

1
2
3
4
5
6
7
8
9
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12
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14
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16
17
18
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20
21
22
23
24
25
26
27
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M A S T E R I N D E X

OCTOBER 19, 2016

CHRONOLOGICAL INDEX OF WITNESSES

WITNESSES:	PAGE
SUSAN PENDER	
DIRECT EXAMINATION BY MR. GUTERRES	7839
CROSS-EXAMINATION BY MR. MCMILLAN	7856
KIMBERLY ROGERS	
CROSS-EXAMINATION BY MR. KING	7897
REDIRECT EXAMINATION BY MS. SWISS	7911
CROSS-EXAMINATION BY MR. KING	7914
VICTORIA SCHEELE	
DIRECT EXAMINATION BY MS. SWISS	7918
CROSS-EXAMINATION BY MR. PRAGER	7956

M A S T E R I N D E X

OCTOBER 19, 2016

EXHIBITS

PLAINTIFF'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	
DEFENDANT'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	

(EXHIBITS ADMITTED INTO EVIDENCE WERE
DONE VIA STIPULATION OFF THE RECORD
PLEASE REFER TO CLERK'S TRANSCRIPT.)

1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES
3 LOS ANGELES, CALIFORNIA WEDNESDAY, OCTOBER 19, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ELORA DORINI, CSR NO. 13755
7 TIME: 8:09 A.M.

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11 THE COURT: ON THE RECORD. EVEN THOUGH YOU'RE
12 STILL GETTING ORGANIZED FOR THE DAY, THERE'S A COUPLE
13 OF THINGS THAT I WANTED TO COVER WITH YOU.

14 I RECEIVED FOUR BRIEFS THIS MORNING THAT,
15 HONESTLY, I HAVE -- WAS JUST GIVEN THEM. I HAVEN'T HAD
16 A CHANCE TO LOOK AT THEM. THERE'S ONE, YOU KNOW HOW
17 THE CITATIONS ON THE EVIDENCE PERTAIN TO THE DISABILITY
18 CLAIMS?

19 MR. PRAGER: YES, YOUR HONOR. AND THIS IS
20 ONLY THE FIRST AMOUNT OF INFORMATION WITH THE TIME WE
21 HAD ALLOTTED BETWEEN WHEN YOU FIRST REQUESTED IT UNTIL
22 THIS MORNING.

23 THERE WILL BE A LOT MORE INFORMATION THAT WILL
24 BE AUGMENTED TO THIS INFORMATION.

25 THE COURT: ALL RIGHT. OKAY. THERE ARE A LOT
26 OF -- WELL, I HAVE TO READ THEM BECAUSE I GUESS I'LL
27 HAVE QUESTIONS ABOUT WHAT THE OTHER ONES ARE ABOUT.

28 AND I'M NOT GOING TO HAVE CONTINUED --

1 CONTINUING BRIEFING ON ALL OF THESE EXCEPT WHERE I HAVE
2 REQUESTED IT.

3 AND ACTUALLY, IT'S NOT BRIEFING. AND I DO
4 WANT TO CONFIRM WITH YOU, IN JUST A MOMENT, THE
5 CONTENTIONS, WHAT LIST OF CONTENTIONS PERTAINING TO
6 DECEPTIVE AND/OR OMITTED EVIDENCE.

7 AND MS. CHUNG HAS BEEN IN CHARGE OF PUTTING
8 THAT TOGETHER. BUT I'LL JUST HAVE A QUESTION TO MAKE
9 SURE WHEN I'M LOOKING AT IT, THAT I'M LOOKING AT WHAT
10 YOU ARE WANTING ME TO CONSIDER.

11 AND I'LL GET TO THAT IN JUST A MINUTE. ON
12 THE -- ON THE MOTION FOR NONSUIT, WE HAD TWO MATTERS
13 WHICH HAD BEEN DEFERRED.

14 ONE WAS ON THE MOTION ITSELF, PARAGRAPH C,
15 WHICH REFERS TO THE 1983 CLAIMS AGAINST ALL OF THE
16 INDIVIDUAL DEFENDANTS THAT ALLEGES JUDICIAL DECEPTION.

17 THE MOTION FOR NONSUIT IS MADE ON THE GROUND
18 THAT THE PLAINTIFF HAS FAILED TO DEMONSTRATE THAT ANY
19 MISREPRESENTATION OR MATERIAL OMISSION WAS MADE
20 DELIBERATELY OR WITH RECKLESS DISREGARD, IT IS FALSITY.

21 THAT IS A SEPARATE ISSUE FROM, I THINK, WHAT
22 IS THE LEGAL ISSUE ABOUT THE -- THAT ASSUMING WHATEVER
23 IS CLAIMED TO HAVE BEEN UNTRUTHFUL AND DECEPTIVE IN
24 SOME FORM.

25 AND WHAT WAS OMITTED IS A SEPARATE CLAIM FOR
26 THE ONE THAT IS THE BASIS OF THE MOTION FOR THE
27 NONSUIT.

28 DO YOU AGREE, MR. GUTERRES?

1 MR. GUTERRES: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. AND I HAD DEFERRED
3 RULING ON THAT ISSUE BECAUSE WE WERE YET TO CONDUCT THE
4 HEARING.

5 BUT I REALIZED IN THINKING ABOUT IT, AFTER I
6 HAD A CHANCE TO WORK BOTH ON THE MOTION FOR NONSUIT AS
7 WELL AS THE PREPARATION FOR HEARING ON THE LEGAL ISSUE,
8 THAT THE MOTION ITSELF IS ON A DIFFERENT GROUND. SO I
9 DO WANT TO HEAR FROM YOU THIS MORNING ON THAT.

10 MY TENTATIVE IS TO DENY THE MOTION FOR NONSUIT
11 ON THE GROUNDS STATED, THAT THE LACK OF EVIDENCE OF
12 DELIBERATE AND/OR RECKLESS DISREGARD -- BECAUSE I DO
13 THINK -- I DON'T THINK THAT'S SOMETHING THAT COULD BE
14 DECIDED -- THAT I COULD DECIDE, IN EFFECT, AS A MATTER
15 OF LAW.

16 I THINK THAT PRESENTS AN ISSUE FOR THE JURY TO
17 DECIDE, AS TO WHETHER, IF THERE WAS A
18 MISREPRESENTATION, WAS IT DELIBERATE OR NOT, OR WAS IT
19 DONE WITH RECKLESS DISREGARD.

20 AND IN THINKING BACK ABOUT THE VERDICT FORM, I
21 THINK WE HAVE ALL AGREED, AT LEAST IN GENERAL TERMS,
22 THAT WE HAVE THE LEGAL ISSUE FOR THE COURT TO DECIDE.

23 IF THE COURT FOUND THAT THOSE CLAIMS COULD GO
24 AHEAD BECAUSE OF A FINDING THAT THERE WAS NOT
25 SUFFICIENT EVIDENCE TO DECIDE ON A LEGAL ISSUE, THAT
26 THEY SHOULD NOT -- THE MAGISTRATE, THE JUDGE COULD NOT
27 HAVE MADE THE FINDING.

28 ONE OF THE THINGS THE JURY STILL HAS TO DECIDE

1 IS WHETHER OR NOT MISREPRESENTATIONS AND/OR OMISSIONS
2 WERE DELIBERATE OR WITH RECKLESS DISREGARD.

3 THAT JUST POINTS OUT IT IS A FACTUAL ISSUE, SO
4 TO BE ABLE TO RULE ON A FACTUAL ISSUE WOULD MEAN THAT
5 THE COURT WOULD HAVE TO FIND THAT A JURY -- TRIER OF
6 FACT COULD NOT FIND AN OMISSION OR DECEPTIVE STATEMENT
7 TO HAVE BEEN DONE DELIBERATELY. AND I DON'T THINK I
8 COULD DO THAT.

9 SO I'M HAPPY TO HEAR FURTHER FROM YOU ON THAT,
10 MR. GUTERRES, AND MS. SWISS, BUT I JUST THINK THAT'S A
11 FACTUAL ISSUE THAT MAY HAVE TO GO TO THE JURY.

12 DO YOU WANT TO SAY ANYTHING FURTHER ON IT?

13 MR. GUTERRES: JUST ONE MINUTE, YOUR HONOR.

14 THE COURT: SURE.

15 MS. SWISS: YOUR HONOR, THE ARGUMENT IN OUR --
16 IN THE DEFENDANT'S NONSUIT UNDER C FOR JUDICIAL
17 DECEPTION IS -- BASED ON THE STATE OF THE EVIDENCE AS
18 IT WAS IN PLAINTIFF'S CASE, THE PLAINTIFF WAS AWARE OF
19 CERTAIN ISSUES IN THE DEPENDENCY CASE THAT ARE
20 NOW BECOME THE CRITICAL ISSUES IN THIS CIVIL LAWSUIT
21 FOR MONEY DAMAGES.

22 AND IN PARTICULAR, THE ISSUE WAS WHETHER OR
23 NOT DR. YIM OR DR. GILL WERE CONSULTED BY DCFS, WHETHER
24 OR NOT THERE WERE ANY LIES OR OMISSIONS PUT INTO THE
25 VARIOUS REPORTS.

26 AND PLAINTIFFS HAVE PUT ON EVIDENCE IN THIS
27 CASE MAKING THE ARGUMENT THAT THERE WAS INEFFECTIVE
28 ASSISTANCE OF COUNSEL.

1 AND SO THE MOTION FOR NONSUIT IS BROUGHT ON
2 THE GROUND THAT EVIDENCE HAS SHOWN THAT THE PLAINTIFF
3 KNEW ABOUT CERTAIN OF THESE ISSUES. SHE HAD AN
4 ATTORNEY. THERE WAS EVIDENCE THAT SHE HAD HER DUE
5 PROCESS.

6 SHE WAS REPRESENTED BY PRIVATE COUNSEL AT ALL
7 OF THE HEARINGS, WHO MADE ARGUMENTS AND MOTIONS ON HER
8 BEHALF, WHO CALLED WITNESSES AT THE ADJUDICATION.

9 AND IF PLAINTIFF'S ARGUMENT NOW IS INEFFECTIVE
10 ASSISTANCE OF COUNSEL, THEN THAT WOULD BE AN
11 INTERVENING SUPERSEDING CAUSE, BREAKING THE CHAIN OF
12 CAUSATION TO FIND THE COUNTY DEFENDANTS LIABLE FOR THAT
13 WHICH SHE ALREADY KNEW ABOUT IN THE UNDERLYING
14 DEPENDENCY MATTER.

15 THE COURT: ALL RIGHT.

16 MR. MCMILLAN: YOUR HONOR, JUST VERY BRIEFLY,
17 FIRST OF ALL, SUPERSEDING INTERVENING CAUSE IN A
18 NEGLIGENCE CASE, AND I HAVEN'T DONE A LOT OF NEGLIGENCE
19 CASES, SO I'M JUST REMEMBERING THIS ALMOST FROM LAW
20 SCHOOL, MAYBE A LITTLE BIT LATER, BUT THIRD-PARTY
21 NEGLIGENCE IS ALWAYS FORESEEABLE.

22 THAT'S THE BLACK-LETTER LAW THAT I SEEM TO
23 RECALL, AND WHEN YOU'RE LOOKING AT INEFFECTIVE
24 ASSISTANCE OF COUNSEL -- I DON'T KNOW THAT WE'RE
25 NECESSARILY MAKING THAT ARGUMENT HERE -- WHEN YOU'RE
26 LOOKING AT INEFFECTIVE ASSISTANCE OF COUNSEL,
27 ESSENTIALLY WHAT YOU'RE SAYING IS THAT THE ATTORNEY WAS
28 NEGLIGENT.

1 SO AGAIN, GOING BACK TO -- AND I HAVEN'T DONE
2 THE RESEARCH ON THIS -- I PROBABLY SHOULD, AND COULD,
3 MAYBE TOMORROW WHILE -- I DON'T THINK WE ADDRESSED THAT
4 IN OUR SUPERSEDING CAUSE, INTERVENING CAUSE BRIEF.

5 I WAS THINKING THAT WHEN THEY SAID THAT
6 YESTERDAY IT WAS ON A DIFFERENT ISSUE. SO I HAVEN'T
7 ADDRESSED -- FRANKLY, LAST NIGHT, I COULDN'T EVEN FIND
8 THE WORDS IN THEIR BRIEF, AND WE'VE NOW FOUND IT.

9 SO WE DIDN'T BRIEF YOUR HONOR ON THE ISSUE OF
10 NEGLIGENCE, AND HOW THAT MAY BE -- OR RATHER,
11 THIRD-PARTY NEGLIGENCE ALWAYS BEING FORESEEABLE AND NOT
12 CUTTING THE CHAIN OF CAUSATION IN A STANDARD NEGLIGENCE
13 CLAIM.

14 AND ANOTHER THING THAT BEARS MENTION, IS --
15 AND WE HAVE BRIEFING ON THIS, THAT WE CAN FILE AT YOUR
16 HONOR'S REQUEST -- THAT A 1983 ACTION IS IN THE NATURE
17 OF INTENTIONAL TORT.

18 AND STANDARD NEGLIGENCE DEFENSES DO NOT APPLY
19 TO A 1983 ACTION, SO -- ALTHOUGH I DON'T HAVE THAT CASE
20 LAW IN MY HEAD, AT MY FINGERTIPS BECAUSE THE ISSUE
21 DOESN'T COME UP VERY FREQUENTLY, I CAN GET BRIEFING ON
22 THAT ISSUE AS WELL IF YOUR HONOR WOULD LIKE IT.

23 THE COURT: I REALLY DON'T THINK I'M GOING TO
24 NEED IT, AND -- BUT I WILL SAY THAT I THINK THERE IS --
25 THAT THE GROUND ASSERTED IN THE MOTION FOR NONSUIT OF
26 THE CLAIMS FOR -- OF DECEPTIVE INFORMATION IS DIFFERENT
27 FROM WHAT IS ARGUED IN THE SUPPORTING POINTS AND
28 AUTHORITIES.

1 YOU DO MAKE THE ARGUMENT IN THE POINTS AND
2 AUTHORITIES THEMSELVES ON THIS ISSUE ABOUT JUDICIAL
3 DECEPTION THAT YOU JUST STATED.

4 AND -- SO, WHAT YOU'RE TELLING ME IS THAT IN
5 THE NOTICE OF THE GROUND FOR THE MOTION FOR NONSUIT,
6 WHICH IS PARAGRAPH C ON PAGE 2 OF YOUR MOTION IS NOT,
7 IN FACT, THE BASIS OF YOUR MOTION FOR NONSUIT ON THE
8 CAUSES OF ACTION FOR DECEPTIVE INFORMATION.

9 THEN I'LL HAVE TO CONSIDER FURTHER THE
10 ARGUMENT. BUT IT'S THE MOVING PARTY'S -- ANY, IN ANY
11 MOTION, IT'S THE MOVING PARTY'S OBLIGATION TO STATE THE
12 GROUNDS FOR THE MOTION, AND YOU ARGUED DIFFERENT
13 GROUNDS THAN YOU BASED THE MOTION ON.

14 AND ON THAT GROUNDS ALONE, I BELIEVE THAT THE
15 MOTION SHOULD BE DENIED FOR THE REASON I STATED. I
16 THINK THAT THE ARGUMENT YOU PRESENTED WAS NOT
17 SUPPORTIVE OF THE GROUND.

18 AND I THINK THE GROUNDS AS FAR AS I'VE STATED
19 IS A FACTUAL ISSUE. SO I UNDERSTAND WHAT YOU'RE
20 SAYING, BUT I DON'T THINK THAT THAT WILL HAVE AN EFFECT
21 ON WHAT I FEEL I NEED TO DO.

22 I THINK YOU'RE BOUND BY THE GROUNDS YOU'VE
23 STATED.

24 MS. SWISS: UNDERSTOOD.

25 THE COURT: ALL RIGHT. I STILL HAVE THE ISSUE
26 PERTAINING TO THE ADA AND REHAB ACT CLAIMS, AND I DO
27 HAVE THE BRIEF. I WILL READ IT WHEN I GET A CHANCE.

28 I WILL NOT HAVE A CHANCE TO READ IT DURING THE

1 DAY TODAY BECAUSE I HAVE A MANDATARY MEETING WHICH WILL
2 TAKE THE ENTIRE NOON HOUR. SO I WON'T HAVE A CHANCE TO
3 CONSIDER THAT UNTIL SOMETIME TONIGHT.

4 SO I'LL STILL HAVE TO DEFER ON THAT ONE.

5 MR. GUTERRES: YOUR HONOR, SO, JUST FOR
6 SCHEDULING PURPOSES, BASED ON THE COMMENTS FROM THE
7 COURT ON MONDAY, WE UNDERSTOOD THAT WE WERE GOING TO BE
8 DARK ONE ADDITIONAL DAY THIS WEEK.

9 THE COURT: CORRECT.

10 MR. GUTERRES: SO IN LIGHT OF THAT, WE'VE
11 ARRANGED IT SUCH THAT WE WOULD NOT HAVE WITNESSES ON
12 FRIDAY, WITH THE INTENT OF BEING DARK ON FRIDAY, AND I
13 DID COMMUNICATE THAT TO THE PLAINTIFF'S ATTORNEY SO
14 THAT WE COULD ADDRESS SOME OF THAT.

15 WE ALSO INTEND TO HAVE OUR BRIEFS IN TO THE
16 COURT SOMETIME THIS MORNING.

17 WE THOUGHT WE'D BE ABLE TO GET IT IN WHEN WE
18 CAME IN THIS MORNING, BUT UNFORTUNATELY WE HAD A COUPLE
19 OF TECHNOLOGICAL GLITCHES, AND HAVING BEEN COMPLETED,
20 THEY SHOULD BE IN THIS MORNING TO THE COURT.

21 THE COURT: THAT'S FINE. I HAVE BEEN
22 WORKING -- I DON'T WANT TO MAKE IT SOUND LIKE I'VE BEEN
23 SLAVING OVER A HOT STOVE OVER THIS BUT I HAVE BEEN
24 LOOKING AT IT, AND THAT'S WHY I'M GOING TO HAVE A
25 DISCUSSION IN A MOMENT TO MAKE SURE THAT I AM -- WILL
26 KNOW EXACTLY WHAT THE CLAIMS ARE.

27 AND I THINK I DO. I JUST WANT TO MAKE SURE
28 THAT I DO. SO I UNDERSTAND THAT. ANY ARGUMENT THAT WE

1 WOULD HAVE ON THOSE ISSUES IS PART OF WHAT I WOULD
2 EXPECT TO DO FRIDAY THIS WEEK, AMONG OTHER THINGS.

3 MR. PRAGER: YOUR HONOR, FOR THE EASE OF THE
4 READER, WHICH IS YOU, IF I COULD JUST EXPLAIN ONE THING
5 ON THE INFORMATION THAT'S BEEN GIVEN TO YOU THIS
6 MORNING.

7 THERE WAS A PATTERN IN THE DEPOSITIONS THAT
8 WERE READ, THAT'S BEFORE YOU IN THE EVIDENCE. AS
9 YOU'RE AWARE, THE CIVIL RIGHTS UNIT FROM THE COUNTY
10 TRANSMITTED INFORMATION TO THE STATE AS THEY'RE
11 REQUIRED TO DO.

12 WHEN YOU READ THE DEPO EXCERPTS THAT WERE READ
13 TO THE JURY, THE PATTERN IS: THE QUESTION IS ASKED
14 ABOUT A PORTION OF EACH CIVIL RIGHTS REPORT, AND THEN
15 THE WITNESS IS ASKED TO CONFIRM SOME STATEMENT FROM THE
16 CIVIL RIGHTS FINDINGS IN THE REPORTS.

17 AND THEN THAT THE INFORMATION WAS TRANSMITTED
18 TO THE STATE. AND THEN THAT THE WITNESS BELIEVED THE
19 INFORMATION TO BE TRUE WHEN IT WAS TRANSMITTED TO THE
20 STATE.

21 SO WHEN YOU READ THAT, SO WE'RE CLEAR, WE VIEW
22 THAT AS AN INDEPENDENT PIECE OF EVIDENCE TO SUPPORT THE
23 COUNSEL BELIEVED THAT INFORMATION TO BE TRUE BECAUSE
24 THEY SAID SO, AND THEY ALSO GAVE IT TO THE STATE.

25 BUT JUST FOR YOUR EDIFICATION, WHEN YOU READ
26 IT, WHY IS IT IN THIS PATTERN. I'M JUST TELLING YOU
27 THAT SO YOU UNDERSTAND.

28 THE COURT: ALL RIGHT. THANK YOU. I THINK I

1 WOULD HAVE UNDERSTOOD THAT. BUT IT MAKES SURE THAT I
2 WILL. THAT'S FINE.

3 ALL RIGHT, NOW, THE -- WHAT I WANTED TO DO IS
4 TO -- I TOOK A LOOK AT -- AND WHOEVER THIS SHOULD BE
5 DIRECTED TO, I'M DIRECTING IT TO MS. CHUNG BECAUSE I
6 THINK SHE'S ONE THAT'S BEEN WORKING ON IT, BUT WHOEVER
7 ELSE HAS WORKED ON IT CAN LET ME KNOW.

8 WHAT WE -- I HAVE THE UPDATED LIST THAT
9 MS. CHUNG, THAT YOU PROVIDED TO US ON MONDAY, OF THE
10 CLAIMED DEFECTS. AND I HAD JUST A COUPLE OF QUESTIONS
11 I WANTED TO ASK ABOUT THAT TO MAKE SURE THAT I
12 UNDERSTAND THE DOCUMENT.

13 MS. CHUNG: CERTAINLY, YOUR HONOR.

14 THE COURT: AND YOU'VE GOT IT RIGHT IN FRONT
15 OF YOU?

16 MS. CHUNG: YES.

17 THE COURT: OKAY. SO IN THE FIRST PART
18 BEGINNING ON WHAT IS NOW PAGE 1, WE HAVE NUMBERS ONE
19 ET CETERA. AND THESE ARE THE PURPORTED AND CLAIMED
20 EITHER FABRICATIONS OR INCOMPLETE STATEMENTS IN THE
21 DETENTION REPORT ITSELF. RIGHT?

22 MS. CHUNG: YES, YOUR HONOR.

23 THE COURT: THEN WE GET OVER ON PAGE 3 WHERE
24 YOU HAVE THE CAPTION OF DETENTION HEARING. AND THE
25 QUESTION I HAD ABOUT THAT IS, THE ITEMS LISTED FOR THE
26 DETENTION HEARING APPEAR TO ME TO BE POINTS OR
27 STATEMENTS MADE BY THE COURT IN MAKING ITS DECISION.

28 MS. CHUNG: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: OKAY. AND IS THE REASON YOU'RE
2 FURNISHING THAT TO ME IS FOR AT LEAST THE PURPOSE OF
3 INDICATING WHAT THE COURT HAS RELIED ON IN MAKING ITS
4 DECISION?

5 MS. CHUNG: YES, THAT WAS OUR INTENT.

6 THE COURT: OKAY. BECAUSE I WON'T DECIDE
7 WHETHER THE COURT WAS RIGHT OR WRONG IN WHAT IT SAID.

8 AND THAT'S WHY I WANTED TO MAKE SURE THAT YOU
9 CITED THESE TO ME TO SHOW ME THERE WAS A DETENTION
10 REPORT, THEY HAVE THE HEARING, AND THEN THE JUDGE PUTS
11 ON THE RECORD THEIR DECISION.

12 AND THESE ARE POINTS MADE BY THE JUDGE WHICH
13 YOU THINK REFLECT THE -- EITHER WRONG INFORMATION, IN
14 OTHER WORDS, SOMETHING HAD BEEN SAID THAT WAS NOT TRUE.
15 OR SOMETHING THAT WAS -- OR SOMETHING HAD BEEN OMITTED.

16 MS. CHUNG: BASICALLY, YOU'RE CORRECT. AND I
17 WOULD ONLY ADD THAT IT'S ALSO THE BASIS THAT THE COURT
18 SAID, "BECAUSE OF THESE REASONS, I FIND SUBSTANTIAL --"

19 THE COURT: ALL RIGHT.

20 MS. CHUNG: "-- REASONS TO DETAIN THIS CHILD."

21 THE COURT: ALL RIGHT.

22 MS. CHUNG: SO NOT JUST WITH REGARDS TO THE
23 COURT'S RELIANCE, BUT ALSO --

24 THE COURT: YEAH. SO THESE ARE THINGS STATED
25 BY THE COURT WHICH YOU THINK ARE INCORRECT CONCLUSIONS
26 BASED ON DECEPTIVE INFORMATION.

27 MS. CHUNG: YES, YOUR HONOR.

28 THE COURT: ALL RIGHT. SO I DO UNDERSTAND

1 THAT.

2 AND THEN WHEN WE BEGIN OVER ON PAGE 6 WITH
3 WHAT IS PARAGRAPH 21, THE -- THERE'S A LISTING OF
4 THINGS WHICH IS DECEPTIVE INFORMATION WHICH YOU FEEL
5 WERE PROVIDED FOR THAT JURISDICTION.

6 AND THE JURISDICTION REPORT FOR THE HEARING
7 WAS HELD, I THINK IT WAS JANUARY 4TH.

8 MS. CHUNG: JANUARY 4, 2010, AS WELL AS THE
9 FINAL DISPOSITION HEARING.

10 THE COURT: OKAY.

11 MS. CHUNG: IN AUGUST.

12 THE COURT: SO FOR BOTH OF THOSE HEARINGS.

13 MS. CHUNG: YES. I COMBINED THOSE, YOUR
14 HONOR.

15 THE COURT: OKAY. THAT'S GOOD. SO I DO
16 UNDERSTAND.

17 NOW, WHAT I DID WAS GO THROUGH THIS, AND THEN
18 COMPARED IT TO THE PRIOR LISTING THAT I HAD GOTTEN,
19 WHICH WAS ON OCTOBER 14TH. AND IF YOU RECALL, ON THAT
20 DATE, YOU GAVE US TWO DOCUMENTS.

21 ONE WHICH WAS THE -- I THINK A MORE DETAILED
22 AND -- THE DETAILED INFORMATION THAT SUPPORTED THE LIST
23 WHICH YOU HAD PUT TOGETHER.

24 DO YOU FOLLOW WHAT I'M SAYING?

25 MS. CHUNG: YES, YOUR HONOR.

26 THE COURT: SO ONE OF THEM -- AND I REMEMBER
27 AT THE TIME, AND I KNOW YOU DO TOO, THAT WHAT YOU DID
28 WAS PUT TOGETHER IN THE -- WHAT'S -- APPEARS TO HAVE

1 BEEN TITLED, "PLAINTIFF'S INDEX OF MATERIAL OR FALSE
2 STATEMENTS" ET CETERA.

3 YOU'VE GIVEN A GREAT DEAL OF DETAIL ABOUT WHAT
4 WAS SAID AND WHAT WAS ERRONEOUS, ET CETERA.

5 AND THEN WHAT YOU DID TO HOPEFULLY ASSIST ME
6 WAS THEN, IN THE OTHER DOCUMENT, THE LIST IS JUST --
7 GIVE A LIST OF THE ISSUES ABOUT DECEPTIVE EVIDENCE IN A
8 SUMMARY FORM TO MAKE IT EASIER TO BE ABLE -- TO BE ABLE
9 TO EXTRACT THOSE FROM THE MORE COMPLETE INFORMATION.

10 MS. CHUNG: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. SO MY QUESTION IS, IS
12 WHAT I GOT FROM YOU ON MONDAY, THE ONE WE JUST TALKED
13 ABOUT, DOES THAT COVER EVERYTHING THAT'S IN WHAT YOU
14 SUBMITTED TO ME ON OCTOBER 14TH?

15 MS. CHUNG: YES, YOUR HONOR.

16 THE COURT: IT DOES?

17 MS. CHUNG: YES.

18 THE COURT: SO THE DOCUMENT THAT I WILL WORK
19 FROM IN MAKING THE DECISIONS PERTAINING TO DECEPTIVE
20 INFORMATION FOR THE RETENTION HEARING, EXCUSE ME,
21 DETENTION HEARING --

22 JURISDICTION HEARING ON JANUARY 4TH, AND THE
23 DISPOSITION HEARING WHICH I THINK WAS AUGUST 9TH OF
24 2010. THE LATEST ONE IS THE SUMMARY THAT I'M TO WORK
25 FROM.

26 MS. CHUNG: FROM MONDAY'S FILING, YES.

27 THE COURT: OKAY. THAT'S GOOD. WELL, THAT'S
28 WHAT I UNDERSTOOD, AND I JUST WANTED TO MAKE SURE THAT

1 I DID UNDERSTAND.

2 MR. MCMILLAN: YOUR HONOR, I THINK YOUR
3 UNDERSTANDING IS CORRECT.

4 I JUST WANT TO MAKE IT CLEAR FOR THE RECORD,
5 THOUGH, THAT WHATEVER THE COURT'S DETERMINATION, THE
6 EARLIER INDEX THAT'S MORE DETAILED WITH THE SUPPORTING
7 EVIDENCE, PLAINTIFF, IT'S NOT OUR INTENTION TO WITHDRAW
8 THAT.

9 BECAUSE IT'S, YOU KNOW, REPRESENTATIVE OF WORK
10 THAT WILL PROBABLY NEED TO BE DONE.

11 THE COURT: ALL RIGHT. WELL, THIS IS WHY I'M
12 ASKING THE QUESTIONS I'M ASKING.

13 MR. MCMILLAN: SURE.

14 THE COURT: I'M TRYING TO NOT HAVE A MOVING
15 TARGET.

16 MR. MCMILLAN: I COMPLETELY UNDERSTAND.

17 THE COURT: AND SO I WANT TO KNOW IF WHAT I
18 GOT ON MONDAY IS THE CLAIMED DECEPTIVE INFORMATION,
19 WHETHER IT'S A MISSTATEMENT OF THE TRUTH OR INCOMPLETE
20 OR WHATEVER.

21 BUT THIS IS THE LIST OF THOSE. THERE'S A
22 NUMBER OF THEM. AND IT GOES TO, WHAT, 49 DIFFERENT
23 INSTANCES CITED TO ME THAT WOULD COVER THOSE THREE
24 HEARINGS.

25 MR. MCMILLAN: I BELIEVE THAT IS CORRECT. IS
26 THAT THE CURRENT ONE YOU'RE WORKING WITH, AS MS. CHUNG
27 HAS STATED, IS THE SUMMARY OF ALL THE OTHER STUFF THAT
28 CAME BEFORE IT, OR SHOULD BE?

1 MS. CHUNG: IT IS THE SUMMARY, YOUR HONOR.
2 IT'S -- THE MOST COMPREHENSIVE LIST WE HAVE IS THE ONE
3 YOU'RE REFERRING TO, NOTWITHSTANDING THE ACTUAL
4 EVIDENCE, CITATIONS PREVIOUSLY FILED THAT MR. MCMILLAN
5 IS REFERRING TO.

6 THE COURT: ALL RIGHT. SO WHAT YOU'RE TELLING
7 ME IS, IF ANY OF THESE, IF I WANT TO SEE MORE DETAILED
8 INFORMATION, THAT I CAN LOOK BACK IN SOMETHING ELSE
9 THAT I'VE RECEIVED PREVIOUSLY.

10 MR. MCMILLAN: EXACTLY. IF YOUR HONOR FEELS
11 THAT YOU NEED MORE INFORMATION THAN WHAT'S IN THE
12 CURRENT, THEN, YOU'VE GOT IT.

13 THE COURT: IT'S THERE SOMEWHERE. SEVERAL --
14 IN FACT, I DON'T THINK, I MAY NOT HAVE BROUGHT IT OUT
15 ON BENCH WITH ME, BUT THERE WERE OTHER FILINGS WHICH
16 DID -- WHICH WERE RATHER THICK, BUT THEY WERE
17 PRESENTING THE UNDERLYING EVIDENCE THAT YOU'RE RELYING
18 ON FOR MUCH OF THIS.

19 MR. MCMILLAN: THAT'S CORRECT.

20 THE COURT: SO WHAT YOU'RE SAYING IS, IF I
21 HAVE A QUESTION ABOUT THAT, THEN I COULD LOOK BACK AT
22 THE EARLIER FILING.

23 MR. MCMILLAN: EXACTLY.

24 MS. CHUNG: CORRECT.

25 THE COURT: OKAY. I DO UNDERSTAND. I WANT TO
26 MAKE SURE I DID, BUT I'M SURE THE DEFENSE WOULD ALSO
27 HAVE THAT...

28 MR. GUTERRES: WE DO APPRECIATE THE COURT'S

1 CLARIFICATION ON THAT SO THAT WE ALSO KNOW WHAT
2 DOCUMENTS TO BE LOOKING AT.

3 THE COURT: WHAT THE TARGET IS.

4 MR. GUTERRES: EXACTLY.

5 THE COURT: ALL RIGHT. THIS THEN GETS -- IT'S
6 GOING TO BE TIME TO START, AND WE HAVEN'T TALKED ABOUT
7 EXHIBITS YET. BUT I WANT TO FINISH UP.

8 I THINK THAT THERE ARE -- THAT WE NEED TO GET
9 BACK TO A VERDICT FORM NOW. WE DON'T -- YOU DO NOT YET
10 HAVE ALL THE RULINGS.

11 WE DON'T KNOW YET WHAT THE RULING WOULD BE AS
12 TO THE TWO CLAIMS, THE TWO CAUSES OF ACTION FOR
13 DECEPTIVE INFORMATION. WHATEVER -- WHATEVER THE CAUSE
14 OF ACTION IS FOR DECEPTIVE INFORMATION.

15 AND SO WE DON'T KNOW WHETHER THAT'S -- WHAT
16 WILL HAPPEN WITH THAT. AND WE ALSO DO NOT YET HAVE A
17 RULING ON THE MOTION FOR NONSUIT OVER THE TWO -- THE
18 CLAIMS ARISING FROM THE ADA AND THE REHAB ACT.

19 NEVERTHELESS, WE DO KNOW THAT THE CAUSE OF
20 ACTION FOR WARRANTLESS DETAINMENT OF THE CHILD WILL
21 BE IN, WE KNOW THAT THE CLAIM FOR INTENTIONAL
22 INFLECTION IS GOING TO BE IN, AND WE KNOW THAT THE
23 CLAIM BASED ON THE UNRUH ACT WILL BE IN.

24 AND I KNOW THAT THE DEFENSE PROVIDED, A FEW
25 DAYS AGO, AN UPDATED SUGGESTED VERDICT FORM. AND I
26 HONESTLY HAVEN'T LOOKED AT IT. I'VE BEEN LOOKING AT
27 THESE OTHER -- THE DOCUMENTS ON THESE OTHER ISSUES.

28 AND SO IT MAY BE THAT YOU'VE ALREADY ADDRESSED

1 THAT. BUT I THINK THAT WE NEED NOW -- BECAUSE WE'RE
2 GOING TO BE, AGAIN, SHORT ON -- NOT SHORT ON TIME, BUT
3 WE'RE GOING TO HAVE TIME ISSUES WITH THE VERDICT FORM
4 AND INSTRUCTIONS.

5 AND SO IT WOULD SEEM TO ME THAT FOR THE CAUSES
6 OF ACTION THAT WE KNOW WOULD GO TO THE JURY, WHICH
7 RIGHT NOW ARE THE ONE ON THE WARRANTLESS SEIZURE, THE
8 INTENTIONAL INFLICTION, AND THE UNRUH ACT, THAT YOU
9 SHOULD BE LOOKING AT WHAT THE QUESTIONS SHOULD BE IN
10 THE VERDICT FORM, AND THEN WHAT INSTRUCTIONS SHOULD BE
11 GIVEN THAT RELATE TO THOSE THREE CAUSES OF ACTION.

12 AND WE'LL DO THIS SERIALLY AFTER THE DECISION
13 IS MADE AS TO WHETHER OR NOT THE CLAIMS FOR DECEPTIVE
14 INFORMATION WILL BE INCLUDED, AND THEN ALSO THE ONES
15 OVER THE DISCRIMINATION CLAIMS.

16 DOES EVERYONE UNDERSTAND WHAT I'M TALKING
17 ABOUT? SO I NEED TO HAVE EVERYBODY START LOOKING AT
18 THAT BECAUSE WE CAN DO THIS SERIALLY.

19 WE DON'T HAVE TO HAVE A DECISION ON EVERYTHING
20 TO BE ABLE TO PUT THE CAUSES OF ACTION IN THE VERDICT
21 FORM, WHAT THE QUESTIONS SHOULD BE. AND I WILL -- I
22 WILL BE LOOKING AT THAT AS WELL. I GUESS, AGAIN
23 TONIGHT WOULD BE THE EARLIEST THAT I CAN DO IT.

24 BECAUSE I HAVE A PRETTY GOOD IDEA, IN FACT,
25 I'VE ALREADY MADE A LISTING OF WHAT I -- I THINK THE
26 QUESTIONS THAT ARE IN THE LAST VERDICT FORM WE DID,
27 WHICH WE AGREED REPRESENTED THE STRUCTURE WITHOUT
28 NECESSARILY THE DETAIL OF WHAT THE QUESTIONS SHOULD BE

1 ON THOSE CAUSES OF ACTION IN THE VERDICT FORM.

2 AND I'VE ALSO MADE A LIST OF WHAT CACI
3 INSTRUCTIONS SHOULD BE GIVEN. AND SO THE QUESTION THEN
4 WOULD BECOME, FOR THE MOMENT, WHAT CACI INSTRUCTIONS
5 SHOULD BE GIVEN.

6 AND IF CACI INSTRUCTIONS DON'T COVER ALL THE
7 ISSUES FOR THOSE CAUSES OF ACTION, THEN YOU SHOULD BE
8 PREPARED TO SHOW ME WHICH OF YOUR SPECIAL INSTRUCTIONS
9 SHOULD HAVE BEEN GIVEN.

10 NOW, I DO KNOW THAT IN THE JURY INSTRUCTIONS,
11 THE LAST GROUP THAT I RECEIVED FROM THE PLAINTIFF, YOU
12 DID BREAK THEM DOWN INTO CATEGORIES OF -- THERE WERE 5
13 OR 6 DIFFERENT GROUPINGS OF INSTRUCTIONS, AND IF THAT'S
14 WHERE YOU'RE AT ON THAT, THAT'S FINE.

15 YOU DON'T HAVE TO DO ANYMORE.

16 MR. MCMILLAN: RIGHT. WE HAVEN'T SINCE -- I
17 DON'T RECALL EXACTLY WHEN OUR LAST CHAMBERS CONFERENCE
18 WAS, AND THEN WE MET AND CONFERRED, MR. DANER CAME UP,
19 AND WE WENT THROUGH THE STRUCTURE OF HOW WE THOUGHT
20 YOUR HONOR WANTED IT.

21 AND, FRANKLY, SINCE THEN, WE -- SINCE THE
22 FINAL VERSION OF THE STRUCTURE, REPRESENTATIVE
23 STRUCTURE OF THE VERDICT FORM WAS FILED, OR -- I DON'T
24 THINK IT WAS FILED --

25 THE COURT: I THINK IT WAS LODGED.

26 MR. MCMILLAN: RIGHT. SINCE THAT TIME, WE
27 REALLY HAVE NOT HAD A CHANCE TO REVISIT THOSE. THERE'S
28 BEEN SO MUCH OTHER STUFF GOING ON AT NIGHT.

1 THE COURT: WHY DON'T WE DO THIS, AT LEAST AS
2 A START:

3 AS TO THE THREE CAUSES, OR THE THREE CLAIMS
4 THAT WE KNOW ARE GOING TO BE INVOLVED, THE WARRANTLESS
5 DETAINMENT, THE INTENTIONAL INFLICTION, AND THE UNRUH
6 ACT, TAKE A LOOK AT THOSE.

7 LET'S GET STARTED, TAKE A LOOK AT THOSE AND
8 LET'S SEE WHAT QUESTIONS SHOULD BE ASKED AND WHAT THE
9 WORDING SHOULD BE, AND THEN WE'LL TAKE IT STEP BY STEP
10 AFTER THAT.

11 AS TO THE -- AS TO EACH OF THOSE THREE CAUSES
12 OF ACTION, THERE IS THE CACI VERDICT FORM AND, IN FACT,
13 WE WERE COMING -- YEAH, THE CACI VERDICT FORMS, AND I
14 THINK THAT YOU WORKED FROM THOSE?

15 MR. MCMILLAN: THAT'S CORRECT.

16 THE COURT: AND THERE ARE CACI INSTRUCTIONS ON
17 EACH OF THOSE CAUSES OF ACTION.

18 SO WHAT YOU SHOULD DO IS TAKE A LOOK, AND I
19 THINK THE DEFENSE HAS ALREADY DONE THIS, TAKE A LOOK AT
20 THOSE CACI INSTRUCTIONS TO MAKE SURE WHICH ONES SHOULD
21 BE GIVEN FOR THOSE CAUSES OF ACTION.

22 AND THEN IF THERE'S SOMETHING MORE THAT NEEDS
23 TO BE SAID, YOU'D BE ABLE TO POINT OUT TO ME WHAT IT
24 IS, BECAUSE THAT'S WHAT I'LL WORK ON OVER THE WEEKEND.

25 MR. MCMILLAN: WE'LL HAVE SOMETHING,
26 HOPEFULLY, WORKED UP FOR YOU SOMETIME TOMORROW, OR
27 PERHAPS -- FRIDAY, WE'RE STILL COMING TO COURT --

28 THE COURT: YOU'RE STILL GOING TO BE HERE ON

1 FRIDAY.

2 MR. MCMILLAN: WE'LL SHOOT FOR FRIDAY, YOUR
3 HONOR.

4 THE COURT: A DAY OFF IS FOR THE JURY, IT'S
5 NOT FOR THE REST OF US.

6 MR. MCMILLAN: I WAS HOPING. (LAUGHTER.)

7 SO WE'LL FOCUS ON HAVING THAT FOR YOU FRIDAY
8 MORNING. WE'LL WORK ON IT TONIGHT BECAUSE IT'S GOING
9 TO TAKE A LITTLE BIT OF TIME FOR ME TO GO THROUGH IT,
10 COGITATE ON IT A LITTLE BIT.

11 BUT PROBABLY THE MAIN FOCUS WILL BE THURSDAY
12 NIGHT.

13 THE COURT: YEAH. I'M HAVING ENOUGH TO READ
14 THAT I DON'T NECESSARILY HAVE TO HAVE YOU FILE ANYTHING
15 BECAUSE ON FRIDAY, WE CAN TAKE A LOOK AT -- FOR THE
16 QUESTIONS FOR THOSE CAUSES OF ACTION.

17 THERE SHOULDN'T BE MUCH CONTROVERSY AS TO WHAT
18 THE QUESTIONS SHOULD BE. WE'LL JUST LOOK AT THE
19 WORDING, WE MIGHT WORDSMITH A LITTLE BIT. AND THEN WE
20 CAN ALL LOOK, WE CAN ALL TOGETHER TAKE A LOOK AT THE
21 CACI INSTRUCTIONS I ALREADY HAVE.

22 SO I DON'T THINK THERE SHOULD BE A LOT OF
23 ISSUE ABOUT IT, EXCEPT MAYBE FOR THE SPECIALS THAT
24 ANYONE WANTS. I'VE ALREADY TOLD YOU, I'M NOT INTO
25 SPECIAL INSTRUCTIONS.

26 BUT THERE ARE SOME TIMES THERE SIMPLY IS NOT A
27 CACI INSTRUCTION ON POINT. AND IT MAY BE THAT IN ANY
28 OF THOSE, WHERE SOME TERM IS USED THAT YOU FEEL NEEDS A

1 FURTHER EXPLANATION, THAT'S A GOOD TIME FOR A SPECIAL
2 INSTRUCTION IF IT NEEDS IT.

3 AND THERE MAY BE OTHER POINTS. I KNOW THAT
4 THE ONES YOU PROPOSE TO PUT INTO -- A CONSIDERABLY
5 LESSER NUMBER OF INSTRUCTIONS THAT YOU PUT INTO EACH OF
6 THOSE, I THINK THEY'RE A THROUGH E, OR SOMETHING --

7 MR. MCMILLAN: I THINK THAT'S RIGHT.

8 THE COURT: WE'LL TAKE A LOOK AT THOSE, THEN,
9 TO SEE. AND IF I -- I DON'T THINK I'LL GET -- I
10 PROBABLY WON'T HAVE A CHANCE TO WORK ON THAT UNTIL THIS
11 WEEKEND BECAUSE WE HAVE ALL THESE OTHER THINGS TO DO.

12 SO IF YOU GET THAT FAR, THEN AS SOON AS WE GET
13 A DECISION ON THE CAUSES OF ACTION, WE MIGHT --

14 I HOPE TO HAVE A DECISION FOR YOU BY TOMORROW
15 MORNING ON THE DISCRIMINATION CLAIMS BECAUSE I HAVE NOW
16 THE INFORMATION --

17 MR. MCMILLAN: THE LIST.

18 THE COURT: -- YOU PROVIDED TO ME THIS
19 MORNING. AND I'LL DO THAT TONIGHT. AND THEN WE CAN GO
20 ABOUT THOSE.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 WE DO HAVE A LOT OF WORK WE'VE ALSO BEEN
23 DOING, AND, YOU KNOW, ALL THE CREDIT ON THAT GOES TO
24 MR. PARIS ON THE EVIDENCE AND THE THINGS THAT THE
25 PLAINTIFF IS EITHER WITHDRAWING OR LIMITED PURPOSE OR
26 TRYING TO PARE DOWN, WE'VE HAD DISCUSSIONS ABOUT THIS.
27 SO --

28 THE COURT: I WANTED TO GET TO THE EXHIBITS.

1 MR. MCMILLAN: YEAH. THAT'S EXACTLY WHERE I
2 WAS GOING. I KNOW THERE'S NOT A LOT OF TIME BEFORE WE
3 HAVE THE JURY COME IN. BUT THERE IS ONE IN PARTICULAR,
4 IT'S EXHIBIT NUMBER 82, AND I MAY HAVE --

5 THE COURT: DELIVERED SERVICE LOGS?

6 MR. MCMILLAN: AFFIRMATIVE. THAT'S CORRECT.

7 THE COURT: ALL RIGHT.

8 MR. MCMILLAN: AND WE SORT OF -- I HOPE THAT
9 WE UNDERSTOOD YOUR HONOR'S -- I KNOW IT WASN'T A
10 DIRECTIVE OR INSTRUCTIONS BUT IT WAS JUST SORT OF, YOU
11 KNOW, SOME DISCUSSIONS AND MUSINGS ABOUT HOW TO
12 APPROACH THE DELIVERED SERVICE LOGS, AND WHAT COMES IN
13 AND WHAT DOESN'T. AND THE FOUNDATION TO GET THAT IN.

14 THE COURT: RIGHT. FOR ENTRIES IN WHICH WE
15 HAVE TESTIMONY OF A WITNESS, THAT THAT IS AN ENTRY THEY
16 MADE, OR, IF WE HAVE TESTIMONY FROM SOMEONE AS TO AN
17 ENTRY, ONE OF THE ENTRIES THAT THEY HAD READ OR RELIED
18 UPON, THEN THOSE ENTRIES COULD BE CONSIDERED TO BE -- I
19 THINK COULD BE CONSIDERED TO BE ADMITTED FOR LIMITED
20 PURPOSE.

21 MR. MCMILLAN: RIGHT. AND WHAT WE'VE DONE IN
22 KEEPING WITH THAT -- AND AGAIN, THE CREDIT FOR THIS
23 GOES TO MR. PARIS --

24 BUT WE'VE GONE SORT OF PAINSTAKINGLY THROUGH
25 AND REDACTED FROM THE PAGES OF THE DELIVERED SERVICE
26 LOGS THAT WERE REFERENCED IN THE VIDEO DEPOSITIONS,
27 WE'VE REDACTED OUT THE INFORMATION TO WHICH NO
28 FOUNDATION HAS BEEN LAID, NOBODY'S TESTIFIED TO IT, SO

1 THAT WE DON'T HAVE TO REALLY DEAL WITH IT OR WORRY
2 ABOUT IT.

3 AND THEN LEFT IN THE STUFF AS TO WHICH WE
4 BELIEVE, IN THE DEPOSITION TESTIMONY, THERE WAS AT
5 LEAST AN ADEQUATE FOUNDATION LAID. FOR EXAMPLE,
6 MS. PENDER'S ENTRIES, OR I THINK THERE MIGHT BE SOME
7 FROM MS. ROGERS OR FROM MS. SCHEELE. I THINK THERE'S
8 ONE FROM MS. NELSON.

9 BUT IT'S ONLY THOSE THINGS AS TO WHICH, AT
10 LEAST IN THE DEPOSITION TESTIMONY WAS, IN OUR
11 ESTIMATION, ADEQUATE FOUNDATION LAID.

12 AND WE'D LIKE TO TRY TO FIGURE OUT WHETHER OR
13 NOT AT LEAST THOSE PIECES WILL BE ADMITTED FOR LIMITED
14 PURPOSE SO THAT WE'LL BE ABLE TO ACTUALLY TALK TO, I
15 THINK MS. PENDER IS THE FIRST WITNESS UP THIS MORNING,
16 LIKE TO BE ABLE TO TALK TO MS. PENDER ABOUT THOSE
17 ENTRIES.

18 THE COURT: ALL RIGHT. THE DEFENSE HAS THE
19 LIST AS WELL, AND LIKE THE REST OF US --

20 MR. GUTERRES: WE'RE NOT GOING TO BE ABLE TO
21 MAKE THAT DETERMINATION IN 5 MINUTES.

22 THE COURT: I'M SURE -- YOU, TOO, HAVE A DAY
23 JOB, AND THE EARLIEST YOU'LL HAVE A CHANCE TO LOOK AT
24 THIS WILL PROBABLY BE TONIGHT IF I CAN. BUT AT LEAST I
25 UNDERSTAND WHAT YOU'VE DONE. AND I'VE GOT IT HERE.

26 I'LL TAKE A LOOK AT IT TONIGHT IF I CAN, BUT I
27 HAVE OTHER THINGS TO BE READ, SO, SO -- BUT AT LEAST I
28 UNDERSTAND WHAT YOU'VE DONE.

