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M A S T E R I N D E X

OCTOBER 18, 2016

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M A S T E R I N D E X

OCTOBER 18, 2016

EXHIBITS

<u>PLAINTIFF'S</u>	<u>MARKED</u>	<u>RECEIVED</u>	<u>WITHDRAWN REJECTED</u>
468.6346	7577		
471.6362	7610		
473.6368	7616		
476.6378	7618		
477.6385	7619		
1001.1	7664		

(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, ET AL
3 LOS ANGELES, CALIFORNIA TUESDAY, OCTOBER 18, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606
7 TIME: 8:02 A.M.

8

9

---OOO---

10

11 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
12 COUNSEL ARE PRESENT.

13 I'VE READ THE MOTION FOR NONSUIT. BEFORE WE
14 HEAR ANY ARGUMENT, I HAVE -- I'M AWARE THAT THERE WAS
15 AN APPEAL IN THE -- OF THE -- IN THE JUVENILE COURT
16 CASE.

17 WHAT WERE THE ISSUES ON APPEAL?

18 MS. SWISS: THE ISSUES ON APPEAL WERE THAT,
19 NUMBER ONE, THE MINOR SHOULD HAVE RECEIVED THE MRI AND
20 FURTHER TESTING THAT MS. DUVAL'S ATTORNEYS HAD
21 REQUESTED DURING THE DEPENDENCY CASE.

22 NUMBER TWO, THE ISSUE WAS THAT THERE WAS NOT
23 SUBSTANTIAL EVIDENCE TO SUPPORT THE UNDERLYING COURT'S
24 DECISION. AND PART OF THAT CONSIDERATION WAS THAT
25 THERE WAS NO EVIDENCE TO SUPPORT THE STATEMENTS
26 ALLEGEDLY MADE BY DR. YIM IN THE DEPENDENCY CASE.

27 AND THEN THE FINAL ARGUMENT WAS THAT THERE WAS
28 NOT EVIDENCE TO -- FURTHER ARGUMENT REGARDING THE

1 SUBSTANTIAL EVIDENCE STANDARD.

2 I CAN PULL THE APPEAL, BUT THAT'S WHAT I
3 RECALL OFF THE TOP OF MY HEAD.

4 THE COURT: WAS THERE A PUBLISHED DECISION?

5 MS. SWISS: IT IS NOT A PUBLISHED DECISION.

6 THE COURT: NOT PUBLISHED?

7 MS. SWISS: CORRECT.

8 THE COURT: I THINK THAT -- I'LL HEAR THE
9 MOTION AND THE OPPOSITION, BUT I THINK THAT I SHOULD
10 SEE THE APPELLATE DECISION.

11 MS. SWISS: I DID MARK IT AS AN EXHIBIT DURING
12 MS. DUVAL'S TESTIMONY, TWELVE-FIFTY-SOMETHING. I KNOW
13 I CAN FIND IT.

14 THE COURT: OKAY. IF YOU CAN JUST PULL OUT
15 THE NUMBER AND LET ME KNOW, I CAN GET IT. I WANT TO
16 MAKE SURE THAT --

17 MS. SWISS: IT'S EXHIBIT 1251. AND

18 MS. DUVAL'S BRIEF IS EXHIBIT 1250.

19 THE COURT: WHY DON'T WE PROCEED IN THE ORDER
20 IN WHICH THE ISSUES ARE ADDRESSED IN THE MOTION.

21 THE FIRST ONE PRESENTED BY THE MOTION IS ON
22 BEHALF OF DEFENDANT BALABAN ON THE CLAIM SET FORTH IN
23 THE FIRST CAUSE OF ACTION FOR, IN BROAD TERMS, A
24 VIOLATION OF THE CONSTITUTIONAL RIGHT TO FAMILIAL
25 ASSOCIATION. THE BASIS OF THE MOTION IS THAT THERE IS
26 NO EVIDENCE THAT BALABAN PARTICIPATED IN THAT DECISION.

27 DO YOU WANT TO TELL ME ANYTHING -- DO YOU WANT
28 TO ADDRESS THAT, MS. SWISS?

1 MS. SWISS: YES, YOUR HONOR.

2 THE COURT: DO YOU WANT TO TELL ME ANYTHING
3 BEYOND WHAT'S SET FORTH IN YOUR MOTION?

4 MS. SWISS: I THINK THE ARGUMENT IS ALL THERE.

5 THE COURT: ALL RIGHT.

6 YOU CAN RESPOND, MR. MCMILLAN.

7 MR. MCMILLAN: YES, YOUR HONOR. I'VE GONE
8 OVER THE MOTION AND THE EVIDENCE PENDING THE CITE
9 THERE, AND IT'S PLAINTIFF'S VIEW THAT THERE IS
10 SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT
11 MS. BALABAN DID PARTICIPATE IN THE DECISION TO DETAIN
12 THE CHILD. I WOULD AGREE THAT IF THE JURY -- IF HER
13 TESTIMONY IS BELIEVED BY THE JURY, THEN THEY WOULD ALSO
14 HAVE A BASIS TO FIND AGAINST US ON THAT ISSUE. BUT AS
15 THE CURRENT STATUS OF THE EVIDENCE SITS AS OF THE TIME
16 THAT PLAINTIFF RESTED, IT'S OUR POSITION THAT
17 SUFFICIENT EVIDENCE IS IN THE RECORD BEFORE THE JURY
18 FOR THEM TO MAKE A POSITIVE FINDING ON THAT QUESTION.

19 THE COURT: TELL ME WHAT THE EVIDENCE IS THAT
20 YOU PRESENTED DURING YOUR CASE OF HER PARTICIPATION.

21 MR. MCMILLAN: SURE.

22 THE COURT: IN THE DECISION.

23 MR. MCMILLAN: IT WOULD HAVE BEEN THE
24 DEPOSITION -- VIDEO DEPOSITION OF MS. ROGERS WHERE SHE
25 DOES SAY IN THE VIDEO DEPOSITION THAT SHE SPOKE WITH
26 HER SUPERVISOR BOTH BEFORE AND AFTER THE SEIZURE ABOUT
27 THE SEIZURE. THERE WAS SOME CONFUSION ON HER PART AS
28 TO WHICH ONE IT WAS, BUT THEN LATER ON IN THE

1 DEPOSITION, AND ALSO IN THE VIDEO EXCERPT, IT CLEARS
2 UP:

3 "MY SUPERVISOR AT THAT TIME WAS
4 MUZEYYEN BALABAN."

5 SO AS OF THE TIME THAT PLAINTIFF RESTED, THERE
6 IS SUFFICIENT EVIDENCE THERE FOR THE JURY TO FIND THAT
7 MS. BALABAN DID, IN FACT, PARTICIPATE IN THAT DECISION.

8 THEN THERE'S ALSO MORE TESTIMONY ABOUT WHAT
9 MS. BALABAN DID LEADING UP TO THE SIGNING OF THE
10 DETENTION REPORT BY HER. NOW, I'M NOT SURE HOW A JURY
11 WOULD NECESSARILY CONSTRUE THAT, LOOKING BACKWARD IN
12 TIME, BUT AS OF THE TIME OF THE SEIZURE, WE BELIEVE
13 THERE IS SUFFICIENT EVIDENCE THAT A JURY COULD FIND IN
14 OUR FAVOR ON THAT QUESTION.

15 THE COURT: ALL RIGHT. MS. SWISS, GO AHEAD.

16 MS. SWISS: THE TESTIMONY FROM MS. ROGERS,
17 WHICH WE DISCUSSED AT LENGTH, I THINK ON FRIDAY, WAS
18 THAT SHE WASN'T SURE IF SHE CONSULTED WITH AN ARA AND
19 WHO SHE CONSULTED WITH. THE STATE OF THE EVIDENCE
20 BEFORE THE DEFENDANTS PRESENTED THEIR CASE WAS THAT SHE
21 WASN'T SURE AND SHE HAD TWO SUPERVISORS AT THAT TIME,
22 EITHER MS. BALABAN OR ANOTHER ARA, MR. MIYAKE, AND
23 THEREFORE THERE IS NOT SUFFICIENT EVIDENCE TO SHOW THAT
24 MS. BALABAN WAS, IN FACT, CONSULTED PRIOR TO THE
25 DETENTION.

26 FURTHER, THERE IS UNDISPUTED EVIDENCE THAT THE
27 DECISION TO DETAIN BABY RYAN OCCURRED AFTER THAT TDM
28 MEETING, AND THERE'S NO EVIDENCE TO SUGGEST THAT

1 MS. BALABAN WAS PRESENT AT THAT MEETING FROM THE
2 PLAINTIFF HERSELF.

3 THE COURT: RIGHT. I THINK IT'S UNDISPUTED
4 SHE WASN'T AT THE MEETING, AND I THINK THE EVIDENCE
5 RELIED UPON BY PLAINTIFF WAS ROGERS'S TESTIMONY OF
6 HAVING TALKED TO -- PERHAPS BEFORE, PERHAPS AFTER, BUT
7 HAVING TALKED TO HER SUPERVISOR. BUT MY RECOLLECTION
8 IS THAT SHE WAS UNABLE TO STATE WHETHER IT WAS BALABAN
9 OR MR. MIYAKE. I DON'T REMEMBER ANYTHING ELSE.

10 AND I'D LOOKED BACK AT THE EVIDENCE IN
11 CONNECTION WITH THIS, AND I DIDN'T FIND ANYTHING ELSE,
12 MR. MCMILLAN.

13 MR. MCMILLAN: OKAY. WE'RE LOOKING IN THE
14 TRANSCRIPT RIGHT NOW.

15 THIS IS JUST FROM RECOLLECTION, BUT WHAT I
16 RECALL THE LINE OF QUESTIONING BEING WITH RESPECT --
17 FIRST OF ALL, WITH RESPECT TO THE TDM, THE DECISION TO
18 SEIZE, AT LEAST FROM PLAINTIFF'S EVIDENCE, ISN'T THAT
19 IT WAS MADE AFTER THE TDM. THE DECISION WAS MADE
20 DURING THE TDM, AFTER THE MATERNAL GRANDFATHER CALLED
21 MS. PENDER "WHITE TRASH."

22 THEY GOT UP, THEY TOOK A BREAK, THEY WENT
23 OUTSIDE FOR A WHILE, THE SOCIAL WORKERS. THEY CAME
24 BACK AND SAID, "WE'RE TAKING YOUR KID."

25 THAT'S THE WAY OUR EVIDENCE PRESENTED IT.

26 THE COURT: I UNDERSTAND THAT. BUT THERE WAS
27 NO EVIDENCE THAT BALABAN --

28 MR. MCMILLAN: SHE WASN'T THERE.

1 THE COURT: YEAH. SO IF YOU CAN FIND WHAT
2 YOU'RE REFERRING TO THAT YOU THINK LATER IS IN ROGERS'S
3 DEPOSITION THAT WAS PLAYED, THAT -- THE FACTUAL ISSUE.

4 MR. MCMILLAN: OKAY. YOUR HONOR, IT'S AT
5 PAGE 321 OF MS. ROGERS'S EXCERPTS. AND I DIDN'T
6 ACTUALLY RECALL THIS, BUT MS. ROGERS IN THIS CASE FILED
7 A DECLARATION IN SUPPORT OF SUMMARY JUDGMENT.

8 SO WHAT SHE SAYS IN HER DECLARATION -- I
9 EXAMINED HER ON IT -- IS:

10 "Q. OKAY. GOING BACK NOW TO
11 PAGE 3, LINE 20, PARAGRAPH NO. 8 OF
12 YOUR DECLARATION, IT SAYS, QUOTE, AFTER
13 CONSULTING WITH PENDER AND MY
14 SUPERVISOR, I DECIDED TO -- I
15 ULTIMATELY DECIDED TO TAKE THE MINOR
16 INTO CUSTODY AND TO PLACE HIM WITH
17 FATHER.

18 "FIRST, DID I READ THAT CORRECTLY?

19 "A. YES.

20 "Q. OKAY. YOUR SUPERVISOR AT
21 THAT POINT IN TIME WAS MUZEYYEN
22 BALABAN?

23 "A. I BELIEVE SO.

24 "Q. DID YOUR SUPERVISOR" --
25 WELL, THE REST OF THIS WASN'T PRESENTED TO THE
26 JURY, BUT THAT SEGMENT WAS.

27 THE COURT: ALL RIGHT. ANYTHING ELSE?

28 MS. SWISS: WHAT WAS CONVENIENTLY OMITTED FROM

1 THE PLAYING OF MS. BALABAN'S TESTIMONY BY THE PLAINTIFF
2 WAS THE SPECIFIC EXCERPT WHERE SHE SAYS THAT SHE WAS
3 NOT CONSULTED PRIOR TO THE DECISION TO DETAIN. THAT IS
4 ALSO NOT BEFORE THE COURT IN PLAINTIFF'S CASE.

5 AND THE EXCERPTS OF MS. ROGERS'S TESTIMONY DO
6 NOT PROVE THAT MS. BALABAN WAS CONSULTED. IN FACT,
7 IT'S REPEATED BY MS. ROGERS ON MULTIPLE OCCASIONS THAT
8 SHE WAS NOT SURE WHO SHE CONSULTED WITH.

9 THE COURT: ALL RIGHT. THE MOTION FOR NONSUIT
10 AS TO MS. BALABAN AND THE FIRST CAUSE OF ACTION IS
11 GRANTED. THE EVIDENCE IS INSUFFICIENT TO ESTABLISH A
12 CLAIM AGAINST HER.

13 THE SECOND ISSUE PRESENTED BY THE MOTION FOR
14 NONSUIT IS ON BEHALF OF DEFENDANTS PENDER AND ROGERS.

15 ON THE FIRST CAUSE OF ACTION, ON THE GROUND
16 THAT THEY'RE ENTITLED TO QUALIFIED IMMUNITY, ANYTHING
17 FURTHER YOU WANT TO TELL ME BEYOND WHAT'S IN YOUR
18 MOTION AT THIS MOMENT?

19 IF YOU WISH. I MEAN, I HAVE READ IT, AND
20 WE'RE GOING TO HEAR WHAT MR. MCMILLAN HAS TO SAY.

21 MS. SWISS: I WILL --

22 THE COURT: AND YOU CAN RESPOND.

23 MS. SWISS: I WILL RESPOND TO MR. MCMILLAN.

24 THE COURT: ALL RIGHT.

25 MR. MCMILLAN, YOU DON'T NEED -- YOU CAN GIVE
26 ME A SUMMARY ARGUMENT ON THIS BECAUSE I'M -- AT THIS
27 POINT ALL OF YOU HAVE MADE ME VERY AWARE OF THE ISSUES.
28 SO BASICALLY SAYING THAT THERE WAS A QUALIFIED IMMUNITY

1 FOR PENDER AND ROGERS IN THE WARRANTLESS SEIZURE.

2 MR. MCMILLAN: I'M SORRY, YOUR HONOR. IS YOUR
3 TENTATIVE RULING THAT THEY WERE QUALIFIED --

4 THE COURT: NO, I'M NOT GIVING YOU A TENTATIVE
5 RULING; I'M JUST PHRASING THE ISSUE. THIS ISSUE, AS
6 PRESENTED BY THE MOTION, IS BASICALLY THAT PENDER AND
7 ROGERS HAD QUALIFIED IMMUNITY FOR THE WARRANTLESS
8 SEIZURE.

9 MR. MCMILLAN: UNDERSTOOD.

10 THE COURT: SO I'M HAPPY TO HEAR WHAT YOU HAVE
11 TO SAY BUT I THINK YOU CAN -- I DON'T NEED A SPEECH ON
12 THIS, I JUST NEED TO HEAR IT SUCCINCTLY.

13 MR. MCMILLAN: I TOTALLY UNDERSTAND AND AGREE.
14 AND MY RESPONSE TO THAT, YOUR HONOR, IS UNLESS THE
15 COURT HAS SPECIFIC QUESTIONS THAT YOU WOULD LIKE ME TO
16 ADDRESS, I HAVE NOTHING TO ADD OTHER THAN WHAT'S IN THE
17 BRIEFING ALREADY.

18 THE COURT: ALL RIGHT.

19 DO YOU WANT TO RESPOND TO HIM SAYING NOTHING?

20 MS. SWISS: JUST BRIEFLY, THE OPPOSITION DID
21 RAISE THE *ROGERS* CASE THAT I DON'T BELIEVE WE HAD FULLY
22 VETTED IN OUR PAPERS. AND I WANTED TO DIRECT THE
23 COURT'S ATTENTION TO THAT *ROGERS VS. COUNTY OF SAN*
24 *JOAQUIN*, WHERE THE 9TH CIRCUIT DETERMINED THAT THERE
25 WAS NOT QUALIFIED IMMUNITY AVAILABLE TO THOSE SOCIAL
26 WORKERS. AND THE SPECIFIC ISSUE IN THAT CASE WERE TWO
27 CHILDREN, 3 AND 5, WHO WERE SUFFERING FROM
28 MALNOURISHMENT. AND THE COURT DETERMINED THAT THERE

1 WAS NOT SUFFICIENT EVIDENCE THAT THE SOCIAL WORKERS HAD
2 EXIGENT CIRCUMSTANCES AND THAT THEY SHOULD HAVE
3 OBTAINED A WARRANT IN THAT CASE.

4 AND FACTUALLY, THIS CASE IS DISTINGUISHABLE
5 BECAUSE WE DO HAVE THIS 15-MONTH OLD INFANT WHO HAD
6 ALREADY BEEN DIAGNOSED WITH SEVERE DEVELOPMENTAL DELAYS
7 AND FAILURE TO THRIVE DUE TO THE SEVERE LACK OF
8 MALNOURISHMENT. SO I WOULD DISTINGUISH THE FACTS OF
9 ROGERS VERSUS THIS CASE BECAUSE AT THIS POINT, WHEN THE
10 DETENTION OCCURRED, THIS CHILD HAD ALREADY SUFFERED
11 SEVERE BODILY HARM. AND IT WAS ONGOING. AND THAT WAS
12 THE CONCERN THAT OUR SOCIAL WORKERS FACED.

13 MR. MCMILLAN: JUST A FEW COMMENTS, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT.

16 MR. MCMILLAN: FIRST OF ALL, IT'S INTERESTING
17 TO NOTE, ACTUALLY, THAT *ROGERS* WAS -- WELL, I GUESS IT
18 WASN'T MR. POWELL'S CASE. IT WAS A GUY NAMED DAVID
19 BEAUVAIS. WE DIDN'T BRING HIM IN TO THIS CASE.
20 BUT THE FACTS OF THAT CASE ARE VERY INTERESTING. THE
21 PROCEDURAL POSTURE OF THAT CASE IS VERY INTERESTING.

22 THE COURT: YOU'RE REFERRING TO THE *ROGERS*
23 CASE?

24 MR. MCMILLAN: *ROGERS*, AFFIRMATIVE.

25 WHAT HAPPENED THERE WAS THE 9TH CIRCUIT, IN
26 REJECTING THE COUNTY'S QUALIFIED IMMUNITY ARGUMENT --
27 BECAUSE AT THE TRIAL COURT, CROSS-MOTION FOR SUMMARY
28 JUDGMENT OR SUMMARY -- OR FEDERAL COURT, A PARTIAL

1 SUMMARY JUDGMENT HAD BEEN FILED AND THOSE CROSS-MOTIONS
2 WERE RAISED ON APPEAL BY BOTH SIDES. AND WHAT THE
3 9TH -- BOTH ON THE ISSUE OF EXIGENCY, BASED IN PART ON
4 THIS ISSUE OF MALNUTRITION AND WHETHER OR NOT
5 MALNUTRITION IS AN EXIGENT CIRCUMSTANCE THAT WOULD
6 JUSTIFY A REMOVAL.

7 AND WHAT THE 9TH CIRCUIT SAID THERE AND DID
8 IS, NUMBER ONE, NO, IT'S NOT SUFFICIENT BECAUSE WITHIN
9 A COUPLE OF HOURS YOU CAN GET A WARRANT AND GET THINGS
10 RESOLVED.

11 BUT MORE IMPORTANTLY, I THINK, FOR THIS CASE,
12 AND FOR WHAT'S COMING WHEN DEFENDANTS REST, IS THE
13 9TH CIRCUIT GRANTED THE SUMMARY JUDGMENT MOTION OF
14 PLAINTIFF ON THE ISSUE OF EXIGENCY AND SENT IT BACK
15 DOWN TO THE TRIAL COURT.

16 IT'S PLAINTIFF'S INTENTION, AT THE END OF
17 DEFENDANT'S CASE IN CHIEF, TO GO AHEAD AND FILE A
18 MOTION FOR DIRECTED VERDICT ON THE ISSUE OF EXIGENCY ON
19 THE SAME BASIS AS SET OUT IN *ROGERS*.

20 THE COURT: ALL RIGHT. ANYTHING FURTHER?

21 MS. SWISS: THE *ROGERS* CASE INVOLVED THE
22 SOCIAL WORKER WHO CONCEDED THAT, AS TO THESE TWO
23 CHILDREN, THEY WEREN'T GOING TO SUFFER SUCH SEVERE
24 BODILY HARM IN THE TIME IT WOULD TAKE TO GET A WARRANT.
25 AND THAT'S PART OF WHAT THE 9TH CIRCUIT MADE ITS RULING
26 ON.

27 IN THIS CASE, THE TESTIMONY FOR MS. ROGERS
28 THAT WAS READ DURING THE PLAINTIFF'S CASE IS THAT THEY

1 DIDN'T KNOW HOW MUCH FURTHER THE CHILD WAS GOING TO
2 SUFFER IN THAT TIME. AND SPECIFICALLY, SHE TESTIFIED
3 THAT THERE WERE VERY SERIOUS CONCERNS AND IF THEY DID
4 NOT TAKE IMMEDIATE ACTION IT COULD RESULT IN DETRIMENT
5 TO BABY RYAN. THAT WAS THE SOCIAL WORKER'S BELIEF AT
6 THE TIME OF THE DETENTION, AND WHETHER OR NOT THAT
7 BELIEF WAS GOING TO COME TO FRUITION BASED ON THE
8 MEDICAL EVIDENCE IS BESIDES THE POINT BECAUSE THE
9 SOCIAL WORKER IS ENTITLED TO HER BELIEF AND HER
10 UNDERSTANDING OF THE MEDICAL EVIDENCE THAT SHE HAD AT
11 THE TIME OF THE DETENTION.

12 AND HER UNDERSTANDING WAS THAT THE CHILD
13 ALREADY HAD BEEN DIAGNOSED NOT JUST WITH MALNUTRITION,
14 LIKE IN ROGERS, BUT WITH SEVERE GLOBAL DEVELOPMENT
15 DELAYS AND FAILURE TO THRIVE FROM ENVIRONMENTAL CAUSES.
16 AND THAT WAS THE NEW EVIDENCE THAT WAS OBTAINED DURING
17 THE VISIT TO THE FAILURE TO THRIVE CLINIC EARLIER IN
18 THE DAY BEFORE THE TDM.

19 THE COURT: I DON'T NEED TO HEAR ANYTHING
20 FURTHER.

21 THIS PART OF THE MOTION ON BEHALF OF
22 DEFENDANTS PENDER AND ROGERS ON THE FIRST CAUSE OF
23 ACTION ON THE GROUND OF QUALIFIED IMMUNITY IS DENIED.
24 I THINK THE COURT CANNOT SAY AS A MATTER OF LAW THAT
25 THERE IS A QUALIFIED IMMUNITY FOR WHAT OCCURRED.

26 NUMBER THREE IS A MOTION ON BEHALF OF THE
27 INDIVIDUAL DEFENDANTS PENDER, ROGERS, BALABAN, PINEDO,
28 SMITH, NELSON, AND SCHEELE, ON THE CLAIM FOR JUDICIAL

1 DECEPTION ON THE GROUND THAT ANY MATERIAL
2 MISREPRESENTATION OR OMISSION WAS MADE DELIBERATELY OR
3 WITH RECKLESS DISREGARD OF ITS FALSITY.

4 AND AGAIN, I'VE READ THE MOTION.

5 AND ANYTHING FURTHER YOU WANT TO TELL ME IN
6 SUPPORT OF THE MOTION?

7 MS. SWISS: THIS PART OF THE MOTION WE ARE
8 BRINGING ON THE GROUND OF INTERVENING SUPERSEDING
9 CAUSE. MOST OF THE OPPOSITION TO THIS PART OF THE
10 MOTION DEALS WITH THE MATERIALITY ASPECT THAT I BELIEVE
11 WE WILL ADDRESS WITH THE COURT AT A LATER TIME. BUT IF
12 THE COURT WANTS TO --

13 THE COURT: THIS PART OF THE MOTION, BOTH C --
14 YES, THIS PART OF THE MOTION, THE THIRD ONE, IS REALLY
15 THE SUBJECT OF THE HEARING THAT I INTEND TO CONDUCT TO
16 DECIDE AS A MATTER OF LAW WHETHER OR NOT THERE WAS A
17 SUFFICIENT GROUND FOR THE COURT TO HAVE SUSTAINED THE
18 DETAINING OF THE MINOR. AND I THINK THAT, AS TO THIS
19 ISSUE, THAT ANY DECISION SHOULD BE -- SHOULD AWAIT
20 THAT.

21 AND IN THAT REGARD, I KNOW THAT THE DEFENSE
22 HAD ASKED FOR, I THINK, AN OPPORTUNITY TO BE ABLE TO
23 RESPOND TO WHAT WE RECEIVED YESTERDAY -- AND
24 PREVIOUSLY, BUT PARTICULARLY YESTERDAY -- THAT THE
25 PLAINTIFF FILED WITH US A BRIEF THAT WAS REALLY QUITE
26 SPECIFIC AS TO WHAT THEY BELIEVE THE FALSE STATEMENTS
27 WERE AND WHAT WERE INCOMPLETE STATEMENTS.

28 I WILL SAY -- AND SO I THINK THAT PROBABLY I

1 SHOULD DEFER ON THIS BECAUSE I THINK, AS TO THE GROUNDS
2 STATED ASKING THE COURT TO DECIDE THAT THERE WAS NO --
3 IN EFFECT, NO EVIDENCE OF DELIBERATE OR --
4 MISSTATEMENTS OR MISREPRESENTATIONS OR RECKLESS
5 DISREGARD FOR ANY FALSITY, THAT I THINK THAT THE ISSUE
6 IS ACTUALLY SOMEWHAT GREATER THAN THAT. AND I THINK
7 THAT THE DECISION ON THIS SHOULD AWAIT THE HEARING THAT
8 I PLAN TO CONDUCT THIS WEEK AS SOON AS YOU'VE HAD AN
9 OPPORTUNITY TO BE ABLE TO FILE A REPLY.

10 AND IN CONNECTION WITH THAT, LET ME ASK --
11 MS. CHUNG?

12 MS. CHUNG: YES, YOUR HONOR.

13 THE COURT: I JUST WANTED TO ASK YOU QUICKLY,
14 IF I COULD, ON THE BRIEF THAT YOU FILED YESTERDAY --
15 ACTUALLY, PLAINTIFFS FILED, BUT WE ALL KNOW YOU WERE
16 THE MOVING FORCE BEHIND PUTTING THAT TOGETHER -- THE
17 FIRST PAGE HAS THE CAPTION OF THE CASE AND SO ON. AND
18 WHEN WE TURN TO THE SECOND PAGE WHERE YOU BEGIN
19 ENUMERATING WHAT YOU THINK ARE FALSE STATEMENTS, IT
20 BEGINS WITH PARAGRAPH 3 ON THE SECOND PAGE. AND I
21 FIRST THOUGHT, WELL, MAYBE THERE WAS A PAGE MISSING.
22 BUT -- I COULD SHOW YOU MORE EASILY, UNLESS YOU HAVE IT
23 HERE WITH YOU, A COPY OF IT YOU CAN PUT YOUR HANDS ON.
24 I'VE GOT IT ON MY DESK AND I CAN GET IT.

25 I JUST WANTED TO MAKE SURE, BUT I DIDN'T FIND
26 A PARAGRAPH 1 AND A PARAGRAPH 2. IT BEGINS ON THE
27 SECOND PAGE WITH PARAGRAPH 3, AT LEAST THE COPY I HAVE.
28 AND I WANTED TO MAKE SURE THAT I WASN'T MISSING

1 SOMETHING.

2 MS. CHUNG: YOUR HONOR, YOU ARE CORRECT.
3 THERE SHOULD BE A 1 AND 2.

4 THE COURT: RIGHT. AND I SAW THAT, SO I WAS
5 WONDERING -- JUST CALLING IT TO YOUR ATTENTION, WE'RE
6 NOT GOING TO DEAL WITH IT RIGHT THIS MOMENT -- THAT
7 MAYBE YOU COULD CHECK WITH YOUR -- WELL, YOU ALREADY
8 ARE -- WHATEVER NOTES YOU HAVE, HOWEVER THEY'RE KEPT,
9 TO SEE IF THERE WAS A PARAGRAPH 1 AND 2 OR JUST THROUGH
10 INADVERTENCE THE NUMBERING BEGAN WITH PARAGRAPH 3.
11 BECAUSE IT IS THE SECOND PAGE, THAT'S WHY I CHECKED,
12 THOUGHT MAYBE I'M MISSING A PAGE, BUT IT'S NOT. THE
13 SECOND PAGE IN FACT IS PAGE 2, AS IT'S NUMBERED. SO
14 EITHER ONE WAS POSSIBLE: THERE WAS A 1 AND 2 THAT
15 SOMEHOW WAS MISSED OR MAYBE THAT THE NUMBERING JUST
16 BEGAN INADVERTENTLY WITH NO. 3.

17 MS. CHUNG: NO, ACTUALLY, YOUR HONOR, I
18 BELIEVE I STARTED ENUMERATING THEM AND THEN THERE WAS A
19 1 AND 2 BUT I TOOK THOSE OUT BECAUSE THOSE WERE JUST
20 MORE BLANKET STATEMENTS.

21 THE COURT: OKAY. WELL, IF YOU WOULD JUST
22 CHECK. AND YOU DON'T NEED TO FILE SOMETHING FURTHER
23 UNLESS 1 AND 2 ACTUALLY ARE MISSING. JUST TELL US SO
24 I'LL KNOW FOR SURE, WHEN I'M READING THAT, THAT I'M
25 SEEING EVERYTHING YOU HAVE TO SAY. AND ALSO, I THINK
26 MORE -- PERHAPS OF EQUAL IMPORTANCE, THAT THE DEFENSE
27 KNOWS THAT THEY ARE SEEING EVERYTHING THAT YOU HAVE TO
28 SAY. AND YOU CAN LET US KNOW LATER.

1 MS. CHUNG: YES.

2 THE COURT: WILL YOU DO THAT?

3 MS. CHUNG: WILL DO.

4 THE COURT: OKAY. THANK YOU VERY MUCH.

5 THE FOURTH PORTION OF THE MOTION FOR NONSUIT
6 IS DIRECTED TO THE INTENTIONAL INFLICTION OF EMOTIONAL
7 DISTRESS CLAIM AGAINST NELSON AND SCHEELE STATING THAT
8 THE CONDUCT IN QUESTION FAILS TO ESTABLISH ANY
9 OUTRAGEOUS CONDUCT OR THAT THE DEFENDANTS INTENDED TO
10 CAUSE HER EMOTIONAL DISTRESS.

11 AND AGAIN, I HAVE READ IT.

12 AND MS. SWISS, DO YOU WANT TO ADD SOMETHING OR
13 WOULD YOU PREFER TO JUST WAIT TO HEAR WHAT THE
14 PLAINTIFF HAS TO SAY AND THEN HAVE A CHANCE TO RESPOND
15 TO IT?

16 MS. SWISS: I WILL RESPOND.

17 THE COURT: ALL RIGHT.

18 ARE YOU GOING TO RESPOND TO THAT,
19 MR. MCMILLAN?

20 MR. MCMILLAN: YOUR HONOR, I'M GOING TO
21 RESPOND BY SAYING I BELIEVE THIS WAS FULLY BRIEFED AND
22 WE HAVE NOTHING FURTHER TO ADD UNLESS THE COURT HAS
23 SPECIFIC QUESTIONS.

24 THE COURT: I DO NOT. ALL RIGHT.

25 ARE YOU GOING TO RESPOND TO HIS NO RESPONSE?

26 MS. SWISS: AS TEMPTING AS THAT IS, NO, YOUR
27 HONOR.

28 THE COURT: ALL RIGHT. WELL, IT HAS BEEN

1 THOROUGHLY BRIEFED, AND THE MOTION IS DENIED. THE -- I
2 MUST SAY, IN THIS KIND OF CLIMATE, I THINK IT IS ALWAYS
3 A QUESTION AS TO WHAT RISES TO THE LEVEL OF THE WORDS
4 THAT ARE USED IN DESCRIBING A CLAIM FOR INTENTIONAL
5 INFLECTION WHERE THEY DO TALK ABOUT SO OUTRAGEOUS THAT,
6 IN FACT, THAT NO ONE IN A CIVILIZED SOCIETY SHOULD HAVE
7 TO ENDURE THAT. AND THEY TALK ABOUT -- USING SIMILAR
8 WORDS, THAT THE WORDS THEMSELVES ARE ONES OF -- THAT
9 ATTEMPT TO DESCRIBE REALLY EXTREME CONDUCT.

10 BUT I THINK IT'S A JURY QUESTION AS TO WHAT
11 SHOULD BE ENDURED IN A CIVILIZED SOCIETY, AT LEAST IN
12 THIS INSTANCE. I'M NOT SAYING THAT WOULD BE TRUE IN
13 EVERY CASE, BUT I THINK THERE IS SUFFICIENT EVIDENCE
14 WHICH THE JURY -- IF BELIEVED, ALL THE EVIDENCE THAT
15 THE PLAINTIFF HAS PRESENTED AS TO WHAT OCCURRED -- THAT
16 THERE'S AN ISSUE OF FACT TO BE DECIDED.

17 THE FIFTH, AND LAST, IS THE -- TWO WHAT I'LL
18 CALL DISCRIMINATION CLAIMS: CLAIM OF PLAINTIFF UNDER
19 THE ADA, AND ALSO UNDER THE REHABILITATION ACT, AGAINST
20 THE COUNTY. AND THE MOTION STATES THAT PLAINTIFF HAS
21 FAILED TO PROVE THAT SHE SUFFERED FROM ANY DISABILITY
22 THAT SUBSTANTIALLY IMPAIRED HER MAJOR LIFE ACTIVITIES
23 OR THAT SHE WAS DENIED ANY SERVICES ON THE BASIS OF HER
24 ALLEGED DISABILITIES.

25 SO WHO'S GOING TO RESPOND TO THIS?

26 MR. PRAGER?

27 MR. PRAGER: YES, YOUR HONOR. THANK YOU.

28 THE COURT: ALL RIGHT. BEFORE I HEAR FROM

1 YOU, AGAIN, I HAVE READ THE MOTION AND UNDERSTAND THE
2 BASIS FOR THE MOTION.

3 SO AGAIN, MS. SWISS, IF THERE'S SOMETHING YOU
4 WANT TO ADD NOW, YOU MAY. IF NOT, YOU CAN -- CERTAINLY
5 YOU'RE GOING TO HAVE AN OPPORTUNITY TO RESPOND TO
6 WHATEVER MR. PRAGER HAS TO TELL US.

7 MS. SWISS: I'LL RESPOND.

8 THE COURT: ALL RIGHT.

9 SO GO AHEAD, MR. PRAGER.

10 MR. PRAGER: THANK YOU, YOUR HONOR. A FEW
11 THINGS, IF I COULD JUST SIT FOR A SECOND TO READ THIS.

12 THE COURT: YES.

13 MR. PRAGER: THIS IS FROM EXHIBIT 219. AND
14 THE SIGNIFICANCE IS WE FILED THE OPPOSITION MOMENTS
15 AFTER THE BRIEF WAS FILED, ANTICIPATING WHAT WE
16 EXPECTED TO BE IN THE MOTION.

17 THE COURT: RIGHT.

18 MR. PRAGER: SO THE ONE POINT I DON'T THINK
19 THE COURT HAS BEEN ADVISED OF AS PART OF THE OPPOSITION
20 YET IS THAT THERE IS, THROUGH PLAINTIFF'S CASE, NO
21 REQUIREMENT THAT WE PROVE MS. DUVAL SUFFERED A PHYSICAL
22 DISABILITY THAT SUBSTANTIALLY LIMITED HER RIGHT TO
23 ENJOY SERVICES. AND THE REASON IS BECAUSE IN THIS
24 CASE, THE ALLEGATION THAT THE COURT'S HEARD MANY TIMES
25 IS THAT SHE NEVER HAD MUNCHAUSEN BY PROXY SYNDROME, AND
26 THEREFORE SHE WAS REGARDED AS A DISABLED PERSON. IN
27 THAT REGARD, I HAVE A CODE FOR YOU. IT'S 28CFR35.104.

28 BUT MOST IMPORTANTLY, IF THE COURT LOOKS AT

1 THE PROPOSED JURY INSTRUCTION, WHICH IS NO. 753,
2 PENDING IN THIS CASE RIGHT NOW -- WHICH I THINK THE
3 COUNTY WILL AGREE TO BEING OFFERED SHOULD THE CLAIM GO
4 FORWARD -- THERE'S THREE DIFFERENT WAYS THAT MS. DUVAL
5 CAN BE PERCEIVED AS BEING DISABLED AND STILL QUALIFY
6 UNDER THESE TWO STATUTES WITHOUT SHOWING A SUBSTANTIAL
7 LIMITATION.

8 AND THEY ARE: HAVING A PHYSICAL IMPAIRMENT OR
9 MENTAL IMPAIRMENT THAT DOES NOT -- AS IT SAYS HERE --
10 LIMIT MAJOR LIFE ACTIVITIES, BUT THAT SHE IS TREATED BY
11 THE PUBLIC ENTITY AS CONSTITUTING SUCH A LIMITATION.

12 THE SECOND IS EFFECTIVELY THE SAME, BUT ONLY
13 AS THE RESULT OF ATTITUDES IS SHE DENIED OR GIVEN
14 LESSER SERVICES.

15 AND THIRD IS SHE HAS NO IMPAIRMENTS AT ALL AND
16 THAT SHE'S TREATED BY THE PUBLIC ENTITY AS HAVING SUCH
17 AN IMPAIRMENT.

18 AND FOR THE RECORD, TO KEEP IT SHORT AND TIGHT
19 HERE, THAT EXHIBIT 219 AT BATES PAGE 3082, THE COURT
20 HAS RECEIVED THE TESTIMONY OF A NUMBER OF WITNESSES,
21 INCLUDING MR. URQUIZO --

22 THE COURT: PLEASE SLOW IT DOWN A LITTLE BIT
23 FOR THE REPORTER.

24 MR. PRAGER: THANK YOU. SORRY.

25 -- AND ALSO THE VIDEO DEPOSITIONS OF
26 MS. HOCHSTEIN AND MS. CONDON.

27 AT THE SECOND FULL PARAGRAPH OF EXHIBIT 219,
28 AT THIS BATES NUMBER, IT SAYS THAT:

1 "WHEN SOI NELSON DOCUMENTED IN
2 COURT REPORTS HER CONCERN THAT CP DUVAL
3 POSSIBLY HAD MUNCHAUSEN SYNDROME BY
4 PROXY, CP DUVAL WAS PERCEIVED TO HAVE
5 MUNCHAUSEN'S SYNDROME. IN ADDITION,
6 THE CP WAS THOUGHT TO BE RESPONSIBLE
7 FOR NEGLECTING AND HARMING HER SON.

8 "AS A RESULT, CP DUVAL IS NOW
9 ALLOWED ONLY COURT-ORDERED AND
10 TIME-LIMITED VISITS WITH HER SON FOR
11 THREE HOURS PER WEEK, MONITORED ONLY BY
12 DCFS."

13 AND THEN THIS PARAGRAPH GOES ON TO SUGGEST --
14 WELL, ACTUALLY, IT'S THE ABOVE PARAGRAPH, SAYS THAT
15 SHE'S BEEN GIVEN LESSER SERVICES BECAUSE SHE WAS DENIED
16 EQUAL SERVICES BASED ON THIS PERCEPTION OF A DISABILITY
17 SHE DOES NOT HAVE.

18 AND YOU ALREADY HAVE BEFORE YOU EXHIBIT 202,
19 WHICH HAS BEEN ADMITTED INTO EVIDENCE, WHICH IS THE
20 LETTER FROM THE COUNTY TELLING MS. DUVAL THAT SHE IS
21 THE VICTIM OF DISCRIMINATION.

22 THE COURT: SO JUST A COUPLE OF QUESTIONS FOR
23 MY UNDERSTANDING.

24 I DON'T RECALL ANYONE FROM THE COUNTY EVER
25 SAYING SHE HAS MUNCHAUSEN. I REMEMBER SOMEONE SAYING
26 THAT IT'S SOMETHING -- I FORGET WHAT WORDS, BUT
27 SOMETHING POSSIBLE.

28 MR. PRAGER: POSSIBLY, YES.

1 THE COURT: RIGHT. AND SO WHAT YOU'RE TELLING
2 ME IS IF SOMEBODY THINKS IT'S POSSIBLE THAT SHE HAS
3 MUNCHAUSEN'S, THAT -- AND THEN BECAUSE OF THAT DENIES
4 SERVICES THAT WOULD OTHERWISE BE PROVIDED, THAT THAT IS
5 A SUFFICIENT BASIS FOR A CLAIM UNDER BOTH THE ADA AND
6 THE REHAB ACTS.

7 MR. PRAGER: YES. AND THE SAME BATES NUMBER
8 IS EVEN CLEARER ABOUT THAT, IF I MAY.

9 THE COURT: WELL, YOU DON'T NEED TO CITE ME
10 THE EVIDENCE ON THAT RIGHT NOW. I JUST WANTED TO MAKE
11 SURE I UNDERSTOOD WHAT YOU WERE TELLING ME. AND THAT
12 YOU'RE SAYING -- AND WHAT SERVICES THAT YOU'RE SAYING
13 SHE WAS DENIED BECAUSE OF THAT PERCEPTION. WHAT -- NOT
14 WHAT YOU'RE ARGUING -- WHAT EVIDENCE WAS THERE OF SOME
15 SERVICE THAT WAS DENIED TO HER BECAUSE OF THAT
16 PERCEPTION?

17 MR. PRAGER: FAMILY REUNIFICATION SERVICES.

18 THE COURT: OKAY. AND THEN THAT -- LOOK, I'M
19 GOING TO GIVE YOU A CHANCE TO EXPOUND ON THIS A LITTLE
20 BIT, BUT THE ARGUMENT WON'T HELP ME. YOUR ARGUMENT
21 ABOUT IT PROBABLY WON'T HELP ME AS MUCH AS JUST HELPING
22 ME ATTAIN GREATER CLARITY AS TO WHAT YOU BELIEVE THE
23 ISSUES ARE THAT I SHOULD BE LOOKING AT.

24 MR. PRAGER: VERY GOOD.

25 THE COURT: OKAY. AND THERE WAS, IN THE -- I
26 REMEMBER -- AND I FORGET THE DOCUMENTS, AND I KNOW YOU
27 KNOW THEM. BUT I REMEMBER, EARLY ON, THERE WAS --
28 SOMEONE HAD WRITTEN IN ONE OF THOSE DOCUMENTS THAT THEY

1 MAY DENY FAMILY REUNIFICATION, AND THAT EVENTUALLY THEY
2 DID. THEY NEVER DID PROVIDE FAMILY REUNIFICATION
3 SERVICES.

4 WHAT EVIDENCE IS THERE THAT THE REUNIFICATION
5 SERVICES WERE NOT PROVIDED BECAUSE OF THAT PERCEPTION?

6 MR. PRAGER: THE TESTIMONY FROM MS. HOCHSTEIN,
7 MS. CONDON.

8 THE COURT: OKAY. AND TELL ME WHAT
9 MS. HOCHSTEIN SAID ABOUT THAT.

10 MR. PRAGER: TRUTHFULLY I'D HAVE TO GO BACK TO
11 HER DEPOSITION.

12 THE COURT: YEAH. AND YOU DON'T HAVE TO QUOTE
13 IT, BUT TELL ME YOUR RECOLLECTION.

14 MR. PRAGER: SHE SAID THAT THE COURT -- I'M
15 SORRY -- THE SOCIAL WORKERS PERCEIVED MOTHER AS
16 SUFFERING MUNCHAUSEN'S, THEY RECOMMENDED AGAINST
17 PROVIDING FAMILY REUNIFICATION SERVICES, AND THEN THEY
18 GAVE HER LESSER SERVICES BECAUSE THEY PERCEIVED HER AS
19 BEING MUNCHAUSEN'S.

20 ON THE SEPTEMBER 9, 2010, AMENDED REPORT,
21 THERE WAS A STATEMENT BY THE CIVIL RIGHTS UNIT FOR THE
22 COUNTY THAT MS. DUVAL LOST HER FAMILIAL ASSOCIATION
23 WITH HER SON BECAUSE OF THE PERCEPTION OF THE SOCIAL
24 WORKERS IN THIS CASE IN RELATION TO HER.

