

Nos. 16-50398, 16-50443, 17-50119

United States Court of Appeals
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE

v.

DARREN DAVID CHAKER,
DEFENDANTS-APPELLANT

*On Appeal from the United States District Court
for the Southern District of California
15CR7012-LAB*

SUPPLEMENTAL EXCERPTS OF RECORD
VOLUME I OF III

ALANA W. ROBINSON
Acting United States Attorney

HELEN H. HONG
*Assistant U.S. Attorney
Chief, Appellate Section
Criminal Division*

*880 Front St., Rm. 6293
San Diego, CA 92101
(619) 546-6990*

Edited to provide additional information.

TABLE OF CONTENTS

Page

Volume I

Excerpts Reporter's Transcript of Bond Revocation Hearing (SD Tex.) 11/6/13	1
Exhibits Submitted at Evidentiary Hearing on Bond Revocation (SD Tex.)	206

Volume II

(Continued) Exhibits Submitted at Evidentiary Hearing on Bond Revocation (SD Tex.)	209
Excerpts Reporter's Transcript of Sentencing Hearing (SD Tex.) 12/17/13	260
Defendant's Motion to Dismiss the Petition and Amended Petition	266
Excerpts Reporter's Transcript of OSC-Contested Hearing 3/23/15	274
Government's Motion to Dismiss the Petition 7/14/15 (R 77)	399

Volume III (Under Seal)

Government's Exhibit Supervised Release Revocation Hearing 3/23/15 (R 30-3)	402
--	-----

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	CASE NO. 4:12-cr-168-1
	§	HOUSTON, TEXAS
VERSUS	§	WEDNESDAY,
	§	NOVEMBER 6, 2013
DARREN DAVID CHAKER	§	9:57 A.M. TO 11:37 A.M.

BOND REVOCATION HEARING

BEFORE THE HONORABLE NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	SEE NEXT PAGE
FOR THE DEFENDANT:	SEE NEXT PAGE
COURTROOM DEPUTY:	SHELIA ASHABRANNER
COURT RECORDER:	A. WILLIAMS

THIS TRANSCRIPT HAS BEEN FURNISHED AT PUBLIC EXPENSE UNDER THE CRIMINAL JUSTICE ACT AND MAY BE USED ONLY AS AUTHORIZED BY COURT ORDER. UNAUTHORIZED REPRODUCTION WILL RESULT IN AN ASSESSMENT AGAINST COUNSEL FOR THE COST OF AN ORIGINAL AND ONE COPY AT THE OFFICIAL RATE. General Order 94-15, United States Court, Southern District of Texas.

TRANSCRIPTION SERVICE BY:

JUDICIAL TRANSCRIBERS OF TEXAS, LLC
935 ELDRIDGE ROAD, #144
SUGAR LAND, TEXAS 77478
281-277-5325 (office) ♦ 281-277-0946 (fax)
www.judicialtranscribers.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES:

For the Government:

U.S. ATTORNEY'S OFFICE
Carolyn Ferko, Esq., AUSA
Sharad Khandelwal, Esq., AUSA
1000 Louisiana, Ste. 2300
Houston, TX 77002
(713) 567-9562

For the Defendant:

James Alston, Esq.
Attorney at Law

1 HOUSTON, TEXAS; WEDNESDAY, NOVEMBER 6, 2013, 9:57 A.M.

2 THE COURT: This is the case of United States versus
3 Darren Chaker. Would counsel state their appearances, please?

4 MS. FERKO: Your Honor, Carolyn Ferko for the
5 United States.

6 Mr. KHANDELWAL: Sharad Khandelwal for the
7 United States.

8 Mr. ALSTON: Your Honor, James Alston for Darren
9 Chaker.

10 THE COURT: Okay. And Mr. Chaker is here. Let's
11 put him over by the lawyer and undo one of his hands for us,
12 please.

13 (Pause.)

14 THE COURT: Okay. There are a number of things that
15 were originally scheduled for today, but -- and most
16 prominently the bond hearing. I have gotten some *ex parte*
17 communications, however, and so I need to deal with those
18 first.

19 MS. FERKO: Yes, Your Honor.

20 THE COURT: And we also have a -- I want to mention
21 on the record that I have recently received a letter from a
22 Nicole Chaker asking me to dismiss the charges against
23 Mr. Chaker. I'm not sure if that's been filed yet.

24 MS. ASHABRANNER: It has.

25 THE COURT: Okay. It's Mr. Chaker's son -- mother,

1 rather. And then we have some other communications I really
2 can't get into at the moment.

3 I would like to talk to Mr. Alston and Mr. Chaker
4 privately.

5 MS. FERKO: No problem, Your Honor.

6 THE COURT: It'll be on the Record.

7 MS. FERKO: Yes, Your Honor.

8 THE COURT: And then we'll invite you back in and
9 we'll figure out where we are.

10 MS. FERKO: Okay. No problem. And, Your Honor, the
11 Government just wanted to say we also got a copy of that
12 letter that Mr. Chaker's mother sent to you. She cc'd us. I
13 received it last night.

14 THE COURT: Okay. Fair enough.

15 MS. FERKO: Thank you, Your Honor.

16 (Court confers with Case Manager.)

17 THE COURT: All right. Mr. Chaker and Mr. Alston,
18 why don't you come forward and let me talk to you.

19 I see Probation is here.

20 PROBATION OFFICER: Just observing, Your Honor.

21 THE COURT: Okay. Might have a question or two for
22 you.

23 PROBATION OFFICER: Okay.

24 THE COURT: The first part of this hearing, however,
25 is to hear from both Mr. Chaker and Mr. Alston.

1 Mr. Chaker, to recap, has had four lawyers in this
2 case. The case was actually filed -- that is the indictment
3 was filed in March of 2012, March 22. And Mr. Chaker was --
4 retained a fellow named Guy Womack who served as a lawyer in
5 the case through arraignment, initial appearance, pretrial
6 conference, and at that conference on August 21, 2012, asked
7 to be relieved.

8 I appointed Mr. Bennett, Mark Bennett, who appeared
9 for Mr. Chaker through the bulk of pretrial and trial. And he
10 filed a motion for a new trial. But then Mr. Chaker had a
11 falling out of some sort with Mr. Bennett and asked that
12 Mr. Bennett be removed. And I think Mr. Bennett may have
13 asked, also, because of a conflict that had developed. And so
14 Mr. Bennett was removed May 14th, 2013, after about nine
15 months.

16 I appointed Mr. Essmeyer on May 17th. Mr. Essmeyer
17 filed a reply to the second amended motion for a new trial and
18 objections to the PSR, which by then had been published to the
19 parties. Mr. Essmeyer also handled the revocation proceeding
20 with Magistrate Judge George Hanks in September, 2013. Sought
21 motion -- filed a motion for a subpoena at government expense
22 on October 1 and then filed a motion for leave to withdraw on
23 October 2nd, 2013. That motion was granted. Materials were
24 received, which I did not look at. I think we had a hearing
25 about that. And so Mr. Essmeyer served as counsel from May

1 17th to October 2nd, about five months.

2 Mr. Alston then was appointed on October 3rd and he
3 filed his response to the Government's motion to revoke bond,
4 which had been filed in the interim because Mr. Chaker,
5 according to the Government, had not disclosed a particular --
6 a second or third identity that he had obtained.

7 Specifically, Hunter, [REDACTED]. Editor: "D. David Hunter" to be
8 exact.

9 Then Mr. Alston's response to the Government's
10 motion to revoke bond was filed on November 4th, but he filed
11 -- he, being Mr. Alston, filed a motion to withdraw as counsel
12 on November 5th. Mr. Alston served for one month.

13 That's the history of appointment of counsel in this
14 case after the Guy Womack resignation.

15 Mr. Chaker, I'd like to figure out with you or find
16 out from you what is going on regarding the lawyers and
17 Mr. Alston, in particular.

18 I should note that I have a document number 272
19 which was filed October 24th, 2013. It's from Mr. Chaker, and
20 I believe is addressed to me. It says, Honorable Nancy Glass,
21 but then below it says, Dear Judge Atlas, so I think it is
22 intended for me. This is a multi-page, seven page letter that
23 -- six page letter with some attachment that Mr. Chaker has
24 sent me directly, concerning issues he had regarding his
25 current attorney.

And I also got a letter -- several letters from you,

1 Mr. Chaker, that were sent in October that are as follows.
2 There's the October 5th letter, separate from the one I just
3 described, to -- complaining about Mr. Alston. And this
4 document is 264 in the record. It's expressing that there's a
5 conflict and requesting a hearing without delay. Then there
6 is a letter that we received on October 11th, dated October
7 8th. Again, to judge -- or Honorable Nancy Glass, but I think
8 that's intended to be me. And this is a letter saying please
9 accept this as a revocation of my preceding letter indicating
10 that a conflict exists. Apparently, there was a
11 miscommunication, so no hearing was held in the October
12 period. As I've said, October 24th is when I then received
13 still another letter saying, yes, now there is a problem
14 because of subpoenas not being issued.

15 So, Mr. Chaker, why don't you tell me a little bit
16 about your concerns so that I can hear them from you directly?
17 Not in writing, but right here. I'm going to put you under
18 oath because there's been a lot of back and forth and I think
19 it just would be safer.

20 Would you raise your right hand?

21 (Defendant sworn.)

22 THE COURT: Okay. Let's talk about your conflicts
23 with Mr. Alston.

24 DEFENDANT CHAKER: I would ask that Pretrial and
25 Probation to be excused? So only that Pretrial --

1 THE COURT: No, they cannot.

2 DEFENDANT CHAKER: Okay. Well, as for the bond
3 hearing --

4 THE COURT: Because they're part of the Court.

5 DEFENDANT CHAKER: Okay. But they will not discuss
6 things with the Government?

7 THE COURT: No, it's sealed. They won't be allowed
8 to. But they're allowed to know this information.

9 DEFENDANT CHAKER: Okay. There are several
10 different things where at the very beginning of my encounter
11 with Mr. Alston I thought there was going to be a relationship
12 and there was a run-in.

13 THE COURT: One day later. He was appointed, when,
14 on the 5th of October?

15 DEFENDANT CHAKER: Yes. Correct.

16 THE COURT: And on the 5th of October you sent me a
17 letter complaining about him.

18 DEFENDANT CHAKER: Correct. Because it appeared
19 that he was very embracing towards taking notes and following
20 different paths of looking into matters concerning either
21 working with the Government and/or defending myself in the
22 bond hearing. As well as entertaining a motion for new trial.
23 And I went over several different things with him and he took
24 notes and I thought he'd be working on it.

25 What kind of set me off is that on the 23rd that he

1 had requested a continuance and I had asked him not to till we
2 meet again so I know exactly what he wants a continuance for.
3 And then the -- which is why you received a letter on the 24th
4 of October. I wasn't happy with a continuance because the
5 crux of the matter is that I violated a term of my release, of
6 my conditions and there was no such term in my release that I
7 disclose a sealed name change. Only that I reside in a
8 geographic area, I appear for court, and I'm employed or go to
9 school full-time. And I complied with all three of those
10 conditions. I was never interviewed by Probation so I didn't
11 -- I never omitted that name.

12 THE COURT: You were never interviewed by any
13 Pretrial Services people?

14 DEFENDANT CHAKER: By -- Yeah, by Pretrial, but not
15 by Probation Department.

16 THE COURT: But Probation is -- Okay, got it.

17 DEFENDANT CHAKER: Yes, ma'am. And so when I -- you
18 know, he sent me a copy of his petition or his reply to the
19 Court to the Government's request for my relocation. I looked
20 at it and there's nothing in there that could not have been
21 raised on the 23rd. And there's nothing in there that this
22 Court did not know about. Specifically, the Court knew that I
23 made every single court appearance and that I complied with
24 all the previous conditions. They knew that, but they still
25 revoked my -- my --

1 THE COURT: Yes.

2 DEFENDANT CHAKER: -- freedom.

3 THE COURT: For reasons stated in the order.

4 DEFENDANT CHAKER: Correct.

5 THE COURT: For failure to disclose an identity you
6 had on a passport.

7 DEFENDANT CHAKER: Correct. And which Mr. Alston
8 correctly stated that I testified I did not have a passport.
9 I have not been out of the country since I think -- I think
10 2008 or 2009 when I went, I think, to the Bahamas on a one-day
11 trip.

12 THE COURT: Okay. But my question is what has
13 Mr. Alston not done that you think is important? And I'll
14 mention that you -- your letter of -- your letter of October
15 24th talks about subpoenas that you think should have been
16 issued.

17 DEFENDANT CHAKER: Correct. I was under the
18 impression that -- that this information, Pretrial was
19 notified about my sealed name on July 1st per email from a
20 Pretrial Services Officer Mary Robano (phonetic). I notified
21 her. I didn't know she contacted by Nevada Attorney General's
22 Office. I notified her in an email on July 12th. The U.S.
23 Attorney didn't move to revoke my -- my -- my bond status
24 until August 28th, which is the same day that the U.S.
25 Attorney visited this law firm's web site. They supposed that

1 I had created this blog for this law firm about them hiring a
2 person who was arrested for sexual misconduct with a minor.
3 Well, the same day that blog went up the U.S. Attorney's
4 Office visited -- I can see it -- visited the blog 23 times.
5 The following morning a sealed petition was filed. And, of
6 course, that petition was to revoke my bond status, which I
7 had no issues with for 16 months. So I think it's rather
8 vindictive for them to know about the name. Pretrial didn't
9 move for my bond to be revoked, but the U.S. Attorney, be it a
10 favor or being -- just being fed up with me moved for my
11 revocation two months after and the day after visiting this
12 blog.

13 What are the things that Mr. Alston has not done
14 specifically? He's not interviewed my mother. He's not
15 interviewed my sister. He's asked my sister to prepare -- my
16 sister, since she is an attorney, to prepare a declaration on
17 her own behalf.

18 I have a right to have live witnesses here. He did
19 not state in the -- I have 17 declarations from people in my
20 paternity case in San Diego.

21 THE COURT: What does your paternity case have to do
22 with this?

23 DEFENDANT CHAKER: Well, the paternity case, Ms.
24 Ferko was notified by the attorney who represents the mother
25 of my son, who absconded with my son in July. She was

1 notified by this attorney that I was going to abscond, that I
2 was going to leave the country. Her name is Susan Adcock
3 (phonetic). Ms. Adcock did not present this revelation to the
4 Nevada investigator. Did not present this revelation to the
5 police. Did nothing. Only --

6 THE COURT: What did they have to do with this case?

7 DEFENDANT CHAKER: Well, they wanted me revoked.
8 They wanted my custody revoked.

9 THE COURT: Yeah, but they have nothing to do with
10 -- I couldn't care less what those people say.

11 DEFENDANT CHAKER: Okay. Well, there were 17
12 declarations prepared in connection with that case.
13 Basically, my friends, neighbors, restaurant managers stating
14 that I'm a member of the community; they've seen me with my
15 son; there's never been an issue, etcetera. I wanted those
16 declarations submitted to show the Court I'm stable and that
17 there's -- I have declarations from people who live above me,
18 next door to me, below me in an apartment have never heard any
19 yelling, screaming. I've never had the police at my house.
20 Nothing at all. I wanted those as an inkling to the Court to
21 show I don't do anything.

22 THE COURT: Okay. Okay. So is it that Mr. Alston
23 didn't do -- didn't get all this material?

24 DEFENDANT CHAKER: Didn't interview my mom, my
25 sister. Didn't try to get the live witnesses. Did not

1 interview or get a declaration from a San Diego attorney named
2 Jonathan Montag. Jonathan Montag is the attorney that
3 arranged with DSS, Diplomatic Security Service, to get my
4 alternate passport.

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

1
2 THE COURT: Okay, fine. But what does that have to
3 do with us?

4 DEFENDANT CHAKER: What is has to do with is that --

5 THE COURT: On your relationship with Mr. Alston,
6 which is really my question. You're telling all this stuff.
7 You think it's going to affect me, but I'm trying to explain
8 to you I'm just today -- The Government is entitled to hear
9 whatever it is you think makes you bond worthy. So don't
10 waste your time giving me all this detail because it's not in
11 evidence for the purposes of the hearing. It's like I didn't
12 even hear you.

13 DEFENDANT CHAKER: Correct.

14 THE COURT: Okay. Just so you understand the rules.

15 DEFENDANT CHAKER: No, I understand that.

16 THE COURT: It's only fair that the Government be
17 here. And so to the extent you want it considered for the
18 purposes of bond you will have the right to testify and you
19 have the right to explain any and all of this when the
20 Government is here. Okay? Not without the Government.

21 So anything you've told me here on this sealed
22 record is not going to be considered in the bond hearing. Am
23 I clear?

24 DEFENDANT CHAKER: I understand that. I understand.

25 THE COURT: I want you to understand. You're a very

1 THE COURT: I'm sorry,

2 DEFENDANT CHAKER: I have an alternate name. I have
3 an alternate social security number.

4 THE COURT: Right. So when you're in Nevada or
5 outside of my proceeding here you use

6 DEFENDANT CHAKER: On a limited basis, yes. I don't
7 have --

8 THE COURT: Okay. So you have the
9 persona, you have the Del Niro persona, and you have the
10 Darren Chaker persona, identity?

11 DEFENDANT CHAKER: Correct. It's my -- Correct.

12 THE COURT: Okay. What did Mr. Alston not do that
13 makes you -- you know, tell me more about what he's done that
14 you think is creating a conflict.

15 DEFENDANT CHAKER: Further, he did not side, which I
16 think is very important -- Right now I'm at a level 22 in my
17 Pretrial Services report, mainly because of this purported
18 amount of loss.

19 THE COURT: Are you talking about the -- now you're
20 talking about the presentence report?

21 DEFENDANT CHAKER: Correct. And that was argued in
22 the Government's motion to revoke my bond. I was able to find
23 a case, *U.S. versus Randall*, 157 F.3d, 328. It's a Fifth
24 Circuit case which is exactly on point where the defendant
25 filed a fraudulent bankruptcy petition and he had -- he was

1 sentenced and the court lumped the foreclosure amount into his
2 PSR and he was sentenced based on that.

3 THE COURT: Who has filed responses to the PSR so
4 far for you?

5 DEFENDANT CHAKER: Nobody.

6 THE COURT: Okay. So what are you talking about?

7 DEFENDANT CHAKER: Well --

8 THE COURT: Hear me out.

9 DEFENDANT CHAKER: Yes.

10 THE COURT: If you want something like that
11 considered and put in for you on your lawyer's -- through your
12 lawyer, it hasn't been denied you yet. Because your response
13 to the PSR has been extended and there is no response yet, no
14 objections or clarifications filed yet.

15 DEFENDANT CHAKER: Correct. Well, what I'm saying
16 is that the Government, they said because my -- because my
17 points put me in four plus years range that I'm definitely a
18 flight risk.

19 THE COURT: Okay.

20 DEFENDANT CHAKER: And now that I know that, now I'm
21 going to somehow use this passport, which I don't have, to
22 flee the country.

23 THE COURT: Well, you were issued one. You're
24 saying you don't physically have it.

25 DEFENDANT CHAKER: I don't have it and I signed that

1 with the Pretrial Services that I do not have a passport and
2 that I will not -

3 THE COURT: Right. And you know who else said that?
4 Was Mr. Stanford and -- Allen Stanford.

5 DEFENDANT CHAKER: Oh --

6 THE COURT: There are other people who say they
7 don't and then, guess what? Those passports are found later.

8 DEFENDANT CHAKER: Correct.

9 THE COURT: And it doesn't reflect badly. So that's
10 part of the reaction that the Government has 'cause it's not
11 just about you. There are patterns that people see when
12 they're in the criminal law --

13 DEFENDANT CHAKER: I understand.

14 THE COURT: -- process. So you need to understand
15 risk is what we're talking about.

16 DEFENDANT CHAKER: I understand.

17 THE COURT: Okay. So, Mr. -- Have you -- I got your
18 letter from the 24th of October.

19 DEFENDANT CHAKER: Correct.

20 THE COURT: Is that something that the Government is
21 supposed to see?

22 DEFENDANT CHAKER: Uh --

23 THE COURT: I don't think they have. It's sealed.

24 DEFENDANT CHAKER: I don't think so, no, because
25 that's related to raising a conflict. And my purpose about

1 raising the points is that the Government, to revoke my bond,
2 said, well, look at where his points are. And I asked
3 Mr. Alston, can you please cite this case because it would
4 deduct 10 points off my PSR, therefore, bringing me within
5 probation 18-month range. So -- because I would not have that
6 much more exposure unless a flight risk.

7 THE COURT: And what did he say?

8 DEFENDANT CHAKER: Well, he said --

9 THE COURT: Has he said anything yet?

10 DEFENDANT CHAKER: He didn't do it because he sent
11 me the text of his motion and he did not cite the case.

12 THE COURT: Oh, he sent you a draft? Not of the
13 motion, but of the response to the PSR, correct?

14 DEFENDANT CHAKER: No, he sent me a response to the
15 Government's request to revoke my bond. What he just filed a
16 few days ago. Because --

17 THE COURT: Okay. And you wanted that withdrawn, so
18 you need to understand I have not read it.

19 DEFENDANT CHAKER: Oh, okay.

20 THE COURT: Because you wanted it withdrawn the day
21 I was going to read it.

22 DEFENDANT CHAKER: Correct.

23 THE COURT: I got your letter, memo, whatever, that
24 said don't read it.

25 DEFENDANT CHAKER: Correct.

1 THE COURT: That -- Or maybe it was Mr. Alston's
2 motion that said to me the client wants it withdrawn.

3 DEFENDANT CHAKER: Correct.

4 THE COURT: So just for your information, I haven't
5 read it yet.

6 DEFENDANT CHAKER: Okay.

7 THE COURT: That November 5th --

8 DEFENDANT CHAKER: Okay. Well --

9 THE COURT: Sorry, November 4th paper.

10 But so you're upset because Mr. Alston didn't put in
11 a particular case that you think helped you on the scoring
12 under the PSR?

13 DEFENDANT CHAKER: Correct. That is not arguing in
14 my favor because with that case cited it would have shown I'm
15 not looking at four years plus, I'm looking at something far
16 less, therefore, I'm not as much a flight risk.

17 THE COURT: Okay.

18 DEFENDANT CHAKER: I understand Mr. Stanford,
19 whatever he did. I'm certainly not a billionaire. My bond,
20 \$50,000 bond which is rather sizeable for a case like this,
21 it's secured by my mother's home.

22 THE COURT: Uh-huh.

23 DEFENDANT CHAKER: I don't know if Mr. Stanford's
24 bond was secured by --

25 THE COURT: Well, he has a lot more money.

1 DEFENDANT CHAKER: Yes. Yes, correct. And he was
2 looking at a lot more time.

3 THE COURT: Although, frankly, he was given
4 appointed counsel after all his money was seized and assets
5 were seized.

6 DEFENDANT CHAKER: Yeah, I --

7 THE COURT: Just for your information.

8 DEFENDANT CHAKER: I've read articles about it.
9 But, you know, I've done -- I've done everything and I've sat
10 in custody for months. And it seems like nothing is getting
11 done.

12 THE COURT: Okay.

13 DEFENDANT CHAKER: That's it.

14 THE COURT: Have you threatened to file a bar
15 grievance against Mr. Alston or to affect his reputation
16 online?

17 DEFENDANT CHAKER: Yes, ma'am.

18 THE COURT: What did you say to Mr. Alston in that
19 regard?

20 DEFENDANT CHAKER: I told him, you know, that he
21 should not have -- Actually, I have it right here. I asked
22 you to notify the court, the motion. You are withdrawing the
23 motion since it was filed without my consent. Which is true.
24 I asked him twice last week, I think on Thursday and Friday,
25 do not file a response because he did not any of the things.

1 He asked my sister to draft her own declaration. And I have a
2 right to witnesses.

3 THE COURT: So your sister is a lawyer, right?

4 DEFENDANT CHAKER: Yes, ma'am.

5 THE COURT: That's the same sister?

6 DEFENDANT CHAKER: Yes, Your Honor. And it was
7 filed without my consent because I do not want to waste 12
8 hours in shackles by the time I go to court and get back. It
9 is inhumane to put me through this. I do not trust your
10 judgment in any respect -- and you -- and will not have you
11 review a 5,000-page record for a potential motion for a new
12 trial when you're incapable of handling a simple bond hearing.
13 And it mentions a bunch of people. And I said, I told --

14 THE COURT: What does it mention people about?

15 DEFENDANT CHAKER: To -- there was a financial -- an
16 asset protection expert, M.J. Atkison (phonetic), a consultant
17 with Aaron Jones (phonetic). And I told him, and no doubt
18 your lazy attitude will require yet another extension while I
19 sit in jail another few months when you could have done the
20 same thing -- when you could have done the same in the last
21 three weeks. Respectfully, get off my case as of now. And
22 then I told him his reputation and I'd file a state bar
23 complaint. And I --

24 THE COURT: So you have threatened the state bar
25 complaint. And what did you say about what you would put on

1 some blog or the Internet?

2 DEFENDANT CHAKER: I just told him that I'd be --
3 there would be nothing -- I didn't tell him what particular
4 things I'd put online.

5 THE COURT: I'm sorry, what?

6 DEFENDANT CHAKER: I didn't say anything specific
7 I'd put online. I just said I'd vent my opinion out online.
8 But I didn't say I'll put specific statements online. And any
9 statements I would put online would be nothing more than what
10 I feel. I feel like I wasn't listened to and I feel that my
11 witnesses were not obtained. My mom was -

12 THE COURT: And you did not want a continuance, but
13 now you do want a continuance because you didn't want him to
14 file the November 4th paper?

15 DEFENDANT CHAKER: Well, I feel that asking for bond
16 is kind of like a one-shot thing. And because the Court looks
17 at danger to the community and flight risk for a motion to be
18 on bond pending appeal, I looked at this -- and which I told
19 Mr. Alston in person -- I don't look at this so much am I
20 going to be free up until sentencing. I think about what are
21 my shots at staying on bond pending appeal.

22 THE COURT: I see.

23 DEFENDANT CHAKER: And the Court looks at the same
24 two factors. So what would the judge do -

25 THE COURT: And the burden is on you.

1 DEFENDANT CHAKER: Correct.

2 THE COURT: It's not on you exactly, but it's -- in
3 effect, it's a very high burden.

4 DEFENDANT CHAKER: Correct. And my thoughts were,
5 all the judge is going to say is I looked -- you know, I'm
6 going to defer to my findings from a month ago and nothing has
7 changed.

8 THE COURT: I see.

9 DEFENDANT CHAKER: So that's the crux of it.

10 THE COURT: Okay. And let's go back and talk about
11 Mr. Essmeyer.

12 DEFENDANT CHAKER: Yes.

13 THE COURT: What did he do wrong?

14 DEFENDANT CHAKER: Extremely lazy. He told me he
15 would do things. For example, getting the transcripts from
16 the prior two bond hearings in San Diego when I was revoked
17 and then transfer that here.

18 THE COURT: He did get those or he did not?

19 DEFENDANT CHAKER: He submitted a subpoena after I
20 got to Texas. He said he would get on it immediately. He
21 didn't do it until I got into Houston two weeks later. Which
22 may not be a long time, but when you're sitting in custody on
23 a half inch mattress on a metal bed frame in a cold cell,
24 every day counts.

