SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY CRIMINAL TERM PART 71

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THE PEOPLE OF THE STATE OF NEW YORK,

-v-

Ind. No. ~~721/2009~~ 2721-09

RAPHAEL GOLB,

Defendant.

----------x

NOTICE OF APPEAL

To: District Attorney,
New York County

PLEASE TAKE NOTICE, that defendant, Raphael Golb, hereby appeals to the Supreme Court of the State of New York, Appellate Division, First Department, from the judgment of conviction and sentence, duly made and entered on the 18th day of November, 2010, the Hon. Carol Berkman presiding, and from each and every part thereof.

Respectfully submitted,

Ronald L. Kuby
119 West 23rd Street
New York, NY 10011
(212) 529-0233

Dated: New York, NY
November 18, 2010

UNIFORM SENTENCE & COMMITMENT

UCS-854(8/2008)

ATE OF NEW YORK
SUPREME COURT, COUNTY OF NEW YORK
ESENT: HON. CAROL BERKMAN

Court Part: 71
Court Reporter: MAGNICARRI
Superior Ct. Case # : 2721-2009

The People of the State of New York
-vs-
RAPHAEL GOLB
Defendant

01/10/60	6	9	2	2	4	6	6	R								
D.O.B.	NYSID NUMBER								CRIMINAL JUSTICE TRACKING NUMBER							

Accusatory Instrument Charge(s):	Law/Section & Subdivision:
1 IDENTITY THEFT 2	190.79(3)
2 FORGERY 3	170.05
3 CRMINAL IMPERSONATION 2	190.25(1), 190.25(4)
4 AGGRAVATED HARASSMENT 2	250.30(1)(a)

Date(s) of Offense: 07 / 01 / 08
To 12 / 31 / 08

E ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED BY [☐ PLEA OR ☒ VERDICT], THE MOST SERIOUS OFFENSE BEING A
☒ FELONY OR ☐ MISDEMEANOR OR ☐ VIOLATION], IS HEREBY SENTENCED TO:

Crime	Count Number	Law § and Subdivision	SMF, Hate or Terror	Minimum Term	Maximum Term	☒ Definite (select: D, M or Y) ☐ Determinate (in years)**	Post-Release Supervision
)ENTITY THEFT 2	1	190.79(3)		____ years	____ years	6 months	____ years
)ENTITY THEFT 2	2	190.79(3)		____ years	____ years	6 months	____ years
GGRAVATED HARASSMENT 2	3	250.30(1)(a)		____ years	____ years	3 months	____ years
RMINAL IMPERSONATION 2	5	190.25(1)		____ years	____ years	3 months	____ years
RMINAL IMPERSONATION 2	7	190.25(1)		____ years	____ years	3 months	____ years

)TE: For each DETERMINATE SENTENCE imposed, a corresponding period of POST-RELEASE SUPERVISION MUST be indicated [PL § 70.45].

unts ALL shall run CONCURRENTLY with each other ☐ Count(s) ____ shall run CONSECUTIVELY to count(s) ____

ntence imposed herein shall run CONCURRENTLY with 5 YEARS PROBATION & 3 YEARS PROBATION and/or CONSECUTIVELY to ____

nviction includes: WEAPON TYPE: ____ and /or DRUG TYPE: ____

arged as a JUVENILE OFFENDER - age at time crime committed: ____ years ☐ Court certified the Defendant a SEX OFFENDER [Cor. L § 168-d]

ljudicated a YOUTHFUL OFFENDER [CPL §720.20] ☐ Re-sentenced as a PROBATION VIOLATOR [CPL § 410.70]

.ecute as a sentence of PAROLE SUPERVISION [CPL § 410.91] ☐ CASAT ordered [§ 60.04(6)]

; a ☐ second ☐ second violent ☐ second drug ☐ second drug/prior VFO ☐ predicate sex offender
☐ predicate sex offender/prior VFO ☐ second child sexual assault ☐ persistent ☐ persistent violent FELONY OFFENDER

d Not Paid			Paid	Not Paid		
☒	Mandatory Surcharge	$ 300.00	☐	☒	Crime Victim Assistance Fee	$ 25.00
☐	Fine	$ ____	☐	☐	Restitution	$ ____
☒	DNA Fee	$ 50.00	☐	☐	Sex Offender Registration Fee	$ ____
☐	DWI/Other: ____	$ ____	☐	☐	Supplemental Sex Off. Victim Fee	$ ____

E SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE:

NYS Department of Correctional Services (NYSDOCS) until released in accordance with the law, and being a person sixteen (16) years or older presently in the custody of NYSDOCS (the County Sheriff) (New York City Dept. Of Correction) is directed to deliver the defendant to the custody of NYSDOCS as)vided in 7 NYCRR Part 103.

NYSDOCS until released in accordance with the law, and being a person sixteen (16) years or older and is presently in the custody of NYSDOCS.

id defendant shall remain in the custody of the NYSDOCS.

NYS Office of Children and Family Services in accordance with the law being a person less than sixteen (16) years of age at the time the crime was committed.

NYC Department of Corrections, County Jail/Correctional Facility

Commitment, Order of Protection & Pre-Sentence Report received by Correctional Authority as indicated:
Official Name
Shield No.

:O BE HELD UNTIL THE JUDGMENT OF THIS COURT IS SATISFIED.

REMARKS Pg. 1/6

Pre-Sentence Investigation Report Attached: ☒ YES ☐ NO ☐ SHOCK INCARCERATION ordered [PL §60.04(7)]
Order of Protection Issued: ☒ YES ☐ NO ☐ Amended Commitment:
Order of Protection Attached: ☒ YES ☐ NO Original Sentence Date ___/___/___

11 / 18 / 10
Date

Norman Goodman
Clerk of the Court

by P. Rawlee
Signature

Senior Court Clerk
Title

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Motions ~~...~~ 45 days
Aug 10 – Post Bond

THE PEOPLE OF THE STATE OF NEW YORK

-against-

RAPHAEL GOLB,

Defendant.

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendant of the crime of **IDENTITY THEFT IN THE SECOND DEGREE**, in violation of Penal Law §190.79(3), committed as follows:

The defendant, in the County of New York, during the period from on or about July 1, 2008 to on or about December 31, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person and thereby committed and attempted to commit a felony and acted as an accessory to the commission of a felony.

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE SECOND DEGREE**, in violation of Penal Law §190.79(3), committed as follows:

The defendant, in the County of New York, during the period from on or about July 1, 2008 to on or about December 31, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person and thereby committed and attempted to commit a felony and acted as an accessory to the commission of a felony.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **AGGRAVATED HARASSMENT IN THE SECOND DEGREE**, in violation of Penal Law §240.30(1)(a), committed as follows:

The defendant, in the County of New York, during the period from on or about August 1, 2008 to on or about December 31, 2008, with intent to harass, annoy, threaten and alarm Lawrence Schiffman, communicated and caused a communication to be initiated by mechanical and electronic means and otherwise, with Lawrence Schiffman anonymously and otherwise, by telephone, telegraph, mail and any form of written communication, in a manner likely to cause annoyance and alarm.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 3, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 3, 2008, impersonated another, to wit Lawrence Schiffman, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 4, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 4, 2008, impersonated another, to wit Lawrence Schiffman, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about August 4, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, impersonated another, to wit Lawrence Schiffman, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

THIRTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, impersonated another, to wit Lawrence Schiffman, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

FOURTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

FIFTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

SIXTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, impersonated another, to wit Lawrence Schiffman, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

SEVENTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about August 5, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

EIGHTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 6, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Lawrence Schiffman, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

NINETEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 6, 2008, impersonated another, to wit Lawrence Schiffman, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

TWENTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about August 6, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

TWENTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Jonathan Seidel, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

TWENTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(4), committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, impersonated another, to wit, Jonathan Seidel, by communication by internet website and electronic means with intent to obtain a benefit and injure and defraud another, and by such communication pretended to be a public servant in order to induce another to submit to such authority and act in reliance on such pretense.

TWENTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, impersonated another, to wit Jonathan Seidel, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

TWENTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Jonathan Seidel, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

TWENTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, impersonated another, to wit Jonathan Seidel, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

TWENTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(4), committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, impersonated another, to wit, Jonathan Seidel, by communication by internet website and electronic means with intent to obtain a benefit and injure and defraud another, and by such communication pretended to be a public servant in order to induce another to submit to such authority and act in reliance on such pretense.

TWENTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about November 22, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

TWENTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Jonathan Seidel, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

TWENTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, impersonated another, to wit Jonathan Seidel, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

THIRTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(4), committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, impersonated another, to wit, Jonathan Seidel, by communication by internet website and electronic means with intent to obtain a benefit and injure and defraud another, and by such communication pretended to be a public servant in order to induce another to submit to such authority and act in reliance on such pretense.

THIRTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

THIRTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Jonathan Seidel, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

THIRTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, impersonated another, to wit Jonathan Seidel, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

THIRTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(4), committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, impersonated another, to wit, Jonathan Seidel, by communication by internet website and electronic means with intent to obtain a benefit and injure and defraud another, and by such communication pretended to be a public servant in order to induce another to submit to such authority and act in reliance on such pretense.

THIRTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about November 24, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

THIRTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about December 6, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Jonathan Seidel, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

THIRTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about December 6, 2008, impersonated another, to wit, Jonathan Seidel, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

THIRTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(4), committed as follows:

The defendant, in the County of New York, on or about December 6, 2008, impersonated another, to wit, Jonathan Seidel, by communication by internet website and electronic means with intent to obtain a benefit and injure and defraud another, and by such communication pretended to be a public servant in order to induce another to submit to such authority and act in reliance on such pretense.

THIRTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about December 6, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

FORTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **AGGRAVATED HARASSMENT IN THE SECOND DEGREE,** in violation of Penal Law §240.30(1)(a), committed as follows:

The defendant, in the County of New York, during the period from on or about July 1, 2008 to on or about December 31, 2008, with intent to harass, annoy, threaten and alarm Stephen Goranson, communicated and caused a communication to be initiated by mechanical and electronic means and otherwise, with Stephen Goranson anonymously and otherwise, by telephone, telegraph, mail and any form of written communication, in a manner likely to cause annoyance and alarm.

FORTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE,** in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about August 7, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Stephen Goranson, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

FORTY-SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about August 7, 2008, impersonated another, to wit Stephen Goranson, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

FORTY-THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about July 20, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Frank Cross, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

FORTY-FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about July 20, 2008, impersonated another, to wit Frank Cross, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

FORTY-FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE**, in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about July 20, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Frank Cross, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

FORTY-SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about July 20, 2008, impersonated another, to wit Frank Cross, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

FORTY-SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **FORGERY IN THE THIRD DEGREE**, in violation of Penal Law §170.05, committed as follows:

The defendant, in the County of New York, on or about July 20, 2008, with intent to defraud, deceive and injury another, falsely made, completed and altered a written instrument.

FORTY-EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **AGGRAVATED HARASSMENT IN THE SECOND DEGREE,** in violation of Penal Law §240.30(1)(a), committed as follows:

The defendant, in the County of New York, during the period from on or about June 1, 2007 to on or about March 1, 2009, with intent to harass, annoy, threaten and alarm Robert Cargill, communicated and caused a communication to be initiated by mechanical and electronic means and otherwise, with Robert Cargill anonymously and otherwise, by telephone, telegraph, mail and any form of written communication, in a manner likely to cause annoyance and alarm.

FORTY-NINTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **IDENTITY THEFT IN THE THIRD DEGREE,** in violation of Penal Law §190.78(2), committed as follows:

The defendant, in the County of New York, on or about June 15, 2008, knowingly and with intent to defraud assumed the identity of another person, to wit, Jeffrey Gibson, by presenting himself as that other person, and by acting as that other person, and by using personal identifying information of that other person, and thereby committed a class A misdemeanor or higher level crime.

FIFTIETH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **CRIMINAL IMPERSONATION IN THE SECOND DEGREE**, in violation of Penal Law §190.25(1), committed as follows:

The defendant, in the County of New York, on or about June 15, 2008, impersonated another, to wit Jeffrey Gibson, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another.

FIFTY-FIRST COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendant of the crime of **UNAUTHORIZED USE OF A COMPUTER**, in violation of Penal Law §156.05, committed as follows:

The defendant, in the County of New York, during the period from on or about July 1, 2008 to on or about March 1, 2009, knowingly used, caused to be used, and accessed a computer, computer service, and computer network without authorization.

ROBERT M. MORGENTHAU
District Attorney

GJ No.-8, Case No. 857

Filed: CCI 2009NY018004

No.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

RAPHAEL GOLB,

Defendant.

INDICTMENT

IDENTITY THEFT IN THE SECOND DEGREE, P.L. §190.79(3), 2 counts
IDENTITY THEFT IN THE THIRD DEGREE, P.L. §190.78(2), 15 counts
FORGERY IN THE THIRD DEGREE, P.L. §170.05, 10 counts
CRIMINAL IMPERSONATION IN THE SECOND DEGREE, P.L. §190.25(1), 15 counts
CRIMINAL IMPERSONATION IN THE SECOND DEGREE, P.L. §190.25(4), 5 counts
AGGRAVATED HARASSMENT IN THE SECOND DEGREE, P.L. §240.30(1)(a), 3 counts
UNAUTHORIZED USE OF A COMPUTER, P.L. §156.05

ROBERT M. MORGENTHAU, District Attorney
A True Bill

John Bandler
Trial Bureau 70, Identity Theft Unit

Foreman

ADJOURNED TO PART F ON 6/11/2009

Count #	DATE	CHARGE	SUMMARY
1	7/1/2008 - 12/31/2008	PL 190.79(3). Identity theft in the second degree	Assumed identity of Lawrence Schiffman and committed/attempted to commit felony of Scheme to Defraud 1st Degree.
2	7/1/2008 - 12/31/2008	PL 190.79(3). Identity theft in the second degree	Assumed identity of Lawrence Schiffman and commited/attempted to commit felony of Falsifying Business Records 1st Degree
3	8/1/2008- 12/31/2008	PL 240.30(1)(a) Aggravated harassment in the second degree	Aggravated harassment of Dr. Lawrence Shiffman
4	8/3/2008	PL 190.78(2) Identity theft in the third degree	Created larry.schiffman@gmail.com email account
5	8/3/2008	PL 190.25(1) Criminal impersonation in the second degree	Created larry.schiffman@gmail.com email account
6	8/4/2008	PL 190.78(2) Identity theft in the third degree	Sent email from larry.schiffman@gmail.com to Dr. Schiffman's students.
7	8/4/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from larry.schiffman@gmail.com to Dr. Schiffman's students.
8	8/4/2008	PL 170.05. Forgery in the third degree	Sent email from larry.schiffman@gmail.com to Dr. Schiffman's students.
9	8/5/2008	PL 190.78(2) Identity theft in the third degree	Sent email from larry.schiffman@gmail.com to multiple NYU email addresses
10	8/5/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from larry.schiffman@gmail.com to multiple NYU email addresses
11	8/5/2008	PL 170.05. Forgery in the third degree	Sent email from larry.schiffman@gmail.com to multiple NYU email addresses
12	8/5/2008	PL 190.78(2) Identity theft in the third degree	Sent email from larry.schiffman@gmail.com to NYU Dean Stimpson
13	8/5/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from larry.schiffman@gmail.com to NYU Dean Stimpson
14	8/5/2008	PL 170.05. Forgery in the third degree	Sent email from larry.schiffman@gmail.com to NYU Dean Stimpson
15	8/5/2008	PL 190.78(2) Identity theft in the third degree	Sent email from larry.schiffman@gmail.com to NYU provost
16	8/5/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from larry.schiffman@gmail.com to NYU provost
17	8/5/2008	PL 170.05. Forgery in the third degree	Sent email from larry.schiffman@gmail.com to NYU provost
18	8/6/2008	PL 190.78(2) Identity theft in the third degree	Sent email from larry.schiffman@gmail.com to NYUNews.com, forwarding email from Provost office.

Count #	DATE	CHARGE	SUMMARY
19	8/6/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from larry.schiffman@gmail.com to NYUNews.com, forwarding email from Provost office.
20	8/6/2008	PL 170.05. Forgery in the third degree	Sent email from larry.schiffman@gmail.com to NYUNews.com, forwarding email from Provost office.
21	11/22/2008	PL 190.78(2) Identity theft in the third degree	Created email account seidel.jonathan@gmail.com
22	11/22/2008	PL 190.25(4) Criminal impersonation in the second degree	Created email account seidel.jonathan@gmail.com
23	11/22/2008	PL 190.25(1) Criminal impersonation in the second degree	Created email account seidel.jonathan@gmail.com
24	11/22/2008	PL 190.78(2) Identity theft in the third degree	Sent email from seidel.jonathan@gmail.com to Royal Ontario Museum (ROM)
25	11/22/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com to Royal Ontario Museum (ROM)
26	11/22/2008	PL 190.25(4) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com to Royal Ontario Museum (ROM)
27	11/22/2008	PL 170.05. Forgery in the third degree	Sent email from seidel.jonathan@gmail.com to Royal Ontario Museum (ROM)
28	11/24/2008	PL 190.78(2) Identity theft in the third degree	Sent email from seidel.jonathan@gmail.com to Risa Kohn (ROM's curator for Dead Sea Scrolls exhibit)
29	11/24/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com to Risa Kohn (ROM's curator for Dead Sea Scrolls exhibit)
30	11/24/2008	PL 190.25(4) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com to Risa Kohn (ROM's curator for Dead Sea Scrolls exhibit)
31	11/24/2008	PL 170.05. Forgery in the third degree	Sent email from seidel.jonathan@gmail.com to Risa Kohn (ROM's curator for Dead Sea Scrolls exhibit)
32	11/24/2008	PL 190.78(2) Identity theft in the third degree	Sent email from seidel.jonathan@gmail.com regarding Norman Golb
33	11/24/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com regarding Norman Golb
34	11/24/2008	PL 190.25(4) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com regarding Norman Golb
35	11/24/2008	PL 170.05. Forgery in the third degree	Sent email from seidel.jonathan@gmail.com regarding Norman Golb
36	12/6/2008	PL 190.78(2) Identity theft in the third degree	Sent email from seidel.jonathan@gmail.com regarding Stephen Goranson internet post
37	12/6/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com regarding Stephen Goranson internet post