25 I DO HAVE THE FIRST PARAGRAPH OF EXHIBIT 219
26 READY TO READ TO YOU IF IT WOULD BENEFIT YOU.

27 THE COURT: WELL, MAYBE LET ME JUST TAKE A
28 LOOK AT IT.

1 MR. PRAGER: YOUR HONOR, IF I MAY?

2 THE COURT: YES.

3 MR. PRAGER: MS. CHUNG IS TRYING TO HELP ME
4 PERHAPS ADDRESS THE CONCERN.

5 THE COURT: I'D ASK HER TO HELP ME AS WELL,
6 BUT I THINK THAT WOULD BE INAPPROPRIATE.

7 OKAY. SO WHERE IN 219?

8 MR. PRAGER: IT'S BATES 3082.

9 THE COURT: BATES -- WHICH ONE?

10 MR. PRAGER: 3082.

11 THE COURT: OKAY.

12 ALL RIGHT. I'VE READ, I BELIEVE, THE
13 PARAGRAPH THAT YOU'RE REFERRING TO ON THAT PAGE.

14 AND DID MS. HOCHSTEIN TESTIFY TO THAT IN HER
15 DEPOSITION?

16 MR. PRAGER: YES. I BELIEVE THAT
17 MS. HOCHSTEIN CONFIRMED THAT STATEMENT -- AS, FOR
18 EXAMPLE, ONE OF THE SLIDES WE DISCUSSED YESTERDAY, SHE
19 DID TESTIFY TO THAT.

20 I WANT TO MAKE THE COURT AWARE OF SOMETHING.
21 IF THE COURT LOOKS AT 3082 -- AND I'LL READ THIS TO
22 YOU. IT SAYS:

23 "THE IMPLIED DIAGNOSIS OF POSSIBLE
24 MUNCHAUSEN BY PROXY LED DCFS CSWS TO
25 RECOMMEND AGAINST FAMILY REUNIFICATION
26 FOR CP DUVAL WITH HER SON."

27 I'M VERY CONFIDENT THAT THE DEFENSE WILL TELL
28 YOU THE COURT REJECTED THIS RECOMMENDATION AND OFFERED

1 FAMILY REUNIFICATION SERVICES IN THE FUTURE. WHEN YOU
2 LOOK AT, FOR EXAMPLE, THE JURY INSTRUCTION WE'VE
3 OFFERED, WHICH IS, AGAIN, 753 -- AND I CAN CITE THE LAW
4 TO YOU AS WELL. THE POINT IS THAT WHEN A PERSON IS --
5 THERE'S A RECOMMENDATION FOR INFERIOR SERVICES, THAT BY
6 ITSELF IS A DENIAL OF EQUAL SERVICES. AND OUR POSITION
7 IS THAT IS ACTIONABLE. NOW, IN THIS CASE --

8 THE COURT: EVEN IF IT WAS PROVIDED AT A LATER
9 TIME.

10 MR. PRAGER: CORRECT. NOW, BECAUSE THERE WAS,
11 AGAIN, THE GOVERNMENT RECOMMENDING THAT SOMEONE GET
12 LESSER SERVICES BECAUSE OF AN UNLAWFUL PERCEPTION OF
13 THAT PERSON'S CHARACTERISTICS --

14 THE COURT: NO, I UNDERSTAND THE ARGUMENT.

15 MR. PRAGER: OKAY. BUT NEVERTHELESS, OUR
16 POSITION ALSO IS MS. DUVAL BECAME PERCEIVED AT THAT
17 POINT AS HAVING MUNCHAUSEN BY PROXY. AND WHEN WE LOOK
18 AT THE SEPTEMBER 9, 2010 REPORT --

19 THE COURT: NO, I UNDERSTAND THAT.

20 SO MY QUESTION IS -- BECAUSE I DO NOT HAVE AN
21 INDEPENDENT RECOLLECTION -- DID MS. HOCHSTEIN TESTIFY,
22 WHICH WAS PRESENTED BY DEPOSITION, TESTIMONY WHICH IN
23 EFFECT STATES WHAT'S IN THIS PARAGRAPH IN EXHIBIT 219?

24 MR. PRAGER: I BELIEVE THE ANSWER IS YES.

25 THE COURT: OKAY. SO TO ANSWER THAT, JUST TO
26 MAKE SURE, I'LL HAVE TO LOOK BACK TO SEE WHAT SHE SAID.

27 MR. PRAGER: AND THE ONLY REASON I HESITATE
28 IS -- I KNOW WE OFFERED IT, AND MY BELIEF IS THE COURT

1 ALLOWED IT, BUT THE ONLY REASON IT WOULD NOT HAVE BEEN
2 RECEIVED IS IF THE COURT STRUCK THAT INDIVIDUAL
3 SENTENCE.

4 THE COURT: RIGHT. THAT'S WHY I'LL LOOK BACK
5 AND MAKE SURE IT WAS GIVEN. I JUST DON'T HAVE A
6 RECOLLECTION ONE WAY OR THE OTHER. BY STATING THIS,
7 I'M NOT SUGGESTING THAT I THINK IT WASN'T GIVEN. WHAT
8 I'M SAYING IS I HONESTLY HAVE NO MEMORY SPECIFICALLY
9 ABOUT THAT ONE WAY OR THE OTHER ON THIS.

10 MR. PRAGER: NOW, THE OTHER WITNESSES THAT
11 TESTIFIED TO THIS WOULD BE LYNNE CONDON; MR. URQUIZO
12 TESTIFIED THAT THE STATE CONFIRMED THE DISCRIMINATION
13 FINDINGS AND CLOSED THEIR FILE AND REPORTED THE
14 DISCRIMINATION AS BEING SUSTAINED.

15 THE COURT: ALL RIGHT. SO LET ME ASK YOU TO
16 DO THIS, IF YOU WILL. I'M GOING TO HEAR FROM THE
17 DEFENSE ON THIS. AND WE DON'T HAVE TO DO IT RIGHT THIS
18 MOMENT, BUT WITH ALL THIS TEAM OF TALENT THAT WE HAVE
19 HERE -- AND I'M LOOKING AT THE FIVE LAWYERS ACROSS THE
20 BOARD AT PLAINTIFF'S COUNSEL -- MAYBE ONE OF THEM,
21 WHILE WE'RE DOING OTHER THINGS THIS MORNING, FOR
22 EXAMPLE, LISTENING TO WITNESSES, SOMEONE COULD CHECK TO
23 BE ABLE TO CITE TO ALL OF US THE DEPOSITION TESTIMONY
24 OF HOCHSTEIN AND CONDON WHICH YOU BELIEVE COVERS THIS
25 SUBJECT.

26 MR. PRAGER: I'M HAPPY TO ASK FOR ASSISTANCE.

27 THE COURT: I CAN DO IT OVER THE NOON HOUR BUT
28 IT'LL SPEED EVERYTHING UP FOR EVERYONE IF SOMEONE WOULD

1 JUST CITE ME TO WHERE IT WAS. I DON'T HAVE THE DISK
2 BUT I CERTAINLY STILL HAVE THE DEPOSITIONS, AND I
3 CAN -- AND I KNOW WHAT -- I CAN ALSO CHECK MY OWN
4 RECORDS OF WHAT WAS PERMITTED AND I'LL BE HAPPY TO DO
5 THAT. BUT IT'LL HELP ME, IF SOMEONE CAN CITE ME, IT
6 WILL JUST QUICKEN THE PROCESS.

7 MR. MCMILLAN: WE'RE WORKING ON IT.

8 MR. PRAGER: VERY GOOD, YOUR HONOR.

9 THE COURT: OKAY.

10 ALL RIGHT. SO NOW, MS. SWISS.

11 MS. SWISS: MY TURN.

12 THE COURT: NOW YOU KNOW WHAT TO RESPOND TO.

13 MS. SWISS: THE RECOMMENDATION THAT THERE WAS
14 NO FAMILY REUNIFICATION SERVICES WAS MADE WHEN DCFS
15 FILED THE PETITION BEFORE THE DETENTION HEARING. THAT
16 PETITION WAS FILED ON OR ABOUT NOVEMBER 5TH OR SO FOR
17 THE HEARING ON NOVEMBER 6TH. SO THAT WAS THE
18 RECOMMENDATION.

19 THE EVIDENCE AS IT'S STATED BY MS. DUVAL WAS
20 THAT THE FIRST MENTION THAT THIS WASN'T A CASE OF
21 MUNCHAUSEN SYNDROME BY PROXY WAS MADE BY HER OWN
22 ATTORNEY AT THE DETENTION HEARING. THE NEXT POINT IN
23 TIME IT WAS EVER RAISED WAS, AGAIN, AFTER THE DETENTION
24 HEARING, AFTER THEIR DEPARTMENT ALREADY HAD MADE THE
25 RECOMMENDATION FOR NO REUNIFICATION SERVICES, WHEN
26 MS. DUVAL HERSELF BROUGHT UP THE FACT THAT HER BELIEF
27 WAS THAT MR. MILLS AND HIS FAMILY WERE ACCUSING HER OF
28 SUFFERING MUNCHAUSEN BY PROXY. AND THAT HAPPENED ON

1 NOVEMBER 18, 2009, IN HER UP-FRONT ASSESSMENT.

2 THAT UP-FRONT ASSESSMENT WAS THEN ATTACHED TO
3 THE JURISDICTION/DISPOSITION FILED BY CANDIS NELSON FOR
4 THE HEARING ON JANUARY 4, 2010. AND AT THE TIME THAT
5 REPORT WAS FILED, THERE WAS ALSO THE RECOMMENDATION BY
6 DCFS THAT THE FAMILY RECEIVE AN INDEPENDENT
7 PSYCHOLOGICAL EVALUATION SO THAT THE COURT WOULD HAVE
8 MORE INFORMATION.

9 AND IN THAT REPORT, THE DEPARTMENT CONTINUED
10 THE RECOMMENDATION FOR NO REUNIFICATION SERVICES. IT
11 DIDN'T CHANGE ON ANY SORT OF PERCEPTION BY ANY OF THE
12 SOCIAL WORKERS. IT WAS CONTINUED FROM THE PETITION.
13 AND THE TESTIMONY OF MS. PINEDO, WHO FILED THE
14 PETITION, IS BECAUSE WHEN THERE IS AN ALLEGATION UNDER
15 WIC CODE 300E FOR SEVERE NEGLECT, THAT THEY ARE
16 ENTITLED AND RECOMMENDED TO RECOMMEND NO REUNIFICATION
17 SERVICES BECAUSE THE CHILD HAS SUFFERED SUCH SEVERE
18 NEGLECT. AND IN THIS CASE, THE EVIDENCE THAT THEY
19 RELIED ON, THE SEVERE GLOBAL DEVELOPMENTAL DELAYS THAT
20 RYAN HAD BEEN DIAGNOSED WITH AS WELL AS THE FAILURE TO
21 THRIVE. SO THAT IS THE REASON FOR THE NO REUNIFICATION
22 SERVICES.

23 SO FAST FORWARD TO THAT JANUARY 4TH HEARING.
24 THE ATTORNEY FOR MR. MILLS IS ACTUALLY THE ONE WHO
25 RAISED THE ISSUE OF THE INDEPENDENT PSYCHOLOGICAL EXAM,
26 AND MS. DUVAL'S ATTORNEY OBJECTED TO THAT EXAM. THE
27 COURT DENIED THE REQUEST FOR THE EXAM.

28 NEVER AGAIN IN THE CASE -- IN THE DEPENDENCY

1 CASE WAS THE ISSUE OF A PSYCHOLOGICAL EVALUATION
2 RAISED. NEVER AGAIN IN THE CASE WAS THE ISSUE OF
3 MUNCHAUSEN BY PROXY RAISED. IN FACT, THOSE WORDS ARE
4 NOT USED IN ANY OF THE DEPENDENCY COURT TRANSCRIPTS
5 EXCEPT FOR IN THE DETENTION HEARING WHEN IT WAS RAISED
6 BY MS. DUVAL'S ATTORNEY HERSELF. IT WAS NOT AN ISSUE
7 THAT WAS DECIDED IN THE CASE. IT WAS NOT AN ISSUE THAT
8 WENT THROUGH THE PERCEPTION OF THE SOCIAL WORKERS.
9 THERE'S NO TESTIMONY FROM ANY OF THE SOCIAL WORKERS
10 HANDLING THAT CASE TO THAT EFFECT.

11 NOW THE ISSUE BECOMES THIS ISSUE WITH THE
12 CIVIL RIGHTS COMPLAINT. NOW, MS. DUVAL FILED HER CIVIL
13 RIGHTS COMPLAINT ON MARCH 8, 2010. SO TWO MONTHS AFTER
14 THE COURT ALREADY SAID NO 730 EVALUATION, MS. DUVAL
15 AGAIN RAISED THAT ISSUE HERSELF IN FILING THE COMPLAINT
16 WITH THE CIVIL RIGHTS INVESTIGATION UNIT.

17 NOW, THE INVESTIGATION DONE BY MS. HOCHSTEIN,
18 THE COUNTY CONCEDES THIS REPORT, EXHIBIT 219, DOES SAY
19 WHAT MR. PRAGER REPRESENTED IT SAID. BUT THIS IS THE
20 REPORT THAT WAS FILED ON AUGUST 2, 2010. AND THE STATE
21 OF THE EVIDENCE AS PRESENTED IN THE PLAINTIFF'S CASE IS
22 THAT THE DECISION OF THE COUNTY, MS. HOCHSTEIN HERSELF,
23 WAS OVERTURNED AND THAT THE FINAL CONCLUSION OF THE
24 REPORT THAT WAS SUBMITTED TO THE STATE ON OR ABOUT
25 JANUARY OF 2011 WAS THAT MS. DUVAL DID NOT SUFFER
26 DISCRIMINATION ON THE BASIS OF PERCEPTION OF MUNCHAUSEN
27 SYNDROME BY PROXY.

28 AND MR. URQUIZO CONFIRMED THAT, YES, THAT THE

1 COUNTY HAD SUBMITTED ADDITIONAL REPORTS. THEY WEREN'T
2 REVIEWED, AND WE CAN -- THAT ISSUE IS REALLY NEITHER
3 HERE NOR THERE FOR THAT MOTION.

4 ADDITIONALLY, THE TESTIMONY OF MS. CONDON THAT
5 WAS READ TO THE JURY STATES THAT, YES, MS. HOCHSTEIN
6 DID MAKE THIS INITIAL CONCLUSION BUT IT WAS BASED ON
7 THE WRONG PREMISE. AND THAT TESTIMONY HAS BEEN IN
8 FRONT OF THE JURY, AND MS. CONDON EXPLAINED THAT THERE
9 WAS NOT A NEXUS BETWEEN THIS MUNCHAUSEN SYNDROME BY
10 PROXY REFERENCE IN THE COURT REPORT IN THE UP-FRONT
11 ASSESSMENT AND ANY DELAY IN REUNIFICATION SERVICES OR
12 ANY DENIAL OF SERVICES. AND SO THAT TESTIMONY HAS BEEN
13 PRESENTED IN FRONT OF THE JURY. MS. CONDON DID NOT
14 CONFIRM THAT MS. DUVAL HAS BEEN DISCRIMINATED. IN
15 FACT, IT WAS EXACTLY THE OPPOSITE, AND SHE TESTIFIED TO
16 THE PROGRESSION OF THE SUBSEQUENT REPORTS THAT WERE
17 FILED WITH THE STATE BASED ON NEW INFORMATION THAT THE
18 INVESTIGATION HAD REVEALED.

19 AND THAT'S ALL.

20 THE COURT: SO THE PLAINTIFF CLAIMS THAT -- AS
21 YOU ALREADY HEARD -- THAT THIS PERCEPTION THAT SHE HAD
22 MUNCHAUSEN'S CAUSED THEM, THE COUNTY, TO RECOMMEND
23 AGAINST FAMILY REUNIFICATION SERVICES, AND THEY, IN
24 FACT, NEVER DID PROVIDE FAMILY REUNIFICATION SERVICES,
25 UNTIL AT LEAST SOME LATER TIME.

26 MR. PRAGER: RIGHT.

27 THE COURT: AND YOU'RE SAYING, WELL, THAT
28 ISN'T WHY THEY RECOMMENDED AGAINST IT. THEY

1 RECOMMENDED AGAINST IT BECAUSE OF THE CONDITION OF THE
2 CHILD WITH THE FAILURE TO THRIVE, OR WHATEVER YOU WANT
3 TO CALL IT, BUT HE WAS VERY TINY. AND I REMEMBER WHEN
4 THIS THING STARTED THEY SAID HE WAS, WHAT, 14 MONTHS
5 OLD AND HAD GAINED ONE POUND, SOMETHING LIKE THAT, OVER
6 SOME EXTENDED PERIOD OF TIME. AND THE DEVELOPMENTAL
7 DELAYS, WHICH HAD TO DO -- AT LEAST MANIFESTED
8 THEMSELVES IN OTHER WAYS AS TO THINGS HE COULD DO OR
9 NOT DO AT A GIVEN AGE.

10 SO IS THAT A FACTUAL ISSUE AS TO WHAT CAUSED
11 THE COUNTY TO NOT -- AT THAT TIME, NOT PROVIDE FAMILY
12 REUNIFICATION SERVICES?

13 MS. SWISS: IT'S NOT A FACTUAL ISSUE. IT'S A
14 STATEMENT OF FACT SIMPLY BASED ON THE TIME LINE. THE
15 ISSUE OF MUNCHAUSEN BY PROXY WASN'T RAISED UNTIL AFTER
16 THE COUNTY HAD ALREADY FILED THE PETITION AND MADE ITS
17 RECOMMENDATIONS. AND THAT DECISION AS TO WHAT THE
18 DEPARTMENT'S RECOMMENDATIONS WERE WAS CONSISTENT
19 THROUGHOUT. SO THERE REALLY -- IT IS NOT A QUESTION OF
20 FACT. IT'S SIMPLY BASED ON THE STATE OF THE EVIDENCE
21 OF WHAT THE COUNTS WERE IN THE PETITION FILED BEFORE
22 THE DETENTION HEARING, BEFORE THE ISSUE WAS EVER RAISED
23 BY ANYONE.

24 THE COURT: AND THE FIRST TIME THE MUNCHAUSEN
25 BY PROXY WAS RAISED WAS IN THE UP-FRONT ASSESSMENT?

26 MS. SWISS: MS. DUVAL'S ATTORNEY SAID, AT
27 DETENTION HEARING --

28 THE COURT: AT THE DETENTION HEARING.

1 MS. SWISS: -- "THIS IS NOT A MUNCHAUSEN BY
2 PROXY CASE," AS A STATEMENT, AS PART OF HIS ARGUMENT.

3 AND THEN THE FIRST TIME THE MUNCHAUSEN BY
4 PROXY WAS RAISED SUBSEQUENT WAS WHEN MS. DUVAL RAISED
5 IT IN THE UP-FRONT ASSESSMENT TO HILLSIDES, NOT
6 AFFILIATED WITH THE COUNTY. AND THE SOCIAL WORKER,
7 MS. NELSON, IS REQUIRED TO REPORT ALL OF THAT
8 INFORMATION TO THE COURT, AND SO PUT THE STATEMENT IN
9 THE -- IN HER REPORT, SAYING "WITH THE CONCERN FOR
10 POSSIBLE MUNCHAUSEN BY PROXY AND OTHER DISORDERS, AS --
11 YOU KNOW, BASED ON THE UP-FRONT ASSESSMENT," AND THEN
12 ATTACHED THE UP-FRONT ASSESSMENT FOR THE COURT TO
13 CONSIDER IN RECOMMENDING THE 730 EVALUATION.

14 THE COURT: OKAY.

15 MR. PRAGER.

16 MR. PRAGER: THERE'S A LOT OF ISSUES TO
17 ADDRESS THAT ARE BEING RAISED, AND I THINK THE MOST
18 IMPORTANT ONE, YOUR HONOR, IS YOU'RE NOW STARTING TO
19 GET INTO QUESTIONS OF FACT. AND I THINK THAT'S A
20 DECISION FOR THE JURY. AND THE MERE FACT THAT THE
21 COUNTY ISSUED MS. DUVAL A LETTER SAYING SHE IS THE
22 VICTIM OF DISCRIMINATION AND THE COUNTY ARTICULATED THE
23 SAME LEGAL BASIS THAT WE'RE ARTICULATING FOR OUR CLAIM
24 MEANS THAT THE JURY SHOULD HAVE THE RIGHT TO CONSIDER
25 THE EVIDENCE.

26 I DISAGREE WITH MUCH OF WHAT MS. SWISS SAID.
27 IN LOOKING AT EXHIBIT 216, AND IT'S AT BATES PAGE --
28 AND WE'D HAVE TO, AGAIN, GO BACK AND LOOK AT WHAT WAS

1 OFFERED AND RECEIVED -- 3056. AND I CAN PROCEED WHEN
2 THE COURT IS READY.

3 THE COURT: WHAT PART OF 216 ARE YOU REFERRING
4 TO?

5 MR. PRAGER: BATES PAGE 3056. IT WILL BE THE
6 LAST FULL PARAGRAPH ON THE BOTTOM OF THE PAGE.

7 I CAN READ IT WHENEVER THE COURT'S READY.

8 THE COURT: WELL, IS 216 IN EVIDENCE?

9 MR. PRAGER: I BELIEVE THAT ONE OF THE
10 WITNESSES DISCUSSED THESE FINDINGS, WHICH WE AGAIN HAVE
11 TO GO BACK AND MAKE SURE THE DEPOSITION TESTIMONY --

12 THE COURT: ALL RIGHT. IT'S 216 -- THAT'S WHY
13 I TOOK A QUICK LOOK. I DON'T FIND THAT 216 IS IN
14 EVIDENCE.

15 MS. SWISS: IT IS NOT IN EVIDENCE. IT IS ONE
16 OF THE -- IT IS THE DRAFT REPORT PREPARED BY
17 MS. HOCHSTEIN BEFORE EXHIBIT 219, WHICH IS ALSO NOT IN
18 EVIDENCE.

19 THE COURT: RIGHT.

20 YES, MR. PRAGER?

21 MR. PRAGER: OKAY. SO THE LAST PARAGRAPH
22 CONFIRMED THAT MS. DUVAL WAS:

23 "DIFFERENTLY TREATED IN THE
24 RECEIPT OF DCFS SERVICES BECAUSE SHE IS
25 A MEMBER OF THE PROTECTED CLASS
26 DISABILITY. SHE WAS HELD RESPONSIBLE
27 FOR NEGLECTING, ABUSING, AND HARMING
28 HER SON BY WITHHOLDING FOOD FROM HIM

1 BECAUSE SHE WAS PERCEIVED BY THE SOIS
2 AS BEING IMPAIRED FROM MSBP. AS A
3 RESULT, DCFS PERMANENTLY REMOVED
4 CP DUVAL'S SON FROM HER CARE AND CLOSED
5 HER CASE."

6 THERE ARE ISSUES ABOUT THE TIMING OF EVENTS,
7 BUT WHAT WE THINK THE EVIDENCE SHOWS IS THAT THE SOCIAL
8 WORKER DEVELOPED THE OPINION, THE PERCEPTION THAT
9 MS. DUVAL WAS IMPAIRED BY MSBP, AND TREATED HER
10 ACCORDINGLY. AND I THINK IT'S WELL WITHIN THE JURY'S
11 PURVIEW TO DECIDE WHEN THAT PERCEPTION BEGAN AND WHEN
12 THE DISCRIMINATION BEGAN.

13 MOREOVER, THERE ARE SOME ADDITIONAL FACTS THAT
14 WE'VE NOT FULLY DISCLOSED DURING THIS HEARING THAT
15 MS. SCHEELE AND MS. NELSON BOTH WERE FOUND TO HAVE
16 VIOLATED COUNTY POLICIES, AND THAT'S BEEN CONSISTENT
17 THROUGH EVEN THE FINAL REPORT OF JANUARY 2011. AND
18 WHAT THE COUNTY DID IN THAT REPORT -- WHICH HASN'T BEEN
19 OFFERED YET AS PART OF OUR CASE -- IS THAT THEY CHANGED
20 IT AND SAID THERE WAS A VIOLATION OF POLICY BUT THAT
21 POLICY VIOLATION DID NOT RISE TO A CIVIL RIGHTS
22 VIOLATION. WE THINK THAT WOULD BE A QUESTION OF FACT
23 FOR A JURY TO DECIDE. THERE ARE DISCIPLINARY
24 RECOMMENDATIONS BY THE CIVIL RIGHTS UNIT AGAINST
25 MS. SCHEELE AND NELSON THAT WERE NEVER IMPLEMENTED.

26 THE COURT: ALL RIGHT. UNFORTUNATELY, THIS IS
27 NOT THE FIRST INSTANCE IN THIS CASE WHERE -- I DON'T
28 WANT A BLENDING OF ARGUMENT SO MUCH AS I WANT EVIDENCE

1 OF FACT. AND I'M HAPPY TO HEAR THE ARGUMENT ONCE WE'VE
2 ESTABLISHED WHAT THE FACTS ARE AND WHAT THE EVIDENCE
3 WAS. AND, AS I SAY, I'LL BE HAPPY TO HEAR THE ARGUMENT
4 WHAT THE IMPACT OR IMPORT OF THE EVIDENCE MIGHT BE AS
5 TO, IN ESSENCE, IS THIS INSTANCE, WHETHER THERE IS A
6 FACTUAL ISSUE THAT THE PERCEPTION RESULTED IN A DENIAL
7 OF SERVICES. AND I DO NOT HAVE SUFFICIENT INDEPENDENT
8 RECOLLECTION BECAUSE OF THE, REALLY, QUANTITY OF
9 EVIDENCE WE'VE HAD AND A LARGE NUMBER OF WITNESSES
10 THAT -- AS YOU KNOW, YOU DON'T NEED ME TO TELL YOU
11 THIS -- WE JUST HAVE HAD A LOT OF INTEREST.

12 MR. PRAGER: SURE.

13 THE COURT: AND I DON'T EVEN THINK MY
14 NOTE-TAKING, WHICH I'LL CHECK, WOULD PROBABLY BE
15 SUFFICIENT TO COVER THE DETAIL OF WHAT EACH SIDE IS
16 SAYING.

17 SO THE MOTION HAS BEEN MADE, AND I'LL ASK THE
18 PLAINTIFF TO GIVE ME A SUMMARY -- NOT YOUR ARGUMENT --

19 MR. PRAGER: I UNDERSTAND.

20 THE COURT: -- A SUMMARY OF THE EVIDENCE THAT
21 YOU BELIEVE -- AND IT HAS TO BE EVIDENCE, NOT SOME
22 DOCUMENT THAT'S NOT IN EVIDENCE, BUT IF IT WAS
23 TESTIMONY THAT WAS ELICITED THAT COVERED THE DOCUMENT,
24 THAT'S FINE.

25 BUT IT'S THE TESTIMONY THAT I'D LIKE TO HAVE
26 YOU REFER ME TO AS TO -- SO I CAN SEE WHAT EVIDENCE
27 THERE ACTUALLY WAS THAT WOULD HELP ME IN DECIDING
28 WHETHER THERE IS THIS FACTUAL ISSUE.

1 AND MS. SWISS, YOU MIGHT WANT TO GET STARTED
2 ON THE SAME SORT OF SUMMARY, IF YOU WOULD.

3 AND AGAIN, I'M NOT -- WE'VE HAD ENOUGH READING
4 TO DO IN THIS CASE, SO I'M NOT, AGAIN, ASKING FOR A
5 40-PAGE BRIEF ON SOMETHING. WHAT I'M ASKING IS
6 SOMETHING THAT PROBABLY OUGHT TO BE COVERED IN A COUPLE
7 OF PAGES AT THE MOST, JUST CITING ME WITNESS SO AND SO
8 OR DOCUMENT RECEIVED IN EVIDENCE SAYS THIS. AND THEN
9 THAT WILL HELP. AND I'LL HAVE TO DEFER FURTHER
10 ARGUMENT UNTIL I HAVE THAT. BECAUSE IT MAY BE -- I'M
11 NOT SUGGESTING IT'S YOUR FAULT, BUT I'M NOT ABLE TO
12 RECALL SUFFICIENTLY TO ASSIMILATE ALL OF THIS
13 INFORMATION AS TO WHETHER IT'S REALLY IN EVIDENCE OR
14 NOT.

15 MR. PRAGER: IT'S A VERY COMPLEX CASE.

16 THE COURT: YES, IT IS.

17 MR. PRAGER: ON MULTIPLE SIDES.

18 THE COURT: YES, IT IS.

19 MR. PRAGER: YOU'VE DEALT WITH THE 83 SIDE OF
20 THE CASE AND NOW YOU'RE GETTING A TASTE OF THE
21 COMPLEXITY ON THE DISABILITY SIDE OF THE CASE. IT'S
22 VERY COMPLEX, YOUR HONOR, AND YOU CAME INTO IT LATE IN
23 THE GAME COMPARED TO US.

24 THE COURT: OKAY. SO THAT'S WHAT I'D LIKE TO
25 HAVE, AND I'LL SIMPLY DEFER ON THIS ISSUE UNTIL I GET
26 THAT AND HAVE A CHANCE TO REVIEW THAT EVIDENCE.

27 ALL RIGHT. THAT WILL -- FOR NOW, IT'S TIME
28 FOR OUR JURY TO BE HERE, BUT I DON'T THINK THERE'S

1 ANYTHING FURTHER THAT WE CAN DO AT THIS TIME ON THE
2 MOTION FOR NONSUIT UNTIL I GET THAT ADDITIONAL
3 INFORMATION.

4 MS. SWISS: THANK YOU, YOUR HONOR.

5 MR. GUTERRES: THANK YOU, YOUR HONOR.

6 MAY WE HAVE, LIKE, TWO MINUTES BEFORE WE --

7 THE COURT: YES. I DON'T BELIEVE WE HAVE AN
8 INDICATION YET WE HAVE ALL THE JURORS.

9 MR. MCMILLAN: COULD WE HAVE ABOUT 15 MINUTES?
10 BECAUSE I NEED TO SET UP EQUIPMENT, AND ONE OF THE
11 REASONS WE WEREN'T ABLE TO GET YOU THE SPECIFIC CITE IS
12 THAT WE HAD TO SET UP AND ALSO I'M HAVING A LITTLE BIT
13 OF A TECHNICAL ISSUE I NEED TO RESOLVE.

14 THE COURT: TECHNICAL ISSUES, I UNDERSTAND.
15 YES, WE HAVE TIME.

16 (RECESS)

17 THE COURT: I DO HAVE ANOTHER ISSUE I WANT TO
18 ASK YOU ABOUT. AND SO WE ARE ON THE RECORD AND COUNSEL
19 ARE PRESENT.

20 WHILE WE WERE OFF THE RECORD, I HAVE LOOKED AT
21 THE COURT OF APPEAL DECISION IN THE JUVENILE CASE.

22 ARE WE RELITIGATING AGAIN WHAT'S ALREADY BEEN
23 LITIGATED?

24 MS. SWISS: THAT'S OUR POSITION.

25 THE COURT: ARE WE LITIGATING AGAIN WHAT'S
26 ALREADY BEEN DECIDED?

27 MR. MCMILLAN: WE ARE NOT, YOUR HONOR.

28 THE COURT: WE ARE NOT? OKAY. I'LL ASK THE

1 QUESTION, AND I NEED TO GO OFF THE RECORD BECAUSE I
2 HAVE AN IMPORTANT PERSON TO SEE.

3 THIS MATTER HAS BEEN CONTESTED IN JUVENILE
4 COURT; IT'S BEEN CONTESTED IN FAMILY LAW COURT. WE NOW
5 HAVE THIS LAWSUIT FOR DAMAGES WHERE IN EFFECT WE'RE
6 BEING ASKED TO AGAIN DECIDE WHETHER THE JUVENILE COURT
7 GOT IT RIGHT OR NOT. I'M JUST WONDERING -- I'M
8 WONDERING WHY THE DECISION OF THE COURT OF APPEAL --
9 WHICH I'VE JUST GLANCED AT, BUT I'VE SEEN WHAT THEY
10 HAVE TO SAY -- IN THE JUVENILE CASE, WHY THAT DOESN'T
11 PUT IT TO REST. WE CAN'T HAVE SERIAL LITIGATION
12 REVISITING THE SAME ISSUES. AND ONE OF THE THINGS, AND
13 I'LL READ IT MORE CAREFULLY, BUT ONE OF THE FINDINGS OF
14 THE COURT OF APPEAL WAS THERE WAS SUBSTANTIAL EVIDENCE
15 WHICH SUPPORTED WHAT THE JUVENILE COURT DID.

16 MR. MCMILLAN: SURE. WE RECOGNIZE THAT, YOUR
17 HONOR, AND THIS IS NOT THE FIRST TIME THAT WE'VE FACED
18 THAT --

19 THE COURT: I'M SURE.

20 MR. MCMILLAN: -- PARTICULAR ISSUE.

21 IN FACT, IN THE *FOGARTY* CASE, THE IDENTICAL
22 ISSUE WAS RAISED BEFORE THE TRIAL COURT AND BEFORE THE
23 COURT OF APPEAL AND RESOLVED BOTH TIMES IN THE
24 PLAINTIFF'S FAVOR. THAT'S AN UNPUBLISHED DECISION, SO
25 OBVIOUSLY IT'S NOT BINDING ON THIS OR ANY OTHER STATE
26 COURT. ALTHOUGH THE FEDERAL COURTS, IT IS PERMISSIBLE
27 FOR FEDERAL COURTS OF APPEAL TO REFER TO AS PERSUASIVE,
28 OR AT LEAST INFORMATIVE, UNPUBLISHED STATE COURT

1 APPELLATE OPINIONS THAT ARE THOROUGHLY VETTED AND
2 WELL-THOUGHT-OUT, WELL-REASONED.

3 AND THERE'S A RECENT 9TH CIRCUIT CASE, IT'S
4 CALLED *DUNKLE*, THAT'S OUT OF ALASKA. WE PARTICIPATED
5 IN ASSISTING THE ATTORNEY ON THAT IN HIS BRIEFING AND
6 PREPARATION FOR ORAL ARGUMENT. THE *DUNKLE* CASE IS ALSO
7 INFORMATIVE ON THIS ISSUE.

8 THERE'S ANOTHER 9TH CIRCUIT CASE CALLED
9 *WIGE*- -- I DON'T REMEMBER WHO, IT BEGINS WITH W-I-G-E,
10 AND I CAN GET YOU BRIEFING ON THAT, WHERE THE
11 9TH CIRCUIT SPECIFICALLY RECOGNIZES IN THE 1983 CONTEXT
12 IN RELATION TO A JUDICIAL DECEPTION CLAIM THAT THERE IS
13 A JUDICIAL DECEPTION EXCEPTION TO THE GENERAL RULES ON
14 COLLATERAL ESTOPPEL.

15 SO WHILE, DURING THE *FOGARTY* PROCESS, THIS
16 AREA OF LAW HAD NOT YET BEEN THOROUGHLY HASHED OUT --
17 AND I'M NOT SURE THAT IT IS YET THOROUGHLY HASHED OUT,
18 BUT IT'S GETTING A LOT CLOSER -- THERE HAS BEEN
19 SIGNIFICANT DEVELOPMENT SINCE 2007, STILL TODAY --
20 WELL, ACTUALLY, IN THE 9TH CIRCUIT, ON THESE ISSUES.

21 THE COURT: ALL RIGHT. WELL --

22 MR. MCMILLAN: AND WE CAN GIVE YOU FURTHER
23 BRIEFING IF IT'S NECESSARY.

24 THE COURT: WELL -- YEAH, THAT MAY BE GOING
25 BEYOND THE QUESTION I HAVE. WHATEVER THE -- WE HAVE A
26 NUMBER OF CLAIMS, INCLUDING THE CLAIM FOR THE -- WHAT,
27 FROM YOUR POINT OF VIEW, IS THE UNLAWFUL SEIZURE OR
28 DETENTION OF THE CHILD IN THE FIRST PLACE. I DON'T

1 THINK THERE'S ANYTHING IN WHAT THE COURT OF APPEALS
2 DEALT WITH THAT DEALS WITH THAT ISSUE.

3 MR. MCMILLAN: THAT'S CORRECT.

4 THE COURT: WE ALSO HAVE THE UNDER-ACT CLAIM.
5 WE HAVE THE TWO DIFFERENT FORMS OF WHAT I'LL CALL
6 DISCRIMINATION CLAIMS, THE ADA AND THE REHAB ACT, AND
7 THEY HAVEN'T LOOKED AT THAT AT ALL. BUT WE HAVE THE
8 CLAIMS HERE, YOUR 1983 CLAIM FOR PROVIDING FALSE
9 INFORMATION, SAYING THAT THERE WASN'T SUFFICIENT
10 INFORMATION -- BASICALLY, IF THEY HADN'T CONSIDERED
11 WHAT YOU SAY IS FALSE INFORMATION AND IF THEY HAD
12 CONSIDERED INFORMATION THAT WAS NOT INCLUDED, THEY
13 WOULDN'T HAVE MADE THE DECISION THEY DID. AND THEN I
14 READ THE COURT OF APPEALS SAYING THERE WAS SUBSTANTIAL
15 EVIDENCE THAT SUPPORTS ALL THIS. SO I'M JUST WONDERING
16 WHAT THE EFFECT OF THAT IS.

17 BUT WE'LL TAKE A RECESS. I DON'T WANT TO HEAR
18 MORE ARGUMENTS. I HAVE SOMEONE I NEED TO TALK TO.

19 MR. MCMILLAN: SURE.

20 (RECESS)

21 THE COURT: WE'RE ON THE RECORD AND COUNSEL
22 ARE PRESENT. WE'RE OUTSIDE THE PRESENCE OF THE JURY.

23 I MENTIONED TO YOU THAT LAST WEEK I'D RECEIVED
24 THE MESSAGE FROM JUROR NO. 4, ANNA NAJARA, WHO I TOLD
25 YOU THAT SHE STATED THAT SHE HAS:

26 "A TRIP PLANNED WITH FLIGHT
27 TICKETS PURCHASED BEFORE THE TRIAL,
28 LEAVING OCTOBER 27TH. WE WERE TOLD THE

1 TRIAL WOULD BE ABOUT 25 DAYS. I'D
2 MENTIONED VERBALLY MY TRIP DATES WITH
3 DEANNA BUT NOT IN WRITING. ACCORDING
4 TO THE NUMBER OF DAYS, THE TRIAL SHOULD
5 BE DONE BY THEN AND IT WON'T BE AN
6 ISSUE."

7 BUT IT IS AN ISSUE.

8 AND THEN I HAVE ANOTHER MESSAGE FROM OUR
9 ALTERNATE JUROR KMET, WHO AGAIN IS TELLING ME THAT SHE
10 HAS THESE TICKETS, THEY'RE GOING ACTUALLY TO EUROPE FOR
11 A WEDDING, LEAVING OCTOBER 25TH. SHE'S BEEN -- SHE
12 TOLD US THIS DURING THE JURY SELECTION AND HAS NOW
13 REMINDED ME ENOUGH TIMES THAT I SEE HER MESSAGES
14 WITHOUT HAVING TO READ THEM. AND I'M NOT MAKING LIGHT
15 OF IT, I'M JUST TELLING YOU SHE'S BEEN VERY DILIGENT IN
16 MAKING SURE THAT WHEN I TEASE ABOUT MEMORY BEING THE
17 SECOND THING TO GO, SHE'S MAKING SURE THAT THAT PART OF
18 MY MEMORY HASN'T GONE. AND I THINK PROBABLY -- I'M
19 PROBABLY GOING TO HAVE TO EXCUSE BOTH OF THESE JURORS.

20 MR. MCMILLAN: YOUR HONOR, WITH RESPECT TO
21 MS. NAJARA, CORRECT ME IF I'M WRONG, BUT SHE WAS
22 RETURNING SHORTLY -- IT WAS A SHORT TRIP.

23 THE COURT: SHE'S GOING TO BE GONE -- YES, IT
24 IS A SHORT TRIP. SHE'S LEAVING THE 27TH, WHICH WOULD
25 BE NEXT THURSDAY, AND WOULD BE HOME -- BY NEXT, I MEAN
26 A WEEK FROM NOW. SHE'S LEAVING THURSDAY, THE 27TH,
27 WOULD BE BACK ON THE 30TH, WHICH WOULD BE SUNDAY. SO
28 SHE WOULD ACTUALLY BE GONE JUST THURSDAY AND FRIDAY OF

1 THAT WEEK.

2 MR. MCMILLAN: YOUR HONOR, I WOULD SUGGEST,
3 RATHER THAN DISMISSING HER -- AS I RECALL, WHAT THE
4 INTENTIONS HAVE BEEN WAS ONCE WE GET THROUGH THE
5 EVIDENCE, BEFORE WE ACTUALLY DO CLOSING ARGUMENTS, WE
6 WOULD DO A FINAL JURY INSTRUCTION CONFERENCE, GIVE US A
7 COUPLE DAYS TO GET EVERYTHING TOGETHER, FINALIZED AND
8 FINISHED --

9 THE COURT: ALTER.

10 MR. MCMILLAN: RIGHT, THAT PERHAPS MAYBE WE
11 PLAN ON DOING THAT ON THURSDAY AND FRIDAY, WHATEVER HER
12 DAYS WERE, THE 26TH AND 27TH.

13 THE COURT: WELL, I'M HOPING WE'RE GOING TO DO
14 IT BEFORE THEN. I DON'T KNOW YET HOW MUCH MORE
15 EVIDENCE THE DEFENSE WILL HAVE.

16 MR. GUTERRES: I UNDERSTOOD, YOUR HONOR, AND
17 CORRECT ME IF I'M WRONG, BUT I THOUGHT ANOTHER JUROR
18 NEEDED THE 27TH AND 28TH OFF. MAYBE THAT WAS NAJARA.

19 THE COURT: THAT WAS NAJARA.

20 MR. GUTERRES: OH, OKAY.

21 THE COURT: AND IT'S POSSIBLE -- BECAUSE I
22 DON'T KNOW YET OF ALL THE TIMING, IT'S POSSIBLE WE
23 COULD WORK AROUND IT.

24 MR. MCMILLAN: WE'D PREFER THAT.

25 THE COURT: AND WITH MS. KMET --

26 MR. MCMILLAN: YEAH, THERE'S NO GETTING OUT OF
27 THAT.

28 THE COURT: SHE'S LEAVING NEXT TUESDAY, THE

1 25TH, AND I KNOW WE'RE NOT GOING TO BE DONE. AND SHE
2 IS GOING TO EUROPE FOR A WEDDING OF A FAMILY FRIEND.
3 AND SHE HAS ADVISED ME OF THIS TRIP FROM THE VERY
4 BEGINNING. SO IF YOU -- CERTAINLY I NEED TO LET HER
5 GO. MAYBE WITH NAJARA WE CAN WAIT AND SEE A LITTLE
6 FURTHER WHETHER OR NOT IT BECOMES IMPORTANT TO US, AND
7 IF IT DOES, WHETHER THERE'D BE A REASONABLE BASIS FOR
8 WORKING AROUND IT. WHICH I WOULD BE A LITTLE RELUCTANT
9 TO HAVE THE JURY, IF THE CASE HAD GONE TO THE JURY, TO
10 HAVE THE JURY NOT IN SESSION ON THURSDAY AND FRIDAY OF
11 THAT WEEK. BUT AS I -- I USED THE WORD "RELUCTANT," I
12 DIDN'T SAY I WOULDN'T. I JUST WOULD EXPERIENCE A
13 CERTAIN RELUCTANCE OVER THAT BECAUSE THEN ALL THE OTHER
14 JURORS THAT WOULD BE READY TO -- HAD ALREADY REACHED A
15 VERDICT WOULD BE -- WE WOULDN'T BE USING THEIR TIME
16 VERY WELL. BUT --

17 MR. GUTERRES: WELL, YOUR HONOR, WE ARE TRYING
18 TO STREAMLINE OUR CASE.

19 THE COURT: NO, I KNOW YOU ARE. AND IN
20 RAISING THESE ISSUES, I WOULD NEVER WANT SOMEONE TO
21 THINK THAT I AM SUGGESTING IN ANY WAY THAT YOU NOT PUT
22 ON EVIDENCE THAT YOU FEEL THAT YOU NEED. I THINK IT IS
23 ALWAYS THE PROCESS, IN EVERY TRIAL, AND PARTICULARLY
24 ONE LIKE THIS WHERE THERE'S A LARGE NUMBER OF WITNESSES
25 AND A GREAT DEAL OF EVIDENCE, IT STILL SHOULD BE
26 STREAMLINED IN THE SENSE THAT WE DON'T HAVE REDUNDANT
27 WITNESSES TESTIFYING AROUND ISSUES THAT REALLY AREN'T
28 VERY IMPORTANT. BUT EVERYBODY NEEDS THE FAIR

1 OPPORTUNITY TO PUT ON THEIR CASE. I'M JUST RAISING THE
2 ISSUE OF WHAT TO DO WITH THE JURORS. I'M NOT
3 SUGGESTING ANYONE GIVE UP THE RIGHT TO BE ABLE TO
4 FAIRLY PRESENT YOUR CASE.

5 SO MAYBE THE THING TO DO IS TO LET MS. NAJARA
6 KNOW THAT I'M AWARE OF HER SITUATION AND THAT SHE IS --
7 THAT I STILL DON'T KNOW EXACTLY WHETHER THIS WILL BE A
8 PROBLEM, BUT THAT SHE'S GOING TO BE ABLE TO TAKE HER
9 TRIP. AND WITH MS. KMET, I THINK IT'S JUST TIME TO LET
10 HER GO.

11 MR. MCMILLAN: I WOULD AGREE WITH MS. KMET.

12 MR. GUTERRES: WE AGREE.

13 THE COURT: ALL RIGHT. WE'LL DO THAT, THEN.

14 YES, MR. PRAGER?

15 MR. PRAGER: MAY I ASK A VERY SIMPLE QUESTION?

16 THE COURT: SURE.

17 MR. PRAGER: DOES IT MAKE SENSE FOR OUR COURT
18 ATTENDANT TO ADVISE THE JURY TO USE THE FACILITIES, IF
19 THEY WANT TO, NOW, SO WHEN WE SIT EVERYBODY, MAYBE WE
20 CAN GO STRAIGHT FROM 10 TO 12? OR IS THAT A BAD IDEA?

