

1 many sessions would you have with him over the phone during
2 this time? You said you had somewhere like around five
3 sessions in person with him?

4 A. Uh-huh.

5 Q. Do you recall?

6 A. I think I had more sessions in person with him. I
7 think it was five sessions -- about five sessions a year over
8 that five-year period. Maybe five or six sessions with him
9 over the phone.

10 Q. Is that a year or is that in total?

11 A. In total, yeah.

12 Q. So that I'm clear, it's -- you recall about five
13 sessions a year during that five-year period and then about
14 five to six sessions over the phone with him during that same
15 period?

16 A. Right in that ballpark.

17 Q. At some point, did you have to end the doctor-patient
18 relationship with him?

19 A. Yes, I did.

20 Q. Do you recall what year that was?

21 A. 2008, I think.

22 Q. Was that -- do you remember what time of year it was,
23 early in the year, the summer, late 2008?

24 A. I think it was around September.

25 Q. And why was it that your therapy sessions ended?

26 A. Well, he had -- my recollection was that he got a new
27 job back east and I think he was moving back to Boston and --
28 and so I -- I think we had maybe a couple of -- maybe one or

1 two other sessions after he moved back just in terms of
2 continuity of care, so -- and I had referred him to find a
3 therapist in his area and I'd refer him three -- three
4 referrals, because I can't -- once -- because my license stops
5 at the border, I would not have been able to continue
6 treatment with him out of state.

7 Q. What do you mean? You said you had a few more
8 sessions with him for continuity of care? What does that
9 mean?

10 A. Right. The idea that because he was starting a new
11 area and he would have had to -- you know, there was typical
12 adjustment issues that rather than his -- drop a patient
13 completely, immediately, sometimes it's okay to continue to
14 support with continuity of care, with the principle of
15 continuity of care where you are not just abandoning your
16 client.

17 And so as I wanted to make sure that he had referrals,
18 appropriate referrals so that he could -- he could continue on
19 with his therapy in the other area.

20 Q. Is that something that your license and your field of
21 work allows you to do?

22 A. Yes. Yes.

23 Q. And that would obviously be for the benefit of a
24 patient?

25 A. Correct, yes. It's just so that it's not dropped
26 totally and then somebody is just left trying to find their
27 own resources or their -- you know, their own support and it's
28 appropriate to help them connect up with a therapist in the

1 area that they're moving to.

2 Q. So after, you know, you provided some referrals and
3 you had, you know, these continuity of care sessions with him
4 over the phone, did you make it clear that you couldn't
5 practice any more with him outside of the State of California?

6 A. Yes.

7 Q. And how did he take that?

8 A. He was -- he was not happy about it. And wanted --
9 and he -- he was a little agitated in one of the last sessions
10 that we had.

11 MS. FREEZE: Objection. Calls for speculation.

12 THE COURT: Overruled.

13 BY MS. SOMERVILLE:

14 Q. I mean, what did you do at that point?

15 A. Well, I just stated what -- you know, what the, you
16 know, the standard of care was and encouraged him to -- to
17 seek out, you know, the referrals that I had given him, and
18 that's basically it.

19 Q. Was that the last time you had a phone session with
20 him?

21 A. Yes.

22 Q. Did you ever hear from Mr. Bathen again around that
23 time?

24 A. Not -- well, a few -- I think it was a couple of
25 months later, I received -- I started receiving some e-mails
26 from him.

27 Q. And so a couple months later, do you remember if that
28 was, like, still in 2008 or had it moved into 2009?

1 A. It had gone into 2009, yeah. I think it was around
2 February is when I started receiving the e-mails in 2009.

3 Q. And what were these e-mails about?

4 A. Well, that he was -- he was upset with me. He -- he
5 referred to a session that he felt --

6 MS. FREEZE: Objection. Calls for privilege.

7 THE COURT: No content, please --

8 THE WITNESS: No content.

9 THE COURT: -- of a session.

10 BY MS. SOMERVILLE:

11 Q. So he was upset with you?

12 A. He was upset with me.

13 Q. And did he want you to do anything to, you know, try
14 and appease him or --

15 A. He wanted me to write -- apologize to him.

16 Q. Did you know, I mean, what this was about?

17 A. I was -- I was -- never got clarity on it. I didn't
18 understand what he was asking, you know, what he was
19 specifically upset about, what he expected me to do.

20 Q. What did you do in response to getting these e-mails?

21 A. Well, I decided to go ahead and call my professional
22 liabilities lawyer. You know, as a professional psychologist,
23 you have to have liability -- professional liability
24 insurance. And there are people that you can consult with.
25 So I called my professional liability attorney and I sort of
26 ran everything by him, and he basically --

27 Q. Why did you do this? I mean what about these e-mails
28 made you then reach out to your professional liability

1 attorney?

2 A. Just the -- there was just -- there was -- I had an
3 uneasy feeling. There was -- he was making demands that I
4 didn't understand what he was asking for and I -- my
5 recollection of what he was saying was -- wasn't the same as
6 his, and so I -- you know, I felt like this was potential
7 termination issues and I wanted to make sure that ethically I
8 was in good standing and so I called my professional liability
9 counselor there and I explained what was going on, and he
10 reassured me that I had done everything that I was required to
11 do.

12 Q. You mentioned "termination."

13 A. Uh-huh.

14 Q. So what are you talking about when you mention that?
15 You said that you wanted to, you know, talk about termination,
16 I believe.

17 A. Termination with the -- I'm sorry.

18 Q. With -- when you contacted the professional
19 liability --

20 A. I wanted to verify that I was doing everything I
21 should ethically in terms of terminating the relationship, and
22 I explained to him the issues with him being out of state.

23 And he said -- and I informed him what I had done in terms
24 of giving him referrals and I just wanted to run it by him to
25 see that I was, you know, in good practice in doing what I
26 should have been doing, you know, in the termination process.

27 And he reassured me that I was okay. That I was doing
28 everything --

1 MS. FREEZE: Objection. Calls for hearsay. Motion to
2 strike as it pertains to what the professional liability
3 attorney advised.

