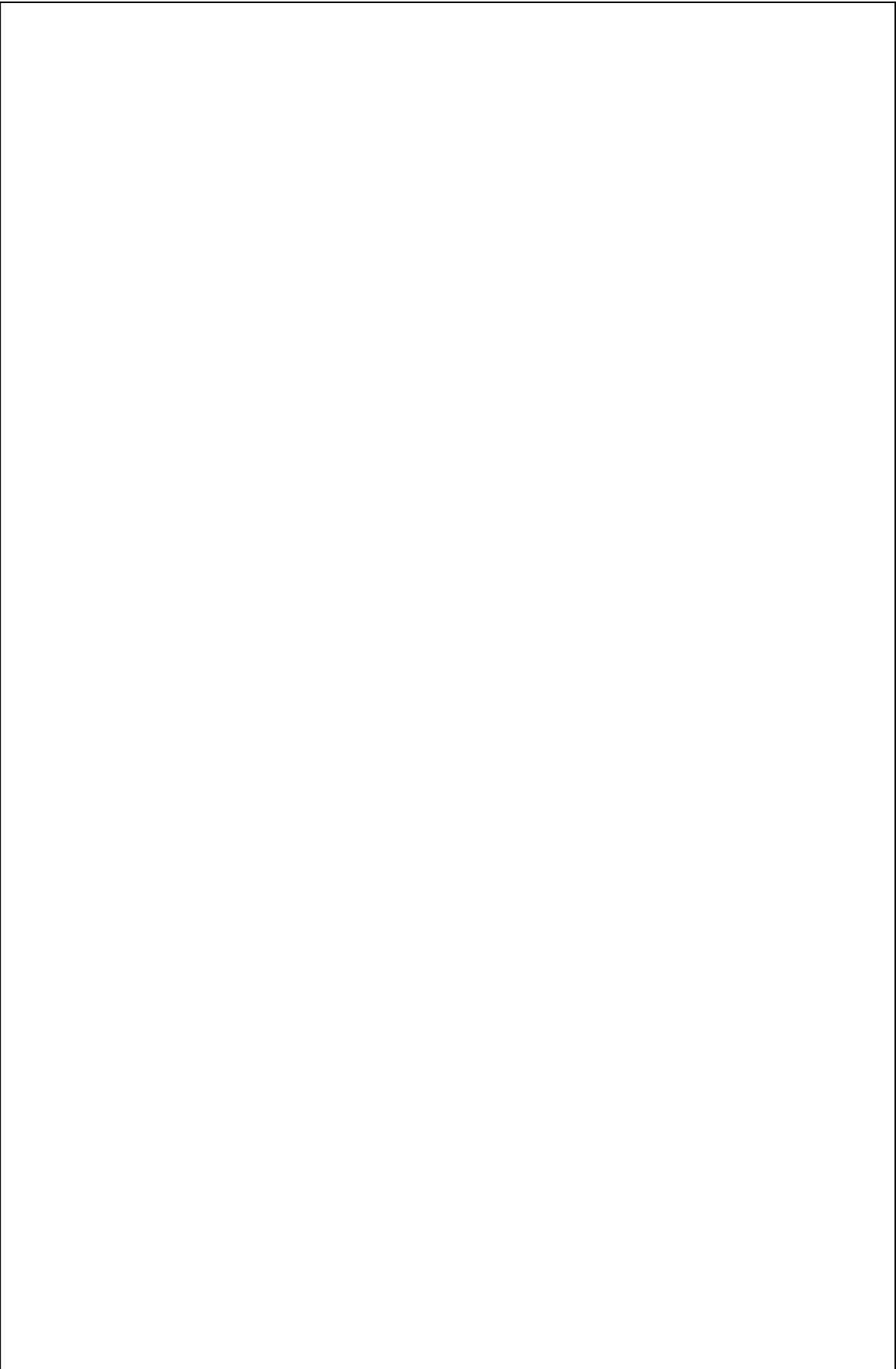


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1 CASE NUMBER: BC470714  
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL  
3 LOS ANGELES, CALIFORNIA THURSDAY, OCTOBER 27, 2016  
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE  
5 APPEARANCES: (AS HERETOFORE NOTED.)  
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606  
7 TIME: 8:19 A.M.

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MR. MCMILLAN: GOOD MORNING, YOUR HONOR.

12

THE COURT: GOOD MORNING. WE ARE ON THE

13

RECORD. WE'LL BE CONTINUING WITH THE ADMISSION OF

14

EXHIBITS.

15

MR. PRAGER: YOUR HONOR, I OWE YOU AN ANSWER

16

THIS MORNING. I HAVE AN ANSWER FOR YOU.

17

THE COURT: I BEG YOUR PARDON.

18

MR. PRAGER: I OWE YOU AN ANSWER TO A

19

QUESTION. I HAVE AN ANSWER FOR YOU.

20

THE COURT: ALL RIGHT.

21

MR. PRAGER: ON NUMBERS 222 --

22

THE COURT: ALL RIGHT.

23

MR. PRAGER: -- 225 AND 233.

24

THE COURT: YES.

25

MR. PRAGER: THOSE DOCUMENTS WERE NOT

26

AUTHENTICATED DURING THE VARIOUS DISCUSSIONS WE HAD

27

YESTERDAY.

28

THE COURT: THEY WERE NOT?

1 MR. PRAGER: THEY WERE NOT.

2 THE COURT: ALL RIGHT. THEY WEREN'T ADDRESSED  
3 EITHER SPECIFICALLY BY HOCHSTEIN OR NELSON.

4 MR. PRAGER: MORGAN-NICHOLS, YOUR HONOR.

5 THE COURT: PARDON?

6 MR. PRAGER: NO, THEY WEREN'T.

7 THE COURT: NOT AT ALL?

8 MR. PRAGER: THEY WERE NOT AUTHENTICATED IN  
9 THIS.

10 THE COURT: DID WE HAVE TESTIMONY IN THE TRIAL  
11 LOG?

12 MR. PRAGER: I THINK THERE WERE DEPO READS OF  
13 THE INFORMATION, WHICH IS WHY THEY'RE BEING OFFERED,  
14 BUT THE OBJECTION WAS AUTHENTICATION OR FOUNDATION. SO  
15 WE SPOKE YESTERDAY ABOUT GOING BACK TO CONFIRM IF THEY  
16 WERE AUTHENTICATED, AND THE ANSWER IS THEY WERE NOT.

17 THE COURT: ALL RIGHT. WITH THAT INFORMATION,  
18 I'M NOT GOING TO RECEIVE 222, 225, AND 233 IN EVIDENCE,  
19 AND THANK YOU FOR CHECKING ON THAT FOR US.

20 MR. MCMILLAN: YOUR HONOR, I THINK I CAN ALSO  
21 DISPENSE WITH THE ECONOMIC DAMAGES EXHIBITS. MR. PARIS  
22 IS STILL BACK WORKING ON EXHIBIT 82 WITH MY MOM.  
23 THEY'RE SORT OF TEAMING ON THAT, TRYING TO GET IT DONE.  
24 THERE'S A LOT OF INFORMATION THERE. BUT I DO KNOW THAT  
25 THE DAMAGE EXHIBITS I THINK IT'S 599, 600 --

26 THE COURT: 600, 603.

27 MR. MCMILLAN: RIGHT. WE WILL BE WITHDRAWING  
28 THE ECONOMIC DAMAGES CLAIM.

1 THE COURT: RIGHT. AS TO THOSE THREE  
2 EXHIBITS?

3 MR. MCMILLAN: THAT'S RIGHT.

4 THE COURT: THANK YOU FOR CHECKING ON THAT AS  
5 WELL.

6 MS. SWISS: AND JUST TO REPEAT THE NUMBERS  
7 AGAIN?

8 THE COURT: 599, 600, 603.

9 MS. SWISS: THANK YOU.

10 MR. GUTERRES: AND LAST NIGHT I HAD ALSO  
11 E-MAILED MR. MCMILLAN BECAUSE THE COURT ALREADY  
12 RECEIVED THREE OTHER EXHIBITS THAT SPOKE TO THE  
13 ECONOMIC DAMAGES THAT WERE RECEIPTS FOR MONITORED  
14 VISITS AND FOR OTHER TOYS THAT WERE PURCHASED. AND  
15 THOSE WERE EXHIBITS 598, 601, AND 602. AND IN LIGHT OF  
16 THE RULINGS BY THE COURT, I HAD REQUESTED THAT  
17 MR. MCMILLAN RECONSIDER WHETHER OR NOT THOSE THREE  
18 EXHIBITS WERE PROPER.

19 AND WE WOULD REQUEST THAT THEY BE NOT RECEIVED  
20 GIVEN THE STATE OF THE CASE AT THIS POINT.

21 MR. MCMILLAN: GIVEN THE STATE OF THE CASE IN  
22 LIGHT OF YOUR HONOR'S RULINGS, I WOULD AGREE THAT THEY  
23 ARE NO LONGER RELEVANT. AND THEY'RE NOT SOMETHING I  
24 COULDN'T WITHDRAW, I THINK, WITHOUT CLIENT CONSENT. SO  
25 I DID HAVE THAT CONVERSATION, GOT CONSENT, AND WE WILL  
26 WITHDRAW THEM.

27 THE COURT: ALL RIGHT. BUT AS OPPOSED TO NOT  
28 WITHDRAWING THEM, IN LIGHT OF WHAT YOU'VE TOLD ME AND

1 WHAT MR. GUTERRES HAS TOLD ME, MY RULING IS THAT I WILL  
2 VACATE THE PRIOR RULING ADMITTING THOSE EXHIBITS INTO  
3 EVIDENCE, AND THAT THEY WILL NOT BE RECEIVED. THAT  
4 COVERS 598, 601, AND 602 AS RECITED BY MR. GUTERRES.

5 WE ALSO HAD -- BEFORE WE GET TO OTHER ONES --  
6 YOU WERE GOING TO ALSO, MR. MCMILLAN, COME UP WITH A  
7 LISTING OF THE ENTRIES IN THE DELIVERED SERVICE LOG OR  
8 ASKING TO BE RECEIVED IN EVIDENCE PROBABLY FOR THE  
9 LIMITED PURPOSE OF INFORMATION AVAILABLE AND RELIED  
10 UPON.

11 HAVE YOU MANAGED TO GET THAT TOGETHER YET?

12 MR. MCMILLAN: IT'S -- MR. PARIS AND --

13 THE COURT: THAT'S WHAT THEY'RE WORKING ON?

14 MR. MCMILLAN: -- MY MOM, YEAH, THEY'RE STILL  
15 WORKING ON THAT. THEY WENT LATE INTO THE NIGHT AND  
16 THEN WE ALL GOT UP PRETTY EARLY THIS MORNING, AND  
17 THEY'RE STILL WORKING ON IT.

18 THE COURT: THAT'S FINE. OKAY.

19 AND THEN YOU WERE GOING TO BE REVIEWING THE  
20 DOCUMENTS, FURTHER DOCUMENTS BEYOND THOSE ALREADY RULED  
21 UPON FROM EXHIBIT 24 THAT THE PARTIES ARE ASKING TO BE  
22 INTRODUCED AND IN THIS REGARD THERE WAS THE MILES --  
23 EXCUSE ME, MILLS DECLARATION, WHICH I'D INDICATED  
24 NEEDED TO BE VERY SUBSTANTIALLY REDACTED.

25 MR. GUTERRES: YOUR HONOR, I SUBMITTED OUR  
26 PROPOSED REDACTIONS TO MR. MCMILLAN LAST NIGHT. AND  
27 THEN THIS MORNING I RECEIVED THEIR PROPOSAL, AND I JUST  
28 INDICATED WE HAVEN'T ACTUALLY HAD A CHANCE TO DISCUSS

1       THEIR --

2               THE COURT:   THAT'S FINE.   WE'LL COME BACK TO  
3       THAT.

4               MR. MCMILLAN:   AND THAT'S ALSO ANOTHER THING  
5       THAT MR. PARIS HAS IN HIS POSSESSION.

6               THE COURT:   ALL RIGHT.

7               MR. MCMILLAN:   I ACTUALLY DON'T EVEN HAVE IT  
8       WITH ME.

9               MR. GUTERRES:   AND THEN WE DID TAKE A LOOK AT  
10       THE FIRST SET OF THE DELIVERED SERVICE LOGS THAT GO UP  
11       TO THE TDM OF NOVEMBER 3RD, WHICH I JUST HANDED TO  
12       MR. MCMILLAN, WITH THE ONLY REDACTIONS OF THE LAST TWO  
13       ENTRIES WHICH WERE NOVEMBER 6 AND NOVEMBER 10.   AND AS  
14       I UNDERSTOOD IT, THE COURT WAS GOING TO ALLOW THESE FOR  
15       A LIMITED PURPOSE.   AND I JUST WANTED TO CONFIRM THAT  
16       I'VE REVIEWED THEM.

17              THE COURT:   I WAS GOING TO PERMIT SOME FOR A  
18       LIMITED PURPOSE.   I DIDN'T SAY ALL BECAUSE I NEEDED TO  
19       HAVE YOU TELL ME WHICH ONE OF THE NOTES, WHATEVER WE  
20       CALL THEM, THE ENTRIES YOU FELT WERE RELEVANT.   NOW, I  
21       AGREE THAT THERE'S A CUTOFF DATE, AND I THINK THE  
22       CUTOFF DATE IS AFTER THAT -- THERE WAS ONE ON  
23       NOVEMBER 6TH, IF I RECALL CORRECTLY, WHICH -- IN FACT,  
24       I'VE GOT IT HERE.   LET ME TAKE A LOOK.

25              MR. GUTERRES:   THE ONE ON NOVEMBER 6 THAT I  
26       THOUGHT WAS GOING TO BE CUT OFF WAS THE ONE I THINK  
27       THAT THE COURT HAD INDICATED WAS A PHN AUSTIN SPEAKING  
28       TO OLGA DEJESUS.

1           THE COURT:  YES, THAT'S CORRECT.  THE LAST ONE  
2           THAT I THOUGHT HAD RELEVANCE WAS THE ONE AT THE BOTTOM  
3           OF THE PAGE 001496, WHICH WAS AN ENTRY BY SUSAN PENDER  
4           DATED NOVEMBER 5TH, AND IT DOES CARRY OVER FOR SIX OR  
5           SO LINES ONTO THE TOP OF PAGE 1497.

6           THE NEXT ONE ON NOVEMBER 6TH WAS THE ONE  
7           ENTERED BY LAURA AUSTIN.  IT DOESN'T REVEAL ANY  
8           SUBSTANTIVE INFORMATION IN ANY EVENT, AND IT IS -- IT  
9           IS UNCLEAR AS TO THE TIMING ON NOVEMBER 6TH WHEN ANY OF  
10          THESE EVENTS OCCURRED.  I DON'T REALLY OBJECT TO IT  
11          COMING IN BUT I DON'T THINK IT ADDS ANYTHING TO THE  
12          CASE BECAUSE IT JUST TALKS ABOUT THINGS -- THAT AUSTIN  
13          HAD SPOKEN TO OLGA DEJESUS; OLGA WANTED TELEPHONE  
14          NUMBER, FATHER, AS HE HAD LEFT A MESSAGE THAT HE WANTED  
15          TO VACCINATE RYAN; AUSTIN PROVIDED THE PHONE NUMBER;  
16          DANIELLA TULLIER, RD, HIS DIETITIAN AT THE FTT CLINIC,  
17          WITH A PHONE NUMBER.

18          I JUST DON'T SEE THAT IT HAS ANYTHING TO DO  
19          WITH ANYTHING.  SO MY THOUGHT IS THAT I THINK UP TO  
20          THAT TIME, TO THE END OF PENDER'S ON PAGE 1497, WHICH  
21          IS THE END OF HER ENTRY ON NOVEMBER 5TH.

22          MR. GUTERRES:  THAT'S WHAT I SUBMITTED TO THE  
23          COURT AS A PROPOSAL AND I GAVE ONE TO MR. MCMILLAN.  
24          AND I THOUGHT THERE HAD BEEN AN ENTRY ABOUT PASTOR  
25          NEYLAND IN THIS SECTION, BUT IT MUST BE IN THE LATER  
26          SECTION.

27          THE COURT:  OKAY.

28          MR. GUTERRES:  SO THERE WAS NO NEED TO...

1 THE COURT: HAVE YOU HAD A CHANCE TO LOOK AT  
2 THAT YET?

3 MR. MCMILLAN: I HAVE NOT, YOUR HONOR, BUT  
4 JUST FOR CLARIFICATION, THE PASTOR NEYLAND ENTRY  
5 HAPPENED ON NOVEMBER 2ND. SO I DON'T KNOW EXACTLY  
6 WHAT'S GOING ON HERE EXCEPT THAT 1491 THROUGH 1495 --  
7 OR 1492 THROUGH 1494 APPEAR TO BE MISSING FROM THIS  
8 PACKET.

9 MS. SWISS: WELL, THAT REMAINS A MYSTERY.

10 MR. GUTERRES: THAT'S PROBABLY WHY.

11 THE COURT: WE'RE MISSING 92, 93 AND 94.

12 MR. MCMILLAN: RIGHT.

13 THE COURT: ALL RIGHT. WE'LL GET THAT  
14 CORRECTED.

15 BUT YOU THINK THAT CONTACT WITH HIM WAS ON THE  
16 2ND?

17 MR. MCMILLAN: I'M POSITIVE IT WAS ON  
18 NOVEMBER 2ND. IT'S AT THE BOTTOM OF THE PAGE ON THE  
19 ENTRY -- BOTTOM OF THE PAGE WHERE THAT ENTRY APPEARED.  
20 IT'S PASTOR REESE NEYLAND, IT'S ABOUT A 3-INCH  
21 PARAGRAPH, NOVEMBER 2ND, SUSAN PENDER. I CAN ALMOST  
22 SEE IT IN MY MIND.

23 MR. GUTERRES: THANK YOU. WE WERE LOOKING FOR  
24 IT AND I COULDN'T FIND IT.

25 THE COURT: YES, HE'S ABSOLUTELY CORRECT. THE  
26 LAST ENTRY ON PAGE 1494 IS AN ENTRY BY PENDER, AND THIS  
27 STARTS OUT:

28 "CSW RECEIVED A PHONE CALL FROM



1 PASTOR REESE NEYLAND."

2 SO NO WONDER YOU DIDN'T REDACT THAT; IT'S NOT  
3 IN THE PAGES YOU GAVE US.

4 MR. MCMILLAN: RIGHT.

5 MR. GUTERRES: MY APOLOGIES, YOUR HONOR. I  
6 HADN'T REALIZED I WAS MISSING TWO PAGES.

7 MR. MCMILLAN: ALSO, YOUR HONOR -- AND  
8 OBVIOUSLY SOME OF THIS DEPENDS ON WHAT THE RULINGS ARE  
9 ON THE CURRENT PENDING MOTIONS -- BUT EVEN AFTER  
10 NOVEMBER 6, CERTAIN ENTRIES BY PARTICULARLY VICTORIA  
11 SCHEELE WOULD BE RELEVANT TO HER CONDUCT TOWARDS  
12 MS. DUVAL IN RENDERING HER SERVICES THAT WERE RENDERED.

13 THE COURT: I THINK THAT'S POSSIBLE, AND  
14 THAT'S WHY, AMONG OTHER THINGS, I ASKED YOU TO  
15 DESIGNATE THE ENTRIES.

16 THE ONES WE HAVE, WITH THE EXCEPTION OF THE  
17 ONE ABOUT NEYLAND ON NOVEMBER 2ND, GOING THROUGH THE  
18 END OF PENDER'S ON NOVEMBER 5TH, AT LEAST AS TO THOSE,  
19 DOES EVERYBODY AGREE THAT THOSE WOULD BE ADMISSIBLE?

20 MR. GUTERRES: FOR THE LIMITED PURPOSE?

21 THE COURT: FOR THE LIMITED PURPOSE, RIGHT.

22 MR. MCMILLAN: ONE MOMENT, YOUR HONOR. I JUST  
23 NEED TO MAKE SURE WHAT THEY ARE. SOME OF THESE I  
24 RECALL AND SOME I DON'T. WE SPENT A LOT OF TIME WITH  
25 THIS LAST NIGHT.

26 YEAH, I THINK -- THERE'S ONE ON 1491, WE DON'T  
27 KNOW WHAT IT SAYS AFTER 1491 BECAUSE THOSE PAGES ARE  
28 MISSING, BUT IT'S AN ENTRY BY AN ELIZABETH SMALL, AND I

1 DO NOT BELIEVE THERE'S BEEN ANY TESTIMONY OR ANYTHING  
2 ABOUT HER. IT SAYS HERE THAT SHE'S A PHN AND THAT SHE  
3 WAS APPROACHED BY MS. PENDER FOR A CONSULTATION BUT  
4 NOTHING MORE THAN THAT. SO I'M NOT SURE WHAT THAT IS.  
5 SO I'M GOING TO SKIP THAT ONE FOR THE MOMENT UNTIL, YOU  
6 KNOW, MR. PARIS SHOWS UP.

7 BUT OTHER THAN THAT, IT LOOKS LIKE ALL OF THE  
8 ENTRIES IN THIS PACKET WOULD BE APPROPRIATE TO BE  
9 ADMITTED FOR A LIMITED PURPOSE.

10 THE COURT: ALL RIGHT. WELL, YOU CAN TAKE A  
11 LOOK AT IT. I'VE GOT IT AND LOOKING AT IT. IT  
12 ACTUALLY -- AND I AGREE, AT THE BOTTOM IT'S JUST ONE  
13 LINE. WHEN IT GOES OVER ON THE NEXT PAGE IT TAKES  
14 PRETTY CLOSE TO HALF THE PAGE OF A GREAT DEAL OF  
15 INFORMATION. IT DOES INDICATE A NUMBER OF STATEMENTS  
16 MADE BY AUSTIN TO PENDER AND ROGERS AND SO ON. SO YOU  
17 HAVE TO TAKE A LOOK AT IT.

18 ALL RIGHT. WELL, WE'LL WAIT ON FURTHER ON THE  
19 DELIVERED SERVICE LOG.

20 MS. SWISS: YOUR HONOR, MAY I RAISE AN ISSUE  
21 ABOUT EXHIBIT 24?

22 THE COURT: YES.

23 MS. SWISS: YESTERDAY, WE DISCUSSED THE TWO  
24 LETTERS BETWEEN MR. MILLS'S ATTORNEY AND MS. DUVAL'S  
25 ATTORNEY IN EXHIBIT 24, BATES 637 THROUGH 640, AND THE  
26 COURT DID NOT RECEIVE THOSE LETTERS INTO EVIDENCE WHEN  
27 WE DISCUSSED IT YESTERDAY. MY UNDERSTANDING OF THE  
28 GROUNDS WAS THAT THERE WAS NO INFORMATION IN THE RECORD

1 THAT MS. PENDER HAD THIS INFORMATION AT THE TIME OF THE  
2 DETENTION AND KNEW ABOUT THESE LETTERS, AND SO  
3 THEREFORE THE COURT FOUND THAT THEY MAY NOT BE  
4 RELEVANT.

5 THE LETTERS ARE DATED IN AUGUST 2009, WHICH  
6 PREDATES THE DETENTION. AND IN LOOKING IN THE RECORDS  
7 FOR THE ENTIRETY OF THE CASE, THERE WAS A DECLARATION  
8 FILED BY MS. PENDER WITH THE COURT BEFORE THE COUNTY'S  
9 SUMMARY JUDGMENT MOTIONS WERE HEARD WHICH STATES THAT  
10 SHE DID RECEIVE CERTAIN DOCUMENTS FROM MS. DUVAL,  
11 FAMILY COURT DOCUMENTS FROM MS. DUVAL. AND IN THAT  
12 DECLARATION, ATTACHED TO IT, ARE THESE -- AMONG OTHER  
13 THINGS, THESE TWO LETTERS.

14 SO I WOULD ASK THE COURT TO RECONSIDER THIS  
15 RULING ALLOWING THESE TWO LETTERS INTO EVIDENCE FOR THE  
16 LIMITED PURPOSE. AND FURTHERMORE, AT THE TIME THAT  
17 MR. MILLS WAS QUESTIONED ABOUT THESE LETTERS, THEY HAD  
18 ALREADY BEEN RECEIVED INTO EVIDENCE FOR THE LIMITED  
19 PURPOSE. THEY WERE PUBLISHED TO THE JURY. AND SO FROM  
20 THE DEFENDANT'S STANDPOINT, THEY WERE ALREADY INTO  
21 EVIDENCE AT THAT TIME THAT MS. PENDER WAS QUESTIONED;  
22 THEREFORE WE DECIDED NOT TO REHASH THAT AREA OF  
23 QUESTIONING WITH MS. PENDER, DID NOT ASK HER THOSE  
24 QUESTIONS BECAUSE THIS DOCUMENT HAD ALREADY BEEN  
25 RECEIVED INTO EVIDENCE AT THAT TIME.

26 MR. PRAGER: I'M SORRY, YOUR HONOR, I DIDN'T  
27 GET THE NUMBER.

28 IF I COULD HAVE THE NUMBER? I DIDN'T HEAR THE

1 EXHIBIT NUMBER.

2 MS. SWISS: EXHIBIT 24, BATES 637 THROUGH 640.

3 MR. PRAGER: THANK YOU, YOUR HONOR.

4 MR. MCMILLAN: YOUR HONOR?

5 THE COURT: GO AHEAD.

6 MR. MCMILLAN: IN WHAT MS. SWISS IS SAYING, I  
7 HAVEN'T HEARD ANY NEW ARGUMENT THAT WAS NOT ALREADY  
8 RAISED AND ADDRESSED YESTERDAY, OTHER THAN A  
9 DECLARATION THAT WAS FILED TWO YEARS -- I THINK TWO  
10 YEARS AGO NOW IN THE COURT THAT WAS OBVIOUSLY PUT  
11 TOGETHER AND CREATED BY COUNSEL, WAS NOT SUBJECT TO  
12 CROSS-EXAMINATION OR ANYTHING ELSE. AND THERE'S BEEN  
13 NO EVIDENCE IN THIS TRIAL BY MS. PENDER OR ANYONE ELSE  
14 TO SUGGEST THAT THERE'S ANY FOUNDATION.

15 AND THE ARGUMENT STILL REMAINS, OBJECTION  
16 STILL REMAINS. IN ADDITION TO LACKING FOUNDATION AND  
17 CONSISTING OF HEARSAY AND MULTIPLE HEARSAY, THEY'RE  
18 PREJUDICIAL UNDER 352, UNDULY PREJUDICIAL. IT'S  
19 LETTERS BETWEEN ATTORNEYS ARGUING IN A FAMILY LAW  
20 DISPUTE.

21 THE COURT: WELL, I UNDERSTAND YOUR ARGUMENT.

22 IS MS. PENDER'S DECLARATION THAT YOU REFERRED  
23 TO IN EVIDENCE?

24 MS. SWISS: THE DECLARATION THAT I REFERRED TO  
25 IS NOT IN EVIDENCE IN THIS CASE IN THIS TRIAL, BUT THE  
26 COURT CAN TAKE JUDICIAL NOTICE OF IT AS A DOCUMENT  
27 FILED WITHIN THE COURSE OF THIS CASE.

28 THE COURT: NO, I'M NOT GOING TO.

1 MS. SWISS: IT WAS FILED JUNE 13, 2014, AND  
2 MS. PENDER WAS SUBJECT TO CROSS-EXAMINATION ABOUT THE  
3 DECLARATION IN HER DEPOSITION BUT NOT HERE AT TRIAL.

4 THE COURT: WELL, THAT'S NOT EVIDENCE IN THIS  
5 CASE AND I'M NOT GOING TO TAKE JUDICIAL NOTICE OF HER  
6 DECLARATION ELSEWHERE AS A BASIS FOR RECEIVING -- IF  
7 IT'S NOT BEFORE THE COURT, AS A BASIS FOR RECEIVING  
8 EVIDENCE IN THIS TRIAL. I'M NOT GOING TO CHANGE THE  
9 RULING ON THOSE TWO ATTORNEY LETTERS.

10 MS. SWISS: THANK YOU, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO WE STILL HAVE 24 AT  
12 ISSUE, WE STILL HAVE 82 AT ISSUE AS TO THE DELIVERED  
13 SERVICE LOG.

14 MR. PRAGER, YOUR RECOLLECTION ON THIS MAY BE  
15 BETTER. IN LOOKING AT THE -- WHAT I'LL CALL THE LOG  
16 THAT MR. PARIS PREPARED FOR ALL OF US, IN LOOKING AT MY  
17 NOTES, IT APPEARS TO ME THE NEXT ONE THAT HASN'T BEEN  
18 ADDRESSED WOULD BE NO. 327?

19 MR. PRAGER: THAT'S, I BELIEVE, CORRECT, YOUR  
20 HONOR.

21 YOUR HONOR, I THINK WHAT I'VE GOT NEXT UP IS  
22 NO. 704 AND NO. 705.

23 MR. MCMILLAN: YEAH, I THINK 327, IF WE CAN  
24 DEFER ON THAT, YOUR HONOR, UNTIL MR. PARIS GETS HERE.  
25 I KNOW THAT HE HAD SOMETHING WRITTEN UP ON THAT, AND I  
26 DON'T RECALL EXACTLY WHAT. HE SHOULD BE HERE -- IN  
27 FACT, I CAN TEXT HIM TO SEE HOW THEY'RE PROGRESSING ON  
28 EXHIBIT 82.

1 THE COURT: ALL RIGHT.

2 MR. PRAGER: I'M READY ON 704 AND 705, YOUR  
3 HONOR.

4 THE COURT: ALL RIGHT. YES, WE HAD TALKED  
5 ABOUT THOSE.

6 MR. PRAGER: OKAY. THIS IS EXHIBIT 2 TO  
7 MS. CONDON'S DEPOSITION, WHERE SHE ADMITS -- UNDER THE  
8 PENALTY OF PERJURY, IT'S FILED WITH THE COURT, AND SHE  
9 DOES VERIFY THIS AS HER DECLARATION AT HER  
10 DEPOSITION -- AT PAGE 72, LINES 15 THROUGH 18, THAT SHE  
11 HAS NOT SENT MS. DUVAL ONE OF THE DUE PROCESS LETTERS  
12 WE TALKED ABOUT DURING THE CASE AND WAS PLAYED AS PART  
13 OF THE -- I'M SORRY, IT WASN'T PLAYED, IT WAS READ AS  
14 PART OF THE DEPO READS THAT WERE OFFERED TO THE JURY.  
15 AND IT GOES TO THE ISSUE THAT THE DEFENSE IS SAYING  
16 THEY TOOK BACK THEIR FINDINGS TO SHOW THAT THE COUNTY  
17 OWED MS. DUVAL A DUE PROCESS LETTER TELLING HER SHE HAD  
18 THE RIGHT TO APPEAL, AND THE COUNTY NEVER SENT THAT  
19 LETTER TO MS. DUVAL.

20 MS. SWISS: YOUR HONOR, I APOLOGIZE. I DON'T  
21 HAVE 704 IN MY BINDER SO I'M LOOKING FOR IT.

22 MR. PRAGER: I HAVE IT, YOUR HONOR.

23 MS. SWISS: CAN YOU JUST SHOW IT TO ME TO  
24 SPEED THINGS ALONG?

25 MR. PRAGER: YEAH.

26 MS. SWISS: YOUR HONOR, THIS DECLARATION WAS  
27 FILED WITH COUNSEL'S -- WITH THE DEFENDANT'S MOTION FOR  
28 SUMMARY JUDGMENT IN THE UNDERLYING CASE. IT ALSO

1 REFERS TO MULTIPLE ATTACHMENTS WHICH WERE NOT INCLUDED  
2 IN THE EXHIBIT WHICH WOULD BE THE CIVIL RIGHTS  
3 INVESTIGATION REPORTS THAT HAVE ALREADY NOT BEEN  
4 RECEIVED INTO EVIDENCE. THIS DECLARATION IS ALSO  
5 CUMULATIVE. THE DEPOSITION READ DONE BY PLAINTIFFS  
6 CONFIRMS THAT MS. CONDON TESTIFIED THAT NO FINAL  
7 DETERMINATION OF A CIVIL RIGHTS LETTER WAS SENT AFTER  
8 THE CHANGE CONCLUSIONS BY THE CIVIL RIGHTS UNIT. SO  
9 THEREFORE, ADMITTING THE DECLARATION INTO EVIDENCE  
10 WOULD BE MISLEADING BECAUSE IT DOESN'T HAVE ALL OF THE  
11 INFORMATION ATTACHED, AND IT SHOULD NOT BE ATTACHED,  
12 AND THE DOCUMENT WOULD ALSO BE CUMULATIVE OF  
13 ALREADY-TESTIFIED-TO STATEMENTS IN THIS TRIAL.

14 THE COURT: WELL, THE FACT THAT A DOCUMENT HAS  
15 BEEN SUBJECT TO TESTIMONY DOES NOT MAKE IT CUMULATIVE.  
16 BUT IF THERE'S A QUESTION ABOUT WHETHER THERE'S A  
17 FOUNDATION FOR THE DOCUMENT TO BE RECEIVED, IF -- WE  
18 WOULD HAVE ALMOST NO EXHIBITS IF WE DIDN'T HAVE  
19 TESTIMONY ABOUT THE SUBJECT MATTER. SO, HAVING SAID  
20 THAT --

21 MR. PRAGER: I'M HAPPY TO REDACT OR LIMIT  
22 EVERYTHING EXCEPT HER SAYING IT'S HER -- MS. CONDON  
23 SAYING IT'S HER DECLARATION.

24 AND THEN WHAT WE CARE ABOUT IS CLAUSE 10 ON  
25 PAGE 3 OF THE DECLARATION, THAT JUST SAYS:

26 "A LETTER OF DETERMINATION FROM A  
27 CONCLUSION OF THE CIVIL RIGHTS  
28 INVESTIGATION WAS NOT SENT TO

1 MS. DUVAL."

2 AND ON THE ISSUE OF CUMULATIVE, I THINK THAT  
3 THIS WILL ACTUALLY SPEED THINGS ALONG BECAUSE, AS THE  
4 COURT CAN IMAGINE, IF WE CAN PUBLISH IT TO THE JURY,  
5 IT'S A MUCH FASTER WAY OF ESTABLISHING A FACT THAN  
6 READING A DEPOSITION TRANSCRIPT OR ANYTHING ELSE. AND  
7 THE WITNESS DID AUTHENTICATE THE DOCUMENT.

8 THE COURT: WELL, I'LL GET IT AND TAKE A LOOK  
9 AT IT. I'M LOOKING AT SOMETHING ELSE FROM MY --

10 MR. PRAGER: IF YOU WANT, I CAN HAND THE  
11 DEPOSITION TO THE COURT WHENEVER YOU'RE READY.

12 THE COURT: I'LL GET IT.

13 DON, THE EXHIBIT 704.

14 THE CLERK: I'M NOT SURE WE'VE GOT IT. IT'S  
15 NOT LISTED IN THE --

16 MS. SWISS: 704 IS NOT MARKED IN THE GREEN  
17 LIST AND THAT'S WHY IT'S NOT IN MY BINDER, I BELIEVE.

18 THE CLERK: IT'S NOT IN THE BINDER AT ALL, AND  
19 I DON'T BELIEVE I HAVE IT.

20 THE COURT: YOU DON'T HAVE IT EITHER.

21 MR. PRAGER: THIS IS, I THINK, FROM THE DEPO  
22 READ, YOUR HONOR.

23 MS. SWISS: YOUR HONOR, 704 IS ACTUALLY ON THE  
24 GREEN LIST DATED OCTOBER 26TH UNDER EXHIBITS MARKED FOR  
25 IDENTIFICATION AND PREVIOUSLY RULED ON. ON THE SECOND  
26 PAGE, THE SIXTH LINE DOWN.

27 MR. PRAGER: YOUR HONOR, IF THAT WAS RULED ON,  
28 I APOLOGIZE I MISSED THAT. SO LET ME TAKE A LOOK AT



1 705.

2 THE COURT: WELL, LET ME JUST CHECK THE LIST  
3 HERE.

4 MR. PRAGER: I APOLOGIZE. 704 APPARENTLY WAS  
5 RULED ON PREVIOUSLY. 705 IS MARKED FOR IDENTIFICATION  
6 ONLY. THAT'S THE NEXT EXHIBIT THAT WE'RE TALKING  
7 ABOUT.

8 THE COURT: ALL RIGHT. DO WE HAVE 705?

9 MS. SWISS: SO 704 IS NOT BEING RECEIVED.

10 THE COURT: APPARENTLY, IT WAS PREVIOUSLY  
11 RULED UPON AND IT WAS NOT RECEIVED.

12 ALL RIGHT. SO NOW I HAVE 705.

13 MS. SWISS: YOUR HONOR, THE OBJECTION IS UNDER  
14 352.

15 THE COURT: I THINK THAT IT'S PROBABLY  
16 INHERENT, ALTHOUGH POSSIBLY NOT, IN THE OBJECTION JUST  
17 MADE UNDER 352. THE OBJECTION IS ALSO BASED ON SECTION  
18 350, WHICH IS RELEVANT EVIDENCE THAT ARE ADMISSIBLE,  
19 THINGS THAT ARE, THINGS THAT ARE NOT. IT'S ONLY ONCE  
20 YOU FIND SOME RELEVANCE AT ALL THAT YOU GET TO 352,  
21 MEANING THAT IT'S RELEVANT BUT THERE'S ONE OF THOSE  
22 SPECIFIED DIFFERENT REASONS AS TO WHY IT SHOULDN'T BE  
23 RECEIVED.

24 SO PUTTING ALL THAT ASIDE TO GET TO THE HEART  
25 OF THE MATTER, WHAT DO YOU FEEL THIS OFFERS?

26 MR. PRAGER: HAPPY TO TELL YOU.

27 THE DEFENSE IS EXPECTED TO ARGUE THAT  
28 MS. HOCHSTEIN MADE A MISTAKE AND SHE ALONE REACHED

1 THESE CONCLUSIONS. IF YOU LOOK AT THIS LETTER, YOUR  
2 HONOR, IT SAYS THAT "I" -- MS. CONDON SAYS ON THE FIRST  
3 PAGE:

4 "I COULD NOT SUBSTANTIATE YOUR  
5 ALLEGATIONS OF RACIAL DISCRIMINATION."

6 AND IT TALKS ABOUT HER I WOULD SAY OVERSIGHT  
7 OF THIS CASE. I THINK IT'S ADOPTIVE ADMISSION BY THE  
8 COUNTY AND THEIR HUMAN RESOURCES DIVISION MANAGER  
9 BECAUSE SHE'S TALKING ABOUT HER -- IT SUGGESTS THAT SHE  
10 REVIEWED THE FILE AND IT WOULD SUGGEST THAT SHE AGREED  
11 WITH THE OUTCOME OF THE FILE AS OF NOVEMBER 9, 2010,  
12 WHICH IS DIRECTLY OPPOSITE FROM WHAT THE COUNTY IS  
13 SAYING IN THEIR DIRECTED VERDICT MOTIONS. AND IT'S  
14 EXPECTED AT CLOSING ARGUMENTS THEY'LL MAKE THE SAME  
15 ARGUMENTS.

16 THE COURT: 705 WILL NOT BE RECEIVED. I DO  
17 NOT FIND RELEVANCE OF THIS LETTER. THIS IS NOT A  
18 RULING ON OTHER LETTERS BY CONDON.

19 AND THE LACK OF RELEVANCE THAT I FIND TO THIS  
20 LETTER -- JUST SO YOU'LL UNDERSTAND, I'M NOT EXPECTING  
21 YOU TO AGREE -- BUT THIS LETTER SPECIFICALLY ADDRESSES  
22 A CLAIM OF RACIAL DISCRIMINATION. THAT IS AN ISSUE NOT  
23 RELEVANT TO THIS CASE. IT WOULD BE ENTIRELY POSSIBLY  
24 THAT SOME OTHER PERSON COULD BE LOOKING AT OTHER  
25 ISSUES. AND ONE OF THE REASONS I HAD ASKED YOU TO  
26 CHECK ON CONDON'S TESTIMONY IS THAT, GIVEN HER POSITION  
27 AT THE TIME, IT DOES SEEM THERE COULD BE SUBJECT  
28 MATTERS ON WHICH SHE HAS SAID SOMETHING THAT WOULD BE A

1 RELEVANT SUBJECT MATTER AND COULD BE AN ADMISSION AS A  
2 PERSON, BECAUSE OF HER TITLE AND POSITION, AUTHORIZED  
3 TO BE SPEAKING ON BEHALF OF DCFS. BUT BECAUSE THIS  
4 ADDRESSED ONLY THE CLAIM OF RACIAL DISCRIMINATION,  
5 THAT'S LACK OF RELEVANCE.

6 I'M JUST TELLING YOU SO YOU'LL UNDERSTAND WHAT  
7 I'M RULING, AS I SAID, NOT ASKING FOR AGREEMENT.

8 MR. PRAGER: I UNDERSTAND.

9 THE COURT: OKAY. SO 705 IS NOT RECEIVED.

10 JUST IN A BROAD, GENERAL QUESTION, WE STILL  
11 HAVE QUITE A BIT TO GO, AND I SAY THIS NOT TO IN ANY  
12 WAY DISCOURAGE SOMEONE FROM OFFERING EVIDENCE THAT THEY  
13 FEEL SHOULD BE RECEIVED AND SHOULD BE PROPERLY PART OF  
14 THE EVIDENCE IN THE CASE, BUT I DO WONDER ON SOME OF  
15 THESE, WHY DO YOU NEED IT? AND AS I'VE ALREADY STATED,  
16 I DON'T CONSIDER IT TO BE A CUMULATIVE WHERE SOMEONE  
17 HAS GIVEN TESTIMONY THAT'S BEING THE SUBJECT OF AN  
18 EXHIBIT AS WELL BECAUSE THE ISSUE, AS I STATED, IF --  
19 YOU'VE GOT TO HAVE SOME TESTIMONY IN ORDER TO GET A  
20 FOUNDATION FOR IT. AND THEN ONCE YOU GET A FOUNDATION  
21 FOR IT, TO THEN HAVE THE OBJECTION THAT IT'S CUMULATIVE  
22 WOULD SEEM TO BE DEFEATING TO A PERSON WHO WANTED TO  
23 GET A DOCUMENT INTO EVIDENCE. THERE'D BE ALMOST NO WAY  
24 TO GET IT IN. NOW, THIS WOULDN'T BE TRUE UNDER ALL  
25 CIRCUMSTANCES BUT IT CERTAINLY IS TRUE.

26 SO I'M HAPPY TO ADDRESS ALL OF THESE, AND  
27 WHATEVER WE HAVE WE'RE GOING TO. BUT, YOU KNOW, JUST  
28 AS A GENERAL OBSERVATION, I LOOK AROUND THE COURTROOM

1 WITH ALL THE NOTEBOOKS ALL OF US HAVE AND WITH ALL THE  
2 TESTIMONY WE'VE HAD, WHETHER OR NOT ALL OF THESE REALLY  
3 NEED TO BE ADDRESSED.

4 MR. PRAGER: WELL, YOU TOOK THE WIND OUT OF MY  
5 SAILS BECAUSE I WANTED TO TELL YOU ALL OF PAGE 3 IS  
6 BEING WITHDRAWN.

7 THE COURT: WELL, 327 -- HAS 370 BEEN  
8 WITHDRAWN?

9 MR. PRAGER: I'M SORRY, 370? I'M SAYING ON  
10 PAGE 3 OF MR. --

11 THE COURT: YES.

12 MR. PRAGER: LET ME DO THE NUMBERS. ON  
13 EXHIBIT 710, 719 --

14 THE COURT: I'M ON A DIFFERENT PAGE.

15 MR. PRAGER: WELL, YOU'VE RULED ON 705, SO I  
16 TURNED THE PAGE TO PAGE 3 OF 4.

17 MS. SWISS: WE HAVE A SEVEN-PAGE DOCUMENT.

18 MR. PRAGER: I HAVE A FOUR-PAGE DOCUMENT.

19 THE COURT: OH, I HAVE A SEVEN-PAGE DOCUMENT.

20 MR. MCMILLAN: I THINK THE CURRENT -- THE  
21 VERSION AS OF OCTOBER 26TH IS DOWN TO FOUR PAGES.

22 MS. SWISS: WE DON'T HAVE THAT.

23 THE COURT: OH. I'M HAPPY TO HEAR IT BUT I  
24 NEVER GOT IT. I'M READING OFF THE SEVEN-PAGE DOCUMENT  
25 WHICH WAS AN EARLIER ITERATION BY MR. PARIS.

26 MS. SWISS: MR. PARIS ISN'T HERE, FOR THE  
27 RECORD, SO NOBODY KNOWS WHAT'S GOING ON.

28 MR. GUTERRES: I THINK WE SHOULD MARK THAT AND

1 SEND THAT STATEMENT TO MR. PARIS'S PARENTS.

2 THE COURT: YES, THAT IS WHAT HIS PARENTS  
3 WOULD LIKE TO HAVE. I WON'T SPEAK FOR ANYONE ELSE BUT  
4 IT'S QUITE APPARENT THAT I DIDN'T KNOW WHAT WAS GOING  
5 ON BECAUSE I'VE BEEN OPERATING FROM THE SEVEN-PAGE  
6 DOCUMENT.

7 MR. PRAGER: WELL, LET ME -- I SIT NEAR THE  
8 WELL, YOUR HONOR, OF THE FOUNTAIN HERE OF INFORMATION.  
9 LET ME GIVE YOU THE NUMBER SO THAT WAY WE CAN KEEP  
10 MOVING AND WE CAN GET THESE ISSUES ADDRESSED AND MOVE  
11 ALONG.

12 THE COURT: SURE.

13 MR. PRAGER: OKAY? JUST EXHIBIT 710 -- AND  
14 THERE ARE SOME MULTIPLE EXHIBITS BECAUSE THERE ARE  
15 BATES NUMBERS WITHIN INDIVIDUAL EXHIBITS, SO LET ME  
16 IDENTIFY THEM.

17 THE COURT: ALL RIGHT.

18 MS. SWISS: WELL, COUNSEL, MOST OF THEM HAVE  
19 ALREADY BEEN WITHDRAWN PREVIOUSLY.

20 MR. PRAGER: OKAY.

21 MS. SWISS: MY UNDERSTANDING IS, OF 710, THE  
22 ONLY ONES STILL AT ISSUE FROM THE SEVEN-PAGE LIST ON  
23 PAGE 4 OF 7 IS BATES 17046 THROUGH 17266.

24 MR. PRAGER: RIGHT. YOU'RE SAYING THAT IS  
25 STILL BEING OFFERED?

26 MS. SWISS: THAT IS THE ONE AS OF OCTOBER 18TH  
27 ON THIS LIST.

28 MR. PRAGER: RIGHT.

1 MS. SWISS: THAT'S THE ONLY ONE THAT'S STILL  
2 AT ISSUE. THAT'S BEING WITHDRAWN. THEN THE OTHER ONES  
3 I BELIEVE HAVE ALREADY BEEN WITHDRAWN.

4 MR. PRAGER: SO I'M JUST TRYING TO WITHDRAW,  
5 YOUR HONOR, NO. 710, AS COUNSEL SUGGESTED, BATES  
6 NOS. 017046 THROUGH 017266.

7 I CAN HAPPILY MAKE A -- OFFER PAGES 3 AND 4 TO  
8 THE COURT IF YOU WANT TO MAKE COPIES REALLY QUICK.

9 THE COURT: NO, YOU GO AHEAD AND TELL ME.

10 MR. PRAGER: OKAY.

11 THE COURT: ALL RIGHT. SO THOSE PAGES OF 710  
12 ARE WITHDRAWN?

13 MR. PRAGER: YES.

14 THE COURT: ALL RIGHT. GO AHEAD TO YOUR NEXT  
15 ONE.

16 MR. PRAGER: EXHIBIT 719, EXHIBIT 7 TO THE  
17 SCHEELE DEPO. I'VE GOT THE BATES NOS. AS WELL IF YOU  
18 WANT THEM, YOUR HONOR.

19 THE COURT: YES, PLEASE.

20 MR. PRAGER: IT'S 019389 THROUGH 019390.

21 THE COURT: ALL RIGHT.

22 MS. SWISS: THESE DOCUMENTS HAVE NOT BEEN  
23 IDENTIFIED, I DON'T BELIEVE. ARE YOU WITHDRAWING IT?

24 MR. PRAGER: YEAH.

25 MS. SWISS: THEN IT DOESN'T MATTER.

26 THE COURT: THAT'S BEING WITHDRAWN?

27 MR. PRAGER: YEAH.

28 THE COURT: ALL RIGHT.

1 MR. PRAGER: NEXT IS EXHIBIT 720, AND THERE  
2 WILL BE A NUMBER OF DOCUMENTS.

3 MAY I PROCEED?

4 THE COURT: YES.

5 MR. PRAGER: THE FIRST IS THE SCHEELE EXHIBIT  
6 NO. 13, AND IT'S BATES RANGE 019682 THROUGH 019693.

7 THE COURT: OKAY. IS THAT --

8 MR. PRAGER: WITHDRAWN.

9 THE COURT: WITHDRAWN.

10 MR. PRAGER: THESE ARE ALL WITHDRAWN.

11 THE COURT: ALL RIGHT.

12 MR. PRAGER: MAY I PROCEED?

13 THE COURT: OKAY.

14 MR. PRAGER: THE NEXT ONE IS EXHIBIT 720,  
15 SCHEELE EXHIBIT NO. 14, AND THE BATES RANGE IS 019694  
16 THROUGH 019695.

