

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PLANNED PARENTHOOD FEDERATION)
OF AMERICA, INC.,)
)
Plaintiff,)
)
vs.) NO. 316-CV-00236 (WHO)
)
)
CENTER FOR MEDICAL PROGRESS,)
)
Defendants.)
_____)

DEPOSITION OF
LINDA TRACY
SAN FRANCISCO, CALIFORNIA
OCTOBER 30, 2019

Reported by:
KRISHANNA DERITA
CSR No. 11945
No. 19-84653

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APPEARANCES

For Deponent:

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1 Be it remembered that, on October 30, 2019, at 1:00
2 p.m. at Orrick Herrington Sutcliffe,
3 San Francisco, CA, before me, Krishanna DeRita,
4 Certified Shorthand Reporter for the County of
5 Contra Costa, appeared:

6 LINDA TRACY,
7 Who, having been first duly sworn by me, testified
8 to the following:

01:02:21 9 THE VIDEOGRAPHER: Good afternoon. Here begins
01:02:22 10 media number one in the deposition of Linda Tracy
01:02:27 11 in the matter of Planned Parenthood Federation of
01:02:30 12 America Incorporated, et al, versus the Center for
01:02:34 13 Medical Progress, et al. This case is in the United
01:02:37 14 States District Court, Northern District of
01:02:40 15 California, and the case number is 3:16-CV-00236WHO.
01:02:53 16 Today's date is October 30th, 2019. The time is
01:02:57 17 1:02 p.m. This deposition is taking place at 405
01:03:01 18 Howard Street, tenth floor, San Francisco,
01:03:05 19 California, 94105. The videographer is Alfredo
01:03:09 20 Domodore appearing on behalf of the Sullivan Group
01:03:14 21 of Court Reporters. Will counsel please identify
01:03:17 22 yourselves and state whom you represent.

01:03:18 23 MR. JONNA: Paul Jonna for defendants David
01:03:22 24 Daleiden and Center for Medical Progress, Biomax
01:03:23 25 Procurement Services, and Adrian Lopez.

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1 MS. STERK: Diane Sterk on behalf of
2 plaintiffs.
3 MS. JOHNSON-MCKEWAN: Karen Johnson of Orrick
4 Herrington and Sutcliffe on behalf of the witness
5 today.
6 THE VIDEOGRAPHER: Thank you, Counsel. The
7 reporter today is Krishanna DeRita with Sullivan.
8 Would the reporter please swear in the witness and
9 we can begin.
10 MS. STERK: Before we start, can we just
11 identify who's present.
12 MR. JONNA: David Daleiden is also here with
13 me.
14 MR. ALLEN: And Molly McCaffrey, an associate
15 with Orrick, is also here with me.
16 EXAMINATION
17 BY MR. JONNA:
18 Q. Good afternoon, Miss Tracy. Can you
19 please state and spell your name for the record?
20 A. Linda Tracy. L-I-N-D-A, T-R-A-C-Y.
21 Q. Thank you. Have you ever been deposed
22 before?
23 A. Yes.
24 Q. How many times approximately?
25 A. Once.

01:04:16 1 Q. And what was the context?

01:04:19 2 A. It was a child custody case.

01:04:20 3 Q. So I want to quickly go through the ground

01:04:22 4 rules, and I'm sure you are aware of them, but the

01:04:25 5 most important one is that you are under oath and

01:04:27 6 the oath that you just took is the same oath that

01:04:30 7 you would take if you were testifying in front of a

01:04:32 8 judge and jury in a courtroom. Do you understand

01:04:34 9 that?

01:04:35 10 A. I do.

01:04:35 11 Q. And the same penalties of perjury apply.

01:04:38 12 Do you understand that?

01:04:39 13 A. I do.

01:04:40 14 Q. Please don't -- if you answer my question,

01:04:42 15 I'm going to assume you understood it. If you need

01:04:44 16 me to clarify, I'm happy to do so. So it's just

01:04:47 17 important that you only answer questions you

01:04:49 18 understand. Does that make sense?

01:04:51 19 A. Yes.

01:04:51 20 Q. There's a court reporter taking down

01:04:53 21 what's being said in this room, so it's important

01:04:56 22 not to talk over each other. Are you under the

01:04:59 23 influence of any drugs or alcohol that could affect

01:05:04 24 your ability to testify?

01:05:05 25 A. No.

01:05:06 1 Q. Is there any reason why you can't give
01:05:08 2 your best testimony today?
01:05:09 3 A. No.
01:05:10 4 Q. You understand that you are not a party to
01:05:11 5 this case? You've been subpoenaed as a third party
01:05:13 6 and you are testifying in that capacity. Correct?
01:05:15 7 A. Yes.
01:05:20 8 Q. Have you ever been convicted of a felony?
01:05:21 9 A. No.
01:05:22 10 Q. Have you ever been charged with a crime?
01:05:23 11 A. No.
01:05:24 12 Q. Have you ever been interviewed by law
01:05:26 13 enforcement in connection with your work at ABR?
01:05:29 14 A. No.
01:05:30 15 Q. Have you ever been interviewed by
01:05:31 16 Congress?
01:05:32 17 A. Yes.
01:05:32 18 Q. Approximately when?
01:05:38 19 A. I believe that was either in the fall of
01:05:42 20 '15 or the spring of '16. I can't recall. I think
01:05:47 21 it was the spring of '16.
01:05:49 22 Q. Was it just one occasion?
01:05:51 23 A. Yes.
01:05:53 24 Q. What was the nature of the interview?
01:05:56 25 What was it regarding?

01:05:59 1 A. It was the House committee and the Senate
01:06:07 2 committee on the -- on Marcia Blackburn's committee.
01:06:16 3 I can't think of the name of it right now.
01:06:18 4 Q. Sure. Without getting into all the
01:06:22 5 details, do you remember generally what the nature
01:06:24 6 of the interview was focused on?
01:06:26 7 A. They were curious about how ABR's program
01:06:31 8 worked and I needed to explain.
01:06:34 9 Q. Were you asked to provide them with
01:06:36 10 documents?
01:06:37 11 A. Yes.
01:06:37 12 Q. And did you?
01:06:38 13 A. Yes.
01:06:39 14 Q. Do you remember generally what you
01:06:40 15 provided them with?
01:06:42 16 MS. STERK: Objection; this is outside the
01:06:44 17 scope of what Judge Orrick has allowed this
01:06:47 18 deposition to be about.
01:06:51 19 MS. JOHNSON-MCKEWAN: I think I'll instruct the
01:06:53 20 witness to not answer the questions that fall
01:06:55 21 outside the scope of what Judge Orrick has
01:06:57 22 permitted. So I'll instruct you not to answer.
01:06:58 23 MR. JONNA: So Judge Orrick didn't prohibit us
01:07:00 24 from going into general background and issues
01:07:03 25 regarding credibility and bias. So the questions

01:07:05 1 along those lines stay, but you make your
01:07:06 2 instructions and we'll deal with them however we see
01:07:10 3 fit.

01:07:10 4 MS. STERK: For the record in the case,
01:07:11 5 everything regarding the Congressional hearings has
01:07:13 6 been barred from coming into the case. So there's
01:07:17 7 no relevance in this deposition.

01:07:19 8 MS. JOHNSON-MCKEWAN: I'll stand by my
01:07:20 9 instruction.

01:07:22 10 BY MR. JONNA:

01:07:23 11 Q. Sure. The question was what documents did
01:07:25 12 you provide Congress?

01:07:27 13 MS. JOHNSON-MCKEWAN: I instruct the witness
01:07:29 14 not to answer.

01:07:30 15 BY MR. JONNA:

01:07:30 16 Q. Were you the person responsible at ABR for
01:07:33 17 gathering the documents that had to be provided to
01:07:35 18 Congress?

01:07:36 19 MS. JOHNSON-MCKEWAN: Same instruction.

01:07:39 20 MS. STERK: Same objection.

01:07:39 21 BY MR. JONNA:

01:07:40 22 Q. Do you recall being subpoenaed by the
01:07:41 23 defendants in the civil case to provide documents in
01:07:45 24 this lawsuit?

01:07:47 25 MS. JOHNSON-MCKEWAN: In this lawsuit?

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THE WITNESS: Yes.

BY MR. JONNA:

Q. And were you the person responsible for locating and gathering these documents?

A. Yes.

Q. And those documents consisted of invoices. I assume you are the person at ABR responsible for maintaining the custody of those?

A. Mm-hmm.

Q. That's a yes?

A. Yes.

Q. What did you do to prepare for today's deposition?

A. I met with Karen yesterday.

Q. On one occasion or on more than one occasion?

A. Just one.

Q. For approximately how long?

A. An hour.

Q. Did you review any documents to prepare for today's deposition?

A. No.

Q. Did you watch any videos to prepare for today's deposition?

A. No.

01:08:35 1 Q. Can you summarize briefly your educational
01:08:37 2 background, please?
01:08:41 3 A. I'm a registered nurse.
01:08:46 4 Q. So you obtained a nursing degree of some
01:08:50 5 kind at some point?
01:08:51 6 A. I did.
01:08:51 7 Q. Where and when?
01:08:52 8 A. It was in 1975 from a college in Southern
01:08:58 9 California.
01:09:01 10 Q. Okay. Any other education after high
01:09:03 11 school?
01:09:04 12 A. No.
01:09:05 13 Q. Can you summarize your work experience
01:09:07 14 after obtaining your degree until the present?
01:09:14 15 A. I worked in critical care in hospitals in
01:09:18 16 Southern California primarily and did what nurses do
01:09:27 17 in critical care.
01:09:30 18 Q. Okay. And how long did you do that for?
01:09:34 19 A. Since 1975 to about '83.
01:09:46 20 Q. Okay. And what did you do next?
01:09:48 21 A. Then I, in '83, I started working for the
01:09:55 22 regional organ procurement agency, ROPA, at UCLA, as
01:10:00 23 a donor coordinator.
01:10:02 24 Q. Okay. And what exactly were your
01:10:05 25 responsibilities as a donor coordinator?

01:10:10 1 A. I would, when a patient presented to the
01:10:12 2 hospital in brain death and the families had
01:10:16 3 consented for organ donation, they would call in a
01:10:25 4 team. And I was the principal coordinator of that
01:10:30 5 team so that when the patient was ready for
01:10:35 6 donation, everything was in order.

01:10:38 7 THE VIDEOGRAPHER: We are going off the record.
01:10:38 8 The time is 1:10 p.m.

01:10:38 9 (Recess is taken.)

01:13:39 10 THE VIDEOGRAPHER: We are back on the record.
01:13:40 11 Time is 1:13 p.m.

01:13:42 12 BY MR. JONNA:

01:13:43 13 Q. Okay. So you were discussing your role in
01:13:46 14 this position as a donor coordinator, and I believe
01:13:49 15 you said you were principal coordinator. And just
01:13:51 16 so I understand correctly, this involves adult organ
01:13:55 17 donation?

01:13:55 18 A. Yes.

01:13:56 19 Q. And how long were you in this role for?

01:14:00 20 A. Two years.

01:14:01 21 Q. Okay. And what did you do after this?

01:14:07 22 A. Then I started working for a company
01:14:10 23 called Hana Biologics H-A-N-A, and they were in
01:14:14 24 Berkeley.

01:14:18 25 Q. What do they do?

01:14:20 1 A. They were a biotech that was researching
01:14:25 2 cures or therapies for Alzheimer's disease, diabetes
01:14:30 3 and Parkinson's disease.

01:14:31 4 Q. So why did you decide to leave nursing and
01:14:34 5 get into this position as a donor coordinator?

01:14:37 6 A. I didn't leave nursing.

01:14:39 7 Q. So you were acting as a nurse?

01:14:41 8 A. Yes.

01:14:41 9 Q. And then this role at Hana Biologics, what
01:14:44 10 was your title there?

01:14:46 11 A. I was procurement manager.

01:14:50 12 Q. What would you do as procurement manager?

01:14:53 13 A. I was hired there to network sources for
01:14:57 14 them for fetal tissue.

01:15:00 15 Q. What does that mean, "network sources"?

01:15:06 16 A. Call providers of abortion services to see
01:15:08 17 if they would participate in program.

01:15:11 18 Q. And where was this company located?

01:15:14 19 A. Berkeley.

01:15:16 20 Q. And which abortion providers were you
01:15:19 21 contacting?

01:15:21 22 MS. STERK: Objection; outside the scope.

01:15:25 23 MS. JOHNSON-MCKEWAN: And I think I'll instruct
01:15:26 24 her not to answer.

01:15:27 25 BY MR. JONNA:

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1 Q. This is just general background
2 information.
3 MS. JOHNSON-MCKEWAN: Yeah, I know, but you've
4 got a very limited subject and limited time. So
5 you've got information about what she was doing and
6 who she was working for.
7 BY MR. JONNA:
8 Q. Were you working with Planned Parenthood
9 affiliates at the time?
10 MS. STERK: Objection; outside the scope.
11 MS. JOHNSON-MCKEWAN: I'm going to instruct
12 her.
13 MR. JONNA: Not to discuss her work with the
14 plaintiffs in this case?
15 MS. JOHNSON-MCKEWAN: Right.
16 BY MR. JONNA:
17 Q. Okay. I'm going to ask the question
18 again. At the time that you were working with this
19 firm in Berkeley, were you working with any Planned
20 Parenthood affiliates?
21 MS. JOHNSON-MCKEWAN: I'm going to instruct her
22 not to answer.
23 MS. STERK: Same objection.
24 BY MR. JONNA:
25 Q. How long did you work at that organization

01:16:07 1 for?

01:16:10 2 A. Almost five years.

01:16:13 3 Q. Okay. And where did you go after that?

01:16:19 4 A. Then I started ABR.

01:16:22 5 Q. Okay. What's ABR?