4 THE COURT: Sustained. It will be stricken.

5 BY MS. SOMERVILLE:

6 Q. Did you ever try to formally terminate or send him
7 any type of notice about, you know, terminating this practice?

8 A. Yes, I did actually. And I needed his -- his new
9 address to do that because I wanted to send him a formal
10 termination letter, and he would not give me his new address.
11 He would only contact me on e-mails.

12 Q. Did he ever make any type of threats to you on the
13 e-mails?

14 A. No, no.

15 Q. Did he ever mention a lawsuit?

16 A. Yes.

17 Q. Okay. What was that about?

18 A. He said that if I didn't either sit -- either sit
19 down with him on a face-to-face with an apology where I had
20 to -- I had to sit and listen and not make any comments until
21 he was finished to apologize, and so -- and if I didn't do
22 that, then he was going to report me to my professional
23 organization, American Association of Marriage and Family
24 Therapy, and make a complaint against me.

25 Q. Did the e-mails from Mr. Bathen eventually stop?

26 A. They did.

27 Q. Do you recall when that was?

28 A. Let me think. February -- I think it was around

1 April.

2 Q. So this went on for a couple months?

3 A. Back and forth, yeah.

4 Q. Were you ever served with any type of lawsuit by
5 Mr. Bathen?

6 A. No.

7 Q. Did you ever have any type of discipline proceedings
8 or anything like that through the medical board?

9 A. No.

10 Q. After these e-mails stopped in April of 2009, did you
11 continue to see patients in your private practice?

12 A. Uh-huh.

13 Q. Yeah? Yes?

14 A. Yes. I'm sorry.

15 Q. That's okay. She's typing it down.
16 You're married, right, to Gary Jacobs?

17 A. Correct.

18 Q. And you have a daughter?

19 A. Uh-huh.

20 Q. Does she -- does she have a family of her own?

21 A. She does. She's married with two little girls, a
22 seven-year-old --

23 MS. FREEZE: Objection. Calls for relevance.

24 THE COURT: Overruled. Just at this point overruled.

25 BY MS. SOMERVILLE:

26 Q. And, you know, this year were you living in
27 Chula Vista?

28 A. Say again.

1 Q. Excuse me. June of last year were you living in
2 Chula Vista?

3 A. Yes, uh-huh.

4 Q. On the morning of June 5th of 2017, did you check
5 your confidential work voice mail?

6 A. Yes, I did.

7 Q. Where were you when you checked that voice mail?

8 A. I was in my kitchen.

9 Q. Do you remember around what time of day this was?

10 A. It was around -- probably around 8:30 in the morning.

11 Q. And was there anyone at home with you during that
12 time?

13 A. No.

14 Q. Did you have any messages that morning?

15 A. Yes, I did.

16 MS. SOMERVILLE: Your Honor, at this time I would ask to
17 play Court's Exhibit 1 for identification.

18 *(Court's Exhibit No. 1 was identified.)*

19 I also have a transcript that's been marked as Court's
20 Exhibit 1A for identification as well and transcripts prepared
21 for the jury.

22 *(Court's Exhibit No. 1A was identified.)*

23 THE COURT: Any objection?

24 MS. FREEZE: Just renewing my objection from earlier with
25 regards to privilege, but we've already discussed that.

26 THE COURT: Overruled. Okay. And we're going to hand out
27 transcripts, ladies and gentlemen. The evidence is the actual
28 tape, not the transcript. The transcript is just to assist you

1 in understanding what is said on the tape.

2 And I think I already got the waiver of reporting all the
3 calls.

4 MS. SOMERVILLE: Yes, Your Honor.

5 THE COURT: And that's yes from both.

6 And Deputy, would you mind handing out the transcripts?

7 MS. SOMERVILLE: Your Honor, would the Court like the
8 Court's Exhibit 1A?

9 THE COURT: Yes.

10 All right. And the jury appears to have the transcript.

11 Ms. Somerville.

12 MS. SOMERVILLE: I'm just waiting for them to pass them
13 down.

14 THE COURT: Oh, they have them passed down. I'm sorry.

15 MS. SOMERVILLE: For the record, I am going to play what
16 has been marked Court's Exhibit 1 for identification.

17 *(Audio recording played; not reported.)*

18 MS. SOMERVILLE: For the record, I just played Court's
19 Exhibit 1.

20 THE COURT: All right. Thank you.

21 And if you pass the transcripts down to Jurors 14 and 12,
22 please.

23 BY MS. SOMERVILLE:

24 Q. Are you okay?

25 A. Yeah, I'm fine.

26 Q. Is that hard to listen to?

27 A. Yeah.

28 Q. How did it make you feel when you first heard that on

1 June 4th -- excuse me, June 5th?

2 A. I was just terrified. You know, I was afraid and --
3 and kind of numb, numbed down a little bit.

4 Q. Did you have any physical reaction?

5 A. Yeah. I was nauseous and I was -- I became afraid.
6 You know, I started looking around the house to make sure my
7 doors were locked. I didn't know, you know, if somebody was
8 nearby or whatever, and so it was just, you know, a fear -- I
9 just had a normal, I think, terrorized fear response when I
10 heard it.

11 Q. How did you feel listening to it today?

12 A. Today?

13 Q. Yes.

14 A. Very similar. It's actually, I haven't heard it for
15 a very long time so it's upsetting. It upsets me. Shaky.

16 Q. I saw you reach for some Kleenex.

17 A. Yeah. Well, I'm a crier. If I get the Kleenex, then
18 I don't cry.

19 Q. When you first listened to the call, did you
20 recognize the voice?

21 A. No, not initially.

22 Q. What did you do after you listened to this call?

23 A. Well, I called my husband. I knew he was in surgery
24 that day, so I left a message to have him -- to come home -- I
25 said come home as soon as possible.

26 And I didn't say anything other than that, but he knew
27 that I needed him to come home as soon as he could get there.
28 I know he had to finish his surgery, but --

1 Q. Why didn't you explain in the message what had
2 happened; do you remember?

3 A. To him?

4 Q. Yes.

5 A. Well, because he's an eye surgeon and I just didn't
6 want to load him up, you know, with any specifics. And I had
7 checked that my doors and my windows -- and I knew that at
8 least for now, you know, at the moment I was safe and I just
9 wanted him to give time to finish up and to get home.