1 MR. GUTERRES: BUT AS I UNDERSTAND IT, THIS IS
2 WHAT THE PLAINTIFF IS INTENDING TO DO -- USE IN LIEU OF
3 THE ACTUAL EXHIBIT 82?

4 MR. MCMILLAN: WELL, DURING THE
5 CROSS-EXAMINATIONS OF THE WITNESS, THE PARTICULAR
6 WITNESS, WE INTEND TO USE WHAT'S IN THE BOOK. RIGHT
7 NOW, WHAT WE'RE GIVING HERE IS WHAT WE'VE -- WE BELIEVE
8 WE'VE ALREADY LAID A FOUNDATION FOR.

9 THE COURT: RIGHT. REMEMBER, WE HAD THE
10 DISCUSSION THAT -- I HAVEN'T SEEN THE PRODUCT, BUT I
11 THINK WHAT IS PUT TOGETHER IS -- WHAT I SUGGESTED, WAS
12 THAT I DON'T THINK THE WHOLE SERVICE LOG COMES IN.

13 AND I MENTIONED, FOR EXAMPLE, THAT ONE, I
14 DON'T THINK THAT WE HAVE A FOUNDATION FOR EVERYTHING AS
15 TO EITHER BUSINESS RECORD.

16 AND WE ALSO MENTIONED THIS -- THE PUBLIC
17 EMPLOYEE RECORDS AS THE SUBJECT OF SECTION 1280 THAT I
18 SAID, CERTAINLY SOME OF THESE ENTRIES MAY BE ADMISSIBLE
19 FOR THE LIMITED PURPOSE OF SHOWING WHAT INFORMATION WAS
20 CONVEYED TO SOMEBODY.

21 SO MY UNDERSTANDING IN TELLING YOU THIS IS --
22 AND I DO SEE MS. SWISS THUMBING THROUGH IT -- THAT WHAT
23 THEY'VE ATTEMPTED TO PUT TOGETHER IS -- MY
24 UNDERSTANDING IS, WHAT THEY THINK, BASED ON TESTIMONY
25 THAT'S ALREADY BEEN RECEIVED -- ENTRIES FROM THE
26 SERVICE LOG THAT HAD BEEN -- THAT THERE'S AN
27 EVIDENTIARY BASIS FOR THEM TO BE RECEIVED, AT LEAST FOR
28 LIMITED PURPOSE.

1 MR. GUTERRES: UNDERSTOOD. THANK YOU, YOUR
2 HONOR.

3 THE COURT: SO WE'LL ALL TAKE A LOOK AT IT.
4 I'LL BE DOING THE SAME THING YOU ARE TONIGHT. I GUESS
5 WE WON'T WATCH ANY DEBATES TONIGHT, WILL WE.

6 MS. SWISS: WELL, I DON'T KNOW, IF THERE'S
7 ANOTHER TACKLING INCIDENT IN THE COURTROOM, WE DON'T
8 REALLY HAVE TO WATCH THE DEBATE. (LAUGHTER.)

9 THE COURT: WE WILL GET THE JURORS IN AS SOON
10 AS WE GET THEM ALL HERE. THANKS TO MR. PARIS, WE HAVE
11 A CONSIDERABLY PARED-DOWN LIST.

12 AND I HAD SUGGESTED MAYBE THERE -- WE MIGHT BE
13 ABLE TO IDENTIFY CATEGORIES OF -- WHAT I THINK WE
14 DID -- AS WE DID YESTERDAY MORNING AND THE MORNING
15 BEFORE, BROAD CATEGORIES OF DOCUMENTS WHERE I CAN MAKE
16 THE DETERMINATION OF WHETHER SUCH DOCUMENTS WILL BE
17 RECEIVED OR NOT.

18 SO, WERE WE ABLE TO IDENTIFY CATEGORIES OR
19 DO -- WHETHER WE NEED TO GO THROUGH THEM INDIVIDUALLY?

20 MR. PARIS: JUST AS AN INITIAL MATTER, I
21 BELIEVE THERE ARE TWO EXHIBITS FROM THIS LIST THAT
22 PLAINTIFF IS PREPARED TO WITHDRAW RIGHT NOW.

23 THE COURT: ALL RIGHT. WHICH ONES ARE THOSE?

24 MR. PARIS: THAT WOULD BE 85, THE SINGLE PAGE
25 IDENTIFIED AS BATES NUMBER 1600.

26 THE COURT: GOT IT. WITHDRAWN.

27 MR. PARIS: AND EXHIBIT 692, IDENTIFIED AS
28 EXHIBIT 5 TO THE DEPOSITION OF DR. BERKOWITZ,

1 HARBOR-UCLA MEDICAL CENTER RECORDS.

2 THE COURT: ALL RIGHT. SO 692 WILL BE
3 WITHDRAWN TOO?

4 MR. PARIS: THAT'S CORRECT. AS FOR THE
5 CATEGORIES, WE DIDN'T GOT A LOT OF THAT -- THERE WERE A
6 COUPLE OF CATEGORIES OF EXHIBITS, ONE BEING THE DAMAGES
7 EXHIBITS AT 599, 600, AND 603, CONSISTING LARGELY OF
8 RECEIPTS.

9 WE HAVEN'T FINISHED THE PROCESS OF FIGURING
10 OUT IF THERE ARE PAGES IN THERE THAT MAY NOT BE --

11 THE COURT: WELL, REMEMBER WE HAD THAT
12 DISCUSSION, AND THERE ARE A LOT OF DOCUMENTS IN THERE,
13 I UNDERSTAND THAT, AND MY INDICATION ON THAT WAS AS
14 LONG AS THERE IS EITHER A RECEIPT OR BILLING OR
15 EVIDENCE OF PAYMENT, THAT I THINK THOSE COULD BE
16 CONSIDERED.

17 BUT THERE ARE A LOT OF DOCUMENTS IN THERE, AND
18 I'M NOT SURE ALL OF THOSE DOCUMENTS WOULD FALL INTO
19 THOSE CATEGORIES. BUT I THINK THOSE ARE THE ONES THAT
20 COULD BE OFFERED.

21 AND AS I HAVE WITH OTHERS, IF IT'S AN ACTUAL
22 BILL OR RECEIPT, I WILL -- OR EVIDENCE OF PAYMENT --
23 THAT I WILL PROBABLY ADMIT THOSE. SO THAT'S 599, 600,
24 AND 603.

25 AND SO I'VE INDICATED TO YOU AS TO THAT -- HOW
26 I WILL APPROACH IT. DO YOU HAVE SOME OTHER GROUPINGS?

27 MR. MCMILLAN: YOUR HONOR, I THINK THAT WAS
28 THE -- IT FOR THE GROUPINGS. WE WERE WORKING PRETTY

1 HARD LAST NIGHT ON EXHIBIT 82 AND DECIDING WHETHER OR
2 NOT -- OH, YEAH.

3 THERE'S ALSO -- SOME OF THE EXHIBITS WE'VE
4 ALREADY DISCUSSED THAT WE'RE GOING TO TRY TO PARE DOWN
5 TO -- I THINK IT WAS SPECIFICALLY EXHIBIT NUMBER 24,
6 THAT'S 372 PAGES.

7 THE COURT: YES.

8 MR. MCMILLAN: AND THEN THERE'S EXHIBIT 3. I
9 DON'T RECALL WHAT THAT WAS. IT MIGHT HAVE BEEN THE
10 METHODIST BIRTH RECORDS, AND THAT WAS ANOTHER HUNDRED
11 OR SO PAGES OR SOMETHING.

12 I DON'T RECALL EXACTLY.

13 THE COURT: I KNOW WE GOT THEM FROM THE LIST
14 TOO, BUT IT WAS PAGES 840 THROUGH 872.

15 MR. MCMILLAN: OKAY. SO IT'S, LIKE, 32 PAGES?

16 THE COURT: YES. AND IT WAS RECEIVED.

17 MR. MCMILLAN: RIGHT. WE WERE LOOKING AT
18 WITHDRAWING THAT, AND WITHDRAWING SUBSTANTIALLY A LOT
19 OUT OF 24.

20 THERE ARE SOME PIECES OF 24 THAT PLAINTIFF
21 WOULD WANT TO KEEP. SPECIFICALLY, THEY'RE THE PORTIONS
22 OF EXHIBIT 24 THAT WERE ACTUALLY ADMITTED INTO EVIDENCE
23 IN THE UNDERLYING JUVENILE TRIAL.

24 AND IT'S, I BELIEVE IT'S 4 OR 5 DOCUMENTS, I
25 DON'T RECALL OFF THE TOP OF MY HEAD. WE'RE STILL
26 WORKING ON THAT. AND WE'RE HOPING THAT -- THERE'S JUST
27 A LOT THERE. AND WE'RE HOPING TO HAVE IT DONE MAYBE
28 TONIGHT.

1 THE COURT: ALL RIGHT. YOU CAN CHAIN
2 MR. PARIS UP IN THAT -- THE REST OF YOU GO HOME OVER
3 THE WEEKEND. (LAUGHTER.)

4 MR. MCMILLAN: THAT'S WHAT I WAS THINKING.

5 THE COURT: I'M NOT VOLUNTEERING YOU FOR THAT,
6 MR. PARIS. THAT'S UP TO YOUR TEAM.

7 MR. PARIS: THANK YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT. WELL, I'M NOT SURE IF
9 THERE'S -- WELL, JUST LOOKING, 82, I KNOW IS -- THAT'S
10 WHAT'S IN PLAY.

11 ON THE LIST WE HAVE IS 52, BEGINNING WITH
12 THAT, THE LETTER FROM DR. EGGE TO DCFS, DATED
13 JUNE 11TH. THAT ACTUALLY WAS IDENTIFIED BY THE
14 DEFENDANT. THAT'S BEING OFFERED INTO EVIDENCE?

15 MR. MCMILLAN: NOT BY US.

16 THE COURT: NOT BY --

17 MR. GUTERRES: THE DEFENSE WILL OFFER IT INTO
18 EVIDENCE, YOUR HONOR.

19 THE COURT: ALL RIGHT. ANY OBJECTION TO IT?

20 MR. MCMILLAN: IT'S HEARSAY, IT'S BASED ON
21 HEARSAY, AND THERE'S BEEN NO FOUNDATION LAID FOR IT, TO
22 DATE.

23 THE COURT: ALL RIGHT. MR. GUTERRES, THE
24 PURPOSE OF THIS EXHIBIT IS TO SHOW INFORMATION THAT WAS
25 PROVIDED TO DCFS.

26 MR. GUTERRES: AND THE COURT, YOUR HONOR.

27 THE COURT: AND TO THE COURT.

28 MR. GUTERRES: IT'S INFORMATION THAT WAS

1 RELIED UPON BY THE SOCIAL WORKERS, WITH REGARD TO THE
2 MEDICAL INFORMATION THAT'S BEING COMMUNICATED TO THEM
3 FROM THE DOCTORS. SOCIAL WORKERS ARE RELYING ON --

4 THE COURT: I UNDERSTAND. SO IF NOTHING ELSE,
5 FOR THE LIMITED PURPOSE OF INFORMATION RELIED UPON?

6 MR. GUTERRES: ABSOLUTELY, YOUR HONOR.

7 THE COURT: WHY WOULD THAT NOT BE ADMISSIBLE
8 FOR THAT PURPOSE, MR. MCMILLAN? WE'VE ADMITTED OTHER
9 DOCUMENTS FOR THE SAME REASON, FOR THE LIMITED PURPOSE.

10 MR. MCMILLAN: SO LONG AS THERE IS THE
11 LIMITING INSTRUCTION, THEN THAT WOULD PROBABLY DEAL
12 WITH AND AMELIORATE PLAINTIFF'S CONCERNS ON THE HEARSAY
13 ISSUE. BUT THERE STILL HASN'T BEEN ANY FOUNDATION LAID
14 YET FOR THIS LETTER.

15 THE COURT: MEANING THERE'S NO EVIDENCE IT WAS
16 RECEIVED?

17 MR. MCMILLAN: I BELIEVE SO FAR THAT IS --
18 WELL, THERE IS EVIDENCE THAT IT WAS ADMITTED INTO
19 EVIDENCE BY THE JUVENILE COURT.

20 THE COURT: YES.

21 MR. MCMILLAN: SO, IN THE SENSE OF RECEIVED
22 INTO EVIDENCE, JUST ON THE FACE OF THE DOCUMENT,
23 THERE'S EVIDENCE IT WAS RECEIVED.

24 THE QUESTION IS WHETHER OR NOT IT WAS
25 SOMETHING THAT WAS ACTUALLY RECEIVED BY THE PARTICULAR
26 SOCIAL WORKER TO WHOM IT'S ADDRESSED.

27 AND WHETHER IT WAS CONSIDERED BY HER IN MAKING
28 ANY DECISIONS THAT SHE IS MAKING, OR CONSIDERED BY

1 SOMEONE ELSE IN MAKING THEIR REPRESENTATIONS OR
2 WHATEVER THEY DID IN THEIR REPORT.

3 THERE'S BEEN NO FOUNDATION LAID, FOR EXAMPLE,
4 TO SUGGEST THAT MS. NELSON EVEN READ THIS LETTER, EVER.
5 THERE'S BEEN NO FOUNDATION TO SUGGEST THAT MS. SCHEELE
6 COMMUNICATED THIS LETTER TO MS. NELSON.

7 IT'S MS. NELSON WHO DRAFTED THE JURIS DISPO
8 REPORTS AND SUBSEQUENT LAST-MINUTE INFORMATIONS
9 ET CETERA THAT WERE FILED WITH THE COURT. SO THAT IS
10 THE FOUNDATIONAL ISSUE THAT WE HAVE.

11 THE COURT: WELL, I DO NOT HAVE AN INDEPENDENT
12 MEMORY OF DEPOSITION TESTIMONY THAT MAY OR MAY NOT HAVE
13 REFERRED TO THIS LETTER. SO FOR THE MOMENT, I'LL
14 SIMPLY HAVE TO DEFER UNTIL WE SEE WHAT EVIDENCE IS
15 RECEIVED.

16 MR. GUTERRES: UNDERSTOOD, YOUR HONOR.

17 THE COURT: ALL RIGHT. NUMBER 178 IS THE
18 HARBOR REGIONAL CENTER EARLY INTERVENTION --
19 INDIVIDUALIZED FAMILY SERVICE PLAN. IS THAT BEING
20 OFFERED?

21 MR. MCMILLAN: YOUR HONOR, THIS IS ANOTHER ONE
22 OF THOSE DOCUMENTS THAT IS SORT OF HUGE. AND A LOT OF
23 IT WAS RELIED ON BY THE EXPERTS IN COMING TO THEIR
24 OPINIONS AND, ACTUALLY, THEY TESTIFIED ABOUT SOME OF
25 THESE.

26 THE COURT: THAT DOESN'T MAKE IT ADMISSIBLE.

27 MR. MCMILLAN: RIGHT. I'M JUST REFRESHING
28 YOUR HONOR'S RECOLLECTION ABOUT THE BACKGROUND, THE

1 REASON THEY'RE EVEN HERE.

2 THEY ALL PRETTY MUCH RELATE TO WHAT HAPPENED
3 WITH THE CHILD AFTER HE WAS TAKEN NOVEMBER 3RD FROM --
4 IN TERMS OF THERAPY AND THINGS LIKE THAT, AND HIS
5 EITHER IMPROVEMENT OR LACK OF IMPROVEMENT.

6 IT HAD BEEN OUR INTENTION TO GO THROUGH THIS
7 BECAUSE IT IS A PRETTY THICK DOCUMENT.

8 THE COURT: ALL RIGHT.

9 MR. MCMILLAN: AND TRY TO FIGURE OUT WHICH
10 PAGES WE NEED TO OFFER OR EVEN WANT TO OFFER. AND WE
11 HAVEN'T HAD A CHANCE ON THAT YET. BUT THAT'S ANOTHER
12 ONE THAT WE'LL BE WORKING ON THURSDAY NIGHT.

13 THE COURT: ALL RIGHT. NEXT ONE ON MY LIST IS
14 NUMBER 205, THE --

15 MR. GUTERRES: I THINK THE COURT'S ALREADY
16 RULED ON -- OR AT LEAST GIVEN US -- THAT'S ONE OF THE
17 DOCUMENTS THAT WOULD BE WITHIN THE CATEGORY OF
18 DOCUMENTS WITH REGARD TO THE DISCRIMINATION COMPLAINT.

19 THE COURT: RIGHT.

20 MS. SWISS: 205 IS THE STATE'S DOCUMENTS FROM
21 THEIR COMPUTER SYSTEM. THE OBJECTION WAS THAT IT'S
22 CUMULATIVE. MR. URQUIZO TESTIFIED AT LENGTH REGARDING
23 THOSE COMPUTER PRINTOUTS.

24 THE COURT: LET ME SEE 205, PLEASE. AND THE
25 OBJECTION TO 205 IS?

26 MS. SWISS: IT'S THAT THE DOCUMENTS CONTAIN
27 HEARSAY, AND THAT IT'S CUMULATIVE BECAUSE MR. URQUIZO
28 TESTIFIED TO THE CONTENTS OF THESE DOCUMENTS DURING HIS

1 TESTIMONY.

2 MR. PRAGER: YOUR HONOR, WE'VE --

3 MS. SWISS: IT'S ALSO GOING TO BE MISLEADING
4 WITHOUT -- BECAUSE IT DOES CONTAIN THE HEARSAY THAT'S
5 NOT EXPLAINED. PAGE 2712 IS BARELY LEGIBLE.

6 THE COURT: AND THE GROUNDS FOR ADMISSIBILITY
7 IS?

8 MR. PRAGER: IT'S A -- I'M SORRY, I'M DRAWING
9 A BLANK ON THE EVIDENCE CODE SECTION WE DISCUSSED --
10 THE PUBLIC VERSION OF THE BUSINESS RECORD.

11 THIS INFORMATION WAS RECEIVED BY THE STATE.
12 THE AUTHENTICATING DOCUMENTS FROM THE COUNTY WERE, BY
13 AND LARGE, ALL SIGNED UNDER THE PENALTY OF PERJURY.

14 THIS IS IN THE NORMAL COURSE AND SCOPE OF THIS
15 INDIVIDUAL'S DUTIES AND ASSIGNMENTS, AND THEY WERE
16 RECEIVED CONTEMPORANEOUS IN TIME.

17 AND IN TERMS OF ALSO BEING A BUSINESS RECORD,
18 THESE RECORDS WERE PRODUCED PURSUANT TO A POLICY,
19 CUSTOM AND PRACTICE, AND, IN FACT, STATUTE. THEY WERE
20 RECEIVED IN LAW. THEY SHOW DATES, TIMES, AND EVENTS
21 AND ARE RELEVANT FOR THAT PURPOSE, WHICH ARE PART OF
22 THIS CASE.

23 AND THEN, IN TERMS OF THE AUTHENTICITY OF THE
24 DOCUMENTS, THEY WERE REVIEWED WITH MR. URQUIZO FOR
25 FOUNDATION PURPOSES.

26 AND IF I COULD REMIND THE COURT, EXHIBIT 203
27 WAS THE DECLARATION FROM THE STATE, WHICH WAS ALSO
28 SIGNED BY MR. URQUIZO AS WELL. THE DECLARATION FOR THE

1 COLLECTION OF THE RECORDS, THE CUSTODIAN OF THAT.

2 THE COURT: ALL RIGHT. BUT THE GROUND OF
3 ADMISSIBILITY IS WHAT?

4 MR. PRAGER: BUSINESS RECORDS PRODUCED
5 AND -- 1280, BUT ALSO, IT'S ALSO A STRAIGHT BUSINESS
6 RECORD WHICH, I THINK, IS 1271, ISN'T IT?

7 THE COURT: WELL, I DON'T KNOW IF YOU HAVE
8 THAT -- IF THERE'S NOTHING IN HERE THAT'S GOING TO
9 SATISFY BUSINESS RECORD, IT MAY NOT SATISFY 1280
10 EITHER.

11 AT LEAST IT MAY NOT, BASED ON THE EVIDENCE.
12 WHAT EVIDENCE DO YOU HAVE THAT -- WHAT -- ARE YOU
13 RELYING ON THE TESTIMONY OF LYNETTE MORGAN-NICHOLS FOR
14 THIS?

15 MR. PRAGER: MR. URQUIZO AUTHENTICATED IT.
16 LYNETTE MORGAN-NICHOLS TRANSMITTED THE INFORMATION TO
17 THE STATE.

18 THE COURT: URQUIZO IS A STATE EMPLOYEE.

19 MR. PRAGER: CORRECT. AND THESE ARE STATE
20 RECORDS.

21 THE COURT: THAT DOESN'T MAKE IT ADMISSIBLE.

22 MR. PRAGER: I UNDERSTAND. I'M ONLY ASKING
23 AND REQUESTING YOUR HELP, YOUR HONOR.

24 THE COURT: URQUIZO IS NOT THE PERSON WHO
25 COULD PROVIDE THE FOUNDATION FOR THE DOCUMENT. THE
26 AUTHOR, MORGAN-NICHOLS COULD. DID SHE?

27 MR. PRAGER: BUT THE OFFERING HERE IS, FOR
28 EXAMPLE, ON 205, 2710, THE DATES ARE RELEVANT. THE

1 DATES THE DOCUMENTS WERE RECEIVED BY THE STATE, THE
2 DATES THE STATE PROCESSED THE DOCUMENTS.

3 THE COURT: WHY? WHAT DOES THAT HAVE TO DO
4 WITH ANYTHING?

5 MR. PRAGER: BECAUSE THE STATE, FOR EXAMPLE,
6 THEY RECEIVED THE FIRST PACKAGE ON AUGUST 2ND, AND THEY
7 SAID THERE WAS CORRECTIONS THAT HAD TO BE MADE ON SOME
8 OF THE DOCUMENTS WHICH WERE PROCESSED ON 9/27/2010.

9 THE COURT: WHAT PART OF THIS EXHIBIT ARE YOU
10 REFERRING TO NOW? THAT'S SOMETHING ELSE ENTIRELY.

11 MR. PRAGER: BATES 2710. AND THE FOUNDATION
12 IS THAT IT WAS CREATED BY MR. URQUIZO.

13 THE COURT: ALL RIGHT. AND WHY DO WE NEED
14 THESE DATES?

15 MR. PRAGER: THE COUNTY IS CONTESTING THE FACT
16 THE INVESTIGATION WAS CLOSED. AND IF YOU LOOK, FOR
17 EXAMPLE, AT 2710, ON 9/28/2010, THE DOCUMENT SAYS, "THE
18 CASE WAS REVIEWED AND SUBMITTED FOR CLOSURE." ON 2711,
19 IT SAYS, "REVIEW CASE, CONCUR, CASE CLOSED."

20 SO THEY DEMONSTRATE THAT THE CASE WAS CLOSED
21 BY THE STATE, WHICH I THINK THE COUNTY TAKES ISSUE
22 WITH. SO THESE RECORDS HELP PROVE THE FACT THAT THE
23 STATE HAS SUBSTANTIATED THE CLAIM AND CLOSED ITS FILE.

24 THE COURT: I DON'T SEE ANY RELEVANCE TO THAT
25 HERE.

26 MR. PRAGER: PART OF THE RELEVANCE, YOUR
27 HONOR, IS -- AND IT'S IN THE VIDEO DEPOS.

28 WHEN THE STATE WOULD TRY TO REOPEN THE CLAIM

1 FOR MS. DUVAL'S DISCRIMINATION CLAIMS, THEY WOULD HAVE
2 TO SEND HER A LETTER TELLING HER THAT THEY HAD FOUND A
3 NEW FINDING, WHICH THEY NEVER DID.

4 AND HER APPELLATE RIGHTS ARE BASED ON THAT
5 LETTER. SO THERE ARE A NUMBER OF DIFFERENT WAYS THAT
6 THIS INFORMATION IS RELEVANT TO THE CASE.

7 THE COURT: I KNOW YOU SAY THERE'S A NUMBER OF
8 THINGS THAT ARE RELEVANT TO THE CASE. BUT, I'M SORRY,
9 WHAT ARE THEY?

10 MR. PRAGER: THE CASE IS CLOSED, IS AN ISSUE
11 IN THIS CASE. THE FACT THAT -- THE COUNTY IS ALLEGING
12 THAT THEY HAVE CHANGED THEIR FINDINGS. THE COUNTY
13 FAILED TO SEND LETTERS TO MS. DUVAL REGARDING THOSE
14 CHANGE IN FINDINGS.

15 THE FACT THAT THOSE LETTERS ARE THE KEY TO HER
16 RIGHT TO APPEAL THESE ALLEGED FINDINGS AND THE COUNTY
17 HAS ARGUED TO YOU THAT THEY HAVE CHANGED THEIR OPINION,
18 THUS, THERE WAS NO POSITIVE FINDING OF DISCRIMINATION.

19 AND THESE DOCUMENTS DEMONSTRATE THAT THERE
20 WERE POSITIVE FINDINGS OF DISCRIMINATION BY THE STATE,
21 AND THEIR FILE WAS CLOSED.

22 THE COURT: THE FACT THE STATE FOUND POSITIVE
23 FINDINGS IS NOT RELEVANT TO THIS CASE. THE JURY WOULD
24 DECIDE WHETHER THERE'S DISCRIMINATION. WHATEVER THE
25 STATE DECIDED IS NOT RELEVANT.

26 THERE CAN BE RELEVANCE OF THE COUNTY IF THEY
27 MADE A FINDING, THEN THERE CAN BE RELEVANCE TO THAT.
28 BUT, YOU KNOW, I DON'T SEE WHAT THIS EVEN ADDS TO THE

1 CASE. YOU HAVE THE TESTIMONY. I DO RECALL THE
2 TESTIMONY THAT --

3 MR. PRAGER: THAT'S TRUE.

4 THE COURT: AMONG OTHER THINGS, YOUR CLIENT
5 TESTIFIED SHE NEVER GOT THIS LETTER. AND SO OBVIOUSLY
6 IF SHE DIDN'T AND HAD NO NOTICE OF SOMETHING FURTHER
7 THE COUNTY DID, SHE'D HAVE NOTHING TO APPEAL.

8 BUT I'M WONDERING, EVEN THAT, WHAT DIFFERENCE
9 DOES THAT MAKE, UNLESS THE DEFENSE IS CONTENDING THAT
10 SHE DIDN'T APPEAL SOMETHING.

11 MR. PRAGER: THE DEFENSE IS CONTENDING SHE'S
12 NOT THE VICTIM OF DISCRIMINATION BECAUSE THE COUNTY
13 CHANGED THEIR FINDINGS IN THE CASE. AND THE POINT
14 IS -- AND YOUR HONOR IS CORRECT. MR. URQUIZO DID
15 TESTIFY. MS. DUVAL DID TESTIFY TO THESE THINGS.

16 SO YOUR HONOR'S MEMORY IS CORRECT AND THE
17 INFORMATION YOU CITE IS ALSO ACCURATE. IT'S JUST THESE
18 DOCUMENTS TEND TO PROVE IN REASON, THEY TEND TO PROVE
19 SOME FACT AS TRUE THAT MS. DUVAL IS TRYING TO CLAIM --

20 THE COURT: SO WHAT PART OF THESE RECORDS DO
21 YOU WANT TO -- ON PAGE 2710?

22 MR. PRAGER: YES, YOUR HONOR.

23 THE COURT: AND 2711, I GUESS, THE HANDWRITTEN
24 NOTE? PART OF WHICH IS NOT READABLE. I NOTICE AS YOU
25 WERE READING IT, A COUPLE WORDS YOU SKIPPED, AND I
26 UNDERSTAND WHY. YOU CAN'T TELL WHAT THEY ARE.

27 THE PART YOU DID READ, AND IT IS CLEAR,
28 "REVIEW CASE, CONCUR," SIGNED CR 9, ACTUALLY, WHICH

1 MUST BE SOME STATE FORM.

2 MR. PRAGER: IT IS.

3 THE COURT: AND THEN, "CLOSE CASE." (SIC) SO
4 ACTUALLY, I COULD READ THAT.

5 MR. PRAGER: AND I HAVE TO CONFESS, I BELIEVE
6 WE HAD MR. URQUIZO READ THAT INTO THE RECORD.

7 THE COURT: I THINK YOU DID.

8 MR. PRAGER: TO MAKE SURE THERE WAS NO
9 CONFUSION OR AMBIGUITY ON THAT POINT.

10 THE COURT: YES, I THINK YOU DID.

11 MR. PRAGER: I TRIED.

12 THE COURT: SO WHY DO WE NEED THIS?

13 MR. PRAGER: AGAIN, IT'S BELTS AND SUSPENDERS,
14 I GUESS YOU'D SAY. RIGHT? BUT IT'S YOUR CALL.

15 MS. SWISS: WE DON'T NEED IT. IT'S
16 IRRELEVANT. THE DATES ARE IRRELEVANT, AND THEY'VE
17 ALREADY BEEN TESTIFIED TO.

18 THE COURT: THERE'S TESTIMONY TO ALL OF THESE
19 DATES BY URQUIZO.

20 MR. PRAGER: TRUE.

21 THE COURT: BUT THE FACT YOU'VE HAD TESTIMONY
22 DOESN'T MEAN A DOCUMENT ISN'T ADMISSIBLE. AND I THINK
23 IF THERE WAS SOME DISPUTE ABOUT ANY OF THOSE DATES,
24 THEN I THINK -- THEN THE DOCUMENT WOULD BECOME
25 RELEVANT.

26 MR. PRAGER: I THINK THERE ARE DISPUTES ABOUT
27 THE DATES, BECAUSE YOU'VE HEARD -- FOR EXAMPLE, ON
28 EXHIBITS -- WE'RE GOING TO BE ARGUING ABOUT 222

1 AND 225, AND THEY'RE SUGGESTING THOSE WERE DRAFT
2 DOCUMENTS THAT WERE NOT SENT TO THE DEFENDANTS IN THE
3 CASE BECAUSE THEY'RE UNSIGNED.

4 AND I THINK THAT THESE DOCUMENTS BEFORE YOU
5 HELP ESTABLISH THE CHAIN OF EVENTS THAT DOC 222 AND 225
6 WERE SENT TO THE DEFENDANT.

7 THE COURT: ALL RIGHT. THE -- WE'VE SPENT A
8 LOT OF TIME OVER ONE DOCUMENT. THE OBJECTION IS
9 SUSTAINED. THIS DOCUMENT WILL NOT BE RECEIVED.

10 AND THE REASON FOR IT IS THAT I DON'T BELIEVE
11 THAT IT SATISFIES THE CRITERIA FOR AN ADMISSIBLE
12 WRITING AND BUSINESS RECORD UNDER SECTION 1271 OF THE
13 EVIDENCE CODE, NOR MEETS -- THAT THE EVIDENCE IS NOT
14 SUFFICIENT TO ESTABLISH -- TO SATISFY THE REQUIREMENTS
15 OF SECTION 1280 OF THE EVIDENCE CODE AS TO A RECORD OF
16 A PUBLIC EMPLOYEE. SO IT WILL NOT BE RECEIVED.

17 WITH THAT, WE'RE GOING TO GET THE JURY IN.
18 AND WE DO HAVE TESTIMONY.

19 (PAUSE IN THE PROCEEDINGS)

20 (JURY PRESENT)

21 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
22 COURT IN THE PRESENCE OF THE JURY)

23 THE COURT: ALL RIGHT. EVERYONE MAY BE
24 SEATED. WE'RE ON THE RECORD. EVERYBODY IS PRESENT.
25 AND GOOD MORNING TO ALL OF OUR JURORS. AND YESTERDAY
26 AFTERNOON, WE HAD NOT COMPLETED THE TESTIMONY OF THE
27 WITNESS AT THE TIME.

28 BUT WE'RE GOING TO INTERRUPT THAT TESTIMONY TO

1 CALL ANOTHER WITNESS. AND, AGAIN, THIS IS JUST FOR
2 SCHEDULING PURPOSES. NO ONE SHOULD DRAW ANY KIND OF
3 INFERENCE FROM THAT.

4 MR. GUTERRES, YOU'RE CALLING THIS NEXT WITNESS
5 AT THIS TIME?

6 MR. GUTERRES: YES. THANK YOU, YOUR HONOR.
7 THE DEFENSE WILL CALL MS. SUSAN PENDER.

8 THE COURT: AND, MS. PENDER, YOU MAY REMAIN
9 SEATED.

10

11

12 SUSAN PENDER,
13 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
14 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

15

16

DIRECT EXAMINATION

17

BY MR. GUTERRES:

18

Q GOOD MORNING, MS. PENDER.

19

A GOOD MORNING.

20

Q WOULD YOU PLEASE TELL US WHO YOUR CURRENT
21 EMPLOYER IS?

22

A COUNTY OF LOS ANGELES.

23

Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
24 COUNTY?

25

A NINE YEARS.

26

Q AND WHAT IS YOUR CURRENT POSITION?

27

A CHILDREN'S SOCIAL WORKER.

28

Q AND IN -- IN THE NOVEMBER -- OCTOBER/NOVEMBER
TIME FRAME OF 2009, COULD YOU TELL US YOUR POSITION

1 WITH THE COUNTY?

2 A I WAS AN EMERGENCY RESPONSE CHILDREN'S SOCIAL
3 WORKER.

4 Q AND WAS THAT WITH A PARTICULAR DEPARTMENT?

5 A OH, DEPARTMENT OF CHILDREN AND FAMILY
6 SERVICES.

7 Q AND CAN YOU TELL US IN GENERAL, AS AN
8 EMERGENCY RESPONSE WORKER FOR THE DEPARTMENT OF
9 CHILDREN AND FAMILY SERVICES, WHAT YOUR DUTIES WERE?

10 A YES. MY DUTIES WERE TO INVESTIGATE REFERRALS
11 WITH ALLEGATIONS OF CHILD ABUSE OR NEGLECT.

12 Q AND FOR WHAT PERIOD OF TIME DID YOU HOLD A
13 POSITION WITH THE EMERGENCY RESPONSE UNIT?

14 A FROM JANUARY OF 2008 UNTIL SUMMER --
15 JANUARY 2008 UNTIL FALL OF 2010.

16 Q AND WHAT IS YOUR CURRENT POSITION?

17 A CHILDREN'S SOCIAL WORKER TWO. I AM CURRENTLY
18 ON MEDICAL LEAVE.

19 Q DO YOU REMEMBER, IN GENERAL, YOUR INVOLVEMENT
20 IN A REFERRAL INVOLVING MS. DUVAL?

21 A YES, I DO.

22 Q AND COULD YOU BRIEFLY TELL US WHAT YOUR
23 INVOLVEMENT WAS IN THAT REGARD?

24 A I RECEIVED A REFERRAL OF CHILD NEGLECT. BABY
25 RYAN DUVAL. AND THE REFERRAL WAS BASED ON -- THE
26 REFERRAL WAS FROM A NUTRITIONIST.

27 THE REPORTING PARTY WAS A NUTRITIONIST WHO
28 REPORTED THAT SHE HAD HAD A VISIT WITH THE FAMILY

1 RECENTLY, AND THAT SHE HAD CONCERNS OF THE BABY NOT
2 BEEN FED PROPERLY.

3 AND ALSO THAT THE -- BOTH PARENTS WERE TOO
4 BUSY ARGUING OVER CUSTODY ISSUES AND DIDN'T SEEM TO
5 GRASP THE SERIOUSNESS OF THE SITUATION. BUT THE
6 NUTRITIONIST WAS VERY CONCERNED ABOUT THE WELL-BEING OF
7 THE CHILD NOT BEING FED ENOUGH.

8 Q AND DO YOU REMEMBER THE NAME OF THE
9 NUTRITIONIST?

10 A MS. WENDY CRUMP.

11 Q AND DO YOU RECALL THE DATE THAT THE REFERRAL
12 FROM THE NUTRITIONIST, MS. CRUMP, CAME IN?

13 A I BELIEVE IT WAS OCTOBER 19TH.

14 Q AND AT THE TIME -- HOW WAS IT THAT YOU GOT THE
15 ASSIGNMENT?

16 A IT CAME TO MY DESK. IT WAS PROBABLY --
17 PROBABLY CAME TO MY SUPERVISOR, KIMBERLY ROGERS'S DESK
18 FIRST, BUT IT CAME TO MY DESK. WE HAD A ROTATION
19 SYSTEM AT THE TIME, I BELIEVE, AND I WAS PROBABLY NEXT
20 UP ON THE ROTATION.

21 Q AND WHAT DO YOU REMEMBER BEING THE FIRST THING
22 YOU DID AS PART OF YOUR INVESTIGATION?

23 A WELL, IT WAS MANY YEARS AGO, BUT TO THE BEST
24 OF MY RECOLLECTION, ONE OF THE FIRST THINGS I DID WAS,
25 BASED ON THE INFORMATION IN THE REFERRAL, AND THE
26 CONCERNS FOR THE CHILD NOT BEING FED ENOUGH, I REFERRED
27 TO THE FAILURE TO THRIVE POLICY.

28 BECAUSE THAT WAS MY TRAINING AT THE TIME, TO

1 REFER TO THE FAILURE TO THRIVE POLICY. SO I LOOKED AT
2 THE FAILURE TO THRIVE POLICY IN THE LA KIDS WEBSITE,
3 WHICH IS THE WEBSITE WE HAVE AVAILABLE TO DCFS WORKERS.

4 AND I PRINTED IT UP, AND I BASICALLY FOLLOWED
5 STEP BY STEP WHAT IT SAID ON THE POLICY.

6 Q WHO WAS THE FIRST PERSON THAT YOU WOULD
7 HAVE -- THAT YOU CONTACTED AS PART OF YOUR
8 INVESTIGATION?

9 A THE REPORTING PARTY, MS. WENDY CRUMP.

10 Q TELL US ABOUT YOUR DISCUSSIONS WITH MS. CRUMP
11 DURING THIS CONTACT WITH -- FROM WHAT YOU REMEMBER.

12 MR. MCMILLAN: OBJECTION, YOUR HONOR.
13 HEARSAY.

14 THE COURT: OVERRULED. LIMITED PURPOSE.
15 NON-HEARSAY PURPOSE.

16 THE WITNESS: CAN I HEAR THE QUESTION AGAIN?
17 BY MR. GUTERRES:

18 Q SURE. I'LL JUST REPHRASE IT. WHAT DO YOU
19 REMEMBER OF THIS CONVERSATION WITH MS. CRUMP AT THE
20 TIME OF YOUR CONTACT WITH HER?

21 A WHAT I REMEMBER OF THE CONVERSATION, AGAIN, AS
22 I STATED EARLIER, THE CONVERSATION WAS MS. CRUMP'S
23 CONCERN FOR THE CHILD RYAN DUVAL, THE BABY RYAN.

24 SHE HAD DEEP CONCERN AND APPREHENSION ABOUT
25 THE BABY'S WELL-BEING AND HIM NOT BEING FED ENOUGH, AND
26 THE PARENTS WERE ARGUING OVER A LOT OF CUSTODY ISSUES.
27 AND THEY DIDN'T SEEM TO SEE HOW SERIOUS THE SITUATION
28 WAS.

1 Q WHAT DID YOU DO NEXT?

2 A I LOOKED UP THE -- WELL, LOOKED TO SEE IF
3 THERE WAS ANY HISTORY WITH THE FAMILY, WHICH THERE WAS
4 NONE. I PROBABLY DISCUSSED IT WITH MY SUPERVISOR,
5 KIMBERLY ROGERS, AND THEN I GOT EVERYTHING TOGETHER TO
6 GO OUT AND DO A VISIT WITH THE MOTHER AND THE BABY IN
7 THE HOME.

8 Q AND AT SOME POINT, DID YOU, IN FACT, VISIT
9 MS. DUVAL AND SEE BABY RYAN?

10 A YES. ON THE NIGHT THAT I RECEIVED THE
11 REFERRAL, THERE APPEARED TO BE NOBODY HOME, SO I LEFT A
12 LETTER AND MY BUSINESS CARD IN THE MAILBOX. AND THE
13 VERY NEXT DAY, I RECEIVED A PHONE CALL FROM MS. DUVAL,
14 AND WE ARRANGED A VISIT THAT AFTERNOON.

15 Q AND WHERE DID THIS VISIT TAKE PLACE?

16 A IN THE HOME OF MS. DUVAL.

17 Q AND TELL US ABOUT THIS VISIT AT MS. DUVAL'S
18 HOME WITH MS. DUVAL AND BABY RYAN.

19 A OKAY. SO SHE INVITED ME IN THE HOME. AND SHE
20 HAD A LOT OF MATERIALS THAT SHE HAD PREPARED THAT SHE
21 WANTED TO SHARE WITH ME. AND WE SAT DOWN AND WE HAD A
22 DISCUSSION FOR QUITE A WHILE.

23 AND I EXPRESSED TO HER MY CONCERNS ON THE
24 REFERRAL. AND ONE OF THE MANY THINGS THAT SHE WOULD
25 TELL ME AT THAT TIME WAS HER CONCERNS FOR THE, YOU
26 KNOW, SHE HAD A LOT OF THEORIES AS TO WHY THE CHILD WAS
27 NOT GAINING WEIGHT.

28 AND SO SHE TOLD ME ABOUT THE MANY THEORIES,

1 ONE OF THEM BEING THE VISITATION WITH THE FATHER BEING
2 TOO STRESSFUL FOR THE BABY. AND ANOTHER THEORY THAT
3 SHE BROUGHT UP AT THE TIME WAS THAT THE BABY HAD -- SHE
4 HAD CONCERNS FOR ALLERGIES. THAT BABY RYAN HAD FOOD
5 ALLERGIES.

6 Q AND DID MS. DUVAL EXPLAIN TO YOU HOW OFTEN
7 BABY RYAN WAS SEEING HIS FATHER?

8 MR. MCMILLAN: OBJECTION: LEADING.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES, SHE DID. SHE DID GIVE A
11 VISITATION SCHEDULE.

12 BY MR. GUTERRES:

13 Q AND -- DID YOU HAVE AN UNDERSTANDING -- WHAT
14 WAS YOUR UNDERSTANDING OF THAT VISITATION SCHEDULE WITH
15 THE FATHER?

16 A I DON'T REMEMBER THE EXACT SCHEDULE, WHICH
17 DAYS, BUT WHAT I DO REMEMBER IS THAT IT WAS AT A FEW
18 HOURS AT A TIME, A FEW DAYS A WEEK. I BELIEVE THERE
19 WAS MAYBE ONE OVERNIGHT AT THAT POINT, BUT I ALSO
20 BELIEVE THAT THAT VISITATION SCHEDULE WAS FAIRLY NEW.

21 THAT EARLIER ON, IT WAS EVEN LESS TIME WITH
22 THE FATHER.

23 Q WHAT DO YOU REMEMBER -- WHAT ELSE DID YOU DO
24 DURING THAT VISIT AT MS. DUVAL'S HOME?

25 A I ASKED FOR A TOUR OF THE HOME, WHICH I DO
26 DURING ANY REFERRAL. I ASK FOR A TOUR OF THE HOME.
27 BUT IN LIGHT OF THE ALLEGATIONS -- WELL, LET ME CORRECT
28 THAT.

1 IN ANY REFERRAL, ALSO, I WOULD ASK FOR A TOUR
2 OF THE KITCHEN AND TO SEE THE FOODS FOR THE CHILDREN,
3 OR IN THIS CASE, THE BABY, AND ASK TO SEE INSIDE THE
4 REFRIGERATOR AND THE CUPBOARDS. AND SHE COMPLIED AND
5 SHOWED ME.

6 AND THEN I, YOU KNOW, WOULD SEE IF THERE WERE
7 ANY SAFETY CONCERNS IN THE HOME.

8 Q AND AS A RESULT OF YOUR -- THIS INITIAL
9 VISIT -- WITHDRAWN.

10 DID YOU ALSO HAVE AN OPPORTUNITY TO ACTUALLY
11 SEE BABY RYAN?

12 A YES, I DID. ANOTHER THING THAT I WOULD DO IN
13 ANY REFERRAL, AND I DEFINITELY DID IN THIS REFERRAL, IS
14 I WOULD ASK -- I ASKED TO SEE BABY RYAN DISROBED DURING
15 A DIAPER CHANGE.

16 MR. MCMILLAN: OBJECT -- OH, SORRY. GO AHEAD.

17 THE WITNESS: YES. I ASKED TO SEE HIM
18 DISROBED DURING A DIAPER CHANGE, WHICH SHE COMPLIED.

19 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
20 STRIKE EVERYTHING BEYOND THE FIRST YES, AS
21 NONRESPONSIVE.

22 THE COURT: THE OBJECTION IS SUSTAINED. THE
23 MOTION IS GRANTED. ALL PORTIONS OF THE ANSWER AFTER
24 YES, I DID ARE STRICKEN AND THE JURY MUST DISREGARD IT.
25 GO AHEAD.

26 MR. GUTERRES: THANK YOU, YOUR HONOR.

27 BY MR. GUTERRES:

28 Q TELL US WHAT YOU REMEMBER SEEING, YOUR

1 IMPRESSIONS OF -- BASED ON YOUR OBSERVATIONS OF BABY
2 RYAN ON THAT DATE.

3 A HE WAS EXTREMELY SMALL FOR HIS AGE AT THE
4 TIME. HE WAS -- HIS AGE WAS 15 MONTHS, BUT IN PHYSICAL
5 APPEARANCE, HE APPEARED TO BE THE SIZE OF A SIX-MONTH
6 OLD. AND DEVELOPMENTALLY, HE APPEARED TO BE AROUND 6
7 TO 9 MONTHS.

8 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
9 STRIKE THE LAST PORTION, "DEVELOPMENTALLY."
10 NUMBER ONE, AS NONRESPONSIVE, NUMBER TWO, AS LACKING IN
11 FOUNDATION WITH RESPECT TO EVIDENCE CODE 780.

12 THE COURT: OVERRULED.

13 BY MR. GUTERRES:

14 Q AS A RESULT OF THIS INITIAL VISIT WITH
15 MS. DUVAL AND YOUR ABILITY TO SEE BABY RYAN, DID YOU
16 HAVE ANY CONCERNS?

17 A YES. I HAD MANY CONCERNS.

18 Q COULD YOU TELL US ABOUT SOME OF THOSE
19 CONCERNS?

20 A WHEN I ASKED FOR -- TO LOOK IN THE CUPBOARDS
21 AND THE REFRIGERATOR, I HAD ALREADY -- WELL, I WAS
22 ALREADY AWARE OF THE FOODS THAT WERE RECOMMENDED BY THE
23 DIETICIAN. AND I DID NOT SEE ANY OF THOSE FOODS IN THE
24 CUPBOARDS OR REFRIGERATOR.

25 AND I ALSO DID NOT WITNESS HIM BEING FED ANY
26 OF THOSE FOODS. SO I HAD CONCERNS ABOUT THAT, AND I
27 ASKED THE MOTHER WHY THOSE FOODS WERE NOT THERE.

28 Q AND DO YOU REMEMBER WHAT MS. DUVAL'S RESPONSE

1 WAS?

2 A SEVERAL THINGS, THE BIGGEST BEING SHE HAD
3 CONCERNS FOR FOOD ALLERGIES, AGAIN. SO THAT'S WHY SHE
4 DIDN'T HAVE THOSE THERE. AND THEN SHE WOULD SAY THE
5 BABY DIDN'T LIKE THOSE THINGS.

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

8 THE COURT: OVERRULED.

9 BY MR. GUTERRES:

10 Q WHAT DO YOU REMEMBER -- WHAT DID YOU DO NEXT
11 AS PART OF YOUR INVESTIGATION?

12 A I'M NOT SURE -- ARE YOU ASKING ABOUT WHAT
13 HAPPENED IN THE HOME, OR WHAT HAPPENED AFTER I LEFT THE
14 HOME?

15 Q TELL US -- WELL, LET ME WITHDRAW THAT
16 QUESTION.

17 ANY OTHER CONCERNS THAT YOU HAD AS A RESULT OF
18 THAT INITIAL VISIT?

19 A I HAD CONCERNS ABOUT THE BABY'S DEVELOPMENT,
20 ALSO.

21 Q SO TELL US, AFTER YOUR INITIAL VISIT, WHAT WAS
22 THE NEXT STEP THAT YOU DID AS PART OF YOUR
23 INVESTIGATION THAT YOU CAN RECALL?

24 A I BELIEVE THE NEXT DAY I CALLED THE BABY'S
25 FATHER, RYAN MILLS.

26 Q TELL US ABOUT YOUR CONTACT WITH THE FATHER AS
27 PART OF YOUR INVESTIGATION.

28 A AGAIN, IT WAS MANY YEARS AGO. SO I DON'T

1 REMEMBER A LOT OF DETAILS, BUT WHAT I DO REMEMBER IS HE
2 WAS CONCERNED.

3 ONE OF THE FIRST THINGS HE SAID WAS HE HAD --
4 HE WAS A BIT ARGUMENTATIVE WITH ME AND HAD CONCERNS AS
5 TO WHY HIS BABY SAW THE DOCTOR WITHOUT HIS PERMISSION.
6 I BELIEVE HE SAID SOMETHING TO THAT EFFECT.

7 Q AND WHAT DOCTOR -- DO YOU KNOW WHAT DOCTOR
8 MR. MILLS WAS TALKING ABOUT?

9 A THIS WAS THE CATC CLINIC THAT I REFERRED THE
10 BABY -- BABY RYAN TO. I REFERRED MOTHER TO TAKE HIM TO
11 THAT CLINIC, WHICH SHE DID THAT DAY.

12 Q AND WHEN WAS THAT REFERRAL?

13 A I MADE THE REFERRAL -- I BELIEVE I MADE THAT
14 REFERRAL THAT DAY THAT I SAW HER IN THE HOME. AND SHE
15 TOOK BABY RYAN THE NEXT DAY.