01:16:24 6 A. Advanced Bioscience Resources,

01:16:26 7 Incorporated.

01:16:27 8 Q. What does ABR do?

01:16:29 9 A. Acquires and distributes fetal tissue for

01:16:32 10 research purposes.

01:16:34 11 Q. Is that similar to what the group did in

01:16:37 12 Berkeley?

01:16:39 13 MS. JOHNSON-MCKEWAN: Objection;

01:16:39 14 mischaracterizes prior testimony. You can answer.

01:16:44 15 THE WITNESS: I was the group at Berkeley.

01:16:46 16 BY MR. JONNA:

01:16:46 17 Q. Hana Biologics?

01:16:48 18 A. Yes.

01:16:48 19 Q. Okay. So why did you decide to start your

01:16:51 20 own group?

01:16:57 21 A. The research community was beginning to

01:17:05 22 grow in their requirements for more tissue, and the

01:17:15 23 company, well, the clinics were getting more and

01:17:19 24 more calls from researchers who wanted to come into

01:17:23 25 the clinics and collect the tissues themselves, but

01:17:26 1 it was more private and more convenient for me or my
01:17:35 2 entity to go in and be the one resource for a
01:17:42 3 variety of researchers so I could make it easier for
01:17:49 4 the clinic, make it easier for the researchers.

01:17:52 5 Q. Is ABR's business model similar to that of
01:17:57 6 Hana Biologics?

01:18:00 7 A. No.

01:18:01 8 Q. What's different about it?

01:18:02 9 MS. STERK: Objection; outside the scope.

01:18:05 10 MS. JOHNSON-MCKEWAN: I think she's already
01:18:07 11 explained to you what Hana Biologics does. She told
01:18:10 12 you what she did at Hana Biologics, which is
01:18:13 13 different from what the company does. She's not
01:18:15 14 engaged in medical research at ABR. You know that.

01:18:19 15 MR. JONNA: Counsel, that's a speaking
01:18:20 16 objection. I'm just asking her the difference
01:18:22 17 between the model, ABR, the company you founded and
01:18:25 18 the prior company you were working at.

01:18:28 19 MS. STERK: Same objection. Outside the scope.

01:18:30 20 MS. JOHNSON-MCKEWAN: You can answer that
01:18:31 21 question, but we are going to really limit this
01:18:33 22 going forward.

01:18:36 23 THE WITNESS: So Hana Biologics hired me to be
01:18:41 24 their procurement department. So what I did for
01:18:44 25 Hana was exactly what I did and do for ABR.

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BY MR. JONNA:

Q. And why was it that Hana asked you to do that, to do a fetal tissue procurement?

MS. JOHNSON-MCKEWAN: Objection; asked and answered and lacks foundation. You can answer the question if you know the answer why they hired you.

THE WITNESS: They hired me to network sources for them for fetal tissue as I said.

BY MR. JONNA:

Q. Is that something that you wanted to get into or you that they asked you to get involved in that line of their work?

A. I wanted to.

Q. What was it that made you interested in that?

A. I thought the research was extremely beneficial, and it is.

Q. What research are you referring to?

A. Diabetes, Alzheimer's disease, Parkinson's disease, and a multitude of others.

Q. And was Hana Biologics part of the National Disease Research Interchange?

A. No.

Q. Okay. Did you work with the National Disease Research Interchange in the 1980's?

01:19:57 1 A. Yes.

01:19:58 2 Q. What time frame?

01:20:00 3 A. I don't remember.

01:20:01 4 Q. Was that a separate position or was

01:20:03 5 that -- because you didn't describe that.

01:20:15 6 A. They were already doing fetal tissue

01:20:22 7 acquisition, NDRI was, and James Bardsley, I think

01:20:26 8 his name was, offered to help me in identifying

01:20:33 9 different types of tissues. So he worked with me

01:20:39 10 for maybe a month, I'm not sure. So I was never an

01:20:46 11 employee of NDRI, but we had a relationship.

01:21:05 12 Q. And the time frame again, that's before

01:21:06 13 you founded ABR?

01:21:08 14 A. Yeah.

01:21:08 15 Q. Before you worked at Hana Biologics or

01:21:11 16 after?

01:21:13 17 A. During the same time.

01:21:14 18 Q. Okay. And ABR's been in business since

01:21:21 19 what year? 1989? Is that what you said?

01:21:23 20 A. Yes.

01:21:25 21 Q. And how has, has ABR's business model

01:21:31 22 changed since it was opened or has it been the same?

01:21:34 23 How would you describe, you know, its growth since

01:21:37 24 1989?

01:21:40 25 MS. JOHNSON-MCKEWAN: Objection; vague and

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1 ambiguous; compound.
2 MS. STERK: Objection; outside the scope.
3 MS. JOHNSON-MCKEWAN: You can answer. Just
4 describe ABR's business.
5 THE WITNESS: It's the same.
6 BY MR. JONNA:
7 Q. Okay. How many employees do you have?
8 A. Nine.
9 Q. How many locations do you have?
10 A. One.
11 Q. And where is that?
12 A. Alameda, California.
13 Q. And how many procurement technicians do
14 you have?
15 A. Five.
16 Q. Do you focus on a certain region?
17 A. Four. Sorry.
18 Q. Four.
19 A. No.
20 Q. Are your clients nationwide?
21 A. Yes.
22 Q. Do you do more of your work predominantly
23 in one state or is it all across the United States?
24 A. In various places in the United States,
25 yes.

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Q. Approximately how many clients do you have?

MS. JOHNSON-MCKEWAN: I'm going to object. This is getting very intrusive into ABR's business. Miss Tracy is here to testify about a very limited subject and the intrusion into the details of the business is inappropriate, so I'm going to instruct her not to answer any further questions about that.

MS. STERK: Join in the objection.

BY MR. JONNA:

Q. Has ABR made contributions to the Alameda Christian Reform Church?

MS. JOHNSON-MCKEWAN: I'm going to object that that falls outside the scope of the order and instruct the witness not to answer.

BY MR. JONNA:

Q. Are you going to answer the question?

A. No.

Q. Is that your church?

MS. JOHNSON-MCKEWAN: I'm going to object again and instruct the witness not to answer.

BY MR. JONNA:

Q. Is it true that ABR has made financial contributions to pro life pregnancy centers?

MS. JOHNSON-MCKEWAN: I'm going to object and

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1 instruct the witness not to answer.
2 MS. STERK: Join.
3 BY MR. JONNA:
4 Q. Which Planned Parenthood affiliates has
5 ABR worked with?
6 MS. JOHNSON-MCKEWAN: I'm going to object and
7 instruct the witness not to answer. Outside the
8 scope.
9 MS. STERK: Join.
10 MR. JONNA: It's certainly relevant to her bias
11 and so --
12 MS. JOHNSON-MCKEWAN: You know, you haven't
13 established that -- any reason to doubt whatever her
14 testimony is going to be on the subject for which
15 you are allowed to ask questions. So before you
16 start talking about bias, why don't you ask her the
17 questions that you are authorized to ask her and
18 then we can talk about the rest.
19 BY MR. JONNA:
20 Q. Yeah. That's fine. I'm just making my
21 record.
22 So do you currently work with Planned
23 Parenthood Pacific Southwest?
24 MS. JOHNSON-MCKEWAN: I'm go to object and
25 instruct the witness not to answer.

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MS. STERK: Join.

BY MR. JONNA:

Q. Have you ever attended a NAF conference?

A. Yes.

Q. Approximately how many have you attended?

A. Maybe 20.

Q. And why do you attend those?

A. To talk to friends.

Q. Any other reason?

A. To let them know about the value of fetal tissue research and how they can participate.

Q. And when you say "talk to friends," what friends are you referring to?

A. Friends that I've made in the clinics.

Q. Which clinics?

MS. JOHNSON-MCKEWAN: I'm going to object that that calls for information about the conduct of ABR's business and instruct her not to answer.

BY MR. JONNA:

Q. Are there certain affiliates or abortion providers that you are looking to network with when you go to NAF conferences?

MS. JOHNSON-MCKEWAN: That's a yes or no question.

THE WITNESS: Yes.

01:25:44 1 BY MR. JONNA:

01:25:45 2 Q. Which ones?

01:25:45 3 MS. JOHNSON-MCKEWAN: I'm going to object and
01:25:47 4 instruct her not to answer.

01:26:05 5 BY MR. JONNA:

01:26:05 6 Q. When you attend NAF conferences, are you
01:26:08 7 attending as an exhibitor?

01:26:09 8 A. No.

01:26:10 9 Q. What are you attending as?

01:26:11 10 A. A member.

01:26:12 11 Q. A member. Okay. Have you ever attended a
01:26:14 12 NAF conference as an exhibitor?

01:26:17 13 A. Yes.

01:26:17 14 Q. Approximately when?

01:26:20 15 A. It was -- I am not exactly sure, but I
01:26:22 16 think it was in the early '90's.

01:26:25 17 Q. And why is it that you don't exhibit at
01:26:27 18 NAF conferences any more?

01:26:30 19 A. Why I don't?

01:26:32 20 Q. Yes.

01:26:34 21 A. Because I would rather go and be part of
01:26:38 22 the sessions and listen to what is being said and to
01:26:45 23 just be there and not have to exhibit.

01:26:52 24 Q. So the last time ABR exhibited at a NAF
01:26:55 25 conference was in the '90's?

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A. I believe so, yes.

Q. Okay. And has ABR been able to obtain new clients and new business by attending NAF conferences?

MS. JOHNSON-MCKEWAN: I'm going to object and instruct her not to answer. That is not within the scope of the authorized testimony.

MS. STERK: Join.

MR. JONNA: It's certainly relevant to know why she attends NAF conferences.

MS. JOHNSON-MCKEWAN: She's told you why.

MR. JONNA: I'm allowed to explore that further and ask additional questions. So what we'll do is we'll bring her back after we raise this issue with Judge Orrick. So I'm just letting you know.

MS. JOHNSON-MCKEWAN: And I'm letting you know.

MR. JONNA: I can't even ask her why? I'm supposed to accept the first answer she gives me and I can't --

MS. JOHNSON-MCKEWAN: She's told you.

MR. JONNA: And I can't follow up?

MS. JOHNSON-MCKEWAN: She's told you why she attends.

MR. JONNA: And I'm entitled to follow up.

MS. JOHNSON-MCKEWAN: What was your last

01:27:35 1 question?

01:27:35 2 MR. JONNA: Can you read back my last question?

01:27:35 3 (Record is reread.)

01:27:49 4 MS. JOHNSON-MCKEWAN: That's no. I'm standing

01:27:51 5 by my instruction.

01:27:55 6 BY MR. JONNA:

01:27:56 7 Q. Do any of your competitors exhibit at NAF

01:27:59 8 conferences to your knowledge?

01:28:00 9 MS. JOHNSON-MCKEWAN: Objection to the

01:28:01 10 characterization.

01:28:06 11 BY MR. JONNA:

01:28:07 12 Q. You can answer.

01:28:08 13 MS. JOHNSON-MCKEWAN: You can go ahead and

01:28:09 14 answer.

01:28:09 15 THE WITNESS: I don't know.

01:28:10 16 BY MR. JONNA:

01:28:10 17 Q. Do you have any competitors?

01:28:14 18 MS. JOHNSON-MCKEWAN: Foundation. You can

01:28:16 19 answer the question.

01:28:16 20 THE WITNESS: I'm not sure.

01:28:26 21 BY MR. JONNA:

01:28:26 22 Q. Do you consider Stem Express a competitor?

01:28:30 23 A. At one point, they were. I'm not sure

01:28:33 24 that they still are.

01:28:35 25 Q. Why do you say that?

01:28:45 1 A. My understanding is that they've changed
01:28:47 2 the focus of their work a little bit.
01:28:50 3 Q. In which way?
01:28:51 4 MS. STERK: Objection; outside the scope.
01:28:53 5 MS. JOHNSON-MCKEWAN: I'm going to instruct you
01:28:54 6 not to answer.
01:28:55 7 BY MR. JONNA:
01:28:55 8 Q. How long have they not been a competitor
01:28:58 9 in your view?
01:29:03 10 A. Probably three years, four years. Since
01:29:08 11 2015. Since the videos and that BS came up.
01:29:15 12 Q. And what is it about the videos?
01:29:18 13 MS. STERK: Objection; outside the scope.
01:29:19 14 MS. JOHNSON-MCKEWAN: Yeah, I'm going to
01:29:20 15 object, too, and it lacks foundation.
01:29:22 16 BY MR. JONNA:
01:29:23 17 Q. I'm following up on your client's answer
01:29:25 18 to my question. What was it about the videos that
01:29:28 19 you said led to a change in how you viewed Stem
01:29:34 20 Express as a competitor?
01:29:35 21 MS. STERK: Same objection.
01:29:36 22 MS. JOHNSON-MCKEWAN: Yeah, and that
01:29:37 23 mischaracterizes her prior testimony.
01:29:39 24 BY MR. JONNA:
01:29:40 25 Q. You said at one point, Stem Express was a

01:29:41 1 competitor and about three or four years ago after
01:29:43 2 the videos, they stopped being a competitor in your
01:29:45 3 view because they changed focus; is that correct?

01:29:48 4 MS. JOHNSON-MCKEWAN: I'm going to object that
01:29:49 5 that does mischaracterize her prior testimony.

01:29:53 6 BY MR. JONNA:

01:29:53 7 Q. She can tell me, Counsel.

01:29:54 8 A. Yes.

01:29:55 9 Q. That's correct. Okay. So what was it
01:29:57 10 about the videos that caused that change.

01:30:00 11 MS. STERK: Objection; outside the scope.

01:30:01 12 MS. JOHNSON-MCKEWAN: Objection; foundation.

01:30:02 13 You can answer that.