Count #	DATE	CHARGE	SUMMARY
38	12/6/2008	PL 190.25(4) Criminal impersonation in the second degree	Sent email from seidel.jonathan@gmail.com regarding Stephen Goranson internet post
39	12/6/2008	PL 170.05. Forgery in the third degree	Sent email from seidel.jonathan@gmail.com regarding Stephen Goranson internet post
40	7/1/2008 - 12/31/2008	PL 240.30(1)(a) Aggravated harassment in the second degree	Aggravated Harassment of Stephen Goranson
41	8/7/2008	PL 190.78(2) Identity theft in the third degree	Created email account steve.goranson@gmail.com
42	8/7/2008	PL 190.25(1) Criminal impersonation in the second degree	Created email account steve.goranson@gmail.com
43	7/20/2008	PL 190.78(2) Identity theft in the third degree	Created email account frank.cross2@gmail.com
44	7/20/2008	PL 190.25(1) Criminal impersonation in the second degree	Created email account frank.cross2@gmail.com
45	7/20/2008	PL 190.78(2) Identity theft in the third degree	Sent email from frank.cross2@gmail.com regarding Bart Ehrman and the Jewish Museum
46	7/20/2008	PL 190.25(1) Criminal impersonation in the second degree	Sent email from frank.cross2@gmail.com regarding Bart Ehrman and the Jewish Museum
47	7/20/2008	PL 170.05. Forgery in the third degree	Sent email from frank.cross2@gmail.com regarding Bart Ehrman and the Jewish Museum
48	6/1/2007 - 3/1/2009	PL 240.30(1)(a) Aggravated harassment in the second degree	Aggravated harassment of Robert Cargill
49	6/15/2008	PL 190.78(2) Identity theft in the third degree	Created email account gibson.jeffrey2@gmail.com
50	6/15/2008	PL 190.25(1) Criminal impersonation in the second degree	Created email account gibson.jeffrey2@gmail.com
51	7/1/2008 - 3/1/2009	PL 156.05 Unauthorized use of a Computer	Unauthorized use of NYU computers to commit criminal offenses and otherwise in violation of NYU computer use policy

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

RAPHAEL GOLB,

Defendant.

1. **IDENTITY THEFT IN THE SECOND DEGREE** (July 1, 2008 to on or about December 31, 2008, Lawrence Schiffman, Scheme to Defraud)
2. **IDENTITY THEFT IN THE SECOND DEGREE** (July 1, 2008 to on or about December 31, 2008, Lawrence Schiffman, Falsifying Business Records)
3. **AGGRAVATED HARASSMENT IN THE SECOND DEGREE** (August 1, 2008 to on or about December 31, 2008, Lawrence Schiffman).
5. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 3, 2008, Lawrence Schiffman).
7. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 4, 2008, Lawrence Schiffman).
8. **FORGERY IN THE THIRD DEGREE** (August 4, 2008).
10. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 5, 2008, Lawrence Schiffman).
11. **FORGERY IN THE THIRD DEGREE** (August 5, 2008).
13. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 5, 2008, Lawrence Schiffman).
14. **FORGERY IN THE THIRD DEGREE** (August 5, 2008).
16. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 5, 2008, Lawrence Schiffman)
17. **FORGERY IN THE THIRD DEGREE** (August 5, 2008).
19. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 6, 2008, Lawrence Schiffman).
20. **FORGERY IN THE THIRD DEGREE** (August 6, 2008).
23. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (November 22, 2008, Jonathan Seidel).
25. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (November 22, 2008, Jonathan Seidel).
27. **FORGERY IN THE THIRD DEGREE** (November 22, 2008).
29. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (November 24, 2008, Jonathan Seidel).
31. **FORGERY IN THE THIRD DEGREE** (November 24, 2008).
33. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (November 24, 2008, Jonathan Seidel).
35. **FORGERY IN THE THIRD DEGREE** (November 24, 2008).
37. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (December 6, 2008, Jonathan Seidel).

39. **FORGERY IN THE THIRD DEGREE** (December 6, 2008).
40. **AGGRAVATED HARASSMENT IN THE SECOND DEGREE** (July 1, 2008 to on or about December 31, 2008, Stephen Goranson).
42. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (August 7, 2008, Stephen Goranson).
44. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (July 20, 2008, Frank Cross).
46. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (July 20, 2008, Frank Cross).
47. **FORGERY IN THE THIRD DEGREE** (July 20, 2008).
48. **AGGRAVATED HARASSMENT IN THE SECOND DEGREE** (June 1, 2007 to on or about March 1, 2009, Robert Cargill).
50. **CRIMINAL IMPERSONATION IN THE SECOND DEGREE** (June 15, 2008, Jeffrey Gibson).
51. **UNAUTHORIZED USE OF A COMPUTER** (July 1, 2008 to on or about March 1, 2009).

SUPREME COURT OF THE STATE OF NEW YORK
PART 71

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THE PEOPLE OF THE STATE OF NEW YORK,

-v-

RAPHAEL GOLB,

Defendant.

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MOTION FOR A TRIAL ORDER OF DISMISSAL, PURSUANT TO N.Y. PENAL L. §290.10, DISMISSING ALL COUNTS OF THE INDICTMENT

To: ADA John Bandler

SIR:

Please take notice that upon the annexed Affirmation of Ronald L. Kuby, duly affirmed on the 26th day of September, 2010, the trial record, and all proceedings prior to trial, the undersigned moves this Court, on September 27, 2010, for a trial order of dismissal as to all counts, for the reasons set forth herein.

Respectfully submitted,

Ronald L. Kuby
Law Office of Ronald L. Kuby
119 West 23rd Street, Suite 900
New York, NY 10011
(212) 529-0644
(212) 529-0644 (fax)

David Breitbart, Esq.
The Law Offices of David Breitbart
470 Park Avenue South, 10th fl. north
New York, NY 10016

Dated: New York, NY
September 26, 2010

SUPREME COURT OF THE STATE OF NEW YORK
PART 71

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THE PEOPLE OF THE STATE OF NEW YORK,

-v-

RAPHAEL GOLB,

Defendant.

----------x

AFFIRMATION IN SUPPORT OF MOTION FOR A TRIAL ORDER OF DISMISSAL, PURSUANT TO N.Y. PENAL L. §290.10.

RONALD L. KUBY, an attorney duly admitted to practice as such in the Courts of the State of New York, hereby affirms, under the pains and penalties of perjury, as follows:

1. I am one of the attorneys for Raphael Golb, defendant herein, and I make this Affirmation in support of his motion for a trial order of dismissal, pursuant to N.Y. Penal L. §290.10.

2. In accordance with the Court's recommendation that the motion be brief, I will not repeat, at length, the arguments and factual assertions made in support of pre-trial motions to dismiss. I do, however, incorporate them herein as if set forth fully. More specifically, I incorporate Defendant's

Motion to Dismiss Counts 1, 2, 4-39, 41-47, 49 & 50, dated November 3, 2009 and the Memorandum of Law in support thereof; Defendant's Notice of Motion to Dismiss Counts 3, 40, 48 and 51, dated December 2, 2009 and the Memorandum of Law in support thereof; and Defendant's Reply Memorandum, dated January 26, 2010. The Court previously held that it was "virtually impossible—and legally unnecessary—for this court to address all of the myriad of arguments raised by the defense at this point...." Opinion and Order, February 11, 2010. At this juncture, the prosecution's proof has been submitted and the matters are ripe for adjudication.

ARGUMENTS COMMON TO ALL COUNTS EXCEPT COUNT 51

Attempting to influence an academic debate is not a legally cognizable fraud, benefit or injury.

Attempting to injure the reputation of an academic opponent is not a legally cognizable fraud or injury.

The First Amendment to the Constitution of the United States, and the Constitution of the State of New York, and Article I, Section 8 of the Constitution of the State of New York prevent criminalization of the speech engaged in by defendant, and the statutes under which defendant has been prosecuted have never been, and cannot be, extended to reach such speech.

The People's application of the relevant statutes to defendant's conduct renders the statutes void for vagueness under the Fourteenth Amendment to the Constitution of the State of New York.

The People's application of the relevant statutes to defendant's conduct renders them overbroad under both the First Amendments to the United states Constitution and the Constitution of the State of New York, and the Fourteenth Amendment to the Constitution of the United States.

Defendant's speech may be deemed, at worst, abusive and derisive and provocative, but it falls far short of actionable threats. It created no clear and present danger of some serious, substantive evil, and may not be criminalized consistent with the freedom of speech guarantees of the Constitutions of the United States and the State of New York.

Additional infirmities, in law and in proof, are addressed below.

DISMISSAL OF COUNT 1

Count One, alleging Identity Theft in the Second Degree, has been charged with the object felony being Scheme to defraud in The First Degree. The People stated that the underlying object was the intentional attempt to have the Jewish Museum cancel the scheduled lecture of Lawrence Schiffman and to replace him with Professor Norman Golb, and to obtain

property in excess of $1,000.00.[1]

Based upon the evidence adduced at trial, no rational juror could conclude that Raphael Golb intended to have Dr. Schiffman's lecture cancelled. None of the e-mails or blogs introduced at trial call for Dr. Schiffman's lecture to be cancelled. Dr. Susan Braunstein, who was responsible for the exhibit at the Jewish Museum, testified that she was never asked by anyone, anonymously or otherwise, to cancel Dr. Schiffman's lecture. Indeed, when she personally spoke to the defendant, he did not state, suggest, or intimate that Dr. Schiffman should not speak. Dr. Braunstein further testified that she was aware of the plagiarism allegations against Dr. Schiffman since 1995, and such allegations did not negatively influence her decision to invite him. She further testified that the exhibition was not a debate on the origin of the Scrolls, but rather, on other issues raised by the Scrolls.

