

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

KEITH RANIERE, CLARE BRONFMAN,
ALLISON MACK, KATHY RUSSELL,
LAUREN SALZMAN, and NANCY SALZMAN,

Defendants.

Case No. 1:18 Cr. 00204-NGG

FILED UNDER SEAL

ORAL ARGUMENT REQUESTED

NOTICE OF MOTION

Submitted on January 9, 2019

PLEASE TAKE NOTICE that the undersigned attorney, Marc Agnifilo, for the Defendant, KEITH RANIERE, will move the Honorable Nicholas G. Garaufis, United States District Judge for the Eastern District of New York, for an order granting the following relief pursuant to Rule 12 of the Federal Rules of Criminal Procedure:

1. To suppress items searched and seized from Raniere's Yahoo! email account; and
2. To Order a hearing regarding the Government reckless procuring of a search warrant, pursuant to Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978).

These motions are based on this Notice of Motion, the accompanying Affirmation of Marc Agnifilo, and the accompanying Memorandum of Law in Support of Raniere's Motion. Raniere respectfully requests oral argument on this Motion.

Dated: January 9, 2019
New York, NY

Respectfully submitted,

/s/

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UNITED STATES DISTRICT COURT
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**AFFIRMATION IN SUPPORT OF
RANIERE'S MOTION TO
SUPPRESS**

Submitted on January 9, 2019

1. I am of counsel to the law firm of Brafman & Associates, P.C., am licensed to practice law in the State of New York and a member of the bar of this Court. As counsel for the defendant, Keith Raniere, I make this declaration in support of Raniere's Motion to Suppress Evidence and Motion for a Hearing Pursuant to Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978).

2. This declaration is made upon information and belief, the sources of which are discovery material provided by the United States Attorney's Office for the Eastern District of New York ("EDNY"), witness interviews and other investigative efforts undertaken by the defense to date, conversations with numerous individuals and other documents and materials comprising counsel's file in this matter.

BACKGROUND

3. The Government has sworn to and executed three search warrants in the past year-and-a-half to search and seize Raniere's email account. Since December of 2018, the Government has also executed warrants on Allison Mack's iCloud account, Lauren Salzman's iCloud account, Clare Bronfman's gmail account, and the accounts of two of Raniere's long-time partners—one of

whom was dead at the time the warrants were signed and executed. In March 2018, the day of Raniere's arrest, the FBI also executed search warrants on 3 Oregon Trail (Nancy Salzman's home) and 8 Hale Drive in Halfmoon, a small community outside of Albany, New York.

4. As set forth below, the affidavits in support of these warrants suffer from deficiencies, misrepresentations and omissions and are materially misleading as to significant facts.

5. As to the first warrant, signed by Honorable Marilyn D. Go on December 3, 2017, this warrant sought to search the Apple IDs associated with Keith Raniere, Lauren Salzman and Allison Mack. (Exhibit 1, "the December Affidavit.")

6. The second warrant, signed by the Honorable Cheryl L. Pollak on January 18, 2018 sought to search and seize Raniere's yahoo email account. (Exhibit 2, "the January Warrant.")

7. Finally, on October 15, 2018, yet another affidavit was submitted in support of two warrants: (1) authorizing further searches and seizures of the information already obtained from Yahoo pursuant to the January Warrant, and (2) requiring Yahoo to disclose further information regarding Raniere's email account for the time period of May 26, 2008, when the account was created, through March 27, 2018, when Raniere was arrested. (Exhibit 3, "the October Warrant" ¶ 33.)

8. Upon my initial review of the vast discovery in the case, including the discovery that the EDNY had in their possession at the time of each warrant (yet only made available to defendants on December 7, 2018), the warrant affidavits contained material misstatements and omissions, necessitating a hearing under Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978).

A. The December 2017 Warrant

9. The December 2017 Warrant sought to establish probable cause to show that the Apple IDs contained evidence of “violation of 18 U.S.C. 875 (interstate threats to injure property or reputation), 18 U.S.C. 1591 (sex trafficking by force, fraud or coercion), 18 U.S.C. 1589 (forced labor) and 18 U.S.C. 1962 (engaging in a pattern of racketeering activity). (Ex. 1 ¶ 4.) The affidavit focuses on the allegations regarding the sorority—sometimes called “DOS” or “The Vow.” (*Id.* ¶ 1.) In an attempt to connect DOS to Nxivm, which is described as a ““professional business providing educational tools, coaching and trainings to corporations and people from all walks of life,” (*id.* ¶ 2), the affidavit refers to the sorority as a “secret society within the organization Nxivm.” (*Id.* ¶ 1.) The affidavit indicates that the agent has spoken to “former Nxians” who state that “participants are encouraged to keep attending classes and to recruit others into the organization,” (*id.* ¶ 3), and that participants were “forced to take jobs working for the organization in order to earn money to pay tuition” (*id.*).

10. In an attempt to characterize Nxivm as a “cult” and a “multilevel marketing scheme” (neither of which has been ever charged as criminal conduct in this case), the affidavit described Nxivm as a vexatious litigation machine that has “filed numerous lawsuits against critics.” (*Id.* ¶ 6.) Invoking press reports as a basis for a search warrant, the affidavit further states that “articles in Forbes, the Albany Times Union and Vanity Fair asked whether Nxivm was a cult. Nxivm and Ranieri have filed numerous lawsuits against critics, including journalists.” (*Id.*) Here, the affidavit materially omitted that the journalists from both the Albany Times Union and Vanity Fair hacked into the Nxivm servers to obtain client lists and non-public, proprietary information. By stating that Nxivm brings frivolous, vexatious litigation against “critics” without candidly stating that the “critics” were actually criminals who committed the crime of computer hacking,

the affidavit is materially misleading and false. The Government clearly knew that several “critics” were implicated in a criminal investigation by the Albany District Attorney and that several “critics” had been specifically named during the guilty plea allocution of John Tighe. (Ex. 4: Dkt. 116, Motion to Seal at Ex. 1: “I was told through Joe O’Hara that Toni Folet or Natale had access to it and I was told vaguely by Joe O’Hara that others did without being named, but when I asked him about Jim Odatto he said he had access to the same information I did without specifically saying he had access to the passwords.”) For the Government to conceal from the Court the existence of the criminal investigation and the guilty plea renders this factual assertion fundamentally false and misleading.

11. The Government also knew that once the widespread computer hacking was exposed, through multiple public filings, the Albany Times Union put James Odatto, a journalist who conspired with others to commit this criminal act, on leave. He has not returned to the newspaper in the six years since these allegations came to light. In addition, as noted above and in prior filings in this case, a second blogger pleaded guilty to hacking into Nxivm’s computer system, a fact that was also specifically omitted from the affidavit.

12. The nature of this omission was set forth in Raniere’s Motion to Seal (Ex. 4), which states in relevant part:

Over the last twenty years, people associated with Executive Success Programs (“ESP”) and NXIVM have been the targets of threats, computer-hacking and blatant false statements on websites and other media specifically to damage their reputations, businesses and lives.

(Id. at 2.) Raniere specifically addressed the allegations that Nxivm is vexatious in lawsuits against others and described the depths of the criminal conduct that journalists engaged in:

In addition to Parlato, a journalist from the Albany Times-Union, a former NXIVM consultant (who later went to prison in Texas for an unrelated conviction), and others, as detailed below, have been involved in misappropriating and printing

stolen, confidential, personal information hacked and misappropriated from NXIVM's private computer files. These files contain *personal information* about people who sign up for ESP/NXIVM courses. This information is now in the hands of a federally indicted defendant (Parlato), journalists for a widely-read newspaper, and others. Despite the prosecution, conviction and incarceration of a member of a former Saratoga anti-NXIVM blogger who hacked NXIVM, the Times-Union and other "publications" remain in possession of stolen, confidential NXIVM information.

(Id. at 6.)

Ranieri explained that due to Odato's criminal conduct, he was released from the newspaper:

As for the Times-Union reporter, Odato, he was released from the paper in light of the allegations of his knowing complicity in the computer trespass of NXIVM's computer system and in causing stolen, secret information to be repeatedly published by the Times-Union. Following Tighe's theft of NXIVM information, Odato went on to write several articles based on the stolen information. Indeed, on October 8, 2007, just six days after an October 2, 2007 illegal breach of the NXIVM computer system traced to a Times-Union IP address, Odato published an article about NXIVM in the Albany Times Union in which he admitted being in possession of the NXIVM client list.

(Id. at 8.)

13. Although it is true that Nxivm did bring suit against these journalists and others, these journalists and other conspirators committed criminal conduct against the company, that amounted to stealing and printing Nxivm's client lists. The Government knew the truth at the time: that a group of conspirators agreed to commit the crime of computer trespass, that they illegally gained access to the confidential server of Nxivm, that they accessed confidential, proprietary, valuable information and that they stole this information as part of a demonstrated plot resulting in a criminal conviction. For the affidavit to characterize a convicted criminal and named co-conspirators as "critics" of Nxivm and for the affidavit to neglect to mention the guilty plea and the fact of a widespread criminal investigation makes the affidavit and the information in it

materially false and misleading. Unfortunately, the Court did not know any of this because the Government concealed it.

14. To continue the narrative that Nxivm retaliates against perceived critics with litigation, the affidavit also refers to alleged retaliation after many Nxians left the organization: “[s]ince defecting, several DOS victims have received ‘cease and desist’ letters from a Mexican attorney, and Clare Bronfman filed a criminal complaint against one victim in Canada.” (Ex. 1 ¶ 24.)

15. Once again, the affidavit materially omits that that the DOS “victim” (whose name is Sarah Edmondson) stole and misappropriated Nxivm corporate documents upon leaving Nxivm. This is information that the Government had in their possession at the time of this affidavit, as it was obtained from the Canadian authorities when their investigation began. (See NXIVM00255121 - NXIVM00255124.)

16. In Raniere’s Motion to Seal, he expanded on Edmondson’s criminal conduct:

Between June 4 and June 8, 2017, NXIVM administrators discovered that their systems were being accessed in Canada and that data in the NXIVM servers were being deleted and manipulated. Upon further investigation, the undersigned counsel has learned that three accounts logged in and accessed the NXIVM servers: the accounts of J.O., Jennifer Kobelt and Sarah Edmondson. Edmondson was a former high-ranking NXIVM member, recruiter and ESP Vancouver center co-owner. At the end of May 2017, Edmondson resigned from NXIVM, telling her friends within the community that she wanted to focus on her family and not lead the ESP Vancouver Center anymore. Her assistant, Jennifer Kobelt, was also a long-time client of NXIVM’s and an assistant to Mark Vicente, another co-owner of the ESP Vancouver center who had recently resigned.

While Edmondson, Kobelt, and J.O. were previously authorized to legitimately access the system (prior to their resignation), suddenly their login credentials were used *58 times* over the course of five days. Those same accounts then deleted data, stole ESP student profiles and documentation and cancelled over \$100,000 worth of credit card payments. This amounts to intentional criminal conduct where the names, financial data and other identity information were unlawfully accessed and misappropriated.

Specifically, on June 4th, Kobelt and others' accounts logged into the NXIVM system and changed their profiles (i.e. names, *but not passwords*) to mask the identities of who was logging into the system. The accounts continued to be used. For example, the account linked to J.O. logged into the system and viewed enrollment history information. The account linked to Sarah Edmondson logged into the system the same day and viewed a salesperson report. On June 5th, the account linked to J.O. again logged into the system and viewed enrollment history. Additionally, the account linked to Kobelt repeatedly logged into the system over those five days and cancelled dozens of payments from NXIVM clients. Kobelt's account also deleted at least 13 files from an area on the server designated to the clients that Vicente enrolled. Each of these files contained numerous NXIVM contracts with client information.

