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M A S T E R I N D E X

OCTOBER 6, 2016

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M A S T E R I N D E X

OCTOBER 6, 2016

EXHIBITS

<u>PLAINTIFF'S</u>	<u>MARKED</u>	<u>RECEIVED</u>	<u>WITHDRAWN REJECTED</u>
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11.8-11.12	5739		
12	5726		
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(EXHIBITS ADMITTED INTO EVIDENCE WERE
DONE VIA STIPULATION OFF THE RECORD.
PLEASE REFER TO CLERK'S TRANSCRIPT.)

1 CASE NUMBER: BC470714
3 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL
4 LOS ANGELES, CALIFORNIA THURSDAY, OCTOBER 6, 2016
5 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: ALISIA PATRICIO, CSR NO. 13606
8 TIME: 8:45 A.M.

9
10 ---OOO---

11
12 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
13 COUNSEL ARE PRESENT OUTSIDE THE PRESENCE OF THE JURY.
14 THE VARIOUS THINGS THAT WE HAVE HAD IN PROCESS, WHAT
15 HAS OCCURRED WITH FIRST OF ALL REQUESTS FOR ADMISSIONS?
16 YOU WERE GOING TO WORK ON PERHAPS A STIPULATION THAT WE
17 COULD --

18 MR. MCMILLAN: RIGHT.

19 THE COURT: -- PRESENT.

20 MR. MCMILLAN: RIGHT. AND I FINISHED THAT UP.
21 WE MET AND CONFERRED WHILE WE WERE HERE IN COURT THE
22 OTHER DAY OR YESTERDAY AFTERNOON AND WE CAN GO AHEAD
23 AND DELETE OUT THE SEIZURE AND EXIGENCY DEFINITIONS.
24 AND THAT DEFINITION APPEARED IN A COUPLE OF PLACES, SO
25 THAT ACTUALLY COMPRESSED THE STIPULATION A LITTLE BIT.
26 AND THEN WITH RESPECT TO DR. EGGE, WE'RE STILL WORKING
27 ON THAT AND TALKING ABOUT IT. DEPENDING ON HOW THINGS
28 GO TODAY, IF PLAINTIFF IS ABLE TO REST TODAY, IT'S MY

1 INTENTION TO DELETE OUT EGGE IF WE CAN READ THE
2 STIPULATION TO THE JURY. IF WE'RE NOT ABLE TO WE'D
3 LIKE TO GET A RULING ON THE ISSUE. THAT'S SORT OF
4 WHERE --

5 THE COURT: WELL, YOU CAN REST SUBJECT TO
6 EXHIBITS AND THAT, YOU KNOW, RESOLUTION OF THE ISSUE
7 PERTAINING TO THE REQUESTS FOR ADMISSIONS, SO.

8 MR. MCMILLAN: I GUESS IT'S JUST A TIMING
9 ISSUE. IF IT COMES TO THAT POINT I THINK I'D PREFER TO
10 JUST READ THE STIP AND FINISH THE CASE.

11 THE COURT: OKAY.

12 MR. MCMILLAN: OR NOT FINISH THE CASE I'M
13 SORRY.

14 THE COURT: NO, I UNDERSTAND.

15 MR. MCMILLAN: FINISH OUR CASE.

16 THE COURT: AT LEAST THIS PART OF IT.

17 MR. MCMILLAN: RIGHT. RIGHT.

18 MR. GUTERRES: THERE'S STILL A SECOND HALF,
19 YOUR HONOR.

20 MR. MCMILLAN: NO, I KNOW. I KNOW.

21 THE COURT: YES.

22 MR. GUTERRES: IN MR. MCMILLAN'S MIND, WE
23 MIGHT JUST BE SITTING HERE.

24 MR. MCMILLAN: I TOTALLY GET IT. THAT WAS
25 LIKE A FAUX PAS ON MY PART. I APOLOGIZE.

26 SO ANYWAY, THAT'S ONLY HANG UP ON THE WHOLE
27 THING. LET ME THINK ABOUT IT SOME MORE. WE'RE NOT
28 COMPLETELY ADVERSE TO THE IDEA OF JUST DELETING

1 DR. EGGE, AND IF WE'RE ABLE TO REACH THAT CONCLUSION,
2 SAY, BEFORE NOON OR SO, THEN THAT'S WHAT WE'LL DO.

3 THE COURT: ALL RIGHT. AND YOU WERE WORKING
4 ON WHAT TO DO WITH THE EXHIBITS.

5 MR. MCMILLAN: WE ARE.

6 THE COURT: AND I SEE -- YOU LOOK TO MR. PARIS
7 WHO IS NOW STEPPING FORWARD.

8 MR. MCMILLAN: CORRECT, YOUR HONOR.

9 THE COURT: DELEGATION IS A SIGN OF
10 LEADERSHIP.

11 MR. MCMILLAN: THANK YOU, YOUR HONOR. I
12 APPRECIATE THAT.

13 MR. PARIS: SO I'VE STARTED THE PRELIMINARY
14 REVIEW TO TRY TO REDUCE DUPLICATION, YOUR HONOR. AT
15 THIS MOMENT I'M NOT QUITE FINISHED WITH CREATING AN
16 INDEX. THE HOPE IS TO HAVE AN INDEX TO INDICATE A
17 SPECIFIC TRIAL EXHIBIT AND WHICH ONES IT WILL CORRELATE
18 TO FROM THE DEPOSITIONS.

19 THE COURT: RIGHT.

20 MR. PARIS: THAT PROCESS IS ALMOST COMPLETE.
21 AT THIS TIME GOING THROUGH IT TO REDUCE DUPLICATION, WE
22 ARE PREPARED TO WITHDRAW REQUESTS TO AT LEAST THREE
23 EXHIBITS RIGHT NOW IF THAT'S ACCEPTABLE.

24 THE COURT: CERTAINLY. WHEN DO YOU THINK THAT
25 YOU'LL BE ABLE TO FINISH THIS UP SO WE CAN --

26 MR. PARIS: I CAN HAVE IT PREPARED BY
27 TOMORROW, YOUR HONOR.

28 THE COURT: ALL RIGHT. HAS THE DEFENSE SEEN

1 HOW THAT IS COMING TOGETHER? OR AT LEAST HAVE YOU
2 TALKED WITH THEM ABOUT IT?

3 MR. PARIS: NOT YET, YOUR HONOR. I WAS HOPING
4 TO HAVE A COMPLETED INDEX.

5 THE COURT: ALL RIGHT. WELL, MAYBE IF YOU
6 WOULD, TOMORROW MORNING WOULD BE FINE.

7 MR. PARIS: OKAY.

8 THE COURT: AND I THINK IT MIGHT BE, WITHOUT
9 SPENDING A LOT OF TIME, JUST SHOW MR. GUTERRES AND
10 MS. SWISS WHAT IT IS YOU'RE WORKING ON SO THEY'LL
11 UNDERSTAND WHERE THIS IS HEADED TO MAKE SURE THAT THEY
12 AGREE THAT'S A REASONABLE PROCESS FOR US TO BE ABLE TO
13 ADDRESS IT. WOULD YOU DO THAT?

14 MR. PARIS: I WILL DO THAT, YOUR HONOR.

15 THE COURT: OKAY. GOOD. THANK YOU.

16 MR. PARIS: THANK YOU, YOUR HONOR.

17 THE COURT: WELL, THAT GETS YOU OFF THE HOOK,
18 DOESN'T IT, MR. MCMILLAN?

19 MR. MCMILLAN: IT SURE DOES. I DO HAVE TO GET
20 SOME SLEEP AT SOME POINT.

21 THE COURT: OKAY. SO TODAY, BESIDES FINISHING
22 WITH MS. DUVAL, AT LEAST HOPING THAT WE DO, REMAINS TO
23 BE SEEN, DO YOU HAVE ONE OTHER WITNESS TODAY?

24 MR. MCMILLAN: DONNIE COX IS --

25 THE COURT: OH, THAT'S RIGHT. WE TALKED ABOUT
26 THAT.

27 MR. MCMILLAN: AT 10:30 IS WHEN --

28 THE COURT: 10:30?

1 MR. MCMILLAN: YES.

2 THE COURT: SO WE'LL START AGAIN WITH
3 MS. DUVAL --

4 MR. MCMILLAN: CORRECT.

5 THE COURT: -- WHEN WE RESUME?

6 MR. MCMILLAN: CORRECT.

7 THERE IS ONE ISSUE, YOUR HONOR, I DON'T KNOW
8 IF THE COURT HAS NOTICED PROBABLY, CERTAINLY, YOU
9 PROBABLY HAVE. BUT EACH TUESDAY AND THURSDAY,
10 MS. DUVAL ISN'T HERE AFTER ABOUT 3:00 O'CLOCK, 3:15.

11 THE COURT: RIGHT.

12 MR. MCMILLAN: SHE HAS HER SCHEDULED VISITS
13 WITH HER SON, AND THERE'S BEEN NO ACCOMMODATION MADE
14 FOR TODAY -- OR WE HAVEN'T BEEN ABLE TO REACH AN
15 ACCOMMODATION TO MOVING THE SCHEDULED VISIT OFF OR
16 ANYTHING LIKE THAT. SHE WOULD LIKE TO BE ABLE TO MEET
17 THAT VISIT.

18 THE COURT: I THINK THE VISITATION IS
19 IMPORTANT. IF WE'RE NOT DONE WITH HER BY THE TIME
20 SHE'D HAVE TO LEAVE, THEN WE'LL JUST HAVE TO FINISH HER
21 UP ON NEXT TUESDAY.

22 AND REMEMBER TODAY, IN ANY EVENT, TO
23 ACCOMMODATE OUR NO. 3, JUROR MS. SALINAS, WE'RE GOING
24 TO RECESS AT ABOUT 4:10 ANYWAY. SO TODAY NO MATTER
25 WHAT, WILL BE A LITTLE SHORTER. I'M HOPING THAT WE CAN
26 ALSO FINISH MS. DUVAL. I SUSPECT EVERYBODY MAYBE FOR
27 DIFFERING REASONS WOULD HOPE WE COULD DO THAT, AND I'M
28 SURE MS. DUVAL WOULD HOPE SO TOO. BUT I'M JUST SAYING

1 I HOPE -- THAT'S A HOPE AND IT'S CERTAINLY NOT
2 SOMETHING THAT I'M GOING TO COMPEL.

3 HER TESTIMONY IS IMPORTANT AND EVERYBODY
4 HAS -- IT'S IMPORTANT THAT EVERYBODY HAVE A CHANCE TO
5 ASK THE QUESTIONS OF HER THAT SHOULD BE ASKED.

6 MR. MCMILLAN: THANK YOU, YOUR HONOR.

7 THE COURT: OKAY.

8 MR. MCMILLAN: WE APPRECIATE IT.

9 THE COURT: ANYTHING ELSE, MR. GUTERRES?

10 MR. GUTERRES: POINT OF CLARIFICATION, YOUR
11 HONOR.

12 THE COURT: SURE.

13 MR. GUTERRES: SO DOES THAT MEAN THAT IF
14 MS. DUVAL IS STILL ON THE STAND, THAT WE WILL ADJOURN
15 AT 3:00 O'CLOCK TODAY?

16 THE COURT: IT COULD MEAN THAT, YES. I DON'T
17 KNOW.

18 DO YOU HAVE AN ESTIMATE OF -- ABOUT TIMING?
19 AND THIS IS AN ESTIMATE. THIS ISN'T SOMETHING THAT
20 YOU'RE BOUND BY. I'M JUST TRYING TO GET AN IDEA.

21 MR. MCMILLAN: I'M HOPING TO MAKE SIGNIFICANT
22 PROGRESS WITH HER BEFORE MR. COX SHOWS UP, AND PERHAPS
23 WE MIGHT MAKE IT THROUGH JURIS DISPO. AND THEN FROM
24 THERE, THERE'S -- I'M NOT GOING TO COVER EVERY LAST
25 MINUTE INFORMATION WITH HER BECAUSE I THINK OTHER
26 WITNESSES HAVE DONE IT. SO TO THE EXTENT THAT WE HAVE
27 OTHER WITNESSES THAT HAVE ADDRESSED THE SAME ISSUES,
28 I'M TRYING TO CUT THAT OUT SO WE DON'T HAVE A LOT OF

1 DUPLICATION. BUT THERE ARE CERTAIN LAST MINUTE
2 INFORMATIONS THAT WE DO NEED TO TALK ABOUT. AND SO
3 THAT'S -- THEN WE HAVE, YOU KNOW, THE ULTIMATE
4 DISPOSITION, AND THEN MARCHING FORWARD TO TODAY, TO THE
5 CURRENT SITUATION.

6 SO MAYBE TWO, THREE HOURS.

7 MR. GUTERRES: YOUR HONOR, HOW I INTERPRET
8 THAT IS WE ARE STILL IN NOVEMBER OF 2009 AND
9 JURISDICTION DISPOSITION WAS JULY 2010, SO HOPEFULLY WE
10 CAN --

11 MR. MCMILLAN: WELL, THE JURIS DISPO HEARING,
12 THE FIRST JURIS DISPO HEARING WAS ACTUALLY IN JANUARY
13 AND JUST TO CORRECT, THE ULTIMATE TRIAL -- THE
14 JURISDICTIONAL TRIAL DIDN'T HAPPEN UNTIL AUGUST. BUT
15 WHEN I'M TALKING ABOUT SORT OF THE TIME LINE IN MY HEAD
16 I'LL DO IT BY HEARING AND BY REPORT. SO THERE ARE TWO
17 JURIS DISPOS, BUT I THINK A LOT OF THAT MATERIAL IN
18 BETWEEN HAS BEEN COVERED SUBSTANTIALLY IN THE
19 DEPOSITION PRESENTATIONS THAT THE JURY'S ALREADY HEARD
20 FROM DEFENDANTS.

21 AND SO I DON'T INTEND WITH MS. DUVAL TO GO
22 BACK AND REFLOW THAT GROUND. THERE'S ONE IN
23 PARTICULAR -- ACTUALLY TWO WHERE WE DO NEED TO TALK A
24 LITTLE BIT, AND THAT'S WITH DR. GILL, BUT THAT
25 SHOULDN'T GO VERY LONG. SO I DON'T ANTICIPATE GETTING
26 BOGGED DOWN AT DETENTION OR JURIS DISPO, THE INITIAL
27 JURIS DISPO. THERE MAY BE SOME BOGGING DOWN THAT
28 HAPPENS A LITTLE LATER, BUT I'LL TRY TO AVOID THAT.

1 AND IF YOU SEE ME STRUGGLING, JUST TELL ME TO
2 MOVE IT ALONG.

3 THE COURT: ALL RIGHT.

4 MR. GUTERRES: WE'LL HELP IN THAT REGARD TOO.

5 THE COURT: SHOWING GOOD WILL. MR. GUTERRES
6 WILL BE HAPPY TO ASSIST YOU.

7 MR. MCMILLAN: AND I APPRECIATE IT.

8 THE COURT: ALL RIGHT. SO I HAVE ANOTHER
9 E-MAIL FROM JUROR NO. 3, MS. SALINAS, AND SHE'S NOW
10 ASKING TO BE EXCUSED 20 MINUTES EARLY ON TUESDAYS AS
11 WELL AS THURSDAYS. SHE SAYS:

12 "MY ATTORNEY CALLED ME AND WANTED
13 TO KNOW WHY I HAVEN'T BEEN GOING TO THE
14 CHIROPRACTOR AS OFTEN AS SHE ASKED ME
15 TO. I TOLD HER I AM ON JURY DUTY AND
16 IT'S HARD TO THE GET TO THE DOCTOR ON
17 TIME BECAUSE THEY CLOSE EARLY. SHE
18 INFORMED ME IF I DON'T START GOING AT
19 LEAST TWO TIMES A WEEK, THEY WILL DROP
20 MY CASE. I KNOW I INCONVENIENCED THE
21 COURT AND ASKED TO LEAVE 20 MINUTES
22 EARLY ON THURSDAYS, BUT UNFORTUNATELY,
23 I ALSO NEED TO LEAVE ON TUESDAYS. I DO
24 UNDERSTAND THIS PUTS A STRAIN ON THE
25 TIME FRAME OF THE CASE, BUT I REALLY
26 NEED TO KEEP THIS LAWYER, ESPECIALLY
27 SINCE I HAD A HARD TIME FINDING ONE. I
28 DO WANT TO BE HERE, BUT I ALSO NEED TO

1 DEAL WITH MY HEALTH. I AM IN PAIN
2 EVERY DAY, AND IF IT'LL HELP GOING TO
3 THIS DOCTOR, AND I WOULD LIKE TO TAKE
4 EVERY OPPORTUNITY I HAVE AT THIS TIME."

5 WELL, I'LL DEAL -- I'M NOT SURE WHAT TO DO.
6 I'M RELUCTANT -- THE EXTRA 20 MINUTES ARE NOT HUGEY
7 MEANINGFUL EACH DAY, SO I'LL PROBABLY ACCOMMODATE THAT
8 BECAUSE I DON'T WANT TO BE REPLACING HER AT THIS TIME
9 OUT OF CONCERN THAT WE HAVE TWO ALTERNATES THAT WE'RE
10 ON THE BRINK OF LOSING ANYWAY. SO JUST ADVISING YOU.
11 I'LL MAKE MY DECISION AS TO WHAT I THINK WE NEED TO DO.

12 ALL RIGHT. I THINK -- ANYTHING ELSE FOR NOW?

13 MR. GUTERRES: YOUR HONOR, WE ARE TRYING TO
14 STREAMLINE OUR CASE IN THE HOPES OF -- WELL, WE WERE
15 LOOKING AT TRYING TO SEE IF WE COULD REST BY THE 14TH.
16 THAT MIGHT BE CUTTING IT A LITTLE TIGHT -- WHICH WOULD
17 BE NEXT FRIDAY. IT MIGHT GO INTO MONDAY.

18 THE COURT: OKAY. I UNDERSTAND.

19 ALL RIGHT. WELL, WE'LL GET STARTED AS SOON AS
20 WE'RE TOLD THE -- ALL JURORS ARE HERE.

21 AS LONG AS WE'RE WAITING, I WANT TO GO BACK ON
22 THE RECORD.

23 MR. MCMILLAN, DID YOU HAVE A CHANCE TO TAKE A
24 LOOK AT THE BRIEF THAT WAS FILED ON BEHALF OF THE
25 DEFENSE IN RESPONSE TO YOUR BRIEF ABOUT CAUSATION, ET
26 CETERA?

27 MR. MCMILLAN: I DID GO THROUGH IT, AND WE
28 SCANNED IT, AND I E-MAILED IT DOWN TO MR. DANER AT MY

1 OFFICE. HE'S GOING TO BE HERE TOMORROW, AND HE'S
2 WORKING UP, I GUESS YOU'D CALL IT A REPLY. BUT AT
3 FIRST GLANCE, THIS IS PROBABLY PREDICTABLE, WE DON'T
4 AGREE WITH THEIR POSITION AT ALL. SO --

5 THE COURT: OKAY.

6 MR. GUTERRES: YOUR HONOR, I ASSUME WE'RE
7 GOING TO ADDRESS IT TOMORROW?

8 THE COURT: WELL, I THINK WE SHOULD BECAUSE IT
9 DOES LEAD TO A COUPLE OF OTHER QUESTIONS I HAD AS TO --
10 PART OF YOUR BRIEF ADDRESSED QUALIFIED IMMUNITY. AND I
11 THINK THAT ISSUE NEEDS TO BE DECIDED AS WE'RE PUTTING
12 TOGETHER A VERDICT FORM SO WE KNOW WHAT WILL BE IN OR
13 OUT. AND THAT'S ONE OF THE REASONS I WAS ASKING. I
14 ALSO DID READ THE CASE OF MARSHALL VERSUS THE COUNTY OF
15 SAN DIEGO, AND WHICH I NOTED WAS YOUR CASE, AND
16 APPARENTLY, BECAUSE YOU DIDN'T CITE IT TO ME IN YOUR
17 BRIEF, YOU DON'T THINK IT HAS ANY APPLICABILITY TO THE
18 ISSUES IN THIS CASE.

19 MR. MCMILLAN: CAN I ADDRESS THAT, YOUR HONOR?

20 THE COURT: SURE.

21 MR. MCMILLAN: IT'S NOT THAT I DON'T THINK IT
22 HAS APPLICABILITY TO THE ISSUES IN THIS CASE. IN FACT,
23 WE ACTUALLY SAW MARSHALL AS A SUBSTANTIAL VICTORY FOR
24 THE PLAINTIFF'S SIDE OF THE BAR, AT LEAST IN THIS
25 PARTICULAR AREA OF PRACTICE BECAUSE THE COURT RESOLVED
26 ONCE AND FOR ALL AN ISSUE THAT HAD PREVIOUSLY BEEN
27 RAISED IN THE 9TH CIRCUIT IN A CASE CALLED STANNIS
28 VERSUS THE STATE OF WASHINGTON DEPARTMENT OF SOCIAL

1 SERVICES. IT WAS STANNIS DICTA THAT SAID GOING FORWARD
2 FROM TODAY, OR GOING FORWARD, IT'S CLEARLY ESTABLISHED
3 SOCIAL WORKERS CAN'T LIE ON COURT REPORTS.

4 AND WHAT HAS HAPPENED SINCE THE STANNIS --
5 THIS IS A 2010 CASE -- IS THE TRIAL COURTS ON MOTION
6 FOR SUMMARY JUDGMENT HAVE BEEN LATCHING ON TO THAT
7 GOING FORWARD LANGUAGE AND SAYING WELL SINCE THE 9TH
8 CIRCUIT IS DRAWING A TIME LINE ON WHEN IT WAS CLEARLY
9 ESTABLISHED, IT HAS TO BE 2010 BECAUSE THAT'S WHEN THE
10 DECISION WAS ISSUED. AND SO WE'VE BEEN DEALING WITH
11 THAT ISSUE EVER SINCE THE STANNIS. WE FINALLY GOT IT
12 RESOLVED IN MARSHALL AT LEAST IN THE STATE COURTS, AND
13 I THINK IN HUCK IN THE FEDERAL COURTS THE 9TH CIRCUIT,
14 SIMILAR ISSUES. AND MARSHALL WAS THE CASE WHERE WE GOT
15 THAT RESOLVED. IN FACT, AT ORAL ARGUMENT THE COUNTY
16 MADE THE ARGUMENT -- CLEARLY. AND THE COURT COMPLETELY
17 DISAGREED AND SAID WELL, WE CAN FIX THAT. AND THEY DID
18 IN MARSHALL. AND THEY PUBLISHED IT TO MAKE IT CLEAR.

19 SO OUR POSITION IS WITH RESPECT TO THE
20 QUALIFIED IMMUNITY ISSUE, WE NO LONGER HAVE THIS
21 CONFUSION AND HANG-UP ABOUT WHEN IT BECAME CLEARLY
22 ESTABLISHED. EVERYBODY AT LEAST IN THE COURT SEEMED TO
23 AGREE SOMEWHERE BACK IN 1999 TO 2000, SOMEWHERE IN THAT
24 RANGE IT STARTED TO BECOME VERY CLEARLY ESTABLISHED
25 THAT SOCIAL WORKERS CAN'T LIE ON REPORTS. OR ACTUALLY
26 THERE'S EVEN SOME AUTHORITY THAT SUGGESTS THEY CAN'T
27 LIE DURING SWORN TESTIMONY, A RECENT 9TH CIRCUIT CASE,
28 IT'S CALLED LITSKAR, AND WE HAD A SIMILAR SITUATION

1 THERE.

2 BUT I THINK POLICE AND A LOT OF CASE LAW DRAWS
3 THE ANALOGY BETWEEN POLICE AND SOCIAL WORKERS IN THEIR
4 INVESTIGATIVE REPORTING. AND LITSKAR AT LEAST IN OUR
5 VIEW OF THE LAW, WOULD STAND FOR THE PROPOSITION THAT
6 EVEN DURING TESTIMONY ON THE STAND WHICH NORMALLY
7 THEY'D HAVE IMMUNITY BUT THAT EVEN THAT POTENTIALLY IS
8 SUBJECT TO CHALLENGE. WE DON'T HAVE THAT SITUATION
9 HERE.

10 THE COURT: WHAT WAS THE EFFECTIVE DATE OF THE
11 WELFARE AND INSTITUTIONS CODE SECTION WHICH
12 SPECIFICALLY ELIMINATED ANY IMMUNITY FOR PERJURY AND SO
13 ON?

14 MR. MCMILLAN: IT'S 820.21, THAT WAS 1995.

15 THE COURT: YEAH, SO WHAT I'M WONDERING IS I'M
16 JUST ASKING WHY WAS IT EVER IN QUESTION IN CERTAINLY IN
17 CALIFORNIA STATE COURTS ABOUT A WELL ESTABLISHED RIGHT
18 BECAUSE THAT'S CODE SECTION SEEMS TO ADDRESS THE HEART
19 OF YOUR CLAIM OF DECEPTIVE EVIDENCE?

20 MR. MCMILLAN: RIGHT. AND THAT'S BEEN OUR
21 POSITION FOR YEARS. BUT WHAT HAPPENS, BECAUSE WE ARE
22 IN STATE COURT ON A FEDERAL CLAIM, THE CASE LAW
23 SUGGESTS CERTAINLY THE 9TH CIRCUIT AND THERE'S
24 SIGNIFICANT CALIFORNIA CASE LAW THAT SAYS WHEN WE'RE
25 DEALING WITH THE SUBSTANTIVE ELEMENTS OF THE CLAIM, WE
26 HAVE TO APPLY FEDERAL LAW. AND UNDER FEDERAL LAW, IF
27 WE LOOK AT I THINK IT'S MARTINEZ VERSUS COUNTY OF LOS
28 ANGELES AND THEN SUBSEQUENTLY IN CACI, THEY BOTH SAY WE

1 TAKE STATE LAW IMMUNITIES AND APPLY THEM TO FEDERAL
2 CASES.

3 SO FOR EXAMPLE SECTION 820.20 CANNOT BE
4 APPLIED TO THE FEDERAL CLAIM AND THEN RC CAME OUT WITH
5 RESPECT TO THE MANDATED REPORTER IMMUNITY AND SAID
6 YEAH, MANDATED REPORTER IMMUNITY CAN BE APPLIED TO THE
7 STATE CLAIMS IN STATE COURT BUT NOT TO THE FEDERAL
8 CLAIMS. SO WE FACE THE SAME SORT OF CONUNDRUMS WITH
9 820.21.

10 THE COURT: YEAH, I DON'T SEE WHY IN FEDERAL
11 COURT WOULD BE HAVING A PROBLEM WITH THAT.

12 MR. MCMILLAN: BECAUSE IT'S THE --

13 THE COURT: IN OTHER WORDS THE STATE IMMUNITY
14 ISN'T GOING TO IMMUNIZE SOMEONE GUEST AGAINST A FEDERAL
15 CLAIM. AND IT SEEMED TO ME THAT THAT WOULD BE WELCOME
16 BY THE FEDERAL COURT BECAUSE THAT MAKES IT CONSISTENT
17 WITH THEIR VIEW THAT STATE CAN'T GRANT AN IMMUNITY OR
18 HAVE AN IMMUNITY FOR A MATTER BASED ON, FOR EXAMPLE, A
19 SECTION 1983 CLAIM. SO.

20 MR. MCMILLAN: WELL, THAT'S BEEN OUR POSITION,
21 BUT THERE'S BEEN THIS DIVERGENCE WITH RESPECT
22 SPECIFICALLY TO 820.21. THERE'S BEEN THIS DIVERGENCE
23 BETWEEN THE FEDERAL AND THE STATE DECISIONS. AND IT
24 STARTED WITH PARKS VERSUS COUNTY OF SAN DIEGO, AND
25 THERE, THE COURT DID NOTE THAT YEAH CALIFORNIA HAS THE
26 STATUTE. IT'S BEEN AROUND FOR A LONG TIME, AND IT
27 LOOKS LIKE IT'S PRETTY CLEAR THIS TYPE OF BEHAVIOR
28 CAN'T BE HAPPENING. BUT -- AND THEN THEY RELY ON

1 SUPREMACY TO SAY WE CAN'T APPLY IT HERE IN THE IMMUNITY
2 ANALYSIS BECAUSE STATE LAW DOESN'T AFFECT FEDERAL
3 IMMUNITIES.

4 SO EVER SINCE PARKS THERE'S BEEN THIS STRUGGLE
5 TO KIND OF CLOSE THAT GAP. AT LEAST FROM OUR
6 PERSPECTIVE WITH MARSHALL, THAT GAP GOT CLOSED.

7 THE COURT: SEEMS TO ME THERE ARE OTHER PARTS
8 IN READING THE MARSHALL CASE IT LOOKED TO ME LIKE THERE
9 WERE PARTS OF THE DECISION THAT ALSO ISSUES IN THIS
10 CASE AND THAT'S WHY I WAS CURIOUS WHY IT WASN'T CITED
11 TO ME.

12 MR. MCMILLAN: I CAN TELL YOU THE MAIN REASON
13 IS BECAUSE WE HAVE ALREADY RELIED IN THAT CASE PROBABLY
14 ON TEMPER TO SOME EXTENT, ON RC TO SOME EXTENT. I'M
15 NOT SURE ON THE FEDERAL SIDE WHICH OF OUR CASES WE'VE
16 RELIED ON, BUT I WAS LOOKING THROUGH THE STUFF AND IT
17 STARTED TO LOOK LIKE WE WERE PUTTING TOO MANY OF OUR
18 OWN CASES IN THERE. AND I THOUGHT IT DIDN'T LOOK GOOD.

19 THE COURT: OKAY.

20 MR. MCMILLAN: I DON'T KNOW, CALL IT AN EGO
21 THING OR WHATEVER, BUT IT HAD NOTHING TO DO WITH THE
22 CASE.

23 THE COURT: ALL RIGHT.

24 EVERYONE IS READY, SO WE'LL GET THE JURORS IN.

25 (JURY PRESENT)

26 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
27 THE RECORD. EVERYBODY IS PRESENT. BEFORE WE RESUME
28 WITH THE TESTIMONY, MS. SALINAS I DID RECEIVE YOUR

1 MESSAGE AND WE'LL DO THE BEST THAT I CAN TO ACCOMMODATE
2 THAT. AND WE WILL BE INCLUDING TODAY.

3 SO MR. MCMILLAN AT THIS TIME WE'RE GOING TO
4 RESUME WITH MS. DUVAL.

5 MR. MCMILLAN: THAT'S CORRECT YOUR HONOR.

6 THE COURT: ALL RIGHT. MS. DUVAL, WILL YOU
7 PLEASE RETURN TO THE STAND.

8 MR. MCMILLAN, YOU MAY CONTINUE.

9
10 RAFAELINA DUVAL,
11 WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY
12 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

13
14 DIRECT EXAMINATION

15 BY MR. MCMILLAN:

16 Q I WANT TO TAKE YOU BACK JUST FOR A MOMENT
17 YESTERDAY WHEN WE BROKE FOR THE NOON BREAK YOU WERE
18 SHARING WITH US ABOUT THE DAY, NOVEMBER 3RD, THE TBM
19 WHEN YOUR BABY WAS TAKEN FROM YOU.

20 DO YOU REMEMBER THAT TESTIMONY?

21 A I DO.

22 Q JUST WANT TO STEP BACK A LITTLE BIT IN TIME
23 TO -- IT WAS AFTER THE BREAK IN THE TBM AND THE SOCIAL
24 WORKERS COME BACK INTO THE ROOM.

25 DO YOU REMEMBER THAT?

26 A YES.

27 Q DO YOU RECALL WHO CAME INTO THE ROOM FIRST?

28 A I KNOW IT WAS EILEEN, PENDER, ROGERS WHO WALK

1 IN FIRST, AND THERE WERE OTHER PEOPLE WITH THEM BUT
2 RIGHT NOW I CAN'T REMEMBER WHO THEY WERE.

3 Q DO YOU RECALL IF ANYBODY SPOKE TO YOU
4 PERSONALLY AS OPPOSED TO THE GROUP IF ANYBODY SPOKE TO
5 YOU WHEN THE THREE CAME BACK INTO THE ROOM?

6 A YES.

7 Q WHO?

8 A PENDER AND ROGERS.

9 Q WHAT DID THEY SAY?

10 A THEY WERE UPSET. AND AFTER EILEEN ANNOUNCED
11 THAT THEY HAD DECIDED TO DETAIN THE BABY, I ASKED WHY?
12 AND THEN PENDER AND ROGERS THEY STARTED ARGUING WITH ME
13 AND SAYING", WE'RE GOING TO TAKE THE BABY," AND ROGERS
14 TOTALLY WITH AN ATTITUDE. I'M HERE, SHE'S HERE. SHE'S
15 LIKE, "WE'RE GOING TO TAKE THE BABY. HE'S NOT THRIVING
16 WITH YOU." AND I'M LIKE, "WHAT ARE YOU TALKING ABOUT?
17 WE'RE NOT DECIDING CUSTODY HERE. YOU CAN'T TAKE MY
18 BABY." AND SO THE BOTH OF THEM WERE WE'RE GOING TO
19 TAKE THE BABY AND JUST BEING REALLY OPPRESSIVE ABOUT
20 IT.

21 Q I'D LIKE YOU TO TURN TO EXHIBIT 207.

22 (PLAINTIFF'S EXHIBIT NO. 207, WAS
23 MARKED FOR IDENTIFICATION BY THE
24 COURT.)

25 BY MR. MCMILLAN:

26 Q I'LL GRAB YOU THE BOOK. I'M GOING TO GIVE YOU
27 A BATES NUMBER, 002876. AND JUST DESCRIBE BRIEFLY WHAT
28 IS THAT DOCUMENT.

1 MS. SWISS: I'M SORRY WHAT BATES NUMBER?

2 MR. MCMILLAN: 002876.

3 THE WITNESS: THIS IS A CIVIL RIGHTS STATEMENT
4 DECLARATION.

5 BY MR. MCMILLAN:

6 Q OKAY.

7 MS. SWISS: YOUR HONOR, I'D LIKE TO OBJECT ON
8 FOUNDATION.

9 MR. MCMILLAN: YOUR HONOR, I'LL WITHDRAW JUST
10 TO SAVE SOME TIME ON THAT. I CAN GET IT A DIFFERENT
11 WAY.

12 BY MR. MCMILLAN:

13 Q IF YOU LOOK AT THE BOTTOM OF THE STATEMENT
14 THERE IT SAYS:

15 "I'VE READ THE ABOVE STATEMENT AND
16 IT'S MY OWN WRITTEN BY THE INVESTIGATOR
17 IN THE ABOVE REFERENCED ALLEGED
18 DISCRIMINATION COMPLAINT. MY SIGNATURE
19 BELOW INDICATES THAT I ACCEPT AND
20 DECLARE UNDER THE PENALTY OF PERJURY
21 UNDER THE LAWS OF THE STATE OF
22 CALIFORNIA THAT THE FOREGOING IS TRUE
23 AND CORRECT."

24 FIRST DID I READ THAT CORRECTLY?

25 A YOU DID.

26 Q LOOK UP AT THE TOP OF THE PAGE THERE, CAN YOU
27 TELL WHOSE STATEMENT THIS IS?

28 A SOI KIMBERLY ROGERS.

1 Q KIMBERLY ROGERS.

2 AND I'M FIRST GOING TO DRAW YOUR ATTENTION
3 TO -- LET ME ASK YOU THIS: AS YOU WERE DESCRIBING FOR
4 US YESTERDAY THE TEAM DECISION MEETING AND YOUR FATHER
5 GOT UPSET AND SAID SOME THINGS.

6 DO YOU RECALL THAT?

7 A I DO.

8 Q I THINK YOU SAID HE CALLED SOMEONE TRASH OR
9 COCKROACHES THAT SORT OF THING?

10 A YES.

11 Q IF I CAN GET YOU TO READ TO YOURSELF -- WELL,
12 LET ME ASK YOU THIS: READ TO YOURSELF THE LAST
13 SENTENCE OF THAT STATEMENT.

14 A ADDITIONALLY --

15 Q TO YOURSELF.

16 OKAY. DOES THAT REFRESH YOUR RECOLLECTION
17 ABOUT NOT ON THE WHAT YOUR FATHER SAID BUT WHO HIS
18 STATEMENTS WERE DIRECTED TOWARDS?

19 A YES.

20 Q CAN YOU PLEASE SHARE WITH US YOUR REFRESHED
21 RECOLLECTION?

22 A SUSAN PENDER AND WENDY CAMPO WERE SITTING
23 TOGETHER AND THEY WERE SMIRKING AND LAUGHING AT ME, AND
24 MY FATHER WAS GETTING TRIGGERED BY THAT. AND THAT'S
25 WHEN HE SAID THAT.

26 Q I UNDERSTAND. I APPRECIATE THAT.

27 MY QUESTION REALLY IS WHAT EXACTLY WAS IT THAT
28 YOUR FATHER SAID?

1 A WHITE TRASH.

2 Q TO WHO?

3 A SUSAN PENDER.

4 Q AND HAVING REVIEWED THAT DECLARATION UNDER
5 PENALTY OF PERJURY BY MS. ROGERS, DID THAT HELP YOU GET
6 BACK INTO THE TIME IN YOUR MIND?

7 A YES.

8 Q DO YOU REMEMBER --

9 MS. SWISS: OBJECTION. MOVE TO STRIKE
10 COUNSEL'S COMMENTS. HE'S NOT TESTIFYING HERE. LACKS
11 FOUNDATION AND LEADING.

12 THE COURT: OBJECTION IS SUSTAINED. COUNSEL'S
13 STATEMENT IS ORDERED STRICKEN.

14 PLEASE JUST ASK A QUESTION.

15 BY MR. MCMILLAN:

16 Q IN REVIEWING THAT DOCUMENT, DID THAT ASSIST
17 YOU IN GETTING A MORE SPECIFIC RECOLLECTION OF WHAT
18 HAPPENED BETWEEN YOUR FATHER AND MS. PENDER IN THAT
19 TDM?

20 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 BY MR. MCMILLAN:

24 Q OKAY. I THINK WHERE WE LEFT OFF YESTERDAY
25 BEFORE THE NOON BREAK, WE WERE DOWNSTAIRS WITH
26 MS. PENDER AND MR. MILLS AND YOU WERE GIVING UP YOUR
27 BABY TO MR. MILLS.

28 RIGHT? DO YOU REMEMBER THAT?

1 A I DO.

2 Q DID YOU CONSENT TO THAT?

3 A NO.

4 Q DID YOU ARGUE?

5 A YES.

6 Q DID YOU FEEL LIKE YOU HAD A CHOICE?

7 A NO.

8 Q DID YOU BRING ANY -- ANYTHING WITH YOU TO THE
9 MEETING THAT DAY TO CARE FOR THE BABY?

10 A YES.

11 Q SHARE WITH US, WHAT DID YOU BRING?

12 A I HAD SNACKS, I HAD FOOD, AND I HAD FROZEN
13 BREAST-MILK IN LIKE A POUCH THAT KEEPS IT REFRIGERATED.

14 Q AND JUST ROUGHLY HOW LONG WAS THE MEETING,
15 TDM?

16 A MORE THAN FOUR HOURS, FOUR TO SIX AND A HALF
17 HOURS.

18 Q NOW THAT FOUR TO SIX AND A HALF PERIOD, IS
19 THAT JUST THE MEETING IN THAT CONFERENCE ROOM OR DOES
20 THAT COVER MORE EVENTS THAT NIGHT?

21 A IT COVERS SOME OF THE EVENTS OF THAT NIGHT.

22 Q OKAY. DO YOU RECALL ROUGHLY WHAT TIME IT WAS
23 THAT YOU ARRIVED AT THE TDM?

24 A YES.

25 Q ABOUT WHEN WAS THAT?

26 A I WAS RUNNING LATE AFTER LEAVING THE FAILURE
27 TO THRIVE CLINIC. IT WAS AFTER 3:30 WHEN I ARRIVED
28 THERE.

1 Q OKAY. AND THEN YOU RECALL JUST ROUGHLY WHEN
2 IT WAS THAT YOU LEFT THE BUILDING TO HEAD ON HOME?

3 A I DO.

4 Q ROUGHLY WHAT TIME WAS THAT?

5 A AFTER 9:00 O'CLOCK.

6 Q I'M SORRY?

7 A AFTER 9:00 O'CLOCK.

8 Q SO ABOUT FIVE AND A HALF, SIX HOURS SOMETHING
9 LIKE THAT?

10 A YES, IN THE BUILDING, BUT I COULDN'T DRIVE
11 AFTER THAT.

12 Q RIGHT. I JUST WANT TO FOCUS FOR THE MOMENT ON
13 WHEN YOU LEFT NOT HOW YOU LEFT, OKAY?

14 A SURE.

15 Q OKAY. SO 9:00 O'CLOCK IS YOUR ESTIMATE?

16 A AFTER 9:00.

17 Q AFTER 9:00.

18 WHILE YOU WERE THERE, AT LEAST UP UNTIL THE
19 POINT THAT YOU HAD TO GIVE THE BABY TO MR. MILLS,
20 PERIODICALLY DID YOU FEED THE BABY DURING TIME PERIOD?

