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M A S T E R I N D E X

OCTOBER 13, 2016

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M A S T E R I N D E X

OCTOBER 13, 2016

EXHIBITS

PLAINTIFF'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	
DEFENDANT'S	MARKED	RECEIVED	REJECTED
EXHIBIT 1254	6643		
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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
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES
3 LOS ANGELES, CALIFORNIA THURSDAY, OCTOBER 13, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ELORA DORINI, CSR NO. 13755
7 TIME: 8:14 A.M.

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10

11 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE
12 PRESENT. AND I'M NOT GETTING REALTIME. WELL, ARE YOU
13 GETTING ANYTHING? NOW, I AM.

14

15 SO BEFORE WE ADDRESS EXHIBITS, WE NEED TO
16 ADDRESS FURTHER PROCEEDINGS. ONE THING THAT I AM GOING
TO DO IS EXCUSE ALTERNATE JUROR HAAN.

17

18 I BELIEVE THAT'S NUMBER 3 OF THE ALTERNATES,
19 WHO HAS THAT TRIP SET FOR NEXT WEEK, AND WE'RE
CERTAINLY NOT GOING TO BE FINISHED.

20

21 MORE IMPORTANTLY, FROM OUR POINT OF VIEW, AS
22 FAR AS SCHEDULING, WE NEED TO DETERMINE WHEN WE'LL HEAR
THE MOTION -- DEFENDANT'S MOTION FOR NON-SUIT.

23

24 AND BECAUSE I HAVEN'T HEARD THE MOTION YET, I
25 DON'T KNOW WHAT ALL IT WILL ADDRESS, OR IN A LITTLE
26 BIT -- A LITTLE BIT OF THE LAWS TO KNOW WHAT ALL THE
ISSUES MIGHT BE.

27

28 NEVERTHELESS, I DO ANTICIPATE THAT THE MOTION
FOR NON-SUIT WILL ADDRESS CLAIMS FOR FALSE AND

1 DECEPTIVE INFORMATION BEING PROVIDED TO THE COURT.

2 IS THAT CORRECT, MR. GUTERRES? THE MOTION
3 WILL INCLUDE THOSE CLAIMS?

4 MR. GUTERRES: YES. UNDER -- YES. WE
5 INTENDED TO BRING A MOTION ON THOSE GROUNDS WITH REGARD
6 TO THOSE, BUT NOT AS TO THE MATERIALITY ISSUE.

7 I KNOW -- I UNDERSTAND THAT WE WERE GOING TO
8 STILL BRIEF THE MATERIAL -- THE ISSUE WITH REGARD TO
9 THE MATERIALITY OF SOME OF THOSE REPRESENTATIONS, BUT
10 WE DID HAVE AN ULTERIOR GROUNDS FOR MOTION ON THE
11 JUDICIAL DECEPTION CLAIM.

12 THE COURT: ALL RIGHT. WELL, I NEED TO HEAR
13 THE MOTION, AND I WILL NEED TO KNOW WHAT GROUNDS ARE
14 BEING ASSERTED.

15 IF ANY OF THOSE GROUNDS ARE ADDRESSED TO THE
16 CAUSES OR THE CLAIMS OF DECEPTIVE REPORTING, THEN PART
17 OF THE PROCESS OF THE RULING ON YOUR MOTION, I BELIEVE,
18 WILL REQUIRE THAT THE COURT ADDRESS THE ISSUE OF
19 WHETHER OR NOT --

20 IF FALSE INFORMATION WAS PROVIDED AND/OR
21 INFORMATION WAS NOT PROVIDED THAT SHOULD HAVE BEEN,
22 WHETHER OR NOT THE, AS TO THE MATTER OF LAW, THE CLAIMS
23 CAN PROCEED.

24 IF THE COURT DETERMINES THAT IT WOULD NOT HAVE
25 ALTERED -- THERE ARE REASONABLE GROUNDS FOR THE
26 DECISION OF THE COURT, THE JUVENILE COURT, EVEN WITHOUT
27 THEM HAVING CONSIDERED ANY INFORMATION WHICH WAS FALSE,
28 AND HAVING FAILED TO CONSIDER INFORMATION THAT SHOULD

1 HAVE BEEN GIVEN, THEN THOSE CAUSES OF ACTION ON THAT
2 GROUND WOULD NOT PROCEED.

3 IN THAT REGARD, AND HE -- MR. DANER PRESENTED
4 TO US YESTERDAY THE DOCUMENT WHICH WE ALL GOT TOWARDS
5 THE END OF THE DAY, WHICH I'VE TAKEN A QUICK LOOK AT,
6 AND I'M GOING TO HAVE TO HAVE HIM EXPLAIN A LITTLE BIT
7 TO ME, BUT YOU'RE GOING TO HAVE TO HAVE AN OPPORTUNITY
8 TO RESPOND TO THAT.

9 MR. GUTERRES: AND WE ARE WORKING ON THE
10 BRIEFING IN RESPONSE TO THE MATERIALITY ISSUE.

11 THE COURT: IT'S STILL MY BELIEF, IN LIGHT OF
12 EVERYTHING THAT HAS BEEN SAID AND ARGUED AND PRESENTED
13 TO THE COURT, THAT THIS IS STILL AN ISSUE OF LAW TO BE
14 DECIDED BY THE COURT, AND THAT I INTEND TO DO SO AS
15 PART OF THE MOTION FOR NON-SUIT, ASSUMING YOU CHALLENGE
16 THE -- THOSE CAUSES OF ACTION ON THAT GROUND.

17 I'M NOT SURE YET -- AND MAYBE MR. MCMILLAN
18 WILL BE ABLE TO TELL US WHICH OF THE PROCEEDINGS IN THE
19 JUVENILE COURT THEY BELIEVE RECEIVED FALSE INFORMATION
20 AND/OR DID NOT RECEIVE ALL INFORMATION THEY SHOULD HAVE
21 RECEIVED.

22 BUT I BELIEVE THAT WE'LL ADDRESS THE ORIGINAL
23 DETENTION HEARING ON NOVEMBER 6TH, THE JURISDICTION
24 HEARING.

25 I'VE FORGOTTEN SOME OF THE EXACT DATES, BUT IT
26 WAS ON OR ABOUT JANUARY 4, 2010, AND THERE WAS A --
27 WHATEVER THE TITLE OF IT WAS, BUT A FINAL DISPOSITION
28 HEARING ON AUGUST 9TH, OR MAYBE IT WAS 10TH, OF 2010.

1 IT DID APPEAR FROM THE EVIDENCE THAT THERE
2 WERE -- CERTAIN REQUESTS HAD BEEN MADE FOR A CHANGE IN
3 COURT ORDERS, ALTHOUGH THE PLAINTIFF TESTIFIED
4 YESTERDAY THAT THEY WERE DENIED, BUT SHE DIDN'T RECALL
5 EVEN ATTENDING ANY OF THOSE.

6 AND I DON'T KNOW THAT THERE WAS ANY CONTENTION
7 THERE WAS FALSE INFORMATION PROVIDED AT THAT TIME.

8 IT'S MY RECOLLECTION, FROM LOOKING AT
9 DOCUMENTS IN THIS CASE, THOSE REQUESTS, HOWEVER, THERE
10 WERE 2 OR 3 OF THEM, THEY WERE DENIED, BUT IF I RECALL
11 CORRECTLY, THEY WERE DENIED SIMPLY ON THE GROUND THAT
12 NOTHING NEW HAD BEEN PRESENTED TO THEM.

13 SO I'M ASSUMING THAT THEY WERE GOING TO
14 ADDRESS THE THREE HEARINGS PREVIOUSLY THAT I JUST
15 MENTIONED. THIS COULD TAKE A LOT OF TIME.

16 THIS WON'T BE EASY. I'M GOING TO -- I'LL GET
17 TO MR. DANER. I KNOW HE PROVIDED A BRIEF TO US
18 YESTERDAY.

19 JUST -- I HAVE A FEW QUESTIONS, JUST TO ORIENT
20 ME AS TO WHAT ALL WE HAVE. I KNOW FROM LOOKING AT
21 WHAT'S HERE, BUT I'LL JUST ASK YOU TO GIVE ME A LITTLE
22 GUIDE THROUGH IT. BUT WE'LL GET TO THAT IN A MOMENT.

23 MR. MCMILLAN: I CAN WAIT. IT'S JUST THE
24 ORDER OF PROCESS THAT YOU WERE ADDRESSING EARLIER.

25 IT SOUNDED LIKE YOU WANTED TO MAKE SURE THAT
26 IT WAS THE DETENTION HEARING, THE JURIS DISPO HEARING,
27 AND THE FINAL DISPOSITION HEARING THAT WERE THE MAIN
28 FOCUS OF THE JUDICIAL DECEPTION CLAIMS.

1 WAS I UNDERSTANDING THAT?

2 THE COURT: THAT WAS MY ASSUMPTION FROM
3 EVERYTHING WE'VE HEARD AND WHAT I'VE SEEN. AND EACH OF
4 THOSE NEEDS TO BE ADDRESSED INDEPENDENTLY. THAT IS, A
5 RULING AS TO ONE IS NOT NECESSARILY THE RULING AS TO
6 ANOTHER.

7 AND SO IT'S ENTIRELY POSSIBLE, AND I'M NOT
8 PREDICTING BECAUSE I HAVEN'T EVEN TAKEN A LOOK AT IT.
9 IT'S ENTIRELY POSSIBLE THE MOTION COULD BE DENIED AS TO
10 ALL, COULD BE IN FACT GRANTED TO ALL.

11 IT'S ALSO POSSIBLE IT COULD BE GRANTED AS TO
12 ONE OR TWO AND NOT ALL. SO IT'S JUST A BROAD RANGE,
13 WHICH ONE OF THOSE HEARINGS I BELIEVE REQUIRES SEPARATE
14 AND INDEPENDENT CONSIDERATION.

15 BECAUSE -- AT LEAST -- I HAVEN'T LOOKED AT
16 WHAT WAS FILED FROM EITHER THE SECOND ONE, THE ONE ON
17 JANUARY 4TH, NOR FOR THE THIRD AND LAST ONE IN AUGUST
18 OF 2010, BUT I'M SURE THAT THERE WERE ADDITIONAL
19 DOCUMENTS FILED IN CONNECTION WITH EACH OF THOSE.

20 MAYBE NOT, I'M NOT SURE. I BELIEVE THERE MUST
21 HAVE BEEN SOME FILED FOR EACH OF THOSE, WHICH WE'LL
22 NEED TO ACCESS IN ORDER TO SEE WHAT THE JUDICIAL
23 OFFICER WAS DEALING WITH IN EACH OF THOSE EVENTS. SO
24 THAT'S THE FIRST THING I WANTED TO ADDRESS.

25 I WANT TO TALK TO YOU ABOUT TIMING, ALSO, OF
26 WHEN WE'RE GOING TO GET THIS DONE, AND HOW WE'RE GOING
27 TO GET THE TIME TO DO IT.

28 WE STILL ALSO HAVE ALL OF THESE EXHIBITS, AND

1 HAVING YOU COME IN AT 8:00 IN THE MORNING, AND SENDING
2 THE JURY HOME AT 4:00, GIVING US A LITTLE BIT OF TIME
3 IN THE MORNING, LITTLE BIT OF TIME AT THE END OF THE
4 DAY, IN MY VIEW IS NOT WORKING.

5 I JUST DON'T THINK IT'S GOING TO BE A GOOD WAY
6 OF GETTING IT DONE. AND SO I AM AT THIS TIME
7 CONSIDERING THAT THE JURY'S GOING TO HAVE TO BE SENT
8 HOME FOR SOME PERIODS OF TIME IN ORDER FOR THIS TO BE
9 ACCOMPLISHED. I DON'T KNOW HOW ELSE WE WILL GET THE
10 TIME TO DO IT.

11 AND I -- JUST STATING, I'VE WORKED ON THIS
12 CASE CONTINUOUSLY SINCE BACK IN AUGUST. LONG BEFORE WE
13 ACTUALLY STARTED BECAUSE OF THE VIDEOTAPES, AS WELL AS
14 THE MOTIONS IN LIMINE.

15 THE MOTIONS IN LIMINE WEREN'T NEARLY AS
16 TIMELY, AND SO WE DIDN'T HAVE A LARGE NUMBER. IT
17 NEVERTHELESS TOOK A CERTAIN AMOUNT OF TIME. THE
18 VIDEOTAPED DEPOSITIONS TOOK A GREAT DEAL OF TIME.

19 THE TRUTH IS, ALL OF YOU DOING DIFFERENT
20 THINGS AND WORKING ON THIS, AT LEAST THAT MUCH JUST
21 RECENTLY AND ALL TOGETHER IN THIS CASE, A GREAT DEAL
22 MORE. SO I'M NOT STATING THAT FOR ANY OTHER REASON
23 THAN TO SAY THERE'S ONLY SO MUCH THAT CAN GET DONE.

24 AND THIS CASE HAS BEEN SO DOCUMENT-INTENSIVE
25 THAT I FIND I'VE WORKED ON IT SEVEN DAYS A WEEK SINCE
26 LAST AUGUST, AND STILL DON'T HAVE THE TIME TO BE ABLE
27 TO ADDRESS THE MOTION FOR NON-SUIT.

28 ALL OF THE EXHIBITS AND WHAT THE VERDICT FORM

1 IS GOING TO LOOK LIKE, AND WHAT THE INSTRUCTIONS WILL
2 BE. BUT THE VERDICT FORM PROBABLY NEEDS TO AT LEAST
3 AWAIT A DECISION ON THE MOTION FOR NON-SUIT. SO I'VE
4 THOUGHT --

5 WELL, BEFORE I STATE THAT, LET ME ALSO SAY
6 THAT I RECEIVED THROUGH OUR COURT ATTENDANT YESTERDAY A
7 MESSAGE THAT SEVERAL JURORS HAVE ASKED OF HER WHEN THE
8 TRIAL WILL BE OVER BECAUSE SHE SAID THAT SEVERAL OF
9 THEM HAVE EXPRESSED THAT THEY HAVE VACATIONS AND OTHER
10 PLANS.

11 AND I THINK IT'S BECOME APPARENT TO THEM AS
12 WELL THAT THIS CASE IS NOT GOING TO BE DONE WITHIN THE
13 TIME ESTIMATE. I WILL SAY FOR THE ONE ALTERNATE JUROR
14 THAT I INTEND TO LET GO, MS. HAAN, THAT I THINK SHE
15 INTERPRETED THE LENGTH OF THE TRIAL INCORRECTLY, WHICH
16 MAY BE MY FAULT FOR NOT HAVING BEEN MORE EXPLICIT THAN
17 I WAS.

18 IF YOU RECALL, I DIDN'T TELL THEM 25 DAYS. I
19 TOLD THEM 25 COURT DAYS, AND THAT THERE WOULD BE SOME
20 DAYS WHEN THE COURT WAS NOT IN SESSION. SHE
21 NEVERTHELESS FIGURED IT WAS GOING TO BE 25 CONSECUTIVE
22 DAYS. SO SHE THOUGHT THE TRIAL WAS GOING TO BE OVER
23 TODAY, IF I RECALL THE MESSAGE CORRECTLY.

24 AND -- SO HAVING DIGRESSED, JUST TO MENTION
25 THAT -- GO BACK TO -- IT APPEARS TO ME THAT WE'RE GOING
26 TO NEED A DAY TO ADDRESS THESE EXHIBITS. WE JUST
27 HAVEN'T MADE ANYTHING CLOSE TO THE KIND OF PROGRESS
28 THAT I THINK WE SHOULD HAVE.

1 I THINK IT WILL TAKE ME IN EXCESS OF A DAY TO
2 BE ABLE TO CHART OUT WHAT I EXPECT THE MOTION WILL
3 RAISE, AND THE PLAINTIFF'S CONTENTION AS TO WHAT WAS
4 FALSE INFORMATION AND WHAT WAS NOT.

5 I NOTED IN SOME OF THE CASES THAT WE HAVE ALL
6 READ -- AND I THINK IT INCLUDES SOME OF THE CASES THAT
7 HAVE BEEN CITED TO ME SEVERAL TIMES BY THE PLAINTIFF,
8 AND I THINK SOME OF THE SAME CASES HAVE BEEN CITED TO
9 ME BY THE DEFENSE --

10 THAT AT LEAST ONE OF THOSE CASES, I REMEMBER
11 THE COURT OF APPEAL COMMENTED THAT THEY THOUGHT THAT
12 THE WAY THAT THE JUDGE HAD GONE ABOUT ASSIMILATING THE
13 INFORMATION OF THE CLAIMED DECEPTIVE INFORMATION, BY
14 TAKING THE DECISION OF THE TRIAL COURT AND CREATING ITS
15 OWN CHART --

16 I'M NOT SURE, DIDN'T SAY HOW THEY DID IT, I
17 DON'T KNOW IF IT WAS COLOR CODED OR HOW IT WAS DONE --
18 BUT CHARTED WHAT INFORMATION WAS ALLEGED TO BE FALSE,
19 WHAT INFORMATION SHOULD HAVE BEEN THERE.

20 AND IT WAS PRESENTED SO THAT THE COURT OF
21 APPEAL, I THINK, THEY'RE NEVER VERY COMPLIMENTARY, BUT
22 SEEMED TO BE RATHER COMPLIMENTARY OF HOW THE JUDGE HAD
23 GONE ABOUT DOING IT.

24 I THINK THAT TO A CERTAIN EXTENT, I BELIEVE
25 THAT MR. DANER HAS ATTEMPTED TO DO THAT, AT LEAST IN
26 PART WHAT HE FILED YESTERDAY, BECAUSE I DID SEE IN HERE
27 TRANSCRIPTS WHERE THERE WERE THINGS THAT HE INDICATED
28 TO ME THAT YOU THOUGHT WERE FALSE AND SHOULD COME OUT,

1 AND OTHER THINGS THAT HAD NOT BEEN NOT STATED BUT
2 SHOULD HAVE BEEN STATED.

3 IS THAT CORRECT?

4 MR. DANER: YES, THAT'S CORRECT, YOUR HONOR.
5 I WAS ADDRESSING -- WE ATTEMPTED TO DO THAT IN REGARDS
6 TO THE PETITION. THAT WAS ONLY TWO PAGES, SO WE WERE
7 KIND OF FITTING THINGS IN THERE. SEPARATELY WE WERE
8 ATTEMPTING TO MAKE SURE THAT --

9 THE COURT: THAT'S WHY I WANTED TO JUST TALK
10 TO YOU ON WHAT WE HAVE SO FAR. AND I MENTIONED ONLY
11 THAT ONE APPELLATE APPEAL, SEEMED TO THINK THAT WAS A
12 GOOD WAY OF GOING ABOUT IT.

13 BEFORE I EVEN READ THAT, IT WAS MY THOUGHT
14 THAT I WAS GOING TO HAVE TAKE ALL THE DOCUMENTS FOR
15 EACH ONE OF THOSE HEARINGS AND DO THAT MYSELF TO SEE
16 WHAT IT WOULD LOOK LIKE IF YOU TOOK OUT WHAT SHOULDN'T
17 BE THERE AND ADDED WHAT SHOULD BE THERE, IN ORDER TO
18 MAKE THE DECISION AS A MATTER OF LAW.

19 AND AS TO WHETHER OR NOT -- THEN WHAT YOU HAD
20 WITHOUT WHAT SHOULD HAVE BEEN THERE, AND WASN'T, AND
21 WITHOUT WAS THERE AND SHOULDN'T HAVE, WOULD THERE BE A
22 SUFFICIENT BASIS FOR THE COURT TO HAVE MADE THE
23 DECISION IT DID.

24 IF THERE WAS, THEN THE COURT MAKES THE
25 DECISION THAT IT WAS A SUFFICIENT BASIS REGARDLESS. IF
26 IT WASN'T, THEN THE CLAIMS WOULD PROCEED. SO I THINK
27 THAT I'M GOING TO HAVE DO THAT. AND THIS JUST ISN'T
28 GOING TO HAPPEN EASILY.

1 INCIDENTALLY, I DON'T -- I'M NOT INFERRING
2 ANYTHING WHEN I TELL YOU I'VE BEEN WORKING ON THE CASE
3 SEVEN DAYS A WEEK NOW FOR SEVERAL MONTHS BECAUSE THE
4 TRUTH IS SOME OF THAT TIME WAS SPENT ON OTHER MATTERS.

5 NOW THAT I THINK ABOUT IT, THE WEEKENDS ARE
6 THE ONLY TIME I CAN FIND TO DO IT. THE CLERK
7 HAS ONE THIS MORNING BUT I'VE BEEN EVEN DOING IT
8 NIGHTS. AND I HAVE ANOTHER ONE I'M WORKING ON THAT
9 TIME IS RUNNING ON.

10 SO IT WASN'T ALL THIS CASE, BUT THE POINT IS,
11 LIKE YOU, I SUSPECT THIS HAS INVOLVED SOME LONG
12 DAYS AND -- YOU CAN BE SEATED, MR. DANER. I'LL GET
13 BACK TO YOU.

14 UNLESS YOU HAVE SOMETHING YOU WANTED TO TELL
15 ME RIGHT NOW, I'M HAPPY TO HEAR FROM YOU.

16 MR. DANER: WELL, I WAS JUST GOING TO KIND OF
17 UPDATE YOU ON SOME OF THAT -- THE PROGRESS WE'RE MAKING
18 ON THAT. FOR THE DETENTION REPORT AND THE PETITION, WE
19 DID ADDRESS THAT IN MORE DETAIL IN THE PAPERS, AND
20 WE -- WITH THAT, WE PROBABLY COULD TRY TO GO BACK AND
21 DEAL WITH A LINE-OUT, STRIKEOUT, ADD INFORMATION IN.

22 THE ONE ISSUE I SEE FOR THE OTHER HEARINGS ARE
23 IT'S A CUMULATIVE EVENT IN THAT THERE'S SEVERAL
24 DIFFERENT REPORTS WHERE YOU COULD HAVE THE REPORT FILED
25 A MONTH BEFORE THE ACTUAL DISPOSITION HEARING THAT
26 INCLUDES FALSE INFORMATION OR OMITTS FACTS.

27 SO FOR THE REST OF THOSE REPORTS FOR THE FINAL
28 DISPOSITION HEARING, I DON'T KNOW IF IT'S GOING TO BE,

1 GIVEN TIME CONSTRAINTS, POSSIBLE TO GO THROUGH AND DO
2 THAT TYPE OF STRIKEOUT, ADD IN.

3 BUT WE ARE TRYING TO WORK ON AN INDEX, LIKE A
4 KIND OF SPREADSHEET, WITH THE LIE, EVIDENCE SHOWING THE
5 LIE, AND AN ADMISSION, EVIDENCE SHOWING THE ADMISSION.
6 SO THAT SHOULD BE ABLE TO HOPEFULLY HELP AID YOU IN THE
7 DETERMINATIONS.

8 THE COURT: OKAY. WELL, I HAVEN'T GOT TO
9 EXACTLY HOW WE'RE GOING TO FORMAT THIS. AND -- I DON'T
10 KNOW. AND I SHOULD ADD THAT I BELIEVE THAT IN EACH OF
11 THESE INSTANCES, THE JUDICIAL OFFICER PLACED ON THE
12 RECORD THE DECISION.

13 AND -- AS THEY ARE REQUIRED TO DO. AND I KNOW
14 I'VE GOT SOME TRANSCRIPTS, I HAVEN'T LOOKED AT THEM. I
15 DID GLANCE AT A TRANSCRIPT OF THE COURT'S DECISION
16 PLACED ON THE RECORD AT THE DETENTION HEARING ON
17 NOVEMBER 6TH.

18 JUST SAW WHAT IT WAS, AND WHAT WAS THERE. AND
19 SO THAT DECISION WILL -- THAT THEY PLACED ON THE
20 RECORD, SHOULD PROVIDE INFORMATION AS TO WHAT THE COURT
21 WAS RELYING ON.

22 BUT IT SEEMS TO ME THAT IT MAY BE A LITTLE
23 MORE COMPLEX BECAUSE THERE'S -- YOUR CONTENTION IS
24 THERE'S ALSO INFORMATION THAT THE COURT DIDN'T HAVE. I
25 MEAN, IT'S ONE THING TO LOOK AT WHAT THEY DID HAVE, AND
26 YOU SAY THAT'S FALSE, AND IT SHOULDN'T HAVE BEEN RELIED
27 UPON.

28 THAT'S ONLY PART OF THE PICTURE BECAUSE THAT

1 WOULD ONLY GIVE YOU HALF THE PICTURE. OKAY. IF THAT
2 WASN'T THERE, IS THERE STILL A REASONABLE BASIS FOR THE
3 JUDICIAL OFFICER TO MAKE THE DECISION?

4 BUT I DON'T THINK YOU CAN MAKE THAT
5 DETERMINATION UNLESS WE KNOW WHAT THE CONTENTION IS,
6 WHAT SHOULD HAVE BEEN THERE.

7 AND THEN TAKE THAT PICTURE OF WHAT THE COURT
8 HAS SAID, WHAT THEY'RE RELYING ON, WHAT SHOULDN'T HAVE
9 BEEN THERE, AND WHAT SHOULD HAVE BEEN THERE, AND MAKE
10 THE DECISION.

11 IS THAT A REASONABLE BASIS -- OR IS THAT THE
12 BASIS FOR WHICH A JUDICIAL OFFICER WOULD OR WOULD
13 NOT -- WOULD MAKE THE SAME DECISION, OR THAT THEY
14 WOULDN'T.

15 AND SO WE'LL HAVE TO FIGURE OUT HOW TO FORMAT
16 ALL THIS. AND I DON'T THINK THAT IT'S YOUR BURDEN TO
17 DO IT, ALTHOUGH I HAVE TO GET THE INFORMATION IN SUCH A
18 WAY THAT I CAN UNDERSTAND WHAT IT IS.

19 AND I DON'T KNOW HOW I'M GOING TO GET THIS
20 DONE OTHER THAN TAKING SOME TIME OFF FROM THE JURY.

21 MR. DANER: WE ARE IN THE PROCESS OF, AS I
22 MENTIONED, OF KIND OF CREATING A SPREADSHEET TO TRY TO
23 AID IN THAT PROCESS.

24 AND THE FIRST THING WE DID LOOK AT, AS YOUR
25 HONOR MENTIONED IS, THE JUVENILE COURT DID ADDRESS --
26 STATE WHAT THE BASIS FOR A LOT OF THEIR FINDINGS WERE,
27 AND APPLIED SIGNIFICANCE TO SOME OF THE STATEMENTS THAT
28 WERE IN THERE -- IN THEIR FINDINGS.

1 SO THAT WAS GOING TO BE OUR FIRST FOCUS, AND
2 THEN KIND OF GO FROM THERE. SO WE ARE IN THE PROCESS
3 OF TRYING TO AT LEAST ASSEMBLE THE ASPECTS THAT WE
4 THINK WOULD GO TO ADDRESS THIS ISSUE.

5 THE COURT: ALL RIGHT.

6 MR. MCMILLAN: YOUR HONOR, JUST ONE THING VERY
7 QUICKLY. WE DO HAVE OUR PRELIMINARY INDEX. THIS HAS
8 SORT OF BEEN AN IMPORTANT ISSUE FOR US, IT'S BASICALLY
9 ALL HANDS ON DECK, ALL NIGHT FOR THE LAST COUPLE DAYS.
10 SO WE DO HAVE A PRELIMINARY INDEX.

11 IT'S NOT TOTALLY COMPLETE, IT'S STILL A WORK
12 IN PROGRESS. WE'RE GOING TO MEET ON IT TONIGHT, FRIDAY
13 NIGHT, SATURDAY ALL DAY, AND JUST GET SOMETHING SO WE
14 CAN GET CLOSE TO COMPLETION. BUT SHE'S READY TO FILE
15 SOMETHING NOW, JUST SO THAT YOU HAVE IT.

16 MS. CHUNG: BASICALLY, YOUR HONOR, THE WAY
17 I'VE OUTLINED IT, IT IS IN A SPREADSHEET, OUTLINING
18 SPECIFICALLY THE LIES AND/OR OMISSIONS IN THE DETENTION
19 REPORT, AS ONE SPREADSHEET.

20 THE LIES ON ONE COLUMN, THE EVIDENCE ON THE
21 OTHER SIDE AND/OR EXCULPATORY INFORMATION OR MISSING
22 INFORMATION ON THE OTHER. SO I'M ADDRESSING THE
23 DETENTION REPORT.

24 THEN WE'LL ADDRESS ISSUES THAT THE JUVENILE
25 COURT RELIED UPON ON NOVEMBER 6TH, WHEN IT MADE ITS
26 RULING. WHAT IT INDICATED THAT THE REASONINGS WERE.
27 WHAT INFORMATION IT DIDN'T HAVE AND/OR SHOULD HAVE BEEN
28 PRESENTED TO THE COURT AT THE TIME.

1 AND THEN I KEEP ON MOVING DOWN THE LINE, IN
2 TWO COLUMNS. IT'S -- CURRENTLY IN ITS FORMAT. IF
3 THERE'S ANY SUGGESTIONS YOU THINK WOULD BE HELPFUL,
4 WE'LL DO THAT.

5 THE COURT: WELL, IT SOUNDS LIKE THAT WOULD BE
6 HELPFUL, YES. I GUESS I'M GOING TO HAVE TO SEE IT.
7 BUT, YES, I THINK SOMETHING -- WE DON'T HAVE TO DO
8 THIS, WE DON'T HAVE TO BE DIGGING THROUGH A LOT OF
9 DOCUMENTS.

10 I THINK WE NEED TO HAVE WHAT THE DECISION WAS,
11 WHAT THE COURT SAID THEY WERE RELYING ON OR NOT RELYING
12 ON. I THINK SOME OF THE DECISIONS MIGHT HAVE SAID
13 THINGS THEY THOUGHT WERE -- MOST OF IT THEY -- SOME
14 THINGS THEY DIDN'T MENTION AT ALL.

15 SO IF THEY DIDN'T MENTION IT IN THE DECISION,
16 IT WOULD APPEAR THAT IT WASN'T SOMETHING THAT THEY
17 RELIED ON. DOESN'T MEAN IF THEY FOUND IT TO BE UNTRUE,
18 THEY JUST DIDN'T RELY ON IT.

19 THIS IS GOING TO TAKE TIME. AND THE DEFENSE
20 HAS TO HAVE TIME TO BE ABLE TO DIGEST WHAT YOUR CLAIM
21 IS ON THESE THINGS, TO BE ABLE TO RESPOND TO IT.

22 MR. MCMILLAN: YOUR HONOR, JUST TO MAKE SURE
23 THAT I'M UNDERSTANDING THIS CLEARLY, WHAT --
24 OR MAYBE --

25 WHAT WE'RE DOING HERE, OR WHAT YOU'D LIKE TO
26 SEE, I GUESS AS AN ORDER OF PRIORITY, AND THIS MAKES
27 SENSE TO ME, IS TAKE THE TRANSCRIPT OF THE HEARING
28 WHERE IT'S CLEAR, THE COURT MAKES CLEAR WHAT IT IS

1 SHE'S RELYING ON IN MAKING THE DECISION.

2 ADDRESS -- IN THE TRANSCRIPT, ADDRESS THOSE
3 ISSUES FIRST. SO NOT NECESSARILY FOCUS ON THE REPORTS
4 THEMSELVES, BUT THE INFORMATION THAT THE JUDGE GLEANED
5 FROM THOSE REPORTS TO SUPPORT --

6 THE COURT: RIGHT. I THINK THAT'S PROBABLY
7 RIGHT. I THINK THE THINGS YOU THINK ARE FALSE -- IF WE
8 HAVE WHAT THE COURT RELIED ON, AND THEN SOMETHING THAT
9 DESIGNATES, YOU KNOW, WE SAY THIS NUMBER 1, 3, 8, 9,
10 ARE FALSE, TO BE ABLE TO SAY, TELL US WHY IT'S FALSE.

11 AND THEN ANOTHER LISTING, AND THIS MAY VERY
12 WELL BE, WHAT HAS ALREADY BEEN ALONG THIS LINE TURNED
13 IN, IS WHAT THEY FEEL SHOULD HAVE BEEN THERE AND SHOULD
14 HAVE BEEN CONSIDERED.

15 MR. MCMILLAN: RIGHT. OKAY. AND THEN AS
16 WE'RE DOING THAT SPREADSHEET, WHAT WE'VE BEEN DOING IS
17 THE FACTUAL MATERIAL THE COURT -- OR THE FACTUAL
18 FINDING THE COURT MADE TO SUPPORT ITS DECISION.

19 CITATIONS TO THE -- FALSE STATEMENT --
20 EVIDENCE TO SUPPORT THE FALSE STATEMENT. BUT WE'VE
21 ONLY BEEN GETTING THE ROUGH TRANSCRIPTS.

22 AS TO THE MATERIAL THAT WAS PRESENTED TO THE
23 JURY WITH THE APPROVED, COURT-APPROVED VIDEO
24 TRANSCRIPTS, THAT'S EASY FOR US TO PULL IT AND
25 REFERENCE IT.

26 THE ROUGH TRANSCRIPTS IS A LITTLE BIT
27 DIFFERENT SITUATION, BUT NOT MUCH. I MEAN, WE HAVE
28 ACCESS TO IT.

1 WHAT I'M WONDERING IS, ON THE SPREADSHEET, OUR
2 APPROACH HAS BEEN, JUST SO THAT WE HAVE A LIST, TO
3 FOCUS ON GETTING THAT LIST TOGETHER. BUT IT SOUNDS
4 LIKE WE'VE GOING TO HAVE A COUPLE MORE DAYS TO GET THIS
5 DONE.

6 AND I'M WONDERING IF YOU WOULD ACTUALLY LIKE
7 US, AND WE CAN DO THIS, TO PRINT OUT THE SPECIFIC
8 CITATIONS TO EVIDENCE. WE CAN BIND THEM FOR YOU, AND
9 TAB THEM SO THAT THEY SORT OF FOLLOW AND FLOW WITH THE
10 SPREADSHEET.

11 IT'LL TAKE A LITTLE EXTRA TIME, A LITTLE EXTRA
12 WORK, BUT WE CAN DO IT. AND IF THAT WOULD BE HELPFUL,
13 WE'RE MORE THAN HAPPY TO DO IT. I KNOW YOU DON'T WANT
14 A LOT MORE PAPER.

15 THE COURT: I'M SURE IT WOULD BE HELPFUL, BUT
16 I DON'T WANT TO -- I DON'T HAVE A SUFFICIENTLY STRONG
17 OPINION AS TO WHAT IS GOING TO BE BEST. BECAUSE THIS
18 IS A UNIQUE SITUATION, AS FAR AS I'M CONCERNED.

19 SO I DON'T HAVE ANY EXPERIENCE TO RELY ON THAT
20 WOULD CAUSE ME TO BE ABLE TO SAY WHAT IS THE BEST WAY
21 OF PRESENTATION FOR THIS INFORMATION. BUT THIS GETS ME
22 BACK TO THE TIMING, AS TO WHEN WE'RE GOING TO GET THIS
23 DONE.

24 MR. MCMILLAN: WELL, WE HAVE OUR PRELIMINARY
25 WORK ON THE -- WHAT WE SEE AS BEING THE MAIN -- CALL IT
26 THE BIG ALLEGED LIES AND THE BIG ALLEGED OMISSIONS. WE
27 HAVE THAT PRELIMINARY WORK SUBSTANTIALLY DONE. AT
28 LEAST THAT'S MY UNDERSTANDING.

1 AND UNDERSTAND, I HAVEN'T BEEN DEEP IN EVERY
2 ASPECT OF IT. I'M JUST SORT OF A MANAGEMENT POSITION,
3 MAKING SURE WHERE WE'RE GOING, WHAT WE'RE DOING, AND
4 THAT IT'S ALL IN PLAN. SOME OF IT I HAVE BEEN DEEPLY
5 INVOLVED IN.

6 BUT IT'S MY UNDERSTANDING THAT THE MAIN BIG
7 ISSUES WE HAVE AT LEAST PRELIMINARY ADDRESSED IN THIS
8 NEW INDEX.

9 WE DON'T HAVE A TABBED BINDER YET OF ALL THE
10 EVIDENCE, WHETHER IT'S TESTIMONIAL OR DOCUMENTARY, THAT
11 SUPPORTS EACH OF THE EITHER OMISSIONS OR FALSE
12 STATEMENTS, OR CLAIMS OF FALSE STATEMENTS.

13 BUT WE ARE WORKING ON THAT AND IT'S JUST GOING
14 TO TAKE A LITTLE BIT OF TIME. WE DON'T HAVE A
15 HIGH-SPEED PRINTER UP HERE OR A HIGH-SPEED SCANNER,
16 THAT'S ALL BACK IN THE OFFICE.

17 IT'S ALL GOTTA HAPPEN BACK THERE AND RIGHT
18 NOW, I ONLY HAVE ONE GUY BACK THERE. MY ENTIRE STAFF
19 IS UP HERE. WE'RE DOING THE BEST WE CAN.

20 MR. GUTERRES: SO, YOUR HONOR, HERE'S MY
21 CONCERN, AND -- WHICH IS THAT IF THIS CHART, AND I
22 DON'T -- I HAVEN'T OBVIOUSLY SEEN WHAT THEY'VE JUST
23 SUBMITTED, BUT MY CERTAIN IS, YOU KNOW, WE'VE BEEN
24 PROVIDED ONE SET OF LISTINGS OF OMISSIONS OR
25 MISREPRESENTATIONS.

26 AND TO THE EXTENT THEY KEEP ADDING, I'M NOT
27 GOING TO HAVE A DOCUMENT TO RESPOND TO IF THEY KEEP
28 ADDING REPRESENTATIONS AND/OR OMISSIONS. AT SOME

1 POINT, WE NEED TO HAVE THE LIST SO THAT WE CAN ADDRESS
2 ALL OF THEM.

3 AND TO THE EXTENT THAT IT KEEPS BEING A FLUID
4 ISSUE, IT BECOMES MORE DIFFICULT FOR US TO BE ABLE TO
5 RESPOND.

6 THE COURT: I AGREE. AND I DON'T INTEND FOR
7 YOU TO ADDRESS IT UNTIL I HAVE WHATEVER THE INFORMATION
8 IS THAT'S BEING RELIED UPON. ALSO, I'M NOT GOING TO
9 TRY TO WORK WITH A MOVING TARGET.

10 SO IT'S GOING TO HAVE TO BE SUBMITTED HERE AND
11 THAT HAS TO BE THE BASIS FOR WHAT THEY SAY SHOWS THE
12 DECISION SHOULD HAVE BEEN, WOULD HAVE BEEN DIFFERENT IF
13 THE JUDICIAL OFFICER HAD RECEIVED DIFFERENT
14 INFORMATION.

15 MR. GUTERRES: THANK YOU.

16 THE COURT: SO WE'RE GOING TO HAVE TO HAVE IT.
17 SO AGAIN, THIS GETS ME BACK TO THE QUESTION OF TIMING.
18 THIS DOESN'T DO US ANY GOOD NOW.

