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712-T, government, cue this up,
MR. McCALL: 712 and 713 are very
clips, Judge. Again, this is her
emotional impact as it relates to the letters to
the community. The last one dealt I think with,
it was more the effect of Cindy Bender
ultimately, the letter to the family, but this
is specific to in 712 the community, the church
receiving letters, so on and so forth, again the
elements of the defense is substantial emotional
distress, this is what it's about. She's forced
in this position based on the defendants'
conduct to have to protect not only herself but
her children. This is what it's about. She's
expressing that to the therapist, and it's
short.

still
no
harassment
charges
or any
other
charges
filed

THE COURT: Let me hear from the
defense on 712-T.

MR. IBRAHIM: Your Honor, I'm
going to sub in for Ms. Chavar. But if you look
at what's referenced in this particular clip,
this was very much covered by the director of
religious education in terms of her conversation

1 with Ms. Belford. Everything from the
2 background check to how she was teaching there
3 Other parts of it are covered in other areas
4 that have been not only brought out through
5 other evidence, but within some of the other
6 transcripts. So with the understanding that one
7 of the problems I have about all the tapes, and
8 --

9 THE COURT: It's cumulative.

10 MR. IBRAHIM: It's cumulative. I
11 would ask the Court to give a cautionary
12 instruction that every time Ms. Belford uses the
13 word "they", from my reading there are clear, at
14 times she's not referring to Amy Gonzalez based
15 on the time it was occurred. I can't
16 cross-examine her. I understand the Court's
17 previous rules. With respect to this particular
18 transcript it's cumulative because there has
19 been direct testimony about this area. In
20 addition there is a Sixth Amendment issue here
21 that I would suggest excluding it does not
22 unduly burden the government. The brevity of it
23 probably argues in the fact it's so brief it's
24 probably better not to play this one

particularly since the other two provide the
impact and the proof that the government is
seeking.

THE COURT: Let me hear back from
Mr. McCall.

MR. McCALL: Judge, it's not
cumulative at all. What you heard from director
of religious education was an e-mail where she
says something to the effect, Christine Belford,
that is, I don't know what's in store for me.
This is more -- this is her talking about, you
look at the bottom, you know, but for the
children is my main purpose, what would happen
to them --

THE COURT: I will allow 712-T.
And so the government understands, I'm also
going to give a cautionary instruction with
respect to the excerpts and the cautionary
instruction is going to be two things, number
one is that this is something we let in as an
exception to hearsay because it goes to
someone's state of mind and they're not subject
to cross-examination, and the second cautionary
instruction is going to be that this is

1 obviously very emotionally powerful evidence,
2 it's relevant evidence they should hear, but the
3 purpose is not to look at it through sympathetic
4 eyes, but rather consider it for what it is, in
5 terms of an element for the government's case.

6 Now, 714-T. Ms. Chavar.

7 MS. CHAVAR: I don't know if I
8 misplaced them. I'm sure Mr. McCall gave it to
9 me.

10 THE COURT: This one is very
11 short, so why don't you take a quick look. 716
12 is also very short if you want to hand them both
13 to Ms. Chavar.

14 I don't need any explication from
15 the government on 714 or 716, but I will hear
16 from the defense.

17 MS. CHAVAR: Your Honor, just the
18 same objection, that I don't see anything new in
19 714. There are so many e-mails, there is --
20 this is not any particular period of time that
21 wasn't covered by Dr. Richman. There is many
22 e-mails where she complains to her friends, or
23 to people about what they're saying about her.
24 So there is just nothing new in 714.

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THE COURT: I understand.

MS. CHAVAR: And 716, I'll call your Honor's attention to the first line in the last paragraph, and I think that that's prejudicial language.

THE COURT: All right. I understand.

All right. The subject of the cautionary instructions I'm going to give to the jury which will include the fact that this is strictly for state of mind and, in fact, they have to realize that there is no right of cross-examination. And second that they must always distinguish when there is a reference to them as to whom the reference applies to, and then third, that even though this might be emotional evidence, its purpose is not to insight sympathy, but rather to simply communicate what is the relevant element of the offense. Defense at your option I would give that instruction either before or after the playing of the excerpts.