21 A YES.

22 Q EVEN DURING THE TDM?

23 A YES.

24 Q WHAT DID YOU FEED HIM?

25 A I HAD VEGGIE PUFFS AND THEN A BOTTLE LIKE
26 AROUND 6:30.

27 Q A WHAT I'M SORRY?

28 A A BOTTLE OF BREAST MILK AROUND 6:30.

1 Q THEN GOING DOWN INTO THAT ROOM DOWNSTAIRS, I
2 THINK YOU TESTIFIED THAT IT WAS KIND OF DARK, AND THEN
3 MR. MILLS CAME OUT, AND THERE WAS THIS EXCHANGE OF THE
4 BABY. WHAT DID YOU DO WITH YOUR FOOD, MILK, AND THE
5 BABY THINGS, IF ANYTHING?

6 A I HAD ASKED MS. PENDER IF SHE WOULD ALLOW ME
7 TO JUST AT LEAST BREAST-FEED ONE MORE TIME BECAUSE THE
8 BABY NEEDED TO EAT SOMETHING BEFORE HE -- HE GOT
9 SOMEWHERE ELSE. AND SHE SAID NO. I BEGGED HER TO LET
10 ME JUST BREAST-FEED HIM ONE MORE TIME, AND SHE SAID NO.

11 Q OKAY. WHAT HAPPENED FROM THERE?

12 A I TURNED TO RYAN MILLS, AND I ASKED HIM, I
13 SAID, "PLEASE JUST TAKE THE POUCH," AND I TAKE IT OUT
14 OF THE BAG AND I'M HANDING IT TO HIM. AND I'M BEGGING
15 HIM, "JUST TAKE IT. AND THERE'S A CLEAN BOTTLE IN
16 THERE, JUST GIVE IT TO HIM."

17 Q DOES HE TAKE THE POUCH?

18 A YES.

19 Q WHAT HAPPENS FROM THERE?

20 A HE TAKES THE BABY, AND HE WALKS OUT. AND AS
21 HE'S WALKING OUT, I FOLLOW HIM, AND KIMBERLY ROGERS IS
22 THERE, AND I PLEAD WITH HER, I BEGGED HER NOT TO DO
23 THIS. AND THEN I NOTICED THAT HE LEFT THE POUCH WITH
24 THE BREAST-MILK ON A TABLE.

25 Q HE. HE WHO?

26 A RYAN MILLS.

27 Q SO HE DIDN'T TAKE THE MILK WITH HIM?

28 A NO.

1 Q WHERE WERE YOUR PARENTS WHEN ALL THIS WAS
2 HAPPENING?

3 A AFTER WHAT HAPPENED EARLIER, MY FATHER LEFT
4 THE BUILDING. I DIDN'T KNOW WHERE HE WAS. AND MY
5 MOTHER WAS FINISHING UP HER FINGERPRINTING.

6 Q AT SOME POINT YOU WERE ABLE TO FIND YOUR
7 FATHER. AND TOGETHER YOU ALL WENT HOME RIGHT?

8 A YES.

9 Q YOU NEED TO BREATHE. BREATHE. I WANT TO HEAR
10 YOU BREATHE.

11 CAN YOU SHARE WITH US A LITTLE BIT ABOUT THAT
12 EVENING?

13 A IT WAS THE WORST DAY OF MY LIFE. MY MOM AND I
14 JUST HUGGED EACH OTHER IN THE LIVING ROOM -- IN THE
15 WAITING ROOM. AND I'M JUST SAYING, "OH, MY GOD, THEY
16 TOOK MY BABY. I DON'T KNOW WHY. I HAVEN'T DONE
17 ANYTHING."

18 THE COURT: MR. MCMILLAN, WE'RE GOING TO TAKE
19 A MOMENT HERE. NO MORE QUESTIONS. LET'S JUST TAKE A
20 MOMENT. WE CAN TAKE A RECESS IF SHE NEEDS TO.

21 MR. MCMILLAN: COULD WE DO THAT, YOUR HONOR?

22 THE COURT: MS. DUVAL WOULD YOU LIKE US TO
23 TAKE A SHORT RECESS?

24 THE WITNESS: JUST A LITTLE -- I'M SORRY. LET
25 ME JUST GO TO THE BATHROOM IF THAT'S OKAY.

26 THE COURT: SURE.

27 ALL RIGHT. WE'RE GOING TO TAKE A SHORT
28 RECESS. WE'LL -- 10 MINUTES. ALL JURORS, PLEASE

1 REMEMBER THE ADMONITION.

2 (JURY EXCUSED)

3 (RECESS)

4 MR. MCMILLAN: WE'RE JUST GOING TO MOVE PAST
5 THAT NIGHT ON TO OTHER STUFF. I THINK WE --

6 THE COURT: I'LL LEAVE IT UP TO YOU. WE'RE ON
7 THE RECORD. COUNSEL IS PRESENT. THERE'S A LADY IN THE
8 SEATED PART OF THE COURTROOM, I BELIEVE TRYING TO GET
9 THE ATTENTION OF MS. DUVAL. YES, YOU. WELL, I'M NOT
10 CRITICIZING IN ANY WAY, IF THERE'S SOMETHING THAT YOU
11 WANT TO CALL TO HER ATTENTION, WE'LL DO SO BEFORE WE
12 START.

13 PLEASE REMEMBER, I KNOW IT'S A VERY DIFFICULT
14 TIME FOR MS. DUVAL TO BE TESTIFYING. WE'RE GOING TO DO
15 THE BEST WE CAN TO HELP HER GET THROUGH IT. BUT THAT
16 WON'T INCLUDE ANY KIND OF SIGNALING FROM ANYBODY IN THE
17 COURTROOM BECAUSE THAT WOULD NOT BE ON THE RECORD, AND
18 NO WAY TO PLACE IT ON THE RECORD. SO WHATEVER WE NEED
19 TO DO WE'LL DO BUT IT WILL BE DONE ON THE RECORD AND
20 THROUGH COUNSEL OR OTHER PERSONS THAT ARE BEFORE ME.
21 IT'S JUST THE NATURE OF THE PROCEEDING, IT'S NOT --
22 SHOULD NOT BE INTERPRETED BY YOU IN ANY WAY AS ANY FORM
23 OF CRITICISM IT'S JUST SIMPLY INFORMATION I'M PROVIDING
24 TO YOU AS TO HOW WE'RE GOING TO PROCEED.

25 SO IF THERE IS SOMETHING THAT EITHER YOU WANT
26 TO CALL TO COUNSEL'S ATTENTION OR MS. DUVAL'S ATTENTION
27 WE'RE GOING TO DO IT WHILE WE DON'T HAVE THE JURY HERE.

28 OKAY. MS. DUVAL, ARE YOU READY TO GO ON?

1 THE WITNESS: YES.

2 THE COURT: OKAY. LET'S GET THE JURORS BACK.

3 (JURY PRESENT)

4 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
5 THE RECORD. EVERYBODY IS PRESENT.

6 GO AHEAD, MR. MCMILLAN.

7 MR. MCMILLAN: THANK YOU, YOUR HONOR.

8 BY MR. MCMILLAN:

9 Q AFTER THAT FIRST NIGHT AT HOME WITHOUT YOUR
10 BABY, AT SOME POINT DO YOU FIND OUT WHAT THE NEXT STEP
11 IN THIS PROCESS IS?

12 A YES. YES.

13 Q HOW SO NO? HOW DO YOU FIND OUT?

14 A AT THE TDM, AT THE END I WAS TOLD THAT I HAD
15 TO GO TO COURT ON THE 6TH.

16 Q COURT YOU SAID ON THE 6TH?

17 A YES.

18 Q WHO TOLD YOU THAT?

19 A ONE OF THEM, I DON'T REMEMBER RIGHT NOW.

20 Q DO YOU GO TO COURT ON THE 6TH?

21 A I DO.

22 Q OKAY. SHARE WITH US A LITTLE BIT ABOUT THAT
23 PROCESS. BY THAT I DON'T MEAN HOW YOU GOT TO COURT
24 THOSE SORTS OF THINGS. ONCE YOU GET TO COURT, WHAT
25 HAPPENS FROM THERE?

26 A I MET THE ATTORNEY I HAD HIRED. IT WAS ABOUT
27 8:15, AND HE WAS JUST HANDED THE DETENTION REPORT.

28 Q DID YOU GET AN OPPORTUNITY BEFORE THE HEARING

1 TO SIT DOWN WITH YOUR ATTORNEY AND GO THROUGH THAT
2 REPORT IN DETAIL?

3 A NO.

4 Q DID YOU GET AN OPPORTUNITY TO SIT DOWN WITH
5 YOUR ATTORNEY BEFORE THAT HEARING AND GO THROUGH THE
6 REPORT AT ALL?

7 A NO.

8 Q HOW LONG BEFORE THE HEARING STARTED WAS IT
9 THAT YOU MET YOUR ATTORNEY AND HAD THE DETENTION
10 REPORT?

11 A 15, 20 MINUTES BEFORE.

12 Q IF I CAN GET YOU TO TURN -- I'LL GRAB YOU THE
13 BINDER. IF I COULD GET YOU TO TURN TO EXHIBIT
14 NUMBER 12. IN FACT, I'LL JUST TAKE CARE OF IT.

15 (PLAINTIFF'S EXHIBIT NO. 12, WAS MARKED
16 FOR IDENTIFICATION BY THE COURT.)

17 BY MR. MCMILLAN:

18 Q IF YOU CAN TAKE A MOMENT, I DON'T HAVE TO READ
19 IT IN DETAIL, BUT YOU WOULD LIKE YOU TO TAKE A CLOSE
20 ENOUGH LOOK AT THE DETENTION REPORT SO THAT YOU'RE ABLE
21 TO TELL ME, OR TELL US, WHETHER OR NOT THAT DETENTION
22 REPORT THAT'S MARKED AS EXHIBIT 12 APPEARS TO YOU TO BE
23 A TRUE AND ACCURATE COPY OF THE DETENTION REPORT THAT
24 YOU SAW THAT MORNING ON NOVEMBER 6TH.

25 A IT LOOKS LIKE IT, YES.

26 Q OKAY. YOU SEE A MENTION OF -- IF YOU CAN TURN
27 TO PAGE -- ACTUALLY, LET ME GIVE PROTECTIVE ORDER THE
28 BATES RANGE NUMBER IT'S 000014 THROUGH AND INCLUDING

1 000024. IS THAT RIGHT?

2 A YES.

3 Q YOU NOTICE ON PAGE NUMBER 000022, TOWARDS TWO
4 BOTTOM OF THE PAGE THERE'S A SECTION TITLED
5 ATTACHMENTS?

6 A YES.

7 Q THE REPORT THAT YOU SAW WITH YOUR ATTORNEY,
8 DID -- DO YOU RECALL WHETHER OR NOT IT HAD ANY
9 ATTACHMENTS ACTUALLY ATTACHED TO IT?

10 A I DON'T KNOW.

11 Q OKAY. BUT THE ONE WE HAVE HERE IN COURT
12 TODAY, IT DOESN'T, DOES IT?

13 A NO.

14 Q NOW, WALK US THROUGH THE PROCESS. YOU MEET
15 YOUR ATTORNEY. WERE YOU THERE WHEN HE GOT THE REPORT
16 OR DID HE ALREADY HAVE THE REPORT WHEN HE MET WITH YOU?

17 A HE HAD JUST COME OUT COUNTY COUNSEL'S OFFICE
18 OR SOMETHING WHEN I MET HIM HE SAID HE HAD JUST GOTTEN
19 TO REPORT.

20 Q OKAY. AND THEN THE WHO OF YOU -- BEFORE YOU
21 WENT INTO THE HEARING, WHAT HAPPENED BEFORE YOU WENT
22 INTO THE HEARING? WHAT HAPPENED WITH BEFORE YOU BEFORE
23 YOU WENT INTO THE HEARING?

24 A THERE WAS NO TIME TO TALK HE SAID HE NEEDED TO
25 GO BACK IN TO FILL OUT A FORM AND THAT HE WILL COME OUT
26 AND GET ME WHEN IT WAS TIME TO GO IN.

27 Q DID HE COME OUT AND GET YOU WHEN IT WAS TIME
28 TO GO IN?

1 A YES.

2 Q AND THEN YOU WENT INTO COURT?

3 A YES.

4 Q TELL US WHAT HAPPENS FROM THERE?

5 A WE WERE CALLED AND I STOOD THERE. HE TALKED
6 TO THE JUDGE.

7 Q DID HE TALK TO THE JUDGE ABOUT THE SPECIFIC
8 CONTENTS OF THE REPORT?

9 A I DON'T RECALL. I KNOW THERE WAS SOME
10 QUESTIONS THAT THE JUDGE HAD OFFHAND, AND I -- I CAN'T
11 RECALL RIGHT NOW ALL THE SPECIFICS OF THAT.

12 Q DID YOU HAVE AT THE OPPORTUNITY AT THAT
13 HEARING DID YOU HAVE WITNESSES COME IN AND TESTIFY TAKE
14 THE STAND THAT SORT OF THING?

15 A NO.

16 Q HOW LONG DID THAT HEARING LAST?

17 A I DON'T KNOW SPECIFICALLY, BUT MAYBE 15,
18 20 MINUTES ESTIMATE.

19 Q WELL, IF I CAN GET YOU TO TURN TO PAGE NUMBER
20 000018 OF EXHIBIT NUMBER 12. LET ME KNOW WHEN YOU'RE
21 THERE. ABOUT HALF WAY DOWN THE PAGE THERE'S AN ENTRY
22 IT SAYS ON NOVEMBER 2, 2009?

23 A YES.

24 Q OKAY. IT SAYS:

25 "ON NOVEMBER 2, 2009, CSW SPOKE
26 WITH DR. JASMEET GILL WHO STATED THAT
27 SHE IS A PARTNER TO DR. YIM WHO MOTHER
28 HAD PREVIOUSLY STATED HAD QUIT ON

1 MOTHER DUE TO HARASSMENT FROM FATHER
2 RYAN. DR. GILL STATED TO CSW THAT HER
3 PRACTICE HAD BEEN FORCED TO RELUCTANTLY
4 DISMISS FAMILY FROM THEIR PRACTICE DUE
5 TO THE FAMILY BEING TOO DEMANDING.
6 DR. GILL FURTHER INDICATED THAT THE
7 MAIN REASON FOR FAMILY BEING DISMISSED
8 WAS THAT MOTHER HAD BEEN GIVEN SPECIFIC
9 DIRECTIONS IN TERMS OF FEEDING THE
10 CHILD, AND IT WAS EVIDENT TO HER THAT
11 THE DIRECTIVES WERE NOT BEING FOLLOWED
12 BY MOTHER IN ORDER TO HELP THE CHILD
13 MAINTAIN AND ATTAIN HEALTHY GROWTH
14 PATTERNS."

15 DID I READ THAT CORRECTLY?

16 A YES.

17 Q THAT DAY WHEN YOU WERE IN COURT, HAD YOU HAD
18 HA CHANCE TO READ THROUGH THAT IN DETAIL TO FIND OUT
19 WHAT IT WAS THEY WERE SAYING ABOUT YOU THAT DAY?

20 A NO.

21 Q DID YOU KNOW WHEN YOU WERE STANDING THERE IN
22 FRONT OF THE JUDGE IN COURT, THIS IS WHAT MS. PENDER
23 WAS TELLING THE JUDGE HAPPENED?

24 A NO.

25 Q DID YOUR ATTORNEY KNOW?

26 A I DON'T KNOW --

27 MS. SWISS: OBJECTION. CALLS FOR SPECULATION.

28 THE COURT: SUSTAINED.

1 MR. MCMILLAN: LET ME BACK THAT UP.

2 BY MR. MCMILLAN:

3 Q YOU HAD A FEW MINUTES BEFORE THE HEARING TO
4 TALK TO YOUR ATTORNEY IN THE HALLWAY?

5 A NOT REALLY. IT WAS REALLY FAST.

6 Q LET ME ASK YOU THIS WAY: YOU WERE AT THE
7 HEARING?

8 A I WAS.

9 Q DO YOU RECALL YOUR ATTORNEY STANDING UP AND
10 SAYING, "WELL JUDGE, YOU KNOW, LET'S LOOK AT THIS HEAR
11 FOR A MINUTE. THE SOCIAL WORKER IS SAYING THAT SHE
12 TALKED TO THE DOCTOR AND THAT THE DOCTOR SAID THESE
13 THINGS ABOUT MOM. CAN WE HAVE A HEARING ON THAT?"

14 DID THAT HAPPEN?

15 MS. SWISS: OBJECTION. LEADING.

16 THE COURT: SUSTAINED.

17 BY MR. MCMILLAN:

18 Q DESCRIBE FOR US IF YOU WOULD WHAT YOU RECALL
19 HAPPENING AT THAT HEARING?

20 A I REMEMBER HIM ANSWERING THE QUESTIONS
21 COMMISSIONER MARTINEZ HAD, AND THEN HIM EXPRESSING TO
22 THE COURT THAT THIS CASE WAS JUST A DISPUTE BETWEEN THE
23 PARENTS, THAT THIS WAS NOT A NEGLECT ISSUE. AT THAT
24 POINT I DENT HEAR OR I DON'T RECALL HEARING ANY OF THE
25 STUFF AT THAT POINT.

26 Q WELL THE JUDGE, SHE ISSUED SOME ORDERS THAT
27 DAY, DO YOU REMEMBER?

28 A YES.

1 Q DO YOU REMEMBER WHAT THE ORDERS WERE?

2 A YES.

3 Q YES?

4 A YES.

5 Q CAN YOU SHARE WITH US WHAT THOSE ORDERS WERE?

6 A THAT MY BABY WAS GOING TO CONTINUE TO BE
7 DETAINED FROM ME AND I WAS GOING TO RECEIVE VISITATION
8 TWICE A WEEK FOR AN HOUR AND A HALF, AND THAT I -- I
9 WAS GOING TO BE GIVEN SERVICES.

10 Q GIVEN SERVICES, WHAT KINDS OF SERVICES?

11 A HOPEFULLY REUNIFICATION SERVICES.

12 Q DID SOMEBODY EXPLAIN TO YOU WHAT THAT MEANT?

13 A BY THEN, I KNEW WHAT THAT MEANT.

14 Q OKAY. WHY DON'T YOU SHARE WITH US YOUR
15 UNDERSTANDING OF WHAT IT MEANT THAT YOU WERE SUPPOSED
16 TO GET THESE REUNIFICATION SERVICES?

17 A I WILL GET SERVICES FROM THE DEPARTMENT
18 PARENTAL CLASSES OR WHATEVER, AND THAT AT SOME POINT
19 VISITS WILL GET LIBERALIZED MAYBE MORE TIME MAYBE TO GO
20 OUTSIDE THE FACILITY AND EVENTUALLY WORK UP TO MORE
21 TIME WITH THE BABY AND ULTIMATELY HAVE SOME SORT OF
22 CUSTODY RIGHTS BACK. CUSTODIAL TIME RIGHTS BACK.

23 Q BUT WHEN YOU LEFT THE HEARING THAT DAY, YOU
24 DIDN'T HAVE CUSTODY OF THE BABY?

25 A NO.

26 Q I THINK YOU SAID YOU HAD VISITS ONE AND A HALF
27 HOURS TWICE A WEEK?

28 A MONITORED, YES.

1 Q MONITORED. EXPLAIN TO US WHAT THAT MEANS?

2 A SUPERVISED VISITATION, BASICALLY YOU HAVE AS
3 PART OF THEIR SERVICES SOMEONE WHO IS THERE TO ENSURE
4 THE SAFETY, SAFETY OF THE CHILD WHILE THE PARENT IS
5 VISITING THE CHILD.

6 Q THESE VISITS WHERE DO THEY TYPICALLY HAPPEN?

7 A THEY BEGAN AT THE WILSHIRE OFFICE THE METRO
8 NORTH OFFICE. AND WHEN THE CASE WAS TRANSFERRED IT WAS
9 IN LAKEWOOD.

10 Q LET'S JUST FOCUS FOR THE MOMENT ON THAT PERIOD
11 OF TIME IN NOVEMBER. DID YOU GET A VISIT THAT DAY
12 AFTER COURT?

13 A I DON'T RECALL RIGHT NOW.

14 Q AND IF I RECALL CORRECTLY, YOU WERE STILL
15 BREAST-FEEDING ABOUT THAT PERIOD OF TIME. IS THAT;
16 RIGHT?

17 A I WAS ON DEMAND, YES.

18 Q I'M SORRY?

19 A ON DEMAND, YES IF THE BABY WANTED IT.

20 Q DID AFTER RYAN WAS TAKEN FROM YOU, DID YOU
21 CONTINUE TO PUMP BREAST MILK?

22 A YES.

23 Q WHY?

24 A I WOULD STILL GET ENGORGED, MEANING MY BREASTS
25 STILL HAD MILK, AND IF I LEAVE IT, IT HURTS A LOT AND
26 IT BECOMES REALLY HARD. SO YOU NEED TO EXPRESS IT.

27 Q BUT WHAT DID YOU DO WITH THAT MILK?

28 A FROZE IT.

1 Q ON THESE -- GOING FORWARD TO THESE VISITS, DO
2 YOU REMEMBER WHEN YOU GOT YOUR FIRST VISIT?

3 A IT WOULD HAVE BEEN EITHER I THINK THAT DAY, IT
4 WAS -- IT WOULD HAVE BEEN EITHER THAT THURSDAY OR THAT
5 TUESDAY AFTER. I DON'T RECALL RIGHT NOW.

6 Q WHICH OFFICE WAS THAT AT?

7 A METRO NORTH ON WILSHIRE.

8 Q AND YOU TOLD US THAT THESE VISITS WERE
9 MONITORED. DO YOU REMEMBER WHO THE MONITOR WAS AT YOUR
10 FIRST VISIT?

11 A YES?

12 Q WHO WAS THAT?

13 A PENDER.

14 Q IT WAS MS. PENDER?

15 A SHE'S NOT HERE.

16 Q CAN YOU SHARE WITH US A LITTLE BIT ABOUT HOW
17 THAT VISIT WENT?

18 A THAT WAS A HARD VISIT. I -- I TRIED TO NURSE
19 THE BABY, AND HE -- HE WASN'T TAKING THE BREAST. I HAD
20 SNACKS WITH ME, I PROVIDED THE SNACKS, BUT ONE OF THE
21 HARDEST THINGS WAS THAT THE ROOM WAS REALLY FILTHY AND
22 SMELLED TERRIBLE. AND I DIDN'T HAVE ANYTHING TO CLEAN
23 IT WITH OR -- SO THAT WAS VERY HARD BECAUSE I WAS ITCHY
24 AND ALLERGIC TO DUST. SO IT WAS UNCOMFORTABLE.

25 Q AND DID YOU HAVE A CHANCE THERE AT THAT FIRST
26 VISIT AT ALL TO SPEAK WITH MS. PENDER?

27 A I DON'T RECALL RIGHT NOW.

28 Q ABOUT ANYBODY COME WITH YOU TO THAT VISIT?

1 A YES.

2 Q SORRY?

3 A YES.

4 Q WHO?

5 A MY MOM.

6 Q WAS SHE PERMITTED TO GO INTO THE VISIT YOU AND
7 SEE THE BABY?

8 A YES.

9 Q WAS SHE ALLOWED TO INTERACT WITH THE BABY,
10 HOLD THE BABY?

11 A YES.

12 Q I WANT TO MARCH FORWARD A LITTLE BIT. AT SOME
13 POINT THE PERSON MONITORING SUPERVISING THESE VISITS
14 CHANGED.

15 DO YOU REMEMBER THAT?

16 A YES.

17 Q DO YOU RECALL HOW LONG WAS IT AFTER THAT FIRST
18 VISIT BEFORE MS. ENNIS STARTED ASSISTING WITH THE
19 SUPERVISION?

20 A PROBABLY THE FOLLOWING VISIT AFTER THAT. I
21 KNOW THAT THERE WERE SOME SCHEDULING ISSUES, AND SOME
22 DAYS I DIDN'T EVEN KNOW WHETHER -- WHO WAS GOING TO DO
23 IT. IT WAS JUST CHAOTIC, YOU KNOW, DISORGANIZED.

24 Q LET ME ASK YOU, MS. ENNIS, DO YOU KNOW WHETHER
25 OR NOT AT EACH OF THE VISITS THAT SHE MONITORED WHETHER
26 OR NOT SHE TOOK NOTES OF WHAT WAS GOING ON AT THE
27 VISIT, THOSE SORTS OF THINGS. SHE TOOK NOTES?

28 DID SHE SHARE THOSE NOTES WITH YOU?

1 A NOT AT THE TIME, NO.

2 Q AT SOME POINT IN TIME DID SHE SHARE THOSE
3 NOTES WITH YOU?

4 A YES.

5 Q WHEN WAS THAT?

6 A 2012.

7 MS. SWISS: COUNSEL, COULD YOU LET ME KNOW THE
8 EXHIBIT NUMBER.

9 MR. MCMILLAN: YEAH IT'S 1088. THEN I HAVE A
10 GET THE SPECIFIC BATES NUMBER, GIVE ME ONE SECOND.
11 BY MR. MCMILLAN:

12 Q OKAY. IF I CAN GET YOU TO TURN TO EXHIBIT
13 NUMBER 1088.28. AND THE PAGE NUMBERS ARE IN THE BOTTOM
14 OF THE PAGE TOWARDS THE CENTER OF THE PAGE IN BOLD
15 BLOCK LETTERING. OKAY LET ME KNOW WHEN YOU'RE THERE?

16 A I AM.

17 Q OKAY. IF YOU CAN LOOK AT 1088.28 THROUGH
18 1088.29?

19 A OKAY.

20 Q IS THIS A TRUE AND ACCURATE COPY OF DEPICTION
21 OF THE REPORT FOR NOVEMBER 10TH AS YOU RECALL IT BEING
22 GIVEN TO YOU BY MS. ENNIS?

23 A YES.

24 Q AND THEN GOING TO THE NEXT ONE,
25 EXHIBIT 1088.30, IT'S A NOVEMBER 12TH NOTE. TAKE A
26 MOMENT TO TAKE A LOOK AT THAT.

27 A YES.

28 Q IS THAT A TRUE AND ACCURATE COPY AND DEPICTION

1 OF THE NOTE OF THE MONITORED VISIT ON NOVEMBER 12TH BY
2 MS. ENNIS TO THE EXTENT YOU RECALL WHEN SHE GAVE IT TO
3 YOU?

4 A YES.

5 Q TURNING TO PAGE NUMBER 1088.31. TAKE A
6 MOMENT, LOOK THAT OVER.

7 IS THAT ALSO A TRUE AND ACCURATE DEPICTION
8 COPY OF THE MONITORING NOTE OF MS. ENNIS FOR
9 DECEMBER 8TH THAT SHE GAVE YOU?

10 A YES.

11 Q GOING TO EXHIBIT NUMBER 1088.32?
12 (PLAINTIFF'S EXHIBIT NO. 1088.32, WAS
13 MARKED FOR IDENTIFICATION BY THE
14 COURT.)

15 THE WITNESS: I'M THERE.

16 BY MR. MCMILLAN:

17 Q IS THAT A TRUE ACCURATE COPY AND DEPICTION OF
18 THE NOTE OF DECEMBER 9TH BY MS. ENNIS THAT SHE GAVE TO
19 YOU?

20 A YES.

21 Q TURNING TO EXHIBIT 1088.33 THROUGH 1088.34.
22 (PLAINTIFF'S EXHIBIT NO. 1088.34, WAS
23 MARKED FOR IDENTIFICATION BY THE
24 COURT.)

25 THE WITNESS: OKAY.

26 BY MR. MCMILLAN:

27 Q THOSE TWO PAGES THERE IS THIS A TRUE AND
28 ACCURATE COPY OR DEPICTION OF MS. ENNIS'S NOTE OF

1 DECEMBER 10TH, AT LEAST INSOFAR AS SHE GAVE IT TO YOU?

2 A YES.

3 Q TURNING TO EXHIBIT NUMBER 1088.35, IS THAT
4 ALSO A TRUE AND ACCURATE COPY AND DEPICTION OF THE
5 MONITORING NOTE THAT MS. ENNIS PROVIDED TO YOU FOR THE
6 VISIT ON DECEMBER 11TH?

7 A YES.

8 Q AND JUST SO WE'RE CLEAR ALL THESE VISITS I
9 DON'T SEE A YEAR THESE WERE ALL 2009 RIGHT?

10 A YES THESE ARE ALL 2009.

11 Q I SEE THIS ONE HERE FOR DECEMBER 11, SIX LINES
12 DOWN TOWARD THE MIDDLE, IT SAYS:

13 "BABY RYAN IS LAUGHING AND
14 SMILING."

15 DO YOU SEE THAT?

16 A YES.

17 Q (READING:)

18 "MOTHER TAKES OUT BLANKET TO PUT
19 ON GROUND FOR BABY. MOTHER TAKES OUT
20 HEALTHY SPINACH SNACKS, TOYS AND RICE.
21 BABY RYAN IS EATING A FEW SPOONFULS OF
22 RICE. MOTHER IS GIVING HIM AVOCADO."

23 DID I READ ALL THAT RIGHT?

24 A YES.

25 Q THOSE SORTS OF THINGS, ARE THOSE THE THINGS AT
26 LEAST TO YOUR UNDERSTANDING WHEN SOMEBODY IS SITTING
27 THERE WATCHING YOU INTERACT WITH YOUR SON, ARE THOSE
28 THE TYPE OF THINGS THEY'RE SUPPOSED TO WRITE AND REPORT

1 AND RECORD?

2 A YES --

3 MS. SWISS: OBJECTION. LACKS FOUNDATION.
4 CALLS FOR SPECULATION.

5 THE COURT: SUSTAINED.

6 BY MR. MCMILLAN:

7 Q DID ANYBODY EVER EXPLAIN TO YOU WHEN THIS
8 REQUIREMENT THAT ALL OF YOUR INTERACTIONS WITH YOUR
9 BABY BE SUPERVISED BY SOMEONE ELSE, DID ANYBODY EVER
10 EXPLAIN TO YOU HOW THAT WAS SUPPOSED TO HAPPEN OR WHY?

11 A YES.

12 Q OKAY. AND WHEN THEY GAVE YOU THE EXPLANATION
13 ABOUT HOW AND WHY YOU WERE HAVING THESE PEOPLE WATCH
14 YOUR INTERACTIONS WITH YOUR BABY, DID ANYBODY EVER
15 EXPLAIN TO YOU THAT SOMEBODY WAS GOING TO BE -- WHETHER
16 OR NOT SOMEBODY WAS GOING TO BE REPORTING AND RECORDING
17 THOSE INTERACTIONS?

18 A YES.

19 Q AND WHEN THEY EXPLAINED THAT TO YOU, DID THEY
20 EXPLAIN TO YOU THE SORTS OF THINGS THAT THEY WERE
21 WATCHING FOR AND REPORTING?

22 A YES.

23 Q CAN YOU SHARE WITH US THAT EXPLANATION?

24 A SURE. THE MONITOR WAS THERE FIRST AND
25 FOREMOST TO ENSURE THE SAFETY OF THE CHILD. AND THEY
26 WERE ALSO THERE TO ENSURE THAT THE COURT ORDER WAS
27 FOLLOWED. AND THEY WERE SUPPOSED TO WRITE DOWN THEIR
28 OBSERVATIONS OF MY INTERACTIONS WITH MY BABY, AND

1 ANYTHING THAT HAD TO DO WITH HOW I CARED FOR MY BABY,
2 HOW THE BABY REACTS TO MY CARE. SO I UNDERSTAND THAT.

3 Q DID ANYBODY EVER EXPLAIN TO YOU WHY IT WAS
4 THAT THESE SUPERVISORS WERE SUPPOSED TO BE WRITING DOWN
5 YOUR INTERACTIONS WITH THE BABY, HOW THE BABY RESPONDS
6 TO YOUR INTERACTIONS AND YOUR CARE AND THAT SORT OF
7 THING, DID THEY EVER EXPLAIN THAT?

8 A YES.

9 Q SHARE WITH US WHAT WAS THE EXPLANATION.

10 A BECAUSE THE ALLEGATIONS THAT HAD BEEN ALLEGED
11 AGAINST ME.

12 Q AND BY NOW YOU KNEW WHAT THOSE ALLEGATIONS
13 WERE?

14 A YES.

15 Q LET ME ASK YOU WE TALKED A LITTLE BIT ABOUT
16 THE -- WE'LL COME BACK TO THESE MONITORING REPORTS A
17 LITTLE BIT LATER.

18 WERE YOU ALSO GIVEN ANOTHER DOCUMENT THAT DAY
19 ON NOVEMBER 6TH AT COURT, DO YOU RECALL?

20 A I DON'T RECALL.

21 Q SORRY?

22 A I DON'T RECALL.

23 Q OKAY. I WILL GIVE YOU ANOTHER DOCUMENT, MAYBE
24 THAT WILL HELP YOU RECALL. ALL RIGHT I'VE GOT EXHIBIT
25 NO. 11 OPEN IN FRONT OF YOU BATES NUMBER 000008 THROUGH
26 AND INCLUDING 000012.

27 (PLAINTIFF'S EXHIBIT NO. 11.8-11.12

28 WERE MARKED FOR IDENTIFICATION BY THE

1 COURT.)

2 BY MR. MCMILLAN:

3 Q AND IF YOU CAN LOOK THAT OVER JUST FOR A
4 MOMENT, THEN WE'LL TALK ABOUT IT?

5 A I SEE IT.

6 Q DO YOU RECALL -- OR LET ME ASK YOU THIS WAY:
7 IN LOOKING AT THIS DOCUMENT EXHIBIT NO. 11, DOES THAT
8 REFRESH YOUR RECOLLECTION AT ALL AS TO WHETHER OR NOT
9 YOU RECEIVED OR AT LEAST SAW SOME OTHER DOCUMENTS THAT
10 DAY ON NOVEMBER 6TH?

11 A I -- I DON'T RECALL EVER SEEING THIS THEN.

12 Q DO YOU RECALL EVER SEEING THIS DOCUMENT?

13 A NO, ACTUALLY. I DON'T RECALL SEEING THIS
14 DOCUMENT UNTIL TODAY.

15 Q LET ME ASK YOU --

16 A OH, I'M SORRY. AT SOME POINT -- SORRY I JUST
17 SAW SOMETHING HERE. AT SOME POINT I DON'T REMEMBER
18 WHEN BUT IT WASN'T THAT DAY, I SAW THIS DOCUMENT ONCE
19 BEFORE AND IT MAY HAVE BEEN AT MAYBE MS. PINEDO'S
20 DEPOSITION.

21 Q YOU MEAN IN THIS CASE?

22 A YES. I THINK THAT'S ONE TIME BEFORE I SAW IT
23 PRIOR TO THAT I HAD NOT SEEN THIS.

24 Q WELL, LET ME ASK YOU THIS: AS YOU WERE
25 FLIPPING THROUGH IT JUST NOW, IT LOOKED LIKE YOU'D SEEN
26 SOMETHING ON A PAGE THAT KIND OF SPARKED A MEMORY?

27 A YES.

28 Q WHICH PAGE WERE YOU LOOKING AT?

1 A THE SECOND PAGE.

2 Q SO THAT WOULD BE 000009?

3 A YES.

4 Q WHAT WAS IT ABOUT THE SECOND PAGE THAT PARKED
5 A MEMORY FOR YOU?

6 A I SEEN THE MIDDLE PART OF THAT PAGE ONCE
7 BEFORE WHERE IT SAYS TO PARENT YOUR PARENTAL RIGHTS MAY
8 BE PERMANENTLY TERMINATED. AND THEN THERE'S ALL THIS
9 STUFF ABOUT, YOU KNOW, CHILD SUPPORT AND STUFF LIKE
10 THAT.

11 Q OKAY. SO YOU'RE TALKING ABOUT THE PART HERE
12 IN THE MIDDLE OF THE PAGE UNDER NOTICE WHERE IT SAYS:

13 "YOUR PARENTAL RIGHTS MAY BE
14 TERMINATED TO PROTECT YOUR RIGHTS YOU
15 MUST APPEAR IN COURT AND ANSWER THIS
16 PETITION."

17 IS THAT WHAT YOU'VE REFERENCING?

18 A YES.

19 Q AND YOU MAY NOT RECALL THIS, DO YOU
20 REMEMBER -- I THINK YOU ALREADY TOLD US YOU DON'T
21 REMEMBER HAVING SEEN IT BEFORE?

22 A SO -- SORRY. WHAT I HAD NEVER SEEN WAS THE
23 FIRST PAGE.

24 Q OH, OKAY.

25 A WHAT I HAVE SEEN BEFORE IS PAGE 9, 10, 11. I
26 HAVE NOT SEEN 12, I DON'T RECALL SEEING 12, BUT THESE
27 THREE I HAVE SEEN AT SOME POINT BEFORE.

28 Q OKAY. AS TO THESE THREE PAGES, NUMBERS 9

1 THROUGH 11, DO YOU RECALL WHEN IT WAS THAT YOU SAW
2 THOSE THREE PAGES?

3 A 9, I DON'T RECALL WHEN WAS THE FIRST TIME.
4 10, I DO RECALL SOMETIME AFTER DETENTION SEEING 10 AND
5 11, BUT I DON'T RECALL SEEING 12.

6 Q OKAY. WITH RESPECT TO PAGE NUMBERS 10 AND 11,
7 CAN YOU GIVE US AN ESTIMATE ROUGHLY WHEN IT WAS -- I
8 THINK YOU SAID AFTER DETENTION RIGHT?

9 A YES.

10 Q BUT ROUGHLY HOW LONG AFTER DETENTION IT WAS
11 BEFORE YOU SAW THESE PAGES?

12 A IT COULD HAVE BEEN -- I'LL GIVE YOU AN
13 ESTIMATE. IT WAS EITHER THAT AFTERNOON AFTER -- AFTER
14 TO ABOUT A WEEK FROM THE DEPENDENCY HEARING.

15 Q OKAY. SO AT SOME POINT FAIRLY CLOSE IN TIME
16 TO THE HEARING, YOU SOMEHOW GOT A HOLD OF THIS
17 DOCUMENT?

18 A AFTER THE HEARING, YES.

19 Q OKAY. AND WHEN I'M SAYING THIS DOCUMENT, FOR
20 THE RECORD, EXHIBIT NO. 11 IS THE JUVENILE DEPENDENCY
21 PETITION.

22 A THE PAGES I MENTIONED TO YOU. THE FIRST AND
23 THE LAST PAGE, I DON'T RECALL EVER SEEING THAT.

24 Q OKAY. IF YOU CAN TURN TO PAGE NUMBER TEN --
25 LET ME ASK YOU THIS: WHEN YOU FIRST SAW PAGE NUMBER
26 TEN, DID YOU READ IT?

27 A YES.

28 Q DID YOU UNDERSTAND IT?

1 A YES.

2 Q WERE YOU ALONE OR WITH YOUR ATTORNEY?

3 A WITH MY ATTORNEY.

4 Q OKAY. IF YOU'D LIKE AT THE CENTER OF THE PAGE
5 THERE -- ACTUALLY, LET ME ASK YOU THIS FIRST: GOING
6 BACK ONE PAGE TO PAGE 9, I BELIEVE AT THE TOP OF THE
7 PAGE THERE'S A NAME THERE WITH A SIGNATURE NEXT TO IT.

8 DO YOU SEE THE NAME?

9 A YES.

10 Q WHO IS THAT?

11 A I SEE THE NAME.

12 Q WHO IS IT?

13 A ELBA PINEDO.

14 Q BEFORE THIS CASE HAD YOU EVER MET ELBA PINEDO?

15 A NO.

16 Q DID SHE EVER CALL YOU ON THE PHONE?

17 A NO.

18 Q SO YOU NEVER TALKED TO HER?

19 A NO.

20 Q THEN LOOKING UP JUST ABOVE HER SIGNATURE PAGE,
21 IT SAYS HERE.

22 I DECLARE UNDER PENALTY OF PERJURY UNDER THE
23 LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING AND
24 ALL ATTACHMENTS ARE TRUE AND CORRECT.