25 THE COURT: I agree with you every day counts.

1 DEFENDANT CHAKER: He told me --

2 THE COURT: On the other hand you have appointed
3 counsel who has more than one case.

4 DEFENDANT CHAKER: I understand that.

5 THE COURT: And, frankly, even paid counsel,
6 Mr. Womack, had more than one case.

7 DEFENDANT CHAKER: Correct.

8 THE COURT: It's not about who's paying. It's about
9 the fact that you are not their only client, right?

10 DEFENDANT CHAKER: Correct. Okay. And --

11 THE COURT: But what did Mr. Essmeyer do? So he
12 delayed in seeking a subpoena.

13 DEFENDANT CHAKER: The subpoena. He didn't draft
14 any declarations. He told Judge Hanks on record that he was
15 going to get my -- he needed a continuance, he wanted to get
16 witnesses from California. And he said that on the record.
17 He was never -- he never subpoenaed or tried to get my mom and
18 sister out to Texas to testify.

19 THE COURT: Well, your mom and your sister don't
20 need subpoenas.

21 DEFENDANT CHAKER: Well, or to arrange for them to
22 come out to Texas to testify.

23 THE COURT: We can't pay for their travel.

24 DEFENDANT CHAKER: I don't ask the Court to. But he
25 said that he told the judge that he needed more time for these

1 -- I was supposed to appear in court, I think five days after
2 I appeared in front of Judge Hanks.

3 THE COURT: Right, for your own benefit.

4 DEFENDANT CHAKER: Correct. And he said -- asked
5 the judge, he asked Judge Hanks can I get more time because I
6 have witnesses coming out from California. Well, he -- it was
7 a lie; he never got witnesses. He never intended to. He
8 never applied to get the two transcripts from California to
9 Texas until the day you entertained his motion to withdraw.
10 You had -- you signed the subpoenas but they were not sent out
11 yet. And the first thing I asked Mr. Alston to do was she has
12 -- the judge has these two subpoenas ready, can you please do
13 whatever you need to do so they can be sent out?

14 THE COURT: And who were the subpoenas for?

15 DEFENDANT CHAKER: To get the conditions of my bond
16 from Judge --

17 THE COURT: Do you realize that that can be obtained
18 through the courts and you don't need a subpoena?

19 DEFENDANT CHAKER: No.

20 THE COURT: Okay. Well, that's true.

21 DEFENDANT CHAKER: I know --

22 THE COURT: If it's conditions of bond.

23 DEFENDANT CHAKER: I know Your Honor issued two
24 subpoenas. And the day Mr. Essmeyer said he was going to
25 withdraw Your Honor said that you have them, they're signed,

1 but they haven't been sent out.

2 THE COURT: Okay. So that's what they were for? I
3 don't remember as I sit here.

4 DEFENDANT CHAKER: Yes. Yes, Your Honor.

5 He also said that he would send out records for my
6 -- for my medical records. And by the time I came to court
7 here I think on the 23rd of October, I asked him, you know,
8 get off my case and notify the court that there's a conflict
9 because there's another issue about him representing another
10 witness in a case.

11 THE COURT: That you were trying to cooperate
12 against?

13 DEFENDANT CHAKER: Correct. That --

14 THE COURT: From a jailhouse conversation, right?

15 DEFENDANT CHAKER: The crux of it, yes. That he --
16 instead of notifying the Court immediately he notified the
17 Court a week later which, if you look at my letter to
18 Mr. Essmeyer, it's dated October 23rd. I didn't come into
19 court until I think it was October or November 1st or 2nd or
20 something.

21 THE COURT: No. I'm not sure.

22 DEFENDANT CHAKER: I know it was a -- there was a
23 one week delay --

24 THE COURT: Okay.

25 DEFENDANT CHAKER: -- from the point I wrote the

1 letter to the point that he filed the motion with the Court
2 asking to withdraw from the case. And, again, a week isn't
3 much, but a week is a lot when you're in custody.

4 THE COURT: But the wheels of justice, Mr. Chaker,
5 don't move as fast as we wish.

6 DEFENDANT CHAKER: I know.

7 THE COURT: And I have to tell you something. On
8 the one hand I work as fast as I possibly can. On the other
9 hand it's very important for defendants and their lawyers and
10 the Government to have proper amounts of time to think,
11 prepare, strategize. So I hope you understand there's a
12 fine --

13 DEFENDANT CHAKER: No, there's no other way, so.

14 THE COURT: Okay. But, so he didn't move fast
15 enough and he didn't seek everything in terms of subpoenas
16 that you wanted. But I had signed the subpoenas, they just
17 hadn't been filed, is that what I'm hearing?

18 DEFENDANT CHAKER: Correct. Also another big lapse
19 of faith with Mr. Essmeyer is that he had my file for -- since
20 May. He was appointed. He did not respond to the
21 Government's opposition to the motion for a new trial or for
22 acquittal. And he just didn't respond to it. He said, oh, I
23 just saw that that the Government did from -- based on your
24 ruling that the Government did respond. That's when they
25 included the jury waiver in a response. He said, oh, I didn't

1 even notice -- I never filed a reply to that. I kid you not.
2 So that, that really took a big chip out of me. 10:33:07.

3 THE COURT: He raised the jury waiver business.

4 DEFENDANT CHAKER: Yes, he did. The Government
5 responded and he never filed a response to that response, a --

6 THE COURT: Do you think there was something that
7 was left unsaid?

8 DEFENDANT CHAKER: That -- Yeah. Yeah. He knew
9 about my medical conditions and --

10 THE COURT: But you specifically told him not to
11 subpoena your medical records. In other words, you -- I don't
12 know what happened between you two, but he issued the
13 subpoena. In fact, I issued the subpoena at his request for
14 three medical providers, psychiatric, as I understand it. I'm
15 not even sure, but that's my understanding. And then one set
16 of records came. Remember, our last hearing, whenever it was
17 --

18 DEFENDANT CHAKER: Correct.

19 THE COURT: -- you had already said you did not want
20 to use those records. You specifically told him don't use
21 them and file them. I knew that because, again, you had sent
22 a letter to me or somehow I was cc'd. And so I -- remember?
23 I handed the unopened box --

24 DEFENDANT CHAKER: Yes, Your Honor, I do.

25 THE COURT: -- to Mr. Essmeyer.

1 DEFENDANT CHAKER: Correct, and --

2 THE COURT: At your request. Is that clear?

3 DEFENDANT CHAKER: Yes, that's -

4 THE COURT: Am I remembering correctly, is what I
5 mean?

6 DEFENDANT CHAKER: That's absolutely correct.

7 THE COURT: Okay.

8 DEFENDANT CHAKER: But the point was --

9 THE COURT: And the point is you did not want your
10 medical or psychological conditions known to the Court. And I
11 think there was some back and forth about that at the time of
12 trial, too.

13 DEFENDANT CHAKER: When the -- Mr. Essmeyer did not
14 try to get my medical records until after I got to Houston,
15 which was in October.

16 THE COURT: And what was the harm in your mind about
17 that?

18 DEFENDANT CHAKER: Because he told me I'm just going
19 to try send you out for a psych eval, and if you're found not
20 competent we can send you out to South Carolina and I'll get
21 you a great reduction. Yeah, that was the crux of it. And --

22 THE COURT: You didn't like that strategy?

23 DEFENDANT CHAKER: No, I didn't like that strategy.

24 THE COURT: Okay.

25 DEFENDANT CHAKER: My sister clerked for two judges

1 in the Southern and Central District of California.

2 THE COURT: Yeah, but you're not your sister.

3 DEFENDANT CHAKER: No, I'm not. But she's told me
4 that people said that they'd rather die than go back into
5 psych -- to the psych hospital.

6 THE COURT: Well, that's your view and her view.

7 DEFENDANT CHAKER: And to make it clear,
8 Mr. Essmeyer represented me in May. He didn't ask for my
9 medical records until October. So the time frame to have
10 raised an issue about my competence to enter into a jury
11 waiver was back in May. May, June when he filed his motion
12 for a new trial, not after the Court issues its opinion.

13 THE COURT: Okay. Now at that time you were not in
14 custody.

15 DEFENDANT CHAKER: Correct.

16 THE COURT: Correct?

17 DEFENDANT CHAKER: Correct.

18 THE COURT: And I had given you and him all the
19 continuances you wanted.

20 DEFENDANT CHAKER: Correct.

21 THE COURT: I had never denied a continuance,
22 correct?

23 DEFENDANT CHAKER: Not that I know, no, Your Honor.

24 THE COURT: Right. Me either. I don't know of one.
25 So you were concerned that he hadn't subpoenaed

1 materials fast enough.

2 DEFENDANT CHAKER: Well, to raise them in a motion
3 for a new trial, correct. And it was never to keep
4 information away from the Court. I have memos that I've asked
5 Mr. Alston to get me for literally three weeks. There are
6 vehement exchanges between myself and Mr. Bennett and that I
7 demanded that a psych defense would be instituted. I have
8 records, voluminous amount of records from my psych. And I
9 asked him, in fact just before trial started. I know he went
10 ex parte with you and asked for my psychiatrist to testify.

11 THE COURT: And I got all the records and said --

12 DEFENDANT CHAKER: Correct.

13 THE COURT: -- when the times comes, when you need
14 the witness we'll get the witness, but right now I'm not going
15 to subpoena these people to sit in the hallway.

16 DEFENDANT CHAKER: Correct. And --

17 THE COURT: And have to pay their fees.

18 DEFENDANT CHAKER: It was never about keeping that
19 information from you. I wanted the information to come out.
20 I memorialized sending to Mr. Essmeyer in memo form
21 pinpointing specific topics and saying this needs to come out.
22 And he specifically -- he just felt --

23 THE COURT: Did he give you reasons?

24 DEFENDANT CHAKER: He felt very confident that the
25 jury waiver not being in the record was sufficient, that we

1 didn't need to go to the psych issue. And I was against it.
2 I have memos to that effect. Mr. Essmeyer has memos -

3 THE COURT: And what was your psych issue? And so,
4 anyway, you and he had a debate about that.

5 DEFENDANT CHAKER: Correct.

6 THE COURT: But then the records came you and fired
7 him, Mr. Essmeyer, and wanted the records not to come in.

8 DEFENDANT CHAKER: Right. I didn't want the records
9 to go to Mr. Essmeyer 'cause my fear was that he was going to
10 try to send me off to some psych institution. And also that
11 he represented another client which I don't think he should be
12 privy to confidential psych records.

13 THE COURT: I see. And so -

14 DEFENDANT CHAKER: So it was past that point that he
15 agreed that he had to get off the case. That's -- I think the
16 psych records should have come in.

17 THE COURT: Did you threaten Mr. Essmeyer with a bar
18 grievance?

19 DEFENDANT CHAKER: I don't -- I may have. I don't
20 know.

21 THE COURT: I think there's some indication that
22 that happened. I'm just wondering one way or another. I'm
23 not -- I'm not sure.

24 DEFENDANT CHAKER: I'm not sure. If it was, then it
25 would be that it can pertain to -- it would pertain to him

1 trying to release information or make allegations about my
2 mental health to try to scare me off to South Carolina, which
3 is totally not what I wanted him to do, not what I thought --

4 THE COURT: Is there anything he filed that did --
5 that defied your wishes? That he filed? Not that he
6 obtained, but that he filed?

7 DEFENDANT CHAKER: The motion for new trial --

8 THE COURT: Had nothing on that.

9 DEFENDANT CHAKER: -- slash, acquittal did not raise
10 mental health issues.

11 THE COURT: And that was because you did not want to
12 raise them because you did not want to use that avenue because
13 of your concern about going to South Carolina, as I understand
14 it.

15 DEFENDANT CHAKER: No, because at that point the
16 motion for new trial was filed. He was appointed in May and
17 he filed his motion back in, I don't know, June, July. So
18 when that was going on he had -- I have all my notes. I had
19 gotten all my chart notes from my psychiatrist and he had
20 them. He did not want to pursue anything about psych issue
21 and the jury waiver, period. Then he wanted to subpoena the
22 records and those records didn't come in until the end of
23 October.

24 THE COURT: So you did or did not threaten him with
25 a bar grievance?

1 hotel, they were very upfront. I demanded that my psych be --
2 testify, that my psychiatrist be able to testify. Um -

3 THE COURT: And -- Go ahead. I'm sorry. I didn't
4 mean to interrupt.

5 DEFENDANT CHAKER: By all means, Your Honor.

6 The fact that Mr. Jones and Ms. Ayers (phonetic)
7 forced a time-line of events on their computer system to show
8 that -- that records, that they received my signature pages.
9 If you were to look at the signature pages or at the -- the --
10 what's their timekeeping system called? It's called BK Pro.
11 And there was testimony that Ms. Ayers altered the time-line
12 in a Word document after they received by state bar complaint.

13 THE COURT: And he argued that.

14 DEFENDANT CHAKER: He argued that, but, you know,
15 argument isn't an expert. We had Bill Odom (phonetic), who is
16 the forensics, retired -- he was a former FBI forensics, head
17 of the forensics unit of the FBI. And Bill Odom found that
18 that record was in fact created seven, eight months after they
19 stopped representing me. And that record conflicted with the
20 original record. So what they did, they inserted the time
21 when that -- they inserted that signature pages were received
22 for the bankruptcy petition. I have -

23 THE COURT: Okay. So it's another topic.

24 DEFENDANT CHAKER: Well, yes. And I have -- they -

25 THE COURT: Okay. We're not getting the merits.

1 I'm trying to just do this at 10,000 feet so that I understand
2 the issues.

3 Did you -- And you've written some of this. Did you
4 threaten Mr. Bennett or did you already file, I don't know, a
5 bar grievance?

6 DEFENDANT CHAKER: I --

7 THE COURT: Did you threaten him with a bar
8 grievance?

9 DEFENDANT CHAKER: Yes, Your Honor.

10 THE COURT: And did you threaten to hurt him in his
11 -- on the Internet?

12 DEFENDANT CHAKER: I don't think so, no. I didn't
13 do that.

14 THE COURT: Okay. Have you filed a bar grievance
15 against him?

16 DEFENDANT CHAKER: I had it. I know it was to be
17 mailed out or it was mailed out. It was months and months
18 ago. I don't remember specifically.

19 THE COURT: Okay. I'm not sure, but my recollection
20 -- and it's vague so I could be wrong -- but is that, yes, you
21 did because Mr. -- that was part of what Mr. Bennett said is
22 the cause of a conflict.

23 DEFENDANT CHAKER: Correct. And in fact gave you a
24 draft or the actual state bar complaint.

25 THE COURT: I think that's right.

1 DEFENDANT CHAKER: Correct.

2 THE COURT: 'Cause either you or he gave it to me.

3 DEFENDANT CHAKER: Yes.

4 THE COURT: So I think there was a state bar
5 complaint.

6 DEFENDANT CHAKER: Correct.

7 THE COURT: Did you have gripes with Mr. Womack?

8 DEFENDANT CHAKER: Absolutely.

9 THE COURT: What?

10 DEFENDANT CHAKER: I had to retain my own forensics
11 person in San Diego about when I saw the -- the -- the
12 chronology of events from Bailey & Galleon (phonetic) law firm
13 saying that I authorized a second filing of the bankruptcy.
14 The bankruptcy, the second one, which was filed on March 6th,
15 2007. And there are two different versions. There's the
16 original one that does not have any indication that the
17 signature pages were actually received. The second version,
18 which is in Word which all I needed to do was right click and
19 look at the properties, indicated that that file was created
20 on January, I believe, 7th or 6th, 2007. And that -- and they
21 gave me two different versions when we subpoenaed the records.
22 I had to get my own forensics person in San Diego to get a
23 declaration and say this was created -- this is not the actual
24 version of events. In fact, the manufacturer of the software
25 company in San Antonio, called LegalPro which manufactures

1 BankruptcyPro, said we don't do our logs in WordPerfect; they
2 come out as screen shots. So if you print it out it would
3 come out looking like a screen shot on view. 10:44:58

4 THE COURT: Okay. Therefore, what was Mr. Womack's
5 problem, in your opinion?

6 DEFENDANT CHAKER: He didn't care. He didn't care.
7 Mr. Womack emailed me back an absolute lie, saying that I
8 would get credit for third party cooperation with the U.S.
9 Attorney in San Diego. With the plea agreement, which I
10 forwarded to a San Diego attorney who represented me on the
11 bond hearing, the plea agreement makes absolutely no reference
12 to receiving any kind of benefit from the U.S. Attorney --

13 THE COURT: So you didn't like that agreement?

14 DEFENDANT CHAKER: He outright lied to me. No, I
15 don't. All he wanted me to do was get me convicted. I looked
16 online.

17 THE COURT: How much did you pay him?

18 DEFENDANT CHAKER: It was 15,000, and then -- it was
19 \$15,000 cash, then another 15 my sister was going to work for
20 him and they were going to open an office in San Diego. So my
21 sister was supposed to work off another 15,000. And then
22 Mr. Womack eventually gave back that retainer. I was really
23 upset because I caught him in a lie with his email saying that
24 I was going to get credit.

25 THE COURT: And did you threaten a bar complaint of

1 him?

2 DEFENDANT CHAKER: I don't -- I honestly don't know.
3 I know I'm here as an independent person. I don't know. I'd
4 rely on my email correspondence. I don't think so.

5 And then to look at what Mr. -- when Mr. Womack left
6 the U.S. Attorney's office guess what he was alleged to have
7 been doing? Fraudulently representing the law enforcement
8 industry by selling meritless 10:46:20 pieces of equipment to
9 law enforcement while he was Assistant U.S. Attorney. And he
10 avoided being indicted by withdrawing. And the company that
11 he worked for was actually indicted because these pieces of
12 equipment used for drug detection were worthless. And he used
13 his status as an Assistant U.S. Attorney to pitch these
14 products.

15 THE COURT: When was that?

16 DEFENDANT CHAKER: If you Google his name in quotes
17 it'll pop up.

18 THE COURT: I see.

19 DEFENDANT CHAKER: It'll pop up.

20 THE COURT: So you paid him 15,000, but he returned
21 it.

22 DEFENDANT CHAKER: He returned it, yes, Your Honor,
23 to my sister.

24 THE COURT: And how could you afford to pay him?

25 DEFENDANT CHAKER: Through my sister. It was my

1 sister's check that paid him and then he refunded the money.
2 He started off at 150,000. And then he's the most tenacious
3 person when it comes down to trying to get paid. So then he
4 eventually -- I mean he calls at all -- morning, noon and
5 night and just reasons why he'll -- won't take 150, now he
6 drops it to 100,000. He emailed me that I should use -

7 THE COURT: Okay. But the bottom line is that your
8 sister paid the original 15 which was then refunded?

9 DEFENDANT CHAKER: Correct. And then he actually
10 emailed me to use \$80,000 of federal financial student aid
11 loan to pay him. And that in itself is against the law. He
12 can't do that. That's against the law.

13 THE COURT: Okay. I have no idea. Okay, but that
14 -- so you fired him?

15 DEFENDANT CHAKER: Correct. And if I could just
16 note one thing -

17 THE COURT: Did you -- Were you satisfied with your
18 bond lawyers in San Diego?

19 DEFENDANT CHAKER: Yes.

20 THE COURT: The second time did you use the same
21 people both times?

22 DEFENDANT CHAKER: Yes. Mr. Columbo was retained.
23 The Court -- he was on the CJA panel and he was appointed a
24 second time on the second bond hearing.

25 THE COURT: Okay. So you don't have a gripe with

1 him?

2 DEFENDANT CHAKER: I wish he would have done more,
3 but he didn't. I can't complain the first time because he --

4 THE COURT: Well, the first time he got your bond.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

THE COURT: But maybe the Government -- you don't think the Government would deal with that if they thought it was worthy?

THE COURT: Haven't you already been sending letters to that effect to the government in San Diego?

DEFENDANT CHAKER: No. No, I have not.

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

THE COURT: I see.

THE COURT: Okay. So that answers the question, at least for the time being.

DEFENDANT CHAKER: Yes. Yes, Your Honor.

THE COURT: Okay. So do you want to just represent yourself?

DEFENDANT CHAKER: No.

THE COURT: You do nothing but criticize your lawyers. And you are threatening at least two and I think three or four of them with bar complaints because they don't snap to it the way you think appropriate. And I am in a quandary because I've given you three lawyers and you had one

1 Did you file a grievance against Mr. Jones, the
2 bankruptcy lawyer?

3 DEFENDANT CHAKER: Absolutely. Two.

4 THE COURT: Two. Okay. So you've filed so far, in
5 this case or in matters relating to the case, three
6 grievances, threatened another one which you have not filed,
7 and threatened one here with Mr. Alston. The threat being
8 Mr. Essmeyer, and then Mr. Alston is current. And this poses
9 a major issue for me and for you because I cannot appoint more
10 lawyers that then you're going to threaten with bar
11 grievances, frankly, because they're not doing exactly what
12 you want or you're -- or and you are not deferring to their
13 professional judgment.

14 I understand that being in custody is hard. I don't
15 want you to think that I'm taking that lightly. You said
16 something earlier which I understand very well; when you're
17 the guy having to serve the time, it feels hard and long.
18 Okay? I understand that.

19 But I can't give you lawyers when you threaten them,
20 to ruin them on the Internet, to file bar grievances which,
21 frankly, become terribly problematic, when what they've done
22 is not respond to you on every single issue. Those lawyers, I
23 don't know what their strategies are, but I can tell you that
24 to the extent that I am aware of their choices I do see
25 reasons for what they've done. Now, I don't know about

1 Mr. Essmeyer and the timing on the mental health records, but
2 the reality is that he got those records, or he got many of
3 them, and you wouldn't allow him to use them. Now, you have
4 your own reasons. Nobody is going to question you about that.
5 But we have an issue because you are not accepting of
6 professional judgments. And your judgments change. So we
7 have some issues here because there have been four lawyers in
8 this case and you have driven every one of them away.

9 Now, Mr. Alston.

10 Mr. ALSTON: Yes, Your Honor.

11 THE COURT: I'd like you to -- you can't respond,
12 obviously, to the prior lawyers' situations. But I would like
13 you to give me your insights into your relationship and the
14 defense's issues that have driven you two apart. Because I am
15 trying to assess whether or not there is a meaningful conflict
16 or not.

17 Mr. ALSTON: Yes, Your Honor. I think there is a
18 meaningful conflict based on the reasons that I put in my
19 motion. I depend probably about 75 percent of my business
20 from the Internet and so I take that threat seriously.

21 I wish Mr. Chaker no harm. I've tried to do
22 everything he could do. I've tried to use my best judgment
23 and my familiarity with the courts and the federal system.

24 I thought the issues for his bond hearing were
25 precisely was he a danger and was he a flight risk. I shared

1 with the Government what they were going to use as evidence,
2 which was the exhibits they attached to their motion. Susan
3 Adcock, the paternity suit, those other issues, I advised
4 Mr. Chaker that the Government was not going to use those, to
5 my understanding. And I had a discussion with Ms. Ferko and I
6 thought they would cause him harm in front of the Court. He
7 became unhappy with that. His sister, who's an ELMO clerk or
8 was an ELMO clerk with two federal judges, has called my
9 office and been derogatory to my staff and to me. And she's
10 also threatened bar complaints against me and Mr. Chaker has,
11 too.

12 I've tried to do everything --

13 THE COURT: It says here in your motion that
14 Mr. Chaker has drafted a grievance and sent it to his sister
15 to fax to the State Bar today.

16 Did you file it, Mr. Chaker?

17 DEFENDANT CHAKER: I don't know if it was filed or
18 not. I basically enumerated several things and --

19 THE COURT: No, the question -- I'm just asking a
20 yes or no --

21 DEFENDANT CHAKER: Did I file it? No, 'cause --

22 THE COURT: Do you know if your sister filed it?

23 DEFENDANT CHAKER: I do not. I don't know.

24 THE COURT: Okay.

25 Mr. ALSTON: She did call my office to ask me for my

1 bar number. And that was Wednesday. That was this week.

2 THE COURT: Today's the 6th.

3 Mr. ALSTON: Yes, Your Honor. That was this week.
4 So I advised her that I was representing her brother and not
5 her, after her emails and telephone calls to me.

6 THE COURT: Right.

7 How about this, Mr. Chaker? Well, what is your view
8 of Mr. Alston staying on the case?

9 DEFENDANT CHAKER: Of his what?

10 THE COURT: What is your view of Mr. Alston staying
11 on the case?

12 DEFENDANT CHAKER: I'll say if I was out I'd have a
13 lot less -- I'd have -- be --

14 THE COURT: Okay. That's not my question.

15 DEFENDANT CHAKER: Okay.

16 THE COURT: What is your view of Mr. Alston? You
17 have threatened and maybe filed a State Bar grievance. We
18 can't check it because it's way too soon and, frankly, the
19 grievances are not public. But I'm going to operate on the
20 assumption that it was filed because it seems so specific.
21 Even if it wasn't, it sounds to me like you and Mr. Alston may
22 have some differences. Once you've filed a grievance against
23 a person you can't have them representing you. You understand
24 that?

25 DEFENDANT CHAKER: Correct.

1 THE COURT: What do you propose we do? You don't
2 seem happy with any of the lawyers. Why don't you figure out
3 or give me a proposal?

4 DEFENDANT CHAKER: I don't know.

5 THE COURT: How about your sister representing you?

6 DEFENDANT CHAKER: My sister works for Baker
7 McKenzie (phonetic) doing mergers and acquisitions. She has
8 no criminal defense --

9 THE COURT: Well, she's on her own, as I understand
10 it.

11 DEFENDANT CHAKER: Yes, she is now.

12 THE COURT: 'Cause you did legal work for her.
13 Legal assistant work, I meant to say.

14 DEFENDANT CHAKER: I've assisted her on various
15 things.

16 THE COURT: What about this lawyer on the CJA panel
17 in California? I won't pay his travel, but he can appear
18 here. You seem satisfied with him.

19 DEFENDANT CHAKER: I'm fine with Mr. Columbo. I've
20 no issues with him.

21 THE COURT: You already have a relationship with
22 him.

23 DEFENDANT CHAKER: I agree. I agree. He's a good
24 attorney. He's very noticed and I don't -- I don't, you know
25 -- I know this squares short on the Court's -- yours. And,

1 you know, with Mr. Bennett, I had a lot of issues with him.
2 Mr. Essmeyer who was appointed to me, he came to see me at the
3 jail in late September. One of the questions he asked me
4 were, did you testify? It's like, heaven forbid. If you
5 don't know if I testified from May until the middle of
6 September. He's never looked at the file, you know? And,
7 granted, I got to say it's a 5,000 page file. It's five, six
8 boxes. I have -- I have -- Mr. Alston --

9 THE COURT: You couldn't get and didn't get the
10 transcript till after that meeting.

11 DEFENDANT CHAKER: Correct. And that's another
12 thing he --

13 THE COURT: Don't you think since the Government is
14 paying the bills that the efficiency of the lawyer is a factor
15 and he should be able to talk to you about the case and get
16 the overview?

17 DEFENDANT CHAKER: Well, I suspect if he interviewed
18 me --

19 THE COURT: And, by the way, you weren't in custody
20 during that time.

21 DEFENDANT CHAKER: Correct. Correct. And that
22 section brings up the transcripts. That's another issue.
23 Since he wasn't trial counsel I took a big issue with him
24 filing a motion for a new trial when he didn't even have the
25 transcripts. So -

1 THE COURT: The issues were not about what
2 transpired in terms of the -- First of all, he could get the
3 tapes. But second of all, weren't many of the issues related
4 to very simple aspects of the case and, of course, the waiver
5 of a jury that you claim was improper?

