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M A S T E R I N D E X

OCTOBER 25, 2016

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M A S T E R I N D E X

OCTOBER 25, 2016

EXHIBITS

NONE

(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 25, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606
7 TIME: 8:13 A.M.

8

9

---OOO---

10

11 THE COURT: IN CONNECTION WITH THE DEFENDANTS
12 MOTION FOR NONSUIT, THEY FILED A REQUEST FOR JUDICIAL
13 NOTICE OF THE BRIEF FILED BY APPELLATE BRIEF FILED BY
14 PLAINTIFF IN THE APPEAL OF THE DECISION OF THE JUVENILE
15 COURT AND THE NONPUBLISHED DECISION OF THE COURT OF
16 APPEAL ON THAT MATTER AND THE NONPUBLISHED DECISION OF
17 THE COURT IN THE APPEAL OF -- IN THE FAMILY LAW CASE.
18 DOCUMENTS PROVIDED WITH THE NOTICE -- FOR THAT REQUEST
19 FOR JUDICIAL NOTICE, THE APPELLATE BRIEFING WAS
20 SUPPLIED AS ONE OF THE EXHIBITS ACTUALLY COPIED ONLY
21 EVERY OTHER PAGE.

22

MS. SWISS: OH, GOOD.

23

24 THE COURT: YEAH. WELL, WHAT HAPPENED IS
25 SOMEONE COPIED IT. THEY DIDN'T COPY BOTH SIDES OF THE
26 PAGE. SO I FORGET WHETHER IT'S THE EVEN NUMBER OF
27 PAGES OR THE ODD NUMBER OF PAGES. I CAN GO GET IT.

27

28 MS. SWISS: WELL, THE REMAINDER WHAT WE USED,
I BELIEVE, IN THE TRIAL IN THE CROSS-EXAMINATION OF THE

1 PLAINIFFS. SO I THINK IN THIS COURTROOM WE'VE GOT
2 CORRECT COPIES.

3 THE COURT: EXHIBIT 1250.

4 MS. SWISS: YES.

5 THE COURT: IS A COMPLETE COPY OF THE -- OF
6 THAT BRIEF. HAVING SAID THAT, I WOULD GIVE PLAINTIFF
7 THE OPPORTUNITY TO SUBSTITUTE A FULL COPY RATHER THAN
8 EVERY OTHER PAGE OF THE BRIEF. AND I DO TAKE JUDICIAL
9 NOTICE OF THOSE DOCUMENTS.

10 MR. MCMILLAN: YOUR HONOR, JUST FOR THE RECORD
11 PLAINTIFF DOES OBJECT TO TAKING OF JUDICIAL NOTICE OF
12 THE APPELLATE OPINION OF THE BRIEFING. I DON'T
13 REMEMBER THE THIRD DOCUMENT, BUT TO THE --

14 THE COURT: IT WAS THE APPELLATE OPINION OF
15 THE FAMILY LAW CASE. THOSE ARE DOCUMENTS -- ALL RIGHT.
16 YOU OBJECT.

17 I'M GOING TO TAKE JUDICIAL NOTICE, BUT YOU
18 WILL FIND THAT --

19 MR. MCMILLAN: I THINK I CAN FIND IT.

20 THE COURT: WELL, NO, YOU'LL -- FIRST OF ALL,
21 THE APPELLATE DECISIONS ARE A MATTER OF -- THEY'RE A
22 MATTER OF PUBLIC RECORD, AND THEY ARE A DOCUMENT THAT
23 IS JUDICIALLY NOTICEABLE, AND I WILL TAKE JUDICIAL
24 NOTICE OF THEM. YOU WILL FIND IN SOME SUBSEQUENT
25 MATTERS -- AND YOUR OBJECTION IS DULY NOTED -- BUT
26 YOU'LL FIND IT WON'T MAKE ANY DIFFERENCE.

27 MR. MCMILLAN: OKAY.

28 THE COURT: AND SO BECAUSE I'M GOING TO GET TO

1 THAT. AND THEN THE BRIEF THAT WAS FILED IS ALSO A
2 DOCUMENT AND A MATTER OF PUBLIC RECORD, AND I BELIEVE
3 IN A JUDICIAL PROCEEDING IN THE STATE COURSE OF THE
4 STATE OF CALIFORNIA, I BELIEVE IT'S PROPERLY JUDICIALLY
5 NOTICED. SO I WILL TAKE JUDICIAL NOTICE OF THEM.

6 THE NEXT MATTER THAT I WANT TO ADDRESS IS THE
7 MOTION FOR NONSUIT. I PREVIOUSLY HAD GRANTED THE
8 NONSUIT TO BALABAN ON THE CAUSE OF ACTION FOR
9 WARRANTLESS SEIZURE. THERE WAS ALSO A MOTION ON BEHALF
10 OF DEFENDANTS PENDER AND ROGERS FOR NONSUIT ON THAT
11 SAME CLAIM ON THE GROUND THEY ARE ENTITLED FOR
12 QUALIFIED IMMUNITY, AND I HAVE DENIED THAT MOTION.

13 THE THIRD, OR THE THIRD PORTION OF THE MOTION
14 FOR NONSUIT, WHICH IS CONTAINED IN PARAGRAPH C OF THE
15 MOTION FILED WITH THE COURT ON OCTOBER 17TH IS A MOTION
16 FOR NONSUIT ON THE CLAIMS FOR WHAT I'LL CALL DECEPTION
17 ON THE COURT IN TWO DIFFERENT PROCEEDINGS, THE
18 DETENTION HEARING, THE JURISDICTION DISPOSITION
19 HEARING. AND THAT MOTION IS MADE ON THE GROUND THAT
20 THE -- THAT ANY MISREPRESENTATION OR MATERIAL OMISSION
21 WAS MADE DELIBERATELY OR WITH RECKLESS DISREGARD OF ITS
22 FALSITY.

23 I DON'T RECALL WHETHER I RULED ON THAT
24 PREVIOUSLY, BUT THAT MOTION IS DENIED. I BELIEVE THAT
25 THERE IS A -- ON THOSE GROUNDS -- THERE IS A, I
26 BELIEVE, A FACTUAL ISSUE AS TO WHETHER ANYTHING WAS
27 MADE DELIBERATELY OR WITH RECKLESS DISREGARD OF ITS
28 FALSITY. AND AMONG OTHER THINGS, WE HAVE THE FACTUAL

1 DISPUTE ABOUT WHETHER DR. GILL WAS EVER INTERVIEWED,
2 AND SHE SAYS SHE WASN'T. THEY -- THE DETENTION REPORT,
3 IT WAS -- THERE WAS REPRESENTATION OF DR. GILL HAVING
4 TALKED WITH THE CHILD SOCIAL WORKER AND MADE CERTAIN
5 STATEMENTS. AND SO I THINK THERE'S A FACTUAL ISSUE ON
6 THAT. AND I BELIEVE I'VE PREVIOUSLY RULED ON IT, BUT
7 IF NOT, THAT IS THE RULING.

8 THE MOTION IN PARAGRAPH D TO THE CAUSE OF
9 ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL
10 DISTRESS, I DO RECALL THAT I PREVIOUSLY DENIED THAT.

11 AND THE LAST CLAIM OR PORTION OF THE MOTION IS
12 DIRECTED TO THE TWO FEDERAL DISCRIMINATION CLAIMS UNDER
13 THE ADA AND REHABILITATION ACT ON THE GROUNDS THAT
14 PLAINTIFF HAS FAILED TO PROVE THAT SHE SUFFERED FROM
15 ANY DISABILITY THAT SUBSTANTIALLY IMPAIRED HER LIFE
16 ACTIVITIES, OR THAT SHE WAS DENIED ANY SERVICES ON THE
17 BASIS OF HER ALLEGED DISABILITIES. THE MOTION MADE ON
18 THOSE GROUNDS IS DENIED, THE COURT, BELIEVING THAT, AS
19 HAD BEEN PREVIOUSLY DISCUSSED, THAT THESE CLAIMS COULD
20 BE BASED ON A PERCEPTION AS OPPOSED TO THERE BEING AN
21 ACTUAL DISABILITY THAT IMPAIRS A LIFE FUNCTION. AND
22 THE CLAIM WAS ALSO BASED ON AN ALLEGED FAILURE TO
23 PROVIDE THAT SHE WAS DENIED ANY SERVICES ON THE BASIS
24 OF HER ALLEGED DISABILITIES.

25 THERE WAS A BRIEF FILED THIS MORNING, BUT I'D
26 ALREADY PREPARED MY RULING BEFORE RECEIVING THE BRIEF
27 THIS MORNING THAT I THINK IT'S A FACTUAL QUESTION AS TO
28 WHAT SERVICES COULD HAVE BEEN PROVIDED AND WERE NOT.

1 SO ON THE GROUNDS STATED, THE MOTION IS DENIED.

2 NOW, THE NEXT QUESTION, HOWEVER, IS: ONE,
3 THAT THERE IS A -- THE LEGAL ISSUE TO BE DECIDED BY THE
4 COURT AS TO WHETHER ANY FALSEHOODS OR OMITTED
5 INFORMATION OR ANY DECEPTIVE INFORMATION PROVIDED BY
6 ANY EMPLOYEE OF THE COUNTY OF LOS ANGELES WOULD HAVE
7 RESULTED IN A DIFFERENT DECISION BY THE JUVENILE COURT
8 JUDGE. WE'VE HAD A GREAT DEAL OF DISCUSSION OVER IT
9 AND BRIEFING, AND WE'VE ACTUALLY DISCUSSED THIS WHOLE
10 ISSUE FOR, ACTUALLY, SEVERAL WEEKS, IF NOT LONGER, IN
11 TRYING TO GET AN UNDERSTANDING OF, FIRST OF ALL, WHAT
12 THE ISSUE WAS, AND THEN HOW IT WAS TO BE ADDRESSED.
13 THAT HAS -- THE COURT HAS NOT RECEIVED ANY MOTION THAT
14 WOULD CAUSE THE COURT TO SPECIFICALLY ADDRESS THAT
15 ISSUE, NOR HAVE I RECEIVED A SPECIFIC REQUEST FOR A
16 RULING ON THAT ISSUE.

17 I HAD RAISED THE ISSUE MYSELF, SOLICITED
18 BRIEFING FROM THE PARTIES, WHICH WAS RECEIVED FROM BOTH
19 SIDES INCLUDING, I BELIEVE -- AND I CAN GO BACK AND
20 TAKE A LOOK -- NOT ONLY THE ORIGINAL BRIEFING, BUT
21 THERE HAS SOME ADDITIONAL SUPPLEMENTAL BRIEFING ON THE
22 ISSUE. AND INCLUDED IN THAT REQUEST, PLAINTIFFS HAVE
23 FILED WITH THE COURT SEVERAL, WHAT I'LL REFER TO AS
24 ITERATIONS -- THE WORD IS NOT IMPORTANT -- BUT AT LEAST
25 A LISTING OF WHAT THEY THOUGHT WAS EITHER FALSE
26 INFORMATION OR OMITTED INFORMATION AND/OR DECEPTIVE
27 INFORMATION.

28 AND AS WE PUT ON THE RECORD PREVIOUSLY LAST

1 WEEK, THE COURT WAS PROVIDED WITH AN UPDATED LIST OF
2 THE MATERIAL FALSE STATEMENTS FABRICATED EVIDENCE
3 AND/OR SUPPRESSION OF EXCULPATORY EVIDENCE THAT'S THE
4 TITLE OF THE DOCUMENT THAT COVERS THE ITEMS WHICH
5 PLAINTIFF WAS CONTENDING WERE FALSE AND ALSO COVERED
6 MATTERS WHICH HOWEVER IT WAS CHARACTERIZED WERE
7 OMITTED, INFORMATION THAT SHOULD HAVE BEEN PROVIDED.
8 WHETHER IT WAS BECAUSE THERE WAS NO MENTION OF THE
9 SUBJECT WHATSOEVER, OR WHETHER THERE HAD BEEN SOME
10 MENTION OF THE SUBJECT BUT WAS DEEMED BY THE PLAINTIFF
11 TO HAVE BEEN INCOMPLETE AND/OR EXCULPATORY, THAT IS
12 SOMETHING THAT REQUIRED A FURTHER EXPLANATION TO THE
13 COURT.

14 AND BASED ON THAT LISTING AS WELL AS THE
15 BRIEFING THAT I'D REQUIRED, I DID PROCEED IN REVIEWING
16 ALL THAT HAD BEEN SUBMITTED TO THE COURT AS WELL AS THE
17 OTHER MATTERS, AND AS I ADVISED YOU YESTERDAY, HAD
18 REACHED A CONCLUSION ON THE MATTER INDICATING THAT
19 THE -- A WRITTEN RULING WAS INCOMPLETE, AND THAT'S THE
20 STATUS AS IT'S PRESENTED TO ME TODAY.

21 I'M NOT CERTAIN, AND THE REASON I'M MENTIONING
22 THIS, I'VE NOT HAD A SPECIFIC REQUEST TO RULE ON THAT
23 ISSUE. I HAVE SOME CONCERN WHETHER THAT'S AN ISSUE
24 THAT REQUIRES SOMEONE TO MAKE A RULING. I MAKE A
25 REQUEST OR A MOTION FOR RULING ON THE ISSUE OR WHETHER
26 THE MANNER IN WHICH THIS ISSUE HAS ARISEN AND BEEN
27 DISCUSSED BY THE COURT AND BRIEFED BY THE PARTIES IS A
28 SUFFICIENT BASIS FOR THE COURT TO RENDER A RULING.

1 MR. GUTERRES: YOUR HONOR, WE WILL SO MOVE IF
2 THAT'S THE -- A CONCERN FOR THE COURT. WE WERE UNDER
3 THE UNDERSTANDING THAT WHEN THE COURT HAD ADDRESSED THE
4 ISSUE WITH REGARD TO IT BEING THE COURT'S DECISION TO
5 MAKE WITH REGARD TO THE MATERIALITY OF THESE EITHER
6 MISREPRESENTATIONS -- ALLEGED MISREPRESENTATIONS AND/OR
7 OMISSIONS ON BEHALF OF THE DEFENSE, WE AGREED WITH THE
8 COURT'S POSITION IN THAT REGARD. AND IF IT WASN'T
9 CLEAR, THEN WE WILL SO MAKE IT CLEAR.

10 THE COURT: WELL, THAT'S WHY I WAS BRINGING IT
11 UP. I'M NOT SURE IT WAS CLEAR. THIS ISSUE WAS ONE OF
12 EVOLUTION, IF I COULD USE THAT TERM. IT CAME UP, AND I
13 KNOW ORIGINALLY -- AND I DON'T REMEMBER WHAT PROMPTED
14 THE DISCUSSION -- BUT I REMEMBER THE ORIGINAL
15 DISCUSSION WERE MY QUESTIONS TO COUNSEL AS TO WHAT DO
16 YOU DO WITH ASKING A JURY? IS IT APPROPRIATE TO ASK A
17 JURY TO DECIDE WHAT A JUDGE WOULD HAVE DONE?

18 AND EVERYONE WILL RECALL THAT I EXPRESSED THE
19 GENERAL THOUGHT THAT I DID NOT THINK THAT YOU COULD ASK
20 A JURY TO DETERMINE WHAT A JUDGE WOULD DO. AND I THINK
21 THAT WAS THE BEGINNING OF THE DISCUSSION, AND IT MAY
22 HAVE ARISEN ORIGINALLY IN CONSIDERATION OF THE PROPOSED
23 VERDICT FORMS, OF WHICH WE'VE HAD A NUMBER OF THEM.
24 AND THEN IT TOOK ON ITS OWN LIFE AFTER THAT WITH
25 ADDITIONAL DISCUSSION AND THEN BRIEFING BY THE PARTIES,
26 AND WITH THE COURT THEN REACHING THE CONCLUSION BASED
27 ON WHAT HAD BEEN PROVIDED TO ME IN THE CASE AUTHORITIES
28 PROVIDED BY THE PARTIES, THAT IT INDEED WAS A LEGAL

1 ISSUE, AND IT MADE THE DETERMINATION THAT IT WAS AN
2 ISSUE TO BE AS A MATTER OF LAW DECIDED BY THE COURT.

3 AND SO IT EVOLVED NOT NECESSARILY BECAUSE OF A
4 MOTION OR A REQUEST, BUT I THINK BECAUSE OF YOUR
5 ORIGINAL DISCUSSION ABOUT THE ISSUES AND HOW THEY WOULD
6 BE PRESENTED IN VERDICT FORM OVER WHICH WE'VE ALSO HAD
7 VERY EXTENSIVE DISCUSSIONS TRYING TO MAKE SURE WE GET A
8 VERDICT FORM THAT NOT ONLY PROPERLY ADDRESSES THE
9 ISSUES, BUT HOPEFULLY WOULD AVOID ANY PITFALLS SUCH AS
10 AN AWARDING OF DAMAGES, THE SAME DAMAGES, MORE THAN
11 ONCE.

12 SO THAT'S HOW IT'S EVOLVED. AND SO
13 MR. MCMILLAN, DO YOU WANT TO ADDRESS THE SUBJECT?

14 MR. MCMILLAN: UNLESS YOUR HONOR HAS SPECIFIC
15 QUESTIONS, I WOULD AGREE IT'S BEEN EXTENSIVELY AND
16 THOROUGHLY BRIEFED, AND I THINK WE CAN EVEN FAIRLY SAY
17 REBRIEFED AND REBRIEFED. THERE'S A LOT OF STUFF
18 FLOATING OUT THERE AND A LOT OF ISSUES RELATED TO
19 MATERIALITY. AND WE MADE A CONCERTED EFFORT ON THIS
20 TABLE TO GIVE YOUR HONOR EVERYTHING WE COULD DIG UP ON
21 THE ISSUE. AND THE PROBLEM HAS BEEN, AS YOU KNOW,
22 THERE IS NO CASE DIRECTLY ON POINT.

23 THE COURT: RIGHT. AND WE HAD THAT
24 DISCUSSION, I THINK, ABOUT EXACTLY HOW DO YOU PROCEED
25 WITH MAKING THAT DECISION.

26 MR. MCMILLAN: RIGHT.

27 THE COURT: WHAT I THINK THAT THE -- THE WAY
28 WE HAVE PROCEEDED WITH IT TO ME STILL MAKES SENSE. I

1 THINK THAT IT IS CERTAINLY APPROPRIATE IN DECIDING THIS
2 ISSUE TO GIVE, FIRST OF ALL, THE PARTIES AN OPPORTUNITY
3 TO ADDRESS THE LAW THAT WOULD APPLY, BUT ALSO TO
4 ADDRESS THEN WHAT IN PLAINTIFF'S CASE ARE THE
5 CONTENTIONS OF WHAT WAS FALSE EVIDENCE AND WHAT WAS
6 OMITTED EVIDENCE AND TO BE ABLE TO PRESENT THOSE
7 CONTENTIONS TO THE COURT TO BE ABLE TO THEN MAKE THE
8 DECISION. AND THE DEFENDANT WAS GIVEN THE SAME
9 OPPORTUNITY AND ALSO FOUND BRIEFING.

10 SO I'M NOT TROUBLED BY THE LACK OF FORMALITY
11 AS TO HOW THE ISSUE HAS ARISEN, BUT I DID WANT TO POINT
12 OUT THAT IT WAS ONE BY EVOLUTION FROM THE DISCUSSIONS
13 WE WERE HAVING ABOUT HOW WE WERE GOING TO PRESENT
14 ISSUES IN THE VERDICT FORM, WHAT COULD BE THERE, AND
15 HOW WE'RE GOING TO PRESENT IT. AND IT GREW FROM THERE
16 TO THE POINT WHERE ALL OF YOU HAVE DONE A GREAT DEAL OF
17 WORK ON IT, AND I MUST SAY THAT I'VE SPENT A GREAT DEAL
18 OF TIME ON IT AS WELL.

19 SO IF THAT IS SATISFACTORY AS TO HOW THE -- TO
20 RAISE THE ISSUE AND TO PRESENT IT, THEN I'M PREPARED TO
21 PROCEED WITH IT.

22 MR. MCMILLAN: I BELIEVE THAT GIVEN THE
23 CURRENT STATE OF THE LAW, WE'VE ALL GOTTEN AS CLOSE AS
24 WE COULD TO THE CORRECT WAY TO APPROACH IT, WHETHER OR
25 NOT THAT IS THE CORRECT WAY.

26 THE COURT: I'M NOT EVEN SURE, YOU KNOW,
27 LOOKING AT THOSE CASES, THEY SAY IT'S A MATTER OF LAW,
28 AND THEY SAY IT SHOULD BE ADDRESSED AS EARLY AS

1 POSSIBLE. WELL, WE'RE NOT ADDRESSING IT AS EARLY AS
2 POSSIBLE, BUT THAT'S BECAUSE THE ISSUE CAME UPON US AS
3 A MATTER OF EVOLUTION. AND I THINK ALL OF US GENERALLY
4 AGREED THAT IN THE FUTURE, IF WE WERE TO DEAL WITH THIS
5 SITUATION AGAIN, THAT WE WOULD PROBABLY DEVISE A
6 MECHANISM BY WHICH THE ISSUE WOULD BE PRESENTED AT AN
7 EARLIER TIME.

8 MR. MCMILLAN: RIGHT.

9 THE COURT: I DON'T THINK THERE IS ANY --
10 THERE'S ALSO NO TEMPLATE AS TO EXACTLY WHEN THE EARLIER
11 TIME SHOULD BE, ALTHOUGH IT'S ENTIRELY POSSIBLE THAT IT
12 COULD BE DONE PRETRIAL AS PART OF A PRETRIAL MOTION.
13 IF THAT OCCURRED, IT STILL COULD BE -- I THINK IT COULD
14 BE DONE THEN BY AGREEMENT OF THE PARTIES AS TO
15 DOCUMENTS THAT ARE JUDICIALLY NOTICEABLE, FOR EXAMPLE,
16 THE DETENTION REPORT, THE JURISDICTION DISPOSITION
17 REPORT, THE OTHER INFORMATION THAT WAS PROVIDED. AND
18 SO I'M NOT SURE WHEN IT COULD OCCUR, BUT I THINK IT
19 COULD OCCUR PRETRIAL, AND I THINK THAT --

20 MR. MCMILLAN: OR BY SUMMARY JUDGMENT MOTION.

21 THE COURT: WELL, IT COULD BY SUMMARY JUDGMENT
22 MOTION TOO. AND BECAUSE IT IS AN ISSUE OF LAW, AND THE
23 PARTIES IN THE SUMMARY JUDGMENT MOTION COULD PRESENT
24 IT, WHOEVER'S MOVING FOR SUMMARY JUDGMENT WOULD ON THE
25 ISSUE.

26 BUT IN ANY EVENT, WE'RE ADDRESSING IT NOW.
27 AND SO HAVING SAID THAT, MY WRITTEN RULING IS NOT
28 COMPLETE BUT WILL BE FILED. BUT I DO WANT TO ADDRESS

1 THE CLAIMS FOR JUDICIAL DECEPTION AT THIS TIME.

2 THE -- A CLAIM FOR JUDICIAL DECEPTION MADE
3 PURSUANT TO 42 U.S. CODE SECTION 1983 REQUIRES A
4 PLAINTIFF TO SHOW THAT A DEFENDANT DELIBERATELY OR
5 RECKLESSLY MADE FALSE STATEMENTS OR OMISSIONS THAT WERE
6 MATERIAL TO THE COURT'S DECISION WHICH RESULTED IN A
7 HARM ALLEGED. I WILL CITE CASES IN THE WRITTEN RULING,
8 BUT I'M GIVING YOU A SUMMARY FORM AT THE PRESENT TIME.

9 THE MATERIALITY OF THOSE FALSE STATEMENTS OR
10 OMISSIONS AS ALLEGED IS IN TURN A LEGAL ISSUE TO BE
11 DECIDED BY THE COURT. AND THAT ISSUE REQUIRES A "BUT
12 FOR" ANALYSIS, THAT TEST HAS BEEN STATED TO BE WHETHER
13 WITH THE FALSE STATEMENTS HAVE BEEN ELIMINATED AND
14 OMITTED MATTERS HAVING BEEN INCLUDED, WHETHER OR NOT
15 THERE WAS A SUBSTANTIAL BASIS FOR THE DECISION MADE BY
16 THE JUDICIAL OFFICER.

17 THE PLAINTIFF HAS LISTED A NUMBER OF FALSE
18 STATEMENTS, AND IN THE UPDATED LIST OF MATERIAL FALSE
19 STATEMENTS, FABRICATED EVIDENCE, ET CETERA, THAT I
20 PREVIOUSLY ALLUDED TO ON THE RECORD, LISTED EIGHT
21 CLAIMED EVIDENTIARY DECEPTIONS THAT PLAINTIFF SAYS ARE
22 MATERIAL TO HER CLAIM, ONE OF THOSE WHICH WAS -- AND
23 I'M REFERRING HERE TO THE PARAGRAPHS NUMBERED 3 IN THAT
24 DOCUMENT PERTAIN TO STATEMENTS PURPORTEDLY MADE BY
25 DR. GILL TO CHILD SOCIAL WORKER PENDER, AND THOSE
26 DR. GILL HAS DENIED THAT SHE EVER SPOKE TO PENDER.

27 MY VIEW THAT THEREFORE CREATES A QUESTION OF
28 FACT AND THAT THE COURT MUST FOR THE PURPOSE OF THIS

1 ANALYSIS THEN ASSUME THAT NO SUCH DISCUSSION EVER
2 OCCURRED, AND THE COURT WOULD BE REQUIRED TO DISREGARD
3 ANY STATEMENT ATTRIBUTED TO DR. GILL.

4 IN NO. 7 OF THOSE -- PARAGRAPH NO. 7, REGARDS
5 STATEMENTS PURPORTEDLY MADE BY NORISSA ENNIS, WHICH
6 HAVE ALSO BEEN DENIED BY HER THEREBY CREATING A
7 QUESTION OF FACT, AND THEY WILL NOT BE CONSIDERED IN
8 THIS RULING -- IN ANY RULING OF THE COURT.

9 NO. 8 LISTED RELATES TO A FAILURE TO MENTION A
10 CONVERSATION WITH PASTOR NEYLAND. THIS IS AN OMISSION
11 THAT, IN MY VIEW, PERSONALLY IS NOT RELEVANT TO THE
12 ISSUES IN THE CASE. NEVERTHELESS, BECAUSE IT'S
13 CONTENDED THAT THAT WAS A PERTINENT AND MATERIAL
14 OMISSION, THE COURT WILL CONSIDER IT TO BE OMITTED
15 INFORMATION.

16 THE REMAINING FIVE EVIDENTIARY SUBJECTS CITED
17 BY THE PLAINTIFF WERE ONES THAT ARE ESSENTIALLY
18 INCOMPLETE OR OMITTED INFORMATION. AND THOSE REMAINING
19 FIVE SUBJECTS WILL BE ADDRESSED -- WILL BE CONSIDERED
20 BY THE COURT IN ITS DECISION ON THE EFFECT OF ANY
21 OMITTED INFORMATION OR INCOMPLETE INFORMATION.

22 THE JUDICIAL OFFICER AT THE DETENTION HEARING
23 ON NOVEMBER 6TH, 2009, MADE CERTAIN FINDINGS WHICH
24 INCLUDED THAT THE CHILD IN QUESTION WAS A PERSON
25 SUBJECT TO THE COURT'S JURISDICTION PURSUANT TO WELFARE
26 AND INSTITUTION CODE SECTION 300; THAT THERE WAS A
27 SUBSTANTIAL DANGER TO THE CHILD WITH NO REASONABLE
28 BASIS TO PROTECT HIM WITHOUT DETAINING HIM FROM HIS

1 MOTHER; THAT MAINTAINING THE CHILD WITH HIS MOTHER WAS
2 CONTRARY TO HIS WELFARE; THAT REASONABLE EFFORTS HAVE
3 BEEN MADE TO PRECLUDE THAT RESULT; AND THE DCFS HAD
4 DONE EXTENSIVE INTERVIEWING AND SUBMITTED A DETAILED
5 REPORT.

6 THE COURT THEREAFTER STATED ON THE RECORD
7 CERTAIN FINDINGS THAT IT HAD MADE IN SUPPORT OF THOSE
8 CONCLUSIONS, AND WHILE I DO NOT CONSIDER THAT THE
9 COURT'S STATEMENT OF ITS REASONS NECESSARILY DETERMINES
10 THE ISSUE BEFORE THIS COURT, NEVERTHELESS, I THINK WHAT
11 THE COURT SAID AT THE TIME AS TO WHAT IT WAS RELYING ON
12 IN REACHING THE CONCLUSIONS IT HAD HAVE SOME BEARING
13 AND AT LEAST SHOULD BE CONSIDERED, IF FOR NOTHING ELSE,
14 A GUIDE TO THIS COURT IN FOCUSING ON WHAT WAS MATERIAL
15 OR NOT MATERIAL.