19 BUT I COULDN'T HELP REMEMBER THAT IN THOSE
20 CASES WE'VE ALL LOOKED AT, WHERE IN A NUMBER OF
21 INSTANCES, THE COURT OF APPEAL INDICATED THAT THE
22 EARLIER IN A CASE YOU CAN DO THIS, THE BETTER.

23 AND IN THINKING ABOUT IT, AS I SAID, IT WON'T
24 DO US ANY GOOD NOW. WE PROBABLY SHOULD HAVE DONE THIS
25 BEFORE WE STARTED. WE PROBABLY SHOULD HAVE DONE IT AT
26 THE TIME THAT WE WERE DOING ALL THE OTHERS.

27 MOTIONS IN LIMINE AND VIDEO DEPOSITIONS AND SO
28 ON WHEN WE DIDN'T HAVE A JURY TO WORRY ABOUT. THIS IS

1 ALL COMPLICATED BY THE FACT THAT WE HAVE THE JURORS,
2 AND WE ARE STARTING TO LOSE THEM, AND MAY END UP LOSING
3 MORE.

4 SO I MENTION THAT ONLY -- THAT I RECOGNIZE
5 THERE PROBABLY WOULD HAVE BEEN A MORE PROPITIOUS TIME
6 TO ADDRESS THIS, AND IT MIGHT VERY WELL BE BEFORE YOU
7 EVEN PICK YOUR JURY. I DON'T KNOW.

8 MR. DANER: YOUR HONOR, I JUST WANTED TO
9 ADDRESS --

10 THE COURT: SOMETIMES, THOUGH -- PERHAPS THE
11 DISADVANTAGE OF THAT IS, YOU HAVEN'T HEARD THE
12 TESTIMONY. BUT BY AND LARGE, WE ALL KNOW WHAT'S IN THE
13 DOCUMENTS. YOU HAD DEPOSITIONS OF ALL THE PLAYERS.

14 SO I'M NOT SAYING THAT THAT WOULD BE THE BEST
15 TIME. IT JUST OCCURRED TO ME. I UNDERSTAND WHY
16 THEY'RE SAYING EARLIER THE BETTER. I THINK FOR
17 DIFFERENT REASONS THOUGH, THAN WE'RE DEALING WITH HERE.

18 MY CONCERN RIGHT NOW IS JUST THE FACT THAT WE
19 HAVE THE JURY, AND I'M THINK GOING TO HAVE THE SEND
20 THEM HOME FOR NOT NECESSARILY CONSECUTIVE DAYS, BUT
21 WE'RE GOING TO HAVE TO BUILD IN DAYS OFF FOR THEM SO WE
22 CAN CATCH UP WITH THIS.

23 RIGHT NOW WE'RE -- IF NOT BURIED, CERTAINLY
24 BEARING A GREAT LOAD OF PAPER, DOCUMENTS, THAT PART OF
25 IT. SO, MR. DANER --

26 MR. DANER: I JUST WANTED TO ADDRESS ONE OF
27 MR. GUTERRES'S CONCERNS, AND MIGHT ALSO PLAY INTO SOME
28 OF THE TIMING ISSUES THAT YOU WERE JUST PREVIOUSLY

1 DISCUSSING.

2 AND THAT WHEN WE'RE LOOKING AT THE MATERIALITY
3 ISSUE, THIS THING TELLS US THAT WHEN WE LOOK AT FALSE
4 STATEMENTS AND OMISSIONS THAT THE COURT ACCEPTS AS
5 TRUE, THE FACTS AS ASSERTED BY THE PLAINTIFF, SO --

6 THE COURT: CAN YOU HOLD ON JUST A SECOND? I
7 CAN'T -- I CAN'T HEAR BECAUSE THE CLERK IS TALKING.

8 OKAY. GO AHEAD.

9 MR. DANER: AS LISTED INSTRUCTIONS TO THE
10 MATERIALITY BRIEF THAT I SUBMITTED YESTERDAY, IT DOES
11 STATE THAT THE MATERIALITY OF THE FALSE STATEMENTS,
12 CHALLENGE OMISSIONS, THE COURTS ACCEPTS AS TRUE THE
13 FACTS AS ASSERTED BY THE PLAINTIFFS.

14 SO THAT MIGHT HELP IN CONSIDERING THE TIMING
15 FOR THE ANALYSIS AND THAT WHAT WE PRESENT AS THE FACTS
16 AS BEING OMISSIONS ACCEPTED AS TRUE.

17 IT DOESN'T NEED TO BE -- THERE'S NO
18 CONSIDERATION FOR ANY CHALLENGE THAT THE DEFENDANTS
19 MIGHT BE BRINGING AGAINST THIS.

20 THE COURT: OKAY.

21 MR. DANER: THANK YOU, YOUR HONOR.

22 MR. GUTERRES: WELL, YOUR HONOR, IT HAS TO BE
23 SUPPORTED BY THE EVIDENCE. I MEAN, THIS ISN'T THE
24 COMPLAINT AND A DEMURRER.

25 IT HAS -- YOU KNOW, IF THEY SET FORTH CERTAIN
26 EVIDENCE, AND WE DISPUTE THAT THAT'S WHAT THE EVIDENCE
27 SAYS, WE CERTAINLY SHOULD BE ABLE TO CHALLENGE IT.

28 I DON'T THINK LISTING STANDS FOR THE

1 PROPOSITION THAT PLAINTIFF CAN JUST MAKE AN ALLEGATION
2 AND THE COURT HAS TO ACCEPT IT.

3 MR. DANER: YOUR HONOR, THIS WOULD BE DECIDED
4 ON A NON-SUIT. SO THE NON-SUIT ONLY CHALLENGES THE
5 LEGAL SUFFICIENCY OF THE EVIDENCE. IT GOES BACK TO,
6 BASICALLY, A DEMURRER OF SUMMARY JUDGMENT WHERE ALL
7 FACTS ACCEPTED AS TRUE, ALL INFERENCES DRAWN IN OUR
8 FAVOR.

9 WHEN WE PRESENT EVIDENCE OF AN OMISSION FROM
10 THE DOCTOR, FROM SOME OTHER WITNESS, SAYING HERE'S A
11 STATEMENT THAT WOULD BE EXCULPATORY, THAT'S ACCEPTED AS
12 TRUE, ALL INFERENCES ARE DRAWN. AND AS LISTING
13 INSTRUCTS, IT'S ACCEPTED AS TRUE BY THE COURT.

14 THE COURT: ALL RIGHT. WELL, I'VE THOUGHT
15 ABOUT THAT ISSUE AS WELL. AND --

16 MR. GUTERRES: AND, ULTIMATELY, AND -- PARDON
17 ME FOR INTERRUPTING, I MEAN, THE COURT'S STILL GOING TO
18 HAVE TO MAKE THE DECISION AT SOME POINT OR OTHER.

19 EVEN IF THE COURT WERE TO DENY A NON-SUIT
20 BEFORE -- THIS ISSUE STILL ISN'T GOING TO GET TO THE
21 JURY. BASICALLY THE COURT WOULD STILL HAVE TO MAKE THE
22 DETERMINATION, EXCEPT THIS TIME WOULD BE WITH ALL THE
23 EVIDENCE.

24 SO I THINK EITHER WAY, WE HAVE TO GET THERE AT
25 SOME POINT. UNLESS, OF COURSE, THE COURT AGREES WITH
26 OUR POSITION ON THE NON-SUIT.

27 BUT I THINK ULTIMATELY, AT SOME POINT OR
28 ANOTHER, IF THE COURT DOES DENY THE NON-SUIT, THEN THE

1 COURT'S STILL GOING TO HAVE TO ULTIMATELY MAKE THAT
2 DECISION BECAUSE THAT'S NOT A DECISION FOR THE JURY.

3 THE COURT: OKAY. AND I'M SORRY THAT I'M NOT
4 QUITE FOLLOWING. I KNOW IT'S MY FAULT.

5 SO YOU'RE SAYING THAT IF THE DECISION WAS MADE
6 IN CONNECTION WITH THE MOTION FOR NON-SUIT, DENYING THE
7 NON-SUIT, THEN THAT WOULD BE, AS TO THE CLAIMS BASED ON
8 DECEPTIVE INFORMATION, COVERING A BROAD RANGE OF
9 UNTRUTHFUL AND FAILURE TO PROVIDE WHAT SHOULD HAVE BEEN
10 PROVIDED, THAT EVEN IF THE MOTION FOR NON-SUIT WAS
11 DENIED, THAT THERE WOULD BE A FURTHER DETERMINATION OF
12 THESE ISSUES AGAIN?

13 MR. GUTERRES: WELL, SINCE THE NON-SUIT WOULD
14 BE BASED ON THE EVIDENCE THAT'S BEEN PRESENTED --

15 THE COURT: RIGHT.

16 MR. GUTERRES: -- TO DATE, IF THE COURT DENIES
17 THE NON-SUIT, WE WOULD BE INTRODUCING EVIDENCE IN OUR
18 CASE IN CHIEF. AND THEN AT THAT POINT, THE COURT STILL
19 HAS TO MAKE THE DETERMINATION WHETHER OR NOT THE -- THE
20 OMISSIONS OR MISREPRESENTATIONS WERE MATERIAL, BASED ON
21 ALL OF THE EVIDENCE BEFORE --

22 BECAUSE STULL IS NOT A MATTER -- I BELIEVE OUR
23 POSITION WOULD BE THAT IT'S STILL A MATTER FOR COURT TO
24 DECIDE WHETHER OR NOT IT'S MATERIAL, BASED ON ALL THE
25 EVIDENCE.

26 IT'S STILL NOT A QUESTION FOR THE JURY TO MAKE
27 THAT DETERMINATION.

28 THE COURT: OKAY. I DO UNDERSTAND WHAT YOU'RE

1 SAYING.

2 MR. DANER: YOUR HONOR, I'LL JUST REFER YOU
3 BACK TO LISTING. THE MATERIALITY DETERMINATION ON
4 WHETHER OR NOT THESE LIES AND OMISSIONS ARE MATERIAL IS
5 THE QUESTION OF LAW FOR THE COURT.

6 AND LISTING INSTRUCTS THAT THAT IS ONLY
7 EXAMINING PLAINTIFF'S -- ACCEPT AS TRUE PLAINTIFF'S
8 EVIDENCE. HUH.

9 WHAT I WAS UNDERSTANDING YOU WERE DISCUSSING
10 YESTERDAY IS, ONCE THAT MATERIALITY DETERMINATION HAS
11 BEEN CONDUCTED AND MADE, YOU WERE INDICATING THAT THEN
12 THE JURY WOULD THEN MAKE A DETERMINATION ON WHETHER OR
13 NOT THERE WERE ACTUALLY LIES AND WHETHER OR NOT THERE
14 WAS SUPPRESSION OF EXCULPATORY EVIDENCE.

15 BUT THE MATERIALITY OF THOSE LIES AND
16 OMISSIONS IS A QUESTION OF LAW THAT WOULD DECIDED BY
17 YOU, ACCEPTING AS TRUE ALL THE FACTS PLAINTIFF'S
18 EVIDENCE HAD PRESENTED. SO THERE WOULD NOT BE MULTIPLE
19 MATERIALITY DETERMINATIONS.

20 THERE WOULD BE ONE MATERIALITY DETERMINATION.
21 WE SURVIVE THAT, AS YOU WERE SUGGESTING YESTERDAY OR
22 INDICATING YESTERDAY. THE JURY THEN GETS TO ASK --
23 ANSWER THE QUESTIONS, WERE THERE FALSE STATEMENTS,
24 FABRICATED EVIDENCE, AND SUPPRESSION OF EXCULPATORY
25 EVIDENCE.

26 THE COURT: WELL, MR. MCMILLAN.

27 MR. MCMILLAN: YES, YOUR HONOR.

28 THE COURT: THIS IS RELATED TO WHAT WE'RE

1 TALKING ABOUT. LOOKING AT THE SUGGESTED VERDICT FORMS,
2 THE ONE FOR JUDICIAL DECEPTION --

3 MR. MCMILLAN: WOULD THAT BE THE NINTH CIRCUIT
4 MODEL OR THE ONE WE'VE PRESENTED --

5 THE COURT: I'M LOOKING AT -- DO YOU HAVE THAT
6 SUGGESTED VERDICT FORM?

7 MR. MCMILLAN: POSSIBLY. I SHOULD. IT'S IN
8 ONE OF THESE BINDERS, I THINK.

9 THE COURT: I'M LOOKING AT THE ONE WHICH WAS
10 THE LAST PRODUCT OF ALL THE DISCUSSIONS YOU ALL HAVE
11 HAD. MY QUESTION WAS --

12 MR. MCMILLAN: I MAY BE ABLE TO ANSWER IT.

13 THE COURT: DO YOU HAVE IT THERE,
14 MR. MCMILLAN?

15 MS. CHUNG: VERDICT FORM ONE? CORRECT, YOUR
16 HONOR?

17 THE COURT: VERDICT FORM NUMBER 1 IS ONE THAT
18 I RECEIVED FROM YOU LAST FRIDAY, OCTOBER 7TH. AND THAT
19 WAS THE ONE THAT WE SAID THAT REPRESENTED A BROAD
20 AGREEMENT AS TO WHAT IT WOULD LOOK LIKE.

21 SO THE QUESTION I HAVE IS SIMPLY, IN THERE,
22 BEGINNING -- THE FIRST TIME THAT THE CLAIM OF JUDICIAL
23 DECEPTION COMES UP IN THIS VERDICT FORM, AND I'M JUST
24 USING THIS BY WAY OF REFERENCE SO YOU'LL SEE WHAT IT IS
25 I'M ASKING YOU IS ON PAGE 5 -- NO, IT'S NOT -- PAGE 6
26 OF 18, WHERE YOU --

27 MR. MCMILLAN: IN THIS VERSION, YOUR HONOR,
28 IT'S PAGE 7. I THINK YOU'RE LOOKING AT THE JUDICIAL

1 DECEPTION THAT WOULD GO FROM DETENTION UP TO BUT NOT
2 INCLUDING THE FIRST JURISDICTIONAL HEARING IN JANUARY.

3 THE COURT: OKAY. WELL, I'M LOOKING AT A
4 DIFFERENT ONE, BUT -- I'M LOOKING AT THE ONE I GOT LAST
5 FRIDAY. BUT MY QUESTION IS THIS: WHERE DID THIS
6 SUGGESTION ABOUT THE VERDICT FORM ON JUDICIAL DECEPTION
7 COME FROM?

8 IS IT IN CACI? IF IT IS, I WONDER WHICH ONE.
9 WAS IT A SUGGESTED VERDICT FORM FROM THE FEDERAL
10 PATTERN INSTRUCTIONS, OR WAS THIS SOMETHING WITH
11 QUESTIONS WERE COMPOSED BASED ON YOUR UNDERSTANDING OF
12 WHAT THE CASE REQUIRED?

13 MR. MCMILLAN: IT'S SORT OF AMALGAMATION OF
14 BOTH. I UNDERSTAND YOUR HONOR'S QUESTION. I WANT TO
15 MAKE SURE I UNDERSTAND IT BEFORE I ANSWER IT.

16 THE QUESTION BEING WHERE THE SPECIFIC
17 QUESTIONS OR THE SUBJECT MATTER OF EACH OF THE
18 QUESTIONS WAS DERIVED FROM, AS WELL AS, I PRESUME, THE
19 ORDER IN WHICH THEY COME ABOUT.

20 IS THAT WHAT WE'RE LOOKING FOR?

21 THE COURT: I'M REALLY ASKING, WHERE DID THESE
22 QUESTIONS COME FROM?

23 MR. MCMILLAN: OKAY. IT'S AMALGAMATION OF THE
24 CASE LAW. A LOT OF THE CASE LAW THAT -- IN VARIOUS --
25 ONE FORM OR ANOTHER HAS ALREADY BEEN BEFORE THE COURT,
26 SOME IN JURY INSTRUCTIONS, SOME IN BRIEFING.

27 AND THEN ALSO, I BELIEVE, AND I WILL LOOK TO
28 MAKE SURE THAT IT'S CACI -- I THINK IT'S BASED ON

1 CACI 3000.

2 THE COURT: THE VERDICT FORM?

3 MR. MCMILLAN: YEAH. AND THERE'S BASICALLY
4 FIVE QUESTIONS THAT NEED TO BE ANSWERED. AND I THINK,
5 IF I RECALL, AND I'M JUST DOING THIS FROM MEMORY. I
6 DON'T HAVE THE UNFORMATTED FORM IN FRONT OF ME.

7 BUT AS I RECALL, THE VERDICT FORM GOES
8 SOMETHING LIKE, THE RIGHT -- WAS THE RIGHT -- WAS A
9 RIGHT VIOLATED. AND THEN IT SAYS, NAME OUT THE
10 SPECIFIC RIGHT OR SOMETHING LIKE THAT.

11 AND THEN, WERE THEY ACTING IN THE COURSE AND
12 SCOPE OF THEIR DUTIES, AND, YOU KNOW, DID THEY DO THIS
13 THING WHEN THEY WERE ACTING IN THE COURSE AND SCOPE OF
14 THEIR DUTIES.

15 I'M LOOKING AT THE WRONG ONE, I'M LOOKING
16 AT 3000. OKAY, 3000. FIVE BASIC QUESTIONS THERE. THE
17 RIGHT THAT WAS VIOLATED. YOU KNOW, IN OUR CLAIM, HOW
18 IT WAS VIOLATED IS THE OVERARCHING ISSUE.

19 AND THEN THE FIRST QUESTION IS WHETHER OR NOT
20 ONE OR MORE OF THE DEFENDANTS ENGAGED IN THE CONDUCT
21 THAT WOULD HAVE VIOLATED THE RIGHT. HERE, THAT CONDUCT
22 IS ALLEGED TO BE DECEPTION IN PRESENTATION OF EVIDENCE.

23 THE SECOND QUESTION BEING, IF THEY DID, YOU
24 KNOW, IF WE PROVE THEY DID THAT, DID ONE OR MORE OF THE
25 DEFENDANTS, WERE THEY ACTING OR PURPORTING TO ACT IN
26 THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

27 THE REPORTER: I'M SORRY?

28 MR. MCMILLAN: I'M SORRY. ONE OR MORE OF THE

1 DEFENDANTS, WHEN THEY DID WHATEVER IT IS THEY'RE BEING
2 ATTACKED FOR, WERE THEY ACTING OR PURPORTING TO ACT IN
3 THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

4 THIRD QUESTION BEING, ONE OR MORE OF THE
5 DEFENDANTS' CONDUCT, THAT WOULD BE THE CONDUCT
6 REFERENCED IN THE FIRST TWO QUESTIONS, DID IT VIOLATE
7 RAFAELINA DUVAL'S RIGHT.

8 AND IN THIS PARTICULAR INSTANCE, WITH RESPECT
9 TO DECEPTION, IT'S THE RIGHT TO REMAIN FREE OF
10 PRESENTATION OF DECEPTIVE EVIDENCE IN JUVENILE COURT
11 PROCEEDINGS.

12 SO WE TRIED TO FOLLOW THE JURY INSTRUCTION
13 WITH THE QUESTIONS. AND THEN, TO DEFINE THE RIGHT THAT
14 WE'RE LOOKING AT, WE REFERENCED CASE LAW.

15 THE COURT: ALL RIGHT. THANK YOU. THIS JUST
16 LEADS ME BACK TO WHAT MR. DANER WAS TALKING TO ME
17 ABOUT, AND MR. GUTERRES. AND THE QUESTION I HAVE IS
18 THAT ON THIS CLAIM OF DECEPTION.

19 LET'S SAY THAT THE -- AS TO ANY ONE OF THEM,
20 THE MOTION FOR NON-SUIT IS DENIED AFTER THE COURT
21 ENGAGES IN THE INQUIRY WHETHER, WITHOUT THE FALSE
22 INFORMATION AND WITH INFORMATION PLAINTIFF CLAIMS
23 SHOULD HAVE BEEN PRESENTED, THAT THERE WAS A BASIS,
24 REASONABLE BASIS, FOR A JUDICIAL OFFICER TO MAKE THE
25 DECISION THEY MADE.

26 NOW, I FORGET THE MAGIC WORDS, BUT THAT'S
27 ESSENTIALLY THE TEST. IF THERE'S A BASIS REGARDLESS OF
28 ANY FALSE INFORMATION, AND REGARDLESS OF INFORMATION

1 THAT WASN'T THERE THAT SHOULD HAVE BEEN THERE, IS THERE
2 STILL A SUFFICIENT BASIS FOR THE JUDICIAL OFFICER TO
3 MAKE THE DECISION THEY DID.

4 IF THE COURT DECIDES AS A MATTER OF LAW THAT
5 THERE WAS A SUFFICIENT FACTUAL BASIS IN THE INFORMATION
6 PROVIDED, THEN THE CLAIM FAILS.

7 IF THE COURT DECIDES THAT THERE WAS NOT, THAT
8 IF THE FALSE INFORMATION WAS NOT THERE, AND THE COURT
9 DID HAVE THE INFORMATION THAT SHOULD HAVE BEEN THERE,
10 AND IF THE COURT DECIDES THAT THE MAGISTRATE WOULD NOT
11 HAVE MADE THE SAME DECISION, THEN THE CLAIM CONTINUES.

12 NOW, THAT JUST LEADS ME TO WHERE I'M GETTING,
13 TO US HAVING THE VERDICT FORM. PUTTING ASIDE THE
14 WORDING OF THIS QUESTION BECAUSE I THINK THE JURY HAS
15 TO DECIDE IF ANY MISREPRESENTATIONS --

16 AND JUST TO SAVE THE DISCUSSION, I WON'T KEEP
17 TALKING ABOUT FAILURE TO INCLUDE -- JUST THE DECEPTIVE
18 INFORMATION, WHETHER IT WAS INTENTIONAL, OR IN RECKLESS
19 DISREGARD, I BELIEVE IS THE TEST.

20 AND SO THE WORDING OF THIS QUESTION MAY HAVE
21 TO BE A LITTLE DIFFERENT, AND I'M NOT CONCERNED ABOUT
22 THE WORDING FOR THE MOMENT. WE CAN SORT THAT OUT TO
23 SEE WHAT THEY ACTUALLY SAY.

24 BUT I DO NOTICE THAT IN VERDICT FORM 3000, THE
25 FIRST QUESTION IS, "DID THE DEFENDANT INTENTIONALLY,"
26 AND THEN, "PROVIDE FALSE OR MISLEADING INFORMATION." I
27 THINK IT'S BOTH. I THINK IT'S, "INTENTIONAL OR WITH
28 RECKLESS DISREGARD."

1 AND THEN I THINK THERE'S A JURY INSTRUCTION
2 THAT WOULD BE GIVEN ABOUT WHAT IS MEANT BY RECKLESS
3 DISREGARD. SO MY POINT THAT IS LEADING ME, THIS IS THE
4 QUESTION I'M ASKING:

5 LET'S ASSUME THAT THE DECISION AS TO ANY ONE
6 OF THESE HEARINGS, THAT THE JUDICIAL OFFICER -- THERE'S
7 NOT A BASIS ON WHICH A REASONABLE JUDICIAL OFFICER
8 WOULD HAVE MADE THAT DECISION, BASED ON WHAT THE COURT
9 FINDS THE RECORD WOULD HAVE BEEN. SO IT GOES TO THE
10 JURY.

11 NOW, THE JURY WOULD DECIDE, AND I THINK THIS
12 IS SOMETHING I THINK MR. GUTERRES HAS ALLUDED TO -- AT
13 THAT POINT IN TIME -- AND ALSO MR. DANER -- THAT I
14 DON'T KNOW THAT THE COURT IS GOING TO GET INVOLVED IN
15 MAKING THIS DECISION, AND WHETHER WHAT YOU CLAIMED WAS
16 FALSE REALLY WAS FALSE OR NOT.

17 AND SO THIS LEADS TO A FURTHER DIFFICULTY THAT
18 I SEE WITH THIS. SO WE SAY OKAY. THE COURT HAS RULED
19 THAT IF THEY DIDN'T KNOW THE FALSE INFORMATION, AND
20 THEY GOT THE INFORMATION THEY SHOULD HAVE GOTTEN, THEY
21 WOULD HAVE MADE A DIFFERENT DECISION. THEN IT GOES TO
22 THE JURY.

23 THE JURY THEN IS ASKED TO DECIDE, WAS ANY
24 FALSE INFORMATION OR INFORMATION THAT SHOULD HAVE BEEN
25 GIVEN, INTENTIONALLY FALSE OR IN FACT INTENTIONALLY
26 WITHHELD, OR WITH RECKLESS DISREGARD FURNISHED OR
27 RECKLESS DISREGARD WITHHELD.

28 SO THEY WOULD THEN MAKE THE FACTUAL

1 DETERMINATION AS TO WHETHER OR NOT THERE WAS AN
2 INTENTIONAL OR WITH RECKLESS DISREGARD
3 MISREPRESENTATION AND/OR PROVIDING OF INCOMPLETE OR
4 MISLEADING INFORMATION.

5 MR. MCMILLAN: I BELIEVE STRUCTURALLY, THAT IS
6 CORRECT.

7 THE COURT: OKAY. NOW, ONCE THEY DO THAT,
8 THEY ANSWER THAT QUESTION. IF THEY SAY NO, IT'S OVER.
9 IF THEY SAY YES, THEN THEY'RE GOING TO ANSWER THE NEXT
10 QUESTION. WHAT'S THE NEXT QUESTION?

11 MR. MCMILLAN: WAS IT A SUBSTANTIAL FACTOR.
12 AND I WOULD SAY THAT THAT QUESTION IS PROBABLY SUBSUMED
13 INTO THE COURT'S DETERMINATION ON MATERIALITY.

14 OTHERWISE THE PLAINTIFF WOULD BEAR A DOUBLE
15 BURDEN OF ESTABLISHING THE "BUT FOR" CAUSATION. SO
16 THAT PROBABLY NEEDS TO BE DELETED IF THE COURT'S MAKING
17 THE MATERIALITY DETERMINATION.

18 THE COURT: THIS IS WHAT LED ME TO ASK THE
19 QUESTION. I MENTIONED THE OTHER DAY, IN THIS CLAIM
20 ABOUT DECEPTIVE INFORMATION, THERE MAY OR MAY NOT BE A
21 QUESTION ABOUT CAUSATION.

22 BUT BECAUSE THE COURT -- BUT WHAT HAPPENS, AND
23 THIS I THINK GOES TO WHAT MR. GUTERRES WAS RAISING. IF
24 THE COURT MAKES THE DECISION AND AS A MATTER OF LAW,
25 NOT FACTUAL DETERMINATION, BUT A MATTER OF LAW, WHETHER
26 OR NOT WHAT WAS GIVEN OR WITHHELD, EVEN IF IT WAS
27 DIFFERENT, WOULD THERE HAVE BEEN A DIFFERENT DECISION?

28 BUT I DON'T THINK IN THAT DETERMINATION THE

1 COURT MAKES THE DECISION AS TO WHAT -- WHETHER
2 SOMETHING REALLY WAS FALSE. NOW, THE WAY THAT THIS
3 APPEARS TO ME WOULD GO IS, YOU ASK THE JURY TO DECIDE
4 IF IT WAS FALSE AND DELIBERATELY SO.

5 ARE THEY GOING TO BE MAKING THAT DECISION ON
6 THE VERY SAME THINGS THE COURT MADE THE DECISION ON, IN
7 RULING THAT WHETHER OR NOT THAT CLAIM COULD PROCEED OR
8 NOT?

9 AND -- AND THEN, IF IT HAS TO BE MADE ON THE
10 SAME INFORMATION, WHAT HAPPENS IF THE JURY THINKS SOME
11 OF THE THINGS WERE FALSE AND MISLEADING, BUT NOT ALL OF
12 THEM, AND THEN WE ASKED THEM TO DECIDE WHETHER THIS WAS
13 A SUBSTANTIAL FACTOR IN CAUSING HARM.

14 ARE WE ASKING THEM SIMPLY, WAS SHE HARMED BY
15 THIS PROCESS IN JUST A BROAD SENSE, OR WAS WHAT THE
16 JURY FINDS TO BE FALSE AND MISLEADING CAUSED HARM.

17 AND MY CONCERN IS THAT THE JURY MIGHT BE
18 MAKING THAT DECISION ON GROUNDS THAT THE COURT DIDN'T.
19 AND SO IF WE LET THE CASE -- IF WE LET THE CLAIM GO
20 FORWARD, WOULDN'T WE NECESSARILY -- WELL, I DON'T KNOW.
21 I'M ASKING THE QUESTION.

22 WHAT DO WE -- THEN LET THE JURY DECIDE WAS
23 FALSE AND MISLEADING?

24 MR. MCMILLAN: I DON'T KNOW, YOUR HONOR, THAT
25 WE HAVE TO GO TO THE JURY, YOU KNOW, WITH AN INDEX OF
26 THE ALLEGATIONS.

27 THE COURT: I DON'T KNOW WHETHER WE DO EITHER.
28 THAT'S WHY I'M ASKING YOU.

1 MR. MCMILLAN: I THINK IT'S SUFFICIENT TO ASK
2 THE -- I MEAN, THEY'VE HEARD ALL THE SAME EVIDENCE. I
3 THINK IT'S SUFFICIENT TO ASK THE JURY, OUT OF
4 EVERYTHING YOU HEARD, WAS THERE, YOU KNOW, WAS THERE
5 FALSE/MISLEADING INFORMATION.

6 ASSUMING, OF COURSE, THE COURT'S ALREADY
7 DECIDED THAT IT'S MATERIAL. WAS THERE FALSE OR
8 MISLEADING INFORMATION. IF THE ANSWER IS NO, THEN
9 WE'RE DONE.

10 IF THE ANSWER IS YES, THEN I THINK THAT'S
11 ENOUGH. AND THE JURY CAN WORK OUT IN ITS OWN MIND, AND
12 I WOULD THINK THAT IT WOULD COME OUT IN THE FORM OF
13 EITHER A REDUCED DAMAGE AWARD IF THERE WERE SOME THINGS
14 THEY JUST THOUGHT WEREN'T A BIG DEAL, THEN, YOU KNOW --

15 OR DIDN'T IMPACT IN ANY WAY THE OUTCOME, THEN
16 THEY'RE NOT GOING TO BE INCLINED TO GIVE ANY KIND OF
17 SUBSTANTIAL DAMAGES. IF IT'S SOMETHING THEY FOUND TO
18 BE PARTICULARLY OFFENSIVE, THEN MAYBE THAT WOULD BE
19 REFLECTED IN A DIFFERENT WAY IN THEIR DAMAGE ANALYSIS.

20 BUT ASIDE FROM THAT, I SUPPOSE THERE WOULD
21 STILL BE A POTENTIAL, YOU KNOW, SUBSTANTIAL FACTOR
22 CAUSATION QUESTION.

23 IF WE'RE TRYING TO FIGURE OUT WHETHER -- IF
24 WE'RE NOT GOING TO GIVE THEM A SPECIFIC LIST OF, YOU
25 KNOW, ALL THE STUFF, I THINK THERE MAY STILL BE A NEED
26 FOR THE SUBSTANTIAL FACTOR ANALYSIS WITH RESPECT TO
27 CAUSATION OF INJURY.

28 NOT NECESSARILY WITH RESPECT TO WHETHER OR NOT

1 THE MISSTATEMENTS WERE MATERIAL. THAT'S A DIFFERENT
2 STEP IN THE PROCESS.

3 SO IT WOULD MAKE SENSE TO ME, JUST AS WE'RE
4 SITTING HERE TALKING ABOUT IT, THAT IF THE QUESTION OF
5 WHETHER OR NOT, ASSUMING THEY FIND A SPECIFIC LIE WAS
6 MADE --

7 IF THE QUESTION OF WHETHER OR NOT THAT
8 SPECIFIC LIE CAUSED AN INJURY OF SOME KIND, THEN WE
9 STILL MAY NEED THE SUBSTANTIAL FACTOR QUESTION
10 THAT'S -- AT LEAST ON THE VERSION I'M LOOKING AT RIGHT
11 NOW. IT'S PAGE 7 -- I THINK ON YOUR HONOR'S IT'S
12 PAGE 6 -- BECAUSE THINGS GOT MOVED AROUND A LITTLE BIT.

13 BUT THAT WOULD BE MY THINKING, IS THAT THE
14 JURY, I WOULD THINK, WOULD STILL NEED TO FIGURE OUT
15 WHETHER OR NOT THE DECEPTION THAT THEY SEE, ASSUMING
16 THEY SEE DECEPTION, WHETHER OR NOT THAT PARTICULAR
17 WHATEVER IT IS THEY'RE RELYING ON WAS A SUBSTANTIAL
18 FACTOR IN CAUSING HER HARM.

19 THE COURT: AND CERTAINLY IN THE JUDICIAL
20 DETERMINATION, CAUSATION OF HARM IS NOT AN ISSUE THE
21 COURT WOULD DECIDE.

22 MR. MCMILLAN: RIGHT.

23 THE COURT: THE COURT IS ONLY, I THINK,
24 DECIDING WHETHER OR NOT A DIFFERENT -- WITHOUT THE
25 DECEPTIVE INFORMATION, WHETHER OR NOT THERE WAS A BASIS
26 FOR THE DECISION THAT WAS MADE.

27 AND IF THE COURT DECIDES NOT, THAT -- THAT THE
28 COURT -- A REASONABLE COURT WOULD NOT HAVE MADE THE

1 SAME DECISION, THEN IT'S GOING TO GO TO THE JURY.

2 AND THE JURY WOULD HAVE TO MAKE SURE THAT --
3 THEY'D HAVE TO MAKE THE DECISION OF WHETHER THERE WAS
4 INTENTIONAL OR WITH RECKLESS DISREGARD
5 MISREPRESENTATIONS, AND IF SO, WHAT HARM THAT CAUSED.

6 THAT'S WHAT YOU'RE SAYING?

7 MR. MCMILLAN: I THINK THAT'S RIGHT, ALTHOUGH
8 I DO HAVE A LITTLE BIT OF -- HOW CAN I SAY THIS -- A
9 LITTLE BIT OF DISAGREEMENT ABOUT THE SPECIFIC NATURE OF
10 THE TEST THE COURT GOES THROUGH.

11 I WOULD AGREE THE COURT HAS TO GO THROUGH, IN
12 DOING THE MATERIALITY ANALYSIS, THE COURT HAS TO LOOK
13 AT THE EVIDENCE THAT EXISTS THAT'S TOWARDS THE
14 DECEPTION AND DECIDE, YOU KNOW, ADDING THAT IN,
15 SUPPLEMENTING, AND DELETING THE FALSE STATEMENTS,
16 WHETHER OR NOT --

17 I'M PRETTY SURE -- AT LEAST THE TEST LAID OUT
18 IN LISTED, IT MAY NOT BE LISTED, NOT, MIGHT BE
19 WHITTAKER, I DON'T RECALL.

20 BUT AS I RECALL IT, THE TEST LAID OUT IS NOT
21 NECESSARILY WHETHER OR NOT THERE'S EVIDENCE THAT WOULD
22 STILL SUPPORT THE --

23 WHATEVER THE ACTION WAS, BUT RATHER WHETHER OR
24 NOT A REASONABLE JUDICIAL OFFICER, FACED WITH THE TRUE
25 INFORMATION AND SUPPRESSED EXCULPATORY INFORMATION,
26 WOULD PROBABLY STILL HAVE DONE IT.

27 THAT MIGHT BE THE SAME TEST, BUT JUST WORDED
28 DIFFERENTLY.

1 THE COURT: I THINK WE'RE TALKING ABOUT THE
2 SAME THING. I DON'T WANT TO DELVE TOO MUCH ON THE
3 WORDS THAT EITHER I HAVE CHOSEN OR YOU HAVE CHOSEN.

4 BUT THE TEST IS THAT THE COURT DECIDES WHETHER
5 OR NOT -- WHAT THE COURT SHOULDN'T HAVE HEARD AND WHAT
6 THEY SHOULD HAVE HEARD BUT DIDN'T.

7 IS THERE -- COULD THEY HAVE MADE -- WOULD IT
8 HAVE -- THE WORDING WAS IN ONE OF THOSE CASES, I DON'T
9 HAVE THOSE NOTES ON THE BENCH WITH ME.

10 BUT THE WORDING, AND I DO RECALL, I FORGET
11 WHICH ONE OF THE CASES, WOULD MAKE THE DECISION WHETHER
12 A REASONABLE JUDICIAL OFFICER, THERE WAS A BASIS IN THE
13 RECORD WHERE THE COURT WOULD MAKE -- COULD MAKE THE
14 SAME DECISION.

15 IF THE ANSWER IS NO, THE COURT -- THIS GOES --
16 IF THE ANSWER IS NO, THEN IT GOES ON, GOES TO THE JURY.
17 THIS GOES TO THE ISSUE WE'VE TALKED ABOUT TIME AND TIME
18 IN THIS CASE. WE CAN'T LET THE JURY DECIDE WHAT A
19 JUDGE WOULD DO.

20 AND IT SEEMS THAT THE PROCESS, AND I'M
21 THINKING THE LEGAL -- DECIDING THE LEGAL ISSUE BY THE
22 COURT, AND THEN LEAVING, ASSUMING THAT LEGAL -- THE
23 DECISION ON THE LEGAL ISSUE PERMITS THE CLAIM OF THE
24 TENURE THAT THE JURY THEN DECIDES WAS -- WERE THESE
25 CERTAIN THINGS INTENTIONAL OR WITH RECKLESS DISREGARD.

26 AND IF THE ANSWER TO THAT IS YES, THEN WAS IT
27 A SUBSTANTIAL FACTOR IN CAUSING HARM.

28 MR. MCMILLAN: I THINK WE'D STILL NEED THE

1 SUBSTANTIAL FACTOR.

2 THE COURT: WELL, I DO TOO. AS I THINK ABOUT
3 IT, I THINK THEY'D HAVE TO MAKE THAT DECISION BECAUSE
4 THEORETICALLY, THEY COULD SAY, YEAH, THESE THINGS
5 HAPPENED, BUT IT DIDN'T MAKE ANY DIFFERENCE, IT DIDN'T
6 CAUSE ANY HARM.

7 I'M NOT SAYING THAT WOULD HAPPEN IN A CASE
8 LIKE THIS. BUT THAT'S -- I UNDERSTAND WHY THE
9 CAUSATION QUESTION IS THERE. ALL RIGHT.

10 WELL, WE'VE USED UP OUR MORNING ALLOTMENT OF
11 TIME HERE. AND WITHOUT A DECISION. SO -- YES, MS.
12 SWISS.

13 MS. SWISS: WE STILL HAVE TO DECIDE THE ISSUE
14 OF THIS VIDEO, AND I NEED SOME ASSISTANCE FROM THE
15 PLAINTIFFS TO MAKE SURE THE PROJECTOR HOOKS UP TO THE
16 LAPTOP. IF WE CAN JUST HAVE A FEW MINUTES TO CONFER ON
17 THE ELECTRONICS.

