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M A S T E R I N D E X

OCTOBER 20, 2016

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M A S T E R I N D E X

OCTOBER 20, 2016

EXHIBITS

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792	8180		
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<u>DEFENDANTS'</u>	<u>MARKED</u>	<u>RECEIVED</u>	<u>WITHDRAWN REJECTED</u>
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1257	8129		
1258	8212		
60	8217		

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

1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL
3 LOS ANGELES, CALIFORNIA THURSDAY, OCTOBER 20, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606
7 TIME: 8:40 A.M.

8

9

---OOO---

10

11 THE COURT: WE'RE GOING TO GET BACK TO -- I
12 GUESS WE'LL GET BACK TO EXHIBITS, BUT I HAVE HAD A
13 CHANCE TO READ THE BRIEF THAT PLAINTIFF SUBMITTED IN
14 CONNECTION WITH THE DISABILITY DISCRIMINATION CLAIMS AS
15 WELL AS AN OPPORTUNITY TO READ THE BRIEF THAT WAS --
16 SUPPLEMENTAL BRIEF FILED ON BEHALF OF THE DEFENDANTS ON
17 THE SAME SUBJECT AND SPECIFICALLY ON PERCEIVED
18 DISABILITY OF MUNCHAUSEN SYNDROME BY PROXY.

19

20 AND I THINK THAT THE MOTION FOR NONSUIT ON
21 THOSE CAUSES OF ACTION SHOULD BE DENIED. I THINK
22 WHAT'S BEEN REALLY PRESENTED AS A FACTUAL ISSUE BY THE
23 BRIEFING IN RECALLING -- IN EACH INSTANCE, EACH SIDE
24 HAS RECALLED CERTAIN EVIDENCE THAT'S BEEN PRESENTED,
25 BUT THE TESTIMONY OF LYNETTE MORGAN-NICHOLS IN SEVERAL
26 INSTANCES SUFFICES, I BELIEVE, TO ESTABLISH AN ADOPTIVE
27 ADMISSION. AND THAT TESTIMONY WAS AMONG OTHER THINGS
28 THAT THE IMPLIED DIAGNOSIS OF POSSIBLE MUNCHAUSEN BY
PROXY LED DCFS CSWS TO RECOMMEND AGAINST FAMILY

1 REUNIFICATION. IN ANOTHER INSTANCE -- THAT WAS
2 DEPOSITION TESTIMONY FROM HER DEPOSITION THAT WAS READ
3 TO THE JURY, PAGE 138, LINES 18 TO 25. AND THERE'S A
4 NUMBER OF OTHER EXCERPTS THAT ARE FROM THE DEPOSITION
5 THAT HAVE BEEN CITED AS WELL.

6 BUT IN HER DEPOSITION AT PAGE 141, LINES 14
7 THROUGH 25 AND CARRYING OVER TO LINES 1 THROUGH 3 ON
8 PAGE 142, SHE SAID IT WAS CORRECT, READING FROM HER
9 DOCUMENT, THAT THE INVESTIGATION REVEALED THAT THE
10 COMPLAINING PARTY DUVAL HAD SUFFERED A DELAY OF FAMILY
11 REUNIFICATION SERVICES AND WAS DIFFERENTLY TREATED IN
12 THE RECEIPT OF SERVICES AND WAS DENIED SOME DCFS
13 SERVICES BECAUSE SHE IS A MEMBER OF A PROTECTED CLASS.
14 AND THAT TRANSMITTED THIS INFORMATION TO THE STATE OF
15 CALIFORNIA, AND AT THE TIME THEY DID SO, THEY BELIEVED
16 IT TO BE TRUE. THEY ALSO CITE LANGUAGE FROM HER
17 DEPOSITION AT PAGES 140 TO 141, LINES 13 TO 25 ON 140
18 THROUGH LINE 2 ON 141, WHICH IS SPECIFIC ABOUT
19 MUNCHAUSEN BY PROXY DISORDER, WHICH WAS TRANSMITTED TO
20 THE STATE AND WAS BELIEVED BY THEM TO BE TRUE.

21 THE BRIEF FILED BY THE DEFENDANTS TRACES A
22 HISTORY OF WHEN MUNCHAUSEN BY PROXY FIRST BECAME A
23 SUBJECT WITHIN THE CASE. AND THAT HISTORY INDICATES
24 THAT AT THE TIME THE INITIAL RECOMMENDATION WAS TO DENY
25 FAMILY REUNIFICATION SERVICES IN THE DETENTION REPORT,
26 THAT MUNCHAUSEN BY PROXY HAD NEVER BEEN MENTIONED BY
27 ANYONE. IT WAS ONLY UNTIL SUBSEQUENT TIMES IT WAS
28 MENTIONED -- THE FIRST TIME IT WAS MENTIONED WAS BY

1 MS. DUVAL'S ATTORNEY AT THE DETENTION HEARING WHO
2 STATED THAT IT WASN'T A MUNCHAUSEN'S CASE. AND THEN
3 SHE DOES TRACE A HISTORY THEREAFTER OF WHAT OCCURRED.

4 THE POINT OF MY MENTIONING ALL OF THIS IS THAT
5 I BELIEVE THAT THE TESTIMONY THAT I RECITED FROM
6 LYNETTE MORGAN-NICHOLS DOES SATISFY -- I THINK IT'S
7 SECTION 1221 OF THE EVIDENCE CODE OF ADOPTIVE
8 ADMISSIONS. AND THE ADOPTIVE ADMISSION IS WHEN THEY
9 TRANSMITTED THIS TO THE STATE OF CALIFORNIA THEY
10 BELIEVED IT TO BE TRUE. AND THEY DID TRANSMIT IT. IN
11 OTHER WORDS, IT'S SOMETHING THAT WAS PUBLISHED; IT
12 WASN'T JUST SOMETHING THEY WERE THINKING.

13 AND I THINK THAT THAT SATISFIES 1221 AS AN
14 ADOPTIVE ADMISSION. AND I THINK THAT WHAT -- AND THEN
15 THEY LATER CHANGED THEIR -- I GUESS I'LL CALL IT
16 CHANGED THEIR MIND. THEY DID ADDITIONAL INVESTIGATION
17 IN THIS AND REACHED WHAT FOR THEM WAS A FINAL
18 CONCLUSION. BUT NEVERTHELESS, IN MAKING THE STATEMENTS
19 THEY DID, BELIEVING THEM TO BE TRUE, AND TRANSMITTING
20 TO THE STATE OF CALIFORNIA, I THINK THAT REQUIREMENTS
21 OF SECTION 1221 OF THE EVIDENCE CODE HAVE BEEN
22 SATISFIED AND IT'S AN ADOPTIVE ADMISSION. AND WHAT WE
23 REALLY HAVE IS A QUESTION OF FACT AS TO WHETHER OR NOT
24 THAT THEY DID DO -- EITHER DID SOMETHING OR REFRAINED
25 FROM DOING SOMETHING BECAUSE OF A PERCEPTION OF THE
26 MUNCHAUSEN'S.

27 SO THE MOTION FOR NONSUIT AS TO THE TWO CAUSES
28 OF ACTION FOR DISCRIMINATION UNDER THE ADA AND THE

1 REHAB ACT WILL BE DENIED.

2 MS. SWISS: THANK YOU, YOUR HONOR.

3 THERE'S ACTUALLY ONE OTHER ISSUE WITH REGARD
4 TO THOSE LAST TWO CAUSES OF ACTION AND THAT IS THE
5 ALLEGATIONS AS TO MS. SCHEELE. OUR UNDERSTANDING IS
6 FOR THOSE -- WELL, THE ALLEGATIONS AS TO THE TREMORS
7 AND WHETHER SERVICES WERE DELAYED OR NOT PROVIDED ON
8 THAT -- IN THAT REGARD BECAUSE THE MUNCHAUSEN BY PROXY
9 ISSUE FOCUSED MORE ON THE ACTS OR OMISSIONS OF
10 MS. NELSON, BUT THERE'S ANOTHER ISSUE IN THAT REGARD,
11 AND THAT'S THE WHOLE THING WITH MS. SCHEELE AND THE
12 MOTION FOR NONSUIT ON THOSE GROUNDS. I DON'T KNOW IF
13 THE COURT WOULD LIKE TO ADDRESS THAT AT THIS TIME OR
14 TOMORROW.

15 THE COURT: LET ME -- I'M NOT SURE THAT I WANT
16 TO ADDRESS IT AT THE MOMENT BUT LET ME RETRIEVE FROM
17 CHAMBERS THE MOTION SO I CAN TAKE A LOOK AT THAT
18 BECAUSE AS I'M SITTING HERE I DON'T REMEMBER HAVING
19 READ THAT. I READ EVERYTHING, I JUST DON'T REMEMBER
20 NOW, AT THE MOMENT, ALL THAT I DID READ.

21 MR. PRAGER: YOUR HONOR, MS. SCHEELE IS NOT A
22 DEFENDANT UNDER EITHER CAUSE OF ACTION.

23 THE COURT: I KNOW SHE'S NOT; IT'S ONLY THE
24 COUNTY IS A DEFENDANT ON THOSE TWO CAUSES OF ACTION.
25 BUT THE QUESTION, NEVERTHELESS, IS WHETHER THERE IS ANY
26 EVIDENCE OF DISCRIMINATION, FAILURE TO PROVIDE
27 SERVICES, ET CETERA, BECAUSE OF THE TREMOR ISSUE;
28 CORRECT?

1 MS. SWISS: YES.

2 THE COURT: AND WAS THAT A DISCREET AND
3 SEPARATE GROUND FOR THE MOTION FOR NONSUIT?

4 MS. SWISS: IT WAS WITHIN THE SAME ARGUMENT.

5 THE COURT: WITHIN IT?

6 MS. SWISS: YES.

7 THE COURT: ALL RIGHT. WELL, I DIDN'T FOCUS
8 ON THAT ASPECT OF -- I REMEMBER OUR INQUIRY THAT WE HAD
9 HAD WAS ABOUT THE MUNCHAUSEN'S AND EVERYBODY RESPONDED
10 TO THAT. AND SO IF I OVERLOOKED THAT, IT WILL HAVE TO
11 BE ADDRESSED. SO LET ME GET THE --

12 MR. GUTERRES: I BELIEVE, AS WE HAD DISCUSSED
13 IN OUR VERDICT FORMAT, I THINK THE JURY IS GOING TO BE
14 ASKED WHETHER OR NOT -- WHAT ACTS BY EACH, BY SCHEELE
15 AND NELSON. IF I RECALL CORRECTLY, THE LAST ITERATION
16 OF THE VERDICT FORMAT WE WERE DISCUSSING AS IT RELATES
17 TO THIS DISABILITY DISCRIMINATION ASKS FOR A FINDING AS
18 TO --

19 THE COURT: AS TO THE DIFFERENT ONES?

20 MR. GUTERRES: YEAH.

21 MR. PRAGER: THAT'S TRUE OF THE UNRUH CLAIM,
22 YOUR HONOR, WHICH HAS A DIFFERENT STANDARD THAN
23 TITLE II AND THE REHAB ACT. AND IT IS TRUE THERE IS
24 SOME LANGUAGE ABOUT TREMORS IN THE CURRENT VERDICT
25 FORM, PENDING THIS DISCUSSION. BUT I THINK WHEN THIS
26 DISCUSSION IS COMPLETE, THE VERDICT FORM MAY HAVE TO BE
27 CORRECTED TO SHOW THAT THE ALLEGATION IS ON THE
28 PERCEPTION ISSUE THE COURT IS ADDRESSING HERE BECAUSE

1 THE PLAINTIFF HAS NEVER MAINTAINED SHE WAS DENIED
2 SERVICES ON THESE TWO CAUSES OF ACTION BECAUSE SHE WAS
3 PHYSICALLY DISABLED, AND BECAUSE OF THAT DISABILITY,
4 THE DEFENSE FAILED TO PROVIDE ACCOMMODATIONS TO HER,
5 THUS RESULTING IN DISCRIMINATION.

6 YOUR HONOR IS CORRECT. THE CLAIM IS BASED ON
7 THE PERCEPTION ISSUE ON THE MUNCHAUSEN IN PARTICULAR.
8 AND WITH MS. SCHEELE, WHAT THE CIVIL RIGHTS UNIT FOUND
9 WAS THAT MS. SCHEELE WAS TAKING THE PLAINTIFF'S MEDICAL
10 CONDITIONS AND USING IT TO SUPPORT HER PERCEPTION THAT
11 MS. DUVAL HAS MUNCHAUSEN'S AND THAT'S WHAT SHE WAS
12 BEING CITED -- OR THAT'S WHAT THE DISCUSSION WAS ABOUT.

13 THE COURT: ALL RIGHT. THEN I DO UNDERSTAND
14 WHAT YOU JUST SAID. COULD YOU PUT THAT IN GREATER
15 CONTEXT FOR ME THOUGH AS TO WHICH OF THESE CLAIMS
16 YOU'RE DIRECTING THOSE COMMENTS?

17 MR. PRAGER: TITLE II.

18 THE COURT: SO LET ME JUST SAY THAT I AM -- AS
19 I'M SITTING HERE, AND I COULD BE INCORRECT, BUT I
20 BELIEVE THAT SOMEWHERE THERE WAS SOME MENTION OF
21 SOMEBODY, PERHAPS MS. SCHEELE, WHO RAISED AT LEAST THE
22 POSSIBILITIES THAT THE TREMORS WERE SOMEHOW RELATED
23 TO -- I REMEMBER STATEMENTS TO THE EFFECT THAT SOMEONE
24 STATED SOMETHING TO THE EFFECT THAT THE TREMORS MAY BE
25 RELATED TO STRESS THAT SHE EXPERIENCED IN DEALING WITH
26 HER CHILD. AND I DON'T REMEMBER SPECIFICALLY AS TO
27 OTHER MENTIONS. SO MY QUESTION SIMPLY IS -- I'VE
28 ATTEMPTED TO ADDRESS THE MOTION FOR NONSUIT OVER

1 MUNCHAUSEN BY PROXY, AND NOW I'M TOLD THAT THE MOTION
2 WAS BROADER THAN THAT, COVERING THE ISSUE OF TREMORS.
3 AND --

4 MR. PRAGER: YOUR HONOR, WE BELIEVE THE
5 PERCEPTION IS THE ISSUE AND THE MUNCHAUSEN'S IS ONE
6 BASIS FOR THE PERCEPTION. MS. SCHEELE'S CONDUCT WAS TO
7 TAKE MS. DUVAL'S MEDICAL CONDITION OF TREMORS, AND
8 MS. SCHEELE DID NOT TELL THE COURT -- AND THERE'S A
9 QUESTION OF FACT ON THIS AS WELL. YOU HEARD, I THINK,
10 FROM MS. SCHEELE ALREADY THAT SHE DENIED EVER BEING
11 TOLD THAT MS. DUVAL HAD A MEDICAL CONDITION AS A BASIS
12 FOR HER TREMORS.

13 THE CONCLUSIONS IN THE COUNTY'S OWN REPORT
14 WERE CONTRARY TO THAT, AND THEY ACCEPT THAT MS. DUVAL
15 PROVED TO THEM, TO THEIR SATISFACTION, THAT SHE HAD A
16 MEDICAL BASIS FOR HER TREMORS, AND THAT MS. SCHEELE WAS
17 TAKING THE TREMOR CONDITION AND USING IT FOR AN
18 IMPROPER PURPOSE AND SUGGESTING THAT MS. DUVAL TREMORED
19 AND APPEARED NERVOUS OR ANXIOUS TO THE COURT, WITHOUT
20 FURTHER DETAILING TO THE COURT MS. DUVAL HAS FAMILIAL
21 TREMORS AND SHE TREMORS WHEN SHE'S MORE STRESSED. AND
22 THAT'S THE REASON SHE WAS TREMORING, AND NOT BECAUSE
23 SHE WAS ANXIOUS OR ANYTHING OF THAT NATURE.

24 AND MS. DUVAL'S CONTENTION IS THE INFORMATION
25 WAS THEN USED TO CAST HER IN A NEGATIVE LIGHT THAT SHE
26 WAS STRESSED, UNTRUSTWORTHY, HER HANDS SHOOK, THINGS OF
27 THAT NATURE.

28 THIS INFORMATION IS AT NO. 6 IN THE PACKET

1 THAT WAS SUBMITTED TO YOU. WHEN WE SUBMITTED OUR
2 PACKET TO YOU, WE ONLY HAD A VERY SHORT WINDOW OF TIME,
3 AND WE INDICATED THAT THERE'S STILL ADDITIONAL EVIDENCE
4 THAT'S BEEN ADMITTED WE CAN OFFER. BUT WHAT YOU'RE
5 SEEKING IS BEFORE YOU AT NO. 6, AND I BELIEVE NO. 7 AS
6 WELL. SO I DO BELIEVE THAT THERE ARE FACTUAL BASES TO
7 DENY THE MOTION ENTIRELY AND ALLOW THE CLAIM TO
8 PROCEED.

9 THE COURT: YES, MS. SWISS?

10 MS. SWISS: THE STATE OF THE EVIDENCE WITH
11 REGARD TO THE ISSUE OF TREMORS AT THE CLOSE OF
12 PLAINTIFF'S CASE WAS THAT THEIR OWN EXPERT, DR. ACHAR,
13 TESTIFIED THAT MS. DUVAL'S TREMORS DID NOT IMPAIR ANY
14 OF HER MAJOR LIFE ACTIVITIES. SO IT DEFEATS ONE OF THE
15 CRITICAL ELEMENTS OF BOTH OF THESE CAUSES OF ACTION
16 UNDER ADA OR THE REHABILITATION ACT BECAUSE SHE WAS NOT
17 DISABLED UNDER THE LAW AND HER OWN EXPERT TESTIFIED IN
18 THAT REGARD. SO FOR THAT REASON, THEY CANNOT MEET
19 THOSE ELEMENTS. AND REGARDLESS OF WHAT THE CIVIL
20 RIGHTS INVESTIGATION CONCLUDED AT ONE POINT OR ANOTHER,
21 IT'S IRRELEVANT AT THIS POINT.

22 SO THE ISSUE AS TO WHETHER THE TREMORS CAUSED
23 HER TO SUFFER ANY DELAY OF REUNIFICATION SERVICES OR
24 DELAY IN SERVICES, THEY JUST CAN'T MEET THE ELEMENTS OF
25 THOSE CAUSE OF ACTIONS IN THEIR OWN CASE.

26 THE COURT: ALL RIGHT. I'M STILL GOING TO DO
27 WHAT I SAID. I'M GOING TO RETRIEVE THE MOTION TO SEE
28 WHAT EXACTLY THE GROUNDS WERE FOR MOTION FOR NONSUIT TO

1 REFRESH MY MEMORY. I HADN'T FOCUSED ON THIS, AND IT
2 WASN'T PART OF OUR DISCUSSION AT THE TIME WHEN I ASKED
3 YOU TO CITE ME TO THE TESTIMONY.

4 SO A BRIEF RECESS WHILE I RETRIEVE THAT.

5 (RECESS)

6 THE COURT: ALL RIGHT. WE'RE BACK ON THE
7 RECORD.

8 THE DEFENDANTS' MOTION FOR NONSUIT IN
9 PARAGRAPH E ON THE THIRD PAGE STATES THAT:

10 "PLAINTIFF'S CLAIMS UNDER THE ADA
11 AND REHABILITATION ACT AGAINST
12 DEFENDANT COUNTY OF LOS ANGELES FAIL
13 BECAUSE PLAINTIFF HAS FAILED TO PROVE
14 THAT SHE SUFFERED FROM ANY DISABILITY
15 THAT SUBSTANTIALLY IMPAIRED HER MAJOR
16 LIFE ACTIVITIES OR THAT SHE WAS DENIED
17 ANY SERVICES ON THE BASIS OF HER
18 DISABILITIES."

19 THE DISCUSSION OF THAT GROUND OF THE MOTION,
20 WHICH IS A BROAD STATEMENT WHICH, BECAUSE OF IT'S BROAD
21 NATURE, THE FAILURE TO PROVE ANY DISABILITY THAT
22 SUBSTANTIALLY IMPAIRED MAJOR LIFE ACTIVITIES OR THAT
23 SHE WAS DENIED SERVICES ON THE BASIS OF HER ALLEGED
24 DISABILITIES IS BROAD ENOUGH, CERTAINLY, TO INCLUDE THE
25 ISSUE OF TREMORS.

26 IN THE BODY OF THE DISCUSSION IN THE MOTION IN
27 REFERENCE TO THAT GROUND, WHICH BEGINS ON PAGE 9, IN
28 THE BOTTOM PARAGRAPH BEGINNING ON LINE 22 OF THE

1 MOTION, DEFENDANT DOES ADDRESS THE ISSUE OF TREMORS,
2 WHICH SAYS THAT:

3 "DR. ACHAR TESTIFIED THAT NO
4 CONCLUSION HAD BEEN REACHED THAT
5 PLAINTIFF'S TREMORS INTERFERED WITH A
6 MAJOR LIFE ACTIVITY, WHICH IS AN
7 ESSENTIAL ELEMENT FOR PLAINTIFF'S CLAIM
8 FOR VIOLATION OF THE ADA AND
9 REHABILITATION ACTS."

10 SO IT'S CERTAINLY TRUE THAT THE ISSUE WAS
11 RAISED BY THE MOTION.

12 THEN I LOOKED AT THE OPPOSITION, WHICH I DO
13 RECALL HAD BEEN PREPARED BY THE DEFENSE BEFORE YOU
14 ACTUALLY RECEIVED THE MOTION, AND THEREFORE ADDRESSED
15 MATTERS THAT WENT BEYOND THE MOTION. BUT IT DID
16 ADDRESS SPECIFICALLY, ON PAGE 33, THE ISSUE OF THE
17 FAMILIAL TREMORS. IT IS -- AND IT'S A -- IT'S PRETTY
18 SHORT. MY POINT IS THAT IT DOES APPEAR THAT BOTH THE
19 MOTION AND TO SOME EXTENT, EVEN THOUGH IT'S VERY BRIEF
20 IN EACH INSTANCE, THE ISSUE OF THE TREMORS HAS ARISEN.
21 AND SO THAT WILL HAVE TO BE ADDRESSED AS WELL.

22 MR. PRAGER: DO YOU WANT MORE INFORMATION ON
23 THAT ISSUE, YOUR HONOR?

24 THE COURT: YES, YOU MAY AS WELL TELL ME.

25 MR. PRAGER: JUST TO REMIND THE COURT ABOUT
26 THE ISSUE, WE HAVE SUBMITTED JURY INSTRUCTION, TO MAKE
27 IT RIGHT AT YOUR FINGERTIPS, PROPOSED NO. 753, AND IT
28 GIVES YOU THREE DIFFERENT GROUNDS TO SAY IF THE

1 PLAINTIFF IS PERCEIVED AS BEING DISABLED AND DOES NOT
2 HAVE ANY CONDITION WHICH SUBSTANTIALLY LIMITS HER
3 PHYSICAL CONDITION, SHE STILL QUALIFIES AS A DISABLED
4 PERSON IF THE GOVERNMENTAL ENTITY TREATS HER THAT WAY.
5 AND IF YOU LOOK AT THE DEFENDANT'S BRIEF AT PAGE 9,
6 LINES 14 THROUGH 15, IT CONCEDES THAT, AT ELEMENT
7 NO. C, BEING REGARDED AS HAVING SUCH AN IMPAIRMENT AS
8 DESCRIBED IN PARAGRAPH NO. 3. AND THE EVIDENCE BEFORE
9 THE COURT IS THAT THAT WAS THE RESULT OF THE CIVIL
10 RIGHTS UNIT DURING THE INVESTIGATION THEY PERFORMED AND
11 THAT INFORMATION DIRECTLY WAS TRANSMITTED TO THE STATE.

12 AND IT WAS DEEMED TRUE AND ADOPTED FOR ALL THE
13 REASONS THE COURT'S ALREADY SAID. FOR EXAMPLE, AT
14 NO. 17, IT ALSO SAYS -- AND THIS IS ON THE -- WHAT THE
15 COURT HAS ALREADY:

16 "SOI SCHEELE DISREGARDED CP
17 DUVAL'S CLAIMS HER TREMORS WERE RELATED
18 TO MEDICAL CONDITIONS; CORRECT?"
19 AND THEY ADOPT IT AND THEY GO THROUGH ALL THAT
20 BUSINESS.

21 SO THE POINT IS THIS IS NOT A CONVENTIONAL
22 CASE WHERE THE PLAINTIFF ALLEGES, FOR EXAMPLE, SHE'S A
23 WHEELCHAIR USER AND SHE CANNOT ACCESS SOME GOVERNMENT
24 BUILDING.

25 THIS IS A CASE WHERE THE PLAINTIFF ALLEGES SHE
26 NEVER HAD MUNCHAUSEN'S. THAT IS THE BODY OF THE
27 EVIDENCE FROM THE PLAINTIFF'S PERSPECTIVE AND WHAT WAS
28 INTRODUCED. AND NEVERTHELESS, THE SOCIAL WORKERS IN

1 THE CASE IN THE COUNTY TREATED HER AS IF SHE HAD THIS
2 MUNCHAUSEN CONDITION AND DENIED HER SERVICES/GAVE HER
3 LESSER SERVICES BECAUSE OF THE PERCEPTION OF HER
4 DISABILITY. AND THAT'S WHY WE THINK THAT THIS
5 REQUIREMENT DOES NOT APPLY TO HER IN THIS CASE.

6 THE COURT: ALL RIGHT. I'M SORRY THAT I
7 DIDN'T FOLLOW, QUITE, THE ARGUMENT. AGAIN, I'VE
8 UNDERSTOOD WHAT YOU SAID.

9 AND SO TELL ME SPECIFICALLY WITH REGARD TO THE
10 TREMORS AS TO WHAT YOU'RE CONTENDING. ARE YOU
11 CONTENDING THAT SHE WAS ALSO DENIED SERVICES BECAUSE OF
12 A PERCEPTION --

13 MR. PRAGER: YES.

14 THE COURT: -- THAT SHE HAD A DISABILITY
15 BECAUSE OF THE TREMORS?

16 MR. PRAGER: YES. AND SPECIFICALLY, THEY TOOK
17 HER TREMORING, WHICH SHE REPORTED AS A MEDICAL
18 CONDITION, AND MS. SCHEELE SAID IT WAS DUE TO ANXIETY
19 AND STRESS. AND THE RESULTS OF THE INVESTIGATION WERE
20 THAT MS. SCHEELE MISCONSTRUED THE INFORMATION WHEN SHE
21 GAVE THE INFORMATION IN COURT REPORTS. AND BECAUSE THE
22 MISCONSTRUING OF THE INFORMATION WAS BASED UPON A
23 DISABILITY, THAT WAS IMPERMISSIBLE, AND THAT IS WHY
24 THEY RECOMMENDED THAT SCHEELE GO FOR BETTER COURT
25 DOCUMENTATION TRAINING.

26 THE COURT: ALL RIGHT.

27 MR. PRAGER: YOUR HONOR, IN LOOKING AT THIS,
28 IT LOOKS LIKE NOS. 18, 19, AND 20 ALSO APPLIES TO THIS

1 VERY SPECIFIC QUESTION BEFORE THE COURT.

2 THE COURT: WELL, IT APPLIES IN PART. AND I'M
3 NOT SURE IT ANSWERS THE QUESTION WHICH -- THE ISSUE
4 WHICH I THINK YOU'VE RAISED, THAT THERE WAS A REPORTING
5 AT THE TIME OF AN INVESTIGATION SUBSTANTIATED,
6 BASICALLY -- I'M NOT QUOTING THE ENTIRE THING --
7 PLAINTIFF EXPERIENCED DISCRIMINATION ON THE BASIS OF
8 HER DISABILITIES AND THEN, IN PARENTHESES, TREMORS AND
9 MUNCHAUSEN'S. BUT YOUR CONTENTION ISN'T THAT SHE
10 ACTUALLY WAS DENIED SOME BENEFIT BECAUSE SHE HAD
11 TREMORS, BUT YOU'RE SAYING THAT SHE WAS DENIED BECAUSE
12 OF A PERCEPTION THAT SHE HAD TREMORS WHICH WERE -- YOU
13 TELL ME THIS ARGUMENT.

14 MR. PRAGER: SURE. THE FINDINGS AS TO THE --
15 THE CONCLUSIONS OF THE CIVIL RIGHTS UNIT WERE THAT THE
16 TREMORS WERE A BASIS FOR UNLAWFUL CONDUCT RESULTING IN
17 A DENIAL OF FAMILY REUNIFICATION SERVICES, FR SERVICES,
18 AND THAT SHE RECEIVED LESSER SERVICES AND WAS DENIED
19 SERVICES --

20 THE COURT: ALL RIGHT. SHOW ME IN HERE THE
21 CONNECTION BETWEEN THAT AND --

22 MR. PRAGER: SO AT NO. 20 --

23 THE COURT: NO. 20, OKAY.

24 MR. PRAGER: AND AS YOU KNOW --

25 THE COURT: WELL, HOLD ON. I'M READING THE
26 OTHER ONES BEFORE THAT.

27 OKAY. SO IN THIS INSTANCE, THEN, YOUR CLAIM,
28 AS OPPOSED TO THE ARGUMENT OF THE PERCEPTION OF

1 MUNCHAUSEN'S IN THIS -- THEN THIS, YOU'RE SAYING IT WAS
2 NOT AN ISSUE OF PERCEPTION, IN THIS CASE THEY WERE
3 AWARE OF THE TREMORS AND THEY DENIED SOME SERVICE.

4 MR. PRAGER: I'M SORRY IF I WAS UNCLEAR ABOUT
5 IT. THEY TOOK HER TREMORS AND THEY MISUSED THEM TO
6 SUPPORT THEIR WRONGFUL BELIEFS ABOUT HER PHYSICAL
7 CONDITION AND WHO SHE WAS AND DENIED HER SERVICES
8 BECAUSE OF THAT. AND I BELIEVE -- I HAVE TO DELVE
9 FURTHER INTO THIS DISCREET QUESTION FOR -- TO GET TO
10 THAT POINT, BUT THE FINDINGS WERE POSSIBLE MUNCHAUSEN
11 BY PROXY AND TREMORS. SO I CAN GO THROUGH AND CULL
12 THAT OUT FOR YOU BETTER, BUT TREMORS WERE A DISCREET
13 AND SEPARATE ISSUE THAT WAS IDENTIFIED AND FOUND
14 POSITIVE VIOLATIONS ON DURING THE INITIAL AND
15 SUBSEQUENT REPORTS. AND OF COURSE --

16 THE COURT: IS IT -- OKAY. WELL, MAYBE I'LL
17 HAVE YOU PULL IT OUT FOR ME FURTHER. APPARENTLY THIS
18 IS CLEAR TO ALL OF YOU, BUT UNFORTUNATELY IT JUST ISN'T
19 TO ME. I DO SEE THE -- I SEE THAT THE PARAGRAPHS
20 INCLUDED IN WHAT YOU'VE ALREADY FURNISHED HAVE THE
21 MENTION OF TREMORS. AND I'M TRYING TO GET A BETTER
22 UNDERSTANDING OF YOUR CLAIM.

23 YOUR CLAIM IS THAT THEY MISUSED -- THAT
24 SCHEELE MISUSED THE HISTORY OF AN OBSERVATION OF
25 TREMORS.

26 MR. PRAGER: RIGHT. RIGHT.

27 THE COURT: TO DO WHAT?

28 MR. PRAGER: RECOMMEND AGAINST PROVIDING

1 GOVERNMENTAL SERVICES.

2 THE COURT: SO YOU'RE SAYING -- OKAY. SO THIS
3 ISN'T A PERCEPTION ISSUE, THIS IS A DISABILITY,
4 TREMORS, THAT THEY USED TO DENY REUNIFICATION.

5 MR. PRAGER: THEY DID, BUT THE WAY THE
6 FINDINGS ARE WRITTEN, THEY USED THAT INFORMATION TO
7 SUPPORT THEIR WRONGFUL BELIEFS, THEIR PERCEPTIONS OF
8 MS. DUVAL. AND THAT'S WHY THE SUBSTANTIAL LIMITATION
9 DOESN'T APPLY BECAUSE THE FINDINGS WERE THEY USED THE
10 TREMORS, AND THERE'S THESE THREE CATEGORIES THAT A
11 DEFENDANT CAN ENGAGE IN THAT OBLIATE THE NEED FOR
12 SUBSTANTIAL LIMITATION.

13 AND, FOR EXAMPLE, THE THIRD IS:

14 "HAS NONE OF THE IMPAIRMENTS BUT
15 IS TREATED BY A PUBLIC ENTITY AS HAVING
16 SUCH AN IMPAIRMENT."

17 THE SECOND ONE IS:

18 "HAS A PHYSICAL OR MENTAL
19 IMPAIRMENT THAT SUBSTANTIALLY LIMITS
20 ACTIVITIES ONLY AS A RESULT OF THE
21 ATTITUDES TOWARD OTHERS OF SUCH
22 IMPAIRMENT."

23 AND THE FIRST ONE IS:

24 "HAS A PHYSICAL OR MENTAL
25 IMPAIRMENT THAT DOES NOT SUBSTANTIALLY
26 LIMIT MAJOR LIFE ACTIVITIES, BUT THAT
27 IS TREATED BY A PUBLIC ENTITY AS
28 CONSTITUTING SUCH A LIMITATION."

1 AND THAT'S THE BASIS OF WHAT WE'RE ARGUING, IS
2 THAT --

3 THE COURT: ALL RIGHT. NOW YOU HAVE ANSWERED
4 MY QUESTION FOR ME, AT LEAST -- YOU PROBABLY DID
5 PREVIOUSLY, BUT AT LEAST NOW I UNDERSTAND WHAT THE
6 CLAIM IS.

7 MR. PRAGER: IT'S COMPLEX, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 SO MS. SWISS, DO YOU WANT -- I'M NOT GOING TO
10 RULE ON THIS ISSUE AT THE MOMENT. I'M GOING TO HAVE TO
11 GET SOMETHING -- UNFORTUNATELY, THESE ISSUES KEEP
12 COMING UP, AND UNFORTUNATELY WE'RE GETTING IN A
13 POSITION WHERE WE'RE GETTING NEAR THE END OF THE
14 EVIDENCE AND WE STILL HAVEN'T RESOLVED THE ISSUES.

15 SO I APOLOGIZE, BUT THE ISSUES SEEM TO KEEP
16 ARISING SERIALLY. AND AS THEY DO, WE REALIZE THAT
17 WE'RE NOT ABLE TO DO A VERDICT FORM, FOR EXAMPLE. IN
18 FACT, AT THE MOMENT, I'M NOT EVEN SURE WHAT CLAIMS
19 SURVIVE THE MOTION EXCEPT FOR THIS ONE AT THIS POINT.

20 SO GO AHEAD AND TELL ME WHAT YOU WANTED TO
21 SAY.

22 MS. SWISS: WE WILL ALSO OUTLINE IN A TIME
23 LINE FASHION THE SAME ISSUE WITH REGARD TO THE TREMORS
24 AND THE ALLEGATIONS. BUT THE DEFENDANTS' POSITION IS
25 THAT AT THIS POINT -- WELL, AT THE POINT OF WHEN THE
26 PLAINTIFF RESTED, THE STATE OF THE EVIDENCE WAS THAT,
27 IN FACT, MS. DUVAL WAS NOT SUFFERING FROM TREMORS BASED
28 ON THE TESTIMONY OF DR. ACHAR AND BASED ON HER OWN

1 TESTIMONY THAT SHE DID HAVE A TREMOR AND THAT IT WAS
2 EXACERBATED BY STRESS. AND THE STATE OF THE EVIDENCE
3 IS THAT MS. SCHEELE DOCUMENTED HER OBSERVATIONS IN THE
4 REPORTS BUT IN FACT SHE DIDN'T MAKE ANY RECOMMENDATIONS
5 TO THE COURT HERSELF. THE RECOMMENDATIONS, SAME AS
6 WITH THE ISSUE OF THE MUNCHAUSEN BY PROXY, THE
7 RECOMMENDATION FOR NO FAMILY REUNIFICATION SERVICES
8 BEGAN AS EARLY AS THE FILING OF THE PETITION ON
9 NOVEMBER 6TH, AND THAT DID NOT CHANGE.

10 MS. SCHEELE'S ROLE WAS TO PROVIDE SERVICES TO
11 MS. DUVAL, WHICH SHE DID. SHE DID NOT INVESTIGATE, SHE
12 DID NOT MAKE THOSE RECOMMENDATIONS TO THE COURT BECAUSE
13 THAT WAS SIMPLY NOT HER ROLE IN THE CASE. AND SIX AND
14 A HALF WEEKS OR WHATEVER INTO THIS CASE, WE STILL DON'T
15 KNOW FROM THE PLAINTIFF WHAT SERVICES SHE WAS DENIED ON
16 THE BASIS OF THOSE TREMORS. IF IT'S FAMILY
17 REUNIFICATION SERVICES, THAT CAN'T BE THE ISSUE.

18 AND THE EVIDENCE THAT PLAINTIFF CITED IN THEIR
19 OPPOSITION TO THE MOTION FOR NONSUIT CITES TO THE
20 SPECIFIC CIVIL RIGHTS INVESTIGATION REPORTS THAT ARE
21 NOT RECEIVED IN EVIDENCE. AND SO AT THAT POINT THE
22 ONLY EVIDENCE THEY WOULD HAVE TO RELY ON ARE THE
23 STATEMENTS IN THE DEPOSITIONS OF THE CIVIL RIGHTS UNIT
24 WORKERS WHICH TALK ABOUT THE FIRST REPORT OF JULY OF
25 2010. THEY DO NOT DISCUSS THE CHANGE IN FINDINGS,
26 WHICH I KNOW IS LATER -- WHICH HAS LATER BEEN MADE AND
27 BEEN TESTIFIED TO IN PLAINTIFF'S CASE.

28 THE COURT: ALL RIGHT. I UNDERSTAND YOUR

1 ARGUMENT.

2 MS. SWISS: THANK YOU.

3 THE COURT: EVERYONE IS GOING TO HAVE TO PUT
4 A -- THE MOTION IS FOR NONSUIT ON ALL CLAIMS OF
5 DISABILITY, WHICH INCLUDES THE TREMORS, AND THE MOTION
6 STATES WHAT IT STATES. I DON'T WANT TO RECITE IT NOW.
7 BUT BASICALLY THEY SAID THERE'S NO EVIDENCE OF A
8 DISABILITY THAT IMPAIRS A LIFE FUNCTION.

9 AND YOUR ARGUMENT IS DIFFERENT FROM THAT AS TO
10 WHY IT WOULD -- THE ISSUE OF TREMORS WOULD STILL BE
11 ACTIONABLE UNDER ADA AND REHAB. SO PUT THAT IN
12 SOMETHING FOR ME TO -- AT LEAST NOW YOU UNDERSTAND WHAT
13 THEIR ARGUMENT IS, I BELIEVE.

14 MR. PRAGER: YES, YOUR HONOR. OF COURSE, YOUR
15 HONOR.

16 THE COURT: AND PERHAPS DID IN THE FIRST
17 PLACE.

18 I UNDERSTAND THEIR ARGUMENT. I HAD A LESSER
19 UNDERSTANDING OF YOUR ARGUMENT. I HAVE A BETTER
20 APPRECIATION OF IT NOW, PARTICULARLY AFTER YOU READ ME
21 THAT ONE -- THE THIRD BASIS THAT YOU'RE RELYING ON. SO
22 IF YOU'LL PUT THIS -- AND IT CAN BE VERY BRIEF.

23 MR. PRAGER: I UNDERSTAND.

24 THE COURT: I DON'T WANT TO KEEP GETTING THESE
25 RATHER EXTENSIVE AND OFTEN LENGTHY DOCUMENTS WE HAVE.
26 ONE OF THE PROBLEMS WE HAVE IN THE CASE IS THAT WE DO
27 HAVE A CONTINUING FLOW OF BRIEFS ON THINGS WHICH COME
28 IN AND THEN UNFORTUNATELY THEY HAVE TO BE READ. ALL OF

1 US HAVE A DAY JOB, AND YOU ALL HAVE A DAY JOB THAT'S
2 INTERFERING WITH GETTING THE BRIEFS DONE IN THE FIRST
3 PLACE. SO FROM BEGINNING TO END, THERE'S A CERTAIN
4 DELAY FACTOR. AND I SAY THIS WITHOUT ANY KIND OF --
5 I'M NOT INTENDING ANY KIND OF CRITICISM AT ALL; IT'S A
6 RECOGNITION OF THE PROCESS. BY THE TIME WE GET AN
7 ISSUE TO BE ADDRESSED, BY THE TIME IT CAN BE ADDRESSED
8 BOTH BY COUNSEL AND THE COURT, WE'RE SEVERAL DAYS DOWN
9 THE ROAD. AND NOW WE'RE RUNNING OUT OF DAYS. SO DO
10 THE BEST YOU CAN.

11 MR. PRAGER: OF COURSE, YOUR HONOR. THANK
12 YOU.

13 THE COURT: DO THAT.

14 AND MS. SWISS, I THINK THAT YOU COULD --

15 MS. SWISS: VERY BRIEF OUTLINE WITH THE
16 EVIDENCE, JUST THE EVIDENCE.

17 THE COURT: YEAH, THAT'S ALL -- THAT'S WHAT I
18 NEED. YOU DID THAT VERY WELL, BOTH OF YOU DID, IN
19 RESPONSE TO THIS ISSUE OF THE MUNCHAUSEN'S. THESE WERE
20 VERY MUCH TO THE POINT, AND MADE IT CONSIDERABLY --

21 MS. SWISS: EASIER TO RULE AGAINST ME.

22 THE COURT: WELL, THAT'S TRUE. BUT IT MAKES
23 IT CONSIDERABLY EASIER TO BE ABLE TO ADDRESS THE ISSUE.

24 MS. SWISS: YES. UNDERSTOOD.

25 THE COURT: SO APPRECIATE IT IF YOU'D DO THAT
26 FOR US AGAIN.

27 MS. SWISS: VERY BRIEF.

28 THE COURT: WELL, IT'S ALMOST TIME FOR THE

1 JURY.

2 (A DISCUSSION WAS HELD OFF THE RECORD.)