This theft of client files gave those accessing NXIVM's servers access to confidential data including client lists, contact information and the intellectual property of the company. It is therefore not surprising that in counsel's investigation of this case, we have discovered that Edmondson, together with others including Vicente were able to contact nearly every NXIVM client and harass them through calls, Telegram and WhatsApp messages after this date—messages that continue to the present.

(Ex. 4: Dkt. 116, Motion to Seal at 8-9.)

17. Yet, the Government materially omits that the reason for filing this criminal complaint due to the theft and misappropriation of these corporate records. Instead, it portrays Edmondson as a victim who has not committed any wrongdoing.

18. The affidavit also falsely stated that Raniere evaded law enforcement, specifically that he fled to Mexico in response to a New York Times article. The affidavit states, “[i]n or around November 2016, several weeks after the New York Times broke a story on DOS, and days after the FBI began interviewing witnesses, Raniere flew to Mexico with Clare Bronfman.”¹ (Ex. 1 ¶ 23.)

¹ The Government also repeated this in the October affidavit—after Raniere set the record straight—stating that they had probable cause to search the account because “[a]ccording to travel records, Raniere's departure from the United States coincided with the beginning of the FBI's investigation into Raniere's criminal conduct.” (Ex. 3 ¶ 8.)

19. As we have already demonstrated to this Court over the course of several bail motions, this statement is false and completely misrepresents the facts. (See Dkt. 43; Dkt. 191; Dkt. 222, Court 12/5/19 Order Denying Bail at 7.) In recklessly misrepresenting the facts, the Government did not include the Custom and Border Patrol (CBP) records in its possession in any of the warrants. These records show that Raniere and Bronfman were in Mexico before The New York Times article, and then flew back to Albany after it was published. (See Ex. 5: Raniere CBP Records; Ex. 6: Bronfman CBP Records.) The Government knew the truth because it had the CPB records, yet it intentionally changed the timeline concerning the Times article to falsely convey to the Court that Raniere intentionally evaded law enforcement by fleeing the jurisdiction to Monterrey, Mexico because of the Times article when the Government knew he was there beforehand.

20. In Raniere's First Motion for Bond, we corrected this misrepresentation that the Government has repeated over the course of this case, stating in relevant part:

These statements are inaccurate and are belied by documents and records in the Government's possession which they have overlooked and not provided to the Court. Contrary to paragraph 34 of the Complaint, Raniere had flown out of the country prior to his trip to Mexico in November 2017, and the circumstances surrounding his trip to Mexico were not to evade law enforcement's investigation. In fact, Raniere and the mother of his child were seeking to comply with United States law. The goal was not to travel south to Mexico, but rather north to Canada.

* * * *

[D]ocumentary evidence conclusively shows that Raniere and the mother of his child left the United States on the precise date that her visa was to expire and that they did so to avoid any violation of United States law.

Additionally, their entry into Mexico was *prior to* the publication of The New York Times article "revealing the existence of DOS." Ironically, and contrary to the Government's flight theory due to The New York Times story, the day The New York Times published the article on DOS, Raniere flew back to Albany from Mexico. See Ex. 7: Raniere Flight to NY. His flight itinerary was sent to his Yahoo! email account, on which the Government has executed a search warrant, yet they have still represented in their multiple public filings that prior to November 2017,

he had not flown out of the country since 2015—ignoring that Raniere had traveled to Mexico weeks earlier. Raniere stayed in Albany until November 10, 2017 (several weeks after The New York Times published its article), to be at his former partner’s home on November 7, 2017, the one year anniversary of her passing.

(Dkt. 43, Motion for Bond at 12-13.)

21. The Government has never denied having the CBP records which show Raniere was in Mexico before the Times article. However, the Government nonetheless provided an account to the Court signing the warrant that Raniere went to Mexico because of the Times article when all the while it knew Raniere was in Mexico before the article was published.

22. Additionally, the affidavit states that Raniere is “now reported to be living in Monterrey, Mexico, where Nxivm maintains a center, with a member of his harem, who is a branded DOS slave.” (Ex. 1 ¶ 23.) The Government knew, at all points in their investigation, that the woman Raniere was living with—the mother of his child—was not a member of DOS and was not “branded.” Yet, the affidavit includes this language to make it appear as if Raniere was hiding with a “DOS victim.”

23. The affidavit next focuses on Lauren Salzman and what he claims to be her efforts to recruit women, including Jane Doe 3 and Jane Doe 4,² into DOS.

24. The affidavit states that “[b]oth Jane Doe 3 and Jane Doe 4 were seriously committed to Nxivm and felt that they were stalling in their Nxivm careers, so they saw DOS as a way to move up the Nxivm ranks.” (Ex. 1 ¶ 43.) This statement is obviously false. First, as the Government itself alleges, DOS is secret from Nxivm. (Id. ¶ 1.) The entire purpose of DOS and the collateral was to be secret from anyone else within Nxivm. By December 2017, the Government already spoke to members of Nxivm’s Executive Board, who would surely have told

² Counsel believes that Jane Doe 4 in the warrant affidavit is Sarah Edmondson. Jane Doe 4 in the Indictment is [REDACTED]

them that anyone's participation DOS did not factor into promotions on the Stripe Path. Second, both Jane Doe 3 and Jane Doe 4 were already high-ranking members. Jane Doe 3 was a founding member of Nxivm's San Francisco Center and high-level coach in Nxivm at the time she enrolled in DOS and was enrolled in Nxivm's University program at the time she enrolled in DOS. Jane Doe 4, Sarah Edmondson, was the owner of Nxivm's Vancouver Center and was "Sr. Proctor" on the Stripe Path—only one level below Counselor. Lauren Salzman was also Sr. Proctor. Out of only three people listed as "Counselor" on the Stripe Path, two are dead. Therefore, she was at the same level on the Stripe Path as Salzman.

25. After falsely stating the reasons for two of Lauren Salzman's members joining, the affidavit misrepresents Edmondson's knowledge of Raniere's participation in DOS. The affidavit discusses the branding ceremony, stating "[a]t one point, while Jane Doe 4 was filming, she noticed a text come in from "KAR" asking, in sum and substance, how the branding was going. At the time, Jane Doe 4 assumed "KAR" stood for Karen Unterriner, a high-ranking woman in Nxivm, who she assumed was Lauren Salzman's slave. Jane Doe 4 now believes the message was from Raniere, whose middle name is 'Alan.'" (Id. ¶ 48.) This statement is demonstrably false and the Agent knew it at the time of signing this affidavit, and every other affidavit.

26. On December 7, 2018, the EDNY turned over a memorandum written by blogger Frank Parlato and actress Catherine Oxenberg [REDACTED] [REDACTED] hat is titled "Criminal Activity involving KR 11-12." (Ex. 7: Parlato and Oxenberg Memorandum.) According to Catherine Oxenberg's recent book titled Captive, she states that she gave this memorandum to authorities in November of 2017. Moreover, the properties of the document indicate that Oxenberg last modified the document on November 11, 2017—three weeks before Agent Lever signed the affidavit.

27. In this memorandum, Parlato and Oxenberg, who have both admitted multiple times that they spoke with Edmondson prior to the Government opening an investigation, write:

At one point, Edmonson [sic] was asked to hold Lauren Salzman's cell phone. She saw a text come in from Keith asking how the girls were doing. She was previously unaware that he was involved with/guiding/ or monitoring the activities of DOS.

(Id. at p. 3.) Yet, just two weeks later, the Agent swears to an incredible and unbelievable statement that Edmondson supposedly believed that KAR actually stood for someone named "Karen." (Ex. 1 ¶ 48.)

28. This warrant did not turn up any iCloud account or Apple ID for Raniere because Raniere does not have an iPhone, has never used an iPhone, and does not have an Apple or iCloud account. Therefore, the FBI did not seize anything of Raniere's pursuant to this search warrant.

29. This warrant did find information from Lauren Salzman's account which included, according to the Government, emails "including about DOS and efforts to silence defectors. Most of Salzman's emails had been deleted but some were recovered." (Ex. 2 ¶ 47.)

B. The January 2018 Warrant

30. Nearly two months later, on January 18, 2018, another affidavit was submitted, this one in support of an application for a search warrant of "keithraniere@yahoo.com." (Ex. 2 ¶ 1.) Despite continuing the investigation and speaking to numerous witnesses in the intervening months, the affidavit is substantially similar to the December one. The first 24 paragraphs are identical. The Government did not change, correct or make complete any of the omissions or misstatements from the December Warrant. Instead, it continued to mislead the Court as to the facts underlying the warrant.

31. The January 2018 warrant affidavit contains an additional paragraph in which the agent relies on a blog "that covers Nxivm." The Affidavit stated "people present at the [January

Nxivm] meeting reported that Mack, Salzman, and another woman, Nikki Clyne, claimed to be the founders of DOS and further stated that Raniere was not involved in DOS.” (Id. ¶ 25.)

32. The Agent seems to be relying on a blog post named Lauren, Allison and Nicki take responsibility for DOS, at Coaches Summit; ‘Keith had nothing to do with it’, <https://frankreport.com/2018/01/16/lauren-allison-and-nicki-take-responsibility-for-dos-at-coaches-summit-keith-had-nothing-to-do-with-it/> (Jan. 16, 2018.). This is a striking addition to the affidavit because not only is it the only substantial change, but it also relies on a blog that is (1) written by a defendant indicted with 19 felonies in the Western District of New York, and (2) the writer was not actually at the meeting on which it reported. The post simply attributes its post to “sources.”³

33. This blogger is the same gentleman who claims to have law enforcement sources, including Richard Donoghue, the United States Attorney of the EDNY, himself. (See Ex. 4 at 6, 10-11.)

34. The affidavit conveys to the Court that this blog is something on which the Court should rely in concluding that probable cause exists for a search. However, the affidavit fails to inform the Court of the essential nature of the blog and its author: that the blogger is under

³ Notably, the affidavit in support of a warrant to search and seize Bronfman, Marianna Fernandez and Pamela Cafritz’s email accounts signed two months later also includes this language relying on this blog. (Ex. 8: March Affidavit ¶ 28.) It touts the reliability of the blog:

On or about February 18, 2018, citing “numerous” local sources, the blog reported that Raniere may have left Monterrey and may now be living in the coastal town of Puerto Vallarta, Mexico. The blog has previously had accurate information regarding Raniere’s whereabouts.

(Id. ¶ 32.)

indictment, that the blogger had been indicted for stealing \$1 million from Bronfman⁴ and that the professed goal of the blogger was to bring disrepute to Raniere. These are clearly material factors of which the Court signing the warrant should have been clearly told. However, the Government concealed these facts from the Court.

35. Moreover, the Government once again tries to characterize Raniere's attempt to "silence defectors" by relying on an email between Raniere and Salzman regarding Edmondson. This email states: "I understand that you do not want to be part of the sorority and that is your right. However, you gave your word that you would keep information about it confidential. You pledged things of importance as a guarantee that you would uphold confidentiality and you have violated this agreement...." (Ex. 2 ¶ 49.)

36. Here, the Government materially omits that Salzman and Raniere never engaged in any actions to "silence" Edmondson. To the contrary, Salzman let Edmondson freely leave the sorority without any so-called repercussions. Salzman never released Edmondson's collateral.

C. The October 2018 Warrant

37. The Government seized information from Raniere's account from January 1, 2015 through the present. (Ex. 2 ¶ I.) The Government then used that information to secure a broader warrant for the period of May 26, 2008 through March 26, 2018. (Ex. 3.)