18 WE WOULD LIKE THE COURT TO TAKE A LOOK AT THIS
19 VIDEO, AND DECIDE IF WE WILL BE ALLOWED TO PLAY IT TO
20 THE JURY DURING THE QUESTIONING OF THE WITNESS.

21 THE COURT: TELL ME IN BROAD TERMS WHAT THE
22 VIDEO IS.

23 MR. GUTERRES: THE VIDEO IS A VIDEO OF --
24 PREPARED BY MR. MILLS, THE FATHER, THAT KIND OF
25 CHRONICLES FROM THE TIME THAT HE GOT BABY RYAN. AND
26 THIS VIDEO CLIP'S KIND OF A CHRONOLOGY THAT SHOWS HIS
27 DEVELOPMENT UP UNTIL MAYBE A YEAR AGO OR SO.

28 THE COURT: ALL RIGHT. SO HE'S EIGHT

1 SOMETHING NOW?

2 MR. GUTERRES: YEAH. SO IT STARTS YOU KNOW,
3 WITHIN, YOU KNOW, A FEW WEEKS OR SO, SHORTLY AFTER HE
4 ACTUALLY GETS BABY RYAN AFTER THE DETENTION. AND IT
5 KIND OF SHOWS HIS CONDITION, AND HOW HE'S DEVELOPED AND
6 BEEN ABLE TO --

7 THE COURT: AND WHAT'S THE -- WHAT'S THE
8 PURPOSE OF SHOWING IT?

9 MR. GUTERRES: THE PURPOSE IS TO ESTABLISH AND
10 SHOW HIS CONDITION, WHAT WOULD HAVE BEEN HIS CONDITION
11 AT THE TIME, OR RELATIVELY CLOSE TO THE TIME OF THE
12 DETENTION, SO AS TO BE ABLE TO EXPLAIN WHAT THE SOCIAL
13 WORKERS WERE LOOKING AT INsofar AS HIS ACTUAL
14 CONDITION.

15 AND THEN THERE'S ISSUES THAT HAVE BEEN BROUGHT
16 BY PLAINTIFF'S EXPERTS THAT HE WAS NOT DEVELOPING, AND
17 THAT HE STILL HAD ALL SORTS OF ISSUES, AND IT SHOWS
18 THAT, YOU KNOW, WHAT HE CAN DO.

19 I MEAN, HE'S KIND OF -- IT SHOWS HIM, FOR
20 EXAMPLE, BEING ABLE TO JUMP AND WALK. AND, YOU KNOW,
21 THAT'S IN ESSENCE KIND OF WHAT THE PURPOSE OF THE VIDEO
22 IS.

23 THE COURT: WHAT'S THE OBJECTION?

24 MR. MCMILLAN: YOUR HONOR, THERE'S SEVERAL
25 OBJECTIONS. FIRST AND FOREMOST, IT'S JUST SOMETHING
26 THAT WAS JUST SPRUNG ON US A COUPLE DAYS AGO BY EMAIL.

27 SECOND ISSUE IS, NONE OF THE CLIPS IN THE
28 ENSEMBLE OF VIDEO ARE TIME/DATE-STAMPED OR ANYTHING

1 ELSE SO THERE'S REALLY NO WAY FOR ANYBODY VIEWING IT TO
2 KNOW EXACTLY WHEN THESE THINGS HAPPENED.

3 SO, IN ADDITION, THERE HAS BEEN SUBSTANTIAL,
4 AS FAR AS I KNOW, UNDISPUTED TESTIMONY, AND TESTIMONY
5 THAT WILL REMAIN UNDISPUTED THAT YES, THE CHILD WAS
6 SUFFERING FROM DEVELOPMENT DELAYS, YES HE WAS HAVING
7 TROUBLE ROLLING OVER, YES, HE WASN'T EATING WELL.

8 AND THERE IS NO DISPUTE. I THINK DR. ACHAR
9 TALKED ABOUT THIS. HE WENT TO THE BIRTHDAY PARTY AND
10 SAW THE CHILD RUNNING AROUND. SO THERE'S NO DISPUTE
11 THAT TODAY HE'S ABLE TO WALK AND THAT, WHEN HE WANTS
12 TO, HE'S ABLE TO EAT.

13 SO I DON'T KNOW, NUMBER ONE, THAT THERE'S ANY
14 DISPUTE IN THAT EVIDENCE. SO IT WOULD BE CUMULATIVE.
15 IN ADDITION, BECAUSE IT'S LACKING IN ANY KIND OF TIME
16 ELEMENT AS GOING YOU'RE THROUGH, WATCHING IT, I THINK
17 THAT IT'S LIKELY TO CAUSE CONFUSION.

18 AND I BELIEVE THAT IT'S PREJUDICIAL, FOR
19 SIMILAR REASONS. SO UNDER 352, WE WOULD OBJECT TO THE
20 VIDEO EVEN COMING IN, AS AN ADDITIONAL GROUNDS.

21 THE COURT: TELL ME ABOUT THE PREJUDICES.

22 MR. MCMILLAN: THE PREJUDICES, YOU WATCH THESE
23 THINGS HE'S GOING THROUGH. IT'S UNCLEAR WHEN IT
24 HAPPENED, OR WHAT WAS GOING ON, OR THE PURPOSE OF THE
25 UNDERLYING RECORDING.

26 THE COURT: COULDN'T THAT BE CLARIFIED BY
27 TESTIMONY?

28 MR. MCMILLAN: HOW ARE WE GOING TO PLAY CLIPS

1 OF THE VIDEO AS HE'S -- I MEAN, HOW'S THAT GOING TO
2 HAPPEN?

3 THE COURT: I DON'T KNOW. I'M NOT THE ONE
4 ASKING TO SHOW IT.

5 MR. MCMILLAN: AS I'M SITTING HERE THINKING
6 ABOUT IT, I HAVE NO IDEA, NO CONCEPT OF HOW IT CAN BE
7 PRESENTED TO THE JURY IN ITS CURRENT FORM, WHILE
8 SOMEBODY'S TESTIFYING.

9 WHAT ARE WE GOING TO DO, JUST PLAY THE VIDEO
10 AND -- AND THEN HAVE HIM TALK ABOUT IT OR -- I DON'T
11 KNOW. I DON'T KNOW HOW THAT WOULD EVEN BE PRESENTED TO
12 THE JURY --

13 MR. GUTERRES: YOUR HONOR, THERE ARE --

14 MR. MCMILLAN: EXCUSE ME. I DON'T KNOW HOW
15 THAT WOULD PRESENTED TO THE JURY IN A CLEAR WAY TO
16 AVOID CONFUSION OR MIXING OF THE ISSUES.

17 MR. GUTERRES: THERE ARE VARIOUS CLIPS, YOUR
18 HONOR. WE CAN STOP THEM AFTER EACH CLIP AND ASK
19 QUESTIONS OF HIM. IT'S NO DIFFERENT THAN THE PHOTOS
20 THAT PLAINTIFF HAS PROVIDED. THEY'RE NOT BATES-STAMPED
21 EITHER.

22 AND MS. DUVAL WAS ASKED QUESTIONS ABOUT, WELL
23 WHEN -- HOW OLD WAS IN HE THIS PHOTO. IT'S NO
24 DIFFERENT, YOUR HONOR, EXCEPT INSTEAD OF HAVING A
25 STILL, IT'S A VIDEO. YOU SEE THE CHILD, WHAT HE CAN --
26 HOW HE CAN MOVE OR WHAT HE CANNOT DO.

27 AND I THINK THAT THAT'S IMPORTANT BECAUSE
28 FAILURE TO THRIVE CHILD AND THE LACK OF DEVELOPMENT IS

1 NOT VISIBLE JUST BY LOOKING AT A PHOTOGRAPH OR A STILL
2 SHOT.

3 THE FACT THAT THIS CHILD CAN'T MOVE, AND WHEN
4 PLACED ON HIS STOMACH, CAN'T ROLL OVER, AND IS
5 EXTREMELY UNCOMFORTABLE, IS SOMETHING THAT -- I THINK
6 IS SOMETHING THAT IS IMPORTANT TO SHOW BECAUSE THAT IS
7 WHAT OUR SOCIAL WORKERS WERE LOOKING AT.

8 IT GOES TO THAT WHOLE ISSUE OF WHY THERE WAS
9 SUCH GREAT CERTAIN AT THE TIME OF THE TDM FOR THE
10 DETENTION.

11 THE COURT: ALL RIGHT. WELL THAT MIGHT
12 EXPLAIN SHOWING SOME CLIP OF THE MINOR AT OR ABOUT THE
13 TIME HE WAS DETAINED. AND HOW ABOUT THE REST OF IT?

14 THE PROBLEM I'M HAVING -- OH, THANKS -- I'M
15 SEEING, YOU DESCRIBED WHAT IT'S GOING TO SHOW. THE
16 PROBLEM I'M HAVING IS, I'M JUST NOT SURE OF RELEVANCE
17 ON THIS.

18 YOU MENTIONED ONE GROUND THAT THE DOCTOR
19 SAYING, WELL, AFTER CUSTODY WAS GIVEN TO THE FATHER,
20 THE CHILD DIDN'T REALLY CHANGE, WHICH THEY INTERPRET --
21 SOMEONE MAY HAVE INTERPRETED -- OR ONE OF THE LAWYERS
22 INDICATED THAT ANY FAILURE TO THRIVE WASN'T THE FAULT
23 OF THE MOTHER, THEN, BECAUSE THE CHILD WAS PRETTY MUCH
24 THE SAME AFTER HE WAS GIVEN TO THE FATHER.

25 ONCE YOU GET BEYOND THAT, THERE'S SEVERAL
26 POSSIBLE ISSUES. BUT ONE, WHEN THE MOTHER IS NO LONGER
27 THE PRIMARY CAREGIVER, WITH LIMITED VISITATION, HOW DO
28 WE KNOW WHAT THE BOY WOULD HAVE BEEN LIKE IF SHE HAD

1 REMAINED THE PRIMARY CAREGIVER.

2 AND IT IS NOT AN ISSUE IN THIS CASE AND I
3 HAVEN'T HEARD ANY EVIDENCE TO CAUSE ME TO THINK THAT
4 ANYONE'S THINKING THIS, BUT THE ISSUE WE'RE DEALING
5 WITH IS NOT WHO CUSTODY WAS GIVEN TO.

6 THE ISSUE IS WHETHER OR NOT CUSTODY SHOULD
7 HAVE BEEN TAKEN AWAY FROM THE MOTHER. AND SO, IF THE
8 BOY HAS DONE WELL SINCE THEN WITH THE FATHER, WELL, WE
9 SHOULD ALL BE HAPPY FOR THE BOY.

10 AND I KNOW THE TESTIMONY HAS BEEN, AND I
11 SUSPECT WE'RE GOING TO HAVE MORE, BUT THE FOCUS FOR
12 DCFS AND THEIR CHARGE IS ALWAYS IN THE BEST INTEREST OF
13 THE MINOR.

14 AND SO THE QUESTION REALLY, TO ME, INDICATES
15 ISN'T WHO GOT CUSTODY, OR NECESSARILY HOW THE BOY HAS
16 DONE SINCE THEN, BUT WHETHER OR NOT AT THE TIME THERE
17 WERE VALID -- PUTTING ASIDE THE SEIZURE WITHOUT A
18 WARRANT. THAT'S A SEPARATE ISSUE.

19 BUT THE OVERALL IDEA THAT THE BASIS BEHIND
20 THIS WAS THE FAILURE TO THRIVE WHICH CAUSED THE
21 JUVENILE COURT TO MAKE A DECISION FOR SOMEBODY ELSE TO
22 BE THE PRIMARY CAREGIVER IN THE BELIEF THAT THAT WAS IN
23 THE BEST INTEREST OF THE CHILD.

24 SO DO WE NEED TO WATCH SOMETHING WHEN HE'S 6
25 OR 7 YEARS OLD? I DON'T KNOW WHAT THAT'S GOING TO
26 PROVE TO US, OTHER THAN THAT HE'S DOING ALL RIGHT. BUT
27 THAT DOESN'T PROVE ANYTHING, THAT --

28 MR. GUTERRES: WELL, THERE'S BEEN TESTIMONY,

1 YOUR HONOR, WITH REGARD TO THE FACT THAT, YOU KNOW,
2 DR. NIESEN ACTUALLY CALLED THE CHILD ABUSE HOTLINE
3 AFTER HE SAW HIM AT THE TIME OF THE ADJUDICATION
4 HEARING.

5 AND IT GOES ALSO TO RESPOND TO, YOU KNOW, THE
6 CONDITION OF THE CHILD AT THAT TIME.

7 MR. MCMILLAN: YOUR HONOR, DR. NIESEN
8 TESTIFIED HE NEVER SAW THE CHILD. HIS CALL WAS BASED
9 TOTALLY ON THE DOCUMENTARY EVIDENCE THAT HE WAS ABLE TO
10 GET FROM THE FAILURE TO THRIVE CLINIC.

11 IT'S NOT IN DISPUTE, THE CONDITION THAT THE
12 CHILD WAS IN AT THE TIME OF THE TAKING.

13 THE COURT: ALL RIGHT. HOW LONG IS THIS --

14 MR. GUTERRES: IT'S NOT A VERY LONG CLIP, YOUR
15 HONOR. IT'S PROBABLY 3 MINUTES. 2 MINUTES, 3 MINUTES.

16 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT
17 IT. WHERE IS GOING TO BE DISPLAYED? I CAN'T SEE THE
18 SCREEN UP HERE FROM THE BENCH. IT'S IF GOING TO BE
19 DISPLAYED ON THE SCREEN I FEAR I'LL SIMPLY HAVE TO STEP
20 DOWN AND COME OVER HERE --

21 MS. SWISS: IT IS ON THE LAPTOP. I JUST NEED
22 TO TURN THE PROJECTOR TO THE RIGHT INPUT. AND IT'S
23 PLAINTIFF'S, SO I DIDN'T WANT TO START PRESSING BUTTONS
24 WITHOUT ASSISTANCE. BUT WE SHOULD BE ABLE TO PLAY IT
25 ON --

26 THE COURT: ON WHICH LAPTOP?

27 MR. MCMILLAN: I THINK IT'S THEIR LAPTOP
28 THERE.

1 THE COURT: AND IT'S GOING TO -- IT WILL
2 PROJECT TO THE SCREEN?

3 MS. SWISS: YES.

4 MR. MCMILLAN: YEAH, IT SHOULD.

5 THE COURT: WE HAVE TO GIVE AN EXHIBIT NUMBER
6 TO THE VIDEO CLIP, NEXT IN ORDER.

7 THE CLERK: 1254.

8 (DEFENDANT'S EXHIBIT NO. 1254 WAS
9 MARKED FOR IDENTIFICATION BY THE
10 COURT.)

11 (PAUSE IN THE PROCEEDINGS)

12 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
13 I AM IN THE WELL, WHERE I'M NOT SUPPOSED TO -- NO ONE
14 IS SUPPOSED TO BE. AND MS. SWISS IS PREPARING TO PLAY
15 THE VIDEO, WHICH WE'RE WATCHING ON A LAPTOP, WHICH IS
16 IN VIEW OF ALL COUNSEL.

17 (PAUSE IN THE PROCEEDINGS)

18 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
19 WE WATCHED ALL BUT THE APPROXIMATE LAST 30 SECONDS OF
20 THE VIDEO. FOR SOME REASON, THE VIDEO FROZE AND
21 WOULDN'T PLAY THE LAST 30 OR SO SECONDS.

22 AND DESPITE PLENTY OF GOOD HELP, THERE IT
23 STOPPED AT THE SAME LOCATION. ALL RIGHT. BUT I'VE
24 SEEN THE VIDEO.

25 (PAUSE IN THE PROCEEDINGS)

26 THE COURT: AND WE ARE ON THE RECORD. AND
27 COUNSEL ARE PRESENT OUTSIDE THE PRESENCE OF THE JURY.

28 SO, MR. MCMILLAN, YOU INDICATED YOU HAD SOME

1 ADDITIONAL GROUNDS FOR OBJECTION SHOWING THE VIDEO?

2 MR. MCMILLAN: YES, YOUR HONOR. INITIALLY --
3 I HAVE A COUPLE ADDITIONAL GROUNDS, BUT PROBABLY THE
4 MOST CRITICAL ONE AT THIS POINT IS THE DEPOSITION
5 SUBPOENA OF MR. RYAN MILLS.

6 AND JUST BY WAY OF BACKGROUND, PLAINTIFF HAD A
7 LOT OF TROUBLE GETTING DOCUMENTS AND INFORMATION
8 AFTER -- OR OUT OF MR. MILLS. HE WAS NOT COOPERATIVE.
9 IT REQUIRED COURT INTERVENTION, A LOT OF OTHER THINGS.

10 ANYWAY, HIS DEPOSITION WAS ULTIMATELY TAKEN.
11 AND HE WAS REQUESTED, ALONG WITH THAT SUBPOENA, TO
12 BRING A WHOLE PLETHORA OF DOCUMENTS, WHICH INCLUDED
13 SPECIFICALLY --

14 INCLUDED SPECIFICALLY VIDEO RECORDINGS, AUDIO
15 RECORDINGS, PHOTOGRAPHS, ALL NOT -- TO THE EXTENT NOT
16 ALREADY REQUESTED IN ALL THE OTHER 24 REQUESTS FOR
17 DOCUMENTS.

18 AT HIS DEPOSITION, WE SPECIFICALLY ASKED HIM:
19 QUESTION: WHEN YOU RECEIVED THAT SUBPOENA, DID YOU
20 UNDERSTAND WHAT IT WAS ASKING YOU TO PRODUCE? ANSWER:
21 AT THE BEGINNING, NO. AS TIME WENT ON, THAT'S WHEN I
22 GOT COUNSEL INVOLVED BECAUSE I DIDN'T UNDERSTAND.

23 QUESTION: OKAY. BUT AT SOME POINT IN TIME,
24 YOU DID COME TO UNDERSTAND EXACTLY WHAT DOCUMENTS WERE
25 SOUGHT, WERE BEING SOUGHT? ANSWER: I RELIED ON
26 COUNSEL TO LET ME KNOW WHAT I NEEDED TO PRODUCE.

27 OKAY. AND DID YOU IN FACT PRODUCE ALL
28 RESPONSIVE DOCUMENTS THAT WERE IN YOUR POSSESSION,

1 CUSTODY, OR CONTROL AT THE TIME OF PRODUCTION? ANSWER:
2 YES.

3 QUESTION: SO YOU DIDN'T HOLD THINGS BACK?
4 FOR EXAMPLE, IT'S JUST -- THINKING THAT YOU WOULDN'T
5 GIVE THEM -- THAT YOU WOULDN'T GIVE IT, EVEN IF IT WAS
6 RESPONSIVE? ANSWER: CORRECT.

7 QUESTION: SO I'M CORRECT, THEN, THAT OUR
8 UNIVERSE OF DOCUMENTS THAT WE HAVE FROM YOU IS THE
9 COMPLETE UNIVERSE OF DOCUMENTS THAT WERE RESPONSIVE TO
10 OUR SUBPOENA? ANSWER: NO.

11 AND THEN THERE'S SOME CLARIFICATION FROM
12 COUNSEL WITH AN OBJECTION COMPOUND, AND HE SAYS:

13 "NO. I MEAN, THERE'S SO MANY DOCUMENTS IN
14 THIS CASE, THERE'S NO WAY THAT I CAN KEEP -- I CAN
15 CONTROL EVERY SINGLE DOCUMENT IN THIS CASE. THERE'S A
16 PILES OF PAPERWORK -- SO I DON'T -- I DON'T HAVE EVERY
17 SINGLE DOCUMENT."

18 WHAT WE TAKE FROM THAT IS THE DOCUMENTS THAT
19 HE DID HAVE, WHICH INCLUDES THE VIDEO RECORDINGS,
20 PICTURES, AUDIO RECORDINGS -- THOSE THAT HE DID HAVE,
21 HE PRODUCED. AND WE RELIED ON THAT.

22 AND THEN WE ALSO ASKED OF -- OH, ACTUALLY,
23 THERE'S MORE QUESTION. QUESTION: WELL, I UNDERSTAND
24 YOU MAY NOT HAVE EVERY SINGLE DOCUMENT, BUT MY QUESTION
25 REALLY IS, YOU DID PRODUCE TO US EVERY DOCUMENT THAT
26 WAS IN YOUR POSSESSION? ANSWER: YES.

27 QUESTION: CUSTODY -- YOU GOT TO WAIT TIL I
28 FINISH THE QUESTION, FOR THE SAME REASON, SHE'S TRYING

1 TO TYPE IT ALL DOWN.

2 AND THAT'S BASICALLY IT. THERE'S A LONG
3 DISCUSSION ABOUT WHY HE HAS TO WAIT FOR ME TO FINISH
4 THE QUESTION. AND THEN IT JUST SAYS HE TOOK A BOX --
5 SAYS:

6 ANSWER: I DID. I TOOK A BOX, AND I LITERALLY
7 TOOK EVERYTHING IN THE BOX THAT I HAD IN CUSTODY WITH
8 ME AND GAVE IT UP. QUESTION: OKAY. DO YOU STILL
9 HAVE -- I GUESS, DO YOU STILL HAVE THAT BOX.

10 IN ADDITION TO THAT, I BELIEVE IT'S REQUEST
11 FOR PRODUCTION NUMBER -- NUMBER 25 ON THE SUBPOENA,
12 THAT'S RIGHT, IT'S NOT AN INDEPENDENT REQUEST TO
13 DEFENDANTS.

14 BUT WE DID, IN THE COURSE OF DISCOVERY, HAVE
15 MULTIPLE ROUNDS OF REQUEST FOR PRODUCTION OF DOCUMENTS
16 THAT WERE, I BELIEVE, RESPONDED TO.

17 AND AT NO POINT IN TIME DID THIS EVER COME UP,
18 FROM EITHER MR. MILLS AND HIS ATTORNEY, WHO IS PRESENT
19 HERE WITH US IN COURT TODAY, OR THE DEFENDANTS, UNTIL
20 TWO DAYS AGO.

21 MR. GUTERRES: WE DIDN'T HAVE THE VIDEO, YOUR
22 HONOR, AND WE ASKED MR. MILLS IF HE HAD A VIDEO THAT
23 SHOWED BABY RYAN AT THE TIME THAT HE -- THAT HE
24 OBTAINED IT.

25 HE PUT TOGETHER A COMPILATION, AND IS
26 PRODUCING IT PURSUANT TO SUBPOENA WE JUST SUBPOENAED
27 HIM FOR. WE CERTAINLY DIDN'T HAVE ANYTHING TO PRODUCE
28 TO HIM. IT'S IN DISCOVERY TO MR. MCMILLAN SINCE WE

1 DIDN'T HAVE IT.

2 MR. MCMILLAN: BUT, YOUR HONOR, MR. MILLS AND
3 HIS ATTORNEY CERTAINLY HAD IT. THEY RECEIVED A
4 SUBPOENA, AND RESPONDED TO IT AS FULLY THEY COULD BASED
5 ON THE INFORMATION MR. MILLS CLAIMED UNDER OATH WAS
6 AVAILABLE TO HIM.

7 THE COURT: WHAT'S THE DATE OF THE DEPOSITION?

8 MR. MCMILLAN: THE DATE OF THE DEPOSITION,
9 YOUR HONOR, WAS DECEMBER 5TH, 2014.

10 THE COURT: AND DID YOU DO ANY SUBSEQUENT
11 DISCOVERY ASKING FOR UPDATING ANSWERS OR PRODUCTION?

12 MR. MCMILLAN: AS TO THE MR. MILLS, THE
13 SUBJECT OF THE SUBPOENA, I'M NOT SURE THAT THERE'S A
14 CODE PROVISION THAT PERMITS US TO DO THAT.

15 THE COURT: THAT DISCOVERY WOULDN'T HAVE
16 APPLIED TO HIM. THAT'S CORRECT. HE'S NOT A PARTY.
17 AND YOUR OTHER OBJECTIONS ARE WHAT?

18 MR. MCMILLAN: IN ADDITION, WE HAVE RELEVANCE.
19 IN 352, NUMBER ONE ON RELEVANCE AT THE TIME OF THE
20 SEIZURE OF THE CHILD, IT WOULD HAVE BEEN -- WHAT WOULD
21 HAVE BEEN RELEVANT UNDER NINTH CIRCUIT CASE LAW IS WHAT
22 WAS APPARENT TO THE SOCIAL WORKERS AT THE TIME OF THE
23 SEIZURE.

24 AND THERE'S NO PERMISSIBILITY OF GOING FORWARD
25 IN TIME TO DIG UP EVIDENCE OR SOMETHING THAT WOULD HAVE
26 SUPPORTED THE PAST CONDUCT. IT'S SORT OF ONE OF THOSE
27 AFTER-ACQUIRED EVIDENCE-TYPE THINGS.

28 I CAN'T GO DIG THINGS UP TO SUPPORT WHAT THEY

1 DID. THEY HAVE TO HAVE EVIDENCE AT THE TIME THEY ACT
2 TO SUPPORT THE ACTION. SO IT WOULD NOT BE RELEVANT, TO
3 THE EXTENT -- ALL THAT STUFF COMING LATER WOULD NOT BE
4 RELEVANT TO THAT QUESTION AT ALL.

5 ADDITIONALLY, AND YOUR HONOR ALREADY TOUCHED
6 ON THIS ISSUE, AND THIS IS THE EVIDENCE TOO, THE CHILD
7 UNDERWENT INTENSIVE OCCUPATIONAL THERAPY AND PHYSICAL
8 THERAPY WITH HARBOR AND OTHERS AFTER HE WAS TAKEN FOR A
9 PERIOD OF YEARS. NOT MONTHS, YEARS.

10 SO I WOULD EXPECT, I WOULD HOPE THAT WITH THAT
11 ALL THAT INTENSIVE ASSISTANCE AND THERAPY, THE CHILD
12 WOULD IMPROVE. SO THE FACT THAT, YOU KNOW, THE VIDEO
13 SHOWS HIM DANCING AROUND WHEN HE'S SIX YEARS OLD, I
14 THINK THAT'S GREAT.

15 I WOULD HOPE THAT ALL THE RESOURCES THAT WERE
16 POURED INTO THIS CHILD HELP HIM HAVE THAT EFFECT. BUT
17 WHO'S TO SAY THAT THAT WOULDN'T HAVE HAPPENED IF HE
18 STAYED WITH MS. DUVAL.

19 BECAUSE REMEMBER, THE CARE PLAN THAT CAME OUT
20 OF HARBOR ON NOVEMBER 3RD INCLUDED ALL THOSE THINGS.
21 OCCUPATIONAL THERAPY, PHYSICAL THERAPY, FEEDING
22 THERAPY.

23 THE COURT: I UNDERSTAND THAT ARGUMENT. AND
24 STATE TO ME SPECIFICALLY YOUR 352 OBJECTION. 352 HAS
25 SEVERAL DIFFERENT BASES THAT ARE SUBJECT TO IT.

26 SO I WANT TO KNOW WHICH ONE YOU'RE RELYING ON
27 AND WHAT THE UNDUE PREJUDICE WOULD BE OR THE OTHER
28 BASIS UNDER 352 THAT YOU ASSERT.

1 MR. MCMILLAN: BEFORE WE GET TO THE BASES -- I
2 UNDERSTAND AND I AGREE. WE'RE LOOKING EITHER AT UNDUE
3 CONSUMPTION OF TIME, CONFUSION, PREJUDICE.

4 BUT BEFORE WE EVEN GET TO THAT, THERE'S AN
5 ISSUE THAT WE HAVE TO ADDRESS. AND THAT'S THAT WE ONLY
6 ACCEPT INTO EVIDENCE, EVIDENCE THAT'S PROBATIVE OF A
7 CONTESTED MATERIAL ISSUE OF FACT IN THE CASE.

8 AND, AGAIN, THERE IS NO DISPUTE THAT THE CHILD
9 HAD THESE PROBLEMS. ALL THROUGHOUT HIS LIFE, THAT HE
10 STILL HAS SOME PROBLEMS. THERE'S NO DISPUTE ABOUT THAT
11 ON EITHER SIDE.

12 AND THERE'S NO DISPUTE ABOUT WHETHER OR NOT
13 INTENSIVE PHYSICAL THERAPY WOULD HAVE HELPED THE CHILD.
14 WE ALL AGREE, NOT ONLY WE WOULD HOPE -- WE WOULD HOPE
15 THAT IT WOULD, BUT WE ALL AGREE THAT IT DID, TO AN
16 EXTENT.

17 SO I DON'T REALLY SEE IT AS EVEN BEING
18 RELEVANT TO A MATERIAL DISPUTED ISSUE IN THE CASE AT
19 THIS POINT. BUT LET'S JUST ASSUME FOR THE MOMENT THAT
20 IT IS. WE GET TO THE ISSUE OF CUMULATIVE EVIDENCE.

21 NUMBER ONE, WE'VE HAD TREMENDOUS AMOUNT OF
22 TESTIMONY ABOUT THE CHILD'S MEDICAL CONDITION THAT'S
23 SUPPORTED BY HARBOR-UCLA'S RECORDS, CATC CLINIC
24 RECORDS, DR. YIM'S RECORDS, ALL KIND OF RECORDS.

25 WE HAVE THAT PRETTY MUCH -- I HAVE A
26 COLLOQUIAL PHRASE IN MY MIND, I'M TRYING TO THINK OF
27 SOMETHING ELSE. WE HAVE THAT PRETTY MUCH NAILED DOWN.
28 SO, AGAIN, WHAT'S ADDITIONAL HERE IS THAT WE HAVE --

1 THE COURT: MY QUESTION WAS, WHAT WAS YOUR 352
2 OBJECTION? THAT'S WHAT I'D LIKE TO HAVE YOU RESPOND
3 TO.

4 MR. MCMILLAN: OKAY. THE 352 OBJECTION.
5 NUMBER ONE, LIKELY TO CONFUSE THE JURY. NUMBER TWO,
6 PREJUDICE.

7 LIKELY TO CONFUSE THE JURY: AGAIN, THERE'S NO
8 INDICATION ON THE VIDEO ITSELF AS TO WHEN OR HOW IT WAS
9 MADE, THE DATES AND VARIOUS COMPONENTS OF HOW IT WAS
10 PUT TOGETHER, WHO PUT IT TOGETHER, OR EVEN WHETHER IT
11 WAS --

12 AND WE HAVEN'T BEEN ABLE TO DO THE ANALYSIS ON
13 IT, TO SEE WHETHER THERE'S SOMETHING THERE FURTHER.
14 SECONDARILY, AS FAR AS PREJUDICE GOES, ANYBODY THAT
15 WATCHES THE VIDEO CAN SEE PHYSICALLY WHAT'S GOING ON
16 WITH THE CHILD.

17 THERE'S A LITTLE BIT OF, I DON'T WANT TO CALL
18 IT MANIPULATION IN THE INITIAL SEGMENTS, BUT THERE IS A
19 LITTLE BIT OF INTERACTION TO EITHER GET THE CHILD TO DO
20 THINGS OR NOT DO CERTAIN THINGS.

21 AND I CAN TELL YOU AS A PARENT, IN LOOKING AT
22 THAT VIDEO, CERTAINLY AS TO THE FIRST PORTIONS OF IT,
23 IT GIVES RISE TO A VISCERAL REACTION. I DON'T THINK
24 IT'S APPROPRIATE IN THE CONTEXT OF THIS CASE.

25 THE COURT: ALL RIGHT. IS THAT IT?

26 MR. MCMILLAN: I'M GETTING NOTES. ALSO, YOUR
27 HONOR, THE CUTS, IT'S SORT OF CHOPPED UP. WE HAVEN'T
28 HAD ACCESS TO THE FULL VIDEOS FROM WHICH THOSE CUTS AND

1 CLIPS WERE TAKEN. IN FACT, THAT WAS -- I CAN ONLY
2 PRESUME, INTENTIONALLY WITHHELD FROM US.

3 SO WE CAN'T TELL WHAT HAPPENED AFTER THOSE
4 SEGMENTS OR BEFORE THOSE SEGMENTS. THERE MAY BE
5 SOMETHING IN THERE THAT WOULD UNDERMINE OR CLARIFY
6 WHATEVER WAS SEEN.

7 I WOULD EXPECT THAT, BEFORE THAT SOMETHING
8 LIKE THAT WAS PLAYED AT ALL, PLAINTIFFS WOULD AT LEAST
9 GET AN OPPORTUNITY TO VET THE ENTIRE VIDEOS AND PICK
10 OUT THE PIECES THAT MAY SHOW A DIFFERENT PICTURE OR A
11 DIFFERENT STORY.

12 ALSO, THE LIKELIHOOD OF CONFUSING THE JURY.
13 IF WE HAVE SEGMENTS BEFORE AND AFTER SEIZURE, WHICH
14 WE'RE NOT SURE THAT WE DO, IT COULD CONFUSE THE JURY TO
15 THE EXTENT THAT THEY COULD THINK THAT THE IMPROVEMENT
16 CAME ABOUT AS A RESULT OF THE CHILD BEING TAKEN AWAY,
17 NOT AS A RESULT OF ALL THE INTENSIVE THERAPY HE GOT.

18 SO AGAIN, THAT'S ANOTHER ISSUE OF PREJUDICE,
19 IN THAT IF THE JURY IS CONFUSED BY WHAT THEY'RE SEEING,
20 OR GIVES RISE TO A VISCERAL EMOTIONAL REACTION, THAT
21 WOULD BE PREJUDICIAL TO THE PLAINTIFF.

22 THE COURT: MR. GUTERRES.

23 MR. GUTERRES: YOUR HONOR, THE ONLY ONE WHO'S
24 CHALLENGED THE IMPROVEMENT OF BABY RYAN DURING THE TIME
25 THAT HE'S BEEN WITH THE FATHER HAS BEEN PLAINTIFF'S OWN
26 EXPERTS. THEY GOT UP THERE, THEY GOT MR. -- DR. ACHAR,
27 AND HE WAS CLAIMING THAT OUR STATEMENTS ABOUT BABY RYAN
28 IMPROVING WERE MISLEADING AND A LIE.

1 SO THE ONLY EVIDENCE THAT -- WE'RE CHALLENGING
2 MISREPRESENTATIONS WITH REGARD TO THE IMPROVEMENTS MADE
3 BY BABY RYAN HAVE ALL COME THROUGH PLAINTIFF'S OWN
4 EXPERTS.

5 WE'RE ENTITLED TO PLAY THIS. WE JUST OBTAINED
6 IT. MR. MILLS IS NOT A PARTY TO THIS ACTION. AND I
7 THINK IT'S EXTREMELY RELEVANT.

8 INASMUCH AS MR. MCMILLAN THINKS THAT PERHAPS,
9 YOU KNOW, THE INITIAL CLIPS OF BABY RYAN AT 15 MONTHS
10 OLD ELICIT SOME VISCERAL REACTION, WELL, THAT'S HOW THE
11 KID WAS AT THE TIME, AT 15 MONTHS WHEN THE DETENTION
12 OCCURRED, YOUR HONOR.

13 AND THAT IS EXTREMELY RELEVANT TO ESTABLISH
14 THE CONDITIONS OF BABY RYAN AT THE TIME THAT THE
15 DECISION WAS BEING MADE WHETHER OR NOT THERE WERE
16 ENDANGERMENT ISSUES AT THE TIME OF THE DETENTION.

17 MR. MCMILLAN: YOUR HONOR, IF I --

18 MR. GUTERRES: AND CERTAINLY, IT'S SUBJECT TO
19 CROSS-EXAMINATION BY COUNSEL IF HE WANTS TO ESTABLISH
20 WHEN ANY OF THOSE CLIPS WERE TAKEN, AT WHAT AGE, AND
21 THAT CAN BE DONE VIA CROSS-EXAMINATION SO AS NOT TO
22 CONFUSE THE JURY.

23 MR. MCMILLAN: YOUR HONOR, IF I MIGHT ADDRESS
24 SOME OF WHAT MR. GUTERRES HAS SAID HERE. IF WE FOCUS
25 FOR A MOMENT ON THE ISSUES OF THE DAY IN THIS CASE, AND
26 THAT IS WHETHER OR NOT THE INFORMATION PRESENTED TO THE
27 JUVENILE COURT WAS EITHER FALSE OR INACCURATE IN SOME
28 WAY, THIS VIDEO WAS NEVER PRODUCED TO THE JUVENILE

1 COURT, AS FAR AS I KNOW.

2 SO IF WE ARE FOCUSING IN THIS CASE ON WHAT WAS
3 OR WAS NOT PRESENTED TO THE JUVENILE COURT, I WOULD
4 THINK THE FIRST QUESTION WE ASK WITH RESPECT TO THE
5 EVIDENCE PRESENTED NOW IS, IS IT SOMETHING THE JUVENILE
6 COURT SAW, HEARD, AND RELIED ON.

7 THERE'S NO INDICATION IN ANY OF THE RECORDS,
8 SPECIFICALLY THE TRANSCRIPTS OF THE JUVENILE COURT
9 PROCEEDINGS, THAT ANY OF THIS VIDEO MATERIAL WAS EVER
10 PRESENTED TO THE COURT.

11 SECONDARILY, WITH RESPECT TO DR. ACHAR AND HIS
12 TESTIMONY, THE QUESTION SPECIFICALLY PHRASED TO HIM WAS
13 DID THE DEFENDANT SAVE THIS CHILD'S LIFE BY REMOVING
14 HIM. THE ANSWER WAS NO.

15 WHETHER OR NOT HE'S THRIVING NOW, THAT
16 QUESTION WAS OBJECTED TO, AND THE OBJECTION WAS
17 SUSTAINED. SO THAT EVIDENCE DID NOT COME IN.

18 TO THE EXTENT THAT DR. ACHAR WAS TESTIFYING
19 ABOUT THE MEDICAL IMPROVEMENT OF THE CHILD, HE NEVER
20 SAID THAT THE CHILD WASN'T IMPROVING, CONSIDERING THE
21 CONDITION HE WAS IN.

22 WHAT HE SAID WAS, THE DEVELOPMENTAL DELAY DID
23 NOT CHANGE, THAT DIAGNOSIS DID NOT CHANGE OVER TIME.
24 AND THAT THE FAILURE TO THRIVE DIAGNOSIS DID NOT CHANGE
25 OVER TIME.

26 AND ALL OF THAT WAS COMING FROM REFERENCE TO
27 THE MEDICAL RECORDS, SPECIFICALLY THE HARBOR-UCLA
28 RECORDS, AND THEN LATER, THE OCCUPATIONAL THERAPY

1 RECORDS FROM THE OCCUPATIONAL THERAPY THAT THE -- I
2 GUESS BY THEN, THE CHILD HAD WHILE IN FATHER'S CUSTODY.

3 IN ADDITION, HE RELIED ON AN IEP EDUCATION
4 PLAN AND THE STATEMENTS MADE IN THAT. AND THERE'S
5 NOTHING THERE THAT'S IN DISPUTE.

