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OCTOBER 14, 2016

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M A S T E R   I N D E X

OCTOBER 14, 2016

EXHIBITS

PLAINTIFF'S	MARKED	RECEIVED	REJECTED
EXHIBIT 220		6905	

DEFENDANT'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	

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

1 CASE NUMBER: BC470714  
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES  
3 LOS ANGELES, CALIFORNIA FRIDAY, OCTOBER 14, 2016  
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN  
5 APPEARANCES: (AS HERETOFORE NOTED.)  
6 REPORTER: ELORA DORINI, CSR NO. 13755  
7 TIME: 7:59 A.M.

8

9

---000---

10

11 THE COURT: COUNSEL ARE PRESENT. WE'RE  
12 OUTSIDE THE PRESENCE OF THE JURY. AND MR. PARIS HAS  
13 BROUGHT US, AGAIN, THIS MORNING, A FURTHER REVISION OF  
14 THE EXHIBITS THAT HAVE BEEN MARKED FOR IDENTIFICATION.

15 AND ACCORDING TO MY NOTES -- WELL, LET ME STOP  
16 TO SAY THAT THIS LIST IS A TOTAL OF 19 PAGES. THE  
17 LATEST REVISION. AND THE EXHIBITS ARE MARKED -- ARE  
18 LISTED IN THE SUMMARY IN NUMERICAL ORDER.

19 MR. PARIS: THAT'S CORRECT.

20 THE COURT: AND FOR THOSE THAT HAVE BEEN  
21 PREVIOUSLY BEEN ADDRESSED IN THE RIGHT-HAND COLUMN FOR  
22 ADMISSION, MR. PARIS HAS LISTED WITH AN X THOSE THAT  
23 HAVE BEEN ADMITTED BY THE COURT, WITH AN L THOSE WHICH  
24 DESIGNATED AN EXHIBIT THAT HAS BEEN ADMITTED, BUT FOR  
25 ONE LIMITED PURPOSE.

26 AND ONE INSTANCE, 203, WHICH IS A CUSTODY  
27 DECLARATION, NOT RECEIVED.

28 AND THEN IN THAT SAME COLUMN, THERE ARE

1 CERTAIN NUMBERS -- THROUGH 207, WHERE IT IS SIMPLY LEFT  
2 BLANK, AND THAT REPRESENTS THE EXHIBITS THAT, THE LAST  
3 TIME WE WERE GOING THROUGH THIS, THAT THE COURT  
4 INDICATED I WOULD TAKE A FURTHER LOOK ON. IN OTHER  
5 WORDS, THERE'S NO RULING.

6 AND MR. PARIS'S LATEST REVISION OF THE  
7 EXHIBITS IS CONSISTENT WITH MY NOTES. SO I WANT TO  
8 MAKE SURE, MR. GUTERRES, AND MS. SWISS, THAT IT'S  
9 CONSISTENT ALSO WITH YOUR NOTES.

10 MR. GUTERRES: INsofar AS PLACEMENT, I WOULD  
11 AGREE, YOUR HONOR. I OBVIOUSLY HAVEN'T LOOKED AT THE  
12 BATES NUMBERS TO COMPARE THAT WITH WHAT WE HAVE. I  
13 WOULD ASSUME THAT THE BATES NUMBERS ALL CORRESPOND TO  
14 WHAT THE COURT HAD.

15 THE COURT: I HAVE NOT -- WE DID PREVIOUSLY  
16 COMPARE BATES NUMBERS, BUT UNFORTUNATELY I DON'T -- WE  
17 CAN DO THAT RATHER QUICKLY, OR WE CAN DO THAT  
18 SEPARATELY.

19 MR. GUTERRES: WE CAN LOOK AT IT OVER THE  
20 WEEKEND. I MEAN, IN CONCEPT, I HAVE NO ISSUES. IT WAS  
21 JUST THAT ONE WE CAME ACROSS THAT WAS ONLY ONE PAGE.

22 THE COURT: AND WE CAN CHECK FOR THAT AND  
23 CERTAINLY CORRECT THIS IF WE FIND A DISCREPANCY. I  
24 KNOW THAT WE DID CHECK A NUMBER OF THESE BEFORE. BUT  
25 WE'LL CHECK THEM FURTHER AGAINST THE CLERK'S NOTES.

26 SO WHAT I WAS HOPING WE WOULD DO AT THIS POINT  
27 WAS WE WOULD BE ON PAGE 4 OF 19 -- EXHIBIT NUMBER 219  
28 WOULD BE THE NEXT ONE, WHICH IS WHERE WE LEFT OFF LAST

1 NIGHT --

2 MR. PARIS: THAT'S CORRECT, YOUR HONOR.

3 THE COURT: -- TO BE ADDRESSED. AND THAT'S  
4 THE DCFS CIVIL RIGHTS REPORT OF INVESTIGATION,  
5 COMPLETED AUGUST 2ND, 2010, AND IT'S A TWO-PAGE  
6 DOCUMENT BEARING BATES NUMBERS 3081 AND 3082.

7 IT'S BEING OFFERED BY THE PLAINTIFF. AND I  
8 REMEMBER THIS THE LATER -- TWO-PAGE LETTER THAT I THINK  
9 WAS SIGNED BY HOCHSTEIN --

10 MR. GUTERRES: NO, YOUR HONOR.

11 THE COURT: IT'S NOT? WELL, LET ME TAKE A  
12 LOOK.

13 MR. PRAGER: YOUR HONOR, 219 IS THE REPORT OF  
14 INVESTIGATION DATED AUGUST 2ND, 2010. IT WAS AUTHORED  
15 BY MS. HOCHSTEIN, AND IT WAS THE ENTIRE REPORT OF  
16 INVESTIGATION.

17 THE COURT: 219, ACCORDING TO THE CLERK,  
18 PAGES 3081 AND 3082 OF A LONGER DOCUMENT WERE THE ONLY  
19 PAGES FOR THAT EXHIBIT THAT WERE MARKED.

20 AND IT APPEARS THAT THOSE PAGES REPRESENT AND  
21 WERE MARKED BECAUSE OF A PARAGRAPH ENTITLED  
22 "CONCLUSION," WHICH BEGINS APPROXIMATELY THE MIDDLE OF  
23 PAGE 3081.

24 MR. PRAGER: YOUR HONOR, I THINK THESE  
25 DOCUMENTS WERE REFERRED TO IN THE DEPOSITION READS,  
26 EXTENSIVELY. AND WE WOULD ASK TO MOVE THE ENTIRE  
27 DOCUMENT INTO EVIDENCE.

28 MR. GUTERRES: AND WE WOULD OBJECT, YOUR

1 HONOR. IT'S -- IT CONTAINS A MULTITUDE OF HEARSAY --

2 THE COURT: WELL, FIRST OF ALL, ACCORDING TO  
3 THE CLERK, THE ONLY PAGES THAT HAVE BEEN MARKED FOR  
4 IDENTIFICATION ARE THE ONES I MENTIONED. TWO PAGES,  
5 SHORTENING THEM, SO I DON'T HAVE TO KEEP REPEATING SIX  
6 DIGITS, 81 AND 82, THOSE ARE THE ONLY PAGES MARKED FOR  
7 IDENTIFICATION.

8 MR. GUTERRES: WE WOULD STILL OBJECT ON THE  
9 GROUNDS OF HEARING, AND I BELIEVE IT'S CUMULATIVE. THE  
10 STATEMENTS IN THE CONCLUSION WERE ALREADY IN EVIDENCE.

11 MR. PRAGER: MAY I BE HEARD?

12 THE COURT: IT IS THE CONCLUSION ON THE REPORT  
13 WHICH IS ON THOSE TWO PAGES. WERE YOU OFFERING THESE  
14 TWO PAGES?

15 MR. PRAGER: WE ARE. TO THE EXTENT THERE'S  
16 ANY HEARSAY THAT THE COURT IS TROUBLED BY, I THINK WE  
17 CAN APPROACH THE ISSUE WITH THE SAME LIMITING ISSUE OR  
18 SAME LIMITING INSTRUCTION WE DISCUSSED WITH REGARD TO  
19 OTHER DOCUMENTS.

20 AND JUST TO ALERT THE CLERK AND THE COURT TO  
21 THIS, THESE CONCLUSIONS HAVE BEEN STATED AND RESTATED  
22 APPROXIMATELY FIVE TIMES IN DIFFERENT DOCUMENTS. AND  
23 THERE ARE DIFFERENCES IN EACH OF THE FIVE DIFFERENT  
24 VARIATIONS OF THE DOCUMENT.

25 SO IT IS TRUE THAT THE CONCLUSION IN THIS  
26 DOCUMENT HAS BEEN RESTATED, BUT THERE ARE A NUMBER OF  
27 ALTERATIONS IN EACH DOCUMENT THAT ARE MATERIAL TO THE  
28 CASE. AND THEY GO TO THE DECEPTION, IF YOU WANT TO

1 CALL IT THAT, IN THE FOLLOW-UP INVESTIGATION ON THE  
2 CIVIL RIGHTS SIDE OF THE CASE.

3 THE COURT: THEN I'M GOING TO HAVE TO DEFER  
4 THIS ONE UNTIL I SEE OTHERS, AND DETERMINE WHETHER OR  
5 NOT THEY'RE ADMISSIBLE.

6 MR. GUTERRES: FURTHERMORE, YOUR HONOR, I  
7 THINK THE PROBLEM BECOMES THAT ADMITTING A CONCLUSION  
8 FROM THE RECORD SHOWS NO DATE.

9 IT'S MISLEADING AS TO WHAT POINT IN TIME THIS  
10 CONCLUSION WOULD BE -- WAS REACHED. AND SO I THINK  
11 IT'S ALSO MISLEADING, AND THEREFORE, THERE MAY BE A 352  
12 ISSUE WITH THIS.

13 MR. PRAGER: YOUR HONOR, IF I MAY. ON PAGE 72  
14 OF EXHIBIT 219, THERE IS A DATE. IT'S THE DATE THE  
15 REPORT IS COMPLETED, AT THE BOTTOM OF THE BOX ON THE  
16 FIRST PAGE OF THE EXHIBIT.

17 THE COURT: AS I SAID, I'LL HAVE TO REVIEW  
18 THIS. I'M NOT GOING TO HEAR YOUR ARGUMENT ON IT NOW OR  
19 ANYTHING THAT HAS A COMPLEXITY TO IT. THE NEXT EXHIBIT  
20 IS 220. 220 IS A ONE-PAGE DOCUMENT, WHICH IS THE  
21 LETTER FROM MS. MORGAN-NICHOLS TO MR. RAMON LOPEZ DATED  
22 AUGUST 2, 2010. ANY OBJECTION?

23 MR. GUTERRES: WE WOULD OBJECT ON THE SAME  
24 GROUNDS AT THE LAST ONE, BUT I UNDERSTAND THE COURT  
25 IS -- 352.

26 THE COURT: THE 352 OBJECTION IS OVERRULED.  
27 THE 220 WILL BE RECEIVED.

28 (PLAINTIFF'S EXHIBIT NO. 220 WAS

1 RECEIVED INTO EVIDENCE BY THE COURT.)

2 THE COURT: NEXT ONE IS 222. THIS IS THE --

3 MR. GUTERRES: I'M SORRY, YOUR HONOR. I DON'T  
4 HAVE THAT ONE.

5 THE COURT: THIS IS THE ONE I ALLUDED TO  
6 EARLIER, ONE-PAGE LETTER SIGNED BY MICHELLE HOCHSTEIN,  
7 WHICH WAS ADDRESSED TO CANDIS NELSON.