38. On October 15, 2018, the agent swore to another affidavit in support of two warrants and opined that the January Warrant could provide the "necessary authority" to search the information already obtained for "evidence of [these] additional crimes," since the "[January]

⁴ Following the indictment in this case, the U.S. Attorney for the Western District of New York superseded the indictment against Parlato, removing the charges related to Bronfman but maintaining the eighteen other fraud charges against him. 15-cr-00149 (JJM) (WDNY) (Dkt. No. 118), Superseding Indictment filed 5/23/18.)

Warrant contemplates seizure of, among other things, ‘contraband, fruits, evidence and/or instrumentalities’ of 18 U.S.C. § 1962 (engaging in a pattern of racketeering activity),’ ‘[e]vidence related to the organizational structure and hierarchy of Nxivm,’ and attribution evidence.” (Id. ¶ 15 & n.1). However, the October 2018 warrant affidavit sought an additional warrant pertaining to that prior Yahoo response allegedly “out of an abundance of caution.” (Id. ¶ 15).

39. As part of the October Warrant, the Agent summarized some of the evidence in the alleged schemes, yet misrepresented and materially omitted certain facts.

40. Next, the Agent describes an apparent scheme to traffic Jane Doe 4 for labor and services and document servitude. The Agent states that “Jane Doe 4 was confined to a room as punishment after she developed romantic feelings for a man who was not Raniere.”⁵ (Id. ¶ 16(e).) “After nearly two years in the room, Jane Doe 4 left the room and, as threatened, she was driven by CW-1 to Mexico without any identification documents.” (Id.)

41. This is a highly misleading, incomplete and fundamentally false representation. The truth, as the Government knew when it submitted the affidavit, was that the woman was living with her family. The “room” was in the home of her family. She was driven to Mexico by her father. These are not mere details. These are critical facts that the Court should have known when it signed the warrant, facts that change the essential nature of the story being conveyed. Instead, the Government falsely painted a picture for the Court of what it contended to be Mexican-related trafficking. A number of indisputable facts that the Government obviously found decidedly inconvenient in its false narrative include (1) that the woman was living in her home, (2) that the room was in her home where she lived with her family and (3) that the woman’s father drove her to Mexico where she was from.

⁵ As stated, Jane Doe 4 in the Indictment is [REDACTED] not Sarah Edmondson.

42. The Government has moreover purposely misled this Court by including snippets of emails, out of context, to show that Raniere and Salzman were scheming to keep the girl in the room. In fact, the Government's own evidence show that Raniere was not forcing her to stay in the room. Raniere wrote to Salzman in November of 2010:

You do not want to buy into [Jane Doe 4's] tantrum or externalizations. Likewise you do not want to tell her what to do or how to be. You might try asking her the difference between being in the room for a day... or as long as she has. From a present time perspective there is no difference except suffering and entitlement....

(Ex. 9, Email Chain Between Lauren Salzman and Keith Raniere) (emphasis added.)

43. Next, the affidavit falsely states that co-conspirators prevented Jane Doe 4 from receiving her identification documents, when the emails clearly show that it was the family's decision not to provide these documents to her. The affidavit provides, "[o]nce in Mexico, according to Jane Doe 4 and as corroborated by emails I have reviewed, Jane Doe 4 repeatedly reached out to her family by email for help with her identification documents. Jane Doe 4's family, including her brother, were instructed by co-conspirators, including Lauren Salzman, not to send Jane Doe 4 documents and to demand Jane Doe 4 resume performing services for the members of the Enterprise in order to see her family again." (Id.)

44. In fact, the emails show just the opposite. (See Ex. 10: Feb. 26, 2012 Email.) Specifically, in an email from Jane Doe 4's father to his family, copying Lauren Salzman and [REDACTED], the father states the following facts which contradict the Government's theory:

- "Driving south while in San Antonio [Jane Doe 4] said she wanted to do things right and [REDACTED] asked about fully honesty." (Proving that the father drove her to Mexico, not just [REDACTED])
- "She had 10 weeks to do 3 tasks while in Mexico 1.-earning her living down there. I just gave her 1660 pesos cash, around 128 US and I paid the bus ticket to Merida. 2.- Deliver book reports results. 3.- Getting her USA visa. I would pay the fees but [Jane Doe 4] needed to do all the paperwork." (Contradicting that the book reports were "performing services for members of the Enterprise")

45. Moreover, emails show that rather than Salzman “instruct[ing]” Jane Doe 4’s brother to not send Jane Doe 4 her documents, Salzman was copied on emails where the family was discussing what to do with the identification documents. Specifically, in the attached email, where Jane Doe 4’s father forwards a chain between he and Jane Doe 4 to his family, copying Salzman and CW-1, her brother is the first to respond and say “if she wants those things (papers) she has to push and work for them...” (Ex. 11: Feb. 29, 2012 Email from Flofito.)

46. Accordingly, in the multiple warrants for Raniere’s accounts, the Government has repeatedly misrepresented, omitted and recklessly described the facts. In doing so, they have risen to the level articulated in Franks, which necessitates a hearing in this instance.

Dated: January 9, 2019
New York, NY

Respectfully submitted,

/s/

Marc Agnifilo, Esq.

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**KEITH RANIERE'S MOTION TO SUPPRESS EVIDENCE AND REQUEST A
HEARING PURSUANT TO FRANKS v. DELAWARE**

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PRELIMINARY STATEMENT

Defendant Keith Raniere respectfully submits this memorandum of law in support of his motion to suppress the fruits of the January and October warrants and for a hearing to determine the propriety of such warrants.¹

ARGUMENT

I. A Franks Hearing Is Required Because Vital Facts That Undermine the Entire Theory of the Prosecution’s Case Were Either Misrepresented, Concealed or Omitted from the Court

To sustain the critical protective role of search warrants, courts must ensure that the representations of affiants are made in good faith. See Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978). As demonstrated in the affirmation, at the time that all three search warrants were sought (from December 2017 to October 2018), the Government acted with reckless disregard for the truth concerning (1) information contrary to their allegation that Nxivm operated as a scheme that forced students into debt and retaliated against “perceived enemies” for decades; (2) Raniere’s stay in Mexico; (3) the true nature of DOS when inviting prospective members into the sorority; (4) the branding ceremony to mislead the Court as to Raniere’s involvement in the sorority; (5) its reliance on double hearsay statements from a federally indicted blogger; and (6) the totality of emails that directly contradict the document servitude charge—that *defendants* kept identifying documents from Jane Doe 4—rather than her own family. This information was concealed from

¹ We submit this Motion and accompanying Affirmation and exhibits under seal because of the Protective Order issued by Magistrate Judge Vera Scanlon. (See Dkt. 236, Limited Unsealing Order at 2: “[I]f Counsel or Record wish to attach or describe the contents of the warrants in any submission to the Court, including but not limited to any motion to suppress, such attachments and descriptions shall be filed under seal, with access limited to the Court, including but not limited to any motion to suppress, such attachments and descriptions shall be filed under seal with access limited to the Court, the Government, and the trial defendants and their counsel of record until further order of the Court.”) Although the Government has not been obeying the Protective Orders that they have insisted be put into place, we ask that their response be under seal as well. If it is not, we will make the appropriate motions to this Court for this Motion to be public.

each Court that signed the search warrants authorizing the Government to seize and search the following accounts and properties: Lauren Salzman’s account, Allison Mack’s account, Keith Raniere’s account, Clare Bronfman’s account, Marianna Fernandez’s account, Nancy Salzman’s residence and 8 Hale Drive in Halfmoon.

A. Legal Standard

On these claims, Raniere has certainly made the “necessary substantial preliminary showing that the warrants were based upon affidavits containing false statements made knowingly or intentionally or with reckless disregard for the truth.” Franks, 438 U.S. at 154. Under such circumstances, according to the Franks Court:

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant’s request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit’s false material set to one side, the affidavit’s remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Id. at 155-56; United States v. Coreas, 419 F.3d 151, 155 (2d Cir. 2005) (the district court must hold a hearing to determine if the misstatements or omissions were made intentionally or with reckless disregard and determine de novo whether after setting aside the falsehoods, the affidavit is sufficient to support a finding a probable cause). The same “reckless disregard” standard applies to material omissions from the affidavit. See United States v. Tomblin, 46 F.3d 1369, 1376 (5th Cir. 1995) (omissions can constitute improper government behavior).

The Franks rule is a well-seasoned safeguard against overzealous and improper activities by the Government. A properly informed, neutral and detached magistrate serves to protect against unjustifiable privacy invasions by interposing judicial impartiality into the critical probable cause

decision. This is an especially important safeguard to protect against the otherwise ex parte process that may be subject to abuse or overreaching by investigators and prosecutors. See, e.g., Johnson v. U.S., 333 U.S. 10, 14, 68 S. Ct. 367 (1948) (probable cause must be determined by a neutral and detached magistrate, and not by the officer engaged in the often competitive enterprise of ferreting out crime). “Because it is the magistrate who must determine independently whether there is probable cause, it would be an unthinkable imposition upon his authority if a warrant affidavit, revealed after the fact to contain a deliberate or reckless false statement, were to stand beyond impeachment.” Franks, 438 U.S. at 165.

B. The Affidavit Contains Fatal Reckless and Material Omissions

Here, the affidavits contain reckless and material omissions. The entire search and seizure of Raniere’s entire email account based on this information suggests an attempt to mislead the Court. First, the affidavit incorrectly, yet repeatedly misrepresents Nxivm as an organization by (1) describing it as a multi-level marketing scheme; and (2) asserting that it uses litigation as a retaliatory device. Specifically, the affidavit states that Nxivm was a “multi-level marketing scheme” that “forced students to take jobs for the company.” The Government knew at all times that Nxivm was a business that sold classes, paid commissions to those who signed new clients up for classes, and, as promised, was a self-help organization. By incorrectly and repeatedly stating that Nxivm was a “scheme” and a “cult,” the affidavit seeks to mislead the Court on the facts. The affidavit also incorrectly and repeatedly states that the company uses litigation to retaliate against critics in an attempt to silence them. In glaring omissions, the affidavit fails to ever state that the lawsuits had basis because of consistent criminal conduct by those “critics” and that many of Nxivm’s lawsuits prevailed. (See Agnifilo Affirmation (“Aff.”) ¶¶ 10-15.)

Second, the Government knowingly and repeatedly mischaracterized Raniere’s departure from the United States to Mexico to mislead the Court and make it appear that Raniere and Bronfman were hiding away in Mexico. The Government knew at all times that Raniere did not leave for Mexico in response to a New York Times article. Rather, the Government knew that he returned from Mexico on the day that the New York Times article was published. (See Agnifilo Aff. ¶¶ 18-21.)

Third, the Government has charged Raniere, Lauren Salzman and Allison Mack with misrepresenting the true nature of DOS when inviting prospective members into the sorority, yet the affidavit misrepresents to the Court the reasons that many women joined the sorority. For example, the affidavit states that Jane Doe 3 and Jane Doe 4 wanted to join to move up in Nxivm’s ranks. This fundamentally misrepresents the role of the “secret” sorority DOS, which does not have any connection to the Nxivm Stripe Path. It also misrepresents Jane Doe 3 and Jane Doe 4’s role in Nxivm—both as co-founders of Nxivm centers with vital roles in the company. (See Agnifilo Aff. ¶¶ 23-24.)

Fourth, the Government sensationalizes and misrepresents the “branding ceremony” of members of Lauren Salzman’s group of women. To try to show that none of the women knew of Raniere’s involvement in the sorority, the affidavit states that while Jane Doe 4 was filming the branding ceremony, she saw a text from “KAR” come in on Salzman’s phone and she assumed this was Karen Unterreiner. In reality, the Government was in possession of a memorandum that referred to Jane Doe 4’s statements that once she saw “KAR” on Salzman’s phone, she knew of Raniere’s involvement in the sorority. The affidavit’s blatant disregard for the truth on this topic goes to the heart of the allegations of fraud, coercion and deception. (See Agnifilo Aff. ¶¶ 25-27.)