6 I HAVEN'T HEARD ANYBODY SAY THAT THOSE MEDICAL
7 RECORDS WERE INACCURATE OR INCOMPLETE OR THAT THE IEP
8 WAS INACCURATE OR INCOMPLETE. IT'S SIMPLY NOT IN
9 DISPUTE.

10 THE COURT: LAST WORD, MR. GUTERRES?

11 MR. GUTERRES: I THINK IT'S JUST IRONIC THAT
12 THE WHOLE CASE IS ABOUT JUDICIAL DECEPTION AND WHAT IS
13 MISLEADING, AND YOU KNOW, WE HAVE VIDEO THAT ACTUALLY
14 SHOWS THE CONDITION OF THE CHILD AT THE TIME.

15 AND THAT'S SOMETHING THAT THE PLAINTIFFS
16 APPEAR NOT TO WANT TO SHOW THE JURY WHO IS MAKING THE
17 DECISION IN THIS CASE.

18 I THINK THAT IT'S CLEARLY RELEVANT, AND WE
19 SHOULD BE ENTITLED TO SHOW IT TO THE JURY, AND WE CAN
20 EXAMINE MR. MILLS ABOUT THE VIDEO. THERE IS NO 352
21 ISSUES, YOUR HONOR.

22 THE COURT: THE OBJECTION TO THE VIDEO,
23 SEVERAL OBJECTIONS ARE SUSTAINED. ONE, IT SHOULD HAVE
24 BEEN PRODUCED AT THE TIME OF THE DEPOSITION. CERTAINLY
25 CALLED FOR IT.

26 SECONDLY, THE -- THERE IS AN ISSUE OF
27 RELEVANCE. I DON'T KNOW THAT THIS VIDEO SHOWS THE
28 CONDITION OF THE CHILD AT THE TIME OF DETENTION. I'M

1 UNABLE TO TELL THAT.

2 AND AS TO HOW HE'S PROGRESSED SINCE THEN IS
3 NOT -- HOW HE HAS PROGRESSED SINCE AUGUST 9TH OF 2010
4 IS NOT AN ISSUE IN THE CASE.

5 THAT DATE, AS EVERYONE KNOWS, IS THE DATE
6 THE -- WHAT I'LL REFER TO AS THE DISPOSITION HEARING,
7 WHICH IS THE TIME THE JUVENILE COURT ISSUED IN ITS CASE
8 ITS -- IT TERMINATED ITS JURISDICTION OF THE MINOR,
9 RETURNING JURISDICTION OF THE MINOR TO THE FAMILY LAW
10 COURT.

11 AS OF THAT DATE, THE CONDITION OF THE MINOR
12 COULD HAVE BEEN AN ISSUE. I DON'T THINK -- I DON'T
13 KNOW WHAT WAS PRESENTED TO THE COURT AT THAT TIME.

14 THE -- AND THE LAST ISSUE, WHICH REALLY WASN'T
15 ARTICULATED BY MR. MCMILLAN -- THE VIDEO CLIPS SHOW
16 CERTAIN INTERACTION BETWEEN THE MINOR AND MR. MILLS.

17 AND I DON'T THINK HE REALLY ANNUNCIATED THE
18 UNDUE PREJUDICE NECESSARY UNDER 352, MR. MCMILLAN, BUT
19 NEVERTHELESS, I THINK SOMEONE WATCHING THE VIDEO WOULD
20 GET A CERTAIN VIEW OF THE INTERACTION BETWEEN THE MINOR
21 AND HIS FATHER.

22 AND THERE WAS POTENTIAL OF AN UNDUE PREJUDICE
23 FROM THAT IN THE COURSE OF THE CASE WHERE THE QUESTION
24 IS WHETHER THE MOTHER SHOULD HAVE CUSTODY. THIS
25 SHOWS -- THE VIDEO SHOWS, I THINK IN A POSITIVE LIGHT,
26 THE RELATIONSHIP OF THE MINOR WITH THE PARENT.

27 MY RULING, HOWEVER, IS NOT BASED ON THAT,
28 BECAUSE YOU DIDN'T MAKE THAT OBJECTION, MR. MCMILLAN.

1 BUT IT IS BASED ON THE TWO PREVIOUS GROUNDS I
2 MENTIONED. THE VIDEO WILL NOT BE SHOWN.

3 MR. MCMILLAN: THANK YOU, YOUR HONOR.

4 THE COURT: AND SO --

5 MR. GUTERRES: YOUR HONOR, MR. MILLS'S
6 ATTORNEY, BEFORE HE GETS CALLED TO TESTIFY, WOULD JUST
7 BRIEFLY LIKE TO ADDRESS THE COURT, IF THAT'S POSSIBLE.

8 THE COURT: ALL RIGHT.

9 THE WITNESS: THANK YOU, YOUR HONOR.
10 MATT KINLEY, ON BEHALF OF RYAN MILLS.

11 THE COURT: YES, SPELL YOUR FIRST AND LAST
12 NAMES, PLEASE.

13 MR. KINLEY: MATTHEW, IT'S M-A-T-T-H-E-W,
14 KINLEY, K-I-N-L-E-Y.

15 THE COURT: THANK YOU.

16 MR. KINLEY: MR. MILLS HAS BEEN EMBROILED IN
17 THE FAMILY LAW COURT AND THIS CASE, AND I'M SIMPLY HERE
18 TO PRESERVE PRIVACY OBJECTIONS. I WANTED TO ADDRESS
19 THE COURT HOW I COULD DO THAT, IF IT SHOULD COME UP.

20 I DON'T EXPECT IT, I HOPEFULLY CAN SIT HERE
21 MUTE. BUT IF THE EVENT COMES UP, I JUST WANTED TO
22 CLEAR THAT BEFORE MR. MILLS TAKES THE STAND.

23 THE COURT: WELL, IF SOMETHING COMES UP IN THE
24 TESTIMONY WHICH YOU THINK IMPLICATES A PRIVACY ISSUE, I
25 THINK THAT YOU SHOULD CALL IT TO THE COURT'S ATTENTION
26 AT THE TIME.

27 AND THEN I CAN CONDUCT A HEARING OUTSIDE THE
28 PRESENCE OF THE JURY TO DETERMINE WHETHER THERE'S A

1 VALID BASIS FOR THAT OBJECTION.

2 MR. KINLEY: THANK YOU. I'LL SIT IN THE
3 AUDIENCE, AND THEN I WILL SAY OBJECTION --

4 THE COURT: WELL, I THINK IT WOULD BE BETTER
5 IF YOU SAT UP HERE ON THE LAWYER'S SIDE OF THE RAIL.

6 MR. KINLEY: OKAY.

7 THE COURT: YOU DON'T HAVE TO SIT AT COUNSEL
8 TABLE. WHAT WE'LL DO IS -- A CHAIR, THERE IS A CHAIR
9 RIGHT THERE, RIGHT BEHIND YOU, AND I THINK THAT -- I
10 DON'T SEE THERE'S ANY REASON TO INTRODUCE YOU TO THE
11 JURY.

12 WE'LL WAIT AND SEE IF ANYTHING HAPPENS. BUT
13 YOU WILL BE ENTITLED TO, AT THE TIME, PERHAPS -- I'M
14 JUST THINKING WHETHER -- YOU'LL BE ABLE TO SPEAK
15 DIRECTLY TO ME.

16 MR. KINLEY: THANK YOU, YOUR HONOR.

17 THE COURT: AT THAT MOMENT, ASK IF YOU COULD
18 BE HEARD. I'LL UNDERSTAND THAT MEANS YOU'RE RAISING A
19 PRIVACY OBJECTION.

20 MR. PRAGER: YOUR HONOR, JUST TO POINT OUT,
21 THAT'S EXACTLY WHAT WE DID WITH MS. SANCHEZ'S ATTORNEY.
22 SO THE COURT CAME TO, I THINK, THE GREAT RESULT YOU'VE
23 ALREADY OFFERED. BEYOND THE BARS, THERE'S A CHAIR FOR
24 COUNSEL TO SIT AT. THANK YOU.

25 MR. KINLEY: THANK YOU.

26 THE COURT: THANK YOU.

27 THE CLERK: DO YOU WANT ME TO GET THEM?

28 THE COURT: NOT QUITE YET. UNFORTUNATELY

1 WE'VE TAKEN MOST OF THE MORNING. WE HAVE A SURE THING.
2 BUT I DID INDICATE TO YOU EARLIER THAT I WAS GOING TO
3 EXCUSE THE ALTERNATE JUROR.

4 SHE ADVISED THE COURT ATTENDANT THIS MORNING
5 THAT SHE IS WITHDRAWING HER REQUEST TO BE EXCUSED,
6 EXPRESSING THAT SHE'S AWARE THAT THERE ARE OTHER JURORS
7 WHO MAY BE HAVING A TIME PROBLEM, AND SHE DECIDED THAT
8 IT WOULD BE BETTER FOR HER TO STAY.

9 MS. SWISS: OKAY.

10 MR. GUTERRES: WOW.

11 THE COURT: SO THERE'S THE KIND OF JUROR WE
12 HOPE WE GET. EVEN IN HER FIRST MESSAGE TO THE COURT,
13 SHE INDICATED THAT SHE CONSIDERED THIS TO BE A VERY
14 IMPORTANT DUTY.

15 AND THE TONE OF HER LETTER WAS A LITTLE
16 APOLOGETIC FOR HAVING ASKED, OR FOR HAVING CALLED IT TO
17 MY ATTENTION. BUT NOW, AS IT TURNS OUT, AS YOU'RE
18 AWARE -- AS I MENTIONED TO YOU EARLIER, APPARENTLY
19 OTHER JURORS ARE EXPRESSING CONCERN.

20 AND SO SHE -- HER MESSAGE WAS, SHE TALKED TO
21 HER HUSBAND. THEY DECIDED THAT THEY ARE GOING TO
22 CANCEL THE TRIP, AND SHE'S NOT ASKING TO BE EXCUSED.

23 MR. GUTERRES: WHERE CAN WE FIND MORE OF THOSE
24 JURORS, YOUR HONOR?

25 THE COURT: I HAD A JUROR ONE TIME WHO HAD A
26 PAID CRUISE, AND I WAS AWARE OF IT, YOU KNOW, DURING
27 JURY SELECTION. SO WE GOT VERY CLOSE LIKE I DID WITH
28 YOU THE OTHER DAY. I SAID, YOU KNOW, I UNDERSTAND YOU

1 HAVE -- SHE SAID, OH, DON'T WORRY ABOUT IT.

2 I SAID, WELL, I AM CONCERNED. SHE SAID, I'M
3 NOT GOING. I SAID, WELL, ARE YOU GOING TO GET YOUR
4 MONEY BACK? SHE SAID, NO, BUT I'D RATHER FINISH THE
5 CASE.

6 YOU NEVER KNOW. THERE ARE PROBABLY MORE
7 PEOPLE LIKE THAT THAN WE'RE AWARE OF.

8 MR. MCMILLAN: YEAH, I WOULD HOPE.

9 THE COURT: IT'S NOT UNCOMMON THAT I FIND,
10 WITH JURORS, I THINK THE BIGGEST OBJECTION, THE PROBLEM
11 PEOPLE HAVE IS WHEN THEY FIRST GET CALLED, THEY'RE
12 HOPING THEY WON'T GET PICKED.

13 MY EXPERIENCE HAS ALWAYS BEEN ONCE A PERSON IS
14 PICKED FOR A JURY THAT THEY DO EVERYTHING THEY CAN TO
15 SEE IT THROUGH.

16 SO I THINK THAT -- THE THING WE -- THE HUMP WE
17 HAVE TO GET OVER IS GETTING PAST THEM JUST WANTING TO
18 GET OUT OF HERE RATHER THAN HAVE TO DO IT AGAIN. BUT
19 ONCE YOU GET THEM, I'VE NEVER HAD A PROBLEM WITH A
20 JUROR. IF I HAVE, I DON'T REMEMBER IT.

21 I SHOULD NEVER SAY NEVER. BUT I DON'T RECALL
22 ONE, ONCE THEY'RE ON THE CASE. I'VE HAD -- THAT WASN'T
23 THE ONLY INSTANCE, THAT WAS KIND OF DRAMATIC. I NEVER
24 ASKED HER HOW MUCH WAS THE CRUISE WAS, THAT SHE HAD
25 PAID.

26 I DON'T REMEMBER IF IT WAS A LONG ONE, BUT IT
27 WAS MORE THAN ONE OF THESE WEEKEND THINGS. SO EVEN
28 THEN, THAT WAS REAL MONEY. AND I THINK THAT SPEAKS

1 WELL OF THE CITIZENRY, GENERALLY. I THINK THERE ARE A
2 LOT OF PEOPLE WHO WOULD BE WILLING TO DO THAT.

3 MR. MCMILLAN: YOUR HONOR, DO YOU MIND IF
4 WE -- ASSUMING THAT WE'RE FINISHED WITH OUR BUSINESS
5 BEFORE GETTING THE JURY IN, WOULD YOU MIND IF WE TAKE
6 LIKE A 5-MINUTE RECESS TO HIT THE RESTROOM AND THEN
7 RECONFIGURE THE EQUIPMENT?

8 THE COURT: NO. I WOULDN'T MIND. TAKE A
9 SHORT RECESS.

10 (PAUSE IN THE PROCEEDINGS)

11 THE COURT: WE'RE ON THE RECORD. BEFORE WE
12 GET THE JURORS IN, WE HAVE COUNSEL PRESENT. IT'S MY
13 UNDERSTANDING THAT THE DEFENSE HAS -- INTENDS TO CALL
14 MR. MILLS.

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

16 THE COURT: I WANT TO MAKE SURE THE RECORD IS
17 CLEAR THAT THE DEFENSE HAS EXPRESSED ITS INTENTION TO
18 MAKE A MOTION FOR NON-SUIT.

19 AND THAT WE HAVE A STIPULATION AND AGREEMENT
20 THAT THE DEFENSE MAY, FOR THE SAKE OF THE EXPEDITIOUS
21 PROGRESS OF THE TRIAL, TO PROCEED BY PUTTING ON
22 EVIDENCE.

23 BUT IT IS AGREED THAT THE DEFENDANT, WHICH
24 WE'LL TRY TO SCHEDULE LATER TODAY, SOMETIME TODAY, HAS
25 NOT WAIVED THEIR RIGHT TO MOVE FOR A NON-SUIT ON ANY
26 AND ALL ISSUES.

27 MR. MCMILLAN: SO STIPULATED, YOUR HONOR.

28 THE COURT: OKAY.

1 MR. GUTERRES: SO STIPULATED.

2 THE COURT: ALL RIGHT. THEN WE'VE KEPT THE
3 JURY WAITING A GOOD PART OF THE MORNING. WE'LL GET
4 THEM IN.

5 (JURY PRESENT)

6 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
7 COURT IN THE PRESENCE OF THE JURY)

8 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
9 THE RECORD. EVERYBODY IS PRESENT. MR. GUTERRES, WOULD
10 YOU LIKE TO CALL YOUR FIRST WITNESS?

11 MR. GUTERRES: YES. THANK YOU, YOUR HONOR.
12 THE DEFENSE WOULD CALL MR. RYAN MILLS.

13
14 RYAN MILLS,
15 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
16 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

17
18 THE COURT: THANK YOU. GO AHEAD,
19 MR. GUTERRES.

20 MR. GUTERRES: THANK YOU, YOUR HONOR.

21
22 DIRECT EXAMINATION

23 BY MR. GUTERRES:

24 Q GOOD MORNING, MR. MILLS.

25 A GOOD MORNING.

26 Q MR. MILLS, WHAT DO YOU DO FOR A LIVING?

27 A I AM A PLANNER -- A FINANCIAL PLANNER FOR THE
28 GOVERNMENT.

1 Q AND TELL ME ABOUT YOUR RELATIONSHIP WITH
2 MS. DUVAL. HOW DID THAT START?

3 A WE WERE FRIENDS AT THE CHURCH THAT WE WENT TO.

4 Q AND TELL ME ABOUT HOW IT IS THAT YOU LEARNED
5 OF MS. DUVAL BEING PREGNANT.

6 A I RECEIVED A PHONE CALL AT ABOUT 10:00 O'CLOCK
7 AT NIGHT. AND SHE TOLD ME THAT SHE WAS PREGNANT.

8 Q AND DO YOU RECALL APPROXIMATELY WHEN IN THE
9 PREGNANCY THIS OCCURRED, THAT SHE NOTIFIED YOU?

10 A ABOUT -- VERY EARLY ON. SO RYAN WAS BORN ON
11 AUGUST 2ND, SO SHE NOTIFIED ABOUT NOVEMBER -- ABOUT THE
12 MIDDLE TO THE END OF NOVEMBER.

13 Q AND THIS WOULD HAVE BEEN NOVEMBER OF 2009?

14 A 2007.

15 Q 2000 AND?

16 A SEVEN, I'M SORRY.

17 Q AND THIS WAS JUST A PHONE CALL THEN, THAT SHE
18 MADE?

19 MR. MCMILLAN: OBJECTION: ASKED AND ANSWERED.

20 THE COURT: SUSTAINED.

21 BY MR. GUTERRES:

22 Q WHAT DID SHE -- WHAT OTHER INFORMATION DID SHE
23 COMMUNICATE TO YOU DURING THIS PHONE CALL?

24 A SHE CALLED ME, AND SHE SAID I'M CALLING TO --
25 I CAN'T REMEMBER THE EXACT WORDING -- IT WAS SOMETHING
26 TO THE EFFECT OF, I'M CALLING TO LET YOU KNOW THAT I'M
27 PREGNANT, AND IT'S YOURS. AND I MEAN, THAT'S WHAT SHE
28 CALLED TO TELL ME.

1 Q AND HOW DID YOU TAKE THE NEWS?

2 A WELL, WHEN I, YOU KNOW, WHEN I -- WHEN WE HAD
3 INTERCOURSE, SHE SAID, MEDICALLY, I CAN'T GET PREGNANT.
4 DON'T WORRY.

5 BECAUSE I STOPPED AND SAID, SHOULDN'T -- YOU
6 KNOW, SHOULDN'T THERE BE PROTECTION. SHE SAID, NO,
7 DON'T WORRY ABOUT IT. I CAN'T GET PREGNANT.

8 MR. MCMILLAN: OBJECTION, YOUR HONOR:
9 NONRESPONSIVE, MOVE TO STRIKE THE ENTIRE ANSWER.

10 THE COURT: THE OBJECTION IS SUSTAINED. THE
11 MOTION TO STRIKE IS GRANTED. THE ENTIRE ANSWER IS
12 ORDERED STRICKEN. THE JURY WILL DISREGARD IT. AND YOU
13 CAN CONTINUE WITH YOUR QUESTIONS, MR. GUTERRES.

14 MR. GUTERRES: THANK YOU, YOUR HONOR.
15 BY MR. GUTERRES:

16 Q TELL ME, AS BEST YOU CAN, WHAT YOU REMEMBER
17 ABOUT THE CONVERSATION ON THIS DATE WHEN MS. DUVAL
18 INFORMED YOU THAT SHE WAS PREGNANT.

19 A LIKE I SAID, IT WAS LATE AT NIGHT. SOMETIME
20 IN THE MIDDLE OF -- THE END OF DECEMBER -- NOVEMBER.
21 AND THE FIRST THING SHE, YOU KNOW, FROM WHAT I
22 REMEMBER, WHAT I RECALL, I JUST WANT TO LET YOU KNOW
23 THAT I'M PREGNANT, AND IT'S YOURS. I LOVE YOU.

24 AND THEN I RESPONDED WITH, I THOUGHT MEDICALLY
25 YOU COULDN'T GET PREGNANT.

26 Q AND WHAT GENERATED THAT RESPONSE? WHY WERE
27 YOU SURPRISED AND ASKED HER WHAT YOU DID DURING THIS
28 PHONE CALL, THAT YOU THOUGHT SHE COULDN'T GET MEDICALLY

1 PREGNANT? HOW DID THAT GO ABOUT?

2 MR. MCMILLAN: OBJECTION: MISSTATES THE
3 TESTIMONY AS TO "SURPRISED."

4 MR. GUTERRES: WITHDRAWN, YOUR HONOR. I'LL
5 MOVE ON.

6 BY MR. GUTERRES:

7 Q WHAT LED YOU TO BELIEVE THAT MS. DUVAL COULD
8 NOT GET MEDICALLY PREGNANT?

9 A SHE TOLD ME RIGHT BEFORE WE WERE ABOUT TO HAVE
10 INTERCOURSE THAT THAT SHE COULDN'T -- BECAUSE THERE WAS
11 A PAUSE BEFORE WE HAD INTERCOURSE, AND SHE SAID, YOU
12 KNOW, AND I SAID WELL, SHOULDN'T WE HAVE PROTECTION,
13 AND SHE SAID DON'T WORRY ABOUT IT. MEDICALLY, I CAN'T
14 GET PREGNANT.

15 Q AND PRIOR TO THE DATE THAT MS. DUVAL INFORMED
16 YOU SHE WAS PREGNANT, WHAT HAD BEEN -- WHEN WAS THE
17 LAST TIME YOU HAD HAD ANY CONTACT WITH MS. DUVAL?

18 A I THINK -- I DON'T REMEMBER. LIKE A WEEK OR
19 TWO EARLIER.

20 Q AND FOR HOW LONG DID YOU DATE MS. DUVAL?

21 A I -- I -- I DON'T THINK WE DATED AT ALL. WE
22 NEVER WENT ON A DATE. WE NEVER TOOK A PHOTO TOGETHER.
23 WE NEVER WENT ON A VACATION. WE NEVER LIVED TOGETHER.

24 WE NEVER -- YOU KNOW, WE WERE FRIENDS FOR A
25 WHILE. AND THE BOUNDARIES GOT CROSSED, AND -- AND I
26 JUST -- I DON'T KNOW. IT JUST KIND OF HAPPENED.

27 MR. MCMILLAN: OBJECTION, YOUR HONOR: MOVE TO
28 STRIKE EVERYTHING AS NONRESPONSIVE AFTER THE WORDS "WE

1 DIDN'T DATE AT ALL."

2 THE COURT: THE OBJECTION IS OVERRULED.
3 MOTION TO STRIKE IS DENIED. GO AHEAD.

4 BY MR. GUTERRES:

5 Q SO WHAT HAPPENED AFTER YOU FOUND OUT THAT
6 MS. DUVAL WAS PREGNANT?

7 A WELL, I WAS SHOCKED. I THINK THAT, YOU KNOW,
8 I DIDN'T -- I MEAN, KIND OF A PARALYSIS, LIKE, AND THEN
9 I ASKED HER, I SAID, HAVE YOU THOUGHT ABOUT GETTING AN
10 ABORTION.

11 AND JUST OUT OF, YOU KNOW, A GUT REACTION OF I
12 DIDN'T WANT TO HAVE A CHILD WITH THIS PERSON. AND SHE
13 RESPONDED, YOU KNOW, I WOULD NEVER DO THAT TO MY BODY.

14 Q AND DID YOU HAVE ANY KIND OF RELATIONSHIP WITH
15 MS. DUVAL AT THE TIME THAT YOU GOT THIS PHONE CALL?

16 MR. MCMILLAN: OBJECTION: VAGUE, AMBIGUOUS.

17 THE COURT: OVERRULED.

18 THE WITNESS: LIKE I SAID, I MEAN, WE WERE
19 FRIENDS. AND IN MY POINT OF VIEW, THERE WERE JUST SOME
20 LINES THAT WERE GRAYED, AND SHE WAS ALL FOR IT. AND I
21 WAS ALL FOR IT. AND...

22 BY MR. GUTERRES:

23 Q AND WHAT'S THE NEXT CONTACT YOU HAD WITH
24 MS. DUVAL REGARDING YOUR SON?

25 A WELL, I DIDN'T -- I DIDN'T -- LIKE I SAID,
26 WHEN I THINK ABOUT WHAT HAPPENED, I WAS JUST, FIRST OF
27 ALL, I WAS IN SHOCK. I DIDN'T -- I MEAN, THERE'S A
28 PART OF ME THAT WAS -- I MEAN, HOW CAN THAT BE?

1 I MEAN, HOW CAN IT HAPPEN WHERE, YOU KNOW, WE
2 HAD SEXUAL INTERCOURSE TWICE, ONCE WITHOUT PROTECTION,
3 FOR SOMEONE WHO TOLD ME, DON'T WORRY, MEDICALLY I CAN'T
4 GET PREGNANT. AND SO I CUT OFF ALL COMMUNICATION.

5 I DON'T -- I WANT TO MAKE SURE THIS CHILD WAS
6 MINE. I DON'T -- I DON'T -- WHAT ARE THE ODDS A
7 31-YEAR-OLD PERSON, ALMOST 32. AND SO I CUT OFF ALL
8 COMMUNICATION BECAUSE I WANTED TO MAKE SURE BECAUSE IF
9 THIS CHILD WAS MINE, HE WAS MINE.

10 MR. MCMILLAN: OBJECTION, YOUR HONOR:
11 NONRESPONSIVE, NARRATIVE RESPONSE, MOVE TO STRIKE. I
12 DON'T REMEMBER WHAT THE FIRST COUPLE WORDS WERE BUT I
13 DON'T THINK THOSE WERE RESPONSIVE EITHER.

14 THE COURT: THE OBJECTION NONRESPONSIVE IS
15 SUSTAINED. THE MOTION TO STRIKE IS GRANTED. THE
16 ENTIRE ANSWER IS ORDERED STRICKEN, AND THE JURY WILL
17 DISREGARD IT.

18 BY MR. GUTERRES:

19 Q DID YOU HAVE CONCERNS AS TO WHETHER OR NOT
20 THIS CHILD WAS IN FACT YOURS?

21 A YES.

22 Q AND AT SOME POINT, DID YOU FIND OUT ONE WAY OR
23 THE OTHER?

24 A WHEN THERE WAS A BLOOD TEST TAKEN A COUPLE
25 WEEKS AFTER THE CHILD WAS BORN.

26 Q AND WHAT DID THE RESULTS SHOW?

27 A THE RESULTS SHOWED THE CHILD WAS MINE.

28 Q SO ONCE YOU DID FIND OUT THAT THE CHILD WAS

1 YOURS, COULD YOU TELL ME WHAT WAS THE NEXT CONTACT THAT
2 YOU HAD WITH MS. DUVAL AND/OR YOUR SON?

3 A I DON'T REMEMBER -- I MEAN, IT WAS JUST A --
4 YOU KNOW, I WAS -- YOU KNOW, JUST FELT -- YOU KNOW, I
5 DON'T REMEMBER EXACTLY AT THAT POINT OF WHEN EXACTLY WE
6 SPOKE AGAIN.

7 I REMEMBER -- I DON'T REMEMBER THE CHAIN OF
8 EVENTS THAT HAPPENED AFTER THAT. I JUST -- WE WERE
9 VERY -- VERY -- VERY TOUGH TIME.

10 Q AT SOME POINT, DID YOU START HAVING SOME KIND
11 OF VISITATIONS WITH YOUR SON AFTER HIS BIRTH?

12 A I BELIEVE IN OCTOBER OF 2008, I WENT OVER, I
13 THINK LIKE ONCE OR TWICE.

14 Q AND THEN AT SOME POINT AFTER OCTOBER 2008, DID
15 YOUR VISITS BECOME MORE FREQUENT?

16 A NO. I MEAN, I DON'T THINK THERE WAS REALLY A
17 SCHEDULED PATTERN OF VISITATIONS. I REALLY JUST DIDN'T
18 KNOW WHAT TO DO.

19 I MEAN, IT WAS ONE OF THOSE THINGS, I JUST, AT
20 THAT PARTICULAR POINT IN MY LIFE, I JUST DIDN'T KNOW
21 WHAT TO DO. SO, YEAH, I DIDN'T REALLY KNOW WHAT TO DO.

22 MR. MCMILLAN: OBJECTION, YOUR HONOR: MOVE TO
23 STRIKE EVERYTHING AFTER "THERE WAS NO SCHEDULED
24 VISITATION" AS NONRESPONSIVE TO THE QUESTION.

25 THE COURT: THE OBJECTION IS SUSTAINED. THE
26 MOTION TO STRIKE IS GRANTED. ALL PORTIONS OF THE
27 ANSWER BEGINNING WITH "I DIDN'T KNOW WHAT TO DO" AND
28 EVERYTHING THEREAFTER IS ORDERED STRICKEN, AND THE JURY

1 WILL DISREGARD.

2 BY MR. GUTERRES:

3 Q WHO CHOSE THE NAME FOR YOUR SON?

4 A SHE DID.

5 Q DID YOU HAVE ANY INPUT IN THAT?

6 A NO -- NO.

7 Q AT SOME POINT IN TIME, DID MS. DUVAL SERVE YOU
8 WITH SOME PAPERS WITH REGARD TO THE PATERNITY OF YOUR
9 SON?

10 A YES. IN NOVEMBER OF -- I THINK IN NOVEMBER
11 OF 2008.

12 Q AND TELL US WHAT YOU REMEMBER, WITH REGARD TO
13 BEING SERVED WITH THOSE PAPERS?

14 A ONE OF HER FRIENDS SHOWED UP AT MY DOOR AND
15 KNOCKED ON MY DOOR AND SERVED ME WITH PAPERS.

16 Q AND AS A RESULT OF BEING SERVED WITH THOSE
17 PAPERS, DID IT INCLUDE ANY DISCUSSIONS ABOUT
18 VISITATIONS WITH YOUR SON?

19 A ARE YOU TALKING ABOUT IN THE PAPERWORK, LIKE
20 READING THROUGH THE PAPERWORK?

21 Q YES.

22 A THE PAPERWORK INVOLVED CHILD SUPPORT AND FOR
23 ME TO BEGIN VISITATIONS.

24 Q AND DID THOSE VISITATIONS IN FACT THEN
25 COMMENCE SOMETIME AFTER NOVEMBER?

26 A THEY COMMENCED IN FEBRUARY OF 2009.
27 FEBRUARY 2009.

28 Q SO LET'S JUMP TO FEBRUARY OF 2009. WHAT SORT

1 OF VISITATION SCHEDULE WAS SET UP?

2 A I THINK IT WAS TUESDAY, THURSDAY, FROM, GOSH,
3 I THINK 4:30 TIL 6:30 OR 7:00. I CAN'T REMEMBER
4 EXACTLY WHAT TIME. AND I -- AND I -- I'M NOT SURE IF
5 IT WAS ON EVERY OTHER SATURDAY, BUT IT WAS JUST A FEW
6 HOURS AT A TIME. LIKE TWO HOURS AT A TIME.

7 Q AND WERE THESE VISITS WHERE YOU BASICALLY HAD
8 YOUR SON ALONE, OR WERE THEY MONITORED?

9 A NO, I HAD HIM ALONE. AND I'D ALWAYS HAVE
10 SOMEBODY WITH ME.

11 Q TELL US, DURING THE TIME -- TAKING YOU BACK TO
12 THE FEBRUARY 2009 TIME FRAME, TELL US ABOUT ANY FEEDING
13 ISSUES THAT YOU HAD WITH REGARD TO YOUR SON, IF ANY?

14 MR. MCMILLAN: OBJECTION: LACKS FOUNDATION,
15 SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: YOU SAID BEFORE FEBRUARY 2009?
18 BY MR. GUTERRES:

19 Q NO. IN THE FEBRUARY 2009 TIME FRAME.

20 A I REMEMBER, JUST FROM THE BEGINNING OF WHEN I
21 STARTED VISITATIONS, THERE WAS JUST -- THERE WAS JUST A
22 LOT OF EMAILS OF PUTTING, THIS IS HOW YOU -- THIS IS
23 WHAT YOU NEED TO DO, WITH OUR SON, GIVE IT TO YOUR MOM.
24 SHE CAN READ IT.

25 THERE WAS A LOT OF INFORMATION. A LOT OF
26 EMAILS THAT WERE SENT.

27 MR. MCMILLAN: OBJECTION: NONRESPONSIVE TO
28 THE QUESTION. MOVE TO STRIKE.

1 THE COURT: OVERRULED. MOTION DENIED. GO
2 AHEAD.

3 BY MR. GUTERRES:

4 Q FROM WHOM WERE THESE EMAILS?

5 A FROM MS. DUVAL.

6 Q AND WHAT SORTS OF INFORMATION WAS SHE GIVING
7 YOU IN THESE EMAILS?

8 A I MEAN, I MEAN, I DON'T KNOW IF WE HAVE THE
9 EMAILS HERE. I DON'T KNOW IF YOU WANT ME TO DESCRIBE
10 THEM. I MEAN --

11 Q JUST IN GENERAL, JUST LET US -- WHAT KIND OF
12 INFORMATION WAS SHE WANTING YOU TO HAVE REGARDING HOW
13 TO FEED YOUR SON?

14 A THE WAY THAT SHE WANTED TO RAISE HER CHILD.

15 Q AND DID SHE INDICATE TO YOU WHAT SORTS OF
16 FOODS TO FEED HIM?

17 A SHE INDICATED --

18 MR. MCMILLAN: LACKS FOUNDATION, CALLS FOR
19 SPECULATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: SHE INDICATED TO ME THAT SHE
22 WANTED TO BREASTFEED ONLY. SHE HAD A LACTATION
23 CONSULTANT, AND THEY WERE FOLLOWING THE PATTERN OF HER
24 LACTATION CONSULTANT, AND YOU KNOW, AS JUST WALKING IN,
25 I -- I WASN'T, YOU KNOW, I -- I DON'T -- YOU KNOW, IT
26 WAS JUST KIND OF GOING WITH THE FLOW.

27 MR. MCMILLAN: OBJECTION: NONRESPONSIVE, MOVE
28 TO STRIKE AFTER "JUST WALKING IN."

1 THE COURT: OBJECTION'S OVERRULED. MOTION TO
2 STRIKE IS DENIED. GO AHEAD.

3 BY MR. GUTERRES:

4 Q THE LACTATION CONSULTANT THAT MS. DUVAL WAS
5 CONSULTING WITH AT THE TIME, WAS THAT ROSA BAGDAZARIAN?

6 A I BELIEVE SO.

7 Q AT SOME POINT IN TIME, DID YOU GET SOME
8 CONCERNS ABOUT YOUR SON'S DEVELOPMENT AND WEIGHT GAIN?

9 A WHAT I HEARD FROM DR. YIM IS THAT HE WAS
10 DEVELOPING ANEMIA AT ABOUT -- I CAN'T REMEMBER WHEN --
11 LIKE 7 OR 8 MONTHS. AND HE WAS, I BELIEVE HE WAS
12 UNDERWEIGHT.

13 BUT I DIDN'T REALLY HAVE A -- I WASN'T ALARMED
14 BECAUSE LIKE I SAID, I WAS JUST TRYING TO GET ADJUSTED
15 TO THIS LIFESTYLE OF VISITATIONS AND EVERYTHING ELSE.

16 MR. MCMILLAN: OBJECTION: NONRESPONSIVE TO
17 THE QUESTION, MOVE TO STRIKE THE ENTIRE ANSWER AS TO
18 TIME.

19 THE COURT: THE OBJECTION'S OVERRULED. MOTION
20 TO STRIKE IS DENIED. GO AHEAD.

21 BY MR. GUTERRES:

22 Q THANK YOU. I WANT YOU TO TURN YOUR ATTENTION
23 TO AN EXHIBIT, AND IT'S EXHIBIT 1064, AND THE BATES
24 RANGES ARE 1896 TO 1897. AND LET ME GET THAT FOR YOU.

25 IT'S ACTUALLY IN THE BOOKS, BUT I'LL JUST
26 PRESENT THAT TO YOU. JBCT1896 AND 1897 OF
27 EXHIBIT 1064.

28 AND FOR THE RECORD, THIS IS AN EMAIL FROM RYAN

1 MILLS TO EMILY BERGER DATED JUNE 21, 2010, AT 3:56.

2 THE SUBJECT MATTER IS NUTRITION HISTORY.

3 MAY I PROCEED, YOUR HONOR?

4 THE COURT: YES.

5 MR. GUTERRES: THANK YOU.

6 BY MR. GUTERRES:

7 Q MR. MILLS, HAVE YOU HAD A CHANCE TO TAKE A
8 LOOK AT EXHIBIT 1064?

9 A YES. I DO HAVE A QUESTION THOUGH. IF THIS
10 WAS MY ATTORNEY, HOW -- IN DEPENDENCY COURT, HOW -- I
11 THOUGHT THERE WAS AN ATTORNEY/CLIENT RELATIONSHIP.

12 Q LET ME ADDRESS A COUPLE OF THINGS.

13 DO YOU SEE -- DO YOU SEE THE STAMP ON THE TOP
14 RIGHT?

15 A YES.

16 Q AND IT SAYS ADMITTED IN EVIDENCE?

17 A YES.

18 Q OKAY. AND THEN --

19 A OH. THAT'S RIGHT. YEAH, SHE ASKED ME TO PUT
20 SOMETHING TOGETHER THAT SHE COULD SUBMIT TO THE COURT
21 THROUGH EMAIL. THAT'S CORRECT. RIGHT.

22 Q DOES THAT REFRESH YOUR RECOLLECTION NOW?

23 A YEAH. SHE ASKED ME FOR KIND OF A SUMMARY OF
24 WHAT WAS GOING ON THAT SHE COULD SUBMIT TO THE COURT.

25 Q AND IS THIS -- ON REVIEW OF THIS EMAIL, DOES
26 THAT REFRESH YOUR RECOLLECTION AS TO WHY YOU WENT AND
27 PUT TOGETHER THIS DOCUMENT?

28 A YES.

1 Q AND WHAT WERE YOU TRYING TO DOCUMENT IN
2 THIS -- IN THIS EMAIL?

3 MR. MCMILLAN: OBJECTION, YOUR HONOR: THE
4 WITNESS IS READING THE DOCUMENT. IMPROPER REFRESHMENT
5 OF RECOLLECTION.

6 THE COURT: OVERRULED. THAT'S NOT THE
7 QUESTION.

8 THE WITNESS: CAN YOU RESTATE THE QUESTION,
9 PLEASE?
10 BY MR. GUTERRES:

11 Q SURE. WHAT WERE YOU TRYING TO DOCUMENT IN
12 PREPARING THIS EMAIL?

13 MR. MCMILLAN: OBJECTION, YOUR HONOR: LACKS
14 FOUNDATION, CALLS FOR SPECULATION. THE WITNESS IS
15 READING THE DOCUMENT TO ANSWER THE QUESTION.

16 THE COURT: I THINK I ALREADY RULED ON THAT,
17 MR. MCMILLAN. THE OBJECTION IS OVERRULED. I DON'T
18 WANT THE OBJECTION AGAIN.