16 Q OKAY.

17 MR. MCMILLAN: OBJECTION, YOUR HONOR. IT'S
18 NONRESPONSIVE. I THINK WE'RE LOOKING FOR A DATE.

19 THE COURT: OVERRULED.

20 BY MR. GUTERRES:

21 Q AT SOME POINT, DID YOU GET INFORMATION FROM
22 THE CATC CLINIC REGARDING BABY RYAN?

23 A YES, I DID.

24 Q WHAT DO YOU RECALL IN THAT REGARD?

25 A I'M SORRY. I DIDN'T HEAR THAT QUESTION.

26 Q WHAT DO YOU REMEMBER IN THAT REGARD,
27 INFORMATION THAT YOU RECEIVED FROM THE CATC CLINIC?

28 A THAT HE WAS DIAGNOSED FAILURE TO THRIVE DUE TO

1 NON-ORGANIC REASONS.

2 Q ONCE YOU GOT THAT INFORMATION, DO YOU REMEMBER
3 WHAT THE NEXT STEP WAS IN YOUR INVESTIGATION?

4 A I BELIEVE I HAD ALREADY CONTACTED THE PUBLIC
5 HEALTH NURSE.

6 AND, AGAIN, THE EXACT ORDER OF EVERYTHING --
7 BUT I BELIEVE THAT SHE HAD DISCUSSED WITH US -- WE HAD
8 DISCUSSIONS WITH THE PUBLIC HEALTH NURSE, HERSELF, AND
9 MY SUPERVISOR AT THE TIME, KIMBERLY ROGERS.

10 AND THEY WERE THE ONES WHO ADVISED US TO MAKE
11 THE REFERRAL TO THE FAILURE TO THRIVE CLINIC AT
12 HARBOR-UCLA.

13 Q AND DID YOU, IN FACT, DO THAT?

14 A YES. I DID.

15 Q TELL US ABOUT -- WELL, WITHDRAWN.

16 AT SOME POINT, DID BABY RYAN THEN GET SEEN BY
17 THE FAILURE TO THRIVE CLINIC?

18 A YES. HE DID.

19 Q AND DID YOU GET ANY INFORMATION FROM THE
20 FAILURE TO THRIVE CLINIC AS A RESULT OF THAT
21 EXAMINATION?

22 A YES. WE DID.

23 Q DO YOU REMEMBER WHEN YOU GOT ANY -- THE
24 INFORMATION FROM THE FAILURE TO THRIVE CLINIC?

25 A ON NOVEMBER 3RD.

26 Q AS PART OF YOUR INVESTIGATION OF THE REFERRAL,
27 DID YOU MAKE CONTACT WITH ANY OTHER HEALTHCARE
28 PROVIDERS FOR BABY RYAN?

1 A YES. I DID.

2 Q LET ME DIRECT YOUR ATTENTION TO EXHIBIT 82, IF
3 I MAY. AND I'M GOING TO DIRECT YOUR ATTENTION TO
4 EXHIBIT 82 AT BATES 1493 AND 1494.

5 AND FOR THE RECORD, EXHIBIT 82 IS THE
6 DELIVERED SERVICE LOGS. IS THAT CORRECT?

7 A CORRECT.

8 Q AND COULD YOU JUST BRIEFLY TELL US WHAT -- HOW
9 YOU USED THIS, THE DELIVERED SERVICE LOGS IN YOUR JOB?

10 A AS PART OF MY DUTIES AS A CHILDREN'S SOCIAL
11 WORKER, WE WERE TO INPUT, AS MUCH AS POSSIBLE, INPUT
12 OUR CONTACTS WITH PEOPLE, WHETHER IT'S IN-PERSON
13 CONTACTS, ON THE PHONE, ET CETERA.

14 SO THESE -- IT IS A COMPUTERIZED SYSTEM WHERE
15 WE INPUT OUR CONTACTS.

16 Q AND DO YOU RECALL, AS PART OF YOUR
17 INVESTIGATION, MAKING CONTACT WITH SOME OF THE
18 HEALTHCARE PROVIDERS FOR BABY RYAN, AS PART OF YOUR
19 INVESTIGATION?

20 A CORRECT.

21 Q AND DO YOU REMEMBER WHO YOU CONTACTED?

22 A I SPOKE WITH -- AS I SAID, I SPOKE TO
23 DR. EVANS AT THE CATC CLINIC. I SPOKE TO HER AND GOT
24 DOCUMENTATION FROM DR. SODERBERG, AN ALLERGIST.

25 I SPOKE TO DR. GILL, THE PEDIATRICIAN THAT
26 MOTHER SAID THAT SHE HAD SEEN IN THE PAST. AND
27 DR. EGGE AT FAILURE TO THRIVE CLINIC. AND, OF COURSE,
28 THE PUBLIC HEALTH NURSES AT OUR OFFICE, AND MS. CRUMP,

1 THE DIETICIAN.

2 Q SO, TO THE BEST OF YOUR RECOLLECTION, THOSE
3 ARE THE HEALTHCARE PROVIDERS THAT YOU SPOKE TO AS PART
4 OF YOUR INVESTIGATION?

5 A YES, TO THE BEST OF MY MEMORY.

6 Q AND YOU UNDERSTOOD -- WHAT WAS YOUR
7 UNDERSTANDING -- HOW DID YOU GET THE INFORMATION ABOUT
8 DR. SODERBERG?

9 A FROM THE MOTHER, I BELIEVE. YES. FROM
10 MS. DUVAL.

11 Q AND DO YOU REMEMBER -- AND WHAT WAS THE SOURCE
12 OF THE INFORMATION FOR DR. GILL?

13 A SAME THING, THE MOTHER -- OR MS. DUVAL.
14 MS. DUVAL, EXCUSE ME.

15 Q DO YOU REMEMBER THE DATE THAT YOU CONTACTED
16 DR. GILL?

17 A NOVEMBER 2ND.

18 MR. MCMILLAN: OBJECTION: LACKS FOUNDATION,
19 IMPROPER REFRESHMENT OF RECOLLECTION.

20 THE COURT: OVERRULED.

21 BY MR. GUTERRES:

22 Q TELL US WHAT YOU REMEMBER ABOUT YOUR
23 DISCUSSIONS WITH DR. GILL ON THE DATE THAT YOU -- ON
24 NOVEMBER 2ND.

25 A WELL, IT WAS A FAIRLY BRIEF CONVERSATION. AND
26 IT WAS QUITE A WHILE AGO. BUT WHAT I DO REMEMBER IS
27 THAT SHE FELT AS THOUGH SHE WAS BEING -- WELL, FIRST OF
28 ALL, SHE FELT AS THOUGH SHE WAS BEING TAKEN ADVANTAGE

1 OF BY THE MOTHER.

2 SHE STATED THAT VERY CLEARLY, THAT SHE FELT
3 SHE WAS PUT IN AN AWKWARD POSITION. THAT MOTHER AND
4 FATHER -- THE BABY, I APOLOGIZE. THE BABY WAS NO
5 LONGER A PATIENT OF HERS, AND THEY HAD NO LONGER BEEN A
6 PATIENT.

7 HE HAD NO LONGER BEEN A PATIENT AS OF SEVERAL
8 MONTHS PRIOR, AND SO SHE FELT LIKE BRINGING THE BABY TO
9 THEM (SIC) THE LAST -- AT THAT TIME, PUT HER IN AN
10 AWKWARD POSITION. AND SO SHE HAD ASKED MOTHER TO
11 LEAVE.

12 BUT IN ADDITION TO THAT, SHE ALSO SHARED WITH
13 ME, WHEN I ASKED HER, SHE SHARED WITH ME THE REASONS
14 WHY THEY WERE NO LONGER PART OF THE PRACTICE.

15 THERE WERE TWO REASONS: THAT THE FAMILY WAS
16 BECOMING TOO DIFFICULT, IN GENERAL, AND THAT THE MOTHER
17 WAS NOT FOLLOWING THE DIRECTIONS FOR FEEDING THE CHILD,
18 FOR THE CHILD TO DEVELOP HEALTHILY.

19 Q AND DID YOU, IN FACT, DOCUMENT THIS CONTACT
20 WITH DR. GILL IN YOUR DELIVERED SERVICE LOG?

21 A YES. I DID.

22 Q AND IS THAT CONTACT REFLECTED IN THE DELIVERED
23 SERVICE LOGS AT EXHIBIT 82 BATES 143 (SIC) AND 1494?

24 A YES. IT IS.

25 Q WHEN WOULD YOU HAVE ENTERED THIS CONTACT WITH
26 DR. GILL?

27 MR. MCMILLAN: LACKS FOUNDATION, CALLS FOR
28 SPECULATION.

1 THE COURT: OVERRULED.

2 THE WITNESS: IT WOULD HAVE BEEN IN -- ALMOST
3 IMMEDIATELY ON THAT DAY, THE LATEST THE NEXT DAY, BUT
4 PROBABLY ON THAT DAY.

5 BY MR. GUTERRES:

6 Q AND BY NOVEMBER 2ND, DO YOU REMEMBER IF BABY
7 RYAN HAD ALREADY BEEN SEEN BY THE CATC CLINIC?

8 A YES. HE HAD.

9 Q MS. PENDER, DID YOU EVER GET AN OPPORTUNITY
10 TO -- WELL, WITHDRAWN.

11 YOU HAD A DISCUSSION WITH THE NUTRITIONIST,
12 MS. CRUMP?

13 A YES. I DID. ACTUALLY, WELL --

14 Q AND BASED ON YOUR DISCUSSIONS, DID YOU HAVE AN
15 UNDERSTANDING AS TO THE TYPES OF FOODS THAT MS. CRUMP
16 WAS RECOMMENDING BE FED TO BABY RYAN?

17 MR. MCMILLAN: OBJECTION: VAGUE AS TO TIME.

18 THE COURT: SUSTAINED.

19 BY MR. GUTERRES:

20 Q WHEN YOU FIRST MADE CONTACT WITH MS. CRUMP,
21 DID YOU DISCUSS ANY RECOMMENDATIONS THAT SHE HAD --
22 THAT MS. CRUMP HAD MADE WITH REGARD TO THE TYPES OF
23 FOODS THAT MS. CRUMP WANTED BABY RYAN TO BE FED?

24 MR. MCMILLAN: OBJECTION: STILL VAGUE AS TO
25 TIME.

26 THE COURT: OVERRULED.

27 THE WITNESS: YES, I DID, DURING THE FIRST
28 CONVERSATION I HAD WITH HER.

1 BY MR. GUTERRES:

2 Q AND DID SHE -- WHAT WAS YOUR UNDERSTANDING IN
3 THAT REGARD?

4 A SHE USED THE PHRASE HIGH-CALORIC,
5 HIGH-PROTEIN, CALORIC-DENSE FOODS.

6 Q AND DID YOU -- ON THE DATE OF YOUR VISIT TO
7 MS. DUVAL'S HOME, DID YOU GET AN OPPORTUNITY TO SEE
8 BABY RYAN BEING FED?

9 A YES. I DID.

10 Q AND TELL US ABOUT WHAT YOU OBSERVED.

11 A HE WAS BEING FED BY THE MATERNAL GRANDMOTHER
12 IN THE HIGH CHAIR. AND HE WAS BEING FED VERY
13 THINLY-SLICED CUCUMBERS AND VERY THINLY-SLICED GRAPES.

14 Q WAS THAT A -- IS THAT ONE OF THE THINGS YOU
15 DISCUSSED WITH MS. DUVAL AT THAT FIRST VISIT?

16 A YES, WE DISCUSSED THAT. YES.

17 Q AND AS FAR AS FOOD ALLERGIES THAT YOU HAD
18 MENTIONED MS. DUVAL HAD IDENTIFIED, DID YOU HAVE AN
19 UNDERSTANDING AS TO WHAT KIND OF FOOD ALLERGIES BABY
20 RYAN -- OR MS. DUVAL WAS CLAIMING BABY RYAN HAD?

21 MR. MCMILLAN: OBJECTION: LEADING. ALSO
22 ASSUMES FACTS, FOUNDATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: MOST OF THE TIME SHE WAS RATHER
25 VAGUE. AND IF I WOULD ASK HER TO ELABORATE, I BELIEVE
26 SHE SAID, THAT'S WHAT SHE BELIEVED, BASED ON THE --
27 WHAT SHE WOULD SAY WAS, UNEXPLAINED -- CORRECT
28 MYSELF -- UNEXPLAINED RASHES THAT SHE SAW.

1 THAT SHE FELT THAT THE BABY WAS ALLERGIC TO
2 DAIRY AND EGGS, AND I BELIEVE POSSIBLY TOMATOES. BUT
3 MY MEMORY IS NOT COMPLETELY -- BUT I DO RECALL HER
4 SAYING ABOUT THE DAIRY AND THE EGGS.

5 BY MR. GUTERRES:

6 Q AND AT SOME POINT, DID YOU GET ANY INFORMATION
7 WITH -- AS TO WHETHER OR NOT BABY RYAN DID HAVE ANY
8 FOOD ALLERGIES OR NOT?

9 A YES. I DID.

10 Q OKAY. AND WHAT DO YOU RECALL IN THAT REGARD?

11 MR. MCMILLAN: OBJECTION: VAGUE AS TO TIME.

12 THE WITNESS: MAY I HEAR THE QUESTION AGAIN?

13 THE COURT: JUST A MOMENT. OVERRULED. GO

14 AHEAD.

15 THE WITNESS: CAN I HEAR THE QUESTION AGAIN?

16 THE COURT: YES. THE COURT REPORTER WILL READ

17 IT BACK.

18 MR. GUTERRES: MAY I HAVE THE COURT REPORTER

19 ASSIST ME, YOUR HONOR?

20 THE COURT: YES. PLEASE.

21 MR. GUTERRES: THANK YOU, YOUR HONOR.

22 THE COURT: I ASK THE REPORTER TO PLEASE READ

23 THE QUESTION.

24 (THE RECORD WAS READ AS REQUESTED)

25 THE WITNESS: I RECALL GETTING DOCUMENTATION

26 FROM THE ALLERGIST, DR. SODERBERG, THAT THE BABY DID

27 NOT HAVE ANY ALLERGIES TO FOOD -- ANY FOOD ALLERGIES.

28 MR. GUTERRES: THANK YOU, MS. PENDER.

1 MR. MCMILLAN: OKAY. JUST TAKE ME ONE MOMENT,
2 YOUR HONOR. I'VE GOT TO GET ALL THE EQUIPMENT FIRED
3 UP.

4

5

CROSS-EXAMINATION

6

BY MR. MCMILLAN:

7

Q WHILE WE'RE WAITING FOR THAT TO FIRE UP, AM I

8

CORRECT, MS. PENDER, THAT WENDY CRUMP, SHE'S A

9

NUTRITIONIST. RIGHT?

10

A CORRECT.

11

Q SHE NEVER MADE A DIAGNOSIS OF FAILURE TO

12

THRIVE. TRUE?

13

A TRUE.

14

Q IN FACT, SHE WOULDN'T BE QUALIFIED TO MAKE

15

THAT DIAGNOSIS, UNDER THE LAW. TRUE?

16

MR. GUTERRES: OBJECTION: RELEVANCE,

17

FOUNDATION.

18

THE COURT: SUSTAINED.

19

BY MR. MCMILLAN:

20

Q DID MS. CRUMP, IN THAT FIRST CONVERSATION THAT

21

YOU HAD WITH HER, DO YOU RECALL HER TELLING YOU THAT

22

MS. DUVAL HAD ACTUALLY BEEN QUITE PERSISTENT IN TRYING

23

TO SET UP THE APPOINTMENT WITH HER, AND, IN FACT, HAD

24

CALLED HER TWICE TO DO THAT?

25

A I DON'T RECALL BEING TOLD THAT, NO.

26

Q OKAY. LET ME ASK YOU A SECOND.

27

YOU TALKED A LITTLE BIT ABOUT THOSE DELIVERED

28

SERVICE LOGS. RIGHT?

1 A YES.

2 Q WE ALSO CALL THOSE CONTACT NOTES. CORRECT?

3 A CORRECT.

4 Q AND THOSE ARE RECORDED OR REPORTED IN
5 SOMETHING THAT'S CALLED THE CWS CMS DATABASE, CORRECT?

6 A CORRECT.

7 Q AND I THINK THAT'S THE CHILD WELFARE SERVICES
8 CASE MANAGEMENT SYSTEM. IS THAT RIGHT?

9 A CORRECT.

10 Q AND THAT'S A DATABASE OWNED AND OPERATED BY
11 THE STATE OF CALIFORNIA. RIGHT?

12 A CORRECT.

13 MR. GUTERRES: OBJECTION: FOUNDATION,
14 SPECULATION.

15 THE COURT: OVERRULED.

16 BY MR. MCMILLAN:

17 Q NOW, THE COUNTY THOUGH, AT LEAST WITH RESPECT
18 TO LOS ANGELES COUNTY -- AND IF YOU DON'T KNOW THIS,
19 YOU CAN TELL ME -- THE COUNTY USES THAT CWS CMS
20 DATABASE FOR MANY PURPOSES, INCLUDING RECORDING THESE
21 CONTACT NOTES AND THE DELIVERED SERVICE LOGS. CORRECT?

22 A I'M NOT SURE WHAT YOU'RE ASKING.

23 Q OKAY. AT SOME POINT -- I THINK YOU ALREADY
24 TESTIFIED TO THIS -- WHEN YOU GO OUT AND YOU INTERVIEW
25 PEOPLE, YOU COLLECT DATA, COME BACK, SIT DOWN FROM YOUR
26 COMPUTER, AND TYPE UP SOME NOTES. IS THAT RIGHT?

27 A CORRECT.

28 Q THOSE NOTES THAT YOU TYPE UP ARE INSERTED INTO

1 THE CWS CMS DATABASE IN THE CONTACT NOTES. CORRECT?

2 A CORRECT.

3 Q THAT'S WHAT I'M TALKING ABOUT. SO THIS
4 DATABASE -- WERE YOU AWARE THAT THE STATE OF CALIFORNIA
5 ACTUALLY TRACKS CHANGES THAT ARE MADE TO THE DATA THAT
6 SOCIAL WORKERS PUT INTO THE CONTACT NOTES?

7 MR. GUTERRES: OBJECTION: RELEVANCE, OUTSIDE
8 THE SCOPE.

9 THE COURT: OVERRULED.

10 THE WITNESS: I'M AWARE.

11 BY MR. MCMILLAN:

12 Q I'M SORRY?

13 A I'M AWARE OF THAT.

14 Q YOU'RE AWARE OF THAT. AND YOU'RE ALSO AWARE,
15 AREN'T YOU, MA'AM, THAT THEY ONLY KEEP TRACK OF THE
16 SUBSTANCE OF THOSE CHANGES AND EDITS FOR 30 DAYS AFTER
17 THE CHANGE IS MADE?

18 MR. GUTERRES: OBJECTION: FOUNDATION, OUTSIDE
19 THE SCOPE.

20 THE COURT: OVERRULED.

21 THE WITNESS: I WASN'T AWARE OF IT. BASED ON
22 THE WORDING YOU'RE USING, NO, I'M NOT SURE WHAT --

23 BY MR. MCMILLAN:

24 Q BASED ON OTHER WORDING, PERHAPS?

25 A NO. I'M NOT SURE WHAT YOU'RE TALKING ABOUT.

26 Q OKAY. LET'S TRY AGAIN. YOU ARE AWARE THAT
27 AFTER THERE'S AN ENTRY MADE INTO THE DELIVERED SERVICE
28 LOGS, THE CONTACT NOTES FOR A PERIOD OF TIME, THE

1 SOCIAL WORKER CAN ACTUALLY GO BACK AND EDIT AND CHANGE
2 THAT DATA. YOU'RE AWARE OF THAT?

3 A YES. I AM.

4 Q I THINK YOU'VE ALREADY ESTABLISHED THAT YOU'RE
5 AWARE THAT THE STATE OF CALIFORNIA TRACKS THOSE CHANGES
6 AND KEEPS A RECORD OF THOSE CHANGES. CORRECT?

7 A CORRECT.

8 Q SO MY QUESTION IS, DO YOU KNOW FOR HOW LONG OF
9 A PERIOD OF TIME THE STATE OF CALIFORNIA KEEPS A RECORD
10 OF THE ACTUAL SUBSTANCE, THE WORDS THAT WERE CHANGED?

11 A NO. I'M NOT SURE OF THAT -- ALL THAT, NO.

12 Q OKAY. YOU'VE NEVER LEARNED IN YOUR TRAINING
13 THAT THAT SPECIFIC INFORMATION IS ONLY AVAILABLE
14 FOR 30 DAYS AFTER THE CHANGE IS MADE? NOT AWARE OF
15 THAT?

16 A NO. NOT THAT MUCH DETAIL, NO. I'M AWARE THAT
17 IT TRACKS -- NO. NOT TO THAT MUCH DETAIL, NO.

18 Q NOT TO THAT MUCH DETAIL, BUT YOU WERE AWARE
19 THAT THE STATE IS LOOKING AT THIS AND THAT THEY ARE
20 KEEPING TRACK OF CHANGES?

21 A YES, I'M AWARE OF THAT.

22 Q SO LET'S GO TALK A LITTLE BIT MORE, THEN,
23 ABOUT THE SPECIFIC CONTACT NOTES IN THIS CASE. LET ME
24 ASK YOU FIRST, JUST FOUNDATIONALLY:

25 THESE DELIVERED SERVICE LOGS, THESE CONTACT
26 NOTES -- IS THAT AN OFFICIAL RECORD THAT, ACCORDING TO
27 YOUR TRAINING, SOCIAL WORKERS ARE REQUIRED TO USE IN
28 THEIR WORK?

1 A YES. IT IS.

2 Q AND AS FAR AS YOU KNOW, IS THAT REQUIRED BY
3 STATE LAW, OR IS THAT REQUIRED BY COUNTY POLICY, IF YOU
4 KNOW?

5 A I BELIEVE IT'S BOTH.

6 Q OKAY. AND AM I ALSO CORRECT MA'AM, THAT
7 ACCORDING TO YOUR TRAINING, WHEN SOCIAL WORKERS ARE
8 MAKING ENTRIES IN THESE DELIVERED SERVICE LOGS, THEY'RE
9 REQUIRED TO BE TRUTHFUL, ACCURATE, AND COMPLETE?

10 A YES. I WAS.

11 Q ONE OF THE REASONS THAT THEY'RE REQUIRED TO BE
12 TRUTHFUL, ACCURATE, AND COMPLETE IS BECAUSE OTHER
13 SOCIAL WORKERS AND OTHER PEOPLE, AUDITORS, THINGS LIKE
14 THAT, LATER ON DOWN THE LINE, MAY GO BACK AND LOOK AT
15 THESE ENTRIES IN THE DELIVERED SERVICE LOGS TO DECIDE,
16 FOR EXAMPLE, WHAT THE NEXT STEPS IN A CASE SHOULD BE.
17 RIGHT?

18 A RIGHT.

19 Q SO WHEN YOU MAKE THESE ENTRIES, YOU KNOW WITH
20 CERTAINTY THAT SOMEWHERE DOWN THE LINE, SOMEBODY, A
21 SOCIAL WORKER, PERHAPS, IS GOING TO BE LOOKING AT WHAT
22 YOU WROTE AND MAKING DECISIONS ABOUT THIS PARENT OR
23 THIS FAMILY. CORRECT?

24 A CORRECT.

25 Q AND YOU'VE ALSO LEARNED IN YOUR TRAINING THAT
26 IF IT'S NOT IN THE DELIVERED SERVICE LOGS, THE CONTACT
27 NOTES, THERE'S A REAL QUESTION ABOUT WHETHER OR NOT THE
28 EVENT EVEN HAPPENED.

1 YOU'VE LEARNED THAT?

2 A THAT PHRASE IS SOMETIMES USED IN TRAININGS,
3 BUT THERE'S A LITTLE MORE TO IT THAN THAT.

4 Q OKAY. LET'S GET THE SPECIFIC TRAINING, AND WE
5 CAN SEE HOW MUCH MORE TO IT THAN THAT THERE IS.

6 WHILE HE'S LOOKING FOR THAT, WE CAN TALK ABOUT
7 ANOTHER TRAINING, MAKE EFFICIENT USE OF THE TIME. AND
8 I'M SHOWING THE WITNESS EXHIBIT NUMBER 400, BATES
9 NUMBER 5875, THE SLIDE IN THE UPPER RIGHT-HAND CORNER,
10 AND -- YOU KNOW WHAT -- LET ME GET THAT FOR YOU.

11 A I PHYSICALLY CAN'T TURN AROUND. I CAN'T SEE
12 THAT.

13 Q IT'S A LITTLE BIT FUZZY. BUT YOU'VE HAD THIS
14 TRAINING IN YOUR CORE ACADEMY TRAINING, HAVEN'T YOU?

15 A I'M NOT SURE. ARE WE LOOKING AT THE WHOLE
16 PAGE, OR ONE IN PARTICULAR?

17 Q OH -- JUST -- I'M SORRY. IT'S THE SLIDE IN
18 THE UPPER RIGHT-HAND CORNER OF PAGE BEARING
19 BATES NUMBER 5875.

20 DO YOU SEE THAT?

21 A I CAN SEE IT. BUT I CAN'T READ IT FROM HERE.

22 Q I'LL TRY TO HELP YOU. I CAN READ IT. AND I
23 AGREE, THE COPY IS A LITTLE BIT POOR. BUT I HAVE IT
24 ZOOMED IN HERE SO I CAN READ IT TOGETHER WITH YOU.

25 SAYS:

26 "THE FIVE COMMANDMENTS OF COURT REPORT WRITING
27 INCLUDE EVERYTHING, EVERYTHING, EVERYTHING IN THE
28 REPORT."

1 BULLET POINT NUMBER ONE SAYS: "NOTHING YOU
2 DISCUSS WITH COUNTY COUNSEL --"

3 I'M SORRY -- THERE'S --- "WITH TWO
4 EXCEPTIONS," AND BULLET POINT NUMBER ONE FOR THE
5 EXCEPTION IS, "NOTHING YOU DISCUSS WITH COUNTY COUNSEL
6 IS ATTORNEY-CLIENT PRIVILEGE."

7 TWO IS, "OTHER CONFIDENTIAL INFORMATION."

8 THE ONE I'M INTERESTED IN MOST, THOUGH, RIGHT
9 NOW, IS ROMAN NUMERAL NUMBER 2:

10 "NOTHING IS TOO TRIVIAL OR UNIMPORTANT OR
11 INCONSEQUENTIAL THAT IT CAN BE LEFT OUT OF THE REPORT.
12 THIS IS A COROLLARY TO COMMANDMENT NUMBER 1."

13 YOU HAD THAT TRAINING?

14 A I'M SURE I -- I'M SURE WE GOT SOMETHING TO
15 THAT EFFECT ON SOME TRAINING. MANY, MANY TRAININGS,
16 IT'S BEEN A WHILE.

17 AND I'M ALSO HAVING TO -- WHATEVER YOU READ, I
18 CAN'T SEE THAT -- AND THIS IS NOT LEGIBLE HERE. SO I'M
19 REALLY AT A LOSS ON MANY ELEMENTS, AS TO WHAT IS GOING
20 ON HERE.

21 Q SURE. I UNDERSTAND THAT. I'M JUST ASKING,
22 FROM YOUR RECOLLECTION -- LET ME ASK THIS FIRST:

23 I RECALL THAT YOU'VE BEEN A CHILDREN'S SOCIAL
24 WORKER WITH THE COUNTY OF LOS ANGELES, I THINK YOU SAID
25 NINE YEARS NOW.

26 IS THAT CORRECT?

27 A I WAS IN CORE ACADEMY IN FALL OF 2007, AND I
28 STARTED IN THE OFFICE FIRST WEEK OF JANUARY 2008.

1 Q OKAY. FIRST WEEK OF JANUARY 2008. SO IT
2 WOULD HAVE BEEN THE FALL OF 2007 THAT YOU RECEIVED THE
3 CORE ACADEMY TRAINING?

4 A CORRECT.

5 Q OKAY. AND AS PART OF THAT CORE ACADEMY
6 TRAINING, DID YOU HAVE A LECTURE, PERHAPS, WHERE
7 SOMEBODY CAME IN AND PUT POWERPOINT SLIDES UP ON THE
8 SCREEN, AND THEN MARCHED THROUGH THEM WITH YOU GUYS?

9 A YES, WE DID, BUT I HAVE NO WAY OF KNOWING IF
10 THIS WAS ONE OF THE TRAININGS I HAD DURING THAT TIME.

11 Q I HAVEN'T ASKED THAT QUESTION YET. WE'LL GET
12 THERE. JUST SORT OF TRY TO FOLLOW WITH ME. OKAY.

13 SO YOU'VE HAD TRAINING WHERE YOU SAT THROUGH
14 POWERPOINT PRESENTATIONS. RIGHT? THE CORE ACADEMY IS
15 WHAT WE'RE FOCUSED ON RIGHT NOW.

16 A OKAY. YES.

17 Q OKAY. AND AS PART OF THAT PROCESS, YOU RECALL
18 THAT WHEN THEY PUT THESE POWERPOINT SLIDES UP ON THE
19 SCREEN -- LET ME ASK YOU THIS FIRST: YOU HAD HANDOUTS,
20 TOO. RIGHT?

21 A YES.

22 Q AND THE HANDOUTS MATCHED THE POWERPOINT
23 PRESENTATION THAT YOU WERE BEING PROVIDED?

24 A YES.

25 Q SO YOU WERE ABLE TO SIT THERE WITH YOUR OWN
26 HANDOUT AND FOLLOW ALONG WITH THE PRESENTATION?

27 A YES.

28 Q AND WHEN THEY WERE PUTTING THESE SLIDES UP AND

1 GIVING YOU THE PRESENTATION, WAS THERE SOMEBODY THERE
2 TO TALK ABOUT WHAT WAS MEANT BY WHAT WAS UP THERE ON
3 THE SLIDE?

4 A YES, OF COURSE.

5 Q SO THEY WOULD GO THROUGH, FOR EXAMPLE, POINT
6 BY POINT AND EXPLAIN TO YOU WHAT THAT MEANT WHEN IT
7 SAYS, "INCLUDE EVERYTHING, EVERYTHING, EVERYTHING IN
8 THE REPORT," AS AN EXAMPLE. RIGHT?

9 A YES.

10 Q DO YOU RECALL WHETHER OR NOT YOU WERE ABLE TO
11 ASK QUESTIONS DURING THIS PRESENTATION?

12 A YES, OF COURSE.

13 Q OKAY. SO FOR EXAMPLE, IF YOU WERE CONFUSED
14 ABOUT THE STATEMENT WHERE IT SAYS -- OR MAYBE YOU
15 DIDN'T UNDERSTAND THE STATEMENT WHERE IT SAYS, "NOTHING
16 IS TOO TRIVIAL OR UNIMPORTANT OR INCONSEQUENTIAL THAT
17 IT CAN BE LEFT OUT OF THE REPORT," YOU WOULD HAVE BEEN
18 ABLE TO RAISE YOUR HAND AND ASK FURTHER EXPLANATION.
19 RIGHT?

20 A YES. BUT I'M NOT CONFUSED ABOUT ANY OF THAT.

21 Q OKAY. YOU'RE NOT CONFUSED ABOUT THAT?

22 A ABOUT ANYTHING YOU JUST SAID, NO.

23 Q OKAY. WHAT ABOUT THIS PART HERE, "IF IT'S NOT
24 IN THE REPORT, IT NEVER HAPPENED." DO YOU RECALL THAT
25 TRAINING IN YOUR CORE ACADEMY IN THE FALL OF 2007?

26 A AS I SAID BEFORE, I'M SURE THAT PHRASE HAS
27 BEEN USED MANY TIMES, INCLUDING POSSIBLY DURING CORE
28 ACADEMY. THAT PHRASE COULD HAVE BEEN USED, YES.

1 Q OKAY. SO DURING CORE ACADEMY, BUT YOU ALSO
2 SAID JUST NOW, IT'S BEEN USED MANY TIMES. RIGHT?

3 A THAT PHRASE, YES.

4 Q IN MANY DIFFERENT TRAININGS THAT YOU HAVE HAD
5 OVER THE COURSE OF THESE LAST NINE YEARS?

6 A I DON'T KNOW HOW MANY. AT LEAST A FEW.

7 Q AT LEAST A FEW. FOR EXAMPLE -- OH, ACTUALLY,
8 BEFORE WE MOVE ON, WHERE IS THAT? THIS PART HERE, ITEM
9 NUMBER 5, "WRITE HONESTLY, OBJECTIVELY, AND
10 PROFESSIONALLY."

11 DO YOU RECALL THAT TRAINING IN 2007?

12 A OKAY, TO CLARIFY AGAIN, I'M GOING BY WHAT
13 YOU'RE SAYING BECAUSE I CANNOT SEE THAT, PHYSICALLY
14 UNABLE TO, BUT I DO RECALL THAT, YES.

15 AND I'M NOT CONFUSED BY ANYTHING. IT'S JUST
16 THAT I HAVE TO GO BY WHAT YOU'RE SAYING BECAUSE I
17 CANNOT READ THAT.

18 Q SURE. I TOTALLY UNDERSTAND, AND THAT'S WHY
19 I'M READING IT OUT LOUD FOR YOU. AND I BELIEVE, MAYBE
20 I'M WRONG, BUT IF I READ SOMETHING INCORRECTLY,
21 PROBABLY YOUR ATTORNEY WOULD OBJECT. LET'S GO BACK TO
22 THE QUESTION.

23 YOU DO RECALL HAVING THAT TRAINING AT SOME
24 POINT IN YOUR CAREER. CORRECT? THAT IS, THAT YOU
25 WRITE HONESTLY, OBJECTIVELY, AND PROFESSIONALLY?

26 A YES. I DO.

27 Q AND THAT -- THAT CONCEPT THAT WE WANT TO WRITE
28 HONESTLY, OBJECTIVELY, AND PROFESSIONALLY, THAT DOESN'T

1 APPLY JUST TO COURT REPORTS, DOES IT?

2 A NO, IT DOES NOT.

3 Q IN FACT, IT APPLIES ALSO TO YOUR DELIVERED
4 SERVICE LOGS. CORRECT?

5 A CORRECT.

6 Q AS WELL AS ANY OTHER REPORTS THAT YOU MAY
7 WRITE IN THE COURSE AND SCOPE OF YOUR DUTIES AS A
8 SOCIAL WORKER?

9 A YES, OF COURSE.

10 Q ALWAYS WANT TO WRITE HONESTLY, OBJECTIVELY,
11 PROFESSIONALLY?

12 A ABSOLUTELY.

13 Q AND GOING NOW TO MY QUESTION I ASKED YOU
14 EARLIER -- AND I'LL GO AHEAD AND SHOW YOU THIS BEFORE I
15 PUT IT UP BECAUSE I KNOW YOU CAN'T TURN -- THIS IS
16 EXHIBIT NUMBER 409, BATES NUMBER 5925, AND JUST TAKE A
17 MOMENT AND READ THAT TO YOURSELF.

18 A YES. THAT'S PRETTY MUCH WHAT I THOUGHT YOU
19 SAID.

20 Q OKAY. THIS TRAINING -- ACTUALLY, LET'S LOOK
21 AT THE WHOLE THING. YOU JUST HAD A MOMENT TO REVIEW
22 IT. IT'S TITLED, "PRACTICE TIPS." THIS IS TRAINING
23 YOU'VE HAD. RIGHT?

24 A YES. WELL --

25 Q I'M SORRY?

26 A YES. YES, I DID.

27 Q OKAY. DO YOU RECALL WHEN IT WAS YOU HAD THIS
28 TRAINING?

1 A NO. I HAVE -- I DON'T HAVE AN INDEPENDENT
2 RECOLLECTION OF EXACTLY WHEN I HAD THAT TRAINING, NO.

3 Q WAS THIS PART OF THAT MANDATORY WARRANT
4 TRAINING THAT YOU HAD WITH THE COUNTY OF LOS ANGELES,
5 IF YOU REMEMBER?

6 A IT'S POSSIBLE.

7 Q AND THAT MANDATORY -- WELL, FIRST LET ME ASK
8 YOU THIS:

9 YOU DO REMEMBER, AT SOME POINT IN TIME, THE
10 COUNTY OF LOS ANGELES ACTUALLY PUT TOGETHER A VERY
11 DETAILED TRAINING REGARDING WARRANTS AND WARRANT
12 REQUIREMENTS AND THE STANDARDS THAT YOU HAVE TO MEET.

13 RIGHT?

14 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

15 THE COURT: SUSTAINED.

16 BY MR. MCMILLAN:

17 Q OKAY. LET'S FOCUS FOR A MINUTE ON THIS
18 PARTICULAR SLIDE ABOUT THE CWS CMS CONTACT NOTES.
19 FIRST, IT SAYS, "YOU MUST ALWAYS CONDUCT A THOROUGH AND
20 TIMELY INVESTIGATION." THAT'S CONSISTENT WITH YOUR
21 TRAINING. CORRECT?

22 A CORRECT.

23 Q "BE SURE TO INCLUDE ALL," AND THE WORD ALL IS
24 CAPITALIZED, ALL CAPITAL LETTERS, AND IT'S UNDER THAT
25 PHRASE, "INCLUDE ALL INFORMATION," IS UNDERLINED, SO IT
26 SAYS:

27 "BE SURE TO INCLUDE ALL INFORMATION RELEVANT
28 TO THE INFORMATION INCLUDING INFORMATION THAT MAY BE

1 DEEMED EXCULPATORY FOR THE ALLEGED PERPETRATOR."

2 DO YOU REMEMBER WHAT THAT MEANS?

3 A EXCULPATORY? IS THAT WHAT YOU'RE ASKING? OR
4 THE WHOLE THING?

5 Q WE CAN START WITH EXCULPATORY. THAT'S FINE.
6 DO YOU RECALL WHAT THAT MEANS?

7 A TO THE BEST OF MY RECOLLECTION, EXCULPATORY,
8 AGAIN, CAN I -- WE DON'T USE THAT TERM VERY OFTEN,
9 EXCULPATORY, SO --

10 BECAUSE WE'RE NOT LEGAL EXPERTS, BUT
11 EXCULPATORY, I BELIEVE, IT MEANS SOMETHING TO THE
12 EFFECT OF ANY EVIDENCE THAT WOULD SHOW POSITIVE -- THAT
13 WOULD SHOW THE MOTHER AND/OR THE FATHER IN A POSITIVE
14 LIGHT ALSO.

15 IN ADDITION TO SHOWING -- I'M NOT SURE HOW TO
16 PHRASE THIS -- ANY EVIDENCE -- ANY AND ALL EVIDENCE
17 WHETHER IT SHOWS MOTHER AND FATHER IN A POSITIVE LIGHT
18 OR A NOT-SO-POSITIVE LIGHT.

19 Q I'M NOT SURE I UNDERSTOOD YOU EXACTLY.

20 A EXCULPATORY, LET'S SEE.

21 Q LET ME TRY TO HELP YOU.

22 DO YOU REMEMBER, IN YOUR CORE ACADEMY TRAINING
23 IN 2007, BEING TAUGHT THAT EXCULPATORY INFORMATION IS
24 INFORMATION THAT WOULD BE HELPFUL TO THE OTHER SIDE?

25 A YES. THAT'S WHAT I'M TRYING TO SAY, YES.

26 Q OKAY. AND WHEN WE'RE TALKING ABOUT THE
27 ALLEGED PERPETRATOR, WHAT DOES THAT MEAN?

28 A WHOEVER THE ALLEGATION ARE AGAINST, WHETHER

1 IT'S THE MOTHER OR THE FATHER.

2 Q WHAT HAPPENS WHEN THE ALLEGATIONS IN THE
3 REFERRAL ARE AGAINST BOTH PARENTS? DO YOU CHOOSE ONE
4 OVER THE OTHER AND THEN JUST EXCLUDE EXCULPATORY
5 EVIDENCE FOR ONE BUT NOT THE OTHER? HOW DOES THAT WORK
6 WHEN WE HAVE ALLEGATIONS THAT BOTH PARENTS ARE AT
7 FAULT?

8 A NO. THEY WERE BOTH INVESTIGATED FULLY.

9 Q BOTH INVESTIGATED FULLY?

10 A YES.

11 Q I'M GOING BACK TO A COMMENT THAT YOU JUST MADE
12 A MOMENT AGO, THAT SOCIAL WORKERS ARE NOT LAWYERS.
13 RIGHT?

14 A CORRECT.

15 Q OKAY. I'M GOING TO SHOW YOU
16 EXHIBIT NUMBER 403, BATES NUMBER 5895, AND I'LL GO
17 AHEAD AND SHOW IT TO YOU AND GIVE YOU A MOMENT TO
18 REVIEW IT. LET ME KNOW WHEN YOU'RE DONE.

19 A YES. I'VE READ IT.

20 Q AGAIN, THIS IS EXHIBIT NUMBER 403, BATES
21 NUMBER 005895.

22 DO YOU RECALL LEARNING IN YOUR TRAINING THAT
23 BOTH FEDERAL AND STATE LAW REQUIRE YOU TO BE TRAINED ON
24 THE LAW.

25 FIRST, IN ORDER TO PROTECT THE LEGAL RIGHTS
26 AND SAFETY OF CHILDREN AND FAMILIES, FROM THE INITIAL
27 TIME OF CONTACT DURING THE INVESTIGATION, THROUGH
28 TREATMENT?

1 DO YOU RECALL BEING TRAINED THAT?

2 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

3 THE COURT: SUSTAINED.

4 BY MR. MCMILLAN:

5 Q NOW, WHEN WE ARE TALKING ABOUT YOUR CONTACT
6 NOTES IN THIS EXHIBIT NUMBER 82, AND LET ME -- LET ME
7 GET THE BOOK FOR YOU SO THAT WE CAN SORT OF MARCH ALONG
8 THROUGH THIS.

9 AND YOU DON'T NEED TO THUMB THROUGH IT YET.
10 WE'LL GET THERE IN A MOMENT.

11 WHEN YOU WERE JUST SPEAKING WITH MR. GUTERRES,
12 WHEN HE ASKED YOU ABOUT YOUR INTERACTIONS WITH
13 MR. RYAN MILLS, DO YOU REMEMBER HAVING A LITTLE BIT OF
14 TROUBLE RECALLING THE DETAILS?

15 A I'M NOT SURE WHAT YOU'RE ASKING. DID I --

16 Q WELL -- GO AHEAD.

17 A OH, BECAUSE THE CONVERSATION WAS SO LONG AGO?

18 Q YOUR CONVERSATION WITH MR. MILLS WAS SO LONG
19 AGO?

20 A YES. I DON'T REMEMBER THE DETAILS. BUT I
21 REMEMBER.

22 Q BUT YOU REMEMBERED A LOT OF THE DETAILS WITH
23 RESPECT TO YOUR VISITS WITH MS. DUVAL. RIGHT?

24 A I'M NOT SURE WHAT YOU'RE ASKING. YOU WERE
25 TALKING ABOUT THE PHONE CALL EARLIER. I REMEMBER A LOT
26 OF OTHER THINGS ABOUT MR. DUVAL -- MR. MILLS.

27 SO I'M NOT SURE WHAT YOU'RE ASKING. I THOUGHT
28 IT WAS SPECIFIC TO THE PHONE CALL, THAT ONE PHONE CALL

1 WITH MR. MILLS.

2 Q WELL, YOU COVERED SEVERAL CONTACTS. ACTUALLY,
3 NOT JUST WITH MR. MILLS. WE CAN GO THROUGH THEM HERE.
4 WE CAN START WITH YOUR CONVERSATION WITH WENDY CRUMP.
5 YOU HAD A LOT OF DETAIL ABOUT THAT CONVERSATION THAT
6 YOU REMEMBERED. RIGHT?

7 A I HAD SEVERAL CONVERSATIONS WITH HER.

8 Q OKAY. LET'S START WITH YOUR FIRST
9 CONVERSATION WITH MS. CRUMP. WHEN EXACTLY DID THAT
10 HAPPEN?

11 A ON OCTOBER 19TH.

12 Q WHAT TIME OF DAY?

13 A IN THE EVENING.

14 Q EVENING. AND LET'S SEE SOME OF THE DETAILS OF
15 THAT CONVERSATION THAT YOU RECALL HAVING. WHAT,
16 SPECIFICALLY, SITTING HERE RIGHT TODAY, WITHOUT LOOKING
17 AT THE NOTE, WHAT DETAILS DO YOU REMEMBER OF THAT
18 CONVERSATION?

19 A DETAILS? AGAIN, I'M NOT SURE WHAT YOU'RE
20 ASKING.

21 Q WELL, YOU HAD A CONVERSATION WITH THE WOMAN.
22 RIGHT?

23 A YES, I DID.

24 Q WHAT'S THE FIRST THING YOU SAID?

25 A THE VERY FIRST THING I SAID?

26 Q SURE.

27 A I COULDN'T TELL YOU THAT.

28 Q WHAT'S THE FIRST THING SHE SAID?

1 A COULDN'T TELL YOU THAT EITHER. THAT'S TOO
2 DETAILED.

3 Q DID SHE TELL YOU WHAT HER CONCERNS WERE?

4 A YES. YES, SHE DID.

5 Q OKAY. OKAY. THAT'S WHAT I'M LOOKING FOR.

6 DID SHE TELL YOU WHEN IT WAS THAT SHE HAD HER
7 FIRST VISIT WITH MS. DUVAL AND MR. MILLS?

8 A SHE MIGHT HAVE TOLD ME WHEN THE FIRST VISIT
9 WAS. I DON'T REMEMBER. IT WAS -- FAIRLY RECENT -- IT
10 WOULD HAVE BEEN FAIRLY RECENT. OF THAT, I'M SURE.

11 Q DOES THE FIRST VISIT BEING OCTOBER 16TH SOUND
12 ABOUT RIGHT?

13 A SOUNDS ABOUT RIGHT. BUT I DON'T HAVE ANY
14 INDEPENDENT RECOLLECTION OF THE EXACT DATE.

15 Q AND BY THE TIME THAT YOU CALLED MS. CRUMP --
16 LET ME MAKE SURE I'VE GOT THIS STRAIGHT IN MY OWN MIND.
17 I THINK YOU TESTIFIED THAT YOU CALLED MS. CRUMP ON THE
18 EVENING OF THE 19TH.

19 AT THE TIME THAT YOU CALLED HER, DO YOU
20 REMEMBER WHETHER OR NOT THERE HAD BEEN ANOTHER VISIT
21 BETWEEN MS. CRUMP AND THIS FAMILY BESIDES THE VISIT ON
22 THE 16TH?

23 A I'M TRYING TO FOLLOW YOUR QUESTION. ARE YOU
24 ASKING WHETHER THERE WAS ANOTHER VISIT BETWEEN THE
25 FIRST VISIT SHE HAD WITH THEM AND MY PHONE CALL WITH
26 HER?

27 Q THAT'S EXACTLY WHAT I'M TRYING TO ASK YOU.

28 A I BELIEVE THERE WAS ONLY ONE VISIT AT THAT

1 TIME.

2 Q DO YOU RECALL WHETHER OR NOT THERE HAD BEEN
3 ANY PHONE CONVERSATIONS THAT MS. CRUMP SHARED WITH YOU
4 THAT OCCURRED BETWEEN THE 16TH AND THE 19TH WITH THIS
5 FAMILY?

6 A IF THERE WERE, I DON'T REMEMBER IF SHE TOLD ME
7 ABOUT THAT. I JUST RECALL HER TELLING ME ABOUT THE
8 MEETING IN HER OFFICE.

9 Q IN THAT MEETING, OR RATHER THAT TELEPHONE CALL
10 THAT YOU HAD WITH MS. CRUMP, PART OF THE REASON FOR
11 THAT CALL, ACCORDING TO YOUR TRAINING, PART OF REASON
12 FOR THE PHONE CALL TO MS. CRUMP WAS TO VERIFY THE
13 REPORT THAT SHE HAD CALLED IN TO THE HOTLINE. CORRECT?

14 A CORRECT.

15 Q TO MAKE SURE THAT THE HOTLINE OPERATOR HAD
16 ACTUALLY REPORTED THE WORDS SPOKEN BY MS. CRUMP
17 ACCURATELY. CORRECT?

18 A CORRECT.

19 Q SO ONE OF THE THINGS THAT YOU WANTED TO DO --
20 YOU HAVE SOMETHING CALLED A SCREENER NARRATIVE.
21 CORRECT?

22 A YES.

23 Q AND ONE OF THE THINGS THAT YOU WANT TO DO WHEN
24 YOU'RE ASSIGNED THIS CASE, YOU GET THE SCREENER
25 NARRATIVE, AND IT'S GOT THE DETAILS OF WHATEVER THE
26 REPORT WAS, CONTAINED IN IT. CORRECT?

27 A CORRECT.

28 Q AND ONE OF THE THINGS THAT YOU WANT TO DO WHEN

1 YOU'RE ASSIGNED THE CASE IS YOU READ THE SCREENER
2 NARRATIVE, MAKE SURE YOU UNDERSTAND IT. RIGHT?

3 A YES.

4 Q AND THEN YOU WANT TO CALL THE REFERRING PARTY
5 THAT'S MAKING THE ALLEGATIONS TO MAKE SURE THAT,
6 ACTUALLY, THESE ARE THE ALLEGATIONS THEY INTEND TO BE
7 MAKING, FIRST. RIGHT?

8 A CORRECT.

9 Q AND IF THERE'S ANY CONFUSION ABOUT WHAT
10 THEY'RE SAYING, TO CLEAR UP THAT CONFUSION SO YOU CAN
11 GET A MORE THOROUGH AND COMPLETE UNDERSTANDING OF THE
12 ALLEGATIONS. CORRECT?

13 A CORRECT.

14 Q AND THAT'S WHAT YOU DID ON THIS PHONE CALL
15 WITH MS. CRUMP ON THE 19TH. CORRECT?

16 A YES. YES, I DID.

17 Q SO YOU WERE ABLE TO ENSURE, THROUGH YOUR
18 CONVERSATION WITH MS. CRUMP, THAT IN FACT HER COMPLAINT
19 WAS THAT BOTH PARENTS -- BOTH PARENTS -- NOT JUST MOM
20 BUT BOTH PARENTS SEEMED TO HER TO BE ARGUING OVER
21 CUSTODY ISSUES INSTEAD OF THE BABY'S MEDICAL ISSUES.
22 RIGHT?

23 A CORRECT.

24 Q NOW, IN THIS CONVERSATION ON THE 19TH, I THINK
25 YOU TOLD US THAT MS. CRUMP HAD GIVEN YOU SOME SORT OF
26 LIST OF FOODS THAT NEED TO -- NEEDED TO BE FED TO THE
27 BABY. DO YOU REMEMBER THAT?