Mr. McCall, is it your intent or whoever is presenting the witness to have that

1 played in its entirety or interspersed with the
2 testimony of the therapist?

3 MR. McCALL: Judge, what we're
4 going to do with the therapist, it is my
5 witness, we're going to take it chronologically
6 as the treatment occurred, as we get to the
7 session, just play them one at a time.

8 THE COURT: Interspersed.

9 MR. McANDREW: Interspersed.

10 THE COURT: All right.

11 MR. IBRAHIM: The only thing I
12 would have now that we're going to play the
13 transcript is Ms. Edgar going to be asked
14 questions now about explaining what was going on
15 concerning the substance of the transcript
16 because obviously playing of the transcripts
17 should be the best evidence and prevent that
18 from now being part of the examination.

19 THE COURT: It's a variation on
20 the cumulative argument which I think is well
21 put.

22 Mr. McCall.

23 MR. McCALL: Judge, the idea was
24 to at least set up what was about to happen,

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1 what was the issue at the therapy session, boom,
2 boom, boom, play.

3 THE COURT: I would do it this
4 way, I believe Mr. Ibrahim is making a good
5 point about the double cumulation if you will,
6 we will rely on you to be a effective navigator,
7 we'll rely on defense counsel to call you if
8 they think you are not.

9 THE COURT: Mr. Edelin.

10 MR. EDELIN: Your Honor, just so
11 the record is clear, that my objection was also
12 lodged, I know the Court asked the specific
13 question of when we preferred you to give the
14 instruction. My suggestion would be both,
15 before and after.

16 THE COURT: Before the first
17 excerpt is played and then I will repeat the
18 instruction after the last excerpt is played. I
19 accept that request.

20 MR. EDELIN: Thank you.

21 THE COURT: If there is nothing
22 further, then I believe we would be ready to
23 proceed. And government, you're clear that
24 709-T is out; right?

1 MR. McCALL: Yes, Your Honor.

2 Thank you.

3 Judge, we're going to bring the
4 witness in, if that's okay.

5 THE COURT: Absolutely.

6 (Jury entered the courtroom).

7 THE COURT: I assure you we have
8 spent the last twenty minutes making evidentiary
9 rulings that will speed us through the afternoon
10 testimony so you were not kept waiting in vein.
11 Hopefully it will eliminate a number of sidebars
12 and we'll be able to move expeditiously.

13 Everyone is getting their warm weather gear on
14 for the chill in the afternoon.

15 You will recall the government had
16 completed its direct examination of the witness
17 and it's now the turn of the defense to
18 cross-examine and you may proceed.

19 CROSS-EXAMINATION

20 BY MR. IBRAHIM:

21 Q. Good afternoon. Ma'am, how are
22 you?

23 A. Fine. Thank you. How are you?

24 Q. My name is Jeremy Gonzalez

him: We haven't met personally; correct?

A. No, we actually have met
personally.

Q. Early on?

A. Yes, we did.

Q. And I also sent you a subpoena.

A. Yes, we did.

Q. So you can ignore that subpoena.

A. I'll have to talk to my lawyer
about that.

Q. I'm going to call you professor.
Is that all right?

A. That's fine.

Q. You have earned that. Professor,
I just have a few questions for you. If I ask
any questions that I'm not articulating the
question that it's clear to you, just let me
know so I can rephrase it. Is that fair?

A. Certainly.

Q. You testified about a number of
documents, petitions that were filed by Amy
Gonzalez. Do you recall that?

A. I do.

Q. And I guess in short order, is it

1 fair to say that those petitions were filed
2 using documents that are placed on the website
3 of the court system?