19 THE WITNESS: I WAS JUST -- I WAS -- WHEN
20 MS. BERGER ASKED ME TO PUT TOGETHER A SUMMARY, LIKE I
21 SAID, I DID MY BEST TO KIND OF DO KIND OF A TIMELINE
22 OF -- OF -- FROM MY POINT OF VIEW, WHAT WAS GOING ON.
23 BY MR. GUTERRES:

24 Q OKAY. AND YOU STARTED OFF -- YOUR TIMELINE,
25 WITH REGARD WITH CERTAIN ISSUES THAT YOU WERE HAVING,
26 OR DIFFERENCES THAT YOU WERE HAVING WITH MS. DUVAL
27 REGARDING THE FEEDING OF YOUR SON?

28 MR. MCMILLAN: OBJECTION: LEADING.

1 THE COURT: SUSTAINED.

2 BY MR. GUTERRES:

3 Q TELL US ABOUT WHAT YOU DOCUMENTED WITH REGARD
4 TO ANY ISSUES YOU HAD WITH MS. DUVAL REGARDING THE
5 FEEDING OF YOUR SON.

6 A I THINK WHEN I ENTERED AT -- IN FEBRUARY,
7 FIRST, I JUST DIDN'T KNOW WHAT -- I DIDN'T KNOW WHAT MY
8 ROLE WAS. I WAS STILL TRYING TO FIGURE OUT WHAT MY
9 ROLE WAS.

10 AND WHEN I WALKED IN, I, YOU KNOW, THERE WERE
11 A -- LIKE I SAID, THERE WAS A LOT OF DOCUMENTATION
12 PROVIDED AS TO THE DIRECTION AND THE CARE FOR HER
13 CHILD. AND I THINK A LOT OF TIMES, I JUST -- I DIDN'T
14 KNOW WHAT MY ROLE WAS.

15 WHEN I HAD MY VISITATIONS, I WAS GIVEN VERY
16 CLEAR INSTRUCTION BY MS. DUVAL THAT SHE HAS A PLAN, AND
17 LIKE I SAID, THIS IS ALL NEW TO ME. SO FOR A PERIOD OF
18 TIME, I JUST WENT ALONG WITH THE PLAN.

19 Q OKAY. AND --

20 MR. MCMILLAN: OBJECTION: NONRESPONSIVE,
21 NARRATIVE RESPONSE, MOVE TO STRIKE.

22 THE COURT: THE OBJECTION NONRESPONSIVE IS
23 SUSTAINED. MOTION TO STRIKE IS GRANTED. THE ENTIRE
24 ANSWER IS ORDERED STRICKEN. AND THE JURY DISREGARD IT.
25 WHY DON'T YOU REPEAT THE QUESTION, IF YOU WANT TO,
26 MR. GUTERRES.

27 MR. GUTERRES: THANK YOU, YOUR HONOR.

28

1 BY MR. GUTERRES:

2 Q AT SOME POINT, WAS THERE ANY DIFFERENCES THAT
3 YOU HAD WITH REGARD TO TIMING OF THE INTRODUCTION OF
4 SOLID FOOD?

5 A THE DIFFERENCES CAME WHEN I HEARD THAT HE WAS
6 ANEMIC. AND THE DIFFERENCES WERE I DIDN'T UNDERSTAND
7 WHY IT WASN'T BEING INTRODUCED.

8 LIKE I SAID, IF I DIDN'T HEAR THAT HE WASN'T
9 ANEMIC AND YOU KNOW, SLOWING DOWN IN HIS WEIGHT, I, YOU
10 KNOW, I DON'T THINK THERE WOULD HAVE BEEN ANY CONCERNS.

11 Q SO --

12 MR. MCMILLAN: OBJECTION: NONRESPONSIVE, MOVE
13 TO STRIKE EVERYTHING BEYOND THE WORD -- ACTUALLY, I'M
14 NOT SURE IF WE GOT A YES.

15 THE COURT: THE OBJECTION IS SUSTAINED. THE
16 OBJECTION BEING NONRESPONSIVE IS SUSTAINED. THE MOTION
17 TO STRIKE IS GRANTED. THE ANSWER IS ORDERED STRICKEN,
18 AND THE JURY DISREGARD IT. YOU CAN --

19 BY MR. GUTERRES:

20 Q MR. MILLS --

21 THE COURT: GO AHEAD, MR. GUTERRES.

22 MR. GUTERRES: THANK YOU, YOUR HONOR.

23 BY MR. GUTERRES:

24 Q AT SOME POINT IN TIME, DID YOU GET INFORMATION
25 FROM RYAN'S PEDIATRICIAN REGARDING HIS CONDITION?

26 A THAT WHOLE TIME -- I DON'T, LIKE I SAID, I
27 HAVE -- I DON'T REMEMBER HOW I FOUND IT, BUT I --
28 SOMETHING CAME UP TO WHERE HE WAS ANEMIC. I DON'T

1 KNOW, SO I GUESS THE ANSWER IS YES.

2 MR. MCMILLAN: OBJECTION -- OKAY. OBJECTION:
3 NONRESPONSIVE BEFORE THE FINAL YES, MOVE TO STRIKE
4 EVERYTHING UP TO THE YES.

5 THE COURT: ALL RIGHT. PLEASE DON'T INTERRUPT
6 THE WITNESS AGAIN, MR. MCMILLAN. THE OBJECTION
7 NONRESPONSIVE, PART OF THE ANSWER IS SUSTAINED. THE
8 MOTION TO STRIKE IS GRANTED.

9 ALL PORTIONS OF THE ANSWER EXCEPT "I DON'T
10 KNOW, SO I GUESS THE ANSWER IS YES" ARE ORDERED
11 STRICKEN. AND THE JURY DISREGARD IT.
12 BY MR. GUTERRES:

13 Q DIRECTING YOUR ATTENTION TO EXHIBIT 1064 ON
14 THAT FIRST PAGE, JBCT1896, COULD YOU PLEASE READ TO
15 YOURSELF THAT FIRST PARAGRAPH, AND THEN LET ME KNOW
16 WHEN YOU'RE DONE?

17 A OKAY.

18 Q HAVING READ THAT FIRST PARAGRAPH OF
19 EXHIBIT 1064, DOES THAT REFRESH YOUR RECOLLECTION OF
20 YOUR DISCUSSIONS WITH DR. YIM?

21 A IT DOES, BUT LIKE I SAID, I DON'T, I DON'T --
22 I REMEMBER -- IT'S STILL VERY VAGUE, MY DISCUSSIONS
23 WITH HER.

24 Q YOU HAD INDICATED THAT YOU HAD LEARNED -- DID
25 YOU LEARN OF SOME TYPE OF ANEMIC CONDITION THAT RELATED
26 TO YOUR SON?

27 A YES.

28 Q AND IN REVIEWING EXHIBIT 1064, DOES THAT

1 REFRESH YOUR RECOLLECTION OF THE SOURCE OF THAT
2 INFORMATION?

3 A YES.

4 Q AND WHO WAS THE SOURCE OF THAT INFORMATION?

5 A DR. YIM.

6 Q AND DID DR. YIM INDICATE TO YOU ANYTHING WITH
7 REGARD TO WHY PERHAPS YOUR SON MIGHT BE ANEMIC?

8 MR. MCMILLAN: OBJECTION, YOUR HONOR: CALLS
9 FOR HEARSAY.

10 THE COURT: THE OBJECTION IS OVERRULED. THE
11 QUESTION CALLS FOR A YES OR NO ANSWER.

12 THE WITNESS: CAN YOU REPEAT THE QUESTION
13 AGAIN?

14 MR. GUTERRES: MAY I HAVE IT READ IT BACK,
15 YOUR HONOR?

16 THE COURT: YES. ASK THE REPORTER TO READ THE
17 QUESTION.

18 (THE RECORD WAS READ AS REQUESTED)

19 THE WITNESS: I CAN'T REMEMBER THE
20 CONVERSATION. I'M SORRY -- I DON'T -- I MEAN, THIS IS
21 SIX YEARS AGO, SIX-AND-A-HALF YEARS AGO.

22 BY MR. GUTERRES:

23 Q WELL, IN PREPARING EXHIBIT 1064, YOU DID IT ON
24 THE DATE THAT IT BEARS, YES?

25 A YES.

26 Q JUNE -- AND WHAT DATE WAS THAT?

27 A LOOKS LIKE JUNE 21, 2010.

28 Q AND YOU TRIED TO PUT DOWN AS COMPLETE A

1 PICTURE AS YOU COULD, BASED ON THE INFORMATION YOU HAD
2 AT THAT TIME?

3 MR. MCMILLAN: OBJECTION: LEADING.

4 THE COURT: SUSTAINED.

5 BY MR. GUTERRES:

6 Q DID YOU HAVE AN UNDERSTANDING, MR. MILLS, THAT
7 EXHIBIT 1064 WAS SOMETHING THAT WAS GOING TO BE
8 PRESENTED TO THE JUVENILE COURT?

9 MR. MCMILLAN: LEADING. OBJECTION.

10 THE COURT: SUSTAINED.

11 BY MR. GUTERRES:

12 Q DID YOU HAVE AN UNDERSTANDING WHAT WAS GOING
13 TO HAPPEN WITH THIS EMAIL THAT YOU PREPARED?

14 A I DID.

15 Q AND WHAT WAS THAT?

16 A I DIDN'T KNOW -- I DIDN'T KNOW EXACTLY WHAT
17 MS. BERGER WAS GOING TO DO WITH IT. SHE ASKED SIMPLY
18 FOR A HISTORY.

19 Q AND AT SOME POINT, IF YOU LOOK AT, ON THE TOP
20 WHERE IT SAYS, A STICKER, WHERE IT SAYS, "ADMITTED IN
21 EVIDENCE" AND THE DATE?

22 A YES.

23 Q CAN YOU READ THAT?

24 A AUGUST 9TH, 2010.

25 Q AND DOES THAT REFRESH YOUR RECOLLECTION THAT
26 AUGUST 9TH, 2010, WAS ONE OF THE DATES WHERE YOU HAD
27 YOUR ADJUDICATION HEARING?

28 MR. MCMILLAN: OBJECTION: LEADING, ALSO LACKS

1 FOUNDATION, AND SPECULATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES. THAT WAS THE DATE OF THE
4 ADJUDICATION.

5 BY MR. GUTERRES:

6 Q AND WERE YOU PRESENT?

7 A YES.

8 Q AND DO YOU REMEMBER IF, IN FACT, YOUR EMAIL,
9 EXHIBIT 1064, WAS IN FACT MOVED INTO EVIDENCE BY YOUR
10 ATTORNEY?

11 A I DON'T REMEMBER. I DO NOT.

12 Q IN YOUR -- DO YOU RECALL ACTUALLY HAVING
13 COMMUNICATIONS WITH DR. YIM REGARDING THE CONDITION OF
14 YOUR SON?

15 A I BELIEVE THERE WERE -- I DON'T REMEMBER IF
16 THERE WAS A FEW PHONE CALLS. LIKE I SAID, IT WAS A
17 LONG TIME AGO, AND THIS WAS SEVEN YEARS AGO NOW, SO I
18 DON'T -- I DON'T REMEMBER GOING TO A DOCTOR
19 APPOINTMENT. ONE OR TWO PHONE CALLS AND A DOCTOR
20 APPOINTMENT.

21 Q WITH DR. YIM?

22 A YES.

23 Q LET ME DIRECT YOUR ATTENTION TO ANOTHER
24 EXHIBIT. AND IT WILL HAVE TO BE THE NEXT EXHIBIT IN
25 ORDER, WHICH --

26 THE CLERK: 1256.

27 (DEFENDANT'S EXHIBIT NO. 1255 WAS
28 MARKED FOR IDENTIFICATION BY THE

1 COURT.)

2 THE CLERK: STRIKE THAT. 1255.

3 BY MR. GUTERRES:

4 Q FOR THE RECORD, EXHIBIT 1255 IS A
5 MARCH 26, 2009, LETTER FROM MS. DUVAL TO AMIR --

6 A AHARONOV.

7 Q A-H-A-R-O-N-O-V, ESQUIRE. AND THE SUBJECT
8 MATTER IS "RESPONSE TO MATTER OF DUVAL AND MILLS."

9 HAVE YOU HAD A CHANCE TO TAKE A LOOK AT EXHIBIT 1255?

10 A YES.

11 Q AND WHO IS MR. AHARONOV?

12 A MR. AHARONOV WAS MY FAMILY ATTORNEY.

13 Q AND HAVE YOU SEEN THIS LETTER BEFORE?

14 A YES.

15 Q AND ARE YOU FAMILIAR WITH THE CONTENTS AND
16 ISSUES BEING RAISED BY MS. DUVAL IN THIS LETTER?

17 A THERE WAS A LOT OF LETTERS BACK AND FORTH, SO
18 THIS IS JUST ONE OF THE MANY, SO YES.

19 Q AND SHE HAD -- MS. DUVAL HAD CERTAIN
20 COMPLAINTS ABOUT YOUR SON'S FEEDING. CORRECT?

21 MR. MCMILLAN: OBJECTION: LEADING.

22 BY MR. GUTERRES:

23 Q AT THIS TIME?

24 MR. MCMILLAN: OBJECTION: LEADING, ALSO LACKS
25 FOUNDATION, SPECULATION.

26 THE COURT: OVERRULED AS TO LEADING -- EXCUSE
27 ME. SUSTAINED AS TO LEADING. OVERRULED AS TO THE
28 OTHER GROUNDS.

1 BY MR. GUTERRES:

2 Q WELL, DIRECTING YOUR ATTENTION TO THE BOTTOM
3 OF THE FIRST PAGE OF EXHIBIT 1255. WHAT WERE THE
4 ISSUES THAT MS. DUVAL WAS RAISING IN THIS LETTER?

5 MR. MCMILLAN: OBJECTION: FOUNDATION,
6 IMPROPER REFRESHMENT OF RECOLLECTION. OR LACK OF
7 FOUNDATION, RATHER.

8 THE COURT: OVERRULED.

9 THE WITNESS: CAN YOU SAY THE QUESTION AGAIN?

10 BY MR. GUTERRES:

11 Q SURE. YOU SAW THIS LETTER. CORRECT?

12 A YES, I DID.

13 Q AND YOU WOULD HAVE SEEN THIS LETTER AT OR
14 ABOUT THE THAT TIME IT WAS SENT, MARCH 26, 2009?

15 A YES.

16 Q DO YOU RECALL WHAT GAVE RISE -- OR WHAT ISSUES
17 WERE BEING COMMUNICATED TO YOU OR TO YOUR -- AND YOUR
18 ATTORNEY BY MS. DUVAL DURING THIS TIME FRAME?

19 MR. MCMILLAN: OBJECTION: LACKS FOUNDATION --
20 LACKS FOUNDATION AS TO WHOM THE LETTER WAS COMMUNICATED
21 TO. MISSTATES THE DIRECTION OF THE LETTER.

22 THE COURT: OVERRULED.

23 THE WITNESS: THIS IS ABOUT FOUR WEEKS AFTER I
24 BEGAN VISITATIONS. AND FROM WHAT I READ, AND FROM WHAT
25 I CAN RECALL THROUGH READING THE LETTER THAT IT -- IT
26 WAS ALREADY A VERY STRONG -- FOR LACK OF A BETTER
27 WORD -- GET ON BOARD WITH MY PLAN.

28 MR. MCMILLAN: OBJECTION: NONRESPONSIVE.

1 MOVE TO STRIKE.

2 THE COURT: THE OBJECTION'S OVERRULED. MOTION
3 TO STRIKE IS DENIED.

4 BY MR. GUTERRES:

5 Q DO YOU REMEMBER IF YOUR ATTORNEY RESPONDED TO
6 MS. DUVAL'S LETTER?

7 A LIKE I SAID, THERE WERE A LOT OF LETTERS, SO I
8 DON'T RECALL.

9 Q LET ME DIRECT YOUR ATTENTION TO THE NEXT
10 LETTER, IT'LL BE THE NEXT IN ORDER, 1256?

11 THE CLERK: YES.

12 (DEFENDANT'S EXHIBIT NO. 1256 WAS
13 MARKED FOR IDENTIFICATION BY THE
14 COURT.)

15 BY MR. GUTERRES:

16 Q OH, I'M SORRY. AND FOR THE RECORD,
17 EXHIBIT 1256 IS A LETTER DATED MARCH 27, 2009, FROM
18 AMIR AHARONOV TO MS. DUVAL. BATES NUMBER ON
19 EXHIBIT 1256 ARE JBTC080 AND 081.

20 A OKAY.

21 Q DO YOU RECOGNIZE THIS LETTER?

22 A YES.

23 Q AND IF YOU TURN TO PAGE 2, THERE'S A CC, AND
24 IT SAYS R. MILLS.

25 DO YOU SEE THAT?

26 A YES.

27 Q DO YOU RECALL RECEIVING A COPY OF THIS LETTER
28 ON OR ABOUT THE DATE THAT IT BEARS?

1 A YES.

2 Q THE HANDWRITING ON THE MARGIN ON THE FIRST
3 PAGE, IS THAT -- DO YOU RECOGNIZE THAT WRITING?

4 A THAT'S NOT MINE.

5 Q THAT'S?

6 A THAT'S NOT MINE. I'M SORRY.

7 Q DO YOU KNOW WHOSE IT IS?

8 A I DO NOT KNOW WHOSE IT IS.

9 Q IN THE MARCH 2009 TIME FRAME DID YOU HAVE AN
10 UNDERSTANDING AS TO WHETHER OR NOT MS. DUVAL WANTED TO
11 EXCLUSIVELY BREASTFEED?

12 MR. MCMILLAN: OBJECTION: LEADING.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES. SHE STATED THAT FROM THE
15 BEGINNING.

16 BY MR. GUTERRES:

17 Q AND I WANT TO DIRECT YOUR ATTENTION TO PAGE 2
18 OF THAT LETTER.

19 A OKAY.

20 Q AT THE TOP OF THAT PARAGRAPH -- FIRST
21 PARAGRAPH -- IF YOU COULD READ THAT TO YOURSELF.

22 A OKAY.

23 Q AGAIN, DOES THAT REFRESH YOUR RECOLLECTION OF
24 THE ISSUES WITH REGARD TO THE CONCERNS THAT YOU WERE
25 HAVING WITH REGARD TO BABY RYAN AT OR ABOUT THE
26 MARCH 2009 TIME FRAME?

27 MR. MCMILLAN: OBJECTION: FOUNDATION, LACK OF
28 FOUNDATION, IMPROPER REFRESHMENT OF RECOLLECTION.

1 THE COURT: THE OBJECTION IS SUSTAINED THAT
2 THERE'S NO TESTIMONY THAT WOULD WARRANT REFRESHING OF
3 RECOLLECTION.

4 BY MR. GUTERRES:

5 Q DID YOU EVER COMMUNICATE ANY CONCERNS YOU HAD,
6 WITH REGARD TO YOUR SON'S FEEDING, TO MS. DUVAL DURING
7 THIS TIME FRAME, MARCH 2009?

8 A YES.

9 Q AND WHAT WERE THOSE CONCERNS?

10 A AS YOU CAN SEE IN THE LETTER, I THINK THE
11 LETTER STATES THAT THERE WERE ISSUES WITH THE -- WITH
12 BREASTFEEDING ONLY.

13 Q ISSUES WITH MS. DUVAL BREASTFEEDING ONLY?

14 A CORRECT. SINCE THE DOCTOR SAID THAT HE WAS
15 DEVELOPING ANEMIA.

16 MR. MCMILLAN: OBJECTION: MOVE TO STRIKE AS
17 NONRESPONSIVE, THE LAST PORTION OF THE ANSWER AFTER, I
18 BELIEVE HE SAID YES.

19 THE COURT: THE OBJECTION IS OVERRULED. THE
20 MOTION TO STRIKE IS DENIED.

21 BY MR. GUTERRES:

22 Q IF I COULD ENLIST MR. MCMILLAN'S ASSISTANCE IN
23 TURNING ON THE MACHINE, YOUR HONOR. AS OF -- IT HAS TO
24 WARM UP, SO I'LL --

25 MR. MILLS, I'M JUST GOING TO TRY TO ADDRESS A
26 COUPLE OF ISSUES BEFORE OUR TECHNOLOGY WARMS UP. IN
27 MARCH, YOU WERE ALREADY HAVING CERTAIN FAMILY LAW
28 PROCEEDINGS. CORRECT?

1 A YES.

2 Q AND DURING THAT TIME FRAME, YOU WERE
3 REPRESENTED BY MR. AMIR --

4 A AHARONOV.

5 Q AHARONOV. AT SOME POINT, DO YOU RECALL -- DID
6 HE CONTINUE TO REPRESENT YOU IN ANY FAMILY CUSTODY TYPE
7 ISSUES? DO YOU RECALL THE TIME FRAMES?

8 A I BELIEVE HE REPRESENTED ME UP UNTIL 2013.

9 Q AND AT SOME POINT, DO YOU RECALL PREPARING A
10 DECLARATION OF SOME SORT TO SUBMIT TO THE FAMILY LAW
11 COURT?

12 A I -- YES.

13 Q AND THERE WAS A DOCUMENT THAT YOU PREPARED
14 AND/OR SIGNED ENTITLED "NEWLY DISCOVERED EVIDENCE"?

15 MR. MCMILLAN: OBJECTION: LEADING.

16 BY MR. GUTERRES:

17 Q DO YOU RECALL?

18 MR. MCMILLAN: STILL OBJECTION: LEADING.

19 THE COURT: OVERRULED.

20 THE WITNESS: I DON'T RECALL. I MEAN, THERE'S
21 BEEN A LOT OF DECLARATIONS.

22 BY MR. GUTERRES:

23 Q I WANT TO TURN YOUR ATTENTION TO EXHIBIT 24,
24 WHICH IS ALREADY IN EVIDENCE. AND FOR THE RECORD,
25 THE -- SPECIFICALLY THE PORTIONS THAT I WANT TO SHOW
26 YOU ARE EXHIBIT 24 AND THE BATES RANGES ARE 615
27 THROUGH 623.

28 AND THE DOCUMENT IS ENTITLED "NEWLY DISCOVERED

1 EVIDENCE, COLON, DECLARATION OF RYAN MILLS." AND I
2 DON'T KNOW WHETHER IT'S EASIER FOR YOU OR...

3 AND AS A COURTESY COPY, I HAVE FOR THE
4 COURT --

5 MR. MCMILLAN: WHAT'S THE BATES NUMBER?

6 MR. GUTERRES: 615.

7 MR. MCMILLAN: YOUR HONOR, BEFORE THERE'S A
8 PUBLICATION, CAN WE HAVE A QUICK SIDEBAR?

9 THE COURT: YES.

10 (THE FOLLOWING PROCEEDINGS WERE HELD AT
11 THE SIDEBAR OUTSIDE THE PRESENCE OF THE
12 JURY).

13 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE
14 PRESENT.

15 MR. MCMILLAN: YOUR HONOR, THE EXHIBIT 24,
16 SPECIFICALLY ALL THE ATTACHMENTS TO IT, THAT'S ONE OF
17 THE EXHIBITS WE'RE REQUESTING LIMITED INSTRUCTION ON.

18 MAINLY ON THE BASIS OF HEARSAY, SPECIFICALLY
19 TO THE -- CATEGORICALLY, IT'S A HEARSAY DOCUMENT, AND
20 IT'S A DOCUMENT -- A STATEMENT THAT'S MADE OUT OF
21 COURT, AND OUT OF THIS PROCEEDING.

22 AND IT'S BEING OFFERED FOR THE SUBSTANTIVE
23 PURPOSE. SO WE MAINTAIN OUR HEARSAY OBJECTION, AND WE
24 WOULD LIKE TO HAVE A LIMITING INSTRUCTION UPON THE
25 INTRODUCTION OF THAT PARTICULAR -- OR THE PUBLICATION
26 OF THAT PARTICULAR DOCUMENT TO THE JURY.

27 IF IT GETS PUBLISHED TO THE JURY, THAT IS, BUT
28 IF IT IS, WE'D LIKE THE LIMITED INSTRUCTION.

1 MR. GUTERRES: THAT'S FINE.

2 THE COURT: SO WHAT DO YOU WANT THE JURY TOLD?

3 MR. MCMILLAN: WE WANT THE JURY TOLD IT'S NOT
4 BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED, BUT
5 MERELY TO DOCUMENT THESE THINGS IN THE COURT -- THINGS
6 WERE SAID.

7 THE COURT: AND THINGS THAT WERE STATED
8 THEREIN, TO THAT EFFECT.

9 MR. MCMILLAN: MR. MILLS MADE THE STATEMENT,
10 BUT THEY'RE NOT FOR THE TRUTH OF THE MATTER ASSERTED.

11 THE COURT: ALL RIGHT.

12 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
13 COURT IN THE PRESENCE OF THE JURY)

14 MR. GUTERRES: MAY I PROCEED, YOUR HONOR?

15 THE COURT: YES.

16 BY MR. GUTERRES:

17 Q MR. MILLS, IF YOU TURN TO THE LAST PAGE OF
18 THAT DOCUMENT.

19 A OKAY.

20 Q AND AT THE BOTTOM, IT'S -- ACTUALLY, IF YOU
21 LOOK AT THE TOP RIGHT, IT'S -- HAS A BATES NUMBER
22 OF 623. YES?

23 A YES.

24 Q AND IS THAT YOUR SIGNATURE?

25 A YES.

26 Q AND DID YOU SIGN IT ON OR ABOUT JUNE 4TH
27 OF 2009?

28 A I'M SORRY. I'M LOOKING FOR THE DATE TO

1 CONFIRM.

2 Q THE DATE WOULD BE -- YOU SEE IT'S RIGHT ON TOP
3 OF WHERE YOU SIGN?

4 A YES.

5 Q DOES THAT REFRESH YOUR RECOLLECTION?

6 A YES.

7 Q OKAY. AND THAT WAS -- IT WOULD HAVE BEEN
8 JUNE 4TH OF 2009?

9 A CORRECT.

10 Q AND DOES -- AND YOU REMEMBER WHAT -- WHY THIS
11 DECLARATION WAS PREPARED?

12 A I THINK BECAUSE OF THE CHALLENGES THAT WERE
13 GOING ON.

14 Q WHAT DO YOU MEAN?

15 A THE CHALLENGES WITH THE -- I MEAN, I HAD --
16 AND LIKE I SAID, I READ THROUGH THE EMAIL -- OR THE
17 LETTER.

18 THE CHALLENGES THAT WERE GOING ON WERE HE WAS
19 ANEMIC, THE CHALLENGES THAT WERE GOING ON WERE THE
20 CONSTANT CONTROL. AND I THINK AT THIS PARTICULAR POINT
21 IN TIME, I WAS TRYING TO FIGURE OUT WHAT ROLE I HAD IN
22 HIS LIFE.

23 Q WERE THERE ANY ISSUES WITH REGARD TO, LIKE,
24 TRYING TO SET UP APPOINTMENTS WITH DOCTORS THAT YOU
25 WERE HAVING WITH MS. DUVAL?

26 A THE ISSUES WERE THAT I WOULD LEARN OF DOCTORS
27 AFTERWARDS. AND THERE WERE MANY DOCTORS. I THINK TO
28 THIS DAY, I DON'T KNOW HOW MANY.

1 Q SO LET ME DIRECT YOUR ATTENTION TO THE
2 HANDWRITING ON THIS DOCUMENT.

3 A OKAY.

4 Q THERE'S SOME HANDWRITING ON THE -- THAT FIRST
5 PAGE, EXHIBIT 24, 615, AND THEN THERE'S OTHER
6 HANDWRITING ON THE MARGINS, SOME OF THE PAGES.

7 DO YOU RECOGNIZE OF ANY THAT HANDWRITING?

8 A IT'S NOT MINE.

9 Q BUT YOU DON'T KNOW WHOSE IT IS?

10 A I DO NOT KNOW.

11 Q AND AT OR ABOUT THE TIME THAT YOU PREPARED AND
12 SIGNED THIS DOCUMENT, JUNE OF 2009, DO YOU RECALL WHO
13 THE DOCTORS WERE THAT HAD SEEN YOUR SON?

14 A DR. YIM WAS THE ONLY ONE I WAS IN CONTACT
15 WITH.

16 Q AND DIRECTING YOUR ATTENTION TO PAGE 2 AT THE
17 BOTTOM. MAY I PUBLISH, YOUR HONOR?

18 MR. MCMILLAN: OBJECTION, YOUR HONOR: SAME
19 OBJECTIONS DISCUSSED AT SIDEBAR.

20 THE COURT: YES, YOU MAY.

21 THIS -- CERTAIN PORTIONS OF THIS DOCUMENT ARE
22 GOING TO BE SHOWN TO THE JURY. THE -- ANY CONTENT YOU
23 SEE IN THIS DOCUMENT MAY NOT BE CONSIDERED BY YOU AS
24 TRUTH OF THE MATTERS SET FORTH THEREIN.

25 BUT IT'S BEING PROVIDED TO YOU ONLY TO SHOW
26 YOU WHAT INFORMATION WAS PROVIDED TO THE COURT AT THE
27 TIME THAT THIS DOCUMENT WAS USED. EVERYBODY UNDERSTAND
28 THAT? ALL RIGHT.

1 BY MR. GUTERRES:

2 Q AND, AGAIN, YOU CAN EITHER LOOK AT THE SCREEN,
3 MR. MILLS, OR FEEL FREE TO LOOK AT THE DOCUMENT THAT'S
4 IN FRONT OF YOU. YOU INDICATED THAT YOU WERE AWARE OF
5 DR. YIM?

6 A YES.

7 Q AND IF YOU LOOK AT PAGE 2 AT THE BOTTOM,
8 THERE'S A REFERENCE TO A DR. BROUSSEAU.

9 DO YOU SEE THAT?

10 A YES, I DO.

11 Q WHAT INFORMATION DID YOU HAVE WITH REGARD TO
12 DR. BROUSSEAU TREATING YOUR SON AT OR ABOUT THIS TIME
13 FRAME?

14 A AT THE TIME --

15 MR. MCMILLAN: OBJECTION: FOUNDATION, LACK OF
16 FOUNDATION, SPECULATION, CALLS FOR HEARSAY -- OR, BASED
17 ON HEARSAY.

18 THE COURT: OVERRULED.

19 THE WITNESS: AT THIS PARTICULAR POINT IN
20 TIME, NONE.

21 BY MR. GUTERRES:

22 Q YOU HAD NO INFORMATION REGARDING
23 DR. BROUSSEAU?

24 A NOT THAT I REMEMBER.

25 Q AND DOES THIS DOCUMENT REFRESH YOUR
26 RECOLLECTION IN ANY WAY AS TO HOW IT IS THAT YOU
27 LEARNED ABOUT DR. BROUSSEAU?

28 A IT'S BEEN SEVEN YEARS, SO I'M KIND OF GOING

1 OFF OF THE DOCUMENT, BUT I DON'T REMEMBER ALL THE
2 DIFFERENT EVENTS.

3 Q AND WHEN YOU PREPARED THIS DOCUMENT, DO YOU
4 RECALL WHAT THE -- WHAT YOUR MAIN PURPOSE -- YOU WERE
5 TRYING TO COMMUNICATE TO THE COURT?

6 MR. MCMILLAN: OBJECTION: FOUNDATION,
7 SPECULATION, IMPROPER OPINION.

8 THE COURT: OVERRULED.

9 THE WITNESS: LIKE I SAID FROM THE BEGINNING,
10 I WAS TRYING TO FIGURE OUT WHAT MY ROLE WAS. I -- I
11 FEEL LIKE IF I WAS GOING TO BE A PART OF HIS LIFE, THEN
12 I JUST DIDN'T WANT TO BE AN ONLOOKER. I WANTED TO BE
13 ABLE TO BE INFORMED OF WHAT'S GOING ON.

14 BY MR. GUTERRES:

15 Q AND DID YOU HAVE ANY INPUT WITH REGARD TO THE
16 SELECTION OF DR. YIM?

17 A NO.

18 Q DID YOU HAVE ANY OBJECTIONS TO DR. YIM?

19 A NO. SHE WAS A PEDIATRICIAN.

20 Q AND I BELIEVE YOU INDICATED THAT YOU HAD HAD
21 SOME LIMITED CONTACT WITH DR. YIM BY PHONE, AND WAS IT
22 ONE MEETING?

23 A I DON'T REMEMBER -- I DON'T REMEMBER HOW MANY.
24 I BELIEVE IT WAS EITHER ONE OR TWO.

25 Q AND NOW, DIRECTING YOUR ATTENTION TO
26 EXHIBIT 24 AT THE TOP RIGHT, BATES 617. IN PARTICULAR,
27 PARAGRAPH 8. IT REFERENCES A CONFERENCE -- SOME -- A
28 DISCUSSION WITH DR. YIM ON -- IN OR ABOUT MARCH.

1 DO YOU SEE THAT?

2 A YES, I DO.

3 Q DOES THAT, AGAIN, REFRESH YOUR RECOLLECTION IN
4 ANY WAY ABOUT DISCUSSIONS YOU HAD WITH DR. YIM?

5 A IT REFRESHES THE FACTS, BUT NOT THE CONTENT --
6 NOT THE OVERALL DISCUSSION.

7 Q AT SOME POINT, YOU WANTED TO INTRODUCE -- OR
8 TO HAVE BABY RYAN HAVE SOLID FOODS.

9 MR. MCMILLAN: OBJECTION: LEADING.

10 THE COURT: SUSTAINED.

11 BY MR. GUTERRES:

12 Q WITH REGARD TO THE INTRODUCTION OF SOLID
13 FOODS, DID YOU HAVE ANY UNDERSTANDING AS TO -- OR INPUT
14 AS TO WHEN THAT WAS TO TAKE PLACE?

15 A NO.

16 Q HAD YOU CONSULTED WITH ANYONE WITH REGARD TO
17 THE APPROPRIATE TIMING OF THE INTRODUCTION OF SOLID
18 FOODS FOR YOUR SON?

19 A JUST DR. YIM IN THIS PARTICULAR INSTANCE.

20 Q AND WHAT DO YOU REMEMBER IN THAT REGARD?

21 MR. MCMILLAN: OBJECTION: HEARSAY AS TO THE
22 CONTENTS OF WHATEVER CONVERSATION THAT IS.

23 THE COURT: SUSTAINED.

24 BY MR. GUTERRES:

25 Q DID YOU START FEEDING YOUR SON SOLID FOODS AT
26 ANY POINT IN TIME?

27 A NO. I DON'T -- I -- I DON'T REMEMBER. I
28 DON'T REMEMBER IF I DID. I -- MS. DUVAL WOULD ALWAYS

1 PACK FOOD. AND I WOULD -- THIS IS A MONTH AFTER --
2 WHEN IS THAT? A COUPLE MONTHS AFTER. SO LIKE I SAID,
3 I DON'T REALLY REMEMBER THAT WELL WHEN THIS ALL
4 HAPPENED.

5 Q WHAT DO YOU REMEMBER, IF ANYTHING, WITH REGARD
6 TO ANY KIND OF ALLERGIES THAT YOUR SON MAY OR MAY NOT
7 HAVE HAD?

8 A I DIDN'T -- I DIDN'T BELIEVE HE HAD ANY.

9 Q WAS THERE ANY CONTRARY INFORMATION
10 COMMUNICATED TO YOU?

11 A YES. CAN I RESTATE THAT? IT'S NOT THE FACT
12 THAT I DIDN'T -- I DIDN'T BELIEVE HE HAD ANY. I
13 JUST -- I HADN'T SEEN ANY EVIDENCE OF IT. SO IT'S NOT
14 THE FACT THAT I -- A YES OR A NO. IT WAS, I DIDN'T SEE
15 ANY EVIDENCE OF IT.

16 Q AND WERE YOU RECEIVING CONTRARY INFORMATION
17 FROM ANYONE WITH REGARD TO ANY ALLERGIES THAT YOUR SON
18 HAD?

19 MR. MCMILLAN: OBJECTION: LEADING.

20 THE COURT: OVERRULED.

21 THE WITNESS: YES.

22 BY MR. GUTERRES:

23 Q COULD YOU TELL US ABOUT THAT?

24 A I THINK THROUGHOUT THE EMAILS, THERE WAS --
25 WAS -- THERE WERE EMAILS FROM MS. DUVAL ABOUT THE
26 DIFFERENT ALLERGIES HE HAS.

27 Q AND DO YOU RECALL ANY PARTICULAR INFORMATION
28 THAT WAS COMMUNICATED TO YOU REGARDING THE TYPES OF

1 ALLERGIES THAT YOUR SON PURPORTEDLY HAD?

2 A THEY WERE RELATED TO FOOD ALLERGIES.

3 Q AT ANY POINT IN TIME, DID YOU FIND OUT WHETHER
4 OR NOT YOUR SON WAS EVER TESTED FOR ANY FOOD ALLERGIES?

5 A YES.

6 Q AND TELL US ABOUT THAT.

7 A I BELIEVE -- I THINK IT'S, LIKE I SAID, ALL OF
8 THE DATES -- IT'S SOMETIME IN OCTOBER, I BELIEVE THAT
9 THERE WAS A -- SHE SET UP AN APPOINTMENT WITH
10 DR. SODERBERG, WHICH I WENT TO. SHE WAS AN ALLERGIST.

11 Q AND DO YOU RECALL WHAT DR. SODERBERG
12 COMMUNICATED TO YOU?

13 A DR. SODERBERG LOOKED AT ME, AND SHE SAID CAN I
14 SPEAK TO YOU? SHE POINTED ME OUT. AND SHE SAID CAN I
15 SPEAK TO YOU FOR A MINUTE.

16 MR. MCMILLAN: OBJECTION: NONRESPONSIVE.
17 MOVE TO STRIKE.

18 THE COURT: THE OBJECTION IS SUSTAINED. THE
19 MOTION TO STRIKE IS GRANTED. THE JURY WILL DISREGARD
20 THE ANSWER. YOU CAN PURSUE THAT.

21 BY MR. GUTERRES:

22 Q AT -- YOU ACTUALLY ATTENDED THIS MEETING -- OR
23 APPOINTMENT WITH DR. SODERBERG?

24 A YES.

25 Q AND WHAT DO YOU REMEMBER REGARDING THIS
26 MEETING?

27 MR. MCMILLAN: OBJECTION AS TO ANY
28 CONVERSATIONS TO THE EXTENT THEY'RE HEARSAY.

1 THE COURT: OVERRULED. WHAT DO YOU REMEMBER?

2 THE WITNESS: I REMEMBERED THEY DID A -- I
3 DON'T KNOW WHAT THE -- AN ALLERGY TEST ON HIM. AND AS
4 THE RESULTS WERE -- WHEN THE RESULTS CAME IN, HE WAS
5 NOT ALLERGIC TO ANY OF THE -- I GUESS THE WORD'S
6 PANEL -- WHAT THEY HAD OF ALLERGIES.

