

1 SUPREME COURT STATE OF NEW YORK
2 COUNTY OF NEW YORK CRIMINAL TERM PART: 71

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK Indict No.:
5 2721/09

6 -against-

7 Jury Trial

8 RAPHAEL GOLB,
9 Defendant

10 -----X
(EXCERPTED TRANSCRIPT)

11 100 Centre Street
12 New York, New York
13 September 13, 2010

14 B E F O R E:
15 THE HONORABLE CAROL BERKMAN, Justice

16 A P P E A R A N C E S:
17 CYRUS VANCE, JR., ESQ.,
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20 BY: JOHN BANDLER, ESQ.
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Raphael Golb

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New York, New York
Attorney for Defendant
Raphael Golb

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Senior Court Reporter

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1 ready.

2 THE COURT: Yes, I'm listening.

3 MR. KUBY: I have repeatedly requested of

4 Mr. Bandler and on one occasion I've requested the court to
5 direct Mr. Bandler to provide us with a simple declarative
6 statement of what the intended object of the alleged fraud
7 is of the 47 counts in the indictment, 47 of the 51 counts
8 of the indictment, each one of which has the element of
9 either fraud which is a gain or a loss or has the element of
10 causing a harm, presumably a legally cognizable one or
11 gaining some sort of a benefit, and I've repeatedly asked
12 and I ask again now that we're literally on the morning of
13 trial for Mr. Bandler to tell us what it is he intends to
14 prove that the defendant intended to do; that is what was
15 the object of the fraud, of the harm, of the benefit, of the
16 gain, because as the court said from reviewing the Grand
17 Jury minutes a number of possible benefits occurred to you
18 and indeed a number of possible benefits of harm occurred to
19 me, but I have no idea of the universe of the possible harms
20 or benefits which he intends to prove.

21 THE COURT: This is very interesting, Mr. Kuby,
22 it's a little late in litigation on discovery number one,
23 and number two, I am not aware of any requirement that the
24 People specify what the gain is, just like they don't have
25 to specify what the object crime is in a burglary crime

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1 case. If they do, of course, they're bound by it, so the
2 People being so happy without constraints in our society,
3 although Mr. Bandler is probably an exception to that rule,
4 I suspect strongly that he doesn't care to specify.

5 Would that be correct, Mr. Bandler?

6 MR. BANDLER: I think we've specified it more than
7 is required by the statute and it's laid out in the motion
8 practice and in the Voluntary Disclosure Form.

9 MR. KUBY: And Mr. Bandler has said that sort of
10 repeatedly that we've already specified, we've already told
11 so we're not going to tell you again. Maybe I'm just dumb,
12 but if he would be willing to --

13 THE COURT: I'm willing to entertain that
14 consideration, Mr. Kuby, but I am not willing to discuss
15 this issue any further. I don't believe he has to specify
16 at all.

17 MR. KUBY: Note my objection. It's a matter of
18 due process. I think it's a right of information, a right
19 to prepare a defense.

20 THE COURT: Sure.

21 Okay, jury selection I seat the prospective jurors
22 one through eight, nine through sixteen.

23 Mr. Bandler, how long do you think your case will
24 take?

25 MR. BANDLER: Your Honor, I have witnesses

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1 So you have to keep an open mind. Don't form any
2 opinion or conclusion with respect to the guilt or non guilt
3 of the defendant except to continue to presume him innocent.

4 Anybody want a notebook? I got one hand,
5 sergeant.

6 A SWORN JUROR: Your Honor?

7 THE COURT: Two hands. You can change your mind
8 later if you like.

9 So you're about to hear the People make an opening
10 statement. The defense may open as well. So let me remind
11 you before that what counsel say, whether an argument or
12 questions or an opening is not evidence, that has to come
13 from the witnesses and the exhibits actually admitted into
14 evidence.

15 A little pause for notebooks.

16 Okay, sir.

17 MR. BANDLER: Ladies and gentlemen, the evidence
18 will prove that the defendant, Raphael Golb, seated right
19 there, engaged in a campaign of impersonation and harassment
20 over the internet. He took a disagreement, a disagreement
21 which was mostly of his own mind and he elevated it into an
22 entirely different level. He elevated it to the level of
23 theft, stealing identities, impersonating people, forging
24 e-mails. He took it to the level of evasive and alarming
25 conduct that rose to the level of criminal harassment.

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1 We're not here because of an academic dispute or
2 disagreement. We're not here because this is just slander
3 or liable or could be resolved civilly. We're here because
4 the defendant broke the law and thus made it a criminal
5 matter. Assuming identities of victims, directing harassing
6 conduct at them through cyberspace.

7 This case has an interesting background which
8 explains the defendant's motives but we're not here because
9 of the Dead Sea Scrolls. We're here because the defendant
10 broke the law. His motivation could have been anything that
11 could get people irate, it could have been money, a lover,
12 anything. He chose to commit the crimes, he chose to
13 conceal his tracks. Why he did it that's just background
14 and as you'll hear during the trial, Dead Sea Scrolls are a
15 set of ancient documents that were discovered in the 1940s
16 and 50s near the Dead Sea and what today is part of Israel.
17 They were found in caves near the ruins of an Ancient
18 settlement called Qumran. The writings in these scrolls are
19 important to many people because they contain information
20 including the earliest known text of the Bible. They're
21 important to people who study religion, Judaism, early
22 Christianity, history of the Old East, old topics, part of
23 them the Old Testament from the Bible so they do contain a
24 glimpse of who wrote the Bible. It's just background, it's
25 not central to the case. There's not going to be a quiz on

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1 the Dead Sea Scrolls and it's not what you're deciding.

2 Scholars may agree on certain things about the
3 Dead Sea Scrolls and they disagree about things about the
4 scrolls and that's as you would expect.

5 They're theorizing, computing about things that
6 were written and done thousands of years ago.

7 So many things about the scrolls are unsure but
8 one thing is sure the evidence you'll hear is not going to
9 solve anything about the Dead Sea Scrolls. It's not going
10 to solve whose theory is right or wrong.

11 The evidence will prove that the defendant did
12 what he did motivated because of this. And the defendant is
13 a smart man, he's well educated. He has multiple degrees.
14 He's has a Bachelor's, he has a Ph.D. from Harvard in
15 comparative literature. He has a law degree from New York
16 University, NYU. He is the son of a university professor
17 who teaches at the University of Chicago, Dr. Norman Golb.

18 Now Dr. Golb spent a good part of his academic
19 career studying who wrote the scrolls and he has theories
20 about it that he believes and there is a particular theory
21 that he champions but the defendant and his father, they're
22 not the only people with their own opinions on the Dead Sea
23 Scrolls, other people have developed theories or subscribed
24 to theories. People around the United States and the world
25 study this. Not only do they study the scrolls, they

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1 studied the places near where they were found Qumran.

2 Now in a nutshell the difference is this between
3 what the defendant and his father subscribe to and to what
4 some other people in the community believes about the
5 scrolls.

6 Now many believe that the scrolls were maintained
7 but not necessarily all written by the people who lived at
8 this settlement at Qumran near the caves where the scrolls
9 were found. And the defendant and his father they have a
10 different theory, they believe the scrolls were hidden in
11 the caves by people who were fleeing Jerusalem and that
12 those people fleeing who hid the scrolls, they did not live
13 at Qumran that site near the cave, they had nothing to do
14 with that site. So that's the difference in a nutshell and
15 the defendant does not like the fact that many in the
16 academic world does not agree with his father or they don't
17 acknowledge his father's theory properly or perhaps he feels
18 they misstate his father's theory or they don't give his
19 father the credit his father deserves for developing that
20 theory.

21 Now that's his motivation to the crimes of the
22 campaign of impersonation and harassment by this defendant
23 using the internet designed to steal identity of other
24 professors and academics, to destroy their reputation and
25 careers, cause them alarm, fear, provoke them.

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1 He didn't simply go online to express his opinion
2 or to disagree with others, he took it to another level and
3 the internet makes it easy to do that today. You could do
4 these types of things while hiding behind a computer and, in
5 fact, the defendant did this from behind a computer at that
6 New York University library, the Bobst Library. It's a
7 library he had access to because he is a graduate to it and
8 he donated to an alumni fund.

9 So as smart as he is, you'll hear he was not smart
10 enough. The proof will reveal that the defendant even
11 though he tried to conceal his acts, the proof will reveal
12 that he did it beyond a reasonable doubt.

13 So this really is a pretty simple case and it may
14 have an interesting background to the ancient Dead Sea
15 Scrolls, the crimes were committed through a very modern
16 method through computers and internet.

17 We had to track him through cyberspace to prove
18 that he's the one who did it but aside from these backdrops,
19 it's a simple case, the defendant impersonated people, he
20 harassed people. The Dead Sea Scrolls is the why, the
21 internet is the how, but the what is simple, impersonation,
22 identity theft, forgery of e-mails and harassment, all done
23 using the New York University computers in violation of
24 their terms of use.

25 The Grand Jury charged the defendant with 51

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1 separate counts and most of the counts are based upon
2 specific acts of impersonating conduct. He opened an e-mail
3 in the name of someone else, he sent an e-mail from that
4 e-mail account pretending to be someone else. He
5 impersonated five people who were involved either directly
6 or indirectly with the Dead Sea Scrolls.

7 As to one victim, Dr. Schiffman, the defendant's
8 identity theft went into a whole broader range with a
9 continuing scheme. So some of the counts are a straight
10 act, he did it on a particular day. Some are of a broader
11 scheme and Dr. Lawrence Schiffman were one of the five
12 people who was impersonated by the defendant. He was also
13 harassed by the defendant. He's a professor of Hebrew and
14 Judaic studies at New York University. He is a lead scholar
15 in the field of the Dead Sea Scrolls and he's chairman of
16 Hebrew and Judaic studies.

17 In early August 2007, the testimony will show that
18 the defendant opened an e-mail account at Larry dot
19 Schiffman at gmail dot com, he obtained the e-mails of
20 Dr. Schiffman's students, colleagues, deans, associates, the
21 president and he sent e-mails from this e-mail account
22 pretending to be Dr. Schiffman and supposedly confessing to
23 plagiarism and supposing to plagiarized Dr. Norman Golb, the
24 defendant's father, and this was coupled with a broader
25 scheme to smear and attack Dr. Schiffman from other e-mail

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1 accounts that the defendant created sending accusations
2 against Dr. Schiffman and from blogs the defendant created.

3 The defendant was not simply content with creating
4 an individual act of impersonation. He had two broader
5 schemes. He committed identity theft of Dr. Schiffman while
6 he attempted to commit a separate one.

7 One was the defendant's scheme to influence The
8 Jewish Museum. The Jewish Museum is a museum on the upper
9 east side of Manhattan and they were putting together an
10 exhibit on the Dead Sea Scrolls and Dr. Schiffman was
11 scheduled to speak at that and that exhibit was started in
12 September of 2008.

13 In July of 2007 the defendant became fixated on
14 this exhibit and Dr. Schiffman was scheduled to speak at it
15 but the defendant's father was not scheduled to speak there.
16 So the defendant's plan was to get the museum to drop
17 Dr. Schiffman as a speaker and add his father and thus his
18 elaborate scheme of deception was hatched, the
19 impersonation, the false confession of plagiarism,
20 pretending to be from Dr. Schiffman and the false complaints
21 from other avenues to NYU.

22 And, second, the defendant with these false
23 confessions and the impersonation and the false accusations
24 were designed to falsify the records of New York University
25 to generate an inquiry and a reaction based upon false

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1 premises and all of this conduct against Dr. Schiffman it
2 was also part of the defendant's scheme to harass
3 Dr. Schiffman, evasive conduct that went into the realm of
4 criminal.

5 The defendant has impersonated Dr. Frank Cross,
6 another leading scholar in the field of the Dead Sea
7 Scrolls. He is a professor emeritus at the university. An
8 emeritus meaning retired in good standing.

9 You're not going to hear from Dr. Frank Cross
10 directly but you'll hear from his daughter Ellen Gindele and
11 you'll hear from his former student Dr. Sidnie Crawford who
12 also studied the Dead Sea Scrolls.

13 You'll hear that Dr. Cross is unable to attend due
14 to his poor health but that he would not have opened these
15 e-mail accounts, that he was not in the location where these
16 e-mails were opened, the Bobst Library in Manhattan, and
17 that he would not have given the defendant permission to
18 open these e-mail accounts in his name or to send e-mails in
19 his name and the defendant did send an e-mail in the name of
20 Dr. Frank Cross attacking another scholar in the field or
21 related field.

22 The defendant also impersonated Dr. Jonathan
23 Seidel. He's a Rabbi and professor in Oregon. He studied
24 and taught the Dead Sea Scrolls but that's not really his
25 primary area of study and from this impersonating e-mail

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1 account the defendant sent e-mails attempting to stir up
2 controversy and also draw another victim into a dispute.

3 The defendant assumed the identity of Dr. Jeffrey
4 Gibson. He's a professor of religion in Chicago. He's not
5 a Dead Sea Scrolls specialist but he is active on some
6 internet forums and he is of the misfortune to draw the
7 anger of one of the defendant's online aliases and because
8 of that, the defendant opened up an e-mail account
9 impersonating Dr. Gibson.

10 Dr. Stephen Goranson was another victim of the
11 defendant's impersonation and also harassment. Dr. Goranson
12 works at Duke University. He studied the Dead Sea Scrolls,
13 has a Ph.D. in them or slightly related field and he also
14 had the misfortune to weigh in online against one of the
15 defendant's aliases. So the evidence will show the
16 defendant created an e-mail account in the name of
17 Dr. Goranson, didn't actually send any e-mails from that
18 account but he did use Dr. Goranson's name to open other
19 alias accounts including accounts related to nine
20 harassments and impersonations of Dr. Schiffman in trying to
21 insert Dr. Goranson onto online disputes.

22 Another victim is Dr. Robert Cargill who is the
23 victim of the defendant's harassment going from 2007 to
24 2009. Dr. Cargill is from California. There was a time
25 when he was working on his Ph.D. and he was Mr. Cargill and

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1 the defendant sought to prevent him from getting his Ph.D.
2 and if you want a career in the academic field without your
3 Ph.D. it's pretty much impossible to have such a career so
4 the defendant anonymously attacked Dr. Cargill's work using
5 anonymous e-mail accounts and harassed him as you will hear
6 from Dr. Cargill.

7 In addition to being a victim of a long standing
8 harassment, he's a pretty tenacious internet suit and
9 through these years of being harassed through anonymous
10 people, he worked to find out who those people or persons
11 were.

12 The evidence will show that the defendant opened
13 each of five e-mail accounts in the name of actual people
14 and in so doing, committed offenses of Identity Theft in the
15 Third Degree and Criminal Impersonation in the Second
16 Degree.

17 The Grand Jury also charged the defendant with 34
18 counts related to the e-mailing from some of these e-mail
19 accounts often impersonating e-mails. Five of these e-mails
20 was from the Larry D. Schiffman account that is charged and
21 for that he is charged with Identity Theft in the Third
22 Degree, Criminal Impersonation, and Forgery.

23 One count for each e-mail or it's three separate
24 counts for each e-mail under different but equally
25 applicable theory.

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1 He sent one e-mail from the Frank dot Cross
2 impersonating account that are charged by the Grand Jury and
3 four e-mails from the Seidel dot Jonathan impersonating
4 account and then there's three counts of harassment charged
5 by the Grand Jury, one count for each victim of harassment.

6 The Grand Jury also charged the defendant with
7 unauthorized use of the New York University computers. The
8 evidence will prove the defendant used these computers at
9 NYU to commit criminal acts. He used the NYU computers so
10 the act could not be traced directly to him or so he
11 thought.

12 He had his own computer at home, he had his own
13 internet service at home but the defendant used the NYU
14 computers in Manhattan to commit the criminal acts and that
15 was in violation of NYU computer use policies.

16 So that's what we'll prove. Here is how we'll
17 prove it and I'm going to do my best to present this in a
18 logical format, however, sometimes things may come out of
19 order and in order to prove what the defendant did to your
20 satisfaction and beyond a reasonable doubt we have a good
21 number of witnesses, many of them are from out of state,
22 some of them are from clear across the country such as
23 California and Oregon, travel and lodging arrangements had
24 to be made well in advance. Some witnesses are business
25 representatives whose companies had to be subpoenaed well in

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1 advance, and there is no way to predict with certainty how
2 quickly or slowly things will go. So we did our best, we'll
3 continue to do our best to give it to you logically and
4 promptly but we'll also, meeting our obligation to prove
5 these charges to your satisfaction and prove that the
6 defendant did these things, because he did take great pains
7 to hide himself.

8 You'll hear from the victims that the defendant
9 did not have permission to impersonate them or to assume
10 their identities. They'll provide some background, too.
11 You'll hear about the effect of the defendant's
12 impersonation and harassment. You'll hear what NYU did as a
13 result of the fake confession and the false allegation.
14 You'll hear the defendant did not have permission to use the
15 NYU computers in violation of their terms of use policy and
16 because of the defendant's efforts to conceal his identity,
17 because of my burden to prove it was him that did these
18 things, you'll hear evidence that links the crimes to him.

19 Some of this evidence is voluminous or technical
20 but it will be summarized and broken down to you. It's
21 going to be a lot of e-mails, a few e-mails that the
22 defendant sent constitutes specific crimes that are charged
23 by the Grand Jury and that you'll be considering in your
24 deliberations.

25 Many e-mails help prove the pattern of harassment.

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1 Many e-mails help prove the defendant's identity and the
2 defendant's motive. All of these e-mails are necessary to
3 prove what the defendant did.

4 It's going to be a lot of internet protocol
5 addresses which help shows the defendant accessing the
6 e-mail accounts. There will be other records that help
7 establish that it was the defendant that committed these
8 crimes despite the defendant's best efforts to conceal his
9 identity.

10 Not every witness will be exciting. You'll hear
11 from business representatives who will testify that certain
12 records from their company were made and kept in the
13 ordinary course of business, that's in order to meet the
14 proper legal criteria to admit the records into evidence.
15 It is my legal burden to call these witnesses in order to
16 get these records admitted into evidence in order to prove
17 it was the defendant that did these things.

18 You'll hear about the search warrant conducted at
19 the defendant's residence located at 206 Thompson Street
20 apartment 12, county of New York, Manhattan, a couple blocks
21 away from the Bobst Library. Some of the evidence recovered
22 help show it was the defendant who was the one who used the
23 NYU library and their computers to commit the crimes.

24 You'll hear about the analysis of the defendant's
25 computer from his home and remember the evidence will show

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1 the defendant never used his home computers to impersonate
2 anyone. He used the NYU computers for the most egregious
3 activities and to hide his tracks but there will be enough
4 from his home computers to assist you in determining it is
5 the defendant who committed these acts; that the defendant
6 knew these acts were criminal; that the defendant also used
7 his home computer to engage in conduct that was connected to
8 his schemes but never directly to impersonate anyone.

9 You'll hear about the defendant's two statements
10 to law enforcement. First statement was some pedigree
11 information which was written down. Second was a video
12 recorded statement. You'll get to see the video recorded
13 statement that the defendant made. It's just under two
14 hours long and the defendant denies impersonating anyone, he
15 denies harassing anyone, he denies that he opened the Larry
16 dot Schiffman at gmail account, he denies he sent e-mails
17 from that account, he denies impersonating Dr. Goranson, and
18 thus his denial was a continuation of his deceit and
19 continuing acknowledgment he had stepped over the line and
20 into criminal conduct. But despite the denials and
21 deception and the statement, it does help prove his case.
22 It helps prove the defendant did these acts, why he did it,
23 and that he knew that they were wrong and you'll be able to
24 view his video statement and view his responses and judge
25 for yourself.

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1 You'll see e-mails and blogs and e-mails. You may
2 not see every one of them because this trial has to end some
3 time, it cannot go on into infinity, but you're going to see
4 enough e-mails. You're going to see blogs, you're going to
5 see analysis of the evidence, you'll see full proof that the
6 person doing this, the person impersonating victims through
7 cyberspace, the person harassing victims through cyberspace
8 was the defendant.

9 The evidence will also show a disturbing pattern
10 of conduct the defendant devoted hundreds if not thousands
11 of hours to his plan using dozens and in fact over 70 e-mail
12 accounts hiding and concealing his identity and you'll see
13 enough of what the defendant did to understand that it was
14 so alarming to be on the receiving end of this conduct.

15 Ladies and gentlemen, use your commonsense, use
16 your experience, listen to the evidence. When the evidence
17 has all been presented, I'll have one last chance to address
18 you, at that time I'll ask you to peel away any of the
19 irrelevant or the distractions that sometimes creep up
20 during the trial, I'll ask you to judge the testimony
21 fairly, I'll ask you to rely on your commonsense, I'll ask
22 you to find that the People have proved their case beyond a
23 reasonable doubt as to each count and I'll ask you to render
24 a verdict of guilty as to each of the crimes charged. Thank
25 you.

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DIRECT/PEOPLE/DR. SCHIFFMAN

1 of Jerusalem in 70, and he said that in Ein Gedi there are
2 people their called the Essenes.

3 Ein Gedi that is a city on the southern end of the Dead
4 Sea, it's a place everyone goes swimming on a tourist trip to
5 Israel.

6 THE COURT: We're getting a little bit too much
7 information.

8 Q Is it fair to say that most people believe it was
9 Essenes that --

10 MR. BREITBART: Object to the form of the
11 question. This is a leading question.

12 THE COURT: You may answer the question. If you
13 got the question.

14 A Most scholars do believe in the Essenes hypothesis.

15 Q Which is?

16 A Which is that the people who lived at Qumran collected
17 the scrolls, wrote the sectarian ones because not all of them
18 are sectarians were the group Josephus calls the Essenes.

19 Q And what is your theory?

20 A Well I disagree with this theory not totally. I've
21 agreed that there was a sect at Qumran and that this sect
22 gathered the manuscript but in my opinion the sectarian group
23 started out through a split in the Sadducees priestly sect that
24 took place after the Maccabees basically took over the temple.
25 This is the Hanukkah story, right. In 164 B.C. there was this

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1 asked me about e-mails they had received.

2 Q And so you got to look at the e-mails, correct?

3 A Yes.

4 Q Did these e-mails come from an e-mail account with the
5 name sounding like yours?

6 A Yes, they came from accounts with my name on the top of
7 them.

8 Q And did these names direct the recipients to blogs?

9 A In most cases, yes.

10 MR. BREITBART: Objection.

11 THE COURT: Overruled.

12 Q Can you describe generally these e-mails that you saw?

13 A The message of the e-mails that were written in my name
14 that I saw was that I was admitting to be a plagiarist and
15 asking the recipient to help to cover it up.

16 Q And who were these e-mails accusing you of
17 plagiarizing?

18 A Who were -- I don't understand the question, I'm sorry.

19 Q They accused you of plagiarizing?

20 A Yes, they accused me of plagiarizing Professor Norman
21 Golb.

22 Q Do you know Dr. Norman Golb?

23 A Yes.

24 Q And how do you know him?

25 A I know him from scholarly conferences for many years

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1 and we actually spent some very pleasant time with him and his
2 wife in Poland at a conference when my wife was there and we
3 actually did some site seeing and other things together in the
4 eighties.

5 Q And prior to this incident, how would you characterize
6 your relationship with Dr. Norman Golb?

7 A I never had any negative experience with Norman Golb
8 and I thought my relationship was one of we don't agree about
9 anything and we've argued about that at conferences but that's
10 it.

11 Q And prior to this incident, did you know the defendant
12 Raphael Golb?

13 A No.

14 Q Could you just generally describe the effect of these
15 e-mails and blogs?

16 A Well, what happened was that -- first of all, some of
17 my colleagues wanted to know what this was about.

18 MR. BREITBART: Objection.

19 THE COURT: Overruled.

20 A And second of all, the university according to its
21 rules and regulations instituted a full investigation into me.

22 Q And these e-mails was it a one time thing or did they
23 continue?

24 A They continued.

25 Q And aside from the e-mails from an e-mail account Larry

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1 A Yes.

2 MR. BANDLER: I move 10-F into evidence.

3 MR. BREITBART: Judge, I don't have any objection

4 to this piece.

5 THE COURT: 10-F in evidence.

6 MR. BANDLER: And I'd like to display it, the
7 electronic version.

8 (Displayed.)

9 Q So, Dr. Schiffman, what is 10-F?

10 A Well, 10-F is an e-mail that one of these grad students
11 sent to me at that phony address not knowing that it was not my
12 address and to the other three students giving essentially his
13 evaluation of the documents that actually follows which is the
14 one that was referred to in that other e-mail where it gave the
15 http address and he gives his opinion of that.

16 Q Now, I want to scroll down a little on that document
17 and towards a little further down I see he's pasted something
18 about plagiarism and the Dead Sea Scrolls, "Did NYU professor
19 snatch Chicago historian's work?"

20 You visited the blog site?

21 A Yes.

22 Q And does that appear to be close to what was on the
23 blog site on or about that time?

24 A Yes.

25 Q So did Cory say anything about why he pasted the blog

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DIRECT/PEOPLE/DR. SCHIFFMAN

1 see so far away for the jurors, it might be a good idea to
2 read these things to the jury.

3 THE COURT: Thanks for the suggestion.

4 Would you proceed, please.

5 Q So 10-I has what date on it?

6 A Tuesday, 5, August 2008.

7 Q And approximately how many people was it sent to?

8 A Well, it's the whole department, you can count it.

9 Q I'm going to withdraw it.

10 A I guess it's about fifteen people.

11 Q And who are some of the people that it was sent to, if
12 you recognize the people?

13 A Well, Ronald Zweig, Hasia Diner of our department at
14 NYU. I can keep reading but every member of the department.

15 Q Every member of your department?

16 A I believe every faculty member including post docs is
17 on this list.

18 Q And this would be people in the department that you're
19 the chair of?

20 A Correct.

21 Q And if you could just read the text of the e-mail,
22 please.

23 A Yes. "Dear Colleagues, apparently, someone is intent
24 on exposing a minor failing of mine that dates back almost
25 fifteen years ago. Every effort must be made to prevent this

Sheila Wesley
Senior Court Reporter

1 Q. If an allegation of misconduct is brought to the
2 Provost's attention, what is he supposed to do?

3 A. Have it investigated.

4 Q. And does webling (phonetic), is that now the
5 public blog we have talked about, 4-B-3?

6 A. Yes.

7 Q. Now, if I can have you look at Exhibit 10-M.

8 (Witness complies.)

9 Q. Do you recognize 10-M?

10 A. Yes.

11 Q. How do you recognize it?

12 A. This was forwarded to me by Dean Stimpson.

13 Q. Is that a fair and accurate depiction of the
14 e-mail that Dean Stimpson forwarded to you?

15 A. Yes.

16 MR. BANDLER: I move that into evidence,
17 Your Honor.

18 THE COURT: In evidence.

19 (People's Exhibit 10M was received in
20 evidence .)

21 Q. If we can display 10M. So could you read that
22 for the jury.

23 A. Yes. Dear, Dean Stimpson, I would like to know
24 what action I can take to counter charges of plagiarism
25 that have been raised against me. Apparently, someone

1 is intending on exposing conduct of mine that dates back
2 almost 15 years ago. It is true that I should have cited
3 Dr. Golb's articles when using his arguments and it is
4 true that I misrepresented his ideas. But this is
5 simply the politics of Dead Sea Scrolls studies. If I
6 had given credit to this man, I would have been band
7 from conferences around the world. I am especially
8 concerned that this affair may come to students
9 attention. My career is at stake. I hope you will
10 understand. And then there is a website and Lawrence
11 Schiffman, professor.

12 Q. Do you have any idea what this person meant by --

13 A. Well, he accuses me of plagiarism.

14 Q. What does he mean by misrepresented his idea, if
15 you know?

16 A. I know from reading the blogs and also from the
17 blogs basically. They assert, whoever wrote them, that
18 I purposely did not use certain articles, two not cite
19 certain articles of Professor Golb from which I took
20 ideas without giving him credit and furthermore
21 purposely falsely described the theory in order to say
22 it was false and then claim the ideas as my own.

23 Q. Is there any truth to those allegations?

24 A. Yes.

25 Q. Why is that?

1 A. In the first place, when they refer specifically
2 to the book -- firstly, they refer to my book, reclaim
3 the Dead Sea Scrolls, so they assert that I made use of
4 articles that are not in the biography. In fact, my
5 files, which I have all the copies of the articles from
6 that period, did not have those articles and, in fact,
7 did not read those articles; therefore, I could not use
8 those articles. Second of all, the specific terms and
9 ideas that they refer to were all common place in the
10 field, have been deserted by all kinds of other people
11 in different sources beforehand. So that's a second
12 reason why the claim was not true. Third of all, the
13 term plagiarism has certain specific meanings that are
14 irrelevant to the discussion.

15 Q. Now, the accusation about supposed plagiarism and
16 supposed misrepresentation accuse you of having done it
17 when, recently?

18 A. No, no, it is an accusation. This was done when
19 I published the article, the exact date, I don't
20 remember, which is the first time they assert and then
21 repeated in the book. Reclaiming would be when I
22 published an article in a volume edited by Hershel
23 Shanks, and that article had appeared originally in
24 biblical archaeology review some years before it ended
25 up in the book. They are asserting from the article to

1 the collective work of Hershel Shanks to the book by me
2 reclaiming the Dead Sea Scrolls in all the works I had
3 done this.

4 Q. Approximately what year?

5 A. Talking about '90s, the early '90s.

6 Q. If I could direct your attention to 10N. Do you
7 recognize that.

8 A. Yes.

9 Q. What do you recognize that to be?

10 A. Well, this is an e-mail which has copies sent or
11 was sent to the Washington Square News which is the NYU
12 newspaper.

13 Q. Did they ever put that on-line?

14 A. Yes, they put this and some other materials which
15 I don't know how they got on-line regarding this entire
16 affair.

17 Q. Is 10N a fair and accurate depiction of what you
18 saw on-line?

19 A. Yes.

20 MR. BANDLER: I move 10N into evidence.

21 MR. BREIBART: No objection.

22 (People's Exhibit 10N was received in
23 evidence.)

24 MR. BANDLER: If we can display 10N for the
25 jury.

1 Q. So this is from the Larry dot Schiffman dot
2 g-mail account?

3 A. It's to editor at NYU news dot com university at
4 NYU new dot com, managing at NYU news dot come, campus
5 at NYU news dot com and editorial at NYU news dot com.

6 Q. Those belong to who?

7 A. Well, I can't say. I only know one thing, this
8 was posted at Washington Square News.

9 Q. Could you read the first two lines?

10 A. The following is self-explanatory. I must ask
11 you not to publish a word about this in the Washington
12 Square News, should it be brought to your attention.
13 Lawrence Schiffman.

14 Q. What e-mail is forwarded?

15 A. It's from Larry dot Schiffman at g-mail dot com.

16 Q. Is this person forwarding an e-mail?

17 A. Forwarding an e-mail for which I could not see an
18 address. It is the e-mail addressed to Dean Stimpson.

19 Q. If you could look at 10-0 for identification. Did
20 you ever see that e-mail?

21 A. Yes.

22 Q. And is 10-0 a fair and accurate depiction of an
23 e-mail you eventually saw?

24 A. Yes.

25 MR. BANDLER: I move 10-0 into evidence.

1 Norman Golb and other people. They wanted to know
2 whether the sentences selected were fair representations
3 of the theories of scholars whose work was being put on
4 a wall with lettering. I read over the lists of
5 quotation and I informed them I thought it was very
6 fair.

7 Q. You were kind of a consultant on the Dead Sea
8 Scrolls?

9 A. On that one question.

10 Q. Was there any fees paid to you for your work --

11 A. I don't know if you call it a fee. I expected I
12 was doing them a favor because it took me ten minutes,
13 but I did receive a \$500 check with thanks.

14 Q. That was for what part of the service?

15 A. For helping them on the one issue.

16 Q. How about speaking?

17 A. Speaking, I got on honorarium, pre-arranged, of
18 \$650.

19 Q. How much do you get for speaking normally?

20 A. I normally get about -- let's put it this way,
21 1,200 to 1,500 for a lecture like that.

22 Q. And why did you get less?

23 A. Two aspects to this. I and a number of other
24 people feel that when there is an exhibit of scrolls run
25 by the antiquity authorities, we owe it to them to work

1 MR. BANDLER: Actually, I would like to move
2 it into evidence if there is no objection so we can
3 discuss it.

4 MR. BREIBART: Can I just read it?

5 (Pause in proceedings.)

6 MR. BREIBART: No objection.

7 THE COURT: Okay.

8 (People's Exhibit 16-H was received in
9 evidence.)

10 MR. BANDLER: We can put 16-H up.

11 Q. So just summarize for the jury what 16-H is
12 about.

13 A. Well, it begins by asking why my outrageous
14 misconduct has never been investigated, claiming I base
15 my career on the plagiarism and misrepresentation of
16 another scholar's work, refers to a blog which will give
17 this information on wordpress named Larry Schiffman dot
18 wordpress dot com and then asks he would like them to
19 write back and tell him what they're doing about the
20 misconduct because it ignores NYU's code of academic
21 conduct.

22 After signing Peter Kaufman, the writer
23 admits using an alias claiming his career at NYU could
24 be ruined if it became known that I finally had the
25 nerve to rat on Dr. Schiffman concerning facts generally

1 known for the past 15 years, et cetera. It claims by
2 the way they were passed over in silence because of my
3 popularity. That's the bottom paragraph.

4 (Whereupon, Senior Court Reporter Sheila
5 Wesley takes over the proceedings.)

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DIRECT/PEOPLE/DR. SCHIFFMAN

1 e-mail address as oppose to some others.

2 Q What is this person sending you the e-mail trying to
3 get you to do?

4 A Well this person wants me to issue some type of
5 statement or response and this again is essentially a trap
6 because in internet what happens when you do that is you get
7 totally chop to pieces. It's a way to get me to admit that I
8 did something.

9 MR. BREITBART: Judge, I object. This is opinion
10 evidence. He's not qualified as an expert in computer lingo
11 or language.

12 THE COURT: Sustained.

13 MR. BREITBART: Thank you, Judge.

14 Q Directing your attention to the second paragraph.

15 A Yes.

16 Q Mentions Jeffrey Gibson of Chicago. If I could read
17 from it, it says "If as I suspect the author of this outrageous
18 piece is Jeffrey Gibson of Chicago" -- and it's referring to by
19 outrageous piece that now public blog mentioned there which I
20 believe is exhibit 40-B-3.

21 "So if as I suspect the author of this outrageous piece
22 is Jeffrey Gibson of Chicago, then you are dealing with an agent
23 provocateur driven by his own academic failure whose basic
24 motivation is hatred of Golb and whose aim is simply to stir
25 further resentment among scholars prior to this case."

Sheila Wesley
Senior Court Reporter

1 MR. BREIBART: No objection.

2 THE COURT: Okay.

3 MR. BANDLER: I will put triple D up. That's
4 from what date?

5 A. This is February 20, 2009.

6 Q. And 16-E-E-E, do you know if that ever came to
7 you.

8 A. Yes, I don't believe I've seen this either.

9 MR. BANDLER: Defense counsel will stipulate.

10 MR. BREIBART: No objection.

11 THE COURT: Okay.

12 MR. BANDLER: I'll put triple E up.

13 Q. 16-F-F-F, do you know if that ever came to you?

14 A. I think not.

15 MR. BANDLER: If defense counsel will
16 stipulate.

17 MR. BREIBART: No objection.

18 Q. Do you recall about how many blogs came about you
19 or mentioning your name?

20 A. I don't have a real number, but it's very, very
21 long.

22 Q. So I'd like to hand you --

23 A. I think the list was about 25 that I identified
24 and I imagine that I don't know all of them.

25 Q. I will hand you 40-A-7?

1 e-mail?

2 A. Yes. Just looking through it again.

3 Q. If we can scroll down to the bottom of page one,
4 and little lower, so the web address, Larry Schiffman
5 dot blog spot dot com, is that generally where in the
6 internet you found it?

7 A. Well, I certainly don't have it. It's not mine.

8 Q. If we could go to the bottom of page eight. It
9 says posted by Larry Schiffman. You didn't post it?

10 A. No, of course not.

11 Q. If we can go to Exhibit 40-A-8. Do you recognize
12 that?

13 A. Yes.

14 Q. Where do you recognize that from?

15 A. Basically the same short version of the same
16 thing.

17 Q. Is that from website plagiarism hyphen Schiffman
18 dot blog spot?

19 A. Yes.

20 Q. Is 40-8-A generally a fair and accurate depiction
21 of the blog you viewed on-line?

22 A. Yes.

23 MR. BANDLER: I move 40-A-8 into evidence.

24 MR. BREIBART: No objection.

25 (People's Exhibit 40-A-8 was received in

1 Q. You said you think he's still teaching. You are
2 not a hundred percent sure of that?

3 A. Well, I know two years ago he was still teaching.

4 Q. Go to 40-C-16. Do you recognize that?

5 A. Well, I recognize the text, but not this blog.

6 MR. BANDLER: If defense counsel would
7 stipulate, I'll put it up.

8 Q. In the meantime, where do you recognize the text
9 from?

10 A. It's a repeat of some texts that you asked me
11 about previously, which I referred to on various
12 e-mails, copies of which I did receive.

13 Q. And you never opened up a blog Larry Schiffman
14 dot word press?

15 A. No.

16 Q. Did you give anyone permission to do so?

17 A. No.

18 MR. BREIBART: If counsel will stipulate to
19 40-C-16.

20 THE COURT: Okay.

21 Q. It says charges of impropriety resurface. That
22 implies that they surfaced once before, is that
23 accurate?

24 A. I don't think it is.

25 Q. Now, please explain.

1 A. Yes.

2 Q. It links to one of the blogs we talked about?

3 A. Yes.

4 Q. I don't think I've asked you, who is Risa Levitt
5 Cohn (phonetic)?

6 A. Risa Levitt Cohn is a person who teaches at the
7 University of California in San Diego. She was selected
8 by the museum, the exact name I don't remember, to
9 curate the Dead Sea Scrolls exhibit they held there.
10 She was subsequently selected to curate the North
11 Carolina exhibit and in Toronto and will be curating an
12 exhibit in New York, which will open in about a year
13 from now.

14 Q. Let me ask you about plagiarism, and plagiarism
15 accusations. Is an accusation against your field
16 serious?

17 A. Very serious. If you are caught plagiarizing,
18 you would be thrown out of your tenure position, job,
19 career, income.

20 Q. Why is that so serious?

21 A. Plagiarism in universities where people exchange
22 ideas creates a situation where people would be afraid
23 to exchange ideas. Let's say a grad student doesn't give
24 about paper because someone at the conference will
25 publish your ideas under your name, even though that's

1 supposedly plagiarized Dr. Golb during what time period?

2 A. Essentially, they start with materials published
3 in the late '80s.

4 Q. Just explain again why the accusations are false?

5 A. The thing is that first of all, it is very
6 important to emphasize that my views on the whole
7 subject are totally different than Professor Golb. Now,
8 the things they we agree are coming from a Judaic
9 studies background. He comes from the point of view of
10 Cairo Geniza. I will explain what that is. It's a
11 collection of manuscripts found in Cairo in the late
12 19-Century which are like is the Dead Sea Scrolls in
13 their bombshell importance for the history of Judaism,
14 but mostly a later period, mostly a later period because
15 most material pertains to the middle ages. There are in
16 that collection several texts found in the Dead Sea
17 Scrolls in a excellent manuscript. Dr. Golb did a lot of
18 research on Cairo Geniza. I did less, much less than
19 the Dead Sea Scrolls, but similar. Both deal with the
20 manuscript corpora and both come from the Judaic study
21 tradition. There are certain things which are either
22 part of the tradition or published by people before us
23 or common knowledge we share and certain terms used in
24 the field, like wide-ranging approaches to Judaism or
25 something that claim were plagiarized from Dr. Golb, but

DIRECT/PEOPLE/DR. SCHIFFMAN

1 A Absolutely.

2 Q And with Dr. Wise being a protégé of Dr. Golb, would
3 that reflect poorly upon Dr. Golb?

4 A Not necessarily.

5 Q Could you tell the jury this impersonation of you that
6 occurred over a period of time, the false accusations of
7 plagiarism, the false confessions of plagiarism, could you tell
8 the jury what effect this had upon you?

9 A I think the effect could be analyzed from two points of
10 view.

11 Directly on me I was basically sort of emotionally
12 frozen. I began to see this thing growing and growing and
13 growing. I had no idea what the impact is and what was
14 happening was that I was finding that in some quarters I was
15 being isolated and if I may, I would like to give the worse
16 example of that.

17 Q Sure.

18 A I sought to get help from the legal department of my
19 own university where I had worked by then I guess for 37 years
20 and I e-mailed them and I asked them if they could do something
21 about getting this investigated and I got no answer so I decided
22 to call up and I got this stony thing, we're not talking to you,
23 which I realized meant only one of two things -- well, I'm not
24 allowed to say that -- I'm not allowed to say what I think,
25 right?

Sheila Wesley
Senior Court Reporter

DIRECT/PEOPLE/DR. SCHIFFMAN

1 Okay, so the bottom line is, I can tell you how I felt.
2 I felt that they basically they no longer trusted me and they
3 were afraid that it might be true and, therefore, they didn't
4 want to get involved in helping me and I couldn't even talk to
5 them and I was like almost, let's put it in a non clinical
6 depression. That's about me.

7 The second thing is that my colleagues were being
8 bombarded with the stuff and it was spreading and spreading and
9 spreading and people were beginning to take it seriously and
10 when you see this stuff growing on internet and growing on
11 internet you start to realize, I mean everything is going to go
12 down the tubes because enough false -- let's be honest -- enough
13 false accusations, people stay away from you and I had the
14 feeling that I was to become one of these people who got off
15 from some terrible allegation and in reality people just think
16 you did it. So this was not, to put it mildly, a joke.

17 And I should say about the legal office the thing that
18 really panicked me about the legal office was I had been working
19 with them on a possible merger for the Center of Jewish
20 Histories which is between 16th and 17th Street near NYU, near
21 the university. People I was working with day after day after
22 day and suddenly they were not talking to me and then I find out
23 they're doing an investigation of me and that the senior vice
24 provost for research doesn't know what it means, this is all
25 sock puppet and phony people don't exist, and I don't know who

Sheila Wesley
Senior Court Reporter

A-370

1 the sentence, and you read it correctly.

2 Q. Thank you. Have you had an opportunity to review your
3 Grand Jury minutes before coming here to testify?

4 A. No.

5 Q. There was some discussion here on your direct testimony
6 when you were asked questions by Mr. Bandler with regard to the
7 Dead Sea Scrolls and what you described as their liberation. Do
8 you recall that?

9 A. Yes.

10 Q. What did you mean by the Dead Sea Scrolls were
11 liberated?

12 A. Well, I think that many people are aware that there was
13 a very long controversy because there was a certain team of
14 scholars that were appointed by the Jordanian government in the
15 early '50s to prepare for publication all of the stuff other
16 than the seven original scrolls, and a few scattered fragments.
17 But the basic piece of it, especially the material from K4. And
18 this team was appointed, made up of groups of Christians --
19 basically two types of Christians, Protestants and Catholics.
20 They were appointed in Jordan, and they didn't do their job.

21 Q. They did not?

22 A. Did not do their job. They published maybe 1/8th of
23 what they were supposed to do. If they published eight volumes
24 of what eventually -- they got eight volumes out and eventually
25 there were 40. They published out of the necessary 40 volumes

1 that would eventually be published. They failed to complete the
2 responsibility. But, they had a monopoly, and access the
3 material. And in beginning of 1989 and running through 1990,
4 there was a struggle to overturn this, which a generally
5 referred to the liberation of the scrolls, in which immense
6 pressure was put on those scholars and on the Israeli government
7 that had come to control them after taking East Jerusalem in
8 1967. That's generally refered to the liberation of the
9 scrolls.

10 Q. Who is responsibility for the liberation of the
11 scrolls?

12 A. Many people. Hershel Shanks who is a biblical --

13 Q. Herhel?

14 A. Hershel Shanks, H-e-r-s-h-e-l S-h-a-n-k-s, of the
15 Biblical Archeology Review made a very, very strong campaign in
16 this his journal which was very influential. And many
17 newspapers editorialized and many scholars worked both Israeli
18 and non-Israeli to push the Israeli government to interfere in
19 this issue. And then, some scholars were able to get purloined
20 copies and release them to the public, which lead to the Israeli
21 government declaring them totally open, and appointing a new
22 publication team that completed the task within some reasonable
23 amount of time.

24 Q. Have you ever heard the name William Moffett, sir?

25 A. Yes.

1 Q. For how many years did you have access to scrolls that
2 you worked on?

3 A. This is not access. This is published text anyone
4 could buy in a book store.

5 Q. Anyone could buy?

6 A. Anyone. 25 percent of the text were published and in
7 the public domain.

8 Q. What is the monopoly, sir?

9 A. The monopoly refers to the group of scholars that did
10 not let people like me and Professor Golb see the unpublished
11 scrolls, which was a total of 75 percent of the total of the
12 material which was in the hands of this group that had been
13 appointed by the Jordanian government, who failed to publish it,
14 and wouldn't let anyone else see it.

15 Q. Isn't it a fact, sir, you had access to these scrolls
16 during the entire period when they were controlled by the
17 monopoly?

18 A. Absolutely not.

19 Q. Not?

20 A. Absolutely not. I could, if you want, tell you
21 specifically those items that I ever saw before the publish
22 release you just described. I could listed items for you. I
23 can tell you where I saw them. But it is a very small group of
24 texts.

25 Q. Did there come a time, sir, when you indicated to the

1 public at large that you had access to the scrolls because of
2 your political connections?

3 A. I never had access to the scrolls, so I would doubt it,
4 ~~unless I referred to those specific few items which I did see~~
5 before the general release.

6 Q. Did you use those scrolls or those pictures of scrolls
7 or those films of scrolls in teaching to the students at NYU?