25 DID I READ THAT; RIGHT?

26 A YES.

27 Q AND THE DATE HERE IS NOVEMBER 5, 2009?

28 A YES.

1 Q ALL RIGHT. TURNING TO THE NEXT PAGE, THAT'S
2 PAGE 10, ABOUT THE MIDDLE OF THE PAGE, DO YOU REMEMBER
3 WHEN YOU READ THAT? I THINK YOU SAID YOU WERE WITH
4 YOUR ATTORNEY?

5 A YES.

6 Q DID THE TWO OF YOU TALK ABOUT WHAT YOU READ
7 HERE?

8 A YES.

9 Q ABOUT HOW LONG WAS THAT MEETING OR
10 CONVERSATION?

11 A AT LEAST HOUR AND A HALF TO TWO AND A HALF.

12 Q DID YOU HAVE YOUR MEDICAL RECORDS WITH YOU?

13 A YES.

14 Q ALL THE BINDERS, TABS?

15 A YES.

16 Q SIT DOWN WITH THE ATTORNEY AND GO THROUGH
17 THEM?

18 A YES.

19 Q LET'S TAKE A LOOK AT IT. TOP OF THE PAGE IT
20 SAYS:

21 "THE CHILD HAS SUFFERED OR THERE
22 IS A SUBSTANTIAL RISK THAT THE CHILD
23 WILL SUFFER SERIOUS PHYSICAL HARM OR
24 ILLNESS."

25 THEN THERE'S A COUPLE BOXES CHECKED THERE.

26 DO YOU SEE THAT?

27 A YES.

28 Q ONE OF THE BOXES THAT'S CHECKED SAYS:

1 "AS A RESULT OF THE FAILURE OF
2 INABILITY OF HIS OR HER PARENT OR LEGAL
3 GUARDIAN TO SUPERVISE OR PROTECT THE
4 CHILD ADEQUATELY."

5 DID I READ THAT; RIGHT?

6 A YES.

7 Q THE NEXT CHECKED BOX SAYS:

8 "AS A RESULT OF THE WILLFUL OR
9 NEGLIGENT FAILURE OF THE CHILD'S PARENT
10 OR LEGAL GUARDIAN TO SUPERVISE THE OR
11 PROTECT THE CHILD ADEQUATELY FROM THE
12 CONDUCT OF THE CUSTODIAN IN WHOM THE
13 CHILD HAS BEEN LEFT."

14 DID I READ THAT ONE; RIGHT?

15 A YES.

16 Q THEN THE THERE'S A PARENTHETICAL STATEMENT
17 DOWN HERE THAT SAYS:

18 "STATE SUPPORTING FACTS CONCISELY
19 AND NUMBER THEM."

20 DO YOU SEE THAT?

21 A YES.

22 Q THEN THE FIRST SUPPORTING FACT IS UNDER B1.
23 IT SAYS:

24 "THE CHILD RYAN DUVAL'S MOTHER
25 RAFAELINA DUVAL WILLFULLY AND
26 INTENTIONALLY FAILED AND REFUSED TO
27 PROPERLY FEED RYAN" --
28 IT ACTUALLY SAYS THE 15-MONTH OLD CHILD BUT

1 THAT'S CROSSED OUT; RIGHT?

2 A YES.

3 Q (READING:)

4 "RESULTING IN THE CHILD BEING
5 DIAGNOSED WITH FAILURE TO THRIVE DUE TO
6 BEING UNDERFED AND UNDERNOURISHED AND
7 BEING FED AN INADEQUATE DIET WHILE IN
8 THE CARE, CUSTODY, AND CONTROL OF HIS
9 MOTHER."

10 FIRST OF ALL, DID I READ THAT RIGHT?

11 A YES.

12 Q WHAT WAS YOUR UNDERSTANDING ABOUT WHAT THEY
13 WERE ACCUSING YOU OF THERE?

14 A THAT I JUST DECIDED TO JUST SIT THERE AND NOT
15 FEED MY BABY.

16 Q AT ANY POINT IN TIME DID YOU EVER JUST DECIDE
17 TO SIT THERE AND STARVE YOUR BABY?

18 A NO.

19 Q IN FACT I THINK YOU TALKED ABOUT THIS A LITTLE
20 BIT AS SOON AS YOU NOTICED BACK IN NOVEMBER, DECEMBER
21 2008 THAT THERE WAS AN ISSUE WITH BABY'S WEIGHT GAIN
22 DID YOU TAKE SOME ACTION?

23 A YES.

24 Q AND DID YOU CONTINUE TAKING ACTION ALL THE WAY
25 UP UNTIL THEY TOOK YOUR BABY?

26 A YES. AND AFTER.

27 Q YOU WENT TO DOCTORS, SOME SPECIALISTS?

28 MS. SWISS: OBJECTION. LEADING.

1 THE COURT: SUSTAINED.

2 PLEASE ASK HER A QUESTION, MR. MCMILLAN.

3 BY MR. MCMILLAN:

4 Q LET'S GO TO THE NEXT SENTENCE. IT SAYS:

5 "THE 15-MONTH OLD CHILD IS NOW
6 BELOW THE 5TH PERCENTILE IN HEIGHT AND
7 WEIGHT FOR CHILD'S AGE. THE CHILD HAS
8 BEEN DIAGNOSED AS DEVELOPMENTALLY
9 DELAYED. THE CHILD'S FAILURE TO THRIVE
10 CONDITION IS DUE TO ENVIRONMENTAL
11 CAUSES AND HAS NO ORGANIC CAUSE FOR" --
12 I'M SORRY.

13 "AND NO ORGANIC CAUSE FOR THE
14 CHILD'S CONDITION HAS BEEN IDENTIFIED."
15 DID I READ THAT RIGHT?

16 A YES.

17 Q GOING BACK FOR A MOMENT TO THAT VISIT THAT YOU
18 HAD WITH DR. EVANS AT THE CATC CLINIC, DO YOU RECALL
19 THAT VISIT?

20 A YES.

21 Q DO YOU RECALL WHETHER OR NOT SHE HAD RULED OUT
22 ALL POTENTIAL ORGANIC CAUSES FOR THE CHILD'S CONDITION?

23 A NO.

24 Q NO, YOU DON'T RECALL OR?

25 A NO.

26 Q THAT WAS A BAD QUESTION.

27 A NO, THEY HAVE NOT -- NOT EVERYTHING HAD BEEN
28 RULED OUT.

1 Q WELL, HOW DO YOU KNOW THAT? DID SOMEBODY TELL
2 YOU, OR HOW DO YOU KNOW?

3 A I SPOKE TO THE DOCTOR THAT DAY. I
4 SPECIFICALLY SPOKE TO HER ABOUT, YOU KNOW, THE FAILURE
5 TO THRIVE. SHE EXPLAINED TO ME WHAT IT WAS. SHE
6 EXPLAINED TO ME THE DEVELOPMENTAL DELAY AND THE ISSUES
7 WITH IT. WE TALKED ABOUT NUTRITIONAL CONSULT, ALL
8 THESE DIFFERENT THINGS THAT SHE HAD CONCERNS OVER THE
9 WEIGHT. THERE WAS A DISCUSSION ABOUT IT.

10 Q BUT SHE DID DO SOME TESTING THAT DAY?

11 A SHE DID.

12 Q DID SHE EXPLAIN TO YOU AT SOME POINT IN TIME
13 WHETHER ADDITIONAL TESTING MIGHT BE NEEDED?

14 A I DON'T RECALL RIGHT NOW IF SHE WANTED TO DO
15 MORE TESTING. I DON'T RECALL RIGHT NOW.

16 Q DID SHE ADMINISTER ANY EMERGENCY MEDICAL CARE
17 TO THE BABY -- THE DOCTOR AT THE CLINIC?

18 A NO. NO.

19 Q DID SHE SEND YOU HOME WITH ANY MEDICATIONS,
20 VITAMINS, THINGS LIKE THAT?

21 A NO.

22 Q THEN THERE'S THE NEXT SENTENCE HERE. IT SAYS:

23 "THE FATHER WAS AWARE OF THE
24 CHILD'S FAILURE TO THRIVE CONDITION AND
25 FAILED TO TAKE ACTION TO PROTECT THE
26 CHILD."

27 DID I READ THAT RIGHT?

28 A YES.

1 Q BUT THAT LINE'S CROSSED OUT.

2 DO YOU SEE THAT?

3 A YES.

4 Q DID YOU CROSS THAT LINE OUT?

5 A NO.

6 Q DO YOU KNOW WHO CROSSED THAT LINE OUT?

7 A I DON'T KNOW. I DON'T KNOW.

8 Q DID ANYBODY EVER TELL YOU OR DID YOU TALK TO
9 ANYBODY ABOUT THIS LINE HERE BEING CROSSED OUT?

10 A NO.

11 Q NEXT SENTENCE -- THE NEXT SENTENCE SAYS:

12 "SUCH WILLFUL AND INTENTIONAL
13 FAILURE OF THE MOTHER TO PROPERLY FEED
14 THE CHILD AND THE FATHER'S FAILURE TO
15 PROTECT THE CHILD ENDANGERS THE
16 PHYSICAL AND EMOTIONAL HEALTH AND
17 SAFETY OF THE CHILD AND PLACES THE
18 CHILD AT RISK OF PHYSICAL AND EMOTIONAL
19 HARM, DAMAGE, DANGER, AND FAILURE TO
20 PROTECT."

21 DID I READ THAT CORRECTLY?

22 A YES.

23 Q BUT IF WE GO BACK, PART OF THAT LINE IS
24 CROSSED OUT TOO, ISN'T IT?

25 A YES.

26 Q AND THAT'S THE PART THAT SAYS:

27 "AND THE FATHER'S FAILURE TO
28 PROTECT THE CHILD."

1 A YES.

2 Q DO YOU KNOW WHO CROSSED THAT OUT?

3 A NO.

4 Q THEN GOING ON TO THE B2 STATEMENT OF
5 SUPPORTING FACTS, IT SAYS:

6 "THE CHILD RYAN DUVAL WAS
7 DIAGNOSED WITH FAILURE TO THRIVE. THE
8 MOTHER RAFAELINA DUVAL AND FATHER RYAN
9 MILLS KNEW OF THE CHILD'S MEDICAL
10 CONDITION AND FAILED TO PROVIDE TIMELY
11 NECESSARY MEDICAL CARE FOR THE CHILD
12 FROM JUNE 2009 TO SEPTEMBER 2009."
13 FIRST, DID I READ THAT CORRECTLY SO FAR?

14 A YES.

15 Q BUT GOING BACK A LINE, THE REFERENCE TO THE
16 FATHER, RYAN MILLS, THAT'S CROSSED OUT?

17 A YES.

18 Q DID YOU DO THAT? DO YOU KNOW WHO DID?

19 A NO.

20 Q THEN THE SENTENCE OR THE PARAGRAPH CONTINUES
21 ON:

22 "SUCH MEDICAL NEGLECT OF THE CHILD
23 ON THE PART OF THE PARENTS ENDANGERS
24 THE CHILD'S PHYSICAL AND EMOTIONAL
25 HEALTH AND SAFETY AND PLACES THE CHILD
26 AT RISK OF PHYSICAL AND EMOTIONAL HARM,
27 DAMAGE, DANGER, AND MEDICAL NEGLECT."
28 SO FAR DID I READ THAT RIGHT?

1 A YES.

2 Q THERE'S AN X THROUGH THAT ENTIRE PARAGRAPH.
3 DID YOU PUT THAT THERE?

4 A NO.

5 Q DO YOU KNOW WHO DID?

6 A NO.

7 Q TURNING OVER TO THE NEXT PAGE, NO. 11, AND IT
8 SAYS, "SEVERE PHYSICAL ABUSE" THERE AT THE TOP OF THE
9 PAGE.

10 DO YOU SEE THAT?

11 A YES.

12 Q THEN IN SMALL PRINT:

13 "THE CHILD IS UNDER THE AGE OF
14 FIVE AND HAS SUFFERED SEVERE PHYSICAL
15 ABUSE BY THE PARENT OR BY ANY PERSON
16 KNOWN BY THE PARENT AND THE PARENT KNEW
17 OR REASONABLY SHOULD HAVE KNOWN THAT
18 THE PERSON WAS PHYSICALLY ABUSING THE
19 CHILD."

20 FIRST, DID I READ THAT CORRECTLY?

21 A YES.

22 Q THEN THERE'S ONE OF THOSE PARENTHETICAL
23 STATEMENTS THAT SAYS STATE SUPPORTING FACTS?

24 A YES.

25 Q AND THEN UNDER E1, IT LOOKS LIKE IT'S THE
26 IDENTICAL STATEMENT AS WE READ JUST A LITTLE EARLIER.

27 WOULD YOU AGREE WITH THAT?

28 A YES. YEAH, YES.

1 Q AND THEN THAT WHOLE PARAGRAPH E1 ON PAGE 11,
2 THAT'S GOT A BIG X THROUGH IT?

3 A YES.

4 Q DID YOU DO THAT?

5 A NO.

6 Q DO YOU KNOW WHO DID?

7 A NO.

8 Q AND THIS CONVERSATION THAT YOU HAD WITH YOUR
9 ATTORNEY, THAT HOUR AND A HALF OR SO, DID YOU DO SORT
10 OF MORE OR LESS THE SAME THING WE JUST DID HERE, GOING
11 THROUGH IT LINE-BY-LINE?

12 A YES.

13 Q AND AS YOU WENT THROUGH EACH LINE, DID YOU
14 TAKE OUT -- OR TELL US WHAT YOU DID, AS YOU WENT
15 THROUGH LINE-BY-LINE WITH YOUR ATTORNEY, WHAT DID YOU
16 DO?

17 A I SHOWED HIM ALL OF THE EVIDENCE THAT I HAD AT
18 THE TIME OF WHAT I DID TO CARE FOR RYAN. I BROUGHT
19 MEDICAL RECORDS, WE WENT THROUGH SOME OF THE MEDICAL
20 RECORDS. EVEN THROUGH THAT TIME, TO ME, THIS WAS LIKE
21 SURREAL, A FOG, AND...

22 Q IF YOU DON'T REMEMBER CLEARLY, THAT'S FINE.
23 JUST LET ME KNOW.

24 A OBVIOUSLY, I DIDN'T AGREE WITH THE
25 ALLEGATIONS, SO I WANTED TO CONTEST IT.

26 Q OKAY. AND AT THE DETENTION HEARING, DID THE
27 COURT SET ANY FURTHER HEARINGS IN THE CASE, IF YOU
28 RECALL?

1 A YES.

2 Q WHAT WAS THE NEXT HEARING THAT YOU RECALL
3 BEING SET?

4 A THERE WAS A HEARING SET FOR JANUARY 4TH.

5 Q DO YOU RECALL WHAT HEARING THAT WAS -- WHAT
6 THE NAME OF IT -- IF YOU DON'T THAT'S FINE. I CAN HELP
7 YOU.

8 A I DO. IT WAS THE JURISDICTION HEARING.

9 Q OKAY. AND THEN THESE MONITORED VISITS THAT WE
10 WERE GOING THROUGH WITH MS. ENNIS'S NOTES, ALL THOSE
11 WERE GOING ON IN BETWEEN THE TWO HEARINGS?

12 A YES.

13 Q WHAT I'D LIKE TO DO, LET'S -- OKAY. IF I CAN
14 GET YOU TO TAKE A LOOK AT EXHIBIT NUMBERS 1088.35 OR
15 PAGE NUMBERS 1088.35 THROUGH AND INCLUDING 1088.41?

16 A IN THIS BINDER?

17 Q OH, I'M SORRY. IT'S THE ONE BEHIND YOU. I
18 SHOULD HAVE TOLD YOU THAT WE WERE SWITCHING BINDERS.

19 AND I DON'T NECESSARILY NEED YOU TO READ THOSE
20 IN DETAIL. I'M JUST GOING TO ASK YOU QUESTIONS ABOUT,
21 ACTUALLY, WHETHER THEY ARE TRUE, ACCURATE COPIES AND
22 DEPICTIONS OF THE MONITORING REPORTS THAT MS. ENNIS
23 PROVIDED TO YOU?

24 A OKAY.

25 Q OKAY. SO 1088.35, THAT'S THE DECEMBER 11TH
26 REPORT, IS THAT A TRUE AND ACCURATE DEPICTION OF WHAT
27 MS. ENNIS PROVIDED YOU?

28 A YES.

1 Q OKAY. GOING TO THE NEXT ONE, 1088.36, IT'S
2 THE DECEMBER 15TH REPORT, IS THAT A TRUE AND ACCURATE
3 COPY AND DEPICTION OF THE REPORT THAT MS. ENNIS
4 PROVIDED TO YOU?

5 A YES.

6 Q OKAY. GOING TO 1088.37, THROUGH AND INCLUDING
7 1088.38, IS THAT A TRUE AND ACCURATE COPY AND DEPICTION
8 OF THE REPORT OF DECEMBER 22ND THAT MS. ENNIS PROVIDED
9 TO YOU?

10 A YES.

11 Q ALL RIGHT. THE NEXT ONE DECEMBER 24TH, IT'S
12 EXHIBIT NUMBER 1088.39. IS THAT A TRUE AND ACCURATE
13 COPY AND DEPICTION OF THE REPORT THAT MS. ENNIS
14 PROVIDED TO YOU?

15 A YES.

16 Q ALL RIGHT. AND THE LAST ONE DECEMBER 28TH,
17 EXHIBIT NUMBER 1088.40. IS THAT A TRUE AND ACCURATE
18 DEPICTION COPY OF THE REPORT THAT MS. ENNIS PROVIDED TO
19 YOU?

20 A YES.

21 Q YOU RECALL A LITTLE EARLIER, WE WERE TALKING
22 ABOUT HOW YOU'D COME TO LEARN ABOUT THE FACT THAT
23 SOMEBODY WAS GOING TO BE WRITING DOWN EVERYTHING THEY
24 SAW AT THESE VISITS.

25 DID ANYBODY EVER EXPRESS TO YOU OR TELL YOU
26 THAT THESE REPORTS OR WHAT WOULD HAPPEN WITH THESE
27 REPORTS?

28 A I DON'T RECALL SOMEONE SPECIFICALLY SAYING

1 WHAT WILL BE THE END RESULT, THE REPORTS.

2 Q OKAY. WELL, THESE MONITORED VISITATION
3 REPORTS, DO YOU KNOW -- AND YOU MAY NOT KNOW -- YOU
4 KNOW WHETHER OR NOT THESE PARTICULAR REPORTS, NUMBERS
5 1088.28 ALL THE WAY THROUGH 1088.41, DO YOU KNOW
6 WHETHER OR NOT THOSE REPORTS WERE GIVEN TO THE COUNTY?

7 A I DON'T KNOW IF IT WAS GIVEN TO THEM OR NOT.
8 I WAS UNDER THE UNDERSTANDING THAT THEY DID HAVE THEM
9 BECAUSE NORISSA WAS THE ONE DOING THE VISIT --
10 MONITORING THE VISITATION, AND THEREFORE, THEY'VE GOT
11 TO HAVE THEIR REPORTS FOR THE VISITATION FOR THAT DAY.
12 SO THAT WAS ARRANGED AMONG THEM. IT WOULDN'T GO
13 THROUGH ME.

14 Q OKAY.

15 A SO I KNEW THAT THEY WERE DEALING WITH THAT,
16 BUT NOT THAT I WOULD GIVE IT TO THEM OR SHE WOULD GIVE
17 IT TO ME.

18 Q THAT WASN'T YOUR RESPONSIBILITY?

19 A THAT'S RIGHT, THAT'S NOT.

20 Q OKAY. OKAY. YOU'D TALKED A LITTLE BIT
21 EARLIER ABOUT YOUR UNDERSTANDING OF WHAT WAS GOING TO
22 HAPPEN DURING THIS REUNIFICATION PROCESS.

23 DO YOU REMEMBER THAT?

24 A YES.

25 Q AND PART OF WHAT YOU'D SHARED WITH US WAS THAT
26 THESE MONITORED VISITS, OVER TIME, YOU THOUGHT THAT
27 THOSE WOULD EXPAND AND ULTIMATELY, YOU KNOW, GET LONGER
28 AND LONGER AND LARGER AND LARGER, THAT SORT OF THING?

1 MS. SWISS: OBJECTION. LEADING.

2 THE COURT: SUSTAINED.

3 BY MR. MCMILLAN:

4 Q WHAT WAS YOUR EXPECTATION OR YOUR
5 UNDERSTANDING AS TO WHAT WAS TO HAPPEN OVER TIME WITH
6 RESPECT TO THE VISITATIONS THE MONITORED VISITATIONS?

7 A MY UNDERSTANDING WAS THAT FROM THE PERIOD OF
8 DETENTION TO THE 4TH, I HAD THAT GAP TO SHOW MY ABILITY
9 TO CARE FOR MY BABY, MY ABILITY TO PARENT MY BABY.
10 THEN THAT WILL BE GIVEN TO THE COURT AS EVIDENCE THAT
11 THE ALLEGATIONS WERE NOT WHAT THEY WERE SAID TO BE.

12 Q OKAY. BUT FOCUSING JUST FOR A MOMENT ON THE
13 LENGTH OF THESE MONITORED VISITS. THEY STARTED OUT AT
14 ONE AND A HALF HOURS; IS THAT RIGHT?

15 A YES.

16 Q DID YOU HAVE AN UNDERSTANDING THAT OVER TIME
17 THAT MIGHT CHANGE OR MAYBE NOT? WHAT WAS YOUR
18 UNDERSTANDING?

19 A WELL, I WAS HOPING THAT AFTER JANUARY 4TH, I
20 DIDN'T NEED TO BE MONITORED, I DIDN'T EVEN NEED TO BE
21 IN THIS SITUATION AT ALL.

22 Q OKAY. SO JANUARY 4TH, I THINK YOU TOLD US
23 EARLIER, THAT WAS THE JURISDICTION DISPOSITION HEARING?

24 A YES.

25 Q OKAY. AT THE JURISDICTION DISPOSITION
26 HEARING -- WHICH BOOK DO YOU HAVE? IF YOU CAN JUST SET
27 THAT ONE ASIDE AND REACH BACK BEHIND YOU, THERE'S
28 ANOTHER EXHIBIT BOOK. I'M HOPING THAT IT HAS

1 EXHIBIT 24 IN IT. IF IT DOESN'T, LET ME KNOW.

2 A I DON'T THINK SO. IT GOES ONLY TO 23.

3 Q I APOLOGIZE FOR THAT.

4 THE COURT: MR. MCMILLAN, IS THERE A SEPARATE
5 BINDER FOR EXHIBIT 24 ONLY?

6 MR. MCMILLAN: YES, YOUR HONOR THAT IS --

7 THE COURT: THAT'S GOOD. I WAS JUST TRYING TO
8 FIND IT.

9 MR. MCMILLAN: OKAY. EVERYBODY GOT IT?

10 THE COURT: YES.

11 BY MR. MCMILLAN:

12 Q ALL RIGHT. MS. DUVAL, THE FIRST PAGE OF
13 EXHIBIT 24 IS 000446 AND THE LAST PAGE IS 000816.

14 DO YOU SEE THAT? ALL THE WAY AT THE VERY END,
15 THE VERY LAST PAGE, UPPER RIGHT-HAND CORNER?

16 A YES.

17 Q IS THAT RIGHT?

18 A YES.

19 Q ALL RIGHT. WELL, LET ME ASK YOU: YOU WENT TO
20 THAT JURISDICTION DISPOSITION HEARING?

21 A YES.

22 Q DID YOU HAVE AN ATTORNEY?

23 A YES.

24 Q DID YOU MEET HIM BEFORE THE HEARING?

25 A ABOUT 15 MINUTES BEFORE.

26 Q ABOUT 15 MINUTES BEFORE.

27 SHARE WITH US THAT WHAT HAPPENED DURING THAT
28 15-MINUTE MEETING.

1 SIDEBAR.)

2 THE COURT: WE'RE AT SIDEBAR WITH COUNSEL.
3 MR. MCMILLAN, DURING MUCH OF THE TRIAL YOUR QUESTIONS
4 HAVE NOT ONLY BEEN LEADING THEY'RE REALLY ALMOST
5 TESTIMONIAL IN NATURE. AND MOST OF THEM HAVEN'T BEEN
6 OBJECTED TO AS LEADING, BUT THERE HAVE BEEN A FEW
7 OBJECTIONS WHICH I HAVE SUSTAINED. BUT I HAVE ASKED
8 YOU A COUPLE TIMES TO ASK DIRECT QUESTIONS, AND I'M
9 MAKING THAT REQUEST AGAIN AT SIDEBAR. I DON'T WANT TO
10 BE FORCED TO DO ANYTHING FURTHER IN FRONT OF THE JURY
11 TO REMIND YOU TO BE -- ASK DIRECT QUESTIONS BECAUSE WE
12 REALLY WANT THE WITNESS'S TESTIMONY.

13 MR. MCMILLAN: OKAY.

14 THE COURT: AND I KNOW IT'S -- THERE'S SOME
15 DIFFICULTY WITH ALL WITNESSES, NOT JUST THIS ONE. ALL
16 WITNESSES HAVE A LITTLE DIFFICULTY IN TESTIFYING FOR A
17 LOT OF DIFFERENT REASONS BECAUSE THEY AREN'T USED TO
18 THE MANNER IN WHICH WE PROCEED, PLUS THE FACT THERE'S A
19 CERTAIN NERVOUSNESS AND APPREHENSION ON THEIR PART.
20 BUT WE REALLY NEED TO HAVE HER TESTIMONY. AND WHILE
21 IT'S TRUE OF EVERY WITNESS, I THINK IT MAY BE EVEN MORE
22 IMPORTANT OF THIS WITNESS BECAUSE SHE IS REALLY THE
23 PRIMARY WITNESS ABOUT EVERYTHING THAT'S HAPPENED.

24 SO I'M GOING TO ASK YOU TO PLEASE ASK DIRECT
25 QUESTIONS SO WE GET WHAT SHE HAS TO TELL US. AND THEN
26 WE'LL ALL BE BETTER OFF FOR THAT.

27 MR. MCMILLAN: ALL RIGHT. THANK YOU, YOUR
28 HONOR. UNDERSTOOD.

1 THE COURT: YEAH.

2 (THE FOLLOWING PROCEEDINGS WERE HELD IN
3 OPEN COURT IN THE PRESENCE OF THE
4 JURY.)

5 THE COURT: WE'RE GOING TO TAKE A SHORT RECESS
6 ALSO AT THIS TIME, AGAIN, ABOUT 10 MINUTES. THIS IS --
7 WE'RE, AGAIN, GOING TO INTERPRET THE TESTIMONY OF
8 MS. DUVAL IN ORDER TO ACCOMMODATE THE SCHEDULE OF
9 ANOTHER WITNESS. SO I THINK JUST AS PART OF THE
10 CHANGEOVER AND TO GIVE THAT WITNESS A CHANCE TO COME
11 INTO THE COURTROOM, WE'LL JUST TAKE A SHORT RECESS,
12 ABOUT 10 MINUTES, AND THEN WE'RE EXPECTING THAT
13 WITNESS'S TESTIMONY WILL TAKE THE REMAINDER OF THE
14 MORNING.

15 SO ALL JURORS, PLEASE REMEMBER THE ADMONITION.
16 ALSO REMEMBER THAT IT'S COMMON IN A TRIAL TO INTERRUPT
17 THE TESTIMONY OF ONE WITNESS TO HAVE ANOTHER ONE
18 TESTIFY. WE DO THAT TO ACCOMMODATE EVERYBODY AS BEST
19 WE CAN. YOU SHOULD NOT DRAW ANY KIND OF CONCLUSION OR
20 INFERENCE TO THE FACT THAT THIS OCCURS EITHER NOW OR AT
21 ANY OTHER TIME IN THE TRIAL.

22 ALSO PLEASE REMEMBER THE ADMONITION. WE ARE
23 NOW IN RECESS. IN 10 MINUTES, WE'LL RESUME.

24 (JURY EXCUSED)

25 (RECESS)

26 THE COURT: EVERYBODY READY?

27 MR. KING: YOUR HONOR?

28 THE COURT: GO AHEAD.

1 MR. KING: ONE ISSUE. MR. COX WAS GOING TO
2 MENTION JUST THE FACT THAT HE WAS LEAD COUNSEL IN THE
3 WALLACE CASE. I'VE RUN THAT PAST DEFENSE COUNSEL.
4 HE'S NOT GOING TO SAY ANYTHING MORE THAN THAT, BUT JUST
5 THAT HE WAS THE LEAD COUNSEL IN THAT CASE AS HE RUNS
6 THROUGH HIS BACKGROUND, TRAINING, AND EDUCATION.

7 MR. GUTERRES: I HAVE NO ISSUES IF HE WANTS TO
8 JUST SAY HE WAS LEAD COUNSEL. BUT I HAVE ISSUES IF
9 HE'S GOING TO START TALKING ABOUT WHAT HIS
10 INTERPRETATION IS OF THE CASE LAW AND WHAT IT MEANS.

11 MR. KING: OF COURSE HE'S NOT GOING TO DO
12 THAT.

13 THE COURT: ALL RIGHT.

14 MR. KING: THANK YOU.

15 THE COURT: SO IF YOU'RE READY, WE'LL GET THE
16 JURORS.

17 MR. KING: OKAY.

18 (JURY PRESENT)

19 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
20 THE RECORD. EVERYBODY IS PRESENT. AT THIS TIME, .

21 MR. KING, DO YOU WANT THE CALL THE NEXT
22 WITNESS?

23 MR. KING: YES, YOUR HONOR. WE'D LIKE TO CALL
24 MR. DONNIE COX.

25 THE COURT: ALL RIGHT. MR. COX COME UP HERE
26 PLEASE.

27

28

DONNIE COX,

1 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
2 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

3

4 THE CLERK: FOR THE RECORD PLEASE STATE YOUR
5 NAME AND SPELL YOUR FIRST AND LAST NAME.

6 THE WITNESS: MY NAME IS DONNIE COX,
7 D-O-N-N-I-E, LAST NAME A C-O-X.

8 THE COURT: THANK YOU.

9 GO AHEAD, MR. KING.

10

11

DIRECT EXAMINATION

12

BY MR. KING:

13

Q GOOD MORNING, MR. COX.

14

A GOOD MORNING.

15

Q WHAT'S YOUR OCCUPATION?

16

A I'M AN ATTORNEY.

17

Q WHAT TYPE OF LAW DO YOU PRACTICE?

18

A THE FOCUS OF MY PRACTICE IS CIVIL RIGHTS LAW.

19

Q IS THERE ANY PARTICULAR SPECIALTY WITHIN THE

20

AREA OF CIVIL RIGHTS THAT YOU FOCUS ON?

21

A YES, I REPRESENT PEOPLE WHO HAVE THEIR

22

CHILDREN REMOVED BY GOVERNMENTAL ENTITIES INCLUDING

23

CHILD PROTECTIVE SERVICES AND THEIR RIGHTS ARE VIOLATED

24

AS A RESULT OF THAT.

25

Q WHAT TYPE RIGHTS ARE WE SPEAKING OF?

26

A TALKING USUALLY OF THE 4TH AND THE 14TH

27

AMENDMENT. THE 14TH AMENDMENT USUALLY RELATES TO THE

28

PARENTAL RIGHTS, THE RIGHTS THAT PARENTS HAVE TO

1 FAMILIAL ASSOCIATION WITH THEIR CHILDREN. AND THE 4TH
2 AMENDMENT USUALLY APPLIES WITH REGARD TO THE CHILDREN
3 THEMSELVES WHO HAVE BEEN DETAINED OR REMOVED WITHOUT
4 JUST CAUSE.

5 Q CAN YOU TELL US A LITTLE BIT ABOUT YOUR
6 BACKGROUND AND EDUCATION IN THIS AREA?

7 A I WENT TO WESTERN STATE UNIVERSITY. I
8 GRADUATED IN 1988. I HAD PRACTICED JUST GENERAL -- HAD
9 A GENERAL PRACTICE UNTIL 1990, AND IN 1990, 1991, I WAS
10 THE LEAD COUNSEL IN WALLACE VERSUS SPENCER.

11 I HAVE, SINCE 2000, PRACTICED ALMOST
12 EXCLUSIVELY IN THE FIELD OF CIVIL RIGHTS LAW INVOLVING
13 THE PARENTAL AND CHILDREN'S RIGHTS BEING VIOLATED BY
14 SOCIAL SERVICES, LAW ENFORCEMENT, THAT SORT OF THING.

15 Q HAVE YOU DONE ANY TRAINING -- GIVEN ANY
16 TRAINING OR ANY SEMINARS IN THIS AREA?

17 A I HAVE. I HAVE SPOKEN TO AND GIVEN SEMINARS
18 TO THE DEPARTMENT OF -- EXCUSE ME. TO THE DEPARTMENT
19 OF SOCIAL SERVICES IN SAN BERNARDINO COUNTY AND TWO OR
20 THREE OTHER SMALL COUNTIES IN CENTRAL CALIFORNIA AS A
21 RESULT OF CLAIMS THAT WERE FILED BY MY CLIENTS, AND
22 THOSE CLAIMS RESOLVED. AS A RESULT OF THAT, I WAS
23 ASKED TO NOT ONLY PARTICIPATE AND -- IN THE TRAINING OF
24 SOCIAL WORKERS, I WAS ALSO ASKED TO PARTICIPATE IN THE
25 WRITING OF POLICIES AND PROCEDURES INCLUDING THE
26 POLICIES AND PROCEDURES WHICH RESULT IN THE REMOVAL AND
27 DETENTION OF CHILDREN.

28 Q THE TRAINING THAT YOU'VE GIVEN WITH REGARDS TO

1 REMOVAL OR DETENTION OF CHILDREN AS IT PERTAINS TO
2 SOCIAL WORKERS, DOES THAT ALSO ENCOMPASS THE LOS
3 ANGELES DEPARTMENT OF CHILDREN AND FAMILY SERVICES?

4 A THE TRAINING WOULD BE RELEVANT TO EVERY COUNTY
5 IN THE STATE OF CALIFORNIA. CALIFORNIA IS GOVERNED BY
6 THE WELFARE AND INSTITUTION CODE. THE WELFARE AND
7 INSTITUTION CODE DETERMINES WHEN CHILDREN CAN BE
8 REMOVED. THE LAWS THAT DEAL WITH HOW THOSE CHILDREN
9 CAN BE REMOVED ARE PREDICATED ON AND LIMITED BY THE 4TH
10 AND 14TH AMENDMENT OF THE CONSTITUTION, WHICH APPLIES
11 TO EVERY COUNTY IN THE STATE OF CALIFORNIA.

12 Q IN THE COUNTY OF LOS ANGELES, HAVE YOU EVER
13 BROUGHT IN CLAIMS ON BEHALF OF A CLIENT FOR THE REMOVAL
14 OF A CHILD FROM THE HOME WITHOUT EXIGENCY?

15 A I HAVE BROUGHT PROBABLY 15 TO 18 CLAIMS.

16 Q WHAT ABOUT WITH RESPECT TO FABRICATION OF
17 DOCUMENTS BY A WORKER FROM THE LOS ANGELES COUNTY
18 CHILDREN AND FAMILY SERVICES?

19 A IN EVERY SINGLE CASE IN WHICH I HAVE BEEN
20 INVOLVED, THAT HAS BEEN THE CRUX OF THE ALLEGATIONS
21 THAT BE HAVE BEEN PART OF THAT.

22 Q WE'VE BEEN TALKING ABOUT JUDICIAL DECEPTION.
23 HAVE YOU BROUGHT ANY CLAIMS OF JUDICIAL DECEPTION
24 AGAINST THE COUNTY OF LOS ANGELES?

25 A FABRICATION OF CLAIMS AND JUDICIAL DECEPTION
26 GO HAND IN HAND. ANY TIME THERE'S A FABRICATION OF
27 EVIDENCE OR FABRICATION IN DOCUMENTS, IT ALWAYS
28 INVOLVES AN ATTEMPT OR CLAIM THAT THERE WAS JUDICIAL

1 DECEPTION INVOLVED.

2 Q WHAT ABOUT FAILURE TO INCLUDE EXCULPATORY
3 EVIDENCE IN REPORTS, WHERE WOULD THAT FALL IN WITH
4 REGARDS TO THE TYPE OF CLAIMS THAT YOU'VE HANDLED IN
5 LOS ANGELES COUNTY?

6 A AGAIN, PART AND PARCEL. ANY TIME THAT THERE'S
7 AN ALLEGATION IN EVERY CLAIM THAT WE'VE EVER BROUGHT,
8 WE HAVE ALWAYS LOOKED AT AND EVALUATED TO DETERMINE
9 WHETHER OR NOT THERE WAS AN ATTEMPT TO FABRICATE
10 EVIDENCE, TO DECEIVE THE COURT, TO MISREPRESENT FACTS.
11 AND THAT IS THE CRUX OF WHAT I DO. I OFTEN SAY THAT I
12 DON'T FILE CLAIMS AGAINST SOCIAL WORKERS FOR MAKING
13 MISTAKES. I FILE CLAIMS AGAINST SOCIAL WORKERS FOR
14 MISREPRESENTING FACTS, LYING, AND FOR BEING MALICIOUS.
15 THAT'S THE CRUX OF WHAT I DO.

16 Q HOW LONG HAVE YOU BEEN BRINGING CLAIMS IN
17 LOS ANGELES COUNTY OF THIS TYPE OF NATURE?

18 A THE FIRST CLAIM THAT WE BROUGHT WAS IN 2001.

19 Q WHERE IS YOUR OFFICE LOCATED?

20 A OCEANSIDE, CALIFORNIA.

21 Q HOW DO YOUR CLIENTS FIND YOU?

22 A I DON'T ADVERTISE. I DON'T HAVE A WEB SITE.
23 MOST OF MY CLIENTS FIND ME AS A RESULT OF -- STARTED
24 WITH THE WALLACE CASE. PEOPLE FOUND THAT ONLINE AND
25 THEY WOULD CONTACT ME, AND WE WOULD EVALUATE THEIR
26 CLAIMS. IN OUR OFFICE, WE GET SOMEWHERE BETWEEN 10 AND
27 15 CALLS A WEEK FOR -- TO EVALUATE CLAIMS THAT ARE THAT
28 PEOPLE WANT US TO LOOK AT. AND WE TAKE ABOUT 1 IN 750

1 CASES THAT COMES THROUGH OUR OFFICE.

2 Q IS THERE A REASON YOU ONLY TAKE A SELECT
3 NUMBER OF CASES?

4 A YEAH, THERE ARE MANY REASONS. ONE OF THE
5 REASONS IS, IS THAT WE ONLY TAKE CLAIMS WHEN WE THINK
6 THAT SOCIAL WORKERS HAVE MISREPRESENTED FACTS,
7 FALSIFIED EVIDENCE, FAILED TO INCLUDE EXCULPATORY
8 EVIDENCE IN THEIR CLAIMS, OR THERE'S BEEN A MALICIOUS
9 ALLEGATION MADE. AND THE OTHER REASON THAT WE TAKE SO
10 FEW CLAIMS IS THAT THERE ARE ONLY TWO OF US, AND THERE
11 ARE VERY FEW LAWYERS IN THIS STATE WHO PRACTICE THIS
12 KIND OF LAW. IT'S A VERY SPECIALIZED KIND OF CIVIL
13 RIGHTS PRACTICE, AND WE CAN'T TAKE MORE CLAIMS THAN
14 THAT WITHOUT, YOU KNOW, IT AFFECTING THE CLAIMS THAT WE
15 ACTUALLY HAVE.

16 SO WE HAVE TO MAKE SURE THAT WE DON'T GET
17 OURSELVES OVERLOADED. BUT I WILL SAY THAT THAT DOES
18 NOT MEAN THAT -- DOES NOT MEAN THAT WE DON'T TAKE
19 CLAIMS THAT ARE NOT VALID. THERE ARE MANY TIMES WHEN
20 PEOPLE COME TO US, AND WE'LL REVIEW THOSE CLAIMS, AND
21 WE'LL DETERMINE THAT THEY MIGHT HAVE A VALID CLAIM, BUT
22 WE JUST CAN'T TAKE MORE THAN WHAT WE CAN HANDLE IN THE
23 OFFICE. AND THAT HAPPENS QUITE A BIT.

