

**From:** [Boyce, Bonnie](#)  
**To:** [mdavis@vpr.org](mailto:mdavis@vpr.org); [Keays, Alan](#)  
**Subject:** RE: Public Records Response  
**Date:** Monday, March 18, 2019 10:39:46 AM  
**Attachments:** [2016-12-01 Misch - Protective Order Transcript.pdf](#)

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Hi Mr. Davis and Mr. Keays,

Attached you will find another 68 page document that we found that falls within your request.

Best,  
Bonnie

Bonnie Boyce  
AGO Records Officer  
Legal Assistant III  
Criminal Division  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-5512  
[www.ago.vermont.gov](http://www.ago.vermont.gov)

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**From:** Boyce, Bonnie  
**Sent:** Friday, March 15, 2019 2:29 PM  
**To:** 'mdavis@vpr.org' <mdavis@vpr.org>; Keays, Alan <akeays@vtdigger.org>  
**Subject:** Public Records Response

Hi Mr. Davis and Mr. Keays,

Attached you will find our response to your request.

Best,  
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IN THE VERMONT SUPERIOR COURT  
BENNINGTON COUNTY CIVIL DIVISION

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RUQAIYAH MORRIS, Plaintiff,  -against-  MAX MISCH, Defendant.	) Case No. 66-11-16 Bnsa ) ) Bennington, Vermont ) ) December 1, 2016 ) 8:55 AM )
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TRANSCRIPT OF HEARING FOR PROTECTIVE ORDER  
BEFORE THE HONORABLE WILLIAM D. COHEN,  
SUPERIOR COURT JUDGE

APPEARANCES:

MICHAEL D. BLAIR, ESQ.  
Attorney for the Plaintiff  
  
MAX MISCH  
Pro Se Defendant

Transcription Services:	eScribers, LLC 352 Seventh Avenue  Suite 604 New York, NY 10001  (973) 406-2250
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

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WITNESSES:	DIRECT	CROSS	REDIRECT	RE CROSS	VOIR DIRE
For the Plaintiff:					
Ruqaiyah Morris	6				

EXHIBITS:	DESCRIPTION	MARK	ADMIT
For the Plaintiff:			
1	Twitter tweet	12	
2	Twitter tweet	12	

1 (Proceedings convened at 8:55 a.m.)

2 THE COURT: Ms. Ruqaiyah Morris vs. Maxwell Misch,  
3 and it's docket number 66-11-16 Bnsa.

4 It's scheduled today as a final hearing on the  
5 plaintiff's request for an order of protection, temporary  
6 order for stalking had been issued by Judge Monte on November  
7 17, 2016, scheduling it for a final hearing today.

8 Plaintiff is present with counsel?

9 MR. MICHAEL BLAIR: Yes, Your Honor, Michael Blair.

10 THE COURT: Excuse me?

11 MR. BLAIR: Michael Blair, it is.

12 THE COURT: Mr. Blair?

13 MR. BLAIR: Yes.

14 THE COURT: And the defendant is self-represented?

15 THE DEFENDANT: That's right, Your Honor.

16 THE COURT: Mr. Misch -- Mr. Misch, when a plaintiff  
17 appears with counsel -- I will give you the opportunity to  
18 extend the order for a week to get counsel on your own.

19 THE DEFENDANT: I'm unable, Your Honor. I can't do  
20 that, so I just will represent myself.

21 THE COURT: Okay.

22 Mr. Blair, what's the request today?

23 MR. BLAIR: Well, Your Honor, we'd like to have the  
24 order -- have an order, but I had talked to the defendant --  
25 he -- I talked about the possibility of getting an order

1 without findings and I said the Court might explain that to  
2 him better than I could. And he wanted to hear that from the  
3 Court.

4 THE COURT: So Mr. Misch, am I pronouncing your name  
5 correctly?

6 THE DEFENDANT: Yes, Your Honor. But for the record,  
7 the plaintiff put the wrong name on the report. My name is  
8 not Maxwell, it's Max so that's -- I just wanted to correct  
9 that.

10 THE COURT: We can -- it'll go onto our computer  
11 as -- however it's listed, but we can correct it on the  
12 computer as being Max, M-A-X.

13 THE DEFENDANT: Okay, Your Honor. Thank you.

14 THE COURT: So Mr. Misch, the way this would work is  
15 that we can have a contested hearing, plaintiff is asking for  
16 a final order, typically we issue the orders for one year.  
17 And sometimes there is a procedure available -- I call it  
18 consent orders where both parties agree to have an order in  
19 place, if you stay away and not contact, not harass or  
20 interfere with the plaintiff's liberties is basically what the  
21 statute says, and that's without specific findings of facts,  
22 so we wouldn't have a hearing. And -- otherwise the plaintiff  
23 bears the burden of proof by a preponderance of the evidence  
24 so that she needs to prove that on two separate occasions that  
25 stalking did occur.

1           And if we -- if you wish, we can just proceed by just  
2           issuing the order that you would stay away from the plaintiff,  
3           which means not talk to, telephone, text, email or use any  
4           other electronic communications to make contact, remain a  
5           certain amount of feet away and any other potential requests  
6           about maintaining separation from Ms. Morris.

7           Is that something you would be agreeable to?

8           THE DEFENDANT: I'm on probation now, so if -- if --  
9           if you find that she -- if she should have this -- what is it  
10          called, the --

11          THE COURT: I call it consent order but it's still a  
12          final order, it's just by agreement of the parties.

13          THE DEFENDANT: Would this affect -- I mean --

14          THE COURT: I can't give you any legal advice.

15          THE DEFENDANT: -- if I lose this, would it affect my  
16          -- huh?

17          THE COURT: I can't give you any legal advice as to  
18          whether or not it would have any effect on your probation or  
19          not.

20          THE DEFENDANT: I see.

21          THE COURT: It's not a criminal conviction.

22          THE DEFENDANT: Right, right.

23          THE COURT: But it could be -- and I'm not sure what  
24          your terms of probation are.

25          THE DEFENDANT: It wasn't involving the -- it wasn't

1 involving her, it was -- it was -- it was -- it was a case  
2 with another person, so this and -- I don't think there will  
3 be any violations of my -- of my probation here. But I  
4 don't -- I don't have it in front of me so I -- I'm not  
5 exactly sure, you know. And I don't have counsel, so there's  
6 that too.

7 I don't -- yeah, I'm going to go forward with this  
8 because I believe she made false statements under, you know,  
9 this is a -- it's going to be a criminal charge against her,  
10 really, you know. It says on the paperwork that false  
11 statements on a affidavit is a criminal charge and she can  
12 be -- you know, she can be imprisoned or either fined.  
13 So -- and I believe this whole thing is baseless and absurd,  
14 and I will go forward with this, yes. Yes, Your Honor.

15 THE COURT: Okay. Sheriff, please swear in the  
16 parties, please.

17 (Witnesses sworn)

18 RUQAIYAH MORRIS

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 THE COURT: Ms. Morris, Can I have your full name,  
22 please?

23 THE PLAINTIFF: Ruqaiyah Morris.

24 THE COURT: And Ms. Morris, are you a resident of  
25 Bennington County?

1 THE PLAINTIFF: Yes.

2 THE COURT: And are you in any way related to Max  
3 Misch?

4 THE PLAINTIFF: No.

5 THE COURT: And have you and he ever been household  
6 members?

7 THE PLAINTIFF: No.

8 THE COURT: And can you tell me what he did on more  
9 than one occasion to -- or what he did in -- to follow or  
10 survey --

11 THE PLAINTIFF: Yes.

12 THE COURT: -- that's the allegation and that was  
13 what was found in the temporary order.

14 THE PLAINTIFF: Correct, correct. So as you'll see  
15 from the affidavit there were numerous incidents. So it began  
16 in August with a series of tweets using social media; that  
17 began there. And then there were additional -- there were  
18 additional incidents that happened in October where he  
19 continued to specifically target me. Then there was a very  
20 specific incident in November as well, on Election night --  
21 Election Day that occurred as well. And so while that was in  
22 a public space it definitely raised significant level of  
23 anxieties, so.

24 What further specifics would you like me to offer,  
25 Your Honor; do you want me to begin with the detailing of

1 this?

2 THE COURT: Just so I'm -- in order to prevail, you  
3 have to show that on more than one occasion that he monitored,  
4 surveyed you in a way that would put a person in fear of  
5 injury or that caused you undue concern.

6 THE PLAINTIFF: Correct.

7 THE COURT: I'm going to give you a chance, Mr.  
8 Blair, to ask some questions after just on what those  
9 incidents were.