8 A. I only had copies. You say film. We are talking about
9 before the release of the -- public release. Before the public
10 release, the only text I had that I could have used to teach
11 anybody was the MMT text. And that text was first brought to
12 NYU by its editor, Elisha Quimron, who distributed copies. And
13 yes, I did share those copies with students who were present in
14 that seminar and took other seminars. I had no other text in my
15 possession, although I was shown a total of one, two texts in
16 their entirety.

17 Now, in order to make sure that I can't get attacked
18 later for lying or something, at lectures we were sometimes
19 given to look at by people in the monopoly the text they were
20 working on. But I never had those in my possession to share
21 with anybody else.

22 Q. Who was Roland de Vaux?

23 A. Roland de Vaux, he is the archeologist who excavated
24 the Qumran in the '50s. And he was first head of the
25 international team that controlled what eventually became the

1 meeting, who was no official group. It was those members of the
2 editorial team because, at the risk of taking too much time, of
3 the seven originals --

4 Q. We have all the time in the world, sir.

5 THE COURT: No, we do not, Mr. Breibart, because
6 the relevance of all of -- this is very interesting, which
7 is why I haven't stepped in before. But the relevance of
8 this to the instant matter is really evading me. So, I will
9 give you five more minutes. If it doesn't stop evading me
10 by then, we will move on to something that is obviously
11 relevant.

12 MR. BREIBART: Any time, Judge, I would be glad to
13 take a brief break and explain the significance.?

14 THE COURT: Sir, no. We have litigated this
15 matter and the relevance, what is relevant and what isn't at
16 great length.

17 MR. BREIBART: Judge, I don't want to be scolded
18 in front jury. That is not appropriate.

19 THE COURT: I am not scolding you. You asked me
20 to take, quote, take a break. I don't want the jury to
21 think I haven't heard counsel at great length. So, as I
22 said you have another few minutes to led me to understand.

23 Q. This antiquities authority sir, do they have the
24 authority to appoint people to different positions?

25 A. Yes.

1 lecture with regard to Qumran and archeological digs?

2 A. Yeah.

3 Q. Did you talk about the digs, do you put them on the
4 internet?

5 A. My lectures, some lectures of me, a small number of
6 items by me are on internet. I don't usually -- I don't, I
7 don't put things on the internet, but I have put on my website,
8 things that others put on it.

9 Q. Did your findings disagree with the findings of Magel
10 and Eshel?

11 A. I am not an archeologist. I don't do archeological
12 research. Magen and Eshel investigated the site, and have
13 published certain things, which I take into consideration. They
14 have done this only recently. But it's not a question, I mean I
15 think they have a different views of the site than I do. If
16 that's what you are asking.

17 Q. Yes, that's exactly what I am asking.

18 A. They have a different view of the site than I do, yes.

19 Q. Did they spend a great deal more time at the site than
20 you did?

21 A. Yes, of course.

22 Q. Can you go to Qumran --

23 A. Of course.

24 Q. -- and make --

25 A. Sorry.

1 PhD had to do with the textual explanation of a few texts and
2 the connection with the car -- I got my PhD before I began to
3 discuss interpretation of the site of Qumran and the manuscripts
4 of Qumran. I believe his earliest article on the subject is
5 1980. I got my PhD in '74 if I remember correctly.

6 Q. Did you read the article that he published in 1980?

7 A. The 1980 article, I have only read -- I had looked at
8 the article briefly I think once before, and I have read it
9 carefully only now, the 1980 article. I had read the American
10 scholar article when that one came out.

11 Q. What year was that?

12 A. I could look on a piece of paper and tell you.
13 Otherwise I will give you --

14 Q. Please, but understand you will be obligated to show us
15 what's on that piece of paper.

16 A. It's not a piece of paper. It's a message on a
17 Blackberry I turned off. Do you want me to turn it on to get
18 date of publication? I think it's '86 but you probably know.

19 THE COURT: I don't see what relevance it has.

20 THE WITNESS: I could turn this machine on --

21 THE COURT: Don't turn it on. Please, no.

22 Q. Have you taken certain liberties with describing the
23 work of Norman Golb?

24 A. I have absolutely not.

25 Q. Have you described his work to the best of your ability

1 accurately?

2 A. I thought --

3 THE COURT: Here in this courtroom, in general? I
4 don't understand the question, please.

5 A. I thought I did, but it's been pointed out to me I made
6 one mistake.

7 Q. What was the mistake that's been pointed out to you?

8 A. The mistake that was pointed out to me was that I had
9 said he believed the material came from the Temple Library, when
10 in fact he believe it came from a number of Jerusalem libraries.
11 Apparently I made an error.

12 Q. How many times did you make that error?

13 A. Apparently three times because I never found in between
14 it was wrong, because no one from, like Norman could have just
15 told me, you made a mistake. I would have fixed it.

16 Q. Did you write a book this year that came out this year?

17 A. Yes.

18 (Continued on next page.)

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1 CROSS-EXAMINATION CONT'G

2 BY MR. BREITBART:

3 Q Did you continue to make the same mistake in that book?

4 A Yes.

5 Q So you continued to attribute the theory of someone
6 else to Norman Golb for twenty years?

7 A I made a mistake. I had misinformation and I did not
8 know that this was misinformation and, therefore, I repeated it.

9 Yes, I made a mistake.

10 Q What year did you publish your last book with that
11 mistake in it?

12 A I think it's the one you're holding over there right
13 there. It came out very recently.

14 Q The stenographer can't see the holding so I'm asking
15 you a question, what year did you publish that book?

16 A I think it's either 2009 or '10.

17 Q Nine or ten?

18 A Yes, it could be '10.

19 You got the book over there, what you're asking me for?

20 Q Because you are under oath and I have an obligation to
21 ask you questions.

22 THE COURT: Mr. Breitbart, stop arguing with the
23 witness. If you need the witness directed, ask me to do it.

24 MR. BREITBART: Would you please direct the
25 witness to --

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1 A I think --

2 MR. BREITBART: He doesn't listen anyway.

3 THE COURT: Professors and Judges, we're bad at
4 following directions so wait for a question please, sir.

5 I'm still not seeing the relevance of this
6 inquiry, counsel. Let's move on to something that we can --
7 let's move on to something else.

8 Q Yesterday you indicated that you didn't know Raphael
9 Golb; is that correct?

10 A Yes.

11 Q Did you ever see Raphael Golb in the street?

12 A I believe I saw Raphael Golb once in the street and
13 that was after this whole affair started. I was sitting in my
14 car, I saw a gentleman walk by, I was just parking, I saw a
15 gentleman walk by holding a cell phone that I thought was
16 Raphael Golb because I had seen his picture in the newspapers so
17 I may have seen Raphael Golb but that's the only experience that
18 I know of.

19 Q Did you know who he was when you saw him in the street?

20 A I thought I did because his picture appeared in the
21 newspapers after he had been arrested.

22 Q Were you with anyone else at that time?

23 A No, I was sitting in the car on the corner there. See
24 I park my car across the street from what is apparently his
25 address almost everyday but only once when I happened by chance

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1 MR. BANDLER: Your Honor, I don't object. I think
2 having them in evidence --

3 THE COURT: We'll wait until the jury takes a
4 break but we should go a little bit longer.

5 Q As a result of the activities that you described, the
6 blogging, the e-mails and the like, did you suffer any economic
7 loss?

8 A I can't know that.

9 Q Were you asked that question in the Grand Jury?

10 A I think I said no because I have no demonstrative --

11 Q The first question was, were you asked that question in
12 the Grand Jury, sir?

13 A I think I've --

14 THE COURT: Sir, I think I've already told you
15 stop yelling at the witness. If you need the witness
16 directed --

17 MR. BREITBART: Judge, I wasn't yelling.

18 THE COURT: I misapprehended. I apologize. If
19 you need the witness directed, ask me.

20 A I think I said I suffered no loss.

21 Q Would you repeat that?

22 A I believe I said to the Grand Jury that I suffered no
23 loss and that was before I did my 2009 income tax.

24 Q Would it be fair to say that you swore in the Grand
25 Jury that you don't know of an economic loss?

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1 A Yes, that's correct. I do not know of an economic
2 loss, that's correct. That's what I said to you here.

3 Q I'm sorry?

4 A That's what I meant when I said when you asked me the
5 first question and I said I don't know that I have any loss
6 whatever. It's correct.

7 Q Did there come a time, sir, when you were asked
8 questions about when you felt that you should proffer to the
9 jury the fact that you have a life contract?

10 A You lost me a little bit.

11 Q Did there come a time where you felt you needed to
12 proffer to the Grand Jury that you have a life contract at the
13 university?

14 A I just don't remember, it's possible. I mean I do have
15 tenure at the university which is essentially a life contract
16 because we have no retirement age unlike everyone else.

17 Q Well, did you indicate, sir, that you just wanted to
18 point out and this is page 58 line 20.

19 THE COURT: I'm sorry, sir, there is no foundation
20 for asking about a prior inconsistent statement.

21 MR. BREITBART: This is to refresh his
22 recollection, your Honor.

23 THE COURT: Excuse me, sir, you haven't asked a
24 question.

25 Q Did you -

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1 THE COURT: Ask a question before you refer to
2 prior testimony which is hearsay.

3 Q Did you indicate to the Grand Jury, sir, that you have
4 a life contract at the university?

5 A I don't remember, I could of.

6 Q Did you indicate, sir, that if you were found guilty of
7 this offense, you'll be gone tomorrow?

8 A Yes.

9 Q Now, when you were testifying to the Grand Jury, did
10 you indicate, sir, that you would not be gone because of the
11 blogs but you would have been gone because you were found guilty
12 of the impropriety of plagiarism?

13 A Of course.

14 Q Were there benefits that you received as a result of
15 this series of disagreements that you had?

16 A When you say "series of disagreement" you're referring
17 to the present affair or the ongoing debate about the scrolls?

18 Q I'm talking about the subject matter about which we're
19 here today.

20 A Absolutely not. A benefit? I got a benefit? Good
21 luck. We should all have benefits like that.

22 Q Well, were you asked this question and did you give
23 this answer in the Grand Jury from page 59 line 9:

24 "QUESTION: The Grand Juror is inquiring if you know of
25 any financial consequences to Norman Golb's son due to the

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1 A Yes.

2 Q Do you know how many people attended the Royal Ontario
3 Museum?

4 A No, I have no idea.

5 Q Would the number 200,000 surprise you?

6 A It wouldn't, no.

7 Q How about the Raleigh Museum, did you do that one also?

8 A Yes, I was there. You're just proving that I got
9 underpaid. You're proving that we don't get paid money to give
10 lectures of the Dead Sea Scrolls.

11 Q Well, you've indicated in other places, sir, that there
12 are inherent benefits for being at the scroll exhibits, aren't
13 there?

14 A Of course.

15 Q What are the benefits that you get?

16 A Well, you get to present your ideas to an audience, you
17 get to see a nice exhibit, get a free trip to see a nice
18 exhibit, you get to present your ideas, and people know about
19 you and you may get invited to some other lectures in the area
20 and you might make a couple bucks here or there for doing it
21 which is an honest activity.

22 Q You describe that as notoriety; is that right?

23 A Well, you could, okay.

24 Q You have is what I'm saying?

25 A Okay, yes, I would, I think it's fine.

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1 Q Did you speak there?

2 A I spoke there. My wife broke her leg there and had an
3 operation in Kansas City but yes, I was there.

4 Q Did that have something to do with the scrolls?

5 A I don't know, you'll have to answer that.

6 THE COURT: You mean her breaking her leg?

7 THE WITNESS: Yes, he'll have to answer whether it
8 was the Dead Sea Scrolls.

9 THE COURT: You know what, I'm going to take a
10 break because I don't know what the relevance of all of this
11 is.

12 THE WITNESS: I can't tell if I'm testifying or if
13 he's testifying.

14 THE COURT: Professor Schiffman, I apologize.
15 Jurors, have a nice little break. See you in fifteen
16 minutes, make it twenty.

17 (The jury exited the courtroom and the
18 following occurred:)

19 (Witness exit.)

20 THE COURT: Yes, 25 words or less what's the
21 relevance of this?

22 MR. BREITBART: Your Honor, this is what I would
23 describe as cross-examination. I'm trying to use any prior
24 immoral, illegal, or vicious act perpetrated by this witness
25 to attack his credibility.

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1 THE COURT: Well in that case I'm not quite which
2 immoral or vicious et cetera act you have asked him about,
3 but while we know Mr. Kuby's politics, excuse me, from his
4 notoriety, it is those who think making money is not immoral
5 or vicious acts. I am not amongst them so I don't
6 understand that.

7 MR. BREITBART: They provide him a motive.

8 THE COURT: Okay now that we have that established
9 that the man has made his living as he has admitted by being
10 a scholar of the Dead Sea Scrolls and now we will move on.

11 And what is the relevance of his providing
12 information to the district attorney which the district
13 attorney chose to use in his search warrant application?

14 MR. BREITBART: What is the significance?

15 THE COURT: Well, you've offered --

16 MR. BREITBART: I'll tell you my purpose is, this
17 man has never been investigated, no one has looked into his
18 activities, he came to the district attorney's office, he
19 went to NYU, no one ever explored whether or not he was in
20 fact a plagiarist and a misrepresenter in any of the violent
21 acts that a scholar can make.

22 THE COURT: I don't really care whether the People
23 have or have not investigated him in this regard. The
24 witness is not competent to so testify. Number one, he did
25 testify that he was involved in an investigation, I don't

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1 know the extent at NYU, I don't know if he has firsthand
2 information on it and I have now had enough of this. So if
3 we're not going to move onto relevant matters, we're going
4 to be done.

5 MR. BANDLER: And my concern with the reference,
6 defense counsel's reference to the search warrant and for
7 the record, we're talking about the search warrant of
8 January 12, 2009, pages four and five, the affidavit of
9 Investigator McKenna, Mr. Breitbart was trying to give the
10 jurors the impression that it was something nefarious when
11 in fact Investigator McKenna's affidavit clearly sources his
12 basis for knowledge and the purpose of that. So it's kind
13 of giving a misleading impression.

14 THE COURT: I don't know whether they have a
15 misleading impression or not being asked as a lawyer and a
16 Judge I know what the purpose of it was so but you like
17 knowing the purpose of this line of cross-examination so I
18 am not taking the documents into evidence and you may have a
19 break.

20 MR. KUBY: When should we return?

21 THE COURT: Ten minutes.

22 (Recess.)

23 (Continued on next page.)

1 to read from the article --

2 MR. BREIBART: All it requires is a yes or no
3 answer.

4 THE COURT: Counsel.

5 A. The answer is no. I answered it yesterday. I will
6 answer it again.

7 Q. It's your testimony that it doesn't say that you
8 appropriated portions of Golb's theory?

9 A. Repeat. If you -- the Judge says I can't translate it.
10 It does not say I appropriated his theory.

11 Q. Not only that, without acknowledge the fact and without
12 giving him appropriate credit?

13 A. Oh, the latter sentence is in fact in the article. The
14 latter part of your sentence is in this article.

15 Q. Is there a writing with regard to your response?

16 A. Yes.

17 Q. Does it say that isn't the issue, there's no innovation
18 in Golb's theory?

19 A. That's correct. That's what it says.

20 Q. And Golb can say what he wants, the idea we're not
21 dealing with a sect is self-evident. Does he think he wrote the
22 bible.

23 A. It says that, although that's an incorrect -- the text
24 incorrectly got my comment, which I could explain if the Judge
25 wants me to.

1 THE COURT: I would like to leave this article,
2 which is hearsay, and once again, I am in that fog bank
3 trying to understand why we are doing this.

4 MR. BREIBART: May I explain?

5 THE COURT: No, I gave you a chance during the
6 break. We will not keep going with it.

7 Q. Why don't you translate for us what what the portion
8 that you were directed to says?

9 A. Here it is. He says (speaking Hebrew) --

10 Q. She can't take down Hebrew.

11 A. So, she won't take down Hebrew.

12 THE COURT: Just the translation.

13 Q. She can't take down Hebrew.

14 A. But you also in various articles that you published did
15 not hesitate to adopt pieces of the theory of Golb, without --
16 then the second part you correctly stated.

17 Q. Why don't you finish it.

18 A. Without admitting it or acknowledging it, and without
19 giving him appropriate credit.

20 Q. Doesn't that exactly fit into the definition of
21 plagiarism from the NYU handbook and the NYU rules and
22 regulations that we just spoke about a moment ago?

23 A. I have no idea.

24 MR. BREIBART: May we have a moment, your Honor?

25 THE COURT: Sure.

1 Q. Does this refresh your recollection about what Avi
2 Katzman had written when you read it in 1993?

3 A. Well, I read Avi Katzman article about a week ago. So,
4 I don't need you to erase my time, refreshing my recollection.
5 I don't believe this is an accusation of plagiarism. It's an
6 accusation of too few footnotes to a guy.

7 Q. Sorry?

8 A. It's an accusation of too few footnotes to a guy.
9 Norman Golb is footnoted in everything I written. I have
10 written seven books on the scrolls. I have written 139
11 scholarly articles. No one has ever accused me of plagiarism,
12 and Norman Golb is footnoted in them. I have an article being
13 edited right now which is coming out soon, this week, about the
14 contributions of Norman Golb in the given subject. I have
15 never plagiarized Norman Golb. And if I mistakenly didn't made
16 some mistake about his theory of plagiarism in a letter from
17 him, I would have fixed it right in the future.

18 Q. The footnotes you are talking about, sir, didn't you
19 make those up?

20 A. Make them up? What does it mean?

21 Q. Where is there an article written by Norman Golb that
22 says what you say it says?

23 A. I repeat, I have made one error regarding Norman Golb's
24 theory. That error is -- I confused it from the guy whose
25 entire theory, Norman Golb admits in his book, it is almost the

1 same, he didn't know about when he wrote his, and I confused the
2 two, and there is one library or several libraries. That's what
3 happened, because the whole theory of Norman Golb is this an
4 article published 1960, except Norman Golb says one or more than
5 one library, and Rando [phonetic] says one library. And if you
6 call that mistake plagiarism or misappropriation or whatever you
7 call it, go ahead, what can I do. It's not -- it's an honest
8 mistake.

9 Q. Did you know whether or not Norman Golb wrote a book
10 about the Dead Sea Scrolls?

11 A. Of course.

12 Q. Do you know what it's called?

13 A. Yes, Who Wrote the Dead Sea Scrolls.

14 Q. Do you know whether or not he discusses this --

15 A. Yes, I do.

16 Q. -- article? He does not excoriate you in this article?

17 A. Once again, I don't think -- look, he got 20 pages in
18 there about my theory, in which he debates it. And he does what
19 we are supposed to do in scholarly -- I don't agree with him.
20 He's doing what he's supposed to do. In there, he simply
21 repeats the same, but doesn't even -- but he never uses the
22 word plagiarism. Simply says, again, that the guy should have
23 been given me more credit.

24 Now, I don't agree with him because I can argue that
25 all these theoris are commonplace in the field, that everything

1 you are telling me I took from Golb, Golb took or did by
2 accident or on purpose, from Rengstorf. And Rengstorf took it
3 from other people. And in 1955, Sparks published an article.
4 ~~You know, you have to listen to me. You are not asking me to~~
5 stop. Spark published articles in which he says the material in
6 the Qumran collection does not come from one sect. And you are
7 sitting here and telling me I plagiarized that from Golb.
8 Future get it. No chance.

9 Q. Then you plagiarized it from Sparks?

10 A. No, of course not. I footnote him in the same way I
11 footnote Golb. You don't like the Golb footnote because there's
12 a mistake in it. Everyone makes mistakes.

13 Q. Do you generally make mistakes?

14 A. I usually don't but I sometimes do.

15 Q. Is Sparks supposedly a major contributor in this field?

16 A. No.

17 Q. Is he a minor contributor in this field?

18 A. Well, he wrote a -- he put together a collection of
19 texts that didn't sell too well that Oxford published. He wrote
20 a small article which discusses these issues.

21 Q. About the scrolls?

22 A. Yes, about -- yes, about the Qumran collection.

23 Q. How long was the article?

24 A. About four pages. You are holding it there. You ask
25 me. Four pages, five pages.

1 Q. Because what I do is not under oath.

2 THE COURT: Mr. Breibart, since I don't understand
3 the relevance of this, this gentleman is not on trial here
4 for plagiarism. You are really pushing my buttons. So
5 could we move on to something relevant because I am done.

6 Q. Well let me ask you a question. Who wrote the book the
7 Encyclopedia of the Dead Sea Scrolls?

8 A. It was written by 400 authors.

9 Q. Were you one of them?

10 A. Yes.

11 Q. Were you the chief author?

12 A. I was one of two editors of the encyclopedia.

13 Q. Anywhere in there do you refer to Spark s?

14 A. Probably not.

15 Q. When did you write that encyclopedia?

16 A. I didn't write the encyclopedia.

17 Q. When did you put it together, sir?

18 A. Truth is I don't remember the date. I don't want to
19 give a false date.

20 Q. In the '80s or '90s?

21 A. I think it was early '90s, the '90s.

22 MR. BREIBART: May I just have another moment?/

23 Q. There came a time, sir, when you interacted with NYU or
24 the hierarchy of NYU with regard to the accusation of
25 plagiarism, correct?

1 A. As I said, I cannot remember now what I told to news
2 reporters. I talk to news reporters about a that lot of things
3 at various times. I hope that most of them record the truth.
4 ~~That's all I know.~~ And I hope that when they write things down,
5 I really said that. I don't remember what I said to some AM New
6 York reporter and some non-date.

7 Q. You have been testifying about events that occurred in
8 1960s and '70s --

9 A. Correct. But reporters, I talk to too many of them to
10 remember this stuff. It's not worth remembering what you told
11 to a reporter. And sometimes I even tell things to the reporter
12 I shouldn't have.

13 Q. If you are asked, sir, now, today --

14 A. Yeah.

15 Q. Now, would it be fair so say that you mentioned that no
16 one will take these comments seriously?

17 A. You just read me a different sentence.

18 Q. This is the sentence you have to respond to.

19 A. I believe no one would ever believe I'm plagiarist
20 because I did write 199 scholarly articles and 14 scholarly
21 books. And I believe no one will ever believe I'm plagiarist.
22 That the university took the accusation seriously is a totally
23 separate issue because of their obligations which go way, way
24 beyond. And, therefore, it's not whether they believe it or
25 not. It's whether they investigated it or not, and whether I

1 could have lost my job because of what this gentleman did. That
2 has nothing to do with whether or not the general public would
3 be crazy enough to believe these ridiculous accusations.

4 Q. Would you say now that no one believed the E-mails,
5 sir?

6 MR. BANDLER: Objection.

7 THE COURT: Sustained.

8 MR. BREIBART: Thank you for your help
9 Dr. Schiffman.

10 THE WITNESS: Thank you.

11 MR. BREIBART: I have no other questions.

12 THE COURT: Thank you. Mr. Bandler?

13 THE WITNESS: I hope none of this is personal.

14 MR. BREIBART: Never is, sir.

15 THE WITNESS: Okay, good. Who gets this
16 (indicating)?

17 THE COURT: I do (handing).

18 THE WITNESS: You can learn Hebrew.

19 RE-DIRECT EXAMINATION

20 BY MR. BANDLER:

21 Q. Dr. Schiffman, you referred to a mistake you made about
22 Dr. Golb's theory?

23 A. Yes.

24 Q. Just briefly, could you clarify what that mistake was
25 in your attribution?

1 A. Yes. Dr. Golb feels that now I see from writing, from
2 rereading a lot of his articles, which I have been doing because
3 of this entire event and his book again, he feels that the
4 collection of libraries, that there was a collection of
5 libraries, several libraries that came from Jerusalem, several
6 book collections that were hidden in the Judean desert, of which
7 some were found in the Qumran collection. He assumes there
8 would have been other ones according to the book. I mistakenly
9 attributed to him the notion in Rengstorf's article, which
10 suggests that there was one library, which was the temple
11 library which came to Qumran.

12 Now, I tried to figure out why I made that mistake.
13 And in examining some handouts which Professor Golb had given,
14 and perhaps people should know I spent an entire time in
15 Molitajny [sic], which is in Poland, discussing Professor Golb's
16 theory, and I thought we understood his theory. I actually had
17 a very pleasant time with him and his wife at that time.

18 In any case, I made a mistake here. Because
19 Renogastric said it was the temple library, and Golb said it was
20 several libraries.

21 Q. So, you are telling the jury are you not perfect?

22 A. Yeah I am not perfect.

23 Q. Now, some people have --

24 A. I just found that out. I thought I was until I found
25 the mistake.

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1 shortly thereafter.

2 Q And when you received this e-mail, what did you think?

3 A I beg your pardon?

4 Q When you received this e-mail, what did you think?

5 A This is really weird. Something is wrong here. This
6 doesn't make sense.

7 Q How well do you know Dr. Schiffman?

8 A I know Dr. Schiffman as a chair and I know
9 Dr. Schiffman as a colleague and since I came to New York
10 University in 1998 this e-mail was sent in 2008, we'd had a
11 number of professional encounters.

12 Q And on 10-M the e-mail address on the to line is that
13 your e-mail address?

14 A Yes, it is.

15 Q And scrolling down a little, are there any other
16 Lawrence Schiffman's in the university that you know of, a
17 Professor Lawrence Schiffman?

18 A Not that I know of, no.

19 Q And I'd like to display exhibit 10-K and you can turn
20 to 10-K which is in evidence.

21 (Displayed.)

22 Q Do you recognize 10-K?

23 A Oh, that's my auto reply.

24 Q And I'd like to display exhibit 10-P which is in
25 evidence.

1 evidence, what was the determination of New York University
2 regarding these this false confession and accusations against
3 Dr. Schiffman?

4 A. That to call Dr. Schiffman a plagiarist was not
5 credible, and it was not substantiated.

6 Q. Based on your personal knowledge and observations, what
7 effect did you notice this false confession and accusations had
8 upon your school that you were the dean of?

9 A. The both the false confession and the accusations were
10 widely circulated, and they were sent to a number of people,
11 graduate students, faculty, staff, and I would say that this was
12 surprise, surprise, this doesn't make sense. This is, this is
13 a, like a storm that shouldn't be happening.

14 Q. And what effect did you notice from your observations
15 this had upon Dr. Schiffman?

16 MR. BREIBART: Objection.

17 THE COURT: Sustained.

18 Q. Were you able to observe from your own observations of
19 Dr. Schiffman or communications with Dr. Schiffman whether he
20 had to spend time addressing this issue?

21 MR. BREIBART: Objection.

22 THE COURT: You may answer the question.

23 Q. You can answer the question?

24 A. Thank you. He had to defend himself. He had to
25 prepare defenses. He had to help the deans understand what was

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1 THE COURT: And current staff?

2 THE WITNESS: I don't remember it saying that but
3 it says it applies to members of the community.

4 MR. BANDLER: I think we're talking about 10-M as
5 in Mary.

6 MR. BREITBART: Yes. Will you scroll down?
7 (Displayed.)

8 Q Dean, this was received by you I think you said, right,
9 eventually?

10 A Right.

11 Q And it contains a message to you and allegedly it's
12 written by Lawrence Schiffman and you made a determination, did
13 you not, that Schiffman didn't write that?

14 A Yes.

15 Q Is that basically because people don't write to you and
16 confess to plagiarism?

17 A No.

18 Q What reason did you use to determine that that was not
19 credible?

20 A Two reasons, in my thinking, one it didn't sound like
21 Professor Schiffman, that's not the way he signs his name to me,
22 that's not, he uses two e-mail addresses in my acquaintance with
23 him, none of them is that e-mail address. So that the language,
24 the e-mail address, the way he signed the name Larry Schiffman
25 professor with a small P, I don't mean to sound pedantic but

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1 that's just not how he signs his name. So there was a lack of
2 credibility on the surface of that and secondly I believed his
3 denial.

4 Q I'm sorry, I couldn't hear you?

5 A I believe Professor Schiffman's denial.

6 Q I see.

7 I see that there is a link in there, did you follow the
8 link?

9 A I may have but I don't remember exactly doing so, no.

10 Q So you don't know whether or not you looked into what
11 the link, linked you to?

12 A I don't remember.

13 Q So it was not the link, you didn't explore the link, is
14 that fair to say?

15 A I'm saying I don't remember.

16 Q So you're entire decision making was based upon those
17 things that you've just enumerated; is that right?

18 A I believe you've asked me what was my decision making
19 about the credibility of that and that's all I was answering.

20 Q Is it part of your role at the time that you received
21 that, would it be fair to say that you had an obligation to take
22 a complaint whether it came in anonymously or in person?

23 A By in person you mean by someone signing his or her
24 name?

25 Q Or coming in and saying hey I got a problem I'd like to

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1 community to be aware of what's in it.

2 Q Did you ask, for example, did you ask Dr. Schiffman
3 whether or not he had read the faculty handbook?

4 A I did not ask him explicitly. As a chair he probably
5 did but I did not ask him explicitly.

6 Q If someone adopts someone else's ideas and puts it into
7 his own writings and doesn't give credit to the individual whose
8 ideas he's adopted is that plagiarism?

9 A He publishes the writings, he takes someone else's
10 ideas?

11 Q Right.

12 A He passes them off as his or her own?

13 Q Correct.

14 A And gives no credit to the other person?

15 Q Correct.

16 A I would call that plagiarism, yes.

17 MR. BREITBART: Thank you very much for your help,
18 Doctor.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you, Mr. Breitbart.

21 MR. BANDLER: No further questions.

22 THE COURT: Thank you.

23 (Witness excused.)

24 THE COURT: Mr. Bandler.

25 MR. BANDLER: The People call Dr. Susan

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DIRECT/PEOPLE/DR. BRAUNSTEIN

1 Braunstein.

2 (Witness entering.)

3 COURT CLERK: Ma'am, do you sincerely and solemnly
4 swear or affirm that the testimony you are about to give
5 this court will be the truth, the whole truth, and nothing
6 but the truth, do you so swear or affirm?

7 D R S U S A N B R A U N S T E I N,
8 having been called as a witness on behalf of the People,
9 testified as follows:

10 THE WITNESS: I do.

11 COURT OFFICER: In a loud clear voice, state your
12 full name, spell your last name, and your county of
13 residence.

14 THE WITNESS: Susan Braunstein,
15 B-R-A-U-N-S-T-E-I-N. Kings county.

16 MR. BRETTBART: Judge, may I impose upon you to
17 ask Miss Braunstein to keep her voice up.

18 THE COURT: Please, the mic. is live although you
19 need to use some energy, too.

20 If you don't understand a question, let me know so
21 we can ask it more clearly and if there is an objection,
22 give me a chance to tell you whether or not to answer it.

23 Your witness, sir.

24 MR. BANDLER: Thank you.

25 DIRECT EXAMINATION

DIRECT/PEOPLE/DR. BRAUNSTEIN

1 BY MR. BANDLER:

2 Q Miss Braunstein -- Dr. Braunstein, who are you employed
3 by?

4 A The Jewish Museum.

5 Q And what is your position at the Jewish Museum?

6 A I'm Curator of Archeology and Judaica and chair of
7 curatorial affairs.

8 Q How long have you been with the Jewish Museum?

9 A Thirty years.

10 Q And could you summarize for the jury what your duties
11 are as curator and chair of that department?

12 A A curator is responsible for creating exhibitions and
13 also for maintaining the collections of a museum.

14 Q And what's your educational background?

15 A I have a master's and Ph.D. from Columbia University.

16 Q What's your Ph.D. in?

17 A Ancient Near Eastern Archeology.

18 Q Did there come a time when your museum was planning an
19 exhibit on the Dead Sea Scrolls?

20 A That's correct.

21 Q And when was that exhibit scheduled to take place?

22 A It was going to open on September 21, 2008 and run
23 through January 4, 2009?

24 Q And did it actually run as scheduled?

25 A Yes, it did.

Sheila Wesley
Senior Court Reporter

DIRECT/PEOPLE/DR. BRAUNSTEIN

1 Q Who was in charge of organizing that exhibit?

2 A I was in charge of it.

3 Q At about when did you start planning and organizing for
4 that exhibit?

5 A About a year and a half before it opened.

6 Q And what type of exhibit was this that took place?

7 A It was an exhibition that was going to explore who
8 wrote the Dead Sea Scrolls and what they tell us about ancient
9 Judaism and Christianity and it featured both artifacts and six
10 Dead Sea Scrolls.

11 Q And do you remember what the exhibit was called?

12 A We called it the Dead Sea Scrolls Mystery of the
13 Ancient World.

14 Q And what types of things did this exhibit include?

15 A It included various artifacts, pottery, a woman's
16 hairnet, comb, things that enabled us to talk about who might
17 have used the Dead Sea Scrolls as well as six of the actual
18 scrolls.

19 Q How did you go about getting the scrolls and getting
20 the artifacts?

21 A We work with the Israel Antiquities Authority which is
22 the organization that is in charge of the scrolls and the
23 artifacts as well.

24 Q And aside from artifacts and exhibits, what else did
25 your exhibit have?

Sheila Wesley
Senior Court Reporter

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DIRECT/PEOPLE/DR. BRAUNSTEIN

1 A We write text panels, they're labels and we also
2 included a wall of quotations from different scholars.

3 Q And were there also speakers?

4 A Yes, we organized several public programs in
5 conjunction with the exhibition.

6 Q And do you normally have speakers at events like this?

7 A Yes, we usually have at least one public program with
8 every exhibition that we hold.

9 Q When you say a public program when is that scheduled
10 for during the exhibit?

11 A It's usually sometime during the run of the exhibition.

12 Q And so at this Jewish Museum exhibit on the Dead Sea
13 Scrolls, did you also have speakers for that exhibit?

14 A Yes, we did.

15 Q And who were the speakers that spoke?

16 A Lawrence Schiffman and Eileen Schuller.

17 Q Do you remember when approximately you started
18 arranging for the speakers?

19 A We probably started discussing it in the spring of
20 2008.

21 Q And do you remember when approximately you announced to
22 the public who the speakers would be?

23 A It probably was late summer when we start sending out
24 announcements about the exhibition and the programs.

25 Q Now, for this exhibit on the Dead Sea Scrolls, how did

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DIRECT/PEOPLE/DR. BRAUNSTEIN

1 you go about selecting a speaker?

2 A There is a public program committee that always meet
3 regularly and when they are ready to discuss what lecturers they
4 want for a particular show, they ask the curator to attend their
5 meeting and we bat around ideas about what subjects we would
6 like to cover or perhaps there are important people who are
7 involved in this subject who we would like to engage.

8 Q And Dr. Schiffman what was his speech scheduled for,
9 what topic?

10 A We asked him to speak about the history of ancient Jews
11 and Christians during the period of the Dead Sea Scrolls.

12 Q And you mentioned Dr. Schuller, what was the topic of
13 her speech?

14 A We asked her to speak on women and the Dead Sea
15 Scrolls.

16 Q I think I asked this, when did you start announcing to
17 the public who the speakers would be?

18 A It was probably late summer.

19 Q Now in general for your general museum events, how do
20 you go about selecting a speaker?

21 MR. KUBY: Judge, I object to in general. I ask
22 as to this event would be fine.

23 THE COURT: You may answer the question.

24 A In general we're looking for somebody who is first of
25 all who is an engaging speaker, someone who knows their subject

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1 very well and someone who also might be known to the public so
2 they may be interested in hearing them speak.

3 Q Do you remember when you first approached Dr. Schiffman
4 about speaking at the event?

5 A It was in April of 2008.

6 Q And in addition to speaking, did Dr. Schiffman perform
7 any other services for the museum related to this exhibit?

8 A Yes, he did.

9 Q And what services?

10 A I asked if he would review a group of about eight to
11 ten quotations from different scholars voicing their opinions of
12 who wrote the Dead Sea Scrolls that I was going to include in
13 the exhibition.

14 Q And I'll ask a few more questions about that later but
15 were any fees paid to Dr. Schiffman?

16 A Yes, he received an honorarium for speaking and he
17 received an honorarium for speaking about those quotations.

18 Q Do you remember approximately how much he was paid?

19 A Yes, I do. It was the lecture honorarium was \$650 and
20 the consultation was \$500.

21 Q And by honorarium, what does that mean in the field?

22 A An honorarium is usually something that we offer as a
23 token of our thanks for speaking knowing that normally the fees
24 are much higher.

25 Q Are speaking fees customary?

Sheila Wesley
Senior Court Reporter

DIRECT/PEOPLE/DR. BRAUNSTEIN

1 A Yes.

2 Q So I would like to talk a little bit about
3 Dr. Schiffman's consultation for the exhibit, this text or the
4 quotes that Dr. Schiffman reviewed, what was the purpose of
5 those within the exhibit?

6 A They were to show that there were many differing
7 interpretations of who wrote the Dead Sea Scrolls to show
8 different sides of the scholarly arguments.

9 Q And did one of those quotes include Dr. Norman Golb?

10 A Yes, it did.

11 Q And did Dr. Schiffman review these different views
12 including Dr. Golb?

13 A Yes, he did.

14 Q And did Dr. Schiffman approve the presentation?

15 A Yes, he did.

16 Q So after Dr. Schiffman's consultation and review, the
17 exhibit still contained these different points of view?

18 A Yes, they did.

19 Q Including Dr. Golb's view?

20 A Yes.

21 Q Have you ever met Raphael Golb?

22 A I met him once.

23 Q And do you see him in the courtroom today?

24 A Yes, I do.

25 Q And if you could just point to him and identify.

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Senior Court Reporter

DIRECT/PEOPLE/DR. BRAUNSTEIN

1 A (The witness indicated.)

2 MR. BANDLER: Indicating the defendant.

3 MR. KUBY: Yes.

4 Q And do you remember approximately when you met
5 Mr. Golb?

6 A It was in January of 2009.

7 Q And when in relation to the Dead Sea Scrolls exhibit,
8 was it before, during, after?

9 A It had already closed.

10 Q And was Mr. Golb alone or with someone else?

11 A He was with somebody else.

12 Q And who was he with?

13 A Daniel Friedenberg.

14 Q And was there any conversation with Mr. Golb?

15 A Yes, I spoke with him.

16 Q And what was that topic about?

17 A We spoke about his father's review, Norman Golb's
18 review of the exhibition.

19 Q And do you know Dr. Norman Golb?

20 A I don't know him, I know of him.

21 Q And so prior to meeting Mr. Raphael Golb, the
22 defendant, had you had any conversations with him about the
23 exhibit?

24 A No.

25 Q So Dr. Norman Golb, do you know him?

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Senior Court Reporter

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DIRECT/PEOPLE/DR. BRAUNSTEIN

1 A No.

2 Q Had any contact with Dr. Norman Golb about the exhibit
3 at the Jewish Museum?

4 A He contacted me to ask if I would send him the text
5 from the exhibition because he wanted to write a review of it
6 and was unable to get to New York.

7 Q And when in relation -- when approximately did this
8 take place?

9 A Shortly after it opened. On September 21st is when it
10 opened.

11 Q So sometime after September 21st?

12 A Yes.

13 Q Any communication with Dr. Norman Golb before the
14 exhibit opened?

15 A None that I can recall.

16 Q And you mentioned Daniel Friedenber, who is Daniel
17 Friedenber?

18 A Daniel Friedenber was once a curator at the Jewish
19 Museum, he's a collector of things related to Jewish life. He
20 gave a collection to the museum and over the years have given us
21 other items from his collection and been a good friend.

22 Q And did Mr. Friedenber ever approach you regarding
23 Dr. Norman Golb and the Dead Sea Scrolls exhibit?

24 A Yes, he did.

25 Q And do you remember approximately when that was?

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DIRECT/PEOPLE/DR. BRAUNSTEIN

1 A I believe it was in August or late summer of 2008.

2 Q And could you please summarize what he asked you
3 regarding Dr. Norman Golb?

4 MR. KUBY: Objection, hearsay.

5 MR. BANDLER: Not for the truth.

6 THE COURT: We'll accept it but not for its truth.

7 Q So if you could, summarize what Mr. Friedenberg asked
8 you?

9 A He asked whether Norman Golb could speak at the Jewish
10 Museum on the subject of who wrote the Dead Sea Scrolls and that
11 Daniel Friedenberg would be willing to pay for that lecture.

12 Q And what was your response to that?

13 A We told him that we did not think it was possible to
14 add this lecturer to the lecture series.

15 Q And did he say why he was making this request?

16 A Yes, he said that he was concerned that Lawrence
17 Schiffman who he knew was speaking, would only give one side of
18 the debate and he felt that we should have the other side
19 represented.

20 Q And what was your position as to the different sides of
21 the debate?

22 A My personal opinion?

23 Q That was a bad question as I can tell.

24 What was your feeling as to whether differing sides
25 were represented in the exhibit?

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DIRECT/PEOPLE/DR. BRAUNSTEIN

1 A I made a very careful effort to show both sides. That
2 was sort of the unusual aspect of the exhibition. Most other
3 exhibitions had shown one side of the argument or championed one
4 side of the argument and I was very careful to show all sides of
5 it and to let the viewer decide for themselves.

6 Q What's the website address for the Jewish Museum?

7 A The Jewish museum dot org.

8 Q And if I was going to send an e-mail to someone who
9 works at the Jewish Museum, what would come after the at sign in
10 the e-mail address?

11 A The J M dot org.

12 Q And what would the following e-mail address belong to
13 press office at the JM dot org?

14 A That's our communications department which is like our
15 press department.

16 Q And how about this e-mail address info at the JM dot
17 org?

18 A That's a more general number for general inquiries that
19 goes to the visitors' services department.

20 MR. BANDLER: No further questions.

21 CROSS-EXAMINATION

22 BY MR. KUBY:

23 Q Good afternoon, Dr. Braunstein.

24 A That's correct.

25 Q You just testified that in curating this exhibit you

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Senior Court Reporter

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CROSS/KUBY/DR. BRAUNSTEIN

1 made a careful effort to show both sides of the controversy?

2 A That's correct.

3 Q And is it fair to say that by both sides, there are two

4 basic theories as to the origin of the Dead Sea Scrolls?

5 A Yes.

6 Q There are a lot of other spinoff theories from those as
7 well, correct?

8 A That's correct.

9 Q But two basic ones and is it fair to say that on one
10 side would be characterized the views of Dr. Schiffman and his
11 colleagues?

12 A In a very general way. Dr. Schiffman already has an
13 alternate view amongst the group that you're talking about.

14 Q And again, very general, because I don't know we need
15 the specifics unless you feel I'm misrepresenting something, the
16 other side, the other theory is represented by Norman Golb and
17 his colleagues?

18 A That's correct.

19 Q And Mr. Magen, I believe, Magen, are you familiar with
20 that name?

21 A Probably pronounced Ma-Gan.

22 Q Magen, sorry. And Mr. Peleg?

23 A They are two archeologists working in Israel who
24 recently re excavated the site of Qumran which has been
25 associated with the Dead Sea Scrolls.

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Senior Court Reporter

CROSS/KUBY/DR. BRAUNSTEIN

1 Q And is it fair to say that generally that their view is
2 more in accord with the Golb view than the Schiffman view?

3 A Yes.

4 Q And those two men, Mr. Magen and Mr. Peleg, they are
5 esteemed, respectable members of the archeological community?

6 A That's correct.

7 Q Now, you also said that most exhibits showed only one
8 side of the story, is that your testimony?

9 A May I qualify what I said?

10 Q Sure.

11 A I believe that they tried to indicate that there were
12 other theories but that in the end they seemed to come down on
13 one side.

14 Q They championed one side over the other and is it fair
15 to say that generally what you're referring to are those who
16 championed what I would call the Schiffman side?

17 A That's correct.

18 Q And what you were trying to do is to champion neither
19 side, correct?

20 A That's correct.

21 Q And to present both theories?

22 A That's correct.

23 Q The evidence supporting both theories?

24 A I was actually the opposite, I felt that neither side
25 had proven their case.

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Senior Court Reporter

CROSS/KUBY/DR. BRAUNSTEIN

1 Q So as far as this exhibition was concerned, you thought
2 that neither side had proven this beyond the doubt that you
3 wanted proof by; is that correct?

4 A That's correct.

5 Q And so you would simply explain that there were these
6 two differing theories, correct?

7 A Correct.

8 Q And no way at this point, given your understanding of
9 this research, to really tell who is right and who is wrong?

10 A Correct.

11 Q You've been involved with the Jewish Museum for how
12 long?

13 A Thirty years.

14 Q And the Dead Sea Scrolls for how long?

15 A Twice. Once when we preparing a permanent exhibition
16 in the nineties and now again so a few years.

17 Q Is it fair to say in your experience the people who
18 care about the origin of the scrolls in academia many of them
19 care very, very passionately about resolving this issue?

20 A Very passionately? They care.

21 Q Now, when you met Raphael Golb, could you briefly
22 describe the conversation you had with him?

23 A The part that I remember was his mentioning that his
24 father's review indicated that he thought that all the labels
25 and text panels were written by one person except those of the

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1 actual six scrolls, he felt that they were written by somebody
2 else and I told Raphael Golb that that was not the case, that I
3 had written them all, and had written them in conjunction with
4 the approval of the Israel Antiquities Authority.

5 Q And do you recall any other part of your conversation
6 with Raphael Golb?

7 A I'm sorry I cannot.

8 Q Do you recall Raphael Golb telling you that you should
9 not have had Schiffman as your speaker?

10 A No, I don't remember that.

11 Q And if that is something that he said, you would have
12 remembered that?

13 A No.

14 Q Schiffman should have been cancelled from this exhibit?

15 A No.

16 Q Schiffman should not speak at this exhibit?

17 A No, he never said that.

18 Q Did Raphael Golb ever make a demand that his father be
19 presented?

20 A No.

21 Q That Mr. Magen be presented?

22 A No.

23 Q That Mr. Peleg be presented?

24 A No.

25 Q Now you have had experience with exhibits that had

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CROSS/KUBY/DR. BRAUNSTEIN

1 generated controversy of one kind or another in the community in
2 which they're primarily addressed; is that correct?