10 Q. Did he get home after he heard that message?

11 A. He was home probably by 11:30 or 12:00, something
12 like that.

13 Q. When he got there, did you explain to him about the
14 message?

15 A. Yes.

16 Q. And how you were feeling?

17 A. Yes, yes, yes.

18 Q. Did you also play the message for him?

19 A. Uh-huh. He heard it on my voice mail, yeah.

20 Q. Did your husband do anything to try to figure out who
21 this call came from?

22 A. Yes. He -- there's technology, technology
23 challenged, he's not. He was able to go to my AT&T message
24 service that apparently it's online and you can go in and you
25 can get a copy of the phone number.

26 MS. FREEZE: Objection for the record, Your Honor. Just
27 speculation, foundation, authentication and hearsay.

28 THE COURT: I'll do foundation and hearsay. Sustained.

1 MS. SOMERVILLE: That's fine.

2 BY MS. SOMERVILLE:

3 Q. So did your husband at some point provide you with a
4 name associated with the phone number that left you the
5 message?

6 A. Right. After he found the phone number on my -- my
7 voice or my phone record, then he went on -- I think he -- he
8 just started going to link in social media and somehow he was
9 able to connect. He came up with the name Ben Bathen that was
10 associated with that number, and he told me that.

11 And then I said that's -- that's my old -- my old patient
12 from nine years ago.

13 MS. FREEZE: And Your Honor, just for the record, again,
14 the hearsay. I understand you've already given the Court --
15 the jury the limiting instruction. Just wanted to put it on
16 the record.

17 THE COURT: Yes.

18 BY MS. SOMERVILLE:

19 Q. So initially you didn't recognize the voice when you
20 first heard the message; right?

21 A. Correct.

22 Q. And then your husband did a little research and gave
23 you the name of Benjamin Bathen; correct?

24 A. Uh-huh. And showed me the phone number.

25 Q. And what about the name, I mean, connected you to
26 this message? How did you -- you said you recognized it?

27 A. The name?

28 Q. Yes.

1 A. I'm not sure I understand.

2 Q. I'm sorry. That was a bad question.

3 Once he told you the name Benjamin Bathen --

4 A. Uh-huh.

5 Q. -- did you recognize the voice?

6 A. Yes, I made that connection, when I could -- when
7 I -- I'm trying to think. Everything was -- let me see how
8 that went. When he said Ben Bathen, it was like, of course,
9 now I recognize the voice, once he -- once he gave me the name
10 that was connected to that phone number.

11 Q. And you've been thinking about Mr. Bathen. I mean
12 this has been a long time that had passed; right?

13 A. Right, right.

14 Q. Was it since -- was April of 2009, was that the last
15 time you had --

16 A. Yes.

17 Q. -- thought about him or --

18 A. Yes.

19 Q. And did you and your husband call the Chula Vista
20 Police Department?

21 A. Yes.

22 Q. Did you give them the phone number and the name of
23 Mr. Bathen?

24 A. Right. They responded. A patrol officer came to the
25 house and gave him the information, and he also -- yeah, so he
26 was there with us and made a report.

27 Q. After you made the report to Chula Vista Police
28 Department, were you still afraid?

1 A. Yes. He instructed us in terms of some safety
2 issues, measures that we can take, and yeah, at that point I
3 was on pretty high alert.

4 Q. What safety measures did you take?

5 A. Well, we -- we relooked at our security system in the
6 house. We -- my office in Chula Vista, we put -- were able to
7 get the landlord to put in security doors so that the doors
8 locked from the outside at all times.

9 I had to notify all of my colleagues because we all are
10 coming in and out of -- and there's a parking lot in the back
11 that's not greatly well lit, so -- so I had to let them know
12 to be cautious and that I had a threat and just to -- you
13 know, I wanted to protect my colleagues and also their
14 patients that were going to be coming in and out of the
15 office.

16 And at that point, I didn't know anymore than I had just
17 received the threat and the police had taken the reports, so
18 we just started mobilizing to try to protect and just protect
19 myself as much as I could.

20 Q. Aside from your landlord putting in security doors,
21 did you take any other safety precaution methods at work?

22 A. At work. Let's see. Just when -- like we would walk
23 each other out to our cars; and if we're going to be there
24 late, my husband would come to the office and drive home with
25 me. And some of the other therapists were doing things like
26 that.

27 Q. What about at your home? You said you relooked at
28 the security. What do you mean?

1 A. Well, we had a security system that we sometimes
2 turned on and sometimes didn't ask. We just became more
3 vigilant, more focused on keeping things, you know, more
4 secure.

5 Q. Would you keep your windows and doors locked?

6 A. Yes, for a year. For a year, I -- if I'm there,
7 especially if I'm there alone, I just -- this is very
8 sustainable and for the earth, but I just locked the doors and
9 the windows and just keep the air-conditioning on just -- I --
10 just to keep -- I just feel safer. I've just become much more
11 vigilant than I would have ever been in the past.

12 Q. Did it kind of change the way you go about your
13 everyday life?

14 A. It has. It has. I don't really like to go to
15 shopping centers anymore with garages and things like that.

16 Q. Did you know where Mr. Bathen was when the June 4,
17 2017 message was left?

18 A. No. I had no idea.

19 Q. Did that have any effect on you?

20 A. Yeah. I wish I had -- you know, I think I would have
21 been less fearful if I had known he was out of state or, you
22 know, not nearby, not in Chula Vista.

23 Q. And you didn't have any type of current address for
24 him; is that correct?

25 A. No.

26 Q. Did you end up receiving a second voice message?

27 A. Yes.

28 Q. And did you recognize the voice on that message?

1 A. Yes.

2 Q. And who did you recognize that as?

3 A. Ben Bathen.

4 Q. When did you get that second voice message?

5 A. It was about a month later, July 3rd, July 3rd.

6 Q. Was that, again, on your confidential work message?

7 A. Yes, uh-huh.

8 Q. Do you remember where you were when you found the
9 second message?

10 A. I think I was in my kitchen again checking my
11 messages.

12 MS. SOMERVILLE: Your Honor, at this time I would ask to
13 play People's Exhibit -- or excuse me, Court's Exhibit 2 for
14 identification.