8 MS. SWISS: YOUR HONOR, I BELIEVE THAT THERE  
9 IS AN OBJECTION TO THIS ONE BECAUSE THIS IS NOT  
10 ACTUALLY SIGNED BY ANYBODY. THIS WAS A DRAFT LETTER  
11 THAT WAS NEVER SENT. THE SIGNED VERSION OF THE LETTER  
12 WAS NOT DISCUSSED IN TESTIMONY.

13 MR. PRAGER: YOUR HONOR, IF I MAY.

14 THE COURT: GO AHEAD.

15 MR. PRAGER: THIS LETTER WAS AUTHENTICATED BY  
16 THE WITNESS IN HER DEPOSITION, AND IT WAS ATTACHED TO  
17 THE DEPOSITION, AND I BELIEVE IT WAS MR. URQUIZO WHO  
18 AUTHENTICATED IT.

19 AND I BELIEVE SHE TESTIFIED ABOUT THE LETTER  
20 IN THE VIDEO DEPO, AND IT WAS OFFERED -- IT WAS  
21 REFERENCED IN HER VIDEO DEPO. AND I THINK SHE ALSO  
22 CONFIRMED THE DATE THAT SHE RECEIVED IT AS BEING  
23 JULY 31, 2010.

24 MS. SWISS: THAT IS THE -- AT THE DEPOSITION,  
25 SHE WAS PRESENTED WITH THIS LETTER JULY 31, 2010,  
26 UNSIGNED, AND SHE WAS NOT PRESENTED AT THE DEPOSITION  
27 WITH THE ACTUAL SIGNED LETTER. THAT WAS AT DIFFERENT  
28 TIME.



1           SO THE WITNESS, MS. NELSON, COULD NOT HAVE  
2 AUTHENTICATED THIS LETTER THAT WASN'T WRITTEN BY HER.  
3 SHE COULDN'T AUTHENTICATE A LETTER THAT WAS UNSIGNED  
4 THAT SHE DIDN'T KNOW IF SHE RECEIVED OR NOT.

5           AND IT'S MISLEADING TO PRESENT TO THE JURY A  
6 LETTER WITH A DATE THAT'S UNSIGNED. IF THEY HAD A  
7 SIGNED VERSION, THAT'S ANOTHER STORY.

8           IT WAS NOT CONFIRMED IN MS. HOCHSTEIN'S  
9 DEPOSITION, NOR IN MS. NELSON'S DEPOSITION, THE DATE  
10 THAT THIS LETTER WAS ACTUALLY SENT.

11           AND IT'S AGAIN, MISLEADING TO THE JURY. THE  
12 TESTIMONY IN MS. HOCHSTEIN'S DEPOSITION THAT WAS NOT  
13 READ IS THAT PART OF THE INVESTIGATION THAT IS SENT TO  
14 THE STATE.

15           MS. HOCHSTEIN WOULD SEND THE DRAFT LETTERS TO  
16 THE STATE, SAYING THESE ARE LETTERS THAT WE PLAN ON  
17 SENDING TO THE INVESTIGATION AS WELL AS THE PERSON WHO  
18 MADE THE COMPLAINT, AFTER THE STATE AGREES WITH THE  
19 INVESTIGATION.

20           AND THAT IS WHAT MS. HOCHSTEIN DID. THIS IS  
21 ONE OF THE DRAFT LETTERS SENT TO THE STATE. THAT IS  
22 NOT THE LETTER THAT ENDED UP BEING SENT, WHICH BEARS A  
23 DIFFERENT DATE.

24           MR. PRAGER: I THINK THAT I CAN VERY EASILY  
25 CLEAR THIS UP. THIS LETTER IS NOT SIGNED. WE ASKED  
26 CDSS FOR ALL THE DOCUMENTS -- WE INCLUDED ALL THE  
27 CUSTODIAN OF RECORDS AND SO FORTH AND SO ON IN ALL THE  
28 EXHIBITS.

1           WE HAVE NO SIGNED LETTER DATED JULY 31, 2010,  
2 FROM CDSS OR FROM THE COUNTY. WE ASKED FOR THOSE  
3 LETTERS. THE WITNESS DID AUTHENTICATE THIS LETTER AS  
4 PART OF HER DEPOSITION, I BELIEVE. AND I CAN TELL YOU  
5 EXACTLY WHY I BELIEVE THAT TO BE TRUE.

6           THERE WAS A DRAFT LETTER FOLLOWING THE THIRD  
7 AND FOURTH VERSION OF THE DOCUMENT, AND THEY DID CHANGE  
8 A VERY MATERIAL POINT. IN THE SUBSEQUENT LETTER THAT  
9 WAS PREPARED AND NOT SENT TO MS. SCHEELE AND  
10 MS. NELSON, THEY CHANGED THE FINDINGS.

11           THE FINDINGS WERE CHANGED FROM, THE COUNTY  
12 VIOLATED YOUR CIVIL RIGHTS, TO, THE COUNTY VIOLATED  
13 POLICY, BUT THEY DID NOT VIOLATE YOUR CIVIL RIGHTS.  
14 THE LETTER SAYS --

15           THE COURT: I KNOW WHAT IT SAYS. I HAVE IT IN  
16 FRONT OF ME. WE'VE GOT TO BE MORE SUCCINCT. I DON'T  
17 HAVE TO HAVE AN APPELLATE ARGUMENT OVER EVERY ONE OF  
18 THESE. SO THIS LETTER WAS INCLUDED -- THIS LETTER,  
19 WHICH YOU'RE TELLING ME WAS A DRAFT, WAS SENT WITH THE  
20 DOCUMENTS SENT BY DCFS TO THE STATE.

21           MS. SWISS: RIGHT.

22           THE COURT: AND WE HAD TESTIMONY ABOUT, THIS  
23 IS WHAT THEY WERE INTENDING TO DO, SOMETHING TO THAT  
24 EFFECT. AND WERE AWAITING THEN A RESPONSE FROM THE  
25 STATE BEFORE DOING SOMETHING.

26           MS. SWISS: CORRECT. JUST LIKE THERE WAS --

27           THE COURT: THERE'S NO EVIDENCE THIS WAS EVER  
28 SENT.

1 MS. SWISS: CORRECT.

2 THE COURT: SO YOU'RE OFFERING NOT BECAUSE IT  
3 WAS EVER SENT AND IT'S A DRAFT, BUT INDICATING THAT --  
4 INDICATE THAT -- TO SHOW EVIDENCE OF WHAT THEIR  
5 ORIGINAL INTENT WAS AND THAT THEY ENDED UP DOING  
6 SOMETHING DIFFERENT.

7 MR. PRAGER: YES.

8 THE COURT: SO WHY IS THIS ADMISSIBLE? TO  
9 SHOW THE ORIGINAL INTENT?

10 MR. PRAGER: YES. AND ALSO THE WITNESSES DID  
11 CONFIRM RECEIPT OF THIS LETTER. SCHEELE AND NELSON  
12 CONFIRMED THEY RECEIVED THIS LETTER WHEN THEY RECEIVED  
13 NOTIFICATION OF THEIR DISCIPLINE -- OR, I'M SORRY --  
14 THEY WOULD BE DISCIPLINED.

15 MS. SWISS: THAT'S MISLEADING. THEY DID NOT  
16 CONFIRM THEY RECEIVED THE LETTER DATED JULY 31, 2010.  
17 THERE'S NO TESTIMONY TO THAT EFFECT. AND IF THEY WERE  
18 PRESENTED WITH THE SPECIFIC LETTER THAT WAS SIGNED,  
19 THEY RECEIVED.

20 THEY COULD HAVE NOT AUTHENTICATED THAT  
21 SPECIFIC LETTER, OR ELSE THE TESTIMONY WAS MISLEADING  
22 THAT --

23 THE COURT: IS IT CANDIS NELSON THAT SAYS SHE  
24 RECEIVED THE LETTER?

25 MR. PRAGER: YES. THIS IS THE CANDIS NELSON'S  
26 LETTER AT PAGE 243 OF THE PORTION OF THE TRANSCRIPT  
27 THAT WAS RECEIVED BY THE COURT AS PART OF THE VIDEO  
28 DEPOS.

1           SHE INDICATES AT LINES 24, 25, "DO YOU  
2       REMEMBER READING IT ON OR ABOUT JULY 31, 2010." THE  
3       ANSWER, ON PAGE 244, LINES 1 AND 2 SAYS, "I CAN'T STATE  
4       WHAT DATE I READ IT, BUT I DO REMEMBER SEEING THIS  
5       LETTER."

6           MS. SWISS: EXACTLY. SHE RECEIVED A VERY  
7       SIMILAR LETTER, MAYBE THE SOME CONTENT, BUT A DIFFERENT  
8       DATE, AND THAT'S THE ISSUE IS, THE PART OF  
9       THE COMPLAINANT'S CASE IS THAT --

10          THE REPORTER: YOU HAVE TO SLOW DOWN.

11          THE COURT: YOU HAVE TO SLOW DOWN. YOU'RE  
12       BATTLING AT GUN SPEED.

13          MR. PRAGER: MAY I MAKE A SUGGESTION? HOW  
14       ABOUT WE JUST MEET AND CONFER ON THESE DISPUTES AND  
15       SUBMIT A VERY -- ONE-PARAGRAPH DIRECTION FOR THE COURT  
16       OVER THE WEEKEND?

17          THE COURT: WELL, I THINK THAT WOULD BE A GOOD  
18       IDEA. AND I HAVE BEEN ENCOURAGING EVERY DAY MEETING  
19       AND CONFERRING, BUT EVERY MORNING WHEN WE MEET, IT  
20       APPEARS TO ME THAT THERE HAS NOT BEEN ANY MEETING AND  
21       CONFERRING.

22          AND YOU TELL ME HERE, THIS TIME, TALKING ABOUT  
23       ONE EXHIBIT ON PAGE 4 OF A LIST OF 19 PAGES. SO WE'RE  
24       PROBABLY GOING TO BE DEALING WITH, IN ROUND NUMBERS,  
25       FOR SOME ON AVERAGE, A LITTLE OVER A HUNDRED EXHIBITS.  
26       AND WE'RE HAVING THIS ARGUMENT OVER IT.

27          THIS IS WHY I'VE BEEN RECOMMENDING MEETING AND  
28       CONFERRING, AND WHY IT APPEARS TO ME WE'RE GOING TO

1 HAVE TO TAKE DAYS OFF FROM THE JURY'S PRESENCE IN ORDER  
2 TO RESOLVE THESE ISSUES.

3 MR. MCMILLAN: YOUR HONOR, IF I MIGHT. AS TO,  
4 I GUESS ON THE 1983 SIDE OF THE CASE, THERE ARE A  
5 SUBSTANTIAL NUMBER OF EXHIBITS, 46 EXHIBITS, THAT  
6 PLAINTIFF IS WITHDRAWING IN PART BECAUSE THERE'S  
7 DUPLICATION, AND IN PART BECAUSE THERE'S BEEN  
8 SIGNIFICANT ORAL TESTIMONY ALREADY ADMITTED.