In addition, based upon the evidence adduced at trial, no rational juror

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[1] The First Amendment/overbreadth-as-applied argument as to this Count has not been previously made in its entirety. Simply stated, even if the defendant had the requisite intent, the methods he used—calling Dr. Schiffman a plagiarist, are constitutionally protected. This is not to say that the People *could not* criminalize intending to attempt to get a lecture cancelled. For example, had the defendant accessed Dr. Schiffman's personal information and used it to impersonate Dr. Schiffman to cancel the airline flight, there is no doubt that such speech could be criminalized. But that is far different from calling Dr. Schiffman nasty names.

could conclude that Raphael Golb intended to obtain $1,000.00 or more. Even if one were to accept the premise that Raphael Golb was the unseen hand behind Dr. Freidenberg's request to have Norman Golb provide a third lecture at the Jewish Musuem, this involved no deception or false e-mail addresses. Alternatively, even if a jury could conclude that Raphael Golb used some deceptive means to try and promote his father as a speaker at the Jewish Museum, there is no proof that in so doing, he attempted to obtain property in excess of $1,000.00. There is no evidence that defendant knew that an honorarium would be paid at all. Dr. Schiffman's honorarium was $650.00. There is no basis to conclude that, had Dr. Golb been invited to speak, Dr. Golb would have received $1,000.00 or more. The People's argument that "common sense" dictates that the $650.00 would be augmented by plane fare, hotel, and meals, thereby reaching the magic $1,000.00 figure, is utter guesswork. Would Dr. Golb have flown in from Chicago or taken the train? Would he have been in town anyway, visiting his son? Would he have stayed at a hotel, or stayed with his son or colleagues? Would he have taken taxis or the subway or be driven by friends? Would he have dined expensively, frugally, or been treated by his colleagues and/or son? No point in going on. The People have simply reached too far and the evidence cannot support such a span.

MOTION TO DISMISS COUNT 2

Count Two charges identity theft in the second Degree, with Falsifying Business Records in the First Degree as the object felony. According to the People, defendant's underlying object was to "generate an inquiry based upon false premises."[2]

The People have yet to set forth the "premises" they allege to be "false." If the People intend to assert that the "false premises" are the allegations that Dr. Schiffman was a plagiarist, they cannot do so. This Court has ruled that the truth of the allegations is irrelevant, and has precluded efforts by the defense to prove the truth of the allegations. The People cannot be permitted to base their proof on the allegation that the accusations against Dr. Schiffman are false, while precluding the defense from proving they are true.

If the People maintain that the "false premises" are e-mails in the name of Larry.Schiffman@gmail.com that made a false "self-confession" of plagiarism, this too requires dismissal of the charges. As demonstrated at trial, an "inquiry" into plagiarism is "generated" whenever a complaint of

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[2] This differs from the Court's far clearer, and frankly, far cleverer, characterization of the People's theory in the Court's proposed (or suggested) Jury Instructions, at page 16.

such is made, no matter by whom and no matter whether it is done anonymously, by pseudonym[3], or by any other means. It is the allegation, not then sender, that generates the inquiry. This has been proved through Dean Foley, Dean Stimpson, and in the NYU documents introduced at trial by the People. There is no "nexus" between the sender of the allegation and the fact that an inquiry is generated by the allegation. Therefore, the evidence on this Count is insufficient as a matter of law.

Next, the evidence is insufficient as a matter of law to prove that defendant made, or attempted to make, a "false entry in the business records of an enterprise," at least as that term applies to the Larry.Schiffman@gmail.com e-mails, and the appended articles linked to said e-mails.

As demonstrated by the testimony of the Google Legal Compliance officer, Google request for a "name" to open a gmail account does not require the account opener's actual name. Using a different name from the sender's own name is not falsifying a business record of Google. The same is true of the evidence adduced regarding the Blogger articles authored by pseudonyms.

The e-mail address Larry.Schiffman@gmail.com likewise is not a

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[3] For purposes of this motion, I use the term "pseudonym" to denotes names allegedly used by the defendant that are not charged as criminal impersonation; e.g., Peter Kaufmann.

"business record" of New York University, as opposed to an address that ended in "NYU.edu".

DISMISSAL OF COUNTS 5, 7, 8, 10, 11, 13, 14, 16, 17, 19, 20

The evidence adduced for these counts fail to prove that the defendant intended to defraud, or to commit a legally-recognized deception, or injury, or to receive a legally-cognizable benefit. See, Defendant's November 3, 2009 Memorandum and January 26, 2010 Memorandum.

DISMISSAL OF COUNTS 22, 23, 25, 26, 27, 29, 31, 33, 34, 35, 37, 38, 39,

The People have yet to articulate their theory of what fraud, benefit, or injury the defendant was intending to inflict or obtain through these e-mails, although the defense has been asking for over a year. Whatever it may be, the evidence adduced for these counts fail to prove that the defendant intended to defraud, or to commit a legally-recognized deception, or injury, or receive a legally-cognizable benefit. See, Defendant's November 3, 2009 Memorandum and January 26, 2010 Memorandum.

DUPLICATIVE COUNTS: JURY CONFUSION AND DOUBLE JEOPARDY

This Court earlier dismissed Count 30, alleging a violation of N.Y.Penal L. §190.25(4), because it criminalized precisely the same conduct as Count 29, which charged a violation of N.Y. Penal L. §190.25(1). The same infirmity is present with respect to Counts 22 and 23, Counts 25 and 26, Counts 33 and 34, and Counts 37 and 38. Whether based upon Double Jeopardy, or preventing jury confusion, Counts 22, 26, 34, and 38, all of which charge under subsection (4), should be dismissed.

DISMISSAL OF COUNT 42

Count 42 alleges a violation of N.Y. Penal L. §190.25(1) based solely upon defendant's creation of a gmail account in the name Stephen.Goranson@gmail.com. This evidence is insufficient as a matter of law because the simple act of opening an gmail account under the name of another person is not "impersonating another", nor is it "doing an act in such assumed character. . . . " both of which are required. Even if this Court were to find that the act of opening the account was impersonation, the completed offense still requires doing something in the assumed character with the requisite intent. Here, nothing else was done.

DISMISSAL OF COUNTS 44, 46, 47

Count 44 charges a violation of N.Y. Penal L. §190.25(1) for opening a gmail account in the name frank.cross.2@gmail.com and Counts 46 and 47 charge criminal impersonation and forgery for codnuct described as "sent an e-mail from frank.cross2@gmail.com regarding Bart Ehrman and the Jewish Museum."

The People have yet to articulate their theory of what fraud, benefit, or injury the defendant was intending to inflict or obtain through these e-mails, although the defense has been asking for over a year. Whatever it may be, the evidence adduced for these counts fail to prove that the defendant intended to defraud, or to commit a legally-recognized deception, or injury, or receive a legally-cognizable benefit. See, Defendant's November 3, 2009 Memorandum and January 26, 2010 Memorandum.

In addition, there is no actual person identified as "Frank Cross2". There is a Frank Moore Cross, who is not identified as (and is not), Frank Moore the Second. The dissimilarity in the e-mail address makes the evidence insufficient, as a matter of law, to convict the defendant for these acts.

DISMISSAL OF COUNT 50

Count 50 alleges a violation of N.Y. Penal L. §190.25(1) based solely upon defendant's creation of a gmail account in the name Gibson.Jeffrey2@gmail.com. This simple act of opening an gmail account under the name of another person is not "impersonating another", nor is it "doing an act in such assumed character. . . . " both of which are required. Even if this Court were to find that the act of opening the account was impersonation, the completed offense still requires doing something in the assumed character with the requisite intent. Here, nothing else was alleged.

In addition, there is no actual person identified as "Gibson.Jeffrey2." There is a Jeffrey B. Gibson, who testified in this case. But he is not Jeffrey2 Gibson, or Jeffrey the II Gibson. The difference in the e-mail address compared with the name of the actual person renders the evidence insufficient as a matter of law to convict the defendant for these acts.

DISMISSAL OF COUNTS 3, 40, 48: AGGRAVATED HARASSMENT

Counts 3, 40, and 48 charge the misdemeanor of aggravated harassment as against Lawrence Schiffman, Stephen Goranson, and Robert Cargill, respectively. As noted more fully in the Memoranda of Law incorporated by reference herein, the communications at issue are protected

by the First Amendment and the statute, as applied, is both vague and over-broad. The evidence is insufficient to sustain a conviction, as the communications were merely criticisms and commentary.

"No danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is an opportunity for full discussion ... Only an emergency can justify repression. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence." Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). "Speech is often provocative and challenging .... [But it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest"; only "fighting words" that, "*by their very utterance, inflict injury or tend to incite an immediate breach of the peace" are punishable.* City of Houston v. Hill, 482 U.S. 451, 461-62 (1987), quoting Lewis v. City of New Orleans, 415 U.S. 130, 132 (1974) (internal quotes omitted). As a matter of law, the communications sent cannot constitute a crime as they are fully protected by the First Amendment. See, e.g., People v. Smith, 89 Misc.2d 789 (App. Term, 2d

Dept. 1977); People v. Dietze, 75 N.Y.2d 47 (1989).

In addition, Courts have held that the statute, at least to the extent that it criminalizes conduct that is meant to annoy or alarm, and/or is likely to annoy and alarm, is unconstitutionally vague, People v. Dupont, 107 A.D.2d 247 (1st Dept. 1985), and overbroad. People v. Dietze, 75 N.Y.2d 47 (1989).