3 (JURY PRESENT)

4 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
5 THE RECORD. EVERYBODY IS PRESENT. GOOD MORNING TO ALL
6 OF OUR JURORS.

7 SO WE'RE GOING TO BE CALLING A WITNESS, A
8 DIFFERENT WITNESS AT THIS TIME, IN JUST A MOMENT. I
9 UNDERSTAND THERE IS, I KNOW, A LOT OF PUBLICITY AND I
10 UNDERSTAND THERE'S EVEN SIGNS AROUND THE COURTHOUSE
11 ABOUT TODAY IS THE DAY OF THE GREAT SHAKEOUT. EVERYONE
12 AWARE OF THAT? WELL, IT'S STATEWIDE. THERE'S SOME --
13 IN CONNECTION WITH EARTHQUAKE PREPAREDNESS, THERE'S A
14 STATEWIDE EXERCISE TODAY THAT, I GUESS IN SCHOOLS,
15 THEY'LL HAVE CHILDREN LEARNING WHERE TO GO WITHIN THE
16 SCHOOL TO PROTECT THEMSELVES IN THE EVENT OF A VERY
17 STRONG EARTHQUAKE.

18 AT 10:20 THIS MORNING, THERE WILL BE AN ALARM
19 THAT GOES OFF. AND WHEN THAT ALARM GOES OFF, WE ARE
20 NOT GOING TO HAVE THE SAME KIND OF EXERCISE THAT THEY
21 DO IN SCHOOLS BUT THERE WILL BE AN EVACUATION, A
22 COMPLETE EVACUATION OF THE BUILDING.

23 SO WHEN THAT OCCURS, I WILL BE INSTRUCTING YOU
24 TO LEAVE YOUR NOTEBOOKS ON YOUR SEAT, TO FOLLOW THE
25 DIRECTIONS OF OUR COURT ATTENDANT, DEANNA. HER
26 OBLIGATIONS WILL INCLUDE TO ENSURE THAT EVERYBODY HAS
27 LEFT THIS COURTROOM. WE'LL BE OUT IN THE HALLWAY
28 WAITING UNTIL SHE CAN VERIFY THAT THE COURTROOM HAS

1 BEEN CLEARED. SHE HAS TO DO THAT. AND THEN, AS SOON
2 AS THAT OCCURS, SHE WILL COME BACK OUT TO THE HALLWAY
3 TO GET YOU AND WILL TAKE YOU TO AN AREA OUTSIDE THE
4 BUILDING. YOU'LL FIND WHEN THIS HAPPENS THERE ARE
5 GOING TO BE A LOT OF PEOPLE OUT THERE, BUT YOU'LL TAKE
6 ALL YOUR DIRECTIONS AND INSTRUCTIONS FROM OUR COURT
7 ATTENDANT.

8 AND I MIGHT MENTION TO THE ATTORNEYS TOO,
9 WHICH I DIDN'T BEFORE YOU CAME IN, EVERYONE, MYSELF
10 INCLUDED, WILL BE EVACUATED. ALL OF THE ATTORNEYS
11 WILL. IT'S UP TO YOU AS TO WHAT YOU DO TO SECURE YOUR
12 PAPERS OR EQUIPMENT. IT WILL ALL BE SAFE HERE BECAUSE
13 THERE WILL BE NO ONE IN THE BUILDING WITHIN A FEW
14 MINUTES OTHER THAN SHERIFF'S DEPUTIES. BUT IT WILL BE
15 COUNSEL'S OBLIGATION TO TAKE CARE OF THEIR OWN RECORDS,
16 DOCUMENTS, EQUIPMENT, WHATEVER YOU HAVE TO TAKE CARE OF
17 HERE.

18 SO WHEN THAT HAPPENS, IT WILL BE 10:20. WE'VE
19 DONE THIS BEFORE. I USUALLY -- I'VE DONE MY BEST IN
20 THE PAST TO NOT HAVE A JURY HERE, BUT IN FACT, TO MAKE
21 IT -- IT REALLY IS NOT SO EFFECTIVE FOR YOU. THE REAL
22 PURPOSE OF DOING IT IS TO MAKE SURE THE PERSONS WHO ARE
23 RESPONSIBLE FOR THIS BUILDING GAIN SOME REAL EXPERIENCE
24 IN TENDING TO WHAT THEY HAVE TO DO. I DON'T KNOW HOW
25 MANY PEOPLE ARE IN THIS BUILDING RIGHT NOW AS WE'RE
26 SPEAKING, BUT IT'S -- I REMEMBER KNOWING AT ONE TIME
27 WHAT OUR AVERAGE DAILY INHABITANTS WERE IN THE
28 BUILDING, BUT IF I RECALL CORRECTLY IT'S SOMEWHERE IN

1 THE RANGE OF 1,000 TO 2,000 PEOPLE. I THINK IT'S
2 CLOSER TO 2,000. AND THERE WILL BE AN EVACUATION, I
3 BELIEVE, FROM ACROSS THE MALL, FROM THE HALL OF
4 ADMINISTRATION, BECAUSE I BELIEVE THAT ALL OF THE
5 COUNTY BUILDINGS ARE PARTICIPATING.

6 SO IF YOU JUST THINK ABOUT IT, YOU CAN SEE WHY
7 THE PEOPLE RESPONSIBLE FOR IT NEED SOME EXPERIENCE IN
8 JUST GOING THROUGH WHAT IT IS THEY'RE SUPPOSED TO DO.

9 IT IS ADDITIONALLY COMPLICATED, AND IN FACT, I
10 SHOULD ASK YOU NOW, BECAUSE DEANNA WILL HAVE TO KNOW,
11 ARE THERE ANY OF YOU WHO WOULD NEED ASSISTANCE GOING UP
12 OR DOWN THE STAIRS? BECAUSE WHEN YOU EVACUATE THE
13 BUILDING, YOU WILL NOT BE ABLE TO USE ELEVATORS. AND
14 DEANNA'S PATH WILL BE AT THE END OF THE HALL.

15 WHAT YOU'LL HAVE TO DO, YOU'LL GO OUT TO THE
16 MAIN HALLWAY AND HEAD THAT WAY, WHICH IS WEST, AND
17 THERE ARE STAIRWAYS THERE. YOU'RE GOING DOWN JUST ONE
18 FLOOR TO THE FOURTH FLOOR. THERE WILL BE ONE FLIGHT OF
19 STAIRS, BUT ANYONE WHO WOULD HAVE ANY DIFFICULTY IN
20 BEING ABLE TO GO UP OR DOWN THE STAIRS, THEN YOU WOULD
21 HAVE TO BE HANDLED DIFFERENTLY, AND DEANNA WOULD BE
22 REQUIRED TO REPORT TO THE SHERIFF'S DEPARTMENT THAT WE
23 HAVE SOMEBODY HERE WHO NEEDS ASSISTANCE.

24 SO WILL EVERYONE BE ABLE TO NAVIGATE ONE
25 FLIGHT OF STAIRS? OKAY. THAT WILL MAKE IT SIMPLER FOR
26 YOU.

27 SO WHEN THAT HAPPENS AT 10:20 -- YOU'LL KNOW
28 WHEN IT'S HAPPENING BECAUSE WHEN THAT ALARM GOES OFF,

1 YOU KNOW IT'S AN ALARM.

2 SO, MR. GUTERRES?

3 MR. GUTERRES: YES, THANK YOU, YOUR HONOR.

4 THE DEFENSE WILL CALL FRANCESCA LERUE.

5 THE COURT: ALL RIGHT.

6

7 FRANCESCA LERUE,

8 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY

9 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

10

11 THE CLERK: FOR THE RECORD, PLEASE STATE YOUR

12 NAME AND SPELL YOUR FIRST AND LAST NAME.

13 THE WITNESS: FRANCESCA LERUE.

14 F-R-A-N-C-E-S-C-A, LAST NAME, L-E-, CAPITAL R, -U-E.

15 THE COURT: THANK YOU.

16 GO AHEAD, MR. GUTERRES.

17 MR. GUTERRES: THANK YOU, YOUR HONOR.

18

19

20 DIRECT EXAMINATION

21 BY MR. GUTERRES:

22 Q GOOD MORNING.

23 A GOOD MORNING.

24 Q COULD YOU PLEASE TELL US YOUR CURRENT

25 POSITION?

26 A I AM A DIVISION CHIEF WITH THE DEPARTMENT OF

27 CHILDREN AND FAMILY SERVICES OVERSEEING THE RISK

28 MANAGEMENT DIVISION.

1 Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
2 COUNTY OF LOS ANGELES DEPARTMENT OF CHILDREN AND FAMILY
3 SERVICES?

4 A 27 YEARS.

5 Q AND IN THE NOVEMBER 2009 TIME FRAME, CAN YOU
6 TELL US WHAT YOUR POSITION WOULD HAVE BEEN AT THAT
7 TIME?

8 A I WAS AN ASSISTANT REGIONAL ADMINISTRATOR
9 OVERSEEING EMERGENCY RESPONSE AND SOME TREATMENT
10 PROGRAMS.

11 Q IN THE NOVEMBER 2009 TIME FRAME, DID YOU
12 HAVE -- DO YOU HAVE AN UNDERSTANDING -- WITHDRAWN.

13 DO YOU HAVE AN UNDERSTANDING AS TO THE CUSTOM
14 AND PRACTICES OF THE DEPARTMENT OF CHILDREN AND FAMILY
15 SERVICES AS IT RELATED TO OBTAINING WARRANTS IN THE
16 NOVEMBER 2009 TIME FRAME?

17 MR. KING: OBJECTION. LACKS FOUNDATION.

18 THE COURT: OVERRULED.

19 THE WITNESS: I DO.

20 BY MR. GUTERRES:

21 Q AND CAN YOU TELL US WHAT THOSE CUSTOMS AND
22 PRACTICES WOULD HAVE BEEN DURING THAT TIME FRAME, THE
23 NOVEMBER 2009 TIME FRAME?

24 MR. KING: OBJECTION, YOUR HONOR. VAGUE.
25 CALLS FOR A NARRATIVE.

26 THE COURT: OVERRULED.

27 THE WITNESS: GENERALLY SPEAKING, ONCE A
28 CHILDREN'S SOCIAL WORKER CONSULTED WITH THEIR

1 SUPERVISING CHILDREN'S SOCIAL WORKER AND A DECISION WAS
2 MADE THAT THERE WAS POSSIBLE NEED TO DETAIN, THERE
3 WOULD BE A CONSULTATION WITH THE IN-HOUSE COUNTY
4 COUNSEL AND DECISIONS WERE MADE WHETHER OR NOT THERE
5 WAS SUFFICIENT TO DETAIN. AND THE PROCESS WOULD MOVE
6 FORWARD FROM THERE.

7 BY MR. GUTERRES:

8 Q AND THAT WAS PROCEDURE IN EFFECT IN THE
9 NOVEMBER 2009 TIME FRAME?

10 A YES.

11 Q AND DO YOU HAVE AN UNDERSTANDING HOW LONG THE
12 PROCESS MIGHT TAKE IN THE NOVEMBER 2009 TIME FRAME FOR
13 THAT TO OCCUR?

14 A WHAT THAT? SORRY.

15 Q I THINK THE COURT MIGHT SUSTAIN YOUR OBJECTION
16 AND I'LL WITHDRAW MY QUESTION AND REPHRASE IT.

17 IN NOVEMBER OF 2009, CAN YOU GIVE US A RANGE
18 OF TIME AS FAR AS THE PROCESS FOR A SOCIAL WORKER TO
19 OBTAIN A WARRANT IF ONE WAS NEEDED WHERE THERE MIGHT
20 NOT BE EXIGENT CIRCUMSTANCES OR CONSENT?

21 MR. KING: OBJECTION. LACKS FOUNDATION. AND
22 VAGUE.

23 THE COURT: OVERRULED.

24 THE WITNESS: GENERALLY SPEAKING, FROM THE
25 POINT THERE WAS CONSULTATION WITH THE COUNTY COUNSEL TO
26 THE POINT THAT A WARRANT WAS ACTUALLY OBTAINED FROM THE
27 COURT IT COULD TAKE ANYWHERE BETWEEN 15 TO 24 HOURS.
28 IT WAS A LONG PROCESS.

1 BY MR. GUTERRES:

2 Q AND IN YOUR EXPERIENCE WITH THE DEPARTMENT,
3 HAD YOU, IN FACT, EVER BEEN INVOLVED IN HAVING TO
4 OBTAIN A WARRANT?

5 A YES.

6 Q AND CAN YOU JUST BRIEFLY TELL US THAT PROCESS
7 THAT YOU EXPERIENCED?

8 A AS AN ASSISTANT REGIONAL ADMINISTRATOR, I
9 WOULD BE CONSULTED BY THE CHILDREN'S SOCIAL WORKER AND
10 THE SUPERVISING CHILDREN'S SOCIAL WORKER, AND I WOULD
11 BE PART OF THE CONSULTATION WITH COUNTY COUNSEL. THERE
12 WOULD BE OCCASIONS WHEN I WOULD REVIEW THE WARRANT
13 REQUEST AND THE DETENTION REPORT, ET CETERA. SO
14 FIRSHAND INFORMATION AS TO THE PROCESS.

15 Q AND BACK IN NOVEMBER OF 2009, DO YOU HAVE AN
16 UNDERSTANDING WHETHER OR NOT THE DEPARTMENT WAS -- ONLY
17 OBTAINED WARRANTS FROM JUDGES WITHIN THE JUVENILE
18 COURT?

19 MR. KING: OBJECTION. VAGUE.

20 THE COURT: OVERRULED.

21 THE WITNESS: MY UNDERSTANDING IS THAT IT WAS
22 NOT EXCLUSIVE TO DEPENDENCY COURT.

23 BY MR. GUTERRES:

24 Q AND WHEN YOU SAY "IT WAS NOT EXCLUSIVE TO
25 DEPENDENCY COURT," CAN YOU EXPLAIN WHAT YOU MEAN BY
26 THAT?

27 A YES, THAT THEY WOULD ACTUALLY SEEK JUDGES THAT
28 MAY EVEN -- FROM OTHER COURTS TO HEAR THESE PARTICULAR

1 CASES.

2 Q LET ME CHANGE SUBJECTS FOR A MOMENT.

3 IN YOUR CURRENT POSITION, ARE YOU FAMILIAR
4 WITH THE ACRONYM CACI?

5 A YES.

6 Q C-A-C-I?

7 A YES.

8 Q AND CAN YOU BRIEFLY TELL US WHAT CACI IS?

9 A CHILD ABUSE CENTRAL INDEX. IT IS A COMPUTER
10 SYSTEM, IF YOU WILL, THAT'S HOUSED BY THE DEPARTMENT OF
11 JUSTICE, AND THE DEPARTMENT OF CHILDREN AND FAMILY
12 SERVICES PROVIDES INFORMATION TO THE DEPARTMENT OF
13 JUSTICE WHEN THERE IS A SUBSTANTIATED ALLEGATION OF
14 CERTAIN ALLEGATIONS.

15 Q AND MS. LERUE, IN YOUR CAPACITY, DO YOU HAVE
16 ACCESS TO THE CACI DATABASE?

17 A I DON'T FIRSTHAND. I OVERSEE -- I'M THE
18 DIVISION CHIEF OVERSEEING FOUR SECTIONS WITHIN RISK
19 MANAGEMENT. ONE OF THOSE SECTIONS IS THE CACI APPEALS
20 MANAGEMENT. AND ALTHOUGH TECHNICALLY I COULD HAVE
21 ACCESS, I DO HAVE PEOPLE THAT DO THOSE THINGS FOR ME,
22 ACCESS INFORMATION.

23 Q AND IN THIS CASE, THERE'S BEEN TESTIMONY THAT
24 MS. DUVAL, RAFAELINA DUVAL, THE PLAINTIFF IN THIS
25 MATTER, WAS PLACED ON THE CACI INDEX.

26 WERE YOU ABLE TO DO ANY KIND OF A SEARCH TO
27 DETERMINE IF THAT IS IN FACT AN ACCURATE STATEMENT?

28 MR. KING: OBJECTION. LACKS FOUNDATION.

1 THE COURT: OVERRULED.

2 THE WITNESS: I WAS ASKED WHETHER OR NOT
3 MS. DUVAL WAS ON THE CACI DATABASE, AND I INSTRUCTED
4 THE CHILDREN'S SERVICES ADMINISTRATOR OVERSEEING THE
5 PROGRAM DAY-TO-DAY ACTIVITIES, MICHAEL WIATROWSKI, TO
6 CHECK AND CONFIRM WITH THE DEPARTMENT OF JUSTICE AS TO
7 WHETHER OR NOT MS. DUVAL WAS ON THE SYSTEM. AND WE
8 VERIFIED THAT SHE IS NOT ON THE CACI SYSTEM.

9 MR. KING: OBJECTION. LACKS FOUNDATION.
10 CALLS FOR SPECULATION. MOVE TO STRIKE. ALSO HEARSAY.

11 THE COURT: OVERRULED.

12 BY MR. GUTERRES:

13 Q AND DID YOU OBTAIN ANYTHING FROM THE
14 DEPARTMENT OF JUSTICE THAT CONFIRMS WHAT YOU'VE JUST
15 INDICATED?

16 A YES. WE RECEIVED WRITTEN CONFIRMATION FROM
17 THE DEPARTMENT OF JUSTICE YESTERDAY THAT MS. DUVAL IS
18 NOT LISTED ON THE CACI DATABASE.

19 Q LET ME SHOW YOU A DOCUMENT.

20 MR. GUTERRES: IF I MAY HAVE THE NEXT EXHIBIT
21 IN ORDER FOR THE DEFENSE.

22 THE CLERK: 1257.

23 BY MR. GUTERRES:

24 Q AND FOR THE RECORD, EXHIBIT 1257 IS A FAX
25 COVER SHEET, IT CONSISTS OF TWO PAGES. THE FIRST PAGE
26 IS A FAX COVER SHEET DATED OCTOBER 19, 2016, FROM THE
27 DEPARTMENT OF JUSTICE, AND THE SECOND PAGE IS A CHILD
28 ABUSE CENTRAL INDEX INQUIRY RESULTS SUMMARY.

1 (DEFENDANT'S EXHIBIT NO. 1257, WAS
2 MARKED FOR IDENTIFICATION.)

3 BY MR. GUTERRES:

4 Q DO YOU HAVE -- I PLACED EXHIBIT 1257 IN FRONT
5 OF YOU, MS. LERUE.

6 COULD YOU IDENTIFY WHAT THIS DOCUMENT IS?

7 MR. KING: I'M GOING TO OBJECT, LACKS
8 FOUNDATION, AND ASK FOR A SIDEBAR WITH REGARDS TO THE
9 DOCUMENT.

10 THE COURT: THE QUESTION CALLS FOR A "YES" OR
11 "NO" ANSWER. I'D LIKE TO GET THE ANSWER TO THE
12 QUESTION.

13 MR. KING: CERTAINLY, YOUR HONOR.

14 THE WITNESS: CAN YOU REPEAT THE QUESTION?

15 MR. GUTERRES: YES.

16 BY MR. GUTERRES:

17 Q EXHIBIT 1257.

18 THE COURT: THE QUESTION IS COULD YOU IDENTIFY
19 WHAT THIS DOCUMENT IS?

20 THAT CALLS FOR A "YES" OR "NO" ANSWER.

21 THE WITNESS: YES.

22 THE COURT: ALL RIGHT. NOW I'LL SEE COUNSEL.

23 MR. KING: THANK YOU, YOUR HONOR.

24 (THE FOLLOWING PROCEEDINGS WERE HELD AT
25 SIDEBAR.)

26 THE COURT: ALL RIGHT. WE'RE AT SIDEBAR.

27 MR. KING: YOUR HONOR, WE'VE JUST, OBVIOUSLY,
28 BEEN HANDED THE DOCUMENT, SAME WITH THE COURT. MY

1 CLIENT'S NAME IS SPELLED INCORRECTLY.

2 THE COURT: I'M SORRY?

3 MR. KING: MY CLIENT'S NAME IS SPELLED
4 INCORRECTLY. SO WE HAVE SERIOUS DOUBT WITH REGARDS TO
5 WHETHER IN THE DEPARTMENT OF JUSTICE DATABASE IF, IN
6 FACT, THE SEARCH WAS DONE PROPERLY. MY CLIENT'S NAME
7 IS SPELLED R-A-F-A-E-L-I-N-A-E, IT ALSO DOES NOT
8 INCLUDE HER MIDDLE NAME. I THINK THIS IS VERY
9 PREJUDICIAL. IN ESSENCE, THIS IS NOT THE SAME NAME AS
10 MY CLIENT, AND THEREFORE WE WOULD ASK THAT THE WITNESS
11 NOT BE ALLOWED TO GET INTO THIS. WE JUST RECEIVED THIS
12 THE DOCUMENT THIS MORNING, AND IT'S REALLY TOO
13 PREJUDICIAL TO UNRING THE BELL IF, IN FACT, IT'S THE
14 WRONG SEARCH. THERE COULD BE NO MATCH FOR THE WAY IT'S
15 SPELLED. MOST SYSTEMS, YOU HAVE TO SPELL THE NAME
16 ACCURATELY. SO THERE'S NO MATCH FOR THE MISSPELLED
17 RAFAELINA DUVAL. HOW DO WE KNOW THERE'S NO MATCH FOR
18 THE PROPER RAFAELINA DUVAL? SHE WOULD RUN ANOTHER
19 CHECK AND COME BACK --

20 MR. GUTERRES: THAT'S SUBJECT OF CAUSE. WE
21 DID THE SEARCH. SHE CAN TESTIFY. HE CAN
22 CROSS-EXAMINE. THE ONLY INFORMATION THAT'S IN EVIDENCE
23 REGARDING MS. DUVAL BEING ON CACI IS HER TESTIMONY THAT
24 SHE FOUND OUT THAT SHE'S ON CACI BASED ON
25 MR. MCMILLAN'S REPRESENTATION.

26 THE COURT: ALL RIGHT.

27 MR. GUTERRES: SO SHE NEVER GOT A LETTER. HAD
28 SHE BEEN PLACED ON CACI, SHE WOULD HAVE RECEIVED A

1 LETTER. MS. DUVAL ALREADY TESTIFIED SHE WASN'T -- SHE
2 DIDN'T GET A LETTER. YOU'VE INDICATED THAT SHE'S --
3 WE'RE JUST TRYING TO RESPOND TO SOMETHING THEY BROUGHT
4 IN.

5 THE COURT: I UNDERSTAND.

6 AND YOU THINK THIS IS -- THAT THIS IS WHAT HER
7 NAME IS?

8 MR. KING: IT -- YOUR HONOR, IF YOU DO A
9 SEARCH AND YOU DON'T PUT IN THE RIGHT NAME, THERE'S
10 GOING TO BE NO MATCH.

11 THE COURT: I AGREE YOU NEED THE RIGHT NAME.
12 WHAT IS THE RIGHT NAME?

13 MR. KING: R-A-F-A-E-L-I-N-A-E. SO IF YOU GO
14 VERY SPECIFICALLY LOOKING FOR ONE NAME.

15 THE COURT: HANG ON A SECOND.

16 MR. GUTERRES: THAT'S NOT HOW IT'S IN THE
17 CAPTION.

18 MS. SWISS: EVERYTHING IN THE CAPTION IS --

19 THE COURT: JUST A MOMENT.

20 MR. KING: YOUR HONOR, I HAVE A CORRECTION TO
21 MY STATEMENT.

22 THE COURT: ALL RIGHT. WELL --

23 MR. KING: YOUR HONOR, I HAVE A CORRECTION TO
24 MY STATEMENT.

25 THE COURT: SO YOUR --

26 MR. KING: I HAVE A CORRECTION TO MY
27 STATEMENT, YOUR HONOR. IT'S THE MIDDLE INITIAL THAT'S
28 E.

1 THE COURT: YOU HAVE TO SPEAK UP.

2 MR. KING: IT'S THE MIDDLE INITIAL THAT'S E.

3 THE COURT: OH, OKAY.

4 MR. GUTERRES: SO THE SPELLING IS CORRECT,
5 YOUR HONOR.

6 THE COURT: YEAH THAT'S WHAT I CHECKED.
7 THAT'S HOW SHE SPELLED HER NAME. SO NOW YOU'RE SAYING
8 THAT IT'S AN INVALID SEARCH BECAUSE IT DOESN'T INCLUDE
9 HER MIDDLE INITIAL?

10 MR. KING: YOUR HONOR, IT'S NOT A THOROUGH
11 SEARCH BECAUSE IT'S NOT HER MIDDLE INITIAL.

12 YOUR HONOR, ANOTHER THING IS THE WAY WE BECAME
13 INFORMED ABOUT CACI WAS SERVICE PRESENTED BY THE
14 DEFENSE THROUGH SETTLEMENT.

15 THE COURT: YOU RAISED THE ISSUE.

16 MR. KING: I DID?

17 THE COURT: NOT YOU PERSONALLY, BUT I'M SAYING
18 PLAINTIFF'S SIDE RAISED THE ISSUE THAT SHE'S ON THIS
19 INDEX. EITHER SHE IS OR SHE ISN'T. AND IF YOU HAVE
20 RELIABLE INFORMATION THAT SHE'S ON IT, FINE. BUT WHAT
21 YOU'RE SAYING IS THAT YOU THINK IT'S AN INVALID SEARCH
22 BECAUSE IT DIDN'T INCLUDE THE MIDDLE INITIAL. AND I
23 THINK THAT THAT WOULD GO TO THE WEIGHT IT GIVES THE
24 FIRST AND LAST NAME, AS WELL AS THE DATE OF BIRTH. AND
25 YOU CAN CROSS-EXAMINE OVER THAT. BUT I WOULD HATE TO
26 THINK THAT WE'RE GOING THROUGH AN EXERCISE THAT'S JUST
27 WASTING TIME. I'M NOT SAYING THAT IT IS, I DON'T KNOW.

28 MR. KING: OKAY.

1 THE COURT: I DON'T KNOW WHETHER THE MIDDLE
2 INITIAL WOULD MAKE ANY DIFFERENCE OR NOT. BUT IF YOU
3 KNOW SHE'S ON THERE, THEN YOU MUST HAVE SOME
4 INFORMATION OF WHAT NAME IS BEING USED, WAS USED, WAS
5 REPORTED THAT HAD HER ON THE LIST. SO I'M ASSUMING
6 THIS IS A GENUINE AND WELL-INTENTIONED OBJECTION. SO
7 IF YOU HAVE INFORMATION THAT SHE'S ON THAT LIST BY A
8 DIFFERENT NAME, SO BE IT. BUT THIS IS HER NAME AND
9 THIS IS THE NAME SHE GAVE US, AND THIS IS THE NAME IN
10 THE PLEADING. SO I'M GOING TO OVERRULE YOUR OBJECTION
11 ON THAT.

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

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

16 THE COURT: GO AHEAD, MR. GUTERRES.

17 MR. GUTERRES: THANK YOU, YOUR HONOR.

18 BY MR. GUTERRES:

19 Q COULD YOU TELL US WHAT EXHIBIT 1257 IS?

20 A THIS IS THE FORM THAT THE DEPARTMENT OF
21 JUSTICE RETURNED TO US AFTER OUR REQUEST FOR
22 INFORMATION AS TO WHETHER OR NOT MS. DUVAL WAS ON THE
23 CACI DATABASE.

24 Q AND WHAT'S THE INFORMATION THAT'S CONTAINED IN
25 THE DOCUMENT?

26 A IT ASKS FOR THE AGENCY REQUESTER INFORMATION,
27 SO WHO -- YOU HAVE TO HAVE OFFICIAL CAPACITY TO REQUEST
28 THIS INFORMATION, AND IN THIS CASE IT WAS MICHAEL

1 WIATROWSKI UNDER MY DIRECTION. IT THEN PROVIDES
2 INFORMATION AS TO THE SUBJECT'S INFORMATION, SO THE
3 SUBJECT'S NAME, IN THIS CASE, DUVAL, RAFAELINA,
4 MS. DUVAL'S DATE OF BIRTH AND THERE IS A COLUMN THAT
5 STATES WHETHER OR NOT THERE WAS A MATCH. AND IN THIS
6 CASE, THERE WAS NO MATCH.

7 Q IN ADDITION TO THIS SEARCH, DID YOU ASK FOR
8 ANY ADDITIONAL SEARCH TO BE CONDUCTED TO DETERMINE IF
9 MS. DUVAL WAS EVER ON A CACI DATABASE?

10 A YES. I ASKED FOR VERIFICATION OF THE CWS/CMS
11 RECORD AND I PERSONALLY SEARCHED CWS/CMS AND THERE WAS
12 NO INDICATION THAT SHE WAS REPORTED TO THE DEPARTMENT
13 OF JUSTICE.

14 Q THANK YOU.

15 THE COURT: ALL RIGHT.

16 MR. KING.

17

18 CROSS-EXAMINATION

19 BY MR. KING:

20 Q GOOD MORNING, MS. LERUE.

21 A GOOD MORNING.

22 Q HOW DO YOU PRONOUNCE YOUR NAME?

23 A IT'S FINE THE WAY YOU SAID IT.

24 Q OKAY. I'VE BEEN READING IT BUT NEVER HEARD
25 IT.

26 A THAT'S FINE.

27 Q THIS DATABASE THROUGH THE DEPARTMENT OF
28 JUSTICE, THE FIRST TIME YOU CHECKED WAS OCTOBER 19,

1 2016; IS THAT CORRECT?

2 A WE REQUESTED IT ON THE 18TH, WE RECEIVED IT ON
3 THE 19TH.

4 Q AND YOU REQUESTED IT BECAUSE YOU WERE ASKED TO
5 DO THAT BY DEFENSE COUNSEL; IS THAT CORRECT?

6 A YES.

7 Q PRIOR TO OCTOBER 19TH, WERE YOU EVER ASKED BY
8 DEFENSE COUNSEL OR ANYONE ELSE TO SEE IF MS. DUVAL IN
9 FACT WAS ON THE CACI LIST?

10 A I DON'T RECALL.

11 Q IS THERE ANYTHING THAT WOULD HELP REFRESH YOUR
12 RECOLLECTION AS TO WHETHER BEFORE OCTOBER 19TH ANYBODY
13 ASKED YOU TO CHECK WHETHER MS. DUVAL WAS IN THE CACI
14 LIST?

15 A I HONESTLY DO NOT RECALL. WE HAVE MANY
16 DIFFERENT PEOPLE THAT APPEAL CACI AND HER NAME DIDN'T
17 RING A BELL UNTIL IT WAS REQUESTED.

18 Q OKAY. YOUR DEPARTMENT HAS THE ABILITY TO
19 PLACE SOMEONE ON CACI; CORRECT?

20 A YES.

21 Q IS IT ALSO TRUE THAT WITHIN 24 HOURS YOU CAN
22 REMOVE SOMEONE'S NAME OFF CACI?

23 A AFTER 24 HOURS OF WHAT?

24 Q WELL, HOW LONG DOES IT TAKE TO TAKE SOMEONE'S
25 NAME OFF OF CACI?

26 MR. GUTERRES: OBJECTION. VAGUE.

27 THE COURT: OVERRULED.

28 DO YOU UNDERSTAND?

1 THE WITNESS: I BELIEVE I DO.

2 THE COURT: SO GO AHEAD, ANSWER THE QUESTION.

3 THE WITNESS: WE CAN -- WE SUBMIT A REQUEST,
4 AN ACTUAL FORM, TO REMOVE SOMEONE'S NAME FROM THE CACI
5 DATABASE. WE HAVE NO CONTROL AS TO THE DEPARTMENT OF
6 JUSTICE PROCESS. I DON'T KNOW HOW LONG IT TAKES THEM
7 TO OBTAIN THE FORM AND PROCESS SUCH A REQUEST.

8 BY MR. KING:

9 Q BUT THAT'S SOMETHING YOU'RE FAMILIAR WITH;
10 RIGHT? A REQUEST CAN BE MADE FROM YOUR DEPARTMENT AND
11 SOMEONE'S NAME CAN BE REMOVED; TRUE?

12 A YES.

13 Q NOW, YOU TALKED ABOUT WARRANTS, BUT YOU
14 WEREN'T CLEAR AS TO WHAT TYPE OF WARRANTS YOU WERE
15 SPEAKING OF. IS IT TRUE THERE ARE SEVERAL DIFFERENT
16 TYPES OF WARRANTS THAT CAN BE OBTAINED THROUGH YOUR
17 DEPARTMENT?

18 A YES.

19 Q YOU CAN HAVE A PROTECTIVE CUSTODY WARRANT;
20 CORRECT?

21 A YES.

22 Q YOU CAN HAVE A REMOVAL WARRANT; CORRECT?

23 A YES.

24 Q WHY DON'T YOU TELL US WHAT THE DIFFERENCE IS?

25 A WELL, WE -- GENERALLY SPEAKING, SOCIAL WORKERS
26 USE THE WORD "WARRANT" SIMULTANEOUSLY IN THE
27 CONSULTATION WITH THE PEOPLE THAT ARE INVOLVED IN THE
28 DISCUSSION WHETHER OR NOT THEY'RE ASKING FOR A SEARCH

1 WARRANT OR A WARRANT TO INTERVIEW A CHILD OR TO REMOVE
2 A CHILD. SO THERE'S SOME STORY LINE BEHIND THAT,
3 THAT -- YOU KNOW, I'M NOT SURE I CAN ANSWER YOUR
4 QUESTION. THE DIFFERENCE IS, YOU KNOW, IF YOU'RE GOING
5 TO REQUEST A WARRANT, IS IT FOR AN INTERVIEW? IS IT TO
6 ENTER THE HOME? IS IT TO REMOVE A CHILD FROM THE HOME?

7 Q OKAY. WELL, LET'S JUST TALK ABOUT THIS
8 MORNING, WHEN DEFENSE COUNSEL WAS ASKING YOU --
9 MR. GUTERRES WAS ASKING YOU: HOW LONG DOES IT
10 GENERALLY TAKE TO GET A WARRANT?

11 WHICH WARRANT DID YOU THINK HE WAS TALKING
12 ABOUT?

13 A ALL OF THEM.

14 Q OKAY. SO PRIOR TO 2009, YOUR TESTIMONY IS
15 THAT THERE WAS A POLICY THAT YOUR DEPARTMENT HAD
16 REGARDING REMOVAL WARRANTS.

17 IS THAT YOUR TESTIMONY?

18 A YES.

19 MR. KING: YOUR HONOR, I'D LIKE TO READ FROM
20 THIS WITNESS'S DEPOSITION IN THE CASE OF *HAZEL SOLIS*
21 *VS. COUNTY OF LOS ANGELES*. I HAVE A COPY FOR THE
22 DEFENSE.

23 PAGE 73, STARTING AT LINE 19 GOING TO PAGE 74,
24 LINE 9.

25 MR. GUTERRES: CAN WE HAVE THE LINE NUMBERS
26 ONCE AGAIN, PLEASE?

27 MR. KING: PAGE 73, LINE 19, TO PAGE 74,
28 LINE 9.

1 MR. GUTERRES: YOUR HONOR, I THINK IT'S
2 IMPROPER IMPEACHMENT.

3 THE COURT: WELL, GO AHEAD.

4 MR. KING: THANK YOU, YOUR HONOR.

5 BY MR. KING:

6 Q (READING:)

7 "QUESTION: DO YOU KNOW WHETHER
8 THERE WAS ANY SORT OF PROCEDURE THAT
9 WAS PROVIDED -- WELL, LET ME BACK UP
10 HERE.

11 "BASED UPON WHAT I SEE IN THE
12 PROCEDURE GUIDE, 0070-570.10, WHICH IS
13 THE FIRST TIME I FOUND ANYTHING THAT
14 SAYS 'CUSTODY WARRANT,' ARE YOU AWARE
15 OF ANY PROCEDURE GUIDE THAT ADDRESSES A
16 PROCESS FOR A SOCIAL WORKER TO OBTAIN A
17 CUSTODY WARRANT OR A REMOVAL ORDER?
18 NOT A SEARCH WARRANT, BUT A CUSTODY
19 ORDER.

20 "ANSWER: RIGHT.

21 "QUESTION: OR REMOVAL ORDER.

22 "ANSWER: RIGHT, I UNDERSTAND.

23 "QUESTION: PRIOR TO DECEMBER 21,
24 2009.

25 "ANSWER: I CANNOT REFERENCE A
26 POLICY OR A PROCEDURE. I CAN ONLY
27 DISCUSS THE PRACTICE AND THE KNOWLEDGE
28 THAT THE SOCIAL WORKERS HAVE WITH

1 REGARD TO THAT."

2 MA'AM, YOU TESTIFIED AS THE PERSON MOST
3 KNOWLEDGEABLE IN THE COUNTY OF LOS ANGELES IN THE CASE
4 OF *HAZEL SOLIS VS. THE COUNTY OF LA*; CORRECT?

5 A VIA DEPOSITION, YES.

6 Q OKAY. AND IN FACT, ONE OF THE VERY SAME
7 DEFENDANTS IN THIS CASE, MS. KIMBERLY ROGERS, WAS A
8 DEFENDANT IN THAT CASE; TRUE?

9 A I DON'T KNOW.

10 Q LET ME SHOW YOU THE DOCUMENT AND YOU CAN LET
11 ME KNOW IF --

12 THE COURT: YOU'RE NOT GOING TO SHOW HER THE
13 DOCUMENT. SHE SAYS SHE DOESN'T KNOW.

14 MR. KING: OH, OKAY. SORRY, YOUR HONOR.

15 BY MR. KING:

16 Q WOULD IT REFRESH YOUR RECOLLECTION IF I SHOWED
17 YOU THE FIRST PAGE OF THE DEPOSITION TRANSCRIPT?

18 A IF I COMPARED THE TWO, NO, IT WOULDN'T. I
19 MEAN, IT WOULDN'T NECESSARILY -- YOU'RE ASKING ME FOR A
20 NAME THAT I WOULD HAVE TO LOOK AT YOUR DOCUMENTS OF
21 THIS PARTICULAR CASE AND THAT ONE TO BE ABLE TO SAY
22 WHETHER OR NOT THEY MATCH.

23 Q OKAY. SO IF I GAVE YOU A DOCUMENT FROM THIS
24 CASE SHOWING THE CAPTION AND THAT CASE SHOWING THE
25 CAPTION, YOU'D BE ABLE TO TELL IF IT, IN FACT, MATCHES;
26 RIGHT?

27 A SURE.

28 MR. GUTERRES: OBJECTION, YOUR HONOR. OUTSIDE

1 THE SCOPE. AND IT'S NOT RELEVANT.

2 THE COURT: SUSTAINED AS TO RELEVANCE.

3 MR. KING: CERTAINLY, YOUR HONOR.

4 BY MR. KING:

5 Q DO YOU KNOW THE SUPERVISING SOCIAL WORKER WHO
6 WAS IN AN ER UNIT IN 2009 BY THE NAME OF KIMBERLY
7 ROGERS?

8 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
9 THE SCOPE.

10 THE COURT: SUSTAINED.

11 BY MR. KING:

12 Q YOU TOLD US THAT YOUR INVOLVEMENT IN 2009 WITH
13 REGARDS TO SOCIAL WORKERS SEEKING WARRANTS IS THAT THEY
14 WOULD CALL COUNTY COUNSEL FOR CONSULTATION AND AT TIMES
15 THEY WOULD CALL YOU PRIOR TO GETTING THE APPROVAL;
16 CORRECT?

17 A NO.

18 Q LET'S SEE. HOW WERE YOU INVOLVED IN SOCIAL
19 WORKERS OBTAINING WARRANTS IN 2009?

20 A IN 2009, I WAS AN ASSISTANT REGIONAL
21 ADMINISTRATOR OVERSEEING THE BELVEDERE OFFICE. SO MY
22 INVOLVEMENT WITH REGARD TO WARRANTS WOULD HAVE BEEN FOR
23 THAT PARTICULAR REGIONAL OFFICE. MY INVOLVEMENT BACK
24 IN 2009 WOULD HAVE BEEN IN CONSULTATION WITH THE
25 SUPERVISING CHILDREN'S SOCIAL WORKER AND THE CHILDREN'S
26 SOCIAL WORKER FOR THAT PARTICULAR OFFICE IN OBTAINING
27 WARRANTS AND CONSULTATION ON A VARIETY OF DIFFERENT
28 ISSUES.

1 Q OKAY. SO AS IT PERTAINS TO THIS CASE,
2 MS. KIMBERLY ROGERS DID NOT CALL YOU IN ORDER TO
3 DETERMINE WHETHER OR NOT YOU APPROVED THE SEIZURE OF
4 BABY RYAN; CORRECT?

5 A CORRECT.

6 Q DO YOU KNOW IF MS. KIMBERLY ROGERS CALLED
7 ANYONE PRIOR TO REMOVING BABY RYAN ON NOVEMBER 3RD,
8 2009?

9 A I DO NOT.

10 Q PRIOR TO BEING ASKED TO COME HERE TO TESTIFY
11 DID YOU LEARN ANYTHING ABOUT THE UNDERLYING FACTS IN
12 THIS CASE?

13 A PRIOR TO? NO.

14 Q OR TODAY, DID ANYBODY TELL YOU ANYTHING ABOUT
15 WHAT THIS CASE WAS ABOUT?

16 A VERY LITTLE.

17 Q WELL, WILL YOU AGREE THAT A CHILD SOCIAL
18 WORKER ALWAYS NEEDS TO DETERMINE IF HE OR SHE NEEDS A
19 WARRANT PRIOR TO SEIZING A CHILD?