16 I'M NOT GOING TO RECITE THOSE AT THIS TIME,
17 BUT THOSE FINDINGS, OR THOSE -- BY THE COURT ARE SET
18 FORTH IN THE TRANSCRIPT OF THE TRIAL, WHICH PERTINENT
19 PORTIONS OF WHICH ARE EXHIBIT A TO DEFENDANTS'
20 RESPONSIVE TRIAL BRIEF FILED WITH THE COURT ON
21 OCTOBER 19TH AT PAGE 11. THE FURTHER STATEMENT BY THE
22 COURT AS TO FACTUAL FINDINGS IN SUPPORT OF THE
23 CONCLUSIONARY FINDINGS WERE SET FORTH AT PAGES 14 AND
24 15 OF THAT EXHIBIT A.

25 I ALSO NOTE THAT EXHIBIT A, THE TRANSCRIPT,
26 HAS BEEN MARKED IN THIS CASE AS EXHIBIT 1258. AND I
27 DON'T KNOW OFFHAND WHETHER THAT EXHIBIT HAS BEEN
28 RECEIVED INTO EVIDENCE, BUT VERIFICATION OF THE

1 TRANSCRIPT WAS PROVIDED WITH THE MOTION.

2 THE COURT HAS THEREFORE CONSIDERED THE
3 UNCONTESTED INFORMATION BEFORE THE JUDICIAL OFFICER
4 WHICH, WHEN CONSIDERED WITHOUT THE FALSE INFORMATION
5 BUT ALSO CONSIDERED WITH THE ALLEGED INCOMPLETE OR
6 OMITTED INFORMATION AS TO WHETHER THAT INFORMATION
7 BEFORE THE COURT ESTABLISHES THAT A REASONABLE BASIS
8 FOR THE DECISION MADE.

9 IN SO DOING AS TO THE DETENTION HEARING, THE
10 COURT FINDS THAT THE PLAINTIFF HAS FAILED TO SHOW THAT
11 THERE WAS NOT A REASONABLE BASIS FOR THE DETERMINATION
12 TO DETERMINE THE CHILD. THERE ARE A NUMBER OF SALIENT
13 FACTS ON WHICH THE COURT MAKES THIS DETERMINATION.
14 THESE INCLUDE THAT THE CHILD WAS OF NORMAL BIRTH WEIGHT
15 AND SUBSEQUENT DEVELOPMENT FOR A PERIOD OF
16 APPROXIMATELY SIX OR SEVEN MONTHS. THE PERIOD OF TIME
17 WHEN THIS MAY HAVE BEGUN TO CHANGE IS PROBABLY NOT
18 CERTAIN TO THE EXTENT YOU CAN PICK A PARTICULAR DATE.
19 BUT AT SOME POINT IN TIME A CONCERN GREW ABOUT THE
20 FAILURE TO GAIN WEIGHT AND TO DEVELOP. AND IT
21 CONTINUED THEREAFTER TO THE POINT WHERE THE CHILD WAS
22 DIAGNOSED WITH FAILURE TO THRIVE.

23 DURING THAT PERIOD OF TIME, HE WAS IN THE
24 EXCLUSIVE CARE AND CONTROL OF HIS MOTHER, AND THIS
25 CHANGE IN THE CHILD APPEARED TO THE NUTRITIONIST, WENDY
26 CRUMP, TO BE A RESULT OF EXAGGERATED FEARS OF FOOD
27 INTOLERANCES AND ALLERGIES, AND THAT THE MOTHER WAS NOT
28 SUFFICIENTLY FOLLOWING HER NUTRITIONAL ADVICE. THE

1 CLAIMED FALSEHOODS DO NOT AFFECT THESE FACTS, AND THE
2 ALLEGED INCOMPLETE OR OMITTED INFORMATION WOULD NOT
3 RENDER THOSE SALIENT FACTS INSUFFICIENT AS A BASIS FOR
4 THE JUDICIAL OFFICER'S FINDINGS AND CONCLUSIONS. AND
5 AS A RESULT, THE CLAIM OF JUDICIAL DECEPTION RELATING
6 TO THE DETENTION REPORT AND HEARING FAILS AS A MATTER
7 OF LAW AND WILL NOT BE SUBMITTED TO THE JURY.

8 I WILL ALSO NOTE ON THIS SUBJECT OF THE CLAIM
9 INCOMPLETE OR FALSE INFORMATION WAS PRESENTED IN
10 PLAINTIFF'S DESIGNATION A LITTLE DIFFERENTLY, AND I DID
11 TALK WITH MS. CHUNG ABOUT IT JUST TO MAKE SURE THAT I
12 UNDERSTAND WHAT'S BEING PRESENTED. I MENTIONED THAT OF
13 THE FIRST EIGHT PARAGRAPHS, THE DESIGNATION OF
14 INFORMATION WAS SPECIFICALLY DIRECTED TO THE DETENTION
15 REPORT. THEN BEGINNING AT PAGE 9, IT WAS DIRECTED TO
16 THE DETENTION HEARING. AND PARAGRAPHS 9 THROUGH 20
17 ADDRESS THE DETENTION HEARING OFTEN IN WORDS THAT
18 APPEAR TO BE STATEMENTS MADE BY THE COURT.

19 BUT IN THIS DOCUMENT, THE PLAINTIFF ALSO
20 CONTENDED AS TO EACH ONE OF THOSE PARAGRAPHS THAT
21 CERTAIN INFORMATION WHICH WAS SPECIFIED HAD BEEN
22 OMITTED AND IN SOME INSTANCES CLAIMED TO BE FALSE.
23 THEREFORE, IN MAKING THIS DECISION ON THE DETENTION
24 HEARING, I HAVE CONSIDERED ALL OF THE EVIDENCE THAT IS
25 SET FORTH BY PLAINTIFF IN RESPONSE TO THE CERTAIN
26 STATEMENTS OF -- OF THE COURT AS BEING ALSO CLAIMS OF
27 INCOMPLETE AND/OR FALSE INFORMATION. SO IT HAS BEEN
28 CONSIDERED, AND I NEGLECTED TO MENTION THAT.

1 ON THE CLAIM OF JUDICIAL DECEPTION AT THE
2 JURISDICTION DISPOSITION HEARING, DEFENDANTS CLAIM THAT
3 PLAINTIFF IS COLLATERALLY ESTOPPED FROM LITIGATING THE
4 DECISION OF THE JUVENILE COURT IN THAT HEARING BECAUSE
5 THAT DECISION OF THE JUVENILE COURT HAS ALREADY BEEN
6 UPHELD ON APPEAL. AND IN THIS REGARD, DEFENDANTS HAVE
7 REQUESTED JUDICIAL NOTICE OF THE UNPUBLISHED DECISION
8 OF THE COURT OF APPEAL, WHICH IS EXHIBIT B. AND I HAVE
9 JUDICIALLY NOTICED IT.

10 BUT IN RESPONSE TO THIS CONTENTION, PLAINTIFF
11 CONTENDS THAT COLLATERAL ESTOPPEL DOES NOT APPLY,
12 RELYING ON, AMONG OTHER CASE AUTHORITIES, A CASE -- I'M
13 NOT SURE OF THE PRONUNCIATION -- BUT IT'S W-I-G-E
14 VERSUS THE CITY OF LOS ANGELES, A 9TH CIRCUIT CASE AT
15 713FEB.3D.1183.

16 AND ALSO PLAINTIFF CITED ADDITIONAL CASES
17 WHICH HAVE HELD THAT COLLATERAL ESTOPPEL DOES NOT APPLY
18 TO A SECTION 1983 CLAIM WHERE A COURT'S DECISION WAS
19 BASED ON EVIDENCE FABRICATED OR OMITTED BY A GOVERNMENT
20 AGENT.

21 IN MY REVIEW OF THE COURT OF APPEAL DECISION
22 OF WHICH I'VE TAKEN JUDICIAL NOTICE AS WELL AS THE
23 APPELLATE BRIEF FILED BY THE PLAINTIFF OF WHICH I'VE
24 TAKEN JUDICIAL NOTICE, IT APPEARS TO THIS COURT THAT
25 THE ISSUE OF FABRICATED EVIDENCE WAS NOT PRESENTED NOR
26 ANY FINDINGS WERE MADE THEREON IN THE TRIAL COURT OR ON
27 THE APPEAL. AS A RESULT, THE COURT FINDS THAT THE
28 PLAINTIFF IS NOT COLLATERALLY ESTOPPED HEREIN FROM

1 MAKING THE CLAIM OF JUDICIAL DECEPTION AT THE
2 JURISDICTION DISPOSITION HEARING.

3 PLAINTIFF'S CONTENTIONS OF FABRICATION OF
4 EVIDENCE AND, AGAIN, USING THE BROAD TERM OMISSIONS,
5 WHETHER IT BE NOT MENTIONED AT ALL, WHETHER IT WAS
6 SOMETHING THAT WAS NOT MENTIONED OR DESCRIBED
7 SATISFACTORILY, OR WHETHER IT WAS EXCULPATORY ARE
8 CONTAINED IN PARAGRAPHS 21 THROUGH 49 OF THIS UPDATED
9 LIST OF WHAT SHE CONTENTS CONSTITUTES SUCH EVIDENCE.

10 I'M NOT AT THIS TIME, ALTHOUGH I WILL IN THE
11 WRITTEN RULING, SUMMARIZE THE INFORMATION, BUT BY AND
12 LARGE FOR THE PURPOSE OF DESCRIBING MY RULING TODAY,
13 NEARLY ALL, WHETHER IT'S ALLEGED FALSEHOODS, INCLUDING
14 ANYTHING THAT DR. GILL SAID, ANYTHING THAT ENNIS SAID
15 WHICH HAS BEEN CONTRADICTED BY SOMEONE SAYING THOSE
16 DISCUSSIONS NEVER OCCURRED HAVE NOT BEEN CONSIDERED BY
17 THE COURT. AND IN MOST INSTANCES, I FOUND SOME OF THE
18 THINGS MENTIONED WERE REALLY CONTENTIONS AS OPPOSED TO
19 FACTS, BUT NEARLY ALL OF THE INFORMATION THAT HAS BEEN
20 SET FORTH IN PLAINTIFF'S CONTENTIONS HAS BEEN
21 CONSIDERED BY THE COURT.

22 IF IT IS OMITTED INFORMATION, I HAVE NOT
23 CONSIDERED IT. IF IT IS FALSE INFORMATION, IN EACH OF
24 THESE INSTANCES WHERE THERE'S ALLEGED FALSE
25 INFORMATION, I AM NOT DECIDING THAT IT WAS FALSE. I'M
26 SIMPLY DECIDING THAT THERE IS A FACTUAL ISSUE, AND
27 BECAUSE THERE IS A FACTUAL ISSUE, IT SHOULD NOT BE
28 CONSIDERED. AND I THINK THAT'S THE APPROPRIATE

1 STANDARD FOR THE COURT IN MAKING THIS TYPE OF RULING.

2 AGAIN, THE COURT ON AUGUST 9TH MADE CERTAIN,
3 WHAT I'LL CALL CONCLUSORY FINDINGS AND THEREAFTER ALSO
4 SET FORTH FACTUAL BASES FOR THE COURT'S FINDINGS. I DO
5 NOTE THAT THEY APPARENTLY HAD SEVERAL PROCEEDINGS
6 CULMINATING IN THE HEARING ON AUGUST 9TH, ACCORDING TO
7 THE TRANSCRIPTS, AS WELL AS DOCUMENTARY EVIDENCE. IT
8 APPEARS THAT THEY HAD SEVERAL SESSIONS, BUT IT WAS AT
9 THE AUGUST 9TH HEARING THAT THE JUDICIAL OFFICER MADE
10 HER FINDINGS AND STATED THE BASIS FOR THE HEARING --
11 BASIS FOR THE CONCLUSORY FINDINGS MADE BY THE COURT,
12 WHICH UPHELD THE DETENTION OF THE CHILD OF THE
13 PERMANENT CUSTODY AWARDED TO THE FATHER FOR THE REASONS
14 STATED.

15 IN THIS REGARD, THE COURT FINDS THAT THERE WAS
16 A SUBSTANTIAL BASIS IN THE EVIDENCE BEFORE THE JUVENILE
17 COURT AT THE TIME OF THIS DECISION IN THE JURISDICTION
18 DISPOSITION HEARING, AND THAT WHILE THERE WERE
19 SUBSTANTIAL CONFLICTS IN THE EVIDENCE, IT IS NOT FOR
20 THIS COURT TO DECIDE IF THE JUVENILE COURT COULD HAVE
21 MADE A DIFFERENT FINDING. BUT THE ISSUE SPECIFICALLY
22 IS WHETHER THERE WAS EVIDENCE BEFORE THE COURT WHICH,
23 IF BELIEVED BY THE COURT, WAS A SUBSTANTIAL BASIS FOR
24 THE DECISION MADE.

25 IN THIS INSTANCE, I FIND THAT THERE WAS, THAT
26 THE PLAINTIFF HAD FAILED IN PLAINTIFF'S BURDEN OF PROOF
27 TO ESTABLISH THERE WAS NOT A REASONABLE BASIS IN THE
28 EVIDENCE FOR THE DECISION MADE, AND THEREFORE, THE

1 ISSUE OF JUDICIAL DECEPTION PERTAINING TO THE
2 JURISDICTION DISPOSITION HEARING WILL NOT BE PRESENTED
3 TO THE JURY.

4 AS I'VE STATED, THE WRITTEN RULING WILL BE
5 FILED AS SOON AS IT'S COMPLETED, WHICH HAS BEEN A
6 LITTLE DIFFICULT TO GET DONE JUST BECAUSE OF THE OTHER
7 ISSUES BEFORE US.

8 THE NEXT ISSUE I WANT TO DISCUSS WITH COUNSEL
9 IS THAT I SEE, IN LIGHT OF THE COURT'S RULING, THERE
10 WILL BE CERTAIN MODIFICATIONS TO THE VERDICT FORM. BUT
11 I DID RECEIVE TODAY WHAT I BELIEVE IS THE PRODUCT OF
12 MR. PRAGER'S WORK, A REVISED VERDICT FORM ON THE
13 DISCRIMINATION CLAIMS. AND WE NEED TO ADDRESS THAT
14 VERDICT FORM BECAUSE EACH OF THOSE THREE CLAIMS IS
15 STILL IN EXISTENCE.

16 I DO ANTICIPATE, MR. PRAGER, BECAUSE I DENIED
17 THE MOTION FOR NONSUIT ON THE GROUNDS THAT WERE
18 ASSERTED, BUT I DO ANTICIPATE THE POSSIBILITY OF A
19 MOTION FOR DIRECTED VERDICT OR SOME OTHER ACTION BY THE
20 DEFENSE, WHICH WE MAY HAVE TO DISCUSS AT A LATER TIME,
21 ALTHOUGH IT WON'T BE TOO MUCH LATER BECAUSE WE'RE
22 GETTING VERY CLOSE TO THE END OF THE EVIDENCE. BUT WE
23 DO HAVE THE VERDICT FORM THAT HAS BEEN SUBMITTED AS A
24 SUGGESTED VERDICT FORM IN THIS REGARD, AND I THEREFORE
25 AM GOING TO GO OFF THE RECORD TO PERMIT DEFENSE COUNSEL
26 TO BE ABLE TO TAKE A LOOK AT IT -- PERHAPS YOU'VE HAD
27 SOME CHANCE TO DO SO -- AND TO THEN HAVE SOME
28 DISCUSSION WITH PLAINTIFF'S COUNSEL. I THINK

1 MR. PRAGER IS CERTAINLY THE LEAD ONE ON THIS ISSUE, TO
2 SEE IF WE CAN HAVE AN AGREEMENT AS TO WHAT IN THE
3 PRESENT STATE THE VERDICT FORM SHOULD REPRESENT.

4 SO WE'RE NOW OFF THE RECORD.

5 MR. PRAGER: BEFORE WE GO OFF THE RECORD, YOUR
6 HONOR, WE SHOULD RECOGNIZE MS. CHUNG'S CONTRIBUTION AS
7 WELL. I WOULD HATE TO OMIT THAT BECAUSE SHE'S BEEN
8 VERY HELPFUL WITH THIS ONE AS WELL.

9 THE COURT: OKAY. THANK YOU.

10 (RECESS)

11 (JURY PRESENT)

12 THE COURT: ALL RIGHT. EVERYONE MAY BE
13 SEATED. WE'RE ON THE RECORD. EVERYBODY IS PRESENT.

14 GOOD MORNING TO ALL OF OUR JURORS. AND WE'RE
15 GOING TO INTERRUPT THE TESTIMONY OF MS. RUSSELL, WHO
16 WAS TESTIFYING AT THE CONCLUSION OF YESTERDAY'S
17 PROCEEDINGS TO COMPLETE THE TESTIMONY OF MS. PENDER,
18 WHO IS PRESENT. AGAIN, PLEASE UNDERSTAND THAT WE JUST
19 DO THIS FOR CONVENIENCE OF WITNESSES. NO ONE SHOULD
20 READ ANYTHING INTO THE FACT THAT WE CALL WITNESSES AT
21 DIFFERENT TIMES SOMETIMES INTERRUPT ONE.

22 SO MS. PENDER WOULD YOU LIKE TO COME BACK UP,
23 PLEASE.

24 I'M GOING TO ASK, YES, LET'S TAKE THE -- HOPE
25 IT WILL STRETCH THAT FAR.

26 (A DISCUSSION WAS HELD OFF THE RECORD.)

27 THE COURT: SO MS. PENDER, YOU'RE STILL UNDER
28 OATH.

1 THE WITNESS: YES.

2 THE COURT: BUT I'M GOING TO ASK YOU TO JUST
3 STATE YOUR NAME FOR THE RECORD SO THE RECORD IS CLEAR.

4 THE WITNESS: SUSAN PENDER.

5 THE COURT: ALL RIGHT. THANKS VERY MUCH.

6 GO AHEAD MR. MCMILLAN.

7

8 SUSAN PENDER,
9 WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY
10 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

11

12 CROSS-EXAMINATION

13 BY MR. MCMILLAN:

14 Q GOOD MORNING, MS. PENDER.

15 A GOOD MORNING.

16 Q FEELING BETTER TODAY?

17 A OKAY. I'M FEELING OKAY.

18 Q GOOD. SO WE'LL TRY TO PICK UP WHERE WE LEFT
19 OFF LAST WEEK AND TRY TO NOT REPLAY OLD GROUND, BUT IF
20 YOU HEAR ME DOING THAT, JUST LET ME KNOW AND I'LL TRY
21 TO FIX IT. ALL RIGHT?

22 A ALL RIGHT.

23 Q WHEN YOU WERE SPEAKING WITH -- I DON'T
24 REMEMBER WHO EXAMINED YOU. WAS IT MR. GUTERRES? YEAH.
25 WHEN YOU WERE SPEAKING WITH MR. GUTERRES LAST
26 WEEK, DO YOU RECALL TELLING HIM ABOUT THE FIRST TIME
27 THAT YOU SAW BABY RYAN?

28 A YES, I DO.

1 Q OKAY. THAT WAS AT THE MOTHER'S HOME?

2 A YES, IT WAS.

3 Q I'M GOING TO PUT ON THE SCREEN EXHIBIT 625.
4 LET ME JUST ASK YOU, DO YOU RECALL WHEN YOU SAW HIM,
5 WAS HE ABLE TO MOVE AROUND AND PLAY WITH TOYS AND
6 THINGS LIKE THAT?

7 A CAN YOU GIVE ME A MOMENT?

8 Q SURE.

9 A I'M SORRY. CAN YOU REPEAT THE QUESTION? I'M
10 NOT SURE WHAT'S ON THERE BECAUSE I CAN'T SEE.

11 Q SURE. I UNDERSTAND THAT. I'M JUST WONDERING
12 WHAT YOU RECALL FROM THE FIRST TIME THAT YOU SAW BABY
13 RYAN. DO YOU RECALL WHETHER HE WAS ABLE TO MOVE AROUND
14 AND PLAY WITH TOYS?

15 A YES, I DO RECALL. AND NO, HE WAS NOT. FIRST
16 OF ALL, SHE DID NOT WANT TO PUT HIM ON THE FLOOR AT
17 FIRST WHEN I ASKED HER TO. SHE SAID HE WAS NOT
18 COMFORTABLE WITH THAT. BUT THEN -- BUT EVEN WHEN HE
19 WAS SITTING IN HER LAP OR SHE HOLDING WAS HIM ON THE
20 FLOOR, HE DID NOT APPEAR TO BE -- HE DID NOT PLAY WITH
21 TOYS OR ANYTHING LIKE THAT IN MY PRESENCE.

22 Q HE DIDN'T EVEN MOVE; RIGHT?

23 A CORRECT.

24 Q AND WHAT ABOUT IN TERMS OF -- I'LL PUT UP FOR
25 THE RECORD, EXHIBIT 648 -- WHAT ABOUT IN TERMS OF WHAT
26 YOU COULD TELL HIS BONDING WITH HIS MOTHER. COULD YOU
27 TELL WHETHER OR NOT THERE WAS ANY KIND OF BONDING
28 BETWEEN THE TWO OF THEM THAT FIRST DAY YOU MET?

1 A YES, THERE WAS BONDING. WHAT IS ON THE
2 SCREEN?

3 MR. GUTERRES: YOUR HONOR, SINCE MS. PENDER
4 CAN'T TURN, IS IT ACCEPTABLE IF WE COULD JUST MOVE HER
5 CHAIR SO --

6 THE COURT: WE CAN SHOW HER THE ACTUAL
7 PICTURE.

8 MR. MCMILLAN: IF SHE DOESN'T HAVE A
9 RECOLLECTION OF HER OWN, I'M NOT SURE THERE'S A NEED.

10 THE COURT: ALL RIGHT.

11 MR. MCMILLAN: IF SHE HAS -- IF SHE DOESN'T
12 REMEMBER, THEN CERTAINLY I WOULD SHOW HER THE PICTURE
13 AND TRY TO REFRESH HER RECOLLECTION.

14 THE COURT: ALL RIGHT. WELL, IT WOULD SEEM TO
15 ME THAT THE PICTURE SHOULDN'T BE SHOWN UNLESS AND UNTIL
16 IT'S GOING TO BE SHOWN TO THE WITNESS.

17 MR. MCMILLAN: OKAY. LET ME SEE IF I CAN FIND
18 ONE.

19 THE COURT: WE -- MR. MCMILLAN?

20 MR. MCMILLAN: YES, SIR.

21 THE COURT: WE HAVE PRINTED THESE PHOTOS.

22 (A DISCUSSION WAS HELD OFF THE RECORD.)

23 MR. MCMILLAN: THIS PICTURE HERE IS THE ONE
24 THAT'S CURRENTLY ON THE SCREEN.

25 THE WITNESS: OKAY.

26 BY MR. MCMILLAN:

27 Q AND I'LL JUST SHARE THESE WITH YOU AS WE GO
28 THROUGH THEM. SO I GUESS I'LL LEAVE YOU THIS ONE.

1 THAT'S THE ONE CURRENTLY UP.

2 AND I THINK YOU TOLD US THAT ACTUALLY YOU SAID
3 THAT YOU DO RECALL THEM BEING BONDED?

4 A YES, I DO.

5 Q BUT YOU DON'T RECALL HIM BEING ABLE TO MOVE
6 AROUND OR PLAY WITH TOYS, THAT SORT OF THING?

7 A NOT ON THE FIRST VISIT, NO.

8 Q WELL, YOUR FIRST VISIT WAS OCTOBER 21ST; IS
9 THAT RIGHT?

10 A EITHER THE 20TH OR THE 21ST. MIGHT HAVE BEEN
11 THE 20TH.

12 Q OKAY. SO LET'S JUST ASSUME THE 20TH. THAT
13 MAKES EASY MATH FOR ME. BETWEEN OCTOBER 20TH AND
14 NOVEMBER 3RD, WHAT'S THAT, ABOUT 14 DAYS?

15 A I'M NOT SURE. I'D NEED A CALENDAR IN FRONT OF
16 ME FOR THAT, BUT APPROXIMATELY.

17 Q OKAY. DID YOU SEE HIM IN MOTHER'S CARE MORE
18 THAN ONCE BETWEEN THE 20TH AND NOVEMBER 3RD?

19 A NO. I BELIEVE IT WAS THAT ONE TIME AT HER
20 HOME AND THEN THE TDM.

21 Q OKAY. AND THAT ONE TIME THAT YOU WERE AT HER
22 HOME, THE BABY COULDN'T MOVE AT ALL, COULDN'T PLAY WITH
23 TOYS, JUST SAT THERE LIMP?

24 A DON'T WANT TO ANSWER IT THAT WAY. THE BABY,
25 WHETHER HE COULD OR COULD NOT, I DIDN'T SEE ANY OF
26 THAT. HE WAS MOSTLY IN HER ARMS THE WHOLE TIME. SO
27 NO, I DID NOT SEE HIM PLAYING AT THAT TIME. DOESN'T
28 NECESSARILY MEAN THAT HE COULD OR COULD NOT.

1 Q AND THEN YOU'D ALSO SAID LAST WEEK WITH
2 MR. GUTERRES THAT YOU SPOKE WITH SOMEBODY AT THE CATC
3 CLINIC.

4 DO YOU RECALL THAT?

5 A YES, I DO.

6 Q THAT WAS DR. EVANS?

7 A YES.

8 Q DO YOU RECALL DR. EVANS SHARING WITH YOU THAT,
9 IN FACT, AT THAT POINT IN TIME, SHE WAS WAITING TEST
10 RESULTS, AND SHE COULDN'T TELL YOU WHETHER OR NOT THE
11 CHILD'S FAILURE TO THRIVE CONDITION WAS DUE TO THE
12 PARENTS'S NEGLECT.

13 YOU REMEMBER THAT; RIGHT?

14 A NO, THAT'S NOT HOW I REMEMBER IT. I RECALL
15 SHE DID SAY THAT SHE WAS SAYING IT WAS FAILURE TO
16 THRIVE DUE TO ENVIRONMENTAL CAUSES, BUT SHE COULD NOT
17 SAY DEFINITELY IT WAS ENVIRONMENTAL CAUSES AT THE
18 TIME. SHE STILL NEEDED TO WAIT FOR THE TESTING TO RULE
19 OUT A FEW OTHER THINGS.

20 Q SO IS IT YOUR TESTIMONY HERE RIGHT NOW TODAY
21 THAT DR. EVANS SPECIFICALLY SAID, "LOOK, THIS CHILD'S
22 FAILURE TO THRIVE IS CAUSED BY ENVIRONMENTAL CAUSES?"
23 IS THAT YOUR TESTIMONY?

24 A NO. WHAT I SAID WAS THAT SHE SAID IT WAS DUE
25 TO ENVIRONMENTAL CAUSES, THAT'S THE WAY SHE WAS
26 LEANING, BUT SHE COULD NOT SAY DEFINITELY JUST YET
27 BECAUSE SHE NEEDED TO WAIT FOR THE TESTING.

28 Q AND WHAT ABOUT THE PART OF THE CONVERSATION

1 WHERE DR. EVANS STATED IT WOULD BE DIFFICULT TO TELL
2 FOR SURE WHETHER THIS WAS DUE TO THE PARENTS' NEGLIGENCE.

3 DO YOU REMEMBER SAYING THAT?

4 A YES, THAT'S WHAT I SAID.

5 Q OKAY. AND THAT SHE HAD TO RUN SOME MORE TESTS
6 TO RULE OUT NONORGANIC CAUSES -- OR ORGANIC CAUSES;
7 RIGHT?

8 A YES, THAT'S WHAT I SAID, YES. THAT'S WHAT --
9 SHE WAS WAITING ON FURTHER TESTING, BUT SHE WAS LEANING
10 TOWARDS THE ENVIRONMENTAL.

11 Q SHE WAS LEANING TOWARDS ENVIRONMENTAL.
12 I'M GOING TO SHOW YOU EXHIBIT 82, PAGE 1487,
13 ASK YOU TO READ THAT FOR YOURSELF, THE ONE THAT'S
14 HIGHLIGHTED THERE.

15 A (READING:)

16 "DR. EVANS" --

17 Q NO, READ IT TO YOURSELF.

18 A OH. YOU'RE SAYING JUST THE PART THAT'S
19 HIGHLIGHTED?

20 Q YOU CAN READ THE WHOLE ENTRY IF YOU NEED TO,
21 BUT JUST TO YOURSELF.

22 A I'VE READ THE WHOLE ENTRY.

23 Q OKAY. NOW, THIS IS A DELIVERED SERVICE LOG
24 ENTRY YOU MADE; RIGHT?

25 A YES, IT IS.

26 Q AND IT'S ONE THAT YOU MADE ON OCTOBER 22ND,
27 2009?

28 A YES, IT IS.

1 Q RIGHT AFTER YOU HAD THIS CONVERSATION WITH
2 DR. EVANS?

3 A CORRECT.

4 Q WHILE IT WAS STILL FRESH IN YOUR MIND?

5 A YES.

6 Q OKAY. AND WHEN YOU WRITE DOWN THESE ENTRIES
7 HERE IN THE DELIVERED SERVICE LOGS, YOU TRY AND BE AS
8 COMPLETE AND ACCURATE AS YOU CAN, AT LEAST WITH THE
9 IMPORTANT INFORMATION; RIGHT?