24 Q WHAT WOULD YOU CONSIDER TO BE A VALID CLAIM?

25 A A VALID CLAIM IS, IN OUR OPINION, IS WHEN A
26 SOCIAL WORKER MISREPRESENTS FACTS, FAILS TO INCLUDE
27 EXCULPATORY EVIDENCE IN A COMPLAINT, LEAVES OUT
28 MATERIAL EVIDENCE IN EITHER A WARRANT OR IN A DOCUMENT

1 LIKE A DETENTION REPORT, A JURISDICTIONAL DISPOSITIONAL
2 REPORT, HAS FABRICATED EVIDENCE IN A TESTIMONY IN FRONT
3 OF A JUVENILE COURT SYSTEM. AND WE SEE THAT QUITE A
4 BIT.

5 AND WHEN WE SEE SOCIAL WORKERS THAT MAKE
6 ALLEGATIONS SIMPLY AS A RESULT OF BEING UPSET WITH A
7 PARENT FOR A REASON OTHER THAN THE FACT THAT THE PARENT
8 MAY HAVE ABUSED OR NEGLECTED THEIR CHILD, WE SEE THAT
9 MORE OFTEN THAN YOU WOULD THINK.

10 Q IN YOUR YEARS OF BRINGING THESE TYPE OF CLAIMS
11 TO THE ATTENTION OF THE DEPARTMENT OF CHILDREN AND
12 FAMILY SERVICES, SPECIFICALLY LOS ANGELES COUNTY, HAVE
13 YOU BECOME FAMILIAR WITH SOME OF THE POLICIES OF THE
14 DEPARTMENT WITH REGARDS TO THE REMOVAL OF CHILDREN FROM
15 THE HOME WITHOUT A WARRANT?

16 A I HAVE. PART OF WHAT WE DO WHEN WE FILE
17 CLAIMS IS THAT WE TAKE STATEMENTS FROM WHAT ARE KNOWN
18 AS THE PERSONS MOST KNOWLEDGEABLE. THESE ARE PEOPLE
19 WHO ARE DESIGNATED BY THE COUNTY OF LOS ANGELES AS THE
20 PEOPLE WHO HAVE THE MOST KNOWLEDGE ABOUT THE POLICIES,
21 PRACTICES, AND PROCEDURES OF THE COUNTY WITH REGARD TO
22 WHATEVER ISSUE WE MIGHT BE INVOLVED IN.

23 AND PART OF THAT PROCESS IS IN LOS ANGELES, WE
24 HAVE -- IN THE CLAIMS WE'VE FILED IN LOS ANGELES, WE
25 HAVE TAKEN NUMEROUS POLICY AND PRACTICE -- FOR -- THE
26 SHORTENED TERM IS PMQ, PERSON MOST QUALIFIED. WE'VE
27 TAKEN MANY PMQ DEPOSITIONS IN LOS ANGELES.

28 Q AND THIS PERSON, A PERSON MOST QUALIFIED, ARE

1 THEY SOMEONE THAT'S DESIGNATED BY THE COUNTY AS THE
2 PERSON MOST QUALIFIED IN THIS AREA?

3 A CORRECT. AND WE'LL TELL THE COUNTY THAT WE
4 WANT THEM TO PRODUCE SOMEBODY WHO HAS SPECIFIC
5 KNOWLEDGE AND THE MOST KNOWLEDGEABLE PERSON ABOUT
6 WHATEVER POLICY OR PRACTICE THAT WE WANT THEM TO
7 TESTIFY ABOUT. AND THEY MAKE THE DECISION ABOUT WHO
8 THEY PUT UP AS THAT PMQ.

9 Q AND WHY --

10 MR. GUTERRES: OBJECTION. MOVE TO STRIKE
11 AFTER "CORRECT" AS NONRESPONSIVE.

12 THE COURT: THE UNDERLYING OBJECTION IS
13 SUSTAINED. MOTION TO STRIKE A GRANTED. ALL PORTIONS
14 OF THE ANSWER AFTER THE WORD CORRECT ARE ORDERED
15 STRICKEN.

16 GO AHEAD.

17 MR. KING: THANK YOU, YOUR HONOR.

18 BY MR. KING:

19 Q WHY IS IT IMPORTANT AFTER PUTTING THE COUNTY
20 ON NOTICE OF THE TYPES OF CLAIMS THAT YOU'RE BRINGING
21 AGAINST THEM TO ACTUALLY SPEAK TO A PERSON MOST
22 QUALIFIED?

23 MR. GUTERRES: OBJECTION. RELEVANCE.

24 THE COURT: OVERRULED.

25 THE WITNESS: IT'S IMPORTANT BECAUSE WE WANT
26 TO SEE WHAT THE COUNTY'S POLICIES ARE AND WHETHER THOSE
27 POLICIES LINE UP WITH THE ACTIONS OF THE SOCIAL
28 WORKERS. SO WE'RE TRYING TO DETERMINE WHETHER IT IS

1 JUST A ROGUE SOCIAL WORKER THAT HAS CREATED THE
2 PROBLEM, THE COUNTY'S POLICIES HAVE CREATED THE
3 PROBLEM, OR A COMBINATION OF BOTH.

4 BY MR. KING:

5 Q AND AFTER YOU INITIALLY BRING A CLAIM, SAY,
6 AGAINST A SPECIFIC SOCIAL WORKER, ARE YOU MAYBE AT A
7 LATER DATE ABLE TO FIND OUT INFORMATION THROUGH A
8 PERSON MOST QUALIFIED AS TO WHETHER ANY TRAINING OR
9 DISCIPLINE WAS IMPLEMENTED ON THE PERSON THAT YOU HAD
10 PREVIOUSLY BROUGHT A CLAIM AGAINST?

11 MR. GUTERRES: OBJECTION. LEADING.

12 THE COURT: SUSTAINED. ASK THAT DIFFERENTLY.

13 MR. KING: SURE.

14 BY MR. KING:

15 Q IN YOUR DISCUSSIONS WITH THE PERSON MOST
16 QUALIFIED, DO YOU EVER DISCUSS DISCIPLINE OR TRAINING?

17 A WE DO.

18 Q TELL US ABOUT THAT.

19 A WE USUALLY -- NOT USUALLY. EVERY SINGLE TIME,
20 WE WANT TO KNOW WHAT KIND OF REMEDIAL ACTION IS BEING
21 TAKEN AGAINST THE INDIVIDUALS WHO HAVE, IN OUR OPINION,
22 HAVE VIOLATED OUR CLIENT'S CONSTITUTIONAL RIGHTS. SO
23 WE WILL ASK IN EVERY CASE, "WAS THERE ANY DISCIPLINE
24 TAKEN AFTER THE CHILD WAS RETURNED OR AFTER THE CASE
25 WAS OVER?" AFTER WE FILED THE CLAIM, "DID YOU DO AN
26 INVESTIGATION TO MAKE A DETERMINATION AS TO WHETHER
27 THERE WAS ANYTHING THAT WAS DONE IN THIS CASE THAT
28 WARRANTED AN INVESTIGATION AND WARRANTED SOME SORT OF

1 DISCIPLINE?"

2 AND IT CAN BE ANYTHING FROM JUST A COUNSELING
3 SESSION TO RETRAINING TO TERMINATION. BUT IN -- THERE
4 HAS NOT BEEN ONE SINGLE CASE IN ANY OF THE CLAIMS THAT
5 WE'VE FILED AGAINST LOS ANGELES WHERE WE HAVE EVER BEEN
6 TOLD -- AND WE'VE ASKED IN EVERY CASE WHETHER OR NOT
7 THE COUNTY HAS DISCIPLINED OR COUNSELED OR RETRAINED --
8 WE'VE NEVER HAD ANY PMQ EVER TELL US THAT THERE HAS
9 BEEN SUCH DISCIPLINE, RETRAINING, OR COUNSELING.

10 Q SO IN ALL THE YEARS OF BRINGING CLAIMS AGAINST
11 LOS ANGELES COUNTY, YOU HAVE NEVER SUBSEQUENTLY LEARNED
12 THAT THERE WAS ANY TRAINING OR DISCIPLINE IMPOSED
13 AGAINST A SOCIAL WORKER FOR WHOM YOU ASSERTED A CLAIM
14 AGAINST?

15 A THAT'S RIGHT --

16 MR. GUTERRES: OBJECTION. LEADING.

17 THE COURT: SUSTAINED. BUT HE JUST ANSWERED
18 THAT, SO WE'LL JUST MOVED ON TO THE NEXT ONE.

19 MR. KING: OKAY. THANK YOU.

20 BY MR. KING:

21 Q ARE YOU FAMILIAR WITH THE SUPERVISING SOCIAL
22 WORKER, I BELIEVE SHE'S A DEPENDENCY INVESTIGATOR NOW
23 BY THE NAME OF KIMBERLY ROGERS?

24 A I AM.

25 Q HAVE YOU EVER ASSERTED A CLAIM AGAINST HER IN
26 THE PAST?

27 A WE HAVE.

28 Q HAVE YOU EVER LEARNED FROM A PERSON MOST

1 QUALIFIED OR A PERSON MOST KNOWLEDGEABLE AFTER FILING
2 YOUR INITIAL CLAIM WHETHER OR NOT ANY DISCIPLINE HAS
3 BEEN IMPOSED UPON MS. ROGERS?

4 A AS FAR AS I KNOW, THERE WAS NEVER BEEN ANY
5 DISCIPLINE IMPOSED.

6 Q CAN YOU TELL US A LITTLE BIT ABOUT THE NATURE
7 OF THE CLAIMS THAT YOU HAVE BROUGHT AGAINST LOS ANGELES
8 COUNTY, LET'S SAY, IN THE AREA OF JUDICIAL DECEPTION OR
9 FABRICATION OF DOCUMENTS?

10 A WELL, GENERALLY SPEAKING, WHERE WE GET
11 INVOLVED IS IT STARTS WITH THE INITIAL REMOVAL AND
12 DETENTION THAT WOULD OCCUR AS A RESULT OF SOCIAL
13 WORKERS THINKING THAT THEY NEEDED TO TAKE A CHILD OUT
14 OF THE HOUSE. AND IN ORDER TO JUSTIFY THAT, THEY WILL
15 THEN FILE DOCUMENTS WITH THE JUVENILE COURT SAYING THAT
16 THEY TOOK THE CHILD FOR X, Y, AND Z REASONS.

17 THOSE CLAIMS ARE GENERALLY -- AND AGAIN, ONCE
18 WE REVIEW THE CLAIMS -- WE DON'T JUST TAKE SOMEBODY'S
19 WORD FOR IT, WE REVIEW THE CLAIMS, WE LOOK AT THEM, WE
20 EVALUATE THEM, WE ASK QUESTIONS, WE REVIEW AS MANY
21 DOCUMENTS AS WE CAN GET AS TO -- WE CAN GET EARLY IN
22 THESE CASES -- AND IT'S HARD TO GET DOCUMENTS EARLY IN
23 THESE CASES -- AND WE TRY TO DETERMINE WHETHER OR NOT
24 SOMEBODY HAS MISREPRESENTED A FACT, FALSIFIED EVIDENCE,
25 YOU KNOW, DONE SOMETHING THAT IS, YOU KNOW, A VIOLATION
26 OF YOUR CLIENT'S SUBSTANTIVE AND PROCEDURAL DUE PROCESS
27 RIGHTS.

28 Q WHAT WOULD BE AN EXAMPLE OF A PROCEDURAL DUE

1 PROCESS VIOLATION?

2 A PROCEDURAL DUE PROCESS --

3 MR. GUTERRES: OBJECTION. RELEVANCE.
4 OVERBROAD.

5 THE COURT: OVERRULED.

6 THE WITNESS: PROCEDURAL DUE PROCESS RIGHT IS
7 WHEN SOMEONE IS NOT GIVEN THE RIGHT TO A HEARING, A
8 JUDICIAL HEARING. YOU KNOW, THERE'S AN EXTRA JUDICIAL
9 SORT OF PROCEDURE THAT YOU DON'T GET A -- YOU'RE NOT
10 GIVEN YOUR ACTUAL DUE PROCESS TO GO IN COURT AND HEAR
11 FROM A JUDGE OR FROM SOME SORT OF A MAGISTRATE.

12 AND SUBSTANTIVE DUE PROCESS IS WHEN YOUR
13 ACTUAL CONSTITUTIONAL RIGHTS THEMSELVES ARE VIOLATED.
14 THAT'S THE 4TH AND 14TH AMENDMENT. THAT'S THE
15 INTERFERENCE WITH FAMILIAL ASSOCIATION. AND GENERALLY,
16 ALL OF OUR CLAIMS INVOLVE FAMILIAL ASSOCIATION CLAIMS,
17 THE RIGHT OF PARENTS AND CHILDREN TO LIVE TOGETHER,
18 PARENTS TO MAKE DECISIONS FOR THEIR CHILDREN, AND
19 CHILDREN TO -- THE CONCURRENT RIGHT FOR THE CHILD TO
20 HAVE A PARENT MAKE THAT DECISION FOR THEM.

21 BY MR. KING:

22 Q BASED OFF THE CASES THAT YOU'VE HANDLED, DOES
23 A SOCIAL WORKER HAVE ANY OPTIONS PRIOR TO MAKING THE
24 DETERMINATION OF REMOVING THE CHILD FROM THE HOME?

25 A OF COURSE.

26 Q WHAT ARE THEY?

27 A WELL, YOU KNOW, THEY CAN -- IF THE ALLEGATION
28 IS THAT THE PARENTS' FAILING TO -- THERE'S A -- STRIKE

1 THAT.

2 IF THERE'S A -- IF THE ALLEGATION IS THAT
3 THERE'S AN ABUSIVE SPOUSE, FOR INSTANCE, YOU CAN
4 EXCLUDE THE SPOUSE. IF THE ALLEGATION IS THAT YOU
5 HAVE -- THE CHILD HASN'T GONE TO THE DOCTOR, YOU CAN
6 HAVE THE CHILD GO TO THE DOCTOR, ASK THEM TO TAKE THE
7 CHILD TO THE DOCTOR. IF -- AND IF THERE'S NOT AN
8 EXIGENT CIRCUMSTANCE, AND YOU DECIDE THAT THAT CHILD
9 STILL NEEDS TO BE PART OF THE SYSTEM, YOU CAN DO TWO
10 THINGS: YOU CAN EITHER GET A PROTECTIVE CUSTODY
11 WARRANT, WHICH, YOU KNOW, IS JUST FILLING OUT A FORM
12 AND SUBMITTING IT TO THE COURT WITH ALL THE RELEVANT
13 FACTS, OR YOU CAN FILE A NONDETENTION PETITION.

14 AND IT'S BEEN OUR EXPERIENCE, BASED ON WHAT
15 WE'VE BEEN TOLD BY PMQS, THAT YOU CAN GET INTO COURT
16 WITHIN 24 HOURS AND ASK THE COURT TO INTERJECT ITSELF,
17 TO INTERVENE IN THESE CASES WITHOUT REMOVING THE CHILD.
18 SO IT'S -- REMOVING THE CHILD SHOULD BE THE LAST
19 RESORT, AND THERE'S PLENTY OF CASE LAW ON THAT.

20 Q MR. COX, IF YOU COULD MAYBE PULL THE
21 MICROPHONE A LITTLE CLOSER.

22 A SORRY ABOUT THAT.

23 Q I THINK IT MIGHT JUST BE MY EARS.

24 WE TALKED ABOUT A NONDETAINED PETITION. IS
25 THAT THE PROCESS WHERE THE SOCIAL WORKER GOES AND ASKS
26 FOR A WARRANT, OR IS THAT SOMETHING DIFFERENT?

27 A IT'S --

28 MR. GUTERRES: OBJECTION. LEADING.

1 THE COURT: OVERRULED.

2 THE WITNESS: IT'S SOMETHING SLIGHTLY
3 DIFFERENT. THERE'S TWO WAYS THAT A SOCIAL WORKER CAN
4 ACTUALLY INTERVENE SHORT OF REMOVING A CHILD. THE
5 FIRST IS TO GO AND ASK THE COURT TO INTERVENE BECAUSE
6 THEY HAVE CONCERNS ABOUT WHETHER OR NOT THE CHILD IS
7 SAFE IN THE HOME. BUT THERE'S NO EXIGENT
8 CIRCUMSTANCES, THERE'S NO EMERGENCY. THAT'S A
9 SITUATION WHERE IT'S WHAT IS REFERRED TO AS AN EX PARTE
10 SITUATION WHERE THE PARENT DOESN'T HAVE A RIGHT TO BE
11 PRESENT AT THAT HEARING. SO THEY SUBMIT A DOCUMENT,
12 THEY SAY THIS IS THE REASON WE WANT THE CHILD REMOVED.
13 IT'S IMPORTANT THAT ALL EXCULPATORY EVIDENCE, THAT ALL
14 RELEVANT EVIDENCE BE PUT INTO THAT PROTECTIVE CUSTODY
15 WARRANT BECAUSE THE PARENT DOESN'T HAVE A RIGHT TO
16 RESPOND.

17 THE OTHER WAY THAT YOU CAN DO IT IS YOU CAN
18 ACTUALLY FILE A PETITION, HAND THAT PETITION TO THE
19 PARENT, AND SAY YOU'RE TO BE IN COURT TOMORROW, THE
20 NEXT DAY, WHENEVER THAT MIGHT BE, AND THEN YOU AND THE
21 PARENT CAN TELL THE JUDGE WHY IT IS THAT YOU WANT
22 THE -- THE SOCIAL WORKER CAN TELL THE JUDGE THIS IS WHY
23 I THINK THE CHILD SHOULD BE REMOVED, BUT THE PARENT HAS
24 A CHANCE TO THEN RESPOND TO THAT. THEY CAN BRING AN
25 ATTORNEY WITH THEM, THEY CAN MAKE WHATEVER ARGUMENTS
26 THEY WANT TO MAKE.

27 AND IT'S MUCH, MUCH MORE DIFFICULT TO -- IT'S
28 MUCH MORE DIFFICULT FOR A PARENT, ONCE THAT CHILD HAS

1 BEEN REMOVED, TO GET THAT CHILD BACK THAN IT IS FOR THE
2 SOCIAL WORKER TO REMOVE THE CHILD THAN IT IS TO WHEN
3 THEY GO INTO COURT BEFORE THE CHILD IS REMOVED.

4 MR. GUTERRES: MOVE TO STRIKE THE ANSWER THAT
5 PRECEDED "THE OTHER WAY IS THE NONDETAINED" -- "IS TO
6 FILE A PETITION" AS NONRESPONSIVE.

7 THE COURT: STRIKE AS TO WHAT, MR. GUTERRES?

8 MR. GUTERRES: EVERYTHING THAT PRECEDED THE
9 ANSWER WHERE MR. COX INDICATED "THE OTHER WAY WAS TO
10 FILE A PETITION," AND THEN CONTINUED FROM THERE.

11 THE COURT: MOTION TO STRIKE IS GRANTED. THAT
12 PORTION OF THE ANSWER THAT BEGAN WITH THE OTHER WAY YOU
13 CAN DO IT IS TO FILE A PETITION ET CETERA IS ORDERED
14 STRICKEN. THE JURY DISREGARD IT.

15 MR. KING: THANK YOU.

16 THE COURT: MR. COX, ANSWER OUR QUESTIONS.

17 THE WITNESS: YES, SIR. SORRY.

18 THE COURT: YOU'VE ASKED JUDGES TO SO RULE ON
19 MANY OCCASIONS, I'M SURE.

20 THE WITNESS: I HAVE, YOUR HONOR.

21 THE COURT: ALL RIGHT. I RECEIVED THAT SAME
22 ADMONITION YEARS AGO WHEN I WAS CALLED AS A WITNESS IN
23 A CASE. A JUDGE I KNEW, AND I HAD ANSWERED ABOUT TWO
24 OR THREE QUESTIONS, AND HE INTERRUPTED AND SAID ANSWER
25 THE QUESTION.

26 THE WITNESS: I'M SORRY, YOUR HONOR.

27 THE COURT: THAT'S ALL RIGHT.

28 ///

1 BY MR. KING:

2 Q IN THE NONDETAINED PETITION SCENARIO YOU JUST
3 MENTIONED, DOES THE CHILD GET TO REMAIN WITH THE PARENT
4 WHILE THE PAPERWORK IS FILED WITH THE COURT?

5 A CORRECT.

6 Q AND THEN A HEARING IS SET AFTER THAT?

7 A CORRECT.

8 Q AND THESE ARE ONE OF THE ALTERNATIVES THAT THE
9 SOCIAL WORKER WOULD HAVE RATHER THAN REMOVING THE CHILD
10 FROM THE HOME IS THE NONDETAINED PETITION AND THEN ALSO
11 SEEKING A PROTECTIVE CUSTODY --

12 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED.
13 THE COURT: IT HAS BEEN. WE'LL ANSWER IT ONE
14 MORE TIME.

15 OVERRULED.

16 THE WITNESS: THAT'S CORRECT.

17 BY MR. KING:

18 Q AND IN YOUR EXPERIENCE IN BRINGING CLAIMS
19 AGAINST THE COUNTY OF LOS ANGELES, DO YOU SEE IT HAPPEN
20 MORE OFTEN ONE WAY VERSUS THE OTHERS?

21 A I HAVE NEVER SEEN THE COUNTY OF LOS ANGELES IN
22 ANY OF THE CASES I'VE BEEN INVOLVED WITH OR ANY OF THE
23 CASES THAT I HAVE REVIEWED AND CONSIDERED WHERE A
24 NONDETAINED PETITION WAS FILED FIRST. AND UP UNTIL --
25 WELL, I'LL STOP THERE.

26 Q BASED ON YOUR EXPERIENCE IN YEARS OF
27 LITIGATION OR YEARS OF -- STRIKE THAT.

28 BASED ON YOUR YEARS OF NOTIFYING THE COUNTY OF

1 CLAIMS OF REMOVAL FROM HOMES OF CHILDREN, HAVE YOU EVER
2 COME TO LEARN WHETHER OR NOT THE POLICY OF THE
3 LOS ANGELES COUNTY DEPARTMENT OF FAMILY SERVICES,
4 THERE'S ACTUALLY A PROCEDURE FOR SEEING A PROTECTIVE
5 CUSTODY WARRANT?

6 A UP UNTIL 2010, THERE WAS NO SUCH PROCEDURE.

7 Q SO YOU STARTED DOING THIS AGAINST LOS ANGELES
8 COUNTY SOMEWHERE IN 1999; IS THAT CORRECT?

9 A 2001 IS WHEN THE FIRST CLAIM WAS FILED.

10 Q 2001.

11 AND UP UNTIL THE YEAR 2010, YOU NEVER LEARNED
12 THERE WAS A POLICY THAT WAS INTACT WITH REGARDS TO
13 SEEKING PROTECTIVE CUSTODY WARRANTS?

14 MR. GUTERRES: OBJECTION. LEADING.

15 THE COURT: SUSTAINED.

16 BY MR. KING:

17 Q BASED ON YOUR DISCUSSIONS WITH PERSON MOST
18 QUALIFIED IN THIS AREA, DID YOU COME TO ANY SORT OF
19 UNDERSTANDING AS TO WHY IT WAS THAT IN 2010 THERE WAS A
20 POLICY IMPLEMENTED WITH REGARDS TO SEEKING PROTECTIVE
21 CUSTODY WARRANTS?

22 MR. GUTERRES: OBJECTION. RELEVANCE.

23 THE COURT: SUSTAINED.

24 BY MR. KING:

25 Q WHAT HAS BEEN YOUR EXPERIENCE WITH REGARDS TO
26 THE FAILURE TO EXCLUDE -- OR FAILURE TO INCLUDE
27 EXCULPATORY EVIDENCE IN REPORTS BY SOCIAL WORKERS
28 AGAINST CLAIMS THAT YOU HAVE MADE AGAINST THE

1 LOS ANGELES DEPARTMENT OF CHILDREN AND FAMILY SERVICES?

2 MR. GUTERRES: OBJECTION. OVERBROAD CALLS FOR
3 A NARRATIVE.

4 THE COURT: SUSTAINED.

5 YOU CAN ASK THAT DIFFERENTLY.

6 BY MR. KING:

7 Q CAN YOU TELL US ONE SUCH EXAMPLE OF CLAIMS
8 WHERE THERE HAS BEEN A FAILURE TO INCLUDE EXCULPATORY
9 EVIDENCE IN REPORTS SUBMITTED BY SOCIAL WORKERS FROM
10 THE LOS ANGELES COUNTY DEPARTMENT OF FAMILY SERVICES?

11 A I CAN. ONE OF THE CLAIMS THAT WE FILED HAD TO
12 DO WITH A WARRANT APPLICATION THAT -- STRIKE THAT.

13 A REQUEST BY THE DEPARTMENT TO -- FROM MY
14 CLIENT TO SEEK A PROTECTIVE ORDER FOR HERSELF AND HER
15 CHILD. SHE DID THAT. SHE ATTEMPTED TO SERVE THE
16 PROTECTIVE ORDER AGAINST THE FATHER OF THE CHILD. AND
17 WHEN IT CAME TIME TO FILE THE PETITION, THE SOCIAL
18 WORKERS COMPLETELY IGNORED AND COMPLETELY EXCLUDED THAT
19 FACT FROM THE PETITION AT THE TIME BEFORE THE DETENTION
20 HEARING.

21 THE CHILD HAD ALREADY BEEN REMOVED BY THE
22 SOCIAL WORKER AT THAT POINT, AND SHE WAS REMOVED, AND
23 THE CHILD WAS REMOVED BECAUSE THEY CLAIMED THAT MY
24 CLIENT FAILED TO SERVE THE DOCUMENT AND EVEN THOUGH SHE
25 HAD ATTEMPTED TO DO THAT. BUT SHE DID ACTUALLY GO OUT
26 AND GET A STAY AWAY ORDER FOR THE DAD. AND THE
27 DEPARTMENT OF SOCIAL SERVICES COMPLETELY IGNORED THAT,
28 DIDN'T PUT IT IN THE REPORT, AND NEVER TOLD THE COURT

1 ABOUT IT. THEY DIDN'T FIND OUT ABOUT IT UNTIL THE
2 DETENTION HEARING ITSELF.

3 Q WAS THAT A MATERIAL FACT THAT WAS OMITTED?

4 A IT WAS THE MOST MATERIAL FACT THAT YOU COULD
5 POSSIBLY HAVE.

6 Q WHY DO YOU SAY THAT?

7 A BECAUSE IT WAS THE THING THEY CLAIMED PUT THE
8 CHILD AT RISK AND REQUIRED THE CHILD TO BE REMOVED
9 IMMEDIATELY BECAUSE MOM HAD, YOU KNOW, FAILED TO GET A
10 PROTECTIVE CUSTODY -- OR A PROTECTIVE WARRANT -- I'M
11 SORRY, NOT A PROTECTIVE WARRANT. I'M LOSING MY TRAIN
12 OF THOUGHT. FAILED TO GET A STAY AWAY ORDER FOR THE
13 FATHER TO PROTECT THE CHILD. AND THAT WAS THE REASON
14 THEY USED FOR REMOVING THE CHILD.

15 AND WHEN THEY GET TO THE DETENTION HEARING,
16 THEY DON'T TELL THE COURT THAT THEY HAD, IN FACT, GONE
17 AND GOTTEN -- THAT SHE HAD IN FACT GONE AND GOTTEN THAT
18 PROTECTIVE ORDER.

19 Q HAVE YOU EVER HAD ANY ACTUAL INSTANCES OF
20 ACTUAL FABRICATION?

21 A I HAVE.

22 Q CAN YOU GIVE US AN EXAMPLE?

23 A YES. IN ONE CASE I HAD A CHILD -- A MOTHER
24 WHOSE CHILD WAS BORN WITH A CONGENITAL BIRTH DEFECT.
25 AND INITIALLY, THE DOCTORS THOUGHT THAT THIS WAS SOME
26 SORT OF AN ISSUE. THEY NEVER EVER SAID THIS WAS CHILD
27 ABUSE. HOWEVER, BECAUSE OF SOME DOMESTIC VIOLENCE
28 BETWEEN MOTHER AND FATHER, THE SOCIAL WORKERS GOT

1 INVOLVED IN THE CASE AND REPORTED THAT THE DOCTORS HAD
2 CLAIMED THAT THE INJURY OR THE PROBLEM THE CHILD HAD
3 WAS SUSPICIOUS FOR CHILD ABUSE.

4 AND WHEN WE TOOK THE STATEMENT OF THE DOCTORS,
5 IT TURNED OUT THAT THAT WAS A COMPLETE FABRICATION AND
6 THAT WAS -- THAT WAS A STATEMENT THAT WAS MADE IN THE
7 DETENTION REPORT, IN THE JURISDICTION DISPOSITIONAL
8 REPORT, AND THE SOCIAL WORKERS TESTIFIED ABOUT IT TWICE
9 DURING THE TRIAL.

10 Q AND IT ENDED UP BEING A FABRICATED STATEMENT?

11 A IT WAS A FABRICATED STATEMENT.

12 Q WAS THERE ANY EFFORT TO CONTACT THE DOCTOR IN
13 ORDER TO DETERMINE WHETHER OR NOT THE DOCTOR IN FACT
14 MADE THAT STATEMENT?

15 A WHEN --

16 MR. GUTERRES: OBJECTION. 827. WELFARE AND
17 INSTITUTION CODE 827, YOUR HONOR. AND APPROACH.

18 THE COURT: YES. I WILL SEE COUNSEL.

19 (THE FOLLOWING PROCEEDINGS WERE HELD AT
20 SIDEBAR.)

21 THE COURT: WE'RE AT SIDEBAR WITH COUNSEL.

22 MR. GUTERRES: YOUR HONOR, THE MORE THAT WE
23 START GETTING INTO THE FACT OF ANY GIVEN CASE, IT'S
24 GOING TO PRECLUDE ME FROM EXAMINING OR CROSS EXAMINING
25 THE WITNESS BASED ON GETTING INTO THE DETAILS OF THE
26 CASE AND VIEW IT AS 827 PETITION.

27 THE COURT: WELL, I'D ALSO RESTRICT IT TO THE
28 SUBJECT MATTER OF THIS WITNESS'S TESTIMONY TO AVOID

1 BEING CUMULATIVE. IN FACT, A GREAT DEAL OF IT HAS BEEN
2 CUMULATIVE. BUT IN ANY EVENT, I'D INDICATED THAT NONE
3 OF THE ATTORNEY EXPERT WITNESSES WERE GOING TO BE
4 PERMITTED TO TALK ABOUT FACTS OF CASES. SO I'M
5 SUSTAINING THE OBJECTION.

6 MR. KING: THANK YOU, YOUR HONOR. I KNOW THE
7 COURT HAS A POLICY OF NOT ARGUING AFTER THE COURT HAS
8 GRANTED THE --

9 THE COURT: NO, I'M GOING TO HEAR FROM YOU.
10 THAT'S WHY WE'RE HERE.

11 MR. KING: OKAY. I'M TRYING TO LEARN FROM MY
12 MISTAKES.

13 THE COURT: NO MISTAKE INVOLVED. I'M HAPPY TO
14 HEAR FROM YOU.

15 MR. KING: ON THE 827 ISSUE, NO NAMES HAVE
16 BEEN INVOLVED OF THE NAMES OF PARENTS OR THE CHILDREN,
17 SO NO 827 APPLIES. AND I DID BELIEVE THAT THE COURT
18 RULED THAT WE CAN GET INTO NATURE OF THE TYPE OF CLAIMS
19 IN ORDER TO SHOW THERE'S A PATTERN AND PRACTICE AND
20 THERE'S A FAILURE TO --

21 THE COURT: WELL, I DON'T THINK THAT -- FIRST
22 OF ALL, I THINK THIS WHOLE AREA OF TESTIMONY IS --
23 CERTAINLY PRESENTS DIFFICULTY AS TO WHAT SHOULD BE
24 PERMITTED AND WHAT SHOULD NOT BE. BUT YOU DO NOT
25 ESTABLISH A CUSTOM AND PRACTICE BY TALKING ABOUT THE
26 FACTS OF A SINGLE CASE. SO WHEN ASKING FOR THE EXAMPLE
27 FOR THE PURPOSE TO BE ABLE TO DEMONSTRATE ABOUT
28 PRACTICE OR CUSTOM OF THE COUNTY, SUCH EVIDENCE IS

1 INSUFFICIENT TO DO THAT. AND SO THAT'S ADDITIONAL
2 GROUND TO SUSTAIN AN OBJECTION TO IT.

3 IF YOU RECALL WHAT MR. POWELL -- BECAUSE I
4 REMEMBER THERE WAS AN ATTORNEY HOWELL ALSO -- WITH
5 MR. POWELL, THAT I DID PERMIT HIM TO TESTIFY ABOUT
6 SEEKING INFORMATION FROM WHAT I'VE CALLED PMKS, PERSONS
7 MOST KNOWLEDGEABLE, BUT IT'S THE SAME THING --

8 MR. MCMILLAN: FEDERAL COURT, IT'S PMQ.

9 THE COURT: -- OF ANYONE EVER HAVING BEEN
10 DISCIPLINED AND SO FORTH AND PERMITTED THAT. AND HE'S
11 ALREADY TESTIFIED TO THAT, THAT IN ALL OF HIS CASES,
12 HE'S NEVER BEEN ABLE TO FIND ANY EVIDENCE THAT SOMEONE
13 HAD EVER BEEN DISCIPLINED.

14 MR. MCMILLAN: CORRECT.

15 THE COURT: WHEN WE START GOING INTO FACTS OF
16 OUR INDIVIDUAL CASES, EVEN THOUGH IT COULD BE DONE AND
17 HAS BEEN DONE WITHOUT REFERENCE TO PERSONS INVOLVED, WE
18 STILL RUN INTO THE PROBLEM, HOWEVER, THAT A SINGLE CASE
19 OR EVEN A COUPLE OF CASES HE CAN TALK ABOUT ARE NOT
20 SUFFICIENT TO ESTABLISH A CUSTOM AND PRACTICE. AND IT
21 ESTABLISHES THE ADDITIONAL PROBLEM, AS MR. GUTERRES
22 MENTIONED, IT MAKES IT VIRTUALLY IMPOSSIBLE FOR HIM TO
23 CROSS-EXAMINE BECAUSE OF CONCERN OF HAVING POTENTIALLY
24 TO EFFECTIVELY CROSS-EXAMINE, GAIN INFORMATION ABOUT A
25 SPECIFIC CASE.

26 SO I THINK IT'S SOMETHING WE SHOULD STAY AWAY
27 FROM. BUT THE TESTIMONY YOU ALREADY HAVE IS RECEIVED
28 WITHOUT OBJECTION.

1 MR. KING: OKAY.

2 THE COURT: AND WOULD HAVE BEEN RECEIVED IN
3 ANY EVENT IN KEEPING WITH THE COURT'S PRIOR RULING.

4 MR. KING: OKAY.

5 THE COURT: SO I DON'T KNOW WHERE ELSE YOU
6 WANT TO GO WITH THE WITNESS. I DON'T WANT TO UNDULY
7 RESTRICT YOUR EXAMINATION, BUT I THINK THE PARAMETERS
8 WE HAVE PREVIOUSLY FOR MR. POWELL ARE THE PARAMETERS
9 THAT SHOULD BE APPLIED TO THIS WITNESS, AND I
10 PREVIOUSLY HAVE SO INDICATED.

11 I JUST WANT TO AVOID DUPLICATIVE TESTIMONY,
12 WHICH WE REALLY HAVEN'T, BUT IT HASN'T BEEN EXCESSIVE.

13 MR. KING: OKAY. THANK YOU, YOUR HONOR.

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN
15 OPEN COURT IN THE PRESENCE OF THE
16 JURY.)

17 THE COURT: ALL RIGHT. MR. KING, YOU MAY
18 CONTINUE.

19 MR. KING: THANK YOU, YOUR HONOR.

20 BY MR. KING:

21 Q MR. COX, I'D LIKE TO TALK TO YOU ABOUT CACI.
22 COULD YOU TELL US WHAT THAT MEANS?

23 A THE CHILD ABUSE CENTRAL INDEX. IN CALIFORNIA,
24 IT IS THE WAY THAT SOCIAL WORKERS AND OTHER LAW
25 ENFORCEMENT AGENCIES MAKE REPORTS TO THE DEPARTMENT OF
26 JUSTICE THE ATTORNEY GENERAL'S OFFICE IN SACRAMENTO ON
27 ALLEGATIONS OF ABUSE OR NEGLIGENT OF THE CHILDREN.

28 Q AND HOW ARE THESE ALLEGATIONS TYPICALLY

1 BROUGHT ABOUT?

2 A THE ALLEGATIONS THEMSELVES AND HOW YOU END UP
3 ON THE CACI IS WHEN EITHER A SOCIAL WORKER OR LAW
4 ENFORCEMENT SIMPLY MAKES AN ALLEGATION THAT YOU HAVE
5 ABUSED OR NEGLECTED A CHILD, AND THAT ALLEGATION IS
6 DETERMINED TO BE FOUNDED, SUBSTANTIATED.

7 Q AND HOW DOES AN ALLEGATION BECOME
8 SUBSTANTIATED OR FOUNDED?

9 MR. GUTERRES: OBJECTION. FOUNDATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: THERE ARE THREE TYPES OF
12 ALLEGATIONS, OR THREE TYPES OF FINDINGS. FIRST IS
13 UNFOUNDED. UNFOUNDED MEANS THE ALLEGATION IS NOT TRUE
14 OR INHERENTLY IMPROBABLY.

15 THE SECOND IS INCONCLUSIVE WHICH MEANS THAT
16 THE ALLEGATION, THAT THERE'S NOT ENOUGH EVIDENCE TO
17 SUBSTANTIATE AN ALLEGATION.

18 THIRD ALLEGATION IS SUBSTANTIATED, AND
19 SUBSTANTIATED MEANS THAT THE ALLEGATION IS TRUE AND
20 THAT -- MORE LIKELY THAN NOT TO BE TRUE, AND THAT THE
21 CHILD HAS BEEN SUBJECTED TO ABUSE OR NEGLECT.

22 THE ALLEGATIONS THEMSELVES ARE BROUGHT BY THE
23 SOCIAL WORKERS, INDIVIDUAL SOCIAL WORKERS WHO MAKE THAT
24 ALLEGATION. AND ONCE THE ALLEGATION IS MADE, YOU
25 HAVE -- IT'S SUBMITTED TO THE DEPARTMENT OF JUSTICE AND
26 IT REMAINS UNLESS IT IS LATER REMOVED EITHER BY THE
27 DEPARTMENT OR AS A RESULT OF THE LITIGATION.

28 ///

1 BY MR. KING:

2 Q AND WHEN YOU SAY THE INDIVIDUAL SOCIAL WORKER
3 CAN BRING THE ALLEGATION, ARE WE TALKING ABOUT A
4 SUPERVISING SOCIAL WORKER?

5 A ANY SOCIAL WORKER CAN MAKE THE ALLEGATION.

6 Q AND IF YOU CAN WALK US THROUGH THE PROCESS HOW
7 IS THAT ALLEGATION INITIALLY BROUGHT?

8 MR. GUTERRES: OBJECTION. OVERBROAD.

9 THE COURT: OVERRULED.

10 THE WITNESS: THE WAY THAT IT WORKS IS THAT
11 THE SOCIAL WORKER FILLS OUT A FORM, SENDS IT TO
12 SACRAMENTO, AND SAYS, "THERE HAVE BEEN ALLEGATIONS OF
13 ABUSE OR NEGLECT," AND FILLS OUT THE FORM AS TO WHY
14 THERE IS ABUSE OR NEGLECT. AND THE -- AND IT'S --
15 THAT'S BASICALLY HOW IT WORKS. IT'S AS SIMPLE AS THAT.

16 MAYBE YOU CAN REPEAT YOUR QUESTION. I DON'T
17 THINK I --

18 BY MR. KING:

19 Q WELL, DOES THE INDIVIDUAL SOCIAL WORKER HAVE
20 TO RUN IT PAST A SUPERVISOR BEFORE THEY FILE IT?

21 MR. GUTERRES: OBJECTION. NO FOUNDATION
22 SPECULATION.

23 THE COURT: SUSTAINED AS TO FOUNDATION.

24 MR. KING: SURE.

25 BY MR. KING:

26 Q HAVE YOU EVER ENCOUNTERED OR REPRESENTED A
27 CLIENT WHO, IN FACT, HAS SUCH A CLAIM MADE AGAINST
28 THEM?

1 A I HAVE.

2 Q OVER THE YEARS, HOW MANY OF THESE TYPE OF
3 CLAIMS HAVE YOU ENCOUNTERED BASED ON THOSE CLAIMS BEING
4 ASSERTED AGAINST ONE OF YOUR CLIENTS?