9 I THINK I TALKED ABOUT THIS A LITTLE BIT  
10 YESTERDAY, HOW WE'RE GOING THROUGH THE PROCESS OF  
11 MAKING A LIST OF --

12 THE COURT: I THINK THAT THE LIST NOW TAKES  
13 INTO ACCOUNT ONES YOU'RE NO LONGER OFFERING. THAT'S  
14 WHY I STARTED OUT. MR. PARIS HAS THE LIST AS I RECALL,  
15 HAS A LIST THAT'S 27 PAGES LONG. AND IN LIGHT OF  
16 THOSE, IN EFFECT, WITHDRAWN REQUESTS, THAT MASTER LIST  
17 IS NOW DOWN TO 19 PAGES.

18 BUT THAT'S MY POINT. THESE AVERAGE -- LOOKS  
19 LIKE ON AVERAGE, THERE'S ABOUT SIX EXHIBITS PER PAGE,  
20 AND THAT'S WHY I WAS SAYING, WE'VE DONE SOME OF THEM.  
21 BUT IF YOU MULTIPLY SIX TIMES 19, YOU END UP WITH  
22 ABOUT 114 OR SOMETHING LIKE THAT, EXHIBITS.

23 WE'VE GONE THROUGH A FEW. WE HAVE AT LEAST A  
24 HUNDRED, INCLUDING, AT THIS POINT, I HAVE A LIST OF TEN  
25 THAT WILL HAVE TO BE REVIEWED FURTHER. AND THAT'S WHY  
26 I'VE BEEN ENCOURAGING MEETING AND CONFERRING RATHER  
27 THAN GOING THROUGH THIS LABORIOUS PROCESS.

28 IF WE'RE GOING TO DO IT THIS WAY -- I'LL HAVE

1 TO DETERMINE WHAT FURTHER HAS TO BE DONE. BUT I DON'T  
2 THINK I'M GOING TO SPEND THIS KIND OF  
3 TIME, 10, 15 MINUTES PER EXHIBIT OF ARGUMENT OF SO MANY  
4 DOCUMENTS. AND AS IT TURNS OUT, THIS WAS A DOCUMENT  
5 WHICH APPARENTLY WAS DRAFTED AND NEVER SENT.

6 AND YOUR CONTENTION IS IT'S ADMISSIBLE TO SHOW  
7 WHAT THEY SAID AT THE TIME. AND THEN LATER THEY DID  
8 SOMETHING DIFFERENT. AND THE GROUND FOR THE -- THE  
9 GROUND FOR ADMISSIBILITY OF THIS LETTER IS WHAT?

10 MR. PRAGER: ADMISSION OF -- STATEMENT BY  
11 INTEREST, ADMISSION BY PARTY OPPONENT.

12 THE COURT: ALL RIGHT. AND THE OBJECTION IS?

13 MS. SWISS: IT'S NOT AUTHENTICATED. IT  
14 CONTAINS --

15 THE COURT: OKAY. NO AUTHENTICATION.

16 MS. SWISS: WE WENT OFF THE NEXT EXHIBITS IN  
17 ORDER IS 226, WHICH IS THE LETTER FROM  
18 MS. MORGAN-NICHOLS TO THE STATE WITH THE FIRST REPORT.  
19 AND IT SAYS:

20 "ENCLOSED IS A COPY OF THE REPORT AND THE  
21 DRAFT LETTERS, AND ALL OF THOSE LETTERS AT ISSUE IN THE  
22 NEXT FEW EXHIBITS, 222, AND 225, ARE INCLUDED IN  
23 EXHIBIT 226, AS WELL AS THE DRAFT LETTER TO MS. DUVAL  
24 DATED JULY 31, 2010."

25 AND AS THE EVIDENCE HAS SHOWN, THE LETTER THAT  
26 WAS ACTUALLY WENT TO MS. DUVAL THAT WAS SIGNED WAS  
27 OCTOBER, SO AGAIN, PROVING THE POINT THAT THESE ARE  
28 JUST DRAFT LETTERS THAT WENT TO THE STATE IN COMPLIANCE

1 WITH THE STATE'S PROCESS.

2 AND THE LETTERS THAT WERE SIGNED AND WENT OUT,  
3 WENT OUT AT A MUCH LATER TIME, SO IT'S CONFUSING TO THE  
4 JURY SENDING LETTERS THAT ARE A DIFFERENT DATE.

5 THE COURT: OKAY. THAT'S ENOUGH FOR NOW.

6 (PAUSE IN THE PROCEEDINGS)

7 THE COURT: GET THE JURORS IN, PLEASE.

8 (JURY PRESENT)

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
10 COURT IN THE PRESENCE OF THE JURY)

11 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON  
12 THE RECORD. EVERYBODY IS PRESENT. GOOD MORNING TO ALL  
13 OF OUR JURORS.

14 JUST A MOMENT. BEFORE WE CALL OUR NEXT  
15 WITNESS, I NEED TO KNOW WHO IS NOT HERE THIS MORNING.  
16 SHE HAD CONVEYED TO ME THAT SEVERAL OF THE JURORS  
17 INQUIRED WHEN IT APPEARS WE'D BE COMPLETING THE  
18 EVIDENCE IN THE CASE. AND I DON'T HAVE A DEFINITIVE  
19 ANSWER FOR YOU RIGHT NOW.

20 I JUST WANTED TO ACKNOWLEDGE TO YOU THAT I'M  
21 AWARE THAT YOU MADE THE INQUIRY, AND IT'S  
22 UNDERSTANDABLE TO ME WHY YOU WOULD BECAUSE OF THE TIME  
23 ESTIMATE I GAVE YOU WHEN WE BEGAN.

24 WE AREN'T QUITE AT THAT TIME ESTIMATE YET IN  
25 TERMS OF DAYS WE'VE BEEN IN TRIAL. BUT SOMETIME LATER  
26 TODAY, I WILL GIVE YOU FURTHER INFORMATION.

27 AND THE REASON THAT I'M NOT DOING IT AT THE  
28 MOMENT IS THAT DURING THE COURSE OF THE TRIAL, THERE

1 ARE A NUMBER OF OBLIGATIONS THE JURORS HAVE.

2 AND THE PRIMARY OBLIGATION IS TO LISTEN TO THE  
3 TESTIMONY. AND EVENTUALLY, WHEN YOU'RE CALLED UPON TO  
4 DELIBERATE TO DECIDE WHAT THE EVIDENCE HAS SHOWN AND,  
5 IN CONSIDERATION OF THE LEGAL INSTRUCTIONS GIVEN TO YOU  
6 BY THE COURT, TO ANSWER CERTAIN QUESTIONS THAT WOULD  
7 DECIDE THE ISSUES IN THIS CASE, THE PART OF THE TRIAL  
8 THAT YOU DON'T SEE --

9 WELL, LET ME JUST HESITATE TO SAY, IN THE  
10 INSTRUCTIONS THAT I GAVE YOU WHEN WE BEGAN, I MENTIONED  
11 THAT THIS IS EXCLUSIVELY YOUR DECISION.

12 I HAVE NOT AND WILL NOT AT ANY TIME EVER  
13 SUGGEST TO YOU HOW I THINK YOU OUGHT TO DECIDE ANY  
14 ISSUE IN THE CASE OR WHETHER I BELIEVE OR DISBELIEVE  
15 ANY WITNESS. THAT'S EXCLUSIVELY YOUR PROVINCE.

16 PARTS OF THE TRIALS THAT YOU DON'T SEE, NOT  
17 ONLY WHEN WE HAVE SIDEBAR CONFERENCES, BUT I'M SURE  
18 YOU'VE ALL NOTED WHEN YOU GET HERE IN THE MORNING,  
19 WHATEVER TIME I TELL YOU TO BE HERE, YOU NOTED THE  
20 ATTORNEYS ARE ALREADY HERE.

21 AND BEFORE YOU GET HERE EVERY DAY, WE MEET TO  
22 WORK ON MATTERS THAT ARE FOR THE COURT ONLY AND NOT FOR  
23 THE JURY. IN THIS INSTANCE, WE HAVE SEVERAL MATTERS  
24 THAT ARE GOING TO BE QUITE TIME-CONSUMING, THAT WILL  
25 HAVE TO BE HEARD BY THE COURT WITHOUT YOUR PRESENCE.

26 AND I DON'T YET HAVE A GOOD ENOUGH ESTIMATE  
27 HOW LONG IT'S GOING TO TAKE TO DO SOME OF THE THINGS  
28 THAT THE COURT HAS TO DO THAT YOU DON'T HAVE TO DO, AND



1 THAT'S WHY I CAN'T GIVE YOU THE ESTIMATE RIGHT NOW.

2 BEFORE THE DAY IS OVER, I WILL GIVE YOU THE  
3 BEST ESTIMATE THAT I'M ABLE TO DO. AS YOU NOTICED, NO  
4 MATTER HOW WE TRY TO DO IT, IT IS A -- A TRIAL IS A  
5 LIVING PROCESS. IT DOESN'T GO BY A SPECIFIC SCHEDULE.

6 WE CAN'T TELL YOU THAT, AT 9:14, EXACTLY  
7 WHAT'S GOING TO OCCUR, OR AT 9:28, EXACTLY WHAT'S GOING  
8 TO OCCUR. BUT NEVERTHELESS, I WILL MAKE THE BEST  
9 ESTIMATE I CAN, AND TALK TO YOU ABOUT IT TODAY.

10 SO I WANT TO LET YOU KNOW THAT I'M NOT  
11 IGNORING THAT THERE HAVE BEEN SOME INQUIRIES.

12 IT'S JUST I HAVE NOT YET BEEN ABLE TO FORM  
13 WHAT I WILL FEEL WOULD BE AN INFORMED ESTIMATE. WITH  
14 THAT, WE'RE NOW GOING TO PROCEED WITH THE EVIDENCE.

15 MR. GUTERRES, ARE YOU ONE CALLING THE NEXT  
16 WITNESS?

17 MR. GUTERRES: I AM, YOUR HONOR.

18 THE COURT: ALL RIGHT. WOULD YOU LIKE TO CALL  
19 THAT WITNESS, PLEASE.

20 MR. GUTERRES: THE DEFENSE WOULD CALL  
21 DR. CAROL BERKOWITZ.

22 THE COURT: ALL RIGHT. DOCTOR, IF YOU WOULD  
23 COME UP HERE PLEASE, BY THE WITNESS STAND.

24

25 CAROL BERKOWITZ,

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

27 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

28

## 1 DIRECT EXAMINATION

2 BY MR. GUTERRES:

3 Q GOOD MORNING, DR. BERKOWITZ.

4 A GOOD MORNING.

5 Q WOULD YOU PLEASE PROVIDE US WITH A BRIEF  
6 OUTLINE OF YOUR PROFESSIONAL BACKGROUND.7 A I'M A PEDIATRICIAN. I WENT TO BARNARD COLLEGE  
8 IN NEW YORK, AND THEN TO THE COLLEGE OF PHYSICIANS AND  
9 SURGEONS OF COLUMBIA UNIVERSITY, AND RECEIVED MY MD  
10 DEGREE FROM THERE.11 I DID PEDIATRIC INTERNSHIP, RESIDENCY, AND WAS  
12 A CHIEF RESIDENT AT THE ROOSEVELT HOSPITAL IN NEW YORK.  
13 I'M BOARD-CERTIFIED IN PEDIATRICS. BOARD-CERTIFIED IN  
14 PEDIATRIC EMERGENCY MEDICINE, AND IN CHILD ABUSE  
15 PEDIATRICS.