10 A YES. AS COMPLETE AS I CAN, YES.

11 Q WITH THE IMPORTANT INFORMATION?

12 A CORRECT. YES.

13 Q YEAH. IS THERE A REASON WHY IN THIS DELIVERED
14 SERVICE LOG ENTRY, WE DO NOT SEE THE PHRASE THAT YOU
15 JUST GAVE US, THAT IS THAT DR. EVANS WAS LEANING
16 TOWARDS ENVIRONMENTAL CAUSES.

17 IS THERE A REASON THAT'S NOT IN HERE?

18 A OKAY. I GUESS, THAT'S THE PHRASE THAT I USED
19 BASICALLY INFERRING FROM WHAT IS IN THE CONTACT THAT
20 SHE HAD ALREADY RULED OUT NUMEROUS OTHER POSSIBLE
21 CAUSES, AND THAT IS IN THE CONTACT.

22 Q AND THAT SHE NEEDED TO DO QUITE A BIT MORE
23 TESTING, AND SHE WAS WAITING FOR RESULTS?

24 MR. GUTERRES: ASKED AND ANSWERED.

25 THE COURT: SUSTAINED.

26 BY MR. MCMILLAN:

27 Q NOW, DR. EVANS ACTUALLY SENT OVER TO YOU GUYS
28 A WRITTEN REPORT OF HER EVALUATION AND FINDINGS. AND

1 I'LL GET A COPY OF THIS FOR YOU, IT'S EXHIBIT 167, PAGE
2 NUMBER 2030.

3 TAKE A GANDER AT THAT, THEN I'M GOING TO ASK
4 YOU SOME QUESTIONS ABOUT IT.

5 A I CAN HOLD IT.

6 Q OKAY. NOW, LOOK AT THE TOP OF THE DOCUMENT
7 THERE, LACUSC CATC CLINIC.

8 THAT'S WHAT YOU REFERRED TO AS THE CATC
9 CLINIC; RIGHT?

10 A CORRECT.

11 Q AND YOU SEE OVER THERE THE DATE, OCTOBER 21ST,
12 2009, IN THE UPPER RIGHT-HAND CORNER OF THE DOCUMENT?

13 A YES.

14 Q OKAY. AND THEN YOU SEE DOWN AT THE BOTTOM
15 THERE, THERE'S A SIGNATURE. AND I CAN'T REALLY TELL
16 WHO THAT IS. DO YOU KNOW?

17 A I HAVE NO IDEA. IT'S SOMEBODY -- I ASSUME
18 IT'S A STAFF MEMBER THAT EVALUATED RYAN AT THE CLINIC.

19 Q THE STAFF MEMBER THAT EVALUATED HIM?

20 A I ASSUME IT IS A STAFF MEMBER. I COULDN'T
21 TELL YOU WHO.

22 Q OKAY. AND THEN YOU SEE SOME CHECK BOXES DOWN
23 THE MIDDLE COLUMN THERE?

24 A YES, I DO.

25 Q NOW, WHEN YOU FILLED OUT YOUR DETENTION
26 REPORT, DID YOU ATTACH ALL OF THE DOCUMENTS THAT YOU
27 GOT FROM THE CATC CLINIC TO THAT REPORT?

28 A I DON'T RECALL SPECIFICALLY WHICH ONES WERE

1 ATTACHED AND WHICH ONES WEREN'T.

2 Q OKAY. NOW, LET'S TALK A LITTLE BIT ABOUT
3 DR. GILL.

4 DO YOU REMEMBER WHEN IT WAS THAT YOU FIRST
5 SPOKE WITH DR. GILL?

6 A WHAT WAS DATE THAT I SPOKE TO DR. GILL?

7 Q YEAH.

8 A I BELIEVE IT WAS THE DAY BEFORE THE TDM, SO
9 THAT WOULD HAVE BEEN NOVEMBER 2ND.

10 Q OKAY. NOVEMBER 2ND.

11 SO WHATEVER IT WAS THAT -- THE INFORMATION
12 THAT YOU SUPPOSEDLY EXCHANGED WITH DR. GILL, THAT
13 FORMED PART OF YOUR BASIS IN MAKING THE DECISION TO
14 SEIZE THE CHILD AT THE TDM; RIGHT?

15 A I DID NOT SEIZE HIM AT THE TDM. ARE YOU
16 REFERRING TO TAKING HIM INTO PROTECTIVE CUSTODY?

17 Q WELL, ACCORDING TO YOUR TRAINING, ISN'T THE
18 TAKING OF A CHILD INTO PROTECTIVE CUSTODY A SEIZURE
19 WITHIN THE CONTEXT OF YOUR TRAINING?

20 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

21 THE COURT: OVERRULED.

22 BY MR. MCMILLAN:

23 Q PUTTING EXHIBIT NUMBER 405 UP ON THE SCREEN.
24 AND LET ME SEE IF I CAN FIND THAT FOR YOU. I'LL SHOW
25 YOU HERE A COPY OF THE EXHIBIT 405, IT'S TITLED
26 SEIZURES IN CHILD ABUSE CASES, BATES NO. 5901.

27 THERE'S FOUR CHECK BOXES ACTUALLY ON THAT
28 SLIDE THERE; RIGHT?

1 A YES, THERE IS.

2 Q OKAY. AND THIS IS A TRAINING THAT WAS
3 ADMINISTERED TO YOU BY A POWERPOINT PRESENTATION;
4 CORRECT?

5 A THAT'S WHAT IT LOOKS LIKE.

6 Q YOU DON'T RECALL IT?

7 A I DON'T RECALL THE SPECIFIC -- I'M SURE I SAW
8 SLIDES LIKE THIS IN TRAINING, BUT I DON'T RECALL THIS
9 SPECIFIC ONE.

10 Q WELL, THIS PARTICULAR SLIDE, YOU DIDN'T SEE
11 THIS ONE UNTIL JANUARY 2010; RIGHT?

12 A COULD BE. LIKE I SAID, I DON'T RECALL
13 SPECIFIC -- SPECIFICALLY WHEN I WOULD HAVE SEEN THIS.

14 Q AND THE REASON THAT YOU DIDN'T SEE THIS UNTIL
15 JANUARY OF 2010 WAS BECAUSE UNTIL JANUARY 2010, THE
16 COUNTY DIDN'T EVEN GIVE YOU THIS TRAINING; CORRECT?

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

19 THE COURT: OVERRULED.

20 THE WITNESS: IF YOU'RE REFERRING TO THE
21 TRAININGS ON WARRANT PROCEDURES, WE WERE GIVEN NEW
22 TRAININGS ON WARRANT PROCEDURES AROUND THAT TIME THAT
23 YOU'RE TALKING ABOUT, YES.

24 BY MR. MCMILLAN:

25 Q JANUARY 2010?

26 A CORRECT.

27 Q CORRECT.

28 THAT'S WHEN THEY CAME UP WITH THE WARRANT

1 DESK, THE WARRANT LIAISONS, ALL THAT?

2 A YES, I BELIEVE SO.

3 Q NOW, GOING BACK TO DR. GILL, YOUR CONVERSATION
4 THAT YOU HAD WITH DR. GILL, WHAT YOU LEARNED IN THAT
5 CONVERSATION, DID THAT FACTOR INTO THE DECISION TO
6 SEIZE THE CHILD FROM MS. DUVAL ON NOVEMBER 3RD?

7 A YES, IT DID.

8 Q IT DID.

9 AND DR. GILL -- LET ME SEE AND MAKE SURE. DID
10 YOU TALK TO DR. GILL ON TELEPHONE OR IN PERSON?

11 A ON THE PHONE.

12 Q ON THE PHONE?

13 A YES.

14 Q HOW LONG WAS THAT CONVERSATION?

15 A COULDN'T TELL YOU HOW LONG THE CONVERSATION
16 WAS. I DON'T KNOW HOW LONG THE CONVERSATION WAS.

17 Q OKAY. DID YOU EVER TALK TO DR. YIM ON THE
18 PHONE?

19 A I DON'T BELIEVE SO.

20 Q OKAY. NOW --

21 A NO, I DID NOT. BUT THEN I -- NO. I ONLY
22 TALKED TO DR. GILL.

23 Q DO YOU KNOW WHO DR. YIM IS?

24 A FROM WHAT I UNDERSTAND OR FROM WHAT MOTHER
25 TOLD ME, THEY WERE IN THE SAME PRACTICE TOGETHER.

26 Q WELL, LET ME TRY THIS AGAIN.

27 DO YOU KNOW DR. YIM, WHAT HER RELATIONSHIP
28 WITH THIS MOTHER AND THIS CHILD WAS IN 2009 -- 2008 AND

1 2009?

2 A FROM WHAT MOTHER TOLD ME, DR. YIM WAS ONE OF
3 THE DOCTORS THAT HAD SEEN BABY RYAN EARLIER ON. NOT AT
4 THE TIME OF MY INVOLVEMENT.

5 Q WELL, MA'AM, AS PART OF YOUR INVESTIGATION --
6 CORRECT ME IF I'M WRONG ON THIS -- YOU ACTUALLY WERE
7 ABLE TO GET ALL OF BABY RYAN'S MEDICAL RECORDS FROM
8 DR. YIM'S OFFICE; RIGHT? YOU WENT THROUGH ELIZABETH
9 SMALL, THE PUBLIC HEALTH NURSE. DO YOU REMEMBER THAT?

10 A I'M SURE I WAS ABLE TO GET SOME OF THE
11 RECORDS, BUT WE DON'T DO THAT. THE PUBLIC HEALTH
12 NURSES ARE THE ONES WHO GATHER THE RECORDS AND LOOK AT
13 THEM.

14 Q AND THEN YOU COMMUNICATE WITH THE PUBLIC
15 HEALTH NURSES ABOUT WHAT RECORDS THEY GOT AND WHAT THEY
16 SAW IN THE RECORDS, AND YOU REPORT THOSE COMMUNICATIONS
17 IN YOUR DELIVERED SERVICE LOGS; RIGHT?

18 A I'M NOT SURE IF THAT WAS IN THE DELIVERED
19 SERVICE LOGS, EVERY CONVERSATION I HAD WITH THEM, BUT I
20 DO BELIEVE THERE ARE CONTACTS IN THERE RELATING TO
21 THOSE CONVERSATIONS.

22 Q WELL, YOU DO REMEMBER HAVING A CONVERSATION
23 WITH THE PUBLIC HEALTH NURSE, ELIZABETH SMALL; CORRECT?

24 A YES, I DO.

25 Q AND THAT CONVERSATION CONCERNED THE MEDICAL
26 RECORDS THAT SHE HAD RECEIVED FROM DR. YIM'S OFFICE;
27 CORRECT?

28 A CORRECT.

1 Q AND DID YOU TALK TO HER ABOUT WHETHER OR NOT
2 DR. GILL, AT LEAST AS REFLECTED IN THOSE RECORDS, HAD
3 EVER SEEN THE CHILD?

4 A DID -- WAS THAT PART OF MY CONVERSATION WITH
5 THE PUBLIC HEALTH NURSE? IS THAT --

6 Q RIGHT.

7 A I'M NOT SURE HOW THAT WOULD HAVE COME UP IN
8 THE CONVERSATIONS. SO NO, I'M NOT SURE IF THAT CAME UP
9 OR NOT.

10 Q WELL, LET ME ASK THIS, YOU SAID THAT YOU
11 TALKED TO DR. GILL ON THE PHONE ON NOVEMBER 2ND;
12 CORRECT?

13 MR. GUTERRES: ASKED AND ANSWERED.

14 THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16 Q WAS THAT BEFORE OR AFTER YOU HAD THE
17 CONVERSATION WITH THE PUBLIC HEALTH NURSE, ELIZABETH
18 SMALL?

19 A I DON'T RECALL WHICH ONE WAS FIRST OR NOT. I
20 DON'T RECALL EXACTLY THE ORDER.

21 Q OKAY. PUT EXHIBIT NUMBER 183 UP ON THE SCREEN
22 HERE.

23 WERE YOU AWARE THAT DR. GILL TESTIFIED IN THIS
24 CASE?

25 A I BELIEVE SHE DID, YES.

26 Q WERE YOU HERE THAT DAY?

27 A I'M NOT SURE IF I WAS OR NOT.

28 Q SO YOU DON'T ACTUALLY KNOW WHAT SHE SAID?

1 A I MIGHT HAVE BEEN HERE. I'M NOT SURE.
2 IT'S...

3 Q DO YOU KNOW WHETHER OR NOT SHE ACTUALLY SIGNED
4 A DECLARATION IN THIS CASE?

5 A NO. NO, I COULDN'T TELL YOU WHETHER SHE DID
6 OR NOT.

7 Q OKAY. I'M GOING TO PUT UP EXHIBIT NUMBER 183,
8 THE LAST PAGE OF IT, ACTUALLY. IT'S BATES MARKED
9 002559.

10 A DID I SAY 183? YEAH, 183. LET ME PUT THAT
11 AWAY FOR YOU.

12 Q DO YOU RECALL EVER LEARNING THAT DR. GILL
13 SIGNED A DECLARATION UNDER PENALTY OF PERJURY IN THIS
14 CASE?

15 A LOOKS LIKE THAT'S WHAT I HAVE RIGHT HERE, YES.

16 Q DID YOU GET A CHANCE TO REVIEW THAT AT ALL
17 BEFORE YOU CAME IN TO TESTIFY IN FRONT OF THIS JURY
18 ABOUT YOUR CONVERSATIONS WITH DR. GILL?

19 A NO, I HAVE NOT REVIEWED THIS. NO.

20 Q WE'RE ACTUALLY DONE WITH THAT. I CAN PUT IT
21 AWAY FOR YOU.

22 A I DIDN'T KNOW IF YOU WANTED ME TO LOOK AT IT
23 RIGHT NOW.

24 Q THAT'S OKAY.

25 A NEXT ONE WE'RE GOING TO TALK ABOUT IS
26 DR. SODERBERG, THAT WILL BE EXHIBIT NO. 8. BEFORE WE
27 GET INTO IT, LET ME GO AHEAD AND GET IT FOR YOU.

28 A NOW, IN TALKING WITH MR. GUTERRES LAST WEEK, I

1 THINK WHAT YOU TOLD HIM WAS THAT DR. SODERBERG TOLD YOU
2 THAT THE BABY DID NOT HAVE ANY ALLERGIES TO FOOD, ANY
3 FOOD ALLERGIES.

4 DO YOU RECALL THAT?

5 A YES, I DO.

6 Q NOW, AT SOME POINT, I THINK YOU ALSO TESTIFIED
7 WITH MR. GUTERRES THAT MS. DUVAL EXPRESSED CONCERNS TO
8 YOU THAT BABY RYAN POSSIBLY HAD SOME SORT OF ALLERGY TO
9 MILK AND EGGS.

10 DID I GET THAT RIGHT?

11 A YES. THAT SHE HAD CONCERNS, YES.

12 Q RIGHT. AND PART OF WHAT HAPPENED AT THE CATC
13 CLINIC WAS DR. EVANS MADE SOME RECOMMENDATIONS, ONE
14 BEING THAT MS. DUVAL TAKE THE BABY TO AN ALLERGIST TO
15 GET DIAGNOSED; RIGHT?

16 A CORRECT.

17 Q AND DID YOU EVER TALK TO DR. SODERBERG?

18 A I CAN'T RECALL WHETHER I SPOKE TO HER ON THE
19 PHONE OR NOT. I DO RECALL GETTING THIS -- OR SOME
20 DOCUMENTATION. SO I -- IT COULD HAVE BEEN THIS
21 DOCUMENTATION. I DEFINITELY RECALL SPEAKING TO THE
22 PUBLIC HEALTH NURSES AND OTHER DOCTORS WHICH SAID THAT
23 THE TESTING RESULTED IN NO DISCERNIBLE ALLERGIES, NO
24 FOOD ALLERGIES.

25 Q BUT, MA'AM, THAT CONVERSATION ABOUT THE BLOOD
26 TESTS, YOU DIDN'T HAVE THAT CONVERSATION UNTIL NOVEMBER
27 7TH OR 6TH, SOMETHING LIKE THAT; RIGHT?

28 A REGARDING BLOOD TESTS, I'M NOT SURE. TO BE

1 HONEST, I, AGAIN, I'M NOT A MEDICAL EXPERT, SO I WAS
2 RELYING ON THE PHNS AND THE DOCTORS. SO THEY WERE
3 TELLING ME THAT THE TESTING THAT WAS DONE SHOWED NO
4 ALLERGIES TO FOOD.

5 Q OKAY. LET'S JUST FOCUS ON THE INFORMATION YOU
6 HAD IN HAND BEFORE THE POINT IN TIME THAT YOU SEIZED
7 THIS CHILD ON NOVEMBER 3RD, OKAY?

8 A THE INFORMATION I HAD IN HAND AT THAT TIME
9 SHOWED NO DISCERNIBLE ALLERGIES.

10 Q THE INFORMATION THAT YOU HAD IN HAND -- AND
11 YOU JUST TOLD US, I THINK -- AND MAYBE I MISUNDERSTOOD
12 YOU -- THAT YOU HAD DR. SODERBERG'S RECORDS IN HAND
13 PRIOR TO THE POINT THAT YOU SEIZED THE BABY ON NOVEMBER
14 3RD; CORRECT?

15 A PRIOR TO THE POINT THAT I TOOK BABY RYAN INTO
16 PROTECTIVE CUSTODY, I HAD DR. SODERBERG'S RECORDS, YES.

17 Q OKAY. AND AT THAT POINT IN TIME, THE ONLY
18 TESTING DR. SODERBERG HAD DONE IS TESTING IN HER OFFICE
19 USING A SKIN TEST; CORRECT?

20 A CORRECT.

21 Q AND THE ONLY RESULTS SHE HAD IN HER HAND AT
22 THAT TIME WERE THE RESULTS OF THAT SKIN TEST; CORRECT?

23 A CORRECT.

24 Q NOW, SHE ALSO LATER DREW BLOOD; RIGHT?

25 A I COULDN'T TELL YOU WHETHER SHE DREW BLOOD
26 LATER OR NOT. FROM WHAT I UNDERSTAND, YES, SHE DID.

27 Q OKAY. AND SHE SENT THAT BLOOD SAMPLE OFF TO A
28 COMPANY CALLED QUEST DIAGNOSTICS; RIGHT?

1 A THAT DETAIL I DON'T RECALL, AGAIN, BUT I
2 BELIEVE SOMETHING TO THAT EFFECT HAPPENED, THAT SHE
3 SENT IT OFF FOR FURTHER TESTING.

4 Q SHE DIDN'T GET THOSE TEST RESULTS BACK FROM
5 WHATEVER COMPANY SHE SENT THEM TO UNTIL NOVEMBER 6TH;
6 IS THAT CORRECT?

7 MR. GUTERRES: OBJECTION. LACKS FOUNDATION.
8 SPECULATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: BASICALLY, THE SAME THING. I
11 DON'T RECALL, BUT I WOULDN'T NECESSARILY KNOW WHEN THEY
12 CAME BACK FROM THE LAB. SO I DON'T HAVE THAT
13 INFORMATION SPECIFICALLY WHEN THEY CAME BACK, NO.
14 BY MR. MCMILLAN:

15 Q WELL, MA'AM, AT THE PRELIMINARY TEST IN
16 DR. SODERBERG'S OFFICE YIELDED A RESULT OF PLUS 1 TO
17 MILK PLUS 1 TO EGGS.

18 BEFORE YOU SEIZED THIS CHILD BASED AT LEAST
19 BASED IN PART ON THIS CONCERN ABOUT ALLERGIES, DON'T
20 YOU THINK MAYBE YOU SHOULD HAVE WAITED UNTIL YOU HAD
21 THE BLOOD TEST TO DO THAT?

22 MR. GUTERRES: OBJECTION. ARGUMENTATIVE. NO
23 FOUNDATION. SPECULATION.

24 THE COURT: OVERRULED.

25 THE WITNESS: SO I DON'T UNDERSTAND THE
26 QUESTION.

27 BY MR. MCMILLAN:

28 Q YOU KNOW THERE WAS A BLOOD TEST; RIGHT?

1 A CORRECT.

2 Q AND YOU KNOW THAT -- THOSE TESTS FROM THE --
3 OR THE RESULTS FROM THE BLOOD TEST, YOU DIDN'T HAVE
4 THOSE IN HAND ON NOVEMBER 3RD; RIGHT?

5 A CORRECT.

6 Q THOSE CAME LATER; RIGHT?

7 A CORRECT.

8 Q SO THE ONLY THING YOU HAD IN HAND ON
9 NOVEMBER 3RD WAS DR. SODERBERG'S RECORD; RIGHT?

10 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED.

11 THE COURT: OVERRULED.

12 THE WITNESS: THE ONLY THING I HAD IN HAND WAS
13 DR. SODERBERG'S RECORDS, CORRECT.

14 BY MR. MCMILLAN:

15 Q AND I'LL SHOW YOU THE NEXT PAGE OF
16 DR. SODERBERG'S RECORD. THAT HANDWRITING IS NOT VERY
17 CLEAR. THIS IS PAGE NUMBER 001284.

18 DO YOU KNOW WHAT THE WHEAL FLARE IS?

19 AND LET ME GRAB THAT FOR YOU.

20 THE COURT: MR. MCMILLAN?

21 MR. MCMILLAN: YES, SIR.

22 THE COURT: DID I ASK YOU -- YOU SAID IT WOULD
23 BE BATES NUMBER 1284. IS IT REALLY 1264?

24 MR. MCMILLAN: OH, MAYBE THAT'S WHY I'M HAVING
25 TROUBLE FINDING IT.

26 THE COURT: I'M LOOKING AT SODERBERG'S
27 RECORDS. ARE YOU REFERRING TO A DIFFERENT RECORD?

28 MR. MCMILLAN: NO. LET ME JUST TAKE THAT DOWN

1 AND SEE IF I CAN FIND IT.

2 THE COURT: ALL RIGHT.

3 MR. MCMILLAN: I DID FIND IT, IT IS THE
4 001284.

5 THE COURT: ALL RIGHT. THAT'S THE FORM. YES.
6 GO AHEAD. I'M SORRY.

7 MR. MCMILLAN: OH, IT'S OKAY. I WAS HAVING
8 TROUBLE FINDING IT TOO.

9 BY MR. MCMILLAN:

10 Q SO YOU SEE A TABLE THERE, AND IT'S GOT SOME
11 DIFFERENT FOODS ON THE LEFT-HAND SIDE, AND THEN THE
12 GRADE DOWN THE MIDDLE COLUMN, AND THEN A STATEMENT
13 THERE THAT SAYS "WHEAL FLARE."

14 DO YOU SEE THAT?

15 A YES, I SEE THAT.

16 Q DO YOU KNOW WHAT THAT MEANS?

17 A NO, I DON'T.

18 Q IS THIS ALSO ONE OF THE RECORDS THAT YOU HAD
19 IN HAND BEFORE YOU MADE THE DECISION TO SEIZE THIS
20 CHILD ON NOVEMBER 3RD?

21 A IT'S POSSIBLE, BUT I DON'T RECALL THE SPECIFIC
22 DETAILS LIKE THAT. THAT WAS SO LONG AGO.

23 Q OKAY.

24 A I DO RECALL THE PLUS 1 PART. I RECALL THAT.

25 Q OH, YOU DO RECALL THAT?

26 A I RECALL THE PART ABOUT THE PLUS 1 ON MILK AND
27 EGGS.

28 Q OKAY. WHAT ABOUT THE MUCOSAL CONJUNCTIVITIS?

1 DO YOU RECALL THAT?

2 A NO, I DON'T RECALL THAT.

3 Q DO YOU KNOW WHAT THAT IS, MUCOSAL
4 CONJUNCTIVITIS?

5 A NO, I DON'T.

6 Q ALLERGIC -- I KEEP MISPRONOUNCING IT. I CAN'T
7 GET IT STRAIGHT -- BUT ALLERGIC RHINITIS, DO YOU KNOW
8 WHAT THAT IS?

9 A YES, I SORT OF DO. I'M NOT A DOCTOR, SO I
10 DON'T KNOW COMPLETELY, BUT I HAVE ALLERGIES MYSELF, SO
11 I'VE HEARD THAT TERM.

12 Q CHRONIC CONDITION?

13 A CORRECT. BUT IT -- YES. CORRECT.

14 Q AND HAVING HAD ALLERGIES YOURSELF, YOU KNOW
15 WHAT COBBLESTONING IS?

16 A NO, I DON'T KNOW WHAT THAT IS.

17 Q DO YOU RECALL IN THIS CONVERSATION YOU HAD
18 WITH DR. SODERBERG, DID SHE TELL YOU THAT THE CHILD
19 ALSO SUFFERED FROM ALLERGIC RHINITIS?

20 A AGAIN, I DON'T RECALL WHETHER IT WAS DURING A
21 PHONE CONVERSATION OR NOT. I DO RECALL SEEING THAT ON
22 DOCUMENTS, THOUGH, YES.

23 Q OKAY. DO YOU RECALL SEEING THIS IN DOCUMENTS
24 WHILE YOU WERE PREPARING TO TESTIFY HERE IN COURT, OR
25 DO YOU RECALL WAY BACK BEFORE NOVEMBER 3RD, 2009,
26 SEEING THIS DOCUMENT?

27 A BOTH.

28 Q NOW, YOU ALSO TESTIFIED ABOUT THIS

1 CONVERSATION THAT YOU HAD WITH MS. CRUMP BACK ON
2 NOVEMBER 19, 2009; DO YOU REMEMBER THAT?

3 A YES, I DO.

4 Q AND YOU TOLD US THAT SHE GAVE YOU SOME SORT OF
5 A LIST OF FOODS?

6 A I RECALL BEING GIVEN A LIST, BUT I DON'T
7 RECALL EXACTLY WHAT WAS ON THE LIST.

8 Q WE --

9 A ONLY THAT --

10 Q GO AHEAD.

11 A ONLY THAT THE LIST INCLUDED THINGS -- WELL, I
12 DO RECALL, FOR INSTANCE, WHOLE MILK WOULD HAVE BEEN ON
13 THE LIST. AND THAT SHE WAS STRESSING HIGH-PROTEIN AND
14 HIGH-CALORIC FOODS.

15 Q DID MS. CRUMP EXPRESS TO YOU AT ALL WHETHER OR
16 NOT TURKEY, CHICKEN, HOT DOGS, GROUND BEEF, BEANS WERE
17 HIGH-PROTEIN FOODS?

18 A THOSE MIGHT HAVE BEEN SOME OF THE FOODS SHE
19 MENTIONED, BUT AGAIN, I DON'T RECALL SPECIFICALLY, NO.

20 Q AND THIS LIST THAT YOU GOT, AT SOME POINT DID
21 YOU GET THAT LIST IN WRITING?

22 A NO. SHE GAVE IT TO ME OVER THE PHONE.

23 Q THAT'S THE ONLY TIME YOU GOT IT?

24 A I BELIEVE SO.

25 Q DO YOU REMEMBER MEETING WITH MR. MILLS ON, I
26 THINK, THE 21ST OR SO, OCTOBER 2009?

27 A YES, I DO.

28 Q I'M SORRY?

1 A YES, I DO REMEMBER MEETING WITH MR. MILLS.

2 Q DO YOU REMEMBER MR. MILLS HAVING A HANDWRITTEN
3 LIST?

4 A CORRECT.

5 Q AND THAT'S WHEN YOU ACTUALLY FIRST SAW AND
6 HEARD OF A LIST OF FOODS; RIGHT?

7 A NO, THAT'S NOT WHEN I FIRST SAW -- THAT'S NOT
8 WHEN I FIRST HEARD OF THE LIST OF FOODS, NO.

9 Q NOW, THAT LIST OF FOODS, IF, IN FACT, YOU HAD
10 THAT CONVERSATION WITH MS. CRUMP, AND SHE HAD GIVEN YOU
11 THAT LIST OF FOODS, THAT'S IMPORTANT INFORMATION THAT
12 WOULD SHOW UP IN YOUR CONTACT NOTES, ISN'T IT?

13 A YES, IT IS. I RECALL I ANSWERED THIS LAST
14 WEEK.

15 Q OKAY. I WAS JUST DOUBLE-CHECKING.

16 NOW, LEADING UP TO THE TEAM DECISION-MAKING
17 MEETING ON NOVEMBER 3RD, YOU KNEW 14 DAYS PRIOR TO THAT
18 TDM -- I'M SORRY, 13 DAYS PRIOR BECAUSE IT WAS IN THE
19 CATC CLINIC.