17 THE COURT: THAT'S WITHDRAWN?

18 MR. PRAGER: YES, YOUR HONOR.

19 THE COURT: OKAY. WITHDRAWN.

20 MR. PRAGER: NEXT IS EXHIBIT 720, IT'S SCHEELE  
21 EXHIBIT NO. 16, AND IT'S BATES RANGE 019699 THROUGH  
22 019712.

23 THE COURT: ALL RIGHT. THAT'S WITHDRAWN?

24 MR. PRAGER: THE FINAL EXHIBIT TO WITHDRAW --

25 THE COURT: IS THAT WITHDRAWN?

26 MR. PRAGER: YES, YOUR HONOR.

27 THE COURT: ALL RIGHT. AND THE NEXT ONE?

28 MR. PRAGER: 720, SCHEELE EXHIBIT NO. 19, THE

1 BATES RANGE IS 019718 THROUGH 019719.

2 THE COURT: AND THAT'S WITHDRAWN?

3 MR. PRAGER: YES, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MR. PRAGER: I'VE GOT TWO EXHIBITS TO DISCUSS  
6 WITH THE COURT.

7 THE COURT: ALL RIGHT.

8 MR. PRAGER: THE NEXT ONE IS 721. THESE ARE  
9 EXCERPTS OF MR. URQUIZO'S DEPOSITION. AND I HAVE BATES  
10 NUMBERS HERE.

11 THE COURT: EXCERPTS FROM URQUIZO'S  
12 DEPOSITION?

13 MR. PRAGER: YEAH, AND THEY'RE MARKED FOR  
14 IDENTIFICATION ONLY ON THE LAST INFORMATION I HAVE FROM  
15 THE COURT.

16 THE COURT: ALL RIGHT. I HAVE A -- ACCORDING  
17 TO THE LISTING I'VE BEEN GIVEN BY THE CLERK, THERE ARE  
18 FOUR DIFFERENT PAGES --

19 MR. PRAGER: YES, YOUR HONOR.

20 THE COURT: -- THAT ARE MARKED FOR ID?

21 MR. PRAGER: YES, YOUR HONOR.

22 THE COURT: AND THOSE ARE BEING MARKED FOR  
23 EVIDENCE?

24 MR. PRAGER: YES, YOUR HONOR.

25 THE COURT: WERE THESE READ?

26 MR. PRAGER: I BELIEVE THEY WERE WITH THE --  
27 WHEN THEY WERE COVERED -- I BELIEVE THESE WERE COVERED  
28 WITH THE WITNESS AT TRIAL. IT COULD BE -- I THINK THEY



1 WERE READ FROM HIS -- I'M SORRY. HE WAS HERE LIVE. I  
2 THINK THEY WERE OFFERED TO HIM. THERE WAS AN E-MAIL,  
3 WHICH IS 20177, AND THEN POLICY STATEMENTS THAT WERE  
4 OFFERED TO HIM.

5 THE COURT: WELL, THE REASON I'M ASKING IF  
6 THEY WERE READ, IT ACTUALLY WOULDN'T MAKE ANY  
7 DIFFERENCE BUT I WAS JUST WONDERING WHAT THE BASIS --  
8 WE DON'T RECEIVE PAGES OF DEPOSITIONS IN EVIDENCE. IN  
9 OTHER WORDS, IF THE EVIDENCE -- IF THE DEPOSITION HAS  
10 BEEN READ, THEN THE RECORD CONTAINS THE TESTIMONY. AND  
11 THAT'S REALLY WHY I WAS ASKING. IF PAGES WEREN'T READ,  
12 THERE WOULD BE NO BASIS FOR ME TO RECEIVE THEM IN ANY  
13 EVENT.

14 MR. PRAGER: I'M SORRY; I WAS INARTFUL. THE  
15 WITNESS READ AND DISCUSSED THESE EXHIBITS IN HIS TRIAL  
16 TESTIMONY HERE, I BELIEVE.

17 MS. SWISS: WELL, EITHER HE DID OR HE DIDN'T.

18 THE COURT: BUT HE TESTIFIED ON THEM?

19 MR. PRAGER: YES.

20 THE COURT: ON THESE PAGES?

21 MR. PRAGER: YES.

22 THE COURT: AS I STATED, I DON'T -- HE'S GIVEN  
23 TESTIMONY. I DON'T TAKE AS AN EXHIBIT, THEN, PAGES  
24 FROM THE DEPOSITION.

25 MR. PRAGER: OKAY.

26 THE COURT: SO IF THAT'S WHAT'S BEING OFFERED,  
27 I'M NOT GOING TO RECEIVE THEM IN EVIDENCE.

28 MR. PRAGER: AND THE FINAL ONE IS THE SAME

1 DISCUSSION, YOUR HONOR. IT'S 1018.

2 THE COURT: 1018?

3 MR. PRAGER: YES. AND IT'S 1018.1, 1018.3.  
4 THEY'RE MARKED FOR IDENTIFICATION AS 1018, PAGES 1 AND  
5 3, BUT THEIR BATES NUMBERS ARE 1018.1 AND 1018.3.

6 MS. SWISS: YOUR HONOR, DEFENSE OBJECTS.  
7 THESE AGAIN ARE PAGES FROM CIVIL RIGHTS INVESTIGATION  
8 REPORTS WHICH THE COURT HAS PREVIOUSLY NOT RECEIVED  
9 INTO EVIDENCE, SO THESE TWO PAGES SHOULD ALSO NOT BE  
10 RECEIVED INTO EVIDENCE.

11 THE COURT: I HAVEN'T EVEN FOUND THEM ON THE  
12 EXHIBIT LIST.

13 MS. SWISS: YOUR HONOR, I DO HAVE THEM AS  
14 MARKED FOR IDENTIFICATION ONLY. LINE 7 OF THE  
15 OCTOBER 26TH LIST FROM YESTERDAY.

16 (DISCUSSION HELD OFF THE RECORD.)

17 THE COURT: ALL RIGHT. THESE ARE PART OF, AS  
18 STATED, THE CIVIL RIGHTS REPORT OF INVESTIGATION  
19 ADDENDUM.

20 DO YOU WANT PAGE 1 BECAUSE IT IDENTIFIES WHAT  
21 IT IS AND THEN PAGE 3 BECAUSE IT IS THEIR CONCLUSION?

22 MR. PRAGER: EXACTLY, AND THE WITNESS READ IT  
23 AND DISCUSSED AS PART OF HIS WORK FOR THE STATE.

24 THE COURT: AND WHOSE TESTIMONY IDENTIFIED  
25 THIS?

26 MR. PRAGER: MR. URQUIZO.

27 THE COURT: PARDON ME?

28 MR. PRAGER: JAMES URQUIZO.

1 THE COURT: MR. URQUIZO?

2 MR. PRAGER: YEAH.

3 THE COURT: WELL, HE IDENTIFIED HAVING  
4 RECEIVED IT.

5 MR. PRAGER: RIGHT.

6 MS. SWISS: THE DEFENSE MAINTAINS THEIR  
7 OBJECTIONS. THE DOCUMENT CONTAINS HEARSAY. IT LACKS  
8 FOUNDATION AND AUTHENTICATION BY THE AUTHOR. AND THESE  
9 PAGES WOULD BE MISLEADING TO THE COURT AND TO THE JURY  
10 BECAUSE IT'S ONLY ONE OF THE REPORTS PREPARED BY THE  
11 CIVIL RIGHTS INVESTIGATION UNIT AND THE EVIDENCE IS  
12 THAT THE ULTIMATE CONCLUSION OF THE CIVIL RIGHTS  
13 INVESTIGATION WAS CHANGED IN SUBSEQUENT REPORTS TO THE  
14 STATE.

15 THE COURT: WELL, I'M NOT GOING TO RECEIVE IT.  
16 WE DON'T -- NO ONE HAS TOLD ME FOUNDATION FOR THE  
17 DOCUMENT.

18 MR. PRAGER: WE'D ARGUE IT WAS A BUSINESS  
19 RECORD BECAUSE IT WAS PREPARED BY THE COUNTY IN THE  
20 COURSE OF THEIR DUTIES AND SENT TO THE STATE AS  
21 REQUIRED BY LAW, AND THEN MR. URQUIZO WAS REQUIRED TO  
22 READ/REVIEW THIS DOCUMENT AND INCORPORATE IT INTO HIS  
23 CONCLUSIONS AND HIS OBLIGATIONS UNDER THE LAW TO REVIEW  
24 THE REPORT AND THEN MAKE A FINDING FOR THE STATE  
25 ABOUT -- OR --

26 THE COURT: WELL, THAT'S WHAT HE DID. BUT I  
27 STILL DON'T HAVE A FOUNDATION FOR THE DOCUMENT ITSELF.  
28 WHAT HE DID DOESN'T PROVIDE THE FOUNDATION. SO I'M NOT

1 GOING TO RECEIVE THOSE TWO PAGES.

2 MR. PRAGER: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU.

4 MR. PRAGER: AND THE --

5 THE COURT: THAT'S YOURS?

6 MR. PRAGER: THAT'S MINE.

7 THE COURT: SO IF I'M WORKING OFF A FOUR-PAGE  
8 DOCUMENT NOW, I CAN SEE IF WE'VE COVERED EVERYTHING.

9 MR. GUTERRES: THAT'S ENCOURAGING.

10 THE COURT: WELL, WE STILL DO HAVE ISSUES WITH  
11 24 OVER WHAT PORTIONS OF 24 EVERYONE IS OFFERING, AND  
12 THEN 82 OVER THE --

13 MR. MCMILLAN: RIGHT.

14 THE COURT: SO IT'S NOT QUITE FINAL. BUT IT  
15 APPEARS TO ME, WITH THE EXCEPTION OF THOSE TWO --

16 MR. MCMILLAN: I THINK ALSO 327. SO IT'S 24,  
17 82, AND 327.

18 BUT I JUST DID RECEIVE A TEXT FROM MR. PARIS,  
19 AND THEY'RE STILL WORKING ON 82. I BELIEVE THEY'VE  
20 FINISHED WITH 24, AND HE'S ALREADY GOT HIS STUFF FROM  
21 LAST NIGHT ON 327. AND HE'S TELLING ME THAT HE SHOULD  
22 BE HERE BY 10:00 WITH IT IN HAND ALONG WITH A PRINTER.  
23 AND WHAT HE'S ACTUALLY BRINGING, ONE OF THE REASONS  
24 IT'S TAKING SOME TIME IS BECAUSE HE'S GOING THROUGH  
25 MAKING THE REDACTIONS AND THOSE SORTS OF THINGS.

26 THE COURT: ALL RIGHT. BUT WE DO HAVE THOSE  
27 THREE THAT ARE INCOMPLETE AT THIS POINT.

28 MR. MCMILLAN: RIGHT.

1 MS. SWISS: YOUR HONOR, AND ONE HOUSEKEEPING  
2 ITEM FROM YESTERDAY. EXHIBIT 1064, THE PAGES 2015,  
3 2018, AND 2380, THOSE WERE THE PRIMARY LANGUAGE FORMS.

4 THE COURT: YES.

5 MS. SWISS: AND WE -- THE DEFENDANTS WILL  
6 WITHDRAW 2015 AND 2018. AND WE WOULD ASK THAT  
7 PAGE 2380 BE RECEIVED, AND THAT'S THE PAGE THAT  
8 MS. DUVAL TESTIFIED THAT SHE DID SIGN ON OR ABOUT  
9 OCTOBER 20 OR SO, 2009.

10 THE COURT: AND THAT IS 2018?

11 MS. SWISS: NO. 2380 IS THE ONE --

12 THE COURT: I'M SORRY, 2380.

13 MS. SWISS: -- THAT WE WOULD ASK TO BE  
14 RECEIVED.

15 THE COURT: ANY OBJECTION ON THAT?

16 MR. PRAGER: I OBJECT. YOUR HONOR, THERE'S A  
17 NUMBER OF FORMS THAT WERE SIGNED. AND I THINK IT'S  
18 PREJUDICIAL TO ADMIT THE SINGLE FORM SINCE THERE WERE  
19 ABOUT THREE OR FOUR OF THESE FORMS SIGNED, SO IF ONE  
20 WAS TO COME INTO EVIDENCE, THERE'D BE SOME DISCUSSION  
21 OF A NUMBER OF THEM.

22 THE COURT: WELL, I DON'T KNOW THAT THAT'S  
23 NECESSARILY SO. THEY'RE OFFERING PAGE 2380 OF  
24 EXHIBIT 1064. IT WILL BE RECEIVED.

25 MS. SWISS: THANK YOU, YOUR HONOR.

26 MR. MCMILLAN: YOUR HONOR, THERE IS ONE LAST  
27 HOUSEKEEPING ISSUE, AND WE MET AND CONFERRED ON IT THIS  
28 MORNING. IT RELATES EXHIBIT 1075.15, SO THAT'S THE

1 15TH PAGE AND ONLY THAT PAGE OF 1075. AND IT IS THE  
2 FAILURE TO THRIVE GROWTH CHART FROM 15 MONTHS TO  
3 24 MONTHS. EARLIER, THE DEFENDANTS -- WE HAD A  
4 STIPULATION THAT THAT WOULD JUST COME IN. IT'S BEEN  
5 SHOWN TO THE JURY AND TESTIFIED ABOUT EXTENSIVELY AND  
6 THEN WE HAD A DISCUSSION AGAIN THIS MORNING. AND AS I  
7 RECALL, MR. GUTERRES AGREES.

8 IS THAT RIGHT?

9 MR. GUTERRES: THAT'S ALREADY BEEN PUBLISHED  
10 BY DR. ACHAR THROUGH HIS TESTIMONY ON --

11 THE COURT: IS THERE ANY OBJECTION TO IT?

12 MR. GUTERRES: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MR. GUTERRES: THAT ONE PAGE, I THINK.

15 THE COURT: ALL RIGHT. SO EXHIBIT 1075.15 --  
16 THE EXHIBIT IS 1075, PAGE .15, WILL BE RECEIVED.

17 MR. MCMILLAN: THANK YOU.

18 THE COURT: ALL RIGHT. NOW, WE STILL HAVE  
19 THREE TO BE ADDRESSED. WE'VE MENTIONED 24, 82, AND  
20 327. ARE WE THEN --

21 MR. MCMILLAN: I THINK SO.

22 THE COURT: WE'VE TAKEN CARE NOT ONLY OF THE  
23 EXHIBITS BUT HOUSEKEEPING ABOUT EXHIBITS EXCEPT FOR  
24 THOSE THREE?

25 MR. MCMILLAN: I THINK THAT'S CORRECT, YOUR  
26 HONOR.

27 THE COURT: OKAY.

28 MR. GUTERRES: YOUR HONOR, WE STILL NEED TO

1 MOVE SOME OF OUR EXHIBITS INTO EVIDENCE.

2 MS. SWISS: FAR FEWER.

3 MR. GUTERRES: YEAH, IT'S ONLY A HANDFUL.

4 THE COURT: ALL RIGHT.

5 MS. SWISS: WE CAN DO THAT BEFORE MR. PARIS  
6 GETS HERE, OR WHILE WE'RE WAITING FOR MR. PARIS, IF THE  
7 COURT WOULD LIKE, OR WE CAN DO IT LATER.

8 THE COURT: ALL RIGHT. WELL, WHY DON'T YOU  
9 TELL ME WHAT THEY ARE SO WE CAN SEE WHAT WE'RE GOING TO  
10 BE ADDRESSING.

11 IF YOU'D LIKE -- I JUST WANTED TO FIND OUT  
12 WHAT THEY WERE.

13 MR. GUTERRES: YEAH.

14 THE COURT: SO IF YOU DON'T HAVE A LIST HANDY  
15 AND YOU HAVE TO GO THROUGH THE BINDERS I'M NOT SURE  
16 IT'S WORTH THE TIME TO DO IT BECAUSE APPARENTLY WE'RE  
17 GOING TO WAIT UNTIL MR. PARIS GETS HERE TO ADDRESS  
18 SOMETHING.

19 MR. GUTERRES: THEN LET ME JUST WRITE THEM  
20 DOWN AND THEN I'LL SUBMIT THEM TO THE COURT.

21 THE COURT: THAT WILL BE FINE.

22 APPROXIMATELY HOW MANY DO YOU HAVE, JUST IN  
23 ROUND NUMBERS?

24 MS. SWISS: I THINK IT'S LESS THAN TEN.

25 THE COURT: EIGHT OR TEN?

26 MR. GUTERRES: YEAH.

27 MS. SWISS: AT THE MOST.

28 THE COURT: OKAY.

1           BECAUSE WE HAVEN'T COMPLETED THE ADMISSION OF  
2 EXHIBITS, YESTERDAY WE HAD A REQUEST NOT TO ADDRESS THE  
3 MOTIONS FOR -- RESPECTIVE MOTIONS FOR A DIRECTED  
4 VERDICT BECAUSE THE EVIDENCE TECHNICALLY WAS NOT  
5 COMPLETE, WHICH IS TRUE. A MOTION FOR DIRECTED VERDICT  
6 CAN BE MADE WHEN THE EVIDENCE HAS BEEN COMPLETED.

7           AND SO DO YOU WANT TO ADDRESS THOSE MOTIONS IN  
8 ANY EVENT AT THIS TIME? OR DO YOU WANT TO WAIT UNTIL  
9 WE HAVE A RULING ON ALL OF THE ENTRIES IN THE DSL AND  
10 THE PORTIONS OF EXHIBIT 24 AND A RULING ON I THINK IT  
11 WAS 327? I'LL LEAVE IT UP TO YOU.

12           IF THOSE EXHIBITS -- IF THERE'S SOMETHING IN  
13 THOSE EXHIBITS THAT YOU FEEL WOULD POTENTIALLY HAVE AN  
14 EFFECT ON THE RULING MADE, THEN WE REALLY SHOULDN'T DO  
15 IT BECAUSE I'M NOT SURE WHAT DOCUMENTS IN 24 OR 82 THAT  
16 SOMEONE COULD BE RELYING ON, OR 327. SO YOU'RE THE  
17 BEST PERSONS TO JUDGE WHETHER OR NOT WE COULD ADDRESS  
18 THE MOTIONS WITHOUT -- AT THIS TIME OR THAT WE SHOULD  
19 PROPERLY AWAIT A RULING ON THOSE EXHIBITS. PLUS, WE  
20 DON'T HAVE THE DEFENDANT'S EXHIBITS EITHER.

21           ARE YOU AWARE, MR. MCMILLAN, WHICH EXHIBITS  
22 THEY'RE INTENDING TO OFFER?

23           MR. MCMILLAN: I HAVE NO IDEA, BUT I'M NOT  
24 SURE IT MATTERS VERY MUCH FOR PURPOSES OF THESE MOTIONS  
25 AT THIS POINT.

26           THE COURT: I DON'T KNOW BECAUSE I DON'T KNOW  
27 WHAT THE EXHIBITS ARE THEY'RE INTENDING TO OFFER.  
28 GENERALLY, I WOULD TEND TO AGREE BECAUSE, AS I STATED



1 EARLIER, AN EXHIBIT ONLY COMES IN AFTER SOME WITNESS  
2 HAS TESTIFIED AT LEAST TO THE FOUNDATION. SOMETIMES  
3 THERE'S NO FURTHER TESTIMONY AND AFTER YOU GET THE  
4 FOUNDATION YOU GET THE RECORD AND YOU HAVE TO TAKE A  
5 LOOK AT IT. BUT IN MANY INSTANCES, THE BASIS FOR THE  
6 DOCUMENT COMING INTO EVIDENCE NOT ONLY IS THE  
7 FOUNDATION BUT THE WITNESS'S TESTIMONY ABOUT THE  
8 SUBJECT MATTER OF THE DOCUMENT. SO I'LL LEAVE IT UP TO  
9 COUNSEL. I'M, AT THIS POINT, JUST TRYING TO GET DONE  
10 WHAT WE NEED TO GET DONE.

11 MR. MCMILLAN: FROM PLAINTIFF'S PERSPECTIVE,  
12 YOUR HONOR, WE ARE LOOKING AT PURE ISSUES OF LAW, I  
13 THINK, REGARDLESS. SO I'M NOT SURE THAT WHATEVER --  
14 PLAINTIFF'S EVIDENCE HAS SUBSTANTIALLY BEEN DEALT WITH.  
15 THERE'S NOTHING IN PARTICULAR THAT REMAINS IN  
16 EXHIBIT 24, 82, OR I THINK EVEN 327 WHICH WOULD BE  
17 RELEVANT TO THE ISSUES THAT ARE BEFORE YOUR HONOR ON  
18 THE MOTIONS FOR DIRECTED VERDICT. THAT BEING SAID,  
19 WE'RE PREPARED TO JUST GO AHEAD AND LET'S PLOW THROUGH  
20 THIS AND GET IT DONE.

21 MS. NAU: WE'RE IN AGREEMENT WITH THAT, YOUR  
22 HONOR.

23 THE COURT: ALL RIGHT.

24 ALL RIGHT. WE'RE GOING TO GO OFF THE RECORD  
25 FOR A MOMENT. I HAVE TO RETRIEVE THE RESPECTIVE  
26 MOTIONS.

27 (PAUSE IN PROCEEDING)

28 THE COURT: ALL RIGHT. THERE'S NO PARTICULAR

1 ORDER BUT THE DEFENDANT'S MOTION FOR DIRECTED VERDICT  
2 WAS RECEIVED FIRST. WE HAD A DISCUSSION ON IT  
3 YESTERDAY.

4 MS. NAU, YOU WERE SPOKESPERSON FOR YOUR SIDE  
5 ON THIS. I DO RECALL -- AT LEAST IN PART OF THE  
6 DISCUSSION, WE HAD A FAIR AMOUNT OF DISCUSSION  
7 YESTERDAY ON THE MOTION. I DO RECALL THAT ONE OF THE  
8 ISSUES THAT HAD BEEN DISCUSSED YESTERDAY IS THAT I  
9 MENTIONED THAT IN A CLAIM FOR INTENTIONAL INFLICTION OF  
10 EMOTIONAL DISTRESS, THAT THE -- WHAT ONE OF THE  
11 ELEMENTS OF THE CLAIM IS THAT -- IS ONE OF INTENT, THAT  
12 THE PARTY MUST INTEND TO INFLICT HARM. I SAID AT THE  
13 TIME THAT THERE ACTUALLY WAS RECKLESS DISREGARD; IT'S  
14 ALSO A BASIS. YOU CALLED TO MY ATTENTION, WHICH I  
15 AGREED WITH WHAT YOU WERE TELLING ME, THAT IN CACI  
16 INSTRUCTION ON THE ELEMENTS OF INTENTIONAL INFLICTION  
17 THAT IT SAYS INTENT, THERE'S AN ALTERNATIVE FOR  
18 RECKLESS DISREGARD WHEN SOMEONE ELSE IS PRESENT. AND I  
19 ACKNOWLEDGED THAT THAT'S THE CASE.

20 AND THAT SECOND PORTION ABOUT RECKLESS  
21 DISREGARD WHEN SOMEONE ELSE IS PRESENT IS INTENDED FOR  
22 A SITUATION WHERE A PERSON IS DIRECTING SOME SORT OF  
23 CONDUCT THAT SUPPOSEDLY IS INFLICTING EMOTIONAL  
24 DISTRESS ON SOMEBODY AND THERE'S SOMEONE ELSE PRESENT.  
25 AND IT MAY BE THAT THAT OTHER PERSON COULD ALSO HAVE A  
26 CLAIM FOR INTENTIONAL INFLICTION.

27 HAVING SAID THAT, I DIDN'T DISAGREE WITH  
28 WHAT'S IN THE CACI INSTRUCTION, BUT I DO -- I DO

1 BELIEVE THAT A CLAIM FOR INTENTIONAL INFLICTION CAN BE  
2 BASED ON EITHER INTENTIONAL CONDUCT OR RECKLESS  
3 DISREGARD, REGARDLESS OF THE FACT THAT THAT LANGUAGE IS  
4 NOT INCLUDED IN THE CACI INSTRUCTION, THAT IT CAN BE  
5 BASED ON RECKLESS DISREGARD.

6 AND BECAUSE WE'D HAD THAT DISCUSSION AND  
7 DIDN'T FINISH IT YESTERDAY, I'LL SIMPLY CITE TO YOU  
8 SEVERAL CASES, INCLUDING *CERVANTES*,  
9 C-E-R-V-A-N-T-E-S -- IT MAY BE A Z. AS I TOLD YOU, I  
10 CAN NEVER READ MY WRITING, MY S OR A Z COULD BE THE  
11 SAME. *CERVANTES VS. JC PENNEY AND CO.*, 1979 CASE, 24  
12 CAL.3D 579 AT PAGE 593.

13 *MILLER VS. NATIONAL BROADCASTING COMPANY*, 1986  
14 CASE, 187 CAL.APP.3D 1463. I FORGET THE PAGE NUMBER OF  
15 THAT BUT I CAN GET IT FOR YOU.

16 AND *HUNTINGDON LIFE SCIENCES, ET CETERA VS.*  
17 *STOP HUNTINGDON, ET CETERA*, A 2005 CASE, AT 129  
18 CAL.APP.4TH 1228 AT PAGE 1259.

19 EACH OF THOSE CASES, AS WELL AS A NUMBER OF  
20 OTHERS THAT I HAVEN'T CITED TO YOU, GOING BACK -- IN  
21 FACT, *CERVANTES* RELIED ON SOME PRIOR CASE AUTHORITY,  
22 BUT CERTAINLY AS A 1979 CASE, AND I'VE GIVEN YOU SORT  
23 OF FOR EACH DECADE -- I DIDN'T PICK ONE, I GUESS, FOR  
24 THE 90S, BUT THEY ARE THERE. AND ALL OF THESE CASES  
25 CONFIRM THAT INTENTIONAL INFLICTION CLAIM CAN BE BASED  
26 EITHER ON AN INTENTIONAL ACT OR BASED ON RECKLESS  
27 DISREGARD.

28 AND SO THAT DOES PERTAIN TO THE DISCUSSION WE

1 HAD YESTERDAY ABOUT THE REQUIREMENTS TO PROVE  
2 INTENTIONAL INFLICTION. AND ONE OF YOUR POINTS WAS  
3 THAT WE HAD NO EVIDENCE THAT THINGS THAT THE DEFENDANTS  
4 OR THE SUBJECT OF THAT, WHICH ARE SCHEELE AND --

5 MS. SWISS: MS. NELSON.

6 THE COURT: -- MS. NELSON, AND I CAN COME BACK  
7 TO MS. NELSON IN A MOMENT.

8 BUT THAT THEY INTENDED THAT BY WHATEVER THEY  
9 DID -- MS. SCHEELE INTENDED WHEN SHE WAS, FOR EXAMPLE,  
10 MONITORING THE VISITATIONS, TO INFLICT. WELL, INTENT,  
11 AS I MENTIONED ALSO YESTERDAY, IS RARELY ADMITTED BY A  
12 PARTY DOING SOMETHING. SO IN MOST INSTANCES, CERTAINLY  
13 NOT ALL, BUT IN I THINK THE VAST MAJORITY OF INSTANCES  
14 WHERE YOU HAVE AN ISSUE OF INTENT, WHETHER IT BE FOR  
15 THIS CLAIM OR OTHER CLAIMS, YOU USUALLY HAVE TO INFER  
16 THE INTENT FROM SURROUNDING CIRCUMSTANCES. SO I THINK  
17 THAT -- AND GENERALLY SPEAKING, I THINK WE AGREED THAT  
18 THAT IS TRUE. IT CAN BE DONE BY DIRECT EVIDENCE, SO  
19 SOMEONE SAYING, "HEY, I'M GOING TO RIP YOUR EAR OFF,"  
20 AND THEN THEY DO IT, OR SOMETHING LIKE THAT.

21 BUT -- AND SO I THINK THE REAL POINT, OR AT  
22 LEAST A POINT YOU WERE MAKING, ONE OF THE POINTS YOU  
23 WERE MAKING WAS THAT YOU FEEL THAT THE CIRCUMSTANCES  
24 SURROUNDING SCHEELE'S CONNECTION ARE NOT SUFFICIENT  
25 FROM WHICH SOMEONE COULD INFER AN INTENT.

26 IS THAT CORRECT OR NOT?

27 MS. NAU: THAT'S NOT ACTUALLY -- SO THE  
28 ARGUMENT REGARDING INTENT IS ACTUALLY SPECIFICALLY IN

1 RELATION TO THE COURT REPORTING CONDUCT THAT'S AT ISSUE  
2 HERE. I DON'T KNOW IF YOUR HONOR'S HAD THE OPPORTUNITY  
3 TO REVIEW PLAINTIFF'S OPPOSITION TO OUR MOTION FOR  
4 DIRECTED VERDICT, BUT IT MAKES CLEAR THAT THE GROUNDS  
5 FOR THEIR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
6 CLAIM, PERHAPS IN ADDITION TO THIS CONDUCT OF  
7 MS. SCHEELE, IS BASED IN PART ON THE SOCIAL WORKERS' --  
8 MS. SCHEELE'S AND MS. NELSON'S -- REPORTS TO THE  
9 JUVENILE COURT. AND IN RELATION TO THAT CONDUCT, THE  
10 ARGUMENT, YES, IT WAS NOT INTENDED TO CAUSE MS. DUVAL  
11 EMOTIONAL DISTRESS THAT THE SOCIAL WORKERS WERE  
12 DOCUMENTING WHAT THEY SAW BECAUSE THAT WAS REQUIRED AS  
13 PART OF THEIR JOBS. AND IT DOESN'T RISE TO THE LEVEL  
14 OF RECKLESS DISREGARD FOR THAT CONDUCT EITHER BECAUSE  
15 THAT'S WHAT THEY'RE REQUIRED TO DO.

16 I'M NOT SURE IF THIS IS THE TIME TO RESPOND TO  
17 PLAINTIFF'S OPPOSITION IN FULL. SPECIFICALLY IN  
18 RELATION TO THE CONDUCT IN THE COURT REPORTING, THE  
19 ISSUE IS NOT IMMUNITY FOR THAT CONDUCT. THAT'S ONE OF  
20 OUR ARGUMENTS, BUT THE FOCUS OF OUR MOTION FOR DIRECTED  
21 VERDICT IS THE CAUSATION ELEMENT REGARDING THAT  
22 CONDUCT, SPECIFICALLY, PLAINTIFF HAS NOT PRESENTED ANY  
23 EVIDENCE AND IN FACT THIS COURT HAS DECIDED THAT WHAT  
24 THE SOCIAL WORKERS WROTE IN THEIR REPORTS DID NOT LEAD  
25 TO THE LOSS OF HER CHILD.

26 SO WE DON'T EVEN GET TO THE IMMUNITY WHICH WAS  
27 THE ISSUE IN THE PARKS CASE CITED IN PLAINTIFF'S  
28 OPPOSITION BECAUSE PLAINTIFF CANNOT ESTABLISH THE

1 ELEMENTS OF HER INTENTIONAL INFLICTION OF EMOTIONAL  
2 DISTRESS CLAIM TO THE EXTENT THAT IT'S BASED ON THE  
3 SOCIAL WORKERS' WRITINGS IN THE COURT REPORTS.

4 THE COURT: ALL RIGHT. YES, AND I HAD SEEN  
5 YOUR OPPOSITION AND I'VE READ IT. IN FACT, I'VE GOT IT  
6 RIGHT HERE.

7 MS. NAU: YOUR HONOR, MAY I POINT OUT ONE MORE  
8 THING?

9 THE COURT: SURE.

10 MS. NAU: TO THE EXTENT THAT THIS IS THE BASIS  
11 OF PLAINTIFF'S CLAIM, I POINT OUT THAT THE DEFENSE WAS  
12 NOT PERMITTED TO INTRODUCE EVIDENCE FROM ITS EXPERT AT  
13 TRIAL REGARDING THE PROPRIETY OF MS. NELSON AND  
14 MS. SCHEELE'S CONDUCT IN REPORTING TO THE JUVENILE  
15 COURT. BECAUSE THE COURT HAD DISMISSED THIS CLAIM, IT  
16 WAS DECIDED THAT MS. RUSSELL COULD NOT STATE HER  
17 OPINIONS ON THAT BASIS BECAUSE THEY WERE IRRELEVANT TO  
18 THE JUDICIAL DECEPTION CLAIMS.

19 HOWEVER, THOSE OPINIONS WOULD ALSO HAVE BEEN  
20 RELEVANT TO PLAINTIFF'S IIED CLAIM. SO TO THE EXTENT  
21 THAT PLAINTIFF'S CLAIM IS BASED ON DOCUMENTING, YOU  
22 KNOW, WHAT THOSE WORKERS WROTE IN THOSE REPORTS, THEY  
23 SHOULD HAVE NOTIFIED THAT TO THE COURT AT THE TIME THAT  
24 THEY OBJECTED TO MS. RUSSELL'S TESTIMONY.

25 THE COURT: ALL RIGHT. I'M GOING TO DIGRESS  
26 JUST FOR A MOMENT BECAUSE RECALL YESTERDAY MR. GUTERRES  
27 HAD ASKED IF PLAINTIFF COULD PLEASE IDENTIFY WHAT  
28 EVIDENCE THEY'RE BASING THEIR CLAIM FOR INTENTIONAL

1       INFLICTION AGAINST MS. NELSON, AND TO A CERTAIN EXTENT  
2       THE OPPOSITION ON THE -- TO THE CAUSE OF ACTION FOR THE  
3       INTENTIONAL INFLICTION DOES STATE AT THE VERY  
4       BEGINNING -- AS YOU CORRECTLY POINTED OUT, MS. NAU --  
5       THAT THEIR CLAIM OF EMOTIONAL INJURY, AMONG OTHER  
6       THINGS, DERIVES FROM THE PUBLICATION OF FALSE,  
7       INCOMPLETE, AND MISLEADING STATEMENTS BY THESE  
8       DEFENDANTS AS WELL AS DEFENDANTS' ACTS OF  
9       DISCRIMINATION BASED ON THE KNOWN DISABILITIES.

10               SO LET ME HEAR FROM THEM ON THIS ISSUE. AND I  
11       KNOW WE ADDRESSED ONLY, RIGHT NOW, THE INTENTIONAL  
12       INFLICTION. SO WE STILL HAVE THE DISABILITY CLAIM.

13               SO MR. MCMILLAN, YOU'RE THE ONE TO REPLY ON  
14       THIS ONE.

15               MR. MCMILLAN: SURE. WITH RESPECT TO  
16       MS. SCHEELE, I DON'T KNOW THAT THERE'S ANY ISSUE. SHE  
17       HAD A LOT OF -- I'LL CALL IT CONDUCT AS OPPOSED TO  
18       COMMUNICATIVE CONDUCT, SHE HAD A LOT OF ACTUAL PHYSICAL  
19       INTERACTION WITH MS. DUVAL, A LOT OF CONDUCT IN THESE  
20       VARIOUS VISITS, THINGS LIKE THAT. THERE'S PLENTY OF  
21       TESTIMONY ABOUT -- LIKE THE STATEMENTS "BY THE TIME  
22       WE'RE DONE WITH YOU, YOU WON'T BE ABLE TO GET OUT OF  
23       BED; THIS CASE ISN'T GOING THE WAY YOU'RE HOPING," YOU  
24       KNOW, A LOT OF THAT VERY MEAN-SPIRITED CONDUCT ON THE  
25       PART OF MS. SCHEELE.

26               SO I'M GOING TO SORT OF FOCUS MY ATTENTION ON  
27       MS. NELSON. THERE'S ONLY ONE CONTACT NOTE FOR A VISIT  
28       WITH MS. NELSON, AND I DON'T REMEMBER THE DATE OF IT.

1 IT WAS A VERY LENGTHY ENTRY; I REMEMBER THAT. BUT  
2 THERE IS TESTIMONY -- ACTUALLY, I DON'T KNOW IF THERE  
3 IS OR NOT -- ABOUT HER SECOND VISIT THAT WAS UNREPORTED  
4 OUT IN MS. DUVAL'S HOME. AND IN MS. DUVAL'S CIVIL  
5 RIGHTS DISCRIMINATION COMPLAINT FORM, HER DECLARATION,  
6 WHICH I BELIEVE IS ADMITTED INTO EVIDENCE, SHE GOES  
7 INTO SOME DETAIL ABOUT HER INTERACTIONS WITH  
8 MS. NELSON, I BELIEVE. MS. RAFAELINA DUVAL'S  
9 DECLARATION IN SUPPORT OF HER CIVIL RIGHTS COMPLAINT IS  
10 WHAT I'M REFERENCING.

11 BUT ASIDE FROM ALL THAT, LET'S JUST FOCUS FOR  
12 A MOMENT ON THE PUBLICATION ITSELF. SHE IS NOT GOING  
13 AFTER -- WITH RESPECT TO THE INTENTIONAL INFLICTION OF  
14 EMOTIONAL DISTRESS CLAIM, SHE IS NOT GOING AFTER  
15 MS. NELSON FOR THE RESULT OF THE UTTERANCES AND  
16 PUBLICATIONS THAT MS. NELSON MADE. THE LAW RECOGNIZES,  
17 AND WE SEE THIS IN DEFAMATION CASES ALL THE TIME,  
18 ESPECIALLY WHEN WE'RE LOOKING AT A PER SE COMPLAINT --

19 THE COURT: YOU'VE ALREADY STATED THAT IN YOUR  
20 OPPOSITION, THAT YOU'RE NOT BASING YOUR CLAIM AGAINST  
21 EITHER OF THE DEFENDANTS IN THAT CAUSE OF ACTION ON THE  
22 RESULT.

23 MR. MCMILLAN: CORRECT.

24 THE COURT: BECAUSE ANY FURTHER REASONS WE  
25 DON'T NEED TO DISCUSS, YOU'RE SIMPLY NOT BASING YOUR  
26 CLAIM ON THAT.

27 MR. MCMILLAN: THAT IS CORRECT.

28 THE COURT: OKAY. SO YOUR CLAIM AS TO



1 MS. SCHEELE, WHICH YOU ALREADY POINTED OUT MS. SCHEELE  
2 DID HAVE SUBSTANTIAL CONTACT WITH YOUR CLIENT AND FROM  
3 YOUR POINT OF VIEW MS. SCHEELE MADE DELIBERATELY FALSE  
4 STATEMENTS TO THE COURT.

5 MR. MCMILLAN: IT'S A LITTLE BIT MORE NUANCED  
6 THAN THAT BECAUSE MS. SCHEELE ACTUALLY ONLY MADE ONE  
7 REPORT TO THE COURT, WHICH I BELIEVE WAS JUST ONE  
8 SENTENCE ON AUGUST 9TH, I THINK, OF 2010. SO WE'RE NOT  
9 REALLY GOING AFTER HER FOR HER DIRECT COURT REPORTING.  
10 WHAT WE'RE SAYING WITH RESPECT TO MS. SCHEELE IS THE  
11 THINGS THAT SHE REPORTED AND RECORDED IN HER DELIVERED  
12 SERVICE LOGS THAT WERE PICKED UP BY MS. NELSON AND  
13 INSERTED INTO REPORTS, THOSE ARE FALSE STATEMENTS,  
14 FABRICATIONS. THEY'RE NOT PERJURY, BUT THEY WOULD BE  
15 FALSE STATEMENTS, FABRICATIONS AND WOULD SORT OF BE  
16 PART AND PARCEL OF A SUPPRESSION ISSUE.

17 NOW, WHEN WE LOOK AT THE ACT OF PUBLICATION,  
18 MS. DUVAL WOULD HAVE NO KNOWLEDGE OF WHAT IS IN THOSE  
19 DELIVERED SERVICE LOGS UNTIL SHE SAW IT IN A PUBLISHED  
20 REPORT. SO THE MOMENT WHEN SHE RECEIVES THE PUBLISHED  
21 REPORT AND SHE SEES WHAT IS BEING REPORTED SUPPOSEDLY  
22 BY MS. SCHEELE, AS WELL AS WHAT MS. NELSON'S REPORTING,  
23 IT'S THAT POINT IN TIME WHEN SHE SUFFERS THE ANXIETY,  
24 THE FEAR, THERE'S A WHOLE LAUNDRY LIST OF THINGS I  
25 THINK THEY DISCUSS IN *PARKS*. IT'S THE FRIGHT,  
26 NERVOUSNESS, ANXIETY, WORRY, MORTIFICATION, SHOCK --

27 THE COURT: YEAH, YOU DON'T HAVE TO READ OFF  
28 THE LIST. I'M WELL AWARE OF THAT INSTRUCTION LIST OF A

1 NUMBER OF WHAT I'LL CALL EMOTIONAL RESPONSES TO CERTAIN  
2 THINGS.

3 MR. MCMILLAN: SURE. AND THE WHOLE POINT OF  
4 BRINGING UP GOVERNMENT CODE SECTION 820.21 IS THAT,  
5 NUMBER ONE, IT WAS ENACTED IN 1995, AND IT WAS ENACTED  
6 IN RESPONSE TO A CASE CALLED *JAMES W* DOWN IN SAN DIEGO,  
7 AND IT WAS A VERY SIMILAR CIRCUMSTANCE WHERE A SOCIAL  
8 WORKER AND A THERAPIST GOT TOGETHER AND MADE UP A BUNCH  
9 OF STORIES AND THE CASE DRAGGED ON FOR TWO YEARS. THE  
10 FATHER'S DAUGHTER, HE WAS OUT OF HER HOME FOR TWO  
11 YEARS. AND AT THAT POINT IN TIME, YES, ABSOLUTE  
12 IMMUNITY BARRED HIS ACTION.

13 BUT THE LEGISLATURE REACTED TO THAT. AND  
14 THEIR REACTION WAS VERY, VERY DETERMINED AND RESOLUTE.  
15 AND THE REASON THEY DID THIS -- THEY LAY IT OUT IN THE  
16 USE NOTES AND I THINK THE *PARKS* COURT MAY EVEN MAKE  
17 NOTE OF IT -- IS THAT SOCIAL WORKERS HAVE TO BE BOUND  
18 BY THE SAME PRINCIPLES AS EVERYBODY ELSE IN DOING THEIR  
19 WORK. AND THEY SPECIFICALLY LAID OUT THE TYPE OF  
20 CONDUCT THAT WILL NOT BE TOLERATED, AT LEAST IN THE  
21 STATE OF CALIFORNIA, AND THEY DID IT WITH SOME MEASURE  
22 OF PARTICULARITY, THAT PERJURY, FABRICATION OF  
23 EVIDENCE -- AND THIS IS INTERESTING, NO. 3, THEY DON'T  
24 SAY FAILURE TO DISCLOSE MATERIAL EXCULPATORY EVIDENCE,  
25 THEY DON'T SAY FABRICATION OF MATERIAL EVIDENCE. WHAT  
26 THEY SAY IS FAILURE TO DISCLOSE KNOWN EXCULPATORY  
27 EVIDENCE. AND THEY ALSO ADD IN OBTAINING TESTIMONY BY  
28 DURESS.

1           NOW, I DON'T SEE HOW THIS SORT OF CONSTRUCT  
2           THAT THE LEGISLATURE HAS CREATED, THIS PATHWAY FOR A  
3           PLAINTIFF TO GET SOME KIND OF REMEDY WHEN THEY'VE BEEN  
4           LIED ABOUT, I DON'T SEE HOW IT RELIES IN ANY WAY ON THE  
5           ULTIMATE OUTCOME OF THE CASE. AND THAT'S WHAT -- OF  
6           THE UNDERLYING CASE. AND THAT'S WHAT WE'RE LOOKING AT  
7           WHEN WE'RE LOOKING AT INTENTIONAL INFLICTION OF  
8           EMOTIONAL DISTRESS FOR MAKING KNOWN FALSE STATEMENTS IN  
9           A WRITTEN DOCUMENT THAT YOU'RE GOING TO SUBMIT IN  
10          OFFICIAL PROCEEDINGS. THERE'S A SEPARATE, DISTINCT  
11          INJURY THAT ARISES FROM THAT REGARDLESS OF WHAT THE  
12          COURT DOES WITH THAT INFORMATION. AND THAT'S WHAT  
13          WE'RE REALLY FOCUSING ON HERE, AT LEAST WITH RESPECT TO  
14          THE PUBLICATION OF INFORMATION WITH RESPECT TO  
15          MS. NELSON AND MS. SCHEELE.

16                 THE COURT: SO YOUR CLAIM AGAINST MS. NELSON  
17                 IS SHE MADE A REPORT TO THE COURT OR TO THE -- YEAH,  
18                 SHE WROTE A DOCUMENT THAT SHE --

19                 MR. MCMILLAN: SEVERAL.

20                 THE COURT: RIGHT.

21                 THAT WAS BASED ON WHAT YOU CONSIDER TO BE  
22                 MS. SCHEELE'S STATEMENTS INTENTIONALLY DESIGNED TO  
23                 INFLICT EMOTIONAL DISTRESS ON THE PLAINTIFF EVEN THOUGH  
24                 THE PLAINTIFF DIDN'T EVEN KNOW ABOUT THEM UNTIL SOME  
25                 OTHER TIME. SO SCHEELE'S RESPONSIBLE FOR INTENTIONAL  
26                 INFLICTION OF EMOTIONAL DISTRESS BY MAKING FALSE  
27                 STATEMENTS WHICH SOMEONE ELSE RELIES UPON IN MAKING A  
28                 REPORT TO THE COURT, AND THE PERSON MAKING THE

1 REPORTING IS ALSO LIABLE.

2 I MUST SAY THIS IS QUITE A STRETCH. I'M  
3 IMPRESSED WITH THE INGENUITY OF THE ARGUMENT BUT I MUST  
4 SAY I'M HAVING SOME DIFFICULTY IN FINDING THIS,  
5 PARTICULARLY MS. NELSON.

6 MR. MCMILLAN: WELL, HOLD ON WITH RESPECT TO  
7 MS. NELSON. I DON'T WANT TO CONFLATE THE TWO. BECAUSE  
8 MS. NELSON, SHE MADE HER OWN FALSE STATEMENTS IN THE  
9 REPORT. THEY WEREN'T BASED -- ALL OF HER STATEMENTS  
10 WERE NOT BASED SOLELY UPON WHAT MS. SCHEELE TOLD HER.  
11 SHE MADE HER OWN FALSE STATEMENTS. SHE MADE STATEMENTS  
12 ABOUT INTERVIEWS WITH DR. YIM AND WHAT DR. YIM TOLD  
13 HER. WE KNOW DR. YIM NEVER SPOKE WITH MS. SCHEELE OR  
14 MS. NELSON OR ANYBODY ELSE.

15 THE COURT: WELL, WAIT A MOMENT. WE'D BETTER  
16 LOOK AT THE DOCUMENT YOU'RE TALKING ABOUT. YOU KNOW,  
17 THIS IS ONE OF THE MORE INTERESTING ARGUMENTS I'VE EVER  
18 HEARD, ENCOUNTERED ON AN INTENTIONAL INFLECTION. SO I  
19 THINK WE BETTER LOOK AT A COUPLE OF THINGS. AND ONE OF  
20 THEM IS WE BETTER LOOK AT THE REPORTING THAT YOU SAY  
21 MS. NELSON DID WHICH IS INDEPENDENTLY INTENTIONALLY  
22 FALSE AND MISLEADING AND SO ON AND WILL BE THE BASIS OF  
23 INFLECTING THE EMOTIONAL DISTRESS.

24 SO WHICH EXHIBIT WAS THAT? I REMEMBER SEEING  
25 THE DOCUMENT.

26 MR. MCMILLAN: IT'S EXHIBIT NO. 24, YOUR  
27 HONOR.

28 THE COURT: IT'S IN 24? OKAY.

1 MR. MCMILLAN: THAT'S CORRECT.

2 THE COURT: AND WHAT ARE THE PAGE NUMBERS? DO  
3 YOU HAVE IT?

4 MR. MCMILLAN: IT'S BATES NO. 461 IS THE ENTRY  
5 BY MS. NELSON REGARDING HER -- HER PERSONAL INTERACTION  
6 WITH MS. DUVAL. AND THAT CONTINUES THROUGH PAGE 463.

7 AND THEN THE STATEMENT WITH RESPECT TO DR. YIM  
8 IS ON PAGE 466 OF EXHIBIT 24, THE LAST PARAGRAPH --  
9 ACTUALLY, THERE'S ANOTHER ONE. THIS IS THE CONCLUSION.

10 AND IN ADDITION, YOUR HONOR --

11 THE COURT: I DON'T SEE IT ON 466.

12 MR. MCMILLAN: 466, LAST PARAGRAPH, ABOUT  
13 HALFWAY DOWN, MS. NELSON --

14 THE COURT: OH, OKAY, I SEE IT.

15 MR. MCMILLAN: SHE TALKS ABOUT HER CONCLUSIONS  
16 OF WHAT DR. YIM DID AND WHY:

17 "DR. YIM DISCONTINUED SERVICES DUE  
18 TO THE MOTHER'S FAILURE TO COMPLY WITH  
19 HER RECOMMENDATIONS."

20 NOW, WE KNOW THAT MS. PENDER CLAIMS TO HAVE  
21 SPOKEN WITH DR. GILL, NOT DR. YIM. ON THE STAND,  
22 MS. NELSON COULDN'T REMEMBER, ALTHOUGH SHE'D RECOGNIZED  
23 AND AGREED THAT SHE HAD A DUTY TO GO OUT AND INTERVIEW  
24 ALL THESE PEOPLE AND WRITE DOWN WHAT THEY SAID IN THOSE  
25 INTERVIEWS, SHE DIDN'T REMEMBER INTERVIEWING ANY DOCTOR  
26 AND SHE COULDN'T FIND IT IN HER CONTACT NOTES. YET  
27 HERE WE HAVE HER SAYING IN HER COURT REPORT THAT  
28 DR. YIM DISCONTINUED SERVICES DUE TO MOTHER'S FAILURE

1 TO COMPLY WITH HER RECOMMENDATIONS. IT'S NOT TRUE.

2 IT'S NOT TRUE.

3 THE COURT: WELL, NO, THAT'S YOUR

4 CONTENTION --

5 MR. MCMILLAN: SURE.

6 THE COURT: -- THAT IT'S NOT TRUE BECAUSE OF

7 DR. GILL'S TESTIMONY --

8 MR. MCMILLAN: WELL, DR. YIM ALSO TESTIFIED.

9 THE COURT: LET ME FINISH.

10 MR. MCMILLAN: SURE, SORRY.

11 THE COURT: -- DR. GILL'S TESTIMONY ABOUT WHAT

12 DR. YIM HAD DONE.

13 I TREATED THAT, FOR THE PURPOSE OF THE "BUT  
14 FOR" ANALYSIS, AS BEING A FALSE STATEMENT BECAUSE OF  
15 DR. GILL'S TESTIMONY. IN SO DOING, I CERTAINLY DON'T  
16 FIND IT WAS A FALSE STATEMENT. AND IN FACT, LOOKING AT  
17 WHAT DR. GILL RELATED IN THE ENTIRETY, IF I HAD TO  
18 PERSONALLY -- I THINK THAT A TRIER OF FACT COULD VERY  
19 EASILY CONCLUDE THAT THAT CONVERSATION ACTUALLY DID  
20 OCCUR BECAUSE OF THINGS THAT WERE SAID THAT COULD NOT  
21 HAVE BEEN KNOWN TO SOMEONE MAKING UP THE QUOTE. BUT  
22 THAT'S A FACTUAL ISSUE FOR THE JURY, AND I DON'T NEED  
23 TO MAKE A DETERMINATION ABOUT THAT.