20 EXHIBIT 405, BATES 005903. WOULD YOU AGREE
21 THAT A CSW ALWAYS NEEDS TO DETERMINE IF HE OR SHE NEEDS
22 A WARRANT OR A COURT ORDER PRIOR TO SEIZING A CHILD
23 FROM ITS PARENT?

24 A THERE ARE TWO OTHER FACTORS THAT THIS
25 POWERPOINT DOES NOT DESCRIBE. ONE IS CONSENT.

26 Q OKAY.

27 A EXIGENCY. AND THEN THE THIRD WOULD BE
28 OBTAINING A WARRANT.

1 Q OKAY. SO WE'LL REPRESENT TO YOU THAT THERE'S
2 NO CONSENT GIVEN IN THIS CASE.

3 IS IT YOUR TESTIMONY NOW THAT, IF THERE'S
4 EXIGENCY, THAT IN FACT A SOCIAL WORKER CAN REMOVE A
5 CHILD FROM ITS PARENT WITHOUT EVEN CONSIDERING WHETHER
6 OR NOT THERE'S TIME TO GET A WARRANT?

7 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE
8 LACKS FOUNDATION. SPECULATION. INCOMPLETE
9 HYPOTHETICAL.

10 THE COURT: JUST A MOMENT.

11 THE OBJECTIONS ARE OVERRULED.

12 BY MR. KING:

13 Q DID YOU NEED THE QUESTION REREAD?

14 A PLEASE.

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

17 "QUESTION: OKAY. SO WE'LL
18 REPRESENT TO YOU THAT THERE'S NO
19 CONSENT GIVEN IN THIS CASE.

20 "IS IT YOUR TESTIMONY NOW THAT, IF
21 THERE'S EXIGENCY, THAT IN FACT A SOCIAL
22 WORKER CAN REMOVE A CHILD FROM ITS
23 PARENT WITHOUT EVEN CONSIDERING WHETHER
24 OR NOT THERE'S TIME TO GET A WARRANT?")

25 THE WITNESS: I BELIEVE THEY DO FACTOR IN
26 WHETHER OR NOT THERE IS TIME TO OBTAIN A WARRANT. I
27 KNOW THAT AS AN ASSISTANT REGIONAL ADMINISTRATOR THAT
28 WOULD BE A STANDARD QUESTION I WOULD ASK.

1 BY MR. KING:

2 Q SO EVEN WITH EXIGENCY, A SOCIAL WORKER HAS TO
3 DETERMINE IF THERE'S ENOUGH TIME TO GO AND GET A
4 WARRANT, TRUE, BEFORE REMOVING THE CHILD FROM THE HOME?

5 A I BELIEVE THAT'S PART OF THE THOUGHT PROCESS,
6 YES.

7 Q WELL, ISN'T IT MORE THAN PART OF THE THOUGHT
8 PROCESS? ISN'T IT THE LAW?

9 SHOWING BATES 406, 005909:

10 "BEFORE ACTING ON THE BASIS OF
11 EXIGENT CIRCUMSTANCES, A CSW MUST
12 ALWAYS ASK 'DO I HAVE TIME TO GET A
13 WARRANT OR COURT ORDER BEFORE THE CHILD
14 WILL LIKELY SUFFER SERIOUS PHYSICAL
15 INJURY,' USUALLY 3 TO 6 HOURS."

16 ISN'T THAT, IN FACT, THE LAW?

17 A YEAH. AND I THINK I EXPLAINED THAT THAT WOULD
18 BE PART OF THE DISCUSSION THAT WOULD BE HAD.
19 ABSOLUTELY.

20 Q NOW, PRIOR TO DECEMBER OF 2009, WERE YOU EVER
21 INVOLVED IN ANY WAY IN A SOCIAL WORKER SEEKING A
22 REMOVAL ORDER?

23 A I BELIEVE SO, YES.

24 Q ISN'T IT TRUE THAT IN FACT THERE WAS NO POLICY
25 OR PROCEDURE BY YOUR DEPARTMENT PRIOR TO DECEMBER 2009
26 FOR SOCIAL WORKERS TO IN FACT OBTAIN REMOVAL ORDERS?

27 A I BELIEVE THERE WAS A POLICY IN 2007. I THINK
28 THE TITLE CHANGED, YOU KNOW, A COUPLE OF TIMES. BUT

1 THE DISCUSSIONS BEGAN IN 2007 AS TO TRAINING SOCIAL
2 WORKERS ON HOW TO OBTAIN A WARRANT.

3 Q YOU'RE FAMILIAR WITH JUDGE NASH; CORRECT?

4 A I AM.

5 Q ISN'T IT TRUE THAT ON NOVEMBER 19, 2009, JUDGE
6 NASH ISSUED A MANDATE TO THE DEPARTMENT OF CHILDREN AND
7 FAMILY SERVICES TO OBTAIN REMOVAL WARRANTS BECAUSE
8 THERE WAS NO POLICY IN PLACE AT THAT TIME?

9 A I'M NOT FAMILIAR WITH HIS MEMO.

10 Q HAVE YOU EVER SEEN JUDGE NASH'S MEMO?

11 A NO, I DON'T BELIEVE I HAVE.

12 Q HAVE YOU EVER HEARD OF IT?

13 A I DON'T BELIEVE I HAVE.

14 Q ISN'T IT TRUE THAT THE POLICY THAT WAS IN
15 PLACE IN 2007 INVOLVED SEARCH WARRANTS ONLY?

16 A I CAN'T SAY FOR SURE.

17 Q SOUNDS PRETTY FAMILIAR?

18 A YES.

19 Q YOU WOULD AGREE THAT, WITH REGARDS TO ANY
20 TRAINING THAT YOUR DEPARTMENT GAVE CONCERNING SEEKING
21 REMOVAL ORDERS FROM THE COURT, THAT THERE WAS NO SUCH
22 TRAINING UNTIL DECEMBER OF 2009; CORRECT?

23 A I BELIEVE THERE WAS TWO WAVES OF TRAINING. I
24 DON'T HAVE THE PARTICULAR DATE, OR YEAR FOR THAT
25 MATTER.

26 Q WAS IT AROUND DECEMBER 21ST OF 2009?

27 A MY MEMORY DOESN'T GO BACK THAT FAR.

28 Q IF I SHOWED YOU YOUR TESTIMONY UNDER OATH IN A

1 DEPOSITION, WOULD THAT HELP REFRESH YOUR RECOLLECTION?

2 A SURE.

3 THE COURT: YOU HAVE TO IDENTIFY WHAT YOU'RE
4 SHOWING HER.

5 MR. KING: CERTAINLY, YOUR HONOR.

6 SHOWING THE WITNESS DEPOSITION TRANSCRIPT IN
7 THE CASE OF *HAZEL SOLIS VS. COUNTY OF LOS ANGELES* DATED
8 MARCH 16, 2011, STARTING AT PAGE 105. JUST IDENTIFYING
9 THE TOP NINE LINES FOR THE WITNESS TO LOOK AT, SEE IF
10 IT REFRESHES THE WITNESS'S RECOLLECTION.

11 THE WITNESS: CAN I FLIP TO PAGE 104?
12 BY MR. KING:

13 Q OF COURSE.

14 A I'M NOT SURE THAT IT'S SAYING WHAT YOU THINK
15 IT'S SAYING.

16 THE COURT: THAT'S ALL RIGHT. JUST FOR THE
17 MOMENT JUST READ IT AND THEN WE'LL SEE IF THERE'S A
18 QUESTION.

19 HAVE YOU READ IT?

20 THE WITNESS: I HAVE.

21 THE COURT: ALL RIGHT. WE'LL WAIT AND SEE IF
22 THERE'S A QUESTION.

23 MR. KING: SORRY, YOUR HONOR, I LOST MY PLACE.
24 BY MR. KING:

25 Q HAS YOUR MEMORY BEEN REFRESHED AS TO THE FIRST
26 TIME YOUR DEPARTMENT HAD MANDATORY TRAINING REGARDING
27 REMOVAL OR CUSTODY WARRANTS WAS, IN FACT, ON
28 DECEMBER 21ST OF 2009?

1 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
2 THE SCOPE.

3 THE COURT: SUSTAINED.

4 BY MR. KING:

5 Q WOULD YOU AGREE THAT THE FIRST TIME YOUR
6 DEPARTMENT HAD MANDATORY TRAINING CONCERNING SOCIAL
7 WORKERS OBTAINING A CUSTODY WARRANT WAS ON
8 DECEMBER 21ST OF 2009?

9 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

10 THE COURT: SUSTAINED.

11 BY MR. KING:

12 Q NOW, WE TALKED A LITTLE ABOUT EXIGENT
13 CIRCUMSTANCES. DISPLAYING EXHIBIT 406, BATES 005907.

14 WOULD YOU AGREE THAT A CSW CAN ACT WITHOUT A
15 WARRANT IF THE CSW HAS REASONABLE CAUSE TO BELIEVE THE
16 CHILD IS IN IMMINENT DANGER OF SERIOUS BODILY INJURY?

17 CORRECT?

18 A YES.

19 Q AND "IMMINENT" TO YOU MEANS WHAT?

20 A RIGHT NOW.

21 Q RIGHT. SORT OF LIKE, IF I DON'T ACT NOW THIS
22 CHILD IS GOING TO DIE OR SUFFER SEVERE BODILY INJURY;
23 CORRECT?

24 A YES.

25 Q AND WHEN A SOCIAL WORKER IS MAKING THAT
26 DETERMINATION -- DISPLAYING EXHIBIT 407,
27 BATES 005915 -- THE SOCIAL WORKER CAN ONLY RELY ON
28 SPECIFIC AND ARTICULABLE EVIDENCE WHEN DETERMINING IF

1 THERE ARE EXIGENT CIRCUMSTANCES TO ACT WITHOUT A
2 WARRANT; CORRECT?

3 A YES.

4 Q AND A SOCIAL WORKER HAS TO DOCUMENT THE
5 EXIGENT CIRCUMSTANCES; CORRECT?

6 A YES.

7 Q AND WHEN WE'RE TALKING ABOUT SEIZURES,
8 EXHIBIT 405, BATES 005904, THE SEIZURE YOUR DEPARTMENT
9 TYPICALLY DEALS WITH ARE SEIZURES OF CHILDREN; CORRECT?

10 A WE CERTAINLY DON'T USE THOSE TERMS.

11 Q YOU DON'T USE "SEIZURES"?

12 A WE DON'T USE THOSE TERMS WHEN WE REFER TO
13 REMOVING A CHILD FROM THE CUSTODY OF THEIR PARENT.

14 Q WELL, WOULD YOU AGREE BATES 405, 005901, THIS
15 IS YOUR TRAINING:

16 "SEIZURES IN CHILD ABUSE CASES.

17 "BOX 1: SOME CHILD INTERVIEWS.

18 "2: TAKING THE CHILD INTO
19 PROTECTIVE CUSTODY."

20 THAT MEANS PHYSICALLY TAKING THE BABY AWAY
21 FROM MOMMY; CORRECT?

22 A I UNDERSTAND THAT.

23 Q AND SHOWING EXHIBIT 403, BATES 005895, WE HAVE
24 THESE LAWS IN ORDER TO PROTECT THE LEGAL RIGHTS AND
25 SAFETY OF CHILDREN AND FAMILIES FROM THE INITIAL TIME
26 OF CONTACT DURING AN INVESTIGATION THROUGH TREATMENT;
27 CORRECT?

28 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

1 THE COURT: SUSTAINED.

2 BY MR. KING:

3 Q WOULD YOU AGREE THAT A DELAY NEGATES A CLAIM
4 OF EXIGENCY?

5 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

6 THE COURT: SUSTAINED.

7 BY MR. KING:

8 Q WE TALKED ABOUT THE CWS/CMS SYSTEM; CORRECT?

9 A YES.

10 Q THOSE ARE SORT OF LIKE THE CONTACT NOTES OF
11 THE SOCIAL WORKERS INVOLVED IN THE CASE?

12 A IT'S A STATEWIDE DATABASE THAT CONTAINS ALL
13 INFORMATION WITH REGARD TO CHILD WELFARE.

14 Q OKAY. SO ALL THE RELEVANT MATERIAL
15 INFORMATION CONCERNING THE CASE SHOULD BE IN THERE;
16 CORRECT?

17 A YES.

18 Q INCLUDING EXCULPATORY EVIDENCE; CORRECT?

19 A YES.

20 Q BECAUSE ACCORDING TO YOUR TRAINING, IF IT'S
21 NOT IN YOUR NOTES, IT REALLY DIDN'T HAPPEN?

22 MR. GUTERRES: OBJECTION. OUTSIDE THE SCOPE.

23 THE COURT: SUSTAINED.

24 BY MR. KING:

25 Q THE TESTIMONY YOU GAVE EARLIER OF YOUR
26 INVOLVEMENT IN OBTAINING WARRANTS PRIOR TO 2009, YOU
27 WOULD AGREE THAT THOSE WERE PROTECTIVE CUSTODY
28 WARRANTS; CORRECT?

1 A YES.

2 Q SO THAT MEANS A CHILD HAS ALREADY BEEN REMOVED
3 FROM MOM OR DAD, PLACED IN FOSTER CARE, THAT CHILD
4 TAKES OFF, SOCIAL WORKER NEEDS TO OBTAIN A WARRANT TO
5 GO GET THE CHILD AND BRING HIM BACK HOME; CORRECT?

6 A YES.

7 Q SO WHEN WE WERE TALKING WITH MR. GUTERRES
8 EARLIER, WE WEREN'T TALKING ABOUT A BABY BEING REMOVED
9 FROM MOMMY; RIGHT?

10 A NO.

11 Q THAT'S A CORRECT STATEMENT?

12 A NO, IT'S NOT.

13 MAY I CLARIFY?

14 Q LET ME ASK YOU A QUESTION.

15 A OKAY.

16 Q WHAT TYPE OF WARRANTS WERE YOU TALKING ABOUT
17 THAT YOU WERE INVOLVED IN PRIOR TO DECEMBER OF 2009
18 DURING YOUR DIRECT TESTIMONY TODAY?

19 A YES. WHAT I TRIED TO EXPLAIN IS THAT I WAS
20 INVOLVED IN OBTAINING WARRANTS PRIOR TO 2009 THAT --
21 WHEN I USE THE TERM "WARRANT," THERE IS A DISCUSSION
22 HAD PRIOR TO THAT. SO I CAN'T TELL YOU TODAY, RIGHT
23 NOW, IF IT WAS A SEARCH WARRANT, IF IT WAS A REMOVAL
24 ORDER WARRANT, ET CETERA, BECAUSE THERE'S A DISCUSSION
25 THAT WAS HAD -- THE CONVERSATION WOULD HAVE BEEN,
26 "LET'S OBTAIN A WARRANT." AND SO THE PEOPLE INVOLVED
27 IN THE CONVERSATION WOULD HAVE KNOWN THE TYPE OF
28 WARRANT THAT WE WERE SEEKING.

1 Q OKAY.

2 A SO.

3 Q SO I THINK YOU'VE CLARIFIED YOURSELF THAT WHEN
4 YOU TOLD US ALL HERE YOUR INVOLVEMENT OF WARRANTS PRIOR
5 TO DECEMBER OF 2009, YOU, FOR YOURSELF, YOU WERE NOT
6 CLEAR SPECIFICALLY AS TO WHICH TYPE OF WARRANTS THOSE
7 WERE?

8 A CORRECT.

9 Q THANK YOU.

10 WE'RE GOING TO HEAR A BELL HERE PRETTY SOON,
11 SO THAT'S WHY I LOOK A LITTLE ANXIOUS.

12 YOU NEVER MET MS. DUVAL; TRUE?

13 A IS THAT HIM? NO.

14 Q NO, THAT'S MR. --

15 A OH, I'M SORRY.

16 Q YOU'VE NEVER MET MS. DUVAL; CORRECT?

17 A NO, I HAVE NOT.

18 Q OKAY.

19 MR. KING: YOUR HONOR, I THINK I'M DONE.

20 THANK YOU.

21 MR. GUTERRES: DID I HEAR RIGHT?

22 THE COURT: YEAH, I BELIEVE YOU DID. AT LEAST
23 THAT WAS MY HEARING.

24 SO IF YOU HAVE REDIRECT, YOU CAN GO AHEAD.

25 MR. GUTERRES: THANK YOU, YOUR HONOR.

26

27 ///

28 ///

REDIRECT EXAMINATION

1
2 BY MR. GUTERRES:

3 Q SO PRIOR TO DECEMBER OF 2009, I BELIEVE YOU
4 TESTIFIED THAT THE TERM "WARRANT" WAS USED IN THE
5 GENERIC SENSE?

6 A YES.

7 Q SO WHETHER ONE WAS GOING TO BE OBTAINING A
8 REMOVAL ORDER OR A WARRANT TO DO AN INTERVIEW OR TO
9 ENTER THE HOME, THERE WAS NO REAL DISTINCTION?

10 A THERE WAS DISTINCTION IN THE CONVERSATION
11 PRIOR TO TAKING THE ACTION, BUT WE WOULD GENERALLY SAY
12 "WARRANT." I HOPE THAT'S CLEAR.

13 Q AND THEREFORE THE PROCEDURE IN EFFECT PRIOR TO
14 DECEMBER OF 2009 WOULD BE TO HAVE THIS DISCUSSION AND
15 THEN CONSULT WITH COUNTY COUNSEL?

16 A CORRECT.

17 MR. GUTERRES: OKAY. THANK YOU VERY MUCH.

18 THE COURT: ANYTHING ELSE?

19 MR. KING: NO, YOUR HONOR. THANK YOU, YOUR
20 HONOR.

21 THE COURT: THANK YOU VERY MUCH. YOU ARE
22 EXCUSED. YOUR TIMING IS GOOD. I'D GET OUT OF THE
23 BUILDING BEFORE 10:20, IF I WERE YOU.

24 THE WITNESS: OKAY. THANK YOU.

25 THE COURT: ALL RIGHT. MR. GUTERRES AND
26 MS. SWISS, THIS IS THE EXHIBIT THAT WAS MARKED FOR
27 IDENTIFICATION ON THE WITNESS STAND SO WE SHOULD GIVE
28 TO THE CLERK.

1 MS. SWISS: OKAY.

2 THE COURT: MS. SWISS?

3 MS. SWISS: THE DEFENDANTS CALL MS. CANDIS
4 NELSON.

5 THE COURT: ALL RIGHT.

6

7

CANDIS NELSON,

8 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY

9 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

10

11 THE CLERK: FOR THE RECORD, PLEASE STATE YOUR
12 NAME AND SPELL YOUR FIRST AND LAST NAME.

13 THE WITNESS: MY NAME IS CANDIS NELSON,
14 C-A-N-D-I-S, N-E-L-S-O-N.

15 THE COURT: THANK YOU.

16 BEFORE WE GET STARTED, MAYBE COULD SOMEONE GET
17 THE EXHIBIT BOOKS, AND WE'LL GET THEM OUT OF HER WAY
18 FOR THE TIME BEING.

19 ALL RIGHT. GO AHEAD.

20 MS. SWISS: OKAY.

21 THE COURT: WE ALL UNDERSTAND THAT IN
22 9 MINUTES -- I'M NOT SURE HOW ACCURATE THAT CLOCK IS
23 SO, IT'S PRETTY CLOSE, WITHIN 24 HOURS.

24 MS. SWISS: GOING TO TRY TO GET OUT OF THE WAY
25 BEFORE I GET TRAMPLED.

26

27 ///

28 ///

1 DIRECT EXAMINATION

2 BY MS. SWISS:

3 Q GOOD MORNING, MS. NELSON.

4 A GOOD MORNING.

5 Q ARE YOU CURRENTLY EMPLOYED?

6 A YES.

7 Q AND WHO IS YOUR CURRENT EMPLOYER?

8 A THE COUNTY OF LOS ANGELES, DEPARTMENT OF
9 CHILDREN AND FAMILY SERVICES.

10 Q HOW LONG HAVE YOU BEEN WITH DCFS?

11 A SINCE JULY 2004.

12 Q WHAT IS YOUR CURRENT TITLE?

13 A MY CURRENT TITLE IS SUPERVISING CHILDREN'S
14 SOCIAL WORKER.15 Q IN LATE 2009 THROUGH 2010, WHAT WAS YOUR
16 POSITION WITH DCFS?17 A MY TITLE WAS CHILDREN'S SOCIAL WORKER III, MY
18 ROLE WAS A DEPENDENCY INVESTIGATOR.19 Q AND AS A DEPENDENCY INVESTIGATOR, WHAT WERE
20 YOUR JOB DUTIES?21 A THE DEPENDENCY INVESTIGATORS ARE ASSIGNED TO
22 THE CASES AFTER THE PETITIONS ARE FILED WITH THE COURT
23 SO THEN WE WOULD COMPLETE INVESTIGATIONS WHICH WOULD
24 INCLUDING ICWA NOTICES -- THOSE ARE NOTICES TO INDIAN
25 TRIBES, NOTICES TO PARTIES FOR COURT HEARINGS,
26 INVESTIGATIONS, INTERVIEWS, COMPLETED REPORTS,
27 JURISDICTION/DISPOSITION REPORTS AS WELL AS 366.26
28 REPORTS. AND OTHER THINGS.

1 Q WHAT IS A 366.26 REPORT?

2 A THAT'S A --

3 MR. MCMILLAN: OBJECTION, YOUR HONOR.

4 RELEVANCE TO THIS CASE.

5 THE COURT: OVERRULED.

6 I DON'T KNOW WHAT IT IS.

7 MR. MCMILLAN: I UNDERSTAND.

8 THE COURT: WE'LL FIND OUT, AND IF IT'S NOT

9 RELEVANT, I'LL STRIKE IT.

10 MR. MCMILLAN: THAT'S FAIR.

11 THE COURT: WHAT IS IT?

12 THE WITNESS: THOSE ARE REPORTS FOR PERMANENCY

13 HEARINGS.

14 MR. MCMILLAN: OBJECTION, YOUR HONOR.

15 RELEVANCE. MOVE TO STRIKE.

16 THE COURT: WHAT'S A PERMANENCY HEARING?

17 THE WITNESS: THOSE ARE AFTER THE CHILD HAS
18 BEEN REMOVED AND THE CHID IS NOT -- THE REUNIFICATION
19 WAS NOT SUCCESSFUL, THOSE ARE HEARINGS FOR ADOPTION,
20 GUARDIANSHIP, THINGS LIKE THAT.

21 THE COURT: ALL RIGHT. THE OBJECTION WILL BE
22 SUSTAINED. THE LAST ANSWER TO MY QUESTION WILL BE
23 ORDERED STRICKEN. THE PREVIOUS ANSWER TELLING US WHAT
24 A 366.26 REPORT IS WILL BE STRICKEN.

25 BY MS. SWISS:

26 Q SO LET ME GET TO THE POINT OF WHY I WAS ASKING
27 THAT QUESTION.

28 THERE ARE ALSO REPORTS CALLED LAST MINUTE

1 INFORMATIONS; RIGHT?

2 A YES.

3 Q AND THAT'S DIFFERENT THAN THIS 366.26 REPORT;
4 RIGHT?

5 A CORRECT.

6 Q WHAT'S A LAST MINUTE INFORMATION FOR THE
7 COURT?

8 A THOSE ARE REPORTS THAT ARE ADDITIONAL
9 INFORMATION AND THEY CAN BE SENT TO COURT FOR ANY TYPE
10 OF THING.

11 Q OKAY. AND GENERALLY SPEAKING, WHY DO YOU
12 SUBMIT THOSE TO THE COURT?

13 A THOSE ARE SUBMITTED TO COURT FOR SUPPLEMENTAL
14 INFORMATION, ADDITIONAL INFORMATION TO THE REPORT
15 THAT'S ALREADY BEEN SUBMITTED, ADDITIONAL INFORMATION
16 THAT COMES IN THAT YOU NEED TO ATTACH RECORDS OR THINGS
17 LIKE THAT TO COURT.

18 Q WHAT KINDS OF RECORDS WOULD YOU BE ATTACHING
19 TO THE COURT?

20 A IF YOU GET ADDITIONAL -- LIKE MEDICAL RECORDS
21 OR REPORTS OR THINGS LIKE THAT, YOU CAN SEND IN A LAST
22 MINUTE AND ATTACH THAT ADDITIONAL INFORMATION.

23 Q WHY DO YOU DO THAT?

24 A TO PROVIDE ADDITIONAL INFORMATION TO THE COURT
25 SO THEY HAVE ALL THE INFORMATION BEFORE THE HEARING.

26 Q NOW, DID YOU HAVE ANY INVOLVEMENT WITH THE
27 CASE INVOLVING BABY RYAN?

28 A YES.

1 Q AND WHAT WAS YOUR INVOLVEMENT IN THE CASE WITH
2 BABY RYAN?

3 A I WAS THE ASSIGNED DEPENDENCY INVESTIGATOR.

4 Q AND DID YOU ACTUALLY DO THAT, DO YOUR
5 INVESTIGATION?

6 A YES.

7 Q NOW, WE WERE JUST TALKING ABOUT THESE LAST
8 MINUTE INFORMATION REPORTS TO THE COURT.

9 DID YOU FILE ANY OF THOSE WITH THE COURT IN
10 THIS PARTICULAR CASE?

11 A YES.

12 Q OKAY. IF YOU CAN TAKE A LOOK -- AND I THINK
13 THAT'S THE BINDER IN FRONT OF YOU -- AT EXHIBIT 26.

14 A YES.

15 Q AND FOR THE RECORD, EXHIBIT 26 IS A LAST
16 MINUTE INFORMATION FOR THE COURT DATED 1/22/2010. IT'S
17 BATES-STAMPED 821, AND THEN THERE'S ADDITIONAL PAGES
18 THAT ARE BATES-STAMPED 415 TO 421, IT LOOKS LIKE.

19 DID YOU FIND THAT?

20 A YES.

21 Q AND DO YOU RECOGNIZE THAT DOCUMENT?

22 A YES.

23 Q WHAT IS THIS?

24 A THIS IS A LAST MINUTE INFORMATION TO COURT FOR
25 THE JANUARY HEARING DATE.

26 Q THE HEARING DATE JANUARY 22, 2010?

27 A YES.

28 Q AND IS THAT YOUR SIGNATURE ON THE PAGE?

1 A YES.

2 Q AND IS THERE ANOTHER SIGNATURE ON THE PAGE?

3 A YES.

4 Q DO YOU RECOGNIZE THAT?

5 A YES.

6 Q WHOSE SIGNATURE IS THAT?

7 A THAT'S TIKA SMITH, MY SUPERVISOR'S SIGNATURE.

8 Q OKAY. DO YOU KNOW IF THIS REPORT WAS ACTUALLY
9 FILED WITH THE JUVENILE COURT?

10 A I BELIEVE SO.

11 Q AND IT HAS A FILED STAMP ON IT; RIGHT?

12 A YES.

13 Q DO YOU KNOW IF IT WAS ACTUALLY ADMITTED INTO
14 EVIDENCE?

15 A I BELIEVE SO.

16 Q AND HOW DO YOU KNOW THAT?

17 A IN BETWEEN -- OH, AT THE BOTTOM, THERE.

18 Q DID YOU PREPARE THIS REPORT?

19 A YES.

20 Q DID YOU PREPARE THIS REPORT ON OR AROUND THE
21 HEARING DATE OF JANUARY 22, 2010?

22 A YES.

23 Q WHAT INFORMATION WERE YOU -- WELL, WHAT WAS
24 THE PURPOSE OF THIS REPORT?

25 A CAN I LOOK AT IT?

26 Q OF COURSE.

27 A OKAY. TO PROVIDE ADDITIONAL INFORMATION TO
28 THE COURT, UPDATED INFORMATION, AND THEN ALSO ATTACH

1 INFORMATION IN REGARDS TO THE MOTHER'S PARENTING
2 PROGRAM.

3 Q AND WHAT INFORMATION DID YOU ATTACH TO THE
4 COURT REGARDING -- I BELIEVE YOU SAID MOTHER'S
5 PARENTING PROGRAM?

6 A IT LOOKS LIKE IT'S A DESCRIPTION OF WHAT THE
7 PROGRAM COVERS.

8 Q WAS THIS INFORMATION THAT MS. DUVAL PROVIDED
9 TO YOU?

10 A I BELIEVE SO.

11 Q AND SPECIFICALLY WHAT WAS THE INFORMATION THAT
12 YOU WERE TRYING TO RELATE TO THE COURT IN THIS REPORT?

13 A WELL, IN THE ACTUAL WRITTEN PART OF THE REPORT
14 THERE'S ADDITIONAL INFORMATION ABOUT THE VISITATIONS
15 AND HOW THINGS HAVE BEEN GOING WITH THE VISITS --

16 Q HOW THINGS --

17 A -- UP TO THAT POINT.

18 Q WHAT WERE YOU TELLING THE COURT ABOUT HOW
19 THINGS WERE GOING WITH THE VISITS AT THIS TIME?

20 A WELL, THERE WAS SOME INFORMATION IN REGARDS TO
21 THE MATERNAL GRANDMOTHER'S INVOLVEMENT IN THE VISITS
22 AND HOW THEY HAD GONE FROM HER BEING INVOLVED IN ALL
23 THE VISITS TO ONLY SOME OF THE VISITS. THERE'S
24 INFORMATION IN REGARDS TO HOW THE INTERACTION WAS
25 BETWEEN THE MOTHER AND THE CHILD DURING THE VISITS.
26 THERE WAS --

27 (INTERRUPTION IN PROCEEDINGS. FIRE DRILL.)

28 (JURY PRESENT)

1 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON
2 THE RECORD. EVERYONE IS PRESENT.

3 BEFORE YOU GO AGAIN, MS. SWISS, I JUST WANT TO
4 TELL OUR JURORS THAT I HAVE RECEIVED A MESSAGE FROM OUR
5 COURT ATTENDANT ABOUT SOME OF THE INQUIRIES YOU HAVE
6 MADE. AND I'LL ATTEMPT TO RESPOND TO SEVERAL OF THEM
7 LATER TODAY AFTER THE LUNCH BREAK. BUT AS TO -- ONE
8 INQUIRY WAS ABOUT ANY DAYS THAT WE'D BE OFF. THE JURY
9 WILL NOT BE HERE TOMORROW. SO IF THAT'S HELPS ANYONE
10 WHO HAD SOME APPOINTMENTS THAT NEED TO BE MADE, YOU
11 WON'T BE HERE TOMORROW. I'LL TRY TO GIVE YOU MORE
12 INFORMATION THIS AFTERNOON.

13 GO AHEAD.

14 MS. SWISS: THANK YOU, YOUR HONOR.

15 BY MS. SWISS:

16 Q MS. NELSON, BEFORE THE BREAK, I BELIEVE YOU
17 WERE IN THE MIDDLE OF AN ANSWER AND I BELIEVE THE
18 QUESTION WAS REGARDING WHAT INFORMATION YOU WERE TRYING
19 TO RELATE TO THE COURT IN YOUR LAST MINUTE INFORMATION
20 EXHIBIT 26, THE DOCUMENT DATED JANUARY 22, 2010.

21 CAN YOU COMPLETE YOUR ANSWER? I DON'T KNOW IF
22 YOU REMEMBER WHAT YOU SAID SO FAR.

23 MS. SWISS: IF I COULD JUST RE-ASK THE
24 QUESTION?

25 THE COURT: I THINK THE BEST THING IS IF WE
26 HAVE THE REPORTER READ BACK THE QUESTION AND THE ANSWER
27 THAT HAD BEEN GIVEN AS OF THE TIME OF THE INTERRUPTION.
28 ACCORDING TO THE TRANSCRIPT, A SENTENCE WAS

1 INTERRUPTED, SO LET'S READ THAT BACK AND THEN YOU CAN
2 PICK UP FROM THERE.

3 THE WITNESS: GREAT.

4 (THE PREVIOUS QUESTION WAS READ BACK BY
5 THE COURT REPORTER AS FOLLOWS:

6 "QUESTION: WHAT WERE YOU TELLING
7 THE COURT ABOUT HOW THINGS WERE GOING
8 WITH THE VISITS AT THAT TIME?

9 "ANSWER: WELL, THERE WAS SOME
10 INFORMATION IN REGARDS TO THE MATERNAL
11 GRANDMOTHER'S INVOLVEMENT IN THE VISITS
12 AND HOW THEY HAD GONE FROM HER BEING
13 INVOLVED IN ALL THE VISITS TO ONLY SOME
14 OF THE VISITS. THERE'S INFORMATION IN
15 REGARDS TO HOW THE INTERACTION WAS
16 BETWEEN THE MOTHER AND THE CHILD DURING
17 THE VISITS. THERE WAS" --)

18 THE WITNESS: THEN THERE'S ALSO SOME NOTATIONS
19 IN REGARDS TO THE INTERACTIONS WITH THE FATHER AND THE
20 CHILD AS WELL.

21 BY MS. SWISS:

22 Q NOW, IF YOU CAN TURN TO EXHIBIT 35, SHOULD BE
23 IN THE SAME BOOK, AND FOR THE RECORD THAT IS AN
24 INFORMATION FOR COURT OFFICER DATED MARCH 8, 2010. AND
25 IT'S BATES 890 AND 891 -- I'M SORRY. 890 THROUGH 895.

26 IF YOU CAN TAKE A LOOK AT THAT AND LET ME KNOW
27 WHEN YOU'RE READY.

28 A OKAY. YES.

1 Q WHAT IS EXHIBIT 35?

2 A THIS IS AN ADDITIONAL LAST MINUTE INFORMATION
3 TO COURT FOR THE COURT HEARING ON MARCH 8, 2010.

4 Q DID YOU PREPARE THIS DOCUMENT?

5 A YES.

6 Q AND ON PAGE 891, IS YOUR SIGNATURE THERE?

7 A YES.

8 Q WHY DID YOU PREPARE THIS DOCUMENT?

9 A THIS DOCUMENT WAS PREPARED TO PROVIDE
10 ADDITIONAL INFORMATION TO COURT FOR THAT CALENDAR COURT
11 HEARING.

12 Q DO YOU KNOW IF IT ACTUALLY GOT FILED WITH THE
13 JUVENILE COURT?

14 A YES, IT SAYS ADMITTED INTO EVIDENCE.

15 Q OKAY. WHAT INFORMATION WERE YOU RELAYING TO
16 THE COURT IN THIS REPORT?

17 A SO THIS REPORT CONTINUES TO TALK ABOUT THE
18 VISITATION. THERE WERE CONTINUED CONCERNS WITH MOTHER
19 REPORTEDLY BEING OVERBEARING WITH THE CHILD, AND THEN
20 THERE WERE ALSO SOME NOTATIONS OF HOW HE REACTED TO --
21 LIKE BEING LED TO DO FREE PLAY DURING THE VISITS. IT
22 TALKED ABOUT SOME OF THE PROGRESS. MOTHER HAD
23 COMPLETED A 20-WEEK PARENTING CLASS, THAT WAS NOTED IN
24 THIS ONE. AS WELL AS IT TALKED ABOUT SOME OF THE
25 SERVICES THE CHILD WAS RECEIVING, THE PHYSICAL THERAPY
26 AND -- I DON'T KNOW WHAT THE OTHER WAS FROM REGIONAL
27 CENTER -- SOME ADDITIONAL STUFF FROM REGIONAL CENTER
28 ABOUT THE CHILD'S PROGRESS, THE WEIGHT GAIN AND THINGS

1 LIKE THAT.

2 Q WHAT WAS YOUR UNDERSTANDING OR WHAT DID YOU
3 REPORT TO THE COURT AS FAR AS THE CHILD'S PROGRESS AS
4 OF MARCH 8, 2010?

5 A WELL, IT INDICATES THAT THE CHILD NEEDS TO
6 GAIN WEIGHT AND THAT HE IS NOW OVER 17 POUNDS AS OF
7 2/19/2010. AND THEN IT TALKS ABOUT HOW THERE WERE SOME
8 GLOBAL DELAYS AND HOW HE HAD BEEN OBSERVED SAYING
9 "MAMA" AND "DADA" AND WAS MORE ACTIVE AND EXPLORATORY.

10 Q DID THIS REPORT FROM MARCH 8TH HAVE ANY
11 EXHIBITS THAT WERE SUBMITTED TO THE JUVENILE COURT?

12 A YES, THERE WAS AN ATTACHMENT.

13 Q WHAT WAS THE ATTACHMENT?

14 A FROM THE PHYSICAL THERAPIST, AN EVALUATION.

15 Q WHY DID YOU SUBMIT THE PHYSICAL THERAPIST'S
16 EVALUATION TO THE JUVENILE COURT?

17 A AGAIN, TO MAKE SURE THAT THE JUDGE HAD ALL OF
18 THE INFORMATION THAT HAD BEEN PROVIDED IN REGARDS TO
19 THE CHILD'S PROGRESS OR THE PARENT'S PROGRESS SO THAT
20 THEY COULD READ THE INFORMATION FOR THEMSELVES AND
21 REFERENCE IT IN LOOKING THROUGH THE CASE INFORMATION,
22 THE LAST MINUTE INFORMATION AS WELL.

23 Q IF YOU CAN TAKE A LOOK AT EXHIBIT 43. AND
24 EXHIBIT 43 IS ANOTHER LAST MINUTE INFORMATION FOR THE
25 COURT FOR THE HEARING DATED APRIL 12, 2010, AND IT'S
26 BATES-STAMPED 971 THROUGH 973.

27 IF YOU CAN READ -- BRIEFLY READ THROUGH THAT
28 DOCUMENT AND THEN LET ME KNOW WHEN YOU'RE READY.

1 A OKAY.

2 Q DO YOU KNOW WHAT THAT DOCUMENT IS?

3 A YES.

4 Q WHAT IS THAT?

5 A IT'S AN ADDITIONAL LAST MINUTE INFORMATION
6 THAT WAS SUBMITTED TO COURT FOR THE APRIL 12, 2010,
7 COURT HEARING.

8 Q DID YOU PREPARE THIS DOCUMENT?

9 A YES.

10 Q AND ON PAGE 972, IS THAT YOUR SIGNATURE?

11 A YES.

12 Q DO YOU KNOW IF THIS DOCUMENT WAS FILED WITH
13 THE COURT?

14 A IT INDICATES THAT IT WAS ADMITTED INTO
15 EVIDENCE.

16 Q OKAY. SO THAT'S A YES?

17 A YES.

18 Q OKAY. WHAT WERE YOU REPORTING TO THE COURT IN
19 THIS LAST MINUTE INFORMATION?

20 A THIS AGAIN WAS ADDITIONAL INFORMATION UPDATES
21 ON THE CASE. THIS PARTICULAR ONE IS IN REGARDS TO
22 DR. LOTT. AND DR. LOTT WANTED TO DO AN ASSESSMENT OF
23 RYAN. SO TRYING TO COORDINATE DR. LOTT'S ASSESSMENT
24 WITH THE ALREADY EXISTING SERVICES THAT THE CHILD HAD
25 BEEN RECEIVING AND TRYING TO COORDINATE THOSE SERVICES.

26 IT TALKS ABOUT VICTORIA SCHEELE TRYING TO GET
27 THE TWO DOCTORS TO CONNECT -- OR THE CLINIC,
28 HARBOR-UCLA FAILURE TO THRIVE CLINIC ALSO CONNECTING

1 WITH DR. LOTT SO THEY CAN COLLABORATE AND HAVE SOME
2 KIND OF UNIFORM PLAN FOR RYAN'S CARE. AND -- YEAH,
3 THAT'S PRETTY MUCH THE SUMMARY OF THAT.

4 Q DID THIS REPORT HAVE AN ATTACHMENT THAT WAS
5 SUBMITTED TO THE JUVENILE COURT?

6 A YES.

7 Q WHAT WAS THE ATTACHMENT?

8 A IT LOOKS LIKE IT IS A DOCUMENTATION THAT TALKS
9 ABOUT SOME OF THE THINGS THAT DR. LOTT WAS REQUESTING
10 FOR RYAN'S CARE.

11 Q AND YOU'RE LOOKING AT BATES LABEL 973; RIGHT?

12 A YES.

13 Q AND THAT EXHIBIT ALSO INCLUDES THE SCHEDULED
14 TESTING THAT DR. LOTT WAS REQUESTING TO PERFORM ON BABY
15 RYAN?

16 A YES.

17 Q WHY DID YOU SUBMIT THIS LAST MINUTE
18 INFORMATION TO THE COURT?

19 A AGAIN, TO JUST MAKE SURE THAT THE COURT HAD
20 ALL THE INFORMATION, TO UTILIZE IT IN MAKING
21 ASSESSMENTS OF THE PLAN FOR THE FAMILY.

22 Q OKAY. I'M GOING TO THROW YOU FOR A LOOP AND
23 ASK YOU TO LOOK AT EXHIBIT 338, WHICH IS IN A DIFFERENT
24 BINDER.

25 OKAY. EXHIBIT 338 IS, FOR THE RECORD, ANOTHER
26 LAST MINUTE INFORMATION FOR THE COURT. AND THAT ONE IS
27 DATED JUNE 21, 2010.

28 PLEASE TAKE A LOOK AT THAT AND LET ME KNOW

1 WHEN YOU READY.

2 A OKAY.

3 Q DO YOU KNOW WHAT EXHIBIT 338 IS?

4 A YES.

5 Q WHAT IS THAT?

6 A IT'S AN ADDITIONAL LAST MINUTE INFORMATION
7 THAT WAS SUBMITTED TO COURT FOR THE JUNE 21, 2010,
8 COURT HEARING.

9 Q DID YOU PREPARE THIS LAST MINUTE INFORMATION?

10 A YES.

11 Q AND ON THE SECOND PAGE, IS YOUR SIGNATURE
12 THERE?

13 A YES.

14 Q DO YOU KNOW IF THIS REPORT WAS FILED WITH THE
15 JUVENILE COURT?

16 A IT INDICATES IT WAS ADMITTED INTO EVIDENCE.

17 Q WHY DID YOU PREPARE THIS REPORT TO THE COURT?

18 A AGAIN, TO PROVIDE ADDITIONAL INFORMATION TO
19 THE COURT, UPDATES ABOUT HOW THINGS HAD BEEN GOING WITH
20 THE VISITS AND ADDITIONAL INFORMATION ABOUT RYAN'S
21 OVERALL PROGRESS.