Lastly, aggravated harassment almost requires that the actionable communications be sent to the alleged victim, People v. Dupont, 107 A.D.2d 247 (1st Dept. 1985);[4] People v. Martinez, 19 Misc.3d 1104(A) (Crim. Ct., New York County 2008) ("the allegations must establish that the defendant communicated with the complainant"). It is true that in "the last few years there have been a handful of 'oddball' cases where, under peculiar circumstances, communications made to some one other than the victim may nevertheless be sufficient . . . . [Kochanowski and other citations omitted] But the general rule still holds true; it is simply not a crime merely to speak or write bad things about another person." People v. Bethea, 1 Misc.3d 909A; 781 N.Y.S.2d 626 (Bronx Crim Ct. 2004). The highly limited exceptions carved out in the cases cited in Bethea refer to conduct that

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[4] Movant recognizes that this Court has previously held that this portion of DuPont is *dicta*. Movant respectfully disagrees, as the vagueness and overbreadth issues were also tied to the fact that communications sent to others besides the "target" could be, and were, made criminal.

threatened to kill a third party. or conduct that "post[ed an] internet message importuning others to harass complainant," id., my making an obscene proposal. The suggestion made by this Court, that a message that is intended to have "specific others communicate with the victim" can constitute a basis for aggravated harassment goes beyond the small steps taken by the handful of "oddball" cases. At the very least, the People would have to prove that these intended communications by others would be harassing, e.g., an internet posting that falsely stated Dr. Schiffman was a child molester, and publishing his phone number and contact information urging the viewer to call Dr. Schiffman and tell him what you think should happen to child molesters would probably qualify, as the communications generated would themselves constitute actionable fighting words, and the indirect communication itself should the requisite intent. But the evidence is insufficient to show this, as a matter of law.[5]

DISMISSAL OF COUNT 51: UNAUTHORIZED USE OF A COMPUTER

Count 51 alleges a single violation of N.Y. Penal Law § 156.05 which provides that "A person is guilty of unauthorized use of a computer when he

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[5] No emails were sent to Goranson or Cargill. The only e-mails sent to Schiffman were polite suggestions that he answer his critics. This simply cannot be a crime.

or she knowingly uses, causes to be used, or accesses a computer, computer service, or computer network without authorization." N.Y. Penal Law §156.05. It is not disputed that, as an NYU alumnus, Raphael Golb was "authorized" to "use" or "access" a computer at Bobst Library. The People's theory of this offense is that defendant used the computer in violation of NYU's terms of service agreement by committing crimes on the NYU computer.

As noted in the December 2, 2009 Motion papers and Memorandum of Law, and in the January 26, 2010 Reply Memorandum of Law, there are two infirmities with this theory that mandate acquittal.

The People's theory is that the defendant, by using NYU computers to allegedly violate the law, violated NYU's policy against using computers to violate the law, and hence, acted in excess of his authorization and hence, can be criminalized under §156.05.

Knowingly violating an Internet Service Provider's terms of service (TOS) (which is directly analogous to NYU's policy) does not constitute "accessing a computer without authorization or in excess of authorization" United States v. Drew, 259 FRD 449, 2009 WL 2872855 (C.D. Cal. 2009).

The Drew court held that the federal statute (a direct analogue to §156.05) was void for vagueness because it failed to provide actual notice

as to what was prohibited and did not contain minimal guidelines to govern law enforcement. Id. at 464. The Drew Court held that ordinary people would not consider the breach of a TOS to be a contractual violation resulting in civil, but not criminal, penalties. That reasoning is particularly applicable here, as the evidence at trial established that only one subsection of NYU's computer policy warned about possible criminal penalties for violations, while the penalty subsection (H) provided only institutional punishments for violating the subsections that that defendant allegedly violated.

Thus, the issue is not whether defendant was on notice that committing a crime with a computer was a crime—by its own terms, one knows that committing a crime is a crime. The issue is whether defendant had any notice that committing a crime with an NYU computer is an *additional* crime by virtue of using an NYU computer. As in Drew, he did not.

The Drew court also found that, given the wide range of conduct prohibited by the MySpace TOS (which as with the NYU Code requires "civility"), it was unclear which violations would result in acting in "excess of authorization" and which would not. 259 FRD at 464-465. To the extent that the answer was "all of them," the Drew court noted that the law would

be "incredibly overbroad and contravene the second prong of the void-for-vagueness doctrine as to setting guidelines to govern law enforcement." Id. at 465. As the Drew Court noted, in language that should be applied here:

> In sum, if any conscious breach of a website's terms of service is held to be sufficient by itself to constitute intentionally accessing a computer without authorization or in excess of authorization, the result will be that [the statute] becomes a law "that affords too much discretion to the police and too little notice to citizens who wish to use the [Internet]."

Drew, 259 FRD at 467, quoting City of Chicago v. Morales, 527 U.S. 41, 64 (1999).

WHEREFORE, it is respectfully requested that all counts in the indictment be dismissed.

Ronald L. Kuby

Dated: New York, NY
September 26, 2010

DEFENDANT'S REQUEST TO CHARGE #1: INJURY

A. The intended injury that the People must prove is not limited to financial injury. However, not all injuries are the subject of the criminal law.

1. Intending to another's reputation by disseminating falsehoods is not the type of harm that the criminal law recognizes. That type of injury may be redressed in the civil courts.

See, e.g., Ashton v. Kentucky, 384 U.S. 195 (1966); Figari v. New York Telephone Co., 32 A.D.2d 434, 446 (2d Dept. 1969). See also, Defendant's Nov. 3, 2009 Memorandum of Law, pp. 33-44.

2. Similarly, the injury intended must go beyond intending to have another spend time responding to accusations or criticisms. A defamation does not become criminal simply because the alleged injured party spends time responding to, or countering, what he or she believes to be falsehoods.

Self-evident conclusion based upon #1.

3. Similarly, intending to abuse, deride, provoke, with the use of words, even vulgar words, is not the type of harm that the criminal law recognizes.

See, People v. Dietze, 75 N.Y.2d 47 (1989)("Speech is often abusive—even vulgar, derisive, and provocative—and yet is still protected under the State and Federal constitutional guarantees of free expression unless it is much more than that. . . .)

DEFENDANT'S REQUEST TO CHARGE #2: BENEFIT

A. The intended benefit that the People must prove is likewise not limited to financial gain. Similarly, not all benefits are the subject of the criminal law. The fact that a defendant may gain emotional pleasure from harming another's reputation, from informing the public or the academic community of perceived wrongdoing, from provoking debate, from getting another to respond to criticisms, and/or from irritating another is not the type of benefit that the criminal law recognizes.

Self-evident mirror-image of the previous propositions. If intending to do these things cannot be a legally-recognized harm, then the fact that one enjoys doing them cannot be a legally-recognized benefit.

DEFENDANT'S REQUEST TO CHARGE #3 DEFRAUD

A. Intent to defraud means an intention to deceive another person, and induce such person, in reliance on the deception, to assume, create, transfer, alter or terminate a right, obligation, or power.

Black's Law Dictionary, 6th ed. 1990, cited with approval, Donnino Commentary, §170.05, McKinney's, (2010), pages 408-409. "Intent to defraud" is not defined in the Penal Law.

1. As with the terms "benefit" and "injury," the intended deception need not be financial. And, as with the terms "benefit" and "injury," not all deceptions are the subject of the criminal law. Satire, parody, and/or pranks, for example, generally contain elements of deception, but these are not criminal.

2. Moreover, the People must prove that the intent to deceive was an actual, or genuine intent. For example, if the People fail to prove that the defendant was actually intending to convince others that Professor Lawrence Schiffman was the author of the e-mails, and/or fail to prove that the defendant was actually intending to convince others to assume, create, transfer, alter or terminate a right, obligation, or power based upon this deception, then you must acquit the defendant on these counts. In other words, to find that the defendant intended to defraud, you must find, beyond a reasonable doubt, that the defendant actually intended for others to believe that the Schiffman e-mails were authored by Professor Lawrence Schiffman, and intending to convince others to initiate an investigation of Professor Schiffman based upon an induced belief in the false self-confession rather than upon the content of the linked article.

There must be a nexus between the impersonation and the intent to deceive. If the content of an e-mail would have triggered an investigation no matter who the sender (as in the case of NYU), then the sender is irrelevant unless there was an attempt to add weight or credibility to the underlying accusation by impersonating a specific person.

DEFENDANT'S REQUEST TO CHARGE #4: INTENT TO DEFRAUD, GAIN A BENEFIT, OR CAUSE HARM.

A. In order to find, beyond a reasonable doubt, that the defendant intended to defraud, or cause legally recognized harm, or to achieve a legally recognized benefit, the People must prove, beyond a reasonable doubt, that the defendant knew that the accusations he was making under assumed identities were false. That is, it is not enough to prove that the defendant knew he was impersonating or taking the identity of another; you must find that he did so to make accusations that he knew were false. For this purpose, you need not decide whether such accusations were true or false; you need only decide whether the People have proved that the defendant knew them to be false.

B. In considering the defendant's intent, you may consider whether the accusations made by defendant were, in fact, true.

Article 1, §8 of the New York State Constituiton, requiring that in all prosecutions for criminal libel, truth is a defense.

DEFENDANT'S REQUEST TO CHARGE #5: FREEDOM OF SPEECH

The right to speak and to write freely is protected by both the Constitution of the United States and the State of New York. You cannot find the defendant guilty of any of the charged offenses unless you find that his speech and/or writings created a clear and present danger of some serious, substantive evil.

See, e.g., People v. Dietze. 75 N.Y.2d 47 (1989); Vives v. City of New York, 305 F.Supp.2d 289 (S.D.N.Y. 2003).

DEFENDANT'S REQUEST TO CHARGE #6: IMPERSONATE A REAL PERSON.