7 BY MR. GUTERRES:

8 Q HAVE YOU HEARD OF THE TERM, "ATTACHMENT
9 PARENTING"?

10 A NOW, I HAVE. YES.

11 Q NOW, YOU HAVE BECAUSE I SAID IT OR --

12 A NO. THAT WAS -- I MEAN, WHEN I BEGAN
13 VISITATIONS, I WAS -- THAT'S THE FIRST TIME I HEARD
14 ABOUT IT.

15 Q AND WHEN YOU BEGAN VISITATIONS WITH YOUR SON?

16 A YES.

17 Q AND WHAT WAS THE SOURCE OF THAT INFORMATION
18 WITH REGARD TO ATTACHMENT PARENTING THAT YOU RECEIVED?

19 A THAT WAS ONE OF THE FIRST EMAILS I GOT FROM
20 MS. DUVAL OF THE TYPE OF PARENTING.

21 Q AND TELL ME WHAT SHE COMMUNICATED TO YOU WITH
22 REGARD TO ATTACHMENT PARENTING?

23 A LIKE I SAID, I THINK EVERY -- ALL THE
24 COMMUNICATIONS AND EMAILS, SHE WOULD -- SHE SAID SHE
25 DID EXTENSIVE RESEARCH ON WHAT KIND OF PARENTING SHE
26 WANTED FOR HER CHILD. AND WANTED ME TO GO ALONG WITH
27 IT.

28 Q AND INsofar AS WHAT ATTACHMENT PARENTING

1 ENTAILED, DID YOU GAIN SOME UNDERSTANDING FROM THOSE
2 COMMUNICATIONS FROM MS. DUVAL AS TO WHAT SHE MEANT BY
3 THAT?

4 A SHE ATTACHED LITERATURE TO THE EMAILS, AND --
5 SO I READ THROUGH SOME OF THE LITERATURE.

6 MR. MCMILLAN: OBJECTION: NONRESPONSIVE, MOVE
7 TO STRIKE.

8 THE COURT: OVERRULED. MOTION TO STRIKE IS
9 DENIED.
10 BY MR. GUTERRES:

11 Q AT SOME POINT IN TIME, DID MS. -- WELL,
12 WITHDRAWN. WAS IT YOUR UNDERSTANDING THAT MS. DUVAL
13 WAS TRYING TO PRACTICE ATTACHMENT PARENTING WITH YOUR
14 SON?

15 A FROM THE CONTENTS OF THE E-MAIL, YES.

16 Q DO YOU RECALL A TIME WHEN YOU HAD ANY CONCERNS
17 WITH REGARD TO THAT TYPE OF PARENTING STYLE?

18 A I DON'T KNOW IF IT WAS CONCERN BECAUSE I
19 DIDN'T KNOW MUCH ABOUT PARENTING STYLES. THAT'S THE
20 WEEK I SHOWED UP, JUST STARTED DOING VISITATIONS.

21 Q OKAY. LET ME SHOW YOU EXHIBIT 24, BATES
22 LABELED 637 AND 638. THAT'S JUST A COPY FOR THE COURT.

23 FOR THE RECORD, EXHIBIT 24 BATES 637
24 THROUGH 638 IS AN AUGUST 5TH, 2009, LETTER FROM
25 MR. AHARONOV TO MR. AZAD JINGOZIAN.

26 DO YOU RECOGNIZE WHO MR. JINGOZIAN WAS?

27 A I DON'T BELIEVE I HAVE THAT LETTER.

28 Q YEAH. I HAVEN'T GIVEN IT TO YOU YET.

1 A OH, SORRY. I REMEMBER THAT WAS ONE OF HER
2 ATTORNEYS.

3 Q ONE OF MS. DUVAL'S ATTORNEYS?

4 A CORRECT.

5 MR. GUTERRES: AND, YOUR HONOR, IF I MAY
6 PUBLISH?

7 MR. MCMILLAN: OBJECTION, YOUR HONOR: IT'S
8 HEARSAY.

9 MR. GUTERRES: IT'S ALREADY IN EVIDENCE.

10 MR. MCMILLAN: IT'S STILL HEARSAY.

11 THE COURT: PARDON?

12 MR. MCMILLAN: IT'S THE SAME OBJECTION, THE
13 DISCUSSION WE HAD AT SIDEBAR.

14 THE COURT: YOU MAY PUBLISH THE DOCUMENT.

15 MR. GUTERRES: THANK YOU, YOUR HONOR.

16 THE COURT: JUST AGAIN, BEFORE YOU SHOW IT.

17 THIS IS A DOCUMENT THAT IS BEING -- IN
18 EVIDENCE FOR A LIMITED PURPOSE. IT IS NOT RECEIVED IN
19 EVIDENCE FOR THE TRUTH OF ANY MATTER SET FORTH THEREIN.

20 BUT IT HAS BEEN RECEIVED FOR THE LIMITED
21 PURPOSE OF SAYING, SETTING FORTH, WHAT IS OR HAS BEEN
22 STATED IN THE DOCUMENT. EVERYONE UNDERSTAND?

23 IN OTHER WORDS, IT'S GIVEN TO YOU OR SHOWN TO
24 YOU SO YOU'LL UNDERSTAND WHAT WAS SAID, BUT YOU MUST
25 NOT ACCEPT WHAT'S SET FORTH IN THE DOCUMENT AS BEING
26 TRUE.

27 GO AHEAD.

28 MR. GUTERRES: THANK YOU, YOUR HONOR.

1 BY MR. GUTERRES:

2 Q DO YOU RECOGNIZE THIS DOCUMENT, MR. MILLS?

3 A YES.

4 Q ON THE SECOND PAGE, IT SHOWS THAT YOU WERE
5 CC'D. DO YOU SEE THAT?

6 A YES.

7 Q SO DO YOU RECALL RECEIVING A COPY OF THIS
8 LETTER AND SEEING IT ON OR ABOUT THE DATE THAT IT
9 BEARS?

10 A YES.

11 Q AND DIRECTING YOUR ATTENTION TO THE MIDDLE OF
12 THAT FIRST PARAGRAPH.

13 A OKAY.

14 Q DO YOU SEE THAT?

15 A YES, I DO.

16 Q DO YOU RECALL IN THE AUGUST 5TH, 2009, TIME
17 FRAME BEING ANY ISSUES WITH -- OR CONCERNS THAT YOU
18 WERE HAVING WITH THE DEVELOPMENT MILESTONES OF YOUR
19 SON?

20 A YES.

21 Q AND WHAT DO YOU REMEMBER WITH REGARD TO THOSE
22 CONCERNS AT OR ABOUT THIS TIME FRAME?

23 A HE WAS -- HE JUST -- HE WAS NOT DOING WELL.
24 HE WAS -- HE WOULD LAY ON HIS BACK AND HE -- LIKE A
25 NEWBORN, WOULD LAY ON HIS BACK, AND JUST NOT ATTEMPT TO
26 ROLL OVER, NOT ATTEMPT TO CRAWL OR WALK. HE WOULD JUST
27 LAY ON HIS BACK, AND IT WAS CONCERNING TO ME.

28 Q AND IN AUGUST OF 2009, HE WOULD HAVE BEEN --

1 WELL, AS OF AUGUST 5TH, 2009, HE WOULD HAVE JUST BEEN
2 ABOUT A YEAR AND A FEW DAYS?

3 A CORRECT.

4 Q AND WHAT YOU'VE DESCRIBED ABOUT YOUR SON
5 LAYING ON HIS BACK, AND NOT BEING ABLE TO ROLL OVER,
6 THAT WOULD HAVE BEEN SOMETHING THAT WAS WHAT YOU
7 OBSERVED AT THE TIME, IN THE AUGUST 2009 TIME FRAME?

8 A WELL, IT WASN'T ONLY THE ROLLING OVER. IT WAS
9 NOT DESIRING TO CRAWL FOR OVER A YEAR. I JUST -- I WAS
10 A NEW DAD, AND SO I DIDN'T -- THIS WAS RIGHT AFTER I
11 STARTED GETTING OVERNIGHTS, AND THAT'S WHEN MY CONCERNS
12 REALLY STARTED.

13 MR. MCMILLAN: OBJECTION: NONRESPONSIVE, MOVE
14 TO STRIKE EVERYTHING BEFORE THIS WAS RIGHT BEFORE
15 OVERNIGHTS.

16 THE COURT: THE OBJECTION IS SUSTAINED. THE
17 MOTION TO STRIKE IS GRANTED. THE PORTION YOU WANT
18 STRICKEN IS WHAT? THE PORTION YOU WANT STRICKEN?

19 MR. MCMILLAN: THE PIECE BEFORE THE TIME
20 RESPONSE, IT WAS RIGHT -- I THINK THE RESPONSE WAS,
21 THIS WAS RIGHT BEFORE OVERNIGHTS OR SOMETHING TO THAT
22 EFFECT.

23 THE COURT: ALL RIGHT. WELL I'M NO LONGER
24 GETTING THE TRANSCRIPT. SO UNFORTUNATELY -- I WILL --
25 AS SOON AS I RESUME GETTING THE TRANSCRIPT, I WILL
26 SPECIFY THAT PORTION WHICH IS ORDERED TO BE STRICKEN.

27 MR. MCMILLAN: THANK YOU, YOUR HONOR.

28 MR. GUTERRES: MAY I PROCEED, YOUR HONOR?

1 THE COURT: YES, GO AHEAD.

2 BY MR. GUTERRES:

3 Q WHAT OTHER CONDITIONS WERE YOU OBSERVING WITH
4 REGARD TO YOUR SON, IN OR ABOUT THE AUGUST 5TH, 2009,
5 TIME FRAME, THAT RAISED CONCERNS REGARDING YOUR SON'S
6 DEVELOPMENT, OTHER THAN WHAT YOU'VE INDICATED ABOUT HIM
7 NOT BEING ABLE TO CRAWL?

8 A HE WAS VERY UNDERWEIGHT.

9 Q ANYTHING ELSE THAT YOU CAN REMEMBER?

10 A I CAN'T REALLY PUT IT INTO WORDS NOW. JUST AN
11 OVERALL, LIKE I SAID, I -- I JUST HAD CONCERNS ABOUT
12 HIS BEING -- YOU KNOW, HIS OVERALL DEVELOPMENT.

13 Q AND DIRECTING YOUR ATTENTION TO THAT SECOND
14 PARAGRAPH, THERE'S A REFERENCE THERE TO MS. DUVAL
15 PRACTICING ATTACHMENT PARENTING.

16 DO YOU SEE THAT?

17 A I DO.

18 Q AND IN READING THAT PARAGRAPH, DOES THIS
19 REFRESH YOUR RECOLLECTION REGARDING ANY CONCERNS WITH
20 REGARD TO THAT PARENTING STYLE THAT YOU MAY HAVE HAD
21 EVER, ABOUT THIS TIME?

22 A YES.

23 Q AND WHAT WERE THOSE CONCERNS?

24 A THE CONCERNS WERE THAT SHE WOULD PICK AND
25 CHOOSE WHAT SHE WANTED TO BOND WITH HER CHILD.

26 Q COULD YOU PLEASE EXPLAIN?

27 THE COURT: PARDON? I'M SORRY.

28 (PAUSE IN THE PROCEEDINGS)

1 THE COURT: I'M SORRY. HAVING A DISCUSSION
2 WITH THE REPORTER. WAS THERE AN OBJECTION?

3 MR. MCMILLAN: I DON'T RECALL THE QUESTION,
4 YOUR HONOR.

5 THE COURT: ALL RIGHT. WELL, THEN I'M GOING
6 TO ASSUME THAT YOU DON'T HAVE ONE. LET'S GO AHEAD.

7 MR. GUTERRES: I DON'T THINK I REMEMBER THE
8 QUESTION. LET ME START OVER. (LAUGHTER)

9 MR. MCMILLAN: THAT'S FAIR.

10 (THE RECORD WAS READ AS REQUESTED)

11 MR. MCMILLAN: OBJECTION: LACKS FOUNDATION,
12 SPECULATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: I THINK WHAT WAS AT ISSUE WAS
15 THAT THROUGHOUT THE -- FROM THE MOMENT I WALKED IN, HER
16 EMAILS WOULD SAY SHE'S DONE EXTENSIVE RESEARCH, BUT THE
17 CONCERN WAS THAT THERE WERE -- THERE WERE DIFFERING --

18 WELL, I -- FOR LACK OF A BETTER PHRASE, I LIKE
19 A LITTLE -- SOME OF THIS, AND I LIKE SOME OF THAT, AND
20 IT WAS -- FROM MY PERCEPTION, AND THE CONCERN THAT I
21 HAD WAS THE FACT THAT IT WASN'T FOR THE CHILD'S BEST
22 INTEREST, BUT IT WAS FOR HERS. YEAH.

23 MR. MCMILLAN: OBJECTION, YOUR HONOR: LACKS
24 FOUNDATION. IT'S ALSO A NONRESPONSIVE NARRATIVE
25 RESPONSE. MOVE TO STRIKE.

26 THE COURT: OVERRULED.

27 BY MR. GUTERRES:

28 Q WITH REGARD TO GETTING YOUR SON EXAMINED BY

1 ANY KIND OF A MEDICAL PROFESSIONAL, DO YOU RECALL THERE
2 BEING ANY ISSUES IN THE AUGUST 2009 TIME FRAME BETWEEN
3 YOU AND MS. DUVAL, WITH REGARD TO WHO SHOULD BE
4 EVALUATING YOUR SON?

5 A YES.

6 Q OKAY. TELL US ABOUT THAT.

7 A AS A NARRATIVE?

8 MR. GUTERRES: OBJECTION BY THE WITNESS NOW?

9 THE COURT: THAT WAS A GOOD OBJECTION. WELL
10 THE QUESTION DID CALL FOR A NARRATIVE.

11 MR. MCMILLAN: OBJECTION, YOUR HONOR: CALLS
12 FOR A NARRATIVE.

13 MR. GUTERRES: IT'S NOT A GOOD DAY.

14 THE COURT: THE OBJECTION IS SUSTAINED. BUT
15 YOU CAN ASK MORE SPECIFIC QUESTIONS ABOUT THE NATURE OF
16 THAT.

17 MR. GUTERRES: THANK YOU, YOUR HONOR. I WILL.
18 BY MR. GUTERRES:

19 Q LET ME DIRECT YOUR ATTENTION TO PAGE 2 OF
20 EXHIBIT 24, 637 AND 638. I'LL TURN TO 638. DIRECTING
21 YOUR ATTENTION TO THAT SECOND PARAGRAPH, FIRST
22 SENTENCE -- OR SECOND SENTENCE -- FIRST AND SECOND
23 SENTENCE OF THAT FIRST PARAGRAPH.

24 DOES THAT REFRESH YOUR RECOLLECTION AS TO ANY
25 ISSUES THAT YOU WERE HAVING WITH MS. DUVAL REGARDING
26 MEDICAL PROFESSIONALS TREATING YOUR SON AT OR ABOUT THE
27 AUGUST 2009 TIME FRAME?

28 MR. MCMILLAN: OBJECTION, YOUR HONOR: LACKS

1 FOUNDATION. IMPROPER REFRESHMENT OF RECOLLECTION.

2 THE COURT: SUSTAINED. YOU CAN ASK HIM IF HE
3 HAS A RECOLLECTION.

4 BY MR. GUTERRES:

5 Q DO YOU HAVE A RECOLLECTION OF ANY ISSUES IN
6 THE AUGUST 2009 TIME FRAME REGARDING GETTING MEDICAL
7 TREATMENT OR EVALUATIONS FOR YOUR SON?

8 A YES.

9 Q AND WHAT DO YOU RECALL IN THAT REGARD?

10 MR. MCMILLAN: YOUR HONOR --

11 THE WITNESS: HERE COMES MY NARRATIVE QUESTION
12 AGAIN.

13 MR. MCMILLAN: I WOULD OBJECT, TO THE EXTENT
14 THE RESPONSE IS BEING GIVEN WHILE HE'S READING THE
15 DOCUMENT. IT'S BEING USED TO REFRESH HIS RECOLLECTION.

16 THE COURT: IF THAT OBJECTION IS ADDRESSED TO
17 THE COURT, THE OBJECTION IS OVERRULED. HE'S SAYING IT
18 DOESN'T REFRESH HIS RECOLLECTION. HE'S ENTITLED TO
19 TELL US WHAT HIS RECOLLECTION IS WHILE IT'S BEING
20 REFRESHED.

21 BY MR. GUTERRES:

22 Q WHAT WAS THE MAIN ISSUE?

23 A THE MAIN ISSUE IN THIS PARTICULAR DOCUMENT WAS
24 THAT THE MOTHER WANTED TO TAKE RYAN TO DR. BROUSSEAU,
25 WHO IS A DOCTOR OF OSTEOPATHY.

26 AND SEEING THAT THE CHILD WAS NOT DOING WELL,
27 I THOUGHT -- I DIDN'T KNOW MUCH ABOUT DOCTORS, BUT I
28 THOUGHT, LET'S TAKE HIM TO A PEDIATRICIAN.

1 Q AND DO YOU REMEMBER THERE BEING ANY CONFLICT
2 REGARDING THE SELECTION OF -- OF THE APPROPRIATE
3 MEDICAL PROFESSIONAL TO SEE YOUR SON, IN THIS TIME
4 FRAME?

5 MR. MCMILLAN: OBJECTION, YOUR HONOR:
6 ARGUMENTATIVE AS TO THE TERM "APPROPRIATE."

7 THE COURT: OVERRULED.

8 THE WITNESS: YES.

9 BY MR. GUTERRES:

10 Q AND DID MS. DUVAL EXPRESS CERTAIN --
11 PREFERENCES FOR CERTAIN TYPES OF DOCTORS DURING THIS
12 TIME FRAME THAT YOU DISAGREED WITH?

13 A YES.

14 Q TELL US ABOUT THAT.

15 A WELL, FIRST OF ALL, THERE WAS DR. BROUSSEAU.
16 SECOND OF ALL, IN THE EMAILS, ONE OF THE LARGEST
17 CHALLENGES IS I LIVED 30 MILES, I THINK 30ISH MILES,
18 AND IT WAS VERY CHALLENGING FOR ME TO GET THERE.

19 AND AS THE EMAIL I SENT INDICATES, HE WASN'T
20 HAVING CHALLENGES LIKE, AS PER DR. YIM. I WOULDN'T
21 HAVE -- I DON'T THINK THERE WOULD HAVE BEEN THAT MUCH
22 OF A, YOU KNOW, OF A -- OF A DESIRE TO MAKE SURE THAT
23 I'M THERE.

24 BUT BECAUSE HE WAS COMING DOWN WITH
25 CHALLENGES, AND THE DOCTORS THAT SHE WAS SELECTING WERE
26 REALLY FAR, I MEAN, LOS ANGELES, 30-35 MILES IS ALMOST
27 A FULL DAY OF WORK, I SAID, CAN WE JUST FIND SOMEONE
28 HALFWAY IN BETWEEN. YEAH.

1 Q DO YOU RECALL, MR. MILLS, MS. DUVAL OR HER
2 LAWYER RESPONDING TO THIS PARTICULAR LETTER, THE LETTER
3 OF AUGUST 5TH, 2009, EXHIBIT 24, 637 AND 638?

4 A I DO. I DO REMEMBER THE LETTER THAT CAME
5 BACK.

6 Q LET ME DIRECT YOUR ATTENTION TO THAT LETTER,
7 WHICH IS EXHIBIT 24, 639 THROUGH 640. HERE'S A COPY
8 FOR THE COURT.

9 MR. GUTERRES: MAY I PUBLISH, YOUR HONOR?

10 MR. MCMILLAN: OBJECTION, YOUR HONOR:
11 HEARSAY, SAME OBJECTION AS THE LAST ATTORNEY LETTER.

12 THE COURT: ALL RIGHT.

13 WELL, AGAIN, THIS DOCUMENT IS ONE WHICH IS
14 BEING RECEIVED BY THE COURT FOR A LIMITED PURPOSE. IT
15 IS NOT TO BE CONSIDERED FOR THE TRUTH OF THE MATTERS
16 THEREIN, BUT MAY BE CONSIDERED FOR WHAT ACTUALLY WAS
17 SAID. GO AHEAD.

18 MR. GUTERRES: MAY I, YOUR HONOR?

19 THE COURT: YES.

20 MR. GUTERRES: THANK YOU.

21 BY MR. GUTERRES:

22 Q FOR THE RECORD, THIS IS A LETTER DATED
23 AUGUST 6, 2009, FROM MR. JINGOZIAN TO MR. AHARONOV.

24 DO YOU RECOGNIZE THIS DOCUMENT, MR. MILLS?

25 A YES.

26 Q DO YOU RECOGNIZE THIS DOCUMENT AS BEING THE
27 RESPONSE TO YOUR ATTORNEY'S LETTER THE DAY BEFORE?

28 A YES.

1 Q AND DIRECTING YOUR ATTENTION TO THAT SECOND
2 PARAGRAPH, COULD YOU READ THAT.

3 A OKAY. I READ IT.

4 Q AND, AGAIN, AUGUST 6, 2009, WOULD HAVE BEEN
5 WHAT, FOUR DAYS AFTER YOUR SON'S FIRST BIRTHDAY?

6 A CORRECT.

7 Q AND DOES THAT REFRESH YOUR RECOLLECTION THAT
8 IT APPEARS MS. DUVAL'S ATTORNEY WAS TAKING ISSUE WITH
9 YOUR ATTORNEY'S CHARACTERIZATION OF THE DEVELOPMENT
10 MILESTONES OF YOUR SON?

11 MR. MCMILLAN: OBJECTION: LEADING, ALSO
12 IMPROPER REFRESHMENT OF RECOLLECTION.

13 THE COURT: SUSTAINED.

14 MR. GUTERRES: SHOULD WE...

15 THE COURT: YES, WE'LL TAKE THE NOON RECESS AT
16 THIS TIME. ALL JURORS PLEASE REMEMBER THE ADMONITION.
17 DON'T DISCUSS THE CASE WITH ANYBODY ABOUT ANY SUBJECTS
18 OR ISSUES INVOLVED IN THIS CASE.

19 ALSO, DO NOT FORM NOR EXPRESS ANY OPINION
20 ABOUT ANY SUBJECT OR ISSUES INVOLVED IN THIS CASE.
21 WE'LL RESUME AT 1:30.

22 (JURY EXCUSED)

23 THE COURT: MR. MCMILLAN, YOU'RE THE ONE
24 OFFERING EXHIBIT 24 INTO EVIDENCE. IF YOU'D RATHER
25 RECONSIDER THAT BECAUSE THERE'S CONTINUING OBJECTIONS
26 EVERY TIME SOMETHING IS ASKED ABOUT A DOCUMENT IN
27 EXHIBIT 24, OR HOW ELSE TO APPROACH IT.

28 BUT WE DON'T NEED TO HAVE A CONTINUING

1 OBJECTION TO AN EXHIBIT THAT YOU ASKED TO HAVE
2 RECEIVED.

3 MR. MCMILLAN: RIGHT. YOUR HONOR, IT'S MY
4 UNDERSTANDING, AND PERHAPS I'M MISUNDERSTANDING, BUT WE
5 HAVE A CONCERN AND OBJECTION THAT WE'VE SORT OF BEEN
6 TALKING ABOUT FOR A COUPLE DAYS NOW WITH RESPECT TO THE
7 VARIOUS COURT REPORTS.

8 AND IT IS -- I MEAN, OBVIOUSLY, PART OF THE
9 EXHIBIT 24, THAT IS THE JURIS DISPO REPORT, PART OF
10 THAT, THE JURY NEEDS TO KNOW WHAT WAS SAID TO THE COURT
11 IN ORDER TO KNOW WHETHER OR NOT IT'S FALSE.

12 WE HAVE TO KNOW WHAT WAS SAID TO THE COURT.
13 THE REMAINDER OF THE ISSUE IS I THINK AN ISSUE OF
14 MATERIALITY FOR THE JUDGE. SO I'M NOT SURE THAT --

15 THE COURT: ALL RIGHT. GOOD. IN ANY EVENT,
16 YOU ANSWERED MY QUESTION. YOU ASKED FOR IT TO BE
17 RECEIVED IN EVIDENCE, AND IT HAS BEEN.

18 MR. MCMILLAN: WELL, SUBJECT TO OUR CONCERN
19 ABOUT A LIMITING INSTRUCTION, THAT'S CORRECT.

20 THE COURT: I'LL SEE YOU BACK AT 1:30.

21 (LUNCH WAS TAKEN FROM 12:04 P.M. TO 1:36 P.M.)

22 THE COURT: ON THE RECORD. AND COUNSEL ARE
23 PRESENT. MR. MCMILLAN, THE CLERK TELLS ME YOU WANT TO
24 BE HEARD ON SOMETHING?

25 MR. MCMILLAN: CORRECT, YOUR HONOR. I
26 DON'T -- I THINK WE MAY HAVE RESOLVED THE ISSUE. I
27 JUST WANT TO MAKE SURE THAT IT'S ON THE RECORD THAT WE
28 RESOLVED THE ISSUE.

1 THE COURT: ALL RIGHT.

2 MR. MCMILLAN: AND THAT IS WITH RESPECT TO
3 EXHIBIT NUMBER 24. IF YOUR HONOR RECALLS, THAT WAS A
4 DUPLICATE OF EXHIBIT NUMBER, WAS IT 182? 1028.

5 IT WAS A DUPLICATE OF EXHIBIT NUMBER 1028 WITH
6 THE EXCEPTION THAT EXHIBIT NUMBER 1028 WAS JUST THE 24
7 PAGES OF THE JURIS DISPO REPORT, WHERE EXHIBIT 24 IS
8 THE COMPLETE REPORT.

9 I BELIEVE IT WAS LAST FRIDAY WHEN WE WERE
10 ALL -- I THINK WE SPENT ALMOST THE WHOLE DAY IN THE
11 BACK ROOM TRYING TO FIGURE OUT EXHIBITS AND JURY
12 INSTRUCTIONS AND ALL THAT.

13 AT THE END OF THAT, IT -- WE HAD DISCUSSED IN
14 THAT CONFERENCE THE IDEA OF ELIMINATING THE
15 DUPLICATION, AND WE DIDN'T NECESSARILY HAVE A PROBLEM
16 SO LONG AS THERE WAS A LIMITING INSTRUCTION ON THE
17 EXHIBITS AND THINGS ATTACHED IN THE REPORTS.

18 THE COURT: ALL RIGHT. AND.

19 MR. MCMILLAN: AND I WANTED TO MAKE SURE IT
20 WAS CLEAR TO THE COURT THAT EXHIBIT 24 WAS SUBJECT TO
21 THE AGREEMENT BETWEEN COUNSEL REGARDING THE LIMITING
22 INSTRUCTION.

23 THE COURT: ALL RIGHT. WITH THAT, THEN, DO WE
24 NEED THE OTHER EXHIBIT AT ALL? 24 IS THE --

25 MR. MCMILLAN: WE DON'T NEED IT.

26 THE COURT: ALL RIGHT. BECAUSE IT HAS THE
27 DETENTION REPORT AS WELL.

28 MR. MCMILLAN: IT DOESN'T HAVE THE DETENTION

1 REPORT. ALL IT HAS IS THE JURISDICTION DISPOSITION
2 REPORT.

3 THE COURT: OH, OKAY. YEAH. ALL RIGHT.

4 MR. MCMILLAN: REMEMBER ON THE JURIS DISPO
5 REPORT THAT GOT FILED WITH THE JUVENILE COURT, IT
6 HAS 372 PAGES OF ADDITIONAL STUFF?

7 THE COURT: I DO.

8 MR. MCMILLAN: THAT WAS EXHIBIT 24.

9 THE COURT: ALL RIGHT.

10 MR. MCMILLAN: I JUST WANTED TO MAKE SURE IT
11 WAS CLEAR ON THE RECORD BECAUSE WHEN WE WERE LEAVING
12 FOR THE BREAK, YOUR HONOR'S QUESTIONS JUST CAUSED ME
13 SOME CONCERN THAT THERE MIGHT BE SOME CONFUSION ABOUT
14 WHETHER OR NOT WE'D AGREED THAT THE LIMITING
15 INSTRUCTION SHOULD ALSO APPLY TO EXHIBIT 24.

16 SO I JUST WANTED TO GET THAT CLEARED UP.

17 THE COURT: WELL, I THINK IT'S CLEAR. AT THIS
18 POINT --

19 MR. GUTERRES: I THOUGHT WHAT THE COURT HAD
20 ASKED WAS -- WAS, GIVEN THAT THE PLAINTIFF WAS OFFERING
21 EXHIBIT 24, WHETHER OR NOT THE PLAINTIFF WANTED TO
22 RECONSIDER THE LIMITING INSTRUCTION.

23 BUT I DON'T -- I DON'T THINK THAT THERE'S ANY
24 ISSUE THAT THE LIMITING INSTRUCTION APPLIES TO THIS.

25 THE COURT: IT APPEARS NOT.

26 MR. MCMILLAN: WE DO NOT WANT TO RECONSIDER
27 THE LIMITING INSTRUCTION. THE WHOLE PURPOSE OF THE
28 LIMITING INSTRUCTION WAS TO AVOID ANYBODY TRYING TO

1 CLAIM THAT THE THINGS WERE TRUE THAT ARE STATED IN
2 THOSE REPORTS OR ATTACHMENTS.

3 BECAUSE THEY CLEARLY ARE ALL HEARSAY. AND IT
4 WOULD APPEAR, FROM THE PRESENTATION OF EVIDENCE
5 CURRENTLY, THAT THERE'S SOME SORT OF IMPLICATION BEING
6 MADE THAT YES, IN FACT THOSE ARE ALL TRUE.

7 WE NEED TO BE VERY CLEAR ON THAT. THE ATTACK
8 IN THIS CASE IS JUST BASED ON WHAT WAS -- STATEMENTS
9 MADE TO THE COURT, NOT WHETHER OR NOT THEY'RE TRUE. OR
10 STATEMENTS NOT MADE TO THE COURT, NOT WHETHER OR NOT
11 THEY'RE TRUE. AND THAT WAS THE PURPOSE OF THE LIMITING
12 INSTRUCTION.

13 MR. GUTERRES: AND THOSE ARE EXHIBITS THAT
14 WERE ALL PART OF THE REPORT THAT WERE SUPPLIED TO THE
15 COURT. SO THE ISSUE IS SIMPLY, YOU KNOW, THOSE ARE ALL
16 DOCUMENTS THAT THE COURT HAD IN ITS POSSESSION IN
17 MAKING ITS RULING.

18 THE COURT: ALL RIGHT. THE OTHER THING,
19 BEFORE WE GET THE JURY IN, WE HAVE TO LET THEM GO
20 AT 3:00.

21 THIS MORNING, I DISCUSSED WITH YOU THAT I
22 THINK WE HAVE TO HAVE SOME DAYS WITHOUT TESTIMONY
23 BECAUSE WE HAVE SUCH A MOUNTAIN OF EXHIBITS TO ADDRESS
24 AS WELL AS THE ISSUE RELATED TO THE -- ADDRESSED AS
25 PART OF THE MOTION FOR NON-SUIT.

26 SO, I HAVEN'T HEARD ANYTHING FURTHER, BUT WE
27 HAVEN'T HAD A CHANCE. SO I'M ASKING IF YOU HAVE
28 ANYTHING FURTHER ON THAT BECAUSE MY THOUGHT IS THAT I

1 SHOULD TELL THE JURY NOT TO BE HERE TOMORROW OR FRIDAY
2 OR NEXT MONDAY.

3 MR. MCMILLAN: WOW.

4 MR. GUTERRES: WOW.

5 THE COURT: YEAH. THAT'S MY REACTION, TOO.
6 BUT I'M NOT THE ONE INTRODUCING ALL THE DOCUMENTS. AND
7 THEY HAVE TO BE ADDRESSED.

8 MR. MCMILLAN: YOUR HONOR, BEFORE WE MAKE THE
9 DECISION TO RELEASE THE JURY FOR THREE DAYS, CAN WE
10 HAVE TONIGHT TO GO THROUGH ALL THOSE -- THERE MAY BE
11 SOME THAT WE DON'T NEED TO PROVE OUR CASE AND WE CAN
12 JUST WITHDRAW.

13 THE COURT: WELL, YES, WE COULD DELAY THAT AND
14 HAVE THE JURY COME IN TOMORROW.

15 BUT AS I LOOK AT THE NUMBER OF EXHIBITS OR THE
16 ISSUES TO BE DECIDED IN CONNECTION WITH THE MOTION FOR
17 NON-SUIT, WHICH I THINK IS GOING TO TAKE EVERYONE AT
18 LEAST A DAY AND PROBABLY MORE, TO BE ABLE TO DIGEST ALL
19 THAT'S GOING TO BE PROVIDED, THERE'S GOING TO BE SOME
20 TIME THAT WE HAVE TO TELL THE JURY TO STAY HOME.

21 AND IF YOU WANT TO MAKE IT NEXT WEEK INSTEAD
22 OF TOMORROW, THAT'S OKAY WITH ME. I REALLY DON'T CARE.

23 MR. GUTERRES: YOUR HONOR, WE HAVE A DOCTOR
24 COMING IN TOMORROW MORNING. SHE IS ONLY AVAILABLE
25 UNTIL NOON.

26 THE COURT: ALL RIGHT.

27 MR. GUTERRES: I DON'T KNOW WHAT THE DOCTOR'S
28 SCHEDULE IS FOR NEXT WEEK BUT MAYBE WE CAN GO TIL NOON

1 TOMORROW, AND THEN MAYBE TAKE MONDAY OFF, IF NEED BE?

2 THE COURT: WELL, IF WE HAVE TO GET YOUR
3 DOCTOR ON, MY SUGGESTION IS, LET'S USE THE DAY. BUT I
4 THINK NEXT WEEK, WE'RE GOING TO HAVE TO HAVE AT
5 LEAST -- I THINK AT LEAST TWO DAYS OFF.

6 BUT PERHAPS ALL OF YOU WILL BE ABLE TO DO A
7 LITTLE MORE WORK ON THE EXHIBITS. I KNOW YOU'VE SPENT
8 A GREAT DEAL OF TIME ON IT. WE STILL HAVE A VERY
9 SUBSTANTIAL LIST, AND IT APPEARS WITH SUBSTANTIAL
10 OBJECTIONS TO MANY OF THEM.

11 I HAVE HAD THE FEELING THAT YOU HAVEN'T
12 CONFERRED ON THE EXHIBITS QUITE AS EFFICIENTLY AS I
13 WOULD HOPE WOULD OCCUR.

14 BUT I SAY THAT WITHOUT ANY CRITICISM INVOLVED
15 BECAUSE I RECOGNIZE THAT EVERYBODY HAS A MASS OF
16 DOCUMENTS TO DEAL WITH IN THIS CASE, AS WELL AS THE
17 OTHER ISSUES WE'VE DISCUSSED.

18 AND I KNOW FOR MYSELF, I'VE ALREADY TOLD YOU,
19 THERE'S ONLY SO MANY DAYS IN THE WEEK, AND SO MANY
20 HOURS IN THE DAY. AND I'M NOT EXPECTING ANYTHING MORE
21 OF YOU THAN I WOULD EXPECT OF MYSELF.

22 SO I RECOGNIZE THAT I HAVE A PROBLEM IN HAVING
23 TO DEAL WITH THIS LIST OF EXHIBITS AND THEIR
24 ADMISSIBILITY CONSIDERING AS TO MOST OF THEM -- AS TO
25 MANY OF THEM WE'RE RECEIVING SUBSTANTIAL OBJECTIONS.

26 AND THAT THE PROCEEDING OVER THE MOTION FOR
27 NON-SUIT IS A COMPLICATED MATTER IN WHICH NONE OF US, I
28 THINK WE HAVE AGREED, HAVE ANY GUIDANCE FROM A STATUTE,

1 REGULATION, OR CASE AUTHORITY.

2 IT APPEARS THAT AS FAR AS ANY OF US KNOW,
3 WE'RE THE FIRST ONES TO HAVE TO DEAL WITH IT ANYWHERE.
4 THAT SOMEONE ELSE HAS DEALT WITH IT, IT NEVER GOT
5 EITHER IN PUBLICATION OR IN A CASE REPORT, SO FOR OUR
6 PURPOSES, WE'RE CERTAINLY ON OUR OWN.

7 AND I THINK THAT THAT -- FIRST OF ALL,
8 REGARDLESS OF THAT, YOU'RE HAVING TO DO A GREAT DEAL OF
9 WORK IN ORDER TO BE ABLE TO PUT TOGETHER, IN THE MATTER
10 WE DISCUSSED THIS MORNING, SO WE ALL UNDERSTAND EXACTLY
11 WHAT IS PART OF THE -- PIECES OF EVIDENCE THAT ARE IN
12 ISSUE.

13 AS WELL AS, AND THE CONSIDERATION OF WHAT IT
14 SHOULD HAVE LOOKED LIKE ACCORDING TO THE
15 PLAINTIFF'S POINT OF VIEW. WHAT SHOULDN'T HAVE BEEN
16 PRESENTED AND WHAT SHOULD HAVE THAT WASN'T. SO THIS IS
17 NOT SIMPLE.

18 SO. BUT WITH THE DOCTOR CALLED TOMORROW, I
19 KNOW HOW DIFFICULT IT IS TO GET EXPERTS LINED UP, SO
20 WE'LL HOLD OFF AND WE'LL BE IN SESSION TOMORROW. LET
21 ME TAKE A LOOK AT IT AGAIN TOMORROW AND SEE IF WE MIGHT
22 DECIDE TO QUIT EARLY.

23 I DON'T THINK THE JURY WILL BE DISAPPOINTED.
24 I WOULD LIKE TO GET THE JURORS IN NOW BECAUSE I HOPE WE
25 CAN FINISH MR. MILLS. WHETHER WE CAN OR NOT, TRUTH IS,
26 MUCH OF THE THINGS I DON'T BLAME HIM.

27 HE'S BEEN ASKED -- BEING ASKED ABOUT THINGS
28 THAT HAPPENED SEVEN YEARS AGO, AND DOESN'T HAVE A GREAT

1 DEAL OF RECOLLECTION ON MOST OF THEM. AND I DON'T
2 BLAME HIM. I HAVE A HARD TIME REMEMBERING WHAT'S
3 HAPPENED THIS WEEK. (LAUGHTER.) I HOPE I'M NOT ALONE.

4 (JURY PRESENT)

5 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
6 COURT IN THE PRESENCE OF THE JURY)

7 THE COURT: ALL RIGHT. LOOK WHO'S HERE.
8 EVERYBODY'S PRESENT. EVERYONE MAY BE SEATED. WE'RE ON
9 THE RECORD. AND MR. MILLS, PLEASE COME BACK UP AND
10 TAKE THE STAND, IF YOU WILL.