10 THE PLAINTIFF: Okay.

11 THE COURT: Could you just put some context to this  
12 as to how you know Mr. Misch and --

13 THE PLAINTIFF: I do. Okay, so let's begin. So the  
14 first incident happened on Oct -- in August -- I'm not sure of  
15 the exact date, maybe it was there. So the first incident  
16 happened in August and it was an actual tweet, so I don't know  
17 if it's helpful for me to explain to the Court the nature of  
18 how tweets work and how we came into contact with one another  
19 through Twitter, I can -- I'm happy to do that.

20 Essentially, it's a social media platform where you  
21 only see the things that you want to see. So you have to  
22 specifically go out of your way to say, I want to follow what  
23 the U.S. Marines are saying or whatever, (indiscernible) of  
24 America is saying or whatever. So you don't see other  
25 people's communications unless they make a point to bring that

1 out to you.

2           So in this situation, out of the blue, having had no  
3 prior experience with the defendant, he targeted me very  
4 specifically using racially charged and specific caricatures  
5 that were very triggering for me, very --

6           THE COURT: So the -- I don't mean to interrupt you  
7 but --

8           THE PLAINTIFF: Correct.

9           THE COURT: -- so did you -- do you use Twitter?

10          THE PLAINTIFF: Yes, I do. As I just -- as a state  
11 representative and an elected official, I have an online  
12 Twitter account, I have social media accounts.

13          THE COURT: And you posted something or -- is that  
14 "posting" the right word for tweeting?

15          THE PLAINTIFF: Correct, correct. So I --

16          THE COURT: Am I on -- I apologize for my --

17          THE PLAINTIFF: That's fine.

18          THE COURT: -- for what --

19          THE PLAINTIFF: Okay.

20          THE COURT: So when you posted a tweet --

21          THE PLAINTIFF: No, I did not post anything. So what  
22 happened was, the defendant posted a tweet, specifically  
23 tagged me in it, which is the only way that I would become  
24 aware of it. So he --

25          THE COURT: Tagged you with --

1 THE PLAINTIFF: Right, with --

2 THE COURT: Is that the hashtag?

3 THE PLAINTIFF: Correct.

4 THE COURT: Okay.

5 THE PLAINTIFF: Kind of like a hashtag, so he  
6 connected his account to my account; he connected his tweet to  
7 my account so then I would see it physically.

8 THE COURT: Okay.

9 THE PLAINTIFF: And it was highly inflammatory, it  
10 was very racially charged, it was very insulting and the  
11 particular imagery and caricatures harken back to early  
12 caricatures that were used by the Ku Klux Klan and white  
13 supremacist groups to disparage blacks and make black  
14 Americans look inhuman. And --

15 THE COURT: And this was August of this year?

16 THE PLAINTIFF: August of this year, correct.

17 And so he did that and then it started, what they  
18 call a Twitter war, so to speak. I didn't respond to him  
19 directly, I retweeted his tweet so that others can see what he  
20 had said, but that was it. And then following that, he  
21 continued to have these online dialogs with individuals and he  
22 consistently tagged me so that I would see everything he was  
23 saying.

24 THE COURT: So if he -- if he would send out a tweet,  
25 he would put the hashtag with your name on it; is that how

1 it's listed?

2 THE PLAINTIFF: Correct, in order for me to see it.

3 He --

4 THE COURT: Okay.

5 THE PLAINTIFF: -- can tweet all day and I would not  
6 have no clue, it would be a like a private text message. But  
7 so, until I'm included in the conversation, I have no idea  
8 what he's saying in his -- and I had no relationship with him,  
9 nor was I following him or watching anything that he was  
10 saying prior to this.

11 THE COURT: So -- and what's the connection between  
12 you -- other than the fact that he would just -- you're an  
13 elected representative --

14 THE PLAINTIFF: Right.

15 THE COURT: I'm just trying to figure out if he knew  
16 you or if this was just something that he was sending out?

17 THE PLAINTIFF: It was still -- I know it's  
18 difficult, Your Honor. So -- so he has his Twitter account  
19 and he is part of different groups that are generally white  
20 supremacist based and one of the groups had -- apparently this  
21 is how the order goes and how I came into the picture. So one  
22 of them asked him a question about my getting the primary and  
23 his response was what then began the engagement over Twitter.

24 THE COURT: The primary was in August?

25 THE PLAINTIFF: Correct.

1 And so it really was saying --

2 I feel like I'm leading the program.

3 MR. BLAIR: I have copies of the tweets and the  
4 defendant's already stipulated to the fact that they may be  
5 graphic, so that may be helpful for the Court to see.

6 THE COURT: Are they marked?

7 MR. BLAIR: No, I have to have them marked.

8 THE COURT: Any objection to the tweets coming into  
9 evidence?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: All right. We'll admit -- there's two --  
12 Plaintiff's 1 and 2 will be admitted.

13 (Twitter tweet was hereby marked for identification as  
14 Plaintiff's Exhibit 1, as of this date.)

15 (Twitter tweet was hereby marked for identification as  
16 Plaintiff's Exhibit 2, as of this date.)

17 THE COURT: So the -- what's contained on Plaintiff's  
18 1 in bold, dark ink is the name MaxMisch@Maxbmisch and then it  
19 has also Green, M-T-N, Goys and it has @rightsVT and it has  
20 @KiahMorrisVT.

21 And then 2 is Haslam (ph.) with a -- it looks like  
22 kanji characters there, but it's not very clear. Like the  
23 tweet you mentioned in (indiscernible) VT supports hashtag  
24 black lives matter plus uvm, Vermont students call out,  
25 hashtag VT racism and racial attacks on KiahMorrisVT hashtag

1 Vermont decides at C-A-X -- W-C-A-X.

2           And then the next one is from Die judenfrage for an  
3 emoji frog swastika at Maxbmisch again. So the -- when it's -  
4 - are those -- are those copied to -- again, I'm not sure how  
5 the platform works. So is it -- when it's "@," does that mean  
6 that it gets copied to, say for example, EvaMcKendWCAX,  
7 KiahMorrisVT, SueMinterVT, UVMVermont; is that how that is?

8           THE PLAINTIFF: Correct. So by adding those, that's  
9 what brings it up under our feed so we would see what he's  
10 saying. So Eva McKend is a -- as you can tell essentially  
11 from the text, she is a reporter for WCAX.

12           And this was out of the blue, like, he had ceased  
13 tagging me in tweets and then decided to start back up.

14           THE COURT: And these aren't dated, correct?

15           THE PLAINTIFF: Correct.

16           THE COURT: So the first one, which is on Plaintiff's  
17 1 --

18           THE PLAINTIFF: This one too -- the first one, the  
19 first book with the character was on August 16th, the second  
20 one with the die Judenfrage was in October, I believe, October  
21 19th.

22           THE COURT: What's the -- and there's a -- there's a  
23 picture on the first tweet?

24           THE PLAINTIFF: Um-hum.

25           THE COURT: Which is -- and I can't see what the

1 writing is "eiiitttt."

2 THE PLAINTIFF: It's a -- it looks like it's an  
3 extend -- you can't see the full picture without it being  
4 blown up but it's essentially an extension of a profanity.  
5 (Indiscernible) from looking at it.

6 THE COURT: And -- so prior to this first tweet, had  
7 you had any contact with Mr. Misch?

8 THE PLAINTIFF: No.

9 THE COURT: So this was out of the blue?

10 THE PLAINTIFF: Correct.

11 THE COURT: And what's -- do you know what Green  
12 Mountain Goys are?

13 THE PLAINTIFF: You might want to ask the defendant.

14 THE COURT: And do you know what Rights VT is?

15 THE PLAINTIFF: I do.

16 THE COURT: What -- do you know what -- can you tell  
17 me what Rights VT is?

18 THE PLAINTIFF: Rights VT is an activist  
19 organization.

20 So following this tweet and the press that happened,  
21 a number of groups placed complaints on Twitter regarding the  
22 defendant and it also did kind of when -- try to push back so  
23 he continued to push forward.

24 What also happened from this was, you know, the  
25 networks that he's a part of, those people then also saw it

1 fit to start to attack.

2 I think it's important to know, You Honor -- it feels  
3 strange to speak about this in this way, but I think it's  
4 important to know that it's not just a case of, I don't like  
5 this particular politician, this individual's past history of  
6 violence against women, this person's very strong belief in  
7 white supremacy and aligned with white supremacy groups, which  
8 again, he'll have to explain to you Green Mountain Goys, I  
9 think he could do better at that than I would.