20 YOU KNEW 13 DAYS PRIOR TO THE TDM THAT THIS
21 CHILD SUFFERED FROM A SERIOUS MEDICAL CONDITION; RIGHT?

22 A CORRECT. WAIT, I'M SORRY. CAN I HEAR THE
23 QUESTION AGAIN?

24 Q LET ME TRY IT DIFFERENTLY.

25 IN YOUR CONVERSATION WITH DR. EVANS 13 DAYS
26 PRIOR TO THE TIME THAT YOU SEIZED THIS BABY, DR. EVANS
27 TOLD YOU, ACCORDING TO YOUR TESTIMONY HERE, THAT THE
28 CHILD WAS DEFINITELY FAILURE TO THRIVE AND IT WAS

1 ENVIRONMENTAL CAUSES; RIGHT?

2 A CORRECT.

3 Q OKAY. SO YOU KNEW 13 DAYS PRIOR TO THE TDM --

4 A BUT SHE STILL NEEDED TO RULE OUT SOME OTHER
5 THINGS, THOUGH.

6 Q I'LL ASK THE QUESTION. YOU'VE JUST GOT TO
7 WAIT.

8 YOU KNEW 13 DAYS PRIOR TO SEIZING THIS CHILD
9 ABOUT DR. EVANS' DIAGNOSIS; RIGHT?

10 A I'M NOT SURE HOW TO ANSWER THE QUESTION THAT
11 WAY OTHER THAN TO SAY WHAT I DID KNOW AT THAT TIME WAS
12 THAT SHE HAD DIAGNOSED BABY RYAN WITH FAILURE TO THRIVE
13 FOR ENVIRONMENTAL CAUSES, BUT THAT SHE NEEDED TO RULE
14 OUT SOME -- SOME FURTHER TESTING AND HE NEEDED TO BE
15 REFERRED TO THE FAILURE TO THRIVE CLINIC.

16 Q WELL, ACTUALLY, WHAT DR. EVANS, HER
17 RECOMMENDATIONS WERE WAS THAT MOM CONTINUE WITH
18 OCCUPATIONAL THERAPY, MOM CONTINUE WITH THE
19 NUTRITIONIST, MOM GET THE CHILD ASSESSED FOR ALLERGIES,
20 AND THAT MOM COME BACK TO HER, TO DR. EVANS, IN ABOUT A
21 MONTH; RIGHT? YOU REMEMBER THAT?

22 A YES. I WANT TO CORRECT MYSELF. DR. EVANS WAS
23 NOT THE ONE WHO DID THE REFERRAL TO THE FAILURE TO
24 THRIVE CLINIC. SO I WANTED TO CORRECT MYSELF ON THAT.

25 Q RIGHT. IN FACT, YOU DID. YOU DID THE
26 REFERRAL TO THE FAILURE TO THRIVE CLINIC; RIGHT?

27 A I DID THE ACTUAL REFERRAL; HOWEVER, IT WAS A
28 PUBLIC HEALTH NURSE -- BASED ON ALL THE RECORDS AND

1 WHAT THEY WERE SAYING WHAT WAS GOING ON WITH THE
2 BABY -- WITH BABY RYAN, AND THEY WERE THE ONES WHO
3 RECOMMENDED I DO THE ACTUAL REFERRAL. NOW THAT I
4 RECALL, ONE OF THE PUBLIC HEALTH NURSES MADE THE PHONE
5 CALL -- FAILURE TO THRIVE. SO I DIDN'T EVEN DO THAT.
6 THE PUBLIC HEALTH NURSE WAS THE ONE WHO MADE THE
7 REFERRAL.

8 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
9 STRIKE EVERYTHING BEFORE THE PUBLIC HEALTH NURSE WAS
10 THE ONE WHO MADE THE REFERRAL AS NONRESPONSIVE.

11 THE WITNESS: IS THERE A QUESTION?

12 THE COURT: JUST A MOMENT. THERE'S NO
13 QUESTION.

14 THE OBJECTION NONRESPONSIVE IS OVERRULED. THE
15 MOTION THE STRIKE IS DENIED.

16 GO AHEAD.

17 BY MR. MCMILLAN:

18 Q AND AFTER THE REFERRAL WAS MADE TO THE FAILURE
19 TO THRIVE CLINIC, YOU WENT OUT AND MET WITH MR. MILLS
20 AT HIS HOME.

21 DO YOU REMEMBER THAT?

22 A NO. I BELIEVE FAILURE TO THRIVE CLINIC --
23 WAIT. SCRATCH THAT. YES, I BELIEVE THAT HAPPENED
24 ABOUT ALL AT THE SAME TIME.

25 Q RIGHT. YOU WENT OUT AND MET WITH MR. MILLS AT
26 HIS HOME AND SAT DOWN WITH HIM AND A PUBLIC HEALTH
27 NURSE WAS THERE WITH YOU?

28 DO YOU REMEMBER THAT?

1 A CORRECT.

2 Q OKAY. AND YOU TOLD MR. MILLS THAT --
3 ACTUALLY, HE ASKED YOU, HE WAS UPSET AT THAT
4 APPOINTMENT, AND HE ASKED YOU, "I DON'T UNDERSTAND WHY
5 WE HAVE TO KEEP GOING TO THESE DOCTORS. THE BABY IS
6 FINE." OR WORDS TO THAT EFFECT.

7 DO YOU REMEMBER THAT?

8 A NO, I DON'T REMEMBER WORDS TO THAT EFFECT.

9 Q DO YOU REMEMBER WHAT THE DATE WAS WHEN YOU
10 WENT OUT THERE AND TALKED TO MR. MILLS IN HIS HOME?

11 A I DON'T RECALL THE EXACT DATE, NO.

12 Q LET ME SEE IF I CAN FIND THAT FOR YOU. OKAY.
13 I'LL BRING IT UP TO YOU, EXHIBIT 82 PAGE 1488.

14 OKAY. IF I CAN GET YOU TO JUST READ TO
15 YOURSELF THIS SECOND PARAGRAPH DOWN HERE, AND LET ME
16 KNOW WHEN YOU'RE DONE.

17 A WAIT, I'M SORRY. DID YOU SAY THE SECOND --
18 CAN I SEE THAT AGAIN?

19 Q THE SECOND PARAGRAPH.

20 A OH, YES. THAT'S WHAT I DID.

21 Q MA'AM, DID READING THAT DOCUMENT REFRESH YOUR
22 RECOLLECTION THAT AT THAT MEETING AT MR. MILL'S HOME,
23 HE EXPRESSED TO YOU HIS FRUSTRATION WITH HAVING TO
24 CONTINUE TO GO SEE THESE DOCTORS?

25 A THAT MIGHT BE HOW THAT COULD BE INTERPRETED.
26 THAT WAS ONLY PART OF IT.

27 Q WELL, DIDN'T YOU ACTUALLY USE THE WORDS, "THE
28 FATHER BEGAN TO TALK ABOUT HIS FRUSTRATION"?

1 A YES, THAT WAS PART OF IT. YES.

2 Q AND PART OF HIS FRUSTRATION, WHAT HE TOLD YOU
3 IS THAT HE HAS TO KEEP GOING TO SEE THESE DOCTORS, AND
4 MOM'S A HYPOCHONDRIAC. THERE'S NOTHING WRONG WITH THE
5 BABY.

6 DO YOU REMEMBER THAT?

7 A NO, I DON'T REMEMBER IT THAT WAY. I DON'T
8 BELIEVE HE SAID THERE'S NOTHING WRONG WITH THE BABY,
9 EVEN IN THAT CONTACT. NO.

10 Q WELL, YOU REMEMBER HIM SAYING MOM'S A
11 HYPOCHONDRIAC AT LEAST; RIGHT?

12 A I DON'T BELIEVE THAT'S IN THAT CONTACT EITHER.
13 NO.

14 Q MS. DUVAL?

15 AND LET ME ASK IT THIS WAY: YOU REMEMBER
16 TELLING HIM WITH YOUR PUBLIC HEALTH NURSE SITTING THERE
17 IN THE ROOM WITH YOU IN HIS HOME OVER AND OVER AGAIN,
18 "DO NOT INTERFERE WITH THESE APPOINTMENTS. THE BABY
19 NEEDS TO BE SEEN. DO NOT INTERFERE," OR WORDS TO THAT
20 EFFECT?

21 A WHAT I RECALL AND WHAT IS IN THAT CONTACT IS
22 THAT WE DID HAVE TO REPEAT SEVERAL TIMES TO THE FATHER
23 THAT HE NEEDS TO BE SEEN BY THESE PROFESSIONALS BECAUSE
24 THE MEDICAL PROFESSIONALS WERE RECOMMENDING WAS THE
25 BEST PLACE TO EVALUATE FAILURE TO THRIVE AND THAT HE
26 NEEDED TO BE SEEN AS SOON AS POSSIBLE.

27 YES, HE WAS RESISTANT AT FIRST, BUT HE WENT ON
28 TO EXPLAIN -- AFTER SOME HESITATION, HE WENT ON TO

1 EXPLAIN THAT HE WANTED TO DO WHATEVER WAS NECESSARY FOR
2 BABY RYAN AND THAT HE HAD 106 HOURS OF SICK TIME. AND
3 SO HE WAS GOING TO MAKE SURE THAT HE GOT THE BABY TO
4 ALL OF THE MEDICAL PROFESSIONALS NECESSARY.

5 Q AND ONE OF THE REASONS, ONE OF THE REASON YOU
6 HAD TO EXPLAIN TO HIM OVER AND OVER AGAIN THAT THIS
7 BABY NEEDS TO BE SEEN IS BECAUSE HE DIDN'T WANT THE
8 BABY TO BE SEEN; RIGHT?

9 MR. GUTERRES: OBJECTION. SPECULATION. NO
10 FOUNDATION.

11 THE COURT: SUSTAINED AS TO SPECULATION.
12 BY MR. MCMILLAN:

13 Q AND WHEN YOU SPOKE WITH MS. DUVAL ABOUT THESE
14 DOCTORS APPOINTMENTS AND CONFLICTS WITH THE FATHER TO
15 SET UP THESE DOCTORS APPOINTMENTS, DID SHE ALSO EXPLAIN
16 TO YOU THAT WITH EVERY SINGLE DOCTOR LEADING UP TO YOUR
17 INVOLVEMENT, MR. MILLS HAD SIMILAR RESISTANCE?

18 A CAN YOU ASK THE FIRST PART OF THAT QUESTION
19 AGAIN?

20 Q SURE. WHEN YOU SPOKE WITH MOTHER, I THINK
21 THAT WOULD HAVE BEEN BACK ON OCTOBER 20TH OR
22 THEREABOUTS, DID SHE ALSO EXPLAIN TO YOU THEN THAT SHE
23 ALSO HAD RESISTANCE FROM MR. MILLS IN GETTING HIM TO
24 AGREE TO ALLOW HER TO TAKE THE BABY TO SEE DOCTORS?

25 A FROM WHAT I RECALL, THEY BOTH WERE POINTING
26 FINGERS AT EACH OTHER, THAT THEY BOTH WERE RESISTANT TO
27 EACH OTHER. THAT'S WHAT I RECALL.

28 Q OKAY. GOING BACK TO THIS CHRONOLOGY THAT WE

1 WERE SETTING OUT LEADING UP TO THE TDM WHERE YOU SEIZED
2 THE CHILD, WE HAVE DR. EVANS AT THE CATC CLINIC
3 ALREADY, AND WE KNOW WHAT YOU DO THERE. THEN WE HAVE
4 DR. SODERBERG, WE'VE TALKED ABOUT HER. THAT WAS BEFORE
5 THE TDM; RIGHT?

6 A CORRECT.

7 Q THEN YOU ALSO HAD -- YOU SPOKE WITH CINDY
8 PARRAS. DO YOU REMEMBER THAT AT THE REGIONAL CENTER?

9 A YES, I DO.

10 Q AND THE REGIONAL CENTER HAD CONDUCTED AN
11 OCCUPATIONAL THERAPY AND DEVELOPMENTAL EVALUATION;
12 RIGHT?

13 A CORRECT.

14 Q YOU HAD THAT IN HAND TOO?

15 A YES, I DID.

16 Q BEFORE NOVEMBER 3RD?

17 A I BELIEVE SO. I KNOW I SPOKE WITH HER ON THE
18 PHONE BEFORE.

19 Q NOW, CINDY PARRAS, SHE WAS WASN'T THE LICENSED
20 PROFESSIONAL THAT ACTUALLY DID THE EVALUATION; CORRECT?

21 A I'M NOT SURE ON THAT. I BELIEVE -- I KNOW FOR
22 SURE SHE WAS THE ONE I SPOKE TO.

23 Q DO YOU KNOW WHETHER OR NOT SHE WAS THE
24 REGIONAL CENTER APPOINTMENT COORDINATOR?

25 A NO, I DON'T KNOW HER TITLE -- OR I MAY HAVE
26 KNOWN HER TITLE AT THE TIME. I DON'T REMEMBER HER
27 TITLE NOW.

28 Q OKAY. DOES THE NAME ANGELA ESPINOZA SOUND

1 FAMILIAR?

2 A NOW THAT YOU MENTION IT, IT SOUNDS FAMILIAR.
3 BUT AGAIN, I DON'T RECALL THE VARIOUS TITLES THAT
4 BELONGED TO EACH PERSON.

5 Q OKAY. AND AS WE'RE LEADING INTO THIS TDM,
6 THOUGH, YOU'RE PRETTY CERTAIN YOU DID HAVE THAT -- YOU
7 AT LEAST HAD A CONVERSATION WITH MS. PARRAS. AND YOU
8 ALSO HAD THAT REPORT AND EVALUATION; CORRECT?

9 A I HAD THE CONVERSATION WITH HER. I RECEIVED
10 THE WRITTEN EVALUATION AT SOME POINT. I DON'T
11 REMEMBER -- I DON'T RECALL EXACTLY WHEN I RECEIVED THE
12 WRITTEN DOCUMENTATION.

13 Q OKAY. SO WE'VE GOT THROUGH MS. PARRAS, WE'VE
14 GOT THROUGH THE REGIONAL CENTER.

15 DO YOU REMEMBER READING ANYWHERE IN THE
16 RECORDS THAT YOU WERE REVIEWING PRIOR TO MAKING THE
17 DECISION TO SEIZE THIS CHILD FROM MOM, DO YOU REMEMBER
18 READING ANYWHERE THAT THE CHILD WAS RESISTIVE TO
19 OUTSIDE INFLUENCES, AND THIS MAY BE CAUSING HIM TO STAY
20 AWAY FROM NEW THINGS OR TO STICK WITH FOODS THAT HE'S
21 FAMILIAR WITH?

22 DO YOU RECALL READING THAT?

23 A NO, I DON'T RECALL THAT DETAIL. NO.

24 Q DO YOU RECALL READING THAT THE BABY WAS
25 HYPERVIGILANT AND EASILY DISREGULATED AND HAD TROUBLE
26 CONTROLLING HIS EMOTIONS?

27 A I RECALL READING THAT, YES.

28 Q DO YOU RECALL READING THAT HE HAD A POTENTIAL

1 FOOD AVERSION?

2 A I DON'T RECALL READING THAT, NO. IT MIGHT
3 HAVE BEEN IN THERE.

4 Q DO YOU KNOW WHAT A FOOD AVERSION IS?

5 A I BELIEVE IT WOULD BE A STRONG DISLIKE TO
6 CERTAIN FOODS POSSIBLY.

7 Q OR TEXTURES?

8 A OR TEXTURES, YES.

9 Q AND HOW ABOUT SENSORY INTEGRATION DISORDER.
10 DO YOU RECALL READING SOMEWHERE IN ONE OF THESE REPORTS
11 PRIOR TO NOVEMBER 3RD THAT THE CHILD APPEARED TO HAVE
12 SYMPTOMS OF A SENSORY INTEGRATION DISORDER?

13 A YES, I DO RECALL READING THAT.

14 Q OKAY. AND THAT SENSORY INTEGRATION DISORDER
15 POTENTIALLY WAS CAUSING HIM TO AVOID CERTAIN TEXTURES
16 AND FOODS, THINGS LIKE THAT?

17 A AS TO CAUSE AND EFFECT, WHICH CAME FIRST, ONE
18 OR THE OTHER, I WOULDN'T HAVE ANY WAY OF KNOWING THAT.
19 AND I DON'T RECALL READING IN THAT MANNER. SO I DON'T
20 FEEL LIKE I'M QUALIFIED TO SAY WHICH CAUSES WHAT
21 ANYWAY.

22 Q AND JUST FOR THE RECORD, THAT OCCUPATIONAL
23 THERAPY DEVELOPMENTAL EVALUATION, THAT'S EXHIBIT 9.

24 THEN YOU GET TO -- WITH ALL THIS INFORMATION
25 IN HAND, YOU GET TO THE TDM; RIGHT?

26 A CORRECT.

27 Q WELL, LET ME ASK YOU THIS: WAS IT BEFORE THE
28 TDM THAT YOU GOT AHOLD OF THE FAILURE TO THRIVE CLINIC

1 OR AFTER? WHEN WAS THAT?

2 A THEY CONTACTED ME.

3 Q WHEN?

4 A ALMOST -- COULDN'T TELL YOU EXACTLY, BUT IT
5 WAS VERY CLOSE TO THE TIME OF THE TDM.

6 Q AND THAT'S REPORTED IN YOUR DELIVERED SERVICE
7 LOG; RIGHT? BECAUSE THAT WOULD BE AN IMPORTANT
8 CONTACT. SOMEBODY CALLING YOU FROM THE FAILURE TO
9 THRIVE CLINIC, THAT WOULD BE AN IMPORTANT CONTACT;
10 RIGHT?

11 A IT WOULD BE AN IMPORTANT CONTACT. WHETHER OR
12 NOT IT WAS IN THE CONTACTS INADVERTENTLY, I MIGHT HAVE
13 MISSED PUTTING IT IN THERE.

14 Q INADVERTENTLY?

15 A I COULDN'T TELL YOU RIGHT NOW -- I DON'T
16 RECALL WHETHER IT WAS IN THE CONTACTS OR NOT.

17 Q OKAY. LET'S START THERE.

18 NOW, WE KNOW THE APPOINTMENT WITH THE FAILURE
19 TO THRIVE CLINIC THAT WOULD HAVE BEEN ON NOVEMBER 3RD
20 BEFORE THE ACTUAL TDM; CORRECT?

21 A CAN YOU ASK THAT AGAIN?

22 Q THE APPOINTMENT, MS. DUVAL'S MEDICAL
23 APPOINTMENT WITH HER CHILD AT THE FAILURE TO THRIVE
24 CLINIC, THAT HAPPENED BEFORE THE TDM BUT ON THE SAME
25 DAY, NOVEMBER 3RD; CORRECT?

26 A YES. IMMEDIATELY BEFORE, YES.

27 Q AND DO YOU RECALL -- IT WAS YOU THAT GOT THE
28 PHONE CALL?

1 A YES, IT WAS.

2 Q DO YOU RECALL WHO YOU SPOKE WITH?

3 A I DON'T RECALL. I BELIEVE IT WAS DR. EGGE,
4 BUT I COULDN'T SAY EXACTLY FOR SURE.

5 Q I'M GOING TO GIVE YOU A RANGE OF PAGES HERE
6 THAT SPAN NOVEMBER 2ND ALL THE WAY THROUGH
7 NOVEMBER 5TH. AND IT'S OUT OF EXHIBIT NO. 82, BEARING
8 BATES NO. 1494 THROUGH 1496.

9 I'M GOING TO ASK YOU TO IDENTIFY FOR ME, IF
10 YOU COULD, FIRST BY DATE, YOUR CONTACTS, THE CONTACTS
11 THAT YOU, YOURSELF, REPORTED.

12 A SO YOU WANT ME TO NAME THEM OFF RIGHT NOW?

13 Q I'M SORRY.

14 A YOU WANT ME THE NAME THEM OFF RIGHT NOW?

15 Q BY DATE.

16 A BY DATE. OKAY. WELL, OKAY. SO I'M NOT SURE
17 WHAT YOU'RE ASKING -- WHO I SPOKE TO, ON WHICH DATE, IN
18 WHAT ORDER?

19 Q WELL, ONE OF THEM WE NEED TO ADDRESS
20 DIFFERENTLY, BUT THE ONES WHERE YOU TALKED TO SOMEBODY
21 LIKE OLGA DEJESUS?

22 A YES.

23 Q OR RAFAELINA DUVAL AND RYAN MILLS, OKAY?

24 SO CAN YOU JUST TELL ME THE DATES OF EVERY
25 SINGLE ONE OF THE CONTACTS THAT YOU HAD FROM
26 NOVEMBER 2ND TO NOVEMBER 5TH, 2009.

27 A OKAY. I'LL DO THE BEST I CAN.

28 Q I CAN HOLD THAT FOR YOU IF YOU WANT.

1 A OKAY. I SPOKE TO OLGA DEJESUS, WHICH WAS -- I
2 DON'T REMEMBER HER TITLE -- CAN YOU HEAR ME OKAY? I
3 DON'T REMEMBER HER TITLE, BUT SHE WAS ONE OF THE
4 ADMINISTRATORS AT THE FAILURE TO THRIVE CLINIC.

5 Q AND WHAT WAS THE DATE ON THAT?

6 A 11/2.

7 Q SO NOVEMBER 2ND, 2009?

8 A CORRECT.

9 Q AND IN THAT CONTACT THERE, SHE DOESN'T SAY
10 ANYTHING ABOUT FAILURE TO THRIVE; RIGHT? WHAT'S
11 CAUSING IT OR ANYTHING LIKE THAT?

12 A NO, THAT WASN'T HER AREA OF EXPERTISE I DON'T
13 BELIEVE.

14 Q OKAY. WHAT'S THE NEXT CONTACT? AND YOU DON'T
15 NEED TO --

16 MR. MCMILLAN: WELL, YOUR HONOR, CAN WE
17 APPROACH SIDEBAR FOR A MOMENT?

18 THE COURT: YES.

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

21 THE COURT: WE'RE AT SIDEBAR.

22 YES, MR. MCMILLAN? ALL COUNSEL ARE PRESENT.

23 MR. MCMILLAN: THIS IS -- THE ISSUE IS BETWEEN
24 NOVEMBER 2ND AND NOVEMBER 5TH, SHE HAD ZERO CONTACT
25 WITH ANYBODY, AT LEAST IN HER CONTACT NOTES. SO WHAT I
26 WOULD LIKE TO DO IS HAVE HER TELL US THAT. BUT ONE OF
27 THOSE NOTES, IN FACT, THE NEXT NOTE IS THE NOTE ABOUT
28 HER CONVERSATION WITH REECE NEYLAND. AND I KNOW YOUR

1 HONOR DOESN'T EVEN WANT HIS NAME COMING UP. SO BUT THE
2 PROBLEM IS THAT UNLESS THE JURY IS SOMEHOW INFORMED --
3 AND I DON'T MIND IF IT COMES FROM THE COURT -- BUT
4 SOMEHOW INFORMED THAT THAT NOTE DOESN'T HAVE ANYTHING
5 TO DO WITH THE MEDICAL CONDITION OF THE CHILD, THEN
6 THERE'S A DOUBT LEFT THERE. SO I'M LOOKING TO YOUR
7 GUIDANCE FIRST BEFORE I GO INTO THAT --

8 THE COURT: YEAH.

9 MR. MCMILLAN: -- TO SEE HOW YOU WANT TO DEAL
10 WITH IT BECAUSE I DON'T WANT TO VIOLATE ANY PRIOR
11 ORDERS.

12 THE COURT: AND THERE'S NO OTHER CONTACT NOTES
13 DURING THAT PERIOD OF TIME?

14 MR. MCMILLAN: NOT WITH NEYLAND AND NOT WITH
15 ANY MEDICAL PROVIDER. HER ONLY CONTACT NOTES ARE
16 NOVEMBER 2ND, TWO ON NOVEMBER 2ND, AND THEN ONE ON
17 NOVEMBER 5TH.

18 THE COURT: OKAY. AND ONE OF THEM ON THE 2ND
19 IS THE ONE WITH MR. NEYLAND?

20 MR. MCMILLAN: CORRECT. THAT'S CORRECT.

21 THE COURT: AND THERE'S ANOTHER ONE ON
22 NOVEMBER 2ND?

23 MR. MCMILLAN: WITH OLGA DEJESUS, CORRECT.

24 THE COURT: OKAY.

25 MR. GUTERRES: RELEVANCE HAS TO DO WITH THE
26 MEDICAL PROVIDERS. I DON'T KNOW WHY WE HAVE TO GO
27 THROUGH AND COVER ALL CONTACTS DURING THE PERIOD OF
28 TIME.

1 THE COURT: WELL.

2 MR. GUTERRES: I MEAN, I THINK IT'S PURPOSELY
3 TRYING TO GET INTO A CONTACT WITH PASTOR NEYLAND.

4 MR. MCMILLAN: YOUR HONOR, IF IT WAS ON
5 PURPOSE, I WOULD HAVE JUST DONE IT.

6 THE COURT: NO, I KNOW. HE'S ASKING FOR
7 GUIDANCE WHAT TO DO.

8 MR. MCMILLAN: HOW ABOUT IF I COULD JUST ASK
9 HER THE SECOND CONTACT ON NOVEMBER 2ND HAS NOTHING TO
10 DO WITH ANY MEDICAL INFORMATION ABOUT THE CHILD?

11 THE COURT: THAT WOULD BE FINE.

12 MR. MCMILLAN: OKAY. THAT'S WHAT I'LL DO
13 THEN.

14 THE COURT: ANY OBJECTION TO THAT?

15 MR. GUTERRES: NO.

16 THE COURT: ALL RIGHT. I THINK THAT'S GOOD.
17 EASY SOLUTION.

18 MR. MCMILLAN: RIGHT. THANK YOU, YOUR HONOR.

19 THE COURT: AS LONG AS SHE AGREES.

20 MR. MCMILLAN: IF SHE DOESN'T, I'LL COME BACK
21 TO SIDEBAR.

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

25 BY MR. MCMILLAN:

26 Q NOW, MS. PENDER I'M CORRECT, AREN'T I, THAT
27 YOU HAVE TWO ENTRIES IN YOUR CONTACT NOTES FOR
28 NOVEMBER 2ND; RIGHT?

1 A CORRECT.

2 Q THE ONE WAS FOR OLGA DEJESUS, AND WE ALREADY
3 SPOKE ABOUT HER. THE OTHER CONTACT ON NOVEMBER 2ND, AM
4 I CORRECT THAT THE SUBSTANCE OF THAT CONTACT HAS
5 ABSOLUTELY NOTHING TO DO WITH THE CONDITION OF THE
6 CHILD ON NOVEMBER 2ND?

7 A CORRECT.

8 Q SORRY?

9 A CORRECT.

10 Q AND BOTH OF THOSE NOTES THAT YOU WROTE ON
11 NOVEMBER 2ND -- FIRST OF ALL, YOU ENTERED THOSE; RIGHT?

12 A CORRECT.

13 Q AND YOU'RE ACTUALLY REQUIRED TO ENTER THOSE
14 BOTH UNDER POLICY AND ACCORDING TO LAW INTO THE CONTACT
15 NOTES IN THE CWS/CMS SYSTEM; CORRECT?

16 A CORRECT.

17 Q AND YOU ENTERED THOSE NOTES WITHIN THE REGULAR
18 COURSE AND SCOPE OF YOUR DUTIES; CORRECT?

19 A CORRECT.

20 Q AND PART OF THE PURPOSE OF ENTERING THOSE
21 NOTES WAS TO MAINTAIN FOR THE AGENCY AND FOR THE STATE
22 OF CALIFORNIA A COMPREHENSIVE WRITTEN RECORD OF ALL
23 CONTACTS THAT WERE MADE IN THE CASE; CORRECT?

24 A CORRECT.

25 Q AND THOSE NOTES THAT YOU MADE -- IN FACT, ALL
26 THE NOTES THAT YOU MADE IN THESE DELIVERED SERVICE
27 LOGS, YOU TRIED TO RECORD THOSE CONTEMPORANEOUS IN TIME
28 WITH THE OCCURRENCE OF THE EVENTS THAT YOU'RE

1 REPORTING; CORRECT?

2 A CORRECT.

3 Q PART OF THE REASON FOR THAT IS BECAUSE YOU
4 HAVE A FRESH MEMORY AT THAT TIME; CORRECT?

5 A CORRECT.

6 Q SO NOVEMBER 2ND, YOU HAVE TWO ENTRIES THERE.
7 WHEN'S YOUR NEXT ENTRY?

8 A MY NEXT ENTRY INTO THE DELIVERED SERVICE LOGS
9 IS NOVEMBER 5TH.

10 Q NOVEMBER 5TH. YOU SAID NOVEMBER 5TH?

11 A CORRECT.

12 Q THERE'S NO ENTRY THERE FOR THIS CONVERSATION
13 YOU HAD WITH DR. EGGE ON NOVEMBER 3RD?

14 A NO. NO, THAT'S NOT IN THE DELIVERED SERVICE
15 LOGS, NO.

16 Q BUT SOMEHOW NOW, WHAT IS THAT, SEVEN YEARS
17 LATER, YOU HAVE A DETAILED MEMORY OF THAT CONVERSATION;
18 RIGHT?

19 A NO, I DON'T HAVE A DETAILED MEMORY. BUT I DO
20 HAVE A VERY VIVID MEMORY OF THE CONVERSATION BEING THAT
21 DR. EGGE HAD SERIOUS CONCERNS FOR THIS CHILD. AND THAT
22 BASED ON MY CONVERSATION WITH HER, BEING THAT SHE HAD
23 SUCH SERIOUS CONCERNS AND THE DOCUMENTATION, I HAD VERY
24 SERIOUS CONCERNS. BUT IT WAS ALSO THE WHOLE TOTALITY
25 OF EVERYTHING ALL PUT TOGETHER.