6 DEFENDANT CHAKER: Correct.

7 THE COURT: Okay. So you don't need the transcript
8 for that. Okay. Whatever.

9 So your concern was that he hadn't gotten the
10 transcript.

11 DEFENDANT CHAKER: He didn't get the transcripts.
12 Didn't put in before the court issues about mental health
13 issues concerning my -- concerning the jury waiver, and relied
14 exclusively on the -- well, the waiver isn't in the record.
15 Well, guess what? It's in the record and the Court denied it.

16 THE COURT: All right. Right, I did.

17 DEFENDANT CHAKER: Yeah. So.

18 THE COURT: I did deny it 'cause you're a smart
19 fellow and you knew darn well, in my opinion, what was going
20 on. You don't have to comment.

21 But the bottom line is that you have a conflict with
22 him. You seem to have a conflict with Mr. Alston. You have a
23 conflict with Bennett. You have a conflict with Womack. And
24 every time I appoint a new lawyer they have to get up to
25 speed. And there's always been progress forward. So I have

1 approved every red cent that has been requested on your case.
2 And it's a huge amount of money. And that's okay, but you
3 want still another lawyer. That would be the fifth lawyer. I
4 can't think of any case and I am unaware of any case where
5 five different lawyers have been appointed.

6 What we have left in this case is bond and
7 sentencing. There has already been a motion for new trial, so
8 that's over and done. Mr. Columbo seems to be our best bet
9 because you don't seem to be able to work with and threaten
10 and file grievances against the others. And I can't have
11 that. That is abusive. Your pounding on the table and your
12 expecting immediate response is a concern of mine.

13 Mr. Bennett, in order to get his fees approved, sent
14 me a list of the emails that you sent him. There were 3,000
15 plus emails. Do you recall that?

16 DEFENDANT CHAKER: I imagine. Yes, Your Honor.

17 THE COURT: Okay. I mean I just saw a list.

18 Mr. Essmeyer made some other comments to that.

19 I'm trying to do the right thing. I think it's
20 important if you want a lawyer that you treat the lawyer with
21 respect and you get a lawyer. But this isn't your private
22 lackey. And if there are issues regarding differences of
23 opinion, sometimes the lawyers know more than the client. If
24 you don't want to represent yourself then you need to defer to
25 the lawyer. You have every right, and I encourage you to

1 speak clearly and make your views known to the lawyer. But at
2 that point the lawyer's judgment needs to take over. And at
3 that point there have to be some compromise for the better,
4 for the longer run. Compromise is important in that you're in
5 a position where legal training by the lawyer and legal
6 experience by the lawyer is something to be respected. So
7 when I say compromise I mean that in the sense of your
8 thinking.

9 It does sound to me, although I'm still waiting for
10 confirmation from you about Mr. Alston, it does sound to me
11 that Mr. Alston needs to get off this case, although I hate to
12 let him go. And I'm trying to figure out whether you agree
13 that he needs to get off the case or not.

14 DEFENDANT CHAKER: I agree. Now, I'd agree. It's
15 just tough. It's tough. And especially locked up -- to like
16 have a blueprint to know what's going to go on.

17 THE COURT: Right. You don't have a crystal ball
18 and neither do I.

19 DEFENDANT CHAKER: No, I don't. And it's -- it's
20 very tough.

21 THE COURT: Okay. All right.

22 Mr. Alston, I'm going to allow you to withdraw.

23 Mr. ALSTON: Yes, Your Honor.

24 THE COURT: But not until we've made a transition,
25 if I can get another lawyer. Mr. Columbo?

1 DEFENDANT CHAKER: Anthony Columbo, San Diego.

2 THE COURT: Is that a joke?

3 DEFENDANT CHAKER: No, he's a real --

4 THE COURT: What was the --

5 DEFENDANT CHAKER: He's a real attorney. Anthony
6 Columbo. Oh, there's that old movie -- TV series. I remember
7 that. No. No. I think it was --

8 Mr. ALSTON: Frank Columbo.

9 THE COURT: Huh?

10 Mr. ALSTON: I think it was Frank. It was
11 something. Plus he has a -

12 THE COURT: Frank Columbo. What was the name of
13 that actor?

14 DEFENDANT CHAKER: It's the one that killed his wife
15 or something in Culber City.

16 THE COURT: I don't know. Okay. Anyway, Anthony
17 Columbo. Do you have his phone number?

18 DEFENDANT CHAKER: I do not. I know when the case
19 first started up there was some correspondence with him and
20 your clerk, Ms. Ashabranner.

21 THE COURT: At the very beginning?

22 DEFENDANT CHAKER: In the very beginning of this
23 case where it was being contemplated that he was going to come
24 out and represent me here.

25 THE COURT: Okay. Well, we're going to see if he's

1 willing to take on your case. If not, I am not sure I can
2 find another lawyer for you.

3 DEFENDANT CHAKER: Federal defenders?

4 THE COURT: They cannot do it. They've got the same
5 conflict that Mosbacker has.

6 DEFENDANT CHAKER: Uh-huh.

7 THE COURT: Because you are now trying to cooperate
8 against somebody and now that's it. You can't use 90 percent
9 of the panel -- not 90, but you can't use a lot of the panel.

10 And I'll tell you something. Your threats to file
11 grievances because people didn't do what you want are ruining
12 your relationship with your lawyers. I'm not sure that I can
13 get another lawyer after this history. The lawyers don't have
14 to take this case.

15 DEFENDANT CHAKER: I understand.

16 THE COURT: And indentured servitude ended with the
17 Thirteenth Amendment, abolishing slavery. So we have a
18 problem. So all I can say is that you better hope that
19 Mr. Columbo is willing to take this case because you have a
20 relationship with him and he looks like the best bet because
21 he knows something about you and the case. If he won't take
22 it, then I'm honestly not sure what I'm going to do.

23 If you have filed a grievance against Mr. Alston or
24 Mr. Essmeyer, I am not ordering, but I am recommending that
25 you think twice about those grievances. Because being --

1 because it doesn't reflect well on your ability to get along
2 with lawyers. Lawyers for whom your major gripe is they
3 didn't do things fast enough.

4 DEFENDANT CHAKER: I do not believe one was filed
5 against Mr. Essmeyer because I told him that he should not use
6 my medical records and I rescind any authorization for him.
7 But that was in mid-October through the week of October and he
8 never did. So there's none filed against him. I asked my
9 sister if she would fax the confirmation page to the state bar
10 grievance to Mr. Alston and that's in my email to her. And --

11 THE COURT: I don't understand that.

12 DEFENDANT CHAKER: Well, I enumerated several things
13 he didn't do and I said make this into a state bar complaint,
14 you have my power of attorney, sign my name, and fax the
15 confirmation to Mr. Alston. And I presume Mr. Alston is not
16 gotten any fax confirmation of the state bar complaint. So I
17 don't believe one was filed against Mr. Alston yet.

18 THE COURT: I mean it's a free country, Mr. Chaker.
19 You can do what you have to do. But, basically, when you
20 listen to what you've described to me, it is essentially
21 things didn't happen fast enough or you have had differences
22 of opinion in regards to strategy.

23 I'm going to tell Mr. Columbo that if he will
24 represent you here he can file two sections to any brief. One
25 section is what he thinks, and then I will let him add a

1 section where he puts in what you think, that he does not
2 subscribe to. But you cannot outside of counsel be sending me
3 letters and argument and stuff because there's no such thing
4 as hybrid representation.

5 DEFENDANT CHAKER: I understand.

6 THE COURT: Either it's you or it's a lawyer. And
7 that's the way life works ever since *Gideon versus Wainwright*.
8 So if he won't take the case, frankly, I'm not sure what I'm
9 going to do. But your threatening people with grievances and
10 to ruin their reputation on the Internet is something that
11 these lawyers do not have to tolerate. When you disagree it's
12 one thing to say you disagree. It's another thing to ruin
13 their reputations because of this level of discussion. And I
14 want to give you that reality check.

15 DEFENDANT CHAKER: I understand.

16 THE COURT: If I can't find a lawyer for you, I will
17 make you go *pro se* because you have abused these lawyers. Now
18 I understand you don't want to and I, frankly, would prefer
19 you not go *pro se*. But the point is you need to understand
20 you cannot abuse other people because they don't see the way
21 you do -- see something the way you do.

22 As important as this case is to you, you have to
23 have faith that there is a legal construct. There are
24 elements. There are things that are truly relevant to those
25 elements and there are things that are not.

1 You will have an opportunity to testify or to make
2 comments, both at the bond hearing and at sentencing and you
3 may avail yourself of that. I have given you that opportunity
4 at every turn, but you will do it when the Government is here
5 and when the Government can respond. Okay?

6 DEFENDANT CHAKER: Yes, Your Honor.

7 THE COURT: We will try to find this fellow,
8 Mr. Anthony Columbo, and we will invite him to represent you,
9 and indeed, urge him. And I'll see what happens.

10 DEFENDANT CHAKER: Okay.

11 THE COURT: All right. I will grant your motion,
12 but not at the hearing today. The delay in this case is
13 attributable to the defendant's request for a new lawyer and
14 this is excludable time under the Speedy Trial Act, to the
15 extent the Act even applies, which it does not.

16 Okay. Would you bring the Government back in?

17 (Court confers with Case Manager.)

18 DEFENDANT CHAKER: Can I sit back at the table?

19 THE COURT: Sure, you can stand, or sit, rather.

20 Okay. We're back on the open court record. The
21 relationship between Mr. Chaker and Mr. Alston has soured.
22 And based on what I know so far and some events that have
23 transpired and words that have been spoken, I feel it
24 necessary to allow Mr. Alston to withdraw. I believe that
25 Mr. Chaker is in agreement with that.

1 Is that true?

2 DEFENDANT CHAKER: Yes, Your Honor.

3 THE COURT: Mr. Chaker does not want to go *pro se*.
4 I am trying to sort out what to do. The details don't matter
5 to you. So we cannot have a hearing today.

6 Let me say this to both sides. And, Mr. Alston, you
7 need to -- I have not read your response; is that clear?
8 'Cause I was directed by your client not to read it.

9 Mr. ALSTON: Yes, Your Honor.

10 THE COURT: So we have put it under seal and I have
11 not reviewed it. I will not be reviewing it until and unless
12 either Mr. Chaker goes *pro se* and he permits it or I find
13 another lawyer.

14 I would like the parties to recognize, and I'm
15 basing this on the Government's motion for revocation, that we
16 have the statute 1348, that's Title 18, United States Code,
17 Section 1348 that the Government has briefed. But I think
18 that applicable is 18 United States Code, Section 3143 which
19 is similar but different. And under 3143 the standard is that
20 release or detention pending sentence is governed by the
21 following: except as provided in paragraph (2) below, the
22 judicial officer shall order that a person who has been found
23 guilty of an offense and who is awaiting imposition of
24 sentence or execution of sentence -- other than some things
25 that don't apply -- shall be detained unless the judicial

1 Mr. Chaker.

2 Mr. Chaker, though, if I can get someone, this is
3 your last lawyer.

4 DEFENDANT CHAKER: Yes, Your Honor.

5 THE COURT: I think I may have said that with regard
6 to Mr. Alston, but it is your last lawyer. If you drive this
7 lawyer away, you will go pro se. Do you understand?

8 DEFENDANT CHAKER: I understand.

9 THE COURT: Okay. And I want you to understand also
10 that your conduct with these lawyers could be easily
11 classified as abusive. And I'm trying, nevertheless, to keep
12 a lawyer on your team or to get a lawyer for your team. Okay?

13 DEFENDANT CHAKER: Yes, Your Honor.

14 THE COURT: I'm going to set a status conference for
15 this case for two weeks from now. That's -- we can do it by
16 telephone, if necessary. Are you guys in Houston anyway?

17 MS. FERKO: Yes, Your Honor. We should be here.

18 THE COURT: Okay. The new lawyer may not be.

19 MS. FERKO: Okay.

20 THE COURT: If he's not, then it can be by telephone
21 with him and/or you.

22 The date is the 19th of November and the time will
23 be 4:30. I have a flight -- Oh, no, that may be optimistic.
24 I think I'm going to push it to the next week. It'll be the
25 week of the 25th which is Thanksgiving week. I could have the

1 hearing that week, but I'm reluctant to do that in light of
2 the new lawyer.

3 Mr. Chaker, what's your thinking on that?

4 DEFENDANT CHAKER: If the lawyer is able to -- if
5 the lawyer is able to do the hearing that week can Your Honor
6 do the hearing that week?

7 THE COURT: Yes, I can do it on Tuesday the 25th.

8 DEFENDANT CHAKER: Please.

9 THE COURT: I wouldn't want to do it on the 26th,
10 but 25th I -- because of the realities of people getting out
11 of town. Or your lawyer, if I can talk him into this, coming
12 from out of town.

13 You have expressed a desire for certain things that
14 may or may not be available by then. And your lawyer having
15 enough time to talk to you. Are you able to talk on the
16 telephone?

17 DEFENDANT CHAKER: Yes. And through -- there's a
18 internal email -- email through the jail. He denies
19 correspondence.

20 THE COURT: Okay. So we'll set it for June 20 --
21 I'm sorry, November 26th and I'm going to set it for 9:30. Be
22 prepared. Government needs to be prepared for the hearing.

23 MS. FERKO: We will be, Your Honor.

24 THE COURT: I would like the Government to tell me
25 generally what it intends to offer so that we can either

1 streamline or expand Mr. Chaker's response. And this is as a
2 courtesy to him. And, Mr. Alston, I expect you to take notes
3 and tell the new lawyer.

4 Mr. ALSTON: Yes, Your Honor.

5 MS. FERKO: Your Honor, based upon our motion we're
6 -- I mean we're essentially going to just include the
7 documents that we have as exhibits, A through -- I think the
8 final exhibit, Your Honor, was --

9 THE COURT: Well, whatever; it's there.

10 MS. FERKO: G, Your Honor, or H, Your Honor, to show
11 that Mr. Chaker had -- changed his name to D. David Hunter,
12 at some point procured a U.S. passport --

13 THE COURT: In 2008, I think.

14 MS. FERKO: Yes, Your Honor. Procured a U.S.
15 passport in December of 2008 in that name. And then --

16 THE COURT: Would that passport still be good?

17 MS. FERKO: Yes, Your Honor, it's good for 10 years.

18 So, Your Honor, the defendant's failure on April 12
19 when he filled out the form that was executed in California
20 for the pretrial release, that's Exhibit #A, Your Honor. That
21 the defendant had the opportunity at that point to say -- and
22 this is post-trial, you know, because he was allowed to remain
23 on release. And, you know, the Government, frankly, could
24 understand maybe why Mr. Chaker didn't want to raise his hand
25 prior to trial, whether it be -- whether it was going to be a

1 bench trial or a jury trial, and say, oh, by the way, I have
2 another name. You know, maybe he felt that it would be held
3 against him. But afterwards he easily could have said to --
4 especially to this Court, and said, Your Honor, I haven't told
5 you something, but, you know, now I feel that, you know, I
6 need to because I need to come -- you know, I need to be
7 forthright with the Probation Office or Pretrial Office and
8 the Court and say I have this name David Hunter and I procured
9 a passport in that name. This document that he executed,
10 while he told the Probation Officer that he had a passport and
11 he couldn't find it, he never discussed the name of David
12 Hunter. So everyone believes that the name -- the passport's
13 in Darren Chaker, Your Honor. And, essentially, what the
14 Government assumes is that there is a safety deposit box
15 somewhere with his ID as David Hunter and God knows what else
16 in it, he's -- you know, for the time he's ready to go, you
17 know? I mean, essentially --

18 THE COURT: What is the question or procedure or
19 practice that you rely on for a defendant to disclose all
20 identities?

21 MS. FERKO: Your Honor, when he took an oath, I mean
22 when he was sworn in to say, you know, my name is Darren
23 Chaker. I mean the Government itself --

24 THE COURT: You mean at trial or -- but he didn't
25 testify.

1 MS. FERKO: No, I agree. But it says you have to
2 disclose your passport and your passport, you're signing as
3 Darren Chaker. And --

4 THE COURT: No, I understand all of the issue.

5 MS. FERKO: Okay. So -- And, Your Honor, then also
6 looking at also 43 --

7 THE COURT: Did Mr. Chaker go through Pretrial
8 efforts with us? Have you interviewed Mr. Chaker?

9 PROBATION OFFICER: And there's a corresponding
10 Pretrial officer in Houston that was corresponding with his
11 Pretrial Service in San Diego.

12 THE COURT: But did not meet with Mr. Chaker?
13 Because Mr. Chaker pretrial lived -- and, frankly, post-trial
14 lived in California.

15 PROBATION OFFICER: That is correct, Your Honor.

16 THE COURT: So we don't have a person here who
17 interviewed Mr. Chaker; is that true? Question mark.

18 PROBATION OFFICER: Yes.

19 THE COURT: Right. Okay. I'm just trying to get
20 the lay of the land.

21 PROBATION OFFICER: And, Your Honor, we have been in
22 contact with a female officer who would visit Mr. Chaker at
23 his home, etcetera. And I'm sure she is more than willing to
24 come with a subpoena. So.

25 THE COURT: Right. Well, the Government can get

1 her.

2 PROBATION OFFICER: Right.

3 MS. FERKO: Yes, Your Honor.

4 THE COURT: And she needs to bring her whole file.

5 MS. FERKO: Oh, I'll have her bring the file, Your
6 Honor.

7 THE COURT: Okay.

8 MS. FERKO: And, Your Honor, we -- again, because of
9 the timing, we also -- we did supplement our notice to
10 objections to the PSR report, Your Honor. And, you know, as
11 far as the way -- for some of Mr. Chaker's actions regarding
12 our supplement -- supplemental facts that were excluded from
13 the first presentence investigative report 'cause of
14 Mr. Chaker's failure to interview, that the Government has
15 been made known -- made known of and some of his actions that
16 he was -- while he was on pretrial release or post-trial
17 release, what he was doing on his computer, the Government --

18
19 THE COURT: Okay. I told Mr. Chaker and I'm now
20 telling you because it's true. I have not read the
21 presentence report or your objections. I'm just seeing them,
22 actually. And I don't read them until I have the full package
23 because I like to read it all together.

24 MS. FERKO: And, Your Honor, I think what the
25 Government can do, Your Honor, in relation to this hearing, we

1 can supplement what -- you know, what we would also include in
2 this hearing regarding some of Mr. Chaker's actions on the
3 computer that would maybe rise to either cyber-bullying or
4 cyber-terrorism. However you want to couch it.

5 THE COURT: Okay. I'm wondering whether we should
6 just try to do the sentence -- Well, Mr. Chaker hasn't put in
7 objections. But I'd like to do the sentencing close in time
8 to the bond hearing. I don't see why not.

9 MS. FERKO: I think currently the sentencing is
10 scheduled for January, I believe.

11 THE COURT: Oh, that's too far. Okay. Well, then I
12 can't do that.

13 Okay. Mr. Chaker is going to get an opportunity --
14 what is the -- to put in a response to the PSR.

15 And the question is what is the date, Shelia, now?
16 Can we figure that out?

17 Mr. ALSTON: And, Your Honor, just so the Court
18 knows, part of the trial transcript that I received from
19 Mr. Essmeyer is missing. Day one is missing.

20 THE COURT: I think -- I think --

21 Mr. ALSTON: I've called the court reporter and
22 they're working on that and they've said it should ready in
23 the next week or so. But I just wanted to inform the Court.

24 THE COURT: Okay. I saw a lot of transcript
25 requests and I've seen transcripts being filed, but I don't

1 know what's there and what's not. Okay.

2 Well, are you concerned that the transcript be
3 available for the bond hearing?

4 Mr. ALSTON: No, Your Honor. I was just -- for the
5 sentencing.

6 THE COURT: Okay. That would not be a problem, but
7 I guess helpful. It's been ordered, anyway.

8 Mr. ALSTON: I was just thinking so whatever lawyer
9 could be up to speed as to everything that had happened in the
10 trial.

11 THE COURT: Right. That's fine. All right. If we
12 cannot find a lawyer willing to take this case, then I'll let
13 you-all know and we'll have to deal with it somehow.

14 MS. FERKO: And, Your Honor, the Government would
15 just ask, if Mr. Chaker does decide to go pro se can the Court
16 order a standby counsel?

17 THE COURT: Yes. I would do that.

18 MS. FERKO: Okay.

19 THE COURT: But I still have to find someone willing
20 to do it.

21 MS. FERKO: Again, it would have to be somebody
22 else. I understand. So, but at that -- the Government would
23 ask that that would be possible just in case Mr. Chaker felt
24 the need at some point he needed to ask a question or --

25 THE COURT: Sure. I definitely am going to do that.

1 MS. FERKO: Okay.

2 THE COURT: But the point is I need to find that
3 live human being.

4 MS. FERKO: Yes, Your Honor. Thank you.

5 (Court confers with Case Manager.)

6 PROBATION OFFICER: The presentence report has been
7 available to Mr. Chaker since October 30th, the revised
8 report.

9 THE COURT: Revised? Did you revise it?

10 PROBATION OFFICER: We did, based on that. And it
11 really deals with Pretrial post-bond conduct that came to our
12 attention in the last few months.

13 THE COURT: I'm looking at the front page now for
14 the first time and see that it says date report revised,
15 October 10th.

16 PROBATION OFFICER: Okay. And I bet we released it
17 prior to that. Well, prior to --

18 THE COURT: It was originally released July 25th.

19 PROBATION OFFICER: Correct.

20 THE COURT: Is there still another --

21 PROBATION OFFICER: No, Your Honor, that is the
22 updated one. The objections, the dates to file objections was
23 extended.

24 THE COURT: Sure.

25 PROBATION OFFICER: So the final product was due to

1 the Court October 30th. So it was basically disclosed prior
2 to that. So there's nothing else pending now.

3 THE COURT: Oh, I see.

4 PROBATION OFFICER: Other than --

5 THE COURT: Well, 'cause we're still awaiting
6 Mr. Chaker's --

7 PROBATION OFFICER: Objections.

8 THE COURT: -- objections.

9 PROBATION OFFICER: And we will answer. We always
10 have answered defendant's objections if they file them.

11 THE COURT: Sure.

12 PROBATION OFFICER: With counsel or without counsel,
13 you know.

14 THE COURT: Right. I agree. Okay. Well, we're
15 going to say that objections are due November -- No, we'll say
16 objections are due December 6, but I'll continue that date if
17 necessary. So Government can put in what it wants sooner so
18 that the defendant can object to what you give and what --

19 MS. FERKO: We did file our objections, Your Honor,
20 prior --

21 THE COURT: Well, but it's something about that
22 supplement that you're talking --

23 MS. FERKO: Well, I'll supplement for the hearing,
24 for the bond hearing, Your Honor. It's essentially similar
25 documents, but we'll just -- I'll make sure that they're --

MS. FERKO: That's exactly what I'm saying. Yes,
Your Honor.

Mr. Chaker, have you received the sentencing materials that Ms. Ferko is referring to?

THE COURT: Mr. Alston, have you got it?

THE COURT: It's thick. I'm now seeing it, again,
first time. I didn't look at the stuff. But it's an
k.

Mr. ALSTON: Yes, Your Honor, and I'll make sure that Mr. Chaker gets it.

THE COURT: Fine. Mr. Chaker and then new counsel.

Mr. ALSTON: Yes, Your Honor.

THE COURT: So you'll need to make two copies.

All right. Is there anything else we can do today?
Anything else that, Mr. Chaker or Mr. Alston, you think you
need?

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

Mr. ALSTON: No, Your Honor.

DEFENDANT CHAKER: No.

THE COURT: No?

DEFENDANT CHAKER: No, Your Honor.

THE COURT: You sure?

DEFENDANT CHAKER: Yes.

THE COURT: Ms. Ferko? Mr. Khandalwal?

MS. FERKO: Nothing from the Government, Your Honor.

THE COURT: Okay. Thank you all. You're excused.

(Proceeding concluded at 11:37 a.m.)

* * * * *

*I certify that the foregoing is a correct transcript
to the best of my ability from the electronic sound recording
of the proceedings in the above-entitled matter.*

/s/ MARY D. HENRY

CERTIFIED BY THE AMERICAN ASSOCIATION OF
ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**D-337
JUDICIAL TRANSCRIBERS OF TEXAS, LLC
JTT INVOICE #52049
DATE: MARCH 23, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,	§ CASE NO. 4:12-CR-00168-1
	§ HOUSTON, TEXAS
VERSUS	§ TUESDAY,
	§ NOVEMBER 26, 2013
DARREN DAVID CHAKER	§ 9:34 A.M. TO 2:52 P.M.

HEARING ON REVOCATION OF BOND

BEFORE THE HONORABLE NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	SEE NEXT PAGE
FOR THE DEFENDANT:	SEE NEXT PAGE
CASE MANAGER:	SHELIA ASHABRANNER
COURT RECORDER:	WILLIAM BOSTIC

THIS TRANSCRIPT HAS BEEN FURNISHED AT PUBLIC EXPENSE UNDER THE CRIMINAL JUSTICE ACT AND MAY BE USED ONLY AS AUTHORIZED BY COURT ORDER. UNAUTHORIZED REPRODUCTION WILL RESULT IN AN ASSESSMENT AGAINST COUNSEL FOR THE COST OF AN ORIGINAL AND ONE COPY AT THE OFFICIAL RATE. General Order 94-15, United States Court, Southern District of Texas.

TRANSCRIPTION SERVICE BY:

JUDICIAL TRANSCRIBERS OF TEXAS, LLC
935 ELDRIDGE ROAD, #144
SUGAR LAND, TEXAS 77478
(281) 277-5325 (office) ♦ (281) 277-0946 (fax)
www.judicialtranscribers.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 raise your right hand, please.

2 (Witness is sworn.)

3 THE COURT: Please be seated.

4 MR. KHANDELWAL: Good morning.

5 THE COURT: Would you state and spell your full name
6 for the record, please?

7 THE WITNESS: Maria Speth, or Maria Crimi Speth, C-
8 R-I-M-I, is the middle name, Speth, S-P-E-T-H, is the last
9 name.

10 THE COURT: S-T?

11 THE WITNESS: S P as in Peter E-T-H.

12 THE COURT: Okay. And Crimi is C-R-I-M-I?

13 THE WITNESS: Correct.

14 THE COURT: You may proceed.

15 MR. KHANDELWAL: Thank you, Your Honor.

16 DIRECT EXAMINATION OF MARIA CRIMI SPETH

17 BY MR. KHANDELWAL:

18 Q Ma'am, can you just tell us what you do for a living?

19 A I'm an attorney with the law firm of Jaburg & Wilk in
20 Phoenix, Arizona. I practice in the areas of intellectual
21 property and in civil law matters.

22 Q And how long have you been practicing law?

23 A Twenty-five years.

24 Q At that firm what is your current title?

25 A I'm an equity partner, a shareholder.

1 Q Can you tell us a little bit about your educational
2 background?

3 A Sure. Four years of college of course and three years of
4 law school. I went to both under-grad and graduate school at
5 Hofstra University in New York.

6 Q In the course of your working at Jaburg & Wilk, did you
7 represent a client by the name of Xcentric Ventures?

8 A Yes, I do represent an entity called Xcentric Ventures,
9 which is spelled X-C-E-N-T-R-I-C Ventures, LLC, which is the
10 operator of the website ripoffreport.com.

11 Q Could you just tell us briefly what is ripoff.com?

12 A Ripoffreport.com is a website where can post their
13 experiences with businesses or people that were negative
14 experiences, like let's say you bought a car and you got a
15 lemon, you're unhappy, you could post and say, I don't like
16 this dealer, it was a bad experience, if that one was.