28 A YES. I DO.

1 Q NOW, THAT LIST, IF THE ALLEGATIONS ARE THAT
2 THE BABY'S UNDERWEIGHT, DOESN'T LOOK LIKE HE'S BEING
3 FED ENOUGH, IN FACT THAT WAS -- LET'S STOP THERE FOR A
4 MOMENT.

5 THAT WAS ONE OF THE ALLEGATIONS IN THE
6 SCREENER NARRATIVE THAT YOU RECEIVED AND INVESTIGATED,
7 CORRECT? THAT THE BABY WAS NOT BEING FED ENOUGH BY
8 BOTH PARENTS. RIGHT?

9 A YES. CORRECT. I WOULD LIKE TO EXPLAIN.

10 Q HOLD ON. FIRST, I AM CORRECT ABOUT THAT, THAT
11 MS. CRUMP, IN THE SCREENER NARRATIVE, SAID BOTH
12 PARENTS -- IT DIDN'T APPEAR TO HER THAT BOTH PARENTS
13 APPEARED TO BE FEEDING THE BABY ENOUGH. CORRECT?

14 A THAT'S IN THE SCREENER NARRATIVE.

15 Q OKAY. AND THEN WHEN YOU TALKED TO MS. CRUMP,
16 I THINK WE'VE BEEN OVER THIS A LITTLE BIT, ABOUT YOUR
17 CONTACT NOTES AND HOW THEY'RE SUPPOSED TO BE THOROUGH,
18 ACCURATE, HONEST, AND COMPLETE, WHAT YOU'RE SUPPOSED TO
19 PUT IN THERE IS IMPORTANT INFORMATION. RIGHT?

20 A CORRECT.

21 Q I'M SORRY?

22 A CORRECT. YES.

23 Q WOULD YOU AGREE WITH ME, MA'AM, THAT THIS LIST
24 OF FOODS, IN THE CONTEXT OF YOUR CONVERSATION IN THIS
25 INVESTIGATION WITH MS. CRUMP ON THE 19TH, THAT LIST
26 WOULD HAVE BEEN IMPORTANT INFORMATION. RIGHT?

27 A ARE YOU TALKING ABOUT THE LIST OF EXACT FOODS
28 OR --

1 Q WAS THERE SOME OTHER LIST OF INEXACT FOODS?

2 A I DON'T UNDERSTAND WHAT YOUR QUESTION IS.

3 WHAT --

4 Q OKAY. HOLD ON. LET ME BACK UP.

5 THIS CONVERSATION THAT YOU HAD WITH MS. CRUMP
6 ON OCTOBER 19, 2009?

7 A YES.

8 Q I THINK YOU TOLD US EARLIER THAT SHE GAVE YOU
9 THIS LIST OF FOODS. YOU DIDN'T REMEMBER THE EXACT
10 ITEMS ON IT, BUT YOU DID REMEMBER THAT THEY NEEDED TO
11 BE CALORIE DENSE OR HIGH-CALORIC, HIGH-PROTEIN. RIGHT?

12 A CORRECT.

13 Q BUT YOU DID SAY SHE GAVE YOU A LIST OF FOODS.
14 RIGHT?

15 A YES.

16 Q AND YOU WOULD AGREE WITH ME THAT IF THAT, IN
17 FACT, DID HAPPEN, IT'S AN IMPORTANT DETAIL THAT SHOULD
18 BE IN THE CONTACT NOTES. RIGHT?

19 A I WRITE THE CONTACTS TO THE BEST OF MY
20 ABILITY, SO I PUT IN THERE WHAT WAS IMPORTANT TO ME AT
21 THE TIME. I STILL -- I DON'T BELIEVE THERE'S ANYTHING
22 MISSING IN THE CONTACTS.

23 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
24 STRIKE AS NONRESPONSIVE.

25 THE COURT: OVERRULED.

26 BY MR. MCMILLAN:

27 Q OKAY. LET ME TRY THIS AGAIN BECAUSE I'M
28 CONFUSED.

1 THESE CONTACT NOTES ARE SUPPOSED TO BE HONEST,
2 ACCURATE, COMPLETE. YES?

3 THE COURT: THAT'S ENOUGH ASKING THAT
4 QUESTION. ENOUGH OF THAT ONE QUESTION.

5 MR. MCMILLAN: OKAY. OKAY.

6 BY MR. MCMILLAN:

7 Q AM I CORRECT, MA'AM, THAT WITHOUT ACTUALLY
8 LOOKING AT THE CONTACT NOTE THERE IN FRONT OF YOU,
9 YOU'RE NOT ABLE TO TELL ME HERE TODAY EXACTLY WHAT
10 MS. CRUMP SAID TO YOU OR GAVE YOU THE FOOD LIST?

11 A EXACTLY WHAT SHE SAID, OF COURSE NOT, BUT I
12 REMEMBER ENOUGH OF WHAT SHE SAID TO KNOW THAT SHE DID
13 NOT HAVE THOSE FOODS IN HER HOME. I COULD TELL YOU
14 SOME OF THE FOODS SHE MENTIONED. THE EXACT LIST, NO.

15 MR. MCMILLAN: OBJECTION: NONRESPONSIVE AS TO
16 FOODS IN THE HOME. MOVE TO STRIKE.

17 THE REPORTER: I ASKED WITNESS TO REPEAT HER
18 ANSWER BECAUSE I DIDN'T HEAR THE FIRST PART.

19 THE COURT: OVERRULED.

20 BY MR. MCMILLAN:

21 Q LET ME JUST FOCUS THE QUESTION FOR A MOMENT ON
22 THIS LIST MS. CRUMP SUPPOSEDLY GAVE YOU. OKAY? WE'LL
23 GET TO WHAT HAPPENED IN MS. DUVAL'S HOME LATER ON. SO
24 LET'S JUST FOCUS ON THE LIST MS. CRUMP GAVE YOU.

25 OKAY? IS THAT OKAY?

26 A YES, IT'S OKAY. I DIDN'T HEAR A QUESTION
27 THERE, REALLY.

28 Q AM I CORRECT THAT, WITHOUT REFERENCING YOUR

1 NOTE OF YOUR CONVERSATION WITH MS. CRUMP ON
2 OCTOBER 19, 2009, YOU HAVE NO RECOLLECTION AS TO
3 WHETHER OR NOT SHE EVEN GAVE YOU A LIST OF SPECIFIC
4 FOODS?

5 MR. GUTERRES: OBJECTION: ASKED AND ANSWERED.

6 THE COURT: SUSTAINED. WE'VE COVERED THAT NOW
7 SEVERAL TIMES.

8 BY MR. MCMILLAN:

9 Q ALL RIGHT. GOING ON TO OCTOBER 20TH, 2009, DO
10 YOU RECALL WHETHER OR NOT IT WAS OCTOBER 20TH WHEN YOU
11 ACTUALLY WERE ABLE TO GO OUT AND MEET WITH MS. DUVAL?

12 A YES. IT WAS.

13 Q AND THAT WAS THE TIME -- THAT WAS THE TIME
14 THAT YOU WENT TO HER HOME?

15 A YES. IT WAS.

16 Q THAT WAS IN THE AFTERNOON OF OCTOBER 20TH?

17 A I BELIEVE SO.

18 Q IN THAT CONVERSATION, DO YOU RECALL MS. DUVAL
19 TELLING YOU THAT HER PEDIATRICIAN WAS, IN FACT,
20 DR. YIM?

21 A I -- I'M NOT -- YES. I BELIEVE SHE SAID THAT.
22 YES.

23 Q SHE DIDN'T TELL YOU IT WAS DR. GILL, IT WAS
24 DR. YIM?

25 A SHE TOLD ME ABOUT DR. GILL AT SOME POINT
26 DURING THE INVESTIGATION.

27 Q OH. WAS THAT ON OCTOBER 20TH THAT SHE
28 MENTIONED DR. GILL?

1 A I COULDN'T TELL YOU EXACTLY WHEN SHE MENTIONED
2 DR. GILL. I REMEMBER BOTH DOCTORS' NAMES.

3 Q NOW, GOING BACK TO THIS ISSUE OF IMPORTANT
4 INFORMATION IN THE CONTACT NOTES.

5 BASED ON YOUR TRAINING AND EXPERIENCE AND WHAT
6 YOU'VE TESTIFIED TO HERE TODAY IN COURT, AM I CORRECT
7 THAT IF YOU NOTED THAT THESE FOODS ON MS. CRUMP'S LIST
8 WERE NOTABLY ABSENT FROM MS. DUVAL'S HOME, THAT WOULD
9 BE SOMETHING THAT YOU'D PUT IN YOUR CONTACT NOTE.
10 RIGHT?

11 A I'M NOT SURE IF THAT'S IN THE CONTACT NOTES OR
12 NOT. BUT I DEFINITELY REMEMBER THERE BEING A LOT OF --
13 I DID PUT IN THE CONTACT NOTES WHAT SHE WAS FEEDING HIM
14 IN MY PRESENCE.

15 MR. MCMILLAN: YOUR HONOR, OBJECTION.
16 NONRESPONSIVE, MOVE TO STRIKE UP TO "I DID PUT IN THE
17 CONTACT NOTES WHAT SHE WAS FEEDING HIM IN MY PRESENCE."

18 THE COURT: I'M NOT SURE WHAT YOU'RE ASKING.
19 BUT IN LOOKING AT THE QUESTION AND THE ANSWER, IF IT'S
20 OBJECTION THE ANSWER IS NONRESPONSIVE, THE OBJECTION IS
21 SUSTAINED.

22 THE MOTION TO STRIKE IS GRANTED. THE ANSWER
23 WILL BE STRICKEN. AND THE JURY MUST DISREGARD. I
24 CAN'T PARSE OUT A WORD HERE AND A WORD THERE. SO WE'LL
25 STRIKE THE WHOLE ANSWER, AND YOU CAN ASK AGAIN.

26 MR. MCMILLAN: YOUR HONOR, MAY I HAVE THE
27 QUESTION REREAD?

28 THE COURT: SURE. WE'LL ASK THE REPORTER TO

1 READ BACK. IT'S A RATHER LONG QUESTION, BUT GO AHEAD.

2 (THE RECORD WAS READ AS REQUESTED)

3 THE WITNESS: THAT COULD BE ONE OF MANY THINGS
4 I'D PUT IN THE CONTACT NOTES.

5 BY MR. MCMILLAN:

6 Q WELL, AM I RIGHT THAT ONE OF THE REASONS THAT
7 YOU MAKE THESE CONTACT NOTES IS SO THAT LATER ON, YOU
8 YOURSELF CAN ACTUALLY GO BACK AND LOOK AT THEM, PERHAPS
9 YEARS LATER, TO KIND OF REFRESH YOUR RECOLLECTION OF
10 WHAT HAPPENED BACK THEN?

11 A THAT'S PART OF IT.

12 Q THAT'S PART OF IT?

13 A BUT --

14 Q AND THAT'S WHY YOU WRITE DOWN THE THINGS THAT
15 ARE IMPORTANT TO YOU AT THE TIME YOU CREATE THE NOTE.
16 CORRECT?

17 A AS MUCH AS POSSIBLE. YES.

18 Q AS MUCH AS POSSIBLE. SO ARE THERE SOME THINGS
19 THAT ARE IMPORTANT TO YOU THAT YOU DON'T WRITE DOWN?

20 A NO. THAT'S NOT WHAT I SAID.

21 Q WELL, MAYBE I'M MISUNDERSTANDING, I THOUGHT
22 YOU JUST TOLD ME AS MUCH AS POSSIBLE, YOU TRY TO WRITE
23 DOWN THE IMPORTANT THINGS. RIGHT?

24 A CORRECT.

25 Q OKAY. IS THERE A CIRCUMSTANCE WHERE YOU DON'T
26 WRITE DOWN THE IMPORTANT THINGS?

27 A NO. THERE ISN'T. THAT WOULD DEPEND ON A LOT
28 OF FACTORS. THERE ARE WAY TOO MANY FACTORS GOING ON IN

1 THE QUESTION. EVERYTHING I PUT IN THE CONTACT NOTE IS
2 IMPORTANT.

3 Q AND MAYBE SOME OF THE THINGS YOU LEFT OUT OF
4 THE CONTACT NOTES ARE IMPORTANT TOO. RIGHT?

5 A THAT'S A VERY GENERAL QUESTION. I DON'T KNOW
6 HOW TO ANSWER THAT.

7 Q WELL, FOR EXAMPLE, THE FACT THAT YOU CLAIM
8 NONE OF THESE FOODS WERE IN MS. DUVAL'S HOME, THAT'S A
9 FACT YOU LEFT OUT OF THE CONTACT NOTES.

10 A I DON'T DISCLAIM THAT THAT IS A FACT, THAT'S
11 TRUE. AND IF IT'S NOT THE IN THE CONTACT NOTES, IT'S
12 INADVERTENT ON MY PART.

13 BECAUSE, AS I WAS TRYING TO SAY, WE DO THE
14 BEST TO OUR ABILITY TO PUT AS MUCH AS WE CAN IN THE
15 CONTACT NOTES. BUT THAT DOESN'T MEAN THAT THINGS THAT
16 ARE LEFT OUT ARE NOT IMPORTANT.

17 BUT I DO HAVE -- IT IS DEFINITELY A FACT THAT
18 THEY WERE NOT IN HER HOME.

19 Q WELL, WE SHOULD FIND THAT IN THE CONTACT
20 NOTES, THEN SOME OF THE -- SOMEWHERE. RIGHT?

21 A I'M NOT SURE WHAT YOU'RE ASKING AGAIN.

22 Q WELL, YOU SAID IT'S DEFINITELY A FACT THAT
23 THOSE FOODS WERE NOT IN THE HOME. UNLESS I HEARD YOU
24 WRONG. RIGHT?

25 A AGAIN, I'M NOT SURE WHAT YOU'RE ASKING. I PUT
26 AS MUCH IN THE CONTACT NOTES AS I COULD. AND
27 EVERYTHING IN THE CONTACT NOTES WAS IMPORTANT.

28 Q OKAY. NOW, IN THAT SAME CONVERSATION THAT YOU

1 HAD WITH MS. DUVAL IN HER HOME, DO YOU RECALL, WITHOUT
2 REFERENCING YOUR CONTACT NOTE, HER TELLING YOU THAT HER
3 AND MR. MILLS BROKE UP FOR GOOD WHEN MR. MILLS FOUND
4 OUT SHE WAS PREGNANT AND THREATENED HER THAT IF SHE
5 DIDN'T ABORT THE BABY, HE WAS GOING TO BREAK UP WITH
6 HER.

7 DO YOU RECALL THAT CONVERSATION?

8 MR. GUTERRES: OBJECTION: RELEVANCE.

9 THE COURT: SUSTAINED. LET ME SEE COUNSEL FOR
10 A MOMENT.

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

14 THE COURT: ALL RIGHT. WE'RE AT SIDEBAR. AND
15 COUNSEL ARE PRESENT. MR. MCMILLAN, I -- YESTERDAY WE
16 HAD A CONVERSATION ABOUT THE ATTEMPTS OF PLAINTIFF'S
17 COUNSEL, AND I THINK PARTICULARLY, YOU, TO CAST
18 MR. MILLS IN A BAD LIGHT.

19 AND I INDICATED THAT THERE ARE CERTAIN PARTS
20 OF THE EVIDENCE THAT WOULD BE RELEVANT, BUT NOT SIMPLY
21 AN ATTACK ON HIM PERSONALLY.

22 THIS IS A NUMBER OF TIMES THIS HAS COME UP.
23 AND IT WILL NOT COME UP ANYMORE. I WANT TO MAKE SURE
24 YOU UNDERSTAND, AND WE'LL TAKE A RECESS IF NECESSARY SO
25 WE CAN HAVE A FULL DISCUSSION SO THAT YOU UNDERSTAND
26 THAT I AM NOW TELLING YOU, DO NOT DO THIS AGAIN.

27 MR. MCMILLAN: YOUR HONOR --

28 THE COURT: I DON'T NEED TO HEAR YOU. DO YOU

1 UNDERSTAND ME OR NOT?

2 MR. MCMILLAN: I UNDERSTAND.

3 THE COURT: DO YOU WANT TO TAKE A BREAK SINCE
4 WE HAD A DISCUSSION ON THE RECORD?

5 MR. MCMILLAN: I DON'T NEED A BREAK.

6 THE COURT: I'M SAYING YOU NEED ONE.

7 AT SIDEBAR, IT DOES INHIBIT A CERTAIN AMOUNT
8 OF DISCUSSION, AND I'M OFFERING AND TELLING YOU THAT IF
9 THERE'S SOME PART OF WHAT I'M TELLING YOU THAT YOU DID
10 NOT UNDERSTAND, OR IF YOU THINK THAT YOU WANT
11 CLARIFICATION AS TO THE KINDS OF THINGS THAT CAN BE
12 GONE INTO ABOUT MR. MILLS AND THE THINGS THAT CAN'T,
13 I'M HAPPY TO EXCUSE THE JURY SO YOU DON'T HAVE TO DO IT
14 IN THIS SOMEWHAT AWKWARD SETTING AT SIDEBAR.

15 MR. MCMILLAN: I DON'T NEED TO DO A
16 FULL-BLOWN -- I THINK WE'VE MADE AN ADEQUATE RECORD AS
17 TO MS. PENDER AND MR. MILLS, AND I HAVE ZERO INTENTION
18 OF GOING INTO THAT WITH HER.

19 BUT I DID NOT HAVE THE UNDERSTANDING FROM YOUR
20 DISCUSSION YESTERDAY THAT, WITH RESPECT TO HER
21 DISCUSSIONS THAT SHE HAD AND REPORTED IN HER DELIVERED
22 SERVICE LOGS WITH MS. DUVAL --

23 I MEAN, SHE'S JUST GIVEN A LOT OF DETAILED
24 INFORMATION ABOUT THOSE DISCUSSIONS. AND I'M NOT GOING
25 TO ASK HER ANYTHING ABOUT WHETHER OR NOT HE DENIED THAT
26 HE EVEN HAD SEX WITH HER OR EVEN WHETHER OR NOT
27 MS. DUVAL TOLD HIM THAT.

28 THE COURT: YOU JUST DID ESSENTIALLY THE SAME

1 THING IN THIS QUESTION BY BEING VERY SPECIFIC ABOUT
2 INFORMATION THAT THE PLAINTIFF IS CONTINUING IN THIS
3 CASE TO BRING UP, I THINK, IN MY VIEW, SOLELY FOR THE
4 PURPOSE OF CASTING MR. MILLS IN A BAD LIGHT.

5 MR. MILLS IS A SEPARATE SUBJECT. HE MAY OR
6 MAY NOT HAVE BEEN THE PROPER PERSON FOR DCFS TO GIVE
7 CUSTODY TO. BUT AS WE'VE DISCUSSED YESTERDAY, AND I
8 THINK YOU AGREED WITH ME, THAT IS A SEPARATE ISSUE.

9 THE QUESTION IN THIS CASE IS WHETHER OR NOT
10 THE BABY SHOULD HAVE BEEN TAKEN FROM YOUR CLIENT. AND
11 IT'S A SEPARATE ISSUE AS TO WHETHER OR NOT THEY --
12 AFTER HAVING TAKEN CUSTODY, AS TO WHO THEY GAVE CUSTODY
13 TO.

14 AND WE'RE NOT HERE TO DECIDE THE PROPRIETY OF
15 THEIR SELECTION. SO TO THE EXTENT THAT MR. MILLS HAD
16 DONE SOMETHING -- I MENTIONED THIS YESTERDAY.

17 THERE WAS A MENTION IN ONE OF THESE REPORTS
18 THAT THE BABY HAD BEEN SEEN BY A PEDIATRICIAN BETWEEN,
19 LIKE, JUNE AND AUGUST OR SEPTEMBER OF WHATEVER YEAR
20 THAT WAS --

21 AND I TOLD YOU THAT I AGREED THAT IT WAS A
22 LEGITIMATE INQUIRY TO BRING UP IF THE REASON WAS THAT
23 MR. MILLS WASN'T AGREEABLE TO DOCTORS THAT SHE WAS
24 SELECTING.

25 AND I PERMITTED THE EXAMINATION OF MR. MILLS
26 ABOUT THAT SUBJECT. AND THAT IS LEGITIMATE BECAUSE
27 THAT -- THAT GOES TO -- IT'S EXCULPATORY INFORMATION
28 ABOUT WHY A PEDIATRICIAN WASN'T SEEN FOR A GIVEN PERIOD

1 OF TIME.

2 BUT HIS ATTITUDE THAT YOU BROUGHT UP
3 ORIGINALLY OF DENYING PATERNITY, AND THE STATEMENTS TO
4 THE PASTOR AND SO ON, ABOUT THE STATEMENTS -- AND HE'S
5 ALREADY TESTIFIED TO IT.

6 I THINK HE HIMSELF SAID THAT HE INQUIRED ABOUT
7 WHETHER SHE WOULD HAVE AN ABORTION. THAT'S ENOUGH.
8 I'M NOT GOING TO HAVE ANY MORE OF THIS.

9 AND WHAT IT DOES IS IT'S ATTEMPTING TO PAINT
10 HIM IN A BAD LIGHT, PERSONALLY HAVING SOMETHING TO DO
11 WITH THE MERITS OF THE DETENTION THAT OCCURRED. SOME
12 THINGS DO, WHEN THESE THINGS PERSONALLY DO NOT.

13 AND I'M NOT GOING TO HAVE ANY MORE OF IT. SO
14 THAT'S WHY I'M OFFERING, BECAUSE I DON'T WANT IT TO BE
15 UNCLEAR, BUT I'M OFFERING TO HAVE, EITHER NOW, OR WHEN
16 WE DO TAKE A BREAK --

17 BY THE TIME WE'RE DONE WITH THIS, IT WILL BE
18 TIME TO TAKE A BREAK ANYWAY -- BUT I'LL BE HAPPY TO DO
19 IT ON THE RECORD TO MAKE SURE THAT YOU HAVE CLARITY AS
20 TO WHAT I'M TELLING YOU.

21 I DON'T WANT TO BE HAVING THIS DISCUSSION
22 AGAIN.

23 MR. MCMILLAN: I UNDERSTAND. MAYBE WE SHOULD
24 TAKE A BREAK BECAUSE YESTERDAY IN OUR DISCUSSIONS, I
25 DIDN'T HAVE THE UNDERSTANDING THAT ANYTHING RELATED TO
26 THE -- I MEAN ANYTHING BEYOND THE NEYLAND ISSUE WAS
27 OFF-LIMITS. NOW I KNOW THAT, I UNDERSTAND THAT.

28 AND JUST SO THAT EVERYBODY'S CLEAR, I HAD NO

1 INTENTION, AND I HAVE NO INTENTION OF TALKING TO
2 MS. PENDER ABOUT THAT CONTACT NOTE THAT SHE HAS, OTHER
3 THAN --

4 BECAUSE I DO NOT BELIEVE THAT WE HAD AN
5 ADEQUATE FOUNDATION LAID FOR IT TO BE ABLE TO DEAL WITH
6 IT AND OTHER RESPECTS IN THE RECORD, NOT IN THE
7 PRESENCE OF THE JURY, OTHER THAN TO JUST ASK HER THE
8 DATE OF THE NOTE.

9 THAT'S A NOTE THAT SHE CREATED IN THE COURSE
10 OF HER BUSINESS.

11 THE COURT: I'M NOT TALKING ABOUT THAT
12 EVIDENCE. I'M PERMITTING YOU TO --

13 MR. MCMILLAN: WELL, NO. IT WOULD BE THE
14 FOUNDATION FOR THE NOTE -- THE NEYLAND NOTE BECAUSE I
15 DON'T THINK A FOUNDATION FOR IT HAD BEEN LAID.

16 IN THE EVENT THAT ANYTHING HAPPENS WITH IT
17 LATER, I WOULD WANT TO BE ABLE TO LAY AN ADEQUATE
18 FOUNDATION, UNLESS THEY'LL STIPULATE TO IT.

19 THE COURT: YOU CAN ESTABLISH FOUNDATION FOR
20 THE NOTE --

21 MR. MCMILLAN: WITHOUT THE SUBSTANCE.

22 THE COURT: WITHOUT REFERRING TO THE
23 SUBSTANCE. THE SUBSTANCE OF IT HAS NOTHING TO DO WITH
24 IT. DID YOU -- I ASSUME SOME OF THOSE NOTES ARE IN HER
25 OWN HANDWRITING.

26 MR. MCMILLAN: THEY'RE COMPUTERIZED.

27 THE COURT: YOU CAN ASK HER IF THIS IS A NOTE
28 THAT SHE CREATED. AT OR ABOUT THE TIME, WHATEVER YOU

1 WANT TO DO TO PROVIDE THE FOUNDATION, BUT YOU DON'T
2 NEED TO GO INTO THE SUBSTANCE OF THE NOTE TO DO THAT.

3 MR. MCMILLAN: CAN WE GO AHEAD AND TAKE OUR
4 MORNING BREAK, BECAUSE I WANT TO MAKE SURE I HAVE
5 CLARITY ON THIS. I DIDN'T YESTERDAY.

6 THE COURT: ALL RIGHT.

7 LADIES AND GENTLEMEN, WE'LL TAKE THE MORNING
8 RECESS AT THIS TIME. APPROXIMATELY 10 MINUTES. ALL
9 JURORS, PLEASE REMEMBER THE ADMONITION.

10 (JURY EXCUSED)

11 (PAUSE IN THE PROCEEDINGS)

12 THE COURT: WE'RE ON THE RECORD. AND COUNSEL
13 ARE PRESENT. ALL JURORS HAVE LEFT THE COURTROOM.

14 FOR THE MOMENT, MS. SWISS IS ASSISTING
15 MS. PENDER. SHE'S BEEN VISIBLY PHYSICALLY
16 UNCOMFORTABLE. SO WE'RE GIVING HER SOME ASSISTANCE SO
17 SHE CAN TAKE A BREAK AS WELL. AS SOON AS THAT'S TAKEN
18 CARE OF, THEN WE'LL HAVE OUR FURTHER DISCUSSION.

19 ALL RIGHT. WE'RE STILL ON THE RECORD. SO AT
20 THIS POINT, HAVING TAKEN UP MY OFFER TO HAVE A FREER
21 DISCUSSION THAN YOU CAN DO AT SIDEBAR WITH THE
22 DISCUSSION WE'RE ADDRESSING, TELL ME, MR. MCMILLAN,
23 WHAT HAVE I SAID THAT REQUIRES -- OR YOU'D LIKE SOME
24 CLARIFICATION?

25 MR. MCMILLAN: IT'S JUST, YOUR HONOR, BASED ON
26 OUR DISCUSSIONS, I WANT TO SAY IT WOULD HAVE BEEN MAYBE
27 EITHER YESTERDAY OR THURSDAY IN RELATION TO THE
28 TESTIMONY OF MR. MILLS.

1 I HAD UNDERSTOOD, AND JUST NOW UNDERSTOOD,
2 THAT THE DISCUSSIONS THAT ARE REPORTED IN MS. PENDER'S
3 DELIVERED SERVICE LOGS RELATIVE TO THE CONVERSATIONS
4 THAT SHE HAD WITH PASTOR NEYLAND ABOUT MR. MILLS'S
5 DENIAL OF SEXUAL RELATIONS AND ALL THAT STUFF, WAS
6 OFF-LIMITS.

7 I UNDERSTOOD THAT, AND I COMPLETELY BACKED OFF
8 OF THAT.

9 THE COURT: I UNDERSTAND.

10 MR. MCMILLAN: AND EVEN THOUGH I HAVE NO
11 INTENTION AND HAD NO INTENTION OF GOING INTO THAT, WHAT
12 I DIDN'T UNDERSTAND, AND I UNDERSTAND NOW, IS THAT EVEN
13 THE QUESTION OF THE STATEMENTS BY MR. MILLS TO
14 MS. DUVAL REGARDING HER GETTING AN ABORTION, THESE ARE
15 NOW ALSO OFF-LIMITS.

16 THE COURT: YES. IT'S IRRELEVANT. IT'S
17 SIMPLY UNNECESSARY. AND MY ADMONITION THE OTHER DAY
18 WAS BROADER THAN YOU SAID, ALTHOUGH WE DID SPEAK ABOUT
19 THAT SPECIFICALLY AS AN EXAMPLE OF WHAT I FEEL IS
20 OFF-LIMITS.

21 AND SO, YES, IT IS TRUE THAT THAT SUBJECT,
22 WHICH IS REFERRED TO SPECIFICALLY IN THE QUESTION WHICH
23 CAUSED ME TO HAVE YOU COME TO SIDEBAR, IS, IN MY VIEW,
24 COMPLETELY UNNECESSARY TO ANY INQUIRY THAT YOU NEED TO
25 MAKE AND SHOULD BE PERMITTED TO MAKE OF THIS WITNESS.

26 THE PURPOSE OF THIS TRIAL IS NOT TO VILIFY
27 ANYBODY OR CAST ASPERSIONS ON ANYBODY. IF, IN FACT, IF
28 IT'S RELEVANT EVIDENCE, THEN IT'S FAIR GAME. IF IT'S

1 RELEVANT.

2 AND I HAVE GIVEN TO YOU SEVERAL TIMES THE
3 EXAMPLE THAT THERE IS -- IT HAS BEEN REPORTED THAT --
4 THERE WAS A PERIOD OF TIME WHEN THE BABY HAD NOT SEEN A
5 PEDIATRICIAN.

6 AND ONE OF THE THINGS, IN FACT, THAT YOU'RE
7 SAYING WAS THAT, IN INCOMPLETE ENTRIES IN SOME OF THE
8 REPORTS THAT YOU'RE GOING TO BE REVIEWING, A SEPARATE
9 MATTER WAS THAT IT WAS INCOMPLETE TO SAY THAT SHE
10 HAD -- THAT THE BABY HADN'T SEEN A PEDIATRICIAN BECAUSE
11 THE REASON FOR THAT WAS THAT THERE WAS A DISPUTE
12 BETWEEN THE TWO PERSONS AS TO WHOM THE BABY COULD BE
13 SEEN BY.

14 AND I'VE INDICATED TO YOU THAT THAT'S A GOOD
15 EXAMPLE OF WHERE THE INQUIRY ABOUT THE CONDUCT OF
16 MR. MILLS WOULD BE PERFECTLY RELEVANT BECAUSE THAT GOES
17 TO AN ISSUE IN THE CASE, SO THAT SOMEONE WOULD NOT
18 THINK UNFAIRLY ABOUT YOUR CLIENT, THAT SHE WAS NOT
19 TRYING TO GET MEDICAL CARE FOR HER BABY.

20 SO THAT'S A RELEVANT SUBJECT. BUT THE OTHER
21 SUBJECTS THAT YOU HAVE GONE INTO IN SOME OF THE
22 QUESTIONS JUST ABOUT MR. MILLS'S ATTITUDE AT THE TIME
23 HE FIRST BECAME AWARE THAT MS. DUVAL WAS PREGNANT,
24 THOSE HAVE NOTHING TO DO WITH THE ISSUES IN THIS CASE.

25 THE ISSUE IN THIS CASE IS WHETHER -- ONE OF
26 THE ISSUES, AND THEY ALL RELATE TOGETHER, IS WHETHER OR
27 NOT THERE WAS JUSTIFICATION FOR DETAINMENT OF THIS
28 BABY. AND FROM YOUR POINT OF VIEW, THERE WASN'T ANY,

1 AND WHAT THE CONSEQUENCES OF THAT HAVE BEEN.

2 IT'S IRRELEVANT AS TO WHETHER MR. MILLS ASKED
3 HER IF SHE HAD CONSIDERED AN ABORTION. WHAT DIFFERENCE
4 DOES THAT MAKE? IT DOESN'T HELP US DECIDE ANY OF THESE
5 ISSUES.

6 SO THE ANSWER TO YOUR QUESTION IS YES. AND
7 I'VE SAID THIS THE OTHER DAY, I'VE SAID IT TODAY. I
8 DON'T INTEND TO DO IT AGAIN. SO I AM INSTRUCTING YOU
9 NOT TO MAKE THAT KIND OF REFERENCE THAT YOU DID IN
10 ASKING THIS LAST QUESTION.

11 IF YOU HAVE ANY POINT -- HAVE ANY DOUBT NOW
12 ABOUT, IN A SPECIFIC INSTANCE, AS TO WHETHER A QUESTION
13 INVOLVING MR. MILLS, HIS CONDUCT, HIS THOUGHTS, THE
14 THINGS THAT HE SAID THAT RELATE TO THE PERSONAL
15 RELATIONSHIP AND NOT TO THE ISSUES IN THIS CASE, THEN I
16 THINK YOU BETTER ASK PERMISSION TO APPROACH TO FIND OUT
17 BECAUSE I'M NOT GOING TO TOLERATE THIS ANY FURTHER.

18 IT WON'T HAPPEN AGAIN. IF IT DOES, THEN YOU
19 ARE FOREWARNED THAT I'M PREPARED TO DO WHATEVER IS
20 NECESSARY TO ENFORCE THIS ORDER AND ENFORCE A PROPER
21 BEHAVIOR IN THIS CASE.

22 I DON'T WANT ANY MISUNDERSTANDING OF THAT,
23 THAT THIS IS IDLE TALK ON MY PART. IT IS NOT. OKAY?

24 MR. MCMILLAN: I UNDERSTAND, YOUR HONOR. AND
25 IF YOUR HONOR HAS TAKEN ANY OF MY CONDUCT AS EITHER
26 IGNORING OR CONSTRUING YOUR INSTRUCTIONS AND DIRECTIONS
27 AS IDLE TALK, I HAVEN'T. AND I DON'T.

28 THE COURT: I'M NOT SUGGESTING ANYTHING. I

1 WANT TO MAKE SURE THE RECORD IS CLEAR BECAUSE I'VE HAD
2 THIS DISCUSSION TWICE NOW, AND I DON'T INTEND TO DO IT
3 AGAIN.

4 SO NEXT TIME, I'M NOT EXPECTING THAT WILL
5 OCCUR, I DON'T EXPECT IT WILL, THEN I'LL DEAL WITH IT
6 AT THE TIME.

7 BUT I SIMPLY WANTED TO MAKE IT CLEAR THAT MY
8 OBLIGATION IS TO PROVIDE A FAIR TRIAL TO EVERYBODY, NOT
9 JUST YOUR CLIENT, EVERYBODY.

10 AND I'M NOT GOING TO HAVE THE RIGHT OF
11 FAIRNESS THAT EVERYBODY HAS IMPAIRED OR DIMINISHED IN
12 ANY WAY BY THE MENTION OF ANY KIND OF INTRODUCTION OF
13 MATTERS THAT ARE NOT RELEVANT TO THE ISSUES IN THE
14 CASE. AND SO --

15 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR.

16 SO, I DO HAVE A COUPLE QUESTIONS. AND WE
17 ADDRESSED THIS A LITTLE BIT AT SIDEBAR ABOUT THIS.

18 AND THIS IS WHAT I REALLY WANTED TO CLARIFY,
19 MAKE SURE I'M NOT STEPPING ON THE INSTRUCTION YOU
20 ALREADY GAVE AT SIDEBAR WHICH, AT LEAST IN MY VIEW, WAS
21 WHAT I WAS LOOKING FOR ON THE RECORD HEARING.

22 WITH RESPECT TO THE SPECIFIC ENTRY IN
23 MS. PENDER'S DELIVERED SERVICE LOGS REGARDING HER
24 CONVERSATION, IF I CAN FIND IT, CAN PASTOR NEYLAND --
25 HERE IT IS, PAGE 1494 OF EXHIBIT 82 -- I HAD REQUESTED
26 AT SIDEBAR A LITTLE BIT OF GUIDANCE BECAUSE I THINK I
27 DO NEED TO LAY A FOUNDATION FOR THE ENTRY ITSELF
28 WITHOUT GOING INTO THE SUBSTANCE OF THE ENTRY.

1 I'D LIKE TO EITHER GET A STIPULATION OUT OF
2 THE DEFENDANTS, YES, THAT IS, ADEQUATE FOUNDATION FOR
3 THAT PARTICULAR ENTRY IS LAID.

4 OR IF NO STIPULATION CAN BE REACHED, THEN I'D
5 LIKE TO BE ABLE TO ASK MS. PENDER, AT A MINIMUM, ON
6 NOVEMBER 2ND, YOU HAD A CONVERSATION WITH PASTOR
7 NEYLAND, AND THAT IS FULLY REPORTED AND RECORDED IN
8 YOUR CONTACT NOTE DATED 11/2/2009 ON BATES NUMBER 1494.

9 AND THAT WOULD BE THE COMPLETE EXTENT OF THAT
10 LINE OF QUESTIONING.

11 THE COURT: I DON'T SEE ANY RELEVANCE OF
12 WHETHER OR NOT SHE HAD A DISCUSSION WITH MR. NEYLAND.

13 IF YOU HAVE A DIFFERENT OPINION ON THAT, I
14 BELIEVE THAT YOU CAN ESTABLISH THE FOUNDATION FOR THAT
15 ENTRY BY SIMPLY ASKING WHETHER OR NOT THAT ENTRY IN THE
16 LOG WAS HER ENTRY ON THAT GIVEN DATE, IF SHE IS IN FACT
17 THE AUTHOR AND CREATOR OF THAT ENTRY IN THE LOG.

18 AND IF THERE'S NO STIPULATION, MAYBE THEY'LL
19 STIPULATE TO IT, YOU CAN ALSO ASK WHAT SHE WOULD NEED
20 TO DO TO ESTABLISH AN OFFICIAL RECORD UNDER 1280, OR
21 PERHAPS A BUSINESS RECORD UNDER 1271 OF THE EVIDENCE
22 CODE.

23 YOU CAN ASK QUESTIONS ABOUT THE MANNER IN
24 WHICH SHE DID IT, THE TIME AT WHICH SHE DID IT, BECAUSE
25 ALL OF THOSE ARE BASES FOR ESTABLISHING THE
26 QUALIFICATION FOR A RECORD AS A BUSINESS RECORD OR AN
27 OFFICIAL RECORD. YOU CAN DO THAT WITHOUT INQUIRING
28 ABOUT THE SUBJECT MATTER OF IT.

1 MR. MCMILLAN: I APPRECIATE THAT, YOUR HONOR.
2 I'VE WRITTEN DOWN, AS CLOSE AS I COULD VERBATIM, THE
3 EXEMPLAR QUESTION. I UNDERSTAND YOU'RE NOT COACHING ME
4 ON THE QUESTION, THAT'S NOT INTENT --

5 THE COURT: THAT'S NOT AN ISSUE.

6 MR. MCMILLAN: BUT I HAVE WRITTEN DOWN THE
7 EXEMPLAR YOU PROVIDED, AND THAT WILL BE WHAT I ASK HER
8 IF WE'RE NOT ABLE TO REACH A STIPULATION.

9 THE COURT: YES. YOU'RE ENTITLED TO PRESERVE
10 YOUR RECORD.

11 MR. MCMILLAN: RIGHT. THAT'S WHY --

12 THE COURT: THAT'S WHY I WANT THE FOUNDATION
13 FOR THAT ENTRY, THAT ENTRY YOU SAID. AT LEAST THAT
14 PORTION OF THAT ENTRY ISN'T GOING TO SEE THE LIGHT OF
15 DAY AS FAR AS THE JURY'S CONCERNED.

16 MR. MCMILLAN: CORRECT.

17 THE COURT: HOWEVER, TO PROTECT YOUR RIGHT TO
18 CREATE YOUR RECORD, I'M NOT IN ANY WAY PREVENTING YOU
19 FROM DOING SO, BUT I AM SAYING IT CAN BE DONE WITHOUT
20 RECITING THE CONTENT.

21 AND YOU CAN TALK TO COUNSEL AS TO WHETHER OR
22 NOT YOU HAVE A STIPULATION. BUT EVEN WITHOUT IT, YOU
23 CAN ESTABLISH THE FOUNDATION NECESSARY -- ASSUMING YOU
24 CAN.

25 BUT YOU'RE ENTITLED TO ASK THE QUESTIONS THAT
26 WOULD ESTABLISH A FOUNDATION UNDER EITHER OF EVIDENCE
27 CODE SECTIONS. AND NOTHING THAT I HAVE SAID WOULD
28 INTERFERE WITH YOUR ABILITY TO DO THAT.

1 MR. MCMILLAN: LAST QUESTION. I JUST WANT TO
2 MAKE SURE THAT -- BECAUSE THERE ARE SOME STATEMENTS IN
3 HERE, LIKE, FOR EXAMPLE, WHERE MR. MILLS SAYS THINGS
4 LIKE, I'M DEFINITELY OF THE OPINION THIS IS ALL MOM'S
5 FAULT. IT'S ALL HER DOING. THOSE SORTS OF THINGS.
6 THOSE ARE STILL FAIR GAME OR NOT?

7 THE COURT: WHERE HE'S BLAMED HER FOR
8 SOMETHING?

9 MR. MCMILLAN: RIGHT.

10 THE COURT: THAT'S FAIR GAME.

11 MR. MCMILLAN: I THINK THAT COVERS IT. I
12 JUST -- IT WAS NOT MY INTENTION TO DO ANYTHING VIA --
13 AND I THINK IT MIGHT HAVE BEEN THAT THE CONVERSATION AT
14 SIDEBAR THE OTHER DAY WITH MR. MILLS, I WAS VERY
15 FOCUSED ON THE CONVERSATION WITH PASTOR NEYLAND, AND I
16 MIGHT NOT HAVE UNDERSTOOD OR INTERPRETED THE BREADTH OF
17 WHAT YOUR HONOR WAS INSTRUCTING.

18 AND FOR THAT, I APOLOGIZE. I DID NOT INTEND,
19 YOU KNOW, TO CAUSE ANY CONSTERNATION.

20 THE COURT: THE QUESTION -- I DON'T HAVE THEM
21 BEFORE ME. WE'LL HAVE TO TAKE A LONGER RECESS. I'M
22 GOING TO LOOK AT THE ENTRIES IN THE LOG THAT YOU WANT
23 TO INQUIRE ABOUT TO MAKE SURE THAT THERE WOULD BE A
24 RELEVANCE TO A QUESTION YOU'VE JUST ASKED, ABOUT HIM
25 BLAMING HER.

26 BY AND LARGE, WE'VE ALREADY HAD TESTIMONY THAT
27 EACH OF THEM CONSIDERED AND FELT THE OTHER ONE WAS AT
28 FAULT FOR SOMETHING THAT HAPPENED. I DON'T KNOW

1 THAT -- MAY OR MAY NOT HAVE RELEVANCE TO THE CASE.

2 IF IT HAS, AS AN EXAMPLE, IS IT IN THE REPORTS
3 THAT WENT TO THE JUVENILE COURT?

4 MR. MCMILLAN: THE STUFF ABOUT HIM THINKING
5 IT'S ALL HER DOING, THAT SPECIFIC QUESTION, I DON'T
6 RECALL IF THAT'S IN THE DETENTION REPORT.

7 BUT THE CONTINUATION OF THAT SENTENCE THAT SHE
8 TAKES THE BABY TO A DOCTOR OF OSTEOPATHY, AND
9 HOMEOPATHIC STUFF, AND ORGANIC FOODS AND THINGS I DON'T
10 UNDERSTAND, THAT ALL DID MAKE IT INTO THE --

11 THE COURT: YES. WE'VE ALREADY HAD TESTIMONY
12 ON IT.

13 MR. MCMILLAN: -- REPORT.

14 THE COURT: RIGHT.

15 MR. MCMILLAN: SO WHY DON'T WE DO THIS THEN,
16 JUST SO WE CAN SORT OF STREAMLINE IT. I WILL ATTEMPT
17 TO AVOID DISCUSSIONS RELATED TO WHAT MR. MILLS MAY HAVE
18 OR MAY NOT HAVE SAID UNLESS HER RESPONSE ELICITS
19 SOMETHING.

20 AND AT THAT POINT IN TIME, I'LL STOP. WE CAN
21 GO TO SIDEBAR AND ADDRESS IT SPECIFICALLY.

22 THE COURT: ALL RIGHT.

23 MR. MCMILLAN: THAT WAY WE CAN --

24 THE COURT: THAT WOULD BE A GOOD WAY TO
25 PROCEED. TAKE A SHORT BREAK.

26 MR. GUTERRES: THANK YOU, YOUR HONOR.

27 (PAUSE IN THE PROCEEDINGS)

28 THE COURT: ALL RIGHT. LET'S GET THE JURORS

1 IN.

2 (JURY PRESENT)

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

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

7 LADIES AND GENTLEMEN, WE'RE GOING TO DEFER THE
8 FURTHER QUESTIONING OF MS. PENDER. AND THIS IS JUST
9 FOR PERSONAL CONVENIENCE OF MS. PENDER WHO, AS YOU CAN
10 SEE, IS HERE IN A WHEELCHAIR.

11 AND I'VE MADE THE DECISION THAT WE'LL CONTINUE
12 WITH SOME OTHER TESTIMONY IN ORDER TO ENSURE THAT
13 MS. PENDER DOES NOT HAVE ANY UNUSUAL DISCOMFORT.
14 PROBABLY EVERY WITNESS HAS SOME DISCOMFORT.

15 BUT WE'LL TRY TO MAKE THAT UNNECESSARY. SO
16 WHAT WE'RE GOING TO DO IS HAVE YOU GET BACK UP ON THE
17 STAND. MS. ROGERS IS STILL WITH US. MS. ROGERS, WILL
18 YOU COME BACK UP TO THE STAND, PLEASE.

19
20 KIMBERLY ROGERS,
21 WAS PREVIOUSLY CALLED AS A WITNESS AND, HAVING BEEN
22 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
23 FOLLOWS:

24
25 THE COURT: MS. ROGERS, THANK YOU. DO YOU
26 UNDERSTAND YOU'RE STILL UNDER OATH?

27 THE WITNESS: YES.

28 THE COURT: AND I WOULD LIKE YOU AGAIN TO

1 STATE YOUR NAME FOR THE RECORD SO IT WILL BE CLEAR.

2 THE WITNESS: KIMBERLY ROGERS.

3 THE COURT: THANK YOU VERY MUCH. MR. KING.

4 MR. KING: THANK YOU, YOUR HONOR.

5

6

CROSS-EXAMINATION

7

BY MR. KING:

8 Q YOUR HONOR, IF I RECALL, THERE WAS A QUESTION
9 THAT WAS PENDING AT THE END OF THE DAY YESTERDAY
10 ABOUT -- PROPOSED TO MS. ROGERS BUT -- THAT DIDN'T GET
11 ANSWERED. BUT I BELIEVE I CAN RECALL WHERE WE LEFT
12 OFF.

13 MS. ROGERS, ARE YOU FAMILIAR WITH SDM? CAN
14 YOU TELL US WHAT THAT MEANS?

15 A YES. SDM STANDS FOR STRUCTURED
16 DECISION-MAKING TOOL -- NO. I'M SORRY. STRUCTURED
17 DECISION-MAKING.

18 Q OKAY. AND EXHIBIT 324 BATES 004451, WE HAVE,
19 "STRUCTURED DECISION-MAKING, THE KEY TO EFFECTIVE
20 DECISION-MAKING."

21 IF I SHOW YOU THE SAME EXHIBIT, BATES 004461,
22 IT INDICATES, "STRUCTURED DECISION-MAKING MODEL
23 OBJECTIVES: TO IDENTIFY AND STRUCTURE CRITICAL
24 DECISION POINTS."

25 AND IT'S DESIGNED TO "INCREASE CONSISTENCY IN
26 DECISION-MAKING AND TO INCREASE ACCURACY IN
27 DECISION-MAKING."

28 WOULD YOU AGREE WITH THOSE THREE STATEMENTS?

1 A YES.

2 Q OKAY. AND ONE STRUCTURED DECISION-MAKING TOOL
3 THAT YOU'RE PROVIDED WITH BY YOUR AGENCY IS CALLED THE
4 RISK ASSESSMENT TOOL. CORRECT?

5 A THAT IS ONE, YES.

6 Q AND, IN FACT, THERE WAS A RISK ASSESSMENT THAT
7 WAS PERFORMED IN THIS CASE. CORRECT?

8 A YES.

9 Q ONE OF THE REASONS THAT WE HAVE RISK
10 ASSESSMENTS IS SO THAT WE CAN DETERMINE CONSISTENT AND
11 FAIR RESULTS FOR THE CHILDREN AND FAMILIES INVOLVED.
12 CORRECT?

13 A YES.

14 Q AND CONSISTENCY IN DECISION-MAKING PROMOTES
15 FAIRNESS IN DECISION-MAKING. CORRECT?

16 A YES.

17 Q SO YOU WOULD AGREE THAT IT'S CRITICAL TO
18 ESTABLISH AND MONITOR A CONSISTENCY -- WELL, LET ME
19 STRIKE THAT.

20 AS A SUPERVISOR IN THIS CASE, DID YOU PERFORM
21 THE RISK ASSESSMENT?

22 A MY CHILDREN'S SOCIAL WORKER, MS. PENDER,
23 COMPLETED THE RISK ASSESSMENT. I REVIEWED AND APPROVED
24 IT.

25 Q OKAY. AND, ACTUALLY, MS. PENDER DID THE RISK
26 ASSESSMENT IN THIS CASE ON OCTOBER 30TH. IS THAT
27 CORRECT?

28 A I'M NOT SURE. I'D HAVE TO REVIEW THE

1 INFORMATION.

2 Q OKAY. SO I'LL PUT UP EXHIBIT 533,
3 BATES 006921, WHICH APPEARS TO BE THE FIRST PAGE OF THE
4 RISK ASSESSMENT.

5 AND IF THERE'S A DATE AT THE TOP THAT SAYS,
6 "CREATED 10/30/2009 BY SUSAN PENDER," WOULD THAT
7 REFRESH YOUR RECOLLECTION AS TO WHEN THE RISK
8 ASSESSMENT IN THIS CASE WAS CREATED?

9 A THAT'S WHEN SHE INITIATED IT.

10 Q OKAY. AND RIGHT AT THE TOP, IT SAYS, "RISK
11 ASSESSMENT." AND THEN IT SAYS, "APPROVAL STATUS
12 SUBMITTED." WHAT DOES THAT MEAN?