3 A That's correct.

4 Q And it's not uncommon generally, different people have
5 different views of the material, right?

6 A Yes.

7 Q And they want their view championed?

8 A Yes.

9 Q And they feel the other person is not telling the truth
10 or is wrong or mistaken?

11 A Sometimes.

12 Q Sometimes.

13 And you get letters, correct?

14 A Yes.

15 Q Complaining about exhibits?

16 A We do.

17 Q Letters praising them, letters complaining about
18 speakers?

19 A Yes, we do.

20 Q Letters praising speakers.

21 Do you make decisions as to who to cancel or who to
22 hire based on letters that people send complaints?

23 A Hired for a position at the museum or hired for a
24 lecture?

25 Q For a lecture?

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Senior Court Reporter

CROSS/KUBY/DR. BRAUNSTEIN

1 A For a lecture, we would only get the complaint after
2 the lecture had taken place so I think that would be --

3 Q You said you received one communication from Norman
4 Golb in which you said he wanted the text of the exhibits?

5 A That's correct.

6 Q Just tell me very briefly, what do you mean by the text
7 of the exhibit, when I go to museums I think of the dinosaurs at
8 the Natural Museum of History, I'm not sure what you mean?

9 A We write what we call text panels which are lengthy
10 discussions for the visitor to understand the nature of what is
11 going on and what we want to tell them. We write individual
12 labels for each object to explain that, and in this case we also
13 had what I call the wall of quotes which were the quotations
14 from different scholars about their opinions about who wrote the
15 Dead Sea Scrolls.

16 Q And Dr. Golb indicated that he wanted this because he
17 couldn't make it to New York to see the exhibit?

18 A That's correct.

19 Q Did you ever send them to him?

20 A The press office sent them to him.

21 Q That's nothing extraordinary for a scholar to request
22 of an exhibit, is it?

23 A Well, usually they come to the museum so they don't
24 request it but we would certainly provide that for a person from
25 the press, a critic who wanted to review an exhibition, we would

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Senior Court Reporter

CROSS/KUBY/DR. BRAUNSTEIN

1 certainly provide the press and I believe they are in our press
2 packet.

3 Q And you knew who Norman Golb was prior to him making
4 the request?

5 A That's correct.

6 Q And you had no problem with sending him a copy of the
7 text?

8 A No problem.

9 Q Because the exhibit is open to the public, correct?

10 A That's correct.

11 Q And really anybody can comment on it who wants to
12 comment on it, right?

13 A That's correct.

14 Q Now you converse with Mr. Friedenber?

15 A That's correct.

16 Q You referred to him as somebody who has been very good
17 to the museum, is that correct, is it fair to say without
18 mischaracterizing it, is it fair to say when you say he's been
19 very good to the museum this is somebody whose donations and
20 contributions have been made in the past and they are important
21 to you?

22 A Yes.

23 Q And he was that person when he made that request of
24 you?

25 A He was important.

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Senior Court Reporter

CROSS/KUBY/DR. BRAUNSTEIN

1 Q Yes?

2 A Yes.

3 Q And is he still that person now?

4 A Yes.

5 Q And he requested that Norman Golb be included is as a
6 speaker; is that correct?

7 A That's correct.

8 Q And is it fair to say that you had already chosen the
9 speakers?

10 A Yes, we had by then.

11 Q And there wasn't time to start to redo the program; is
12 that correct?

13 A That's correct.

14 Q And you also explained to him look, this is not a
15 scholarly analysis of the minucia of who wrote the Dead Sea
16 Scrolls, this is more general presentation to show there are
17 different theories?

18 A That is correct.

19 Q And, therefore, the Schiffmanites (phonetic) versus the
20 Golbites (phonetic), if I might say that, were really irrelevant
21 to what you were doing except they both exist?

22 A We did not want the lecture series to be a forum for
23 that debate.

24 Q And did he ask that or appear to?

25 A Yes, he did.

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Senior Court Reporter

CROSS/KUBY/DR. BRAUNSTEIN

1 Q He didn't say invite Golb or forget my contributions?

2 A No, he did not.

3 Q And he continues to make contributions?

4 A Yes.

5 Q When Raphael Golb, the defendant, when he spoke to you,
6 was he polite?

7 A Yes, he was.

8 Q Pleasant?

9 A Yes.

10 Q Appeared to be somewhat well informed about the nature
11 of the exhibits and the nature of the controversy?

12 A Yes.

13 Q And engaged you in conversation and that was pretty
14 much the end of it, right?

15 A Yes.

16 MR. KUBY: May I have just a moment, Judge?

17 THE COURT: Sure.

18 Q Was this the first time there had been a scrolls
19 presentation in New York City?

20 A No, it was not.

21 Q Okay, when was the previous one?

22 A I believe the previous one was in 1994, if memory
23 serves me correctly. In the nineties.

24 Q So this was the first one more or less in a generation
25 '08, '09?

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1 A Maybe half a generation.

2 Q And about how many people attended?

3 A Excuse me?

4 Q About how many people attended?

5 A Our exhibition?

6 Q Your exhibit, yes?

7 A About 36,000 people.

8 Q 36,000. Was there an admission charge for this?

9 A Yes, a general admission to the museum.

10 Q And how much was that, is that?

11 A I regret to say I don't know.

12 Q You get comp in?

13 A I believe it's around \$12.

14 Q You had a conversation with -- well withdrawn. Thank
15 you very much doctor -- Just a second.

16 I am done, thank you.

17 REDIRECT EXAMINATION

18 BY MR. BANDLER:

19 Q Would you consider yourself an expert on the Dead Sea
20 Scrolls?

21 A No, I don't, that takes a long time to become an expert
22 on the Dead Sea Scrolls.

23 Q Would you consider yourself an expert on the debate
24 about the Dead Sea Scrolls?

25 A To some extent.

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REDIRECT/PEOPLE/DR. BRAUNSTEIN

1 Q Is it fair to say there's a lot of different aspects
2 about the Dead Sea Scrolls?

3 A Yes, it's a very complex subject.

4 Q Is it fair to say it may not be black and white as
5 Schiffman versus Golb?

6 A That's correct. It's much more nuance and complex than
7 that.

8 Q Is it fair to say that an accusation of plagiarism
9 might give you pause about whether that person should be a
10 speaker potentially and hypothetically?

11 A I think several things might go into our consideration,
12 the reputation of the speaker and our knowledge of their
13 integrity, the nature of the accusation, was this a major
14 horrific act or was it just a minor thing and I would say also
15 the nature of the press interest in that might affect our
16 decision.

17 MR. BANDLER: Thank you.

18 MR. KUBY: Briefly, Judge.

19 RE CROSS-EXAMINATION

20 BY MR. KUBY:

21 Q Before Dr. Schiffman spoke at your exhibition, you were
22 aware, were you not, that there were accusations of plagiarism
23 made against him?

24 A I can't recall when I learned about this between the
25 spring and the summer and the fall but at some point I became

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RE CROSS / KUBY / DR. BRAUNSTEIN

1 aware that there were these accusations.

2 Q And in fact you were aware that in -- well withdrawn.
3 Norman Golb wrote a book; is that correct?

4 A About the Dead Sea --

5 MR. BANDLER: Objection, beyond the scope.

6 MR. KUBY: No, it's foundational, Judge.

7 Q And the name of that book was?

8 A I believe it was Who Wrote the Dead Sea Scrolls or
9 something to that effect.

10 Q And you were aware that Norman Golb had made the
11 accusation of plagiarism as against Dr. Schiffman in his book;
12 is that correct?

13 MR. BANDLER: Objection.

14 THE COURT: You may answer the question.

15 A Yes.

16 Q And that book was written in 1992 or something?

17 A 1995.

18 Q Thank you. And that played no role in your decision to
19 have Dr. Schiffman as your speaker; is that correct?

20 A That is correct.

21 Q So whatever could have happened, might have happened,
22 could have happened, would have happened in this case, it had no
23 role whatsoever in your decision; is that correct?

24 A That is correct.

25 MR. KUBY: Thank you, Doctor.

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Senior Court Reporter

PROCEEDINGS

1 MR. BANDLER: No further questions.

2 THE COURT: Thank you.

3 (Witness exit.)

4 THE COURT: Now, jurors, much to my grave
5 displeasure, Mr. Bandler has no further witnesses for us
6 today. You see how red his cheeks are. So have a good
7 afternoon and evening. I'll see you tomorrow morning at
8 10:30 to avoid the fire drill unless you all want to come to
9 the fire drill. I didn't think so, it's not fun. And I'll
10 see you 10:30 and we have an early break for the holiday.

11 (The jury exited the courtroom and the
12 following occurred:)

13 THE COURT: Mr. Bandler, let me just ask you one
14 more question the count with regard to Identity Theft in the
15 Third Degree, it's not on the V.D.F.

16 MR. BANDLER: That would be the Criminal
17 Impersonation in the Second Degree. There is the other
18 misdemeanors charge, the Forgery in the Third Degree and the
19 Harassment so I guess I haven't specified.

20 THE COURT: So it would be Aggravated Harassment,
21 Criminal Impersonation, not the computer charge?

22 MR. BANDLER: And that, too.

23 MR. KUBY: Sorry, not Identity Theft?

24 THE COURT: No, Identity Theft that would be a
25 totality. Identity Theft requires an object crime.

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Senior Court Reporter

PROCEEDINGS

1 Identity Theft in the Second Degree requires a felony object
2 crime. Identity Theft in the Third Degree requires a
3 misdemeanor.

4 MR. KUBY: That's correct, Judge, and I'm just
5 trying to make it clear because there seems to be to my
6 perception a certain amount of bootstrapping of the elements
7 of one offense in order to get to the felony level and I was
8 just trying to clarify what Mr. Bandler considered Identity
9 Theft as one of the object offenses for the felonious
10 falsification.

11 THE COURT: No, we asked that question this
12 morning.

13 MR. KUBY: So there is Criminal Impersonation,
14 Forgery, and Aggravated Harassment.

15 THE COURT: He answered the question. It's on the
16 V.D.F. as Scheme to Defraud and Falsifying Business Records
17 and we keep on going this is never ending because Falsifying
18 Business Records also ends up with committing another crime
19 or two but I'm not really up to that yet.

20 (The trial was adjourned until September 17,
21 2010 at 10:30 a.m.)

22
23
24
25

Sheila Wesley
Senior Court Reporter

A-417

DIRECT/PEOPLE/DR. FOLEY

1 A She and I were colleagues, she had one of the positions
2 as dean of the graduate school which has a joint reporting
3 relationship both to the university level, the provost, and to
4 me but Dean Stimpson and the dean of the undergrad college and I
5 would work almost on a daily basis with each other.

6 Q And how about Dr. Schiffman, where did he fit in
7 relation to you when you were dean?

8 A He was chair of one of the departments of Arts And
9 Science. The department of Hebrew and Judaic studies was housed
10 within the Division of Humanities and so he reported to me.

11 Q I want to direct your attention to early August of
12 2008, were there some e-mails sent supposedly from
13 Dr. Schiffman?

14 A Yes.

15 Q And were there also some e-mails that came in from
16 other sources accusing Dr. Schiffman of plagiarism?

17 A Yes.

18 Q And did you receive some of those e-mails?

19 A Yes.

20 Q I'd like to display, I'm going to use the monitor, if
21 you could just turn a little, I'm going to display first 10-M as
22 in Mary.

23 (Displayed.)

24 Q This e-mail to Catharine dot Stimpson did that e-mail
25 eventually come to you?

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1 e-mail?

2 A Yes.

3 Q And 16-RR?

4 (Displayed.)

5 Q Do you remember receiving that e-mail?

6 A Yes.

7 Q How serious is an accusation of plagiarism for someone
8 in Dr. Schiffman's field or your field?

9 A It's very, very serious.

10 Q And why is that?

11 A The academic system rests is basically a system relies
12 on scholarly trust and honesty so charging somebody with a
13 violation of that is very serious to one's reputation.

14 Q Does NYU have a policy that covers plagiarism?

15 A Yes, it does.

16 Q Prior to testifying, did you get a chance to review
17 exhibit 1-A which is in evidence?

18 A Yes.

19 Q And I'll just display the first page so we all know
20 what 1-A is.

21 (Displayed.)

22 Q And that fairly and accurately describe portions of the
23 NYU policy?

24 A Yes, that's correct.

25 Q What action was taken by NYU in response to this false

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1 confession from the Larry dot Schiffman gmail account as well as
2 these accusations coming from other e-mail accounts?

3 A There was a series of conversations between Dean

4 Stimpson and myself. There were conversations with Professor
5 Schiffman as well.

6 Q And were any records generated by New York University
7 as a result of this?

8 A There was a statement that I wrote at some point, a
9 short statement.

10 Q And prior to testifying did you get a chance to review
11 what is in evidence as exhibit 2?

12 I'll display that.

13 (Displayed.)

14 A Yes, I did.

15 Q And what is exhibit 2?

16 A Pardon me?

17 Q What is exhibit 2, what is this?

18 A Exhibit 2 is a memo stating that following our review
19 we determined that the claims of plagiarism were not credible.

20 Q And if you had determined that they were credible you
21 would have had to do additional procedural action, correct?

22 A That's correct.

23 Q Based on your personal observations, were you able to
24 tell if these accusations and impersonation had any effect upon
25 Dr. Schiffman?

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A-420

DIRECT/PEOPLE/DR. FOLEY

1 MR. BREITBART: Objection.

2 THE COURT: You may answer the question.

3 A Yes, I knew that he was very, very upset by these

4 allegations.

5 Q And how were you able to tell that?

6 A He told me he was very, very upset.

7 MR. BREITBART: I'm sorry, I can't hear.

8 THE COURT: He told him so we're going to strike
9 that answer since that is hearsay.

10 Q Aside from what he told you, was there anything else
11 that manifested his mental state?

12 A He reported to me in an agitated tone of voice.

13 Q Is this something that took time for Dr. Schiffman to
14 address?

15 A No, no, he addressed it right away.

16 Q But did it take him any amount of effort and I guess
17 expenditure of time I guess to address these false accusations?

18 A Yes, he reported to me that he spent considerable time.

19 MR. BANDLER: I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. BREITBART:

22 Q Dean Foley, my name is David Breitbart. I'm one of the
23 attorneys that represent the defendant. I'm going to be asking
24 you some questions on cross-examination.

25 A Fine.

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Senior Court Reporter

A-421

CROSS/BREITBART/DR. FOLEY

1 Q You indicated firstly that you were familiar with and
2 subsequent August 2008, you received and read 10-M, 10-P, 16-H,
3 16-I, 16-X, 16-KK, 16-LL, 16-RR; is that correct, sir?

4 A I don't remember all the numbers but that matches
5 what's the district attorney asked me, the answer is yes.

6 Q Did you read all of those things that had been sent to
7 you?

8 A Yes, I read them.

9 Q There were blog links attached to those notes and
10 memorandum that I see, did you read those links?

11 A Not that I recall.

12 Q Was there a reason that you chose not to follow the
13 link?

14 A No particular reason.

15 Q You read enough though to begin an inquiry with regard
16 to the plagiarism accusation against Dr. Schiffman?

17 A That's correct.

18 Q The allegations against Dr. Schiffman were contained in
19 the documents that you read; is that right?

20 A Yes, that's correct.

21 Q What investigation did you do to determine whether or
22 not those allegations were correct or not, false or true?

23 A I had conversations with, extensive conversations with
24 Dean Stimpson about the charges. I had conversations with
25 Professor Schiffman about the charges and reached a conclusion

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1 that they were not credible.

2 Q In reaching that conclusion, sir, was that your opinion
3 also?

4 A Yes, it was my opinion.

5 Q Would it be fair to say that you made no inquiry
6 whatsoever outside of these short discussions with Dean
7 Stimpson?

8 A I'm not sure if that's fair or not. I may have
9 discussed the case with some other people, the Dean of
10 Humanities who is Edward Sullivan, I may have had a conversation
11 with Edward Sullivan as well.

12 Q What does that mean, you may have had a discussion with
13 Dean Sullivan?

14 A That means I don't have a clear memory of this, it
15 would not have been unnatural for me to have a conversation,
16 we're in the dean office, we talk to each other on virtually a
17 daily basis about many, many things. I may have had a
18 conversation with Edward Sullivan.

19 Q Does that also mean that you may not have had a
20 conversation with Mr. Sullivan?

21 A Yes, it does mean I may not have had a discussion with
22 him.

23 Q Basically you recall the conversation you had with Dean
24 Stimpson but you do not recall any conversation that you had
25 with Dean Sullivan?

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CROSS/BREITBART/DR. FOLEY

1 A That is correct.

2 Q My question though was did you do outside, did you do
3 anything outside of the NYU community to investigate the claim?

4 A No, we did not.

5 Q And when you say "we" now you're speaking for all of
6 the people that you've mentioned Dean Stimpson, Dean Sullivan?

7 A I don't have firsthand knowledge what Dean Stimpson
8 did. My investigations were limited to Professor Stimpson and
9 perhaps Dean Sullivan.

10 Q There were some pretty specific allegations against
11 Mr. Schiffman, weren't there?

12 A I don't recall all the details of the allegations.

13 Q You don't even know what he was accused of?

14 A I know he was accused of plagiarism.

15 Q What was the plagiarism?

16 A I don't recall at this time.

17 Q Who was he accused of plagiarizing?

18 A It was a professor at the University of Chicago?

19 Q Do you know the name of that individual?

20 A Golb.

21 Q Did you attempt to communicate with Professor Golb?

22 A No, I did not.

23 Q Did you know, sir, that Professor Golb had written a
24 book called Who Had Written The Dead Sea Scrolls?

25 A I didn't know the title of the book. I knew he had

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1 written on the Dead Sea Scrolls.

2 Q Did you know there were entries in that book with
3 regard to the allegation of plagiarism?

4 A No, I did not.

5 Q Do you now know it?

6 A No.

7 Q Would it be fair to say that you didn't look into
8 any -- picking up this book and ascertaining if there were any
9 reference to these allegations?

10 A That's correct.

11 Q Did there come a time when you learned that one of the
12 allegations was that he had previously been accused of
13 plagiarism by a very prominent journalist in Israel by the name
14 of Avi Katsman?

15 A Who is the he?

16 Q Who is the he who was accused of plagiarism?
17 Schiffman.

18 A No, I was not aware of that.

19 Q Was it not contained in the documents that you read
20 that contained the claim of plagiarism?

21 A I looked over the documents quickly before a quick
22 meeting but I don't remember that.

23 Q If there had been documents either verifying or taking
24 Dr. Schiffman's position, would it in fact had been beneficial
25 for you to explore those documents?

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CROSS/BREITBART/DR. FOLEY

1 A Dr. Stimpson and I talked extensively about it, based
2 on the background knowledge that we knew about Professor
3 Schiffman, we didn't find the charges credible.

4 Q Well, you've said that you didn't find the charges
5 credible, but would it also be fair to say that you didn't do
6 anything to check them out?

7 A We did talk to Larry Schiffman, we talked to Dean
8 Stimpson, we knew the background that scholars and Dead sea
9 scrolls was a controversial area, we knew that charges of
10 plagiarism was not unusual in this area, putting all that
11 together and what we knew of Larry Schiffman's background, his
12 reputation for honesty, and as an outstanding scholar, we
13 decided that the charges were not credible.

14 Q Did you ask Dr. Schiffman to take any steps, did you
15 ask him to write a response to you?

16 A No, we had discussions with him.

17 Q Did he write a response to you?

18 A I don't recall, we didn't request a formal statement
19 from him.

20 MR. BREITBART: May I approach the witness, your
21 Honor?

22 THE COURT: You want to show the witness a
23 document?

24 MR. BREITBART: Yes.

25 THE COURT: Sure, but that's Dennis's job.

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1 Q. Does that indicate to you or refresh your recollection,
2 sir, that if one working for NYU appropriates portions of
3 another's scholar's theory and presents them as his own without
4 giving appropriate credit that falls under NYU's definition of
5 plagiarism; is that right?

6 A. Yes, that is correct. The appropriation of another
7 person's idea, process, or results, or reasons without giving
8 appropriate credit, research, conduct does not include honest
9 error or honest differences of preponderance.

10 Q. If an NYU faculty member had been accused of doing
11 precisely that, and then told the NYU officials including
12 yourself that he had never been accused of plagiarism, would
13 that be appropriate?

14 A. The definition of plagiarism is the appropriation of
15 another person's ideas without giving appropriate credit that
16 would not be appropriate.

17 Q. If you asked Dr. Schiffman whether or not he or --
18 withdrawn.

19 Did you ask Dr. Schiffman whether he had in any way
20 committed plagiarism?

21 A. I did ask him about these issues and concluded he had
22 not committed any plagiarism.

23 Q. You concluded?

24 A. I concluded.

25 Q. Did you do any -- would it be fair to say, sir, you did

1 A. Yes.

2 Q. Page 9, a section titled the war of aliases?

3 A. Yes.

4 ~~Q. Page 10, a section titled the current accusation?~~

5 A. Yes.

6 Q. So, Dr. Schiffman did create a detailed document
7 addressing these internet accusations, correct?

8 A. Yes.

9 Q. Albeit a document created very soon after this
10 incident. The university would accept an anonymous complaint,
11 correct?

12 A. Would accept, yes.

13 Q. Yes. But is it fair to say someone who makes a
14 complaint anonymously carries less surface credibility than
15 someone who would do so under their true name?

16 A. Yes.

17 Q. Is it fair to say someone who impersonates someone
18 while making an accusation for false confession carries even
19 less surface credibility than someone who would do so under
20 either their own name or an alias?

21 A. Yes.

22 Q. And in fact, an act of deception such as impression
23 while making a complaint might tend to show that the accuser is
24 not credible?

25 A. Yes.

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1 year?

2 A Yes, till the end of the academic year which is
3 August 31st.

4 Q So they would also get access to the computers inside
5 the library?

6 A Yes.

7 Q And just display the other two pages front and back.
8 (Displayed.)

9 Q This you said is from where?

10 A This is from our website which basically, it basically
11 tells you how to become a member of Friends of Bobst?

12 Q And this last page, what is that?

13 A This was our Friends of Bobst Library brochure?

14 Q And on the back of that, that describes the friend
15 program?

16 A Yes.

17 Q I would just like to talk about a portion of 3-A in
18 evidence. The NYU giving history and direct your attention to
19 May 14th of 2007, \$175 when would that give the person access
20 from and to?

21 A If someone joins in May or June of, the person makes
22 that gift at that level, then the person would have member
23 privileges through the end of the next academic year, so May '07
24 through August 31, '08 so it's a kind of a bonus where if you
25 join during the summer you get the summer months.

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1 Q And these records indicate a donation on August 29th of
2 2008?

3 A Well, then he would have had privileges then through
4 August 31, 2009.

5 Q What are the general hours of the Bobst Library?

6 A The students it's essentially open 24/7 for the
7 students and professors. For friends there are allowed seven to
8 midnight.

9 Q Seven a.m. to midnight?

10 A Yes.

11 Q So if they were to come after midnight, the guard is
12 not suppose to let them in?

13 A That's right.

14 Q And what happens if they come in before midnight but
15 stay after midnight?

16 A Well, they would just be there, the guard occasionally
17 goes around and he'll ask for an ID and if someone is a friend
18 then they'll be asked to leave.

19 MR. BANDLER: No further questions.

20 CROSS-EXAMINATION

21 BY MR. KUBY:

22 Q Good afternoon.

23 A Hi.

24 Q The Bobst Library is a huge building; is that correct?

25 A Yes, it's twelve stories.

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CROSS/KUBY/PAULA JENNINGS

1 Q Twelve stories and you have a fantastic collection of
2 french history in that library; is that correct?

3 A I don't know.

4 Q French literature?

5 A I'm sorry, I don't know.

6 Q It wouldn't surprise you though if they had them
7 somewhere in those twelve stories?

8 A I guess not, no.

9 Q Can anybody walk into Bobst, is it open to the general
10 public?

11 A No.

12 Q What's the Wagner collection?

13 A The Wagner, the Robert F Wagner Library archive is a
14 special collection of papers and other documentation of labor
15 unions.

16 Q And is that open to the public?

17 A Yes, that's open to the public, yes.

18 Q And is that in Bobst Library?

19 A Yes, it is.

20 Q So if I wanted to get into Bobst Library without paying
21 my \$175 as a friend and walk over and say I'm here for the
22 Wagner collection and they'll let me in?

23 A Yes, you generally need to make an appointment because
24 it's a special collection, the materials don't circulate.

25 Q But once I'm in assuming, I don't do anything to stand

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DIRECT/PEOPLE/JANE DELFAVERO

1 was fifteen years ago now.

2 Q Does New York University have a policy on computer and
3 network use?

4 A Sure, yes.

5 Q And where are some of the places that's set forth?

6 A It's included in handbooks that are given to students
7 and faculty. It's also available on the web.

8 Q I'd like to show you what's marked as People's Exhibit
9 1-B for identification. In fact, I believe it's 16 pages.

10 Do you recognize that?

11 A Yes.

12 Q What do you recognize it to be?

13 A It's the responsible use of NYU computers and data
14 policy as well as our web policy, the bulk e-mail policy and
15 then a brochure that we give out to explain the main responsible
16 use policy as well as the last page is a printout of the web
17 page on which all of our policies appear.

18 Q And does exhibit 1-B for identification fairly and
19 accurately describe New York University's computer and network
20 use policy?

21 A Yes, it does.

22 MR. BANDLER: I'd like to move 1-B into evidence.

23 MR. KUBY: No objection.

24 THE COURT: In evidence.

25 Q If you could hand the binder back. I'll display some

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1 THE WITNESS: I'm sorry, I was going to amplify my
2 answer but that's fine.

3 Q Well, if you were continuing your response about the
4 internet access.

5 A Yes, I just wanted to say that we tell people that
6 there might be rules outside of NYU which also apply so it's not
7 just our own rules but other websites or whatever might have
8 their own rules which we remind people apply as well.

9 Q And, in fact, I guess going back to page two paragraph
10 A, your policy even prohibits or even says user must sub
11 paragraph two behave with civil regard.

12 A Yes.

13 Q So it's a much much broader restriction than what you
14 were talking about or what you had just mentioned?

15 A Exactly, yes.

16 Q I think you mentioned affiliates so there is a section
17 in here, I'm on page 8, there is a section of this policy that
18 does have some definitions of terms that are used, correct?

19 A Yes.

20 Q So going on to page 10 which is titled World Wide Web
21 Policies and Procedures, direct your attention to the second
22 paragraph.

23 (Displayed.)

24 Q Does your policy restrict the manner in which people
25 can access the internet?

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1 people didn't think that hacking around was a big deal or
2 whatever so that's why that section happens to be more specific.
3 But section H doesn't exclude that possibility.

4 Q And so the answer to my question is what?

5 A Could you repeat your original question?

6 Q Section C is the only section that mentions criminal
7 penalties for the violation; is that correct?

8 A That mentions criminal penalties, yes.

9 Q Thank you. Now one of the requirements of sort of good
10 citizenship on the computers is to behave with civil regard and
11 is that sort of a fancy way of just saying be nice?

12 A Sure, yes.

13 Q You know don't say anything that are nasty, don't use
14 the computer for things that are offensive, right, civil regard?

15 A Yes.

16 Q And nobody is authorized by NYU to behave on the
17 computers in an uncivil way, right?

18 A That's correct.

19 Q Because by its very nature once you behave uncivilly
20 you use your authorization to do what it is you're doing,
21 behaving uncivilly because you are not allowed to behave
22 uncivilly?

23 A Yes.

24 Q But you're still authorized to use the computer unless
25 that privilege is taken away from you as a consequence of your

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1 incivility.

2 A Yes, it just means that your use could be taken from
3 you.

4 Q Could be. Right. And one other thing in the policy
5 you want the user confined sort of generally to the educational
6 mission of NYU, correct?

7 A Correct.

8 Q That is sort of no going on Lady Gaga chat room unless
9 Lady Gaga is a course at NYU, you know, confine yourself to
10 educational type materials?

11 A In general, yes.

12 Q So assuming there is no source in Lady Gaga, someone is
13 not authorized at NYU to check out a Lady Gaga's chat room from
14 the Bobst computer?

15 A I guess that's a strange use of the word authorization.

16 Q Well, I'll withdraw it then.

17 Nobody is authorized to do anything that is prohibited
18 in the cubby, right?

19 A Right but those other uses aren't prohibited
20 necessarily, it's just that the use of the computers is intended
21 for these purposes and these purposes take precedent over any
22 other use of the network and that violation of that depending on
23 the kind of violation and how it fits with the rest of the
24 policy can lead to disciplinary charges so if you're an employee
25 spending all day looking at Lady Gaga sites that's an H.R.

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1 problem, you know. If you are a students spending all day
2 looking at Lady Gaga sites from your room that's a different
3 sort of event.

4 Q Okay, well if you are using the Bobst computer and you
5 are not behaving in accordance with NYU educational research and
6 service purposes, then are you in violation of the policy, I'm
7 not saying something terrible are going to happen to you, are
8 you in violation of the policy?

9 A You can be.

10 Q Hence nobody is authorized to engage in activity on the
11 NYU computers that are not in accordance with the educational
12 research and service purposes, right?

13 A I guess they're not affirmatively authorized, no.

14 Q They're specifically prohibited, correct, they are told
15 this is the way you can act and act in no other way?

16 A You are behaving in accordance with those things but
17 that doesn't necessarily mean that everything you do is related
18 to some bit of research or some educational direct educational
19 act.

20 Q You cut them some slack, right?

21 A Yes.

22 Q Subsection C, however, is quite specific about not
23 allowing access to persons other than those permitted by NYU; is
24 that right?

25 A Yes.

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1 in nyu dot edu is very easy to forge. A machine name is -- it's
2 possible I suppose but it's much more difficult. An e-mail
3 address is actually relatively trivial to forge but these names
4 are not e-mail addresses, these are names of particular
5 computers. So it's sort of different things.

6 Q I understand. I'm asking you something else. You said
7 a nyu address is relatively thing to forge?

8 A Any e-mail address is easy to forge.

9 Q How so?

10 A You open up an e-mail -- well there are a number of
11 things but I could download a copy of Outlook and when it says
12 what's your e-mail account, I type in Jane at epa dot gov and
13 that's the name it will put in the from line. There is no
14 authentication that happens there. I wouldn't be able to get
15 mail for someone called jane at epa dot gov but I can say that's
16 what spammers do all the time, that's how spammers are able to
17 put other people's addresses on the from line. It's just
18 something you put in an e-mail program.

19 Q So you'll be able to fool people to thinking that this
20 is really a Government e-mail or Government space?

21 A You can fool them into believing that that e-mail came
22 from the epa except there are ways to technically look at the
23 message and there are what are called e-mail headers that show
24 what computer that message pass through from the center to the
25 recipient and when you look at those headers you can see that

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1 none of those machines were in fact at the epa, and you could
2 make a pretty good guess that the person who sent it to you
3 really isn't someone who work at the epa.

4 Q But for the casual reader and I recognize that you are
5 not the casual reader of these things, for the casual reader
6 they see something that comes from nyu dot edu e-mail address
7 that indicates that it came from somebody at the NYU community?

8 A Yes, that's what people think because they believe
9 what's on the from line.

10 Q And that's why people fake their stuff to fool people
11 into believing that?

12 A Yes.

13 Q And I can tell from listening to you that you have a
14 tremendous amount of experience in internet stuff, it doesn't
15 take someone with your degree of intelligence and expertise to
16 forge one of those nyu dot edu headers?

17 A No. Headers are actually hard to forge. An e-mail
18 address is easy.

19 Q Right, to forge a NYU --

20 A -- and these addresses are hard.

21 MR. KUBY: Mr. Kuby, could you have a little
22 sympathy for the court reporter because I'm letting you get
23 away with this and she's going to take revenge later. She
24 can't take it down when you both talk and it's your fault.

25 Q In order to forge a nyu dot edu e-mail address what

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REDIRECT/PEOPLE/INVESTIGATOR MCKENNA

1 THE COURT: Perhaps you can explain now that the
2 jurors are gone what the relevance is of that, I forget what
3 is called, I think it's D-1 the Investigative Opening
4 document.

5 MR. BREITBART: The significance of it, Judge, it
6 was my intent through this witness to show that this
7 investigation was a non investigation. My purpose was --

8 THE COURT: Because it targeted Mr. Golb and
9 nobody else?

10 MR. BREITBART: Yes, for one. But that
11 Dr. Schiffman took over the district attorney's office, made
12 allegations and that the DA ran with them and I was trying
13 in my own way to achieve that. Which I thought I did.

14 THE COURT: Well, the jury certainly knows that he
15 was quickly arrived at and that there were no other suspects
16 so I'm not exactly sure.

17 You know I never really quite know if you walk
18 into a murder scene and there is a person standing there
19 with a smoking gun and blood all over him testify and he
20 says I did it you never investigate anybody else. The issue
21 at trial is whether the evidence proves that he did it
22 beyond a reasonable doubt not whether anybody else was
23 investigated so I don't really quite understand all of that.

24 MR. BREITBART: Well, let me explain it to you,
25 Judge, every case doesn't have the district attorney of New

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PROCEEDINGS

1 York county being a recipient of funds from the Skirball
2 Institute which is where Mr. Schiffman also gets his money,
3 so --

4 THE COURT: I'm sorry I didn't hear any evidence
5 that the district attorney gets any money from the Skirball.

6 MR. BREITBART: He runs the Jewish Museum and as a
7 result of --

8 THE COURT: Mr. Morgenthau is not district
9 attorney any more.

10 MR. BREITBART: That's right. At the inception of
11 this case he was.

12 THE COURT: Or because Mr. Morgenthau wanted to
13 get Raphael Golb so he could get money from the Skirball
14 institute.

15 MR. BREITBART: No, because Mr. Schiffman was
16 funded by the same people that he was funded by he wanted to
17 do a favor.

18 THE COURT: That's very interesting but I haven't
19 heard any evidence in that regard.

20 Mr. Bandler, vis-a-vis the charge, I'm really not
21 getting the scheme to defraud so I'm not sure whether you
22 can help me out with that but I just don't get the scheme to
23 defraud. There are two different theories of scheme to
24 defraud, I don't get either one.

25 MR. BANDLER: For the scheme to defraud we're

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PROCEEDINGS

1 talking Count 1?

2 THE COURT: Right.

3 MR. BANDLER: As oppose to Count 2 so the scheme

4 to defraud is to influence the Jewish museum based on this

5 internet campaign and the false accusations against Dr.

6 Schiffman to influence the Jewish Museum to drop Dr.

7 Schiffman and add Dr. Golb.

8 THE COURT: I'm still not sure I get it but I'll

9 take another look.

10 With regard to your request to charge --

11 MR. KUBY: I'm sorry, Judge, before we do that can

12 I just ask for a clarification of the last discussion.

13 Because when Mr. Bandler opened I thought that he

14 articulated two sort of objects of the scheme to defraud or

15 harm or benefit. The first was the attempt to get Dr.

16 Schiffman to be dropped from the speech and I do understand

17 that although I have comments to make about that at the

18 appropriate time.

19 The second one was to generate an inquiry based on

20 false premises. Is it my understanding that Mr. Bandler is

21 not relying on that any longer or that's going to come as

22 part of some other count?

23 MR. BANDLER: There's two counts that charge

24 Identity Theft in the Second Degree, each has their own

25 object crime.

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1 Count 1 which I just addressed, the object crime
2 is an attempt to commit the felony of Scheme to Defraud in
3 the First Degree.

4 The second count has the object crime attempt to
5 commit the felony of falsifying business records in the
6 first degree and that pertains to New York University.

7 THE COURT: Scheme to Defraud is what section so
8 it's your position that Scheme to Defraud subdivision (b)
9 does not require the obtaining of actual property?

10 MR. BANDLER: I don't know if that's necessarily
11 the position but I do know that the object crime does not
12 have to be a completed scheme to defraud. It can be and
13 attempted scheme to defraud.

14 THE COURT: I guess I'm just having you know
15 assuming this is referring to the Jewish Museum and I don't
16 know how we get more than one person because we got sort of
17 corporation and all the people who work for the corporation
18 so I'm not exactly sure about that but the language is odd.
19 I'm not rejecting it necessarily although I don't think
20 there is any interpretation engages in a scheme constituting
21 a systematic ongoing course of conduct with an intent to
22 defraud more than one person. In order to have this fit,
23 you would have to stop there because then there is a second
24 or to obtain property from more than one person and then
25 there is the and so for your position that and so obtains

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1 property with a value in excess of \$1,000 from one or more
2 such persons wouldn't apply to the first clause of the
3 sentence.

4 I mean it doesn't make sense to me to interpret
5 the sentence that way although that is not a good rule of
6 statutory interpretation all the time.

7 Anyway take a look at it because I'm having
8 difficulty. I think that scheme to defraud requires I
9 think, requires the obtaining of property.

10 MR. BANDLER: And even if that's the case as
11 charged, it's not necessary that the defendant have obtained
12 property as long as his intent was to commit that.

13 THE COURT: Okay but then it's obtained property
14 in value in excess of a thousand dollars and where would he
15 get that. Think about it. Sleep on it.

16 MR. KUBY: And then you were going to --

17 THE COURT: And I was going to say that you don't
18 cite any authorities for your request to charge and I don't
19 think they're consistent with anything I'm aware of so I
20 would love your authorities, if any.

21 MR. KUBY: Sure. I'll be happy to modify and
22 return it.

23 Just so I'm clear once again the second object
24 that Mr. Bandler articulated before the jury which was to
25 generate an inquiry based on false premises, that is the

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1 ultimate object of Count 2.

2 MR. BANDLER: Yes, the attempt to falsify the
3 business records of NYU.

4 MR. KUBY: I have one last issue with respect to
5 instructions, it seems to be -- it seems to me to be
6 Mr. Bandler's theory that the object crime of 190.78
7 Identity Theft in the Third Degree can be criminal
8 impersonation and I say it seems to me because it's not
9 entirely clear but if I can get some clarification, if
10 that's Mr. Bandler's position?

11 THE COURT: I believe that's what he said.

12 MR. BANDLER: Yes, all of the A misdemeanors
13 charged including the one you mentioned.

14 MR. KUBY: Okay. I will submit something in
15 writing explaining why I don't think that that can be,
16 that's the one misdemeanor that I don't think can be an
17 object crime under that subsection. Thank you.

18 THE COURT: I look forward to it.

19 (The trial was adjourned until September 21,
20 2010 at 10:00 a.m.)

21

22

23

24

25

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Senior Court Reporter

1 SUPREME COURT STATE OF NEW YORK
2 COUNTY OF NEW YORK CRIMINAL TERM PART: 71
3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK Indict No.:
5 2721/09

6 -against-

7 Jury Trial
8 RAPHAEL GOLB,
9 Defendant

10 -----X
11 100 Centre Street
12 New York, New York
13 September 21, 2010

14 B E F O R E:

15 A P P E A R A N C E S:

16 (As previously entered.)
17 *****

18 COURT CLERK: Case on trial. Raphael Golb. All
19 parties are present. The jury is not present.

20 THE COURT: Mr. Breitbart.

21 MR. BREITBART: Your Honor, predicated upon the
22 testimony and the cross-examination of Mr. McKenna, we have
23 an application firstly for a mistrial and secondly to move
24 to reopen the application to controvert the search warrant
25 predicated upon his testimony yesterday that he did not see
or do any of the things that are outlined in the affidavit

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1 to support the search warrant. Apparently fraud was
2 perpetrated upon, your Honor, submitting you an affidavit in
3 the first person by Mr. McKenna that he was in fact the
4 affiant that he did see and do all of the things that were
5 included in the affidavit and yesterday he indicated under
6 oath that he didn't do any of them.

7 For those reasons we would move to controvert the
8 search warrant or renew the application to controvert the
9 search warrant or for a mistrial.

10 MR. BANDLER: Well, first of all, under direct by
11 Mr. Breitbart aside from his dozens of objectionable
12 questions, I think his questions were confusing and the
13 answers to those questions were taken out of context and I
14 think on redirect we clarify that Investigator McKenna for
15 everything he swore to, he verified that it was true, he
16 personally talked to each person that the affidavit said he
17 talked to and that he wasn't personally swearing to the
18 truth of certain things as Mr. Breitbart was implying.

19 It was a highly misleading cross-examination by
20 Mr. Breitbart, he tried to get Investigator McKenna to admit
21 that Investigator McKenna personally was swearing to the
22 truth of facts about the Dead Sea Scrolls and on redirect I
23 think we clarified what was going on there.

24 The search warrant its on his face, its already
25 been litigated by your Honor, he litigated the face of the

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1 search warrant despite Mr. Breitbart's improper attempt to
2 litigate it in front of the jury, I think Investigator
3 McKenna's testimony was clear.

4 THE COURT: It's not clear what the grounds for
5 the mistrial.

6 MR. BREITBART: The initial application is with
7 regard to the search warrant, we learned during the trial
8 yesterday and the cross-examination of Mr. McKenna which by
9 the way was an affidavit that was in the first person where
10 the first few lines of it indicate that this is the
11 affidavit of Patrick McKenna not that it was signed and he
12 was affirming what other people had in fact told him.

13 These were, if you read it carefully, allegations
14 by Mr. McKenna as to what he had seen, what he had done, and
15 what he felt with regard to what he was saying so basically
16 the application is for the search warrant and secondly as a
17 result of that if your Honor grant that application we don't
18 think that any of the evidence that is being referred to
19 here was legally obtained.

20 THE COURT: I see. And paragraph 11, the one that
21 indicates information and belief, that means nothing?

22 MR. BREITBART: I'm sorry, you're asking a
23 specific question?

24 THE COURT: You're the one who said he perjured
25 himself in the affidavit because he said he knew all of

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1 these things of his own knowledge.

2 MR. BREITBART: I just want to check paragraph 11.

3 MR. BANDLER: What Mr. Breitbart just said is
4 misleading and misstating what's in the affidavit just like
5 he was misstating it in front of the jury to try to put some
6 kind of bug in the jury's mind but Investigator McKenna
7 information is sourced including as your Honor indicated
8 paragraph 11 and then, for example, paragraph 19 which
9 Mr. Breitbart chose to bring out in such detail in front of
10 the jury. Paragraph 19 starts with Dr. Schiffman informs me
11 and then it goes on for, it's about twelve lines and at the
12 end of that same paragraph it says the allegations of
13 plagiarism are false. And I guess Mr. Breitbart's position
14 would be that in this affidavit within every single sentence
15 it needs to be proceeded by who he's being informed by.
16 That's not the standard for search warrants. It's clear who
17 Investigator McKenna was sourcing, it's clear investigator
18 McKenna was not pretending to be a Dead Sea Scrolls scholar,
19 he wasn't pretending to have investigated these plagiarism
20 allegations and he wasn't pretending to know all of these
21 things on firsthand knowledge. He's an investigator and he
22 does an affidavit, that's how he does it. He interviews
23 people and report what they say.

24 THE COURT: Actually. Technically the CPLR
25 requires that when you do an affidavit on information and

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1 belief that the source of the information for each
2 allegation should be recited. I am painfully aware that
3 people overlook that requirement through uselessness of
4 speech or whatever. There you go. I don't think the issue
5 were to the issues of plagiarism being true or false had
6 anything to do with the granting of the application for the
7 warrant.

8 MR. BANDLER: I agree.

9 THE COURT: So let's get the jurors, please. The
10 motion is denied.

11 (Jury entering.)

12 COURT CLERK: Jurors have entered and are being
13 seated.

14 THE COURT: Good morning.

15 Mr. Bandler.

16 MR. BANDLER: The People Candida Gibson.

17 (Witness entering.)

18 COURT CLERK: Ma'am, do you sincerely and solemnly
19 swear or affirm that the testimony you are about to give
20 this court will be the truth the whole truth, and nothing
21 but the truth do you so swear or affirm.

22 C A N D I D A G I B S O N,

23 having been called as a witness on behalf of the People,
24 testified as follows:

25 THE WITNESS: Yes.

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CROSS/MR. KUBY/CANDIDA GIBSON

1 Q Is there any limit to the number of e-mail addresses
2 that one can sign up for through Earthlink?

3 A I think there is a limit, yes.

4 Q Do you have an idea of what that is?

5 A I do not.

6 Q The very first document that Mr. Bandler put up on the
7 screen which is from People's exhibit 5, I'd like to show you
8 that and ask you a question or two about it.

9 (Displayed.)

10 Q I want to draw your attention to, Please note that
11 Earthlink does not verify the accuracy provided by the
12 subscriber. Do you see that?

13 A Yes.

14 Q What does that mean?

15 A It means when a subscriber opens an account and give us
16 an address, we don't verify that that is actually their address.
17 We don't verify that that's their phone number.

18 Q Is it fair to say that people can choose any e-mail
19 address that they want or am I saying it correctly?

20 A As long as it's not taken by another subscriber.

21 Q So Raphael dot G was not already taken and somebody
22 signed up for Raphael dot G?

23 A Correct.

24 Q And if it had been taken and someone wanted Raphael dot
25 G they would get Raphael 1 dot G?

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Senior Court Reporter

CROSS/MR. KUBY/CANDIDA GIBSON

1 A If that had not been taken.

2 Q And do people use numbers to indicate -- well
3 withdrawn.

4 Are there any names that one cannot use?

5 A Not that I am aware of, I don't know.

6 Q So if I wanted to be Barack dot Obama and the president
7 already didn't have that, I could do that?

8 A I don't know the secret service would allow you to but
9 I don't know.

10 Q Okay, well maybe Kuby dot councilman, I could do that,
11 right?

12 A Right, if it's not already taken.

13 Q And is there any monitoring of the names that people
14 choose?

15 A As far as I know when you sign up for an account once
16 you select your e-mail address if you can't have it for some
17 reason it will tell you that you can't have it other than that.

18 Q And the only reason you know of if the name is already
19 taken?

20 A Right.

21 Q So if I wanted to be Sara dot Palin put aside the
22 secret service issue, Sara dot Palin, I can be Sara dot Palin?

23 A Correct.

24 Q And if that name had been taken, I can be Sara dot
25 Palin 1 or 2 or 125, correct?

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Senior Court Reporter

CROSS/MR. KUBY/CANDIDA GIBSON

1 A Right.

2 Q And you do have subscribers with numbers after their
3 name, correct?

4 A Correct.

5 Q And that frequently, not always, but frequently that
6 indicates that there are other people who have that name?

7 A Correct.

8 Q So if I'm Sara dot Palin 125, somebody might think that
9 there is a Sara dot Palin plus another, 124, Sara dot Palin and
10 I'm Sara dot Palin 125?