Fifth, the Government relies on a blog in its affidavit to show probable cause. As this Court is well aware now, this blog pokes endless fun at Raniere and is dedicated to Raniere's demise. Even more astonishing is that this blog's creator and author is an indicted defendant in the Western District of New York. Although the Government maintains to this Court it has never spoken to the blog's author,² it somehow still finds him credible enough to cite in an affidavit to search and seize Raniere's account. (See Agnifilo Aff. ¶¶ 31-34.)

Finally, in the most recent warrant, the Government omits and misrepresents the allegations regarding "document servitude" in the Superseding Indictment. Despite evidence (text messages and emails) in their possession and the fact that Raniere continually points out the truth, the affidavit continues to paint a false picture regarding this woman's voluntary stay in her own bedroom and her return to Mexico. Moreover, it omits any mention of her family's effort to control their daughter, and instead places the blame at the feet of Raniere and Salzman. (See Agnifilo Aff. ¶¶ 40-45.)

Therefore, these statements show that the affidavit repeatedly misrepresented the truth and was made in reckless disregard of the true facts. The lack of information in the affidavit suggests reckless behavior on the Government's part and an attempt to repeatedly mislead the Court.

C. Without the Misrepresentations and Omissions, the Remaining Portions Do Not Establish Probable Cause

After purging the affidavit of the misrepresentations and omissions, the remaining portions lack sufficient information to rise to the level of establishing probable cause. The Government acts with reckless disregard for the truth for a substantial number of the alleged crimes (such as 18

² See 9/13/18 Transcript at 42-43: "I do just want to clarify, Mr. Agnifilo stated that he thought that Government leaks to this particular blogger was a farfetched idea. It is not just farfetched, it is false. The Government has said it is false.")

U.S.C. § 1592 (document servitude), 18 U.S.C. § (engaging in a pattern of racketeering activity), [REDACTED] which substantially taints the entirety of the affidavit as a whole. As a result, Raniere is entitled to a Franks hearing on the matter.

II. The Evidence Acquired Through the October 2018 Search Warrant Should Be Suppressed Because the Allegations Supporting the Warrant Were Obtained Through an Unconstitutional Search of Co-Defendant Clare Bronfman's Emails

In addition to suppressing the search warrants based on the Government's misrepresentations in their search warrant applications (see above), the evidence obtained based on the October 2018 search warrant must also be suppressed because the Government obtained that warrant by relying on information unconstitutionally obtained through a March 2018 search warrant of co-defendant Clare Bronfman's emails. Specifically, as part of Bronfman's motion to suppress, she argues that the March 2018 search warrant violated the Fourth Amendment because (1) it was overbroad; (2) it was insufficiently particular; and (3) the Government exceeded the scope of the warrant.

As part of the search warrant returns, the Government obtained certain emails between Ms. Bronfman and Raniere. The Government then used these emails as probable cause to obtain the October 2018 search warrant on Raniere's emails. (See, e.g., [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

To the extent these emails were obtained unconstitutionally (as argued by Bronfman), they should not serve as a basis for probable cause for the October 2018 warrant. Accordingly, should this Court grant Bronfman's motion to suppress the evidence obtained through the March 2018 search warrant of her email account, this Court should also suppress the evidence obtained through the October 2018 search warrant of Raniere's email account.

III. Keith Raniere Respectfully Adopts the Motions of His Codefendant Clare Bronfman To the Extent Not Inconsistent With the Instant Motions

We respectfully adopt all the arguments filed by co-defendant Clare Bronfman to suppress the evidence from the search warrants, including, but not limited to, her arguments that that the search warrants were (1) insufficiently particular and (2) that the evidence obtained from certain third-party searches should be suppressed.

CONCLUSION

For the foregoing reasons, the fruits from the search warrants should be suppressed, or in the least, an evidentiary hearing should be ordered under Franks v. Delaware.

Dated: January 9, 2019
New York, NY

Respectfully submitted,

/s/

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EXHIBIT 4

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August 28, 2018

BY HAND AND ECF

Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Keith Raniere, 18 Cr. 204 (NGG)

Dear Judge Garaufis:

We represent defendant Keith Raniere in the above-captioned case. Since Mr. Raniere's June 12, 2018 bond hearing, several potential bond co-signers have come forward indicating their willingness to post property or cash in support of a bond for Mr. Raniere. However, for the reasons set forth below, these individuals have a reasonable and demonstrated concern that by participating in this process, they will be subject to reprisal and potentially be the victims of unlawful and criminal conduct. Accordingly, in anticipation of a release application, we make two requests: (1) the sealing of potential co-signers' names and (2) a highly limited courtroom closure in where the co-signers can be fully vetted by the government and the Court in a non-public setting.

Procedural History

Mr. Raniere previously moved for release on bail pending trial on June 5, 2018 (Dkt. No. 43, Deft. Mot. for Release; Dkt. 45, Deft. Reply to Govt Response), which the government opposed (Dkt. No. 44, Govt Response). At a hearing on June 12, 2018, the Court noted that Mr. Raniere's proposed bail conditions were deficient because "there's no moral suasion placed upon the defendant to adhere to the terms of the bail because...he has nothing to lose." (6/12/18 Transcript at 14: ll. 10-12.) Mr. Raniere's proposed bail package did not enable the Court to "question the surety" and ask "[a]re you going to be able to cast moral suasion on this individual to guarantee that this person is going to come back?" (*Id.* at 23: ll. 10-15). This Court denied Mr. Raniere's motion

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without prejudice writing that Mr. Raniere “poses a serious risk of flight if he is released pending bail” and that the proposed conditions do not mitigate the court’s concerns. (Dkt. No. 46, Memorandum and Order filed 6/20/18 at pp. 12-13.) In short, “[w]ithout anything to offer as collateral, Defendant would have nothing to lose if he were to flee.” (*Id.* at p. 13.)

Subsequent to the denial of Mr. Raniere’s bail application, a Grand Jury returned a Superseding Indictment, unsealed on July 24, 2018, charging defendants Raniere and Mack, along with four new defendants, Clare Bronfman, Nancy Salzman, Lauren Salzman and Kathy Russell. These defendants are out on bail with varying conditions of release.

The government continues to maintain that there are no conditions it will agree to regarding Mr. Raniere’s release. Moreover, the government indicated it will not agree to the sealing of co-signers’ names or the partial courtroom closure referenced herein. Accordingly, we bring the instant motion.

Background

Over the last twenty years, people associated with Executive Success Programs (“ESP”) and NXIVM have been the targets of threats, computer-hacking and blatant false statements on websites and other media specifically to damage their reputations, businesses and lives.¹ Specifically, people antagonistic to ESP/NXIVM have created blogs and websites aimed at targeting those associated with the companies. The creators of these blogs have stated publicly that they created the blogs to damage people within ESP/NXIVM’s reputations, businesses and lives. These attacks have only increased under the intense media coverage surrounding this case. Accordingly, while there are several individuals who are willing to co-sign a personal recognizance bond for Keith Raniere and to support the bond with their property or funds, they are afraid that their lives and their families will be threatened, their home addresses made public and that they and their families will be the subject of false and defamatory media reports aimed at damaging their businesses and reputations.

Relief Sought

We move this court for three related forms of relief in connection with a potential upcoming bond application. First, we ask that we be permitted to refer to any potential bond co-signer by a number (Person 1, Person 2, and so on) so that the person’s identity (as well as identifying information such as the person’s address) is not in any written documents publicly filed with the Court or stated in a public courtroom.² On the bond

¹ This letter will address a small percentage of the many threats, damaging false statements and other intentional conduct directed at members of the group.

² We will of course identify the individuals to the government and the Court in the form of a separate sealed submission at the time of the filing of the bond motion.

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itself, we ask that this Court redact the co-signers name and address. Second, we ask that for that portion of the bond hearing when the Court questions the co-signer that this limited, discrete portion of the hearing be conducted in a closed courtroom. The bond hearing will be conducted in public, like any other bond hearing. However, when the Court questions the potential co-signer, only that portion will be closed to the public. Third, we ask that any personal identifying information in the transcript relating to the Court's questioning of the potential co-signer be sealed.³

As shown below, these forms of relief are both necessary to protect the co-signers' safety and livelihood and are also sufficiently narrowly tailored to comport with the First Amendment and give the public and the press extensive access to the proceedings.

Argument

1. The First Amendment Right to Press and Public Access to Our Courts Is Applicable in This Case

Before discussing the First Amendment implications of the requested relief, it bears noting that the body of case law discussing the Sixth Amendment right to public court proceedings is not invoked here because it is the *defendant* requesting the limited closure. For example, in Waller v. Georgia, 467 U.S. 39 (1984), the prosecution requested a partial courtroom closure and the Supreme Court noted that "when the defendant objects to the closure of a suppression hearing, therefore, the hearing must be open unless the party seeking to close the hearing advances an overriding interest that is likely to be prejudiced." Press Enterprise Company v. Superior Court of California, 478 U.S. 1 (1986); Waller, 467 U.S. at 47. In Gannett Co. v. DePasquale, 443 U.S. 368 (1979), the Supreme Court held that the Sixth Amendment does not grant a public right to attend pretrial proceedings or a criminal trial, and that the Sixth Amendment is a right of a criminal defendant, and of no other party.

Therefore, the Court here does not need to engage in a Sixth Amendment balancing of a criminal defendant's Sixth Amendment right to public proceedings and other competing interests because the defendant is requesting the limited closure. Rather, the analysis is purely a First Amendment balancing of the competing interests.

The First Amendment right of access to criminal trials is no doubt well-established (See Richmond Newspapers v. Virginia, 448 U.S. 555 (1980); Globe

³ It is unclear whether there is a public right of access to co-signers' names, let alone a public's right to listen to a judge question a potential co-signer. The important element is that the judge can, if he sees fit, speak to the co-signer, pose questions and gage for himself whether the co-signer is appropriate given the facts of the case and the court's specific concerns. This can be done in or out of the public eye. Indeed, out of the public eye, the Court may even choose to ask more penetrating questions because the co-signer's right to privacy, always a concern to the Court, is reduced.

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Newspaper Co. v. Superior Court, 457 U.S. 596 (1982); Press Enterprise Co. v. Superior Court, 457 U.S. 596 (1982)(Press Enterprise I)) and is an important part of our nation’s history. In Richmond, Chief Justice Berger’s plurality opinion devoted considerable attention to the tradition of jury trials in England and the United States, and showed that open trials were conducive to an accurate fact-finding process, public confidence in the legal system and the community’s need for justice. Richmond Newspapers, 448 U.S. at 565-573. In Globe, the Supreme Court reasoned that the express freedoms of speech, the press, and assembly share a common goal in guaranteeing open discussion of governmental affairs.⁴ The Supreme Court has continued to emphasize that one “important means of assuring a fair trial is that the process be open to neutral observers.” Press Enterprise Co. v. Superior Court of California, 478 U.S. 1, 7 (1986)(Press Enterprise II). The Second Circuit has added, “except in rare circumstances, openness preserves, indeed is essential to, the realization of (the right of the accused to a fair trial) and to public confidence in the administration of justice.” ABC, Inc. v. Stewart, 360 F.3d 90, 105-06 (2d Cir. 2004); see also United States v. King, 150 F.3d 76, 83 (2d Cir. 1998).