21 THE COURT: IT'S NOT A BAD IDEA, BUT THEY HAVE
22 BEEN DOING IT. THAT'S WHY THEY WEREN'T READY TO COME
23 IN. AND I STILL INTEND TO TAKE A SHORT BREAK BECAUSE
24 NOT EVERYBODY IS ON THE SAME SCHEDULE.

25 (RECESS)

26 (JURY PRESENT)

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

1 BEFORE WE RESUME THE TESTIMONY, MS. NAJARA, I
2 HAVE YOUR MESSAGE FROM LAST WEEK, AND I'M AWARE OF YOUR
3 SITUATION. THERE'S STILL SOME UNCERTAINTY ABOUT WHEN
4 EVERYTHING WILL BE COMPLETED, BUT YOU WILL TAKE YOUR
5 TRIP NO MATTER WHAT.

6 OKAY?

7 MS. NAJARA: OKAY.

8 THE COURT: SO YOU WON'T NEED TO WORRY ABOUT
9 IT.

10 MS. NAJARA: OKAY. THANK YOU.

11 THE COURT: AND I'M GOING TO KEEP -- I TOLD
12 YOU THE MEMORY IS THE SECOND THING TO GO. THAT'S WHY
13 I'M GOING TO KEEP YOUR MESSAGE RIGHT HERE ON THE BENCH
14 IN FRONT OF ME TO REMIND ME.

15 MS. NAJARA: OKAY. THANK YOU.

16 THE COURT: AND PUT RIGHT THERE, YOU CAN
17 REMIND ME WHERE I PUT IT.

18 ALL RIGHT. AND MS. KMET, YOU REMINDED ME OF
19 SOMETHING I DIDN'T NEED REMINDING OF.

20 MS. KMET: OKAY. I JUST WANTED TO MAKE SURE.

21 THE COURT: NO, THAT'S ALL RIGHT BECAUSE I
22 UNDERSTAND YOUR SITUATION. AND BECAUSE OF IT, I'M
23 GOING TO EXCUSE YOU FROM FURTHER SERVICE. WE WILL NOT
24 BE COMPLETED IN TIME FOR YOUR OBLIGATION WHICH YOU HAD
25 ADVISED ME WHEN WE FIRST BEGAN JURY SELECTION BACK ON
26 SEPTEMBER 12TH. SO I'VE BEEN AWARE OF IT AT ALL TIMES
27 AND WAITING TO SEE WHETHER OR NOT IT WAS -- THAT WAS
28 GOING TO BE JEOPARDIZED IN SOME WAY. AND I DON'T

1 BELIEVE WE CAN BE ASSURED AT ALL THAT WE CAN COMPLETE
2 BEFORE YOUR OBLIGATION.

3 SO I'M GOING TO EXCUSE YOU AT THIS TIME, AND I
4 WANT TO THANK YOU VERY MUCH. YOU WON'T GET TO HEAR MY
5 CONCLUDING REMARKS THAT I USUALLY GIVE TO THE JURY WHEN
6 WE'RE AT THE END, SO LUCKY YOU. AND THE -- DEANNA WILL
7 TAKE WHATEVER NOTES YOU HAVE IN THE NOTEBOOK AND THEY
8 WILL SIMPLY BE DESTROYED. NO ONE, INCLUDING DEANNA,
9 WILL EVER LOOK AT THE NOTES. THEY WILL REMAIN TOTALLY
10 CONFIDENTIAL TO YOU.

11 I NEED TO HAVE YOU GO DOWNSTAIRS TO THE
12 JURORS' ASSEMBLY ROOM TO CHECK OUT WITH THEM. AND I
13 REALLY WANT TO THANK YOU. THERE'S A LOT THAT I DO HAVE
14 TO SAY WHICH ISN'T ALL THAT IMPORTANT AS -- WHAT JURORS
15 DO FOR US. YOU KNOW, WE ALL HAVE THE CONSTITUTIONAL
16 RIGHT TO A TRIAL BY JURY. THIS CASE INVOLVES CLAIMS OF
17 CONSTITUTIONAL RIGHTS AS WELL. BUT REGARDLESS OF THE
18 KINDS OF CLAIMS, WE COULDN'T HONOR WHAT THE
19 CONSTITUTION PROVIDES FOR ALL OF US UNLESS WE HAVE
20 PEOPLE LIKE YOU, AS WELL AS THE OTHERS HERE WHO GIVE
21 THEIR TIME TO GIVE MEANING TO THAT RIGHT. IT'S HUGEY
22 IMPORTANT.

23 AND I KNOW FROM YOUR BACKGROUND, HAVING WORKED
24 IN COURT SOME YEARS AGO -- IN SOME OF THE COURTS WHERE
25 I'VE SAT IN THE PAST TOO, BY THE WAY. AND SO ON BEHALF
26 OF THE -- CERTAINLY THE LOS ANGELES SUPERIOR COURT, THE
27 COUNTY OF LOS ANGELES, AND THE STATE OF CALIFORNIA, AS
28 WELL AS OUR PARTIES AND THEIR ATTORNEYS, WE ALL WANT TO

1 THANK YOU VERY MUCH.

2 AND YOU ARE NOW EXCUSED.

3 MS. KMET: THANK YOU.

4 THE COURT: IT'S ONLY RHETORICAL IF I ASK IT,
5 BUT IS IT TIME FOR LUNCH YET?

6 MR. MCMILLAN: ARE YOU SURE THAT'S RHETORICAL?

7 THE COURT: WE'VE ALL HAD A LONG DAY, AND WE
8 KNOW YOU HAVE TOO, SO WE'RE GOING TO GET DOWN TO
9 BUSINESS AGAIN.

10 AND WE'LL -- I ASSUME WE'RE GOING TO RESUME
11 WITH MS. ROGERS? OR DO WE HAVE TO INTERRUPT?

12 MR. GUTERRES: WE ARE GOING TO INTERRUPT
13 BECAUSE WE DO HAVE A THIRD-PARTY WITNESS.

14 THE COURT: THAT'S FINE.

15 DO YOU WANT TO CALL THAT WITNESS?

16 MR. GUTERRES: YES. THE DEFENSE IS RECALLING
17 MR. RYAN MILLS.

18 THE COURT: OH, THAT'S RIGHT, I FORGOT ABOUT
19 MR. MILLS.

20 (A DISCUSSION WAS HELD OFF THE RECORD.)

21 THE COURT: MR. MILLS, COME ON UP TO THE
22 STAND, PLEASE. GOOD MORNING.

23 THE WITNESS: GOOD MORNING.

24 THE COURT: AND WILL YOU PLEASE BE SEATED.
25 AND YOU ARE STILL UNDER OATH.

26 THE WITNESS: OKAY.

27 THE COURT: THANK YOU.

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RYAN MILLS,
WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY
SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

BY MR. MCMILLAN:

Q GOOD MORNING, MR. MILLS. HOW ARE YOU?

A I'M WELL. HOW ARE YOU?

Q I'M ALL RIGHT.

WE LEFT OFF YESTERDAY -- NOT YESTERDAY. I'M
SO SORRY.

THE COURT: SOME TIME AGO.

BY MR. MCMILLAN:

Q FRIDAY, I THINK IT WAS. WE LEFT OFF FRIDAY,
AND AS I RECALL -- YOU CORRECT ME IF I'M WRONG -- YOU
HAD TOLD US THAT YOUR SON, AT LEAST INSOFAR AS YOU
RECALLED IT, HAD NEVER SUFFERED FROM ANY ALLERGIES.

DID I GET THAT PRETTY MUCH RIGHT?

A THAT I KNOW OF, CORRECT.

Q OKAY. AND YOU SAID ALSO THAT YOU WERE AT THAT
APPOINTMENT WITH DR. SODERBERG?

A YES, I WAS.

Q I'M GOING TO PUT UP ON THE SCREEN EXHIBIT 8,
BATES NO. 01266.

DO YOU KNOW WHAT --

MR. GUTERRES: I'M SORRY. EXHIBIT NUMBER?

MR. MCMILLAN: NO. 8, BATES NO. 1266.

///

1 BY MR. MCMILLAN:

2 Q DO YOU KNOW WHAT MUCOSAL CONJUNCTIVITIS IS?

3 A NEVER HEARD OF IT.

4 Q NEVER HEARD OF IT?

5 A NO.

6 Q HOW ABOUT DERMATITIS UNSPECIFIED, HAVE YOU
7 EVER HEARD OF THAT?

8 A I'VE HEARD OF DERMATITIS.

9 Q HOW ABOUT ALLERGIC -- LET'S LOOK AT THAT ONE,
10 THAT ONE'S INTERESTING -- ALLERGIC RHINITIS.

11 DID DR. SODERBERG EXPLAIN TO YOU IN THAT
12 DOCTOR'S APPOINTMENT WHAT WAS MEANT BY ALLERGIC
13 RHINITIS?

14 A SHE DIDN'T EXPLAIN TO ME ABOUT ANY KIND OF
15 ALLERGIES, NO.

16 Q OKAY. AND THEN HERE, DO YOU HAVE ANY
17 INDICATION WHAT THIS ONE MEANS: PLUS 1 TO MILK, PLUS 1
18 TO EGG WHITE?

19 A AND WHAT WAS YOUR QUESTION?

20 Q DO YOU HAVE ANY UNDERSTANDING WHAT THAT MEANS?

21 A NO, I DON'T.

22 Q OKAY. SHOWING YOU BATES NO. 001284, ALSO OF
23 EXHIBIT NO. 8.

24 SEE THAT LIST OF FOODS THERE DOWN THE
25 LEFT-HAND COLUMN?

26 A YES.

27 Q THEN OVER ON THE RIGHT-HAND SIDE IT SAYS
28 "GRADE" -- WELL, I'M SORRY. TOWARD THE MIDDLE, IT SAYS

1 "GRADE." ON THE FAR RIGHT-HAND SIDE IT SAYS

2 "WHEAL/FLARE."

3 RIGHT?

4 A OH, YEAH, I CAN SEE IT, YES.

5 Q OKAY. THE TWO THAT ARE HIGHLIGHTED THERE,
6 COW'S MILK AND EGG WHITE, DO YOU SEE THOSE?

7 A I DO.

8 Q YOU'RE TELLING US THAT DR. SODERBERG DID NOT
9 EXPLAIN TO YOU ON THAT VISIT THAT THE CHILD TESTED ON
10 THE SKIN TEST POSITIVE FOR PLUS 1 TO COW'S MILK AND
11 PLUS 1 TO EGG WHITES?

12 A I CAN'T REMEMBER. IT WAS SEVEN YEARS AGO. I
13 DON'T KNOW WHAT SHE EXPLAINED TO ME. I CAN'T REMEMBER
14 THE CONVERSATION THAT WE HAD.

15 Q OKAY. BUT BEFORE YOU CAME IN HERE TO TESTIFY,
16 YOU HAD A CHANCE TO LOOK OVER DOCUMENTS AND THINGS,
17 E-MAILS, STUFF LIKE THAT?

18 A THERE ARE PROBABLY -- THERE ARE THOUSANDS OF
19 DOCUMENTS.

20 Q RIGHT. AND WHEN YOUR DEPOSITION WAS TAKEN,
21 YOU HAD A BUNCH OF THOSE DOCUMENTS THERE, IN YOUR
22 HANDS, AT THE DEPOSITION; RIGHT?

23 A A HUGE BOX, YES.

24 Q HUGE BOX. AND YOU AND I WENT THROUGH SOME OF
25 THOSE.

26 A YES.

27 Q DO YOU REMEMBER THIS ONE?

28 A I DON'T REMEMBER THIS ONE IN THE DEPOSITION,

1 NO.

2 Q BUT THERE WERE THOUSANDS; RIGHT?

3 A THERE WAS A LOT, YEAH.

4 Q LET'S TALK ABOUT DR. NIESEN. I THINK HE WAS
5 ON YOUR LIST ON FRIDAY AS WELL.

6 DO YOU REMEMBER DR. NIESEN?

7 A I'VE NEVER MET HIM, BUT YES, I DO REMEMBER
8 HIM.

9 Q OKAY. AND I THINK YOU TESTIFIED LAST FRIDAY
10 THAT HE CALLED IN A CHILD ABUSE REPORT ON YOU?

11 A FROM WHAT I HEARD, YES.

12 Q FROM WHAT YOU HEARD FROM WHO?

13 MR. GUTERRES: OBJECTION. RELEVANCE.

14 THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16 Q GOING TO SHOW YOU WHAT'S ALREADY BEEN ADMITTED
17 AS EXHIBIT NO. 98, BATES NO. 1711.

18 LET ME ASK YOU, DO YOU KNOW -- DO YOU KNOW
19 WHETHER OR NOT DR. NIESEN EVER COMPLAINED DIRECTLY TO
20 JUDGE NASH ABOUT -- ABOUT THE UNDERLYING CASE?

21 A NO -- NO, I DON'T.

22 Q DO YOU KNOW -- WELL, I GUESS YOUR TESTIMONY
23 WAS THAT YOU BELIEVED HE COMPLAINED ABOUT YOU, YOUR
24 TREATMENT OF BABY RYAN; CORRECT? THAT WAS WHAT YOU
25 SAID LAST FRIDAY, IS THAT DR. NIESEN FILED SOME SORT OF
26 COMPLAINT ABOUT YOU?

27 MR. GUTERRES: OBJECTION. MISSTATES THE
28 TESTIMONY. NO FOUNDATION.

1 THE COURT: IS THAT WHAT YOU SAID?

2 THE WITNESS: FROM WHAT I HEARD, THAT HE --
3 THAT HE FILED A REPORT TO CHILD AND FAMILY SERVICES,
4 WHO THEN CAME OUT AND INVESTIGATED.

5 BY MR. MCMILLAN:

6 Q SO THIS SOURCE, THEY NEVER TOLD YOU THAT
7 DR. NIESEN ACTUALLY COMPLAINED ABOUT DR. EGGE'S
8 TREATMENT OF THE CHILD?

9 A NO.

10 Q YOU'D SPOKEN LAST WEEK ALSO ABOUT THESE --
11 THESE POLICE THAT CAME INTO YOUR HOME.

12 WAS THAT IN THE MIDDLE OF THE NIGHT? I DON'T
13 REMEMBER.

14 A AROUND 10:00 P.M.

15 Q AROUND 10:00 P.M.

16 AND THEY HAD THEIR GUNS DRAWN?

17 A THEY HAD THEIR HANDS ON THEIR WEAPONS.

18 Q ON THEIR WEAPONS. HOLD ON ONE SECOND.

19 OKAY. OKAY.

20 MR. MCMILLAN: YOUR HONOR, I'M NOT -- WELL,
21 LET ME SEE IF I CAN --

22 BY MR. MCMILLAN:

23 Q LET ME ASK YOU, DO YOU REMEMBER SPECIFICALLY
24 THE WORDS YOU USED LAST FRIDAY?

25 A NO, I DON'T.

26 Q OKAY. LET'S SEE IF WE CAN REFRESH YOUR
27 RECOLLECTION ABOUT THE WORDS YOU USED LAST FRIDAY.

28 IF YOU CAN READ TO YOURSELF THIS ONE RIGHT

1 THERE.

2 GOT IT?

3 A OKAY. GOT IT.

4 Q AM I CORRECT LAST FRIDAY YOU TESTIFIED THEY
5 CAME INTO YOUR HOUSE WITH THEIR GUNS DRAWN, THEIR
6 WEAPONS DRAWN?

7 MR. GUTERRES: OBJECTION. RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. MCMILLAN:

10 Q AND THEY RANSACKED YOUR DRAWERS; IS THAT
11 RIGHT?

12 MR. GUTERRES: OBJECTION. RELEVANCE.

13 THE COURT: SUSTAINED.

14 BY MR. MCMILLAN:

15 Q WERE THEY ACCOMPANIED BY A SOCIAL WORKER?

16 MR. GUTERRES: OBJECTION. RELEVANCE.

17 THE COURT: SUSTAINED.

18 BY MR. MCMILLAN:

19 Q DO YOU REMEMBER A SOCIAL WORKER NAMED BLAZ
20 KABANBAN (PHONETIC)?

21 MR. GUTERRES: OBJECTION. RELEVANCE.

22 THE COURT: SUSTAINED.

23 BY MR. MCMILLAN:

24 Q YOU'D ALSO SPOKEN TO US LAST WEEK ABOUT WHEN
25 IT WAS THAT YOU FIRST LEARNED THAT THERE MIGHT BE SOME
26 DEVELOPMENTAL ISSUES OR SOME PROBLEMS WITH BABY RYAN.

27 DO YOU REMEMBER THAT TESTIMONY?

28 A NO. I MEAN, I'M SURE I DID, I JUST DON'T

1 REMEMBER WHAT I SAID.

2 Q OKAY. WELL, YOU DID TESTIFY ABOUT WHO DR. YIM
3 WAS; RIGHT?

4 A I DON'T BELIEVE WE GOT INTO DR. YIM. WELL, I
5 MEAN -- THE DEPOSITION OR LAST WEEK?

6 Q LAST WEEK, JUST A FEW DAYS AGO.

7 A I DON'T REMEMBER -- LIKE I SAID, I DON'T
8 REMEMBER.

9 Q OKAY. DO YOU RECALL TALKING LAST WEEK ABOUT
10 SOME -- SOME CONVERSATIONS YOU HAD WITH DR. YIM OVER
11 THE TELEPHONE REGARDING THE BABY?

12 A I DO REMEMBER THAT. I DO. YES, I DID.

13 Q OKAY. THAT'S WHAT I WANT TO TALK TO YOU ABOUT
14 HERE TODAY, SOME OF THOSE CONVERSATIONS, AT LEAST FOR
15 THE MOMENT.

16 A OKAY.

17 Q AND WE CAN START WITH, DO YOU RECALL HAVING A
18 CONVERSATION WITH DR. YIM ON OR ABOUT MARCH 16, 2009?

19 A NO.

20 Q OKAY.

21 A I MEAN, I MAY HAVE, I JUST DON'T RECALL THE
22 CONVERSATION.

23 Q THIS IS EXHIBIT 4, BATES NO. 000924. YOU SEE
24 THE DATE THERE IS 3/16/2009 AT 12:56 P.M., DR. ALISON
25 YIM SPOKE WITH FATHER, RYAN MILLS.

26 DOES THAT REFRESH YOUR RECOLLECTION ABOUT A
27 CONVERSATION YOU MAY HAVE HAD WITH HER ON MARCH 16,
28 2009?

1 A IT DOESN'T RECALL THE ACTUAL CONVERSATION, BUT
2 I CAN SEE THAT SHE OBVIOUSLY WROTE IT DOWN.

3 Q IF YOU LOOK AT PAGE NO. 0000921 OF THE SAME
4 EXHIBIT, THAT FAR RIGHT-HAND COLUMN SAYS:

5 "FAIL ROLLS BOTH WAYS."

6 "FAIL," AND THE ROW SAYS, "ROLLS BOTH WAYS."

7 DO YOU SEE THAT?

8 A UH-HUH.

9 Q DOES THAT REFRESH YOUR RECOLLECTION THAT
10 SOMETIME AROUND MARCH 16TH SOMETIME, AFTERNOON OR SO,
11 DR. YIM SPOKE TO YOU ABOUT BABY RYAN FAILING TO MEET
12 SOME MILESTONES?

13 A LIKE I SAID, I DON'T REMEMBER THE
14 CONVERSATION.

15 Q OKAY. BUT YOU REMEMBERED SOME OF THE
16 CONVERSATIONS?

17 A VERY -- I MEAN, NOT MUCH OF THEM.

18 Q WERE THOSE THE CONVERSATIONS THAT THE DEFENSE
19 ATTORNEYS REFRESHED YOUR RECOLLECTION ON BEFORE YOU
20 TESTIFIED?

21 MR. GUTERRES: OBJECTION. FOUNDATION.

22 THE COURT: SUSTAINED.

23 BY MR. MCMILLAN:

24 Q DO YOU RECALL EVER BEING TOLD BY DR. YIM THAT
25 WE NEEDED TO KEEP CHECKING EVERY TWO WEEKS ON THE
26 BABY'S WEIGHT?

27 A NO, I DON'T.

28 Q DO YOU SEE AT THE BOTTOM THERE WHERE IT SAYS:

1 "DAD AGREED TO PROVIDE PATIENT
2 COUNSELING, WILL RECHECK IN TWO WEEKS"?
3 THAT DOESN'T REFRESH YOUR RECOLLECTION?

4 A NO.

5 MR. GUTERRES: OBJECTION. THE WITNESS IS
6 BEING SHOWN A DOCUMENT WITHOUT IT HAVING BEEN
7 IDENTIFIED.

8 THE COURT: SUSTAINED.

9 BY MR. MCMILLAN:

10 Q IT'S EXHIBIT NO. 4, BATES NO. 0000924. IT'S
11 THE SAME RECORD.

12 DOES IT REFRESH YOUR RECOLLECTION THAT YOU
13 AGREED TO HAVE THE BABY RECHECKED FOR WEIGHT IN TWO
14 WEEKS?

15 A NO.

16 Q DO YOU DENY THAT?

17 A NO, I DON'T DENY IT. I JUST DON'T RECALL. IT
18 WAS SEVEN YEARS AGO.

19 Q DO YOU RECALL WHETHER OR NOT, TWO WEEKS AFTER
20 MARCH 16TH, THE BABY ACTUALLY WAS BROUGHT BACK IN FOR A
21 TWO-WEEK CHECKUP ON THE WEIGHT?

22 A I DON'T RECALL, NO.

23 Q DOES LOOKING AT THAT E-MAIL THAT'S PART OF
24 EXHIBIT 4, BATES-MARKED 000925, REFRESH YOUR
25 RECOLLECTION ABOUT WHETHER OR NOT THE BABY WAS BROUGHT
26 BACK ON OR ABOUT MARCH 31ST FOR A RECHECK ON WEIGHT?

27 MR. GUTERRES: OBJECTION. MISCHARACTERIZES
28 THE DOCUMENT THAT'S BEING SHOWN.

1 THE COURT: JUST A MOMENT. LET ME SEE THE
2 DOCUMENT, PLEASE.

3 OBJECTION IS SUSTAINED.

4 LET ME SEE COUNSEL, PLEASE.

5 (THE FOLLOWING PROCEEDINGS WERE HELD AT
6 SIDEBAR.)

7 THE COURT: WE'RE AT SIDEBAR AND COUNSEL ARE
8 PRESENT.

9 MR. MCMILLAN, I THINK THAT THE Demeanor AND
10 TONE OF VOICE WITH WHICH YOU'RE ADDRESSING THIS WITNESS
11 IS UNCALLED FOR. I'LL LEAVE IT UP TO YOU WHETHER YOU
12 THINK SHOWING SOMEONE A MESSAGE FROM SEVEN, EIGHT YEARS
13 AGO, WHATEVER IT IS, IS GOING TO REFRESH THEIR
14 RECOLLECTION TO A PARTICULAR DATE, BUT IT DOESN'T SEEM
15 TO BE A PROFITABLE WAY, TO ME, TO BE APPROACHING
16 CROSS-EXAMINATION.

17 BUT THE REASON I WANT TO TALK TO YOU IS I'M
18 FINDING THE TONE AND Demeanor TOWARDS THE WITNESS TO BE
19 UNSATISFACTORY. I'M GOING TO ASK YOU TO TREAT HIM WITH
20 MORE COURTESY THAN YOU HAVE BEEN.

21 MR. MCMILLAN: OKAY. I APOLOGIZE, YOUR HONOR.

22 (THE FOLLOWING PROCEEDINGS WERE HELD IN
23 OPEN COURT IN THE PRESENCE OF THE
24 JURY.)

25 BY MR. MCMILLAN:

26 Q DO YOU RECALL LAST WEEK, MR. MILLS, TALKING TO
27 US ABOUT WHEN IT WAS THAT MS. DUVAL STARTED INTRODUCING
28 SOLID FOODS TO BABY RYAN?

1 A IF YOU CAN REFRESH MY MEMORY -- LIKE I SAID, I
2 DON'T REMEMBER EXACTLY THE TIME OR WHAT I SAID. SO I
3 WANT TO MAKE SURE WHAT I SAID.

4 Q WELL, LET ME DO THIS: YOU DO RECALL
5 DISCUSSING WITH US LAST WEEK THERE BEING SOME ISSUE
6 ABOUT WHEN TO START INTRODUCING THE CHILD SOLID FOODS;
7 RIGHT?

8 A YES.

9 Q DO YOU RECALL WHEN IT WAS FINALLY RESOLVED
10 THAT IT WAS APPROPRIATE TO START INTRODUCING SOLID
11 FOODS?

12 A NO, I DO NOT.

13 Q DO YOU RECALL ANYONE EVER EXPLAINING TO YOU
14 WHY IT WAS THAT BABY RYAN WAS NOT INTRODUCED SOLID
15 FOODS PRIOR TO AGE OF SIX MONTHS OLD?

16 A CAN YOU REPEAT YOUR QUESTION?

17 THE COURT: BEFORE YOU ANSWER THAT, FOR THE
18 PURPOSE OF THE RECORD, YOU'VE PLACED A DOCUMENT ON THE
19 PROJECTOR, ON THE ELMO --

20 MR. MCMILLAN: I GOT SIDETRACKED.

21 THE COURT: -- THAT YOU HAVEN'T IDENTIFIED.

22 MR. MCMILLAN: OH, IT'S STILL EXHIBIT NO. 4,
23 BATES NO. 000926. AND I'M PROBABLY A LITTLE PREMATURE
24 ON IT ANYWAY BECAUSE I GOT SIDETRACKED.

25 THE COURT: OH, OKAY. THAT'S FINE.

26 MR. MCMILLAN: I'LL GET BACK TO THAT IN A
27 SECOND. EXCEPT NOW I FORGOT MY QUESTION. HOLD ON,
28 I'LL GET IT.

1 BY MR. MCMILLAN:

2 Q DO YOU REMEMBER WHY IT WAS THAT THERE WAS A
3 CONCERN ABOUT INTRODUCING BABY RYAN TO SOLID FOODS
4 BEFORE SIX MONTHS?

5 A I WASN'T AROUND FOR THE FIRST SIX MONTHS, SO I
6 DON'T KNOW.

7 Q YOU WEREN'T AROUND FOR THE FIRST SIX MONTHS?

8 A NO. WELL, I SAW HIM TWICE FOR THE FIRST SIX
9 MONTHS.

10 Q OKAY. BUT YOU DO RECALL -- OR DO YOU RECALL
11 THAT, AT LEAST AS OF MARCH 31, 2009, MOM HAD STARTED TO
12 INTRODUCE SOLIDS?

13 A THAT'S WHAT THE DOCUMENT SAYS, YES.

14 Q WELL, BY THIS TIME, YOU WERE COMMUNICATING
15 WITH DR. YIM, WEREN'T YOU?

16 A I BELIEVE I HAD A PHONE CALL OR TWO. I MEAN,
17 WE WEREN'T, LIKE, TALKING ON A REGULAR BASIS, NO. FROM
18 WHAT I RECALL.

19 Q DO YOU RECALL TALKING TO DR. YIM ABOUT YOUR
20 OWN CONCERNS THAT BABY RYAN DIDN'T SEEM TO LIKE TUMMY
21 TIME?

22 A NO, I DON'T RECALL THAT.

23 Q WELL, LET'S LOOK FIRST -- THIS IS STILL
24 EXHIBIT NO. 4, BATES NO. 000932. IT'S -- DATE OF CALL
25 IS 5/22/2009:

26 "SPOKE WITH FATHER, RYAN MILLS."

27 DO YOU SEE THERE WHERE IT SAYS:

28 "PARENT DISCUSSED CONCERN ABOUT

1 PATIENT NOT LIKING TUMMY TIME"?

2 A YES.

3 Q DO YOU HAVE AN UNDERSTANDING WHO THAT PATIENT
4 WAS?

5 A WELL, I'M SURE IT'S RYAN. I'M SURE IT'S RYAN.

6 Q THE BABY?

7 A YES.

8 Q DO YOU RECALL WHY IT WAS YOU HAD THIS CONCERN
9 ABOUT BABY RYAN NOT LIKING TUMMY TIME?

10 A NO, I DO NOT RECALL.

11 Q DO YOU RECALL DR. YIM -- ANY DISCUSSIONS WITH
12 DR. YIM ABOUT THE POSSIBILITY THAT PERHAPS THE CHILD
13 SUFFERED FROM AUTISM?

14 A NO, I DON'T REMEMBER -- I MEAN, I REMEMBER
15 CONCEPTS, BUT I DON'T REMEMBER DISCUSSIONS, NO.

16 Q DO YOU KNOW WHETHER OR NOT DR. YIM EVER HAD
17 ANY SIMILAR DISCUSSIONS WITH RAFAELINA -- OR MS. DUVAL?

18 A NO, I DON'T.

19 Q DO YOU RECALL WHETHER OR NOT SHE -- DR. YIM
20 ACTUALLY TOLD YOU THAT SHE WAS GOING TO HAVE THESE
21 SIMILAR DISCUSSIONS WITH MS. DUVAL?

22 A NO, I DO NOT.

23 Q AND REVIEWING THIS DOCUMENT DOESN'T HELP
24 REFRESH YOUR RECOLLECTION?

25 A THIS IS NOT MY DOCUMENT. SO THIS IS HER
26 NOTES, SO -- OR MAYBE -- I DON'T KNOW. MAYBE I DO HAVE
27 HER NOTES. I DON'T KNOW WHETHER I HAVE HER NOTES OR
28 NOT. BUT I DON'T REMEMBER THE NOTES THAT SHE HAS, NO.

1 Q NOW, I SEEM TO RECALL, AND CORRECT ME IF I'M
2 WRONG, THAT YOUR TESTIMONY LAST FRIDAY WAS TO THE
3 EFFECT THAT YOU DIDN'T REALIZE THAT THE BABY WAS HAVING
4 THESE PROBLEMS WITH ROLLING AND CRAWLING AND CRUISING
5 AND MOVING, THINGS LIKE THAT, UNTIL SOMETIME IN AUGUST
6 WHEN YOU ACTUALLY STARTED GETTING OVERNIGHTS.

7 DID I GET THAT RIGHT?

8 A MIDDLE OF JULY, THAT'S WHEN I STARTED GETTING
9 OVERNIGHTS, AROUND JULY 16TH -- OR MIDDLE OF JULY
10 SOMEWHERE, I STARTED GETTING OVERNIGHTS.

11 MR. GUTERRES: YOUR HONOR, IF I MAY CLARIFY.
12 MR. MILLS WAS ACTUALLY HERE ON THURSDAY, AND I KNOW THE
13 QUESTIONS KEEP REFERENCING TO THE FACT IT WAS FRIDAY.

14 MR. MCMILLAN: DID WE HAVE FRIDAY OFF?

15 THE COURT: FRIDAY WE WEREN'T RECEIVING
16 EVIDENCE. BUT EVERYBODY WILL UNDERSTAND THAT YOU'RE
17 REFERRING TO THE LAST TIME WHEN MR. MILLS WAS HERE.

18 MR. MCMILLAN: I APOLOGIZE. THAT'S WHAT I
19 MEANT. IT'S JUST SORT OF ALL BECOMING A FOG.

20 THE COURT: THAT'S UNDERSTANDABLE.

21 MR. MCMILLAN: I'M SORRY.

22 BY MR. MCMILLAN:

23 Q ANYWAY, EXHIBIT 4, BATES NO. 000928, IT'S A
24 RECORD FROM A VISIT WITH DR. YIM ON APRIL 30, 2009,
25 WOULD HAVE BEEN BEFORE THE PHONE CALL THAT WE JUST
26 SPOKE OF.

27 DO YOU REMEMBER EVER TALKING WITH DR. YIM
28 ABOUT THE TYPES OF FOODS THAT BABY RYAN WAS EATING AT

1 THAT POINT IN TIME?

2 A I DON'T RECALL, NO.

3 Q DO YOU SEE THERE AVOCADO, CHICKEN, TURKEY?
4 THOSE WERE SOME OF THE FOODS THAT YOU WERE ABLE TO FEED
5 HIM TOO; RIGHT?

6 A FROM WHAT I RECALL, I FED WHAT WAS BEING
7 PACKED.

8 Q OKAY. BUT -- OKAY. THAT'S FAIR.

9 DO YOU RECALL BEING PACKED AVOCADO, CHICKEN,
10 TURKEY, CORN, BANANAS, PRUNES, SQUASH, AND PUMPED
11 BREAST MILK -- OR PUMPED BREAST MILK?

12 DO YOU RECALL ANY OF THOSE FOODS BEING PACKED?

13 A NO, I DO NOT.

14 Q NOW, LATER ON, WHEN YOU STARTED HAVING YOUR
15 OVERNIGHTS YOU FED HIM YOUR OWN FOODS; RIGHT?

16 A FROM WHAT I RECALL, YES.

17 Q DO YOU RECALL FEEDING HIM AVOCADO?

18 A I DON'T RECALL WHAT I WAS FEEDING HIM, NO.

19 Q DO YOU RECALL HIM EVER LIKING AVOCADO WHEN HE
20 WAS A BABY?

21 A I DON'T RECALL IT, NO.

22 Q PERHAPS THIS WILL HELP: BREAD DIPPED IN
23 AVOCADO AND OLIVE OIL.

24 DOES THAT REFRESH YOUR RECOLLECTION?

25 A NO, IT DOES NOT.

26 Q ANYWAY, ON THAT VISIT -- THIS IS GOING OVER TO
27 BATES NO. 000929. TOWARDS THE MIDDLE OF THE PAGE
28 THERE, THERE'S MILESTONES.

1 DO YOU SEE THAT?

2 A YES.

3 Q AND YOU SEE THERE'S A COLUMN THAT SAYS FINAL
4 STATUS?

5 A YES.

6 Q ON THE RIGHT-HAND SIDE?

7 A YES.

8 Q AND YOU SEE A COUPLE OF THOSE -- MANY OF THOSE
9 ARE PASS, BUT A COUPLE OF THOSE ARE FAIL, MAINLY CREEPS
10 AND CRAWLS AND CRUISES.

11 HE FAILED THOSE MILESTONES?

12 A I GUESS THAT'S WHAT IT SAYS, YEAH.

13 Q OKAY. WELL, WHEN YOU HAD THAT CONVERSATION
14 WITH DR. YIM ON THE TELEPHONE ON MAY 22, 2009, DO YOU
15 RECALL HER TALKING TO YOU ABOUT HIM FAILING SOME OF HIS
16 DEVELOPMENTAL MILESTONES?

17 A NO, I DON'T RECALL ANY CONVERSATIONS I HAD
18 WITH HER. I MEAN, I REMEMBER HAVING CONVERSATIONS. I
19 DON'T REMEMBER WHAT THE CONTEXT WAS.

20 Q THEN, AT SOME POINT, DO YOU RECALL CALLING
21 DR. YIM ON THE TELEPHONE -- DO YOU RECALL CALLING
22 DR. YIM ON THE TELEPHONE AND ACTUALLY COMPLAINING TO
23 HER THAT MS. DUVAL, IN YOUR ESTIMATION, WAS TAKING THE
24 BABY TO SEE THE DOCTOR TOO MUCH?

25 A LIKE I SAID, I DON'T REMEMBER ANY PHONE CALLS
26 I HAD WITH HER. I MEAN, I KNOW I CALLED, I JUST DON'T
27 REMEMBER THE CONTENTS OF THE CONVERSATION.

28 Q OKAY. ONE MOMENT.

1 THIS IS ALSO EXHIBIT NO. 4, BATES NO. 000943,
2 AND THE DATE OF CONTACT IS JUNE 25TH, 2009. IF I CAN
3 DRAW YOUR ATTENTION DOWN TO -- OKAY.

4 YOU SEE THERE THE PART THAT I UNDERLINED. IT
5 SAYS:

6 "DAD CONCERNED THAT PATIENT IS
7 COMING TO SEE THE DOCTOR EXCESSIVELY,
8 AND I REASSURED HIM THAT RYAN'S VISITS
9 WERE NOT EXCESSIVE AND WERE
10 APPROPRIATE."

11 DOES THAT REFRESH YOUR RECOLLECTION ABOUT THE
12 CONVERSATION YOU HAD WITH DR. YIM ON JUNE 25, 2009
13 WHERE YOU COMPLAINED THAT MS. DUVAL WAS TAKING TO SEE
14 THE -- TAKING THE BABY TO SEE THE DOCTOR EXCESSIVELY?

15 A IT DOESN'T RECALL THE CONVERSATION, BUT IF SHE
16 PUT IT IN THERE, I'M SURE SHE PUT HER NOTES IN
17 CORRECTLY.

18 Q WELL, DO YOU RECALL A POINT IN TIME IN MAY OR
19 JUNE, SOMETIME IN THAT TIME FRAME, WHEN YOU FELT THAT
20 RAFAELINA WAS JUST TAKING THE BABY TO SEE THE DOCTOR
21 TOO MUCH?

22 A I DO REMEMBER A TIME WHEN, EARLY ON, THAT --
23 THAT THERE -- IT SEEMED LIKE HE HAD WEEKLY VISITS WITH
24 THE DOCTOR, SOMETHING LIKE THAT. I REMEMBER SOMETHING
25 HAVING TO DO WITH THAT, YES.

26 Q COULD THAT HAVE BEEN LIKE EVERY TWO WEEKS FOR
27 THOSE WEIGHT CHECKS?

28 A I DON'T REMEMBER.

1 Q WELL, NOW THAT WE'VE TALKED ABOUT IT FOR A
2 WHILE, DO YOU HAVE AT LEAST A VAGUE RECOLLECTION THAT
3 AS EARLY AS MARCH THERE WERE CONCERNS ABOUT THE BABY'S
4 WEIGHT AND HOW IT WASN'T INCREASING?

5 A I DON'T REMEMBER THE WEIGHT INCREASING IN THE
6 CONCERNS. WHAT I DO RECALL IS, IN READING THROUGH SOME
7 OF THE E-MAILS, IS -- YEAH, I DON'T -- YEAH. THERE'S A
8 VAGUE RECOLLECTION.

9 WAIT, LET ME --

10 THE WITNESS: CAN I REPHRASE THAT?

11 THE COURT: NO, YOU'VE ANSWERED THAT QUESTION.

12 THE WITNESS: OKAY.

13 BY MR. MCMILLAN:

14 Q LET ME MAKE SURE I UNDERSTAND. YOU NOW DO
15 HAVE A VAGUE RECOLLECTION, IN THAT MARCH/APRIL/MAY/JUNE
16 TIME FRAME OF 2009, THAT THERE BEING SOME CONCERNS THAT
17 THE BABY WAS NOT DEVELOPING THE WAY HE SHOULD?

18 A MY FIRST VISITS STARTED IN MID-FEBRUARY. SO
19 THAT WAS PROBABLY TWO OR THREE WEEKS AFTER I STARTED
20 VISITING. AND MY VISITS WERE PROBABLY TWO HOURS, YOU
21 KNOW, COUPLE TIMES A WEEK. SO IT WAS ALL KIND OF A
22 FLOOD OF INFORMATION. SO I DON'T -- LIKE I SAID, I
23 DON'T RECALL THE SPECIFICITY OF WHAT WAS GOING ON.

24 Q OKAY. I UNDERSTAND THAT YOUR VISITS -- YOUR
25 VISITS STARTED IN FEBRUARY.

26 A CORRECT.

27 Q WE'RE FOCUSED RIGHT NOW, THOUGH, ON YOUR
28 COMMUNICATIONS WITH THE DOCTOR --

1 A RIGHT.

2 Q -- AND THE INFORMATION SHE WAS GIVING YOU.

3 A BUT YOU ASKED ME A QUESTION ABOUT MARCH, WHICH
4 WOULD HAVE BEEN TWO WEEKS TO THREE WEEKS AFTER I
5 STARTED VISITING THE CHILD.

6 Q OKAY. LET'S JUST MAKE SURE I'M RIGHT ON THIS.
7 MAYBE I GOT THE DATE WRONG. I DON'T WANT TO DO THAT.

8 TWO WEEKS AFTER YOU STARTED VISITING THE
9 CHILD -- EXHIBIT 4, BATES NO. 924 -- WOULD HAVE BEEN
10 MARCH 16TH.

11 A SO IT WAS ABOUT FOUR WEEKS.

12 Q ABOUT FOUR WEEKS. YOU'RE HAVING CONVERSATIONS
13 WITH DR. YIM?

14 A THIS IS MAYBE THE FIRST. I DON'T REMEMBER IN
15 THE SUCCESSION. I THINK IN ALL THE TIME I ONLY HAD
16 MAYBE TWO OR THREE CONVERSATIONS WITH HER. LIKE I
17 SAID, I DON'T REMEMBER.

18 Q BUT FOCUSING ON THIS ONE HERE, WHETHER IT'S
19 THE FIRST OR SECOND OR THIRD, WHATEVER IT IS, YOU DO
20 AGREE THAT, AT LEAST AS OF MID-MARCH, SHE WAS
21 EXPRESSING TO YOU -- AND IF YOU HAVE A VAGUE
22 RECOLLECTION OF THIS, THAT'S GOOD ENOUGH FOR ME, JUST
23 LET ME KNOW -- SHE WAS EXPRESSING TO YOU THAT WE NEED
24 TO BE CHECKING THIS BABY'S WEIGHT EVERY TWO WEEKS?

25 A I DON'T KNOW IF SHE EXPRESSED IT -- I DON'T
26 REMEMBER WHAT SHE EXPRESSED TO ME, WHAT SHE WROTE DOWN
27 IN HER NOTES. I DON'T KNOW IF SHE EXPRESSED THAT TO
28 ME. I DON'T REMEMBER THE PHONE CALL WITH HER.

1 Q OKAY. YOU DON'T -- LET ME ASK IT THIS WAY.

2 WELL, LET'S JUST MOVE ON.

3 DO YOU KNOW WHAT PCDA IS?

4 A NO.

5 Q PASADENA CHILD DEVELOPMENT ASSOCIATION?

6 A I THINK I READ IT THROUGH ONE OF THE E-MAILS.

7 Q WELL, DID YOU ALSO DISCUSS WITH DR. YIM THE
8 IDEA OF GETTING AN OCCUPATIONAL THERAPY EVALUATION?

9 DO YOU REMEMBER THAT?

10 MR. GUTERRES: OBJECTION, YOUR HONOR. YOUR
11 HONOR, ONCE AGAIN, COUNSEL IS PRESENTING EXHIBITS
12 WITHOUT IDENTIFYING THEM.

13 THE COURT: YES.

14 MR. MCMILLAN: IT'S EXHIBIT 4, BATES NO. 943.

15 THE COURT: MR. MILLS, DO YOU --

16 THE WITNESS: I'M SORRY. I'M JUST READING THE
17 E-MAIL.

18 BY MR. MCMILLAN:

19 Q LET ME MAKE IT EASIER. LET ME GET A BOOK FOR
20 YOU.

21 A OKAY. I'VE READ IT. THANK YOU.

22 Q DOES THAT REFRESH YOUR RECOLLECTION AT ALL
23 ABOUT DR. YIM'S RECOMMENDATION THAT BABY RYAN HAVE AN
24 OCCUPATIONAL THERAPY EVALUATION?

25 A A VAGUE RECOLLECTION.

26 Q OKAY. AND DO YOU RECALL HAVING A CONVERSATION
27 WITH MS. DUVAL WHEREIN SHE HAD SET UP OR WAS ATTEMPTING
28 TO SET UP THAT OCCUPATIONAL THERAPY EVALUATION WITH

1 PCDA OR THE PASADENA CHILD DEVELOPMENT ASSOCIATION?

2 A IF IT WAS, IT WAS THROUGH E-MAILS, SO I'M SURE
3 WE CAN SEE THE E-MAIL ON IT. BECAUSE EVERYTHING WAS
4 THROUGH E-MAIL.

5 Q WELL, THIS IS MY QUESTION, THOUGH -- IT MAY OR
6 MAY NOT BE IN THE E-MAILS, BUT MY QUESTION IS DOES THIS
7 REFRESH YOUR RECOLLECTION?

8 A LIKE I SAID, THERE'S A VAGUE RECOLLECTION
9 ABOUT THE OT EVALUATION.

10 Q OKAY. NOW, SHORTLY AFTER JUNE 25, 2009 -- AND
11 WE'RE STILL REFERENCING EXHIBIT 4, BATES NO. 943,
12 SHORTLY AFTER THAT, DR. YIM WITHDREW AS BABY RYAN'S
13 DOCTOR.

14 DO YOU REMEMBER THAT?

15 A I DO.

16 Q AT THAT POINT IN TIME, YOU HAD A COURT ORDER
17 SAYING THAT ANY FURTHER DOCTOR VISITS HAD TO BE AGREED
18 TO?

19 A CORRECT.

20 Q DID THAT INCLUDE OCCUPATIONAL THERAPY?

21 A I BELIEVE -- YES.

22 Q AND YOU DIDN'T AGREE TO ALLOW MS. DUVAL TO
23 TAKE THE BABY TO PCDA, DID YOU?

24 A I DON'T RECALL THAT.

25 Q YOU DON'T RECALL IT?

26 A NO, I DON'T.

27 Q DO YOU RECALL AN E-MAIL WITH MS. DUVAL WHEREIN
28 THE ISSUE WAS DISCUSSED AND YOU DIDN'T WANT TO GO TO

1 PCDA. YOU WANTED TO GO TO THE REGIONAL CENTER IF YOU
2 COULD GET IN THERE INSTEAD?

3 A I DO REMEMBER, YES, AND I GOT AN APPOINTMENT
4 WITH THE LONG BEACH REGIONAL CENTER.

5 Q THE LONG BEACH REGIONAL CENTER, THOUGH, THAT
6 WAS NOT THE REGION WHERE THE MOTHER AND BABY PRIMARILY
7 RESIDED, WAS IT?