10 This is not just a typical I don't like Hillary  
11 Clinton tweet nor are his actions or the ones that followed or  
12 the responses that my family has had because of his actions.

13 THE COURT: Mr. Blair, questions for your client?

14 MR. BLAIR: Yes, I have a series of questions, should  
15 she go up there, Your Honor?

16 THE COURT: No, she could stay right there.

17 MR. BLAIR: You already asked her name and everything  
18 so I'll skip through the preliminaries, Your Honor.

19 FURTHER DIRECT EXAMINATION

20 BY MR. BLAIR:

21 Q. So how long have you been a representative of the  
22 State?

23 A. Two years.

24 Q. Recently, did the defendant engage in conduct that  
25 caused you to feel threatened?

1 A. Yes.

2 Q. When was the most recent event?

3 A. The most recent event was on Election Day, so that  
4 was November 8th, I believe. I was at the polls, as most  
5 candidates are, and I was standing on a part of the green,  
6 it's a public space, everyone has the right to come there so  
7 that was not the concern. I was standing there and we came  
8 face to face on an unoccupied area of the front entrance to  
9 the polling place. The defendant began to stare at me and  
10 continued to hold stare at me for quite an extended period of  
11 time. I tried to not look at him as much as possible because  
12 it was making me very distressed and upset and concerned but I  
13 didn't want to -- I just didn't want to have anything further  
14 happen.

15 After he finished staring at me for this extended  
16 period of time, he then turned and stared at the people going  
17 into the polls and went in the polls. I then went over,  
18 because I did not feel safe being alone, standing where the  
19 other rest of the candidates were and I looked -- a resident  
20 saw that I was upset and said that they would stand with me to  
21 make sure that I was safe after he left the building. And  
22 then he continued to stare at all of us and it was so intense  
23 that it actually made one of the other people there cry.  
24 So --

25 Q. How did you know it was the defendant?

1 A. From the pictures on social media.

2 Q. Now, at some point in time you said -- you told the  
3 Court that you received a tweet. I'm going to show you -- may  
4 I have those -- thank you.

5 It's been marked as Plaintiff's 1, can you tell us  
6 what that is?

7 THE COURT: Mr. Blair, these are -- these are  
8 abbreviated hearings on the elements of the offense, we have  
9 other cases in that -- and I have full docket next door, so  
10 just please keep that in mind as to the nature of what this  
11 proceeding is.

12 MR. BLAIR: Of course, Your Honor.

13 THE COURT: Thank you.

14 MR. BLAIR: Okay.

15 BY MR. BLAIR:

16 Q. You received -- how did that make you feel?

17 A. As I said, it made me feel very upset, concerned,  
18 worried. This isn't typical political banter, this is very  
19 hate-directed and very specific and intended to intimidate.

20 Q. Now, I'm going to hand you what's been marked as  
21 Exhibit 2, can you tell us what about that post was most  
22 threatening?

23 A. Well, it was -- first of all, it was out of the blue,  
24 it wasn't even necessarily related to me but it was meant to  
25 bring to my attention. It was -- again, it was this -- the

1 defendant once again and he's there with caricature images  
2 that have to do with white supremacist groups -- die  
3 Judenfrage, the frog, which is the main character from  
4 (indiscernible) it's kind of -- whatever, it's a character  
5 that's used within white supremacist communities, the swastika  
6 and the fact that it was his name again. So even though he  
7 had changed his twitter name, it was him again, and he wanted  
8 me to know that Eva McKend was black and that he was attacking  
9 her, and me being black, that I'm associated with it somehow.

10 Q. Did there come a time there was an incident at the  
11 Democratic office that concerned you?

12 A. There was.

13 Q. Can you just tell us when that was?

14 A. That was October 11th. So what was concerning about  
15 it was that the night before my home had been broken into and  
16 vandalized and then that same evening, a Democratic -- that  
17 was on the 10th, the Democratic office had white supremacist  
18 materials slipped under their door, that was downtown, that's  
19 where all of my materials were as well. And then they  
20 received a threatening phone call as well into the office that  
21 next day so --

22 MR. BLAIR: This is the county Democratic  
23 headquarters?

24 THE WITNESS: Correct, during the elections season on  
25 Main Street.

1 BY MR. BLAIR:

2 Q. Okay. How do you feel about the defendant, as you're  
3 sitting here today?

4 A. I'm -- I can't even look at him right now. I can't  
5 even look at him right now.

6 Q. Can you tell us, are you afraid of the defendant?

7 A. Yes. I'm afraid of him, yes.

8 Q. How has his conduct impacted your daily life?

9 A. It's changed it significantly. We've had to change  
10 all of our home security, we've had to change our normal  
11 patterns of where we go, there's stores that I don't go to by  
12 myself because he's there. There's places in my community I  
13 don't walk my dog because he lives near there. He's very --  
14 he's very highly visible and it's very intimidating and I  
15 don't know -- I just can't trust that he's there. I've even  
16 had to take self-defense and power training classes to prepare  
17 myself to have self-defense.

18 Q. How has the defendant's conduct towards you impacted  
19 your family?

20 A. It's affected my family greatly, not only the level  
21 of distress and fear and concern that we've all had, I have a  
22 young son who has definitely picked up on the anxiety, it's  
23 carried through to even in the school, which has had to take  
24 completely different security protocols, which he's aware of,  
25 just to make sure that he's safe.

1 THE COURT: How old is your son?

2 THE WITNESS: Five and a half.

3 BY MR. BLAIR:

4 Q. And over -- since August of 2016 up to the present,  
5 there's been how many specific conducts from the defendant  
6 that have caused you concern?

7 A. Three that we brought to the Court today. There are  
8 others I can't -- there's been other communication beyond that  
9 day, but his Twitter account got cancelled, it was suspended,  
10 all white supremacist groups, many of their members, their  
11 accounts were suspended so I can't get you that information.  
12 But it continued beyond that first initial tweet.

13 Q. What do you want the Court to do here?

14 A. I want him to stay away from my family, I want no  
15 further contact, I want him to not -- I want him to leave us  
16 alone. I want to feel safe.

17 Q. So you're asking the Court to implement a no stalking  
18 order?

19 A. Yes.

20 MR. BLAIR: Thank you, Your Honor.

21 THE COURT: Mr. Misch, any questions you'd like me to  
22 ask Ms. Morris?

23 THE DEFENDANT: Oh, yeah, sure. Yes, Your Honor.

24 I'd like you to ask her if she felt threatened -- if  
25 she felt like I was going to do her bodily harm, as she

1 stated, why did she retweet me and why didn't she block me?

2 Please ask her that, Your Honor.

3 THE COURT: That's, like, four questions there. So  
4 can I --

5 THE DEFENDANT: Well, it's --

6 THE COURT: -- go backwards?

7 THE DEFENDANT: Sure.

8 THE COURT: So Ms. Morris, why did you block him?

9 THE PLAINTIFF: I didn't block him.

10 THE DEFENDANT: No, I said why didn't she block me --

11 THE COURT: Oh.

12 THE DEFENDANT: And why did she retweet me?

13 THE COURT: Why didn't you block him?

14 THE PLAINTIFF: I did not block him so that if he was  
15 to do further threatening behavior, there could be an  
16 electronic record, because I was working with the FBI and our  
17 local law enforcement.

18 THE COURT: And why did you -- and retweeting means  
19 sending it to somebody else or retweeting means sending it  
20 back to him?

21 THE PLAINTIFF: Nope, it sends it on to my page. I  
22 retweeted it on my page so that the people who follow my  
23 account could see what had happened.

24 THE COURT: And what was it -- the other question was  
25 -- did he -- did she fear bodily harm?

1 THE DEFENDANT: Wait, if you felt like -- like this  
2 was such a -- if it was so truly offensive and threatening,  
3 you know, the -- the -- the -- the normal thing to do would be  
4 to block the individual who is --

5 THE COURT: Mr. Misch, I'll give you a chance to give  
6 some statements but -- so just questions for -- that you'd  
7 like me to ask Ms. Morris.

8 THE DEFENDANT: No, no, that's all, Your Honor.

9 THE COURT: Mr. Blair, may I see those exhibits,  
10 please?

11 MR. BLAIR: Yes, Your Honor.

12 THE COURT: Thank you.

13 Mr. Blair, do you have any additional witnesses?

14 MR. BLAIR: No, Your Honor.

15 MAX MISCH

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 THE COURT: And Mr. Misch, may I have your full name,  
19 please?