24 BUT I DO SEE THE REFERENCE THAT YOU'VE MADE,  
25 AND I'LL ACCEPT YOU SAY IT'S A FALSE STATEMENT. THAT  
26 IS YOUR CONTENTION. BUT IT BY NO MEANS HAS BEEN SHOWN  
27 TO BE FALSE. IT'S JUST A DISPUTE. PENDER SAYS, "I  
28 TALKED TO HER AND HERE'S WHAT SHE SAID," AND GILL SAYS,

1 "NOPE, SHE NEVER TALKED TO ME." SO THE JURY CAN DECIDE  
2 THAT TO THE EXTENT IT'S A FALSE STATEMENT.

3 BUT ANYWAY, I SEE THIS. SO THIS REFERENCE TO  
4 DR. YIM IN HERE, BY NELSON, YOU'RE SAYING IS A FALSE  
5 STATEMENT. AND BY THIS FALSE STATEMENT ON HER PART,  
6 THAT THAT IS A PART OF THE -- A CLAIM FOR HER OWN  
7 ACTIONS IN INTENTIONALLY INFLICTING EMOTIONAL DISTRESS.

8 MR. MCMILLAN: THAT IS AFFIRMATIVE, YOUR  
9 HONOR.

10 ALSO, THE --

11 THE COURT: ALL RIGHT. NOW, YOU ALSO BASED --

12 MR. MCMILLAN: -- THE SUPPRESSION --

13 THE COURT: THEY'LL LET YOU FINISH YOUR  
14 ARGUMENT.

15 BUT THEN ALSO WHERE YOU CITED TO ME THIS  
16 RECITATION BEGINNING ON BATES PAGE NO. 461 AND  
17 CONTINUING, AND IT IS RATHER LENGTHY, ABOUT  
18 MS. NELSON'S PERSONAL VISIT TO THE HOME. SO I WANT TO  
19 TAKE A MOMENT TO FINISH READING THAT.

20 MR. MCMILLAN: SURE. SURE.

21 (PAUSE IN PROCEEDINGS.)

22 THE COURT: ALL RIGHT. I'VE TAKEN A LOOK.  
23 GO AHEAD.

24 MR. MCMILLAN: IN ADDITION, YOUR HONOR,  
25 MS. NELSON, IN HER REPORT, SUPPRESSED KNOWN EXCULPATORY  
26 EVIDENCE. SHE DID NOT TELL THE COURT -- WHEN SHE'S  
27 PUTTING OUT THIS CONCERN ABOUT POSSIBLE MUNCHAUSEN BY  
28 PROXY IN REFERENCE TO THE UP-FRONT ASSESSMENT, SHE DID

1 NOT TELL THE COURT THAT THE ASSESSOR HAD IN FACT FOUND  
2 THAT THE CRITERIA FOR MUNCHAUSEN SYNDROME BY PROXY HAD  
3 NOT BEEN MET AND THAT IN FACT THERE COULD BE SOME  
4 CONFUSION BETWEEN MUNCHAUSEN SYNDROME BY PROXY AND A  
5 MOTHER WHO'S MEDICALLY KNOWLEDGEABLE ABOUT HER SON'S  
6 DIAGNOSED SENSORY INTEGRATION DISORDER. SO THAT WOULD  
7 ALSO BE A KNOWN EXCULPATORY FACT NOT REPORTED TO THE  
8 COURT.

9 CASE LAW RECOGNIZES THAT SEPARATE AND APART  
10 FROM THE RESULT THAT MAY HAVE -- THE OUTCOME THAT MAY  
11 HAVE COME FROM THE JUVENILE DEPENDENCY PROCEEDING THAT  
12 THE USE OF IMPROPER TACTICS TO GET THERE IS  
13 INDEPENDENTLY ACTIONABLE. AND IN FACT, IN *PARKS*, IT  
14 WAS AN INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
15 CLAIM BASED ON THE REPORTING, NOT THE OUTCOME, AND THE  
16 OTHER CONDUCT, THE CONDUCT GIVING RISE TO A CLAIM OF  
17 DURESS. SO THAT'S BASICALLY WHERE WE'RE AT.

18 AND IT'S NOT JUST THE JURIS/DISPO REPORT  
19 EITHER. IT'S ALL THE LAST-MINUTE INFORMATIONS THAT LED  
20 ALL THE WAY UP TO THE END, THAT THERE WAS A  
21 CONSISTENT -- AT LEAST IN PLAINTIFF'S VIEW OF THE  
22 EVIDENCE, I'M NOT SAYING THAT THIS WAS ESTABLISHED --  
23 IN PLAINTIFF'S VIEW OF THE EVIDENCE, THERE IS A  
24 CONSISTENT AND REPEATED MISREPORTING AND INCOMPLETE  
25 REPORTING THAT'S DONE BY MS. NELSON ALL THE WAY  
26 THROUGH.

27 THE COURT: ALL RIGHT. TELL ME FURTHER WHAT  
28 INCOMPLETE REPORTING OR MISREPORTING BEYOND WHAT YOU'VE



1 ALREADY TOLD ME. I DO RECALL THAT THERE WAS SOMETHING  
2 SUBMITTED -- I'M PROBABLY WRONG ON THIS, BUT I RECALL,  
3 AND I THINK YOU ALLUDED TO THIS EARLIER, A VERY SHORT  
4 DOCUMENT -- SHORT IN TERMS OF IT'S CONTENT, NOT THE  
5 SIZE OF THE PAGE -- THAT SHE HAD DONE SOMETHING, MAYBE  
6 A LAST-MINUTE INFORMATION TO THE COURT OR SOMETHING. I  
7 DON'T REMEMBER WHAT IT WAS.

8 MR. MCMILLAN: THAT WAS MS. SCHEELE. AND AS I  
9 RECALL --

10 THE COURT: THAT WAS MS. SCHEELE, YEAH.

11 WELL, TELL ME THE OTHER MISREPORTING OR -- BY  
12 MS. NELSON, BESIDES WHAT YOU'VE CITED TO ME.

13 MR. MCMILLAN: SURE. I DON'T HAVE MY ADMITTED  
14 EVIDENCE BOOK HERE WITH ME BUT I CAN REPRESENT TO THE  
15 COURT -- I MEAN, I CAN TELL YOU I REMEMBER THESE  
16 SPECIFICALLY. THERE WERE A SERIES OF LAST-MINUTE  
17 INFORMATIONS. I BELIEVE ONE WAS JANUARY 22, 2010.  
18 THERE WAS ANOTHER ONE, I BELIEVE, IN FEBRUARY 2010.  
19 THERE WAS ANOTHER ONE -- I DON'T RECALL IF THERE WAS  
20 ONE IN MARCH. I BELIEVE THERE WAS ONE IN APRIL, I  
21 THINK APRIL 18, 2010. I DON'T RECALL MAY. AND THEN I  
22 BELIEVE IN JUNE, THERE MIGHT HAVE BEEN TWO LAST-MINUTE  
23 INFORMATIONS.

24 THE COURT: ALL FILED BY NELSON?

25 MR. MCMILLAN: ALL BY MS. NELSON; THAT'S  
26 CORRECT.

27 THE COURT: ALL RIGHT. AND ARE ANY OF THOSE  
28 IN EVIDENCE OR WAS THERE TESTIMONY?

1 MR. MCMILLAN: YES. IN FACT, THERE WAS  
2 SUBSTANTIAL TESTIMONY AS TO EVERY ONE OF THEM BY  
3 DR. ACHAR AND ALSO BY MS. NELSON IN HER VIDEO, AND THE  
4 ONES THAT I'M REFERENCING SPECIFICALLY I BELIEVE WERE  
5 ADMITTED INTO EVIDENCE.

6 DO YOU HAVE THEM?

7 MR. PARIS: I HAVE ONE.

8 MR. MCMILLAN: I'VE JUST BEEN HANDED BY  
9 MR. PARIS EXHIBIT NO. 26, BATES NO. 821. AND IN FACT  
10 WE CAN LOOK AT THE BOTTOM OF THE PAGE THERE.

11 IT SAYS:

12 "CSW SCHEELE AND THIS DI HAVE  
13 NOTED THAT MOTHER CONTINUES TO BE  
14 SOMEWHAT OBSESSED WITH THE IDEA THAT  
15 RYAN IS A SPECIAL NEEDS CHILD WITH A  
16 SENSORY INTEGRATION DISORDER CAUSING  
17 HIM TO BE A PICKY EATER AND THEREFORE  
18 FAILING TO ADEQUATELY GAIN WEIGHT."

19 WELL, THAT'S, NUMBER ONE, CAST IN THE  
20 PEJORATIVE. AND NUMBER TWO, IT'S NOT MOM BEING  
21 OBSESSED. WE HAVE A REGIONAL CENTER EVALUATION AND  
22 REPORT SAYING YES, THIS CHILD HAS A SENSORY INTEGRATION  
23 DISORDER. AND MS. ESPINOZA GAVE THE SAME TESTIMONY ON  
24 THE STAND, THAT YES, HE DOES HAVE A SENSORY INTEGRATION  
25 DISORDER AND YES, THAT DOES CAUSE HIM TO HAVE PROBLEMS  
26 FEEDING.

27 SO, YOU KNOW, AGAIN, IT'S A KNOWN EXCULPATORY  
28 PIECE OF INFORMATION THAT MS. NELSON IS INSERTING A

1 PEJORATIVE STATEMENT INTO THE RECORD WITHOUT GIVING THE  
2 COMPLETE PICTURE, WITHOUT, YOU KNOW, SAYING WHAT'S  
3 THERE THAT'S TRUE.

4 SECONDARILY, MS. NELSON ALSO PUT THIS CONCERN  
5 FOR MUNCHAUSEN BY PROXY IN HER JURIS/DISPO REPORT. AND  
6 AT THE END OF THE DAY, IN RELATION TO THE  
7 DISCRIMINATION, THE DISCRIMINATION RECOMMENDATION FOR  
8 DISCIPLINE WAS THAT MS. NELSON SPECIFICALLY UNDERGO  
9 FURTHER TRAINING IN ACCURATE COURT REPORT WRITING.  
10 NOW, I DON'T KNOW THAT THEY WOULD HAVE COME TO THAT  
11 RECOMMENDATION FOR FURTHER TRAINING UNLESS THE COUNTY  
12 ITSELF AGREED THAT SHE HAD A PROBLEM WITH ACCURATE  
13 COURT REPORT WRITING.

14 ALL OF THAT TOGETHER, AT LEAST IN OUR VIEW,  
15 WOULD SUPPORT A CLAIM FOR INTENTIONAL INFLECTION OF  
16 MENTAL [SIC] DISTRESS BASED ON THE FALSE PUBLICATIONS,  
17 THE SUPPRESSION OF KNOWN EXCULPATORY EVIDENCE, AND THEN  
18 THE EXERCISE OF DURESS. I BELIEVE THAT THE -- AND YOU  
19 CORRECT ME IF I'M WRONG BECAUSE I DON'T KNOW EXACTLY  
20 HOW TO PHRASE IT -- BUT MS. DUVAL'S INTERACTION WITH  
21 MS. NELSON HAD SOME SORT OF BULLYING ASPECT TO IT.

22 IS THAT RIGHT?

23 MR. PARIS: SHE CALLED IT BULLYING. THIS IS  
24 THE EXHIBIT.

25 MR. MCMILLAN: THIS IS EXHIBIT NO. 207, 2732  
26 IS THE BATES NUMBER. AND THAT IT SAYS:

27 "LACK OF ETHNIC SENSITIVITY,  
28 EXAGGERATION, BULLYING, PUTTING DOWN

1           RAFAELINA" --

2           IS THAT "RAFAELINA"?

3           MR. PARIS:  "PARENTING."

4           MR. MCMILLAN:  (READING:)

5                   -- "PARENTING, LACK OF DISCERNMENT  
6           AND OBJECTIVITY TO MAKE NEUTRAL  
7           ASSESSMENT."

8           BUT SHE HAS IN THERE THIS BULLYING CONDUCT OF  
9           MS. NELSON.  AND THEN FURTHER -- OH, AND "INTENTIONAL  
10          MISLEADING REPORTS," AS WELL, IS ALSO IN THIS  
11          DISCRIMINATION COMPLAINT.

12          THE COURT:  DON, COULD YOU GET ME EXHIBIT 207?

13          DON, COULD YOU GET ME EXHIBIT 26?

14          OKAY, IS THERE SOMETHING ELSE WE CAN SEE WHILE  
15          THERE ARE DOCUMENTS OUT?

16          MR. MCMILLAN:  THERE ARE -- IT'S BASICALLY  
17          JUST ALL THE LAST-MINUTE INFORMATIONS, YOUR HONOR.

18          THE COURT:  WELL, THAT'S -- YEAH, I'D LIKE TO  
19          HAVE YOU CITE THOSE TO ME IF YOU WOULD.  HANG ON A  
20          SECOND.

21          MR. MCMILLAN:  SURE.

22          THE COURT:  ALL RIGHT.

23          MR. MCMILLAN:  I BELIEVE THAT EXHIBIT 35 IS  
24          ALSO ADMITTED INTO EVIDENCE.  I'M NOT SURE THOUGH.

25          MR. PRAGER:  I'LL CHECK.  35, YES.  26 WAS.

26          MR. MCMILLAN:  OKAY.  35, THAT WOULD BE  
27          ANOTHER LAST-MINUTE REPORT.  AND THIS IS A FAIRLY GOOD  
28          EXAMPLE OF HOW MS. SCHEELE'S CONTACTS MAKE IT INTO

1 MS. NELSON'S REPORTS. THIS WOULD BE AN EXAMPLE OF  
2 MS. SCHEELE MAKING WHAT WE BELIEVE ARE UNTRUE  
3 DISPARAGING REMARKS.

4 THE COURT: YEAH, THAT'S FINE. I'LL BE HAPPY  
5 TO SEE IT. I WANT TO -- THIS IS GOING TO BE QUITE A  
6 PROJECT, SO I'M GOING TO HAVE YOU CITE TO ME ALL THE  
7 EVIDENCE. IT WILL TAKE ME -- THAT YOU'RE RELYING UPON,  
8 AND SPECIFICALLY THAT SHOWS EITHER AN INTENT TO INFLICT  
9 EMOTIONAL DISTRESS, THAT WE COULD INFER THAT INTENT, OR  
10 RECKLESS DISREGARD BY THE PART OF MS. NELSON THAT IS A  
11 CAUSE, IN YOUR POINT OF VIEW, OF INFLICTING --

12 MR. MCMILLAN: THE MAIN ISSUE ON MS. NELSON,  
13 YOUR HONOR, I BELIEVE WE'VE ADDRESSED, WITH RESPECT TO  
14 EXHIBIT 24 AND I THINK IT WAS EXHIBIT 26 WHERE SHE PUTS  
15 HER OWN OBSERVATIONS IN THERE. THE BALANCE OF THE --

16 THE COURT: RELATED MORE TO SCHEELE?

17 MR. MCMILLAN: YEAH, IT WOULD BE MORE RELATED  
18 TO SCHEELE'S --

19 THE COURT: HANG ON. I'M GOING TO -- RIGHT.  
20 SO AS TO --

21 MR. MCMILLAN: THERE MAY BE ONE MORE, YOUR  
22 HONOR, THAT RELATES TO MS. NELSON. NO, THESE ARE  
23 SCHEELE AS WELL.

24 IT WOULD BE EXHIBIT 43 AND THEN ALSO IT LOOKS  
25 LIKE EXHIBIT -- WELL, 63, BUT THAT'S JUST A ONE LINE.  
26 WE'RE NOT COMPLAINING ABOUT EXHIBIT 63.

27 THE COURT: ALL RIGHT. JUST GIVE ME THE ONES  
28 THAT YOU DO THINK AS TO SCHEELE SHOULD BE CONSIDERED ON

1 THIS POINT.

2 MR. MCMILLAN: THAT WOULD BE, I BELIEVE,  
3 NO. 26, NO. 35, NO. 43.

4 AND LET ME ASK MR. PARIS IF THERE ARE ANY MORE  
5 OF THOSE LAST-MINUTE INFORMATIONS.

6 THE COURT: OKAY. AND IN EXHIBIT 26, IF YOU  
7 HAVE THE PAGES THAT YOU --

8 MR. MCMILLAN: YES. IT'S GOING TO BE BATES  
9 NO. 821, BOTTOM OF THE PARAGRAPH. AND WHERE IT SAYS  
10 "AND THIS DI," THIS DI IS CANDIS NELSON.

11 THE COURT: ALL RIGHT.

12 MR. MCMILLAN: AND THEN WITH RESPECT TO 35,  
13 BATES NO. 890.

14 THE COURT: OKAY.

15 MR. MCMILLAN: AND THEN THIS IS ACTUALLY  
16 THIS -- AT THE BOTTOM OF THE PARAGRAPH, IT'S  
17 PLAINTIFF'S CONTENTION THAT THE INFORMATION CONTAINED  
18 IN THAT, AT LEAST THE FIRST THREE SENTENCES, WAS KNOWN  
19 FALSE INFORMATION BY MS. NELSON.

20 THE COURT: ALL RIGHT.

21 MR. MCMILLAN: AND --

22 THE COURT: THEN YOU MENTIONED 43?

23 MR. MCMILLAN: 43, RIGHT. THAT WAS THE  
24 APRIL 12TH LAST-MINUTE INFORMATION, BATES NO. 971.

25 THE COURT: ALL RIGHT.

26 MR. MCMILLAN: AND IT LOOKS LIKE THAT IS  
27 PRIMARILY A RE-REPORTING OF THINGS MS. SCHEELE IS  
28 SAYING HAPPENED DURING THE INTERACTION WITH DR. LOTT

1 THAT WE CONTEND IS JUST NOT A TRUE STATEMENT. BUT THAT  
2 WOULD HAVE BEEN -- I MEAN, IT ENCOMPASSES TWO THINGS,  
3 REALLY, MS. SCHEELE'S FACE-TO-FACE CONTACT AND THEN  
4 MS. NELSON'S REPORTING OF WHAT WE CONTEND IS  
5 MS. SCHEELE'S FALSE REPRESENTATION ABOUT THE OUTCOME OR  
6 WHAT HAPPENED AT THAT FACE-TO-FACE CONTACT.

7 IN ONE OF THESE, I THINK IT MIGHT BE IN 26 --  
8 LET ME LOOK. NO, IT'S NOT 26.

9 35, THERE IS THE REPORT OF, AGAIN,  
10 MS. SCHEELE'S CLAIM THAT MS. DUVAL WAS SMOTHERING TO  
11 THE CHILD DURING THEIR VISITS. RIGHT. WHICH IS  
12 ANOTHER THING THAT MS. SCHEELE WAS FOUND TO -- ANOTHER  
13 BASIS, THAT WAS FOUND AS ANOTHER BASIS FOR THE  
14 CRITICISM IN THE DISCRIMINATION FINDINGS OF  
15 MS. SCHEELE, WAS HER CHARACTERIZATION AND REPORTING OF  
16 WHAT SHE WAS SEEING AND DOING.

17 THE COURT: WHICH EXHIBIT WAS THAT?

18 MR. MCMILLAN: THAT'S EXHIBIT NO. 35.

19 THE COURT: ALL RIGHT.

20 MR. MCMILLAN: BATES NO. 890.

21 THE COURT: 890?

22 MR. MCMILLAN: FIRST PARAGRAPH, CORRECT.

23 AND I BELIEVE THAT'S IT, YOUR HONOR, IN TERMS  
24 OF THE LAST-MINUTE INFORMATIONS.

25 THE COURT: ALL RIGHT.

26 MR. MCMILLAN: I BELIEVE THAT'S IT, YOUR  
27 HONOR.

28 THE COURT: ALL RIGHT. WELL, ANYTHING FURTHER

1 ON THE SUBJECT, MS. NAU?

2 MS. NAU: YOUR HONOR, I WOULD JUST POINT OUT  
3 THAT WE'RE GETTING SO FAR AWAY FROM INTENTIONAL  
4 INFLECTION OF EMOTIONAL DISTRESS. PLAINTIFF IS  
5 POINTING OUT THINGS THAT ARE PARAPHRASED OR IN THEIR  
6 MINDS UNTRUE, BUT THE POINT IS WHETHER THESE STATEMENTS  
7 WERE INTENDED BY WHOEVER AUTHORED THEM TO CAUSE  
8 MS. DUVAL SEVERE EMOTIONAL DISTRESS. THAT'S EMOTIONAL  
9 DISTRESS THAT NO CIVILIZED PERSON SHOULD HAVE TO  
10 ENDURE. THE FACT THAT, YOU KNOW, MS. NELSON WROTE --  
11 PARAPHRASED ONE PART OF THE UP-FRONT ASSESSMENT AND  
12 LEFT OUT THE NEXT PART DOES NOT RISE TO THAT LEVEL, AND  
13 SOCIAL WORKERS COULD NOT DO THEIR JOBS IF IT DID.

14 SO WHEN YOU'RE LOOKING THROUGH THESE  
15 STATEMENTS, I JUST ASK YOU TO BE -- PLAINTIFF IS TRYING  
16 TO REVIVE THEIR JUDICIAL DECEPTION CLAIM HERE, AND  
17 THAT'S NOT WHAT THIS IS. THIS IS AN INTENTIONAL  
18 INFLECTION OF EMOTIONAL DISTRESS CLAIM. NONE OF THESE  
19 STATEMENTS RISE TO THAT LEVEL. WHEN THE SOCIAL WORKERS  
20 ARE MAKING STATEMENTS, THEY'RE ATTACHING THE MEDICAL  
21 RECORDS, THEY'RE ATTACHING THE INFORMATION TO THE  
22 COURT. TO SAY -- AND I UNDERSTAND PLAINTIFFS AGREE  
23 THAT WE'RE NOT TALKING ABOUT THE RESULT IN THE JUVENILE  
24 DEPENDENCY CASE, SO THEN THE HARM THAT THEY'RE TALKING  
25 ABOUT IS MS. DUVAL'S OWN READING OF THAT DOCUMENT. AND  
26 TO SAY THAT MS. DUVAL'S READING OF MS. NELSON'S ACCOUNT  
27 OF WHAT MS. PENDER SAID ABOUT HER CONVERSATION WITH  
28 DR. YIM CAUSED MS. DUVAL SEVERE EMOTIONAL DISTRESS AT



1 THIS LEVEL IS RIDICULOUS.

2 THAT'S ALL.

3 MR. MCMILLAN: YOUR HONOR, JUST ONE MORE  
4 THING. MS. SCHEELE AND MS. DUVAL BOTH HAD SIGNIFICANT  
5 TESTIMONY ON MS. DUVAL'S -- A CONFRONTATION HAD  
6 ACTUALLY OCCURRED BETWEEN THE TWO OF THEM, AND  
7 MS. DUVAL'S COMPLAINT TO MS. SCHEELE THAT WHAT SHE WAS  
8 SEEING IN THE REPORT AND MS. SCHEELE WAS REPORTING TO  
9 MS. NELSON THAT MADE IT INTO THE COURT REPORTS WAS NOT  
10 TRUE. THEY HAD BIG DISPUTES OVER THAT.

11 AND MS. SCHEELE EVEN WENT SO FAR AS TO  
12 INTERACT WITH MS. DUVAL'S THERAPIST TO UNDERMINE THAT  
13 THERAPIST-PATIENT RELATIONSHIP. WE HAD SIGNIFICANT  
14 TESTIMONY ON THAT. AND WE HAD SIGNIFICANT TESTIMONY ON  
15 THE IMPACT THAT THE ALLEGED LIES OF MS. SCHEELE HAD ON  
16 MS. DUVAL. AND EVEN AFTER MS. DUVAL RAISED THESE  
17 ISSUES WITH MS. SCHEELE SHE CONTINUED TO MAKE THOSE  
18 REPORTS. AND WE HAVE SIGNIFICANT TESTIMONY ON THAT AS  
19 WELL.

20 SO MAYBE THERE COULD BE AN ARGUMENT THAT UP  
21 UNTIL THE POINT MS. DUVAL COMPLAINED ABOUT IT  
22 MS. SCHEELE COULDN'T HAVE KNOWN SHE WAS CAUSING  
23 MS. DUVAL SUCH EMOTIONAL DISTRESS. BUT CERTAINLY FROM  
24 THE POINT THEY STARTED HAVING ARGUMENTS ABOUT THE TRUTH  
25 AND VERACITY OF WHAT MS. SCHEELE WAS SAYING ABOUT  
26 MS. DUVAL, CERTAINLY FROM THAT POINT MS. SCHEELE WOULD  
27 HAVE KNOWN THAT YES, THIS FALSE REPORTING, THIS LEAVING  
28 THINGS OUT, THIS TWISTING AND TURNING IS HAVING A

1       SIGNIFICANT AND SEVERE EMOTIONAL IMPACT ON MS. DUVAL.

2               AND, YOUR HONOR, AS FAR AS BEING BEYOND THE  
3       BOUNDS OF COMMON DECENCY, THE WHOLE ART OF THE  
4       GOVERNMENT CONSISTS IN THE ART OF BEING HONEST. WE'VE  
5       HAD THOSE DISCUSSIONS. AND AT LEAST FROM MY  
6       PERSPECTIVE, WHEN I SEE AN AGENT OF THE LAW, AN ARM OF  
7       THE STATE, IF THEY DON'T HAVE WHAT THEY NEED, THEY  
8       CAN'T JUST MAKE IT UP. THEY CAN'T TWIST THINGS AND  
9       TURN THINGS. THEY HAVE TO BE -- BECAUSE OF THE POWER  
10      THEY HOLD THEY HAVE TO BE SCRUPULOUSLY HONEST IN  
11      EVERYTHING THEY DO.

12              THE COURT: OKAY. I DON'T THINK THAT HAS A  
13      LOT TO DO WITH THIS MOTION.

14              ALL RIGHT. WELL, THIS MATTER IS -- THE  
15      INTENTIONAL INFLECTION IS SUBMITTED. AND THE RESULT OF  
16      THESE MOTIONS OF THE -- AND WE HAVEN'T ADDRESSED THE  
17      ONE ON THE DISABILITY CLAIMS, NOR HAVE WE ADDRESSED THE  
18      PLAINTIFF'S MOTION FOR A DIRECTED VERDICT. ONE OF THE  
19      RESULTS OF THESE CONTINUING -- OF THESE ISSUES THAT ARE  
20      UNRESOLVED IS THAT I'M GOING TO CALL OFF THE JURY FOR  
21      TOMORROW BECAUSE I WILL NOT HAVE TIME TO ADDRESS ALL OF  
22      THE ISSUES THAT HAVE BEEN RAISED.

23              I'M TAKING IT SERIOUSLY, THE CLAIMS THAT ARE  
24      BEING MADE AND THE ARGUMENTS AGAINST THEM. AND I WILL  
25      HAVE TO READ ALL THAT HAS BEEN CITED TO ME AS WELL AS A  
26      REVIEW OF THE STANDARDS FOR OUTRAGEOUS CONDUCT -- I  
27      FORGOT WHAT THE MAGIC WORDS -- BEYOND WHAT SHOULD BE  
28      TOLERATED IN A CIVILIZED SOCIETY. I THINK WHEN YOU

1 READ THE CASES, THEY'RE A LITTLE MORE FORGIVING OF THAT  
2 STANDARD THAN THOSE WORDS MIGHT CAUSE YOU TO BELIEVE.  
3 BUT HAVING SAID THAT, WE'LL SEE.

4 AND AS LONG AS WE'RE DOING THAT, THERE'S A --  
5 THE MOTION FOR A DIRECTED VERDICT ON THE DISABILITY  
6 CLAIMS. SO LET ME TAKE A LOOK AT THAT. JUST A MOMENT.

7 SO MS. NAU, ON YOUR MOTION, THAT PART OF THE  
8 MOTION RELATING TO THE DISABILITY CLAIMS. I HAVE THAT  
9 DOCUMENT IN FRONT OF ME -- I HAVE A LOT OF DOCUMENTS IN  
10 FRONT OF ME. SO I'M NOT FINDING IT RIGHT THIS MOMENT  
11 BUT I'LL CLEAR THINGS UP A LITTLE BIT.

12 WELL, THE REASON I DIDN'T SEE IT IS BECAUSE IT  
13 IS LITERALLY RIGHT IN FRONT OF ME AND I LOOKED  
14 EVERYWHERE EXCEPT THERE. SO I WILL NOW LOOK DIRECTLY  
15 IN FRONT OF ME.

16 ALL RIGHT. MS. NAU, YOU TOLD ME YESTERDAY THE  
17 REASONS FOR YOUR MOTION WHICH ARE SET FORTH IN THE  
18 MOTION FOR DIRECTED VERDICT ON THE DISABILITY CLAIMS.  
19 WAS THERE ANYTHING FURTHER YOU WANT TO ADD TO THAT?

20 MS. NAU: YES, YOUR HONOR. JUST BRIEFLY, I'D  
21 LIKE TO RESPOND SINCE I'VE NOW HAD THE CHANCE TO READ  
22 THE PLAINTIFF'S OPPOSITION.

23 THE COURT: OKAY.

24 MS. NAU: WE AGREE WITH THE COURT'S STATEMENTS  
25 YESTERDAY AND WITH THE LAW THAT MR. PRAGER HAS PROVIDED  
26 US THAT, YOU KNOW, IT IS -- WHEN I SAY "COUNTY PROGRAMS  
27 AND SERVICES" IN THE MOTION, I'M USING THAT AS  
28 SHORTHAND. BUT THERE ARE A WIDE RANGE OF THINGS THAT

1 MS. DUVAL COULD POINT TO TO SAY THAT SHE WAS PROVIDED  
2 LESSER BENEFITS, LESSER SERVICES, NOT PROVIDED THOSE  
3 SERVICES ON THE BASIS OF HER DISABILITY. THERE'S A  
4 WHOLE LOT OF THINGS, BUT SHE HASN'T POINTED TO ONE OF  
5 THEM. THERE ISN'T EVIDENCE OF A SINGLE THING THAT  
6 MS. DUVAL IS DENIED OR GIVEN LESSER OF FROM THE COUNTY  
7 ON THE BASIS OF HER PERCEIVED DISABILITIES.

8 THE ONLY EVIDENCE POINTED TO IN MR. PRAGER'S  
9 OPPOSITION IS THE DECISION OR PRELIMINARY FINDING BY  
10 MS. HOCHSTEIN THAT PLAINTIFF WAS DENIED LESSER  
11 SERVICES. THESE SERVICES AREN'T AT ALL EXPLAINED IN  
12 THAT LETTER TO MS. DUVAL. AND FRANKLY, THERE WOULD BE  
13 NO NEED FOR CIVIL LITIGATION IF MS. HOCHSTEIN'S  
14 CONCLUSIONS OR THE CONCLUSIONS OF THE CIVIL RIGHTS UNIT  
15 OF THE COUNTY WERE DETERMINATIVE AS TO WHETHER  
16 MS. DUVAL WAS DISCRIMINATED AGAINST.

17 THAT INVESTIGATION BY THE COUNTY WAS VERY  
18 LIMITED. MS. SCHEELE, MS. NELSON DID NOT HAVE ANY SORT  
19 OF DUE PROCESS OR REPRESENTATION. SO THAT ALONE --  
20 WHICH AGAIN, IS A PRELIMINARY FINDING, AND THERE'S  
21 EVIDENCE THAT THAT FINDING WAS OVERTURNED AND IT WAS  
22 ERRONEOUS -- IS NOT ITSELF EVIDENCE THAT MS. DUVAL WAS  
23 DISCRIMINATED AGAINST AND DOES NOT ESTABLISH HER CLAIMS  
24 IN THIS CASE. SHE NEEDS TO PROVE AND PRESENT EVIDENCE  
25 IN THIS CASE THAT SHE WAS DENIED SERVICES, AND SHE HAS  
26 NOT DONE SO. THE ONLY SERVICE THAT PLAINTIFF'S COUNSEL  
27 HAS ARTICULATED TO THIS POINT IS FAMILY REUNIFICATION  
28 SERVICES, AND FOR THE REASONS ADDRESSED IN OUR MOTION

1 SHE WAS NOT DENIED THOSE SERVICES ON THE BASIS OF HER  
2 PERCEIVED DISABILITIES BECAUSE THE RECOMMENDATION WAS  
3 MADE BASED ON THE WELFARE INSTITUTION'S CODE COUNTS AND  
4 WAS MADE PRIOR TO ANY KNOWLEDGE OF MS. DUVAL'S  
5 PERCEIVED TREMORS OR MUNCHAUSEN SYNDROME BY PROXY. AND  
6 SHE DID, IN FACT, RECEIVE THOSE SERVICES INITIALLY.

7 THE COURT: OKAY.

8 MR. PRAGER?

9 MR. PRAGER: THANK YOU, YOUR HONOR.

10 YESTERDAY, THE COURT ASKED ABOUT DAMAGES AND  
11 THE COURT ASKED ME TO ADDRESS DAMAGES. SO I'M PREPARED  
12 TO DO THAT. AND IN HEARING WHAT YOU ASKED, I THINK YOU  
13 WERE ASKING FOR US TO EXPLAIN THE CATEGORIES OF  
14 DAMAGES. AND I ALSO UNDERSTOOD YOUR QUESTION TO BE:  
15 HOW DO I GET TO A LEGAL BASIS FOR DAMAGES?

16 IS THAT WHAT I -- THE COURT WOULD LIKE TO  
17 HEAR?

18 THE COURT: I HAD ASKED THAT AT A PREVIOUS  
19 TIME, I DON'T REMEMBER ASKING IT YESTERDAY. BUT THE --  
20 THE MOTION ISN'T BASED ON THAT GROUND. THE MOTION IS  
21 BASED ON THE GROUNDS THAT MS. NAU JUST ADDRESSED. SO  
22 THE -- I THINK HER POINTS ARE THAT THERE IS NO EVIDENCE  
23 OF ACTUAL DISCRIMINATION, NO EVIDENCE OF WHAT SHE WAS  
24 DENIED, AND THAT IF ANYTHING WAS DENIED THERE'S NO  
25 EVIDENCE IT WAS ON THE BASIS OF A DISABILITY. I THINK  
26 IN SUMMARY THOSE ARE THE POINTS SHE WAS MAKING AND SO I  
27 THINK THAT'S -- I KNOW YOU WANT TO ADDRESS IT. THOSE  
28 ARE THE POINTS THAT SHE MADE. AND THOSE ARE THE POINTS

1 IN THE MOTION SO I THINK THOSE WOULD BE THE ONES TO  
2 RESPOND TO.

3 MR. PRAGER: VERY GOOD.

4 FIRST OF ALL, WE COULDN'T DISAGREE MORE. AND  
5 WE HAVE TO START, AS WE ALWAYS DO, WITH EXHIBIT 202,  
6 WHICH IS THE LETTER THAT SAYS SHE IS THE VICTIM OF  
7 DISCRIMINATION. AS THE COURT WELL KNOWS, I BELIEVE IN  
8 THIS MOTION YOU HAVE TO ACCEPT OUR EVIDENCE AS BEING  
9 TRUE, AND THEN DOES THAT ESTABLISH A FACT THAT THE JURY  
10 CAN DECIDE WHICH WOULD JUSTIFY A DENIAL OF THE MOTION?  
11 AND THEN I BELIEVE THE COURT'S WELL-ACQUAINTED WITH  
12 THERE IS AN INSTRUCTION THAT SAYS ONE PIECE OF EVIDENCE  
13 OR ONE WITNESS THAT'S BELIEVABLE CAN CARY ANY ISSUE FOR  
14 A JURY TO RELY ON AND DECIDE.

15 SO AT THE START, OUR POSITION IS THERE WAS A  
16 DETERMINATION THAT THE COUNTY CONCLUDED MS. DUVAL'S  
17 CIVIL RIGHTS WERE VIOLATED AND SHE WAS -- HER CASE WENT  
18 THROUGH A PROCESS, THAT PROCESS WAS CONCLUDED, AND THEN  
19 MS. DUVAL WAS TOLD SHE SUFFERED UNEQUAL SERVICES,  
20 DENIAL OF SERVICES, AND LESSER SERVICES.

21 WITH REGARD TO THIS BUSINESS ABOUT  
22 MS. HOCHSTEIN BEING THE ONLY PERSON IN THE ORGANIZATION  
23 THAT MADE THAT FINDING, THAT'S SIMPLY NOT TRUE. AND  
24 THE REASON IS THE COURT HAS BEEN EXPOSED TO ALL THE  
25 COVER LETTERS, THE TRANSMISSION LETTERS THAT  
26 MS. MORGAN-NICHOLS SIGNED THAT TRANSMITTED THE  
27 INFORMATION TO THE STATE. IF THE COURT WILL REMEMBER  
28 ALL THOSE DEPO READS YOU HAD TO DO AT THE BEGINNING OF

1 THE CASE, AND I THINK PART OF YOUR PAST REASONING ON  
2 THE OMISSIONS ASPECT OF THIS WAS THAT  
3 MS. MORGAN-NICHOLS, AS THE SUPERVISOR OF MS. HOCHSTEIN,  
4 SAID THAT SHE WASN'T JUST RUBBER-STAMPING WHAT WAS  
5 BEING SENT TO THE STATE, THAT SHE WAS INDEPENDENTLY  
6 REVIEWING EVERYTHING, SHE CONCURRED WITH IT, SHE  
7 BELIEVED IT TO BE TRUE, AND SHE SENT THAT INFORMATION  
8 TO THE STATE, WHICH THEN LATER FILED THEIR CONCURRENT  
9 WITH THE OUTCOME OF THE STATE'S INVESTIGATION AND  
10 CLOSED THEIR FILE.

11 THERE WAS A RECOMMENDATION FOR DISCIPLINE  
12 AGAINST THE SOCIAL WORKERS, AND AS THE COURT'S HEARD,  
13 THAT DISCIPLINE HAS NEVER BEEN IMPLEMENTED AGAINST THE  
14 TWO SOCIAL WORKERS.

15 WITH REGARD -- I CAN GO THROUGH THE TESTIMONY  
16 OF MS. HOCHSTEIN AND HER FINDINGS. HER FINDINGS WERE  
17 THAT MS. DUVAL WAS PERCEIVED AS SUFFERING MUNCHAUSEN'S,  
18 WHICH RESULTED IN HER LOSING SERVICES. THERE IS AN  
19 EDGE IN THIS CASE NOW THAT WE DIDN'T HAVE A MONTH AGO  
20 WHERE WE'RE NOT GETTING TO THE ARGUMENT SHE LOST HER  
21 SON BECAUSE OF THESE THINGS, BUT THERE IS EVIDENCE, WE  
22 BELIEVE, THAT A CIVIL RIGHTS INVESTIGATOR SAID THAT.  
23 SO WE'RE STAYING WITH THE IMPACT OF THESE STATEMENTS ON  
24 MS. DUVAL AND ALSO THE PROCESS BY WHICH THE COUNTY  
25 ADMINISTERED THE SERVICES TO MS. DUVAL.

26 THE COURT: OKAY. LET ME JUST SAY IN RESPONSE  
27 TO THAT: I DON'T THINK THAT THE ISSUE OF WHAT YOU JUST  
28 MENTIONED IS REALLY RELEVANT TO MY CONSIDERATION OF THE

1 IMPACT ON HER -- HERE, WE'RE TALKING ABOUT  
2 DISABILITIES.

3 MR. PRAGER: RIGHT.

4 THE COURT: AND SO ON THIS FIRST POINT THAT  
5 I'D MENTIONED THAT HAS BEEN ARGUED BY THE DEFENDANTS IS  
6 THERE IS NO EVIDENCE OF DISCRIMINATION. AND YOU'VE  
7 POINTED OUT SOME OF THE EVIDENCE. IF THERE'S  
8 ADDITIONAL ON THAT POINT, I'M HAPPY TO HAVE YOU RECITE  
9 IT TO ME, BUT WE WANT TO GO ON TO THE OTHER POINTS AS  
10 WELL.

11 MR. PRAGER: VERY GOOD.

12 THE COURT: BUT THAT'S NOT TO SHORTEN YOUR  
13 ARGUMENT. I'M JUST TRYING TO MAKE SURE THAT YOU'RE  
14 TALKING ABOUT THE THINGS I'VE ASKED YOU TO TALK ABOUT.

15 MR. PRAGER: I DON'T WANT TO RUN AFOUL OF THE  
16 COURT'S, YOU KNOW, PRIOR RULINGS OR WHATEVER IN TERMS  
17 OF THEIR ISSUES AND THEY DIDN'T -- THE POINT IS I HAVE  
18 THE DOCUMENT IN FRONT OF ME, I'LL REPRESENT THE  
19 TESTIMONY WAS IDENTICAL BECAUSE THE TESTIMONY WAS READ  
20 TO THE WITNESS AND SHE ADOPTED IT.

21 SO THERE WAS MULTIPLE STATEMENTS THAT THE  
22 REFERENCE TO MUNCHAUSEN BY PROXY REQUIRED A LICENSED  
23 MEDICAL PRACTITIONER, WHICH MS. NELSON WAS NOT.

24 (READING:)

25 "MS. DUVAL WAS NEVER DIAGNOSED  
26 WITH MUNCHAUSEN BY PROXY BY AN  
27 APPROPRIATE MEDICAL PRACTITIONER. WHEN  
28 SOI NELSON DOCUMENTED THE PHRASE



1 'POSSIBLE MUNCHAUSEN BY PROXY' ABOUT  
2 CP DUVAL IN HER COURT REPORT, THIS  
3 RESULTED IN CP DUVAL BEING PERCEIVED BY  
4 OTHERS AS HAVING THE IMPAIRMENT  
5 MUNCHAUSEN BY PROXY. FURTHER, DCFS  
6 MADE THE RECOMMENDATION THAT CP DUVAL  
7 NOT BE ALLOWED TO REUNIFY WITH HER SON.  
8 THEREFORE, CP DUVAL WAS DIFFERENTLY  
9 TREATED IN THE RECEIPT OF SERVICES  
10 BECAUSE SHE IS A QUALIFIED INDIVIDUAL  
11 WITH A DISABILITY, TREMORS, POSSIBLE  
12 MUNCHAUSEN BY PROXY -- I'M SORRY --  
13 POSSIBLE MUNCHAUSEN."

14 IT GOES ON THAT:

15 "WHEN SOI NELSON REPORTED CONCERNS  
16 ABOUT CP DUVAL'S UNCONTROLLABLE SHAKING  
17 HANDS" --

18 AND I'LL SKIP AHEAD ON THAT.

19 I'LL REPRESENT TO THE COURT THAT THE FINDING  
20 HERE IS MS. SCHEELE WAS INFORMED THAT MS. DUVAL HAD A  
21 MEDICAL CONDITION, THE FAMILIAL TREMORS THE COURT'S  
22 HEARD ABOUT FROM MS. DUVAL. AND AS A NEUTRAL ARM OF  
23 THE COURT, THE SOCIAL WORKER WAS UNDER OBLIGATION TO  
24 REPORT ALL THE FACTS TO THE COURT TO EXPLAIN THE  
25 POSSIBLE CONDUCT OR APPEARANCE OF MS. DUVAL IN THE  
26 PROCEEDINGS.

27 AND THE REPORTS INDICATE THAT RATHER THAN  
28 CONFIRM THAT SHE HAD A MEDICAL CONDITION, THE SOCIAL

1 WORKERS DESCRIBED MS. DUVAL AS BEING NERVOUS AND  
2 ANXIOUS AND NEVER DISCLOSED TO THE COURT MS. DUVAL'S  
3 EXPLANATION THAT SHE HAD TREMORS.

4 THERE ARE MATERIAL DIFFERENCES ON THIS BECAUSE  
5 MS. DUVAL SAYS IN HER TESTIMONY THAT SHE DISCLOSED THIS  
6 INFORMATION TO THE COUNTY'S AGENTS. SOME COUNTY AGENTS  
7 DISPUTE THAT. SO THERE'S GOING TO BE FACTS THE JURY  
8 HAS TO DECIDE ON THAT POINT. FOR THIS MOTION, I THINK  
9 IT SHOULD BE ACCEPTED AS TRUE THAT SHE TOLD THE SOCIAL  
10 WORKERS THAT SHE HAS A MEDICAL CONDITION -- THERE'S  
11 EVIDENCE ABOUT THAT FROM DR. ACHAR AND HER MOTHER AS  
12 WELL -- AND THAT THE SOCIAL WORKERS, ABSOLUTELY  
13 MS. SCHEELE NEVER DISCLOSED THAT IN HER DOCUMENTATION  
14 TO THE COURT OR IN HER RECORDS. YOU HAVE INFORMATION  
15 FROM MS. DUVAL'S MOTHER WHO ACTUALLY I THINK CALLED  
16 HER -- I WASN'T SURE IF IT WAS "DEVIL," BUT IT WAS SOME  
17 WORD LIKE THAT WHEN SHE WAS DESCRIBING THE  
18 ADMINISTRATION OF SERVICES THAT MS. SCHEELE GAVE TO  
19 MS. DUVAL AND HER MOTHER.

20 IN TERMS OF THE ADMINISTRATION OF SERVICES,  
21 THERE WAS TESTIMONY THAT MS. DUVAL HAD MADE REPEATED  
22 REQUESTS FOR A BILINGUAL INTERPRETER AND THAT WAS  
23 DENIED TO HER. THERE WAS TESTIMONY THEY EXCLUDED  
24 URBANA DUVAL FROM THE MEETINGS. IF THE COURT RECALLS  
25 THE EXAMINATION OF MS. SCHEELE, THERE WAS DISCUSSION  
26 ABOUT, AS WE TRIED TO GET THE EVIDENCE IN, AN ALWAYS  
27 ONGOING NEGATIVE PORTRAYAL OF MOTHER AND ALWAYS A  
28 POSITIVE PORTRAYAL OF FATHER. WITH REGARD TO THE

1 MEDICAL PROVIDERS, THAT IS ASSUREDLY TRUE.

2 THERE IS TESTIMONY REGARDING THE MUNCHAUSEN BY  
3 PROXY CONDITION NEVER HAVING BEEN SATISFIED FROM A  
4 MEDICAL STANDPOINT. AND THERE WAS TESTIMONY ABOUT HOW  
5 THE FATHER WAS ALWAYS CAST IN THE BETTER LIGHT AND THE  
6 MOTHER ALWAYS CAST IN THE NEGATIVE LIGHT.

7 THE SOCIAL WORKERS ARE NOT SUPPOSED TO BE  
8 JUDGMENTAL, AND OUR POSITION IS THEY WERE.

9 THERE WAS TESTIMONY ABOUT THE ALLERGIES AND  
10 THE CONDITION OF THE ROOMS. MS. DUVAL TESTIFIED IN  
11 TERMS OF THE PHYSICAL MANIFESTATION OF THIS CONDITION  
12 THAT SHE HAD ALLERGIES AND TOLD THE SOCIAL WORKERS SHE  
13 WAS REACTING TO THE ROOMS BECAUSE THEY WERE FILTHY.  
14 THEREFORE, SHE THEN BEGAN APPEARING AT THESE ROOMS AND  
15 CLEANING THEM AND BRINGING A BLANKET TO SIT ON WITH HER  
16 SON TO AVOID GETTING SICK. I BELIEVE SHE TESTIFIED ON  
17 ONE OCCASION SHE REACTED SO BADLY TO THE DIRTY ROOM  
18 THAT SHE WENT TO THE EMERGENCY ROOM AFTER SHE LEFT THE  
19 VISIT.

20 RATHER THAN EXPLAINING THAT MS. DUVAL WAS  
21 DESCRIBING THESE CONDITIONS AND SAYING SHE HAD  
22 ALLERGIES, THE SOCIAL WORKERS CAST HER, AGAIN, IN A  
23 NEGATIVE LIGHT ABOUT THAT.

24 LAST TIME WE DISCUSSED THIS, I PROVIDED YOU  
25 WITH A SHORT SNIPPET FROM 45CFR84.4, AND IT DETAILS A  
26 NUMBER OF DIFFERENT WAYS THAT SERVICES CAN BE RENDERED  
27 IN AN INEFFECTIVE OR UNEQUAL OR LESSER MANNER TO THE  
28 DETRIMENT OF THE DISABLED INDIVIDUAL RECEIVING THE

1 SERVICES.

2 AND I CAN APPLY THE FACTS TO ALL THESE, YOUR  
3 HONOR, IF YOU WOULD LIKE, TO ESTABLISH THE ELEMENTS OF  
4 THE CLAIM, BUT THE BASIC IDEA HERE IS THAT B1, FOR  
5 EXAMPLE, THEY'VE GOT TO PROVIDE A BENEFIT OR SERVICE  
6 THAT'S EQUAL, THAT THEY HAVE TO PROVIDE AN OPPORTUNITY  
7 TO PARTICIPATE THAT'S EQUAL. THEY MUST PROVIDE A  
8 BENEFIT THAT IS NOT LESSER TO OTHERS AFFORDED. THEY  
9 HAVE TO PROVIDE A BENEFIT THAT IS EFFECTIVE AS THE  
10 BENEFITS PROVIDED TO OTHERS. THEY HAVE TO PROVIDE  
11 OPPORTUNITY TO PARTICIPATE. THEY HAVE TO PROVIDE  
12 ENJOYMENT OF ANY RIGHT OR PRIVILEGE; THEY CANNOT  
13 OTHERWISE LIMIT ANY RIGHT. THEY HAVE TO AFFORD EQUAL  
14 OPPORTUNITY TO OBTAIN THE SAME RESULT, GAIN THE SAME  
15 BENEFIT, OR REACH THE SAME LEVEL OF ACHIEVEMENT. THEY  
16 HAVE TO AFFORD AN OPPORTUNITY TO PARTICIPATE.