Before you can find the defendant guilty of criminal impersonation or identity theft, you must find, beyond a reasonable doubt, that he intended to assume, and did assume, the identity of a specific, identifiable person. It is not sufficient to prove that a name used by the defendant happens to be the name of a real person.

Ct. Ex IV

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

-v- Ind. 2721/2009

RAPHAEL GOLB

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DEFENDANT'S OBJECTIONS TO THE COURT'S PROPOSED JURY CHARGE.

The defendant incorporates all prior arguments as if set forth herein. Specifically, Defendant incorporates Defendant's Motion to Dismiss Counts 1, 2, 4-39, 41-47, 49 & 50, dated November 3, 2009 and the Memorandum of Law in support thereof; Defendant's Notice of Motion to Dismiss Counts 3, 40, 48 and 51, dated December 2, 2009 and the Memorandum of Law in support thereof; and Defendant's Reply Memorandum, dated January 26, 2010, and Defendant's Proposed Jury Instructions 1-6; Court Exhibit C.

The most recent iteration of the Court's proposed charge is attached hereto.

1. Defendant objects to the Court's proposed definition of "defraud" and "fraud," as used on page 11, lines 11-16. Specifically, defendant objects to the words "interest," "advantage" and "benefit." More specifically, the terms are both vague and overbroad, particularly in the context of speech.

Under the Court's instruction, if the defendant assumed the identity of another to hurt someone's feelings (assuming he/she has an "interest" in those feelings), he is guilty. Or, if the jury finds that the defendant assumed the identity of another for the purpose of criticizing the victim's scholarship or movie, he is guilty. The use of the word "advantage" is equally problematic. Under the Court's proposed instruction, if the jury finds that the defendant assumed the identity of others to deprive the victim of an "advantage" in an online debate over the origin of the Dead Sea Scrolls, the defendant is guilty. Since the most important disputed aspect of this case is the defendant's intent in doing what he admits to have done, there must be language that circumscribes the scope of "advantage" and "interest." Otherwise, anything and everything qualifies.

2. The same is true with respect to the use of the word "benefit" on page 12, line 14, and the definition of benefit at page 18, lines 6-8. Defining benefit as "any gain or advantage," no matter how intangible, psychological or spiritual, renders the term unconstitutionally vague and impossibly overbroad.

3. The Court's proposed charge does not define "injury." Leaving this crucial term to be interpreted as anything "hurtful" also renders the term unconstitutionally vague and overbroad.

4. Defendant objects to the Court's articulation of the People's theory as set forth on page 15, lines 1-3. First, the statement of the People's theory from the Court gives it an authority that it would not otherwise have if articulated by Mr. Bandler. Second, the Court does not give the defense theory. And third, the Court's formulation of the People's theory differs substantially from what the People said its theory was in the opening statement. Mr. Bandler stated that the object was to have Dr. Schiffman cancelled as a participant and have Dr. Golb take his place. The Court's formulation subtly, but significantly, changes the People's theory, without any notice to the defense.

5. Defendant objects to the Court's articulation of the People's theory as set forth on page 15, lines 9-11, on the same grounds. More specifically, the People asserted that the object was to "generate an investigation based upon false premises." That is strikingly different from the Court's formulation.

6. Lastly, as set forth in earlier papers, it is not a crime to intend to annoy someone in a manner likely to annoy them. I do it every day. The Court's proposed charge on the count, while faithfully tracking the statutory language, is unconstitutional.

Respectfully submitted,

Ronald L. Kuby

Dated: New York, NY
September 28, 2010

Before you deliberate, I will explain the rules of law which you must follow in order to be fair to both sides. That is your sworn duty.

Whatever you want during the course of your deliberations - read back of testimony, exhibits admitted into evidence, instructions on the law - send a note (which should be signed by the foreperson, juror number 1). Particularly when it comes to read back of testimony, try to be specific in your request. It will take us longer to find the testimony you want, but will save you the time and effort of listening to testimony you do not need for your deliberations.

Some of you have taken notes. As I have said before, note taking should not distract you from the proceedings. Your notes you have taken are only an aid to memory, and may not take precedence over your recollection. Those of you who have not taken notes must rely on your own independent recollection of the evidence. Do not be influenced by the notes of another juror. Any notes are only for the note taker's own personal use, in refreshing his or her own recollection of the evidence. If there is a discrepancy between a juror's recollection and the notes, request a read back of the record. The court's transcript prevails over the notes. In other words, the notes are not a substitute for the official record or for the governing principles of law as I instruct you. After the trial is over, the notes are yours, to keep or to discard.

I begin with general instructions and then turn to the specific issues and charges in this case. I will try to be brief, since you should feel free to ask me to repeat or clarify an instruction as you need it. If I repeat an instruction, do not think it is more important than a rule of law I mention only once. Also, understand that I refer to evidence only to help you understand a rule of law. That in no way implies that the item of evidence I mention is more important or more credible. It is your recollection of the evidence that controls, not mine, so follow your own recollection.

I am neutral. Nothing I have said or done during this trial - my rulings, questions I have asked, what I say during these instructions, nothing - reflects an opinion about the facts. It is neither my intention nor my function to make factual judgments. You must follow the law as I instruct you, but you are the judges of the facts. It is your sworn duty to make your factual determinations based on the evidence, or insufficiency of the evidence, in the case. Do not speculate, or be influenced by bias or prejudice or sympathy. Follow the law and not what you personally think is "just." In short, make your decision, based on the law as I instruct you, and without reference to anything outside the four corners of the evidence.

It is part of a lawyer's function to make objections, and mine to rule on

them. I am sure you understand that your duty to evaluate the evidence and follow the law is separate from any feelings you may have about either the lawyers or the judge.

The lawyers have made arguments to you about the evidence, but what they say, whether in questions or in argument, is not evidence. You have the right to accept or reject any lawyer's arguments about the evidence, in whole or in part, depending on whether or not you find the argument reasonable and logical, based on the evidence as you recall it, and consistent with the evidence.

The evidence consists of the testimony of the witnesses under oath, any concessions or agreements or stipulations between counsel (a stipulation is information the parties agree to present to you without calling a witness to testify), and the exhibits that have actually been admitted into evidence. Testimony stricken from the record or to which an objection was sustained must be disregarded. Exhibits which were not received in evidence are not evidence, and are not available for your inspection and consideration, although any testimony based on such an exhibit may be considered.

While you may rely on your everyday life experiences in evaluating the evidence, you may not use or share your special expertise, professional or otherwise, to insert facts outside the record; if you do that, you become an

unsworn and uncross-examined witness, and that is not permissible.

The indictment is not evidence. It is only a procedural device that sets forth the charges the People must prove.

Issues of sentence and punishment are not evidence, and must not enter in any way into your deliberations.

As judges of the facts, you alone determine the truthfulness and accuracy of the testimony of each witness. You have to decide whether the witness told the truth and was accurate, or testified falsely, or was mistaken or inaccurate. It is also up to you to decide what importance to give any testimony you accept as truthful and accurate. There is no particular formula for this process of evaluation. Use your COMMON SENSE and your life experience, as we all frequently decide the truthfulness and accuracy of statements made to us by other people. The tests and techniques you use in your lives for evaluating credibility are equally valid in your function as a juror.

It is the quality and not the quantity of the evidence that controls. So far as the law is concerned, one witness can prove guilt beyond a reasonable doubt if a jury is so satisfied by the evidence; in other cases, a jury may find that many witnesses are incredible, or that they provide insufficient credible information to establish all the elements of the crime. The rule is quality, not quantity.

Use the same tests in evaluating the testimony of law enforcement officials as you use for any other witness. The mere fact that a witness is in law enforcement or associated with the district attorney's office does not mean that his/her testimony should be afforded any greater, or any lesser, weight than that of any other witness.

I will mention some possible considerations. These are only suggestions. Whether or not a factor is present, and its impact, if any, is up to you to decide. You are certainly not limited to the factors I mention. Apply any of the commonsense tests you use in your everyday lives to make important decisions.

Did the witness have an adequate opportunity to see or hear the events about which he/she testified? What was the witness' ability to recall the events?

Did the witness' account seem likely to be true?

Was the witness' testimony consistent or inconsistent with other evidence? If there are inconsistencies, consider whether they were significant inconsistencies related to important facts, or the kind of minor inconsistency naturally expected from various witnesses to the same events.

Are there any factors in the witness' background, training education, or experience which affect the believability of his/her testimony?

Does the witness have a bias, hostility or some other attitude which

influenced his/her testimony or somehow affected the truthfulness of the witness' testimony?

You have the right to consider any witness' character as it bears on whether he is likely to lie on the stand. In this regard, you may consider whether a witness has been convicted of a crime or has engaged in criminal conduct. Antisocial acts are relevant to credibility because they may show a willingness and/or inclination on the witness' part to put his own interests ahead of those of society - here to violate the oath to tell the truth that the witness took in this courtroom. You are not required to reject the testimony of such a witness, or accept the testimony of an apparently law-abiding witness, but you may consider this factor. *With respect to the defendant, understand that prior convictions or criminal conduct is not evidence of his guilt in this case, or evidence that he is disposed to commit crimes. You are permitted to consider such convictions or conduct only to evaluate the defendant's truthfulness.*

Did the witness have a motive to lie, and did that motive affect his or her truthfulness? Was there no apparent motive to lie? Did the witness hope for or expect any benefit for testifying, or for testifying in a certain way? In determining the credibility of any witness, you have the right to consider whether the witness has any bias or prejudice for or against any party in the case and similarly you may

consider whether the witness has an interest in the outcome of the trial.