01:30:08 14 THE WITNESS: She was intimidated and
01:30:10 15 frightened by threats and so she focused on
01:30:22 16 acquiring other types of tissues instead of fetal
01:30:30 17 tissues.

01:30:30 18 BY MR. JONNA:

01:30:30 19 Q. And how do you know that?

01:30:35 20 A. Her website.

01:30:36 21 Q. Anything else?

01:30:38 22 A. No.

01:30:39 23 Q. Did you speak to her about that?

01:30:40 24 A. No.

01:30:42 25 Q. When was the last time you spoke to Kate

01:30:44 1 Dyer?

01:30:52 2 A. I think in 2017.

01:30:55 3 Q. Was that at a NAF conference?

01:30:57 4 A. No.

01:30:57 5 Q. Where was that?

01:30:58 6 A. At an ISSCR conference.

01:31:03 7 Q. What does that stand for?

01:31:06 8 A. International Society for Stem Cell

01:31:08 9 Research.

01:31:11 10 Q. Have you ever seen Stem Express at NAF

01:31:13 11 conferences?

01:31:14 12 A. Yes.

01:31:16 13 Q. Are there other fetal tissue procurement

01:31:21 14 organizations that you've seen at NAF conferences in

01:31:24 15 the past?

01:31:25 16 A. Not that I recall.

01:31:26 17 Q. Do you consider Novagenix a competitor?

01:31:31 18 A. I forgot about them. I suppose so.

01:31:37 19 Q. What about DaVinci Biologics when they

01:31:41 20 existed?

01:31:45 21 A. I suppose so.

01:31:49 22 Q. Let's take a look at three exhibits.

01:31:57 23 4500, 4501, 4502.

01:32:10 24 MS. JOHNSON-MCKEWAN: May I have copies?

01:32:55 25 (Exhibits 4500, 4501 and 4502 are marked for

01:33:00 1 identification.)

01:33:00 2 BY MR. JONNA:

01:33:00 3 Q. So the first exhibit that I handed you is
01:33:03 4 Exhibit 4500, and I want to turn your attention to
01:33:08 5 page four of five. It has a Bates number of
01:33:14 6 4500-005. And this document is a Department of
01:33:22 7 Justice Bureau of Law Enforcement Bureau of
01:33:26 8 Investigation, Investigation report. And page four
01:33:35 9 of five says, first full paragraph, "On
01:33:38 10 November 17th, 2016 I talked with Linda Tracy, owner
01:33:41 11 of Advanced Bioscience Resource, ABR. I informed
01:33:44 12 Tracy about the investigation, inquired about her
01:33:47 13 speaking with Daleiden posing as Robert Sarkis at
01:33:51 14 the NAF conference held in San Francisco in 2014.
01:33:53 15 Tracy said while attending the conference, she
01:33:56 16 vaguely recalled speaking with Daleiden and a female
01:33:59 17 she believed was Susan at the Biomax booth. Tracy
01:34:03 18 stated she did not know she was being recorded and
01:34:06 19 felt the conversation was not private due to the
01:34:09 20 amount of people walking around." Do you see that?

01:34:11 21 A. Mm-hmm.

01:34:12 22 Q. Is that a yes?

01:34:13 23 A. Yes.

01:34:13 24 Q. Okay. I'd like you to look at exhibit
01:34:16 25 4501, which is the next exhibit there. I want you

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to turn to page 452 to the top right. This document?

MS. STERK: Sorry. Which page?

BY MR. JONNA:

Q. 452. This document is a transcript of proceedings and preliminary hearing in the matter of people of the State of California versus David Robert Daleiden and Sandra Susan Merritt dated September 10th, 2019, and this is sworn testimony under oath by Agent Cardwell. And on page 452, these are questions and answers during the proceeding, the question posed to Agent Cardwell was, "Were there any other individuals that you crossed off the list as potential victims," answer, "Yes. There was the owner of advanced, or ABR, Advanced Bioresearch, I believe, Linda Tracy." Question, "And why did you cross her off the list," answer, "She did not feel the brief conversation with Mr. Daleiden at the Biomax exhibit was confidential." Do you see that?

A. Mm-hmm. Yes.

Q. Okay. I'd like you to look at the next exhibit, which is also a transcript of the same proceedings, but on September 12, 2019. I want to turn your attention to 794 in the top right, Bates

01:35:43 1 number 4502-0004. And at the very bottom, line 26,
01:35:51 2 it says, "And I recall," again, questioning with
01:35:54 3 Agent Cardwell, "And I recall that you mentioned
01:35:56 4 that you ruled out Linda Tracy of ABR and her
01:36:01 5 colleague, Perrin Larton. Did I hear that
01:36:02 6 correctly," answer, "Yes," and it goes on, line 14,
01:36:05 7 "And after you watched the video, you called and had
01:36:08 8 a telephone discussion with Miss Linda Tracy."
01:36:11 9 Correct," answer, "Yes." Question, "And as a result
01:36:11 10 of watching the video and having a telephone
01:36:11 11 discussion, you concluded there was no probable
01:36:17 12 cause for, that a violation under 632 occurred as to
01:36:22 13 them. Correct," answer, "Yes. She didn't believe
01:36:25 14 that the conversation that she had was confidential.
01:36:27 15 " do you see that?
01:36:31 16 A. Yes.
01:36:33 17 Q. And it's your, it's accurate, isn't it,
01:36:36 18 that you thought that your conversation with David
01:36:39 19 Daleiden at the NAF conference was neither private
01:36:42 20 nor confidential. Correct?
01:36:50 21 A. Correct.
01:36:51 22 Q. And that's because there were people
01:36:53 23 around that could overhear the conversation.
01:36:56 24 Correct?
01:36:57 25 A. Correct.

01:36:57 1 Q. Do you recall the conversation that you
01:36:59 2 had with Agent Cardwell that he recalls in his
01:37:02 3 testimony?

01:37:03 4 A. No.

01:37:04 5 Q. But it's accurate. What he recaps is
01:37:08 6 accurate. His conclusions are accurate. Correct?

01:37:12 7 A. I don't know who he is.

01:37:17 8 Q. You don't recall speaking to any
01:37:18 9 investigator from the Department -- in connection
01:37:20 10 with this case with the Department of Justice?

01:37:28 11 A. In September of this year?

01:37:30 12 Q. No. The report, the first exhibit we
01:37:35 13 looked at is dated November 28th, 2016. His name is
01:37:44 14 Brian Cardwell. He's a special agent with the
01:37:52 15 California Department of Justice.

01:38:12 16 A. I don't recall that at all.

01:38:14 17 Q. Okay. The conversation that you had with
01:38:17 18 David Daleiden at the NAF conference, what do you
01:38:20 19 remember about it?

01:38:25 20 A. It was mostly just a greeting.

01:38:30 21 Q. Do you remember where you were?

01:38:35 22 A. His booth. He was in a corner.

01:38:40 23 Q. In the exhibit hall?

01:38:42 24 A. Yes. Outside of the main exhibit hall as
01:38:44 25 I recall. It was rather a dark corner.

01:38:48 1 Q. Okay. Was there anybody else present
01:38:51 2 during the conversation besides you and him?
01:38:54 3 A. Susan was there.
01:38:56 4 Q. Anyone else?
01:38:59 5 A. I'm not sure. Perrin might have been
01:39:04 6 there.
01:39:12 7 Q. Let's take a quick look at the first video
01:39:16 8 exhibit, which was 5402-3. I have copies of the
01:39:23 9 thumb drives. It's really bad quality, but I just
01:39:31 10 want you to listen and see what you remember. Is
01:39:42 11 the volume on?
01:39:43 12 MS. STERK: What did you say the exhibit number
01:39:43 13 was?
01:39:59 14 MR. JONNA: 5402-3.
01:40:04 15 Let's go off the record for a second, please.
01:40:07 16 THE VIDEOGRAPHER: Sure. We are going off the
01:40:08 17 record. Time is 1:39 p.m.
01:43:19 18 (Recess is taken.)
01:44:19 19 THE VIDEOGRAPHER: We are back on the record.
01:44:20 20 The time is 1:43 p.m.
01:44:23 21 BY MR. JONNA:
01:44:23 22 Q. Before we look at the video, I just have a
01:44:25 23 couple of follow up questions. Is it your testimony
01:44:28 24 that you know nothing about the California
01:44:30 25 Department of Justice investigation into the

01:44:35 1 recordings at issue in this case?

01:44:38 2 MS. STERK: Objection.

01:44:38 3 MS. JOHNSON-MCKEWAN: I'm going to object that
01:44:40 4 that mischaracterizes her prior testimony.

01:44:42 5 BY MR. JONNA:

01:44:42 6 Q. So your testimony before was that you
01:44:44 7 don't recall speaking to Agent Cardwell; is that
01:44:47 8 correct?

01:44:48 9 A. Yes.

01:44:48 10 Q. Do you recall speaking to anybody at the
01:44:50 11 California Department of Justice about the CMP
01:44:56 12 videos?

01:44:56 13 A. I don't.

01:44:57 14 Q. Do you recall speaking to anybody at the
01:44:58 15 Attorney General's office about the CMP videos?

01:45:06 16 A. No.

01:45:07 17 Q. Do you recall speaking to anyone from
01:45:08 18 Planned Parenthood about a criminal case in
01:45:10 19 connection with the CMP videos?

01:45:14 20 MS. STERK: Objection; vague.

01:45:20 21 MS. JOHNSON-MCKEWAN: Would you mind reading
01:45:20 22 the question back?

01:45:20 23 (Record is reread.)

01:45:30 24 MS. JOHNSON-MCKEWAN: You can answer that.

01:45:34 25 THE WITNESS: Probably, but I don't recall when

01:45:35 1 or any details about it.

01:45:37 2 BY MR. JONNA:

01:45:38 3 Q. Do you recall who you spoke to?

01:45:39 4 A. No.

01:45:40 5 Q. Did you speak to Beth Parker about a

01:45:43 6 criminal case involving the CMP videos?

01:45:46 7 A. I spoke to Beth Parker.

01:45:48 8 Q. Do you remember what she told you?

01:45:49 9 A. No.

01:45:51 10 Q. Was it about the CMP videos?

01:45:54 11 A. I don't know.

01:45:54 12 Q. When was the last time you spoke to Beth

01:45:58 13 Parker?

01:46:00 14 A. Maybe six months ago. I don't know

01:46:03 15 exactly.

01:46:05 16 Q. Do you remember what you were speaking to

01:46:06 17 her about?

01:46:13 18 A. About Planned Parenthood clinics.

01:46:17 19 Q. Anything regarding this lawsuit or the

01:46:19 20 criminal case?

01:46:19 21 A. No.

01:46:27 22 Q. Are you aware that there's a criminal case

01:46:29 23 in connection with the CMP videos?

01:46:31 24 A. Yes.

01:46:31 25 Q. And how are you aware of that?

01:46:41 1 A. It's general knowledge.

01:46:42 2 Q. Do you remember how you became aware of

01:46:45 3 that? For example, who told you?

01:46:49 4 A. Not exactly.

01:46:50 5 Q. Do you remember when you first learned?

01:46:53 6 A. No.

01:47:01 7 Q. So it's your testimony that you don't

01:47:03 8 recall ever being interviewed in connection with the

01:47:08 9 California Department of Justice criminal case

01:47:10 10 regarding the CMP videos?

01:47:12 11 MS. STERK: Objection; asked and answered.

01:47:14 12 MS. JOHNSON-MCKEWAN: Same objection. Asked

01:47:15 13 and answered. You can answer the question.

01:47:19 14 THE WITNESS: I don't recall.

01:47:20 15 BY MR. JONNA:

01:47:20 16 Q. Okay. Are you aware if ABR is currently

01:47:25 17 under investigation?

01:47:28 18 MS. STERK: Objection; outside the scope.

01:47:30 19 MS. JOHNSON-MCKEWAN: Yeah, and I'm going to

01:47:31 20 instruct you not to answer that question.

01:47:34 21 BY MR. JONNA:

01:47:35 22 Q. Let's take a look at 5402-3. This is a

01:47:41 23 video from the 2014 NAF conference.

01:50:08 24 (Whereupon Video Exhibit 5402-3 is played for

01:50:08 25 deponent.)

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BY MR. JONNA:

Q. Okay. I know it was hard to see that and hard to hear, but I want to ask you a few questions about the video we just watched. First of all, do you remember having that conversation at the NAF conference with Susan Merritt?

A. Not exactly, no.

Q. Does any of it ring a bell to you at all?

A. No.

Q. Do you -- were you able to -- well, I know it's hard to see. Were you able to recognize where you were?

A. No.

Q. Can you tell that you were in the exhibit hall?

A. It could have been anywhere.

Q. Do you remember the discussion you had with Susan where you were talking about how Stem Express was started and Kate Dyer stole information from ABR and left to start her own business?

A. I couldn't really hear that very clearly.

Q. Do you remember?

A. I can't answer that.

Q. Do you remember discussing that, though, with Susan Merritt?

01:51:06 1 A. Not particularly, no.

01:51:09 2 Q. Do you remember telling her that Kate Dyer

01:51:11 3 backstabbed you, but she's charismatic and she's

01:51:16 4 endearing? And you also said she lies. Do you

01:51:18 5 remember that discussion at all?

01:51:19 6 A. I remember having that discussion with

01:51:21 7 some people. I don't know that it was Susan.

01:51:24 8 Q. And Kate Dyer used to work for ABR?

01:51:28 9 A. Yes.

01:51:28 10 Q. When did she stop working for ABR?

01:51:34 11 A. I don't know exactly.

01:51:35 12 Q. When did she start working for ABR?

01:51:37 13 A. I don't know exactly.

01:51:38 14 Q. And is it, I think I heard you say, but I

01:51:43 15 just want to confirm, is it your position that she

01:51:46 16 stole business information from ABR to found Stem

01:51:49 17 Express?

01:51:49 18 A. Yes.