17 AND I THINK THE ONE THAT I WOULD CALL YOUR  
18 ATTENTION SPECIFICALLY IS B4, WHERE IT SAYS:

19 "THE DEFENDANTS IN THE CASE CANNOT  
20 UTILIZE A CRITERIA OR METHODS OF  
21 ADMINISTRATION THAT HAVE THE EFFECT OF  
22 SUBJECTING THE QUALIFIED -- IN THIS  
23 CASE, HANDICAPPED PERSON TO  
24 DISCRIMINATION BASED ON THE HANDICAP."

25 AND HERE THE ARGUMENT IS, AS LAID OUT BY  
26 MS. HOCHSTEIN AS WELL, THAT MS. DUVAL WAS PERCEIVED AS  
27 HAVING MUNCHAUSEN'S BY SCHEELE AND NELSON, AND WHEN SHE  
28 WAS PERCEIVED AS HAVING MUNCHAUSEN'S, THE

1 RECOMMENDATIONS THAT FLOWED FROM THAT POINT FORWARD  
2 ALWAYS CONSIDERED HER AS HAVING MUNCHAUSEN'S, WHICH WAS  
3 STIGMATIZING TO HER AND LABELING TO HER.

4 AND I WILL JUST ASK THAT YOU ADOPT THE  
5 CONVERSATION WITH MR. MCMILLAN TODAY WITH ALL THOSE  
6 ISSUES BECAUSE TO SOME DEGREE THEY APPLY HERE AS WELL.  
7 TO SAVE TIME, WE DON'T NEED TO GO OVER THEM AGAIN  
8 COMPLETELY.

9 SO WE THINK THERE IS AMPLE EVIDENCE THAT IN  
10 THIS CASE THE GOVERNMENT DID NOT PROVIDE EQUAL  
11 SERVICES.

12 AND THE TIME LINE ARGUMENT THE DEFENSE HAS  
13 RAISED, IT'S VERY IMPORTANT TO RECALL THAT AS A  
14 DEPENDENCY INVESTIGATOR MS. NELSON HAS A JOB TO LOOK AT  
15 THE CASE ANEW. AND SO DOES MS. SCHEELE, AS I THINK  
16 WHAT THEY CALL THE BACK-END WORKER, WHERE SHE COMES  
17 INTO THE CASE AFTER THE CHILD HAS BEEN DETAINED. AND  
18 IT'S TRUE IN NOVEMBER THEY MADE A RECOMMENDATION THAT  
19 NO FR SERVICES BE OFFERED. BUT WHEN MS. NELSON BEGAN  
20 DOING HER WORK, SHE MADE THE SAME RECOMMENDATION. AND  
21 THAT'S ACTIONABLE, ACCORDING TO MS. HOCHSTEIN, BECAUSE  
22 MS. NELSON AND MS. SCHEELE WERE BASING THEIR BEHAVIORS  
23 ON THE CONDUCT OR THE BELIEF THAT MS. DUVAL HAD THIS  
24 DISABILITY, THIS MUNCHAUSEN'S, AND THE MISUSE OF THE  
25 TREMORS.

26 SO IT ISN'T AS IF NOVEMBER IS STARTING THE  
27 CLOCK. WHEN NELSON AND SCHEELE COME INTO THE CASE,  
28 IT'S THEIR JOB TO TREAT MS. DUVAL FAIRLY AND EQUALLY.

1 AND BASED ON THE EVIDENCE BEFORE YOU, 202 AND SO FORTH,  
2 THEY FAILED TO DO THAT.

3 WE DESCRIBED IN DETAIL THE ANXIETY SHE HAD.  
4 MS. DUVAL TESTIFIED ABOUT SHE FEARED MS. SCHEELE; SHE  
5 ASKED TO GET A DIFFERENT MONITOR. SHE WAS NOT GIVEN A  
6 DIFFERENT MONITOR. SHE TALKED ABOUT THE ANXIETY. SHE  
7 TALKED ABOUT THE IMPACT OF THIS SITUATION ON HER  
8 PHYSICAL HEALTH AND HAVING TO DEAL WITH THE DEFENDANTS.

9 SO WE THINK THAT SHE HAS AMPLY ESTABLISHED  
10 THAT SHE RECEIVED LESSER SERVICES UNDER THE REHAB ACT.  
11 UNDER THE TITLE II OF THE ADA, THE REGULATIONS WE GAVE  
12 YOU THE OTHER DAY WERE 28CFR35.101 AND -35.102, AND IT  
13 TALKS ABOUT THE SERVICES THAT MUST BE PROVIDED INCLUDE  
14 PRETTY MUCH ALL SERVICES THE GOVERNMENT PROVIDES. WE  
15 GAVE YOU A NUMBER OF CASE AUTHORITY THAT WE DON'T NEED  
16 TO REPEAT TODAY. BUT THE BOTTOM LINE IS, WITH REGARD  
17 TO TITLE II, IT'S PRETTY MUCH ANYTHING A GOVERNMENT  
18 ENTITY DOES THAT SUBJECTS THEM TO THE NONDISCRIMINATION  
19 LANGUAGE. AND IF THEY HAD A LEGITIMATE BASIS FOR THEIR  
20 CONDUCT, THAT WOULD BE ONE THING. BUT THEY DIDN'T.  
21 THE OWN INTERNAL INVESTIGATION WHICH WAS APPROVED AT  
22 MULTIPLE LEVELS BY THE CIVIL RIGHTS UNIT IS THAT THEY  
23 WERE UNEQUAL AND THEY DENIED SERVICES TO HER AND GAVE  
24 HER LESS BENEFIT THAN WHAT THEY AFFORDED TO OTHER  
25 PEOPLE.  
26 THE COURT: I'LL JUST ASK YOU, WHAT EVIDENCE  
27 IS THESE THINGS THAT YOU MENTIONED WERE GIVEN TO  
28 OTHERS?

1           MR. PRAGER: THE COURT REPORT -- THE POSSIBLE  
2 MUNCHAUSEN BY PROXY WAS STILL FILED IN THE COURT. AND  
3 I HAVE TO CHECK THE TESTIMONY BUT ON THE SEPTEMBER 9,  
4 2010, REPORT MS. HOCHSTEIN WROTE TO THE STATE AND SAID  
5 THAT MS. DUVAL LOST HER SON BECAUSE SHE WAS PERCEIVED  
6 AS MUNCHAUSEN BY PROXY. SO -- AND SHE ALSO TESTIFIED  
7 THAT -- I'M NOT SURE IF WE'VE COVERED IT YET, BUT IN  
8 THE CONCLUSIONS THAT I BELIEVE MS. HOCHSTEIN TESTIFIED  
9 AS PART OF HER TESTIMONY, SHE DESCRIBED SHE WAS  
10 PERCEIVED BY OTHERS AS HAVING THIS IMPAIRMENT --

11           THE COURT: YEAH. LOOK, LET ME JUST GO BACK  
12 TO WHAT YOU SAID.

13           THE LOSS OF THE SON IS NOT GOING TO BE AN  
14 ELEMENT OF DAMAGE FOR THE DISABILITY CLAIMS. NOR WILL  
15 IT BE -- AND WE'VE ALREADY TALKED ABOUT IT -- IN THE  
16 INTENTIONAL INFLECTION.

17           MY QUESTION WAS YOU SAID THEY -- SHE  
18 COMPLAINED ABOUT THE ROOM, YOU KNOW, THE CONDITION OF  
19 THE ROOM WHERE THE VISITS OCCURRED.

20           MR. PRAGER: RIGHT.

21           THE COURT: AND ASKED TO HAVE IT CLEANED,  
22 SOMETHING.

23           MR. PRAGER: SHE ALSO ASKED TO HAVE OUTSIDE  
24 VISITS. SHE ALSO, HER TESTIMONY WAS THAT SHE ASKED TO  
25 HAVE HER VISITATIONS OUTSIDE, AND THAT WAS DENIED TO  
26 HER AS WELL.

27           THE COURT: OKAY. SO WHAT ALL THESE DIFFERENT  
28 THINGS ARE THAT YOU'RE SAYING, I'D LIKE -- I DON'T WANT

1 TO CURTAIL YOUR ARGUMENT, BUT SPECIFICALLY THE POINT  
2 THAT WAS BEING MADE IN SUPPORT OF THE MOTION IS THERE'S  
3 NO EVIDENCE THAT ANY SERVICE WAS DENIED. AND SO WHEN  
4 YOU TALK ABOUT THINGS THAT DIDN'T HAPPEN, I THINK  
5 THAT'S ONLY PART OF THE PICTURE.

6 IF YOU SAY -- I DON'T WANT TO MAKE A  
7 RIDICULOUS -- BECAUSE THIS IS A SERIOUS MATTER, BUT IF  
8 YOU SAID THAT SHE WAS -- I'M TRYING TO THINK OF AN  
9 EXAMPLE THAT WOULD NOT BE JUST ON ITS FACE A RIDICULOUS  
10 COMPARISON. BUT SUPPOSE, FOR EXAMPLE, THAT -- AND THIS  
11 IS AN EXAMPLE BECAUSE THIS WASN'T THE EVIDENCE IN THE  
12 CASE -- BUT SUPPOSE AS AN EXAMPLE THAT MS. DUVAL WAS  
13 SUFFERING -- WAS EXPERIENCING STRESS AT THE TIME OF THE  
14 VISITATIONS, AS -- FOR THE MOMENT WE'LL SAY AS -- THAT  
15 SHE WAS PERCEIVED TO BE EXPERIENCING STRESS AT ONE OF  
16 THE VISITATIONS. AND THAT AT THE END OF THE  
17 VISITATION, SHE SAID TO THEM, "I REALLY AM UPSET, AND I  
18 DON'T THINK I CAN GET MYSELF HOME. PLEASE PROVIDE  
19 TRANSPORTATION TO GO HOME."

20 NOW, THIS ISN'T THE EVIDENCE IN THE CASE.

21 MR. PRAGER: I UNDERSTAND.

22 THE COURT: I'M TRYING TO STAY AWAY FROM THE  
23 CASE.

24 AND THEN YOU SAY, WELL -- JUST AS AN  
25 EXAMPLE -- WELL, THEY DIDN'T DO THAT FOR HER. BUT THE  
26 POINT IS TO DENY A SERVICE, UNEQUAL TREATMENT, IS THAT  
27 SOMETHING THAT THEY SHOULD DO EVEN THOUGH THEY DON'T DO  
28 IT FOR ANYBODY ELSE?



1           MR. PRAGER: IN YOUR HYPOTHETICAL, THE REASON  
2 IT WOULD APPLY TO MS. DUVAL AND NOT TO ME OR PERHAPS  
3 YOU, I DON'T KNOW, IS BECAUSE WE ARE NOT DISABLED,  
4 OKAY? SO IN HER SITUATION, SHE ALLEGEDLY TOLD THEM  
5 THAT SHE HAD TREMORS, WHICH IS A MEDICAL CONDITION. SO  
6 LET'S SAY IT'S ME AND I'M IN A ROOM AND I'M JUST  
7 STRESSED BECAUSE I'M AFRAID THEY'RE GOING TO TAKE MY  
8 CHILD AWAY FROM ME, AND I DON'T FEEL I CAN GO ON  
9 BECAUSE THE DAY HAS BEEN FATIGUING AND I DON'T FEEL I  
10 CAN DRIVE. I DON'T BELIEVE THE COUNTY HAS ANY  
11 OBLIGATION TO PROVIDE ME ANY SERVICE BECAUSE I'M NOT  
12 DISABLED.

13           AND WITH REGARD TO MS. --

14           THE COURT: WELL, LET'S SUPPOSE -- LOOK, SOME  
15 OF THE EVIDENCE IN THE CASE WAS THAT SHE DID -- THE  
16 TREMORS SEEMED TO BE MORE PRONOUNCED WHEN SHE WAS  
17 FEELING STRESS, AND I DON'T REMEMBER IF IT'S WHEN SHE  
18 WAS TIRED, BUT AT LEAST CERTAINLY WHEN SHE WAS  
19 STRESSED. SO SHE HAS A VISITATION, SHE'S UNHAPPY WITH  
20 THE CIRCUMSTANCE, WHATEVER REASON, AND AT THE END OF  
21 THE VISITATION SHE'S, YOU KNOW, "I REALLY CAN'T GET  
22 MYSELF HOME. PLEASE PROVIDE ME TRANSPORTATION."

23           MY POINT OF ALL THIS IS THAT ONE OF THE BASES  
24 OF THE MOTION IS THAT THERE'S NO EVIDENCE OF WHAT SHE  
25 WAS DENIED. AND SO IT'S ONE THING TO BE MAKING THESE  
26 CLAIMS OF THINGS YOU THINK DIDN'T HAPPEN. MY QUESTION  
27 IS: WHAT EVIDENCE IS THERE THAT SHE WAS DENIED  
28 SOMETHING THAT SOMEONE ELSE WOULD RECEIVE?

1           NOW, YOU DID -- YOU GAVE ONE EXAMPLE, IS THEY  
2 DID NOT, ON THEIR OWN, PROVIDE REUNIFICATION SERVICES.  
3 SO THERE'S ONE EXAMPLE.

4           MR. PRAGER: I'LL READ IT TO YOU. I'LL READ  
5 THE QUOTE --

6           THE COURT: AND IF I COULD JUST FINISH.

7           MR. PRAGER: SORRY.

8           THE COURT: WELL, I DON'T WANT TO CAUSE YOU TO  
9 LOSE TRAIN OF THOUGHT.

10          MR. PRAGER: SORRY. LIKEWISE.

11          THE COURT: BECAUSE I KNOW I CAN LOSE MY OWN  
12 TRAIN OF THOUGHT.

13          YOU DID MENTION THAT. AND IS THERE EVIDENCE  
14 THAT ON THEIR OWN DCFS, WITHOUT ANY ORDER OF THE COURT,  
15 CAN PROVIDE REUNIFICATION SERVICES? I BELIEVE THAT  
16 THERE IS.

17          SO IF YOUR CLAIM IS THAT, AS AN EXAMPLE -- I'M  
18 TRYING TO GET FOCUSED ON THEIR MOTION THAT THERE'S NO  
19 EVIDENCE OF WHAT WAS DENIED. AND TO BE DENIED, IT HAS  
20 TO BE SOMETHING THAT THERE WOULD BE EITHER AN  
21 ENTITLEMENT TO OR SOMETHING WHICH IS FURNISHED BY THEM,  
22 WHATEVER IT MIGHT BE. AND I DON'T THINK IT HAS TO BE A  
23 SPECIFIC FORMAL PROGRAM, AS I MENTIONED YESTERDAY. I  
24 THINK THE QUESTION IS A LITTLE BROADER: IS THERE  
25 SOMETHING THAT THEY DIDN'T DO FOR HER THAT THEY DO DO  
26 FOR OTHERS? BECAUSE I DON'T RECALL EVIDENCE OF WHAT IT  
27 WAS.

28          SO GO AHEAD.

1 MR. PRAGER: OKAY. DON'T WANT TO CUT YOU OFF  
2 EITHER, SO.

3 THE COURT: NO, YOU DIDN'T. NO, YOU DIDN'T.  
4 THANKS.

5 MR. PRAGER: THIS IS HOCHSTEIN -- AND I'M  
6 READING, BUT MY RECOLLECTION IS, AS YOU KNOW, THIS WAS  
7 ALL READ INTO THE TRANSCRIPTS AND READ TO THE JURY.

8 "THE IMPLIED DIAGNOSIS" --

9 MS. NAU: YOUR HONOR, HE'S READING FROM A  
10 DOCUMENT THAT'S NOT IN EVIDENCE.

11 MR. PRAGER: THE TESTIMONY IS -- IF WE NEED TO  
12 TAKE A MOMENT AND GET HOCHSTEIN'S DEPOSITION TYPED OUT  
13 AND DO THAT --

14 MS. NAU: YES, BECAUSE I DON'T KNOW THAT THE  
15 ENTIRETY OF THAT DOCUMENT IS IN HOCHSTEIN'S TESTIMONY.

16 THE COURT: JUST MAKE THE ARGUMENT.

17 MR. PRAGER: OKAY.

18 THE COURT: I'VE ASKED THE QUESTION. I HOPE  
19 IT'S CLEAR.

20 MR. PRAGER: YOU ARE.

21 THE COURT: THAT'S ONE OF THE BASES OF THE  
22 MOTION. THERE'S NO EVIDENCE OF WHAT WAS DENIED. SO  
23 I'M SAYING: WHAT WAS DENIED?

24 MR. PRAGER: FAMILY REUNIFICATION SERVICES,  
25 HOCHSTEIN SAID THAT --

26 THE COURT: DON'T TELL ME WHAT HOCHSTEIN SAID.  
27 JUST TELL ME.

28 MR. PRAGER: FAMILY REUNIFICATION SERVICES --

1 THE COURT: FAMILY REUNIFICATION WAS DENIED.

2 MR. PRAGER: RIGHT.

3 THE COURT: NOW, THEY'RE SAYING IT WAS LATER  
4 FURNISHED, BUT THAT'S NOT THE POINT.

5 MR. PRAGER: RIGHT.

6 THE COURT: YOUR POINT IS IT COULD HAVE BEEN  
7 PROVIDED BY THEM AT ANY TIME, WITHOUT A COURT ORDER.

8 MR. PRAGER: MY POINT IS THAT WHEN NELSON  
9 BEGAN DOING HER JOB SHE HAD TO MAKE A RECOMMENDATION  
10 BASED ON HER INVESTIGATION FIRST. AND DURING HER  
11 INVESTIGATION, AT THE END OF IT, SHE MADE A  
12 RECOMMENDATION HERSELF TO THE COURT THAT NO FAMILY  
13 REUNIFICATION SERVICES BE OFFERED.

14 THE COURT: I KNOW. LOOK, YOU'VE MADE THAT  
15 ARGUMENT, AND THAT ONE ISN'T DOING VERY WELL WITH ME,  
16 AND IT'S NOT QUITE RESPONDING TO WHAT I'D LIKE TO HEAR.  
17 I DON'T THINK THAT FOR THE CLAIMED DISABILITY THAT  
18 THEIR RECOMMENDATION THAT THE COURT DENY SOMETHING --  
19 WHICH LATER THE COURT DIDN'T DENY ANYWAY -- BUT I DON'T  
20 THINK THAT RECOMMENDATION IS THE DENIAL OF SERVICES.

21 THE QUESTION TO ME WOULD BE, IF YOU'RE SAYING  
22 THEY DIDN'T GIVE HER FAMILY REUNIFICATION, WE KNOW SHE  
23 DID GET IT, BUT SHE DIDN'T GET IT VOLUNTARILY BEFORE  
24 THERE WAS A COURT ORDER -- JUST LET ME FINISH,  
25 EVERYBODY.

26 I'M GIVING -- LOOK, I'M GIVING ALL OF YOU AN  
27 OPPORTUNITY TO MAKE YOUR ARGUMENTS, AND I'D LIKE THE  
28 SAME COURTESY, THAT I GET TO FINISH WHAT I HAVE TO SAY

1 WITHOUT PEOPLE POPPING UP. YOU WILL NOTICE THAT I  
2 ALWAYS COME BACK TO FIND OUT IF SOMEBODY ELSE HAS  
3 SOMETHING TO SAY. SO EVERYBODY WILL BE ASSURED OF  
4 GETTING THEIR SAY, BUT I'D LIKE THE SAME COURTESY THAT  
5 I GET TO SAY WHAT I HAVE TO SAY.

6 SO MY QUESTION SIMPLY IS: TELL ME SOMETHING  
7 THAT WAS DENIED TO HER THAT OTHERWISE WAS PROVIDED TO  
8 EVERYBODY ELSE.

9 MR. PRAGER: SCHEELE --

10 THE COURT: DON'T -- JUST TELL ME. I WANT YOU  
11 TO ENUMERATE THEM. NOT THE EVIDENCE YOU HAVE. TELL ME  
12 WHAT YOU'RE SAYING. LOOK, IF I'M NOT MAKING MYSELF  
13 CLEAR, THEN TELL ME. I WANT A LIST OF TELLING ME THIS  
14 SERVICE WAS DENIED, THIS SERVICE WAS DENIED, AND THAT  
15 THIS IS A SERVICE WHICH IS FURNISHED TO OTHERS BUT NOT  
16 TO HER.

17 MR. PRAGER: BILINGUAL MONITOR, OKAY? THE  
18 BILINGUAL MONITOR WAS ONE ASPECT.

19 THE COURT: OKAY.

20 MR. PRAGER: THE MOTHER BEING IN THE ROOM WAS  
21 ONE ASPECT. OKAY?

22 WE'VE ALREADY DISCUSSED THE FR SERVICES.

23 YOUR HONOR, MAY I ALSO ADDRESS UNEQUAL  
24 SERVICES AS PART OF THAT? BECAUSE I THINK IN TERMS OF  
25 AN ABSENCE OF SERVICES, WE'VE DISCUSSED THAT.

26 THE COURT: ALL RIGHT.

27 MR. PRAGER: I THINK THERE WERE UNEQUAL  
28 SERVICES.

1 THE COURT: DON'T TELL ME UNEQUAL. I WANT --  
2 REALLY, MR. PRAGER, I'M SORRY. AND I AM INTERRUPTING,  
3 AND HERE I JUST CHASTISED EVERYONE FOR INTERRUPTING ME,  
4 SO I'M GUILTY OF THE SAME THING.

5 BUT I'M TRYING TO GET -- YOU STARTED TO GIVE  
6 ME A LIST. BILINGUAL INTERPRETER. AND YOUR CONTENTION  
7 IS THAT THEY DO FURNISH THAT FOR OTHER PEOPLE AND THEY  
8 DIDN'T TO HER.

9 MR. PRAGER: RIGHT.

10 THE COURT: REUNIFICATION. THEY DIDN'T  
11 FURNISH IT TO THEM. THAT WAS LATER FURNISHED BY COURT  
12 ORDER, BUT THEY DIDN'T. AND THAT IS SOMETHING WHICH  
13 THEY CAN DO AND DO DO FOR OTHERS.

14 MR. PRAGER: YES.

15 THE COURT: OKAY. I JUST WANT THAT LIST.

16 MR. PRAGER: OKAY.

17 THE COURT: WE'RE GOING TO TAKE A SHORT  
18 RECESS. FIRST OF ALL, THE REPORTER HAS BEEN GOING FOR  
19 QUITE SOME PERIOD OF TIME AND I'VE FORGOTTEN ABOUT HER  
20 AND I APOLOGIZE FOR THAT.

21 AND SO WE'RE GOING TO TAKE ABOUT A TEN-MINUTE  
22 RECESS TO GIVE THE REPORTER A BREAK, AND THEN EVERYONE  
23 WILL ALSO BE ABLE TO THINK ABOUT THE QUESTIONS I'VE  
24 ASKED. BECAUSE MY NEXT QUESTION IS GOING TO BE VERY  
25 SPECIFIC ABOUT WHAT WAS DENIED.

26 FIRST OF ALL, THEY'VE SAID THERE'S NO -- THE  
27 POINTS WERE: THERE'S NO EVIDENCE OF DISCRIMINATION.  
28 YOU HAVE ADDRESSED THAT. THE SECOND POINT THEY MADE,

1       THERE WAS NO EVIDENCE OF WHAT WAS DENIED.  THAT'S THE  
2       ONE WE'RE ON.  AND THEN THE LAST POINT WAS MADE THAT  
3       EVEN IF ANYTHING WAS DENIED, THEY SAY THERE IS NO  
4       EVIDENCE IT WAS DENIED BECAUSE OF A DISABILITY.

5                I WANT TO BE ABLE TO ADDRESS THOSE THREE  
6       QUESTIONS, AND I WANT TO BE ABLE TO DO IT SUCCINCTLY.

7                MR. PRAGER:  VERY GOOD.

8                THE COURT:  SO WE'LL TAKE ABOUT 10 MINUTES.

9                (RECESS)

10               THE COURT:  ALL RIGHT.  WE'RE BACK ON THE  
11       RECORD.

12               AND MR. PRAGER, GOING BACK TO MY QUESTION JUST  
13       ABOUT THE SERVICES, ONE YOU GAVE ABOUT REUNIFICATION.  
14       ANOTHER ONE, BILINGUAL INTERPRETER FOR THE VISITATIONS.

15               WERE THERE ANY OTHERS YOU WANT TO MENTION TO  
16       ME IN THAT LIST?

17               MR. PRAGER:  YES, I HAVE A LIST FOR YOU, YOUR  
18       HONOR.

19               THE COURT:  YEAH.

20               MR. PRAGER:  AND I APOLOGIZE FOR ANYTHING I'VE  
21       SAID THAT, YOU KNOW --

22               THE COURT:  NO APOLOGY NECESSARY.  JUST GIVE  
23       ME THE LIST SO I'LL KNOW WHAT IT IS.  BECAUSE I THINK  
24       WE'VE -- I THINK THERE'S BEEN AN AMPLE OPPORTUNITY TO  
25       DISCUSS THIS SO I'M GOING TO BRING IT TO AN END, BUT  
26       NOT BEFORE YOU GIVE ME THE LIST, AND THEN JUST ANSWER  
27       THAT LAST QUESTION FOR ME.

28               MR. PRAGER:  OKAY.  207 IS THE EXHIBIT WHERE

1       MUCH OF THE INFORMATION IS COMING FROM. IT'S  
2       PAGES 2732 THROUGH 2750. THIS IS THE COMPLAINT THAT  
3       MS. DUVAL FILED ALLEGING ALL THE BASES FOR WHAT HER  
4       CONDUCT OR PERCEPTION OF HER CONDUCT WAS.

5               THE COURT: OKAY.

6               MR. PRAGER: SO THERE WAS A LIMITATION ON THE  
7       NUMBER OF VISITS SHE GOT.

8               THE COURT: ALL RIGHT. IF IT -- I'LL JUST  
9       LOOK AT THE LIST.

10              MR. PRAGER: I'VE SUMMARIZED IT FOR YOU.

11              THE COURT: ALL RIGHT. GO AHEAD.

12              MR. PRAGER: THE CLEAN ROOMS ISSUE. ISSUE  
13       REGARDING FAILURE TO GIVE HER ACCESS TO MEDICAL RECORDS  
14       REGARDING BABY RYAN. THE PREVENTION OF A  
15       SPANISH-SPEAKING MONITOR. NONJUDGEMENTAL MONITORING  
16       SERVICES. THE FAILURE -- THE OBSERVATION THAT BABY  
17       RYAN'S PATERNAL GRANDPARENTS GOT A SPANISH-SPEAKING  
18       MONITOR IN THEIR HOME TO SHOW THAT SHE WAS DENIED  
19       SERVICES AND THE OTHER SIDE WAS NOT.

20              BULLYING, TO BE FREE FROM BULLYING DURING HER  
21       VISITS. A REFUSAL TO ALLOW HER TO VIDEOTAPE HER  
22       VISITS. A BREACH OF HER CONFIDENTIALITY REGARDING THE  
23       COURT REPORTS.

24              THE FAILURE TO FOLLOW DEPARTMENTAL STANDARDS.  
25       THE FAILURE TO ACCURATELY DESCRIBE INFORMATION IN COURT  
26       REPORTS. THE FAILURE TO MAKE NEUTRAL ASSESSMENTS. THE  
27       FAILURE TO ALLOW HER TO PROVIDE BREAST MILK, I BELIEVE.

28              SHE WAS DENIED TWO LETTERS OF REDETERMINATION.



1 THAT WOULD BE FROM THE DECEMBER 2009 REDETERMINATION OF  
2 SCHEELE, AND DENIED THE LETTER OF REDETERMINATION IN  
3 JANUARY 2010 REGARDING NELSON. AND THERE WOULD BE AN  
4 APPEALS RIGHT ATTACHED TO BOTH OF THOSE DENIALS THAT  
5 SHE WAS ALSO DENIED.

6 SHE WAS DENIED THE RIGHT TO BE FREE FROM BEING  
7 MISCHARACTERIZED AS MUNCHAUSEN'S OR MENTALLY ILL. TO  
8 BE FREE FROM PROFILING, AS SHE DESCRIBED IT. SHE WAS  
9 DENIED THE OPPORTUNITY TO HAVE MS. ENNIS BE HER  
10 MONITOR.

11 THAT'S IT. THANK YOU.

12 THE COURT: OKAY. AND THEN THE LAST QUESTION  
13 WAS THAT THE DENIAL OF CERTAIN BENEFITS, SERVICES,  
14 ET CETERA, THE DEFENSE CLAIMS THERE'S NO EVIDENCE THAT  
15 ANY OF SUCH THINGS WERE DENIED ON THE BASIS OF A  
16 DISABILITY. I THINK WHAT YOU'VE TOLD ME SO FAR  
17 PROBABLY SUMMARIZES YOUR POSITION ON THAT, BUT IF YOU  
18 THINK IT HASN'T, YOU CAN GIVE ME EVEN A THUMBNAIL  
19 SUMMARY IF YOU'D LIKE.

20 MR. PRAGER: THE ALLEGATION HAS TO BE THAT  
21 THEY MISCHARACTERIZED HER DISABILITY TREMORS FOR THEIR  
22 OWN PURPOSES TO HER DETRIMENT, AND JUST LEAVE IT AT  
23 THAT, DON'T NEED TO GO FURTHER THAN THAT.

24 AND THEN THEY INCLUDED IN THE COURT REPORTS,  
25 WHICH THEY WERE NOT PERMITTED TO DO, THE MUNCHAUSEN'S  
26 BY REFERENCE PROXY INFORMATION WHICH RESULTED IN HER  
27 DETRIMENT.

28 AND THE -- I GUESS THE LAST THING IS THERE'S

1 BEEN EVIDENCE THAT THE UP-FRONT ASSESSMENT WAS NEVER  
2 SUPPOSED TO BE ATTACHED TO THE COURT REPORTS, AND THAT  
3 WAS DONE AS WELL. WHICH WILL SUPPORT THE IDEA SHE WAS  
4 BEING MISCHARACTERIZED.

5 THE COURT: ALL RIGHT. THANK YOU.

6 ALL RIGHT. MS. NAU, YOU GET A CHANCE TO REPLY  
7 BECAUSE IT'S YOUR MOTION.

8 MS. NAU: JUST BRIEFLY, YOUR HONOR. WITH THE  
9 EXCEPTION OF FAMILY REUNIFICATION SERVICES, NOTHING  
10 ELSE THAT MR. PRAGER HAS LISTED HERE WHICH IS BASED ON  
11 MS. DUVAL'S COMPLAINT HAS ANYTHING TO DO WITH HER  
12 DISABILITIES OR HER PERCEIVED DISABILITIES. AND  
13 THERE'S NO EVIDENCE THAT THOSE THINGS, NONJUDGMENTAL  
14 MONITORS OR A BILINGUAL MONITOR, WOULD BE PROVIDED TO  
15 SOMEONE WHO WASN'T PERCEIVED AS HAVING A DISABILITY.  
16 OR -- I MEAN, ANY BULLYING, ALLOWING HER TO  
17 VIDEOTAPE -- IN FACT, THERE'S EVIDENCE THAT ALLOWING  
18 HER TO VIDEOTAPE IS NOT AN ENTITLEMENT THAT ANYONE HAS  
19 IN THESE VISITS.

20 SO ANY OF THESE THINGS, ONE, NONE OF THEM HAVE  
21 ANYTHING TO DO WITH HER PERCEIVED DISABILITIES AND  
22 THERE'S NO EVIDENCE THAT THEY DO. NUMBER TWO,  
23 PLAINTIFF HASN'T SHOWN THAT SHE WOULD OTHERWISE HAVE  
24 BEEN ENTITLED TO THEM.

25 WITH REGARD TO THE FAMILY REUNIFICATION  
26 SERVICES, I JUST WANTED TO CLARIFY THAT MS. DUVAL WAS  
27 PROVIDED THOSE SERVICES FROM DAY ONE, FROM NOVEMBER 6TH  
28 DETENTION HEARING. HER FIRST VISIT STARTED I THINK

1 THAT DAY, IF NOT THE DAY AFTER, HER FIRST MONITORED  
2 VISIT, WHICH IS PART OF THE FAMILY REUNIFICATION  
3 SERVICES. SO THE COUNTY PROVIDED HER WITH THOSE  
4 SERVICES FROM THE TIME OF THE DETENTION THROUGH THE  
5 ADJUDICATION HEARING. AND THEN THE REASON THEY STOPPED  
6 DOING SO ON AUGUST 9TH IS BECAUSE THE COURT ORDERED  
7 THAT THOSE SERVICES SHOULD NOT BE PROVIDED TO HER.

8 SO THERE WAS NO OTHER TIME THE COUNTY COULD  
9 HAVE PROVIDED HER WITH FAMILY REUNIFICATION SERVICES.

10 THE COURT: ALL RIGHT. OKAY. THANK YOU.

11 ON THE PLAINTIFF'S MOTION FOR DIRECTED  
12 VERDICT, WHO WILL ADDRESS THAT? MS. SWISS?

13 MS. SWISS: YES, YOUR HONOR.

14 THE COURT: BUT LET ME, BEFORE I HEAR FROM  
15 YOU.

16 I THINK IT'S PROBABLY YOUR -- PART OF YOUR  
17 RESPONSIBILITIES, MR. MCMILLAN, IS FOR THE MOTION FOR  
18 DIRECTED VERDICT ON THE ISSUES THAT YOU RAISED, THE  
19 LACK OF -- THAT THERE'S NO EVIDENCE OF EXIGENT  
20 CIRCUMSTANCE, AND THAT -- AND THE -- AND ON THE *MONELL*  
21 CLAIM.

22 MR. MCMILLAN: THAT'S AFFIRMATIVE, YOUR HONOR.

23 THE COURT: SO I HAVE READ WHAT YOU HAD TO SAY  
24 ABOUT IT, BUT I GIVE YOU AN OPPORTUNITY TO TELL ME  
25 FURTHER.

26 MR. MCMILLAN: I DON'T HAVE A LOT TO SAY OTHER  
27 THAN WHAT'S ALREADY IN THE PAPERS AND THE EVIDENCE  
28 ATTACHED TO THE PAPERS, WITH THE EXCEPTION OF THE

1 TESTIMONY THAT WAS PRESENTED TO THE JURY BY DEPOSITION  
2 READ OF VALERIE ANN BAGGIO, PERSON MOST KNOWLEDGEABLE,  
3 AND THEN ALSO OF GUY TRIMARCHI, A PERSON MOST  
4 KNOWLEDGEABLE.

5 BOTH OF THEM IN ESSENCE STATED THE SAME THING.  
6 AND THAT IS THAT PRIOR TO DECEMBER 22, 2009, THERE --  
7 AND IT MIGHT HAVE EVEN BEEN JANUARY 2010, NOW THAT I'M  
8 THINKING ABOUT THE DATE, OR EVEN FEBRUARY 2010. BUT  
9 PRIOR TO THAT DATE RANGE, THE COUNTY OF LOS ANGELES HAD  
10 NO REMOVAL WARRANT POLICY AND HAD NO REMOVAL WARRANT  
11 PROCEDURE IN PLACE AT ALL, EVEN THOUGH THEY WERE AWARE  
12 THAT *WALLIS VS. SPENCER* CAME OUT IN I THINK IT WAS 2000  
13 OR 1999 REQUIRING A WARRANT, AND THEN THE PROGRESSION  
14 OF THE CASES SINCE THEN.

15 AND THEN ALSO -- I THINK THOSE ARE THE ONLY  
16 TWO PIECES OF EVIDENCE THAT I DON'T RECALL SEEING IN  
17 THE MOVING PAPERS. THERE MAY BE OTHERS AND IT MAY  
18 SPARK A MEMORY AS I HEAR ARGUMENT, BUT AT THE MOMENT  
19 THAT'S ALL I HAVE TO ADD. THE LAW IS FAIRLY WELL -- I  
20 BELIEVE FAIRLY WELL LAID OUT IN THE MOVING PAPERS, AS  
21 IS THE EVIDENCE THAT PLAINTIFF BELIEVES LEADS TO THE  
22 CONCLUSION THAT THERE IS NO EVIDENCE THAT DEFENDANTS  
23 PRESENTED IN THEIR CASE THAT WOULD GIVE RISE TO A VALID  
24 CLAIM OF EXIGENT CIRCUMSTANCES.

25 THE COURT: ALL RIGHT. SO YOU WILL GET A  
26 CHANCE TO REPLY AND MIGHT HAVE MORE TO SAY AFTER WE  
27 HEAR FROM MS. SWISS.

28 MS. SWISS?

1 MS. SWISS: THANK YOU, YOUR HONOR.

2 AS TO BOTH ISSUES THAT PLAINTIFF RAISED IN  
3 THEIR MOTION FOR DIRECTED VERDICT, THESE ARE QUESTIONS  
4 THAT SHOULD BE SENT TO THE JURY.

5 I'LL DEAL WITH *MONELL* FIRST SINCE THAT'S WHERE  
6 PLAINTIFF FOCUSED HIS ARGUMENT. THERE IS EVIDENCE THAT  
7 PLAINTIFF PRESENTED THAT THEY ARE ARGUING THERE WAS NO  
8 POLICY, AND THAT THE -- FOR REMOVING CHILDREN PURSUANT  
9 TO WARRANTS, AND THAT THE CUSTOM AND PRACTICE WAS THAT  
10 ALL CHILDREN WERE REMOVED WITHOUT WARRANTS.

11 THE DEFENDANTS HAVE PROVIDED EVIDENCE IN THEIR  
12 OPPOSITION FROM SPECIFICALLY MS. LERUE, WHO TESTIFIED  
13 THAT SHE WAS THE ARA WHO WAS INVOLVED IN THE OBTAINING  
14 OF WARRANTS DURING THE TIME FRAME OF THIS CASE, PRIOR  
15 TO THE INCEPTION OF THE NEW WARRANT POLICIES AND  
16 PROTOCOLS BY THE COUNTY OF LOS ANGELES IN LATE 2009,  
17 EARLY 2010. SPECIFICALLY, MS. LERUE TESTIFIED THAT THE  
18 PROCEDURE FOR OBTAINING WARRANTS PRIOR TO DECEMBER 2009  
19 WAS FOR THE SOCIAL WORKER AND THE SUPERVISOR TO MEET  
20 WITH COUNTY COUNSEL AND THEN COUNTY COUNSEL WOULD  
21 DIRECT THAT PROCESS.

22 SO THERE IS ENOUGH EVIDENCE AS FAR AS THE  
23 *MONELL* CLAIM TO GO FORWARD AND HAVE THE JURY DECIDE  
24 WHAT WAS THE CUSTOM AND PRACTICE AT THE TIME OF THIS  
25 DETENTION, NOVEMBER 3, 2009, BECAUSE ANY OTHER TIME IS  
26 IRRELEVANT.

27 AS FAR AS MS. BAGGIO AND HER PERSON MOST  
28 KNOWLEDGEABLE DEPOSITION READ, SHE WAS THE PERSON MOST

1 KNOWLEDGEABLE FOR THE INTAKE DETENTION AND CONTROL  
2 DESK, WHICH AFTER DECEMBER 2009 BECAME RESPONSIBLE FOR  
3 THE NEW WARRANT PROCEDURES AND PROTOCOLS THAT WERE PUT  
4 INTO PLACE. AND JUDGE NASH TESTIFIED HOW THE COURT  
5 WORKED WITH DCFS IN ENABLING THOSE NEW PROCEDURES.  
6 MS. BAGGIO DID NOT AND COULD NOT TESTIFY AS TO  
7 PROCEDURES BEFORE THEN BECAUSE THE PROCEDURES BEFORE  
8 THEN WERE TOTALLY DIFFERENT AND WERE NOT PART OF HER  
9 SCOPE.

10 MR. TRIMARCHI, IN HIS DEPOSITION READ AS THE  
11 PERSON MOST KNOWLEDGEABLE FOR POLICIES OF THE COUNTY,  
12 TESTIFIED THAT THERE WAS NO SPECIFIC PROTECTIVE CUSTODY  
13 WARRANT REMOVAL POLICY ON NOVEMBER 3, 2009. THE NEW  
14 POLICIES HAPPENED DECEMBER 2009 AND FORWARD. BUT HE  
15 DID TESTIFY THAT THE POLICY IN PLACE AT THE TIME OF THE  
16 NOVEMBER 3RD DETENTION WAS CALLED THE SEARCH WARRANT  
17 POLICY, AND THERE WAS ALSO THE POLICY OF TAKING  
18 CHILDREN INTO TEMPORARY CUSTODY. AND THAT IS IN  
19 CONFORMANCE WITH MS. LERUE'S TESTIMONY THAT AT THE TIME  
20 OF THIS DETENTION ON NOVEMBER 3RD THE DCFS DID NOT  
21 DIFFERENTIATE THE TYPES OF WARRANTS. THEY CALLED ALL  
22 OF THEM SEARCH WARRANTS, WHETHER IT WAS FOR ENTERING A  
23 HOME, OR REMOVING A CHILD, ET CETERA. THE DISTINCTION  
24 HAPPENED LATER ON IN THE TERMINOLOGY OF HOW DCFS USED  
25 IT.

26 SO THERE IS ENOUGH INFORMATION FOR THIS ISSUE  
27 TO GO TO THE JURY ON THE *MONELL* CLAIM.

28 WITH REGARD TO THE EXIGENT CIRCUMSTANCES

1 CLAIM, WHICH THE JURY WOULD HAVE TO ADDRESS BEFORE THEY  
2 EVER GET TO *MONELL*, THERE IS AMPLE EVIDENCE FOR THE  
3 JURY TO DECIDE THAT EXIGENT CIRCUMSTANCES DID EXIST;  
4 THAT A WARRANT WAS NOT REQUIRED BEFORE BABY RYAN WAS  
5 DETAINED AFTER THIS TDM, BASED ON THE TESTIMONY OF  
6 WENDY CRUMP, WHO TESTIFIED THAT WHEN SHE WAS AT THE TDM  
7 SHE INFORMED THE SOCIAL WORKER THAT SHE DID NOT BELIEVE  
8 THAT MS. DUVAL WAS GOING TO BE FOLLOWING HER  
9 RECOMMENDATIONS; THE INFORMATION FROM THE FAILURE TO  
10 THRIVE CLINIC RECEIVED THE DAY OF THE TDM, JUST PRIOR  
11 TO THE TDM, THAT THE BABY WAS DIAGNOSED WITH FAILURE TO  
12 THRIVE FROM ENVIRONMENTAL CAUSES; AND THE TESTIMONY  
13 FROM MS. ROGERS, WHO SAID, "WE GOT THE INFORMATION FROM  
14 DR. EGGE JUST PRIOR TO THE TDM, WE WENT TO THE TDM AND  
15 WE GAVE EVERYBODY ANOTHER SHOT TO SAY, 'HEY, NOW WE  
16 HAVE THE INFORMATION THAT THIS BABY IS SUFFERING AND  
17 IT'S ENVIRONMENTAL CAUSES; WHAT CAN WE DO ABOUT IT?'"  
18 MOTHER WAS NOT GOING TO COMPLY WITH DR. CRUMP'S  
19 RECOMMENDATIONS ON WHAT TO FEED THIS BABY, AND  
20 THEREFORE EXIGENT CIRCUMSTANCES DID EXIST AT THE MOMENT  
21 THEY MADE THE DECISION AT THE TEAM DECISION-MAKING  
22 MEETING.

23 MS. PENDER'S TESTIMONY ALSO CORROBORATES WHAT  
24 MS. ROGERS TESTIFIED, IS THAT THEY WERE THE TWO SOCIAL  
25 WORKERS THERE IN PLACE. SO THOSE TWO SOCIAL WORKERS  
26 TESTIFIED THAT THEY BELIEVED THERE WAS EXIGENT  
27 CIRCUMSTANCES BASED ON HOW THEY UNDERSTOOD THE MEDICAL  
28 EVIDENCE.

1           AND THE ADDITIONAL EVIDENCE IS -- TO SUPPORT  
2           THE EXIGENT CIRCUMSTANCES ARGUMENT IN THE PAPERS  
3           INCLUDES THE TESTIMONY BY PLAINTIFF'S OWN MEDICAL  
4           EXPERT, THAT THE DOCTORS FELT IF IT WAS ENVIRONMENTAL  
5           CAUSES, IF THIS MOTHER WAS WILLFULLY NOT FEEDING THIS  
6           CHILD, THEN THE CHILD SHOULD NOT REMAIN IN THE HOME.  
7           AND THAT WAS, I BELIEVE, DR. NIESEN.

8           THE REMAINING ARGUMENTS I BELIEVE ARE IN THE  
9           PAPERS, AND THERE IS ENOUGH TO GET TO THE JURY ON THIS  
10          ISSUE.

11          THE COURT: ALL RIGHT. YEAH, AND I THINK I'VE  
12          HEARD THE OPPOSITION. LET ME JUST ASK YOU ONE  
13          QUESTION.

14          THE EVIDENCE THAT YOU'VE RECITED MAY BE  
15          EVIDENCE OF -- THAT COULD BE CONSTRUED TO SUPPORT THE  
16          DETENTION OF THE BABY, BUT NOT AT THAT TIME. IN OTHER  
17          WORDS, THE, YOU KNOW, THE ALTERNATIVE TO DETAINING THE  
18          BABY FOLLOWING THE TDM ON NOVEMBER 3RD WOULD HAVE  
19          BEEN -- OR AT LEAST AN ALTERNATIVE WOULD HAVE BEEN TO  
20          PETITION THE JUVENILE COURT FOR A WARRANT AUTHORIZING  
21          THE DETAINMENT. AND THAT WOULD PRESENT -- IF THEY HAD  
22          DONE THAT, THAT WOULD PRESENT DIFFERENT ISSUES THEN.  
23          AT THAT POINT IN TIME, THE COURT WOULD DECIDE WHETHER  
24          THERE WAS SUFFICIENT EVIDENCE TO DO IT. AND THE  
25          ARGUMENT THAT THE PLAINTIFF IS MAKING IS THAT THE  
26          EVIDENCE IS LACKING THAT IT HAD TO BE DONE AT THAT  
27          TIME.

28          NOW, I'M AWARE THAT THERE'S -- I THINK IT MAY



1 BE MR. MCMILLAN'S OTHER CASE THAT TALKED ABOUT  
2 TWO HOURS TO GET A WARRANT. THAT IS REALLY OPTIMISTIC  
3 IN LOS ANGELES, AND I KNOW THAT WE'VE SAID THAT. AND I  
4 DO NOTICE THAT IN THE VERDICT FORM THAT THE WAY THE  
5 QUESTION IS POSED IS BE ABLE TO GET A WARRANT WITHIN  
6 A --

7 MR. MCMILLAN: SHORT PERIOD OF TIME.

8 THE COURT: YEAH, A SHORT PERIOD OF TIME. AND  
9 WE DID HAVE SOME EVIDENCE UP HERE WITH WITNESSES WAS  
10 THAT TYPICALLY WHAT THEY DO WHEN THEY HAVE TO GET A  
11 WARRANT IS THEY PUT IT TOGETHER, THEY THEN I THINK SEE  
12 COUNTY COUNSEL TO GET THE GO-AHEAD ON IT, THEN GO OVER  
13 TO THE JUVENILE COURT AND FILE THEIR PETITION. AND IT  
14 WOULD HAPPEN SOMETIME DURING THE DAY. BUT THE FACT  
15 THEY COME IN WITH A PETITION DOESN'T MEAN IT'S GOING TO  
16 BE HEARD FIRST THING ANYWAY.

17 AND MY POINT OF ALL THIS IS THAT I DON'T  
18 THINK -- THERE'S NOTHING THAT THE PLAINTIFF IS  
19 INSISTING IT REALLY HAS TO BE WITHIN TWO HOURS. SO  
20 LET'S JUST SAY, FROM WHAT LITTLE EVIDENCE WE HAVE ON  
21 HOW LONG IT WOULD TAKE, WE DID HAVE EVIDENCE THAT MAYBE  
22 THE WHOLE PROCESS OF PUTTING IT TOGETHER, SEEING COUNTY  
23 COUNSEL, GETTING OVER TO THE JUVENILE COURT OVER IN  
24 EDELMAN, AND GETTING IT ON FILE, THAT ONE OF THE  
25 JUDICIAL OFFICERS TO WHOMEVER IT WAS ASSIGNED WOULD GET  
26 TO IT, AND WE DIDN'T HAVE ANY EVIDENCE IF IT'S  
27 PRIORITY, IF THEY WOULD GET TO IT RIGHT AWAY. THE  
28 WHOLE POINT OF THIS BEING THAT IT WOULD CERTAINLY BE

1 REASONABLE FOR ALL OF US TO ASSUME THAT IT COULD BE UP  
2 TO A 24-HOUR PERIOD IN ORDER TO GET ONE BECAUSE YOU  
3 CAN'T GO -- ACTUALLY, YOU CAN. WE DO HAVE JUDICIAL  
4 OFFICERS AVAILABLE ON WARRANTS, AS PROBABLY ALL OF YOU  
5 KNOW, 24 HOURS A DAY. SO WE ALL HAVE THAT DUTY, AND  
6 YOUR PHONE RINGS AT NIGHT, 2:30 IN THE MORNING, YOU'VE  
7 GOT TO GET UP AND DECIDE IF THERE'S PROBABLE CAUSE,  
8 USUALLY, SET FOR SOMETHING THEY'RE GOING TO DO.

9 MY POINT OF ALL THIS IS, REALLY, WHATEVER THE  
10 PERIOD OF TIME IS, IT IS A RELATIVELY SHORT PERIOD OF  
11 TIME. IF IT TAKES 12 HOURS TOTAL FROM BEGINNING TO END  
12 OR EVEN UP TO 24 HOURS, I THINK THAT COULD BE DEEMED A  
13 SHORT PERIOD OF TIME.