22 Q OKAY. NOW, IN THE SECOND PARAGRAPH OF YOUR
23 REPORT, IT MENTIONS AN ATTACHMENT TO THAT REPORT?

24 A YES.

25 Q DO YOU KNOW IF THERE WAS AN ATTACHMENT TO THIS
26 REPORT THAT WAS FILED WITH THE JUVENILE COURT?

27 A YES.

28 Q IF YOU COULD TAKE A LOOK AT EXHIBIT 52, IT'S

1 IN THE OTHER BINDER. I APOLOGIZE FOR MAKING YOU DO
2 GYMNASTICS. IF YOU COULD TAKE A LOOK AT EXHIBIT 52.

3 AND FOR THE RECORD, THAT IS A LETTER FROM
4 DR. EGGE TO VICTORIA SCHEELE DATED JUNE 11, 2010.

5 IF YOU COULD TAKE A LOOK AT THAT AND ME KNOW
6 WHEN YOU READY.

7 AND EXHIBIT 52 IS BATES 1049 THROUGH 1053.

8 A OKAY, YES.

9 Q DO YOU KNOW WHAT EXHIBIT 52 IS?

10 A IT'S A LETTER FROM MELISSA EGGE.

11 Q AND HAVE YOU SEEN THIS LETTER BEFORE?

12 A YES.

13 Q WHEN HAVE YOU SEEN IT BEFORE?

14 A PROBABLY IN 2010.

15 Q IS THIS THE -- IS THIS LETTER SOMETHING THAT
16 YOU HAD FILED WITH THE JUVENILE COURT?

17 A YES.

18 Q AND IS THIS THE LETTER THAT YOU ACTUALLY HAD
19 ATTACHED TO THE INFORMATION FOR THE COURT DATED
20 JUNE 21, 2010, THAT IS EXHIBIT 338?

21 MR. MCMILLAN: OBJECTION. LEADING.

22 THE COURT: OVERRULED.

23 THE WITNESS: WELL, YEAH, THE REPORT INDICATES
24 THAT THIS LETTER WAS ATTACHED TO THE REPORT.

25 BY MS. SWISS:

26 Q OKAY. WHY WAS THIS LETTER SUBMITTED TO THE
27 JUVENILE COURT?

28 A WELL, IT PROVIDED AN UPDATE ON HOW RYAN WAS

1 DOING WITH THE SERVICES THROUGH THE FAILURE TO THRIVE
2 CLINIC. AND SO IT WAS PROVIDED TO PROVIDE ADDITIONAL
3 INFORMATION TO THE COURT ABOUT HIS PROGRESS.

4 Q THANK YOU.

5 OKAY. LAST ONE. IF YOU CAN TAKE A LOOK AT
6 EXHIBIT 63, AND, FOR THE RECORD, THAT IS BATES-LABELED
7 1163 THROUGH 1168. AND IT IS A LAST MINUTE INFORMATION
8 DATED JUNE 26, 2010.

9 A OKAY.

10 Q DO YOU RECOGNIZE THIS DOCUMENT?

11 A YES.

12 Q WHAT IS THIS?

13 A THIS IS SIMPLY A LAST MINUTE JUST TO ATTACH
14 THE UPDATED RECORDS THAT HAD BEEN RECEIVED.

15 Q DID YOU PREPARE THIS DOCUMENT?

16 A YES.

17 Q IS YOUR SIGNATURE ON IT?

18 A YES.

19 Q DID YOU ACTUALLY FILE THIS WITH THE JUVENILE
20 COURT?

21 A YES.

22 Q AND WHAT WERE THE RECORDS THAT YOU WERE
23 ATTACHING?

24 A THE PHYSICAL THERAPY RECORDS. AND I BELIEVE
25 MORE RECORDS FROM HARBOR-UCLA.

26 Q OKAY. WHY DID YOU SUBMIT THESE RECORDS TO THE
27 JUVENILE COURT?

28 A SO THAT THE JUDGE HAD THE MOST UP TO DATE

1 INFORMATION THAT WAS AVAILABLE REGARDING HOW RYAN HAD
2 BEEN DOING WITH THE PHYSICAL THERAPY AND HARBOR-UCLA.

3 Q AND THAT'S AS OF JULY 26, 2010?

4 A YES.

5 MS. SWISS: THANK YOU, YOUR HONOR.

6 NO FURTHER QUESTIONS.

7 MR. MCMILLAN: OKAY. ONE MOMENT, YOUR HONOR,
8 SO I CAN GET ALL SORT OF SITUATED HERE.

9

10 CROSS-EXAMINATION

11 BY MR. MCMILLAN:

12 Q LET'S JUST START, SINCE YOU HAVE IT IN FRONT
13 OF YOU -- I THINK THE LAST ONE WAS EXHIBIT 63. AND I
14 MIGHT HAVE MISSED THE QUESTION. I THOUGHT I HEARD THE
15 DATE WRONG, BUT IS THIS A REPORT THAT YOU FILED ON
16 JULY 27, 2010?

17 A I DON'T KNOW -- IT LOOKS LIKE THERE'S TWO
18 DIFFERENT STAMPS. SO I'M NOT SURE BECAUSE IT SAYS
19 FILED JULY 26TH, FILED JULY 27TH. AND I DON'T RECALL
20 THE EXACT DATE FROM 2010 SITTING HERE.

21 Q BUT IT SAYS THE HEARING DATE WAS FOR JULY 26,
22 2010, CORRECT? IF YOU LOOK IN THE UPPER RIGHT-HAND
23 CORNER OF THE PAGE ON 1163?

24 A CORRECT.

25 Q SO THAT WOULD HAVE BEEN THE DATE THAT THE
26 COURT HEARING WAS HELD?

27 A CORRECT.

28 Q IS THERE IS REASON, IF YOU KNOW -- AND YOU MAY

1 NOT KNOW THIS -- IS THERE A REASON WHY, IN THE MIDDLE
2 OF THE PAGE THERE, THERE'S A FILED STAMP THAT SAYS
3 JULY 27TH, 2010?

4 A I WOULDN'T KNOW WHY THERE'S TWO STAMPS ON HERE
5 FOR TWO DIFFERENT DATES. THAT'S SOMETHING THAT HAPPENS
6 AT COURT.

7 Q OKAY. DO YOU KNOW WHETHER OR NOT MOTHER,
8 MS. RAFAELINA DUVAL, WAS EVEN GIVEN A COPY OF THIS LAST
9 MINUTE INFORMATION BEFORE THE HEARING?

10 A I DON'T KNOW. I WASN'T AT THE HEARING.

11 Q OH, YOU WEREN'T AT THE HEARING?

12 A I WASN'T THERE BEFORE THE HEARING. I DON'T
13 KNOW IF I WAS -- LIKE I WASN'T THERE AT THE BEGINNING
14 OF ANY HEARING. SO I DON'T KNOW WHAT SHE WAS GIVEN
15 BEFORE THIS HEARING OR ANY OF THE HEARINGS.

16 Q WELL, LET ME ASK YOU: DO YOU RECALL, WERE YOU
17 AT, AT SOME POINT -- YOU MAY NOT HAVE COME IN IN THE
18 BEGINNING, BUT AT SOME POINT IN TIME, WERE YOU AT THIS
19 HEARING ON JULY 26TH, 2010?

20 A I CAME IN ON ONE OF THE HEARINGS TO TESTIFY
21 BUT I DON'T REMEMBER WHICH HEARING IT WAS. I DON'T
22 REMEMBER THE DATE.

23 Q I WANT YOU TO ASSUME JUST FOR THE MOMENT THAT
24 IT WAS ORIGINALLY FILED ON JULY 26, 2010?

25 A OKAY.

26 Q BY JULY 26, 2010, YOU ALREADY KNEW THAT YOU
27 WERE BEING INVESTIGATED FOR A CIVIL RIGHTS
28 DISCRIMINATION COMPLAINT; RIGHT?

1 MS. SWISS: OBJECTION. RELEVANCE.

2 THE COURT: OVERRULED.

3 THE WITNESS: BY JULY 26TH, YES.

4 BY MR. MCMILLAN:

5 Q YES, YOU KNEW THAT.

6 AND THE PURPOSE -- I THINK YOU SAID WITH
7 MS. SWISS A FEW MOMENTS AGO THE PURPOSE OF FILING THESE
8 LAST MINUTE INFORMATIONS FOR THE COURT WAS TO LET THE
9 COURT KNOW ALL THE IMPORTANT UPDATED INFORMATION.

10 DID I GET THAT ABOUT RIGHT?

11 A I SAID UPDATED INFORMATION.

12 Q YOU WOULD AGREE WITH ME THOUGH THAT WE ONLY
13 WANT TO LET THE COURT KNOW ABOUT IMPORTANT THINGS;
14 RIGHT?

15 A I WOULD AGREE THAT IT WOULD BE GOOD TO LET
16 THEM KNOW ABOUT IMPORTANT THINGS.

17 Q NOW, IN YOUR ROLE AS A DEPENDENCY
18 INVESTIGATOR, AM I CORRECT THAT YOU'RE SUPPOSED TO BE
19 OBJECTIVE AND UNBIASED?

20 A YES.

21 Q AND THAT'S ACCORDING TO BOTH POLICY AND YOUR
22 TRAINING?

23 A YES.

24 Q NOW, AT SOME POINT IN TIME, YOU ALSO FOUND OUT
25 THAT THE DISCRIMINATION COMPLAINT AGAINST YOU HAD BEEN
26 SUBSTANTIATED, MEANING THAT YOUR CIVIL RIGHTS UNIT,
27 AFTER THEY CONDUCTED THEIR THOROUGH INVESTIGATION,
28 DETERMINED THAT YOU IN FACT HAD DISCRIMINATED AGAINST

1 MS. DUVAL BASED ON A DISABILITY; CORRECT?

2 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.
3 RELEVANCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: CAN YOU REPEAT THE QUESTION?

6 MR. MCMILLAN: CAN I HAVE IT REREAD, PLEASE.

7 THE COURT: ASK THE REPORTER TO READ THE
8 QUESTION.

9 (THE PREVIOUS QUESTION WAS READ BACK BY
10 THE COURT REPORTER AS FOLLOWS:

11 "QUESTION: NOW, AT SOME POINT IN
12 TIME, YOU ALSO FOUND OUT THAT THE
13 DISCRIMINATION COMPLAINT AGAINST YOU
14 HAD BEEN SUBSTANTIATED, MEANING THAT
15 YOUR CIVIL RIGHTS UNIT, AFTER THEY
16 CONDUCTED THEIR THOROUGH INVESTIGATION,
17 DETERMINED THAT YOU IN FACT HAD
18 DISCRIMINATED AGAINST MS. DUVAL BASED
19 ON A DISABILITY; CORRECT?")

20 THE WITNESS: I BELIEVE IN THIS PERIOD OF TIME
21 THE CIVIL RIGHTS INVESTIGATOR CONCLUDED THAT, YES.
22 BY MR. MCMILLAN:

23 Q SHE DID CONCLUDE THAT WITHIN THE PERIOD OF
24 TIME WE'RE TALKING ABOUT RIGHT NOW, THAT IS SOMETIME
25 JULY, AUGUST 2010?

26 A THAT WAS THE CONCLUSION THAT SHE HAD, YES.

27 Q NOW DID YOU FILE A LAST MINUTE INFORMATION
28 WITH THE JUVENILE COURT TO LET THEM KNOW THAT NOT ONLY

1 HAD YOU BEEN THOROUGHLY INVESTIGATED BUT THE RESULT OF
2 THAT INVESTIGATION WAS YOU WERE DETERMINED TO HAVE
3 DISCRIMINATED AGAINST MS. DUVAL BASED ON HER
4 DISABILITY? DID YOU LET THE JUVENILE COURT KNOW THAT?

5 A WELL, CONSIDERING THAT THE INFORMATION THAT
6 WAS PROVIDED TO US, THAT CAME TO ME, WAS -- THE SUBJECT
7 LINE SAID "TREAT THIS AS A CONFIDENTIAL PERSONNEL
8 MATTER AND DO NOT DISCUSS IT WITH OTHER PEOPLE," I DID
9 NOT LET THE COURT KNOW THAT THIS INVESTIGATION HAD BEEN
10 COMPLETED OR HAD BEEN GOING ON.

11 MR. MCMILLAN: OBJECTION. YOUR HONOR MOVE TO
12 STRIKE EVERYTHING BEFORE "I DID NOT TELL THE COURT" OR
13 WORDS TO THAT EFFECT AS NONRESPONSIVE TO THE QUESTION.

14 THE COURT: THE OBJECTION IS SUSTAINED. THE
15 MOTION TO STRIKE IS GRANTED.

16 THE -- IN REVIEWING THE ANSWER, THE RULING IS
17 TO OVERRULE THE OBJECTION AND DENY THE MOTION TO STRIKE
18 BECAUSE THE WORDING THAT YOU WERE ASKING AS TO THE
19 MILEPOST TO STRIKE EVERYTHING THEREAFTER WAS --
20 EVERYTHING BEFORE?

21 MR. MCMILLAN: IT WAS EVERYTHING BEFORE HER
22 FINAL ANSWER THAT --

23 THE COURT: I'M OVERRULING. YOU DO WHAT YOU
24 WANT TO DO. GO AHEAD. I'M NOT GOING TO PARSE THAT
25 MANY WORDS, I THINK.

26 BY MR. MCMILLAN:

27 Q AM I CORRECT, MA'AM, THAT AT NO POINT IN TIME
28 EVER DID YOU LET THE JUVENILE COURT KNOW THAT THE

1 INVESTIGATION DONE BY THE CIVIL RIGHTS UNIT HAD
2 CONCLUDED THAT YOU DID IN FACT VIOLATE MS. DUVAL'S
3 RIGHTS BY DISCRIMINATING AGAINST HER BASED ON
4 DISABILITY?

5 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

6 THE COURT: OVERRULED. THIS QUESTION HAS THE
7 WORD "EVER."

8 THE WITNESS: NO, I DID NOT LET THE COURT KNOW
9 ABOUT THE INVESTIGATION.
10 BY MR. MCMILLAN:

11 Q WELL, AND YOU DIDN'T LET THE COURT KNOW ABOUT
12 THE OUTCOME, THE RESULTS OF THE INVESTIGATION EITHER,
13 DID YOU?

14 A I DID NOT LET THE COURT KNOW ABOUT ANYTHING
15 RELATED TO THE INVESTIGATION.

16 Q NOW, WE TALKED A FEW MOMENTS AGO ABOUT THE
17 IMPORTANCE OF BEING UNBIASED AND OBJECTIVE WHEN YOU'RE
18 DOING THESE REPORTS AND INVESTIGATIONS AND REPORTS TO
19 THE COURT; RIGHT?

20 A CORRECT.

21 Q WHY IS IT IMPORTANT THAT, AS A DI MAKING THESE
22 REPORTS TO THE COURT, THAT YOU MAINTAIN YOUR
23 OBJECTIVITY AND NOT BE BIASSED?

24 A WELL, SO THAT YOU PROVIDE AN ACCURATE
25 ASSESSMENT TO THE COURT.

26 Q SO THAT YOU PROVIDE AN ACCURATE ASSESSMENT TO
27 THE COURT.

28 AND THAT'S IMPORTANT ALSO, ISN'T IT, THAT YOU

1 PROVIDE AN ACCURATE ASSESSMENT TO THE COURT?

2 A CORRECT.

3 Q AN ACCURATE REPORT TO THE COURT?

4 A CORRECT.

5 Q AND YOU HAVE TRAINING THAT YOUR COURT
6 REPORTS -- AND THIS GOES FOR ALL REPORTS WHETHER IT'S A
7 LAST MINUTE INFORMATION OR A JURIS/DISPO REPORT, YOUR
8 TRAINING IS YOUR REPORTS ARE REQUIRED TO BE TRUTHFUL,
9 HONEST, ACCURATE, AND COMPLETE; RIGHT?

10 A I BELIEVE SO.

11 Q AND ONE OF THE REASONS FOR THAT IS BECAUSE THE
12 JUDGE -- YOU KNOW THIS THROUGH YOUR TRAINING, THOSE
13 REPORTS ARE GOING TO BE RECEIVED INTO EVIDENCE; RIGHT?

14 A YES.

15 Q AND THE JUDGE IS GOING TO LOOK AT THOSE
16 REPORTS AND READ THROUGH THEM; RIGHT?

17 A YOU'RE ASKING ME WHAT THE JUDGE DOES WITH THE
18 REPORT?

19 Q BASED ON YOUR EXPERIENCE, YOUR UNDERSTANDING,
20 YOUR TRAINING?

21 A I WOULD HOPE THAT THEY WOULD READ THROUGH THE
22 REPORT, YES.

23 Q AND THEN MAKE IMPORTANT DECISIONS ABOUT
24 CHILDREN AND FAMILIES BASED ON WHAT YOU'VE GIVEN THEM
25 IN THAT REPORT; RIGHT?

26 A YES.

27 Q AND WHEN YOU'RE DOING THOSE REPORTS, SOMETIMES
28 YOU ATTACH MEDICAL RECORDS; RIGHT?

1 A YES.

2 Q SOMETIMES VOLUMINOUS MEDICAL RECORDS, LIKE 372
3 PAGES OF MEDICAL RECORDS; RIGHT?

4 A YES.

5 Q AND ACCORDING TO YOUR TRAINING AND THE WRITTEN
6 POLICIES THAT YOU'RE SUPPOSED TO ADHERE TO, ARE YOU
7 SUPPOSED TO SUMMARIZE FOR THE COURT, IN THE BODY OF
8 YOUR REPORT, THE CONTENTS OF THOSE MEDICAL RECORDS?

9 A I DON'T REALLY KNOW IF THAT'S THE WORDING OF
10 HOW IT IS, IF THAT'S SUPPOSED TO BE SUMMARIZED, ALL THE
11 MEDICAL RECORDS, BUT I'M NOT SURE.

12 Q OKAY. ARE YOU REQUIRED -- ARE YOU REQUIRED,
13 ACCORDING TO YOUR TRAINING AND YOUR POLICIES, TO
14 PROVIDE A SUMMARY OF THE CONTENTS OF YOUR ATTACHMENTS
15 WITHIN THE BODY OF THE REPORTS THAT YOU FILE WITH THE
16 COURT?

17 A I DON'T SPECIFICALLY RECALL IF THAT'S THE
18 LANGUAGE OF THE POLICY, BUT IN PRACTICE, GENERALLY, I
19 TRY TO DO THAT.

20 Q OKAY. LET ME TRY IT THIS WAY.

21 WHEN YOU'RE ATTACHING ANY DOCUMENT -- NOT JUST
22 MEDICAL RECORDS, BUT ANY DOCUMENT -- TO A COURT REPORT,
23 ARE YOU TRAINED TO DIFFERENTIATE WHICH FACTS TO
24 DOCUMENT IN THE REPORT ITSELF AND WHICH FACTS NOT TO
25 DOCUMENT?

26 A CAN YOU REPEAT THE QUESTION?

27 Q SURE.

28 MR. MCMILLAN: ACTUALLY, CAN I HAVE IT REREAD

1 PLEASE, YOUR HONOR.

2 THE COURT: ASK THE REPORTER TO READ IT BACK.

3 (THE PREVIOUS QUESTION WAS READ BACK BY

4 THE COURT REPORTER AS FOLLOWS:

5 "QUESTION: LET ME TRY IT THIS

6 WAY. WHEN YOU'RE ATTACHING ANY

7 DOCUMENT -- NOT JUST MEDICAL RECORDS,

8 BUT ANY DOCUMENT -- TO A COURT REPORT

9 ARE YOU TRAINED TO DIFFERENTIATE WHICH

10 FACTS TO DOCUMENT IN THE REPORT ITSELF

11 AND WHICH FACTS NOT TO DOCUMENT?")

12 THE WITNESS: I WOULD SAY THERE'S SOME

13 TRAINING IN REGARDS TO WHICH THINGS ARE PERTINENT TO

14 COURT.

15 BY MR. MCMILLAN:

16 Q AND IN FACT, THAT TRAINING, YOU'RE TRAINED TO

17 PROVIDE A SUMMARY OF THAT INFORMATION; CORRECT?

18 A I DON'T SPECIFICALLY RECALL THE TRAINING AS

19 I'M SITTING HERE.

20 Q OKAY. LET ME JUST TRY TO HELP YOU.

21 MR. MCMILLAN: AND JUST FOR THE RECORD, YOUR

22 HONOR, I'M SHOWING VOLUME II OF THE DEPOSITION OF

23 MS. CANDIS NELSON TAKEN ON AUGUST 20, 2014, PAGE 375.

24 AND ACTUALLY YOU CAN JUST READ THE WHOLE THING FROM

25 LINE 7 ALL THE WAY THROUGH LINE 21. DON'T WORRY TOO

26 MUCH ABOUT THE OBJECTION.

27 THE WITNESS: OKAY.

28 ///

1 BY MR. MCMILLAN:

2 Q THANK YOU.

3 OKAY. I'LL ASK THE QUESTION AGAIN. WELL, LET
4 ME ASK FIRST --

5 THE COURT: WHY DON'T YOU JUST READ FROM THE
6 DEPOSITION.

7 MR. MCMILLAN: OKAY. YOUR HONOR, I WOULD READ
8 FROM PAGE 375, LINE 7, ALL THE WAY THROUGH LINE 21,
9 EXCLUDING THE OBJECTION.

10 MS. SWISS: YOUR HONOR, THERE'S NO QUESTION
11 PENDING THAT WOULD REQUIRE IMPEACHMENT. IF IT WAS AN
12 ATTEMPT TO REFRESH HER RECOLLECTION, IT'S NOT TIME TO
13 TRY TO IMPEACH THE WITNESS.

14 THE COURT: I'M TRYING TO SAVE US A LITTLE
15 TIME. SHE PREVIOUSLY HAD ANSWERED THAT "I DON'T
16 SPECIFICALLY RECALL THE TRAINING AS I'M SITTING HERE."
17 SHE THEN WAS ASKED TO LOOK AT THE DEPOSITION. THAT
18 TECHNICALLY IS NOT A PROPER WAY OF USE OF THE
19 DEPOSITION. I'VE NOW ASKED COUNSEL TO DO WHAT SHOULD
20 BE DONE WITH A DEPOSITION; IF HE THINKS THERE'S
21 SOMETHING CONFLICTING, TO READ IT TO US. SO THAT'S
22 WHAT I'VE ASKED HIM TO DO.

23 MS. SWISS: UNDERSTOOD.

24 THE COURT: NOW TAKE A LOOK AT WHATEVER --
25 WHAT HE'S ASKING TO BE READ.

26 MS. SWISS: COULD YOU REPEAT THE LINES,
27 PLEASE.

28 MR. MCMILLAN: SURE. IT'S 7 THROUGH 21.

1 MS. SWISS: NO OBJECTION, OBVIOUSLY EXCLUDING
2 THE OBJECTION IN THE DEPOSITION TRANSCRIPT.

3 THE COURT: THERE'S NO OBJECTION.

4 MR. MCMILLAN: THANK YOU.

5 THE COURT: SO GO AHEAD.

6 MR. MCMILLAN: THANK YOU, YOUR HONOR.

7 (READING:)

8 "QUESTION: OKAY. ARE YOU TRAINED
9 TO DIFFERENTIATE WHICH FACTS TO
10 DOCUMENT AND WHICH FACTS NOT TO
11 DOCUMENT?

12 "ANSWER: WE'RE TRAINED TO PROVIDE
13 A SUMMARY OF THE INFORMATION.

14 "QUESTION: YOU MEAN A SUMMARY OF
15 THE MEDICAL RECORDS OR A SUMMARY OF THE
16 FACTS?

17 "ANSWER: A SUMMARY OF THE FACTS.

18 "QUESTION: HOW ABOUT A SUMMARY OF
19 THE MEDICAL RECORDS?

20 "ANSWER: YES.

21 "QUESTION: WITH THE FACTS, DO YOU
22 MAKE A DECISION ABOUT WHAT TO PUT IN
23 AND WHAT TO EXCLUDE FROM YOUR REPORT?

24 "ANSWER: YES, I WOULD SAY WE HAVE
25 TO MAKE DECISIONS ABOUT WHAT
26 INFORMATION CAN GO INTO A REPORT AND
27 WHAT INFORMATION DOES NOT GO INTO A
28 REPORT."

1 BY MR. MCMILLAN:

2 Q NOW, MA'AM, AM I CORRECT THAT WHEN YOU'RE
3 PROVIDING THAT SUMMARY IN YOUR COURT REPORTS OF THE
4 MEDICAL INFORMATION THAT YOU'RE ATTACHING, THAT YOU ARE
5 REQUIRED TO BE TRUTHFUL AND ACCURATE IN THAT SUMMARY?

6 A YES.

7 Q AND WHEN WE SAY "TRUTHFUL AND ACCURATE," DOES
8 THAT MEAN THAT WE EXCLUDE AND KEEP OUT OF THE SUMMARY
9 THE EXCULPATORY INFORMATION?

10 A I WOULD SAY NO, YOU DON'T KEEP THAT
11 INFORMATION OUT.

12 Q IN FACT, WHAT YOU'RE SUPPOSED TO DO, ACCORDING
13 TO YOUR TRAINING, THE POLICIES, IS YOU'RE SUPPOSED TO,
14 WHEN YOU SUMMARIZE THOSE VOLUMINOUS MEDICAL RECORDS, IF
15 THERE IS EXCULPATORY INFORMATION IN THERE, IT'S
16 SUPPOSED TO GO IN THE SUMMARY THAT'S IN THE BODY OF
17 YOUR REPORT; CORRECT?

18 A CAN YOU REPEAT THAT?

19 Q SURE. WHEN YOU'RE SUMMARIZING THOSE
20 VOLUMINOUS MEDICAL RECORDS IN THE BODY OF YOUR REPORT,
21 IN THAT SUMMARY, YOU'RE SUPPOSED TO -- IF THERE'S
22 EXCULPATORY INFORMATION IN THOSE RECORDS, YOU'RE
23 SUPPOSED TO LET THE COURT KNOW THAT IN YOUR SUMMARY;
24 RIGHT?

25 A IF THERE'S EXCULPATORY INFORMATION, I WOULD
26 HAVE THAT IN THE REPORT. I WOULDN'T EXCLUDE
27 EXCULPATORY INFORMATION. THAT'S WHAT I WAS TESTIFYING.

28 Q CORRECT. BUT WE'RE -- I UNDERSTAND IN YOUR

1 REPORT THAT YOU'RE REQUIRED IN THE TOTALITY OF YOUR
2 REPORT TO INCLUDE ALL EXCULPATORY INFORMATION; RIGHT?

3 A TO INCLUDE THE -- YES, I WOULD SAY AS MUCH AS
4 POSSIBLE. I MEAN, I THINK IT'S IMPOSSIBLE TO INCLUDE
5 EVERY SINGLE PIECE OF INFORMATION. SO I WOULD SAY AS
6 MUCH AS POSSIBLE TO NOT LEAVE OUT INFORMATION THAT IS
7 EXCULPATORY.

8 Q OKAY. I UNDERSTAND IT'S IMPOSSIBLE TO INCLUDE
9 EVERY SINGLE BIT OF INFORMATION. THERE'S A LOT OF
10 INFORMATION; RIGHT?

11 A CORRECT.

12 Q BUT LET'S JUST FOCUS ON EXCULPATORY
13 INFORMATION. YOU ARE REQUIRED, IN FACT, TO THE EXTENT
14 YOU KNOW THERE'S EXCULPATORY INFORMATION, YOU ARE
15 REQUIRED TO PUT ALL OF THAT EXCULPATORY INFORMATION IN
16 THE BODY OF YOUR REPORT; CORRECT?

17 A I THINK IT'S -- I WOULD SAY MY ANSWER TO THAT
18 WOULD BE IT'S GENERAL PRACTICE TO INCLUDE EXCULPATORY
19 INFORMATION. I'M HAVING AN ISSUE WITH THE WORD "ALL"
20 BECAUSE, LIKE I SAID, IT'S IMPOSSIBLE TO PUT EVERY
21 PIECE OF INFORMATION INTO A REPORT.

22 MR. MCMILLAN: YOUR HONOR, I'VE ALREADY
23 PROVIDED A COPY OF NEXT IN ORDER, EXHIBIT NO. 792,
24 TO -- YEAH, JUST EXHIBIT 792. IT'S A SINGLE-PAGE
25 DOCUMENT, NO BATES NUMBER. AND I WILL SHOW YOU THAT
26 AND JUST LEAVE IT HERE FOR YOU.

27 (PLAINTIFF'S EXHIBIT NO. 792, WAS
28 MARKED FOR IDENTIFICATION.)

1 BY MR. MCMILLAN:

2 Q NOW, IF I CAN DRAW --

3 MS. SWISS: YOU -- THE EXHIBIT 792 THAT WAS
4 HANDED TO COUNSEL IS FOUR PAGES, SO IF YOU COULD
5 IDENTIFY --

6 MR. MCMILLAN: I THINK YOU'VE GOT THE WRONG
7 ONE.

8 MS. SWISS: OH, THE OTHER 792. THANK YOU.

9 BY MR. MCMILLAN:

10 Q IF I CAN GET YOU TO LOOK AT THE UPPER
11 LEFT-HAND QUADRANT OF THE PAGE, YOU SEE A SLIDE THERE,
12 IT SAYS "EXCULPATORY EVIDENCE."

13 DO YOU SEE THAT?

14 A YES.

15 Q CAN YOU READ THAT TO YOURSELF, PLEASE.

16 A YES.

17 Q DO YOU REMEMBER WHEN WE TALKED ABOUT THIS
18 SLIDE AT YOUR DEPOSITION?

19 A VAGUELY.

20 Q IT WAS A COUPLE YEARS AGO. I UNDERSTAND.

21 IN READING THAT SLIDE, DOES THAT REFRESH YOUR
22 RECOLLECTION -- WELL, LET ME ASK YOU THIS FIRST: DO
23 YOU HAVE AN AFFIRMATIVE DUTY TO DISCLOSE EXCULPATORY
24 INFORMATION?

25 A YES.

26 Q WHAT IS EXCULPATORY INFORMATION?

27 A INFORMATION THAT WOULD SHOW NO WRONGDOING OR
28 SHOW -- LIKE EXONERATE THE OTHER PERSON, OR THE OTHER

1 SIDE OF THE -- EQUATION, I GUESS.

2 Q I DIDN'T HEAR THE LAST PART. I'M SORRY.

3 A INFORMATION THAT WOULD EXONERATE A PARTY OR
4 WHATEVER.

5 Q SO THAT'S LIKE INFORMATION THAT MAY BE HELPFUL
6 TO THE OTHER SIDE?

7 A SURE.

8 Q AND IN FACT, HAVE YOU BEEN TRAINED THAT IF YOU
9 FAIL TO DISCLOSE EXCULPATORY INFORMATION, YOU COULD
10 LOSE YOUR CASE OR YOU COULD BE SUED?

11 A I DON'T PARTICULARLY REMEMBER THE EXACT
12 TRAINING. I MEAN, I KNOW THERE'S A SLIDE HERE THAT WAS
13 PRESENTED AS FROM THE TRAINING, BUT I DON'T
14 PARTICULARLY REMEMBER THE EXACT TRAINING, ALL THE
15 WORDING OF THE DIFFERENT TRAININGS THAT WE'VE HAD.

16 Q WELL, DO YOU REMEMBER AT ANY POINT -- I THINK
17 YOU'D SAID YOU'D BEEN EITHER A SOCIAL WORKER OR A
18 SUPERVISING CHILDREN'S SOCIAL WORKER, I THINK I WROTE
19 IT DOWN, LIKE NINE YEARS OR SOMETHING LIKE THAT; IS
20 THAT RIGHT?

21 A 12.

22 Q 12 YEARS. I'M SORRY. IT MIGHT HAVE BEEN NINE
23 AT YOUR DEPOSITION.

24 ANY POINT IN TIME DURING THOSE 12 YEARS, DO
25 YOU RECALL BEING TRAINED THAT IF YOU FAIL TO DISCLOSE
26 EXCULPATORY INFORMATION YOU COULD LOSE YOUR CASE, YOU
27 COULD BE SUED, YOU COULD EVEN BE FIRED?

28 A AGAIN, I DON'T RECALL THE SPECIFICS OF ANY

1 PARTICULAR TRAINING ON THAT. THERE'S BEEN A LOT OF
2 TRAININGS.

3 Q AND THEN DO YOU ALSO RECALL BEING TRAINED THAT
4 NOTHING IS TOO TRIVIAL OR INSIGNIFICANT THAT IT SHOULD
5 BE LEFT OUT OF THE REPORT?

6 A I DON'T HAVE A RECOLLECTION OF THAT SPECIFIC
7 STATEMENT IN A TRAINING BECAUSE, LIKE I SAID, I DON'T
8 RECALL THE SPECIFIC TRAINING.

9 Q OKAY. LET ME TRY AND HELP YOU.

10 MR. MCMILLAN: YOUR HONOR, JUST FOR THE RECORD
11 THIS IS EXHIBIT 400, BATES NO. 5875.

12 AND I'LL GET YOU A DIFFERENT BOOK SO YOU HAVE
13 IT THERE IN FRONT OF YOU.

14 BY MR. MCMILLAN:

15 Q MA'AM, AS PART OF YOUR TRAINING YOU'VE GONE
16 THROUGH THE CORE ACADEMY TRAINING; CORRECT?

17 A YES.

18 Q OKAY. DO YOU RECALL THE YEAR THAT YOU WENT
19 THROUGH THE CORE ACADEMY TRAINING?

20 A IT WOULD HAVE BEEN IN 2004.

21 Q 2004.

22 DO YOU RECALL, IN THAT CORE ACADEMY TRAINING
23 THAT YOU HAD IN 2004, SITTING IN A CLASS OR PERHAPS A
24 ROOM, CONFERENCE ROOM, SOMETHING LIKE THAT AND HAVING
25 SOMEBODY SHOW YOU POWERPOINT SLIDES?

26 A IT WAS EIGHT WEEKS OF TRAINING, SO THERE WAS A
27 LOT OF TRAINING. SO I THINK THERE WERE SOME POWERPOINT
28 SLIDE IN THERE.

1 Q OKAY. AND AS PART OF THAT PROCESS, THEY GAVE
2 YOU HANDOUTS AS WELL?

3 A I BELIEVE SO.

4 Q SO THAT YOU COULD TRACK ALONG WITH THE
5 POWERPOINT PRESENTATIONS?

6 A I WOULD IMAGINE SO.

7 Q DO YOU RECALL BEING TRAINED IN YOUR CORE
8 ACADEMY TRAINING ANYTHING ABOUT THE FIVE COMMANDMENTS
9 OF COURT REPORT WRITING, DRAWING YOUR ATTENTION
10 SPECIFICALLY TO NO. 1, WHICH IS INCLUDE EVERYTHING,
11 EVERYTHING, EVERYTHING IN THE REPORT?

12 A I DON'T REMEMBER THAT PARTICULAR TRAINING FROM
13 2004.

14 Q OH, DO YOU REMEMBER IT IN A DIFFERENT YEAR?

15 A NO. I'M SAYING I DON'T REMEMBER, FROM 2004,
16 THIS SLIDE IN THAT TRAINING.

17 Q WELL, AS PART OF YOUR TRAINING PROCESS, DO YOU
18 HAVE RECURRENT TRAINING?

19 A RECURRENT OR DIFFERENT OR CHANGED, LIKE IF
20 THERE'S CHANGES OF POLICIES, THERE MIGHT BE DIFFERENT
21 TRAINING, OR UPDATED THINGS, OR NEW POLICIES THAT COME
22 IN. THERE'S LOTS OF TRAINING.

23 Q OKAY. I UNDERSTAND THERE'S LOTS OF TRAINING.
24 BUT WHAT I'M WONDERING HERE -- AND I CAN GIVE YOU AN
25 EXAMPLE. IT'S LIKE WE HAVE TO HAVE RECURRENT TRAINING
26 TO STAY UPDATED ON THE THINGS WE'RE SUPPOSED TO DO.
27 THERE'S A CERTAIN NUMBER OF HOURS WE HAVE TO TAKE EACH
28 YEAR.

1 DO YOU GUYS HAVE SOMETHING LIKE THAT AT THE
2 COUNTY, ANY RECURRENT TRAINING?

3 MS. SWISS: OBJECTION. RELEVANCE.

4 THE COURT: SUSTAINED.

5 BY MR. MCMILLAN:

6 Q IN ANY OF THESE OTHER TRAININGS THAT YOU'VE
7 HAD SINCE 2004 -- THERE'S BEEN MANY; RIGHT?

8 A YEAH.

9 Q DO YOU RECALL ANYBODY EVER TRAINING YOU IN ANY
10 OF THOSE OTHER TRAININGS THAT NOTHING IS TOO TRIVIAL OR
11 UNIMPORTANT OR INCONSEQUENTIAL THAT IT CAN BE LEFT OUT
12 OF THE REPORT?

13 A WELL, AS I SAID I DON'T RECALL THAT SPECIFIC
14 STATEMENT IN A TRAINING.

15 Q IN ANY TRAINING?

16 A WELL, SPECIFICALLY AS IT RELATES TO COURT
17 REPORTS, IN ANY OTHER TRAINING RELATED TO COURT
18 REPORTS.

19 Q ON EXHIBIT 63 THAT YOU WERE SPEAKING WITH
20 MS. SWISS ABOUT -- BEFORE YOU ACTUALLY LOOK AT THE
21 DOCUMENT, DO YOU REMEMBER WHAT RECORDS YOU ATTACHED TO
22 IT?

23 A I THINK IT'S THE PHYSICAL THERAPY STUFF.

24 Q WAS THAT ALL THE TOTAL EXTENT OF THE MEDICAL
25 RECORDS FOR THE CHILD THAT WERE AVAILABLE TO YOU
26 BETWEEN JULY 26, 2010, AND THE LAST HEARING?

27 MS. SWISS: OBJECTION. VAGUE.

28 THE COURT: SUSTAINED. PLEASE REPHRASE THAT.

1 MR. MCMILLAN: OKAY. I THINK I CAN.

2 BY MR. MCMILLAN:

3 Q EXHIBIT NO. 338, THAT WAS THE LAST MINUTE
4 INFORMATION YOU FILED FOR THE HEARING ON JUNE 21, 2010;
5 CORRECT?

6 A WHICH ONE IS THAT ONE?

7 Q IT'S 338.

8 A YES.

9 Q OKAY. THEN THE NEXT LAST MINUTE INFORMATION
10 THAT YOU FILED WAS THE LAST MINUTE INFORMATION DATED
11 JULY 26, 2010; CORRECT?

12 A CORRECT.

13 Q AND SO MY QUESTION WAS THERE ANY OTHER MEDICAL
14 INFORMATION FROM, FOR EXAMPLE, HARBOR-UCLA FAILURE TO
15 THRIVE CLINIC THAT YOU HAD ACCESS TO BETWEEN JUNE 21,
16 2010, AND JULY 26, 2010, OTHER THAN THE FEW PAGES YOU
17 ATTACHED TO EXHIBIT 63?