20 THE DEFENDANT: Max Misch, Your Honor.

21 THE COURT: And your first name is actually M-A-X not  
22 Maxwell?

23 THE DEFENDANT: That's correct.

24 THE COURT: And Ms. Morris indicated that you and she  
25 are not related in any way and that's --

1 THE DEFENDANT: No, we're not, Your Honor.

2 THE COURT: Is that right?

3 And you and she have never been household members,  
4 correct?

5 THE DEFENDANT: No, that's -- no, we're not.

6 THE COURT: And -- so in August of 2016, did you send  
7 a tweet -- do you use -- do you have a Twitter account?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: And did you send a tweet to Ms. Morris?

10 THE DEFENDANT: August?

11 THE COURT: August.

12 THE DEFENDANT: That's correct, Your Honor.

13 THE COURT: And also to Green Mountain Goys?

14 THE DEFENDANT: No, this I was -- I was tagged by --  
15 by -- by this individual or group.

16 THE COURT: What's tagging mean? I apologize for  
17 the -- I --

18 THE DEFENDANT: Well, I should just explain it.  
19 You -- you -- this goes on your Twitter page and you're made  
20 aware of it and that's all, yeah. And you can reply to it  
21 also.

22 THE COURT: You can what?

23 THE DEFENDANT: Reply to it if you want to.

24 THE COURT: Okay. So did you send it to Green  
25 Mountain Goys?

1 THE DEFENDANT: No, I was -- I just received that out  
2 of the blue and I responded.

3 THE COURT: So what did you -- what's the first thing  
4 you received?

5 THE DEFENDANT: There was -- it's not -- it's not  
6 here but there was a tweet from GMG saying --

7 THE COURT: What's GMG?

8 THE DEFENDANT: I'm just referring to -- the Green  
9 Mountain Goys group or individual. There was a tweet  
10 saying -- no, there was a -- yeah, there was a tweet from  
11 RightsVT or - yeah, it must have been RightsVT saying, Kiah  
12 Morris wins, like, a district 1 or 2 of -- whichever one it is  
13 in Bennington, a picture of her and that was all. And -- and  
14 then, you know, and he said, Is this real, is this what's  
15 really happening here?

16 THE COURT: Who's "he"?

17 THE DEFENDANT: Whoever runs the -- the -- the Green  
18 Mountain Goys' Twitter account.

19 So I said, I hope not, but I wouldn't be surprised  
20 after she was endorsed by Senator -- Senator Sanders. And so  
21 -- and then after that, I was, like, you know what, I'm going  
22 to -- I'm going to troll, let's -- have you ever heard of --

23 THE COURT: No.

24 THE DEFENDANT: -- trolling?

25 THE COURT: No, I don't have any idea what --

1           THE DEFENDANT: It's -- it's just putting -- putting  
2 political speech out there but in a -- in -- in a very fensive  
3 (sic) manner.

4           THE COURT: In a very offensive?

5           THE DEFENDANT: Offensive manner, yes, Your Honor.

6           THE COURT: So you decided to troll?

7           THE DEFENDANT: Yes.

8           THE COURT: And --

9           THE DEFENDANT: I mean, because -- because I was  
10 doing this to other people, journalists, before this and  
11 others, celebrities, you know, that sort of thing. And --  
12 and -- and we have a community of people who -- who -- who  
13 make our opinion known on Twitter, until recently when there  
14 was a mass ban of -- of white supremacists', you know,  
15 accounts on there.

16           THE COURT: So I'm -- I apologize but I'm really --  
17 I'm missing the -- the -- the connection and I might just  
18 be -- I don't use social media and I don't sort of understand  
19 the -- what is being done.

20           So when you were trolling, you take political speech  
21 and put out statements --

22           THE DEFENDANT: Your Honor --

23           THE COURT: -- that are offensive?

24           THE DEFENDANT: You can -- you can -- you can put out  
25 statements, you can put out caricatures, you can -- you can --

1 you can do a number -- a variety of, you know, methods to get  
2 your message out there, which is -- which is protected speech,  
3 Your Honor, you know --

4 THE COURT: Well, some is and some's not and it  
5 depends on what the speech is.

6 THE DEFENDANT: And that's what I'm trying to say  
7 here, there was nothing physically -- there was nothing  
8 contained within these tweets which could give anyone the --  
9 the -- the -- the idea that I was going to physically harm  
10 them. It's -- it was very offensive but -- but there is  
11 nothing in there saying, I'm going to, you know, do this or  
12 that to you, I am -- I am -- I'm going to hurt you, I'm going  
13 to -- you know, I'm going to kill you, I'm going to do  
14 anything of that nature.

15 THE COURT: So the fact that there is no actual  
16 threat wouldn't take -- wouldn't make a person be alarmed  
17 about the -- the wording --

18 THE DEFENDANT: Well, Your Honor --

19 THE COURT: -- is that --

20 THE DEFENDANT: Your Honor, they might be alarmed but  
21 it's still protected speech under the First Amendment.

22 THE COURT: Okay. So as to protected speech, there  
23 is a line; is there not?

24 THE DEFENDANT: Right. You can't -- you can't yell  
25 "fire" in a theatre, that's one. And you -- and you can't

1 call for the killing or, you know, violence against -- against  
2 another person or another group of people, but -- but that's  
3 it, Your Honor. There -- everything else is protected,  
4 sacrosanct. You cannot -- it is inviolable. You cannot, you  
5 cannot restrict a person's First Amendment just because it  
6 upsets you or it bothers you.

7 THE COURT: I -- I --

8 THE DEFENDANT: Your Honor --

9 THE COURT: I agree. And I think -- I think that's  
10 correct, but there is a certain point where it gets beyond --  
11 there -- there is a line. You admit -- I mean, you said that  
12 yourself.

13 THE DEFENDANT: There is a line and I didn't cross  
14 it, Your Honor. I didn't -- I mean, you can just look at the  
15 tweet.

16 THE COURT: I am looking at the tweets and I just --  
17 I'm just -- but I don't understand -- I can't -- again, I  
18 apologize but I don't -- and I'm not allowed to do -- I'm not  
19 allowed to go on the computer -- I can go on the computer and  
20 get the Vermont law.

21 THE DEFENDANT: Yes.

22 THE COURT: But I can't go on urban dictionary and  
23 look at any of these things on what they mean, so I'm --  
24 that's part of my judicial ethics of not getting that  
25 information, so --

1 THE DEFENDANT: Well, this is -- this is just --

2 THE COURT: I need some explanation from you --

3 THE DEFENDANT: Okay. This --

4 THE COURT: -- so I -- so on the first one that I  
5 have -- but there was one before this one from Green Mountain  
6 Goys?

7 THE DEFENDANT: Goys, yeah.

8 THE COURT: And do you know -- is that -- is that --  
9 is that an agenda-driven group?

10 THE DEFENDANT: It's a pro-white group, yeah.

11 THE COURT: It's a what?

12 THE DEFENDANT: A pro-white group, or individual, I  
13 don't know. But I know that they're pro-white, yes.

14 THE COURT: Again, I'm really so far removed from  
15 this on what "pro-white" even means.

16 THE DEFENDANT: Well, we're against --

17 THE COURT: You say "we" --

18 THE DEFENDANT: -- the importation of -- of these  
19 "refugee Somalians" (sic) who bring in active tuberculosis.  
20 There are many cases you can -- you could look online and see  
21 that they have active TB and -- and just the other day there  
22 was a case of -- I mean, you know, national news at OSU, at --  
23 at the school --

24 THE COURT: At Ohio State University?

25 THE DEFENDANT: What was that, Your Honor?

1 THE COURT: You said OSU?

2 THE DEFENDANT: Yes.

3 THE COURT: Ohio State University?

4 THE DEFENDANT: That's -- that's correct, Your Honor.  
5 Where a Somalian (sic) -- I believe a -- you know, a refugee  
6 went to his car, went on campus, plowed over a whole bunch of  
7 people, got out and started stabbing them with a -- with a  
8 butcher knife. The same type -- the same group that the  
9 plaintiff -- the plaintiff wants to bring here, en masse. And  
10 we're against that, Your Honor. We -- we are very much  
11 opposed to this, Your Honor.

12 THE COURT: Okay, you can be opposed to it, I mean,  
13 that's -- that -- obviously you have the right to be opposed  
14 to any political position that is taken, but it's -- I'm just  
15 not sure what that first tweet -- so this -- the first one is  
16 from you, correct?

17 THE DEFENDANT: That's correct, Your Honor.

18 THE COURT: And it's copied, is that what that -- the  
19 "@" means is sent to Green Mountain Goys?

20 THE DEFENDANT: It was from him -- I mean, I -- I --  
21 I'm replying to him because he was the one who notified me  
22 about her -- her win at the -- at -- for the primary.