8 A SHE HAD SAID SHE HAD TRIED TO CONTACT THREE
9 DIFFERENT REGIONAL CENTERS AND COULD NOT GET A MEETING.
10 SO I SAID OKAY, WELL, LET ME SEE IF I CAN GET
11 ONE AT LONG BEACH.

12 MR. MCMILLAN: OBJECTION, YOUR HONOR.
13 NONRESPONSIVE. MOVE TO STRIKE.

14 THE COURT: ALL RIGHT. THE OBJECTION IS
15 SUSTAINED. THE MOTION TO STRIKE IS GRANTED. THE
16 ANSWER WILL BE STRICKEN.

17 THE QUESTION WAS: THE REGIONAL CENTER WASN'T
18 THE ONE WHERE THE MOTHER AND BABY RESIDED?

19 THE WITNESS: CORRECT.

20 BY MR. MCMILLAN:

21 Q THAT'S CORRECT.

22 DO YOU RECALL A CONVERSATION WITH THE REGIONAL
23 CENTER COORDINATOR, CINDY PARRAS, SOMETIME IN SEPTEMBER
24 OF 2009, WHEREIN MS. PARRAS TOLD YOU THAT THE LOCATION
25 OF THE REGIONAL CENTER WAS DEPENDENT ON THE ADDRESS OF
26 THE PARENT WITH WHOM THE CHILD PRIMARILY RESIDED AND
27 THAT THERE WAS NO CHOICE IN THE MATTER?

28 DO YOU RECALL THAT CONVERSATION?

1 A NO, I DON'T RECALL THAT CONVERSATION.

2 Q OKAY. LET ME SEE IF I CAN HELP YOU.

3 LET ME GET YOU TO TURN TO EXHIBIT 82, AND I
4 DON'T KNOW IF YOU HAVE IT IN THAT BOOK OR NOT.

5 A MINE GOES UP TO 23.

6 Q YEAH, LET ME SEE.

7 OKAY. IF I CAN GET YOU TO TURN TO BATES
8 NO. 001491. AND IF I CAN GET YOU TO GO -- ARE YOU AT
9 001491?

10 A CORRECT. I'M THERE.

11 Q IF YOU CAN GO DOWN TO THE SECOND TO THE LAST
12 ENTRY, IT'S THE ENTRY DATED OCTOBER 30, 2009.

13 DO YOU SEE THAT?

14 A YES, I DO.

15 Q OKAY. GO DOWN FIVE LINES, AND THE SENTENCE
16 THAT SAYS -- BEGINS WITH "MS. PARRAS STATED THAT."

17 IF YOU CAN READ THAT SENTENCE TO YOURSELF, I
18 WOULD APPRECIATE IT.

19 A OKAY. I READ IT.

20 Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOU
21 HAD A CONVERSATION WITH MS. PARRAS AND THAT MS. PARRAS
22 SPECIFICALLY TOLD YOU THAT THE LOCATION OF THE REGIONAL
23 CENTER WAS DETERMINED BY THE ADDRESS OF THE PARENT WITH
24 WHOM THE CHILD PRIMARILY RESIDES?

25 A HONESTLY, I DON'T REMEMBER THIS CONVERSATION
26 AT ALL WITH MS. PARRAS. I DON'T REMEMBER EVER SPEAKING
27 WITH MS. PARRAS.

28 Q OKAY.

1 A I'M NOT SAYING WHAT SHE'S SAYING HERE IS WRONG
2 I HONESTLY DON'T REMEMBER EVER SPEAKING WITH
3 MS. PARRAS.

4 Q DO YOU REMEMBER EVER MEETING MS. PARRAS?

5 A I DON'T EVER REMEMBER EVEN MEETING MS. PARRAS,
6 NO.

7 Q WAS MS. PARRAS AT THE TDM?

8 A THERE WERE QUITE A FEW PEOPLE. I DON'T RECALL
9 WHO WAS THERE AND WHO WAS NOT.

10 Q WELL, DO YOU RECALL EVER SPEAKING WITH THE
11 OCCUPATIONAL THERAPIST, ANGELA ESPINOZA?

12 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
13 THE SCOPE.

14 THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16 Q MS. SUSAN PENDER, YOU SPOKE LAST WEEK ABOUT
17 YOUR VARIOUS CONVERSATIONS WITH MS. PENDER.

18 DO YOU RECALL THAT?

19 A I DO REMEMBER MS. PENDER, YES.

20 Q OKAY. AND DID SHE COME TO VISIT YOU AT YOUR
21 HOUSE, DO YOU RECALL?

22 A I THINK SHE DID. I DON'T REMEMBER THE --
23 THERE WAS SO MUCH GOING ON. I DON'T REMEMBER THE
24 SPECIFIC EVENTS THAT HAPPENED.

25 Q SURE. SURE, I UNDERSTAND. BUT YOU HAVE A
26 VAGUE RECOLLECTION OF HER VISITING YOU AT YOUR HOUSE AT
27 LEAST?

28 A I THINK SHE DID. LIKE I SAID, I THINK IT

1 SEEMS TO ME DID.

2 Q DO YOU RECALL WHETHER OR NOT SHE WAS
3 ACCOMPANIED BY A PUBLIC HEALTH NURSE, LAURA AUSTIN?

4 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

5 THE COURT: OVERRULED.

6 THE WITNESS: THE ONLY TIME I REMEMBER THE
7 PUBLIC HEALTH NURSE WAS RIGHT AFTER RYAN CAME TO LIVE
8 WITH ME. THAT'S THE ONLY TIME I REMEMBER A PUBLIC
9 HEALTH NURSE. AND I COULD HAVE MY DATES MESSED UP.
10 BY MR. MCMILLAN:

11 Q SURE. SURE, I UNDERSTAND. IT'S SEVEN YEARS
12 AGO. I GET IT. I AGREE.

13 BUT GOING BACK TO WHAT YOU DO RECALL OF THAT
14 HOME VISIT WITH MS. PENDER, WHETHER MS. AUSTIN WAS
15 THERE OR NOT -- DON'T WORRY ABOUT THAT FOR THE
16 MOMENT -- DO YOU RECALL COMPLAINING TO HER THAT
17 MS. DUVAL HAD TAKEN THE CHILD TO THE CATC CLINIC, AND
18 YOU TELLING MS. PENDER THAT YOU WERE EXTREMELY
19 DISPLEASED WITH THAT?

20 A I TOLD MS. -- CAN I ANSWER THE QUESTION?

21 Q SURE.

22 A I TOLD HER THAT I WAS DISPLEASED THAT I WASN'T
23 NOTIFIED UNTIL AFTERWARDS.

24 Q AND IN RESPONSE TO THAT, DID MS. PENDER
25 EXPLAIN TO YOU THAT IT WAS ABSOLUTELY NECESSARY THAT
26 BABY RYAN BE SEEN BY THE CATC CLINIC AND EVALUATED BY
27 THE CATC CLINIC BECAUSE IT LOOKED LIKE HE HAD SOME
28 SERIOUS ISSUES AND THEY NEEDED TO BE ADDRESSED.

1 DO YOU RECALL THAT?

2 A I DON'T REMEMBER THE CONVERSATION, BUT I
3 REMEMBER THAT WHEN ALL OF A SUDDEN THEY GOT THE CATC
4 CLINIC INVOLVED, OBVIOUSLY, IT WAS KIND OF BIGGER THAN
5 ME. AND AT THAT PARTICULAR TIME I JUST SAID I WAS -- I
6 REMEMBER BEING UPSET THAT I WASN'T INCLUDED IN BEING
7 THERE. I JUST HEARD ABOUT THE MEETING AFTERWARDS.

8 Q OKAY. LET'S LOOK AT EXHIBIT NO. 82, BATES
9 NO. 001486.

10 A OKAY.

11 Q OKAY. IN READING THAT, DOES THAT REFRESH YOUR
12 RECOLLECTION THAT IN THIS CONVERSATION MS. PENDER
13 SPECIFICALLY TOLD YOU THAT IT'S NOT UP TO THE FAMILY,
14 IT'S NOT UP TO THE CSW, THE BABY NEEDS TO BE EVALUATED
15 BY THESE MEDICAL PROFESSIONALS?

16 A YEAH, I MEAN, I AGREE, WHAT WAS WRITTEN, YEAH.

17 MR. GUTERRES: OBJECTION. MOVE TO STRIKE AS
18 NONRESPONSIVE.

19 THE COURT: MR. MILLS, IN GIVING YOUR LAST
20 ANSWER, WERE YOU STATING THAT HAVING READ WHAT YOU DID
21 REFRESHED YOUR MEMORY, OR WERE YOU SAYING THAT YOU SEE
22 WHAT WAS WRITTEN?

23 THE WITNESS: I JUST -- I SEE WHAT WAS
24 WRITTEN.

25 THE COURT: ALL RIGHT. THEN THE MOTION IS
26 GRANTED. THE ANSWER WILL BE STRICKEN AND THE JURY
27 DISREGARD IT.

28 GO AHEAD, MR. MCMILLAN.

1 BY MR. MCMILLAN:

2 Q DID YOU TELL MS. PENDER IN THAT CONVERSATION
3 THAT YOU BELIEVED EVERYTHING GOING WRONG WITH THE BABY,
4 OR SOMETHING LIKE THAT -- EVERYTHING GOING WRONG WITH
5 THE BABY WAS MS. DUVAL'S FAULT? SHE WAS TO BLAME?

6 MR. GUTERRES: OBJECTION. FOUNDATION.
7 SPECULATION.

8 THE COURT: OVERRULED.

9 THE WITNESS: I DON'T REMEMBER WHAT I TALKED
10 TO HER ABOUT THAT DAY.

11 BY MR. MCMILLAN:

12 Q LET ME ASK YOU, AS YOU SIT HERE, YOU MAY NOT
13 REMEMBER CLEARLY, BUT DO YOU DENY TELLING MS. PENDER IN
14 THAT CONVERSATION ON OCTOBER 21ST THAT "WHATEVER IS
15 GOING WRONG WITH THE BABY HERE, IT'S ALL HER FAULT"?

16 DO YOU DENY THAT?

17 MR. GUTERRES: OBJECTION --

18 THE WITNESS: I LITERALLY DO NOT RECALL THE
19 CONVERSATION. SORRY.

20 BY MR. MCMILLAN:

21 Q NOW, BY THE TIME THAT YOU WERE MEETING WITH
22 MS. PENDER IN OCTOBER OF 2009, THIS ISSUE ABOUT THE
23 DEVELOPMENTAL DELAYS OR FAILING TO MEET MILESTONES, THE
24 BABY FAILING TO GAIN WEIGHT, THOSE ARE ISSUES THAT
25 YOU'D KNOWN ABOUT SINCE AT LEAST MARCH OF 2009; RIGHT?

26 A NO, I WOULDN'T SAY MARCH.

27 Q WHEN WAS THE VERY FIRST TIME THAT YOU RECEIVED
28 ANY INFORMATION FROM DR. YIM REGARDING THE BABY'S

1 FAILURE TO MEET ANY KIND OF MILESTONE?

2 A I DON'T RECALL. AND LIKE I SAID, I'M SORRY, I
3 DON'T RECALL MUCH OF THESE THINGS THAT HAPPENED.

4 Q OKAY. THAT'S FINE. WE'VE ALREADY BEEN OVER
5 IT. I WON'T REHASH IT AGAIN.

6 NOW, AFTER DR. YIM WITHDREW AS THE DOCTOR FOR
7 BABY RYAN, MS. DUVAL, SHE CAME TO YOU WITH OTHER
8 DOCTORS; RIGHT?

9 A FROM WHAT I REMEMBER, DR. BROUSSEAU.

10 Q AND HE'S A DO; CORRECT?

11 A DOCTOR OF OSTEOPATHY.

12 Q IS THAT A DO?

13 A I BELIEVE SO, YES.

14 Q AND YOU UNDERSTAND THAT DO GOES THROUGH THE
15 SAME TRAINING AND EDUCATION AS AN MD AND THEN PLUS
16 SOME? YOU UNDERSTAND THAT; RIGHT?

17 A NO, I DON'T. I DID NOT UNDERSTAND THAT.

18 Q YOU UNDERSTAND THAT THE MEDICAL DIRECTOR FOR
19 THE COUNTY OF LOS ANGELES, DR. CHARLES SOPHY, HE'S A
20 DO?

21 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
22 THE SCOPE.

23 THE COURT: SUSTAINED.

24 BY MR. MCMILLAN:

25 Q AM I CORRECT THAT DR. BROUSSEAU, DO, WAS A
26 FAMILY PRACTICE DOCTOR?

27 A I DON'T REMEMBER WHETHER HE WAS.

28 Q ARE YOU AWARE -- AND YOU MAY NOT BE, JUST TELL

1 ME -- ACTUALLY, BETTER STILL.

2 AT THE TIME -- WE'RE TALKING JUNE 2009 -- WERE
3 YOU AWARE THAT A FAMILY PRACTICE DOCTOR, THE SCOPE OF
4 THEIR PRACTICE IS FROM BIRTH TO DEATH?

5 MR. GUTERRES: OBJECTION. RELEVANCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I HAVE NEVER HEARD OF THAT, NO.

8 BY MR. MCMILLAN:

9 Q OKAY.

10 A TO THIS DAY, I'VE NEVER HEARD OF THAT BEFORE.

11 Q OKAY. NOW, A PEDIATRICIAN, AS FAR AS YOU
12 UNDERSTOOD IN 2009, THEIR SCOPE OF PRACTICE IS ONLY
13 FROM BIRTH TO THE AGE OF 18 YEARS OLD.

14 DO YOU KNOW THAT?

15 A I JUST KNEW THAT A PEDIATRICIAN WAS A
16 CHILDREN'S DOCTOR.

17 Q OKAY. AND YOU NEVER ACTUALLY WENT TO ANY
18 DOCTOR OR MEDICAL PROFESSIONAL TO ASK THEM TO FIND OUT
19 WHETHER OR NOT THE SCOPE OF PRACTICE FOR A FAMILY
20 PRACTITIONER INCLUDED BABIES, YOUNG CHILDREN ALL THE
21 WAY THROUGH ADULTHOOD?

22 A NO --

23 MR. GUTERRES: OBJECTION. RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. MCMILLAN:

26 Q SO, TO WRAP THAT WHOLE SECTION UP, YOU
27 REJECTED DR. BROUSSEAU AS A CHOICE FOR BABY RYAN;
28 CORRECT?

1 A I DID.

2 Q OKAY. AND THEN THERE WERE OTHER DOCTORS OVER
3 THE SUMMER FROM JUNE UNTIL AUGUST. DR. BROUSSEAU WAS
4 ONE. THERE WAS ANOTHER ONE, RIGHT, PEDIATRICIAN?

5 THE COURT: BEFORE YOU ANSWER, DO YOU
6 UNDERSTAND -- BY SAYING "ANOTHER ONE," YOU MEAN ANOTHER
7 DOCTOR SUGGESTED OR WHAT?

8 MR. MCMILLAN: AFFIRMATIVE. ANOTHER DOCTOR
9 SUGGESTED. ANOTHER PEDIATRICIAN.

10 THE WITNESS: I THINK THE BEST THING WOULD BE
11 JUST TO PUT UP THE E-MAILS BECAUSE EVERY SINGLE THING
12 WAS IN THE E-MAILS. SO IF I CAN READ THE E-MAIL THEN I
13 CAN KIND OF GO THROUGH ON WHAT I REMEMBER AND WHAT I
14 DON'T BECAUSE IT'S ALL IN THE E-MAILS.

15 BY MR. MCMILLAN:

16 Q SURE, I UNDERSTAND THAT YOU MAY HAVE A VAGUE
17 MEMORY. BUT A LOT OF THE STUFF YOU TESTIFIED TO ABOUT
18 LAST WEEK YOU DIDN'T NEED AN E-MAIL. I JUST WANT TO
19 SORT OF DO THE SAME TEST OF YOUR MEMORY.

20 A OKAY. FROM WHAT I RECALL, THERE WAS THE
21 DOCTOR OF OSTEOPATHY. I DIDN'T -- BECAUSE HE WAS
22 STARTING TO HAVE CHALLENGES, AND THAT'S WHEN I KNEW HE
23 WAS STARTING TO HAVE CHALLENGES, IN AUGUST, I THINK,
24 LIKE -- YOU KNOW, LIKE I SAID, WHEN I STARTED GETTING
25 OVERNIGHTS. SO I SAID WHY DON'T -- INSTEAD OF GETTING
26 A DOCTOR --

27 DID HE MOVE TO STRIKE? I CAN -- I DON'T
28 KNOW --

1 Q NO, NO. GO AHEAD.

2 A OKAY. I JUST THOUGHT -- I DON'T KNOW MUCH
3 ABOUT DOCTORS, BUT I JUST THOUGHT, HEY, LET'S GET HIM A
4 PEDIATRICIAN.

5 Q OKAY. AND AFTER YOU REJECTED DR. BROUSSEAU,
6 DO, SHE BROUGHT YOU ANOTHER PEDIATRICIAN THAT WAS, IN
7 YOUR ESTIMATION, TOO FAR AWAY?

8 A I DON'T REMEMBER OTHER DOCTORS THAT SHE
9 BROUGHT TO ME. I THINK WE BOTH SUBMITTED DOCTORS TO
10 EACH OTHER. AND THEN I GUESS THE, YOU KNOW, WE WERE
11 SUPPOSED TO AGREE ON A DOCTOR.

12 Q SO YOU BOTH SUBMITTED DOCTORS TO EACH OTHER?

13 A CORRECT.

14 Q OKAY. SO SHE DID SUBMIT DOCTORS TO YOU, THEN?

15 A I BELIEVE SO.

16 Q IT WAS A MUTUAL EXCHANGE?

17 A I BELIEVE SO, YES.

18 Q AND AS TO MOST OF THE DOCTORS ON HER LIST,
19 THEY WERE TOO FAR AWAY FOR YOU.

20 THE COURT: IS THAT A QUESTION?

21 BY MR. MCMILLAN:

22 Q CORRECT?

23 A THAT WAS ONE OF THE -- ONE OF THE CHALLENGES
24 THAT I HAD BECAUSE I WANTED TO BE THERE.

25 Q OKAY. SO I AM CORRECT, JUST WANT TO MAKE SURE
26 I'M CORRECT, THAT ONE OF YOUR COMPLAINTS WAS THAT THE
27 DOCTOR -- AT LEAST ONE OF THE DOCTORS SHE WAS GIVING
28 YOU WAS TOO FAR AWAY?

1 A I --

2 Q IT WOULD TAKE YOU TOO MUCH TIME TO GET THERE?

3 A I WOULD HAVE LIKED TO ESTABLISH A PLACE IN THE
4 MIDDLE THAT WE COULD BOTH MEET WITH THE DOCTOR.

5 Q OKAY. I UNDERSTAND. I'M GOING TO ASK YOU TO
6 LISTEN CAREFULLY TO MY QUESTION.

7 AM I CORRECT THAT AT LEAST ONE OF THE DOCTORS
8 THAT YOU REJECTED THAT MS. DUVAL OFFERED UP AFTER YOU'D
9 REJECTED DR. BROUSSEAU, DO -- AT LEAST ONE OF THOSE
10 DOCTORS, YOU REJECTED THEM BECAUSE THEY WERE TOO FAR
11 AWAY FROM YOU, AND IT WOULD TAKE YOU BETWEEN 45 MINUTES
12 AND AN HOUR TO GET TO THAT DOCTOR'S APPOINTMENT?

13 A I REJECTED THEM BECAUSE I THOUGHT THERE WAS A
14 BETTER SOLUTION THAT I COULD BE THERE AT, NOT JUST
15 SIMPLY BECAUSE THEY WERE FAR AWAY, BUT SO I COULD -- WE
16 COULD ESTABLISH SOMETHING RIGHT IN BETWEEN.

17 Q HOLD ON ONE SECOND. GIVE ME JUST ONE MOMENT.

18 (PLAINTIFF'S EXHIBIT NO. 468.6346, WAS
19 MARKED FOR IDENTIFICATION BY THE
20 COURT.)

21 BY MR. MCMILLAN:

22 Q OKAY. THIS IS EXHIBIT NO. 468. SO IT'S GOING
23 TO BE A DIFFERENT BOOK.

24 AND IF YOU CAN READ THAT TO YOURSELF FOR ONE
25 MOMENT.

26 MR. GUTERRES: YOUR HONOR, MAY I HAVE --

27 MR. MCMILLAN: OH, I'M SORRY.

28 MR. GUTERRES: PLAINTIFF'S COUNSEL IS

1 DIRECTING THE WITNESS TO REVIEW SOMETHING WITHOUT
2 IDENTIFYING IT TO ME.

3 MR. MCMILLAN: THAT'S MY FAULT.

4 IT'S 468, BATES NO. -- WHAT'S THE BATES NUMBER
5 IN THE UPPER RIGHT-HAND PAGE OF THE DOCUMENT.

6 THE WITNESS: 6346.

7 MR. MCMILLAN: 6346, THANK YOU.

8 THAT'S EXHIBIT 468, BATES NO. 6346.

9 MR. GUTERRES: YOUR HONOR, COUNSEL AGAIN WAS
10 IDENTIFYING CERTAIN PORTIONS OF THAT PAGE TO THE
11 WITNESS, AND WE WOULD REQUEST THAT THAT BE IDENTIFIED
12 FOR THE RECORD.

13 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR.

14 THE COURT: YES.

15 MR. MCMILLAN: IT'S THE LAST PARAGRAPH AT THE
16 BOTTOM OF THE PAGE ON 6346, THE -- LOOKS LIKE THE
17 FOURTH LINE DOWN, SENTENCE BEGINS SOMEWHERE TOWARD THE
18 MIDDLE OF THE PAGE WITH "I CANNOT BE."

19 THE COURT: ARE YOU ASKING HIM TO READ
20 BEGINNING THERE?

21 MR. MCMILLAN: YEAH. IT'S JUST THE ONE
22 SENTENCE.

23 THE COURT: OH, ONLY ONE SENTENCE.

24 MR. MCMILLAN: YEAH.

25 THE COURT: OKAY.

26 BY MR. MCMILLAN:

27 Q MR. MILLS, HAVE YOU FINISHED READING THAT ONE
28 SENTENCE?

1 A YES.

2 Q AM I CORRECT -- OR, NO, LET ME ASK: DOES THIS
3 REFRESH YOUR RECOLLECTION -- AND I THINK THIS IS A
4 "YES" OR "NO" QUESTION -- THAT YOU REJECTED MS. DUVAL'S
5 SUGGESTIONS BECAUSE THE PEDIATRICIAN -- YOU WANTED TO
6 HAVE A PEDIATRICIAN THAT WAS CLOSER TO YOU THAN
7 45 MINUTES TO AN HOUR AWAY?

8 A LIKE I SAID, IF YOU READ THE E-MAIL, YOU'LL
9 UNDERSTAND MY LOGIC THROUGH IT.

10 MR. MCMILLAN: OKAY. OBJECTION, YOUR HONOR,
11 MOVE TO STRIKE AS NONRESPONSIVE.

12 THE COURT: ALL RIGHT. THE OBJECTION IS
13 SUSTAINED. THE MOTION TO STRIKE IS GRANTED. THE
14 ANSWER IS ORDERED STRICKEN.

15 BUT YOU'RE NOT GOING TO PICK ONE SENTENCE OUT
16 OF AN E-MAIL THAT IS MORE -- AND IN VERY SMALL PRINT --
17 MORE THAN ONE PAGE LONG AND ASK HIM IF THAT IS THE --
18 WHAT HE WAS REJECTING AT THE TIME.

19 BY MR. MCMILLAN:

20 Q MR. MILLS, LET ME ASK -- TRY AND GET AT THIS A
21 DIFFERENT WAY.

22 DO YOU RECALL MS. DUVAL, SHE WAS THE ONE --
23 FIRST LET ME ASK THIS -- SHE WAS THE ONE THAT WAS
24 PRIMARILY RUNNING BABY RYAN AROUND TO ALL THESE
25 DOCTORS' APPOINTMENTS; CORRECT?

26 A YES. I WAS TRYING TO GET THERE AS MUCH AS I
27 COULD.

28 Q OKAY. AND YOU WERE TRYING TO GET THERE AS

1 MUCH AS YOU COULD.

2 AND ONE OF THE PROBLEMS YOU WERE FACING IN
3 GETTING THERE WAS THAT SOME OF THESE DOCTORS'
4 APPOINTMENTS, IN LOS ANGELES TRAFFIC, IN TERMS OF TIME,
5 WERE A LONG WAY AWAY FROM YOU?

6 A CORRECT. AND I WAS ALREADY LEAVING WORK AT
7 3:00 TO GO TO VISITATIONS. SO I ALREADY HAD TO, ON
8 TUESDAY AND THURSDAY, I HAD TO FOREGO MY LUNCH SO I CAN
9 BE AT VISITATION AT 4:30 OR 5:00. SO THAT WAS ALREADY
10 TWICE A WEEK THAT I WAS HAVING TO COMPLETELY WORK
11 AROUND MY SCHEDULE, MY WORK SCHEDULE, TO BE UP THERE IN
12 ALHAMBRA.

13 Q SO IT WAS A LOT OF WORK TO VISIT WITH YOUR
14 SON?

15 A I HAD TO -- I HAD TO MOVE THINGS AROUND A LOT
16 IN MY WORK SCHEDULE TO GET THERE.

17 Q AND IT WAS ALSO A LOT OF WORK TO MAKE SURE
18 YOUR SON'S MEDICAL NEEDS WERE TAKEN CARE OF?

19 MR. GUTERRES: OBJECTION. ARGUMENTIVE.

20 THE COURT: OVERRULED.

21 THE WITNESS: WORK. IT WAS WORK TO MAKE SURE
22 HE WAS GETTING TAKEN CARE OF, YES.

23 BY MR. MCMILLAN:

24 Q AND YOU COMPLAINED TO MS. DUVAL ABOUT HOW MUCH
25 WORK IT WAS AND WANTED HER TO MAKE IT A LITTLE EASIER
26 ON YOU?

27 A YEAH, WELL, SHE SAID "IF YOU WERE REALLY
28 INTERESTED, LOCATION WOULDN'T MATTER." IT'S ON THE

1 NEXT PAGE.

2 MR. MCMILLAN: OBJECTION. MOVE TO STRIKE.
3 NONRESPONSIVE.

4 THE COURT: THE OBJECTION IS SUSTAINED. THE
5 MOTION TO STRIKE IS GRANTED. THE ANSWER WILL BE
6 STRICKEN AND THE JURY WILL DISREGARD IT.

7 GO AHEAD.

8 MR. MCMILLAN: YOUR HONOR, I ACTUALLY FORGOT
9 THE QUESTION. CAN I GET IT REREAD?

10 THE COURT: YES, YOU CAN.

11 AND WE'LL ASK -- WE'LL ASK THE COURT REPORTER
12 TO REREAD THE QUESTION OR CAN I DO IT FOR YOU.

13 WE'LL HAVE HER DO IT.

14 (THE PREVIOUS QUESTION WAS READ BACK BY
15 THE COURT REPORTER AS FOLLOWS:

16 "QUESTION: AND YOU COMPLAINED TO
17 MS. DUVAL") --

18 THE COURT REPORTER: THAT'S ALL I HAVE.

19 MR. MCMILLAN: OH, OKAY. LET'S TRY THAT ONE
20 OVER.

21 MR. GUTERRES: OBJECTION. VAGUE.

22 THE COURT: I'M GOING TO DECLINE TO RULE ON
23 THAT.

24 BY MR. GUTERRES:

25 Q AND YOU COMPLAINED TO MS. DUVAL ABOUT HOW MUCH
26 TIME IT WAS REQUIRING YOU TO TAKE AWAY FROM YOUR WORK
27 NOT JUST TO VISIT WITH YOUR SON BUT TO GO TO THESE
28 DOCTORS' APPOINTMENTS TOO?

1 A I THINK I COMPLAINED BECAUSE I WOULD HAVE
2 LIKED IT TO HAVE BEEN EASIER TO GET TO.

3 Q BUT LOS ANGELES, THERE'S A LOT OF TRAFFIC. I
4 THINK WE CAN ALL AGREE ON THAT.

5 MR. GUTERRES: OBJECTION. RELEVANCE. AND
6 ASKED AND ANSWERED.

7 THE COURT: OVERRULED. ALTHOUGH -- GO AHEAD,
8 IF THAT WAS PART OF YOUR CONSIDERATION, OF TRAFFIC.

9 THE WITNESS: YEAH, TRAFFIC WAS -- YEAH, VERY
10 TOUGH GETTING THERE.

11 BY MR. GUTERRES:

12 Q AND MS. DUVAL, SHE ALSO LIVED IN THE COUNTY OF
13 LOS ANGELES AT THIS TIME; RIGHT?

14 A I BELIEVE SO, YES.

15 Q SHE HAD SIMILAR TRAFFIC CONCERNS?

16 MR. GUTERRES: OBJECTION. SPECULATION.

17 THE COURT: SUSTAINED.

18 BY MR. GUTERRES:

19 Q LET ME TRY THIS: YOU RECALL WHETHER OR NOT
20 MS. DUVAL ALSO HELD DOWN A JOB DURING -- ACTUALLY FROM
21 AT LEAST JUNE 2009 ALL THE WAY THROUGH NOVEMBER?

22 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
23 THE SCOPE.

24 THE COURT: SUSTAINED AS TO RELEVANCE.

25 BY MR. MCMILLAN:

26 Q WELL, YOU RAISED THESE CONDITIONS WITH
27 MS. DUVAL, DIDN'T YOU, ABOUT THE TRAFFIC AND IT TAKING
28 TIME AWAY FROM WORK TO GO TAKE YOUR BABY TO THE DOCTOR

1 OR TO BE AT THE DOCTOR AND DO YOUR VISITS, THOSE SORTS
2 OF THINGS? YOU COMPLAINED TO MS. DUVAL ABOUT THAT?

3 MR. GUTERRES: OBJECTION. COMPOUND AND ASKED
4 AND ANSWERED.

5 THE COURT: SUSTAINED. IT HAS BEEN ANSWERED.
6 BY MR. MCMILLAN:

7 Q MS. DUVAL RESPONDED TO YOUR COMPLAINTS, DIDN'T
8 SHE?

9 A SHE DID.

10 Q DO YOU RECALL HER TELLING YOU THAT IN ORDER
11 FOR HER TO MAKE IT TO THE DOCTORS YOU WERE SELECTING
12 THAT WERE CLOSE TO YOUR WORK THAT SHE WOULD HAVE THE
13 LEAVE WORK, GO HOME TO GET THE BABY, AND THEN DRIVE ALL
14 THE WAY DOWN TO I THINK SOME PLACE IN SOUTH GATE. I'M
15 NOT SURE WHERE THAT IS.

16 BUT DO YOU RECALL THAT CONVERSATION WITH
17 MS. DUVAL?

18 A I RECALL THE E-MAIL, YES.

19 Q OKAY. YOU DO RECALL THE E-MAIL?

20 A YEAH, I'M READING IT.

21 Q AND SHE HAD SIMILAR PROBLEMS AS YOU DID,
22 DIDN'T SHE? IF SHE WERE TO MAKE IT TO YOUR BACKYARD TO
23 GO TO YOUR DOCTORS, IT WOULD TAKE HER AN HOUR TO AN
24 HOUR AND A HALF FOR EACH VISIT; RIGHT?

25 MR. GUTERRES: OBJECTION. FOUNDATION.
26 SPECULATION.

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. MCMILLAN:

2 Q WELL, DO YOU RECALL HER TELLING YOU THAT SHE
3 WOULD HAVE TO TRAVEL TWO AND A HALF HOURS TO SAVE YOU
4 FROM TRAVELING 45 MINUTES?

5 A I RECALL HER TELLING ME THAT, YES.

6 Q AND DURING ALL THIS TIME, ALL THIS TIME THAT
7 YOU WERE FIGHTING OVER DOCTORS, YOU KNEW THE BABY
8 WASN'T MEETING MILESTONES; RIGHT?

9 A RIGHT. THE END OF JULY IS WHEN -- BEGINNING
10 OF AUGUST IS WHEN I REALIZED HE WASN'T MEETING
11 MILESTONES.

12 Q OKAY. SO YOU DIDN'T BELIEVE DR. YIM IN MARCH
13 WHEN SHE WAS TELLING YOU HE WASN'T MEETING MILESTONES?

14 A I DON'T REMEMBER MY CONVERSATIONS WITH HER.
15 LIKE I SAID, I DON'T RECALL ALL THE CONVERSATIONS ABOUT
16 HIS MILESTONES AND EVERYTHING.

17 Q YOU'D HAVE TO LOOK AT THE RECORDS TO FIGURE
18 THAT OUT?

19 A CORRECT.

20 Q SOME OF THIS I CAN'T READ MY OWN WRITING.

21 NOW, YOU SAID SOMETHING -- NOW THAT WE KNOW IT
22 WAS THURSDAY -- YOU SAID SOMETHING LAST THURSDAY, AND
23 THAT WAS THAT THROUGHOUT THIS WHOLE PROCESS, FROM BIRTH
24 UNTIL SOMETIME IN AUGUST, YOU WERE TRYING TO FIGURE OUT
25 WHAT YOUR ROLE WAS IN BABY RYAN'S LIFE.

26 DO YOU REMEMBER THAT?

27 A I DO, YES.

28 Q OKAY. WELL, IF WE GO BACK TO THE VERY

1 BEGINNING, YOU MET MS. DUVAL AT A CHURCH VOLLEYBALL
2 GAME.

3 DO YOU RECALL THAT?

4 A YES.

5 Q IT WAS AROUND 2002, 2003?

6 A CORRECT.

7 Q AND THE TWO OF YOU SORT OF STARTED HANGING
8 OUT -- I DON'T WANT TO SAY "DATING" BECAUSE YOU DON'T
9 LIKE THAT WORD, BUT STARTED HANGING OUT; RIGHT?

10 A YEAH, WE WERE FRIENDS FOR MANY YEARS.

11 Q YOU WERE FRIENDS FOR MANY YEARS?

12 A FOR THREE, FOUR -- FOUR YEARS.

13 Q AND THE TWO OF YOU WOULD SOMETIMES GO DANCING
14 TOGETHER?

15 A I WOULD MEET HER. WE WOULDN'T GO TOGETHER; I
16 WOULD MEET HER AT PLACES.

17 Q AND YOU'D DANCE WITH HER?

18 A YEAH.

19 Q AND FOR A PERIOD OF TIME IT WAS LIKE EVERY
20 WEEK OR TWO; RIGHT?

21 A I DON'T KNOW IF IT WAS -- IT WAS OFF AND ON,
22 "HEY, YOU'RE GOING TO BE OVER THERE? COOL, I'LL MEET
23 UP WITH YOU THERE."

24 Q AND OVER THE YEARS, YOU HAD OTHER GIRLFRIENDS;
25 RIGHT?

26 MR. GUTERRES: OBJECTION. RELEVANCE.

27 THE COURT: SUSTAINED.

28 ///

1 BY MR. MCMILLAN:

2 Q WELL, LET ME ASK IT THIS WAY: MS. DUVAL, SHE
3 ACTUALLY -- YOU WOULD CONFIDE IN HER, YOU FELT
4 COMFORTABLE ENOUGH WITH HER THAT YOU WOULD CONFIDE IN
5 HER ABOUT YOUR OTHER VARIOUS ROMANCES; RIGHT?

6 MR. GUTERRES: OBJECTION. RELEVANCE.

7 THE COURT: SUSTAINED.

8 BY MR. MCMILLAN:

9 Q WELL, AT SOME POINT -- AT SOME POINT THE TWO
10 OF YOU STARTED GETTING TOGETHER MORE FREQUENTLY AT HER
11 HOME; RIGHT?

12 A YES. NOT -- I MEAN, HERE AND THERE. I
13 WOULDN'T SAY FREQUENTLY. HERE AND THERE.

14 Q AND WHEN YOU GOT TOGETHER WITH HER AT HER
15 HOME, THE TWO OF YOU WOULD ENGAGE IN SOME SORT OF
16 SEXUAL ACTIVITY; CORRECT?

17 MR. GUTERRES: OBJECTION. RELEVANCE.

18 THE COURT: SUSTAINED.

19 BY MR. MCMILLAN:

20 Q YOU TALKED LAST WEEK ABOUT HOW YOU
21 SPECIFICALLY REMEMBERED THAT YOU HAD SEXUAL INTERCOURSE
22 WITH HER ON OCTOBER 30TH OF, I THINK YOU SAID 2007.

23 DID I GET THAT RIGHT?

24 A CORRECT.

25 Q AND YOU DID NOT BELIEVE -- WHEN SHE TOLD YOU
26 THAT SHE WAS PREGNANT, YOU DID NOT BELIEVE IT WAS YOUR
27 CHILD?

28 A CORRECT.

1 Q I THINK YOU TALKED ABOUT LAST WEEK SOME OF THE
2 PEOPLE YOU TOLD YOU DIDN'T BELIEVE -- OR THAT YOU TOLD
3 SOME PEOPLE YOU DIDN'T BELIEVE THE BABY WAS YOUR CHILD.

4 DO YOU REMEMBER THAT?

5 A I DIDN'T SAY I DIDN'T BELIEVE; I SAID I DIDN'T
6 KNOW IF IT WAS.

7 Q DIDN'T KNOW, OKAY.

8 DO YOU RECALL EVER TELLING ANYONE THAT YOU
9 NEVER HAD SEXUAL RELATIONS WITH THIS WOMAN?

10 MR. GUTERRES: OBJECTION. RELEVANCE.

11 THE COURT: SUSTAINED.

12 BY MR. MCMILLAN:

13 Q DO YOU REMEMBER WHO -- ACTUALLY, I THINK WE
14 MIGHT HAVE TALKED ABOUT THIS WHEN WE MET UP AT YOUR
15 DEPOSITION.

16 DO YOU REMEMBER REESE NEYLAND, N-E-Y-L-A-N-D?

17 A I DO.

18 Q WHO'S REESE NEYLAND?

19 A A FORMER MINISTER OF MINE.

20 Q HE WAS YOUR FRIEND AND MENTOR FOR MANY YEARS?

21 MR. KINLEY: YOUR HONOR, I HAVE A PRIVACY
22 OBJECTION.

23 THE COURT: DID YOU RECORD THAT?

24 THE COURT REPORTER: YES, I JUST DON'T HAVE
25 HIS NAME. I DON'T KNOW WHO THAT IS.

26 THE COURT: THE PERSON WHO HAS VOICED THE
27 OBJECTION IS MR. MATTHEW KINLEY, WHO IS PRESENT, AND HE
28 IS THE ATTORNEY FOR MR. MILLS. THEREFORE, THE RECORD

1 OF THE REPORTER SHOULD REFLECT THAT THE OBJECTION WAS
2 MADE BY MR. KINLEY.

3 THE OBJECTION TO PRIVACY TO THAT QUESTION IS
4 OVERRULED, AND YOU MAY ANSWER IT. BUT AFTER YOU DO, I
5 THEN WILL HAVE TO SEE COUNSEL.

6 THE WITNESS: CAN YOU REPEAT THE QUESTION?

7 MR. MCMILLAN: CAN I HAVE IT REREAD, PLEASE?

8 THE COURT: WE'LL ASK THE REPORTER TO READ IT
9 BACK.

10 "HE WAS YOUR FRIEND AND MENTOR FOR MANY
11 YEARS," WAS THE QUESTION.

12 THE WITNESS: HE WAS A FRIEND, FOR --

13 THE COURT: ALL RIGHT.

14 THE WITNESS: -- 15 YEARS.

15 THE COURT: NOW I NEED TO SEE COUNSEL.

16 (THE FOLLOWING PROCEEDINGS WERE HELD AT
17 SIDEBAR.)

18 THE COURT: THIS LINE OF QUESTIONING IS HEADED
19 TO A SUBJECT MATTER WHICH HAS NO RELEVANCE TO THIS
20 CASE. WE HAVE FROM -- FOR SOME TIME I THINK BEEN
21 TRYING TO GET BEFORE THE JURY, FIRST OF ALL, THAT HE
22 EITHER DENIED OR QUESTIONED THE PATERNITY. AND -- ALL
23 RIGHT. JUST A MOMENT.

24 (THE FOLLOWING PROCEEDINGS WERE HELD IN
25 OPEN COURT IN THE PRESENCE OF THE
26 JURY.)

27 THE COURT: WE'RE GOING TO TAKE A MORNING
28 RECESS AT THIS TIME OF APPROXIMATELY 10 MINUTES. ALL

1 JURORS, PLEASE REMEMBER THE ADMONITION.

2 (JURY EXCUSED)

3 (THE FOLLOWING PROCEEDINGS WERE HELD AT
4 SIDEBAR.)

5 THE COURT: ALL RIGHT. I'M CONTINUING. ALL
6 JURORS HAVE LEFT THE COURTROOM. WE ARE STILL AT
7 SIDEBAR.

8 THERE ARE PORTIONS OF HIS CONDUCT WHICH ARE
9 RELEVANT TO ISSUES IN THE CASE. AN EXAMPLE OF THAT IS
10 SOME OF THE QUESTIONS YOU WERE ASKING ABOUT
11 DISAGREEMENTS OVER WHO THE MEDICAL PRACTITIONER SHOULD
12 BE, INCLUDING THE STATEMENT TO THE EFFECT THAT SHE WAS
13 SEEKING TOO MANY, TOO MUCH MEDICAL APPOINTMENTS. AND
14 ANYTHING THAT HE DID WHICH INTERFERED WITH HER ABILITY
15 TO TAKE THE CHILD TO MEDICAL PRACTITIONER, AND THAT IS
16 RELEVANT BECAUSE, AMONG OTHER THINGS, THERE WAS THE
17 REPORT ABOUT HER NOT HAVING, DESPITE HER -- IT WAS TO
18 THE EFFECT THAT DESPITE HER PROPOSED CONCERNS ABOUT THE
19 WELFARE OF THE CHILD, SHE HADN'T TAKEN HIM TO A
20 PEDIATRICIAN FOR SEVERAL MONTHS.

21 AND SO THAT EVIDENCE AS AN EXAMPLE OF HIS
22 CONDUCT IS RELEVANT IN THE SUBJECT MATTER, AND I DON'T
23 BELIEVE THERE WAS ANY OBJECTION TO IT.

24 BUT THERE HAS BEEN A CONTINUING EFFORT, I
25 THINK, TO INJECT ISSUES RELATING TO HIM AND HIS
26 ORIGINAL QUESTIONING OF WHETHER HE WAS THE FATHER AND
27 SO ON, WHICH SIMPLY AREN'T RELEVANT.

28 AND THERE'S ANOTHER ISSUE IN THE CASE, A

1 BIGGER ISSUE IN THE CASE THAT ALL OF THIS RELATES TO:
2 THERE IS A DISTINCTION BETWEEN THE CHILD BEING TAKEN
3 FROM HER AND THE ISSUE OF TO WHOM THEY GAVE CUSTODY OF
4 THE CHILD.

5 MR. MCMILLAN: I BELIEVE THAT'S CORRECT.

6 THE COURT: YEAH, BUT WE'RE LOOKING AT WHETHER
7 OR NOT THE CHILD SHOULD HAVE BEEN TAKEN FROM HER. ONCE
8 THAT OCCURS, IT IS ESSENTIALLY NOT RELEVANT TO THIS
9 CASE, WITH CERTAIN EXCEPTIONS THAT I'LL MENTION,
10 THAT -- AS TO WHOM THEY GRANTED CUSTODY. ONCE THEY
11 MADE THE DECISION TO TAKE THE CHILD, THEY HAD A NUMBER
12 OF OPTIONS.

13 NOW, VERY CLEARLY, I BELIEVE THE FIRST THING
14 THEY LOOK TO ARE WHAT WE WOULD CALL FAMILY MEMBERS. HE
15 WAS THE FATHER. SO THEY LOOK TO FAMILY MEMBERS OR
16 OTHER PERSONS THAT -- SOMETIMES THEY LOOK TO
17 GRANDPARENTS, SOMETIMES THEY LOOK TO SIBLINGS.
18 SOMETIMES, IF NECESSARY, THEY MIGHT EVEN LOOK TO A
19 PERSON I THINK WE'D CALL FRIENDS, TO TRY TO FIND THE
20 BEST SITUATION FOR THE CHILD, WHAT THE JUVENILE COURT
21 BELIEVES IS IN THE BEST INTEREST OF THE CHILD.
22 SOMETIMES, THAT UNFORTUNATELY RESULTS IN PLACING THE
23 CHILD IN FOSTER CARE WHEN THE COURT IS UNABLE TO FIND A
24 BETTER ALTERNATIVE.

25 HOW -- SOME OF THE EVIDENCE ABOUT HOW THE BABY
26 THRIVED OR DIDN'T THRIVE DURING HIS CUSTODY IS RELEVANT
27 BECAUSE ONE OF YOUR POINTS IS THAT THEY TOOK THE
28 CUSTODY AWAY FROM HER BECAUSE THE CHILD WASN'T

1 THRIVING, AND THEN THE CHILD DIDN'T DO ANY BETTER, AT
2 LEAST FOR WEIGHT GAIN AND CERTAIN THINGS, AND YOUR
3 ARGUMENT IS IT DIDN'T REALLY DO ANY BETTER UNDER THE
4 FATHER, WHICH WOULD TEND TO UNDERMINE THE DECISION OF
5 HAVING TAKEN THE CHILD AWAY FROM HER IN THE FIRST
6 PLACE.