18 A I DON'T KNOW.

19 Q GOING TO EXHIBIT 338 JUST FOR A MOMENT --
20 WELL, EXHIBIT 35. IS THAT THERE IN FRONT OF YOU?

21 A I DON'T THINK SO. OH, WAIT, IT IS.

22 Q AND JUST FOR THE RECORD, IT'S BATES
23 NO. 000890.

24 A YOU SAID 35?

25 Q YES, 35.

26 A OKAY.

27 Q OKAY. WHAT YOU TOLD THE COURT, OR AT LEAST
28 ONE OF THE THINGS THAT YOU TOLD THE COURT, WAS THAT THE

1 MOTHER, MS. RAFAELINA DUVAL, IS REPORTEDLY SMOTHERING
2 TO THE CHILD DURING MANY OF THE VISITS; CORRECT?

3 A THAT'S WHAT IT SAYS THERE.

4 Q WELL, YOU WROTE THIS; RIGHT?

5 A CORRECT.

6 Q NOW, YOU ONLY ACTUALLY MONITORED ONE VISIT
7 WITH MOTHER; RIGHT?

8 A I DIDN'T MONITOR THE VISIT, I OBSERVED THE
9 VISIT THAT WAS BEING MONITORED BY SOMEBODY ELSE, BUT
10 YES.

11 Q SO THERE WERE TWO OF YOU IN THE ROOM WATCHING
12 MS. DUVAL WITH HER CHILD?

13 A WHEN I WAS THERE FOR THE VISIT, MS. ENNIS WAS
14 THE MONITOR AND I WAS OBSERVING THE VISIT.

15 Q OKAY. AND TAKING NOTES?

16 A I BELIEVE SO. I DON'T KNOW. ARE YOU ASKING
17 IF I WAS TAKING NOTES OR IF MS. ENNIS WAS TAKING NOTES?

18 Q YOU TAKING NOTES?

19 A I BELIEVE SO.

20 Q AND THEN YOU WENT BACK AT SOME POINT IN TIME
21 AND YOU TYPED THOSE NOTES UP IN YOUR DELIVERED SERVICE
22 LOG?

23 A YES.

24 Q NOW, THAT WAS THE ONLY VISIT OR ACTUALLY THE
25 ONLY INTERACTION THAT YOU EVER HAD WITH MS. DUVAL;
26 RIGHT?

27 A WELL, NO THAT WAS SEPARATE FROM MY INTERVIEW
28 WITH HER SO THERE WERE TWO DIFFERENT INTERACTIONS WITH

1 HER.

2 Q OKAY. IF YOU CAN TURN TO EXHIBIT NO. 82.

3 AND I DON'T KNOW IF YOU HAVE THAT.

4 THE COURT: WE'LL TAKE THE NOONTIME RECESS.

5 WE'RE GOING TO RESUME AT 1:30.

6 ALL JURORS, PLEASE REMEMBER THE ADMONITION TO

7 HAVE NO COMMUNICATION WITH ANYONE ABOUT ANYTHING TO DO

8 WITH THIS CASE. DO NOT FORM NOR EXPRESS ANY OPINIONS.

9 WE ARE NOW IN RECESS.

10 (JURY EXCUSED)

11 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE

12 PRESENT OUTSIDE THE PRESENCE OF THE JURY.

13 I'VE RECEIVED A MESSAGE OF ONE JUROR WHO HAS

14 ADVISED OUR COURT ATTENDANT THAT THAT JUROR IS NOT

15 GETTING PAID TWO DAYS A WEEK. HE DIDN'T REALIZE THIS

16 UNTIL HE GOT PAID. HE'S BEEN TRYING TO GO WITHOUT PAY

17 BUT IT'S BECOMING A STRAIN ON HIM FINANCIALLY. I DON'T

18 KNOW WHO IT IS. I'M JUST TELLING YOU THE INFORMATION I

19 RECEIVED. IT'S A PREFACE TO WHAT I'M ABOUT TO TALK TO

20 YOU ABOUT.

21 ONE JUROR HAS ISSUES WITH HER PARENTS'

22 DOCTORS' APPOINTMENTS. HER MOTHER WAS SUPPOSED TO HAVE

23 SURGERY TODAY AND HAD TO RESCHEDULE IT. ANOTHER ONE

24 SIMPLY WANTED TO MAKE APPOINTMENTS AND WANTED TO KNOW

25 WHICH DAYS WE'D BE OFF. THAT'S WHAT I ADDRESSED WHEN

26 WE RESUMED. I DON'T KNOW WHO THESE TWO JURORS ARE BUT

27 THAT'S THE MESSAGE I'VE RECEIVED.

28 I'M GOING TO HAVE TO ADDRESS THOSE ISSUES WITH

1 THOSE JURORS AND TO FIND OUT WHAT THE HARDSHIP WOULD
2 BE.

3 THIS IS THE 25TH DAY OF THE TRIAL, AND WE GAVE
4 THESE JURORS A 25-DAY ESTIMATE AT THE TIME WE BEGAN THE
5 CASE. THE 25-DAY ESTIMATE WAS THE SAFETY ESTIMATE. IN
6 FACT, YOUR ESTIMATE WAS -- THE HIGHEST ESTIMATE I EVER
7 HEARD FROM YOU WAS 22 DAYS. OF COURSE, THE TRIAL
8 INCLUDES JURY SELECTION, INSTRUCTIONS, TIME FOR
9 DELIBERATION.

10 WHATEVER THE REASONS ARE, WE'RE GOING TO START
11 LOSING JURORS. I DON'T KNOW WHEN YOU THINK WE CAN
12 FINISH THE EVIDENCE, BUT WE CONTINUE TO HAVE SERIAL
13 MAJOR LEGAL ISSUES THAT SHOULD HAVE BEEN, PROBABLY SOME
14 OF IT AT LEAST, ADDRESSED AT A MUCH EARLIER TIME THAN
15 THE TIME THEY CAME UP. BUT THE REAL POINT IS WE HAVE
16 TO DEAL WITH THEM.

17 SO, HAVING ADVISED YOU OF THIS, I INTEND TO
18 CONFER WITH YOU FURTHER AT 1:30 AS TO, FIRST OF ALL, A
19 REALISTIC ESTIMATE THAT I CAN GIVE THESE JURORS OF THE
20 FURTHER TIME THAT THEY WILL BE HERE. I THEN AM ALSO
21 GOING TO HAVE TO SEPARATELY IDENTIFY WHO THE JUROR IS
22 THAT IS NOW LOSING MONEY FOR BEING HERE. I'M JUST
23 QUOTING THE MESSAGE; I'M NOT SAYING THAT I KNOW THIS TO
24 BE SO. "IS BECOMING A STRAIN ON HIM," SO I'M ASSUMING
25 IT'S ONE OF THE MALE MEMBERS OF THE JURY.

26 SO I WANT A REALISTIC ESTIMATE SO WE CAN GIVE
27 THE JURORS, AND THEN WE'LL HAVE TO SEE WHAT HAPPENS.

28 SEE YOU BACK AT 1:30.

1 MR. GUTERRES: THANK YOU, YOUR HONOR.

2 MR. MCMILLAN: THANK YOU, YOUR HONOR.

3 (LUNCH RECESS)

4 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE
5 PRESENT OUTSIDE THE PRESENCE OF THE JURY.

6 MR. GUTERRES, CAN YOU GIVE ME AN ESTIMATE OF
7 HOW MUCH LONGER YOU'RE GOING TO NEED TO GET YOUR
8 WITNESSES ON? AND YOU KNOW WHY I'M ASKING.

9 MR. GUTERRES: ABSOLUTELY, YOUR HONOR.

10 THE COURT: I'M NOT SUGGESTING IN ANY WAY THAT
11 YOU SHOULD NOT PUT ON ANY PART OF YOUR CASE WHICH YOU
12 THINK IS ESSENTIAL TO REPRESENT YOUR CLIENTS. I JUST
13 NEED TO GET AN ESTIMATE BECAUSE WE'RE GOING TO HAVE TO
14 TALK TO SOME JURORS.

15 MR. GUTERRES: WE THINK THAT BY TUESDAY WE
16 SHOULD BE DONE WITH OUR EVIDENCE, AT THE LATEST.

17 THE COURT: SO MEANING THE REST OF TODAY AND
18 MONDAY AND TUESDAY OF NEXT WEEK?

19 MR. GUTERRES: WOULD BE MY HOPE. I HAVE A
20 NUMBER OF WITNESSES LINED UP AND MR. MCMILLAN HAS BEEN
21 VERY ACCOMMODATING IN THAT REGARD BECAUSE WE'VE BEEN
22 TRYING TO GET SOME OF THESE FOLKS IN -- WE'VE HAD FOLKS
23 IN HERE IN THE HOPES OF BEING ABLE TO GET THEM IN
24 AND --

25 THE COURT: AND HAVEN'T, IN SOME INSTANCES.

26 MR. GUTERRES: CORRECT, AND IT JUST HASN'T
27 PANNED OUT.

28 SO WE'RE JUST TRYING TO -- WE'RE STILL TRYING

1 TO CUT BACK ON WHAT WE REALLY NEED AND WE'RE TRYING TO
2 BE AS EFFICIENT AS WE CAN. THERE'S A SLIGHT CHANCE
3 THAT WE COULD BE DONE BY MONDAY BUT IT REALLY WOULD
4 DEPEND ON HOW MANY WITNESSES WE CAN GET DONE TODAY.

5 I HAVE AT LEAST TWO WITNESSES FOR -- WE NEED
6 TO FINISH MS. NELSON. I'VE GOT MS. WORK HERE, WHICH I
7 WOULD ACTUALLY LIKE TO BRING IN BECAUSE SHE'S NO LONGER
8 A PARTY-AFFILIATED WITNESS.

9 THE COURT: RIGHT. ALL RIGHT. WELL, THAT'S
10 YOUR BEST ESTIMATE, HOPEFULLY DONE BY NEXT TUESDAY.

11 MR. GUTERRES: YES, YOUR HONOR. AS FAR AS OUR
12 WITNESSES, WE THINK WE SHOULD BE DONE BY TUESDAY.

13 THE COURT: ALL RIGHT. DON, I NEED DEANNA.

14 ALL RIGHT. DEANNA, YOUR MESSAGE TO ME WAS YOU
15 HAD ONE JUROR TALK TO YOU WHO IS NOT GETTING PAID TWO
16 DAYS OUT OF THE WEEK?

17 DEANNA: YES.

18 THE COURT: CAN YOU IDENTIFY THAT JUROR FOR
19 ME?

20 DEANNA: I DON'T KNOW WHAT NUMBER HE IS
21 OFFHAND.

22 THE COURT: DO YOU KNOW WHO IT IS OUTSIDE?

23 DEANNA: UH-HUH. I WAS JUST ACTUALLY TALKING
24 TO HIM TO CLARIFY EXACTLY WHAT IT WAS. AND APPARENTLY,
25 HE HAS TWO JOBS. SO WHEN MONDAY AND TUESDAY COMES, HE
26 DOESN'T GET THAT EXTRA PAY FOR MONDAY AND TUESDAY,
27 WHICH HE DOES NEED TO MAKE HIS INCOME.

28 THE COURT: RIGHT. MAKE ENDS MEET.

1 DEANNA: YEAH.

2 THE COURT: ALL RIGHT. WILL YOU ASK THAT
3 JUROR TO COME IN, PLEASE.

4 DEANNA: ALL RIGHT.

5 THE COURT: I KNOW MR. HOLLINGSWORTH.

6 MR. HOLLINGSWORTH, DEANNA PASSED ON TO ME THAT
7 YOU HAVE TWO DAYS A WEEK FOR WHICH YOU'RE NOT GETTING
8 PAID AS IT TURNS OUT, WHICH APPARENTLY ARE MONDAYS AND
9 TUESDAYS.

10 MR. HOLLINGSWORTH: YES.

11 THE COURT: AND IS THIS CREATING A FINANCIAL
12 HARDSHIP FOR YOU?

13 MR. HOLLINGSWORTH: IT'S STARTING TO.

14 THE COURT: I'M GOING TO TALK TO EVERYBODY
15 ABOUT -- BECAUSE WE'VE HAD, CONTINUED TO HAVE INQUIRIES
16 ABOUT HOW LONG THE TRIAL WILL TAKE. MY ESTIMATE IS
17 THAT IT'S GOING TO TAKE AT LEAST ALL OF NEXT WEEK AND
18 POSSIBLY INTO THE FIRST FEW DAYS OF THE FOLLOWING WEEK.
19 I DON'T KNOW THAT IT WILL TAKE THAT LONG BUT I BELIEVE
20 THAT, UNDER THE VERY BEST OF CIRCUMSTANCES, IT WOULD
21 TAKE ALL OF NEXT WEEK. AND I DON'T THINK THE CASE WILL
22 BE FINISHED, INCLUDING -- I'M TALKING ABOUT THAT THE
23 EVIDENCE WILL BE FINISHED BUT I'M TALKING ABOUT
24 INSTRUCTIONS, FINAL ARGUMENTS, REASONABLE TIME FOR
25 DELIBERATION, BECAUSE THERE WILL BE A NUMBER OF ISSUES
26 THE JURY WILL HAVE TO DELIBERATE UPON.

27 SO, FOR YOUR SITUATION, IT APPEARS THAT YOU
28 WOULD BE HERE ALL OF NEXT WEEK AND COULD MISS A DAY OR

1 COUPLE DAYS IN THE BEGINNING OF THE FOLLOWING WEEK. SO
2 I NEED YOU TO BE ABLE TO TELL ME IF THIS IS SOMETHING
3 YOU REASONABLY CAN DO OR NOT BECAUSE THE TIME ESTIMATE
4 FOR THE TRIAL IS -- WAS A SHORTER TIME. SO I NEED TO
5 HAVE YOU TELL ME YOUR CIRCUMSTANCES.

6 MR. HOLLINGSWORTH: OKAY. SO YOU SAID END OF
7 NEXT WEEK AND THEN A FEW DAYS INTO THE FOLLOWING WEEK?

8 THE COURT: YES. TOMORROW, AS I TOLD THE JURY
9 EARLIER TODAY, YOU WON'T BE HERE, AND THAT'S BECAUSE
10 THERE ARE MATTERS THAT CAN ONLY BE DONE BY THE COURT
11 FOR WHICH WE DO NOT NEED THE JURY. AND THEN NEXT WEEK
12 I EXPECT YOU TO BE HERE ALL WEEK. AND THEN POSSIBLY
13 INTO THE FOLLOWING WEEK, WHICH WOULD BE THE WEEK
14 BEGINNING OCTOBER 31 ON THE MONDAY, NOVEMBER 1, WHICH
15 IS A TUESDAY. IT'S POSSIBLE BECAUSE IT'S HARD TO
16 PREDICT ALSO EXACTLY HOW LONG A JURY WILL DELIBERATE,
17 BUT I THINK THAT'S RIGHT NOW REASONABLY POSSIBLE. SO.

18 MR. HOLLINGSWORTH: I'VE BEEN HERE THIS LONG.
19 ANOTHER WEEK AND COUPLE DAYS, I THINK I CAN DO IT.

20 THE COURT: YOU CAN DO IT?

21 MR. HOLLINGSWORTH: YEAH.

22 THE COURT: OKAY. I LEAVE IT UP TO YOU. I'M
23 SYMPATHETIC. THIS IS NOT AN EASY WORLD WE LIVE IN.

24 MR. HOLLINGSWORTH: IT'S NOT.

25 THE COURT: AND IT'S UNDERSTANDABLE THAT
26 EVERYONE PRETTY MUCH HAS THEIR NEEDS AND THEIR ABILITY
27 TO SATISFY THOSE NEEDS MAPPED OUT. SO IF YOU THINK YOU
28 CAN DO IT --

1 MR. HOLLINGSWORTH: YEAH.

2 THE COURT: -- THEN WE'D LOVE TO HAVE YOU
3 STAY.

4 BUT I WOULDN'T HAVE YOU STAY AT THE EXPENSE OF
5 CREATING A REAL HARDSHIP FOR YOU.

6 MR. HOLLINGSWORTH: I APPRECIATE THAT.

7 THE COURT: SO YOU THINK YOU CAN DO IT?

8 MR. HOLLINGSWORTH: YEAH, I CAN DO IT.

9 THE COURT: OKAY. I APPRECIATE IT. IF YOU
10 COULD GO BACK OUTSIDE FOR A MINUTE.

11 MR. HOLLINGSWORTH: OKAY.

12 THE COURT: I HAVE MAYBE ONE OTHER JUROR TO
13 TALK TO.

14 MR. HOLLINGSWORTH: OKAY.

15 THE COURT: OKAY.

16 MR. HOLLINGSWORTH: THANKS.

17 THE COURT: THANKS, MR. HOLLINGSWORTH.

18 ALL RIGHT. DEANNA, IN YOUR MESSAGE TO ME YOU
19 ALSO TOLD ME THAT YOU HAVE A JUROR WHO HAS ISSUES WITH
20 HER PARENTS' DOCTORS' APPOINTMENTS. HER MOTHER WAS
21 SUPPOSED TO HAVE HAD SURGERY TODAY AND HAD TO
22 RESCHEDULE IT.

23 WAS THAT RESCHEDULING, TO YOUR UNDERSTANDING,
24 DUE TO THE UNAVAILABILITY OF THE JUROR?

25 DEANNA: YES.

26 THE COURT: IS THIS THE SAME JUROR THAT WE'VE
27 RECESSED EARLY FOR ON SEVERAL OCCASIONS?

28 DEANNA: YES.

1 THE COURT: BECAUSE I REMEMBER LAST TIME THEY
2 WERE GOING TO THE CITY OF HOPE.

3 DEANNA: YES.

4 THE COURT: SO THAT WAS OUR JUROR NO. 8,
5 MS. MANZANO.

6 WILL YOU ASK MS. MANZANO TO COME IN, PLEASE.

7 MR. GUTERRES: YOUR HONOR?

8 THE COURT: YES.

9 HOLD ON.

10 MR. GUTERRES: NEXT WEEK, AS I UNDERSTOOD THE
11 COURT, BECAUSE OF ONE OF THE JUROR'S PREPAID VACATIONS
12 WE WERE GOING TO BE DARK ON THURSDAY AND FRIDAY.

13 THE COURT: I DON'T THINK WE CAN AFFORD TO BE
14 DARK NEXT THURSDAY AND FRIDAY. I'M GOING TO HAVE TO
15 LET THAT JUROR GO. I DON'T THINK WE CAN AFFORD THAT
16 TIME.

17 MR. GUTERRES: UNDERSTOOD. I JUST WANTED TO
18 CONFIRM.

19 THE COURT: OKAY.

20 SO PLEASE HAVE MS. MANZANO COME IN.

21 AND THEN I HAVE COMMUNICATION JUST HOT OFF THE
22 COMPUTER WHICH IS OF A LESSER PROBLEM BUT STILL
23 SOMEWHAT OF A PROBLEM.

24 MS. MANZANO, IF YOU COULD STEP UP HERE BY THE
25 PODIUM FOR JUST A SECOND BECAUSE I WANTED TO TALK TO
26 YOU FOR A MOMENT BECAUSE ACCORDING TO DEANNA -- DEANNA
27 HAD SENT ME AN E-MAIL EARLIER TODAY AND -- MENTIONING
28 ABOUT SOME PROBLEMS WITH MEDICAL AND SO ON, WHICH I

1 KNOW THAT YOU'VE HAD SEVERAL OCCASIONS DURING THE TRIAL
2 TO HAVE TO GO WITH YOUR MOTHER TO TAKE CARE OF MATTERS.
3 AND THE MESSAGE THAT I RECEIVED WAS TO THE EFFECT THAT
4 YOUR MOTHER WAS SUPPOSED TO HAVE HAD SURGERY TODAY.

5 MS. MANZANO: YEAH, I RESCHEDULED IT FOR
6 NOVEMBER 3RD.

7 THE COURT: FOR NOVEMBER 3RD?

8 MS. MANZANO: YES. BUT THAT'S WHAT I WAS
9 ASKING THE LADY TO SEE MORE OR LESS WHEN THIS TRIAL IS
10 GOING TO BE OVER SO I CAN.

11 THE COURT: ALL RIGHT. IF I ASSURE YOU THAT
12 YOU WOULD BE ABLE TO ACCOMPANY HER ON NOVEMBER 3RD,
13 WOULD YOU BE ABLE TO SEE THIS THROUGH?

14 MS. MANZANO: YES. I JUST DON'T WANT TO
15 RESCHEDULE IT AGAIN.

16 THE COURT: YOU WILL NOT HAVE TO BE HERE ON
17 NOVEMBER 3RD. IT'S MY BELIEF THAT THE CASE WILL BE IN
18 TRIAL ALL OF NEXT WEEK. IT'S POSSIBLE THAT WE COULD
19 COMPLETE THE ENTIRE MATTER BY THE END OF NEXT WEEK BUT
20 I THINK IT'S DOUBTFUL. SO THE TRIAL, IN MY VIEW, WILL
21 PROBABLY GO INTO THE FIRST ONE OR TWO DAYS OF THE
22 FOLLOWING WEEK, WHICH WILL BE MONDAY, OCTOBER 31, AND
23 TUESDAY, NOVEMBER 1.

24 I THINK TO ME IT'S PROBABLE IT COULD BE
25 COMPLETED THEN, THE MATTERS THAT HAVE TO BE COMPLETED,
26 INCLUDING THE EVIDENCE. AND ONCE THE EVIDENCE IS
27 COMPLETED, THERE WILL ALSO BE A BREAK BEFORE WE CAN
28 PROCEED BECAUSE OF LEGAL ISSUES THAT THE COURT NEEDS TO

1 ADDRESS, INCLUDING SUCH MATTERS AS EXHIBITS, WHETHER
2 THEY ARE ADMISSIBLE IN EVIDENCE OR NOT. SO THERE'S A
3 NUMBER OF THINGS LIKE THAT THAT HAVE TO BE DONE BEFORE
4 WE CAN GO TO CLOSING ARGUMENTS. AND THEN PROVIDE FOR A
5 REASONABLE PERIOD OF TIME TO BE ABLE TO DELIBERATE TO
6 DECIDE THE ISSUES THAT WILL BE SUBMITTED TO THEM.

7 AND ALL OF THIS IS A LITTLE UNPREDICTABLE, BUT
8 NEVERTHELESS, I BELIEVE THAT REASONABLY WE CAN BE
9 COMPLETED BY TUESDAY, NOVEMBER 1ST. MY POINT OF IT IS
10 THIS: KNOWING WHAT YOUR SCHEDULE IS, IF I PROMISE YOU
11 AND GUARANTEE TO YOU THAT YOU WILL NOT HAVE TO BE HERE
12 PAST THAT DATE, OR AT LEAST PAST THE TIME WHEN YOUR
13 MOTHER NEEDS YOU TO GO WITH HER FOR SURGERY, WHICH WILL
14 BE THURSDAY OF THAT WEEK --

15 MS. MANZANO: ACTUALLY, YOUR HONOR, I'M SORRY.
16 IT'S WEDNESDAY, I BELIEVE, IT'S THE 2ND.

17 THE COURT: WEDNESDAY THE 2ND?

18 MS. MANZANO: YES.

19 THE COURT: OKAY. SO WEDNESDAY OF THAT WEEK?

20 IF I GUARANTEE YOU THAT IF WE'RE NOT COMPLETED
21 THAT YOU WOULD BE EXCUSED SO YOU CAN ATTEND TO THAT
22 MATTER WITH YOUR MOTHER, WOULD YOU BE ABLE TO STAY ON
23 WITHOUT CREATING ANY GREAT HARDSHIP?

24 MS. MANZANO: YES.

25 THE COURT: OKAY. THANKS VERY MUCH.

26 (A DISCUSSION WAS HELD OFF THE RECORD.)

27 THE COURT: THE LAST SITUATION WITH A JUROR IS
28 STILL -- I'M NOT GOING TO ADDRESS AT THIS TIME. SO

1 WE'RE READY TO PROCEED.

2 MR. GUTERRES: YOUR HONOR, WE'RE GOING TO NEED
3 TO INTERRUPT THE TESTIMONY OF MS. NELSON. WE HAVE A
4 THIRD-PARTY WITNESS NOW. AND WE'VE --

5 THE COURT: ALL RIGHT.

6 BEFORE WE GET THE JURORS BACK IN, THEN, I DO
7 NEED TO ADDRESS JUROR NO. 4, NAJARA, WHO NEEDED TO BE
8 OFF NEXT THURSDAY AND FRIDAY. I PROMISED TO HER THAT
9 SHE WOULD BE. I THINK I'M GOING TO HAVE TO LET HER GO
10 AND I MIGHT AS WELL DO IT NOW BECAUSE WE WILL NOT BE
11 DONE IN ORDER TO TAKE THAT TIME OFF.

12 HI, MS. NAJARA.

13 MS. NAJARA: HELLO.

14 THE COURT: LOOK I HAVEN'T FORGOTTEN ABOUT
15 NEXT THURSDAY AND FRIDAY. AND YOU STILL HAVE THOSE
16 PLANS?

17 MS. NAJARA: YES, I DO.

18 THE COURT: OKAY. BECAUSE I PROMISED YOU THAT
19 YOU WOULD BE ABLE TO GO ON THAT TRIP, I'M GOING TO HAVE
20 TO EXCUSE YOU FROM FURTHER SERVICE BECAUSE WE WILL NOT
21 BE COMPLETED BY NEXT THURSDAY.

22 MS. NAJARA: OKAY. THAT'S FINE.

23 THE COURT: AND SO I'M GOING TO THANK YOU VERY
24 MUCH --

25 MS. NAJARA: OKAY.

26 THE COURT: -- FOR YOUR SERVICE AND FOR YOUR
27 WILLINGNESS TO SERVE. AND I NEED TO HAVE YOU GO
28 DOWNSTAIRS TO THE JURORS' ASSEMBLY ROOM, 253.

1 MS. NAJARA: OKAY.

2 THE COURT: THANK YOU VERY MUCH.

3 MS. NAJARA: OKAY. THANK YOU.

4 THE COURT: NOW WE NEED TO GET THE JURORS IN,
5 AND WE'RE GOING TO DRAW THE NEXT ALTERNATE.

6 DEANNA IS NOT HERE, DON. COULD YOU LET HER
7 KNOW?

8 THE CLERK: YES.

9 THE COURT: THERE SHE IS.

10 (A DISCUSSION WAS HELD OFF THE RECORD.)

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

13 AT THIS TIME, BECAUSE I HAVE EXCUSED JUROR
14 NO. 4 FOR HARDSHIP FROM FURTHER SERVICE IN THIS CASE,
15 WE'RE GOING TO SELECT AN ALTERNATE JUROR TO REPLACE
16 JUROR NO. 4. THE -- AFTER THE CLERK CALLS THE
17 ALTERNATE JUROR'S NAME, PLEASE TAKE THE NO. 4 SEAT IN
18 THE JURY BOX.

19 ASK THE CLERK TO DRAW THE NAME OF THE
20 ALTERNATE JUROR.

21 THE CLERK: LUCKY CHALIANDRA.

22 THE COURT: ALL RIGHT. AND NEXT, TO RESUME
23 THE TESTIMONY IN THE CASE, WE ARE AGAIN GOING TO
24 INTERRUPT THE TESTIMONY OF MS. NELSON IN ORDER TO
25 ACCOMMODATE THE SCHEDULE OF ANOTHER WITNESS.

26 AND MR. GUTERRES, YOU'D LIKE TO CALL THAT
27 WITNESS AT THIS TIME?

28 MR. GUTERRES: YES, THANK YOU, YOUR HONOR.

1 THE DEFENSE WOULD CALL ROBBI WORK.

2

3

ROBBI WORK,

4

WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY

5

SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

6

7

THE CLERK: FOR THE RECORD, PLEASE STATE YOUR

8

NAME AND SPELL YOUR FIRST AND LAST NAME.

9

THE WITNESS: ROBBI WORK, R-O-B-B-I, W-O-R-K.

10

THE COURT: THANK YOU VERY MUCH.

11

GO AHEAD, MR. GUTERRES.

12

MR. GUTERRES: THANK YOU, YOUR HONOR.

13

14

DIRECT EXAMINATION

15

BY MR. GUTERRES:

16

Q MS. WORK, GOOD AFTERNOON.

17

A GOOD AFTERNOON.

18

Q ARE YOU CURRENTLY EMPLOYED?

19

A NO.

20

Q WHEN WERE YOU LAST EMPLOYED?

21

A MAY 31ST, 2016.

22

Q AND WHAT WAS YOUR LAST EMPLOYMENT?

23

A I WAS A PRINCIPAL DEPUTY COUNTY COUNSEL,

24

OFFICE OF COUNTY COUNSEL OF LOS ANGELES. AND I WAS

25

ASSIGNED TO THE DEPENDENCY DIVISION.

26

Q AND DID YOU HAVE ANY INVOLVEMENT IN THE

27

DEPENDENCY PROCEEDINGS INVOLVING BABY RYAN?

28

A I DID.

1 Q AND COULD YOU BRIEFLY TELL US WHAT YOUR
2 INVOLVEMENT WAS?

3 A I WAS THE TRIAL ATTORNEY ON THE CASE FOR THE
4 COUNTY.

5 Q AND COULD YOU TELL US THEN AS THE TRIAL
6 ATTORNEY WERE YOU AT THE VARIOUS HEARINGS THAT TOOK
7 PLACE IN THE DEPENDENCY COURT?

8 A I WAS AT ALL OF THE HEARINGS, YES.

9 Q AND YOU REMEMBER WHO THE JUDICIAL OFFICER WAS
10 FOR THE DEPENDENCY PROCEEDINGS?

11 A YES, IT WAS MARILYN MARTINEZ.

12 Q AND AS FAR AS YOUR FAMILIARITY WITH THE
13 JUDICIAL OFFICER, COULD TELL US WHAT YOUR FAMILIARITY
14 WAS?

15 MR. MCMILLAN: OBJECTION. RELEVANCE. ALSO
16 FOUNDATION. ALSO VAGUE.

17 THE COURT: IS THAT IT?

18 MR. MCMILLAN: I THINK THAT'S IT. THOSE ARE
19 THE ONLY ONES I CAN THINK OF.

20 THE COURT: THE OBJECTION OF RELEVANCE IS
21 SUSTAINED.

22 MR. GUTERRES, UNLESS THERE'S A PARTICULAR
23 REASON FOR THIS, WHICH YOU COULD ADVISE ME AT SIDEBAR
24 IF YOU WISH.

25 MR. GUTERRES: I'LL WITHDRAW -- I'LL MOVE ON,
26 YOUR HONOR.

27 THE COURT: OKAY. THANK YOU.

28 ///

1 BY MR. GUTERRES:

2 Q IN YOUR LAST ASSIGNMENT IN DEPENDENCY COURT,
3 WERE YOU ASSIGNED TO A PARTICULAR COURTROOM?

4 A I WAS ASSIGNED TO DEPARTMENT 414 FOR 16 YEARS.

5 Q AND FOR THOSE 16 YEARS, WHO WAS THE JUDICIAL
6 OFFICER ASSIGNED TO THAT DEPARTMENT?

7 A COMMISSIONER MARILYN MARTINEZ.

8 Q IS THAT THE SAME JUDICIAL OFFICER THAT
9 PRESIDED OVER THE DEPENDENCY PROCEEDINGS FOR BABY RYAN?

10 A YES.

11 AND ACTUALLY, IT WAS A LITTLE OVER 16 YEARS.

12 Q THANK YOU.

13 LET ME TURN YOUR ATTENTION TO EXHIBIT 11.

14 COULD YOU GO THROUGH EXHIBIT 11 THAT I'VE
15 PLACED BEFORE YOU, AND LET ME KNOW WHEN YOU DONE.

16 A I'M DONE.

17 Q DO YOU RECOGNIZE WHAT EXHIBIT 11 IS?

18 A YEAH, IT'S A DETENTION REPORT FILED BY DCFS ON
19 NOVEMBER 6TH, 2009, REGARDING RYAN'S CASE.

20 MR. MCMILLAN: OBJECTION. YOUR HONOR, WHAT I
21 HAVE AS EXHIBIT 11 IS THE JUVENILE DEPENDENCY PETITION.

22 THE WITNESS: THAT'S WHAT I THOUGHT I STATED.
23 I'M SORRY. I MISSPOKE. IT'S THE PETITION.

24 BY MR. GUTERRES:

25 Q AND IF YOU WOULD TURN TO THE THIRD PAGE IN,
26 WHICH WOULD BE BATES 10 OF THE EXHIBIT, 11-10?

27 A I'M SORRY, WOULD YOU REPEAT THAT?

28 Q YEAH. THE BATES NUMBERS ARE ON THE TOP RIGHT.

1 A YES.

2 Q IT WOULD BE BATES PAGE 10.

3 A CORRECT.

4 Q DO YOU SEE THAT THERE'S SOME HANDWRITTEN
5 MARKINGS ON THE DOCUMENT?

6 A YES.

7 Q AND THERE'S ALSO SOME HANDWRITING?

8 A YES.

9 Q DO YOU RECOGNIZE WHOSE HANDWRITING THAT IS?

10 A THAT'S COMMISSIONER MARTINEZ'S HANDWRITING.

11 Q AND THEN IF YOU COULD TURN TO THE NEXT PAGE,
12 WHICH IS EXHIBIT 11-11.

13 AT THE BOTTOM OF THAT PAGE --

14 A YES.

15 Q -- THERE'S A PARTICULAR STATEMENT THAT'S IN
16 THAT PETITION.

17 DO YOU SEE THAT?

18 A I DO.

19 Q COULD YOU TELL ME THE SIGNIFICANCE OF WHAT
20 THAT MEANS?

21 A THERE'S CERTAIN MATTERS IN DEPENDENCY WHERE
22 THE COURT NEED NOT ORDER FAMILY REUNIFICATION SERVICES.
23 IN THIS INSTANCE, BECAUSE THE DEPARTMENT HAD ALLEGED
24 SEVERE PHYSICAL ABUSE UNDER BOTH AN E1 AND A B1, THEY
25 WERE ASKING THAT NO FR BE GIVEN TO THIS FAMILY -- TO
26 THE MOTHER, GIVEN THE PARTICULARLY EGREGIOUS CONDUCT.

27 Q AND THE FR MEANS FAMILY REUNIFICATION?

28 A CORRECT.

1 Q DO YOU REMEMBER WHO WAS REPRESENTING MS. DUVAL
2 AT THE DETENTION HEARING?

3 A SCOTT CLARK.

4 Q AND DO YOU RECALL WHAT TRANSPIRED IN GENERAL
5 AT THE DETENTION HEARING?

6 A THIS WAS, I DON'T KNOW, SEVEN YEARS AGO. BEST
7 I RECALL, THE COURT REVIEWED THE EVIDENCE AND FOUND
8 THAT THERE WAS A PRIMA FACIE BASIS TO DETAIN, AND THAT
9 REASONABLE EFFORTS HAD BEEN MADE TO RETAIN RYAN IN THE
10 HOME WITH HIS MOTHER BUT THAT THAT WAS NOT POSSIBLE,
11 THAT HE COULD ONLY BE PROTECTED IF HE WERE REMOVED FROM
12 HER.

13 Q DO YOU RECALL IF COMMISSIONER MARTINEZ
14 FOLLOWED THE RECOMMENDATIONS IN THE REPORT REGARDING
15 NOT PROVIDING FAMILY REUNIFICATION?

16 A WELL, SHE WOULD NOT HAVE MADE THAT FINDING AT
17 THE DETENTION HEARING. SO MY RECOLLECTION IS NO, SHE
18 DID NOT.

19 Q SO ALTHOUGH THE PETITION RECOMMENDED NO
20 REUNIFICATION, IS IT YOUR RECOLLECTION THAT THAT IN
21 FACT WASN'T SOMETHING THAT THE COURT ORDERED?

22 A THE COURT DID NOT ORDER THAT, AND WOULD NOT
23 HAVE ORDERED THAT AT THAT HEARING.

24 Q AT SOME POINT, DO YOU REMEMBER ANY OTHER
25 ATTORNEYS REPRESENTING MS. DUVAL DURING THE DEPENDENCY
26 PROCEEDING?

27 A ROBERT HOWELL.

28 Q AND DO YOU REMEMBER OR DO YOU HAVE A MEMORY OF

1 WHO THE ATTORNEY FOR THE MINOR, BABY RYAN, WAS?

2 A WELL, I BELIEVE INITIALLY THE ASSIGNED
3 ATTORNEY WAS CARRIE LEE. A SUPERVISING ATTORNEY FROM
4 HER LAW FIRM TOOK OVER THE CASE, LLOYD BEDELL.

5 Q AND DO YOU REMEMBER WHO FATHER'S ATTORNEY WAS?

6 A EMILY BERGER.

7 Q LET ME ALSO TURN YOUR ATTENTION TO EXHIBIT 24,
8 WHICH IS ACTUALLY IN EVIDENCE.

9 MR. GUTERRES: MAY I REQUEST YOUR ASSISTANCE
10 WITH THE EQUIPMENT?

11 MR. MCMILLAN: CERTAINLY.
12 BY MR. GUTERRES:

13 Q BEFORE WE GET TO EXHIBIT 24, LET ME ASK YOU A
14 FEW QUESTIONS.

15 DO YOU REMEMBER ANY MOTIONS FILED BY
16 MR. HOWELL REQUESTING ANY KIND OF CHANGES TO ANY COURT
17 ORDERS DURING THE PROCEEDINGS OF THE DEPENDENCY?

18 A I BELIEVE THERE WAS A 388 PETITION FILED AT
19 THE CONCLUSION OF THE DISPOSITION HEARING. BUT I'M
20 ONLY GUESSING AT THIS POINT.

21 Q DO YOU RECALL WHETHER OR NOT MS. DUVAL,
22 THROUGH HER ATTORNEY, HAD ASKED ABOUT HAVING BABY RYAN
23 EXAMINED BY ANY MEDICAL PROFESSIONALS OR EXPERTS?

24 MR. MCMILLAN: OBJECTION, YOUR HONOR LACKS
25 FOUNDATION. CALLS FOR SPECULATION.

26 THE COURT: OVERRULED.

27 THE WITNESS: I DON'T RECALL.

28 ///

1 BY MR. GUTERRES:

2 Q DO YOU REMEMBER A DR. LOTT FROM UCI?

3 A I REMEMBER THE NAME, YES.

4 Q DO YOU RECALL -- DO YOU RECALL ANY MOTIONS BY
5 MR. HOWELL REGARDING ANY KIND OF TESTING THAT WAS BEING
6 RECOMMENDED BY DR. LOTT FOR BABY RYAN?

7 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.
8 CALLS FOR SPECULATION. LEADING.

9 THE COURT: OVERRULED.

10 THE WITNESS: I CAN'T REMEMBER IF IT WAS AN
11 MRI OR CAT SCAN THAT WAS REQUESTED.

12 BY MR. GUTERRES:

13 Q AND DO YOU REMEMBER IF THAT WAS IN FACT
14 PRESENTED TO THE COURT?

15 A AGAIN, IT WAS SIX OR SEVEN YEARS AGO, SO NO.

16 Q LET ME TURN YOUR ATTENTION TO THE
17 JURISDICTION/DISPOSITION REPORT WHICH IS EXHIBIT 24. I
18 THINK YOU HAVE THAT IN FRONT OF YOU.

19 A I DO.

20 Q AND HAVE YOU KIND OF GOTTEN A CHANCE TO GO
21 THROUGH THAT?

22 A WELL, IT'S FAIRLY LENGTHY.

23 IS THERE A PARTICULAR PORTION OF IT YOU WANT
24 ME TO ADDRESS?

25 Q SURE. FIRST OF ALL, LET'S GO TO THE --
26 PAGE 22 OF THE REPORT, IT'S BATES 467 AT THE TOP RIGHT
27 OF EXHIBIT 24.

28 A I HAVE IT.

1 Q LET ME SHOW YOU --

2 MR. GUTERRES: IF I MAY PUBLISH PAGE BATES 467
3 OF THE REPORT.

4 MR. MCMILLAN: OBJECTION. HEARSAY, YOUR
5 HONOR. BUT WE'VE ADDRESSED THOSE ISSUES EARLIER AT
6 SIDEBAR.

7 THE COURT: JUST ONE MOMENT.

8 OVERRULED.

9 THE WITNESS: COULD YOU REPEAT THE QUESTION,
10 PLEASE.

11 THE COURT: GO AHEAD.

12 MR. GUTERRES: THANK YOU, YOUR HONOR.

13 BY MR. GUTERRES:

14 Q SO I WANTED TO PUBLISH THIS AND SHOW YOU AT --
15 THE RECOMMENDATIONS THAT WERE IN THE REPORT.

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

17 THE COURT: YES.

18 MR. GUTERRES: THANK YOU.

19 THE COURT: I'M SORRY BUT I'M ON THE WRONG
20 PAGE OF THIS EXHIBIT. HOLD ON A SECOND.

21 WHAT PAGE?

22 MR. GUTERRES: IT'S BATES 467 OF EXHIBIT 24.

23 THE COURT: ALL RIGHT. GO AHEAD.

24 MR. GUTERRES: THANK YOU.

25 BY MR. GUTERRES:

26 Q DO YOU HAVE THAT PAGE?

27 A I DO.

28 Q AND TURNING YOUR ATTENTION TO ITEMS 4 AND --

1 ITEM 4, DO YOU SEE THAT?

2 A YES.

3 Q DO YOU KNOW WHY THE DEPARTMENT WAS ASKING FOR
4 NO FAMILY REUNIFICATION SERVICES AT THIS JUNCTURE?

5 A YEAH, AS I INDICATED PREVIOUSLY, WHERE YOU
6 HAVE A PETITION THAT'S SUSTAINED WHERE A CHILD -- THE
7 ALLEGATIONS INDICATE THAT THE CHILD HAS BEEN SEVERELY
8 SEXUALLY ABUSED OR SEVERELY PHYSICALLY ABUSED, THEN THE
9 DEPARTMENT CAN REQUEST NO FR AT THE DISCRETION OF THE
10 COURT. SO THEY AGAIN REITERATE THE POSITION THAT SHE
11 SHOULD NOT HAVE FAMILY REUNIFICATION SERVICES.

12 Q AND THEN TURNING YOUR ATTENTION TO THE NEXT
13 PAGE, WHICH WOULD BE BATES 468 OF EXHIBIT 24 WHICH IS
14 THE CONTINUATION OF THE RECOMMENDATIONS, ITEM 9, DO YOU
15 SEE IT SAYS FAMILY BE ORDERED TO RECEIVE A
16 730 EVALUATION BY COURT APPOINTED EXPERT?

17 A YES.

18 Q DO YOU RECALL IF COMMISSIONER MARTINEZ
19 FOLLOWED THE DEPARTMENT'S RECOMMENDATIONS IN THAT
20 REGARD?

21 A I DO NOT RECALL. I -- I DO NOT RECALL.

22 Q DO YOU REMEMBER --

23 A I WOULD VENTURE TO SAY THAT SHE PROBABLY WOULD
24 NOT HAVE DONE SO, INASMUCH AS THEY WERE REACHING A
25 DISPOSITION ON THAT DAY.

26 MR. MCMILLAN: OBJECTION, YOUR HONOR. NUMBER
27 ONE, NO QUESTION PENDING. ALSO LACKS FOUNDATION AND
28 SPECULATION BASED ON HER PRIOR -- MOVE TO STRIKE.

1 THE COURT: OBJECTION IS SUSTAINED. THE
2 ANSWER IS ORDERED STRICKEN AND THE JURY MUST DISREGARD
3 IT.

4 BY MR. GUTERRES:

5 Q DO YOU REMEMBER ANY ISSUE BEING RAISED DURING
6 THE DEPENDENCY PROCEEDINGS REGARDING MUNCHAUSEN'S BY
7 PROXY?

8 A IT WAS NEVER BROUGHT UP DURING THE TRIAL.

9 Q THE JURISDICTION/DISPOSITION REPORT INCLUDED A
10 NUMBER OF ATTACHMENTS AND THOSE ARE THERE IN FRONT OF
11 YOU.

12 DO YOU REMEMBER AT THE TIME GOING THROUGH THE
13 REPORT AND ITS ATTACHMENTS?

14 A YES.

15 Q AND THERE WERE A NUMBER OF LAST MINUTE
16 INFORMATION REPORTS THAT WERE SUBMITTED BY THE
17 DEPARTMENT TO THE COURT THAT ALSO ATTACHED VARIOUS
18 MEDICAL REPORTS.