01:51:50 19 Q. Do you know what she stole?

01:51:54 20 A. Research or information.

01:52:00 21 Q. Did you ever sue her?

01:52:04 22 A. No.

01:52:06 23 Q. Why not?

01:52:12 24 A. The lawyer that I contacted suggested that

01:52:17 25 it would be hard to prove.

01:52:18 1 MS. JOHNSON-MCKEWAN: Wait a minute. I'm going
01:52:19 2 to ask you not to disclose attorney-client
01:52:22 3 communications. And Counsel, can you explain to me
01:52:24 4 how this relates to the scope of the authorized
01:52:28 5 testimony?

01:52:28 6 MR. JONNA: I'm trying to understand the
01:52:30 7 context of the statement she's making at the NAF
01:52:33 8 conference, which the statements themselves are
01:52:35 9 relevant to understand the expectation of
01:52:38 10 confidentiality.

01:52:39 11 MS. JOHNSON-MCKEWAN: You haven't actually
01:52:40 12 established that she knows where this video was
01:52:43 13 taken or that she remembers the conversation.

01:52:45 14 BY MR. JONNA:

01:52:45 15 Q. So, well, you remember discussing these
01:52:48 16 subject matters with different people over the
01:52:52 17 years, you said. And it wouldn't surprise you if
01:52:54 18 you were talking about that at the NAF conference
01:52:56 19 with Susan Merritt, would it?

01:52:59 20 MS. STERK: Object to form.

01:53:00 21 MS. JOHNSON-MCKEWAN: Yeah, I'm going to
01:53:01 22 object. I'm going to object to that question, too,
01:53:04 23 to the form of that question, but you can answer it
01:53:07 24 if you can recall.

01:53:20 25 THE WITNESS: Could you rephrase the question,

01:53:21 1 please?

01:53:22 2 BY MR. JONNA:

01:53:22 3 Q. You are not disputing that you spoke to
01:53:25 4 Susan Merritt about the subject matter we are
01:53:27 5 discussing about Kate Dyer's background with ABR and
01:53:30 6 the fact that she stole information from ABR. It
01:53:33 7 wouldn't surprise you to have a discussion about
01:53:35 8 that with someone at a NAF conference, would it?

01:53:39 9 MS. STERK: Objection to form; mischaracterizes
01:53:41 10 testimony.

01:53:42 11 MS. JOHNSON-MCKEWAN: Same objections.

01:53:47 12 BY MR. JONNA:

01:53:48 13 Q. Do you understand the question?

01:53:48 14 A. Yes. I guess it wouldn't surprise me.

01:53:55 15 Q. Do you remember meeting David Daleiden and
01:53:58 16 Susan and the folks at Biomax at the NAF conference
01:54:03 17 in 2014?

01:54:04 18 A. Yes.

01:54:04 19 Q. And you remember talking to them at their
01:54:07 20 exhibit booth?

01:54:08 21 A. Yes.

01:54:08 22 Q. Okay. And you don't remember anything
01:54:10 23 about the conversation?

01:54:14 24 A. No.

01:54:17 25 Q. Let's take a look at another clip from the

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same conference. This is Exhibit 5402-4.

(Whereupon Video Exhibit 5402-4 is played for the
deponent.)

BY MR. JONNA:

Q. Do you at least recognize your voice?
A. Yes.
Q. Okay. That's you. Does that conversation
ring a bell at all?
A. No.
Q. Okay. Do you recognize Susan Merritt's
voice?
A. No.
Q. Did you ever tell Susan Merritt or David
Daleiden that you were having a confidential
communication with them at the NAF conference?
A. No.
Q. You didn't do anything to suggest it was
confidential because you didn't think it was
confidential. Right?
A. I thought it was safe.
Q. But you didn't think it was confidential?
A. I thought it was safe.
Q. So the answer is yes to my question. You
did not think it was confidential?
A. Yes.

01:56:41 1 Q. Let's take a look at Exhibit 4509. Do you
01:57:03 2 remember also speaking to David Daleiden at an ISSCR
01:57:08 3 conference?

01:57:09 4 A. Yes.

01:57:09 5 Q. And can you tell me generally the,
01:57:11 6 generally the difference between that conference and
01:57:14 7 a NAF conference?

01:57:14 8 A. ISSCR is primarily for researchers who are
01:57:22 9 looking to develop their research.

01:57:27 10 Q. Okay. Can we go off the record for a
01:57:40 11 second, please?

01:57:41 12 THE VIDEOGRAPHER: Going off the record. The
01:57:42 13 time is 1:57 p.m.

01:57:44 14 (Pause.)

01:58:46 15 THE VIDEOGRAPHER: We are back on the record.
01:58:47 16 The time is 1:58 p.m.

01:58:52 17 BY MR. JONNA:

01:58:52 18 Q. We are going to play Exhibit 5409, and for
01:58:52 19 the record, we are going to start at 10:38:26.

01:59:00 20 MS. STERK: For the record, I object to this
01:59:02 21 video and to testimony regarding it as this is not a
01:59:05 22 conference that is at issue.

01:59:14 23 MR. JONNA: Judge Orrick said we are allowed to
01:59:16 24 ask about trade shows. He didn't say NAF trade
01:59:20 25 shows.

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MS. STERK: For the record, he obviously meant trade shows that were at issue in the case in the Planned Parenthood case, which does not involve the conference that's being shown, Exhibit 4509.

MS. JOHNSON-MCKEWAN: Let me make sure I know what exhibit we are talking about because I've heard 4509 and 5409.

MR. JONNA: We are at 4509.

MS. JOHNSON-MCKEWAN: Okay. Thank you.

(Whereupon Video Exhibit 4509 is played for the deponent.)

BY MR. JONNA:

Q. So I stopped it at 10:40:21. Do you remember this discussion with David Daleiden at the ISSCR conference?

A. Yeah. Not completely, but yes.

Q. And you recognize yourself in the video?

A. Yes.

Q. And that's Perrin Larton to your right in the video?

A. Yes.

Q. And in the discussion, Perrin Larton talks about fetuses falling out in front of you and she testified in this case that she's harvested fetuses whose hearts were still beating. Are you aware of

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that?

MS. STERK: Objection; mischaracterizes the video.

MS. JOHNSON-MCKEWAN: And I'm also going to object. This is outside the scope.

BY MR. JONNA:

Q. Have you had similar discussions at NAF conferences?

MS. STERK: Objection.

MS. JOHNSON-MCKEWAN: I'm going to object that that's vague and ambiguous.

BY MR. JONNA:

Q. You can answer the question.

A. No.

Q. Have you ever had discussions about intact specimens and harvesting organs from fetuses whose hearts were still beating at NAF conferences?

A. No.

Q. Do you remember if when you attended the NAF conferences if you had to sign a confidentiality agreement?

A. Always.

Q. What is your understanding of what that agreement entails, or strike that. Is it your understanding that, how do you understand that

02:03:22 1 agreement to apply? What's your understanding of
02:03:24 2 that agreement?

02:03:25 3 A. That when a person attends the meeting,
02:03:28 4 they are who they say they are, who they represent
02:03:31 5 themselves as, they are absolutely pro choice, they
02:03:38 6 are bound by a rule and promise of following the NAF
02:03:47 7 regulations about no videotaping, without
02:03:51 8 permission, no recording without permission, and
02:03:59 9 providing a safe environment for everyone in
02:04:01 10 attendance.

02:04:02 11 Q. What makes you think that the agreement
02:04:04 12 requires everyone to be pro choice?

02:04:08 13 A. Because NAF is pro choice.

02:04:10 14 Q. Are you pro choice?

02:04:11 15 A. Yes.

02:04:13 16 Q. And is it your understanding that if you
02:04:19 17 were to learn, if someone were to learn that there
02:04:23 18 was criminal activity being discussed at a NAF
02:04:26 19 conference, that they couldn't disclose that to
02:04:29 20 other people because the confidentiality agreement
02:04:32 21 prevents them from doing that?

02:04:34 22 MS. STERK: Objection; form; lacks foundation.

02:04:37 23 THE WITNESS: I don't understand the question.

02:04:38 24 BY MR. JONNA:

02:04:39 25 Q. Do you think that the NAF confidentiality

02:04:41 1 agreement prevents people from disclosing criminal
02:04:46 2 activity that's being discussed at a NAF conference?
02:04:50 3 MS. STERK: Object to form.
02:04:52 4 THE WITNESS: What criminal activities?
02:04:54 5 BY MR. JONNA:
02:04:55 6 Q. If someone were to learn or hear
02:04:57 7 discussion of criminal activity, do you think the
02:05:00 8 NAF confidentiality agreement prevents people from
02:05:03 9 being able to disclose that outside the NAF
02:05:06 10 conference?
02:05:07 11 MS. STERK: Same objection.
02:05:08 12 THE WITNESS: I don't know.
02:05:08 13 BY MR. JONNA:
02:05:08 14 Q. If you were to learn that people at the
02:05:11 15 NAF conference were engaged in criminal activity,
02:05:13 16 would you report that to authorities?
02:05:17 17 MS. STERK: Same objection.
02:05:18 18 MS. JOHNSON-MCKEWAN: Objection; calls for
02:05:19 19 speculation; lacks foundation.
02:05:25 20 BY MR. JONNA:
02:05:30 21 Q. You can answer the question.
02:05:42 22 A. Can you repeat the question?
02:05:42 23 (Record is reread.)
02:05:43 24 MS. JOHNSON-MCKEWAN: Calls for speculation;
02:05:44 25 lacks foundation.

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1 MS. STERK: Join.
2 MS. JOHNSON-MCKEWAN: You can answer.
3 THE WITNESS: I don't know.
4 BY MR. JONNA:
5 Q. Okay. When you testified earlier about
6 the distinction in your mind between a conversation
7 being safe versus being confidential, do you recall
8 that testimony?
9 A. Yes.
10 Q. What were you trying to -- what did you
11 mean when you said "safe"?
12 A. That it was a safe environment. That
13 discussions that were being held whether casual or
14 formal would be treated as -- that it would be okay
15 to talk to another pro choice person about such
16 things.
17 Q. Have you ever discussed pricing of fetal
18 tissue at NAF conferences?
19 THE VIDEOGRAPHER: Careful with your
20 microphone.
21 THE WITNESS: So sorry. I suppose so, yes.
22 BY MR. JONNA:
23 Q. Can you just generally explain the nature
24 of those discussions that you had at NAF?
25 MS. STERK: Objection; vague.

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1 MS. JOHNSON-MCKEWAN: And I want you to be
2 careful here not to disclose anything about the way
3 ABR conducts its business. So that's a yes or no
4 question. Have you ever discussed pricing at
5 conferences?
6 BY MR. JONNA:
7 Q. My last question wasn't yes or no.
8 MS. JOHNSON-MCKEWAN: What was the last
9 question? Can you read it back, please?
10 (Record is reread.)
11 MS. JOHNSON-MCKEWAN: I'm going to instruct her
12 not to answer because that intrudes into ABR's
13 business practices.
14 MR. JONNA: I think we are entitled to know
15 generally how your client, you know, handles
16 confidentiality at NAF conferences and what topics
17 are discussed generally. I'm not asking for
18 details. I'm asking on high level. You said you
19 talked to folks at NAF about fetal tissue pricing.
20 I'm just trying to get a general high level
21 understanding of what those discussions entail.
22 MS. JOHNSON-MCKEWAN: I think you need to be
23 more specific about what you are looking because
24 she's given you the high level. She's talked about
25 pricing. If there's something more specific you are

02:08:09 1 looking for, please ask so I can measure the
02:08:10 2 objection.

02:08:11 3 BY MR. JONNA:

02:08:11 4 Q. Can you tell me what you recall in that
02:08:14 5 regard discussing fetal tissue pricing at NAF
02:08:17 6 conferences?

02:08:18 7 MS. JOHNSON-MCKEWAN: Don't disclose the
02:08:20 8 details of any discussions about pricing, please.

02:08:24 9 THE WITNESS: I suppose when we discussed the
02:08:27 10 service that we provide, the fee for the service
02:08:33 11 came into play, but it was never emphasized or that
02:08:38 12 was never the first order of discussion.

02:08:45 13 BY MR. JONNA:

02:08:46 14 Q. Have you ever discussed your regulated
02:08:48 15 tissue acquisition agreements with folks at NAF
02:08:51 16 conferences?

02:08:57 17 MS. JOHNSON-MCKEWAN: That's a yes or no.

02:08:58 18 THE WITNESS: Yes.

02:08:59 19 BY MR. JONNA:

02:09:01 20 Q. And in those agreements, the researchers
02:09:04 21 pay ABR up to \$6,000 for a -- strike that. What do
02:09:13 22 you remember discussing about the RTA agreements at
02:09:16 23 NAF conferences?