5 A IN NEARLY EVERY CASE THAT WE TAKE, THE
6 ALLEGATIONS THAT RESULTED IN THE CHILD BEING REMOVED
7 ALSO RESULTED IN A CACI REPORT BY THAT SOCIAL WORKER.
8 AND NORMALLY IT IS THE INDIVIDUAL SOCIAL WORKER WHO
9 MAKES THE COMPLAINT. THEY DO NOT NEED TO GET
10 PERMISSION FROM THEIR SUPERVISOR.

11 Q AND IS THAT COMPLAINT TYPICALLY MADE EARLY ON
12 IN THE PROCESS?

13 A IT'S INTENDED TO BE MADE AFTER THE CONCLUSION
14 OF THE INVESTIGATION BY THE SOCIAL WORKER. BUT THERE'S
15 A CONTINUING OBLIGATION TO INVESTIGATE, BUT -- AND IT'S
16 BEEN OUR EXPERIENCE THAT IT'S NORMALLY MADE WITHIN A
17 WEEK OF THE REMOVAL AND DETENTION OF A CHILD.

18 Q AND WHEN YOU SAY "CONTINUING INVESTIGATION,"
19 WHOSE OBLIGATION IS IT TO CONTINUE THIS INVESTIGATION?

20 A THE SOCIAL WORKER -- THAT SOCIAL WORKER, AND
21 ALL PRECEDING SOCIAL WORKERS -- OR ALL SUBSEQUENT
22 SOCIAL WORKERS.

23 Q SO ALL SUBSEQUENT SOCIAL WORKERS INVOLVED IN
24 THE CASE HAVE AN OBLIGATION TO CONTINUE TO INVESTIGATE?

25 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED.
26 LEADING.

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. KING:

2 Q THE CLAIMS, IS IT SOMETHING THAT'S EASY TO
3 REMOVE?

4 A IT IS NEAR -- THERE ARE -- THERE ARE -- WELL,
5 THERE ARE TWO WAYS THAT YOU CAN GET A CLAIM REMOVED.
6 THE FIRST WAY IS THROUGH WHAT'S CALLED A GOMEZ HEARING.
7 AND THE GOMEZ HEARING IS SET UP SO THAT YOU MAKE AN --
8 WHEN THE INDIVIDUAL CAN APPEAL AND SAY, YOU KNOW, "I
9 DON'T THINK THAT THE FACTS JUSTIFY MY NAME BEING PLACED
10 ON THE CACI."

11 AT THAT POINT, THERE IS A HEARING SET UP, AND
12 THE HEARING OFFICER IS SOMEBODY WHO EITHER WORKS FOR
13 THE DEPARTMENT OF SOCIAL SERVICES OR IS APPOINTED BY
14 THE DEPARTMENT OF SOCIAL SERVICES TO ACT AS THE HEARING
15 OFFICER. AND THAT OFFICER THEN HEARS THE ALLEGATIONS,
16 HEARS THE EVIDENCE, AND MAKES A DETERMINATION AS TO
17 WHETHER THE CLAIM CAN BE REMOVED.

18 IN THE 15 YEARS THAT I'VE BEEN DOING THIS, I
19 HAVE NEVER SEEN A SUCCESSFUL GOMEZ HEARING WHERE AN
20 ALLEGATION WAS REMOVED. IT HAS ALWAYS REQUIRED THE
21 FILING OF LITIGATION TO GET THAT REMOVED.

22 Q AND WHAT ARE THE REPERCUSSIONS OF HAVING A
23 CLAIM SUCH AS A CACI CLAIM ON ONE OF YOUR CLIENTS?

24 A FIRST OF ALL, PENAL CODE SECTION 11164 THROUGH
25 11174, AND ALL OF THE APPENDING PENAL CODE SECTIONS IN
26 BETWEEN, LAY OUT NOT JUST WHEN A CLAIM CAN BE -- OR A
27 CACI ALLEGATION CAN BE MADE AND HOW THOSE WORK BUT THEY
28 ALSO LAY OUT WHO HAS ACCESS TO THE CACI.

1 SO IF YOU DECIDE THAT YOU HAVE AN ALLEGATION
2 THAT YOU'VE ABUSED OR NEGLECTED A CHILD -- MOSTLY IT'S
3 ABUSE -- AND YOU APPLY TO BECOME A FOSTER PARENT, THAT
4 WILL POP UP. IF YOU WANT TO APPLY TO BE A TEACHER,
5 THAT MIGHT POP UP. IF YOU WANT TO BE A COACH FOR YOUR
6 CHILD, THAT WILL LIKELY POP UP. ANY JOB THAT YOU'RE
7 GOING TO DO THAT REQUIRES YOU TO HAVE INTERACTIONS WITH
8 CHILDREN, THAT STIGMA WILL BE ATTACHED TO YOU. IT IS
9 NEARLY IMPOSSIBLE TO GET IT REMOVED ABSENT LITIGATION.

10 MR. GUTERRES: OBJECTION. MOVE TO STRIKE THE
11 LAST COMMENT AS NONRESPONSIVE.

12 THE COURT: MOTION TO STRIKE IS DENIED.
13 BY MR. KING:

14 Q WHAT IF AN INDIVIDUAL WANTS TO BECOME, LET'S
15 SAY, A COACH OF A BASKETBALL TEAM INVOLVING CHILDREN?

16 A IT IS LIKELY THAT THAT ALLEGATION WILL ARISE,
17 AND IT REALLY WILL DEPEND ON HOW THE INDIVIDUAL CAN
18 EXPLAIN IT TO THE LEAD. BUT GENERALLY SPEAKING, IT
19 IS -- IT IS ONE OF THOSE SCARLET LETTERS THAT JUST
20 FOLLOWS YOU WHEREVER YOU GO, AND IT WILL FOLLOW YOU FOR
21 THE REST OF YOUR LIFE.

22 IT IS -- WELL, I WAS -- WHEN WE BRING CLAIMS
23 IN THESE CASES, ONE OF THE THINGS THAT WE REQUIRE IN
24 ORDER TO SETTLE THE CASE IS IN ORDER FOR THAT CASE TO
25 RESOLVE IS THAT OUR CLIENTS' NAMES MUST BE REMOVED FROM
26 THE CACI. THAT IS ALMOST ALWAYS A CONDITION FOR
27 RESOLVING THE CLAIM. AND IT'S BEEN OUR EXPERIENCE THAT
28 THAT IS THE ONLY WAY THAT THAT CLAIM CAN BE RESOLVED.

1 MR. GUTERRES: OBJECTION. MOVE TO STRIKE THAT
2 LAST COMMENT AS NONRESPONSIVE. AND RELEVANCE.

3 THE COURT: THE OBJECTION IS OVERRULED.
4 MOTION TO STRIKE IS DENIED.

5 GO AHEAD, MR. KING. PLEASE BE MINDFUL OF THE
6 TIME.

7 MR. KING: THANK YOU, YOUR HONOR. WE'RE
8 WRAPPING UP.

9 BY MR. KING:

10 Q DOES THIS AFFECT THE PARENT AND CHILD?

11 A IT DOES.

12 Q HOW SO?

13 A NOT ONLY IS THE PARENT PLACED ON THE CACI, BUT
14 THE CHILD IS PLACED ON THE CACI AS WELL. AND THE CHILD
15 CAN, AS A VICTIM, THE ALLEGED VICTIM OF ABUSE CAN ASK
16 THEIR NAME BE REMOVED FROM THE CACI WHEN THEY TURN 18.
17 HOWEVER, MOST PEOPLE DON'T KNOW THAT THEIR NAME HAS
18 BEEN PLACED ON THE CACI AS THE VICTIM. THE PARENTS
19 HAVE BEEN GIVEN NOTICE THAT THEIR NAME HAS BEEN PLACED,
20 BUT THEY'RE NOT TOLD THAT THEIR CHILD HAS BEEN PLACED
21 ON THE CACI AS WELL.

22 WE HAVE LITIGATED CASES, MATTER OF FACT, A
23 CASE IN LOS ANGELES WHERE AN ALLEGATION WAS MADE THAT
24 AN INDIVIDUAL HAD ABUSED OR NEGLECTED A CHILD, AND ONE
25 OF THE BASES FOR THAT ALLEGATION WAS THAT THAT CHILD
26 HAD BEEN THE VICTIM OF ABUSE, ALLEGED VICTIM OF ABUSE
27 AS A CHILD.

28 AND SO IT NOT ONLY FOLLOWS THE PARENT AROUND,

1 BUT IT IS A STIGMA THAT FOLLOWS THE CHILD AS WELL.

2 Q WHAT'S THE SIGNIFICANCE OF A CHILD BEING
3 PLACED ON THE CACI?

4 A I THINK I JUST OUTLINED IT. THE CHILD THEN IS
5 SUBJECT TO BEING MORE, ACCORDING TO THE SYSTEM, MORE
6 SUSCEPTIBLE TO BEING AN ABUSER GOING FORWARD. IF I
7 MAY, THERE'S A SYSTEM SET UP, IT'S A POINT SYSTEM THAT
8 IS SET UP BY THE DEPARTMENT. AND THEY OUTLINE -- THEY
9 GIVE A POINT OR TWO POINTS OR THREE POINTS DEPENDING ON
10 THE ALLEGATION FOR CERTAIN ACTIONS AND CERTAIN
11 ACTIVITIES. EVEN AN UNFOUNDED ALLEGATION GETS YOU A
12 POINT.

13 SO THAT IF THERE'S A SUBSEQUENT ALLEGATION
14 THAT GETS MADE, THAT'S COUNTED AGAINST YOU. IT IS
15 COUNTED AGAINST YOU EVEN IF YOU ARE CONSIDERED A VICTIM
16 OF CHILD ABUSE IN THE FUTURE IF THERE'S AN ALLEGATION
17 THAT'S BROUGHT AGAINST YOU BECAUSE THE REASONING GOES
18 THAT YOU'RE MORE LIKELY TO COMMIT ABUSE IF YOU WERE THE
19 VICTIM OF ABUSE.

20 Q AND HOW MANY TIMES HAVE YOU IN THE COUNTY OF
21 LOS ANGELES HAD A SITUATION ARE A CLIENT OF YOURS HAS
22 BEEN PLACED IN THE CACI?

23 A WELL, EVERY TIME THAT I'VE REPRESENTED PARENTS
24 IN LOS ANGELES WHO HAVE BEEN ALLEGED WHO HAVE ABUSED OR
25 NEGLECTED THEIR CHILD, IN EVERY SINGLE INSTANCE, THEIR
26 NAME HAS BEEN ON THE CACI.

27 Q OKAY.

28 MR. KING: THANK YOU. I HAVE NOTHING FURTHER.

1 THE COURT: ALL RIGHT. MR. GUTERRES?

2

3

CROSS-EXAMINATION

4

BY MR. GUTERRES:

5

Q GOOD MORNING, MR. COX.

6

A GOOD MORNING, COUNSEL.

7

Q YOU GAVE A DEPOSITION WHERE YOU GAVE TESTIMONY

8

UNDER OATH IN THIS CASE; CORRECT?

9

A I DID.

10

Q MARCH 4, 2015, SOUND FAMILIAR?

11

A IT DOES.

12

Q YOU'VE NEVER ACTUALLY TRIED ANY CASES AGAINST

13

THE COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES;

14

ISN'T THAT TRUE?

15

A THAT IS CORRECT.

16

Q AND AS OF MARCH 4, 2015, THE DATE OF YOUR

17

DEPOSITION, YOU HAD IDENTIFIED SEVEN CASES YOU HAD

18

ACTUALLY BROUGHT AGAINST THE COUNTY; ISN'T THAT TRUE?

19

A AT THAT TIME, THAT'S WHAT I COULD RECALL AT

20

THE DEPOSITION, YES.

21

Q AND YOU HAD NOT MET MS. DUVAL AT THAT TIME --

22

AT THE TIME OF YOUR DEPOSITION; TRUE?

23

A THAT'S CORRECT.

24

Q AND THOSE SITUATIONS WHERE YOU'VE INDICATED

25

YOU'VE HAD AN OPPORTUNITY THE SPEAK TO PERSONS MOST

26

QUALIFIED, DESIGNEES OF THE DEPARTMENT, THOSE HAVE BEEN

27

ACTUAL LAWSUITS; CORRECT?

28

A CORRECT.

1 Q SO IT WOULD BE LIMITED TO THOSE CASES THAT
2 YOU'VE ACTUALLY FILED; ISN'T THAT TRUE?

3 A WELL, NO. THE PERSON MOST KNOWLEDGEABLE IS
4 TALKING ABOUT POLICIES AND PRACTICES OF THE COUNTY
5 GENERALLY, NOT JUST AS THEY APPLY TO THAT SPECIFIC
6 CASE.

7 Q UNDERSTOOD. BUT YOU WOULD ONLY BE SPEAKING TO
8 THEM ON THOSE CASES THAT YOU'VE ACTUALLY FILED; TRUE?

9 A I'M NOT SURE.

10 Q YOU'VE ONLY TAKEN DEPOSITIONS OF COUNTY
11 DEPARTMENT OF CHILDREN AND FAMILY SERVICES' PERSONS
12 MOST KNOWLEDGEABLE IN THOSE CASES WHERE YOU'VE ACTUALLY
13 FILED THE LAWSUIT?

14 A OH, YES, THAT'S TRUE.

15 Q SO IT WOULD HAVE BEEN, AT THE TIME OF YOUR
16 DEPOSITION, THOSE SEVEN CASES; CORRECT?

17 A CORRECT. AND THERE HAVE BEEN THREE SINCE.

18 Q AND YOU HAVEN'T TAKEN DEPOSITIONS IN ALL OF
19 THOSE SEVEN CASES; ISN'T THAT A FACT?

20 A I BELIEVE WE TOOK DEPOSITIONS IN -- WELL,
21 STRIKE THAT. NO. YOU'RE RIGHT. THERE ARE A COUPLE
22 THAT WE DID NOT TAKE DEPOSITIONS.

23 Q RIGHT. YOU TESTIFIED TO THAT?

24 A CORRECT.

25 Q SO FOR YOU TO SAY THAT IN EVERY SINGLE CASE,
26 YOU'VE NEVER BEEN TOLD. WELL, SOME OF THOSE CASES
27 YOU'VE NEVER BEEN TOLD BECAUSE YOU HAVEN'T TAKEN THE
28 DEPOSITION; TRUE?

1 A WELL, WE ACTUALLY ASKED THE INDIVIDUAL SOCIAL
2 WORKERS IF THEY'VE BEEN DISCIPLINED, AND IN EVERY
3 INSTANCE, THE ANSWER IS NO.

4 Q MR. COX, AT LEAST ONE OF THOSE CASES, YOU TOOK
5 NO DEPOSITIONS; TRUE?

6 A THAT'S TRUE.

7 Q SO YOU DIDN'T SPEAK TO ANYONE ON THAT CASE;
8 CORRECT?

9 A IN THAT PARTICULAR CASE, YOU'RE ABSOLUTELY
10 CORRECT.

11 Q OKAY. THANK YOU.

12 ARE YOU BEING PAID FOR YOUR TESTIMONY?

13 A NO.

14 Q DID YOU MEET WITH MR. MCMILLAN'S OFFICE BEFORE
15 COMING HERE TODAY?

16 A I MET WITH MR. KING FOR ABOUT AN HOUR BEFORE
17 TODAY.

18 Q IN PREPARATION FOR YOUR TESTIMONY HERE TODAY?

19 A CORRECT.

20 Q IS THAT THE ONLY TIME YOU MET WITH ANY
21 ATTORNEYS FROM MR. MCMILLAN'S TEAM?

22 A I MET WITH MR. KING BRIEFLY AND WAS INTRODUCED
23 TO HIM APPROXIMATELY TWO AND A HALF, THREE MONTHS AGO.

24 Q AND THEN PRIOR TO YOUR DEPOSITION, DID YOU
25 ALSO MEET WITH AN ATTORNEY FROM MR. MCMILLAN'S OFFICE?

26 A I DID NOT.

27 Q BUT YOU AND MR. MCMILLAN TALK REGULARLY ABOUT
28 THE CASES, ISN'T THAT TRUE?

1 A MR. MCMILLAN IS ONE OF ABOUT TEN LAWYERS IN
2 THE STATE OF CALIFORNIA THAT DO THIS WORK, SO YES, WE
3 DO TALK QUITE A BIT.

4 Q AND YOU GUYS SHARE INFORMATION AMONGST
5 YOURSELVES?

6 A ABSOLUTELY, WE DO.

7 Q STRATEGIES ON HOW TO SUE ENTITIES?

8 A I WOULDN'T SAY STRATEGIES ON HOW TO SUE
9 ENTITIES. WHAT WE SHARE IS INFORMATION ABOUT WHAT
10 WE'VE LEARNED IN DEPOSITIONS AND WHAT WE'RE TOLD BY
11 PMQS AND BY INDIVIDUAL DEFENDANTS. AND WE COMPARE
12 NOTES ON THE KINDS OF CLAIMS THAT ARE -- THAT ARE
13 COMMON TO BOTH OF OUR PRACTICES.

14 Q THERE ARE CERTAIN CONFIDENTIALITY ISSUES,
15 CERTAINLY, TO THE TYPES OF CASES THAT YOU HANDLE;
16 CORRECT?

17 A THAT IS CORRECT.

18 Q AND, IN FACT, THERE'S A STATUTE THAT DOESN'T
19 ALLOW YOU TO DISCLOSE INFORMATION REGARDING THE FACTS
20 OF A PARTICULAR CASE WITH OTHERS UNLESS THEY'RE
21 INCLUDED IN THAT ORDER; CORRECT?

22 A THERE ARE STATUTES THAT REQUIRE THAT WE NOT
23 DIVULGE THE NAMES AND SPECIFICS OF A CASE. SO, FOR
24 INSTANCE, I COULD TELL MR. MCMILLAN ABOUT CASES THAT I
25 HAVE, BUT I'M NOT ALLOWED TO TELL HIM ABOUT THE NAMES
26 OF THOSE CLIENTS.

27 Q I MEAN, YOU WOULDN'T BE VIOLATING THOSE
28 STATUTES IN YOUR DISCUSSIONS, WOULD YOU?

1 A NO, I WOULD NOT.

2 Q DO YOU KNOW MR. POWELL?

3 A I DO.

4 Q ROBERT POWELL?

5 A I DO.

6 Q FROM UP NORTH?

7 A I DO.

8 Q DID YOU KNOW HE TESTIFIED HERE?

9 A I DID.

10 Q SO YOU'VE ALREADY TALKED TO HIM IN ADVANCE OF
11 COMING HERE?

12 A WELL, MR. POWELL AND I SHARED THE SOLIS AND
13 HOLLY CASE. WE WERE CO-COUNSEL.

14 Q DID YOU HEAR MY QUESTION, SIR?

15 A WHAT'S THAT?

16 Q DID YOU HEAR MY QUESTION?

17 A NO. I THOUGHT YOU ASKED ME WHAT WE DISCUSSED.

18 Q NO, I -- PARDON ME IF THAT'S WHAT YOU HEARD.
19 I SAID SO YOU HAD A DISCUSSION WITH MR. POWELL BEFORE
20 COMING HERE?

21 A I TOLD HIM I WAS COMING HERE TO TESTIFY.

22 Q AND, IN FACT, MR. POWELL TESTIFIED THAT THE
23 WAY HE GOT INTRODUCED INTO THIS LINE OF WORK WAS BY
24 CALLING YOU?

25 A I'M NOT SURPRISED.

26 Q HE SAID YOU SHARED HIS PASSWORD -- THAT YOU
27 SHARED YOUR PASSWORD TO ALL OF YOUR FILES WITH HIM?

28 A I HAVE ASSOCIATED BOB IN ON ALMOST EVERY CASE

1 THAT I'VE BEEN INVOLVED IN BECAUSE HE AND I HAVE WORKED
2 MANY CASES TOGETHER.

3 Q SO IS THAT A YES?

4 A YES.

5 Q SO WHEN YOU SAY YOU ASSOCIATED HIM IN, THERE
6 WAS A FORMAL ASSOCIATION FILED ON EVERY SINGLE CASE
7 THAT YOU HAVE FILED? IS THAT WHAT YOU'RE SAYING?

8 A NO. NO.

9 Q YOUR EDUCATION AND WORK EXPERIENCE, OTHER THAN
10 SUING CHILD PROTECTIVE SERVICE AGENCIES, DO YOU HAVE
11 ANY BACKGROUND TRAINING AS A SOCIAL WORKER?

12 A I DO NOT.

13 Q LET ME DIRECT YOUR ATTENTION TO THAT LINE OF
14 QUESTIONING WITH REGARD TO THE CACI. THERE ARE CERTAIN
15 TIME LIMITS AS TO WHEN A PARTY CAN APPEAL THEIR BEING
16 PLACED IN THE CACI; CORRECT?

17 A GENERALLY SPEAKING, YES, BUT THOSE TIME LIMITS
18 ARE NOT WRITTEN IN STONE.

19 Q AND HAVE YOU ACTUALLY EVER PARTICIPATED IN AN
20 APPEAL PROCESS OF A CACI?

21 A I HAVE.

22 Q THROUGH THE ADMINISTRATIVE HEARING?

23 A I HAVE.

24 Q THROUGH THE COUNTY OF LOS ANGELES?

25 A NOT WITH THE COUNTY OF LOS ANGELES.

26 Q SO YOUR EXPERIENCES AS IT RELATES TO ANY
27 APPEALS FROM A CACI -- PARDON ME. YOUR EXPERIENCE WITH
28 REGARD TO THE APPELLATE PROCEDURES FOR BEING PLACED ON

1 CACI WOULD BE OUTSIDE OF THE COUNTY OF LOS ANGELES?

2 A IT WOULD.

3 COULD I AMEND MY LAST ANSWER A LITTLE BIT? I
4 ACTUALLY PARTICIPATED IN HUMPHRIES VERSUS COUNTY OF LOS
5 ANGELES WITH ESTHER BOYNTON WHO WAS A -- THAT WAS THE,
6 LITERALLY THE CASE THAT SAID THAT THE PRACTICE OF THE
7 COUNTY OF LOS ANGELES DURING, I THINK IT WAS BEFORE
8 2011 WAS UNCONSTITUTIONAL WITH REGARD TO HOW THE CACI
9 WAS SET UP. AND IT'S A 9TH CIRCUIT CASE. AND NOT ONLY
10 DID I CONSULT WITH ESTHER, BUT I HELPED HER WRITE THE
11 APPELLATE BRIEF IN THE CASE.

12 MR. GUTERRES: I'LL MOVE TO STRIKE THAT LAST
13 PORTION AS NONRESPONSIVE TO MY QUESTION.

14 THE COURT: IT'S THE ENTIRE STATEMENT?

15 MR. GUTERRES: YES, SIR. WHAT MR. COX ADDED.

16 THE COURT: THE MOTION TO STRIKE IS DENIED.
17 IT DOES RESPOND TO THE QUESTION.

18 BY MR. GUTERRES:

19 Q IN RESPONSE TO SOME QUESTIONING BY MR. KING,
20 THERE WAS A QUESTION ABOUT YOUR FAMILIARITY WITH
21 KIMBERLY ROGERS?

22 A I AM FAMILIAR WITH THE FACT THAT WE SUED HER
23 AND THAT SHE WAS, I BELIEVE, A SUPERVISING SOCIAL
24 WORKER AT THAT POINT.

25 Q AND ISN'T IT TRUE, SIR, THAT HER INVOLVEMENT
26 IN THAT PARTICULAR CASE WAS VERY LIMITED?

27 A I WILL TELL YOU AS I SIT HERE TODAY, I DO NOT
28 HAVE A SPECIFIC RECOLLECTION. I WILL TELL YOU THAT

1 BEFORE WE FILE SUIT IN THESE CASES, THAT WE REVIEW AND
2 MAKE SURE THAT WE'RE NOT FILING LAWSUITS AGAINST PEOPLE
3 THAT WE DON'T BELIEVE HAVE ANY SPECIFIC LIABILITY WITH
4 REGARD TO THAT CASE.

5 Q ISN'T IT TRUE, SIR, THAT IN THAT CASE, THE
6 DETENTION HAD ALREADY OCCURRED BEFORE SHE WAS INVOLVED?

7 A I BELIEVE THAT IS THE CASE, YES.

8 Q AND SHE NEVER SIGNED ANY KIND OF A REPORT IN
9 THAT CASE; ISN'T THAT TRUE?

10 A THAT I DON'T BELIEVE IS TRUE. I BELIEVE SHE
11 DID SIGN A SUBSEQUENT JURISDICTIONAL DISPOSITION
12 REPORT, BUT THAT'S JUST OFF THE TOP OF MY HEAD. I'D
13 HAVE TO LOOK AT THE DOCUMENTS TO MAKE SURE.

14 MR. GUTERRES: THAT'S ALL.

15 THE COURT: THANK YOU.

16 MR. KING?

17 MR. KING: YES. THANK YOU.

18

19 REDIRECT EXAMINATION

20 BY MR. KING:

21 Q YOU MENTIONED THAT YOU HAVE FILED LAWSUITS IN
22 THE LOS ANGELES COUNTY AGAINST THE DEPARTMENT OF
23 CHILDREN AND FAMILY SERVICES?

24 A I HAVE.

25 Q DO YOU HAVE ANY CASES AGAINST THOSE ATTORNEYS
26 RIGHT NOW?

27 A I DO.

28 Q BOTH OF THEM?

1 A ACTUALLY, I'M INVOLVED IN ONE NOW, AND WE
2 SETTLED A CLAIM WITH THEM EARLIER THIS YEAR.

3 Q AND YOU SPOKE ABOUT HUMPHRIES VERSUS
4 CALIFORNIA AS IT APPLIES TO THE CACI APPEAL?

5 A CORRECT.

6 Q CAN YOU TELL US THE SIGNIFICANCE OF HUMPHRIES
7 VERSUS CALIFORNIA AS IT PERTAINS TO THE CACI APPEAL
8 PROCESS?

9 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED
10 AND RELEVANT.

11 THE COURT: SUSTAINED AS TO RELEVANT.
12 BY MR. KING:

13 Q THE CACI APPEAL PROCESS, IS THAT PROCESS
14 DRIVEN BY THE GOMEZ CASE?

15 A IT IS.

16 MR. GUTERRES: OBJECTION. RELEVANCE.

17 THE COURT: SUSTAINED.

18 BY MR. KING:

19 Q THE TIME LIMITS FOR THE CACI APPEAL, DOES THAT
20 START ONCE FORMAL NOTICE IS GIVEN?

21 A IT STARTS ONCE FORMAL NOTICE IS GIVEN.
22 HOWEVER, THERE IS A QUESTION ABOUT WHETHER THAT FORMAL
23 NOTICE ACTUALLY STOPS THE STATUTE BECAUSE WHILE THE
24 PERSON IS STILL LITIGATING THE CASE IN THE JUVENILE
25 COURT SYSTEM, THERE IS AN ISSUE ABOUT WHETHER OR NOT --
26 AS I SAID EARLIER, THEY'RE REQUIRED TO CONTINUE
27 INVESTIGATION DURING THE COURSE OF THAT PROCESS. AND
28 SO IF THAT PROCESS IS STILL ONGOING, THEY STILL HAVE AN

1 OBLIGATION TO CHANGE THE DETERMINATION IF THEY MAKE THE
2 DETERMINATION THAT IT'S NOT FOUNDED, IF IT'S NOT
3 SUBSTANTIATED. AND I BELIEVE THERE'S BEEN SOME
4 LITIGATION ON THAT. I HAVE NEVER HEARD OF A CACI CLAIM
5 BEING DENIED AS A RESULT OF THE STATUTE OF LIMITATIONS
6 RUNNING BECAUSE THEY DIDN'T FILE THE CLAIM IN A TIMELY
7 MANNER.

8 Q WHETHER OR NOT YOU MET MS. DUVAL PRIOR TO
9 COMING TO TESTIFY HERE TODAY, DOES THAT HAVE ANY BASIS
10 IN YOUR OPINION?

11 A ABSOLUTELY NOT.

12 Q THE DISCUSSIONS THAT YOU'VE HAD WITH
13 MR. POWELL AND EVEN MR. MCMILLAN CONCERNING CASES, DO
14 YOU FREQUENTLY HAVE DISCUSSIONS ABOUT PMQS THAT ARE
15 INVOLVED IN YOUR CASE AS WELL AS OTHER ATTORNEYS'
16 CASES?

17 A ALL THE TIME.

18 Q HAVE YOU HEARD OF THE NAME GUY TRIMARCHI?

19 A I HAVE.

20 Q DO YOU HAVE A CASE RIGHT NOW WHERE
21 MR. TRIMARCHI IS THE PMQ?

22 MR. GUTERRES: OBJECTION. RELEVANCE.

23 THE COURT: SUSTAINED.

24 MR. KING, WE'RE JUST ABOUT READY TO TAKE A
25 RECESS.

26 MR. KING: OKAY. THANK YOU.

27 BY MR. KING:

28 Q YOU WERE ASKED ABOUT ASSOCIATIONS OF ATTORNEYS

1 SUCH AS MR. POWELL. IF YOU ASSOCIATE ANOTHER ATTORNEY
2 INTO A CASE THAT YOU'RE HANDLING, DOES THAT BREACH ANY
3 SORT OF CONFIDENTIALITY?

4 A IT IS NOT. AND WHEN I SAY I ASSOCIATED
5 MR. POWELL INTO THESE CASES, ANY TIME THAT I CONSULT
6 WITH MR. POWELL OR MR. MCMILLAN OR ANY OTHER ATTORNEY,
7 WE HAVE AN UNDERSTANDING THAT WE ARE CONSULTING WITH
8 THEM AS EXPERTS OR AS OTHER PEOPLE WHO HAVE HAD
9 LITIGATION EXPERIENCE IN THESE CASES, AND ANYTHING THAT
10 WE SAY IS COVERED BY THE SAME PROTECTIVE ORDER THAT
11 WOULD BE IN EFFECT IN ALL OF THE CIVIL RIGHTS CASES
12 THAT WE HAVE.

13 MR. KING: THANK YOU.

14 YOUR HONOR, I HAVE NOTHING FURTHER.

15 THE COURT: ANYTHING ELSE, MR. GUTERRES?

16 MR. GUTERRES: NO QUESTIONS, YOUR HONOR.

17 THE COURT: ALL RIGHT. MR. COX, YOU ARE
18 EXCUSED.

19 FOR OUR JURY, WE'RE GOING TO TAKE OUR NOONTIME
20 RECESS UNTIL 1:30. ALL JURORS PLEASE REMEMBER THE
21 ADMONITION. SEE YOU BACK AT 1:30.

22 (JURY EXCUSED)

23 THE COURT: BEFORE COUNSEL LEAVES, I RECEIVED
24 IN THE EARLIER MORNING RECESS A MOTION IN LIMINE FROM
25 THE DEFENDANT. WE'RE GOING TO HAVE TO ADDRESS IT
26 BECAUSE -- BEFORE WE RESUME THIS AFTERNOON BECAUSE THIS
27 MAY IMPLICATE TESTIMONY THAT YOU'LL BE INTENDING TO
28 ELICIT THIS AFTERNOON.

1 MR. MCMILLAN: SURE.

2 THE COURT: YOU'LL HAVE TO TAKE A LOOK AT IT
3 OVER THE NOON HOUR AND I WILL AS WELL SEE WHAT NEEDS TO
4 BE DONE.

5 MR. MCMILLAN: OKAY. THANK YOU, YOUR HONOR.

6 THE COURT: OKAY. SEE YOU BACK AT 1:30.

7 (LUNCH RECESS)

8 THE COURT: ALL RIGHT. WE ARE ON THE RECORD
9 AND COUNSEL ARE PRESENT. BEFORE WE GET THE JURY IN, I
10 MENTIONED AS WE TOOK THE NOON RECESS, WE HAVE
11 DEFENDANTS' MOTION IN LIMINE TO PRECLUDE THE ELEMENTS
12 OF TESTIMONY ABOUT PLAINTIFF'S DAMAGES NOT IDENTIFIED
13 BY PLAINTIFF IN THE DISCOVERY.

14 WHICH OF YOU ON PLAINTIFF'S SIDE? SO
15 MR. PRAGER?

16 MR. PRAGER: YES, YOUR HONOR. THANK YOU, YOUR
17 HONOR.

18 FIRST OF ALL, YOUR HONOR, OF COURSE, THERE ARE
19 A NUMBER OF DOCUMENTS TO REVIEW HERE. WE'VE NOT HAD
20 MUCH TIME TO REVIEW IT. THERE ARE A NUMBER OF
21 IRREGULARITIES TO CALL TO THE COURT'S ATTENTION
22 REGARDING THE MOTION ITSELF. FOR EXAMPLE, THE DOCUMENT
23 GOES FROM PAGE 1 TO PAGE 17 ON THE DISCUSSION OF
24 PLAINTIFF'S RESPONSE TO FORM INTERROGATORIES. THERE IS
25 A REFERENCE TO AN ATTACHMENT ON -- THERE'S ALSO --
26 WHILE I LOOK FOR THAT, THERE'S ALSO IRREGULARITIES
27 WHERE IT GOES FROM 1 TO PAGE 13 REGARDING SUPPLEMENTAL
28 RESPONSES. THERE'S, AS FAR AS I CAN TELL, A MISSING

1 ATTACHMENT ON PAGE 20 OF SUPPLEMENTAL RESPONSES TO THE
2 MOTION.

3 IN TERMS OF THE MOTION ITSELF, THE ATTACHMENT
4 SHOULD HAVE BEEN -- I THINK IT WAS ACTUALLY AN EXTERNAL
5 HARD DRIVE FULL OF DATA. AND IT WAS PRETTY MUCH THE
6 ENTIRE EXPECTED PRODUCTION OF DOCUMENTS THAT THE
7 PLAINTIFF INTENDED TO OFFER AT THE TIME.

8 NOW, THIS OCCURRED WHEN JUDGE LINFIELD HAD THE
9 CASE, AND THERE WAS SOME DISCUSSION ABOUT THE DEFENSE
10 TRYING TO MOVE TO COMPEL ADDITIONAL RESPONSES IF THE
11 DEFENSE SO CHOSE. AND THAT WAS BEFORE JUDGE LINFIELD,
12 AND I THINK HE INVITED THEM TO DO SO, AND THEY NEVER
13 DID. THAT WAS, OF COURSE, OVER A YEAR AND A HALF AGO.

14 SO OUR POSITION IS, IF THERE WAS A MOTION TO
15 BE HAD, THERE'S BEEN MORE THAN AMPLE TIME TO HAVE THAT
16 MOTION HEARD BY THE COURT. AND HERE AT THE VERGE OF
17 HAVING MS. DUVAL TESTIFY IS THE WRONG TIME TO ADDRESS
18 THAT CONCERN.

19 IF I MAY ADDRESS THE MERITS OF SOME OF THE
20 DISCUSSION HERE, THERE ARE A NUMBER OF ISSUES THAT ARE
21 PRESENTED BY THE DOCUMENTS. I THINK A CORE ISSUE THE
22 COURT CAN ADDRESS GLOBALLY IS THERE'S BEEN SUGGESTIONS
23 REGARDING CERTAIN ITEMS OF DAMAGE, WHICH THE DEFENSE IS
24 SAYING RECEIPTS WEREN'T PRODUCED. TO THE EXTENT THAT
25 MS. DUVAL HAD CUSTODY AND CONTROL OF THE RECEIPT, SHE
26 SHOULD PRODUCE THEM. BUT IT'S PERFECTLY PROPER FOR HER
27 TO IDENTIFY AS BEST AS SHE CAN ANY EXPENSES THAT SHE
28 BELIEVES SHE'S INCURRED, AND IF SHE'S ASKED TO PRODUCE

1 RECEIPTS AND SHE CANNOT PRODUCE RECEIPTS, SHE HAS THE
2 RIGHT TO SAY SHE'S DONE A DILIGENT SEARCH AND CANNOT
3 PRODUCE THE RECEIPTS.

4 OUR POSITION IS THAT WOULD GO TO THE WEIGHT OF
5 THAT EVIDENCE, NOT TO ADMISSIBILITY OR THE EXCLUSION OF
6 THAT EVIDENCE. AND WITHOUT ATTACHMENT 1, AND WITH --
7 HONESTLY WITH THE TIME WE HAD DURING THE NOON RECESS TO
8 ADDRESS THIS, I CANNOT OFFER THE COURT MORE GUIDANCE ON
9 THAT ISSUE.

10 SO WE WOULD SUGGEST THE MOTION BE DENIED AND
11 LET THE WITNESS TESTIFY, AND IF THERE'S SOME
12 IRREGULARITY, IT CAN BE DEALT WITH AFTER MS. DUVAL
13 HOPEFULLY CONCLUDES TODAY, IF POSSIBLE.

14 THE COURT: TELL ME AGAIN, IF YOU WOULD, ABOUT
15 THE ATTACHMENT YOU'RE REFERRING TO.

16 MR. PRAGER: YES, YOUR HONOR.

17 THE COURT: TELL ME WHERE THAT IS SO I CAN
18 REFER TO IT. IF YOU WANT TO YOU CAN --

19 MR. PRAGER: I CAN HAND IT TO YOU, OR IT'S ON
20 PAGE 20 OF THE ATTACHED PLAINTIFF'S SUPPLEMENTAL
21 RESPONSES TO FORM INTERROGATORIES.

22 THE COURT: OH, I SEE. YEAH, SUPPLEMENTAL
23 RESPONSE TO FORM INTERROGATORY 10.1?

24 MR. PRAGER: YES, YOUR HONOR.

25 THE COURT: SEE ATTACHMENT NUMBER 1?

26 MR. PRAGER: YES, SIR.

27 THE COURT: OKAY.

28 MR. PRAGER: I DON'T SEE THAT ATTACHED TO THIS

1 DOCUMENT. AND I THINK THE ATTACHMENT WAS ELECTRONIC --
2 IT WAS ONE OF THESE TYPE DEVICES. AND I'M HOLDING UP
3 FOR COURT AN EXTERNAL HARD DRIVE.

4 THE COURT: RIGHT.

5 MR. PRAGER: AND I BELIEVE THE DOCUMENTS WERE
6 SCANNED AS PDF DOCUMENTS IN THIS DOCUMENT, THEY WERE
7 PLACED ON AN EXTERNAL HARD DRIVE, AND THAT HARD DRIVE
8 WAS DELIVERED TO THE DEFENSE WHEN JUDGE LINFIELD HAD
9 THE CASE.

10 THE COURT: ALL RIGHT. SO I'M GOING TO HEAR
11 FROM MS. NAU IN JUST A SECOND BECAUSE YOU WERE
12 APPARENTLY THE AUTHOR OR AT LEAST THE SIGNATORY OF THE
13 MOTION AND ARE STANDING, SO I PUT ALL THIS TOGETHER
14 THINKING MAYBE YOU'RE THE ONE THAT'S GOING TO RESPOND
15 TO THIS. BUT BEFORE I HEAR THAT, I SAW -- IN LOOKING
16 AT THIS, I SAW A PROBLEM THAT I'M NOT SURE IS ADDRESSED
17 BY WHAT YOU'VE HAD TO TELL ME.

18 AS I LOOKED THROUGH, AND I DIDN'T MAKE A LIST
19 OF ALL OF THEM, BUT IN A NUMBER OF THE RESPONSES, THERE
20 WAS A RESPONSE:

21 "THIS RESPONSE WILL BE
22 SUPPLEMENTAL AFTER PLAINTIFF HAS HAD AN
23 OPPORTUNITY TO OBTAIN AND REVIEW
24 DOCUMENTS FROM WHICH THE ANSWER CAN BE
25 DERIVED. DISCOVERY IS ONGOING AND
26 INCOMPLETE."