15 *(Court's Exhibit No. 2 was identified.)*

16 And I also have a transcript marked as Court's Exhibit 2A
17 for identification and copies for the jury.

18 *(Court's Exhibit No. 2A was identified.)*

19 THE COURT: All right. Any objection?

20 MS. FREEZE: No, Your Honor. Just --

21 THE COURT: Go ahead.

22 MS. SOMERVILLE: Your Honor, for the record at this time
23 I'm going to play Court's Exhibit 2 for identification.

24 *(Audio recording played; not reported.)*

25 THE COURT: All right. And again, if you can pass them
26 down to jurors 14 and 12, the transcripts.

27 BY MS. SOMERVILLE:

28 Q. Are you okay?

1 A. Uh-huh.

2 Q. Was that the message that was left on your machine on
3 July 3rd?

4 A. Yes.

5 Q. How do you feel about hearing that?

6 A. It's -- actually it's terrifying and it's
7 humiliating. It's humiliating.

8 Q. What do you mean by it's humiliating?

9 A. I just think the -- I guess the sexual content of it
10 and the explicitness of it, I guess.

11 Q. Describe for me how you felt after you get this
12 second message when you are home alone.

13 A. Well, that time I actually had enough of a visceral
14 reaction that I threw up. And then after I got over that,
15 I -- I think I called my husband and then I think I called the
16 police again.

17 Q. And the second call, did you immediately recognize
18 the voice?

19 A. Yes.

20 Q. Did you get any more calls of this nature?

21 A. Yes.

22 Q. And do you remember when you got an additional call?

23 A. It was two days later, July 5th.

24 Q. How were you feeling in between, you know, getting
25 that second call and then July 5th?

26 A. Well, I was -- I was really getting frightened
27 because it had escalated and -- and the threats were much more
28 violent and explicit, and I really began to think that I was

1 really -- my life was in danger. I mean I thought from the
2 very beginning, but it was getting more clear to me that this
3 was escalating and I could be in real danger.

4 Q. Between the July 3rd call and this -- or excuse me,
5 the July 4th call and this July 3rd call, did you know where
6 Mr. Bathen was during that basically month period?

7 A. No -- did I know -- well, I know the police had
8 turned the case over to the detectives and I know the
9 detectives were working on trying to locate him.

10 Q. But did you know yourself?

11 A. No.

12 Q. So you didn't know if he was in Chula Vista when he
13 made the call?

14 A. No, no.

15 Q. And when was the third call that you received?

16 A. July 5th.

17 Q. Okay. Do you remember where you were when you
18 checked your messages again?

19 A. I think it was in my bedroom phone.

20 Q. Was anyone with you?

21 A. I think so. I can't -- I think my husband might have
22 been upstairs when I took the message. But I really can't --
23 I don't recall. I don't recall.

24 Q. That's okay.

25 A. Yeah.

26 Q. Did you recognize the caller on this third call?

27 A. Yes. It was the same voice.

28 Q. And who was that?

1 A. Ben Bathen.

2 MS. SOMERVILLE: Your Honor, I have Court's Exhibit 3 for
3 identification that I would request to play for the jury at
4 this time along with Court's Exhibit 3A marked transcript and
5 transcripts for the jurors.

6 *(Court's Exhibit No. 3 was identified.)*

7 *(Court's Exhibit No. 3A was identified.)*

8 THE COURT: Any objection?

9 MS. FREEZE: No, Your Honor. Just the repeated privilege
10 objection.

11 MS. SOMERVILLE: For the record, I'm going to play Court's
12 Exhibit 3 for identification.

13 *(Audio recording played; not reported.)*

14 BY MS. SOMERVILLE:

15 Q. Are you okay?

16 A. Uh-huh. I am -- I am okay.

17 Q. You talked about when you got the second call you
18 believed it was escalating. How did you feel after this call?

19 A. Well, he upped the ante when he made threats against
20 my family, so for me to get to another level of really
21 frightened.

22 Q. Were you concerned about your daughter?

23 A. Pardon me?

24 Q. Were you concerned about your daughter?

25 A. Yes.

26 Q. How were you feeling physically after hearing these
27 threats to rape you, to rape your daughter?

28 A. Just kind of done in, I think. Is this ever going to

1 end, you know, and how is this going to end or how could this
2 end? Am I going to be dealing with this for -- you know, way
3 into the future?

4 I mean every time I answer the phone am I going to have to
5 prepare myself for the next threat? And just that kind of
6 thing.

7 Q. Did you believe that your life was legitimately in
8 danger?

9 A. I did.

10 Q. Did you also believe that about your daughter?

11 A. Yes.

12 Q. Was this third call reported to the Chula Vista
13 Police Department?

14 A. Yes.

15 Q. Did you let your daughter know at some point about
16 the threats that had been made?

17 A. I did not.

18 Q. Why not?

19 A. We felt like -- my husband and I discussed it. We
20 both felt that we were doing everything that we could to set
21 up the protections that were -- that we could do within the
22 law. We felt like law enforcement was really -- was really
23 supporting us, and we just elected to not tell her at this
24 point because there wasn't -- we didn't feel like there was
25 any -- much more that she could have done because everything
26 was in place and everything was in process, so I just didn't
27 want to load her up.

28 Q. As a mother, you didn't want to frighten her?

1 A. As a mother, yeah, yeah, yeah.

2 Q. You said you were doing stuff, everything that you
3 could within the law?

4 A. Uh-huh.

5 Q. Did you end up coming to court to try, you know, to
6 get any protection in place for yourself?

7 A. Yes. I applied for a -- I'm blocking right now.
8 Hang on here -- a civil restraining order. I knew I would get
9 it, a civil restraining order. So I applied for a civil
10 restraining order.

11 Q. How did that process work, if you can just kind of
12 explain it?

13 A. Well, let's see. I applied. I came here and I
14 presented my -- the case and it was heard by a judge. And
15 Mr. Bathen at that time had an attorney that appeared for it
16 and asked for a contingency so it was put off.

17 And then we had to come back to court again and then
18 eventually I was granted the civil restraining order for --
19 until 2020.