7 SO THE CONDUCT CAN BE IMPORTANT TO CERTAIN
8 AREAS. BUT THERE HAS BEEN A REPEATED ATTEMPT,
9 CERTAINLY, TO MAKE HIM LOOK BAD. AND I DON'T THINK
10 QUESTIONS ORIGINALLY OF ANY QUESTION HE HAD OF
11 PATERNITY -- INCLUDING WHAT HE SAID TO THIS LAST PERSON
12 YOU WERE JUST ASKING ABOUT, WHO IS A MINISTER OF SOME
13 TYPE -- MAKES ANY DIFFERENCE TO THE CASE. AND I'M NOT
14 GOING TO LET THIS GET DOWN TO BE A TRIAL ABOUT WHETHER
15 HE'S A GOOD PERSON OR A BAD PERSON. HIS CONDUCT, IN
16 REFERENCE THAT -- AS IT MAY PERTAIN TO MATTERS SUCH AS
17 WHETHER CUSTODY SHOULD -- TO THE ISSUES I'VE MENTIONED,
18 OF IF HE DID SOMETHING, IF IT PREVENTED HER FROM
19 GETTING MEDICAL CARE, THAT THAT'S SOMETHING YOU SAY
20 SHOULD HAVE BEEN KNOWN. AND THAT'S LEGITIMATE AND FAIR
21 GAME.

22 BUT THE ATTEMPT TO BRING HIM INTO THIS VERY
23 DIFFICULT SITUATION AND, I THINK, IN SOME MANNER,
24 ATTEMPT TO Demean HIM OR DIMINISH HIM SIMPLY IS NOT
25 RELEVANT, AND WE'RE NOT GOING TO GO THERE.

26 SO YOU'RE WANTING TO ASK QUESTIONS ABOUT
27 THIS -- WHAT'S HIS NAME?

28 MR. MCMILLAN: REESE NEYLAND.

1 THE COURT: YES. AND HE'S BEEN MENTIONED AS
2 WELL --

3 MR. MCMILLAN: HE ACTUALLY CAME IN.

4 THE COURT: HE TESTIFIED. AND FRANKLY, AT THE
5 TIME, I DIDN'T THINK THAT HE REALLY HAD ANYTHING TO DO
6 WITH THIS. BUT WE DIDN'T HAVE AN OBJECTION AT THE
7 TIME. SO WE'RE JUST NOT GOING TO GO DOWN THIS ROAD.

8 MR. MCMILLAN: YOUR HONOR, IF I MIGHT HAVE A
9 COUPLE OF COMMENTS.

10 FUNDAMENTAL TO THE SOCIAL WORKER'S ASSESSMENT
11 OF THE INFORMATION, NUMBER ONE, IF WE LOOK AT THE TIME
12 OF SEIZURE, WHAT THEY KNEW AT THE TIME OF SEIZURE --
13 AND THIS IS GOING TO COME UP -- THAT RELIABILITY OF THE
14 WITNESS STATEMENTS IS PARAMOUNT. AND RELIABILITY HAS
15 AN UNDERPINNING TO IT OF CREDIBILITY, MEANING THAT IF
16 THE SOCIAL WORKERS KNEW AT THE TIME THAT A WITNESS --
17 WHERE THIS USUALLY COMES UP IS WHEN WE'RE LOOKING AT
18 JAILHOUSE SNITCHES, BUT IN THE CONTEXT OF FRANK'S
19 ANALYSIS SPECIFICALLY. BUT WHERE WE HAVE A REASON TO
20 BELIEVE -- ANY REASON TO BELIEVE THAT THE WITNESS IS
21 NOT CREDIBLE, THAT NEEDS TO BE DISCLOSED TO THE COURT.
22 IN MAKING THIS WARRANT APPLICATION OR WHEN WE'RE MAKING
23 A PETITION OR A DETENTION REPORT, IF WE KNOW AT THE
24 TIME THAT THERE WAS DOUBT AS TO A PARTICULAR WITNESS'S
25 CREDIBILITY AND THE RELIABILITY OF THE EVIDENCE, THAT
26 NEEDS TO BE DISCLOSED TO THE COURT SO THE COURT CAN
27 MAKE A WELL-REASONED AND FULLY-INFORMED DECISION.

28 NOW, I UNDERSTAND YOUR HONOR'S CONCERNS, AND I

1 UNDERSTAND THAT -- BUT THIS IS AN ISSUE OF RELIABILITY
2 OF THE EVIDENCE THAT THE SOCIAL WORKERS KNEW THEY HAD
3 AT THE TIME THAT THEY ELECTED TO SUPPRESS WHEN THEY
4 WENT TO COURT TO TELL THE JUDGE WHAT WAS GOING ON IN
5 THIS CASE.

6 THE COURT: I DON'T THINK IT HAS ANY RELEVANCE
7 WHATSOEVER, AND I'M NOT GOING TO PERMIT IT. I'M NOT
8 DISAGREEING THAT IF THEY TAKE SOMETHING HE SAID AND
9 THEY THINK THAT HE'S NOT A RELIABLE SOURCE, THAT THAT
10 IS SOMETHING THAT THEY SHOULD CONSIDER. I'M NOT
11 ADDRESSING -- I CANNOT ADDRESS IT BECAUSE I DON'T HAVE
12 ENOUGH IMAGINATION TO THINK OF ALL THE DIFFERENT THINGS
13 THAT ALL OF YOU MIGHT WANT TO ASK. BUT THIS HAS
14 NOTHING TO DO WITH IT AND IT SIMPLY ISN'T GOING TO
15 HAPPEN.

16 MR. MCMILLAN: OKAY. I'LL LEAVE THAT LINE OF
17 QUESTIONING.

18 MR. KINLEY: AND JUST TO BE CLEAR, MY
19 OBJECTION WAS THERE'S SOME --

20 THE COURT REPORTER: I CAN'T HEAR.

21 (PROCEEDINGS HELD IN OPEN COURT,
22 OUTSIDE THE PRESENCE OF THE JURY.)

23 THE COURT: ALL RIGHT. WELL, WE HAVE RESUMED
24 OUR DISCUSSION SINCE ALL JURORS HAVE LEFT THE
25 COURTROOM.

26 GO AHEAD, MR. KINLEY.

27 MR. KINLEY: THANK YOU, YOUR HONOR. AND
28 QUICKLY, MY OBJECTION WAS BASED ON MR. MILLS'S

1 RELATIONSHIP TO HIS CHURCH AND THERE WERE SOME
2 QUESTIONS IN THE DEPOSITION AND WE WENT THROUGH THAT IN
3 THE DEPOSITION, AND THAT'S ONE THING THAT HE
4 PARTICULARLY DID NOT WANT TO TESTIFY TO.

5 THE COURT: IT'S NOT GOING ANY FURTHER.

6 MR. KINLEY: THANK YOU, YOUR HONOR.

7 THE COURT: SO -- AND I'VE ALREADY STATED MY
8 POSITION ON IT. IT HAS NO RELEVANCE. IT'S NOT GOING
9 TO HAPPEN. IT'S NOT GOING TO BE IN EVIDENCE. WE'RE
10 GOING TO STICK TO MATTERS THAT AFFECT -- HAVE SOME
11 EFFECT ON THE ISSUES IN THE CASE AND THAT IS NOT AN
12 ISSUE IN THIS CASE.

13 THE QUESTION IS FOR THE ONES THAT I'VE ALREADY
14 RECITED, EVERYONE KNOWS THEM.

15 WE'LL TAKE A -- IT'S GOT TO BE CLOSE TO -- SO
16 WE'LL TAKE A SHORT BREAK.

17 MR. MCMILLAN: JUST SO THAT IT'S CLEAR, WITH
18 RESPECT TO THIS PARTICULAR LINE OF QUESTIONING IN
19 REGARD TO THESE CONVERSATIONS WITH THE MINISTER, I HAVE
20 NO INTENTION ON TAKING YOUR HONOR'S -- I'M TAKING HEED
21 OF YOUR HONOR'S ADMONITION. I HAVE NO INTENTION OF
22 GOING BACK TO THAT MEETING WHERE THOSE THINGS WERE SAID
23 OR DENIED OR ANYTHING LIKE THAT. I'M JUST GOING TO
24 MOVE ON.

25 THE COURT: OKAY. THAT'S GOOD. THERE WAS A
26 LINE OF QUESTIONING ABOUT THE DISPUTE ABOUT WHO AND
27 WHERE TO HAVE THE MEDICAL APPOINTMENTS. THERE'S NO
28 OBJECTION TO THE RELEVANCE OF THAT, AND THAT'S

1 PERFECTLY PROPER. THERE ARE OTHER SUBJECTS AS WELL
2 THAT WOULD BE PROPER. SO THAT'S WHAT WE SHOULD BE
3 HEARING.

4 MR. MCMILLAN: SURE. AND WHAT I'LL DO IS
5 JUST, THAT PIECE OF THE TIME LINE -- AND I THINK THE
6 SPECIFIC CONVERSATION HAPPENED SOMETIME
7 OCTOBER/NOVEMBER/DECEMBER OF 2007 -- I'M JUST GOING TO
8 SKIP PAST IT UP TO AFTER THE CHILD WAS BORN.

9 THE COURT: ALL RIGHT. WELL, I DON'T KNOW
10 WHERE THAT WILL TAKE US. WE'LL ADDRESS IT WHEN WE GET
11 THERE.

12 MR. MCMILLAN: OKAY. THAT'S FAIR.

13 MR. GUTERRES: THANK YOU, YOUR HONOR.

14 (RECESS)

15 THE COURT: WE ARE ON THE RECORD AND OUTSIDE
16 THE PRESENCE OF THE JURY. COUNSEL ARE PRESENT.

17 WE NEED TO GET THE WITNESS BACK AND GET THE
18 JURY IN.

19 (JURY PRESENT)

20 THE COURT: EVERYONE MAY BE SEATED. WE'RE
21 BACK ON THE RECORD. EVERYONE IS PRESENT.

22 GO AHEAD, MR. MCMILLAN.

23 MR. MCMILLAN: THANK YOU, YOUR HONOR.

24 BY MR. MCMILLAN:

25 Q I RECALL FROM LAST WEEK -- AGAIN, CORRECT ME
26 IF I'M WRONG -- THAT YOU'D SAID SOMETHING ALONG THE
27 LINES OF ONCE YOU HAD YOUR PATERNITY TEST THEN IT WAS
28 CLEAR YOU WERE THE FATHER.

1 DO YOU RECALL THAT?

2 A YES.

3 Q OBVIOUSLY, THAT WOULD HAVE BEEN AFTER THE BABY
4 WAS BORN; IS THAT RIGHT?

5 A CORRECT.

6 Q WAS THAT ABOUT THREE WEEKS AFTER THE BABY WAS
7 BORN?

8 A AROUND THAT TIME FRAME.

9 Q AND THEN THE FIRST TIME THAT YOU ACTUALLY SAW
10 THE BABY WAS ABOUT TWO MONTHS LATER, SOMETIME IN
11 OCTOBER.

12 DOES THAT SOUND RIGHT?

13 A YES.

14 Q AM I CORRECT THAT THE REASON YOU SAW THE BABY
15 WAS BECAUSE YOU WERE BEING URGED TO SEE THE BABY BY
16 MS. DUVAL?

17 MR. GUTERRES: OBJECTION. RELEVANCE.

18 THE COURT: SUSTAINED.

19 BY MR. MCMILLAN:

20 Q WELL, BETWEEN OCTOBER AND FEBRUARY OF
21 TWO-THOUSAND- -- I GUESS FEBRUARY 2009, MS. DUVAL, SHE
22 WASN'T PREVENTING YOU FROM SEEING THE BABY, WAS SHE?

23 MR. GUTERRES: OBJECTION. RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. MCMILLAN:

26 Q WELL, YOU'D SAID SOMETHING ON THURSDAY ABOUT
27 HOW THERE WAS A SUIT OF SOME KIND FILED BY MS. DUVAL
28 AND HER FRIEND SHOWED UP AT YOUR DOORSTEP AND SERVED

1 YOU SOME PAPERS.

2 DO YOU REMEMBER THAT TESTIMONY?

3 A YES.

4 Q AND THAT WAS ROUGHLY IN, WHAT, JANUARY OF
5 2009?

6 A NOVEMBER OF 2008.

7 Q NOVEMBER OF 2009 [SIC].

8 AND ONE OF THE THINGS THAT MS. DUVAL WAS
9 LOOKING FOR THERE WAS TO ESTABLISH A VISITATION
10 SCHEDULE SO THAT YOU WOULD START SEEING THE BABY.

11 DO YOU REMEMBER THAT?

12 A I'D HAVE TO GO THROUGH MY PAPERS AGAIN, THE
13 INITIAL PAPERS.

14 Q WE'RE GOING TO FIND THE TESTIMONY FOR YOU IN
15 JUST ONE MOMENT, BUT WE'LL MOVE ON AND COME BACK IF
16 WE'RE ABLE TO FIND WHAT I'M LOOKING FOR.

17 SO AM I CORRECT THAT THE -- OH.

18 I'M GOING TO ASK YOU TO REVIEW -- AND JUST FOR
19 THE RECORD, THIS IS A REPORTER'S TRANSCRIPT OF
20 PROCEEDING FOR OCTOBER 13, 2016, IN THIS PROCEEDING.
21 IT'S AN UNCERTIFIED TRANSCRIPT, ROUGH TRANSCRIPT. BUT
22 IF YOU COULD JUST READ PAGE 10, LINES 26 THROUGH 27, TO
23 YOURSELF, AND THEN I'LL ASK YOU SOME QUESTIONS ABOUT
24 THAT.

25 A OKAY, YEAH I READ IT.

26 Q DO YOU RECALL TESTIFYING LAST WEEK, ON OR
27 ABOUT OCTOBER 13, 2016, THAT THE PAPERWORK THAT
28 MS. DUVAL SERVED YOU WITH INVOLVED CHILD SUPPORT AND

1 FOR YOU TO BEGIN VISITATIONS WITH YOUR SON?

2 A YES.

3 Q UP UNTIL THE POINT THAT SHE SERVED YOU WITH
4 THOSE PAPERS -- AND I THINK YOU SAID THAT WAS IN
5 NOVEMBER THAT YOU ACTUALLY GOT SERVED; CORRECT?

6 A IF I CAN RECALL.

7 Q YOU READ THOSE PAPERS WHEN YOU GOT THEM?

8 A YEAH. I READ HUNDREDS OF DECLARATIONS, YEAH.

9 Q RIGHT.

10 A LOTS.

11 Q BETWEEN NOVEMBER OF 2008, WHEN YOU RECEIVED
12 THOSE PAPERS, AND THE HEARING ON THAT PETITION, DID YOU
13 GO TRY TO VISIT YOUR SON?

14 MR. GUTERRES: OBJECTION. RELEVANCE.

15 THE COURT: SUSTAINED.

16 BY MR. MCMILLAN:

17 Q DO YOU RECALL WHEN -- AND YOU DON'T HAVE TO
18 GIVE AN EXACT DATE, I'M NOT SURE IT'S MEANINGFUL -- BUT
19 THE MONTH WHEN IT WAS THAT THAT PETITION REGARDING YOU
20 BEGINNING VISITATION WITH YOUR SON AND CHILD SUPPORT,
21 WHEN THAT WAS DECIDED?

22 MR. GUTERRES: OBJECTION. RELEVANCE.

23 THE COURT: SUSTAINED.

24 BY MR. MCMILLAN:

25 Q WELL, DO YOU RECALL WHEN IT WAS THAT YOU
26 ACTUALLY HAD YOUR FIRST COURT-ORDERED VISIT WITH YOUR
27 SON?

28 MR. GUTERRES: OBJECTION. FOUNDATION.

1 RELEVANCE.

2 THE COURT: OVERRULED.

3 THE WITNESS: SOMETIME IN FEBRUARY, MIDDLE OF
4 FEBRUARY.

5 BY MR. MCMILLAN:

6 Q MIDDLE OF FEBRUARY.

7 BEFORE THAT, DO YOU RECALL MS. DUVAL SENDING
8 YOU E-MAILS -- AND WE CAN JUST LOOK AT A SHORT WINDOW
9 BEFORE FEBRUARY 2009. LET'S GO TO NOVEMBER, DECEMBER,
10 JANUARY, 2009.

11 DO YOU RECALL MS. DUVAL SENDING YOU E-MAILS
12 REGARDING WHAT WAS GOING ON WITH BABY RYAN?

13 A NO, I DO NOT RECALL.

14 Q SO THE FIRST THING -- JUST MAKING SURE I'M
15 GETTING THE TIME LINE RIGHT.

16 THE FIRST THING THAT WE'VE SEEN HERE WOULD BE
17 THAT MARCH 16 PHONE CALL WITH DR. YIM?

18 A I DON'T --

19 MR. GUTERRES: OBJECTION --

20 THE WITNESS: -- REMEMBER TIME LINES.

21 MR. GUTERRES: INCOMPREHENSIBLE. VAGUE.

22 THE COURT: SUSTAINED.

23 ASK THAT A LITTLE DIFFERENTLY, MR. MCMILLAN.

24 MR. MCMILLAN: OKAY. AND IT COULD HAVE BEEN
25 INCOMPREHENSIBLE.

26 BY MR. MCMILLAN:

27 Q WHAT I'M TRYING TO GET AT IS YOU DIDN'T GET
28 ANY E-MAILS, OR YOU DON'T REMEMBER ANY E-MAILS FROM

1 MS. DUVAL FROM NOVEMBER FORWARD INTO MARCH REGARDING
2 THE CONDITION OF THE BABY.

3 I'M RIGHT ON THAT SO FAR; RIGHT?

4 A I JUST DON'T REMEMBER IT, CORRECT.

5 Q JUST DON'T REMEMBER IT, OKAY.

6 NOW HAVING GONE THROUGH, SPECIFICALLY,
7 EXHIBIT 4 HERE IN COURT, AM I CORRECT THAT THE FIRST
8 INDICATION THAT YOU WOULD HAVE HAD THAT THE BABY WAS
9 HAVING THESE TROUBLES WOULD HAVE BEEN THE CONVERSATIONS
10 WITH DR. YIM IN MARCH, MARCH 16TH, SPECIFICALLY?

11 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED.

12 THE COURT: SUSTAINED.

13 BY MR. MCMILLAN:

14 Q OKAY. IF I CAN GO TO EXHIBIT NO. 1064, AND
15 I'LL HAVE TO FIND THAT FOR YOU. IT'S IN A TOTALLY
16 DIFFERENT BOOK.

17 ACTUALLY, LET ME GIVE YOU THE BATES RANGE.

18 MR. MCMILLAN: AND JUST FOR THE RECORD, YOUR
19 HONOR, IT'LL BE BATES NOS. 1896 AND 1897.

20 YOUR HONOR, IF I CAN TAKE A MOMENT, THE
21 DEFENSE BINDER JUST HAS A DVD IN IT. OH, THAT'S GREAT.
22 PERFECT.

23 BY MR. MCMILLAN:

24 Q OKAY. EXHIBIT NO. 1064, BATES NOS. 1896
25 THROUGH 1897. YOU TESTIFIED WITH -- YOU TESTIFIED ON
26 FRIDAY THAT THIS WAS AN E-MAIL THAT YOU WROTE AT THE
27 REQUEST OF YOUR ATTORNEY.

28 AM I RECALLING THAT CORRECTLY?

1 A CORRECT.

2 Q AND THE REASON YOU WROTE THIS AT THE REQUEST
3 OF YOUR ATTORNEY IS THAT SHE WAS GOING TO TAKE YOUR
4 E-MAIL AND SUBMIT IT TO THE COURT AS EVIDENCE; CORRECT?

5 A I DON'T REMEMBER WHAT SHE DID ASK ME FOR AND
6 WHAT MY VIEW OF WHAT THE SUMMARY WAS.

7 Q OKAY.

8 OKAY. AND ON THIS E-MAIL, WHEN YOU WERE --
9 LET'S SEE -- DO YOU RECALL WHEN YOU WROTE IT?

10 A IT LOOKS LIKE 6/21, JUNE 21, 2010.

11 Q 2010.

12 AND LET ME ASK YOU THIS: DO YOU RECALL EVER
13 DOING ANYTHING -- CALLING DR. YIM, TALKING TO
14 MS. DUVAL, ANYTHING -- TO FIND OUT WHETHER OR WHAT
15 MS. DUVAL WAS FEEDING THE CHILD OUTSIDE YOUR PRESENCE?

16 A RESTATE YOUR QUESTION?

17 Q DID YOU EVER -- LET'S JUST START WITH DR. YIM.
18 DID YOU EVER TALK TO DR. YIM AND ASK HER WHAT
19 MS. DUVAL WAS FEEDING THE CHILD OUTSIDE YOUR PRESENCE?

20 A NO.

21 Q DID YOU EVER DO ANYTHING TO VERIFY THE CLAIM
22 THAT MS. DUVAL WASN'T ATTEMPTING TO FEED THE CHILD
23 CERTAIN FOODS OUTSIDE OF YOUR PRESENCE?

24 A CAN YOU REPEAT THE QUESTION?

25 Q LET ME BACK UP A LITTLE BIT.

26 YOUR VISITATION WAS LIMITED, CORRECT, ALL THE
27 WAY FROM THE BEGINNING UP -- OR FROM FEBRUARY ALL THE
28 WAY UP TO NOVEMBER 2009?

1 A CORRECT.

2 Q AND BECAUSE OF THAT, YOU WERE NOT PRESENT ALL
3 OF THE TIMES THAT MS. DUVAL WAS THERE WITH THE BABY;
4 CORRECT?

5 A CORRECT.

6 Q DURING YOUR VISITATIONS, UP UNTIL THE POINT
7 THAT YOU HAD OVERNIGHTS, MS. DUVAL WOULD SEND THE
8 SNACKS; CORRECT?

9 A CORRECT.

10 Q AND THOSE SNACKS WOULD INCLUDE BREAST MILK;
11 CORRECT?

12 A I DON'T REMEMBER ALL THE CONTENTS THAT SHE
13 WOULD SEND.

14 Q BUT YOU DO REMEMBER THAT THERE WERE FOODS IN
15 THERE BESIDES BREAST MILK; CORRECT?

16 A LIKE I SAID, I DON'T REMEMBER THE CONTENTS OF
17 WHAT SHE SENT.

18 Q NOW, DR. YIM, SHE NEVER TOLD YOU -- SHE NEVER
19 TOLD YOU THAT THE REASON SHE DROPPED BABY RYAN FROM HER
20 PRACTICE WAS BECAUSE MS. DUVAL FAILED TO FOLLOW HER
21 ADVICE OR INSTRUCTIONS REGARDING WHAT AND HOW MUCH TO
22 FEED THE BABY; RIGHT?

23 A CORRECT.

24 MR. GUTERRES: OBJECTION. NO FOUNDATION.
25 SPECULATION.

26 THE COURT: OVERRULED.

27 THE WITNESS: CORRECT.

28 ///

1 BY MR. MCMILLAN:

2 Q DO YOU KNOW WHO DR. GILL IS?

3 A I THINK IT WAS -- THE PARTNER OF DR. YIM.

4 Q YOU NEVER MET DR. GILL, DID YOU?

5 A I DON'T REMEMBER ALL THE DIFFERENT PEOPLE. I
6 THINK -- LIKE I SAID, I DON'T REMEMBER ALL THE
7 DIFFERENT NAMES AND PEOPLE THAT I MET.

8 Q OKAY. SO YOU DON'T REMEMBER MEETING DR. GILL?

9 A I MAY HAVE. IT'S JUST THERE WAS A LOT OF
10 PEOPLE. I DON'T REMEMBER ALL THE DIFFERENT PEOPLE THAT
11 WERE IN PLAY.

12 Q BUT DR. GILL, YOU DON'T REMEMBER HER EVER
13 TELLING YOU THAT THE REASON BABY RYAN WAS DISMISSED
14 FROM DR. YIM'S PRACTICE WAS BECAUSE MS. DUVAL REFUSED
15 TO FOLLOW THEIR ADVICE OR INSTRUCTIONS? DR. GILL, YOU
16 DON'T REMEMBER HER EVER SAYING THAT?

17 MR. GUTERRES: OBJECTION. FOUNDATION.
18 SPECULATION.

19 THE COURT: OVERRULED.

20 DO YOU REMEMBER THAT?

21 THE WITNESS: I DON'T REMEMBER. I DON'T
22 REMEMBER EVEN HAVING ANY CONVERSATIONS WITH DR. GILL.
23 I MAY HAVE, I JUST DON'T REMEMBER.

24 BY MR. MCMILLAN:

25 Q AND THEN THIS E-MAIL, I THINK YOU REFERRED TO
26 IT IN YOUR TESTIMONY AS A DECLARATION, THAT'S 1064,
27 BATES NO. JVCT01896 THROUGH -97. IF YOU CAN TURN TO
28 THE LAST PAGE OF THAT.

1 AND LET ME ASK YOU: DID YOU SIGN THIS THING
2 AT SOME POINT UNDER PENALTY OF PERJURY?

3 A I DON'T KNOW WHAT YOU'RE LOOKING AT.

4 Q IT'S JVCT01897.

5 DO YOU HAVE THOSE PAGES --

6 A OH, YEAH.

7 NO, THIS IS JUST AN E-MAIL FROM ME.

8 Q OKAY. SO THE E-MAIL IS NOT SIGNED UNDER
9 PENALTY OF PERJURY.

10 DID I GET THAT RIGHT?

11 A IT'S JUST AN E-MAIL THAT SHE ASKED FOR MY VIEW
12 OF WHAT MY ATTORNEY AT THE TIME, WHAT THE SUMMARY WAS.

13 Q AND DO YOU REMEMBER TESTIFYING IN JUVENILE
14 DEPENDENCY COURT?

15 A I REMEMBER, YES.

16 Q DID YOU TALK ABOUT THIS E-MAIL THERE?

17 A I DON'T REMEMBER WHAT -- ALL THE STUFF I
18 TESTIFIED ABOUT.

19 MR. MCMILLAN: ALL RIGHT. LET ME CHECK MY
20 OTHER NOTEPAD. I MAY BE EITHER DONE OR CLOSE TO DONE.
21 BY MR. MCMILLAN:

22 Q OH. DO YOU RECALL, AT SOME POINT, MS. PENDER
23 ARRANGING FOR BABY RYAN TO BE SEEN AT THE FAILURE TO
24 THRIVE CLINIC?

25 A AT THE -- I DON'T KNOW -- I DON'T REMEMBER IF
26 IT WAS MS. PENDER. I REMEMBER THE INSTRUCTION WAS TO
27 DELIVER BABY RYAN TO THE FAILURE TO THRIVE -- OH, AT
28 HARBOR-UCLA, YOU MEAN, THE HARBOR-UCLA FAILURE TO

1 THRIVE CLINIC?

2 Q CORRECT.

3 A I DON'T KNOW IF IT WAS MS. PENDER BUT I
4 REMEMBER SOMEONE INSTRUCTED ME. THERE WERE QUITE A FEW
5 PEOPLE IN THE ROOM THAT DAY.

6 Q YOU SAID THERE WERE QUITE A FEW PEOPLE IN THE
7 ROOM THAT DAY.

8 DO YOU RECALL THAT ROOM, WHERE IT WAS?

9 A I BELIEVE -- I MEAN -- I DON'T EVEN REMEMBER
10 WHERE I GOT THE INSTRUCTION FROM. I BELIEVE THE
11 INSTRUCTION WAS AT THE DOWNTOWN WILSHIRE, THE WILSHIRE
12 BUILDING. THAT'S WHY, LIKE I SAID, I DON'T REMEMBER
13 WHERE AND WHEN I GOT THE INSTRUCTION. I JUST REMEMBER
14 GETTING THE INSTRUCTION OF "THESE ARE THE THINGS YOU
15 NEED TO GET DONE."

16 Q OKAY. AND WHEN YOU WERE TOLD THAT THOSE WERE
17 THE THINGS THAT NEEDED TO GET DONE, DO YOU RECALL
18 ARGUING -- ARGUING WITH WHOEVER IT WAS THAT GAVE YOU
19 THESE INSTRUCTIONS, ARGUING WITH THEM, SAYING SOMETHING
20 TO THE EFFECT OF "THE BABY IS SEEING TOO MANY DOCTORS,
21 MOM'S A HYPOCHONDRIAC, AND I HAVE RIGHTS, SHE DOESN'T
22 GET TO RUN THE SHOW ALL THE TIME"?

23 DO YOU REMEMBER TELLING ONE OF THESE PEOPLE
24 THAT?

25 MR. GUTERRES: OBJECTION. COMPOUND.

26 THE COURT: OVERRULED.

27 THE WITNESS: NO, I DON'T REMEMBER TELLING
28 THEM THAT.

1 BY MR. MCMILLAN:

2 Q OKAY. WELL, IN THE CONVERSATION WHEN YOU MET
3 WITH THEM AND THEY TOLD YOU THAT YOU NEED TO GO TO
4 FAILURE TO THRIVE CLINIC TO HAVE THE BABY ASSESSED, DO
5 YOU REMEMBER THEM TELLING YOU WORDS TO THE EFFECT OF
6 "LOOK, THE BABY HAS ISSUES, HE NEEDS TO BE SEEN BY
7 THESE PROFESSIONALS, DO NOT INTERFERE"?

8 DO YOU REMEMBER THAT CONVERSATION?

9 A NO.

10 Q SEE IF WE CAN GET YOU TO TURN TO EXHIBIT
11 NO. 82, IT'S BATES NO. 1488.

12 I'LL FIND THAT FOR YOU IF IT'S NOT UP THERE
13 ALREADY.

14 MS. SWISS: WHAT BATES NUMBER, COUNSEL?

15 MR. MCMILLAN: ACTUALLY, IT BEGINS AT 1487,
16 BOTTOM OF THE PAGE.

17 BY MR. MCMILLAN:

18 Q AND LET'S JUST START THERE. IT'S A CONTACT
19 NOTE DATED OCTOBER 22, 2009; STAFF PERSON, SUSAN
20 PENDER; PARTICIPANTS, RYAN MILLS, RYAN DUVAL.

21 DO YOU SEE THAT AT 1487?

22 A CORRECT.

23 Q AND IF YOU LOOK AT THE EIGHTH LINE DOWN, IF
24 YOU CAN READ THAT, JUST THAT SENTENCE THERE, TO
25 YOURSELF. AND THEN I'LL ASK YOU SOME QUESTIONS ABOUT
26 IT.

27 A OKAY.

28 Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOU

1 MET WITH MS. PENDER AND PUBLIC HEALTH NURSE LAURA
2 AUSTIN WHEN YOU RECEIVED THIS INSTRUCTION REGARDING THE
3 HARBOR-UCLA FAILURE TO THRIVE CLINIC?

4 A YOU SAID DOES IT -- DOES IT --

5 Q REFRESH YOUR RECOLLECTION?

6 A I DON'T REMEMBER -- LIKE I SAID, THERE WAS A
7 LOT OF CONVERSATIONS. I DON'T RECALL THIS PARTICULAR
8 ONE.

9 Q OKAY. BUT YOU DO REMEMBER AT SOME POINT
10 SOMEBODY TOLD YOU YOU NEED TO GO TO HARBOR-UCLA FAILURE
11 TO THRIVE CLINIC?

12 A THAT'S WHAT I REMEMBER, YES.

13 Q IF YOU TURN OVER TO THE NEXT PAGE, 001488,
14 STILL ON EXHIBIT NO. 82, IT'S THE SECOND PARAGRAPH DOWN
15 THAT BEGINS WITH "PHN AND CSW REMINDED FATHER."

16 AND IF I CAN GET YOU TO READ THAT, THE NEXT
17 THREE SENTENCES, TO YOURSELF THERE.

18 A OKAY.

19 Q DOES THAT REFRESH YOUR RECOLLECTION OF WHAT
20 YOU TOLD MS. AUSTIN OR MS. PENDER THAT DAY WHEN THEY
21 WERE TELLING YOU YOU NEEDED TO GO TO THE FAILURE TO
22 THRIVE -- OR YOUR BABY NEEDED TO GO TO THE FAILURE TO
23 THRIVE CLINIC?

24 A NO. I DON'T REMEMBER ANY OF THE
25 CONVERSATIONS.

26 Q LET ME ASK YOU THIS WAY: WERE YOU
27 RESISTANT -- DO YOU RECALL BEING RESISTANT TO THE IDEA
28 THAT YOUR BABY NEEDED TO BE SEEN BY THESE

1 PROFESSIONALS?

2 A LIKE I SAID, I DO NOT REMEMBER ANY OF THE
3 CONVERSATIONS. THERE WERE A LOT OF CONVERSATIONS. I
4 DON'T REMEMBER THEM.

5 Q I UNDERSTAND YOU DON'T REMEMBER THE SPECIFIC
6 CONVERSATIONS. I'M ASKING YOU, GENERALLY, DO YOU
7 REMEMBER BEING RESISTANT TO THE IDEA THAT YOUR CHILD
8 NEEDED TO BE SEEN BY THESE MEDICAL PROFESSIONALS?

9 A I DON'T REMEMBER BEING RESISTANT.

10 MR. MCMILLAN: YOUR HONOR, AT THIS POINT, I --
11 I'M DEBATING. I THINK I'M CLOSE TO DONE AND I COULD BE
12 DONE.

13 THE COURT: ARE YOU DONE?

14 MR. MCMILLAN: THAT'S THE BIG QUESTION.
15 THAT'S THE BIG QUESTION.

16 IS THAT A DECISION I CAN MAKE OVER THE LUNCH
17 BREAK?

18 THE COURT: THE DEBATE TIME IS OVER, SO JUST
19 TELL ME. EITHER YOU ARE OR YOU'RE NOT.

20 MR. MCMILLAN: I'M NOT DONE, YOUR HONOR.

21 THE COURT: WE'LL TAKE THE NOONTIME RECESS.
22 WE WILL RESUME AT 1:30. ALL JURORS, PLEASE REMEMBER
23 THE ADMONITION.

24 (JURY EXCUSED)

25 THE COURT: ALL RIGHT. 1:30 FOR COUNSEL.

26 (LUNCH RECESS)

27 (JURY PRESENT)

28 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON

1 THE RECORD. EVERYONE IS PRESENT.

2 MR. MCMILLAN?

3 MR. MCMILLAN: THANK YOU, YOUR HONOR.

4 BY MR. MCMILLAN:

5 Q NOW, EARLIER THIS MORNING, MR. MILLS, WE SPOKE
6 A LITTLE BIT ABOUT DR. SODERBERG AND THE TEST RESULTS
7 THAT HAPPENED THAT DAY IN HER OFFICE.

8 DO YOU RECALL THAT TESTIMONY?

9 A I DO.

10 Q DO YOU ALSO RECALL THAT EVEN LATER, AFTER THE
11 TDM, YOU STILL DIDN'T HAVE ANY CONCLUSIVE RESULTS FROM
12 THE BLOOD TESTS THAT WERE ALSO DONE THAT DAY?

13 MR. GUTERRES: OBJECTION. VAGUE.

14 THE COURT: THE WAY THE QUESTION IS FRAMED,
15 THE OBJECTION IS SUSTAINED, NOT THE SUBJECT MATTER.
16 BUT HE DIDN'T DO ANY -- THE QUESTION IMPLIES HE DID
17 SOME BLOOD TESTS. HE DIDN'T.

18 MR. MCMILLAN: I CAN FIX THAT.

19 THE COURT: YEAH.

20 BY MR. MCMILLAN:

21 Q DO YOU RECALL, MR. MILLS, THAT IN ADDITION TO
22 THE SKIN TESTING THAT WAS DONE WITH DR. SODERBERG, THAT
23 THERE WAS ALSO SOME BLOOD DRAWN?

24 A NOT WITH DR. SODERBERG.

25 Q DID DR. SODERBERG PLACE AN ORDER FOR A BLOOD
26 DRAW FOR A BLOOD TEST?

27 A I BELIEVE SHE DID, YES.

28 Q AND YOU TOOK THE CHILD IN TO GET THE BLOOD

1 DRAWN?

2 A I DON'T REMEMBER.

3 Q DOES QUEST DIAGNOSTICS RING A BELL?

4 A NO, IT DOES NOT.

5 Q OKAY. AM I CORRECT, THOUGH, THAT AT SOME
6 POINT SOMEBODY, WHETHER IT'S YOU OR SOMEBODY ELSE, DID
7 GET THE BLOOD DRAWN FROM BABY RYAN FOR THAT TEST?

8 A I'M ASSUMING HARBOR-UCLA DID BUT THAT'S THE
9 ONLY THING I REMEMBER.

10 Q IF I CAN GET YOU -- WELL, LET ME ASK YOU THIS
11 FIRST.

12 WE KNOW THE CHILD WAS TAKEN ON THE EVENING OF
13 NOVEMBER 3RD; CORRECT?

14 A CORRECT.

15 Q DO YOU RECALL WHETHER OR NOT YOU HAD THE BLOOD
16 TEST BACK YET AS OF NOVEMBER 4TH AT 9:55 A.M.?

17 A NO, I DON'T RECALL.

18 Q OKAY. LET'S SEE IF WE CAN HELP YOU.

19 (PLAINTIFF'S EXHIBIT NO. 471.6362, WAS
20 MARKED FOR IDENTIFICATION BY THE
21 COURT.)

22 BY MR. MCMILLAN:

23 Q IF I CAN GET YOU TO TURN TO EXHIBIT NO. 471,
24 THE PAGE WE WILL BE LOOKING AT IS BATES NO. 6362.

25 OKAY. AND IT'S 6362 IS THE BATES NO, 471.

26 THAT'S NOT THE SAME E-MAIL. ONE SECOND.

27 OH, I THINK IT IS, ACTUALLY. JUST IT LOOKS

28 DIFFERENT IN YOUR BOOK. I APOLOGIZE. SEE HERE, THAT'S

1 WHAT I'D LIKE YOU TO READ TO YOURSELF.

2 A OKAY.

3 Q AND PAYING PARTICULAR ATTENTION -- SOMEWHERE
4 THERE'S A DATE.

5 OKAY. HAVING READ THAT PORTION OF EXHIBIT
6 NO. 471, BATES NO. 6362 TO YOURSELF, DOES THAT REFRESH
7 YOUR RECOLLECTION THAT AS OF NOVEMBER 4TH, THE DAY
8 AFTER THE TDM, YOU HAD STILL NOT RECEIVED THE BLOOD
9 TESTS THAT WERE TAKEN OF BABY RYAN?

10 A THAT WAS -- YEAH, THAT'S WHAT THE E-MAIL SAYS.

11 Q WELL, SO I'M CORRECT THEN AT THAT POINT IN
12 TIME ON NOVEMBER 4TH, AFTER THE BABY WAS SEIZED FROM
13 MS. DUVAL'S CARE, THERE STILL WAS NO CONCLUSIVE
14 EVIDENCE ON THE ISSUE OF ALLERGIES ONE WAY OR THE
15 OTHER?

16 MR. GUTERRES: OBJECTION. FOUNDATION.
17 SPECULATION.

18 THE COURT: SUSTAINED AS TO BOTH. HE'S NOT
19 HERE AS AN EXPERT TO TESTIFY AS TO WHAT'S CONCLUSIVE
20 MEDICALLY.

21 BY MR. MCMILLAN:

22 Q WELL, LET ME ASK IT THIS WAY: THIS E-MAIL
23 HERE, IT'S AN E-MAIL YOU WROTE; CORRECT?

24 A IT LOOKS LIKE IT, YES.

25 Q AND THAT'S YOUR E-MAIL ADDRESS,
26 RYANPMILLS@GMAIL.COM?

27 A CORRECT.

28 Q WHO WERE YOU WRITING AN E-MAIL TO, IF YOU

1 RECALL?

2 A IT SAYS DR. SODERBERG.

3 Q WAS THE PURPOSE OF YOUR E-MAIL TO FIND OUT
4 WHETHER OR NOT THERE WAS ANY CONCLUSIVE EVIDENCE ONE
5 WAY OR THE OTHER ON THE ISSUE OF ALLERGIES?

6 A YEAH, LOOKS LIKE IT.

7 Q DID SHE RESPOND TO YOUR QUERY?

8 A SHE DID.

9 Q DID SHE TELL YOU ANYTHING ABOUT THE
10 AVAILABILITY OF THE TEST RESULTS?

11 A YEAH, I GUESS SHE SAYS SHE DOES NOT HAVE ALL
12 OF THE RESULTS OF THE BLOOD TEST AVAILABLE.

13 Q NOW, AT SOME POINT IN TIME AFTER THE CHILD WAS
14 SEIZED FROM MS. DUVAL, DID YOU BEGIN COMMUNICATING VIA
15 E-MAIL WITH DR. EGGE?

16 A YES.

17 Q DO YOU RECALL EXPRESSING TO DR. EGGE THAT YOU
18 WERE HAVING A LOT OF TROUBLE GETTING BABY RYAN TO EAT
19 AND WERE HAVING TO THROW A LOT OF FOOD OUT BECAUSE HE
20 JUST WOULDN'T EAT IT?

21 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES, I REMEMBER WE WERE HAVING
24 CHALLENGES AT THE BEGINNING.

25 BY MR. MCMILLAN:

26 Q OKAY. AT THE BEGINNING?

27 A CORRECT.

28 Q WELL, THOSE CHALLENGES AT THE BEGINNING, THEY

1 CONTINUED FOR SEVERAL MONTHS; CORRECT?

2 A THEY WERE SLOWLY GETTING BETTER, BUT YES, THEY
3 STILL CONTINUED.

4 Q IN FACT, YOU WERE STILL HAVING TROUBLE GETTING
5 BABY RYAN TO EAT AND GAIN WEIGHT AS LATE AS JUNE 14,
6 2010, WEREN'T YOU?

7 A THAT'S WHEN HE WOULD JUST HAVE A TOUGH DAY OR
8 A TOUGH WEEKEND. IT WOULDN'T BE -- LIKE I SAID, IT WAS
9 JUST KIND OF A SLOW PROGRESSION OF HE WOULD HAVE A GOOD
10 WEEK, THEN ALL OF A SUDDEN A DAY OR TWO HE WOULDN'T
11 EAT.

12 Q WELL --

13 A FROM WHAT I RECALL.

14 Q LET ME ASK YOU THIS WAY: IT ACTUALLY WAS SO
15 CONSISTENT THAT HE WOULDN'T HAVE A GOOD DAY OR A GOOD
16 WEEK THAT YOU WERE CONCERNED, AS OF JUNE 2009, JUST A
17 FEW WEEKS BEFORE TRIAL, THAT HE WASN'T GAINING WEIGHT?

18 MR. GUTERRES: OBJECTION. VAGUE AS TO TIME.

19 THE COURT: SUSTAINED.

20 BY MR. MCMILLAN:

21 Q THE TRIAL IN THE MATTER IN THE UNDERLYING
22 JUVENILE DEPENDENCY CASE WAS ORIGINALLY SCHEDULED TO
23 BEGIN SOMETIME TOWARDS THE END OF JUNE 2010; CORRECT?

24 A IF I REMEMBER RIGHT.

25 Q AND LEADING UP TO THAT TRIAL, YOU HAD
26 COMMUNICATIONS WITH DR. EGGE WHERE YOU EXPRESSED
27 CONCERNS TO HER THAT THE CHILD JUST WAS HAVING TROUBLE
28 EATING AND HE WASN'T GAINING WEIGHT; RIGHT?

1 A WELL, WHAT WAS GOING ON IS HE WOULD HAVE -- AS
2 TIME WENT ON, HE WOULD HAVE MORE GOOD DAYS AND THEN A
3 COUPLE OFF DAYS. BUT FROM WHAT I WAS TOLD, THAT FIRST
4 WOULD COME BACK HIS HEAD SIZE, AND THEN WOULD COME BACK
5 HIS HEIGHT, AND THEN WOULD COME BACK HIS WEIGHT.

6 MR. MCMILLAN: OBJECTION. NONRESPONSIVE.
7 NARRATIVE RESPONSE. MOVE TO STRIKE.

8 THE COURT: THE OBJECTION IS SUSTAINED. THE
9 MOTION TO STRIKE IS GRANTED. THE ANSWER WILL BE
10 ORDERED STRICKEN AND THE JURY DISREGARD IT.

11 HOWEVER, A FEW QUESTIONS AGO THERE WAS AN
12 OBJECTION OF OUTSIDE THE SCOPE. DURING THE INTERIM, I
13 HAVE REVIEWED THE SCOPE OF THE DIRECT EXAMINATION, AND
14 AM REVERSING MY RULING, SUSTAINING THAT OBJECTION
15 OUTSIDE THE SCOPE. AND THIS CONTINUING QUESTION IS
16 OUTSIDE THE SCOPE OF THE TESTIMONY OF THIS WITNESS AT
17 THIS TIME.

18 MR. GUTERRES: THANK YOU, YOUR HONOR. I MOVE
19 TO STRIKE THE ANSWERS TO THOSE QUESTIONS AS BEING
20 OUTSIDE THE SCOPE.

21 THE COURT: MOTION TO STRIKE IS GRANTED.

22 MR. MCMILLAN: YOUR HONOR, AM I OKAY TO
23 CONTINUE?

24 THE COURT: PARDON?

25 MR. MCMILLAN: AM I OKAY TO CONTINUE?

26 THE COURT: NO. I'M TRYING TO LOCATE THE
27 TESTIMONY RECEIVED AFTER THE OBJECTION WAS SUSTAINED AS
28 BEING OUTSIDE THE SCOPE. AND I HAVE.