26 MR. MCMILLAN: OBJECTION. MOVE TO STRIKE AS
27 NONRESPONSIVE EVERYTHING BEYOND "YES." OR ACTUALLY
28 EVERYTHING BEYOND "I DON'T HAVE A VIVID MEMORY."

1 THE COURT: ALL RIGHT. IN THE TRANSCRIPT,
2 THERE WAS NO "YES," AND SO EVERYTHING -- YOUR MOTION IS
3 FOR EVERYTHING?

4 MR. MCMILLAN: CORRECT.

5 THE WITNESS: BUT MY --

6 THE COURT: JUST A MOMENT. THE QUESTION WAS,
7 "BUT NOW SOMEHOW SEVEN YEARS LATER YOU HAVE A DETAILED
8 MEMORY OF THAT CONVERSATION; RIGHT?"

9 FIRST PART OF THE ANSWER WAS, "NO I DON'T HAVE
10 A DETAILED MEMORY."

11 MR. MCMILLAN: EVERYTHING BEYOND "NO."

12 THE COURT: ALL RIGHT. EVERYTHING AFTER THAT
13 PART OF THE ANSWER, "NO, I DON'T HAVE A DETAILED
14 MEMORY," IS -- THE OBJECTION OF NONRESPONSIVE IS
15 SUSTAINED. THE MOTION TO STRIKE IS GRANTED, AND ALL
16 PORTIONS OF THE ANSWER AFTER THE PART I JUST RECITED TO
17 YOU WILL BE ORDERED STRICKEN AND THE JURY MUST
18 DISREGARD IT.

19 MR. MCMILLAN: THANK YOU, YOUR HONOR.

20 I'M DONE WITH THIS WITNESS.

21 THE COURT: MR. GUTERRES?

22 MR. GUTERRES: THANK YOU, YOUR HONOR.

23

24 REDIRECT EXAMINATION

25 BY MR. GUTERRES:

26 Q MS. PENDER, DO YOU STILL HAVE THOSE DELIVERED
27 SERVICE LOGS THAT MR. MCMILLAN PUT IN FRONT OF YOU,
28 EXHIBIT 82, 1494 THROUGH 1496? IS THAT STILL WITH YOU?

1 A YES, IT IS.

2 Q DO YOU HAVE THOSE PAGES?

3 A YES. THIS ONE?

4 Q LET ME ALSO GIVE YOU ONE OF THE PAGES THAT
5 MR. MCMILLAN DID NOT GIVE YOU, WHICH WAS THE PAGE
6 BEFORE THAT. IT'S EXHIBIT 82, BATES 1493. AND LET ME
7 DIRECT YOUR ATTENTION TO THE BOTTOM ENTRY OF THE SAME
8 DATE NOVEMBER 2ND, 2009.

9 AND I BELIEVE MR. MCMILLAN HAD ASKED YOU ABOUT
10 CONTACTS WITH MEDICAL PROVIDERS ON NOVEMBER 2ND; IS
11 THAT RIGHT?

12 A CORRECT.

13 Q SO YOU ACTUALLY HAD A CONTACT WITH A MEDICAL
14 PROVIDER OTHER THAN OLGA DEJESUS; ISN'T THAT TRUE?

15 MR. MCMILLAN: OBJECTION. EXCEEDS SCOPE OF
16 CROSS AS TO WHO.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES, I DID.

19 BY MR. GUTERRES:

20 Q AND WHO DID YOU HAVE CONTACT WITH ON
21 NOVEMBER 2ND WITH REGARD TO MEDICAL PROVIDER OTHER THAN
22 OLGA DEJESUS?

23 A DR. GILL.

24 Q AND IS THAT IN YOUR CONTACT NOTE?

25 A YES, IT IS.

26 Q OKAY. AND DID YOU PUT DOWN IN YOUR CONTACT
27 NOTE YOUR DISCUSSIONS WITH DR. GILL?

28 A YES, I DID.

1 Q AND THAT WAS A TELEPHONE CONVERSATION?

2 A YES, IT WAS.

3 Q TELL US WHAT YOU REMEMBER ABOUT THAT
4 CONVERSATION THAT YOU WROTE?

5 A WHAT I REMEMBER WAS THAT SHE WAS VERY UPSET
6 WITH THE FAMILY AND WHAT HAD OCCURRED. SHE FELT THAT
7 SHE WAS PUT IN AN AWKWARD POSITION FOR SEVERAL REASONS,
8 THE FIRST BEING THAT THE -- BABY RYAN AND THE FAMILY
9 WERE NO LONGER PATIENTS OF HERS. AND THAT ALSO SHE --
10 WELL, SHE STATED THAT SHE FELT KIND OF TAKEN ABACK BY
11 THE WHOLE APPOINTMENT AND WHY MOTHER BROUGHT THE BABY,
12 THAT SHE WAS USING HER TO SUIT HER PURPOSES, I BELIEVE
13 WAS THE PHRASE SHE USED.

14 Q AND DID YOU WRITE DOWN THE INFORMATION AS TO
15 WHAT DR. GILL TOLD YOU ABOUT THE PRACTICE NO LONGER
16 TREATING BABY RYAN?

17 A YES. YES, I DID. SHE ELABORATED AS TO THE
18 REASONS WHY THE BABY AND THE FAMILY WERE NO LONGER A
19 PART OF HER PRACTICE. AND THE REASONS WHY WERE THAT
20 THE FAMILY WERE BECOMING TOO DIFFICULT WITH THE
21 ARGUMENTS BACK AND FORTH, BUT ALSO THAT MOTHER WAS NOT
22 FOLLOWING HER INSTRUCTIONS TO FEED THE BABY PROPERLY
23 FOR THE BABY TO GROW.

24 Q AND IN RELATION TO THE CONTACT NOTES THAT YOU
25 HAVE IN FRONT OF YOU, WHERE IS THAT CONTACT, THE ONE
26 THAT DOCUMENTS YOUR DISCUSSION WITH DR. GILL IN
27 RELATION TO YOUR NOTES THAT SPEAK TO YOUR DISCUSSION
28 WITH OLGA DEJESUS?

1 A CAN I READ FROM HERE?

2 Q NO. I'M JUST ASKING IN RELATION, WHERE IS
3 THIS IN YOUR CONTACT NOTES?

4 A IT'S RIGHT IN THE MIDDLE OF THE CONTACT. IT'S
5 IN THE MIDDLE OF CONTACT.

6 Q SO YOU INPUTTED IN YOUR CONTACT A DISCUSSION
7 THAT YOU HAD WITH DR. GILL?

8 A CORRECT.

9 Q AND THEN FOLLOWED -- THE NEXT ENTRY THAT YOU
10 HAD IS A DISCUSSION WITH WHOM IN YOUR CONTACT NOTES?

11 A THE ENTRY WAS THE DISCUSSION WITH DR. GILL.

12 Q AND THEN WHAT'S THE NEXT CONTACT THAT YOU
13 ENTERED?

14 A OH, THE PHONE CALL WITH DR. -- SCRATCH THAT.
15 I DON'T KNOW IF SHE'S A DOCTOR OR NOT. IT WAS WITH
16 OLGA DEJESUS. I DON'T BELIEVE SHE'S A DOCTOR.

17 Q THANK YOU.

18 LET ME GIVE YOU ONE OTHER PAGE, WHICH IS THE
19 PAGE PREVIOUS TO THAT ONE, EXHIBIT 82, 1492.

20 DO YOU SEE THAT ENTRY?

21 A YES, I DO.

22 Q AT THE BOTTOM?

23 A YES.

24 Q AND DID YOU DOCUMENT ANOTHER CONTACT WITH
25 ANOTHER MEDICAL PROVIDER ON NOVEMBER 2ND, 2009?

26 A YES, I DID.

27 Q AND WHO WAS THAT?

28 A WENDY CRUMP, THE DIETITIAN.

1 Q AND AGAIN, THIS WAS A TELEPHONE CONVERSATION
2 WITH MS. CRUMP?

3 A YES, IT WAS.

4 Q AND YOU WOULD HAVE ENTERED THAT ON OR ABOUT
5 THE DATE THAT IT BEARS?

6 A YES.

7 Q AND THAT WOULD HAVE BEEN TRUE FOR THE CONTACT
8 NOTES FOR BOTH THE TWO OTHER MEDICAL PROVIDERS, NAMES
9 DEJESUS AND DR. GILL?

10 A CORRECT.

11 Q THOSE WOULD HAVE BEEN ENTERED ON OR ABOUT THE
12 DATE THAT IT BEARS?

13 A YES, CORRECT.

14 Q AND THOSE WOULD ALL HAVE BEEN NOVEMBER 2ND;
15 CORRECT?

16 A YES, THAT'S CORRECT.

17 MR. GUTERRES: THANK YOU.

18 MR. MCMILLAN: IS THAT IT?

19

20 CROSS-EXAMINATION

21 BY MR. MCMILLAN:

22 Q OKAY. KEEP THOSE IN YOUR HAND.

23 IF YOU REMEMBER, WHEN WE WERE TALKING, YOU
24 TOLD ME THAT YOU HAD THIS PHONE CALL WITH DR. EGGE ON
25 NOVEMBER 3RD; RIGHT? THAT'S HOW WE GOT INTO THESE
26 DELIVERED SERVICE LOGS; RIGHT?

27 A CORRECT.

28 Q AND GOING THROUGH FROM NOVEMBER 2ND TO

1 NOVEMBER 5TH, THERE'S NO REPORT IN THERE OF ANY
2 CONVERSATION YOU HAD WITH DR. EGGE; CORRECT?

3 A NO REPORT. THAT DOESN'T MEAN IT DIDN'T
4 HAPPEN.

5 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
6 STRIKE. NONRESPONSIVE.

7 THE COURT: THE OBJECTION IS SUSTAINED.
8 MOTION TO STRIKE IS GRANTED. THE ANSWER WILL BE
9 STRICKEN. THE JURY MUST DISREGARD IT.
10 BY MR. MCMILLAN:

11 Q MA'AM, I'LL TRY AGAIN.

12 I'M CORRECT, AREN'T I, THAT NOWHERE IN THOSE
13 CONTACT NOTES BETWEEN NOVEMBER 2ND AND NOVEMBER 5TH IS
14 THERE ANY RECORD OF YOU EVER HAVING A CONVERSATION WITH
15 DR. EGGE?

16 A THERE'S NO RECORD IN THE CONTACT NOTES OF
17 THAT, NO.

18 Q AND GOING BACK TO SOME OF THESE OTHER THINGS
19 THAT MR. GUTERRES WAS TALKING ABOUT, TALK ABOUT, FIRST,
20 I THINK THERE WAS A CONTACT WITH WENDY CRUMP; CORRECT?

21 A CORRECT.

22 Q IS THAT THE CONTACT WHERE SHE TOLD YOU THAT IT
23 WAS BOTH PARENTS THAT SHE WAS HAVING TROUBLE WITH, BOTH
24 PARENTS THAT WERE BEING VERY INCONSISTENT IN THEIR
25 REPORTING?

26 A THAT'S CORRECT.

27 Q SO IT WASN'T JUST MS. DUVAL THAT SHE WAS
28 HAVING TROUBLE WITH, IT WAS BOTH PARENTS?

1 A THAT'S CORRECT.

2 Q AND THEN -- AS A MATTER OF FACT, LET'S JUST DO
3 THIS TO ELIMINATE ANY DOUBT AT ALL: JUST SORT OF
4 IGNORE MY STICKIES AND MY NOTES. THEY'RE NOT
5 MEANINGFUL FOR WHAT WE'RE DOING RIGHT NOW.

6 BUT LET'S GET THESE IN PROPER ORDER. 92.
7 WHAT'S THE NEXT ONE YOU HAVE THERE, 1494?

8 A 93.

9 Q OKAY. 93 SO WE'VE GOT THAT. AND THEN 94?

10 A RIGHT HERE.

11 Q AND DOES THAT TAKE US THROUGH NOVEMBER 5TH?
12 THAT'S 94, GOT THAT HERE.

13 A 95.

14 Q 95 IS NOVEMBER 5TH?

15 A 96.

16 Q 96, THERE WE GO. NOW WE HAVE THE WHOLE
17 PACKET.

18 THE COURT: AND WHAT ARE THOSE PAGES?

19 MR. MCMILLAN: I'M SORRY, YOUR HONOR. IT'S
20 1491 THROUGH 1496.

21 THE COURT: ALL RIGHT.

22 MR. MCMILLAN: AND THE DATES SPAN
23 OCTOBER 30TH, 2009, THROUGH AND INCLUDING NOVEMBER 5TH,
24 2009.

25 BY MR. MCMILLAN:

26 Q ALL RIGHT. LET'S GO THROUGH THE EXERCISE.

27 ANYTIME BETWEEN OCTOBER 30TH OF 2009 AND
28 NOVEMBER 5TH OF 2009, IS THERE ANY RECORD AT ALL OF

1 YOUR CONVERSATION WITH DR. EGGE?

2 A I BELIEVE I ANSWERED THAT. I DON'T BELIEVE
3 THAT THERE'S A CONVERSATION WITH DR. EGGE IN THERE, NO.

4 Q NO. OKAY.

5 AND THEN THIS CONVERSATION HE JUST SPOKE WITH
6 YOU ABOUT REGARDING DR. GILL, ACCORDING TO YOUR
7 TESTIMONY, YOU HAD THAT ON THE TELEPHONE ON NOVEMBER
8 2ND WITH DR. GILL?

9 A YES.

10 Q IS THAT THE ONE WHERE SUPPOSEDLY DR. GILL HAD
11 TO SORT OF HAVE MOM ESCORTED OUT OF HER OFFICE?

12 A THAT'S -- I BELIEVE THAT'S WHAT HAPPENED.

13 Q IS THAT THE ONE WHERE YOU REPORTED THAT
14 DR. GILL TOLD YOU THAT --

15 A NO -- CAN I -- NO, I DON'T -- HOLD ON. I
16 DON'T RECALL SAYING THAT SHE HAD TO BE ESCORTED OUT OF
17 THE OFFICE. I RECALL SHE HAD TO BE ASKED SEVERAL TIMES
18 TO LEAVE.

19 Q OKAY. LET ME -- BECAUSE THAT'S MY ONLY COPY.
20 AND THAT WAS ON NOVEMBER 2ND.

21 THIS IS THE NOTE, THOUGH, WHERE YOU CLAIM
22 DR. GILL TOLD YOU SHE WAS VERY UPSET WITH THIS FAMILY;
23 RIGHT?

24 A CORRECT.

25 Q THAT -- WHERE IS IT? THAT DR. GILL FELT LIKE
26 "THE MOTHER IS USING ME TO SUIT HER PURPOSE"?

27 A CORRECT.

28 Q AND THAT EVEN AFTER THE MOTHER WAS TOLD THAT

1 SHE COULDN'T BE SEEN, MOTHER CONTINUED TO TRY TO GET
2 ONE OF THE DOCTORS TO LOOK AT THE LAB REPORT, AND
3 MOTHER HAD TO BE TOLD SEVERAL TIMES TO LEAVE THE
4 OFFICE.

5 THAT'S THE CONVERSATION YOU REPORTED THERE?

6 A CORRECT.

7 Q THAT'S SUPPOSED TO BE TRUTHFUL, ACCURATE, AND
8 COMPLETE?

9 A CORRECT.

10 Q OKAY. I'M GOING TO SHOW EXHIBIT NUMBER 183,
11 BATES NUMBER 002558. AND JUST TO SAVE A LITTLE TIME,
12 I'LL JUST READ IT TO YOU HERE. IT'S PARAGRAPH 5 OF THE
13 DECLARATION SIGNED UNDER PENALTY OF PERJURY BY
14 DR. GILL.

15 IT SAYS:

16 "I DO NOT RECALL RECEIVING ANY
17 TELEPHONE CALL FROM ANY LOS ANGELES
18 COUNTY SOCIAL WORKER OR PUBLIC HEALTH
19 NURSE. HOWEVER, IF I HAD RECEIVED SUCH
20 A TELEPHONE CALL, IT WOULD HAVE BEEN MY
21 COMMON PRACTICE TO REFRAIN FROM
22 PROVIDING INFORMATION TO THE CALLER
23 WITHOUT FIRST OBTAINING A HIPAA WAIVER
24 OR SIMILAR RELEASE FROM THE CLIENT."

25 DID YOU GET A HIPAA WAIVER OR SIMILAR RELEASE
26 FROM MS. DUVAL BEFORE YOU MADE THAT PHONE CALL TO
27 DR. GILL.

28 MR. GUTERRES: OBJECTION. IT'S CUMULATIVE.

1 IT'S OUTSIDE THE SCOPE. RELEVANCE.

2 THE COURT: IT'S --

3 MR. GUTERRES: AND NO FOUNDATION.

4 THE COURT: FIRST OF ALL, THE OBJECTION
5 OUTSIDE THE SCOPE OF THE REDIRECT EXAMINATION IS
6 SUSTAINED.

7 MR. MCMILLAN: OKAY.

8 BY MR. MCMILLAN:

9 Q AND JUST FOR THE RECORD, THAT WAS EXHIBIT
10 NUMBER 183.

11 THE COURT: THAT IS NOT A PROPER USE OF THAT
12 EXHIBIT WITH THIS WITNESS.

13 MR. MCMILLAN: UNDERSTOOD.

14 I HAVE NO FURTHER QUESTIONS.

15 THE COURT: MR. GUTERRES?

16 MR. GUTERRES: NO QUESTIONS, YOUR HONOR.

17 THE COURT: ALL RIGHT. MS. PENDER, WE'VE
18 COMPLETED YOUR TESTIMONY. YOU ARE EXCUSED.

19 WE'LL TAKE A MORNING RECESS AT THIS TIME,
20 APPROXIMATELY 10 MINUTES.

21 ALL JURORS, PLEASE REMEMBER THE ADMONITION.

22 (JURY EXCUSED)

23 (RECESS)

24 THE COURT: AS SOON AS YOURS HANDS ARE FREE,
25 CAN YOU GET THE JURORS?

26 (JURY PRESENT)

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

1 MR. GUTERRES, CALL FOR THE RETURN FOR ONE OF
2 OUR WITNESSES.

3 MR. GUTERRES: THANK YOU, YOUR HONOR. THE
4 DEFENSE WOULD CALL THE RETURN OF MS. JOI RUSSELL.

5 THE COURT: ALL RIGHT. MS. RUSSELL, YOU'RE
6 STILL UNDER OATH.

7 THE WITNESS: YES.

8 THE COURT: AND PLEASE JUST STATE YOUR NAME
9 FOR THE RECORD.

10 THE WITNESS: JOI RUSSELL.

11 THE COURT: THANK YOU. GO AHEAD,
12 MR. GUTERRES.

13 MR. GUTERRES: THANK YOU, YOUR HONOR.

14

15

JOI RUSSELL,

16 WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY

17 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18

19

DIRECT EXAMINATION

20 BY MR. GUTERRES:

21

Q GOOD MORNING, MS. RUSSELL.

22

A GOOD MORNING.

23

Q YESTERDAY, WE WERE TALKING ABOUT THE OPINIONS

24

THAT YOU HAD REACHED IN THIS CASE AS A RESULT OF YOUR

25

REVIEW AND WORKUP ON THIS PARTICULAR MATTER.

26

I BELIEVE ONE OF THE OPINIONS THAT YOU'VE

27

REACHED IS THAT AT THE DETENTION HEARING, MS. PENDER

28

PRESENTED SOLID EVIDENCE FROM VARIOUS EXPERTS THAT BABY

1 RYAN SUFFERED FROM A FAILURE TO THRIVE AND
2 DEVELOPMENTAL DELAYS AS A RESULT OF ENVIRONMENTAL
3 CAUSES WHILE BEING IN THE HOME OF MOTHER.

4 IS THAT TRUE?

5 A THAT IS TRUE.

6 Q COULD YOU TELL US A LITTLE MORE ABOUT THAT
7 OPINION.

8 A I REVIEWED THE RECORDS, AND I DOCUMENTED THAT
9 ON THIS CASE, THERE WAS NOT ONE, NOT TWO, BUT FIVE
10 DIFFERENT DOCTORS, DR. YIM, DR. FEDDER, DR. EVANS,
11 DR. EGGE, AND THE ALLERGIST DR. SODERBERG THAT GAVE
12 OPINIONS REGARDING RYAN'S HEALTH AND CONDITIONS.

13 THE DOCUMENTS ALSO INCLUDED THE EAST LA
14 REGIONAL CENTER AND WENDY CRUMP, THE NUTRITIONIST, AND
15 TWO PUBLIC HEALTH NURSES. AND BASED ON THEIR INPUT,
16 THEIR REPORTS, AND THE EVIDENCE, I FOUND THAT
17 MS. PENDER'S DETENTION OF THE CHILD WAS CORRECT.

18 Q ONE OF THE OPINIONS IS THAT, I GUESS,
19 COROLLARY TO THAT WAS THAT THE DEPARTMENT OF CHILDREN
20 AND FAMILY SERVICES HAD HANDLED THE DETENTION OF BABY
21 RYAN CORRECTLY; IS THAT CORRECT?

22 A THAT IS CORRECT.

23 Q OKAY. AND HOW IS IT THAT YOU CAME TO THAT
24 DETERMINATION?

25 A THE SOCIAL WORKER I THINK DID A VERY GOOD JOB
26 IN LOOKING AT THE WHOLE SITUATION. SHE TALKED TO THE
27 MOM, SHE TALKED TO THE DAD, SHE HAD HAD INPUT FROM THE
28 PROFESSIONALS. AT THE DETENTION HEARING, A LOT OF THAT

1 INFORMATION, THE FAILURE TO THRIVE CLINIC AT UCLA CAME
2 IN. THAT SAME DAY, THE INFORMATION FROM DR. SODERBERG,
3 THE ALLERGIST, CAME IN. AND AT THE TDM, MS. PENDER
4 ASKED WENDY CRUMP, NEAR THE END OF THE TDM, "DO YOU
5 THINK MOM'S GOING TO FOLLOW THE RECOMMENDATION?" AND
6 MS. CRUMP SAID NO.

7 SO I THINK THE DETENTION WAS SOLID. WE WERE
8 TRYING TO, YOU KNOW, GIVE AS MUCH -- GATHER AS MUCH
9 INFORMATION AS WE POSSIBLY COULD, BUT RYAN HAD SUFFERED
10 DEVELOPMENTAL DELAYS. WE DON'T KNOW EXACTLY HOW MUCH
11 BRAN DAMAGE, IF ANY, THERE WAS. CERTAINLY FAILURE TO
12 THRIVE, THE BODY OF A SIX-MONTH OLD, AND HE WAS
13 15 MONTHS OLD. SO MS. PENDER AND MS. ROGERS' DECISION
14 TO DETAIN WAS CORRECT.

15 MR. PRAGER: YOUR HONOR, OBJECTION. MOVE TO
16 STRIKE EVERYTHING AFTER TDM AS NONRESPONSIVE. LACKS
17 FOUNDATION. CALLS FOR SPECULATION. MAY EXCEED THE
18 SCOPE OF THIS WITNESS'S KNOWLEDGE. MISSTATES THE
19 EVIDENCE.

20 THE COURT: OBJECTION IS OVERRULED. GO AHEAD.

21 MR. PRAGER: THANK YOU, YOUR HONOR.

22 BY MR. GUTERRES:

23 Q SO LET'S TALK ABOUT THE JURISDICTION
24 DISPOSITION REPORT.

25 DID YOU FORMULATE AN OPINION AS TO WHETHER OR
26 NOT THE INFORMATION CONTAINED IN THE JURISDICTION
27 DISPOSITION REPORT WAS PROPER?

28 MR. PRAGER: OBJECTION. RELEVANCE.

1 THE COURT: SUSTAINED. LET ME SEE COUNSEL.

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

4 THE COURT: WE'RE AT SIDEBAR, AND COUNSEL ARE
5 PRESENT.

6 WHETHER THEY AGREE OR NOT, AND I'M SURE THEY
7 KNOW THE COURT'S RULING ABOUT THE SO-CALLED DECEPTION,
8 THE -- HER OPINIONS ABOUT WHAT WAS REPORTED TO THE
9 COURT AND AS PART OF THE INFORMATION PROVIDED
10 EVENTUALLY FOR THE DISPOSITION AND DETENTION HEARING IS
11 NO LONGER RELEVANT.

12 MR. GUTERRES: I'LL FOCUS MY QUESTION A LITTLE
13 MORE ON THE DISABILITY.

14 THE COURT: WELL, THE CAUSES OF ACTION THAT
15 REMAIN -- SHE OBVIOUSLY WOULDN'T HAVE ANY TESTIMONY, I
16 WOULDN'T BELIEVE, ABOUT THE INTENTIONAL INFLICTION NOR
17 ON THE DISCRIMINATION, SO THE CAUSE OF ACTION THAT
18 REMAINS IS FOR THE DETENTION OF THE CHILD ORIGINALLY.
19 AND SO ANY OPINIONS SHE HAS SHOULD BE LIMITED TO THAT.

20 MR. GUTERRES: WELL, YOUR HONOR, ALSO WITH
21 REGARD TO THE PROPRIETY OF THE INCLUSION OF THE
22 INFORMATION AS IT RELATES TO DISABILITY CLAIMS -- I'M
23 SORRY, I BELIEVE ONE OF THE TOPICS THAT'S STILL AT
24 ISSUE IS WHETHER OR NOT IT WAS PROPER FOR MS. NELSON TO
25 INCLUDE INFORMATION, OR MS. SCHEELE TO INCLUDE
26 INFORMATION AS TO WHAT THEY HAD OBSERVED IN THE REPORT.
27 BECAUSE IT GOES TO THE ISSUE OF THE PERCEIVED
28 DISCRIMINATION OR DISCRIMINATION.

1 THE COURT: WELL.

2 MR. GUTERRES: THE DISABILITY ISSUES WHICH IS
3 STILL AT PLAY.

4 THE COURT: WELL, THAT RAISES AN INTERESTING
5 QUESTION OF WHAT TESTIMONY DOES SHE HAVE THAT WOULD.

6 MR. GUTERRES: SHE SAID IT WAS PROPER FOR --
7 FOR HER TO MAKE A REFERENCE TO THE MUNCHAUSEN BY PROXY.

8 MS. SWISS: IN THE REPORT.

9 MR. GUTERRES: IN THE REPORT.

10 MR. PRAGER: YOU'RE TALKING ABOUT 18 AND 25.

11 THE COURT: 18 AND 25?

12 MR. PRAGER: YES, YOUR HONOR.

13 THE COURT: OKAY. THANKS.

14 MR. PRAGER: AND YOUR HONOR, WHILE YOU'RE
15 REVIEWING THAT, WE'RE GOING TO ASK TO 402 HER IF SHE
16 KEEPS GOING OFF ON ALL THESE TANGENTS AND STARTS
17 TALKING ABOUT THINGS THAT ARE NOT PART OF THE QUESTION.

18 THE COURT: WELL, WE'RE GOING TO TRY TO STOP
19 THAT. I DON'T THINK WE NEED TO 402. I DON'T THINK
20 SHE'S --

21 MR. PRAGER: THESE ARE ALL THE OPINIONS THE
22 COURT ALLOWED HER TO TESTIFY TO. THERE'S A DOUBLE-PAGE
23 LIST OVER THERE SHE CAN'T TESTIFY TO. AND MY
24 DIFFICULTY IS WE ALREADY AGREED THAT MR. GUTERRES CAN
25 LEAD TO GET THESE OPINIONS GOING.

26 THE COURT: RIGHT.

27 MR. PRAGER: BUT ONCE HE GETS THEM OUT FROM
28 HER, SHE JUST TAKES OFF AND STARTS GOING.

1 THE COURT: WELL, SHE'S NOT GOING TO CONTINUE
2 TO.

3 MR. PRAGER: THANK YOU, YOUR HONOR.

4 THE COURT: IF SHE CONTINUES TO DO SO, THEN I
5 WILL STEP IN, AND YOU CAN MAKE YOUR OBJECTIONS -- AND
6 WE GOT A LITTLE TASTE OF THIS THE OTHER DAY. I DON'T
7 INTEND TO HAVE FREE-RANGING DISCUSSION. SO AS TO THOSE
8 OPINIONS 18 AND 25 THAT ARE LISTED HERE, ALL RIGHT.

9 MR. PRAGER: PERHAPS, YOUR HONOR, BECAUSE
10 YOU'RE FROM A DIFFERENT BACKGROUND AND FREE-RANGING
11 EXPERTS, THAT I'M NOT FAMILIAR WITH. I'M USED TO MORE
12 URBAN EXPERTS.

13 THE COURT: THAT'S ENTIRELY POSSIBLE.

14 MR. GUTERRES: SO YOUR HONOR, I'LL FOCUS MY
15 QUESTIONS -- THE THREE AREAS THAT I INTEND TO BE
16 GETTING INTO RELATES TO THE DETENTION, THE MUNCHAUSEN
17 BY PROXY BEING INCLUDED IN THE JURISDICTION DISPOSITION
18 REPORT, AND HER OPINIONS REGARDING CRITICISMS AS TO WHY
19 MR. DOMINGUEZ IS NOT QUALIFIED TO RENDER OPINIONS ON
20 THE DETENTION.