14 AND SO THE REAL PART OF THE MOTION IS THAT  
15 YOU'RE SAYING THERE'S NO EVIDENCE THAT THIS COULDN'T  
16 HAVE WAITED 24 HOURS.

17 AND I THINK THE ARGUMENT WOULD BE, LOOK, THIS  
18 BABY WAS -- THIS BABY REALLY WAS NOTED AS BEING  
19 UNDERWEIGHT. AND I THINK ORIGINALLY, WHEN MS. DUVAL  
20 FIRST WENT TO DR. YIM, WHICH WAS AROUND IN -- I'M  
21 PROBABLY OFF A LITTLE BIT. IT MIGHT HAVE BEEN MARCH,  
22 COULD HAVE BEEN FEBRUARY. I REMEMBER IT AS BEING  
23 MARCH. SHE EXPRESSED A CONCERN AT THAT TIME OF THE  
24 BABY'S WEIGHT. AND CERTAINLY MEASUREMENTS AND VISITS  
25 THEREAFTER, THERE WASN'T ANY QUESTION, I THINK EVERYONE  
26 AGREES IT'S A FAILURE-TO-THRIVE BABY.

27 THE DISPUTE HAD BEEN IN INCLUDING ON THE  
28 DECEPTION CLAIMS WHETHER IT WAS DUE TO ENVIRONMENTAL

1 CAUSES, MEANING THE MOTHER, OR WHETHER IT WAS DUE TO,  
2 AT LEAST IN PART OR PERHAPS EXCLUSIVELY, TO OTHER  
3 CAUSES. BUT THE BABY WAS FAILURE TO THRIVE.

4 BUT IT HAD BEEN SINCE IT WAS ABOUT SIX MONTHS,  
5 I THINK, IT WAS A LITTLE IMPRECISE EXACTLY. CERTAINLY  
6 THE DIAGNOSIS DIDN'T OCCUR THEN, BUT THE WEIGHT ISSUE  
7 HAD, BY AROUND SIX, SEVEN MONTHS OF AGE. THE DETENTION  
8 IS WHEN THE BABY'S AROUND 15 MONTHS, SO SOMEWHERE IN  
9 THE RANGE OF SEVEN, EIGHT, NINE MONTHS, THIS BABY HAS  
10 BEEN UNDERWEIGHT, DIAGNOSED EVENTUALLY FAILURE TO  
11 THRIVE. AND ALL THIS WAS KNOWN FOR QUITE SOME PERIOD  
12 OF TIME.

13 AND SO ON NOVEMBER 3RD, WHAT MADE IT EXIGENT  
14 AS OF APPROXIMATELY 6:00 P.M. OR 6:30 P.M. ON NOVEMBER  
15 3RD TO TAKE THE CHILD? BECAUSE IT WOULD SEEM THERE  
16 WASN'T A LOT DIFFERENT AT THAT TIME. AND I THINK  
17 THAT'S THE HEART OF THE MOTION, IS THAT THE LACK OF  
18 EXIGENCY IS THAT THEY'RE SAYING THERE'S NO EVIDENCE  
19 THAT WOULD INDICATE THAT THE BABY HAD TO BE TAKEN AT  
20 THAT TIME AS OPPOSED TO 24 HOURS LATER.

21 MS. SWISS: THE NEW EVIDENCE THAT HAPPENED  
22 JUST BEFORE THE TDM WAS CONFIRMATION FROM THE FAILURE  
23 TO THRIVE CLINIC THAT THE FAILURE TO THRIVE WAS DUE TO  
24 ENVIRONMENTAL CAUSES. UP UNTIL NOVEMBER 6TH IN THE  
25 AFTERNOON, JUST BEFORE THE TDM, THERE WAS -- THE  
26 ORGANIC CAUSES HAD NOT BEEN RULED OUT. DR. EVANS COULD  
27 NOT FIND ANY ORGANIC CAUSES TWO WEEKS EARLIER. BUT SHE  
28 SENT IN FOR FURTHER TESTING. THE NEW INFORMATION WAS

1 THAT DR. EGGE CONFIRMED IT. THE BABY HAD ALREADY BEEN  
2 DIAGNOSED WITH THE SEVERE DEVELOPMENTAL DELAYS. AND  
3 MS. ROGERS TESTIFIED THAT HER CONCERN WAS THAT THIS  
4 BABY WAS SUFFERING FROM NOT ONLY THOSE DELAYS BUT BRAIN  
5 DAMAGE, AND THEY DID NOT KNOW -- SHE DID NOT KNOW HOW  
6 MUCH OTHER DAMAGE COULD HAPPEN IN THIS SHORT PERIOD OF  
7 TIME. THE CHILD HAD ALREADY SUFFERED ENOUGH. AND SHE  
8 TESTIFIED THAT SHE BELIEVED THAT HIS CONDITION WAS  
9 LIFE-THREATENING FROM DR. EGGE'S DIAGNOSIS.

10 FURTHERMORE, THE NEW INFORMATION AT THE TEAM  
11 DECISION-MAKING MEETING WAS THAT THE MOTHER WOULD NOT  
12 AGREE, EVEN AT THAT MEETING, EVEN FINDING OUT THAT THE  
13 ENVIRONMENT WAS THE SOLE CAUSE AT THIS POINT, FOR WHAT  
14 TO FEED THE BABY, SHE WOULD NOT AGREE TO FEED THE BABY  
15 THE CALORIE-DENSE FOODS RECOMMENDED BY THE  
16 NUTRITIONIST. WE HAVE THE EVIDENCE FROM OCTOBER 16TH  
17 ON THE FIRST VISIT WITH DR. CRUMP SAYING YOU NEED TO  
18 FEED THIS BABY HIGH-CALORIE FOODS. MOTHER COMES BACK  
19 ON OCTOBER 30TH; SHE STILL WAS ONLY FEEDING THIS BABY  
20 30 TO 50 PERCENT OF THE CALORIES HE REQUIRED.

21 THEN, AFTER THE CATC CLINIC, AND THEN FAILURE  
22 TO THRIVE CLINIC, SITTING AT THE TDM WITH THE  
23 PROFESSIONALS AND THE SOCIAL WORKERS, MOM IS STILL  
24 SAYING THAT SHE WOULD NOT FEED THIS BABY THE  
25 HIGH-CALORIE FOODS. ALLERGIES HAD BEEN RULED OUT. SHE  
26 WAS CONCERNED ABOUT MICROCEPHALY, OTHER ISSUES, NOT  
27 FOCUSING ON GET THIS BABY THE FOOD THAT HE NEEDS.

28 SO IT CREATED EXIGENT CIRCUMSTANCES IN THE

1 MINDS OF THE SOCIAL WORKERS THAT THIS BABY'S ALREADY  
2 BEEN SUFFERING, THIS BABY HAS NOW BEEN, ALL THE -- THE  
3 DIAGNOSIS HAS BEEN RULED OUT AS ORGANIC, AND MOM WILL  
4 NOT FEED THIS BABY HIGH-CALORIE FOODS; WE DON'T KNOW  
5 WHAT'S GOING TO HAPPEN IN THE NEXT 12 TO 24 HOURS IN  
6 THE TIME IT COULD TAKE TO GET A WARRANT.

7 THERE'S ALSO JUST THIS DISCREPANCY AS TO THE  
8 TIME IT WOULD TAKE TO GET A WARRANT. AND SO, IN THE  
9 MINDS OF THE SOCIAL WORKERS, IT WOULD BE APPROPRIATE TO  
10 TAKE THIS CHILD INTO PROTECTIVE CUSTODY, PLACE THE  
11 CHILD WITH HIS FATHER, AND LET THE COURT DECIDE.  
12 FATHER WAS ABLE AND WILLING TO FOLLOW THE  
13 NUTRITIONIST'S RECOMMENDATIONS AND FEED THE BABY THE  
14 HIGH-CALORIE FOODS. AND THAT WAS IN THE BEST INTEREST  
15 OF THE CHILD AT THAT TIME, TO LET THE COURT DECIDE.

16 THE COURT: AND THAT COULDN'T WAIT UNTIL  
17 4:00 THE NEXT DAY?

18 MS. SWISS: EXCUSE ME?

19 THE COURT: THAT COULDN'T WAIT UNTIL 4:00 THE  
20 NEXT DAY?

21 MS. SWISS: IN THE MINDS OF THE SOCIAL  
22 WORKERS, THIS CHILD HAD ALREADY SUFFERED ENOUGH, AND  
23 THE INVESTIGATION HAD ALREADY TAKEN SEVERAL WEEKS. THE  
24 SOCIAL WORKERS PROVIDED THE CHILD WITH SERVICES AND  
25 RECOMMENDATIONS BY PROFESSIONALS. AND IN THEIR  
26 UNDERSTANDING, THIS WAS THE TIME TO TAKE THIS CHILD AND  
27 FEED THE BABY.

28 THE COURT: OKAY. THANK YOU.

1           ALL RIGHT. MR. MCMILLAN, DO YOU WANT TO  
2 RESPOND?

3           MR. MCMILLAN: JUST A COUPLE OF POINTS REALLY  
4 ON THE EVIDENCE. AND I GUESS I SHOULD HAVE ADDRESSED  
5 IT EARLIER. I THINK -- NO, WE DIDN'T FILE A REPLY ON  
6 THIS ONE, SO IT'S NOT ADDRESSED IN PAPERS.

7           BUT MUCH OF THE EVIDENCE THAT IS IN THEIR  
8 PAPERS COME FROM DEPOSITIONS THAT WERE NEVER PRESENTED  
9 TO THE JURY AND OTHER SOURCES THAT NEVER CAME BEFORE  
10 THE JURY. WHAT DID COME BEFORE THE JURY IN THIS TRIAL  
11 IS MS. ROGERS SAYING SPECIFICALLY, "WE DIDN'T HAVE A  
12 SPECIFIC INJURY IN MIND, ALL WE HAD WAS A SPECIFIC  
13 DIAGNOSIS; WE DIDN'T KNOW WHAT COULD HAPPEN TO THE  
14 CHILD."

15           YOUR HONOR, THE LAW IS VERY CLEAR ON THIS. IN  
16 ORDER TO GET EXIGENCY, THEY HAVE TO HAVE SPECIFIC  
17 PARTICULARIZED EVIDENCE. DEPENDING ON THE CASE, IT  
18 MIGHT BE ARTICULABLE EVIDENCE, BUT --

19           THE COURT: IF WE HAVE A DISPUTE OVER THAT, WE  
20 MAY END UP WITH ARTICULABLE, AND THEN WE'LL WAIT FOR  
21 THE JURY QUESTION: WHAT DOES THAT MEAN?

22           MR. MCMILLAN: RIGHT. BUT THEY HAVE TO BE --  
23 THEY HAVE TO HAVE THE SPECIFIC ARTICULABLE OR  
24 PARTICULARIZED EVIDENCE TO SHOW THAT THE CHILD IS IN  
25 IMMEDIATE DANGER. AND WE HAVE THAT JURY INSTRUCTION  
26 DEFINITION FOR WHAT'S MEANT BY EMINENT. I DON'T RECALL  
27 IT OFF THE TOP OF MY HEAD. BUT IT MEANS IMMEDIATE,  
28 ABOUT TO HAPPEN, NEAR OR AT HAND. AND WHEN WE'RE

1 SEIZING A CHILD UNDER WHAT WE BELIEVE ARE EXIGENT  
2 CIRCUMSTANCES, WE CAN ONLY INTRUDE ON THE PARENTS'  
3 INTEREST IN THE CONTINUED CARE OF THAT CHILD TO THE  
4 EXTENT REASONABLY NECESSARY AFTER WE EXPLORE ALL SORTS  
5 OF OTHER ALTERNATIVE MEANS OF PROTECTING THE CHILD.

6 SO IT'S REALLY A TWO-PART TASK. THEY HAVE  
7 ZERO EVIDENCE. AND IT IS THEIR BURDEN, THE DEFENDANT'S  
8 BURDEN TO SHOW THAT THERE WERE NO OTHER LESS-INTRUSIVE  
9 ALTERNATIVE MEANS. THEY HAVE ZERO EVIDENCE TO  
10 DEMONSTRATE THAT. IN FACT, WHAT THEY HAVE, THEY WANTED  
11 MS. DUVAL TO GO TO THE CATC CLINIC FOR AN EVALUATION.  
12 SHE DID THAT. THE CATC CLINIC RECOMMENDED THAT MOM  
13 TAKE THE CHILD TO AN ALLERGIST TO GET TESTED FOR  
14 POTENTIAL FOOD ALLERGIES AS PART OF THE RULE-OUT  
15 DIAGNOSIS PROCESS. MOTHER DID THAT.

16 THE CATC CLINIC ALSO RECOMMENDED THAT MOTHER  
17 COME BACK IN ABOUT A MONTH. AND THE REASON THAT'S  
18 IMPORTANT IS THE MEDICAL PROFESSIONALS AT THE CATC  
19 CLINIC, THEIR JOB, THEY'RE A COUNTY HUB FOR DOING CHILD  
20 ABUSE EXAMINATIONS. AND THEIR JOB IS TO LOOK AT  
21 CHILDREN THAT COME BEFORE THEM AND DECIDE, IS THIS  
22 SOMETHING THAT NEEDS TO BE ELEVATED AS AN ABUSE CASE --  
23 IN FACT, THEY HAVE A LITTLE CHECKLIST, I THINK WE WENT  
24 THROUGH IT SEVERAL TIMES IN FRONT OF THE JURY -- IS  
25 THIS AN ISSUE THAT WE NEED TO ELEVATE IMMEDIATELY TO A  
26 CHILD ABUSE CASE OR IS THIS SOMETHING WE NEED TO  
27 EXPLORE A LITTLE BIT FURTHER? AND THE INFORMATION WITH  
28 RESPECT TO THE CATC CLINIC IS THEIR RECOMMENDATION WAS

1 COME BACK IN A MONTH. NOT TAKE THE CHILD IMMEDIATELY  
2 SOMEWHERE AND GET AN NG TUBE INSTALLED, NOT ANYTHING  
3 LIKE THAT. IN FACT --

4 THE COURT: NOT COME BACK TOMORROW?

5 MR. MCMILLAN: RIGHT, DON'T EVEN COME BACK  
6 TOMORROW.

7 AND IN FACT, IF WE LOOK AT THE RECOMMENDATIONS  
8 FOR THE FAILURE TO THRIVE CLINIC, THAT ONE-PAGE  
9 DOCUMENT WITH THE ENVIRONMENTAL DOWN THE SIDE OF IT,  
10 THE RECOMMENDATION'S THE SAME: FOLLOW UP WITH YOUR  
11 OCCUPATIONAL THERAPY, KEEP GOING WITH THE NUTRITIONIST,  
12 AND COME BACK AND SEE US IN ABOUT A MONTH. SO --

13 THE COURT: OKAY. I THINK THAT IN FACT WAS --  
14 THAT ARGUMENT AND THE EVIDENCE WAS CITED IN THE MOTION.  
15 I'M NOT LOOKING AT IT RIGHT NOW BUT MY RECOLLECTION IS  
16 THAT IT WAS.

17 MR. MCMILLAN: RIGHT. I THINK IT -- I TEND  
18 TO -- I THINK I AGREE WITH YOU.

19 ON THE ISSUE OF MS. LERUE, WHAT SHE TESTIFIED  
20 TO -- AND WE DON'T DISPUTE THIS -- THAT FROM 2007  
21 FORWARD THERE WAS A VERY SPECIFIC POLICY ON GETTING  
22 SEARCH WARRANTS. AND THAT STEMMED FROM A CASE CALLED  
23 *CALABRETTA V. FLOYD*. THAT'S THE CASE THAT CAME OUT  
24 OF -- I DON'T REMEMBER IF IT WAS 9TH CIRCUIT OR U.S.  
25 SUPREME COURT. BUT IN RESPONSE TO THAT CASE, THE  
26 COUNTY OF LOS ANGELES PROMULGATED A SEARCH WARRANT  
27 POLICY.

28 THAT SEARCH WARRANT POLICY SPECIFICALLY DID



1 NOT INCLUDE SEIZING THE CHILD OR DETAINING THE CHILD.  
2 WHAT MS. LERUE TESTIFIED TO WAS, IN A GENERAL SENSE,  
3 WHEN WE GO TO GET A WARRANT -- AND SHE NEVER DID  
4 SPECIFY REMOVAL WARRANT -- WHEN WE GO TO GET A WARRANT,  
5 IT TAKES THIS MUCH TIME AND THIS IS THE PROCESS. AND  
6 PLAINTIFF DOESN'T DISPUTE THAT FOR A SEARCH WARRANT  
7 BECAUSE THAT HAD BEEN IN PLACE SINCE 2007.

8 AND WHERE MS. LERUE SORT OF FELL APART WAS ON  
9 CROSS-EXAMINATION WHEN MR. KING ASKED HER, WELL, YOU  
10 HAVE DIFFERENT TYPES OF WARRANTS; RIGHT? YES.

11 AND YOU HAVE, FOR EXAMPLE, PROTECTIVE CUSTODY  
12 WARRANTS, AND WE KNOW FROM GUY TRIMARCHI'S TESTIMONY  
13 THAT A PROTECTIVE CUSTODY WARRANT IS A SPECIALIZED  
14 WARRANT THAT GETS ISSUED WHEN A CHILD GOES AWOL FROM  
15 FOSTER CARE AND WE NEED TO GO FIND THE CHILD AND PICK  
16 HIM UP. AND THEN WE ALSO HAVE THE REMOVAL WARRANTS.

17 AND THEN I BELIEVE MR. KING SPECIFICALLY ASKED  
18 HER, WITH RESPECT TO REMOVAL WARRANTS, "THAT'S NOT WHAT  
19 YOU WERE TALKING ABOUT HERE; YOU DIDN'T TALK TO COUNSEL  
20 IN YOUR PREP ABOUT THAT," AND I BELIEVE HER ANSWER WAS  
21 YES. WE CAN GO BACK AND CHECK IN THE TESTIMONY FOR  
22 THAT. SO --

23 THE COURT: OKAY. I THINK YOU'VE TOLD ME  
24 ENOUGH.

25 THE MOTION IS UNDER SUBMISSION. I'LL RULE ON  
26 IT AS SOON AS I CAN, HOPEFULLY WITHIN THE TIME IT WOULD  
27 TAKE TO GET A WARRANT.

28 AND I NEED TO SEE COUNSEL HERE ON ANOTHER

1       MATTER, SO GIVEN THE TIME, WE'RE GOING TO RECESS UNTIL  
2       1:30.

3               SO I DO HAVE A COUPLE OF QUESTIONS BEFORE WE  
4       DO RECESS. I DID RECEIVE, THIS MORNING, THE LATEST  
5       ITERATION OF VERDICT FORMS 1 AND 2. ARE THEY AGREED  
6       TO, OR DO WE HAVE ISSUES AS TO EITHER ONE OF THOSE,  
7       EVEN IF IT'S JUST A WORD OR WORDING?

8               MS. NAGY: YOUR HONOR, AS TO VERDICT 2, WHICH  
9       IS THE ONE WE WORKED ON YESTERDAY, THEY HAVE ADDRESSED  
10      MOST OF OUR CONCERNS. I HAVE TWO QUIBBLES WHICH I'D  
11      LIKE TO ADDRESS WITH MR. PRAGER WHEN HE HAS A MOMENT,  
12      AND I THINK THAT THE OUTCOME OF THESE MOTIONS WILL  
13      DETERMINE WHAT THESE VERDICT FORMS ARE ULTIMATELY GOING  
14      TO SAY. SO WE THINK THERE MAY BE SOME ULTIMATE  
15      CHANGES.

16              THE COURT: ALL RIGHT.

17              MS. NAGY: ONE OF THE ISSUES THAT I HAVE WITH  
18      THE VERDICT FORM IS WITH THE CIVIL CODE 52 QUESTIONS IN  
19      THAT -- IT'S RELATED TO THE MOTIONS HERE IN THAT MY  
20      CONCERN IS THAT HE DOESN'T ADEQUATELY SET OUT ON WHAT  
21      BASIS HE'S SEEKING SOME SORT OF VERDICT.

22              SO I THINK THAT WE MIGHT -- THAT MIGHT BECOME  
23      CLEARER TO US WITHIN A DAY WHEN WE GET YOUR HONOR'S  
24      RULING.

25              THE COURT: ALL RIGHT. I'D ALSO ASKED FOR  
26      INSTRUCTIONS THAT WOULD APPLY, ANY ADDITIONAL  
27      INSTRUCTIONS BEYOND CACI INSTRUCTIONS, AND  
28      UNDERSTANDING THAT SOME CACI INSTRUCTIONS SOMETIMES

1       REQUIRE MODIFICATIONS, BUT SOMETHING OTHER THAN A CACI  
2       INSTRUCTION VERBATIM OR AS ALTERED ON THE DIFFERENT  
3       CAUSES OF ACTION. DO WE HAVE THAT?

4               MR. MCMILLAN: WE WORKED ON THAT LAST NIGHT A  
5       LOT. I HAVE, I THINK, MOST OF THOSE AS TO -- MOST OF  
6       THE CACI -- IN FACT, I THINK WE HAVE ALL OF THE CACI  
7       INSTRUCTIONS AS TO THE ONES THAT YOUR HONOR LISTED  
8       YESTERDAY FOR SURE. AND THEN THERE'S AN ADDITIONAL  
9       INSTRUCTION THAT JUST CAME OUT OF CACI I THINK ON  
10      JUNE 16TH OF THIS YEAR THAT SPECIFICALLY TARGETS  
11      WARRANTLESS REMOVAL OF CHILDREN. AND THAT'S 3051. SO  
12      WE HAVE THAT HERE FOR EVERYBODY TO LOOK AT.

13             THE COURT: OKAY.

14             MR. MCMILLAN: AND THEN I DO -- I DID GO  
15      THROUGH THE SPECIALS THAT RELATE JUST TO THE WARRANT  
16      ISSUE. AND I HAVE THOSE IDENTIFIED BY DOG-EARED PAGES;  
17      I DON'T HAVE A LIST YET. BUT THAT MAY CHANGE DEPENDING  
18      ON THE RULINGS ON THE MOTION.

19             THE COURT: ALL RIGHT.

20             MR. GUTERRES: AND YOUR HONOR YESTERDAY DID  
21      NOT MENTION 5007, BUT I THINK THAT WE NEED TO ADDRESS  
22      5007. AND THAT HAS TO DO WITH CLAIMS AND DEFENDANTS  
23      THAT ARE NO LONGER AT ISSUE.

24             THE COURT: OH, THAT'S TRUE, WE DIDN'T MENTION  
25      THAT. I DIDN'T MENTION THAT ONE YESTERDAY.

26             MR. GUTERRES: SO I DID START WORKING ON IT.  
27      AND I HAD AT LEAST ONE ITERATION OF IT UNTIL I RECEIVED  
28      THE BRIEFS THIS MORNING ABOUT --

1 THE COURT: WELL, YEAH.

2 MR. GUTERRES: -- KIND OF LOOKING INTO  
3 REVIVING THE --

4 THE COURT: THE OUTCOME OF THE MOTIONS COULD  
5 AFFECT THAT.

6 I DO HAVE -- I DON'T HAVE THAT WITH ME ON THE  
7 BENCH, BUT I DID HAVE -- I DO HAVE 5007 ON MY LIST, AND  
8 YOU'RE RIGHT THAT I DIDN'T MENTION IT TO YOU YESTERDAY.  
9 WE ALREADY HAD ONE PARTY, BALABAN. IF THAT'S ALL, IF  
10 THAT'S THE ONLY PARTY, THEN YOU MAY OR MAY NOT WANT THE  
11 INSTRUCTION BECAUSE I DON'T THINK THE JURY IS GOING TO  
12 RECALL WHO WAS IN AND WHO IS OUT.

13 MR. GUTERRES: IT'S ACTUALLY THREE INDIVIDUAL  
14 DEFENDANTS WHO ARE NOW OUT AS A RESULT OF THE JUDICIAL  
15 DECEPTION CLAIM.

16 THE COURT: THAT'S TRUE TOO. SO WE'RE GOING  
17 TO -- IF YOU WANT IT, THEN WE'RE CERTAINLY GOING TO  
18 GIVE IT BECAUSE THERE'S NO QUESTION THAT THERE ARE  
19 CLAIMS THAT ARE NO LONGER VIABLE AS TO CERTAIN PERSONS.

20 MR. GUTERRES: THANK YOU, YOUR HONOR.

21 THE COURT: OKAY. SO, ALL RIGHT. WE'RE AT  
22 RECESS THEN UNTIL 3:30 -- EXCUSE ME, 1:30. I'LL SEE  
23 YOU BACK AT THAT TIME.

24 MR. GUTERRES: THANK YOU, YOUR HONOR.

25 MS. SWISS: THANK YOU, YOUR HONOR.

26 MR. MCMILLAN: THANK YOU, YOUR HONOR.

27 (RECESS)

28 THE COURT: BACK ON THE RECORD AND COUNSEL ARE

1 PRESENT.

2 THE COURT HAS READ AND CONSIDERED THE  
3 DEFENDANT'S MOTION FOR NONSUIT AS WELL AS CONSIDERED  
4 THE ARGUMENTS MADE BY COUNSEL. DEFENDANT'S MOTION FOR  
5 NONSUIT TO THE DISABILITY CLAIMS ALLEGED BY THE  
6 PLAINTIFF IS DENIED.

7 THE DEFENDANT'S MOTION FOR NONSUIT ON THE  
8 CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
9 IS GRANTED AS TO DEFENDANT NELSON AND IT IS DENIED AS  
10 TO DEFENDANT SCHEELE.

11 PLAINTIFF'S MOTION FOR DIRECTED VERDICT ON THE  
12 ISSUE OF EXIGENT CIRCUMSTANCES IS DENIED.

13 AND PLAINTIFF'S MOTION FOR A DIRECTED VERDICT  
14 ON THE ISSUE OF *MONELL* LIABILITY ON THE PART OF THE  
15 COUNTY OF LOS ANGELES IS DENIED.

16 DO WE HAVE THE PORTIONS OF THE DSL THE  
17 PLAINTIFF WANTS TO OFFER INTO EVIDENCE?

18 THE COURT HAS BEEN HANDED AND DEFENSE COUNSEL  
19 HAS BEEN HANDED A DOCUMENT THAT IS A PHOTOCOPY OF THE  
20 DELIVERED SERVICE LOG, OR AT LEAST PARTS THEREOF.

21 AND IS IT CORRECT THAT AS TO THOSE WHICH ARE  
22 SET FORTH AS OPPOSED TO JUST A BLANK SPACE BEING LEFT  
23 ARE ONES THAT ARE BEING OFFERED --

24 MR. PARIS: THAT'S CORRECT.

25 THE COURT: -- BY PLAINTIFFS? OKAY.

26 MR. GUTERRES, IN LOOKING AT THIS, IT APPEARS  
27 TO ME THAT THERE ARE A NUMBER OF THE ENTRIES DURING THE  
28 SAME PERIOD OF TIME WHICH YOU OFFERED, SO QUITE CLEARLY

1       THERE WON'T BE A CONTROVERSY OVER THAT.  IT DOES NOT  
2       INCLUDE THE ENTRIES FOR OCTOBER 19TH AND OCTOBER 20TH,  
3       AS WELL AS IT DOES NOT INCLUDE FOUR ENTRIES THAT ARE  
4       DATED NOVEMBER 2ND AND IT DOES NOT OFFER THE ENTRY FOR  
5       NOVEMBER 5TH THAT WE DISCUSSED PREVIOUSLY, INCLUDING  
6       THIS MORNING.  SO --

7               MR. GUTERRES:  YOUR HONOR, AS I UNDERSTOOD IT,  
8       THE ENTRIES FROM OCTOBER 19TH, WHICH IS WHEN THE  
9       REFERRAL CAME IN, UNTIL THE DATE OF THE TDM,  
10      NOVEMBER 3RD, WAS SOMETHING THAT THE PLAINTIFFS  
11      ORIGINALLY WERE OFFERING FOR THE LIMITED PURPOSE.  SO  
12      I'M NOT SURE IF NOW THIS SEEMS TO BE THE DOCUMENT THAT  
13      THEY WANT INSOFAR AS THAT TIME FRAME IS CONCERNED.

14             THE COURT:  WELL, YEAH, THEY'VE OFFERED IT FOR  
15      ONES THAT THEY WANT.  AND I WAS JUST SAYING THIS BY WAY  
16      OF REFERENCE, THERE'S CERTAIN ONES THEY WANTED THAT  
17      THEY APPARENTLY ARE NOT ASKING FOR.  BUT THEN,  
18      BEGINNING WITH AN ENTRY MADE APPARENTLY BY VICTORIA  
19      SCHEELE ON DECEMBER 22ND, AND --

20             MR. GUTERRES:  YOUR HONOR, IF I MAY, AND I  
21      APOLOGIZE.  SO OUR POSITION WOULD BE THAT WITH REGARD  
22      TO THE TIME FRAME FROM WHEN THE CALL FROM THE HOT LINE  
23      CAME IN UNTIL THE TIME OF THE TDM, NOVEMBER 3RD, OUR  
24      POSITION WOULD BE THAT IF -- THAT ALL OF THOSE ENTRIES  
25      THEN SHOULD COME IN EXCEPT FOR THE ENTRY REGARDING  
26      PASTOR NEYLAND BECAUSE THAT'S CLEARLY NEITHER HERE NOR  
27      THERE.  IT HAS REALLY NO RELEVANCE TO THE ISSUES OF  
28      THIS CASE.

1           SO TO THE EXTENT THAT PLAINTIFF IS GOING TO BE  
2 ASKING FOR ENTRIES DURING THAT PERIOD OF TIME, THEN OUR  
3 POSITION -- THE DEFENSE'S POSITION WOULD BE THAT FOR  
4 THE LIMITED PURPOSE THEN WE WOULD PREFER TO HAVE ALL OF  
5 THE ENTRIES FROM OCTOBER 19TH UNTIL NOVEMBER 3RD, WITH  
6 THE ONLY REDACTION BEING THE ENTRY FOR PASTOR NEYLAND.  
7 AND WE WOULD AGREE TO THAT.

8           THE COURT:   RIGHT.   AND I UNDERSTOOD THAT THAT  
9 WAS -- THAT WAS THE OFFERING OF EVIDENCE THAT YOU MADE  
10 THIS MORNING.   I'M JUST POINTING OUT THAT THE  
11 PLAINTIFF'S REQUEST COVERS MANY OF THOSE, BUT NOT ALL  
12 OF THE ENTRIES FROM OCTOBER 19TH UP TO NOVEMBER 3RD.  
13 AND THEN IT DOES INCLUDE -- THERE ARE A NUMBER OF  
14 PAGES, BUT CERTAINLY NOT ALL OF THEM, BUT A NUMBER OF  
15 ENTRIES THAT HAVE BEEN MADE -- THAT WERE MADE AFTER THE  
16 TIME OF THE DETENTION, WITH THE FIRST ONE BEING  
17 DECEMBER 22ND OF 2009 AND THE LAST ONE BEING DATED  
18 JUNE 22ND OF 2010.

19           WHAT I WAS GOING TO SUGGEST IS THAT YOU  
20 HAVEN'T HAD ANY MORE TIME TO LOOK AT THE ADDITIONAL  
21 ONES THAN I HAVE, AND THEN WE'RE GOING TO ARRANGE FOR  
22 THE TIME TO DO THAT VERY SHORTLY --

23           MR. GUTERRES:   THANK YOU, YOUR HONOR.

24           THE COURT:   -- SO WE CAN GET THIS EXHIBIT  
25 BEHIND US ONE WAY OR ANOTHER.

26           AND SO WE WILL GET TO THAT.   AND I UNDERSTAND  
27 YOUR REQUEST FOR ALL OF THEM EXCLUDING THE PASTOR  
28 ENTRY, AND WE'LL ADDRESS THEM ALL.

1 MR. GUTERRES: THANK YOU, YOUR HONOR.

2 THE COURT: SO THE NEXT THING I WANTED TO ASK  
3 WAS -- AND I UNDERSTAND WHAT A CHORE IT IS, BUT  
4 MR. MCMILLAN, DO WE HAVE THOSE PORTIONS OF EXHIBIT 24  
5 THAT YOU WERE ASKING FOR?

6 MR. MCMILLAN: I BELIEVE WE'VE PRETTY MUCH  
7 RESOLVED EVERYTHING OF EXHIBIT 24 WITH THE EXCEPTION  
8 OF -- ACTUALLY, IF YOU DON'T MIND, YOUR HONOR, IF  
9 MR. PARIS COULD ADDRESS IT BECAUSE I HAD SORT OF  
10 MINIMAL INVOLVEMENT IN THAT.

11 THE COURT: I'M HAPPY TO HEAR FROM MR. PARIS.

12 MR. PARIS: FROM WHAT I HAVE HERE, THE ONLY  
13 PORTION THAT WAS REMAINING TO DISCUSS FROM EXHIBIT 24  
14 WAS THE DECLARATION OF RYAN MILLS.

15 THE COURT: YES.

16 MR. PARIS: WE STILL OBJECT TO IT BUT WE  
17 HAVE -- WE'VE RECEIVED A REDACTED VERSION.

18 THE COURT: IF IT'S GOING TO BE RECEIVED, YOU  
19 HAVE --

20 MR. PARIS: REDACTIONS THAT WE WOULD --

21 THE COURT: THAT YOU WOULD ASK FOR?

22 MR. PARIS: CORRECT.

23 THE COURT: AND HAS MR. GUTERRES HAD A CHANCE  
24 TO SEE THAT YET?

25 MR. GUTERRES: I HAVE. IT WAS -- AND I THINK  
26 THAT -- THAT THERE ARE CERTAIN PORTIONS THAT WE AGREE  
27 UPON, AND THEN CERTAIN PORTIONS THAT I HAD ACTUALLY  
28 INCLUDED THAT THEY DON'T AGREE WITH.



1 THE COURT: RIGHT.

2 MR. GUTERRES: AND THOSE, I THINK I MUST  
3 INSIST ON THEM. SO I WOULD ASK THAT THE COURT RULE ON  
4 THAT.

5 THE COURT: AND I WILL. AND SO, AGAIN, I WAS  
6 ASKING THE QUESTION -- DID YOU HAVE A COPY THERE OF --  
7 THAT I COULD LOOK AT?

8 MR. GUTERRES: I DO, YOUR HONOR. I HAVE THE  
9 ONE THAT I HAD GIVEN TO THE PLAINTIFF'S COUNSEL, AND I  
10 ASSUME THAT'S THEIR VERSION, WHICH IS A LITTLE -- THE  
11 REDACTIONS ARE DIFFERENT.

12 THE COURT: ALL RIGHT. WELL, I'LL TAKE THOSE,  
13 AND WHEN WE TAKE A RECESS, WE'LL BE COMPARING ON THE  
14 DSL, I'LL TAKE A LOOK AT THESE.

15 AND WITH THE EXCEPTION OF THIS RYAN MILLS  
16 DECLARATION, WE THEN HAVE ADDRESSED ALL PORTIONS OF  
17 EXHIBIT 24 THAT ARE BEING REQUESTED; IS THAT CORRECT?

18 MR. PARIS: THAT'S CORRECT, BASED ON THE  
19 NUMBERS I HAVE HERE, YOUR HONOR.

20 THE COURT: OKAY. AND THEN ONE LAST THING  
21 THAT I WANT TO ADDRESS BEFORE WE TAKE A RECESS TO  
22 REVIEW THESE DOCUMENTS AND HAVE COUNSEL CONFER ON  
23 CERTAIN ASPECTS OF IT IS THE ISSUE WHICH WAS MENTIONED  
24 YESTERDAY WHICH WAS THE DEFENDANT'S REQUEST FOR SPECIAL  
25 INTERROGATORIES TO BE SUBMITTED TO THE JURY IN  
26 CONNECTION WITH THE VERDICT FORMS. I HAVE -- AND  
27 YESTERDAY, MS. SWISS PROVIDED US WITH A CASE THAT'S  
28 SOMEWHERE IN THESE DOCUMENTS THAT I HAVE BUT I HAVE

1 READ, AND WHICH SHE WAS OFFERING TO US AS AN INDICATION  
2 AS TO WHY SPECIAL INTERROGATORIES TO THE JURY WOULD BE  
3 APPROPRIATE.

4 HAVE YOU HAD A CHANCE TO SEE THAT,  
5 MR. MCMILLAN?

6 MR. MCMILLAN: I WAS NOT PRESENTED WITH A COPY  
7 OF THE CASE AND I DON'T RECALL HAVING EVEN BEEN GIVEN A  
8 CASE CITATION FOR THAT.

9 THE COURT: SHE DID GIVE US ON THE RECORD  
10 YESTERDAY AFTERNOON THE CASE CITATION, WHICH I'D RECITE  
11 TO YOU, BUT AS I SAID, I'D HAVE TO FISH IT OUT. BUT  
12 THEN SHE ALSO GAVE US A COPY OF THE CASE DECISION.

13 MR. MCMILLAN: I DON'T THINK SHE DISTRIBUTED  
14 THAT.

15 THE COURT: WELL, I SAW HER -- I'M NOT SAYING  
16 YOU HAVEN'T SEEN -- I'M NOT SAYING YOU HAVE SEEN IT,  
17 I'M JUST SAYING THAT SHE DID PROVIDE A COPY OF IT, OF  
18 THE CASE, GAVE THE CITATION TO US ON THE RECORD AND  
19 THEN GAVE EACH OF US A COPY OF THE CASE. SO WE'RE  
20 GOING TO HAVE TO HAVE A CHANCE TO TAKE A LOOK AT IT AND  
21 THEN I'LL, AFTER YOU'VE HAD A CHANCE TO TAKE A LOOK AT  
22 IT -- I'M NOT SURE YOU NEED TO LOOK AT IT BUT YOU  
23 PROBABLY SHOULD. AND THERE'S A PARTICULAR AREA OF THE  
24 CASE THAT WAS THE MENTION OF THE USE OF INTERROGATORIES  
25 TO THE JURY. AND I FORGET THE PAGE NUMBER, BUT I CAN  
26 TELL YOU IT WAS UNDER THE HEADING -- THE NO. 10 HEADING  
27 IN THE CASE, WHICH YOU'LL FIND THE OPINION ACTUALLY HAS  
28 A NUMBER OF THINGS, INCLUDING WHAT WAS THE VERDICT FORM

1 THAT THEY USED IN THE CASE. AND THEN THERE'S A  
2 DISCUSSION AFTER YOU GO THROUGH A LOT OF IT ABOUT WHY  
3 THIS INQUIRY OF INTERROGATORIES TO THE JURY WHERE THERE  
4 WAS AN ISSUE OF QUALIFIED IMMUNITY WOULD BE THE WAY TO  
5 APPROACH THE SUBJECT.

6 MS. SWISS: I CAN PROVIDE COUNSEL WITH THE  
7 CITATION AND THE PINPOINT AGAIN. AND I DO KNOW I  
8 HANDED A COPY, BUT I KNOW THERE'S A LOT OF PAPER OVER  
9 ON YOUR TABLE, SAME AS OURS.

10 MR. MCMILLAN: I'LL NEED TO GET TO A PLACE  
11 WHERE I HAVE INTERNET ACCESS TO BE ABLE TO PULL IT UP.

12 MS. SWISS: I'M HAPPY TO LET COUNSEL BORROW MY  
13 HARD COPY JUST TO READ FOR NOW, BUT IF YOU'D LIKE TO GO  
14 OFF THE RECORD TO MEET AND CONFER OR HOWEVER YOU'D LIKE  
15 TO ADDRESS THIS.

16 THE COURT: YES. I'D ALSO NEED TO SEE IT. I  
17 SAID I HAD A COPY OF THAT DECISION WITH ME BUT I MIGHT  
18 NOT, SO.

19 YES, I DO. IN THIS INSTANCE, IT'S NOT  
20 DIRECTLY IN FRONT OF ME AS IT WAS THE LAST TIME.

21 SO, DON'T?

22 AND YOU'LL FIND, NOT BECAUSE I'M INTENDING TO  
23 HIGHLIGHT CERTAIN LANGUAGE, BUT I DID UNDERLINE IN THE  
24 OPINION -- YOU CAN LOOK AT THE WHOLE OPINION, BUT THE  
25 PAGE -- I HAVE IT OPEN TO THE PAGE WHERE IT'S THE  
26 ACTUAL DISCUSSION OF THE INTERROGATORY, AND I  
27 UNDERLINED THE LANGUAGE SO IT'LL BE EASY TO FIND. AND  
28 WE'LL GIVE THAT TO YOU.

1 MR. MCMILLAN: THANK YOU, YOUR HONOR.

2 THE COURT: SO WHILE I HAVE COUNSEL DOING  
3 THAT, WITH THE MOTIONS FOR DIRECTED VERDICT HAVING BEEN  
4 RULED UPON, MR. PRAGER, YOU AND COUNSEL CAN TAKE A LOOK  
5 AT VERDICT FORM 2 AND EITHER REACH AN AGREEMENT OR BE  
6 ABLE TO TELL ME THE ISSUES THAT -- WHERE THE  
7 DIFFERENCES ARE.

8 MR. PRAGER: DO YOU WANT US TO GO BACK?

9 THE COURT: I THINK IT WOULD BE A GOOD IDEA.  
10 YOU CAN USE THE JURY ROOM. AND THERE ARE SOME PLUG-INS  
11 WHERE YOU CAN PLUG IN YOUR LAPTOP TOO; ALL RIGHT?  
12 OKAY?

13 AND SO WE WILL GO OFF THE RECORD NOW FOR AN  
14 INDEFINITE PERIOD OF TIME, BUT LONG ENOUGH TO BE ABLE  
15 TO PERMIT BOTH -- TO THE EXTENT YOU CHOOSE TO DO SO,  
16 MR. GUTERRES, TO TAKE A LOOK AT THE ADDITIONAL ENTRIES  
17 IN THE DSL THAT THEY'RE PROPOSING. AND MR. MCMILLAN  
18 WILL BE KEPT BUSY LOOKING AT THE CASE.

19 MR. GUTERRES: UNLESS THE COURT WANTS TO  
20 ADDRESS THE DEFENSE EXHIBITS.

21 THE COURT: WE WILL ADDRESS THE DEFENSE  
22 EXHIBITS, AND I DO HAVE THAT LIST.

23 MR. GUTERRES: WE HAVE POTENTIALLY TWO  
24 AGREEMENTS, BUT I'LL LET MR. MCMILLAN SPEAK FOR  
25 HIMSELF.

26 THE COURT: WELL, ANYTHING HELPS.

27 MR. GUTERRES: ABSOLUTELY, YOUR HONOR.

28 THE COURT: SO IF YOU WANT TO PUT THOSE ON THE

1 RECORD TO WHICH THERE'S AN AGREEMENT, THAT WOULD BE  
2 FINE.

3 MR. GUTERRES: MR. MCMILLAN?

4 MR. MCMILLAN: OH, WHICH ONE WAS IT? IT WAS  
5 1064, PAGES 919 THROUGH 923, AS TO WHICH WE HAVE NO  
6 OBJECTION.

7 THE COURT: ALL RIGHT. SO THAT WILL BE  
8 RECEIVED.

9 DO YOU HAVE THE PAGE NUMBER, DON?

10 ALL RIGHT. IT WILL BE RECEIVED.

11 MR. MCMILLAN: AND THEN THE BALANCE OF THE --  
12 THE BALANCE OF THE PROPOSED EXHIBITS PLAINTIFF DOES  
13 HAVE OBJECTION TO.

14 THE COURT: SO WE HAVE ONE AREA OF AGREEMENT  
15 AS OPPOSED TO TWO?

16 MR. GUTERRES: WELL, I WAS TOLD THAT  
17 POTENTIALLY THERE MIGHT BE A SECOND ONE, BUT I GUESS WE  
18 HAVE ONE.

19 THE COURT: ALL RIGHT. WELL, WE COULD GO  
20 AHEAD AND ADDRESS THE OTHERS.

21 MR. MCMILLAN: SURE. WE CAN DO THAT. I CAN  
22 SET THIS ASIDE AND LOOK AT IT A LITTLE BIT LATER.

23 THE COURT: ALL RIGHT. SO GOING IN THE ORDER  
24 THAT I HAVE ON THE LIST IS EXHIBIT 13, PAGES 26 TO 31.

25 MR. MCMILLAN, HAVE YOU HAD A CHANCE TO TAKE A  
26 LOOK AT THAT?

27 MR. MCMILLAN: RIGHT. I HAVE, YOUR HONOR.  
28 AND MY MAIN OBJECTION TO IT AT THIS POINT IS I DON'T

1 ACTUALLY SEE THE CONTINUED RELEVANCE OF IT TO THE  
2 ISSUES OF WHETHER OR NOT THE UNWARRANTED SEIZURE OF THE  
3 CHILD WAS WITH EXIGENT CIRCUMSTANCES OR TO ANY ISSUES  
4 ARISING FROM MS. SCHEELE'S CONDUCT, WHICH CAME MUCH  
5 LATER IN THE PROGRESSION OF THE JUVENILE DEPENDENCY  
6 CASE. SO THAT WOULD BE MY MAIN OBJECTION. I JUST  
7 DON'T SEE THAT IT HAS ANY CONTINUED RELEVANCE.

8 THE COURT: I ALSO SEE SOME INFORMATION THAT  
9 COULD BE -- COULD HAVE BEEN RELEVANT TO THE "BUT FOR"  
10 ISSUE RELATING TO WHETHER THERE WAS EVIDENCE BEFORE THE  
11 JUDICIAL OFFICER, BUT THAT ISSUE HAS ALREADY BEEN PUT  
12 TO REST.

13 SO, MR. GUTERRES?

14 MR. GUTERRES: YOUR HONOR, MS. PINEDO'S  
15 QUESTION ABOUT WHY NO REUNIFICATION SERVICES WERE  
16 RECOMMENDED, AND THIS GOES TO SHOW THAT EVEN BEFORE THE  
17 ISSUE OF ANY PERCEIVED DISABILITY OR MUNCHAUSEN BY  
18 PROXY, THAT THE RECOMMENDATION FOR NO REUNIFICATION  
19 SERVICES HAD ALREADY BEEN MADE, WHICH GOES TO THE ISSUE  
20 OF WHETHER OR NOT THE RECOMMENDATION FOR NO  
21 REUNIFICATION SERVICES BY MS. NELSON AROSE AS A RESULT  
22 OF ANY PERCEIVED MUNCHAUSEN BY PROXY OR DISABILITY.  
23 AND THIS GOES TO SHOW THAT MS. NELSON'S RECOMMENDATIONS  
24 ARE NO DIFFERENT AND JUST ARE A CONTINUATION OF WHAT  
25 WAS ALREADY INCLUDED AT THE VERY GET-GO OF THIS CASE.  
26 AND I THINK IT GOES TOWARDS THE ISSUE OF PLAINTIFF'S  
27 CLAIMS FOR THE DISABILITY AND UNRUH, STATE UNRUH, AND  
28 ADA AGAINST MS. NELSON.

1 THE COURT: ALL RIGHT.

2 MR. GUTERRES: AND THAT'S AT PAGE 5, YOUR  
3 HONOR. IT'S BATES 30 OF THE DOCUMENT.

4 MR. MCMILLAN: WHICH PAGE, I'M SORRY?

5 MR. GUTERRES: IT'S ON EXHIBIT 13 AT BATES 30.

6 MR. MCMILLAN: YOUR HONOR, IF I'M CORRECT IN  
7 MY UNDERSTANDING, THE ENTIRE RELEVANCE OF THE DOCUMENT  
8 WOULD BE A ONE-SENTENCE ENTRY UNDER THE PHRASE "OTHER"  
9 ON BATES NO. 30 OF EXHIBIT 13. AND PLAINTIFF MAINTAINS  
10 THE SAME OBJECTION. NUMBER ONE, I DON'T THINK THAT IT  
11 HAS RELEVANCE TO THE ISSUES STILL AT PLAY.

12 THE COURT: NO. WELL --

13 MR. MCMILLAN: AND ALSO, I THINK IT'S  
14 CUMULATIVE. I THINK THERE WAS -- ACTUALLY, IT WAS -- I  
15 DON'T REMEMBER. IT'S A FOG. I DON'T REMEMBER IF THERE  
16 WAS ADEQUATE FOUNDATION LAID FOR THIS DOCUMENT EITHER.  
17 AND THERE'S NO RECEIVED OR ADMITTED INTO EVIDENCE  
18 STICKER ON IT THAT I SEE EITHER, AT LEAST I DON'T  
19 THINK. LET ME GO TO THE FRONT OF THE DOCUMENT.

20 MR. GUTERRES: YOUR HONOR, ALSO ON PAGE 27, IT  
21 SPEAKS TO THE RECOMMENDATIONS ON VISITATION. AND  
22 AGAIN, GOING TO THE ISSUES OF THE DISABILITY CLAIMS, AT  
23 BATES 27 -- EXHIBIT 13, BATES 27, IT TALKS ABOUT THE  
24 NUMBER OF MONITORED VISITS TO BE TWICE A WEEK, AND IT  
25 GOES AGAIN TO THE ISSUE THAT THIS RECOMMENDATION IS  
26 COMING IN WELL BEFORE THERE'S ANY ALLEGATIONS OF  
27 MUNCHAUSEN BY PROXY. IT ALSO GOES TO THE ISSUE OF --  
28 BEFORE THE TREMORS HAVE EVEN ARISEN, DCFS IS ALREADY

1 ASKING FOR VISITATION TO BE MONITORED BY DCFS WITH AN  
2 APPROVED DCFS MONITOR, VISITATIONS AT LEAST TWICE A  
3 WEEK.

4 IT GOES TO THE ISSUES NOT ONLY OF MS. NELSON,  
5 I MISSPOKE, IT ALSO ADDRESSES MS. SCHEELE'S CLAIMS AS  
6 MR. PRAGER HAD RAISED EARLIER.