27 THERE ARE OTHER ANSWERS WHERE, AS OPPOSED TO
28 MAKING THAT REPRESENTATION ABOUT SUPPLEMENTATION -- AND

1 I COULD GO THROUGH AND FIND THESE -- THE -- WELL, I'M
2 LOOKING RIGHT NOW, AND I'M NOT SEEING WHAT I THOUGHT I
3 SAW BEFORE. BUT A NUMBER OF THE RESPONSES ASKING --
4 WELL, FOR THE INFORMATION THAT'S BEING OBJECTED TO,
5 THERE WAS AN ANSWER INDICATING, AS I JUST READ TO YOU,
6 A VERY SIMILAR ANSWER TO A NUMBER OF THESE QUESTIONS.

7 I THINK IT IS GENERALLY CORRECT THAT A --
8 WHERE SUPPLEMENTAL INFORMATION IS REQUESTED BY A PARTY
9 PROPOUNDING THE DISCOVERY, THAT IT IS THEIR OBLIGATION
10 TO MAKE A MOTION OR FILE SUPPLEMENTAL INTERROGATORIES
11 ASKING FOR AN UPDATE. AND I DON'T THINK ON THESE
12 ANSWERS IN HERE, MANY OF THEM, WHERE THEY JUST SAY
13 THEY'RE INCOMPLETE -- IN FACT, "WE'RE GIVING EVERYTHING
14 WE'VE GOT. IT'S INCOMPLETE. WE'LL SUPPLEMENT."

15 THERE'D BE NO REASON TO MAKE A MOTION ON THAT.
16 AND THE PROBLEM I HAVE IS -- AT LEAST ONE OF THE ISSUES
17 THAT I THOUGHT ABOUT IN CONNECTION WITH THIS -- IS THAT
18 WHILE NORMALLY THERE'S NO OBLIGATION TO SUPPLEMENT
19 ANSWERS, AND IF A PARTY WANTS SUPPLEMENTATION, THEN
20 THEY CAN PROPOUND FURTHER DISCOVERY. IT WOULD SEEM TO
21 ME -- AND I NEED TO ADD, IT IS IMPROPER TO PROPOUND AN
22 INTERROGATORY THAT REQUIRES BY THE INTERROGATORY A
23 PARTY TO PROVIDE SUPPLEMENTAL RESPONSES AS THEY REQUIRE
24 ADDITIONAL INFORMATION.

25 BUT THAT ISN'T WHAT HAPPENED HERE. AND ONE OF
26 THE THINGS THAT'S A LITTLE TROUBLING TO ME IS THAT
27 WHILE YOU DIDN'T NEED AND WERE NOT OBLIGED TO
28 SUPPLEMENT, WHEN YOU REPRESENTED THAT YOU SHALL -- AND

1 THAT WAS THE WORD USED IN MANY OF THESE, "SHALL
2 SUPPLEMENT" -- IT SEEMS TO ME THAT THEY OUGHT TO BE
3 ENTITLED TO TAKE YOU AT YOUR WORD ON THAT. AND THERE'S
4 NOTHING FOR THEM TO MOVE TO COMPEL AT THAT POINT WHEN
5 YOU SAY, "I'VE GIVEN YOU EVERYTHING I'VE GOT. WE DON'T
6 HAVE ANYTHING ELSE TO GIVE YOU." WHAT ARE YOU GOING TO
7 DO? ALL YOU'RE GOING TO DO IS MAKE A MOTION TO COMPEL
8 FURTHER, AND THE JUDGE IS GOING TO SAY, "THEY'VE
9 ALREADY TOLD YOU THEY DON'T HAVE ANYTHING FURTHER AT
10 THIS TIME. THERE'S NOTHING FOR ME TO COMPEL."

11 SO I'M A LITTLE TROUBLED BY THE FACT THAT THE
12 REPRESENTATION WAS MADE, EVEN WITH ACKNOWLEDGING YOU
13 HAD NO OBLIGATION TO SUPPLEMENT NORMALLY, IT SEEMS TO
14 ME WHEN YOU SAY YOU'RE GOING TO SUPPLEMENT, I THINK THE
15 PARTY OUGHT TO BE ABLE TO RELY ON WHAT YOU REPRESENTED
16 YOU WOULD DO.

17 MR. PRAGER: AND THE DIFFICULTY I HAVE
18 STANDING HERE RIGHT NOW AND DRAFTING THIS PAPER IS I
19 CANNOT REPRESENT TO THE COURT RIGHT NOW WHEN WE
20 SUPPLEMENTED WITH THE ADDITIONAL INFORMATION. AND I
21 APPRECIATE THE COURT'S CONCERN, BUT I JUST HAVE NOT HAD
22 TIME TO GO BACK IN OUR RECORD AND SAY, "JUDGE, I HEAR
23 YOUR CONCERN. THIS WAS ON MONDAY, AND ON THAT
24 THURSDAY, WE GAVE THE DEFENSE X, Y, AND Z PAPER."

25 THE COURT: YES. AND I UNDERSTAND THE TIMING
26 OF THIS BECAUSE WE ALL RECEIVED THE MOTION THIS
27 MORNING. AND SO MS. NAU HAS OBVIOUSLY BEEN BUSY. AND
28 I'M GOING TO HEAR FROM YOU IN JUST A SECOND.

1 SO LET ME HEAR WHAT MS. NAU HAS TO SAY, AND
2 I'LL DECIDE WHAT WE'RE GOING TO DO.

3 MS. NAU: YES. JUST A FEW THINGS, YOUR HONOR.

4 FIRST OF ALL, THE REASON FOR THE SKIPPED PAGES
5 IS JUST TO NOT INCLUDE 100 PAGES OF THE RESPONSES TO
6 FORM INTERROGATORIES WHEN THERE WERE ONLY TEN OR SO
7 RELEVANT THAT INCLUDED THE ACTUAL INTERROGATORIES THAT
8 ARE AT ISSUE HERE. SO THAT'S THE REASON FOR THE JUMP.

9 AS FOR NOT INCLUDING THE ATTACHMENT, I BELIEVE
10 PLAINTIFF IS RIGHT THAT IT IS A DISK THAT CONTAINS A
11 LOT OF DOCUMENTS. AND AS MY DECLARATION STATES, I'VE
12 REVIEWED THOSE DOCUMENTS, AND THEY DO NOT CONTAIN THE
13 SPECIFIC DOCUMENTS IDENTIFIED HERE. AND, YOU KNOW, IF
14 THE COURT WANTS ALL OF THAT MATERIAL IN FRONT OF IT, WE
15 CAN PROVIDE IT.

16 BUT YOUR HONOR IS RIGHT THAT IN THE INITIAL
17 RESPONSES FROM THE PLAINTIFF AND THE SUPPLEMENTAL
18 RESPONSES, SHE INDICATED THAT SHE WOULD SUPPLEMENT WITH
19 ADDITIONAL MATERIAL AS IT BECAME AVAILABLE TO HER. IT
20 SEEMS THAT MOST OF THESE ITEMS ARE ACTUALLY THINGS THAT
21 SHE WOULD HAVE HAD. MOST OF THE RECEIPTS ARE FROM
22 2009, 2010. SO I'M NOT SURE WHY IT WASN'T AVAILABLE TO
23 HER AT THE TIME SHE WAS RESPONDING TO DISCOVERY.

24 IN ANY EVENT, WE DID SERVE SUPPLEMENTAL
25 INTERROGATORIES AND SUPPLEMENTAL REQUESTS FOR
26 PRODUCTION AT THE CLOSE OF THIS CASE AND DID NOT
27 RECEIVE ANY OF THIS STUFF IN RESPONSE TO THAT EITHER.
28 SO, YOU KNOW, THE DEFENSE HAS MADE EFFORTS TO GET AS

1 MUCH INFORMATION ABOUT PLAINTIFF'S DAMAGES AS WE CAN.

2 THE COURT: OKAY.

3 MR. PRAGER: YOUR HONOR?

4 THE COURT: YES, GO AHEAD, MR. PRAGER.

5 MR. PRAGER: WE DISPUTE THAT WE FAILED TO
6 RESPOND TO THE MOST RECENT SUPPLEMENTAL. AND AGAIN,
7 IF THAT MAY HAVE OCCURRED, I COULD BE MISSPOKEN BECAUSE
8 OF THE TIMING WE'VE HAD TO REVIEW THIS. OUR POSITION
9 COULD BE, BECAUSE, AGAIN, I'M NOT 100 PERCENT CERTAIN,
10 THAT THEY COULD HAVE PROPOUNDED DISCOVERY PAST THE
11 CAUSE, PAST THE TIME THAT THEY HAD TO DO SO.

12 WHAT I CAN TELL YOU BASED ON MY RECOLLECTION
13 IS, THIS ISSUE WAS ADDRESSED WITH JUDGE LINFIELD, AND I
14 BELIEVE THE COURT THEN INVITED THE DEFENSE TO DO WHAT
15 THEY THOUGHT NECESSARY ONCE THAT HARD DRIVE WAS SERVED.
16 AND HERE WE ARE ON THE VERGE OF, WHAT, OUR 18TH TRIAL
17 DAY, WHATEVER IT IS? THERE WAS NO MIL ON THE ISSUE.
18 THERE WAS NO DISCUSSION OF THE NUMEROUS FSCS WE HAD ON
19 OVER THE YEARS ON THE ISSUE. SO I JUST AM A BIT
20 STUMPED AT THE TIMING OF THE REQUEST WHEN, IF THE
21 PLAINTIFF WAS WRONG, AT THE FIRST FSC, WE EACH GAVE AN
22 ADDRESS, AND THEN WE COULD HAVE CORRECTED IT OR AT
23 LEAST HAD MORE TIME TO DEAL WITH IT IN A COGENT
24 FASHION.

25 THE COURT: OKAY. SO MS. NAU?

26 MS. NAU: YES, YOUR HONOR. SO THAT HARD DRIVE
27 WE BELIEVE WAS SERVED IN 2013. IT WAS A LONG TIME AGO.
28 BUT IN ANY EVENT, WHEN PLAINTIFF SAID THAT, YOU KNOW,

1 IT WAS INCUMBENT ON US TO FIGURE OUT WHAT WASN'T ON THE
2 HARD DRIVE, IF PLAINTIFF IS PROVIDING DOCUMENTS IN
3 RESPONSE TO SOMETHING, WE'RE NOT GOING TO KNOW WHAT'S
4 OMITTED. WE DID NOT KNOW THAT THESE SPECIFIC DAMAGES
5 ITEMS WERE MISSING UNTIL THEY WERE INCLUDED IN THE
6 TRIAL EXHIBITS THAT PLAINTIFF GAVE US. AND THAT'S THE
7 REASON FOR BRINGING THE MOTION NOW.

8 THE COURT: ONLY ONE AT A TIME, ONE PER SIDE,
9 AND MR. PRAGER HAS PREEMPTED YOU, MR. MCMILLAN. AS WE
10 HAVE ON MANY OCCASIONS, YOU CAN PASS A POST-IT TO HIM.

11 MR. PRAGER: YOUR HONOR, I HAVE A POST-IT.
12 THE POINT IS WE BELIEVE THIS WAS NOT 2013. WE BELIEVE
13 IT WAS LATER THAN THAT. WE BELIEVE IT WAS
14 CONTEMPORANEOUS WITH THE MANAGEMENT OF THE CASE JUST
15 PRIOR TO THE TRIAL DATE WE HAD BEFORE THE CASE BECAME A
16 COMPLEX CASE AND SENT TO YOUR DEPARTMENT ULTIMATELY.
17 AND WE DO BELIEVE THERE WERE AT LEAST TWO EXTERNAL HARD
18 DRIVES THAT WERE DELIVERED TO THE DEFENSE DURING THE
19 PENDENCY OF THIS CASE. SO WE DISPUTE THERE WOULD HAVE
20 BEEN LATENESS ISSUE THERE. AND ALL THE TRIAL EXHIBITS
21 WERE ALSO DELIVERED.

22 AND THE OTHER QUESTION WE'VE NOT YET ADDRESSED
23 IS, I'M NOT SURE IT'S DIRECTLY ON POINT, MS. DUVAL HAS
24 ONGOING LOSSES BECAUSE, FOR EXAMPLE, AS THE COURT
25 KNOWS, SHE HAS SUPERVISED VISITS. SO EVEN IF SHE
26 PRODUCED IN 2015 OR '16 OR WHATEVER ELSE, THERE WOULD
27 HAVE BEEN SOME ONGOING EXPENSES ASSOCIATED WITH THOSE
28 ONGOING VISITS AND THINGS OF THAT NATURE SHE WOULDN'T

1 HAVE HAD AT THE TIME SHE LAST RESPONDED.

2 THE COURT: ALL RIGHT. SO MS. NAU, YOU HAVE
3 SOMETHING FURTHER TO SAY?

4 MS. NAU: I JUST FORGOT TO MENTION THAT OUR
5 SUPPLEMENTAL DISCOVERIES WERE TIMELY SERVED, AND THESE
6 WERE NOT INCLUDED IN EITHER HARD DRIVE THAT PLAINTIFF
7 HAS PROVIDED US WITH.

8 THE COURT: ALL RIGHT. IS THAT SUPPLEMENTAL
9 DISCOVERY? I DIDN'T SEE THAT IN THERE. I PROBABLY
10 OVERLOOKED IT.

11 MS. NAU: YES. IT'S EXHIBIT C, OUR BOOK, THE
12 SUPPLEMENTAL REQUEST FOR PRODUCTION AND THE
13 SUPPLEMENTAL INTERROGATORY.

14 THE COURT: OH, YES, I TAKE IT BACK. I DID
15 SEE THAT.

16 MR. PRAGER: AND YOUR HONOR, JUST FOR THE
17 RECORD, THERE'S A PROOF OF SERVICE ON THE RESPONSE --
18 WELL, I'LL WITHDRAW THAT.

19 THE COURT: UM...

20 MR. PRAGER: YOUR HONOR?

21 THE COURT: YES.

22 MR. PRAGER: IF I MAY MAKE ONE OBSERVATION FOR
23 YOU, THERE IS A PROOF OF SERVICE THAT THE PLAINTIFF HAD
24 SUPPLEMENTED HER RESPONSES, AND THAT'S JUNE 18TH, 2015.
25 AND SO FAR AS I CAN TELL, I BELIEVE THAT THE LAST
26 RESPONSES PROPOUNDED WERE, I THINK, IN MARCH, AROUND
27 THAT PERIOD OF TIME. SO THERE IS PROOF OF SERVICE IN
28 THE FILE THAT THERE WAS A RESPONSE. AND, AGAIN, THE

1 ATTACHMENT WOULD INCLUDE ALL THE TRIAL EXHIBITS AND
2 DOCUMENTS AVAILABLE AT THE TIME OF THAT RESPONSE, JUST
3 TO MAKE THAT CLEAR FOR THE RECORD.

4 THANK YOU, YOUR HONOR.

5 YOUR HONOR?

6 THE COURT: YES.

7 MR. PRAGER: IF IT BENEFITS YOU, AS FAR AS I
8 CAN ASCERTAIN, THE SUPPLEMENTAL DISCOVERY WAS SERVED
9 FEBRUARY 16, 2015 -- FEBRUARY 6, 2015, WITH THE
10 RESPONSE IN JUNE 2015. SO PLAINTIFF REMAINS AT A LOSS
11 AS TO WHAT DISCOVERY WE FAILED TO RESPOND TO.

12 THE COURT: ALL RIGHT. WELL, THE MOTION CAN'T
13 BE DECIDED AT THIS TIME. I KNOW THAT I HAVEN'T HAD
14 ENOUGH TIME TO BE ABLE TO ADDRESS ALL OF THE ISSUES,
15 POTENTIAL ISSUES THAT ARE IMPLICATED IN THIS MOTION.
16 AND I DON'T THINK THE DEFENSE HAS EITHER, AND HAVING
17 RECEIVED THE MOTION THIS MORNING, I DON'T THINK THAT --
18 I THINK THAT THE DEFENSE -- EXCUSE ME, THE RESPONDING
19 PARTY, THE PLAINTIFF, IS ENTITLED TO HAVE -- SHOULD
20 HAVE SOME TIME TO RESPOND.

21 THE PROPOUNDING OF SUPPLEMENTAL DISCOVERY,
22 WHICH I DO SEE HERE IN BOTH INTERROGATORIES AND THE
23 REQUEST FOR PRODUCTION MAY HAVE SOME BEARING ON ANY
24 RULING THAT I WOULD MAKE IN THIS CASE. I ALREADY
25 MENTIONED THAT WHEN THERE'S A REPRESENTATION THAT
26 SOMEONE IS GOING TO SUPPLEMENT, THAT'S A -- A PARTY, I
27 THINK, MIGHT VERY WELL BE BOUND BY THAT. BUT WHEN THE
28 PROPOUNDING PARTY THEN PROPOUNDS SUPPLEMENTAL DISCOVERY

1 TO OBTAIN MATTERS THAT HAVE BEEN REQUESTED PREVIOUSLY
2 IN RESPONSE TO INTERROGATORIES OR A REQUEST FOR
3 PRODUCTION MAY REPRESENT A LACK OF RELIANCE ON THE
4 REPRESENTATION PREVIOUSLY MADE. AND IF THAT WAS THE
5 CASE, AND THEN THE REMEDY COULD VERY WELL HAVE BEEN TO
6 MAKE A MOTION TO COMPEL RATHER THAN A MOTION IN LIMINE.

7 SO HAVING SAID ALL OF THAT, THERE'S JUST TOO
8 MANY ISSUES PRESENTED BY THIS. AND AS A RESULT, I'M
9 GOING -- WE'RE GOING TO CONTINUE WITH THE TESTIMONY OF
10 MS. DUVAL. BUT MR. MCMILLAN, YOU'RE DIRECTED TO NOT
11 QUESTION HER ABOUT ANY SUBJECT THAT WOULD SEEK A
12 RESPONSE OF DAMAGES WHICH ARE BEING CLAIMED WHICH ARE
13 SUBJECT TO THIS MOTION. AND SO THE RESULT OF THAT WILL
14 BE THAT PROBABLY THE NEXT TIME WE'LL HAVE AN
15 OPPORTUNITY, IF ANY, FOR HER TO TESTIFY TO THAT WILL
16 HAVE TO BE NEXT WEEK ON TUESDAY WHEN WE RESUME. I
17 THINK IT'S THE ONLY WAY WE CAN RESOLVE ALL OF THESE
18 ISSUES.

19 SO THAT WILL BE THE ORDER FOR NOW. AND THEN
20 I'LL -- IF YOU COMPLETE HER TESTIMONY TODAY, WHICH I
21 THINK MAY BE DOUBTFUL ANY WAY, YOU WOULDN'T BE RESTING.
22 BUT IF YOU DO REACH THE POINT OF OTHERWISE YOU'RE
23 RESTING SUBJECT TO EXHIBITS, ET CETERA, I WILL ORDER AN
24 EXCEPTION TO THAT FOR THE PURPOSE, POTENTIAL PURPOSE OF
25 PROVIDING ADDITIONAL TESTIMONY WHICH REMAINS TO BE SEEN
26 WHETHER IT'S GOING TO BE PERMITTED. I'M JUST NOT
27 MAKING ANY RULING AT THIS TIME BECAUSE I THINK A NUMBER
28 OF PROBLEMS ARE PRESENTED BY THIS.

1 I DO -- IT CERTAINLY WOULD HAVE BEEN
2 ADVANTAGEOUS FOR ALL OF US IF THIS HAD BEEN PRESENTED
3 AT AN EARLIER TIME RATHER THAN IN THE MIDDLE OF
4 MS. DUVAL'S TESTIMONY. SO IT CATCHES ALL OF US A
5 LITTLE SHORT ON TIME, BUT WE'LL ADDRESS IT, AND I'LL DO
6 THE BEST -- I'M NOT SURE THAT I CAN HAVE A RULING READY
7 FOR YOU IN THE MORNING, BUT I'LL DO THE BEST I CAN.
8 AND IF NOT, I'LL GET IT DONE WHEN I CAN.

9 MR. MCMILLAN: THANK YOU, YOUR HONOR.

10 THE COURT: UNFORTUNATELY, WE'RE NOT GOING TO
11 BE IN SESSION TOMORROW FOR THE JURY, BUT YOU ALL ARE
12 GOING TO HAVE A LOT OF WORK TO DO IN WHICH I WILL
13 PARTICIPATE TO A CERTAIN EXTENT, BUT I DO HAVE OTHER
14 MATTERS I SET FOR TOMORROW BECAUSE WE WEREN'T GOING TO
15 HAVE THE JURORS HERE. AND MONDAY, OF COURSE, BEING A
16 HOLIDAY, IT IS POSSIBLE YOU WOULDN'T GET AN ANSWER
17 UNTIL TUESDAY, BUT I'LL DO MY BEST TO GET AN ANSWER TO
18 THIS MOTION BY TOMORROW.

19 MR. MCMILLAN: THANK YOU, YOUR HONOR.

20 MS. NAU: THANK YOU, YOUR HONOR.

21 MR. MCMILLAN: SO JUST SO THAT I'M CLEAR, YOUR
22 HONOR, SHOULD I JUST -- AND I DON'T KNOW THAT I'LL GET
23 THERE ANY WAY, ALTHOUGH I CAN CONCEIVABLY SEE GETTING
24 CLOSE -- SHOULD I JUST STAY AWAY FROM DAMAGES
25 COMPLETELY, OR ARE WE JUST TALKING ABOUT THE SPECIFIC
26 ISSUES ADDRESSED HERE? BECAUSE I HAVEN'T HAD A CHANCE
27 TO GO THROUGH THEM IN AN IN DEPTH WAY --

28 THE COURT: WELL, YEAH, THAT -- I WOULD SAY,

1 IF WE'RE ABLE, THERE MAY BE DAMAGE CLAIMS WHICH ARE NOT
2 A SUBJECT OF THIS MOTION, I DON'T KNOW WHETHER THERE
3 ARE OR NOT. THE PROBLEM WOULD BE WHETHER YOU EVEN HAVE
4 THE TIME TO IDENTIFY DAMAGE CLAIMS WHICH ARE SUBJECT TO
5 THE MOTION AND ONES WHICH ARE NOT.

6 SO IF YOU'RE ABLE TO FIND AN ITEM OF DAMAGE
7 WHICH THE TESTIMONY WOULD BE THE SAME AS HAVING BEEN
8 PROVIDED BEFORE, IF YOU'RE ABLE TO DO THAT, GO AHEAD.
9 IF YOU'RE NOT ABLE TO DO IT, THEN I WOULD SAY DON'T
10 ADDRESS DAMAGES AT ALL IN FURTHER TESTIMONY UNTIL WE
11 CAN GET A RULING ON THIS.

12 MR. MCMILLAN: SO JUST SO I'M CLEAR, LIKE,
13 THERE'S SOME SPECIFIC ITEMS LIKE THESE MONITORING FEES.
14 SHE HAS TO PAY A MONITOR FOR THE LAST SEVEN YEARS TO
15 SIT AND WATCH HER WITH HER CHILD.

16 THE COURT: YES. IF THAT'S BEEN DISCLOSED --

17 MR. MCMILLAN: OKAY.

18 THE COURT: -- IN THE PRIOR RESPONSES TO
19 DISCOVERY, WHICH COULD BE EITHER RESPONSES TO THE
20 INTERROGATORIES OR REQUESTS FOR PRODUCTION OR BOTH, IF
21 THERE'S A DAMAGE THAT YOU'RE CLAIMING THAT WAS
22 IDENTIFIED PREVIOUSLY, THEN IT WOULDN'T BE SUBJECT TO
23 THIS MOTION. THE MOTION IS DIRECTED TO INFORMATION
24 THEY DIDN'T RECEIVE. AND I RECOGNIZE THAT MAY BE A
25 LITTLE DIFFICULT TO SORT OUT. NOW, YOU DO HAVE THREE
26 OTHER PEOPLE WHO, AS HAS BEEN THE CUSTOM AND PRACTICE
27 THROUGHOUT THE CASE, TO PASS POST-ITS. SO MAYBE ONE OF
28 THEM -- THEY ALL HAVE A SUPPLY. MR. KING IS DISPLAYING

1 HIS SUPPLY. AND I JUST DON'T KNOW IF IT WILL BE
2 POSSIBLE, SO IF IT'S NOT POSSIBLE, THEN JUST DON'T
3 ADDRESS DAMAGES AT ALL.

4 MR. PRAGER: I'VE READ THE MOTION, YOUR HONOR,
5 FOR THE PLAINTIFF, AND I WAS GOING TO SUGGEST THAT IF
6 MR. MCMILLAN COULD STICK TO GENERAL DAMAGES,
7 NONECONOMIC DAMAGES, WE COULD PROBABLY PERHAPS ADDRESS
8 SOME OF THAT TODAY.

9 MR. MCMILLAN: WELL, THE NON -- WELL, I'M
10 SORRY. IS IT OKAY IF I COMMENT ON THAT?

11 THE COURT: SURE.

12 MR. MCMILLAN: THE NONECONOMIC DAMAGES, AT
13 LEAST THE WAY I SEE THEM PRESENTED, IT'S NOT LIKE WE'RE
14 GOING TO ASK THE --

15 THE COURT: SHE WOULDN'T TESTIFY --

16 MR. MCMILLAN: RIGHT.

17 THE COURT: SHE CAN TESTIFY TO THE SUBJECT
18 MATTER --

19 MR. MCMILLAN: RIGHT.

20 THE COURT: -- BUT OBVIOUSLY NONECONOMIC
21 THERE'S NO EVIDENCE PRESENTED OF THE AMOUNT BECAUSE
22 THAT'S FOR A JURY TO DECIDE.

23 MR. MCMILLAN: RIGHT.

24 THE COURT: AND SO THE TESTIMONY THAT WE HAVE
25 BEEN -- THAT WE HAVE BEEN ENGAGED IN IS TESTIMONY, MUCH
26 OF IT WHICH WOULD GO TO THE ISSUE OF NONECONOMIC
27 DAMAGES. AND I'M SURE BECAUSE OF JUST WHERE WE ARE IN
28 THE TIME FRAME OF HER TESTIMONY, THERE'S MORE TO COME.

1 SO THERE'S NO PROBLEM WITH CONTINUING WITH THAT
2 TESTIMONY BECAUSE THAT ISN'T SUBJECT TO THE MOTION.

3 MR. MCMILLAN: HOW ABOUT WE DO THIS, THEN,
4 BECAUSE FOR ME TO FIGURE OUT EXACTLY WHAT WOULD HAVE
5 BEEN DISCLOSED OR IS DISCLOSED, I ACTUALLY NEED TO BE
6 ABLE TO SIT DOWN -- AS YOU CAN PROBABLY TELL THERE WAS
7 A MASSIVE AMOUNT OF DISCOVERY THAT WENT BOTH WAYS IN
8 THIS CASE. AND BOTH SIDES HAD MOTIONS TO COMPEL AND
9 BOTH SIDES HAD MULTIPLE SUPPLEMENTATIONS OF DISCOVERY
10 RESPONSES. AND I BELIEVE I WAS PERSONALLY INVOLVED IN
11 THE LAST ONE WHERE THE WAY OF RESPONDING TO THE
12 REQUEST, BY THEN WE HAD AN EXHIBIT LIST THAT ITEMIZED
13 OUT WHAT THE EXHIBITS WERE, WHAT THE EVIDENCE WAS,
14 DAMAGES WERE ALL SET ASIDE IN THEIR OWN CATEGORY. AND
15 THEN WE HAD ALL THE EVIDENCE AND PUT IT ALL TOGETHER IN
16 A PACKAGE AND SAID THIS IS IT. IF THERE'S SOMETHING
17 MISSING, SOMETHING MORE YOU NEED, LET US KNOW. WE'LL
18 FIGURE IT OUT.

19 WITH RESPECT TO OTHER DISCOVERY RESPONSES, I
20 NEED TO HAVE SOME TIME TO LOOK THROUGH THEM AND SEE
21 WHEN AND WHAT THE RESPONSE WAS.

22 THE COURT: I UNDERSTAND.

23 MR. MCMILLAN: THERE WAS A LOT. I DON'T EVEN
24 KNOW THAT I COULD NECESSARILY GET THROUGH THAT BY
25 TOMORROW.

26 THE COURT: I SUSPECT YOU MIGHT HAVE A PROBLEM
27 OF GETTING THROUGH IT TOMORROW. YOU HAVE OTHER THINGS
28 THAT YOU NEED TO BE WORKING ON BECAUSE WE HAVE A

1 NONJURY DAY, AND THE SUBJECT MATTER ON THIS IS
2 IMPORTANT, BUT WE HAVE OTHER THINGS THAT WE'RE GOING TO
3 BE WORKING ON TOMORROW, AND YOU NEED TO BE PREPARED TO
4 DISCUSS THOSE OTHER MATTERS AS WELL. SO I'M NOT
5 PUTTING A TIME LIMIT AS TO WHEN YOU'LL BE ABLE TO GET
6 TO IT, JUST AS I'M NOT PUTTING A TIME LIMIT AS TO WHEN
7 I'LL BE ABLE TO MAKE THAT ORDER, WHICH I HOPE WILL BE
8 SOMETIME TOMORROW.

9 MR. MCMILLAN: OKAY.

10 THE COURT: SO I UNDERSTAND THE DIFFICULTY
11 THIS HAS PRESENTED, BUT LIKE MANY THINGS TO THE CASE,
12 THERE'S NOT A SIMPLE ANSWER TO IT.

13 MR. MCMILLAN: THANK YOU, YOUR HONOR.

14 THE COURT: BUT I DO WANT TO GET THE JURORS
15 IN. THANK YOU. WE'LL GET BACK TO THIS.

16 (JURY PRESENT)

17 THE COURT: EVERYONE MAY BE SEATED. WE ARE ON
18 THE RECORD. EVERYBODY IS PRESENT.

19 MR. MCMILLAN, YOU MAY CONTINUE QUESTIONING
20 MS. DUVAL.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 BY MR. MCMILLAN:

23 Q MS. DUVAL, BEFORE WE TOOK THE NOON RECESS, WE
24 WERE TALKING ABOUT THE DAY OF THE JURISDICTION
25 DISPOSITION HEARING. AND YOU JUST EXPLAINED TO US HOW
26 YOU MET WITH YOUR ATTORNEY OUT IN THE HALLWAY.

27 DO YOU RECALL THAT TESTIMONY?

28 A YES, I DO.

1 Q AND WHAT DID -- IF YOU COULD JUST SHARE WITH
2 US BRIEFLY THAT BRIEF MOMENT THAT YOU HAD WITH YOUR
3 ATTORNEY OUT IN THE HALLWAY, WHAT WENT ON THERE?

4 A WE SAID HELLO, AND THEN HE ASKED ME TO WAIT
5 THERE UNTIL WE GOT CALLED, BUT HE NEEDED TO BE INSIDE
6 IN ORDER TO KNOW WE WERE GOING TO BE CALLED.

7 Q AND I THINK YOU MIGHT HAVE SAID, BUT I DON'T
8 ACTUALLY RECALL, DID HE HAVE A PILE OF PAPER WITH HIM?

9 A YES, HE HAD JUST RECEIVED WHEN HE GOT THERE
10 THE JURIS DISPO REPORT.

11 MS. SWISS: OBJECTION. MOVE TO STRIKE
12 EVERYTHING AFTER "YES." NONRESPONSIVE SPECULATION.

13 THE COURT: THE UNDERLYING OBJECTION OF
14 NONRESPONSIVE AND SPECULATION, THOSE OBJECTIONS ARE
15 SUSTAINED. THE MOTION TO STRIKE IS GRANTED. ALL
16 PORTIONS OF THE ANSWER AFTER THE WORD "YES" ARE ORDERED
17 STRICKEN AND THE JURY WILL DISREGARD IT.

18 GO AHEAD.

19 MR. MCMILLAN: THANK YOU, YOUR HONOR.

20 BY MR. MCMILLAN:

21 Q DID THE TWO OF YOU TALK AT ALL ABOUT THE
22 PAPERS HE HAD IN HIS HAND?

23 A YES.

24 Q CAN YOU SHARE THAT CONVERSATION WITH US?

25 A HE CAME OUT, AND HE HAD THIS STACK OF PAPERS.
26 AND HE TOLD ME, "THIS IS THE REPORT I JUST GOT. I NEED
27 TO GO INSIDE, AND I'LL COME AND GET YOU."

28 Q AND YOU WAITED OUT IN THE HALLWAY?

1 A YES.

2 Q HOW LONG WAS IT BEFORE SOMEBODY CAME OUT TO
3 GET YOU?

4 A I DON'T REMEMBER, BUT I CAN ESTIMATE SHORTLY
5 BEFORE 9:00.

6 Q SHORTLY BEFORE 9:00. AND HOW LONG HAD YOU
7 BEEN WAITING OUT IN THE HALLWAY BEFORE SOMEBODY CAME TO
8 GET YOU?

9 A ABOUT 20 MINUTES.

10 Q SO YOU CAME INTO THE COURTROOM?

11 A YES.

12 Q SHARE WITH US WHAT HAPPENED THERE.

13 A I REMEMBER GOING THROUGH, OR THE JUDGE GOING
14 THROUGH THE ALLEGATIONS. THERE WERE SOME PARTS OF THE
15 REPORT THAT WERE ADDRESSED FIRST, AND THAT KIND OF TOOK
16 A LITTLE BIT OF TIME. AND THEN THERE WERE OTHER ISSUES
17 THAT WERE ADDRESSED AS PART OF THE REPORT TOO. BUT
18 AFTER THAT, I DON'T -- I DON'T REMEMBER EVERY SINGLE
19 THING THAT HAPPENED.

20 Q WELL, WHEN YOU SAY THERE WERE SOME ISSUES THAT
21 WERE ADDRESSED, DO YOU RECALL WHAT SOME OF THOSE ISSUES
22 WERE?

23 A YES.

24 Q CAN YOU SHARE WITH THAT WITH US?

25 A THE MAIN ISSUE WAS THAT SOMEONE -- IT WAS SAID
26 ON THE REPORT THAT I HAD TAKEN AN APPLE, AND I HAD
27 TAKEN A PIECE OF THE APPLE WITH MY TEETH AND JUST CUT
28 IT AND GIVEN IT TO THE BABY. AND THAT WAS AN ISSUE AS

1 BEING UNSANITARY OR SOMETHING LIKE THAT FROM WHAT I
2 REMEMBER RIGHT NOW.

3 Q DO YOU REMEMBER WHO IT WAS THAT WAS
4 COMPLAINING ABOUT YOU FEEDING THE BABY AN APPLE IN THAT
5 WAY?

6 A YES.

7 Q WHO WAS THAT?

8 A MINOR'S COUNSEL.

9 Q I'M SORRY?

10 A MINOR'S COUNSEL.

11 Q WHO WOULD THAT HAVE BEEN?

12 A CARRIE LEE (PHONETIC).

13 Q AND WHAT WAS THE RESOLUTION OF THAT ISSUE?

14 A I WAS ASKED TO BRING A KNIFE NEXT TIME TO CUT
15 FOOD, OR LIKE A PLASTIC KNIFE, SINCE I CAN'T BRING AN
16 ACTUAL KNIFE, BUT LIKE A PLASTIC KNIFE.

17 Q WHAT ARE SOME OF THE OTHER ISSUES THAT YOU
18 RECALL BEING ADDRESSED AT THAT JURISDICTION DISPOSITION
19 HEARING?

20 A I DON'T REMEMBER THE SPECIFICS. I WILL HAVE
21 TO LOOK AT THE REPORT. I KNOW THERE WAS ONE OTHER
22 ISSUE THAT WAS ADDRESSED, I JUST DON'T REMEMBER RIGHT
23 NOW.

24 Q SURE. IF YOU NEED TO TAKE A MOMENT, THAT'S
25 FINE. THE ONLY THING I WOULD ASK IS THAT WHEN YOU FIND
26 WHATEVER IT IS YOU'RE LOOKING FOR TO REFRESH YOUR
27 RECOLLECTION, PLEASE IDENTIFY FOR US THE PAGE NUMBER BY
28 PROVIDING THE BATES NUMBER IN THE UPPER RIGHT-HAND

1 CORNER.

2 A OKAY.

3 Q MAYBE I CAN HELP YOU. IS THERE SOMETHING IN
4 PARTICULAR YOU'RE LOOKING FOR?

5 A SOMETHING STOOD OUT, BUT RIGHT NOW, I REALLY
6 CAN'T REMEMBER WHAT PEOPLE SAID ABOUT IT. SO I WOULD
7 JUST BE GUESSING. BUT THERE'S ONE MORE ISSUE I WILL
8 HAVE TO HAVE SOME TIME TO THINK BACK.

9 Q OKAY. THAT'S FINE. FOR THE MOMENT, WHY DON'T
10 WE JUST MOVE ON AND GET A LITTLE BIT DEEPER INTO THIS
11 JURISDICTION DISPOSITION HEARING.

12 ABOUT HOW LONG DID THE HEARING LAST?

13 A I DON'T REMEMBER HOW LONG IT LASTED.

14 Q WELL, DO YOU REMEMBER WHETHER OR NOT YOU WERE
15 FINISHED WITH IT BY LUNCH?

16 A I THINK WE HAD TO STAY THROUGH LUNCH. I DON'T
17 KNOW WHY, BUT I DON'T KNOW -- I DON'T REMEMBER IF IT
18 WAS BECAUSE WE HAD TO GO BACK OR MY ATTORNEY HAD TO GO
19 BACK IN THE AFTERNOON. BUT THERE WAS A REASON WHY. I
20 REMEMBER BEING IN THE CAFETERIA AND JUST, YOU KNOW,
21 FINDING OUT THAT WE HAVE TO GO BACK. SO I DON'T
22 REMEMBER THE REASON RIGHT NOW.

23 Q DID YOU TESTIFY IN THAT HEARING? THEY PUT YOU
24 UP ON STAND?

25 A I DID NOT GO ON THE STAND, NO.

26 Q DID ANY WITNESS TAKE THE STAND AT THAT
27 JURISDICTION DISPOSITION HEARING?

28 A NO. I WAS TOLD THAT WITNESSES DON'T TAKE THE

1 STAND ON THAT HEARING.

2 Q OKAY. WHO WAS PRESENT AT THAT HEARING? I
3 MEAN, OBVIOUSLY YOU WERE, BUT WHO ELSE?

4 A MY MOM. MY FRIEND NORISSA CAME BRIEFLY AND
5 LEFT BY 10:00 O'CLOCK, OR SOMETHING LIKE THAT, AND MY
6 ATTORNEY.

7 Q WAS MR. MILLS THERE?

8 A I DON'T REMEMBER. HE MAY HAVE BEEN. I DON'T
9 REMEMBER.

10 Q WERE ANY OF THE -- ANY OF THE SOCIAL WORKERS
11 HERE -- OR THERE?

12 A I DIDN'T SEE THEM AND I DON'T THINK THEY WERE
13 THERE.

14 Q DO YOU KNOW WHETHER OR NOT THE COUNTY HAD AN
15 ATTORNEY THERE?

16 A YES.

17 Q AND I THINK YOU TOLD US THE CHILD HAD AN
18 ATTORNEY, YOUR BABY?

19 A YES.

20 Q YOU MAY NOT RECALL AND YOU MAY NOT KNOW, JUST
21 TELL US THAT. DO YOU KNOW WHETHER OR NOT THE COURT
22 ACCEPTED ANY EVIDENCE OTHER THAN DOCUMENTS ANY EVIDENCE
23 AT THAT HEARING?

24 A IT'S MY UNDERSTANDING ALL THAT WAS ACCEPTED
25 THAT DAY WAS THIS. THIS IS ALL WHAT WAS PUT INTO
26 EVIDENCE THAT DAY.

27 Q AT THE END OF THAT HEARING -- WELL, JUST SHARE
28 WITH US, HOW DID THE HEARING END?

1 A I BELIEVE THERE WAS ANOTHER HEARING SET, AND I
2 DON'T REMEMBER THE DATE OF THAT HEARING, BUT, LIKE,
3 MAYBE WITHIN A FEW WEEKS OR ALMOST A MONTH, SOMETHING
4 LIKE THAT. SO, BUT I DON'T REMEMBER THE DATE RIGHT
5 NOW. I WILL HAVE TO LOOK UP MINUTE ORDERS AND STUFF.