4 A. That is correct.

5 Q. Is it also fair to say that those
6 are the same documents that are used by lawyers
7 that are filing petitions?

8 A. Some lawyers use the documents
9 that are online, other lawyers use their own
10 pleadings.

11 Q. But I guess based on that
12 response, is it more likely the pro se or folks
13 who are proceeding on their own use those forms?

14 A. Yes, it is.

15 Q. All right. Now, can you give me,
16 because I don't want to misquote, you are with
17 the Department of Justice.

18 A. Yes. In Delaware the Department
19 of Justice represents all of the agencies of
20 state government including the Department of
21 Services for Children, Youths and their
22 Families, and DFS is a division of that
23 department.

24 Q. Understood. If I misstate it, I'm

ing about your department, that's all.

A. My Department of Justice?

Q. Yes, the agencies. Who is your

ent?

A. The Department of Services For
Children, Youth and Their Families.

Q. Right, that's who I'm asking
questions about.

Now, is it correct to say that one
of the petitions that was filed by Amy Gonzalez
that you testified to, and I'll put it up here
on the screen, is Exhibit 352-B; correct?

A. Yes.

Q. Okay. And at the back of that
document, it indicates that that was actually
filed on her behalf by an attorney, Amy Butler?

A. That is correct.

Q. And this document we're looking at
here is a certificate of service. When you file
something, you got to serve the individuals in
this case, Attorney Butler served the two
natural parents of the children; correct?

A. Yes. At the time this was filed,
both parents still held rights.

so basically
we are biological
relatives until
you try to protect
the children
from harm or
get the courts
involved.

1 Q. One of the things I want to ask
2 you about because this is one of the things that
3 it's kind of tricky. Biologically,
4 scientifically, a parent will always be a
biological parent, scientifically, take it
outside the legal realm; correct?

A. For biology purposes, yes.

Q. Right.

For family law purposes, that's a
term of art when you say biological parent in
terms, and correct me if I'm wrong, I'm just
going based upon your direct, that when parental
rights are terminated as to one or in some
situations both parents, then are their
relatives as a matter of law, not biology, don't
have biological rights to children?

13 A. That is correct, because the
14 rights of the relatives flow through a
15 biological parent.
16

17 Q. And my understanding from your
18 responses to the motions filed or the petition
19 filed by Ms. Butler as well as the subsequent
20 petitions filed by Amy Gonzalez on her own,
21 whether it was for guardianship, visitation, and
22
23
24

...sing one, is it temporary guardianship?

A. It was custody, guardianship and permanent guardianship were the three petitions that were filed during the post death of Christine Belford.

Q. Okay. And in each one of those cases, generally is it fair to say that Amy Gonzalez lacked standing for one reason or another?

A. She lacked standing as to custody because custody petitions can only be filed by parents.

Q. Okay.

A. So only parents can hold custody. When it comes to nonparents, whether that's a relative or the state, then they can only hold a type of guardianship. And in Delaware, we have two types of guardianship, guardianship and permanent guardianship. Permanent guardianship has specific statutory factors for who may file those petitions, who may hold permanent guardianship, it's a very limited class.

Q. That's what I want to ask you about before you lose me. That limited class,

1 Professor, is what group of people?

2 A. It is biological relatives,
3 relatives.

4 Q. Hold on there. So at that point,
5 according to not science, but the law, my client
6 was no longer a biological relative?

7 A. Correct, she was no longer a
8 relative.

9 Q. I cut you off.

10 A. Foster parents in certain cases.

11 Q. Understood. Okay.

12 Now, you testified about a
13 Delaware statute, Section 2410(d), that was the
14 one I believe you indicated you were on a
15 committee in terms of the drafting of this
16 particular section?

17 A. I did work in the drafting of
18 that, yes.

19 Q. And when I read it, it didn't
20 stand out to me right away that it seems that
21 when this statute was written, the intention of
22 it was if a child was placed through the
23 services of your office and your client and then
24 someone else was trying to get an opportunity to

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...situation or some interaction with the

A. The underlying basis of that
... was for children who were in the
... Department of Services For Children, Youth and
... their Families care, it was -- the situation
... here was very unusual, and this situation was ~~not~~
... not contemplated when that statute was drafted.