A defendant is an interested witness. He has a primary interest in the outcome of the trial.

Evidence that a witness made a prior statement inconsistent with his testimony at trial may be used only to impeach his credibility. In general, out of court statements are not evidence in chief, that is evidence which shows what happened or on which you may rest a guilty verdict. The question of whether a prior statement is inconsistent and effect of any inconsistency on the witness' credibility are questions of fact for you to determine.

If you find a witness has deliberately testified falsely as to a material fact, the effect of that on credibility is up to you to determine. You have the right to reject all the testimony or simply disregard the untruthful portions, accepting only what you find to be truthful.

We now come to the basic principles of law that apply to all criminal trials: the presumption of innocence, the burden of proof, and the requirement of proof beyond a reasonable doubt. A plea of not guilty requires the People to prove guilt beyond a reasonable doubt. The defendant is presumed innocent and you must find him not guilty unless you find that the credible evidence at this trial establishes guilt beyond a reasonable doubt. Take this presumption with you into

the jury room, and start your deliberations by presuming defendant's innocence. The cloak of the presumption falls from him only if the evidence you accept and believe convinces you of guilt beyond a reasonable doubt.

In determining whether the People have satisfied their burden of proving guilt beyond a reasonable doubt, you may consider all the evidence, whether presented by the People or the defendant. Remember, however, that even though the defendant has presented evidence, the burden of proving guilt remains on the People and never shifts to the defense.

The defendant is not required to prove he is not guilty, or to prove anything. To the contrary, the People have the burden of proving the defendant's guilt beyond a reasonable doubt. This means that before you can find the defendant guilty of a crime, the People must prove, beyond a reasonable doubt, every element of the crime and that the defendant committed it. The burden of proof never shifts to the defense. If the People fail to prove guilt beyond a reasonable doubt, you must find the defendant not guilty.

The law uses the term proof beyond a reasonable doubt to tell you how strong the evidence must be to permit a guilty verdict. The law recognizes that in dealing with human affairs there are very few things we know or can prove with absolute certainty, so the law does not require proof beyond all possible doubt.

Moreover, proof beyond a reasonable doubt does not require that the People produce every possible witness or every possible exhibit. On the other hand, the standard of proof beyond a reasonable doubt requires more than proof that the defendant is "probably" guilty. The proof must be stronger than that. It must be proof beyond a reasonable doubt.

A reasonable doubt is an honest doubt of the defendant's guilt for which there is a reason, a reason based upon the nature and/or quality of the evidence. A reasonable doubt is not a fanciful or imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be likely to entertain because of the evidence presented or because of some lack or insufficiency of material, convincing and/or necessary evidence.

In determining whether or not the People have proved the defendant's guilt beyond a reasonable doubt, you must make a full and fair evaluation of the evidence. Your verdict must not rest upon outlandish theories or baseless speculation. Nor may your verdict be in any way influenced by bias, prejudice or sympathy, or a mere desire to end deliberations, or by a mere desire to avoid the unpleasant and difficult duty of returning a verdict which may make one party or another deeply unhappy.

Each juror must carefully review, weigh, consider and evaluate all of the

evidence and decide which evidence you accept as credible. The next duty of each of you is to determine, as to each count, whether you have a reasonable doubt. If you then find that the People have not proved guilt beyond a reasonable doubt, as I have just defined it, you must find the defendant not guilty of that crime and acquit. If, on the other hand, you are satisfied that the People have proved the defendant's guilt beyond a reasonable doubt, you must find the defendant guilty.

I will turn now to the definition of the charges in this case. There are only a few definitions as many of the counts charge the same offense, but allegedly committed against a different victim and/or on a different date. You verdict sheet lists the charges you are to consider, with notations the only purpose of which is to help you distinguish one count from the other. Those notations are proof of nothing. You will also note that the charges are not sequentially numbered. Draw no inference from that. I've just eliminated some of the counts for the sake of simplifying your job.

IDENTITY THEFT SECOND DEGREE

The first two counts charge Identity Theft in the Second Degree.

A person is guilty of Identity Theft in the Second Degree when he knowingly, and with intent to defraud, assumes the identity of another person by presenting himself as that other person, or by acting as that other person or by

using personal identifying information of that other person, and thereby commits or attempts to commit a felony. The object felony alleged with respect to count one is Scheme to Defraud in the First Degree. The object felony alleged with respect to count two is Falsifying Business Records in the First Degree. I'll talk about that if a moment, but first I'll give you some other definitions.

A person KNOWINGLY assumes the identity of another person when that person is aware that he has assumed the identity of that other person.

INTENT means conscious objective or purpose. A person acts with intent to defraud when his conscious objective or purpose is to deceive or trick another with intent to deprive that person of his/her right or in some manner to do him/her an injury. The word 'defraud' means to practice fraud, to cheat or trick to deprive a person of property or any interest or right by fraud, deceit or artifice. The meaning of fraud, both in its legal usage and its common usage, is the same: a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property. To defraud is to intentionally use dishonest means to deprive another person of their property, or to imperil their rights or interests.

Each charge you are to consider requires the proof brd of a specific intent or intents. I will detail them as I define the charges. For example, the charges

criminal impersonation charges require the intentional impersonation of an actual person and the intent to obtain a benefit or injure or defraud another; the aggravated harassment charges require the intent to annoy harass or alarm the designated victim. There have been numerous references during this trial to the first amendment, to free academic discussion, to parody, which is the close imitation of the syle of an author or a work for comic effect or in ridicule, and to satire, which is a form of humor where the writer tries to make the reader have a negative opinion of another by laughing at that person, or making that person seem ridiculous or foolish, and the like. In this country, we zealously protect the right to speak freely, whether under one's own name, or anonymously, or even under a fake name, or pseudonym. We zealously protect that right whether the speech is correct or incorrect, truthful or not. Thus, focusing for the moment on the criminal impersonation charges, without the intent to deceive or defraud as to the source of the speech with the intent to reap a benefit from that deceit, there is no crime. In other words, Tina Fey is free to keep doing her famous Sarah Palin imitation. But words can be the tools by which crimes are committed, as, for obvious examples, when a robber says, your money or your life, or Bernie Madoff's fraud. So the questions for you are not the legal issues of freedom of speech under first amendment to the United States Constitution, but rather whether

the elements of a charged crime have been proved brd.

What a person intends is an operation of his mind. Of course you are not mind-readers, and there's no device or technique to determine the mind's operation directly. You have to look at all of the circumstances, the entire context, as you find the credible evidence establishes, and then use your common-sense and life experience, just as you do in your every day lives, to draw inferences (reach conclusions) about the purpose with which another person acted.

Intent and motive are not the same. Motive is the reason why a person acts (whether that reason is good or bad, rational or irrational). Motive is not an element of the crime. On the other hand, if you find that there is credible evidence showing motive, the reason a person acts, the why, obviously can bear on what the person wants to accomplish. The absence of motive is also something you may consider as tending to establish lack of criminal intent. The absence or presence of motive is simply a factor to be considered in determining whether a specific intent has been proved beyond a reasonable doubt.

There are many (other) factors you may wish to consider in determining whether the evidence establishes the requisite intent beyond a reasonable doubt. For example, what if anything does the evidence show the defendant did (and said) before the event, during it, afterwards?

What were the nature and manner of the defendant's acts? What were the natural and probable consequences of his acts? You have the right to conclude, if you consider it factually appropriate under all the circumstances, that the defendant intended the natural and probable consequences of his acts.

In the final analysis, whether or not the People have proved to your satisfaction, beyond a reasonable doubt, that the defendant acted with the intent required for the commission of a crime is a question of fact for the jury to be decided on the basis of all of the evidence in the case.

PERSONAL IDENTIFYING INFORMATION, as it applies here, means a person's name, address, telephone number, date of birth, driver's license number, social security number, place of employment . . . .

Felony scheme to defraud is committed when a person engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false of fraudulent . . . representations, and so obtains property with a value in excess of one thousand dollars . . . and so obtains property from one or more of such persons, at least one of who is identified . . . . This felony is attempted when a person intends to commit the crime, intending to defraud and to obtain property worth more than $1000 from one or more persons, and comes dangerously close to

doing so. The theory here is that defendant attempted to have Dr. Schiffman rejected as a participant in the Dead Sea Scrolls exhibit at the Jewish Museum, or at least add Dr. Golb to the roster.

A person is guilty of falsifying business records as a felony when he makes or causes a false entry in the business records of an enterprise, and when his intent to defraud includes an intent to commit another crime - specifically criminal impersonation in the second degree or forgery in the third degree - or to aid or conceal the commission thereof. A person attempts to falsify business records when he intends to do so, and comes dangerously close to succeeding. Broadly speaking, the People's theory here is that the defendant sought to falsify the records of NYU to reflect that Dr. Schiffman was an admitted plagiarist.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That from on or about July 1, 2008 to December 31, 2008, in the County of New York, the defendant assumed the identity of Lawrence Schiffman by using Dr. Schiffman's name;

2. That the defendant did so knowingly and with intent to defraud; and

3. That the defendant thereby committed or attempted to commit a felony - scheme to defraud as to count 1 and falsifying business records as to count 2.

Therefore, if you find that the People have proven beyond a reasonable doubt all of those elements as to a count, you must find the defendant guilty of the crime of Identity Theft in the Second Degree.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Identity Theft in the Second Degree.