11 MR. BANDLER: Objection.

12 THE COURT: Sustained.

13 Q Do you do anything at all to make sure that the person
14 opening the e-mail address is not using the name of another real
15 person?

16 A Not that I'm aware of.

17 MR. KUBY: I think I have no further questions.

18 Q And lastly, anybody can do that any time they want as
19 long as they pay the fee, right, if the name is not taken?

20 A You mean sign up for an e-mail account?

21 Q Yes, under any name they wish unless it's not taken?

22 A Yes, unless it's one of those high profile names you
23 talked about.

24 MR. KUBY: Thank you.

25 REDIRECT EXAMINATION

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CROSS/MR. KUBY/COLIN BOGART

1 THE COURT: I understand but if he has to read the
2 document that you've just offered into evidence, there is no
3 point in asking him to do that. It's in evidence.

4 Q When somebody signs up for Blogger, do you verify their
5 age?

6 A I don't know.

7 Q Do you verify their name?

8 A I don't believe so, no.

9 Q Well, when Mr. Bandler asked you, I believe, do you do
10 any verification -- he asked you the question do you verify the
11 information that you're given and you answered no; is that
12 correct?

13 A Correct.

14 Q So the answer is still no?

15 A Correct.

16 Q And in the terms of service, is it fair to say that the
17 user is told that the user is responsible for the content of
18 their blog?

19 MR. BANDLER: Objection.

20 MR. KUBY: Judge, it's a foundational question to
21 ask.

22 THE COURT: I'm sorry, you're asking him to read
23 from this document?

24 MR. KUBY: No, I'm not. I'm asking him a
25 question.

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CROSS/MR. KUBY/COLIN BOGART

1 Q Are users told that they are responsible for the
2 content of their blogs?

3 MR. BANDLER: Objection.

4 THE COURT: Sustained.

5 Q Do you police the content --

6 MR. BANDLER: Objection.

7 Q -- of the blog?

8 MR. BANDLER: Objection.

9 THE COURT: I don't know if this witness is
10 qualified to answer that question.

11 MR. KUBY: I don't know that he is either but it
12 sounded like he was from the direct examination so let me
13 ask him the question.

14 Q Not you personally police the content, do Google police
15 the content of the blog?

16 A I'm not sure exactly what you mean by police. We do
17 have a team who review abuse flags and things of that nature
18 when blogs are reported for abuse. I don't work on that team
19 nor do I have any expertise in that.

20 Q Is it fair to say that by its very nature blogger dot
21 com and blog spot may carry offensive, harmful, inaccurate or
22 otherwise inappropriate material?

23 MR. BANDLER: Objection.

24 THE COURT: Sustained.

25 MR. KUBY: Form or content, Judge?

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CROSS/MR. KUBY/COLIN BOGART

1 Mr. Bandler made inquiry about the blogger service
2 on direct and I'm asking him some questions.

3 THE COURT: I don't see what relevance this has.

4 Let's just agree that it can and move on.

5 Q Is it fair to say that using the blogger service either
6 Blog Spot or Blogger dot com, the creator of a blog is given
7 almost complete freedom by Google to say whatever they wish to
8 say on their blog?

9 MR. BANDLER: Objection.

10 THE COURT: Sustained.

11 Q Is it fair to say that Google has an institutional
12 philosophy that information is good --

13 MR. BANDLER: Objection.

14 THE COURT: Sustained.

15 Q Is it fair to say that Google has an institutional
16 philosophy encouraging debate on the internet?

17 MR. BANDLER: Objection.

18 THE COURT: I really do not care about Google's
19 institutional philosophy for the purpose of this case.

20 Q Does Google have a policy with respect to Blog Spot or
21 Blogger that people generally should be free to say whatever
22 they wish to say?

23 MR. BANDLER: Objection.

24 THE COURT: Sustained.

25 Q You do warn people that posting may be mislabeled, do

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CROSS/MR. KUBY/COLIN BOGART

1 you not?

2 MR. BANDLER: Objection.

3 THE COURT: Sustained.

4 Q You don't do anything to verify the authenticity of the
5 identity of the people who are signing up for your service,
6 correct?

7 MR. BANDLER: Objection, asked and answered.

8 THE COURT: You may answer the question.

9 A No, we do not verify all the accounts that are created
10 for our free services.

11 Q You do warn people who are using the service that
12 posting might be deceptive, correct?

13 MR. BANDLER: Objection.

14 THE COURT: Sustained.

15 Q You warn people who use the service, do you not, that
16 the user needs to beware of the content?

17 MR. BANDLER: Objection.

18 THE COURT: Sustained.

19 Q You take pains, do you not --

20 MR. BANDLER: Go ahead.

21 Q You take pains, do you not, to inform people that
22 Google does not endorse, support, represent, or guarantee the
23 truthfulness, accuracy, or reliability of any of the
24 communications?

25 MR. BANDLER: Objection.

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CROSS/MR. KUBY/COLIN BOGART

1 THE COURT: Sustained.

2 Google doesn't make the rules that applies to this
3 case.

4 MR. KUBY: I'm not suggesting that they do, Judge.

5 THE COURT: So what Goggle says about the rules is
6 not relevant. The court will instruct the jury on the law.
7 Please move on and that's the third time I've asked you to
8 do that so let's do it this time.

9 MR. KUBY: Note my objection.

10 THE COURT: Sure.

11 MR. KUBY: And I would like to make an offer of
12 proof and an offer of relevance and I'd like to do it before
13 the witness goes back to California.

14 THE COURT: So in ten words or less, relevance.

15 MR. KUBY: The fact that Google has a policy of
16 encouraging everyone to post anything they wish and that
17 Google in no way attempts to verify any of the information
18 posted and the fact that Google tells everyone who uses the
19 service to beware, caveat, don't take the stuff seriously
20 because anybody can do it and anybody does do it and we
21 don't bother to check, is relevant for the purpose of number
22 one as to the aggravated harassment counts dealing with the
23 issue of --

24 THE COURT: Okay, you're over ten words, sir.

25 Okay, here is the story, I will tell you, people

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CROSS/MR. KUBY/COLIN BOGART

1 can say anything and it could be false. There you go.
2 Whether in person, over the telephone, by internet,
3 Facebook, et cetera. Now move on.

4 MR. KUBY: I will move on but I don't believe that
5 instruction as much as it's appreciated and self-evident
6 addresses the issues.

7 Q Let's talk a little bit about your gmail service, shall
8 we.

9 Let me show you what I have marked as E-2 for
10 identification.

11 Do you recognize that?

12 A Yes, this is a gmail account creation page.

13 MR. KUBY: I would offer this into evidence,
14 Judge.

15 MR. BANDLER: Just one question for the witness.

16 VOIR DIRE EXAMINATION

17 BY MR. BANDLER:

18 Q Is this the entire gmail account creation page, do you
19 know, is this one step in the process?

20 A I'm not sure. It looks like it's most of the account
21 creation process, if not all.

22 MR. BANDLER: I don't think this is the right
23 witness for this exhibit. I'll stipulate to it coming in
24 but I don't think this is the right witness for this
25 exhibit.

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CROSS/MR. KUBY/COLIN BOGART

1 MR. KUBY: So that means it's in evidence since he
2 said he'll stipulate.

3 THE COURT: I gather. As part of the gmail
4 application page.

5 CROSS-EXAMINATION CONT'D

6 BY MR. KUBY:

7 Q When you testified on direct examination about how
8 someone creates a gmail account, is it fair to say that this is
9 the form that they see on their computer screen when they open
10 up such an account?

11 MR. BANDLER: Objection.

12 THE COURT: Do you know the answer to that
13 question, sir?

14 THE WITNESS: I believe that this would be when
15 you create a new gmail account, this could be one of the
16 ways that it would appear that you would create the account.

17 Q Well, you recognize it, right?

18 A Yes.

19 Q You've seen it before?

20 A Yes.

21 Q And there is a request when it says first name, is
22 there any requirement that it actually be the first name of the
23 person who is using it?

24 A No.

25 Q It says last name, is there any requirement that it

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CROSS/MR. KUBY/COLIN BOGART

1 actually be the last name of the person using it?

2 A No.

3 Q Is there any verification of the first name or last
4 name provided?

5 A No.

6 Q Does that not make it remarkably easy for anybody to
7 create any name they wish?

8 MR. BANDLER: Objection.

9 THE COURT: Sustained.

10 Q In creating a gmail name, the first name, can that be
11 separated with dots?

12 MR. BANDLER: Objection.

13 MR. KUBY: I'm sorry, I'll withdraw the question.

14 Q I'll give you an example. A name such as Sara dot
15 Palin 2, what would that signify to you?

16 MR. BANDLER: Objection.

17 THE COURT: Once again I haven't heard anything
18 that would say that this would signify anything to him, and
19 how somehow that expertise will assist the jury so I haven't
20 heard that so I won't permit it.

21 Q Okay, what if anything would that signify to you?

22 MR. BANDLER: Objection.

23 THE COURT: Sustained.

24 Q When there is a 2 after the name, does that mean that
25 in fact that name has -- the actual name has already been used?

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CROSS/MR. KUBY/COLIN BOGART

1 MR. BANDLER: Objection.

2 THE COURT: Do you have any particular knowledge
3 other than the generic knowledge that all of us have from
4 using e-mail accounts on this subject?

5 THE WITNESS: No, I don't. My job is just to
6 produce the records. I don't work on the product.

7 Q And is there any other information that the user, to
8 your knowledge, has to provide aside from what is on this form?

9 MR. BANDLER: Objection.

10 THE COURT: Sustained.

11 MR. KUBY: On what basis, Judge? That he doesn't
12 know? Of course he knows.

13 THE COURT: Excuse me, I've said this 15 times
14 now. I'm no longer slumping. The gentleman says his job is
15 to produce the documents, so I don't know why you're using
16 him as an expert in the way this particular e-mail
17 technically works.

18 MR. KUBY: I'm not asking him as an expert, I'm
19 not asking him for his opinion on anything.

20 THE COURT: The objection is sustained.

21 MR. KUBY: Well, in that case we're done.

22 Thank you.

23 MR. BANDLER: No redirect.

24 THE COURT: Thank you, sir. You are excused.

25 (Witness excused.)

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Senior Court Reporter

CROSS/MR. KUBY/YUKIN KANG

1 account, correct, in terms of service agreement and other
2 things?

3 A Yes.

4 Q But this is what you have to do to actually open your
5 account?

6 A Yes, that's correct.

7 Q Where it says first name, is there any requirement that
8 the person actually use her or his own first name?

9 MR. BANDLER: Objection.

10 Q If you know?

11 THE COURT: You may answer the question.

12 A They should, we would hope that the user would put in
13 their correct first and last name.

14 Q You would hope?

15 A Yes.

16 Q Is there any means of verifying?

17 A No, we don't verify that information.

18 Q And the last name you also hope that they use their
19 real name, correct?

20 A Correct.

21 Q But you don't verify it?

22 A We don't verify that information.

23 Q Is it fair to say if you were to verify it with a
24 credit card, driver's license, piece of identification, your
25 hope would become much closer to reality?

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Senior Court Reporter

CROSS/BREITBART/DR. SEIDEL

1 A I believe that was as far back as the fall of '08.

2 Q And who did you speak to, sir?

3 A Mr. Bandler.

4 Q Are you a Dead Sea Scrolls scholar?

5 A It's trinary to my field not really. It's the third
6 field really that I've studied or the fourth, not my main field.

7 Q Does that mean that the answer to the question is that
8 you are not a scrolls scholar?

9 A I'm not a scrolls scholar.

10 Q Did you receive any communications with regard to this
11 particular case from Larry Schiffman?

12 A We talked informally at a conference about it but I did
13 not receive any communication.

14 Q When did you speak to him at a conference?

15 MR. BANDLER: Objection.

16 THE COURT: You may answer the question.

17 A I think it was fall of '08 at either the A.J.S., I
18 believe. Association of Jewish Studies.

19 Q I'm sorry, I didn't hear that.

20 A The Association of Jewish Studies.

21 Q Did you ever receive any communications by someone by
22 the name of Robert Cargill?

23 A No.

24 Q How about the name Jeffrey Gibson, did he contact you?

25 A No.

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Senior Court Reporter

CROSS/BREITBART/DR. SEIDEL

1 Q Did any museums contact you with regard to this case?

2 A No.

3 Q Did any museums forward you any e-mails?

4 A No.

5 Q Have you ever published any scholarly articles
6 specifically about the Dead Sea Scrolls?

7 A I have not.

8 Q Taking away the scholarly, have you published any
9 articles at all focused on the Dead Sea Scrolls?

10 A I mentioned the scrolls in my dissertation at U.C.
11 Berkeley, mentioned them. It's mentioned for a few pages but
12 it's not intrinsic to the point of my doctorate.

13 Q That would be in '82?

14 A No, my doctorate finished in '96.

15 Q '96?

16 A U.C. Berkeley, '96.

17 Q Have you ever participated in any academic conferences
18 focused on the Dead Sea Scrolls?

19 A I've been to the Society of Biblical Literature.

20 Q The S.B.L.?

21 A The S.B.L. which had scrolls sessions which I've
22 attended over the years since the late seventies.

23 Q Have you made any comments to reporters about the Dead
24 Sea Scrolls controversy?

25 A Not to reporters. I've talked informally to friends

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Senior Court Reporter

CROSS/BRETTBART/DR. SEIDEL

1 about it but no.

2 Q And I think on direct you indicated that you did not
3 know Raphael Golb?

4 A Did not know Raphael Golb, no.

5 Q Did you know Norman Golb had a son or two?

6 A I made an assumption that Dr. Golb had a family. I did
7 not know his kids. I met him in 1988. I knew he had a family,
8 that's all.

9 Q Did you ever discuss the scrolls with Dr. Golb?

10 A No, we talked about his book on Runes, on the Jews of
11 France for an hour or two and maybe two seconds on Dead Sea
12 Scrolls.

13 Q Do you know if Jonathan Seidel is a very common name in
14 the internet?

15 A I haven't done a statistical study of the United States
16 but I know that there are some younger Jonathan Seidels out
17 there and they never impersonated me, they can just be
18 themselves but this name is not completely uncommon for a Jew or
19 Christian to have the name Seidel. I suspect there are about a
20 hundred nationally.

21 Q Very close.

22 A Something like that, I don't know.

23 Q Do you know how many Jonathan Seidels come up when you
24 do a white pages search on the internet?

25 A No.

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Senior Court Reporter

CROSS/BREITBART/DR. SEIDEL

1 Q Would 119 surprise you?

2 A That was my ballpark. Okay, ballpark was a hundred but
3 maybe two hundred, I don't know.

4 Q Yes, it was very close.

5 Do you use the internet, sir?

6 A Sure.

7 Q Do you do any blogging at all?

8 A No, I thought about setting up a potential blog on my
9 synagogue site but never followed through with it. I don't have
10 a blog.

11 Q Do you know anything about using anonymity on the
12 internet?

13 MR. BANDLER: Objection.

14 THE COURT: Sustained.

15 Q There were calls that you said that you got from people
16 that asked you whether or not you were doing any blogging on the
17 internet?

18 A Within about a twenty-four hour period and then I just
19 immediately said no to all questions.

20 Q Did you read the things that were reputed to have been
21 done in Jonathan Seidel's name?

22 A Yes, I read them, yes.

23 Q Are any of those blogs signed Rabbi Seidel?

24 A No.

25 MR. BANDLER: Blogs or e-mails?

Sheila Wesley
Senior Court Reporter

CROSS/BREITBART/DR. SEIDEL

1 A Internet discussions, internet forum comments.

2 Q Like blog type comments?

3 A Right, none of them are signed Rabbi Seidel.

4 Q Just that the header was Jonathan dot Seidel?

5 A It's actually Seidel dot Jonathan. I have my own gmail
6 account at Rabbi Seidel at gmail.

7 MR. BREITBART: May I just have a moment, your
8 Honor? Thank you.

9 Q Apparently you've taken a long trip to get here?

10 A Yes.

11 Q I hope you enjoyed it and you got a chance to go back
12 to the old neighborhood. Thank you very much.

13 A You're welcome.

14 MR. BANDLER: Just to clarify.

15 REDIRECT EXAMINATION

16 BY MR. BANDLER:

17 Q I think Mr. Breitbart asked about blogs and people
18 contacting you.

19 Were there blogs in your names or e-mails in your name?

20 A These are, there's no blogs in my name, no.

21 Q So people contacted you about e-mails?

22 A John Seidel at aol dot com I've had for 23 years.

23 Rabbi Seidel is new. No yahoo address. The people contacted me
24 through John Seidel because that's the one that goes way back to
25 the eighties under my name John Seidel but the Rabbi Seidel is

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REDIRECT/PEOPLE/DR. SEIDEL

1 about three years old and that's what I use on gmail. I was
2 shocked to see that there was a Seidel dot Jonathan, did not
3 feel very good. Felt bizarre and I was angry about it.

4 MR. BANDLER: Thank you.

5 THE COURT: May I excuse the witness, sir?

6 MR. BRETTBART: Yes, please.

7 THE COURT: Thank you, sir.

8 (Witness excused.)

9 MR. BANDLER: The People call Stephen Goranson.

10 (Witness entering.)

11 COURT CLERK: Sir, do you sincerely and solemnly
12 swear or affirm that the testimony you are about to give
13 this court will be the truth, the whole truth, and nothing
14 but the truth, do you so swear or affirm?

15 D R S T E P H E N G O R A N S O N ,

16 having been called as a witness on behalf of the People,
17 testified as follows:

18 THE WITNESS: I do.

19 COURT OFFICER: In a loud clear voice, state your
20 name and spell your last name, please.

21 THE WITNESS: Stephen Goranson, G-O-R-A-N-S-O-N.

22 THE COURT: Okay, so I need you to keep your voice
23 up so every one can hear you. The mic. is live but require
24 personal energy, too.

25 If you don't understand a question, let me know so

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DIRECT/PEOPLE/DR. GORANSON

1 Q Do you know Raphael Golb?

2 A Not personally.

3 Q I want to ask you a couple questions, did you ever open
4 up an e-mail account Steve dot Goranson at gmail dot com?

5 A No.

6 Q E-mail addresses that have where the at sign and then
7 Duke dot edu, who do those belong to?

8 A They belong to students and faculty and staff of Duke
9 University.

10 Q Where you work?

11 A Yes. I got my Duke dot edu e-mail when I was a
12 graduate student and I've had it ever since, twenty something
13 years.

14 Q Did you ever open up a blog plagiarist dash Schiffman
15 dash blog spot dot com?

16 A No.

17 Q E-mail addresses that end with Brandeis dot edu, what
18 do those go to?

19 A Brandeis University in Massachusetts. When I was a
20 student we didn't have e-mail back then.

21 Q Did you ever draft a letter to Dean Richard Foley
22 concerning allegations of plagiarism against Lawrence Schiffman?

23 A No.

24 Q Did you ever open up an e-mail account Sara dot Palin 2
25 at gmail dot com?

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1 A No.

2 Q Did you ever post a blog or send an e-mail that condemn
3 the filth coming out of Chicago?

4 A No.

5 Q And or ever post a blog or sent an e-mail condemning
6 Norman Golb for his filth?

7 A No.

8 Q Now you mentioned ANE 2, what is ANE 2?

9 A It stands for Ancient Near East and it's two because
10 it's the second sort of incarnation of that list.

11 Q And do you know who any of the moderators are?

12 A Yes, Jeffrey Gibson is one of them.

13 Q And did you meet him today?

14 A I did.

15 Q Had you met him before today?

16 A Only by e-mail.

17 Q What's the website bib dash arch dot org?

18 A Biblical Archeology Society that publish biblical
19 archeology review.

20 Q And have you posted comments on that site?

21 A Yes.

22 Q But did you ever post any comments condemning the filth
23 coming out of Chicago?

24 A No.

25 Q Or of Norman Golb having sent filth out?

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1 A No.

2 Q So if someone said their name was Albert White Ph.D. a
3 friend of Steve Goranson, they would not be telling the truth?

4 A Right, not be telling the truth.

5 Q Have you ever heard the term stack maintenance?

6 A Yes.

7 Q What does that refer to?

8 A It refers to shelving and making sure that the books
9 are in order and so on.

10 Q Do you know who Saxe at Brandeis dot edu is?

11 A No.

12 Q Do you know who Dr. Chang is?

13 A I think if I am thinking of the right person, he was or
14 at Brandeis and wrote an article related to the Dead Sea
15 Scrolls.

16 Q Who is Lloyd Bailey?

17 A He used to be a professor at Duke University.

18 Q And again Professor Eric Meyers is who?

19 A He is a professor and archeologist in the religion
20 department and was my dissertation adviser.

21 Q Did you ever have some disagreement online with anyone
22 who used the name Charles Gadda?

23 A Yes.

24 Q And what type of disagreement was that about?

25 A Over whether the scrolls came from Jerusalem to Qumran

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1 or had some connection with the people living at Qumran.

2 Q Is Professor Meyers' address emc at Duke or ecm?

3 A EMC.

4 Q So if it was ecm that would be a mistyping?

5 A I think so.

6 Q Did there come a time when you became aware of some
7 complaints being made against you?

8 A Do you mean online?

9 Q Yes, via e-mail?

10 A Well, online a couple, few years ago there started
11 being a lot more attacks on people who didn't support the views
12 of Norman Golb and I'm one of those.

13 MR. BREITBART: I'm sorry, I couldn't get the last
14 part of that sentence.

15 THE COURT: And I am one of those, he said.

16 A I am one of those.

17 Q And did there come a time when you became aware of some
18 complaints by e-mail to Duke?

19 A Yes, this was later, I learned that from Michael
20 Finigan. One of my supervisors got an e-mail complaining about
21 me, he didn't remember a whole lot about it, he said it was not
22 germane to my job and he deleted them and I asked the head
23 librarian too if she got something and she said I may have been
24 sent something from the provost but again didn't remember a
25 whole lot about it. But complaints about me and a suggestion

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1 that I be fired.

2 Q And so shortly after the complaints were made, is it
3 fair to say you were not notified?

4 A I didn't know for awhile. I learned some months after
5 the fact, I think.

6 Q So is it fair to say the university didn't ask you to
7 provide information in connection with some investigation they
8 took?

9 A That is right, they did not.

10 Q Now, potentially, what could have happened as a result
11 of some of the complaints you have now seen?

12 MR. BREITBART: Objection, your Honor.

13 THE COURT: It sounds like the way you asked the
14 question the answer would be awfully speculative.

15 Q You are suppose to perform your duties and carry
16 yourself in accordance with your employer's requirements, right?

17 A Surely.

18 Q And if they determined that you have done something
19 wrong --

20 MR. BREITBART: Objection, it calls for the
21 operation of someone else's mind.

22 THE COURT: You may answer the question.

23 Q If your employer determines that you have done
24 something wrong, they can take disciplinary action?

25 A Surely.

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Senior Court Reporter

DIRECT/PEOPLE/DR. GORANSON

1 Q And the most extreme disciplinary action would be what?

2 MR. BREITBART: Objection.

3 THE COURT: You may answer the question.

4 A To be fired.

5 Q Did you open the e-mail account Steve dot Goranson at
6 gmail dot com?

7 A I did not.

8 Q How about us dot campus dot news at gmail dot com?

9 A No.

10 Q How about the e-mail P dot Goranson at yahoo dot com?

11 A No.

12 Q Did you give Raphael Golb permission or authority to
13 open any e-mail account in your name?

14 A I did not.

15 Q How about any blogs in your name?

16 A No blogs in my name.

17 Q And you are not accusing him, you're just saying he
18 didn't have permission, right?

19 A That's right.

20 MR. BANDLER: Thank you. No further questions.

21 MR. BREITBART: I just have a moment, Judge?

22 CROSS-EXAMINATION

23 BY MR. BREITBART:

24 Q Good afternoon, Dr. Goranson, my name is Breitbart, I'm
25 one of the attorneys that represent Raphael Golb and I'm going

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CROSS/BREITBART/DR. GORANSON

1 to be asking you some questions.

2 By the way, when you were preparing to testify, were
3 you told that there would be cross-examination?

4 A Yes.

5 Q Would you describe your e-mail and blogging activity as
6 being scholarly?

7 A Certainly some of it is.

8 Q Mr. Bandler asked you questions about did you have
9 disagreements online, do you recall that?

10 A Yes.

11 Q And have you had disagreements online?

12 A Yes.

13 Q And as a result of those disagreements, have you been
14 thrown off many web sites?

15 A I'm off one website, one lists now. And when the lists
16 owner put me off the lists, members voted me back on.

17 Q And what list was that?

18 A G hyphen Megillot, which is Hebrew for scrolls.

19 Q And why were you removed from that?

20 A The person, the list owner thought I made an ad hominem
21 attack.

22 Q Would you please explain to the jury what an ad hominem
23 attack is?

24 A Certainly, it means attacking the person rather than
25 the idea.

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CROSS/BRETTBART/DR. GORANSON

1 Q And were you accused of doing it in a vile fashion?

2 A I don't remember the word vile but if you happen to
3 have a copy of the letter I wrote and I could read it without
4 any shame and I don't think it's ad hominem.

5 (Continued on next page.)

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A-474

1 Q. Are ad hominem attacks forbidden on the internet?

2 A. On some lists, yes.

3 Q. Is that the only time you were removed from the list?

4 A. There have been temporary suspensions on some other
5 lists. There have also been times the Dead Sea Scrolls was
6 banned all together on the list because they didn't know where
7 they were.

8 Q. How many times have you been banned or suspended on the
9 internet for things that you have written?

10 A. I don't know.

11 Q. Many?

12 A. Four, five maybe, along with other people.

13 Q. Other people were also removed?

14 A. Right.

15 Q. But the scrolls, the list continued to go on?

16 A. In some cases. In some cases lists have died. One
17 Dead Sea Scrolls list gave up and ended itself.

18 Q. Weren't you removed three times from the Orion list
19 before they gave up?

20 A. It's possible. I don't remember the number.

21 Q. Did you have some kind of search engine on your
22 computer that brought to your attention any time Norman Golb's
23 name came up on the internet?

24 A. I do now. I haven't -- I didn't years ago.

25 Q. How about the last three or four years, did you have

1 it?

2 A. I think the last two or three year, yes, among with
3 many other names and Google search terms.

4 Q. Every time Norman Golb's name appeared, did you take
5 certain action?

6 A. No, not every time.

7 Q. Many times, then, that Norman Golb's name appeared, did
8 you take certain action?

9 A. Several times, yes.

10 Q. What kind of action did you take? Was it affirmative
11 or was it negative?

12 A. I would read what he said and some times comment on it.

13 Q. Were you known for attacking Norman Golb on the
14 internet, sir?

15 A. Known by whom?

16 Q. The rest of the people on the internet?

17 A. All the rest of the people on the internet?

18 Q. The people who accused you of doing improper things as
19 a result of seeing Norman Golb's name?

20 A. I can speculate to some say that. I don't know how
21 many.

22 Q. How many times did you read that you were accused of
23 attacking Norman Golb?

24 A. How many times?

25 Q. Yes?

1 A. In recent years, a number of times.

2 Q. Would that be 5, 10, 50, 100?

3 A. I don't know the number.

4 Q. How many times have you knowingly attacked Norman Golb
5 about the scholarship?

6 A. There's a difference between being called an attacker
7 and attacking, sir.

8 Q. I am aware of that, thank you.

9 A. Tell me which one you are addressing at the time.

10 Q. My question is how many times in your mind did you
11 attack Norman Golb?

12 A. If you are men a personal attack, never.

13 Q. I mean theories, theories of scholarship?

14 A. Often.

15 Q. When you say often is that 50, 100, 1,000?

16 A. Not a thousand. I don't know.

17 Q. Under a thousand?

18 A. Probably under a hundred.

19 Q. Now, what seemed to be the problem that you were having
20 with Norman Golb? Was it his beliefs of theories as opposed to
21 yours?

22 A. I have written thousands of E-mails and they are not
23 all about Norman Golb. I have criticized and praised many,
24 many, many theories on the Dead Sea Scrolls.

25 Q. Sorry. I missed what you said.

1 THE COURT: Well, your enjoyment, as happy I am to
2 hear about it, really doesn't make it relevant.

3 Q. How do you spell your name the Stephen in Stephen
4 Goranson?

5 A. S-T-E-P-H-E-N.

6 Q. And the Steve in Steve Goranson, how is that spelt?

7 A. S-T-E-V-E.

8 Q. So, there's a difference in the spelling of the
9 Steves? S-T-E-V-E --

10 A. It's a difference of spelling of Stephen and Steve, not
11 of the Steves.

12 Q. The names that Mr. Bandler asked you about were Steve
13 Goranson, weren't they?

14 A. Yes, he did ask that.

15 Q. Did you ever accuse Norman Golb of blatant
16 misrepresentations?

17 A. I'm not sure if I did or not. Was that a quote or --

18 Q. I am using it as a quote, sir. Did you accuse him of
19 misinformation of making errors --

20 A. Making errors, certainly, yes.

21 Q. Did you accuse him of making Essenophobic articles of
22 obscuring the relevant history of --

23 A. Oh, Essenophobic, yes, I remember that word.

24 Q. You created that word?

25 A. I guess I did.

1 Q. Did you accuse Norman Golb of being Essenophobic?

2 A. I think I did many years ago. I had forgotten.

3 Q. Glad to remind you. Did you accuse him of obscuring
4 the relevant history?

5 A. I may have.

6 Q. Did you accuse him of attempting to erase the history
7 of Essene Jews?

8 A. I think I did.

9 Q. Did you accuse him of being inaccurate and source of
10 false myths?

11 A. I may have.

12 Q. Would it be fair to say that you've used those kinds of
13 terms and phrases over the years in describing Dr. Golb's
14 theories?

15 A. I think that batch was from many years ago.

16 Q. So, for how many years, sir, have you been attacking
17 Norman Golb in these articles?

18 A. I haven't said I've been attacking him.

19 Q. For how many years you have been using these types of
20 terms and phrases in describing Norman Golb's work?

21 A. I think that was maybe years ago, that batch you just
22 mentioned.

23 Q. That batch was many years?

24 A. I think so.

25 Q. My question was for how many years have you been using

1 that kind of verbiage?

2 A. If you have saying that kind of verbiage, I haven't
3 used it for many years.

4 Q. What's the latest writing that you did in opposition to
5 Norman Golb's theories?

6 A. I don't think I've written one in recent weeks. I
7 don't remember --

8 Q. In recent weeks?

9 A. I don't think in recent weeks.

10 Q. What about in recent months?

11 A. I don't recall when the last one was.

12 Q. Could you estimate for us how many times you've written
13 something taking a strong position of Norman Golb?

14 A. Dozens.

15 Q. Dozens?

16 A. Surely. And other people as well, positive and
17 negative. Dozens of times for others as well.

18 Q. How about Fred Cryer did you attack him?

19 A. No, I did not attack Fred Cryer.

20 Q. Did you say negative things about him and his ideas and
21 feelings?

22 A. I said some negative things of his description of the
23 Tel Dan inscription Aramaic inscription. It has nothing to do
24 with Dead Sea Scrolls.

25 Q. Were you involved in the Yahad Ostracon?

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1 THE COURT: Okay.

2 MR. BREITBART: Judge, there is some planning that
3 has to be done in regards to witnesses and summations and
4 charge conference and the like. Has that been worked out
5 yet?

6 THE COURT: Well, you know, Mr. Breitbart, I
7 always like to think we can have a charge conference at any
8 time during the trial notwithstanding that experience
9 teaches me that that optimism is overrated.

10 So, Mr. Kuby, had given me some requests to charge
11 and I asked him for authority because I couldn't find any.

12 MR. KUBY: I will have the annotated version to
13 you tomorrow morning, Judge.

14 THE COURT: Otherwise I would be happy to discuss
15 that but I have found no authority for his requests and to
16 the contrary, Mr. Bandler, I'm still -- bewildered is the
17 wrong word -- with regard to Count 1, that is the Identity
18 Theft with the object crime being Scheme to Defraud, I don't
19 know whether you have any authority for a Scheme to Defraud
20 not requiring the attempt at least since the charge -- since
21 attempt not requiring the intent to actually steal a certain
22 amount of money.

23 And I don't know that there is any proof to be
24 offered as to the amount of money which somehow could be
25 taken that the Scheme to Defraud work and the Jewish Museum

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1 responded.

2 MR. BANDLER: I think the attempt to commit the
3 crime does not require to be completed and the money be
4 stolen.

5 THE COURT: Correct.

6 MR. BANDLER: I think the attempt with respect to
7 the intent property in value in excess of \$1,000.

8 THE COURT: And maybe you are contemplating
9 offering evidence as to the amount but we did hear from your
10 Jewish Museum witness, if I recall correctly, which
11 certainly I might not, without an amount being specified.

12 MR. BANDLER: I don't believe the exact amounts
13 but I know Dr. Schiffman and Ms. Braunstein testified about
14 what he actually got paid I think it was \$500 or \$650 for
15 the speech and then another amount for the honorarium and
16 for the consultation and that those amounts were lower than
17 the normal fee because it's an honorarium not a full fee so
18 I think the ultimate issue is proving what the defendant
19 intended to do and I think notwithstanding the actual amount
20 being \$500 plus \$650 which is over a thousand and the
21 speaking honorarium of whatever it was under a thousand but
22 I think the normal speaking fee is over a thousand so I
23 think we have a value there and there was testimony that at
24 least from Dr. Schiffman that when he's speaking some place
25 he gets the free admission, he gets the travel, he gets the

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1 hotel, he gets the honorarium so in theory if Dr. Golb was
2 coming, if he was invited, we're talking travel, hotel,
3 speaking fee.

4 MR. KUBY: May I respond?

5 THE COURT: Yes.

6 MR. KUBY: Dr. Schiffman testified that he
7 received -- well, first just as a matter of evidentiary
8 sufficiency, there is no evidence that I saw and I'll make
9 this argument more fully at the appropriate time, there is
10 no evidence that I saw that there is any proof that Mr. Golb
11 under any identity attempted to get Dr. Schiffman cancelled
12 from the Jewish Museum and indeed the only person who had
13 any interaction with respect to that was Dr. Braunstein who
14 made it very clear that he made no such attempt in any point
15 in any communication that she's received.

16 Even if the court were to allow that issue to go
17 to the jury, Dr. Schiffman testified that he received a \$650
18 honorarium, and that he was surprised to learn that he was
19 given \$500 for his consultation. He didn't even know he was
20 going to get that. So if Mr. Bandler wants to aggregate,
21 add the \$500 to the \$650, he really has to prove that
22 Raphael Golb intended to deprive Dr. Schiffman of an
23 honorarium that there is no evidence that Raphael Golb knew
24 about it and even Dr. Schiffman didn't know about it.

25 THE COURT: Excuse me, Scheme to Defraud is what

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1 section?

2 MR. BANDLER: 190.65 subdivision (1) (b).

3 Just to address one of Mr. Kuby's comments,
4 obviously all of the proof is not in so the court will not
5 be making any decision as to whether the People had proved
6 the defendant's intent with respect to the Jewish Museum and
7 the impersonation of Dr. Schiffman.

8 THE COURT: Well, it's funny language I have to
9 tell you for an intent because one of the problems of
10 instructing on attempt is where the attempt always -- sorry,
11 I need to announce more clearly than I'm capable of today.

12 Is always where the intent goes to. So for the
13 completed crime you need the intent to defraud more than one
14 person whatever that means and in order for the completed
15 crime, need to obtain property more than a thousand dollars.
16 I don't know and to me the language looks like and so obtain
17 because it is the intent to defraud more than one person and
18 then the obtaining of the amount of property doesn't seem to
19 require the intent for the completed crime.

20 MR. BANDLER: I would agree with that.

21 THE COURT: So I don't know whether for the
22 attempted crime you need to have an intent to recover that
23 amount of money leaving aside so that's on the evidentiary
24 issue of how much you think you're getting by it.

25 So I don't know. I will confess I'm a little,

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1 this is something of a stretch with regard to this situation
2 and I don't quite know what to say and I don't think,
3 although I haven't really looked specifically, I might spend
4 a little time this afternoon looking specifically, that
5 there is much case law under this since I last worked with
6 Scheme to Defraud ten, fifteen years ago.

7 MR. KUBY: I haven't found any thus far although
8 I'm always hoping that today will give some guidance when I
9 get back to the office but he's not charged with attempt to
10 engage in a Scheme to Defraud, is he? He's charged with a
11 Scheme to Defraud.

12 THE COURT: No, no, the Identity Theft requires an
13 object felony. The felony Identity Theft requires an object
14 felony. A person is guilty of Identity Theft in the Second
15 Degree when he knowingly and intends to defraud, assume the
16 identity of another person, et cetera and thereby commits or
17 attempts to commit a felony. The felony the People are
18 asserting with regard to Count 1 is Scheme to Defraud. He's
19 not charged with Scheme to Defraud, there is no charge of
20 Scheme to Defraud, that is the object felony.

21 So the question is when I instruct the jury on the
22 felony they need to understand what that felony is.

23 MR. KUBY: And my issue --

24 THE COURT: Or attempted issue.

25 MR. KUBY: Exactly. My issue is I don't know that

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1 sub (b) can be an attempt because it has within its own
2 definition the completion of an actual theft that is you
3 have to --

4 THE COURT: Every crime, robbery, and so obtained
5 property. So the case -- actually, why don't you take a
6 look at this because I don't understand most words of it.

7 There is a decision in the law journal this week
8 relating to burglary with the intent to commit crime therein
9 where the fellow, I don't have to say allegedly because he
10 was convicted, entered illegally and his intent was to have
11 sex with I believe it was a young woman who was in fact too
12 young. So the whole discussion -- well, part of the
13 discussion is preservation which amuses me but not relative
14 right here, and the other part was did he have to know how
15 old she was and the answer that the trial judge gave was no
16 and the answer that I believe the Appellate Division
17 unanimously agreed upon although Judge McGuire wrote a
18 concurring opinion usually in a week or two. I believe
19 everybody agreed but I'm not sure about that, no you don't
20 have to know it was a crime, you had to have the intent to
21 commit the crime which is defined as a crime.

22 So it seems to me there is some analogy going on
23 here but I don't see why you can't have an Attempted Scheme
24 to Defraud because if you act to the defraud two or more
25 people in a systematic ongoing scheme.

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1 MR. BANDLER: And just to clarify, we're not
2 limiting our theory to subdivision (b). I think subdivision
3 (a) would apply as well. The intent to defraud two or more
4 people, the Jewish Museum people as well as other people.
5 He's intending to defraud property from one or more.

6 THE COURT: Well, I'm a little troubled by that,
7 Mr. Bandler. I don't really like charging the jury quite
8 that amorphously so there is a global thing going on here
9 which is the various and sundry accusations and he's going
10 about to many, many different people but the only indicia of
11 an actual attempt to acquire something that is an
12 appointment to a particular job that's worth money is the
13 Jewish Museum.

14 MR. BANDLER: Except to the extent that she
15 testified and commonsense tells us that if the world thinks
16 something about someone that might be a reason not to have
17 that person be a speaker so if you can convince the world.

18 THE COURT: I think you're a little bit too -- I'm
19 just uncomfortable with it. I continue to be uncomfortable
20 with it because it's too -- while I don't always defend
21 Mr. Kuby's definition of what due process is, it does
22 require something that the jury can all agree upon has been
23 proven beyond a reasonable doubt, so when I have these
24 various alternative theories, I'm not comfortable with that.

25 MR. KUBY: I just want to go back to subsection

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1 (b) and I totally understand the Court's reference to the
2 Appellate Division decision and I recognize the import of
3 that. I just don't think the text of sub (b) fits
4 comfortably there because what we would have then is
5 Mr. Golb attempting to engage in a scheme so he's attempting
6 to engage.

7 THE COURT: No, he actually has engaged in a
8 scheme.

9 MR. KUBY: I'm sorry, I thought he was attempting
10 to commit the crime of Scheme to Defraud in the First
11 Degree?

12 THE COURT: Yes. But that doesn't necessarily
13 mean that he attempt to engage in a scheme. I don't know
14 how you do that.

15 MR. KUBY: So he intended to engage in a scheme
16 and so contained property with a value in property in excess
17 of \$1,000. What you have there is a scheme, that is a plan,
18 plus a realized object.

19 THE COURT: That's for the completed crime.

20 MR. KUBY: Yes, that's exactly right, that's for
21 the completed crime. So here you have an intent to commit a
22 scheme which I understand but part of the completed crime
23 itself requires actually obtaining not intending to obtain
24 but actually obtaining.

25 THE COURT: For the completed crime. So I come

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1 back to my original question, is there something about the
2 language because part of this and this makes me very
3 uncomfortable because I think this is a matter to reach the
4 ultimate answer here of comma placement and I'm being
5 serious about it and I don't really understand how it cuts
6 in this particular phrase.

7 It says engaging in a scheme constituting a
8 systematic on going course of conduct with intent to defraud
9 more than one person or to obtain property from more than
10 one person by false or fraudulent pretenses so that or it's
11 like a whole independent thing.

12 MR. KUBY: Right.

13 THE COURT: And so obtains property so the
14 question I asked the other day was, was the clause after the
15 comma applies to both of the preceding clauses, the one
16 before the "or" or the one after the "or" or only to the
17 latter and there may be a grammatical explanation that one
18 of you smart people because it has been many, many years
19 since I was an English major, can explain to me.

20 MR. KUBY: You know we had him here, too and it's
21 a shame we didn't actually ask him.

22 THE COURT: I just bring in my Eats, Shoots, and
23 Leaves. I do have that on my bookshelf but I don't know
24 what the meaning.

25 MR. KUBY: I think and modifies both the clauses.

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1 THE COURT: I would expect you would think that
2 because --

3 MR. KUBY: I'm a defense lawyer.

4 THE COURT: Exactly.

5 MR. KUBY: They put a comma there.

6 THE COURT: But I don't know why it should.

7 MR. KUBY: Because they put a comma there. If
8 they didn't put a comma there, I wouldn't have no argument,
9 it would be quite clear that the and clarifies the second
10 clause but the comma makes it as clear as they could make it
11 that it modifies both clauses.

12 THE COURT: I certainly disagree that it's as
13 clear as they could make it. Excuse me, Mr. Kuby, nothing
14 personal, we've been getting along but that's the silliest
15 thing that you've said, as clear as they could make it. No.

16 I think he may be correct about that comma so I'm
17 not quite sure what you've been assuming in your argument
18 that that's the case that there has to be because if you are
19 in a scheme to defraud and you are telling people you are a
20 jury consultant, so I hold myself as a jury consultant. I
21 say I'm an expert, I've done this and it's successful and
22 blah, blah, blah and I'm lying, just lying, I know nothing,
23 just a Judge, I don't know anything. I suppose the clear
24 case would be as I go up to Mr. Breitbart and I say hire me
25 as a jury consultant, I will only charge you \$500 and I go

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1 up to you and I say hire me and I'll only charge you \$450
2 and I find some third victim because I have to have two or
3 more and I charge them -- and it has to be over a thousand
4 dollars -- and I say \$250 on the third guy.

5 Part of my scheme to defraud, my false pretense
6 has to be I lied about my qualifications, right? The fact
7 that all of you are too smart for me and none of you pay me
8 a penny, doesn't mean that I haven't attempted the crime,
9 correct?

10 MR. KUBY: Correct.

11 THE COURT: So now the question is I now go up to
12 the same three lawyers or a different three lawyers if you
13 don't like to be part of my examples, I usually use worse
14 examples on Janet.

15 If I then go up to the three lawyers and say okay,
16 I'll be your jury consultant and, of course, you are no
17 fools you say okay, how much is this going to cost my client
18 and I say well, it depends on how much time and blah, blah,
19 blah and this, that, and the other thing, and I'll send you
20 a bill and you very cleverly call the district attorney's
21 office and say that Charlotte is trying to get money from
22 people but I never deposited an amount.

23 MR. KUBY: I suspect you have committed some
24 crime, probably a misdemeanor.

25 THE COURT: Well, it's Attempted Scheme to

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1 Defraud. The question is whether it's an Attempted Scheme
2 to Defraud when I don't actually obtain the thousand dollars
3 and how do I then, Mr. Bandler, distinguish between the
4 second degree which is the misdemeanor and the first degree
5 which is the felony unless there's some requirement that I
6 have that part of my scheme is an attempt to get more than a
7 thousand dollars.

8 Now I'm not sure, Mr. Bandler, that you haven't
9 established it or at least you haven't established it prima
10 facie because it's not ultimately my decision that you could
11 say here is what Dr. Schiffman's discount was. I think
12 you'll have factual questions because -- nevermind, but I
13 think you'll have factual questions because it's none of my
14 business but in terms of charging I still need to know
15 whether the intent has to be to obtain an amount of money
16 that's the one charge that requires it in excess of a
17 thousand dollars. I always think when things are too
18 difficult you should kind of leave them alone.

19 MR. KUBY: You think the grand jurors understood
20 any of this when they were voting out the original
21 indictment?

22 THE COURT: I'm sorry, I have never seen it as a
23 standard whether the grand jurors understood anything nor
24 does the charge have to be with the same precision, blah,
25 blah, blah.

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1 I'm just having a lot of difficulty getting my
2 head around it so I suppose not on the legal issue, I'm
3 suggesting that perhaps you think about whether or not you
4 want to confuse the jurors as totally as you've confused the
5 Judge.

6 MR. KUBY: I would suggest and I'm not entirely
7 being facetious here since Mr. Bandler already had the
8 opportunity to give a charge, this type of charge to one
9 group of jurors in the Grand Jury, that perhaps his first
10 efforts might be disclosed to us and we could sort of look
11 at that as an example of what to tinker with, your Honor.

12 THE COURT: You are so funny.

13 MR. KUBY: I take it that means no.

14 Thank you, Judge.

15 THE COURT: Now the crime of falsifying business
16 records as a felony, the intent to commit another crime and
17 your theory there is the other crime is what?