7 THE COURT: ALL RIGHT. WELL, AT MOST, IT  
8 WOULD SEEM TO ME THAT TO ACCOMPLISH THOSE PURPOSES YOU  
9 REALLY ONLY NEED TWO PAGES, THE FIRST PAGE AND THE  
10 SECOND PAGE. THERE IS A FURTHER MENTION AT THE END, ON  
11 THE LAST PAGE -- NEXT TO THE LAST PAGE, WHICH IS THE  
12 SIGNATURE PAGE, WHICH AGAIN STATES THAT DCFS  
13 RESPECTFULLY RECOMMENDS NO REUNIFICATION SERVICES, BUT  
14 THAT'S INCLUDED ON THE SECOND PAGE.

15 MR. GUTERRES: YOUR HONOR, I COULD LIVE WITH  
16 THE FIRST TWO PAGES. JUST FOR THE SAKE OF  
17 COMPLETENESS, I WANTED THE WHOLE DOCUMENT IN.

18 THE COURT: WELL, WE HAVE AN OBJECTION TO THE  
19 WHOLE DOCUMENT, I GATHER, MR. MCMILLAN, ON THE GROUNDS  
20 OF RELEVANCE?

21 MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: ALL RIGHT. I AGREE WITH YOU THAT  
23 IT'S PROBABLY PREFERABLE THAT AN ENTIRE DOCUMENT -- IF  
24 YOU'RE GOING TO TAKE PART OF IT, IT'S PREFERABLE TO  
25 SHOW ALL OF IT, BUT WE HAVE PARTS OF OTHER DOCUMENTS  
26 TOO WITHOUT INCLUDING THE ENTIRE DOCUMENTS, AND FOR THE  
27 PURPOSES YOU'VE STATED, I'LL -- MY RULING IS THAT THE  
28 FIRST TWO PAGES MAY BE RECEIVED.



1           THOSE, FOR THE CLERK'S RECORDS, ARE BATES  
2 PAGES 000026 AND -27. AND THEN AS TO THE REMAINING  
3 PAGES, -28, ALL OF -- FOUR ZEROS BEFORE IT -- -28  
4 THROUGH -31 ARE NOT.

5           MR. MCMILLAN: AND YOUR HONOR, WOULD THAT ALSO  
6 BE FOR A LIMITED PURPOSE?

7           THE COURT: FOR A LIMITED PURPOSE ONLY.  
8 THAT'S CORRECT.

9           MR. MCMILLAN: THANK YOU.

10          THE COURT: SO THIS IS ANOTHER ONE THAT YOU'RE  
11 GOING TO HAVE TO PUT TOGETHER THAT LISTING FOR US OF  
12 LIMITED PURPOSE, WHICH IS GOING TO BE A SIGNIFICANT  
13 NUMBER OF DOCUMENTS. BUT THIS SHOULD BE PART OF THAT.

14          ALL RIGHT. THE NEXT IS EXHIBIT 60.

15          ALL RIGHT. THE NEXT, THEN, EXHIBIT 60, ARE  
16 PAGES BEARING THE BATES NUMBERS, WITHOUT MENTION OF THE  
17 ZEROS, 1155 AND 1156. AND THE FIRST OF THOSE PAGES IS  
18 THE DOCUMENT INFORMATION FROM THE COURT OFFICER, AND  
19 THEN THE SECOND PAGE IS A ONE-PAGE DOCUMENT DATED  
20 JUNE 29, 2010, SIGNED BY WENDY CRUMP. THIS DOCUMENT  
21 WAS RECEIVED IN EVIDENCE IN THE JUVENILE PROCEEDING.

22          AND THE BASIS FOR THIS TO BE RECEIVED,  
23 MR. GUTERRES? I DON'T KNOW THAT WE NEED THE  
24 TRANSMITTAL FORM, THERE'S NOTHING ABOUT IT THAT'S --  
25 THAT COULD POSSIBLY CAUSE ANY PREJUDICE. THE HEART OF  
26 THIS IS THE WENDY CRUMP LETTER.

27          MR. GUTERRES: UNDERSTOOD, YOUR HONOR.

28          THE COURT: AND THE BASIS FOR OFFERING THIS IS

1       WHAT?

2                   MR. GUTERRES:  AGAIN, THE PURPOSE OF THIS GOES  
3       TO SHOW THE REPORTING PARTY'S REPORTS TO THE DEPARTMENT  
4       WITH REGARD TO WHAT GAVE RISE TO HER CONCERNS WITH THIS  
5       CHILD, AND IT GOES ALSO TO THE ISSUES OF MOTIVATING  
6       FACTORS FOR WHY MS. NELSON AND MS. SCHEELE WERE DOING  
7       THE THINGS THAT THEY WERE DOING THAT HAVE NO BEARING ON  
8       MOTHER'S DISABILITY OR PERCEIVED DISABILITY, THAT THIS  
9       IS REALLY BEING DONE -- THE ACTIONS THAT ARE BEING  
10      TAKEN ARE PURSUANT TO WHAT IS REQUIRED OF THEM TO DO,  
11      AND IT'S IN THE BEST INTERESTS OF THE CHILD AND HAS NO  
12      BEARING ON ANYTHING HAVING TO DO WITH PERCEIVED  
13      DISABILITY OR WITH ANY INTENTION OR MALICE TOWARDS  
14      MS. DUVAL OR RECKLESS DISREGARD TOWARDS MS. DUVAL.

15                  THE COURT:  ALL RIGHT.  MR. MCMILLAN?

16                  MR. MCMILLAN:  YOUR HONOR, NUMBER ONE, THE  
17      DOCUMENT, FIRST OF ALL, IT'S LACKING IN FOUNDATION TO  
18      ESTABLISH THAT THIS PARTICULAR DOCUMENT WAS EVER SENT  
19      TO OR RECEIVED AND REVIEWED BY EITHER MS. NELSON OR  
20      MS. SCHEELE, FIRST OF ALL.

21                  SECONDARILY, I'M NOT TOTALLY CLEAR WHAT THE  
22      PURPOSE OF THE LETTER IS.  IF IT WAS SOMETHING THAT WAS  
23      PREPARED IN RELATION TO THE ONGOING JUVENILE DEPENDENCY  
24      LITIGATION FOR SOME SORT OF PURPOSE, THEN IT'S  
25      CERTAINLY HEARSAY AND THERE'S SOME QUESTION AS TO ITS  
26      TRUSTWORTHINESS BECAUSE OF THE LITIGATION CONTACT, IF  
27      THAT IS IN FACT WHAT IT IS.  PART OF THE PROBLEM I'M  
28      HAVING HERE IS THERE'S NO ADEQUATE FOUNDATION LAID SO

1 THAT WE CAN FIGURE OUT WHO GOT IT, WHEN IT WAS ACTUALLY  
2 WRITTEN, WHO RELIED ON IT, WHO REVIEWED IT, OTHER THAN  
3 THE FACT THERE'S AN ADMITTED STICKER ON IT WHICH MEANS  
4 IT MUST HAVE COME INTO THE COURT DURING THE TRIAL OF  
5 THE CASE IN JUNE. BUT BY THEN, WITH RESPECT TO  
6 NELSON -- CERTAINLY IT HAS NOTHING TO DO WITH EARLIER  
7 EVENTS BECAUSE IT WAS LATER IN TIME, BUT WITH RESPECT  
8 TO NELSON AND SCHEELE, BY JUNE 29TH, PRETTY MUCH ALL OF  
9 THEIR -- AT LEAST INsofar AS I UNDERSTAND THE STATE OF  
10 THE EVIDENCE, PRETTY MUCH ALL OF THEIR ALLEGED  
11 MISCONDUCT IS SUBSTANTIALLY COMPLETED BY THAT TIME.

12 AND SO I GUESS THAT'S THE FUNDAMENTAL  
13 OBJECTION, IS THAT IT'S LACKING IN FOUNDATION, NO  
14 LONGER RELEVANT TO ANY ISSUE IN THE CASE, IT'S  
15 HEARSAY -- AND I CAN'T READ MY LAST ONE. I HAD ANOTHER  
16 ONE BUT I CAN'T READ IT.

17 THE COURT: WELCOME TO THE CLUB.

18 MR. MCMILLAN: YEAH.

19 THE COURT: ALL RIGHT.

20 MR. GUTERRES: YOUR HONOR, FOUNDATION-WISE,  
21 THE FOUNDATION WAS LAID BY MS. CRUMP DURING HER  
22 TESTIMONY.

23 THE COURT: SHE DID STATE IT WAS HER LETTER.  
24 I'LL REFER TO IT AS A LETTER. THAT SEEMS TO BE A FAIR  
25 DESCRIPTION.

26 I AGREE WITH WHAT MR. MCMILLAN SAID, THAT  
27 THIS -- THERE COULDN'T BE ANY KIND OF RELIANCE OF  
28 SOMEBODY ON THIS LETTER UNTIL AT LEAST JUNE 29TH, WHICH

1 IS THE DATE OF THE LETTER. AND I'M NOT SURE WHEN IT  
2 WAS RECEIVED. BUT I DO NOTE FROM THE PREVIOUS PAGE  
3 THAT YOU'VE OFFERED, PAGE 1155, THAT THE TRANSMISSION  
4 WAS ON JUNE 30TH. SO CLEARLY SOMEONE AT DCFS HAD  
5 RECEIVED THIS BY THAT TIME. SO I THINK THE QUESTION  
6 GOES TO -- GOES TO -- WELL, LET ME SAY FURTHER, THE  
7 LETTER IS HEARSAY, EVEN THOUGH DR. EGGE SAID THAT WAS  
8 HER LETTER, BUT IT IS HEARSAY.

9 BUT THE BASIS FOR RECEIVING IT IN EVIDENCE  
10 WOULD BE A NONHEARSAY PURPOSE. AND I THINK YOU'VE  
11 SUGGESTED A CERTAIN NONHEARSAY PURPOSE.

12 MR. GUTERRES: YOUR HONOR, THIS LETTER IS A  
13 CONSISTENT STATEMENT BY MS. CRUMP WHICH WOULD HAVE BEEN  
14 COMMUNICATED -- OUT OF THIS INFORMATION, IN ESSENCE,  
15 ALTHOUGH THIS POSTDATES THE DETENTION, IS INFORMATION  
16 THAT WAS COMMUNICATED AND MS. PENDER HAD, MS. ROGERS  
17 HAD, AND THEN OBVIOUSLY MS. NELSON HAD DURING THE TIME  
18 POST DETENTION. AND WE FEEL THAT, GIVEN THE  
19 ALLEGATIONS, AS IT RELATES TO THE DETENTION AND THE  
20 EXIGENT CIRCUMSTANCES, AND THEN THE CLAIMS OF -- THE  
21 DISABILITY CLAIMS AND INTENTIONAL INFLICTION CLAIMS  
22 AGAINST MS. SCHEELE, THAT THIS GOES TO SHOW A  
23 CONSISTENT PRIOR STATEMENT BY A VERY KEY WITNESS THAT  
24 PLAYED A MAJOR ROLE IN THIS CASE.

25 THE COURT: WELL, IT MAY BE INFORMATION THEY  
26 HAD, RECITING SOME INFORMATION THEY HAD, BUT THEIR  
27 TESTIMONY WOULD STAND -- THAT THEIR TESTIMONY WOULD BE  
28 THE BASIS FOR ESTABLISHING WHAT THEY KNEW OR DIDN'T

1 KNOW AT A PARTICULAR POINT IN TIME. I WAS LOOKING AT  
2 THE -- WELL, THE LIMITED PURPOSE THAT I COULD SEE, AT  
3 LEAST BY ARGUMENT, IS IN THE ORIGINAL  
4 JURISDICTION/DISPOSITION REPORT THERE HAD BEEN A  
5 RECOMMENDATION AGAINST FAMILY REUNIFICATION SERVICES.  
6 THAT RECOMMENDATION, OR THE ISSUE OF FAMILY  
7 RECOMMENDATION SERVICES [SIC], WAS A SUBJECT OF THE  
8 ACTUAL HEARING ON THE JURISDICTION/DISPOSITION REPORT  
9 WHICH OCCURRED ON SEVERAL DAYS -- I REALIZED IN GOING  
10 THROUGH SOME OF THESE DOCUMENTS -- SEVERAL DAYS LEADING  
11 UP TO THE FINAL HEARING WHICH WAS ON AUGUST 9.

12 SO MR. PRAGER HAS INDICATED TO US THAT PART OF  
13 HIS CLAIM FOR DISCRIMINATION WAS THE RECOMMENDATION  
14 AGAINST FAMILY REUNIFICATION SERVICES. AND SO TO THAT  
15 VERY LIMITED PURPOSE, THIS LETTER COULD BE RECEIVED.

16 MR. GUTERRES: THANK YOU, YOUR HONOR.

17 THE COURT: MR. MCMILLAN?

18 MR. MCMILLAN: YES, YOUR HONOR.

19 THE PROBLEM THAT I HAVE WITH IT IS, FIRST AND  
20 FOREMOST, THERE'S STILL -- AND THERE MAY HAVE BEEN AND  
21 I JUST DON'T RECALL IT. I'M NOT SAYING IT DIDN'T  
22 HAPPEN, I JUST DON'T RECALL EITHER MS. SCHEELE OR  
23 MS. NELSON SAYING THAT THEY RELIED OR EVEN SAW THIS  
24 LETTER. SO IF -- I UNDERSTAND WHAT YOUR HONOR IS  
25 SAYING, BUT IF THEY NEVER SAW IT, THEN HOW COULD IT  
26 FACTOR INTO ANYTHING THAT FORMED THE BASIS FOR THE  
27 DISCRIMINATION CLAIM OR NOT? NOW, IF THEY HAD SEEN IT,  
28 ANALYZED IT, AND SAID, "OH, YEAH, I BASED MY

1 RECOMMENDATION, I BASED MY CONDUCT ON SOME OF THE  
2 INFORMATION IN THIS LETTER," THEN I DON'T KNOW THAT I  
3 COULD REASONABLY HAVE ANY PROBLEM WITH THAT. BUT I  
4 DON'T RECALL THERE EVER HAVING BEEN ANY TESTIMONY THAT,  
5 "YES, I GOT THIS LETTER, I REVIEWED IT, IT FORMED THE  
6 BASIS FOR SOMETHING I DID," OR ANYTHING LIKE THAT.

7 SO I STILL DON'T THINK IT BEARS ANY RELEVANCE  
8 TO THE ISSUES.

9 SECONDARILY, FOR THE LIMITED PURPOSE  
10 MR. GUTERRES IS PRESENTING, HOW CAN THIS LETTER SATISFY  
11 THE LIMITED PURPOSE TO SHOW THE BASIS FOR CONDUCT  
12 WITHOUT THE JURY ACCEPTING IT AS TRUE? I DON'T  
13 UNDERSTAND HOW WE CAN MAKE THAT SEVERANCE.

14 WHERE THE CLAIM IS -- IT'S REALLY PRETTY EASY  
15 ON THE JUDICIAL DECEPTION CLAIM, AND WE WERE TALKING  
16 ABOUT THOSE WAY BACK WHEN, BECAUSE THE CLAIM IS THIS  
17 FALSE STATEMENT WAS MADE TO THE COURT, SO THAT'S PRETTY  
18 SIMPLE. LIMITED PURPOSE, JUST SHOWING WHAT STATEMENTS  
19 WERE MADE TO THE COURT, NOT WHETHER THEY WERE TRUE OR  
20 NOT. THIS IS QUITE A BIT DIFFERENT BECAUSE THE ISSUE  
21 AT PLAY IS NO LONGER WHETHER OR NOT STATEMENTS MADE TO  
22 THE COURT WERE TRUE OR WHETHER THOSE STATEMENTS WERE  
23 MADE TO THE COURT.

24 THE ISSUE THAT THEY'VE RAISED NOW, DEFENDANTS  
25 HAVE RAISED NOW IS THAT THE CONDUCT OF MS. NELSON AND  
26 MS. SCHEELE WAS BASED IN SOME MEASURE OR THIS LETTER IN  
27 SOME WAY FORMED THE BASIS FOR THAT CONDUCT OR EVEN THE  
28 JUSTIFICATION FOR THAT CONDUCT. TO GET TO THAT

1 QUESTION, THERE HAS TO BE TESTIMONY BY MS. NELSON AND  
2 MS. SCHEELE THAT SAYS, "YES, I GOT THIS LETTER, I READ  
3 IT, I ANALYZED IT IN THE CONTEXT OF THAT CASE. AND IT  
4 FORMED THE BASIS FOR SOME CONDUCT THAT PLAINTIFF CLAIMS  
5 I DID THAT WAS WRONGFUL BUT IT WASN'T BECAUSE WHEN I  
6 LOOKED AT THIS LETTER, YOU KNOW, IT GAVE ME THE REASONS  
7 TO DO THE THINGS I DID." WITHOUT EVIDENCE BEFORE THIS  
8 JURY TO MAKE THAT ARGUMENT, IT'S NOT PROPER.

9 THE COURT: ANYTHING FURTHER, MR. GUTERRES?

10 MR. GUTERRES: YOUR HONOR, THERE'S REFERENCES  
11 WITHIN THE JURISDICTION/DISPOSITION REPORT REGARDING  
12 THE CONCERNS WITH MOTHER NOT PROPERLY FEEDING THIS  
13 CHILD AT THE TIME THAT THE REPORT WAS PREPARED. AND  
14 THIS REPORT FURTHER SUPPORTS THOSE -- THE  
15 RECOMMENDATIONS AS THE COURT HAS INDICATED. AND I  
16 THINK EVEN IF IT'S FOR THE LIMITED PURPOSE, IT IS  
17 CONSISTENT WITH WHY CERTAIN RECOMMENDATIONS WERE MADE  
18 IN THE REPORT BY MS. NELSON. IT SHOWS THAT THERE IS A  
19 NONDISCRIMINATORY REASON FOR MAKING THE RECOMMENDATIONS  
20 THAT WERE MADE.

21 THE COURT: ALL RIGHT.

22 MR. GUTERRES: WITH THAT, WE'LL SUBMIT YOUR  
23 HONOR.

24 THE COURT: ALL RIGHT. EXHIBIT 60 WILL NOT BE  
25 RECEIVED.

26 I WILL GIVE YOU AN OPPORTUNITY, MR. GUTERRES,  
27 OR MS. SWISS, WHO SEEMS TO BE THE ONE WHO CAN FIND  
28 THINGS FOR US QUICKLY, THAT IF YOU -- I THINK IT'S

1 CORRECT THAT TO THE EXTENT THAT WOULD BE FOR A LIMITED  
2 PURPOSE OF SHOWING THAT SCHEELE AND NELSON DID NOT --  
3 THAT ANY RECOMMENDATION AGAINST REUNIFICATION WAS NOT  
4 BASED ON A DISCRIMINATORY REASON BUT ON A LEGITIMATE  
5 REASON, THAT TO THE EXTENT THIS LETTER MAY PROVIDE A  
6 BASIS FOR THAT, AND IT PROBABLY DOES, THAT THERE WAS A  
7 GOOD REASON. ONE OF THE REASONS FOR IT ORIGINALLY WAS  
8 NOT ONLY STATUTORY PROVISION, BUT REUNIFICATION  
9 REGARDLESS OF THE STATUTE WOULD NOT BE A GOOD IDEA IF  
10 YOU'RE REUNIFYING WITH A PERSON YOU'RE FINDING AT FAULT  
11 FOR THE CONDITION.

12 SO IF YOU CAN SHOW US ANY EVIDENCE, SOME  
13 TESTIMONY FROM SCHEELE AND/OR NELSON ABOUT HAVING  
14 CONSIDERED IT, THAT I'LL BE HAPPY TO ENTERTAIN. THE  
15 PREVIOUS PAGE, 1155, WAS A TRANSMITTAL BY NELSON. AND  
16 SO I THINK HAVING TRANSMITTED IT, IT WOULD BE  
17 REASONABLE TO INFER THAT SHE SAW IT. BUT I THINK  
18 SEEING IT ISN'T SUFFICIENT. I THINK THERE HAS TO BE  
19 SOME EVIDENCE OF RELIANCE. EVEN THEN, THIS IS -- THIS  
20 IS REALLY JUST DOWN THE ROAD, BUT I WILL ADMIT ALSO  
21 THAT THE CLAIMS OF DISCRIMINATION ALSO GO DOWN THE ROAD  
22 TOO. AND THEY'RE BASED ON WHAT PLAINTIFF PERCEIVES AS  
23 DIFFERENT EVENTS OCCURRING OVER A PERIOD OF TIME, AND  
24 SPECIFICALLY AFTER THE ORIGINAL DETENTION HEARING.  
25 THAT'S ONE OF THE REASONS THEY'VE CITED ALL THOSE DSL  
26 NOTES TO YOU THAT EXTEND INTO THE FOLLOWING JUNE OR SO.

27 SO FOR NOW, THE ANSWER IS IT WILL NOT BE  
28 RECEIVED.



1 MR. GUTERRES: THANK YOU, YOUR HONOR.

2 THE COURT: THE NEXT ONE IS EXHIBIT 76, WHICH  
3 IS THE LAST-MINUTE INFORMATION FORM DATED -- AND I HAVE  
4 IT HERE -- DATED AUGUST 9, 2010, WHICH WAS A FORM THAT  
5 IS SIGNED BY MS. SCHEELE.

6 WHAT'S THE BASIS FOR OFFERING THIS?

7 MR. GUTERRES: YOUR HONOR, THIS IS THE ONLY  
8 REPORT -- MS. SCHEELE LAID THE FOUNDATION FOR THIS  
9 DOCUMENT. SHE'S TESTIFIED THIS IS THE ONLY REPORT SHE  
10 EVER SUBMITTED TO THE COURT. AND IT'S BEING SAID THAT  
11 THERE'S VARIOUS ALLEGATIONS OF HER MAKING SORTS OF --  
12 ALL SORTS OF STATEMENTS THAT WERE DONE WITH SOME INTENT  
13 OR RECKLESS DISREGARD TOWARDS MS. DUVAL. WE WOULD LIKE  
14 TO ESTABLISH THAT THE ONLY THING THAT MS. SCHEELE  
15 SUBMITTED -- EVER SUBMITTED TO THE COURT WAS THIS ONE  
16 REPORT. AND IT ALSO GOES, AGAIN, TO THE ISSUE THAT HER  
17 ACTIONS WERE IN CONJUNCTION WITH HER DUTIES AND  
18 OBLIGATIONS IN PROVIDING REUNIFICATION SERVICES. ANY  
19 COMMENTS MADE TO MS. DUVAL WOULD HAVE BEEN IN THAT  
20 REGARD. AND THAT IT WAS DONE WITHOUT ANY -- FOR A  
21 NONDISCRIMINATORY PURPOSE.

22 THE COURT: MR. MCMILLAN?

23 MR. MCMILLAN: THANK YOU, YOUR HONOR.

24 AGAIN, ON THIS, JUST IN LOOKING AT THE TEXT OF  
25 THE FILING, ALL IT APPEARS TO BE SAYING IS THAT THERE  
26 WAS A CHANGE IN THE DOCTOR, THE DOCTOR HASN'T HAD A  
27 CHANCE TO ACTUALLY DO A, YOU KNOW, FULL BLOWN REVIEW,  
28 AND THAT OTHER THAN THAT, THE BOY APPEARS TO BE DOING

1 GOOD, AND STUFF OF THAT NATURE. IT DOESN'T ACTUALLY  
2 SAY ANYTHING ABOUT THE UNDERLYING BASIS FOR ANY OF THE  
3 CLAIMS IN THIS SUIT.

4 IF YOUR HONOR REMEMBERS THE ARGUMENT --  
5 ACTUALLY, I'M SURE YOU DO, IT WAS JUST THIS MORNING.  
6 IN FACT, I PROBABLY DON'T REMEMBER IT AS WELL. BUT  
7 WE'RE NOT GOING AFTER MS. SCHEELE IN ANY REGARD -- AND  
8 I THINK THIS MIGHT HAVE EVEN BEEN THE REPORT WE WERE  
9 TALKING ABOUT WHERE SHE JUST DID ONE REPORT TO THE  
10 COURT, AND WE'RE NOT GOING AFTER HER FOR THAT. THAT  
11 HAS NOTHING TO DO WITH ANYTHING THAT WE'RE DOING HERE  
12 IN THIS CASE. AND IT DOESN'T EVEN RELATE TO  
13 REUNIFICATION SERVICES. THIS IS AT THE END OF THE  
14 CASE, THE DAY BEFORE -- ONCE THE TRIAL HAS ALREADY BEEN  
15 COMPLETED, THE DAY BEFORE THE COURT ISSUES ITS FINAL  
16 WRITTEN RULING IN THE UNDERLYING JUVENILE DEPENDENCY  
17 CASE.

18 SO IT'S NOT CLEAR TO ME HOW THIS DOCUMENT IS  
19 RELEVANT TO ANY ISSUE CURRENTLY AT PLAY IN THIS CASE.

20 THE COURT: THE --

21 MR. MCMILLAN: IN ADDITION, IT'S HEARSAY AND  
22 CONTAINS HEARSAY COMMENTS OF A DR. DE-RITTER  
23 (PHONETIC).

24 MR. GUTERRES: YOUR HONOR, IF I MAY, BRIEFLY?

25 THE COURT: SURE.

26 MR. GUTERRES: THAT'S EXACTLY OUR POINT.  
27 THEIR WHOLE POINT IS THAT MS. SCHEELE WAS HARASSING,  
28 HAD A BIAS, HAD A PERSONAL VENDETTA, IN ESSENCE,

1 AGAINST MS. DUVAL. HERE'S HER OPPORTUNITY TO ADD ONTO  
2 THAT, TO REPORT TO THE COURT, AND YET THERE'S NOTHING  
3 IN THERE. THIS IS THE ONLY REPORT MS. SCHEELE SUBMITS.  
4 THE ABSENCE OF ANY INFORMATION GOES TO THE ISSUE OF, IN  
5 HER DEFENSE, THAT THE INTENTIONAL CONDUCT THAT THEY'RE  
6 TRYING TO PUT ON MS. SCHEELE IS JUST NOT THERE.

7 MR. MCMILLAN: YOUR HONOR, BY NOW, BY  
8 AUGUST 9TH, I BELIEVE THAT IS THE LAST HEARING  
9 TRANSCRIPT FROM THE UNDERLYING JUVENILE DEPENDENCY  
10 PROCEEDING.

11 THE COURT: YES, IT WAS.

12 MR. MCMILLAN: SO EVERYBODY ALREADY KNEW BY  
13 THE 9TH THAT THIS CASE WAS OVER AND MS. DUVAL LOST. SO  
14 WHETHER OR NOT --

15 THE COURT: WELL, SHE ACTUALLY LOST BY, AT  
16 LEAST THE ORAL DECISION, ON AUGUST 9TH.

17 MR. MCMILLAN: CORRECT.

18 THE COURT: AND THAT WAS THE TIME THE COURT  
19 MADE ON THE RECORD THE FINDINGS AND THE FACTUAL BASIS  
20 FOR THE FINDINGS. AND SO -- AND THIS WAS ADMITTED INTO  
21 EVIDENCE, SO WE KNOW THAT THE COURT DID RECEIVE IT.  
22 AND I'M NOT SAYING THIS IS REALLY COUNTER TO WHAT  
23 YOU'RE SAYING, BUT THE -- THE OBJECTIONS ARE GOING TO  
24 BE OVERRULED. THIS ONE-PAGE DOCUMENT -- DO YOU NEED  
25 THE FIRST PAGE? JUST SHOWING IT WAS --

26 MR. GUTERRES: IT'S ONLY ONE PAGE, YOUR HONOR.

27 MR. MCMILLAN: I THINK IT'S ONLY ONE PAGE.

28 THE COURT: OH, THAT'S -- IT'S A ONE-PAGE

1 DOCUMENT. SO EXHIBIT 76, CONSISTING OF THE SINGLE PAGE  
2 BEARING IN THE UPPER RIGHT-HAND CORNER THE BATES NUMBER  
3 OF 001250, WILL BE RECEIVED FOR A LIMITED PURPOSE ONLY.

4 NEXT ONE IS EXHIBIT 338.

5 WELL, THIS HAS NOTHING TO DO WITH THE  
6 ADMISSIBILITY OF EXHIBITS. REMEMBER, COUNSEL, I'VE  
7 GIVEN YOU A TIME LIMIT FOR YOUR CLOSING ARGUMENT. I  
8 DON'T KNOW HOW ANY OF YOU WILL HAVE TIME TO MENTION ALL  
9 OF THE EXHIBITS.

10 MR. GUTERRES: I HOPE THE COURT'S GOING TO  
11 KEEP A STOPWATCH AND HOLD US TO THAT.

12 THE COURT: I DO INTEND TO KEEP YOU TO IT  
13 BECAUSE, LOOK, AT THIS POINT IN TIME, THIS IS GOING TO  
14 HAPPEN ON MONDAY. AND THIS CASE HAS TO GET OUT ON  
15 MONDAY. I HAVE ANOTHER JURY PANEL COMING TUESDAY  
16 MORNING, AND -- TO START THE NEXT CASE, AND I INTEND TO  
17 START IT. AND WE WILL HAVE MONDAY, AND WITH THE TIME  
18 LIMIT WE TALKED ABOUT, EVEN WITH EXPANDING IT A LITTLE  
19 BIT IF NECESSARY WILL STILL GIVE US TIME TO GIVE THE  
20 INSTRUCTIONS. OUR ACTUAL PACKAGE OF INSTRUCTIONS,  
21 DESPITE ALL THE ISSUES IN THE CASE, IS NOT AN UNUSUALLY  
22 LARGE NUMBER OF INSTRUCTIONS.

23 ALSO, AT THE END OF THE DAY, I SAVED THE -- I  
24 SAVED THE 5000 SERIES OF INSTRUCTIONS, WHAT I CALL THE  
25 CLOSING INSTRUCTIONS, TO GIVE AFTER COUNSEL'S CLOSING  
26 ARGUMENT. THAT'S THE TIME WE SEND THEM OUT. IF  
27 NECESSARY, AND I DON'T BELIEVE IT WILL, BUT IF  
28 NECESSARY, I COULD GIVE THOSE TUESDAY MORNING AND THEN

1 SEND THE JURY OUT BEFORE I GET THE OTHER JURY PANEL IN.

2 SO THERE WILL BE TIME ON MONDAY, SO I DO  
3 INTEND THAT ALL OF THIS WILL BE COMPLETED ON MONDAY.

4 SO, IN ANY EVENT, GOING BACK TO OUR LIST  
5 BECAUSE THIS IS TIME-CONSUMING, I DO HAVE EXHIBIT 338,  
6 WHICH IS A LAST-MINUTE INFORMATION FOR THE COURT FORM,  
7 AND THIS IS SIGNED BY CANDIS NELSON.

8 MR. MCMILLAN: YOUR HONOR?

9 THE COURT: YES.

10 MR. MCMILLAN: IT OCCURS TO ME AS I'M LOOKING  
11 AT THIS PARTICULAR EXHIBIT, WHICH CONSISTS LARGELY OF  
12 DISCUSSION ABOUT WHAT THE SOCIAL WORKER BELIEVES IS IN  
13 THE MEDICAL RECORDS, THAT IF WE'RE GOING TO BE GOING  
14 DOWN THIS ROAD, THEN PLAINTIFF WILL NEED TO REOFFER THE  
15 HARBOR-UCLA FAILURE TO THRIVE CLINIC RECORD BECAUSE I'D  
16 PRESUME THAT THIS IS GOING TO BE PRESENTED TO THE JURY  
17 BY DEFENDANTS SAYING, "OH, MY GOD, LOOK AT ALL THESE  
18 GREAT THINGS GOING ON WITH THE BOY, THESE HORRIBLE  
19 THINGS THAT WERE GOING ON WITH THE BOY." AND THE JURY  
20 HAS HEARD A LOT OF TESTIMONY ACTUALLY COMPARING THE  
21 MEDICAL RECORDS WITH WHAT'S REPORTED TO THE COURT. AND  
22 I THINK IT WOULD BE UNFAIR TO PLAINTIFF TO ALLOW  
23 DEFENDANTS TO THEN GO AHEAD AND PUT IN THE REPORTS  
24 WITHOUT THE JURY HAVING THE INFORMATION THEY NEED TO  
25 MAKE THEIR OWN DETERMINATION ABOUT WHAT THE MEDICAL  
26 CONDITION OF THE CHILD WAS AT THAT TIME.

27 YEAH, AND THAT WOULD BE EXHIBIT NO. 1076.1  
28 THROUGH 1076.163.

1 THE COURT: WHAT IS THE PURPOSE OF --

2 MR. GUTERRES: YOUR HONOR, WE'LL WITHDRAW THIS  
3 ONE.

4 THE COURT: ALL RIGHT.

5 MR. MCMILLAN: I SHOULD HAVE STARTED DOING  
6 THAT EARLIER.

7 THE COURT: YOU OBVIOUSLY MADE A VERY STRONG  
8 ARGUMENT.

9 MR. MCMILLAN: SO WHICH ONE WAS THAT? THAT  
10 WAS --

11 MR. GUTERRES: 338.

12 MR. MCMILLAN: I THINK YOU'VE STIPULATED TO  
13 THE FIRST PIECE OF 1064.

14 THE SECOND PIECE OF 1064, WHAT IS THAT?

15 THE COURT: ALL RIGHT. THE NEXT ONE IS 1064.

16 MR. MCMILLAN: ONE SECOND.

17 THE COURT: AND WE'RE -- WE'VE GOT TWO  
18 DIFFERENT --

19 MR. GUTERRES: THE FIRST ONES WAS ALREADY  
20 AGREED TO BY COUNSEL, WHICH ARE --

21 THE COURT: THAT'S TRUE.

22 MR. GUTERRES: -- 919 THROUGH 923.

23 THE COURT: YES.

24 MR. MCMILLAN: AND THEN THE NEXT ONE, YOUR  
25 HONOR, IS 1064 --

26 MR. GUTERRES: 18.

27 MR. MCMILLAN: -- 1896.

28 MR. GUTERRES: OH, SORRY.

1 MR. MCMILLAN: RIGHT, 1896. AND PLAINTIFF  
2 OBJECTS --

3 THE COURT: RIGHT. SO THE NEXT WHICH WAS NOT  
4 STIPULATED TO IS EXHIBIT 1064, PAGES 1896 AND 1897.

5 WHILE DON IS LOOKING FOR THAT, LET ME --  
6 RELATIVELY MINOR ISSUE, BUT, YOU KNOW, BECAUSE WE'RE  
7 GOING TO BE GOING OVER INSTRUCTIONS CERTAINLY BY NO  
8 LATER THAN TOMORROW MORNING, I MENTIONED YESTERDAY THAT  
9 WE HAD THAT ONE CACI INSTRUCTION THAT I BELIEVE WAS IN  
10 THE 5000 SERIES ABOUT ELECTRONIC EVIDENCE.

11 MR. MCMILLAN: RIGHT.

12 THE COURT: AND I THOUGHT IF IT WAS THE SAME.  
13 BUT WHEN I LOOKED AT THE ACTUAL WORDING OF THE  
14 INSTRUCTION, I THINK IT INCLUDED, AMONG OTHER THINGS --  
15 AND I CAN PULL IT OUT AGAIN AND TAKE A LOOK -- BUT IT  
16 INCLUDED SOMETHING ABOUT VIDEOS AS WELL. BECAUSE WE  
17 DID HAVE THE VIDEO DEPOS. I WAS ALREADY -- I'LL PULL  
18 UP THE NUMBER FOR YOU.

19 THE CLERK: 1896 THROUGH 1897?

20 MR. GUTERRES: YES. YES.

21 MR. MCMILLAN: LET ME GO BACK TO THE...

22 THE COURT: THAT'S 5021.

23 DO YOU HAVE IT PULLED UP?

24 MR. MCMILLAN: UH-HUH.

25 THE COURT: I SHOULD HAVE JUST ASKED  
26 MR. PARIS.

27 MR. MCMILLAN: THAT'S ALL RIGHT, YOUR HONOR.  
28 I WAS YOUR PROXY. I GOT HIM TO LOOK IT UP.

1 THE COURT: OH, YEAH, THE REASON I MENTIONED  
2 THIS IS --

3 (READING:)

4 "SOME EXHIBITS THAT HAVE BEEN  
5 ADMITTED INTO EVIDENCE WILL BE PROVIDED  
6 TO YOU ELECTRONICALLY. THE EQUIPMENT  
7 NECESSARY TO VIEW THESE EXHIBITS" --  
8 WELL, THAT'S EXHIBITS. THAT ISN'T THE  
9 TESTIMONY. SO I'M GOING BACK TO WHERE I WAS; I DON'T  
10 THINK WE NEED 5021. IT WOULD BE IF WE GOT -- THE  
11 DIFFERENCE WOULD BE THAT WE DON'T SEND THE EQUIPMENT  
12 INTO THE JURY ROOM WHERE THEY CAN PLAY FOR THEMSELVES  
13 EVIDENCE THAT HAS BEEN RECEIVED ELECTRONICALLY. THE  
14 DEPOSITIONS ARE DIFFERENT. THE DEPOSITIONS ARE  
15 TESTIMONY, AND IF WE GET A REQUEST FOR A REREAD OF ANY  
16 PORTION OF THE TESTIMONY, THEN WE WOULD BRING THEM INTO  
17 THE COURTROOM, AND ASSUMING IT WAS TESTIMONY OF ONE OF  
18 THE VIDEO DEPOSITIONS, WE WOULD THEN REPLAY THE  
19 PORTIONS OF THE VIDEO DEPOSITION THAT THEY'VE ASKED  
20 FOR.

21 SO I STILL THINK, IN NOW LOOKING AT THIS, A  
22 MINOR POINT, I DON'T THINK WE DO NEED THIS ONE, 5021.

23 ALL RIGHT. THIS DOCUMENT IS THE TWO-PAGE  
24 E-MAIL THAT MR. MILLS HAD SENT TO HIS THEN ATTORNEY,  
25 EMILY BERGER (PHONETIC). AND IT DOES BEAR THE WHAT  
26 WE'LL REFER TO AS THE JVCT PAGE MARKINGS OF 01896 AND  
27 -97.

28 THE PURPOSE OF OFFERING THIS FOR MR. MILLS,



1 MR. GUTERRES?

2 MR. GUTERRES: YES, YOUR HONOR.

3 AGAIN, THIS GOES TO INFORMATION THAT IS BEING  
4 REPORTED THAT IS CONSISTENT WITH WHAT OUR SOCIAL  
5 WORKERS WERE REPORTING. AND THE INFORMATION THAT OUR  
6 SOCIAL WORKERS RECEIVED, BOTH IN CONNECTION WITH  
7 MS. PENDER AND MS. ROGERS AS WELL AS THE BACK-END  
8 FOLKS, IT GOES TO THE --

9 THE COURT: NELSON AND SCHEELE?

10 MR. GUTERRES: YES, NELSON AND SCHEELE.

11 AND THE -- AGAIN, IT GOES TO THE -- IT GOES TO  
12 ALL OF THE ISSUES, YOUR HONOR. IT GOES TO THE  
13 ISSUES -- ALTHOUGH IT POSTDATES THE DETENTION, IT IS A  
14 HISTORY THAT LAYS OUT ALL OF THE INFORMATION THAT  
15 MR. MILLS WAS REPORTING. AND I THINK IT'S EXTREMELY  
16 RELEVANT AND IT'S ALSO CONSISTENT TO SHOW THAT THE  
17 INFORMATION THAT OUR SOCIAL WORKERS WERE RECEIVING IS  
18 CONSISTENT WITH WHAT IS OUTLINED HERE.

19 THE COURT: MR. MCMILLAN, YOUR OBJECTION IS?

20 MR. MCMILLAN: THAT IT LACKS FOUNDATION, BEARS  
21 NO RELEVANCE TO THE ISSUES CURRENTLY AT PLAY IN THE  
22 CASE. IT'S HEARSAY -- IN FACT, IT'S HEARSAY, IT'S  
23 MULTIPLE -- CONTAINS MULTIPLE ORDERS HEARSAY WHERE HE'S  
24 TALKING ABOUT OTHER PEOPLE TELLING HIM THINGS AND OTHER  
25 PEOPLE TELLING HIM WHAT OTHER PEOPLE SAID.

26 AND ON TOP OF THAT, THE INHERENT LACK OF  
27 TRUSTWORTHINESS OF THE DOCUMENT I THINK PREVENTS IT'S  
28 ADMISSION. IT'S A DOCUMENT THAT WAS GENERATED BY

1 MR. MILLS, AS I RECALL, AT THE REQUEST OF HIS ATTORNEY,  
2 FOR PRESENTATION TO THE COURT IN THE CONTEXT OF ONGOING  
3 LITIGATION IN WHICH HE HAD A SUBSTANTIAL INTEREST IN  
4 THE OUTCOME.

5 THE COURT: WELL --

6 MR. MCMILLAN: AND --

7 THE COURT: OKAY. I INTERRUPTED YOU, AND I'LL  
8 LET YOU BE ABLE TO FINISH. I WAS JUST GOING TO SAY I  
9 THINK THAT ARGUMENT, THE WEIGHT, HOW MUCH CREDENCE  
10 SHOULD BE GIVEN TO IT IS REALLY A FACTUAL ISSUE. BUT I  
11 WILL SAY I THINK THERE IS A FOUNDATION IN THE SENSE  
12 THAT MY RECOLLECTION IS THAT MR. MILLS DID TESTIFY  
13 ABOUT COMPOSING THIS MESSAGE TO HIS THEN ATTORNEY.

14 THE PROBLEM IS, THAT I SEE, HEARSAY. IT IS  
15 HEARSAY. AND THE FACT IT'S CONSISTENT WITH OTHER  
16 EVIDENCE IS NOT ONE OF THE RECOGNIZED EXCEPTIONS TO  
17 HEARSAY. AND I DON'T SEE THAT AN EXCEPTION TO THE  
18 HEARSAY RULE WOULD PERMIT ITS ENTRY INTO EVIDENCE.

19 SO THE OBJECTION WILL BE SUSTAINED.

20 MR. MCMILLAN: THANK YOU, YOUR HONOR.

21 THE COURT: ALL RIGHT. NEXT ONE, I NEED 1089.

22 (A DISCUSSION WAS HELD OFF THE RECORD.)

23 THE COURT: THIS BEGINS, DON, WITH 1085. I  
24 NEED 1084.

25 MS. SWISS: NO, 1089.

26 THE COURT: OH, EXCUSE ME. I AM WRONG. IT IS  
27 1089, YOU DID GIVE ME THE RIGHT BINDER.

28 I MUST SAY THAT I THINK SOMEONE IN YOUR OFFICE

1 IS ALSO VERY FIT, MR. GUTERRES, GETTING BINDERS OF THIS  
2 SIZE PUT TOGETHER.

3 MS. SWISS: WE'VE ALREADY BEEN TOLD SEVERAL  
4 TIMES BY DON NEXT TIME WE'LL HAVE SMALLER BINDERS. AND  
5 I AGREE.

6 THE COURT: ALL RIGHT. THIS IS -- THE FIRST  
7 DOCUMENT IS A THREE-PAGE DECLARATION OF WENDY CRUMP.

8 MR. GUTERRES: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: AND I KNOW SHE WAS QUESTIONED  
10 ABOUT THIS. IN FACT, IT MIGHT HAVE BEEN MR. MCMILLAN  
11 WHO --

12 MR. GUTERRES: IT WAS, YOUR HONOR.

13 MR. MCMILLAN: I MAY VERY WELL HAVE ASKED HER  
14 QUESTIONS ABOUT THE -- WHAT SHE SAID IN IT, YOUR HONOR,  
15 BUT THE.

16 THE COURT: WELL, YEAH. NO, I'M NOT MAKING  
17 THAT STATEMENT AS INDICATING THAT'S A BASIS FOR  
18 ADMISSION.

19 MR. MCMILLAN: OKAY.

20 THE COURT: I WAS JUST RECALLING THAT THERE  
21 HAD BEEN TESTIMONY ABOUT IT, AND AS I WAS THINKING  
22 ABOUT IT, I DO RECALL, IT SEEMS TO ME THAT IN MY  
23 RECOLLECTION, YOU QUESTIONING HER ABOUT THE DOCUMENT.  
24 SO IN ANY EVENT, THAT ISN'T THE ISSUE. THE ISSUE --  
25 THAT WAS JUST A REFERENCE TO MY MEMORY.

26 THE REAL ISSUE IS: IS IT ADMISSIBLE?

27 MR. MCMILLAN: RIGHT. AND PLAINTIFF OBJECTS  
28 THAT, NUMBER ONE, IT'S A DECLARATION THAT SHE FILED IN

1 THIS CASE, SEVEN YEARS AFTER THE EVENTS SHE'S  
2 RECORDING. IT'S A DECLARATION THAT WAS DRAFTED BY  
3 OPPOSING COUNSEL, REVIEWED AND SIGNED BY MS. CRUMP.  
4 AND SHE ACTUALLY TESTIFIED, AT LEAST TO THESE -- WHAT  
5 IS IT -- .2 THROUGH .4, IT'S MY RECOLLECTION THAT THIS  
6 PARROTS PRETTY MUCH HER TESTIMONY, WITH SOME MINOR  
7 EXCEPTIONS. AND IN THAT RESPECT, IN ADDITION TO BEING  
8 HEARSAY, IT WOULD ALSO BE CUMULATIVE OF THE TESTIMONY  
9 SHE'S ALREADY GIVEN AND OTHER PEOPLE HAVE GIVEN ABOUT  
10 THE SAME EVENTS.

11 THE COURT: YEAH, THIS IS OPPOSED TO MANY  
12 DOCUMENTS WHICH ARE SIMPLY A DOCUMENT OF SOMEONE WHO  
13 HAS TESTIFIED. THE NATURE OF THIS DOCUMENT, IT IS  
14 TESTIMONIAL IN NATURE BECAUSE IT IS A DECLARATION UNDER  
15 PENALTY OF PERJURY.

16 SO YOU ARE OBJECTING ON THE GROUNDS OF  
17 CUMULATIVE, HEARSAY --

18 MR. MCMILLAN: CUMULATIVE, HEARSAY, AND  
19 RELEVANCE.

20 THE COURT: -- AND RELEVANCE.

21 WELL, I THINK THE SUBJECT MATTER IS CERTAINLY  
22 RELEVANT. AND I DO -- BUT I DO AGREE, FIRST OF ALL, IT  
23 IS CUMULATIVE TO HER TESTIMONY, AND THAT THE DOCUMENT  
24 ITSELF IS HEARSAY. SO I DON'T, AGAIN, SEE AN EXCEPTION  
25 TO THE HEARSAY RULE TO ADMIT THE DOCUMENT.

26 THIS DOCUMENT -- AND I DO NOTICE IN THE LAST  
27 PAGE THAT SHE HERSELF, WHEN YOU ASKED HER WHEN THIS WAS  
28 PREPARED, THE SIGNATURE SHOWS 2013, 4. THAT HAS THE

1 NUMBER 20134, AND SO SHE COULDN'T REMEMBER FOR WHICH I  
2 DON'T BLAME HER WHETHER THIS WAS DONE IN 2013 OR 2014.

3 BUT I DO SEE THE HEARSAY OBJECTION, AND I  
4 DON'T SEE A REASON TO ADMIT IT. SO THE ANSWER TO THAT  
5 ONE WILL BE NO.

6 NEXT IS -- IN THE REFERENCE YOU'VE GIVEN ME  
7 FOR THE NEXT, MR. GUTERRES, YOU INDICATED 14 TO 17. I  
8 BELIEVE THOSE ARE 1.14 TO 1.17?

9 MR. GUTERRES: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: BECAUSE THOSE ARE HER HANDWRITTEN  
11 NOTES, WHICH AGAIN, SHE WAS ASKED ABOUT. AND SO THESE  
12 ARE -- AND I BELIEVE THAT SHE CERTAINLY DID IDENTIFY  
13 THESE AS BEING HER NOTES, SO I DON'T THINK THERE'S AN  
14 ISSUE OF FOUNDATION. I THINK THE ISSUE -- AND I THINK  
15 THERE IS RELEVANCE TO IT. IT IS TALKING ABOUT THE  
16 CONDITION OF THE MINOR. I THINK THE REAL QUESTION IS  
17 HEARSAY.

18 OR DO YOU WANT THESE IN?

19 MR. MCMILLAN: WELL, THE REAL QUESTION IS  
20 HEARSAY, BUT TO THE EXTENT THE COURT MIGHT BE INCLINED  
21 TO OVERRULE THE OBJECTION, IT'S ALSO INCOMPLETE. AND  
22 IT SHOULD, IF IT DOES COME IN AT ALL -- WHICH, YOU  
23 KNOW, PLAINTIFF DOES OBJECT TO -- BUT IF IT DOES COME  
24 IN AT ALL, IT SHOULD INCLUDE PAGE .18.

25 THAT BEING SAID, THOUGH, PLAINTIFF DOES OBJECT  
26 ON THE BASIS OF --

27 THE COURT: WELL, AGAIN, MR. GUTERRES, I THINK  
28 THIS IS HEARSAY, AND AGAIN, I DON'T SEE AN EXCEPTION

1 THAT WOULD ALLOW US TO RECEIVE THIS, SO.

2 MR. GUTERRES: THAT'S FINE, YOUR HONOR. WE'LL  
3 SUBMIT ON WHATEVER THE COURT RULES.

4 THE COURT: ALL RIGHT. AND SO THE OBJECTION  
5 HEARSAY WILL BE SUSTAINED.

6 THE NEXT ONE IS THE -- ENTRY UNDER THIS  
7 EXHIBIT IS THE CHILD DIET HISTORY QUESTIONNAIRE, WHICH  
8 ON THE LIST YOU GAVE ME STARTS AT 1.9 BUT ACTUALLY THE  
9 FIRST PAGE OF THE QUESTIONNAIRE IS 1.18. THERE'S  
10 NOTHING ON IT, OTHER THAN THE DATE AND THEN A NOTATION  
11 IN THE NEXT LINE, "BIRTH, 6 POUNDS, 12 OUNCES."