21 THE COURT: ALL RIGHT. AND WHEN YOU GET TO
22 THAT LAST ONE BECAUSE THAT'S WHERE I THINK I STRUCK --

23 MR. GUTERRES: STRUCK THE ENTIRE TESTIMONY.

24 THE COURT: YEAH, I THINK YOU BETTER ASK ON A
25 SPECIFIC SUBJECT. TRY IT, BUT THE QUESTION IS --
26 THEY'RE GOING TO GIVE YOU SOME LENIENCY AS TO WHETHER
27 SHE HAS AN OPINION ON A PARTICULAR SUBJECT.

28 MR. GUTERRES: YEAH, I'LL BE VERY FOCUSED.

1 THE COURT: WE DON'T WANT A QUESTION, DO YOU
2 HAVE AN OPINION ON MR. DOMINGUEZ AS AN EXPERT.

3 MR. GUTERRES: NO. YES. UNDERSTOOD. AND I
4 WILL AVOID THE -- AND I'VE ALREADY TOLD THEM IF HE
5 OBJECTS IN THE LEADING AND THE COURT SUSTAINS, YOU
6 KNOW, WHEN MY NEXT QUESTION IS GOING TO BE.

7 MR. PRAGER: WHEN'S LUNCH?

8 MR. GUTERRES: YEAH.

9 MR. PRAGER: SOME OF THESE ARE GOING TO BE
10 ASKED AND ANSWERED, I THINK. SO I THINK WE CAN DO THE
11 TWO DISABILITY ONES, AND WE CAN START WITH
12 MR. DOMINGUEZ BUT WE'LL SEE WHERE WE GO. I DON'T
13 APPRECIATE THE COURT'S INVOLVEMENT.

14 THE COURT: YEAH I DON'T WANT TO -- YEAH.

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

18 THE COURT: GO AHEAD, MR. GUTERRES.

19 BY MR. GUTERRES:

20 Q SO LET'S GO BACK TO THE INVESTIGATION LEADING
21 UP TO THE DETENTION.

22 DID YOU RENDER -- DID YOU REACH AN OPINION
23 WITH REGARD TO THE CIRCUMSTANCES LEADING TO THE ACTUAL
24 SEIZURE OF OR DETENTION OF BABY RYAN?

25 A YES.

26 MR. PRAGER: OBJECTION. ASKED AND ANSWERED.

27 THE COURT: OVERRULED. JUST ONE MOMENT,
28 PLEASE. WELL, I'LL NEED TO SEE COUNSEL AGAIN.

1 (THE FOLLOWING PROCEEDINGS WERE HELD AT
2 SIDEBAR.)

3 THE COURT: SIDEBAR WITH COUNSEL AGAIN. SHE
4 DID GIVE AN ANSWER THAT -- NOW I'VE FORGOTTEN
5 EVERYTHING SHE SAID.

6 MR. PRAGER: THE MEDICAL.

7 MR. MCMILLAN: FIVE OR SIX DOCTORS.

8 THE COURT: BUT IN LOOKING AT THE ANSWER, IT
9 SEEMS TO ME THAT SHE HAS GIVEN AN OPINION. IF IT
10 DIDN'T COVER EVERYTHING YOU WANTED, THEN I THINK YOU
11 COULD ASK SOME MORE SPECIFIC QUESTIONS ABOUT ANY
12 PARTICULAR ISSUE, SOMETHING BEYOND WHAT SHE SAID. IT
13 WAS A GENERAL ANSWER, BUT IT WAS -- IT WAS TO THE
14 EFFECT SHE THOUGHT PENDER DID A GOOD JOB LOOKING AT THE
15 WHOLE PICTURE LEADING UP TO -- THEN AT THE HEARING SHE
16 HAD ASKED MOM IF SHE WAS GOING TO FOLLOW THE
17 RECOMMENDATION, AND MOM SAID NO.

18 BUT SHE EXPRESSED THE OPINION THAT IT WAS SHE
19 HAD DONE THE RIGHT THINGS LEADING UP TO IT. SO IF YOU
20 WANT TO ELABORATE ON SOMETHING, LET'S DO IT BY SPECIFIC
21 QUESTION RATHER THAN ASKING HER WHAT MIGHT VERY WELL BE
22 THE SAME ANSWER AGAIN.

23 MR. GUTERRES: OKAY.

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

27 THE COURT: YOU MAY GO AHEAD, MR. GUTERRES.

28 MR. GUTERRES: THANK YOU, YOUR HONOR.

1 BY MR. GUTERRES:

2 Q MS. RUSSELL, DO YOU HAVE AN OPINION AS TO
3 WHETHER OR NOT MS. PENDER SHOULD HAVE OBTAINED THE
4 DECLARATIONS OR DEPOSITIONS OR TESTIMONY FROM THE
5 MEDICAL PROFESSIONALS WHO TREATED BABY RYAN?

6 A YES, I HAVE AN OPINION ON THAT.

7 Q WHAT'S YOUR OPINION IN THAT REGARD?

8 MR. PRAGER: OBJECTION. IT'S OUTSIDE THE
9 SCOPE OF THIS WITNESS'S TESTIMONY. THE DESIGNATION OF
10 THE WITNESS'S TESTIMONY, YOUR HONOR.

11 MR. GUTERRES: IT'S NO. 34.

12 MR. PRAGER: YOUR HONOR, MAY I ASK THE COURT
13 THE READ THE QUESTION BACK FOR ME?

14 THE COURT: SURE.

15 MR. PRAGER: THANK YOU, YOUR HONOR.

16 THE COURT: I'LL ASK THE REPORTER TO READ THE
17 QUESTION BACK.

18 (THE PREVIOUS QUESTION WAS READ BACK BY
19 THE COURT REPORTER AS FOLLOWS:

20 "QUESTION: MS. RUSSELL, DO YOU
21 HAVE AN OPINION AS TO WHETHER OR NOT
22 MS. PENDER SHOULD HAVE OBTAINED THE
23 DECLARATIONS OR DEPOSITIONS OR
24 TESTIMONY FROM THE MEDICAL
25 PROFESSIONALS WHO TREATED BABY RYAN?")

26 MR. PRAGER: I RENEW THE OBJECTION BASED ON
27 NO. 34 AS I UNDERSTAND IT.

28 THE COURT: ALL RIGHT. WILL SOMEONE PROVIDE

1 ME WITH THE LIST?

2 MR. GUTERRES: IT'S ITEM 34.

3 THE COURT: NO, THE -- ALL RIGHT. LET ME SEE
4 COUNSEL AGAIN FOR A MOMENT.

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

7 THE COURT: WHAT I DIDN'T HAVE ON THE BENCH
8 WAS THE DESIGNATION OF ALL THE OPINIONS. I HAVE THE
9 RULING, AND I KNOW I OVERRULED THE OBJECTION TO 34.
10 WHAT IS IT ABOUT WHAT'S DESIGNATED IN THE QUESTION DO
11 YOU THINK?

12 MR. PRAGER: WELL, I THINK I UNDERSTAND NOW.
13 THE REASON I HESITATED IS BECAUSE HE SAID "SUSAN
14 PENDER," AND THE QUESTION JUST SAYS "SOCIAL WORKER."
15 SO WHEN I HEARD THE QUESTION, IT DIDN'T SOUND FAMILIAR
16 TO ME. I STILL THINK THE QUESTION IS NOT RELEVANT
17 BECAUSE OF THE COURT'S RULING THIS MORNING ON THE
18 DECEPTION CLAIM, AND I THINK THAT'S GOING TO BE --
19 MR. DOMINGUEZ TESTIFIED, I THINK, EXTENSIVELY IN THAT
20 AREA, AND NOW THAT THE COURT'S MADE ITS RULING, I THINK
21 WE NEED TO REVISIT THESE OPINIONS IN RELATION TO WHAT
22 MR. DOMINGUEZ IS GOING -- THAT EVIDENCE WILL BE
23 IMPACTED.

24 THE COURT: WELL --

25 MR. PRAGER: I HAVE A SUMMARY, IF THE COURT
26 WANTS, I CAN ASK THE CLERK TO MAKE A COPY.

27 THE COURT: WELL, DO YOU HAVE ANOTHER ONE TO
28 WORK FROM?

1 MR. PRAGER: SURE.

2 THE COURT: BECAUSE I DON'T WANT TO LEAVE YOU
3 IN THE SAME POSITION I WAS. BUT OKAY, I PROBABLY --

4 MR. PRAGER: I'LL REPRESENT, YOUR HONOR, THE
5 WORD, AGAIN, I WAS THROWN OFF BECAUSE "SOCIAL WORKER"
6 WAS IN THE OPINION, AND THERE WAS A REFERENCE TO AN
7 INDIVIDUAL SOCIAL WORKER IN THE QUESTION.

8 THE COURT: I'M GOING TO OVERRULE THE
9 OBJECTION ON THAT DISTINCTION.

10 MR. PRAGER: OKAY.

11 MR. MCMILLAN: WHAT ABOUT ON THE RELEVANCE
12 ISSUE?

13 MR. PRAGER: THE RELEVANCE ISSUE?

14 MR. MCMILLAN: THIS WAS AN OBJECTION
15 INTERPOSED BASED -- THE RELEVANCE OF THE CURRENT STATE
16 OF THE CASE OF THAT OPINION AND THE JUDICIAL DECEPTION
17 CLAIMS ARE OUT AND THAT'S WHAT THAT RELATES TO.

18 MR. PRAGER: THAT'S WHY WE THINK, YOUR HONOR,
19 THAT MR. DOMINGUEZ'S OPINIONS THROUGH THIS WITNESS HAVE
20 TO BE ADDRESSED BECAUSE THERE'S NOW BEEN A CHANGE IN
21 THE PLEADINGS AND THE EVIDENCE THAT WILL BE COMING IN.

22 MR. GUTERRES: THE PROBLEM IS THAT
23 MR. DOMINGUEZ HAS ALREADY TESTIFIED REGARDING HIS
24 CRITICISMS ABOUT THE ACTIONS OF OUR SOCIAL WORKERS. SO
25 I SHOULD BE ABLE TO AT LEAST HAVE MY EXPERT BE ABLE TO
26 RESPOND TO MR. DOMINGUEZ'S CRITICISM.

27 MR. MCMILLAN: IT'S NO LONGER AN ISSUE IN THE
28 CASE, YOUR HONOR. THE JURY IS NOT GOING TO HAVE A

1 QUESTION ON THE VERDICT FORM THAT'S RELATED TO
2 ANYTHING.

3 THE COURT: YEAH, I AGREE WITH THAT. AND WHAT
4 I'M TRYING TO DETERMINE IS TO THE EXTENT THIS OPINION
5 APPLIES TO THE DETENTION HEARING, THAT'S WHAT --

6 MR. MCMILLAN: THE DETENTION HEARING IS ALSO
7 OUT. THE ONLY THING THAT'S STILL IN THE CASE IS THE
8 NOVEMBER 3RD SEIZURE, THAT'S WHETHER THAT WAS PROPER OR
9 NOT.

10 MS. SWISS: MR. DOMINGUEZ TESTIFIED HE NEEDED
11 PROOF BEFORE THEY CAN DETAIN. AND THAT OPINION GOES TO
12 WHAT THEY WERE SUPPOSED TO -- SOCIAL WORKERS WERE --
13 WHAT THEY NEEDED TO HAVE IN ORDER TO DETAIN WITHOUT A
14 WARRANT.

15 THE COURT: OKAY.

16 MR. MCMILLAN: HE'S ALREADY TESTIFIED THEY HAD
17 COLLECTED PROOF, SO --

18 MR. PRAGER: SO IT'S CUMULATIVE.

19 MR. GUTERRES: WELL, I'M ASKING WHETHER OR NOT
20 ACCORDING TO MR. DOMINGUEZ THEY WERE SUPPOSED TO OBTAIN
21 DECLARATIONS.

22 MS. SWISS: PROOF. GOES TO THE --

23 THE COURT: ALL RIGHT. I'M GOING TO SEND THE
24 JURY OUT AND ADDRESS THIS. BECAUSE YOU ARE PROBABLY
25 RIGHT, WE NEED TO LOOK AT THE OPINIONS AND SEE WHETHER
26 THEY ARE RELEVANT.

27 MR. PRAGER: THANK YOU, YOUR HONOR.

28 MR. MCMILLAN: THANK YOU, YOUR HONOR.

1 MR. GUTERRES: THANK YOU, YOUR HONOR.

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

5 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE
6 THE NOON RECESS AT THIS TIME. WE'LL RESUME AT 1:30.

7 ALL JURORS, PLEASE REMEMBER THE ADMONITION TO
8 HAVE NO CONTACT WITH ANYONE ABOUT ANY SUBJECT OR ISSUE
9 OR PERSON INVOLVED IN THIS CASE. DO NOT FORM NOR
10 EXPRESS ANY OPINION ON ANY SUBJECT OR ISSUE IN THE
11 CASE.

12 WE ARE NOW IN RECESS. WE'LL SEE YOU BACK AT
13 1:30.

14 (JURY EXCUSED)

15 THE COURT: ALL RIGHT. WE'RE ON THE RECORD
16 AND COUNSEL ARE PRESENT.

17 MS. RUSSELL, YOU MAY STEP DOWN.

18 ALL RIGHT. I'M LOOKING -- YES, MR. PRAGER?

19 MR. PRAGER: JUST BEFORE THE COURT ADDRESSES
20 US, JUST SO YOU'RE AWARE, THE WITNESS IS STILL IN THE
21 GALLERY. I DON'T KNOW IF THAT CONCERNS THE COURT OR
22 NOT, BUT JUST SO WE'RE AWARE OF THAT.

23 THE COURT: I DON'T THINK IT MAKES ANY
24 DIFFERENCE TO THE DISCUSSION WE'RE GOING TO HAVE.

25 WHAT I WAS LOOKING AT WERE THE, FIRST OF ALL,
26 THE LIST WHICH YOU PUT TOGETHER, WHICH IS HELPFUL. I
27 WAS LOOKING AT THE COURT'S RULINGS, AND ONE OPINION
28 THAT'S BEEN EXPRESSED SO FAR -- WELL, ACTUALLY, TWO OF

1 THEM BY THE WITNESS. THE FIRST ONE WAS THAT THE SOCIAL
2 WORKER, I THINK, DID A VERY GOOD JOB IN LOOKING AT THE
3 WHOLE SITUATION. SHE TALKED TO THE MOM, SHE TALKED TO
4 THE DAD. SHE HAD INPUT FROM PROFESSIONALS AT THE
5 DETENTION HEARING. A LOT OF THAT INFORMATION FAILURE
6 TO THRIVE CLINIC FROM UCLA CAME IN THAT DAY, AND THE
7 INFORMATION FROM DR. SODERBERG AND, THE ALLERGIST, CAME
8 IN. AND AT THE TDM, MS. PENDER ASKED MOTHER AND SO
9 FORTH. SO SHE SAID THE DECISION TO DETAIN WAS CORRECT.

10 THE NEXT -- THE FIRST OPINION WAS THAT I
11 REVIEWED THE RECORDS, ET CETERA -- ALL RIGHT. MAYBE,
12 MR. GUTERRES, YOU COULD TELL US WHICH OPINIONS YOU ARE
13 INTENDING TO ELICIT FROM THE WITNESS.

14 MR. GUTERRES: OKAY. BY THE NUMBER?

15 THE COURT: YES.

16 MR. GUTERRES: WELL, I'VE ALREADY ELICITED
17 NUMBER 5.

18 THE COURT: YES.

19 MR. GUTERRES: 7, 8, 9, 10, ALTHOUGH THEY'RE
20 ALL KIND OF GENERAL. I CAN PROBABLY COMBINE SOME OF
21 THOSE. I'VE ALREADY ADDRESSED --

22 THE COURT: THAT GOES TO TRAINING AND CUSTOM
23 AND PRACTICE.

24 MR. GUTERRES: RIGHT, AS TO THE DETENTION.
25 AND WE'LL FOCUS IT ON THE DETENTION.

26 THE COURT: ON THE DETENTION.

27 MR. GUTERRES: CORRECT.

28 THE COURT: WHAT ELSE?

1 MR. GUTERRES: WE'VE ADDRESSED NUMBER 12.

2 THE COURT: YES.

3 MR. GUTERRES: KIND OF TOUCHED UPON NO. 15.

4 THE COURT: I THINK -- I THINK THAT WE'VE
5 COVERED 15.

6 MR. GUTERRES: YES.

7 THE COURT: AT LEAST HER ANSWER WAS -- THERE
8 WAS -- DETAINMENT WAS CORRECT.

9 MR. GUTERRES: 18.

10 THE COURT: 18, ABOUT THE MENTION OF?

11 MR. GUTERRES: ABOUT THE MUNCHAUSEN BY PROXY.

12 THE COURT: ALL RIGHT.

13 MR. GUTERRES: AND THE PROPRIETY OF INCLUDING
14 THAT.

15 THE COURT: ALL RIGHT.

16 MR. GUTERRES: THE NEXT ONE WOULD BE 25.

17 THE COURT: WHICH ONE?

18 MR. GUTERRES: NUMBER 25. AGAIN, IT GOES TO
19 THE MUNCHAUSEN BY PROXY IN THE COURT REPORT.

20 THE COURT: ALL RIGHT.

21 MR. GUTERRES: 28, I CAN ADDRESS AND LIMIT IT
22 TO THE DETENTION REPORT.

23 THE COURT: ALL RIGHT.

24 MR. GUTERRES: 34, I CAN FOCUS THAT OPINION AS
25 IT RELATES TO THE DETENTION REPORT.

26 THE COURT: ALL RIGHT.

27 MR. GUTERRES: 36, I THINK GOES TO THE ISSUE
28 OF *MONELL*.

1 THE COURT: GOES TO *MONELL*. ALL RIGHT.

2 MR. GUTERRES: I WILL LIMIT 37 TO ACTIONS
3 AND -- OR ACTIONS PRIOR TO DETENTION HEARING BECAUSE
4 ONE OF THE QUESTIONS IN THE VERDICT FORM RELATES TO
5 WHETHER OR NOT IT WAS AT LEAST RESTRICTIVE OR OTHER
6 MEANS OF --

7 THE COURT: YEAH, SOME --

8 MR. GUTERRES: -- OTHER THAN DETAINING.

9 THE COURT: IN ESSENCE, WAS THERE SOME LESSER
10 INTRUSIVE?

11 MR. GUTERRES: RIGHT.

12 THE COURT: OKAY. NEXT?

13 MR. GUTERRES: YOUR HONOR, I THINK WE CAN SKIP
14 40 AND 41.

15 THE COURT: ALL RIGHT.

16 MR. GUTERRES: I THINK WE CAN SKIP 42.

17 THE COURT: ALL RIGHT.

18 MR. GUTERRES: I THINK 45, I CAN TRY TO FOCUS
19 IT ON THE TREMORS.

20 THE COURT: IN CONNECTION WITH THE --

21 MR. GUTERRES: TREMORS.

22 THE COURT: WELL, WITH THE TREMORS -- OKAY.

23 ALL RIGHT. SO MR. PRAGER, LET ME HEAR FROM
24 YOU ON THESE.

25 MR. PRAGER: THANK YOU, YOUR HONOR.

26 ON NUMBER 36, WE BELIEVE THAT THE *MONELL* CLAIM
27 WHICH IS TO BE APPLIED TO WARRANTS. SO I'M NOT SURE
28 THIS OPINION HAS ANY BEARING ANY LONGER TO THE CASE.

1 THERE'S NO DECEPTION CLAIM AS OF RIGHT NOW, SO THE ONLY
2 CLAIM SURVIVING, OR I SHOULD SAY THE OPERABLE CLAIM
3 WOULD BE WARRANTS IN THE *MONELL* CLAIM, AND I DON'T
4 THINK THERE'S BEEN EVIDENCE ABOUT LACK OF WARRANT
5 POLICY. BUT AS I UNDERSTOOD THE WITNESS'S TESTIMONY, A
6 BLIND EYE OR DEAF EAR REFERENCE WAS MORE AKIN TO THE
7 DECEPTION CLAIM.

8 THE COURT: MR. GUTERRES, DO YOU UNDERSTAND
9 WHAT MR. PRAGER IS SAYING IN CONNECTION WITH NUMBER 36?
10 I THINK HIS -- I THINK HIS POINT IS THE CLAIM OF AN
11 UNLAWFUL DETENTION IS -- THAT THIS OPINION, NUMBER 36,
12 WOULDN'T RELATE TO THAT CLAIM, THAT THAT CLAIM IS...

13 MR. GUTERRES: WELL, YOUR HONOR, ONE OF THE
14 THINGS THAT MR. DOMINGUEZ TESTIFIED TO RELATED TO THIS
15 CONFIRMATION BIAS. AND IT KIND OF GOES TO THE ISSUE --
16 AND HE TRIED TO ARGUE DURING HIS TESTIMONY THAT THAT'S
17 KIND OF A SYSTEMIC THING THROUGHOUT THE DEPARTMENT ON
18 HOW THEY APPROACH CASES AND INVESTIGATIONS. AND I
19 THINK IN RESPONSE TO THAT OPINION, IT KIND OF GOES
20 THROUGH THIS ARGUMENT ABOUT DCFS TURNING A BLIND EYE OR
21 A DEAF EAR. THAT -- THOSE AREN'T THE WORDS THAT
22 ULTIMATELY MR. DOMINGUEZ USED, BUT WHEN HE WAS ON THE
23 STAND, HE ACTUALLY COINED THE PHRASE "CONFIRMATION
24 BIAS." BUT I THINK WE SHOULD HAVE AN OPPORTUNITY TO
25 RESPOND TO THAT IN RELATION TO MR. DOMINGUEZ'S --

26 THE COURT: AND THE -- WHAT EXHIBIT IS THE
27 DETENTION REPORT?

28 MR. PRAGER: 24, I BELIEVE, YOUR HONOR.

1 THE COURT: 24?

2 MS. SWISS: NO, THAT'S THE JURISDICTION
3 DISPOSITION --

4 MR. GUTERRES: I THINK IT'S 11.

5 MS. SWISS: 12.

6 THE COURT: 12?

7 SO IF THERE WAS A FINDING ON THE CLAIM FOR --
8 AGAINST THE INDIVIDUAL DEFENDANTS ON THE CLAIM FOR AN
9 UNLAWFUL DETENTION, THE -- ONE OF THE FURTHER ISSUES TO
10 BE DECIDED WOULD BE THE *MONELL* CLAIM, AND THE *MONELL*
11 CLAIM WOULD BE BASED EITHER ON -- COULD BE BASED ON
12 INADEQUATE OR NONEXISTENT TRAINING. IT COULD ALSO BE
13 BASED ON EITHER CUSTOM AND PRACTICE OR POLICY OR
14 ACCEPTANCE OF A CUSTOM AND PRACTICE CORRECT?

15 MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR, BUT
16 ONLY IN RELATION TO THE WARRANT ISSUE, NOT IN RELATION
17 TO TRUTHFULNESS OR TURNING A BLIND EYE OR ANY OF THAT.
18 THAT WOULD ALL HAVE GONE TO THE *MONELL* CLAIM STEMMING
19 FROM JUDICIAL DECEPTION. RECALL IN THE VERDICT FORM,
20 THERE WERE TWO SEPARATE TYPES OF *MONELL* CLAIMS BEING
21 MADE, ONE DERIVING FROM JUDICIAL DECEPTION, ONE
22 DERIVING FROM WARRANTS.

23 THE COURT: SO MR. GUTERRES?

24 MR. GUTERRES: WELL, YOUR HONOR, IT STILL GOES
25 TO THE ISSUE OF THE PROPRIETY OF THE INVESTIGATION, WHO
26 MS. PENDER CONTACTED, ULTIMATELY, ALL OF THE
27 INFORMATION LEADING UP TO THE FACTORS THAT THE SOCIAL
28 WORKERS CONSIDERED AT THE TIME OF THE DETENTION,

1 WHETHER OR NOT THERE WAS EXIGENT CIRCUMSTANCES OR NOT.

2 THE COURT: I DON'T THINK 36 IS RELEVANT TO
3 THAT. WE HAVE ALREADY HAD -- AND THE OPINIONS ABOUT
4 THE -- IN THE FIRST TWO OPINIONS THAT WERE GIVEN, ONE
5 OF THEM WAS ABOUT, BY AND LARGE, THE PROPRIETY OF THE
6 INVESTIGATION, AND -- WELL, THEY DID THE RIGHT THING.

7 BUT 36 IS REALLY DIRECTED TO... I THINK
8 MR. MCMILLAN IS CORRECT IN WHAT HE SAID, AND THE
9 OBJECTION TO NUMBER 36 WILL BE SUSTAINED.

10 MR. GUTERRES: OKAY.

11 MR. PRAGER: ONE LAST, YOUR HONOR, NUMBER 37.
12 THE JURIS DISPO IS WHEN THE FIRST -- STRIKE THAT. WHEN
13 MS. NELSON TAKES OVER THE CASE AS THE DI IS THE FIRST
14 RECOMMENDATION FOR A 730 PSYCHIATRIC EVALUATION, AND
15 THAT'S NO LONGER, I THINK, RELEVANT ON THIS WITNESS'S
16 TESTIMONY BECAUSE WE'RE STOPPING AT THE DETENTION
17 HEARING. SO THE DISCUSSION ABOUT THE MENTAL HEALTH
18 EXAM WOULDN'T BE RELEVANT FOR THAT PORTION OF THE CASE.

19 THE COURT: IS THIS -- I DON'T KNOW THIS IS A
20 SERVICE OR NOT, BUT DOES IT GO TO THE ISSUE OF
21 DISCRIMINATION CLAIM OF FAILURE TO PROVIDE A SERVICE?
22 I DON'T LOOK AT IT AS BEING A SERVICE. I THINK IT'S
23 REALLY A MATTER OF ACQUIRING ADDITIONAL INFORMATION AS
24 OPPOSED TO A SERVICE. I DON'T LOOK AT THAT AS BEING A
25 SERVICE.

26 MR. PRAGER: THERE'S DIFFERENT WAYS YOU CAN
27 COUCH IT. I'M NOT SURE HOW THE WITNESS WILL TESTIFY AT
28 THIS POINT, BUT I THINK MY UNDERSTANDING RIGHT NOW ON

1 THE OPINION IS THAT IT'S BEING OFFERED TO SUGGEST
2 MR. DOMINGUEZ'S OPINIONS ARE WRONG. AND TO THE EXTENT
3 THAT MR. DOMINGUEZ'S OPINIONS ARE BEING CRITICIZED, I
4 THINK IT GOES TO THE PART OF THE CLAIM THAT'S BEEN
5 IMPACTED BY THE COURT'S RULING, AND IT WOULD BE
6 IRRELEVANT.

7 THE COURT: YEAH, IT IS TRUE THE WAY THAT IT
8 WAS -- AND IT WAS TO NEGATE AN OPINION OF
9 MR. DOMINGUEZ. BUT I DON'T SEE THAT AS BEING AN ISSUE
10 AT THIS POINT ON HIS OPINION ON THAT SUBJECT.

11 I CAN UNDERSTAND FROM THE DEFENSE POINT OF
12 VIEW THAT MR. DOMINGUEZ EXPRESSED A SIGNIFICANT NUMBER
13 OF OPINIONS, AND FROM THE DEFENSE POINT OF VIEW, YOU
14 PROBABLY DON'T LIKE THEM SITTING OUT THERE WITHOUT A
15 RESPONSE. BUT THE TRUTH IS, THE OPINIONS ON SUBJECTS
16 THAT ARE NOW, BECAUSE OF THE COURT'S RULING, ARE NO
17 LONGER AN ISSUE IN THE CASE, THEY'RE JUST OUT THERE.
18 AND I DON'T THINK IT WOULD BE PROPER FOR US TO BE
19 PERMITTING TESTIMONY ON OPINIONS THAT ARE NO LONGER
20 RELEVANT TO THE ISSUES IN THE CASE.

21 THIS, PERHAPS, HIGHLIGHTS WHY THE CASES
22 INDICATE THE EARLIER THE BETTER YOU CAN HAVE THE
23 DECISION. THERE'S SOME PRACTICAL REASONS FOR IT, WHICH
24 ALL OF US UNDERSTAND. BUT SO THE OBJECTION TO 37 WILL
25 BE SUSTAINED AS WELL.

26 MR. PRAGER: THANK YOU, YOUR HONOR. WE HAVE
27 NO FURTHER OBJECTIONS.

28 THE COURT: ANY OTHERS?

1 MR. PRAGER: I'M SORRY. I DID EXPRESS THAT
2 WE'RE FINISHED. THANK YOU, YOUR HONOR. I'M SORRY IF I
3 DIDN'T SPEAK LOUD ENOUGH FOR YOU.

4 MR. GUTERRES: THANK YOU, YOUR HONOR. WE'LL
5 STREAMLINE OUR QUESTIONS.

6 THE COURT: THANK YOU FOR THIS. AND WE'LL SEE
7 YOU BACK AT 1:30.

8 MR. MCMILLAN: THANK YOU, YOUR HONOR.

9 MS. SWISS: THANK YOU, YOUR HONOR.

10 (LUNCH RECESS)

11 THE COURT: MS. RUSSELL, WILL YOU PLEASE
12 RETURN TO THE STAND.

13 (JURY PRESENT)

14 THE COURT: ALL RIGHT. EVERYONE MAY BE
15 SEATED. WE ARE ON THE RECORD. EVERYBODY IS PRESENT.
16 THE WITNESS IS ON THE STAND.