18 MR. BANDLER: The other crimes charged.

19 THE COURT: Any of the other crimes charged?

20 MR. BANDLER: Yes, I guess, except for Count 1
21 which we've been discussing, leave that out.

22 THE COURT: It also occurs to me from reading the
23 case law with regard to the impersonation and the identity
24 theft is that the impersonation has to be of a specific
25 person.

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1 Part of your arguments have been all of this has
2 been a big coincidence and if I seem a little skeptical
3 about that, I'll charge it in front of the jury, but perhaps
4 you might concentrate on some language because the formed
5 charge just says another person and you might think that
6 that's not sufficiently clear.

7 Now, unauthorized use of a computer includes at
8 least in the formed charge that it is a defense that the
9 defendant had reasonable ground to believe that he had
10 authorization to use the computer.

11 Do I take it that you want that instructed? I
12 honestly just don't know. I'm not quite sure why they say
13 that because the charge is when he knowingly uses or
14 accesses a computer, et cetera, and it does seem to me that
15 when you say in the defense that he had reasonable grounds
16 to believe that he had authorization that just goes to the
17 knowingness.

18 So when you say something is a defense, it implies
19 something which I don't particularly want to get into
20 telling the jury about just because it's a defense doesn't
21 mean, I suppose if we do it like an alibi or like self
22 defense it would be People would have to prove beyond a
23 reasonable doubt that.

24 MR. KUBY: That would be my preference if that
25 count ends up surviving going to the jury.

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1 I think the problem is that and I argued this
2 earlier in my papers that Mr. Bandler's theory of this
3 transforms -- I mean the gravamen of the crime is gaining
4 access to a computer that you don't have the right to gain
5 access to. The legislative history seems to make it fairly
6 clear that there is a difference between on the one hand
7 using false identification to get access to a computer which
8 is clearly intended to be criminalized and on the other hand
9 using a computer in a way that violates the terms of service
10 which they never intended to criminalize. Mr. Bandler's
11 theory is that Raphael Golb violated --

12 THE COURT: How do we know they never intended to
13 criminalize? In other words, if I download something into
14 my computer here at work which nobody wants me to download
15 onto my computer at work why am I not guilty of this crime?

16 MR. KUBY: I would maintain that that is not, that
17 you can't criminalize that.

18 Let's take another example, let's say instead of
19 downloading you were the Judge on the bench and you happen
20 to be looking at certain items that you're not suppose to
21 look at, pursuant to your judicial duties you were using the
22 computer for your own delectation as you would, you might
23 lose your job, you might quit your job, but you're not going
24 to be prosecuted for unauthorized use of a computer.

25 THE COURT: You keep saying that but why are you

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1 assuming the conclusion?

2 MR. KUBY: Because otherwise every person
3 everywhere who violates a term of service of any contract
4 that they engage in with any service provider is committing
5 a crime and that was the very problem we had in the Larry
6 Drew case which I recognize it's a federal case but it still
7 sort of stand as one of the sweeping discussions of this
8 area we currently have in the law.

9 MR. BANDLER: I think there is a distinction to be
10 made and a lot of it is in the defendant's mind his mens
11 rea, if you're just doing something innocuous and you're not
12 deliberately using the system to commit a crime, that's one
13 thing.

14 We're not opening the floodgates to say that every
15 one who does some violation of the terms of use is
16 committing this crime. But when someone knowingly and
17 deliberately using a computer for the specific purpose of
18 committing a crime and when that person knows the terms of
19 use prohibits the use of a computer to commit a crime and
20 when the very reason to use those computers is to conceal
21 his identity to commit a crime then we're in a different
22 area.

23 MR. KUBY: The trouble is Mr. Bandler is drawing a
24 distinction without a legal difference. Mr. Bandler is
25 simply saying we won't prosecute under those circumstances.

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1 But the reality from what we at least heard from the
2 witnesses is obviously if you commit a crime using the
3 computer, you've committed a crime because you have
4 committed a crime period when you use a computer or pen and
5 ink.

6 THE COURT: Let me just say the following, okay, I
7 suppose I should invoke my Fifth Amendment rights before we
8 have this discussion.

9 I do send e-mails on my personal account from this
10 computer which is probably not formally, I don't know, we're
11 not given a contract in terms of terms of use. If there is
12 something written, I don't even know what it is, but okay,
13 there are just certain websites, for example, which are
14 blocked. For example, Facebook which is often relevant in
15 criminal cases. I once had a case in which the defendant
16 met I think it was an undercover police officer but in any
17 event through a website called I Love Older Men and of
18 course I couldn't access that, although it was interesting
19 to me related to that particular case. I couldn't possibly
20 be in love with any older men because there aren't any, so
21 it wasn't for my as you call it delactation.

22 Assume there is something in writing, maybe there
23 is, I just don't pay attention to it because I will send an
24 e-mail saying "I'll be home at six if you want to go out for
25 a run" nobody is going to get too upset with me. So I

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1 believe, I have reasonable grounds that I'm permitted to do
2 that since I can't make a phone call.

3 So the point is that you can't open the floodgates
4 as long as a person has reasonable ground. There may be
5 strictly speaking that the contract and I think probably
6 this is true in most corporations you're not suppose to use
7 the computer for personal use, blah, blah, blah, period, end
8 of story. And yet the local cultural is that everybody
9 shoots off a quick e-mail and says "I expect to be free at
10 seven and we'll meet at" or something of that sort and that
11 would seem to me leaving aside the People being kind and
12 choosing not to prosecute, that the defense would be made
13 out as a matter of law.

14 MR. KUBY: Here is the problem I have with that
15 analysis, the NYU policy states very clearly in addition to
16 not being allowed to commit crimes using NYU computers, you
17 are not permitted to behave in an uncivil fashion. You are
18 not permitted to behave in any nasty fashion to other
19 people. Everybody has notice of that policy actual or
20 constructive by virtue of them accessing the NYU computer.

21 If Mr. Golb, knowingly knowing that that policy is
22 in place and knowing that he's not suppose to be nasty to
23 his girlfriend is nonetheless nasty to his girlfriend on the
24 NYU computer then under Mr. Bandler's theory he's using the
25 computer in an unauthorized way and can be convicted of a

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1 crime and I am not prepared to believe that the district
2 attorney's office believes that it can sweep quite so
3 broadly into our lives.

4 THE COURT: But we're not dealing with that
5 clause. His theory is he used it to commit a crime and that
6 is not vague. That is not whatever uncivil means between
7 friends or lovers.

8 MR. KUBY: I'm not arguing vagueness. This part
9 is not a vagueness argument. This part is really an
10 overboard argument and I know that we're not arguing that
11 clause, we're arguing two clauses above it, but they're all
12 contained in the same admonition. There is nothing to stop
13 Mr. Bandler except oh, the good sense of the DA's office in
14 not making that prosecution, if he so wishes.

15 THE COURT: And you know what, if I got a
16 prosecution because he calls his girlfriend an unpleasant
17 word.

18 MR. KUBY: You would do what?

19 THE COURT: I would deal with it when I got there.
20 But you know what, that's not what I have.

21 MR. BANDLER: I don't know if this is a good
22 analogy, if you think of computers and you have access to
23 the computer, I can do whatever I want but if you rent a car
24 you're borrowing the car for a certain purpose to drive it,
25 not to drive it off a cliff, not to sell it out for parts,

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1 not to take it into a demolition derby so when you borrow
2 the use of the NYU computer system, it's for certain
3 purposes, and there may be shades of gray if civil or not
4 civil but when you deliberately borrowing it to commit a
5 crime or to take the car into a demolition derby, I think we
6 have a different issue.

7 MR. KUBY: I actually like that. So if Junior
8 borrows dad's car to go to the store and without
9 authorization he stops off at his girlfriends' house, he can
10 be charged with unlawful use of an automobile when dad finds
11 out?

12 THE COURT: That brings up something from many,
13 many years ago about detours and frolics and all those sorts
14 of things.

15 So whether or not the corporation, for example, is
16 liable and the employee has used the company van to go to
17 the ball game unauthorized. Uncivil is kind of a funny
18 phrase. So if you are having a relationship with somebody
19 and you banter, banter or whatever you want to call it and
20 it has some fairly strong language in it, not necessarily
21 upsetting but uses strong language, you may not have that
22 uncivil in that context as they say in the civil context, to
23 be liable, you have to look at context but I don't have that
24 case.

25 It's not that he was uncivil, it's not that he

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1 accused Larry Schiffman of plagiarism which you might argue
2 is uncivil. That's not what we have here. If that was the
3 case then I would agree with you, I would say that's kind of
4 odd, because clearly if there is no question whatever I
5 believe I think we all agree that if he used the computer
6 and he sent an e-mail to Larry Schiffman at his correct
7 address and said you are a dirty plagiarist and he signed
8 it, indicated to or he signed it anonymous or he signed it
9 Raphael Golb, he would be First Amendment protected.

10 MR. KUBY: I agree.

11 THE COURT: And whether or not it would be
12 unauthorized use although it's not civil whatever that means
13 I don't have that.

14 MR. KUBY: We'll agree with your original
15 proposition. Can I get Mr. Bandler's agreement to that?

16 MR. BANDLER: One e-mail I would agree. If he
17 sent a thousand e-mails to Dr. Schiffman then we might have
18 an aggravated harassment.

19 THE COURT: A thousand e-mails might be so
20 excessive and bring it to stalking. I'm not going to deal
21 with that. I don't know when I go over the line of you are
22 allowed to.

23 MR. KUBY: I don't either. Does Mr. Bandler know
24 where the line is?

25 THE COURT: That's not our case. It's all very

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1 interesting to talk about better cases than you got here but
2 I don't want to.

3 MR. KUBY: I think going back to Mr. Breitbart's
4 question about scheduling -- well, I won't speak for the
5 People.

6 MR. BANDLER: Well, you said you're putting on a
7 case or no?

8 MR. KUBY: I didn't say.

9 MR. BANDLER: I think I should be done Monday.

10 THE COURT: So you prepare a reasonably brief
11 motion to dismiss and I'll deal with it and then we'll start
12 putting on your case.

13 MR. KUBY: Would you prefer that in writing or do
14 you object to it in writing?

15 THE COURT: I guess in terms I prefer it in
16 writing because it's easier for me to cope with.

17 MR. KUBY: Fine, thank you.

18 THE COURT: I don't require it in writing.

19 MR. KUBY: And you don't object to it in writing?

20 THE COURT: I certainly do not.

21 MR. KUBY: Thank you, Judge.

22 (The trial was adjourned until September 24,
23 2010 at 10:00 a.m.)

24

25

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DIRECT/PEOPLE/ELLEN GINDELE

1 A I wouldn't have wanted to have to bring him. I would
2 have been very worried about his health and well-being. He
3 tends to sleep a lot and the trip would be overwhelming for him,
4 I believe.

5 Q So who would you say aside from the medical
6 professionals, who else would be closest to him as a care giver?

7 A Well the aides at the facility are his primary
8 caretakers but my husband and I are the ones that have made
9 major contact with him.

10 Q To your knowledge did your father ever open up an
11 e-mail account --

12 MR. BREITBART: Objection, your Honor.

13 THE COURT: You may ask your question.

14 Q To your knowledge did your father ever open up an
15 e-mail account Frank dot Cross 2 at gmail dot com?

16 A No.

17 Q How do you know that?

18 A Well, in his desire to communicate with the outside
19 world we have sat down with him in the last few months and setup
20 a gmail account for him. He set it up in the name of F M Cross
21 Junior which is the way he would refer to himself either that or
22 Frank Moore Cross and we gave him a list of instructions one by
23 one so that we were hoping that he could get into the e-mail
24 account and begin writing to friends and he to my knowledge
25 never succeeded getting into the account.

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DIRECT/PEOPLE/ELLEN GINDELE

1 I left a message on the account that if he were to
2 reach my message that he would send a message to me on my hot
3 mail account and that's how I would know and he's not been able
4 to do that.

5 Q And have you seen some e-mails sent from the e-mail
6 account Frank dot Cross 2 at gmail dot com?

7 A I'm sorry, I don't understand.

8 Q Did you ever look at some e-mails that were printed out
9 that were sent from an e-mail account Frank dot Cross 2 at gmail
10 dot com?

11 A They were sent to me from your office.

12 Q And the writings in that, in those e-mails is that your
13 father's style?

14 A No.

15 MR. BREITBART: Objection, your Honor.

16 Q The writings in those e-mails was that your father's
17 style?

18 THE WITNESS: Can I answer that?

19 THE COURT: Yes, ma'am.

20 A It does not appear to be his style.

21 Q And since your father been in the assisted living, has
22 he come to New York City?

23 A Absolutely not.

24 Q Has he come to the Bobst Library at New York
25 University?

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1 university received?

2 A. Yeah.

3 Q. How did you become aware of that?

4 A. Because I got called into the dean's office. I mean
5 the dean called me, and said, hey, I got a letter. What's going
6 on, who is this guy. Basically, when the museum sent the script
7 to Dr. Golb, it was in an E-mail, attached to an E-mail that
8 says this is a courtesy copy. You asked for a copy of the
9 script. We are sending this to you. And of course on the top
10 of the script, it said don't reproduce it. He then turned
11 around and took ten or eleven large excerpts out of that script
12 and published a critique of the script, not the movie --

13 MR. KUBY: I don't understand what the he is.

14 THE WITNESS: Dr. Norman Golb, Dr. Golb.

15 MR. KUBY: Thank you.

16 A. Published critical comments, eleven excerpts from the
17 script and wrote comments that were marginal notes. Actually
18 wrote a critique of the editorial notes that were involved in
19 the script. So, he wrote a critique, he posted that on the
20 Oriental Institute's -- online, than their website. And then
21 sent some letters, hand-signed letters in signed by Norman Golb
22 to my administrators, basically asking them, you know, why I
23 excluded him.

24 Q. You said the Oriental Institute. Briefly, what is
25 that?

1 A. To my knowledge, the Oriental Institute is a center
2 within the University of Chicago, and it's a very prestigious
3 center. It's a highly acclaimed center that basically studies
4 ancient near eastern civilization.

5 Q. Dr. Norman Golb was part of that?

6 A. Yes, he's part of the Oriental Institute.

7 Q. Dr. Norman Golb wrote a letter complaining about your
8 work, but did you become aware of some E-mail complaints to
9 UCLA?

10 A. Yes, administrators at UCLA were getting complaints
11 about the same time that I was having my attention drawn.

12 Q. How did you become aware of these E-mails that were
13 being sent?

14 A. I received an E-mail that basically said --

15 MR. KUBY: Objection, Judge, unless he is
16 referring to a document in evidence.

17 MR. BANDLER: It's personal knowledge.

18 MR. KUBY: Hearsay.

19 THE COURT: We not having him say what the E-mail
20 said for its truth, but rather what the E-mail said. So,
21 you may continue, sir.

22 A. Thank you. The E-mail basically said I can't find a
23 review of that movie, could you point me to a review. It was an
24 E-mail from someone I never heard of.

25 Q. This was an E-mail sent to your E-mail address?

1 A. Yes.

2 Q. And did you become aware that other people at UCLA were
3 receiving E-mails from --

4 A. Yes.

5 Q. And how did you become aware of that?

6 A. Because one scholar after another kept coming up to me
7 saying what is this, what are you doing, what is this, what's
8 going on here. And, I would have to go to the scholar and say,
9 look, there's somebody out there who doesn't like my -- the way
10 I am arguing my dissertation. They don't like the conclusion I
11 reached. They are taking it upon themselves to go online and
12 just have at it with me just to critique what I am doing. They
13 are doing this online.

14 Q. Do you remember when approximately this started?

15 A. Oh, I want to say 2007, late 2007.

16 Q. Do you remember approximately how many people from UCLA
17 approached you to say, hey, I got this E-mail complaining of
18 about you?

19 A. Everyone in my department, the Department of Near
20 Eastern Language and Cultures, people in the press room, the
21 provost of the university, the dean of my college, all of them
22 were saying, you know what, pardon me, what the hell is going
23 on, what is this all about.

24 Q. And did there come a time when you became aware of some
25 internet blogs about your work?

1 A. Yeah. Basically what was taking place was what we call
2 in the tech world a Google bomb, a Google bomb. What you do is
3 in a Google bomb, is you write something on line, and algorithm
4 that drives Google search results is based upon how many other
5 it documents link to it and the credibility of those documents.
6 So, what you do is you post something online, then you would
7 copy and paste that on to a blog somewhere else, and link to
8 that. Then you would go back in the original document and
9 update that document and link to the blog. Then you paste that
10 on another blog. Then you paste that on another blog. You try
11 to build up as many of the same thing, and you use meta tags and
12 key words to --

13 THE COURT: Meta tags?

14 THE WITNESS: M-E-T-A.

15 THE COURT: What are those?

16 THE WITNESS: Key words. There are -- sometimes
17 you are asked to describe, you do a keyword search.
18 Basically I want to search for greatest baseball team on
19 earth, right. And so, you are hoping that -- I am guess you
20 are in New York, it would be the Yankees or the Mets. I
21 don't want to guide anyone in the room. It would be
22 something like that. This would come up. So, maybe when
23 you are blog, you put greatest baseball team on earth
24 Yankees because you want that result to come up. Someone
25 was cutting and pasting the same thing over and over in the

1 attempt to elevate its search standings within Google.

2 Q. When in relation to these anonymous E-mail complaints
3 did this internet blog campaign take place?

4 A. The internet campaign had been going on before I was
5 involved with the San Diego exhibit in 2007. It had been going
6 on long before that. I first began seeing blogs about it with
7 the Kansas City exhibit, which was prior to the San Diego
8 exhibit in 2007, with the Seattle exhibit which was in 2006.
9 Then, of course, the San Diego exhibit. The scrolls then moved
10 to North Carolina, then New York, and Toronto. Then there was
11 a, just a massive campaign critiquing seeking all of those
12 exhibit.

13 Q. What was your initial action in connection to these
14 internet attacks upon you?

15 A. Well, your first -- when I first was attacked, I mean
16 your first inclination is to respond to them. I was warned not
17 to respond because anything I say would be copied and pasted and
18 then responded to elsewhere. And the example was Dr. Risa
19 Levitt Kohn who was the curator of the San Diego --

20 MR. KUBY: Judge, I will object to this hearsay
21 within hearsay. The example, whose example?

22 THE COURT: I will permit it to explain why he
23 didn't respond.

24 A. I was at San Diego. I saw very critical things being
25 said about the exhibit. And as someone who is online, I want to

1 go in, just like you do at the bottom of a news article, and
2 respond to these comments, and I was warned not to do that.
3 Because Dr. Kohn had responded earlier to a critical complaint
4 about the thing, and then that comment was then copied, taken
5 elsewhere, posted on a blog, and then a response to that was
6 given, and then that give and take was copied over and over and
7 over with the intent to humiliate her.

8 Q. So --

9 MR. KUBY: Objection to what he believes the
10 anonymous person's intent was.

11 THE COURT: Yes. Intent will be a question for
12 the jury. I will strike that.

13 Q. So, your initial response to these attacks on you were
14 to ignore it?

15 A. You can't ignore it, but, you can -- yeah. I was
16 warned don't respond.

17 Q. Don't respond?

18 A. Whatever you do, just let it go. Whoever it is, this
19 has a bug, it's a bully, it will pass. It will -- he'll find
20 someone else to pick on later.

21 Q. Did there come a time when you started tracking various
22 aliases that were either sending E-mails or doing blogs?

23 A. Yes, sir.

24 Q. And why?

25 A. It doesn't take a genius to realize that someone was

1 copying and pasting the same thing and using a different name.
2 The language was the same, the grammar was the same, the content
3 was the same, the, the combative style was the same. Everything
4 was the same comment to comment to comment. And yet, every,
5 every name underneath it would be a different name. So, you get
6 one from Charles Gadda, you get one from Frankel, you get one
7 from Friedman, you get one from -- just -- but it was -- it
8 doesn't take a genius to see this is the same person. I assumed
9 the same person copied and pasted pasting the same thing and
10 used different name.

11 Q. Why did it matter so much to you that you took the time
12 to do this, why did it matter?

13 A. Because they weren't going away. The bully wasn't
14 stopping. It kept intensifying and intensifying. It began to
15 go from critiquing just -- the original critique of the San
16 Diego exhibit was the same the as the critique of the Seattle
17 exhibit, and same as others, that is Dr. Norman Golb had not
18 been invited to speak. He wasn't allowed to come present his
19 theory. Other scholars, Dead Sea Scrolls, archeologists, a lot
20 of them were invited to speak, but Dr. Norman Golb wasn't.
21 There were campaigns online, campaigns against -- letters
22 written to San Diego. Everyone in the museum had written either
23 handwritten letters, E-mails, read the blogs over and over. It
24 was a generic complaint, why didn't you invite Dr. Norman Golb
25 to speak. But soon after that, as soon as it was found out I

1 was involved, I hadn't yet -- I was just a grad student on a
2 research grant to provide some new technology that none of the
3 other scholars could do. So, I was starting to build this
4 thing. And, now it became personal attacks against me.

5 Q. And how did you go about tracking various aliases and
6 their internet activity?

7 A. As a researcher, you learn to write everything down.
8 You write everything down. And I am very active on the
9 internet. I grew up with Netscape, and, you know, the origins
10 of internet browsing. That's what I have done. That's how I
11 put myself through school is doing technology. And so, I began
12 bookmarking everything that I read that had anything -- I was
13 already doing this because as a scholar writing, actively
14 writing a dissertation on the Dead Sea Scrolls, I want to know
15 every internet resource available to me. But I had a special
16 file for all of these critical things I thought were the same
17 guy or the same people, some group of people or one person. I
18 thought everything that was critical, that had the same grammar,
19 same style, that could be the same person, I put into a bookmark
20 in a folder.

21 Q. And, what kinds of things made you thought it was the
22 same person?

23 A. As I stated, the subject matter is the same, the Dead
24 Sea Scrolls. The argument is the same, it's an attack against
25 Dead Sea Scrolls exhibition, specifically against those who are

1 asked to come and speak at the exhibition as a part of the
2 distinguished lecturer series. It would always, always, always
3 make arguments in defense and promoting and defending Norman
4 Golb, Dr. Norman Golb at the University of Chicago. It was
5 always arguing that he had a theory that everyone was ignoring,
6 that no one was paying attention to, and it was some form of
7 conspiracy or some form of, you know, something bad that was
8 taking place to keep Norman Golb off this thing. And so, these
9 letters were basically there, and they say in the letters, I
10 mean, the letters when you read them, they actually say things
11 like, this is very disturbing, it's embarrassing, things like
12 that to try to influence the museum to bring Dr. Golb out to
13 serve as a lecturer.

14 Q. Have you ever used aliases when posting things online?

15 A. Sure.

16 Q. Do you ever impersonate anyone?

17 A. No.

18 Q. Do you do a lot under your own name or your own hand?

19 A. I do, yeah. I am very -- a whole lot under my own
20 name.

21 Q. Do you have a handle?

22 A. Yeah.

23 Q. What's that?

24 A. I have a couple of handles. One is bobcargill, all --
25 no space in between all lower case, and for a long time, I wrote

1 everything in no caps. And people ask me why. It was because
2 -- it's actually because if you look at a URL at the top of your
3 browser when you go to Yahoo, at the top, that's all lower case.
4 When you look at E-mail addresses, everything is in lower case.
5 Early programming languages were done in lower case. Often
6 times you can identify programers by they use all lower case
7 when they are online. That and E.E. Cummings used to do it I am
8 told.

9 Q. They are a programmer or they don't like the shift key?

10 A. I have been accused of being lazy, not wanting to reach
11 over and hit the shift key.

12 Q. At the time the internet attacks were happening against
13 you, what was happening with respect to your PhD?

14 A. Well, the handles I was using was bobcargill. I have
15 another --

16 Q. I am asking about the time --

17 A. I was in min progress, was still working on my PhD.

18 Q. Did you use -- were you able to determine internet
19 protocol addresses of this alias?

20 A. Sure.

21 Q. And how were you able to determine that?

22 A. By a number of means. Sometimes when you post on --
23 let's say, for instance, a news article comes out online.
24 There's a comments box at the bottom. Sometimes you can just
25 type in comments and just type in any name you want. Sometimes

1 you have to register. You have to give them your full name.
2 That's becoming more and more frequent because of the abuse of
3 anonymity. A lot of time they will post a name, they may or may
4 not post E-mail address. And some blogs post the IP address
5 right below it. Most of the comments that were made consistent
6 with critiques of Dead Sea Scrolls museums, and defense and
7 promoting Dr. Norman Golb were just anonymous names. Some of
8 them actually printed the IP address next to it. Then you can
9 see, here's an IP address. I know IP address, every computer
10 online has to have a way to connect to the internet. The IP
11 address is a unique identifier for someone's machine online.
12 Another way to do it is using Wikipedia. Wikipedia, if you do
13 not register your account, whatever terminal from which you make
14 a comment online, they just record and log the IP address right
15 up there. Wikipedia administrators can also go behind the scenes
16 and see the IP address. The third way is via blogs. When you
17 write a blog and someone leaves a comment, like I've got this
18 guy that leaves a comment on my blog every day, I never approve.
19 He leaves comments on my blog. When you leave a comment on a
20 blog, it gives the name of the person or at least whatever name
21 they gave. It gives the E-mail address or whatever E-mail they
22 give. It gives you the IP address. They have no control over
23 that. The IP address is shown there. And then you can look at
24 that IP address. And then I went to publicly available
25 software, What is My IP. There's lots of them out there. You

1 scholars were sending me these E-mails saying, I got this one.
2 I said make sure you get the header, because at the time, the
3 defendant didn't know that the E-mail, a -- the IP address were
4 contained in the header of these E-mails.

5 MR. KUBY: Judge, I object to what Mr. Cargill
6 believes the defendant did or did not do.

7 THE COURT: Sustained.

8 Q. So --

9 A. What this individual who was passing himself --

10 THE COURT: Don't tell us what somebody else's
11 state of mind is, that's the point.

12 THE WITNESS: Sure.

13 Q. Let me get you to early August of 2008. Did there come
14 a time when you saw a blog that accused Dr. Schiffman of
15 plagiarism?

16 A. Yes, sir.

17 Q. And what was your reaction when you saw that blog?

18 MR. KUBY: Objection to his reaction.

19 THE COURT: Sustained.

20 Q. What did you do as a result of seeing that blog?

21 A. I called Dr. Schiffman, like I had called every other
22 scholar who had been attacked by this campaign.

23 Q. Did you provide Dr. Schiffman with some information?

24 A. I did.

25 Q. And you spent quite a lot of time tracking this

1 | blog, but it has the advantage of being deemed as a news site,
2 | so that on Google alerts, the alerts I get come from news
3 | alerts, which are valued higher than blog alerts.

4 | Q. I want to direct your attention to on or about
5 | September 12, 2008. Did there come a time when you made a
6 | complaint to NowPublic?

7 | A. Yes, sir. I made several complaints to NowPublic.

8 | Q. Can you tell the jurors and why you did it?

9 | A. When I first read some of the things which the alias
10 | Charles Gadda had written, I wrote to NowPublic saying we have a
11 | lot of evidence to suggest that this is an alias, it's not a
12 | real person, and that it's a part of a widespread campaign to
13 | defame to critique the Dead Sea Scrolls exhibition and the
14 | scholars involved in them. They wrote me back. I had, I had an
15 | exchange with some of them, basically said we are going to let
16 | it go. We will keep an eye on it. Later on when I saw the
17 | Dr. Schiffman complaint, I called them back and said this is
18 | wrong, this is just you can't do this.

19 | Q. And , do you remember which blogger blogging accounts
20 | those pertain to?

21 | A. When I complained, NowPublic put under review -- they
22 | didn't delete the blogs. They had -- they didn't delete the
23 | blogs until the day after the defendant was arrested. They
24 | didn't delete the blogs. They put them under review. And the
25 | two accounts they put under review was Peter Kaufman, the author

1 of the one critiquing Larry Schiffman, and Charles Gadda. Those
2 two were based under review after my complaint off the Peter
3 Kaufman blog.

4 Q. Did you tell NowPublic there was a criminal
5 investigation going?

6 A. Yes, I did.

7 Q. And can you tell the jury why you did that?

8 A. I had written to NowPublic trying to convince them,
9 look, this is not right. This is wrong it's an alias. It's a
10 part of a widespread campaign, you know. You need to have some
11 kind of journalistic credibility, you need to do something. And
12 they what they would normally do is they would end the coming --

13 MR. KUBY: Judge, objection to NowPublic's normal
14 policy unless he's a representative thereof.

15 THE COURT: Tell us what happened, sir.

16 A. Okay. NowPublic sometimes did not remove the content.
17 What they would do, though, is an administer with NowPublic
18 could come in and they would see the comments, the responses to
19 these articles were constituting what we call in the internet
20 world flaming. They are deliberate intent to bait people into
21 responding. They are incendiary comments. The administer would
22 come on and say we are closing the commenting to this argument
23 because this is flamed. In my -- not only in my opinion, but at
24 the opinion of the administer supervising --

25 MR. KUBY: Objection, Judge.

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1 point in their career were involved with the study of the Dead
2 Sea Scrolls that it must be corrupt, the conclusions reached by
3 those scholars it must be corrupt. That's the summary of that
4 blog.

5 Q And is Frank Cross one of those supposedly corrupt
6 Christian scholars?

7 MR. KUBY: Judge, at this point I object.

8 THE COURT: Sustained.

9 Q Do you remember if that blog mentioned Frank Cross?

10 A Yes, sir.

11 MR. KUBY: Objection, Judge -- withdrawn.

12 Q What's ASOR?

13 A ASOR is the American School of Oriental Research. It's
14 an organization of scholars most of whom are archeologists, who
15 dig in what we would consider the Ancient Near East that is
16 Israel, Palestine, Cyprus, Egypt, Syria, that region.

17 Q Was your doctoral adviser Dr. Schniedewind also
18 attacked online?

19 A Yes he was, quite a lot.

20 Q Who is Dr. Ehrman, E-H-R-M-A-N.

21 A Dr. Bart Ehrman is a specialist in paleographical
22 literature. That means literature that didn't necessarily make
23 it into the Bible but was considered to be biblical literature
24 but it didn't get it in the cannon either the Hebrew Bible or
25 the Christian literature and he's either at Duke or the

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1 A No, these would be e-mails from people other than
2 Norman Golb critiquing me about not agreeing with the
3 conclusions of Dr. Norman Golb. It would have been some time
4 between late 2007, all the way up through the day before the
5 defendant's arrest.

6 Q Now what is the effectiveness upon you?

7 A I was a grad student at the time, I wanted to do my
8 research, get my dissertation, maybe publish an article and
9 become a teacher, that's what I wanted to do. That's still what
10 I want to do. I understand that in this field there are people
11 who critique one another, that's part of the process. I invite
12 the critique. When I published my book I invited Jody Magness
13 who disagreed with me to come and critique me, that was part of
14 a conference that reviewed my book. I invited Vidal Delwick who
15 was part of the committee to critique me. I invited the
16 criticism. There are scholars who come in their own name and
17 critique me and I stand up and I stand up to that and you have
18 to expect some form of criticism in this field, that's how
19 scholarship work.

20 But to wake up every day and to see anonymous people
21 taking shots, not just at my conclusions, not just because I
22 didn't agree with Dr. Norman Golb, because I went to Pepperdine,
23 because I am a Christian, because I studied under Dr. William
24 Schniedewind. To have these personal attacks against me, I
25 thought crossed a big line. To then have that -- it's one thing

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1 if they send an e-mail to me, you send me the e-mail, I can
2 block the e-mail address, I can change it, I can do something.
3 When you're sending it to my faculty, to my administration, to
4 my provost, to anyone who has any control over whether or not I
5 get that Ph.D., whether or not my career actually advanced and
6 go forward, and those people are calling you into the office and
7 saying what the hell is this, what is going on, what are you
8 doing and I have to stand there and say I'm not doing anything,
9 all I'm doing is my research, my job, someone is disgruntled and
10 they're taking aliases and I had to do that time and time again
11 until Dr. Schniedewind my adviser wrote an e-mail to the
12 faculty.

13 MR. KUBY: Objection, your Honor.

14 THE COURT: Overruled.

15 A He wrote an e-mail to the faculty including me and said
16 Bob is not at fault here, this is someone who is disgruntled
17 he's using --

18 THE COURT: I just want the jury to understand
19 that Dr. Schniedewind, that letter is not evidence for its
20 truth.

21 A Fair enough. That I'm not the one at fault here, that
22 I'm trying to do my research and there's an army of aliases that
23 are trying to attack me. Me, Dr. Schniedewind --

24 MR. KUBY: Objection, Judge, to what other people
25 are trying to do.

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1 THE COURT: I'll permit the witness' perception.

2 A An army of aliases that I believe were from one person,
3 maybe a few people that were trying to just make my name into a
4 nuisance that every time my name comes across on a daily e-mail
5 every faculty, the provost, the dean, all of these people there
6 is Cargill's name again and you say every time those e-mails are
7 associated with words like mendacious or spurious or doesn't
8 know what he's talking about or did he consider this or is he
9 going to be allowed to get his Ph.D. for shoddy work like this.
10 When every day to walk into the office to have somebody go, I
11 got another one of those e-mails again, even though
12 Dr. Schniedewind wrote them and told them to ignore it, to every
13 day to read, to know that these other faculty members are
14 walking around and saying I wonder if there is any truth at all
15 to this, I wonder if. When it's just a campaign to harass me.
16 I didn't like it. It made me regret ever getting into Qumran
17 studies and I think that's the point of it, if you can chase out
18 anyone trying to do original research --

19 MR. KUBY: Objection, objection, objection.

20 MR. BANDLER: Thank you, doctor.

21 No further questions.

22 THE COURT: Thank you.

23 CROSS-EXAMINATION

24 BY MR. KUBY:

25 Q Good morning, Dr. Cargill.

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1 A Before the University of Chicago removed it, yes, I saw
2 it.

3 Q We'll get to that in a minute.

4 You saw it, right?

5 A I did see it, yes.

6 Q And you read it, correct?

7 A I did, yes, sir, I'm sorry, yes.

8 Q And is it fair to say it's something like a dozen or
9 more single spaced pages of scholarly criticism of your work?

10 A I don't know how long it was but yes it was criticism,
11 scholarly criticism of my work, that's fair to say.

12 Q It wasn't a smear, was it?

13 A I believe one portion of it was an attempt to smear.

14 Q You thought one portion was an attempt to smear you,
15 but overall it was a scholarly critique of your work?

16 A It indeed was a scholarly critique of my work.

17 Q It attacked your methods, correct?

18 A I don't recall but it may have.

19 Q It attacked your conclusions?

20 A It may, yes.

21 Q It attacked the way you got to your conclusions?

22 A It attacked the way I got to my conclusions, yes, I
23 would agree.

24 Q The methodology by which you started at point A?

25 THE COURT: Mr. Kuby, don't talk while the witness

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1 is talking, okay. You are a lawyer you know better.

2 MR. KUBY: Sorry.

3 THE COURT: Professor Cargill, we can't take both
4 of you at once but it's not your fault. It's his fault.

5 MR. KUBY: I'm sorry.

6 A I would agree with your last three statements that he
7 attacked my methodology, that he attacked my conclusions.

8 Q And it's fair to say, is it not, that you, Dr. Cargill,
9 invite criticism of your work?

10 A I do.

11 Q And you, in fact, are one of academias, you are among
12 academia four most proponents of putting scholarly work online
13 for criticism?

14 A I would agree with that, yes.

15 Q The earlier preview process was anonymously, colleagues
16 of yours review your work, they give it a thumbs up or thumbs
17 down or criticism, that's sort of old school?

18 A I had written against old school pre review methods,
19 yes.

20 Q We'll call it new school, the younger hipper version to
21 put it online so that anybody can read it?

22 A I don't know how hip it is. I won't characterize it as
23 hip as we're all still pretty much nerds writing about the Dead
24 Sea Scrolls.

25 Q I'm not hip any more but the younger version?

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1 A Sure.

2 Q And you know from your own online experiences when
3 articles are posted online they invite criticism?

4 A Some of them, yes.

5 Q And they invite credits?

6 A Some of them do, yes.

7 Q And anybody with a cursor and an idea can critique it?

8 A If it's allowed, yes.

9 Q If it's online?

10 A If it's allowed online, yes.

11 Q Now you repeatedly said that Norman Golb attacked your
12 script, correct, on direct examination?

13 A I'd have to have it read back to me. I don't know if I
14 used the word "attacked." I know that you've just used the word
15 attack.

16 Q Pardon me?

17 A You just characterized it as an attack.

18 Q Do you recall your earlier testimony?

19 THE COURT: I'm sorry, the jury has heard his
20 earlier testimony. It's one of my pet peeves when you ask
21 someone what their earlier testimony was in this courtroom.

22 MR. KUBY: I had no idea that was a pet peeve of
23 yours.

24 THE COURT: Now you know, that's why I told you so
25 you would know.

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1 testimony you sat there and talked about the impact this had on
2 you.

3 A Right.

4 Q Tell me the thing that you considered the worse thing
5 that was said about your film?

6 A I didn't appreciate many things, one of them that
7 sticks in my mind was this concept of mendaciousness, mendacity.

8 Q For those of us who don't have dictionaries in front of
9 us and cannot use our handheld devices, give us the definition
10 of mendacity?

11 A I had to look it up, too because it's not that common
12 of a word as you just said. But I had seen it two places, one
13 on anonymous attacks on my work and one on a hand signed letter
14 by Norman Golb, that's where I saw the word mendacious.

15 Q Tell us what it means though.

16 A It essentially is a synonym for lying.

17 Q Dishonesty?

18 A Dishonesty, academic dishonesty.

19 Q And your work was the worst thing that the online
20 poster said about your film was it was mendacious?

21 A I don't think it was the worse thing, it was one of
22 many things.

23 Q That was a real bad thing, right near the top of awful?

24 A Yes.

25 Q Give us one other one, maybe a word that we're

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1 Q And you published a review of this as well in the
2 Archeological Review as well?

3 A Of this paper? Not to my knowledge.

4 Q At the November 23rd lecture and this lecture was
5 before whom again?

6 A It was again to my recollection the Society of Biblical
7 Literature, it was a session on online research. There are
8 different sessions within the Society of Biblical you can give a
9 lecture on the Samuel lecture or the prophet lecture and they
10 have one on technology and use of research.

11 Q And in that lecture did you say the following quote
12 despite Norman and Raphael many criticisms, the Dead Sea Scrolls
13 exhibits were experiencing tremendous success and Norman Golb
14 was still not being invited to speak at the museums lectures.
15 Our patient vigilance had begun to pay off and the Golbs
16 experience increasing difficulty in getting out their message
17 end quote.

18 A If it's not word for word, that's consistent with
19 something that I said in the lecture.

20 Q Well, would you like to listen to a CD of that?

21 A Sure -- no, but I guess you're going to play it anyway.

22 Q No, I'm not.

23 THE COURT: I'm not exactly sure why we're doing
24 that. He already admitted to saying something like that and
25 the jury may take it to be a particular bias and they may

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1 A I never published in Archeology Magazine.

2 Q I'm sorry, Dr. Cargill, just take a look at the
3 document marked page one, scan it silently to yourself if you
4 please and after you've satisfied yourself and you know what it
5 is.

6 A (The witness complied.)

7 Q What do you recognize that to be, sir?

8 A This is a document that I wrote for consideration to
9 publication for Archeology Magazine?

10 Q So you sent it to Archeology Magazine for publication;
11 is that correct?

12 A I was working with an editor there.

13 Q And did they publish it?

14 A No, sir.

15 Q Could you hand it back, please?

16 COURT CLERK: And that is marked as?

17 MR. KUBY: H-1.

18 Q And with respect to this article, you've delivered
19 variations of this article in the form of a lecture; is that
20 correct?

21 A I have not delivered variations, I've delivered one
22 redacted variation of that article, the one that we've already
23 described at SBL.

24 Q And this article, you wrote this article, right?

25 A Yes.

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1 Q Did you end the article by saying unfortunately the
2 words of shrine of the book curator Magen Broshi still appears
3 to echo true today. Quote when will be we free of Golb? When
4 he dies. Close quote.

5 You wrote that?

6 A I'm sorry?

7 Q You wrote that?

8 A Magen Broshi wrote that.

9 Q You were quoting Magen Broshi?

10 A In the initial draft, in the first draft of this
11 article, I had a lot of things and things that we ended up
12 redacting out of the article thinking the article is too long.

13 Q But in the Society for Biblical lecture that you gave
14 on November 23rd, you included that portion in the speech that
15 you gave, did you not?

16 A I do not recall?

17 Q You do not recall?

18 A Including that portion.

19 Q Well, we'll hold that for now.

20 Magen Broshi you identified him in this article as the
21 shrine of the book curator, correct?

22 A I believe so.

23 Q And what is the shrine of the book?

24 A The shrine of the book is a building that contains many
25 of the Dead Sea Scrolls. It's a part of the Israel museum in

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1 Jerusalem.

2 Q So it's an important institution in your area of work?

3 A In my area of work, yes, it's an important place.

4 Q And you were aware, were you not, that in an interview
5 with the newspaper Iris, Magen Broshi when will we be free of
6 Golb? When he dies.

7 A I read that quote in Dr. Golb's books that's when I
8 learned of that quote.

9 Q And you saw fit to quote it in your papers, correct?

10 A No, I did not. I saw fit to include it in the original
11 draft of the paper which was later redacted from the paper. No
12 one every publicly saw that.

13 Q Pardon me?

14 A No one ever publicly saw that.

15 Q I'm not asking you that question, you wrote those
16 words, correct?

17 A I quoted Dr. Broshi in the early draft of a document
18 that I wrote.

19 (Continued on next page.)

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1 Q. And when you say you in your portion, that is the
2 portion that you had not, simply to quote, unfortunately
3 Broshi's [phonetic] words are still true, you mean by that it's
4 unfortunate that you wouldn't be rid Norman Golb sooner than his
5 death?

6 A. No, sir, that's not what I meant.

7 Q. Do you know how old Norman Golb is?

8 A. I do not.

9 Q. Do you have any idea?

10 A. I would have to speculate.

11 Q. Any notion of how long you have to wait to be free of
12 him?

13 MR. BANDLER: Objection.

14 THE COURT: Sustained.

15 Q. You also wrote, did you not, that Norman Golb will,
16 quote, fight his litigious losing battle until the bitter end?

17 A. Sorry, are you quoting from a draft of a manuscript I
18 wrote from?

19 Q. I am asking you if you wrote the following words?

20 A. I don't recall. I mean, we would have to see if it's
21 in a draft of a manuscript that was never published?

22 Q. Did you ever deliver those words to the Society of
23 Biblical Literature on November 23rd?

24 A. I don't recall.

25 Q. You don't recall. Is this the kind of thing you would

1 objection to Dr. Golb and my opinion violating copyright.
2 Publishing things that he was just publishing, well, I will
3 leave why I think he did it to myself. And then me writing the
4 Oriental Institute saying this is wrong, you can't do this, and
5 then removing the document after my E-mail exchange with them.

6 Q. The end, that's where it ended?

7 A. I wish that's where it would have ended.

8 Q. Right, because the University of Chicago then took
9 Norman Golb's review with the couple of revisions and posted it
10 on their website; is that correct?

11 A. I can't -- I don't know how to answer that. It was
12 published on Dr. Norman Golb's private personal website. It was
13 no longer on the Oriental Institute website.

14 Q. And his personal website is through the University of
15 Chicago?

16 A. If I recall, I believe it's University of Chicago, it
17 was revised version where he took out of content, to which I
18 objected, and re-put the argument back up, and then -- but it
19 was removed, all of the stuff to which I objected.

20 Q. Well, you received a letter from the University of
21 Chicago counsel, is that correct, in response to your complaint?

22 MR. BANDLER: Objection.

23 THE COURT: Sustained.

24 MR. KUBY: Judge --

25 THE COURT: What does this have to do with --

1 MR. KUBY: It has to do with, number one, the fact
2 that, that the University of Chicago counsel told him that
3 this false --

4 THE COURT: Why is what the University of Chicago
5 counsel told him not hearsay?

6 MR. BANDLER: Objection.

7 MR. KUBY: It is hearsay, and --

8 THE COURT: Then don't ask it.

9 MR. KUBY: It goes to his state of mind, and the
10 reason it goes to his state of mind is when he blogs about
11 this, he does -- he never mentioned the fact it was told by
12 counsel --

13 THE COURT: Excuse me, step back.

14 MR. KUBY: -- to stop doing it. So --

15 THE COURT: The jury will disregard that comment.
16 That is hearsay. I don't know whether counsel is good, bad
17 or indifferent, correct or incorrect. And his state of mind
18 I don't believe is part of any of the charges in this case.
19 Please proceed.

20 MR. KUBY: Judge this --

21 THE COURT: Excuse me, please proceed.

22 MR. KUBY: Could I get this marked as -- where are
23 we?

24 THE COURT: Pat tells me it's lunchtime. I always
25 listen to her. So, jurors have a good lunch. I will see

1 you at 2:20.

2 (Whereupon, the jury exited the courtroom.)

3 THE COURT: I will see you after lunch.

4 (Whereupon, the witness was excused.)