11 MR. GUTERRES, YOU MAY CONTINUE.

12 MR. GUTERRES: THANK YOU, YOUR HONOR. MAY I
13 REQUEST THE ASSISTANCE OF MY IT COLLEAGUE?

14 MR. MCMILLAN: I DID.

15 MR. GUTERRES: THANK YOU.

16 MR. MCMILLAN: I ANTICIPATED YOUR REQUEST.

17

18 DIRECT EXAMINATION (RESUMED)

19 BY MR. GUTERRES:

20 Q GOOD AFTERNOON, MR. MILLS.

21 A GOOD AFTERNOON.

22 Q BEFORE WE TOOK THE BREAK, I WAS ASKING YOU
23 ABOUT THIS AUGUST 6TH LETTER. AND I BELIEVE I HAD
24 ASKED YOU ABOUT WHETHER YOU HAD SEEN THIS LETTER
25 BEFORE?

26 A YES, I HAVE.

27 Q AND THIS APPEARS TO BE A LETTER THAT WAS IN
28 RESPONSE TO YOUR -- TO THE PREVIOUS EXHIBIT THAT WE

1 REVIEWED, WHICH WAS DATED AUGUST 5TH THAT WAS WRITTEN
2 BY YOUR ATTORNEY. CORRECT?

3 MR. MCMILLAN: OBJECTION: LEADING.

4 THE COURT: SUSTAINED.

5 BY MR. GUTERRES:

6 Q DIRECTING YOUR ATTENTION TO THAT SECOND
7 PARAGRAPH OF THAT -- OF THE LETTER.

8 DO YOU SEE THAT?

9 A YES.

10 Q DOES THAT REFRESH YOUR RECOLLECTION THERE WAS
11 SOME DISPUTE -- WAS THERE ANY KIND OF A DISPUTE BETWEEN
12 THE DEVELOPMENTAL MILESTONES OF YOUR SON, BABY RYAN,
13 DURING THIS TIME FRAME, AS IT RELATED -- BETWEEN YOU
14 AND MS. DUVAL?

15 MR. MCMILLAN: OBJECTION: LACKS FOUNDATION,
16 IMPROPER REFRESHMENT OF RECOLLECTION.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES. THERE SEEMS TO BE.

19 BY MR. GUTERRES:

20 Q AND DURING THIS TIME, ONE OF THE THINGS THAT
21 PRECIPITATED -- WHAT PRECIPITATED YOUR LETTER ASKING --
22 THAT WAS SENT ON AUGUST 5TH WITH REGARD TO THE
23 DEVELOPMENTAL MILESTONE OF YOUR SON?

24 A AUGUST 5TH IS APPROXIMATELY A FEW WEEKS AFTER
25 I STARTED -- A FEW WEEKS AFTER I HAD OVERNIGHTS. AND
26 SO THROUGH THOSE OVERNIGHTS I -- BEFORE THAT, I WOULD
27 ONLY GET TWO-HOUR INCREMENTS AT A TIME.

28 AND SO WHEN I STARTED GETTING OVERNIGHTS, I

1 STARTED BEING ABLE TO KIND OF, I GUESS, COMPARE HIM TO
2 OTHER CHILDREN, AND KIND OF -- THAT'S WHAT SPARKED THE
3 ALARM.

4 Q AND TELL ME, WHAT YOU WERE EXPERIENCING AS YOU
5 FINALLY GOT TO HAVE THESE OVERNIGHTS WITH YOUR SON,
6 THAT RAISED CONCERNS FOR YOU?

7 A IF I CAN RECALL, LIKE I SAID IT'S BEEN A LONG
8 TIME, IT WAS THE -- I THINK EVEN MORE THAN THE WEIGHT,
9 IT WAS HIS PHYSICAL CONDITION.

10 IT WAS THE FACT THAT HE WAS -- I WOULD HIM ON
11 THE FLOOR. AND I WOULD TRY TO PUT HIM ON HIS STOMACH,
12 AND HE WAS A YEAR OLD, AND HE WOULD JUST LAY THERE AND
13 CRY. AND THAT JUST DISTURBED ME MORE THAN ANYTHING
14 ELSE.

15 Q AND WHEN YOU SAY HE WOULD JUST LAY THERE AND
16 CRY, WOULD HE TRY TO ROLL OVER OR MOVE OR --

17 A NO. HE WOULDN'T -- HE WOULDN'T TRY. LIKE I
18 SAID, FROM MY RECOLLECTION, HE WOULDN'T TRY. THERE WAS
19 NO KIND OF -- YOU KNOW, WE'D PUT LITTLE THINGS OUT IN
20 FRONT OF HIM, AND HE WOULD JUST LAY THERE.

21 YOU KNOW, COME ON, BUD, COME ON. WE CAN DO
22 THIS. HE WOULD JUST LAY THERE.

23 Q SO WHAT WOULD YOU DO TO TRY TO HELP HIM WHEN
24 YOU SAW YOUR SON IN THIS KIND OF CONDITION, WHEN HE WAS
25 ON HIS STOMACH LAYING AND JUST BASICALLY CRYING?

26 A I'D GET ON THE FLOOR WITH HIM. I WOULD LAY ON
27 THE FLOOR WITH HIM WITH MY STOMACH DOWN AND I WOULD
28 TURN MY HEAD AND LOOK AT HIM.

1 AND I WOULD TRY TO KIND OF SHOW HIM. YOU
2 KNOW, I'D JUST GO, COME ON, BUD, WE, YOU KNOW, YOU CAN
3 DO THIS. THIS IS A LIFE ISSUE. WE'VE GOT TO -- YOU
4 CAN DO THIS.

5 AND WE WOULD LAY THERE, YOU KNOW, FOR PROBABLY
6 30 MINUTES AT A TIME, JUST TRYING TO GO -- COME ON, YOU
7 CAN DO THIS. LET'S GO.

8 Q AND I KNOW THAT YOU KIND OF HAD YOUR HANDS
9 OUT. WHAT WERE YOU TRYING TO DO WHEN YOU WERE SAYING
10 WE CAN DO THIS, COME ON?

11 A I'D TRY TO MODEL IT FOR HIM. SO I WOULD LAY
12 PROSTRATE, OR I DON'T KNOW IF THAT'S THE WORD, BUT I
13 WOULD LAY RIGHT ON THE GROUND ALONGSIDE OF HIM, AND I
14 WOULD JUST LOOK AT HIM IN THE EYES, AND GO, YOU KNOW,
15 BUD, THIS IS -- LIKE, WE CAN DO THIS.

16 LIKE, IT'S TRAUMATIZING. IT'S HARD TO WATCH.

17 Q AT SOME POINT DO YOU REMEMBER YOUR SON BEING
18 TAKEN TO A CONSULTATION WITH A NUTRITIONIST?

19 A YES.

20 Q DO YOU REMEMBER THE NAME OF THAT NUTRITIONIST?

21 A DR. WENDY CRUMP.

22 Q AND DO YOU REMEMBER, IN RELATION TO THE
23 AUGUST 2009 TIME FRAME, DO YOU HAVE A GENERAL
24 RECOLLECTION OF WHEN THAT VISIT TO MS. CRUMP WOULD HAVE
25 BEEN?

26 A I WOULD ASSUME SOMETIME IN OCTOBER.

27 Q THAT'S YOUR BEST ESTIMATE?

28 A I BELIEVE SO, YEAH.

1 Q TELL US WHAT YOU REMEMBER OF THIS VISIT WITH
2 MS. CRUMP.

3 A LIKE I SAID, IT'S VERY -- I DON'T REMEMBER
4 FINE DETAILS. I REMEMBER WHAT -- I REMEMBER IT WAS IN,
5 SOMEWHERE AROUND PASADENA.

6 AND THE ONE THING I REMEMBER IS
7 DR. WENDY CRUMP ASKING ME TO PUT TOGETHER A FOOD LIST
8 OF THE THINGS THAT HE EATS. THAT'S -- LIKE, THAT'S
9 PRETTY MUCH ALL I REMEMBER ABOUT IT.

10 Q AND WHO ALL WAS IN ATTENDANCE AT THIS INITIAL
11 MEETING THAT YOU ATTENDED WITH MS. CRUMP?

12 A I THINK THE MOTHER AND MY WIFE, WHO WAS -- WE
13 HAD BEEN MARRIED FOR TWO WEEKS AT THE TIME.

14 Q I'M SORRY. AND YOU SAID YOUR MOTHER?

15 A NO. THE MOTHER, AND THEN MY WIFE.

16 Q AND BY MOTHER, YOU MEAN MS. DUVAL?

17 A CORRECT.

18 Q ANYONE ELSE THAT YOU RECALL?

19 A MAYBE ONE OF MY FAMILY MEMBERS. I DON'T
20 KNOW -- I DON'T -- I DON'T -- I THINK MAYBE ONE OF MY
21 FAMILY MEMBERS WAS.

22 Q AND WITH REGARD TO, I THINK YOU SAID THE FOOD
23 LOG?

24 A YES.

25 Q WAS THIS A RECOMMENDATION THAT WAS ASKED OF
26 BOTH YOU AND MS. DUVAL?

27 A YES.

28 Q AND DID YOU IN FACT COMPLY?

1 A YES.

2 Q AND AT THE TIME THAT BABY RYAN WAS -- WENT TO
3 SEE THE NUTRITIONIST, WAS HE ALREADY EATING SOLIDS?

4 MR. MCMILLAN: LACKS FOUNDATION, CALLS FOR
5 SPECULATION. OBJECTION.

6 THE COURT: OVERRULED.

7 THE WITNESS: I BELIEVE SO.

8 BY MR. GUTERRES:

9 Q AND DO YOU RECALL WHAT KINDS OF SOLIDS BABY
10 RYAN WAS EATING?

11 A NO.

12 Q AT SOME POINT, YOUR SON WAS ASKED TO BE TAKEN
13 TO THE CATC CLINIC, C-A-T-C, CLINIC?

14 A CORRECT.

15 Q AND YOU RECALL, INsofar AS THE TIME FRAME,
16 WHETHER OR NOT THIS WAS AFTER THE VISIT TO THE
17 NUTRITIONIST?

18 A YES. I WAS NOT PRESENT AT THE CATC CLINIC.

19 Q AND HOW DID IT COME TO YOUR ATTENTION THAT
20 YOUR SON WAS BEING ASKED TO BE EXAMINED BY THE CATC
21 CLINIC?

22 A AN EMAIL FROM THE MOTHER.

23 Q AND WHAT WAS YOUR UNDERSTANDING AS TO THE
24 PURPOSE OF HAVING BABY RYAN EVALUATED BY THE CATC
25 CLINIC?

26 A WHAT WAS MY UNDERSTANDING? I THINK MY
27 UNDERSTANDING WAS -- WELL, FIRST OF ALL, I DIDN'T KNOW
28 UNTIL AFTERWARDS, AND I KNOW THAT'S NOT THE QUESTION.

1 BUT MY UNDERSTANDING WAS -- WAS, I GUESS
2 SOMEONE HIGHER IS GETTING INVOLVED IN, YOU KNOW, MAKING
3 SURE THAT HE'S OKAY.

4 Q DO YOU REMEMBER WHEN YOU FIRST LEARNED THAT
5 THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES WAS
6 INVOLVED?

7 A NOT THE EXACT DATE.

8 Q AS FAR AS YOUR SON BEING SEEN BY THE CATC
9 CLINIC, DO YOU REMEMBER IF, BY THAT TIME, YOU HAD BEEN
10 NOTIFIED THAT THE DEPARTMENT OF CHILDREN AND FAMILY
11 SERVICES WAS INVOLVED OR NOT?

12 A I DON'T REMEMBER LIKE, IT -- IT ALL HAPPENED
13 IN SUCH A SHORT PERIOD OF TIME.

14 Q WHAT DO YOU REMEMBER BEING YOUR FIRST CONTACT
15 WITH ANYONE FROM THE DEPARTMENT?

16 A HONESTLY, THE FIRST THING I REMEMBER IS BEING
17 CALLED TO TAKE RYAN INTO UCLA -- HARBOR-UCLA THE DAY
18 OF -- THE DAY OF THE TDM MEETING IN THE EVENING. I'M
19 SURE THERE WERE PROBABLY PHONE CALLS IN THERE. I
20 JUST -- I DON'T REMEMBER.

21 Q YOU DO REMEMBER BEING CALLED ON THE DAY OF THE
22 TDM?

23 A YES.

24 Q BY SOMEONE FROM DCFS, OR DEPARTMENT OF
25 CHILDREN AND FAMILY SERVICES?

26 A I BELIEVE SO. LIKE I SAID, I DON'T REMEMBER
27 THE PHONE CALL. BUT I REMEMBER I WAS INSTRUCTED TO GO
28 DOWN TO HARBOR-UCLA.

1 Q AND DID YOU IN FACT GO?

2 A YES.

3 Q AND WERE YOU PRESENT AT THE FAILURE TO THRIVE
4 CLINIC WHEN YOUR SON WAS BEING EVALUATED?

5 A YES.

6 Q AND DO YOU REMEMBER WHO ELSE WAS PRESENT?

7 A I BELIEVE -- I BELIEVE MY WIFE AND MY PARENTS,
8 AND THEN I THINK MS. DUVAL'S MOTHER.

9 Q AND WAS MS. DUVAL THERE?

10 A YES.

11 Q AND DO YOU REMEMBER APPROXIMATELY WHAT TIME OF
12 DAY IT WAS THAT YOU WENT TO THE FAILURE TO THRIVE
13 CLINIC?

14 A MORNING.

15 Q AND DO YOU REMEMBER -- WERE YOU -- WHEN WERE
16 YOU INFORMED THAT THERE WAS GOING TO BE SOME KIND OF A
17 TEAM DECISION MEETING?

18 A I DON'T REMEMBER. I DON'T REMEMBER EXACTLY
19 WHEN I WAS INFORMED.

20 Q WERE YOU AT THE FAILURE TO THRIVE CLINIC
21 THROUGHOUT THE DAY BEFORE GOING TO THE TEAM DECISION
22 MEETING?

23 A CAN YOU REPEAT THE QUESTION, PLEASE?

24 Q YES. DID YOU GO DIRECTLY FROM THE FAILURE TO
25 THRIVE CLINIC TO THE TDM MEETING?

26 A NO. NO. I THINK THERE WAS LIKE A 3-
27 OR 4-HOUR DIFFERENCE BY THE TIME I GOT OUT UNTIL THE
28 TIME I HAD TO BE AT THE TDM. BECAUSE ONE OF THEM WAS

1 IN HARBOR CITY WHERE UCLA IS, AND ONE OF THEM WAS UP IN
2 THE WILSHIRE DISTRICT.

3 Q AND WHAT DO YOU REMEMBER ABOUT YOUR SON'S
4 EVALUATION AT THE FAILURE TO THRIVE CLINIC THAT DAY?

5 A I DON'T REMEMBER THAT MUCH. I REMEMBER -- I
6 REMEMBER -- I DON'T REMEMBER THAT MUCH ABOUT IT. I
7 JUST -- I DON'T -- YEAH. I DON'T REMEMBER THAT MUCH
8 ABOUT IT. I REMEMBER THAT WE WERE IN DIFFERENT ROOMS.
9 AND THAT'S ABOUT IT.

10 Q WHEN YOU SAY WE WERE IN DIFFERENT ROOMS, THIS
11 IS AT THE FAILURE TO THRIVE CLINIC?

12 A CORRECT.

13 Q AND BY WE, WHO ARE YOU REFERRING TO?

14 A THE MOTHER AND I WERE IN DIFFERENT ROOMS.

15 Q AND DO YOU RECALL HAVING ANY DISCUSSIONS WITH
16 DR. EGGE ABOUT YOUR SON'S CONDITION?

17 A NO. MY JOB THERE WAS TO LISTEN. MY JOB THERE
18 WAS TO -- WAS TO -- I'M NOT A DOCTOR. I MEAN,
19 THEY'RE -- THIS IS, TO ME, WHEN HARBOR-UCLA WAS THERE,
20 THEY WERE NOW CALLING THE SHOTS.

21 SO WHATEVER, YOU KNOW, WHATEVER THEY ASKED ME
22 TO DO, I'M NOT A DOCTOR. SO THAT'S THE ONLY THING I
23 CAN REMEMBER. I DON'T REMEMBER CONVERSATIONS
24 BETWEEN -- BETWEEN THE DOCTORS AND I.

25 MR. MCMILLAN: OBJECTION, YOUR HONOR: MOVE TO
26 STRIKE EVERYTHING BEYOND THE WORD NO AS NONRESPONSIVE
27 NARRATIVE RESPONSE.

28 THE COURT: THE OBJECTION'S OVERRULED.

1 BY MR. GUTERRES:

2 Q AT SOME POINT THEN YOU, FOLLOWING YOU BEING AT
3 THE FAILURE TO THRIVE CLINIC, YOU WENT TO A TDM MEETING
4 THAT EVENING?

5 A CORRECT.

6 Q AND TELL US ABOUT THAT. WHO WENT WITH YOU?

7 A MY WIFE AND MY PARENTS.

8 Q AND WHAT WERE YOU TOLD, IF ANYTHING, WAS THE
9 PURPOSE OF THIS MEETING?

10 MR. MCMILLAN: OBJECTION: HEARSAY.

11 THE COURT: OVERRULED. FOR NON-HEARSAY
12 PURPOSE.

13 THE WITNESS: I WAS -- FROM WHAT I REMEMBER,
14 THESE WERE ALL CONVERSATIONS, I WAS JUST -- I DON'T
15 REMEMBER VERY WELL. BUT WHAT I REMEMBER, IT WAS A TEAM
16 MEETING TO DISCUSS A SOLUTION, I GUESS.

17 I'M PARAPHRASING. THAT IS NOT EXACTLY WHAT
18 WAS SAID, BUT THAT'S -- FROM WHAT I REMEMBER, IT WAS
19 THE TONE OF THAT.

20 BY MR. GUTERRES:

21 Q TELL US WHAT YOU REMEMBER WHAT HAPPENED AT THE
22 BEGINNING OF THIS MEETING.

23 A THERE WERE A LOT OF PEOPLE AROUND THE TABLE.
24 AND THEY STARTED -- THEY, AS I MEAN, DCFS SOCIAL
25 WORKERS STARTED LISTING OUTS PROS AND CONS, OR
26 WEAKNESSES AND STRENGTHS, SOMETHING TO THAT SORT.

27 AND THEN WHAT I REMEMBER IS, I THINK THEY WENT
28 AROUND THE ROOM AND THEY, YOU KNOW, TALKED ABOUT

1 WEAKNESSES AND STRENGTHS, AND THEY ASKED US ALL TO WALK
2 OUT OF THE ROOM FROM WHAT I REMEMBER.

3 AND WHEN WE CAME BACK IN THE ROOM, THEY MADE
4 THE DECISION. AND THEY BASICALLY SAID, I FORGET THE
5 WAY THEY PHRASED IT, BUT THEY BASICALLY SAID -- SOMEHOW
6 THEY SAID, WILL YOU TAKE YOUR SON TO GO LIVE -- I DON'T
7 KNOW HOW THEY PHRASED IT -- YOU KNOW, WILL YOU TAKE
8 YOUR SON?

9 AND IF -- FROM WHAT I REMEMBER, IF NOT, HE'S
10 GOING TO GO TO A FOSTER HOME.

11 Q AND DID YOU -- WHAT WAS YOUR RESPONSE?

12 A I MEAN, I WASN'T READY FOR THAT. I MEAN, I
13 WASN'T -- I WAS -- I DON'T -- YOU KNOW -- I KIND OF
14 LOOKED AROUND. I DIDN'T -- YOU KNOW, I LOOKED AROUND.

15 I'VE BEEN MARRIED NOW FOR FIVE WEEKS, AND I
16 LOOKED AROUND AT MY WIFE, AND I LOOKED AROUND AT MY
17 FAMILY. AND I PAUSED. I MEAN, YOU KNOW, IT'S A HUGE
18 RESPONSIBILITY.

19 SO -- AND I SAID, YEAH, WELL WE'LL, YOU KNOW,
20 I'LL DO MY BEST.

21 Q AND DID YOU HAVE ANY DISCUSSIONS WITH
22 MS. DUVAL AFTER THAT DECISION WAS ANNOUNCED?

23 A WELL, I THINK HER -- REMEMBER HER FATHER
24 SAYING SOMETHING TO THE EFFECT OF, YOU'RE WHITE TRASH.
25 AND SHE -- SHE LOOKED AT MY DAD AND SAID
26 CONGRATULATIONS, YOU WON.

27 AND MY FATHER SAID THERE'S NO ONE THAT'S WON
28 ANYTHING. THIS CHILD IS HURTING. HE'S NOT DOING WELL.

1 MR. MCMILLAN: OBJECTION: MOVE TO STRIKE AS
2 NONRESPONSIVE NARRATIVE RESPONSE AND HEARSAY,
3 EVERYTHING AFTER THE CONVERSATION WITH MS. DUVAL.

4 THE COURT: OVERRULED. IT'S NON-HEARSAY
5 PURPOSE.

6 BY MR. GUTERRES:

7 Q AFTER YOU WERE TOLD -- YOU WERE ASKED IF YOU
8 WOULD TAKE YOUR SON, AND YOU INDICATED YOU WOULD, WERE
9 YOU GIVEN ANY OTHER INFORMATION AS TO WHAT WAS GOING TO
10 HAPPEN NEXT?

11 A THEY BASICALLY TOLD ME -- THEY GAVE ME THE
12 CONDITION THAT THEY STILL HAD, I GUESS, CUSTODY OF HIM,
13 AND THEY BASICALLY GAVE ME THE CONDITION, WE WILL HAND
14 HIM OVER TO YOU AS LONG AS WE DO EXACTLY WHAT WE TELL
15 YOU TO DO.

16 Q DID YOU GET ANY INFORMATION ABOUT ANY KIND OF
17 HEARINGS THAT THEY WANTED YOU TO ATTEND OR ANYTHING
18 LIKE THAT?

19 A I BELIEVE THAT THERE WAS A HEARING THE NEXT
20 DAY IN DEPENDENCY COURT THAT I ATTENDED.

21 Q AND YOU WENT TO SOME KIND OF A HEARING IN A
22 COURTROOM?

23 A IN THE DEPENDENCY COURT, THE EDELMAN
24 COURTROOM.

25 Q AND WHEN YOU APPEARED THERE, DID YOU COME WITH
26 AN ATTORNEY?

27 A NO. I JUST TOOK THE PUBLIC ATTORNEY.

28 Q WAS MS. DUVAL THERE?

1 A YES.

2 Q ANYONE ELSE PRESENT THAT YOU RECOGNIZED AT
3 THAT HEARING?

4 A I DON'T REMEMBER FACES. I REALLY DON'T.

5 Q WHAT DO YOU REMEMBER HAPPENING AT THIS
6 DETENTION HEARING, WHICH WOULD HAVE BEEN THE VERY FIRST
7 HEARING AFTER YOU GOT PHYSICAL CUSTODY OF YOUR SON?

8 A I ALMOST REMEMBER NOTHING. IT WAS PRETTY
9 TRAUMATIC.

10 Q DO YOU REMEMBER THERE BEING ANY DISCUSSIONS
11 ABOUT WHAT THE CHARGES WERE AGAINST ANYONE?

12 A THEY CHARGED THE MOTHER WITH, I BELIEVE, IT'S
13 NEGLECT. AND THEY CHARGED ME WITH FAILURE TO PROTECT.

14 Q AND AT THE CONCLUSION OF THAT HEARING, DID YOU
15 RECEIVE ANY KIND OF INSTRUCTIONS FROM THE COURT AS TO
16 WHAT YOU WERE TO DO?

17 A I DON'T REMEMBER INSTRUCTIONS. I
18 REMEMBER WHEN I -- I DON'T KNOW IF IT WAS AT DCFS, THE
19 OFFICE, OR WHETHER IT WAS AT THE COURTHOUSE.

20 THEY GAVE ME A LOT OF INSTRUCTIONS OF WHERE I
21 WAS SUPPOSED TO BRING THE CHILD ON, YOU KNOW, A LOT --
22 YOU KNOW, FOR THE FIRST FEW WEEKS, IT WAS ALL THE TIME.

23 Q FOLLOWING THAT HEARING, TELL US ABOUT YOUR
24 CONTACTS WITH ANY SOCIAL WORKERS FROM THE DEPARTMENT OF
25 CHILDREN AND FAMILY SERVICES. WHAT DO YOU REMEMBER IN
26 THAT REGARD?

27 A I REMEMBER THEY WERE AT MY HOUSE EVERY WEEK
28 MAKING SURE I HAD FOOD, MAKING SURE I WAS PRETTY MUCH

1 DOING WHAT I WAS TOLD, AND MAKING SURE I WAS COMPLYING
2 WITH -- WITH -- ALL OF THIS WHOLE, I GUESS, PROGRAM,
3 YOU KNOW, THAT THEY HAD LAID OUT.

4 Q AND CAN YOU JUST BRIEFLY TELL ME WHAT THE
5 PROGRAM WAS AS YOU UNDERSTOOD IT?

6 A WELL, THERE WERE A LOT OF -- AT FIRST, A LOT
7 OF WEIGH-INS, A LOT OF APPOINTMENTS WITH THE THERAPIST
8 THERE -- NOT THE PHYSICAL THERAPIST -- I WOULDN'T SAY A
9 LOT WITH THE PHYSICAL THERAPIST, THERE WERE -- I WAS
10 GETTING CONNECTED WITH A PHYSICAL THERAPIST.

11 THEY WANTED ME TO COME IN SO THEY COULD RUN A
12 BUNCH OF EXAMS ON HIM. AND I GOT IT DONE.

13 Q AND WAS THERE A PARTICULAR SOCIAL WORKER THAT
14 YOU PRIMARILY DEALT WITH AT THE DETENTION HEARING?

15 A WHEN THE CASE MOVED DOWN, BECAUSE I LIVED IN
16 CARSON, I DEALT WITH VICTORIA SCHEELE. SHE WAS THE
17 PRIMARY CASEWORKER, AND THEN, YEAH. SO VICTORIA.

18 Q AND PRIOR TO THE DETENTION HEARING, WERE YOU
19 DEALING WITH A DIFFERENT SOCIAL WORKER?

20 A I BELIEVE SO. I MEAN, THERE WERE A LOT OF
21 SOCIAL WORKERS. THERE WERE SOCIAL WORKERS IN
22 EVERYTHING. SO I DON'T REMEMBER WHO'S WHO.

23 I REMEMBER -- I CAN'T THINK OF HER NAME,
24 THERE'S A SOCIAL WORKER DURING THE DETENTION, AND BLOND
25 HAIR, GLASSES, I JUST CAN'T REMEMBER HER NAME.

26 Q SUSAN PENDER, I BELIEVE?

27 A SUSAN PENDER. THERE IT IS.

28 Q AND DURING THE TIME THAT YOU WERE DEALING WITH

1 MS. SCHEELE, WAS -- DID MS. DUVAL HAVE CONTACT WITH
2 YOUR SON AND HER SON?

3 A SHE HAD, I BELIEVE SHE HAD VISITS TWICE A
4 WEEK, TUESDAYS AND THURSDAYS.

5 Q AND DO YOU REMEMBER WHERE THOSE VISITS WOULD
6 TAKE PLACE?

7 A AT FIRST THE VISITS WERE TAKING PLACE DOWNTOWN
8 LOS ANGELES IN THE WILSHIRE BUILDING, AND THEN THEY
9 MOVED DOWN TO THE LAKEWOOD BUILDING.

10 Q AND JUST BRIEFLY TELL US, HOW WERE THE
11 ARRANGEMENTS WITH REGARD TO -- FOR THOSE VISITATIONS
12 WHEN YOU HAD CUSTODY -- PHYSICAL CUSTODY OF YOUR SON
13 DURING THAT PERIOD OF TIME?

14 A I DON'T UNDERSTAND YOUR QUESTION.

15 Q YOUR SON HAD TO BE TAKEN TO THE LOCATION FOR
16 THE VISIT. CORRECT?

17 A CORRECT.

18 Q HOW WAS THAT ACCOMPLISHED?

19 A MY PARENTS WOULD PRIMARILY TAKE HIM TO THE
20 VISITATION.

21 Q I WANT TO TAKE YOU TO THE ADJUDICATION
22 HEARING.

23 A OKAY.

24 Q YOU WERE REPRESENTED BY AN ATTORNEY?

25 A BY -- WHAT'S HER NAME? YES. BY EMILY BERGER.

26 Q AND DO YOU REMEMBER THERE BEING AN ATTORNEY
27 ALSO FOR YOUR SON?

28 A THERE WAS AN ATTORNEY.

1 Q AND MS. DUVAL WAS ALSO REPRESENTED?

2 A BY -- YEAH, BY A FEW ATTORNEYS, YEAH.

3 Q AND DO YOU RECALL -- DID YOU ATTEND EVERY DAY
4 OF THE HEARING?

5 A NO.

6 Q DO YOU REMEMBER HOW MANY DAYS OF THE
7 ADJUDICATION HEARING YOU WERE PERSONALLY IN ATTENDANCE?

8 A I -- I DON'T REMEMBER HOW MANY. I REMEMBER
9 ONE TIME MY SON WITH MY WIFE WAS BEING BORN. AND I HAD
10 TO EXCUSE MYSELF SO I COULD BE WITH MY WIFE WHEN WE
11 GAVE BIRTH.

12 Q WERE YOU EVER IN COURT WHEN THERE WERE ANY
13 WITNESSES WHO TESTIFIED?

14 A NO. I -- I TAKE THAT BACK. I DON'T REMEMBER.
15 I DON'T REMEMBER BECAUSE I WOULD ONLY GO INTO THE
16 COURTROOM WHEN THEY ASKED ME TO GO IN THE COURTROOM.

17 Q DID YOU IN FACT TESTIFY THERE?

18 A I BELIEVE I DID.

19 Q AND DO YOU KNOW IF MS. DUVAL HAD ANY MEDICAL
20 PROFESSIONALS TESTIFY ON HER BEHALF?

21 A I REMEMBER DR. NIESEN.

22 Q AND IS THAT THE ONLY MEDICAL PROFESSIONAL THAT
23 YOU REMEMBER TESTIFYING?

24 A YEAH. I REMEMBER HIM QUITE WELL. YEAH.

25 Q AND WHY IS THAT?

26 A BECAUSE HE CALLED SOCIAL SERVICES ON ME A WEEK
27 LATER, AND I HAD POLICE IN MY HOME AT 10:00 AT NIGHT
28 WITH MY THREE-WEEK-OLD SON.

1 AND THEY ASKED MY WIFE WITH MY THREE-WEEK-OLD
2 SON TO GO UPSTAIRS, WITH THEIR WEAPONS DRAWN. SO YEAH,
3 I REMEMBER THAT ONE VERY WELL. AND THEY ACCUSED ME OF
4 PURPOSELY STARVING HIM A WEEK AFTER -- THAT I GOT OUT
5 OF DEPENDENCY COURT.

6 Q STARVING WHO?

7 A RYAN. AND THEY MADE MY WIFE GO UPSTAIRS, AND
8 THEY RANSACKED MY HOUSE FOR ABOUT 45 MINUTES, GOING
9 THROUGH EVERY DRAWER I HAD TO MAKE SURE THAT THERE WAS
10 FOOD IN MY HOUSE.

11 AND THEY HAD ME GO THROUGH ALL MY DOCUMENTS OF
12 WHY I WAS THERE. AND THIS WAS ONE WEEK AFTER
13 DEPENDENCY COURT TRIAL WAS OVER.

14 MR. MCMILLAN: OBJECTION, YOUR HONOR: THERE'S
15 NO QUESTION PENDING FOR THE NARRATIVE RESPONSE. MOVE
16 TO STRIKE.

17 THE COURT: THAT OBJECTION IS OVERRULED.
18 BY MR. GUTERRES:

19 Q DURING THE DEPENDENCY PROCEEDINGS, UP UNTIL
20 THE ADJUDICATION HEARING, DO YOU RECALL THERE EVER
21 BEING ANY ISSUE RAISED BY MS. DUVAL REGARDING ANY
22 DISABILITIES?

23 A NO.

24 Q DID SHE EVER INDICATE TO YOU THAT SHE SUFFERED
25 FROM ANY DISABILITIES?

26 A NO.

27 Q DO YOU KNOW IF MS. DUVAL EVER BROUGHT ANY
28 CLAIM THAT SHE HAD BEEN DISCRIMINATED, DUE TO HER

1 DISABILITIES, TO THE JUVENILE COURT?

2 MR. MCMILLAN: OBJECTION: LACKS FOUNDATION,
3 CALLS FOR SPECULATION.

4 THE COURT: OVERRULED. ASKED IF YOU KNOW.
5 EITHER YOU DO OR YOU DON'T.

6 THE WITNESS: I DO NOT, NO.

7 BY MR. GUTERRES:

8 Q AFTER -- WELL, AS A RESULT OF THE ADJUDICATION
9 HEARING, THE COURT ISSUED A FINAL RULING OR AN EXIT
10 ORDER?

11 A THEY ISSUED AN EXIT ORDER, CORRECT.

12 Q AND WHAT'S YOUR UNDERSTANDING OF THAT ORDER?

13 A CAN YOU ELABORATE MORE ON YOUR QUESTION?

14 Q SURE. WHAT DID THE ORDER SAY?

15 A OKAY. THE ORDER SAID -- THE ORDER GAVE ME
16 SOLE PHYSICAL AND LEGAL CUSTODY OF RYAN AND GAVE THE
17 MOTHER MONITORED VISITATIONS, AND THAT ALL THE FOOD WAS
18 TO BE PACKED BY ME.

19 Q AND ALL?

20 A THE FOOD.

21 Q AND SO, FOLLOWING THE ADJUDICATION HEARING AND
22 THAT EXIT ORDER, DID MOM IN FACT START HAVING MONITORED
23 VISITATIONS?

24 A IT WAS A -- IT WAS A VERY STRANGE TIME BECAUSE
25 I DON'T THINK -- I DON'T EVEN THINK, I MEAN, AT THAT
26 PARTICULAR POINT IN TIME, I MEAN, I BELIEVE SHE DID BUT
27 THEY WEREN'T VERY ESTABLISHED AT THAT PARTICULAR POINT
28 IN TIME.

1 THEY WERE -- I MEAN, IT'S DEFINITELY SOMETHING
2 THAT WAS A -- AFTER WALKING OUT OF, YOU KNOW,
3 DEPENDENCY COURT, IT WAS, WHAT NOW?

4 Q AT SOME POINT A MONITOR -- A PROFESSIONAL
5 MONITOR OF SOME SORT WAS OBTAINED TO MONITOR THE
6 VISITS?

7 A YES.

8 Q AND HAS THAT SITUATION CONTINUED TO THIS DATE?

9 A CORRECT.

10 Q AND LET'S SEE, THE ADJUDICATION HEARING
11 HAPPENED SOMETIME IN AUGUST OF 2010?

12 A TEN, YES.

13 Q AND SO YOU'VE HAD MONITORS BASICALLY MAKING --
14 MONITORING THOSE VISITS WITH MS. DUVAL SINCE THEN.
15 CORRECT?

16 A CORRECT.

17 Q HOW MANY MONITORS -- DIFFERENT MONITORS HAVE
18 YOU HAD SINCE THEN? GIVE ME YOUR BEST ESTIMATE.

19 A 10 OR 11.

20 Q IS THERE A REASON -- ANY PARTICULAR REASON
21 YOU'VE HAD 10 OR 11 MONITORS SINCE THEN?

22 MR. MCMILLAN: LACKS FOUNDATION, SPECULATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: SOME HAVE LEFT DUE TO
25 CIRCUMSTANCE. AND ONE COULDN'T -- THERE'S BEEN A FEW
26 OF THEM THAT HAVE LEFT BECAUSE OF MS. DUVAL'S BEHAVIOR.
27 BY MR. GUTERRES:

28 Q AND WHAT DO YOU MEAN BY THAT?

1 A WELL, IT'S A WAR EVERY SINGLE TIME. I GET
2 PHONE CALLS ALL THE TIME OF -- I MEAN, AFTER EVERY
3 VISIT, I'M LIKE WHAT'S GOING TO HAPPEN NOW, WHAT'S
4 GOING TO HAPPEN?

5 SO WE'VE HAD ONE MONITOR -- I DON'T KNOW IF
6 THAT'S ANSWERED YOUR QUESTION.

7 Q WELL, I UNDERSTAND THAT YOU'VE INDICATED --
8 YOU'VE CHARACTERIZED IT AS A WAR EVERY TIME, BUT IF YOU
9 COULD BE A LITTLE DESCRIPTIVE.

10 WHAT DO YOU MEAN BY THAT? HAS THERE BEEN A
11 DISAGREEMENT BETWEEN THE MONITOR AND MS. DUVAL? TELL
12 US WHAT YOU MEAN BY THAT.

13 A YES. WHERE THE OWNER OF ONE OF THE --
14 IN 2012, 2012, NO, 2014, I CAN'T REMEMBER THE DATE --
15 ONE -- THE OWNER REFUSED -- OF THE MONITORING SERVICES,
16 REFUSED ALL FUTURE SERVICES.

17 SHE SAID, IN 22 YEARS, I'VE NEVER SEEN THIS
18 BEFORE. AND THIS CASE IS OUTSIDE OF OUR EXPERTISE.

19 MR. MCMILLAN: OBJECTION: MOVE TO STRIKE THE
20 HEARSAY STATEMENTS AND THE NARRATIVE RESPONSE AS
21 NONRESPONSIVE.

22 THE COURT: THE MOVE TO STRIKE THE HEARSAY
23 STATEMENT IS GRANTED. THAT PART OF THE ANSWER SAYING,
24 "SHE SAID IN 22 YEARS," ET CETERA, IS, FROM THERE TO
25 THE END OF THAT ANSWER, IS ORDERED STRICKEN.

26 AND THE JURY WILL DISREGARD IT. REMAINING
27 OBJECTION OF NARRATIVE IS OVERRULED.

28

1 BY MR. GUTERRES:

2 Q DO YOU REMEMBER A MONITOR BY THE NAME OF
3 GUS MARTINEZ?

4 A YES.

5 Q WAS THERE AN ISSUE WITH MS. DUVAL AND
6 MR. MARTINEZ?

7 A YES.

8 Q WHAT DO YOU REMEMBER IN THAT REGARD?

9 A A FEW TIMES THAT SHE -- THAT MS. DUVAL BROKE
10 THE RULES AND SPANKED HIM ON A FEW OCCASIONS. AND
11 MR. MARTINEZ SAID, TOO BIG OF A LIABILITY. I -- I
12 CAN'T DO THIS ANYMORE.

13 Q DURING THE COURSE OF THE DEPENDENCY
14 PROCEEDINGS PRIOR TO THE FINAL RULING ON THE
15 ADJUDICATION, DO YOU RECALL MS. DUVAL FILING ANY KIND
16 OF MOTIONS TO CHANGE THE ORDERS OF THE COURT?

17 A MANY TIMES.

18 Q WHEN THOSE MOTIONS WERE, OR PETITIONS WERE
19 FILED, YOU WERE MADE AWARE OF THOSE?

20 A CORRECT.

21 Q AND WERE YOU MADE AWARE OF CERTAIN
22 RECOMMENDATIONS THAT A MEDICAL EXPERT THAT MS. DUVAL
23 HAD RETAINED HAD MADE IN THOSE PROCEEDINGS?