Q. I see. So this was kind of like
... an issue of first impression for you when you
... looked at it that it was being used in any way
... that literally, although it looks like it
... applied, it didn't apply?

A. It wasn't first impression, but I
... knew that it didn't apply.

Q. Okay. I'm just going to put up --
... okay, Exhibit 364. I believe this was shown to
... you on direct, or no?

A. I have seen it before.

Q. All right.

A. I know that was only an hour ago.

Q. It might seem like longer. In any
... case, you have seen it before, if not today, at
... some point when you reviewed the file; correct?

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A. Right.

Q. And when it talks about deficiency, all that is letting the person know is they sent the wrong amount of money; correct?

A. They sent the wrong amount or they sent nothing, yes.

Q. Okay. So then ultimately, the petition keeps going through the process or does the petition get sent back because you didn't send the right amount of money?

A. It depend on the judge and it depends on the circumstances. Sometimes the judges give you this notice and if you don't respond to it, it gets dismissed. Other times they wouldn't set it for a hearing until you correct the deficiency.

Q. Okay. And from your review, ultimately this was a situation where it wasn't dismissed immediately, the payment was allowed to be sent and then the judge ruled on it?

A. There was a petition for custody filed on the 13th that had I think a check for \$80. Then there was a petition for custody filed on I think the 15th. I can't say that I

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... a \$10 check, but a petition for custody
... have been dismissed at any rate because
... person filing the petition wasn't a parent.

Q. And then the last petition you
testified about was one that was filed in May;
correct? Do you remember testifying about that
one?

A. I think that was the petition for
guardianship. Do you have that one?

Q. Yes.

MR. WEEDE: 364, page eight.

Q. This is a portion of Exhibit 364,
page eight. Does that look familiar?

A. It does.

Q. Okay. Let me just -- and the date
it was submitted or at least signed was July
10th, 2013; correct?

A. Correct.

Q. Now, all of these petitions you
responded to, or you provided the answer to the
courts, is that fair to say?

A. Yes.

Q. In each one of these petitions for
standing issues, either Amy was not considered

1 by law a biological parent, or for some other
2 reason dealing with standing the courts agreed
3 with you and dismissed each one of her requests?

4 A. Correct.

5 Q. Now, one of the things I just
6 wanted to run by you, when you reviewed the
7 filing, you testified on direct that you
8 understood that the cards -- well, let me
9 rephrase that.

10 There were cards, multiple cards
11 you received addressed to your agency, not to
12 your agents, to your clients, for the children;
13 correct?

14 A. There were cards that were sent to
15 the childrens department who immediately sent
16 them to me because there was pending litigation,
17 and then there were some cards sent personally
18 to me, they were not admitted into evidence.

19 Q. When you say personally to you,
20 they were greeting cards addressed to Amy's
21 nieces, but they were sent in your care?

22 A. Three or four were sent in my care
23 and then one was directed to me.

24 Q. Okay. Now, here is a document

I would like you to take a look at, and
me if you recognize seeing this item?

MR. IBRAHIM: May I approach, Your
Honor?

THE COURT: Are you showing it to
the government?

MR. IBRAHIM: Yes. Your Honor, I
would just like to mark that for identification
purposes as Defendant Gonzalez Exhibit 7.

BY MR. IBRAHIM:

Q. Professor, after you have had a
chance to review those pages, just lift your
head.

Have you ever seen those documents
before?

A. No.

Q. Okay.

MR. IBRAHIM: May I?

THE COURT: You may.

MR. IBRAHIM: Thank you very much.

I have no further questions, Your Honor.

MR. BOSTIC: May I, Your Honor?

THE COURT: Of course.