16 Q THANK YOU. CURRENTLY, WHERE ARE YOU EMPLOYED?

17 A I WORK AT HARBOR-UCLA MEDICAL CENTER IN  
18 TORRANCE.19 Q AND IN THE 2009, 2010 TIME FRAME, WERE YOU  
20 ALSO AT THE SAME LOCATION?

21 A YES, I WAS.

22 Q AND COULD YOU TELL US WHAT YOUR ASSIGNMENT WAS  
23 IN THE 2009, 2010 TIME FRAME AT HARBOR-UCLA?24 A I WAS EXECUTIVE VICE-CHAIR OF THE DEPARTMENT  
25 OF PEDIATRICS. PROFESSOR OF PEDIATRICS AT THE DAVID  
26 GEFFEN SCHOOL OF MEDICINE AT UCLA.27 I'M DIRECTOR AT THE CLINIC, AND DIRECTOR --  
28 PROGRAM DIRECTOR OF FELLOWSHIP TRAINING PROGRAM IN

1 CHILD ABUSE PEDIATRICS, A DIRECTOR OF CRANIAL-FACIAL  
2 CLINIC, AND IT'S PROBABLY MOST OF THE TITLES.

3 Q AMONGST THOSE, DID YOU OVERSEE CLINICS  
4 INVOLVING FAILURE TO THRIVE?

5 A RIGHT. I'M DIRECTOR OF THE FAILURE TO THRIVE  
6 CLINIC AND OUR FAILURE TO THRIVE PROGRAM.

7 Q WOULD YOU PLEASE TELL ME -- OR TELL US YOUR  
8 EXPERIENCE WITH FAILURE TO THRIVE PATIENTS.

9 A OKAY. SO WE STARTED OUR PROGRAM IN FAILURE TO  
10 THRIVE IN 1980. SO IT'S BEEN IN EXISTENCE NOW  
11 FOR 37 YEARS.

12 AND THE REASON WE STARTED IT WAS THAT WE  
13 NOTICED THERE WERE CHILDREN WHO WERE SMALL COMING INTO  
14 OUR PEDIATRIC EMERGENCY DEPARTMENT.

15 AND IN THE EMERGENCY DEPARTMENT, THEY'D OFTEN  
16 DO SOME BLOOD TESTS LIKE A THYROID TEST, WHICH WOULD  
17 COME BACK NORMAL. AND WHEN THE CHILD CAME BACK, THEY  
18 SAID, WELL, THE TESTS WERE NEGATIVE, SO THIS CHILD --  
19 THERE'S NOTHING WRONG.

20 AND WE FELT THAT THEY NEEDED -- THE CHILDREN  
21 NEEDED AN EVALUATION, NOT JUST A BLOOD TEST. SO THAT'S  
22 WHEN WE STARTED THE CLINIC.

23 Q AND YOU SAY 2009, 2010, THERE WAS A PROGRAM  
24 FOR FELLOWS TO GET EXPERIENCE WITH FAILURE TO THRIVE  
25 CLINIC -- PATIENTS?

26 A RIGHT. SO CHILD ABUSE PEDIATRICS HAS BEEN  
27 RECOGNIZED AS A SUBSPECIALTY IN THE AREA OF PEDIATRICS  
28 AND PEOPLE HAVE TRAINED IN IT.

1           BUT IN 2009, THE DISCIPLINE WAS RECOGNIZED BY  
2 THE ACCREDITATION COUNCIL AND GRADUATE MEDICAL  
3 EDUCATION AND THE AMERICAN BOARD OF PEDIATRICS AS A  
4 DISCIPLINE WORTHY OF STUDY AND EXPERTISE AND ADDITIONAL  
5 TRAINING.

6           SO IN -- THAT HAPPENED IN 2009. THAT WAS THE  
7 FIRST TIME THAT THE BOARDS WERE GIVEN. AND SO WE DID  
8 OFFER THAT PROGRAM AT HARBOR.

9           Q       AND WHAT DOES IT TAKE TO ACTUALLY BECOME  
10 CERTIFIED IN CHILD ABUSE PEDIATRICS?

11          A       YOU FIRST HAVE TO BE CERTIFIED IN GENERAL  
12 PEDIATRICS. SO TO BE CERTIFIED IN GENERAL PEDIATRICS,  
13 YOU NEED THREE YEARS OF TRAINING AFTER MEDICAL SCHOOL.

14                SO FOUR YEARS OF MEDICAL SCHOOL, THREE YEARS  
15 OF RESIDENCY, AND THEN YOU NEED THREE ADDITIONAL YEARS  
16 OF FELLOWSHIP TRAINING IN CHILD ABUSE PEDIATRICS.

17                BEFORE YOU TAKE THE EXAM IN CHILD ABUSE  
18 PEDIATRICS, YOU HAVE TO HAVE TAKEN THE EXAM IN  
19 PEDIATRICS.

20          Q       SOUNDS LIKE A LOT OF STUDY?

21          A       IT IS.

22          Q       BASED ON YOUR EXPERIENCE TREATING FAILURE TO  
23 THRIVE PATIENTS, WOULD YOU CONSIDER IT THE SAME AS  
24 TREATING MALNOURISHED CHILDREN IN KENYA OR SOMALI?

25                MR. PRAGER: OBJECTION: CALLS FOR  
26 SPECULATION.

27                THE COURT: OVERRULED.

28                THE WITNESS: NO.

1 BY MR. GUTERRES:

2 Q AND WHY NOT?

3 A WHEN YOU TALK ABOUT BIG POPULATIONS OF  
4 CHILDREN LIVING IN DEVELOPING NATIONS, YOU HAVE  
5 DIFFERENT ETIOLOGIES FOR THEIR GROWTH IMPAIRMENT.

6 MALNUTRITION -- INADEQUATE ACCESS TO  
7 SUFFICIENT PROTEIN FOR SUFFICIENT CALORIES, OTHER  
8 DISEASES THAT ARE PREVALENT, MEASLES, HIV INFECTION.

9 SO THEY'RE NOT -- THEY'RE REALLY NOT  
10 COMPARABLE. AND NONE OF THE LITERATURE WOULD SUGGEST  
11 IN ANY WAY THAT FAILURE TO THRIVE IS COMPARABLE TO THE  
12 ASSESSMENT OF CHILDREN IN DEVELOPING COUNTRIES.

13 I WORKED IN BRAZIL ONE SUMMER. IT'S A  
14 DIFFERENT SITUATION.

15 Q THANK YOU.

16 MR. PRAGER: OBJECTION, YOUR HONOR.  
17 NONRESPONSIVE TO THE QUESTION, "I WORKED IN BRAZIL ONE  
18 SUMMER." MOVE TO STRIKE.

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

21 MR. GUTERRES: THANK YOU, YOUR HONOR.

22 BY MR. GUTERRES:

23 Q ARE YOU FAMILIAR WITH THE CONCEPT OF CATCH-UP  
24 GROWTH?

25 A YES.

26 Q AND COULD YOU TELL US WHAT THAT UNDERSTANDING  
27 IS?

28 A RIGHT. THE CATCH-UP GROWTH IS USED TO

1 DESCRIBE AN ACCELERATED, THAT IS AN INCREASED GROWTH  
2 RATE, USUALLY IN CHILDREN, WHO FOR SOME REASON HAVE NOT  
3 BEEN GROWING WELL.

4           COULD BE ALL SORTS OF DIFFERENT REASONS THAT  
5 THEIR GROWTH IS WHAT WE WOULD CALL SUBOPTIMAL.  MAYBE  
6 NOT ENOUGH ACCESS TO FOOD, MAYBE RECURRENT INFECTIONS,  
7 AND ONCE THAT RESOLVES, YOU CAN SEE THEY GAIN WEIGHT AT  
8 AN ACCELERATED RATE.

9           SO LET'S SAY THEY WERE WAY DOWN BELOW THE  
10 LOWEST PERCENTILE, AND OVER THE NEXT 5 OR 6 MONTHS,  
11 THEY GET UP TO BE AT THE 25TH PERCENTILE, MEANING  
12 THEY'RE ON A NORMAL CURVE.

13           SO THAT'S WHAT WE MEAN BY CATCH-UP GROWTH.  
14 SOMETHING HAPPENED THAT CAUSED THEM TO STOP GROWING.  
15 THAT WENT AWAY, AND NOW THEY'RE GROWING FASTER THAN  
16 USUAL, SO THEY'RE GAINING WEIGHT AT A GREATER RATE.

17           Q     AND ARE YOU FAMILIAR WITH THE TERM,  
18 ENVIRONMENTAL FAILURE TO THRIVE?

19           A     I AM.

20           Q     AND HOW WOULD YOU DESCRIBE ENVIRONMENTAL  
21 FAILURE TO THRIVE?

22           A     OKAY.  SO ENVIRONMENTAL FAILURE TO THRIVE  
23 MEANS THAT A CHILD'S GROWTH IMPAIRMENT, THEY'RE NOT  
24 GROWING, IS RELATED TO THEIR ENVIRONMENT.

25                    THAT THEIR ENVIRONMENT IS NOT ONLY NOT GIVING  
26 THEM ENOUGH NUTRITION, BUT NOT NURTURING.  SO THERE'S  
27 NOT THE NORMAL HUMAN INTERACTIONS THAT ONE WOULD EXPECT  
28 IN THEIR ENVIRONMENT.

1 Q AND IS THERE A DIFFERENT TYPE OF FAILURE TO  
2 THRIVE THAT MIGHT NOT HAVE AN ENVIRONMENTAL COMPONENT?

3 A RIGHT. SO OVER THE YEARS, THE TERMS THAT  
4 WE'VE USED HAVE VARIED A LITTLE BIT.

5 SO ENVIRONMENTAL FAILURE TO THRIVE WAS ALSO  
6 CALLED NON-ORGANIC FAILURE TO THRIVE, WHICH BASICALLY  
7 MEANT THERE WAS NOT A MEDICAL REASON THAT YOU COULD  
8 FIND TO ACCOUNT FOR WHY THAT CHILD WAS SMALL.

9 SO THE OPPOSITE OF THAT, THEN, WAS THE TERM  
10 ORGANIC, MEANING A MEDICAL REASON. SO, FOR EXAMPLE, IF  
11 A CHILD HAS CYSTIC FIBROSIS, THAT'S A MEDICAL REASON  
12 WHY THEY'RE NOT GROWING.

13 YOU CAN STILL TREAT IT AND DEAL WITH IT, BUT  
14 KNOWING THAT THAT'S THERE, YOU CHANGE YOUR MANAGEMENT.  
15 WE TEND NOT TO ACTUALLY MAKE IT EITHER/OR, BUT REALIZE  
16 THAT THERE'RE DIFFERENT FACTORS THAT WAY, AND IN MANY  
17 CASES WHERE CHILDREN'S GROWTH IS SUBOPTIMAL.