5 MR. KUBY: Judge, if I can make an offer of proof
6 for this witness.

7 THE COURT: Sure.

8 MR. KUBY: Dr. Cargill acknowledged on direct
9 examination that he blogs about this episode and he talks
10 about the alleged copyright infringement, his complaint, and
11 how it was redressed by the Oriental Institute. In his
12 blogging, that's where he stops and he makes it seem -- he
13 makes it seem as though in his own writings that somehow he
14 triumphs over Dr. Golb and Dr. Golb was wrong. What he
15 never does on his blogs is the rest of the story which is,
16 A, it was put back up on the University of Chicago's
17 website, which we did elicit; and B, the legal counsel for
18 the University of Chicago told him that you may not like
19 Professor Golb's critique your work. We welcome you to
20 respond to Professor Golb on the merit rather than
21 attempt --

22 THE COURT: Excuse me. That is relevant to what?

23 MR. KUBY: It's relevant to show that Dr. Cargill
24 in his public discussions, and both on direct examination
25 about the incident, the offer Oriental Institute incident as

1 well as his public discussion, it is not being completely or
2 even at all honest about --

3 THE COURT: I am a little confused, Mr. Kuby.

4 MR. KUBY: Yes.

5 THE COURT: Dr. Normal Golb is not on trial here.
6 That's number one. Number two, Dr. Cargill is not on trial
7 here. So, there are a few charges with regard to
8 Dr. Cargill. There is actually, I don't know if --

9 MR. KUBY: Judge, I believe there's one.

10 THE COURT: Aggravated harassment. So, the
11 question is whether there were communications from your
12 client intended to annoy, harass, or alarm him, and which
13 were likely to annoy, harass, or alarm him.

14 So, the issue as to whether or not Dr. Cargill was
15 correct that his copyright had been violated, and that it
16 was adamantly redressed is fascinating. It doesn't go to
17 bias. It doesn't it go to interest. It is not an issue
18 which will be resolved by any verdict in this case.

19 MR. KUBY: Judge, I am not trying to resolve that
20 issue. All I am trying to do is demonstrate when Dr.
21 Cargill both speak and writes about this episode, which was
22 at least a central part of the direct examination. He is
23 not speaking and writing about it honestly. That's all.
24 And his credibility is very much at issue.

25 THE COURT: The fact the lawyer said we fixed you

1 now may or may not be correct. It's Illinois law. Well,
2 actually it may be federal because it's copyright, you know,
3 but I don't -- I honestly just don't -- you know, there it
4 is. It's out there. And there you are, you are trying to
5 bring in the lawyer said this just like that newspaper
6 article where somebody asked a question and all of the
7 sudden that's proof of a fact. That is not rules of
8 evidence as I understand it. So you can't do it. Have a
9 nice lunch.

10 MR. KUBY: I would like this marked as a Court
11 Exhibit, if I may, so it's properly in the court record.

12 THE COURT: Sure. No problem.

13 THE CLERK: That will be Court Exhibit 3.

14 (Whereupon, a luncheon recess was taken.)
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1 A There were discussions at the beginning when we were
2 having all the aliases coming after us and the idea was you
3 never respond, you never to respond to anything that the
4 defendant says, you never are to respond to any of the aliases.
5 In fact, you never --

6 MR. BREITBART: Can he wait a little until the
7 motorcycle go by?

8 A Sorry about that, I apologize.

9 You never want to respond because it will be cut and
10 paste and posted on other blogs. So the idea was don't make
11 mention of Dr. Golb, just write everything down. Don't make
12 mention of anything that the defendant say, just write it down.

13 Q So the third reason is you in fact had a policy of
14 never mentioning Norman Golb's name?

15 A Not true.

16 Q If I misunderstood what you just said?

17 A This is a play on words. It is an inside joke. I
18 think it's safe to say that this is a third reason and the third
19 reason is I'm saying you never write it down because we were
20 writing everything down. I was already --

21 Q I'm sorry, what is it that you don't write down? I'm
22 just not -- I didn't get that.

23 A There was a third reason I would like to mention
24 Hirschfeld, Dr. Yizhar Hirschfeld and I removed Brian Wood's
25 name so we would have room, the same amount of names and the

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1 third reason is I never write it down.

2 Q What is it that you never write down?

3 A I try to refrain from writing down references to
4 Dr. Golb.

5 Q Okay, thank you.

6 When you say there was an agreement among a group of
7 you, who else was in that group who made that agreement with you
8 not to write down?

9 A It wasn't a formal agreement.

10 MR. BANDLER: Objection.

11 THE COURT: Sustained.

12 Q There were other people as well, were there not?

13 MR. BANDLER: Objection.

14 THE COURT: Sustained.

15 Q Was Risa Levitt Kohn one of the people who agreed with
16 you to not write down Norman Golb's material or name?

17 MR. BANDLER: Objection.

18 THE COURT: Sustained.

19 Q On direct examination I think you said that you used,
20 you yourself have used, I think the word was pseudonyms on the
21 internet; is that correct?

22 A That's not what I said, no.

23 Q What did you say, I'm sorry?

24 A I was asked if I had handles, if I was prolific on the
25 internet.

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1 Q I'm sorry, what is a handle?

2 A A handle?

3 Q Yes.

4 A A handle is a username. If you remember back in CB
5 radio you had a handle other people knew who you were or you had
6 a username. On many websites today even when they ask you your
7 name, who are you, Robert Cargill and then they would say what
8 would you like your username to be and many people, you do a lot
9 online, use the same username over and over again.

10 Q And your username is your handle?

11 A I have a couple of them. One as I said earlier is Bob
12 Cargill all lower case and no space and the next one X-K-V and
13 the number 8-R which phonetically is excavator.

14 Q Have you ever used any aliases on the internet
15 yourself?

16 A I just answered that question.

17 Q I mean besides that?

18 A Oh, yes, sure I got usernames, sure.

19 Q Names that are not your name?

20 A Excavator is not my name.

21 Q Besides excavator?

22 THE COURT: I think he means real names like John
23 Smith, Peter Kougasian.

24 THE WITNESS: I'm sorry?

25 THE COURT: Just a real name?

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1 THE WITNESS: Yes.

2 THE COURT: Nobody is going to think X-K- whatever
3 is your real name?

4 THE WITNESS: Yes.

5 Q Have you ever used other real names on the internet?

6 THE COURT: Other than your own.

7 Q Other than your own and other than the ones you've told
8 us about?

9 A I have used other names.

10 Q And what other names have you used?

11 A I have used Robert Cargill, I have used Bob Cargill, I
12 have used, I'm certain there's more.

13 Q Okay, have you used any other names on the internet
14 aside the excavator and variations on the name Robert or Bob
15 Cargill?

16 A Yes.

17 Q What are they?

18 MR. BANDLER: Objection.

19 THE COURT: You may answer the question.

20 A One of them is Israelxcvar I-S-R-A-E-L-X-K-V-A-R. The
21 reason I did that one, Google mandates 6 characters and xkv8r
22 (excavator) is only five and I couldn't use it.

23 Q Any other names of people besides those that you've
24 just articulated?

25 A No names of individuals, no.

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1 Q You are aware that there is a practice of hiding behind
2 an alias to engage in online debates and that it's common among
3 those who either lack professional standing and among some
4 professionals who wish to conceal their identity while issuing
5 statements they would not normally make in their own name?

6 A Correct.

7 Q And that's a practice that you acknowledge, correct?

8 A Yes.

9 Q And, in fact, you just wrote what I said, right?

10 A Yes.

11 Q And it's widespread?

12 A I'm sorry?

13 Q Widespread?

14 A Yes. I think, I mean, I think there is a lot of
15 anonymity online, sure.

16 Q Did you have the opportunity to monitor some of the
17 blog exchanges about the San Diego exhibit when they were being
18 posted?

19 A I tried to monitor just about everything that had
20 anything to do with the Dead Sea Scrolls.

21 Q And the person that -- well Charles Gadda posted on
22 there, correct?

23 A Yes.

24 Q And there was somebody, if you recall, who was
25 attacking Charles Gadda called B Ralph, do you recall that?

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1 A I do.

2 Q Do you know who that was?

3 MR. BANDLER: Objection?

4 Q Do you think that is the person's real name?

5 MR. BANDLER: Objection.

6 THE COURT: Sustained.

7 Q Withdrawn.

8 There was somebody who was criticizing Charles Gadda
9 under the name Raphael Joel, do you recall that?

10 A I do.

11 Q Do you know who the critic of Charles Gadda was calling
12 himself Raphael Joel?

13 A I do.

14 Q Who was that?

15 A I made some comments.

16 Q Under the name Raphael Joel and that was your reference
17 to Raphael Golb?

18 A No.

19 Q Who was the Raphael you were talking about?

20 A Who is Raphael Joel? I don't know anyone named Raphael
21 Joel.

22 Q Okay, the Raphael in the Raphael Joel?

23 A Yes.

24 Q Who are you talking about, who were you intending to --

25 THE COURT: I'm sorry, you're assuming a fact not

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1 in evidence.

2 Where did you get the name Raphael from?

3 THE WITNESS: It's a name. It's a name that I
4 thought was the man behind the alias.

5 Q Raphael Golb, correct?

6 A Yes.

7 Q And who is the Joel?

8 A The Joel is another person that I think is behind the
9 aliases that were attacking me.

10 Q And that would be Joel Golb, correct, so you knew that
11 Raphael and Joel were in fact real people?

12 A Of course. I never met either of them but I had
13 assumed they were real people.

14 Q And the comments that you post under the name Raphael
15 Joel attacked the views of Charles Gadda, correct?

16 A They questioned the views of Charles Gadda.

17 Q Questioned, by saying -- give me an idea of a question
18 that's not an attack that you used?

19 A I left a comment once as excavator all lower case --
20 all lower caps calling into question on an article written on
21 Indy Week, it's an online newspapers called Indy Week. The
22 article, the author of the article wrote this piece talking
23 about the contract I believe it was a controversy of Qumran and
24 cited Robert Darwin, cited one of the defendant's alias Robert
25 Darwin who had posted a blog. I immediately went into the

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1 article and posted as X-K-V-8-R, my handle, everyone who knows
2 me knows it is. I wasn't disguising anything. I said something
3 I find it comical this author is citing an alias and I follow it
4 up as a comment that Raphael Joel basically their sense of the
5 comment was, you can't hide any more I know who you are.

6 Q You can't hide any more, I know who you are, did you
7 intend that as a threat?

8 A No.

9 Q Did you intend it to intimidate?

10 A No.

11 Q Did you intend it to get the people you thought were
12 posting blogs to stop posting them?

13 A I don't know what the intent was. The intent was to
14 let him know that I knew who he was.

15 Q Any reason you couldn't do that under the name Robert
16 Cargill, your name?

17 A To be honest --

18 Q Yes, that would be good.

19 A I didn't do it with Robert Cargill, I did it right
20 before I left the Raphael Joel, I left the X-K-V-8-R comment to
21 which the defendant wrote that everyone knows that X-K-V-8-R is
22 Robert Cargill, here is a link to his Wikipedia, here the
23 defendant himself said I know who X-K-V-8-R is.

24 Q Why did you use the name of Raphael Joel aside Bob
25 Cargill or excavator?

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1 withdrawn.

2 You made reference to getting Now Public to delete a
3 blog site; is that correct?

4 A I wrote them asking them to a blog news -- one of their
5 Now Public sites, let's put it that way.

6 Q And is it fair to say that Now Public is a site that
7 really does encourage almost, almost every one to say almost
8 anything that is on their mind?

9 MR. BANDLER: Objection.

10 THE COURT: Sustained.

11 Q Was that your understanding of Now Public?

12 MR. BANDLER: Objection.

13 THE COURT: Sustained.

14 Q And first you wrote to them complaining, correct?

15 A I'm sorry?

16 Q Well, withdrawn.

17 How many communications did you have with Now Public?

18 MR. BANDLER: Objection.

19 A Oh, gosh, I can't recall. I know that when I first
20 started to see the Charles Gadda articles I wrote to one of the
21 editors who responded to me, we had two or three exchanges if my
22 recollection serves me well and I wrote them again when Peter
23 Kaufman the alias Peter Kaufman wrote against Larry Schiffman.

24 Q So now we're up to like three?

25 A I think I submitted a comment via the vehicle, they

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1 don't have -- they don't put their -- if you have a complaint --

2 Q I'm just asking for the number of times?

3 A You asked for the number of e-mails and I didn't always
4 send e-mails.

5 Q No, I'm asking you the number of times you contacted
6 them complaining?

7 A The number of times it would be two.

8 Q And the first one they did not take it down, correct?

9 A Not to my recollection.

10 Q And the second time is when you told them there was a
11 police investigation, correct?

12 A I can't recall what I told them but yes, I basically
13 communicated to them there is an investigation going on and they
14 need to take this seriously.

15 Q Didn't you indicate on direct examination you
16 communicated to them there was a police investigation or a
17 criminal investigation going on?

18 A I don't recall if I said police, criminal, civil, I
19 don't recall what I said.

20 Q And you said you should not have done that, is that
21 what you said on direct?

22 A Yeah, probably.

23 Q And the reason you should not have done it is because
24 you should not be in the business of telling other people what
25 they can write, what they can't write, correct?

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1 MR. BANDLER: Objection.

2 THE COURT: Sustained.

3 Q How did you know there was an investigation?

4 A I was contacted by the New York district attorney's
5 office.

6 Q And he told you that -- and when was this?

7 A Not long after, if my memory if I can remember, not
8 long after the defendant wrote the piece against Larry
9 Schiffman.

10 Q And when you say New York county district attorney's
11 office, you dealt with Mr. Bandler here; is that correct?

12 A True, yes.

13 Q And you had a number of conversations with Mr. Bandler
14 over a period of time; is that right?

15 A I had more than one, yes.

16 Q And was it Mr. Bandler who advised you that there was
17 an investigation going on?

18 MR. BANDLER: Objection.

19 THE COURT: Sustained.

20 Q Well, when you told Now Public that there was an
21 investigation going on, were you saying that based on
22 information you received from Mr. Bandler?

23 MR. BANDLER: Objection.

24 THE COURT: Sustained.

25 Q Going back to the San Diego exhibit blog site, are you

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CROSS/BREITBART/DR. SIDNIE CRAWFORD

1 communicated with him by e-mail?

2 MR. BREITBART: Yes.

3 Q When was the last time you had an e-mail communication
4 from Dr. Cross?

5 A It must have been over three or four years ago.

6 Q And what was his e-mail address?

7 MR. BANDLER: Objection.

8 THE COURT: Sustained.

9 Q Did Frank Moore Cross always use the name Frank Moore
10 Cross?

11 A Yes, he did.

12 Q And was Moore always included as part of his name?

13 MR. BANDLER: Objection.

14 THE COURT: So far as you know, you may answer the
15 question.

16 MR. BREITBART: I think the Judge just said you
17 may answer the question.

18 THE COURT: You may answer the question.

19 A In publications he always used Moore. I think in more
20 less settle he would just say Frank Cross.

21 Q How many times -- withdrawn.

22 You said the last time was three years ago?

23 A At least.

24 Q And before that?

25 A Yes, I received e-mail communications from him.

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DIRECT/PEOPLE/SARA BRIGLIA

1 MR. KUBY: Who doesn't, Judge?

2 THE COURT: I know you all laugh at me, it's okay,
3 I can take it. So have a great weekend. I'm sorry I
4 truncated yours. I'll see you Monday morning at ten
5 o'clock. Don't discuss the case. Keep an open mind.

6 A SWORN JUROR: Sorry, Judge, are you expecting
7 next Wednesday to be the same or possibly not?

8 THE COURT: Possibly not but I can't tell you.
9 I'm sorry I'm not committed.

10 Okay, I'll see you Monday.

11 (Jury exit.)

12 (Witness exit.)

13 THE COURT: I have Mr. Bandler's e-mail address
14 since I assume it's the usual and if you gentlemen would
15 like to provide me with one, I can give you drafts of
16 various documents you may find important.

17 MR. KUBY: Ron Kuby at AOL dot com.

18 MR. BREITBART: Breitbart D at AOL dot com.

19 THE COURT: I highlighted some of the more
20 original language as I mentioned briefly earlier in the day.
21 I'm not sure if you were here Mr. Kuby.

22 MR. KUBY: I'm sure that I wasn't.

23 THE COURT: In considering all of this and trying
24 to simplify it for the jury, I don't think I'm giving any of
25 the Identity Theft in the Third Degree charges. It seems to

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1 me particularly under the facts of this case it's clearly
2 the same as the criminal impersonation. I know you
3 mentioned, Mr. Bandler, there were some counts where there
4 weren't forgeries, there's always a criminal impersonation
5 so I don't really, looking at it, see that there is a
6 difference and I like to keep it simple.

7 I'm also sending you, it's not really a proposed
8 verdict sheet but my list which would then be transferred to
9 a verdict sheet. It's a little unstable because I've
10 transferred it from word to word perfect because that's what
11 we use here in our modern court system, making lots of
12 things very difficult for me but that's okay, it keeps me
13 sharp. Stays off Alzheimer's.

14 Mr. Bandler, I am not clear on what public servant
15 was being imitated in connection with the Seidel charges.
16 It's only with regard to Seidel.

17 MR. BANDLER: Not public servant.

18 THE COURT: That's the count you've charged,
19 that's what it says in the indictment. It sites that in the
20 indictment.

21 MR. BANDLER: That's what the indictment language
22 says. There is and or clause in that new section.

23 You're talking about subdivision (4) of 190.25
24 which became effective after November 1st of 2008?

25 So there is and or.

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1 THE COURT: What you recite in the indictment.

2 MR. BANDLER: That's because the Court of Appeals
3 says when you plead it in the indictment you have to use the
4 and even though in normal -- in the statute it's and or but
5 there's some Court of Appeals rule that says the pleading
6 has to have an and even though that's not the way normal
7 people think and write and interpret so that's why all our
8 pleading documents when there is and or in the statute our
9 pleading documents put an and in.

10 MR. KUBY: I'm sorry, I'll just repeat an earlier
11 question. I'm not exactly sure what Mr. Golb is actually
12 charged with doing here.

13 THE COURT: Apparently I misread the count.
14 That's what happens when you multitask. So in the statute
15 there is and or where there is an and, and the charge would
16 be impersonating another to be Jonathan Seidel. The
17 difference between that and subdivision (1) is what?

18 MR. BANDLER: Is the element of internet or
19 electronic means.

20 THE COURT: Right, and the People are advantaged
21 by having that submitted in addition to the regular criminal
22 impersonation because?

23 MR. BANDLER: Maybe we're not.

24 THE COURT: Impersonated another and adds an
25 additional element.

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1 MR. KUBY: Which would actually make subdivision
2 (1) in some sense a lesser included of subdivision (4) and
3 it has the added draw back of having gone into effect at a
4 specific date which post dates I believe some of the e-mails
5 but certainly not all of them.

6 MR. BANDLER: Well, certainly post dates all of
7 the victims that were impersonated expect for Jonathan
8 Seidel.

9 THE COURT: I see. It's not that he impersonates
10 a public servant, we'll have to ignore that on the verdict
11 sheet and so forth. I'll correct it on Monday. I'm not
12 seeing a difference again sort of like a criminal
13 impersonation and the identity theft, I don't see the
14 difference in practical effect. It's not like one requires
15 one requirement, another requires another intent. Perhaps
16 the jury may agree on one and not the other. This is like
17 kind of the same thing, the same intent, same impersonation
18 so I'm not seeing why.

19 You can sleep on it if you like. I'm not changing
20 anything until Monday but it's not like making sense to me.

21 Is this your last witness?

22 MR. BANDLER: Yes.

23 THE COURT: Be advised gentlemen, since
24 Mr. Breitbart is always asking me my schedule.

25 MR. BREITBART: It's important, Judge.

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1 THE COURT: I know that. But you see you won't
2 tell me whether there is a defense case so it's hard for me
3 to tell you my schedule so now you know.

4 MR. BREITBART: You haven't asked anything about
5 the defense case.

6 THE COURT: Because I don't ask that question
7 because no defense lawyer has ever answered it and I don't
8 think this team will do it but now you know more than I do.
9 That should give you a good weekend.

10 MR. BREITBART: How long will this witness be on?

11 THE COURT: I don't know. Mr. Bandler, how long?

12 MR. BANDLER: Will you keep your cross to ten
13 minutes?

14 THE COURT: Is it another hour or another three
15 hours?

16 MR. BANDLER: I think two to three, two, we'll
17 see.

18 MR. BREITBART: It's our feeling at this time that
19 the defense will be putting on a case, your Honor.

20 MR. BANDLER: I'll try to get it done quickly so
21 they can have maybe late morning you can put it on.

22 THE COURT: That will be lovely.

23 With regard to the question that the juror asked,
24 it's my reading of the statute that if the jury starts
25 deliberating and I send them home I have to convene the next

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1 workday and I don't know but this may be totally academic if
2 there is a defense case anyway because I have a huge
3 calendar on Wednesday and I suspect there may be questions
4 from this jury so I will be asking in the event which is
5 probably unlikely that they start deliberating that we skip
6 Wednesday.

7 MR. KUBY: I have no objection to skipping
8 Wednesday.

9 THE COURT: If there is a defense case. I don't
10 know if we'll get to that particular.

11 MR. KUBY: I actually foolishly made some plans
12 for Wednesday anyway so I'm just as happy to carry them out.

13 THE COURT: I'm happy to obliged, you know me.

14 MR. BREITBART: Would it be your intention, your
15 Honor, to ask us to sum up on the same day that there is
16 testimony that's finishing?

17 THE COURT: You're asking me again a question that
18 I don't know the answer to because if you only fill an hour
19 in the morning of the day and there is the whole day ahead
20 of us. If it's 3:30, no. If it's early enough in the day
21 so that the jurors are not exhausted, yes.

22 MR. BREITBART: Thank you.

23 (The trial was adjourned until September 27,
24 2010 at 10:00 a.m.)

25

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PROCEEDINGS

1 THE COURT: Can I just see the exhibit again?

2 (Published to the court.)

3 MR. BANDLER: I don't think the jury should have
4 to, if there is a particular e-mail that is important, I
5 don't think they should have to go through the thousands of
6 e-mails to do their own analysis when we've summarized the
7 records that are already in evidence for them.

8 MR. KUBY: Judge, I recognize that the giant mass
9 of data dictates for jury clarification, the need to produce
10 summary charts which technically are objectionable because
11 they're just a recapitulation of evidence that has already
12 been introduced, that's fine, and I get it, there is no
13 other way to do this in an effective way. To then go
14 further in column J and add Mr. Bandler's view of what he
15 think the jury ought to be looking at with respect to the
16 others is argument. He gets to do a summation and
17 presumably you'll give him the time to do this.

18 THE COURT: I'll clarify this, although I'm not
19 sure it can be reacted, number one. If you start with
20 Albert White, it starts with alternate e-mail that's kind of
21 not argument.

22 MR. KUBY: That's fine.

23 THE COURT: The final line about Schiffman
24 plagiarism allegation is argument.

25 MR. KUBY: Correct.

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1 THE COURT: That one doesn't seem to be an
2 argument and the next one, the access from Germany and
3 discussion about Jeffrey Gibson is.

4 MR. KUBY: Yes.

5 THE COURT: So do you think maybe you could sit
6 down with Mr. Bandler and be more specific because some of
7 the things would be helpful to the jury to have as it's
8 referring them to another exhibit where some of them are.

9 MR. KUBY: I would love to sit down with
10 Mr. Bandler and do that, Judge, I'll be happy to.

11 THE COURT: Right away, please.

12 MR. KUBY: Yes.

13 THE COURT: And, Mr. Bandler, let me say this now
14 because what we'll need when the jury is deliberating a
15 clean computer.

16 MR. BANDLER: Leave them a computer?

17 THE COURT: Clean computer. I know we've done
18 this before, Ms. Manley has provided a computer that has no
19 other stuff on it and you can provide it to the jury and
20 they can look at it as they wish.

21 MR. BANDLER: Sure and Mr. Kuby may just want to
22 check to make sure things on the DVDs, there may be some
23 things that we don't want to give the entire DVD.

24 THE COURT: Good. You all have a nice lunch
25 together. Fortunately I don't have to join you. Thank you.

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1 And, Mr. Bandler, I take it that was your last
2 witness?

3 MR. BANDLER: Yes, your Honor.

4 THE COURT: I do have a writing from Mr. Kuby
5 entitled Motion for a Trial Order of Dismissal.

6 MR. KUBY: Correct and I take it since that was
7 your last witness, you rest at this point all though he may
8 want to rest in front of the jury.

9 THE COURT: I would presume so. So that's been
10 served and filed.

11 I think as we've discussed off the record, it is
12 not the People's theory with regard to falsifying the
13 business records that it was the Google records that are
14 falsified but rather it was the NYU records that were
15 falsified or attempted to be falsified and as I had
16 indicated I don't know where this comes, I'm not giving the
17 criminal impersonation under subdivision (4) under the
18 circumstances here, that totally overlaps so that's for
19 simplicity. I will venture no opinion on the double
20 jeopardy.

21 MR. KUBY: So that would be Counts 22, 34, 35, and
22 38. All of which reference sub 4 and all of which also
23 include sub (1) as alternative counts. That's my
24 understanding.

25 THE COURT: I'm sorry, I have 22, 26, 30, 34, and

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1 38. Are we on the same page?

2 MR. KUBY: Yes. My reading of that and it may be
3 wrong that Count 25 was the referenced to sub (4) but I may
4 have misread it.

5 THE COURT: It doesn't really make a difference.

6 MR. KUBY: It only makes a difference if in fact
7 one of the counts end up being submitted.

8 THE COURT: No. 25 is under sub (1) and 26 is
9 under sub (4).

10 MR. KUBY: I apologize and my paper should reflect
11 on page 11 Count 26 not count 25 and I'm correcting that
12 right now.

13 THE COURT: Notwithstanding your diligent effort
14 to turn this into a First Amendment case, I think I've
15 discussed that as much as I need to.

16 On the Scheme to Defraud, Count 1, I have some
17 issues with it but I think it should be presented to the
18 jury because it's a totally independent count of Count 2 and
19 I'll let the jury make the decision in the first instance.
20 Other than that motion is denied.

21 MR. KUBY: Thank you, Judge.

22 THE COURT: See you later.

23 MR. BANDLER: Dealing with the charge, a couple of
24 comments or deal with it later?

25 THE COURT: We can do that later.

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1 MR. BANDLER: And this afternoon what are we
2 anticipating happening?

3 THE COURT: I anticipate the defense either going
4 forward or resting.

5 MR. BREITBART: Defense is prepared to go forward.
6 Mr. Golb is going to take the stand this afternoon.

7 THE COURT: I got that idea from the press.

8 MR. BREITBART: I didn't know there was any press
9 involved in that decision.

10 MR. BANDLER: Any chance we're going to be summing
11 up this afternoon?

12 THE COURT: No.

13 (Lunch recess.)

AFTERNOON SESSION

14 COURT CLERK: Case on trial. All parties are
15 present.

16 MR. KUBY: I'm withdrawing my objection to column
17 J.

18 THE COURT: And the videotape as well?

19 MR. KUBY: And the video version, yes, the books
20 the movie, and the T-shirt. They can all come in under
21 column J.

22 MR. BANDLER: The DVD version. The CD rom
23 version.

24 THE COURT: Shall we bring in the jury.
25

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1 August and then there were other e-mails that I sent informing
2 New York University faculty members of the publication of the
3 article and then I moved onto other things basically and when I
4 was arrested it came as a shock.

5 Q During the period of time after you got a law degree,
6 did you ever do anything with criminal law?

7 A No.

8 Q So you're saying it was a complete surprise to you that
9 there was a criminal statute that you were being arrested under?

10 A I'm not sure I understand the question.

11 I had thought about when I received the e-mail from Now
12 Public saying that I was the subject of a criminal
13 investigation, I thought about, I asked myself whether there was
14 some law I could of violated and I rapidly concluded no. I sent
15 out a parody, I had accused somebody of plagiarism these are
16 civil matters not criminal matters in my knowledge of the law.

17 THE COURT: The jury will of course take the law
18 from me and ignorance of the law is not a defense.

19 You may proceed.

20 Q What is plagiarism, sir?

21 A Well, there are many different forms of plagiarism, it
22 depends on which definition you're looking at. But the
23 definitions that I've always used and known of are that
24 plagiarism involves appropriating, taking over, adopting the
25 ideas, the arguments, even the research methods, the

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1 Q Is this the document that you were referring to,
2 Raphael?

3 A Yes.

4 Q Does this help you refresh your recollection about the
5 things that you were talking about?

6 A I'm sure it will. I highlighted the sentences in
7 question.

8 Q If it's being used to refresh your recollection you may
9 not read it except to yourself and then you put it down and tell
10 us what it refreshed.

11 A Well, I don't want to read it. What I just said to you
12 is a paraphrase of what's said here.

13 THE COURT: I'm sorry, don't paraphrase it, don't
14 read it, does it refresh your recollection with respect to
15 the definition of plagiarism?

16 THE DEFENDANT: Yes. It refreshes my recollection
17 as to what the American Historical Association says the
18 definition that they give for plagiarism.

19 Q I'm sorry, I missed that.

20 A The definition that the American Historical Association
21 gives of plagiarism is slightly different than the differences
22 that New York University, for example, gives for plagiarism but
23 basically it's the same thing.

24 Q As a result of feeling that or knowing that Lawrence
25 Schiffman had plagiarized your father, did you take certain

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1 time to read this book so there is no purpose in having this
2 in evidence. It's irrelevant.

3 MR. BREITBART: Well mostly, your Honor, I'm going
4 to be asking him about a very small portion of the book.

5 THE COURT: Sir, I don't think that it qualifies
6 as a learned treatise even if it were relevant.

7 MR. BREITBART: I think it's the most learned
8 treatise on the subject.

9 THE COURT: I don't know whether it is or it
10 isn't, sir, but so far as I know you are not an expert in
11 the Dead Sea Scrolls and I'm certainly not so I don't think
12 that Mr. Golb can qualify his father's book as the
13 authoritative or an authoritative or whatever. That can't
14 come in through this witness. So if you want to offer
15 something for a different issue, a page here or a page
16 there, that's another story.

17 MR. BREITBART: That's all I want to do, Judge.

18 THE COURT: Well, sir, that's not what you just
19 did.

20 Q Is there a particular portion in that book, one page,
21 one paragraph where your father indicates that Schiffman
22 plagiarized his work?

23 A Two paragraphs and a footnote where he also discusses
24 the misrepresentations.

25 Q And what page is that on?

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1 edition came out.

2 MR. BREITBART: Your Honor, I would ask that we be
3 able to mark and offer this as --

4 THE COURT: I'm sorry, mark it as what?

5 MR. BREITBART: An exhibit so that I can offer it
6 as a learned treatise.

7 Q Would you show the book to Mr. Golb.

8 Do you recognize that book?

9 A Yes.

10 Q What do you recognize it to be?

11 A It's a copy of the paperback edition of my father's
12 book published by Simon Schuster in 1996.

13 Q Does that contain writings with regard to the Dead Sea
14 Scrolls?

15 A Yes.

16 Q Does it contain the allegations that you just spoke
17 about where Mr. Schiffman is accused of plagiarism?

18 A Yes.

19 MR. BREITBART: I would offer that book at this
20 time, your Honor?

21 MR. BANDLER: Can I see it, please?

22 (Published to counsel.)

23 MR. BANDLER: Your Honor, I'm going to object
24 first off there's notes in some of the margins.

25 Second of all, the jury is never going to have

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1 A 215. The two paragraphs are on page 215 and the
2 footnote -- give me a moment, please.

3 The footnote is on page 423 note 75. 423 to 424, note
4 75.

5 MR. BREITBART: I would offer those two paragraphs
6 and that footnote, your Honor?

7 MR. BANDLER: Objection.

8 MR. BREITBART: Its already been testified to by
9 Miss Braunstein.

10 THE COURT: You know I don't care if they're
11 offered to show what Dr. Golb said about that particular
12 topic but you don't have a document that is simply those
13 relevant portions or barely those relevant portions. Till
14 you do, I'm not dealing with it.

15 MR. BREITBART: Can we just make a xerox copy of
16 that page?

17 THE COURT: You have it?

18 MR. BREITBART: No, I don't.

19 THE COURT: And would you like me to run down the
20 hall and xerox it? Excuse me, sarcasm, sorry.

21 MR. BREITBART: Are you trying to ridicule me in
22 front of the jury while I'm putting my witness on?

23 THE COURT: I beg your pardon, sir, the whole book
24 is plainly irrelevant. If you wish that portion put into
25 evidence then produce it for me. I'm not doing it.

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1 MR. BREITBART: That's all I want.

2 THE COURT: And I'm sorry you feel ridicule, it's
3 not my intention.

4 MR. BREITBART: The record should reflect that you
5 slapped yourself in the face.

6 THE COURT: To punish myself for sarcasm. Now
7 proceed, that's enough.

8 Q What does your father say in the book with regard to
9 Schiffman and plagiarism and misrepresentation?

10 MR. BANDLER: Objection.

11 THE COURT: Sustained.

12 Q Don't read it from the book, tell us from your best
13 recollection?

14 MR. BANDLER: Objection.

15 THE COURT: Sustained.

16 Q Let's get to the blogs and e-mails now -- by the way,
17 did you ever open up a blog entitled Raphael Golb dot blog spot
18 dot com?

19 A No, I did not.

20 Q Does a blog with that name exist?

21 A Yes.

22 Q Did you ever receive any requests or give any
23 permission to open it?

24 A No. Neither.

25 Q Do you intend to file an identity theft or criminal

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1 Q Have you read on the Dead Sea Scrolls?

2 A I've read my father's book. I've read some writings of
3 Dr. Schiffman's. I read the article or maybe several articles
4 by Magen and Peleg. I've looked at, I've read other articles
5 about the scrolls by other people whose names I don't recall
6 offhand. I've read many things on the internet about them.
7 I've read portions of other books about them but I would not
8 describe myself as a Dead Sea Scrolls scholar. It's not the
9 focus of mine.

10 Q Is your father a Dead Sea Scrolls scholar?

11 A My father is a Dead Sea Scrolls scholar, yes.

12 Q Is Schiffman a Dead Sea Scrolls scholar?

13 A You could call him that.

14 Q You were talking about silencing scholarship, do you
15 recall that?

16 A Yes.

17 Q Why don't you tell us about that?

18 A Well, the basic principle of all research of all
19 scholarship is that you, it's a quest for the truth and a
20 principle follows from that, you can't get the truth unless you
21 have free and open debate between scholars who have different
22 opinions about things. If you simply dogmatically present a
23 position as the truth and don't give other people the
24 opportunity to debate with you, then you have a serious problem
25 and this is what has been going on with the Dead Sea Scrolls

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1 over the past sixty years.

2 Q Six zero?

3 A And its taken different forms at different periods
4 during different periods of the past sixty years. What I became
5 interested in was the form its taken over the past five or six
6 years.

7 Q And what form is that?

8 A The use of museum exhibits to present propaganda for
9 one particular theory while excluding the entire group of
10 scholars we're talking about some Israel most important
11 archeologists, for example, who have agreed with my father that
12 this theory has no basis and there is no evidence for it at all.

13 Q What is your father's theory called?

14 A Well, I think the appropriate term for it is the
15 Jerusalem libraries theory in the plural, libraries.

16 Q Is that as oppose to the Qumran Essene theories?

17 A Yes. Shall I sum them up for you?

18 Q Yes.

19 A According to the Qumran Essene theory the Dead Sea
20 Scrolls were written by a radical groups of sectarians who had a
21 very particular vision, religious vision who lived at the site
22 of Qumran according to the people who have this theory.

23 Now there are different variations of this theory, some
24 people say that it wasn't Essence it must have been some other
25 sect. Some people say that they didn't live in the site of

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1 shall I tell you that after I --

2 Q Why don't you finish telling us who Hirschfeld is?

3 A Hirschfeld is one of the series of major Israeli
4 archeologists who re-examined the site of Qumran after my
5 father's book came out because at that point people realized
6 that there was a problem and they went back to the site they
7 started re-examining the evidence and Hirschfeld is one of those
8 who came out saying that there was no evidence, they could find
9 no evidence at all that the site had ever been inhabited by any
10 sectarian group at all, it's just a secular site which was
11 constructed as a military fortress and according to Hirschfeld
12 it was then used as a kind of a trading post, like a commercial
13 trading post and he as well as Magen and Peleg they simply had
14 not addressed the issue of whether it was then again used as a
15 fortress during the revolt of the Jews against Rome. I think
16 this will only make sense if I explain my father's theory.

17 (Continued on next page.)

18

19

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1 Q. Keep your voice up, please.

2 A. One of the two basic theories is that the scrolls were
3 written by a sect living at Qumran. There are different
4 variations. The other theory is that no sect ever lived at
5 Qumran, and that there is no connection between the scrolls and
6 Qumran, and that most likely they came from the Jerusalem area.

7 Q. Now, you mentioned a couple of other names you
8 mentioned during the trial.

9 Yizhak Magen, who is Yizhak Magen?

10 A. Yizhak Magen is one of the most famous living
11 archaeologist in Israel. He is the chief of all archaeological
12 excavations in what's called Judeo and Samaria, or the West Bank
13 area of Israel, and he has published many books on many
14 different topics, and he went back, he is one of the Israeli
15 scholars who went back to the site after my father's book came
16 out, and ended up doing digs there for ten years trying to find
17 any sign that a sect had ever lived there, and he concluded, his
18 team concluded that there was no such evidence, and that the
19 scrolls came from the Jerusalem area just like my father had
20 said it.

21 So one can now speak of two groups of scholars: Those
22 who share the view that there was a sect, Dr. Schiffman is one
23 of that group, and those who believe that there was no sect in
24 Qumran, that the scrolls came undoubtedly from Jerusalem. My
25 father was the original person who argued for that view, and now

1 DIRECT EXAMINATION

2 BY MR. BREITBART:

3 Q Did Peleg work with Magen?

4 A Yes.

5 Q During the period of time during the ten years of
6 excavation?

7 A Yes, they're a team for ten years, yes.

8 Q Did they issue a report, a preliminary report with
9 regard to what they found?

10 A Yes, they did.

11 Q Did they respond to the other theory in their report?

12 A In great detail.

13 Q And did they indicate a comparison between what they
14 found and what the Essenes were espousing were really the
15 theory?

16 A They indicated that they found nothing to confirm the
17 old theory that Essenes lived there.

18 Q In their writings did they indicate that they were
19 adopting the second theory, the one espoused by your father?

20 A Yes, they explained that the scrolls came from
21 Jerusalem.

22 Q Of the people who were involved in these selections of
23 theories, which are the newest, later, hottest accurate of the
24 theories?

25 MR. BANDLER: Objection.

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1 THE COURT: Sustained.

2 Q When did Magen and Peleg and Hirschfield and your
3 father come out with their position?

4 MR. BANDLER: Objection.

5 THE COURT: Sustained.

6 Q One of the things we did before was we said that you
7 did send out all of the e-mails that had been shown here in
8 evidence; is that right?

9 A Yes.

10 Q And you posted blogs too; is that right?

11 A Yes.

12 Q And you regarded all this as whistle blowing?

13 A Yes.

14 Q What was your purpose?

15 A My purpose was to expose a pattern of unethical conduct
16 in this field of studies in its various forms.

17 My purpose was to expose the exclusion of scholars from
18 conferences and museum exhibits and in particular museum
19 exhibits.

20 My purpose was to expose the plagiarism, to expose the
21 misrepresentations, to expose the smearing, to expose the
22 silencing, to expose the failure to give free -- to provide free
23 and open access to the manuscript.

24 Q What methods did you use, what were the methods that
25 you used, sir?

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1 intended for Dr. Schiffman to lose his job. My interest ended
2 with the concept of an inquiry that this would be openly
3 discussed not concealed as it had been for fifteen years at NYU.

4 Q Were you aware of any statements by academic
5 organizations where members of the academic community that say
6 that ridicule is an appropriate punishment for plagiarism?

7 MR. BANDLER: Objection.

8 A Yes, I was.

9 THE COURT: Sustained. Disregard the answer.

10 Q Did you seek to benefit in any way from sending the
11 e-mails?

12 A Not at all. I sought to produce a benefit for the
13 academic community and for the public and even I might add for
14 Dr. Schiffman himself because it's not good to conceal things.
15 It's better to discuss them openly and to rebut them.

16 Q What benefit were you trying to produce?

17 A Free and open discussion of this entire scandal of
18 Dr. Schiffman's conduct, perhaps some explanation of it. I
19 don't know of one, I never heard one.

20 Q Were you aware when you sent the e-mail of any previous
21 examples of similar conduct?

22 A Yes, I was.

23 MR. BANDLER: Objection.

24 MR. BREITBART: The Judge is going to rule on this
25 objection.

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1 THE COURT: I'm sorry, I don't know what similar,
2 similar conduct of Dr. Schiffman, similar conduct of his
3 own?

4 MR. BREITBART: Similar conduct of his own.

5 THE COURT: I see. Objection sustained.

6 Q Why do you say that it became apparent that the e-mails
7 were parodies?

8 MR. BANDLER: Objection.

9 THE COURT: Sustained.

10 Q Do you regret your parodies of Dr. Schiffman?

11 A No, I do not. I have no regret for exposing a scandal.

12 Q When you sent out all of these e-mails, did you ever
13 send any of them to anyone's private e-mail address?

14 A No, I did not. All the e-mail addresses I used were
15 available on university's websites, they were posted by
16 professors because they invite this kind of debate about issues
17 of pressing concern. Otherwise the academic life, intellectual
18 life wouldn't be able to continue in this country.

19 Q You contacted hundreds upon hundreds of people, did any
20 of them ever ask you to take them off your list?

21 A Three or four people in my memory asked me to take them
22 off the list. The virtual 99 percent never asked me to take
23 them off the list.

24 Q What did you do when they asked you to take them off?

25 A I asked for a confirmation and then I took them off the

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1 list as I've seen done by other people.

2 Q Did anyone respond favorably to your blogs and e-mails?

3 A Yes, several people responded favorably.

4 Q Could you layout for us who they were?

5 MR. BANDLER: Objection.

6 Q You don't have to name them, you can describe them.

7 MR. BANDLER: Objection.

8 THE COURT: Sustained.

9 Q Did you ever receive any demand from an attorney to
10 stop posting or to stop sending e-mails?

11 MR. BANDLER: Objection.

12 THE COURT: Sustained.

13 MR. BREITBART: I'm sorry, Judge?

14 THE COURT: Sustained.

15 Q Well, let's go over the other witnesses one by one
16 beginning with Robert Cargill who testified here on Friday.

17 What were the concerns that led you to complain about
18 him?

19 A This is a whole big topic dealing with the museum
20 exhibit on the Dead Sea Scrolls that took place at the San Diego

21 --

22 Q Keep your voice up, please.

23 A At the San Diego Natural History Museum in 2007. There
24 was like a block -- a thing announced a blockbuster exhibit, \$6
25 million on the Dead Sea Scrolls. It was announced that it would

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1 the Holy Land website, clearly they had been contacted but I had
2 already printed out, at that point I printed out the cached
3 version of it on Google because it stays online for awhile even
4 if it's taken off of a website. So I printed that out and I
5 posted that on a blog raising the question has Dr. William
6 Schniedewind been associated with the University of the Holy
7 Land that is the origin of the whole conflict with Robert
8 Cargill.

9 Then I began to noticed that whenever I tried to post
10 --

11 MR. BANDLER: Objection.

12 THE COURT: Sustained.

13 A He then published an article on --

14 MR. BANDLER: Objection.

15 THE COURT: Sustained.

16 A An article appeared --

17 THE COURT: Maybe we should have another question,
18 Mr. Breitbart.

19 Q What were your criticisms about the things that you
20 saw?

21 A My criticisms were that these were not findings, that
22 they were not citing previous scholarships in the field, that
23 there was an association here with Christian fundamentalism in
24 the museum exhibits at the science museum at San Diego. It
25 struck me as highly unusual.

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1 sir?

2 MR. BANDLER: I don't think it's responsive to the
3 question and its been about five minutes since a question
4 was asked.

5 THE COURT: Well, the particular objection is the
6 question but we're going a bit far afield from any issues
7 relevant, even arguably relevant to the issues in this
8 trial.

9 Q Do you have any feelings about Christian beliefs?

10 MR. BANDLER: Objection.

11 THE COURT: Sustained.

12 Q Did you discuss the legality from quoting from
13 Cargill's script with your father?

14 A Yes, I did.

15 Q And the two of you reached a conclusion?

16 MR. BANDLER: Objection.

17 A Yes, we did.

18 THE COURT: Sustained.

19 Q Did you contact UCLA?

20 MR. BANDLER: Objection.

21 A Yes, I did.

22 THE COURT: Overruled.

23 Q The Judge said the objection is overruled.

24 THE COURT: He answered the question. He said yes
25 he contacted UCLA.

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1 Q Were you told that your letters were perfectly
2 reasonable complaints about the conduct engaged in by Cargill?

3 MR. BANDLER: Objection.

4 THE COURT: Sustained.

5 Q Did you suggest to anyone that Cargill shouldn't get
6 his Ph.D.?

7 A No. I questioned whether he should get his Ph.D.
8 before answering the questions that my father had raised. I
9 don't believe that anybody should get a Ph.D. without answering
10 criticism of their work.

11 Q Is it part of the Ph.D. process?

12 A Yes.

13 Q What is it called?

14 A Well, there is a thing called the defense. When you
15 get your Ph.D., members of the public are usually invited to
16 come to Ph.D. defenses precisely for that reason, if they have
17 objections, problems with what's been said, questions,
18 criticisms.

19 Q Let's move on to Jonathan Seidel. Did you impersonate
20 him?

21 A I made the name up.

22 Q What do you mean you made the name up?

23 A I made the name up. If you go through my list of
24 names, you'll see names like Joshua Reznick, Jessie Friedman, I
25 can't even remember the names because I would have to have the

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1 list in front of me. There were so many of them. Jonathan
2 Seidel was one of them, I didn't even know this guy exist.

3 Q Did you know that he was a Rabbi in Oregon?

4 A No, I did not.

5 Q Did you know anything about him?

6 A No, I did not.

7 Q Did you believe that you were using the name of someone
8 that had some contact with Schiffman?

9 A No, I did not.

10 Q Did you believe he had any contact with your father?

11 A No, I did not.

12 Q So what you are saying is that this is an accident, you
13 happened to pick a name?

14 A Exactly.

15 Q Do you recall whether or not you picked Jonathan first
16 or Seidel first?

17 A I would normally pick a last name first. I must have
18 picked Seidel first which for me is like a German sounding name.
19 There is a poet named Frederick Seidel who is accused of
20 antisemitism during the 1960s but my purpose was ironical. I
21 used that e-mail account initially I believe to send out a
22 parody attacking my father to call attention to some of the
23 vicious attacks that were going around about my father. And I
24 wanted to combine the German sounding name with a good Jewish
25 first name. That is my memory of how I came up with that name.