17 Q How long has that client been a -- has Xcentric been a
18 client of the firm?

19 A Well, I've been with the firm 10 years, it's been a
20 client since I've been there, it's been my client for I want
21 to say 12 years. So it was my client, I brought the client to
22 the firm.

23 Q And during the course of your representation of this
24 client, did you come across a person by the name of Darren
25 Chaker?

1 A Yes.

2 Q Can you tell us when approximately you first came into
3 contact with Mr. Chaker?

4 A In June of 2010.

5 Q Tell us the circumstances surrounding that initial
6 encounter.

7 A Well, the initial encounter was that Mr. Chaker, as many
8 people do, wrote to my client and requested that a post that
9 was negative about him be taken down. So that was an -- was
10 not an usual request. It's something we see pretty often.

11 Q Now since then to today has there been a continuing
12 contact with Mr. Chaker concerning this complaint?

13 A Yes, I periodically hear from him and have heard from him
14 pretty much all along.

15 Q So over -- about over three years now?

16 A Yes.

17 THE COURT: What was the post?

18 THE WITNESS: I'm not sure, Your Honor. I don't
19 know. I don't -- you know, I'm just the lawyer for the
20 website, I don't even know what he was -- I know he was
21 unhappy with a post, I don't know what the post was.

22 THE COURT: Okay.

23 BY MR. KHANDELWAL:

24 Q During the course of this three years, did there come a
25 time that you made complaints with law enforcement?

1 A Yes.

2 Q I'm going to show you what's been marked as Government's
3 Exhibit D-1.

4 MR. KHANDELWAL: And I'll hand one up to the Court
5 as well, Your Honor. It needs more labeling. This one is --
6 it corresponds with the exhibits in the supplemental
7 memorandum.

8 THE COURT: Oh.

9 MR. KHANDELWAL: So that's why it's D because first
10 of all --

11 THE COURT: I did wonder about that actually. Thank
12 you.

13 (Government Exhibit D-1 marked for identification.)

14 MS. FERKO: Your Honor, that's in Mr. Khandelwal's
15 case, not necessarily mine. I just started with A-1.

16 MR. KHANDELWAL: Oh, well, I thought --

17 MS. FERKO: I just didn't want to have more than one
18 A exhibit, so --

19 MR. KHANDELWAL: I was --

20 (General laughter.)

21 BY MR. KHANDELWAL:

22 Q All right. Let's just take a look at D-1, and can you
23 just tell us what we're looking at here?

24 A Yes, this is a January 22 letter that I wrote to law
25 enforcement officials about -- and that included a chronology

1 about the events related to Mr. Chaker, or Chaker.

2 Q Okay. Let's first start with the cover page of this
3 letter. Could you just generally tell us what you were
4 expressing to law enforcement?

5 A Well, that I was concerned for my safety.

6 THE WITNESS: Oh, and, Your Honor, this says what
7 the fuss was about, it was about his former girlfriend, or by
8 his former girlfriend, so if that answers --

9 THE COURT: It answers --

10 THE WITNESS: -- the question.

11 THE COURT: Yeah.

12 THE WITNESS: I did remember that. So it's
13 expressing to law enforcement that I was concerned for my
14 safety because the communications with Mr. Chaker had seemed
15 to be escalating, and I was getting concerned.

16 BY MR. KHANDELWAL:

17 Q Okay. In fact, in this cover letter you actually
18 describe it as "frightening" in the second paragraph of that
19 letter. Is that right?

20 A Yes.

21 Q And you also indicate that it placed you in fear for your
22 safety and the safety of your clients.

23 A Correct.

24 Q Let's turn now in this exhibit to -- after the cover
25 letter there's a chronology that are about three pages long --

1 A Yes.

2 Q -- before the actual path, or exhibit starts. Is that
3 right?

4 A Yes, I created that chronology.

5 Q And that was my question. Was this chronology to
6 basically document what had happened with respect to
7 Mr. Chaker and Xcentric Ventures in this case?

8 A Yes, I had gone back through my emails and run a search
9 on his name and then made a chronology of all of the relevant,
10 you know, communications.

11 Q Okay. Let's go through this and make sure that we
12 understand the chronology of what happened. Let's start at
13 the very top of the chronology. And you had before indicated
14 that in June 2010 I believe that there was a routine non-
15 threatening request to remove a post.

16 A Yes.

17 Q Okay. About a month after that, on July 1, 2010, what
18 happened?

19 A Mr. Chaker emailed David Gingras. David Gingras, at that
20 time, was general counsel for Xcentric Ventures. Before that
21 I can't tell you -- I don't remember the one before that. He
22 had worked for my law firm as an attorney, and they left the
23 firm and went to work for the client.

24 And Mr. Chaker had emailed David Gingras a copy of
25 some sort of lawsuit, and I think it was a lawsuit between him

1 and his ex-girlfriend, if I remember correctly, now that I
2 think about it, and included -- the significant part was it
3 included a photograph of himself holding an assault rifle from
4 a post on the internet. And he had no shirt on and he had an
5 assault rifle in his hands.

6 Q And a very frankly, a picture of that is actually listed
7 in Cat 1 of this exhibit. Is that right?

8 A Yes, but the version we got was much clearer than that.
9 So sorry about -- if -- that's my bad copy there. It was a
10 clearer picture that we received.

11 Q What was your reaction to this photograph of him holding
12 an assault rifle?

13 A Well, I mean I think it was clearly a threat. I am
14 interpreted it as a threat.

15 Q Let's move forward then to the next event on October 6,
16 2010. What happened then?

17 A There was another email from Mr. Chaker to David Gingras,
18 and what was significant about that email was that he said he
19 was -- it was -- his last email was his last effort at
20 being -- as diplomacy, and that we wouldn't hear from him
21 again.

22 Q What was your reaction to that?

23 A Well, I mean, you know, I didn't think it was very
24 diplomatic to send himself -- send a picture of himself with
25 an assault weapon, so if that was he thought was diplomacy, it

1 could establish diplomacy. I was a little concerned about
2 where he was going next.

3 Q Were you in fear for safety at that point?

4 A Yeah, I was concerned at that point. I had a little bit
5 of comfort level with the fact that he was in California, and
6 I was in Arizona. So I think I was just concerned at that
7 point.

8 Q Let's move forward -- well, actually, on that same day
9 there was an additional email from Mr. Chaker as well. Is
10 that right?

11 A Yes.

12 Q And that's directly to you?

13 A Correct.

14 Q And what does he say in this email, how is also?

15 A Right. He started to threaten to publish things about my
16 firm and about that.

17 Q On that same day then additional there was a post on
18 SEOMoz?

19 A Yeah, SEOMoz.

20 Q What is SEOMoz?

21 A SEOMoz is just a blog, and is operated by I think an
22 attorney, and it's a free speech forum.

23 Q Okay. And what does he post on this blog?

24 A He said -- it was directed at David Gingras and it said,
25 "David, either get that garbage off your site" --

1 -- of course the reference to Ripoff Report --

2 " -- or there's going to be a break down around here.

3 I'm not going to court, I'm going to lose it."

4 Q I'm not going to court and I'm going to lose it. That's
5 what he wrote?

6 A Yes.

7 Q Let's move forward a little bit in time to November 19,
8 2010. In this case -- at this point just tell us what happens
9 then.

10 A Then there's another email, this time from Mr. Chaker
11 directly to Ed Magedson. Ed Magedson is the founder of Ripoff
12 Report, the currently manager of the Xcentric Ventures, LLC,
13 and the person who makes editorial decisions on the website.
14 And Mr. Chaker sent Mr. Magedson an email talking about his
15 specialized training and provided a link to a You Tube video,
16 and my client asked me to watch it, and it was kind of bizarre
17 video about inciting suspects to resist arrest and being tear
18 gassed in the car vents and it was a little off.

19 Q Do you -- did you understand why he was sending this You
20 Tube video link to Mr. Magedson?

21 A Everything -- my interpretation of everything that
22 Mr. Chaker did with respect to me, David Gingras and Magedson
23 was to try to frighten us enough that Magedson would make a
24 decision to remove the post from Ripoff Report.

25 Q And of course this was following an earlier post on an

1 email -- on a blog that he had said he was not going to court,
2 he's going to lose it?

3 A Right. Yes.

4 Q Let's move forward in time about a month there, on
5 December 24, 2010. What happens then?

6 A I'm sorry, December 24?

7 Q Yes, please.

8 A Oh, I got you. Okay. Sorry. Oh, right. So he
9 attached -- Mr. Chaker attached some records from a
10 disciplinary action against David Gingras from 2007, and he
11 also attached the NCA notice and he said he was going to
12 publish a website about Gingras and about my law firm, and
13 that he was going to do a neighborhood mailing campaign. And
14 what was a little disturbing about this -- or most disturbing
15 about this particular email was that he included my home
16 email -- I'm sorry, my home physical address and David
17 Gingras' home address.

18 Q What, if any, safety precautions did you take in response
19 to this?

20 A I don't remember if I took any precautions at that point.
21 I know that at some point in time I showed my daughter, my
22 teenaged daughter a picture of Mr. Chaker and I told her that
23 if she saw him around to immediately call the police. But I
24 don't remember at what point in time that was.

25 Q Why did you feel that was necessary?

1 A Because I -- and I think it may have been later, because
2 he started talking about coming to Arizona and knowing my home
3 address.

4 Q On that same topic, do you know if Mr. Gingras ever
5 made -- have any safety precautions?

6 A He installed a home security system with video cameras.

7 Q And that was in response to this?

8 A Yes, my understanding was that that's why he did it. I
9 think at some -- one point Mr. Chaker took a picture of David
10 Gingras' front door.

11 Q Okay.

12 A That kind of freaked me out.

13 Q And we'll get to that. Let's jump forward in time to the
14 next page of the chronology, to July 18, 2011. Can you tell
15 us what happened on that date?

16 A Oh, that's what I was just talking about. So Mr. Chaker
17 sent a photograph to David Gingras of David's residence. And
18 it was a close up, I mean it looked like his front door. And
19 he also sent out copy of my deed of my property, and a list of
20 the home addresses of several of Jaburg & Wilk's clients.

21 So my law firm has a website and on our website we
22 have testimonials of clients who are happy clients, so he
23 apparently researched those clients, and it doesn't give their
24 addresses on the website, but he must have gone through the
25 names and then researched their home addresses, and then he

1 sent their home addresses to us.

2 Q About a month later I understand that he filed a bar
3 charge against you?

4 A I'm sorry, let me back up for a minute. Some of the
5 addresses were the business addresses of the clients, not all
6 of them were the home addresses. The one home address that
7 stuck out was Deborah Wakis (phonetic) because that later on
8 he actually goes to her house. But the other ones I think are
9 actually their business addresses.

10 Q Okay. And specifically talking about Ms. Wakis. Did she
11 have anything to do with Ripoff Report or Xcentric or anything
12 with regards to Mr. Chaker?

13 A Nothing whatsoever. She's completely unrelated. She
14 simply did a testimonial for the firm.

15 Q Okay. All right. Let's go then back to August 24. I
16 understand that the Defendant filed a bar complaint against
17 you?

18 A Correct.

19 Q And what happened with that?

20 A It was dismissed.

21 Q Then let's move forward to about two months there, a
22 month-and-a-half to October 8, 2011. What happened about
23 that?

24 A Mr. Chaker sent me an email, sent David Gingras an email
25 and he copied a long list of attorneys from my law firm.

1 Again, he requested a removal of the post on Ripoff Report.
2 He threatened to file a second bar complaint and he threatened
3 to publish negative information about David Gingras. He again
4 included the home addresses of certain clients, Deborah Wakis.

5 And he made this quote,

6 "I may be aware of various people who have threatened the
7 safety of Ed Magedson, but will not advocate injury
8 to you, members of your firm or family members, or even
9 Gingras while connecting who defends Ed Magedson with
10 publicly available records."

11 So there were people who had threatened Ed
12 Magedson's life and I took this to mean that Mr. Chaker was
13 going to make sure that those people knew not only how to find
14 Ed, but how to find me and my family.

15 Q But he's in there -- in that note he's saying he's not
16 advocating injuring anyone.

17 A Yeah, well, I don't know if I would call it sarcastic, or
18 a veiled threat, but I mean it clearly indicates, you know,
19 that he wasn't advocating injury.

20 Q And at the end of that email, what does end with?

21 A "This is my last email to you. I've done all I can for
22 now and will take a different course of action."

23 Q What did you understand that to mean?

24 A Well, here again, I mean he's already gone -- you know,
25 so the legal route, he'd already gone the harassment route. I

1 took that as an indication that he was going to escalate his
2 activities in some way. I mean I didn't know if he meant
3 physical yet, but it looked to me like that's what he was
4 talking about.

5 Q Let's move forward a week to October 16, 2011. I
6 understand Mr. Chaker then emailed again?

7 A Yes, again to me, Mr. Gingras and to many attorneys in my
8 firm. We have 35 attorneys in my firm and I think he copied a
9 whole bunch of them on this.

10 Q Was there a selection he made, did he only selected
11 criminal attorneys and not others?

12 A Well, I don't know if this particular email, but in one
13 of the emails he specifically lists only the female attorneys,
14 and I know that he would typically copy our managing partner
15 and then the females in the firm.

16 Q Okay. On regards to this October 16 email, tell us about
17 what Mr. Chaker said.

18 A He said,

19 "Likewise, I will continue to enjoy my Second Amendment
20 rights, as I recently had a former conviction for
21 possessing an assault rifle with a sniper scope expunged,
22 which allows me the joy of shooting. Thankfully Arizona
23 (indiscernible) do not have such laws concerning assault
24 rifles as California does."

25 Q Now was there -- did you see any reason why he a gun with

1 respect to a request to remove a post on a -- on
2 ripoffreport.com?

3 A Sure, he was threatening me and he was threatening my
4 clients, he was specifically talking about Arizona and he
5 specifically included, again, the home address of one of my
6 female clients and, you know, talked about a sniper scope,
7 meaning he doesn't have to get that close. It was -- this was
8 an incredibly disturbing email.

9 Q And what did you do in response?

10 A I called the police.

11 Q On October 17 you filed an incident report with the
12 Phoenix police. Is that correct?

13 A I did, yes.

14 Q Did the Phoenix police do anything?

15 A No.

16 Q Let's move forward in time to the third page of our
17 chronology. On September 1, 2012, which is under Tab 11, was
18 there an email from Mr. Chaker as well?

19 A Yes.

20 Q And what did he say in this email?

21 A Yeah, and, you know, it was on 9/11, so that was even
22 more disturbing, but he specifically said,
23 "I'm sure you're pleased to know that I'm in Arizona
24 now."

25 Q Now at the point that he's saying this -- first of all,

1 what's your reaction to it?

2 A Again, this is -- you know, although it's many months
3 later, I have not forgotten the fact that he had told me that
4 he could exercise his Second Amendment rights in Arizona. And
5 I absolutely, you know, took this as he wants me to know that
6 he's right here in my home state and that I should be
7 concerned.

8 Q Now at that time had you been -- were you aware that on
9 September 11, 2012, he had already been indicted and arrested
10 in this bankruptcy fraud case?

11 A I didn't. I had no idea.

12 Q And did you know that he was on pretrial supervised
13 release then?

14 A I did not.

15 Q Let's move forward then in time to about a week to
16 September 24, 2012. What happened then?

17 A Another email, a long list of attorneys attached that it
18 went to, a copy of the DMCA notice and -- do you want to know
19 what a DMCA notice is or do you --

20 Q Why don't we go ahead and get that for the record.

21 A Yeah, a DMCA notice is basically a take down notice
22 claiming that there's copyright infringement, which my client
23 rejected because there was no copyright infringement. It was
24 a purported defamation against him, it was not copyright
25 infringement. So the DMCA wasn't the right kind of notice.

1 But anyway, that DMCA notice, he sent it over and over again
2 as in repeating or renewing his request that the post be taken
3 down.

4 But along with that notice he had the photographs of
5 David Gingras' home, some public records about David Gingras,
6 and he included email addresses of approximately -- about 100
7 Phoenix lawyers, and he said he would be emailing all of them.
8 So these would be all my peers that I work with in the
9 community in Phoenix, and he was going to email all of them.

10 Q You had earlier testified about a photograph of his home.
11 This was in addition to the one he had sent before about the
12 front door?

13 A I think it was the same picture.

14 Q Okay. Same.

15 A I think it was the same.

16 Q All right. What was your reaction to this email?

17 A Well, I think it was clearly harassment, it was clearly
18 he wanted to -- and this particular email was about -- even
19 though David Gingras hasn't worked for my law firm for a very,
20 very long time, he continued to tell everybody that David
21 Gingras worked for my firm, and then to say that David Gingras
22 had this history of, you know, this violation many years ago.
23 In other words, he was going to make it look like my firm was
24 hiring somebody who had a sordid past, and was currently
25 employing that person, which we weren't. And he was sending

1 it to all my peers.

2 Q Let's jump forward to the next day on the chronology,
3 December 1, 2012, about a year ago. What does he do at that
4 point?

5 A Well, then he follows through on the threat from the
6 September -- he actually emails about 140 Phoenix lawyers and
7 sends them David Gingras' booking photo from 1999 and David
8 Gingras' record and tells them all that David Gingras works at
9 Jaburg & Wilk, which he didn't that time.

10 THE COURT: Where are now -- excuse me -- oh,
11 December?

12 MR. KHANDELWAL: December 1, 2012.

13 THE COURT: He states he has emailed --

14 THE WITNESS: Yeah.

15 THE COURT: Do know one way or another it happened?

16 THE WITNESS: (No audible response.)

17 THE COURT: Do you know --

18 THE WITNESS: Yeah, I'm trying to remember if I got
19 any feedback from any of them. Your Honor, I think I do have
20 confirmation that he emailed them. I believe I saw -- you
21 know, I'm not sure. I think that I saw emails, but I'm not
22 positive.

23 THE COURT: Okay.

24 THE WITNESS: And he said -- and he ends the email
25 with, "And, no, it won't end."

1 BY MR. KHANDELWAL:

2 Q And what was your reaction to that?

3 A Again, this was, you know, clearly harassment and, you
4 know, I guess he had decided that it was a good -- hurt our
5 reputation perhaps with the pressure on our client to remove
6 the post about him.

7 Q Let's move again a month ahead in time, about January 14
8 of this year, 2013. What does Mr. Chaker do at that time?

9 A Well, I got a call for Deborah Wakis on that day and she
10 said, This is really strange, I -- and she didn't even know
11 about any of the previous things that I'm talking -- she said,
12 This is really strange. I got something in my mailbox that's
13 addressed to you.

14 And I was like, well, that doesn't make any sense.
15 And I said, What is it? And she said, It's a DMCA notice and
16 it is addressed to you. And I said, Who's it from, and then I
17 realized it, and I said, Who's it from? She said, Darren
18 Chaker. And I said, Was it mailed? And she said, No, it was
19 just folded over and put in my mailbox.

20 So I said, Please fax that to me, and she did. So
21 that meant to me that, you know, that he was clearly letting
22 me know that he was willing to go to the home of my client,
23 physically go there.

24 Q This was her actual home, not her business?

25 A This was her actual home.

1 Q And her home is in Arizona?

2 A Correct.

3 Q What was your reaction to this?

4 A Oh, this was -- this is what made me write the
5 chronology, this is what made write the letter. I was -- you
6 know, the first time I made a police report they did nothing
7 and I was going insist that somebody do something because now
8 he wasn't just threatening me, he was threatening my client,
9 he was going to my client's house and it was just really
10 disturbing.

11 Q And of course at this time you didn't realize that he was
12 under pretrial supervised release?

13 A I did not know that. And I assumed he went in person,
14 and I don't -- to this day I assume he went in person, but I
15 mean he was heading out.

16 Q Since this January 22, 2013 -- well, let me ask you this.
17 Did anyone -- did any law enforcement do anything about --
18 with respect to this January letter?

19 A I did get a call after this one, but nothing ever came of
20 it until I heard from guys recently. But I did get a call,
21 you know, a follow-up call.

22 Q From law enforcement?

23 A From law -- from -- she wasn't a police officer, she said
24 something like she was some sort of assistant at the police
25 office and she got a bunch of information from the local

1 Phoenix police.

2 Q And did anything happen as a result of that?

3 A No, she just asked me a lot of questions and said she'd
4 be looking into it. And I think that's when I first found out
5 that he was involved -- you know, that he had other
6 proceedings against him, if I remember correctly.

7 Q Since the January 2013 letter, when was the next time
8 that you had any contact with Mr. Chaker?

9 A Well, I don't think I was actually directly emailed it,
10 or either that or my version went into Spam, but I received
11 emails from my partners, from two or three of my partners
12 forwarding emails they had gotten from Mr. Chaker that
13 included a blog, and that was in August of 2013.

14 MR. KHANDELWAL: May I approach, Your Honor?

15 THE COURT: (No verbal response.)

16 BY MR. KHANDELWAL:

17 Q I'm going to had to you what's been marked as D-2, D-3
18 and D-4. If you could turn to D-2 first.

19 (Government Exhibits D-2, D-3 and D-4 marked for
20 identification.)

21 THE COURT: You're offering these. Right?

22 MR. KHANDELWAL: Yes, yes, Your Honor.

23 BY MR. KHANDELWAL:

24 Q D-2, can you just telling us what we're looking at with
25 respect to D-2?

1 A Okay. Well, Gary Jaburg is our managing partner and our
2 main partner with the firm and he had forwarded this to me.
3 And it is a reference to Jaburg & Wilk attorney arrested for
4 molestation. This is a reference to David Gingras' arrest
5 back in 1999.

6 And it looks like Mr. Chaker had started one of
7 those petition site dot com petitions against our law firm.
8 And he had sent it to my managing partner and he also sent it,
9 if you go to the second page, to Gary Bialowas, who's one of
10 our clients, and included Gary Bialowas' home address.

11 Q And now this happens on August 18 or so I guess, some of
12 the dates are a little bit earlier than that actually.

13 A Yeah, 14th, 15th, 16th. He also sent it to Neal
14 Bookspan, another one of my partners.

15 Q In mid-August 2013 --

16 A Correct.

17 Q -- were you aware that by this time he had been
18 convicted in federal court and was now pending sentencing?

19 A I was not.

20 Q These blog entries, have you ever had a chance to look at
21 some of these?

22 A Yes.

23 Q And let's turn to D-3. What's D-3?

24 A D-3 is one of the blog entries that he sent around, and
25 what's interesting about that is other than David Gingras'

1 address, every address on there is, in fact, every female
2 attorney in my office. And so every woman in my office's home
3 addresses.

4 Q Right. So let's look at that. First of all, it's dated
5 on the top of this document as Tuesday, August 13, 2013. Is
6 that right?

7 A Yes.

8 Q And, in fact, on the blog archive to the right of the
9 date on the first page of D-3, it actually lists six different
10 blogs I guess, or entries on the blog at that same time period
11 in August 2013. Right?

12 A Yes.

13 Q In this report he -- let me see if I'm indicating this
14 correctly. Just tell me if I'm reading this right I guess is
15 probably the easiest way to do this. Darren Chaker agrees
16 that despite the -- and it says, D-E-A-T. I'm not sure what
17 that stands for.

18 A Oh, yeah.

19 Q Okay. That some people may feel against Ed Magedson, who
20 started ripoffreport.com and remains in hiding. Do you know
21 anything about that?

22 THE COURT: Wait, I'm sorry. Forgive me. Oh,
23 you're at the top?

24 MR. KHANDELWAL: I'm at the top, Your Honor. I
25 assume it's correct because I think it's easier, it's so small

1 frankly.

2 THE WITNESS: It was a *Forbes* article about Ed
3 Magedson, about how he has gotten so many death threats that
4 he doesn't like people to know where he lives.

5 BY MR. KHANDELWAL:

6 Q Oh. Okay.

7 A And that's the reference to that.

8 Q And it says -- then it follows with,
9 "It should not be forgotten it is the lawyers who
10 concocted ways to keep Xcentric Ventures, LLC d/b/a
11 ripoffreport.com to exist in churning money for the
12 website and it's attorneys."

13 Did I read that right?

14 A Right. But --

15 Q Can you read the next sentence for us?

16 A Sure.

17 "Darren Chaker does not promote injury to the lawyers,
18 but does provide home addresses of its female attorneys,
19 since females appear to listen better in an effort to
20 keep open the channels of communication."

21 Q Now what was your reaction to that, ma'am?

22 A Oh, it was just cowardly in a way but, you know, I mean
23 I -- it's -- I'm sorry. He says it's because females listen
24 better, it's because he thinks females are more afraid of him.
25 And so this was, you know, this was connected directly. Well,

1 Ed may be in hiding, but we know the home addresses of his
2 lawyer, so you can go after that.

3 Q Of his female lawyers.

4 A Of his female lawyers. Exactly. And it was just -- it
5 was just over the top threatening and outrageous.

6 Q And below of course it lists, besides David Gingras',
7 several female attorneys at your firm?

8 A Correct.

9 Q All right. Let's look at D-4, and that's another blog
10 entry in August of 2013. Again, it has the same date,
11 Tuesday, August 13, 2013?

12 A Yes.

13 Q Let me just sort of jump down without reading it. Do you
14 see the part where it says, Here it is encouraged, sort of in
15 the middle?

16 A Yeah.

17 Q Okay. Can you read that part right there?

18 A "Here it is encouraged to voice opinion about Jaburg &
19 Wilk, but not to injury to attorneys or clients.
20 Nonetheless, here are a few client home addresses to
21 voice concerns over a business who" --

22 I'm sorry.

23 " -- business you believe who should not support Jaburg &
24 Wilk due to its representation of Ripoff Report or
25 employing an attorney, David Gingras, who was charged

1 with sexual molestation."

2 So basically, you know, you're clients of this law
3 firm, you shouldn't be, you shouldn't support this firm, this
4 firm represents Ripoff Report.

5 Q Now in the context of the last three years of dealing
6 with Mr. Chaker, did you take him at his word where he says
7 it's not to injure attorneys or clients?

8 A No, I mean it clearly was. I mean it was absolutely
9 about intimidating us.

10 MR. KHANDELWAL: Nothing else, Your Honor.

11 THE COURT: Cross?

12 MR. COLOMBO: Thank you.

13 CROSS-EXAMINATION OF MARIA CRIMI SPETH

14 BY MR. COLOMBO:

15 Q Ms. Speth, you've never spoken to Mr. Chaker. Is that
16 right?

17 A That's correct.

18 Q Has he ever contacted you at your office --

19 A He has contacted me --

20 Q -- through the phone?

21 A -- many times.

22 THE COURT: Many times.

23 THE WITNESS: Many times.

24 BY MR. COLOMBO:

25 Q Through the phone?

1 A Never by phone.

2 Q Okay. He has never contacted you in person. Is that
3 right?

4 A That's correct.

5 Q Okay. And, in fact, you've never seen Mr. Chaker before.
6 Is that correct?

7 A That's correct.

8 Q Other than a photograph.

9 A That's correct.

10 Q Okay. Now Mr. Chaker has never overtly threatened you
11 with physical harm. Is that correct?

12 A I don't know what you mean by overt. I think telling me
13 that he's going to exercise his Second Amendment rights is a
14 pretty overt threat. Has he ever said, I'm going to kill you
15 directly? No.

16 Q Okay. So he has never overtly threatened you, I'm going
17 to kill you, I'm going to hurt you, anything like that.
18 Correct?