13 A IT HAD NOT BEEN APPROVED JUST YET.

14 Q AND THE PERSON IT'S SUBMITTED TO IS
15 KIMBERLY ROGERS. CORRECT?

16 A YES.

17 Q SO ON OCTOBER 30TH, MS. PENDER DID THE RISK
18 ASSESSMENT. SHE COMPLETES IT, AND SHE SUBMITS IT TO
19 YOU FOR YOUR APPROVAL. CORRECT?

20 A CORRECT.

21 Q THEN IF WE GO TO THE FIFTH PAGE OF THIS
22 DOCUMENT, WHICH IS BATES 006925, WE HAVE SOMETHING AT
23 THE TOP, WHICH I JUST HIGHLIGHTED, WHICH INDICATES,
24 "SCORED RISK LEVEL."

25 CAN YOU TELL US WHAT THAT IS?

26 A THAT REPRESENTS THE LEVEL OF RISK.

27 Q OKAY. AND WHEN WE SAY LEVEL OF RISK, ARE WE
28 TALKING ABOUT IN RELATIONSHIP FROM THE PARENT TO THE

1 CHILD?

2 A WE'RE TALKING ABOUT IN RELATIONSHIP TO THE
3 CHILD BEING AT RISK OF ABUSE OR NEGLECT WITHOUT
4 TREATMENT.

5 Q OKAY. AND WE HAVE SEVERAL DIFFERENT LEVELS OF
6 RISK. CORRECT?

7 A YES.

8 Q OKAY. AND IS IT TRUE THAT IN ORDER TO OPEN UP
9 A CASE AGAINST A PARENT, THE RISK LEVEL HAS TO BE HIGH.
10 CORRECT?

11 A IT WAS A WHILE AGO. BUT THE RISK LEVEL, AT
12 TIMES WE HAVE OPENED CASES, IT DOESN'T NECESSARILY HAVE
13 TO BE HIGH. IT CAN BE MODERATE. JUST DEPENDS ON THE
14 CIRCUMSTANCES OF THE CASE.

15 Q WOULD YOU AGREE THAT IN THIS CASE, THE RISK
16 LEVEL OF MODERATE WAS INSUFFICIENT TO OPEN UP A CASE
17 AGAINST MS. DUVAL? YES OR NO.

18 MS. SWISS: OBJECTION: VAGUE AS TO TIME.

19 THE COURT: AT THE TIME OF THE REPORT?

20 BY MR. KING:

21 Q AT OF THE TIME OF THE REPORT.

22 A WE WERE STILL CONDUCTING OUR SAFETY
23 INVESTIGATION. THE INVESTIGATION HADN'T BEEN
24 COMPLETED.

25 Q LET'S CONTINUE. SO WE HAVE RISK LEVEL OF
26 MODERATE, LOW, AND MODERATE (SIC). CORRECT?

27 A YES.

28 Q AND THEN THERE'S A SECTION DOWN HERE THAT

1 SAYS, "OVERRIDES," AND IT SAYS, "NO OVERRIDES."
2 CORRECT?

3 A YES.

4 Q AND WHAT THE OVERRIDE MEANS IS THAT IF
5 MS. PENDER WANTED TO EXERCISE AN OVERRIDE AND INCREASE
6 FROM A MODERATE TO A HIGH, SHE HAD THE DISCRETION TO DO
7 THAT. CORRECT?

8 A SHE HAD THE DISCRETION, YES.

9 Q SO SHE HAD THE ABILITY TO PROMOTE FROM A
10 MODERATE TO A HIGH. CORRECT?

11 A SHE HAD THE ABILITY TO APPLY A DISCRETIONARY
12 OVERRIDE.

13 Q AND YOU WOULD AGREE THAT, IN THIS CASE, IF SHE
14 EXERCISED THAT ABILITY TO OVERRIDE FROM A MODERATE TO A
15 HIGH, IT WOULD HAVE RESULTED IN THE OPENING OF A CASE
16 AGAINST MS. DUVAL?

17 MS. SWISS: OBJECTION: CALLS FOR SPECULATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: YOU'RE ASKING WHY SHE HAD NOT
20 APPLIED THE DISCRETIONARY OVERRIDE?

21 MR. KING: NO. THAT WAS NOT MY QUESTION.

22 THE WITNESS: CAN YOU RE-ASK IT?

23 MR. KING: MY QUESTION IS --

24 THE COURT: ASK IT AGAIN, MR. KING.

25 MR. KING: SURE.

26 BY MR. KING:

27 Q HAD MS. PENDER EXERCISED HER DISCRETION AND
28 APPLIED AN OVERRIDE, IT WOULD HAVE RESULTED IN A CASE

1 BEING OPENED AGAINST MS. DUVAL. CORRECT?

2 A NOT NECESSARILY BECAUSE SHE HAD TO COMPLETE
3 THE INVESTIGATION. ON OCTOBER 30TH, WE HADN'T
4 COMPLETED OUR INVESTIGATION.

5 THESE ARE COMPLETED ONES WE WERE ABOUT TO
6 DISPO THE INVESTIGATION.

7 THE REPORTER: YOU WERE ABOUT TO WHAT?

8 THE WITNESS: DISPO -- IT'S SORT OF LIKE,
9 COMPLETE THE INVESTIGATION. COME TO A CONCLUSION.

10 MR. KING: YOUR HONOR, IF I COULD READ FROM
11 THE WITNESS'S DEPOSITION PAGE 273 LINES 12 THROUGH 273
12 LINE 25.

13 MS. SWISS: OBJECT: IMPROPER IMPEACHMENT.

14 THE COURT: THE OBJECTION IS SUSTAINED.

15 MR. KING, I THINK THERE'S -- I THINK YOU COULD ASK SOME
16 ADDITIONAL QUESTIONS THAT WOULD EITHER MAKE THIS
17 RELEVANT OR, PERHAPS, ELIMINATE ANY REASON TO READ
18 THIS.

19 MR. KING: OKAY.

20 BY MR. KING:

21 Q IF MS. PENDER BELIEVED THAT IT WAS APPROPRIATE
22 AT THIS POINT IN THE INVESTIGATION TO OVERRIDE THE RISK
23 LEVEL FROM MODERATE TO HIGH, SHE COULD HAVE DONE THAT.
24 CORRECT?

25 A YES.

26 Q SHE DIDN'T HAVE TO GET YOUR PERMISSION IN
27 ORDER TO DO THAT. CORRECT?

28 A NO.

1 Q AND THE FINAL RISK LEVEL ON THE STRUCTURED
2 DECISION-MAKING TOOL BY MS. PENDER WAS IMPLEMENTED AS
3 MODERATE. CORRECT?

4 A MAY I EXPLAIN?

5 Q NO. IF YOU CAN'T ANSWER, THEN YOU CAN LET US
6 KNOW THAT.

7 A I'M NOT ABLE TO ANSWER THAT AT THIS TIME.

8 Q IS THERE A SECTION ON THE RISK ASSESSMENT,
9 STANDARD DECISION-MAKING TOOL HERE, WHICH INDICATES AT
10 THIS POINT WHAT, EXACTLY, THE FINAL RISK ASSESSMENT
11 LEVEL IS?

12 A YOU'RE ASKING IF THERE IS A SECTION THAT HAS
13 THE FINAL RECOMMENDATION?

14 Q THAT'S CORRECT.

15 A YES. THERE IS A SECTION HERE.

16 Q THE FINAL RISK LEVEL BY MS. PENDER ON THE
17 STRUCTURED DECISION-MAKING TOOL WAS MODERATE. CORRECT?

18 A ON OCTOBER THE 30TH, YES.

19 Q OKAY. AND SHE COULD HAVE RECOMMENDED THAT THE
20 CASE ACTUALLY BE PROMOTED TO A CASE (SIC). CORRECT?

21 A NOT AT THAT TIME.

22 Q OKAY.

23 MR. KING: YOUR HONOR, MAY I NOW READ
24 PAGE 273, 12 THROUGH 25?

25 MS. SWISS: OBJECTION, YOUR HONOR. IT'S STILL
26 IMPROPER IMPEACHMENT.

27 THE COURT: OVERRULED. YES, YOU MAY.

28 MR. KING: THANK YOU.

1 MS. SWISS: YOUR HONOR, I --

2 THE COURT: GO AHEAD AND READ IT. HOPEFULLY
3 THIS WILL BE CLARIFYING AS TO ADDITIONAL QUESTIONS.

4 MR. KING: THANK YOU.

5 QUESTION: AND THEN HERE, THE FINAL RISK LEVEL
6 OF THE STRUCTURED DECISION-MAKING TOOL THAT MS. PENDER
7 IMPLEMENTED WAS MODERATE. CORRECT? ANSWER: THAT SHE
8 SUBMITTED, YES.

9 QUESTION: AND IT SAYS HERE, THE RECOMMENDED
10 DECISION WAS "DO NOT PROMOTE." CORRECT? ANSWER:
11 CORRECT.

12 AND AT THAT POINT IN TIME, MS. PENDER, DID SHE
13 HAVE THE ABILITY TO CHANGE THE RECOMMENDED DECISION?
14 ANSWER: SHE HAD IT.

15 QUESTION: SO SHE COULD HAVE RECOMMENDED THAT
16 THE CASE ACTUALLY BE PROMOTED TO A CASE. ANSWER:
17 CORRECT.

18 MS. SWISS: YOUR HONOR, I WOULD REQUEST THAT
19 PAGES -- PAGE 274, LINES 1 THROUGH 16 ALSO BE READ FOR
20 COMPLETENESS. LINES 1 THROUGH 11. I APOLOGIZE.

21 THE COURT: GO AHEAD AND READ THE ADDITIONAL
22 PORTION.

23 MR. KING: YOUR HONOR, THAT'S PAGE 274,
24 LINES 1 THROUGH 11?

25 THE COURT: YES. 1 THROUGH 11.

26 MR. KING: THANK YOU, YOUR HONOR.

27 QUESTION: BUT SHE DIDN'T DO THAT HERE ON THE
28 RISK ASSESSMENT TOOL THAT SHE SENT TO YOU FOR APPROVAL.

1 ANSWER: YES.

2 NOW, THE NEXT LINE UNDER THAT, IT SAYS IN BOLD
3 LETTERS, AND THIS IS ON PAGE 5, "IF RECOMMENDED
4 DECISION AND PLANNED ACTION DO NOT MATCH, EXPLAIN WHY."
5 WHAT DOES THAT MEAN?

6 YOU HAVE TO EXPLAIN, IF IT SEEMED LIKE "DO NOT
7 PROMOTE," YOU HAVE TO EXPLAIN YOUR JUSTIFICATION AS TO
8 WHY THE CASE, THE REFERRAL IS BEING PROMOTED.

9 BY MR. KING:

10 Q NOW, MS. ROGERS, MS. PENDER WOULD ONLY HAVE TO
11 EXPLAIN AN OVERRIDE IF SHE ACTUALLY EFFECTUATED AN
12 OVERRIDE. CORRECT?

13 A YOU'RE ASKING IF SHE APPLIES AN OVERRIDE, IF
14 SHE NEEDS TO?

15 Q IF SHE DOESN'T APPLY OVERRIDE, SHE DOESN'T
16 HAVE TO GIVE A REASON FOR THAT. CORRECT?

17 A NO. SHE NEEDS TO PROVIDE AN EXPLANATION IF
18 SHE'S APPLYING A DISCRETIONARY OVERRIDE AND IT DOES NOT
19 MATCH WHAT THE RECOMMENDED PLAN IS.

20 Q TRUE. BUT IN THIS CASE, MS. PENDER WENT ALONG
21 WITH THE RECOMMENDED PLAN. CORRECT? ON OCTOBER 30TH?

22 A SHE HAD SUBMITTED THAT, BASED ON THE
23 INFORMATION THAT SHE HAD AT THE PRESENT TIME, YES.

24 Q SO THE ANSWER IS YES. CORRECT?

25 A YOUR QUESTION IS AGAIN? IT WAS MURKY. I'M
26 SORRY.

27 Q OKAY. RECOMMENDED DECISION. THE RECOMMENDED
28 DECISION IS "DO NOT PROMOTE." CORRECT?

1 A AT THE TIME, IT WAS. YES.

2 Q SO WHAT WE'RE TALKING ABOUT HERE IS MS. PENDER
3 FILLS THIS OUT ON OCTOBER 30, 2009, SHE SUBMITS IT TO
4 YOU, THE RECOMMENDATION IS MODERATE, AND THEREFORE, SHE
5 RECOMMENDS DO NOT PROMOTE. CORRECT?

6 A SHE DID THAT, YES.

7 Q WE ALREADY ESTABLISHED SHE HAD THE ABILITY TO
8 OVERRIDE IT IF SHE SAW FIT. CORRECT?

9 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

10 THE COURT: SUSTAINED.

11 BY MR. KING:

12 Q NOW, I WANT TO SHOW YOU EXHIBIT 324
13 BATES 004452. NOW, IN ORDER TO OVERRIDE THE
14 RECOMMENDATION OF THE SDM TOOL, THE SOCIAL WORKER WOULD
15 HAVE TO GIVE SOME SORT OF REASON. CORRECT?

16 A YES.

17 Q OKAY. AND THOSE REASONS, THEY SHOULDN'T BE
18 BASED ON BIAS. WOULD YOU AGREE WITH THAT?

19 A YES.

20 Q THEY SHOULDN'T BE BASED ON, LIKE, A GUT
21 FEELING?

22 A SHOULDN'T BE BASED ON ANY OF THOSE LISTED.

23 Q OKAY. AND SO MS. PENDER, ON OCTOBER 30TH,
24 DOES NOT EFFECTUATE AN OVERRIDE, BUT IF WE GO TO
25 EXHIBIT 537, AND WE GO TO BATES 006949, WE HAVE A
26 SIMILAR DOCUMENT WHICH APPEARS TO ALSO BE A PAGE OUT OF
27 THE SDM RISK ASSESSMENT TOOL.

28 AND ON THIS ONE, WHERE AT THE TOP, WE HAVE THE

1 SCORED RISK LEVEL OF MODERATE, LOW, AND MODERATE.

2 CORRECT?

3 A YES.

4 Q AND THEN AS WE GO DOWN TOWARDS THE BOTTOM, WE
5 HAVE DISCRETIONARY OVERRIDE.

6 DO YOU SEE THAT?

7 A YES.

8 Q AND THIS DISCRETIONARY OVERRIDE WAS ACTUALLY
9 EFFECTUATED BY YOU. CORRECT?

10 MS. SWISS: OBJECTION, YOUR HONOR --

11 MR. KING: THIS IS BATES 006945 OF THE SAME
12 EXHIBIT.

13 MS. SWISS: IF THE WITNESS COULD REFER TO THE
14 ENTIRE PAGE INSTEAD JUST THE NARROWED-IN PART, IT WOULD
15 ASSIST IN HER TESTIMONY.

16 MR. KING: CERTAINLY YOUR HONOR.

17 BY MR. KING:

18 Q DOES THIS DOCUMENT LOOK FAMILIAR TO YOU?
19 WE'LL GO AHEAD AND BRING IT UP TO YOU. SHOWING YOU
20 BATES 006945.

21 A YES.

22 Q IS THAT THE FIRST PAGE OF THE SDM RISK
23 ASSESSMENT IN THIS CASE?

24 A YES. IT IS. APPROVES WITH MODIFICATIONS.

25 Q OKAY. SO ON OCTOBER 30TH, WE HAVE ONE RISK
26 ASSESSMENT DONE BY MS. PENDER. SHE GOES ALONG WITH THE
27 MODERATE, AND SUBMITTED TO YOU ON THAT SAME DATE.

28 AND NOW, SHOWING YOU BATES NUMBER 006945, WE

1 HAVE THE SAME RISK ASSESSMENT WHICH WAS COMPLETED ON
2 OCTOBER 30TH, 2009, BUT NOW THIS ONE IS APPROVED WITH
3 MODIFICATIONS ON NOVEMBER 4TH OF 2009, BY
4 KIMBERLY ROGERS.

5 CORRECT?

6 A YES.

7 Q SO THE MODIFICATION HERE WAS MADE THE DAY
8 AFTER THE TDM. RIGHT?

9 A YES.

10 Q OKAY. AND SO THE DAY AFTER THE TDM, WHEN WE
11 HAD THIS OUTBURST, AND YOU AND MS. PENDER WENT OUT THE
12 ROOM AFTER THE MATERNAL GRANDFATHER CALLED MS. PENDER
13 WHITE TRASH, YOU COME BACK IN, MAKE THIS DECISION TO
14 REMOVE THE CHILD FROM THE MOM'S CUSTODY, AND YOU GO THE
15 NEXT DAY AND ADJUST THE SDM TOOL FROM MODERATE TO HIGH.

16 CORRECT?

17 MS. SWISS: OBJECTION: ARGUMENTATIVE.

18 THE COURT: SUSTAINED.

19 BY MR. KING:

20 Q DO YOU, ON THE DAY AFTER THE TDM, GO BACK AND
21 GET THE SAME RISK ASSESSMENT THAT MS. PENDER SUBMITTED
22 TO YOU ON OCTOBER 30TH, AND EFFECTUATE AN OVERRIDE ON
23 YOUR OWN. YES OR NO?

24 A I COMPLETED THE SDM TOOL AFTER -- THE DAY
25 AFTER THE TMD, YES, BUT IT WAS BASED ON THE
26 INFORMATION -- TOTALITY OF ALL OF THE INFORMATION THAT
27 WE HAD GATHERED DURING THE INVESTIGATION.

28 BASED ON THE MEDICAL PROFESSIONALS'

1 INFORMATION AND SO ON.

2 MR. KING: I MOVE TO OBJECT AS NONRESPONSIVE
3 EVERYTHING AFTER "YES."

4 THE COURT: THE OBJECTION OF NONRESPONSIVE IS
5 SUSTAINED.

6 MR. KING: MOVE TO STRIKE, YOUR HONOR.

7 THE COURT: THE MOTION TO STRIKE IS GRANTED.
8 YOU ACCEPTED THE WORD YES, BUT THAT WAS BURIED IN THE
9 MIDDLE OF THE ANSWER.

10 I'M ORDERING THE ENTIRE ANSWER STRICKEN. YOU
11 CAN ASK IT AGAIN TO SEEK -- TO ATTAIN THE ANSWER YOU'RE
12 LOOKING FOR BY SOME OTHER QUESTION.

13 BY MR. KING:

14 Q MS. ROGERS, BASED ON WHAT WE'RE LOOKING AT
15 HERE UP ON THE SCREEN, WOULD YOU AGREE THAT THE DAY
16 AFTER THE TDM, YOU OVERRODE THE RISK ASSESSMENT FROM
17 MODERATE TO HIGH?

18 A YES.

19 Q OKAY. AND ONCE YOU DID THAT, YOU WERE ABLE TO
20 OPEN A CASE AGAINST MS. DUVAL. CORRECT?

21 A YES.

22 Q NOW, IF WE GO BACK TO THE SAME EXHIBIT,
23 BATES 006949, WHERE YOU GIVE A REASON FOR RECOMMENDING
24 THAT RISK LEVEL BE MODIFIED FROM A MODERATE TO A HIGH,
25 PROMOTING IT INTO A CASE, AND YOU INDICATE THAT:

26 "CHILD WAS DIAGNOSED WITH FAILURE TO THRIVE AS
27 A RESULT OF ENVIRONMENTAL NEGLECT. MOTHER WAS PRIMARY
28 CAREGIVER."

1 THAT'S THE REASON. CORRECT?

2 A THAT'S PART OF THE REASON, YES.

3 Q BUT YOU WOULD AGREE THAT THAT'S THE ONLY
4 REASON YOU PUT ON THE RISK ASSESSMENT TOOL. CORRECT?

5 A THIS IS A TOOL. YES.

6 Q OKAY. JUST SO WE'RE CLEAR, THIS IS THE REASON
7 THAT YOU PUT ON THE TOOL. CORRECT?

8 A THAT'S THE REASON THAT'S INDICATED ON THAT
9 TOOL. YES.

10 Q OKAY. AND MAYBE I'M ASKING THE QUESTION
11 IMPROPERLY. DID YOU PUT THAT REASON ON THE TOOL?

12 A YES.

13 Q OKAY. THANK YOU. NOW, AFTER THE TDM WAS OVER
14 ON NOVEMBER 3RD OF 2009, AND THE FATHER RECEIVED
15 CUSTODY OF BABY RYAN, DID YOU TELL THE FATHER TO
16 IMMEDIATELY TAKE THE BABY TO THE HOSPITAL FOR EMERGENT
17 CARE?

18 A NO.

19 Q OKAY. AND WE ALREADY KNOW THAT BEFORE THE TDM
20 BEGAN, NO DOCTOR HAD TOLD YOU THAT THE BABY REQUIRED
21 EMERGENT CARE. CORRECT?

22 A EMERGENT MEDICAL CARE, NO.

23 Q AND NO DOCTOR HAD TOLD YOU THAT THE MOTHER WAS
24 THE CAUSE OF THE ENVIRONMENTAL FAILURE TO THRIVE.
25 CORRECT?

26 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

27 THE COURT: SUSTAINED.

28

1 BY MR. KING:

2 Q DID YOU INCLUDE ON THIS TOOL THAT ANYONE TOLD
3 YOU THAT THE RESULT OF THE ENVIRONMENTAL NEGLIGENCE WAS
4 CAUSED BY THE MOTHER?

5 A NO.

6 Q THAT'S BECAUSE YOU HAD NO INFORMATION FROM ANY
7 MEDICAL PROVIDER THAT THE MOTHER CAUSED THE
8 ENVIRONMENTAL FAILURE TO THRIVE. CORRECT?

9 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

10 THE COURT: SUSTAINED.

11 MR. KING: JUST CHECKING MY NOTES, YOUR HONOR,
12 BECAUSE THAT MIGHT BE ALL I HAVE LEFT WITH MS. ROGERS.

13 BY MR. KING:

14 Q AND MS. ROGERS, WOULD YOU ALSO AGREE THAT ON
15 ANY DATE DURING THE COURSE AND SCOPE OF YOUR
16 INVESTIGATION IN THIS CASE, NO ONE REPORTED TO YOU THAT
17 MS. DUVAL DID NOT FEED HER CHILD?

18 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

19 THE COURT: SUSTAINED.

20 MR. KING: I HAVE NOTHING FURTHER FOR THIS
21 WITNESS.

22 THE COURT: MS. SWISS, DO YOU HAVE ANYTHING
23 FURTHER?

24 MS. SWISS: VERY BRIEFLY, YOUR HONOR.

25

26 REDIRECT EXAMINATION

27 BY MS. SWISS:

28 Q MS. ROGERS, COUNSEL ASKED YOU SEVERAL

1 QUESTIONS ABOUT THE -- YOUR APPROVAL OF THE RISK
2 ASSESSMENT ON NOVEMBER 4TH, 2009.

3 DO YOU REMEMBER THAT TESTIMONY?

4 A YES.

5 Q OKAY. WHY WAS THE RISK ASSESSMENT COMPLETED
6 ON NOVEMBER 4TH, 2009?

7 MR. KING: OBJECTION: MISSTATES THE
8 TESTIMONY.

9 THE COURT: OVERRULED.

10 THE WITNESS: BECAUSE WE HAD HAD A WEALTH OF
11 INFORMATION. WE HAD COMPLETED THE TEAM DECISION-MAKING
12 MEETING IN WHICH IT WAS DETERMINED THAT THE CHILD WOULD
13 BE PLACED IN TEMPORARY PROTECTIVE CUSTODY.

14 SO ALL OF THE INFORMATION THAT WE HAD, WE WERE
15 ABLE TO COMPLETE THE RISK ASSESSMENT DECISION-MAKING
16 TOOL AT THAT TIME. YOU DON'T COMPLETE IT BEFORE YOU
17 ACTUALLY COMPLETE YOUR INVESTIGATION.

18 BY MS. SWISS:

19 Q OKAY. NOW, YESTERDAY YOU DISCUSSED WITH
20 MR. KING THE DECISION TO DETAIN BABY RYAN.

21 DIRECTING YOUR ATTENTION TO THAT PORTION OF
22 YOUR TESTIMONY, WHY DID YOU WAIT UNTIL THE TEAM
23 DECISION-MAKING MEETING TO DETAIN BABY RYAN?

24 A WELL, ON THAT DATE, WE HAD THE INFORMATION
25 FROM OUR UCLA FAILURE TO THRIVE CLINIC REGARDING THE
26 RESULTS OF THE EXAM. WE ALSO HAD AN OPPORTUNITY TO SIT
27 DOWN AND MEET WITH THE FAMILY.

28 BECAUSE THE PURPOSE OF THAT, WE WERE TRYING TO

1 DETERMINE WHETHER OR NOT WE COULD ACTUALLY KEEP BABY
2 RYAN SAFELY UNDER THE CARE OF HIS MOTHER.

3 BUT AT THAT MEETING, IT BECAME DEFINITELY
4 APPARENT THAT MOTHER WAS NOT GOING TO BE ABLE TO FOLLOW
5 THROUGH WITH THE RECOMMENDATIONS OF THE DOCTOR.

6 THE SERIOUS CONCERNS OF REGARDING RYAN'S
7 CONDITION, THAT IT WAS THREATENING TOWARDS HIS LIFE, IN
8 WHICH HE MAY HAVE CONTINUED TO SUFFER BEING SEVERELY
9 DEVELOPMENTALLY DELAYED AS A RESULT OF THE FEEDING
10 ISSUES.

11 AT THAT MEETING, I RECALL THAT MOTHER, SHE
12 DIDN'T TAKE RESPONSIBILITY. SHE DIDN'T EVEN COME
13 ACROSS AS, OKAY, MAYBE THERE IS SOMETHING THAT I COULD
14 LEARN SO THAT I CAN APPROPRIATELY FEED RYAN AND GIVE
15 HIM THE NUTRIENTS NEEDED TO DEVELOP.

16 MR. KING: I'M GOING TO OBJECT, YOUR HONOR, AS
17 NONRESPONSIVE, RESPONDING IN THE NARRATIVE. MOVE TO
18 STRIKE.

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

21 MS. SWISS: NO FURTHER QUESTIONS. THANK YOU.

22 THE COURT: ANYTHING FURTHER, MR. KING?

23 MR. KING: YES, YOUR HONOR.

24 THE COURT: THIS WILL BE THE LAST TIME AROUND.
25 GO AHEAD.

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

27

28

1 CROSS-EXAMINATION

2 BY MR. KING:

3 Q YOU AGREE THAT IF EXIGENCY EXISTS, YOU HAVE TO
4 ACT RIGHT THEN AND THERE. CORRECT?5 A YOU HAVE TO ACT WITHIN -- AS IMMEDIATE AS
6 POSSIBLE. YES.7 Q AND A DELAY IN SEIZING THE CHILD NEGATES
8 EXIGENCY. CORRECT?

9 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

10 THE COURT: SUSTAINED.

11 BY MR. KING:

12 Q YOU INDICATED THAT THE INFORMATION THAT YOU
13 GOT FROM MS. PENDER REGARDING DR. EGGE, YOU GOT ABOUT
14 TWO HOURS BEFORE THE TDM. CORRECT?

15 A THAT MAY BE RIGHT. YES.

16 Q AND EXHIBIT 408, BATES 005919, AS IS
17 CONSISTENT WITH YOUR TRAINING, INDICATES, "ANY DELAY IN
18 RESPONSE TIME MAY WEAKEN A CLAIM OF EXIGENT
19 CIRCUMSTANCES." CORRECT?

20 A WOULD YOU RE-ASK YOUR QUESTION AGAIN?

21 Q SURE. IS IT TRUE, ACCORDING TO YOUR TRAINING,
22 THAT ANY DELAY IN RESPONSE TIME MAY WEAKEN A CLAIM OF
23 EXIGENT CIRCUMSTANCE?

24 A IN REGARDS TO TRAINING, YES.

25 Q AND WOULD YOU ALSO AGREE THAT CONSISTENT WITH
26 YOUR TRAINING IS, DELAYS INCLUDING WAITING TO ACT UNTIL
27 A TDM IS CONDUCTED, OR AFTER A SAFETY PLAN HAS BEEN
28 IMPLEMENTED, MAY WEAKEN A CLAIM OF EXIGENCY. CORRECT?

1 A IN TRAINING, YES, BUT --

2 Q THAT'S MY ONLY QUESTION. OKAY?

3 THE COURT: PLEASE DON'T CUT OFF THE WITNESS.

4 MR. KING: I'M SORRY, I DID CUT HER OFF.

5 THE COURT: IT'S CORRECT THAT SHE ANSWERED
6 YOUR QUESTION, BUT DON'T DO IT.

7 MR. KING: PLEASE FINISH YOUR ANSWER, IF YOU
8 HAVEN'T ALREADY FINISHED IT.

9 THE COURT: THE ANSWER WAS HER COMPLETE
10 ANSWER.

11 MR. KING: THANK YOU.

12 THE COURT: I'M JUST SAYING DON'T CUT THEM
13 OFF. IT'S ALL RIGHT.

14 BY MR. KING:

15 Q YOU WOULD AGREE THAT AS A SUPERVISOR, ONE OF
16 YOUR ROLES, DUTIES AND RESPONSIBILITIES IS TO ENSURE
17 THAT THE POLICIES OF THE COUNTY ARE PUT INTO PRACTICE?

18 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE.

19 THE COURT: SUSTAINED.

20 MR. KING: I HAVE NOTHING FURTHER, YOUR HONOR.

21 THE COURT: ANYTHING FURTHER, MS. SWISS?

22 MS. SWISS: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. MS. ROGERS, I WANT TO
24 THANK YOU VERY MUCH. YOU ARE EXCUSED AS A WITNESS.

25 WE'LL TAKE THE NOON RECESS. WE'LL RESUME AT
26 1:30. ALL JURORS, PLEASE REMEMBER THE ADMONITION.

27 HAVE NO CONTACT WITH ANYONE, ANY FORM OF --

28 ANY FORM OF COMMUNICATION ABOUT ANY SUBJECT OR ISSUE OR

1 PERSON INVOLVED IN THE CASE.

2 DO NOT FORM ANY OPINION NOR EXPRESS ANY
3 OPINION ON ANY SUBJECT OR ISSUE OR PERSON INVOLVED IN
4 THE CASE.

5 WE'RE NOW IN RECESS. RESUME AT 1:30.

6 (JURY EXCUSED)

7 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
8 COUNSEL ARE PRESENT. ALL JURORS HAVE LEFT THE
9 COURTROOM.

10 I JUST WANT TO INQUIRE, MR. GUTERRES, AND
11 MS. SWISS, YOUR 1:30, DO YOU HAVE ANOTHER WITNESS LINED
12 UP? I'M ASKING THIS SO OPPOSING COUNSEL WILL KNOW WHO
13 THEY'RE GOING TO BE SEEING AT 1:30. FOR EXAMPLE, WILL
14 MS. PENDER BE BACK ON THE STAND, OR DO YOU HAVE ANOTHER
15 WITNESS?

16 MR. GUTERRES: NO. WE WILL BE BRINGING
17 DIFFERENT WITNESSES.

18 THE COURT: ALL RIGHT. HAVE YOU GIVEN NOTICE
19 TO THEM?

20 MR. GUTERRES: YES. WE'VE ALREADY DONE THAT.

21 MS. SWISS: MR. HUNTER AND MS. SCHEELE.

22 MR. MCMILLAN: DO YOU HAVE ANY IDEA WHICH ONE
23 WILL BE FIRST?

24 MS. SWISS: MR. HUNTER SHOULD BE HERE RIGHT
25 AFTER THE BREAK.

26 MR. MCMILLAN: THANK YOU.

27 THE COURT: ALL RIGHT. I'LL SEE YOU BACK
28 AT 1:30.

1 (LUNCH WAS TAKEN FROM 11:58 A.M. TO 1:29 P.M.)

2 THE COURT: EVERYBODY READY?

3 MR. GUTERRES: YOUR HONOR, THERE'S BEEN A
4 CHANGE IN THE LINEUP. WE'RE GOING TO BE CALLING
5 MS. SCHEELE INSTEAD OF MR. HUNTER.

6 MR. HUNTER HAD TO BE CALLED OUT TO CHILDREN'S
7 COURT SO WE'RE GOING TO HAVE TO RESCHEDULE HIM. I
8 NOTIFIED MR. MCMILLAN, BUT HE DIDN'T GET MY TEXT.

9 THE COURT: ALL RIGHT. ARE WE READY?
10 CAN WE GET THE JURORS IN, PLEASE.

11 (JURY PRESENT)

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

14 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
15 THE RECORD. EVERYONE IS PRESENT.

16 MS. SWISS, CALL YOUR NEXT WITNESS.

17 MS. SWISS: YES, YOUR HONOR. THE DEFENDANTS
18 CALL MS. VICTORIA SCHEELE.

19
20 VICTORIA SCHEELE,
21 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
22 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

23

24 THE COURT: THANK YOU. GO AHEAD, MS. SWISS.

25 MS. SWISS: THANK YOU, YOUR HONOR.

26

27

28

1 DIRECT EXAMINATION

2 BY MS. SWISS:

3 Q GOOD AFTERNOON, MS. SCHEELE.

4 A GOOD AFTERNOON.

5 Q ARE YOU CURRENTLY EMPLOYED?

6 A YES, I AM.

7 Q WHO IS YOUR CURRENT EMPLOYER?

8 A I WORK FOR ORANGE COUNTY CHILDREN AND FAMILY
9 SERVICES.10 Q HOW LONG HAVE YOU BEEN WITH ORANGE COUNTY
11 CHILDREN AND FAMILY SERVICES?12 A I STARTED WITH THEM LAST YEAR IN DECEMBER AND
13 CONTINUING TO NOW.

14 Q AND WHAT IS YOUR CURRENT POSITION THERE?

15 A I'M A SENIOR SOCIAL WORKER, AND I WORK IN
16 DEPENDENCY INVESTIGATIONS.17 Q NOW, PRIOR TO WORKING FOR ORANGE COUNTY, WERE
18 YOU EMPLOYED?19 A YES. I WAS EMPLOYED WITH LOS ANGELES COUNTY,
20 DEPARTMENT OF CHILDREN AND FAMILY SERVICES.

21 Q WHY DID YOU LEAVE LA COUNTY DCFS?

22 A I HAD A VERY LONG COMMUTE.

23 Q HOW LONG WERE YOU WITH LA DCFS?

24 A I STARTED WITH THEM IN OCTOBER OF 2008 UNTIL
25 DECEMBER OF 2015.26 Q WHEN -- IN -- END OF 2009, CONTINUING TO 2010,
27 WERE YOU EMPLOYED WITH LOS ANGELES COUNTY DCFS?

28 A YES, I WAS.

1 Q AND WHAT WAS YOUR POSITION AT THAT TIME?

2 A I WAS A CHILD'S SOCIAL WORKER TWO. AND I
3 WORKED IN FAMILY MAINTENANCE AND REUNIFICATION
4 SERVICES.

5 Q AND AT THAT TIME, WHAT WERE YOUR JOB DUTIES?

6 A WELL, IN FAMILY MAINTENANCE AND REUNIFICATION,
7 YOU ARE WORKING WITH FAMILIES EITHER TO MAINTAIN A
8 CHILD IN THE HOME, OR TO HELP A PARENT REUNIFY WITH
9 THEIR CHILD.

10 Q AT SOME POINT, DID YOU BECOME INVOLVED WITH
11 THE BABY RYAN CASE?

12 A YES. I DID.

13 Q AND WHAT WAS YOUR INVOLVEMENT IN THAT CASE?

14 A THE CASE WAS TRANSFERRED TO MY OFFICE. IT
15 ORIGINATED IN THE METRO NORTH OFFICE, AND IT WAS
16 TRANSFERRED OVER TO LAKEWOOD, WHICH IS ALSO KNOWN AS
17 SOUTH COUNTY.

18 AND IT WAS ASSIGNED TO ME AS THE CASE CARING
19 FAMILY MAINTENANCE AND REUNIFICATION SOCIAL WORKER.

20 Q DO YOU RECALL WHEN YOU BECAME INVOLVED IN THE
21 CASE?

22 A YES, I DO.

23 Q WHEN WAS THAT?

24 A WELL, THE FIRST TIME I SAW THE CHILD WAS ON
25 DECEMBER 22ND. I WAS NOT EXPECTING ANYONE, AND I WAS
26 CALLED DOWN TO THE LOBBY. AND THE GRANDPARENTS WERE
27 THERE WITH LITTLE RYAN ON THEIR LAP.

28 MR. PRAGER: OBJECTION: NONRESPONSIVE, MOVE

1 TO STRIKE EVERYTHING AFTER THE REFERENCE TO GOING TO
2 THE LOBBY AND MEETING THE PARENTS (SIC).

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

5 BY MS. SWISS:

6 Q NOW, YOU SAID DECEMBER 22ND. DO YOU RECALL
7 THE YEAR?

8 A 2009.

9 Q OKAY. AND WHAT DO YOU RECALL ABOUT BABY RYAN
10 THE FIRST TIME YOU MET HIM?

11 A I WAS SHOCKED. I WAS SHOCKED AT HIS
12 CONDITION. HE WAS SO SMALL. HE WAS PALE. HE WAS
13 WEAK. HE COULDN'T SIT UP STRAIGHT. HE JUST KIND OF
14 SLUMPED OVER.

15 AND, IN FACT, I WAS SO SHOCKED THAT I GOT MY
16 SUPERVISOR, AND I GOT A PUBLIC HEALTH NURSE TO COME
17 DOWN TO THE LOBBY AND ASSIST ME IN ASSESSING THE CHILD.

18 Q AND DID THEY DO THAT?

19 A YES. THEY DID.

20 Q WHAT HAPPENED?

21 A WELL, THE CONTACT IN THE DELIVERED SERVICE
22 LOGS WAS WRITTEN BY THE PUBLIC HEALTH NURSE, SO SHE
23 TALKED WITH THE GRANDPARENTS. THE PARENTS WERE NOT
24 PRESENT. THE CHILD WAS WITH THE GRANDPARENTS, THE
25 PATERNAL GRANDPARENTS.

26 AND SHE TOOK A LITTLE HISTORY FROM THEM, AND
27 SHE ADMONISHED THEM THAT, SHOULD THE CHILD BECOME ILL
28 OR SHOW ANY UNUSUAL SYMPTOMS, THEY SHOULD IMMEDIATELY

1 TAKE HIM TO HIS PRIMARY PHYSICIAN OR THE ER.

2 AND APPARENTLY, THE GRANDPARENTS HAD
3 MISTAKENLY COME TO OUR OFFICE. THEY WERE THERE FOR A
4 VISIT WITH MOM. AND THEY WENT ON AND TOOK THE CHILD TO
5 METRO NORTH, I GUESS, WHERE HE HAD HIS VISIT.

6 MR. PRAGER: OBJECTION: NONRESPONSIVE,
7 NARRATIVE ANSWER, LACKS FOUNDATION.

8 THE COURT: THE OBJECTION OF LACKING
9 FOUNDATION IS SUSTAINED. THE OTHER OBJECTIONS ARE
10 OVERRULED. MOTION TO STRIKE?

11 MR. PRAGER: YES, YOUR HONOR, I'M SORRY.

12 THE COURT: MOTION TO STRIKE IS GRANTED. THE
13 ENTIRE ANSWER WILL BE STRICKEN, AND THE JURY MUST
14 DISREGARD.

15 BY MS. SWISS:

16 Q DO YOU KNOW WHY BABY RYAN CAME TO YOUR OFFICE
17 ON DECEMBER 22ND, 2009?

18 A IT WAS MY UNDERSTANDING THAT THE GRANDPARENTS
19 HAD BROUGHT HIM FOR A VISIT WITH HIS MOTHER, MS. DUVAL,
20 BUT THEY WERE IN THE WRONG OFFICE.

21 Q NOW, WHAT WAS YOUR SPECIFIC ROLE IN DEALING
22 WITH BABY RYAN DURING THE CASE?

23 A MY ROLE STEMS FROM THE COURT ORDERS. SO THE
24 COURT HAD ALREADY MADE ORDERS AT THE DETENTION HEARING,
25 AND IT'S NOW MY ROLE TO CARRY OUT THE ORDERS OF THE
26 COURT.

27 THE COURT HAD MONITORED VISITATION FOR
28 MS. DUVAL. THEY ORDERED FAMILY MAINTENANCE SERVICES

1 FOR MR. MILLS. THEY ORDERED FAMILY REUNIFICATION
2 SERVICES FOR MS. DUVAL.

3 THEY ORDERED MEDICAL SERVICES FOR THE CHILD.
4 AND THEY ORDERED OUR DEPARTMENT TO MAKE SURE THAT
5 MS. DUVAL WAS ABLE TO ENROLL IN COUNSELING.

6 MR. PRAGER: OBJECTION: LACKS FOUNDATION,
7 CALLS FOR NARRATIVE RESPONSE, NONRESPONSIVE AFTER THE
8 INITIAL STATEMENT, "COURT ORDERS."

9 THE COURT: THE OBJECTION IS OVERRULED.
10 MOTION TO STRIKE IS DENIED. PLEASE GO AHEAD.
11 BY MS. SWISS:

12 Q NOW, WHEN YOU SAY THAT YOU PROVIDED FAMILY
13 REUNIFICATION SERVICES FOR MS. DUVAL, WELL, THAT WAS --
14 I'M SORRY. STRIKE THAT.

15 SO YOU JUST TESTIFIED THAT YOUR UNDERSTANDING
16 OF THE COURT ORDER WAS THAT MS. DUVAL WAS ORDERED
17 FAMILY REUNIFICATION SERVICES. MY QUESTION TO YOU IS,
18 WHAT FAMILY REUNIFICATION SERVICES DID YOU PROVIDE?

19 A WELL, FIRST AND FOREMOST, I PROVIDED HER WITH
20 MONITORED VISITATIONS. SO THAT WAS THE FIRST THING WE
21 DID.

22 SECONDLY, MY ROLE WAS TO ASSIST THE MOTHER IN,
23 YOU KNOW, FEEDING THE CHILD PROPERLY, AND, DURING HER
24 VISITATION, JUST ANY GENERAL COACHING THAT I COULD
25 OFFER TO THE MOM.

26 ALSO, WE WERE ORDERED TO MAKE SURE SHE WAS IN
27 COUNSELING, WHICH SHE ALREADY WAS. SO...

28 Q NOW, WITH REGARD TO MONITORING THE VISITS,

1 WHAT WAS YOUR ROLE IN THAT -- IN THAT TASK?

2 A I MONITORED PART OF THE VISIT, AND ANOTHER
3 PERSON, ANIKA LEWIS, MONITORED THE OTHER PART BECAUSE
4 THE VISITS WERE AN HOUR-AND-A-HALF AND WE SPLIT UP THE
5 TIME.

6 Q DO YOU RECALL HOW OFTEN THOSE VISITS WERE?

7 A THEY WERE TWICE A WEEK.

8 Q AND WHAT WERE YOU DOING AS A MONITOR DURING
9 THE VISITS?

10 A AS A MONITOR, IT IS MY ROLE TO MAKE SURE THAT
11 THE CHILD IS SAFE, THAT THE CASE IS NOT DISCUSSED.
12 THERE'S A WHOLE LIST OF GUIDELINES. NOTHING NEGATIVE
13 IS SAID ABOUT THE OTHER PARTY.

14 COMMUNICATION IS IN A LANGUAGE THAT I CAN
15 UNDERSTAND. AND, AGAIN, TO OFFER ANY COACHING OR
16 DIRECT ASSISTANCE THAT I CAN TO THE MOTHER. BUT
17 GENERALLY, IT'S MORE OF A, YOU KNOW, YOU ARE -- YOU'RE
18 MONITORING.

19 YOU'RE SITTING ON THE SIDELINE AND WATCHING
20 THE VISIT AND HELPING AS YOU CAN.

21 Q DID YOU ACTUALLY DO THAT FOR MS. DUVAL?

22 A YES. I DID.

23 Q DID YOU PROVIDE HER COACHING?

24 A YES. I DID.

25 Q AND CAN YOU GIVE SOME EXAMPLES, GIVE AN
26 EXAMPLE OF THAT?

27 A CERTAINLY. AS WE'VE HEARD DISCUSSED EARLIER
28 TODAY, THE NUTRITIONIST HAD PROVIDED A LIST OF FOODS

1 FOR THE CHILD TO BE FED.

2 AND BECAUSE HE WAS SO UNDERWEIGHT, HE WAS TO
3 EAT FOODS THAT ARE HIGH IN CALORIES, HIGH IN NUTRITION,
4 PROTEIN. AND SO AT THE FIRST VISIT, ACTUALLY FOR
5 SEVERAL VISITS, I TALKED TO MOM ABOUT THE FOOD, AND
6 ASKED HER TO BRING THE HIGH-CALORIE, HIGH-PROTEIN FOODS
7 THAT WERE ON THE LIST.

8 MR. PRAGER: OBJECTION: NONRESPONSIVE,
9 NARRATIVE RESPONSE, MOVE TO STRIKE AFTER THE REFERENCE
10 TO BRINGING THE FOOD AND THE HIGH-CALORIC FOOD FROM
11 MOM.

12 THE COURT: THE OBJECTION IS OVERRULED. THE
13 MOTION TO STRIKE IS DENIED.

14 BY MS. SWISS:

15 Q NOW, WHEN YOU PROVIDED THAT COACHING REGARDING
16 THE FOODS TO MS. DUVAL DURING YOUR MONITORED VISITS,
17 DID SHE RESPOND TO YOUR COACHING?

18 A WELL, FIRST OF ALL, I DIDN'T ACTUALLY TELL HER
19 THOSE THINGS DURING THE VISIT. I SPOKE WITH HER AFTER
20 THE VISIT, REGARDING THE FOOD ISSUES.

21 Q WHY WAS THAT?

22 A WELL, THIS IS HER TIME WITH HER BABY. IT'S
23 IMPORTANT THAT SHE HAS THIS TIME TO BOND WITH HER BABY
24 AND SPEND THE TIME WITH HER BABY. SO I DON'T WANT TO
25 BE DISRUPTIVE DURING THE VISIT, OR, YOU KNOW, INTERFERE
26 IF IT'S NOT NECESSARY.

27 SO I WOULD SPEAK WITH HER AFTER THE VISIT.
28 AND THE FIRST ONE, I ASKED HER NOT TO BRING, IT'S A

1 PUFFED RICE SNACK FOOD CALLED PIRATE'S BOOTY. SO I
2 ASKED HER TO BRING THE ITEMS FROM THE LIST.

3 AND THEN THE SECOND VISIT, SAME THING. WE HAD
4 PIRATE'S BOOTY, WE HAD VEGGIE CHIPS, AND SHE HAD SOME
5 PASTA WITH A LITTLE OLIVE OIL. BUT IT DIDN'T HAVE ANY
6 MEAT, OR ANY CHEESE, OR ANY PROTEIN.

7 SO, AGAIN, I ASKED HER PLEASE, YOU KNOW, BRING
8 THINGS FROM THE LIST. SO -- AND I THINK AT THE NEXT
9 VISIT, SHE DID. BUT THEN AT SUBSEQUENT VISITS, WE HAD
10 THAT SAME ISSUE.

11 SO EVENTUALLY, AFTER A FEW WEEKS, I ASKED THE
12 FATHER TO PACK A BAG AND SEND THE FOOD FOR THE MOM.
13 AND THE MOM WAS STILL ABLE TO FEED THE CHILD, BUT SHE
14 FED THE CHILD THE FOOD THAT THE FATHER PACKED.

15 Q NOW, WHEN YOU MONITORED THE VISITS, DID YOU
16 DOCUMENT WHAT HAPPENED ANYWHERE?

17 A YES.

18 Q AND WHERE WAS THAT?

19 A IT'S -- IT GETS DOCUMENTED IN THE COMPUTER.
20 IT'S CALLED A CONTACT, AND THE CONTACTS THEN MAKE UP
21 THE DELIVERED SERVICE LOGS.

22 Q AND WHAT WERE YOU PUTTING INTO, IN GENERAL,
23 THE -- INTO THE DELIVERED SERVICE LOGS, REGARDING YOUR
24 MONITORED VISITS?

25 MR. PRAGER: OBJECTION: VAGUE AS TO TIME.

26 THE COURT: OVERRULED. GO AHEAD.

27 THE WITNESS: I'M PUTTING IN -- I'M PRIMARILY
28 WRITING BEHAVIORS. HOW THE CHILD -- WHAT THE CHILD DID

1 DURING THE VISIT, WHAT THE MOM DID DURING THE VISIT,
2 HOW THEY INTERACTED WITH ONE ANOTHER.

3 IF THEY PLAYED, WHAT DID THEY PLAY WITH, FOOD,
4 HOW WAS THE FOOD FED, HOW DID THE CHILD EAT. THOSE
5 TYPES OF THINGS, BEHAVIORAL CONTEXT.

6 BY MS. SWISS:

7 Q OKAY. NOW, HOW LONG DID YOU CONTINUE TO
8 MONITOR VISITS FOR MS. DUVAL?

9 A I MONITORED VISITS FOR MS. DUVAL, I BELIEVE
10 THE LAST ONE WAS ON JULY 15TH, SO ABOUT THE MIDDLE OF
11 JULY.

12 Q AND CAN YOU ESTIMATE HOW MANY VISITS YOU
13 MONITORED DURING THAT TIME?

14 A IT WAS A LOT. PRETTY MUCH TWO A WEEK FOR
15 SIX-AND-A-HALF MONTHS.

16 Q OKAY. NOW, DURING THE SIX-AND-A-HALF MONTHS
17 THAT YOU MONITORED THE VISITS, DID YOU GET AN OVERALL
18 IMPRESSION OF HOW THOSE VISITS WERE GOING?

19 A YES.

20 Q WHAT WAS YOUR IMPRESSION?

21 MR. PRAGER: OBJECTION: VAGUE AS TO TIME.

22 THE COURT: OVERRULED.

23 THE WITNESS: MY IMPRESSION WAS THAT MOTHER
24 TENDED TO OVERWHELM THE CHILD. SHE -- SHE TENDED TO BE
25 RIGID IN HER APPROACH, TO NOT ALLOW THE CHILD FREE
26 PLAY.