02:09:18 24 MS. JOHNSON-MCKEWAN: Again, just at a high
02:09:19 25 level. Please don't disclose any details about how

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1 ABR conducts its operations.
2 THE WITNESS: I probably discussed that it was
3 an optional service that we offer to researchers.
4 BY MR. JONNA:
5 Q. And for a CGTP compliant tissue
6 acquisition, the service fee is \$6,000 for a
7 completed phase II acquisition; is that correct?
8 MS. JOHNSON-MCKEWAN: I'm going to object and
9 instruct the witness not to answer that it does not
10 pertain to expectations of confidentiality at NAF
11 conferences and it intrudes into the operations of
12 ABR's business.
13 MS. STERK: Join.
14 BY MR. JONNA:
15 Q. Do you recall discussing the details of
16 your RTA agreement at NAF conferences?
17 MS. STERK: Objection; asked and answered.
18 MS. JOHNSON-MCKEWAN: Yeah. And that's a yes
19 or no question.
20 THE WITNESS: Have I discussed it?
21 MS. JOHNSON-MCKEWAN: Yes.
22 THE WITNESS: Perhaps, yes.
23 BY MR. JONNA:
24 Q. Do you remember discussing the fees
25 associated with that agreement with people at NAF

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1 conferences?
2 A. No.
3 Q. Do you remember discussing with abortion
4 clinics what kind of revenues that they would expect
5 to receive by partnering with ABR?
6 MS. STERK: Objection; outside the scope.
7 MR. JONNA: At NAF conferences.
8 MS. JOHNSON-MCKEWAN: I'm still going to
9 instruct the witness not to answer because that's
10 getting into operations at ABR and business
11 discussions.
12 BY MR. JONNA:
13 Q. And in that conversation that we looked
14 at, you discussed or you and Perrin Larton discussed
15 in questions from Biomax whether they could obtain
16 intact fetal tissue specimens. Did you recall that?
17 MS. JOHNSON-MCKEWAN: Are you talking about the
18 video that's currently up on the screen, 4509?
19 MR. JONNA: Yes.
20 MS. JOHNSON-MCKEWAN: That was not a NAF
21 conference, was it, and I think your question
22 assumes it was.
23 BY MR. JONNA:
24 Q. I'm sorry. In the video that we just
25 watched, do you recall discussing with David

02:11:24 1 Daleiden and Susan Merritt in response to their
02:11:27 2 question about obtaining intact fetal tissue
02:11:31 3 specimens whether ABR could provide intact
02:11:36 4 specimens? Do you recall that discussion?
02:11:38 5 MS. STERK: Objection; outside the scope.
02:11:40 6 MS. JOHNSON-MCKEWAN: And I'll instruct her not
02:11:41 7 to answer on that basis.
02:11:43 8 BY MR. JONNA:
02:11:43 9 Q. Do you recall confirming to David Daleiden
02:11:46 10 at this conference that you, that ABR pays clinics
02:11:52 11 per specimen?
02:11:54 12 MS. STERK: Objection; outside the scope.
02:11:56 13 MS. JOHNSON-MCKEWAN: And I'll instruct the
02:11:57 14 witness not to answer on that basis.
02:12:06 15 BY MR. JONNA:
02:12:06 16 Q. What percentage of revenue to ABR would
02:12:09 17 you say Planned Parenthood affiliates constitute?
02:12:12 18 MS. STERK: Objection; outside the scope.
02:12:14 19 MS. JOHNSON-MCKEWAN: Instruct the witness not
02:12:15 20 to answer on that basis.
02:12:17 21 BY MR. JONNA:
02:12:18 22 Q. How many Planned Parenthood affiliates
02:12:21 23 does ABR work with? I'm not asking for the specific
02:12:25 24 ones. I'm just asking how many.
02:12:27 25 MS. JOHNSON-MCKEWAN: I'm still going to

02:12:28 1 instruct her not to answer the question. It gets
02:12:31 2 into ABR's businesses and it doesn't have anything
02:12:31 3 to do with expectation of confidentiality at NAF
02:12:35 4 conferences.

02:12:35 5 MR. JONNA: Can we go off the record for a
02:12:35 6 second?

02:12:36 7 MS. STERK: Join.

02:13:01 8 THE VIDEOGRAPHER: We are going off the record,
02:13:02 9 time is 2:12 p.m.

02:20:48 10 (Recess is taken.)

02:22:26 11 THE VIDEOGRAPHER: We are back on the record.
02:22:27 12 The time is 2:22 p.m.

02:22:29 13 EXAMINATION

02:22:31 14 BY MS. STERK:

02:22:32 15 Q. Good afternoon, Miss Tracy. I'm Diana
02:22:34 16 Sterk from Planned Parenthood. I represent Planned
02:22:36 17 Parenthood. I think you testified earlier that you
02:22:39 18 are a NAF member; is that correct?

02:22:40 19 A. Yes.

02:22:41 20 Q. And how long have you been a NAF member
02:22:43 21 for?

02:22:45 22 A. Since the early '90's, as far as I recall.
02:22:48 23 I don't know exactly what year.

02:22:49 24 Q. And do you recall the process that you had
02:22:51 25 to go through to become a NAF member?

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A. Yes.

Q. What did you have to do?

A. First you make application to NAF and they, and you have to identify a sponsor that will vet for you basically, and list that person or persons on the application.

Q. And what other information did you have to provide to NAF before becoming a member?

A. I don't know.

Q. Did you have to provide information about your business?

A. At the time I think that I just joined as an individual member, not as a business member, and so it was just my professional background, my RN licensure, and where I worked.

Q. And you said that you needed a sponsor or reference of some sort on the application?

A. Right. A current NAF member that would vet for me or sponsor me.

Q. And why was it that you became a NAF member?

A. I wanted to be able to provide more services to the researchers and so I wanted to discuss ABR's program with other abortion providers so that more tissue could be acquired.

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1 Q. And you said that you have attended NAF
2 conferences for a number of years as well?
3 A. Yes.
4 Q. When you attend NAF conferences, what
5 information or do you have to register in advance?
6 A. Yes.
7 Q. And what do you have to do to register for
8 the NAF conference?
9 A. So once the conference is announced, then
10 you can register if you are a current NAF member in
11 good standing, and there are fees for the conference
12 that are paid and then you get the information.
13 Q. And you said that once the conference is
14 announced, you can do that. How is it that the
15 conference is announced?
16 A. Through a private e-mail.
17 Q. Do you know who is on that e-mail?
18 A. Not specifically, no.
19 Q. Do you know if NAF announces its
20 conferences to the general public?
21 A. No, they do not.
22 Q. You said that you were an exhibitor at NAF
23 back in the 1990's. Do you recall at all what you
24 had to do to become an exhibitor prior to the
25 conference?

02:25:46 1 A. It was the same type of vetting, where you
02:25:51 2 make application and as a current NAF member, an
02:25:55 3 individual, that allowed me to also not sponsor, but
02:26:04 4 to exhibit, to ask to be an exhibitor.

02:26:09 5 Q. And attending the NAF conferences in 2014
02:26:12 6 and 2015, was it your expectation that exhibitors
02:26:16 7 who attend those would have to go through a similar
02:26:20 8 process?

02:26:20 9 MR. JONNA: Objection; vague.

02:26:22 10 THE WITNESS: Absolutely, yes.

02:26:23 11 BY MS. STERK:

02:26:24 12 Q. When you actually arrived at NAF
02:26:26 13 conferences, what did you have to do to get into the
02:26:29 14 conference base?

02:26:31 15 A. So the conferences would be on a separate
02:26:34 16 floor usually or a separate area in the hotel or
02:26:37 17 venue where the conference was being held, and that
02:26:45 18 information also was usually distributed to the --
02:26:48 19 through the e-mail so that the attendees could know
02:26:54 20 where to go in the hotel or the venue and --

02:26:58 21 Q. Go ahead. Sorry. I didn't mean to cut
02:27:00 22 you off.

02:27:01 23 A. So then you go to a specific area where
02:27:04 24 the registration takes place, and they give you your
02:27:10 25 badge and identifiers and you sign the

02:27:12 1 confidentiality agreement.

02:27:17 2 Q. And you said that the conference base is
02:27:20 3 usually on a separate floor of the hotel. Do you
02:27:23 4 mean by that it's not on the ground floor?

02:27:25 5 A. Yes.

02:27:25 6 Q. And are there signs for the NAF conference
02:27:28 7 to advertise where to go once you enter the hotel?

02:27:33 8 A. Sometimes. There might be a marquee in
02:27:36 9 the main floor that identifies it, but usually, it's
02:27:45 10 a private information that goes out to the
02:27:49 11 membership.

02:27:51 12 Q. You said that one of the things you have
02:27:53 13 to do before entering is get a badge; is that right?

02:27:56 14 A. Right.

02:27:57 15 Q. What did you have to present to NAF in
02:28:00 16 order to get a badge?

02:28:01 17 A. My driver's license. Basically that's it.

02:28:07 18 Q. And then once you got a badge, what did
02:28:09 19 you have to do with it at the conference or what did
02:28:13 20 you do with it?

02:28:15 21 A. Always wear it.

02:28:15 22 Q. Was there somebody checking for badges
02:28:17 23 when you entered the conference?

02:28:19 24 A. Always, everywhere.

02:28:21 25 Q. And was it your expectation that everybody

02:28:24 1 who got a badge had shown their ID?

02:28:27 2 A. Yes.

02:28:30 3 Q. Other than somebody checking badges and
02:28:31 4 ID's, were there any other security measures that
02:28:35 5 you observed at NAF conferences?

02:28:38 6 A. They had dogs. The security was very in
02:28:47 7 tune to what was happening, very observant.

02:28:54 8 Q. Did you ever enter a NAF conference
02:28:56 9 without a badge on?

02:28:57 10 A. No. You get stopped every time.

02:29:03 11 Q. I'm going to mark Exhibit 8100.
02:29:20 12 (Exhibit 8100 is marked for identification.)

02:29:25 13 Q. Miss Tracy, do you recognize Exhibit 8100?

02:29:28 14 A. Yes.

02:29:28 15 Q. What is it?

02:29:29 16 A. The confidentiality agreement that I
02:29:32 17 signed.

02:29:32 18 Q. And if you look at the first page, there's
02:29:34 19 a date at the bottom that says April 5, 2014. Do
02:29:38 20 you see that?

02:29:39 21 A. Yes.

02:29:39 22 Q. And is that the date that you signed the
02:29:41 23 first page of Exhibit 8100?

02:29:44 24 A. Yes.

02:29:45 25 Q. If you turn to the second page, that's a

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date that's April 18th, 2015. Do you see that?

A. Yes.

Q. And is that the date that you signed the second page of Exhibit 8100?

A. Yes.

Q. And if you look at the top of the first page of 8100, it says, "Confidentiality agreement for NAF annual meeting April 5th through 8th, 2014." Do you see that?

A. Yes.

Q. And do you see that to mean that this was the confidentiality agreement you signed prior to entering the NAF meeting in 2014?

A. Yes.

Q. And is the same true for the second page except for 2015?

A. Yes.

Q. And I want to draw your attention to the first sentence of the agreement, and it says, "It's NAF policy that all people attending its conferences," in parentheses, "attendees, sign this confidentiality agreement." Do you see that?

A. Yes.

Q. And was that your understanding that everybody who had, who attended the NAF conferences

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1 had to sign a confidentiality agreement?
2 A. Yes.
3 Q. And then the first number one underneath
4 that says, "Videotaping or other recording
5 prohibited." Do you see that?
6 A. Yes.
7 Q. And what was your understanding of that
8 first clause?
9 A. That there would be no videotaping or
10 other recordings.
11 Q. And then the second clause under number
12 two, it says, "Use of NAF conference information.
13 NAF conference information includes all information
14 distributed or otherwise made available at this
15 conference by NAF or at any or any conference
16 participants through all written materials,
17 discussions, workshops or other means." Do you see
18 that?
19 A. Yes.
20 Q. And was it your understanding that any
21 information provided by conference participants was
22 included in conference information?
23 A. Yes.
24 Q. And under number three, it says,
25 "Disclosure of NAF materials to third parties.

02:31:56 1 Attendees may not disclose any NAF conference
02:32:00 2 information to third parties without first obtaining
02:32:04 3 NAF's expressed written consent which will not be
02:32:07 4 unreasonably withheld." Do you see that?

02:32:09 5 A. Yes.

02:32:10 6 Q. And was it your understanding that the
02:32:12 7 conference information we just talked about could
02:32:14 8 not be disclosed to anyone outside of the NAF
02:32:18 9 conference?

02:32:19 10 MR. JONNA: Objection; leading.

02:32:20 11 THE WITNESS: Yes.

02:32:21 12 BY MS. STERK:

02:32:33 13 Q. Did you ever talk to anyone at NAF, any
02:32:36 14 NAF employees, about the confidentiality agreements
02:32:41 15 in Exhibit 8100?

02:32:45 16 A. Not that I recall.

02:32:51 17 Q. Were NAF employees, was it a NAF employee
02:32:56 18 who would hand you the agreement in Exhibit 8100?

02:33:00 19 A. Yes.

02:33:00 20 Q. And if you had had questions, would you
02:33:02 21 have been able to ask the NAF employee about those
02:33:05 22 questions?

02:33:06 23 A. Yes.

02:33:16 24 Q. What was your belief about whether the
02:33:18 25 confidentiality agreements in Exhibit 8100 covered

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conversations that you had at NAF conferences?

A. I believe that it would be safe place to have discussions about the work that was being done and that everyone would have that understanding.

Q. Did you consider NAF conferences to be private spaces?

A. Yes.

Q. And so members of the public who hadn't registered for the conference weren't allowed to enter the conference space?

MR. JONNA: Objection; leading.

THE WITNESS: Yes.

BY MS. STERK:

Q. What was your understanding as to whether people within the hotel who hadn't registered for the NAF conferences were able to enter?

A. They were not able to enter.

Q. Was it your expectation that conversations you had at the NAF conference would be shared with people outside of the NAF conference?

A. I didn't ever expect that to happen.

Q. Did you ever expect that anyone would be videotaping you at the NAF conference?

A. No.

Q. You said that NAF was a safe space for

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1 you. What do you mean by that?
2 MR. JONNA: Objection; asked and answered.
3 THE WITNESS: It was a place where everyone had
4 like goals and work ethic and similar, similar goals
5 and so it was a place where you could have
6 discussions about your own business or clinic goings
7 on or any services that were provided without any
8 fear of it being disliked -- or sorry. I'm having a
9 hard time articulating, but just that it was a safe
10 place. There was no fear of any kind of "anti"
11 activity, anti-abortion activity. So it was just a
12 place where everyone gathered and could discuss
13 their own goals.
14 BY MS. STERK:
15 Q. And what was it about the NAF conference
16 that made you believe that the people there all
17 shared similar goals in terms of, I guess, yeah,
18 what made you think that people shared similar
19 goals?
20 A. Well, they were people that I had known
21 for years and years, most of them, although there
22 are a lot of new folks coming up in the ranks and
23 discussing the reproductive rights and the health
24 care that was given to women and men and so it was
25 very obvious, actually, that the goals were very

02:36:58 1 similar throughout the community.