19 DO YOU REMEMBER THAT?

20 A YES.

21 Q THIS -- DO YOU RECALL THIS CASE IN THE
22 DEPENDENCY PROCEEDINGS BEING SOMEWHAT FOCUSED ON THE
23 MEDICAL INFORMATION?

24 A YES.

25 MR. MCMILLAN: OBJECTION, YOUR HONOR.
26 LEADING.

27 THE COURT: SUSTAINED.

28 MR. MCMILLAN: ALSO MOVE TO STRIKE THE

1 RESPONSE.

2 THE COURT: MOTION TO STRIKE IS GRANTED. THE
3 ANSWER WILL BE ORDERED STRICKEN AND THE JURY MUST
4 DISREGARD.

5 BY MR. GUTERRES:

6 Q GIVEN YOUR EXPERIENCE, YOUR 16 YEARS WITH
7 COMMISSIONER MARTINEZ, DID YOU HAVE AN UNDERSTANDING AS
8 TO WHETHER OR NOT -- WHAT COMMISSIONER MARTINEZ'S
9 PRACTICES WAS WHEN IT CAME TO MEDICAL RECORDS?

10 MR. MCMILLAN: OBJECTION, YOUR HONOR. LACKS
11 FOUNDATION. SPECULATION. ALSO RELEVANCE.

12 THE COURT: OVERRULED.

13 THE WITNESS: AS I INDICATED, I APPEARED
14 BEFORE COMMISSIONER MARTINEZ FOR A LITTLE OVER
15 16 YEARS. IN THE COURSE OF APPEARING BEFORE SOMEONE
16 FOR 16 YEARS EVERY SINGLE DAY, YOU COME TO KNOW WHAT
17 THEY EXPECT IN TRIAL, WHAT EXHIBITS THEY EXPECT TO BE
18 ADMITTED INTO EVIDENCE, AND HOW DISCIPLINED THEY ARE IN
19 REVIEWING EVIDENCE. OF ALL THE HEARING OFFICERS I
20 APPEARED BEFORE IN THE 24-PLUS YEARS WITH COUNTY
21 COUNSEL, SHE WAS PERHAPS THE MOST DILIGENT. SHE WENT
22 THROUGH EVERY SINGLE DOCUMENT, READ EVERYTHING, WOULD
23 OFTEN INTERJECT QUESTIONS WHEN ATTORNEYS WERE ASKING
24 THEM OF PARTIES AND EXPERTS. SO IT WOULD HAVE BEEN HER
25 PRACTICE TO READ EVERY SINGLE PIECE OF PAPER SUBMITTED
26 TO HER.

27 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
28 STRIKE THE ENTIRE RESPONSE AS NONRESPONSIVE NARRATIVE

1 RESPONSE. EVERYTHING BEYOND THE WORD YES, IF THERE WAS
2 A YES.

3 THE COURT: THERE ISN'T ANY YES.
4 NEVERTHELESS, THE OBJECTION IS SUSTAINED. THE MOTION
5 TO STRIKE IS GRANTED. THE ANSWER WILL BE STRICKEN IN
6 ITS ENTIRETY AND THE JURY MUST DISREGARD IT.

7 THE QUESTION JUST INITIALLY CALLS FOR A "YES"
8 OR "NO" ANSWER.

9 DO YOU WANT TO HAVE THE REPORTER READ IT BACK?

10 MR. GUTERRES: YES, PLEASE.

11 THE COURT: ALL RIGHT. WE'LL ASK THE REPORTER
12 TO READ THE QUESTION BACK.

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

15 "QUESTION: GIVEN YOUR EXPERIENCE,
16 YOUR 16 YEARS WITH
17 COMMISSIONER MARTINEZ, DID YOU HAVE AN
18 UNDERSTANDING AS TO WHETHER OR NOT --
19 WHAT COMMISSIONER MARTINEZ'S PRACTICES
20 WAS WHEN IT CAME TO MEDICAL RECORDS?")

21 THE WITNESS: YES.

22 BY MR. GUTERRES:

23 Q AND WHAT IS YOUR UNDERSTANDING IN THAT REGARD?

24 MR. MCMILLAN: OBJECTION, YOUR HONOR. CALLS
25 FOR SPECULATION AS TO THE INTERNAL THOUGHT PROCESSES OF
26 A MAGISTRATE.

27 THE COURT: OVERRULED.

28 THE WITNESS: AS I INDICATED, SHE WANTED ALL

1 RELEVANT MEDICAL DOCUMENTS ATTACHED. NOT SIMPLY
2 SUMMARIZED WITHIN THE BODY OF A REPORT. AND MY
3 EXPERIENCE WITH HER IN THE 16-PLUS YEARS WAS THAT SHE
4 READ EVERY SINGLE PAGE OF EVERY SINGLE REPORT.

5 MR. MCMILLAN: OBJECTION, YOUR HONOR. THE
6 READING EVERY SINGLE PAGE OF EVERY SINGLE REPORT LACKS
7 FOUNDATION. SPECULATION. MOVE TO STRIKE.

8 THE COURT: OVERRULED.

9 BY MR. GUTERRES:

10 Q I WANT TO SHOW YOU A DOCUMENT WHICH IS THE
11 REPORTER'S TRANSCRIPT ON APPEAL OF VARIOUS HEARINGS.

12 MR. GUTERRES: IF I CAN HAVE THAT MARKED AS
13 NEXT IN ORDER.

14 THE CLERK: 1258.

15 (DEFENDANT'S EXHIBIT NO. 1258, WAS
16 MARKED FOR IDENTIFICATION.)

17 BY MR. GUTERRES:

18 Q AND IF YOU'D TURN TO PAGE 18 OF
19 EXHIBIT 1258 -- AND ACTUALLY IF YOU COULD TURN TO
20 PAGE 17, WHICH WILL IDENTIFY THE TRANSCRIPT -- THE
21 HEARING DATE.

22 DO YOU SEE THAT?

23 A YES.

24 Q AND WHAT HEARING DATE WAS THAT?

25 A JANUARY 4, 2010.

26 Q AND DOES THAT REFRESH YOUR -- IF YOU LOOK AT
27 LINE 19 AT PAGE 17 OF EXHIBIT 1258?

28 A I WAS THERE.

1 Q IF YOU'D NOW TURN TO PAGE 18 AND IF YOU'D LOOK
2 AT LINES 22 THROUGH 26 OR 27 AND READ THAT TO YOURSELF.

3 A I'VE READ IT.

4 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO
5 WHETHER OR NOT THERE WAS A 730 EVALUATION ORDERED BY
6 THE COURT?

7 A ACCORDING TO THIS, THERE WAS NOT AN EVALUATION
8 ORDERED.

9 Q LET ME NEXT TURN YOUR ATTENTION TO EXHIBIT 45.
10 WILL YOU IDENTIFY WHAT EXHIBIT 45 IS?

11 A YES, IT'S A 388 PETITION FILED WITH THE COURT
12 BY MOTHER.

13 Q COULD YOU JUST BRIEFLY EXPLAIN WHAT A 388
14 PETITION IS?

15 A A 388 IS A PETITION FILED WITH THE COURT
16 SEEKING A MODIFICATION FROM A COURT'S PRIOR ORDER. AND
17 IN ORDER TO PREVAIL ON A 388, YOU HAVE TO SHOW NEW OR
18 CHANGED CIRCUMSTANCES AND SHOW THAT WHAT'S REQUESTED IS
19 IN THE CHILD'S BEST INTERESTS.

20 Q AND BASED ON YOUR REVIEW OF THIS, DOES THIS
21 REFRESH YOUR RECOLLECTION AS TO WHETHER OR NOT
22 MS. DUVAL FILED A PETITION ASKING FOR TESTING TO BE
23 COMPLETED ON BABY RYAN ON OR ABOUT APRIL OF 2010?

24 A YES IT DEFINITELY SHOWS THAT THE PETITION WAS
25 FILED WITH THE COURT ON APRIL 22ND.

26 Q AND IF YOU TURN TO THE SECOND PAGE THAT'S
27 BATES LABELED 979 OF EXHIBIT 45 AT ITEM 8 AND 9, DOES
28 THAT REFRESH YOUR RECOLLECTION AS TO WHAT IT IS THAT

1 WAS BEING REQUESTED OF THE COURT TO BE CHANGED BY
2 MS. DUVAL'S ATTORNEY?

3 A YES.

4 Q AND WHAT'S -- WHAT DO YOU REMEMBER IN THAT
5 REGARD?

6 A THE COURT HAD PREVIOUSLY ORDERED NO FURTHER
7 TESTING OF THE CHILD. AND MS. DUVAL WAS ASKING THAT HE
8 BE FURTHER TESTED TO RULE OUT ANY OTHER MALADIES OR
9 CAUSES OF ANY ISSUES HE WAS HAVING. SHE WAS ALSO --
10 ALSO HAD ASKED THAT SHE BE ALLOWED TO TAKE THE CHILD TO
11 THE MEDICAL APPOINTMENTS AND THAT THERE NOT BE A
12 MONITOR, SPECIFICALLY NOT A DCFS MONITOR. AND SHE ALSO
13 ASKED FOR INCREASED VISITATION.

14 Q AND IF YOU COULD TURN TO EXHIBIT 48?

15 A YES.

16 Q AND COULD YOU IDENTIFY WHAT EXHIBIT 48 IS FOR
17 THE RECORD?

18 A EXHIBIT 48 IS A WITNESS LIST FOR MR. HOWELL ON
19 BEHALF OF THE MOTHER.

20 Q AND FOR WHAT HEARING WOULD THIS HAVE BEEN
21 SUBMITTED? DO YOU KNOW?

22 A THIS WOULD BE BEEN FOR THE ADJUDICATION
23 HEARING.

24 Q AND THE ADJUDICATION HEARING IS, IN ESSENCE,
25 THE TRIAL?

26 A YES.

27 Q AND DOES THIS REFRESH YOUR RECOLLECTION AS TO
28 THE WITNESSES THAT MOTHER ASKED TO CALL FOR PURPOSES OF

1 THE TRIAL IN THE DEPENDENCY PROCEEDING?

2 MR. MCMILLAN: OBJECTION, YOUR HONOR. THERE'S
3 BEEN NO FOUNDATION LAID TO REFRESH HER RECOLLECTION.

4 THE COURT: SUSTAINED.

5 BY MR. GUTERRES:

6 Q IF YOU LOOK AT THE SECOND PAGE OF MOTHER'S
7 WITNESS LIST, EXHIBIT 48?

8 A YES.

9 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO
10 WHETHER OR NOT MS. DUVAL HAD IDENTIFIED CERTAIN
11 EXPERTS, MEDICAL EXPERTS --

12 MR. MCMILLAN: OBJECTION --

13 THE WITNESS: YEAH --

14 MR. MCMILLAN: OBJECTION, YOUR HONOR. STILL
15 LACKS FOUNDATION THAT THERE'S A RECOLLECTION THAT NEEDS
16 TO BE REFRESHED.

17 THE COURT: YES, THE OBJECTION IS SUSTAINED.
18 IT'S LACKING FOUNDATION THAT SOMETHING IS NECESSARY TO
19 REFRESH HER RECOLLECTION.

20 BY MR. GUTERRES:

21 Q DO YOU REMEMBER, MS. WORK, IF MS. DUVAL HAD
22 ANY EXPERTS TESTIFY AT THE TRIAL?

23 A YES.

24 Q AND WHAT DO YOU REMEMBER IN THAT REGARD?

25 A I BELIEVE IT WAS DR. LOTT AND DR. NIESEN.

26 Q AND DO YOU REMEMBER WHAT OTHER WITNESSES
27 MS. DUVAL CALLED AT THE TIME OF THE TRIAL?

28 A I BELIEVE THERE WAS A LACTATION EXPERT.

1 Q ANYONE ELSE?

2 A I CAN'T RECALL.

3 Q DO YOU KNOW OR REMEMBER SOMEONE BY THE NAME OF
4 DR. YIM, ALLISON YIM?

5 A YES.

6 Q DO YOU REMEMBER IF DR. YIM WAS EVER CALLED BY
7 MS. DUVAL TO TESTIFY AT THE DEPENDENCY PROCEEDING?

8 A NO. YES, I REMEMBER, NO DR. YIM WAS NOT
9 CALLED.

10 Q AND DO YOU REMEMBER WHAT DR. YIM'S ROLE WAS
11 WITH REGARD TO BABY RYAN?

12 A MY UNDERSTANDING IS THAT MY CLIENT HAD SPOKEN
13 WITH DR. YIM AND RECEIVED INFORMATION OF A SIGNIFICANT
14 CONCERN AND THAT INFORMATION WAS TAKEN TO BOTH THE
15 DETENTION AND THE ADJUDICATION REPORTS.

16 Q AND DO YOU HAVE EXHIBIT 50 THERE IN THAT BOOK?

17 A YES.

18 Q DO YOU REMEMBER MS. DUVAL, AT THE TIME OF THE
19 TRIAL IN THE DEPENDENCY PROCEEDINGS, OBJECTING TO ANY
20 WITNESSES TESTIFYING OR FILING AN OBJECTION TO ANY
21 WITNESSES TESTIFYING?

22 A ACCORDING TO THIS EXHIBIT, THERE WERE THREE
23 OBJECTIONS MADE.

24 Q AND WHAT DO YOU REMEMBER WITH REGARD TO THE
25 OBJECTIONS THAT WERE FILED ON BEHALF OF MS. DUVAL?

26 A ACCORDING TO THIS, THE MOTHER FILED 355
27 OBJECTIONS ASKING THAT STATEMENTS MADE BY DR. EVANS, A
28 WENDY CRUMP, AND A DR. JASMEET GILL NOT BE INCLUDED AND

1 ADMITTED INTO EVIDENCE.

2 Q AND A 355 OBJECTION IS -- COULD YOU EXPLAIN
3 WHAT THAT MEANS TO THE JURY?

4 A UNDER WELFARE AND INSTITUTIONS CODE 355, THE
5 OTHER PARTY WOULD ASK THAT IT NOT BE ADMITTED BECAUSE
6 IT'S HEARSAY OR THE DECLARANT IS NOT A PARTY TO THE
7 MATTER, AND THE COURT MAKES A DECISION AS TO WHETHER
8 IT'S GOING TO TOTALLY DISREGARD IT, GIVE IT ANY WEIGHT
9 AT ALL. WHAT THE COURT WILL OFTEN SAY IS, "I'M NOT
10 GOING TO EXCLUDE IT, BUT IT CANNOT BE USED AS MY SOLE
11 BASIS FOR FINDING JURISDICTION."

12 Q AND SO THAT TYPE OF A -- SO DO YOU KNOW IF ANY
13 OTHER 355 OBJECTIONS WERE FILED BY MS. DUVAL?

14 A AS FAR AS I KNOW, THESE WERE THE ONLY ONES.

15 Q DO YOU HAVE EXHIBIT 60 IN FRONT OF YOU?

16 A YES.

17 Q AND FOR THE RECORD, COULD YOU IDENTIFY WHAT
18 EXHIBIT 60 IS?

19 A IT'S A PETITIONER'S WITNESS LIST PREPARED BY
20 MYSELF AND IT WILL BE SUBMITTED TO THE COURT TO
21 IDENTIFY ALL THE DOCUMENTS WE WOULD LIKE TO HAVE
22 INCLUDED IN THE EVIDENCE.

23 (DEFENDANTS' EXHIBIT NO. 60, WAS MARKED
24 FOR IDENTIFICATION BY THE COURT.)

25 BY MR. GUTERRES:

26 Q AND THERE'S, ON THE THIRD PAGE IN, AT BATES
27 1152, THERE'S A --

28 A YES.

1 Q -- HANDWRITTEN ATTACHMENT?

2 A YES.

3 Q DO YOU RECOGNIZE THAT?

4 A YES.

5 Q AND WHAT IS THAT?

6 A THAT'S AN AMENDMENT TO A WITNESS LIST THAT I
7 MADE IN MY HANDWRITING.

8 Q AND CONTINUING ON, IS THERE ANY BATES 1153
9 AFTER THAT?

10 A YES.

11 Q AND CAN YOU IDENTIFY WHAT IS THAT DOCUMENT AT
12 EXHIBIT 60, BATES 1153?

13 A IT'S THE CHILD'S WITNESS LIST.

14 Q AND THE CHILD BEING WHO?

15 A RYAN.

16 Q IS THAT THE WITNESS AND EXHIBIT LIST OF --

17 A YES.

18 Q -- THAT WAS OFFERED ON BEHALF OF THE MINOR?

19 A YES, IT IS.

20 Q AND THEN IF YOU CONTINUE ON AT EXHIBIT 60,
21 BATES 1155 AND 1156, CAN YOU TELL US WHAT THAT IS?

22 A THOSE ARE LAST MINUTE INFORMATION TO THE
23 COURT. TYPICALLY THEY COME IN AS INFORMATION THE
24 WORKERS JUST RECEIVED, AND THEY SEND IT TO THE COURT
25 PERHAPS ON THE DAY OF TRIAL.

26 Q AND DO YOU REMEMBER WHEN EXHIBIT 60 AT
27 BATES 1155 AND -56 WERE IN FACT SUBMITTED TO THE COURT?

28 A IT WOULD HAVE BEEN JUNE 30, 2010.

1 Q AND ON EXHIBIT 60, 1155, THERE APPEARS TO BE A
2 DARK KIND OF A STICKER OR COPY OF A STICKER THAT WAS ON
3 THIS DOCUMENT.

4 DO YOU SEE THAT?

5 A YES.

6 Q COULD YOU EXPLAIN WHAT THAT IS?

7 A IT'S THE -- THE CLERK FILED IT. IT SAYS
8 ADMITTED INTO EVIDENCE.

9 Q AND WHAT'S THE SIGNIFICANCE OF THAT?

10 A THAT MEANS THAT THE COURT HAD IT BEFORE HER TO
11 REVIEW.

12 Q AND THEN IF YOU LOOK AT THE SECOND PAGE AT
13 EXHIBIT 60, 1156, WHAT IS THAT?

14 A IT'S A LETTER FROM NUTRITIONALLY FIT, LOOKS
15 LIKE A DIETARY CONSULTATION FIRM THAT REVIEWED RYAN'S
16 MEDICAL RECORDS AND MET WITH THE PARENTS. AND IT ALSO
17 SAYS ADMITTED IN EVIDENCE. AND IT ALSO HAS
18 COMMISSIONER MARTINEZ'S WRITING IN THE LEFT HAND BOTTOM
19 CORNER.

20 Q AND THEN IF YOU COULD TURN TO EXHIBIT 59 IN
21 YOUR BOOK.

22 A OKAY.

23 Q COULD YOU IDENTIFY WHAT EXHIBIT 59 IS?

24 A IT'S A DOCUMENT WITNESS LIST SUBMITTED ON
25 BEHALF OF THE FATHER.

26 Q AND LOOKING AT THE SECOND PAGE OF EXHIBIT 59,
27 BATES 1136, DO YOU SEE THAT?

28 A YES.

1 Q AND DO YOU RECOGNIZE THAT DOCUMENT?

2 A IT'S JUST A TEXT -- OR AN E-MAIL SENT FROM THE
3 FATHER TO HIS ATTORNEY.

4 Q AND THAT DOCUMENT HAS ALSO A STICKER THAT SAYS
5 ADMITTED IN EVIDENCE?

6 A CORRECT. ON AUGUST 9, 2010.

7 Q AND WHAT'S THE SIGNIFICANCE OF THAT?

8 A THE JUDGE WOULD HAVE REVIEWED IT.

9 Q AND --

10 MR. MCMILLAN: OBJECTION, YOUR HONOR. LACKS
11 FOUNDATION. CALLS FOR SPECULATION ON THE PART OF THIS
12 WITNESS, EVIDENCE CODE 702.

13 THE COURT: THE OBJECTION I THINK CALLING FOR
14 SPECULATION WAS TO THE QUESTION, AND I THINK YOU MAY BE
15 OBJECTING TO THE ANSWER.

16 MR. MCMILLAN: THAT'S AFFIRMATIVE, YOUR HONOR.

17 THE COURT: ALL RIGHT. THE OBJECTION IS
18 SUSTAINED.

19 MR. MCMILLAN: MOTION TO STRIKE, YOUR HONOR,
20 THE ANSWER.

21 THE WITNESS: MOTION TO STRIKE IS GRANTED.
22 THE ANSWER WILL BE ORDERED STRICKEN, AND THE JURY MUST
23 DISREGARD IT.

24 BY MR. GUTERRES:

25 Q AND AS THE TRIAL ATTORNEY IN THE DEPENDENCY
26 PROCEEDINGS, WOULD YOU HAVE RECEIVED COPIES OF THE
27 DOCUMENT AND WITNESS LISTS OF MOTHER AT OR ABOUT THE
28 DATE THAT IT WAS FILED?

1 A YES.

2 Q AND SAME FOR THE DOCUMENT AND WITNESS LISTS
3 THAT WOULD HAVE BEEN SUBMITTED BY FATHER'S ATTORNEY?

4 A YES.

5 Q AND SAME FOR THE ATTORNEY FOR BABY RYAN?

6 A YES.

7 Q AT THE ADJUDICATION HEARING, DO YOU REMEMBER
8 IF COMMISSIONER MARTINEZ QUESTIONED ANY OF THE
9 WITNESSES?

10 A I BELIEVE SHE DID. SHE ALMOST ALWAYS DOES.

11 MR. GUTERRES: THANK YOU.

12 THE WITNESS: COUNSEL AND YOUR HONOR, I NEED A
13 RESTROOM BREAK.

14 THE COURT: OKAY. WE'RE GOING TO TAKE A VERY
15 SHORT BREAK IN PLACE. AND THE WITNESS WILL RETURN VERY
16 SHORTLY.

17 (RECESS)

18 THE COURT: ALL RIGHT. WE'RE BACK ON THE
19 RECORD AND THE WITNESS HAS RESUMED THE STAND.

20 GO AHEAD, MR. MCMILLAN.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22

23 CROSS-EXAMINATION

24 BY MR. MCMILLAN:

25 Q WOW, 16 YEARS. THAT'S A LONG TIME.

26 A YES.

27 Q GET TO KNOW SOMEBODY PRETTY WELL IN THOSE
28 16 YEARS; RIGHT?

1 A YES.

2 Q SORT OF DEVELOP A RELATIONSHIP?

3 A SORT OF, I SUPPOSE.

4 Q ABOUT HOW MANY HOURS A DAY IN THAT COURTROOM
5 WITH COMMISSIONER MARTINEZ?

6 A PROBABLY SIX.

7 Q SORRY?

8 A SIX.

9 Q SIX HOURS A DAY.
10 HOW MANY DAYS A WEEK?

11 A USUALLY FIVE, EXCEPT FOR MY SIX WEEKS OF
12 VACATION EVERY YEAR.

13 Q 16 YEARS, FIVE DAYS A WEEK, SIX HOURS A DAY
14 DEVELOP A LOT OF TRUST BETWEEN YOU AND THE JUDGE;
15 RIGHT?

16 A DEVELOP TRUST IN THE SENSE THAT WE FIND EACH
17 OTHER TO BE CREDIBLE AND TRUSTWORTHY.

18 Q RIGHT. RIGHT. AND YOU'RE THE ATTORNEY FOR
19 THE GOVERNMENT?

20 A I AM.

21 Q IN THESE PROCEEDINGS; RIGHT?

22 A I AM.

23 Q AND ONE OF THE THINGS THAT YOU DO AS THE
24 ATTORNEY FOR THE GOVERNMENT IS YOU PRESENT THE EVIDENCE
25 IN A WAY THAT SUPPORTS THE GOVERNMENT'S CASE; RIGHT?

26 A THAT'S TRUE.

27 Q AND ONE OF THE THINGS -- IN FACT, YOU WOULD
28 AGREE WITH ME, WOULDN'T YOU, THAT ONE OF THE MOST

1 IMPORTANT THINGS WHEN YOU'RE PRESENTING CONFLICTING
2 EVIDENCE IN ANY COURT PROCEEDING IS CREDIBILITY; RIGHT?

3 A SURE.

4 Q AND YOU HAD A LOT OF CREDIBILITY WITH
5 COMMISSIONER MARTINEZ?

6 A I DID.

7 Q AND THE PEOPLE THAT YOU REPRESENTED OVER THOSE
8 16 YEARS, YOU HAD A LOT OF TIME TO COMMUNICATE AND
9 BUILD RELATIONSHIPS WITH YOUR CLIENTS; RIGHT?

10 A NOT REALLY BECAUSE CASES ARE ASSIGNED, AT
11 LEAST AT THAT POINT, WERE ASSIGNED WILLY-NILLY
12 THROUGHOUT THE DIFFERENT COUNTY OFFICES, SO, NO.

13 Q SO THERE WAS NEVER A TIME WHEN YOU INTERACTED
14 WITH THE SAME SOCIAL WORKER MORE THAN ONCE?

15 A WELL, OF COURSE THERE WERE, OVER THE 16 YEARS.

16 Q RIGHT. THAT'S WHAT I WAS LOOKING FOR. THANK
17 YOU.

18 AND OVER THOSE 16 YEARS INTERACTING WITH THOSE
19 CLIENTS, THOSE SOCIAL WORKERS, YOU SORT OF DEVELOP A
20 RAPPORT WITH THEM TOO; RIGHT?

21 A SOMETIMES.

22 Q DID YOU HAVE A RAPPORT WITH THESE LADIES HERE?

23 A I KNEW CANDIS FROM HAVING WORKED WITH HER ON
24 SEVERAL REPORTS. AND I RECOGNIZE MS. PINEDO, BUT I
25 CAN'T REMEMBER WHEN I LAST SPOKE WITH HER.

26 Q YOU WORKED WITH BOTH OF THEM ON SEVERAL
27 DIFFERENT CASES?

28 A THAT'S NOT CORRECT.

1 Q EXPLAIN THEN. I DIDN'T UNDERSTAND WHAT YOU
2 JUST SAID.

3 A I BELIEVE I WORKED WITH MS. PINEDO ON A CASE
4 YEARS AGO. AND WITH CANDIS, MS. NELSON, I DID WORK
5 WITH HER ON A FEW CASES, YES.

6 Q OKAY. AND IT WAS ENOUGH CASES AND YOU
7 DEVELOPED A GOOD ENOUGH RAPPORT THAT YOU FEEL
8 COMFORTABLE CALLING HER BY HER FIRST NAME HERE IN
9 COURT?

10 A WE WERE VERY FRIENDLY IN DEPENDENCY COURT.

11 Q THAT'S GOOD.

12 I WANT TO SHOW YOU THE DOCUMENT MR. GUTERRES
13 WAS TALKING ABOUT. IT'S THE JUVENILE DEPENDENCY
14 PETITION. IT'S EXHIBIT NO. 11. AND IF YOU DON'T HAVE
15 IT THERE, I'LL FIND IT FOR YOU.

16 A I DON'T HAVE IT.

17 WHAT EXHIBIT AGAIN?

18 Q IT'S EXHIBIT NO. 11. I THINK I'VE GOT IT OPEN
19 THERE FOR YOU.

20 A OKAY.

21 Q AND YOU SAID EARLIER THAT THAT WAS THE
22 DETENTION REPORT, RIGHT, BUT IT'S ACTUALLY THE
23 PETITION?

24 A YES, AND I CORRECTED THAT.

25 Q OKAY.

26 A I INDICATED I HAD MISSPOKEN.

27 Q IF I CAN GET YOU TO TURN TO PAGE NO. -- OR
28 BATES NO. 000010.

1 A ALL RIGHT.

2 Q AND I THINK THIS IS THE HANDWRITING THAT
3 MR. GUTERRES WAS TALKING WITH YOU ABOUT, RIGHT THERE
4 ABOUT -- TOWARDS THE MIDDLE OF THE PAGE, THERE'S A NAME
5 THAT SAYS "RYAN."

6 DO YOU SEE THAT?

7 A YES.

8 Q AND YOU RECOGNIZE THAT HANDWRITING?

9 A YES.

10 Q HOW ABOUT THE LINEOUTS; DO YOU RECOGNIZE THAT?

11 A COMMISSIONER MARTINEZ'S.

12 Q OKAY. THE STRIKEOUTS. I SAID LINEOUTS.

13 AND WHEN YOU FIRST PICKED UP THIS CASE IN THE
14 DEPENDENCY COURT, YOU REVIEWED THE FILE; RIGHT?

15 A IT REALLY -- WHAT WAS OF THE FILE, THERE WERE
16 PROBABLY FOUR PAGES, BUT YES.

17 Q WELL, YOU GOT A COPY OF THE PETITION AT SOME
18 POINT; RIGHT?

19 A YEAH, I GOT A COPY OF THE PETITION, AND I
20 WOULD ALSO HAVE RECEIVED A COPY OF THE DETENTION
21 REPORT --

22 Q WELL, THE DETENTION --

23 A -- THE SAME DAY.

24 THE COURT REPORTER: HANG ON, I'M SORRY.
25 OF THE WHAT?

26 THE WITNESS: DETENTION REPORT.

27 THE COURT REPORTER: OF THE SAME DAY?

28 THE WITNESS: YES.

1 THE DISCREPANCY OF MY ANSWER IS THEY'RE NOT
2 REALLY FILED AT THAT JUNCTURE. THEY'RE PIECES OF
3 PAPER. THEY DON'T BECOME A FILE UNTIL AFTER THE
4 DETENTION HEARING.

5 BY MR. MCMILLAN:

6 Q SO YOU ACTUALLY -- THOSE MANY PIECES OF PAPER,
7 YOU PUT THEM IN A FOLDER AFTER THE DETENTION --

8 A I DON'T, BUT SOMEONE DOES.

9 Q -- HEARING? OKAY.

10 A AND THAT'S WHAT YOU'RE REFERRING TO AS A FILE?

11 A YES.

12 Q AND THIS PAGE HERE, IF WE GO NEXT TO 000011
13 STILL ON EXHIBIT NO. 11, DO YOU RECOGNIZE THAT BIG X IN
14 THE MIDDLE OF THE PAGE AS ALSO COMMISSIONER MARTINEZ?

15 A YES.

16 Q OKAY. JUST WANTED TO MAKE SURE ABOUT THAT.

17 A IF I CAN GET YOU TO TURN THEN NEXT TO EXHIBIT
18 NO. 12, IF YOU WOULD.

19 Q WHAT DOCUMENT IS THAT?

20 A THE DETENTION REPORT.

21 Q I'M SORRY?

22 A THE DETENTION REPORT.

23 Q IF YOU GO TO BATES NO. 000015, WRITING --
24 HANDWRITING IN THE MIDDLE OF THE PAGE THERE, IS THAT
25 ALSO COMMISSIONER MARTINEZ?

26 A YES.

27 Q LET ME ASK YOU THIS -- YOU MAY OR MAY NOT
28 KNOW -- UP HERE IN THE UPPER RIGHT-HAND CORNER THERE'S

1 TWO SETS OF NUMBERS THERE. ONE IS A BATES NUMBER, AND
2 I'LL REPRESENT TO YOU THAT THAT'S A NUMBER THAT WE PUT
3 ON THESE DOCUMENTS FOR ORGANIZATIONAL PURPOSES. THEN
4 THERE'S A NUMBER RIGHT BELOW IT, IT SAYS 00008.

5 DO YOU HAVE AN UNDERSTANDING AS TO WHETHER OR
6 NOT THAT IS THE PAGINATION FOR THE CLERK'S TRANSCRIPT
7 ON APPEAL?

8 A I HAVE NO IDEA.

9 Q OKAY. I DON'T REMEMBER. DID I ASK YOU IF
10 THAT WAS COMMISSIONER MARTINEZ'S HANDWRITING?

11 A YOU DID.

12 Q OKAY. AND IT IS?

13 A AND I SAID IT WAS.

14 Q OKAY. THEN, IF WE TURN TO THE NEXT PAGE, IT'S
15 000016. AND WE SEE SOME -- QUITE A BIT, REALLY -- SOME
16 MORE HANDWRITING AND SOME UNDERLINES AND STRIKEOUTS.

17 DO YOU RECOGNIZE THOSE ALSO AS
18 COMMISSIONER MARTINEZ?

19 A YES.

20 Q OKAY. AND THEN YOU CAN ALSO SEE WHAT LOOKS
21 LIKE, IF WE ZOOM IN HERE, THERE'S GRAY AREAS THAT LOOKS
22 LIKE IT WAS HIGHLIGHTED OR SOMETHING LIKE THAT.

23 DO YOU SEE THOSE?

24 A I DO.

25 Q IS IT YOUR UNDERSTANDING THAT THAT'S ALSO
26 SOMETHING THAT WAS DONE BY COMMISSIONER MARTINEZ?

27 A I'M GOING TO ASSUME IT IS BECAUSE I'M GOING TO
28 HAVE TO ASSUME THEY COPIED THE LEGAL FILE IN PRESENTING

1 THIS TO COURT.

2 Q AND WHEN YOU SAY "THEY COPIED THE LEGAL FILE,"
3 WHO ARE YOU TALKING ABOUT?

4 A I HAVE NO IDEA WHO COPIED THE LEGAL FILE FOR
5 THESE PROCEEDINGS. AND I THE REASON I SAY I BELIEVE
6 IT'S HER FILE THEY COPIED IS BECAUSE OF ALL THE
7 NOTATION.

8 Q OKAY. GOING ON TO BATES NO. 000017 OF EXHIBIT
9 NO. 12, TOWARDS THE BOTTOM OF THE PAGE THERE, YOU SEE
10 THERE'S SOME MORE HANDWRITING AND UNDERLINES?

11 A YEAH, I SEE THOSE.

12 Q OKAY. AND THIS ONE HERE, DO YOU KNOW WHO
13 DR. EVANS WAS?

14 A ACCORDING TO THIS DOCUMENT, HE WAS A DOCTOR AT
15 COUNTY USC.

16 Q AND WHEN THE SOCIAL WORKERS ARE PUTTING
17 TOGETHER THESE DETENTION REPORTS, THEY'RE REQUIRED TO
18 INCLUDE EXCULPATORY INFORMATION IN THE REPORTS; RIGHT?

19 A SURE. IF THEY HAVE ANY AT THE TIME OF THE
20 DETENTION. THE DETENTION HEARING IS THREE DAYS AFTER
21 THE CHILD IS TAKEN INTO CUSTODY. SO THEY MAY NOT HAVE
22 READILY AVAILABLE MUCH EVIDENCE AT ALL.

23 Q ARE YOU FAMILIAR WITH DELIVERED SERVICE LOGS
24 AND CONTACT NOTES?

25 A YES.

26 Q I THINK YOU MIGHT HAVE CALLED THEM TITLE XXS
27 BACK IN THE DAY?

28 A YES.

1 Q RIGHT. AND THOSE DELIVERED SERVICE LOGS,
2 THOSE CONTACT NOTES, WHAT THEY'RE SUPPOSED TO DO IS
3 THEY'RE SUPPOSED TO REFLECT ALL OF THE CONTACTS AND
4 INFORMATION AND EVERYTHING THAT WAS GATHERED UP BY THE
5 SOCIAL WORKERS DURING THEIR INVESTIGATION BEFORE THEY
6 MAKE THIS REPORT; RIGHT?

7 A I WOULD AGREE WITH THAT.

8 Q AND YOU WOULD AGREE WITH ME, WOULDN'T YOU,
9 MA'AM, THAT IF ON OCTOBER 21, 2009, THERE WAS
10 INFORMATION IN THE FILE FOR THE DELIVERED SERVICE LOGS
11 FROM DR. EVANS AT THE CATC CLINIC THAT WAS EXCULPATORY,
12 AND IT WAS IN THOSE NOTES FOR THAT SAME DAY, THAT
13 SHOULD HAVE MADE IT INTO THE REPORT; RIGHT?

14 MR. GUTERRES: OBJECTION. FOUNDATION.
15 SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: COULD YOU REPEAT THE QUESTION?

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

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

21 "QUESTION: AND YOU WOULD AGREE
22 WITH ME, WOULDN'T YOU, MA'AM, THAT ON
23 OCTOBER 21, 2009, THERE WAS INFORMATION
24 IN THE FILE IN THE DELIVERED SERVICE
25 LOGS FROM DR. EVANS AT THE CATC CLINIC
26 THAT WAS EXCULPATORY, AND THIS WAS IN
27 THOSE NOTES FOR THAT SAME DAY, THAT
28 SHOULD HAVE MADE IT INTO THE REPORT;

1 RIGHT?")

2 THE WITNESS: I WOULD AGREE WITH THAT.

3 BY MR. MCMILLAN:

4 Q YOU WOULD AGREE WITH THAT.

5 IN FACT, AM I CORRECT THAT UNDER THE RULES OF
6 COURT -- CALIFORNIA RULE OF COURT 5.546, THERE'S AN
7 AFFIRMATIVE DUTY TO DISCLOSE ANY AND ALL EXCULPATORY
8 INFORMATION IN THESE REPORTS?

9 A IF YOU --

10 MR. GUTERRES: OBJECTION.

11 THE WITNESS: -- SAY SO.

12 THE COURT: JUST A MOMENT.

13 MR. GUTERRES: OUTSIDE THE SCOPE.

14 THE COURT: OVERRULED.

15 BY MR. MCMILLAN:

16 Q YOUR ANSWER WAS?

17 A IF YOU SAY SO.

18 Q DO YOU NOT REMEMBER?

19 A I'VE BEEN RETIRED FOR FOUR AND A HALF MONTHS.
20 I DON'T REMEMBER MUCH OF ANYTHING.

21 Q I CAN UNDERSTAND THAT.

22 I'M GOING TO SHOW THE WITNESS WHAT'S BEEN
23 PREVIOUSLY MARKED AS EXHIBIT 791.

24 DOES THAT REFRESH YOUR RECOLLECTION, MA'AM,
25 THAT UNDER CALIFORNIA RULES OF COURT 5.546 THERE'S AN
26 AFFIRMATIVE DUTY TO DISCLOSE ALL KNOWN EXCULPATORY
27 INFORMATION WITHIN THE PETITIONER'S CONTROL OR
28 KNOWLEDGE?

1 A YES.

2 Q OKAY. AND WHEN WE'RE SAYING "THE PETITIONER,"
3 IT WOULD BE THE PERSON FILING THE PETITION?

4 A IT WOULD BE DCFS, YES.

5 Q THE WHOLE AGENCY?

6 A RIGHT.

7 Q I COULDN'T HEAR YOU. I'M SORRY.

8 A RIGHT.

9 Q RIGHT.

10 SO, FOR EXAMPLE, IF THE CATC CLINIC ACTUALLY
11 SAID, "AT THIS POINT IN TIME, I CAN'T TELL YOU WHETHER
12 THE CHILD'S FAILURE TO THRIVE IS DUE TO PARENTAL
13 NEGLECT BECAUSE I HAVE A LOT OF MORE TESTING TO RUN,"
14 OR WORDS TO THAT EFFECT, THAT'S SOMETHING THAT SHOULD
15 HAVE APPEARED HERE IN THE DETENTION REPORT, ISN'T IT?

16 MR. GUTERRES: OBJECTION. HYPOTHETICAL.
17 FOUNDATION. SPECULATION. OUTSIDE THE SCOPE.

18 THE COURT: SUSTAINED AS TO THE FOUNDATION AND
19 OUTSIDE THE SCOPE.

20 BY MR. MCMILLAN:

21 Q LOOKING AT PAGE NO. 0011 STILL ON EXHIBIT
22 NO. 12, THIS ONE HAS QUITE A BIT OF HANDWRITING ON IT.
23 AND UNDERLINES AND SOME KEY WORDS CIRCLED.

24 DO YOU RECOGNIZE ALL OF THAT WRITING AND
25 UNDERLINES AND CIRCLES AS BEING COMMISSIONER MARTINEZ'S
26 HANDWRITING?

27 A I CANNOT SAY SO ON THIS PAGE.

28 Q SO ON THIS PAGE YOU DON'T RECOGNIZE IT?

1 A I CANNOT DEFINITELY STATE THAT IT IS HERS.
2 IT APPEARS TO BE UNINTELLIGIBLE.

3 Q WELL, LET ME ASK YOU THIS WAY: YOU CAN'T
4 DEFINITELY STATE THAT IT'S HERS, BUT DO YOU RECOGNIZE
5 IT AS SOMETHING YOU THINK MIGHT BE HERS?

6 A I DON'T KNOW IF IT'S HER CHICKEN SCRATCH OR
7 SOMEONE ELSE'S.

8 Q DO YOU KNOW WHO WENDY CRUMP WAS?

9 A ACCORDING TO THIS DOCUMENT, SHE WAS A
10 NUTRITIONIST.

11 Q YOU DON'T HAVE AN INDEPENDENT RECOLLECTION?

12 A NO. IT WAS SIX OR SEVEN YEARS AGO.

13 Q AND REMEMBER WE WERE LOOKING BACK AT THAT 355
14 OBJECTION. I THINK IT WAS -- I THINK EXHIBIT NO. 50.
15 IF YOU CAN TURN TO EXHIBIT NO. 50, PAGE 1015?

16 A YES.

17 Q AND YOU HAD EXPLAINED TO US THAT THIS WAS AN
18 OBJECTION TO THE COMMENTS IN THE DETENTION REPORT ABOUT
19 DR. EVANS, WENDY CRUMP, AND A DR. JASMEET GILL.

20 AM I GETTING THAT RIGHT?

21 A YES.

22 Q OKAY. NOW, THE OBJECTION WAS SORT OF
23 QUALIFIED THOUGH, WASN'T IT?

24 A I DON'T KNOW WHAT YOU MEAN BY THAT.

25 Q WELL, YOU'D EXPLAINED TO US EARLIER THAT UNDER
26 355, WHEN WE DO AN OBJECTION, WE'RE BASICALLY SAYING
27 THESE ARE HEARSAY STATEMENTS, THEY SHOULDN'T COME IN,
28 BUT THEN I THINK THE JUDGE, IN OVERRULING IT -- YOU

1 EXPLAINED SOMETHING ALONG THE LINES OF THE JUDGE WILL
2 SAY THAT THEY WILL ACCEPT IT IN BUT IT WON'T BE THE
3 SOLE BASIS FOR THE OUTCOME OR SOMETHING LIKE THAT?