18 Q AND IF FAILURE TO THRIVE WAS ENVIRONMENTAL,  
19 WOULD YOU NECESSARILY EXPECT CATCH-UP GROWTH WITHIN  
20 DAYS?

21 A NO.

22 Q AND WHY NOT?

23 A TWO REASONS. ONE IS THAT THAT'S A CHILD WHO  
24 HASN'T HAD THE EXPERIENCE OF A NURTURING RELATIONSHIP,  
25 AND, IN FACT, CLOSE CONTACT IS WHAT WE WOULD SAY  
26 AVERSIVE. SO IT DOESN'T SEEM, LIKE, INTUITIVE.

27 BUT IF YOU'VE NOT BEEN SORT OF HELD AND  
28 NURTURED, WHAT HAPPENS IS, THE CHILDREN JUST -- IT'S

1 UNCOMFORTABLE FOR THEM.

2 AND WE ACTUALLY DID A STUDY IN HOSPITALIZED  
3 CHILDREN TO SEE HOW LONG, AND IT TURNED OUT IN THE  
4 HOSPITAL WHEN THE NURSES TRIED TO HOLD THEM TO GIVE  
5 THEM A BOTTLE, THEY'D PUSH THE BOTTLE OUT AND ARCH.

6 SO WE LEARNED THAT IT TAKES A WHILE FOR A  
7 CHILD TO SORT OF REGAIN THEIR ABILITY TO ATTACH AND  
8 RESPOND IN WAYS THAT WE THINK YOU WOULD JUST  
9 AUTOMATICALLY APPRECIATE, THAT CLOSENESS AND THE  
10 CUDDLING.

11 Q DOCTOR, BASED ON YOUR YEARS OF EXPERIENCE WITH  
12 FAILURE TO THRIVE, ARE YOU FAMILIAR WITH ANY TYPE OF  
13 MEDICAL OR SCIENTIFIC TESTING THAT IS BASED ON  
14 OBSERVATION OF AN EIGHT-YEAR-OLD, AND WHETHER OR NOT  
15 THAT EIGHT-YEAR-OLD WANTS TO EAT A CUPCAKE?

16 A IT DEPENDS IF IT WAS VANILLA OR CHOCOLATE.  
17 ONE OF MY GRAND -- NO. I GUESS I'M UNCLEAR OF WHY THAT  
18 WOULD BE THE ULTIMATE TEST. SOMETIMES YOU LIKE  
19 SOMETHING, AND SOMETIMES YOU DON'T WANT A CUPCAKE.  
20 IT'S A MISCONCEPTION THAT ALL CHILDREN WOULD EAT CANDY  
21 AND SWEET -- VARIABLE TASTE.

22 MR. PRAGER: OBJECTION. CAN WE REQUEST A  
23 SIDEBAR, YOUR HONOR?

24 THE COURT: ALL RIGHT.

25 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
26 THE SIDEBAR OUTSIDE THE PRESENCE OF THE  
27 JURY)

28 THE COURT: WE'RE AT SIDEBAR. YES?



1 MR. PRAGER: YOUR HONOR, THIS WITNESS WAS  
2 DEPOSED AS A PERCIPIENT WITNESS, AND I DON'T THINK  
3 SHE'S QUALIFIED TO RENDER EXPERT TESTIMONY IN THIS  
4 CASE. I DON'T THINK SHE'S OFFERED ANY EXPERT --

5 THE COURT: MUCH TOO QUICKLY.

6 MR. PRAGER: SO WE BELIEVE THE OPINIONS SHE'S  
7 OFFERING ARE NOT AUTHENTICATED -- DESIGNATED, AND THEY  
8 HAVE NO FOUNDATION AT THIS TIME.

9 THE COURT: SO WHAT ARE YOU ASKING FOR, OR  
10 WHAT ARE YOU TELLING ME?

11 MR. PRAGER: THE WITNESS CAN TESTIFY --

12 THE COURT: YOU HAVE TO SPEAK SLOWLY ENOUGH SO  
13 SOMEONE CAN HEAR.

14 MR. PRAGER: THE WITNESS WAS DEPOSED, AND SHE  
15 CERTAINLY HAS PERCIPIENT TESTIMONY REGARDING HER  
16 OBSERVATIONS OF THE MOTHER, CHILD. AND FAMILY.

17 THE COURT: ALL RIGHT. I THINK SO. I'M  
18 ASSUMING WE'LL GET TO THE PERCIPIENT TESTIMONY. I  
19 THINK A CERTAIN AMOUNT OF BACKGROUND IS PERMITTED. SO  
20 I'LL JUST HAVE TO WAIT A LITTLE BIT AND SEE. SO I  
21 DON'T KNOW WHAT'S GOING TO BE ELICITED FROM HER.

22 MR. GUTERRES: YOUR HONOR, DR. BERKOWITZ IS  
23 ALSO DESIGNATED AS A NON-RETAINED EXPERT.

24 THE COURT: HE SAID SHE WASN'T DESIGNATED.

25 MR. MCMILLAN: SHE WASN'T DESIGNATED, YOUR  
26 HONOR, TO OFFER EXPERT OPINIONS.

27 THE COURT: ALL RIGHT. IF YOU'LL SHOW ME THE  
28 DESIGNATION OF YOUR EXPERTS, DO YOU HAVE THAT HERE?

1 MS. SWISS: I CAN GET IT.

2 THE COURT: I'LL JUST STATE THAT A  
3 NON-RETAINED EXPERT IS ENTITLED TO EXPRESS OPINION  
4 TESTIMONY.

5 THE LAW MAKES A DISTINCTION BETWEEN EXPERTS  
6 THAT HAVE BEEN RETAINED BY THE PARTY, OFTEN THROUGH  
7 THEIR COUNSEL, SPECIFICALLY FOR THE PURPOSE OF  
8 PROVIDING EXPERT OPINION.

9 NON-RETAINED EXPERTS ARE PERSONS WHO HAVE  
10 EXPERT OPINIONS, BUT HAVE NOT BEEN RETAINED FOR THE  
11 PURPOSE OF PROVIDING OPINION TESTIMONY. THAT IS, THEY  
12 ALREADY HAVE IT. YOU DESIGNATED A NUMBER OF  
13 NON-RETAINED EXPERTS.

14 MS. SWISS: INCLUDING DR. BERKOWITZ.

15 THE COURT: YES.

16 MS. SWISS: BY --

17 THE COURT: THAT'S MY RECOLLECTION. I'LL TAKE  
18 A LOOK AT IT AGAIN. BUT I THINK YOU DID. NON-RETAINED  
19 EXPERT. YOU'RE TELLING ME SHE WASN'T DESIGNATED.

20 IF SHE'S DESIGNATED AS NON-RETAINED EXPERT,  
21 AND NOT BY YOU BUT BY THEM, THEY'RE ENTITLED TO CALL ON  
22 YOUR NON-RETAINED EXPERT, AND SHE'S ENTITLED TO GIVE  
23 OPINION TESTIMONY.

24 MR. PRAGER: THE ISSUE FOR HER -- SHE'S  
25 TESTIFYING ABOUT MATTERS BEYOND HER PERSONAL  
26 EXPERIENCE, EXCEEDING WHAT SHE UNDERSTOOD OR LEARNED AT  
27 THE CLINIC.

28 WE DIDN'T OBJECT TO HER TESTIFYING ABOUT THE

1 AFRICAN EXPERIENCE. WE DIDN'T OBJECT TO OTHER THINGS  
2 SHE MIGHT SAY THAT WOULD GO TO THAT. SHE'S TALKING  
3 ABOUT CAKE. THAT OCCURRED AFTER SHE SAW THE CHILD AT  
4 THE CLINIC, WHICH IS WHY WE'RE OBJECTING NOW.

5 THE COURT: I UNDERSTAND THAT. I'VE HEARD  
6 WHAT YOU HAVE TO SAY. THERE'S NOTHING FOR THE COURT TO  
7 DO AT THE MOMENT.

8 AND IF THERE'S SOMETHING WHICH EXCEEDS THE  
9 RIGHT OF A NON-RETAINED EXPERT TO TESTIFY, THEN YOU CAN  
10 MAKE YOUR OBJECTION, AND I'LL RULE ON IT AT THE TIME.

11 MR. GUTERRES: THANK YOU.

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

14 THE COURT: GO AHEAD.

15 MR. GUTERRES: THANK YOU, YOUR HONOR.

16 BY MR. GUTERRES:

17 Q DR. BERKOWITZ, DO YOU REMEMBER A PATIENT AT  
18 THE FAILURE TO THRIVE CLINIC BY THE NAME OF BABY RYAN?  
19 THAT'S WHAT WE'RE CALLING HIM.

20 A I DO.

21 Q AND DID YOU HAVE ANY INVOLVEMENT WITH THE  
22 TREATMENT OF BABY RYAN AT THE FAILURE TO THRIVE CLINIC?

23 A I DID. I THINK I SAW HIM A FEW TIMES, AND WAS  
24 INVOLVED IN HIS CARE.

25 Q WOULD YOU HAVE -- AND DO YOU REMEMBER THE TIME  
26 FRAME THAT BABY RYAN WAS TREATED AT HARBOR-UCLA BY YOUR  
27 FAILURE TO THRIVE CLINIC?

28 A I THINK IT WAS 2009, 2010.

1 Q WOULD YOU HAVE CONSIDERED BABY RYAN TO HAVE  
2 DYSMORPHIC FEATURES?

3 A I DIDN'T.

4 Q ARE YOU FAMILIAR WITH FRAGILE X DISORDERS?

5 A I AM.

6 Q COULD YOU TELL ME WHAT YOUR UNDERSTANDING IS  
7 OF FRAGILE X?

8 A RIGHT. SO CHILDREN WITH FRAGILE X, EASIER TO  
9 RECOGNIZE IN BOYS THAN IN GIRLS, BUT CAN OCCUR IN  
10 GIRLS. AND IT'S RELATED TO THE X CHROMOSOME HAVING,  
11 LIKE, BREAKABILITY BECAUSE IT'S FRAGILE.

12 AND THE MOST COMMON WAY SUCH CHILDREN PRESENT  
13 IS WITH AUTISM. IT'S ONE OF THE LEADING CAUSES OF  
14 AUTISM OR SPEECH DELAY.

15 AS INDIVIDUALS GET OLDER, NOT IN CHILDHOOD,  
16 THEY HAVE EARS THAT SEEM A BIT LARGER, AND IN MALES,  
17 THE TESTICLES ARE LARGER.

18 THAT'S NOT SEEN IN CHILDREN. FAILURE TO  
19 THRIVE IS NOT PART OF THE PICTURE OF FRAGILE X. IT'S  
20 MORE TO DO WITH COGNITIVE INTELLECTUAL DISABILITIES.

21 Q SO, BASED ON YOUR INVOLVEMENT IN THE TREATMENT  
22 THAT BABY RYAN WAS RECEIVING AT THE FAILURE TO THRIVE  
23 CLINIC, WAS THERE ANYTHING IN BABY RYAN'S CONDITION  
24 THAT WOULD HAVE LED YOU TO TEST HIM FOR FRAGILE X?