17 GO AHEAD, MR. GUTERRES.

18 MR. GUTERRES: THANK YOU, YOUR HONOR.

19 BY MR. GUTERRES:

20 Q GOOD AFTERNOON, MS. RUSSELL.

21 A GOOD AFTERNOON.

22 Q DO YOU HAVE AN OPINION WITH REGARD TO WHETHER
23 OR NOT THE SOCIAL WORKERS AND THE SUPERVISORS INVOLVED
24 IN THE DETENTION WERE TRAINED AND FOLLOWED CUSTOMS,
25 PRACTICES, AND POLICIES OF THE DEPARTMENT OF THE
26 CHILDREN AND FAMILY SERVICES?

27 A YES, I BELIEVE THEY FOLLOWED.

28 Q AND CAN YOU TELL ME WHAT THE BASIS IS FOR THAT

1 OPINION?

2 A MS. PENDER, WHEN SHE RECEIVED THE REFERRAL,
3 FIRST THING SHE DID WAS SHE DOWNLOADED A DOCUMENT ON
4 FAILURE TO THRIVE BECAUSE IT'S SUCH AN UNUSUAL CASE FOR
5 US. I'VE SEEN MAYBE TWO IN THE WHOLE TIME I'VE BEEN AT
6 WORK. SO SHE DOWNLOADED THAT, THEN SHE CONTACTED THE
7 REPORTING PARTY, WHICH SHE'S SUPPOSED TO DO. SHE
8 CONTACTED THE MOTHER, AND CONSEQUENTLY, WENT OUT TO SEE
9 THE MOTHER, WENT OUT THE SEE THE FATHER, CONTACTED
10 MEDICAL PROFESSIONALS, REFERRED MOM TO DIFFERENT
11 MEDICAL AGENCIES TO HAVE THE CHILD ASSESSED.

12 Q ANYTHING ELSE THAT YOU FEEL THAT MS. PENDER
13 AND/OR MS. ROGERS DID THAT WAS IN CONFORMITY WITH THE
14 CUSTOMS, PRACTICES, AND POLICIES REGARDING THE
15 DETENTION?

16 MR. PRAGER: OBJECTION. VAGUE. CALLS FOR
17 SPECULATION. LACKS FOUNDATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: SO ONE OF THE THINGS WE DO FOR
20 EMERGENCY RESPONSE FOR SOCIAL WORKERS WHEN WE GO TO THE
21 HOME OF THE CUSTODIAL PARENT IS WE LOOK IN THE
22 REFRIGERATOR AND THE CUPBOARDS TO MAKE SURE THAT
23 THERE'S ADEQUATE FOOD IN THE HOME. AND ONE OF THE
24 THINGS THAT MS. PENDER NOTICED AND SPOKE TO MS. DUVAL
25 ABOUT WAS THAT THE LIST OF FOOD THAT WAS ON WENDY
26 CRUMP'S LIST FOR BABY RYAN TO HAVE WAS NOT IN THE HOME.
27 AND SHE WAS NOT FEEDING HIM AT THAT TIME ANY OF THE
28 FOODS THAT WERE RECOMMENDED.

1 BY MR. GUTERRES:

2 Q AND WHY IS THAT IMPORTANT?

3 A IT GOES TO THE CUSTODIAL PARENT FOLLOWING
4 RECOMMENDATIONS FROM THE EXPERT, AND THAT'S ONE OF THE
5 THINGS THAT WE LOOK AT TO ASSESS A FAMILY IS ARE THEY
6 FOLLOWING THE WHAT THE EXPERTS ARE TELLING THEM TO DO?
7 IT GOES ALONG WITH KIND OF COMPLIANCE, ARE THEY
8 COMPLIANT.

9 Q AND LET ME MOVE ON TO A DIFFERENT SUBJECT.

10 WITH REGARD TO THE JURISDICTION DISPOSITION
11 REPORT, DO YOU HAVE AN OPINION ON WHETHER OR NOT IT WAS
12 PROPER FOR MS. NELSON TO INCLUDE A REFERENCE TO
13 MUNCHAUSEN BY PROXY IN THE JURISDICTION DISPOSITION
14 REPORT?

15 A I DO THINK IT WAS APPROPRIATE. HILLSIDES IS
16 AN AGENCY THAT WE CONTRACT WITH TO DO AN EVALUATION OF
17 PARENTS. AND I BELIEVE THAT MS. DUVAL BROUGHT UP THE
18 ISSUE OF MUNCHAUSEN BY PROXY. AND SO WHEN MS. NELSON
19 WAS PROVIDING THE COURT WITH ALL THE DOCUMENTATION,
20 IT'S IMPORTANT BECAUSE SHE WAS ASKING THE COURT TO
21 EVALUATE NOT JUST MOM, MOM, DAD, AND THE CHILD FOR A
22 PSYCHOLOGICAL EVALUATION.

23 SO I THINK IT WAS IMPORTANT FOR HER TO PUT
24 THAT IN THERE BECAUSE, AGAIN, THIS IS SUCH AN UNUSUAL
25 CASE. AND WE WANT TO BE ABLE TO GET THE JUDGE ALL THE
26 THINGS WE CAN. AND 730 EVALUATIONS ALSO GO FOR US AS
27 SOCIAL WORKERS TO TELL US WHAT SERVICES MAYBE THE
28 PARENTS NEED AND THE CHILD NEEDS.

1 Q DO YOU HAVE ANY OPINIONS WITH REGARD TO
2 WHETHER OR NOT IT WAS PROPER OR IMPROPER FOR
3 MS. SCHEELE WHEN OBSERVING VISITS TO PUT IN COMMENTS
4 ABOUT MOTHER'S TREMORS?

5 A YES. I FEEL IT WAS APPROPRIATE FOR HER TO PUT
6 THAT IN THERE. ONE OF THE DUTIES OF A CONTINUING
7 SOCIAL WORKER'S RESPONSIBILITIES IS TO MONITOR THE
8 VISITS. AND IT'S TO MONITOR THE VISITS SO THAT WE CAN
9 HELP THE PARENTS OBSERVE, MAKE NONJUDGMENTAL
10 RECOMMENDATIONS, GIVE SOME GUIDANCE AS TO HOW THEY CAN
11 INTERACT WITH THE CHILD BETTER. AND SO MS. SCHEELE WAS
12 DOING WHAT'S IN OUR PRACTICE AND CUSTOMS TO DOCUMENT
13 WHAT SHE SEES.

14 MR. PRAGER: OBJECTION. CALLS FOR A NARRATIVE
15 RESPONSE. MOVE TO STRIKE EVERYTHING AFTER THE WORD
16 "YES." LACKS FOUNDATION. CALLS FOR SPECULATION. AND
17 NONRESPONSIVE.

18 THE COURT: THE OBJECTION NONRESPONSIVE IS
19 SUSTAINED. MOTION TO STRIKE WILL BE GRANTED. ALL
20 PORTIONS IN THAT ANSWER AFTER THE WORD "YES" WILL BE
21 ORDERED STRICKEN. JURY MUST DISREGARD IT.

22 GO AHEAD.

23 BY MR. GUTERRES:

24 Q WHAT IS YOUR OPINION WITH REGARD TO THE
25 PROPRIETY OF MS. SCHEELE, INCLUDING HER OBSERVATIONS
26 REGARDING MOTHER'S TREMORS IN THE DELIVERED SERVICE
27 LOGS?

28 A SO BASED ON OUR POLICY AND PRACTICE AND

1 CUSTOMS, THE SOCIAL WORKER IS TO DOCUMENT WHAT SHE
2 OBSERVES DURING THE MONITORED VISITS.

3 Q AND LASTLY, DO YOU HAVE AN OPINION WITH REGARD
4 TO THE BACKGROUND AND EXPERIENCE OF PLAINTIFF'S EXPERT,
5 MR. JULIAN DOMINGUEZ, IN RENDERING OPINIONS AS TO THE
6 PROPRIETY OF THE DETENTION IN THIS PARTICULAR CASE?

7 A YES, I DO.

8 Q AND WHAT IS THAT OPINION?

9 MR. PRAGER: OBJECTION. OUTSIDE THE SCOPE OF
10 THIS WITNESS'S ALLOWED OPINIONS. ASKED AND ANSWERED AS
11 WELL.

12 THE COURT: SUSTAINED.

13 MR. GUTERRES: THAT'S ALL I HAVE. THANK YOU.

14 THE COURT: ALL RIGHT. MR. PRAGER?

15 MR. PRAGER: THANK YOU, YOUR HONOR.

16

17

CROSS-EXAMINATION

18 BY MR. PRAGER:

19 Q GOOD AFTERNOON, MS. RUSSELL.

20 A GOOD AFTERNOON.

21 Q WE'VE MET BEFORE, HAVEN'T WE?

22 A WE HAVE.

23 Q NOW, DO YOU RECALL -- PLEASE REFRESH US --
24 WHEN WERE YOU FIRST RETAINED ABOUT THIS CASE?

25 A PROBABLY ABOUT CLOSER TO THREE YEARS AGO. I
26 THINK YESTERDAY I SAID TWO, BUT IT'S PROBABLY THREE
27 YEARS AGO.

28 Q DO YOU RECALL THE DATE THAT YOU WERE FIRST

1 RETAINED?

2 A I DO NOT.

3 Q CAN YOU ESTIMATE THAT DATE FOR US?

4 A MAYBE APRIL OF 2013.

5 Q SO YOU HAD NO KNOWLEDGE OF THE DUVAL MATTER
6 BEFORE APRIL 2013; CORRECT?

7 A I DID NOT.

8 Q OKAY. AND YOU'RE TESTIFYING AS AN EXPERT
9 TODAY SO THEREFORE SOMEONE IS PAYING YOU TO BE HERE
10 TODAY; CORRECT?

11 A CORRECT.

12 Q HOW MUCH ARE YOU BEING PAID TO TESTIFY AT
13 TRIAL TODAY?

14 A \$350 AN HOUR.

15 Q THAT IS THE RATE FOR YOUR TRIAL TESTIMONY?

16 A IT IS.

17 Q DO YOU HAVE A DIFFERENT RATE FOR WORK DONE
18 OUTSIDE OF COURT?

19 A \$150 AN HOUR.

20 Q SO TO REVIEW DOCUMENTS, THINGS OF THAT NATURE
21 WOULD BE \$150 AN HOUR?

22 A THAT'S CORRECT.

23 Q NOW, IT'S TRUE THAT YOU'VE TESTIFIED IN TRIAL
24 BEFORE; CORRECT?

25 A YES.

26 Q IS IT TRUE THAT THIS IS THE FIRST TIME YOU'VE
27 EVER TESTIFIED IN THE TRIAL AS AN EXPERT WITNESS?

28 A YES.

1 Q AND I BELIEVE YOU HAVE ONE PRIOR CASE BEFORE
2 THE DUVAL MATTER WHERE YOU WERE RETAINED AS AN EXPERT
3 WITNESS; IS THAT CORRECT?

4 A CORRECT.

5 Q AND THAT WAS IN 2012?

6 A CORRECT.

7 Q AND YOUR CLIENT IN THAT CASE WAS DCFS?

8 A YES.

9 Q AND YOUR CLIENT, OBVIOUSLY, IN THIS CASE IS
10 DCFS?

11 A CORRECT.

12 Q IT'S TRUE THAT YOU DO NOT HAVE A LIST OF ALL
13 THE DOCUMENTS YOU REVIEWED IN PREPARING TO TESTIFY HERE
14 TODAY; CORRECT?

15 A I DON'T HAVE A LIST WITH ME RIGHT NOW,
16 CORRECT.

17 Q RIGHT. YOU DIDN'T BRING WITH YOU A LIST WITH
18 ENUMERATIONS OF ALL THE DOCUMENTS YOU'VE REVIEWED IN
19 PREPARING FOR YOUR DEPOSITION -- I'M SORRY, YOUR
20 TESTIMONY TODAY?

21 A CORRECT.

22 Q SO IT'S TRUE THAT YOU DID NOT REVIEW THE
23 DECLARATION OF DR. GILL REGARDING THIS CASE; CORRECT?

24 A CORRECT.

25 Q AND YOU HAVE NO INFORMATION REGARDING WHAT
26 DR. GILL SAID ABOUT THIS CASE; CORRECT?

27 A NO.

28 Q DID YOU EVER ASK -- WELL, LET ME WITHDRAW THAT

1 QUESTION AND REPHRASE IT.

2 WHO WAS YOUR PRINCIPAL CONTACT IN THIS CASE?

3 A CHRISTIE SWISS.

4 Q DID YOU ASK MS. SWISS TO GIVE YOU EVERYTHING,
5 EVERYTHING, EVERYTHING ABOUT THIS FILE SO YOU COULD
6 OFFER THE MOST COMPETENT OPINIONS HERE TODAY?

7 A I DID, AND I DO BELIEVE I REVIEWED DR. GILL'S
8 DEPOSITION.

9 Q DR. GILL'S DEPOSITION?

10 A OR DECLARATION.

11 Q WELL, LET ME SHOW YOU --

12 MR. PRAGER: YOUR HONOR, WE'LL GO AHEAD AND
13 PUBLISH EXHIBIT 183.

14 BY MR. PRAGER:

15 Q ALL RIGHT. WE'RE SHOWING YOU EXHIBIT 183
16 CORRECT? THIS IS THE DECLARATION OF DR. GILL; CORRECT?

17 A YES.

18 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

19 A I BELIEVE I HAVE.

20 Q AND WHAT DOES IT SAY TO YOUR KNOWLEDGE?

21 A BASICALLY THAT DR. GILL DOES NOT REMEMBER
22 SPEAKING WITH THE SOCIAL WORKER ON THIS CASE.

23 Q DOES NOT REMEMBER OR, IN FACT, NEVER SPOKE TO
24 A SOCIAL WORKER IN THIS CASE?

25 A I DON'T RECALL.

26 Q I'M GOING TO GO AHEAD AND APPROACH AND HAND IT
27 TO YOU.

28 PLEASE TAKE A MOMENT AND REVIEW EXHIBIT 183.

1 A ALL OF 183 OR JUST THE FIRST PAGE?

2 Q THE ENTIRE DOCUMENT, MA'AM.

3 A OH, THANK YOU.

4 THE COURT: YOU WANT HER TO READ THE ENTIRE
5 DOCUMENT?

6 MR. PRAGER: JUST TO REVIEW IT TO MAKE SURE
7 SHE'S SEEN THE ENTIRE DOCUMENT.

8 THE WITNESS: OKAY. I'M FINISHED.

9 BY MR. PRAGER:

10 Q I'M SORRY?

11 A I'M FINISHED.

12 Q IT'S TRUE THAT DR. GILL HAS STATED SHE NEVER
13 SPOKE TO MS. PENDER; CORRECT?

14 A IT SAYS:

15 "I DO NOT RECALL RECEIVING ANY
16 TELEPHONE CALLS FROM LOS ANGELES COUNTY
17 SOCIAL WORKER."

18 Q THAT WOULD INCLUDE MS. PENDER; CORRECT?

19 A SHE DOESN'T RECALL IT. IT'S NOT THAT SHE
20 DIDN'T, SHE JUST DOESN'T REMEMBER IT.

21 Q AND IT'S TRUE THAT BABY RYAN WAS NEVER
22 DR. GILL'S PATIENT; CORRECT?

23 A CORRECT.

24 Q SO DO YOU ALSO RECALL -- WELL, LET ME ASK THIS
25 QUESTION: ARE YOU AWARE WHETHER OR NOT DR. GILL
26 TESTIFIED AT TRIAL IN THIS MATTER?

27 A I BELIEVE SHE DID.

28 Q DID YOU ASK MS. SWISS FOR A COPY OF THE TRIAL

1 TRANSCRIPT IN THIS MATTER?

2 A I DID RECEIVE A COPY OF THE TRIAL TRANSCRIPT.

3 Q FOR DR. GILL?

4 A FOR DR. GILL.

5 Q DID YOU READ IT?

6 A I DID.

7 Q AND IS IT TRUE DR. GILL TESTIFIED THAT SHE DID
8 NOT SPEAK TO MS. PENDER AT TRIAL?

9 A THAT'S WHAT SHE SAID AT TRIAL.

10 Q OKAY. DID YOU READ ANY OF THE TRIAL
11 TRANSCRIPTS BEFORE COMING HERE TODAY?

12 A I DID.

13 Q WHICH TRIAL TRANSCRIPTS?

14 A MS. PENDER'S, MS. ROGERS', PART OF
15 MS. SCHEELE'S, PART OF JERRY DOMINGUEZ'S, PART OF WENDY
16 CRUMP'S, PART OF CAROL BERKOWITZ'S, PART OF
17 MS. PINEDO'S, AND I THINK THAT'S ABOUT IT.

18 Q I'M SORRY, DID YOU SAY YOU READ
19 DR. BERKOWITZ'S TRIAL TESTIMONY?

20 A I DID.

21 Q AND I BELIEVE WHEN YOU TESTIFIED EARLIER WITH
22 THE DOCUMENTS YOU REVIEWED, YOU DID NOT MENTION THAT
23 YOU REVIEWED DR. BERKOWITZ'S TRIAL TESTIMONY; IS THAT
24 CORRECT?

25 A I DID NOT MENTION THAT, CORRECT.

26 Q WHEN DID YOU REVIEW DR. BERKOWITZ'S TRIAL
27 TESTIMONY?

28 A ABOUT TWO DAYS AGO.

1 Q WAS THAT AFTER THE TIME YOU TESTIFIED HERE IN
2 THE FIRST INSTANCE?

3 A IT WAS BEFORE.

4 Q BEFORE? OKAY.

5 AND IT'S TRUE THAT YOU DID NOT REVIEW
6 DR. BERKOWITZ'S DEPOSITION; CORRECT?

7 A I DID REVIEW DR. BERKOWITZ'S DEPOSITION.

8 Q OKAY. AND IF YOU REVIEWED DR. BERKOWITZ'S
9 DEPOSITION, DO YOU AGREE THAT DR. BERKOWITZ TESTIFIED
10 THAT BABY RYAN WAS NEVER AT RISK FOR GREAT BODILY
11 INJURY WHEN DCFS FIRST MADE CONTACT WITH BABY RYAN?
12 STRIKE THAT. I'M GOING TO REPHRASE THAT. THAT WAS A
13 POOR QUESTION.

14 WHEN DR. BERKOWITZ FIRST ENCOUNTERED BABY RYAN
15 AT THE FAILURE TO THRIVE CLINIC, IT'S TRUE THAT SHE
16 TESTIFIED BABY RYAN WAS NOT AT RISK OF GREAT BODILY
17 INJURY; CORRECT?

18 A FROM A MEDICAL POINT OF VIEW.

19 Q THE ANSWER IS YES?

20 A FROM A MEDICAL POINT OF VIEW. SOCIAL WORKERS
21 HAVE A DIFFERENT STANDARD OF CARE.

22 MR. PRAGER: OBJECTION. NONRESPONSIVE. MOVE
23 TO STRIKE.

24 THE COURT: OVERRULED.

25 BY MR. PRAGER:

26 Q DR. BERKOWITZ, TO YOUR KNOWLEDGE, IS NOT A
27 SOCIAL WORKER; CORRECT?

28 A CORRECT.

1 Q SHE'S A BOARD-CERTIFIED DOCTOR OF PEDIATRICS;
2 CORRECT?

3 A CORRECT.

4 Q AND SHE'S BOARD-CERTIFIED IN CHILD ABUSE;
5 CORRECT?

6 A CORRECT.

7 Q SO TO YOUR KNOWLEDGE, AS AN EXPERT WITNESS,
8 WHEN DR. BERKOWITZ WAS TESTIFYING AT TRIAL, HER
9 TESTIMONY WAS THAT BABY RYAN WAS AT NO RISK OF GREAT
10 BODILY INJURY WHEN SHE WAS FIRST ENCOUNTERED HIM AT THE
11 FAILURE TO THRIVE CLINIC; CORRECT?

12 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED.

13 THE COURT: SUSTAINED.

14 MR. PRAGER: OKAY.

15 THE COURT: IT'S ALSO NOT RELEVANT.

16 MR. PRAGER: OKAY.

17 THE COURT: AS TO WHAT DR. BERKOWITZ
18 TESTIFIED. SHE'S NOT HERE AS AN EXPERT ON
19 DR. BERKOWITZ.

20 BY MR. PRAGER:

21 Q NOW, LET ME DRAW YOUR ATTENTION TO YOUR
22 COMMENT ABOUT THE UP-FRONT ASSESSMENT.

23 DO YOU RECALL TESTIFYING TODAY THAT IT WAS
24 PROPER FOR THE SOCIAL WORKERS TO ATTACH THE UP-FRONT
25 ASSESSMENT TO THE COURT RECORDS OR COURT REPORTS IN
26 MS. DUVAL'S CASE?

27 A IN THIS SITUATION, I DO FEEL IT WAS IMPORTANT
28 THAT THEY ATTACH IT.

1 Q ISN'T IT TRUE THAT DCFS POLICY IS THAT THE
2 UP-FRONT ASSESSMENT IS NOT TO BE ATTACHED TO COURT
3 REPORTS?

4 A THE OLD POLICY SAID THAT, BUT IN THIS CASE, I
5 THINK THE SOCIAL WORKER WAS APPROPRIATE IN GIVING THE
6 COURT AS MUCH INFORMATION BECAUSE OF THE SEVERITY OF
7 THE CASE.

8 Q AND BY THE "OLD POLICY," YOU'RE TALKING ABOUT
9 WHAT TIME FRAME?

10 A DURING THE TIME OF THIS TRIAL, IT WAS IN
11 PLACE.

12 Q I'M SORRY?

13 A DURING THE TIME OF THE DETENTION, IT WAS IN
14 PLACE. SO 2009/2010.

15 Q SO YOU'RE SAYING THAT THE OPERATIVE DCFS
16 POLICY IN 2009/2010 WAS THAT THE UP-FRONT ASSESSMENT
17 WAS NOT TO BE ATTACHED TO COURT REPORTS; CORRECT?

18 A THAT IS CORRECT.

19 Q AND IN THIS CASE, IT'S TRUE THAT MS. NELSON
20 ATTACHED THE UP-FRONT ASSESSMENT TO COURT REPORTS;
21 CORRECT?

22 A YES. APPROPRIATELY SO FROM MY POINT OF VIEW.

23 MR. PRAGER: MOVE TO STRIKE AS NONRESPONSIVE
24 AFTER "YES."

25 THE COURT: THE OBJECTION NONRESPONSIVE IS
26 SUSTAINED. MOTION TO STRIKE IS GRANTED. ALL PORTIONS
27 IN THE ANSWER AFTER THE WORD "YES" ARE ORDERED
28 STRICKEN. THE JURY DISREGARD IT.

1 MR. PRAGER: COULD I IDENTIFY EXHIBIT 400,
2 YOUR HONOR?

3 THE COURT: ALL RIGHT.

4 BY MR. PRAGER:

5 Q I'M SORRY, THE BATES NUMBER IS 5875.

6 HAVE YOU SEEN THIS DOCUMENT BEFORE, MA'AM?

7 A OH, GOSH. YES.

8 Q NOW, IT'S TRUE THAT THE REPORTER -- STRIKE
9 THAT -- THE SOCIAL WORKER IS SUPPOSED TO REPORT FACTS;
10 CORRECT?

11 A CORRECT.

12 Q AND AN OPINION, AS YOU'RE SEEING HERE, IS A
13 PERSONAL BELIEF; CORRECT?

14 A CORRECT.

15 Q AND IT'S INAPPROPRIATE FOR A SOCIAL WORKER TO
16 PUT OPINIONS IN COURT REPORTS; CORRECT?

17 A CORRECT.

18 Q IT'S ALSO TRUE THAT MS. NELSON IS NOT A
19 LICENSED CLINICAL SOCIAL WORKER AT THE TIME OF THIS
20 INCIDENT; CORRECT?

21 A CORRECT.

22 Q AND IT WAS IMPROPER FOR HER TO MAKE ANY
23 REFERENCE TO MUNCHAUSEN BY PROXY SYNDROME BECAUSE SHE
24 WAS NOT AN LCSW, OR LICENSED CLINICAL SOCIAL WORKER;
25 CORRECT?

26 A INCORRECT.

27 Q AND IT'S TRUE THAT SOCIAL WORKERS CANNOT OPINE
28 ABOUT DIAGNOSES; CORRECT?

1 A CORRECT.

2 Q HAVE YOU EVER SEEN A STATEMENT FROM MS. NELSON
3 SAYING SHE IS NOT QUALIFIED TO PUT A REFERENCE TO
4 MUNCHAUSEN BY PROXY IN COURT REPORTS?

5 A THAT SHE'S NOT QUALIFIED TO DIAGNOSE
6 MUNCHAUSEN BY PROXY.

7 Q IS IT TRUE THAT MS. NELSON HAS SAID UNDER
8 PENALTY OF PERJURY THAT SHE'S NOT QUALIFIED TO RULE AN
9 MSBP AS A CONCLUSION OF HER OBSERVATIONS IN MS. DUVAL'S
10 CASE?

11 A YES.

12 Q NOW, IT'S TRUE THAT YOUR OPINIONS ARE BASED ON
13 THE EXISTING POLICIES, PROCEDURES, TRAINING, AND
14 EXPERIENCE WHILE YOU WERE WORKING AT DCFS; CORRECT?

15 A CORRECT.

16 Q YOU TALKED ABOUT MS. PENDER'S ACTION BEING
17 CORRECT HERE TODAY; CORRECT?

18 A YES.

19 Q AND YOU WERE TALKING ABOUT THAT FROM YOUR
20 SOCIAL WORKING PERSPECTIVE; CORRECT?

21 A YES.

22 Q YOU'RE NOT A LAWYER; CORRECT?

23 A YES.

24 Q AND YOU CAN OFFER NO LEGAL OPINIONS HERE
25 TODAY; CORRECT?

26 A CORRECT.

27 Q NOW, DO YOU KNOW THE APPROXIMATE AMOUNT OF
28 TIME IN TOTAL THAT YOU HAVE SPENT ON THIS MATTER?

1 A PROBABLY ABOUT 200 HOURS, MAYBE 400 HOURS.

2 Q AND OF THAT 2- TO 400 HOURS, HOW MUCH TIME WAS
3 BILLED AT YOUR RATE OF \$350 AN HOUR?

4 A THE 6 HOURS I SPENT WITH YOU GUYS AND
5 15 MINUTES YESTERDAY.

6 Q AND WHAT DID YOU DO DURING THE 15 MINUTES
7 YESTERDAY?

8 A I BELIEVE MR. GUTERRES JUST INTRODUCED ME,
9 ASKED FOR MY BACKGROUND.

10 Q OH, I'M SORRY. YOU MEAN HERE IN TRIAL?

11 A YES.

12 Q OKAY. WAS THERE A TRIAL PREP FOR YOU AS WELL?

13 A YES.

14 Q WHEN WAS THAT?

15 A WITH WHOM?

16 Q THAT'S -- WOULD BE THE NEXT QUESTION.

17 SO WHEN DID YOUR TRIAL PREPARATION SESSION
18 OCCUR?

19 A WITH WHOM?

20 Q HOW ABOUT YOUR FIRST TRIAL PREPARATION
21 SESSION?

22 A MR. GUTERRES AND I TALKED SUNDAY NIGHT.

23 Q I'M SORRY, IS THAT --

24 A I'VE BEEN IN MEETINGS WITH SOCIAL WORKERS, BUT
25 I WASN'T THE ONE BEING PREPPED.

26 Q WHICH SOCIAL WORKERS WERE YOU IN MEETINGS
27 WITH?

28 A MS. ROGERS, MS. NELSON, MS. SCHEELE,

1 MS. PINEDO, TIKA SMITH, AND MS. NELSON.

2 Q WHAT YEAR DID YOU RETIRE FROM DCFS?

3 A 2011.

4 Q AND IT'S TRUE THAT YOU'RE GETTING A PENSION
5 FROM THE COUNTY AT THIS TIME; CORRECT?

6 MR. GUTERRES: OBJECTION. RELEVANCE.

7 THE COURT: SUSTAINED.

8 BY MR. PRAGER:

9 Q NOW, IN 2010, YOU WERE STILL EMPLOYED BY THE
10 COUNTY OF LOS ANGELES; CORRECT?

11 A CORRECT.

12 Q AND YOU WERE PART OF AN E-MAIL SYSTEM IN 2010
13 FOR DCFS?

14 A YES.

15 Q AND ISN'T IT TRUE THAT YOU FIRST LEARNED OF
16 THE DUVAL MATTER IN JULY 2010 WHILE YOU WERE STILL
17 EMPLOYED WITH DCFS?

18 A I RECEIVED AN E-MAIL ON IT.

19 Q THE ANSWER IS YES?

20 A THE ANSWER IS YES.

21 Q AND ISN'T IT TRUE THAT AT THAT TIME THE ISSUES
22 OF MS. SCHEELE AND DISCIPLINE AGAINST MS. SCHEELE FOR
23 THIS CASE WERE ONGOING?