4 DO YOU REMEMBER THAT?

5 A YES, I DO. THE JUDGE SAID "I'M GOING TO
6 OVERRULE YOUR OBJECTION. I'M GOING TO ADMIT THE
7 DOCUMENTS. HOWEVER, THEY CANNOT BE USED AS A SOLE
8 BASIS UPON WHICH I CONSIDER JURISDICTION. AND FURTHER,
9 IF YOU WANT TO HAVE THEM TAKEN OUT, IT'S THEIR
10 RESPONSIBILITY TO BRING THE WITNESS IN."

11 Q WELL, WHAT THE OBJECTION ACTUALLY SAYS, MA'AM,
12 IS THAT UNLESS THE PARTIES ARE MADE -- THE WITNESSES,
13 THE PARTIES ARE MADE AVAILABLE AT THE TIME OF TRIAL, WE
14 HAVE THESE OBJECTIONS; RIGHT?

15 A AND THE PARTIES BEING MADE AVAILABLE AT THE
16 TIME OF TRIAL MEANS THAT THE DEPARTMENT HAS PROVIDED
17 THE NAMES AND OTHER INFORMATION ON THE INDIVIDUAL WHOSE
18 STATEMENTS ARE IN THE REPORT, AND THE ATTORNEY THEN
19 SUBPOENAED THOSE PEOPLE. IT DOESN'T MEAN WE HAVE TO
20 BRING THEM IN.

21 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
22 STRIKE AS NONRESPONSIVE.

23 THE COURT: OBJECTION IS SUSTAINED. MOTION TO
24 STRIKE IS GRANTED. THE ANSWER IS STRICKEN AND THE JURY
25 MUST DISREGARD IT.

26 BY MR. MCMILLAN:

27 Q LET ME ASK YOU, MA'AM, WHEN WE'RE DOING ONE OF
28 THESE DEPENDENCY TRIALS, IS THE BURDEN OF PROOF ON THE

1 GOVERNMENT OR DOES THE PARENT HAVE TO COME IN AND PROVE
2 THEY'RE INNOCENT?

3 A IT'S ON THE GOVERNMENT, COUNSEL.

4 Q RIGHT. SO IF THE GOVERNMENT WANTS TO PROVE A
5 POINT THEY SHOULD BRING IN SOME WITNESSES; RIGHT?

6 A NOT NECESSARILY. THEY CAN BRING IN DOCUMENTS
7 AND STATEMENTS FROM WITNESSES.

8 Q THAT GET OBJECTED TO UNLESS THE WITNESS IS
9 MADE AVAILABLE?

10 A AND I THINK THE PROBLEM WE'RE HAVING IS THE
11 DEFINITION OF "MADE AVAILABLE." IN OUR COURT, MADE
12 AVAILABLE MEANS OPPOSING COUNSEL HAS THE INFORMATION ON
13 THOSE WITNESSES, OR CAN SECURE IT, WE LET THEM KNOW,
14 AND THEN THEY SUBPOENA THOSE WITNESSES TO COME IN AND
15 TESTIFY, WHICH DIDN'T HAPPEN.

16 Q SO LET ME MAKE SURE I'M CLEAR HERE. THE ONLY
17 BURDEN ON THE GOVERNMENT HERE IS TO PUT IN A STATEMENT
18 LIKE THIS ONE HERE THAT SAYS, ON PAGE NO. 000018, THAT
19 ON NOVEMBER 2ND, CSW SPOKE WITH DR. JASMEET GILL, WHO
20 STATED THAT SHE'S A PARTNER TO DR. YIM, WHO MOTHER --
21 HAD PREVIOUSLY STATED HAD QUIT ON MOTHER DUE TO
22 HARASSMENT. THEN IT SAYS SOME OTHER BAD THINGS ABOUT
23 MOTHER THAT DR. GILL SUPPOSEDLY SAID.

24 THAT'S YOUR ONLY BURDEN, THE GOVERNMENT ;
25 RIGHT?

26 A I'M NOT SURE WHAT YOU MEAN BY THAT.

27 Q WELL, YOU JUST TOLD ME -- AND MAYBE I
28 MISUNDERSTOOD -- THAT ONCE THE HEARSAY OBJECTION'S

1 OVERRULED, THIS DOCUMENT HERE COMES INTO EVIDENCE?

2 A THAT'S CORRECT.

3 Q WHETHER THAT STATEMENT THERE IS TRUE OR NOT?

4 A IT COMES INTO EVIDENCE. COUNSEL CAN HAVE THE
5 OPPORTUNITY TO SUBPOENA THAT PERSON AND HAVE THEM
6 TESTIFY AND CONTRADICT THAT ON THE STAND BEFORE THE
7 COURT.

8 Q WELL, LET ME ASK YOU: WHEN THE SOCIAL WORKERS
9 SIGN THIS DETENTION REPORT, DO YOU KNOW IF THEY DO IT
10 UNDER PENALTY OF PERJURY?

11 A I BELIEVE THEY DO.

12 Q DO YOU KNOW WHY?

13 A ASSUMINGLY SO THAT THE INFORMATION THAT IS IN
14 HERE IS CORRECT AND TRUTHFUL.

15 Q AND YOU, AS COUNTY COUNSEL FOR THE GOVERNMENT,
16 YOU ALSO RELIED TO SOME EXTENT ON THE SOCIAL WORKERS
17 BEING -- HOLD ON -- BEING TRUTHFUL, HONEST, ACCURATE,
18 AND COMPLETE, DON'T YOU?

19 A YES.

20 Q IN FACT, IF THEY'RE NOT, IT MAKES IT VERY
21 DIFFICULT FOR YOU TO EVEN DO YOUR JOB?

22 A YES.

23 Q HAVE YOU EVER HAD A CIRCUMSTANCE IN YOUR
24 16 YEARS WHERE YOU ACTUALLY DID YOUR OWN INVESTIGATION
25 AND DISCOVERED THAT ONE OF THE WORKERS YOU WERE WORKING
26 WITH HAD LIED TO YOU ABOUT SOMETHING?

27 MR. GUTERRES: OBJECTION. RELEVANCE. OUTSIDE
28 THE SCOPE.

1 THE COURT: SUSTAINED.

2 BY MR. MCMILLAN:

3 Q OKAY. WE'LL MOVE ON TO EXHIBIT NO. 24. AND
4 IT'S -- OH, YOU KNOW WHAT, I THINK IT'S IN A DIFFERENT
5 BOOK.

6 A I DON'T HAVE 24.

7 Q THIS ONE'S ITS OWN BOOK.

8 IN LOOKING AT EXHIBIT NO. 24, DO YOU RECOGNIZE
9 THAT DOCUMENT?

10 A YES.

11 Q IT'S THE JURIS/DISPO REPORT?

12 A YES.

13 Q AND THE FIRST PAGE THERE, IT'S GOT SOME
14 HANDWRITING ON IT THERE UP IN THE UPPER RIGHT-HAND
15 CORNER?

16 A YES.

17 Q DO YOU RECOGNIZE THAT HANDWRITING?

18 A IT'S THE COURT OFFICER'S HANDWRITING.

19 Q WHAT DO YOU MEAN, "COURT OFFICER"?

20 A WITHIN EACH DEPENDENCY COURT THERE ARE IDEALLY
21 TWO COURT OFFICERS. COURT OFFICERS ARE SOCIAL WORKERS
22 WITH SOME EXPERIENCE WHO ACT AS A LIAISON BETWEEN THE
23 WORKERS IN THE FIELD AND THE COURT -- EXCUSE ME.

24 SO THEY -- I'M SORRY. I GOT IT. THANK YOU.

25 THE COURT REPORTS COME TO THE COURT OFFICERS
26 WHO ARE ASSIGNED TO, LIKE, DEPARTMENT 414. THEY REVIEW
27 THE COURT REPORTS, THEY ASSESS WHETHER OR NOT PROOF OF
28 SERVICE IS CORRECT, AND THEY NOTATE THE DOCUMENTS FOR

1 THE COURT.

2 SO IN THIS INSTANCE, IT INDICATES PROOF OF
3 SERVICE TO MOM AND DAD WAS PROPER.

4 Q AND THEN IF I CAN GET YOU TO TURN TO PAGE
5 NO. 000452.

6 A YES.

7 Q OKAY. YOU SEE THERE'S AN UNDERLINE THERE
8 ABOUT THE MIDDLE OF THE PAGE IN THE SECOND PARAGRAPH?

9 A YES.

10 Q DO YOU RECOGNIZE THAT AS
11 COMMISSIONER MARTINEZ'S WRITING?

12 A THERE'S NO WRITING; THERE'S JUST HIGHLIGHTING.

13 Q WELL THE UNDERLINE THERE, DO YOU RECOGNIZE
14 THAT AS HERS?

15 A I CAN ONLY MAKE ASSUMPTIONS, WHICH I WON'T DO.

16 Q IF I CAN GET YOU TO TURN TO PAGE NO. 21 OF THE
17 JURIS/DISPO REPORT. THAT'S 466, THE BATES NUMBER.

18 A OKAY.

19 Q AND YOU SEE SOME UNDERLINING AND BOXING AND
20 THINGS LIKE THAT ON THE LAST PARAGRAPH?

21 A I DO.

22 Q OKAY. DO YOU RECOGNIZE THOSE AS BEING
23 COMMISSIONER MARTINEZ?

24 A THEY COULD BE.

25 Q AND YOU SEE RIGHT THERE, MUNCHAUSEN BY PROXY
26 HAS A SORT OF BOX AROUND IT?

27 A YEAH, THE CONCERN FOR POSSIBLE MUNCHAUSEN BY
28 PROXY.

1 Q POSSIBLE -- A CONCERN.

2 DID YOU EVER FIGURE OUT WHOSE CONCERN THAT
3 WAS?

4 A I DON'T RECALL. IT NEVER CAME UP AT THE
5 TRIAL.

6 Q AND THEN ANOTHER THING HERE JUST BEFORE
7 THAT -- WHERE IS IT?

8 (READING:)

9 "CHILD'S REGULAR PEDIATRICIAN,
10 DR. YIM, DISCONTINUED SERVICES DUE TO
11 MOTHER'S FAILURE TO COMPLY WITH HER
12 RECOMMENDATIONS."

13 DO YOU SEE THAT?

14 THE COURT: WHAT PAGE IS THIS ON?

15 MR. MCMILLAN: I'M SORRY, YOUR HONOR. IT'S
16 000466, LAST PARAGRAPH, THE SENTENCE IMMEDIATELY BEFORE
17 THE BOXED MUNCHAUSEN BY PROXY.

18 THE COURT: ALL RIGHT. THANK YOU.

19 THE WITNESS: I SEE IT.

20 BY MR. MCMILLAN:

21 Q YOU'D SAID EARLIER, I THINK, WHEN YOU WERE
22 TALKING TO MR. GUTERRES, DR. YIM WAS THE CHILD'S
23 TREATING PEDIATRICIAN?

24 A I DON'T BELIEVE I SAID THAT BUT I MAY HAVE.

25 Q DO YOU REMEMBER WHETHER OR NOT DR. YIM WAS THE
26 CHILD'S TREATING PEDIATRICIAN?

27 A FROM THIS I GLEAN THAT DR. YIM WAS THE REGULAR
28 PEDIATRICIAN.

1 Q OKAY. AND ON THESE JURISDICTION/DISPOSITION
2 REPORTS, THEY'RE OFFICIAL DOCUMENTS; RIGHT?

3 A YES.

4 Q THEY'RE A DOCUMENT ACTUALLY THAT'S REQUIRED BY
5 STATUTE TO BE PUT TOGETHER BY THE SOCIAL WORKER AND
6 FILED WITH THE COURT?

7 A YES.

8 Q AND THEN THE COURT, ALSO BY STATUTE, ACCEPTS
9 IT INTO EVIDENCE?

10 A YES.

11 Q OKAY. IN PUTTING THESE TOGETHER, AS COUNTY
12 COUNSEL PROSECUTING ONE OF THESE JUVENILE DEPENDENCY
13 CASES, YOU RELY ON THE HONESTY AND INTEGRITY OF THE
14 SOCIAL WORKERS WHO ARE PUTTING THESE TOGETHER?

15 A I BELIEVE YOU ASKED ME THAT ALREADY, BUT, YES.

16 Q WELL, THIS REPORT IN PARTICULAR, THIS --

17 A YES.

18 Q -- JURIS/DISPO REPORT?

19 A I DO. I DO.

20 Q DID YOU EVER, YOURSELF, ACTUALLY TALK TO
21 DR. YIM?

22 A NO.

23 Q DID YOU EVER, YOURSELF, ACTUALLY TALK TO
24 DR. GILL?

25 A I DON'T THINK SO.

26 Q DID YOU EVER, YOURSELF, TALK TO DR. FEDDER?

27 A I DON'T EVEN KNOW WHO DR. FEDDER IS.

28 Q DR. BROUSSEAU? DID YOU TALK TO DR. BROUSSEAU?

1 A IT WOULD NOT BE MY ORDINARY CUSTOM AND
2 PRACTICE TO SPEAK WITH A PHYSICIAN ON A CASE UNLESS IT
3 WAS SOMETHING WHICH APPEARED LESS SOLID THAN THIS.

4 Q WHAT DO YOU MEAN, "LESS SOLID THAN THIS"?

5 A WE HAD REAMS AND REAMS OF MEDICAL INFORMATION
6 SUGGESTING THIS CHILD WAS NOT BEING FED PROPERLY AND
7 WAS NOT RECEIVING PROPER NUTRITION. THAT COUPLED WITH
8 SOME OF THE MOTHER'S RESPONSES AND WHAT THE SOCIAL
9 WORKERS HAD PRESENTED TO ME, THIS SEEMED TO BE AN
10 OPEN-AND-SHUT CASE.

11 Q SEEMED TO BE AN OPEN-AND-SHUT CASE.

12 A IN A CASE WHERE I HAVE DEAD CHILDREN, I WILL
13 REVIEW THE CORONER'S REPORTS, SPEAK WITH CORONERS. BUT
14 TRADITIONALLY, I WILL RELY ON THE INFORMATION THAT IS
15 PRESENTED TO ME BY THE SOCIAL WORKERS.

16 Q DID YOU LOOK AT ALL OF DR. YIM'S RECORDS?

17 A IF THEY WERE ATTACHED TO THE REPORT, I DID.

18 Q OKAY. SO YOU ONLY LOOKED AT THE RECORDS IN
19 THIS OPEN-AND-SHUT CASE THAT WERE ATTACHED TO THE
20 REPORT --

21 A I SAID IT APPEARED TO BE OPEN AND SHUT.

22 Q MA'AM?

23 A SIR?

24 Q LET ME TRY AGAIN.

25 THE COURT: SO DON'T INTERRUPT THE WITNESS.
26 THIS IS NOT YOUR PREROGATIVE, ONLY THE COURT CAN
27 DETERMINE WHEN SOMEONE CAN SPEAK. SO PLEASE JUST
28 DON'T.

1 MR. MCMILLAN: I APOLOGIZE, YOUR HONOR.

2 THE COURT: I UNDERSTAND SOMETHING WAS BEING
3 SAID THAT YOU FELT WASN'T BEING CALLED FOR, AND THAT'S
4 WHY WE HAVE OBJECTIONS. AND THE COURT WILL DETERMINE
5 THAT, NOT COUNSEL.

6 GO AHEAD.

7 MR. MCMILLAN: OKAY. CAN I ACTUALLY LOOK
8 AT --

9 THE COURT: FIND OUT WHERE YOU WERE?

10 MR. MCMILLAN: YEAH, BECAUSE MY QUESTION GOT
11 INTERRUPTED, SO I'VE FORGOTTEN WHERE I WAS.

12 THE COURT: YOU BEGAN WITH THE QUESTION:

13 "OKAY. SO YOU ONLY LOOKED AT THE
14 RECORDS IN THIS OPEN-AND-SHUT CASE THAT
15 WERE ATTACHED TO THE REPORT --

16 "ANSWER: I SAID IT APPEARED TO BE
17 OPEN AND SHUT.

18 "QUESTION: MA'AM?

19 "ANSWER: SIR?

20 "QUESTION: LET ME TRY AGAIN."

21 MR. MCMILLAN: THANK YOU, YOUR HONOR. AND
22 I'LL TRY AGAIN.

23 BY MR. MCMILLAN:

24 Q LET ME MAKE SURE I GET THIS RIGHT.

25 YOU SAID THIS CASE APPEARED TO BE AN
26 OPEN-AND-SHUT CASE BASED ON WHAT THE SOCIAL WORKERS
27 GAVE YOU; RIGHT?

28 A CORRECT.

1 Q AND THE ONLY THING YOU DID WAS LOOK AT WHAT
2 THE SOCIAL WORKERS REPORTED IN THE REPORT AND ATTACHED
3 TO THE REPORT, AND THAT'S IT?

4 A CORRECT.

5 Q YOU DIDN'T DO ANY FURTHER INVESTIGATION, LIKE
6 GO LOOK AT THE ENTIRETY OF THE DOCTOR'S RECORDS, FOR
7 EXAMPLE?

8 A THAT'S NOT MY RESPONSIBILITY.

9 Q WELL, MA'AM, DON'T YOU HAVE A STATUTORY DUTY
10 TO MAINTAIN THOSE ACTIONS, PROCEEDINGS OR DEFENSES ONLY
11 AS APPEAR TO BE LEGAL OR JUST?

12 A I SUPPOSE I DID.

13 Q I'M SORRY, YOU SAID YOU DID?

14 A I SUPPOSE I DID, YES.

15 Q YOU DON'T ANYMORE?

16 A NOT SINCE I'VE BEEN RETIRED.

17 AS THE COUNTY COUNSEL ON THE CASE, WE DO NOT
18 GO THROUGH ENTIRE REAMS OF INFORMATION. WE ARE
19 PRESENTED WITH INFORMATION FROM OUR CLIENT WHICH WE
20 BELIEVE TO BE CREDIBLE AND TRUSTWORTHY AND ACCURATE,
21 AND THAT IS WHAT WE PRESENT TO THE COURT. WE DON'T DO
22 INDEPENDENT INVESTIGATIONS AND SUBMIT THAT TO THE COURT
23 INDIVIDUALLY.

24 Q SO WHOSE RESPONSIBILITY IS IT TO MAKE SURE
25 THAT THE COURT GETS EVERYTHING IT NEEDS TO GET TO MAKE
26 A CORRECT DECISION?

27 A WELL, PERHAPS IF COUNSEL FOR THE PARENTS
28 BELIEVE THERE'S SOMETHING ABSENT AND THERE'S

1 EXCULPATORY EVIDENCE, THEN THEY SHOULD BRING THAT TO
2 THE COURT'S ATTENTION.

3 Q WELL, LET ME ASK YOU, IF EXCULPATORY EVIDENCE
4 IS SUPPRESSED, HOW WOULD A PARENT KNOW THAT THERE WAS
5 EXCULPATORY EVIDENCE?

6 A LET ME SAY THIS TO YOU. I, AS A PROSECUTOR,
7 HAD AN ABSOLUTE DUTY TO PRESENT TO THE COURT ANY
8 EXCULPATORY -- I'M SORRY ABOUT THIS -- ANY EXCULPATORY
9 EVIDENCE THAT I WAS AWARE OF. I WAS NOT AWARE OF ANY
10 EXCULPATORY EVIDENCE.

11 IF MR. HOWELL BELIEVED THAT THERE WERE
12 DISINGENUOUS COMMENTS ATTRIBUTED TO CERTAIN DOCTORS OR
13 OTHER WITNESSES IN THIS CASE, THEN IT WOULD HAVE BEEN
14 INCUMBENT UPON HIM TO BEST REPRESENT HIS CLIENT BY
15 SUBPOENAING THOSE WITNESSES. THAT IS NOT MY
16 RESPONSIBILITY.

17 Q AND IF HE DIDN'T DO THAT, THEN THERE COULD BE
18 SOME INEFFECTIVE ASSISTANCE OF COUNSEL THERE; RIGHT?

19 A THAT WOULD BE FOR A COURT TO MAKE A DECISION.

20 Q NOW, THIS PROSECUTOR'S DUTY THAT YOU JUST
21 SPOKE OF, THE PROSECUTOR'S DUTY TO DISCLOSE KNOWN
22 EXCULPATORY EVIDENCE, THAT'S UNDER *BRADY V. MARYLAND*;
23 CORRECT?

24 A I HAVE NO IDEA.

25 THE COURT: WE'RE GOING TO TAKE AFTERNOON
26 RECESS AT THIS TIME. IT WILL BE APPROXIMATELY
27 10 MINUTES. ALL JURORS, PLEASE REMEMBER THE
28 ADMONITION.

1 (JURY EXCUSED)

2 (RECESS)

3 THE COURT: ALL RIGHT. WELL, I NEED DEANNA TO
4 TELL ME IF WE HAVE ALL THE JURORS. IF WE DO, I'D LIKE
5 TO GET THEM IN.

6 (JURY PRESENT)

7 THE COURT: EVERYBODY IS PRESENT. EVERYBODY
8 BE SEATED.

9 I NEED TO SEE COUNSEL, UNFORTUNATELY, AT
10 SIDEBAR.

11 (THE FOLLOWING PROCEEDINGS WERE HELD AT
12 SIDEBAR.)

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

15 MR. MCMILLAN, THE COURSE OF THIS EXAMINATION
16 OF THIS WITNESS IS BECOMING EXCEEDINGLY BEYOND THE
17 SCOPE OF THE DIRECT EXAMINATION. I DO NOT INTEND TO
18 HAVE US GO INTO THE OBLIGATIONS OF A PROSECUTOR IN THE
19 CASE. THERE WAS NO EVIDENCE PRESENTED ON DIRECT
20 EXAMINATION THAT WOULD IMPLICATE THAT KIND OF
21 CROSS-EXAMINATION. THE ISSUE IN THIS CASE HAS TO DO
22 WITH THE OBLIGATIONS OF THE DEPARTMENT OF CHILDREN AND
23 FAMILY SERVICES, AND SHE DID NOT EXPRESS ANY OPINIONS
24 EVEN ON HOW THEY ARE SUPPOSED TO PERFORM THEIR JOB
25 EXCEPT IN RESPONSE TO YOUR QUESTIONS. THAT WAS NOT
26 PART OF DIRECT EXAMINATION. IT WAS ACTUALLY PRETTY
27 LIMITED. AND I DON'T INTEND IN ANY WAY TO RESTRICT
28 CROSS-EXAMINATION ON THE THINGS SHE DID TESTIFY ABOUT.

1 BUT THIS IS NOT --

2 MR. MCMILLAN: OKAY.

3 THE COURT: -- A MALPRACTICE CASE AGAINST
4 COUNTY COUNSEL, SO I'D LIKE TO HAVE US FOCUS ON THE
5 AREAS OF HER TESTIMONY.

6 MR. MCMILLAN: I ONLY HAVE PROBABLY FIVE MORE
7 MINUTES.

8 THE COURT: OH, THAT'S FINE. I'M NOT SAYING
9 THAT -- I'M NOT IN ANY WAY TRYING TO HURRY YOU UP OR
10 ENCOURAGE YOU --

11 MR. MCMILLAN: I'M TRYING TO HURRY UP.

12 THE COURT: -- OR ENCOURAGE YOU NOT TO ASK
13 QUESTIONS YOU SHOULD ASK.

14 I'M SIMPLY ENCOURAGING YOU NOT TO ASK
15 QUESTIONS YOU SHOULDN'T ASK.

16 MR. GUTERRES: I'LL ENCOURAGE HIM NOT TO ASK
17 QUESTIONS HE SHOULDN'T ASK.

18 (THE FOLLOWING PROCEEDINGS WERE HELD IN
19 OPEN COURT IN THE PRESENCE OF THE
20 JURY.)

21 THE COURT: GO AHEAD, MR. MCMILLAN.

22 MR. MCMILLAN: THANK YOU, YOUR HONOR.

23 BY MR. MCMILLAN:

24 Q I DON'T KNOW IF YOU HAVE, MA'AM, VOLUME NO. 3
25 IN FRONT OF YOU. IT SHOULD BE ON THE FRONT COVERS.

26 THE COURT: WHICH EXHIBIT?

27 MR. MCMILLAN: IT'S EXHIBIT NO. 60.

28 THE COURT: 60 WE DO HAVE.

1 THE WITNESS: I HAVE IT.

2 BY MR. MCMILLAN:

3 Q OKAY. EXCELLENT. IF I CAN GET YOU TO TURN TO
4 EXHIBIT NO. 60.

5 A YES.

6 Q IN LOOKING AT EXHIBIT NO. 60, I THINK YOU
7 IDENTIFIED THIS EARLIER AS THE PETITIONER'S WITNESS
8 EVIDENCE LIST IN THE UNDERLYING JUVENILE DEPENDENCY
9 CASE.

10 DO I HAVE THAT RIGHT?

11 A YES.

12 Q AND IS THIS A LIST THAT YOU YOURSELF CREATED?

13 A YES.

14 Q AND ON IT I NOTICE THERE'S A LIST OF WHAT
15 LOOKED LIKE A BUNCH OF DIFFERENT DOCUMENTS AND IT
16 CONTINUES OVER ON TO THE NEXT PAGE -- JUST SO WE HAVE A
17 CLEAR RECORD, IT'S BATES 001150 ALL THE WAY THROUGH AND
18 INCLUDING 001151.

19 DO YOU SEE THAT?

20 A YES.

21 Q OKAY. ON THE FIRST PAGE, 001150, THERE'S
22 12 -- ACTUALLY, 11 DOCUMENTS. 12 DOCUMENTS LISTED, BUT
23 11 OF THOSE ARE ATTACHMENTS TO THE
24 JURISDICTION/DISPOSITION REPORT.

25 AM I RIGHT ABOUT THAT?

26 A NO. SIX OF THEM ARE ATTACHMENTS TO THE
27 JURISDICTION REPORT.

28 Q OH, I SEE, THERE'S A SEPARATE COLUMN HERE. I

1 GOT IT. THAT WAS ONE OF MY CONFUSIONS.

2 SO LET ME MAKE SURE I GOT THIS RIGHT: WHAT
3 YOU WERE PUTTING INTO EVIDENCE IN THE UNDERLYING
4 JUVENILE DEPENDENCY CASE, AS DEPICTED ON THIS EXHIBIT
5 NO. 60, WAS THE JURISDICTION REPORT -- I THINK THAT WAS
6 EXHIBIT NO. 24; IS THAT RIGHT? THAT'S THE BIG HUGE
7 THICK ONE?

8 A THAT'S CORRECT.

9 Q OKAY. BUT YOU SAY HERE "TO INCLUDE THE
10 DETENTION REPORT," AND THEN SPECIFIED A PAGE OF THE
11 METHODIST HOSPITAL NEWBORN PROGRESS RECORD. IT SAYS A
12 NOTATION OF AUGUST 3, 2008, FAX PAGE 49.

13 DO YOU SEE THAT?

14 A YES.

15 Q WHAT DOES THAT MEAN? WHAT ARE WE TALKING
16 ABOUT? AND OBVIOUSLY YOU DON'T KNOW EXACTLY WHAT THAT
17 DOCUMENT MIGHT HAVE BEEN OR WHAT IT SAID. THIS WAS
18 SEVEN YEARS AGO, I GET THAT.

19 BUT I'M WONDERING HERE IF YOU'RE TALKING ABOUT
20 A SPECIFIC PAGE OR A SPECIFIC NOTATION OR A SPECIFIC
21 PIECE OF EVIDENCE?

22 WHAT ARE WE TALKING ABOUT?

23 A I HAVE NO PRESENT RECOLLECTION.

24 Q OKAY.

25 A WHAT I WOULD SAY IS OFTEN SOCIAL WORKERS WOULD
26 FAX OVER EVERYTHING TO US TO GIVE TO THE COURT. AND SO
27 IT MAY HAVE BEEN A FAX PAGE 49 FROM THE SOCIAL WORKER,
28 BUT I REALLY CAN'T TELL INASMUCH AS IT WAS SO LONG AGO

1 AND I DON'T HAVE THE DOCUMENTS BEFORE ME.

2 Q LET ME ASK YOU, AND MAYBE THIS WILL HELP, IN
3 YOUR REGULAR PRACTICE IN PREPARATION FOR ONE OF THESE
4 TRIALS, I IMAGINE THERE'S A LOT OF DOCUMENTS THAT COME
5 INTO PLAY; CORRECT?

6 A YES.

7 Q BUT NOT ALL OF THOSE DOCUMENTS ARE DOCUMENTS
8 THAT YOU'RE ACTUALLY GOING TO MOVE INTO EVIDENCE TO
9 SUPPORT YOUR CASE; CORRECT?

10 A CORRECT.

11 Q IN FACT, WHAT USUALLY HAPPENS, YOU MIGHT HAVE
12 HUNDREDS AND HUNDREDS OF PAGES OF DOCUMENTS AND MAYBE
13 ONLY 10 OR 12 OR 15 OR 20 ACTUALLY COME INTO EVIDENCE;
14 IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q IN LOOKING AT THIS WITNESS LIST, WITH THAT
17 SORT OF BACKGROUND IN MIND -- NOT WITNESS LIST. I'M
18 SORRY.

19 IN LOOKING AT THIS WITNESS/EVIDENCE LIST, WITH
20 THAT SORT OF BACKGROUND IN MIND, DOES IT REFRESH YOUR
21 RECOLLECTION THAT THAT'S WHAT YOU WERE DOING HERE IS
22 LETTING THE JUDGE KNOW THAT ONLY SPECIFIED ITEMS OF
23 EVIDENCE WERE NECESSARY TO YOU TO PROVE YOUR CASE?

24 A I DON'T KNOW THAT THAT WAS THE CASE. I MEAN,
25 IT SEEMS YOU'RE -- I DON'T KNOW IF YOU'RE SUGGESTING I
26 GO THROUGH AND PULL WHAT I WANT. THAT WOULD NOT HAVE
27 BEEN MY COMMON PRACTICE. I'M ASSUMING THEY WERE FAXED
28 OVER TO ME FROM SOMEWHERE, FAXED TO THE COURT FROM

1 SOMEWHERE, PERHAPS THE HOSPITAL ITSELF. BUT I WOULD
2 NOT JUST GO THROUGH AND PICK OUT PIECES OF EVIDENCE
3 THAT I WANTED.

4 Q IF YOU CAN LOOK UNDER THE MAIN PARAGRAPH
5 NO. 1, UNDER 1F; DO YOU SEE THAT?

6 A YES.

7 Q IT'S REFERENCING A NOTE BY ALLISON YIM DATED
8 MARCH 9, 2009; CORRECT?

9 A YES.

10 Q AM I CORRECT IN UNDERSTANDING THAT YOU WEREN'T
11 INTENDING TO USE ALL OF DR. YIM'S RECORDS HERE, YOU
12 WERE JUST INTENDING TO USE THAT SPECIFIC RECORD FROM
13 MARCH 9, 2009?

14 MR. GUTERRES: OBJECTION. LACKS FOUNDATION.
15 SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: I THINK MY INTENTION WAS TO
18 INCLUDE THOSE THREE SEPARATE OFFICE VISIT NOTES FOR
19 DR. YIM.

20 BY MR. MCMILLAN:

21 Q RIGHT. I RECOGNIZE THAT THERE'S THREE VISIT
22 NOTES.

23 BUT MY REAL QUESTION IS, TO THE EXTENT WE HAVE
24 A NOTE THERE AND IT HAS A SPECIFIC DATE AND A SPECIFIC
25 PAGE, IS IT THAT ITEM THAT YOU WERE INTENDING TO MOVE
26 INTO EVIDENCE?

27 A THERE'S NO SPECIFIC PAGE ATTACHED TO THE
28 EVIDENCE IN 1D, 1E, AND 1F, WHICH IS DR. YIM'S NOTES.

1 Q OKAY. ASSUME FOR ME FOR THE MOMENT -- AND I
2 DON'T MIND IF THERE ARE FIVE OR TEN PAGES. WHATEVER IT
3 IS, IF THERE'S A VISIT NOTE FOR DR. YIM DATED
4 NOVEMBER 11, 2008, WAS IT YOUR INTENTION HERE TO ONLY
5 BE IDENTIFYING THAT NOTE UNDER PARAGRAPH 1D?

6 MR. GUTERRES: SPECULATION. NO FOUNDATION.

7 THE COURT: OVERRULED.

8 THE WITNESS: YES.

9 BY MR. MCMILLAN:

10 Q OKAY. AND THE SAME HOLDS TRUE FOR EACH OF
11 THESE OTHER DR. YIM NOTES, CORRECT, THAT YOU WERE --

12 A YES.

13 Q OKAY. THANK YOU.

14 AND IF WE LOOK AT THE DEVELOPMENTAL -- THAT'S
15 5A ON PAGE 001150. IF WE LOOK AT THE DEVELOPMENTAL
16 EVALUATION FOR FEBRUARY 19TH, 2010, IT'S THE SAME SORT
17 OF PROCESS YOU WENT THROUGH. YOU'RE JUST WANTING TO
18 MOVE THAT PARTICULAR REPORT, HOWEVER MANY PAGES IT WAS.

19 CORRECT?

20 A YES, AS IT WAS SUBMITTED TO THE COURT BY THE
21 SOCIAL WORKER ON JUNE 21, 2010, AND ATTACHED THERETO.

22 Q OKAY. AND THEN ONE WAY WE CAN ACTUALLY TELL
23 WHAT GOT MOVED INTO EVIDENCE OUT OF THIS BIG BUNDLE OF
24 PAPER IS THAT THE STUFF THAT THE COURT RELIED ON,
25 ACCEPTED INTO EVIDENCE, HAS A STICKER ON IT THAT SAYS
26 ADMITTED INTO EVIDENCE; RIGHT?

27 A UNDER THE BEST OF TERMS, THAT WOULD BE WHAT
28 HAPPENED. I CAN'T BE CERTAIN WHAT HAPPENED BECAUSE I

1 HAVEN'T LOOKED AT THESE DOCUMENTS.

2 Q SURE. BUT IN YOUR REGULAR PRACTICE AND
3 EXPERIENCE OVER THE COURSE OF YOUR ENTIRE TIME AS A
4 PROSECUTOR IN THE DEPENDENCY COURTS, IT WAS YOUR
5 GENERAL EXPERIENCE THAT IF A DOCUMENT WAS ACCEPTED INTO
6 EVIDENCE, IT GOT A STICKER ON IT THAT SAID ACCEPTED
7 INTO EVIDENCE?

8 A YES.

9 Q IF YOU GO OVER TO PAGE NO. 001151, THERE'S A
10 WHOLE BUNCH OF DOCUMENTS LISTED ON THAT PAGE AS WELL.

11 DO YOU SEE THOSE?

12 A YES.

13 Q AND SOME OF THEM -- WE CAN JUST START WITH 5B.
14 AND IT IDENTIFIES -- IT'S ACTUALLY A LONG TITLE OF THE
15 DOCUMENT. IT IDENTIFIES A DOCUMENT. BUT THEN THERE'S
16 A NOTATION THAT SAYS PAGE 2 OF 2.

17 DO YOU SEE THAT?

18 A I DO.

19 Q WAS IT YOUR INTENTION THERE THAT ONLY THE
20 SECOND PAGE WOULD BE OFFERED INTO EVIDENCE?

21 A I ASSUME SO. GIVEN THE PASSAGE OF TIME, I
22 CAN'T RECALL.

23 Q OKAY. AND THE SAME SORT OF PROCESS -- I DON'T
24 WANT TO HAVE TO GO THROUGH EACH ONE OF THESE, BUT THE
25 SAME SORT OF PROCESS WOULD APPLY TO EACH OF THESE ON
26 THIS LIST ON BATES 1150 AND 1151 OF EXHIBIT 60, IS THAT
27 WE CAN LOOK AT HOW YOU'VE IDENTIFIED IT AND PRETTY MUCH
28 TELL EXACTLY WHAT IT IS YOU'RE WANTING TO GET INTO

1 EVIDENCE; RIGHT?

2 A YES.

3 Q AND AS FAR AS YOU UNDERSTAND, WERE ANY OF
4 THESE ITEMS ON YOUR LIST NOT ACCEPTED INTO EVIDENCE?

5 A I HAVE NO IDEA.

6 Q AND THIS EVIDENCE WITNESS LIST THAT'S
7 EXHIBIT 60, THAT'S THE LIST THAT YOU PREPARED AND FILED
8 WITH THE COURT IN RELATION TO THE TRIAL; RIGHT?

9 A YES.

10 MR. MCMILLAN: THANK YOU VERY MUCH, MS. WORK.

11 THE COURT: ANYTHING FURTHER, MR. GUTERRES?

12 MR. GUTERRES: JUST BRIEFLY, YOUR HONOR.

13

14

REDIRECT EXAMINATION

15 BY MR. GUTERRES:

16 Q DO YOU HAVE EXHIBIT 60 THERE, MS. WORK?

17 A I DO.

18 Q AND EXHIBIT 60 IS BABY RYAN'S ATTORNEY'S
19 WITNESS LIST/EXHIBIT LIST; CORRECT?

20 A NO, EXHIBIT 60 IS MINE.

21 Q PARDON ME. BEHIND EXHIBIT 60, AS PART OF
22 EXHIBIT 60, IF YOU LOOK AT BATES -- AT THE TOP RIGHT --
23 1153 AND -54?

24 A THAT'S CORRECT. THAT'S THE CHILD'S ATTORNEY'S
25 WITNESS LIST, YES.

26 Q AND THE CHILD'S ATTORNEY'S EXHIBIT LIST ALSO
27 INCLUDES CERTAIN SIMILAR DOCUMENTS AS YOUR EXHIBIT
28 LIST?

1 A CORRECT.

2 Q AND IF YOU LOOK AT PAGE 1 OF THAT, IT SAYS
3 DCFS DETENTION REPORT.

4 DO YOU SEE THAT?

5 A YES.

6 Q AND THE SECOND ONE IS THE
7 JURISDICTION/DISPOSITION REPORT?

8 A YES.

9 Q AND THEN IT HAS AN A THROUGH E?

10 A CORRECT.

11 Q CORRECT?

12 AND AS YOU SIT HERE TODAY, DO YOU HAVE A
13 MEMORY OF WHETHER OR NOT -- WHICH DOCUMENTS ACTUALLY
14 WENT INTO EVIDENCE FROM BABY RYAN'S ATTORNEYS EXHIBIT
15 LIST OR NOT?

16 A I DON'T HAVE AN EXACT RECOLLECTION, BUT
17 BECAUSE THE COURT EXTENDS SUCH DEFERENCE TO THE CHILD'S
18 ATTORNEY, I WOULD ASSUME THAT THEY WERE ADMITTED.

19 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO
20 STRIKE, NONRESPONSIVE, EVERYTHING AFTER "I DON'T HAVE A
21 RECOLLECTION."

22 THE COURT: THE OBJECTION IS SUSTAINED --

23 MR. GUTERRES: AND AS YOU --

24 THE COURT: -- THE MOTION TO STRIKE IS
25 GRANTED.

26 ALL PORTIONS OF THE ANSWER AFTER THE WORDS "I
27 DON'T HAVE AN EXACT RECOLLECTION" IS ORDERED STRICKEN
28 AND THE JURY MUST DISREGARD IT.

1 MR. GUTERRES: THANK YOU, YOUR HONOR.

2 THANK YOU, MS. WORK.

3 MR. MCMILLAN: JUST ONE QUICK QUESTION.

4

5

RECROSS-EXAMINATION

6 BY MR. MCMILLAN:

7 Q WE'RE LOOKING AT BATES NO. 1153, AND THAT'S
8 THE CHILD'S -- THAT'S THE CHILD'S EXHIBIT LIST, ISN'T
9 IT?

10 A YES.

11 Q IT'S MS. CARRIE LEE?

12 A SHE WAS THE ORIGINAL ATTORNEY, YES.

13 Q OKAY. SO THAT'S NOT MS. DUVAL'S EXHIBIT LIST?

14 A NO.

15 Q OKAY. I'M SORRY. I MISUNDERSTOOD.

16 THE -- REGARDLESS OF WHICH EXHIBIT LIST WE'RE
17 LOOKING AT, WHETHER IT'S YOURS OR THEIRS OR MS. DUVAL'S
18 OR WHOEVER'S, WE STILL APPLY THE SAME PRINCIPLE IN
19 DETERMINING WHAT EVIDENCE WAS ACTUALLY ADMITTED, IN
20 TERMS OF DOCUMENTS; RIGHT? THAT WOULD BE WE'D LOOK FOR
21 THAT ADMITTED STICKER; CORRECT?

22 A I DON'T REALLY KNOW.

23 MR. GUTERRES: OBJECTION. SPECULATION.

24 BY MR. MCMILLAN:

25 Q IN YOUR PRACTICE, WOULD YOU EXPECT A DOCUMENT
26 THAT'S ADMITTED INTO EVIDENCE TO HAVE THAT ADMITTED
27 STICKER ON IT?

28 A IN MY PRACTICE, I WOULD EXPECT THAT THE COUNTY

1 COUNSEL DOCUMENTS WOULD HAVE THE EXHIBITS MARKED AS
2 ADMITTED. I NEVER REALLY LOOKED AT THE OTHER
3 ATTORNEY'S ADMISSION -- AT DOCUMENTS TO SEE IF THOSE
4 STICKERS APPLY BECAUSE I HAVE MY OWN PRIVATE NOTES AS
5 TO WHAT HAD BEEN ADMITTED. AND I SELDOM LOOKED AT THE
6 LEGAL FILE AFTER WE CONCLUDED THE TRIAL. THERE WOULD
7 BE NO REASON FOR ME TO.