25 A NO.

26 Q HOW ABOUT MICROCEPHALY? THERE WERE CONCERNS  
27 EXPRESSED ABOUT THE POSSIBILITY OF BABY RYAN HAVING  
28 MICROCEPHALY.

1 DID YOU EVER SHARE IN THESE CONCERNS DURING  
2 BABY RYAN'S TREATMENT?

3 A SO, JUST TO BE CLEAR, MICROCEPHALY MEANS YOUR  
4 HEAD IS SMALL. BUT IF YOUR BODY IS SMALL, YOUR HEAD IS  
5 SMALL TOO.

6 SO IT WOULD BE INCORRECT TO SAY A PERSON WHOSE  
7 BODY WAS PROPORTIONAL, HAD SMALL STATURE, SMALL WEIGHT,  
8 SMALL HEAD, HAD MICROCEPHALY.

9 MICROCEPHALY REALLY REFERS TO THE  
10 DISPROPORTIONATE SMALLNESS OF THE HEAD IN RELATION TO  
11 THE REST OF THE BODY.

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

14 THE COURT: THE OBJECTION'S OVERRULED. MOTION  
15 TO STRIKE DENIED.  
16 BY MR. GUTERRES:

17 Q DURING THE COURSE OF YOUR TREATMENT OF BABY  
18 RYAN AT THE FAILURE TO THRIVE CLINIC, DID IT EVER COME  
19 TO YOUR ATTENTION THAT IT WAS SUGGESTED THAT AN MRI  
20 BEEN DONE FOR BABY RYAN?

21 A I WAS TOLD THAT.

22 Q AND DID YOU AGREE OR DISAGREE WITH THAT  
23 SUGGESTION?

24 A I DISAGREED. I FELT ON THE BASIS OF HIS  
25 EXAMINATION, IT WASN'T WARRANTED. IF I CAN CONTINUE  
26 WITH THAT.

27 Q PLEASE.

28 A TO DO AN MRI IN AN INFANT REQUIRES SEDATION.

1 SEDATION ALWAYS CARRIES SOME RISK TO IT. AND BEFORE I  
2 WOULD REQUEST AN MRI, I WOULD CONSULT WITH OUR  
3 PEDIATRIC NEUROLOGIST TO SEE IF THEY FELT IT WAS  
4 INDICATED.

5 WE DID NOT FEEL -- THEY DID NOT FEEL THAT  
6 THERE WERE ANY NEUROLOGICAL SIGNS THAT WARRANTED A  
7 SEPARATE NEUROLOGICAL CONSULTATION OR AN MRI.

8 Q DID IT EVER COME TO YOUR ATTENTION THAT  
9 CERTAIN MEDICAL PROFESSIONALS WERE SUGGESTING A G-TUBE  
10 BE PERFORMED ON BABY RYAN?

11 A ACTUALLY, I DON'T KNOW IF I EVER HEARD THAT.  
12 WE ARE VERY SELECTIVE IN CHILDREN IN WHOM WE INSERT A  
13 G-TUBE. IT'S AN OPERATIVE PROCEDURE. VERY, VERY  
14 RARELY WOULD I RECOMMEND IT.

15 MR. PRAGER: OBJECTION, YOUR HONOR.  
16 NONRESPONSIVE AFTER "I DON'T KNOW." AND MOVE TO  
17 STRIKE.

18 THE COURT: OBJECTION'S OVERRULED.  
19 BY MR. GUTERRES:

20 Q AND WAS THERE ANYTHING, BASED ON YOUR  
21 INVOLVEMENT IN THE TREATMENT OF BABY RYAN, THAT WOULD  
22 SUGGEST THE NEED FOR A G-TUBE FOR BABY RYAN?

23 A NO.

24 Q IS FAILURE TO THRIVE A RULE-OUT DIAGNOSIS?

25 A NO, IF BY RULE-OUT, YOU MEAN YOU DO LOTS OF  
26 LABORATORY TESTS, AND IF NOTHING'S POSITIVE, THEN YOU  
27 SAY HMM, IT MUST BE FAILURE TO THRIVE OR ENVIRONMENTAL  
28 FAILURE TO THRIVE.

1                   STUDIES HAVE BEEN DONE FOR MANY YEARS THAT  
2 SHOW THAT IS NOT THE APPROPRIATE APPROACH.

3           Q       LET ME TURN TO YOUR ATTENTION TO EXHIBIT --  
4 FOR THE RECORD, I'M GOING TO ASK THAT YOU TAKE A LOOK  
5 AT EXHIBIT 52. LET ME GET IT FOR YOU. PLEASE TAKE A  
6 LOOK AT THE PAGES OF EXHIBIT 52.

7                   AND FOR THE RECORD, EXHIBIT 52 IS A  
8 JUNE 11, 2010, LETTER FROM DR. MELISSA EGGE TO THE  
9 DEPARTMENT OF CHILDREN AND FAMILY SERVICES. AND IT  
10 ALSO CONTAINS THREE ADDITIONAL PAGES. THE BATES RANGES  
11 ARE 1049 THROUGH 1053.

12                   HAVE YOU HAD A CHANCE TO TAKE A LOOK AT THAT  
13 EXHIBIT?

14           A       YES.

15           Q       HAVE YOU SEEN THIS DOCUMENT BEFORE?

16           A       I HAVE.

17           Q       AND MELISSA EGGE, COULD YOU TELL US WHAT HER  
18 ROLE WAS WITH THE FAILURE TO THRIVE CLINIC AT OR ABOUT  
19 THIS TIME FRAME?

20           A       AT THIS POINT IN TIME, MELISSA EGGE WAS A  
21 FELLOW IN A CHILD ABUSE PEDIATRICS TRAINING PROGRAM.

22           Q       AND DID YOU -- WHAT WAS HER ROLE IN CONNECTION  
23 WITH THE TREATMENT OF BABY RYAN?

24           A       SHE WOULD HAVE BEEN THE CLINICIAN, THE  
25 PROVIDER WHO SAW HIM.

26           Q       YOU WOULD HAVE BEEN -- AS THE DIRECTOR, WHAT  
27 WOULD HAVE BEEN YOUR ROLE IN CONNECTION WITH DR. EGGE  
28 IN THE TREATMENT OF BABY RYAN?

1           A       I WOULD HAVE BEEN INVOLVED. WE ARE A TEAM IN  
2 THE CLINIC. SO MYSELF AND ANY OTHER TRAINEE -- AND  
3 DR. EGGE WAS A TRAINEE.

4                    BUT AT THAT TIME, SHE WAS A BOARD CERTIFIED  
5 PEDIATRICIAN. SHE JUST WAS NOT YET BOARD CERTIFIED IN  
6 PEDIATRICS.

7                    WE HAVE A NUTRITIONIST ON THE TEAM. WE HAVE A  
8 CASE -- CASE MANAGER ON THE TEAM. AND SO AS A TEAM, WE  
9 INTERACT TOGETHER ABOUT THE PATIENTS, DECIDING ABOUT  
10 APPROPRIATE TREATMENT PLANS, LABORATORY STUDIES, AND SO  
11 FORTH.

12           Q       AND THIS WOULD HAVE BEEN TRUE FOR THE  
13 TREATMENT PLAN FOR BABY RYAN?

14           A       YES.

15           Q       AND COULD YOU EXPLAIN TO US THE ATTACHMENT  
16 ON -- IF YOU TAKE A LOOK AT THE TOP RIGHT OF THE PAGE  
17 ON THE THIRD PAGE, BATES LABELED 1051. AND COULD YOU  
18 TELL US WHAT THAT IS?

19           A       SO, IT'S A GROWTH CHART WITH TWO PARTS TO IT.  
20 THE TOP PART IS THE HEAD CIRCUMFERENCE, AND THE BOTTOM  
21 PART -- IT'S NOT LABELED -- IT'S THE WEIGHT FOR LENGTH.  
22 HARD TO SEE ON THE COPY.

23           Q       AND THEN IF YOU TURN TO THE NEXT PAGE, WHICH  
24 IS OF THAT EXHIBIT, BATES LABELED 1052. ARE YOU THERE?

25           A       I'M THERE.

26           Q       OKAY. WHAT IS THIS DOCUMENT?

27           A       SO, THIS IS ALSO A GROWTH CHART. AND THIS  
28 GROWTH CHART HAS THE UPPER PORTION AS THE LENGTH AND



1 THE LOWER PORTION AS THE WEIGHT. SOME OF THE BOTTOM IS  
2 MISSING, BUT IT LOOKS LIKE A GROWTH CHART FROM BIRTH  
3 TO 36 MONTHS OF AGE.

4 Q AND DOES THIS DOCUMENT -- DOES THE GROWTH  
5 CHART DOCUMENT VARIOUS STATES WHEN BABY RYAN WOULD HAVE  
6 BEEN WEIGHED OR MEASURED FOR PURPOSES OF THE CHART?

7 A YES. THERE'S A TABLE IN THE MIDDLE OF THE  
8 CHART THAT HAS A DATE, AN AGE, A WEIGHT, A LENGTH, AND  
9 A HEAD CIRCUMFERENCE.

10 Q AND BASED ON THE INFORMATION THAT'S LISTED ON  
11 THE GROWTH CHART, IS THAT INDICATIVE OF -- WHAT KIND OF  
12 INFORMATION DOES THAT GIVE YOU RELATIVE TO BABY RYAN?

13 MR. PRAGER: OBJECTION: HEARSAY, YOUR HONOR.

14 THE COURT: OVERRULED.

15 THE WITNESS: THE INFORMATION THAT IT GIVES  
16 YOU ARE THE MEASUREMENTS AT THOSE POINTS IN TIME. SO  
17 THE NUMERICAL VALUE WOULD BE IN THE TABLE, AND THEN THE  
18 PATTERN OF GROWTH WOULD BE THE WAY IT'S PLOTTED OUT ON  
19 THE CURVE ITSELF.

20 BY MR. GUTERRES:

21 Q DO YOU HAVE A MEMORY, DR. BERKOWITZ, OF HOW  
22 BABY RYAN -- HOW HIS -- WITHDRAWN.

23 DO YOU HAVE A MEMORY OF HOW BABY RYAN  
24 PROGRESSED DURING THE TIME THAT HE WAS BEING TREATED BY  
25 THE FAILURE TO THRIVE CLINIC?

26 A I DO.

27 Q AND WHAT DO YOU REMEMBER ABOUT HIS PROGRESSION  
28 DURING THE TIME THAT HE WAS BEING TREATED BY THE

1 FAILURE TO THRIVE CLINIC?

2 A SO, TWO COMPONENTS TO IT. ONE WAS HIS WEIGHT.  
3 HIS LENGTH CONTINUED TO PROGRESS AT THE APPROPRIATE  
4 RATE. HEAD CIRCUMFERENCE, TOO.

5 AND HIS WEIGHT KIND OF FLUCTUATED UP AND DOWN  
6 A BIT, THOUGH, OVER THE LONG RUN, IT WAS POSITIVE. HE  
7 DIDN'T LOSE WEIGHT. HE DIDN'T STAY FLAT. HE DID  
8 INCREASE.