1 BEGINNING WITH THE QUESTION:

2 "DO YOU RECALL EXPRESSING TO
3 DR. EGGE THAT YOU WERE HAVING A LOT OF
4 TROUBLE GETTING BABY RYAN TO EAT AND
5 WERE HAVING TO THROW A LOT OF FOOD OUT
6 BECAUSE HE JUST WOULDN'T EAT IT?"

7 ALL TESTIMONY FROM THEN TO THE PRESENT TIME IS
8 ORDERED STRICKEN FROM THE RECORD AS IT IS BEYOND THE
9 SCOPE OF THE DIRECT EXAMINATION OF THIS WITNESS. THIS
10 WITNESS WAS PREVIOUSLY CALLED -- WELL, THAT'S
11 SUFFICIENT.

12 MR. MCMILLAN: OKAY.

13 BY MR. MCMILLAN:

14 Q LET'S JUST FOCUS THEN ON SOMETHING ELSE.
15 LET'S TALK ABOUT YOUR CONVERSATIONS WITH SUSAN PENDER,
16 OKAY?

17 DO YOU REMEMBER ALSO HAVING -- IN ADDITION TO
18 HAVING FACE-TO-FACE CONVERSATIONS WITH MS. PENDER, YOU
19 HAD E-MAIL EXCHANGES WITH HER?

20 A I DON'T REMEMBER HAVING E-MAIL EXCHANGES, BUT
21 MAYBE I DID.

22 Q DO YOU RECALL -- AROUND THE TIME THAT THE
23 CHILD WAS SEIZED FROM MS. DUVAL'S CARE AND PLACED WITH
24 YOU, DO YOU RECALL EXPRESSING TO MS. PENDER YOUR
25 CONCERN THAT THE BABY SUFFERED FROM A POSSIBLE
26 NEUROLOGIC PROBLEM?

27 A NO, I DON'T RECALL THAT.

28 Q DO YOU RECALL A TIME WHEN YOU OBSERVED THE

1 CHILD SITTING ON THE GROUND AND HIS LEFT HAND WAS
2 SHAKING AND BOBBLING, AND HE WAS STIFFENING UP AND
3 STARING AT THE CEILING AND JUST SCREAMING?

4 A I REMEMBER HE'D DO THAT HERE AND THERE, YES.
5 (PLAINTIFF'S EXHIBIT NO. 473.6368, WAS
6 MARKED FOR IDENTIFICATION BY THE
7 COURT.)

8 BY MR. MCMILLAN:

9 Q OKAY. DO YOU REMEMBER -- I THINK YOU JUST
10 SAID YOU DON'T REMEMBER SPECIFICALLY SHARING THAT WITH
11 SUSAN PENDER. BUT I'LL ASK YOU TO TURN TO EXHIBIT 473,
12 BATES NO. 6368. AND IF YOU LOOK DOWN BOTTOM OF THE
13 PAGE -- WELL, ACTUALLY, LET'S JUST TALK ABOUT WHAT THAT
14 IS FIRST.

15 IT'S AN E-MAIL, CORRECT, FROM YOU TO
16 MS. PENDER?

17 A CORRECT.

18 Q YOU ALSO CC'D DR. EGGE?

19 A YES.

20 Q AND DANIELLE TOULIE VICE (PHONETIC), WHO IS
21 THAT?

22 A I BELIEVE SHE WAS THE NUTRITIONIST FOR
23 HARBOR-UCLA.

24 Q AND JUST IF YOU COULD FOCUS FOR A MOMENT ON
25 THE BULLET POINTS ON THE BOTTOM OF THAT E-MAIL -- AT
26 THE BOTTOM OF THE PAGE, THERE'S A 1, 2, 3 -- BEGINNING
27 WITH THE WORDS "POSSIBLE NEUROLOGIC PROBLEM." AND JUST
28 READ THOSE TO YOURSELF.

1 A OKAY.

2 Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOU
3 SHARED THESE CONCERNS WITH -- OR YOUR CONCERNS WITH
4 MS. PENDER AND DR. EGGE?

5 A YEAH, TWO WEEKS AFTER I GOT HIM, YES.

6 Q AND WE TALKED A LITTLE BIT ABOUT YOUR
7 INTERACTIONS WITH -- I GUESS NOT YOUR INTERACTIONS WITH
8 DR. NIESEN, BUT WE TALKED A LITTLE BIT ABOUT DR. NIESEN
9 EARLIER LAST WEEK.

10 DO YOU RECALL THAT?

11 A YES.

12 Q OKAY. NOW, AT SOME POINT IN TIME, YOU WERE
13 AWARE THAT DR. NIESEN NEEDED TO GET A HOLD OF THE
14 HARBOR-UCLA MEDICAL RECORDS SO THAT HE COULD LOOK AT
15 THEM, REVIEW THEM, AND RENDER AN OPINION; RIGHT?

16 MR. GUTERRES: OBJECTION. FOUNDATION.
17 SPECULATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: I -- THEY HAD -- AT THE TIME,
20 HARBOR-UCLA TOOK CARE OF -- I DON'T KNOW, SOCIAL
21 WORKERS, HARBOR-UCLA TOOK CARE OF ALL OF THAT. I
22 DIDN'T KNOW EXACTLY WHO WAS ASKING FOR WHAT. I DON'T
23 REMEMBER WHO WAS ASKING FOR WHAT AND WHEN. WHEN THEY
24 ASKED ME TO DO SOMETHING, I WOULD DO IT.

25 BY MR. MCMILLAN:

26 Q YOU DON'T RECALL THAT IT WAS VICTORIA SCHEELE
27 THAT WAS TAKING CARE OF THAT?

28 A PROBABLY -- MAYBE VICTORIA SCHEELE.

1 (PLAINTIFF'S EXHIBIT NO. 476.6378, WAS
2 MARKED FOR IDENTIFICATION BY THE
3 COURT.)

4 BY MR. MCMILLAN:

5 Q OKAY. LET'S LOOK AT EXHIBIT NO. 476, BATES
6 NO. 6378. ABOUT THE MIDDLE OF THE PAGE THERE, IT'S AN
7 E-MAIL FROM DR. EGGE TO YOU, DATED MAY 20TH.

8 DO YOU SEE THAT?

9 A SAY THE BATES NUMBER AGAIN.

10 Q SURE. IT'S 6378.

11 A OKAY.

12 Q AND TOWARDS THE MIDDLE OF THE PAGE THERE, IT'S
13 AN E-MAIL FROM DR. EGGE TO YOU, DATED MAY 20, 2010.

14 DO YOU SEE THAT?

15 A YES.

16 Q IF YOU COULD READ THE BODY OF THE E-MAIL TO
17 YOURSELF THERE, THEN I'LL ASK YOU SOME QUESTIONS ABOUT
18 IT.

19 A OKAY.

20 Q DO YOU HAVE AN UNDERSTANDING AS TO WHO
21 DR. NIESEN WAS?

22 A THERE WERE MANY DOCTORS, SO I DON'T KNOW WHICH
23 ONE WAS WHICH. LIKE I SAID, THIS IS SOMETHING TO WHERE
24 THEY ASKED ME WHAT I NEEDED TO DO AND I GOT IT DONE.

25 Q OKAY. SO YOU DIDN'T KNOW WHETHER HE WAS THE
26 NEUROLOGIST OR --

27 A NO.

28 Q AND THEN YOU RESPONDED TO DR. EGGE, DIDN'T

1 YOU?

2 A I DID.

3 Q WHAT DID YOU SAY TO HER?

4 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
5 THE SCOPE.

6 THE COURT: SUSTAINED.

7 BY MR. MCMILLAN:

8 Q LET ME ASK: DO YOU RECALL TELLING HER
9 SOMETHING TO THE EFFECT OF "GEEZ, YOU HAVE TO TALK TO
10 VICTORIA AGAIN"?

11 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

12 THE COURT: SUSTAINED.

13 BY MR. MCMILLAN:

14 Q HOW LONG WAS IT, IF YOU RECALL -- I KNOW WE
15 ALREADY TALKED ABOUT YOUR CONCERNS ABOUT THE
16 NEUROLOGICAL CONDITIONS BACK IN NOVEMBER OR SO OF 2009
17 WHEN YOU FIRST RECEIVED THE CHILD.

18 DID THAT CONCERN ABOUT A POSSIBLE NEUROLOGIC
19 CONDITION CONTINUE FOR SOME PERIOD OF TIME?

20 A I DON'T REMEMBER.

21 (PLAINTIFF'S EXHIBIT NO. 477.6385, WAS
22 MARKED FOR IDENTIFICATION BY THE
23 COURT.)

24 BY MR. MCMILLAN:

25 Q CAN I GET YOU TO TURN TO EXHIBIT NO. 477,
26 BATES NO. 006385.

27 AND IF I COULD GET YOU TO TAKE A LOOK AT THE
28 SECOND PARAGRAPH THERE, BEGINNING WITH THE WORDS THAT

1 SAYS "LIKE I EXPRESSED ON THE PHONE," AND ACTUALLY JUST
2 READ THAT FIRST LINE THERE TO YOURSELF?

3 A OKAY.

4 OKAY.

5 Q OKAY. NOW, THIS IS AN E-MAIL FROM YOU TO
6 DR. EGGE; IS THAT CORRECT?

7 A CORRECT.

8 Q AND IT'S JUNE 14, 2010?

9 A CORRECT.

10 Q DO YOU RECALL AT THAT POINT IN TIME THAT YOU
11 STILL HAD A CONCERN THAT THERE WAS A PSYCHOLOGICAL
12 ISSUE WITH THE BABY?

13 MR. GUTERRES: OBJECTION. BEYOND THE SCOPE.

14 THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16 Q DID YOU SOMETIMES FEEL LOST WITH HOW TO GET
17 HIM INTERESTED IN EATING FOOD?

18 A IN WHAT TIME LINE?

19 Q JUNE 14, 2010, AT 12:29 P.M.

20 A FROM THE TIME THAT I BEGAN CARING FOR HIM
21 UNTIL THAT TIME, YES.

22 Q OKAY. AND ACTUALLY AFTER THAT TIME, FOR SOME
23 PERIOD OF TIME, IT WAS QUITE A CHALLENGE?

24 A HASN'T BEEN FOR FOUR OR FIVE YEARS, SO -- BUT
25 YES, IT WAS.

26 Q AND DURING THE TIME PERIOD FROM WHEN YOU HAD
27 HIM UP TO FOUR OR FIVE YEARS AGO, HE HAD INTENSIVE
28 PHYSICAL THERAPY, OCCUPATIONAL THERAPY, FEEDING

1 EVALUATIONS, AND ASSESSMENTS; RIGHT?

2 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

3 THE COURT: SUSTAINED.

4 BY MR. MCMILLAN:

5 Q NOW, I THINK YOU TESTIFIED LAST WEEK A LITTLE
6 BIT ABOUT THE TRIAL IN THE JUVENILE DEPENDENCY COURT.

7 DO YOU REMEMBER THAT?

8 A BITS AND PIECES OF IT.

9 Q AND IN THE DAYS AND WEEKS LEADING UP TO THE
10 JUVENILE DEPENDENCY COURT, THE THINGS THAT YOU WERE
11 DOING IN PREPARATION FOR THAT HEARING -- I THINK WE
12 LOOKED AT A COUPLE OF E-MAILS YOU SENT YOUR ATTORNEY,
13 THOSE SORTS OF THINGS.

14 DO YOU REMEMBER THAT?

15 A I THINK THAT'S PRETTY MUCH THE ONLY THING I
16 DID. I DIDN'T REALLY PREPARE ANYTHING FOR IT BESIDES
17 IN WHAT THAT E-MAIL -- THAT I REMEMBER.

18 Q WELL, DO YOU RECALL AT SOME POINT THOUGH THAT
19 THE TRIAL ACTUALLY GOT CONTINUED?

20 A I REMEMBER, YES.

21 Q OKAY. AND DO YOU RECALL DR. EGGE SENDING AN
22 E-MAIL SAYING, "OH, THAT'S GREAT BECAUSE NOW WE HAVE
23 MORE TIME TO FATTEN HIM UP"?

24 MR. GUTERRES: OBJECTION. BEYOND THE SCOPE.
25 RELEVANCE.

26 THE COURT: SUSTAINED.

27 BY MR. MCMILLAN:

28 Q OH, WENDY CRUMP.

1 NOW, YOU SAID A FEW TIMES LAST WEEK "DR. CRUMP
2 THIS, DR. CRUMP THAT, DR. CRUMP THE OTHER THING."

3 DO YOU REMEMBER THAT?

4 A NO, I DON'T REMEMBER TALKING ABOUT IT. MAYBE
5 I DID.

6 Q WHILE SHE'S LOOKING FOR THAT, YOU KNOW WENDY
7 CRUMP IS NOT A DOCTOR; RIGHT?

8 A OKAY. I GUESS SHE'S NOT.

9 Q I'M SORRY?

10 A I SAID OKAY, I GUESS SHE'S NOT, SHE'S NOT A
11 DOCTOR. SHE'S A NUTRITIONIST; CORRECT?

12 Q RIGHT. SHE'S A NUTRITIONIST.

13 A OKAY.

14 Q YOU DIDN'T KNOW THAT?

15 MR. GUTERRES: OBJECTION. RELEVANCE.

16 THE COURT: SUSTAINED.

17 BY MR. MCMILLAN:

18 Q DO YOU KNOW WHETHER OR NOT A NUTRITIONIST IS
19 EVEN CAPABLE OF DIAGNOSING A CHILD WITH ANYTHING?

20 MR. GUTERRES: OBJECTION. RELEVANCE.

21 THE COURT: SUSTAINED.

22 MR. MCMILLAN: YOUR HONOR, I HAVE NO FURTHER
23 QUESTIONS AT THIS TIME.

24 THE COURT: ANYTHING FURTHER?

25 MR. GUTERRES: BRIEFLY, YOUR HONOR.

26

27 ///
28 ///
29

REDIRECT EXAMINATION

1
2 BY MR. GUTERRES:

3 Q GOOD AFTERNOON, MR. MILLS.

4 A GOOD AFTERNOON.

5 Q MR. MCMILLAN HAD ASKED YOU SOME QUESTIONS
6 ABOUT THE VARIOUS DOCTORS AND THE DISCUSSIONS YOU WERE
7 HAVING WITH MS. DUVAL ABOUT WHICH DOCTOR TO HAVE YOUR
8 SON EXAMINED BY PRIOR TO THE NOVEMBER 2009 TIME FRAME.

9 DO YOU GENERALLY RECALL THAT DISCUSSION?

10 A YES.

11 Q WHY WAS IT IMPORTANT FOR YOU TO ATTEND THOSE
12 DOCTORS' VISITS?

13 A BECAUSE HE WASN'T DOING -- I LEARNED THAT HE
14 WASN'T DOING WELL.

15 Q AND WHY DID YOU FEEL THAT YOU NEEDED TO BE AT
16 THOSE APPOINTMENTS WITH THE DOCTOR FOR YOUR SON?

17 A BECAUSE I CARED. IT'S HARD TO WATCH.

18 Q WHEN YOU SAY "IT'S HARD TO WATCH," COULD
19 YOU -- WHAT DO YOU MEAN?

20 MR. MCMILLAN: CALLS FOR A NARRATIVE.

21 THE COURT: OVERRULED.

22 THE WITNESS: IT'S HARD TO WATCH A CHILD -- I
23 DON'T KNOW IF THE WORD IS FAIL OR MISS HIS MILESTONES
24 OR -- IT'S HARD TO WATCH A -- IT'S EMOTIONALLY
25 CHALLENGING TO WATCH A CHILD FAIL.

26 BY MR. GUTERRES:

27 Q MR. MILLS, YOU WERE -- DO YOU STILL HAVE
28 EXHIBIT 1064 IN FRONT OF YOU? IT'S A TWO-PAGE E-MAIL

1 DATED JUNE 21, 2010, FROM YOU TO MS. BERGER?

2 THE COURT: OH, I TOOK IT BACK.

3 MR. GUTERRES: OH. I HAVE ANOTHER COPY, YOUR
4 HONOR.

5 MR. MCMILLAN: I'M SORRY. WHAT WAS THE BATES
6 NUMBER ON THAT?

7 MR. GUTERRES: JVCT1896.

8 MR. MCMILLAN: I'M SORRY. I'VE GOT IT FOR
9 YOU.

10 BY MR. GUTERRES:

11 Q DO YOU HAVE THAT IN FRONT OF YOU, MR. MILLS?

12 A I DO.

13 Q OKAY. AND I BELIEVE YOU HAD INDICATED THAT
14 YOU PREPARED THIS ON OR ABOUT THE DATE THAT IT BEARS,
15 JUNE 21, 2010, YES?

16 A CORRECT.

17 Q WHEN YOU PREPARED THIS E-MAIL, DID YOU TRY TO
18 PUT IN ALL OF THE INFORMATION THAT WAS KNOWN TO YOU AND
19 THAT YOU FELT WAS IMPORTANT AT THE TIME?

20 MR. MCMILLAN: OBJECTION. SPECULATION.
21 FOUNDATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES.

24 BY MR. GUTERRES:

25 Q AND CAN YOU JUST TELL US, AT THIS TIME FRAME,
26 IN THE JUNE 2010 TIME FRAME, WHAT WERE YOU TRYING TO
27 COMMUNICATE IN PUTTING TOGETHER THIS E-MAIL?

28 MR. MCMILLAN: OBJECTION. DOCUMENT SPEAKS FOR

1 ITSELF. FOUNDATION. SPECULATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: MY EXPERIENCES FROM THE MOMENT
4 THAT I JUST -- FROM THE MOMENT THAT I WALKED IN
5 UNTIL -- I THINK UNTIL THE PRESENT. YES. OR UNTIL THE
6 DATE OF THE E-MAIL.
7 BY MR. GUTERRES:

8 Q AND COULD YOU ELABORATE? WHAT DO YOU MEAN BY
9 YOUR EXPERIENCES THAT -- BETWEEN THE DATE OF -- UP
10 UNTIL THE TIME OF THE E-MAIL?

11 A I DON'T KNOW HOW TO FURTHER ELABORATE ON THAT.
12 JUST THE ATTORNEY ASKED ME FOR A BRIEF HISTORY, SHE WAS
13 THE PUBLIC ATTORNEY, AND I WROTE THIS UP JUST AS KIND
14 OF MY OBSERVATIONS AND WHAT I EXPERIENCED FROM WHEN I
15 BEGAN KIND OF THIS JOURNEY OR, YOU KNOW, STARTING TO DO
16 VISITATIONS.

17 Q AND THIS RELATES TO, IN ESSENCE -- YOU WERE
18 TALKING ABOUT YOUR SON; CORRECT?

19 A CORRECT.

20 Q AND THE EXPERIENCES AND WHAT YOU WERE
21 OBSERVING ABOUT HIM?

22 A CORRECT.

23 MR. GUTERRES: ONE MOMENT.

24 THANK YOU, MR. MILLS.

25 THE COURT: ANYTHING ELSE, MR. MCMILLAN?

26 MR. MCMILLAN: WITH THAT, I THINK, NO.

27 THE COURT: ALL RIGHT.

28 THEN MR. MILLS, THANK YOU VERY MUCH. YOU'VE

1 COMPLETED YOUR TESTIMONY. YOU'RE EXCUSED.

2 THE WITNESS: THANK YOU.

3 MS. SWISS: AT THIS POINT, THE DEFENDANTS
4 WOULD LIKE TO RESUME THE EXAMINATION OF MS. ROGERS. I
5 BELIEVE MR. KING WAS QUESTIONING LAST FRIDAY WHEN WE
6 ENDED.

7 THE COURT: ON THURSDAY.

8 MS. SWISS: I THINK IT WAS FRIDAY.

9 THE COURT: WE WEREN'T IN FRONT OF THE JURY
10 LAST FRIDAY.

11 MS. SWISS: I THOUGHT WE WERE. WE WERE DARK
12 YESTERDAY, WHICH WAS MONDAY, BUT --

13 THE COURT: I TAKE IT BACK, IT WAS FRIDAY,
14 YES.

15 MS. SWISS: IN ANY CASE, WE'D LIKE TO RESUME
16 MS. ROGERS, IF MR. KING IS READY.

17 THE COURT: MS. ROGERS, AFTER YOU'RE SEATED,
18 PLEASE STATE YOUR NAME AGAIN FOR THE RECORD, AND PLEASE
19 REMEMBER YOU'RE STILL UNDER OATH.

20 THE WITNESS: KIMBERLY ROGERS, K-I-M- --

21 THE COURT: YOU DON'T HAVE TO SPELL IT.

22 THE WITNESS: OKAY.

23 THE COURT: MR. KING?

24 MR. KING: THANK YOU.

25

26 KIMBERLY ROGERS,

27 WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY

28 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

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CROSS-EXAMINATION

BY MR. KING:

Q MS. ROGERS, BEFORE WE BROKE ON FRIDAY, WE WERE TALKING ABOUT YOUR DECISION TO SEIZE BABY RYAN FROM HIS MOTHER ON NOVEMBER 3RD, 2009.

DO YOU REMEMBER THAT?

A YES.

Q INCIDENTALLY, DID YOU CARRY A BADGE?

A YES.

MS. SWISS: OBJECTION. RELEVANCE.

THE COURT: SUSTAINED.

BY MR. KING:

Q YOU UNDERSTAND THAT THE DECISION TO SEIZE A BABY FROM HIS PARENT IS PROTECTED BY CERTAIN CONSTITUTIONAL SAFEGUARDS; CORRECT?

MS. SWISS: OBJECTION. OUTSIDE THE SCOPE. RELEVANCE.

THE COURT: SUSTAINED.

MR. KING: ON WHICH GROUNDS, YOUR HONOR?

THE COURT: PARDON?

MR. KING: I DIDN'T KNOW ON WHICH GROUNDS. BUT I CAN ASK ANOTHER QUESTION.

THE COURT: SHE OBJECTED ON THE GROUNDS OF OUTSIDE THE SCOPE AND RELEVANCE. I'M SUSTAINING THE OBJECTION TO RELEVANCE.

MR. KING: THANK YOU, YOUR HONOR.

THE COURT: SHE'S NOT HERE TO TESTIFY ABOUT

1 CONSTITUTIONAL PRINCIPLES.

2 MR. KING: OKAY. THANK YOU.

3 BY MR. KING:

4 Q DID YOU RECEIVE TRAINING AS A SOCIAL WORKER
5 WITH REGARDS TO THE REQUIREMENTS PRIOR TO SEIZING A
6 CHILD?

7 A YES.

8 Q YOUR HONOR, I'M SHOWING EXHIBIT NO. 437,
9 BATES-STAMPED 006127. IT'S ALREADY BEEN ADMITTED INTO
10 EVIDENCE.

11 AS PART OF YOUR TRAINING TO BECOME A SOCIAL
12 WORKER, YOU'RE TRAINED ON WHEN THERE'S A REQUIREMENT TO
13 OBTAIN A WARRANT BEFORE SEIZING A CHILD; CORRECT?

14 A YES.

15 Q AND ON FRIDAY, YOU TESTIFIED AND TOLD US THAT
16 YOU'RE NOT AWARE OF ANY TIME RESTRICTIONS ON YOUR
17 DECISION TO SEIZE A BABY WITHOUT FIRST OBTAINING A
18 WARRANT; CORRECT?

19 A COULD YOU ASK THAT QUESTION AGAIN?

20 Q SURE. DO YOU REMEMBER TELLING US ON FRIDAY
21 THAT YOU HAVE NO INFORMATION THAT BEFORE MAKING A
22 DETERMINATION TO SEIZE A BABY, THAT YOU HAVE TO
23 DETERMINE WITHIN A CERTAIN TIME FRAME WHETHER OR NOT
24 YOU HAVE TIME TO GO OUT AND OBTAIN A WARRANT?

25 A SO YOU'RE ASKING IF I WAS AWARE THAT IT TOOK A
26 FEW HOURS -- OR THE PROCEDURES TO OBTAIN A WARRANT? IS
27 THAT WHAT YOU'RE --

28 Q NO. I'M JUST ASKING YOU, DO YOU REMEMBER

1 TESTIFYING THAT YOU HAVE NO INFORMATION TO BELIEVE THAT
2 THERE'S A CERTAIN TIME LIMIT THAT FACTORS INTO YOUR
3 DECISION ON WHETHER OR NOT YOU NEED TO OBTAIN A WARRANT
4 OR NOT PRIOR TO SEIZING A BABY?

5 DO YOU REMEMBER THAT TESTIMONY?

6 A THE WAY YOU'RE PHRASING IT, NO.

7 Q OKAY. I'D LIKE TO SHOW YOU A PORTION OF YOUR
8 TESTIMONY FROM FRIDAY. IF YOU COULD JUST TAKE A LOOK
9 AT LINES 3 THROUGH 13 AND LET ME KNOW IF THAT REFRESHES
10 YOUR RECOLLECTION AS TO YOUR TESTIMONY ON FRIDAY.

11 A OKAY. I READ IT.

12 Q OKAY. SO HAS YOUR MEMORY BEEN REFRESHED THAT
13 ON FRIDAY YOU TOLD US THAT YOU DON'T HAVE ANY
14 INFORMATION WHICH WOULD LEAD YOU TO BELIEVE THAT
15 THERE'S A CERTAIN TIME FRAME FOR YOU TO CONSIDER
16 WHETHER OR NOT THERE'S ENOUGH TIME TO OBTAIN A WARRANT
17 BEFORE YOU SEIZE A BABY?

18 DO YOU RECALL THAT TESTIMONY NOW?

19 A YOUR QUESTION -- WELL, THE WAY HE'S ASKING IT
20 IS DIFFERENT FROM WHEN HE PHRASED IT FOR ME.

21 Q THE QUESTION IS JUST "YES" OR "NO," IF YOU
22 REMEMBER?

23 A THE WAY YOU'RE ASKING IT TODAY, NO. THE WAY
24 HE ASKED IT LAST FRIDAY IS DIFFERENT.

25 Q THAT'S FAIR ENOUGH.

26 I'D LIKE TO DISPLAY EXHIBIT 406, BATES-STAMPED
27 5909. NOW, ISN'T IT TRUE THAT, IN FACT, IN DETERMINING
28 WHETHER OR NOT THERE'S EXIGENT CIRCUMSTANCES BEFORE YOU

1 CAN SEIZE A CHILD, USUALLY A SOCIAL WORKER HAS TO ASK
2 HERSELF, "DO I HAVE ENOUGH TIME IN ORDER TO OBTAIN A
3 WARRANT BEFORE SEVERE BODILY INJURY WILL RESULT TO THIS
4 CHILD?"

5 A AS A SOCIAL WORKER, WE DO HAVE TO ASSESS, WE
6 HAVE TO DETERMINE, WE HAVE TO CONDUCT INVESTIGATIONS TO
7 DETERMINE IF EXIGENT CIRCUMSTANCES ARE PRESENT. AND IF
8 THEY ARE PRESENT, THEN WE'RE NOT SEEKING A WARRANT AT
9 THAT TIME.

10 Q OKAY. SO YOUR TESTIMONY IS THAT AS LONG AS I
11 HAVE EXIGENCY, I DON'T NEED TO DETERMINE IF I NEED A
12 WARRANT; CORRECT?

13 A AS LONG AS WE HAVE EXIGENCY AS WELL AS CONSENT
14 FROM THE PARENT, YES.

15 Q WELL, LET'S TAKE A SITUATION WHERE YOU DON'T
16 HAVE CONSENT FROM THE PARENT, LIKE HERE. ON
17 NOVEMBER 3, 2009, YOU DIDN'T OBTAIN CONSENT FROM
18 MS. DUVAL TO SEIZE HER CHILD, DID YOU?

19 A NO, WE HAD EXIGENCY.

20 Q OKAY. SO IN A SITUATION WHERE WE HAVE
21 EXIGENCY WITH NO CONSENT, DO YOU HAVE TO ASK YOURSELF
22 "IS THERE ENOUGH TIME FOR ME TO GO AND OBTAIN A
23 WARRANT?"

24 A A WARRANT IS NOT NECESSARY WHEN YOU HAVE
25 EXIGENT CIRCUMSTANCES PRESENT. THAT'S HOW WE'RE
26 TRAINED.

27 Q OKAY. SO WHEN WE LOOK AT THIS EXHIBIT HERE
28 WHICH SAYS:

1 "WHEN A CSW DOES NOT HAVE TIME TO
2 OBTAIN A WARRANT OR COURT ORDER BECAUSE
3 OF IMMEDIATE RISK OF HARM TO THE CHILD.

4 "BEFORE ACTING ON THE BASIS OF
5 EXIGENT CIRCUMSTANCES, A CSW MUST
6 ALWAYS ASK, 'DO I HAVE TIME TO GET A
7 WARRANT OR A COURT ORDER BEFORE THE
8 CHILD WILL LIKELY SUFFER SERIOUS
9 PHYSICAL INJURY?'

10 "USUALLY THREE TO SIX HOURS."
11 IS THIS CONSISTENT OR INCONSISTENT WITH YOUR
12 TRAINING?

13 A THAT'S DEFINITELY A TRAINING -- THAT IS
14 INFORMATION THAT WAS MOST LIKELY PROVIDED IN THE
15 TRAINING, YES.

16 Q THANK YOU. NOW, YOU ALSO TRAINED ON THE
17 DEFINITION OF EXIGENT CIRCUMSTANCES; CORRECT?

18 A YES.

19 Q OKAY. AND:

20 "EXIGENT CIRCUMSTANCES, FEDERAL
21 DEFINITION: CSW CAN ACT WITHOUT A
22 WARRANT OR COURT ORDER IF THE CSW HAS
23 REASONABLE CAUSE TO BELIEVE CHILD IS IN
24 IMMINENT DANGER OF SERIOUS BODILY
25 INJURY."

26 IS THAT CORRECT?

27 A YES.

28 Q AND YOU ALSO HAVE TO DETERMINE IF:

1 "THE SCOPE OF THE INTRUSION IS
2 REASONABLY NECESSARY TO PREVENT THAT
3 SPECIFIC INJURY."
4 CORRECT?

5 A YES.

6 Q NOW, WE ALSO READ THAT:

7 "TO PLACE A CHILD IN PROTECTIVE
8 CUSTODY, THERE HAS TO BE SOME PHYSICAL
9 EVIDENCE OR SOME INFORMATION RIGHT THEN
10 AND THERE THAT WE CAN SEE THAT THE
11 CHILD IS AT RISK."
12 DO YOU AGREE WITH THAT STATEMENT?

13 A YES.

14 Q NOW, WE TALKED A MOMENT AGO ABOUT THE SPECIFIC
15 INJURY REQUIREMENT.

16 WHAT WAS THE SPECIFIC INJURY THAT YOU WERE
17 TRYING TO AVERT BY SEIZING MS. DUVAL'S BABY ON
18 NOVEMBER 3RD OF 2009?

19 A WHEN WE PLACED BABY RYAN INTO PROTECTIVE
20 CUSTODY, WE WERE BASING THAT OFF OF THE INFORMATION
21 THAT WAS PROVIDED IN EVIDENCE OBTAINED THAT INDICATED
22 THAT HE WAS IN IMMEDIATE IMMINENT -- IN IMMEDIATE --
23 POTENTIAL IMMEDIATE DANGER OF SUFFERING FROM A SEVERE
24 PHYSICAL INJURY.

25 MR. KING: I'M GOING TO OBJECT, YOUR HONOR, AS
26 NONRESPONSIVE. MOVE TO STRIKE.

27 THE COURT: THE OBJECTION IS OVERRULED.
28 MOTION TO STRIKE IS GRANTED -- I MEAN THE MOTION TO

1 STRIKE IS DENIED.

2 YOU CAN FOLLOW UP.

3 MR. KING: SURE.

4 BY MR. KING:

5 Q MAYBE I MISUNDERSTOOD YOUR ANSWER.

6 WHAT EXACTLY WAS THE SPECIFIC INJURY THAT YOU
7 WERE TRYING TO AVERT?

8 A YOU'RE REFERRING TO AN INJURY. I'M REFERRING
9 TO THE IMMINENT DANGER THAT BABY RYAN WAS IN GIVEN HIS
10 CURRENT CONDITION IN WHICH HE WAS DIAGNOSED WITH
11 FAILURE TO THRIVE, ENVIRONMENTAL PURPOSES.

12 Q GOING BACK TO BATES 5909 OF THE SAME EXHIBIT:

13 "A CSW MUST ALWAYS ASK 'DO I HAVE
14 TIME TO GET A WARRANT OR COURT ORDER
15 BEFORE THE CHILD WILL SUFFER SERIOUS
16 PHYSICAL INJURY?'"

17 DO YOU AGREE WITH THAT STATEMENT?

18 A YES.

19 Q NOW SHOWING YOU EXHIBIT 406, BATES-STAMPED
20 005907:

21 "A CSW CAN ACT WITHOUT A WARRANT
22 OR COURT ORDER IF THE CSW HAS
23 REASONABLE CAUSE TO BELIEVE THE CHILD
24 IS IN IMMINENT DANGER OF SERIOUS BODILY
25 INJURY."

26 SO MY QUESTION TO YOU IS WHAT IS THE SERIOUS
27 BODILY INJURY THAT YOU WERE TRYING TO AVERT?

28 A IT WAS BROUGHT TO MY ATTENTION -- WE WERE MADE

1 AWARE THAT WHEN YOU HAVE A CONDITION SUCH AS FAILURE TO
2 THRIVE, THAT IT CAN POTENTIALLY CAUSE SOME SERIOUS
3 IRREVERSIBLE OR PERMANENT DAMAGE TO YOUR DEVELOPMENT,
4 TO YOUR PHYSICAL WELL-BEING, ALSO IMPACTING THE BRAIN
5 DEVELOPMENT.

6 SO WE WERE LOOKING AT THE PHYSICAL SEVERE
7 INJURIES THAT RYAN COULD SUFFER FROM OR THAT CONTINUED
8 TO SUFFER FROM.

9 Q OKAY. DID YOU HAVE ANY INFORMATION BEFORE YOU
10 THAT RYAN WAS SUFFERING FROM ANY OF THOSE PHYSICAL
11 INJURIES WITHIN SIX HOURS OF YOUR DECISION TO DETAIN
12 HIM?

13 A NO, THERE WAS NO DOCTOR THAT SAID HE WAS GOING
14 TO SUFFER ANY BRAIN DAMAGE OR ANYTHING LIKE THAT. THEY
15 SAID THE POTENTIAL DANGER WAS THERE.

16 Q OKAY. BUT NO DOCTOR TOLD YOU THAT IT'S SO
17 IMMINENT THAT WITHIN SIX HOURS, IF YOU DON'T DETAIN
18 THIS BABY, HE'S GOING TO SUFFER SEVERE BODILY INJURY;
19 CORRECT?

20 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

21 THE COURT: OVERRULED.

22 THE WITNESS: WE DID -- OKAY. WHAT IS YOUR
23 QUESTION? BECAUSE YOU --

24 BY MR. KING:

25 Q I'M SORRY. I HAVE TO WAIT UNTIL YOU ANSWER.
26 BUT I'M JUST ASKING THAT YOU ANSWER MY QUESTION AS TO
27 WHETHER OR NOT THERE WAS ANY DOCTOR THAT TOLD YOU THAT
28 IF YOU DID NOT ACT AND SEIZE THIS BABY WITHIN SIX HOURS

1 HE'S GOING TO SUFFER SEVERE BODILY INJURY.

2 IS THERE ANY DOCTOR THAT TOLD YOU THAT?

3 A THERE'S NO DOCTOR THAT SAID THAT, NO.

4 Q THANK YOU.

5 I'D LIKE TO DISPLAY EXHIBIT 408, BATES 005917.

6 MS. ROGERS, WOULD YOU AGREE WITH ME THAT

7 SERIOUS DOES NOT ALWAYS EQUAL EXIGENT?

8 A THAT'S WHAT THIS -- YES.

9 Q I CAN HAVE A SERIOUS INJURY, BUT IF IT'S NOT
10 EXIGENT, IT DOESN'T JUSTIFY THE SEIZURE; CORRECT?

11 A THAT'S CORRECT.

12 Q THANK YOU.

13 AND IN FACT, IF THERE IS TIME TO GET A WARRANT
14 BEFORE THE CHILD WILL BE HARMED, THE RISK OF HARM
15 CANNOT BE DEEMED IMMEDIATE OR IMMINENT DESPITE THE TYPE
16 OF ALLEGATION.

17 TRUE?

18 A IN THIS PARTICULAR CASE, THAT -- OKAY.

19 Q WELL, I'M JUST ASKING IS THAT A TRUE
20 STATEMENT?

21 A YOU'RE READING THE FORM. YES, THAT'S ON
22 THERE.

23 Q OKAY. AND IT'S CONSISTENT WITH YOUR TRAINING;
24 CORRECT?

25 A YES. THAT'S PART OF IT, YES.

26 Q I'D LIKE TO DISPLAY EXHIBIT 408, BATES 005920.

27 NOW, WHERE WE DO HAVE EXIGENT CIRCUMSTANCES,
28 IT MUST BE DOCUMENTED; CORRECT?

1 A YOU'RE ASKING SHOULD EXIGENT CIRCUMSTANCES BE
2 DOCUMENTED?

3 Q THAT'S MY QUESTION.

4 A YES, THEY SHOULD.

5 Q OKAY. AND YOUR ANSWER IS YES; CORRECT?

6 A YES, WE SHOULD HAVE SOME INFORMATION OR
7 EVIDENCE, DOCUMENTATION, SOMETHING.

8 Q RIGHT. AND AS A CSW, YOU'RE FAMILIAR WITH THE
9 DELIVERED SERVICE LOGS; CORRECT?

10 A AS A SUPERVISING CHILDREN'S SOCIAL WORKER,
11 YES, I'M FAMILIAR WITH THE CONTACT LOGS.

12 Q CONTACT LOGS; CORRECT?

13 A YES.

14 Q AND THAT'S WHERE THE EXIGENT CIRCUMSTANCES
15 SHOULD BE DOCUMENTED; CORRECT?

16 A THAT'S ONE PLACE WHERE THEY COULD BE
17 DOCUMENTED, YES.

18 Q IN THIS PARTICULAR CASE, WHEN BABY RYAN WAS
19 SEIZED ON NOVEMBER 3RD OF 2009, WERE THE EXIGENT
20 CIRCUMSTANCES DOCUMENTED IN THE DELIVERED SERVICE LOGS?

21 A I'D HAVE TO REVIEW THAT INFORMATION.

22 Q THAT'S EXHIBIT 82. YOU SHOULD HAVE IT IN
23 FRONT OF YOU, IN THE BINDERS.

24 A EXHIBIT 82?

25 Q I CAN PROBABLY TURN TO THAT PAGE FOR YOU.

26 YOU HAVE EXHIBIT 82 IN FRONT OF YOU. IF YOU
27 LIKE, YOU CAN GO TO THE DATE OF NOVEMBER 3RD, 2009,
28 AND -- IT SHOULD BE ON PAGE BATES-STAMPED 001495

1 THROUGH 001496. IF YOU CAN TAKE A LOOK AT THOSE AND
2 LET ME KNOW IF YOUR MEMORY HAS BEEN REFRESHED WITH
3 REGARDS TO WHETHER OR NOT ANY EXIGENT CIRCUMSTANCES
4 WERE DOCUMENTED AFTER BABY RYAN WAS SEIZED.

5 A OKAY. I'VE READ IT.

6 Q DO YOU DOCUMENT ANYWHERE IN THE DELIVERED
7 SERVICE LOGS ON NOVEMBER 3, 2009 -- YOU, MS. NELSON --

8 A I'M MS. ROGERS.

9 Q I'M SORRY, MS. ROGERS. MS. NELSON IS COMING
10 UP LATER TODAY. I'M ON HER MIND -- I'M SORRY. SHE'S
11 ON MY MIND.

12 I'LL START ALL OVER.

13 A COME BACK TO ME.

14 Q I'M COMING BACK.

15 DO YOU, MS. ROGERS, DOCUMENT ANYWHERE IN THE
16 DELIVERED SERVICE LOGS WHAT THE EXIGENT CIRCUMSTANCES
17 WERE WHEN YOU DETAINED BABY RYAN ON NOVEMBER 3, 2009?

18 A YOU'RE ASKING IF I DOCUMENTED SOMETHING?

19 Q DID YOU?

20 A NO, I DID NOT DOCUMENT IT.

21 Q OKAY. I'M GOING TO SHOW YOU EXHIBIT 409,
22 BATES-STAMPED 005925, WHICH INDICATES:

23 "BE SURE TO DOCUMENT YOUR EFFORTS

24 BY PROVIDING ACCURATE, DETAILED, AND

25 UPDATED INFORMATION IN THE CONTACTS ON

26 CWS/CMS. IF IT ISN'T IN YOUR NOTES,

27 DID IT REALLY HAPPEN?"

28 IS THAT ALSO PART OF YOUR TRAINING, WHERE

1 YOU'RE ACTUALLY TRAINED -- THERE'S A STATEMENT THERE IN
2 QUOTES:

3 "IF IT ISN'T IN YOUR NOTES, DID IT
4 REALLY HAPPEN?"

5 A THAT SAYS THAT, BUT IT'S IN THE NOTES.

6 Q I'M SORRY?

7 A IT'S IN THE NOTES, THE INFORMATION THAT WE
8 BASED OUR DECISION TO PLACE THE CHILD INTO CUSTODY.
9 YOU'RE JUST ASKING IF I WROTE THE CONTACT?

10 Q YES, I'M JUST ASKING BECAUSE IT SAYS:

11 "BE SURE TO DOCUMENT YOUR EFFORTS
12 BY PROVIDING ACCURATE, DETAILED, AND
13 UPDATED INFORMATION IN THE CONTACTS ON
14 CWS/CMS."

15 SO I JUST WANT TO KNOW IF YOU DOCUMENTED IT
16 YOURSELF.

17 A AS THE SUPERVISORS, WE TYPICALLY DON'T
18 DOCUMENT. WE WOULD DOCUMENT IF WE'RE DOING -- IF I HAD
19 CONDUCTED THE DIRECT INVESTIGATION, I MOST LIKELY MAY
20 HAVE DOCUMENTED IT. BUT MY WORKER DID THE DIRECT
21 INVESTIGATION.

22 Q OKAY. AND YOUR WORKER IS MS. SUSAN PENDER;
23 CORRECT?

24 A YES, AND WE ALSO WERE WORKING WITH OUR PUBLIC
25 HEALTH NURSE AS WELL.

26 Q OKAY. I'M SURE THEY'LL BE TESTIFYING.

27 A OKAY. YOU'RE ASKING.

28 Q I'D LIKE TO GO TO EXHIBIT 436, BATES 006125.

1 YOU'RE ALSO TRAINED THAT:

2 "DELAYS, INCLUDING WAITING TO ACT
3 UNTIL A TDM IS CONDUCTED OR AFTER A
4 SAFETY PLAN HAS BEEN IMPLEMENTED,
5 NEGATES CLAIMS OF IMMEDIATE HARM."
6 IS THAT CORRECT?

7 A YES.

8 Q SO IF YOU HAVE EXIGENT CIRCUMSTANCES, YOU
9 SHOULDN'T WAIT UNTIL THE TDM; CORRECT?

10 A WHEN YOU HAVE EXIGENT CIRCUMSTANCES, WE MAY
11 HAVE CONDUCTED A TDM.

12 Q OKAY. WELL, MY POINT IS THIS, IF YOU HAVE
13 EXIGENT CIRCUMSTANCES BEFORE A TDM, YOU DON'T WAIT
14 UNTIL THE TDM; CORRECT?

15 A WE RECEIVED THE INFORMATION -- WE SCHEDULED
16 THE TDM IN ADVANCE BECAUSE WE KNEW WE WOULD BE ABLE TO
17 RECEIVE THE MEDICAL ASSESSMENTS AND RESULTS ON THAT
18 DAY.

19 MR. KING: I'M GOING TO OBJECT AS
20 NONRESPONSIVE AND MOVE TO STRIKE.

21 THE COURT: THE UNDERLYING OBJECTION
22 NONRESPONSIVE IS SUSTAINED. THE MOTION TO STRIKE IS
23 GRANTED. THE ANSWER WILL BE ORDERED STRICKEN AND THE
24 JURY DISREGARD IT.

25 GO AHEAD.

26 BY MR. KING:

27 Q DO YOU AGREE THAT DELAYS, INCLUDING WAITING TO
28 ACT UNTIL A TDM IS CONDUCTED, MAY WEAKEN A CLAIM OF

1 EXIGENT CIRCUMSTANCES?

2 DO YOU AGREE WITH THAT?

3 A THAT'S POSSIBLE.

4 Q GOING TO EXHIBIT 407, BATES 005915.

5 "CSWS CAN ONLY RELY ON SPECIFIC

6 AND ARTICULABLE EVIDENCE, AND OF

7 PARTICULAR IMPORTANCE IS THE

8 RELIABILITY OF THE EVIDENCE."

9 WOULD YOU AGREE WITH THAT STATEMENT?

10 A YES.

11 Q NOW GOING TO EXHIBIT 409, BATES-STAMPED

12 005922.