20 Q. Did you have to give any type of testimony or
21 statement to the Court at the restraining order hearing?

22 A. I think it was just in the transcript. I think it
23 was just in the transcript.

24 Q. Did you prepare documents and kind of explain what
25 had been going on in the threats?

26 A. Right. Right.

27 Q. And were those submitted to the Court?

28 A. Yes.

1 Q. At that restraining order, was that the first time
2 you had seen Mr. Bathen since he had moved to the East Coast?

3 A. Yes.

4 Q. How did you feel having to come into court and see
5 him again after getting these threats?

6 A. It was just really uncomfortable. And you know, I --
7 you know, I felt -- I didn't feel unsafe because I felt like I
8 had plenty of support, law enforcement support. Structures
9 around me. But I just -- it was just uncomfortable. I just
10 wanted -- I just wanted to do what I could to try to put
11 everything I could in my life around me to stay safe. That
12 was all it was for me.

13 So that was recommended to go ahead and get -- I know
14 there would be a criminal restraining order eventually, but to
15 have a civil restraining order would be like an extra level of
16 protection.

17 Q. Did you -- after you got the restraining order, did
18 you still keep in place, you know, some of the safety
19 precautions that you had talked about before like locking the
20 door?

21 A. They're still in place. Even now. Yeah.

22 Q. Are you still afraid of Mr. Bathen?

23 A. Yes. Yes.

24 Q. Have you had any -- you know, aside obviously from
25 being afraid and having to kind of change your lifestyle,
26 protect yourself, have you had any, like, emotional or issues
27 or anything like that since this has happened?

28 A. Just a little -- probably just heightened --

1 heightened vigilance, which kind of increases just your base
2 levels of anxiety a little bit higher. Sleeping more.
3 Sleeping issues that I never had really before. But not
4 really anything -- not anything I would in any way call a
5 clinical issue, yeah.

6 Q. Aside from Mr. Batten getting angry with you and
7 wanting to have this face-to-face sit-down basically monologue
8 to you about what his issues were when you couldn't see him
9 anymore, have you ever had any issues like this with another
10 patient?

11 A. No, I never have. Never.

12 Q. And I believe you said that you've been in the area
13 even with marriage and family therapy since 1988?

14 A. Yes.

15 Q. Before all this started, did -- you have an open
16 Facebook page?

17 A. Uh-huh.

18 Q. Where you would share things?

19 MS. FREEZE: Objection. Withdrawn.

20 THE WITNESS: I have a Web page where -- I have an
21 education-in-training program that I -- and I offer conferences
22 twice a year, training, venues in particular, Bowen Family
23 Systems, theory training for therapists and others who want to
24 learn how to work in a particular way with families and
25 individuals and so I have that on my website. And people can
26 go there and get information about my programs and my
27 trainings.

28 /////

1 BY MS. SOMERVILLE:

2 Q. In terms of social media, were you posting anything
3 online like pictures with you and your family or with your
4 daughter?

5 A. Well, that's the thing. Somehow I got -- I don't
6 know how it happens, but I guess because my kids are on social
7 media and my friends are on social media and all of a sudden
8 I'm finding myself on social media, but I didn't actually
9 intend to be on there, but I do -- I do come up on social
10 media, but I think at one time I had a LinkedIn --
11 professional LinkedIn and I got rid of that. And now I
12 have -- I think I have some safeties that I put in so that
13 only people -- only my family and my close friends can -- you
14 know, can be on my Facebook account or if I have -- I'm sorry.
15 I just don't know exactly how I got caught in that, but
16 somehow I got caught in that.

17 Q. Do you remember ever talking to Mr. Bathen about
18 having a daughter, mentioning that you have a daughter?

19 A. I don't recall that. I don't recall that.

20 Q. Is your daughter on social media online?

21 A. Yes.

22 MS. SOMERVILLE: Thank you. Nothing further, Your Honor.

23 THE COURT: Okay. Ms. Freeze.

24 MS. FREEZE: Thank you, Your Honor.

25 Just one moment.

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CROSS-EXAMINATION

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BY MS. FREEZE:

Q. Good morning, Dr. Jacobs.

A. Good morning.

Q. Now, Dr. Jacobs, have you had the same office address in Chula Vista since 1995?

A. Uh-huh.

Q. Is that a "yes"?

A. Yes.

Q. Okay. And I understand that you're a sole practitioner and you said you share space with other individuals kind of in the same realm of what you do or do they do different things?

A. Same realm.

Q. And when Mr. Bathen was your patient, did he come to that office?

A. Yes.

Q. Okay. And you said that was approximately five sessions a year; is that correct?

A. Uh-huh. I think it averaged out about that, yeah.

Q. Until he moved to Los Angeles; correct?

A. Yes. Yes.

Q. Because then he stopped coming and you did phone consultations?

A. Right. Right.

Q. And your -- your license allows for phone consultations?

A. Yes.

1 Q. Okay. Do you record those phone consultations?

2 A. I don't record them, no.

3 Q. Take notes?

4 A. I take notes.

5 Q. Okay. Now, when -- I recall -- and I'm not sure if
6 you said this, the timeline, I know it's been some time and I
7 know you had testified as well, Dr. Jacobs, that you since
8 actually purged Mr. Bathen's file; correct?

9 A. Right.

10 Q. Did you say you purged the file in 2014?

11 A. Uh-huh.

12 Q. Is that a "yes"?

13 A. Yes.

14 Q. And -- and that's the -- and the rule is that you
15 purge them after seven years?

16 A. Uh-huh, from your last contact.

17 Q. Okay. So your last contact with Mr. Bathen, would
18 that be the last contact in person or over the phone?

19 A. Let's see. Over the phone.

20 Q. Okay.

21 A. Over the last -- yeah, over the phone.

22 Q. And it's your testimony that the last time you had a
23 session with him was in 2008?

24 A. Uh-huh.

25 Q. "Yes"?

26 A. Yes.

27 Q. Sorry?

28 A. I'm sorry.

1 Q. This lovely lady is trying to write down everything
2 so we want to make sure it's clear for the record.

3 A. Uh-huh.

4 Q. So -- so then you would have purged the file seven
5 years after 2008?

6 A. Right.

7 Q. So that would have been 2015?

8 A. Yeah. I'm not doing the math, but seven, yeah.

9 Q. Okay. Now, this -- is it Bowen or Bowen?

10 A. Bowen. B-o-w-e-n.

11 Q. Bowen. That's Bowen Center for the study of
12 family -- study of the family; is that correct?

13 A. Correct, uh-huh.

14 Q. And that's at the Georgetown Family Center?

15 A. Right.

16 Q. Is that in Washington, D.C.?

17 A. Correct.

18 Q. And do you go out there still like --

19 A. No.

20 Q. When was the last time you were out there?

21 A. I was there from 1995 to 2000.

22 Q. Okay. When you were there in the East Coast, did you
23 have patients or were you just speaking to other colleagues?