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1 Q After you were arrested, did you look up the name
2 Jonathan Seidel?

3 A Yes, I did.

4 Q What did you find?

5 A Well, I found that there are 119 Jonathan Seidels.

6 Q So are you telling us that you didn't know that this
7 was a young, attractive Rabbi in Oregon who had the name
8 Jonathan Seidel?

9 A Exactly, that's exactly what I'm telling you.

10 Q And would it be fair to say that you didn't want to
11 hurt Jonathan Seidel?

12 A Not at all.

13 Q You didn't want to benefit from using the name Jonathan
14 Seidel?

15 A Not at all.

16 Q You just used it as any of the other names as you had
17 previously used?

18 A Yes, I used shifting pseudonyms for several reasons.

19 Q I didn't hear you.

20 A I used shifting pseudonyms for several reasons. It's
21 called shifting pseudonyms when you just change your name like
22 that all the time.

23 Q Well, why do you do that?

24 A First reason I was being stalked by Robert Cargill
25 wanted to shake him off.

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1 Second reason, it's a way of saying that I want you to
2 pay attention to the substance of what I'm saying, to the
3 content of what I'm saying. Not to my identity, who am I,
4 doesn't matter. It doesn't matter if I'm Norman Golb's son. I
5 could be Norman Golb's uncle, I could be his nephew, I could be
6 his friend. I could be a friend of Magen and Peleg. Why do you
7 keep on making this into a personal matter engaging me in a
8 personal dispute implying that I'm Norman Golb's son and,
9 therefore, what I'm saying doesn't need to be attended to. My
10 point was that it's the content of my message that matter.

11 And the third reason is that they were making claims in
12 all of these museum exhibits that they had a consensus, despite
13 the fact that a whole series of Israeli archeologists over the
14 past ten years had rejected their view, they said we have a
15 consensus and in fact in the conference they had in 2007, the
16 New York Times quoted --

17 MR. BANDLER: Objection.

18 THE COURT: Yes, don't tell us what the New York
19 Times said.

20 A Well, the idea of a consensus was subject to dispute
21 already in many sources and I felt that it was wrong for the
22 museum to be making this claim and, therefore, I used as many
23 pseudonyms as I could to ironically call attention to that
24 point.

25 They said they have a consensus, okay, then they are

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1 fabricating a false consensus. I'll fabricate a controversy
2 between all kinds of characters talking about theirs on the
3 internet. That was the point, those three things.

4 Q What about Stephen Goranson?

5 A Stephen Goranson, well, what about him?

6 This goes back to thirteen years ago, at least thirteen
7 or fourteen years ago there are various websites where they chat
8 about the Dead Sea Scrolls online. He would go on all of these
9 websites constantly making nasty remarks about my father, some
10 of which had an antisemitic hint to them insinuation and he was
11 reproached for this by many European scholars who engaged him in
12 debates over these matters. It was very upsetting for me to see
13 this through the years. Now I never sent any e-mails from that
14 address.

15 Q How did you spell the name?

16 A I spelled it Steven with a V rather than a P-H. It was
17 a personal joke with myself.

18 Q And what did you use that e-mail account for?

19 A I used it to store e-mail addresses of all the faculty
20 members at NYU and other institutions where I intended to send
21 out e-mails referring them to the article about Lawrence
22 Schiffman's plagiarism.

23 It was a personnel joke with myself that I derived some
24 personal satisfaction simply from associating Dr. Schiffman and
25 Goranson because these are the two people who have been most,

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1 behaved in the most despicable manner towards my father over the
2 years.

3 Q Did you send any e-mails from that account?

4 A No, I did not.

5 Q Did you ever intend anyone to see them?

6 A No, I did not. When I opened up, I open up a blog at
7 one point and when you open up a blog, you have to put in, plunk
8 in an e-mail address so you get a confirmation e-mail. I
9 plunked in that address, I don't remember why, it was simply a
10 personal thing between me and the computer. I never even
11 imagined that anyone could even see that e-mail, that e-mail
12 address doesn't come up on the blog. I never meant to associate
13 Dr. Goranson's name through anybody else through my articles
14 with Dr. Schiffman. It was a personnel thing with myself.

15 Q Was there any intent to benefit or injure anyone with
16 many of the names that you used?

17 A No.

18 Q Was there any other illogical thing about someone being
19 at Duke University who had an irrational obsession with Norman
20 Golb going all the way to the Bobst Library to attack somebody?

21 A Of course that would be utterly irrational and one of
22 the, you know, the joke with myself, the humor of it with myself
23 in storing all of these e-mail addresses in an e-mail account in
24 the name Steve Goranson was that Dr. Goranson has been
25 publishing all these nasty remarks about my father using

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1 computers in the Duke University library and that's not really
2 appropriate.

3 Q Did you know anything about Goranson's background and
4 getting thrown off of websites?

5 A Oh, yes, I was very much aware of that. Being thrown
6 off of websites and trying to cancel a lecture that somebody
7 gave at a meeting in Rome in 2004, somebody who agrees with my
8 father.

9 Q Did you know anything about Goranson engaging in ad
10 hominem attacks on people?

11 MR. BANDLER: Objection to leading.

12 THE COURT: Sustained.

13 Q What was Goranson thrown off those sites for?

14 MR. BANDLER: Objection.

15 THE COURT: Sustained.

16 Q Did you get a response from anyone with regard to your
17 blogging with Goranson?

18 MR. BANDLER: Objection.

19 THE COURT: Sustained.

20 Q Did you receive anything back from the provost at Duke?

21 A Yes.

22 MR. BANDLER: Objection.

23 THE COURT: Sustained.

24 Q What about Jeffrey Gibson, sir?

25 A Jeffrey Gibson took over the A.N.E. site, that's

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1 Ancient Near Eastern. That was a website that usually exist,
2 that operated out of the Oriental Institute out of the
3 University of Chicago by a librarian at the Oriental Institute
4 and they closed it down in 2005 or 2006 and Jeffrey Gibson took
5 it over.

6 I only gradually became aware of its existence because
7 he was the owner and moderator of that site and because when I
8 went looking for Stephen Goranson because I was wondering who
9 Stephen Goranson was whether he had an academic position because
10 I knew that he blogged a lot about my father.

11 MR. BANDLER: Objection.

12 A But I didn't know he was a professor or not.

13 THE COURT: Sorry to what were you objecting?

14 MR. BANDLER: I think the question was just did he
15 know Jeffrey Gibson.

16 THE COURT: Overruled.

17 A And there is a website when I was looking for Goranson,
18 I came across the website called the Aliases of Jeffrey Gibson
19 in which it's argued that all of these people blogging about the
20 Dead Sea Scrolls are on the internet are actually Jeffrey Gibson
21 just using all kind of aliases and staging debates and this
22 struck me as very amusing because it reminded me of the famous
23 poet Fernando Pessoa who had over 70 pseudonyms that he used to
24 stage debates and conversations between various people in the
25 newspapers all over the world and this is a delightful part of

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1 intellectual life is this use of pseudonyms by so many poets and
2 philosophers, and authors and when I saw that blog about Jeffrey
3 Gibson I became more aware of his existence. I was able to
4 verify that Goranson was not one of those aliases.

5 Later he sucked me into a vicious conversation with him
6 on a website called the Internet Infidel where they respect
7 anonymity on Jeffrey Gibson's website. He has ruled that you
8 cannot be anonymous although a lot people on that website are
9 anonymous but on the Internet Infidel it's more common on the
10 internet that they respect anonymity, they protect your
11 anonymity.

12 Well, Jeffrey Gibson got me into a big argument about
13 the film, the Robert Cargill stuff, and about the Society of
14 Biblical Literature and he revealed my name in the course of the
15 conversation and the moderator immediately contacted me and
16 asked me if I had any objection to my name being used and I said
17 yes, I did and then he took, he removed that reference to my
18 name and then a little later Gibson basically accused my father
19 of committing a crime by exercising his right to freedom of
20 research to academic freedom by criticizing this film script.
21 The problem being that you can't have a film in a museum which
22 is shown to 450,000 people and then not allow anybody to
23 criticize it under the pretext that you can't quote from it.
24 That makes no sense. If you show a film to 450,000 people, any
25 scholar who gets a hold of the script from the museum has the

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1 write to quote that script as much as he like and refute the
2 film and criticize it. That's a form part of academic
3 procedure. It's called the Principles of Fair Use and Jeffrey
4 Gibson accused my father of committing a crime by citing the
5 film script.

6 (Continued on next page.)
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1 Q. Let's talk about Frank Cross, Frank Moore Cross.

2 A. Frank Moore Cross.

3 Q. Did you ever use the name Frank Moore Cross?

4 A. I did not use the name Frank Moore Cross. I do not
5 recall his name as Frank Moore Cross. I did use the name Frank
6 Cross.

7 Q. Did you know anything about him at the time you used
8 his name?

9 A. I knew a lot about him.

10 Q. Did you know that he was sick or that he was in an old
11 age home?

12 A. That I did not know.

13 Q. What did you know?

14 A. I knew that he was a member of the original Dead Sea
15 Scrolls monopoly. I knew that he -- that he had, during the
16 1990's, made claims about a particular document found at Qumran
17 in the side on a piece of pottery which were then presented by
18 the Jewish Museum as being furnished proof ever discovered that
19 the sect ever lived at Qumran, and I knew that his reading from
20 the word in question was a falsification, was exposed as
21 fraudulent at an academic conference in Jerusalem in 1997.

22 Q. Does that incident have a name?

23 A. Yes. It's called the Yahad ostrakon.

24 Q. Is that Y-a-h-a-d?

25 A. Yes.

1 Q. The Yahad ostracon?

2 A. Yes.

3 Q. What did Frank Cross try to do at that Yahad ostracon?

4 A. He tried to show that a word on the ostracon, an
5 ostracon is a piece of pottery, and sometimes they would write
6 like a sales, you know, like a contract of sales or something,
7 they didn't have a piece of paper, so they would write it on a
8 piece of pottery, and the portions of it are a little difficult
9 to read, and he tried to make out that a word found there was
10 the word yahad which is the word which means group or
11 brotherhood, it is a word that appears in maybe five or six of
12 the Dead Sea Scrolls, and it's on the basis of that word that
13 they originally formulated this theory that a sect, the Yahad
14 sect had lived at Qumran.

15 Now, when my father was in Jerusalem at this time, they
16 made this claim and they specifically said --

17 MR. BANDLER: Objection. Relevance.

18 THE COURT: Sustained.

19 MR. BREITBART: May I argue the relevance issue,
20 your Honor?

21 Frank Cross is the guy that's one of the
22 complaining witnesses in the indictment who never showed up
23 here, and if he had, we would have been able to
24 cross-examine him with this material.

25 THE COURT: That may well be, although the

1 cross-examination as to academic differences and this and
2 that, I must say has bewildered me.

3 MR. BREITBART: But this is basically an
4 allegation of a major fraud being perpetrated on the
5 academic community.

6 THE COURT: That's fascinating, and if he had
7 testified, you could ask him whether he perpetrated a major
8 fraud on the academic community as would reflect on his
9 credibility, but the fact -- never mind. Let me not go
10 further than that at this point, but as the jury will hear
11 when I instruct them, the relevance of whether or not these
12 people perpetrated an academic fraud, which is off to the
13 side, and not in the center.

14 Have a lovely evening, jurors. Don't discuss the
15 case. I will see you at 10 o'clock tomorrow. Oh, and
16 Wednesday you have off. So I told one of you and not
17 everybody.

18 (Jury exits the courtroom.)

19 THE COURT: You may step down. Thanks.

20 Does the defense intend on asking for a
21 voluntariness charge on the statement?

22 MR. KUBY: I don't know that we have made that
23 decision yet. I will speak with Mr. Breitbart about that.

24 THE COURT: And, Mr. Bandler, you had a couple of
25 things on the charge.

1 MR. BANDLER: They were very minor. Just on the
2 jury sheet sometimes it listed the victim's name and
3 sometimes it didn't. Sometimes it referenced Exhibit 6 and
4 60. For example, the creation of an impersonating Gmail
5 account, and sometimes it didn't. Six being the Gmail
6 record, 60 being the spreadsheet of e-mail accounts.

7 THE COURT: Sorry, Mr. Bandler, that's the verdict
8 sheet, I'm having trouble with that, so if you could write
9 it on it so that we can see what it is, I have no ownership
10 interest in the verdict sheet.

11 MR. BANDLER: Okay, for the charge. The public
12 servant issue we took care of because those counts are out,
13 and for definition of written instrument, if you could add
14 the words from the definition including computer data.

15 THE COURT: Anything else?

16 MR. BANDLER: No.

17 MR. KUBY: Judge, I have a number of objections
18 that I will submit to you tomorrow morning in writing so as
19 not to clog up the record, but one objection which I think
20 may be an error on your part, rather than simply a
21 disagreement, second line on the bottom of page 15.

22 THE COURT: I made so many revisions this morning,
23 I'm not on page 15 anymore.

24 MR. KUBY: When you are talking about falsifying
25 business records as a felony, when your intent is to commit

1 another crime, you include forgery in the third degree,
2 which we at no point defined because we omitted -- sorry,
3 identity theft in the third degree.

4 THE COURT: I took that out.

5 MR. KUBY: Okay.

6 THE COURT: All the identity theft in the third
7 degree is out.

8 MR. KUBY: Because it is mentioned in the part of
9 the charge of falsifying business records as one of the
10 underlying abject crimes. Can I approach and just show you
11 where I see it?

12 THE COURT: Yes, please. What's wrong with that?

13 MR. KUBY: You took out all the counts with
14 respect to identity theft in the third degree, and you
15 don't instruct the jury about identity theft in the third
16 degree, so tell them that's an abject crime, without a
17 definition.

18 THE COURT: So it's not forgery in the third
19 degree, it's the identity theft in the third degree?

20 MR. KUBY: Yes. Thank you.

21 I'm asking if you would e-mail me a copy of it?

22 THE COURT: I'm assuming Mr. Golb is your last
23 witness just based on the practice and custom. So, when
24 will we get to summation, tomorrow afternoon?

25 MR. KUBY: And if we do, will it be your intent

1 then to charge on Thursday?

2 THE COURT: Yes. Sometimes, I will begin if I can
3 get that far, I will begin with the first part of the
4 charge just so I can start the day fresh with the
5 substantive portion. So your objections will be helpful
6 before then, and if you can look at the verdict sheet
7 because we have to start making that up, and I'm not quite
8 sure. I may have been inconsistent with putting the
9 exhibits in because I was not clear as to whether they were
10 generalized or not.

11 MR. BREITBART: Judge, you are going to send us
12 another e-mail indicating what the charges are that are
13 going to the jury?

14 THE COURT: Sure. Right now. I will just hop
15 right to it. DBreitbart --

16 MR. BREITBART: No. BreitbartD.

17 MR. KUBY: Just so the record is clear, the jury
18 request that I had made, number one through six which are
19 before the Court as Court Exhibit C, I will take it to the
20 extent you have not included those, those are denied?

21 THE COURT: Correct.

22 MR. KUBY: Thank you.

23 THE COURT: Okay. Okay.

24 (Trial is adjourned to Tuesday, September 28th,
25 2010, at 10:00 a.m.)

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1 THE COURT: I'm sorry, why isn't that collateral
2 and why would you be able to put this into evidence?

3 MR. BREITBART: Because it's a critical issue in
4 the case.

5 THE COURT: I'm sorry, why isn't it collateral?
6 Critical issue in the case, I don't believe it is.

7 MR. BANDLER: Judge, since Mr. Breitbart is making
8 an argument in front of the jury, let's just put it in so
9 the jury can see it but move on with the testimony.

10 THE COURT: Fine. On consent in evidence. Let's
11 move on.

12 Q Would you please read it to us?

13 MR. BANDLER: Objection.

14 THE COURT: Yes, objection is sustained.

15 Q Yesterday -- let's just clarify a few things that we
16 left unfinished yesterday. You said you used the name Frank
17 Cross, did you ever seek to make anyone believe that you were
18 Frank Moore Cross of Harvard University?

19 A No, I never said Professor Cross, I never said Harvard
20 University. Frank Cross is a very common name. There was a
21 humoristic element to this. I was alluding to Frank Cross
22 obviously and the idea was that the person I was talking about
23 in an e-mail, Bart Ehman had just like Frank Cross participated
24 in fraudulent assertions.

25 I also, this e-mail address is Frank Cross 2 and part

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1 of the humor was in the two. This was the answer to the Frank
2 Cross, this was an amateur Frank Cross. And the text of the
3 e-mail was also outlandish. I think it said it looks like Bart
4 has gone and put his foot in his mouth again. Professors don't
5 send out e-mails like that.

6 Q What was your purpose in sending that e-mail, sir?

7 A To draw the attention of the people I sent the e-mail
8 to, to the conduct of Bart Ehrman who was one of the lecturers
9 in the Raleigh exhibit on the Dead Sea Scrolls. He's a New
10 Testament specialist not a specialist on the Dead Sea Scrolls
11 and in e-mail correspondence he confessed that he's not an
12 expert on the Dead Sea Scrolls and I asked him, I was using an
13 alias of course, and I asked him if he thought it was
14 appropriate for someone who's not an expert on the Dead Sea
15 Scrolls to be giving a lecture on the Dead Sea Scrolls in a
16 major museum exhibit sponsored by the Department of Environment
17 of North Carolina when all of the major opponents of the theory
18 that was being championed in that exhibit had not been invited,
19 had been excluded from the exhibit and when their ideas had been
20 belittled in the exhibit and he got very huffy, and I felt that
21 this was a matter of public interest, that the Department of the
22 Environment of North Carolina was putting on such an exhibit and
23 having people give lectures who are not even specialists on the
24 Dead Sea Scrolls and excluding all the other people who were
25 specialists on the scrolls.

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1 So I post the exchange with him on the internet and I
2 sent out that e-mail to faculty members in the religion
3 department at Duke University to call attention to the exchange.

4 Q Returning to Jeffrey Gibson, did you send any e-mails
5 from that address?

6 A No. That address was like the Steve Goranson's
7 address, it was just like a personal joke with myself.
8 Basically everybody who attacked my father or who I criticized
9 in the Charles Gadda articles was graced with an e-mail address.
10 This was just passing the time. I never intended even to send
11 any messages from it as far as I remember, I intended to use it
12 to store e-mail addresses just like the Steve Goranson one.

13 I don't remember if -- some addresses I used them for a
14 little while or I would open them and then I would forget how to
15 get back into them and then I would open up a new one. It might
16 have been, I don't remember what date I opened the Jeffrey
17 Gibson thing, if it was before or after the Steve Goranson, but
18 at any rate it was the same type of thing. I never meant
19 anybody to think that I was Jeffrey Gibson.

20 Q In sending these letters, sir, were you in any way
21 motivated by your religious beliefs?

22 A Absolutely not. I respect all religious beliefs. What
23 I was opposing in my campaign was that certain religious
24 perspective seem to be sending the agenda of science museum
25 exhibits to the exclusion of other perspectives, both religious

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1 perspective and secular nonreligious perspective.

2 Now there's already a problem if you have religion in
3 science museums because science and religion doesn't mesh well.
4 If you choose to do that, you have to take special care to give
5 all points of view, all religious points of view an opportunity
6 to be expressed in the exhibit and this in fact is what the Code
7 of Ethics of the Museum Association specifically says.

8 Chapter 9 of the Code of Ethics of the Museum
9 Association when there is a controversy, the responsibility of
10 the exhibiter is to show both sides of the controversy. They
11 say it very specifically there. I have it somewhere.

12 But the point is, Susan Braunstein is a professional
13 curator at the New York Jewish Museum, she understood this,
14 that's why she did the right thing.

15 The other curators in the Dead Sea Scrolls exhibits,
16 they are people who just come in who are part of the Dead Sea
17 Scrolls clique and they come in and they do these special
18 exhibits, the museum just kind of grant them you know an
19 opportunity to do that and there is a lack of responsibility
20 being shown there.

21 Q Sir, how much time did you spend on all of this?

22 A Quite a bit but it actually looks like I spent more
23 time than I did because a lot of it was just cutting and pasting
24 stuff. Once I had my articles, it doesn't take too much time.
25 Once you know how to open a blog on word press, it doesn't take

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1 MR. KUBY: Judge, I would like to be heard for a
2 moment.

3 THE COURT: About what?

4 MR. KUBY: About the examination of this witness.

5 THE COURT: No. It's Mr. Breitbart's witness, I'm
6 not hearing you. Don't double team me. Thank you.

7 MR. KUBY: I'm not double teaming. It is a
8 generalized Due Process Clause objection based upon your
9 conduct with other witnesses, and your conduct with this
10 witness. It is not this witness specific. May I be heard?

11 THE COURT: Sure.

12 MR. KUBY: Thank you.

13 Throughout the course of this trial, when crucial
14 prosecution witnesses have testified, they have explained
15 their answers even though they were yes and no questions.
16 When either I or Mr. Breitbart asks the Court for
17 admonitions for a witness to answer yes or no questions if
18 they could, if the answer calls for a yes or no, this Court
19 consistently refused to do so.

20 The assumption that counsel made was that the same
21 rules would be applied to the crucial witness for the
22 defense, the defendant himself, and those rules, Judge,
23 with all due respect, have changed, and changed
24 dramatically. I think that's fundamentally unfair, and I
25 object. You can do it either way you want. You can allow

1 the witnesses to answer at great length or you can control
2 them, it's your courtroom, but respectfully what you cannot
3 do is have one set of rules for the prosecution and another
4 set of rules for the defense, and the record will reflect
5 that's exactly what's happening.

6 MR. BANDLER: Your Honor, I think the record will
7 reflect the manner of cross-examination. The manner of
8 cross-examination by defense counsel, improper
9 cross-examination. The manner of cross-examination by the
10 People, proper leading questions that call for a yes or no
11 answer which the defendant refuses to answer yes or no.

12 It's defense counsel's own fault when they ask
13 improper questions on cross, and they should not be blaming
14 the Court.

15 THE COURT: Yes. Well, the record speaks for
16 itself.

17 MR. KUBY: Thank you.

18 THE COURT: Let's take a break.

19 (Brief recess taken.)

20 (Continued on next page.)

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PROCEEDINGS

1 MR. BRETTBART: Your Honor, the defendant rests at
2 this time.

3 THE COURT: Okay, jurors, about 2:30, don't
4 discuss the case, you're not ready.

5 (Jurors exit.)

6 THE COURT: Mr. Bandler, it's my practice not to
7 ask in front of the jury but I assume the People are also
8 resting at this time?

9 MR. BANDLER: Yes, your Honor.

10 THE COURT: Motions at the close of the entire
11 case?

12 MR. KUBY: Renew the motion from before which was
13 submitted at the close of the People's case.

14 THE COURT: Are you resting on the record,
15 Mr. Bandler?

16 MR. BANDLER: Yes, your Honor, except to the
17 extent that the defendant's testimony was utterly not
18 credible and I think helps the People's case so we're in a
19 little better spot now than we were at the previous motion.

20 THE COURT: I'll let the jury make their
21 credibility determinations.

22 I do have before me the defense objections with
23 regard to paragraph 4 or position 4. I've taken out that
24 language in its entirety.

25 With regard to paragraph five, I'll simply refer

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1 to the records of NYU. And of course I reserve the right to
2 amend the instructions if need be because of something
3 that's said during closing arguments.

4 MR. KUBY: I understand, Judge. I would simply
5 reiterate my desire that you use the same words that
6 Mr. Bandler used in his opening that the object was to
7 generate an investigation based possible false premises.

8 THE COURT: I don't think it addressees the
9 particular charge.

10 MR. KUBY: Well, I didn't either frankly but that
11 was his theory that I thought that you should sort of stay
12 with it frankly than giving a better and newer theory.
13 That's my objection.

14 MR. BANDLER: I'm not sure that the People's
15 opening constitutes the legal charge. I haven't heard that
16 before.

17 MR. BREITBART: Judge, what's your plan for this
18 afternoon?

19 THE COURT: My plan to proceed as far as we can
20 go.

21 MR. BREITBART: My problem is that it's really
22 difficult when summations are not on the same day
23 immediately followed by a charge. It sort of, it's going to
24 make the district attorney's summation part of your charge.

25 THE COURT: You know I don't like it either,

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1 Mr. Breitbart, but unfortunately you know it is physically
2 impossible for me to get two things in the same place. I
3 don't how long your summation is, I'm not in the habit of
4 asking. I don't know how long Mr. Bandler's summation is.
5 He's got a lot of material to cover and I guess you do too
6 so I don't know. I can't do it, I can't do them
7 simultaneously so I understand you don't like it, I don't
8 like it either. If I could do everything at once I would
9 but I can't.

10 MR. BREITBART: My suggestion is that we do it all
11 on Thursday. We're going to be down tomorrow anyway so I'd
12 like to begin first thing in the morning and then he can
13 finish his and then you can charge the jury.

14 THE COURT: I reject that suggestion. This jury
15 wants to get out of here and they are entitled. And you did
16 pick a very intelligent jury, by the way, so I'm sure they
17 can they can keep things in their mind.

18 (Lunch recess.)

AFTERNOON SESSION

19 THE COURT: Let me put one thing on the record so
20 it's quite clear, I have been sending out proposed verdict
21 sheets so both sides are aware of what counts are being
22 submitted to the jury.
23

24 MR. KUBY: That's correct, Judge.

25 MR. BANDLER: The verdict sheet I have still

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1 mentions public servant, the typo.

2 THE COURT: I thought I took them all out.

3 MR. BANDLER: Maybe I have an older version
4 printed.

5 COURT CLERK: No, later on, Count 24 still says
6 that.

7 THE COURT: That's a mistake.

8 MR. BANDLER: The count charging criminal
9 impersonation over the internet under subsection (4) those
10 are the counts out. Those are 22, 26, 30, 34, and 38. The
11 other criminal impersonation counts under subsection (1) are
12 still in.

13 THE COURT: Right.

14 MR. BANDLER: And a couple of those mistakenly
15 mention --

16 THE COURT: Public servant.

17 MR. BANDLER: Right, maybe there is on one of
18 those.

19 MR. KUBY: Sorry, so 44 and 46 are the sending and
20 the creation?

21 THE COURT: Right, those are not subdivision (4)
22 counts.

23 MR. BANDLER: Just for the record, none of them
24 were charged under the public servant theory.

25 THE COURT: Yes.

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1 MR. BANDLER: It's just the way --

2 THE COURT: I picked that up.

3 COURT CLERK: So there is no public servant
4 mentioned at all in any of the others?

5 THE COURT: Correct.

6 COURT CLERK: And the counts out now are 22, 26,
7 30, 34, and 38?

8 MR. BANDLER: Correct.

9 COURT CLERK: And I'll adjust it accordingly.

10 MR. KUBY: My count is we milled this down to a
11 mere 31?

12 THE COURT: I don't know. I never count because I
13 didn't number them sequentially because it makes record
14 keeping very difficult.

15 MR. KUBY: Is that Mr. Bandler's view; am I
16 counting 31?

17 MR. BANDLER: I have not counted.

18 THE COURT: Okay.

19 MR. KUBY: Judge, I do have one observation about
20 the verdict sheet, it's really more of a question, I noticed
21 that there are several references to exhibits after the
22 counts, is the People's position that the counts rests
23 exclusively on those exhibits or is that just emblematic of
24 some of the exhibits because if it's the former, I don't
25 have an objection but if it's just like by the way you

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1 should look at this as well as other things then I do.

2 THE COURT: I don't know the answer to that. With
3 regard to some of the counts is a particular e-mail so I
4 assume that is the particular exhibit. Some of them are not
5 so I got a little confused with that, at least that's my
6 excuse at the moment why I am not consistent with regards to
7 those.

8 MR. BANDLER: Well, some of the counts pertain to
9 a specific act like sending an e-mail or opening an e-mail
10 account so I think that's there to avoid jury confusion.

11 Certainly if our whole case on that count was just
12 based on one single exhibit, this wouldn't have been a two
13 and a half week trial, I could have put that exhibit in in
14 ten minutes. So it's not the entire proof as to the count
15 but it does help show what count pertains to what conduct.

16 THE COURT: But it's a particular act?

17 MR. BANDLER: Yes.

18 THE COURT: When it says one exhibit, it's the one
19 that says 60 or something like that, that I'm not clear on.

20 MR. KUBY: In that case, Judge, I would object to
21 any references to the exhibits on the verdict sheet.

22 THE COURT: I'm sorry, as to all of them or as to
23 just the ones where it's a broader issue?

24 MR. KUBY: As to all of them. I mean Mr. Bandler
25 gets an argument and I assume you will let him argue as long

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1 as you let him argue. He doesn't get to make --

2 THE COURT: Well, if you're objecting, I'm taking
3 it out because the statute doesn't explicitly relate to it.
4 So all the references to exhibit numbers are out. Okay.

5 (Jury entering.)

6 COURT CLERK: Case on trial continued. All
7 parties are present. The jury has entered is being seated.

8 THE COURT: Okay, so we're up to closing arguments
9 of counsel. We begin, as I told you, with defense counsel.
10 I'm not sure which one of you is.

11 MR. BREITBART: I am, Judge. With the permission
12 of the court.

13 THE COURT: Sure.

14 MR. BREITBART: Ron, Raphael, Mr. Bandler, madam
15 forelady, ladies and gentlemen of the jury, this part of the
16 trial is called the summations. It's the last argument
17 that's made by counsel. I'm going to be summing up this
18 afternoon and after I sum up then Mr. Bandler is going to
19 sum up and its been decided by the wisdom of the courts that
20 since the burden of proof is on the district attorney, the
21 district attorney sums up last so there will be no rebuttal
22 summation. You will hear from me, you will hear from him,
23 and then the Judge will charge you on the law.

24 I will ask you to try as best you can to recall
25 the arguments that are made because I'm not going to be able

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1 he wouldn't say who wrote the affidavit. He's been a cop,
2 he's been on the job for over 40 years, right, he said he
3 started in '64, those guys don't give up another. He
4 wouldn't say that Mr. Bandler was the author of that
5 affidavit. He refused. Maybe that's good, maybe that's
6 what he considered integrity, but it was clear when it was
7 discussed that Mr. Bandler was the other signature on that
8 affidavit, and that Mr. Bandler points out that it was -- I
9 think the way he corrected it was saying -- it's a fact,
10 isn't it, that the affidavit is not based on your personal
11 knowledge? And Pat said, that's correct, it wasn't based on
12 his personal knowledge, and even material that he included
13 in there and one of the things that it said in that
14 affidavit was that the allegations of plagiarism were false.

15 Well, I'm going to assume because I don't believe
16 that the district attorney would intentionally and
17 consciously support perjury.

18 MR. BANDLER: Objection, your Honor.

19 MR. BREITBART: That was a compliment.

20 THE COURT: I'm glad but I'm frankly not sure if
21 we have proof that the allegation of plagiarism are or are
22 not true or false.

23 MR. BREITBART: Well, that would be determined
24 after the jury looks at J-1, Judge.

25 MR. BANDLER: Objection.

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1 THE COURT: No, that will not be. I admitted J-1
2 on your client's state of mind and not for its truth because
3 it's plainly hearsay.

4 MR. BREITBART: Well, there is no question that in
5 the affidavit in support of the search warrant the affidavit
6 says that the allegations of plagiarism are false.

7 MR. BANDLER: Objection. Misstates the affidavit.

8 THE COURT: The jurors' evaluation of the evidence
9 will control.

10 MR. BREITBART: There is no question though that
11 they never did anything to check out if the allegations of
12 plagiarism were false.

13 What is this all about then? Is it about money?
14 There was some questions that were asked about money, you
15 know, that there were exhibits all over the country.
16 Questions were asked and answers were given, that there was
17 an exhibition in St. Pauls, Minnesota in 2010. You know
18 that there was an exhibition in Milwaukee in 2010. You know
19 that there was an exhibition at the Royal Ontario Museum in
20 2009. You know that there was an exhibition in Raleigh in
21 2008. You know that there was a San Diego exhibit in 2007.
22 You know that there was a Kansas City exhibit in 2007. You
23 know that there was an exhibit in 2006. You know that there
24 was an exhibit in Charlotte in 2006. You know that there
25 was one in Ottawa in 2004. You know there was one in

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1 is not what this is about. It's just his motive and
2 otherwise it's just a distraction. You can't impersonate
3 real life people. You can't assume their identities. You
4 can't do that to do wrong, to deceive, or to defraud or
5 injure. To do bad things like sending a false confession of
6 plagiarism, something that could derail a career or speaking
7 engagements or to otherwise deceive people and stir up
8 disputes and controversy.

9 This case could be about any motive. It just
10 happens to be about the defendant wanting his father's
11 theory to get more credit. His obsession with that.

12 Let's think about two accountants who work at the
13 same company. Let's call them Bob and Pete. Bob is angry
14 at Pete because Pete got a big promotion that they were both
15 going for or maybe he's mad at him for any reason, Pete
16 keeps taking Bob's lunch without Bob permission. Pete has
17 annoying habits and Bob can't stand them so Bob opens up an
18 e-mail account in Pete's name and sends e-mails to their
19 bosses and colleagues and in the e-mail it looks like Pete
20 is admitting to stealing in the past. The bosses confront
21 Pete who denies it and denies even knowing about the e-mail
22 address but of course the company has to investigate and
23 ultimately the investigation shows no evidence of any
24 wrongdoing of any kind, Pete has been a great employee. He
25 goes through a lot of stress, annoyance, alarm, fixation

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1 because of the allegations and that stain, that accusation
2 it's always out there in the back of people's mind in the
3 company, they always remember that complaint and they'll
4 always associate it with Pete and Pete knows this so it's
5 always in the back of Pete's mind causing him stress,
6 turmoil, annoyance, and alarm. It doesn't just go away.

7 Think about it, what I just described is not
8 whistle blowing. It's Bob's malicious and fraudulent use of
9 Pete's identity for the sole purpose of hurting Pete.

10 Now let's say Bob really thought Pete was
11 stealing. Opening up an e-mail account in Pete's name is
12 not the way to blow the whistle. You blow the whistle by
13 going to the boss and telling the boss you think Pete is
14 doing something wrong or you might even send an anonymous
15 letter or e-mail. But you don't do it by taking the other
16 person's identity and stealing their identity. When you go
17 to those lengths, there is only one reason to do it, it's
18 not whistle blowing, it's an intent to defraud and deceive.
19 It's an intent to torment.

20 Now let's say someone did it anonymously, in good
21 faith and then they're confronted, hey, did you send that
22 e-mail accusing him of stealing? You admit it promptly so
23 you can get to the substance of your complaint. You
24 wouldn't deny it unless what you did was malicious and
25 you're deceptive. Because if you are a whistle blower, you

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1 The investigation was conducted properly, the search
2 warrants were obtained in --

3 MR. BREITBART: Objection, your Honor, that's
4 coaching.

5 MR. BANDLER: The arrest and statement were
6 obtained properly.

7 THE COURT: Excuse me, the jurors will base their
8 verdict on the evidence but certainly the issue of
9 improprieties and search warrants and so forth and so on has
10 nothing to do with this trial and nothing to do with the
11 jury's function except on a limited basis of credibility of
12 the one witness question on the subject.

13 MR. BANDLER: So those issues are not before you.
14 The issue is whether the evidence presented proved the
15 defendant's guilt beyond a reasonable doubt.

16 Another thing designed to distract you are
17 remedied by following the Judge's instruction, follow the
18 evidence, follow the law, don't speculate. And it's ironic
19 because in the defendant's world he says everyone else is
20 part of a conspiracy, he says everyone else is lying but
21 he's the one who is full of deception and untruths, and
22 misrepresentations.

23 Prime example is his video statement. He's
24 arrested for impersonating Dr. Schiffman among other things.
25 He knows he did it and what does he do, he blames it on a

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1 conspiracy, he blames Dr. Schiffman for setting him up, for
2 falsely accusing him of doing this.

3 You are here to decide this case, this defendant,
4 these charges, and that's what the evidence presented was
5 about. Don't be distracted.

6 Part of my burden is proving who did it. Who spun
7 this enormous web of deceit and because of my burden,
8 because of the defendant's lies during his video statement,
9 because of his continuing deceit, you heard voluminous
10 evidence proving that he did it. The evidence was so
11 voluminous that the defendant testified and was forced to
12 admit doing it. But before he testified, you saw a lot of
13 evidence about it and evidence that corroborates that what
14 the defendant said about having done it.

15 Now you wouldn't want to take the defendant's word
16 for anything without corroboration because the defendant and
17 the truth are very far apart and they only meet when it's
18 convenient for him.

19 The evidence corroborates the defendant's
20 admission that he opened the e-mail accounts in question and
21 sent the e-mails and then the defendant himself corroborated
22 much of the evidence. We went through a lot of it with him,
23 he didn't dispute it. He might have been evasive and
24 reluctant but he didn't dispute it.

25 Yes, he said that stuff was on my computer. Yes,

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1 Dr. Cargill did not stalk the defendant like the defendant
2 claimed on the stand. He can't stalk someone who doesn't
3 exist. You can't stalk an anonymous identity. A fictitious
4 person. It is the defendant that stalked Dr. Cargill except
5 in New York for this conduct we call it harassment.

6 Defense counsel elicited from Dr. Cargill the fact
7 that Dr. Cargill wrote something in which Dr. Cargill quoted
8 another Dead Sea Scrolls scholar and that scholar had said,
9 "When will the world be free of Dr. Golb?" Don't forget
10 that Dr. Cargill wrote that long after the defendant was
11 arrested and this conduct was terminated so Dr. Cargill
12 quoting of this other scholar could not have been an
13 execution for the defendant's harassment of Dr. Cargill, it
14 happened after.

15 You as the fact finders decide where the
16 defendant's conduct lies. Look at what he did, how he did
17 it. You determine his likely intent when you impersonate
18 people, false confessions, false accusations, when you hate
19 them, when you devote hundreds of hours to your scheme,
20 that's an intent to harass, annoy, and alarm, to persecute,
21 to torment, and attack.

22 With all this when you look at the evidence you
23 can see why it would have been so alarming to be on the
24 receiving end of his conduct. Let him know what he did is
25 not okay. Follow the law, apply each statute charged to the

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1 would be worried if he knew he had done something wrong, if
2 he knew he had said something untruthful because he can't be
3 held liable for truthful statements.

4 Plagiarism accusations were untruthful. His
5 impersonation of five people were untruthful acts. His
6 denial of these acts were untruthful. His accusation that
7 Dr. Schiffman had falsely accused him of doing this was
8 untruthful.

9 There is a pattern here and don't be fooled by the
10 defendant's testimony on the stand oh, when I gave the video
11 tape I was overtired, I was exhausted. He wasn't tired, he
12 was just lying. He was telling the story he thought was
13 most convenient for him to tell at the time and he wasn't
14 intimidated or coerced.

15 Just look at the video. Look at how he answers.
16 He's aggressive, he's not afraid to interrupt, he's not
17 afraid to say whatever he feels will suit him and look at
18 his written pedigree statement which is made before his
19 video statement, he wants to talk to the DA. He wasn't
20 coerced into talking to the DA and it's because of his
21 deception there and throughout so many witnesses were
22 called, so much proof. That's why he had to testify, that's
23 why he had to change his story. The proof of his guilt is
24 overwhelming. His testimony is just the latest phase in his
25 continuing deception.

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1 verdict sheet that is going to list the counts and a lot of
2 times it's going to list who the victim is.

3 Counts 1 and 2 are Identity Theft in the Second
4 Degree. There are two different theories. The first theory
5 is the defendant attempted to commit a Scheme to Defraud and
6 influence The Jewish Museum. Second count of Identity Theft
7 in the Second Degree, he assumed the identity of
8 Dr. Schiffman and he attempted to falsify the business
9 records of NYU with a false confession and false
10 accusations.

11 Count 3 is the aggravated harassment of
12 Dr. Schiffman. Through that in a totality look at all the
13 evidence.

14 Count 5 is Criminal Impersonation Second, that
15 concerns the creation of the Larry dot Schiffman e-mail
16 account so you can look at exhibit 60, for example.

17 (Displayed.)

18 MR. BANDLER: We're looking at Exhibit 60-C which
19 is 60 sorted by the date. Now remember for this I asked the
20 defendant about each e-mail account he said yes, I did it,
21 except maybe one or two which his brother opened but for
22 each impersonating e-mail account I asked him did you open
23 it, was it on this date, he said yes. So on 60-C and look
24 at 60-C, too, because this shows why the defendant had to
25 testify and admit what he did because it helps link all of

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1 case and for serving as jurors, for listening to the
2 evidence, and evaluating it fairly, following the Judge's
3 instructions, use your commonsense and your everyday
4 experience. The defendant impersonated five people, he
5 assumed their identity, he forged e-mails pretending they
6 were from three of them. He had no right to do so. He
7 harassed three people in a long and mean spirited way. He
8 had no right to do that either. He did all this with the
9 intent to do harm, to deceive, to alarm, to injure. He used
10 the NYU computers to commit crimes knowing he was not
11 allowed to do this. The evidence has proved this
12 overwhelming. I ask that you hold him responsible for the
13 actions he took and the decisions he made and return a
14 verdict of guilty as to each of the counts because the
15 evidence has overwhelmingly proven his guilt. Thank you.

16 THE COURT: Okay, good time for a break, jurors.
17 I won't be as long as either lawyer so I don't want you to
18 worry. I presume you want coffee, shall we resume at five
19 to twelve, that will give me plenty of time to finish the
20 other cases.

21 (Jury exits.)

22 THE COURT: Before you go, what do you want me to
23 do with the alternates?

24 MR. BREITBART: We won't stipulate.

25 THE COURT: I'm sorry, you want me to excuse them?

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1 MR. BREITBART: Yes.

2 THE COURT: I just need you to know while the jury
3 is deliberating, I'll of course excuse you for lunch but
4 otherwise I expect you in or around the courtroom.

5 If the jury should ask for an exhibit of course
6 since you'll be in and around the courtroom you can just
7 check to make sure the correct exhibit is given, do we need
8 to go back on the record?

9 MR. BREITBART: Certainly we have no intention on
10 leaving the courtroom area.

11 THE COURT: The question is do I need to go back
12 on the record or just assemble the exhibits and send them
13 in?

14 MR. BREITBART: It's our position that we want it
15 on the record, your Honor.

16 THE COURT: Okay.

17 COURT CLERK: I've given everybody a copy of the
18 verdict sheet to look through.

19 MR. BREITBART: Do you want it initialed in some
20 way, Pat?

21 THE COURT: You can put it on the record. Those
22 are your copies to keep. If you find it sufficient just put
23 it on the record.

24 MR. KUEBY: No objection.

25 THE COURT: Mr. Bandler, how about you?

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1 MR. BANDLER: I'm still going through it, Judge.
2 My only comment Count 13 doesn't have the victim's
3 name.

4 THE COURT: Is that Schiffman?

5 MR. BANDLER: Yes. And Count 42 it spells
6 Goranson wrong, I'm not sure that matters. And do we want
7 to take out the blank lines on the second page?

8 MR. KUBY: I have no objection to the two
9 corrections that he mentioned.

10 COURT CLERK: Do you have any objections to the
11 blank line?

12 MR. KUBY: I sort of like them.

13 (Recess.)

14 (Jury entering.)

15 COURT CLERK: Case on trial continued. All
16 parties are present. The jury is present and properly
17 seated.

18 THE COURT: Jurors, before you deliberate, I will
19 explain the rules of law which you must follow in order to
20 be fair to both sides which is of course your sworn duty.

21 Whatever you need when you're deliberating,
22 whether it's read back of testimony or exhibits actually
23 admitted into evidence, or instructions on the law, send me
24 a note to be signed by your foreperson, juror number one, by
25 operation of law.

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1 Particularly when it comes to read back of
2 testimony, I would suggest that you try to be specific in
3 your request. It will take us a little longer to find the
4 testimony you're asking for but it will save you the time
5 and the distraction in hearing testimony you don't really
6 need for your discussions.

7 Some of you have taken notes and as I've said
8 before, note taking should not distract you from the
9 proceedings. Your notes that you have taken are only an aid
10 to your own memory and may not take precedence over your
11 recollection.

12 Those of you who have not taken notes must rely on
13 your own independent recollection of the evidence and don't
14 be influenced by the notes of another juror.

15 In other words, the notes are only for the note
16 taker's own personal use, in refreshing his or her own
17 recollection of the evidence. If there is a discrepancy
18 between your recollection and the notes, request a read back
19 of the record because the court's transcript prevails over
20 the notes. In other words, they are not a substitute for
21 the official record or for the governing principles of law
22 as I instruct you. After the trial is over, you can keep
23 your notes, whatever you want to do with them.

24 I begin with general instructions and then I'll
25 turn to the specific issues and charges in the case and I'm

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1 going to try to be brief because you should feel free to ask
2 me to repeat or to clarify an instruction as you need it.

3 If I repeat an instruction, don't think it's more
4 important as a rule of law. Also understand that I will
5 refer to evidence only to help you to understand a rule of
6 law. That in no way implies that the item of evidence I
7 mention is more important or more credible. It's your
8 recollection of the evidence that controls, not mine, so
9 follow your own recollection.

10 I am neutral. Nothing I've said or done during
11 this trial, my rulings, questions I've asked, what I say
12 during these instructions, nothing reflects an opinion about
13 the facts.

14 It's neither my intention nor my function to make
15 factual judgments. You must follow the law as I instruct
16 you, but you are the judges of the facts. It is your sworn
17 duty to make your factual determinations based on the
18 evidence or insufficiency of the evidence in the case.

19 Do not speculate or be influenced by bias or
20 prejudice or sympathy. Follow the law and not what you
21 might personally think is "just" and I put quotes around
22 that.

23 In short, make your decision based on the law as I
24 instruct you and without reference to anything outside the
25 four corners of the evidence.