27 SHE KIND OF HAD HER OWN SET WAY OF DOING
28 THINGS AND HAD A HARD TIME BEING FLEXIBLE WITH WHAT THE

1 CHILD WANTED TO DO.

2 AND AS HE DEVELOPED, SHE HAD A VERY HARD TIME
3 LETTING HIM ACTUALLY DO THE THINGS THAT HE BECAME
4 CAPABLE OF DOING, SUCH AS CRAWLING OR STANDING
5 INDEPENDENTLY, ON HIS OWN.

6 BY MS. SWISS:

7 Q WHAT DO YOU MEAN BY, SHE HAD TROUBLE ALLOWING
8 THE CHILD DOING WHAT HE WANTED TO DO ON HIS OWN? CAN
9 YOU BE MORE SPECIFIC?

10 A YES. SO WHEN HE LEARNED TO CRAWL, HE WAS
11 EXCITED BECAUSE SUDDENLY HE COULD CRAWL, AND HE STARTED
12 CRAWLING UNDER THE DESK AND UNDER THE CHAIR. AND ANY
13 TIME HE WENT ANY PLACE LIKE THAT, MOM WOULD PULL HIM
14 OUT.

15 AND I ENCOURAGED HER TO ALLOW HIM TO, YOU
16 KNOW, TURN AROUND AND COME OUT HIMSELF. BUT IT SEEMED
17 TO MAKE HER UNCOMFORTABLE. WHEN HE LEARNED TO STAND,
18 AND HE COULD TO STAND BY HIMSELF, SHE WOULD INSIST ON,
19 YOU KNOW, HOLDING HIM, PUTTING HER -- HOLDING HIM BY
20 THE WAIST.

21 AND I TOLD HER, YOU KNOW, HE CAN STAND, GO
22 AHEAD AND LET HIM STAND. BUT SHE WOULDN'T -- DIDN'T
23 WANT TO DO THAT.

24 MR. PRAGER: OBJECTION: NARRATIVE RESPONSE,
25 CALLS FOR SPECULATION, LACKS FOUNDATION AS TO MOM'S
26 REACTION -- THE DESCRIPTION OF MOM'S REACTION IN THIS
27 SITUATION.

28 THE COURT: OBJECTION...

1 MR. PRAGER: OR MOM'S INTERNAL THOUGHT
2 PROCESS, YOUR HONOR.

3 THE COURT: THE OBJECTION LACKING FOUNDATION
4 AS TO MOTHER'S REACTION IS SUSTAINED. THAT PART OF THE
5 ANSWER BE STRICKEN. THE OTHER OBJECTIONS ARE
6 OVERRULED. AND THE PORTION THAT IS STRICKEN MUST BE
7 DISREGARDED BY THE JURY.

8 BY MS. SWISS:

9 Q SO, MS. SCHEELE, THERE WAS A QUESTION IN THIS
10 CASE REGARDING VIDEOTAPING OF VISITS.

11 DO YOU RECALL THAT ISSUE COMING UP WHEN YOU
12 MONITORED VISITS FOR MS. DUVAL?

13 A YES. I DO.

14 Q WHAT DO YOU RECALL REGARDING THAT ISSUE?

15 A THIS WAS A VISIT TOWARD THE END OF FEBRUARY.
16 AND MS. DUVAL HAD A VIDEO THAT SHE LIKED TO BRING AND
17 PUT ON FOR THE CHILD ON HER LAPTOP. AND SHE WOULD HOLD
18 HIM ON HER LAP, YOU KNOW, WITH HER ARMS AROUND HIM.

19 AND ON THIS OCCASION, THE CHILD WANTED TO GET
20 DOWN, AND SHE CONTINUED HOLDING HIM. AND HE STUCK ALL
21 FOUR FINGERS OF HIS HAND DOWN HIS THROAT, ENGAGING HIS
22 GAG REFLEX. AND SO I TOLD HER, YOU KNOW, HE'S GAGGING
23 HIMSELF.

24 AND SHE REMOVED HIS HAND. I SUGGESTED SHE PUT
25 HIM DOWN. SHE WANTED TO CONTINUE TO HOLD HIM. HE DID
26 IT AGAIN, AND AGAIN I TOLD HER -- SHE DIDN'T KNOW
27 BECAUSE HE WAS FACING AWAY FROM HER.

28 SO I ASKED HER AT THAT TIME -- I SAID, REALLY,

1 I HAVE TO ASK YOU PUT HIM DOWN. LET HIM -- HE WANTED
2 TO CRAWL. HE WANTED TO BE ON THE FLOOR.

3 AND AFTER THAT VISIT, WHEN WE TALKED, THE
4 MOTHER ASKED ME IF SHE COULD VIDEOTAPE VISITS. AND I
5 TOLD HER NO.

6 BECAUSE THAT'S -- FIRST OF ALL, IT'S NOT THE
7 PURPOSE OF THE VISIT. THE PURPOSE OF THE VISIT IS FOR
8 YOU TO INTERACT WITH YOUR CHILD, SPEND TIME WITH YOUR
9 CHILD. THIS IS YOUR TIME TO BE WITH YOUR SON.

10 AND SECONDLY, WE JUST DON'T VIDEOTAPE THINGS.
11 SO I TOLD HER NO. AND THAT WAS THE ONE AND ONLY TIME
12 SHE EVER ASKED ME TO VIDEOTAPE.

13 Q NOW, DURING THE MONITORED VISITS, DID ANYONE
14 ELSE FROM MS. DUVAL'S FAMILY EVER ATTEND?

15 A HER MOTHER ATTENDED THE VISITS AS WELL.

16 Q NOW, IT'S ALSO -- AN ISSUE HAS ALSO BEEN
17 RAISED IN THIS CASE AS TO SOME POINT THE MATERNAL
18 GRANDMOTHER WAS ASKED NOT TO ATTEND SOME VISITS.

19 DO YOU RECALL THAT ISSUE COMING UP DURING THE
20 VISITS THAT YOU MONITORED?

21 A YES. I DO.

22 Q AND WHAT DO YOU RECALL, REGARDING THAT ISSUE?

23 A IT WAS FAIRLY EARLY ON AND -- AFTER BEING
24 TRANSFERRED TO MY OFFICE. AND IT WAS DURING A VISIT
25 WHEN MOM WAS TRYING TO FEED THE CHILD SOME PASTA.
26 SHE'D BROUGHT A VERY LARGE SPOON, LIKE A TABLESPOON.

27 THE PASTA HAD OIL ON IT, AND SHE WAS TRYING TO
28 FEED THE CHILD WITH THE SPOON, AND THE CHILD TURNED HIS

1 HEAD. HE REFUSED.

2 AND THEN GRANDMA TOOK THE PASTA AND PICKED IT
3 UP AND TRIED TO FORCE IT IN HIS MOUTH. AND I
4 INTERVENED AND SAID, DON'T FORCE-FEED THE CHILD.

5 AND I FELT, AS I REVIEWED IT AFTERWARDS, AND I
6 TALKED TO MY SUPERVISOR ABOUT IT, THAT IT WAS HARDER TO
7 ASSESS THE SITUATION WITH MOTHER. LIKE, HOW MUCH OF
8 THIS IS MOM, HOW MUCH OF THIS IS GRANDMA, WHO NEEDS
9 HELP AND WHERE.

10 AND I REALLY WANTED MOM TO HAVE ONE-ON-ONE
11 TIME WITH HER CHILD, AT LEAST ONCE A WEEK. AND IT
12 WOULD ALSO GIVE ME A BETTER OPPORTUNITY TO ASSESS WHAT
13 SHE NEEDED HELP WITH.

14 SO GRANDMA BEGAN COMING ONE TIME A WEEK,
15 AND -- WITH MOM, THEY CAME TOGETHER -- AND THEN THE
16 SECOND TIME, THE VISIT WAS JUST FOR THE MOTHER.

17 MR. PRAGER: OBJECTION: NONRESPONSIVE, MOVE
18 TO STRIKE EVERYTHING AFTER "YES," CALLS FOR A NARRATIVE
19 OR GAVE A NARRATIVE RESPONSE.

20 THE COURT: THE OBJECTION NONRESPONSIVE IS
21 OVERRULED. THERE WAS NO "YES" IN THE ANSWER. THE
22 OTHER OBJECTIONS ARE OVERRULED. MOTION TO STRIKE IS
23 DENIED. GO AHEAD.

24 BY MS. SWISS:

25 Q MS. SCHEELE, WITH REGARD TO THE VISITS, AN
26 ISSUE HAS ALSO BEEN RAISED IN THIS CASE REGARDING THE
27 SPECIFIC LANGUAGE OF THE VISITS.

28 A OKAY.

1 Q SPECIFICALLY, THERE WAS AN ISSUE THAT MOTHER
2 WAS NOT ALLOWED TO SPEAK IN SPANISH DURING THE VISITS.

3 A YES.

4 Q DO YOU RECALL AN ISSUE -- THAT SPECIFIC ISSUE
5 COMING UP IN THE VISITS THAT YOU MONITORED?

6 A YES. I DO.

7 Q AND WHAT DO YOU RECALL REGARDING THE LANGUAGE
8 ISSUE DURING THE VISITS THAT YOU MONITORED?

9 A THE LANGUAGE OF THIS CASE, OF EVERY CASE, IS
10 DETERMINED BY THE PARENT. THE MOTHER HAD DETERMINED
11 THE LANGUAGE OF THE CASE AS ENGLISH BY SIGNING A
12 LANGUAGE DETERMINATION FORM EARLY IN THE BEGINNING OF
13 THE CASE.

14 SO THE LANGUAGE OF THIS CASE IS ENGLISH.
15 THAT'S WHY I'M ASSIGNED, BECAUSE I DON'T SPEAK SPANISH.
16 SO I WOULDN'T GET A SPANISH-SPEAKING CASE. AND WE HAD
17 MANY VISITS, AND MOM SPOKE SPANISH -- I'M SORRY -- MOM
18 SPOKE ENGLISH.

19 SHE SANG TO HER CHILD, SHE FREQUENTLY SANG TO
20 HER CHILD, AND SHE SANG TO HER CHILD IN ENGLISH. AND
21 THEN ON JUNE 3RD OF 2010, I'M MONITORING A VISIT, AND
22 SHE STARTED SINGING IT IN SPANISH.

23 AND I HAD TO SAY, HEY, YOU KNOW, PLEASE DON'T.
24 I DON'T UNDERSTAND SPANISH, SO IF YOU NEED TO SING,
25 PLEASE SING IN ENGLISH.

26 Q HOW DID SHE RESPOND TO THAT?

27 A I DON'T -- SHE COMPLIED.

28 Q DID THE ISSUE REGARDING THE LANGUAGE OF THE

1 VISITS EVER COME UP AGAIN, TO YOUR KNOWLEDGE?

2 A YES, IT DID. AND --

3 Q WHAT DO YOU RECALL REGARDING THAT?

4 A IT CAME UP WITH ANIKA LEWIS, WHO WAS THE OTHER
5 PERSON WHO MONITORED VISITATION FOR MOM, AND IT WAS THE
6 END OF JULY.

7 AND SHE, AGAIN, JUST STARTED SINGING IN
8 SPANISH, AND MS. LEWIS HAD TO TELL HER, PLEASE, THIS IS
9 AN ENGLISH-SPEAKING CASE. AND AT THAT TIME, THE
10 MOTHER, MS. DUVAL, REQUESTED A SPANISH MONITOR --
11 SPANISH-SPEAKING MONITOR.

12 Q NOW, WAS A SPANISH-SPEAKING MONITOR EVER
13 ASSIGNED, TO YOUR KNOWLEDGE?

14 A WE DID FIND ONE THAT COULD TAKE OVER THE
15 VISITS, AND I BELIEVE SHE'S -- I THINK SHE MONITORED IN
16 AUGUST.

17 Q AND WHAT WAS HER NAME, IF YOU RECALL?

18 A ROSEMARY SIERRA.

19 Q NOW, ANOTHER ISSUE THAT HAS COME UP IN THIS
20 CASE IS, YOU ASKED MOM AT SOME POINT IF SHE WAS
21 PREGNANT.

22 A MM-HMM.

23 Q DID YOU EVER ASK MOM DURING THE VISITS YOU
24 MONITORED WHETHER SHE WAS PREGNANT?

25 A NOT DURING THE VISITS, NO.

26 Q AT ANY TIME, DID YOU EVER ASK MS. DUVAL IF SHE
27 WAS PREGNANT?

28 A YES.

1 Q AND WHY WAS THAT?

2 A WELL, FIRST OF ALL, VERY AWKWARD QUESTION TO
3 ASK ANYONE, AND DURING A PREVIOUS VISIT, SHE HAD BEEN
4 ILL. AND SHE HAD BEEN LYING DOWN.

5 AND I OBSERVED THAT IT WAS A POSSIBILITY THAT
6 SHE MIGHT BE PREGNANT. AND BY POLICY, I'M REQUIRED TO
7 ASK. SO I ASKED.

8 Q AND WHO WAS HER RESPONSE?

9 A HER RESPONSE WAS NO.

10 Q AND DID YOU DO ANYTHING ELSE WITH THAT
11 INFORMATION?

12 A I ASKED HER A SECOND TIME BECAUSE, MAYBE
13 BECAUSE IT WAS AWKWARD FOR ME, AND I FELT IT WAS
14 PROBABLY AWKWARD FOR HER. SO I ASKED HER AGAIN, AND
15 SHE SAID, NO, AGAIN, AND I ACCEPTED THAT AS THE TRUTH.

16 Q NOW, DURING THIS CASE, ANOTHER ISSUE HAS
17 ARISEN REGARDING DOCUMENTATION IN THE CONTACT NOTES,
18 REGARDING MOTHER'S TREMORS.

19 A YES.

20 Q DO YOU RECALL, WHEN YOU MONITORED THE VISITS,
21 EVER WITNESSING MOM SUFFERING FROM TREMORS?

22 A YES. I DID.

23 Q AND WHEN WAS THE FIRST TIME THAT YOU WITNESSED
24 THAT?

25 A FIRST TIME I WITNESSED THE MOTHER HAVING
26 TREMORS WAS ON DECEMBER 31ST OF 2009.

27 Q AND WHAT DO YOU RECALL -- WELL, WHAT DID YOU
28 OBSERVE?

1 A I OBSERVED THAT IT WAS AN UNUSUAL
2 PRESENTATION. THAT SHE WOULD BE DOING THINGS, SETTING
3 UP TOYS OR HER LAPTOP OR WHATEVER, AND SHE HAD NO
4 TREMORS WHATSOEVER.

5 BUT IN THIS PARTICULAR VISIT, THE CHILD WAS
6 WEARING A SWEATER, AND WE WERE INDOORS, AND SHE JUST
7 WANTED TO TAKE HIS SWEATER OFF.

8 AND SHE STARTED TO REMOVE THE SWEATER, AND HER
9 HANDS JUST BEGAN TO TREMBLE. SHE HAD A VERY BAD TREMOR
10 ALL OF A SUDDEN. AND SO THAT'S THE FIRST TIME I
11 OBSERVED HER TREMOR.

12 Q DID YOU ASK MS. DUVAL ABOUT IT?

13 A NOT AT THAT TIME.

14 Q DID YOU OBSERVE IT ON ANY OTHER OCCASIONS?

15 A YES.

16 Q WHEN WAS THE NEXT TIME, IF YOU RECALL?

17 A I DON'T RECALL, EXACTLY, THE NEXT TIME. I DO
18 RECALL THAT I OBSERVED IT SEVERAL TIMES. AND I
19 DOCUMENTED IT WHEN I OBSERVED IT.

20 Q WHY DID YOU DOCUMENT THAT?

21 A BECAUSE IT WAS HAPPENING. IT WAS HAPPENING.
22 I WAS OBSERVING IT. AND IT WAS ALSO IN RELATIONSHIP --
23 IT WAS IN RELATION TO ACTIVITIES SHE WAS DOING WITH HER
24 CHILD. I NEVER ONE TIME EVER OBSERVED HER JUST
25 TREMORING DOING ANOTHER ACTIVITY.

26 IT WAS ALWAYS IN RELATIONSHIP TO -- SOMETHING
27 LIKE PUTTING ON THE CHILD'S SHOES, CHANGING HIS PANTS,
28 SOMETHING OF THAT NATURE.

1 Q DID YOU EVER BRING -- ASK MS. DUVAL ABOUT THAT
2 ISSUE?

3 A YES, I DID.

4 Q AND WHAT WAS HER RESPONSE?

5 MR. PRAGER: OBJECTION: ASSUMES FACTS.

6 THE COURT: OVERRULED. GO AHEAD.

7 THE WITNESS: WHEN I -- SHE CAME INTO THE
8 OFFICE UNEXPECTEDLY ON JANUARY 4TH. I THINK SHE
9 BELIEVED THAT THERE WAS SUPPOSED TO BE A VISIT, BUT I
10 DIDN'T HAVE A VISIT SCHEDULED.

11 SO I GAVE HER MY TIME. I TOOK THAT
12 OPPORTUNITY, EVEN THOUGH I WASN'T EXPECTING HER, TO SIT
13 DOWN AND TALK WITH HER. AND AT THAT TIME, I ASKED HER
14 ABOUT THE TREMORS.

15 AND SHE TOLD ME THAT SHE AND HER FATHER AND
16 HER BROTHER HAVE THESE TREMORS, THAT THEY'RE WORSE WHEN
17 SHE'S UNDER STRESS. THAT THEY DON'T BOTHER HER, AND
18 SHE HAD NEVER HAD THEM CHECKED OUT.

19 AND THAT SHE PLANNED TO SEE A DOCTOR, I THINK
20 SHE SAID THIS WEEK. AND SHE ALSO SAID SHE THOUGHT IT
21 WAS RUDE THAT IT WAS INCLUDED IN THE COURT REPORT.

22 BY MS. SWISS:

23 Q AND DID YOU RESPOND?

24 A THAT WAS THE ONLY -- WELL, THE PART ABOUT THE
25 COURT REPORT?

26 Q YES.

27 A YES. I TOLD HER WELL, YOU KNOW, WE OFTEN ASK
28 PERSONAL QUESTIONS, AND THAT'S KIND OF A NORMAL PART OF

1 SOCIAL WORK.

2 Q DID YOU TELL HER THE REASON THAT YOU WERE
3 DOCUMENTING THE TREMORS?

4 A I ACTUALLY DID NOT DOCUMENT THE TREMORS THAT
5 WERE REPORTED IN THAT REPORT OF JANUARY -- FOR THE
6 HEARING ON JANUARY 4TH. THAT REPORT -- REPORTS ARE
7 WRITTEN AHEAD OF TIME.

8 THAT REPORT WAS WRITTEN AND SIGNED OFF ON, ON
9 DECEMBER 30TH. I DIDN'T OBSERVE A TREMOR UNTIL
10 DECEMBER 31ST. SO THE TREMOR REPORTED IN THE REPORT
11 WAS NOT OBSERVED OR DOCUMENTED BY ME.

12 Q DID YOU DOCUMENT SOMEWHERE THAT YOU OBSERVED
13 MOM'S TREMORS?

14 A YES. I DID.

15 Q WHERE DID YOU DOCUMENT THAT?

16 A IN THE CONTACTS, IN THE DELIVERED SERVICE
17 LOGS.

18 Q OKAY. DID YOU EVER HAVE THE OCCASION TO
19 ACCOMPANY BABY RYAN TO ANY DOCTOR VISITS?

20 A YES. I DID.

21 Q ON HOW MANY OCCASIONS?

22 A ONLY ONE TIME.

23 Q AND WHEN WAS THAT?

24 A THAT WAS ON APRIL 1ST, 2010.

25 Q WHERE DID YOU ACCOMPANY RYAN?

26 A I ACCOMPANIED RYAN -- ACTUALLY, I MET HIM AT
27 DR. IRA LOTT'S OFFICE AND MOM AND GRANDMA MET US THERE.
28 AND PATERNAL GRANDFATHER BROUGHT THE CHILD TO THE

1 DOCTOR'S OFFICE, AND THEN I STAYED AND WAS PRESENT
2 DURING THE DOCTOR'S VISIT.

3 Q WHY DID YOU GO?

4 A WELL, I WENT BECAUSE MOTHER WAS PRESENT AND
5 THIS WAS AN APPOINTMENT THAT SHE SET UP WITH HER OWN
6 SPECIALIST, DR. IRA LOTT. AND HER TIME WITH THE CHILD
7 IS MONITORED, SO THEREFORE, I OR SOMEONE HAD TO BE
8 PRESENT.

9 Q SO WAS THIS VISIT -- WAS YOUR ACCOMPANYING THE
10 BABY AND MS. DUVAL TO THE DOCTOR, DID THAT TAKE THE
11 PLACE OF A MONITORED VISIT AT THE DCFS OFFICE THAT DAY?

12 A YES. IT DID.

13 MR. PRAGER: OBJECTION: LEADING.

14 THE COURT: OVERRULED.

15 BY MS. SWISS:

16 Q I'M SORRY. WHAT WAS YOUR ANSWER?

17 A YES. IT DID.

18 Q NOW, WERE YOU PRESENT IN THE ROOM WITH -- WHEN
19 DR. LOTT EXAMINED THE BABY?

20 A YES. I WAS.

21 Q AND DID MS. DUVAL COMMUNICATE ANY INFORMATION
22 ABOUT THE CASE DURING THAT DOCTOR VISIT?

23 MR. PRAGER: OBJECTION: CALLS FOR HEARSAY.

24 THE COURT: OVERRULED. CALLS FOR A YES OR NO.

25 THE WITNESS: YES. SHE DID.

26 BY MS. SWISS:

27 Q AND WHAT INFORMATION DID SHE COMMUNICATE, THAT
28 YOU OBSERVED?

1 MR. PRAGER: OBJECTION: HEARSAY.

2 THE COURT: OVERRULED. NON-HEARSAY PURPOSE.

3 THE WITNESS: THE MOTHER GAVE THE DOCTOR SOME
4 BASIC HISTORY OF HER PREGNANCY AND THE CHILD'S BIRTH.

5 AND SHE EXPLAINED TO THE DOCTOR THAT THE CHILD
6 IS -- HAD GAINED SOME WEIGHT, BUT SEEMED TO HAVE A
7 SMALLER BODY MASS, AND THAT HIS LEGS ARE SKINNY NOW,
8 BUT THEY WERE CHUBBY WHEN HE WAS WITH HER.

9 SHE TOLD THE DOCTOR THAT THE CHILD USED TO
10 ORGANIZE THINGS MORE AND THROW BALLS, BUT NOW HE
11 SCATTERS MORE. THOSE ARE THE MAIN THINGS I REMEMBER
12 HER TELLING THE DOCTOR.

13 BY MS. SWISS:

14 Q NOW, DO YOU RECALL, IN THAT VISIT, IF THE
15 QUESTION WAS ASKED WHETHER THE BABY WAS BEING SEEN BY
16 ANY OTHER SPECIALIST AT THAT TIME?

17 A YES.

18 Q AND WHO ASKED THAT QUESTION?

19 A A NURSE CAME IN THE ROOM FIRST TO TAKE SOME
20 BASIC HISTORY. AND THE NURSE ASKED THAT QUESTION.

21 Q AND DID MS. DUVAL RESPOND TO THAT QUESTION?

22 A YES. SHE DENIED THAT HE WAS BEING SEEN BY ANY
23 SPECIALIST.

24 Q DID YOU OBSERVE ANYTHING ELSE DURING THAT
25 VISIT IN DR. LOTT'S OFFICE THAT DAY, WITH REGARD TO THE
26 BABY?

27 A THE BABY WAS THROUGH -- WELL, FOR THE DOCTOR
28 HE WAS, YOU KNOW, HE WAS CRAWLING, HE WAS ON THE FLOOR.

1 HE WAS ACTIVE. THOSE ARE THE THINGS I RECALL.

2 Q AND WERE YOU -- DID DR. LOTT PROVIDE ANY
3 DIAGNOSES OR RECOMMENDATIONS DURING THAT VISIT?

4 A HE RECOMMENDED SOME FURTHER TESTING FOR THE
5 CHILD.

6 Q DO YOU RECALL WHAT THAT WAS?

7 A I BELIEVE HE WANTED -- HE RECOMMENDED GENETIC
8 TESTING. HE RECOMMENDED AN MRI TO RULE OUT
9 MICROCEPHALY. AND HE RECOMMENDED, I BELIEVE, A
10 GASTROENTEROLOGIST CONSULT OR SOMETHING ALONG THAT
11 LINE.

12 Q WHEN YOU WERE IN THE APPOINTMENT WITH DR. LOTT
13 AND MS. DUVAL, DID YOU HAVE ANY CONCERNS WITH THE
14 INFORMATION THAT MS. DUVAL WAS REPORTING?

15 MR. PRAGER: OBJECTION: VAGUE AS TO ANY
16 CONCERNS.

17 THE COURT: SUSTAINED, WITH REFERENCE TO
18 CONCERNS AS BEING VAGUE.

19 BY MS. SWISS:

20 Q MS. SCHEELE, WHEN YOU WERE IN THE APPOINTMENT
21 WITH MS. DUVAL AND DR. LOTT, DID YOU TAKE ISSUE WITH
22 ANYTHING THAT MS. DUVAL REPORTED IN THAT VISIT?

23 MR. PRAGER: OBJECTION: VAGUE AS TO TAKE
24 ISSUE.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES. I WAS --

27 THE COURT: THE ANSWER IS YES.

28

1 BY MS. SWISS:

2 Q WHAT DID YOU TAKE ISSUE WITH?

3 A WHEN THE NURSE ASKED ABOUT SPECIALIZED CARE,
4 AND MOM DENIED -- I WAS SURPRISED BECAUSE THE CHILD HAD
5 BEEN AT FAILURE TO THRIVE CLINIC SINCE NOVEMBER, AND
6 THOSE ARE SPECIALISTS IN FAILURE TO THRIVE.

7 SO I -- I HAD A PROBLEM WITH THAT.

8 Q DID YOU DO ANYTHING ABOUT THAT?

9 A I SAID TO MOM AT THE TIME, WHAT ABOUT FAILURE
10 TO THRIVE? AND SHE REPLIED, SHE DID NOT CONSIDER THEM
11 SPECIALISTS, THAT THEY'RE PEDIATRICIANS.

12 Q NOW, WHEN DID YOU BRING THIS UP TO MS. DUVAL?

13 A THAT'S WHILE THE NURSE WAS STILL PRESENT IN
14 THE ROOM. AND AFTER THE NURSE LEFT THE ROOM, I AGAIN
15 SAID THE SAME THING TO HER. AND SHE SAID, I DON'T WANT
16 TO ARGUE IN FRONT OF MY SON. SO I JUST LET IT BE.

17 Q DID YOU TAKE ISSUE WITH ANY OTHER INFORMATION
18 THAT WAS COMMUNICATED DURING THAT VISIT, BY MS. DUVAL?

19 A YES.

20 Q WHAT ELSE?

21 A I TOOK ISSUE WITH HER REPORTING THAT THE
22 CHILD'S WORSE. THE CHILD WAS -- HAD MADE INCREDIBLE
23 IMPROVEMENTS. SO I TRULY FELT THAT WAS MISLEADING AND
24 INACCURATE.

25 MR. PRAGER: OBJECTION: LACKS FOUNDATION AS
26 TO IMPROVEMENT. CALLS FOR SPECULATION. ARGUMENTATIVE.

27 THE COURT: OVERRULED.

28

1 BY MS. SWISS:

2 Q NOW, THIS VISIT -- SO -- STRIKE THAT.

3 YOU TESTIFIED THAT YOU HAD STARTED MONITORING
4 VISITS THE END OF DECEMBER, AND THIS DOCTOR VISIT WAS
5 IN APRIL. CORRECT?

6 A YES.

7 Q OKAY. WHAT IMPROVEMENTS IN BABY RYAN'S
8 DEVELOPMENT DID YOU OBSERVE AT THAT TIME?

9 MR. PRAGER: OBJECTION: LACKS FOUNDATION,
10 CALLS FOR SPECULATION.

11 THE COURT: OVERRULED.

12 THE WITNESS: WHEN I INITIALLY MET THIS CHILD,
13 HE COULD BARELY SCOOT HIMSELF BACKWARD. HE COULD NOT
14 CRAWL. HE -- EVEN SITTING INDEPENDENTLY WAS DIFFICULT
15 FOR HIM.

16 AND HE WAS -- THIS WAS IN DECEMBER, SO HE WAS,
17 I BELIEVE, 16 MONTHS OLD. AND I HAD SEEN HIM -- I
18 MEAN, HE COULD FULLY CRAWL. BY THE END OF FEBRUARY, HE
19 HAD STARTED CRAWLING.

20 HE COULD STAND INDEPENDENTLY BY APRIL 1ST. HE
21 CLEARLY WAS STRONGER. SO I HAD SEEN DEVELOPMENTAL
22 IMPROVEMENTS.

23 BY MS. SWISS:

24 Q NOW, AFTER THE VISIT WITH DR. LOTT, DID YOU DO
25 ANYTHING WITH THE MEDICAL INFORMATION THAT YOU HAD
26 RECEIVED DURING THAT VISIT?

27 A YES.

28 Q WHAT DID YOU DO?

1 A AFTER I GOT BACK TO THE OFFICE, I CALLED THE
2 FAILURE TO THRIVE CLINIC AND I SPOKE WITH DR. EGGE.
3 AND I ASKED HER, YOU KNOW, DR. LOTT THINKS PERHAPS WE
4 NEED AN MRI TO RULE OUT MICROCEPHALY. WHAT DO YOU
5 THINK?

6 AND SHE DISAGREED. SHE TOLD ME THAT
7 MICROCEPHALY IS THE ONE THING THAT RYAN DOES NOT HAVE.

8 MR. PRAGER: OBJECT -- OBJECTION:
9 NONRESPONSIVE, NARRATIVE ANSWER AFTER "GOT BACK AND
10 CALLED DR. EGGE." MOVE TO STRIKE. ALSO CALLS FOR
11 HEARSAY.

12 THE COURT: THE OBJECTION NONRESPONSIVE IS
13 SUSTAINED IN PART. THAT PART OF THE ANSWER AFTER,
14 "AFTER I GOT BACK TO THE CLINIC, I CALLED THE FAILURE
15 TO THRIVE CLINIC, AND I SPOKE WITH DR. EGGE" IS ORDERED
16 STRICKEN. AND THE JURY MUST DISREGARD IT.

17 BY MS. SWISS:

18 Q WHEN YOU CALLED -- STRIKE THAT.

19 WHY DID YOU CALL DR. EGGE?

20 A WE HAD JUST COME FROM A SPECIALIST'S OFFICE.
21 AND IF SHE HAD MISSED SOMETHING, SHE NEEDED TO GET ON
22 IT. SO -- I MEAN -- I FELT -- I DIDN'T KNOW. HAVE YOU
23 RULED THIS OUT? HAVE YOU CONSIDERED THIS? SHOULD THIS
24 CHILD HAVE AN MRI? LET'S GET THIS TOGETHER.

25 IF THERE'S SOME MEDICAL CARE THAT THIS CHILD
26 NEEDS THAT HE'S NOT GETTING, HE NEEDED TO GET IT. SO
27 ESSENTIALLY, I'M ADVOCATING FOR THIS CHILD AT THIS
28 POINT.

1 Q AND WHAT INFORMATION DID YOU GLEAN FROM THE
2 CONVERSATION WITH DR. EGGE, WITH REGARD TO RYAN'S
3 TREATMENT PLAN, AT THAT POINT?

4 A BASED ON WHAT SHE SAID TO ME, SHE DID NOT
5 BELIEVE THAT THE CHILD HAD MICROCEPHALY, THAT THAT --
6 THE WAY SHE SAID IT, I BELIEVE THAT IT WAS RULED OUT ON
7 THEIR PART -- ON THEIR END. THAT THEY HAD CONSIDERED
8 IT AND BELIEVED IT WAS NOT THE CASE.

9 Q OKAY. DID YOU DO ANYTHING ELSE WITH REGARD TO
10 THE INFORMATION THAT YOU LEARNED FROM THE VISIT WITH
11 DR. LOTT?

12 A YES.

13 Q WHAT ELSE DID YOU DO?

14 A WELL, WE NOW HAVE TWO DOCTORS WHO ARE NOT
15 AGREEING. WE HAVE A SPECIALIST IN FAILURE TO THRIVE
16 WHO HAS BEEN THE CHILD'S TREATING PHYSICIAN, AND WE
17 HAVE A NEUROLOGICAL SPECIALIST WITH SOME OTHER IDEAS.

18 SO IN THE BEST INTEREST OF THIS CHILD, I SENT
19 LETTERS TO EACH OF THE DOCTORS, AND I ASKED THEM TO
20 CONSULT WITH ONE ANOTHER.

21 MR. PRAGER: OBJECTION: NONRESPONSIVE,
22 NARRATIVE ANSWER, MOVE TO STRIKE AFTER SHE INDICATED
23 SHE CALLED THE DOCTOR.

24 THE COURT: OVERRULED.

25 BY MS. SWISS:

26 Q DID YOU RECEIVE ANY RESPONSES TO THOSE LETTERS
27 YOU SENT TO THE DOCTORS?

28 A I DON'T RECALL.

1 Q DID ANYTHING HAPPEN AFTER YOU SENT THOSE
2 LETTERS TO DR. LOTT AND DR. EGGE, WITH REGARD TO THE
3 TREATMENT PLAN OF RYAN, THAT YOU'RE AWARE OF?

4 A WELL, EVENTUALLY THE TWO OF THEM DID CONSULT,
5 YES.

6 Q WAS THERE AN ISSUE IN THE WAY THEY WERE -- IN
7 THE MANNER IN WHICH THEY WERE COMMUNICATING?

8 MR. PRAGER: OBJECTION: VAGUE AS TO ISSUE.

9 MS. SWISS: IT'S VAGUE. I WILL REPHRASE.

10 THE COURT: ALL RIGHT.

11 BY MS. SWISS:

12 Q DO YOU RECALL -- DO YOU RECALL MS. DUVAL
13 TAKING ISSUE WITH YOU COMMUNICATING WITH DR. LOTT AND
14 DR. EGGE ABOUT DR. LOTT'S RECOMMENDATIONS AND VISITS?

15 A YES.

16 Q AND WHAT DO YOU RECALL THE ISSUE WAS?

17 A SHE DID NOT WANT THE TWO DOCTORS TO TALK.

18 Q WHY DO YOU SAY THAT?

19 A SHE TOLD ME THAT, AND I ASKED HER WHY. AND
20 SHE SAID SHE DID NOT WANT TO POISON THE WELL.

21 Q DID YOU ASK WHAT SHE MEANT BY THAT?

22 A I DID NOT.

23 Q AND YOU TESTIFIED THAT EVENTUALLY THE TWO
24 DOCTORS DID TALK. RIGHT?

25 A YES.

26 Q DO YOU KNOW HOW THAT CAME TO PASS?

27 A I DON'T.

28 Q DO YOU KNOW WHO MR. BUDIN IS? ROBERT BUDIN?

1 A YES.

2 Q WHO IS THAT?

3 A THAT'S MS. DUVAL'S THERAPIST.

4 Q AND DID YOU EVER COMMUNICATE WITH MR. BUDIN,
5 WITH REGARDS TO MS. DUVAL?

6 A YES. I DID.

7 Q AND WHEN WAS THIS?

8 A THAT WAS ALSO IN APRIL. I CALLED HIM, AND WE
9 COULDN'T TALK AT THAT TIME, BUT HE CALLED ME BACK LATER
10 IN THE EVENING.

11 Q AND WHY DID YOU CALL MR. BUDIN?

12 A BECAUSE THAT'S PART OF MY JOB AS A SOCIAL
13 WORKER, AND IT WAS PART OF THE COURT ORDERS THAT WE
14 WERE TO MAKE SURE THAT MOM WAS CONNECTED WITH A
15 THERAPIST.

16 SHE HAD ALREADY CONNECTED HERSELF WITH A
17 THERAPIST, SO I DIDN'T HAVE TO DO THAT, BUT I DID NEED
18 TO FOLLOW UP TO MAKE SURE THAT SHE WAS GOING TO
19 APPOINTMENTS AND, YOU KNOW, RECEIVING SERVICES.

20 Q DID YOU SPEAK WITH MR. BUDIN AT SOME POINT?

21 A YES.

22 Q AND WHAT DO YOU RECALL FROM THAT CONVERSATION?

23 A IT WAS A RELATIVELY SHORT CONVERSATION. I
24 ALWAYS START THOSE CONVERSATIONS THE SAME WAY.
25 IDENTIFYING MYSELF, THAT WE HAVE A MUTUAL CLIENT, IS
26 THE CLIENT COMING, YOU KNOW, IS THE CLIENT ATTENDING
27 APPOINTMENTS, HOW ARE THEY DOING.

28 THAT'S BASICALLY WHAT I ALWAYS START WITH.

1 I RECALL THAT HE SEEMED TO BE AWARE OF THE
2 ISSUE OF MICROCEPHALY AND WHAT WAS GOING ON WITH THE
3 CASE, AND IN THAT REGARD, AS FAR AS THE MEDICAL PIECE,
4 HE TOLD ME HE WAS A TRUTH SEEKER.

5 HE HOPED THAT THE MRI WOULD BE DONE. AND I
6 BELIEVE I ASKED HIM ABOUT MOTHER'S ORIENTATION. AND HE
7 SAID, YES, SHE'S ORIENTED, SHE'S NOT DELUSIONAL, SHE
8 UNDERSTANDS WHAT'S GOING ON.

9 AND ONE OTHER ISSUE THAT CONCERNED ME THAT I
10 ASKED HIM ABOUT WAS THAT THE MOTHER WAS NOT EXCITED TO
11 SEE THE CHILD DEVELOPING.

12 AND I TOLD HIM THAT. I SAID, YOU KNOW, I'VE
13 BEEN VERY EXCITED TO SEE HIM -- HIS DEVELOPMENT
14 IMPROVING AND THE MOM DOESN'T SEEM TO BE EXCITED AT
15 ALL.

16 MR. PRAGER: OBJECTION, YOUR HONOR. NARRATIVE
17 RESPONSE. MOVE TO STRIKE EVERYTHING AFTER, "IT WAS
18 SHORT," AS NONRESPONSIVE AND MOVE TO STRIKE.

19 THE COURT: OVERRULED.

20 BY MS. SWISS:

21 Q AFTER YOU HAD THAT CONVERSATION WITH
22 MR. BUDIN, DID YOU DOCUMENT THE CONVERSATION ANYWHERE?

23 A YES. I DID. I PUT MY CONTACT IN THE
24 COMPUTER, IN THE DELIVERED SERVICE LOGS.

25 Q AND IF YOU CAN TAKE A LOOK AT EXHIBIT 82, IT
26 IS PAGE 1544. LET ME HELP YOU WITH THAT. AND FOR THE
27 RECORD, THAT IS A PAGE OF THE DELIVERED SERVICE LOGS
28 CONTACT NOTEBOOK.

1 NOW, MS. SCHEELE, ON THAT PAGE 1544 OF
2 EXHIBIT 82, DO YOU SEE YOUR CONTACT THERE, WITH REGARD
3 TO YOUR PHONE CALL WITH MR. BUDIN?

4 A YES. I DO.

5 Q AND WHAT IS THE DATE ON THAT CONTACT?

6 A DATE ON THE CONTACT IS APRIL 22ND, 2010.

7 Q DO YOU RECALL THE DATE OF THE PHONE CALL WITH
8 MR. BUDIN?

9 A I DON'T.

10 Q DO YOU RECALL WHEN YOU INSERTED THIS CONTACT
11 INTO THE CONTACT NOTEBOOK?

12 A I DON'T.

13 Q THE CONTACT DATED APRIL 22ND, 2010, IF YOU CAN
14 REVIEW IT TO YOURSELF AND LET ME KNOW WHEN YOU'RE
15 FINISHED.

16 A OKAY. YES.

17 Q REVIEWING THAT CONTACT, DOES -- IS THAT AN
18 ACCURATE REPRESENTATION OF WHAT YOUR RECOLLECTION WAS
19 OF THAT PHONE CALL SOMETIME IN APRIL OF 2010?

20 A YES. IT IS.

21 MR. PRAGER: OBJECTION: IMPROPER ATTEMPT TO
22 OFFER THIS INFORMATION, IMPROPER ATTEMPT TO REFRESH THE
23 WITNESS'S RECOLLECTION.

24 THE COURT: OVERRULED.

25 BY MS. SWISS:

26 Q YOUR ANSWER WAS?

27 A YES.

28 Q DO YOU BELIEVE YOU CREATED THAT ENTRY CLOSE IN

1 TIME TO THE DATE THERE OF APRIL 22, 2010?

2 A THAT'S MY NORMAL PRACTICE.

3 Q NOW, THERE IS AN ALLEGATION IN THIS CASE THAT
4 MR. BUDIN SAID THAT IN THIS PHONE CALL, YOU TOLD HIM,
5 MOM NEEDS TO JUST PLAY BALL IN ORDER TO GET HER KID
6 BACK.

7 MR. PRAGER: OBJECTION: LEADING.

8 MS. SWISS: I DIDN'T ASK A QUESTION YET.

9 MR. PRAGER: SORRY.

10 THE COURT: GO AHEAD AND FINISH.

11 BY MS. SWISS:

12 Q DID YOU SAY THAT?

13 MR. PRAGER: OBJECTION: LEADING, MISSTATES
14 TESTIMONY.

15 THE COURT: OVERRULED.

16 THE WITNESS: NO. THIS IS NOT A GAME.

17 BY MS. SWISS:

18 Q WHAT DO YOU MEAN BY THIS IS NOT A GAME?

19 A THIS IS NOT A GAME. I WOULD NEVER ASK SOMEONE
20 TO PLAY BALL WITH ME. THIS IS NOT A GAME. THIS IS
21 SERIOUS. THIS CHILD HAS A SERIOUS CONDITION.

22 THIS MOTHER IS TRYING TO REUNIFY. THIS FATHER
23 IS TRYING TO HELP HIS CHILD WITH MEDICAL ISSUES. I
24 HAVE NEVER ASKED ANYONE TO PLAY BALL WITH ME OR TO PLAY
25 ANY GAME WITH ME.

26 Q NOW, IF YOU CAN TAKE A LOOK IN THAT BOOK,
27 EXHIBIT 52. EXHIBIT 52 IS THE LETTER FROM DR. EGGE TO
28 MS. SCHEELE IN JUNE OF 2010.

1 MR. PRAGER: OBJECTION: LACKS FOUNDATION,
2 IMPROPER ATTEMPT TO REFRESH THE RECOLLECTION OF THIS
3 WITNESS. THERE'S BEEN NO QUESTION THAT --

4 THE COURT: THE OBJECTION'S OVERRULED.
5 THERE'S NO QUESTION PENDING. SHE'S BEEN ASKED TO LOOK
6 AT A DOCUMENT.

7 BY MS. SWISS:

8 Q PLEASE TAKE A LOOK AT EXHIBIT 52 AND LET ME
9 KNOW WHEN YOU'RE READY.

10 A YES.

11 Q DO YOU RECOGNIZE THIS DOCUMENT?

12 A YES.

13 Q AND WHAT IS IT?

14 A IT'S A LETTER WRITTEN TO ME FROM DR. EGGE.

15 Q AND DO YOU KNOW WHY DR. EGGE WAS SENDING THIS
16 LETTER?

17 MR. PRAGER: OBJECTION: CALLS FOR
18 SPECULATION, LACKS FOUNDATION.

19 THE COURT: OVERRULED. SHE'S ASKING WHETHER
20 YOU KNOW OR NOT. YOU CAN ANSWER YES OR NO.

21 THE WITNESS: YES.

22 BY MS. SWISS:

23 Q WHY?

24 A SHE'S SENDING ME HER IMPRESSIONS OF THE CASE
25 AND THE CHILD -- HOW -- WHAT HAS BEEN DONE FOR HIM.
26 SHE DISCUSSES HIS TESTING IN HERE. IT'S A SUMMARY OF
27 RYAN'S CARE DURING THE TIME THAT SHE WAS HIS PHYSICIAN.

28 Q AND WHAT IS THE DATE OF THAT LETTER?

1 A IT'S JUNE 11TH, 2010.

2 Q AND DO YOU KNOW WHEN YOU RECEIVED IT?

3 A I DON'T.

4 Q WHAT, IF ANYTHING, DID YOU DO WITH THIS
5 LETTER?

6 A I'M SURE THAT I PUT IT IN THE FILE. IT -- IT
7 PROBABLY IS SOMETHING THAT I WOULD HAVE SENT TO
8 MS. NELSON BECAUSE SHE WAS THE DEPENDENCY INVESTIGATOR
9 ON THIS CASE.

10 Q WOULD YOU HAVE PUT SOMETHING IN THE CONTACT
11 NOTEBOOK SAYING THAT YOU RECEIVED THE LETTER?

12 A YES.

13 MR. PRAGER: OBJECTION: CALLS FOR SPECULATION
14 AS PHRASED.

15 THE COURT: OVERRULED.

16 THE WITNESS: THAT WOULD BE MY NORMAL
17 PROCEDURE, YES.

18 BY MS. SWISS:

19 Q AND IF YOU COULD TAKE A LOOK AT EXHIBIT 82,
20 THAT'S THE DELIVERED SERVICE LOGS. BATES 1555.

21 A YES.

22 Q IF YOU COULD TAKE A LOOK AT THE SECOND-TO-LAST
23 CONTACT AND READ IT TO YOURSELF. LET ME KNOW WHEN
24 YOU'RE FINISHED.

25 A YES.

26 Q DOES THAT REFRESH YOUR RECOLLECTION OF WHETHER
27 YOU DOCUMENTED RECEIPT OF THE LETTER FROM DR. EGGE?

28 A YES. I DOCUMENTED IT ON 6/14/2010.

1 Q AND WHAT WAS THE PURPOSE OF DOCUMENTING THIS
2 LETTER IN THE CONTACT NOTES?

3 A I JUST DOCUMENTED THAT I RECEIVED IT AND THAT
4 THE LETTER'S IN THE FILE.

5 Q NOW, YOU SAID THAT YOU'D PROBABLY SEND THE
6 LETTER TO MS. NELSON. WHY WOULD YOU DO THAT?

7 A BECAUSE THIS WOULD BE IMPORTANT INFORMATION
8 FOR THE COURT TO HAVE IN THIS CASE.

9 Q AND WHY DO YOU SAY THAT?

10 A WELL, THIS IS HIS TREATING PHYSICIAN WHO HAS
11 BEEN FOLLOWING THIS CHILD SINCE DECEMBER -- SINCE
12 NOVEMBER 3RD.

13 AND SHE'S SUMMARIZING HER IMPRESSIONS OF THE
14 CHILD'S CASE, HIS PROGRESS, WHERE HE WAS, WHERE HE IS
15 NOW. SO, CLEARLY, THIS IS INFORMATION THAT THE COURT
16 SHOULD HAVE.

17 Q AND DO YOU KNOW IF THIS WAS EVER SUBMITTED TO
18 THE COURT?

19 MR. PRAGER: CALLS FOR --

20 THE WITNESS: I DON'T.

21 BY MS. SWISS:

22 Q NOW, THERE'S ALSO AN ALLEGATION IN THIS CASE
23 THAT MS. DUVAL WAS SUFFERING FROM ALLERGIES.

24 DO YOU RECALL MS. DUVAL DISCLOSING TO YOU THAT
25 SHE SUFFERED FROM ALLERGIES, DURING YOUR MONITORED
26 VISITS OR ANY TIME WITH HER?

27 A MS. DUVAL MENTIONED ALLERGIES TO ME ON ONE
28 OCCASION. AND THAT WAS --

1 Q WHAT WAS --

2 A YES.

3 Q AND WHAT DID SHE DISCLOSE TO YOU?

4 A IT WAS DURING A PHONE CONVERSATION EARLY IN
5 JUNE. AND THE CHILD RYAN HAD HAD A RASH AT A PREVIOUS
6 VISIT.

7 AND SHE TOLD ME THAT HER ALLERGIST HAD ALWAYS
8 TOLD HER THAT SINCE SHE HAD ALLERGIES, IT WAS LIKELY
9 HER CHILD WOULD HAVE ALLERGIES, AND SHE WAS CONCERNED
10 ABOUT THE RASH ON THE CHILD.

11 Q AND DID YOU RESPOND TO THAT CONCERN
12 COMMUNICATED TO YOU?

13 A I SAW THE CHILD, I BELIEVE AT THE FATHER'S
14 HOME, EITHER LATER THAT DAY OR THE NEXT DAY, AND THE
15 RASH HAD CLEARED UP.

16 I CAN'T RECALL EXACTLY -- I DON'T REMEMBER THE
17 EXACT TIMELINE OF THOSE EVENTS. I MAY HAVE ALREADY
18 SEEN HIM AND TOLD HER THAT THE RASH WAS CLEARED UP.
19 I'M NOT EXACTLY CLEAR ON THAT.

20 Q DO YOU RECALL AN ISSUE OF MS. DUVAL'S
21 ALLERGIES COMING UP, SPECIFICALLY DURING ANY OF THE
22 MONITORED VISITS AT THE DCFS OFFICE?

23 A I WAS NEVER AWARE OF ANY ALLERGIES DURING
24 VISITATION OR AT THE OFFICE, NO.

25 Q DO YOU RECALL IF YOU PREPARED ANY REPORTS TO
26 THE COURT IN THIS CASE?

27 A YES. I PREPARED ONE LAST-MINUTE INFORMATION
28 TO THE COURT ON, I THINK IT WAS AUGUST 9TH, 2010,

1 AND -- YES.

2 Q IF YOU CAN TAKE A LOOK AT EXHIBIT 1034.
3 THAT'S THE LAST-MINUTE INFORMATION FOR
4 AUGUST 9TH, 2010.

5 MS. SCHEELE, IF YOU CAN JUST TAKE A LOOK AT
6 THAT DOCUMENT. READ IT AND LET ME KNOW WHEN YOU'RE
7 FINISHED.

8 A YES.

9 Q DO YOU RECOGNIZE THIS DOCUMENT?

10 A YES.

11 Q AND WHAT IS IT?

12 A THIS IS LAST-MINUTE INFORMATION TO THE COURT
13 THAT I WROTE ON AUGUST 9TH, 2010.

14 Q AND WHY DID YOU PREPARE THIS LAST-MINUTE
15 INFORMATION FOR THE COURT?

16 A I HAD BEEN ON VACATION. I JUST WALKED IN THE
17 OFFICE THAT MORNING.

18 I GOT A CALL FROM COUNTY COUNSEL'S OFFICE, AND
19 THEY WANTED THE MOST UP-TO-DATE INFORMATION FROM THE
20 FAILURE TO THRIVE CLINIC ON THE CHILD'S CARE, HIS
21 WELL-BEING, ANYTHING THAT WE COULD PROVIDE TO THEM.