12 BUT FOR THE PAGES THAT ARE CITED HERE, I THINK  
13 WE AGAIN HAVE THE SAME ISSUE. I THINK THERE IS A  
14 FOUNDATION. SHE WAS ASKED ABOUT IT. I THINK THERE IS  
15 RELEVANCE. I THINK THE ISSUE AGAIN IS HEARSAY.

16 IS THAT THE OBJECTION?

17 MR. MCMILLAN: AFFIRMATIVE, YOUR HONOR. IT IS  
18 A HEARSAY OBJECTION.

19 THE COURT: AND AGAIN --

20 MR. GUTERRES: YOUR HONOR, IT IS ALSO A  
21 BUSINESS RECORD INASMUCH AS THESE ARE HER NOTES WHICH  
22 WERE TAKEN CONCURRENTLY WITH HER INTERVIEW WITH THE  
23 FAMILY.

24 THE COURT: THE -- I DON'T RECALL IN HER  
25 TESTIMONY THAT SHE WAS ASKED ALL THE QUESTIONS  
26 NECESSARY TO SATISFY THE REQUIREMENTS FOR BUSINESS  
27 RECORD UNDER EVIDENCE CODE SECTION 1271. AND IN  
28 ADDITION, EVEN IF THERE WAS THAT TESTIMONY -- AND I

1       REALLY DON'T BELIEVE THERE WAS -- BUT IF THERE WAS,  
2       BUSINESS RECORDS ARE ADMISSIBLE ONLY TO THE EXTENT THEY  
3       ARE A RECORD OF AN ACT, CONDITION, OR EVENT.  AND I  
4       DON'T SEE IN THESE PAGES AN ACT, CONDITION, OR EVENT.

5               MS. SWISS:  YOUR HONOR, I WILL LOOK FOR THE  
6       TESTIMONY OF MS. CRUMP, IF WE CAN MOVE ON, AND SEE IF  
7       THERE IS EVIDENCE THAT SHE DID LAY AN ADEQUATE  
8       FOUNDATION.  BUT THE ARGUMENT WOULD BE THAT SHE WAS  
9       RECORDING THE EVENT OF MS. DUVAL RELAYING THE 24-HOUR  
10      FOOD INTAKE THAT FORMED THE BASIS FOR MS. CRUMP'S  
11      INITIAL OPINION THAT THE BABY WAS ONLY RECEIVING 30 TO  
12      50 PERCENT OF THE REQUIRED CALORIES AND ULTIMATELY  
13      CONTRIBUTED TO HER CALLING THE DCFS HOT LINE.  SO I  
14      WILL LOOK TO SEE IF THERE IS A FOUNDATION BUT THAT  
15      WOULD BE THE ARGUMENT FOR THE EXCEPTION TO THE HEARSAY  
16      RULE.

17              THE COURT:  WELL, YOU CAN GO AHEAD AND LOOK  
18      FOR THE TESTIMONY AND -- YOU'RE LEAVING MR. GUTERRES  
19      ALMOST ON HIS OWN TO ADDRESS THESE WHILE YOUR ATTENTION  
20      IS DIVERTED.

21              MS. SWISS:  DOING THE BEST I CAN.

22              THE COURT:  BUT HE CAN HANDLE IT, SO.

23              WE'LL TAKE AN APPROXIMATE 10-MINUTE RECESS AT  
24      THIS TIME.

25              (RECESS)

26              THE COURT:  BACK ON THE RECORD AND COUNSEL ARE  
27      PRESENT.

28              THE NEXT EXHIBIT TO BE ADDRESSED IS ALSO PART

1 OF EXHIBIT 1089, AND IT'S PAGE 125.

2 MR. GUTERRES: .25.

3 THE COURT: 1.25.

4 MR. GUTERRES: .25.

5 THE COURT: ALL RIGHT. I DON'T HAVE A .25.

6 MR. GUTERRES: 189.25, THE FOOD LOG.

7 THE COURT: THE FOOD LOG IS MARKED AS 1.25 IN  
8 MY BOOK.

9 MR. GUTERRES: AT THE BOTTOM, YOUR HONOR,  
10 EXHIBIT 1089.25.

11 THE COURT: IT IS THE -- NO. IT IS -- I'M  
12 SORRY.

13 THE FOOD LOG IN QUESTION IS EXHIBIT 1089.25,  
14 SINGLE-PAGE DOCUMENT. IT'S NOT, BUT THAT'S THE ONE  
15 THAT'S IDENTIFIED, THE ONE PAGE. THERE'S OTHER  
16 PARTS -- THE FOOD LOG IS ALL I'M STATING.

17 MR. GUTERRES: ALL RIGHT.

18 THE COURT: AND THE OBJECTION TO THIS,  
19 MR. MCMILLAN, IS?

20 MR. MCMILLAN: THE OBJECTION ON 1089.25 IS,  
21 NUMBER ONE, THERE'S NO FOUNDATION AS TO THE TYPEWRITTEN  
22 MATERIAL THERE. AND THEN THE HANDWRITTEN MATERIAL  
23 WOULD BE HEARSAY, AND IN ANY EVENT THE ENTIRE DOCUMENT  
24 IS CUMULATIVE OF TESTIMONY. ACTUALLY, THE WHOLE THING  
25 IS HEARSAY. BUT AS I RECALL, SHE -- MS. CRUMP  
26 TESTIFIED AS TO HER HANDWRITING, BUT I DON'T -- I DON'T  
27 BELIEVE THAT SHE'S ACTUALLY ABLE TO LAY THE FOUNDATION  
28 FOR THE PORTION THAT IT'S ALLEGED MS. DUVAL CREATED.



1           AND THEN, SECONDARILY, IF IT DOES COME IN,  
2           THERE ARE TWO PAGES BEFORE IT, IT'S 1089.24 AND  
3           1089.23 --

4           THE COURT:   WELL --

5           MR. MCMILLAN:   ACTUALLY, I'M NOT SURE IF  
6           THOSE --

7           THE COURT:   THERE'S AN OBJECTION TO THE  
8           DOCUMENT OFFERED, WHICH IS .25.   THE OBJECTIONS WERE  
9           FOUNDATION; I DO NOT AGREE AS TO FOUNDATION OF THE  
10          TYPEWRITTEN MATERIAL THERE.   SHE TESTIFIED THAT SHE HAD  
11          GIVEN THIS TO MS. DUVAL.   THIS IS WHAT MS. DUVAL HAD  
12          RETURNED TO HER.   SO I THINK THERE'S RELEVANCE.   BUT  
13          THE DOCUMENT AS TO THE HANDWRITTEN PORTIONS IS HEARSAY.  
14          AND I'M NOT AWARE OF A HEARSAY EXCEPTION WHICH PERMITS  
15          IT TO BE RECEIVED.

16          SO THE OBJECTION WILL BE SUSTAINED.

17          THE NEXT DOCUMENT OFFERED IS 1089.42,  
18          HIGH-CALORIE TIPS, WHICH IS A PRINTED DOCUMENT.   AND  
19          MS. CRUMP DID TESTIFY TO THE DOCUMENT.

20          THE OBJECTION TO THIS, MR. MCMILLAN?

21          MR. MCMILLAN:   THE OBJECTION, YOUR HONOR,  
22          NUMBER ONE, IT'S INCOMPLETE.   I THINK THE DOCUMENT  
23          ACTUALLY, IF WE'RE GOING TO OFFER IT TO THE JURY AT  
24          ALL, IT SHOULD INCLUDE 1089.43.   BUT ASIDE FROM THAT,  
25          IT'S CUMULATIVE OF HER TESTIMONY.

26          AND I HAVE A HEARSAY OBJECTION, BUT IT'S THE  
27          COMMUNICATION OF THE LIST TO MS. DUVAL.   AND THE  
28          QUESTION I WOULD HAVE IS THE COMMUNICATIVE EVENT WOULD

1 HAVE BEEN THE ALLEGED GIVING TO HER OF THE FOOD  
2 RECOMMENDATIONS CONTAINED ON THE LIST. SO WE DO  
3 MAINTAIN A HEARSAY OBJECTION, BUT IT'S ALSO CUMULATIVE  
4 AND INCOMPLETE.

5 THE COURT: THE DOCUMENT IS NOT HEARSAY. IT  
6 DOES NOT PROFESS TO STATE ANYTHING. THERE IS A  
7 FOUNDATION FOR THE DOCUMENT BECAUSE THE DOCTOR  
8 TESTIFIED TO IT. IT IS -- SHE DID TESTIFY TO THE  
9 DOCUMENT, DID NOT TESTIFY TO ALL MATTERS THEREON, SO --  
10 AND CUMULATIVE DOES NOT AUTOMATICALLY DISQUALIFY A  
11 DOCUMENT.

12 HOWEVER, IT IS CORRECT THAT IT IS INCOMPLETE.  
13 PAGE 1089.43 IS THE SECOND PAGE OF THE DOCUMENT. AND  
14 IF YOU OFFER THE ENTIRE DOCUMENT, BOTH PAGES, THE  
15 OBJECTION WILL BE OVERRULED, AND IT WILL BE RECEIVED.

16 MR. GUTERRES: THAT'S FINE, YOUR HONOR. WE'LL  
17 REQUEST BOTH .42 AND .43, YOUR HONOR.

18 THE COURT: ALL RIGHT. THE NEXT EXHIBIT IS  
19 1257.

20 THE OBJECTION TO THIS, MR. MCMILLAN?

21 MR. MCMILLAN: YES, YOUR HONOR.

22 THE OBJECTION IS -- AND AS I RECALL THIS IS  
23 GOING TO BE THE DOJ RETURN ON INQUIRY OR -- I DON'T  
24 REMEMBER THE EXACT NAME OF THE DOCUMENT BUT IT WAS  
25 SOMETHING LIKE THAT.

26 THE COURT: YES, MY RECOLLECTION OF THE  
27 DOCUMENT IS WHAT YOU'RE SAYING, THAT THE WITNESS SAID  
28 THAT THE INQUIRY WAS MADE TO WHAT THEY REFER TO AS

1 CACI, THE CHILD ABUSE CENTRAL INDEX, AND THEY RECEIVED  
2 THIS DOCUMENT AFTER HAVING MADE THAT INQUIRY.

3 MR. MCMILLAN: RIGHT. THE PLAINTIFF OBJECTS  
4 ON THE BASIS THAT THE DOCUMENT ITSELF IS HEARSAY, THAT  
5 THE FOUNDATION FOR THE DOCUMENT TO BE ADMITTED INTO  
6 EVIDENCE IS INADEQUATE. AND AS I RECALL, MS. LERUE  
7 TESTIFIED THAT SHE HERSELF DID NOT DO ANYTHING; SHE  
8 INSTRUCTED SOME STAFF MEMBER TO DO SOMETHING, AND A  
9 STAFF MEMBER RETURNED WITH THE DOCUMENT. IN  
10 PLAINTIFF'S VIEW, IT SHOULD HAVE BEEN THE STAFF MEMBER  
11 TESTIFYING AS TO WHAT HAPPENED THERE TO LAY THE  
12 FOUNDATION FOR THE DOCUMENT.

13 IN ADDITION, AND PERHAPS MORE IMPORTANTLY,  
14 IT'S NO LONGER RELEVANT TO ANY CLAIM IN THE CASE. WITH  
15 THE JUDICIAL DECEPTION CLAIMS OUT OF THE CASE,  
16 PLAINTIFF COULD NOT REASONABLY MAKE THE ARGUMENT THAT  
17 THERE WAS NO BASIS FOR A SUBSTANTIATED CLAIM OF CHILD  
18 ABUSE. SO WE CAN'T COME IN AND CLAIM THAT SORT OF  
19 REPUTATIONAL INJURY NOW BECAUSE THE PART OF THE CASE  
20 THAT WOULD HAVE ALLOWED FOR THAT AS A MEASURE OF  
21 DAMAGES IS GONE. SO IT'S ALSO NO LONGER RELEVANT.

22 THE COURT: WELL, AS TO THE LATTER STATEMENT  
23 YOU MADE -- I'LL HEAR FROM MR. GUTERRES BEFORE I GO  
24 AHEAD.

25 MR. GUTERRES: YOUR HONOR, THE CONCERN I HAVE  
26 IS THAT A GOOD CHUNK OF MR. COX'S TESTIMONY AND THEN  
27 MS. DUVAL'S TESTIMONY SPOKE ABOUT CACI AND ALL THE  
28 DAMAGES RELATED TO CACI. AND THAT'S OUT THERE FOR THE

1 JURY TO CONSIDER IN ANSWERING DAMAGE QUESTIONS. AND MY  
2 CONCERN IS, WITHOUT HAVING SOME DOCUMENTS THAT SHOW  
3 THAT SHE'S NOT, I'M CONCERNED WHAT THE JURY IS GOING TO  
4 CONSIDER IN AWARDING DAMAGES.

5 THE COURT: WELL, YOU ALREADY HAVE THE  
6 TESTIMONY THAT THE RESPONSE WAS RECEIVED AND THE  
7 RESPONSE SHOWED THAT SHE WAS NOT ON THEIR INDEX. IT IS  
8 TRUE THAT THERE WAS THAT EVIDENCE, AND -- ABOUT THE  
9 HARM WHEN YOU HAVE YOUR NAME ON THE INDEX AND HOW THAT  
10 WOULD LIMIT THINGS YOU COULD DO. AND I THINK -- DIDN'T  
11 MS. DUVAL EVEN TESTIFY ABOUT LIMITING HER ABILITY TO BE  
12 AT HER CHILD'S SCHOOL?

13 MR. GUTERRES: YES, CAN'T VOLUNTEER AND NO  
14 LONGER DOES ANY WORK FOR HER LOCAL HOMELESS OR --

15 THE COURT: RIGHT.

16 MR. GUTERRES: -- CHILDREN'S SHELTER.

17 MR. MCMILLAN: YOUR HONOR, THOSE ARE NO LONGER  
18 CLAIMS FOR DAMAGES IN THIS CASE.

19 THE COURT: WELL, WE DO HAVE A CLAIM FOR  
20 EMOTIONAL DISTRESS.

21 MR. MCMILLAN: WELL, WE DO, BUT IT'S EMOTIONAL  
22 DISTRESS IN A VERY SPECIFIC SENSE. IN THE SENSE OF THE  
23 SEIZURE AND THEN IN THE SENSE OF ABUSE BY -- OR ALLEGED  
24 ABUSE BY MS. SCHEELE.

25 AND THEN ON THE DISCRIMINATION SIDE, AT LEAST  
26 INsofar AS I UNDERSTAND THOSE CLAIMS -- AND I DON'T  
27 PROFESS TO HAVE ANY PARTICULAR EXPERTISE THERE -- BUT  
28 THE INJURY THAT HE'S TALKING ABOUT THERE IS NOT BASED,

1       INSOFAR AS I UNDERSTAND IT, ON ANYTHING RELATING TO HER  
2       ABILITY IN THE FUTURE TO WORK WITH CHILDREN OR ANYTHING  
3       LIKE THAT. THAT PORTION -- AT LEAST IN MY WAY OF  
4       THINKING, THAT PORTION OF THE DAMAGES CLAIM SORT OF  
5       DIED ALONG WITH THE JUDICIAL DECEPTION CLAIM. BECAUSE  
6       IF THE -- IF THE RESULTS OF THE UNDERLYING DEPENDENCY  
7       ACTION ARE DEEMED TO HAVE BEEN SUPPORTED IRRESPECTIVE  
8       OF THE SUPPRESSED EXCULPATORY EVIDENCE AND THE ALLEGED  
9       FABRICATIONS, THEN THERE CAN BE NO CLAIM THAT SOMEHOW  
10      HER INABILITY TO CONTINUE WORKING WITH CHILDREN WAS  
11      DAMAGED BECAUSE THE RESULTS OF THE OUTCOME OF THE  
12      HEARING ARE WHAT THEY ARE AND THERE'S NO CHALLENGING  
13      IT. SO IN THAT SENSE, AT LEAST IN MY VIEW, THAT  
14      ELEMENT, THAT ITEM OF CLAIMED DAMAGE THAT ARISES FROM  
15      THE CACI IS COMPLETELY OFF THE TABLE.

16               AND IT RAISES ANOTHER ISSUE IN TERMS OF  
17      ARGUMENT: IF THE JURY IS GOING TO GET THIS DOCUMENT  
18      BACK IN THE ROOM AND IS GOING TO BE ABLE TO GO THROUGH  
19      IT AND LOOK AT IT AND MAKE THEIR OWN ASSESSMENTS, THEN  
20      I NEED TO BE ABLE TO ADDRESS THE DOCUMENT ITSELF IN  
21      CLOSING, AND THEN WE'RE GOING TO GET INTO SORT OF A  
22      BACKHANDED WAY OF TALKING ABOUT THE DAMAGE THAT SHE  
23      WOULD HAVE SUFFERED BY BEING ON THE LIST. IF YOUR  
24      HONOR REMEMBERS, THERE WAS TESTIMONY FROM MS. LERUE  
25      THAT, IN FACT, THE COUNTY HAS THE ABILITY TO GO BACK TO  
26      THE CENTRAL CALIFORNIA JUSTICE DEPARTMENT CENTRAL INDEX  
27      AND REQUEST THAT PEOPLE BE REMOVED FROM IT. AND IF IT  
28      WERE TO COME UP, YOU KNOW, WE'RE GOING TO HAVE TO GET

1 INTO THAT TESTIMONY. WE'RE GOING TO HAVE TO TALK ABOUT  
2 HOW IT ONLY TAKES 24 HOURS AND AN E-MAIL.

3 AND I JUST THINK IT LEADS US DOWN A PATH WHERE  
4 WE REALLY DON'T NEED TO BE IN THE CASE, AND IT JUST  
5 DOESN'T HAVE RELEVANCE TO ANY DAMAGE ISSUE THAT'S STILL  
6 IN PLAY.

7 THE COURT: WELL, I CERTAINLY AGREE THAT I  
8 DON'T THINK IT'S A PATHWAY WE NEED TO GO DOWN. THE  
9 PROBLEM WAS YOU'RE THE ONE WHO ELICITED THE TESTIMONY  
10 ABOUT HOW SHE -- THE TESTIMONY WAS THAT SHE WOULD BE ON  
11 THE LIST, SHE WAS ON THE LIST.

12 MR. MCMILLAN: UH-HUH.

13 THE COURT: AND SHE'S NOT. AND SO YOU'RE  
14 TALKING ABOUT, WELL, MAYBE -- NOT MAYBE -- THEY COULD  
15 STILL DO IT BUT THEY HAVEN'T. AND AT LEAST THERE'S NO  
16 EVIDENCE THAT THEY HAVE. SO ONE OF THE PROBLEMS WE  
17 HAVE IN THE CASE IS YOU PRESENTED THE EVIDENCE, AND  
18 THEN SAY WELL, WE DON'T REALLY NEED TO GO DOWN THAT  
19 PATH, BUT YOU'RE LEAVING THEM WITH -- NOW, THEY DO HAVE  
20 TESTIMONY.

21 MR. MCMILLAN: THEY DO.

22 THE COURT: THE DOCUMENT IS NOT THE -- IS  
23 NOT -- BECAUSE THERE IS TESTIMONY, IT'S NOT AS THOUGH  
24 THEY'RE WITHOUT EVIDENCE. AND I THINK THAT, THAT IN  
25 TERMS OF RULING ON THE ADMISSIBILITY OF THE EXHIBIT IS  
26 A DIFFERENT QUESTION. I THINK THERE IS RELEVANCE OF  
27 THE DOCUMENT, BUT I DO AGREE THAT THE TESTIMONY OF THE  
28 WITNESS, THIS IS NOT SOMETHING THAT SHE SOLICITED

1 HERSELF BUT HAD SOMEONE UNDER HER DIRECTION DO IT, AND  
2 THAT PERSON APPARENTLY DIDN'T RETURN THE DOCUMENT TO  
3 HER.

4 I DON'T THINK THAT'S A SUFFICIENT FOUNDATION  
5 FOR THE BASIS OF THE DOCUMENT, AND THEREFORE, THE  
6 OBJECTION WILL BE SUSTAINED.

7 BUT I DO HAVE A CONCERN ABOUT THE BROAD SCOPE  
8 OF ISSUES THAT HAVE BEEN PRESENTED, INCLUDING EVEN SOME  
9 OF THE ARGUMENTS THAT HAVE BEEN MADE ABOUT RELEVANCE OF  
10 CERTAIN THINGS AND WHAT THE CLAIMS ARE GOING TO BE  
11 BASED ON. BUT THERE IS EVIDENCE, MY RULING IS THE  
12 RULING, AND THERE IS TESTIMONY.

13 MR. GUTERRES: YOUR HONOR, YOU KNOW, AND I AM  
14 CONCERNED AS WELL AND I SHARE IN THOSE CONCERNS, YOU  
15 KNOW, WHICH IS ONE OF THE REASONS I THINK THERE HAS TO  
16 BE -- WE WOULD BE ASKING THE COURT FOR SOME KIND OF  
17 INSTRUCTION BECAUSE IT SEEMS TO ME THAT WE WERE LIMITED  
18 IN OUR ABILITY TO EXAMINE ON CERTAIN SUBJECTS BASED ON  
19 OBJECTIONS BY PLAINTIFF'S COUNSEL ON RELEVANCE. AND  
20 NOW IT LOOKS LIKE A LOT OF THOSE SAME ARGUMENTS ARE  
21 BEING BROUGHT IN THROUGH THE BACK DOOR, AS I FEEL,  
22 THROUGH THE INTENTIONAL INFLICTION CLAIMS AGAINST  
23 MS. SCHEELE AND THEN THE DISABILITY CLAIMS. WE'RE KIND  
24 OF GOING BACK TO A LOT OF THE ARGUMENTS ON THE JUDICIAL  
25 DECEPTION. SO I THINK THAT A 5007 IS CERTAINLY GOING  
26 TO BE SOMETHING THAT WE WOULD LIKE TO CRAFT FOR  
27 PRESENTATION AND CONSIDERATION TO THE COURT.

28 THE COURT: WELL, I TOLD YOU THAT I THINK THE

1 5007 SHOULD BE GIVEN. MY RULING IS AS I'VE STATED.  
2 THERE WAS AN OPPORTUNITY IN THE EVIDENCE TO BE ABLE TO  
3 CROSS-EXAMINE SOME WITNESSES, AND I DO NOT REMEMBER ANY  
4 SUSTAINING OF ANY OBJECTION TO EITHER ASKING MS. DUVAL  
5 "HAVE YOU EVER CHECKED TO SEE IF YOU'RE ON THE LIST?"  
6 THE LAWYER WHO TESTIFIED ABOUT IT DIDN'T SAY SHE WAS,  
7 JUST SAID SOMETHING TO THE EFFECT -- I CAN LOOK BACK IN  
8 MY NOTES. THE IMPLICATION OF HIS TESTIMONY WAS THAT  
9 SHE WOULD BE ON THE LIST. AND SHE GAVE TESTIMONY ABOUT  
10 HOW THIS WAS DISTRESSFUL TO HER TO BE ON THE LIST. I'D  
11 BETTER NOT HEAR AN ARGUMENT TO THAT EFFECT. THAT WOULD  
12 BE -- THAT WOULDN'T BE RIGHT.

13 MR. MCMILLAN: YOUR HONOR, JUST TO ALLAY YOUR  
14 CONCERNS, I HAVE ABSOLUTELY NO INTENTION OF DISCUSSING  
15 THE CACI INDEX LIST AT ALL, IN ANY RESPECT, CERTAINLY  
16 IN, YOU KNOW, MY PORTION OF THE FIRST CLOSE. AND THE  
17 ONLY WAY IT WOULD COME UP IN REBUTTAL IS IF  
18 MR. GUTERRES SOMEHOW RAISES IT ON SOME ISSUE AND I HAVE  
19 TO ADDRESS IT.

20 THE COURT: WELL, I DON'T THINK HE'S GOING TO  
21 OPEN THAT DOOR, BUT WE'LL WAIT AND SEE.

22 MR. MCMILLAN: AND JUST SO IT'S CLEAR, I KNOW  
23 MR. PRAGER IS NOT HERE, BUT I WILL MAKE SURE TO  
24 COMMUNICATE THAT TO HIM AS WELL, THAT THE CACI IS  
25 COMPLETELY OUT OF THE --

26 THE COURT: YEAH, THAT WOULD BE GREATLY  
27 APPRECIATED IF YOU CAN DO THAT.

28 ALL RIGHT. NOW, WE'RE STILL -- WE'RE STILL



1       LOOKING AT 82 AND 24.

2               AND, LOOK, AS YOU KNOW, I'VE PUT THE JURY OFF  
3 UNTIL MONDAY. IT JUST SIMPLY HAS TO GO. WE'RE GOING  
4 TO LOSE, REMEMBER, ANOTHER JUROR, MANZANO, NO. 7 OR 8,  
5 WILL BE -- WOULDN'T HAVE TO NECESSARILY BE EXCUSED FROM  
6 THE CASE ENTIRELY IN AN EMERGENCY BUT REMEMBER IT'S HER  
7 MOTHER'S SURGERY WILL BE ON WEDNESDAY, THE 2ND. YOU  
8 RECALL WE'VE LET HER GO EARLY ON A COUPLE OF OCCASIONS  
9 TO TAKE HER MOTHER OUT TO CITY OF HOPE. THAT'S NEVER A  
10 VISIT THAT ANY OF US COULD EVER WANT TO MAKE. SO  
11 CERTAINLY WE WOULD LET HER GO. I'M HOPING IT WON'T BE  
12 NECESSARY, BUT OUR PRESENT TIMING, I MAY HAVE TO. I  
13 DON'T KNOW WHAT -- I'M NOT PLANNING ON DOING IT RIGHT  
14 NOW, BUT NOW THEY'RE GOING TO HAVE ONE DAY OF  
15 DELIBERATION BEFORE SHE'S GOING TO HAVE TO ACCOMPANY  
16 HER MOTHER. AND I DON'T KNOW WHAT ELSE SHE'S GOING TO  
17 NEED TO DO TO TAKE CARE OF HER MOTHER.

18               WE MIGHT VERY WELL HEAR ABOUT THAT FURTHER,  
19 AND WE'LL ADDRESS IT WHEN WE DO.

20               OF THE REMAINING EXHIBITS, ON 24 AND 82, WE'RE  
21 GOING TO HAVE TO GET THAT BUTTONED DOWN. I'M NOT GOING  
22 TO SPEND MORE TIME ON THE EXHIBITS IN THIS CASE. I'M  
23 OBVIOUSLY GOING TO RULE ON THEM, AND I'M HAPPY TO HEAR  
24 FROM YOU, BUT WE'VE REACHED THE POINT WHERE WE DON'T  
25 HAVE THE LUXURY OF A GREAT DEAL OF DELIBERATION OR A  
26 GREAT DEAL OF ARGUMENT.

27               WE DID HAVE ONE OTHER WHICH WAS STILL -- THAT  
28 HAD NOT BEEN ADDRESSED, AND THAT WAS 327.

1 MR. PARIS: YES, THAT'S THE TITLE IV-E  
2 FINDINGS. PLAINTIFF WOULD OFFER THAT MOVED TO  
3 EVIDENCE.

4 MS. SWISS: YOUR HONOR?

5 THE COURT: YES.

6 MS. SWISS: 327 DOES NOT APPEAR TO BE MARKED  
7 FOR IDENTIFICATION ON THE MOST RECENT LIST.

8 THE COURT: MR. PARIS?

9 MR. PARIS: I CAN SOLVE THAT. IT WAS  
10 IDENTIFIED DURING THE DEPOSITION READ OF BETH MINOR AS  
11 COUNTY PMK. IT'S MINOR'S EXHIBIT 24.

12 MS. SWISS: ALL RIGHT. I'VE GOT THE DOCUMENT  
13 IN FRONT OF ME. THIS IS A CHART WHERE THERE'S NO  
14 FOUNDATION LAID FOR IT. THE DOCUMENT APPEARS TO BE  
15 LEGAL CITATIONS. MS. MINOR WOULD NOT BE ABLE TO LAY  
16 THE FOUNDATION FOR THAT HERSELF AS A NONATTORNEY. AND  
17 TO THE EXTENT THAT THE JURY WILL BE INSTRUCTED ON THE  
18 LAW, THAT WOULD COME FROM THE COURT, NOT FROM THIS  
19 DOCUMENT OR THE TESTIMONY OF ANY WITNESSES.

20 THE COURT: YEAH, I AGREE. THE OBJECTION IS  
21 SUSTAINED. IT WILL NOT BE RECEIVED.

22 ALL RIGHT. I'M LOOKING AT THE DECLARATION OF  
23 RYAN MILLS, WHICH IS PART OF EXHIBIT 24. AND I HAVE  
24 THE TWO VERSIONS THAT ARE GIVEN TO ME EARLIER; I'M NOT  
25 SURE WHICH ONE IS THE PLAINTIFF'S, WHICH ONE IS THE  
26 DEFENDANT'S. ALTHOUGH I BELIEVE THE PLAINTIFF'S ONE IS  
27 THE ONE WITH THE -- SOME SUBSTANTIAL PARAGRAPHS. SO  
28 LET'S GO THROUGH IT -- SUBSTANTIAL PARAGRAPHS REDACTED.

1 THE DOCUMENTS GIVEN TO ME ARE THE SAME ON  
2 PAGES 1 AND 2.

3 GETTING OVER TO PAGE 3, ONE VERSION HAS, OTHER  
4 THAN THE FIRST LINE AND PART OF A SECOND LINE, THE  
5 REMAINDER OF THE ENTIRE PAGE REDACTED. THE OTHER  
6 VERSION HAS WHAT APPEARS TO BE PAGE 3 IN IT ENTIRETY.

7 FIRST OF ALL, TELL ME WHICH VERSION IS WHOSE.

8 MR. PARIS: THE VERSION WITH THE MORE  
9 SUBSTANTIAL REDACTIONS IS OUR VERSION, YOUR HONOR.

10 THE COURT: OKAY. SO ON PAGE 3, YOU'VE  
11 REDACTED ALL BUT THAT FIRST LINE AND PART OF THE NEXT  
12 LINE.

13 MR. PARIS: THAT'S CORRECT.

14 THE COURT: AND YOUR PROPOSED REDACTION GOES  
15 OVER TO THE MIDDLE OF PAGE 4; CORRECT?

16 MR. PARIS: THAT'S CORRECT.

17 THE COURT: SO THIS DECLARATION WHICH ON  
18 PAGE 8, THE LAST PAGE, PURPORTS TO HAVE BEEN SIGNED IN  
19 JUNE OF 2009, AND THE DECLARATION WAS PART OF  
20 EXHIBIT 24, THE SUBMISSION OF THE  
21 JURISDICTION/DISPOSITION REPORT. AND THE DECLARATION  
22 WAS OBVIOUSLY PREPARED AND FILED IN THE FAMILY LAW  
23 CASE.

24 MR. MCMILLAN: YOUR HONOR?

25 THE COURT: YES.

26 MR. MCMILLAN: I PRESUME THAT IT WAS FILED IN  
27 THE FAMILY LAW CASE, BUT.

28 THE COURT: WELL, IT BEARS THE CAPTION.

1 MR. MCMILLAN: WELL, IT DOES HAVE THE CAPTION,  
2 BUT I DON'T SEE A FILE-STAMPED OR A CONFORMED --

3 THE COURT: WELL, ALL RIGHT. I DON'T THINK  
4 THAT'S IMPORTANT TO ANY DECISION THAT I WOULD MAKE,  
5 WHETHER IT WAS OR NOT. BUT PERHAPS IT DOES MAKE A  
6 DIFFERENCE, AND IF SO WE CAN ORDER THE FAMILY LAW FILE  
7 AND DETERMINE WHETHER OR NOT IT WAS FILED.

8 MR. MCMILLAN: WE DON'T NEED TO DO THAT.

9 THE COURT: I'M NOT EVEN SURE AT THIS POINT,  
10 I'M SORRY, WHOSE OFFERING THIS DECLARATION?

11 YOU ARE?

12 MR. GUTERRES: THE DEFENSE IS OFFERING -- IT  
13 HAD PREVIOUSLY BEEN ADMITTED FOR A LIMITED PURPOSE. WE  
14 ACTUALLY PUBLISHED THIS PAGE, PAGE 3 TO THE -- PAGE 2  
15 AND PAGE 3 TO THE JURY, AND I QUESTIONED MR. MILLS  
16 ABOUT THE INFORMATION CONTAINED THEREIN. HE LAID THE  
17 FOUNDATION FOR THIS DOCUMENT AS BEING ONE OF THE  
18 DOCUMENTS THAT HE SUBMITTED IN THE FAMILY COURT MATTER.  
19 AND THEN WAS GIVEN TO THE -- TO DCFS.

20 THE COURT: RIGHT.

21 MR. GUTERRES: SO WE ARE ASKING THAT IT BE  
22 INCLUDED FOR THE LIMITED PURPOSE AGAIN, ALONG WITH ALL  
23 OF EXHIBIT 24, OR THOSE PORTIONS THAT THE COURT IS  
24 ALLOWING, FOR THE LIMITED PURPOSE OF SHOWING WHAT  
25 INFORMATION WAS IN THE POSSESSION OF THE DEPARTMENT  
26 RELATIVE TO THE ISSUES OF FEEDING AND WHAT WAS BEING  
27 REPORTED AND WHAT INFORMATION THAT THE DEPARTMENT HAD  
28 RELATIVE TO THE ISSUES WITH REGARD TO GETTING THE CHILD

1 PROPER MEDICAL CARE AS WELL AS CLAIMS ABOUT WHY  
2 MS. DUVAL WASN'T FEEDING HIM CERTAIN FOODS.

3 AND THESE ARE ALL CONSISTENT WITH WHAT WAS  
4 BEING REPORTED TO DCFS AT THE TIME BOTH BEFORE THE  
5 DETENTION AND AFTER THE DETENTION.

6 MR. MCMILLAN: YOUR HONOR, WE DON'T HAVE A  
7 FOUNDATIONAL OBJECTION TO IT.

8 THE COURT: ALL RIGHT.

9 MR. MCMILLAN: THE OBJECTION THAT WE'VE  
10 INTERPOSED IS HEARSAY AND 352, UNDULY PREJUDICIAL, AND  
11 CUMULATIVE. AND TO THE EXTENT THOSE OBJECTIONS ARE NOT  
12 SUSTAINED OR ANY OF THOSE ARE NOT SUSTAINED, WE HAVE  
13 PROPOSED SPECIFIC REDACTIONS OF WHAT WE BELIEVE WOULD  
14 BE THE PARTICULARLY UNDULY PREJUDICIAL MATERIAL.

15 AND ASIDE FROM THAT, I REALLY DON'T HAVE MUCH  
16 TO ADD TO THE DISCUSSION OR ARGUMENT.

17 MR. GUTERRES: YOUR HONOR, EXHIBIT 1064,  
18 JVCT919 THROUGH 923, IS ACTUALLY MS. DUVAL'S  
19 DECLARATION IN RESPONSE TO MR. MILLS, WHICH IS -- WHICH  
20 HAS BEEN RECEIVED BY THE COURT. SO THERE WOULD BE NO  
21 352 ARGUMENT BECAUSE IN FACT MS. DUVAL'S DECLARATION IS  
22 ALREADY IN THAT ADDRESSES HER RESPONSE TO MR. MILLS'S  
23 DECLARATION IN THE SAME FAMILY LAW MATTER.

24 MR. MCMILLAN: YEAH, YOUR HONOR, IN LOOKING AT  
25 THE 1064, I DON'T THINK THAT DIMINISHES SUBSTANTIALLY  
26 THE -- AGAIN, THIS DECLARATION BY MR. MILLS, JUST IN  
27 READING IT, IT'S REALLY A VITRIOLIC DIATRIBE ATTACKING  
28 MOTHER, CALLING HER A LIAR, ALL SORTS OF THINGS THAT

1 JUST IN PLAINTIFF'S VIEW IT SEEMS LIKE --

2 THE COURT: ALL RIGHT.

3 DON, LET ME SEE 1064, PLEASE.

4 (A DISCUSSION WAS HELD OFF THE RECORD.)

5 THE COURT: SO YOU OFFERED, MR. GUTERRES, BOTH  
6 DECLARATIONS, RYAN MILLS AND THEN MS. DUVAL'S RESPONSE,  
7 AND THEY STIPULATED TO HER RESPONSE.

8 BUT IF I UNDERSTAND CORRECTLY, YOU'RE  
9 OBJECTING TO THE DOCUMENT TO WHICH SHE WAS RESPONDING?

10 MR. MCMILLAN: GIVE ME ONE SECOND TO LOOK,  
11 YOUR HONOR. I'M NOT SURE WHETHER THIS WAS INCLUDED IN  
12 EXHIBIT 24, MS. DUVAL'S RESPONSE. I NEED TO LOOK AT  
13 THAT.

14 MS. SWISS: MS. DUVAL'S RESPONSE WAS INCLUDED  
15 IN EXHIBIT 24, EXCEPT IN EXHIBIT 24 IT'S THE UNSIGNED  
16 VERSION. I SPECIFICALLY QUESTIONED MS. DUVAL IN  
17 CROSS-EXAMINATION ON EXHIBIT 1064, AND SHE  
18 AUTHENTICATED HER DECLARATION WITH THE SIGNATURE. WE  
19 DON'T KNOW WHY THE UNSIGNED VERSION WAS ATTACHED TO 24.

20 MR. MCMILLAN: THIS IS THE PROBLEM I HAVE,  
21 YOUR HONOR, IS THAT IF THE ONE COMES IN AS PART OF  
22 EXHIBIT 24 AND THE OTHER DOES NOT, THEN THAT HAS THE  
23 POTENTIAL OF CAUSING CONFUSION WHEN THE EVIDENCE IS  
24 BEING PRESENTED OR REVIEWED BY THE JURY. SO I'M NOT  
25 SURE EXACTLY HOW TO DEAL WITH THAT PROBLEM.

26 MS. SWISS: COUNSEL, MR. GUTERRES JUST PULLED  
27 THE VERSION OF MS. DUVAL'S DECLARATION FROM EXHIBIT 24,  
28 AND I STAND CORRECTED. IT'S BATES 631 TO 636, AND IT

1 DOES APPEAR THAT IT IS THE SIGNED VERSION OF HER  
2 DECLARATION IN RESPONSE TO MR. MILLS, AND IT LOOKS LIKE  
3 IT'S IMMEDIATELY AFTER -- OR NO. IT LOOKS LIKE IT'S  
4 WITHIN A FEW PAGES OF THE DECLARATION OF MR. MILLS  
5 ATTACHED TO EXHIBIT 24. SO MAYBE THAT SOLVES THE  
6 PROBLEM.

7 MR. MCMILLAN: SO WHAT ARE WE -- I'M CONFUSED  
8 NOW. SO CORRECT ME IF I'M WRONG, BUT THE ONE THAT  
9 YOU'RE LOOKING TO ADMIT IS 615 THROUGH 623; CORRECT?

10 MR. GUTERRES: 631 THROUGH 636.

11 MS. SWISS: THAT'S MS. DUVAL'S DECLARATION.

12 MR. MCMILLAN: OKAY. SO MAKE SURE I  
13 UNDERSTAND YOU CORRECTLY. ARE YOU PROPOSING TO  
14 SUBSTITUTE -- WHERE WAS THAT -- 1064, 919 THROUGH 923,  
15 FOR EXHIBIT 24, 631 THROUGH AND INCLUDING 635?

16 MR. GUTERRES: YOUR HONOR, IF WE CAN JUST ADD  
17 631 THROUGH 636 OF EXHIBIT 24, I THINK THAT SOLVES THE  
18 ISSUE WITH MR. MCMILLAN. YOU'LL HAVE THE DECLARATION  
19 OF MR. MILLS AND THEN YOU'LL HAVE THE DECLARATION --  
20 THE RESPONSE -- RESPONSIVE DECLARATION BY MS. DUVAL  
21 BOTH AS PART OF EXHIBIT 24. AND SINCE MS. DUVAL WAS  
22 ACTUALLY QUESTIONED WITH USING EXHIBIT 1064, IF WE CAN  
23 JUST HAVE ONE DUPLICATE THERE, THAT WOULD, I THINK,  
24 ALLEVIATE THE PROBLEM, IF THAT'S ACCEPTABLE TO THE  
25 COURT.

26 MR. MCMILLAN: WELL, I STILL HAVE TROUBLES  
27 WITH SOME OF THE SPECIFIC INFLAMMATORY LANGUAGE IN  
28 MR. MILLS'S DECLARATION. AND I DON'T KNOW IF

1 DEFENDANTS ARE INTENDING TO GO AHEAD AND REDACT THOSE  
2 PORTIONS THEY'VE ALREADY REDACTED OR NOT EVEN WITH THE  
3 INCLUSION OF MS. DUVAL'S DECLARATION IN THE EXHIBIT.

4 MR. GUTERRES: YOUR HONOR, IT WOULD BE FOR THE  
5 LIMITED PURPOSE. IT'S NOT FOR THE TRUTH OF THE MATTER  
6 ASSERTED BUT IT'S FOR THE LIMITED PURPOSE OF WHAT  
7 INFORMATION WAS BEING COMMUNICATED TO THE DEPARTMENT.

8 MR. MCMILLAN: YOUR HONOR, SOME OF THAT  
9 INFORMATION -- FOR EXAMPLE:

10 "PETITIONER HAS WARNED ME TO KEEP  
11 OUR SON AWAY FROM MEXICANS."

12 I DON'T SEE HOW THAT WOULD BE RELEVANT TO ANY  
13 DECISION THE DEPARTMENT HAS MADE OR WOULD MAKE.

14 MR. GUTERRES: YOUR HONOR, BOTH PETITIONS --  
15 WE'VE AGREED TO REDACT THAT STATEMENT, AND WE'VE  
16 ALREADY SUBMITTED -- IN OUR VERSION TO THE COURT, THAT  
17 STATEMENT HAS ALREADY BEEN REDACTED, SO FOR  
18 MR. MCMILLAN TO KEEP BRINGING THAT ISSUE UP IS REALLY A  
19 NONISSUE HERE.

20 MR. MCMILLAN: WELL, THERE'S --

21 MR. GUTERRES: IF THERE'S ANY OTHER STATEMENTS  
22 THAT HE FEELS ARE ALONG THOSE LINES, YOU KNOW, WE'D BE  
23 HAPPY TO CONSIDER THEM. BUT THE REDACTIONS THAT  
24 MR. MCMILLAN HAS REQUESTED GOES TO THE VERY ISSUE OF  
25 WHAT WAS BEING COMMUNICATED, WHICH IS WHAT IS HE BEING  
26 FED, YOU KNOW, WHAT MR. MILLS IS TELLING US WITH REGARD  
27 TO THE RECOMMENDATIONS OF THE DOCTORS. THOSE ARE ALL  
28 THE KEY ISSUES IN THIS CASE. AND IT GOES TO WHAT



1 INFORMATION DCFS SOCIAL WORKERS HAD IN MAKING THEIR  
2 DECISION.

3 THE COURT: ALL RIGHT. I'M NOT GOING TO  
4 RECEIVE EITHER DECLARATION.

5 LET ME STATE THAT WE ARE REALLY OUT OF TIME ON  
6 THIS CASE, AND WHILE THERE WAS PREVIOUSLY A STIPULATION  
7 TO MS. DUVAL'S DECLARATION, IT WAS OBVIOUSLY BEING  
8 OFFERED BY THE DEFENSE AS THE RESPONSE TO MR. MILLS'S  
9 DECLARATION. I WILL RELIEVE YOU OF THE OFFER OF THAT  
10 EXHIBIT BECAUSE IT WOULD SEEM TO ME TO BE UNFAIR TO  
11 RECEIVE THE RESPONSE WITHOUT ANY EVIDENCE OF WHAT IT  
12 WAS RESPONDING TO. AND I DON'T BELIEVE YOU WOULD WANT  
13 THAT TO OCCUR.

14 SO I AM -- IF YOU'RE ASKING TO WITHDRAW HER  
15 DECLARATION, EXHIBIT 1064, JVCT00919, -920, -921, -922,  
16 AND -923, I WILL GRANT THE REQUEST TO WITHDRAW THAT  
17 DECLARATION FROM EVIDENCE. I WILL THEN CONSIDER YOUR  
18 OFFER OF MR. MILLS'S DECLARATION AND -- NO, I'M NOT  
19 GOING TO GO THROUGH AND EDIT THIS. I'M REALLY NOT.

20 I'VE GOT WHAT PARTIES ARE SUGGESTING. I DON'T  
21 NEED TO SPEND AND I REALLY DON'T INTEND TO SPEND THE  
22 TIME TONIGHT. WE'RE OUT OF TIME. AND IT SEEMS LIKE  
23 WE'VE GOT TOMORROW -- DO YOU KNOW SOMETHING? WE'RE  
24 SHORT OF TIME, EVEN WITH TOMORROW. AND THIS IS A GOOD  
25 EXAMPLE OF WHY WE'RE SHORT OF TIME.

26 NOW, THE OFFER OF RYAN MILLS'S DECLARATION IS  
27 OPPOSED ON THE GROUND, AMONG OTHERS, THAT IT IS HEARSAY  
28 AND RELEVANCE.

1 IS THAT CORRECT?

2 MR. MCMILLAN: HEARSAY; RELEVANCE; 352, UNDULY  
3 PREJUDICIAL.

4 THE COURT: ALL RIGHT. ALL OF THOSE ARE  
5 OVERRULED EXCEPT THE HEARSAY OBJECTION. THERE MAY BE A  
6 352 ISSUE IF IT WAS TO BE RECEIVED, AS TO SOME PART OF  
7 IT SHOULD BE REDACTED, BUT I'M NOT RECEIVING IT.

8 I'M ASSUMING THAT PLAINTIFF IS -- EXCUSE ME,  
9 DEFENSE IS NOT OFFERING AFTER I'VE RELIEVED YOU  
10 PREVIOUSLY OF ITS OFFER INTO EVIDENCE, THE MS. DUVAL'S  
11 DECLARATION?

12 MR. GUTERRES: YES, YOUR HONOR. THANK YOU.

13 THE COURT: NEITHER ONE OF THEM IS GOING TO BE  
14 RECEIVED.

15 THE -- JUST ONE MOMENT. JUST ONE MOMENT.

16 DO YOU HAVE EVIDENCE THAT ANYBODY RELIED ON  
17 MR. MILLS'S DECLARATION?

18 MS. SWISS: YES. THE EVIDENCE WOULD BE THAT  
19 MS. NELSON RECEIVED BOTH OF THE DECLARATIONS AND FILED  
20 THEM WITH THE JURISDICTION/DISPOSITION REPORT. IT  
21 WOULD GO TOWARDS HER RECOMMENDATIONS MADE IN THAT  
22 REPORT.

23 THE OTHER ISSUE WOULD BE: THESE DECLARATIONS,  
24 AS WELL AS FAMILY COURT TRANSCRIPTS, THE ATTORNEY  
25 LETTERS, OTHER FAMILY COURT DOCUMENTS, WERE DOCUMENTS  
26 THAT WERE GIVEN TO MS. PENDER BY MS. DUVAL BEFORE THE  
27 DETENTION EVER OCCURRED. AND THERE'S THE DELIVERED  
28 SERVICE LOGS TO THAT EFFECT. UNFORTUNATELY, BECAUSE

1 THESE DOCUMENTS HAD ALREADY BEEN RECEIVED FOR A LIMITED  
2 PURPOSE AT THE TIME OF MS. PENDER'S QUESTIONING, THE  
3 DEFENDANTS DID NOT SPECIFICALLY QUESTION MS. PENDER  
4 ABOUT THOSE DOCUMENTS BECAUSE THEY'D ALREADY BEEN  
5 RECEIVED INTO EVIDENCE, AND BASED ON THE DATES WE  
6 COULDN'T --

7 THE COURT: WAS RYAN MILLS'S DECLARATION  
8 RECEIVED INTO EVIDENCE FOR A LIMITED PURPOSE  
9 PREVIOUSLY?

10 MS. SWISS: YES, BUT IT WAS PUBLISHED TO THE  
11 JURY DURING MR. MILLS'S QUESTIONING BY --

12 THE COURT: I'M SORRY, YOU PROBABLY HAVE TOLD  
13 ME THAT. AND I'LL HAVE TO RECONSIDER WHAT I JUST SAID.

14 CAN OUR CLERK TELL US WHEN THIS EXHIBIT, RYAN  
15 MILLS, WAS RECEIVED? PROBABLY NOT.

16 MS. SWISS: YOUR HONOR, THIS WAS PART OF THE  
17 DISCUSSION WE HAD YESTERDAY ON WHETHER EXHIBIT 24 WAS  
18 ADMITTED FOR A LIMITED PURPOSE, SO I BELIEVE I CAN FIND  
19 THAT QUICKLY. I BELIEVE IT WAS OCTOBER 12TH OR 13TH.

20 THE COURT: IF YOU DO --

21 THE CLERK: IT WAS AT A SIDEBAR ON OCTOBER --

22 THE COURT: I REMEMBER THE DIFFICULTY WE HAD.

23 MS. SWISS: WE JUST DID THIS YESTERDAY. I CAN  
24 FIND IT.

25 THE COURT: YOU CAN FIND IT FOR ME? OKAY.

26 MR. MCMILLAN: YOUR HONOR, WHILE THEY'RE  
27 LOOKING FOR THAT, THE ONLY TESTIMONY THAT I RECALL  
28 REGARDING ANY FAMILY LAW DOCUMENTS CAME IN RELATION TO

1 MS. PENDER AND MS. DUVAL'S MEETING TOGETHER, I BELIEVE  
2 ON OCTOBER -- I BELIEVE OCTOBER 21ST, COULD HAVE BEEN  
3 AS LATE AS -- I DON'T RECALL IF THEY HAD A MEETING ON  
4 OCTOBER 30TH OR NOT. I THINK IT WAS ON OCTOBER 21ST.  
5 AND THAT WAS WHERE MS. DUVAL GAVE ACCESS -- OR I THINK  
6 GAVE COPIES OF HER FAMILY LAW FILE. ACTUALLY, I THINK  
7 MS. DUVAL WENT INTO MS. PENDER'S OFFICE SOMETIME AFTER  
8 OCTOBER 21ST WITH HER FAMILY LAW FILE; IT WAS GIVEN TO  
9 MS. PENDER. AND THAT'S IN THE TESTIMONY, THAT'S IN THE  
10 EVIDENCE.