23 THE COURT: So you were notified of the win and  
24 then -- but you copied -- you also copied Ms. Morris?

25 THE DEFENDANT: Where?

1 THE COURT: On the first --

2 THE DEFENDANT: Oh.

3 THE COURT: -- first tweet.

4 THE DEFENDANT: With the caricature and statement?

5 THE COURT: Yes.

6 THE DEFENDANT: No, I didn't copy her, I tagged her  
7 because she was tagged in the previous tweets. And any -- and  
8 -- and --

9 THE COURT: She was --

10 THE DEFENDANT: Yeah.

11 THE COURT: So Green Mountain Goys tagged -- but  
12 that's not a hashtag, that's a "@" so --

13 THE DEFENDANT: "@" is tagging, a hashtag is  
14 something else. That's -- that's -- that's -- people can  
15 search for, like, topics, you know, hashtag politics, hashtag  
16 sports, hashtag whatever, and you'll see whatever has been  
17 tagged like that. But this is -- this is tagging a person.  
18 The "@" symbol or -- yeah.

19 THE COURT: So you receive -- you receive a tweet  
20 from Green Mountain Goys?

21 THE DEFENDANT: Um-hum.

22 THE COURT: Then you respond, you reply to that and  
23 it's basically like "reply all" on an email, correct?

24 THE DEFENDANT: Sure, yes.

25 THE COURT: And so you sent it back to Green Mountain

1 Goys with a copy to Vermont -- to RightsVT.

2 THE DEFENDANT: RightsVT, yes.

3 THE COURT: What is that?

4 THE DEFENDANT: I don't what this -- it's a advocacy  
5 group, I don't -- I don't -- I don't know what this is, but I  
6 think it was the -- the Twitter account -- yeah, it was the  
7 Twitter account which -- which, you know, posted a picture of  
8 saying -- saying she won, you know. And, you know, like I  
9 said the -- the -- the -- her face --

10 THE COURT: This is on her own account?

11 THE DEFENDANT: What was that?

12 THE COURT: She tweeted this, that she won the  
13 primary?

14 THE DEFENDANT: No. It was tweeted by RightsVT that  
15 Mrs. Morris won -- won Bennington, like a district -- what is  
16 it 1 or 2, I don't -- I don't know. And -- and -- and then  
17 this other guy GMG, Green Mountain Goys, retweeted that and  
18 tagged me in it and then I -- and then I responded and this is  
19 what I put after the -- the -- the tweet.

20 THE COURT: Can you tell me what your -- so are  
21 you -- can you tell me what your connection is with Green  
22 Mountain Goys?

23 THE DEFENDANT: I know them on a -- a message board,  
24 which is -- which is -- which is pro-white.

25 THE COURT: And can you explain to me again what

1 "pro-white" means? You talked about the anti-immigration --  
2 again, you -- you clearly have a right to your opinion as to  
3 whether or not refugees should come to Vermont or not come,  
4 but -- but what pro-white means --

5 THE DEFENDANT: Advocating for --

6 THE COURT: I'm not -- and that's not a rhetorical  
7 question I just -- I just don't -- I'm not sure what that --  
8 that -- and I don't want to start labeling here but --

9 THE DEFENDANT: Well, because you have -- you have a  
10 lobbyist for every other group except for white people; of  
11 Black people, of Asian people, of Hispanic people, Jewish  
12 people, Native American people. You have -- you have lot --  
13 you have -- you have, you know, you have lobbyists for these  
14 groups, you have --

15 I mean, the biggest one is the American Israeli PAC,  
16 you know, like, arguably the most powerful lobbyist group in  
17 the country. But white people don't have anything of that  
18 sort. And whenever you argue for white interests, you are  
19 labeled and smeared and slandered and, you know, maybe even  
20 put into prison for -- for your politically incorrect opinions  
21 and, you know, views.

22 THE COURT: Okay. So can you tell me what -- what  
23 that -- can you just explain to me, as best you can, in -- in  
24 language that I would understand what -- when you wrote  
25 "s-h-e-e-e-i-t, I be representing dem," D-E-M, "white

1 m-u-h-f-u-g-g-u-h-z of Bennington, g-m-o-m-e," saying?

2 THE DEFENDANT: I think you incorrectly stated  
3 this -- this -- this tweet here.

4 THE COURT: Okay.

5 THE DEFENDANT: It's "Sheeeit, I be representing dem  
6 white muhfugguhz of Bennington, know what I'm saying?"

7 THE COURT: No, I'm trying -- I have no idea what  
8 that -- you just spoke it in a way that's not reflected at all  
9 in the -- in reading the sentence.

10 THE DEFENDANT: All right. It's muhfugguhz,  
11 that's -- that's the proper pronunciation of that word.

12 THE COURT: I spelled it, I didn't pronounce it  
13 because I actually don't know how to pronounce it. But -- so  
14 what does -- can you just tell me what that means?

15 THE DEFENDANT: It is a -- yeah, humorous take on the  
16 way, you know, African Americans, many of them, not all of  
17 them, speak in the projects, in the culturally diverse parts  
18 of this -- of this country, which Vermont is very much not one  
19 of them. This is one of the most white parts of the country,  
20 ninety-six percent white. But where I'm from, New York City,  
21 it is a -- it is very diverse, culturally vibrant, so to  
22 speak, Your Honor.

23 THE COURT: Well, I'm -- I am from Vermont so I  
24 don't -- so the way you spoke that, as quickly as you did  
25 using the -- hold on -- is -- can you just tell me what it

1 means?

2 THE DEFENDANT: What it means in English --

3 THE COURT: Yes, that's what I'd like to know; what  
4 it means in English.

5 THE DEFENDANT: Is -- is -- it's basically stating  
6 that I just found it incongruent that -- that -- that you have  
7 a African American woman representing a ninety-six percent  
8 white district. It -- it -- it -- you know, by the laws of  
9 probability, it's just astronomically low. I mean, you know -  
10 - and there is something -- there is something going on here,  
11 I don't -- I don't -- I don't know what exactly it is, Your  
12 Honor. But -- but -- you know, maybe affirmative action,  
13 maybe -- I don't -- I don't -- I don't know what exactly you  
14 would -- you would -- you would call it, but whatever --  
15 whatever you want to call it, that's what I meant by it.

16 And I didn't mean -- and there was no -- and there  
17 was no intent to harm physically this -- this individual, you  
18 know. If anything, it was -- it was in poor taste if -- if  
19 you -- if you feel that way. But how can you -- it's a --  
20 it's a joke -- it's a joke, Your Honor. I mean, it's a  
21 troll -- it's a troll joke, that's --

22 THE COURT: A troll? And getting back to the troll  
23 which is?

24 THE DEFENDANT: Trolling, yeah. Again, putting out  
25 humor with political speech which is very offensive, yes,

1 that's what trolling is, Your Honor.

2 THE COURT: Well, I'm missing the political speech  
3 part of this.

4 THE DEFENDANT: Political speech is -- I just  
5 explained it. I was -- I was -- I was showing, you know, this  
6 other individual who tweeted me that it's -- it's -- it's  
7 just, you know, by the numbers it's -- you know, that's just  
8 how I feel, you know?

9 THE COURT: Well, I mean, it's -- there was an  
10 election and the voters in her district spoke, correct?

11 THE DEFENDANT: That's correct.

12 THE COURT: So -- but you're saying that there's  
13 something more to this because --

14 THE DEFENDANT: No, people have white guilt, you  
15 know, because of slavery and -- and -- and past, like the --  
16 you know, injustices to -- to -- to African Americans and --  
17 and -- and so they get this -- this -- this feeling that they  
18 have to do more for them, you know, maybe elect one, Your  
19 Honor.

20 THE COURT: I'm not -- elect one? You mean that this  
21 has nothing to do with merit or anything but --

22 THE DEFENDANT: No, no this is not anything to do  
23 with merit, you know -- you know -- because I would be willing  
24 to take an IQ test and I -- I -- I -- I believe, with the  
25 utmost conviction, that I have forty to fifty points on her.

1 I can say that with certainty, Your Honor.

2 THE COURT: Okay, but what does that --

3 THE PLAINTIFF: You don't.

4 THE COURT: -- what does that -- what does that mean  
5 though? I'm not --

6 THE DEFENDANT: What does that mean? Meaning that  
7 this is not a meritocracy anymore and we're pushing people  
8 based on race, Your Honor.