22 SO THAT'S WHAT GENERATED IT.

23 Q THAT'S WHAT YOU DID?

24 A THAT'S WHAT I DID.

25 Q IS YOUR SIGNATURE ON THIS DOCUMENT?

26 A YES. IT IS.

27 Q AND DO YOU KNOW IF IT WAS FILED WITH THE
28 COURT?

1 A I BELIEVE IT WAS, YES.

2 Q AND WHAT INFORMATION DID YOU COMMUNICATE TO
3 THE COURT IN THIS LAST-MINUTE INFORMATION?

4 MR. PRAGER: OBJECTION: HEARSAY, AND DOUBLE
5 HEARSAY.

6 THE COURT: OVERRULED. THERE'S A NON-HEARSAY
7 PURPOSE TO THIS.

8 THE WITNESS: COULD YOU REPEAT THE QUESTION,
9 PLEASE?

10 BY MS. SWISS:

11 Q WHAT INFORMATION DID YOU COMMUNICATE TO THE
12 COURT IN THIS LAST-MINUTE INFORMATION?

13 A I CALLED THE FAILURE TO THRIVE CLINIC, AND A
14 NEW DOCTOR HAD TAKEN OVER FOR DR. EGGE. HER NAME IS
15 DR. KATHERINE DERIDDER.

16 I SPOKE WITH HER, AND I JUST ASKED HER ABOUT
17 RYAN, HOW'S HE DOING. AND SHE HAD BEEN OUT. SHE MADE
18 A HOME CALL. SHE HAD SEEN THE CHILD IN HIS HOME ON
19 JULY 19TH, SO SHE TOLD ME ABOUT THAT.

20 SHE TOLD ME HE WAS MAKING GOOD DEVELOPMENTAL
21 STRIDES, THAT HE'S SOCIALLY INTERACTIVE. HE CAN WALK
22 NOW, HOLDING ON TO SOMEONE'S HAND, AND THAT HIS
23 LANGUAGE IS COMING ALONG.

24 IT'S HER UNDERSTANDING THAT HE'S MUCH IMPROVED
25 AND THAT THE FAMILY CONTINUES TO ENCOURAGE HIGH-CALORIE
26 FOOD CHOICES.

27 Q NOW, IF YOU CAN TAKE A LOOK AT EXHIBIT 76.
28 NOW, EXHIBIT 76, FOR THE RECORD, IS ALSO LAST-MINUTE

1 INFORMATION TO THE COURT DATED AUGUST 9, 2010.

2 A YES.

3 Q IF YOU CAN TAKE A LOOK AT THAT DOCUMENT AND
4 LET ME KNOW WHEN YOU'VE HAD A CHANCE TO REVIEW IT.

5 A YES.

6 Q DO YOU KNOW WHAT THIS IS?

7 A THIS IS THE COPY WITH THE STAMP THAT SHOWS IT
8 WAS FILED WITH THE COURT ON AUGUST 9TH, 2010.

9 Q SO DOES THIS REFRESH YOUR RECOLLECTION THAT
10 YOUR LAST-MINUTE INFORMATION WAS FILED WITH THE
11 JUVENILE COURT?

12 A YES. IT WAS.

13 Q NOW, DID YOU TESTIFY IN THE ADJUDICATION
14 HEARING?

15 A I DID NOT.

16 Q MS. SCHEELE, LAST AREA. THERE'S ALSO AN
17 ALLEGATION IN THIS CASE THAT YOU CALLED MS. DUVAL A
18 COW.

19 A (UNREPORTABLE SOUND.)

20 Q DO YOU RECALL THAT ISSUE EVER COMING UP WITH
21 MS. DUVAL DURING THE TIME THAT YOU MONITORED VISITS?

22 A NO.

23 Q DID YOU, IN FACT, CALL HER A COW?

24 A I'VE NEVER CALLED MS. DUVAL A COW, AND I'VE
25 NEVER CALLED ANY OTHER CLIENT A COW.

26 MS. SWISS: THANK YOU. NO FURTHER QUESTIONS.

27 THE COURT: MR. PRAGER.

28 MR. PRAGER: THANK YOU, YOUR HONOR.

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CROSS-EXAMINATION

BY MR. PRAGER:

Q GOOD AFTERNOON, MS. SCHEELE.

A GOOD AFTERNOON, MR. PRAGER.

Q WE'VE MET BEFORE. HAVEN'T WE?

A WE HAVE.

Q DURING YOUR DEPOSITION?

A YES.

Q ALL RIGHT. LET'S GO BACK AND REVIEW SOME OF
THE INFORMATION YOU JUST GAVE THE JURY TODAY.

A OKAY.

Q YOU WERE ASKED ABOUT THE SPANISH-SPEAKING
ISSUE IN THE CASE. CORRECT?

A YES.

Q AND YOU DISCUSSED IT -- IT CAME UP
APPROXIMATELY TWICE DURING YOUR TESTIMONY HERE TODAY.
RIGHT?

A YES.

Q IT CAME UP ANOTHER TIME. DIDN'T IT?

A THOSE --

Q LET ME REPHRASE THAT.

A PARDON?

Q LET ME REPHRASE THAT.

IS IT TRUE THAT IN SOME OTHER ASPECT OF
MS. DUVAL'S CASE, THIS ISSUE OF BILINGUAL MONITORING
CAME UP?

A I DON'T RECALL.

Q WELL, IS IT TRUE -- STRIKE THAT.

1 IT IS TRUE THAT MS. DUVAL FILED A CIVIL RIGHTS
2 COMPLAINT AGAINST YOU. CORRECT?

3 A YES.

4 Q AND ONE OF THE GROUNDS OF THE CIVIL RIGHTS
5 COMPLAINT WAS AN ALLEGATION OF DISCRIMINATION BASED ON
6 NATIONAL ORIGIN. TRUE?

7 A YES.

8 Q AND THE BASIS FOR THAT ALLEGATION WAS, IN
9 FACT, THAT SHE WAS DENIED A SPANISH-SPEAKING
10 INTERPRETER.

11 MS. SWISS: OBJECTION: CALLS FOR SPECULATION.
12 THE COURT: THAT WAS ACTUALLY A STATEMENT,
13 ALTHOUGH, BY THE VOICE, IT WAS IN THE FORM OF A
14 QUESTION.

15 DO YOU INTEND THAT TO BE A QUESTION TO HER?

16 MR. PRAGER: I WITHDRAW IT AND I WILL REPHRASE
17 IT.

18 THE COURT: ALL RIGHT. I TOOK IT AS A
19 QUESTION, BUT SOMEONE READING A TRANSCRIPT WOULD SEE IT
20 AS ONLY A STATEMENT.

21 BY MR. PRAGER:

22 Q DO YOU RECALL A CIVIL RIGHTS COMPLAINT BEING
23 FILED AGAINST YOU BECAUSE YOU REFUSED TO ALLOW
24 MS. DUVAL TO SING TO HER SON IN SPANISH?

25 A BECAUSE I ALLOWED HER -- I REFUSED? I'M
26 HAVING A HARD TIME WITH THE QUESTION. I'M SORRY.

27 MR. PRAGER: YOUR HONOR, CAN THE QUESTION BE
28 READ BACK?

1 THE COURT: YES. I'LL ASK THE REPORTER TO
2 READ THE QUESTION, PLEASE.

3 (THE RECORD WAS READ AS REQUESTED)

4 THE WITNESS: I'M NOT CLEAR THAT THAT'S WHY
5 THE CIVIL RIGHTS INVESTIGATION WAS FILED -- OR THE
6 COMPLAINT WAS FILED.

7 BY MR. PRAGER:

8 Q DO YOU RECALL IF THAT WAS ONE OF HER
9 COMPLAINTS IN THE CIVIL RIGHTS COMPLAINT AGAINST YOU?

10 A YES, THEY WERE -- IT WAS.

11 Q SO IS IT TRUE THAT MS. DUVAL ASKED YOU FOR A
12 BILINGUAL MONITOR?

13 A I DON'T BELIEVE SHE ASKED ME FOR A BILINGUAL
14 MONITOR.

15 Q DO YOU RECALL BEING ASKED APPROXIMATELY THREE
16 TIMES BY MS. DUVAL FOR A BILINGUAL MONITOR?

17 A I DO NOT RECALL THAT. NO.

18 Q NOW, ISN'T IT TRUE THAT MS. DUVAL FILED A FORM
19 ADVISING THE DEPARTMENT THAT SHE WAS ENGLISH-SPEAKING
20 IN HER PRIMARY LANGUAGE. CORRECT?

21 A I BELIEVE THAT -- ARE WE -- I'M NOT SURE WHICH
22 FORM YOU'RE TALKING ABOUT.

23 Q IS THERE A 485 FORM?

24 A I WOULDN'T KNOW IT BY NUMBER.

25 Q THERE'S A PRIMARY ELECTION OF LANGUAGE.
26 CORRECT?

27 A I BELIEVE IT'S CALLED LANGUAGE DESIGNATION.

28 Q AND MS. DUVAL DID FILL THAT FORM OUT.

1 CORRECT?

2 A YES.

3 Q AND IT'S TRUE THAT SHE CHECKED ENGLISH ON THAT
4 FORM. CORRECT?

5 A I BELIEVE SO, YES.

6 Q AND IT'S TRUE THAT FORM IS PRINCIPALLY USED TO
7 COMMUNICATE INFORMATION, IN WRITING, TO THE PERSON
8 RECEIVING SERVICES. CORRECT?

9 A NO.

10 Q OKAY. DO YOU RECALL IF THERE WAS A DIFFERENT
11 FORM TO BE USED BY EXTENDED FAMILY AND VISITORS IN
12 RELATION TO THEIR LANGUAGE NEEDS?

13 A I DON'T. NO.

14 Q HAVE YOU EVER HEARD OF A FORM CALLED A 5126
15 FORM?

16 A I WOULDN'T KNOW BY ITS NUMBER.

17 Q HAVE YOU EVER HEARD OF A FORM CALLED A
18 MONITOR'S INSTRUCTIONS, TERMS, AND CONDITIONS FOR
19 SUPERVISED VISITS?

20 A YES. I HAVE.

21 Q AND IT'S TRUE THAT THAT FORM IS USED BY
22 PERSONS WHO ARE EXTENDED FAMILY OF THE INDIVIDUALS
23 GETTING SERVICES FROM THE DEPARTMENT. CORRECT?

24 MS. SWISS: I'LL OBJECT ON RELEVANCE.

25 THE COURT: OVERRULED.

26 THE WITNESS: I -- I'M NOT UNDERSTANDING THE
27 QUESTION. I'M SORRY.

28

1 BY MR. PRAGER:

2 Q IT'S TRUE THAT MS. DUVAL FILED A LANGUAGE
3 ELECTION FORM TO RECEIVE INFORMATION IN ENGLISH.
4 CORRECT?

5 MS. SWISS: OBJECTION: ASKED AND ANSWERED.
6 THE COURT: YES. IT HAS -- SUSTAINED AS TO
7 THAT.

8 MR. PRAGER: TRYING TO GET FOUNDATIONAL.
9 BY MR. PRAGER:

10 Q SO YOU MONITORED VISITS WITH MS. DUVAL'S
11 MOTHER. CORRECT?

12 A THE MOTHER JOINED IN SOME OF THE VISITS, YES.

13 Q AND I'M SORRY. WHAT WAS HER NAME?

14 A URBANA DUVAL.

15 Q THANK YOU. AND MS. URBANA DUVAL'S PRIMARY
16 LANGUAGE WAS SPANISH. CORRECT?

17 MS. SWISS: OBJECTION: SPECULATION,
18 RELEVANCE.

19 THE COURT: OVERRULED. I OVERRULED THE
20 OBJECTION, BUT WE HAVEN'T HAD AN ANSWER.

21 MR. PRAGER: SORRY. GO AHEAD.

22 THE WITNESS: I --

23 THE COURT: WOULD YOU LIKE TO HAVE THE
24 QUESTION AGAIN?

25 THE WITNESS: PLEASE DO.

26 (THE RECORD WAS READ AS REQUESTED)

27 THE WITNESS: TO THE BEST OF MY KNOWLEDGE,
28 YES.

1 BY MR. PRAGER:

2 Q I BELIEVE YOU ALREADY TESTIFIED HER ENGLISH
3 WAS LIMITED. CORRECT?

4 A I BELIEVE SO, YES.

5 Q SO THE REQUEST FOR SERVICES MS. DUVAL MADE FOR
6 A BILINGUAL INTERPRETER WASN'T JUST FOR HER. IT WAS
7 ALSO FOR HER MOTHER. CORRECT?

8 MS. SWISS: OBJECTION: FOUNDATION,
9 SPECULATION.

10 THE COURT: SUSTAINED AS TO FOUNDATION.

11 BY MR. PRAGER:

12 Q MS. SCHEELE, DID MS. DUVAL ASK YOU FOR A
13 SPANISH-SPEAKING MONITOR TO ASSIST HER MOTHER IN
14 SPEAKING WITH HER GRANDCHILD DURING YOUR MONITORED
15 VISITS?

16 A NO. SHE DID NOT.

17 Q SO, AS PART OF THE CIVIL RIGHTS INVESTIGATION,
18 YOU PREPARED WRITTEN STATEMENTS. CORRECT?

19 A YES.

20 Q AND YOU FILLED THEM OUT WITH VARIOUS PERSONS
21 FROM THE DEPARTMENT OF THE CIVIL RIGHTS UNIT INSIDE
22 DCFS. CORRECT?

23 A VARIOUS PERSONS?

24 Q YES.

25 A I'M UNCLEAR.

26 Q DID YOU RECALL MEETING MICHELLE HOCHSTEIN?

27 A YES.

28 Q WHO WAS MICHELLE HOCHSTEIN?

1 A SHE WAS THE CIVIL RIGHTS INVESTIGATOR.

2 Q SO, IN RELATION TO THE CIVIL RIGHTS
3 INVESTIGATION, THE FIRST THING YOU DID WAS ADDRESS, IN
4 WRITING, VARIOUS ALLEGATIONS MS. DUVAL MADE AGAINST
5 YOU. CORRECT?

6 A CORRECT.

7 Q WE CAN MOVE THIS. LET'S SEE WHAT'S OVER HERE.

8 MR. PRAGER: YOUR HONOR, I'M GOING TO PLACE
9 EXHIBIT 207, STARTING AT BATES NUMBER 2836, BEFORE THE
10 WITNESS.

11 THE COURT: ALL RIGHT.

12 BY MR. PRAGER:

13 Q PLEASE TAKE A LOOK AT BATES RANGE 2836
14 THROUGH 2847, AND LET ME KNOW WHEN YOU'RE DONE, PLEASE.

15 A OKAY. YES.

16 Q DO YOU RECOGNIZE YOUR HANDWRITING ON A NUMBER
17 OF THESE DOCUMENTS?

18 A THIS IS NOT MY HANDWRITING.

19 MS. SWISS: OBJECTION. YOUR HONOR, MAY WE
20 HAVE A SIDEBAR?

21 THE COURT: YES.

22 (THE FOLLOWING PROCEEDINGS WERE HELD AT
23 THE SIDEBAR OUTSIDE THE PRESENCE OF THE
24 JURY)

25 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE
26 PRESENT.

27 MS. SWISS: YOUR HONOR, THE FOUNDATIONAL
28 QUESTIONS FOR THE CIVIL RIGHTS INVESTIGATION STATEMENTS

1 BY MS. SCHEELE ARE AN IMPROPER SUBJECT OF
2 CROSS-EXAMINATION SINCE IT WAS NOT BROUGHT UP IN THE
3 DIRECT.

4 THE PLAINTIFF HAS ALREADY HAD THE OPPORTUNITY
5 TO PRESENT MS. SCHEELE'S EVIDENCE DURING THEIR CASE IN
6 CHIEF. AND THESE STATEMENTS, IF THEY WEREN'T LAID, THE
7 FOUNDATION WAS NOT LAID THEN, IT'S NOT THE APPROPRIATE
8 TIME TO DO SO.

9 COUNSEL HAD ASKED THE QUESTIONS ABOUT THE
10 SUBJECT MATTER, BUT THIS IS OUTSIDE THE SCOPE, AND IT'S
11 IRRELEVANT.

12 MR. GUTERRES: YOUR HONOR, IT'S TIME FOR A
13 BREAK.

14 THE COURT: LET THE JURY OUT FOR A RECESS.
15 FOR OUR JURORS, WE'RE GOING TO TAKE A RECESS AT THIS
16 TIME. BE APPROXIMATELY 15 MINUTES. ALL JURORS, PLEASE
17 REMEMBER THE ADMONITION.

18 (JURY EXCUSED)

19 THE COURT: ALL RIGHT. ON THE RECORD.
20 COUNSEL ARE PRESENT.

21 MR. PRAGER, YOU HEARD THE OBJECTION BEFORE WE
22 TOOK THE RECESS. AND I ASSUME YOU WANTED TO RESPOND.
23 I THINK THE OBJECTION, BASICALLY, IS OUTSIDE THE SCOPE.
24 IS THAT CORRECT?

25 MS. SWISS: YES, YOUR HONOR.

26 THE COURT: ALL RIGHT.

27 MR. PRAGER: THE DEFENSE BROUGHT THE SPANISH
28 ISSUE UP AS PART OF THEIR DIRECT EXAMINATION. WE CAN

1 MAKE AN OFFERING THAT MS. SCHEELE WAS CITED IN THE
2 CIVIL RIGHTS INVESTIGATION FOR FAILING TO OFFER A
3 SPANISH-SPEAKING INTERPRETER TO MS. DUVAL'S FAMILY.

4 THE OTHER ISSUE, WHICH I WAS JUST ACTUALLY
5 TRYING TO GO THROUGH IS, I THINK MS. SCHEELE MADE
6 STATEMENTS ABOUT THAT SPANISH-SPEAKING ISSUE AS PART OF
7 HER DECLARATIONS IN RESPONSE TO MS. DUVAL'S COMPLAINTS.

8 AND, IF I MAY, I THINK THIS ENTIRE ISSUE GOES
9 TO HER CREDIBILITY, COMPETENCE, VERACITY, AND
10 TRUTHFULNESS, TO THE EXTENT THE DEFENSE HAS OPENED THE
11 DOOR AS TO CERTAIN ISSUES.

12 THE COURT: ALL RIGHT. WHY DON'T WE ADDRESS
13 WHAT MIGHT BE, PERHAPS, MORE IMPORTANT ISSUES THAT
14 YOU'VE RAISED. I DON'T THINK THE FACT SHE WAS CITED IS
15 IMPORTANT. THAT'S SIMPLY A CLAIM MADE BY -- BASED ON A
16 CLAIM MADE BY YOUR CLIENT.

17 HOWEVER, YOU'RE SAYING THERE'S SOMETHING IN A
18 DECLARATION THAT -- OR IN THESE FORMS THAT SHE FILLED
19 OUT THAT ADDRESS THE SUBJECT OF SPANISH-SPEAKING AND/OR
20 BILINGUAL INTERPRETER?

21 MR. PRAGER: YES. I BELIEVE SO. NOW, AS TO
22 THE REPORTS, THERE WAS A DETERMINATION BY MS. HOCHSTEIN
23 THAT THE CONDUCT BROKE POLICY AND VIOLATED MS. DUVAL'S
24 CIVIL RIGHTS.

25 THE COURT: THAT DOESN'T MAKE ANY DIFFERENCE
26 TO ME IN CONSIDERING THIS POINT. MY POINT IS, THERE'S
27 CONCERN -- A SUBJECT WAS BROACHED ABOUT
28 SPANISH-SPEAKING INTERPRETERS. THE OBJECTION IS:

1 OUTSIDE THE SCOPE.

2 IT DEPENDS ON WHAT YOU WANT TO ASK HER ABOUT,
3 THAT MAY VERY WELL BE WITHIN THE SCOPE OF THE
4 EXAMINATION.

5 AND WHAT I'M TRYING TO IDENTIFY FROM YOU IS IF
6 YOU -- DO YOU HAVE A DOCUMENT, FOR EXAMPLE, THE
7 DOCUMENTS YOU HAVE IN YOUR HAND, WHICH YOU HAVE ASKED
8 HER IF THEY WERE IN HER HANDWRITING, AND THE ANSWER WAS
9 NO. AT THAT TIME, THEN, WE HAD THE REQUEST TO
10 APPROACH.

11 SO I DON'T KNOW WHAT'S IN THOSE DOCUMENTS, BUT
12 IF YOU'RE TELLING ME THERE'S SOMETHING IN THOSE
13 DOCUMENTS THAT ADDRESS THE SUBJECT, OR IF THERE'S SOME
14 OTHER DOCUMENT SUCH AS A DECLARATION UNDER OATH, A
15 DOCUMENT I ALSO HAVEN'T SEEN, THAT ADDRESSES THIS ISSUE
16 ABOUT REQUESTS FOR SPANISH-SPEAKING AND/OR BILINGUAL
17 SPANISH-SPEAKING INTERPRETER, I'LL TAKE A LOOK AT IT,
18 AND WE'LL SEE IF IT'S -- NOT ONLY -- THE SUBJECT IS
19 WITHIN THE SCOPE.

20 IT DEPENDS ON WHAT YOU'RE INTENDING TO DO WITH
21 IT. SO I WANT TO MAKE SURE THAT WHATEVER YOU'RE
22 INTENDING TO DO IS SOMETHING THAT WOULD BE WITHIN THE
23 SCOPE AND NOT SOMETHING THAT IS NOT.

24 MR. PRAGER: I DO BELIEVE IT'S A DOCUMENT. I
25 HAD IT IN MY HAND. I AM NOW BEING HANDED IT. THANK
26 YOU. AND I CAN OFFER BATES 2848 WHICH INDICATES
27 THAT --

28 THE COURT: THIS IS IN EXHIBIT 207?

1 MR. PRAGER: YES, YOUR HONOR.

2 THE COURT: HOLD ON A MOMENT. ALL RIGHT. I
3 SEE -- NOW WE HAVE THE DOCUMENT, I SEE, AND THIS IS A
4 PAGE WITH THE BATES NUMBER 204. CORRECT?

5 MR. PRAGER: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. SO, ALL RIGHT, I
7 SEE -- I SEE THE DOCUMENT. NOW --

8 MR. PRAGER: I CAN MAKE AN OFFERING.

9 MR. KING: EXCUSE ME?

10 THE COURT: WELL, IF YOU GIVE ME JUST A
11 MOMENT, I'M LOOKING AT MY NOTES TO SEE WHAT WAS SAID ON
12 DIRECT.

13 ALL RIGHT. GO AHEAD AND TELL ME NOW WHAT IT
14 IS -- WHAT IT IS YOU INTEND TO QUESTION THIS WITNESS
15 ABOUT THAT'S WITHIN THE SCOPE. THAT'S REALLY -- THAT'S
16 THE ONLY OBJECTION.

17 MR. PRAGER: I THINK THE WITNESS HAS
18 CONTRADICTED HERSELF IN HER TESTIMONY TODAY AND CAN BE
19 IMPEACHED WITH HER STATEMENT UNDER OATH REGARDING THE
20 SPANISH BILINGUAL ISSUE. THAT'S WHY I CAN MAKE THE
21 OFFERING AS TO THE LANGUAGE IN THE STATEMENT.

22 THE COURT: ALL RIGHT. WHAT IS IT -- WHAT IS
23 IT THAT SHE SAID THAT YOU THINK IS IMPEACHED? WHAT'S
24 ON THIS PAGE?

25 MR. PRAGER: "WE DON'T HAVE A
26 SPANISH-SPEAKING --" AND IT CUTS OFF ON THE SIDE OF THE
27 PAGE -- "MONITOR AVAILABLE TO MONITOR."

28 THE COURT: OKAY.

1 MR. PRAGER: IT ALSO --

2 THE COURT: I SEE THAT STATEMENT.

3 MR. PRAGER: THE WITNESS TESTIFIED THEY
4 PROVIDED A BILINGUAL MONITOR TO HER ON ONE OCCASION.

5 THE COURT: SHE SAID IT WAS AUGUST 10TH. AND
6 HER TESTIMONY IN THAT REGARD WAS THAT THERE WASN'T A
7 SPANISH-SPEAKING MONITOR AS OPPOSED TO A BILINGUAL
8 MONITOR.

9 MR. PRAGER: THANK YOU. THAT POINT, I THINK
10 WE CAN ADDRESS. THE IDEA HERE IS THAT SHE DID NOT HAVE
11 A SPANISH -- WELL, WE CAN CLEAR THAT UP IF THAT'S AN
12 ISSUE FOR THE COURT.

13 BUT I THINK THE THRUST IS, THE MOTHER SPEAKS
14 SPANISH PRINCIPALLY. AND MS. DUVAL ASKED FOR -- I'VE
15 GOT HER DEPOS HERE, BUT -- A BILINGUAL OR
16 SPANISH-SPEAKING MONITOR FOR HER MOTHER'S ASSISTANCE IN
17 PARTICIPATING. AND IT WAS NEVER PROVIDED TO HER.

18 THE COURT: WELL, I THINK, FROM WHAT I
19 UNDERSTOOD FROM THE TESTIMONY, I THINK THAT'S TRUE.

20 AND I THINK YOU'RE CERTAINLY -- IT WOULD BE
21 PROPER TO ASK HER IF THEY EVER PROVIDED A
22 SPANISH-SPEAKING MONITOR -- A SPANISH-SPEAKING PERSON
23 DURING ANY OF THE VISITS THAT SHE MONITORED.

24 I CAN TELL THAT -- WELL, SO TELL ME FURTHER,
25 IF -- IS THAT THE POINT YOU WANT TO MAKE? THEY NEVER
26 PROVIDED HER A SPANISH-SPEAKING MONITOR FOR ANY OF THE
27 VISITS THAT SHE MONITORED?

28 MR. PRAGER: YES, AND ALSO MS. DUVAL TESTIFIED

1 SHE REQUESTED, AND I'LL HAVE TO GO LOOK IF IT WAS
2 BILINGUAL OR SPANISH SPEAKING SINCE THE COURT EXPRESSED
3 THAT CONCERN. BUT HOWEVER IT WAS EXPRESSED, MS. DUVAL
4 REQUESTED A MONITOR THAT WOULD FACILITATE THE MOTHER'S
5 PARTICIPATION IN THE MEETING.

6 THE COURT: ALL RIGHT. WHY DON'T YOU ASK HER
7 THOSE QUESTIONS. I DON'T THINK THIS DOCUMENT HAS
8 ANYTHING TO DO WITH IT. YOU CAN ASK THOSE QUESTIONS.
9 AND THAT IS NOT OUTSIDE THE SCOPE.

10 MR. PRAGER: OKAY.

11 THE COURT: AND I'M NOT PRECLUDING MS. SWISS
12 FROM MAKING THE OBJECTION, BUT I'M SAYING I THINK THOSE
13 ARE QUESTIONS THAT YOU CAN ASK. THIS DOCUMENT DOESN'T
14 HELP US WITH THAT.

15 THE QUESTION IS, YOUR CLIENT ASKED FOR
16 SOMETHING, IN EFFECT, THAT YOU WOULD LOOK AT AS AN
17 ACCOMMODATION. CORRECT?

18 MR. PRAGER: FOR LANGUAGE, YEAH.

19 THE COURT: ALL RIGHT. AND YOU WANT TO BE
20 ABLE TO SHOW THAT THEY DIDN'T PROVIDE THAT
21 ACCOMMODATION.

22 MR. PRAGER: CORRECT.

23 THE COURT: WHY DON'T YOU JUST ASK HER?

24 MR. PRAGER: I CAN.

25 THE COURT: I THINK THAT WOULD BE THE QUICKEST
26 AND EASIEST, WOULDN'T IT? JUST ASK, DID YOU EVER
27 PROVIDE A SPANISH-SPEAKING PERSON FOR THESE VISITS, DID
28 YOU PROVIDE A BILINGUAL PERSON WHO SPEAKS SPANISH. AND

1 SEEMS TO ME WE CAN GET TO THIS -- TO THAT POINT PRETTY
2 QUICKLY.

3 MR. PRAGER: WHEN THE OBJECTION WAS MADE ABOUT
4 THE SCOPE OF DIRECT AND CROSS, I THINK WE CAN ADDRESS
5 IT TO SAVE SOME TIME BECAUSE WE'RE GOING TO HAVE TO
6 DEAL WITH, I THINK, THE CIVIL RIGHTS ISSUE AS PART OF
7 THE CROSS-EXAMINATION.

8 SO IF I COULD OFFER, THE PLAINTIFF BELIEVES
9 THE CIVIL RIGHTS INVESTIGATION FINDINGS GO TO BIAS, THE
10 CREDIBILITY OF THE WITNESS, THEIR COMPETENCY, AND THEIR
11 TRUTHFULNESS.

12 SO IN RELATION TO THOSE SUBJECTS DISCUSSED
13 TODAY, DURING DIRECT EXAMINATION, THE PLAINTIFF
14 BELIEVES THERE SHOULD BE PEOPLE TO OFFER OR REFERENCE
15 THE CIVIL RIGHTS INVESTIGATIONS ON THOSE MATTERS.

16 THE COURT: WELL, I DON'T KNOW WHAT THAT -- I
17 UNDERSTAND THE WORDS, BUT I DON'T KNOW THAT MEANS, WHAT
18 THAT REFERENCE MIGHT BE.

19 AND SO I WON'T SPECULATE ON IT, AND BECAUSE I
20 CAN'T SPECULATE WHAT THAT WOULD BE, I CAN'T MAKE ANY
21 KIND OF RULING, IF THAT'S WHAT YOU'RE ASKING.

22 IT SEEMS TO ME THAT MANY -- VERY OFTEN DURING
23 THE COURSE OF THIS CASE, WE GO ABOUT POINTS IN A RATHER
24 OBSCURE FASHION. THERE ARE MANY THINGS THAT COULD HAVE
25 BEEN SOLVED WITH A SINGLE QUESTION, AND I THINK THIS IS
26 ONE OF THEM.

27 DID YOU EVER PROVIDE A SPANISH-SPEAKING PERSON
28 OR MONITOR FOR ANY OF THESE VISITS, YES OR NO. DID YOU

1 EVER PROVIDE A BILINGUAL ONE, A MONITOR, WHO SPOKE
2 SPANISH. YES OR NO. THIS IS PRETTY QUICK.

3 WE COULD DO ALL THAT IN LESS THAN 15 SECONDS,
4 AND I THINK THAT MIGHT ACCOMPLISH YOUR PURPOSE. AND IT
5 SEEMS TO ME THAT TOO OFTEN WE'RE SPENDING A GREAT DEAL
6 OF TIME TRYING TO GET SOMETHING -- TO SOMETHING WHICH
7 IS VERY SIMPLE.

8 AND SO YOU SAY THAT YOU HAVE OTHER -- WELL, I
9 THINK YOU USED THE WORDS, "CIVIL RIGHTS ISSUES," THAT
10 YOU WANTED TO ADDRESS AS PART OF THIS. IT WILL DEPEND
11 ON WHETHER IT'S WITHIN THE SCOPE OF THIS DIRECT
12 EXAMINATION. AND I KNOW WE'LL GET OBJECTIONS.

13 MR. PRAGER: RIGHT.

14 THE COURT: AT LEAST IT'S POSSIBLE THAT WE'LL
15 GET OBJECTIONS. IF WE DO, WE'LL ADDRESS THEM.

16 MR. PRAGER: OKAY.

17 THE COURT: AND SO I'M NOT PRECLUDING ANYTHING
18 THAT'S WITHIN THE SCOPE.

19 MR. PRAGER: OKAY.

20 THE COURT: YOU WANT TO TAKE A COUPLE MINUTES?

21 MR. PRAGER: YEAH, DO YOU MIND?

22 MS. SWISS: YES, THANK YOU.

23 MR. GUTERRES: THANK YOU, YOUR HONOR.

24 (PAUSE IN THE PROCEEDINGS)

25 (JURY PRESENT)

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN

27 COURT IN THE PRESENCE OF THE JURY)

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

1 BACK ON THE RECORD. EVERYONE IS PRESENT. MR. PRAGER,
2 YOU MAY CONTINUE WHENEVER YOU'RE READY.

3 MR. PRAGER: THANK YOU, YOUR HONOR.

4 BY MR. PRAGER:

5 Q ON THE BUSINESS ABOUT THE SPANISH-SPEAKING
6 INTERPRETER, LET'S PAUSE FOR ONE SECOND.

7 DOES IT MAKE A DIFFERENCE IN YOUR MIND IF WE
8 TALK ABOUT A BILINGUAL MONITOR OR A SPANISH-SPEAKING
9 MONITOR?

10 MS. SWISS: OBJECTION: VAGUE, SPECULATION.

11 THE COURT: OVERRULED, IF YOU UNDERSTAND. IF
12 YOU DON'T, YOU CAN TELL HIM. HE'LL CLARIFY FOR YOU.

13 THE WITNESS: YES. IT DOES MAKE A DIFFERENCE.

14 BY MR. PRAGER:

15 Q THANK YOU. WHAT'S THE SIGNIFICANCE IN THE TWO
16 TERMS AS YOU UNDERSTAND THEM, IN RELATION TO YOUR WORK?

17 A WELL, IF THEY'RE SPANISH-SPEAKING ONLY, THEN
18 THEY'RE NOT SPEAKING ENGLISH, AND WE HAVE BILINGUAL
19 PEOPLE. WE DON'T HAVE MONOLINGUAL -- ARE WE TALKING
20 ABOUT A MONITOR? I THINK WE'RE TALKING ABOUT A
21 MONITOR.

22 Q LET'S BACK UP. AND LET'S TALK ABOUT
23 URBANA DUVAL FOR A SECOND.

24 A OKAY.

25 Q YOU WOULD AGREE THAT URBANA DUVAL HAS A RIGHT
26 TO PARTICIPATE IN THE VISITATIONS WITH BABY RYAN.
27 CORRECT?

28 MS. SWISS: OBJECTION: RELEVANCE.

1 THE COURT: OVERRULED.

2 THE WITNESS: MS. DUVAL IS NOT COURT-ORDERED
3 TO HAVE VISITS. MS. DUVAL IS VISITING BECAUSE WE'RE
4 ALLOWING HER TO VISIT.

5 DOES SHE HAVE THE RIGHT TO VISIT?

6 BY MR. PRAGER:

7 Q LET'S JUST STOP FOR ONE SECOND TO BE CLEAR.
8 YOU SAID MS. DUVAL. TO BE CLEAR, YOU MEANT
9 MS. URBANA DUVAL --

10 A URBANA DUVAL. THE GRANDMOTHER.

11 Q LET'S SPEAK ONE AT A TIME, IF WE COULD, AND IF
12 I'M EVER ASKING YOU A QUESTION AND YOU WEREN'T DONE
13 WITH YOUR ANSWER, JUST HOLD YOUR HAND UP. OKAY?

14 A SURE.

15 Q SO JUST SO WE'RE CLEAR, YOU WERE JUST SPEAKING
16 ABOUT MS. URBANA DUVAL. CORRECT?

17 A YES.

18 Q AND THE QUESTION WAS, MS. URBANA DUVAL HAS THE
19 RIGHT TO PARTICIPATE IN THE MONITORED VISITS. CORRECT?

20 A NO.

21 Q OKAY. YOU WERE OFFERING THOSE SERVICES TO
22 URBANA DUVAL WHEN MS. DUVAL FIRST BEGAN HAVING
23 MONITORED VISITS WITH YOU. CORRECT?

24 A WE ALLOWED HER TO ATTEND THE VISITS, YES.

25 Q AND BY WE, YOU'RE SPEAKING OF THE DEPARTMENT?

26 A YES.

27 Q YOU'RE SPEAKING OF YOU?

28 A IN GENERAL, YES. IT WAS AN ACCOMMODATION, IT

1 WAS NOT A RIGHT. THAT'S DIFFERENT.

2 Q NOW, LET'S GO BACK TO THE SPANISH LANGUAGE
3 VERSUS BILINGUAL INTERPRETER QUESTION FOR A MOMENT.
4 AND YOU WERE ABOUT TO EXPLAIN TO US THE DIFFERENCE
5 BETWEEN A SPANISH-SPEAKING DCFS EMPLOYEE, OR SOMEONE
6 ASSISTING THE DEPARTMENT, AND A BILINGUAL MONITOR.
7 OKAY?

8 A I'M --

9 Q OKAY. LET ME STOP.

10 A I'M LOST. I'M SORRY.

11 Q I'LL WITHDRAW THE QUESTION. SORRY FOR ASKING
12 YOU A CONFUSING QUESTION. IN YOUR OFFICE IN
13 JANUARY 2010, DID YOU HAVE, TO YOUR KNOWLEDGE, ANY
14 BILINGUAL SPANISH-SPEAKING MONITORS?

15 A YES.

16 Q NOW, DO YOU RECALL, AGAIN, THE DATE THAT
17 MS. DUVAL FIRST BEGAN RECEIVING SERVICES FROM YOU?

18 A YES.

19 Q AND THE DATE, AGAIN, IS?

20 A IS THE FIRST TIME I MET HER AND MONITORED A
21 VISIT WAS DECEMBER 28, 2009.

22 Q OKAY. SO BETWEEN DECEMBER 28, 2009, AND
23 JULY 2010?

24 A YES.

25 Q IT'S TRUE THE DEPARTMENT NEVER PROVIDED
26 MS. DUVAL WITH A BILINGUAL MONITOR. CORRECT?

27 A NO. THAT'S NOT TRUE.

28 Q WHAT IS INACCURATE ABOUT THAT STATEMENT?

1 A ON ONE OCCASION, WE HAD CAROLINA SOTO MONITOR
2 PART OF THE VISIT, AND SHE IS A BILINGUAL CSW.

3 Q I'M SORRY. I THINK I UNDERSTOOD YOUR
4 TESTIMONY, AND CORRECT ME IF I'M WRONG, THAT OCCURRED
5 IN AUGUST?

6 A NO. CAROLINA MONITORED A VISIT FOR ME PRIOR
7 TO THAT.

8 Q AND WHAT DATE WAS THAT?

9 A I WOULD HAVE TO LOOK. I DON'T KNOW.

10 Q YOU DON'T REMEMBER?

11 A I DON'T REMEMBER. BUT I KNOW SHE MONITORED A
12 VISIT.

13 Q WELL, YOU TESTIFIED TO A NUMBER OF THINGS
14 TODAY FROM YOUR MEMORY. CORRECT?

15 A MM-HMM.

16 Q YES? YOU HAVE TO ANSWER AUDIBLY.

17 A YES.

18 Q THANK YOU. BUT YOU CAN'T TELL US RIGHT NOW
19 WHAT THE DATE OF THAT BILINGUAL MONITORED VISIT WAS?

20 A I CANNOT.

21 Q WAS IT -- IS THERE A RECORD THAT YOU CAN USE
22 TO REFRESH YOUR RECOLLECTION?

23 MS. SWISS: OBJECTION: SPECULATION.

24 THE COURT: OVERRULED.

25 BY MR. PRAGER:

26 Q I CAN ASK IT MORE DIRECTLY. IT'S A PART OF
27 YOUR DELIVERED SERVICE LOG?

28 A IT WOULD BE, YES.

1 Q DO YOU KNOW WHERE IN YOUR DELIVERED SERVICE
2 LOG WHERE IT WOULD BE?

3 A NO.

4 Q CAN YOU ESTIMATE, BASED ON YOUR RECOLLECTION
5 AS TO A TIME FRAME OR RANGE, WHEN THIS BILINGUAL
6 MONITORED VISIT OCCURRED?

7 A I DON'T KNOW.

8 Q YOU CAN'T ESTIMATE FOR US TODAY?

9 A I CAN'T.

10 Q CAN YOU ESTIMATE AT LEAST IF IT WAS IN 2010?

11 A YES.

12 Q IT WAS NOT IN 2009?

13 A NO.

14 Q DO YOU RECALL IF IT WAS AFTER MARCH -- LET ME
15 REPHRASE THAT.

16 IS IT TRUE THAT IT WAS IN JULY 2010, TO THE
17 BEST OF YOUR KNOWLEDGE?

18 A I DON'T KNOW.

19 Q IT WAS TRUE, IT WAS AFTER MARCH OF 2010.
20 CORRECT?

21 A I DON'T KNOW. I CAN LOOK.

22 Q THAT WAS THE QUESTION EARLIER. IF -- SO DO
23 YOU KNOW IF IT WAS IN APRIL OF 2010?

24 A I DON'T REMEMBER.

25 Q DO YOU RECALL MS. DUVAL ASKING YOU TO NO
26 LONGER BE HER MONITOR AND PROVIDE A BILINGUAL
27 INTERPRETER FOR HER?

28 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

1 THE WITNESS: SHE DID NOT.

2 THE COURT: OVERRULED.

3 THE WITNESS: SHE DID NOT. NO.

4 BY MR. PRAGER:

5 Q WE WERE TALKING ABOUT THIS LANGUAGE
6 DESIGNATION FORM A MOMENT AGO. CORRECT?

7 A YES.

8 Q DO YOU RECALL IN GENERAL TERMS IF THERE IS A
9 FORM THE LA DCFS USED DURING 2010 TO ACCOMMODATE
10 SPANISH-SPEAKING VISITORS OR GUESTS?

11 A I DON'T RECALL.

12 Q NOW, DO YOU RECALL TELLING MS. DUVAL, BETWEEN
13 DECEMBER 2009 AND MARCH 2010, THAT YOUR OFFICE DID NOT
14 HAVE SPANISH-SPEAKING MONITORS AVAILABLE TO MONITOR?

15 A NO.

16 Q OKAY. THAT'S AN UNCLEAR QUESTION ON MY PART.
17 SORRY. NO, YOU DON'T RECALL, OR NO, YOU HAD NO
18 MONITORS?

19 A I'M SORRY. NOW I NEED THE QUESTION AGAIN.

20 Q YOU CAN ANSWER TRUE OR FALSE. IT IS TRUE THAT
21 THERE WERE NO SPANISH-SPEAKING MONITORS AVAILABLE TO
22 MONITOR AT YOUR OFFICE BETWEEN DECEMBER 2009 AND MARCH
23 2010. CORRECT?

24 A NO. THAT'S NOT TRUE. NO.

25 Q OKAY. SO THAT STATEMENT WAS FALSE?

26 A IT'S NOT TRUE. IT'S FALSE, YES.

27 Q AND THAT WAS TRUE AS OF -- WELL, STRIKE THAT.
28 SO, IN JANUARY 2010, YOUR OFFICE HAD

1 SPANISH-SPEAKING MONITORS?

2 A YES.

3 Q OKAY. LET ME DRAW YOUR ATTENTION TO
4 EXHIBIT 207 BATES PAGE 2848.

5 A WHAT IS THE NUMBER AGAIN?

6 Q SURE, LET ME COME HELP YOU WITH THAT.

7 A YES. DONE.

8 Q NOW, HAVING READ THIS DOCUMENT, DOES IT
9 REFRESH YOUR RECOLLECTION THAT YOU DID NOT HAVE
10 SPANISH-SPEAKING MONITORS AVAILABLE TO MONITOR IN JULY
11 OF 2010?

12 A THAT'S NOT WHAT THAT MEANS.

13 Q IT DOES NOT REFRESH YOUR RECOLLECTION?

14 A NO. IT DOES NOT.

15 Q NOW, DO YOU RECALL FILLING OUT A CIVIL RIGHTS
16 INVESTIGATION STATEMENT PERTAINING TO A COMPLAINT
17 MS. DUVAL FILED AGAINST YOU FOR REFUSING TO ALLOW HER
18 TO SING TO SPANISH -- I'M SORRY -- SING IN SPANISH TO
19 HER SON?

20 A DID I FILL OUT A COMPLAINT?

21 Q DO YOU RECALL HER FILING A COMPLAINT AGAINST
22 YOU?

23 A YES. I DO.

24 Q SORRY. LET'S DO THAT AGAIN TO GET THE FULL
25 QUESTION OUT.

26 DO YOU RECALL MS. DUVAL FILING A CIVIL RIGHTS
27 COMPLAINT AGAINST YOU FOR FAILING TO ALLOW HER TO SING
28 TO HER SON IN SPANISH?

1 A I BELIEVE THE CIVIL RIGHTS COMPLAINT WAS
2 REGARDING NATIONAL ORIGIN, WAS THE BASIS. AM I
3 INCORRECT?

4 Q THE CATEGORY IS ONE THING, WE'RE ASKING ABOUT
5 THE UNDERLYING REASON THAT SHE FILED THE COMPLAINT.

6 DO YOU UNDERSTAND?

7 A OKAY. YES.

8 Q LET ME ASK THE QUESTION MORE BROADLY.

9 DO YOU RECALL LEARNING THAT MS. DUVAL HAD
10 FILED A COMPLAINT AGAINST YOU BECAUSE YOU FAILED TO
11 ALLOW HER TO SING TO HER SON IN SPANISH DURING
12 MONITORED VISITS?

13 A YES.

14 Q AS PART OF -- STRIKE THAT.

15 AS A RESULT OF THAT COMPLAINT, WAS THERE A
16 CIVIL RIGHTS INVESTIGATION?

17 A YES. THERE WAS.

18 Q AND YOU TOOK PART IN THAT CIVIL RIGHTS
19 INVESTIGATION. CORRECT?

20 A YES.

21 Q YOU WERE ASKED TO ANSWER QUESTIONS REGARDING
22 MS. DUVAL'S ALLEGATIONS. CORRECT?

23 A YES.

24 Q ONE OF THE ALLEGATIONS YOU WERE ASKED TO
25 ANSWER IS, DID YOU ASK MS. DUVAL TO SING TO HER CHILD
26 IN ENGLISH INSTEAD OF SPANISH.

27 A YES.

28 Q NOW, THERE WAS A WOMAN NAMED

1 MICHELLE HOCHSTEIN WHO WAS ASSIGNED TO INVESTIGATE THIS
2 COMPLAINT. CORRECT?

3 A YES.

4 Q AND YOU MET WITH MS. HOCHSTEIN. CORRECT?

5 A I DID.

6 Q AND SHE ASKED YOU TO RESPOND TO MS. DUVAL'S
7 COMPLAINT THAT YOU FAILED TO ALLOW HER TO SING TO HER
8 SON IN SPANISH. CORRECT?

9 A YES.

10 Q AND YOU ACTUALLY HAD TO SIT DOWN WITH
11 MS. HOCHSTEIN. CORRECT?

12 A MM-HMM.

13 Q YES?

14 A YES.

15 Q THANK YOU. AND YOU HAD TO RESPOND IN WRITING
16 TO MS. DUVAL'S ALLEGATIONS. CORRECT?

17 A NO.

18 Q OKAY. SO, LET'S GO BACK TO EXHIBIT 207, 2848.

19 A MM-HMM.

20 Q LET ME DRAW YOUR ATTENTION TO THE BOTTOM OF
21 THE PAGE. DO YOU SEE THE LINE, "SIGNATURE" THERE?

22 A YES.

23 Q IS THAT YOUR SIGNATURE?

24 A YES. IT IS.

25 Q NOW, DO YOU SEE THE WORD, "STATEMENT" THERE?
26 IT'S AT THE TOP LEFT SIDE.

27 A YES.

28 Q GREAT. NOW, BETWEEN THE WORD, "STATEMENT" AND

1 YOUR SIGNATURE, THERE IS A DETAILED STATEMENT.

2 CORRECT?

3 A YES.

4 Q DO YOU RECOGNIZE THE WRITING IN THAT DETAILED
5 STATEMENT?

6 A I DO NOT.

7 Q IS IT YOURS?

8 A IT IS NOT.

9 Q DO YOU KNOW IF IT'S MS. HOCHSTEIN'S?

10 A I PRESUME IT WAS MS. HOCHSTEIN'S, YES.

11 Q WELL, WAS THIS DOCUMENT FILLED OUT IN YOUR
12 PRESENCE?

13 A YES. IT WAS.

14 Q DO YOU RECALL WHO FILLED IT OUT?

15 A MS. HOCHSTEIN.

16 Q SO THAT QUESTION REFRESHED YOUR RECOLLECTION?

17 A YES.

18 Q SO DO YOU NOW RECALL THAT THE WRITING ON BATES
19 PAGE 2848 WAS MS. HOCHSTEIN'S?

20 A YES. IT WAS.

21 Q AND THE SIGNATURE IS STILL YOURS. CORRECT?

22 A YES.

23 Q AND BELOW YOUR SIGNATURE IS MS. HOCHSTEIN'S
24 SIGNATURE. CORRECT?

25 A CORRECT.

26 Q ABOVE YOUR SIGNATURE THERE IS A STATEMENT.
27 CORRECT?

28 A YES.

1 Q IT SAYS THAT YOU HAVE READ THE STATEMENT, AND
2 THE ABOVE AND FOREGOING IS TRUE AND CORRECT?

3 A YES.

4 Q AND IT SAYS YOU AGREE, UNDER THE PENALTY OF
5 PERJURY, WITH THE INFORMATION IN THE STATEMENT.
6 CORRECT?

7 A YES.

8 Q AND THE STATEMENT SAYS THAT -- WITHDRAW THAT.
9 THE STATEMENT CONFIRMS THAT YOUR OFFICE DOES NOT
10 HAVE A SPANISH-SPEAKING MONITOR AVAILABLE TO MONITOR.
11 IS THAT CORRECT?