Despite the primacy that the First Amendment right of access enjoys, it is not absolute. Press-Enterprise II, 478 U.S. at 10; Globe, 457 U.S. at 606. In this regard, the Supreme Court has referred to the First Amendment right of access as a “qualified right.” Press-Enterprise II, 478 U.S. at 13. The Second Circuit has held that “(t)he First Amendment right of access to criminal proceedings is not absolute. Proceedings may be closed and, by analogy, documents may be sealed if ‘specific, on the record findings are made demonstrating that ‘closure is essential to preserve higher values and is narrowly tailored to serve that interest’” Matter of New York Times Company v. Biaggi, 828 F.2d 110 (2d Cir. 1987) quoting Press-Enterprise II, 478 U.S. at 13; see also, United States v. Hubbard, 650 F.2d 293, 315 n.81 (D.C. Cir. 1980).

2. The Limited Closure Requested Here Is Constitutional and Required Under the Facts

The highly limited closure requested here is consistent with the requirements of the Supreme Court and the Second Circuit because it is narrowly tailored to serve a compelling interest. First, the motion for bail will be filed publicly. The public and the press will know all of the facts, reasons and arguments Mr. Raniere’s counsel advances as to why release on conditions is appropriate, as well as the government’s reasons as to why it is not. The public and the press will likewise see that, among other conditions, co-signers are being proposed to secure the requested package. The only information that will not be included in the written materials will be the identities of these co-signers. In this regard, the proposal encouraged by the defense is no more extensive than what the government has already done through the use of Jane and John Doe in the Indictment and in all other documents filed in this case.

⁴ Significantly, Globe addressed a situation where a Massachusetts law required that any trial involving a sexual assault victim who was a minor be conducted wholly in private. Not surprisingly, the Court found that such a wholesale violation of a basic First Amendment right was not sufficiently narrow to withstand scrutiny.

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Second, the bail hearing will be held in public and will be memorialized in a written transcript for the public to request and read. Again, the readers will see the arguments of counsel, the questions of the Court and the reasons offered by the parties as to why release is, or is not, appropriate given the conditions proposed. The only part of the proposed proceeding that the public and the press will not see is the portion where the co-signer is brought before Your Honor for questioning. However, as with all such procedures, the Court and the government will have the full ability to vet the proposed co-signer. Both are free to ask whatever questions each sees fit. It bears noting that the government typically questions proposed co-signers in a private setting even in a normal case. So, as far as the government is concerned, the defendant here is not asking for a different procedure than is typically followed.

Third, a transcript of the proceedings will be available, as in a typical case. The only request is that the portion of the transcript reflecting any personal identifying information of the co-signer will be sealed.

The examples where the right to full court access has been suspended on a limited basis are numerous and diverse. For instance, the privacy interest of jurors has been held to be an appropriate basis to close aspects of court proceedings. See Press-Enterprise Company v. Superior Court of California, 478 U.S. 1 (1986). Moreover, it is routine that guilty pleas of cooperating witnesses are held in a closed courtroom where no transcript is available to the press or the public. Even in this very case, as noted, the public indictment contains references to Jane and John Does in lieu of identified people. These are but a few examples showing that limited courtroom-closure or sealing are both commonplace and acceptable where other interests are at stake. The request of limited courtroom closure here is consistent with court precedent for closing courtrooms.

In sum, the defense believes it has crafted a narrowly tailored process that is fair and sufficient to the Court and the government, necessary for the potential co-signers and constitutional to the press and public.

3. Potential Co-signers Have a Reasonable Basis to Fear That Illegal Action Will Be Taken Against Them

As set forth below, clients and supporters of ESP/NXIVM have been subject to threats, privacy-invasions and defamatory statements. Since Mr. Raniere's "arrest" and subsequent deportation in Mexico, threatening and menacing letters and comments have been routine—these involve letters to attorneys, including the undersigned, threatening gestures made by the public toward members of the defense team and other menacing conduct. While this type of conduct has been occurring for over a decade, the increasing negative press, including false and defamatory statements, against perceived ESP/NXIVM supporters has made potential co-signers fearful to become involved with the court process.

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Over the course of many years, a known group of anti-NXIVM members have hacked into NXIVM's private computer files, gaining access to confidential personal data. These same persons have used this data to determine the names, addresses and locations of NXIVM clients and subsequently posting this private information online.

Specifically, the anti-NXIVM press is associated with a prolific blogger named Frank Parlato, who is currently under indictment in the Western District of New York in an 18-count fraud case that spans over ten years—from mid-2006 to 2017.⁵ (See United States v. Frank Parlato, Jr. 15-cr-00149 (JJM) (WDNY) (Dkt. No. 118), Superseding Indictment filed 5/23/18.) As will be shown in more detail below, Parlato claims to know “key law enforcement strategies” as well as the investigative decisions of the United States Attorney, Richard Donoghue (whom Parlato explicitly names), himself. Parlato strongly suggests that he is aware of such information from law enforcement sources. He often posts that he has inside information that certain persons whom he names publicly are about to be indicted in this case. Sometimes, Parlato's “prophecies” about who will be indicted end up being correct. Sometimes, they do not end up being correct, leaving the person named to suffer massive business and reputational damage. Regardless of whether Parlato actually has inside law enforcement sources, he is not acting as a legitimate media outlet. Rather, as he has stated to many internet outlets who inconspicuously credit him, he is an active antagonist who has admitted publicly that he is obsessed with ruining Keith Raniere and others supportive of ESP/NXIVM.⁶

In addition to Parlato, a journalist from the Albany Times-Union, a former NXIVM consultant (who later went to prison in Texas for an unrelated conviction), and others, as detailed below, have been involved in misappropriating and printing stolen, confidential, personal information hacked and misappropriated from NXIVM's private computer files. These files contain *personal information* about people who sign up for ESP/NXIVM courses. This information is now in the hands of a federally indicted defendant (Parlato), journalists for a widely-read newspaper, and others. Despite the prosecution, conviction and incarceration of a member of a former Saratoga anti-NXIVM blogger who hacked NXIVM, the Times-Union and other “publications” remain in possession of stolen, confidential NXIVM information.

As a result, potential co-signers of a bond for Mr. Raniere are reasonably concerned (1) that they and their families will be threatened, (2) that they and their families' personal private information may have been among the information hacked by,

⁵ Parlato is charged with, among other things, using shell companies and IOLA (attorney accounts) to defraud the Internal Revenue Service out of millions of dollars of taxable income.

⁶ See VICE News: The Man Who Blew the Whistle On Alleged Sex Cult Inside NXIVM (HBO published May 17, 2018). Parlato states that, “I sharpened my axe” and that “part of my strategy was to mock Raniere. I photoshopped images of him, I wrote-I wrote fictional stories about him, just to make him look ridiculous, because sometimes that's...necessary, too.”

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and be in the possession of, people looking to harm them, and (3) that they and their families will be the subject of defamatory public statements specifically intended to damage their businesses and reputations.

As set forth below, the hacking of NXIVM's private computer system has been an ongoing criminal scheme perpetrated by many anti-NXIVM members over several years including a number of likely government witnesses in this case.

A. The Hacking and Subsequent Prosecution of NXIVM's Computer System Between 2006 and 2011

On November 5, 2014, John Tighe, a freelance journalist with a blog, pleaded guilty to the felony of Computer Trespass, in violation of New York Penal Law Section 156.10(2) in the Albany County Court. (Exhibit 1: 11/5/14 Transcript of Plea and Allocution.) He admitted to one particular computer trespass on November 4, 2010 at 9:35 p.m., and admitted to accessing the server a total of 50 or 60 occasions over several years. (*Id.* at p 14.) He intentionally accessed the NXIVM computer network using the identity information of a former NXIVM student without the permission and authority of either the student or of NXIVM.⁷ (*Id.*) He further admitted during the public plea proceeding that he knew that Joe O'Hara (NXIVM's former consultant, a now disbarred attorney who later served time in prison in Texas for an unrelated conviction) had also accessed the NXIVM server by utilizing the student's identity information. Tighe stated that his conspirator O'Hara informed him that James Odato, then a reporter for the Times-Union, also had access to the information that was illegally obtained by Tighe and O'Hara. Corroborating Tighe's plea allocution concerning Odato's involvement is the fact that an IP address belonging to the Times-Union was used repeatedly to access NXIVM's confidential database. This amounts to incontrovertible proof that the Times-Union illegally accessed the confidential NXIVM database and used stolen secret information in articles about NXIVM and the accused.

Because NXIVM prompted law enforcement to investigate James Odato of the Times-Union as being complicit in the computer trespass and also sued Odato for these transgressions, press publications outside of the Times-Union quickly came to the Times-Union's defense.⁸ For instance, on November 18, 2014, the Nation published an article entitled "How a Strange Secretive, Cult-like Company Is Waging Legal War Against

⁷ To the extent that this student was a victim of Tighe's identity theft, her name is not being included in this filing. If the Court or the government would like the name, it will be provided without a public filing.

⁸ NXIVM's lawsuit against Odato was later dismissed because the court found that the statute of limitations had run. (See 14-cv-1375 (LEX/RFT) (NDNY) Dkt. No. 83 filed 9/17/15.)

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Journalists.”⁹ The article stated that the case against Tighe, author of a blog called “Saratoga in Decline,” was a “thinly veiled attempt to retaliate against journalists.” (*Id.*) Far from being “thinly veiled,” however, the case against Tighe and the others was shown to be absolutely true, as Tighe stated unequivocally during his guilty plea allocution. Indeed, once the authorities came into possession of Tighe’s computer in connection with the hacking investigation, they found a cache of child pornography resulting in a 70-month federal sentence. (See United States v. John Tighe, 14-cr-464 (TJM) (NDNY), Dkt. No. 34, Judgment as to John Tighe).

Parlato, unsurprisingly, falsely reported his confederate John Tighe had been framed with regard to the child pornography on his computer.¹⁰ Parlato’s defense of Tighe proved to be inaccurate as Tighe readily admitted his guilt during his plea allocution and accepted full responsibility for possessing child pornography, stating there was no one to blame but himself.

As for the Times-Union reporter, Odato, he was released from the paper in light of the allegations of his knowing complicity in the computer trespass of NXIVM’s computer system and in causing stolen, secret information to be repeatedly published by the Times-Union.¹¹ Following Tighe’s theft of NXIVM information, Odato went on to write several articles based on the stolen information. Indeed, on October 8, 2007, just six days after an October 2, 2007 illegal breach of the NXIVM computer system traced to a Times-Union IP address, Odato published an article about NXIVM in the Albany Times Union in which he admitted being in possession of the NXIVM client list. (See Exhibit 2 at p. 1.)

B. The Misappropriation and Theft of the NXIVM Computer System Files in June 2017

Between June 4 and June 8, 2017, NXIVM administrators discovered that their systems were being accessed in Canada and that data in the NXIVM servers were being deleted and manipulated. Upon further investigation, the undersigned counsel has learned

⁹ William Cohan, How a Strange, Secretive, Cult-like Company Is Waging Legal War Against Journalists, THE NATION (Nov. 18, 2014), <https://www.thenation.com/article/how-strange-secretive-cult-company-waging-legal-war-against-journalists/>.

¹⁰ Frank Parlato, Rethinking John Tighe: Ailing blogger; a fierce critic of Raniere, imprisoned after child porn ‘found’ on seized computer, FRANK REPORT (Nov. 2, 2017), <https://frankreport.com/2017/11/02/rethinking-john-tighe-ailing-blogger-a-fierce-critic-of-raniere-imprisoned-after-child-porn-found-on-seized-computer/>.

¹¹ Joe Pompeo, Journalist on leave after tangle with secretive ‘NXIVM’ group, POLITICO (Nov. 26, 2014 4:51 AM), <https://www.politico.com/media/story/2014/11/journalist-on-leave-after-tangle-with-secretive-nxivm-group-003145>.