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1 It's part of a lawyer's function to make
2 objections and mine to rule on them and I'm sure that you
3 understand that your duty to evaluate the evidence and
4 follow the law are separate from any feelings you may have
5 about the lawyers or me the Judge.

6 The lawyers have made arguments to you about the
7 evidence. What they say, whether in questions or in
8 argument, is not evidence. You have the right to accept or
9 reject a lawyer's argument about the evidence, in whole or
10 in part, depending on whether or not you find the argument
11 reasonable and logical, based on the evidence as you recall
12 it, and consistent with the evidence.

13 The evidence consists of the testimony of the
14 witnesses under oath, any concessions or agreements or
15 stipulations between counsel.

16 A stipulation is information the parties agree to
17 present to you without calling a witness to testify. And
18 the exhibits that have actually been admitted into evidence.

19 Testimony stricken from the record or to which an
20 objection was sustained must be disregarded.

21 Exhibits which were not received in evidence are
22 not evidence and are not available for your inspection and
23 consideration, although any testimony based on such an
24 exhibit may be considered.

25 Now, while you may rely on your everyday life

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1 experiences in evaluating the evidence, you may not use or
2 share your special expertise, professional or otherwise, to
3 insert facts outside the record because if you do that, you
4 become an unsworn and uncross-examined witness and that's
5 just not fair or permissible.

6 The indictment is not evidence. It's only a
7 procedural device that sets forth the charges the People
8 must prove.

9 Issues of sentence and punishment are not
10 evidence. They must not enter in any way into your
11 deliberations.

12 Now, as judges of the facts, you alone determine
13 the truthfulness and accuracy of the testimony of each
14 witness. You have to decide whether the witness told the
15 truth and was accurate or testified falsely or was mistaken
16 or inaccurate.

17 It's also up to you to decide what importance to
18 give any testimony you accept as truthful and accurate.
19 There is no particular formula for this process of
20 evaluation. You have to use your commonsense, use your life
21 experience, because all of us frequently decide the
22 truthfulness and accuracy of statements made to us by other
23 people so the tests and techniques you use in your lives for
24 evaluating credibility are equally valid in your function as
25 a juror.

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1 It is the quality and not the quantity of the
2 evidence that controls. So far as the law is concerned, one
3 witness is sufficient to prove guilt beyond a reasonable
4 doubt if the jury is so satisfied. And, in other cases, a
5 jury may look at many witnesses and say, still not enough in
6 terms of sufficiency or credibility to establish all the
7 elements of a crime.

8 So, again, the rule is quality not quantity.

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

15 I'm going to mention some possible considerations
16 in your credibility evaluation but understand these are only
17 suggestions. Whether or not a factor is present, what
18 impact it has, if any, up to you to decide and you're
19 certainly not limited to the factors I mention. Apply any
20 of the commonsense tests you use in your everyday lives to
21 make important decisions.

22 So you could ask yourselves, did the witness have
23 an adequate opportunity to see or hear the events about
24 which he or she testified?

25 What was the witness' ability to recall the

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1 events?

2 Did the witness' account seem likely to be true?

3 Was the witness' testimony consistent or
4 inconsistent with other evidence?

5 If there are inconsistencies, consider whether
6 they were significant, related to important facts, or the
7 kind of minor inconsistency you would naturally expect from
8 various witnesses to the same events?

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

12 Does the witness have a bias, hostility or some
13 other attitude which influenced his or her testimony or
14 somehow affected the truthfulness of the witness' testimony?

15 You have the right to consider any witness'
16 character as it bears on whether he or she is likely to lie
17 on the stand. So in this regard you may consider whether a
18 witness has been convicted of a crime or has engaged in
19 criminal conduct and this is relevant to credibility because
20 it may show a willingness and or an inclination on the
21 witness' part to put his own interests ahead of those of
22 society and in terms of credibility that would be to violate
23 the oath to tell the truth the witness took in this
24 courtroom. Though you are not required to reject the
25 testimony of a witness with a conviction or accept the

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1 testimony of an apparently law-abiding witness, but it is a
2 factor you may consider.

3 Did the witness have a motive to lie? Did that
4 motive affect truthfulness?

5 Was there no apparent motive to lie?

6 Did the witness hope for or expect any benefit for
7 testifying or for testifying in a certain way?

8 In determining the credibility of any witness, you
9 have the right to consider whether the witness has any bias
10 or prejudice for or against any party, and similarly, you
11 may consider whether a witness has an interest in the
12 outcome of the trial.

13 Of course a defendant is an interested witness.
14 He has a primary interest in the outcome of the trial.

15 Evidence that a witness made a prior statement
16 inconsistent with his or her testimony at trial may be used
17 only to impeach credibility, in other words, you are to
18 consider the inconsistency and what effect it has on
19 credibility.

20 In general, out of court statements are not
21 evidence in chief, that is evidence which shows what
22 happened or on which you may rest a guilty verdict. The
23 question of whether a prior statement is inconsistent, the
24 effect of any inconsistency you find on the witness'
25 credibility, again questions of fact for you to determine.

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1 If you find a witness has deliberately testified
2 falsely as to a material fact then the effect on credibility
3 is up to you to determine. You have the right to reject all
4 of that witness' testimony or simply disregard the
5 untruthful portions and accept only what you find to be
6 truthful.

7 We now come to the basic principles of law that
8 apply to all criminal trials: The presumption of innocence,
9 the burden of proof, the requirement of proof beyond a
10 reasonable doubt.

11 A plea of not guilty requires the People to prove
12 guilt beyond a reasonable doubt. So the defendant is
13 presumed innocent and you must find him not guilty unless
14 you find that the credible evidence at this trial
15 establishes his guilt beyond a reasonable doubt. You take
16 the presumption with you into the jury room and you start
17 your deliberations by presuming defendant's innocence. The
18 cloak of the presumption falls from him only if the evidence
19 that you accept and you believe convinces you of guilt
20 beyond a reasonable doubt.

21 In determining whether the People have satisfied
22 their burden of proving guilt beyond a reasonable doubt, you
23 may consider all of the evidence presented, whether
24 presented by the People or by the defendant.

25 Remember, however, that even though the defendant

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1 has presented evidence, the burden of proving guilt remains
2 on the People and never shifts to the defense.

3 The defendant is not required to prove he is not
4 guilty or to prove anything. To the contrary, the People
5 have the burden of proving the defendant's guilt beyond a
6 reasonable doubt. So this means that before you can find
7 the defendant guilty of a crime, the People must prove,
8 beyond a reasonable doubt, every element of the crime and
9 that the defendant committed it. The burden of proof never
10 shifts to the defense. If the People fail to prove guilt
11 beyond a reasonable doubt then you must find the defendant
12 not guilty.

13 The law uses the term proof beyond a reasonable
14 doubt to tell you how strong the evidence must be to permit
15 a guilty verdict.

16 Now the law recognizes that in dealing with human
17 affairs there are very few things that we know or can prove
18 with absolute certainty so the law doesn't require proof
19 beyond all possible doubt and proof beyond a reasonable
20 doubt doesn't require that the People produce every possible
21 witness or every possible exhibit.

22 On the other hand, the standard of proof beyond a
23 reasonable doubt requires more than proof the defendant is
24 probably guilty. The proof must be stronger than that. It
25 must be proof beyond a reasonable doubt.

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1 A reasonable doubt is an honest doubt of the
2 defendant's guilt for which there is a reason, a reason
3 based upon the nature and or quality of the evidence.

4 It's not a fanciful or imaginary doubt. It is a
5 doubt that a reasonable person, acting in a matter of this
6 importance, would be likely to entertain because of the
7 evidence presented or because of some lack or insufficiency
8 of material, convincing and or necessary evidence.

9 In determining whether or not the People have
10 proved the defendant's guilt beyond a reasonable doubt, you
11 must make a full and fair evaluation of the evidence.

12 Your verdict must not rest upon outlandish
13 theories or baseless speculation. Nor may your verdict may
14 be in any way influenced by bias or prejudice or sympathy or
15 a mere desire to end deliberations or a mere desire to avoid
16 the unpleasant and difficult duty of returning a verdict
17 that will make one party or another unhappy.

18 Each juror must consider, weigh, and carefully
19 review the evidence and decide which evidence you accept is
20 credible.

21 The next duty of each of you is to determine as to
22 each count whether you have a reasonable doubt. If you then
23 find that the People have not proved guilt beyond a
24 reasonable doubt, as I've just defined it, you must find the
25 defendant not guilty of that crime and acquit.

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1 If, on the other hand, you are satisfied that the
2 People have proved the defendant's guilt, beyond a
3 reasonable doubt, then you must find the defendant guilty of
4 that charge.

5 I'm going to turn now to the definition of the
6 charges in the case. One second, water break.

7 There are only a few definitions as many of the
8 counts charge the same offense as allegedly committed
9 against a different victim and or on a different date.

10 Your verdict sheet lists for you the charges you
11 are to consider with notations as to the date and or the
12 alleged victim. These notations are only for the purpose of
13 helping you distinguish one count from the other. They are
14 proof of nothing.

15 Also you'll note that the charges are not
16 sequentially numbered. Draw no inference from that. I just
17 eliminated some of the counts for the sake of simplifying
18 your job so that you don't have to do it.

19 Now the first two counts charge Identity Theft in
20 the Second Degree under slightly different theories.

21 A person is guilty of Identity Theft in the Second
22 Degree when he knowingly, and with intent to defraud,
23 assumes the identity of another person by presenting himself
24 as that other person, or by acting as that other person or
25 by using personal identifying information of that other

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1 person, and thereby commits or attempts to commit a felony.

2 So the object felony alleged with respect to Count
3 1 is Scheme to Defraud in the First Degree and the object
4 felony with respect to Count 2 is Falsifying Business
5 Records in the First Degree. And I'll start to define all
6 of those terms for you.

7 A person knowingly assumes the identity of another
8 person when that person is aware that he has assumed the
9 identity of that other person.

10 Intent means conscious objective or purpose.

11 A person acts with the intent to defraud when his
12 conscious objective or purpose is to deceive or trick
13 another with intent to deprive that person of his or her
14 right or in some manner to do him or her an injury.

15 The word defraud to give you a dictionary
16 definition means to practice fraud, to cheat or trick, to
17 deprive a person of property or any interest or right by
18 fraud, deceit, or artifice. So the meaning of fraud both in
19 its legal usage and in its common usage is the same, a
20 deliberately planned purpose and intent to cheat, or
21 deceive, or unlawfully deprive someone of some advantage,
22 benefit, or property.

23 To defraud is to intentionally use.

24 Dishonest means to deprive another person of their
25 property or to imperil their rights or interest.

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1 Each charge that you are to consider requires the
2 proof beyond a reasonable doubt of a specific intent or
3 intents and I'm going to detail them as I define the
4 charges.

5 For example, the charge is criminal impersonation
6 charges require the intentional impersonation of an actual
7 person and the intent to obtain a benefit or injure or
8 defraud another.

9 The aggravated harassment charges require the
10 intent to annoy, harass, or alarm the designated victim.
11 Let me do a little aside here.

12 There have been numerous references during this
13 trial to the First Amendment, to free academic discussion,
14 to parody, which for a dictionary definition is the close
15 imitation of the style of an author or a work for comic
16 effect or in ridicule, and to satire, which is a form of
17 humor where a writer tries to make the reader have a
18 negative opinion of another by laughing at that person or
19 making that person seem ridiculous or foolish, and the like.

20 Now in this country as I'm sure you all know, we
21 zealously protect the right to speak freely, whether under
22 one's own name or anonymously, or even under a fake name, or
23 a pseudonym. We zealously protect that right whether the
24 speech is correct or incorrect, truthful or not, derogatory
25 or positive.

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1 So focusing for the moment on the criminal
2 impersonation charges, without the intent to deceive or
3 defraud as to the source of the speech with the intent to
4 reap a benefit from that deceit, there is no crime.

5 So, in other words, Tina Fey is free to keep doing
6 her famous Sarah Palin imitation without the danger of
7 criminal impersonation.

8 SWORN JUROR: I don't take notes as quickly as
9 you're speaking. Those definitions, do we get a copy of
10 those?

11 THE COURT: No. You ask me and I'll give it to
12 you again. I'll try to slow down.

13 Now as I said, we have freedom of speech but words
14 can be the tools by which crimes are committed, as, for very
15 obvious example, when a robber says, Your money or your
16 life, the First Amendment doesn't protect that. Words by a
17 means which this person threatens you to take your property
18 or Bernie Madoff's fraud, in large part was made with words.

19 So the questions for you are not the legal issues
20 of freedom of speech under the First Amendment to the United
21 States Constitution, but rather whether the elements of a
22 charged crime have been proved beyond a reasonable doubt.

23 So what a person intends is the operation of his
24 mind. We're not mind readers. There is no special device
25 or technique to determine the mind's operations directly so

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1 you have to look at all the circumstances, the entire
2 context as you find the credible evidence establishes, and
3 then use your commonsense and your life experience, just as
4 you do in your every day lives, to draw inferences, to reach
5 conclusions about the purpose with which another person
6 acted.

7 Now intent and motive aren't the same. Motive is
8 the reason why a person acts. Some reasons can be good, it
9 can be bad. It can be rational or it can be irrational.
10 It's not the element of a crime.

11 But, on the other hand, if you find credible
12 evidence showing motive, the reason a person acts, the why,
13 obviously can bear on what the person wants to accomplish.

14 Just like the absence of motive may be something
15 you may consider to establish lack of criminal intent. The
16 absence or presence of motive is simply a factor to be
17 considered in determining whether a specific intent has been
18 proved beyond a reasonable doubt.

19 There are many other factors you may wish to
20 consider in determining whether the evidence establishes the
21 requisite intent beyond a reasonable doubt.

22 For example, what if anything the evidence shows
23 that the defendant did or said before the event, during it,
24 and afterwards?

25 What were the nature and manner of the defendant's

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1 acts?

2 What were the natural and probable consequences of
3 his acts?

4 You have the right to conclude, if you consider it
5 factually appropriate under all of the circumstances, that
6 the defendant intended the natural and probable consequences
7 of his acts.

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

14 Personal identifying information as it applies
15 here means a person's name, address, telephone number, date
16 of birth, driver's license number, social security number,
17 place of employment, et cetera.

18 A felony Scheme to Defraud is committed when a
19 person engages in a scheme constituting a systematic ongoing
20 course of conduct with the intent to defraud more than one
21 person or to obtain property from more than one person by
22 false or fraudulent representations, and so obtains property
23 with a value in excess of \$1,000 from one or more such
24 person at least one of whom is identified.

25 Now in the definition that's given the commission

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1 or the attempted commission of a felony, so you need to know
2 that this felony is attempted when a person intends to
3 commit the crime, intending to defraud and to obtain
4 property worth more than \$1,000 from one or more persons,
5 and comes dangerously close to doing so.

6 A person is guilty of falsifying business records
7 -- you see I said I will go slower and I'm tripping over my
8 words, sorry.

9 A person is guilty of falsifying business records
10 as a felony when he makes or causes a false entry in the
11 business records of an enterprise, and when his intent to
12 defraud includes an intent to commit another crime
13 specifically here Criminal Impersonation in the Second
14 Degree or Forgery in the Third Degree, or to aid or to
15 conceal the commission thereof.

16 So, again, a person attempts to falsify business
17 records when he intends to do so and comes dangerously close
18 to succeeding.

19 Broadly speaking, the People's theory here is that
20 the defendant sought to falsify business records of NYU.

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

25 One, that from on or about July 1st of 2008 to

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1 December 31st of 2008 in the county of New York, the
2 defendant assumed the identity of Lawrence Schiffman by
3 using his name.

4 Two, that the defendant did so knowingly and with
5 the intent to defraud.

6 Three, that the defendant thereby committed or
7 attempted to commit a felony, Scheme to Defraud as to Count
8 1; Falsifying Business Records as to Count 2.

9 If you find the People have proved all of these
10 elements beyond a reasonable doubt as to a count you must
11 find the defendant guilty of the crime.

12 If you find that the People have not proved any
13 one or more of the elements of the crime, you must find the
14 defendant not guilty of that charge.

15 This rule is true as to each count so I won't keep
16 repeating it, all the elements must be proved beyond a
17 reasonable doubt for a verdict of guilt. A reasonable doubt
18 as to any one or more of the elements requires a verdict of
19 not guilty.

20 Counts 3, 40, and 48 charges Aggravated Harassment
21 in the Second Degree against Lawrence Schiffman, Stephen
22 Goranson, and Robert Cargill respectfully.

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

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

4 In order to find the defendant guilty of this
5 crime, the People must prove beyond a reasonable doubt the
6 following two elements:

7 As to Count 3, that on or about August 1st to
8 December 31st of 2008 in the county of New York, the
9 defendant communicated anonymously or otherwise by any form
10 of written communication, in a manner likely to cause
11 annoyance or alarm to Dr. Schiffman.

12 And, two, that the defendant did so with the
13 intent to harass, annoy, threaten, or alarm Dr. Schiffman.

14 Count 40, relates to the period from July 1st to
15 December 31st of 2008, the alleged victim is Stephen
16 Goranson.

17 Count 48, is the period from June 1st of 2007 to
18 March 1st of 2009 and the alleged victim is Robert Cargill.

19 Of course the elements are the same and you have
20 this on your verdict sheet, you don't have to memorize it.

21 Criminal Impersonation in the Second Degree and we
22 have a lists of counts here 5, 7, 10, 13, 16, 19, 23, 25,
23 29, 33, 37, 42, 44, 46, and 50 charge Criminal Impersonation
24 in the Second Degree under the theory that the defendant
25 intentionally impersonated an actual person.

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

5 A benefit means any gain or advantage to the
6 beneficiary and includes any gain or advantage to a third
7 person pursuant to the desire or consent of the beneficiary.
8 Any gain or advantage to the beneficiary including any gain
9 or advantage to a third person pursuant to the desire or
10 consent of the beneficiary.

11 In order for you to find the defendant guilty of
12 this crime, the People must prove beyond a reasonable doubt
13 the following three elements:

14 One, that on or about the date or dates specified
15 in the county of New York, the defendant knowingly
16 impersonated another real person.

17 Two, that the defendant acted in such assumed
18 character with the intent to obtain a benefit or to injure
19 or defraud another. I guess I can't count because I keep
20 saying the wrong number of elements. So it's the knowing
21 impersonation and the intent to obtain a benefit or to
22 injure or defraud another.

23 Forgery in the Third Degree and that's Count 8,
24 11, 14, 17, 20, 27, 31, 35, 39, and 47 charge Forgery in the
25 Third Degree.

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

5 A written instrument means any instrument or
6 article, including computer data, containing written or
7 printed matter, or the equivalent thereof, used for the
8 purpose of reciting, embodying, conveying, or recording
9 information which is capable of being used to the advantage
10 or disadvantage of some person.

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

17 So we have two elements:

18 One, that on or about the date or dates specified
19 in the county of New York, the defendant falsely made,
20 completed, or altered a written instrument.

21 And, second, that the defendant did so with the
22 intent to defraud, deceive, or injure another.

23 Finally, Count 51 charges Unauthorized use of a
24 Computer.

25 A person is guilty of unauthorized use of a

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1 computer when he knowingly uses, causes to be used, or
2 accesses a computer, computer service, or computer network
3 without authorization.

4 The People's theory of lack of authorization in
5 this case is that the defendant used the NYU computer to
6 commit a crime in violation of the terms of use.

7 The People must prove beyond a reasonable doubt
8 that the defendant had no reasonable grounds to believe that
9 he had authorization to use the computer for the purpose.

10 A computer means a device or group of devices
11 which, by manipulation of electronic, magnetic, optical, or
12 electrochemical impulses, pursuant to a computer program,
13 can automatically perform arithmetic, logical, storage or
14 retrieval operations with or on computer data, and it
15 includes any connected or directly related device,
16 equipment, or facility which enables such computer to store,
17 retrieve, or communicate to or from a person, another
18 computer or another device the results of computer
19 operations, computer programs, or computer data.

20 Computer service means any and all services
21 provided by or through the facilities of any computer
22 communication system allowing the input, output,
23 examination, or transfer, of computer data or computer
24 programs from one computer to another.

25 Computer network means the interconnection of

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1 hardwire or wireless communication lines with a computer
2 through remote terminals, or a complex consisting of two or
3 more interconnected computers.

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

8 Without authorization means to use or to access a
9 computer, computer service, or a computer network without
10 the permission of the owner or lessor or someone licensed or
11 privileged by the owner or lessor where the actor knew his
12 use or access was without permission.

13 So three elements:

14 One, that on or about July 1, 2008 to March 1st of
15 '09 in the county of New York, the defendant used, or
16 accessed a computer, computer service, or computer network
17 without authorization.

18 Two, that the defendant did so knowing he had no
19 permission for the use, in that he used the computer,
20 computer service, or computer network to commit a crime or
21 crimes.

22 And, three, that the defendant did not have
23 reasonable grounds to believe that he had authorization to
24 use computer for a criminal purpose.

25 Do we need to speak before I conclude?

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1 MR. KUBY: Only reiterate the matters what were
2 reiterated earlier, Judge.

3 THE COURT: Thank you. We'll take that as read.
4 So your verdict must be unanimous and it must also
5 represent the considered judgment of each juror.

6 It is your duty as jurors, to be open minded, to
7 consult with one another, and to deliberate with a goal of
8 reaching an agreement. Each of you must decide the case for
9 yourself but only after an impartial consideration of the
10 evidence with your fellow jurors.

11 In the course of your discussions, constantly
12 examine and re-examine your views. Change your opinion if
13 you are convinced it's erroneous but don't give up your
14 views as to the weight and effect of the evidence simply
15 because your views differ from the opinions of your fellow
16 jurors or only to reach a verdict.

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

21 We can have the jury retire.

22 I need the alternates to get their property, if
23 any, in the jury room and return to the courtroom, please.

24 (The jury retired to the jury room to
25 consider their verdict and commence

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1 deliberations.)

2 (Time noted: 12:46 p.m.)

3 MR. KUEY: My cryptic reference on the record
4 obviously was to the repeat of my earlier objections and my
5 objection to the court overruling my proposed language.
6 Thank you.

7 (Alternates entering.)

8 THE COURT: So, folks, you may well ask why I made
9 you listen to me when you're not going to get to deliberate
10 because I am going to discharge you at this time.

11 Well, the answer is, number one, it's tradition
12 and, number two, since you've been here for three weeks you
13 might as well know the details of the law that covers the
14 case just, I don't know, for your edification, like it or
15 not.

16 You know a lot of times we do need to use our
17 alternates. We were a little worried which is why we picked
18 so many of you and I know you attended very faithfully and a
19 lot of you took notes and it was very inconvenient and
20 everybody appreciates it and you are free to discuss or not
21 discuss this case with whomever you like, up to you,
22 entirely your choice but we do thank you.

23 You are free to get your lunch which has been
24 ordered for you and maybe we can give you a place in the
25 witness room to have it, if you feel like staying.

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1 two requests.

2 MR. BREITBART: I didn't see that one about
3 forgery.

4 THE COURT: Okay, you want to see it again.

5 MR. BREITBART: Okay.

6 THE COURT: You may, you don't have to take my
7 word for it.

8 (Published to counsel.)

9 THE COURT: I think with regard to the read back
10 of Mr. Bandler's summation, while I can do that but it would
11 be better for me to read the counts and the exhibit number.
12 That's what I want to do. I can read to the jurors what
13 exhibit number go to which counts.

14 MR. BREITBART: I think they should be advised
15 that they can't have the summation read back.

16 THE COURT: Well, they can have the summation read
17 back. It's in the Court's discretion. I just rather not.
18 If you don't want me to go through the counts and the
19 exhibits that the People say go to them then --

20 MR. KUBY: May I just converse, your Honor?

21 (Defense counsels conferring.)

22 MR. KUBY: As to that we'll go to plan B.

23 THE COURT: Plan B is being me?

24 MR. KUBY: Yes.

25 THE COURT: Plan Berkman.

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1 MR. KUBY: Yes, which was originally plan A before
2 I objected.

3 THE COURT: Right.

4 MR. KUBY: Right, correct.

5 THE COURT: And with regard to the definitions, my
6 usual practice is just to do the short form, just a short
7 form definition to tell them if they want the terms inside
8 defined they can ask me.

9 MR. KUBY: That's fine.

10 THE COURT: I think they just want the short form.

11 MR. BANDLER: I wrote in red the exhibits that
12 pertains to each count.

13 THE COURT: Okay, do you want to show it to
14 counsel.

15 (Published to counsel.)

16 MR. BANDLER: I just note that in the laptop which
17 the jury doesn't have yet but if they wanted it, the e-mails
18 that are charged as separate counts are also contained in a
19 separate folder.

20 THE COURT: Is that an exhibit?

21 MR. BANDLER: They are exhibits but it's just
22 sorted a little differently. They're grouped together in
23 one folder.

24 THE COURT: Guess counsel has to look at them
25 because I like to send them a clean copy so they can look at

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1 the videotape.

2 MR. KUBY: I don't think that it's necessary to
3 point that out to the jury. They want to know the exhibits
4 that's corresponding and we're doing the specific e-mail.

5 THE COURT: I'm not pointing out anything. He was
6 pointing it out to me so I was just trying to give him a
7 head's up if they ask to view the statement which they may
8 or may not do.

9 And there are no exhibit numbers which you said
10 relate to Counts 1 and 2?

11 MR. BANDLER: There are but I indicate a lot so I
12 think my thought is that they understand it's the totality
13 of the evidence as to those counts.

14 THE COURT: So I'll just tell them as to those
15 counts there wasn't a specific number for them to look,
16 correct?

17 MR. BANDLER: Right. Obviously each exhibit is
18 not the sole exclusive proof for each count, just to point
19 them to the particular act.

20 THE COURT: Are we ready for the jury?

21 MR. KUBY: We are, Judge.

22 Can you just tell me how you will formulate what
23 Mr. Bandler just said as to the exhibit numbers for Counts 1
24 and 2?

25 THE COURT: And as well as the aggravated

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1 harassment counts as well do not have specifics numbers.

2 MR. BANDLER: Nor does the last count.

3 If I could just note for the record when I was
4 completing my case I had had an exhibit for Miss Briglia to
5 testify to to simplify what count was what but at that point
6 when we had the jury verdict sheet, the exhibits were on it
7 and Mr. Kuby had consented to it. It was only after the
8 People rested that Mr. Kuby objected to the exhibit numbers
9 being on it so I was not able to put in that piece of
10 evidence which would have simplified these things for the
11 jury.

12 THE COURT: All right, there you go, would of,
13 could of, should of. Let's forget about it.

14 MR. KUBY: I'm sorry, I don't recall addressing
15 the verdict sheet and I didn't address it until recently and
16 I'm certainly not in any way mean to sandbag Mr. Bandler but
17 I would have objected to that exhibit anyway to simplify the
18 counts for the jury as a piece of evidence because I
19 consider that oral argument unless when it comes from you.

20 THE COURT: Are you done?

21 MR. KUBY: Yes.

22 MR. BREITBART: How many binders are going in,
23 Judge?

24 THE COURT: How many binders went in, Pat?

25 COURT CLERK: Exhibit 10, 11, 12, 13, 14, 15, 16,

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1 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,
2 40.

3 Some of the binders have two exhibits in them so
4 those are the exhibits that went in aside from 60-A, B, C.

5 MR. BREITBART: They went in already?

6 THE COURT: Yes.

7 MR. BREITBART: I thought we agreed that nothing
8 was going to go in unless we had all agreed to it. You had
9 asked that and we did not consent to anything going in until
10 it was shown to counsel first.

11 THE COURT: Then I apologize, counsel, but my
12 understanding was that you wanted to put on the record and I
13 did not want the jury to spend an hour without them or an
14 hour and a half without them.

15 MR. BREITBART: On the contrary, what we wanted
16 was an opportunity to see that the exhibits that were sent
17 in conformed to the request by the jurors.

18 THE COURT: Well, you just heard so did it not
19 conform?

20 MR. BREITBART: I don't know unless I look at
21 them. I don't know what went in. I know what numbers went
22 in. I don't know what went in. Objection, your Honor.

23 COURT CLERK: Would you like me to read the names
24 of the exhibits that went in or would you like to see the
25 exhibit list?

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1 MR. BREITBART: Yes, I would like to see it.

2 (Published to counsel.)

3 THE COURT: Okay, if I can read my writing I will
4 say rather than read back Mr. Bandler's summation, I will
5 list the exhibit Mr. Bandler specifically referred to in his
6 closing as to various counts. A number of counts rests on
7 numerous exhibits so there will be no specific number
8 supplied. Okay?

9 MR. KUBY: Yes.

10 (Jury entering.)

11 COURT CLERK: The jury has entered and is seated.

12 THE COURT: Okay, so let's see, we sent in the
13 exhibits and then the next note you wanted read back of the
14 definition of falsifying business records and read back from
15 Mr. Bandler's summation regarding the counts and the
16 exhibits that match up and then a definition of Criminal
17 Impersonation in the Second Degree and Forgery in the Third
18 Degree and I know you just sent out another request for a
19 definition but I want to consult with counsel first and
20 maybe you're asking for too much at once. It will be easier
21 one at a time but you can tell me. I'll send you back into
22 the room, if you want it right away that will be fine, too.

23 So let me start with the request for the
24 summation. Rather than read back from summations, at this
25 point I'm going to list the exhibits Mr. Bandler

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1 specifically referred to in his closing as to various of the
2 counts.

3 I should say that a number of the counts rests on,
4 according to his argument, numerous exhibits so there was no
5 and there will be no specific number supplied as to those
6 counts.

7 So Count 5, exhibit 60.

8 Counts 7 and 8, exhibit 10-E.

9 Counts 10 and 11, 10-I.

10 13 and 14, 10-M, M as in Mary.

11 16 and 17, 10-L as in Linda.

12 19 and 20, 10-R.

13 23, 60.

14 25 and 27, 12-B as in boy.

15 29 and 31, 12-N as in Nancy.

16 33 and 35, 12-P as in Peter.

17 37 and 38, 12-ZZ.

18 42 and 44, 60.

19 46 and 47, 14-A as in apple.

20 And 50 is exhibit 60.

21 Falsifying business records. What I'm going to do
22 is give you the short form without all the footnotes and
23 definitions, okay.

24 A person is guilty of falsifying business records
25 as a felony when he makes or causes a false entry in the

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1 business records of an enterprise, and when his intent to
2 defraud includes an intent to commit another crime
3 specifically as charged here, Criminal Impersonation in the
4 Second Degree or Forgery in the Third Degree, or to aid or
5 conceal the commission thereof. Slow enough.

6 Criminal Impersonation in the Second Degree, a
7 person is guilty of Criminal Impersonation in the Second
8 Degree when he knowingly impersonates a specific other
9 person, other real person, I should say, and acts in such
10 assumed character with intent to obtain a benefit or to
11 injure or defraud another.

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

16 So let me send you back in and send me a note if
17 you want the other definition right away otherwise I'll wait
18 for your command.

19 (The jury retired to the jury room to
20 continue their deliberations.)

21 (Time noted: 2:47 p.m.)

22 THE COURT: The latest note this is Court exhibit
23 IX, ask for a definition of Aggravated Harassment in the
24 Second Degree.

25 Maybe you better show it to Mr. Breitbart since he

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1 never believes me.

2 (Published to defense counsel.)

3 * * *

4 THE COURT: Case on trial. Counsel and the
5 defendant are present. The jurors are not present.

6 I have Court exhibit X where they ask for all
7 e-mail charts and then they say example and they have a
8 picture but it's an example compiled by Briglia so it looks
9 like they want all e-mail charts to me.

10 MR. KUBY: Okay.

11 THE COURT: Case on trial. The defendant and
12 counsel are present. The jurors are not yet present. They
13 have, just limiting myself to substantive matters, they've
14 asked for the aggravated harassment definition so I think we
15 agreed but I think it was off the record that I would read
16 back the definition previously.

17 MR. KUBY: Correct.

18 THE COURT: So shall we bring in the jurors.

19 (Jury entering.)

20 COURT CLERK: The jurors have entered and is being
21 seated.

22 THE COURT: Okay, let me just say as a
23 housekeeping matter, we've ordered your coffee so I'm
24 assuming you want to stay after five but your wish is my
25 command.

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1 Well, it's 4:25, you tell me within reason.

2 SWORN JUROR: Right now we're feeling up to
3 staying.

4 THE COURT: Whatever. It's none of my business
5 and I've never been married so optimism is not high in my
6 list. That old expression the triumph of hope over
7 experience, so it's really up to you. You let me know
8 within reason because if you're looking too pale and tired,
9 I don't want you to be rushing along, this is too important.

10 So you've asked for the definition of aggravated
11 harassment.

12 A person is guilty of Aggravated Harassment in the
13 Second degree when, with intent to harass, annoy, threaten,
14 or alarm another person, he communicates with a person
15 anonymously or otherwise by telephone, telegraph, mail, or
16 any other form of written communication, in a manner likely
17 to cause annoyance or alarm.

18 So the intent to harass, annoy, threaten, or
19 alarm, or communicate in writing and in a manner likely to
20 cause annoyance or alarm.

21 The jury may retire and I stand at your service.

22 (The jury retired to the jury room to
23 continue their deliberations.)

24 (Time noted: 4:32 p.m.)

25 MR. KUBY: Just so the record is clear, my

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1 agreement that that is what the court should do is without
2 prejudice to my original and repeated disagreement with the
3 fact that I disagree with that charge but clearly given the
4 charge you gave, your conduct in repeating it was totally
5 appropriate.

6 * * *

7 THE COURT: Case on trial. Counsel and the
8 defendant are present. The jurors are not yet present.
9 They have sent us a note that they've reached a verdict.
10 Shall we bring them in and take the verdict,
11 please.

12 (Jury entering.)

13 COURT CLERK: The jury has entered and is properly
14 seated.

15 Will the foreperson please rise.

16 Has the jury reached a verdict?

17 SWORN JUROR: We have.

18 COURT CLERK: Madam foreperson, how do you say to
19 the first count of the indictment charging the defendant,
20 Raphael Golb, under indictment number 2721 of 2009 with the
21 crime of Identity Theft in the Second Degree, do you find
22 the defendant guilty or not guilty?

23 SWORN JUROR: Guilty.

24 COURT CLERK: And as to the second count of that
25 indictment charging the defendant with the crime of Identity

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1 Theft in the Second Degree, how do you find the defendant,
2 guilty or not guilty?

3 SWORN JUROR: Guilty.

4 COURT CLERK: As to the third count of that
5 indictment charging the defendant with the crime of
6 Aggravated Harassment in the Second Degree, how do you find
7 the defendant, guilty or not guilty?

8 SWORN JUROR: Guilty.

9 COURT CLERK: As to Count 5 of the indictment
10 charging the defendant with the crime of Criminal
11 Impersonation in the Second Degree, how do you find the
12 defendant, guilty or not guilty?

13 SWORN JUROR: Guilty.

14 COURT CLERK: As to Count 7 of the indictment
15 charging the defendant with the crime of Criminal
16 Impersonation in the Second Degree, how do you find the
17 defendant, guilty or not guilty?

18 SWORN JUROR: Guilty.

19 COURT CLERK: As to Count 8 of the indictment
20 charging the defendant with the crime of Forgery in the
21 Second Degree, how do you find the defendant, guilty or not
22 guilty?

23 THE COURT: Excuse me, that's third degree,
24 Patricia.

25 COURT CLERK: Sorry, Judge.

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1 With the crime of Forgery in the Third Degree, how
2 do you find the defendant, guilty or not guilty?

3 SWORN JUROR: Guilty.

4 COURT CLERK: As to Count 10 of the indictment
5 charging the defendant with the crime of Criminal
6 Impersonation in the Second Degree, how do you find the
7 defendant, guilty or not guilty?

8 SWORN JUROR: Guilty.

9 COURT CLERK: As to Count 11 of the indictment
10 charging the defendant with the crime of Forgery in the
11 Third Degree, how do you find the defendant, guilty or not
12 guilty?

13 SWORN JUROR: Guilty.

14 COURT CLERK: As to Count 13 of the indictment
15 charging the defendant with the crime of Criminal
16 Impersonation in the Second Degree, how do you find the
17 defendant, guilty or not guilty?

18 SWORN JUROR: Guilty.

19 COURT CLERK: As to Count 14 of the indictment
20 charging the defendant with the crime of Forgery in the
21 Third Degree, how do you find the defendant, guilty or not
22 guilty?

23 SWORN JUROR: Guilty.

24 COURT CLERK: As to Count 16 of the indictment
25 charging the defendant with the crime of Criminal

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1 Impersonation in the Second Degree, how do you find the
2 defendant, guilty or not guilty?

3 SWORN JUROR: Guilty.

4 COURT CLERK: As to Count 17 of the indictment
5 charging the defendant with the crime of Forgery in the
6 Third Degree, how do you find the defendant, guilty or not
7 guilty?

8 SWORN JUROR: Guilty.

9 COURT CLERK: As to Count 19 of the indictment
10 charging the defendant with the crime of Criminal
11 Impersonation in the Second Degree, how do you find the
12 defendant, guilty or not guilty?

13 SWORN JUROR: Guilty.

14 COURT CLERK: As to Count 20 of the indictment
15 charging the defendant with the crime of Forgery in the
16 Third Degree, how do you find the defendant, guilty or not
17 guilty?

18 SWORN JUROR: Guilty.

19 COURT CLERK: As to Count 23 of the indictment
20 charging the defendant with the crime of Criminal
21 Impersonation in the Second Degree, how do you find the
22 defendant, guilty or not guilty?

23 SWORN JUROR: Guilty.

24 COURT CLERK: As to Count 25 of the indictment
25 charging the defendant with the crime of Criminal

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1 Impersonation in the Second Degree, how do you find the
2 defendant, guilty or not guilty?

3 SWORN JUROR: Guilty.

4 COURT CLERK: As to Count 27 of the indictment
5 charging the defendant with the crime of Forgery in the
6 Third Degree, how do you find the defendant, guilty or not
7 guilty?

8 SWORN JUROR: Guilty.

9 COURT CLERK: As to Count 29 of the indictment
10 charging the defendant with the crime of Criminal
11 Impersonation in the Second Degree, how do you find the
12 defendant, guilty or not guilty?

13 SWORN JUROR: Guilty.

14 COURT CLERK: As to Count 31 of the indictment
15 charging the defendant with the crime of Forgery in the
16 Third Degree, how do you find the defendant, guilty or not
17 guilty?

18 SWORN JUROR: Guilty.

19 COURT CLERK: As to Count 33 of the indictment
20 charging the defendant with the crime of Criminal
21 Impersonation in the Second Degree, how do you find the
22 defendant, guilty or not guilty?

23 SWORN JUROR: Guilty.

24 COURT CLERK: As to Count 35 of the indictment
25 charging the defendant with the crime of Forgery in the

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1 Third Degree, how do you find the defendant, guilty or not
2 guilty?

3 SWORN JUROR: Guilty.

4 COURT CLERK: As to Count 37 of the indictment
5 charging the defendant with the crime of Criminal
6 Impersonation in the Second Degree, how do you find the
7 defendant, guilty or not guilty?

8 SWORN JUROR: Guilty.

9 COURT CLERK: Count 39 of the indictment charging
10 the defendant with the crime of Forgery in the Third Degree,
11 how do you find the defendant, guilty or not guilty?

12 SWORN JUROR: Guilty.

13 COURT CLERK: Count 40 of the indictment charging
14 the defendant with the crime of Aggravated Harassment in the
15 Second Degree, how do you find the defendant, guilty or not
16 guilty?

17 SWORN JUROR: Guilty.

18 COURT CLERK: Count 42 of the indictment charging
19 the defendant with the crime of Criminal Impersonation in
20 the Second Degree, how do you find the defendant, guilty or
21 not guilty?

22 SWORN JUROR: Guilty.

23 COURT CLERK: Count 44 of the indictment charging
24 the defendant with the crime of Criminal Impersonation in
25 the Second Degree, how do you find the defendant, guilty or

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1 not guilty?

2 SWORN JUROR: Guilty.

3 COURT CLERK: Count 46 of the indictment charging
4 the defendant with the crime of Criminal Impersonation in
5 the Second Degree, how do you find the defendant, guilty or
6 not guilty?

7 SWORN JUROR: Guilty.

8 COURT CLERK: Count 47 of the indictment charging
9 the defendant with the crime of Forgery in the Third Degree,
10 how do you find the defendant, guilty or not guilty?

11 SWORN JUROR: Guilty.

12 COURT CLERK: Count 48 of the indictment charging
13 the defendant with the crime of Aggravated Harassment in the
14 Second Degree, how do you find the defendant, guilty or not
15 guilty?

16 SWORN JUROR: Guilty.

17 COURT CLERK: Count 50 of the indictment charging
18 the defendant with the crime of Criminal Impersonation in
19 the Second Degree, how do you find the defendant, guilty or
20 not guilty?

21 SWORN JUROR: Not guilty.

22 COURT CLERK: And Count 51 of the indictment
23 charging the defendant with the crime of Unauthorized use of
24 a Computer, how do you find the defendant, guilty or not
25 guilty?

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1 SWORN JUROR: Guilty.

2 COURT CLERK: Members of the jury, listen to your
3 verdict as it stands recorded. You and each of you say
4 through your foreperson that you find the defendant, Raphael
5 Golb, guilty of Count 1 charging him with the crime of
6 Identity Theft in the Second Degree. Count 2 charging him
7 with Identity Theft in the Second Degree. Count 3, charging
8 him with Aggravated Harassment in the Second Degree. Count
9 5, charging him with Criminal Impersonation in the Second
10 Degree. Count 7, charging Criminal Impersonation in the
11 Second Degree. Count 8, charging Forgery in the Third
12 Degree. Count 10, charging Criminal Impersonation in the
13 Second Degree. Count 11, charging Forgery in the Third
14 Degree. Count 13, charging Criminal Impersonation in the
15 Second Degree. Count 14, charging Forgery in the Third
16 Degree. Count 16, charging Criminal Impersonation in the
17 Second Degree. Count 17, charging Forgery in the Third
18 Degree. Count 19, charging Criminal Impersonation in the
19 Second Degree. Count 20, charging Forgery in the Third
20 Degree. Count 23, charging Criminal Impersonation in the
21 Second Degree. Count 25, charging Criminal Impersonation in
22 the Second Degree. Count 27 charging Forgery in the Third
23 Degree. Count 29 charging Criminal Impersonation in the
24 Second Degree. Count 31 charging Forgery in the Third
25 Degree. Count 33 charging Criminal Impersonation in the

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1 Second Degree. Count 35 charging Forgery in the Third
2 Degree. Count 37 charging Criminal Impersonation in the
3 Second Degree. Count 39 charging Forgery in the Third
4 Degree. Count 40 charging Aggravated Harassment in the
5 Second Degree. Count 42 charging Criminal Impersonation in
6 the Second Degree. Count 44 charging Criminal impersonation
7 in the Second Degree. Count 46, charging Criminal
8 Impersonation in the Second Degree. Count 47 charging
9 criminal -- sorry, Count 47 charging Forgery in the Third
10 Degree. Count 48 charging Aggravated Harassment in the
11 Second Degree. Count 51 charging Unauthorized use of a
12 Computer and that you find the defendant not guilty of Count
13 50, Criminal Impersonation in the Second Degree and so say
14 you all.

15 Would either side like the jury polled?

16 MR. BRETTBART: I would like the jury polled.

17 COURT CLERK: Juror number one, ma'am, are those
18 your verdicts?

19 SWORN JUROR: Yes.

20 COURT CLERK: Juror number two, sir, are those
21 your verdicts?

22 SWORN JUROR: Yes.

23 COURT CLERK: Juror number 3, sir, are those your
24 verdicts?

25 SWORN JUROR: Yes.

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1 COURT CLERK: Juror number four, ma'am, are those
2 your verdicts?

3 SWORN JUROR: Yes.

4 COURT CLERK: Juror number five, sir, are those
5 your verdicts?

6 SWORN JUROR: Yes.

7 COURT CLERK: Juror number six, ma'am, are those
8 your verdicts?

9 SWORN JUROR: Yes.

10 COURT CLERK: Juror number seven, ma'am, are those
11 your verdicts?

12 SWORN JUROR: Yes.

13 COURT CLERK: Juror number eight, ma'am, are those
14 your verdicts?

15 SWORN JUROR: Yes.

16 COURT CLERK: Juror number nine, ma'am, are those
17 your verdicts?

18 SWORN JUROR: Yes.

19 COURT CLERK: Juror number ten, sir, are those
20 your verdicts?

21 SWORN JUROR: Yes.

22 COURT CLERK: Juror number eleven, ma'am, are
23 those your verdicts?

24 SWORN JUROR: Yes.

25 COURT CLERK: And juror number twelve, are those

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1 your verdicts, sir?

2 SWORN JUROR: Yes.

3 COURT CLERK: The jury has been polled.

4 THE COURT: Okay, jurors, thank you. I won't make
5 a speech, I will come in the back in just a couple of
6 minutes if you can bear with me for a few minutes. I won't
7 keep you long. I know you are all anxious to get out. If
8 we can escort the jurors to the jury room.

9 (Jurors exit courtroom at 5:30 p.m.)

10 THE COURT: Mr. Bandler, sir, is there an
11 application by the People at this time?

12 MR. BANDLER: Increase in bail?

13 THE COURT: Yes, I don't know what other
14 application you might make. You don't have one, you don't
15 have one. I'm just asking.

16 MR. BANDLER: Not that I'm aware of, your Honor.

17 THE COURT: Okay, November 18th for sentence.

18 9:30.

19 MR. KUBY: Fine, Judge. Thank you.

20 COURT CLERK: 11/18.

21 (Proceedings concluded.)

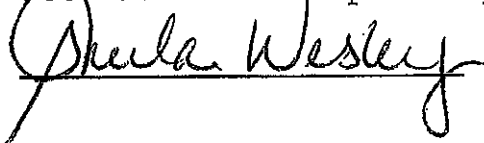
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23 I, Sheila Wesley, Senior Court Reporter, of the State of
24 New York, do hereby certify that the foregoing is a true and
accurate transcript of my stenographic notes.

25



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Senior Court Reporter