19 A He's never said those words. Again, I think his threats
20 were pretty overt, but never used those words.

21 Q Okay. Now all this started back in June of 2010. Is
22 that right?

23 A Correct.

24 Q When Mr. Chaker made a request to your firm and to
25 ripoffreport.com to remove what he believed was defamatory and

1 false information that was posted on ripoffreport.com. Is
2 that correct?

3 A It was a request to remove posts. I don't know if he
4 believed them to defamatory or not, but he wanted them
5 removed.

6 Q Well, in his initial email to you he requested you, as
7 counsel and an editor of ripoffreport.com, to remove postings
8 that he's a fraud, a liar and a felon that are clearly
9 defamatory. Is that right?

10 A Is that what he said? Yes.

11 Q Okay. So you're aware then of the content of what
12 Mr. Chaker was concerned about. Is that right?

13 A I remember now that it was about something his ex-
14 girlfriend posted. I do not remember the content.

15 Q In fact, one of the postings that the ex-girlfriend had
16 posted was that picture of Mr. Chaker with a rifle. Is that
17 right?

18 A I don't know. On Ripoff Report?

19 Q Yes.

20 A I don't know.

21 Q Well, you're familiar with all the emails that had been
22 sent. Correct? From Mr. Chaker to you and to other attorneys
23 of ripoffreport.com?

24 A I'm familiar with all the ones that were sent to me and
25 the ones that were forwarded to me, yes.

1 Q And that particular photograph, which you said that you
2 found threatening, that's actually a post from
3 ripoffreport.com. Is that right? With this picture?

4 A I think so. No, that's not it. No, that's not Ripoff
5 Report, that's from a Sedona, I think, agency -- no, that's
6 definitely not Ripoff Report.

7 Q Oh, it's not Ripoff Report then.

8 A No.

9 Q Well, within one of the emails that was sent to you with
10 that photograph, Mr. Chaker explained that that photograph is
11 copywritten, and he requested that it be taken off of
12 ripoffreport.com. Isn't that correct?

13 A I don't think so. I could be mistaken, but I don't think
14 the DMCA notice was about that photo. That was not my
15 understanding. Now I'm not saying I couldn't be incorrect
16 about that, but I don't think so.

17 Q Well, in Tab Number 1 there was an email that was
18 attached to that. Correct?

19 A What was attached to Tab Number 1 when we received it was
20 a complaint against -- between him and his ex-girlfriend. I
21 can't remember who was doing it.

22 Q Okay. And that's not something -- in your Tab Number 1,
23 that email from Mr. Chaker is not attached. Is that right?

24 A No, it's not on this version. I'm not sure if it --
25 yeah, it's --

1 Q That's not something that you provided to the Government,
2 that email. Correct?

3 A I'm not sure. I just don't remember.

4 Q Well, this Tab Number 1 was an attachment to an email
5 that you received from Mr. Chaker. Correct?

6 A That's correct.

7 Q Okay. And that email that you received from Mr. Chaker
8 was a request to remove that photograph that had been posted
9 on ripoffreport.com because it was copywritten.

10 A I'm not sure. I know that a month earlier he had made a
11 request to remove a post. When he emailed in July I do not
12 recall if he again had requested removal, or if he just
13 included the complaint and the photo. I just don't remember
14 that.

15 Q So as you sit here today you can't say whether or not
16 that photograph that was included as an attachment by
17 Mr. Chaker was, to you, a threat or something that was in the
18 context of what he was requesting to be removed from
19 ripoffreport.com.

20 A Oh, I can tell I took it as a threat.

21 Q You took it as a threat.

22 A Absolutely.

23 Q Correct? Well, you can't say today whether or not it was
24 in the context of having that photograph removed from
25 ripoffreport.com.

1 A If I had received a request to remove that photograph, I
2 would not have interpreted it as a threat, which is why I do
3 not believe that that's what it was.

4 Q Well, let me ask you, at that point when you viewed this
5 photograph as a threat and not in the context of having it
6 removed from ripoffreport.com, you did not contact law
7 enforcement.

8 A Well, that's true. I did not.

9 Q You didn't contact the FBI?

10 A That's true.

11 Q The local Arizona police department?

12 A True.

13 Q Okay. You didn't raise nearly any concerns at that point
14 about this particular photograph.

15 A To law enforcement, no, I did not.

16 Q Okay. Now you indicated during the course of your
17 testimony that Mr. Chaker had -- you felt threatened by him.
18 Correct?

19 A Correct.

20 Q Now the threats --

21 THE COURT: Could I ask a question? Was the photo
22 in the posting of Ripoff Report by Ripoff Report?

23 THE WITNESS: I don't think so.

24 THE COURT: So the posting was -- the photo rather
25 was in some other posting. But what connection, if any, did

1 you have to the photo and the posting that he -- that
2 contained it?

3 THE WITNESS: That's what I'm saying. My memory is
4 not -- my memory is that the first time we had ever seen the
5 photo was when Mr. Chaker sent it to us. Because -- and the
6 reason I say that is because -- you know how they say you
7 don't bats, but you remember how they made you feel, the way
8 it made us feel was that he was threatening us.

9 And if all he was doing was saying, Take down this
10 post, I don't think we would have been threatened by that.
11 And my memory is we were very threatened by it, and we -- and
12 he sent it to us unrelated to the take down request. That's,
13 again, my memory and I -- if I saw documents, I, you know, I
14 possibly could be wrong. But that's the way I remember it.

15 BY MR. COLOMBO:

16 Q But your -- the email from Mr. Chaker isn't attached as
17 an exhibit to Tab 1. Right?

18 A It's not.

19 Q Okay. And that's not something that you recall -- this
20 wasn't to the Government. Is that right?

21 (Pause in proceedings.)

22 MR. KHANDELWAL: Your Honor, we've turned over
23 everything, you know, we've gotten to defense.

24 THE COURT: Okay.

25 THE WITNESS: Yeah, so --

1 THE COURT: Do you have Ms. Speth's -- all the full
2 emails, or do you have just a summary.

3 MR. KHANDELWAL: We have a stack, I've been going
4 through it, try to make it as best I could. I don't remember
5 if I had this particular email or not.

6 MS. FERKO: And, Your Honor, what I filed, Your
7 Honor, with the supplement, that was actually an email I
8 received from somebody else.

9 THE COURT: Right.

10 MS. FERKO: I believe it was from stuff maybe
11 through my agent. And I printed everything out and initially
12 that exhibit was filed along with the objections to the PSR,
13 and then that exhibit was just -- I just duplicated for the
14 purpose of this hearing, so --

15 THE COURT: I see. Okay.

16 BY MR. COLOMBO:

17 Q Now, Ms. Speth, you testified earlier that you did not
18 review what had actually been posted on ripoffreport.com about
19 Mr. Chaker. Correct?

20 A I said I didn't remember reviewing it. I can't say that
21 I didn't review it at the time. I don't -- I couldn't tell
22 you the content of it today as I sit here. I mean this is
23 going back three years now, so I'm just not sure.

24 Q So you can't say whether or not the content of the
25 ripoffreport.com included that photograph of Mr. Chaker with a

1 rifle.

2 A I can tell you that I do not believe it did, but I can't
3 say 100 percent certain, but I do not believe that that
4 photograph of Mr. Chaker with a rifle was ever on Ripoff
5 Report to my knowledge.

6 THE COURT: What was the typical process, if you got
7 a complaint from the target of the ripoffreport.com posting?
8 In other words, you got a complaint from somebody about him, a
9 report was made, and the posting -- and the subject said, Take
10 it down. What would the process be?

11 THE WITNESS: It depends on whether the take down
12 was a result of a copyright infringement or defamation, two
13 totally different procedures. If it was copyright
14 infringement, as in somebody says, That's my photograph, or a
15 photograph that I have a copyright on, it would be removed
16 almost immediately upon receipt, assuming it was a valid DMCA
17 notice.

18 If, on the other hand, the request was the result of
19 alleged defamation, ripoffreport.com --

20 THE COURT: A DMC --

21 THE WITNESS: DMCA is copyright. If the subject of
22 a post said that it was defamatory, Ripoff Report's general
23 procedure would be to send back a letter that says, We don't
24 removed posts just because you say they're defamatory. And
25 the Communications Decency Act protects the website from

1 THE COURT: And do you know one way or another if
2 that happened, or was requested in this case?

3 THE WITNESS: It was not requested and it did not
4 happen in this case.

5 THE COURT: It did not happen.

6 BY MR. COLOMBO:

7 Q Now, Ms. Speth, you're familiar with the content of
8 ripoffreport.com. That's correct?

9 A Yes.

10 Q Okay. And you testified it's basically negatively
11 comments by consumers concerning particular services or goods
12 that they're familiar with. Right?

13 A Generally I mean the majority of which is about this,
14 this is -- but the website does not prevent people from also
15 posting about individuals. But it's mostly about businesses.

16 Q And the reason why Mr. Magedson has -- I hope I
17 pronouncing his name correctly --

18 A It's Magedson.

19 Q -- Magedson has received death threat after death threat
20 is because the content of ripoffreport.com is particularly
21 nasty, isn't it?

22 A The reason he's received death threat after death threat
23 is because people who are ripping people off don't want to be
24 exposed.

25 Q Well, the content of ripoffreport.com can be pretty

1 nasty. Correct?

2 A I'm not comfortable with the word nasty. I've seen some
3 things that I think are nasty on Ripoff Report. I think that
4 most of the content on Ripoff Report is consumers who email,
5 and I think that's not nasty at all, and --

6 Q Well --

7 A -- that's a good thing. But of course I wouldn't
8 represent them if I didn't think that.

9 Q -- yet there are postings, as you said, against
10 individuals. Right?

11 A There are some postings against individuals, yes.

12 Q Opinions about what one individual thinks of another
13 individual. Correct?

14 A I'm not going to say it's not on there, but not
15 typically. It's typically more about something that
16 somebody's done to someone else as opposed to just, I don't
17 like that person. It's usually, I had a dealing with that
18 person and it didn't go well and here's what happened to me.

19 Q Well, there's no particular view that ripoffreport.com
20 does before an individual posts their posting. Is that right?

21 A No, that's not correct. There's a team of monitors that
22 are employed by Xcentric Ventures, and their job is to review
23 the posts, not for defamation, so if you mean review for
24 defamation --

25 Q I do mean for defamation.

1 A Okay. But they remove threats, they remove social
2 security numbers, credit card numbers, personal information,
3 but they don't -- you're right, nobody reviewed -- they have
4 no way of knowing whether it's true or false, and they don't
5 try to figure that out.

6 Q So they remove information that basically wouldn't be
7 protected under the First Amendment.

8 A Correct. That is, on its face, not protected under the
9 First Amendment. Correct.

10 Q Understood. And if there is some information on an
11 individual that is defamatory, there is some type of internal
12 review that can be done to remove those posts.

13 A If somebody seeks arbitration, then that's the only --
14 that's really the only program that they have for that.

15 Q There is an expense that's incurred by ripoffreport.com,
16 your client, if, in fact, they have to remove postings by
17 individuals using the service. Is that right?

18 A They don't -- I don't know because they don't remove
19 postings. Again, if they remove a factual statement under the
20 arbitration, I don't think there's a lot of expense involved.
21 I mean, yes, there's some expense, but it would be nominal,
22 somebody has to go in and remove the statement of fact that's
23 false.

24 Q And there's also an expense incurred through the use of
25 arbitration. Is that right?

1 A An expense incurred, but Ripoff Report passes that
2 expense along to the person who wants to do the arbitration.
3 They don't do that for them.

4 Q So in order to engage in the arbitration then, the
5 individual who is requesting the arbitration has to pay for
6 it.

7 A That is correct.

8 Q And in circumstances where an individual can't afford to
9 pay for it, what happens then?

10 A There is also a program for somebody who can't afford to
11 pay, they can send in to Xcentric their financial information
12 and basically plead poverty and Xcentric will consider that,
13 and has in frankly very few circumstances, but has on occasion
14 said, Okay, we'll either reduce or eliminate the fee.

15 Q So it's up to Xcentric then to determine --

16 A Oh, yeah.

17 Q -- whether or not they qualify.

18 A Sure. Sure.

19 Q Now I want to go back --

20 THE COURT: Did Mr. Chaker ever make this request?

21 THE WITNESS: No.

22 THE COURT: I thought I asked you that.

23 BY MR. COLOMBO:

24 Q I want to get back to the alleged threats by Mr. Chaker.
25 Now these alleged threats never manifested themselves in any

1 physical harm to you.

2 A That is correct.

3 Q They have not manifested themselves in any physical harm
4 to any of your clients.

5 A That's correct.

6 Q Any of the other attorneys at your firm.

7 A Correct.

8 Q Anyone at ripoffreport.com?

9 A Right.

10 Q Or anyone at all that you're aware of.

11 A Right.

12 Q Now, what these alleged threats have manifested
13 themselves in is, for example, a DMCA request.

14 A I'm sorry. I don't think the threats manifested in the
15 DMCA request. I think -- there was a DMCA request, yes.

16 Q Okay. Well, there was bar complaints issued by
17 Mr. Chaker.

18 A Correct.

19 Q There were notifying individuals of Mr. Gingras, a former
20 attorney for Jaburg & Wilk who had been arrested for sexual
21 molestation of a minor. Is that right?

22 A I'm sorry, could you state -- ask the question again. It
23 was there was notification to people about that?

24 Q Yes.

25 A Yes. Yes.

1 Q There was, in addition to that, a request for postings of
2 public information concerning the attorneys at Jaburg & Wilk
3 and other individuals at ripoffreport.com. Is that right?

4 A And the clients of Jaburg & Wilk, yes.

5 Q Okay. And that public information meaning addresses, et
6 cetera. Correct?

7 A Correct.

8 Q All right. Now that's something that an individual on
9 ripoffreport.com could post legally. Is that right?

10 A Home addresses can be posted, but they'll be removed if
11 somebody says it's their home address and has nothing to do
12 with the business. But, yeah, you can post it.

13 Q Okay.

14 A It'll be removed, but you can post it.

15 Q That's protected within the First Amendment. Is that
16 right?

17 A Are you asking me a legal opinion? Do I think posting
18 somebody's home address is protected under the First
19 Amendment? I think in a vacuum, yes.

20 Q And in addition Mr. Chaker filed -- or threatened to file
21 lawsuits against Jaburg & Wilk and ripoffreport.com. Is that
22 right?

23 A Nobody threatened to sue my firm that I can remember.
24 He -- I think he did threaten to sue ripoffreport.com.

25 Q Now you never sought an injunction against Mr. Chaker.

1 Correct?

2 A No.

3 Q And you said you went -- or approached law enforcement
4 twice. Is that right?

5 A Correct. And there might have been a third time, but I
6 think just twice.

7 Q And neither time was there any follow-up to your
8 satisfaction. Is that fair to say?

9 A To my satisfaction, that is fair to say, yes.

10 Q Okay. The first time your information was ignored?

11 A It seemed to have been completely ignored the first time.

12 Q And the second time your information, all you received as
13 a result was a phone call back.

14 A Correct.

15 Q No follow-up investigation, no interview with Mr. Chaker?

16 A You know, I thought that the woman who called me said she
17 was going to interview him, but I'm not sure she ever did.
18 But I think she told me that they were going to try to
19 interview him.

20 Q But you're not aware that that ever happened.

21 A I'm not -- just not sure either way.

22 Q So this has been an ongoing situation for you for three
23 years. Correct?

24 A Correct.

25 Q And you would say that it has been -- you felt harassed?

1 A Correct.

2 Q And these emails from Mr. Chaker to you, you say you
3 received them periodically. Is that right?

4 A Yes.

5 Q I'd say, in looking at my calculation, and correct me if
6 I'm wrong, over the course of 38 months you received
7 approximately 23 emails.

8 A (No audible response.)

9 Q Including the last exhibits D-2 through 4, which I
10 believe are from our recent history.

11 A I think the numbers are close to that.

12 Q So about one email every six weeks.

13 A I don't think it was like that. I think there was -- I'd
14 not hear from him for a while and then I'd get a little flurry
15 of emails, and then I wouldn't hear from him for a while, and
16 then I'd get a flurry of emails.

17 Q And you would agree that if an individual felt that they
18 had been defamed on ripoffreport.com by being called a liar, a
19 felon, a crook, what have you, that would be disconcerting to
20 that individual. Right?

21 A Sure.

22 Q It would be something that that individual would be
23 concerned with. Correct?

24 A I would think.

25 Q And if they felt ignored by ripoffreport.com, that would

1 be upsetting as well. Correct?

2 A I imagine.

3 MR. COLOMBO: May I approach, Your Honor?

4 THE COURT: Sure.

5 BY MR. COLOMBO:

6 Q I want to ask you about Exhibit D-4. That is the last
7 email that you said you received wherein Mr. Chaker addresses
8 the issues with the female attorneys being better listeners.
9 Is that right?

10 A No, that's D --

11 Q Oh.

12 A -- 3 I believe.

13 Q Okay.

14 A That D-4 is about my client --

15 Q All right. Sorry. I apologize. D-3. And in that
16 particular email, after Mr. Chaker says that in his belief he
17 thinks that female attorneys are better listeners, there's a
18 link to the study saying female attorneys are better
19 listeners. Is that right?

20 A Yeah, and this sounds -- this might sound like semantics,
21 and I don't mean to argue with you, but he doesn't say they're
22 better listeners. They say they -- he says they listen
23 better. And that's different, because better listeners mean,
24 you know, you're really listening and listen better means when
25 you're threatened, you'll respond. To me that's a big

1 difference.

2 Q And that's the way you interpreted it.

3 A That's the way in interpreted it, yes.

4 Q And you're not connecting that at all with your
5 profession as a lawyer?

6 A I'm sorry, what do you mean --

7 Q You're not connecting that interpretation at all with
8 your profession as a lawyer.

9 A No, I'm connecting that with my status as a woman. And I
10 think that the fact, again, that he picked the women in the
11 firm to pick on and that he specifically said they listen
12 better, I don't think it -- I don't think you have to be a
13 lawyer to figure out that he meant that women respond better
14 because they're afraid.

15 Q But that particular link that is in that email, in fact,
16 corroborates what Mr. Chaker has said. Is that right?

17 A Help me out because I don't see the link. I don't -- I
18 actually do not see a link.

19 MR. KHANDELWAL: If I can show the original, Your
20 Honor, it's in color, which may show the link as a --

21 THE COURT: Sure.

22 MR. KHANDELWAL: Can I come and --

23 (Several speaking at once.)

24 THE COURT: No, the link -- where is the link. I
25 don't see it either.

1 THE WITNESS: Oh, that's the hyperlink that -- that
2 doesn't -- well, I don't know what it links to. But typically
3 that would be to an article, typically that would be --

4 THE COURT: Where is the link? Somebody read it to
5 me. Do you want to show me --

6 MR. KHANDELWAL: The original has it in color,
7 that's why --

8 THE WITNESS: It's the words -- just the words,
9 Listen Better, in blue.

10 BY MR. COLOMBO:

11 Q So it indicates a hyperlink. Right? It gets to you.
12 Right?

13 A And that's usually an advertising company that -- it's
14 something that internet websites use for advertising.

15 Q Well, I would argue, yes --

16 THE COURT: Supposedly it goes to an article.

17 BY MR. COLOMBO:

18 Q You never clicked on that to see whether or not it
19 connected to an article which quotes what it is Mr. Chaker was
20 saying?

21 A No, I didn't. I was -- no.

22 Q Now over the course of this three years, just to
23 reiterate, you've never been physically harmed.

24 A Correct. Well --

25 Q Well, we know --

1 MR. KHANDELWAL: Objection, Your Honor.

2 MR. COLOMBO: It's cross-examination, Your Honor.

3 THE WITNESS: Never by Mr. Chaker. That's correct.

4 BY MR. COLOMBO:

5 Q None of the attorneys you work with. Right?

6 A Correct.

7 Q None of the clients that you have?

8 A Correct.

9 Q All right. No one that you are aware of.

10 A No one that I'm aware of.

11 MR. COLOMBO: No further questions.

12 REDIRECT EXAMINATION OF MARIA CRIMI SPETH

13 BY MR. KHANDELWAL:

14 Q Sitting here today, if the Defendant were released, would
15 you be in fear for your safety? Based on all the things that
16 happened the last three years?

17 A If I knew that he could come to Arizona, yes.

18 MR. KHANDELWAL: No further questions.

19 MR. COLOMBO: Nothing further.

20 THE COURT: You're excused. Thank you.

21 THE WITNESS: Do I leave this here or --

22 THE COURT: Yes.

23 (Witness steps down.)

24 MR. KHANDELWAL: And may I ask the witness be
25 excused so she can go back to Arizona?

1 THE COURT: You are excused, ma'am.

2 THE WITNESS: Thank you.

3 MS. FERKO: Your Honor, we have the -- Investigator
4 Fazal is our next witness. So I can call her, if we can just
5 sit around.

6 (Pause in proceedings.)

7 MR. COLOMBO: While we're waiting, Your Honor, for
8 Ms. Fazal, I do have a Defendant's Exhibit I, which I received
9 late. It was a letter addressed to Your Honor from the
10 Electronic Frontier Foundation.

11 THE COURT: Yeah, we got it.

12 MR. COLOMBO: Okay. Okay.

13 THE COURT: You're welcome to mark it. Do you have
14 other exhibits? You just -- so you're just --

15 MR. COLOMBO: No, just that --

16 THE COURT: -- picking up where your exhibits left
17 off?

18 MR. COLOMBO: Yes, that's the only one, Your Honor.

19 THE COURT: All right.

20 MR. COLOMBO: So if I could provide this to the
21 Court, I'd like the Court to consider that because I think
22 it's relevant.

23 THE COURT: I read it, but I will consider it. It's
24 their opinion on First Amendment, I saw that. You keep it,
25 because it's an original.

1 MR. COLOMBO: Okay.

2 THE COURT: We have it. We docketed it.

3 MR. COLOMBO: Okay.

4 THE COURT: Or at least we docketed.

5 Ma'am, would you raise your right hand.

6 (Witness is sworn.)

7 THE COURT: Could you sit down, please, and pull
8 yourself close to the mike. If you can pull the chair up
9 one -- all right. Then state and spell your whole name for
10 the record.

11 THE WITNESS: Okay. Leesa, L-E-E-S-A, Fazal, F-A-Z-
12 A-L.

13 THE COURT: F-A-Z-A-L?

14 THE WITNESS: That's correct.

15 THE COURT: All right. You may proceed.

16 MS. FERKO: Thank you, Your Honor.

17 DIRECT EXAMINATION OF LEESA FAZAL

18 BY MS. FERKO:

19 Q Criminal Investigator Fazal, will you please tell the
20 Court how you're employed?

21 A I'm a police officer with the State of Nevada, Office of
22 the Attorney General.

23 Q Okay. And how long have you been employed with the
24 Office of the Attorney General?

25 A For approximately three years.

1 Q Okay. And what was your capacity as a police officer,
2 what do you investigate specifically at this time?

3 A I'm in the missing children unit.

4 Q Okay. And prior to your employment with the Office of
5 the Attorney General, what was your employment prior to that?

6 A I was a police officer and a detective at the Las Vegas
7 Metropolitan Police Department.

8 Q Okay. And as a detective -- how long were you a
9 detective there?

10 A I was employed through that department for about five
11 years.

12 Q Okay. And what kind of cases did you work as a detective
13 with the Las Vegas Police Department?

14 A I worked various units, but I did have a lot of
15 experience and training in Vice, and that's the prostitute
16 subculture.

17 Q Okay. And --

18 THE COURT: What was the first thing you said? ICE?

19 THE WITNESS: Vice.

20 THE COURT: Oh, vice. Okay.

21 BY MS. FERKO:

22 Q And when you worked with Vice, can you just briefly --
23 prostitution, is that -- it is -- in parts of Nevada it's
24 legal. Is that correct?

25 A Not in Las Vegas, but in parts of Nevada, yes. But not

1 in Clark County.

2 Q Okay. So --

3 MR. COLOMBO: Your Honor, I'm going to object as to
4 relevancy. This is --

5 THE COURT: Well, it's background. I'm sure it's
6 going to end very soon.

7 MS. FERKO: Your Honor, that's the only question I
8 had, I just wanted to clarify.

9 BY MS. FERKO:

10 Q Officer Fazal, how did you first come to know an
11 individual by the name of Susan Adcock?

12 A I contacted her through her sister.

13 Q Actually, let me back up. When did you first meet
14 Mr. Chaker?

15 A I never --

16 THE COURT: What, in person?

17 BY MS. FERKO:

18 Q In person, yes.

19 A The first time I met Mr. Chaker was when I was in San
20 Diego Family Court because I was given a subpoena to actually
21 testify at a hearing.

22 Q Okay. And who subpoenaed you to that hearing in San
23 Diego?

24 A The attorney representing Susan Adcock.

25 Q Okay. And the attorney representing Susan Adcock at the

1 time, his name was McMillan. Is that correct? Scott
2 McMillan?

3 A Yes.

4 Q Okay. And at that hearing did you ultimately testify?

5 A No.

6 Q Okay. When you were -- when -- what was the hearing for
7 in California with Mr. Chaker and Ms. [redacted], what did it
8 concern?

9 A It was regarding a child custody matter in which
10 Mr. Chaker obtained an *ex parte* order giving him custody of a
11 four year old child.

12 Q Okay. And --

13 THE COURT: Mr. Chaker got sole custody or joint?

14 THE WITNESS: I believe that it was temporary sole
15 custody of the pick-up order in which he is granted by the
16 Court in San Diego and it was done *ex parte*, meaning the
17 mother was never served with any kind of notice.

18 BY MS. FERKO:

19 Q Okay. And did you do any type of investigation in your
20 capacity as a police officer for the Attorney General's
21 office, related to Mr. Chaker's missing child, [redacted], and
22 Susan [redacted]?

23 A Yes, Mr. Chaker was the one that actually first contacted
24 me for assistance.

25 Q Okay. When Mr. Chaker contacted you, how did he contact

1 you?

2 A Over the phone.

3 Q Okay. And when he called you, do you recall the date in
4 question?

5 A I believe that it was around June 20, 2013.

6 Q Okay. And so June 20, 2013. Is that -- this is the
7 basically the first time you ever heard about Darren Chaker?

8 A That was the first time that I had contact with him.

9 Q Okay. And the hearing that you attended in California
10 was July what?

11 A I have to look at my --

12 MS. FERKO: Your Honor --

13 THE WITNESS: -- I have a copy of the original
14 memo.

15 MS. FERKO: Your Honor, the witness has, just for
16 the record, a copy of a summary of letters that have been
17 provided to defense counsel which was dated July 15, it was
18 just -- or July 25, 2013. She's asking to refer to that.

19 THE COURT: Okay.

20 MS. FERKO: That's just --

21 THE COURT: But it has been provided.

22 MS. FERKO: Yes, Your Honor, I provided it.

23 THE WITNESS: Can I ask to please have a copy of my
24 original memo that has the dates before July 10?

25 MS. FERKO: Sure.

1 Your Honor, the original memo has been filed by the
2 Court, Your Honor, provided through the Government, Your
3 Honor, with the Court under seal. It's Exhibit A of our
4 supplement.