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that three accounts logged in and accessed the NXIVM servers: the accounts of J.O.¹², Jennifer Kobelt and Sarah Edmondson. Edmondson was a former high-ranking NXIVM member, recruiter and ESP Vancouver center co-owner. At the end of May 2017, Edmondson resigned from NXIVM, telling her friends within the community that she wanted to focus on her family and not lead the ESP Vancouver Center anymore. Her assistant, Jennifer Kobelt, was also a long-time client of NXIVM's and an assistant to Mark Vicente, another co-owner of the ESP Vancouver center who had recently resigned.

While Edmondson, Kobelt, and J.O. were previously authorized to legitimately access the system (prior to their resignation), suddenly their login credentials were used 58 times over the course of five days. Those same accounts then deleted data, stole ESP student profiles and documentation and cancelled over \$100,000 worth of credit card payments. This amounts to intentional criminal conduct where the names, financial data and other identity information were unlawfully accessed and misappropriated.

Specifically, on June 4th, Kobelt and others' accounts logged into the NXIVM system and changed their profiles (i.e. names, *but not passwords*) to mask the identities of who was logging into the system. The accounts continued to be used. For example, the account linked to J.O. logged into the system and viewed enrollment history information. The account linked to Sarah Edmondson logged into the system the same day and viewed a salesperson report. On June 5th, the account linked to J.O. again logged into the system and viewed enrollment history. Additionally, the account linked to Kobelt repeatedly logged into the system over those five days and cancelled dozens of payments from NXIVM clients. Kobelt's account also deleted at least 13 files from an area on the server designated to the clients that Vicente enrolled. Each of these files contained numerous NXIVM contracts with client information.

This theft of client files gave those accessing NXIVM's servers access to confidential data including client lists, contact information and the intellectual property of the company. It is therefore not surprising that in counsel's investigation of this case, we have discovered that Edmondson, together with others including Vicente were able to contact nearly every NXIVM client and harass them through calls, Telegram and WhatsApp messages after this date—messages that continue to the present.

¹² We have used a person's initials if that person has not spoken publicly to media outlets in connection with this case—assuming that person would like to remain private. If the Court or the government would like the name, it will be provided without a public filing. However, we have included the full names of those who have sought public attention in connection with their roles in this matter, including Edmondson who announced her documentary TV series less than one week after Raniere and Mack were indicted. (See Nelli Andreeva, Former NXIVM Member Sarah Edmondson To Star in Documentary Series Produced By Brian Graden, DEADLINE HOLLYWOOD (Apr. 25, 2018, 10:30 AM), <https://deadline.com/2018/04/ex-nxivm-member-sarah-edmondson-star-docu-series-produced-brian-graden-sex-cult-1202373257/>.)

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It is also not the least bit surprising that the day after the NXIVM system was accessed nearly 60 times by these profiles, Frank Parlato posted his first story on his recounting of DOS.¹³ Specifically, he writes that his “report has been developed from information provided from sources” he chose not to name.

**C. Parlato’s Purported Connection to Law Enforcement Sources
in This Case**

Frank Parlato runs three websites--“The Frank Report,” “Art Voice” and “The Niagra Falls Reporter,” all devoted to publishing negative information, regardless of its truth, about anyone favorably disposed to Mr. Ranieri or NXIVM. He routinely states that he has high-level sources and intimates that his sources are members of law enforcement involved in this case.¹⁴

The following are just a few examples:

- On August 19, 2018, he wrote, “according to sources, the FBI investigation into NXIVM is reportedly not over and the latest superseding indictment is not to be the last.”¹⁵ As written, this is something that Parlato can only “know” through law

¹³ Frank Parlato, Part 1: Branded Slaves and Master Ranieri; Sources: Human branding part of Ranieri-inspired women’s group, FRANK REPORT (Jun. 5, 2017), <https://frankreport.com/2017/06/05/part-1-branded-slaves-and-master-ranieri-sources-human-branding-part-of-ranieri-inspired-womens-group/>.

¹⁴ See Frank Parlato, Misc. notes and info picked up from various sources on NXIVM, FRANK REPORT (Aug. 19, 2018), <https://frankreport.com/2018/08/19/misc-notes-and-info-picked-up-from-various-sources-on-nxivm/>;
Frank Parlato, It’s not over: Emiliano Salinas is FBI target now!, FRANK REPORT (Jul. 29, 2018), <https://frankreport.com/2018/07/29/its-not-over-emiliano-salinas-is-fbi-target-now/>;
Frank Parlato, Son of former Mexican President Carlos Salinas reportedly under FBI investigation for role in sex-slaver cult that branded women, FRANK REPORT (Apr. 16, 2018), <https://frankreport.com/2018/04/16/son-of-former-mexican-president-carlos-salinas-reportedly-under-fbi-investigation-for-role-in-sex-slaver-cult-that-branded-women/>;
Frank Parlato, Times Union Breaking News, “NXIVM co-founder Keith Ranieri charged in federal complaint, FRANK REPORT (Mar. 26, 2018), <https://frankreport.com/2018/03/26/times-union-latest-news-nxivm-co-founder-keith-ranieri-charged-in-federal-complaint/>.

¹⁵ Frank Parlato, Vanguard Week starts tomorrow – but Silver Bay doesn’t seem to be hosting 10 day celebration, FRANK REPORT (Aug. 19, 2018), <https://frankreport.com/2018/08/19/vanguard-week-starts-tomorrow-but-silver-bay-doesnt-seem-to-be-hosting-10-day-celebration/>.

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enforcement sources. After all, it would be highly improper for the U.S. Attorney to inform witnesses of who it intends to indict. Yet, Parlato purports to have precisely this type of information, suggesting, as he says, that he has sources in law enforcement.

- On July 29, 2018, Parlato wrote, “Sources tell me that US Attorney in the Eastern District, Richard P. Donoghue, has ordered his office to further investigate (a named person) and that additional federal resources have been made available for that part of the case.”¹⁶ Absent law enforcement sources, Parlato cannot possibly know what the United States Attorney has ordered his office to investigate or how federal resources are allocated.
- On July 18, 2018, Parlato wrote “there is much I cannot share with you at this time. I trust that most of you will be able to read between the lines.”¹⁷ He then went on to surmise about the timing of the Superseding Indictment, intimating he had inside information from sources that he did not want to share with the reader.
- On July 13, 2018, Parlato wrote “there is some information I have to withhold to protect my sources. But, just to give readers a hint – and without giving away any key law enforcement strategies, **which are being leaked to me on a regular basis**...I can assure you from reports of at least three knowledgeable sources – this is going to be huge.”¹⁸ Parlato here claims to know “key law enforcement strategies” which are “being leaked on a regular basis.”¹⁹

¹⁶ Frank Parlato, It’s not over: Emiliano Salinas is FBI target now!, FRANK REPORT (Jul. 29, 2018), <https://frankreport.com/2018/07/29/its-not-over-emiliano-salinas-is-fbi-target-now/>.

¹⁷ Frank Parlato, Update on FBI Investigation into Bronfman-Raniere crime organization: Emiliano Salinas is major target, FRANK REPORT (Jul. 18, 2018), <https://frankreport.com/2018/07/18/update-on-fbi-investigation-into-bronfman-raniere-crime-organization-emiliano-salinas-is-major-target/>.

¹⁸ Frank Parlato, Noose tightening for NXIVM members – feds in Knox Woods neighborhood against today – and more coming as indictments near, FRANK REPORT (Jul 13, 2018), <https://frankreport.com/2018/07/13/noose-tightening-for-nxivm-members-feds-in-knox-woods-neighborhood-again-today-and-more-coming-as-indictments-near/>.

¹⁹ If the United States Attorney’s Office for the Eastern District of New York was not already aware that Parlato, an indicted defendant in another federal district, has repeatedly suggested that he has law enforcement sources regularly leaking information to him in this case, it is now on clear notice. The government is also on notice that these posts are, in defense counsel’s view, obstructing justice, in part, because they purport to be based on inside sources.

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Furthermore, and perhaps most troubling, is that Parlato, even as recently as last weekend, posted the names, whereabouts and photos of those who he believes still remain clients and/or leaders of NXIVM.²⁰ Upon our information and belief, this information was given to Parlato by those who misappropriated and stole NXIVM's client files.

These postings are not the normal operation of media outlets covering a case. Rather, they are specifically aimed at scaring potential defense witnesses and bond co-signers. After all, hard-working, honest, innocent people considering whether to co-sign a bond for their long-time friend, Keith Raniere, are placed in an impossible position. On the one hand, they can take Parlato at his word, which is that he is the recipient of a steady stream of law enforcement leaks, with law enforcement knowing all the while that its leaked information is being published to the considerable detriment of people who have not been charged with any crime. On the other hand, people can view Parlato as someone posing as the recipient of law enforcement leaks as a way of giving his posting greater credibility. In either event, however, a co-signer can expect that he or she will be targeted by Parlato, who will publish that law enforcement informs him that such person is being investigated or is about to be charged with a crime. This is a brutally unfair and highly unusual situation that calls out for a remedy.

²⁰ See Frank Parlato, The Top 150 plus remaining High Rank of NXIVM revealed, ART VOICE (Aug. 24, 2018), <https://artvoice.com/2018/08/24/the-top-150-plus-remaining-high-rank-of-nxivm-revealed/#.W4Q74yRKhpq>; and <https://frankreport.com/2018/08/24/the-top-150-plus-remaining-high-rank-of-nxivm-revealed/>.

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Conclusion

Accordingly, we ask the Court for the highly limited closure set forth above. In the event the Court grants the limited closure we request, the names of potential co-signers and all relevant background information will be provided to the government and the Court prior to any bail hearing. That way, both the Court and the government will know who the proposed co-signers will be in advance of the hearing. Simultaneously, Mr. Ranieri will file a bail motion in the normal course setting forth the reasons why release on conditions is appropriate.

We thank the Court for its attention to this matter.

Respectfully,


Brafman & Associates, PC
By: Marc Agnifilo
Jacob Kaplan
Teny Geragos

**DerOhannesian &
DerOhannesian**
By: Paul DerOhannesian II
Danielle R. Smith

cc: All Counsel (via ECF)

EXHIBIT 1

STATE OF NEW YORK
COUNTY OF ALBANY COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-against-

SCI NO.
14-495

JOHN TIGHE,

Defendant.

P L E A

BEFORE: HON. PETER A. LYNCH,
Albany County Court Judge

APPEARANCES:

For the People: HOLLY TREXLER, ESQ.
90 State Street
Suite 1400
Albany, NY 12207
Special Prosecutor

For the Defendant: LEE C. KINDLON, ESQ.
74 Chapel Street
Albany, NY 12207

JOHN TIGHE, in person.

TRANSCRIPT OF PROCEEDINGS in the above-entitled matter
held in Albany County Court, Albany County Judicial Center,
6 Lodge Street, Albany, New York, on Wednesday, November 5,
2014.

1 (Proceedings commenced at approximately
2 9:05 a.m. as follows:)

3 THE COURT: John Tighe. This is the matter of
4 People of the State of New York against John Tighe. Are
5 you John Tighe, sir?

6 THE DEFENDANT: Yes I am.

7 THE COURT: Counsel, would you put your
8 appearances on the record please.

9 MR. KINDLON: Lee Kindlon, 74 Chapel Street,
10 Albany, New York, on behalf of John Tighe.

11 MS. TREXLER: Holly Trexler for the People.

12 THE COURT: Before we get going on this matter
13 I've had a conference with counsel and it appears that the
14 alleged victim in this matter is the NXIVM organization,
15 that's N-X-I-V-M, and I disclosed to counsel that
16 approximately ten years or so ago I did do some legal
17 research for that group for a brief period of time of
18 maybe a month or two and as a result of having previously
19 represented that entity, which is the alleged victim in
20 this case, I've advised counsel that I'm going to
21 disqualify myself from this case subject to remittal,
22 which I have discussed with counsel and asked counsel to
23 speak with Mr. Tighe outside of my presence. Mr. Kindlon.
24 MR. KINDLON: Thank you, Your Honor. I had the
25 opportunity to speak to my client about a potential

1 conflict. We would waive any conflict and ask that Your
2 Honor sit over this case.