13 "CONSEQUENCES OF VIOLATING A

14 WARRANT REQUIREMENT.

15 "POTENTIAL CIVIL LIABILITY FOR

16 SOCIAL WORKERS.

17 "UNREASONABLE SEARCHES AND

18 SEIZURES IN DEPENDENCY CASES ARE 4TH

19 AND 14TH AMENDMENT VIOLATIONS."

20 YOU'RE TRAINED THAT YOU CAN BE HELD CIVILLY

21 RESPONSIBLE WHEN YOU VIOLATE SOMEONE'S CONSTITUTIONAL

22 RIGHTS BY EXERCISING AN UNLAWFUL SEIZURE OF THEIR

23 CHILD; CORRECT?

24 A FOR UNLAWFUL SEIZURE -- UNLAWFUL PLACING

25 CHILDREN INTO PROTECTIVE CUSTODY, YES.

26 Q AND IT WOULD BE UNLAWFUL -- STRIKE THAT.

27 WE'LL GET TO THAT.

28 GO TO EXHIBIT 409, BATES 005923.

1 AND AS A SOCIAL WORKER, YOU'RE TRAINED THAT:

2 "THE DEFENSE OF CIVIL IMMUNITY
3 WILL NOT EXTEND TO A CSW IF ANY OF THE
4 FOLLOWING ARE COMMITTED WITH MALICE."

5 AND IT TELLS YOU:

6 "PERJURY; A FABRICATION OF
7 EVIDENCE; FAILURE TO DISCLOSE KNOWN
8 EXCULPATORY EVIDENCE; OBTAINING
9 TESTIMONY BY DURESS; FRAUD; OR UNDUE
10 INFLUENCE."

11 NOW, BASED ON YOUR TRAINING AND EXPERIENCE --
12 AND I BELIVE IT'S 23 YEARS WITH THE DEPARTMENT; IS THAT
13 CORRECT?

14 A 19.

15 Q OKAY, 19.

16 WHAT IS THE DEFINITION OF EXCULPATORY EVIDENCE
17 BASED ON YOUR TRAINING?

18 A EXCULPATORY EVIDENCE IS INFORMATION THAT WOULD
19 PROVE SOMEONE NOT GUILTY.

20 Q OKAY.

21 MR. KING: YOUR HONOR, I'D LIKE TO READ FROM
22 THE WITNESS'S DEPO, PAGE 147, LINE 19, TO PAGE 148,
23 LINE 2.

24 MS. SWISS: I'M SORRY, WHAT'S THE?

25 MR. KING: SURE. 147, 19 THROUGH 148, 2.

26 MS. SWISS: OBJECTION, YOUR HONOR. IMPROPER
27 IMPEACHMENT.

28 THE COURT: OVERRULED.

1 I'VE GOT IT.

2 MR. KING: YOU DO, OKAY.

3 THE COURT: YES, THANK YOU.

4 BY MR. KING:

5 Q (READING:)

6 "QUESTION: WHAT IS EXCULPATORY
7 EVIDENCE INsofar AS YOU HAVE BEEN
8 TRAINED ABOUT THAT?

9 "QUESTION: JUST YOUR TRAINING.

10 "ANSWER: MY UNDERSTANDING IS IT'S
11 INFORMATION THAT IS SUBMITTED OR
12 PROVIDED THAT JUSTIFIES WHATEVER ACTION
13 WAS TAKEN."

14 NOW, WOULD YOU AGREE THAT AS OF THE TIME OF
15 YOUR DEPOSITION, YOU HAD NEVER RECEIVED ANY TRAINING ON
16 EXCULPATORY EVIDENCE, ON EXACTLY WHAT THAT IS?

17 A NO, THAT'S NOT TRUE. WE RECEIVED TRAINING ON
18 THAT. IT'S JUST YOU USED LEGAL TERMS, AND WE MAY
19 UNDERSTAND IT A DIFFERENT WAY.

20 MR. KING: YOUR HONOR, IF WE CAN READ FROM THE
21 WITNESS'S DEPOSITION, PAGE 149, LINES 3 THROUGH 7.

22 MS. SWISS: OBJECTION. IMPROPER IMPEACHMENT.

23 THE COURT: OVERRULED. GO AHEAD.

24 MR. KING: THANK YOU.

25 BY MR. KING:

26 Q (READING:)

27 "QUESTION: HAVE YOU EVER BEEN
28 TRAINED THAT EXCULPATORY EVIDENCE IS

1 EVIDENCE THAT MAY BE HELPFUL TO THE
2 OTHER SIDE?

3 "ANSWER: NO, I'M NOT TRAINED
4 PARTICULARLY ON EXCULPATORY EVIDENCE.
5 I DON'T RECALL THAT."

6 MS. SWISS: YOUR HONOR, MAY I REQUEST THAT THE
7 NEXT QUESTION AND ANSWER BE READ?

8 THE COURT: YES, I DO THINK THE NEXT QUESTION
9 AND ANSWER SHOULD BE READ. THE PORTION READ IS, I
10 THINK, INCOMPLETE.

11 MS. SWISS: IT'S PAGE 149, LINES 8 THROUGH 12.

12 MR. KING: (READING:)

13 "QUESTION: HAVE YOU EVER BEEN
14 TRAINED THAT YOU HAVE AN AFFIRMATIVE
15 DUTY TO DISCLOSE EXCULPATORY EVIDENCE
16 TO THE COURT?

17 "ANSWER: WE HAVE A DUTY TO
18 DISCLOSE THE INFORMATION, THE FACTS,
19 THE TRUTH. THAT'S OUR DUTY."

20 NOW, YOU'RE AWARE THAT THE DETENTION REPORT IS
21 THE PRIMARY EVIDENTIARY DOCUMENT THAT'S SUBMITTED TO
22 THE COURT UNDER PENALTY OF PERJURY; CORRECT?

23 A YES.

24 Q AND THE INTAKE DETENTION WORKER RELIES ON THE
25 REPORT, THE DETENTION REPORT, IN FORMULATING THE
26 PETITION; CORRECT?

27 A YES.

28 Q AND WE AGREE THAT NO ONE REPORTED TO YOU THAT

1 MS. DUVAL WILLFULLY FAILED TO FEED HER CHILD; CORRECT?

2 A ARE YOU REFERRING TO THE INTAKE, THAT THE
3 OTHER WORKER WROTE, OR ARE YOU REFERRING TO THE
4 PETITION THAT MY WORKER WROTE? BECAUSE WHEN WE SUBMIT
5 A DETENTION REPORT, A PETITION, WE SUBMIT THAT
6 INFORMATION AND IT GOES TO COURT.

7 Q RIGHT. AND YOU SEIZED BABY RYAN ON
8 NOVEMBER 3, 2009; CORRECT?

9 A WE PLACED HIM INTO TEMPORARY PROTECTIVE
10 CUSTODY.

11 Q OKAY. AND THEN ON 11/5 OF 2009, YOU SIGNED
12 THE DETENTION REPORT?

13 A CORRECT.

14 Q UP UNTIL THAT POINT IN TIME WHEN YOU SIGNED
15 THE DETENTION REPORT, DID YOU HAVE ANY INFORMATION THAT
16 BABY RYAN WILLFULLY -- I'M SORRY -- THAT MS. DUVAL
17 WILLFULLY FAILED TO FEED HER CHILD?

18 A SHE DID FAIL TO FEED HER CHILD. THAT IS WHAT
19 OUR INVESTIGATION CONCLUDED, OUR FINDINGS, YES.

20 MR. KING: I'M GOING TO OBJECT AND MOVE TO
21 STRIKE, YOUR HONOR, AS NONRESPONSIVE.

22 THE COURT: THE OBJECTION IS OVERRULED.
23 MOTION TO STRIKE IS DENIED.

24 BY MR. KING:

25 Q NOW. NO DOCTOR EVER TOLD YOU THAT MS. DUVAL
26 WAS THE CAUSE OF BABY RYAN'S FAILURE TO THRIVE; IS THAT
27 CORRECT?

28 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

1 THE COURT: OVERRULED.

2 WE'LL DO IT ANOTHER TIME, AND THEN THAT WILL
3 BE IT.

4 THE WITNESS: OKAY. YOU'RE ASKING IF A DOCTOR
5 TOLD ME THAT BABY RYAN WAS ABOUT TO EXPIRE OR PASS
6 AWAY?

7 BY MR. KING:

8 Q RIGHT.

9 A NO. DOCTORS DON'T TELL US THAT. THEY WILL
10 NOT TELL US THAT, UNLESS THEY'RE ABOUT TO DIE.

11 Q OKAY. WELL, WE TALKED ABOUT THE FACT THAT ON
12 OCTOBER 21ST BABY RYAN HAD BEEN TO THE CATC CLINIC;
13 CORRECT?

14 A YES.

15 Q OKAY. AND THEN ON OCTOBER 22ND, THERE WAS A
16 NOTATION IN THE CASE NOTE FROM DR. EVANS THAT YOU
17 LOOKED AT AND RELIED ON IN FORMING YOUR DECISION TO
18 DETAIN BABY RYAN; CORRECT?

19 A THAT WAS PART OF IT. THAT WAS SOME OF THE
20 INFORMATION, YES.

21 Q RIGHT. AND AT THAT POINT, AFTER GOING TO THE
22 CATC CLINIC, THE INFORMATION THAT YOU HAD WAS THAT SOME
23 ORGANIC CAUSES HAD BEEN RULED OUT AND THAT FURTHER
24 TESTING NEEDED TO BE DONE; CORRECT?

25 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

26 THE COURT: OVERRULED.

27 THE WITNESS: YES.

28 ///

1 BY MR. KING:

2 Q OKAY. AND THEN THE NEXT TIME THAT BABY RYAN
3 SEES A DOCTOR FOR THE CONDITION OF FAILURE TO THRIVE
4 WAS ON NOVEMBER 3RD OF 2009; CORRECT?

5 A YES.

6 Q NOW, THAT WAS IMMEDIATELY BEFORE THE TDM; IS
7 THAT TRUE?

8 A IT WAS RIGHT BEFORE THE TDM, YES.

9 Q OKAY. AND THAT DOCTOR WAS DR. EGGE; CORRECT?

10 A YES.

11 Q AND DR. EGGE IS A COUNTY DOCTOR; CORRECT?

12 A YES, DR. EGGE IS A MEDICAL DOCTOR, YES.

13 Q OKAY. MEANING THAT YOUR DEPARTMENT SENT
14 BABY RYAN AND HIS MOTHER TO DR. EGGE; TRUE?

15 A YES -- DR. EGGE DID EXAMINE BABY RYAN, YES.

16 Q OKAY. AND THEN, PRIOR TO THE TDM, DID YOU
17 HAVE AN OPPORTUNITY TO SPEAK WITH DR. EGGE?

18 A NO.

19 Q YOUR TESTIMONY IS THAT SUSAN PENDER SPOKE WITH
20 DR. EGGE; IS THAT CORRECT?

21 A I BELIEVE SO.

22 Q OKAY. THEN YOU HAD A COMMUNICATION WITH SUSAN
23 PENDER PRIOR TO THE TDM CONCERNING DR. EGGE'S
24 EXAMINATION OF BABY RYAN; IS THAT CORRECT?

25 A YES. WITH MY CSW, SUSAN PENDER, AND OUR
26 PUBLIC HEALTH NURSE.

27 Q SO THE THREE OF YOU -- MS. PENDER, YOURSELF,
28 AND THE PUBLIC HEALTH NURSE, LAURA AUSTIN -- HAVE A

1 CONVERSATION PRIOR TO THE TDM CONCERNING BABY RYAN'S
2 EVALUATION BY DR. EGGE ON NOVEMBER 3, 2009; CORRECT?

3 A YES.

4 Q OKAY. IS THAT DOCUMENTED IN THE DELIVERED
5 SERVICE LOGS?

6 A I'D HAVE TO CHECK THE INFORMATION HERE. ONE
7 MOMENT.

8 Q OKAY. YOU HAVE IT RIGHT IN FRONT OF YOU.

9 A ON NOVEMBER 3RD -- YOU NEED ME TO SAY WHAT
10 PAGE I'M ON?

11 Q YES, JUST COULD YOU LOOK ON NOVEMBER 3RD AND
12 LET ME KNOW IF THE COMMUNICATION -- TALKING ABOUT THE
13 FACT THAT YOU, MS. PENDER, AND LAURA AUSTIN GOT
14 TOGETHER AND HAD A COMMUNICATION CONCERNING BABY RYAN
15 GOING TO DR. EGGE EARLIER ON NOVEMBER 3, 2009.

16 YES OR NO, IS THAT REFLECTED IN YOUR DELIVERED
17 SERVICE LOGS?

18 A YES.

19 Q OKAY. LET ME LOOK AT WHAT PAGE YOU'RE LOOKING
20 AT.

21 SO WE'RE LOOKING AT BATES STAMP 001495; IS
22 THAT CORRECT?

23 A YES.

24 Q OKAY. SO LOOKING AT EXHIBIT 82, BATES 001495,
25 YOUR TESTIMONY IS THAT THAT ENTRY STATES THAT
26 MS. ROGERS, MS. PENDER, AND LAURA AUSTIN TALKED ABOUT
27 BABY RYAN'S VISIT WITH DR. EGGE ON THE MORNING OF
28 NOVEMBER 3RD, 2009?

1 A IT DOESN'T SPECIFICALLY STATE OUR NAMES, NO,
2 BUT THERE WAS DEFINITELY A CONSULT.

3 Q OKAY. YOU'RE TALKING ABOUT CONSULT WITH
4 SERVICE PROVIDER? IS THAT WHAT YOU'RE MENTIONING?

5 A YES.

6 Q OKAY. THE SERVICE PROVIDER IS WHO?

7 A DR. EGGE.

8 Q OKAY. I'M ASKING WHETHER OR NOT THERE'S
9 ANYTHING IN YOUR NOTES THAT SAYS THAT LAURA AUSTIN,
10 KIMBERLY ROGERS, AND SUSAN PENDER GOT TOGETHER AND
11 TALKED ABOUT A COMMUNICATION THAT MS. PENDER RECEIVED
12 FROM DR. EGGE?

13 A YOU'RE LOOKING FOR SPECIFIC WORDING, AND
14 WHAT -- THE WAY WE OPERATE IS WE WILL CONSULT WITH EACH
15 OTHER BUT WE MAY NOT DOCUMENT EVERY SINGLE WORD THAT WE
16 DISCUSS AMONGST EACH OTHER. BUT THERE DEFINITELY WAS
17 COMMUNICATION AND A CONSULT REGARDING BABY RYAN'S
18 CONDITION.

19 Q AND SO MY QUESTION IS: IS THERE ANYTHING ON
20 NOVEMBER 3RD THAT SAYS THERE WAS A CONSULTATION AMONGST
21 THE THREE OF YOU, JUST YES OR NO?

22 A NO.

23 Q OKAY. BECAUSE YOU WOULD AGREE THAT AT OTHER
24 TIMES IN THE DELIVERED SERVICE LOG WHEN THERE'S A
25 CONSULTATION, IT'S DOCUMENTED; CORRECT?

26 A SOMETIMES. IT'S NOT THROUGHOUT ALL OF THE
27 INFORMATION, NO.

28 Q RIGHT. BUT I MEAN IF WE GO TO BATES 001492,

1 SIX LINES DOWN, THERE'S A CONSULTATION THERE WITH YOU
2 THAT'S DOCUMENTED; CORRECT?

3 A ONE MOMENT, PLEASE. YOU SAID 001492?

4 Q CORRECT.

5 YOU WOULD AGREE THAT ON THAT EXHIBIT, SIX
6 LINES DOWN, IS A NOTATION THAT THERE WAS A CONSULTATION
7 WITH KAREN ROGERS; CORRECT?

8 A WITH KIMBERLY ROGERS?

9 Q KIMBERLY -- IT SAYS K. ROGERS, SO LET'S GO
10 WITH THAT, K. ROGERS.

11 THAT'S DOCUMENTED; CORRECT?

12 A ONE MOMENT, PLEASE.

13 YES, IT'S DOCUMENTED THAT WE HAD A
14 CONSULTATION WITH A PUBLIC HEALTH NURSE, MS. SMALL.

15 Q OKAY. AND YOU AGREE THAT YOUR TRAINING THAT
16 WE DISCUSSED EARLIER TRAINED YOU THAT IF SOMETHING
17 IMPORTANT OCCURS AND IT'S NOT IN YOUR CASE NOTES,
18 THERE'S A QUESTION OF DID IT REALLY HAPPEN; CORRECT?

19 A YOU'RE BRINGING THAT UP, BUT IT ALSO DOCUMENTS
20 THAT THERE HAVE BEEN SEVERAL CONSULTATIONS BETWEEN MY
21 WORKER, MS. PENDER, OUR PUBLIC HEALTH NURSE, AND
22 MYSELF. IT DOCUMENTS SEVERAL. IT MAY NOT BE THE
23 WAY -- I THINK YOU'RE LOOKING FOR IT TO BE A CERTAIN
24 WAY, AND IT MAY NOT BE THAT WAY. DOESN'T MEAN IT
25 DIDN'T HAPPEN.

26 Q OKAY. WELL, WHAT I'M ASKING IS, AS CONSISTENT
27 WITH YOUR TRAINING, YOU TESTIFIED, YOU TOLD THIS JURY
28 THAT MS. PENDER GOT A PHONE CALL FROM DR. EGGE, AND

1 AFTER THE PHONE CALL, YOU, MS. ROGERS, AND LAURA AUSTIN
2 HAD A CONVERSATION ABOUT BABY RYAN'S CONDITION;
3 CORRECT?

4 A YES, WE DID HAVE A CONSULTATION. YES.

5 Q SO I'M JUST ASKING IF THAT PARTICULAR
6 CONSULTATION WAS DOCUMENTED?

7 A NO, THAT'S NOT -- THAT WAS RIGHT BEFORE WE
8 WALKED INTO OUR MEETING. NO.

9 Q OKAY. NOW, YOUR TESTIMONY CONCERNING THE
10 INFORMATION THAT WAS RECEIVED BY MS. PENDER WAS THAT
11 DR. EGGE INFORMS MS. PENDER THAT BABY RYAN'S FAILURE TO
12 THRIVE IS NOW ASSOCIATED WITH ENVIRONMENTAL CAUSES; IS
13 THAT CORRECT?

14 A YES.

15 Q DID YOU DOCUMENT THAT MS. PENDER TOLD YOU THAT
16 SHE HAD HAD A CONVERSATION WITH DR. EGGE, WHO HAS NOW
17 INFORMED HER THAT THE BABY'S FAILURE TO THRIVE IS
18 CAUSED BY ENVIRONMENTAL CONDITIONS?

19 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

20 THE COURT: SUSTAINED.

21 BY MR. KING:

22 Q ARE YOU FAMILIAR WITH THE FACT THAT THERE
23 COULD BE MORE THAN ONE CAUSE OF FAILURE TO THRIVE?

24 A YES, IT COULD BE MEDICAL-RELATED OR
25 ENVIRONMENTAL.

26 Q SO IT COULD BE ORGANIC OR NONORGANIC?

27 A IT COULD BE BOTH.

28 Q IT COULD BE MULTIPLE FACTORS; CORRECT?

1 A CORRECT.

2 Q WHAT THEY CALL MULTIFACTORIAL?

3 A YES.

4 Q NOW, DID MS. PENDER TELL YOU THAT BASED OFF OF
5 HER CONVERSATION WITH DR. EGGE -- I'M SORRY -- YEAH,
6 BASED OFF OF HER CONVERSATION WITH DR. EGGE, THAT BABY
7 RYAN'S FAILURE TO THRIVE CONDITION WAS REPORTED TO BE
8 MULTIFACTORIAL?

9 A I DON'T RECALL THAT INFORMATION.

10 Q ALL YOU RECALL IS THAT MS. PENDER TOLD YOU
11 THAT IT WAS ENVIRONMENTAL; CORRECT?

12 A MY UNDERSTANDING IS IT WAS BROUGHT TO OUR
13 ATTENTION THAT HIS CONDITION WAS AS A RESULT OF
14 ENVIRONMENTAL FAILURE TO THRIVE, YES.

15 Q LET'S TALK ABOUT ENVIRONMENTAL FAILURE TO
16 THRIVE.

17 THAT COULD BE SEVERAL TYPES OF ENVIRONMENTAL
18 FACTORS; CORRECT?

19 A IN OUR TRAINING, WE HAVE TO LOOK AT THE
20 PRIMARY CUSTODIAL PARENT AND WHEN IT'S -- WHEN IT'S
21 BROUGHT TO OUR ATTENTION THAT IT'S ENVIRONMENTAL
22 PURPOSES.

23 Q WELL, THERE COULD BE PSYCHOSOCIAL CAUSES FOR
24 ENVIRONMENTAL FAILURE TO THRIVE; IS THAT CORRECT?

25 A LOOKING AT IF THE CHILD IS BEING FED PROPERLY
26 AND IF THERE'S ANY REASON WHY HE WAS NOT BEING FED
27 PROPERLY. AND BASED ON THAT INFORMATION THAT WE
28 RECEIVED FROM OUR MEDICAL PROVIDER, THEN THE

1 INFORMATION, WE DIDN'T HAVE ANY MEDICAL-RELATED
2 REASONING AS TO WHY THE CHILD WAS SUFFERING FROM THAT
3 CONDITION.

4 MR. KING: I'LL OBJECT AS NONRESPONSIVE AND
5 MOVE TO STRIKE, YOUR HONOR.

6 THE COURT: THE OBJECTION IS SUSTAINED.
7 MOTION TO STRIKE IS GRANTED. AND THE ANSWER WILL BE
8 STRICKEN AND THE JURY DISREGARD IT.

9 MR. KING: THANK YOU.

10 BY MR. KING:

11 Q THIS POSITION AS THE SUPERVISING CSW AT THE ER
12 DEPARTMENT, HOW LONG HAD YOU BEEN THERE PRIOR TO 11/3
13 OF 2009?

14 A AS A SUPERVISOR, TWO YEARS AS A SUPERVISOR.
15 AND I HAD BEEN WITH THE DEPARTMENT FOR ABOUT 12 YEARS
16 AT THAT TIME.

17 Q AND HOW MANY FAILURE TO THRIVE CASES HAD YOU
18 DEALT WITH PRIOR TO THIS ONE?

19 A MR. MCMILLAN ALREADY POINTED OUT THAT THAT WAS
20 MY FIRST, YES. BUT I'VE SUPERVISED SEVERAL CASES ON
21 THE INVESTIGATION OF THOSE CASES, YES.

22 Q SO THIS WAS YOUR FIRST FAILURE TO THRIVE CASE
23 SINCE BEING A SUPERVISOR AT THE ER UNIT?

24 A SUPERVISING A FAILURE TO THRIVE CASE, YES, IN
25 EMERGENCY RESPONSE, YES.

26 Q OKAY. AND SO THE INFORMATION THAT YOU HAVE ON
27 NOVEMBER 3RD FROM MS. PENDER IS THAT THERE'S ONE CAUSE
28 OF BABY RYAN'S FAILURE TO THRIVE AND IT'S

1 ENVIRONMENTAL; CORRECT?

2 A WHEN YOU SAY "ONE CAUSE OF"?

3 Q WELL, BECAUSE WE TALKED ABOUT THE FACT THAT
4 THERE COULD BE MULTIPLE CAUSES OF FAILURE TO THRIVE;
5 CORRECT?

6 A THAT'S TRUE, YES, THERE CAN BE MULTIPLE
7 CAUSES.

8 Q AND IN FACT, DR. EVANS, ON OCTOBER 21ST, SAID,
9 "LOOK, WE NEED ADDITIONAL TESTING BECAUSE WE NEED TO
10 DETERMINE TRULY WHAT IS THE CAUSE OF THE FAILURE TO
11 THRIVE."

12 CORRECT?

13 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

14 THE COURT: OVERRULED.

15 THE WITNESS: YES, THEY DID WANT TO CONDUCT
16 ADDITIONAL TESTS, YES.

17 BY MR. KING:

18 Q SO WE'RE WAITING ON ADDITIONAL TESTING TO BE
19 DONE.

20 AND ISN'T IT TRUE THAT AS OF NOVEMBER 3, 2009,
21 THERE HAD BEEN NO ADDITIONAL TESTING DONE REGARDING
22 BABY RYAN'S FAILURE TO THRIVE?

23 A I'M NOT SURE WHAT THE DOCTORS CONDUCTED OR
24 TESTED. WE JUST BASICALLY RECEIVED THEIR RESULTS AND
25 INFORMATION.

26 Q OKAY. SO YOU HAVE NO IDEA IF THERE WAS ANY
27 TESTING DONE ON BABY RYAN BETWEEN 10/21 AND NOVEMBER 3;
28 CORRECT?

1 A YOU'RE ASKING ME WHAT THE DOCTORS DID?

2 Q I'M ASKING YOU WHAT YOU KNEW BEFORE YOU MADE
3 THE DECISION TO SEIZE BABY RYAN FROM HIS MOTHER?

4 A WHEN I PLACED HIM INTO PROTECTIVE CUSTODY, WE
5 HAD INFORMATION THAT THE MEDICAL EXAMINERS -- THE
6 BABY'S MEDICAL PROVIDERS HAD DID WHATEVER WAS NECESSARY
7 TO DETERMINE WHAT WAS HIS CONDITION, SO.

8 Q SO YOUR TESTIMONY IS THAT ON 11/3, YOU HAD
9 INFORMATION TO BELIEVE THAT THE MEDICAL PROVIDERS HAD
10 DONE WHATEVER THEY NEEDED TO DO TO INFORM YOU THAT THE
11 CAUSE OF BABY RYAN'S FAILURE TO THRIVE WAS, IN FACT,
12 ENVIRONMENTAL; CORRECT?

13 A WE WERE -- IT WAS BROUGHT TO OUR ATTENTION
14 THAT THE CAUSE WAS ENVIRONMENTAL, YES.

15 Q AND WHEN YOU SAY "BROUGHT TO OUR ATTENTION,"
16 YOU'RE TALKING ABOUT FROM DR. EGGE; CORRECT?

17 A YES.

18 Q DID YOU EVER SPEAK TO DR. BERKOWITZ AT THE
19 UCLA FAILURE TO THRIVE CLINIC?

20 A NO, I HAVEN'T.

21 Q YOU UNDERSTAND THAT DR. EGGE WAS THE FELLOW
22 AND THEN DR. BERKOWITZ WAS, IN FACT, THE DIRECTOR OF
23 THE UCLA FAILURE TO THRIVE CLINIC; CORRECT?

24 A I CAN'T RECALL AT THAT TIME WHO THE DIRECTOR
25 WAS.

26 Q OKAY. AT ANY POINT IN TIME, DID YOU BECOME
27 AWARE THAT DR. BERKOWITZ WAS ACTUALLY THE PERSON WHO
28 RAN THE CLINIC AND DR. EGGE WAS JUST A FELLOW?

1 A I DON'T RECALL AT THIS TIME.

2 Q BUT YOU DO RECALL THAT YOU HAD ENOUGH
3 INFORMATION ON NOVEMBER 3RD THAT THE ONLY CAUSE OF BABY
4 RYAN'S FAILURE TO THRIVE WAS ENVIRONMENTAL; RIGHT?

5 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

6 THE COURT: SUSTAINED.

7 BY MR. KING:

8 Q YOU TOLD US ON FRIDAY THAT -- I'LL JUST SHOW
9 YOU EXHIBIT 175, BATES 002251, WHICH HAS A DATE OF
10 NOVEMBER 3, 2009, AT THE TOP, UCLA HARBOR [SIC] MEDICAL
11 CENTER.

12 MR. GUTERRES: ONE MINUTE, COUNSEL.

13 MR. KING: OKAY.

14 BY MR. KING:

15 Q AND IF WE LOOK AT THIS DOCUMENT -- JUST
16 WAITING FOR DEFENSE COUNSEL. IT LOOKS LIKE HE HAS HIS
17 COPY.

18 MR. GUTERRES: THANK YOU.

19 BY MR. KING:

20 Q AS WE LOOK AT THIS DOCUMENT HERE FROM THE UCLA
21 FAILURE TO THRIVE CLINIC DATED NOVEMBER 3RD, 2009, WE
22 SEE THAT THERE'S:

23 "1, A 15-MONTH OLD MALE WITH
24 FAILURE TO THRIVE (ENVIRONMENTAL);

25 "2, PARENTAL DISCORD;

26 "3, TRUNCAL HYPOTONICITY, DELAYED
27 GROSS MOTOR ATTAINED, SIX MONTHS
28 MILESTONES. HE'S 15 MONTHS OLD;

1 "4, DELAYED VACCINATIONS."

2 THEN WE HAVE A RECOMMENDATION AT THE BOTTOM:

3 "DIETITIAN CONSULT, HOME VISIT,
4 FOLLOW-UP WITH THE PT/OT AND FOLLOW-UP
5 ONE MONTH."

6 SO WHEN WE LOOK AT THE TOP AND WE HAVE ONE,
7 TWO, THREE, FOUR CAUSES THERE OF THE -- BABY RYAN'S
8 FAILURE TO THRIVE, WOULD YOU AGREE THAT THAT'S
9 MULTIFACTORIAL CAUSES OF FAILURE TO THRIVE?

10 MS. SWISS: OBJECTION. MISSTATES THE
11 DOCUMENT. LACKS FOUNDATION. CALLS FOR SPECULATION ON
12 THE PART OF THIS WITNESS.

13 THE COURT: SUSTAINED AS TO ASKING HER FOR
14 WHAT APPEARS TO BE A MEDICAL OPINION.

15 BY MR. KING:

16 Q WELL, YOU DID INDICATE THAT YOU'RE AWARE THAT
17 THERE'S DIFFERENT TYPES OF FAILURE TO THRIVE; CORRECT?

18 A YES.

19 Q AND IT COULD BE ORGANIC OR IT COULD BE
20 NONORGANIC; CORRECT?

21 A YES.

22 Q YOU CAN HAVE FAILURE TO THRIVE WHERE THERE ARE
23 MULTIPLE CAUSES OF THE FAILURE TO THRIVE; CORRECT?

24 A YES, IT CAN BE MIXED.

25 Q AND PART OF YOUR TRAINING IS THAT THAT WOULD
26 BE MULTIFACTORIAL; CORRECT?

27 MS. SWISS: OBJECTION. LACKS FOUNDATION.
28 CALLS FOR SPECULATION RELATED TO MEDICAL OPINION.

1 THE COURT: OVERRULED.

2 SHE'S ALREADY TESTIFIED TO THIS, SO I'D LIKE
3 TO NOT KEEP REPEATING THE SAME QUESTIONS. BUT YOU'RE
4 ASKING HER TO INTERPRET A HARBOR-UCLA MEDICAL CENTER
5 RECORD. THERE'S NO FOUNDATION FOR HER TO ACTUALLY BE
6 ABLE TO INTERPRET THE MEDICAL RECORD.

7 MR. KING: OKAY.

8 BY MR. KING:

9 Q ASSUMING THAT WE HAVE FOUR CAUSES OF BABY
10 RYAN'S FAILURE TO THRIVE, WOULD THAT BE CONSIDERED
11 MULTIFACTORIAL BASED ON YOUR TRAINING?

12 MS. SWISS: OBJECTION. LACKS FOUNDATION.
13 CALLS FOR SPECULATION.

14 THE COURT: ARE YOU SAYING IF THERE'S MORE
15 THAN ONE CAUSE, THAT BECOMES MULTI?

16 MR. KING: CORRECT, YOUR HONOR.

17 THE COURT: THAT'S A GIVEN. LET'S ASK A
18 QUESTION TO GET EVIDENCE.

19 MR. KING: OKAY.

20 BY MR. KING:

21 Q SO YOU WOULD AGREE THAT ON NOVEMBER 3RD OF
22 2009, THE INFORMATION THAT YOU'RE ACTING ON IS THAT THE
23 ONLY CAUSE OF THE FAILURE TO THRIVE IS ENVIRONMENTAL;
24 CORRECT?

25 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

26 THE COURT: SUSTAINED.

27 BY MR. KING:

28 Q OKAY. NOW, AS PART OF YOUR ROLE IN

1 DETAINING -- MAKING THE ULTIMATE DECISION TO DETAIN
2 BABY RYAN, DO YOU DO ANY INVESTIGATION OR OVERSIGHT ON
3 YOUR OWN?

4 A I DID NOT DO IN THIS PARTICULAR CASE, NO.

5 Q OKAY. WHAT ABOUT WHAT WE TALKED ABOUT
6 EARLIER, EXCULPATORY EVIDENCE? DID YOU DO ANYTHING TO
7 ENSURE THAT EXCULPATORY EVIDENCE WAS, IN FACT, GATHERED
8 AND PRESENTED TO THE COURT THROUGH YOUR DETENTION
9 REPORT?

10 MS. SWISS: OBJECTION. VAGUE.

11 THE COURT: OVERRULED.

12 THE WITNESS: YOU'RE ASKING -- WHAT WAS THE
13 QUESTION AGAIN? I'M SORRY.

14 BY MR. KING:

15 Q SURE. I'M ASKING FOR YOUR ROLE IN THE
16 DETENTION REPORT.

17 DID YOU REVIEW IT?

18 A YES.

19 Q DID YOU REVIEW IT TO ENSURE THAT EXCULPATORY
20 EVIDENCE WAS PLACED IN THE DETENTION REPORT?

21 A I REVIEWED IT TO ENSURE THAT THE PERTINENT
22 INFORMATION, THE FACTS, WAS INCLUDED, YES.

23 Q AND YOU ALSO REVIEW IT TO MAKE SURE THAT IT'S
24 ACCURATE; CORRECT?

25 A TO THE BEST OF MY ABILITY, YES.

26 Q AND IN FACT, AS A SUPERVISOR, YOU HAVE AN
27 OBLIGATION TO REVIEW IT AND IF THERE'S ANYTHING THAT
28 SEEMS INCONSISTENT, TO DISCUSS THAT WITH YOUR SOCIAL

1 WORKER TO MAKE CORRECTIONS IF NECESSARY; CORRECT?

2 A YES.

3 Q AND IN THIS PARTICULAR CASE, IF WE GO TO
4 EXHIBIT 12 -- THAT'S THE DETENTION REPORT; RIGHT?

5 A I'M NOT SURE WHICH EXHIBIT YOU'RE -- YOU'D
6 HAVE TO GIVE ME THE NUMBER.

7 THE COURT: WE'LL TAKE AFTERNOON RECESS AT
8 THIS TIME. ALL JURORS -- APPROXIMATELY 10 MINUTES.
9 ALL JURORS, PLEASE REMEMBER THE ADMONITION.

10 (JURY EXCUSED)

11 (RECESS)

12 (JURY PRESENT)

13 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
14 THE RECORD. EVERYONE IS PRESENT.

15 MR. KING, YOU MAY CONTINUE.

16 MR. KING: THANK YOU.

17 BY MR. KING:

18 Q MS. ROGERS, THE EXHIBIT THAT WE HAVE DISPLAYED
19 HERE, PRIOR TO THE BREAK, FROM UCLA MEDICAL CENTER
20 HARBOR [SIC] ON NOVEMBER 3, 2009, WHICH INDICATES AT
21 THE BOTTOM, ITEM 4, FOLLOW-UP IN ONE MONTH.

22 MOM WASN'T ABLE TO FOLLOW-UP WITH DR. EGGE IN
23 A MONTH, WAS SHE?

24 MS. SWISS: OBJECTION. CALLS FOR SPECULATION.
25 LACKS FOUNDATION.

26 THE COURT: WELL --

27 MR. KING: I CAN REPHRASE, YOUR HONOR.

28 THE COURT: THE OBJECTION IS SUSTAINED AS TO

1 SPECULATION.

2 I THINK WHAT YOU WANT TO KNOW IS THE CUSTODY
3 BY MS. DUVAL ENDED ON NOVEMBER 3RD.

4 MR. KING: RIGHT.

5 THE COURT: AND I THINK THAT'S WHAT YOU'RE
6 REFERRING TO.

7 MR. KING: IT IS, YOUR HONOR.

8 THE COURT: SO MAYBE YOU COULD ASK QUESTIONS
9 THAT MIGHT BE A LITTLE MORE DIRECT ABOUT WHAT HER
10 ABILITY WOULD HAVE BEEN TO DELIVER A CHILD TO A MEDICAL
11 APPOINTMENT THEREAFTER.

12 MR. KING: THANK YOU.

13 BY MR. KING:

14 Q MS. ROGERS, YOU WOULD AGREE THAT BECAUSE
15 MS. DUVAL'S CUSTODY WAS TAKEN AWAY ON THE SAME DAY
16 NOVEMBER 3, 2009, SHE LOST THE ABILITY TO FOLLOW UP ON
17 THIS DOCTOR'S APPOINTMENT WITH DR. EGGE; CORRECT?

18 MS. SWISS: OBJECTION. CALLS FOR SPECULATION.

19 THE COURT: WELL, OVERRULED.

20 I THINK MAYBE THE BETTER DATE WOULD BE
21 NOVEMBER 6TH, AFTER THE HEARING AND THE DETENTION
22 HEARING.

23 BY MR. KING:

24 Q WELL, MS. DUVAL LOST CUSTODY OF HER BABY ON
25 NOVEMBER 3, 2009; CORRECT?

26 A YES.

27 Q OKAY. SO YOU WOULD AGREE THAT SHE WASN'T ABLE
28 TO FOLLOW UP WITH DR. EGGE IN ONE MONTH BECAUSE SHE

1 LOST CUSTODY THAT SAME DAY; CORRECT?

2 A NOT NECESSARILY. LOSING CUSTODY DOESN'T MEAN
3 YOU LOST YOUR PARENTAL RIGHTS. PARENTS, THEY ARE ABLE
4 TO ATTEND MEDICAL VISITS, SCHOOL EVENTS, WHATEVER. SO
5 SHE COULD HAVE, IF SHE KNEW WHAT DAY THE APPOINTMENT
6 WAS AND TIME, SHE MAY HAVE BEEN ABLE TO ATTEND. I
7 DON'T KNOW WHAT SHE WOULD HAVE DONE A MONTH LATER.

8 Q DID MOM HAVE CUSTODY OF BABY RYAN AFTER
9 NOVEMBER 3RD, 2009?

10 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

11 THE COURT: SUSTAINED.

12 BY MR. KING:

13 Q YOU TALKED ABOUT DR. SODERBERG ON FRIDAY.

14 DO YOU REMEMBER THAT?

15 A DID WE TALK ABOUT DR. SODERBERG?

16 Q DO YOU REMEMBER DR. SODERBERG BEING ONE OF

17 THE --

18 A THE ALLERGIST.

19 Q THE ALLERGIST, OKAY.

20 DO YOU RECALL THAT MS. DUVAL WAS ASKED TO TAKE
21 BABY RYAN TO AN ALLERGIST; CORRECT?

22 A YES.

23 Q OKAY. AND SHE DID THAT; CORRECT?

24 A YES.

25 Q I'M GOING TO DISPLAY EXHIBIT 8, BATES 001266,
26 WHICH HAS ALREADY BEEN ADMITTED INTO EVIDENCE.

27 AND WE SPOKE ABOUT THE FACT THAT -- WE TALKED
28 ABOUT ALLERGIC RHINITIS. AND WE HAVE ON HERE FAILURE

1 TO THRIVE AND, NUMBER 4, WE HAVE SOCIALLY STRESSFUL
2 PARENTING SITUATION.

3 BASED ON YOUR TRAINING, CAN STRESSFUL
4 PARENTING SITUATION CONTRIBUTE OR CAN IT BE AN
5 ENVIRONMENTAL CAUSE TO FAILURE TO THRIVE?

6 MR. GUTERRES: OBJECTION. LACKS FOUNDATION.
7 CALLS FOR SPECULATION.

8 THE COURT: OVERRULED.

9 IS THAT SOMETHING YOU RECEIVED TRAINING ON?

10 THE WITNESS: WHAT CAUSES FAILURE TO THRIVE?

11 THE COURT: YES.

12 THE WITNESS: THEY -- NOT REALLY, NO.

13 BY MR. KING:

14 Q DO YOU RECEIVE TRAINING ON PSYCHOSOCIAL
15 DIFFICULTIES AS BEING AN ENVIRONMENTAL CAUSE OF FAILURE
16 TO THRIVE?

17 A THE WAY YOU'RE ASKING IT, I'M NOT --

18 Q OKAY.

19 A -- ABLE TO UNDERSTAND OR ANSWER THAT.

20 Q OKAY. IF I SHOW TO YOU A PROCEDURAL GUIDE FOR
21 ASSESSING FAILURE TO THRIVE --

22 A UH-HUH.

23 Q ON PAGE 2, DOES IT REFRESH YOUR RECOLLECTION
24 AS TO WHETHER PSYCHOSOCIAL DIFFICULTIES CAN BE A
25 CONTRIBUTOR TO --

26 THE COURT: WILL YOU IDENTIFY THIS DOCUMENT
27 THAT YOU'RE --

28 MR. KING: CERTAINLY, YOUR HONOR.

1 THE COURT: -- REFERRING TO?

2 MR. KING: THIS DOCUMENT IS THE PROCEDURAL
3 GUIDE FOR --

4 THE COURT: BY EXHIBIT NUMBER.

5 MR. KING: I'LL HAVE TO MARK IT AS NEXT IN
6 ORDER.

7 THE CLERK: THAT WILL BE 791.

8 MR. KING: THANK YOU.

9 BY MR. KING:

10 Q TURNING TO PAGE 2 OF EXHIBIT 791, JUST LOOK AT
11 IT, THE THIRD PARAGRAPH, AND JUST LET US KNOW IF IT
12 REFRESHES YOUR RECOLLECTION.

13 THE COURT: NOW, PLEASE UNDERSTAND, HE'S NOT
14 ASKING YOU WHAT THE DOCUMENT SAYS. HE'S ASKING YOU IF
15 THERE'S SOMETHING IN THAT DOCUMENT THAT REFRESHES SOME
16 RECOLLECTION.

17 ABOUT WHAT?

18 MR. KING: WHETHER OR NOT HER TRAINING
19 INCLUDES TRAINING CONSISTENT WITH THE FACT THAT
20 PSYCHOSOCIAL DIFFICULTIES CAN BE A CONTRIBUTOR TO
21 NONORGANIC FAILURE TO THRIVE.

22 MS. SWISS: YOUR HONOR, I WOULD REQUEST THAT
23 COUNSEL PROVIDE A COPY OF WHATEVER DOCUMENT HE'S USING.

24 THE COURT: YES.

25 BEFORE YOU ANSWER THE QUESTION --

26 YOU'LL HAVE TO SHOW THE DOCUMENT TO COUNSEL.

27 MR. KING: OKAY.

28 YOUR HONOR, ACTUALLY I DO HAVE AN EXHIBIT NO.

1 IT'S EXHIBIT 1001.1, IF WE COULD MARK IT AS SUCH.

2 THE COURT: SO IT'S NOT THE NEXT IN ORDER.

3 MR. KING: CORRECT, YOUR HONOR.

4 THE COURT: ALL RIGHT. THE DESIGNATION OF
5 EXHIBIT 791 IS RESCINDED.

6 THE CLERK: OKAY.

7 (PLAINTIFF'S EXHIBIT NO. 1001.1, WAS
8 MARKED FOR IDENTIFICATION BY THE
9 COURT.)

10 BY MR. KING:

11 Q DID LOOKING AT THAT DOCUMENT REFRESH YOUR
12 RECOLLECTION?

13 A YES.

14 MS. SWISS: WHAT PORTION? I'M SORRY.

15 MR. KING: THIRD PARAGRAPH, PAGE 2.

16 BY MR. KING:

17 Q AND CAN PSYCHOSOCIAL DIFFICULTIES BE A
18 CONTRIBUTOR TO NONORGANIC FAILURE TO THRIVE BASED ON
19 YOUR TRAINING?

20 A YES.

21 Q OKAY. AND WOULD YOU AGREE THAT STRESSFUL
22 PARENTING SITUATION CAN BE A PSYCHOSOCIAL EVENT BASED
23 ON YOUR TRAINING?

24 A IT CAN BE, YES.

25 Q TURNING TO WHAT HAS ALREADY BEEN MARKED AS
26 EXHIBIT 176 [SIC], BATES 00230, IT'S A DOCUMENT FROM
27 THE CATC CLINIC WITH THE DATE OF OCTOBER 21, 2009. THE
28 BOTTOM OF THE DOCUMENT READS:

1 "PLACEMENT CHILDCARE EDUCATION
2 STEPS. DOES THIS CHILD EXHIBIT
3 BEHAVIORS THAT MAY NOT ALLOW HIM/HER TO
4 REMAIN IN HIS/HER CURRENT LIVING,
5 PRESCHOOL, AND/OR CHILD CARE
6 SITUATION?"

7 WE HAVE THAT MARKED AS A NO.

8 DID YOU REVIEW THAT DOCUMENT FROM THE CATC
9 CLINIC PRIOR TO MAKING YOUR DECISION TO SEIZE BABY RYAN
10 ON NOVEMBER 3, 2009?

11 MS. SWISS: YOUR HONOR, IF THE WITNESS COULD
12 LOOK AT THE ENTIRE DOCUMENT, NOT JUST THE HIGHLIGHTED
13 PORTION, OF EXHIBIT 167, PAGE 2030.

14 THE COURT: YES. THIS IS IN RESPONSE TO THE
15 QUESTION OF IF SHE REVIEWED IT BEFORE?

16 MR. KING: YES.

17 THE COURT: ALL RIGHT. YOU HAVE TO LET HER
18 LOOK AT THE ENTIRE DOCUMENT.

19 MR. KING: THAT'S EXHIBIT 176.

20 MR. MCMILLAN: 167.

21 MR. KING: OH, 167. SORRY.

22 THE COURT: THE WITNESS HAS A QUESTION. I'M
23 NOT SURE WHAT IT IS, MR. KING. I'M NOT SURE SHE KNOWS
24 WHAT SHE'S SUPPOSED TO BE LOOKING AT.