24 A. It was just training. I was there for training.

25 Q. Okay. Did you ever have as part of that training
26 like hypothetical patients that would come in where you did
27 training sessions with individuals or anything like that?

28 A. No, no.

1 Q. Just with other professionals?

2 A. Yes.

3 Q. Okay. So -- so that was just training so there's not
4 any type of special license that you would have just to
5 practice like in Washington, D.C. or in certain areas in that
6 area of the East Coast?

7 A. No.

8 THE COURT: And Doctor, I'm going to ask you, since we are
9 taking down everything, she can't take down two people at once.
10 So even if you know where the question is going, if you be
11 patient and wait.

12 THE WITNESS: Thank you.

13 MS. FREEZE: Thank you, Your Honor.

14 BY MS. FREEZE:

15 Q. And so when initially Mr. Bathen was referred to you,
16 it was referred -- he was living on the East Coast; is that
17 correct?

18 A. That's my understanding.

19 Q. And so perhaps through that relationship you had with
20 other colleagues on the East Coast he was directed to you?

21 A. I think so. I'm not certain about that.

22 Q. And the prosecutor was kind of asking you a little
23 bit of questions in the beginning of the questioning this
24 morning about how you receive clients; right?

25 A. Uh-huh.

26 Q. Do you recall that?

27 A. Clients?

28 Q. Yes. How you receive clients.

1 A. Yes.

2 Q. And -- and you had said that you have mostly just
3 like word-of-mouth referrals from other colleagues, things
4 like that?

5 A. Uh-huh.

6 Q. Is that "yes"?

7 A. Yes.

8 Q. And do you do any type of, like, advertising? I know
9 you mentioned your website that mentions, you know, your
10 background and things like that, but do you do any type of
11 like through Yelp or Review, you know, any type of Websites
12 that you pay to get referrals?

13 A. No.

14 Q. Have you ever heard of a website called
15 HealthGrades.com?

16 A. Could you repeat that?

17 Q. Have you ever heard of a website -- a reviewing
18 website that gives information to potential clients or
19 patients called HealthGrades.com?

20 A. Health Grades, yeah, I've heard of that, yeah.

21 Q. Have you ever gone on the website to see what is
22 written about you or reviews or anything like that?

23 MS. SOMERVILLE: Objection. Relevance.

24 THE COURT: That's just a "yes" or "no."

25 THE WITNESS: Yes.

26 BY MS. FREEZE:

27 Q. And you had testified earlier that you haven't had --
28 well, let me back up.

1 You've been practicing since 1995 in Chula Vista?

2 A. 1998.

3 Q. And approximately how many patients do you see a
4 year?

5 A. Probably 700 contacts a year.

6 Q. And you said that you treat -- your specialty is
7 families as well as individuals; correct?

8 A. Uh-huh. And couples.

9 Q. Couples. And it could be, but you don't have the
10 authority or the ability to prescribe medication and make
11 diagnoses; is that fair to say?

12 A. I can make diagnoses but I can't prescribe
13 medication.

14 Q. Okay. And so seven -- around 700 clients per year
15 for the past couple decades. So you've had a lot of patients;
16 fair to say?

17 A. Yeah.

18 Q. You don't remember every single one of their names;
19 fair to say?

20 A. Not off the top of my head.

21 Q. But if someone says a patient's name, you might say,
22 oh, yeah, I treated that person or, oh, yeah, it kind of
23 triggers?

24 A. Uh-huh.

25 Q. Would you say you have a pretty good memory then?

26 A. Yes. I think I do, yeah.

27 Q. And in those couple -- last couple decades of
28 practicing as a psychologist seeing around 700 patients per

1 year, it's your testimony that none of them has ever been mad
2 at you or made a bad complaint about you?

3 MS. SOMERVILLE: Objection. Misstates the testimony.

4 THE COURT: The doctor can correct her. Is that --

5 THE WITNESS: Would you repeat the question.

6 MS. FREEZE: Sure, sure.

7 BY MS. FREEZE:

8 Q. So you had testified that -- that you've never had
9 anybody this madder, this type of level of anger; correct?

10 A. Correct.

11 Q. As -- when I say this, kind of referring to these
12 voice messages; correct?

13 A. Yes.

14 Q. But fair to say, though, on the last couple decades
15 of practicing and seeing the volume of patients that you've
16 seen, fair to say that once in a while maybe a client or a
17 patient gets upset with you?

18 A. I don't -- I actually don't have any recollection of
19 that. If it was -- if it happened, I'm not aware of it. I
20 haven't been made aware of it.

21 Q. Okay. So have you -- with regards to this
22 HealthGrades.com and other type of reviews, you've looked at
23 reviews that patients have given you; fair to say?

24 A. I've only looked -- I actually looked at the reviews
25 maybe twice.

26 Q. Okay. And have you ever seen a negative review?

27 A. I saw one negative review.

28 Q. Okay.

1 A. Yeah.

2 Q. And is that the one that was -- that's on
3 HealthGrades.com?

4 A. I don't recall.

5 MS. FREEZE: Okay. Your Honor, may I approach?

6 MS. SOMERVILLE: I haven't seen this and I'm going to
7 object that it's hearsay as well.

8 MS. FREEZE: It's -- I think it's effect on -- effect on
9 the listener as it pertains to the review.

10 BY MS. FREEZE:

11 Q. Okay. So you are saying one bad review in the past
12 couple decades?

13 A. That's -- that I'm aware of, yeah.

14 Q. Now, talking about this confidential voice message
15 system that you had, has it always been through AT&T?

16 A. Uh-huh.

17 Q. Is that a "yes"?

18 A. Yes.

19 Q. I know it's unusual.

20 And you had said that the number that you have -- that's
21 your contact number, the (619)525-7747 you had testified that
22 that's really been your only number that you're aware of that
23 you've used in your practice for your clients to practice;
24 correct?