9 AND THE SECOND THING WAS THAT HIS DEVELOPMENT  
10 ALSO CONTINUED TO IMPROVE. IF I'M REMEMBERING  
11 CORRECTLY, HE WASN'T WALKING WHEN WE FIRST SAW HIM.  
12 AND THEN HE EVENTUALLY WAS ABLE TO WALK.

13 Q AND IN THE INTERIM, WAS THERE ANY ISSUES THAT  
14 CAME UP THAT IMPACTED BABY RYAN'S WEIGHT?

15 MR. PRAGER: OBJECTION: VAGUE AS TO TIME,  
16 YOUR HONOR.

17 THE COURT: SUSTAINED.

18 BY MR. GUTERRES:

19 Q IN THE INTERIM BETWEEN THE TIME THAT BABY RYAN  
20 CAME INTO THE FAILURE TO THRIVE CLINIC IN EARLY  
21 NOVEMBER UNTIL HE STOPPED TREATING WITH THE FAILURE TO  
22 THRIVE CLINIC, DO YOU RECALL ANY ISSUES WITH BABY RYAN  
23 THAT MAY HAVE HAD AN IMPACT ON HIS WEIGHT GAIN?

24 A I THINK THERE WERE SEVERAL. ONE WAS THERE WAS  
25 A CHANGE IN HIS ENVIRONMENT. AND HE WAS PLACED WITH  
26 HIS BIOLOGICAL DAD.

27 HE ALSO WAS RECEIVING THERAPY, OCCUPATIONAL  
28 THERAPY, AS WELL AS PHYSICAL THERAPY. AND THEN I

1 BELIEVE HE ALSO WAS RECEIVING SPEECH THERAPY OVER THIS  
2 TIME.

3 Q AND IF I CAN DIRECT YOUR ATTENTION TO THE  
4 SECOND PARAGRAPH OF THE FIRST -- OF THE LETTER, PARDON  
5 ME -- THAT WOULD BE BATES 1059 OF --

6 A IS IT 1049?

7 Q YES. AT THE TOP OF THE SECOND PARAGRAPH.

8 A I GOT IT.

9 Q OKAY. MY APOLOGIES.

10 DO YOU REMEMBER IF BABY RYAN ENDED UP HAVING  
11 ANY ILLNESSES THAT IMPACTED HIS DEVELOPMENT?

12 MR. PRAGER: OBJECTION: VAGUE AS TO TIME,  
13 YOUR HONOR.

14 THE COURT: SUSTAINED.

15 MR. GUTERRES: I'LL WITHDRAW IT. LET ME ASK  
16 ONE MORE TIME.

17 BY MR. GUTERRES:

18 Q DO YOU RECALL ANY ILLNESSES THAT BABY RYAN MAY  
19 HAVE GOTTEN BETWEEN THE TIME THAT HE CAME TO SEE THE  
20 FAILURE TO THRIVE CLINIC IN EARLY NOVEMBER AND THE TIME  
21 THAT HE STOPPED TREATMENT?

22 A I DO.

23 Q AND WHAT DO YOU REMEMBER IN THAT REGARD?

24 A THAT HE HAD SOME VIRAL RESPIRATORY ILLNESSES,  
25 AND AS NOTED IN THE LETTER, HE HAD DOCUMENTED  
26 INFLUENZA A.

27 MR. PRAGER: OBJECTION, YOUR HONOR. IMPROPER  
28 REFRESHMENT OF THIS WITNESS.

1 THE COURT: OVERRULED.

2 BY MR. GUTERRES:

3 Q NOW, DO YOU REMEMBER WHAT TYPES OF TESTS WERE  
4 DONE ON BABY RYAN WHILE HE WAS BEING SEEN BY THE  
5 FAILURE TO THRIVE CLINIC?

6 A I REMEMBER SOME OF THEM.

7 Q AND WHAT TESTS DO YOU REMEMBER?

8 A HE HAD THYROID STUDIES DONE. HE HAD A CELIAC  
9 PANEL. THAT'S TO LOOK FOR CELIAC DISEASE. I BELIEVE  
10 HE HAD ALSO HAD IMMUNOGLOBULINS DONE.

11 AND WE USUALLY SEE ROUTINE TESTS LIKE A  
12 COMPLETE BLOOD COUNT. THOSE ARE THE ONES THAT I CAN  
13 RECALL OFF THE TOP OF MY HEAD.

14 Q IF YOU LOOK AT THE BOTTOM OF THE PAGE,  
15 EXHIBIT 52, THE LAST PARAGRAPH, THEN ON TO THE NEXT  
16 PAGE OF EXHIBIT 52, 1050, COULD YOU REVIEW THAT --  
17 REVIEW IT THEN LET ME KNOW ONCE YOU'RE DONE REVIEWING.

18 A I'M DONE.

19 Q YOU'RE A FAST READER.

20 DOES THAT REFRESH YOUR RECOLLECTION OF ANY  
21 OTHER TESTS THAT WERE DONE TO -- WITH BABY RYAN?

22 A YES.

23 Q AND WHAT -- HOW HAS YOUR MEMORY BEEN  
24 REFRESHED?

25 A IN THAT IT ENUMERATES IN GREATER DETAIL THE  
26 SPECIFIC LIKE NUTRIENTS THAT WERE EVALUATED IN HIS  
27 SYSTEM.

28 Q ANY OTHER TESTING THAT WAS DONE OTHER THAN

1 WHAT YOU'VE ALREADY MENTIONED?

2 A THOSE WERE BLOOD LABORATORY STUDIES THAT WERE  
3 DONE.

4 Q AND DO YOU TAKE ISSUE WITH ANYTHING THAT  
5 DR. EGGE PUT FORTH IN THIS LETTER TO THE DEPARTMENT OF  
6 CHILDREN AND FAMILY SERVICES AS OF THE DATE OF -- THAT  
7 THE LETTER BEARS, JUNE 11, 2010?

8 MR. PRAGER: OBJECTION: VAGUE, CALLS FOR  
9 SPECULATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: NO. I DON'T TAKE ANY OBJECTION  
12 TO ANYTHING SHE'S WRITTEN IN THAT LETTER.

13 MR. GUTERRES: THANK YOU, DOCTOR. I THINK I'M  
14 DONE.

15

16

CROSS-EXAMINATION

17 BY MR. PRAGER:

18 Q DOCTOR, WE MET BEFORE. DIDN'T WE?

19 A YES.

20 Q WE MET AT YOUR DEPOSITION. DIDN'T WE?

21 A I THINK SO.

22 Q IN FACT, YOU HAD TWO DEPOSITIONS THAT DAY,  
23 DIDN'T YOU?

24 A YOU MEAN MORNING AND AFTERNOON?

25 Q YES.

26 A YEAH.

27 Q YOU TESTIFIED ABOUT YOUR PERSONAL KNOWLEDGE AT  
28 THE CLINIC WITH BABY RYAN. CORRECT?

1           A     YES.

2           Q     AND YOU TESTIFIED ABOUT YOUR RESPONSIBILITY AS  
3     THE DIRECTOR OF THE FAILURE TO THRIVE CLINIC FOR UCLA.  
4     CORRECT?

5           A     HARBOR, YES.

6           Q     THANK YOU. HARBOR-UCLA. AND REFRESH US, I'M  
7     SORRY, TELL US WHO PAYS FOR THE HARBOR-UCLA'S  
8     OPERATION?

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

11          THE COURT: ALL RIGHT. I HAVE TO SEE COUNSEL.  
12          (THE FOLLOWING PROCEEDINGS WERE HELD AT  
13          THE SIDEBAR OUTSIDE THE PRESENCE OF THE  
14          JURY)

15          THE COURT: WE'RE AT SIDEBAR. I'M ASSUMING  
16    YOU'RE ASKING THIS QUESTION TO ESTABLISH A CONDITION  
17    NECESSARY TO BE ABLE TO PROVE CERTAIN OF THE CLAIMS?

18          MR. PRAGER: I THINK IT'S BASIS, YOUR HONOR,  
19    BECAUSE SHE'S EMPLOYED BY THE DEFENDANT COUNTY. OR IT  
20    OPERATES THE -- THE COUNTY OPERATES THE HOSPITAL.

21          THE COURT: OH. ALL RIGHT.

22          MR. PRAGER: AND YOUR HONOR, I'M NOT GOING TO  
23    ASK HOW MUCH SHE EARNS --

24          THE COURT: OKAY. I UNDERSTAND. YOU JUST  
25    WANT TO ESTABLISH THAT THE CLINIC IS FUNDED BY THE  
26    COUNTY?

27          MR. PRAGER: YES, YOUR HONOR. AND THAT SHE  
28    RECEIVES A SALARY FROM THE COUNTY AS WELL.

1 THE COURT: ALL RIGHT. OBJECTION'S OVERRULED.  
2 IF THAT'S -- ALL YOU -- WHY DON'T YOU JUST ASK THE  
3 QUESTION.

4 WHEN YOU'RE CROSS-EXAMINING, YOU CAN ASK A  
5 LEADING QUESTION, SO WHAT IS IT YOU'RE ASKING HER TO  
6 RESPOND TO? BECAUSE FRANKLY, I HAD NO IDEA WHAT YOU  
7 WERE ASKING WHEN YOU WERE ASKING THAT QUESTION.

8 I SUSPECT SHE MIGHT HAVE THE SAME PROBLEM. SO  
9 WHY DON'T YOU JUST ASK, WERE YOU AN EMPLOYEE OF THE  
10 COUNTY AT THAT TIME, AND WAS THE FAILURE TO THRIVE  
11 CLINIC FUNDED BY THE COUNTY.

12 MR. PRAGER: VERY GOOD, YOUR HONOR.

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

15 BY MR. PRAGER:

16 Q DOCTOR, THE FAILURE TO THRIVE CLINIC IS PAID  
17 IN PART BY THE COUNTY OF LOS ANGELES. CORRECT?

18 A DO YOU MEAN THE SALARIES OF THE PEOPLE WHO  
19 WORK THERE?

20 Q LET ME WITHDRAW THAT AND REPHRASE THE  
21 QUESTION. THANK YOU.

22 IT'S TRUE THAT THE COUNTY OF LOS ANGELES  
23 PROVIDES FINANCIAL SUPPORT TO THE HARBOR-UCLA FAILURE  
24 TO THRIVE CLINIC. CORRECT?