02:37:01 2 Q. And was there anything about NAF's vetting
02:37:03 3 processes that made you believe that people at the
02:37:06 4 conference shared similar goals?

02:37:12 5 A. They would make sure that you were who you
02:37:16 6 said you were. And in an age of innocence, you, I
02:37:27 7 suppose you trust people and you trust people to be
02:37:29 8 honest and forthright with the information they are
02:37:31 9 providing and are actually who they say they are.

02:37:37 10 Q. You testified earlier that you had met
02:37:41 11 David Daleiden and Susan at the NAF conference; is
02:37:46 12 that correct?

02:37:46 13 A. Yes.

02:37:49 14 Q. Who did they tell you that they worked for
02:37:52 15 when you met them?

02:37:54 16 A. Biomax.

02:37:54 17 Q. What did they say that Biomax did?

02:37:57 18 A. That they acquired fetal tissue for
02:37:59 19 research.

02:38:00 20 Q. And what names did they give you when they
02:38:03 21 introduced themselves?

02:38:08 22 A. I know Susan, but I don't remember what
02:38:10 23 last name she gave at the time. I think was it
02:38:17 24 Robert Sarkis? I'm not sure if that was the correct
02:38:21 25 name. I kind of dispelled it.

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Q. Mr. Daleiden didn't introduce himself as David Daleiden to you; is that correct?

A. No, correct.

Q. Did you know at the time you were talking to Mr. Daleiden and Miss Merritt at the NAF conferences that they did not actually have a tissue procurement company?

A. I didn't know that.

Q. And did you know that they were not actually using their real names?

A. No, I didn't know that.

Q. And if you had known that they were using their real names or that they were not using their real names, would you have been speaking to them?

A. No.

Q. And if you had known that they were not actually a tissue procurement company, would you have been speaking to them?

A. No.

Q. Did you expect when you met Mr. Daleiden and Miss Merritt at the NAF conferences that they were lying to you about who they were?

A. No.

Q. And why didn't you expect that?

A. I didn't expect that they were lying to me

02:39:27 1 because I trusted the vetting process of NAF and the
02:39:36 2 honor of people to be who they say they are.

02:39:42 3 Q. And you said earlier that, I think early
02:39:46 4 on in your testimony when Mr. Jonna was asking you
02:39:49 5 questions that you didn't believe the conversations
02:39:52 6 that you were having with Mr. Daleiden and Susan
02:39:55 7 Merritt were confidential. Do you recall that?

02:39:57 8 A. Yes.

02:39:58 9 Q. And can you explain what you meant by
02:40:00 10 that?

02:40:01 11 A. It was fairly general conversation and
02:40:05 12 there were people milling about, so it wasn't like
02:40:08 13 we were in a closed space.

02:40:10 14 Q. And despite not believing that that
02:40:13 15 conversation was confidential in terms of the
02:40:16 16 content, did you believe that Biomax or Mr. Daleiden
02:40:20 17 would disclose your conversation to other people
02:40:24 18 outside of NAF?

02:40:25 19 MR. JONNA: Objection; leading.

02:40:27 20 THE WITNESS: I didn't think he would disclose
02:40:28 21 it outside of NAF, no.

02:40:30 22 BY MS. STERK:

02:40:30 23 Q. And was it your understanding that the
02:40:32 24 confidentiality agreement, or strike that. What was
02:40:35 25 your understanding of how the confidentiality

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agreement you signed at NAF affected anyone's
ability to share the conversations you had with
them?
MR. JONNA: Objection; vague and ambiguous;
calls for a legal conclusion; leading.
THE WITNESS: I'm sorry?
BY MS. STERK:
Q. I'll restate it. What was your
understanding as to how the NAF confidentiality
agreement protected conversations that you had
within the NAF space?
MR. JONNA: Same objections.
THE WITNESS: Everyone had to sign it.
Everyone, you know, we believed, I believed that
everyone was going to abide by these rules and
regulations.
BY MS. STERK:
Q. What was your understanding as to who the
confidentiality agreements in Exhibit 8100 were
meant to protect?
MR. JONNA: Objection; calls for a legal
conclusion.
THE WITNESS: Everyone in the conference.
BY MS. STERK:
Q. And why do you have that understanding?

02:41:54 1 A. We all had to sign it. Everyone signed
02:41:57 2 it.

02:42:06 3 Q. I want you to turn back to Exhibit 4500.
02:42:15 4 Before today, had you ever seen Exhibit 4500 that
02:42:22 5 you recall?

02:42:23 6 A. Not that I recall, no.

02:42:24 7 Q. And you didn't draft Exhibit 4500?

02:42:27 8 A. No.

02:42:30 9 Q. And before today, had you ever seen
02:42:34 10 Exhibits 4501 or 4502?

02:42:42 11 A. Not that I recall.

02:42:59 12 Q. You testified a minute or two ago that
02:43:01 13 when you were at the NAF meeting talking to Mr.
02:43:04 14 Daleiden that there were some people milling about
02:43:07 15 in the background. Do you recall that?

02:43:09 16 A. Yes.

02:43:11 17 Q. Did you have any knowledge of whether the
02:43:13 18 people in the background could hear the conversation
02:43:16 19 that you were having with Mr. Daleiden or
02:43:17 20 Miss Merritt?

02:43:21 21 A. I suppose they could have if they had
02:43:24 22 gotten close in. But everybody was kind of milling
02:43:27 23 about, so I don't know.

02:43:34 24 Q. And do you know whether anyone or did you
02:43:37 25 believe that anyone was standing and listening in to

02:43:40 1 the conversation you were having with Miss Merritt
02:43:43 2 or Mr. Daleiden?
02:43:44 3 A. No.
02:44:09 4 Q. At some point, did you learn that CMP had
02:44:12 5 released videos that they'd taken at NAF
02:44:15 6 conferences?
02:44:16 7 A. Yes.
02:44:16 8 Q. When did you learn that?
02:44:19 9 A. Shortly after they were revealed in July,
02:44:22 10 I think it was, of '15.
02:44:24 11 Q. And was that the same time when you
02:44:26 12 learned that CMP had infiltrated the NAF
02:44:29 13 conferences?
02:44:30 14 A. Yes.
02:44:31 15 Q. Were you, at that point, did you know
02:44:34 16 whether you had been videotaped?
02:44:36 17 A. I didn't know.
02:44:40 18 Q. Had you learned before today that you had
02:44:43 19 been videotaped at the NAF conferences?
02:44:46 20 A. No, actually.
02:44:58 21 Q. And so when you were at the NAF
02:44:59 22 conference, you didn't see Mr. Daleiden or
02:45:02 23 Miss Merritt holding video cameras?
02:45:04 24 A. No.
02:45:07 25 Q. And you were are you surprised to learn

02:45:09 1 that you had been videotaped?

02:45:10 2 A. Yes, very.

02:45:15 3 MS. STERK: I don't have anything else for now.

02:45:18 4 MR. JONNA: Can we go off the record?

02:45:21 5 THE VIDEOGRAPHER: Going off the record. The
02:45:21 6 time is 2:44 p.m.

02:51:02 7 (Recess is taken.)

02:52:05 8 THE VIDEOGRAPHER: We are back on the record.
02:52:06 9 The time is 2:51 p.m.

02:52:08 10 FURTHER EXAMINATION

02:52:09 11 BY MR. JONNA:

02:52:09 12 Q. Okay. I just want to follow up on a few
02:52:12 13 things you testified about. Did I understand your
02:52:14 14 testimony to basically be drawing a distinction
02:52:17 15 between certain conversations at NAF, conferences
02:52:23 16 basically where you are discussing more general
02:52:26 17 things where you consider them not confidential and
02:52:31 18 certain conversations might be falling in a
02:52:33 19 different category? Is that a distinction you are
02:52:36 20 trying to make?

02:52:38 21 MS. JOHNSON-MCKEWAN: Vague and ambiguous.

02:52:38 22 MS. STERK: Mischaracterizes.

02:52:38 23 THE WITNESS: I don't understand.

02:52:39 24 BY MR. JONNA:

02:52:40 25 Q. Do you recall testifying earlier that you

02:52:41 1 didn't think the conversation you had with David
02:52:44 2 Daleiden was confidential because you were
02:52:46 3 discussing general things and there were people
02:52:49 4 milling around? Do you recall that testimony?

02:52:51 5 A. Yes.

02:52:52 6 Q. During the conversation with Mr. Daleiden,
02:52:55 7 you were discussing, and with Susan Merritt, you
02:52:57 8 were discussing Stem Express and Kate Dyer and
02:53:01 9 details of fetal tissue procurement. Do you recall
02:53:06 10 that?

02:53:06 11 MS. JOHNSON-MCKEWAN: Objection; foundation;
02:53:06 12 mischaracterizes prior testimony.

02:53:12 13 THE WITNESS: Yes.

02:53:15 14 BY MR. JONNA:

02:53:15 15 Q. But you would consider that general
02:53:17 16 conversation?

02:53:19 17 A. Yes.

02:53:19 18 Q. Okay. So -- okay. You also made a
02:53:28 19 distinction about physical safety in terms of the
02:53:35 20 purpose of the confidentiality agreement. Is that
02:53:37 21 one of your understandings of what the agreement was
02:53:40 22 supposed to serve to ensure the physical safety of
02:53:43 23 the folks attending the conference?

02:53:45 24 A. I didn't say physical safety.

02:53:46 25 Q. Okay. You said safety.

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1 A. I said it's a safe place.
2 Q. And can you -- what do you mean when you
3 said "a safe place"?
4 MS. JOHNSON-MCKEWAN: Asked and answered, but
5 you can answer again.
6 THE WITNESS: That everyone in attendance,
7 whoever I would speak to, was there with the
8 understanding that everyone had been vetted, that
9 everyone was who they said they were, that everyone
10 had a common goal, that everyone was pro choice.
11 Safe place to discuss my services, the services of
12 ABR, the work in the clinics. Safe place.
13 BY MR. JONNA:
14 Q. Okay. So the conversations that you had
15 at NAF that you didn't think were confidential, like
16 the ones where you discussed more general matters,
17 you didn't think that those fell within the scope of
18 the confidentiality agreement, did you?
19 A. I thought everything was under the
20 confidentiality agreement.
21 Q. Regardless of whether it was confidential?
22 A. It was all confidential. Excuse me.
23 MS. JOHNSON-MCKEWAN: It's all right. You did
24 fine.
25 BY MR. JONNA:

02:54:47 1 Q. And as far as the conversation that you
02:54:50 2 had with David Daleiden and Susan Merritt, you
02:54:54 3 recall being in a crowded room in the exhibit hall
02:54:57 4 with people milling around. Correct?

02:54:59 5 A. Yes.

02:55:00 6 Q. And those people were within earshot of
02:55:02 7 you. They were close by. Correct?

02:55:05 8 A. Yes, possibly.

02:55:06 9 Q. And those people could overhear the
02:55:08 10 conversation. Correct?

02:55:10 11 MS. STERK: Objection; form.

02:55:12 12 THE WITNESS: Yes.

02:55:12 13 BY MR. JONNA:

02:55:21 14 Q. You testified earlier that you spoke to
02:55:24 15 Beth Parker six months ago regarding clinics. Do
02:55:29 16 you remember that?

02:55:30 17 MS. STERK: Objection. This is outside the
02:55:31 18 scope of my cross.

02:55:34 19 MR. JONNA: I didn't -- I reserved my time not
02:55:36 20 to respond to your cross.

02:55:37 21 MS. STERK: You can't just reserve time not to
02:55:40 22 respond. Your time was to respond, and that was not
02:55:42 23 within the scope of my questioning, so I'm going to
02:55:43 24 object to that.

02:55:44 25 MR. JONNA: That's absolutely not what I did.

02:55:46 1 I specifically said I'm going to reserve the balance
02:55:49 2 of my 30 minutes until after you're done. I wasn't
02:55:50 3 going to only respond to what you covered.

02:55:52 4 MS. STERK: That's not the way depositions work
02:55:54 5 and you know that. So I'm going to object as
02:55:57 6 outside the scope of my questions.

02:55:57 7 MS. JOHNSON-MCKEWAN: Can you read the question
02:55:57 8 back, please, so I can see if I have an objection?

02:55:57 9 (Record is reread.)

02:56:09 10 MS. JOHNSON-MCKEWAN: Are you asking her if she
02:56:11 11 remembers testifying about that?

02:56:12 12 MR. JONNA: Yes.

02:56:13 13 MS. JOHNSON-MCKEWAN: You can answer that.

02:56:14 14 THE WITNESS: Yes.

02:56:15 15 BY MR. JONNA:

02:56:15 16 Q. And what do you remember about that
02:56:17 17 discussion?

02:56:17 18 MS. JOHNSON-MCKEWAN: I'm going to object that
02:56:18 19 this is outside the scope.

02:56:20 20 MS. STERK: Join.

02:56:23 21 BY MR. JONNA:

02:56:23 22 Q. Do you remember discussing with Beth
02:56:25 23 Parker about the California Attorney General case
02:56:27 24 against David Daleiden?

02:56:29 25 MS. JOHNSON-MCKEWAN: I'm going to object;

02:56:30 1 outside the scope.

02:56:32 2 MS. STERK: Join.

02:56:33 3 MR. JONNA: Scope of what?

02:56:34 4 MS. JOHNSON-MCKEWAN: The permitted testimony.

02:56:36 5 The scope of the subject matter.