25 A. Correct.

26 Q. You don't give your cell phone, your home number out;
27 right? But sometimes you'll return phone calls from that
28 telephone?

1 A. Right. Also, if there is any real crisis, I have
2 given my cell phone number to someone.

3 Q. Okay. And it's also in your practice that you --
4 your general practice is not to disclose your family
5 information; correct?

6 A. Generally, yes.

7 Q. Because that's important, to have boundaries; right?

8 A. Uh-huh, uh-huh. Yes.

9 Q. Now, fair to say that you started treating or seeing
10 Mr. Bathen in 2004?

11 A. Uh-huh, yes.

12 Q. And that was when he had relocated from the East
13 Coast to Southern California for work purposes?

14 A. That's my understanding, yes.

15 Q. And he would come to your office in Chula Vista;
16 correct?

17 A. Correct.

18 Q. And during those sessions in person, would you say it
19 was a pleasant dialogue between you and Mr. Bathen?

20 A. I think we had a therapeutic alliance.

21 Q. Okay. He wouldn't make inappropriate or aggressive
22 gestures to you during those in-person contacts?

23 MS. SOMERVILLE: Your Honor, I'm going to object. Motion
24 in limine, the content of --

25 THE COURT: Overruled.

26 MS. SOMERVILLE: Thank you.

27 BY MS. FREEZE:

28 Q. And you received -- he received a referral from you

1 from an individual that you worked with, you assumed you
2 worked with, in the East Coast; correct?

3 A. Mr. Bathen reported to me that he had been referred
4 by someone from the East Coast.

5 Q. Now, when he had -- when do you recall when he moved
6 to L.A. and you started doing the phone conversations?

7 A. I really don't. I don't have -- I don't have that --

8 Q. But he wanted to stick with you despite him moving to
9 L.A. County; correct?

10 A. Correct.

11 Q. And -- and it's your testimony that you had ended
12 this relationship with Mr. Bathen around September of 2008
13 because it's your understanding he had relocated to the East
14 Coast at that time?

15 A. Right.

16 Q. When you had initially had that dialogue with
17 Mr. Bathen with regards to ending that relationship, was
18 Mr. Bathen still in California and advising you, hey, I'm
19 going to be moving; how do we do this? Or had he already
20 relocated to the East Coast?

21 A. I don't recall if he was -- I'm not sure if he was
22 here in California or if he was already back there. I'm not
23 sure.

24 Q. How -- what was your normal way of communicating with
25 Mr. Bathen when it came to scheduling appointments? Was it a
26 phone dialogue or was it e-mail?

27 A. I think it was -- it might have been both.

28 Q. Okay.

1 A. Yeah.

2 Q. And you had said that you -- when you did learn that
3 Mr. Bathen had moved to the East Coast, you had testified
4 earlier about this continuity of care to make sure that you
5 didn't just drop him -- you kind of point him in the right
6 direction; hey, if you need to chat with someone these are
7 some referrals?

8 A. Uh-huh.

9 Q. Is that correct?

10 A. Correct.

11 Q. So would you say that your communication with
12 Mr. Bathen when he was on the East Coast then was not
13 therapeutic sessions, it was just call this doctor, call this
14 doctor, best of luck to you, sir, kind of thing?

15 A. I'm trying to think. Yeah, it was more consultation.
16 I would say not therapeutic.

17 Q. What's the difference between consultation and, like,
18 a session?

19 A. As you described, you know, more like how are things
20 going and, you know, are you planning -- you know, what are
21 your plans to move on to, you know, to continue your therapy
22 and that sort of thing.

23 Q. Okay. And so that wouldn't be something that he
24 would pay for; right?

25 A. Yes, I think he did pay for that.

26 Q. He would pay for -- and so it would be a normal
27 45-minute to 55-minute session?

28 A. Correct.

1 Q. Just talking about referrals to other doctors in the
2 East Coast?

3 A. Well, I think there were some -- some therapeutic
4 issues that were addressed, but --

5 Q. But I thought you said that your license stopped at
6 the border.

7 A. Yeah. That's true. My license does stop at the
8 border.

9 Q. So it would -- you would be practicing technically
10 without a license then if you were giving him therapeutic
11 sessions over the phone if he lived in the East Coast;
12 correct?

13 A. Yes.

14 Q. Is it your testimony then today, Dr. Jacobs, that you
15 did, in fact, continue to treat Mr. Bathen or have therapeutic
16 sessions when he resided in the East Coast despite not being
17 permitted to do so?

18 A. Well, I guess I'm -- I wasn't thinking about it being
19 treatment. I was thinking about it being more transitioning
20 on as part of a termination process.

21 Q. Okay. But your testimony on direct would have been
22 that's the continuity of care. So are you then -- were you
23 maybe conferencing in with other psychologists?

24 A. No.

25 Q. Okay. So approximately how many of these phone
26 conversations would you say that you had with Mr. Bathen when
27 you were aware that he lived on the East Coast where he would
28 pay you for these 45- to 55-minute sessions?

1 A. I think it was maybe three, three sessions.

2 Q. Okay.

3 A. Three or four.

4 Q. And so -- and this is all just, hey, these are
5 referrals for you to talk to?

6 A. Well, my intention was for that, but the -- the
7 client had -- you know, had -- this was reciprocity in terms
8 that he wanted to talk about or he would share with me, but I
9 considered it more of a consultation.

10 Q. A therapeutic consultation, though; correct?

11 A. Yes.

12 Q. And he's living on the East Coast and you are in
13 California?

14 A. Right, right.

15 Q. So technically you weren't supposed to be doing that;
16 correct?

17 A. I think ethically I was supposed to be doing it
18 because it wasn't appropriate for me to just cut him off and
19 drop him.

20 Q. Right. But you said a number of times today as well
21 as at the preliminary hearing last year as well as to the many
22 Chula Vista Police Department officers that you've spoken to
23 over the last year that it's pretty straightforward, you --
24 once they move, you can't really provide any more therapeutic
25 sessions; correct?