9 THE COURT: And then what's the picture mean?

10 THE DEFENDANT: The picture is just -- it's just a  
11 caricature and it says "Sheeeit."

12 THE COURT: And what does that mean?

13 THE DEFENDANT: Well, you're not exposed to them,  
14 Your Honor, so you don't know how they --

15 THE COURT: Who said I'm not exposed to -- I don't  
16 like the word "them."

17 THE DEFENDANT: -- how they behave in their natural  
18 habitat.

19 THE COURT: I really don't like the word "them,"  
20 because I don't know what "them" is and I don't know what  
21 "them" --

22 THE DEFENDANT: African Americans as a -- not as a  
23 whole but -- but -- but many of them where I'm from, New York  
24 City; Queens, New York, to be precise.

25 THE COURT: Okay. But when you use the word "them,"

1 how does that factor into all of this?

2 THE DEFENDANT: Don't you think we're -- we're --  
3 we're getting away from the point here that -- that -- that  
4 I -- I was not threatening her and she could have blocked me,  
5 and I was going to vote.

6 That's another thing, I didn't -- I didn't mention  
7 here. I have a bachelor's degree in political science, okay,  
8 this is my thing along with weight training. This is -- this  
9 is my passion, okay; I'm a political activist. And I went to  
10 go vote. I glanced at her. I was, like, oh, I hope she  
11 doesn't -- you know, make a scene here, you know, because of  
12 this stupid, you know, stuff online. And I was, like, I hope  
13 she doesn't, you know, make a big problem for me. And I  
14 thought, incorrectly, she was electioneering. Because where  
15 I'm from -- you have to stand 300 or so feet away from the  
16 polling place if you're going to a hold, you know, "Vote for  
17 Me" sign, which she was doing just a few feet from the door,  
18 which is -- which is legal, I checked afterwards, but I didn't  
19 know then.

20 THE COURT: So did you say anything to her?

21 THE DEFENDANT: No, I didn't say a word. I just  
22 thought, wow, is she really committing a crime here and -- but  
23 you know, but she wasn't, I was -- I was -- I was wrong.

24 And I glanced at her, I barely glanced at her and  
25 she's -- and she's lying here when she said I was holding a

1 stare for an extended period of time, as she puts it, I think.

2 THE COURT: Okay. Then the next one you send was a  
3 reply again to Green Mountain Goys and it says again -- it's  
4 copied to Green Mountain Goys, Vermont Rights, Ms. Morris, "I  
5 hope not, but I wouldn't be surprised after she" --

6 THE DEFENDANT: -- was in -- that -- that was, I  
7 think, referring to Senator Sanders endorsing Mrs. Morris.

8 THE COURT: Okay.

9 THE DEFENDANT: After she was endorsed by --

10 THE COURT: I don't have the end -- I don't have  
11 the --

12 THE DEFENDANT: Yeah. I mean, it's -- it's cut off,  
13 yeah.

14 THE COURT: And then the next one, do you know who  
15 Haslum is?

16 THE DEFENDANT: That's not even -- that's not even  
17 a -- no, he liked this tweet but this -- but this tweet was  
18 from Sue Minter who was -- who was -- who was a local  
19 newswoman on TV. And Sue Minter -- it said that she -- it was  
20 referring to racial attacks on Kiah Morris and she -- and the  
21 latter was tagged, you know, like you can see there. And then  
22 I replied to Mrs. Eva -- what's her name?

23 THE COURT: McKend?

24 THE DEFENDANT: McKend.

25 THE COURT: Who's Die Judenfrage?

1 THE DEFENDANT: Die Judenfrage is the proper  
2 pronunciation.

3 THE COURT: Thank you. So --

4 THE DEFENDANT: And that's -- that's me, I'm sorry,  
5 that's me. You can -- so this is my account at and then what  
6 comes after Max Misch. You can change what -- you know, this  
7 other one to the left of it, you see, and I did that at some  
8 point.

9 THE COURT: So -- so what -- what is -- so that's  
10 your name, and how did you pronounce it again?

11 THE DEFENDANT: Die Judenfrage.

12 THE COURT: Do you know what that means?

13 THE DEFENDANT: The Jewish question.

14 THE COURT: Do you know what that means?

15 THE DEFENDANT: Do I know what that means? Why, yes,  
16 I do, Your Honor. It's referring to the fact that that we  
17 have a Zionist Occupied Government with Jews at the upper  
18 echelons of every aspect of this country, the media, banking,  
19 the -- the Pentagon, government, academia, Ivy League schools,  
20 including -- I could go on and on and on and on but we have a  
21 limited time here like you told --

22 THE COURT: Okay. So then you say, "Eva, you're so  
23 proud to be black, why get a weave to look like a white  
24 woman?"

25 THE DEFENDANT: Yeah, that's -- that's a common thing

1 among Black females. They -- they -- they're so proud --  
2 they're so proud of their heritage and their ethnicity, their  
3 race, then why did they get a weave which specifically makes  
4 them look like Caucasian, you know, European American women.  
5 I mean, that's -- that's kind of odd to me, you know?

6           And so this thing wasn't even about Kiah, I mean, it  
7 was just because she was tagged in it and -- you know, because  
8 it was about racial attacks on her in the tweet that I  
9 responded to, but my tweet wasn't even about her, it was -- it  
10 was -- it was about the newswoman there.

11           So this is -- this is -- this is a little -- she's  
12 grasping at straws here, to be honest, Your Honor, you know,  
13 with the -- with the other tweet, the one we just went over,  
14 this latest one. Yeah.

15           And again, the point still stands, if she felt so  
16 threatened by me, why did she not block me? She retweeted me  
17 so all the world -- so all the world -- so she could get all  
18 the pity and all the -- and all the -- the people, you know,  
19 falling over themselves to -- to signal how virtuous they were  
20 and how bad and evil I am. She did that. She made sure to do  
21 that, but she didn't block me, so it must have not been that  
22 threatening based on that, Your Honor.

23           THE COURT: Okay. I'm going to disclose that I'm  
24 Jewish.

25           THE DEFENDANT: Oh, you are?

1 THE COURT: I am.

2 THE DEFENDANT: Okay.

3 THE COURT: A hundred percent.

4 THE DEFENDANT: Well, you must -- you must see that  
5 there is a pattern here; in Hollywood, in -- in -- in --

6 THE COURT: I don't see patterns and I don't see  
7 things; I see cases and I look at cases.

8 THE DEFENDANT: Okay

9 THE COURT: And I look at cases objectively, because  
10 I can. I'm not going to get into a political discussion with  
11 you as to what pattern I see. I go to work, I have files, I  
12 resolve the files in front of me.

13 Based on your statements, I just think it's important  
14 for me to disclose the fact that I am Jewish.

15 So Mr. Blair, questions for Mr. Misch?

16 MR. BLAIR: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BLAIR:

19 Q. Would you describe yourself as a white supremacist?

20 A. No.

21 Q. When you talk about white power, so you -- you feel  
22 white people are superior than other races, correct?

23 A. I never said the phrase or used the -- that  
24 terminology, "white power," no.

25 Q. Okay. Let me ask you this, you -- you send out

1 tweets and you target others that have different views than  
2 you, correct?

3 A. Yes.

4 Q. Okay. And the tweets that you tagged my client, you  
5 wanted her to see?

6 A. Yes.

7 Q. You wanted her to see what's been marked as Exhibit  
8 1?

9 A. Yes.

10 Q. And you intended to do that to make her feel a  
11 certain way?

12 A. Yes.

13 Q. So you intentionally wanted her to feel  
14 uncomfortable?

15 A. Yes.

16 Q. And would you agree with me, somebody feeling  
17 uncomfortable may feel afraid of somebody?

18 A. No.

19 Q. In the -- what's been marked as Exhibit 2, there's  
20 a -- there's a Nazi sign.

21 A. A swastika.

22 Q. A swastika.

23 A. Yes.

24 Q. Would you -- would you agree that that's a pretty  
25 significant symbol?

1           A. That wasn't in the original tweet that you're  
2 referring to.

3           Q. Let me show you, it's what's been marked as Number 2.

4           A. But -- yes, but it was not --

5           MR. BLAIR: Your Honor, may I give it to him just to  
6 show that to him?

7           THE COURT: Go ahead.

8 BY MR. BLAIR:

9           Q. Right there.

10          A. That's correct, but that wasn't in the tweet that got  
11 all the media publicity and -- and -- and -- and all of that.