5 BY MS. FERKO:

6 Q Go ahead and take a look at the attachments. And I'm
7 going to need that back.

8 A Oh, yes. And you are correct, it is June 20 --

9 Q Okay.

10 A -- is when I first had contact with him.

11 Q Okay. And what was the date of that hearing that you
12 were subpoenaed and you appeared in San Diego for?

13 A The hearing was on July 22, 2013.

14 Q Okay. So roughly a little bit -- 30 days after.

15 A Yes.

16 Q Okay. When you replied to Mr. Chaker, what did
17 Mr. Chaker inform you?

18 A My assistance in enforcing his ex parte pick-up order
19 that was issued out in California.

20 Q Okay. And what other information -- did he provide a
21 copy of that order?

22 A He provided a copy of that order, yet he did not provide
23 me all the information pertaining to that order on how it was
24 issued. He --

25 Q And what do you mean by that?

1 A There was -- what's that?

2 Q What do you mean by that when you say not all the
3 information was provided?

4 A There's an email that was submitted into evidence as part
5 of the reasoning why he was issued that *ex parte* order, and he
6 failed to provide me a copy of that email.

7 Q Okay. And did you eventually see a copy of that email?

8 A Yes, it was provided to me by the San Diego District
9 Attorney, Child Abduction Unit.

10 Q Okay. And what did that email say?

11 A It was an email that was allegedly sent by Susan Adcock,
12 the mother of the child, to Darren Chaker alleging abuse of
13 the child, making references to the child having marks and
14 bruises.

15 Q And this was an email that Darren had sent to --
16 Mr. Chaker sent to Susan Adcock, or the other way around?

17 A It's an email, yes, that Susan allegedly sent to Chaker
18 and Mr. Chaker then used that as evidence presented in to the
19 Family Court judge in order to get an *ex parte* order giving
20 him custody.

21 Q And as a result --

22 THE COURT: I'm sorry. I must be thick. Please
23 forgive me. You are referring to an email that was in the San
24 Diego Child Abduction Unit files --

25 THE WITNESS: An email --

1 and do things and do not want a job and do not want to
2 get up early to take [redacted] to school last semester or the
3 summer one. Understand you will not see him. I want to
4 go out and live a fun life. I do not care if you're
5 feeling bad or don't sleep. Tough.

6 "No judge will take a kid away from his mom unless she's
7 doing drugs or hitting him hard. He cries, the welts go
8 away and all is okay in an hour with some ice. I can hit
9 him if I want; it's called tough love. It's how I was
10 raised. He gets over it. Stayed up all night getting
11 upset. I went to the garage while [redacted] was sleeping and
12 you were at mom's. It's not a big deal. It took a few
13 min and took stairs. He was fine.

14 "Don't eat, don't leave the house, I don't care what you
15 do. I am in another state so find me if you can and come
16 here to fight for him. If I get any papers, I will go to
17 cousin in Japan and you can't come on a military base, or
18 aunt in Hawaii or Texas. Who the fuck knows.

19 "Nicole and my mom knew what's right for me, are making
20 sure you can't find me and [redacted] doesn't see you. I need
21 to be able to date, do my job and it seems you
22 have the issue, not me. [redacted] is fine and you are
23 sued for when family is only helping other family out.

24 "So leave me the fuck alone. Any now, and then
25 you will get to see a pic of [redacted] If you do not,

1 you will never, ever see him. Never. I don't want
2 another email or message on mom's phone. We all laugh at
3 them anyway. All three of us will stick together this
4 far and we'll keep doing so."

5 BY MS. FERKO:

6 Q So, Investigator Fazal, did you have an opportunity some
7 time after you received that complaint from Mr. Chaker to talk
8 to Susan ?

9 A Yes.

10 Q Okay. And did you -- personally or talk to her on the
11 phone?

12 A I spoke to her -- the first time was over was over the
13 phone.

14 Q Okay. And did you personally meet her when you were in
15 San Diego, California?

16 A Yeah.

17 Q Okay. When you spoke to her on the phone, did she admit
18 to sending that email?

19 A She adamantly denied sending that email, and actually
20 said that that email was -- had --

21 MR. COLOMBO: Objection, Your Honor, not responsive
22 after --

23 THE COURT: Okay. Sustained.

24 BY MS. FERKO:

25 Q As far as Susan did she admit that -- did she

1 agree she sent that email, yes or no?

2 A No.

3 MR. COLOMBO: Objection, Your Honor, asked and
4 answered.

5 THE COURT: Overruled.

6 BY MS. FERKO:

7 Q Okay. What did she say?

8 A Give me a moment and I'll pull it up in my report.

9 MR. COLOMBO: Your Honor, I'm going to object. I
10 understand hearsay's not here, but I would object on
11 confrontation -- Fifth Amendment, Sixth Amendment.

12 THE COURT: This is --

13 MR. COLOMBO: Ms. s not here.

14 THE COURT: Okay. Overruled.

15 BY MS. FERKO:

16 Q So I'll just repeat the question. What did --

17 A Yeah.

18 Q -- Ms. say?

19 A I'm sorry, I'm just looking for that part in my report
20 because I was detailed about it. Just give me one moment.

21 (Pause in proceedings.)

22 THE WITNESS: Ms. said that throughout her
23 relationship that Darren had --

24 MR. COLOMBO: Objection, Your Honor, I'm going to
25 object to the witness reading directly from her report.

1 THE WITNESS: I'm not reading directly from it, I'm
2 just giving a summary of it.

3 THE COURT: Okay. Okay. Let me just make this
4 clear so we can maybe shortcut this a little bit. I don't
5 care about the details --

6 MS. FERKO: Okay.

7 THE COURT: -- of this. I care that
8 adamantly denied writing this email. It's all over your
9 papers, and all this witness's reports really. And frankly,
10 I'm not the Family Court, and I'm not going to get into this
11 whole situation with any detail.

12 MS. FERKO: Yes, Your Honor.

13 THE COURT: I'm not doing it.

14 BY MS. FERKO:

15 Q Agent Fazal, did you find in your investigation of
16 Mr. Chaker and Ms. and the situation that was being
17 alleged, did you find that Mr. Chaker had been accused of
18 hacking into someone else's email?

19 A Yes.

20 Q Where -- what -- what information did you get regarding
21 that, and who did you get it from, if you recall?

22 A I got it from Susan as well as Spring, Texas Police
23 Department.

24 Q And the Spring, Texas Police Department, did they provide
25 you with their reports regarding the conduct of Mr. Chaker?

1 A Yes.

2 Q Okay. And that conduct of Mr. Chaker was some time
3 around January 1, 2012?

4 A That's correct.

5 Q Okay.

6 THE COURT: The Spring County Sheriff's Department?

7 THE WITNESS: I believe so, yes.

8 BY MS. FERKO:

9 Q Okay. And you provided that -- you put that information
10 also in your report. Is that correct?

11 A That's correct.

12 Q Okay. And moving forward to the hearing date in July
13 2003, you say you were subpoenaed to --

14 THE COURT: 2000 --

15 MS. FERKO: 2013. I'm sorry, Your Honor.

16 BY MS. FERKO:

17 Q You were subpoenaed by Scott McMillan. Is that correct?

18 A That's correct.

19 Q Okay. Just describe to me when you -- how that -- how
20 you got to the courthouse and who you were met by.

21 A Scott McMillan transported me to the court and I walked
22 into the building with him, and left around noon.

23 Q Okay. So was there anyone else with Mr. McMillan any
24 other time?

25 A He advised me at the time, for his safety, that he had

1 hired a private investigator to do surveillance of him walking
2 into the courtroom and leaving, because he was scared that
3 Chaker would do something that could harm him.

4 Q Okay. And Scott McMillan, as an attorney, what did he
5 say to you about his being threatened by Mr. Chaker?

6 A He revealed to me that whenever he goes to court where he
7 believed Chaker would be present, that he always has a private
8 investigator there for his own safety.

9 Q Okay. And in courts in California, are individuals
10 allowed to be armed?

11 A Yes.

12 Q Okay. And who are those individuals that allowed to be
13 armed in California?

14 A Police officers.

15 Q Okay. And only police officers or would private
16 investigators fall under an exception?

17 A I don't know.

18 Q That you're aware? Okay. When you got to the hearing
19 did you have any -- what was your first contact with
20 Mr. Chaker?

21 A My first contact was when I first appeared in court at
22 approximately nine o'clock that morning.

23 Q Okay. Can you just tell the Court what happened?

24 A That was just the first physical contact I ever had with
25 him. When we --

1 THE COURT: Do you mean physical contact meaning he
2 touched you or --

3 THE WITNESS: No, no, I'm sorry. That I --

4 THE COURT: -- do you mean that you saw him?

5 THE WITNESS: -- physically saw him in person, this
6 was the first time.

7 Then at twelve o'clock we were recessed from court
8 and we were advised to return back at three o'clock that
9 afternoon.

10 BY MS. FERKO:

11 Q Okay. And at that time had the judge made any kind of
12 decision regarding the custody case at noon?

13 A The judge revoked his order that he had granted to
14 Chaker.

15 Q Okay.

16 A And expressed great concern, and he wanted to revisit the
17 case later that afternoon when he had more to read everything
18 that was filed.

19 Q Okay. And when you what was filed, this is filed by
20 Scott McMillan in that -- in the California court. Correct?

21 A That's correct.

22 Q Okay. And Ms. [redacted] did not have to be present for this
23 hearing. Is that correct?

24 A She did not have to be present. She was present through
25 her attorney.

1 Q Okay. And so at twelve o'clock tell the Court what
2 happened.

3 A At twelve o'clock I was leaving the court and I was
4 walking away with Mr. McMillan to his car, and when we were
5 leaving and we stopped by the -- when we were in the vehicle,
6 we're driving, stopped at a stop sign and I observed Chaker on
7 the side of the -- the corner of the street and he was
8 clapping and just staring at us in the car.

9 Q Okay. Was Chaker in a vehicle or was he just on foot on
10 the ground?

11 A He was on foot.

12 Q Okay. And did he say anything to you at that time? Did
13 he do anything --

14 A No.

15 Q -- other than laugh?

16 A Laugh and just staring that I saw.

17 Q Okay. And did the investigator -- or did you learn at a
18 later time did anyone else see anything else?

19 A Yes, Scott McMillan said that he himself saw Chaker take
20 a picture of me in the vehicle and the private investigator
21 also confirmed that.

22 Q And that was with Mr. Chaker's cell phone, him taking the
23 picture?

24 A Yes.

25 Q And then what happened when court reconvened at 3:00?

1 A Went back to court at three o'clock, at that time the
2 judge denied any kind of visitation to Chaker. When court was
3 done, I then proceeded to get up and leave the court. And
4 Chaker started yelling, saying that he demanded that he place
5 me under citizen's arrest because I was carrying a firearm in
6 the State of California and I was a law enforcement officer in
7 the State of Nevada.

8 He said about three times to the bailiff, to the
9 judge and the Judge said that, you know, this isn't an issue
10 to be brought up in this court and to bring it outside. The
11 bailiff said that I was free to go. When I walked downstairs
12 to exit the building, Chaker and his sister were standing by
13 the door yelling at the bailiffs downstairs to, again, place
14 me under citizen's arrest.

15 Q Okay. And Mr. Chaker, was he, just was he calm and
16 yelling, was he radically yelling, what would you describe --
17 what was he -- how loud was he, was he --

18 A He was aggressively yelling and demanding the bailiff to
19 place me under citizen's arrest. He then demanded the bailiff
20 to call their sergeant and have the sergeant place me under
21 citizen's arrest and not to let me leave the building.

22 Q Okay. And at this time -- this all occurred after the
23 California judge denied -- revoked the order -- revoked the ex
24 parte order for custody and denied any visitation. Is that
25 correct?

1 A That's correct.

2 Q Okay. And did Mr. Chaker at any time try to physically
3 come near you or touch you?

4 A By the time -- after I cleared up the matter with the
5 sergeant and the bailiff's and they said that I did not
6 violate any laws, they advised me, for my safety, because they
7 believed that it was volatile situation, that they wanted me
8 to leave after they get Chaker out of the building.

9 They advised that Chaker leave. At that time his
10 sister went up in the elevator and went upstairs. Chaker left
11 out the front door. I stayed in the back and he actually
12 walked around the building --

13 Q When you say we --

14 A -- myself --

15 Q -- who was with you?

16 A -- I then met up with Scott McMillan and the private
17 investigator. We then walked around the building and walked
18 Mr. McMillan to his vehicle. I then proceeded to go with the
19 private investigator in his vehicle to be dropped off to my
20 hotel, because I had true concerns for my safety.

21 At that time, when we were driving to the hotel, the
22 private investigator observed the same vehicle that Chaker was
23 seen being dropped off in, a black SUV, following us.

24 Q Okay.

25 A He then told me that he clearly saw that it was the same

1 vehicle, that it was his sister driving, and that Chaker --
2 Mr. Chaker was in the passenger seat and he was hunched over.

3 Q Okay. And at that time what did the private investigator
4 driving his vehicle, what did he do?

5 A Out of safety concerns, I did not want him to know what
6 hotel I was in, we proceeded to drive around for about 10 more
7 minutes, and go in circles and maneuvers to try to -- we had
8 to lose them from following us. I then went to the hotel,
9 immediately got my luggage and left because I was in fear that
10 Chaker was going to try to locate me.

11 Q Okay. And the Oceanside Investigative -- Investigations,
12 which is the company that Mr. McMillan's, private eye --
13 private investigator who works for, he prepared a report about
14 that event on July 22.

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q Okay.

19 MS. FERKO: And that is included in our -- in our
20 evidence, Your Honor, as C-1 in the supplemental filing.

21 BY MS. FERKO:

22 Q As far as -- I'm want to ask one more time, when you
23 spoke with Susan , how did she -- what did she describe
24 her relationship with Mr. Chaker to be prior to her leaving?

25 A She told me that she was in fear of her life and the life

1 of her son, and that she thought that he was going to hurt her
2 or kill her.

3 Q Okay. And how long did she say that she had been with
4 Mr. Chaker?

5 A I don't know exact years, but it was an off and on
6 relationship for many years.

7 Q Okay. And did Ms. say how she worked, what she
8 did for employment purposes during that time with Mr. Chaker?

9 A She had told me that Chaker would pose ads on craigslist
10 and encourage her to be engaged in prostitution.

11 Q Okay. And when she -- did she do that, did she admit to
12 doing that?

13 A Yes, she did.

14 Q Okay. And did she tell -- did she explain to you
15 where -- who she gave money to after she answered the ad for
16 craigslist?

17 A Yes, she told me that she gave all the money to Chaker.
18 Chaker arranged all of the meetings and posted all the ads on
19 craigslist.

20 Q Okay. In your report you prepared for your
21 investigation, it's Respondent's Exhibit A, do you have it
22 there? Did you look for any domestic violence reports for
23 Nevada related to Susan and Darren Chaker, and/or
24 Darren Chaker?

25 A Yes.

1 MR. COLOMBO: Your Honor, I'm going to object to
2 these particular exhibits.

3 THE COURT: What -- refer to them again?

4 MS. FERKO: Your Honor, I was asking her, in the
5 report she prepared, there's an exhibit in the report, did she
6 do any investigation for any domestic violence reports
7 specifically related to Susan and/or Darren Chaker.
8 That was the question, and then there was --

9 THE COURT: In any time frame?

10 MS. FERKO: Your Honor, well, I just said in any
11 time frame as far as --

12 THE COURT: All right. Well, that objection's
13 overruled. I'd like to know if there was an investigation.

14 THE WITNESS: Absolutely, yes.

15 MR. COLOMBO: Your Honor, may I be heard on the
16 exhibits? I think that's where counsel's going.

17 THE COURT: Okay. Yes.

18 MR. COLOMBO: Your Honor, two things. One, in the
19 two Nevada reports that Ms. Fazal's going to refer to, the
20 Government attached as exhibits --

21 THE COURT: In the Nevada reports?

22 MR. COLOMBO: In the Nevada reports. My
23 understanding is that they were ordered sealed. I don't
24 believe --

25 THE COURT: By whom?

1 MR. COLOMBO: By the Nevada courts.

2 THE COURT: At whose request?

3 MR. COLOMBO: At -- I believe it might have been
4 Mr. Chaker's. I --

5 THE COURT: You're not sure?

6 MR. COLOMBO: I'm not sure. However, my
7 understanding is that Officer Fazal has never received any
8 unsealing order. So to disclose to other individuals without
9 having the court's permission to unseal these, number one, I
10 think is a violation of that sealing order, but, number two, I
11 would object to it being considered here for that reason.

12 The second reason is Mr. Chaker's name isn't
13 mentioned on any of these reports at all, so we have no idea
14 who these reports are actually referring to. So for those
15 reasons, Your Honor, I would object to the Court considering
16 these particular exhibits.

17 THE WITNESS: I could -- if I could say something?

18 THE COURT: Well, I'd like to know -- I'm going to
19 construe this as a request for a better foundation because I
20 don't know -- frankly your comments are not evidence and I'd
21 like to hear from the witness about how she obtained these
22 reports.

23 MR. COLOMBO: That's what I'm --

24 THE COURT: And I'll go to your second point, if,
25 for relevance purposes, if Chaker is mentioned, or somehow

1 identifiable in that, and then we'll decide whether or not I
2 see them.

3 THE WITNESS: Okay. Your question was if I ran the
4 domestic violence for both Susan and/or Darren Chaker.

5 BY MS. FERKO:

6 Q That's correct.

7 A When I ran Susan through the Las Vegas
8 Metropolitan Police Department's database, they confirmed two
9 reports where she is listed as the victim and, in fact, there
10 is no suspect listed because it was sealed. And in my report
11 I did put that she was a victim of two domestic violence
12 reports in Las Vegas.

13 Q So in Nevada, or in the -- within the police department,
14 when someone asks for something to be sealed, it's only their
15 name that's removed or sealed, not the entire report.

16 A Right. And Susan stated to me that Chaker was the
17 suspect in these reports. I also --

18 THE COURT: How could there be a domestic
19 violence -- didn't they live in California?

20 THE WITNESS: At one time for -- actually for a
21 couple of years they actually lived in Las Vegas.

22 THE COURT: Okay. What's the date of these reports?

23 MR. COLOMBO: It's 2007.

24 THE COURT: Seven?

25 THE WITNESS: There's two different ones.

1 (Pause in proceedings.)

2 THE COURT: Okay. Well, we're going to assume for
3 the moment it was 2007.

4 THE WITNESS: I have them right here. One is 2007
5 and one is 2004.

6 THE COURT: Oh, okay.

7 THE WITNESS: But I did also locate other domestic
8 violence reports in which Darren Chaker was the suspect.

9 THE COURT: Okay. All right. Well, let's talk
10 about the Nevada law because I'm confused by that, and I do
11 want to be sure that we're not violating something there.
12 What is the Nevada law on sealing in this context?

13 THE WITNESS: I was provided these documents by a
14 request from the Las Vegas Metropolitan Police Department.

15 THE COURT: You made a request to the Las Vegas
16 Metropolitan Police?

17 THE WITNESS: Yes, to provide me the reports with --
18 any reports listed for both Susan . . . and Darren Chaker. I
19 was given two domestic violence reports --

20 THE COURT: Both meaning the report had to --

21 THE WITNESS: Both meaning --

22 THE COURT: -- deal with -- the report had to deal
23 with both people or that a report could deal with one or the
24 other.

25 THE WITNESS: One or the other.

1 THE COURT: Okay.

2 THE WITNESS: The reports that I was given -- that I
3 was provided with has Susan as a victim of domestic
4 violence. The part where it says, Suspect, is blank.

5 THE COURT: Okay. Blank meaning redacted.

6 THE WITNESS: Yes, it's redacted.

7 THE COURT: Okay. And then any other information
8 you have is from .

9 THE WITNESS: Yes, is the one that told me
10 that -- she confirmed that she was the victim of domestic
11 violence and she identified the suspect as being Darren
12 Chaker.

13 THE COURT: Okay. Well, I can receive the
14 information concerning her comments to you, but I don't know
15 what the reports add. Are the reports themselves sealed, or
16 just the name of the suspect?

17 THE WITNESS: It's just the name of the suspects are
18 redacted.

19 THE COURT: Okay. So there's nothing in those
20 reports that specifically refer to Mr. Chaker.

21 THE WITNESS: No.

22 THE COURT: Okay. Well, I'll receive them.
23 Overruled.

24 BY MS. FERKO:

25 Q Agent Fazal, after you returned to Las Vegas after the

1 hearing, were you contacted again by Mr. Chaker?

2 A After the hearing my office was given a request for
3 public information, specifically putting my name in the
4 request and me pressed to host a website called

5 blogspot.com. If you don't comply, this means.

6 Q Okay. And that was the first letter received. Correct?

7 A No.

8 Q There was more than one letter?

9 A Yes.

10 Q Okay. Do you have the dates of those letters that were
11 received by your office?

12 A Yes. That first one was an email that was sent directly
13 to me from Darren Chaker. And I believe that was right before
14 the trial at the beginning of July. That was -- our office --

15 THE COURT: In 2013?

16 THE WITNESS: In 2013. Our office then received a
17 public records request again, including my name specifically
18 in it, the reasoning of the request. It's dated June 24, yet
19 our office didn't receive it till the beginning of July.
20 There was then -- before the hearing -- there was then a
21 notice for public records request, again, the purpose of it
22 was because he was not happy with my investigation. That was
23 dated July 17, and then the third one -- or the fourth one
24 would be July 23 and that was after the hearing.

25 BY MS. FERKO:

1 Q That was actually one day after the hearing. Is that
2 correct?

3 A That's correct.

4 Q And what --

5 THE COURT: I'm still unclear what she actually
6 received. I was just looking at stuff, but I'm not --

7 MS. FERKO: Your Honor, if I may, this is what's
8 been filed with the Court. It's Exhibit C, Your Honor, of --
9 I can't remember, but I think it's the first filing, Your
10 Honor. If I can hand this up to you so you can take a look?

11 THE COURT: Okay. Well -- okay. Mr. Chaker is --
12 these are -- okay. These are all public records requests to
13 the Office of Attorney General emphasizing about the -- that
14 he wants responses to the public records request on Leesa
15 Fazal. There are three letters. Correct?

16 THE WITNESS: And the email as well.

17 THE COURT: Okay. And these are Exhibit C to the
18 Government's --

19 MS. FERKO: I believe it's the first filing, Your
20 Honor.

21 THE COURT: The original motion?

22 MS. FERKO: The original motion. This is going to
23 be -- maybe the supplemental, Your Honor.

24 THE COURT: I think as well --

25 MS. FERKO: I think it's the supplemental.

1 BY MS. FERKO:

2 Q Also, Ms. Fazal, also included in your report did you
3 also receive an email from Mr. Chaker on July 1, 2013?

4 A Yes.

5 Q Okay. And in that email if you can generally just
6 discuss -- it talks about -- the email -- is it not true that
7 he talks about his general unhappiness with the investigation
8 that you're doing?

9 A (No audible response.)

10 Q Okay. And in that email, on the second page, what does
11 he talk about posting of addresses on the internet and home
12 addresses? Do you want to start with the last paragraph, if
13 you could read that for the Court?

14 A The last paragraph on --

15 Q No, the last paragraph on the first page, and then
16 continue on to this top of the second page.

17 A "Nonetheless, you jeopardize my son by letting the
18 abductor know her location was no longer unknown and not
19 following the Court order as you said you would to
20 recover the child listed in NCIC as being abducted. If
21 you are not going to comply with the order, then it never
22 would have been sent to you. However, you played judge
23 in the street and tipped off the advantage of recovering
24 the child, finding him.

25 "For that I am requesting the name, such contact

1 information of your supervisor to lodge a complaint and I
2 am submitting a public records request for the entire
3 roster of each employee at the Las Vegas office and
4 enclose their home addresses online if they exist on
5 public record.

6 "Merely republished public records is perfectly legal.
7 See Harvard Law Review 1244.L REB 616 December 2010,
8 constitutional law, First Amendment, Fourth Circuit
9 publish -- free publishing of social security
10 numbers linked from online records is protected speech.
11 *Ostergren v Cuccinelli*, 615 F.3d 263 (4th Circuit 2010).
12 See also posting of portion doctor's home addresses
13 online with the matter --

14 THE COURT: Yeah. Yeah, that's fine.

15 THE WITNESS: -- of truth.

16 MS. FERKO: Okay.

17 THE COURT: Planned parenthood case. Got it.

18 BY MS. FERKO:

19 Q Agent Fazal, how did you take -- when you received that
20 email on July 1, which is prior to the hearing you went to,
21 how did you view that email from Mr. Chaker?

22 A I viewed that as an extreme safety concern and I reported
23 it immediately to my supervisors.

24 Q Okay. Subsequently from when you sent the three letters
25 requesting the public information, was there anyone else --

1 did he threaten a blog spot for?

2 A To the Attorney General, State of Nevada, Catherine
3 Masto.

4 Q Okay. And the Attorney General of Nevada is a woman. Is
5 that correct?

6 A That is correct.

7 Q Okay. So are these -- if you were to Google that
8 blogspot.com, is there actually a blog spot on
9 the internet or over the internet that you can go to?

10 A Yes.

11 Q Okay. And if you click on it, what is there?

12 A When if first Googled both of those,
13 blogspot.com and @blogspot.com, it
14 had a picture of Darren Chaker and it said, Created by Darren
15 Chaker.

16 Q Okay. And was there anything -- was there any
17 information content on that blog, or was it just like a blank
18 page at this point?

19 A At that time there was no post.

20 Q Okay. Have you looked at it since then?

21 A I looked at it again recently and no post.

22 Q Okay. So -- but they're pending. Is that correct?

23 A It's still open and it's still under my name, which is
24 disturbing to me, and I work in covert investigations also and
25 I don't want --

1 A This is what -- the last that I know was received in my
2 office.

3 Q Okay.

4 A So there might have been more.

5 Q But you haven't followed up on anything since then.

6 A No.

7 Q Okay. Because you're working other stuff now.

8 A Yes.

9 Q Okay. One thing in your investigation that you included
10 in your report, I just want to take a look at the part that --
11 that there was -- you did an internet search of Mr. Chaker.
12 Is that correct?

13 A That's correct.

14 Q Okay. And you included in your report a LinkedIn page
15 that has Mr. Chaker's picture, face, name and everything. Is
16 that correct?

17 A Yes.

18 MR. COLOMBO: Objection as to relevance, Your Honor,
19 as to this LinkedIn report.

20 THE COURT: Does it hurt? If it's a LinkedIn page,
21 how much could it hurt?

22 MR. COLOMBO: Well, Your Honor, I know --

23 THE COURT: And you know, I have to say, I'm going
24 to be asking if I can look at all of Mr. Chaker's posts, you
25 know, his websites and things because he apparently is very

1 careful, he's very skilled at the computer and forensic
2 research in the computer, and there are all these posts or
3 websites being referred to and maybe they're helpful to you,
4 maybe they're harmless. I don't know one way or another but I
5 would like your permission to look at them because I have
6 assiduously avoided them in deference to Mr. Chaker.

7 MR. COLOMBO: I don't have a problem with Your Honor
8 reviewing them. However, I think the reason why I objected is
9 the Government -- I don't think that this particular piece of
10 evidence is relevant for this hearing here. In addition --

11 THE COURT: Okay. I'm not even sure where they were
12 going.

13 MR. COLOMBO: Well, the Government's going to submit
14 it and then say that everything in there's false.

15 THE COURT: Oh, I see. Oh, okay.

16 MS. FERKO: Your Honor --

17 THE COURT: What are we talking about?

18 MS. FERKO: I just want to direct her to the
19 employment section of LinkedIn and what it says that he was
20 currently doing in 2012. It's --

21 THE COURT: Okay. What's the relevance?
22 Mr. Colombo is --

23 MS. FERKO: Your Honor, the relevance is, you heard
24 from Pretrial saying he's not employed, he gets SSI and he is
25 online studying school, he needs certificates. From his

1 LinkedIn page, which is his photo, his name, counter
2 forensics. He says he has own internet company and then he
3 also says he works for Haliburton and that he's in the --

4 THE COURT: He had worked there.

5 MS. FERKO: No, Haliburton up to 2012, Your Honor.
6 So there are dates on the LinkedIn, and in order to get into
7 LinkedIn, you do it yourself.

