's sufficient
3 evidence from which a jury could conclude in the
4 entire context of the stalking conduct that this
5 was done for purposes of harassment. I'm going
6 to dispense with the litany of all the evidence
7 unless Your Honor really needs me to --

8 THE COURT: I'm familiar with the
9 record, Mr. McAndrew.

10 MR. McANDREW: Very well. But if
11 you go beyond harassment, because this is
12 information for first amendment purposes, we
13 also have surveillance and that's not what we've
14 been referring to as the defamation prong of
15 this case, the dissemination of information to
16 third parties for purposes of intimidating,
17 harassing or causing distress. These are
18 communications that -- to the extent that they
19 are communications, because they are also
20 physical acts designed to spy, to gain
21 information either directly or through third
22 parties about the targets of the surveillance.
23 That we think is clearly beyond the purview. I
24 think there's sufficient evidence for purposes

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1 to go to the jury on that point in terms of
2 criminal intent and certainly beyond the purview
3 of the first amendment.

4 I guess now is a good time to
5 address *Elonis*. It's a different statute
6 completely. It's 875(c). It's the interstate
7 transportation of threat statute. What's
8 missing from *Elonis* is explicit in 2261(a).

9 THE COURT: *Scienter*.

10 MR. McANDREW: Exactly. And what
11 the Supreme Court had to grapple with in the
12 Third Circuit before that was what *Scienter*
13 requirements should apply to the statute. Here
14 we don't have that problem. So if you were to
15 take the arguments in *Elonis* and find for the
16 petitioner on every single one of them, you end
17 up essentially where we are under 2261 with
18 these express *Scienter* requirements to prove
19 intent to do certain things. And all of those
20 things, I want to point out, involve engaging in
21 conduct as opposed to speech, so you have speech
22 that could be integral to conduct that is
23 criminal in nature. You have speech that could
24 be false and defamatory.

1 Of course it's law that the first
2 amendment does not protect false statements. So
3 we think there's sufficient evidence that the
4 statements were false, because we have that from
5 numerous witnesses, we have it from the victims,
6 the inconsistencies we see throughout the
7 documentation of the Defendants themselves about
8 their allegations, all suggest that there's
9 sufficient evidence for that purpose.

10 I would point the Court in a
11 summary fashion to the case law we cite in our
12 trial brief, where we cite specifically to
13 2261(a) case law that includes, on sufficiency
14 challenges, all of this type of evidence as
15 being more than sufficient. And in particular,
16 I'll address the Court's attention to United
17 States versus Lee, which is the new First
18 Circuit case that came down, I think on our
19 first day of testimony, June 12th.

20 THE COURT: It was, yes.

21 MR. McANDREW: Which devotes an
22 entire paragraph to the sufficiency of evidence
23 challenge, but some of the facts there are
24 similar to ours. There were more direct threats

There
were
no
threats
in our
case
ever

than we had in our case; but there's a lot of surveillance, there's interstate travel, there's actually the stopping of the vehicle in route to the house, it looks like, that had a lot of the same materials that we found in the vehicle in this case. The Defendant made an argument that I think Amy Gonzalez makes here, and that is that some of the statements that have been transmitted were really hyperbole, they were statements of belief or just running off at the mouth for lack of a better phrase. And the Court rejected that and said well, that's one construction, but the jury was obviously free to decide otherwise, which they did. So we think the jury should be permitted that option here as well.

THE COURT: I understand the Government's argument. All right. Thank you, counsel.

MR. McANDREW: Thanks.

THE COURT: I agree with Mr. Ibrahim that there are innocent explanations for much of the conduct that the Government has charged. At the same time the Government has

1 put forth a broader context in which there are
 2 lessons and explanations for some of the conduct
 3 in which Mrs. Gonzalez has allegedly engaged.

4 Given the very high standard that
 5 exists for a Rule 29 motion, I'm persuaded that
 6 there is a basis on which a reasonable jury
 7 could infer criminal intent. The first
 8 amendment issue is of significance to the Court.
 9 I addressed it at length in my opinion of March
 10 2015 in which I differentiated those areas of
 11 speech which are protected and those which are
 12 not.

13 As counsel knows, I'm going to
 14 cover that in my charge to the jury. And so to
 15 the extent that the jury concludes that the
 16 accusations are true, then the defense may rely
 17 upon that as a basis for asking for a judgment
 18 of acquittal. But to the extent that the jury
 19 were to conclude the representations are false,
 20 they are per se defamatory to accuse someone of
 21 child abuse, and on that basis, there would be
 22 grounds for taking it outside the umbrella of
 23 the first amendment. But again, we're going to
 24 address those issues that protect the

Would you
 ever take
 a polygraph,
 let alone
 2, if you
 were lying
 + would
 fail it?

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1 Defendants' rights as a matter of charge to the
2 jury.

3 I've studied the Elonis case and
4 it strikes me there is a critical difference
5 between the statute there which the Court found
6 to be deficient and the statute here. And that
7 is here there is indeed a specific requirement
8 of intent in Scierter and that's going to be
9 driven home very clearly in the Court's charge.
10 And in Elonis the Court found that lacking and
11 note that across our juris prudence when that's
12 lacking in the statute the courts have written
13 it in. Here, in fact, the Congress wrote it in.
14 And so I don't find this case suffers from the
15 same defect as Elonis. I'm also struck by the
16 fact that in Elonis the poster of the material
17 in question explicitly said I'm not serious and
18 these are not true allegations and indeed was
19 engaging in what he claimed was parody of the
20 rapper Eminem and whereas here as I understand
21 it there were serious allegations that Ms.
22 Belford was a child abuser that were intended
23 and meant to be true.

24 So for all those basis I find that

1 there's a sufficient record that the Government
2 has established for the case to proceed and on
3 that basis will deny the Rule 29 motion, but
4 without prejudice to renewal of other motions at
5 the appropriate time post trial. We have other
6 motions, I'm sure.

7 MR. EDELIN: I would ask that your
8 record reflect that I am also raising a Rule 29
9 motion. Your Honor has addressed most of my
10 concerns in what you've just recited, but I do
11 want my record protected.

12 THE COURT: Yes, sir. I will
13 treat Mr. Edelin as having made the Rule 29
14 motion and I will incorporate my reasoning and
15 deem it denied. Mr. Bostic.

16 MR. BOSTIC: Yes, Your Honor. As
17 the Court is aware Rule 29 permits a submission
18 at the end of the trial within 14 days and we
19 will submit a written Rule 29 motion at that
20 time.

21 THE COURT: All right. I will
22 then consider that deferred and accept that as
23 proper procedure under Rule 29. All right.
24 Counsel, I believe that brings us back to the

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1 subject of jury instructions, am I correct?

2 If I may, I think we created a
3 cyber record yesterday afternoon, but I better
4 put it on the actual record in terms of
5 different rulings.

6 The Government has asked for two
7 instructions which I'm going to deny. The
8 Government has asked for a consciousness of
9 guilt instruction based upon statements that
10 David Matusiewicz purportedly made to law
11 enforcement while still in the courthouse
12 following the shooting. I'm going to deny that
13 because I believe that if the statements were,
14 in fact, made, and I do find they were placed
15 into evidence on redirect, they could have as
16 well been statements intended to exculpate his
17 father. In denying the instruction, I am not
18 limiting the ability of counsel to argue the
19 point, I'm merely not going to give it the
20 imprimatur of the Court as a separate point of
21 law for the jury to consider.

22 The Government has also asked for
23 a provision that's frequently given in some
24 other circuits that proof may be disjunctive.

I think they are referring to when David said Dad came in + went back out.