12          Q. But I'm asking about this tweet. This tweet has the  
13 swastika in it, right?

14          A. That's -- yeah, that's right.

15          Q. And would you agree that that can create a lot of  
16 fear when people --

17          A. I could have -- and a sickle should -- should really  
18 be the symbol that puts out this fear, because they murdered  
19 tens of millions of people, before and after the Nazi regime.

20          THE COURT: Sickle meaning the Soviets?

21          THE DEFENDANT: That's -- that's correct, sixty plus  
22 million people wiped out, gone, from -- from the Bolsheviks  
23 and the Reds, Communists, from the nineteen teens up to the -  
24 - the -- I mean, to -- you know, you can argue and say that  
25 the post-war period for the -- until the '60s or '50s.

1 Q. Do you have a Twitter account now?

2 A. Yes.

3 Q. Is it active?

4 A. Well, not this one.

5 Q. Is this one shut down?

6 A. Yes.

7 Q. Okay. Who shut it down?

8 A. Twitter.

9 Q. Okay. And they shut it down based on the content of  
10 the posts, you said?

11 A. Because it makes people feel uncomfortable, yes.

12 Q. So between August and the time that that Twitter  
13 account was shut down, you tagged my client on more than two  
14 occasions about some of the posts that you were putting out  
15 there, correct?

16 A. Yes, because she retweeted me and -- and in a -- and  
17 because of that, there was a whole, like you stated, a whole  
18 Twitter war over this. She brought it upon herself after the  
19 initial one.

20 Q. So you -- you didn't know who she was, you tweet  
21 something about her and she responds and puts it out there so  
22 other people see how you're treating her, right?

23 A. That's what she did, yes.

24 Q. And then you continued to tag her every time you put  
25 something out there?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 MR. BLAIR: That's all I have, Your Honor.

5 THE COURT: Anything else you'd like to say, Mr.

6 Misch?

7 THE DEFENDANT: Sure. I don't know if it has any  
8 bearing, but I'm Iraq War veteran of the army -- the -- served  
9 from '01 to '03, honorably, and came back and I -- I -- I  
10 don't like the way things are going in my country.

11 And that's -- oh, and then -- and then at the end,  
12 she attributes these crimes to me that I didn't commit. I  
13 mean, that's -- that's -- that's -- that's -- I mean, she has  
14 no proof of that whatsoever, and she's just going to put this  
15 out there at the end of the statement, saying -- saying -- you  
16 know, accusing me of breaking into -- of her house and -- and  
17 slipping something under a door of the --

18 THE COURT: That hasn't been in any of the evidence  
19 or the testimony today. Today we have been focusing on the --  
20 on the events in the tweets, not on any allegations regarding  
21 activity that you --

22 THE DEFENDANT: No, but it's in the report.

23 THE COURT: But that's -- I'm not -- what happens in  
24 the affidavit is of no consequence today. My ruling would be  
25 based on what's presented as evidence in the court.

1 THE DEFENDANT: Okay.

2 THE COURT: And that has not been introduced or would  
3 be considered as part of the --

4 THE DEFENDANT: Well, she did, it was mentioned  
5 before I spoke.

6 THE COURT: About breaking into her house?

7 THE DEFENDANT: Yeah.

8 THE COURT: I think it was breaking into the -- I  
9 thought --

10 THE DEFENDANT: No --

11 THE COURT: But it wasn't attributed to you.

12 THE DEFENDANT: She stated that her house was broken  
13 into and that there was hate propaganda put -- slipped under  
14 the Democratic headquarter's door. She mentioned that during  
15 this whole thing, yeah.

16 THE COURT: But she didn't say it was attributed to  
17 you, she just said it happened.

18 THE DEFENDANT: Yeah, but she implied that,  
19 basically. It's implicit in her --

20 THE COURT: I'm not considering that as part of  
21 the -- this case.

22 THE DEFENDANT: Okay.

23 Okay, so --

24 THE COURT: I'm not going to draw any conclusions  
25 from it, there's no evidence, there's no -- that --

1 speculation and conjecture really are not part of the system.  
2 But yet again, I'm brewing on what's in front of me.

3 THE DEFENDANT: So that's my main argument. If it --  
4 if it -- if it -- if it -- if it -- if she felt as threatened  
5 as she did, she should have done everything possible to --  
6 to -- to not be exposed to my "hate." Now, her case would be  
7 a lot stronger if -- if she blocked me, I made another account  
8 and started, like, you know, tweeting at her with this other  
9 account, which isn't what happened. So the whole thing is  
10 absurd, baseless and -- and -- you know, there is no case  
11 here, Your Honor. I mean, that's just my opinion but, you  
12 know, you're the -- you're the judge.

13 And I went to go vote, I went to go vote, that's my  
14 thing. I went to go vote. I didn't -- I had no idea she was  
15 going to be there, I honestly -- I -- I'm telling you honestly  
16 and you can ask anyone, I mean, you know, nobody is here, but  
17 I'm honest to a fault, people would say. I -- I had no idea  
18 she was going to be there at the -- at the polling place.  
19 And -- and even if I did know that, which I didn't, I was just  
20 going to vote, that was a big day for me, okay. You know, I -  
21 - I'm -- I was pro Trump and -- and this was, you know, this  
22 was my big thing for quite a while, you know?

23 THE COURT: Obviously, that's well within your  
24 rights, be pro whatever you wish to be. And it's questions  
25 where -- when you become anti is where it is -- that's where

1 it potentially is more difficult.

2 THE DEFENDANT: Sure, okay.

3 THE COURT: Nobody is criticizing you for being --  
4 for any of your political views or beliefs. People may  
5 disagree with them, but that's not what we're here for.

6 THE DEFENDANT: Well, I mentioned that because --  
7 because in the report it seems like I just went there just to  
8 go there. She said -- she writes here that on Election Day I  
9 came to the fire house and stared at her -- yeah, I -- I went  
10 there to vote, I didn't just go there. She said I -- she  
11 said -- you know, she said that I came -- I went there. She  
12 didn't say -- you know, she didn't say -- she said November  
13 8th, well, what's November 8th, it's Election Day, it's when,  
14 you know, people have to go to that particular location to go  
15 vote, but she didn't say that in there. She -- she -- she --  
16 you know, she kind of makes it seem like -- like I was just  
17 going because -- you know, maybe -- maybe I knew that she was  
18 going to be there, which I didn't. But even if I did, it's  
19 irrelevant because I -- that is my civic, like, a duty and  
20 right to cast my vote in the presidential election.

21 THE COURT: I completely agree and you absolutely  
22 have that and nobody would restrict you of that.

23 THE DEFENDANT: And I did not stare at her, I glanced  
24 at her and I looked away. And I had a few sunflower seeds, I  
25 remember, and then I went inside and it was, like, a matter of

1 like half of a minute that this whole thing took -- and I --  
2 well, not even, like twenty seconds. And -- and -- I barely  
3 looked at her, barely. Made eye contact maybe just for a  
4 slight little moment, and then I looked away because I didn't  
5 want to have anything to do with her at that point.

6 THE COURT: Okay. In this matter I can make the  
7 following findings. Ms. Morris filed an action for an order  
8 against stalking against Mr. Misch based on behavior that  
9 started in August of 2016, and ultimately, based on the  
10 allegations of the plaintiff, resulted in something that  
11 occurred in -- on November 8th, Election Day of 2016.

12 The plaintiff has testified as to receiving certain  
13 social media responses, they were part of where she was  
14 getting copied beginning in August. The defendant has  
15 testified as to his -- his constitutionally protected  
16 political views.

17 In order for the plaintiff to prevail in obtaining an  
18 order of protection, the plaintiff bares a burden of proof by  
19 a preponderance of the evidence that on more than one occasion  
20 that the -- that the defendant either followed, monitored,  
21 surveyed, threatened or made threats against or interfered  
22 with property of the defendant. This is -- there hasn't been  
23 any evidence of any following. There hasn't been the evidence  
24 involving monitoring surveillance, and Mr. Misch indicates  
25 that there is nothing threatening regarding the information

1 that was submitted through the use of Twitter accounts.

2           And stalking means engaging purposely or in a course  
3 of conduct directed at a specific person. The person engaged  
4 in the conduct knows -- should know that it would cause a  
5 reasonable person to fear for his or her safety or safety of a  
6 family member or suffer substantial emotional distress by fear  
7 of unlawful sexual conduct -- which doesn't apply in this case  
8 -- unlawful restraint -- which really doesn't apply in this  
9 case -- and the -- and also has under the -- in the statute  
10 they -- significant modification of a person's actions or  
11 routines including moving from an established residence and  
12 the like, which there has been some testimony about, not  
13 moving from a residence, but moving in their behavior.