25 MR. KING: SURE. IT'S BATES 002030.

26 THE WITNESS: OKAY. I'VE HAD A CHANCE TO LOOK
27 AT IT.

28 ///

1 BY MR. KING:

2 Q IS THAT A DOCUMENT THAT YOU REVIEWED PRIOR TO
3 MAKING YOUR DECISION TO DETAIN BABY RYAN FROM HIS MOM?

4 A THIS MENTAL HEALTH SCREENING TOOL WAS
5 COMPLETED ON OCTOBER 21, 2009.

6 Q CORRECT.

7 A THE TDM WAS ON NOVEMBER 3, 2009, SO THIS WAS
8 BEFORE. PERHAPS AT THAT TIME IT MAY HAVE BEEN THIS WAS
9 THE SITUATION GIVEN THEY HADN'T RULED OUT ANY
10 MEDICAL-RELATED REASON. BUT YES, I WOULD HAVE REVIEWED
11 THIS FORM, BUT THIS IS BEFORE WE ACTUALLY HAD
12 ADDITIONAL INFORMATION.

13 MR. KING: YOUR HONOR, I'LL OBJECT AS
14 NONRESPONSIVE TO THE QUESTION, EVERYTHING BESIDES YES,
15 THAT SHE REVIEWED THE DOCUMENT.

16 THE COURT: THE OBJECTION NONRESPONSIVE IS
17 OVERRULED. WE CONTINUE TO HAVE -- SHE DID ANSWER THE
18 QUESTION. NOT THE WAY YOU WANTED, BUT SHE ANSWERED
19 YOUR QUESTION.

20 MR. KING: THANK YOU, YOUR HONOR.

21 BY MR. KING:

22 Q SO WE'VE ESTABLISHED THAT YOU REVIEWED THE
23 CATC CLINIC RECORDS, DR. SODERBERG'S RECORDS.

24 YOU ALSO REVIEWED THE EAST LA REGIONAL CENTER
25 RECORDS, IS THAT CORRECT, PRIOR TO NOVEMBER 3, 2009?

26 A YES.

27 Q OKAY. AND THEN LASTLY YOU RECEIVED
28 INFORMATION VIA TELEPHONE FROM -- THROUGH SUSAN PENDER

1 FROM DR. EGGE'S OFFICE; CORRECT?

2 A YES.

3 Q OKAY. NOW, GETTING TO THE DETENTION REPORT,
4 YOU REVIEWED THE DETENTION REPORT TO ENSURE THAT ALL
5 EXCULPATORY INFORMATION WAS IN THE REPORT; CORRECT?

6 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

7 THE COURT: SUSTAINED.

8 BY MR. KING:

9 Q OKAY. SO LET'S GET TO THE DETENTION REPORT
10 WHICH IS EXHIBIT 12.

11 NOW, DID YOU AUTHOR THE DETENTION REPORT?

12 MS. SWISS: OBJECTION. VAGUE.

13 THE COURT: SUSTAINED.

14 MR. KING, ARE YOU ASKING IF SHE'S THE ONE WHO
15 WROTE IT?

16 MR. KING: YES, YOUR HONOR.

17 THE COURT: OKAY.

18 MR. KING: I'LL REPHRASE IT.

19 THE COURT: DO YOU UNDERSTAND THE QUESTION?
20 ARE YOU THE ONE WHO ACTUALLY WROTE THIS REPORT?

21 THE WITNESS: YES.

22 THE COURT: ALL RIGHT. ANSWER HIS QUESTION.

23 THE WITNESS: NO.

24 BY MR. KING:

25 Q YOU'VE ALREADY TOLD US THAT YOU REVIEWED IT
26 FOR ACCURACY; CORRECT?

27 A YES.

28 Q ON PAGE 5 OF THE REPORT, WHICH IS PAGE 000018,

1 THE FOURTH PARAGRAPH DOWN, WHERE IT INDICATES THAT:

2 "CSW SPOKE WITH DR. JASMEET GILL."

3 DID YOU DO ANYTHING TO VERIFY THAT, IN FACT,
4 MS. PENDER SPOKE WITH DR. GILL?

5 A WHEN MY SOCIAL WORKER INDICATED THAT SHE SPOKE
6 WITH DR. GILL, THEN I TRUST THAT INFORMATION.

7 Q SO YOU DID NOTHING TO VERIFY THAT INFORMATION;
8 CORRECT?

9 A I'M TRYING TO FIGURE OUT WHAT IT WAS I -- WE
10 DON'T CALL, LIKE, THE DOCTORS AND SAY, "DID MY SOCIAL
11 WORKER CALL YOU?" WE TYPICALLY DON'T DO THAT. SO WHEN
12 THEY PROVIDE US WITH INFORMATION, WE GO OVER IT, AND WE
13 TAKE THEIR INFORMATION AS BEING TRUTHFUL.

14 Q WHAT IF YOU FIND INCONSISTENCIES IN THE
15 INFORMATION THAT'S REPORTED THROUGH THE INVESTIGATION?
16 DO YOU ASK YOUR SOCIAL WORKER TO GO AND MAYBE CLEAR UP
17 SOME OF THOSE INCONSISTENCIES?

18 A IF NEEDED, YES.

19 Q AND IN THAT SAME PARAGRAPH, FOUR LINES DOWN,
20 WHERE IT INDICATES:

21 "DR. GILL FURTHER INDICATED THAT
22 THE MAIN REASON FOR FAMILY BEING
23 DISMISSED WAS THAT MOTHER, HAVING BEEN
24 GIVEN SPECIFIC DIRECTIONS IN TERMS OF
25 FEEDING THE CHILD, THAT IT WAS EVIDENT
26 TO HER THAT THE DIRECTIVES WERE NOT
27 BEING FOLLOWED BY MOTHER IN ORDER TO
28 HELP THE CHILD MAINTAIN AND ATTAIN

1 HEALTHY GROWTH PATTERNS."

2 DID YOU DO ANYTHING TO VERIFY THE ACCURACY OF
3 THAT STATEMENT?

4 A I REVIEWED THE INFORMATION.

5 Q AND WHAT EXACT INFORMATION DID YOU REVIEW?

6 A THE INFORMATION THAT YOU JUST READ, I READ
7 THAT AS WELL.

8 Q DID YOU ALSO READ THE CONTACT NOTES IN
9 RELATION TO DR. GILL AND ANY CONTACTS THAT MAY OR MAY
10 NOT HAVE BEEN MADE WITH DR. GILL?

11 A I CAN'T RECALL SPECIFICALLY AT THIS TIME.

12 Q IS THAT SOMETHING YOU CUSTOMARILY DO?

13 A YES, I DO REVIEW MY SOCIAL WORKER'S CONTACT
14 NOTES, YES.

15 Q OKAY. WHAT IF, HYPOTHETICALLY, THERE'S A NOTE
16 THAT MOM SAYS "DR. GILL NEVER TREATED MY BABY," AND
17 THEN YOU HAVE A CONTACT THAT SAYS, "TALKED TO DR. GILL
18 AND SERVICES WERE DISCONTINUED BECAUSE THE MOM WOULDN'T
19 FOLLOW-UP WITH ALL MY RECOMMENDATIONS"? IS THAT
20 SOMETHING YOU WOULD FOLLOW-UP WITH?

21 MS. SWISS: OBJECTION. VAGUE.

22 THE COURT: OVERRULED.

23 THE WITNESS: WHEN MY WORKER CONDUCTS AN
24 INVESTIGATION WE JUST HAVE CONSULTATIONS IN REGARDS TO
25 WHAT INFORMATION IS BEING GATHERED, PROVIDED, PRODUCED.
26 BY MR. KING:

27 Q SO YOU EXPECT HER TO BE TRUTHFUL, HONEST,
28 ACCURATE, AND COMPLETE IN HER INVESTIGATION; CORRECT?

1 A YES.

2 Q WOULD YOU ENSURE THAT ALL OF THE MEDICAL
3 RECORDS THAT HAVE EXCULPATORY INFORMATION IS ALSO
4 INCLUDED IN THE DETENTION REPORT?

5 A COULD YOU ASK YOUR QUESTION AGAIN?

6 Q SURE. FOR EXAMPLE, IF THERE'S DOCTORS THAT
7 HAVE SEEN THE BABY THAT HAVE EXCULPATORY INFORMATION
8 TOWARD WHETHER OR NOT THE MOM SHOULD MAINTAIN CUSTODY
9 OF HER BABY, IS THAT SOMETHING THAT YOU WOULD MAKE SURE
10 GOES INTO THE DETENTION REPORT OR IS ATTACHED TO THE
11 DETENTION REPORT?

12 MS. SWISS: OBJECTION. CALLS FOR SPECULATION.

13 THE COURT: OVERRULED.

14 I DON'T -- FRANKLY, I DON'T UNDERSTAND WHAT
15 YOU'RE ASKING HER. BUT THAT WASN'T THE OBJECTION.

16 MR. KING: ALL RIGHT.

17 THE COURT: WHAT EXCULPATORY INFORMATION ARE
18 YOU TALKING ABOUT?

19 MR. KING: LET ME -- LET ME MOVE ON TO MY NEXT
20 QUESTION, YOUR HONOR, AND IT MIGHT --

21 THE COURT: WELL, PURSUE IT THE WAY YOU
22 CHOOSE. BUT I'M FINDING THAT QUESTION DIFFICULT TO
23 UNDERSTAND. AND I THINK WE'D BETTER ASK THAT SUBJECT
24 MATTER DIFFERENTLY.

25 MR. KING: OKAY.

26 BY MR. KING:

27 Q LET'S GET TO THE TEAM DECISION MEETING WHICH
28 TOOK PLACE ON NOVEMBER 3, 2009.

1 PRIOR TO THE TEAM DECISION MEETING, DID YOU
2 HAVE EXIGENT CIRCUMSTANCES IN ORDER TO DETAIN
3 BABY RYAN?

4 A PRIOR TO THE MEETING?

5 Q CORRECT.

6 A YES.

7 Q HOW LONG PRIOR TO THE MEETING DID YOU HAVE
8 THIS INFORMATION?

9 A I CAN'T RECALL THE EXACT TIME IN WHICH WE HAD
10 IT BUT IT WAS BEFORE THE MEETING. IT WAS THE DAY OF.

11 Q APPROXIMATELY AN HOUR, TWO HOURS?

12 A MAY HAVE BEEN, I'M NOT SURE.

13 Q DO YOU RECALL HOW LONG THE TEAM DECISION
14 MEETING LASTED PRIOR TO BABY RYAN BEING SEIZED?

15 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

16 THE COURT: OVERRULED.

17 THE WITNESS: I BELIEVE IT WAS ABOUT
18 TWO HOURS.

19 BY MR. KING:

20 Q AND DO YOU RECALL APPROXIMATELY WHAT TIME IT
21 STARTED?

22 A I KNOW IT WAS IN THE LATE AFTERNOON BUT I'M
23 NOT EXACTLY SURE.

24 Q DOES ABOUT 2:00, 3:00 SOUND RIGHT?

25 A POSSIBLY, YES.

26 Q WE TALKED ABOUT YOUR TRAINING EARLIER, WHICH
27 INDICATES THAT WAITING UNTIL THE TEAM DECISION MEETING
28 WILL NEGATE A CLAIM OF EXIGENCY.

1 DO YOU REMEMBER THAT TRAINING?

2 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES, I REMEMBER THE SLIDE.

5 BY MR. KING:

6 Q AND WAS IT YOUR DECISION TO WAIT UNTIL DURING
7 THE TEAM DECISION MEETING PRIOR TO SEIZING THE BABY?

8 A OUR DECISION WAS TO CALL A TEAM
9 DECISION-MAKING MEETING WITH THE FAMILY TO DETERMINE
10 IF -- WHETHER OR NOT WE CAN ALLOW RYAN TO SAFELY --
11 BABY RYAN TO SAFELY REMAIN UNDER MOTHER'S CARE. NOW,
12 AT THE TIME, GIVEN ALL OF THE FACTS, WE CAME TO THE
13 CONCLUSION THAT THAT WOULDN'T BE POSSIBLE GIVEN THAT HE
14 WAS DEVELOPMENTALLY DELAYED, SEVERELY DELAYED, GROSSLY
15 UNDERWEIGHT. A 15-MONTH OLD MEETING THE MILESTONES OF
16 A SIX-MONTH OLD CHILD. SO -- I KNOW, IT'S PROBABLY A
17 NARRATIVE, BUT --

18 MR. KING: I'M GOING TO OBJECT THAT --

19 THE WITNESS: I DON'T KNOW IF I CAN GO ON OR
20 WHAT.

21 MR. KING: MY OBJECTION IS NONRESPONSIVE.
22 MOVE TO STRIKE, YOUR HONOR.

23 THE WITNESS: OKAY.

24 THE COURT: OVERRULED.

25 BY MR. KING:

26 Q SO YOUR TESTIMONY IS THAT EVEN THOUGH YOU HAD
27 EXIGENT CIRCUMSTANCES PRIOR TO THE TEAM DECISION
28 MEETING, YOU DECIDED TO WAIT UNTIL DURING THE TEAM

1 DECISION MEETING IN ORDER TO DETERMINE WHETHER OR NOT
2 YOU WERE GOING TO SEIZE BABY RYAN; IS THAT CORRECT?

3 A YES.

4 Q OKAY. YOU TOLD US ON FRIDAY THAT THERE WAS
5 SORT OF A DISRUPTION DURING THE TEAM DECISION MEETING
6 THAT CAUSED YOU AND MS. PENDER TO GO OUTSIDE.

7 DO YOU REMEMBER THAT TESTIMONY?

8 A YES.

9 Q AND YOU PROBABLY DIDN'T USE THE WORD
10 "DISRUPTION."

11 YOU TESTIFIED THAT:

12 "MOTHER GOT UPSET, AND MS. PENDER
13 AND I WENT OUTSIDE, CAME BACK IN, AND
14 WE DECIDED TO DETAIN BABY RYAN."

15 CORRECT?

16 A YES.

17 Q AND ISN'T IT TRUE THAT IMMEDIATELY PRIOR TO
18 YOU AND MS. PENDER GOING OUTSIDE AND HAVING THE
19 CONVERSATION -- INCIDENTALLY, IS THAT WHEN YOU CALLED
20 YOUR COORDINATOR OR YOUR SUPERVISOR, WHEN YOU WENT
21 OUTSIDE AT THAT POINT?

22 MS. SWISS: OBJECTION. LACKS FOUNDATION.
23 MISSTATES THE EVIDENCE.

24 THE COURT: OVERRULED.

25 THE WITNESS: I CAN'T RECALL EXACTLY WHAT
26 TRANSPIRED THAT DAY AND WHEN WE STEPPED OUT BUT I WOULD
27 HAVE SPOKEN -- IT'S LIKELY I WOULD HAVE SPOKEN TO MY
28 ADMINISTRATOR -- OR AN ADMINISTRATOR THAT DAY, YES.

1 BY MR. KING:

2 Q AND YOU TAKE THIS BREAK, YOU GO OUTSIDE WITH
3 MS. PENDER, AND YOU MAKE THE DECISION TO SEIZE THE
4 BABY; CORRECT?

5 A IT WAS PROBABLY BEFORE. DURING OUR MEETING,
6 THAT'S WHEN WE WERE DISCUSSING THE ISSUES OF THE
7 FAMILY, SO.

8 Q WELL, YOUR TESTIMONY IS THERE'S THIS
9 DISRUPTION, YOU GO OUTSIDE, YOU COME BACK IN, AND YOU
10 SAY, "WE'RE SEIZING THE BABY FROM MOM AND GIVING HIM TO
11 DAD"; CORRECT?

12 A I CAN'T RECALL IF IT WAS AT THAT PARTICULAR --
13 THE WAY YOU HAVE IT, IF WE HAD MENTIONED THAT WE WERE
14 GOING THAT ROUTE OR NOT BEFORE, BUT WE DID HAVE TO TAKE
15 A BREAK. I REMEMBER THAT.

16 Q AND AFTER THE BREAK, THAT'S WHEN YOU TOLD THE
17 MOM THAT SHE'S GOING TO BE LOSING CUSTODY; CORRECT?

18 A THAT'S WHEN WE COMPLETED OUR TEAM
19 DECISION-MAKING MEETING.

20 Q AND IT'S ALSO TRUE THAT, RIGHT BEFORE THAT
21 BREAK, MATERNAL GRANDFATHER CALLED MS. SUSAN PENDER
22 "TRASH"; TRUE?

23 A YES.

24 Q NOW, WHEN YOU DECIDED AT THAT POINT TO SEIZE
25 BABY RYAN FROM HIS MOTHER'S CARE, YOU DID THAT IN ORDER
26 TO DETERMINE IF BY PUTTING HIM WITH THE FATHER HIS
27 CONDITION WOULD IMPROVE; CORRECT?

28 A THAT WAS THE GOAL, HOPEFULLY THAT HE WOULD

1 IMPROVE, YES.

2 Q IN FACT, LATER ON, AFTER NOVEMBER OF 2009,
3 THERE WAS A CIVIL RIGHTS INVESTIGATION DURING WHICH YOU
4 WERE ASKED TO ANSWER CERTAIN QUESTIONS; CORRECT?

5 A YES.

6 Q AND YOU KNOW WHO MICHELLE HOCHSTEIN IS; IS
7 THAT CORRECT?

8 A YES.

9 Q AND SHE'S AN EMPLOYEE -- AN INVESTIGATOR; IS
10 THAT CORRECT?

11 A YES.

12 Q AND PART OF HER OFFICIAL DUTY, SHE CAME OUT
13 BECAUSE THERE HAD BEEN A COMPLAINT LODGED AGAINST YOU
14 FOR A CIVIL RIGHTS VIOLATION, AND SHE ASKED YOU TO FILL
15 OUT CERTAIN FORMS.

16 IS THAT CORRECT?

17 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

18 THE COURT: OVERRULED.

19 BY MR. KING:

20 Q YOU PROBABLY DON'T REMEMBER THE QUESTION.

21 A I DON'T.

22 MR. KING: CAN WE HAVE IT REPEATED?

23 THE COURT: WE'LL ASK THE REPORTER TO PLEASE
24 READ THE QUESTION BACK.

25 MR. KING: THANK YOU, YOUR HONOR.

26 (THE PREVIOUS QUESTION WAS READ BACK BY
27 THE COURT REPORTER AS FOLLOWS:

28 "QUESTION: AND PART OF HER

1 OFFICIAL DUTY, SHE CAME OUT BECAUSE
2 THERE HAD BEEN A COMPLAINT LODGED
3 AGAINST YOU FOR A CIVIL RIGHTS
4 VIOLATION, AND SHE ASKED YOU TO FILL
5 OUT CERTAIN FORMS.

6 "IS THAT CORRECT?")

7 THE WITNESS: YES.

8 BY MR. KING:

9 Q AND I'M GOING TO APPROACH YOU WITH
10 EXHIBIT 207, BATES 002869 THROUGH 002877. TAKE A LOOK
11 AT THOSE DOCUMENTS AND LET ME KNOW IF THAT'S, IN FACT,
12 YOUR HANDWRITING.

13 MS. SWISS: IF YOU COULD JUST WAIT A SECOND.

14 MR. KING: 207. STARTING AT BATES 002869
15 THROUGH 002877.

16 BY MR. KING:

17 Q MY QUESTION ONLY IS THAT IF YOU RECOGNIZE YOUR
18 HANDWRITING IN THE MIDDLE PORTION ON EACH ONE OF THOSE
19 DOCUMENTS?

20 A SOME IS MY HANDWRITING, AND SOME IS
21 MS. HOCHSTEIN'S HANDWRITING.

22 Q WELL, LET'S GO TO BATES 002370?

23 A OKAY.

24 MS. SWISS: COUNSEL, DO YOU MEAN 2870?

25 MR. KING: ONE SECOND. 002876.

26 AND IF WE LOOK AT THE WRITTEN PORTION, THE
27 LAST LINE, IS THAT YOUR HANDWRITING?

28 THE WITNESS: YES.

1 BY MR. KING:

2 Q AND IN FACT THIS DOCUMENT, EXHIBIT 207,
3 BATES 002876 WAS GIVEN TO YOU BY MS. HOCHSTEIN AS PART
4 OF HER INVESTIGATION; CORRECT?

5 A YES.

6 Q AND IT WAS AT OR NEAR THE TIME THAT SHE WAS
7 CONDUCTING HER INVESTIGATION; IS THAT CORRECT?

8 A YES.

9 Q AND YOU SAT THERE AND FILLED OUT THIS
10 INFORMATION IN FRONT OF HER; CORRECT?

11 A SOME IS WRITTEN IN HER HANDWRITING AND SOME IS
12 MINE, YES.

13 Q OKAY. BUT AT LEAST AS TO THE LAST LINE, YOU
14 FILLED THAT OUT WHILE SHE WAS THERE AND IN HER
15 PRESENCE; CORRECT?

16 A MICHELLE HOCHSTEIN, YES.

17 Q AND YOU UNDERSTOOD SHE WAS DOING A CIVIL
18 RIGHTS INVESTIGATION; CORRECT?

19 A YES.

20 Q AND ISN'T IT TRUE THAT WHEN YOU EXPLAINED TO
21 MS. HOCHSTEIN WHAT HAPPENED RIGHT BEFORE YOU AND
22 MS. PENDER DECIDED TO LEAVE THE TDM AND COME BACK IN
23 AND SEIZE BABY RYAN, YOU IN FACT TOLD HER THAT THE
24 MATERNAL GRANDFATHER CALLED CSW PENDER "WHITE TRASH";
25 CORRECT?

26 A MAY I EXPLAIN?

27 Q YOU CAN SAY YES OR NO FIRST.

28 A OKAY. YES, I DID WRITE THAT.

1 Q OKAY. IS THERE ANY PORTION OF THIS DOCUMENT,
2 002876, THAT YOU DID NOT WRITE ON? THE MIDDLE PART
3 WHERE IT STARTS "STATEMENT" ALL THE WAY DOWN TO THE
4 WORD "WHITE TRASH"?

5 MS. SWISS: OBJECTION. ASKED AND ANSWERED.
6 RELEVANCE.

7 THE COURT: OVERRULED.

8 DO YOU UNDERSTAND? HE'S ASKING IF THAT ONE
9 PAGE, IF ALL THE HANDWRITING IS YOURS.

10 THE WITNESS: NO. ONCE AGAIN, SOME OF IT IS
11 MS. HOCHSTEIN'S AND THE LATTER PORTION IS MINE.
12 BY MR. KING:

13 Q OKAY. SO COULD YOU TELL US WHAT WORD BEGINS
14 IN YOUR HANDWRITING?

15 A "REUNIFY WITH," AND THEN THERE'S A PERIOD, AND
16 THEN "FROM."

17 Q OKAY. SO FROM WHERE IT SAYS REUNIFYING WITH
18 HER CHILD" ALL THE WAY DOWN TO "WHITE TRASH"; IS THAT
19 CORRECT?

20 A YES.

21 Q AND THAT'S BATES 002876.

22 WHAT ABOUT 002877? IS THAT ALL YOUR
23 HANDWRITING ON THE PORTION WHERE IT SAYS "STATEMENT"?

24 A YES.

25 Q AND AT THE BOTTOM OF THE PAGE, IS THAT YOUR
26 SIGNATURE?

27 A YES.

28 Q AND SAME QUESTION FOR BATES 002876, THE BOTTOM

1 OF THAT PAGE, IS THAT YOUR SIGNATURE?

2 A YOU SAID -76?

3 Q YES, THE ONE WE JUST LOOKED AT BEFORE THIS.

4 A YES, IT IS.

5 Q AND AS TO BOTH THESE STATEMENTS, ABOVE YOUR
6 SIGNATURE, YOU WROTE THAT YOU HAVE READ THE ABOVE
7 STATEMENT AND APPROVED THE ABOVE STATEMENT; CORRECT?

8 A YES.

9 Q AND WHY DON'T WE GO TO 002875. THE
10 HANDWRITING PORTION WHERE IT SAYS "STATEMENT," IS THAT
11 ALL OF YOUR HANDWRITING?

12 MS. SWISS: YOUR HONOR, I'D LIKE TO MAKE A
13 CONTINUING OBJECTION RELATED TO THE QUESTIONING ON THE
14 CIVIL RIGHTS INVESTIGATION AS OUTSIDE THE SCOPE.

15 MR. KING: YOUR HONOR, IT'S ONLY FOUNDATIONAL
16 FOR THESE DOCUMENTS I DON'T PLAN ON GOING INTO THEM.

17 THE COURT: I DON'T NEED TO HEAR FROM YOU.
18 I'LL SEE COUNSEL AT SIDEBAR.

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

21 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE
22 PRESENT.

23 THIS ISN'T THE REASON WE'RE HERE, BUT PLEASE
24 REMEMBER, MR. KING, THAT WHEN THERE'S AN OBJECTION,
25 THAT I PREVIOUSLY INSTRUCTED AT THE BEGINNING OF THE
26 TRIAL, I DO NOT WANT TO HEAR A RESPONSE FROM ANYONE
27 UNLESS I ASK FOR IT.

28 NOW, TO GET TO WHY I REALLY ASKED YOU TO BE

1 HERE, WHAT IS THE PURPOSE OF THIS? WE HAVE HAD THE
2 OBJECTION THAT IS OUTSIDE THE SCOPE, AND OF COURSE THIS
3 CASE HAS BEEN PRESENTED IN A SOMEWHAT UNUSUAL WAY WHERE
4 YOU CALLED HER AS A WITNESS YOURSELF IN PUTTING YOUR
5 CASE ON, HAD THE OPPORTUNITY TO OBTAIN FROM HER
6 WHATEVER EVIDENCE YOU WANTED AS PART OF YOUR CASE.
7 NOW, THAT WAS DONE BY A VIDEO DEPOSITION, IF I RECALL
8 CORRECTLY. AND NOW, AS PART OF THEIR CASE, THEY HAVE
9 PUT HER ON, AND THIS IS NOT THE TIME FOR YOU TO BE
10 ELICITING INFORMATION AS PART OF YOUR CASE.

11 IT IS TIME FOR YOU TO BE ABLE TO CROSS-EXAMINE
12 ONLY ON THE SUBJECTS THAT HAVE BEEN IN DIRECT
13 EXAMINATION OF THE DEFENSE COUNSEL. IT APPEARS TO ME
14 NOW, IN LISTENING TO HOW THIS EVIDENCE HAS GONE, THAT
15 THIS GOES CONSIDERABLY BEYOND WHATEVER WAS ASKED ON
16 DIRECT EXAMINATION IN THIS PORTION OF THE CASE. AND SO
17 THAT'S WHY WE'RE AT SIDEBAR, TO FIND OUT WHAT ARE WE
18 GOING INTO THIS FOR AT THIS TIME AND HOW DOES THAT
19 RELATE TO THE DIRECT EXAMINATION OF THIS WITNESS?

20 IN OTHER WORDS, YOU'RE NOT GOING TO GET TWO
21 DIFFERENT CROSS-EXAMINATIONS. YOU GOT YOUR
22 CROSS-EXAMINATION INITIALLY WHERE YOU CALLED HER AS A
23 WITNESS, AND THAT WAS PART OF YOUR CASE. NOW YOU'RE
24 BOUND BY THE EXTENT OF THE DIRECT EXAMINATION OF THIS
25 WITNESS BY THE DEFENSE. SO IF YOU CAN ANSWER THAT FOR
26 ME, IT MIGHT HELP ME UNDERSTAND WHERE WE'RE GOING AND
27 THEN TO MAKE THE DECISION WHETHER THIS IS PROPER
28 CROSS-EXAMINATION.

1 MR. KING: CORRECT, YOUR HONOR. THANK YOU.

2 AS TO EXHIBIT 207, BATES 002876, THE
3 QUESTIONING THERE WAS TO ELICIT WHETHER OR NOT IN FACT
4 THE STATEMENT WAS "WHITE TRASH" AND NOT "TRASH." SO I
5 BELIEVE THAT IT WAS PERTINENT TO MY CROSS-EXAMINATION,
6 BECAUSE I WAS TALKING ABOUT THE TDM.

7 WITH REGARDS TO THE OTHER --

8 THE COURT: WELL -- I'M SORRY. I INTERRUPTED
9 YOU.

10 MR. KING: WITH REGARDS TO THE OTHER EXHIBITS,
11 YOUR HONOR, I DO BELIEVE THAT THEY WERE MORE
12 FOUNDATIONAL IN A SENSE THAT I WANTED TO LAY THE
13 FOUNDATION THROUGH THIS WITNESS IN ORDER TO ADDRESS
14 CROSS-EXAMINATION AND OTHER ASPECTS OF THE CASE.

15 THE COURT: WHAT OTHER ASPECTS?

16 MR. KING: WELL, THE CIVIL RIGHTS ASPECT, YOUR
17 HONOR.

18 MS. SWISS: WHICH WAS OUTSIDE THE SCOPE OF MY
19 DIRECT.

20 THE COURT: YES, IT IS.

21 MR. KING: AND IT ALSO GOES TO THE FACT THAT
22 THERE'S BIAS. IN ESSENCE, THERE'S A CIVIL RIGHTS
23 ACTION THAT MY CLIENT FILED AGAINST MS. KIMBERLY ROGERS
24 THAT SHE INTENTIONALLY FABRICATED.

25 THE COURT: YEAH, WELL, IF YOU WANTED TO
26 ESTABLISH THAT, YOU SHOULD HAVE DONE SO WHEN YOU PUT
27 HER TESTIMONY ON IN YOUR CASE.

28 I AM GOING TO SUSTAIN THE OBJECTION. NOW, IN

1 HAVING LISTENED TO THIS, THAT IS IMPERMISSIBLY OUTSIDE
2 THE DIRECT EXAMINATION. THERE IS NOT ALWAYS A BRIGHT
3 CLEAR LINE, THAT'S WHY I SAID IMPERMISSIBLY. SOMETIMES
4 THERE CAN BE SOME GRAY AREAS THAT WE CAN LOOK AT AND
5 SAY YEAH, WELL, MAYBE. IT'S A STRETCH, BUT IT'S STILL
6 WITHIN REASONABLE BOUNDS. THIS HAS GONE BEYOND ANY
7 GRAY AREA, AS FAR AS I'M CONCERNED.

8 MS. SWISS: YOUR HONOR, WE WOULD ASK THAT THE
9 COURT MOVE TO SUSTAIN THE OBJECTION TO A MOTION TO
10 STRIKE THE TESTIMONY REGARDING THE CIVIL RIGHTS
11 INVESTIGATION IN ITS ENTIRETY.

12 THE COURT: ALL RIGHT.

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

16 THE COURT: THE OBJECTION -- DEFENDANT'S
17 OBJECTION, I HAVE SUSTAINED TO CERTAIN TESTIMONY. THE
18 DEFENDANT'S MOTION TO STRIKE THAT TESTIMONY IS GRANTED.
19 AND BEGINNING WITH THE QUESTION BY MR. KING:

20 "AND I'M GOING TO APPROACH YOU
21 WITH EXHIBIT 207, BATES 002869 THROUGH
22 002877. TAKE A LOOK AT THOSE
23 DOCUMENTS, AND LET ME KNOW IF THAT'S,
24 IN FACT, YOUR HANDWRITING."

25 BEGINNING WITH THAT QUESTION, AND ALL ANSWERS
26 AND ALL QUESTIONS ASKED, THAT QUESTION AND ALL
27 QUESTIONS ASKED UP TO THE PRESENT TIME AND ALL ANSWERS
28 GIVEN ARE ORDERED STRICKEN AND THE JURY MUST DISREGARD

1 THAT EVIDENCE.

2 GO AHEAD, MR. KING.

3 MR. KING: THANK YOU.

4 BY MR. KING:

5 Q MS. ROGERS, IS YOUR RECOLLECTION NOW THAT THE
6 STATEMENT WAS "WHITE TRASH" THAT WAS MADE BY THE
7 MATERNAL GRANDFATHER, AS OPPOSED TO "TRASH"?

8 MS. SWISS: OBJECTION. ASKED AND ANSWERED.
9 IMPROPER REFRESHING OF RECOLLECTION.

10 THE COURT: THE ASKED AND ANSWERED IS
11 OVERRULED BECAUSE I JUST ORDERED THAT TESTIMONY
12 STRICKEN.

13 AND THE OTHER OBJECTION OF IMPROPER REFRESHING
14 OF RECOLLECTION IS OVERRULED.

15 PLEASE JUST ANSWER THAT QUESTION.

16 BY MR. KING:

17 Q YES OR NO?

18 A WHAT WAS THE QUESTION AGAIN? I'M SORRY.

19 Q IS IT YOUR RECOLLECTION NOW THAT THE STATEMENT
20 MADE BY THE MATERNAL GRANDFATHER WAS IN FACT "WHITE
21 TRASH" VERSUS "TRASH"? YES OR NO?

22 A YES.

23 Q OKAY. NOW THE LAST THING I WANT TO DISCUSS
24 WITH YOU IS THE SDM TOOLS.

25 WHAT ARE THE SDM TOOLS?

26 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

27 MR. KING: I CAN REPHRASE, YOUR HONOR. I
28 MIGHT BE ABLE TO GET RIGHT TO IT.

1 THE COURT: ALL RIGHT.

2 MR. KING: THANK YOU.

3 BY MR. KING:

4 Q YOU ULTIMATELY MADE THE DECISION TO OPEN A
5 CASE AGAINST MS. DUVAL; CORRECT?

6 A AGAINST THE PARENTS, YES.

7 Q OKAY. BECAUSE AFTER MS. PENDER'S
8 INVESTIGATION, THERE WAS A MODERATE LEVEL RISK
9 ASSESSMENT; CORRECT?

10 MS. SWISS: OBJECTION. VAGUE AS TO TIME.
11 OUTSIDE THE SCOPE.

12 MR. KING: I CAN REPHRASE.

13 THE COURT: SUSTAINED AS TO TIME.

14 MR. KING: OKAY.

15 THE COURT: AND IF YOU CAN ESTABLISH WHEN THAT
16 WAS DONE, PERHAPS -- AND THEN I'LL FIND OUT IF THERE'S
17 WHETHER IT'S OUTSIDE THE SCOPE OR NOT.

18 BY MR. KING:

19 Q PRIOR TO THE TEAM DECISION MEETING, ISN'T IT
20 TRUE THAT THE RISK ASSESSMENT LEVEL ATTRIBUTED AFTER
21 MS. PENDER'S INVESTIGATION WAS, IN FACT, AT A MODERATE?

22 MS. SWISS: OBJECTION. VAGUE AS TO TIME.
23 OUTSIDE THE SCOPE.

24 THE COURT: ALL RIGHT.

25 LADIES AND GENTLEMEN, WE'RE GOING TO RECESS
26 FOR THE DAY. WE'RE GOING TO RESUME AT 9:00 A.M.
27 TOMORROW MORNING.

28 ALL JURORS, PLEASE REMEMBER THE ADMONITION TO

1 HAVE NO COMMUNICATION WITH ANYBODY ABOUT ANY SUBJECT OR
2 ISSUE OR PERSON INVOLVED IN THIS CASE. AND DO NOT FORM
3 ANY OPINION NOR EXPRESS ANY OPINION ON ANY SUBJECT OR
4 ISSUE IN THE CASE OR ABOUT ANY PERSON INVOLVED IN IT.

5 WE ARE NOW IN RECESS. WE'LL SEE YOU BACK AT
6 9:00 A.M.

7 (JURY EXCUSED)

8 THE COURT: ALL RIGHT. AS TO THE LAST
9 OBJECTION, OUTSIDE THE SCOPE, THE OBJECTION WILL BE
10 OVERRULED WHEN WE RESUME. THE WITNESS WILL BE ABLE --
11 WILL BE REQUIRED TO ANSWER THAT QUESTION.

12 THIS IS -- LET ME JUST MAKE AN OBSERVATION.
13 GENERALLY, IT'S GETTING A LITTLE TEDIOUS IN THE COURSE
14 OF THE TRIAL. AND IT ISN'T SERVING ANYONE WELL, AND IT
15 CERTAINLY ISN'T SERVING THE JURY WELL FOR WHAT APPEARS
16 TO BE TOO OFTEN A FAILURE TO RECOGNIZE THAT PROPER --
17 NOT PROPER, BUT THE SUBJECT THAT MAY BE INQUIRED INTO
18 AT THE TIME. AND THAT APPLIES TO EVERYBODY BECAUSE WE
19 DO HAVE CONTINUING QUESTIONS THAT, JUST AS AN
20 EXAMPLE -- AND I'M USING IT ONLY AS AN EXAMPLE -- "THIS
21 GOES BEYOND THE SCOPE OF THE DIRECT EXAMINATION."

22 ON THE OTHER HAND, I'VE BEEN RECEIVING
23 FREQUENT OBJECTIONS OF BEYOND THE SCOPE. AS TO THE
24 BEYOND THE SCOPE OBJECTIONS, THEY SHOULD BE MADE WHEN
25 THAT IS PROPER TO DO SO. BUT IT IS NOT A METHOD OF
26 UNDULY RESTRICTING SOMEBODY TO BE ABLE TO ASK A
27 PARTICULAR QUESTION THAT, EVEN IF IT WASN'T DIRECTLY
28 ASKED ON DIRECT EXAMINATION, NEVERTHELESS WAS A SUBJECT

1 MATTER WHICH WAS COVERED BY THE DIRECT EXAMINATION.

2 SO IN THIS INSTANCE, I'M EXPLAINING -- I
3 NORMALLY DON'T FEEL CALLED UPON TO EXPLAIN MY RULINGS.
4 BUT BECAUSE I'M GIVING WHAT SOME OF YOU MAY LOOK AT AS
5 A LECTURE, AND PERHAPS IT IS, I DO WANT TO TAKE THE
6 TROUBLE TO EXPLAIN AS USING THIS AS AN EXAMPLE.
7 BECAUSE EACH TIME WE GET THIS OBJECTION, MY MEMORY IS
8 NOT SUFFICIENTLY PERFECT THAT I CAN, BY RECOLLECTION
9 ONLY, DETERMINE WHETHER SOMETHING IS BEYOND THE SCOPE.

10 THE RESULT OF THAT IS THAT I HAVE TO TAKE THE
11 TIME TO LOOK BACK AT MY NOTES, AND I'VE DONE SO AS TO
12 THIS PARTICULAR QUESTION.

13 THERE WERE QUESTIONS ASKED OF THIS WITNESS ON
14 DIRECT EXAMINATION ABOUT INFORMATION THAT THEY HAD
15 BEFORE THE TDM. THE -- AND THERE WERE A NUMBER OF
16 QUESTIONS ON THAT SUBJECT OF INFORMATION THEY HAD.
17 THAT OPENS UP -- AS FAR AS I'M CONCERNED, EVEN THOUGH
18 THE WITNESS DID NOT TESTIFY AT THE TIME AS TO A
19 PARTICULAR THING, SUCH AS THE RESULT OF THIS TESTING --
20 AT LEAST THE OPPORTUNITY TO FIND OUT IF THAT WAS ALSO
21 INFORMATION THAT THE WITNESS HAD BEFORE THE TDM.

22 SO IT IS TRUE THAT I DON'T BELIEVE THERE WAS
23 ANY TESTIMONY ABOUT THE TDM. BUT THERE WAS TESTIMONY
24 ABOUT WHAT INFORMATION WAS AVAILABLE AND WHAT THEY HAD
25 GOING INTO THIS MEETING, AND WE HAVE BEEN TOLD BY THE
26 WITNESS THAT AT THE MEETING, AT LEAST THEY MADE THE
27 DECISION TO DETAIN THE CHILD. I THINK IT IS LEGITIMATE
28 AND WELL WITHIN THE SCOPE OF THE DIRECT EXAMINATION TO

1 INQUIRE WHETHER OR NOT OTHER INFORMATION WAS -- WAS
2 AVAILABLE OR KNOWN TO THEM.

3 I HAVE READ BUT DO NOT RECALL WHEN THAT
4 TESTING WAS DONE. AND I SIMPLY DON'T REMEMBER
5 INDEPENDENTLY, AS I'M SITTING HERE NOW -- AND I'M NOT
6 GOING TO TAKE THE TROUBLE TO TRY TO LOOK BACK TO FIND
7 THE SOURCE OF WHATEVER INFORMATION I THINK I HAVE, BUT
8 SIMPLY TO SAY IT'S A LEGITIMATE QUESTION AS TO ANY
9 INFORMATION THAT THE WITNESS HAD PRIOR TO OR DURING OR
10 RECEIVED DURING THE TDM EVEN IF THE WITNESS HAS NOT
11 PREVIOUSLY TESTIFIED TO IT. IT MAY BE THAT THIS
12 TESTING -- AND I FORGET, IT HAS THE NAME.

13 MR. KING: SDM.

14 THE COURT: AND I DON'T REMEMBER, HONESTLY, IF
15 IT WAS DONE BEFORE THE MEETING OR JUST AFTER THE
16 MEETING. I'M NOT SURE. AND MY RECOLLECTION IS SUCH
17 THAT IT COULD BE EITHER. BUT MY POINT OF ALL THIS IS
18 THAT IT'S LEGITIMATE TO ASK THE QUESTION, ASK WHAT IS
19 THAT, AND DID YOU HAVE -- WHEN WAS THAT DONE. AND IF
20 IT WAS DONE BEFORE THE MEETING -- I DON'T THINK IT WAS
21 DONE AT THE MEETING, BUT IF IT WAS DONE BEFORE THE
22 MEETING, THEN IT'S A LEGITIMATE QUESTION TO ASK WHAT
23 DID SHE LEARN ABOUT THAT. AND THAT IS NOT OUTSIDE THE
24 SCOPE.

25 SO I'M FINDING DIFFICULTIES BOTH IN THE WAY
26 SOME OF THESE WITNESSES, PARTICULARLY THIS WITNESS, IS
27 BEING QUESTIONED, BUT I'M ALSO EXPERIENCING SOME
28 DIFFICULTY IN WHAT I THINK ARE NOT JUST ISOLATED BUT A

1 FAIRLY FREQUENT OBJECTION THAT SIMPLY IS NOT
2 WELL-TAKEN.

3 HAVING SAID THAT, I'LL SEE ALL OF YOU AT
4 8:00 TOMORROW MORNING.

5 NOW, WE DO HAVE EXHIBITS TO ADDRESS. I DO NOT
6 KNOW WHETHER -- MR. GUTERRES AND MS. SWISS, HAVE YOU
7 HAD THE OPPORTUNITY -- YOU WERE GETTING SOMETHING TO
8 PUT TOGETHER IN YOUR RESPONSE TO WHAT WE HAD RECEIVED
9 FROM THE PLAINTIFF ABOUT THE -- WHAT THEY CLAIM WAS
10 FALSE INFORMATION AND OMITTED INFORMATION. I DON'T SEE
11 THE DOCUMENT, SO I'M GUESSING YOU DIDN'T GET IT IN.

12 MR. GUTERRES: NO, YOUR HONOR, BUT WE WILL TRY
13 TO GET IT HOPEFULLY BY TOMORROW MORNING.

14 THE COURT: WELL, IF WE HAVE IT AT 8:00 I CAN
15 TAKE A LOOK AT IT, AND THAT MAY ASSIST US IN SOME
16 DISCUSSION ALSO ON THAT ISSUE. I DON'T THINK WE'RE
17 GOING TO BE REACHING ANY DECISION ON THAT TOMORROW
18 BECAUSE ALL OF US ARE GOING TO HAVE TO HAVE A LITTLE
19 MORE TIME TO DIGEST IT. BUT IF WE HAVE IT, AT LEAST
20 THAT IS ALSO SOMETHING THAT WE CAN HAVE A DISCUSSION
21 ABOUT. SO I'LL SEE EVERYONE AT 8:00 A.M.

22 MR. GUTERRES: THANK YOU, YOUR HONOR.

23 MR. MCMILLAN: YOUR HONOR, THERE IS ONE LAST
24 THING, WE DON'T NEED IT NECESSARILY ON THE RECORD. BUT
25 MR. PARIS HAS INFORMED ME THAT HE'S RECOMPILED THE
26 EXHIBIT MATRIX THAT WE'VE BEEN WORKING OFF OF. AND IN
27 LIGHT OF YESTERDAY'S RULINGS AND STIPULATIONS, HE HAS A
28 NEW VERSION, I THINK IT'S LIKE SIX OR SEVEN PAGES. AND

1 HE'S HERE WITH COPIES FOR EVERYBODY.

2 THE COURT: WELL, THAT WILL BE GOOD IF WE GET
3 THAT IN THE MORNING. ALTHOUGH IF YOU DO HAVE IT WITH
4 YOU NOW, MR. PARIS --

5 MR. PARIS: I DO, YOUR HONOR.

6 THE COURT: IF YOU DO, THEN I'D SAY LET'S
7 FURNISH IT TO MR. GUTERRES AND MS. SWISS. IF THEY'RE
8 FEELING IDLE AND DON'T WATCH THE DODGER/CUBS GAME, THEY
9 MAY WANT TO TAKE A LOOK AT THAT LIST AND MAYBE THAT
10 WILL ASSIST US IN SOME FURTHER DISCUSSION TOMORROW.
11 ANYTHING WE CAN DO THAT WILL EXPEDITE US GETTING CAUGHT
12 UP WITH ALL THESE EXHIBITS WILL BE TIME WELL-SPENT.
13 AND AS LONG AS YOU HAVE IT, I'LL TAKE IT TOO. GIVE IT
14 TO DON.

15 ALL RIGHT. WE'LL SEE YOU ALL AT 8:00.

16 MR. MCMILLAN: THANK YOU, YOUR HONOR.

17 (RECESS)

18

19 (WHEREUPON, AT THE HOUR OF 4:24 P.M.,
20 THE PROCEEDING ADJOURNED.)

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---OOO---

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(NEXT PAGE IS 7801.)