24 A I DON'T UNDERSTAND THE QUESTION.

25 Q DO YOU KNOW WHO DR. LOTT IS, IRA LOTT?

26 A I'VE HEARD OF HIM.

27 Q WERE YOU EVER INFORMED OF ANY TESTING THAT
28 DR. LOTT WANTED TO DO, RELATIVE TO YOUR SON?

1 A I BELIEVE THAT WAS DURING THE DEPENDENCY
2 PROCEEDINGS. DR. LOTT, FROM WHAT I UNDERSTAND IS HE
3 RAN SOME TESTS, AND HE SAID THAT THE CHILD -- I DON'T
4 KNOW WHAT HE SAID.

5 I WAS NOT THERE. FROM WHAT I GOT OUT OF IT
6 WAS HE COULD POSSIBLY HAVE A CONDITION CALLED
7 MICROCEPHALY.

8 MR. MCMILLAN: OBJECTION, YOUR HONOR: LACKS
9 FOUNDATION, NONRESPONSIVE TO THE QUESTION, ALSO SOUNDS
10 LIKE IT'S BASED ON HEARSAY OR CONSISTS OF HEARSAY.

11 THE COURT: THE OBJECTION LACKING FOUNDATION
12 IS OVERRULED. THE OBJECTION NONRESPONSIVE TO THE
13 QUESTION IS SUSTAINED. THE "SOUNDS LIKE BASED ON
14 HEARSAY," OVERRULED.

15 MR. MCMILLAN: I'M SORRY, YOUR HONOR. BASED
16 ON THE NONRESPONSIVE SUSTAINED OBJECTION, WE'D MOVE TO
17 STRIKE THE TESTIMONY.

18 THE COURT: THE MOTION TO STRIKE IS GRANTED.
19 THE ENTIRE ANSWER IS ORDERED STRICKEN. THE JURY
20 DISREGARD IT. THE MOTION IS GRANTED ON THE GROUND
21 NONRESPONSIVE TO THE QUESTION THAT WAS ASKED.
22 BY MR. GUTERRES:

23 Q MR. MILLS, WAS IT EVER BROUGHT TO YOUR
24 ATTENTION THAT THERE WAS SOME CONCERN THAT PERHAPS YOUR
25 SON WAS SUFFERING FROM MICROCEPHALY?

26 A IT WAS BROUGHT UP BY DR. LOTT.

27 Q AND DID YOU DISCUSS THIS CONCERN WITH ANYONE?

28 MR. MCMILLAN: OBJECTION, YOUR HONOR:

1 HEARSAY.

2 THE COURT: OVERRULED. THE QUESTION CALLS FOR
3 A YES OR NO ANSWER. THAT'S NOT HEARSAY.

4 THE WITNESS: DID I DISCUSS -- OBVIOUSLY WITH
5 MY FAMILY I DISCUSSED THE CONCERN.

6 BY MR. GUTERRES:

7 Q WHAT DO YOU REMEMBER OCCURRING WITH REGARD TO
8 THIS ISSUE OF A POSSIBLE CONCERN FOR MICROCEPHALY?

9 MR. MCMILLAN: OBJECTION: VAGUE AND
10 AMBIGUOUS.

11 THE COURT: OVERRULED. I DON'T THINK YOU WANT
12 TO ASK A LEADING QUESTION TO BE MORE SPECIFIC.

13 MR. GUTERRES: I'D BE HAPPY TO, YOUR HONOR.

14 THE COURT: THAT WON'T BE NECESSARY. I'M
15 OVERRULING THAT OBJECTION. SO, HE WANTS TO KNOW WHAT
16 DO YOU REMEMBER OCCURRED WITH REGARD TO ISSUE OF
17 MICROCEPHALY, IF ANYTHING?

18 THE WITNESS: I DON'T REMEMBER.

19 BY MR. GUTERRES:

20 Q AT THE CONCLUSION OF THE ADJUDICATION HEARING
21 IN THE DEPENDENCY PROCEEDINGS, DO YOU REMEMBER IF
22 MS. DUVAL APPEALED?

23 A YES.

24 Q AND DO YOU REMEMBER THE GROUNDS FOR ARGUMENTS
25 ON APPEAL?

26 A NO --

27 MR. MCMILLAN: LACKS -- WITHDRAWN.

28

1 BY MR. GUTERRES:

2 Q HOW ABOUT ANY APPEALS BY MS. DUVAL AS IT
3 RELATED TO THE FAMILY LAW MATTERS? DO YOU RECALL ANY
4 APPEALS THAT MS. DUVAL UNDERTOOK ARISING OUT OF THE
5 FAMILY LAW COURT?

6 A YES.

7 Q AND WERE YOU INVOLVED IN THAT APPEAL?

8 A YES.

9 Q AND WHAT DO YOU REMEMBER -- DO YOU REMEMBER
10 WHAT HER -- MS. DUVAL'S ARGUMENTS WERE, RELATIVE TO THE
11 APPEAL IN THE FAMILY LAW MATTER?

12 A NO. THEY'RE -- NO.

13 Q IN THAT APPEAL, DID YOU HAVE AN ATTORNEY OR
14 WERE YOU REPRESENTING YOURSELF? DO YOU REMEMBER?

15 A IN WHICH APPEAL?

16 Q IN THE APPEAL -- PARDON ME -- ON THE -- FOR
17 THE -- ON MS. DUVAL'S APPEAL FROM THE FAMILY LAW
18 ORDERS?

19 A I REPRESENTED MYSELF.

20 Q I BELIEVE YOU HAD INDICATED THAT YOUR
21 UNDERSTANDING FROM DR. SODERBERG RELATIVE TO -- PLEASE
22 TELL ME WHAT YOUR UNDERSTANDING WAS, FROM
23 DR. SODERBERG'S TESTING, AS TO YOUR SON'S ALLERGIES.

24 MR. MCMILLAN: OBJECTION, YOUR HONOR: ASKED
25 AND ANSWERED. ALSO FOUNDATION, SPECULATION.

26 THE COURT: SUSTAINED AS TO ASKED AND ANSWERED
27 PREVIOUSLY.

28

1 BY MR. GUTERRES:

2 Q HAS YOUR SON EVER BEEN DIAGNOSED WITH ANY FOOD
3 ALLERGIES?

4 MR. MCMILLAN: OBJECTION, YOUR HONOR: ASKED
5 AND ANSWERED.

6 THE COURT: OVERRULED.

7 THE WITNESS: NO.

8 BY MR. GUTERRES:

9 Q IN THE ADJUDICATION -- IN THE JURISDICTION
10 DISPOSITION REPORT THAT WAS FILED, DO YOU KNOW IF -- OR
11 DO YOU REMEMBER IF THERE WAS A REQUEST FOR A
12 PSYCHOLOGICAL EVALUATION TO BE DONE?

13 A I DON'T REMEMBER.

14 Q DO YOU KNOW IF ANY PSYCHOLOGICAL EXAMINATIONS
15 WERE EVER PERFORMED, AT THE REQUEST OF THE COURT, ON
16 YOU?

17 A NO.

18 Q DO YOU KNOW IF ANY PSYCHOLOGICAL EXAMS WERE
19 EVER PERFORMED ON MS. DUVAL?

20 A NO.

21 Q AS A RESULT OF THE FAMILY LAW ORDERS,
22 MS. DUVAL IS REQUIRED TO PAY CHILD CUSTODY SUPPORT
23 PAYMENTS?

24 A YES.

25 Q AND HAS SHE COMPLIED WITH THOSE?

26 A YES.

27 Q IS MS. DUVAL -- ARE HER PAYMENTS ALL UP TO
28 DATE?

1 A THERE'S AN ARREARS OF ABOUT \$14,000.

2 MR. GUTERRES: THANK YOU.

3 THE COURT: MR. MCMILLAN.

4 MR. MCMILLAN: YES, YOUR HONOR. JUST GIVE ME
5 A MOMENT. I HAVE A PILE OF STUFF HERE.

6

7

CROSS-EXAMINATION

8

BY MR. MCMILLAN:

9 Q LET'S START WITH -- I HAVE A LOT OF PLACES TO
10 START. BUT I THINK GUS MARTINEZ PROBABLY THE BEST ONE
11 TO START. YOU REMEMBER WHO THAT IS. RIGHT?

12

A YES.

13

Q WHO IS HE AGAIN?

14

A HE WAS A MONITOR.

15

16 Q A MONITOR? AND WHEN WE DO THESE MONITORED
VISITS, YOU'RE NOT THERE. RIGHT?

17

A NO, I'M NOT.

18

19 Q IT'S JUST THE MONITOR, THE CHILD, AND
MS. DUVAL?

20

A MOST OF THE TIME, YES.

21

22 Q SOMETIMES SHE'LL BRING SOMEBODY WITH HER, A
FRIEND OR SOMEBODY?

23

A A DOCTOR.

24

25 Q SURE, SURE. AND AT ONE OF THESE, YOU TALKED A
LITTLE BIT ABOUT THIS, I THINK YOU DESCRIBED IT AS A
26 WAR THAT'S GOING ON DURING THESE VISITS, OR IN RELATION
27 TO THESE VISITS.

28

DO YOU REMEMBER THAT?

1 A YES.

2 Q AND IT'S ALL HER, RIGHT, IT'S ALL HER WARRING,
3 IS THAT YOUR TESTIMONY?

4 MR. GUTERRES: OBJECTION: THAT MISSTATES THE
5 TESTIMONY.

6 THE COURT: OVERRULED. IT'S
7 CROSS-EXAMINATION.

8 THE WITNESS: REPEAT YOUR QUESTION?
9 BY MR. MCMILLAN:

10 Q YEAH. IT'S ALL HER FAULT. IT'S MS. DUVAL
11 THAT'S WARRING?

12 A I JUST KNOW THERE'S CHALLENGES BETWEEN THE
13 MONITORS.

14 Q CHALLENGES BETWEEN THE MONITORS.

15 IS ONE OF THE REASONS FOR THOSE CHALLENGES
16 BECAUSE YOU TELL YOUR SON, "MOMMY TRIED TO KILL YOU
17 WHEN YOU WERE A BABY"? "HE WANTS TO GET FAR AWAY FROM
18 YOU. DADDY SAID YOU'RE THE WORST THING IN THE WORLD"?

19 IS THAT THE REASON YOU'RE WARRING WITH
20 MS. DUVAL, HAVING THESE TROUBLES AT THESE MONITORED
21 VISITS?

22 A I DON'T UNDERSTAND YOUR QUESTION. AGAIN?

23 Q DO YOU REMEMBER EVER TELLING YOUR SON, "MOMMY
24 TRIED TO KILL YOU WHEN YOU WERE A BABY" AND THAT "DADDY
25 WANTS TO GET FAR AWAY FROM YOU"? AND THAT YOU TOLD
26 YOUR LITTLE BOY THAT HIS MOMMY WAS THE WORST THING IN
27 THE WORLD?

28 DO YOU REMEMBER SAYING THAT TO YOUR SON

1 SOMETIME AROUND FEBRUARY 2016?

2 MR. GUTERRES: OBJECTION: THAT'S COMPOUND.

3 THE COURT: IT'S COMPOUND. AND THERE'S
4 ANOTHER PROBLEM. YOU BETTER RESTATE IT.

5 MR. MCMILLAN: OKAY.

6 BY MR. MCMILLAN:

7 Q DO YOU RECALL EVER HAVING A CONVERSATION WITH
8 YOUR LITTLE BOY WHERE YOU TOLD HIM THAT HIS MOM TRIED
9 TO KILL HIM WHEN HE WAS 15 MONTHS OLD?

10 A NO.

11 Q YOU DON'T REMEMBER THAT?

12 A NO.

13 Q OKAY. LET ME SEE IF I CAN REFRESH YOUR
14 RECOLLECTION. IT'S THAT PARAGRAPH RIGHT THERE WE'RE
15 LOOKING AT. FIRST OF ALL, IF YOU CAN READ TO YOURSELF
16 THE FIFTH LINE DOWN, THE SENTENCE BEGINNING WITH, "RYAN
17 WITHOUT."

18 A "RYAN WITHOUT NOTICE," OKAY.

19 Q TO YOURSELF, PLEASE.

20 A OKAY.

21 Q OKAY. AND WHO, AGAIN, IS GUS B. MARTINEZ? IS
22 THAT THE SAME GUS MARTINEZ WE WERE TALKING ABOUT
23 EARLIER?

24 A CORRECT.

25 Q WITH CHILD-SAFE VISITATIONS?

26 A CORRECT.

27 Q AND WHAT DOES PSM STANDS FOR? DO YOU KNOW?

28 A NO IDEA.

1 Q BUT HE IS THE SAME -- THIS GENTLEMEN HERE IS
2 THE SAME GUS MARTINEZ WE'VE BEEN TALKING ABOUT?

3 A CORRECT.

4 Q OKAY. IN READING THAT STATEMENT, DOES THAT
5 REFRESH YOUR RECOLLECTION THAT YOU TOLD YOUR SON THAT
6 HIS MOTHER TRIED TO KILL HIM WHEN HE WAS A BABY AND
7 THAT YOU WANT TO GET AS FAR AWAY FROM HER AND THAT SHE
8 WAS THE WORST THING IN THE WORLD?

9 DOES THAT REFRESH YOUR RECOLLECTION?

10 MR. GUTERRES: OBJECTION, YOUR HONOR: COUNSEL
11 IS READING FROM AN EXHIBIT. IMPROPER REFRESHMENT OF
12 RECOLLECTION.

13 THE COURT: IT'S AN IMPROPER ATTEMPT TO
14 REFRESH RECOLLECTION. THERE'S NO SHOWING THAT THIS
15 DOCUMENT IS ANYTHING THAT PROVES -- TO HIS
16 RECOLLECTION. THIS OBJECTION IS SUSTAINED.

17 DON'T DO IT ANYMORE.

18 MR. MCMILLAN: OKAY. LET ME BACK UP. I'LL
19 WITHDRAW THAT. LET ME TRY IT DIFFERENTLY.

20 BY MR. MCMILLAN:

21 Q HAVING READ THIS EMAIL, DOES THAT REFRESH YOUR
22 RECOLLECTION AS TO THE THINGS THAT YOU MAY HAVE TOLD
23 YOUR SON ABOUT MS. DUVAL?

24 A I HAVE READ THE EMAIL. THERE ARE MANY THINGS
25 THAT RYAN HAD SAID COMING HOME THAT HAVE BEEN OFF THE
26 WALL BECAUSE HE IS -- HE WAS WHAT, SEVEN YEARS OLD AT
27 THE TIME.

28 Q LET ME TRY AGAIN.

1 A BECAUSE HE'S ALSO SAID HE WANTED TO KILL
2 HIMSELF, TOO, AND I'M LIKE (GESTURING) WHERE DID THAT
3 COME FROM.

4 MR. MCMILLAN: OBJECTION, YOUR HONOR: MOVE TO
5 STRIKE AS NONRESPONSIVE TO MY QUESTION.

6 THE COURT: AND THE ANSWER YOU'RE ASKING TO BE
7 STRICKEN IS "I HAVE READ THE EMAIL," ET CETERA?

8 MR. MCMILLAN: I COULDN'T HEAR YOU. I'M
9 SORRY.

10 THE COURT: IS THE ANSWER -- I'M TRYING TO
11 FIGURE OUT WHICH ANSWER BECAUSE, ACCORDING TO THE
12 TRANSCRIPT, THERE WAS AN ANSWER, AND THEN YOU SAID YOU
13 WANTED TO TRY AGAIN, AND THEN THERE WAS SOMETHING MORE
14 SAID.

15 AND I'M NOT SURE -- DO YOU WANT TO TAKE A LOOK
16 AT IT?

17 MR. MCMILLAN: IF I COULD. BECAUSE I THINK
18 THERE WAS A QUESTION ABOUT REFRESHED RECOLLECTION.

19 THE COURT: LET ME -- MAYBE WE CAN LOOK AT OUR
20 REPORTER'S...

21 MR. MCMILLAN: ACTUALLY BOTH, YOUR HONOR.
22 BOTH THE ANSWER, AND THEN --

23 THE COURT: ALL RIGHT.

24 MR. MCMILLAN: BOTH, YOUR HONOR. THE ANSWER
25 TO MY ORIGINAL QUESTION, AND THEN THE ANSWER THAT CAME
26 AFTER, "LET ME TRY AGAIN."

27 THE COURT: ALL RIGHT. THE -- BOTH ANSWERS
28 GIVEN, ONE WHICH BEGAN, "I READ THE EMAIL, THERE ARE

1 MANY THINGS THAT RYAN HAD SAID," ET CETERA, AND THEN, A
2 FURTHER ANSWER, "BECAUSE HE SAID HE WANTED TO KILL
3 HIMSELF," ET CETERA.

4 BOTH OF THOSE ANSWERS, THE OBJECTION OF
5 NONRESPONSIVE IS SUSTAINED. THE MOTION TO STRIKE IS
6 GRANTED. BOTH THOSE ANSWERS WILL BE STRICKEN AND THE
7 JURY DISREGARD IT.

8 AND THE REAL QUESTION, MR. MILLS, IS SIMPLY,
9 HAVING LOOKED AT THIS EMAIL, DOES THAT REFRESH YOUR
10 RECOLLECTION AS TO THINGS THAT YOU MAY HAVE TOLD YOUR
11 SON ABOUT MS. DUVAL.

12 THAT JUST CALLS FOR A YES OR NO. EITHER IT
13 CAUSES YOU TO REMEMBER SOMETHING THAT YOU DIDN'T
14 OTHERWISE REMEMBER OR IT DOESN'T.

15 THE WITNESS: I REMEMBER THE EMAIL, YES.

16 BY MR. MCMILLAN:

17 Q YOU REMEMBER THE EMAIL?

18 A YES.

19 Q SO YOU ALSO RECEIVED THIS EMAIL FROM
20 MR. MARTINEZ?

21 A I BELIEVE IT WAS A -- I BELIEVE IT WAS A
22 MONITORING REPORT THAT I RECEIVED.

23 Q AND IN THE MONITORING REPORT THAT YOU
24 RECEIVED, DID IT SAY THE SAME THING THAT IT SAID IN
25 THIS EMAIL HERE?

26 A SOMETHING TO THE -- SOMETHING TO THAT EFFECT,
27 YES.

28 Q AND WHAT WAS IT TO THAT EFFECT THAT YOU RECALL

1 READING IN THAT MONITOR REPORT? IF YOU REMEMBER THE
2 WORDS, IF YOU COULD GIVE THEM TO US, THAT WOULD BE
3 GREAT.

4 A I DON'T REMEMBER THE EXACT WORDS.

5 Q OKAY. CAN I ASK YOU TO LOOK AT THE SIXTH LINE
6 DOWN, AGAIN ON THAT EMAIL. AGAIN, BEGINNING WITH "RYAN
7 WITHOUT." THEN READ THAT SENTENCE. TO YOURSELF.

8 A OKAY.

9 Q OKAY. THIS EMAIL THAT WE'RE LOOKING AT, TO
10 YOUR RECOLLECTION, IS IT IN SUBSTANCE IDENTICAL TO THE
11 MONITORING REPORT THAT WAS SENT TO YOU?

12 A I DON'T KNOW. I DON'T HAVE THE MONITORING
13 REPORT IN FRONT OF ME.

14 Q WHEN'S THE LAST TIME YOU LOOKED AT THIS
15 MONITORING REPORT THAT WE'RE TALKING ABOUT RIGHT NOW?

16 A WELL, THIS IS AN EMAIL, NOT A MONITORING
17 REPORT.

18 Q I UNDERSTAND, BUT YOU REFERENCED A MONITORING
19 REPORT THAT YOU GOT THAT SAID -- HAD THE SAME SUBSTANCE
20 IN IT. CORRECT?

21 A MM-HMM.

22 Q YES?

23 A YES.

24 Q AND WHEN WAS IT THAT, WHEN WAS THE LAST TIME
25 YOU LOOKED AT THAT EMAIL?

26 A A LONG TIME AGO.

27 THE COURT: YOUR QUESTION, WHEN IS THE LAST
28 TIME YOU LOOKED AT THE MONITORING REPORT?

1 MR. MCMILLAN: I'M SORRY. MONITORING REPORT.
2 THAT'S WHAT I MEANT.

3 THE COURT: CAN YOU TELL HIM WHEN THE LAST
4 TIME WAS YOU LOOKED AT THE MONITORING REPORT YOU
5 REMEMBER HAVING RECEIVED.

6 THE WITNESS: I DON'T REMEMBER WHEN.
7 BY MR. MCMILLAN:

8 Q DO YOU REMEMBER HOW LONG AFTER FEBRUARY 11TH
9 OF THIS YEAR IT WAS THAT YOU RECEIVED THAT MONITORING
10 REPORT?

11 A I DON'T REMEMBER.

12 Q DO YOU RECALL A MOTION HEARING IN THE FAMILY
13 LAW COURT, SOMETIME IN THE LAST COUPLE MONTHS?

14 A YES.

15 Q AND THIS MONITORING REPORT THAT YOU'RE
16 REFERENCING, WAS THAT PART OF THAT?

17 A I DON'T KNOW. I DON'T REMEMBER. I'D HAVE TO
18 LOOK THROUGH IT.

19 Q WELL, WHEN YOU GOT THE COURT DOCUMENTS, DID
20 YOU LOOK THROUGH THEM? DID YOU READ THEM?

21 A I READ -- I READ THE DECLARATION. I DON'T --
22 LIKE I SAID, I DON'T RECALL. THERE'S A LOT OF STUFF.
23 I DON'T RECALL ALL THE DIFFERENT INFORMATION INVOLVED.

24 Q LET ME ASK YOU: DO YOU REMEMBER WHAT IT WAS
25 THAT MS. DUVAL WAS COMPLAINING ABOUT, IF ANYTHING?

26 A THERE'S A LOT OF STUFF THAT MS. DUVAL
27 COMPLAINED ABOUT.

28 Q WAS ONE OF THE THINGS THAT SHE WAS COMPLAINING

1 ABOUT -- WELL, LET ME ASK YOU: WHEN WAS THAT HEARING?

2 A THE FIRST HEARING WAS IN MAY. AND THEN IT GOT
3 MOVED TO ABOUT A MONTH OR THREE WEEKS AGO.

4 Q THREE WEEKS AGO?

5 A FOUR WEEKS AGO. YES.

6 Q WAS THAT THE SAME DAY WE SAW YOUR DADDY HERE
7 IN COURT? I KNOW HE'S NOT HERE --

8 A WHAT DID YOU CALL HIM?

9 MR. GUTERRES: OBJECTION: RELEVANCE.

10 THE COURT: SUSTAINED AS TO RELEVANCE. LET'S
11 STICK TO THE CASE.

12 BY MR. MCMILLAN:

13 Q DO YOU RECALL THE ISSUE IN THAT HEARING, JUST
14 THREE WEEKS AGO, BEING THESE STATEMENTS THAT YOU WERE,
15 AT LEAST IN PART, BEING THESE STATEMENTS THAT YOU WERE
16 MAKING TO YOUR SON ABOUT HIS MOM?

17 A CAN YOU REPEAT YOUR QUESTION?

18 Q YEAH. DO YOU RECALL ONE OF THE ISSUES AT PLAY
19 IN THAT HEARING THREE WEEKS AGO WAS THIS QUESTION ABOUT
20 YOU MAKING THESE STATEMENTS TO YOUR SON ABOUT
21 MS. DUVAL?

22 A THERE WERE A LOT OF ISSUES AT PLAY. AND --

23 Q WAS THIS ONE OF THEM?

24 A YES.

25 Q OKAY. THREE WEEKS AGO, THIS WAS ONE OF THE
26 ISSUES. WHAT EXACTLY WERE THE WORDS THAT YOU REMEMBER
27 BEING AT ISSUE FROM THAT HEARING THREE WEEKS AGO?

28 A I DIDN'T REVIEW IT BEFORE THREE WEEKS -- I

1 MEAN, AFTER MAY, I DID NOT REVIEW IT.

2 Q OKAY. DID YOU AT LEAST, WHEN YOU DID REVIEW
3 IT, GET THE GIST OF WHAT IT WAS MS. DUVAL WAS SAYING
4 YOU WERE DOING?

5 A THERE'S MANY THINGS SHE WAS ACCUSING ME OF
6 DOING, YES.

7 Q SIR, WE'RE FOCUSED ON THIS ONE RIGHT HERE THAT
8 MR. MARTINEZ IS WRITING AN EMAIL AND MONITORING REPORT.
9 YOU UNDERSTAND THAT, RIGHT?

10 A YES, I DO.

11 Q OKAY. LET'S FOCUS ON THAT FOR JUST A
12 MOMENT --

13 THE REPORTER: OKAY. I CAN'T --

14 THE COURT: SLOW DOWN, PLEASE.

15 MR. MCMILLAN: SORRY.

16 THE REPORTER: STOP.

17 MR. MCMILLAN: SORRY.

18 BY MR. MCMILLAN:

19 Q LET'S FOCUS ON THAT FOR JUST A MOMENT. YOU
20 WITH ME?

21 A YES, I AM.

22 Q OKAY. WHAT DO YOU RECALL BEING THE GIST OF
23 THE STATEMENTS MS. DUVAL WAS COMPLAINING ABOUT THAT YOU
24 WERE MAKING TO YOUR SON? THE GIST OF IT, THE ISSUE IN
25 THAT HEARING ABOUT THREE WEEKS AGO?

26 A THE GIST OF THE ISSUE OF THIS PARTICULAR ONE
27 WAS AN ISSUE OF ALIENATION.

28 Q I'M SORRY?

1 A AN ISSUE OF ALIENATION.

2 Q WHAT DO YOU MEAN BY THAT?

3 A THAT SHE WAS CLAIMING THAT I WAS ALIENATING
4 HIM FROM HER BY MAKING STATEMENTS LIKE THIS.

5 Q OKAY. AND IN WHAT WAY WAS SHE CLAIMING THAT
6 WAS ALIENATING HER SON FROM HER?

7 A I DON'T UNDERSTAND THE QUESTION.

8 Q OKAY. YOU'RE SAYING THAT SHE WAS COMPLAINING
9 THAT YOU WERE ALIENATING HER FROM HER SON. RIGHT?

10 A MM-HMM.

11 Q YES?

12 A YES.

13 Q BY MAKING STATEMENTS LIKE THIS?

14 A YES.

15 Q OKAY. WHAT ARE TALKING ABOUT WHEN WE SAY
16 STATEMENTS LIKE THIS?

17 A THE ONE THAT YOU TOLD ME TO FOCUS ON.

18 Q OKAY. AND WHAT STATEMENT WAS THAT?

19 A THE ONE THAT YOU READ REGARDING --

20 THE COURT: YOU'RE NOT GOING TO READ FROM THIS
21 THERE. YOU ASKED HIM TO FOCUS. HE SAID HE FOCUSED.
22 HE DOESN'T HAVE TO RECITE TO YOU WHAT YOU ASKED HIM TO
23 FOCUS ON.

24 MR. MCMILLAN: I UNDERSTAND, YOUR HONOR. I'M
25 NOT ASKING HIM TO READ IT. I'M HOPING THAT HE NOW
26 REMEMBERS. IF HE DOESN'T, HE DOESN'T.

27 THE COURT: WELL, ASK A QUESTION THAT WOULD
28 ELICIT THAT INFORMATION THEN.

1 MR. MCMILLAN:

2 BY MR. MCMILLAN:

3 Q NOW, THAT WE'VE BEEN TALKING ABOUT THE
4 SPECIFIC LANGUAGE OF THE STATEMENT THAT YOU MADE TO
5 YOUR SON THAT CAUSED MS. DUVAL TO GO INTO COURT --

6 A I DID NOT MAKE IT TO MY SON.

7 Q OKAY. SO YOU'RE DENYING THAT YOU TOLD YOUR
8 SON THESE THINGS?

9 A YES, I AM.

10 Q WHEN YOU RECEIVED THE MONITORING REPORT FROM
11 GUS MARTINEZ, YOU DIDN'T CALL HIM AND DENY IT, DID YOU?

12 A YES, I DID.

13 Q DID YOU KEEP A RECORD OF THAT?

14 A NO. HOW WOULD I RECORD IT?

15 Q I DON'T KNOW. MAYBE MAKE A NOTE IN A CALENDAR
16 OR DIARY?

17 A NO.

18 Q HOW ABOUT YOUR DECLARATION? DID YOU SAY IN A
19 DECLARATION THAT YOU SIGNED UNDER PENALTY OF PERJURY
20 AND FILED WITH THE COURT, HEY, MR. MARTINEZ, THAT'S NOT
21 RIGHT. I TOLD HIM THAT'S NOT RIGHT. I DENY IT EVER
22 HAPPENED?

23 A NO, BECAUSE I UNDERSTAND HE WAS A
24 SEVEN-YEAR-OLD BOY, AND LIKE I SAID, HE COMES BACK
25 SAYING ALL SORTS OF THINGS.

26 Q WELL, HOLD ON A SECOND. THE ALLEGATION
27 AGAINST YOU IN FAMILY COURT PROCEEDINGS THAT YOU MADE
28 THESE STATEMENTS TO YOUR SON ABOUT MS. DUVAL.

1 MR. GUTERRES: OBJECTION: ASKED AND ANSWERED.

2 THE WITNESS: I'VE HAD HUNDREDS OF
3 ALLEGATIONS.

4 THE COURT: OVERRULED.

5 BY MR. MCMILLAN:

6 Q OKAY. WELL, LET'S LOOK AT SOME OF THOSE OTHER
7 ALLEGATIONS. DO YOU KNOW WHO SHIRLEY DOUGLAS IS?

8 A YES.

9 Q SHE'S ANOTHER MONITOR THAT SEPARATED FROM
10 MONITORING MS. DUVAL'S VISITS?

11 A SHE WASN'T A MONITOR. SHE WAS THE OWNER OF
12 THE MONITORING ORGANIZATION.

13 Q I THINK THAT'S RIGHT, IS THAT SHE OWNED THE
14 AGENCY, AND HER AGENCY CEASED PROVIDING SERVICES FOR
15 MS. DUVAL.

16 A CORRECT.

17 Q AS PART OF THE SERVICES THEY PROVIDED
18 MS. DUVAL, THE AGENCY WOULD ALSO GIVE THESE MONITORED
19 VISIT REPORTS, SORT OF LIKE THE ONES THAT MR. MARTINEZ
20 WAS PROVIDING?

21 A CORRECT.

22 Q THE MONITORS, DO YOU KNOW HOW THOSE MONITORING
23 REPORTS WOULD GET PUT TOGETHER?

24 MR. GUTERRES: OBJECTION: RELEVANCE.

25 THE COURT: SUSTAINED.

26 BY MR. MCMILLAN:

27 Q DO YOU KNOW WHY IT WAS THAT THE MONITORING
28 RELATIONSHIP BETWEEN SHIRLEY DOUGLAS'S COMPANY AND

1 MS. DUVAL FELL APART?

2 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

3 THE COURT: SUSTAINED.

4 BY MR. MCMILLAN:

5 Q WAIT A MINUTE. YOU SAID THAT -- I THINK YOU
6 SAID THERE WERE 11 OF THESE MONITORING SERVICES OVER
7 THE YEARS.

8 A NOT SERVICES, MONITORS.

9 Q MONITORS. OKAY, I'M SORRY. I MISUNDERSTOOD.

10 A AND YOU'RE ASKING ME TO APPROXIMATE BECAUSE I
11 HAVEN'T COUNTED THEM.

12 Q OKAY. AND SHIRLEY DOUGLAS WAS ONE OF THE
13 MONITORS?

14 A NO, SHE WAS --

15 Q SERVICES.

16 A YES, SHE WAS THE OWNER OF A SERVICE.

17 Q RIGHT. AND GUS MARTINEZ WAS A MONITOR OR THE
18 OWNER OF CHILD-SAFE VISITATIONS?

19 A I THINK IN THAT PARTICULAR SITUATION, HE WAS
20 BOTH.

21 Q AND AS TO EACH OF THESE SERVICES, THE ONE -- I
22 THINK SHIRLEY DOUGLAS'S, WAS IT CALLED VISITATION
23 AGENCY?

24 A YEAH. I DON'T REMEMBER WHAT HER AGENCY IS
25 CALLED. I JUST THOUGHT IT WAS SHIRLEY DOUGLAS AND
26 ASSOCIATES.

27 Q SO AS TO SHIRLEY DOUGLAS, IS THAT ONE OF THE
28 AGENCIES OR SERVICES THAT OVER THE YEARS HAS QUIT ON

1 MS. DUVAL OR CEASED THEIR --

2 A YES.

3 Q THANK YOU. SAME WITH MR. MARTINEZ?

4 A WHAT'S THE QUESTION, AGAIN, FOR MR. MARTINEZ?

5 Q HE'S ONE OF THE OTHER AGENCIES THAT'S QUIT ON
6 MS. DUVAL?

7 A YES.

8 Q AND WE ALREADY COVERED MR. MARTINEZ ABOUT WAS
9 GOING ON WITH THE THINGS THAT YOUR SON SAID AT THE
10 MONITORING VISIT. ON MS. DOUGLAS, DO YOU KNOW WHY IT
11 WAS THAT MS. DOUGLAS QUIT?

12 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

13 THE COURT: OVERRULED.

14 THE WITNESS: WELL, FROM WHAT HER EMAIL STATED
15 SHE SAID THAT IN 22 YEARS, SHE'S NEVER SEEN ANYTHING
16 LIKE THIS, AND THIS IS OUTSIDE OF HER EXPERTISE.

17 MR. MCMILLAN: OBJECTION: MOVE TO STRIKE
18 NONRESPONSIVE. I --

19 THE COURT: THE MOTION TO STRIKE -- THE
20 UNDERLYING OBJECTION NONRESPONSIVE IS OVERRULED. THE
21 MOTION TO STRIKE IS DENIED.

22 BY MR. MCMILLAN:

23 Q I'LL SHOW YOU WHAT HAS BEEN MARKED
24 EXHIBIT 1248. IF I CAN DRAW YOUR ATTENTION TO THE
25 SECOND PARAGRAPH, AND IT LOOKS LIKE THE SIXTH LINE DOWN
26 IN THE SECOND PARAGRAPH, THE SENTENCE TOWARDS THE END
27 THAT BEGINS WITH, "ANYTHING I DELETED."

28 LET ME KNOW WHEN YOU'VE READ THAT SENTENCE.

1 ARE YOU FINISHED WITH THAT SENTENCE?

2 A NO. NOT YET. OKAY.

3 Q OKAY. NOW, WHEN THE CONFLICT BETWEEN
4 MS. DUVAL AND THE SHIRLEY DOUGLAS AGENCY WAS
5 DEVELOPING, YOU NOTICE UP AT THE TOP OF THAT EMAIL, THE
6 TO: LINE SAYS "UNDISCLOSED RECIPIENTS"?

7 A YES.

8 Q WERE YOU ONE OF THOSE UNDISCLOSED RECIPIENTS?

9 A I DON'T KNOW.

10 Q YOU DON'T REMEMBER?

11 A I DON'T KNOW IF THIS PARTICULAR EMAIL IF I'M
12 AN UNDISCLOSED RECIPIENT.

13 Q OKAY. WELL, LET'S TRY AGAIN. YOU SEE THE
14 NEXT LINE WHERE IT SAYS, "DEAR MS. DUVAL AND
15 MR. MILLS"?

16 A OKAY.

17 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO
18 WHETHER OR NOT YOU WERE AN UNDISCLOSED RECIPIENT?

19 A WELL, SEEING THAT IT'S ADDRESSED TO ME, I
20 WOULD PROBABLY BE A RECIPIENT.

21 Q AND DOWN IN THAT LAST -- WHAT IS IT, THE
22 SEVENTH SENTENCE DOWN THAT I JUST HAD YOU READ, DID
23 THAT REFRESH YOUR RECOLLECTION AS TO WHY IT WAS THAT
24 THERE WAS A DISPUTE BETWEEN MS. DUVAL AND MS. DOUGLAS?

25 A NO, BECAUSE I WASN'T A PART OF THE DISPUTE.

26 Q IT WASN'T A PART OF THE --

27 THE COURT: ALL RIGHT. MR. MCMILLAN, WE NEED
28 TO RECESS BECAUSE I PROMISED ONE OF THE JURORS THAT

1 WE'D RECESS AT 3:00 P.M. TODAY TO TAKE CARE OF A VERY
2 IMPORTANT PERSONAL MATTER.

3 AND SO WE'RE GOING TO RECESS. WE'LL RESUME
4 AT 9:00 A.M. TOMORROW MORNING, AS FAR AS THE JURY'S
5 CONCERNED. ALL JURORS PLEASE REMEMBER THE ADMONITION.

6 DON'T HAVE ANY COMMUNICATION WITH ANYONE ABOUT
7 ANY PERSON OR SUBJECT OR ISSUE WE HAVE IN THIS CASE.
8 DO NOT FORM NOR EXPRESS ANY OPINION ABOUT ANY SUBJECT
9 OR ISSUE IN THIS CASE.

10 (JURY EXCUSED)

11 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
12 COUNSEL ARE PRESENT. ALL JURORS LEFT THE COURTROOM.
13 BECAUSE WE HAVEN'T FINISHED MR. MILLS'S TESTIMONY,
14 HE'LL HAVE TO RETURN.

15 BUT I WANT MR. GUTERRES AND MR. KINLEY TO TALK
16 WITH MR. MILLS TO FIND OUT WHEN HE'D BE ABLE TO RETURN
17 BECAUSE HE'S -- I'M NOT NECESSARILY ORDERING HIM BACK
18 TOMORROW.

19 I WOULD LIKE TO GET HIM DONE. BUT WE HAVE TO
20 TAKE INTO CONSIDERATION WHAT HIS SCHEDULE AND
21 RESPONSIBILITIES MIGHT BE.

22 WOULD YOU JUST STEP DOWN AND TALK WITH
23 MR. KINLEY AND MR. GUTERRES ABOUT WHAT YOUR OBLIGATIONS
24 ARE SO WE CAN FIGURE OUT THE TIME TO HAVE YOU RETURN?

25 THE WITNESS: OKAY.

26 THE COURT: I'D PREFER IT TO BE TOMORROW, BUT
27 I'M AWARE THAT FIRST THING IN THE MORNING, WE HAVE AN
28 EXPERT WITNESS WHO IS GOING TO TESTIFY. I'M NOT SURE

1 HOW LONG THAT WILL TAKE. COULD BE A GOOD PART OF THE
2 MORNING.

3 (A DISCUSSION WAS HELD OFF THE RECORD.)

4 THE COURT: WELL, LET'S -- WE'LL GO OFF THE
5 RECORD NOW.

6

7 (WHEREUPON, AT THE HOUR OF 3:02 P.M.,

8 THE PROCEEDINGS WERE ADJOURNED.)

9

10 ---OOO---

11

12 (THE NEXT PAGE NUMBER IS 6901)

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