14           The evidence in the case involves introduction of two  
15 tweets. One, which, based on the circumstances where Mr.  
16 Misch has indicated that he is part of a pro-white political  
17 view and that -- the fact that Ms. Morris -- and for the  
18 record, Ms. Morris is African American, was elected to the  
19 Vermont State Legislature -- that the -- in his mind that the  
20 demographic component of this, if based solely on people  
21 voting as to the race of a candidate versus the qualifications  
22 of the candidate is what -- I -- is that fair to say, what you  
23 were -- you were indicating? That -- that the election was  
24 based on -- you questioned the fact of her election because of  
25 her race and not because of her qualifications?

1           THE DEFENDANT: That's correct. It wasn't about  
2 merit, it was about white and guilt, Your Honor.

3           THE COURT: So these text messages were sent, the  
4 first one, which Mr. Misch indicated on the record, stating  
5 the language as it should be spoken -- it's hard to get that  
6 same tone from just reading it, because it was a lot of  
7 pronunciation --

8           THE DEFENDANT: Um-hum.

9           THE COURT: A lot of -- the way it's spoken --

10          THE DEFENDANT: Vernacular, yeah.

11          THE COURT: Vernacular, thank you. And with a  
12 picture. And then the second one, again, involves just a  
13 comment, we don't have the full text but it's something about  
14 being supported by Senator Sanders.

15                 The next one was in response to somebody by a news  
16 station where there is a -- information about -- which would  
17 be consistent with a pro-white viewpoint, not directly at Ms.  
18 Morris but in regard to certainly the views.

19                 So by the preponderance standard, which is the  
20 standard on a civil stalking order, the plaintiff has shown  
21 that the texts unto themselves, without getting into what  
22 occurred at the election site, without getting into any of  
23 these other things, that this information clearly would put  
24 someone in substantial emotional distress by -- because of the  
25 nature of the words used, the tone of the words, the symbols

1 that were utilized and the like. That the -- that this does  
2 cross the line on -- from speech to something that would cause  
3 emotional distress to a person of color in the state of  
4 Vermont.

5           You indicated, Mr. Misch, that it's something that  
6 would be -- that you think is -- the mathematics of it don't  
7 actually work, but on the same token it's -- it could be  
8 looked at the other way is that somebody who receives  
9 information such as this, where there is not a strong African  
10 American community, would feel more targeted.

11           And based on that information, I'm going to grant the  
12 request, I'm going to issue the order. I'll find that the --  
13 Mr. Blair, I think it's a threatening component of the  
14 stalking, not a -- not a monitoring or following or surveyed.  
15 I think those are different areas. I think the texts  
16 themselves --

17           MR. BLAIR: I think they kind of blend how it  
18 happened, you know, the tagging is a thing where you were  
19 sending something with -- normally like pointing a gun but for  
20 that. But I think the Court is right, it is a threatening  
21 piece, as well, and probably that's the stronger piece.

22           THE COURT: And I'll grant the request and find that  
23 on more than one occasion the defendant purposely made threats  
24 that would be considered stalking under the statute. And that  
25 this would make someone fear of their safety and suffer

1 substantial emotional distress. So I'm going to order that  
2 the defendant stay 300 -- I'm going to order that the  
3 defendant stay away from Ms. Morris --

4 And Ms. Morris, your son's name?

5 THE PLAINTIFF: [REDACTED]

6 THE COURT: [REDACTED]?

7 THE PLAINTIFF: [REDACTED], last name [REDACTED], [REDACTED]  
8 [REDACTED]

9 THE COURT: And which means not talk to, telephone,  
10 text, mail, email, or use any other electronic communication  
11 to make contact, and do not post to them, about them on social  
12 media and do not -- and do not ask other people to give them  
13 messages. I'm also going to order that the defendant remain  
14 300 feet away from Ms. Morris, Ms. Morris's son, Ms. Morris's  
15 home, her child's school -- I don't know if you want to  
16 disclose that or not?

17 THE PLAINTIFF: I prefer not to.

18 THE COURT: I'm just going -- to ensure that he's 300  
19 feet away from your child, I'd have to put the name of the  
20 school in if it's put to include that and so --

21 THE PLAINTIFF: I prefer if I don't, law enforcement  
22 is aware.

23 THE COURT: So 300 feet away from him individually.

24 This order will remain in effect for one year until  
25 December 1st, 2017.

1           Mr. Misch, the court officer is going to give you a  
2 copy of this so we are going to serve you with a copy before  
3 you can leave.

4           Mr. Blair, Ms. Morris, you can -- you can leave now.  
5 We can mail you a copy or you can get a copy downstairs but  
6 you don't need to wait until we give you the --

7           THE DEFENDANT: I have a question, Your Honor.

8           THE COURT: The sheriff is going to have to serve you  
9 with a copy of the final order.

10          THE DEFENDANT: I just have one question.

11          THE COURT: Sure.

12          THE DEFENDANT: I don't know where she lives, so I  
13 could accidentally -- I don't -- you know, I could -- I could  
14 walk past and not knowing that, like, that's her house and  
15 then -- and then -- you know, she could say that I am  
16 violating this. So that's -- I think that's kind of risky for  
17 me, you know, not knowing where she lives and --

18          THE COURT: I'm not -- I'm not going to disclose her  
19 address, you live in a small community, there is going to be  
20 inadvertent contact --

21          THE DEFENDANT: Okay.

22          THE COURT: It's -- it's an unfortunate reality of  
23 living in a town where you can be at the supermarket and she  
24 could be there, you could be walking down the street and she  
25 could be walking the other direction; those things do occur.

1 Inadvertent contact is allowed but specific contact is not  
2 allowed. So if you were to know where she lives and you're  
3 within 300 feet of her house and you are standing there,  
4 parked there, like that, potentially it could be a  
5 violation --

6 THE DEFENDANT: Okay.

7 THE COURT: -- of the order.

8 THE DEFENDANT: What if I was, like, walking my dog  
9 and I didn't know that she lived there and I walked past her  
10 house, didn't stop, you know. Like, I'm -- I'm concerned  
11 about these things, because she could just make these stories  
12 or claims and, you know, because she's scared and she's, you  
13 know, whatever, and so, I don't want -- I mean, I don't want -  
14 - I want to cover my -- my rear here, you know, you know what  
15 I mean, Your Honor? So -- but I guess I'll be okay.

16 THE COURT: Well, if you're walking your dog and  
17 you're walking your dog down the street and you're not  
18 stopping in front of someone's home --

19 THE DEFENDANT: Yeah.

20 THE COURT: -- intentionally with the purpose of that  
21 then -- again, those things do happen, but -- and that's --  
22 it's the intent is where the problem would arise. So if you  
23 were to go and be in front of her home, stop in front of her  
24 home -- again, inadvertent contact we're never going to be  
25 able to completely eliminate.

1 THE DEFENDANT: Okay.

2 THE COURT: You live in a small community.

3 THE DEFENDANT: Yes.

4 THE COURT: But it's looking for her, finding her,  
5 being near her, being near her son, is where it would be a  
6 potential violation.

7 THE DEFENDANT: But also the question is, as a -- as  
8 a elected official, now I can't even, you know, voice my  
9 opinions about any of these topics. Can I write a letter to  
10 the Banner maybe, you know, about her, is that against  
11 this -- you know what I mean, it's -- it's -- it's -- it's  
12 kind of silly. But maybe -- can I do that? Is that allowed?

13 THE COURT: I can't give you any legal advice as to  
14 what you can and can't do. I mean, the terms of the order are  
15 fairly clear, and it's -- it's not post about them on social  
16 media and making other people give them messages. Again, I  
17 can't give you any specific legal advice as to where the First  
18 Amendment takes over. Obviously, you're entitled to your --  
19 you're entitled to your opinion involving certain things, but  
20 there is a line.

21 THE DEFENDANT: Okay.

22 THE COURT: If you have any questions on that, you  
23 can either -- you can read the terms of the order, you can  
24 discuss it with someone, you can ask questions, you can  
25 research it on your own, but I'm not allowed to actually --

1 THE DEFENDANT: Okay.

2 THE COURT: -- say what you can and can't do other  
3 than the terms of the order.

4 THE DEFENDANT: All right.

5 THE COURT: Okay.

6 (Proceedings concluded at 10:12 a.m.)

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C E R T I F I C A T I O N

I, Maital George, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

*Maital George*

February 2, 2017

\_\_\_\_\_  
MAITAL GEORGE

\_\_\_\_\_  
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