02:56:45 6 BY MR. JONNA:

02:56:45 7 Q. You also testified that you spoke to Kate

02:56:47 8 Dyer in 2017. Do you remember that?

02:56:50 9 A. Yes.

02:56:51 10 Q. What did you discuss with her in 2017?

02:56:53 11 MS. JOHNSON-MCKEWAN: I'm going to object.

02:56:54 12 That's outside the scope of the testimony permitted

02:56:57 13 by the order.

02:57:00 14 MS. STERK: Join.

02:57:00 15 BY MR. JONNA:

02:57:01 16 Q. Do you remember producing documents to the

02:57:05 17 defendants in this case pursuant to a subpoena?

02:57:09 18 MS. JOHNSON-MCKEWAN: Asked and answered and

02:57:10 19 also outside the scope of the testimony --

02:57:13 20 MS. STERK: Join.

02:57:13 21 MS. JOHNSON-MCKEWAN: -- authorized by the

02:57:15 22 Court.

02:57:15 23 MR. JONNA: I'm asking about documents she

02:57:17 24 produced in this litigation.

02:57:19 25 MS. JOHNSON-MCKEWAN: Yeah. Right. Outside

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1 the scope of the authorized testimony.
2 BY MR. JONNA:
3 Q. Do you remember producing documents in
4 this case?
5 MS. JOHNSON-MCKEWAN: That's a yes or no
6 question.
7 THE WITNESS: Yes.
8 BY MR. JONNA:
9 Q. I just have a question for you about this
10 exhibit. I'll hand you what's been previously
11 marked as Exhibit 2140.
12 MS. JOHNSON-MCKEWAN: Go ahead and mark it and
13 then I've got a statement for the record.
14 (Exhibit 2140 is marked for identification.)
15 MS. JOHNSON-MCKEWAN: This document appears to
16 be statements of facility fees over a period of
17 time, and I'm going to instruct the witness not to
18 answer any questions concerning the financial
19 arrangements between ABR and anyone else.
20 MR. JONNA: So I don't have a question about
21 the financial arrangements. I just have a question
22 about the production itself.
23 MS. JOHNSON-MCKEWAN: No, that's outside the
24 scope of the cross. We are not here to talk about
25 that. Ask your question and then we'll --

02:58:34 1 MR. JONNA: I'm entitled to ask about basic
02:58:37 2 issues that pertain to credibility. So I'd like you
02:58:40 3 to look at the page that's Bates stamped ABR 38.
02:59:00 4 MS. JOHNSON-MCKEWAN: I'm not seeing --
02:59:01 5 MS. STERK: For the record, is this exhibit
02:59:03 6 made up of lots of different documents that were
02:59:06 7 produced differently?
02:59:07 8 MR. JONNA: Yeah, I apologize.
02:59:09 9 MS. JOHNSON-MCKEWAN: I don't see a page -- oh,
02:59:10 10 I see. It's the second to last page. Okay.
02:59:15 11 BY MR. JONNA:
02:59:15 12 Q. This is a document that you, ABR produced
02:59:18 13 in response to our subpoena and at the very bottom
02:59:21 14 right hand corner, it has an e-mail address. It's
02:59:24 15 for a statement of facility fees dated January,
02:59:26 16 2010. Do you see that?
02:59:28 17 A. Yes.
02:59:28 18 MS. STERK: Objection; outside the scope.
02:59:30 19 BY MR. JONNA:
02:59:30 20 Q. The question, take a look at two pages
02:59:34 21 down, which is the same document, the same statement
02:59:37 22 facility fees for January, 2010, but it has a
02:59:42 23 Planned Parenthood Bates stamp with 4505. Do you
02:59:47 24 see that?
02:59:51 25 A. Where is it?

02:59:52 1 Q. Two pages down.

02:59:53 2 MS. JOHNSON-MCKEWAN: You are looking at the

02:59:54 3 last page of the document.

02:59:56 4 MS. STERK: Objection; outside the scope.

02:59:58 5 BY MR. JONNA:

02:59:59 6 Q. Do you see that?

03:00:00 7 MS. JOHNSON-MCKEWAN: It's a yes or no

03:00:01 8 question. He's asking you if you see that number at

03:00:04 9 the bottom of the page.

03:00:06 10 THE WITNESS: Excuse me. Yes.

03:00:06 11 BY MR. JONNA:

03:00:06 12 Q. At the very bottom of the page, the footer

03:00:09 13 that we looked at before that had the e-mail address

03:00:12 14 doesn't have an e-mail address. Do you see that?

03:00:15 15 A. I do, yes.

03:00:16 16 Q. Do you know why?

03:00:16 17 MS. JOHNSON-MCKEWAN: I'm going to object and

03:00:17 18 instruct the witness not to answer. This is outside

03:00:20 19 the scope of the authorized testimony.

03:00:22 20 MS. STERK: Join.

03:00:23 21 BY MR. JONNA:

03:00:23 22 Q. Did you alter any of these documents

03:00:25 23 before you produced them to us?

03:00:25 24 A. No.

03:00:26 25 MS. JOHNSON-MCKEWAN: Same objection. Same

03:00:27 1 instruction. Don't answer it.

03:00:28 2 MS. STERK: Join.

03:00:29 3 BY MR. JONNA:

03:00:29 4 Q. Okay. Do you know Connie Cantrell from
03:00:51 5 Cedar River Clinics?

03:00:53 6 A. Yes.

03:00:53 7 MS. STERK: Objection; outside the scope.

03:00:54 8 BY MR. JONNA:

03:00:55 9 Q. Have you spoken to her or met her at NAF
03:00:57 10 conferences?

03:00:58 11 MS. JOHNSON-MCKEWAN: That's a yes or no.

03:01:00 12 THE WITNESS: Yes.

03:01:01 13 BY MR. JONNA:

03:01:05 14 Q. Has she ever conveyed to you that she's
03:01:08 15 told, she's told -- has she ever conveyed to you
03:01:16 16 that they were projecting \$250,000 in revenue for
03:01:19 17 fetal tissue sales to Stem Express?

03:01:22 18 MS. JOHNSON-MCKEWAN: Don't answer that
03:01:23 19 question.

03:01:23 20 BY MR. JONNA:

03:01:23 21 Q. At a NAF conference?

03:01:25 22 MS. JOHNSON-MCKEWAN: Do not answer that
03:01:26 23 question. That is asking about the details of
03:01:29 24 communications at NAF conferences which you have
03:01:32 25 testified you expect as confidential, and it's

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1 outside the scope of the authorized testimony.
2 MS. STERK: Join.
3 MR. JONNA: You are testifying for the witness
4 right now. She didn't testify to that, actually.
5 So you are coaching the witness now.
6 MS. JOHNSON-MCKEWAN: I couldn't coach her if I
7 don't know the answer. I'm just telling you the
8 scope of your question is beyond what Judge Orrick
9 has permitted you to ask about. It doesn't have
10 anything to do with her expectations of
11 confidentiality at conferences.
12 MR. JONNA: Yeah, and the content of those
13 discussions is relevant to understanding the
14 expectation of confidentiality.
15 Q. So my question is, have you discussed,
16 have you discussed projected revenues regarding --
17 for abortion clinics, projected revenues at NAF
18 conferences?
19 MS. JOHNSON-MCKEWAN: Don't answer the
20 question.
21 BY MR. JONNA:
22 Q. Actually, let me --
23 MS. JOHNSON-MCKEWAN: Finish your question.
24 BY MR. JONNA:
25 Q. Have you discussed projected revenues

03:02:27 1 abortion clinics can expect as a result of working
03:02:30 2 with ABR at NAF conferences?

03:02:33 3 MS. JOHNSON-MCKEWAN: And you are instructed
03:02:34 4 not to answer that question. It's outside the
03:02:37 5 scope.

03:02:38 6 MS. STERK: Join.

03:03:03 7 MR. JONNA: You are aware, though, Counsel,
03:03:04 8 that there's another trial set for December 2nd.
03:03:07 9 It's a trial focusing on the plaintiff's claim for
03:03:10 10 unfair competition, and the scope of that testimony
03:03:15 11 is going to -- the scope of the evidence that's
03:03:18 12 going to be allowed in that case is going to include
03:03:20 13 the social utility of the CMP videos and there's
03:03:24 14 going to be a separate trial with separate
03:03:26 15 witnesses. So I'm going to make my record and ask
03:03:29 16 my questions and I'm also going to use it as an
03:03:32 17 offer of proof if we need to bring Miss Tracy back.

03:03:35 18 MS. JOHNSON-MCKEWAN: So it's your position
03:03:37 19 that you can ask questions today for a different
03:03:39 20 case?

03:03:40 21 MR. JONNA: It's the same case. The judge
03:03:42 22 bifurcated the claims. He's basically having a
03:03:45 23 separate trial, a bench trial on the UCL claim on
03:03:49 24 December 2nd.

03:03:50 25 MS. JOHNSON-MCKEWAN: Well, if and when

03:03:51 1 Miss Tracy is called to testify in connection with
03:03:54 2 that matter, we will confront those issues then.
03:03:56 3 You can make whatever record you want. You've got,
03:03:59 4 on my count, about 15 minutes left.
03:04:30 5 BY MR. JONNA:
03:04:30 6 Q. Let's take another look at Exhibit 8100,
03:04:33 7 the NAF confidentiality agreement. Have you read
03:04:37 8 this before today?
03:04:40 9 A. At the conference.
03:04:42 10 Q. And take a look at exhibit, paragraph two.
03:04:48 11 It says, "Use of NAF conference information." Do
03:04:50 12 you see that?
03:04:51 13 A. Yes.
03:04:52 14 Q. Do you have an understanding as you sit
03:04:54 15 here today to what NAF conference information is?
03:04:58 16 MS. JOHNSON-MCKEWAN: Asked and answered. You
03:04:59 17 can answer the question.
03:05:05 18 THE WITNESS: It is information that --
03:05:07 19 BY MR. JONNA:
03:05:08 20 Q. It's actually defined in here, but I'm
03:05:10 21 curious if you have an understanding as to what it
03:05:12 22 is.
03:05:12 23 A. Yes.
03:05:13 24 Q. What's that?
03:05:15 25 A. It's information that's distributed by

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1 clinics and exhibitors, by NAF.
2 Q. Okay. And the document paragraph three
3 discusses disclosure of NAF materials to third
4 parties. Do you see that?
5 A. Yes.
6 Q. Is it your understanding that this
7 provision protects NAF from distribution of its own
8 materials to third parties?
9 MS. JOHNSON-MCKEWAN: Objection; calls for a
10 legal conclusion; document speaks for itself. You
11 can answer it if you know.
12 THE WITNESS: I believe it protects NAF, yes.
13 BY MR. JONNA:
14 Q. Do you believe it protects anyone else?
15 MS. JOHNSON-MCKEWAN: Same objections; calls
16 for a legal conclusion.
17 THE WITNESS: I would think it would.
18 BY MR. JONNA:
19 Q. And what do you think?
20 MS. JOHNSON-MCKEWAN: About? Do you have a
21 more specific question you want to ask?
22 BY MR. JONNA:
23 Q. So the document we are looking at
24 discusses the use of NAF conference information and
25 has a section on disclosure of NAF materials to

03:06:39 1 third parties. Would you agree with me that this is
03:06:42 2 a document, based on your understanding, that
03:06:44 3 protects NAF?

03:06:46 4 MS. JOHNSON-MCKEWAN: Calls for a legal
03:06:47 5 conclusion; lacks foundation. You can answer.

03:06:51 6 THE WITNESS: I do believe it protects NAF,
03:06:54 7 yes.

03:06:54 8 BY MR. JONNA:

03:06:54 9 Q. And you said that you have some basis for
03:06:58 10 thinking it protects people other than NAF. Is that
03:07:00 11 your testimony?

03:07:05 12 A. It protects people in attendance.

03:07:12 13 Q. In which way?

03:07:15 14 MS. JOHNSON-MCKEWAN: Vague and ambiguous. You
03:07:16 15 can answer.

03:07:21 16 THE WITNESS: That people who have information
03:07:25 17 to distribute to other members or attendees would
03:07:30 18 be -- it would be okay to distribute without fear of
03:07:37 19 it being distributed to hands that weren't in
03:07:42 20 support.

03:07:44 21 BY MR. JONNA:

03:07:45 22 Q. Okay. So it's your understanding that you
03:07:47 23 can distribute the information that you learn at NAF
03:07:50 24 conferences to other people who you think support
03:07:53 25 the mission of NAF?

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MS. JOHNSON-MCKEWAN: Objection;
mischaracterizes her testimony.

THE WITNESS: It was meant for people within
the conference, not for anywhere else.

BY MR. JONNA:

Q. Is it your testimony that you have never
shared anything you've learned at a NAF conference
with anybody outside of the NAF conference?

A. Say again?

MR. JONNA: Can you read it back?

(Record is reread.)

THE WITNESS: No. It's not my testimony.

BY MR. JONNA:

Q. So you have shared information you've
learned at NAF conferences with people who weren't
at the conference. True?

A. Yes. My employees who would have a
similar goal. So it would be beneficial to them to
have some information, perhaps, that NAF or one of
the clinics has shared confidentiality,
confidentially with me.