11 THERE IS NO EVIDENCE THAT I KNOW OF THAT  
12 MS. NELSON TESTIFIED TO THIS PARTICULAR -- EITHER OF  
13 THE DOCUMENTS, ACTUALLY, REGARDING THE FORMATION OF  
14 HER --

15 THE COURT: YOU KNOW SOMETHING -- YOU'VE TOLD  
16 ME ENOUGH. I'M GOING TO FIND OUT WHAT THE RULING WAS  
17 ON THE NO. 24. IF I PREVIOUSLY RECEIVED THE DOCUMENTS,  
18 I DON'T KNOW WHY WE'RE ADDRESSING THEM NOW. IF THEY  
19 WERE NOT RECEIVED SPECIFICALLY, THEY WERE NOT RECEIVED.

20 SO THIS IS ENOUGH. WE'VE SPENT DAYS OVER  
21 EXHIBITS. I'VE TRIED CASES THAT HAVE HUNDREDS OF TIMES  
22 MORE EXHIBITS THAN WE DO IN THIS CASE, AND HAVE NEVER  
23 HAD TO SPEND THIS KIND OF TIME OVER EXHIBITS. SO IT'S  
24 ENOUGH. AND I'M NOW TERMINATING ANY FURTHER  
25 DISCUSSION, WITH ANY SPECIFIC EXCEPTION I MIGHT MAKE.  
26 ENOUGH IS ENOUGH.

27 MS. SWISS: YOUR HONOR, EXHIBIT 24, THE  
28 DECLARATION OF MR. MILLS, WAS PRESENTED DURING HIS

1 TESTIMONY ON OCTOBER 13TH.

2 THE COURT: PRESENTED IN WHOSE TESTIMONY?  
3 MR. MILLS'S?

4 MS. SWISS: MR. MILLS, IN HIS OWN TESTIMONY.

5 THE COURT: ALL RIGHT. SO THAT'S WHEN IT WAS  
6 DISCUSSED.

7 MS. SWISS: YES.

8 MR. GUTERRES: WITH THE COURT GIVING THE  
9 LIMITING INSTRUCTION BEFORE PUBLISHING.

10 THE COURT: ALL RIGHT. DO YOU HAVE WHAT WAS  
11 SAID AT THAT TIME?

12 MS. SWISS: I'VE GOT TO GET ON THE INTERNET TO  
13 GET THE SPECIFIC TESTIMONY. I WAS LOOKING AT MY NOTES  
14 BUT IT WILL BE ANOTHER COUPLE OF MINUTES.

15 THE COURT: I WANT TO KNOW WHAT I SAID AT THE  
16 TIME.

17 MS. SWISS: UNDERSTOOD.

18 (A DISCUSSION WAS HELD OFF THE RECORD.)

19 MR. MCMILLAN: YOUR HONOR, WE CAN  
20 SHORT-CIRCUIT THIS WHOLE THING -- OF EXHIBIT NO. 24,  
21 PAGES 615 THROUGH 623 AND -- WHERE DID THE OTHER ONE  
22 GO -- 631 THROUGH 636, IF THEY JUST COME IN TOGETHER  
23 FOR THE LIMITED PURPOSE, THAT'S FINE. I STILL THINK  
24 THERE'S SOME INFLAMMATORY MATERIAL IN 636, BUT YOUR  
25 HONOR'S -- OR RATHER IN MR. MILLS'S DECLARATION, I  
26 THINK THERE STILL IS SOME INFLAMMATORY MATERIAL, BUT  
27 YOUR HONOR HAS MADE A GOOD POINT, AND THAT'S THAT WE'RE  
28 OUT OF TIME AND WE NEED TO GET THIS BEHIND US. AND IN

1 LIGHT OF THOSE COMMENTS AND THE REALIZATION THAT YES,  
2 WE ARE OUT OF TIME, WE HAVE TO BE DONE WITH THIS, THE  
3 PLAINTIFF IS WILLING TO GO AHEAD AND DO THAT.

4 THE COURT: AND THOSE PAGE NUMBERS YOU GAVE  
5 ME, THE PAGE NUMBERS FOR THOSE TWO DIFFERENT --

6 MR. MCMILLAN: FOR THE TWO DECLARATIONS.

7 THE COURT: -- FOR THE TWO DECLARATIONS, IS  
8 THE LOWER NUMBER, IS THAT THE ONE FOR MR. MILLS?

9 MR. MCMILLAN: THAT'S CORRECT.

10 THE COURT: AND THE HIGHER NUMBERS WERE  
11 MS. DUVAL'S.

12 MR. MCMILLAN: THAT'S CORRECT. AND THAT WOULD  
13 REPLACE THE 1064 ONE THAT WE'D BEEN DISCUSSING EARLIER.  
14 AS LONG AS THEY COME IN TOGETHER, YOU KNOW, I THINK  
15 THAT THE PREJUDICE IS SOMEWHAT AMELIORATED.

16 THE COURT: WELL, I'M -- IF THERE IS AN ISSUE  
17 OF NOTICE TO THE -- THERE'S THE ONE STATEMENT YOU'VE  
18 TALKED ABOUT WHICH CERTAINLY OUGHT TO BE REDACTED IN  
19 ANY EVENT, WHICH IS REALLY A DIFFERENT ISSUE. THERE IT  
20 IS A 352 ISSUE. THE RELEVANCE OF THAT TO THE ISSUES IN  
21 THE CASE IS NEGLIGIBLE AT MOST. THE PREJUDICIAL EFFECT  
22 IS SO GREAT THAT ON 352 WE COULD REDACT THE STATEMENT  
23 ABOUT ASSOCIATION WITH CERTAIN PERSONS.

24 MR. GUTERRES: I'M SORRY, YOUR HONOR, THE  
25 BATES RANGES THAT MR. MCMILLAN IS PROPOSING FOR  
26 MR. MILLS'S DECLARATION, IF I MAY HAVE THAT ONCE AGAIN,  
27 PLEASE.

28 THE COURT: IT'S 615 THROUGH 623.

1           MR. GUTERRES:   OKAY.   WITH THE REDACTIONS OF  
2   THAT REFERENCE?

3           THE COURT:   WELL, CERTAINLY WITH THE REDACTION  
4   OF THAT REFERENCE.

5           IF THERE'S SOME OTHER REFERENCE IN THERE THAT  
6   IS NOT PERTINENT -- LOOK, THESE TWO OR THREE PEOPLE  
7   WEREN'T GOING ALONG, THEY WEREN'T HAVING GOOD THINGS TO  
8   SAY ABOUT EACH OTHER.   BUT THAT'S JUST -- THAT'S  
9   EXPECTED.   BUT YES, IF THERE'S SOMETHING ELSE THAT HAS  
10   NOTHING TO DO WITH THE MERITS OF THE CASE BUT IS  
11   OFFENSIVE IN NATURE, SUCH AS THE ONE WE PREVIOUSLY  
12   DISCUSSED ABOUT ASSOCIATION WITH MEXICANS, THAT SHOULD  
13   BE REDACTED.   IF THERE'S SOMETHING ELSE OF A SIMILAR  
14   NATURE THAT IS, AGAIN, REALLY NOT ABOUT THE ISSUES OF  
15   THE CASE, THAT SHOULD BE REDACTED.

16          MR. GUTERRES:   AND YOUR HONOR, THEN I WOULD  
17   PROPOSE, IF MR. MCMILLAN -- I DON'T KNOW IF  
18   MR. MCMILLAN, THEN, IS WILLING TO SIMPLY ACCEPT THE  
19   DEFENSE'S VERSION SINCE WE HAD ALREADY REDACTED THAT  
20   LINE AND IN FACT WE HAD REDACTED THE ENTIRE PAGE 7.

21          MR. MCMILLAN:   YOUR HONOR, I THINK THAT -- SO  
22   IT WOULD BE THE SENTENCE IN PARAGRAPH, I GUESS --  
23   DO YOU HAVE IT?

24          MR. GUTERRES:   PAGE 620, THE SENTENCE THAT'S  
25   ALREADY BEEN REDACTED IN THE DEFENSE'S VERSION IS  
26   LINES 12 THROUGH 13.   EXHIBIT 24, BATES 620, LINES 12  
27   AND 13, WHICH STARTS, "IN ADDITION, COMMA."

28          MR. MCMILLAN:   YOUR HONOR, THAT WOULD BE

1 ACCEPTABLE. I'D ONLY REQUEST THAT LINES 9 THROUGH 13,  
2 THE ENTIRETY OF PARAGRAPH 20, BE REDACTED INSTEAD OF  
3 JUST THE ISSUE ABOUT MEXICANS. IT ALSO TALKS ABOUT  
4 GETTING THE SMELL OFF AND, YOU KNOW, HER FIANCE. IT  
5 REALLY DOESN'T HAVE ANYTHING TO DO WITH THE ISSUES IN  
6 THIS CASE. BUT I THINK IF THEY'RE WILLING TO DO THAT,  
7 I'M FINE WITH IT.

8 MR. GUTERRES: THAT'S FINE, YOUR HONOR. WE  
9 CAN REDACT PARAGRAPH 20. THAT WOULD BE LINES 9 THROUGH  
10 13 INSTEAD, ON BATES 620.

11 MR. MCMILLAN: AND THEN PAGE 7 AS WELL;  
12 CORRECT?

13 MR. GUTERRES: AND PAGE 7. THAT'S FINE.

14 WE WILL DO THOSE REDACTIONS AND SUBMIT THEM TO  
15 PLAINTIFF'S COUNSEL TONIGHT, YOUR HONOR.

16 THE COURT: I'M TRYING TO FIND A VERSION OF --  
17 IF YOU HAVE AN AGREEMENT ON THAT, WE'LL GO AHEAD AND DO  
18 IT.

19 AND THEY'LL BOTH BE RECEIVED.

20 MR. GUTERRES: THANK YOU, YOUR HONOR.

21 MR. MCMILLAN: WE DO HAVE AN AGREEMENT, YOUR  
22 HONOR.

23 THE COURT: I'M GOING TO GIVE THESE BACK TO  
24 THE CLERK BECAUSE I CAN'T TELL WHICH ONE IS WHICH AT  
25 THIS POINT. THEY ARE NOT CLEAR.

26 MS. SWISS: TO CLARIFY, IS THE DECLARATION OF  
27 MS. DUVAL FROM EXHIBIT 24, IS THAT THE STIPULATION?

28 MR. MCMILLAN: YES. YES.



1 MS. SWISS: SO THOSE PAGES WILL BE ADMITTED --  
2 WILL BE STIPULATED TO BE ADMITTED, PAGES 631 THROUGH  
3 636 OF EXHIBIT 24.

4 AND IF THE COURT RECEIVES THAT DOCUMENT FOR  
5 THE LIMITED PURPOSE, THEN WE WOULD WITHDRAW  
6 EXHIBIT 1064, BATES JVCT919 TO 923, WHICH THE COURT HAD  
7 PREVIOUSLY RECEIVED AND THAT COUNSEL HAD STIPULATED TO.

8 SO BASICALLY, WE'RE SWAPPING MS. DUVAL'S  
9 DECLARATION AND WILL ASK TO BE RECEIVED THE ONE IN  
10 EXHIBIT 24 THAT COMES AFTER THE DECLARATION OF  
11 MR. MILLS, AND WE WILL WITHDRAW THE SEPARATE  
12 DECLARATION.

13 THE COURT: THE SEPARATE ONE. OKAY, I  
14 UNDERSTAND. ALL RIGHT.

15 MR. MCMILLAN: I BELIEVE THAT SOLVES IT.

16 THE COURT: NOW, IS THERE ANYTHING ELSE ON  
17 EXHIBIT 24 THAT'S GOING TO HAVE TO BE DISCUSSED?

18 MR. MCMILLAN: I THINK THAT WAS THE LAST ISSUE  
19 ON EXHIBIT 24.

20 MR. PARIS: YEAH, THAT'S EVERYTHING I HAVE.

21 THE COURT: SO WE STILL WILL ADDRESS THE DSL.

22 MR. MCMILLAN: YOUR HONOR, ONE THING THAT --  
23 AND WE WERE JUST TALKING ABOUT THIS HERE. RIGHT NOW,  
24 IN ORDER SAVE TIME, THERE'S PROBABLY A LOT OF STUFF IN  
25 HERE THAT BOTH SIDES DON'T LIKE, BUT SO LONG AS IT'S IN  
26 FOR THE LIMITED PURPOSE, WE DON'T HAVE A PROBLEM WITH  
27 JUST MOVING THE WHOLE THING IN.

28 MS. SWISS: WHAT DO YOU MEAN, "THE WHOLE

1       THING"? 88 PAGES, OR?

2               MR. MCMILLAN: WELL, YEAH, BECAUSE OTHERWISE  
3 WE'RE GOING TO END UP NEEDING TO GO THROUGH ITEMS ENTRY  
4 BY ENTRY. AND, YOU KNOW, THAT'S GOING TO BURN A HUGE  
5 AMOUNT OF ADDITIONAL TIME, AND WE REALLY NEED TO GET  
6 MOVING WITH INSTRUCTIONS AND VERDICT FORMS.

7               THE COURT: SO ARE YOU JUST SUGGESTING THE  
8 WHOLE DSL COMES IN?

9               MR. MCMILLAN: THE WHOLE THING COMES IN, JUST  
10 FOR A LIMITED PURPOSE.

11              THE COURT: FOR A LIMITED PURPOSE.

12              MR. GUTERRES: YOUR HONOR, WE'RE GOING TO HAVE  
13 TO CONSIDER THAT. I MEAN, MAY WE GIVE THE COURT AN  
14 ANSWER TOMORROW MORNING?

15              MS. SWISS: AND IF WE DON'T AGREE, WE WILL  
16 PROVIDE OUR SUGGESTION.

17              MR. GUTERRES: OR RESPONSE TO THE ONE THAT  
18 PLAINTIFF HAS SUBMITTED TO US.

19              THE COURT: BECAUSE PLAINTIFF DID GIVE US --

20              MS. SWISS: WE DON'T WANT TO TAKE FOREVER.

21              THE COURT: -- THE ONE EARLIER.

22              BECAUSE THEY WANT, AND I -- SUBSEQUENT DSL  
23 ENTRIES, A GREAT NUMBER OF WHICH ARE BY SCHEELE,  
24 THERE'S A FEW BY OTHERS, BUT IT ALSO -- BEHIND THAT  
25 REQUEST I BELIEVE IS THAT, AS OTHER MATTERS HAVE BEEN  
26 RECEIVED FOR THE LIMITED PURPOSE OF SHOWING WHAT  
27 INFORMATION WAS KNOWN AT VARIOUS TIMES THINGS OCCURRED,  
28 THAT THAT WOULD APPLY TO SUBSEQUENT ONES AS WELL.

1 MR. MCMILLAN: CORRECT.

2 THE COURT: ALL RIGHT. YOU CAN GIVE ME YOUR  
3 REPLY IN THE MORNING.

4 MR. GUTERRES: WE WILL, YOUR HONOR, THANK YOU.

5 THE COURT: THAT WILL BE FINE.

6 AND THEN -- SO GO AHEAD, MR. MCMILLAN.

7 MR. MCMILLAN: I'M SORRY, YOUR HONOR. THERE'S  
8 ONE LAST THING. I MEANT TO ADDRESS IT EARLIER. BUT  
9 THE CLERK VERY TIMELY ALERTED ME TO A DISCREPANCY  
10 ISSUE, AND IT'S COMPLETELY MY FAULT.

11 WHEN WE WERE TALKING ABOUT EXHIBIT  
12 NO. 1076.15, AND THERE'S A STIPULATION TO ADMIT IT, IT  
13 APPEARS IN THE TRANSCRIPT THAT I IDENTIFIED IT AS  
14 1075.15 AND THAT IS THE WAY IT WAS RECEIVED, WAS AS  
15 1075.15 AS OPPOSED TO THE CORRECT NUMBER WHICH WOULD BE  
16 1076.15.

17 THE COURT: ALL RIGHT. DO YOU NEED TO LOOK AT  
18 THE DOCUMENT, MR. GUTERRES?

19 (A DISCUSSION WAS HELD OFF THE RECORD.)

20 MR. MCMILLAN: YOUR HONOR, I THINK WE ALL  
21 AGREE IT'S THE SAME DOCUMENT THAT WE'RE TALKING ABOUT.

22 THE COURT: THE CHART, WE'LL CALL IT THE  
23 GROWTH CHART WITH --

24 MR. MCMILLAN: RIGHT.

25 THE COURT: -- THE GRAPH.

26 MR. MCMILLAN: RIGHT. AND WE'VE JUST TALKED  
27 ABOUT IT. WE'RE WILLING TO DO WHATEVER'S EASIEST FOR  
28 THE COURT, EITHER REIDENTIFY IT IN THE TRANSCRIPT OR

1 CHANGE THE NUMBER ON THE DOCUMENT ITSELF.

2 THE COURT: WELL, I WOULD SUGGEST WE JUST  
3 CHANGE THE NUMBER ON IT AS OPPOSED TO --

4 MR. GUTERRES: THAT'S FINE, YOUR HONOR.

5 THE COURT: -- DOING SOMETHING WITH THE  
6 TRANSCRIPT.

7 SO IF YOU WANT TO RE-MARK THAT -- OR GIVE IT  
8 TO DON. DON WILL RE-MARK IT BECAUSE THAT'S BY  
9 STIPULATION OF THE PARTIES SO IT WILL BE RE-MARKED.

10 DO YOU HAVE THAT, DON?

11 THE CLERK: YEAH.

12 THE COURT: OKAY.

13 MR. MCMILLAN: THANK YOU, YOUR HONOR.

14 THE COURT: YEAH, YOU'RE WELCOME.

15 ALL RIGHT. NOW, MR. PRAGER, WHERE ARE WE ON  
16 THE VERDICT FORM?

17 MR. PRAGER: WELL, I THINK WE HAVE SOME GOOD  
18 NEWS FOR YOU, YOUR HONOR. I THINK WE'RE EFFECTIVELY --  
19 WE'RE VERY CLOSE ON THE VERDICT FORM. AND MAYBE WHAT  
20 WE -- NO. I WAS GOING TO MAKE A JOKE BUT IT'S TOO LATE  
21 FOR THAT. SO WE HAVE THE VERDICT FORM LARGELY IRONED  
22 OUT.

23 IS THERE ONE QUESTION ON THE VERDICT FORM?  
24 I'M NOT SURE.

25 MS. NAGY: YES, THERE IS ONE QUESTION ON THE  
26 VERDICT FORM. AND IT'S AN ITEM OF DAMAGE WHICH WE HAVE  
27 A DISPUTE ABOUT WHETHER IT'S RECOVERABLE.

28 THIS IS ONLY AS TO VERDICT 2; THAT'S WHAT

1 WE'VE BEEN WORKING ON.

2 MR. PRAGER: SO WE WERE ENSCONCED IN THE BACK.  
3 AND I KNOW THAT PLAINTIFF HAS ABANDONED ALL ECONOMIC  
4 LOSS. THAT HAS NOW BEEN REMOVED FROM THE VERDICT FORM.

5 THE COURT: ALL RIGHT.

6 MR. PRAGER: THE QUESTION IS: DOES THE  
7 PLAINTIFF HAVE THE RIGHT TO SEEK PAST NON- -- GENERAL  
8 DAMAGES AND FUTURE GENERAL DAMAGES? AND I DIDN'T  
9 UNDERSTAND THERE WAS A CONTROVERSY, AND I THINK COUNSEL  
10 BELIEVES THERE IS NO PROSPECTIVE RIGHT FOR DAMAGES, SO  
11 THAT'S WHAT WE NEED TO GET CLARIFICATION ON.

12 THE COURT: OH, OKAY.

13 SO MAYBE YOU COULD TELL ME WHY THERE'S NO  
14 ENTITLEMENT TO FUTURE NONECONOMIC DAMAGES.

15 (REPORTER ASKS FOR CLARIFICATION.)

16 THE COURT: SO MY QUESTION STILL IS APPARENTLY  
17 THERE'S A DISPUTE ABOUT AN ENTITLEMENT TO FUTURE  
18 NONECONOMIC DAMAGE, AND APPARENTLY IT'S THE DEFENDANT'S  
19 CONTENTION THAT THERE IS NOT AN ENTITLEMENT TO THAT.

20 IS THAT CORRECT?

21 MS. NAGY: YES, YOUR HONOR.

22 THE COURT: OKAY.

23 MS. NAGY: THE REASON BEING THAT ANY  
24 ADJUDICATION WHICH HAPPENED SUBSEQUENTLY AND THE  
25 PROCEEDINGS WHICH WERE ENGAGED IN BY THE JUVENILE  
26 COURT, DEPENDENCY COURT, THOSE ARE NOT  
27 SERVICES-PROGRAMMED BENEFITS THAT ARE PROVIDED TO  
28 MS. DUVAL FOR WHICH SHE CAN CLAIM SOME SORT OF

1 DISCRIMINATION OR, YOU KNOW, FAILURE TO ACCOMMODATE.  
2 SO SHE MAY HAVE SUFFERED, YOU KNOW, PAIN AND SUFFERING  
3 BACK WHILE SHE WAS BEING PROVIDED THE SERVICES WHICH --  
4 FOR WHICH SHE IS ELIGIBLE TO CLAIM ADA AND THE REHAB  
5 ACT INJURY, BUT ONCE WE GOT INTO THE COURT, AND THIS  
6 WAS -- ONCE IT BECAME A FORMAL DEPENDENCY PROCEEDING  
7 AND THE COURT MADE ANY KIND OF RULING, IT -- YOU KNOW,  
8 SHE IS NO LONGER ASSERTING A SERVICE BENEFIT IN THE  
9 PROGRAM THAT INURES TO HER BENEFIT. IT'S NOW -- WE  
10 CITED THE *IN RE ANTHONY* CASE THAT THE DEPENDENCY  
11 PROCEEDINGS ARE FOR THE BENEFIT OF THE CHILD. SO SHE  
12 CAN'T ALLEGE THAT SHE DIDN'T -- AN ADA CLAIM AS TO  
13 THOSE COURT PROCEEDINGS.

14 THE COURT: ALL RIGHT.

15 MS. NAGY: I THINK THERE WOULD BE A CONFUSION,  
16 RIGHT, IF THE JURY WERE PRESENTED WITH THIS NOTION OF  
17 PAIN AND SUFFERING ON A GOING-FORWARD BASIS IF WE  
18 ALLOWED THIS SORT OF CONTINUING PAIN AND TRAUMA.  
19 BECAUSE REALLY, HER PAIN AND TRAUMA SHE'S GOING TO  
20 ASSERT IS A RESULT OF LOSING HER CHILD. AND THAT'S NOT  
21 PERMISSIBLE IN ANY OF THESE CAUSES OF ACTION. WELL --  
22 YEAH, THAT WOULDN'T BE PERMISSIBLE UNDER THIS ADA REHAB  
23 ACT THEORY.

24 THE COURT: ALL RIGHT. SO -- JUST A MOMENT.

25 ALL RIGHT. MR. PRAGER, AND THE REASON THAT  
26 YOU FEEL THAT THERE IS AN ENTITLEMENT TO FUTURE  
27 NONECONOMIC DAMAGE IS WHAT?

28 MR. PRAGER: I'D HAVE -- FIRST OF ALL, THEY'VE

1 GIVEN US A CASE AND I'VE NOT READ THE CASE YET THAT  
2 THEY GAVE US. SO I HAVE TO GO READ THEIR CASE AND SEE  
3 WHAT IT SAYS.

4 I'D LIKE TO CLARIFY STATEMENTS COUNSEL MADE  
5 FROM OUR PERSPECTIVE. THE ONLY TORT CAUSE OF ACTION IN  
6 THE CASE RIGHT NOW WOULD BE THE IIED CLAIM AGAINST  
7 MS. SCHEELE, AS I UNDERSTAND THE RULING TODAY. SO WHEN  
8 SHE SAID TORT DAMAGES GOING FORWARD, I DON'T BELIEVE  
9 THEY'RE EXACTLY TORT DAMAGES BECAUSE THEY'RE  
10 CONSEQUENTIAL DAMAGES IN THE CIVIL RIGHTS SETTING AND  
11 THEY'RE DISCRIMINATION CLAIMS, SO I WOULD FEEL  
12 UNCOMFORTABLE DESCRIBING THOSE DAMAGES AS TORT DAMAGES.

13 THE COURT: ALL RIGHT. BUT THEY'RE STILL  
14 NONECONOMIC DAMAGES.

15 MR. PRAGER: THAT'S CORRECT. AND, FOR  
16 EXAMPLE, MR. BUDIN TESTIFIED THAT AS A RESULT OF THIS  
17 EVENT -- AND I'M SPEAKING ABOUT THE 83 SIDE OF THE CASE  
18 FOR A SECOND -- THE REMOVAL OF THE CHILD HAS CAUSED HER  
19 TO BE IN THERAPY AT THIS TIME. I THINK THAT WOULD BE A  
20 DAMAGE THAT WOULD BE GOING ON IN THE FUTURE BECAUSE  
21 SHE'S STILL IN THERAPY.

22 AND I WAS UNAWARE OF THIS ISSUE BEING ASSERTED  
23 ON THE COMPENSATORY DAMAGES FOR THE CIVIL RIGHTS CLAIM,  
24 SO I'D HAVE TO THINK ABOUT THAT MYSELF AND READ THEIR  
25 CASE AND SEE WHAT IT SAYS.

26 I DO DISAGREE WITH THIS IDEA OF SERVICE BEING  
27 WHEN THE MOTHER ENTERS THE DEPENDENCY COURT, IT'S FOR  
28 THE BENEFIT OF THE CHILD. THAT'S CERTAINLY TRUE, BUT

1 I'M SURE AS THIS COURT WOULD AGREE, EVERY LITIGANT,  
2 EVERY WITNESS, EVERY PERSON THAT COMES IN THE COURT,  
3 EVEN THE JURORS, ARE HERE TO SERVE A PURPOSE AND THEY  
4 HAVE THE RIGHT TO PARTICIPATE IN THE PROCESS WITHOUT  
5 DISCRIMINATION, SO FORTH AND SO ON.

6 SO I'D HAVE TO GO BACK AND LOOK AT THAT AND  
7 THEN I THINK I CAN MORE ARTICULATELY ANSWER THE  
8 QUESTIONS BEING RAISED.

9 THE COURT: DO YOU HAVE THE CASE THAT YOU  
10 CITED TO HIM?

11 MS. NAGY: I DO. THE CASE IS *IN RE ANTHONY P.*  
12 (2000) 84 CAL.APP.4TH 1112 AT PAGE 1116.

13 NOW, THE CONTEXT OF THAT --

14 THE COURT: AGAIN, I JUST WANT TO MAKE SURE.  
15 THAT'S A 2000 CASE?

16 MS. NAGY: YES.

17 THE COURT: AND IT'S IN 84 CAL.APP.4TH?

18 MS. NAGY: YES.

19 THE COURT: AND I'M SORRY THAT I DIDN'T GET IT  
20 WRITTEN DOWN, BUT WHAT WAS THE PAGE CITE AGAIN?

21 MS. NAGY: 1112.

22 THE COURT: OKAY. I'LL READ IT AS WELL. AND  
23 LET ME JUST ASK A FOLLOW-UP QUESTION BECAUSE I THINK  
24 I'D LIKE TO READ THE CASE AND OBVIOUSLY, AND RIGHTLY  
25 SO, MR. PRAGER WOULD TOO.

26 THE ONE QUESTION I HAVE -- OR MAYBE IT'S NOT  
27 THE ONE, BUT A QUESTION I HAVE IS THAT IT WOULD SEEM TO  
28 ME THAT THERE MAY BE A DISTINCTION BETWEEN THE



1 OBLIGATION TO CONTINUE TO PROVIDE SERVICES ONCE THE  
2 COURT HAS ORDERED WHAT SERVICES SHOULD BE PROVIDED AND  
3 WHAT NOT. AND I WOULD AGREE -- JUST IN THINKING ABOUT  
4 THIS, IT WOULD CERTAINLY SEEM TO ME THAT IT'S A  
5 REASONABLE ARGUMENT THAT YOUR EMOTIONAL DISTRESS  
6 DAMAGES ATTRIBUTABLE TO THE DEFENDANTS SHOULD NOT COVER  
7 ANY EMOTIONAL DISTRESS COVERED BY COURT ORDER THAT  
8 DELINEATES AND IN SOME WAY LIMITS WHAT OTHER SERVICES  
9 NEED TO BE PROVIDED.

10           HOWEVER, IT WOULD ALSO SEEM TO ME THAT IF  
11 SOMEONE IS SUFFERING EMOTIONAL DISTRESS FOR SOMETHING  
12 THAT'S HAPPENED IN THE PAST, THAT THAT EMOTIONAL  
13 DISTRESS FOR WHAT WAS DENIED IN THE PAST DOESN'T  
14 NECESSARILY END WHEN THE COURT MAKES AN ORDER. AND SO  
15 I HOPE I'M MAKING CLEAR TO YOU THE DISTINCTION THAT I'M  
16 ASKING ABOUT -- AND REALLY THIS IS ALMOST RHETORICAL  
17 BECAUSE, GIVEN THE TIME OF DAY, I'LL LET YOU ADDRESS IT  
18 IN THE MORNING. BUT I DO WANT TO READ THE CASE. AND  
19 THAT CASE MIGHT VERY WELL POINT OUT TO ME WHY MY  
20 RHETORICAL QUESTION IS ILL-FOUNDED.

21           BUT THE POINT I'M MAKING IS THAT -- IT'S THE  
22 DENIAL OF SERVICES IN THE PAST THAT HAVE CAUSED -- JUST  
23 ASSUMING FROM THE PLAINTIFF'S POINT OF VIEW -- THAT  
24 HAVE CAUSED EMOTIONAL DISTRESS, AND THAT DOESN'T  
25 NECESSARILY END. IT WOULD BE, SEEMINGLY TO ME, LOGICAL  
26 TO SAY THAT EMOTIONAL DISTRESS FROM A DENIAL OF  
27 SERVICES BASED ON A COURT ORDER WOULD NOT BE THE BASIS  
28 FOR EMOTIONAL DISTRESS BECAUSE OF THAT.

1 HAVE I MADE THAT CLEAR, EVERYONE?

2 MR. PRAGER: YES.

3 THE COURT: OKAY. SO I'LL LEAVE IT AS A  
4 RHETORICAL QUESTION FOR NOW BECAUSE WE'LL ALL TAKE A  
5 LOOK AT THE CASE. THANK YOU VERY MUCH.

6 MS. NAGY: MAY I SAY ONE MORE THING, YOUR  
7 HONOR?

8 THE COURT: YES.

9 MS. NAGY: PART OF OUR CONCERN AS WELL IS THE  
10 LACK OF SPECIFICITY IN BOTH THE INSTRUCTIONS AND IN THE  
11 VERDICT FORM ABOUT WHAT EXACTLY THE MECHANISM OF HARM  
12 WAS. SO IN THE CACI, THERE'S BRACKETED LANGUAGE:  
13 DENIED, INCITE A DENIAL, AID IN A DENIAL, ET CETERA,  
14 ET CETERA. WE HAD A CONVERSATION EARLIER ABOUT WHAT  
15 SERVICES EXACTLY WAS SHE NOT PROVIDED, AND THEN WHAT IS  
16 THE MECHANISM OF INJURY? WAS SHE DENIED IT? I MEAN,  
17 HOW -- WHAT IS THE THEORY ON WHICH, YOU KNOW, SHE  
18 WASN'T -- WE WOULD LIKE THAT BETTER SPECIFIED BECAUSE  
19 THEN IT WOULD BE EASIER TO SAY YES, THE LACK OF A  
20 TRANSLATOR IN THESE SUPERVISED MEETINGS, THAT'S NOT A  
21 CONTINUING ISSUE OF HARM. I MEAN, IT'S VERY UNLIKELY  
22 THAT THAT IS THE SOURCE OF A FUTURE DAMAGE OR A FUTURE  
23 PAIN AND SUFFERING. RIGHT.

24 SO I THINK IT WOULD BE EASIER FOR THE JURY TO  
25 ANALYTICALLY DISTINGUISH BETWEEN WHAT PAIN IS ARISING  
26 FROM WHAT INJURY, PARTICULARLY BECAUSE WE DID, YOU  
27 KNOW, WE DID DISAGGREGATE ALL OF THE DAMAGES ON THE  
28 FORMS.

1 THE COURT: ALL RIGHT. AND I DO UNDERSTAND  
2 YOUR POINT. AND WE'LL HAVE TO HAVE YOU BACK IN THE  
3 MORNING FOR.

4 MS. NAGY: I HAVE AN *EX PARTE* IN THE MORNING  
5 IN LONG BEACH, YOUR HONOR.

6 THE COURT: ALL RIGHT. WELL, SOMEONE WILL BE  
7 SPEAKING ON THIS ISSUE FROM YOUR SIDE. MS. SWISS --

8 MR. GUTERRES: WE'LL BE HERE.

9 MS. SWISS: WE'LL BE HERE.

10 THE COURT: I KNOW YOU TWO WILL BE HERE.

11 MS. NAGY: I WILL COME DIRECTLY FROM LONG  
12 BEACH HERE.

13 THE COURT: ALL RIGHT. SURE. I'M NOT  
14 ORDERING YOU BACK HERE, BUT ONCE YOU'RE BACK, YOU CAN.

15 AND I UNDERSTAND THE POINT. I THINK  
16 MR. PRAGER UNDERSTANDS THE POINT YOU'RE MAKING. AND  
17 MAYBE ONCE WE HAVE A DECISION AS TO WHAT CAN, ABOUT  
18 THIS ISSUE OF DAMAGES FOR FUTURE NONECONOMIC, MAYBE  
19 THAT WILL BE INSTRUCTIVE TO US AS TO -- I DON'T THINK  
20 SO MUCH ON THE VERDICT FORM. I THINK PROBABLY IT'S  
21 THAT WHAT YOUR ISSUE YOU'RE RAISING MAY BE BETTER  
22 ADDRESSED IN AN INSTRUCTION. BECAUSE WE TRY NOT TO USE  
23 THE VERDICT FORM TO INSTRUCT, AND THAT'S -- IF WE DID,  
24 I GUESS WE WOULDN'T BOTHER WITH INSTRUCTIONS. NOT  
25 NECESSARILY TRUE IN ALL INSTANCES BECAUSE WE DID --  
26 IT'S NOT A UNIVERSAL RULE.

27 SO I'LL TALK TO YOU ABOUT THAT IN THE MORNING  
28 AS WELL.

1 MS. NAGY: MAY I ASK ANOTHER QUESTION, YOUR  
2 HONOR?

3 THE COURT: SURE.

4 MS. NAGY: WE HAVE A BIT OF A PHILOSOPHICAL  
5 DIFFERENCE THAT I THINK THE COURT CAN RESOLVE NOW THAT  
6 WILL HELP US WHEN WE COMMUNICATE LATER THIS EVENING, ON  
7 JUST A PURELY STRUCTURAL MATTER.

8 I HAVE BEEN TRYING TO AGGREGATE THE CLAIMS  
9 INTO AS FEW JURY INSTRUCTIONS AS POSSIBLE NOT TO  
10 OVERWHELM THE JURORS, SO ONE ON ADA, ONE ON REHAB, ONE  
11 ON DEFINITIONS OF DISABILITY, ET CETERA. MR. PRAGER  
12 BELIEVES THAT THE COURT REQUESTED AN INSTRUCTION ON  
13 EACH ELEMENT. AND SO WE ARE GOING TO BE TALKING  
14 TONIGHT ABOUT HOW WE CAN SORT OF SYNTHESIZE AND  
15 STREAMLINE THOSE INSTRUCTIONS BUT I WANT TO MAKE SURE  
16 THAT, FIRST, WE UNDERSTAND WHAT THE COURT WANTED.

17 THE COURT: WELL, BECAUSE I HAVEN'T REALLY  
18 DEALT WITH THIS. WE'VE ALL ALONG SEGMENTED OUR  
19 DISCUSSION BETWEEN VERDICT FORM NO. 1 AND NO. 2, AND  
20 THE TRUTH IS THAT A LOT OF THIS HAS BEEN DISCUSSIONS  
21 YOU'VE BEEN HAVING WITH MR. PRAGER WHEN THE REST OF US  
22 WERE DEALING WITH MOSTLY OTHER ISSUES.

23 MY VIEW IS THAT, FIRST OF ALL, WE NEED TO HAVE  
24 AN INSTRUCTION THAT WILL TELL THE JURY WHAT A PLAINTIFF  
25 MUST PROVE ON ONE OF THESE.

26 CASES.

27 MR. PRAGER: RIGHT.

28 THE COURT: TO THE EXTENT THAT ANY OF THE

1 TERMINOLOGY USED IN THAT INSTRUCTION REQUIRES SOME  
2 DEFINITION, THEN I BELIEVE THERE SHOULD BE AN  
3 ADDITIONAL INSTRUCTION RATHER THAN TRYING TO PUT ALL OF  
4 IT INTO ONE. I THINK THAT NOT ONLY WOULD THAT BE  
5 CONSISTENT WITH WHAT I THINK IS THE GENERAL  
6 CONSTRUCTION OF THE CACI INSTRUCTIONS, BUT ALSO  
7 CONSISTENT AT LEAST WITH ONE SCHOOL OF THOUGHT IS THAT  
8 YOU WANT TO LAY OUT WITH YOUR JURY: HERE ARE THE FOUR  
9 THINGS THEY HAVE TO PROVE. THE PLAINTIFF IS MAKING A  
10 CLAIM FOR VIOLATION OF SO AND SO. IN ORDER TO PROVE  
11 THAT CLAIM, THE PLAINTIFF MUST PROVE ONE, TWO, THREE,  
12 AND FOUR.

13 AND THEN, AS WE DO IN MANY OTHER INSTANCES --  
14 AND I KNOW YOU'RE PROBABLY MORE FAMILIAR WITH CACI THAN  
15 I AM -- BUT VERY OFTEN IN THESE DIFFERENT CAUSES OF  
16 ACTION, THERE ARE THEN ADDITIONAL INSTRUCTIONS THAT  
17 EXPLAIN USUALLY SOME TERM THAT HAS BEEN USED. A GOOD  
18 EXAMPLE OF THAT WOULD BE SOMETHING WITH THE INTENTIONAL  
19 INFLECTION, WHEN WE GIVE THE INSTRUCTION THEY HAVE TO  
20 PROVE IT'S OUTRAGEOUS CONDUCT AND SO ON, AND THEN WE  
21 GIVE THEM THE INSTRUCTION WHAT OUTRAGEOUS CONDUCT  
22 MEANS. THERE'S ALSO INSTRUCTIONS WHERE IT COULD BE  
23 PROVEN EITHER BY INTENT -- AND WE HAD THIS ISSUE -- OR  
24 BY RECKLESS DISREGARD, AND THERE'S A SEPARATE  
25 INSTRUCTION THAT DEFINES RECKLESS DISREGARD.

26 AND I APPRECIATE THE EFFORT TO STREAMLINE IT  
27 BECAUSE I THINK THAT IS VERY VALUABLE TO A JUROR.  
28 THESE INSTRUCTIONS, WHEN WE READ THEM TO THEM, I'VE

1 ALWAYS WONDERED, HOW MUCH DO THEY GET OUT OF IT? THEN  
2 WE GIVE THEM THE INSTRUCTIONS TO TAKE INTO THE JURY  
3 ROOM, AND I'VE ALSO ALWAYS WONDERED, HOW MUCH DO THEY  
4 GET OUT OF IT, WITH THE INSTRUCTIONS THEY'VE BEEN  
5 GIVEN? NEVERTHELESS, THAT'S WHAT WE DO. AND SOMETIMES  
6 WE'LL GET A QUESTION, AS YOU KNOW, FROM THE JURY. WHAT  
7 DID YOU MEAN WHEN YOU SAID SO AND SO? AND SOMETIMES  
8 THAT CAN REFER TO A SPECIFIC INSTRUCTION. SO THEN WE  
9 TRY TO BRING SOME CLARITY TO WHAT THAT WAS GIVEN.

10 SO AS MUCH AS I PREFER CONCISENESS BECAUSE I  
11 THINK THAT THAT HAS A VALUE, WE CANNOT -- I THINK THE  
12 BETTER WAY IN ANSWERING YOUR QUESTION IS TO HAVE AN  
13 INSTRUCTION TO PROVE THIS CLAIM, THIS IS WHAT THE  
14 PLAINTIFF MUST PROVE. PROVE THIS CLAIM, THIS IS WHAT  
15 THEY MUST PROVE. PROVE THIS CLAIM, THIS IS WHAT THEY  
16 MUST PROVE. AND THEN DEFINE WHERE THERE'S SOME TERM  
17 THAT IS NOT SELF-EVIDENT AS TO WHAT IT MEANS, THEN WE  
18 WOULD GIVE AN INSTRUCTION DEFINING.

19 DOES THAT HELP ANSWER YOUR QUESTION?

20 MS. NAGY: YES. THE DISAGREEMENT WAS WHETHER,  
21 IF IT WERE SELF-EVIDENT, WOULD IT THEN STILL NEED A  
22 SEPARATE INSTRUCTION?

23 SO I THINK YOU'VE ANSWERED OUR QUESTION.  
24 THANK YOU, YOUR HONOR.

25 THE COURT: OKAY. THANKS VERY MUCH. SO WE'LL  
26 SEE YOU BACK IN THE MORNING WHEN YOU'RE ABLE TO GET  
27 HERE.

28 SO WE'LL ANSWER IN THE MORNING. I WILL HAVE

1 READ THIS CASE AND THOUGHT ABOUT IT FURTHER, ALTHOUGH  
2 I'VE ALREADY EXPRESSED TO YOU MY VIEW ON THIS, WHICH IS  
3 CAPABLE OF BEING CORRECTED AFTER I READ THE CASE. IF I  
4 WAS THE LAST WORD ON THE LAW, WE WOULDN'T HAVE  
5 APPELLATE COURTS. BUT I WILL HAVE READ THE CASE SO WE  
6 WILL KNOW WHAT IT IS THAT HAS CAUSED YOU TO RAISE THIS  
7 QUESTION. AND THEN WE'LL HAVE THE DISCUSSION. I  
8 INTEND TO RESOLVE IT VERY EARLY ON TOMORROW SO THAT  
9 WHATEVER HAS TO BE DONE TO GET THE VERDICT FORM WHERE  
10 IT NEEDS TO BE WILL BE DONE.

11 LET ME ASK YOU, THEN, ON VERDICT FORM NO. ONE,  
12 DO WE HAVE ANY ISSUES WITH VERDICT FORM NO. ONE? FOR  
13 EXAMPLE, HAVE WE DECIDED WHETHER IT'S ARTICULABLE OR  
14 PARTICULAR?

15 MS. SWISS: THAT IS ONE ISSUE THAT THE COURT  
16 CAN JUST MAKE THE DECISION FOR US, I THINK.

17 THE OTHER ISSUE IS THE REQUEST FOR AN  
18 ADDITIONAL QUESTION ON THE INTENTIONAL INFLICTION CLAIM  
19 WITH REGARD TO THE AFFIRMATIVE DEFENSE. I CAN'T  
20 REMEMBER THE CACI INSTRUCTION.

21 THE COURT: THE AFFIRMATIVE DEFENSE OF --

22 MS. SWISS: THE PRIVILEGED COMMUNICATION.

23 MS. NAGY: 1605.

24 MS. SWISS: AND THEN, I DON'T KNOW IF WE  
25 NEED -- WELL, WE HAVEN'T EXACTLY LOOKED AT TOGETHER ALL  
26 OF THE DAMAGES, HOW THE DAMAGES ARE LAID OUT, BUT I  
27 THINK THAT WE HAVE TO RESOLVE THAT. I DON'T THINK IT'S  
28 GOING TO BE THAT MUCH DISCUSSION. WE JUST HAVEN'T DONE

1 THAT TOGETHER.

2 MR. MCMILLAN: I NEED TO STILL DELETE OUT --  
3 AS YOU RECALL, EARLIER IN THE DAY, PLAINTIFFS PUT ON  
4 THE RECORD, ACTUALLY -- PLAINTIFF PUT ON THE RECORD  
5 THAT WE'RE REMOVING ALL THE ECONOMIC, PAST AND FUTURE  
6 ECONOMIC DAMAGES. SO THOSE NEED TO BE DELETED FROM THE  
7 FORM.

8 THE COURT: ALL RIGHT. SO ON THE -- I'M THE  
9 ONE THAT CREATED THE QUESTION ABOUT ARTICULABLE, I  
10 BELIEVE, WONDERING IF ANYONE WAS GOING TO KNOW EXACTLY  
11 WHAT THAT MEANS. BUT AS LONG AS WE'RE NOT ABLE TO GET  
12 AN AGREEMENT ON AN ALTERNATIVE WORD, I INTEND TO USE  
13 THE WORD "ARTICULABLE."

14 MR. MCMILLAN: THANK YOU, YOUR HONOR.

15 MS. SWISS: THAT'S FINE.

16 THE COURT: AND IF WE GET A QUESTION FROM THE  
17 JURY, THEN WE'LL TRY TO FIGURE IT OUT.

18 MR. GUTERRES: HERE WE HAVE THAT DICTIONARY  
19 THAT HAS THE DEFINITION.

20 THE COURT: YEAH, I DON'T HAPPEN TO HAVE SUCH  
21 A DICTIONARY.

22 BUT WE'LL DO IT THEN BECAUSE I KNOW  
23 "ARTICULABLE" IS IN THE CACIS, SO WE'LL GO WITH THAT.

24 MR. GUTERRES: THANK YOU, YOUR HONOR.

25 MS. SWISS: AND THE FINAL ISSUE IS I KNOW  
26 MR. MCMILLAN WAS GOING TO TAKE A LOOK AT THE *ZELLNER*  
27 CASE WITH REGARDS TO THE INTERROGATORIES TO THE JURY.  
28 THE DEFENDANTS -- IF THE COURT WOULD AGREE WITH THAT



1       PROCEDURE, THE DEFENDANTS PROPOSED INTERROGATORIES BACK  
2       IN JULY, WHICH WAS LONG BEFORE THE EVIDENCE IN THIS  
3       CASE. SO WE WILL -- WE'VE LOOKED AT THE  
4       INTERROGATORIES REQUESTED AT THAT TIME. WE'LL SEND A  
5       LIST TO THE PLAINTIFF TONIGHT OF PROPOSED  
6       INTERROGATORIES TO THE JURY SHOULD THE COURT AGREE WITH  
7       THAT, AND THEN WE CAN FINALIZE THAT TOMORROW AS WELL.

8               MR. MCMILLAN: AND YOUR HONOR, JUST SO IT'S  
9       CLEAR, WHEN THEY DID SERVE THEIR ORIGINAL BOLUS OF  
10       INTERROGATORIES, PLAINTIFF DID FILE OBJECTIONS TO ALL  
11       OF THOSE.

12              THE COURT: YES, YOU DID.

13              MR. MCMILLAN: RIGHT.

14              THE COURT: BUT SHE'S STILL GOT TO FURNISH YOU  
15       THE ONES THEY'RE PROPOSING IN THE PRESENT STATE OF THE  
16       CASE.

17              MS. SWISS: YES.

18              THE COURT: AND THOSE WOULD BE ON THAT  
19       CAUSE -- IN THE CAUSE OF ACTION FOR THE INTENTIONAL  
20       INFLECTION.

21              MS. SWISS: NO, YOUR HONOR. THE QUALIFIED  
22       IMMUNITY DEFENSE WOULD GO TOWARDS THE FEDERAL CAUSE OF  
23       ACTION AGAINST MS. PENDER AND MS. ROGERS FOR THE  
24       SEIZURE OF THE BABY. SO IT WOULD GO TO THE ISSUE OF  
25       WHETHER THEY'RE -- WHETHER OR NOT THERE'S EXIGENT  
26       CIRCUMSTANCES THAT THE COURT FINDS AGAINST THEM,  
27       WHETHER THEY AS INDIVIDUALS ARE ENTITLED TO QUALIFIED  
28       IMMUNITY BASED ON THEIR UNDERSTANDING OF THE MEDICAL

1 EVIDENCE AT THE TIME.

2 THE COURT: AND THAT PART I UNDERSTOOD. I WAS  
3 GOING BACK TO WHERE YOU SAID THAT YOU HAD A QUESTION AS  
4 TO WHETHER THERE SHOULD BE AN ADDITIONAL QUESTION THAT  
5 BASED ON THE LITIGATION PRIVILEGE -- IN WHICH CAUSE OF  
6 ACTION WAS THAT?

7 MS. SWISS: THAT WAS FOR THE INTENTIONAL  
8 INFLECTION OF EMOTIONAL DISTRESS CLAIM AGAINST  
9 MS. SCHEELE ONLY. THAT WOULD BE A REQUEST FOR  
10 ADMISSION --

11 THE COURT: ALL RIGHT. AND THAT'S WHAT I WAS  
12 ASKING BECAUSE I'LL ALSO TONIGHT TRY TO ADDRESS THAT AS  
13 WELL.

14 MS. SWISS: THANK YOU.

15 THE COURT: NOW, LOOK, TOMORROW, WE'RE UP  
16 AGAINST IT, AND WE'RE GOING TO HAVE -- SO I'LL SEE  
17 EVERYBODY THAT'S GOING TO BE HERE AT 8:00 A.M.

18 MS. SWISS: THANK YOU, YOUR HONOR.

19 MR. GUTERRES: THANK YOU, YOUR HONOR.

20 MR. MCMILLAN: THANK YOU, YOUR HONOR.

21 (RECESS)

22  
23 (WHEREUPON, AT THE HOUR OF 4:53 P.M.,  
24 THE PROCEEDING ADJOURNED.)

25

26

---OOO---

27

28

(NEXT PAGE IS 9901.)