3 THE COURT: Is that correct, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: Ms. Trexler, do you also waive any
6 potential conflict?

7 MS. TREXLER: Absolutely.

8 THE COURT: Then I'll entertain the case and
9 counsel put the proposal on the record.

10 MS. TREXLER: Your Honor, the People are
11 prepared to offer a plea to computer trespass in violation
12 of Section 156.10(2) of the Penal Law of the State of New
13 York, a class E felony. Should Mr. Tighe enter a plea of
14 guilty to said charge, we would recommend, with the
15 Court's consent, a sentence of one year in the Albany
16 County Correctional Facility, waiver of his right to
17 appeal and cooperation against others in the investigation
18 as well as a conditional discharge to stay away from the
19 members of this organization.

20 THE COURT: A conditional discharge or order of
21 protection?

22 MS. TREXLER: Well, the organization is vast,
23 Your Honor, so maybe just the officers of the
24 organization.

25 THE COURT: Well, I suggest that you create an

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1 order of protection specific to what your request is.

2 MS. TREXLER: Okay. Fair enough.

3 THE COURT: Mr. Kindlon.

4 MR. KINDLON: Your Honor, that is the offer as
5 we understand it. I've had a lot of time to talk to
6 Mr. Tighe about the case, the facts against him, any
7 potential defenses, the sentence, and any cooperation.
8 And given all that, Your Honor, he is willing to waive all
9 of his rights and proceed forward with the plea today.

10 THE COURT: Is that correct, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Before I can accept your guilty plea
13 I do have to ask you a series of questions so the clerk of
14 the court will swear you in.

15 (The defendant was sworn.)

16 THE COURT: Okay. Can you tell me your full
17 name for the record please?

18 THE DEFENDANT: John Joseph Tighe.

19 THE COURT: How old are you?

20 THE DEFENDANT: 57.

21 THE COURT: What is your date of birth?

22 THE DEFENDANT: 7/20/57.

23 THE COURT: And your address?

24 THE DEFENDANT: 496 Rowland Street, Building 6,
25 Apartment 4, Ballston Spa, New York 12020.

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1 THE COURT: What is the highest grade that you
2 completed in school?

3 THE DEFENDANT: High school. I graduated.

4 THE COURT: Do you have any problem
5 understanding or reading the English language?

6 THE DEFENDANT: As long as I have my reading
7 glasses I can read it.

8 THE COURT: Do you understand the proposed plea
9 agreement that counsel just put on the record a moment
10 ago?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Is that what you'd like to do?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you a citizen of the United
15 States?

16 THE DEFENDANT: Yes, I am.

17 THE COURT: Okay. Do you understand that you do
18 have the right to have your case presented to a grand jury
19 and the further right to be prosecuted by means of an
20 indictment filed by a grand jury?

21 THE DEFENDANT: Yes. I waive those rights.

22 MR. KINDLON: He understands he has those
23 rights. He's willing to waive them, Judge.

24 THE COURT: Here's how this is going to work.
25 All I want you to do is listen to one question at a time,

1 answer the question and then I'll move on to the next
2 question. There's a whole series of questions that I'm
3 going to ask you. Can we agree on that?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that you have
6 the right to testify before that grand jury and the
7 further right to ask the grand jury to listen to witnesses
8 that you identify?

9 THE DEFENDANT: Yes.

10 THE COURT: It is my understanding that you are
11 desirous of giving up those grand jury rights and that you
12 consent to be prosecuted by means of a superior court
13 information which is a charge drawn up by the special
14 prosecutor.

15 THE DEFENDANT: Yes.

16 THE COURT: Is that what you would like to do?

17 THE DEFENDANT: Yes.

18 THE COURT: And do you understand that this
19 superior court information has the same legal effect as if
20 it were an indictment charging you with computer trespass
21 as a class E felony?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm going to provide to you and your
24 attorney a written waiver of indictment. If you
25 understand it and agree to be bound by it, I'd ask that

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1 you sign it.

2 (Short suspension of proceedings.)

3 THE COURT: Sir, is that your signature on the
4 waiver of indictment?

5 THE DEFENDANT: Yes, it is.

6 THE COURT: You understand it and agree to be
7 bound by it?

8 THE DEFENDANT: Yes.

9 THE COURT: Let the record reflect I've signed
10 the order approving the waiver of indictment. And,
11 Mr. Kindlon, do you acknowledge receipt and waive a formal
12 reading of the superior court information?

13 MR. KINDLON: Yes, Your Honor, I do.

14 THE COURT: Sir, do you understand that with
15 respect to the charges against you, that you do have a
16 constitutional and an absolute right to remain silent?

17 THE DEFENDANT: Yes.

18 THE COURT: Clearly by speaking with me and
19 entering a guilty plea you are giving up your right to
20 remain silent and you are incriminating yourself. Do you
21 understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: In the last two days have you
24 consumed any alcohol or medication?

25 THE DEFENDANT: I take eight medications a day

1 under a doctor's prescription.

2 THE COURT: Does that medication affect your
3 ability to think clearly?

4 THE DEFENDANT: No.

5 THE COURT: Are you thinking clearly here today?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you believe that this plea
8 agreement is in your best interest?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, have you had a full opportunity
11 to speak with your attorney about all of the relevant
12 issues in your case, about the evidence that the
13 prosecution has against you and about any possible
14 defenses that you may have?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you satisfied with the legal
17 representation that Mr. Kindlon has provided to you?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you do have
20 an absolute right to go to trial on these charges either
21 before a jury or a non-jury trial before the Court?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, at a trial the burden of proof
24 is on the prosecution to prove your guilt beyond a
25 reasonable doubt and you are not required to prove or

1 disprove anything. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: At trial you have the right to
4 confront, that is through your attorney the right to
5 cross-examine, all witnesses. Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: And although you're not required to
8 do so, you do have the right to testify at trial if you
9 wish and the further right to call witnesses to testify on
10 your behalf. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Clearly if you plead guilty there's
13 not going to be a trial and you waive, that is you give
14 up, your right to any pretrial hearings, you give up all
15 trial-related rights and you give up any defenses that you
16 may have. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, has anyone threatened, coerced
19 or forced you in any way to enter this plea?

20 THE DEFENDANT: No.

21 THE COURT: And are you pleading guilty of your
22 own free will?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you pleading guilty because you
25 are in fact guilty of criminal trespass as charged?

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1 THE DEFENDANT: Yes.

2 MS. TREXLER: Computer trespass.

3 THE COURT: Excuse me. Computer trespass as
4 charged. Do you understand?

5 THE DEFENDANT: Uh-huh.

6 THE COURT: Now, do you understand you're
7 pleading guilty to a class E felony for which the maximum
8 sentence is one and a third to four years in state prison?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, as we've already discussed,
11 when you do plead guilty you automatically forfeit the
12 right to remain silent, the right to confront your
13 accusers and the right to trial by jury. Do you
14 understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Notwithstanding the automatic
17 forfeiture of those rights upon a guilty plea, in the
18 ordinary course you would still have the right to appeal
19 your case to a higher court. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Here, however, the plea agreement
22 requires, in addition to the waiver of your trial rights,
23 that you also waive your right to appeal with respect to
24 both the conviction and the sentence to be imposed as long
25 as the sentence is in accord with the plea agreement. Do

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11

1 you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you agree with that?

4 THE DEFENDANT: Yes.

5 THE COURT: In a moment I'm going to give you a
6 written waiver of the right to appeal. Please review it
7 with Mr. Kindlon. If you understand it and agree to be
8 bound by it, I'd ask that you sign it.

9 (Short suspension of proceedings.)

10 THE COURT: Sir, is that your signature on the
11 waiver of right to appeal?

12 THE DEFENDANT: Yes, it is.

13 THE COURT: Do you understand it and agree to be
14 bound by it?

15 THE DEFENDANT: Yes.

16 THE COURT: I'm going to make that a part of the
17 record of this proceeding. Now, subject to a presentence
18 report, it is my current intent to abide by the plea
19 agreement. So all things being equal at the time of
20 sentencing, you'll receive a definite sentence of one year
21 in the Albany County jail. Is that your understanding of
22 the plea agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, the conditions on that sentence
25 are, one, that you timely meet with probation in the

1 preparation of a presentence report and provide answers to
2 their questions consistent with your guilty plea here
3 today; two, that you not commit any further crime between
4 now and the time of sentencing; three, that you comply
5 with your cooperation agreement with the prosecutor; and,
6 four, that you show up for sentencing.

7 If you comply with those conditions, all things
8 being equal, you'll get the benefit of your plea agreement
9 and the one year definite sentence. What you have to
10 understand is if you violate one or more of those
11 conditions, your plea of guilty would remain in full force
12 and effect but the sentencing agreement would not and you
13 could receive a sentence of up to one and a third to four
14 years in state prison. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: So other than my intent on
17 sentencing that I've just described to you, has anyone
18 made any other promise or representation to you in order
19 to get you to plead guilty?

20 THE DEFENDANT: No.

21 THE COURT: Mr. Kindlon, are you satisfied that
22 your client's desire to plead guilty and the waiver of his
23 trial and appellate rights have all been knowingly,
24 intelligently and voluntarily made?

25 MR. KINDLON: Yes, I am, Your Honor.

1 THE COURT: Now, directing your attention to the
2 superior court information, Mr. Tighe, do you admit that
3 on the 4th day of November of 2010 at approximately
4 9:35 p.m. at 80 State Street, 7th floor, in the City and
5 County of Albany, State of New York, that you did
6 knowingly access the computer network of NXIVM using a
7 user name and a password of a former student without her
8 permission or authorization and thereby you gained access
9 to "lcontact.php." which contained a list of active
10 participants and clients of NXIVM including contact
11 information of those individuals?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you do that?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand everything that
16 we've done here today?

17 THE DEFENDANT: Uh-huh.

18 MR. KINDLON: Yes?

19 THE DEFENDANT: Yes.

20 THE COURT: How do you plea to the charge of
21 computer trespass in violation of Penal Law
22 Section 156.10(2), a class E felony, guilty or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: The Court will accept your plea.
25 Mr. Kindlon, is January 7, 2015, convenient for

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14

1 sentencing?

2 MR. KINDLON: Yes.

3 MS. TREXLER: Your Honor, may I ask a couple
4 questions?

5 MR. KINDLON: We need further allocution I
6 believe.

7 THE COURT: Do you want to make a further
8 allocution?

9 MS. TREXLER: Just a couple of questions,
10 Mr. Tighe, if I could. Approximately, if you know, how
11 many times did you access these servers with that user
12 name and password?

13 THE DEFENDANT: Roughly 50 to 60.

14 MS. TREXLER: What user name and password were
15 you using, sir?

16 THE DEFENDANT: I don't recall.

17 MS. TREXLER: Was it a password of [REDACTED]
18 [REDACTED]?

19 THE DEFENDANT: Yes.

20 MS. TREXLER: And a user name of hers as well?

21 THE DEFENDANT: Yes.

22 MS. TREXLER: Did you have her permission to do
23 so?

24 THE DEFENDANT: I was told I did but not from
25 her.

1 MS. TREXLER: You did not have it from [REDACTED]
2 [REDACTED]; right?

3 THE DEFENDANT: No, I did not.

4 MS. TREXLER: Who else did you know was
5 accessing the NXIVM servers using that user name and
6 password?

7 THE DEFENDANT: I know Joe O'Hara told me
8 firsthand that he was. I was told through Joe O'Hara that
9 Toni Folet or Natale had access to it and I was told
10 vaguely by Joe O'Hara that others did without being named,
11 but when I asked him about Jim Odato he said he had access
12 to the same information I did without specifically saying
13 he had access to the passwords.