8 THE COURT: Correct.

9 MS. FERKO: So that's the Government's position, the
10 reason --

11 THE COURT: Why wouldn't that be relevant?

12 MR. COLOMBO: Well --

13 MS. FERKO: I mean he was -- Your Honor --

14 THE COURT: And let me put it to you this way, okay.
15 To the extent you argue later it's not relevant as to
16 Mr. Chaker's credibility and some concerns we have -- the
17 Government is posing about safety or whatever, the
18 Government's got its position, but even if they were wrong,
19 I'm entitled to know this for the purposes of sentencing.

20 MR. COLOMBO: Understood, Your Honor.

21 THE COURT: So I'm going to go ahead, and if it's
22 not here, it'll be there. Okay.

23 BY MS. FERKO:

24 Q If you could look at the employment section and just --
25 and read --

1 THE COURT: I want a copy of this.

2 MS. FERKO: Your Honor, you have a copy --

3 THE COURT: I can't see it. Forgive me. Forgive
4 me.

5 MS. FERKO: I know --

6 THE COURT: I just don't know where to look.

7 MS. FERKO: I'm sorry, Your Honor. It is filed.

8 Let me hand over --

9 THE COURT: Is it in Ms. Fazal's report?

10 MS. FERKO: It's Exhibit 7, Your Honor, of Exhibit
11 A.

12 THE COURT: That's fine. That's exactly what I
13 needed.

14 MS. FERKO: Okay.

15 THE COURT: Perfect.

16 MS. FERKO: I'm sorry. These were not bates
17 stamped, which I regret.

18 THE COURT: It's all right. I have the stuff
19 tabbed. I just needed a clue.

20 MS. FERKO: Okay. It's our Exhibit A of our
21 supplemental filing, it's the memorandum that she prepared and
22 it's Exhibit 7.

23 THE COURT: Seven? No problem.

24 MS. FERKO: It's right after seven, it's the first
25 page.

1 THE COURT: Okay. Because there are pictures -- I
2 think -- because I thought I'd seen this before.

3 MS. FERKO: Yes, Your Honor.

4 THE COURT: Okay. Is it this?

5 MS. FERKO: Yes, that's correct.

6 THE COURT: Is this --

7 MR. COLOMBO: That's correct.

8 THE COURT: Okay. Wonderful.

9 MR. COLOMBO: Okay.

10 THE COURT: I've got it.

11 BY MS. FERKO:

12 Q So on this document here can you just say what his job
13 is, as a team operator for Haliburton, from when to when?

14 THE COURT: Well, wait, let's start at the top.

15 MS. FERKO: You want to start from the beginning or
16 the top?

17 THE COURT: What is Dynacorp?

18 BY MS. FERKO:

19 Q It says currently -- it says security investigations. Do
20 you know what Dynacorp is?

21 A I've never heard of it, but it says security and
22 investigations.

23 THE COURT: According to this document, you're just
24 reading the document. Correct?

25 THE WITNESS: Right, I'm just reading the document.

1 THE COURT: And it says current, counter forensics.

2 THE WITNESS: counterforensics.com.

3 THE COURT: Yes, I'm sorry, dot com. Okay.

4 Previous was Haliburton.

5 BY MS. FERKO:

6 Q What's the last date for Haliburton?

7 A September 2012.

8 THE COURT: How can you tell that? Oh, down at the
9 bottom.

10 MR. COLOMBO: It says at the bottom, Your Honor.

11 THE COURT: Right. Okay.

12 BY MS. FERKO:

13 Q And looking at the statement of what Mr. Chaker does for
14 Dynacorp.

15 A It says, Security and investigations.

16 Q And does it say -- does it give an example of what his
17 qualifications are or --

18 A Yeah, you want me to --

19 Q Yes, if you'll read it.

20 A -- read it? It says, Computer security related,
21 security operating systems, security and part (indiscernible),
22 windows, (indiscernible), firewalls, intrusion detection
23 systems, (indiscernible) analysis, hacker --

24 THE COURT: Okay.

25 THE WITNESS: -- counter half methods.

1 THE COURT: I'm able to read it.

2 MS. FERKO: Okay.

3 THE COURT: For the record, if we are going to
4 continue to refer to this, there are page numbers from ECF
5 that --

6 MS. FERKO: I've got it written on --

7 THE COURT: -- would simplify our lives a little
8 bit, and so --

9 MS. FERKO: I don't have that printed copy, Your
10 Honor.

11 THE COURT: Okay. Well, I happen to have both.

12 MS. FERKO: Okay.

13 THE COURT: So it would make sense.

14 MS. FERKO: It's the one filed under seal.

15 MR. COLOMBO: Yeah. Your Honor, I think that's a
16 problem for --

17 THE COURT: Do you not have it?

18 MR. COLOMBO: I have the copy that was --

19 MS. FERKO: Right.

20 MR. COLOMBO: -- sent, but not the ECF filed copy
21 because once --

22 THE COURT: Oh.

23 MR. COLOMBO: -- even if you're filer of a sealed
24 document --

25 MS. FERKO: You can't get it online.

1 MR. COLOMBO: -- you're not allowed to print it
2 out.

3 THE COURT: Yeah.

4 MR. COLOMBO: Which is strange, but --

5 MS. FERKO: Right.

6 THE COURT: Okay. Okay. Well, I guess the concern
7 about misuse of sensitive information, potentially sensitive.
8 So I will tell you what it is and then maybe I will give you a
9 copy at some point, although it's expensive. We'll do it
10 anyway. Anyway, it is Document 281-1, page 28 of 63. Okay?

11 MS. FERKO: Okay.

12 BY MS. FERKO:

13 Q Ms. Adcock also --

14 THE COURT: But again, it's my understanding, and I
15 do not want to allow anything outside the Record, but counsel
16 has represented, but it is also my understanding that LinkedIn
17 is a website where you as an individual create the webpage and
18 then you are -- you can put on there whatever you want.

19 MR. COLOMBO: Well, I think that's true in most
20 cases, but it's also very easily -- but anyway, then anybody
21 can create a LinkedIn profile for anybody else, Your Honor.
22 There's not really that much security involved in these
23 particular websites.

24 THE COURT: Okay. All right. I'll accept your
25 representation, but I don't know that. You would need a code,

1 you would need to be able to get in through some security code
2 presumably, meaning, you know, a password.

3 MR. COLOMBO: Well, an individual would put their
4 email and password --

5 THE COURT: Right.

6 MR. COLOMBO: -- and then you receive the, you
7 know, confirmation through that, but --

8 THE COURT: Okay.

9 MR. COLOMBO: -- it doesn't have to match --
10 necessarily match the name. My understanding.

11 THE COURT: Okay.

12 MS. FERKO: All right. And, Your Honor, just for
13 purposes of what our internet search revealed, --

14 THE COURT: And I would like you to go to the
15 specialized training part.

16 MS. FERKO: Okay.

17 BY MS. FERKO:

18 Q And if you look at the specialized training on that
19 LinkedIn form, could you please read for the record what does
20 it say he's done?

21 A 2400 hours law enforcement academy and specialized
22 training, tactical policing, weaponry, survival procedures
23 management, close protection and contact, readiness, hand-to-
24 hand combat, advanced weapons training, foreign weapons, and
25 explosives, world urban warfare.

1 Q Okay. Ms. [REDACTED] -- or, excuse me, Ms. Fazal -- Fazal,
2 when you spoke with Ms. [REDACTED], did you ever receive any
3 documents from Ms. [REDACTED] related to the [REDACTED] name
4 change?

5 A Yes.

6 Q Okay. And you received them from her how, if you can --
7 if you recall? Email, post office, fax?

8 A I believe she had either faxed it or sent me an email
9 attachment --

10 Q Okay.

11 A -- of the scam.

12 Q And those documents received are included in your report.
13 Is that correct?

14 A Yes, I included it.

15 Q Okay. Could you tell the Court what exhibit number was
16 on your report?

17 MS. FERKO: That's still part of Exhibit A, Your
18 Honor. I believe that's right.

19 (Pause in proceedings.)

20 MS. FERKO: Your Honor, I believe it's the last two
21 pages prior to Exhibit C -- Exhibit B, Your Honor. Actually,
22 this -- yeah.

23 THE COURT: We did a petition on name change? It's
24 B.

25 MS. FERKO: It's B, Your Honor. The petition on

1 name change here.

2 THE COURT: Okay. Order for Change of Name?

3 MS. FERKO: Right. And within that document, Your
4 Honor, there was a motion, ex parte motion to waive
5 publication requirement and seal file.

6 THE COURT: Yeah, and this affidavit is for it.

7 MS. FERKO: Okay. And again, Ms. provided
8 these documents. I have no idea if they're still under seal
9 in California. But we're aware of it and we'll alleging
10 criminal conduct for it, so I could care less about the seal.
11 But we would like to direct the Court to the affidavit, the
12 reasoning behind the name change. I would like to draw the
13 Court's attention to that and the Court just to take notice of
14 that. And that's just going to be for argument.

15 THE COURT: And that's --

16 MS. FERKO: Argument for later.

17 THE COURT: Okay.

18 MS. FERKO: At this time, Your Honor --

19 THE COURT: For Mr. Colombo's benefit, I think that
20 this is --

21 MS. FERKO: I believe it's Exhibit B of our
22 supplement, and it's --

23 THE COURT: Right. But --

24 MS. FERKO: It's a couple of pages in.

25 THE COURT: Well, I think it's -- is it the

1 affidavit of petitioner at the beginning -- towards the
2 beginning of this, or is it the one at the very end?

3 MS. FERKO: It's the one at the very end, Your
4 Honor, for the *ex parte* --

5 THE COURT: The one page 4, it's labeled at the
6 bottom, page 4, and it's August 3, 2004 I guess.

7 MS. FERKO: I believe that's correct. Page 2, it
8 says, Facts and Argument.

9 THE COURT: Uh-huh.

10 MS. FERKO: And it's called the *ex parte* motion to
11 waive publication requirements, seal file.

12 THE COURT: Okay. That's at pages 8 through 11 --
13 8, 9, 10, 11 of Document 281-2.

14 THE WITNESS: Okay.

15 MS. FERKO: That's correct, Your Honor. And --

16 THE COURT: Now you may proceed.

17 MS. FERKO: And, Your Honor, it just -- it's just
18 really for the -- it was just to show that Ms. ... provided
19 that to Ms. Fazal, and the content, Your Honor, his reasoning
20 for the name change relates to an employment issue and him
21 being stalked by somebody.

22 THE COURT: Right.

23 MS. FERKO: And it's signed, Darren D. Nero, not
24 Del, D.

25 THE COURT: Right. There are a number of

1 iterations. That was true in the trial as well.

2 MS. FERKO: That's correct, Your Honor.

3 And, Your Honor, at this time I have no questions,
4 no questions for Officer Fazal.

5 THE COURT: Okay. Cross?

6 MR. COLOMBO: Thank you, Your Honor.

7 THE COURT: Sure.

8 CROSS-EXAMINATION OF LEESA FAZAL

9 BY MR. COLOMBO:

10 Q Officer Fazal, you were initially contacted by Mr. Chaker
11 on June 20 of 2013. Correct?

12 A That's right.

13 Q And he contacted you for the purpose of assisting him in
14 locating his child that he believe was abducted.

15 A He wanted me to enforce and recover the child that he
16 believed to be kidnapped.

17 Q He had received, on June 10, 10 days prior to that, a
18 temporary order of custody. Correct?

19 A That's right.

20 Q And that order of custody was based upon three things.
21 One, the mother removed the child from the home. Is that
22 correct?

23 A If you want to show me the --

24 Q Well, it's part of your --

25 A Okay. Well, there's --

1 Q -- your package.

2 A -- a hundred pages here, so if you want me to go through
3 it and look --

4 Q Well, it'd be --

5 A -- for something --

6 Q -- it'd be --

7 A -- I will be more than happy to do that.

8 Q -- it'd be Exhibit 2 to your --

9 A Okay.

10 Q -- your investigative report.

11 THE COURT: Yeah, just -- in order to simplify
12 things, just site her to where it is, please.

13 THE WITNESS: Okay. This is an order of --

14 MS. FERKO: I don't have --

15 THE WITNESS: I should have brought my own --

16 VOICE: It should be in order.

17 MR. COLOMBO: No, it's --

18 MS. FERKO: Your Honor, he'd have to show her his
19 copy because that copy has been shuffled, so --

20 THE COURT: Would you like to see my clean copy?
21 Do you want to share -- do you want me to share my clean copy
22 with her?

23 MR. COLOMBO: Your Honor, I have a copy here, but it
24 doesn't have the ECF page numbers.

25 THE COURT: No, I understand that, but the point is

1 you could keep your copy --

2 MR. COLOMBO: Sure, that'd be great.

3 THE COURT: -- and she could have one herself --

4 MR. COLOMBO: I'd appreciate that.

5 THE COURT: -- and that should speed things along.

6 THE WITNESS: Thank you.

7 THE COURT: Okay. Why don't have the Government
8 take that --

9 MS. FERKO: Back.

10 THE COURT: -- excess back. The tab is on the page
11 23 just referred to, that affidavit, but other than that it's
12 not tabbed.

13 BY MR. COLOMBO:

14 Q Now I'm going to specifically refer you to page -- to
15 Exhibit 1 of your investigative report, page 3.

16 A Yes.

17 Q Okay. And there are three reasons why this particular
18 temporary protective order was issued, number one being that
19 Respondent, being Susar had removed the child from his
20 home without warrant or excuse. Is that right?

21 A That's alleged in the court document, yes.

22 Q And in addition the Respondent, Ms ceased
23 contact with Petitioner, Mr. Chaker.

24 A Yes.

25 Q And the third was Ms. continues to endanger the

1 child's safety. Is that correct?

2 A That's right.

3 Q And that's the order that Mr. Chaker requested that you
4 execute. Correct?

5 A That's correct.

6 Q Because it was his belief from past experience that the
7 mother of his child was living in Nevada.

8 MS. FERKO: Your Honor, objection. Your Honor, he's
9 asking what Mr. Chaker's experience was through --

10 THE COURT: Okay. Well, it's a question, it's
11 cross.

12 If you know that, you can answer. If you don't know
13 it, say so.

14 THE WITNESS: He made comments that the -- that Ms.
15 Adcock could possibly be in Las Vegas area, and that is why he
16 contacted me.

17 BY MR. COLOMBO:

18 Q Now you were initially concerned with Mr. Chaker because
19 it seemed that he was taking the investigation into his own
20 hands. Is that right?

21 A Initially I actually was assisting him and I asked him to
22 provide me with more documentation and instructed him to make
23 a police report and have the child entered as missing. As I
24 proceeded with my investigation, other facts came out that
25 myself, as an officer, cannot enforce something that I believe

1 that was obtained fraudulently.

2 Q Okay. In your report you state that Mr. Chaker was -- he
3 sent you information. Is that right? That you had requested?

4 A He sent me some information that I requested.

5 Q In addition to sending you information, he was conducting
6 his own investigation into potentially finding his son and his
7 girlfriend. Is that right?

8 A The evidence shows that, yes.

9 Q Okay. Where he requested DMV flags. Right?

10 A That was in an email --

11 Q He said that --

12 A -- that he had sent, yes.

13 Q Okay. He contacted Ms. Adcock's gym in Las Vegas.
14 Right?

15 A I think so.

16 Q Okay. And also contacted other businesses to try to
17 locate her. Is that right?

18 A Yes.

19 Q And by June 25 he was complaining to you about how slow
20 your investigation was taking. Is that right?

21 A Do you have an email or something that you're --

22 Q Well --

23 A -- referring to?

24 Q -- to get -- yes, he did, in fact, send you an email on
25 June 25 with concern as to how long your investigation was

1 taking. Is that right?

2 A Do you want to show me that email?

3 Q Well, it's part of your report, so why don't you --

4 A Okay. So what is it?

5 Q -- look through your report?

6 THE COURT: Okay. Let's not waste our time. Show
7 her the email.

8 (Pause in proceedings.)

9 MR. COLOMBO: Your Honor, I don't have it --

10 THE COURT: You don't have it tabbed?

11 MR. COLOMBO: -- readily available, so I'll just
12 move on.

13 BY MR. COLOMBO:

14 Q Now you would agree Mr. Chaker was concerned about your
15 conclusion that his son wasn't abducted by his girlfriend. Is
16 that right?

17 A I actually did not tell him my conclusion. He was
18 notified by his attorney at that time after July 1 that I had
19 concerns about the order that was issued.

20 Q Now when you -- you never met with Ms. Is that
21 right?

22 A That's right, I never met her physically in person.

23 Q And you never met her -- Mr. Chaker's son, in
24 person. Is that right?

25 A That's correct.

1 Q Now you would agree that concluding that child is in
2 danger, it would be important to meet both the parent who's in
3 custody of the child and the child in person. Is that right?

4 A If you read my report, I had a law enforcement agency
5 conduct a thorough welfare check at the residence that Susan
6 and Logan were residing in, and I confirmed with WIC Services
7 that the child was given a full examination and there was no
8 marks, bruises or any evidence of concern.

9 Q But you didn't do that yourself.

10 MS. FERKO: Your Honor, objection, it's been asked
11 and answered.

12 THE COURT: Sustained.

13 BY MR. COLOMBO:

14 Q Now when you spoke to Ms. one of the reasons --
15 well, the reason why she said that she had left the home with
16 her son on May 10 of 2013 was because she became aware
17 that there was an insurance policy in her name where her son
18 was the beneficiary. Is that right?

19 A Not completely. That was one of the reasons that she
20 told. She expressed concerns for her safety. And on the
21 paper that you're referring to with the life insurance policy
22 saying the son is the beneficiary, and then it also lists
23 Guardian as being Darren Chaker.

24 Q Well, what Ms. told you was that the straw that
25 broke the camel's back, so to speak, was that she became aware

1 that Mr. Chaker had taken out an insurance policy in her name
2 and that's why she left. Right?

3 A She had numerous reasons on her safety and why she left
4 with . . . That was one of them.

5 Q Okay.

6 THE COURT: Was one of the reasons something to the
7 effect that she had not bought that policy and yet the
8 policy -- the money was being taken out of her bank account?

9 THE WITNESS: Yes, she actually provided me with
10 the -- and event number that there was an open investigation
11 for that policy because she never obtained that policy
12 herself. She believes that Darren Chaker took that
13 fraudulently under her name.

14 THE COURT: Meaning that he somehow got money --

15 THE WITNESS: He took --

16 THE COURT: -- where it's drawn from her account to
17 pay the premiums without her knowledge.

18 THE WITNESS: Right, because it was withdrawn
19 quarterly and she wasn't made aware of it until recently
20 before she left, and that was one of the reasons that
21 contributed to her reasoning for leaving.

22 BY MR. COLOMBO:

23 Q Well, what she advised you was that this insurance policy
24 was taken out in her name unbeknownst to her. Is that right?

25 A That's right.

1 Q And if you look at Exhibit 4 of your report, the
2 insurance policy, it's from May of 2010. Is that correct?

3 A Yes.

4 Q Okay. And these premiums, or the payments for the
5 insurance policy, are taken out quarterly. Is that correct?

6 A That's what I was told, that this is an open
7 investigation done by an insurance fraud department that --

8 Q Okay. I understand.

9 A -- is totally unrelated to my investigation that I
10 thoroughly conducted. This is one of the exhibits that I
11 included in the report that was provided to me by Susan. This
12 is not the sole reasoning for why she left.

13 Q Okay. I'd like you, Officer, just listen to my questions
14 and answer my questions. Okay?

15 MS. FERKO: Your Honor, objection, he's arguing
16 with --

17 THE COURT: Overruled.

18 MS. FERKO: -- the witness.

19 BY MR. COLOMBO:

20 Q Now this insurance was received in May of 2010. Is that
21 correct?

22 A That's what it says.

23 Q Okay.

24 A I'm sorry, it's actually dated April.

25 Q Okay. April of --

1 A April 15, 2010.

2 Q April 15, 2010, and the policy requirements requires
3 quarterly payments. Is that right?

4 A I don't know.

5 Q Well, you spoke to Ms. . Is that correct?

6 A Yes, and then --

7 Q And that's --

8 A -- she advised me --

9 Q -- what she told you.

10 A Yes, that's what she had told me.

11 Q Okay. So now according to Ms. - the insurance
12 policy required quarterly payments. Right?

13 A Yes.

14 Q And those quarterly payments, from what she told you,
15 was -- were deducted from her checking account. Is that
16 correct?

17 A Correct. Well, she told me that they were automatically
18 drafted from her account and then when she found out -- she
19 said something about her account was negative, and that's what
20 brought it to the attention and she then cancelled the policy
21 on I believe May 1, 2013.

22 THE COURT: What -- July -- what -- May?

23 THE WITNESS: 2013 I believe I've got in my report.

24 BY MR. COLOMBO:

25 Q Now it's fair to say, Officer, that these quarterly

1 payments had been deducted from her checking account for the
2 last three years. Correct?

3 A That's correct.

4 Q Now I want to go back to -- in your report you asked
5 Susan why she decided to leave Mr. Chaker. Is that correct?

6 A Yes.

7 Q Okay. Now I'm going to just refer you specifically to
8 your report, page 4, top paragraph.

9 "Susan continued to say that she made the decision to end
10 her relationship with Darren and to leave with
11 because she had discovered that Darren had fraudulently
12 taken out a life insurance policy for accidental death
13 and dismemberment under her name, and listed himself as
14 the beneficiary. Unbeknownst to Susan until recently,
15 Darren had set up for the payments to be electronically
16 debited from her checking account quarterly."

17 A That's the very first --

18 Q That's --

19 A -- sentence where I said, Continued.

20 Q That's what you wrote in your report. Is that right?

21 A Yes.

22 Q Okay. So in this report, Susan -- the reason why Susan
23 says that she left is because she became aware of this
24 insurance policy that she didn't have information of prior.
25 Is that correct?

1 A I'm sorry. That's one of the reasons. If you look at
2 the page right before you read off, where it says, Continued
3 to say, there's a whole other -- you know, elements of why she
4 was in fear of her life and why she left. So I don't know how
5 you want me to answer that.

6 Q Well, I'd like you to answer my question, which is --

7 MS. FERKO: Your Honor, I believe -- objection --

8 THE COURT: Okay. I think the question's been
9 answered, frankly.

10 MS. FERKO: I mean she answered the question and
11 she's --

12 THE COURT: Overruled.

13 MR. COLOMBO: Well, let me --

14 THE COURT: It's one of the reasons. It's clear,
15 it's one of the reasons.

16 BY MR. COLOMBO:

17 Q Ms. told you that she was not aware of this
18 insurance policy prior to May of 2013. Is that right?

19 A That's correct.

20 Q Okay. But yet her checking account was being debited for
21 three years, since the inception of the policy. Is that
22 correct?

23 MS. FERKO: Objection, asked and answered, Your
24 Honor.

25 THE COURT: Overruled.

1 If you know.

2 THE WITNESS: I believe so.

3 THE COURT: Do we know how much the debit was?

4 THE WITNESS: I don't have that --

5 THE COURT: Well --

6 THE WITNESS: -- information because it is an open
7 investigation with that insurance policy.

8 THE COURT: Okay.

9 THE WITNESS: I'm sure that Ms. could provide
10 any of that information to the Court. But it is an open
11 investigation and that's investigator can answer those
12 questions as well.

13 BY MR. COLOMBO:

14 Q So in looking at Exhibit Number 4, which is the insurance
15 policy, that's actually a solicitation from Ms. k's
16 Citibank account. Correct?

17 MR. COLOMBO: Your Honor, I'll withdraw that.

18 THE COURT: Yes, solicitation --

19 BY MR. COLOMBO:

20 Q Please take a look at that -- this policy wasn't obtained
21 by Mr. Chaker going into or contacting an insurance company.

22 A I don't know the --

23 Q Right?

24 A -- details of that. But I confirmed with Harker Company
25 that there's a pending -- an active investigation under that

1 policy number. I didn't go into details of it, but it's
2 not -- I didn't charge him at that time, that is not what he's
3 investigating. I included that as one of the elements of why
4 she --

5 Q Okay. Understood. Now that pending investigation that
6 you keep referring to is as a result of Ms. contacting
7 Harker Insurance and saying that she no longer wants the
8 policy, that it was obtained without her knowledge. Is that
9 correct?

10 A Yes.

11 Q Okay. Now you indicated that it was your opinion, or you
12 were told that Ms. did not send an email to Mr. Chaker
13 that was the basis for the temporary protective order. Is
14 that correct?

15 A That's correct.

16 Q All right. Ms. told you that she didn't send that
17 email. Is that right?

18 A That's right.

19 Q All right. Now Ms. left on May 10, 2013.
20 Correct?

21 A I need to look at the dates to confirm to give you a yes
22 or no answer on that. What date did you say?

23 Q May 10 of 2013.

24 A Was that what I put in the report?

25 Q That's what you have in your report. Correct.

1 A Okay. If that's what I put on the report, that is what
2 she told me.

3 Q And Mr. Chaker, as you're aware, attempted to contact her
4 through Ms. [REDACTED]'s mother, [REDACTED] (phonetic). Is
5 that right?

6 A That's correct.

7 Q And Mr. Chaker sent two emails to Ms. [REDACTED]'s mother on
8 May 15. Is that right?

9 A I -- you know, if you want to show me the emails. I
10 can't confirm --

11 Q Well, they're --

12 A -- yes or no, but if that's what I included in the
13 report and those are the dates that you're reading off of that
14 report, then, yes.

15 THE COURT: 2013?

16 BY MR. COLOMBO:

17 Q I'm going to refer you to Exhibit 6 of your report.

18 THE COURT: May 15, 2013?

19 MR. COLOMBO: Yes.

20 BY MR. COLOMBO:

21 Q Exhibit 6 contains three emails. Is that correct?

22 A That's correct.

23 Q Okay. And those three emails are from Mr. Chaker to
24 Susan [REDACTED]'s mother, [REDACTED] (phonetic).

25 A That's correct.

1 Q And in those emails Mr. Chaker requests Ms. Chaucer's
2 assistance in finding out where his son is and where Ms.
3 Adcock is. Correct?

4 A Yes.

5 Q And Mr. Chaker didn't receive any response to those
6 emails. Is that right?

7 A As far as I know, I do not believe that they -- that the
8 mother responded to those emails.

9 Q They offered no assistance to Mr. Chaker just to let him
10 know his son was okay.

11 MS. FERKO: Your Honor, objection. If this witness
12 knows what --

13 THE COURT: Right.

14 MS. FERKO: -- somebody else did --

15 THE COURT: Just simply foundation. Sustained. If
16 you want to rephrase it, you can.

17 BY MR. COLOMBO:

18 Q You interviewed -- you interviewed Ms. . Correct?

19 A Have I interviewed her?

20 Q Yes, she did. Did you interview her?

21 A I don't believe that I did.

22 Q You never interviewed Ms. ; mother?

23 A No.

24 Q All right.

25 A I don't think --

1 Q Did you -- I'm sorry -- did you interview Ms. Adcock's
2 sister?

3 A Yes.

4 Q Okay. And so you're aware then that they offered no
5 assistance, either Ms. s sister or mother, in locating
6 his son

7 A No, that's not true. She actually placed a call to
8 dispatch in the Las Vegas Metropolitan Police Department
9 indicating references to what Mr. Chaker was making to her
10 mother, and that's part --

11 THE COURT: And this is what?

12 THE WITNESS: She called the Las Vegas Metropolitan
13 Police Department and she told the dispatcher -- and that's
14 part of the exhibit as well, is the dispatch call -- that
15 she -- that her mother received emails from Darren Chaker
16 threatening to put an Amber Alert on the child, so she
17 informed the police that the child was not missing and that
18 she was in fear of her life and she left because of domestic
19 violence issues and that she was turned down from shelters.
20 And this is all on the recording.