6 Q DID YOU GET YOUR BABY BACK THAT DAY?

7 A NO.

8 Q DID YOU GET EXPANDED VISITATION WITH YOUR BABY
9 THAT DAY?

10 A NO.

11 Q DID YOU ASK FOR EXPANDED VISITATION?

12 A A FEW WEEKS AFTER, YES.

13 Q DID THE COUNTY'S ATTORNEYS, WHAT DID THEY HAVE
14 TO SAY ABOUT THAT WHEN YOU ASKED FOR EXPANDED
15 VISITATION?

16 A I FIRST ASKED VICTORIA SCHEELE IF THERE'S
17 ANYTHING I CAN DO TO LIBERALIZE THE VISITS, GET MORE
18 TIME, OR MAYBE WE CAN GO OUTSIDE THE FACILITY. AND I
19 WAS TOLD NO. AND THEN I HAD PUT IN A 388, A REQUEST
20 FOR LIBERALIZED VISITS, AND IT WAS UP TO THE DEPARTMENT
21 TO MAKE THAT DECISION. AND I WAS TOLD NO.

22 MS. SWISS: OBJECTION. MOVE TO STRIKE AS
23 NONRESPONSIVE.

24 THE COURT: THE OBJECTION IS SUSTAINED. THE
25 MOTION TO STRIKE IS GRANTED. THE ENTIRE ANSWER WILL BE
26 STRICKEN AND THE JURY DISREGARD IT, BUT YOU CAN ASK THE
27 QUESTION AGAIN.

28 MR. MCMILLAN: THANK YOU, YOUR HONOR.

1 THE COURT: DO YOU REMEMBER IT?

2 MR. MCMILLAN: I'M STRUGGLING WITH THAT.

3 THE COURT: WELL, WE CAN HAVE THE REPORTER
4 READ IT BACK.

5 MR. MCMILLAN: I'D APPRECIATE THAT.

6 (THE PREVIOUS PORTION WAS READ BACK BY
7 THE COURT REPORTER AS FOLLOWS:

8 "QUESTION: DID THE COUNTY'S
9 ATTORNEYS, WHAT DID THEY HAVE TO SAY
10 ABOUT THAT WHEN YOU ASKED FOR EXPANDED
11 VISITATION?)

12 BY MR. MCMILLAN:

13 Q LET ME TRY AND REPHRASE IT.

14 AT SOME POINT, YOU DID ASK FOR EXPANDED
15 VISITATION; CORRECT?

16 MS. SWISS: OBJECTION. LEADING.

17 THE COURT: OVERRULED. IN THIS INSTANCE.

18 GO AHEAD.

19 THE WITNESS: YES.

20 BY MR. MCMILLAN:

21 Q HOW DID YOU GO ABOUT DOING THAT?

22 A I ASKED THE SOCIAL WORKER TO LIBERALIZE THE
23 VISITS.

24 Q WHICH SOCIAL WORKER?

25 A VICTORIA SCHEELE.

26 Q WHAT DID SHE TELL YOU?

27 A NO.

28 Q DID YOU DO ANYTHING FURTHER TO TRY TO GET

1 EXPANDED VISITATION?

2 A YES.

3 Q WHAT DID YOU DO?

4 A I PUT IN A 388 PETITION.

5 Q DID YOU DO THAT YOURSELF, OR DID SOMEBODY HELP
6 YOU WITH THAT?

7 A I REQUESTED THE ATTORNEY TO DO IT.

8 Q SO THE ATTORNEY DID IT?

9 A YES.

10 Q SHARE WITH US WHAT HAPPENED WITH THAT -- WELL,
11 HOLD ON A SECOND.

12 DO YOU KNOW WHETHER OR NOT THE COUNTY OPPOSED
13 YOUR 388 PETITION?

14 A I -- I DON'T KNOW. I KNOW THAT IT WAS DENIED,
15 SO I DON'T KNOW.

16 Q WAS THERE A HEARING ON IT?

17 A I DON'T KNOW.

18 Q HOW DID YOU FIND OUT THAT YOUR REQUEST FOR
19 EXPANDED VISITATION BY THIS 388 PETITION HAD BEEN
20 DENIED?

21 A E-MAIL.

22 Q I'M SORRY?

23 A E-MAIL.

24 Q FROM WHO?

25 A MY ATTORNEY.

26 Q AND I THINK YOU GAVE US A TIME FRAME ON THAT,
27 IT WAS WITHIN A COUPLE WEEKS OF THE JURISDICTION
28 DISPOSITION HEARING. DID I GET THAT RIGHT?

1 A YEAH. YEAH, I CAN'T TELL YOU EXACTLY HOW MANY
2 WEEKS, BUT IT WAS A FEW WEEKS.

3 Q GOING BACK FOR A MOMENT TO THE JURISDICTION
4 DISPOSITION REPORT, I UNDERSTAND YOU WERE THERE AT
5 COURT FOR A FEW HOURS THERE THAT DAY, OR AT LEAST IN
6 THE BUILDING DOING THINGS.

7 DID YOU HAVE A CHANCE THEN TO ACTUALLY SIT
8 DOWN AND GO THROUGH AT LEAST THE FIRST PART OF THE
9 REPORT?

10 A YOU MEAN IN THE MORNING?

11 Q ANY TIME DURING THE DAY IN COURT THAT DAY. AT
12 LEAST AS I UNDERSTAND IT, AND CORRECT ME IF I'M WRONG,
13 YOU WERE THERE FOR QUITE A WHILE, LIKE 8:30 UNTIL SOME
14 TIME IN THE AFTERNOON?

15 A THAT'S CORRECT.

16 Q AT ANY POINT DURING THAT WINDOW OF TIME, DID
17 YOU HAVE ANY CHANCE TO SIT DOWN AND AT LEAST START
18 READING THE REPORT?

19 A OVER LUNCH. I SAW SOME OF IT OVER LUNCH.

20 Q I'M GOING TO ASK YOU TO TURN TO PAGE NUMBER
21 0004666 -- NO, I'M SORRY. 000466. IT'S INTERNAL PAGE
22 NO. 21 TO THE REPORT.

23 THE LAST PARAGRAPH ON THE PAGE THERE ABOUT
24 HALFWAY THROUGH 8TH LINE DOWN OF THE MIDDLE OF THE
25 PAGE, IT STARTS WITH "IN ADDITION."

26 ARE YOU THERE?

27 A YES.

28 Q IT SAYS:

1 "IN ADDITION, THE CHILD'S REGULAR
2 PEDIATRICIAN, DR. YIM, DISCONTINUED
3 SERVICES DUE TO THE MOTHER'S FAILURE TO
4 COMPLY WITH HER RECOMMENDATIONS."
5 FIRST, DID I READ THAT CORRECTLY?

6 A YES.

7 Q ARE THERE ANY OF DR. YIM'S RECOMMENDATIONS
8 THAT YOU FAILED TO COMPLY WITH?

9 A NO.

10 Q DO YOU KNOW WHY DR. YIM DISCONTINUED SERVICES
11 IN TREATING BABY RYAN?

12 A YES.

13 Q WHY DON'T YOU SHARE THAT WITH US.

14 A WHAT DR. YIM AND I HAD SPOKEN WHEN SHE
15 DISMISSED US WAS THAT THE CONFLICT OF THE CUSTODIAL
16 ISSUES GOING ON MADE -- HER AND HER PARTNER MADE THE
17 DECISION, AS WELL HER HAVING TO KIND OF GO BACK AND
18 FORTH AND MEDIATE BETWEEN US AS JUST TO HAVE DOCTOR'S
19 VISITS, IT WAS TOO MUCH FOR THEIR PRACTICE. THAT'S
20 WHAT I UNDERSTOOD.

21 Q OKAY. SHE DIDN'T -- OR DID SHE RAISE WITH YOU
22 IN THAT CONVERSATION ANYTHING ABOUT YOUR FAILURE,
23 MOTHER'S FAILURE, YOUR FAILURE TO COMPLY WITH HER
24 RECOMMENDATIONS?

25 A NO.

26 Q EVER?

27 A NO.

28 Q THEN THIS CONTINUES ON THE NEXT SENTENCE SAYS:

1 "WITH THE CONCERN FOR POSSIBLE
2 MUNCHAUSEN BY PROXY AND OTHER
3 PERSONALITY DISORDERS FOR MOTHER
4 COUPLED WITH THE SURE UNCERTAINTY OF
5 THE EVENTS WHICH LED TO THE CHILD'S
6 SIGNIFICANT STUNTED DEVELOPMENT WHILE
7 IN MOTHER'S CARE, FURTHER ASSESSMENT IS
8 NECESSARY."

9 FIRST, DID I READ THAT CORRECTLY?

10 A YES.

11 Q DO YOU RECALL READING THAT SENTENCE THAT DAY?

12 A YES.

13 Q WHAT DID YOU THINK THAT MEANT?

14 MS. SWISS: OBJECTION. LACKS FOUNDATION.
15 CALLS FOR SPECULATION.

16 THE COURT: SUSTAINED --

17 MS. SWISS: RELEVANCE.

18 THE COURT: SUSTAINED AS TO SPECULATION.

19 BY MR. MCMILLAN:

20 Q LET ME ASK IT THIS WAY: WHEN YOU READ IT,
21 WHAT DID YOU UNDERSTAND IT TO MEAN?

22 MS. SWISS: OBJECTION. SPECULATION.

23 THE COURT: SUSTAINED.

24 BY MR. MCMILLAN:

25 Q WHEN YOU READ IT HERE TODAY, WHAT DO YOU
26 UNDERSTAND IT TO MEAN?

27 MS. SWISS: OBJECTION. RELEVANCE,
28 SPECULATION.

1 THE COURT: SUSTAINED.

2 BY MR. MCMILLAN:

3 Q LET ME ASK YOU THIS: THE PHRASE "SURE
4 UNCERTAINTY" -- FORGET THAT. LET ME BACK UP.

5 "WITH A CONCERN FOR POSSIBLE MUNCHAUSEN BY
6 PROXY AND OTHER PERSONALITY DISORDERS FOR MOTHER."
7 THEN IT SAYS HERE "COUPLED WITH THE SURE UNCERTAINTY."

8 WHEN YOU READ THAT, DID YOU TALK TO -- WELL,
9 LET ME ASK YOU: WHEN YOU WERE LOOKING AT THIS REPORT
10 OVER THE LUNCH BACK DURING THAT HEARING, WERE YOU ALONE
11 OR WERE YOU WITH YOUR ATTORNEY OR SOMEBODY ELSE?

12 A I DON'T REMEMBER RIGHT NOW WHO I WAS WITH.

13 Q AT ANY POINT IN TIME DID YOU HAVE AN
14 OPPORTUNITY TO SIT DOWN WITH YOUR ATTORNEY AND TALK
15 ABOUT THIS?

16 A YES.

17 Q WHEN WAS THAT?

18 A ABOUT AN HOUR AND A HALF OR 2 HOURS AFTER.

19 Q HOUR AND A HALF OR 2 HOURS AFTER WHAT?

20 A AFTER BEING IN THE CAFETERIA.

21 Q WAS THAT AFTER THE DAY IN COURT WAS FINISHED?

22 A YES.

23 Q DO YOU REMEMBER WHERE YOU HAD THAT
24 CONVERSATION?

25 A YES.

26 Q DURING THAT CONVERSATION WERE YOU ABLE TO SIT
27 DOWN WITH YOUR ATTORNEY AND KIND OF GO OVER THIS?

28 A YES.

1 Q OKAY. AND WAS YOUR ATTORNEY ABLE TO HELP YOU
2 OUT IN UNDERSTANDING WHAT WAS BEING SAID THERE?

3 MS. SWISS: OBJECTION. LEADING.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES. WE DISCUSSED THE ISSUES
6 HERE.

7 BY MR. MCMILLAN:

8 Q OKAY. CAN YOU SHARE WITH US SOME OF THOSE
9 ISSUES THAT YOU DISCUSSED?

10 A WHOEVER MADE THIS STATEMENT, I, AT THE TIME, I
11 HAD NOT BEEN SEEN BY AN EXPERIENCED PSYCHOLOGIST OR NO
12 ONE HAD DIAGNOSED ME WITH THAT I KNEW WITH ANYTHING
13 LIKE THAT. SO I HAD AN ISSUE WITH IT BECAUSE I WAS IN
14 THERAPY. I HAD NOT BEEN DIAGNOSED WITH THAT IN
15 THERAPY, SO I DIDN'T KNOW WHERE THIS WHOLE THING CAME
16 FROM.

17 Q AT SOME POINT IN TIME, DO YOU RECALL ATTENDING
18 AN UP-FRONT ASSESSMENT -- OR LET ME ASK YOU THIS WAY:
19 BECAUSE YOU MAY NOT HAVE KNOWN: DO YOU RECALL MEETING
20 WITH A -- DO YOU RECALL MONIQUE BUSTOS?

21 A YES.

22 Q EXPLAIN FOR US WHO IS MONIQUE BUSTOS?

23 A SHE WAS A SOCIAL WORKER FROM HILLSIDES. SHE
24 WAS COMING TO DO AN ASSESSMENT REFERRED BY DCFS, AND
25 SHE JUST WANTED TO UNDERSTAND, HAVE SOME BACKGROUND
26 HISTORY ON ME, FAMILY, AND JUST UNDERSTAND WHAT MY
27 PERCEPTION OF EVERYTHING THAT WAS GOING ON AND WHAT WAS
28 GOING ON -- WHAT LED TO MY SON BEING DETAINED. BUT IT

1 WAS MORE GETTING BACKGROUND OF ME AND MY FAMILY AND MY
2 CARE OF THE BABY. BUT THAT WAS THAT.

3 Q OKAY. WHERE DID THIS HAPPEN, THIS INTERVIEW?

4 A MY HOME.

5 Q SHE CAME OUT TO YOUR HOME?

6 A YES.

7 Q OKAY. ABOUT HOW LONG DID THIS INTERVIEW TAKE?

8 A I DON'T REMEMBER, BUT I CAN ESTIMATE.

9 Q PLEASE.

10 A BETWEEN AN HOUR AND A HALF TO 2 HOURS,
11 SOMETHING LIKE THAT.

12 Q OKAY. AND DURING THAT HOUR AND A HALF TO
13 2 HOURS, YOU'VE TOLD US SOME OF THE THINGS YOU TALKED
14 ABOUT: FAMILY SITUATION, YOUR PERCEPTION OF WHAT WAS
15 GOING ON; RIGHT?

16 A YES.

17 Q CAN YOU SHARE WITH US SOME OF THE DETAILS
18 ABOUT YOUR DISCUSSIONS WITH MS. BUSTOS?

19 A YES.

20 Q PLEASE DO.

21 A THERE WAS QUESTIONS SHE WAS ASKING ME, WHERE I
22 WAS BORN, CHILDHOOD, WHAT KIND OF CHILDHOOD I HAD,
23 EDUCATION, WORK, WHAT I DO AT WORK, MY DUTIES AT WORK.
24 QUESTIONS REGARDING FAMILY MEMBERS, LIKE, YOU KNOW,
25 THEIR HEALTH AND OTHER STUFF. SHE ALSO ASKED ME ABOUT
26 WHAT I THOUGHT WERE THE ISSUES WITH THE BABY AND HOW
27 EVERYTHING CAME ABOUT. SHE ASKED ME HOW I FELT
28 ABOUT -- ABOUT SPECIFIC THINGS THAT WE TALKED ABOUT.

1 SO THE CONVERSATION WAS JUST TO THAT EXTENT.

2 Q FOCUSING JUST FOR A MOMENT ON ISSUES WITH THE
3 BABY -- ACTUALLY, WAIT A MINUTE. YOU DID THIS AT YOUR
4 HOUSE.

5 DID YOU HAVE YOUR MEDICAL RECORDS THERE WITH
6 YOU?

7 A YES.

8 Q THE BINDERS?

9 A YES.

10 Q OKAY. DURING THIS INTERVIEW WITH MS. BUSTOS,
11 DID YOU TALK ABOUT ANY OF THOSE MEDICAL RECORDS?

12 A WE TALKED ABOUT IT.

13 Q DID YOU SHOW THEM TO HER?

14 A I DON'T REMEMBER RIGHT NOW IF I SHOWED IT TO
15 HER OR NOT, BUT WE -- WE SPOKE ABOUT ISSUES WITH
16 DOCTORS, THE FEEDING ISSUES THAT WERE GOING AND WE
17 TALKED ABOUT IT.

18 Q OKAY. SPECIFICALLY, DID YOU TALK TO HER ABOUT
19 THE BABY'S EVALUATION AT EASTERN LOS ANGELES REGIONAL
20 CENTER?

21 A THAT WAS PART OF IT, YES.

22 Q WHAT DID YOU TELL HER ABOUT THAT?

23 A I WAS EXPLAINING TO HER THAT MY -- MY BELIEF
24 AT THE TIME WAS THE BABY WAS HAVING SENSORY
25 INTEGRATION, SENSORIAL ISSUES AND THAT MAYBE THAT WAS
26 THE REASON WHY HE WAS -- BEEN, YOU KNOW, STRIKING TO
27 EAT AND UP AND DOWN IN HIS FEEDINGS. I HAD TALKED TO
28 HER ABOUT THE EFFORTS THAT I WAS DOING TO FEED THE

1 BABY, PROVIDE DIFFERENT TYPE OF FOODS, MAINTAIN THE
2 BREAST-FEEDING SO THAT AT LEAST I KNOW HE IS GETTING
3 SOME SORT OF NUTRIENTS IN HIS BODY AND JUST ALL THE
4 DIFFERENT EFFORTS I WAS MAKING TO GET HIM TO A DOCTOR
5 TO FIND A PEDIATRICIAN, EVEN ME TAKING CLASSES OR
6 READING BOOKS ON HOW TO HAVE A BETTER UNDERSTANDING OF
7 HOW TO HELP MY BABY.

8 Q AND THEN IN ADDITION TO THAT, DID YOU TALK TO
9 MS. BUSTOS AT ALL ABOUT MR. MILLS IN THE -- WHAT WAS
10 GOING ON WITH MR. MILLS?

11 A YES.

12 Q TELL US A LITTLE BIT ABOUT THE SUBSTANCE OF
13 THAT PART OF YOUR CONVERSATION WITH MS. BUSTOS?

14 A ONE OF HER QUESTIONS WAS IF I HAD HAD
15 CONFLICTS IN THE LAST 30 DAYS, AND I SAID "YES, I
16 HAVE." AND SHE WENT ON TO ASK ME WHAT KIND OF
17 CONFLICTS. SO I GAVE HER MANY THAT I CAN REMEMBER
18 RIGHT NOW, I GAVE HER FOUR DIFFERENT CONFLICTS THAT I
19 HAD IN THE LAST 30 DAYS.

20 Q WHAT WERE THEY?

21 A DEFINITELY TRYING TO GET HELP FOR OUR SON, FOR
22 RYAN, CONFLICTS AT WORK BECAUSE OF WHAT I DO. I HAVE
23 TO TELL PEOPLE WHAT TO DO. SOMETIMES PEOPLE DON'T LIKE
24 THAT, SO -- BECAUSE THE QUESTION CALLED ANY KIND OF
25 CONFLICT, I SAID THAT. ONE OF THEM WAS CONFLICT WITH
26 COWORKERS BECAUSE IF I'M GIVEN AN ASSIGNMENT TO GO TO
27 SOMEONE AND SAY, "WHERE'S THE RECEIPTS?" SO I HAD TO GO
28 IN AND ENFORCE THAT. AND SO THAT WAS PRETTY MUCH THE

1 EXTENT OF THE CONFLICTS THAT I -- OH, THE LAST CONFLICT
2 WAS CONFLICT WITH MY DAD ARGUING OVER WHAT HAPPENED.

3 Q CONFLICT WITH YOUR FATHER?

4 A YES.

5 Q CAN YOU SHARE WITH US A LITTLE BIT ABOUT THIS
6 CONFLICT WITH YOUR FATHER.

7 MS. SWISS: OBJECTION. RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. MCMILLAN:

10 Q YOU JUST TOLD US THAT ONE OF THE CONFLICTS
11 THAT YOU SHARED WITH MS. BUSTOS RELATED TO AN ISSUE
12 WITH YOUR FATHER THAT AROSE OUT OF NOVEMBER 3RD.

13 DO YOU REMEMBER THAT TESTIMONY?

14 A YES.

15 MS. SWISS: OBJECTION. LEADING.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES.

18 BY MR. MCMILLAN:

19 Q WHAT WAS THE CONFLICT WITH YOUR FATHER ABOUT
20 NOVEMBER 3RD?

21 MS. SWISS: OBJECTION. RELEVANCE.

22 THE COURT: OVERRULED.

23 GO AHEAD.

24 THE WITNESS: I WAS VERY ANGRY BECAUSE I
25 SPECIFICALLY ASKED MY FATHER AT THE TDM TO LET ME
26 HANDLE THIS, TO LET ME -- LET ME DO THIS. AND THAT
27 DIDN'T GO THAT WAY.

28 ///

1 BY MR. MCMILLAN:

2 Q IS THERE ANYTHING ELSE THAT YOU TALKED ABOUT
3 WITH MS. BUSTOS, ANYTHING SPECIFIC TO MR. MILLS?

4 A YES, WE WENT INTO -- INTO CONVERSATIONS.

5 Q OKAY. ABOUT WHAT?

6 A CUSTODY, VISITATION ISSUES, CHOOSING MEDICAL
7 HELP FOR RYAN. I SPECIFICALLY HAD TALKED TO HER THAT I
8 WAS CONSTANTLY BLAMED AT DOCTOR'S APPOINTMENTS OR --
9 I'M CONSTANTLY HAVING TO DEFEND MYSELF IN PLACES
10 BECAUSE RYAN MILLS IS CONSTANTLY ACCUSING ME OF DOING
11 THINGS THAT I'M NOT DOING. AND WE -- WE TALKED A LOT
12 ABOUT THAT.

13 Q WHAT SORTS OF THINGS WAS HE ACCUSING YOU OF?

14 MS. SWISS: OBJECTION. RELEVANCE.

15 THE COURT: ALL RIGHT. LET ME SEE COUNSEL.

16 (THE FOLLOWING PROCEEDINGS WERE HELD AT
17 SIDEBAR.)

18 THE COURT: WE'RE AT SIDEBAR WITH COUNSEL.
19 WHAT IS THE RELEVANCE OF, IN FACT, THE WHOLE LINE OF
20 QUESTIONING OF WHAT SHE TOLD MS. BUSTOS DURING -- WHY
21 ARE WE GOING THROUGH ALL OF THIS?

22 MR. MCMILLAN: I'M TRYING NOT TO ASK LEADING
23 QUESTIONS, AND I WAS HOPING THAT SHE WOULD JUST GET TO
24 IT, BUT ONE OF THE THINGS WITH THE UP-FRONT ASSESSMENT
25 IS THE FACT THAT IT WAS MS. DUVAL THAT BROUGHT UP THE
26 ISSUE OF MR. MILLS ACCUSING HER OF MUNCHAUSEN BY PROXY,
27 AND THAT'S WHY THE ASSESSMENT FOR MUNCHAUSEN BY PROXY
28 EVEN GOT DONE. IT WAS AT HER REQUEST, NOT DEFENSE'S.

1 AND THAT'S -- I JUST WANT TO GET IT OUT THERE THAT IT
2 WAS HER BRINGING IT UP. IT'S NOT SOMETHING SHE WAS
3 BEING ACCUSED OF BY THE AGENCY. AND THEN THEY LATCHED
4 ON TO THIS MUNCHAUSEN THING AND JUST BLEW IT UP IN AN
5 EXCUSE TO RAILROAD HER THROUGH THE WHOLE CASE. THAT'S
6 ULTIMATELY WHERE IT GOES, BUT NOT WITH THIS WITNESS,
7 OBVIOUSLY.

8 THE COURT: I THINK I MISSED A LITTLE BIT OF
9 THIS. EVENTUALLY, THIS IS GOING TO LEAD TO SOME
10 TESTIMONY ABOUT --

11 MR. MCMILLAN: NO, THERE'S ALREADY BEEN
12 SUBSTANTIAL TESTIMONY ABOUT THE UP-FRONT ASSESSMENT AND
13 THIS MUNCHAUSEN BUSINESS.

14 THE COURT: RIGHT.

15 MR. MCMILLAN: OKAY. THE WAY THE WHOLE
16 MUNCHAUSEN BUSINESS GOT STARTED WAS AT THE UP-FRONT
17 ASSESSMENT WHEN MS. DUVAL WAS ASKED ABOUT THESE
18 CONFLICTS. MS. DUVAL BROUGHT UP WITH MS. BUSTOS --
19 WELL, DAD KEEPS ACCUSING ME OF MUNCHAUSEN BY PROXY.
20 HIS FAMILY, EVERYBODY IN THE CHURCH, THAT'S WHY
21 MS. BUSTOS EVEN ASSESSED BRINGING IT UP BUT FOR
22 MS. DUVAL BRINGING IT UP AS A CONFLICT AND CAUSATION.

23 THE COURT: OKAY. WHY DON'T WE JUST ASK THE
24 QUESTION AS OPPOSED TO GOING THROUGH --

25 MR. MCMILLAN: BECAUSE I DON'T WANT TO LEAD
26 HER. I DON'T KNOW HOW TO GET THERE.

27 THE COURT: WELL, YOU CAN CERTAINLY ASK
28 WITHOUT LEADING WHETHER SHE HAD ANY CONVERSATION WITH

1 MS. BUSTOS ABOUT MUNCHAUSEN BY PROXY.

2 MR. MCMILLAN: OKAY.

3 THE COURT: THAT'S A DIRECT QUESTION. THAT'S
4 NOT LEADING.

5 MR. MCMILLAN: BECAUSE IT'S SUGGESTING WHAT
6 WE'RE GOING TO TALK ABOUT --

7 THE COURT: THAT'S NOT LEADING. THAT'S A
8 QUICK WAY OF GETTING TO THE SUBJECT.

9 MR. MCMILLAN: ALL RIGHT. ALL RIGHT. FAIR
10 ENOUGH.

11 THE COURT: OKAY.

12 (THE FOLLOWING PROCEEDINGS WERE HELD IN
13 OPEN COURT IN THE PRESENCE OF THE
14 JURY.)

15 MR. MCMILLAN: MAY I?

16 THE COURT: YES, GO AHEAD.

17 BY MR. MCMILLAN:

18 Q SO IN THE CONVERSATIONS WITH MS. BUSTOS, DID
19 YOU TALK TO HER AT ALL ABOUT THE MUNCHAUSEN BY PROXY
20 BUSINESS?

21 A I HAD EXPRESSED TO HER THAT THE FATHER WAS
22 CONSTANTLY -- AND HIS FAMILY CONSTANTLY ACCUSED ME OF
23 NOT FEEDING THE BABY, AND YEAH.

24 Q WELL, LET ME ASK YOU SPECIFICALLY: DID YOU
25 BRING UP WITH HER THE WORD OR PHRASE "MUNCHAUSEN
26 SYNDROME BY PROXY"?

27 A YES.

28 Q OKAY. SHARE WITH US JUST THAT SNIPPET OF YOUR

1 CONVERSATION.

2 A I HAD TOLD HER THAT RYAN MILLS AND HIS FAMILY
3 WERE CONSTANTLY ACCUSING ME OF BEING SOMEONE WHO WAS
4 LIKE MUNCHAUSEN.

5 Q AND THEN AS PART OF HER ASSESSMENT, DID SHE DO
6 ANYTHING IN RELATION TO THIS MUNCHAUSEN BY PROXY?

7 A NOT THAT I KNOW OF. SHE JUST WROTE IT DOWN.

8 Q SHE HAD A LITTLE NOTE PAD OR SOMETHING?

9 A SHE HAD LIKE A TABLET, I THINK. SHE HAD
10 SOMETHING SHE WAS WRITING DOWN WHATEVER SHE ASKED ME.
11 SHE WAS WRITING DOWN WHATEVER I SAID.

12 Q ONCE YOU FINISHED YOUR INTERVIEW, DID YOU EVER
13 MEET OR TALK WITH HER AGAIN?

14 A NO.

15 Q DID YOU EVER RECEIVE ANY CORRESPONDENCE FROM
16 HER, A REPORT OR LETTER, ANYTHING LIKE THAT?

17 A NO.

18 Q DID ANYBODY EVER -- EVER TALK TO YOU OR TELL
19 YOU ANYTHING ABOUT WHAT IT WAS -- WHAT PURPOSE WHAT
20 FUNCTION SHE WAS PERFORMING THERE THAT DAY?

21 A OTHER THAN JUST COMING TO DO AN ASSESSMENT ON,
22 YOU KNOW, ME AND MY, YOU KNOW, THE HISTORY OF
23 BACKGROUND AND THAT'S THAT. THAT WAS IT AS TO WHAT I
24 UNDERSTOOD.

25 Q OKAY. DID SHE OR ANYBODY ELSE EXPLAIN TO YOU
26 AT ANY POINT IN TIME WHAT THAT ASSESSMENT, THE
27 INFORMATION THAT SHE GATHERED THAT DAY WOULD BE USED
28 FOR?

1 A NO.

2 Q GOING BACK TO THAT CONVERSATION THAT YOU HAD
3 WITH YOUR ATTORNEY AT THE END OF THE DAY ON THE DAY OF
4 THE JURISDICTION DISPOSITION HEARING, HOW MUCH OF THIS
5 PILE OF DOCUMENTS DID YOU GO THROUGH WITH HIM?

6 A JUST A FEW PAGES OF IT.

7 Q OKAY. SO JUST A FEW PAGES. WOULD THAT HAVE
8 BEEN LIKE THE BODY OF THE REPORT ITSELF OR MORE?

9 A THE BODY OF THE REPORT AND A FEW OF THE
10 EXHIBITS. I DON'T REMEMBER HOW MANY OF THE EXHIBITS,
11 BUT JUST A FEW OF THE EXHIBITS.

12 Q OKAY. AND FROM THAT POINT GOING FORWARD, I
13 THINK YOU TOLD US EARLIER THAT YOUR VISITATIONS WITH
14 YOUR BABY STAYED THE SAME AS THEY HAD BEEN AT THE
15 DETENTION. AM I RIGHT ON THAT?

16 A YES.

17 Q AT SOME POINT IN TIME DID THAT CHANGE?

18 A NO.

19 Q SO YOU -- AT WHAT POINT IN TIME -- LET ME ASK
20 YOU THIS WAY: AT SOME POINT IN TIME, WE KNOW THE
21 DEPENDENCY PROCEEDINGS ENDED; RIGHT?

22 A YES.

23 Q FROM THE DETENTION HEARING, NOVEMBER 6TH,
24 2009, UP TO THE END OF THE DEPENDENCY PROCEEDINGS, DID
25 YOUR VISITATION SCHEDULE WITH YOUR BABY EVER CHANGE?

26 A NO.

27 Q SO IT REMAINED THE 1.5 HOURS A WEEK TWICE A
28 WEEK?

1 A YES.

2 Q DID YOU EVER MISS ANY VISITS?

3 A MAYBE ONE, BUT NO, I WAS -- I RELIGIOUSLY
4 ATTENDED MY VISITS.

5 Q THAT WAS IMPORTANT TO YOU?

6 A YES.

7 Q WHY? WHY IS THAT?

8 A I WANTED TO SEE MY BABY.

9 Q AND AT THESE VISITS, SHARE WITH US SOME OF THE
10 THINGS YOU WOULD DO WITH YOUR BABY AT THESE VISITS.

11 A WE WOULD PLAY, WE WOULD SING, I WOULD BRING
12 TWO HUGE BAGS OF TOYS, ALL KINDS OF STUFF, HAVE MUSIC
13 ON THE COMPUTER OR THERE WAS THIS NURSERY RHYME THING
14 THAT HE LIKED. HE WASN'T WATCHING IT, HE LIKES TO HEAR
15 IT, SO I WOULD COME IN, SET UP MY COMPUTER, AND HAVE
16 HIM HEAR HIS NURSERY RHYMES, JUST LIKE HE WOULD DO AT
17 HOME.

18 Q WHAT SORTS OF NURSERY RHYMES?

19 A MOTHER GOOSE, VOLUME I AND II, THE
20 DIFFERENT -- ALL THE VOLUMES, I GUESS.

21 Q AND THE GAMES AND TOYS, THINGS LIKE THAT, THAT
22 YOU PLAYED WITH, WERE THERE ANY SPECIAL TOYS THAT YOU'D
23 BRING?

24 A SOME.

25 Q LIKE WHAT?

26 A STACKING CUPS.

27 Q LIKE THIS?

28 A YES.

1 Q WHAT WAS THE PURPOSE OF THOSE?

2 A THOSE, THEY HELP WITH FINE MOTOR SKILLS THAT,
3 WHAT'S CALLED THE PINCER GRASP BECAUSE THE BABY HAS TO
4 PUT HIS LITTLE FINGERS AROUND AND TRY TO MANIPULATE THE
5 CUPS. OR IT HELPS WITH EYE COORDINATION TO BE ABLE TO
6 HOLD OR JUST ATTEMPT, IF IT IS ON THE FLOOR, TO ATTEMPT
7 TO PUT OR MANIPULATE WHICH ONE GOES INSIDE OR -- OF THE
8 OTHER. SO JUST DIFFERENT THINGS, WHATEVER HE WANTED TO
9 TRY THAT DAY OR WHATEVER I MODEL FOR HIM AS TO HOW TO
10 PLAY WITH THE TOYS.

11 Q SO SPECIFICALLY WITH THIS IDEA OF WORKING ON
12 PINCER AND FINE MOTOR ISSUES, WHERE DID YOU LEARN ABOUT
13 ALL THAT?

14 MS. SWISS: OBJECTION. RELEVANCE.

15 THE COURT: OVERRULED.

16 THE WITNESS: IN ONE OF THE EXHIBITS, I HAD
17 TOLD THE WORKER THAT I HAD, AS PART OF THE BIRTHING
18 CLASSES, I HAD READ BOOKS ABOUT PLAY TIME AND THAT I
19 ALSO HAD SIGNED UP FOR A CLASS ON HOW, YOU KNOW, WITH
20 CHILDREN WHO HAD SENSORIAL OR DEVELOPMENTAL DELAY AND
21 THINGS YOU CAN USE, PROPS, TOYS YOU CAN USE TO KIND OF
22 HELP THEM WITH WHATEVER ISSUE YOU WANTED TO WORK THAT
23 DAY, WHETHER IT IS FINE GROSS MOTOR OR PUSHING
24 SOMETHING TO BALANCE OR JUST DIFFERENT THINGS.

25 I HAD BOOKS AND MAGAZINES WITH TOYS.

26 BY MR. MCMILLAN:

27 Q AND THESE CUPS, WERE THOSE ONE OF THE THINGS
28 THAT YOU LEARNED ABOUT IN YOUR BOOKS AND CLASSES?

1 A YES.

2 Q WHAT SORTS OF OTHER THINGS -- WELL, LET ME ASK
3 YOU THIS FIRST: DID YOU BRING ANY OTHER, I DON'T KNOW,
4 WHAT WOULD YOU CALL THESE, LIKE, THERAPEUTIC TOYS?

5 A SOME. NOT ALL OF THEM WERE THERAPEUTIC.
6 THERE WAS ANOTHER ONE THAT MOST CHILDREN USE, MOST
7 CHILDREN PLAY WITH. THEY LOOK LIKE A DONUT, AND THE
8 CHILD JUST PUTS IT, HOPEFULLY TO TEACH THEM THERE'S A
9 BIGGER ONE -- ORGANIZATION, TO TEACH ORGANIZING SKILLS.
10 THE BIGGER ONE GOES ON THE BOTTOM, THEN SMALLER,
11 SMALLER, SMALLER GOES TO THE TOP. IT'S JUST DIFFERENT
12 WAYS TO TEACH ORGANIZATION SKILLS.

13 Q AND IN SOME OF THESE DOCUMENTS, THERE'S A
14 PHRASE "INSIDE/OUTSIDE"? DO YOU KNOW WHAT THAT MEANS?

15 A YES.

16 Q WHAT IT REFERENCES?

17 A YES.

18 Q CAN YOU EXPLAIN THAT TO US?

19 A IT'S RELATED TO THE CUPS, STACKING CUPS.

20 Q OKAY. EXPLAIN TO US, WHAT ARE YOU TALKING
21 ABOUT WHEN YOU'RE SAYING INSIDE/OUTSIDE?

22 A ONE DAY, I WAS TRYING TO SHOW THE BABY HOW TO
23 PLAY WITH THE CUPS, PUTTING THEM TOGETHER. AND I TOOK
24 TWO CUPS AND DIFFERENT COLORS AND I SAID, "THE BIGGER
25 ONE INSIDE, OUTSIDE. INSIDE, OUTSIDE." AND SOMEHOW
26 THAT MADE IT INTO THIS REPORT AS SOMETHING BAD.

27 Q WHO WAS THE VISITATION MONITOR THAT DAY?

28 A VICTORIA SCHEELE.

1 Q DO YOU RECALL WHEN IT WAS THAT VICTORIA
2 SCHEELE STARTED REGULARLY MONITORING YOUR VISITS?

3 A DECEMBER 28TH I BELIEVE. I THINK SHE WAS ON
4 VACATION ON THE 24TH. 28TH, I BELIEVE, WAS THE FIRST
5 TIME SHE MONITORED MY VISITS.

6 Q YOU'VE GOT TO SPEAK UP A LITTLE BIT.

7 A I THINK IT WAS EITHER THE 24TH OR THE 28TH,
8 BUT DEFINITELY BY THE 28TH, SHE WAS MONITORING MY
9 VISITS OF DECEMBER OF 2009.

10 Q DO YOU HAVE ANY UNDERSTANDING AS TO WHY IT WAS
11 THAT SHE WAS NOW MONITORING YOUR VISITS AS OPPOSED TO
12 MS. ENNIS?

13 A ALL SHE HAD TOLD ME WAS THE DEPARTMENT WANTED
14 SOMEONE FROM THE DEPARTMENT TO MONITOR THE VISITS.

15 Q DID THE LOCATION OF YOUR VISITS CHANGE AT ALL
16 AT THAT POINT?

17 A THE CASE WAS TRANSFERRED FROM METRO NORTH TO
18 LAKEWOOD, SO I HAD JUST BEGUN GOING TO LAKEWOOD.

19 Q AND THAT WAS WHEN MS. SCHEELE STARTED
20 REGULARLY MONITORING YOUR VISITS WAS AT LAKEWOOD?

21 A YES.

22 Q I'M CURIOUS WHERE LAKEWOOD IS, BUT I'M NOT
23 GOING TO ASK THAT QUESTION BECAUSE I'M PROBABLY THE
24 ONLY ONE THAT DOESN'T EXACTLY KNOW.

25 NOW, MS. SCHEELE, WHEN SHE FIRST PICKED UP THE
26 RESPONSIBILITY TO MONITOR OR SUPERVISE YOUR VISITS, DID
27 YOU HAVE A CHANCE TO MEET WITH HER AND TALK WITH HER AT
28 ALL ABOUT HER EXPECTATIONS AND YOURS?

1 A YES, WE TALKED FOR A LITTLE BIT.

2 Q WAS THAT THAT FIRST DAY ON THE 28TH?

3 A YES.

4 Q BEFORE OR AFTER THE VISIT?

5 A I DON'T REMEMBER.

6 Q DO YOU RECALL THE SUBSTANCE OF YOUR
7 CONVERSATION WITH MS. SCHEELE AT THAT POINT IN TIME ON
8 THE 28TH?

9 A YES.

10 Q OKAY. CAN YOU SHARE THAT WITH US?

11 A YES. SHE HAD ASKED ME ABOUT WHY I WAS IN THIS
12 SITUATION. SHE TOLD ME SHE WANTED TO HELP ME REUNIFY
13 WITH RYAN, AND I WAS SO HAPPY ABOUT THAT. SO PRETTY
14 MUCH ASKED ME QUESTIONS ABOUT FEEDINGS, FEEDING ISSUES,
15 AND I TALKED TO HER ABOUT FEEDING ISSUES. I DID
16 DISCLOSE TO HER THAT I HAD ALLERGIES, THAT I TREMOR,
17 AND THAT I HAD LOW BLOOD PRESSURE, AND I WOULD GET
18 HEADACHES AS WELL.

19 SHE HAD ASKED ME AT THAT VISIT WHY I TREMOR.
20 I TOLD HER THAT MY FATHER AND MY BROTHER, WE HAD ALL
21 BEEN DIAGNOSED WITH A PARKINSONIAN DISORDER. AND WHEN
22 WE'RE STRESSED OUT, WE TREMOR.

23 Q DID SHE HAVE ANY -- WHAT DID SHE HAVE TO SAY
24 ABOUT THAT, IF ANYTHING?

25 A ACTUALLY, SHE ASKED ME IF MY DAD WAS GOING TO
26 COME TO THE VISITS SO SHE COULD MEET HIM, AND I SAID
27 NO, HE WAS OUT OF TOWN.