24 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

25 THE COURT: SUSTAINED.

26 BY MR. PRAGER:

27 Q HOW MANY YEARS DID YOU SPEND WORKING FOR DCFS
28 IN TOTAL?

1 A FOR DCFS, 30 YEARS. 31 YEARS.

2 Q AND IT'S TRUE THAT YOU ARE EXCEPTIONALLY LOYAL
3 TO DCFS; CORRECT?

4 A I BELIEVE --

5 MR. GUTERRES: OBJECTION. RELEVANCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I BELIEVE IN WHAT WE DO FOR A
8 LIVING IN PROTECTING CHILDREN.

9 BY MR. PRAGER:

10 Q AND IN TERMS OF THE MEETINGS YOU SPENT WITH
11 THE SOCIAL WORKERS, DO YOU RECALL HOW MANY HOURS YOU
12 SPENT WITH MS. ROGERS?

13 A IN THE MEETING, PROBABLY 2 HOURS.

14 Q HOW ABOUT MS. PENDER?

15 A SAME AMOUNT OF TIME. MS. PENDER, THAT WAS
16 2 HOURS.

17 Q MS. NELSON?

18 A 2 HOURS.

19 Q MS. SCHEELE?

20 A 2 HOURS.

21 Q AND YOU WERE COUNSELING THEM ON HOW TO TESTIFY
22 AT TRIAL HERE IN THIS MATTER; CORRECT?

23 A PART OF THE TIME.

24 Q WERE ANY ATTORNEYS PARTICIPATING IN THAT
25 MEETING?

26 A YES.

27 Q WHOM?

28 A MR. GUTERRES AND MS. NAU.

1 MR. PRAGER: NO FURTHER QUESTIONS. THANK YOU,
2 YOUR HONOR.

3 THE COURT: ALL RIGHT. MR. GUTERRES?

4 MR. GUTERRES: NO FURTHER QUESTIONS, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. MS. RUSSELL, WE'VE
7 COMPLETED YOUR TESTIMONY. I WANT TO THANK YOU VERY
8 MUCH, AND YOU'RE EXCUSED.

9 THE WITNESS: THANK YOU, YOUR HONOR.

10 THE COURT: MR. GUTERRES?

11 MR. GUTERRES: WELL, YOUR HONOR, AT THIS POINT
12 SUBJECT TO THE INTRODUCTION OF EXHIBITS AND ANY
13 POTENTIAL MOTIONS, THE DEFENSE RESTS.

14 THE COURT: ALL RIGHT.

15 MR. MCMILLAN?

16 MR. MCMILLAN: SUBJECT TO THE SAME
17 RESERVATIONS, PLAINTIFF RESTS.

18 THE COURT: ALL RIGHT. LET ME SEE -- I'M
19 GOING TO TAKE A RECESS, ABOUT 15 MINUTES, AT THIS TIME.
20 DURING THE RECESS, ALL JURORS PLEASE REMEMBER THE
21 ADMONITION.

22 (JURY EXCUSED)

23 THE COURT: ALL RIGHT. I'M GOING TO HAVE AN
24 OFF-THE-RECORD CONFERENCE WITH COUNSEL. OBVIOUSLY, NO
25 MATTERS RELATING TO THE EVIDENCE OR ISSUES IN THE CASE
26 WILL OCCUR. THE OFF-THE-RECORD DISCUSSION WILL SIMPLY
27 BE PLANNING OF THE FURTHER STEPS TO -- FOR US TO BE
28 ABLE TO PRESENT THIS TO THE JURY.

1 SO I WANT TO MEET WITH COUNSEL IN THE JURY
2 ROOM.

3 MR. MCMILLAN: YOUR HONOR, SHOULD WE BRING
4 BINDERS WITH THE VERDICT FORMS?

5 THE COURT: WELL, WHY DON'T WE BRING THEM
6 BECAUSE WE'LL TALK ABOUT ALL OF THEM IN GENERAL TERMS.
7 WHAT I WANT TO SEE IS WHAT ALL WE HAVE TO DO AND GET
8 WHAT I THINK IS A REASONABLE ESTIMATE OF THE TIME WE'RE
9 GOING TO NEED.

10 MR. MCMILLAN: OKAY. I HAVE AMENDED THE
11 VERDICT FORM THAT WE HAD LAST WEEK, BUT IT'S ON MY
12 COMPUTER. I HAVEN'T HAD A CHANCE TO PRINT IT OUT YET.

13 THE COURT: DO YOU WANT TO MAIL IT TO DON,
14 THEN WE'LL HAVE HIM PRINT IT OUT FOR US?

15 MR. MCMILLAN: I CAN TAKE CARE OF THAT, YOUR
16 HONOR.

17 THE COURT: WHY DON'T YOU TAKE A MINUTE OR SO
18 TO DO THAT. IF ANYONE IS READY, I'LL SEE YOU IN THE
19 JURY ROOM.

20 (RECESS)

21 (JURY PRESENT)

22 THE COURT: ALL RIGHT. EVERYONE MAY BE
23 SEATED. WE'RE BACK ON THE RECORD EVERYONE IS PRESENT.

24 ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY,
25 AS YOU'VE HEARD FROM THE COUNSEL, EACH SIDE HAS RESTED
26 THEIR EVIDENCE IN THE CASE. WE ARE GOING TO RECESS AS
27 FAR AS YOU'RE CONCERNED AT THIS TIME, AND YOU'RE
28 ORDERED TO RETURN HERE AT 9:00 A.M. ON FRIDAY OF THIS

1 WEEK. EVERYBODY UNDERSTAND? 9:00 A.M. FRIDAY.

2 ALL RIGHT. AS IS ALWAYS THE CASE, WHEN --
3 EITHER WHEN YOU'RE NOT HERE OR YOU ARE HERE AND I'M
4 CONFERRING WITH COUNSEL, YOU NOTICE I NEVER TELL YOU
5 WHAT WE'RE TALKING ABOUT. AND THE REASON IS IT ISN'T
6 EVIDENCE; THEREFORE, IT'S A MATTER WITH WHICH YOU
7 SHOULD NOT BE CONCERNED.

8 THE SAME THING WILL BE TRUE NOW BECAUSE YOU'RE
9 WONDERING WHY FRIDAY INSTEAD OF SOME OTHER TIME. AND
10 THE ANSWER -- AND THE GENERAL ANSWER TO THAT IS THAT
11 THERE ARE A NUMBER OF THINGS THAT NEED TO BE COMPLETED
12 BEFORE WE CAN PRESENT YOU WITH THE INSTRUCTIONS OF LAW.

13 -- AND THE EVIDENCE HAS BEEN COMPLETED. I DON'T HAVE
14 IT IN FRONT OF ME, BUT AS YOU NOTICE DURING THE COURSE
15 OF THE TRIAL, THERE'S BEEN A VERY SIGNIFICANT NUMBER OF
16 DOCUMENTS IDENTIFIED AS EXHIBITS. WE HAVE ON MANY
17 OCCASIONS WHILE THE TRIAL'S BEEN GOING ON, USUALLY
18 BEFORE YOU GET HERE IN THE MORNING, BEEN ADDRESSING THE
19 ADMISSIBILITY OF EXHIBITS. BUT WE STILL HAVE A
20 SIGNIFICANT NUMBER TO DEAL WITH.

21 THIS DOES NOT, IN MOST INSTANCES, DOES NOT
22 HAPPEN QUICKLY, AND WE DO HAVE A VERY SIGNIFICANT
23 NUMBER TO DEAL WITH. SO ONE OF THE THINGS WE'LL BE
24 DOING IS TO COMPLETE THE EVIDENCE TO RULE ON THE
25 ADMISSIBILITY OF EXHIBITS. THERE ARE OTHER THINGS THAT
26 NEED TO BE DONE, INCLUDING THE CREATION OF THE
27 INSTRUCTIONS OF LAW. WHEN I SAY "CREATION," WE DON'T
28 SIT DOWN AND START WRITING, LIKE IN FRONT OF A CANDLE

1 OR IN FRONT OF A FIREPLACE IN THE DARK OF NIGHT WITH A
2 PEN, YOU KNOW, A QUILL PEN AND WRITING IT OUT.

3 IT'S JUST -- IT'S SIMPLER THAN THAT, BUT IT
4 STILL ISN'T SIMPLE. AND THOSE INSTRUCTIONS REALLY
5 CAN'T BE COMPLETED UNTIL THE EVIDENCE IS COMPLETED.
6 AND THERE ARE AND WILL BE AND WOULD BE EXPECTED IN ANY
7 CASE TO HAVE DIFFERENCES OF OPINIONS, SOMETIMES ABOUT
8 WHAT THE LAW IS THAT SHOULD BE INCLUDED IN THE
9 INSTRUCTIONS, BUT ALSO CERTAINLY SIMPLY EVEN IF THERE'S
10 AN AGREEMENT, WHAT THE LEGAL PRINCIPLE IS, WHAT THE
11 EXACT WORDING OUGHT TO BE. NOW AGAIN, I'M NOT
12 SUGGESTING, AS I SAID, WE SIT DOWN AND START WRITING
13 THEM OUT. WE HAVE A GOOD START ON THEM. BUT THIS IS
14 ALSO A VERY OFTEN A TIME-CONSUMING PROCESS.

15 WE ALSO NEED TO COMPLETE THE VERDICT FORM
16 WHICH WILL BE USED AND EVENTUALLY FURNISHED TO EACH OF
17 YOU AND WHICH YOU WOULD THEN USE TO BE ABLE TO REFER TO
18 DURING YOUR JURY DELIBERATIONS.

19 MY EXPERIENCE HAS ALWAYS BEEN THAT NOT ONLY I
20 BUT VERY OFTEN THE ATTORNEYS UNDERESTIMATE THE TIME
21 NECESSARY TO COMPLETE THESE THINGS. I EXPERIENCE THAT
22 MORE THAN THEY DO BECAUSE THAT'S ONE OF MY CONCERNS,
23 OBVIOUSLY, IS TO USE YOUR TIME WELL. BUT I THINK THE
24 VERY EARLIEST, THE VERY EARLIEST THAT I COULD CONSIDER
25 HAVING YOU COME BACK WOULD BE THURSDAY AFTERNOON. BUT
26 I'VE DECIDED TO BUILD A CERTAIN MARGIN OF ERROR. PLUS
27 I DON'T WANT YOU COMING IN FOR JUST PART OF THE DAY,
28 PARTICULARLY THE AFTERNOON. IT PARTICULARLY KILLS OFF

1 YOUR DAY.

2 SO FOR ALL THOSE REASONS, I'M NOT ASKING YOU
3 TO AGREE, BUT I'M JUST GIVING YOU A GENERAL EXPLANATION
4 AS TO THERE'S STILL QUITE A BIT OF PROCESS THAT CAN
5 ONLY BE COMPLETED WHEN THE EVIDENCE IS COMPLETED. AND
6 FOR THAT REASON WE NEED SOME ADDITIONAL TIME.

7 SO AT 9:00 A.M. ON MONDAY MORNING --

8 YES, MR. VAN --

9 JUROR: YOUR HONOR, UNFORTUNATELY, I MUST ASK
10 TO BE EXCUSED. MY FLIGHT LEAVES ON A SATURDAY MORNING,
11 THIS COMING SATURDAY MORNING. AND UNFORTUNATELY, I
12 WILL NOT BE ABLE TO CONTINUE ON AS A JUROR IN THIS
13 CASE.

14 THE COURT: ALL RIGHT.

15 JUROR: LIKE, LEAVING AT THE LAST 15 MINUTES.
16 SO UNFORTUNATELY, I SHOULD EXCUSE MYSELF AT THIS TIME.

17 THE COURT: ALL RIGHT. I'M GOING TALK TO YOU
18 SEPARATELY FROM THE OTHER JURORS.

19 ALL JURORS WILL NOW BE IN RECESS. ALL JURORS
20 PLEASE REMEMBER THE ADMONITION.

21 YES?

22 JUROR: FRIDAY OR MONDAY?

23 THE COURT: YOUR DATE IS -- I ALREADY TOLD
24 YOU, YOUR DATE IS GOOD.

25 JUROR: NO, NO, I'M SAYING FOR COMING BACK,
26 IT'S FRIDAY OR MONDAY?

27 JUROR: HE SAID MONDAY THE LAST TIME.

28 THE COURT: DID I SAY MONDAY?

1 JUROR: YES.

2 THE COURT: OH, I BEG YOUR PARDON. FRIDAY. I
3 DID SAY 9:00 A.M. MONDAY MORNING. THAT WAS MY MISTAKE.
4 FRIDAY MORNING AT 9:00 A.M. I'M GLAD SOMEBODY WAS
5 PAYING ATTENTION TO WHAT I WAS SAYING. OBVIOUSLY, I
6 WASN'T. NO. FRIDAY MORNING 9:00 A.M.

7 WE ARE NOW IN RECESS IN JUST A MOMENT, BUT
8 PLEASE REMEMBER THE ADMONITION -- THIS REMAINS
9 EXTREMELY IMPORTANT. THE ADMONITION REMAINS IN PLACE
10 UNTIL EVENTUALLY YOU ARE DISCHARGED FROM FURTHER DUTY
11 IN THE CASE WHICH WILL OCCUR AFTER YOU RETURN A
12 VERDICT. SO NO COMMUNICATION WITH ANYBODY ABOUT ANY
13 SUBJECT OR ISSUE OR PERSON INVOLVED IN THE CASE. NO
14 KIND OF RESEARCH. DO NOT RECEIVE, DO NOT PERMIT ANYONE
15 TO COMMUNICATE INFORMATION TO YOU NOR SHOULD YOU SEEK
16 INFORMATION FROM ANY SOURCE WHATSOEVER. AND ALSO IT IS
17 NOT YET TIME TO FORM ANY OPINIONS, SO DON'T DO IT NOR
18 EXPRESS ANY BECAUSE AMONG OTHER THINGS, WE STILL HAVE
19 AN IMPORTANT PART OF THE CASE, COMPLETION OF THE
20 EVIDENCE, THE INSTRUCTIONS OF THE LAW, AND THE
21 ARGUMENTS OF COUNSEL.

22 SO WE ARE NOW IN RECESS. MR. VAN METER, IF
23 YOU COULD JUST HOLD ON FOR ONE MOMENT.

24 (JURY EXCUSED)

25 THE COURT: ALL RIGHT. WE'RE ON THE RECORD
26 AND COUNSEL ARE PRESENT.

27 MR. VAN METER STAYED.

28 SO THIS IS A PREPLANNED TRIP?

1 MR. VAN METER: YES, SIR. I BROUGHT IT TO THE
2 COURT'S ATTENTION BEFORE JURY SELECTION.

3 THE COURT: AND I ASSURED YOU AT THE TIME?

4 MR. VAN METER: SIR?

5 THE COURT: I ASSURED YOU AT THE TIME?

6 MR. VAN METER: YOU DID, SIR.

7 THE COURT: I DID. AND THE ESTIMATE OF THE
8 TRIAL HAS GONE OVERBOARD. YOU'RE GOING TO BE GONE FOR?

9 MR. VAN METER: 17 DAYS.

10 THE COURT: GOOD FOR YOU. NOTHING FURTHER
11 NEEDS TO BE SAID, MR. VAN METER. I'M GOING TO EXCUSE
12 YOU FROM SERVICE IN THIS CASE. BEFORE I DO, OR AS I
13 DO, I WANT TO THANK YOU VERY MUCH FOR YOUR SERVICE.
14 DURING THE ENTIRE TIME YOU'VE BEEN HERE, I ALWAYS HAVE
15 A GOOD VIEW OF YOU BECAUSE YOU'RE JUST BEYOND WHERE I'M
16 WATCHING THE WITNESS AS THEY'RE TESTIFYING, BUT BEYOND
17 THAT, I KNOW YOU'VE PAID VERY CLOSE ATTENTION DURING
18 THE ENTIRE TIME THE TRIAL WAS GOING ON. YOU'RE VERY
19 OFTEN THE FIRST ONE IN THE DOOR AFTER A RECESS. AND
20 THAT KIND OF SERVICE TO THE PARTIES AND TO THE COURT IS
21 GREATLY APPRECIATED.

22 SO ON BEHALF OF ALL OF THEM, AND MYSELF
23 PERSONALLY, BUT ALSO ON BEHALF OF THE COURT, I WANT TO
24 THANK YOU VERY MUCH. AND I'M SORRY -- I'M SURE THERE
25 MIGHT BE A CERTAIN SENSE OF LACK OF FINALITY BECAUSE
26 YOU WON'T BE ABLE TO SEE IT THROUGH, AND I DO
27 UNDERSTAND THAT. AND I'M SORRY THAT IT WORKED THAT
28 WAY. BUT IT TURNS OUT THAT OUR TIME ESTIMATE THAT I

1 GAVE YOU WHEN WE STARTED WAS NOT AS ACCURATE AS I WOULD
2 HAVE HOPED IT WOULD HAVE BEEN.

3 AND SO IN ANY EVENT, YOU ARE EXCUSED. I NEED
4 TO HAVE YOU GO DOWNSTAIRS TO THE JURORS' ASSEMBLY ROOM
5 TO CHECK OUT WITH THEM. YOU CAN TAKE, IF YOU WANT,
6 YOUR NOTES, WHATEVER NOTES YOU HAVE, OR YOU CAN TEAR
7 THEM OUT OF THE NOTEBOOK AND TAKE THEM WITH YOU. BUT
8 ALSO DEANNA WILL COLLECT THEM, THEY WILL BE DESTROYED.
9 NEITHER SHE NOR ANYONE ELSE WILL EVER SEE THE CONTENTS
10 OF ANY OF THOSE NOTES.

11 MR. VAN METER: I WILL LEAVE THEM HERE.

12 THE COURT: ALL RIGHT. SO DEANNA WILL TAKE
13 CARE OF IT. SO THANKS VERY MUCH.

14 MR. VAN METER: THANK YOU, YOUR HONOR.

15 THE COURT: I APPRECIATE IT.

16 ALL RIGHT. WE ARE NOW IN RECESS. I'LL SEE
17 COUNSEL AGAIN BACK IN THE JURY ROOM, AND WE'LL SET UP
18 OUR SCHEDULE AS TO HOW WE'RE GOING TO GO ABOUT GETTING
19 THESE MATTERS TAKEN CARE OF.

20 (A DISCUSSION WAS HELD OFF THE RECORD.)

21 (RECESS)

22 THE COURT: ALL RIGHT. WE'RE ON THE RECORD,
23 AND WHILE OFF THE RECORD, COURT AND COUNSEL HAVE
24 CONFERRED, AND WE HAVE SET UP A -- I'M NOT SURE YOU'D
25 CALL IT A SCHEDULE, AT LEAST ALL AGREED ON THE MATTERS
26 THAT NEED TO GET DONE AND HOW WE'RE GOING TO APPROACH
27 IT.

28 WE DO HAVE A LITTLE TIME THIS AFTERNOON, AND

1 WE'VE HAD THE REQUEST FROM MR. PRAGER NOW TO ADDRESS
2 EXHIBITS THAT WOULD BE PERTINENT TO THE DISCRIMINATION
3 CAUSES OF ACTION, WHICH WE WON'T DO UNTIL HE CAN BE
4 PRESENT. AND HE WAS EXCUSED BY THE COURT TO NOT BE
5 HERE AT THIS TIME.

6 BUT ALSO MR. PARIS DID HAVE, EVEN THOUGH
7 SOMEWHAT SHORT, A LIST OF EXHIBITS THAT WE APPARENTLY
8 CAN DEAL WITH.

9 MR. PARIS, DO YOU WANT TO GO OVER THAT WITH
10 US?

11 MR. PARIS: YES, YOUR HONOR. I CAN START WITH
12 THE DAMAGES EXHIBITS. THE THREE REMAINING WERE
13 EXHIBITS 599, 600, AND 603. I BELIEVE I'D BEEN TASKED
14 EARLIER TO GO THROUGH AND IDENTIFY WHICH PAGES OF THOSE
15 EXHIBITS HAD BEEN WITHDRAWN FROM OUR REQUEST FOR
16 VARIOUS REASONS, BE THEY LEGIBILITY OR THAT THEY
17 WEREN'T RECEIPTS OR RECORDINGS OF EXPENSES OR THE
18 LIKES.

19 SO FOR EXHIBIT 599, PLAINTIFF WOULD OFFER
20 THOSE PAGES RANGING BATES NUMBERS 7472 THROUGH 7476.
21 THEN 7478 THROUGH 7507. AND THEN 75 --

22 MR. GUTERRES: WAIT, WAIT, WAIT. HOLD ON.

23 MR. PARIS: SURE.

24 MR. GUTERRES: THANK YOU.

25 MR. PARIS: AND THE FINAL PORTION OF
26 EXHIBIT 599 THAT PLAINTIFF WOULD OFFER WOULD BE THAT
27 SECTION IDENTIFIED AS 7509 THROUGH 7530.

28 THE COURT: ALL RIGHT. DO YOU HAVE THOSE

1 NUMBERS DOWN?

2 MR. GUTERRES: I DO, YOUR HONOR.

3 THE COURT: DO YOU WANT TO TAKE A LOOK AT
4 THOSE -- WHY DON'T WE ADDRESS THIS ON THE RECORD, THEN
5 YOU CAN TAKE A LOOK AT THOSE, AND WE CAN ADDRESS THEM
6 IN THE MORNING?

7 MR. GUTERRES: YES, YOUR HONOR.

8 THE COURT: OKAY. THEN THIS NEXT ONE WILL BE
9 600?

10 MR. PARIS: THAT'S CORRECT. FOR 600,
11 PLAINTIFF WOULD OFFER THOSE RANGES FOR 7536 THROUGH
12 7584. AND THEN 7586 THROUGH 7769.

13 THE COURT: ALL RIGHT. AND THEN ON 603?

14 MR. PARIS: 603, GOING THROUGH IT, PLAINTIFF
15 WILL NOT BE CHANGING THE REQUEST IN ANY WAY.

16 THE COURT: SO THE ONES THAT HAVE ALREADY BEEN
17 MARKED ARE THE ONES BEING OFFERED.

18 MR. PARIS: THAT'S CORRECT, 7869 THROUGH 7891,
19 THE ONES ALREADY IDENTIFIED.

20 THE COURT: ALL RIGHT. ALL RIGHT. SO WE'LL
21 GIVE THE DEFENSE AN OPPORTUNITY TO CHECK THOSE OUT.
22 THEN YOU HAD SOME ADDITIONAL EXHIBITS THAT COULD BE
23 ADDRESSED AT THIS TIME?

24 MR. PARIS: UM.

25 THE COURT: WERE THERE MORE ON THE LIST?

26 MR. PARIS: YES, THERE WERE, YOUR HONOR.

27 THE COURT: OKAY.

28 MR. PARIS: FOR EXHIBIT 3, WHICH WAS ALREADY

1 RECEIVED INTO EVIDENCE, PLAINTIFF HAD OFFERED THAT WE
2 CAN WITHDRAW EXHIBIT 3 AT THIS TIME.

3 THE COURT: ALL RIGHT. SO EXHIBIT 3
4 PREVIOUSLY ADMITTED WILL BE WITHDRAWN.

5 MR. PARIS: THAT'S CORRECT.

6 THE COURT: IS THAT AGREEABLE?

7 MS. SWISS: THAT'S THE BIRTH RECORDS; CORRECT?

8 MR. PARIS: THAT'S CORRECT.

9 MS. SWISS: NO OBJECTION.

10 THE COURT: 3 WILL BE WITHDRAWN.

11 MR. MCMILLAN: YOUR HONOR, WITH RESPECT TO
12 EXHIBIT NUMBER 24, I KNOW IT'S BEEN AN ONGOING ISSUE
13 WE'VE BEEN LOOKING AT OVER A PERIOD OF SEVERAL DAYS,
14 AND MR. PARIS AND I WERE ABLE TO PUT TOGETHER A LIST OF
15 THOSE PORTIONS THAT WE BELIEVE SHOULD COME IN AND THOSE
16 THAT SHOULDN'T.

17 THE COURT: ALL RIGHT.

18 MR. MCMILLAN: SO WE WOULD BE KEEPING THE
19 FIRST 24 PAGES, WHICH IS THE BODY OF THE JURISDICTION
20 DISPOSITION REPORT ITSELF.

21 THE COURT: ALL RIGHT.

22 MR. MCMILLAN: AND THEN --

23 MR. GUTERRES: JUST A MINUTE. COULD YOU GIVE
24 US THE BATES NUMBERS SO THAT WE JUST KNOW EXACTLY WHAT
25 IT IS?

26 MR. MCMILLAN: I'M GIVING THEM TO YOU RIGHT
27 NOW. WE WOULD BE ALSO KEEPING BATES NUMBER -- THE
28 PAGES BEARING BATES NUMBERS 446 THROUGH 469.

1 THE COURT: THAT'S BEING OFFERED?

2 MR. MCMILLAN: CORRECT.

3 THE COURT: YEAH, AND THAT IS THE DETENTION --
4 I MEAN THE JURISDICTION DISPOSITION REPORT?

5 MR. MCMILLAN: CORRECT.

6 THE COURT: OKAY.

7 MR. MCMILLAN: CORRECT.

8 AND THEN BATES NO. 501, BATES NO. 520 THROUGH
9 521, BATES NO. 525 THROUGH 526, AND BATES NO. 537
10 THROUGH 538. THE BALANCE OF THE 372 PAGES WOULD BE
11 WITHDRAWN.

12 THE COURT: ALL RIGHT. AND YOU'VE HAD A
13 CHANCE TO TAKE A LOOK AT THAT, MR. GUTERRES?

14 MR. GUTERRES: I WILL TAKE A LOOK AT IT, YOUR
15 HONOR.

16 THE COURT: SURE.

17 MR. GUTERRES: SO 525 THROUGH 526 AND THEN 537
18 THROUGH 538?

19 MR. MCMILLAN: WELL, IT'S ACTUALLY 501, 520
20 THROUGH 521, 525 THROUGH 526, 537 THROUGH 538. AND
21 THEN ALSO IT LOOKS LIKE THERE'S A FOUR -- OH, NO,
22 THAT'S THE REPORT ITSELF. OKAY.

23 THE COURT: ALL RIGHT.

24 MR. MCMILLAN: AND IN PART, YOUR HONOR, THE
25 REQUEST THE TO WITHDRAW THOSE ARE, NUMBER ONE, THAT
26 IT'S A HUGE DOCUMENT, FIRST OF ALL. I DON'T THINK IT'S
27 ALL NECESSARY, ESPECIALLY FOR THE WARRANT ISSUES, THE
28 ONLY ISSUES THAT ARE REALLY LEFT IN THE CASE, IIED. I

1 DON'T THINK THAT MASSIVE PAPER IS RELEVANT TO THOSE
2 ISSUES.

3 AND THEN SECONDARILY, IF YOUR HONOR RECALLS
4 WHEN MS. WORK TESTIFIED, SHE TESTIFIED THAT SHE ONLY
5 IDENTIFIED CERTAIN PAGES OF THE ATTACHMENTS TO THE
6 JURIS DISPO REPORT TO BE ADMITTED INTO EVIDENCE IN THE
7 JURISDICTIONAL TRIAL. AND ONLY CERTAIN OF THOSE WERE
8 ADMITTED INTO EVIDENCE, AND THE WAY WE KNOW WHICH ONES
9 WERE ADMITTED IS THEY HAVE AN ADMITTED STICKER ON THEM.
10 THE IDENTIFIED DOCUMENTS HERE THAT I'VE JUST READ OFF
11 ARE THOSE EXHIBITS THAT WERE IDENTIFIED BY EITHER
12 MS. WORK OR ANOTHER PARTY AND ACTUALLY GOT ADMITTED
13 INTO EVIDENCE IN THE JURISDICTIONAL PHASE OF THE TRIAL.

14 THE COURT: OKAY.

15 MR. MCMILLAN: AND WE KNOW THAT BECAUSE THEY
16 HAVE THE STICKER ON IT.

17 THE COURT: OKAY. WHAT ELSE COULD WE PUT ON
18 THE RECORD AT THIS TIME?

19 MR. PARIS: AT THIS TIME, THE REMAINING
20 EXHIBITS WILL HAVE TO BE DISCUSSED AND RULED ON, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT.

23 MR. PARIS: THE ONES FROM THE SEVEN-PAGE INDEX
24 THAT WAS SUBMITTED ON OCTOBER 18TH.

25 THE COURT: RIGHT. OKAY. SO WE'LL -- MY
26 SUGGESTION IS WE RECESS NOW AND RESUME AT 8:00 A.M.

27 MR. PARIS: OKAY.

28 THE COURT: ALL RIGHT. THAT'S WHAT WE'LL DO.

1 I'LL SEE YOU BACK AT 8:00 IN THE MORNING.

2 MS. SWISS: THANK YOU, YOUR HONOR.

3 MR. GUTERRES: THANK YOU, YOUR HONOR.

4 MR. MCMILLAN: THANK YOU, YOUR HONOR.

5 (RECESS)

6

7 (WHEREUPON, AT THE HOUR OF 3:54 P.M.,

8 THE PROCEEDING ADJOURNED.)

9

10 ---OOO---

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