21 THE COURT: And she being?

22 THE WITNESS: The mother of Susan

23 THE COURT: -- " --

24 THE WITNESS: And she did that immediately after
25 receiving notification from the mother in reference to Darren

1 Chaker's emails to her.

2 THE COURT: When you say the mother in that
3 content --

4 THE WITNESS: Susan's mother.

5 THE COURT: Susan's mother. Right. Okay.

6 BY MR. COLOMBO:

7 Q Okay. So they were not -- they did not respond directly
8 to Mr. Chaker. Is that correct?

9 A Her family did not respond directly to Mr. Chaker, no.

10 Q And they only called the Las Vegas Police Department
11 because Mr. Chaker said, I'm at a loss. I don't know what to
12 do other than to submit an Amber Alert. Is that correct?

13 A You can interpret that dispatch call how you choose. I
14 did not interpret it that way.

15 Q Now the dates on the three emails that Mr. Chaker sent to
16 Candy Chaucer (phonetic). The first one is May 15. Right?

17 A That's correct.

18 Q The second one is May 15. Correct?

19 A That's correct.

20 Q The third is May 17.

21 A That's --

22 Q Correct?

23 A -- correct.

24 Q And the time on the May 17 was 2:42 p.m. Is that right?

25 A Yes.

1 A That's correct.

2 Q Now you indicated that Ms. told you that she was
3 the victim of domestic violence. Is that right?

4 A Yes.

5 Q All right. And to support that, there are two reports
6 which you questioned Ms. about in Las Vegas. Is that
7 right?

8 A She actually informed me of two incidences that occurred
9 in Las Vegas, and then one in Texas. The information I got
10 from the Las Vegas Metropolitan Police Department support what
11 she had already told me.

12 Q Okay. Mr. Chaker is not named as the assailant in that
13 report. Is that right?

14 A That's correct.

15 Q And you have no information other than Ms. that
16 Mr. Chaker was, in fact, the assailant. Is that right?

17 A The case was sealed, so.

18 Q So no -- so the answer is no.

19 THE COURT: Right.

20 BY MR. COLOMBO:

21 Q Is that right?

22 A Yes.

23 Q Okay. Now this -- these domestic violence incidents
24 occurred in -- I think you indicated on the record 2004 and
25 2007?

1 A Yes.

2 Q So we're talking about incidents that are between eight
3 and ten years old?

4 A Yeah, I think she had an extensive history of it, yes.

5 Q Okay. Well, after 2007 there are no domestic violence
6 incidents, or reports involving Susan ---- and Mr. Chaker as
7 the assailant. Is that correct?

8 A I don't believe that's correct. I believe there was
9 another additional report in Texas.

10 Q Okay. That's not part of your --

11 A I believe I mentioned that in my report.

12 Q But you don't have any reports that would support that.
13 Correct?

14 A I made reference to that report that I don't -- I don't
15 believe that I have a physical report from Texas of that
16 domestic violence incident that occurred.

17 Q And you don't know what date that occurred, do you?

18 A If it's in my report, an approximate date. I don't know.
19 But --

20 Q Okay.

21 A -- it was definitely after 2007.

22 Q And you're basing that information on --

23 A On information she had told me.

24 Q That she had told you.

25 A Yes.

1 Q Okay. But there was no information that you have that
2 would corroborate that.

3 A Right.

4 Q So the only domestic violence incidents that you could
5 corroborate were those two incidents in Las Vegas. Is that
6 right?

7 A Pertaining as her as the victim and him as the suspect,
8 or alleged suspect?

9 Q Alleged suspect, yes.

10 A Yes.

11 Q Because he's not named in those reports.

12 A Right.

13 Q Okay. So nothing in 2008. Correct?

14 A Not that I included or that I --

15 Q That you're aware of.

16 A That I'm aware of. Right.

17 Q Nothing in 2009 that you're aware of?

18 A Right.

19 Q Nothing in 2010, '11 or this year. Correct?

20 A Like I said, there was the one that -- the Texas, I don't
21 have the exact date on that one.

22 Q In fact, it could have been 2001, you have no idea.
23 Correct?

24 A She had told me that it was after 2007.

25 Q Okay. Could have been 2008. Right?

1 A It could.

2 Q Okay. But you don't know. You don't know.

3 A I don't have a copy of that report.

4 Q Okay. Now Ms. didn't provide you any photographs
5 of any bruises that she had suffered at the hand Mr. Chaker.
6 Correct?

7 A That's right.

8 Q Her sister didn't provide you any photographs or any
9 evidence that she had been -- suffered any bruises at the hand
10 of --

11 A I didn't --

12 Q -- Mr. Chaker?

13 A I didn't ask her to supply me with those, so, no.

14 Q All right. And you've never received any of those, you
15 don't have that. Correct?

16 A Right.

17 Q Okay. Now Susan told you that she did -- at one point in
18 2013 when she decided to leave, she requested a temporary
19 protective order on her own. Is that correct?

20 A That's correct.

21 Q And she didn't qualify for that. Is that right?

22 A That's correct.

23 Q Now in your experience, if a mother of a young child were
24 placed in some type of danger, the Court would issue a
25 temporary protective order. Correct?

6 Q And --

9 MR. COLOMBO: Any place.

12 BY MR. COLOMBO:

14 THE COURT: And I don't know what the requirements
15 are for them.

17 Q Did you ask Ms. [REDACTED] where she applied for the
18 temporary protective order?

20 Q No, it's not.

21 A -- where I mentioned it? Okay. Can you tell me what
22 page I said --

23 Q No, it's not in your report. I'm asking you if you had
24 asked her.

SER191

1 Q Okay. Now in your investigation did you conduct any
2 investigation into Ms. -- --'s background?

3 A Yes.

4 Q You did. Okay. So then you would be aware then that she
5 has her own child, a 14 year old that she's not raising?

6 A She told me that she has another child, yes.

7 Q Okay. And that she is not raising it. Is that correct?

8 A She told me that that child is currently residing with
9 her mother because there was conflict with Mr. Chaker and that
10 child because that child is half African-American, and Susan
11 -- stated that Chaker did not like that.

12 Q Okay. Now -- so then you're aware that Ms. Adcock has a
13 million dollar default judgment against her for providing a
14 false allegation of rape against an attorney, Mr. Goldstein,
15 in Beverly Hills. Are you aware of that?

16 A Yes.

17 Q Okay. So you're aware then that she perjured herself.
18 Are you aware of that?

19 A I can't go on to -- on that, I don't know the details of
20 if she perjured herself or not.

21 Q Okay. Well, she did make an allegation of rape against
22 an attorney in Beverly Hills. You're aware of that?

23 A Aware of that because that attorney actually contacted
24 me.

25 Q Okay. And he has a million dollar judgment against her

1 because the allegation turned out to be false. Is that right?

2 A The attorney contacted me because Chaker was sending him
3 faxes and emails asking for his assistance.

4 Q I'm not -- I'm asking you if you're aware --

5 MS. FERKO: Your Honor, objection --

6 THE COURT: Sustained.

7 MS. FERKO: -- the witness --

8 THE COURT: Let's hear the answer.

9 MS. FERKO: If she can answer the question.

10 THE WITNESS: Can you repeat the question?

11 BY MR. COLOMBO:

12 Q Well, you're aware as to the fact that Ms. has a
13 million dollar judgment against her for a false allegation of
14 rape.

15 A I'm aware of the judgment, I don't know if it's a million
16 dollars, or what the exact amount is, and it's the allegations
17 of rape, but I'm aware of the case that you're referring to.

18 Q Okay. And then you're also aware in your investigation
19 that Ms. hasn't had a job since 2004. Is that correct?

20 A I don't know the exact dates of her last employment.

21 Q Okay. But you know that she's been unemployed for a
22 significant period of time.

23 A I know at the time of my investigation she was
24 unemployed.

25 Q And you're also aware then during your investigation that

1 Ms. [REDACTED], while residing in California, was receiving
2 benefits from both Nevada and Colorado.

3 A I'm sorry, with your last question I do remember she told
4 me that she was doing -- she had her notary license and she
5 was doing notary before she moved to California, and that was
6 as recent as 2011 I believe, in answer to your last question.

7 Q All right. And based upon that information, did you
8 follow up and receive her notary license and other
9 information?

10 A No, I did not ask for it.

11 Q Okay. So let me get back to the other question then.
12 And you're aware during your investigation then that Ms.

13 [REDACTED] was receiving benefits from both Nevada and Colorado
14 while a resident in California.

15 A I didn't investigate that part.

16 Q Okay. So you did talk to her about that.

17 A I don't believe so, no.

18 Q Okay. You would agree that if you were aware of that,
19 that would weigh upon Ms. [REDACTED]'s credibility. Is that
20 correct?

21 A My concern is the safety of the child. I don't know if
22 that would weigh on my determination on enforcing an order
23 that I believe was under thought in recovering a child.

24 Q And you believe that that order was fraudulent based upon
25 what Ms. [REDACTED] told you.

1 A Partially on what she told me, yeah. I did my own
2 investigation to confirm evidence that would support what she
3 told me.

4 Q Okay. And had you been aware that was triple-dipping so
5 to speak, receiving benefits in three different states where
6 she wasn't a resident, that would be something that would give
7 you pause to believe whether or not this particular email was
8 fraudulent. That's fair to say. Correct?

9 A If I asked her about that and she was dishonest with me,
10 it would affect credibility, but I did not ask her about that,
11 and everything that I have asked her in my interview and
12 investigation, she has been truthful.

13 Q Well, Ms. Fazal, it's fair to say you don't like
14 Mr. Chaker. Correct?

15 A I don't know if I would say that.

16 Q Well, you told his attorney that represented him in
17 his --

18 A That's not correct.

19 Q -- family law proceedings that you didn't like him.

20 A No, that's not correct. If you look at the email, he
21 told -- the attorney told Chaker that, She doesn't like you
22 very much. I did not tell that to the attorney. And if you
23 look at the exhibit as well as my follow-up to the attorney
24 the next day, it references what the conversation was with the
25 attorney. So I did not tell the attorney that.

1 Q And it was you who informed Pretrial Services out in San
2 Diego that Mr. Chaker had several different names. Is that
3 correct?

4 A I provided information to another law enforcement agency,
5 yes.

6 Q And you, on your own, contacted Pretrial Services.

7 A When I ran a -- I ran both parties. He's currently on
8 pretrial, it comes up as another -- with a name and phone
9 number of his pretrial officer. Before I did that, the Child
10 Abduction Unit investigator in San Diego as well contacted
11 her.

12 Q Okay. But you contacted Pretrial. Correct?

13 A Absolutely, yes.

14 Q Okay. And you also, on your own, sent to Mr. McMillan to
15 assist him -- Mr. McMillan, Susan s attorney -- to
16 assist him in the family law dispute, your entire report.

17 A That's not correct how you're wording your questions.

18 Q Well, let me break it down. Did you send your -- you
19 know Mr. McMillan. Correct?

20 A Yes.

21 Q He represents Ms. .

22 A Yes.

23 Q He represents Ms. in a family dispute.

24 A Yes.

25 Q The child custody situation.

1 A Yes.

2 Q And you sent to Mr. McMillan your report that is Exhibit
3 A of the Government's file. Is that correct?

4 MS. FERKO: Your Honor, could I just ask the
5 relevance of this question to a hearing about Mr. Chaker and
6 whether he should have bond or not have bond?

7 THE COURT: Yes, I'll go with that.

8 MS. FERKO: Because I mean I --

9 THE COURT: Stop. Stop, stop, stop. Thank you.
10 There's an objection to relevance.

11 MR. COLOMBO: Your Honor, it simply goes to bias. I
12 didn't open this whole can of worms. The Government did with
13 their filing. So I think I should be free to get into it.

14 THE COURT: Okay. But we're half an hour past the
15 time frame that I had planned, and I got your message, that
16 you don't think much of Ms. And I've mentioned
17 before, frankly, that I'm not getting in the middle of that
18 one. That's the California court's problem, or the Nevada
19 court's problem, but it's not going to be something that we'll
20 be focusing on. There's obviously a major dispute between
21 them. And the saddest thing about it is that hopefully the
22 child -- I hope the child won't suffer, I'll say that.

23 MR. COLOMBO: I'll withdraw the question then, and I
24 would -- I have no further questions.

25 THE COURT: Okay. Anything further?

1 MS. FERKO: I just have one question.

2 REDIRECT EXAMINATION OF LEESA FAZAL

3 BY MS. FERKO:

4 Q Ms. Fazal, when you responded to counsel's question, you
5 stated that the attorney contacted you who has the judgment
6 against Ms. [REDACTED]. And he was telling you about Mr. Chaker
7 faxing him stuff. What did that attorney tell you about
8 Mr. Chaker?

9 A He actually told me that he believed that Mr. Chaker was
10 responsible for that incident that was against [REDACTED], but
11 there was just not enough evidence to prove it at that time.
12 He said that [REDACTED] was sending him emails and faxes --

13 Q Was it [REDACTED] -- I'm sorry -- or Chaker?

14 A I'm sorry, Chaker. And actually this part of the exhibit
15 in which he was telling that attorney that [REDACTED] was being
16 investigated for child abduction and requesting his
17 assistance.

18 THE COURT: What are we talking about, in what
19 context?

20 MS. FERKO: Your Honor, it was --

21 THE COURT: Are you talking about the million dollar
22 judgment?

23 MS. FERKO: Yes, Your Honor. It was the attorney
24 who had that judgment against her who was talking to the
25 investigator.

1 THE COURT: Is the attorney somebody who actually
2 held the judgment in his own name, or was he the attorney for
3 someone else?

4 THE WITNESS: I believe he's part of the case.

5 MS. FERKO: He is the attorney --

6 THE COURT: He personally brought a case.

7 MS. FERKO: Yes.

8 MR. COLOMBO: Your Honor, he has --

9 THE COURT: Okay. And --

10 MR. COLOMBO: -- a judgment.

11 THE COURT: Okay. Thank you. Okay. But -- okay.
12 So the attorney has a judgment.

13 THE WITNESS: Against --

14 THE COURT: Is it in default?

15 THE WITNESS: I don't have the documents with me.

16 THE COURT: Here, I'll check.

17 THE WITNESS: But he told me because he was more
18 concerned with the child's safety and he -- and that attorney
19 who is listed as -- you know, in the judgment, had concerns
20 for the child's safety --

21 THE COURT: And is that same person calling you?
22 Okay.

23 THE WITNESS: And that -- yes, that same attorney
24 actually sent me the emails that Chaker sent to me because he
25 was concerned for the child's safety because he didn't -- he

1 believed Susan was in danger.

2 THE COURT: But he held a judgment.

3 THE WITNESS: Yes, but he believed that Susan and
4 the child were in danger because he said that, you know, he
5 had experiences with Chaker that concerned him. And, yes,
6 he's the same one that had the judgment.

7 THE COURT: Did he say he believed that Chaker was
8 actually sending -- sent communications to him --

9 THE WITNESS: As part of that judgment, yeah.

10 THE COURT: Okay. Well, that's a little vague. I'm
11 sorry.

12 THE WITNESS: The part of the judgment that's not
13 related, he had said that he believed that Chaker was behind
14 it --

15 THE COURT: Yes.

16 THE WITNESS: -- not Susan. That was his opinion
17 that he told me, and then he later sent me those emails and
18 fax that Chaker sent to him regarding the child custody.

19 THE COURT: Okay. All right. Well -- gotcha. I
20 understand your testimony.

21 MS. FERKO: I have no further questions, Your Honor.

22 THE COURT: Anything further, Mr. Colombo?

23 MR. COLOMBO: No, Your Honor.

24 MS. FERKO: The Government asks --

25 THE COURT: All right. You're excused. Thank you

1 bond, and I'm sustaining the Government's motion for
2 revocation of release. Under 3143(a), a judicial officer must
3 find, or shall order that a person who has been found guilty
4 of an offense, and who is awaiting imposition or execution of
5 sentence, other than a person for whom -- some stuff that
6 doesn't apply -- be detained.

7 So I shall order him detained, unless I find, by
8 clear and convincing evidence, that the person is not likely
9 to flee, or pose a danger to the safety of any other person,
10 or the community, if released under Section 3142(b) or (c).
11 3142(b) refers to release on personal recognizance and (c) is
12 released on conditions. Nobody is talking about a personal
13 recognizance bond. Conditions are something I'll address
14 later.

15 But my view is, after listening to all the evidence,
16 reading the paperwork submitted by both sides, and considering
17 the law, that the Defendant -- that the Government has met its
18 burden to show that the Defendant may flee. I need to say
19 that his use of a -- his obtaining a name completely different
20 from anything in the extensive record of the trial or the
21 criminal investigation, on top of the multiple names that he
22 uses in his business dealings, meaning Darren Chaker, D.
23 Darren Chaker, Delnero, with word, Del Nero with two words,
24 Delniro with N-I-R-O.

25 The use by the Defendant of the name D. Darren --

D. David Hunter

1 what is it -- [REDACTED], is something that plainly
2 should have been disclosed at some point to Pretrial or
3 Probation or both. The fact that the Defendant claims now he
4 does not have a passport and claimed to the Pretrial people in
5 California that he does not -- cannot find his passport book,
6 is subject to some serious question of credibility.
7 Defendant's credibility is not that strong in my book, having
8 listened to the evidence at trial.

9 The Defendant has many reasons to possibly flee,
10 because of the guideline range that he faces in punishment.
11 The Defendant is obviously an emotional person who is
12 extremely frustrated by the situation with his child and
13 former -- the women in his former lives, and the children that
14 he has in that regard.

15 The Defendant seems to take on a set of facts that
16 are convenient to him at the time and that has come out at the
17 trial, and it has come out in this hearing, and in this -- the
18 paperwork. He discloses what is convenient and he forgets to
19 disclose other material or other information when it would be
20 inconvenient to his position.

21 I cannot say by clear and convincing evidence that
22 Defendant is not likely to flee. At best the evidence shows
23 maybe he would, maybe he wouldn't, but clear and convincing
24 that he won't flee, no. No, no, no way.

25 I also find that the Defendant does pose a danger to

1 the safety of others or the community. I respect the First
2 Amendment, and I am interested in not running afoul of that in
3 any way. And the letter that was sent by EFF earlier, this
4 counsel refers to something that I have read and am familiar
5 with.

6 The Defendant is not in a position, like the cases
7 cited in that letter, where he's being sued or ordered to take
8 down some posting or statement that he has made. The
9 Defendant's being evaluated to determine if his conduct would
10 pose a danger to others. The Defendant doesn't have to cause
11 the danger by attacking the victim directly. That's one of
12 the reasons that frankly I'm not that interested in the
13 domestic violence complaints. That's not the theory.

14 The theory is that the Defendant, with access to a
15 computer, and with the ability to get travel and the ability
16 to do what he chooses to do is going to continue a pattern of
17 harassment and intimidation of others when he feels it is
18 important to get his way. The testimony of these women is
19 credited -- the witnesses, all whom happen to be women, is
20 credited.

21 The testimony of Ms. Fazal, with the Defendant while
22 on bond in my Court, following and tracking and stalking in
23 effect an agent that he knew was in California to testify is
24 an example of my concern when Defendant is on bond. Now the
25 Defendant may have the right to do that, but he's on bond and

1 I think that his emotional state and his desperation poses --
2 puts him emotionally and mentally in a state where he could
3 cause physical harm to her.

4 As to the postings, the Defendant may be allowed
5 under the First Amendment to post what he sees fit, but it
6 causes danger to others. That agent, with her information on
7 the web, can be tracked and found by others. Thus lawyers --
8 if Mr. Chaker has a gripe with the lawyer's client, then
9 Mr. Chaker has remedies.

10 But instead Mr. Chaker, through his emails and his
11 use of the internet is intimidating and posing a threat, a
12 serious threat to people by repeatedly posting their home
13 addresses with statements that raise the hint of danger or
14 suggestions that things could happen. It can incite others
15 and it can also indicate a pattern or an intent of his. It
16 was clearly for intimidation and I think it poses danger to
17 the safety of those lawyers.

18 I'm not saying Mr. Chaker doesn't have a First
19 Amendment right to do whatever he chooses, but I'm not looking
20 at whether he has to take it down, I'm looking at what he may
21 do in the future between now and when I sentence and he
22 finishes serving that sentence. And the fact of the matter
23 is, that Mr. Chaker's conduct is a problem.

24 I also cannot say, by clear and convincing evidence,
25 that Mr. Chaker is not a threat to others because of the issue

1 of whether or not he bought insurance in someone's name, using
2 her money without her knowledge. Mr. Chaker, in the papers,
3 went on websites and allegedly sent emails from government
4 websites, school district and sheriff office websites to co-
5 workers of one of his paramour's parents, ostensibly emails
6 from those parents themselves about their daughter with whom
7 Chaker had had a relationship.

8 Now those -- that wasn't part of the oral testimony
9 but it's before me in these papers, and that poses danger to
10 the victims there, both to the employees, whose websites were
11 hacked, and to the subject of the emails, and frankly
12 indicates that Mr. Chaker is a very skilled person, if it's
13 true, that can get into email accounts.

14 My concern frankly is that Mr. Chaker, when he's
15 very upset, takes extraordinary measures intended to harm
16 others either in their reputation or in their person, either
17 by raising the profile of those people in order for others to
18 retaliate, or by Mr. Chaker retaliating. So when someone's on
19 bond in this Court, they don't create -- they don't create the
20 problems that Mr. Chaker has been creating and then have a
21 Court say by clear and convincing evidence that he's not a
22 threat to others, or poses a threat to others, either directly
23 or indirectly.

24 So I am of the view that the Government has met its
25 burden. I'll also say with regard to fleeing that the

HEARING MINUTES AND ORDER

Cause Number: 12CR168-1

Style: United States of America v. Darren David Chaker

Appearances:

Counsel:

Representing:

Carolyn Ferko/Sharad Khandelwal

Government

Anthony Colombo

Defendant

Date: November 26, 2013

ERO: Yes

Time: 9:30 a.m. - 1:35 p.m.

Interpreter:

2:08 p.m. - 2:53 p.m.

At the hearing the Court made the following rulings:

Evidentiary hearing held on Defendant's renewed request for bond [Doc. # 274] and Government Ex Parte Motion for Revocation of Release for Violations of Bond Conditions [Doc. # 227]. Testimony heard. Government's exhibits A-1, A-2, D-1, D-2, D-3 and D-4 are all offered and admitted. Defendant's exhibit I is offered and admitted.

Defendant's renewed request for bond [see Doc. # 274] is DENIED for reasons stated on the record in open court.

Government's Motion for Revocation [Doc. # 281] is GRANTED for reasons stated on the record in open court.

Sentencing is expedited and now is set for December 17, 2013 at 10:00 a.m.

Defendant's oral motion to seal the record for today's hearing is DENIED for reasons stated on the record in open court.

SIGNED at Houston, Texas this 26th day of November, 2013.



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

November 22, 2013

The Honorable Nancy F. Atlas
United States District Court, Southern District of Texas
515 Rusk Street
Houston, TX 77002

VIA FEDEX

DEFENDANT'S EXHIBIT	
CASE NO.	12-cv-168
EXHIBIT NO.	I

Re: *United States v. Darren Chaker*, Case No. H-12-CR-168

Dear Judge Atlas:

The Electronic Frontier Foundation ("EFF") is a nonprofit civil liberties organization that has worked for more than 20 years to protect consumer interests, innovation, and free expression in the digital world. Founded in 1990, EFF has more than 22,000 dues-contributing members. EFF's mission is to ensure that the civil liberties and due process guaranteed by our Constitution and laws do not diminish as communication, commerce, government, and much of daily life move online.

We write with respect to the motion of the United States to revoke the bond of Darren Chaker based in part on Mr. Chaker's alleged authorship of the website, *blogspot.com*. We have no idea whether or not Mr. Chaker did indeed author this website or was in any way involved with its creation. But even if he were, the website is speech protected by the First Amendment and as such cannot be used as the basis for any legal sanction against him.

We offer this brief letter to highlight some of the very complex First Amendment issues raised by the government's motion. But it is this very complexity of the issues that highlights one of the motion's most troubling aspects. A summary proceeding such as a bond revocation hearing is an inappropriate forum for adjudicating an individual's fundamental First Amendment rights.

1. The Supreme Court Has Held in Numerous Contexts That One Can Bear No Civil or Criminal Liability for Republishing Information Obtained From the Government

The Supreme Court has held without exception that one can bear no liability for re-publishing information obtained from the government, even if strong public policy reasons existed for keeping that information private in the first place. Thus, in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495 (1975), the Court found unconstitutional a civil damages award entered against a television station for broadcasting the name of a rape-murder victim it had obtained through court records. In *Oklahoma Daily Publishing*

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org

SER207

The Honorable Nancy F. Atlas
November 22, 2013
Page 2 of 3

Co. v. District Court, 430 U.S. 308, 311 (1977), the Court declared unconstitutional a pretrial order enjoining the media from publishing the name and photograph of a juvenile defendant when the media obtained the information by attending an open court hearing. In *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 841 (1978), the Court found that a newspaper could not be punished for publishing the names of judges under investigation, even though such information was deemed by state law to be confidential. In *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 103 (1979), the Court found that a state law forbidding the publication of the name of any youth charged as a juvenile offender could not constitutionally be applied to newspapers that had obtained the information from the police, the prosecutor and witnesses. And in *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989), the Court found that a law making it unlawful to publish the name of a victim of sexual abuse in an "instrument of mass communication" could not constitutionally be applied to a newspaper that had obtained the name from a publicly released police report.

All of the information published on the website – the Arizona State Bar letter, the San Francisco Sheriff's Department Mugshot Profile, the Maricopa County Superior Court charging sheet, and the addresses of the attorneys and their clients were obtained from governmental sources. The fact that Mr. Chaker has published them thus cannot be the basis for any adverse legal action against him.

2. A Writing Cannot be Proscribed as a "True Threat" Unless It Unequivocally Indicates An Intent To Act Violently Against a Target

"True threats" are an extremely narrow category of speech that may be excluded from the protections of the First Amendment. See *Virginia v. Black*, 538 U.S. 343, 360 (2003). "True threats" include only those statements "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* "Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *Id.* A statement will not be considered a true threat, and thus fully protected by the First Amendment, if it is hypothetical or conditional. See *United States v. O'Dwyer*, 443 Fed. Appx. 18 (5th Cir. 2011) (finding that the statement "suppose I do become 'homicidal' . . . a number of scoundrels might be at risk if I DO become homicidal" to be protected speech). And importantly, a true threat must communicate an intent to commit an act of violence; speech that is offensive and provocative, but not violent, is protected under the First Amendment.

The website at issue is not only devoid of any threats of violence, it affirmatively urges its readers to refrain from any violent action. The website only asks its readers to contact those listed and let them know of the readers' disapproval of the law firm that is the subject of the website. The website is thus similar to the leaflets found

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org