26 MS. SOMERVILLE: Object to the form of the question.

27 THE COURT: Sustained.

28 MS. FREEZE: The form as it being compound.

1 THE COURT: Referring to many conversations, vague.

2 MS. FREEZE: Sure.

3 THE COURT: No foundation. Compound.

4 BY MS. FREEZE:

5 Q. Fair to say, Dr. Jacobs, you mentioned a number of
6 times that your license stops at the border; correct?

7 A. Correct.

8 Q. So would your sessions with Mr. Bathen then, when he
9 had moved to the East Coast, would those be doctor-patient
10 privilege type of conversations?

11 A. Yes.

12 Q. Because you are talking about treatment; correct?

13 A. Right.

14 Q. And when would you say that you recall -- you said
15 that you understand the relationship ended in September of
16 2008; is that correct?

17 A. Right.

18 Q. Okay. So if there was correspondence between you and
19 my client in April of 2008 --

20 A. Uh-huh.

21 Q. -- discussing times to discuss -- or times to have
22 sessions and he was living on the East Coast, would that be
23 incorrect?

24 A. Well, the correspondence in April was really related
25 to the previous -- what was upset that he had with me, that's
26 what -- that's the April contacts were about.

27 Q. And I apologize, Doctor. I mean April of 2008.

28 A. In April 2008. Okay. Could you track it back for

1 me? I'm lost.

2 Q. It's been some time. I appreciate it.

3 So if there's communication between my -- well, let me
4 just ask you this.

5 Do you recall communicating with my client via e-mail in
6 April of 2008 when he was living on the East Coast?

7 A. Yes.

8 Q. Okay. And when -- and there was discussions
9 regarding appointments and scheduling. What were those
10 appointments, were those therapeutic sessions?

11 A. The 2008 e-mails were him outlining his grievances to
12 me so it wasn't about making appointments.

13 Q. Okay. Maybe I'll refresh your recollection with an
14 e-mail that you had sent to my client.

15 MS. SOMERVILLE: Your Honor, I'm going to object to the
16 memory of the witness being refreshed. She never indicated
17 that her memory needs to be refreshed.

18 THE COURT: Sustained.

19 MS. FREEZE: Well, Your Honor, I believe --

20 THE COURT: Don't argue in front -- let's take a brief
21 sidebar.

22 Excuse us, ladies and gentlemen.

23 MS. FREEZE: And just to -- if -- Your Honor, if I may just
24 pick up where we left off so there's not --

25 BY MS. FREEZE:

26 Q. Dr. Jacobs, and again, I know it's been 10 years so
27 if you need a moment, and that's fine, I'm just trying to make
28 sure I understand the communication with my client when he was

1 on the East Coast.

2 So you had testified that your license stops at the
3 border; correct?

4 A. Correct.

5 Q. And so -- and you had just a moment ago testified
6 that -- that e-mail correspondence when he was on the East
7 Coast was more about him laying out in grievances and things
8 like that; correct?

9 A. Uh-huh, uh-huh.

10 Q. So if I have an e-mail correspondence between you and
11 my client in April of 2008 where you are discussing
12 appointment times -- do you recall that?

13 A. I don't. I don't. Could I -- could I see that or --

14 Q. Sure.

15 MS. FREEZE: Your Honor, may I approach?

16 THE COURT: Sure.

17 BY MS. FREEZE:

18 Q. It's an e-mail, appears to be an e-mail between you
19 and my client in April of 2008 discussing scheduling.

20 THE COURT: Okay.

21 BY MS. FREEZE:

22 Q. April of 2008. I'll just say that.

23 A. Okay.

24 Q. Does that refresh your recollection?

25 A. Uh-huh.

26 Q. Do you recall e-mailing with my client then in April
27 of 2008?

28 A. I don't recall it, but I see it there in writing,

1 so --

2 Q. Okay. And in that, he's living in the East Coast at
3 that time; correct?

4 A. I think so.

5 Q. Okay. And your -- and isn't it true that now that
6 you've had an opportunity for your memory to be refreshed and
7 looked at this document, it appears to be scheduling sessions
8 with Mr. Bathen?

9 MS. SOMERVILLE: Object. It did not refresh the witness's
10 memory.

11 THE COURT: Sustained.

12 MS. FREEZE: I believe, Your Honor, when I showed it to her
13 she had indicated that --

14 THE COURT: You can -- we can have the last question before
15 our break whether or not it refreshes the witness's memory.

16 BY MS. FREEZE:

17 Q. Did this refresh your recollection or your memory
18 speaking with Mr. Bathen via e-mail in April of 2008?

19 A. I'm -- right now I'm trying to recollect because the
20 e-mails that I was referring to was in February 2009, so
21 that's -- so I'm getting confused with the timeline. I'm
22 sorry.

23 I might have to have you -- I'm not clear about this --
24 the timing on this in terms of when he met -- when he moved
25 and when -- and when we had further conversation. So I'm
26 just -- I'm confused about it at this point.

27 Q. Okay. Did you have a chance to read this document,
28 though, when I showed it to you?

1 A. I skimmed it.

2 Q. Okay. Did it appear to have your proper e-mail
3 address on it?

4 A. Can I look at it again?

5 MS. FREEZE: If -- Your Honor, if I may approach?

6 MS. SOMERVILLE: Object as hearsay.

7 THE COURT: I'm sorry.

8 MS. SOMERVILLE: I'm going to object as hearsay, Your
9 Honor.

10 THE COURT: I'm going to allow just to do the e-mail
11 address and then we're going to break.

12 MS. FREEZE: Okay. Thank you, Your Honor.

13 THE WITNESS: That's my e-mail.

14 Yeah, okay. That's my e-mail.

15 BY MS. FREEZE:

16 Q. Okay. And --

17 THE COURT: All right. And so, as I said, that was the
18 question for the break.

19 All right. So we're going to take our noon recess at this
20 time, ladies and gentlemen, until 1:30.

21 Please remember not to form or express an opinion. Don't
22 talk to anybody about any subject connected with this matter
23 and don't do any research or investigation.

24 I'll see you all at 1:30. Thank you.

25 And ma'am, you may step down. Thank you.

26 *(The following proceedings were held in open court*
27 *outside the presence of the jury:)*

28 THE COURT: And we're on the record outside of the presence