BY MR. BOSTIC:

Hawkins Reporting Service
715 North King Street - Wilmington, Delaware 19801
(302) 658-6697 FAX (302) 658-8418

1 Q. Good afternoon, ma'am.

2 A. Good afternoon.

3 Q. I don't think you have met me
4 either, but I could be mistaken. I forget
5 everything. Have we met before?

6 A. We did, briefly.

7 Q. My apologies. My daughters always
8 complain when I start calling them by my pet's
9 names. So bear with me, please.

10 Now, would you agree with me the
11 statute and Family Court law that you discussed
12 earlier with Mr. Weede I believe and Mr. Ibriham
13 Gonzalez, it's fairly complicated stuff?

14 A. Yes, I think it is.

15 Q. And, in fact, people go to law
16 school and specialize in family law; right?

17 A. Yes.

18 Q. For that reason?

19 A. A few, yes.

20 Q. And you are a deputy attorney
21 general; is that right?

22 A. Correct.

23 Q. And, in fact, you have in the past
24 seen documents and petitions filed by pro se

litigants? Now?

A. Yes, I have.

Q. And pro se litigants only means
that the person is operating on their own behalf
without a lawyer?

A. That is correct.

Q. And you're used to getting volumes
and volumes of paper from pro se litigants when
they're litigating, would that be fair to say?

A. At times.

Q. At times. And you have to drill
down really deep to find the one part that makes
sense in the context of the law or the issue
that they're dealing with?

A. At times.

Q. They're not schooled in the law.
Now, you're familiar with the term
nunc pro tunc?

A. Yes.

Q. I'm certain you are, and I don't
mean to ask in a way that means you are not.
Nunc pro tunc, what does that mean in terms of
the law?

A. Back to the beginning.

1 Q. And in this case, would it be fa
2 to say that David Matusiewicz filed in June of
3 2012 petition nunc pro tunc asking the Family
4 ~~*~~ Court to go back to the beginning with respect
5 to determination of parental rights?

6 A. No, he never filed a petition.

7 Q. Would you have seen it if he had?

8 A. Yes, I would have seen it. It
9 would have been served upon me. He wrote a
10 letter, but he never filed a petition.

11 Q. So if I tell you that he did file
12 and, in fact, it was returned to him initially
13 based upon an issue about payment of a \$19
14 filing fee, you would say that I'm incorrect,
15 basically, for what your knowledge is?

16 A. It's never been served on me.

17 Q. I'm talking about with respect to
18 Family Court, because you review the Family
19 Court records; right?

20 A. Yes.

21 Q. Since we have met and I understand
22 why you did this now because my apologies,
23 because I forgot that we had met, I wrote you a
24 letter back on May 4th of this year; am I

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A. No, you have never written a

Q. Let me show you -- did you write a letter on May 7th?

A. No.

Q. Let me approach and show you. And I have one for the Court, if I may. I'm going to forgive you for forgetting this, but I think this is you. Would you take a look at that document, please, and review it to yourself. We have marked this document as Defense Exhibit 900. Do you have it in front of you, ma'am?

A. I do.

Q. And is that letter that you sent to me?

A. No, it is not. This is from Janice Roe Tigani, who is the deputy attorney general under my supervision.

Q. Okay. But your name is on that letter; is that correct?

A. Yes, it is.

MR. BOSTIC: Permission to publish it, Your Honor.

1 THE COURT: Hearing no objection,
2 you may.

3 BY MR. BOSTIC:

4 Q. Ma'am, I want you to read that
5 letter into the record, please?

6 A. Dear Mr. Bostic, Patricia Daily
7 Lewis and I are in receipt of your letter dated
8 May 4, 2015 seeking to interview several
9 employees of the Division of Family Services,
10 Department of Services For Children, Youth and
11 Their Families in the above captioned matter.
12 On behalf of our clients, we decline your
13 request for interviews of Erin Leigh Breitigan,
14 Jean M. Gardner, Robin Lee Hamilton, Laura
15 Miles, Jeffrey Michael Pelly and Jeffrey Noonan.