8 MR. MCMILLAN: SURE. I UNDERSTAND THAT.
9 THANK YOU VERY MUCH, MS. WORK. I APPRECIATE YOU COMING
10 OUT.

11 MR. GUTERRES: NOTHING FURTHER.

12 THE COURT: THANK YOU, MS. WORK. YOU'RE
13 EXCUSED.

14 ALL RIGHT, MR. GUTERRES? MS. SWISS?

15 MS. SWISS: WE ARE GOING TO ASK MS. NELSON TO
16 RETURN TO THE STAND FOR EXAMINATION.

17 THE COURT: ALL RIGHT. MS. NELSON, PLEASE
18 COME BACK UP.

19 MR. MCMILLAN: YOUR HONOR, I NEED A MOMENT TO
20 FIND MY NOTES.

21 THE COURT: MS. NELSON, JUST AS A REMINDER,
22 YOU'RE STILL UNDER OATH.

23 DO YOU UNDERSTAND THAT?

24 THE WITNESS: YES.

25 THE COURT: AND LET ME GET YOU TO RESTATE YOUR
26 NAME FOR THE RECORD SO THE RECORD IS CLEAR THAT YOU ARE
27 THE WITNESS WHO'S TESTIFYING.

28 THE WITNESS: CANDIS NELSON.

1 THE COURT: THANK YOU. NOW HOLD ON JUST A
2 MOMENT. MR. MCMILLAN IS GETTING SOME DOCUMENTS.

3
4 CANDIS NELSON,
5 WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY
6 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

7
8 CROSS-EXAMINATION

9 BY MR. MCMILLAN:

10 Q I DON'T ACTUALLY REMEMBER EXACTLY WHERE WE
11 LEFT OFF EARLIER TODAY, SO --

12 A NEITHER DO I.

13 Q I TOTALLY GET IT. SO WHAT WE'LL DO IS JUST
14 START OVER FROM THE BEGINNING. NO, I'M JUST KIDDING.

15 MR. GUTERRES: OBJECTION, YOUR HONOR.

16 MR. KING: OBJECTION HERE.

17 THE COURT: I'LL CALL FOR OXYGEN --

18 THE WITNESS: FOR BOTH OF US.

19 THE COURT: -- FOR THOSE THAT NEED IT.

20 MR. MCMILLAN: ALL RIGHT. WITH THAT BEING
21 SAID.

22 BY MR. MCMILLAN:

23 Q I JUST WANT TO FOCUS -- WE'RE GOING TO CUT
24 THROUGH A LOT OF OTHER STUFF. I JUST WANT TO FOCUS ON
25 SOMETHING YOU SAID IN THE VERY, VERY BEGINNING OF YOUR
26 TESTIMONY EARLIER.

27 AND MS. SWISS ASKED YOU IF YOU INVESTIGATED.
28 AND YOU SAID YOU DID.

1 DO YOU REMEMBER THAT?

2 A YES.

3 Q OKAY. NOW, WHEN WE'RE TALKING ABOUT THE
4 INVESTIGATION THAT YOU NEED TO DO WHEN YOU PICK UP ONE
5 OF THESE CASES, THAT DUTY TO INVESTIGATE, IT BEGINS
6 WHEN YOU'RE FIRST ASSIGNED; CORRECT?

7 A CORRECT.

8 Q AND THAT HAPPENS SOMETIME AFTER THE DETENTION
9 HEARING; RIGHT?

10 A CORRECT.

11 Q YOU'LL GET THE CASE ASSIGNED OVER TO YOU, AND
12 ONE OF THE VERY FIRST THINGS YOU NEED TO DO IS GET THE
13 DETENTION REPORT AND LOOK THROUGH IT; RIGHT?

14 A THAT'S HELPFUL, YES.

15 Q WELL, IT'S MORE THAN HELPFUL, IT'S WHAT THE
16 POLICY REQUIRES, ISN'T IT?

17 A WELL, THAT'S WHAT I'M SAYING, THAT'S VERY
18 HELPFUL TO READ THROUGH IT. I DON'T KNOW IF THAT'S THE
19 FIRST THING THAT YOU DO, BUT, YES.

20 Q WELL, LET'S --

21 A THAT'S PART OF IT.

22 Q LET ME TRY THIS: THE POLICY RELATIVE TO
23 INVESTIGATING AND WRITING A JURISDICTION/DISPOSITION
24 REPORT REQUIRES, MANDATES THAT YOU TAKE THE DETENTION
25 REPORT AND REVIEW IT TO GLEAN CERTAIN INFORMATION;
26 RIGHT?

27 A CORRECT. THAT'S WHAT I SAID.

28 Q OKAY. AND THAT'S MANDATORY?

1 A YES.

2 Q OKAY. SOME OF THAT INFORMATION THAT YOU'RE
3 REQUIRED TO GLEAN FROM THE DETENTION REPORT IS WHO THE
4 WITNESSES ARE; CORRECT?

5 A YES.

6 Q HOW TO GET AHOLD OF THEM; CORRECT?

7 A I DON'T RECALL SPECIFICALLY IF THAT'S WHAT IT
8 SAYS, BUT THAT SOUNDS GOOD.

9 Q WELL, IT MAKES SENSE, DOESN'T IT, BECAUSE
10 ANOTHER ONE OF THE THINGS THAT YOU'RE REQUIRED TO DO,
11 MANDATED BY THAT POLICY, IS TO ACTUALLY INTERVIEW THOSE
12 WITNESSES SO THAT THEIR ANTICIPATED TESTIMONY CAN BE
13 VERIFIED AND MORE THOROUGHLY UNDERSTOOD; CORRECT?

14 A I BELIEVE SO.

15 Q OKAY. AND THAT'S BECAUSE, ACCORDING TO POLICY
16 AND YOUR TRAINING, WHAT WE DO WHEN WE DO THIS
17 INVESTIGATION IS IT'S SUPPOSED TO BE THOROUGH AND
18 COMPLETE; RIGHT?

19 A IT IS SUPPOSED TO BE THOROUGH AND COMPLETE.

20 Q AND IT'S SUPPOSED TO BE DONE INDEPENDENTLY;
21 RIGHT?

22 A CORRECT.

23 Q FROM A DIFFERENT PERSPECTIVE, ANEW, AFRESH;
24 CORRECT?

25 A CORRECT.

26 Q AND ONE OF THE THINGS THAT WE DO WITH THAT
27 INDEPENDENT AND NEW AND FRESH INVESTIGATION IS WE
28 ACTUALLY INTERVIEW SOME OF THE KEY WITNESSES; CORRECT?

1 A CORRECT.

2 Q AND THEN WHAT WE DO WHEN WE INTERVIEW THOSE
3 KEY WITNESSES IS WE WRITE DOWN WHAT THEY TELL US IN THE
4 CONTACT NOTES; CORRECT?

5 A CORRECT.

6 Q THEN ANOTHER THING THAT WE DO -- WELL,
7 ACTUALLY, ONE OF THE REASONS THAT WE WRITE THE
8 SUBSTANCE OF THOSE INTERVIEWS DOWN IN THE CONTACT NOTES
9 IS SO THAT SOMEBODY LATER CAN LOOK AND SEE WHO WE
10 ACTUALLY SPOKE WITH AND WHAT THOSE PEOPLE SAID; RIGHT?

11 A THAT'S A BENEFIT OF WRITING IT DOWN IN THE
12 CONTACT NOTES; CORRECT.

13 Q AND IN FACT, WHAT YOU -- AND I THINK YOU SAID
14 EARLIER YOU'RE A SUPERVISOR NOW; RIGHT?

15 A CORRECT.

16 Q YOU SUPERVISE, I THINK, EIGHT WORKERS?

17 A THAT WAS BACK IN 2004. NOW I HAVE SIX
18 WORKERS.

19 Q SIX WORKERS. OKAY.

20 SO WHAT YOU TRAIN YOUR WORKERS WITH RESPECT TO
21 THESE CONTACT NOTES AND DELIVERED SERVICE LOGS IS IF
22 THEY DIDN'T WRITE IT DOWN IN THOSE CONTACT NOTES, IT
23 DIDN'T HAPPEN; CORRECT?

24 MS. SWISS: OBJECTION. RELEVANCE. OUTSIDE
25 THE SCOPE.

26 THE COURT: JUST A MOMENT. THE OBJECTION
27 OUTSIDE THE SCOPE IS SUSTAINED.

28 ///

1 BY MR. MCMILLAN:

2 Q NOW, MS. NELSON, IN RESPECT TO YOUR
3 INVESTIGATION, WHAT YOU DID, WHAT YOU SAY YOU DID,
4 LET'S JUST START WITH DR. YIM.

5 DID YOU CALL HER ON THE PHONE?

6 A I DON'T RECALL.

7 Q WELL, DO YOU RECALL EVER TALKING TO HER?

8 A I DON'T RECALL.

9 Q OKAY. IF WE WANTED TO TRY TO REFRESH YOUR
10 RECOLLECTION, WE SHOULD BE ABLE TO LOOK AT YOUR CONTACT
11 NOTES TO DO THAT; RIGHT?

12 MS. SWISS: OBJECTION. SPECULATION.
13 ARGUMENTIVE.

14 THE COURT: OVERRULED.

15 THE WITNESS: IF IT'S IN THERE; CORRECT.

16 BY MR. MCMILLAN:

17 Q OKAY. GREAT. IF I CAN GET YOU TO TURN TO
18 EXHIBIT NO. 82. I DON'T KNOW IF IT'S UP THERE IN FRONT
19 OF YOU OR NOT.

20 A NO.

21 Q OKAY.

22 OKAY. YOU'VE GOT THAT EXHIBIT 82 IN FRONT OF
23 YOU.

24 JUST BY WAY OF FOUNDATION, WHAT IS THAT?

25 A THIS IS THE DELIVERED SERVICE LOGS.

26 Q COVERING WHAT DATE RANGE?

27 A FROM 10/1/2009 TO 8/10/2010.

28 Q DOES THAT INCLUDE THE DATE RANGE WHEN YOU WERE

1 INVOLVED IN THE CASE?

2 A YES.

3 Q AND ACCORDING TO YOUR TRAINING AND ACCORDING
4 TO POLICY, ALL THE CONTACTS THAT YOU HAD WITH ALL THOSE
5 WITNESSES, THEY SHOULD BE IN THESE NOTES, THESE CONTACT
6 NOTES?

7 A ACCORDING TO THE POLICY, YOU SHOULD DOCUMENT
8 THE CONTACTS THAT YOU HAVE WITH SERVICE PROVIDERS,
9 INCLUDING THE DOCTORS, SO I WOULD SAY YES.

10 Q OKAY. SO LET'S TRY TO REFRESH YOUR
11 RECOLLECTION, THEN.

12 I BELIEVE -- AND YOU CAN CORRECT ME IF I'M
13 WRONG -- THAT YOUR FIRST CONTACT WITH MS. DUVAL --
14 ACTUALLY, YOUR FIRST CONTACT WITH ANYBODY IN THIS CASE
15 WAS ON DECEMBER 22ND, 2009?

16 DOES THAT SOUND RIGHT?

17 A YOU'RE TALKING ABOUT IN REGARDS TO THE CONTACT
18 THAT'S IN HERE OR THE ACTUAL CONTACT THAT HAPPENED IN
19 REAL LIFE?

20 Q I'M TALKING ABOUT YOUR CONTACT NOTES WHERE
21 WE'RE SUPPOSED TO RECORD EVERYTHING.

22 A THE CONTACT NOTES, OKAY. BECAUSE YOU DIDN'T
23 SAY NOTES, YOU JUST SAID CONTACT.

24 Q OKAY.

25 A SO I WAS TRYING TO CLARIFY IF IT WAS NOTES OR
26 ACTUAL CONTACT. BUT THE CONTACT NOTES THAT'S IN HERE
27 IS 12/22, CORRECT.

28 Q OKAY. SO WHEN YOU SAY "CONTACT," YOU'RE

1 ACTUALLY TALKING ABOUT THE PHYSICAL CONTACT?

2 A THE ACTUAL INTERACTION, YES.

3 Q THE ACTUAL INTERACTION. OKAY.

4 WHEN WE'RE TALKING ABOUT CONTACT NOTES -- JUST
5 SO I MAKE SURE I'M UNDERSTANDING YOU, BECAUSE I DON'T
6 WANT YOU CONFUSED -- WHEN WE'RE TALKING ABOUT CONTACT
7 NOTES, THAT'S THE RECORD THAT YOU WRITE OF THE PHYSICAL
8 CONTACT; RIGHT?

9 A CORRECT.

10 Q OKAY. SO TO REFRESH YOUR RECOLLECTION ABOUT
11 THIS CONVERSATION YOU DON'T RECALL WITH DR. YIM, WE
12 SHOULD BE ABLE TO FIND IT IN THE CONTACT NOTES IF IT
13 HAPPENED; RIGHT?

14 A IF IT WAS DOCUMENTED IN THE CONTACT NOTES, IT
15 WOULD BE IN HERE, IN THE DELIVERED SERVICE LOGS.

16 Q WELL, LET ME ASK YOU -- MAYBE IT'LL HELP
17 REFRESH YOUR RECOLLECTION IF YOU TAKE A GANDER AT
18 EXHIBIT NO. 24, PAGE 0072.

19 THE STATEMENT THERE THAT YOU WROTE, IT SAYS:

20 "DR. YIM DISCONTINUED SERVICES DUE
21 TO THE MOTHER'S FAILURE TO COMPLY WITH
22 HER RECOMMENDATIONS."

23 DID DR. YIM, IF YOU REMEMBER -- DID READING
24 THAT REFRESH YOUR RECOLLECTION AS TO WHETHER OR NOT
25 DR. YIM EVER SPOKE THOSE WORDS TO YOU?

26 A AS I ALREADY STATED, I DON'T RECALL.

27 Q HOW ABOUT DR. GILL? DID YOU EVER TALK TO
28 DR. GILL?

1 A I DON'T RECALL ANY SPECIFIC CONVERSATIONS WITH
2 THE DIFFERENT DOCTORS, JUST SO THAT WE CAN -- TO LET
3 YOU KNOW THAT.

4 Q OKAY. CAN YOU GO AHEAD FOR ME AND SEE IF YOU
5 CAN'T FIND IN THESE CONTACT NOTES SOMEWHERE A CONTACT
6 WITH DR. GILL?

7 WELL, LET ME ASK YOU THIS FIRST: DO YOU
8 REMEMBER SITTING WITH ME FOR A VERY LONG DAY A COUPLE
9 YEARS AGO AT YOUR DEPOSITION?

10 A YES, IT WAS A LONG DAY.

11 Q WE DID A VERY SIMILAR EXERCISE THERE?

12 A YES.

13 Q WE WENT THROUGH THE CONTACT NOTES PAGE BY
14 PAGE, LOOKING FOR DR. YIM AND DR. GILL AND ALL THESE
15 DOCTORS?

16 A WE DID DO THAT.

17 Q ANSWER ME, DID WE FIND ANY CONTACT NOTES FOR
18 ANY OF THE DOCTORS IN THIS CASE?

19 A WE WENT THROUGH ALL THE NOTES AND THE ONLY
20 CONTACT NOTE THAT I HAD ENTERED WAS THE 12/22 DATE THAT
21 I HAD SAT IN ON THE OBSERVATION OF THE VISIT.

22 Q AND JUST SO THAT WE'RE CLEAR, THE 12/22, THAT
23 WAS THE ONE, I THINK WE TALKED ABOUT IT EARLIER -- I
24 GUESS IT MUST HAVE BEEN THIS MORNING -- WHEN YOU SAT IN
25 ON MS. ANIKA LOUIS'S MONITORING OF MS. DUVAL'S VISIT;
26 IS THAT RIGHT?

27 A NO, IT WAS MOTHER'S FRIEND. I DON'T --
28 MS. ENNIS WAS THE MONITOR.

1 Q OH, I SEE THAT. GOTCHA, OKAY.

2 AND AS FAR AS WE CAN TELL IN LOOKING AT THESE
3 CONTACT NOTES, THAT IS THE ONLY CONTACT YOU HAD IN THIS
4 CASE WITH ANY WITNESS OTHER THAN MOTHER AND FATHER;
5 RIGHT?

6 BECAUSE YOU HAD A CONTACT NOTE FOR FATHER TOO.

7 A THE ONLY CONTACT NOTE THAT'S IN THE DELIVERED
8 SERVICE LOGS THAT I ENTERED WAS IN REGARD TO SITTING IN
9 ON THE VISITATION ON 12/22.

10 Q AND SO, AS PART OF YOUR THOROUGH, FRESH,
11 COMPLETE INVESTIGATION, WHO EXACTLY DID YOU TALK TO?

12 A WELL, AS A PART OF MY THOROUGH INVESTIGATION,
13 AS YOU NOTED, I INTERVIEWED BOTH OF THE PARENTS. I
14 ACTUALLY OBSERVED BOTH OF THE PARENTS WITH THE CHILD.
15 AND THEN I WENT THROUGH ALL THE MEDICAL RECORDS, THE
16 FAMILY LAW RECORDS. MOTHER HAD ALSO GIVEN ME RESEARCH
17 BOOKS THAT SHE HAD READ; WE WENT OVER THAT WHEN I
18 ACTUALLY INTERVIEWED HER. AND WENT THROUGH THE
19 REGIONAL CENTER REPORTS AND RECORDS. SO ALL OF THE
20 DOCUMENTATION AND EVERY -- YOU REFERRED TO IT AS
21 VOLUMINOUS EARLIER, WENT THROUGH ALL OF THOSE AND
22 INCLUDED THOSE IN THE REPORT IN TERMS OF MAKING THAT
23 ASSESSMENT -- AS WELL AS THE UP-FRONT ASSESSMENT AS
24 WELL.

25 Q DID YOU LOOK AT THE EASTERN LOS ANGELES
26 REGIONAL CENTER EVALUATION?

27 A I DON'T RECALL EXACTLY WHICH REGIONAL CENTER
28 EVALUATION IT WAS THAT I REVIEWED.

1 Q DO YOU RECALL ANY OF THESE REGIONAL CENTERS --
2 YOU SAID YOU REVIEWED THOSE REPORTS.

3 DO YOU RECALL IN ANY OF THOSE THE EVALUATION
4 SAYING THAT THE CHILD SUFFERED FROM A SENSORY
5 INTEGRATION DISORDER?

6 A I DON'T KNOW IF I RECALL THE EXACT WORDING OF
7 THAT BEING A DIAGNOSIS FROM THE REGIONAL CENTER. I
8 BELIEVE THE REPORT REFERENCES THERE BEING SENSORY
9 ISSUES THAT WERE NOTED FROM THE REGIONAL CENTER REPORT;
10 I JUST DON'T KNOW IF THAT WAS THE EXACT DIAGNOSIS
11 INDICATED IN THE REPORT.

12 Q DIDN'T YOU TELL THE COURT IN ONE OF THOSE LAST
13 MINUTE INFORMATIONS THAT YOU TALKED ABOUT EARLIER TODAY
14 THAT MOTHER, RAFAELINA DUVAL, WAS STILL OBSESSING OVER
15 DETERMINING WHETHER OR NOT THE CHILD SUFFERED FROM A
16 SENSORY INTEGRATION DISORDER?

17 A I THINK THERE IS SOME WORDING SIMILAR TO THAT
18 IN ONE OF THE LAST MINUTE INFORMATIONS.

19 Q AND AS PART OF YOUR THOROUGH, FRESH, NEW,
20 COMPLETE INVESTIGATION, DID YOU GO TALK TO SOMEBODY,
21 LIKE AN OCCUPATIONAL THERAPIST, TO FIGURE OUT WHETHER
22 OR NOT THIS CHILD REALLY DID HAVE A SENSORY INTEGRATION
23 DISORDER, MAYBE A FOOD AVERSION?

24 A I RELIED ON THE RECORDS THAT CAME TO ME THAT
25 STATED YES OR NO THERE WAS AN ACTUAL DIAGNOSIS FOR
26 THAT, NOT FOR ME TO GO OUT AND INTERVIEW AND TRY TO
27 MAKE THE DIAGNOSIS MYSELF.

28 Q BUT THE POLICY, DOESN'T IT REQUIRE THAT WHEN

1 YOU HAVE EVIDENCE FROM SOME THIRD PARTY, YOU'RE
2 SUPPOSED TO GO TALK TO THAT THIRD PARTY SO THAT THE
3 EVIDENCE CAN BE MORE THOROUGHLY UNDERSTOOD? ISN'T THAT
4 THE POLICY?

5 A I'M NOT EXACTLY SURE OF THE WORDING OF THAT,
6 BUT I WOULD AGREE THAT IT WOULD BE HELPFUL TO TALK TO
7 PEOPLE TO GET ADDITIONAL INFORMATION, IF NECESSARY.

8 Q LET ME SEE IF I CAN HELP YOU WITH THE WORDING.
9 WHILE WE'RE LOOKING FOR THAT, DO YOU RECALL,
10 IN THIS JURISDICTION/DISPOSITION REPORT THAT YOU WROTE,
11 DO YOU RECALL ATTACHING TO IT AN UP-FRONT ASSESSMENT?

12 A YES.

13 Q DO YOU RECALL THAT IN THE SAME POLICY THAT
14 WE'RE TALKING ABOUT -- THAT IS, THE WRITING THE
15 JURISDICTIONAL/DISPOSITIONAL HEARING REPORT POLICY --
16 IT TELLS YOU, YOU DON'T ATTACH THE UP-FRONT ASSESSMENT
17 TO THESE REPORTS.

18 DO YOU REMEMBER THAT?

19 A I BELIEVE IT DOES SAY THAT IN THE POLICY.

20 Q OKAY. AND DO YOU KNOW WHO DR. STEPHEN SANDERS
21 IS?

22 A I BELIEVE HE WAS MY REGIONAL ADMINISTRATOR AT
23 THE TIME OF THIS CASE.

24 Q DID HE EVER TEACH YOU OR TELL YOU THAT ONE OF
25 THE REASONS WE DON'T ATTACH THE UP-FRONT ASSESSMENT TO
26 THESE REPORTS IS BECAUSE THEY MAY NOT CONTAIN ACCURATE
27 AND TRUTHFUL INFORMATION?

28 MS. SWISS: OBJECTION. RELEVANCE. BEYOND THE

1 SCOPE.

2 THE COURT: ALL RIGHT. JUST A MOMENT. I HAVE
3 TO CHECK THE SCOPE.

4 THE OBJECTION BEYOND THE SCOPE IS SUSTAINED.

5 MR. MCMILLAN: YOUR HONOR, WOULD YOU MIND IF I
6 TAKE A LOOK AT THE LAST QUESTION? I WANT TO MAKE SURE
7 I DON'T EXCEED THE SCOPE ON MY NEXT QUESTION.

8 THE COURT: ALL RIGHT.

9 MR. MCMILLAN: THANK YOU, YOUR HONOR. THAT
10 GIVES ME SOME GUIDANCE.

11 BY MR. MCMILLAN:

12 Q DO YOU RECALL SPECIFICALLY WHETHER OR NOT,
13 ACCORDING TO POLICY, YOU WERE TO REFRAIN FROM ATTACHING
14 THE UP-FRONT ASSESSMENT TO YOUR
15 JURISDICTION/DISPOSITION REPORT?

16 MS. SWISS: OBJECTION. ASKED AND ANSWERED.

17 THE COURT: THE OBJECTION IS SUSTAINED. IT
18 WAS ASKED AND ANSWERED.

19 MR. MCMILLAN: OKAY.

20 BY MR. MCMILLAN:

21 Q I'M GOING TO SHOW YOU EXHIBIT NO. 24 -- NO,
22 I'M SORRY. EXHIBIT NO. 328, PAGE NO. 4586.

23 AND SPECIFICALLY LOOK AT THE SECOND LINE DOWN
24 TOWARDS THE END OF THAT SENTENCE THERE, WHERE IT SAYS
25 "DO NOT MAKE REFERENCE TO" --

26 MR. GUTERRES: WAIT A MINUTE.

27 BY MR. MCMILLAN:

28 Q -- "OR ATTACH THE UP-FRONT ASSESSMENT."

1 DO YOU SEE THAT?

2 THE COURT: JUST A MOMENT.

3 MR. MCMILLAN: OH, SORRY.

4 MS. SWISS: ALL RIGHT.

5 THE COURT: ALL RIGHT. GO AHEAD,

6 MR. MCMILLAN.

7 MR. MCMILLAN: THANK YOU, YOUR HONOR.

8 BY MR. MCMILLAN:

9 Q I SORT OF LOST MY TRAIN OF THOUGHT.

10 BUT DO YOU SEE RIGHT HERE WHERE IT SAYS -- AND
11 ACTUALLY, THAT'S IN BOLD, ISN'T IT?

12 A I CAN'T REALLY TELL.

13 Q WELL, LET ME GET ONE IN FRONT OF YOU SO YOU
14 CAN.

15 A OKAY.

16 Q 328. ALL RIGHT. IT'S BATES NO. 004586.

17 RIGHT? THAT'S ALL BOLD?

18 A YES.

19 Q AND THEN IF YOU TURN TO PAGE NO. 4588, SAME
20 EXHIBIT, SAME POLICY?

21 A YES.

22 Q SAYS:

23 "DO NOT ATTACH THE UP-FRONT
24 ASSESSMENT UNLESS ORDERED BY THE COURT
25 TO DO SO."

26 CORRECT?

27 A CORRECT.

28 Q AND YOU WEREN'T ORDERED BY THE COURT TO ATTACH

1 IT HERE EITHER; RIGHT?

2 A NO.

3 Q AND IF I CAN GET YOU TO TURN TO 004589, SAME
4 EXHIBIT.

5 DO YOU SEE THAT THERE? IT SAYS:

6 "DO NOT MAKE REFERENCE TO OR
7 ATTACH THE UP-FRONT ASSESSMENT."

8 RIGHT?

9 A YES.

10 Q AND THEN THE LAST ONE -- I THINK WE'RE JUST
11 ABOUT DONE -- IS 4590.

12 IT SAYS, AGAIN:

13 "DO NOT MAKE REFERENCE TO OR
14 ATTACH THE UP-FRONT ASSESSMENT."

15 RIGHT? DOWN AT THE BOTTOM OF THE PAGE?

16 A YEAH, I WAS LOOKING AT THE PARAGRAPH. YES,
17 THAT'S THE LAST SENTENCE IN THAT PARAGRAPH.

18 Q SO THEY SAY HERE IN THE POLICY, OVER AND OVER
19 AND OVER AGAIN, DON'T DO IT.

20 BUT YOU DID IT, DIDN'T YOU?

21 A IT IS ATTACHED TO THE REPORT.

22 Q AND THAT WAS SOMETHING YOU DID?

23 A YES, I PUT TOGETHER THE REPORT.

24 Q AND ATTACHED THE UP-FRONT ASSESSMENT?

25 A YES, I ATTACHED THE UP-FRONT ASSESSMENT.

26 MR. MCMILLAN: NO FURTHER QUESTIONS, YOUR
27 HONOR.

28 THE COURT: MS. SWISS?

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REDIRECT EXAMINATION

BY MS. SWISS:

Q MS. NELSON, WHY DID YOU ATTACH THE UP-FRONT ASSESSMENT TO EXHIBIT 24, THE JURISDICTION/DISPOSITION REPORT?

A SO THAT THE INFORMATION THAT WAS IN THE UP-FRONT ASSESSMENT COULD BE READ BY THE COURT AS INFORMATION THAT WAS RELEVANT TO THE CASE. IT ALSO REFERENCES SOME AREAS FOR FURTHER ASSESSMENT. AND SO THOSE THINGS FOR -- TOWARDS THE RECOMMENDATIONS FOR THE CASE WERE BENEFICIAL, AND I FELT THAT IT WAS NECESSARY TO ATTACH IT.

MS. SWISS: THANK YOU. NO QUESTIONS.

MR. MCMILLAN: I'VE GOT A COUPLE QUESTIONS NOW.

RECROSS-EXAMINATION

BY MR. MCMILLAN:

Q ON YOUR JURIS/DISPO REPORT, YOU DID SUMMARIZE SOME OF THE CONTENT OF THE UP-FRONT ASSESSMENT; RIGHT?

A I DON'T THINK I WOULD CALL IT A SUMMARY. I THINK IT WAS A COUPLE OF SENTENCES ON AN EIGHT-PAGE DOCUMENT. I DON'T KNOW IF THAT'S QUITE A SUMMARY.

Q WELL, DID YOU TELL THE COURT IN YOUR JURIS/DISPO REPORT THAT THE UP-FRONT ASSESSMENT ACTUALLY FOUND THAT THE NECESSARY CRITERIA TO DIAGNOSE MS. DUVAL WITH MUNCHAUSEN SYNDROME BY PROXY WERE NOT

1 APPARENT IN THE ASSESSMENT, AND THAT THIS MOTHER MAY BE
2 SOMEBODY WHO'S BEEN CONFUSED WITH A MOTHER WHO'S
3 MEDICALLY KNOWLEDGEABLE ABOUT HER SON'S SENSORY
4 INTEGRATION ORDER [SIC]?

5 DID YOU TELL THE COURT THAT IN YOUR
6 JURIS/DISPO REPORT?

7 A I'D HAVE TO LOOK AT THE EXACT REPORT.

8 Q OKAY. LET'S GO TO EXHIBIT NO. 12 -- I'M
9 SORRY. EXHIBIT NO. 24. TOWARDS THE END OF EXHIBIT
10 NO. 24, AND I'LL GIVE YOU THE EXACT BATES NUMBER IN
11 JUST A SECOND.

12 A I THINK IT'S LIKE 21.

13 Q I THINK THAT'S CORRECT.

14 WELL, I SEEM TO HAVE LOST TRACK OF MY
15 EXHIBIT 24, BUT I THINK YOU HAVE A COMPLETE ONE HERE.

16 A YES.

17 Q AND IT SAYS EXHIBIT NO. 21. CORRECT, YOU'RE
18 IN THE RIGHT PLACE.

19 IF YOU CAN READ THAT PARAGRAPH TO YOURSELF AND
20 THEN I'LL ASK YOU SOME QUESTIONS ABOUT IT.

21 A OKAY.

22 Q OKAY. I'LL ASK YOU THE QUESTION: DID YOU
23 TELL THE COURT HERE, IN YOUR JURISDICTION/DISPOSITION
24 REPORT, THAT THE CRITERIA FOR MUNCHAUSEN SYNDROME BY
25 PROXY WERE NOT MET BY THE MOTHER -- WELL, LET'S START
26 WITH THAT.

27 DID YOU TELL THE COURT THAT?

28 A THERE'S NOT A SPECIFIC STATEMENT THAT STATES

1 THAT, NO.

2 Q SO YOU DIDN'T TELL THE COURT THAT?

3 A THAT SPECIFIC STATEMENT IS NOT IN HERE, NO.

4 Q OKAY. DID YOU TELL THE COURT THAT MUNCHAUSEN
5 BY PROXY COULD HAVE BEEN CONFUSED WITH A MOTHER WHO WAS
6 MEDICALLY KNOWLEDGEABLE ABOUT HER SON'S DIAGNOSIS OF
7 SENSORY INTEGRATION DISORDER?

8 DID YOU TELL THE COURT THAT HERE --

9 A THAT SPECIFIC -- OH, SORRY. I THOUGHT YOU
10 WERE DONE.

11 Q -- ON PAGE NO. 453 OF EXHIBIT 24 OF YOUR
12 JURIS/DISPO REPORT?

13 DID YOU TELL THE COURT THAT?

14 A THAT SPECIFIC SENTENCE IS NOT IN THE REPORT.

15 Q IN FACT, THERE IS NOTHING IN THE REPORT
16 ANYWHERE EVEN GENERALLY INFORMING THE COURT THAT MOM
17 MAY HAVE BEEN CONFUSED -- OR RATHER MUNCHAUSEN SYNDROME
18 BY PROXY MAY HAVE BEEN CONFUSED WITH A MOTHER WHO IS
19 MEDICALLY KNOWLEDGEABLE ABOUT HER SON'S SENSORY
20 INTEGRATION DISORDER; RIGHT?

21 IT DOESN'T EVEN SAY THAT ANYWHERE IN YOUR --

22 A WHAT IT SAYS IS THAT FURTHER ASSESSMENT IS
23 NECESSARY.

24 Q OKAY, MA'AM, I'M GOING TO ASK YOU TO LISTEN
25 CAREFULLY TO THE QUESTION.

26 YOU DON'T SAY ANYWHERE IN YOUR JURIS/DISPO
27 REPORT, TO LET THE COURT KNOW, YOU DON'T SAY MUNCHAUSEN
28 SYNDROME BY PROXY MAY HAVE BEEN CONFUSED WITH A MOTHER

1 WHO IS MEDICALLY KNOWLEDGEABLE ABOUT HER SON'S SENSORY
2 INTEGRATION DISORDER.

3 YOU DO NOT SAY THOSE WORDS ANYWHERE IN YOUR
4 REPORT; CORRECT?

5 A THOSE SPECIFIC WORDS ARE NOT IN THE REPORT.

6 Q OKAY. THAT'S CLOSE ENOUGH FOR ME.

7 MR. MCMILLAN: THANK YOU, YOUR HONOR. NO
8 FURTHER QUESTIONS.

9 THE COURT: ANYTHING ELSE?

10 MS. SWISS: NO QUESTIONS, YOUR HONOR.

11 THE COURT: ALL RIGHT. MS. NELSON, THANK YOU
12 VERY MUCH FOR YOUR TESTIMONY, AND YOU ARE EXCUSED.

13 I THINK, GIVEN THE TIME, RATHER THAN A FEW
14 MORE MINUTES WITH SOMEONE ELSE, WE'LL RECESS.

15 AS FAR AS THE JURY IS CONCERNED, WE'LL RESUME
16 AT 9:00 A.M. ON MONDAY. BETWEEN NOW AND THEN, ALL
17 JURORS PLEASE REMEMBER THE ADMONITION TO HAVE NO
18 COMMUNICATION WITH ANYONE ABOUT ANY SUBJECT OR ISSUE
19 INVOLVED IN THIS CASE OR ANY PERSON INVOLVED IN THE
20 CASE. YOU'VE HEARD A GREAT DEAL OF EVIDENCE, BUT YOU
21 HAVEN'T HEARD ALL OF THE EVIDENCE AND THERE, AGAIN,
22 MORE COURT'S INSTRUCTIONS OF LAW AND CLOSING ARGUMENTS.
23 YOU'RE NOT IN A POSITION TO BE MAKING ANY DECISIONS, SO
24 DON'T FORM AN OPINION NOR EXPRESS ONE. AND REMEMBER
25 THE REASON FOR THAT IS TO KEEP AN OPEN MIND SO THAT YOU
26 CAN LISTEN TO ALL OF THE EVIDENCE AND HAVE ALL THE
27 INSTRUCTIONS OF LAW BEFORE YOU BEGIN THE DELIBERATION
28 PROCESS. THAT WILL BEGIN ONLY WHEN WE SEND THE JURORS

1 OUT TO THE JURY ROOM TO DELIBERATE.

2 SO WE'RE NOW IN RECESS.

3 (JURY EXCUSED)

4 THE COURT: I HAVE ANOTHER MATTER AT 8:30 IN
5 THE MORNING, SO I'LL ASK COUNSEL TO BE HERE AT 9:00.

6 MR. MCMILLAN: I'M SORRY, YOUR HONOR. 9:00?

7 THE COURT: 9:00.

8 ALL RIGHT. MR. PRAGER?

9 MR. PRAGER: WHEN WE RETURN TOMORROW, WE WOULD
10 HAVE THE DOCUMENTS YOU REQUESTED TODAY FROM US.

11 THE COURT: ALL RIGHT.

12 MR. PRAGER: SO IF YOU HAVE A MATTER AND
13 YOU'RE ENGAGED, I'M NOT SURE --

14 THE COURT: YES. YOU'LL BE WELCOME TO COME AT
15 8:00, AND I'LL HAVE A CHANCE TO -- DEPENDING HOW LONG
16 IT IS, BUT I THINK YOU WERE PRETTY SUCCINCT AND I
17 SUSPECT YOU WILL BE AGAIN. SO I'LL DO MY BEST TO READ
18 THE DOCUMENTS SO I WILL HAVE READ IT BEFORE 11:00.

19 MR. PRAGER: OKAY. SO WE'LL COME AND THE
20 COURT WILL BE OPEN AND WE'LL GIVE IT TO THE CLERK.

21 THE COURT: YEAH, WE'LL OPEN UP AT 8:00.

22 THE CLERK: 7:50.

23 MS. CHUNG: AND YOUR HONOR, JUST TO BE CLEAR,
24 WE'RE SUPPOSED TO BE LOOKING OVER THE VERDICT FORMS AND
25 COMING WITH OUR THOUGHTS AND --

26 THE COURT: YES.

27 MS. CHUNG: -- GETTING YOUR FEEDBACK TOMORROW,
28 AS WELL AS JURY INSTRUCTIONS; CORRECT?

1 THE COURT: CORRECT.

2 MR. MCMILLAN: ARE WE ALSO DOING EVIDENCE --
3 WE'RE DOING EVIDENCE AS WELL, RIGHT, FINISHING UP THE
4 EXHIBIT LIST?

5 THE COURT: WELL, WE'RE GOING TO ATTACK THE
6 EXHIBIT LIST. IT TAKES UP A GREAT DEAL OF TIME, AND
7 THERE'S A NUMBER OF THINGS I'D LIKE TO ACCOMPLISH. MY
8 EXPECTATION IS THAT WE WILL DO THAT. I DO HAVE WHAT
9 HAS BEEN SUBMITTED TO THE COURT FOR THE -- TO DECIDE
10 THE LEGAL ISSUE, BUT UNFORTUNATELY, AS YOU KNOW, THERE
11 ARE A VERY LARGE NUMBER OF DOCUMENTS TO READ. AND I
12 DON'T KNOW WHERE I'LL BE ON THAT. BUT WE MAY HEAR YOUR
13 ARGUMENT AT THAT TIME.

14 MR. MCMILLAN: AT THAT TIME, YOU MEAN
15 TOMORROW?

16 THE COURT: SOMETIME TOMORROW.

17 MR. MCMILLAN: OKAY. WHAT I WAS WONDERING IS:
18 MR. PARIS HERE HAS BEEN AWAY FROM HOME MUCH LONGER THAN
19 HE WANTED TO BE. AND IF THERE'S A HIGH PROBABILITY
20 THAT WE'LL DEFER TO ANOTHER TIME TO DO THE EXHIBITS,
21 I'D LIKE TO BE ABLE TO LET HIM GO IF WE CAN. BUT IF
22 NOT, I'M GOING TO KEEP HIM HERE -- IF THERE'S A
23 SUBSTANTIAL PROBABILITY THAT WE WILL BE LOOKING AT
24 EXHIBITS TOMORROW, THEN I'M GOING TO KEEP HIM HERE.

25 THE COURT: I THINK IF WE DO ANYTHING WITH
26 EXHIBITS, WE'LL DO WHAT CAN BE DONE WITHOUT HIM.

27 MR. MCMILLAN: OKAY.

28 MS. SWISS: HOW ABOUT ME?

1 THE COURT: I KNOW, WHICH IS SCARY TO US, ALL
2 OF US.

3 MR. MCMILLAN: WELL, HE'S DONE A REALLY GOOD
4 JOB ON KEEPING IT ALL SQUARE.

5 THE COURT: YES, WE ALL AGREE. AND WE'LL DO
6 THE BEST -- WE'LL SEE WHETHER IT'S WORTH SPENDING TIME
7 ON IT OR NOT. IF IT IS, IT WOULD BE TO AN EXTENT WHERE
8 HIS INPUT WOULD NOT BE NECESSARY.

9 MR. MCMILLAN: OKAY.

10 THE COURT: BECAUSE WE HAVE PLENTY OF OTHER
11 THINGS TO WORK ON. THERE'S GOING TO BE ANOTHER DAY OFF
12 NEXT WEEK AS WELL. I DON'T KNOW WHEN, BUT THERE WILL
13 BE. SO WE HAVE PLENTY OF THINGS TO WORK ON TOMORROW.
14 WE CAN GET THE FULL PRODUCTIVE DAY.

15 MS. SWISS: IF THERE'S GOING TO BE A DAY OFF
16 NEXT WEEK, AND THERE'S A LITTLE GIRL IN CARLSBAD WITH A
17 DANCE RECITAL ON THURSDAY, I JUST WANT TO SUGGEST THAT
18 THURSDAY WOULD BE THE DAY WE'RE DARK SO THAT THE PARENT
19 COULD BE THERE. BUT IF IT DOESN'T WORK FOR THE COURT,
20 THAT'S FINE.

21 THE COURT: WELL, THOSE ARE IMPORTANT EVENTS.
22 WE'LL DO THE BEST WE CAN WITH IT. I'M NOT SURE WHERE
23 WE'LL BE AT THAT POINT.

24 MR. GUTERRES: YOUR HONOR, WE SHOULD BE DONE
25 WITH THE EVIDENCE BY THURSDAY.

26 THE COURT: WELL, WHEN WE'RE DONE WITH THE
27 EVIDENCE IS PROBABLY WHEN WE MIGHT TAKE ANOTHER DAY
28 BECAUSE ALL THESE ISSUES ARE GOING TO HAVE TO BE

1 WRAPPED UP AND IT MAY TAKE MORE THAN A DAY. I KNOW I
2 HAVE A STACK OF BRIEFS IN CHAMBERS THAT I'M NOT SURE
3 HAVE BEEN ADDRESSED YET. SOME OF THEM MAY NOT BE
4 NECESSARY, BUT WE'LL SEE.

5 ALL RIGHT. I'LL SEE YOU IN THE MORNING.

6 MR. GUTERRES: THANK YOU, YOUR HONOR.

7 MR. MCMILLAN: THANK YOU, YOUR HONOR.

8 (RECESS)

9
10 (WHEREUPON, AT THE HOUR OF 4:26 P.M.,
11 THE PROCEEDING ADJOURNED.)

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