28 Q WAS YOUR MOM STILL COMING TO VISITS AT THAT

1 POINT IN TIME?

2 A YES.

3 Q FOR HOW LONG WAS YOUR MOM PERMITTED TO
4 CONTINUE COMING TO THOSE VISITS?

5 A I DON'T REMEMBER EXACTLY WHEN SHE ASKED ME TO
6 NOT LET MY MOM COME TO THE VISITS, BUT AT SOME POINT,
7 SHE DID ASK FOR MY MOM NOT COME TO THE VISITS.

8 Q WHEN YOU SAY "SHE," WHO ARE YOU TALKING ABOUT?

9 A MS. SCHEELE.

10 Q DO YOU HAVE ANY UNDERSTANDING WHY IT WAS THAT
11 MS. SCHEELE DIDN'T WANT YOUR MOTHER COMING WITH YOU TO
12 THE VISITS ANYMORE?

13 A SHE SAID THAT THE VISITATION WAS ONLY FOR ME
14 AND MY SON, AND THAT MY MOM WAS NOT ALLOWED TO COME.

15 Q DID YOUR MOM, EVEN THOUGH SHE WASN'T ALLOWED
16 TO COME INTO THE VISIT WITH YOU, DID SHE CONTINUE
17 COMING WITH YOU TO THE BUILDING?

18 A YES.

19 Q HOW LONG DID THAT GO ON?

20 A TILL THE END.

21 Q TILL AUGUST SOMETIME?

22 A YES.

23 Q WHAT WOULD SHE DO WHILE YOU WERE IN YOUR
24 VISITS, IF YOU KNOW?

25 A STAY IN THE CAR.

26 Q NOW, DO YOU RECALL A VISIT -- THIS WOULD HAVE
27 BEEN IN THE TIME AFTER MS. SCHEELE WAS YOUR VISITATION
28 SUPERVISOR -- DO YOU RECALL A VISIT WHEN YOU BECAME

1 PRETTY ILL?

2 DO YOU REMEMBER WHEN THAT WAS?

3 A YES.

4 Q WHEN WAS THAT?

5 A THERE WERE SEVERAL VISITS WHEN THAT HAPPENED.
6 ONE WAS IN FEBRUARY OF 2010, AND THERE WAS ANOTHER ONE
7 PROBABLY A FEW WEEKS AFTER.

8 Q OKAY. LET'S START WITH FEBRUARY 2010.

9 CAN YOU TELL US A LITTLE BIT ABOUT WHAT WAS
10 GOING ON IN THAT VISIT?

11 A I CAME IN, I LET HER KNOW THAT I HAD A
12 POUNING HEADACHE AND THAT MY BLOOD PRESSURE WAS VERY
13 LOW AND THAT I NEEDED TO JUST LAY DOWN AND I WAS GOING
14 TO JUST BE ON THE FLOOR WITH THE BABY. AND THAT I -- I
15 WAS ASKING HER TO PLEASE NOT TO HARASS ME, DON'T TALK
16 TO ME ABOUT ANYTHING. WHATEVER YOU HAVE TO TALK TO ME,
17 IF WE CAN DO IT ON THE NEXT VISIT, BUT TO NOT ARGUE
18 WITH ME THAT DAY.

19 Q WELL, UP UNTIL THAT DAY, I MEAN, "DON'T HARASS
20 ME, DON'T ARGUE WITH ME." PRIOR TO THAT DAY HAD SHE
21 BEEN ARGUING WITH YOU OR HARASSING YOU?

22 A YES.

23 Q HOW?

24 A SHE WOULD WAIT EITHER BEFORE THE VISIT OR
25 AFTER THE VISIT WHEN I'M PICKING UP THE TOYS, SHE WOULD
26 COME TO ASK ME QUESTIONS. BUT OFTENTIMES, THE
27 CONVERSATION WAS VERY OFFENSIVE AT TIMES.

28 Q OFFENSIVE. WHAT DO YOU MEAN?

1 A IN ONE OCCASION, SHE ASKED ME IF I WASN'T
2 TIRED OF BREAST-FEEDING. AND I SAID NO. MY BABY -- I
3 LIKE TO BREAST-FEED MY BABY. AND SHE -- SHE SAYS,
4 "WELL, DON'T YOU FEEL LIKE A COW FOR BREAST-FEEDING?"
5 AND I JUST STORMED OUT. I WAS LIKE, I'M DONE. I
6 STORMED OUT.

7 Q WHEN DID THAT CONVERSATION HAPPEN?

8 A SOMETIME IN JANUARY OR MID-JANUARY, SOMETHING
9 LIKE THAT.

10 Q BETWEEN THAT EPISODE IN MID-JANUARY AND THIS
11 TIME IN FEBRUARY WHEN YOU LAID DOWN AND ASKED HER NOT
12 TO HARASS YOU OR ARGUE WITH YOU, HAD THERE BEEN ANY
13 OTHER INSTANCES WHERE SIMILAR SORTS OF THINGS HAPPENED?

14 A THAT WAS USUALLY THE NORM. THE QUESTION WOULD
15 BE HOW LONG IT WOULD HAPPEN, LIKE THE DURATION. SO
16 THAT WAS AT ALMOST EVERY VISIT FOR ME.

17 Q YOU SAID THAT THERE WAS ANOTHER EPISODE AFTER
18 THIS FIRST ONE IN FEBRUARY WHERE YOU WERE HAVING SOME
19 TROUBLE. CAN YOU SHARE WITH US WHAT THAT WAS ALL
20 ABOUT?

21 A YES. THAT WEEK, TUESDAY, WE HAD GOTTEN INTO
22 AN ARGUMENT. RIGHT NOW I DON'T REMEMBER WHY.
23 THURSDAY, I CAME IN, I WAS VERY ILL, AND I ASKED HER
24 FOR AN ACCOMMODATION. I ASKED HER TO ALLOW MY MOM TO
25 BE IN THE VISIT BECAUSE I WASN'T FEELING WELL. AND SHE
26 SAID NO. AND MAYBE 15, 20 MINUTES INTO THE VISIT, I
27 WAS ABOUT TO PASS OUT. AND I -- BY THEN, SHE HAD LEFT
28 THE ROOM. SHE LEFT ANIKA LOUIS, THE SERVICE AID, IN

1 THE ROOM. I ASK ANIKA, I SAID, "ANIKA, I'M GOING TO
2 PASS OUT. I NEED MY MOTHER." SHE TEXT VICTORIA TO
3 COME DOWN. VICTORIA COMES DOWN, AND SHE ASKS ME WHAT
4 THE PROBLEM WAS. I SAID, "LISTEN, I'M ABOUT TO PASS
5 OUT HERE. I NEED MY MOM. AND IF SOMETHING HAPPENS TO
6 ME, YOU ARE RESPONSIBLE."

7 AND AT THAT POINT, SHE ALLOWED MY MOM TO COME
8 IN. MY MOM CAME INTO THE ROOM AND PLAYED WITH THE BABY
9 WHILE I JUST LAID DOWN IN A CORNER TRYING TO GET MYSELF
10 WELL.

11 Q NOW, YOU'D MENTIONED SOMETHING BEFORE ABOUT
12 HOW SOMETIMES BEFORE AND SOMETIMES AFTER THE MEETING
13 MS. SCHEELE WOULD HAVE CONVERSATIONS WITH YOU ABOUT
14 WHAT WAS GOING ON?

15 A YES.

16 Q DO YOU RECALL HER EVER HAVING A CONVERSATION
17 WITH YOU WHERE SHE ASKED YOU WHETHER OR NOT YOU WERE
18 PREGNANT?

19 A YES.

20 Q SHARE THAT WITH US, THAT CONVERSATION.

21 A THOSE MONTHS, I PUT ON A LOT OF WEIGHT, YOU
22 KNOW. SHE ASKED ME IF I WAS PREGNANT. I SAID, "NO,
23 I'M JUST FAT." AND THEN SHE SAID, "WELL, I SEE YOU'RE
24 WEARING BAGGY CLOTHES. AND I JUST WANT TO KNOW IF
25 YOU'RE PREGNANT." AND I SAID TO HER, "I ALREADY TOLD
26 YOU I'M NOT PREGNANT. I'M FAT, AND" --

27 Q WELL, DID YOU ASK HER AT SOME POINT IN THAT
28 CONVERSATION WHAT DIFFERENCE DOES IT MAKE OR SOMETHING

1 LIKE THAT? WHY SHE WANTS TO KNOW?

2 A SHE TOLD ME WHY. I DON'T RECALL, I DON'T
3 REMEMBER ASKING. SHE SAID THAT IF I WAS PREGNANT, THE
4 DEPARTMENT HAD A RIGHT TO KNOW BECAUSE THEY WOULD SEEK
5 AN ORDER TO ATTEND, I GUESS OBG VISITS BECAUSE I HAVE
6 AN OPEN CASE WITH THE DEPARTMENT. I WAS JUST UPSET. I
7 WAS STUNNED, AND I JUST LEFT.

8 Q SO IS THAT HOW THAT CONVERSATION ENDED,
9 JUST --

10 A YEAH.

11 Q DID YOU EVER AT ANY POINT IN TIME FIND OUT
12 WHETHER OR NOT YOU HAD BEEN REPORTED TO THE CALIFORNIA
13 JUSTICE DEPARTMENT CHILD ABUSE CENTRAL INDEX?

14 A I DIDN'T KNOW THAT UNTIL THIS CASE.

15 Q YOU LEARNED THAT IN THIS CASE THAT WE'RE IN
16 RIGHT NOW? NOBODY EVER SENT YOU A LETTER FROM THE
17 COUNTY?

18 A NO.

19 Q DO YOU RECALL WHEN IT WAS THAT YOU LEARNED IN
20 THIS CASE THAT THE COUNTY HAD REPORTED YOU TO THE
21 CALIFORNIA JUSTICE DEPARTMENT CHILD ABUSE CENTRAL
22 INDEX?

23 A WHEN -- IN A CONVERSATION YOU AND I HAD.

24 Q I'M SORRY?

25 A IN A CONVERSATION YOU AND I HAD.

26 Q NOW, AFTER JURIS DISPO, OR AFTER THE INITIAL
27 JURISDICTION DISPOSITION -- LET ME JUST START OVER.

28 AFTER THE INITIAL JURISDICTION DISPOSITION

1 HEARING, DO YOU RECALL HOW LONG IT WAS BEFORE YOUR NEXT
2 HEARING?

3 A THERE WERE HEARINGS SCHEDULED ALL ALONG, BUT I
4 WASN'T REQUIRED TO BE THERE, I THINK. SO I DON'T --
5 THERE WERE SEVERAL HEARINGS THAT I WASN'T THERE BECAUSE
6 I WAS NOT REQUIRED TO BE THERE.

7 Q OKAY. SO THAT WOULD HAVE BEEN YOUR ATTORNEYS
8 OR SOMETHING, AND YOU DON'T NECESSARILY KNOW BECAUSE
9 YOU WEREN'T THERE?

10 A RIGHT.

11 Q WOULD YOUR ATTORNEY REPORT BACK TO YOU, IF YOU
12 RECALL?

13 A YES, AT SOME POINT.

14 Q DO YOU RECALL -- LET ME FIND IT -- I'LL GET
15 YOU THE BOOK, BUT WE'RE LOOKING FOR EXHIBIT NUMBER 260.
16 IF I CAN GET YOU TO TURN TO EXHIBIT NUMBER 262. AND
17 BEFORE WE GET INTO THAT, DO YOU KNOW A -- WHO A DR. IRA
18 LOTT IS?

19 A YES.

20 Q WHO IS DR. IRA LOTT?

21 A DR. LOTT IS A PEDIATRICIAN AND -- A
22 NEUROLOGIST WHO WORKS AT UCI. HE DOES PEDIATRIC
23 NEUROLOGY.

24 Q HOW IS IT THAT YOU KNOW OF DR. LOTT?

25 A I HAD, THROUGHOUT THE DEPENDENCY PROCEEDINGS,
26 I HAD REQUESTED A SECOND OPINION TO THE INFORMATION AT
27 HARBOR UCLA, AND I HAVE HIRED A FIRM TO SEEK FOR A
28 PEDIATRIC NEUROLOGIST.

1 Q WHEN YOU SAY "PEDIATRIC," CAN YOU EXPLAIN FOR
2 US WHAT DOES THAT MEAN?

3 A THERE IS A SERVICE WHERE YOU CAN -- IF -- THEY
4 FIND YOU EXPERTS. AND I HAD REQUESTED MY ATTORNEY TO
5 FIND A FIRM THAT -- YOU GIVE THEM THE MEDICAL RECORDS,
6 AND THEY FIND AN EXPERT.

7 Q DO YOU REMEMBER THE NAME OF THAT FIRM?

8 A YES.

9 Q WHAT'S THE NAME OF THAT FIRM?

10 A FORENSIS.

11 Q IS THAT FORENSISGROUP?

12 A YES.

13 Q HOW DID YOU FIND OUT ABOUT THE FORENSISGROUP?

14 A THROUGH MY ATTORNEY.

15 Q THAT WAS A SERVICE THAT YOUR ATTORNEY USED OR
16 SOMETHING?

17 A YES.

18 Q AT SOME POINT IN TIME THROUGH THAT
19 FORENSISGROUP AND YOUR ATTORNEY, WERE YOU ABLE TO
20 YOURSELF TALK WITH OR MEET DR. LOTT?

21 A YES.

22 Q WHEN YOU MET WITH HIM, SHARE WITH US, WHAT DID
23 YOU TALK ABOUT. THE SUBSTANCE OF THAT CONVERSATION?

24 A THE FIRST TIME I MET HIM, IT WAS AN ASSESSMENT
25 THAT HE WAS GOING TO PERFORM FOR RYAN, A NEUROLOGICAL
26 ASSESSMENT ORDERED BY THE COURT. THAT'S THE FIRST TIME
27 I MET HIM AND I TALKED TO HIM.

28 Q DO YOU KNOW WHETHER OR NOT BEFORE YOU MET HIM

1 YOUR ATTORNEY HAD ALSO MET OR SPOKEN WITH HIM?

2 A I DON'T -- I DON'T KNOW EXACTLY WHEN THEY MET.

3 Q DID YOU HAVE TO PAY FOR DR. LOTT'S SERVICES?

4 A YES.

5 Q AND WHEN YOU MET WITH DR. LOTT, DID YOU
6 EXPLAIN TO HIM WHAT IT WAS AND WHY IT WAS YOU NEEDED
7 HIM THERE FOR ASSESSMENT?

8 A YES.

9 Q WHAT DID YOU TELL HIM?

10 A HE HAD ASKED FOR A HISTORY OF THE BABY'S
11 FEEDING FROM BIRTH TO THAT POINT. WE HAD DISCUSSED THE
12 DIFFERENT DOCTORS THAT HE HAD SEEN AND WHAT THE
13 DIAGNOSIS, WHERE -- FOR EACH OF THOSE VISITS TO EACH OF
14 THOSE PROVIDERS.

15 Q DID YOU DISCUSS WITH HIM IN THAT CONVERSATION
16 THE ALLEGATIONS THAT HAD BEEN LEVELED AGAINST YOU?

17 A I DON'T REMEMBER IF THAT WAS DISCUSSED. I
18 THINK WHEN HE PICKED UP THE CASE, HE PROBABLY KNEW
19 THAT -- WHAT THE ALLEGATIONS WERE.

20 Q THAT'S SOMETHING THAT WOULD HAVE HAPPENED WITH
21 YOUR ATTORNEY?

22 A YES.

23 MR. MCMILLAN: YOUR HONOR, WOULD NOW BE A GOOD
24 TIME TO DO THE AFTERNOON BREAK?

25 THE COURT: YES. WE'LL TAKE AN AFTERNOON
26 RECESS AT THIS TIME, APPROXIMATELY 10 MINUTES.

27 ALL JURORS, PLEASE REMEMBER THE ADMONITION.

28 (JURY EXCUSED)

1 MR. MCMILLAN: YOUR HONOR, WE'D TALKED ABOUT
2 IT THIS MORNING, BUT MS. DUVAL HAS HER VISITATION WITH
3 HER SON, AND SHE'S GOT TO GET ON THE ROAD TO MAKE IT TO
4 HER VISITATION ON TIME.

5 THE COURT: OKAY. WE DID TALK ABOUT IT, AND I
6 HADN'T CONNECTED THAT WITH A SPECIFIC TIME. SO I'LL
7 GET THE JURORS BACK IN AND EXCUSE THEM THEN.

8 MR. MCMILLAN: OKAY. I SHOULD HAVE PROBABLY
9 PRESENTED IT A LITTLE BIT DIFFERENTLY THAN JUST THE --

10 THE COURT: THAT'S ALL RIGHT. WE HAD TALKED
11 ABOUT IT, AND -- SO WE'RE IN RECESS FOR ABOUT TEN
12 MINUTES.

13 AND MS. DUVAL, YOU CAN LEAVE.

14 THE WITNESS: THANK YOU. SORRY ABOUT THAT.

15 THE COURT: IT'S ALL RIGHT. AND WE'LL GET THE
16 JURORS BACK IN, I'LL SEND THEM HOME FOR THE DAY.

17 MR. MCMILLAN: THANK YOU, YOUR HONOR.

18 THE COURT: NOT JUST FOR THE DAY, UNTIL
19 TUESDAY.

20 MR. MCMILLAN: RIGHT. PROBABLY A MUCH NEEDED
21 BREAK.

22 (RECESS)

23 THE COURT: EVERYBODY READY? I'M JUST GOING
24 TO GET THE JURORS IN. LET'S GET THE JURORS IN.

25 (JURY PRESENT)

26 THE COURT: ALL RIGHT. EVERYONE MAY BE
27 SEATED. WE'RE ON THE RECORD. EVERYBODY IS PRESENT.

28 LADIES AND GENTLEMEN OF THE JURY, WE ARE GOING

1 TO RECESS FOR THE DAY. AND WE'LL RESUME AS FAR AS YOUR
2 CONCERNED ON TUESDAY MORNING. IF YOU RECALL, I TOLD
3 YOU WE WOULD NOT BE IN SESSION TOMORROW FOR THE JURY TO
4 ACCOMMODATE SEVERAL PERSONS INVOLVED IN THE TRIAL,
5 INCLUDING AT LEAST ONE JUROR THAT I RECALL. AND
6 MONDAY, AS YOU RECALL, IS A COURT HOLIDAY. SO THE NEXT
7 BUSINESS DAY NEXT WEEK WILL BE TUESDAY.

8 SO WE'LL RESUME NEXT TUESDAY AT 9:00 A.M. AS
9 FAR AS YOU'RE CONCERNED. BETWEEN NOW AND THEN, I'LL
10 JUST REMIND YOU THE ADMONITION. YOU ALL KNOW IT. YOU
11 ALL COULD RECITE IT BETTER THAN I COULD AT THIS POINT.
12 YOU KNOW, IT DOESN'T GET ANY BETTER. THERE'S ONLY SO
13 MANY WAYS YOU CAN STATE IT.

14 BUT YOU UNDERSTAND THE PURPOSE OF THE
15 ADMONITION IS TO REMIND YOU OF TWO THINGS: THAT YOU
16 NEED TO DECIDE ALL ISSUES IN THE CASE BASED ON EVIDENCE
17 YOU RECEIVED IN THIS TRIAL. THAT'S WHY WE GIVE YOU THE
18 FIRST PART ABOUT NOT HAVING COMMUNICATION WITH ANYBODY,
19 NOT SEEKING NOR RECEIVING ANY INFORMATION.

20 AND THEN THE SECOND PART OF NOT FORMING ANY
21 OPINION OR EXPRESSING ONE IS REALLY A REMINDER TO KEEP
22 AN OPEN MIND BECAUSE YOU'RE REALLY NOT IN A POSITION TO
23 MAKE ANY DECISIONS UNTIL YOU'VE HEARD ALL THE EVIDENCE
24 AND THE COURT'S INSTRUCTIONS OF LAW.

25 AND IN FACT, WHILE WE CONTINUED IN THE VERY
26 BEGINNING OF THE CASE, I'VE TOLD YOU A NUMBER OF
27 OCCASIONS THAT WHAT THE ATTORNEYS SAY IS NOT EVIDENCE.
28 THAT REMAINS TRUE. AND SO IN THEIR CLOSING ARGUMENTS,

1 EVEN THOUGH THOSE ARGUMENTS ARE NOT EVIDENCE, THEY ARE
2 NEVERTHELESS A VERY IMPORTANT PART OF THE CASE TO
3 ASSIST YOU AS YOU DEEM USEFUL THEIR VIEWS OF WHAT THE
4 EVIDENCE HAS SHOWN AND WHAT THE IMPORTANCE OF THAT
5 EVIDENCE MAY BE AS TO THE ISSUES IN THE CASE.

6 SO I DO SHORTEN IT AS WE GO ALONG BECAUSE I
7 KNOW YOU CAN RECITE THAT ADMONITION AS WELL AS I DO.
8 WE'VE BEEN OVER IT MANY TIMES. PARTICULARLY
9 MID-MORNING, MID AFTERNOON, I JUST TELL YOU "REMEMBER
10 THE ADMONITION." THAT REMAINS TRUE WHETHER YOU'RE
11 OUTSIDE FOR 10 MINUTES OR YOU'RE GOING TO BE GONE FOR A
12 FEW DAYS FROM THE TRIAL, IT REMAINS TRUE NO MATTER
13 WHAT. SO THAT IS THE ADMONITION.

14 DON'T RECEIVE, DON'T SEEK NOR RECEIVE ANY
15 INFORMATION BECAUSE INFORMATION OUTSIDE THIS COURTROOM
16 IS SIMPLY NOT EVIDENCE. AND ALL OF US ARE COMMITTED TO
17 DECIDING ALL MATTERS BASED ON THE EVIDENCE RECEIVED.
18 AND DON'T FORM ANY OPINIONS NOR EXPRESS ANY BECAUSE
19 THERE'S STILL SUBSTANTIAL EVIDENCE TO BE HEARD. AND I
20 THINK ONE OF THE MAJOR REASONS WE TELL YOU THAT IS WE
21 ALL KNOW AS YOU'RE HEARING EVIDENCE IN THE COURSE OF
22 THE CASE THAT YOU WILL BE THINKING ABOUT IT AND TRY TO
23 PUT IT IN ITS PLACE AND PROBABLY THINK ABOUT, YOU KNOW,
24 HOW MUCH DOES THAT MAKE SENSE TO ME? THAT'S A NATURAL
25 PART OF HOW THE BRAIN WORKS, AND WE'RE NOT TELLING YOU
26 NOT TO LET THE BRAIN WORK, NOT TO DO WHAT'S NATURAL.
27 WE'RE SAYING DON'T LET IT GET TO A DECISION BECAUSE
28 IT'S HARDER ONCE SOMEONE MAKES UP THEIR MIND TO CHANGE

1 THEIR MIND THAN IT IS TO HOLD OFF AND WAIT UNTIL
2 THEY'VE GOT ALL THE INFORMATION TO MAKE A DECISION.

3 SO WE GIVE YOU THAT PART OF THE ADMONITION. I
4 THINK IT'S JUST A VERY PRACTICAL REMINDER. IT'S GOING
5 TO BE EASIER TO MAKE AN INFORMED DECISION IF YOU WAIT
6 UNTIL YOU'VE HEARD EVERYTHING. AND IT'S BASIC
7 UNFAIRNESS TO THE PARTIES IF YOU MAKE DECISIONS BEFORE
8 YOU'VE HEARD EVERYTHING BECAUSE IT'S HARDER TO CHANGE
9 YOUR MIND ONCE IT'S MADE UP.

10 SO ALL OF THIS, I HOPE, MAKES GOOD SENSE TO
11 YOU, AND THAT'S THE REASON FOR THE CONTINUED
12 ADMONITION, PLUS THE FACT I AM BOUND BY LAW TO GIVE YOU
13 THE ADMONITION EVERY TIME WE TAKE A RECESS, SO I HAVE
14 TO DO IT LIKE IT OR NOT. BUT I THINK IT'S A GOOD
15 REMINDER NOW YOU'RE GOING TO BE A FEW DAYS BEFORE
16 YOU'RE BACK HERE, AND YOU'RE GOING TO GET ON WITH THE
17 OTHER THINGS IN YOUR OWN LIFE. IT'S A GOOD REMINDER, A
18 GOOD TIME TO GO BACK OVER IT A LITTLE BIT.

19 SO WITH THAT, WE'RE NOW IN RECESS AS FAR AS
20 YOU'RE CONCERNED. AND WE'LL SEE YOU BACK AT 9:00 A.M.
21 ON TUESDAY. AND THANKS VERY MUCH. WE LOOK FORWARD TO
22 SEEING YOU NEXT WEEK.

23 (JURY EXCUSED)

24 THE COURT: ALL RIGHT. SO ALL JURORS HAVE
25 LEFT THE COURTROOM AND COUNSEL ARE PRESENT.

26 SO I THINK WE HAD TALKED ABOUT THAT YOU WOULD
27 COME IN AT 9:00 O'CLOCK TOMORROW. AND I DO HAVE TWO
28 MATTERS THAT WILL BE -- ONE IS AT 8:30 WHICH,

1 HOPEFULLY, WON'T TAKE VERY LONG. AND AT 9:00, I HAVE
2 THE CASE THAT'S FOLLOWING YOURS COMING IN. SO WE'RE
3 TAKING ADVANTAGE OF THE FACT WE WEREN'T GOING TO BE IN
4 SESSION TOMORROW TO DO SOME OF THE PRELIMINARY, MOSTLY
5 MOTIONS IN LIMINE. BUT WHEN YOU ALL GET HERE, WHOEVER
6 IS COMING, AND I'LL LEAVE IT UP TO YOU AS TO WHO WILL
7 BE HERE, IT DOESN'T HAVE TO BE EVERYBODY, BUT JUST
8 SOMEONE WHO IS GOING TO BE ABLE TO WORK ON THE THINGS
9 WE HAVE TO WORK ON AND MAKE ANY DECISIONS THAT MAY NEED
10 TO BE MADE. SO WHEN YOU GET HERE, I'LL TALK WITH YOU
11 FIRST BECAUSE THE OTHER ATTORNEYS, YOU KNOW, WE DON'T
12 HAVE TO GET STARTED ON THEIR MOTIONS UNTIL WE GET YOU
13 STARTED.

14 SO I'M HOPING THAT AT 9:00, I CAN GIVE YOU A
15 TENTATIVE RULING ON THE MOTION IN LIMINE THAT WE
16 DISCUSSED EARLIER, AND THEN GET YOU DIRECTED TOWARDS
17 WORKING ON WHAT WE HAVE TO DO. AND THAT WILL BE THEN
18 THE DISCUSSION YOU HAVE. AND I'LL HAVE TO BRING YOU
19 BACK PERIODICALLY, AND I MAY PARTICIPATE IN SOME OF THE
20 DISCUSSIONS WITH YOU FOR US TO GET TO WHERE THE VERDICT
21 FORM NEEDS TO BE. WE'RE ALSO GOING TO HAVE TO ADDRESS
22 THE ISSUE ABOUT THE REQUEST FOR ADMISSIONS, WHICH ONES,
23 AND HOW WE'RE GOING TO PRESENT IT, AND ALSO THE ISSUE
24 OVER THE EXHIBITS.

25 AND BY THEN, MR. PARIS WILL HAVE PUT IT ALL IN
26 ORDER FOR US, AND THE PRODUCT OF THAT GOOD WORK WILL
27 GIVE US GUIDANCE TO WHAT WE HAVE TO DO. AND I KNOW
28 YOU'LL DO THIS, BUT YOU'LL NEED TO TALK TO EACH OTHER.

1 MOST OF THESE THINGS OUGHT TO BE SOLVED BY YOU, NOT BY
2 ME. I'M WILLING TO DO IT IF WE HAVE TO. BUT YOUR
3 SOLUTIONS, I THINK, ARE ALMOST INVARIABLY SUPERIOR TO
4 ANYTHING THE COURT CAN DECIDE. COURT DECISIONS TEND TO
5 MAKE SOMEONE THE WINNER AND SOMEONE THE LOSER, AND A
6 LOT OF THESE THINGS, WE DON'T NEED TO HAVE A WINNER OR
7 LOSER, WE JUST NEED TO GET THEM TAKEN CARE OF.

8 SO ANYWAY, I'LL SEE YOU BACK AT 9:00 O'CLOCK.

9 MR. GUTERRES: THANK YOU, YOUR HONOR.

10 MR. KING: THANK YOU, YOUR HONOR.

11 MR. PRAGER: THANK YOU, YOUR HONOR.

12 MR. MCMILLAN: I HAVE ONE QUESTION, DOESN'T
13 NEED TO BE ON THE RECORD, YOUR HONOR, BUT IT SOUNDS
14 LIKE WE'RE ACTUALLY GOING TO BE DOING LIKE SUBSTANTIVE
15 EDITING-TYPE WORK ON THE VERDICT FORM. SHOULD I BRING
16 A PRINTER?

17 THE COURT: YEAH, ONE OF THE THINGS YOU COULD
18 DO, WE COULD HAVE YOU E-MAIL IT TO DON.

19 MR. MCMILLAN: OKAY.

20 THE COURT: WHO COULD PRINT IT OUT FOR US.

21 MR. MCMILLAN: OKAY.

22 THE COURT: SO IF YOU HAVE A PRINTER, FINE,
23 BUT THAT'S CERTAINLY A GOOD ALTERNATIVE IS TO E-MAIL IT
24 TO DON WHO CAN PRINT IT OUT FOR US.

25 MR. MCMILLAN: I DO HAVE A PRINTER, BUT IT'S
26 PROBABLY EASIER BECAUSE I HAVE TO CART IT IN HERE AND
27 SET IT UP.

28 THE COURT: OKAY. AND FOR YOUR DISCUSSIONS,

1 THERE WILL BE A LOT OF THINGS GOING ON HERE IN THE
2 COURTROOM, I'M GOING TO HAVE THE JURY ROOM AVAILABLE
3 FOR YOU, AND YOU CAN ALL TAKE THE STUFF IN AND SIT DOWN
4 AND BE ABLE TO TALK IN A NORMAL MANNER. SO WE'LL TRY
5 TO MAKE IT A PRODUCTIVE DAY TO GET A LOT OF THESE
6 THINGS TAKEN CARE OF.

7 MR. MCMILLAN: ALSO ONE OTHER THING IS
8 MR. DANER IS COMING UP. IT'S MY UNDERSTANDING -- I
9 HOPE I GOT THIS RIGHT SO HE DOESN'T HAVE A WASTED
10 TRIP -- IT'S MY UNDERSTANDING THAT WE WILL BE MAKING
11 SOME SUBSTANTIVE DECISIONS TOMORROW OR AT LEAST
12 APPROACHING SOME SUBSTANTIVE DECISIONS TOMORROW ON
13 INSTRUCTIONS AND VERDICT FORMS. I THINK THERE'S THAT
14 BRIEFING THAT'S BEEN FLOATING AROUND. AND HE'S COMING
15 IN PREPARED TO DEAL WITH QUITE A BIT OF THAT.

16 THE COURT: YES. I DON'T KNOW WHETHER THERE
17 WILL BE FINAL DECISIONS ON THINGS, BUT I HOPE THE TIME
18 WILL BE USED EFFECTIVELY SO THAT WE CAN DO SOMETHING IF
19 NOT FINALLY DEFINITIVE, NEVERTHELESS DEFINITIVE IF FOR
20 NO OTHER REASON TO DIRECT US AS TO WHAT FURTHER WOULD
21 HAVE TO BE DONE. BUT YES, I INTEND TO DO THAT.

22 NOW, I KNOW ON THE INSTRUCTIONS -- I DON'T
23 KNOW HOW FAR WE'LL GET, BUT JUST AS AN EXAMPLE, A
24 COUPLE OF DAYS AGO, THE DEFENSE FILED THEIR SUGGESTED
25 PROPOSED INSTRUCTIONS AS WELL AS A BRIEF ACCOMPANYING
26 THAT, THAT ADDRESSED IN BROAD TERMS THE SIGNIFICANT
27 NUMBER OF INSTRUCTIONS THAT HAVE BEEN REQUESTED BY
28 PLAINTIFF. AND THAT'S A DISCUSSION YOU SHOULD HAVE.

1 BUT I WILL TELL YOU THAT IN THAT DISCUSSION AND POINTS
2 AND AUTHORITIES, I BELIEVE THAT THEY ARE CORRECT, THAT
3 I DO NOT REALLY -- AND I'M NOT SAYING I WON'T GIVE
4 SPECIAL INSTRUCTIONS. I THINK THERE ARE SOME THINGS
5 WHICH WE'LL NEED, AND I HOPE WE CAN IDENTIFY THAT
6 TOMORROW, WHERE WE MIGHT NEED A SPECIAL INSTRUCTION.

7 BUT THEIR POINT WAS THAT BY AND LARGE IF THERE
8 IS A CACI INSTRUCTION THAT APPLIES UNDER THE CALIFORNIA
9 RULES OF COURT, THAT IS THE PREFERRED INSTRUCTION.
10 NOW, I HAVEN'T LOOKED AT THAT RULE LATELY, BUT I'M WELL
11 AWARE OF IT, AND THAT'S THE REASON WE HAVE PATTERNED
12 INSTRUCTIONS TO BRING SOME CONSISTENCY TO INSTRUCTIONS
13 IN LAWSUITS. SO IT CERTAINLY IS MY INTENT WHERE THERE
14 IS A CACI INSTRUCTION THAT APPLIES TO AN ISSUE, IT'S MY
15 INTENT THAT HIGHLY LIKELY I'M GOING TO USE THAT.

16 I THINK THE OTHER THING THEY ADDRESSED, AGAIN,
17 IN BROAD TERMS WAS THAT A NUMBER OF THE INSTRUCTIONS,
18 ONE OF THEM IS A QUOTE FROM THOMAS JEFFERSON, IF I
19 RECALL.

20 MR. MCMILLAN: I THINK, YOUR HONOR, THAT'S
21 BEEN WITHDRAWN.

22 THE COURT: HAS IT?

23 MR. MCMILLAN: IT DID MAKE IT'S WAY --

24 THE COURT: WELL, I HAVE GREAT REGARD FOR
25 THOMAS JEFFERSON, AND IF YOU'VE NEVER HAD AN
26 OPPORTUNITY TO VISIT MONTICELLO, HIS HOME JUST ON THE
27 HILL UP ABOVE CHARLOTTESVILLE, VIRGINIA, IT'S WELL
28 WORTH THE TIME. IT'S REALLY INTERESTING.

1 AND I'M AWARE NOW THAT MANY OF THE PERSONS
2 BACK AT THAT TIME WERE BEING QUESTIONED AS TO WHO THEY
3 WERE AND WHAT THEY DID, BUT THERE WASN'T ANY QUESTION
4 ABOUT, I THINK, THE VERY HIGH LEVEL OF INTELLIGENCE --
5 HAVE YOU BEEN TO MONTICELLO?

6 MR. MCMILLAN: I HAVEN'T.

7 THE COURT: I FORGET THE EXACT DATE IT WAS
8 BUILT, BUT IT WAS LATE 1700S PERHAPS. BUT I THINK HE
9 WAS ALREADY -- I KNOW HE LIVED IN MONTICELLO AFTER HIS
10 PRESIDENCY. AND I DON'T REMEMBER IF HE WAS LIVING
11 THERE BEFORE HE BECAME PRESIDENT OR NOT. I JUST DON'T
12 REMEMBER. WHEN YOU SEE THE THING, IT'S REALLY
13 EXTRAORDINARY. HE JUST HAD PERSONALLY A VERY INQUIRING
14 MIND. AND ANOTHER GOOD EXAMPLE OF THAT IS, IF YOU
15 RECALL, HE'S THE ONE WHO DISPATCHED LOUIS AND CLARK ON
16 THE FAMOUS EXPEDITION. AND BEFORE -- AND WHAT IS
17 LITTLE KNOWN -- WE ALL KNOW MUCH MORE ABOUT THE
18 JOURNEY, BUT HE DIDN'T LEAVE IT TO HALF MEASURES.

19 AND I FORGET HOW MANY MONTHS AND PERHAPS EVEN
20 MORE THAN A YEAR THAT HE REQUIRED LOUIS AND CLARK TO GO
21 TO SCHOOL, BASICALLY, ON A WIDE VARIETY OF ISSUES. AND
22 HE BROUGHT IN WHAT AT THE TIME WERE SOME VERY LEADING
23 EXPERTS ON ALL KINDS OF ISSUES THAT WOULD ADDRESS WHAT
24 THEY MIGHT ENCOUNTER ON THE TRIP. I MEAN, HE BROUGHT
25 IN BOTANISTS, GEOGRAPHERS, EXPERTS ABOUT THE WESTERN
26 INDIAN TRIBES, WHICH AT THAT TIME, NO ONE KNEW ANYTHING
27 ABOUT. THAT'S REALLY -- THEIR KNOWLEDGE ABOUT THE
28 INDIAN TRIBES ENDED AT ABOUT THE MISSISSIPPI RIVER,

1 AND, OF COURSE, THAT'S WHERE THE EXPEDITION REALLY
2 BEGAN.

3 SO IT'S REALLY -- HE WAS A FASCINATING MAN. I
4 DIGRESS. SO THE FACT I WOULDN'T GIVE AN INSTRUCTION
5 WAS NOT A REFLECTION THAT I DON'T THINK HE'S WORTHY OF
6 CONSIDERATION, IT'S JUST THERE'S NOTHING ABOUT IT
7 THAT'S A JURY INSTRUCTION. AND A NUMBER OF THOSE
8 THINGS WHICH THE DEFENSE COUNSEL POINTED OUT BY AND
9 LARGE, QUOTATIONS, YOU KNOW, A SENTENCE OR TWO OUT OF A
10 CASE RARELY SHOULD BE THE BASIS FOR A JURY INSTRUCTION.
11 SO OF THAT BROAD NUMBER THAT WERE SUBMITTED, WHILE I
12 HAVE LOOKED AT THEM, I ALSO DON'T REMEMBER THEM ALL AS
13 I'M SITTING HERE NOW -- I PROBABLY DON'T REMEMBER ANY
14 OF THEM -- BUT I DID LOOK AT THEM AND MADE MY OWN NOTES
15 THAT NO THIS IS NOT GOING TO SUFFICE AS JURY
16 INSTRUCTION.

17 I DON'T INTEND TO TELL THE JURY ANY MORE THAN
18 THEY NEED TO BE ABLE TO UNDERSTAND THE VERDICT FORM AND
19 UNDERSTAND WHAT IT IS THEY'RE BEING ASKED AND TO
20 UNDERSTAND, THEN, WHY THE VERDICT FORM ASKS THESE
21 QUESTIONS BY TELLING THEM WHAT IT IS THAT EVERYONE HAS
22 TO PROVE. AND THE REST I LEAVE TO YOUR ARGUMENT, BUT
23 AS FAR AS THE INSTRUCTIONS ARE CONCERNED, I THINK
24 THAT'S WHAT THE INSTRUCTIONS ARE PROPERLY FOR. AND
25 THAT'S WHAT WE'LL WANT TO ACCOMPLISH. AND THAT'S WHY
26 WE DO NEED TO TAKE A LOOK AT THEM TO SEE IS THERE A
27 CACI INSTRUCTION THAT DOES APPLY, AND DOES IT APPLY
28 FULLY? IF IT DOES, IT'S EXTREMELY LIKELY I'M GOING TO

1 USE IT. IF THERE IS NO CACI INSTRUCTION, BUT IT DOES
2 APPEAR THIS IS SOMETHING WHICH REQUIRES SOME FORM OF
3 EXPLANATION, THEN THAT'S WHERE WE'LL FOCUS ON GETTING A
4 SPECIAL INSTRUCTION PUT TOGETHER.

5 SO I HOPE WE'LL BE ABLE TO HAVE THAT
6 DISCUSSION TOMORROW TOO, BUT THERE'S A LOT TO BE DONE,
7 AND I RECOGNIZE THAT. WE'LL JUST DO THE BEST WE CAN
8 WITH ALL OF THIS TOMORROW.

9 MR. MCMILLAN: SOUNDS GOOD, YOUR HONOR.

10 MR. GUTERRES: THANK YOU VERY MUCH.

11 THE COURT: OKAY.

12

13 (WHEREUPON, AT THE HOUR OF 3:46 P.M.,
14 THE PROCEEDING ADJOURNED.)

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(NEXT PAGE IS 6001.)