12 A THAT IS NOT THE MEANING OF THAT STATEMENT.

13 Q IS THAT WHAT THE LANGUAGE IS?

14 A THAT IS WHAT THE LANGUAGE IS. THAT IS NOT THE
15 MEANING OF THE STATEMENT.

16 Q LET'S JUST STICK WITH THE WORDS FOR A MINUTE.

17 A OKAY.

18 Q THE WORDS THAT WE'VE BEEN DISCUSSING ARE
19 ACCURATE. CORRECT?

20 A YES.

21 Q AND YOU SIGNED THAT UNDER THE PENALTY OF
22 PERJURY, CORRECT?

23 A YES.

24 Q AT ANY TIME, IF YOU FELT THAT THAT STATEMENT
25 WAS AMBIGUOUS, DID YOU UNDERTAKE ANY EFFORT TO CHANGE
26 IT OR CLARIFY IT?

27 A I DID NOT.

28 Q IN THIS STATEMENT, IT SAYS, "WE DON'T HAVE A

1 SPANISH-SPEAKING MONITOR AVAILABLE TO MONITOR."

2 CORRECT?

3 MS. SWISS: OBJECTION: IMPROPER READING OF
4 THE DOCUMENT DURING CROSS-EXAMINATION BY COUNSEL.

5 THE COURT: OVERRULED. IS THAT STATEMENT IN
6 THE DOCUMENT?

7 THE WITNESS: YES. IT IS.

8 THE COURT: ALL RIGHT.

9 MR. PRAGER: THANK YOU.

10 BY MR. PRAGER:

11 Q AND THE NEXT LINE IS CONFIRMATION OF WHAT
12 YOU'RE SAYING. MS. DUVAL NEVER REQUESTED A BILINGUAL
13 MONITOR. CORRECT?

14 A YES.

15 Q NOW, DO YOU HAVE ANY INFORMATION TO REFUTE ANY
16 SUGGESTION BY MS. DUVAL THAT SHE DID ASK FOR A
17 BILINGUAL MONITOR?

18 A YES.

19 Q AND THERE IS A LANGUAGE DESIGNATION FORM.
20 CORRECT?

21 A YES.

22 Q AND DO YOU KNOW IF THE VISITOR'S LANGUAGE
23 DESIGNATION FORM APPLIES TO MS. DUVAL'S MOTHER,
24 MS. URBANA DUVAL?

25 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

26 THE COURT: SUSTAINED.

27 BY MR. PRAGER:

28 Q WE'LL MOVE ON, YOUR HONOR, THANK YOU. NOW,

1 WHEN YOU FIRST MET MS. DUVAL, YOU ALREADY RECEIVED
2 INFORMATION FROM MS. PENDER. CORRECT?

3 A I RECEIVED THE CASE FILE.

4 Q RIGHT. AND YOU REVIEWED IT. CORRECT?

5 A YES. I DID.

6 Q DID YOU SPEAK TO MS. PENDER AT THE TIME THAT
7 YOU RECEIVED AND REVIEWED YOUR CASE FILE?

8 A AT THE TIME I RECEIVED IT? I DON'T BELIEVE
9 SO.

10 Q AT ANY TIME BETWEEN THE INITIAL DATE YOU GOT
11 THE CASE FILE UNTIL THE FILE WAS CLOSED, DID YOU SPEAK
12 TO MS. PENDER?

13 A YES.

14 Q DO YOU RECALL THE DATE?

15 A I DON'T.

16 Q DO YOU RECALL -- YOU CAN ESTIMATE FOR US IF
17 YOU CAN, WHETHER IT WAS, SAY IN THE FIRST WEEK OF
18 RECEIVING THE DUVAL FILE, THE FIRST MONTH, SO FORTH AND
19 SO ON?

20 A IT WOULD HAVE BEEN IN THE FIRST FEW WEEKS.
21 MAYBE TWO WEEKS.

22 Q WAS THAT OVER THE TELEPHONE?

23 A YES.

24 Q IT'S TRUE THAT DURING THAT TELEPHONE CALL
25 MS. DUVAL ADVISED YOU THAT THE PATERNAL GRANDFATHER HAD
26 CALLED HER, "WHITE TRASH." ISN'T THAT TRUE?

27 A I DON'T RECALL THAT AT ALL.

28 Q NOW, YOU MENTIONED THAT YOU HAD A PHONE CALL

1 WITH MR. BUDIN. CORRECT?

2 A YES.

3 Q AND I'M SORRY, DO YOU RECALL THE DATE OF THAT
4 PHONE CALL?

5 A I HAVE -- I DON'T INDEPENDENTLY RECALL THE
6 DATE. WE JUST LOOKED IT UP IN THE DELIVERED SERVICE
7 LOGS.

8 Q WHO IS WE?

9 A I LOOKED IT UP HERE, RIGHT NOW. ME.

10 Q BUT YOU SAID "WE."

11 A WELL, IN RESPONSE TO MS. SWISS. SO THE
12 COLLECTIVE WE.

13 Q SO MS. SWISS AND YOU -- DID YOU BOTH REVIEW
14 ANY DOCUMENTS PRIOR TO COMING HERE TODAY?

15 MS. SWISS: OBJECTION: ATTORNEY-CLIENT
16 PRIVILEGE.

17 THE COURT: OVERRULED.

18 BY MR. PRAGER:

19 Q I DON'T WANT TO KNOW WHAT YOU AND YOUR
20 ATTORNEY SPOKE ABOUT. YOU'RE SIMPLY BEING ASKED, DID
21 YOU REVIEW DOCUMENTS IN PREPARING TO TESTIFY TODAY?

22 A YES.

23 Q WHEN?

24 A I DON'T KNOW. RECENTLY.

25 Q TODAY?

26 A YES. TODAY -- WELL, I JUST DID IT RIGHT HERE.

27 Q TO GET READY TO COME TESTIFY -- YOU JUST
28 TESTIFIED FROM THE STAND. LET ME BE CLEAR, MA'AM. I'M

1 NOT TRYING TO CONFUSE YOU. I'M SORRY IF I AM.

2 BEFORE YOU CAME TO COURT TODAY --

3 A MM-HMM.

4 Q -- BEFORE YOU TOOK THE STAND TO TESTIFY --

5 A YES.

6 Q -- DID YOU REVIEW DOCUMENTS TO AID YOUR
7 PREPARATION IN TESTIFYING TODAY?

8 MS. SWISS: OBJECTION: RELEVANCE.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES. I DID.

11 BY MR. PRAGER:

12 Q WHEN?

13 A LAST NIGHT.

14 Q SO YOU HAD AN AMAZING COMMAND OF THE FACTS
15 WHEN YOU WERE TESTIFYING TODAY. CORRECT?

16 A YES.

17 MS. SWISS: OBJECTION: ARGUMENTATIVE.

18 THE COURT: SUSTAINED. I DON'T KNOW WHETHER
19 IT'S ARGUMENTATIVE. BUT I'LL SUSTAIN THE OBJECTION TO
20 THE WORD, "AMAZING." (LAUGHTER)

21 MR. PRAGER: OKAY.

22 BY MR. PRAGER:

23 Q YOU'VE HAD A VERY COMPREHENSIVE RECOLLECTION
24 OF THE FACTS TODAY DURING YOUR TESTIMONY. CORRECT?

25 A YES, SIR.

26 Q AND THAT'S BASED ON YOUR REVIEW OF THE
27 DOCUMENTS LAST NIGHT. CORRECT?

28 A IN PART.

1 Q OKAY. BUT -- HOW MANY FAMILIES DO YOU SERVICE
2 AT THIS TIME?

3 A FIVE.

4 Q AND ABOUT HOW MANY FAMILIES, ON AVERAGE, DO
5 YOU SERVICE IN, SAY, THE YEAR 2016, AT ONE TIME?

6 MS. SWISS: OBJECTION: RELEVANCE, OUTSIDE THE
7 SCOPE.

8 THE COURT: SUSTAINED AS TO RELEVANCE.

9 BY MR. PRAGER:

10 Q BETWEEN THE -- BETWEEN AUGUST OF 2010, WHEN
11 YOU LAST WERE INVOLVED IN THE DUVAL MATTER, AND TODAY,
12 JUST BRIEFLY ESTIMATE FOR US, HOW MANY MATTERS IN TOTAL
13 HAVE YOU BEEN INVOLVED IN?

14 MS. SWISS: OBJECTION: RELEVANCE.

15 THE COURT: SUSTAINED.

16 BY MR. PRAGER:

17 Q DO YOU KNOW, ABSENT YOUR REVIEW OF THE
18 DOCUMENTS YOU REVIEWED LAST NIGHT, IF YOU REMEMBER ANY
19 OF THE DATES THAT YOU TESTIFIED TO HERE TODAY?

20 MS. SWISS: OBJECTION: SPECULATION,
21 RELEVANCE.

22 THE COURT: SUSTAINED.

23 BY MR. PRAGER:

24 Q LET ME DRAW YOUR ATTENTION TO THE CONVERSATION
25 WITH MR. BUDIN. SITTING HERE TODAY, RIGHT NOW, DO YOU
26 RECALL THAT CONVERSATION?

27 A I RECALL A PORTION OF IT, YES.

28 Q WHICH PORTION DO YOU RECALL?

1 A I RECALL CALLING HIM. I RECALL ASKING HIM
2 WHETHER OUR MUTUAL CLIENT, MS. DUVAL, IS ATTENDING
3 THERAPY. I RECALL THAT HE JUST HAD AN UNUSUAL
4 PHRASE -- HE'S A TRUTH-SEEKER. I RECALL HIM SAYING HE
5 WAS A TRUTH-SEEKER.

6 Q OKAY. NOW, DO YOU EVER RECALL --

7 MS. SWISS: OBJECTION: I'M NOT SURE THE
8 WITNESS WAS FINISHED WITH HER RESPONSE.

9 THE COURT: WERE YOU FINISHED WITH YOUR
10 ANSWER?

11 THE WITNESS: YES.

12 THE COURT: ALL RIGHT. GO AHEAD.

13 MR. PRAGER: THANK YOU, YOUR HONOR.

14 BY MR. PRAGER:

15 Q DO YOU EVER RECALL, DURING THIS CONVERSATION
16 WITH MR. BUDIN, TELLING HIM THAT YOU HAVE CONCERNS
17 ABOUT MS. DUVAL?

18 A YES.

19 Q AND DO YOU REMEMBER TELLING MR. BUDIN THAT YOU
20 ARE NOT SURE HOW SHE PERCEIVES HER SITUATION?

21 A NO.

22 Q WOULD YOU AGREE THAT A WRITING, GENERATED
23 CONTEMPORANEOUS WITH YOUR TELEPHONE CONVERSATION, WOULD
24 BE A BETTER MEMORIALIZATION OF THE CONVERSATION THAN
25 YOUR MEMORY TODAY?

26 A NO.

27 Q DO YOU THINK YOUR MEMORY TODAY IS A BETTER
28 MEMORIALIZATION THAN A DOCUMENT CREATED CONTEMPORANEOUS

1 WITH YOUR TELEPHONE CONVERSATION?

2 MS. SWISS: OBJECTION: SPECULATION.

3 THE COURT: YES. SUSTAINED.

4 MR. PRAGER: OKAY.

5 BY MR. PRAGER:

6 Q DO YOU RECALL STATING TO MR. BUDIN IN
7 APRIL 2010 THAT YOU, "DON'T BELIEVE THE CASE IS GOING
8 TO GO THE WAY SHE IS HOPING, AND I AM CONCERNED WHAT IS
9 GOING TO HAPPEN WHEN IT ENDS"?

10 A NO. I DON'T.

11 Q AND YOU UNDERSTOOD THE WORD, "SHE" TO MEAN
12 MS. DUVAL. CORRECT?

13 A YES.

14 Q YOU HAVE NO RECOLLECTION OF THAT?

15 A NO, I DON'T.

16 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

17 THE COURT: YES, IT HAS BEEN.

18 MR. PRAGER: THANK YOU.

19 THE COURT: BUT SHE'D ALREADY ANSWERED AGAIN.
20 WE'LL MOVE ON.

21 MR. PRAGER: THANK YOU, YOUR HONOR.

22 BY MR. PRAGER:

23 Q DID YOU EVER TELL MR. BUDIN THAT YOU WERE
24 CONCERNED ABOUT MS. DUVAL'S ABILITY TO HAVE A QUOTE
25 "REALITY CHECK," END QUOTE?

26 MS. SWISS: OBJECTION: COUNSEL IS IMPROPERLY
27 READING THE DOCUMENT TRYING TO REFRESH RECOLLECTION, AN
28 UNIDENTIFIED DOCUMENT.

1 THE COURT: OVERRULED.

2 MR. PRAGER: I CAN -- YOUR HONOR, FOR THE
3 RECORD, THE BUDIN DECLARATION IS EXHIBIT --

4 THE COURT: I DON'T KNOW. YOU DON'T NEED TO
5 GO ON THE RECORD. I'VE OVERRULED THE OBJECTION TO THE
6 LAST QUESTION.

7 THE WITNESS: I'M SORRY. CAN YOU JUST REPEAT
8 IT TO ME? I APOLOGIZE.

9 MR. PRAGER: CAN WE HAVE THE QUESTION READ
10 BACK, YOUR HONOR?

11 THE COURT: WE'LL ASK THE REPORTER TO READ
12 BACK THE LAST QUESTION THAT WASN'T ANSWERED.

13 (THE RECORD WAS READ AS REQUESTED)

14 THE WITNESS: I DID NOT.

15 BY MR. PRAGER:

16 Q DID YOU EVER ASK MR. BUDIN IF MS. DUVAL
17 REFUSED TO ACCEPT RESPONSIBILITY FOR BABY RYAN'S
18 CONDITION?

19 A I DON'T RECALL THAT.

20 Q DO YOU DENY THAT DURING THE TELEPHONE CALL
21 WITH MR. BUDIN, YOU INFORMED HIM THAT YOU HAD CONCERNS
22 ABOUT MS. DUVAL.

23 DO YOU RECALL THAT?

24 A YES. I DID HAVE CONCERNS ABOUT MS. DUVAL.

25 Q DO YOU RECALL THAT YOU WERE NOT SURE HOW SHE
26 PERCEIVED THE SITUATION, AND THAT YOU DID NOT BELIEVE
27 THE CASE WAS GOING TO GO THE WAY THAT MS. DUVAL WAS
28 HOPING, AND YOU WERE CONCERNED WHAT'S GOING TO HAPPEN

1 WHEN IT ENDS?

2 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

3 THE COURT: SUSTAINED.

4 BY MR. PRAGER:

5 Q ISN'T IT TRUE THAT -- WELL, I'LL MOVE ON.
6 NOW, IN TERMS OF MS. DUVAL, IT'S YOUR BELIEF SHE NEVER
7 TOOK RESPONSIBILITY FOR HER SON'S CONDITION. CORRECT?

8 MS. SWISS: OBJECTION: CALLS FOR SPECULATION.

9 THE COURT: OVERRULED. HE'S ASKING IF THAT IS
10 YOUR BELIEF.

11 THE WITNESS: I DON'T KNOW.

12 BY MR. PRAGER:

13 Q AND, IN FACT, IT'S YOUR BELIEF THAT OFTEN
14 CLIENTS ARE DEFENSIVE WHEN THEY MEET YOU. CORRECT?

15 A I DON'T THINK IT'S ME. BUT SOMETIMES THEY ARE
16 DEFENSIVE, YES.

17 Q AND YOUR BELIEF IS THAT OVER TIME, THEY BEGIN
18 TO UNDERSTAND THAT YOU'RE TRYING TO ASSIST THEM.
19 CORRECT?

20 A I WOULD SAY IN GENERAL, THAT'S HOW THINGS GO,
21 YES.

22 Q BUT MS. DUVAL NEVER VIEWED YOU THAT WAY.
23 CORRECT?

24 MS. SWISS: OBJECTION: CALLS FOR SPECULATION.

25 THE COURT: SUSTAINED.

26 MR. PRAGER: I'LL REPHRASE IT.

27 BY MR. PRAGER:

28 Q TO YOUR KNOWLEDGE, MS. DUVAL NEVER EXPRESSED

1 TO YOU THAT SHE VIEWED YOU AS HELPING HER. CORRECT?

2 A DID SHE SAY IT TO ME? DID SHE EXPRESS IT TO
3 ME? I DON'T RECALL. I WOULD HAVE TO READ EVERYTHING.

4 Q OKAY. LET'S TALK ABOUT THE COMMENT ABOUT
5 MS. DUVAL BEING PREGNANT.

6 DO YOU RECALL THAT?

7 A YES.

8 Q YOU MADE MENTION TO A POLICY THAT REQUIRES YOU
9 TO ASK THAT QUESTION. CORRECT?

10 A YES.

11 Q WHAT POLICY NUMBER IS THAT?

12 MS. SWISS: OBJECTION: RELEVANCE.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DON'T KNOW THE NUMBER. WE
15 HAVE A -- AT THE TIME, THOUSANDS OF POLICIES.

16 BY MR. PRAGER:

17 Q WHAT'S IT CALLED? WHAT'S THAT POLICY CALLED?

18 A I DON'T REMEMBER THE NAME.

19 Q IF I WANTED TO FIND IT, WHERE COULD I FIND IT?

20 A LA KIDS.

21 Q AND WHAT WOULD I LOOK FOR? SORRY. GO AHEAD.

22 A I DON'T KNOW.

23 Q THERE IS NO SUCH POLICY. ISN'T THAT TRUE?

24 MS. SWISS: OBJECTION: FOUNDATION.

25 THE WITNESS: I DON'T BELIEVE SO.

26 THE COURT: THE OBJECTION IS OVERRULED. AND
27 SHE'S ANSWERED THE QUESTION.

28 MR. PRAGER: THANK YOU.

1 BY MR. PRAGER:

2 Q IT'S TRUE THAT YOUR OBJECTIVE IN ANSWERING
3 (SIC) THE QUESTION WAS TO CONFIRM THAT MS. DUVAL WAS
4 PREGNANT TO CONSIDER FURTHER DCFS ACTION AGAINST THE
5 BABY IN HER WOMB IF THERE WAS ONE. CORRECT?

6 MS. SWISS: OBJECTION: VAGUE, SPECULATION.

7 THE COURT: OVERRULED.

8 THE WITNESS: I THINK YOU SAID THAT
9 INCORRECTLY.

10 BY MR. PRAGER:

11 Q I WILL REPHRASE THAT FOR YOU. THANK YOU. YOU
12 WANTED TO KNOW IF MS. DUVAL WAS PREGNANT. CORRECT?

13 A YES. WELL I DIDN'T PERSONALLY WANT TO KNOW,
14 BUT...

15 Q DCFS WANTED TO KNOW IF MS. DUVAL WAS PREGNANT,
16 AND IF SHE WAS, DCFS WOULD HAVE CONSIDERED WHETHER OR
17 NOT TO TAKE FURTHER ACTION AGAINST MS. DUVAL'S
18 POTENTIAL OR FORTHCOMING CHILD. CORRECT?

19 A NO. THAT'S NOT THE PURPOSE OF THAT QUESTION.

20 Q SO DO YOU DENY EVER TELLING MS. DUVAL THAT, IF
21 SHE WERE PREGNANT, THAT YOU WOULD HAVE TO EVALUATE HER
22 PREGNANCY TO SEE IF DCFS WOULD REMOVE THAT CHILD FROM
23 HER?

24 A YES. I DENY THAT.

25 Q NOW, YOU MENTIONED THAT THE BABY WAS IMPROVING
26 IN AUGUST 2010. CORRECT?

27 A THE BABY RYAN?

28 Q BABY RYAN.

1 A IN AUGUST 2010, THAT IS WHAT DR. DERIDDER TOLD
2 ME. YES.

3 Q DO YOU KNOW WHO DR. CAROL BERKOWITZ IS?

4 A YES.

5 Q WHO IS DR. CAROL BERKOWITZ?

6 A WELL, SHE IS A DOCTOR, I BELIEVE SHE'S ONE OF
7 THE MAIN DOCTORS AT THE FAILURE TO THRIVE CLINIC.

8 Q DO YOU RECALL EVER SPEAKING TO DR. BERKOWITZ
9 ABOUT BABY RYAN?

10 A I DID NOT SPEAK TO DR. BERKOWITZ, I DON'T
11 THINK.

12 Q IT'S TRUE THAT DR. EGGE WAS DR. BERKOWITZ'S
13 FELLOW. CORRECT?

14 A I DON'T KNOW THE POSITIONS OF THE DOCTORS OVER
15 THERE.

16 Q IT'S TRUE THAT IN 2010, BABY RYAN HAD
17 EXTENSIVE DEVELOPMENTAL THERAPY. CORRECT?

18 A HE HAD PHYSICAL THERAPY, I BELIEVE.

19 Q AND HE HAD OCCUPATIONAL THERAPY?

20 A I'M NOT SURE IF OCCUPATIONAL THERAPY -- I'M
21 NOT SURE WHEN IT BEGAN. SOME OF IT BEGAN EARLY, SOME
22 BEGAN LATE.

23 Q AND IT'S TRUE THAT THE REASON BABY RYAN WAS
24 IMPROVING WAS THE THERAPY, NOT THE FACT HIS MOTHER OR
25 HIS FATHER WAS DRIVING HIM TO THE THERAPY. CORRECT?

26 MS. SWISS: OBJECTION: FOUNDATION,
27 SPECULATION.

28 THE COURT: SUSTAINED.

1 BY MR. PRAGER:

2 Q MA'AM, IN -- TO YOUR MIND, THE REASON BABY
3 RYAN WAS GETTING BETTER WAS BECAUSE HE WAS RECEIVING
4 THERAPY. CORRECT?

5 A NO.

6 Q SO HE WAS NOT GETTING BETTER BECAUSE HE
7 RECEIVED THERAPY?

8 MS. SWISS: OBJECTION: FOUNDATION,
9 SPECULATION.

10 THE COURT: SUSTAINED.

11 BY MR. PRAGER:

12 Q NOW, YOU MENTIONED THAT YOU DOCUMENTED -- LET
13 ME ASK YOU THIS QUESTION:

14 YOU VIEW YOURSELF AS BEING NEUTRAL. CORRECT?

15 A YES.

16 Q AND YOU VIEW YOURSELF AS NOT TAKING SIDES FOR
17 ONE PARENT OR THE OTHER. CORRECT?

18 A THAT IS CORRECT.

19 Q IS IT TRUE THAT DURING -- LET'S DO IT THIS
20 WAY:

21 MONITORED VISITS, LET'S EXPLAIN VERY QUICKLY
22 HOW THIS WORKS. WHERE DO MONITORED VISITS TAKE PLACE,
23 NORMALLY, SAY, FOR BABY RYAN?

24 A IN THIS CASE, FOR THIS CHILD, THE VISITS TOOK
25 PLACE AT OUR OFFICE.

26 Q WHAT DOES YOUR OFFICE LOOK LIKE? JUST
27 BRIEFLY.

28 MS. SWISS: OBJECTION: RELEVANCE.

1 MR. PRAGER: I'LL WITHDRAW AS TO THAT
2 QUESTION.

3 THE COURT: ALL RIGHT.

4 BY MR. PRAGER:

5 Q SO MS. DUVAL ARRIVES FOR HER VISIT. CORRECT?

6 A MM-HMM. YES.

7 Q THE BABY'S NOT IN THE ROOM DURING THAT VISIT
8 YET. CORRECT?

9 A THE CHILD'S BEING BROUGHT TO THE VISIT BY THE
10 PATERNAL GRANDFATHER.

11 Q AND THE ACTUAL HANDOFF FROM THE PATERNAL
12 GRANDFATHER TO MS. DUVAL, PLEASE EXPLAIN HOW THAT
13 WORKS.

14 A THAT TAKES PLACE WITH THE MONITOR AS WELL.

15 Q OKAY. AND THE MONITOR ACTUALLY TAKES THE
16 CHILD FROM THE PATERNAL GRANDPARENT AND DELIVERS THE
17 CHILD TO THE MOTHER. CORRECT?

18 A NO. HE CAN HAND HER THE CHILD.

19 Q SO AT THIS POINT, MS. DUVAL WAS RECEIVING 1.5
20 HOURS OF VISITATION. CORRECT?

21 A TWICE A WEEK. HOUR-AND-A-HALF, TWICE A WEEK,
22 YES.

23 Q AND WHEN MS. DUVAL WOULD FIRST SEE HER SON,
24 CAN YOU DESCRIBE FOR US WHAT HER FACE LOOKED LIKE
25 DURING THAT PERIOD OF TIME?

26 MS. SWISS: OBJECTION: VAGUE AS TO TIME.

27 BY MR. PRAGER:

28 Q DURING YOUR INITIAL VISITS IN DECEMBER 2010.

1 A SHE LOOKED HAPPY TO SEE HER SON.

2 Q DID YOU EVER COMPLAIN THAT SHE WAS BEING
3 EXCESSIVELY DEMONSTRATIVE WITH HER SON?

4 A COMPLAINED TO WHOM?

5 Q DID YOU EVER DOCUMENT IN THE SERVICE LOGS THAT
6 MOTHER OVERWHELMED BABY RYAN WITH HUGS AND KISSES?

7 A YES.

8 Q AND YOU DOCUMENTED THAT SHE HAD REPEATED
9 PROTESTATIONS OF LOVE. IS THAT RIGHT?

10 A I DON'T RECALL.

11 Q LET ME DRAW YOUR ATTENTION TO THE DELIVERED
12 SERVICE LOGS. IT'S PAGE 82. AND THE BATES NUMBER
13 IS 1516.

14 YOU KNOW WHAT, LET ME WITHDRAW THAT AND WE CAN
15 MOVE ALONG TO MAKE IT A LITTLE FASTER. LET ME DRAW
16 YOUR ATTENTION TO EXHIBIT 82, 1521, IF YOU WOULD.

17 DO YOU RECALL EVER SAYING THAT YOU THOUGHT THE
18 MOTHER WAS SMOTHERING THE BABY WITH EXCESSIVE
19 ATTENTION?

20 A YES.

21 Q AS A RESULT OF MS. DUVAL'S CIVIL RIGHTS
22 INVESTIGATION, DID YOU EVER LEARN IF THAT WAS IMPROPER
23 CONDUCT ON YOUR PART OR NOT?

24 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE.

25 THE COURT: SUSTAINED.

26 BY MR. PRAGER:

27 Q YOU'VE MAINTAINED THAT YOU ARE NEUTRAL.
28 CORRECT?

1 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

2 THE COURT: SUSTAINED.

3 BY MR. PRAGER:

4 Q DO YOU BELIEVE THAT YOU WERE BEING NEUTRAL TO
5 THE MOTHER WHEN YOU WERE REPORTING IN YOUR DELIVERED
6 SERVICE LOGS THAT SHE WAS SMOTHERING HER BABY WITH
7 EXCESSIVE ATTENTION?

8 MS. SWISS: OBJECTION: FOUNDATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: THAT I WAS BEING?

11 BY MR. PRAGER:

12 Q UNBIASED. YOU WERE STILL BEING UNBIASED?

13 A YES. I DO.

14 Q ISN'T IT TRUE THAT MR. MILLS IS WHITE OR
15 CAUCASIAN?

16 MS. SWISS: OBJECTION: RELEVANCE.

17 THE COURT: SUSTAINED.

18 BY MR. PRAGER:

19 Q DID MS. DUVAL EVER TELL YOU THAT SHE THOUGHT
20 YOU WERE BEING UNFAIR TO HER BECAUSE SHE WAS
21 AFRICAN AMERICAN?

22 A NO.

23 Q DID MS. DUVAL EVER TELL YOU THAT SHE THOUGHT
24 YOU WERE FAVORING THE FATHER OVER HER BECAUSE HE WAS
25 WHITE?

26 A NO.

27 Q DID YOU EVER LEARN, AS PART OF THE CIVIL
28 RIGHTS INVESTIGATION, THAT THAT CLAIM WAS ONE OF THE

1 ALLEGATIONS AGAINST THE DEPARTMENT?

2 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE.

3 THE COURT: SUSTAINED.

4 BY MR. PRAGER:

5 Q NOW, MA'AM, IS IT TRUE THAT VISITATION IS ONE
6 OF THE GREATEST PREDICTORS OF FAMILY REUNIFICATION?

7 A IT IS A PREDICTOR OF FAMILY REUNIFICATION,
8 YES.

9 Q AND NORMALLY, PERSONS WITH GREATER VISITATION
10 HAVE THE BEST OPPORTUNITY TO REUNIFY. CORRECT?

11 MS. SWISS: OBJECTION: VAGUE AS TO GREATER.

12 MR. PRAGER: I WILL WITHDRAW THE QUESTION AND
13 ASK IT THIS WAY.

14 THE COURT: ALL RIGHT.

15 BY MR. PRAGER:

16 Q VISITATION IS THE NUMBER ONE PREDICTOR OF
17 REUNIFICATION. CORRECT?

18 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

19 THE COURT: THAT ONE WASN'T QUITE ASKED THAT
20 WAY, SO IT'S OVERRULED.

21 THE QUESTION NOW IS, IS VISITATION THE
22 NUMBER ONE PREDICTOR, AS OPPOSED TO BEING ONE OF THE
23 PREDICTORS?

24 THE WITNESS: I'M NOT SURE -- I'M NOT SURE IF
25 IT'S NUMBER ONE OR NOT. I DON'T REMEMBER.

26 MR. PRAGER: YOUR HONOR, I'D LIKE TO READ THE
27 WITNESS'S DEPOSITION, PAGE 51, LINES 6 THROUGH 9. THIS
28 IS VOLUME I, YOUR HONOR.

1 MS. SWISS: OBJECTION: IMPROPER IMPEACHMENT.

2 THE COURT: THE OBJECTION IS OVERRULED. BUT I
3 THINK YOU PROBABLY HAVE TO READ LINES 3 THROUGH 5 AS
4 WELL. OTHERWISE, I THINK THE QUESTION MIGHT NOT BE AS
5 CLEAR.

6 MR. PRAGER: THANK YOU, YOUR HONOR.

7 I'M SORRY, YOUR HONOR, YOU SAID LINE THREE.
8 IS THAT CORRECT?

9 THE COURT: YES.

10 MR. PRAGER: THANK YOU, YOUR HONOR.

11 QUESTION: DO YOU BELIEVE THAT YOU HELPED
12 MS. DUVAL IN SOME WAY? ANSWER: YES.

13 QUESTION: CAN YOU TELL ME HOW? ANSWER:
14 VISITATION. WE HAD REGULAR VISITATION AS ORDERED BY
15 THE COURT TWICE A WEEK. VISITATION IS THE NUMBER ONE
16 PREDICTOR OF REUNIFICATION.

17 MS. SWISS: YOUR HONOR, I WOULD REQUEST THAT
18 PAGE 51, LINES 10 THROUGH 25 AS WELL AS PAGE 52 LINES 1
19 THROUGH 4 ALSO BE READ FOR COMPLETENESS.

20 THE COURT: I'M NOT GOING TO REQUIRE HIM TO
21 READ THAT AT THIS TIME. YOU'LL HAVE AN OPPORTUNITY TO
22 QUESTION FURTHER, IF YOU CHOOSE.

23 MS. SWISS: THANK YOU, YOUR HONOR.

24 BY MR. PRAGER:

25 Q NOW, YOU RECALL THE DISCUSSION ABOUT
26 MS. DUVAL'S TREMORS. CORRECT?

27 A YES.

28 Q AND IT'S TRUE THAT MS. DUVAL INFORMED YOU THAT

1 SHE DID HAVE A HISTORY OF TREMORS. CORRECT?

2 A YES.

3 Q AND IT'S TRUE THAT MS. DUVAL TOLD YOU THAT SHE
4 HAD UNDERGONE MEDICAL TREATMENT IN THE PAST FOR
5 TREMORS. CORRECT?

6 A NO.

7 Q YOU TAKE ISSUE WITH THAT STATEMENT?

8 A YES.

9 Q NOW, YOU NEVER TOLD THE JUVENILE COURT THAT
10 MS. DUVAL DISCLOSED TO YOU THAT SHE WAS SEEKING
11 TREATMENT FOR THE CONDITION OF TREMORS. CORRECT?

12 A I'M NOT WRITING TO THE COURT.

13 Q LET ME CHANGE TOPICS AND ASK YOU A DIFFERENT
14 QUESTION.

15 YOU AGREE, MA'AM, THAT YOU HAVE AN OBLIGATION
16 TO PROVIDE EXCULPATORY INFORMATION TO THE JUVENILE
17 COURT. CORRECT?

18 A YES.

19 Q AND YOU LEARNED IN JULY 2010 THAT A CIVIL
20 RIGHTS INVESTIGATION HAD BEEN OPENED AS TO YOU.
21 CORRECT?

22 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE.

23 THE COURT: OVERRULED. I'M NOT SURE WHERE
24 THIS IS GOING.

25 THE WITNESS: YES.

26 BY MR. PRAGER:

27 Q DID YOU VIEW -- STRIKE THAT.

28 YOU NEVER TOLD THE JUVENILE COURT THAT THERE

1 WAS AN OPEN INVESTIGATION AGAINST YOU. CORRECT?

2 A CORRECT.

3 Q NOW, AT SOME POINT IN TIME, THERE WAS A
4 POSITIVE FINDING OF DISCRIMINATION AGAINST YOU.
5 CORRECT?

6 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE.

7 THE COURT: SUSTAINED.

8 BY MR. PRAGER:

9 Q DID YOU -- WITHDRAW THAT.
10 LET'S GO BACK TO EXHIBIT 82.

11 A MM-HMM.

12 Q LET ME DRAW YOUR ATTENTION TO BATES
13 NUMBER 1507.

14 DID YOU REVIEW THAT RECORD AS PART OF YOUR
15 DUTIES IN RENDERING SERVICES TO MS. DUVAL? IT'S A
16 RECORD CREATED BY MS. NELSON?

17 MS. SWISS: OBJECTION: VAGUE.

18 THE COURT: OVERRULED.

19 BY MR. PRAGER:

20 Q DID YOU REVIEW THE RECORD?

21 THE COURT: DON, 82, PLEASE.

22 MR. PRAGER: 1507, I'M SORRY.

23 THE COURT: YES.

24 MR. PRAGER: I CAN WITHDRAW THAT, YOUR HONOR.
25 WE CAN MOVE ON TO THE NEXT --

26 THE COURT: I WAS JUST LOOKING, IF YOU CAN
27 DIRECT ME.

28 MR. PRAGER: I'LL JUST WITHDRAW IT. IT'LL

1 MOVE ALONG FASTER.

2 THE COURT: OKAY.

3 BY MR. PRAGER:

4 Q LET ME DRAW YOUR ATTENTION TO BATES 1511. LET
5 ME DRAW YOUR ATTENTION TO THE MIDDLE OF THE PAGE. WHEN
6 YOU'RE READY, LET ME KNOW.

7 A ON WHICH DATE?

8 Q IT WILL BE DECEMBER 30TH, 2009.

9 A YES.

10 Q OKAY. HERE -- THIS IS WHERE YOU'RE DIRECTING
11 THE MATERNAL GRANDMOTHER NOT BE ALLOWED TO RETURN TO
12 THE VISITATIONS. CORRECT?

13 A THAT'S NOT WHAT IT SAYS.

14 Q SAYS, "LIMIT MGM'S VISITS." CORRECT?

15 A YES.

16 Q TO ONCE PER WEEK?

17 A YES.

18 Q SO THAT YOU CAN ASSESS AND ASSIST MOTHER WITH
19 REUNIFICATION. CORRECT?

20 A YES.

21 Q SO IT'S YOUR BELIEF THAT THE GRANDMOTHER'S
22 PRESENCE HAMPERED YOUR ABILITY TO ASSESS MS. DUVAL?

23 A THE SERVICES ARE FOR THE MOTHER, FOR
24 MS. DUVAL. AND YES, THEY SHOULD BE ONE-ON-ONE SERVICES
25 SO THAT SHE CAN GET THE MOST OUT OF THE REUNIFICATION
26 SERVICES THAT ARE BEING OFFERED. SO, YES.

27 Q AND IT'S TRUE THAT URBANA DUVAL DOES NOT HAVE
28 ACCESS TO BABY RYAN ONCE BABY RYAN IS REMOVED FROM

1 MOTHER'S CUSTODY. CORRECT?

2 MS. SWISS: OBJECTION: SPECULATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: TO MY KNOWLEDGE, NO.

5 BY MR. PRAGER:

6 Q THAT WOULD DEPEND ON MR. MILLS ALLOWING
7 MS. URBANA DUVAL TO VISIT BABY RYAN. CORRECT?

8 A YES.

9 Q THIS IS A VERY CONTENTIOUS FAMILY SITUATION.
10 CORRECT?

11 MS. SWISS: OBJECTION: RELEVANCE,
12 SPECULATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: YES.

15 BY MR. PRAGER:

16 Q THAT'S WHY DCFS WAS INVOLVED. CORRECT?
17 CONTENTIOUS RELATIONSHIP BETWEEN THE MOTHER AND FATHER?

18 A NO.

19 Q SO MS. CRUMP DID NOT SUGGEST THAT THE FOCUS OF
20 MS. DUVAL AND MR. MILLS ON THEIR RELATIONSHIP AND NOT
21 TAKING CARE OF BABY RYAN WAS NOT ONE OF THE PRINCIPAL
22 REASONS WHY SHE FILED HER REPORT?

23 MS. SWISS: OBJECTION: FOUNDATION,
24 SPECULATION.

25 THE COURT: SUSTAINED.

26 BY MR. PRAGER:

27 Q DID YOU EVER ACTUALLY REPORT IN THE DELIVERED
28 SERVICE LOGS THAT THE BABY APPEARED HAPPY WITH MOTHER?

1 A DID I REPORT IN THE LOGS THAT THE BABY
2 APPEARED HAPPY? YES, I DID.

3 Q WITH MOTHER.

4 A WITH THE MOTHER, YES.

5 Q AND LET'S DRAW YOUR ATTENTION TO THE ALLERGIES
6 ISSUE FOR A MOMENT.

7 A MM-HMM.

8 Q DID YOU EVER SEE MS. DUVAL USING A BLANKET TO
9 PUT ON THE FLOOR?

10 A YES.

11 Q AND DID YOU SEE MS. DUVAL CLEAN THE ROOMS
12 BEFORE HER VISITATION?

13 A ONE TIME, SHE CLEANED THE FLOOR WITH BABY
14 WIPES.

15 Q AND ISN'T IT TRUE THAT SHE INFORMED YOU SHE
16 WAS DOING THAT BECAUSE THE ROOMS WERE FILTHY AND SHE --

17 A NO. IT'S NOT TRUE.

18 Q LET ME FINISH THE QUESTION.

19 A SORRY.

20 Q ISN'T IT TRUE THAT SHE INFORMED YOU THE ROOM
21 WAS FILTHY AND THAT SHE WAS REACTING TO THE ROOMS,
22 WHICH IS WHY SHE WAS CLEANING THEM?

23 A NO.

24 Q NOW, AS PART OF YOUR WORK, DID YOU REVIEW THE
25 REPORTS FROM THE MONITORS?

26 A ARE WE TALKING ABOUT ANIKA LEWIS?

27 Q HOW ABOUT MS. ENNIS?

28 A I DON'T THINK I -- MS. ENNIS? I DON'T BELIEVE

1 I EVER SAW ANYTHING FROM MS. ENNIS.

2 Q LET ME DRAW YOUR ATTENTION TO EXHIBIT 1088.40.
3 I'LL HAVE TO GET IT FOR YOU.

4 A OKAY.

5 Q GO AHEAD AND TAKE A LOOK AT THAT TWO-PAGE
6 DOCUMENT.

7 THE COURT: COULD YOU TELL ME WHAT PAGE THIS
8 IS?

9 MR. PRAGER: I'M SORRY, YOUR HONOR.
10 IT'S 1088.40 --

11 THE COURT: THANK YOU.

12 MR. PRAGER: -- THROUGH 1088.41, YOUR HONOR.

13 THE COURT: THANKS VERY MUCH.

14 MR. PRAGER, I THINK SHE'S INDICATED SHE'S
15 LOOKED AT IT.

16 BY MR. PRAGER:

17 Q THANK YOU. NOW, DO YOU RECALL WHO MS. ENNIS
18 IS?

19 A I DO NOT.

20 Q DO YOU SEE ON EXHIBIT 1088.40, THREE LINES
21 DOWN, THE WORD, "VICTORIA" IS THERE?

22 A YES.

23 Q DO YOU HAVE AN UNDERSTANDING IF THAT'S A
24 REFERENCE TO YOU?

25 A I DON'T KNOW.

26 Q DO YOU UNDERSTAND -- WELL, STRIKE THAT.

27 DO YOU RECALL MS. ENNIS EVER MONITORING VISITS
28 FOR BABY RYAN?

1 A NOT AT LAKEWOOD. I DON'T RECALL THAT, NO.

2 Q DO YOU RECALL MS. ENNIS EVER MONITORING VISITS
3 WHILE YOU WERE A SOCIAL WORKER ON THE BABY RYAN MATTER?

4 A NO.

5 Q DO YOU -- HAVING READ THIS DOCUMENT, DO YOU
6 HAVE AN INDEPENDENT RECOLLECTION OF BABY RYAN SMILING
7 AND CLAPPING AND PLAYING ON DRUMS?

8 MS. SWISS: OBJECTION: VAGUE AS TO TIME.
9 BY MR. PRAGER:

10 Q THE DOCUMENT THAT'S DATED DECEMBER 28TH. SO
11 LET ME REPHRASE THAT FOR YOU.

12 DO YOU RECALL ON DECEMBER 28, 2009, BABY RYAN
13 SMILING AND CLAPPING AND PLAYING ON DRUMS?

14 A NO.

15 Q THIS WAS CHRISTMAS. RIGHT?

16 MS. SWISS: OBJECTION: RELEVANCE.

17 THE COURT: OVERRULED. I HOPE HE'LL SHOW US
18 THE RELEVANCE.

19 MR. PRAGER: SORRY?

20 THE COURT: I SAID I HOPE YOU'LL SHOW US THE
21 RELEVANCE.

22 MR. PRAGER: I'M TRYING.

23 THE COURT: I THINK EVERYONE KNOWS
24 DECEMBER 28TH IS PRETTY CLOSE TO CHRISTMAS.

25 BY MR. PRAGER:

26 Q SHE WAS HAVING A MONITORED VISIT WITH YOU
27 DURING CHRISTMAS. CORRECT?

28 A I MONITORED A PORTION OF A VISIT ON

1 DECEMBER 28TH WITH MOTHER AND BABY RYAN. I DO NOT
2 RECALL MS. ENNIS BEING PRESENT AT ANY TIME DURING THE
3 HALF-HOUR THAT I MONITORED THE VISIT, AND I DON'T
4 RECALL MEETING HER, EVER.

5 Q LET ME DRAW YOUR ATTENTION TO THE CONTACT LOG
6 ON PAGE 1508, DATED DECEMBER 28, 2009. IT'S
7 EXHIBIT 82, AND I CAN GET THAT FOR YOU AS WELL.

8 LET ME DIRECT YOUR ATTENTION TO 1508, THE
9 BOTTOM OF THE PAGE. WHEN YOU'RE READY, LET ME KNOW.
10 AND YOU CAN KEEP READING THROUGH THE TOP OF THE NEXT
11 PAGE, 1509.

12 A YES.

13 Q IT'S TRUE THAT NOWHERE ON DECEMBER 28, 2009,
14 IN YOUR REPORTED LOG THAT YOU REPORT THE BABY AS BEING
15 SMILING. CORRECT?

16 A I DID NOT.

17 Q NOW, DO YOU RECALL EVER INFORMING MS. ENNIS
18 THAT SHE COULD NO LONGER MONITOR VISITS FOR BABY RYAN?

19 A I NEVER SPOKE TO MS. ENNIS.

20 Q NOW, ON DECEMBER 28, 2009, THE NEXT ENTRY ON
21 PAGE 1509, PLEASE TAKE A MOMENT AND REVIEW THAT.

22 A WHICH ONE?

23 Q THE SECOND -- WELL, THE FIRST FULL ENTRY ON
24 PAGE 1509.

25 A ON 12/28?

26 Q YES, MA'AM.

27 A YES.

28 Q DO YOU SEE THAT?

1 A YES.

2 Q AND IT TAKES -- THE PARTICIPANTS THERE ARE
3 MR. MILLS AND CARMEN MILLS. CORRECT?

4 A YES.

5 Q OKAY. GO AHEAD AND READ THAT, AND LET ME KNOW
6 WHEN YOU'RE READY.

7 A OKAY. YES.

8 Q DO YOU SEE ABOUT THE FOURTH LINE DOWN, IT
9 SAYS, "HE PLAYED AND BABBLED HAPPILY, ENTERTAINING
10 HIMSELF"?

11 A YES.

12 Q THAT NOTE WAS CREATED IN REFERENCE TO BABY
13 RYAN'S TIME WITH HIS FATHER AND STEPMOTHER. CORRECT?

14 A THAT'S WHERE HE WAS AT THE TIME THAT HE WAS
15 PLAYING AND BABBLED HAPPILY, YES.

16 Q AND IN THIS NOTE, YOU DO DOCUMENT THAT THE
17 BABY WAS BABBLING HAPPILY. CORRECT?

18 A BABBLED HAPPILY. THAT'S WHAT IT SAYS, YES.

19 Q IS THERE ANY REASON, TO YOUR KNOWLEDGE, THAT
20 THE MONITOR ON DECEMBER 28TH HAS REPORTED THE BABY
21 SMILING AND CLAPPING AND PLAYING, AND THAT THAT TYPE OF
22 INFORMATION DID NOT MAKE IT INTO YOUR NOTE ON THE VISIT
23 FOR MOTHER ON THE SAME DAY?

24 MS. SWISS: OBJECTION: LACKS FOUNDATION,
25 CALLS FOR SPECULATION, VAGUE.

26 THE COURT: SUSTAINED.

27 THERE'S TWO DIFFERENT PERIODS OF TIME.

28 MR. PRAGER: SORRY?

1 THE COURT: SUSTAINED. ARE YOU ASKING HER WHY
2 SOMEONE ELSE'S OBSERVATION WASN'T INCLUDED IN HERS?

3 MR. PRAGER: LET ME REPHRASE THE QUESTION.
4 BY MR. PRAGER:

5 Q IS IT TRUE THAT DURING THE HALF AN HOUR THAT
6 YOU WERE WITH BABY RYAN AND HIS MOTHER, HE WAS BABBLING
7 HAPPY, OR HAPPILY?

8 A NOT THAT I RECALL.

9 Q AND YOU RECALL THAT SITTING HERE TODAY?

10 A I DON'T RECALL HIM BABBLING -- I DON'T RECALL
11 THAT.

12 Q NOW, IT'S TRUE -- WELL, AT THIS TIME, ARE YOU
13 STILL A SOCIAL WORKER?

14 A YES, I AM.

15 Q AT THIS TIME, ARE YOU A LICENSED CLINICAL
16 SOCIAL WORKER?

17 A NO.

18 MS. SWISS: OBJECTION: RELEVANCE.

19 THE COURT: SUSTAINED.

20 BY MR. PRAGER:

21 Q NOW, IT'S TRUE THAT SERVICES ENDED FOR THIS
22 CASE IN AUGUST 2010. CORRECT?

23 A YES.

24 Q I THINK YOU TESTIFIED EARLIER THAT YOU BELIEVE
25 THAT THE LAST VISITATION THAT YOU SUPERVISED WAS IN
26 JULY 2010. CORRECT?

27 A I BELIEVE SO.

28 Q DO YOU KNOW IF THAT WAS THE LAST SERVICE THAT

1 YOU OFFERED TO MS. DUVAL AS PART OF THIS CASE BEFORE
2 HER CASE WAS CLOSED?

3 A NO. THAT WAS NOT THE LAST SERVICE THAT I
4 OFFERED TO HER.

5 Q AND WHAT WAS THE LAST SERVICE THAT YOU OFFERED
6 TO HER?

7 A I RECALL THAT WE PREPARED A NEW CASE PLAN FOR
8 HER, AND I CONSULTED WITH HER AS TO THE THINGS SHE
9 WANTED INCLUDED IN THE CASE PLAN.

10 Q AND WHAT WAS THE PURPOSE OF PREPARING THE CASE
11 PLAN?

12 A WE PREPARE A CASE PLAN FOR EVERY CASE, AND
13 IT'S RENEWED EVERY SIX MONTHS. SO IT WOULD HAVE BEEN
14 DUE TO BE RENEWED.

15 Q AND WHAT WAS THE OBJECT OF -- I'M SORRY. I
16 DON'T UNDERSTAND THE OBJECT OF THE CASE PLAN.

17 A THE CASE PLAN IS WHAT YOU PREPARE THAT
18 INCLUDES WHAT THE FAMILY BELIEVES THEY NEED, WHAT THE
19 DEPARTMENT IS RECOMMENDING FOR THE MOTHER, THE FATHER,
20 THE CHILD.

21 AND MOTHER HAD THINGS THAT SHE FELT WERE
22 IMPORTANT FOR THE CHILD.

23 Q DID YOU EVER CONSIDER WITHDRAWING AS THE
24 CASEWORKER FOR MS. DUVAL AFTER YOU LEARNED THAT SHE HAD
25 FILED A CIVIL RIGHTS COMPLAINT AGAINST YOU?

26 MS. SWISS: OBJECTION: RELEVANCE.
27 THE COURT: SUSTAINED.

28 WE'RE GOING TO HAVE THE RECESS AT THIS TIME.

1 WE'LL RESUME AT 9:00 A.M. TOMORROW MORNING. ALL
2 JURORS, PLEASE REMEMBER THE ADMONITION.

3 HAVE NO COMMUNICATION WITH ANYBODY ABOUT
4 ANYTHING TO DO WITH THIS CASE, INCLUDING ANY SUBJECT OR
5 ISSUE OR PERSON INVOLVED.

6 DO NOT FORM ANY OPINION NOR EXPRESS ANY
7 OPINION.

8 (JURY EXCUSED)

9 THE COURT: AND I'LL SEE COUNSEL AT 8:00 A.M.

10

11 (WHEREUPON, AT THE HOUR OF 4:31 P.M.,
12 THE PROCEEDINGS WERE ADJOURNED.)

13

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(THE NEXT PAGE NUMBER IS 8101)

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