This rule is true as to each count: if the people have proved each element brd, convict. If you have a reasonable doubt as to one or more elements, acquit. I won't keep repeating this with each definition.

AGGRAVATED HARASSMENT

Counts 3, 40, and 48, charge Aggravated Harassment in the Second Degree against Lawrence Schiffman, Stephen Goranson and Robert Cargill, respectively.

A person is guilty of Aggravated Harassment in the Second Degree when, with intent to harass, annoy, threaten or alarm another person, he communicates

with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or any other form of written communication, in a manner likely to cause annoyance or alarm.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

As to count 3: 1. That on or about August 1 to December 31, 2008 , in the County of New York, the defendant

communicated, anonymously or otherwise, by telephone, telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm to Dr. Schiffman;

2. That the defendant did so with intent to harass, annoy, threaten or alarm Dr. Schiffman.

Count 40 relates to the period from July 1 to December 31, 2008, and the alleged victim is Stephen Goranson. Count 48 relates to the period from June 1, 2007, to March 1, 2009, and the alleged victim is Robert Cargill. The elements are the same.

CRIMINAL IMPERSONATION SECOND DEGREE

A number of counts - 5, 7, 10, 13, 16, 19, 23, 25, 29. 33, 37, 42, 44, 46 and 50 - charge Criminal Impersonation in the Second Degree under the theory that defendant intentionally impersonated an actual person.

A person is guilty of Criminal Impersonation in the Second Degree when he knowingly impersonates a specific other person and acts in such assumed character with intent to obtain a benefit or to injure or defraud another.

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about the date specified, in the county of New York the defendant, knowingly impersonated another person;

2. That the defendant acted in such assumed character with intent to obtain a benefit or to injure or defraud another.

FORGERY THIRD DEGREE

A number of counts - 8, 11, 14, 17, 20, 27, 31, 35, 39, 47 - charge Forgery in the Third Degree.

A person is guilty of Forgery in the Third Degree when, with the intent to defraud, deceive or injure another, he falsely makes, completes, or alters a written instrument.

A WRITTEN INSTRUMENT means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information . . . which is capable of being used to the advantage or disadvantage of some person.

A person FALSELY MAKES a written instrument when he makes or draws a written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he or she did not authorize the making or drawing thereof.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about the date specified, in the County of New York, the defendant falsely made, completed or altered a written instrument; and

2. That the defendant did so with the intent to defraud, deceive or injure another.

UNAUTHORIZED USE OF A COMPUTER

Count 51 is Unauthorized Use of a Computer.

A person is guilty of unauthorized use of a computer when he knowingly uses, causes to be used, or accesses a computer, computer service, or computer network without authorization. The People's theory of lack of authorization in this case is that defendant used the NYU computer to commit a crime in violation of the terms of use.

The people must prove brd that the defendant had no reasonable grounds to believe that he had authorization to use the computer for the purpose.

COMPUTER means a device or group of devices which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to a computer program, can automatically perform arithmetic, logical, storage or retrieval operations with or on computer data, and includes any connected or directly related device, equipment or facility which enables such computer to store, retrieve or communicate to or from a person, another computer or another device the results of computer operations, computer programs or computer data.

COMPUTER SERVICE means any and all services provided by or through the facilities of any computer communication system allowing the input, output, examination, or transfer, of computer data or computer programs from one computer to another.

COMPUTER NETWORK means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

ACCESS means to instruct, communicate with, store data in, retrieve from, or otherwise make use of any resources of a computer, physically, directly or by electronic means.

WITHOUT AUTHORIZATION means to use or to access a computer, computer service or computer network without the permission of the owner or lessor or someone licensed or privileged by the owner or lessor where the actor knew that his use or access was without permission . . . .

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, the following three elements:

1. That on or about July 1, 2008 to March 1/09, in the county of New York, the defendant used, or accessed a computer, computer service, or computer network without authorization;

2. That the defendant did so knowing he had no permission for the use, in that he used the computer, computer service or computer network to commit a crime or crimes; and

3. That the defendant did not have reasonable grounds to believe that he had authorization to use the computer for a criminal purpose.

CONCLUSION

The verdict must be unanimous and must also represent the considered judgment of each juror.

It is your duty, as jurors, to be open-minded, to consult with one another and deliberate with the goal of reaching agreement. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. In the course of your discussions, constantly examine and reexamine your views. Change your opinion if you are convinced it is erroneous. But do not give up your views as to the weight and effect of the evidence simply because your views differ from the opinion of your fellow jurors, or only to reach a verdict.

You are each a judge of the facts. It is your duty to use your best efforts to reach a unanimous decision, if at all possible, as to whether or not the evidence establishes guilt beyond a reasonable doubt.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 71

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

Ind. No. 2721/09

RAFAEL GOLB,

Defendant.

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BERKMAN, J:

Defendant is charged with two counts of identity theft in the second degree, fifteen counts of identity theft in the third degree, ten counts of forgery in the third degree, fifteen counts of criminal impersonation in the second degree, P.L.§190.25(1), five counts of criminal impersonation in the second degree, P.L.§190.25(4), three counts of aggravated harassment in the second degree, P.L.§240.30(1)(a) and one count of unauthorized use of a computer. Defendant has asserted, *inter alia,* that the prosecution violates the right to freedom of speech, and seeks to controvert the search warrants on various grounds.

Leaving aside the standing issues with respect to the motion to controvert the search warrants, defendant's complaints as to allegedly material omissions (such as the failure to state that - as every holder of an email account knows - a user can choose any name for such an account) and material misstatements (primarily about the history of the Dead Sea Scrolls and related scholarship) are without merit. The warrants were issued on probable cause. The motion to controvert is in all respects denied.

As this court has previously ruled, the evidence before the grand jury was factually sufficient and the proceedings procedurally proper. Upon reviewing the submissions of counsel, the court adheres to that ruling.

It is virtually impossible - and legally unnecessary - for this court to address all of the myriad of arguments raised by the defense at this point. Suffice it to say that the trial of the charges in this indictment will not resolve the controversy in the world of Dead Sea Scroll scholarship or even the issue (for example) of whether the accusation of plagiarism against one of the complainants is accurate.[1]

[1]It is this court's view that the "truth" of the Dead Sea Scrolls controversy or of the claims in the blogs or emails allegedly created by defendant is not relevant to any issue actually presented in this case, or as to any issue presented by this motion, whether the freedom of speech claims or the propriety of the warrants or the sufficiency of the evidence. As the defendant correctly argues in this motion, there is no longer a criminal penalty for libel, and neither good faith nor truth is a defense to any of the crimes charged here. Accordingly, absent a persuasive offer of proof in this regard, this court declines to enter into this fray.

With respect to the First Amendment challenges, the People do not disagree with defendant that there is a constitutional right to speak anonymously or pseudonymously. The gravamen of the identity-theft and related charges, however, is the intentional assumption of specific identities of actual people - to wit, "individuals within and around the Dead Sea Scrolls community, namely Dr. Schiffman, Dr. Jonathan Seidel, Dr. Stephen Goranson, Dr. Frank Cross, and Jeffrey Gibson" (People's response, ¶31) - with the requisite intent to obtain a "benefit," as the statute broadly defines that term. As the People assert, "a reasonable view of the evidence indicates that defendant did not pick these names by mere 'coincidence'" (People's response, ¶52). From the evidence, various "benefits" suggest themselves, but there is no requirement that the benefit be financial or that the People specify further.[2] *People v. Mackey,* 49 N.Y.2d 274 (burglary).

With respect to the aggravated harassment counts, the constitutional challenge is more viable. This is particularly so as to any count or counts depending on proof of indirect communications. *People v. Dupont,* 107 A.D.2d, 247, 252.[3] Nonetheless, the statute has repeatedly been held constitutional on its face. *E.g., People v. Cooper,* 4 Misc.3d 788 (District Court, Nassau Cy), and cases therein cited. The final determination of this issue can and should

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[2]The defendant's factual arguments are not pertinent here, either to the warrant or sufficiency issues.

[3]*Dupont's* reference to "communications transmitted directly to the complainant," at 252, is *dictum*, and thus does not mandate dismissal on that ground. Nor, contrary to defendant's argument, at page 8 of the Memorandum of Law (Counts 3, 40 and 48), has *Dupont* been read as striking down the statute. Indeed, there have been successful prosecutions since *Dupont* with a case by case analysis of the constitutional issues, and since *People v. Dietze,* 75 N.Y.2d 47 (a case also relied on by defendant to support his claim that the harassment charges are unconstitutionally brought).

be deferred until the development of a full trial record. Nor will this unfairly impact on the defendant's right to a fair trial. First of all, it is plain that the evidence with respect to the harassment counts, if not identical to the evidence of the other charges, is very similar. That evidence is in any event part of the narrative of the events relating to this prosecution and relevant at least to the required *mens rea* for all of the charges. Further, even as to the indirect harassment, this case is distinguishable from *Dupont*, as the evidence before the grand jury supports the inference that the communications initiated by defendant were targeted with the intent of having specific others communicate with the victim, and thus intentionally causing that victim annoyance and alarm. *People v. Kochanowski,* 186 Misc.2d 441 (App.Term 2nd Dep't).

The charge of unauthorized use of a computer is proper.

The court declines to issue an advisory opinion as to what defendant may or may not do under the order of protection in terms of his participation in the academic debate in which he is so interested. The best remedy for his uncertainty in this respect is a speedy trial, which this court strongly encourages.

The foregoing constitutes the order and opinion of the court.

Dated: New York, New York
February 11, 2010

CAROL BERKMAN