Q. Did you get NAF's permission to do that?

A. No.

Q. Did you ask anyone if you would need NAF's
permission to disclose the information to your

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employees?
A. No.
Q. And have you disclosed information you've learned at NAF conferences to others besides your employees?
A. No.
Q. So your testimony today, though, was that the conversation that you had with David Daleiden at the NAF conference was not a private conversation and was not a confidential conversation because you were in a place where people could overhear the conversation. True?
MS. STERK: Objection; mischaracterizes testimony.
MS. JOHNSON-MCKEWAN: Same objection.
BY MR. JONNA:
Q. I can break it down for you. You testified that you were in a crowded space when you spoke to David Daleiden. True?
A. Yes.
Q. And you have testified that there were people around that could overhear the conversation. Correct?
A. Yes.
Q. And you testified that you didn't think it

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1 was a confidential or a private conversation.
2 Correct?
3 A. I think that it was a private
4 conversation. It was just between David or Susan
5 and me. It wasn't for everyone to hear. It was a
6 private conversation or conversations. But it was,
7 if someone was around to hear it, they could, but it
8 was also, in my mind, very confidential and very
9 protected.
10 Q. You didn't think that you were discussing
11 anything sensitive. You thought you were discussing
12 general matters with Mr. Daleiden. Isn't that your
13 testimony?
14 A. No, I thought they were sensitive issues.
15 Q. What was sensitive about them?
16 A. The use of fetal tissue is controversial
17 to some folks. So it's a sensitive issue. Abortion
18 is a sensitive issue.
19 Q. Okay. So you've changed your testimony
20 now during the deposition, so I want to make sure we
21 have it clear on the record.
22 MS. JOHNSON-MCKEWAN: I'm going to object to
23 that preamble because that mischaracterizes her
24 testimony and mischaracterizes the witness's
25 answers, but go ahead.

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1 BY MR. JONNA:
2 Q. Your testimony earlier today was that you
3 didn't, after looking at what Agent Cardwell
4 testified to under oath and after looking at his
5 report, I asked you if you agreed with him that the
6 conversation was not confidential and not private,
7 and you said yes, you agreed with that. Do you
8 remember that earlier today?
9 A. Yes.
10 Q. And then I said, and that's because people
11 could overhear the conversation, and then you agreed
12 with that as well. Do you remember that?
13 A. Yes.
14 Q. And are you changing your testimony now?
15 A. I guess I am, yes. I believe that when I
16 spoke to them about our work and their supposed
17 work, that it was a private conversation. It was --
18 I didn't expect it to be out in the world. A
19 conversation between two people, I didn't expect him
20 or anyone else to go gossip about it. So in that
21 respect, it was confidential and private.
22 Q. Okay. So let me just draw a distinction
23 between the two things we are talking about. You
24 are talking about whether you had an expectation the
25 conversation would be published or disclosed to

03:13:10 1 third parties, and I'm asking you whether you
03:13:12 2 thought the conversation was confidential and
03:13:16 3 private. Maybe those aren't distinct things, but I
03:13:20 4 want to make sure I understand your testimony. You
03:13:24 5 didn't think anyone would publish your, or release a
03:13:27 6 videotape of your conversation. Correct?

03:13:30 7 A. Correct.

03:13:30 8 Q. But you didn't think the conversation you
03:13:32 9 had in that area was confidential or private.
03:13:37 10 Correct?

03:13:39 11 A. Correct. It was a public area. Public as
03:13:44 12 far as the NAF conference goes so that, you know,
03:13:48 13 not public in the world. Public within the
03:13:51 14 conference.

03:13:51 15 Q. Sure. There are people that you didn't
03:13:53 16 know that were around you that could overhear the
03:13:56 17 conversation. Correct?

03:13:57 18 A. Yes.

03:13:58 19 Q. Okay.

03:13:59 20 A. Again.

03:14:02 21 Q. How much time is left on the record?

03:14:13 22 THE VIDEOGRAPHER: Going off the record. Time
03:14:14 23 is 3:13 p.m.

03:14:15 24 (Recess is taken.)

03:18:58 25 THE VIDEOGRAPHER: We are back on the record.

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Time is 3:18 p.m.

BY MR. JONNA:

Q. Did I understand you correctly to say that you didn't know until today that you were videotaped by David Daleiden?

A. That's right.

Q. So the first time anyone ever told you, the first time that you learned that you were recorded by CMP is today in your deposition?

A. Yes.

Q. No one from Planned Parenthood ever reached out to you and told you that?

A. No. It was all about Perrin.

Q. It was all about Perrin. And you don't recall being with Perrin during one of the conversations at that conference we looked at, ISSCR? You don't recall that?

A. Yes, I recall that.

Q. You don't recall speaking to David Daleiden at that conference?

A. Yes, I do. But the only video that I saw was the one of Perrin. Ever. Not me.

Q. You don't recall thinking to yourself, "I wonder if he recorded me, too?" You never had that question in your mind?

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A. I wondered. I never knew.

Q. And you never discussed that with an attorney, or strike that. You never actually discussed that with anyone at Planned Parenthood whether you were taped?

A. Nope.

Q. And you never spoke to anyone from law enforcement about the fact that you were taped by CMP?

A. Not that I recall.

Q. You never spoke to Congress about that when you were interviewed?

A. No.

Q. You never spoke to anyone from the Attorney General's office ever about this, about this, about the CMP videos?

A. Not that I recall.

Q. Have you ever spoken to the Attorney General's office ever about anything?

A. Not that I recall.

Q. Have you ever spoken to the California Department of Justice about anything?

A. Not that I recall.

Q. And the name Agent Brian Cardwell doesn't ring a bell to you in any way, shape or form?

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A. It doesn't.

Q. You have no recollection of ever speaking to someone who asked you about being taped by CMP?

A. No, I don't.

Q. You don't remember -- you don't remember being identified as a potential victim by the California Department of Justice?

A. No. I don't recall.

Q. And I'm not trying to be disrespectful, but I'm just asking. Do you have any memory problems?

A. No.

Q. So can you say with confidence that you didn't speak to these folks or is it your testimony that you just don't remember?

A. I don't remember ever speaking to them.

Q. Do you remember ever being asked about speaking to David Daleiden and Susan Merritt at the NAF conference in 2014? Specifically that conference.

MS. JOHNSON-MCKEWAN: I'm sorry. Could you read the question back?

(Record is reread.)

MS. JOHNSON-MCKEWAN: Okay. So in responding to that question, please exclude any communications

03:22:08 1 you may have had with Counsel at any time. Okay?
03:22:11 2 Because he didn't limit it to non-attorneys.

03:22:14 3 BY MR. JONNA:

03:22:14 4 Q. Sorry. It was an unclear question. Do
03:22:15 5 you remember speaking to anyone from Planned
03:22:18 6 Parenthood or from any law enforcement agency or
03:22:22 7 anyone about, other than your attorney, about the
03:22:27 8 fact, about speaking to David Daleiden and CMP at
03:22:32 9 the NAF conference in 2014?

03:22:35 10 A. My husband.

03:22:38 11 Q. Recently or a long time ago when it
03:22:41 12 first -- when the videos were first released?

03:22:45 13 A. So you are asking if I wondered if I had
03:22:48 14 been videotaped? Is that the question? And that I
03:22:52 15 asked my husband about that or talked to him about
03:22:55 16 that? What are you asking?

03:22:56 17 Q. Okay. So no, I don't want to know what
03:22:58 18 you asked your husband. I want to know if anyone
03:23:01 19 other than your attorney spoke to you about the fact
03:23:04 20 that you might have been taped at the NAF conference
03:23:08 21 in 2014.

03:23:09 22 A. No.

03:23:10 23 Q. Okay. Have you ever spoken to Beth Parker
03:23:18 24 about the California Attorney General's case against
03:23:23 25 Mr. Daleiden?

03:23:24 1 A. Not that I recall.

03:23:26 2 Q. Have you ever spoken to anyone at Planned

03:23:27 3 Parenthood about the criminal case against David

03:23:31 4 Daleiden?

03:23:32 5 A. Not that I recall.

03:23:38 6 Q. Have you ever spoken to Perrin Larton

03:23:40 7 about the criminal case against David Daleiden?

03:23:43 8 A. Yes.

03:23:43 9 Q. What do you remember talking to her about?

03:23:45 10 MS. STERK: Objection; outside the scope.

03:23:46 11 BY MR. JONNA:

03:23:47 12 Q. Go ahead.

03:23:48 13 A. Wondering how it was going to go.

03:23:49 14 Q. And what did she tell you?

03:23:53 15 MS. STERK: Objection; outside the scope.

03:23:55 16 BY MR. JONNA:

03:23:55 17 Q. Do you have any -- well, go ahead. You

03:23:57 18 can answer that.

03:24:00 19 MS. JOHNSON-MCKEWAN: And that will be the last

03:24:02 20 question you answer.

03:24:03 21 BY MR. JONNA:

03:24:03 22 Q. I have one question after that.

03:24:04 23 MS. JOHNSON-MCKEWAN: Well, your time is up.

03:24:07 24 BY MR. JONNA:

03:24:07 25 Q. Well, I just have one follow up question.

03:24:09 1 Go ahead.

03:24:11 2 A. We just talked about it. How awful and
03:24:13 3 ridiculous it was.

03:24:16 4 Q. Okay. Do you have any idea how it is that
03:24:20 5 Agent Cardwell in his sworn testimony under oath and
03:24:24 6 in his report references conversations with you
03:24:29 7 about this issue? Do you have any idea how it is
03:24:33 8 that they would think they spoke to you? Do you
03:24:36 9 have anything to offer to explain that?

03:24:40 10 MS. JOHNSON-MCKEWAN: Compound; lacks
03:24:40 11 foundation. You can answer it if you can.

03:24:45 12 THE WITNESS: I do not recall speaking to that
03:24:47 13 person or recall the name. It may not have been
03:24:53 14 something that made an impact. So it wasn't
03:24:57 15 important.

03:24:58 16 BY MR. JONNA:

03:24:59 17 Q. Do you think he's lying about speaking to
03:25:00 18 you?

03:25:01 19 A. No.

03:25:02 20 MS. JOHNSON-MCKEWAN: And now you are done.
03:25:06 21 Do you have any other questions?

03:25:07 22 MS. STERK: I don't have any.

03:25:08 23 MS. JOHNSON-MCKEWAN: We are done.

03:25:09 24 THE VIDEOGRAPHER: This concludes today's
03:25:10 25 testimony given by Linda Tracy. The total number of

03:25:14 1 media used was one. We are off the record at
03:25:17 2 3:24 p.m.
03:25:18 3 MR. JONNA: Let me just say something before
03:25:20 4 you go off the record.
03:25:21 5 THE VIDEOGRAPHER: Strike that.
03:25:21 6 MR. JONNA: It's my understanding that
03:25:23 7 Miss Tracy's been served with a subpoena to appear
03:25:26 8 at trial and you've accepted service. I just want
03:25:27 9 to make sure that we are in agreement about that.
03:25:31 10 MS. JOHNSON-MCKEWAN: We are in agreement that
03:25:32 11 we have a subpoena that we have accepted service on,
03:25:35 12 but I think we are still talking about what date she
03:25:38 13 would actually appear to testify.
03:25:38 14 MR. JONNA: Do you want to discuss that off
03:25:40 15 line later?
03:25:41 16 MS. JOHNSON-MCKEWAN: Yeah. Let's do that off
03:25:41 17 line later because I don't know what the witness's
03:25:44 18 schedule is. I don't know what you have in mind, I
03:25:45 19 don't know what my schedule is yet.
03:25:47 20 MR. JONNA: Sounds good.
03:25:48 21 THE VIDEOGRAPHER: All right. This concludes
03:25:49 22 today's testimony given by Linda Tracy. The total
03:25:52 23 number of media used was one. We are off the record
03:25:56 24 at 3:25 p.m.
03:25:56 25 (Deposition is concluded at 3:25 p.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, __LINDA TRACY , having appeared
for my deposition on OCTOBER 30, 2019, do this date
declare under penalty of perjury that I have read the
foregoing deposition, I have made any corrections,
additions or deletions that I was desirous of making
in order to render the within transcript true and
correct.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this _____ day of _____, 2019.

LINDA TRACY

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DEPONENT'S CHANGES OR CORRECTIONS

Note: If you are adding to your testimony, print the exact words you want to add. If you are deleting from your testimony, print the exact words you want to delete. Specify with "Add" or "Delete" and sign this form.

DEPOSITION OF: DEBORAH NUCATOLA, M.D.

CASE: PPFA v CMP

DATE OF DEPOSITION: OCTOBER 30, 2019

PAGE	LINE	CHANGE/ADD/DELETE/REASON
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Deponent's Signature _____ Date _____

1 DEPOSITION OFFICER'S CERTIFICATE

2 STATE OF CALIFORNIA)

3 COUNTY OF CONTRA COSTA) ss.

4

5 I, KRISHANNA DERITA, hereby certify:

6 I am a duly qualified Certified Shorthand
7 Reporter in the State of California, holder of
8 Certificate Number CSR 11945 issued by the Court
9 Reporter's Board of California and which is in full
10 force and effect. (Civ. Proc. 2025.320 (a))

11 I am authorized to administer oaths or
12 affirmations pursuant to California Code of Civil
13 Procedure, Section 2093 (b) and prior to being
14 examined, the witness was first placed under oath or
15 affirmation by me. (Civ. Proc. 2025.320, 2025.540)

16 I am the deposition officer that
17 stenographically recorded the testimony in the
18 foregoing deposition and the foregoing transcript is
19 a full true record of the testimony given. (Civ.
20 Proc. 2025.540 (a))

21 I have not and shall not offer to provide any
22 services or products to any party's attorney nor
23 party who is financing all or part of the action
24 without first offering same to all parties or their
25 attorneys attending the deposition and making same

1 available at the same time to all parties or their
2 attorneys. (Civ. Proc. 2025.320(b))

3 I shall not provide any service or product
4 consisting of the deposition officer's notations or
5 comments regarding the demeanor of any witness,
6 attorney or party present at the deposition to any
7 attorney or party present at the deposition to any
8 party or any party's attorney or third party who is
9 financing all or part of the action, nor shall I
10 collection any personal identifying information
11 about the witness as a service or product to be
12 provided to a party or third party who is financing
13 all or part of the action. (Civ. Proc. 2025.320 (c))

14

15 DATED October 31, 2019

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Krishanna DeRita

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KRISHANNA M. DERITA
CSR # 11945

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