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

18 THE COURT: Mr. Edelin.

19 MR. EDELIN: Ma'am, you and I have
20 never met?

21 THE WITNESS: No, we have never
22 met.

23 MR. EDELIN: Thank you.

24 THE COURT: Redirect?

MR. WEEDE: Your Honor, briefly.

1
2 May I have one moment to confer with co-counsel?

3
4 THE COURT: If it makes it
5
6 briefefer.

7
8 MR. WEEDE: It will make it much
9
10 briefefer.

11
12 REDIRECT EXAMINATION.

13
14 BY MR. WEEDE:

15
16 Q. Just I think two quick subject
17
18 matters. So, Mr. Gonzalez Ibrahim showed you a
19
20 card, do you remember that?

21
22 A. Yes.

23
24 Q. A photograph of a card. You
25
26 hadn't seen that before; right?

27
28 A. No.

29
30 Q. Did it have a date on it?

31
32 A. I did not see any date but it was
33
34 clearly addressed -- it was clearly addressed,
35
36 the address was to Donegal Court which was where
37
38 the children lived with their mother.

39
40 Q. When you said before that it was
41
42 your understanding from reviewing the Family
43
44 Court record that Ms. Belford did not want Amy
45
46 to have visitation with the children in

I have received from the girls with the return address of Donegal Court ... not a crime

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1 connection with that petition that we saw, what
2 document was that based on with your review?

3 A. She filed an answer to the
4 petition saying she did not want Ms. Gonzalez to
5 have contact.

6 Q. Now, Mr. Bostic mentioned
7 something about a nunc pro tunc petition in
8 connection with the termination of parental
9 rights proceedings with Mr. David Matusiewicz.
10 Do you remember that?

11 A. Yes.

12 Q. You don't recall seeing any actual
13 petition for a nunc pro tunc?

14 A. There has been no petition filed.
15 This was a letter directed to the Office of
16 Child Advocate.

17 Q. Would there have been any basis
18 for a petition nunc pro tunc in that case?

19 A. No, there would not.

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

22 THE COURT: Mr. Ibrahim.

23 RECROSS-EXAMINATION

24 BY MR. IBRAHIM:

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Q. Sorry to keep you. So there is a

motion that was filed by my client?

A. Correct.

Q. There was an answer that was filed

was it filed by your office or by

Belford?

A. No, our office was not involved

Ms. Belford was deceased.

Q. So Ms. Belford files an answer and

judge rules on it, that is the way it works?

A. The judge held that petition in

abeyance until the termination of parental

rights proceeding was concluded.

Q. So essentially what happened was

judge did not rule, the judge looked and

realized that if the TPR, the termination of

parental rights is granted, then by operation of

the law he would deny visitation because Amy would

no longer be at least in the eyes of the law a

biological aunt?

A. Yes, she would have -- and

remember, there was an exhibit that was really

allowing the petitioners to file to give some

reason why, and they did not, so it was

Remember I previously
sent where Attorney
Don Roberts (David's
lawyer for the
Termination of Parental
Rights hearing)
suggested that David's
family could take the
girls to visit Dave in
prison.
After that is when
Christine was
purportedly against
visitation.

1 dismissed.

2 Q. The order to show reason for
3 dismissal?

4 A. Almost like a show cause.

5 Q. And then eventually when parental
6 rights were terminated, the reason why Amy's
7 petition was dismissed was now she didn't have
8 standing?

9 A. Correct.

10 MR. IBRAHIM: Thank you.

11 THE WITNESS: You're welcome.

12 THE COURT: Anything further from
13 the defense?

14 MR. BOSTIC: No, Your Honor.

15 THE COURT: Mr. Weede?

16 MR. WEEDE: No, Your Honor.

17 THE COURT: You may be dismissed.

18 Government, call your next witness.

19 MR. McCALL: Judge, we call Peggy
20 Mitchell.

21 THE COURT: All right. As we do
22 that, ladies and gentlemen of the jury, we'll
23 have our afternoon Latin lesson. Nunc pro tunc
24 means now or then. The reason I say that, my