14 MS. TREXLER: And you had no contact with
15 Suzanna Andrews of Vanity Fair?

16 THE DEFENDANT: To the best of my knowledge, no.

17 MS. TREXLER: Thank you, Your Honor.

18 THE COURT: Okay. Sentencing is January 7,
19 2015, at 9 a.m. What is your client's status?

20 MR. KINDLON: Your Honor, he has been released
21 from Albany City Court on his own recog.

22 MS. TREXLER: He was.

23 THE COURT: He was released in his own
24 recognizance?

25 MR. KINDLON: Your Honor, he's also on federal

1 probationary pretrial release supervision.

2 THE COURT: I'll continue that status subject to
3 a Parker.

4 MR. KINDLON: Thank you.

5 (Short suspension of proceedings.)

6 THE COURT: Sir, is that your signature on the
7 Parker admonishment?

8 THE DEFENDANT: Yes, it is.

9 THE COURT: You understand it and agree to be
10 bound by it?

11 THE DEFENDANT: Yes.

12 THE COURT: I'll make that part of the record.
13 Your release is subject to the Parker. I'm going to give
14 you the instructions to go down to probation. I want you
15 to go down there this morning and give them your contact
16 information. Make sure you cooperate with probation so
17 you can get the benefit of your plea. That's it.

18 MR. KINDLON: Thanks, Judge. Have a good day.

19 (Proceedings concluded at approximately
20 9:22 a.m.)

21

22

23

24

25

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

I, AMY E. MACKENZIE, a Court Reporter and Notary Public
in and for the State of New York, do hereby certify that
the foregoing transcript in the above-entitled matter
is a true and accurate transcript to the best of my
knowledge and belief.

Amy E MacKenzie

DATED: November 6, 2014

INTEREST IN HORSES LED TO BRUNO MEETING

The Times Union (Albany, New York)

October 8, 2007 Monday, 1 EDITION

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Section: MAIN; Pg. A3

Length: 518 words

Body

Political consultant Roger Stone acknowledges he introduced the millionaire Bronfman sisters, Sara and Clare, devotees of the NXIVM executive training program, to Senate Majority Leader Joseph L. Bruno because of a common interest in horses.

The Bronfmans ended up writing checks totaling \$31,600 last year to the Senate Republican Campaign Committee. A limited liability corporation using the same address as the women provided \$34,763 in air transportation - in-kind contributions - to the Senate GOP housekeeping account. The jet rides were likely for Bruno, Senate officials say.

Stone won't say whether he is a student of NXIVM, the controversial organization based in the Capital Region, which does business as Executive Success Programs. But he and his son, Scott Stone, who run a political consulting business, are on a list of NXIVM students obtained by the Times Union.

Roger Stone recently lost his job helping the Senate Republicans after a person with his voice and using his telephone number left an obscenity-laced message on the office phone of Gov. Eliot Spitzer's father. Stone has denied it was him.

It's fine with him After insisting he isn't a lobbyist, American Racing and Entertainment Chairman Jeff Gural has agreed to register as one after all and to pay a \$500 penalty.

Gural, a Manhattan real estate executive who's invested a small fortune in video slots at Tioga Downs and Vernon Downs, could have faced a fine as high as \$25,000, but came away with the \$500 charge after agreeing to register as a lobbyist for American Racing.

Gural said earlier he didn't consider himself a lobbyist since he already pays for one and isn't paid for lobbying work.

The staff of the former state lobbying commission, in one of its last investigations, concluded Gural had been lobbying the Legislature on behalf of American Racing to let VLT operators keep more of the money that goes into the gambling machines, and had more than \$5,000 in expenses. By law, someone who works for passage or defeat of a bill and spends or is paid at least \$5,000 is a lobbyist, and must register with the state.

Leader's new office Perhaps it's a case of office envy. Or just a needed upgrade, as Curtis Taylor, director of communications for Senate Minority Leader Malcolm Smith, describes the renovation project on the third floor of the Capitol.

Workers have been tearing up Taylor's office in recent days, ripping down the wall that separated his quarters from his press officer's. In the end, he'll have the back office all to himself, and some Senate staffers say it's because Taylor has compared his relatively small digs to the bigger work area of his counterpart in the Senate majority, John McArdle.

INTEREST IN HORSES LED TO BRUNO MEETING

Taylor said "updating" was needed, such as new wiring and a new wall, "nothing out of the ordinary," and suggested the communications office won't be changing.

A Senate Democrat said Taylor's staff will be working upstairs from his office because of the rearrangement.

Contributors: State editor Jay Jochnowitz and Capitol bureau reporter James M. Odat. Got a tip? Call 454-5424 or e-mail jjochowitz@timesunion.com

Notes

Capitol Confidential

Load-Date: October 8, 2007

End of Document

EXHIBIT 9

From: Lauren Salzman
To: [Keith Raniere](#)
Subject: Re: [REDACTED]
Date: Tuesday, November 9, 2010 6:39:04 AM

Ah, ok. That's good.
Thank you.
xoxo

On 11/9/10 2:56 AM, "Keith Raniere" <[keithraniere@](#)[REDACTED]> wrote:

Hi honey,
You do not want to buy into [REDACTED] tantrum or externalizations. Likewise you do not want to tell her what to do or how to be. You might try asking her the difference between being in the room for a day... or as long as she has. From a present time perspective there is no difference except suffering and entitlement....
Hope this helps, Keith

From: Lauren Salzman <[Lauren](#)[REDACTED]>
To: Keith Raniere <[keithraniere](#)[REDACTED]>
Sent: Monday, November 8, 2010 10:46:25 PM
Subject: [REDACTED]

Doomp,
I'm going to sleep but apparently Bobo wrote a letter that said "let me out I'm coming undone". [REDACTED] intercepted it and didn't show the parents bc they are so reactionary. She instead texted me asking for permission to speak to [REDACTED]. I told her "no" and explained why I thought it was bad on a postulate level. I am not going there tonight b/c of the letter, but I will stop by in the morning. Probably around 8am. I plan to explain to [REDACTED] that I think she's had a huge setback and this focus of "let me out of the room" is totally in the opposite direction of healing a breach. If there's anything that you think I should add or do differently please let me know.
If not, and if you're ok with what I'm planning I'll just report in afterwards. I will call you before I go over there in the morning, but I've not been able to reach you mornings this week. If possible I'd like to sleep through the night tonight, but if there's anything urgent you need to tell me about this you can wake me. If not, I'll be up around 6:30am.
Love you.
xx

EXHIBIT 10

Sent: Sun, 26 Feb 2012 19:04:23 -0500
Subject: Case 1:18-cr-00204-NGG-VMS Document 409-5 Filed 03/12/19 Page 2 of 2 PageID #: 3999
From: [REDACTED]
To: [REDACTED]
Cc: Lauren Salzman <Lauren@[REDACTED]>

Dear family

I am sharing my understanding of where we are with [REDACTED]

Driving south while in San Antonio [REDACTED] said she wanted to do things right and [REDACTED] asked about full honesty. She had mama PSP and 1,000 pesos and 100 Euros she stole from me.

She also hacked my facebook account.

We agreed in consequences that we had promised many times but never did, that was go back to Mexico.

[REDACTED] went to the border to see her crossing the border, my accountant was waiting for her across the bridge.

She had 10 weeks to do 3 tasks while in Mexico

1.- Earning her living down there. I just gave her 1660 pesos cash, around 128 US and I paid the bus ticket to Merida.

2.- Deliver book reports results.

3.- Getting her USA visa. I would pay the fees but [REDACTED] needed to do all the paperwork

My accountant drove her to SLP and put her in a bus to Merida. They made a stop in Monterrey where she looked for

books for the book report. She did not find any.

While in Merida she sent two lengthy emails describing for the most part the carnival. She shared the struggle in her about doing the commitment and attending the party.

It sounded like fun instead of healing. I sent an email telling her that. She then went into the worried mood. True? who knows.

It is difficult to believe what [REDACTED] says based in past data.

She was asked to deliver within 72 hrs from her arrival a full proposal and she just sent a small paragraph without detail.

Once in Merida she asked me to deliver books for the book report while she missed the opportunity to have some in Monterrey. I didn't.

She also missed the opportunity about the full proposal in the more that seventeen hour bus trip to Merida.

She said is staying at

[REDACTED]
Merida, Yucatan [REDACTED]

She say she chosed a book in Spanish called Sensations and Perceptions to start book reports

[REDACTED] thinks that she is still playing games with little or no conscience. [REDACTED] has proof that [REDACTED] hacked the greathead account ([REDACTED] had changed the password previously).

[REDACTED] and the team are preparing a precise draft with shorter span times for [REDACTED] to earn her comeback.

It is deeply sad to say but seems like more and more difficult that [REDACTED] will come back.

Tell me or [REDACTED] what you think about it

Love

Papa

PD She asked over and over again permit to write K and the three of you.

She sent kisses and hellos and the message that she is safe.

EXHIBIT 11

Cc:

Case 1:18-cr-00204-NGG-VMS Document 409-6 Filed 03/12/19 Page 2 of 3 PageID #: 4001

From:

Subject: Re: important

Sent: Wed, 29 Feb 2012 14:17:21 -0500

To:

Thats our conditions of satisfaction, just tell her to do so, if she wants those things (papers) she has to push and work for them, in response to the last very victim like questions you can tell her she hasn't done anything at all and that's why we are doing this.

In my opinion she is playing victim now, she is smart enough to do a book report in 48 hours, that's all we are asking for right now.

Sent from my Laser iPhone 4.

On Feb 29, 2012, at 1:45 PM, [REDACTED] wrote:

I just received this communication

----- Forwarded message -----

From:

Date: 2012/2/29

Subject: Re: important

To:

Papa,

I dont have a book report now and will not have it ready in 48 hours. I started working on the one i told you and it is about 600 pages lonmg and in a large text-book like format, so it doesnt fit my measurements. And I started it just on on Saturday. Also I have sent you all the accounts I had access to, there is nothing more I can send you. I didnt open a facebook or skype account yet as i said i would because it would be pointless since i have no money to pay at the cyber to use them.

Withouth my papers I cannot do anything about my visa, at all.

I am so sad. I cry every time I am alone. You havent answered my constant questions about being able to write keith and [REDACTED]. I have so much I need to say to each of you. This really seems impossible now.

Why wont you send me my papers? You said on the last talk you and [REDACTED] had with me that you'd help me with my visa in every way you could, sending me what i needed, even economically, and i am not asking for anything but my papers -- i will pay you for sending them if that is what you want. There is nothing I can do without them. I cannot renew my passport yet because I have no money. I cannot open a bank account to begin building the basis for a tourist visa because i have no proof of address, i cannot begin applying at au pair institutions because I have no proof of any education. I can do nothing.

What is this? what did i do? I have been trying to survive and just I as I am getting started. What am I supposed to do? What do you want me to do?

2012/2/29 [REDACTED]

Dear [REDACTED]

The family no longer has the heart to keep calling you out on your destructiveness and playing your games. Please send a book report and all the email accounts and passwords you had access to in the last year to me within 48 hours. This report needs to be based on a book that is 250 pages or more, and must be a minimum of 10,000 words. Thereafter, you will need to send 1 new book report by midnight EST every 7 days. If you do not complete these tasks, without exception or excuse, **it will demonstrate to us a lack of care for the family and therefore we can not**

~~support such difference in values.~~ Additionally you need to legitimately return to Clifton Park
by Wednesday, April 4th 2012. Unfortunately, we cannot consider sending you any of your
requested documents.

With Love

Papa, [REDACTED] [REDACTED]