25 A NOT THE WAY YOU STATE IT. IT PAYS SALARIES OF  
26 PEOPLE WHO WORK THIS THE CLINIC, SOME OF THE PEOPLE.  
27 AND THE BUILDING IS A COUNTY BUILDING. BUT WE DON'T  
28 GET MONEY FROM THE COUNTY THAT'S DESIGNATED FOR FAILURE

1 TO THRIVE --

2 MR. PRAGER: MOVE TO STRIKE, YOUR HONOR.

3 SORRY. MOVE TO STRIKE AS NONRESPONSIVE, YOUR HONOR.

4 THE COURT: THE MOTION IS STRIKE -- THE  
5 UNDERLYING OBJECTION IS OVERRULED. AND THE MOTION TO  
6 STRIKE IS DENIED.

7 AND PLEASE DON'T INTERRUPT THE WITNESS WHEN --  
8 THEY HAVE TO BE ABLE TO GIVE THEIR ANSWER. BUT JUST GO  
9 AHEAD.

10 MR. PRAGER: THANK YOU, YOUR HONOR. I THOUGHT  
11 SHE WAS FINISHED. I APOLOGIZE.

12 BY MR. PRAGER:

13 Q DOCTOR, DO YOU RECEIVE A SALARY FROM THE  
14 COUNTY OF LOS ANGELES?

15 A I DO.

16 Q OKAY. AND APPROXIMATELY AT THIS TIME -- WELL,  
17 STRIKE THAT.

18 IN 2009, HOW MANY STAFF PERSONS, TO YOUR  
19 KNOWLEDGE, RECEIVED A SALARY FROM THE COUNTY OF UCLA --  
20 I'M SORRY -- COUNTY OF UCLA -- I'M SORRY -- COUNTY OF  
21 LOS ANGELES?

22 MR. GUTERRES: OBJECTION: OVERBROAD.

23 MR. PRAGER: I'LL WITHDRAW THAT AND RESTATE  
24 IT.

25 BY MR. PRAGER:

26 Q SO, IN 2009, TO YOUR KNOWLEDGE, HOW MANY  
27 EMPLOYEES RECEIVED A SALARY FROM THE COUNTY OF LOS  
28 ANGELES?



1 MR. GUTERRES: OBJECTION: OVERBROAD AND VAGUE  
2 AND RELEVANCE.

3 THE COURT: IN THE FAILURE TO THRIVE CLINIC?

4 MR. PRAGER: YES.

5 THE COURT: ALL RIGHT. SO LIMITED, THE  
6 OBJECTION IS OVERRULED. HE WANTS TO KNOW THE COUNTY IN  
7 THE FAILURE TO THRIVE CLINIC --

8 THE WITNESS: I THOUGHT YOU MEANT THE WHOLE  
9 COUNTY. SO OUR FAILURE TO THRIVE TEAM -- DO YOU MEAN  
10 THE NURSES IN THE CLINIC TOO?

11 BY MR. PRAGER:

12 Q EVERYBODY WHO GETS A PAYCHECK FROM THE COUNTY  
13 OF LOS ANGELES, TO YOUR KNOWLEDGE, AND JUST A NUMBER,  
14 IF YOU CAN ESTIMATE IT FOR US?

15 A IN THE FAILURE TO THRIVE CLINIC?

16 Q YES, MA'AM.

17 A OKAY. SO IF THEY'RE RESIDENTS IN THE CLINIC,  
18 SO LET'S SAY 1 TO 2 RESIDENTS, MYSELF AND THE  
19 RESIDENTS.

20 DR. EGGE'S SALARY AT THAT TIME WAS NOT FROM  
21 THE COUNTY, AND OUR CASE MANAGER IS NOT FROM THE  
22 COUNTY, AND OUR NUTRITIONIST IS NOT FROM THE COUNTY.

23 Q DOCTOR, TO BE CLEAR, IN 2009 YOU WERE AN  
24 EMPLOYEE OF THE COUNTY. IS THAT CORRECT?

25 A YES.

26 Q AND YOU UNDERSTAND THE COUNTY IS A PARTY IN  
27 THIS CASE. CORRECT?

28 A I UNDERSTAND THE DEPARTMENT OF --

1 THE COURT: THAT'S NOT FOR HER TO ANSWER.

2 BY MR. PRAGER:

3 Q OKAY. DOCTOR, NOW, IN -- DO YOU RECALL WHEN  
4 YOU FIRST ACTUALLY SAW BABY RYAN?

5 A I DO.

6 Q WHAT WAS THE DATE?

7 A THAT I CAN ONLY RECALL FROM IT HAVING BEEN  
8 STATED, BUT I THINK IT WAS NOVEMBER OF 2009.

9 Q STATED BY WHOM?

10 A IN THE RECORDS.

11 Q OKAY. DO YOU HAVE AN INDEPENDENT  
12 RECOLLECTION, AS YOU SIT HERE NOW, OF WHEN YOU FIRST  
13 ENCOUNTERED BABY RYAN?

14 A I CAN REMEMBER THE DAY, AND I CAN REMEMBER THE  
15 CLINIC, AND I CAN REMEMBER HIS MOM.

16 Q NOW, WHEN YOU EVALUATED BABY RYAN, YOU WERE  
17 EVALUATING FOR A NUMBER OF VARIOUS MEDICAL  
18 POSSIBILITIES FOR THE CHILD'S FAILURE TO THRIVE.  
19 CORRECT?

20 A YES.

21 Q AS PART OF YOUR ASSESSMENT OF THE CHILD, DID  
22 YOU ALSO ASSESS HIS MOTHER?

23 A ONLY IN A LIMITED CONTEXT.

24 Q WOULD THAT LIMITED CONTEXT BE THE PRESENCE OR  
25 ABSENCE OF MUNCHAUSEN SYNDROME BY PROXY?

26 A THAT'S A TOTALLY UNRELATED ISSUE.

27 Q RIGHT. IT'S TRUE, MA'AM, THAT MS. DUVAL'S  
28 SITUATION HAS NO BEARING TO MUNCHAUSEN SYNDROME BY

1 PROXY AS PART OF THIS CASE. CORRECT?

2 MR. GUTERRES: OBJECTION, YOUR HONOR. OUTSIDE  
3 THE SCOPE.

4 THE COURT: SUSTAINED.

5 BY MR. PRAGER:

6 Q DID YOU EVER CONSIDER THE PRESENTATION OF  
7 MS. DUVAL IN THE CLINIC WITH HER SON BABY RYAN AS  
8 PRESENTING WITH A MUNCHAUSEN SYNDROME BY PROXY  
9 SITUATION?

10 MR. GUTERRES: OBJECTION, YOUR HONOR. OUTSIDE  
11 THE SCOPE.

12 THE COURT: OVERRULED.

13 THE WITNESS: NO.

14 BY MR. PRAGER:

15 Q AND IT'S TRUE THAT IN YOUR PRACTICE, YOU'VE  
16 ESTIMATED THAT YOU'VE EVALUATED -- YOUR PATIENTS ARE  
17 MINORS. CORRECT?

18 A I'M SORRY. I COULDN'T HEAR.

19 Q YOUR CLIENTS OR PATIENTS ARE MINORS, MOST OF  
20 THE TIME. CORRECT?

21 A YES.

22 Q SO WHEN YOU EVALUATE ONE OF YOUR PATIENTS, YOU  
23 ALSO ARE INTERACTING WITH THEIR FAMILY. CORRECT?

24 A INTERACTING WITH THEM, CORRECT.

25 Q AND YOU YOU'VE INTERACTED WITH OVER 150,000  
26 FAMILIES DURING YOUR PRACTICE. ISN'T THAT CORRECT?

27 MR. GUTERRES: OBJECTION: RELEVANCE.

28 THE COURT: OVERRULED.

1 THE WITNESS: AT LEAST THAT MANY.

2 BY MR. PRAGER:

3 Q AND WHEN YOU TOOK YOUR DEPOSITION, IT WAS YOUR  
4 BELIEF THAT YOU'D ONLY SEEN APPROXIMATELY TWO CASES OF  
5 MUNCHAUSEN BY PROXY. IS THAT CORRECT?

6 A IT IS.

7 MR. GUTERRES: OBJECTION: RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. PRAGER:

10 Q NOW, WHEN YOU FIRST MET BABY RYAN, IT'S TRUE  
11 THAT YOUR PRINCIPAL CONCERN WAS BABY RYAN'S SAFETY AND  
12 WELL-BEING. CORRECT?

13 A I'M SORRY? I MISSED A LITTLE BIT OF WHAT YOU  
14 SAID.

15 Q WHEN YOU FIRST MET BABY RYAN, YOUR PRINCIPAL  
16 CONCERN WAS BABY RYAN'S SAFETY AND WELL-BEING.  
17 CORRECT?

18 A SAFETY, THAT'S WHAT I MISSED. YES.

19 Q OKAY. SO WHEN YOU EVALUATED BABY RYAN AT THE  
20 FIRST VISIT, YOU WERE LOOKING TO ENSURE THAT HE WAS  
21 SAFE. CORRECT?

22 A ACTUALLY, I MADE THE ASSUMPTION THE CHILD WAS  
23 SAFE, AND WAS LOOKING TO SEE WHAT COULD ACCOUNT -- THE  
24 FINDINGS THAT HE'S BEING SEEN FOR.

25 Q WELL, IT'S TRUE THAT SOME CHILDREN COME TO  
26 YOUR CLINIC AND THEY'RE SO ILL THAT YOU BECOME  
27 CONCERNED, THEY SHALL NOT LEAVE YOUR CLINIC. CORRECT?

28 MR. GUTERRES: OBJECTION: RELEVANCE, OUTSIDE

1 THE SCOPE.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES, THERE'S SOME CHILDREN WHO  
4 ARE SO SICK THAT THEY CAN'T LEAVE THE CLINIC.

5 BY MR. PRAGER:

6 Q IT'S TRUE THAT FOR BABY RYAN, YOU NEVER FEARED  
7 FOR THE IMMINENT WELL-BEING OF HIM DURING YOUR FIRST  
8 VISIT. CORRECT?

9 A THAT'S CORRECT.

10 Q AND IT'S TRUE THAT DURING YOUR FIRST  
11 EVALUATION OF BABY RYAN, YOU NEVER FEARED THAT HE WOULD  
12 DIE WITHIN 24 HOURS. IS THAT CORRECT?

13 A THAT IS CORRECT.

14 Q AND IT'S TRUE THAT THERE WAS NO MEDICAL  
15 EVIDENCE TO SUPPORT CONCERN THAT BABY RYAN WOULD SUFFER  
16 DEATH WITHIN THE NEXT 24 HOURS. IS THAT CORRECT?

17 A THAT IS CORRECT.

18 Q AND THERE WAS NO EVIDENCE -- STRIKE THAT.

19 THERE WAS NO MEDICAL EVIDENCE TO SUGGEST THAT  
20 BABY RYAN WAS GOING TO SUFFER IMMINENT HARM IF HE WERE  
21 ALLOWED TO LEAVE YOUR CLINIC IN THE NEXT 24 HOURS.  
22 CORRECT?

23 MR. GUTERRES: OBJECTION: SPECULATION,  
24 FOUNDATION.

25 THE COURT: OVERRULED.

26 THE WITNESS: THAT'S CORRECT.

27 BY MR. PRAGER:

28 Q IT'S TRUE THAT AT THE TIME YOU SAW BABY RYAN,

1 HE WAS NOT MALNOURISHED. IS THAT CORRECT?

2 A THAT'S NOT CORRECT.

3 Q OKAY. AND IT'S TRUE THAT YOU ALLOWED HIM TO  
4 LEAVE THE CLINIC THE DAY THAT YOU FIRST ENCOUNTERED  
5 HIM?

6 A THAT'S CORRECT.

7 Q NOW, YOU'VE TALKED ABOUT BABY RYAN'S FAILURE  
8 TO THRIVE CONDITION. DO YOU RECALL THAT?

9 A YES.

10 Q AND YOU TALKED ABOUT THE CHANGE IN TERMS AS IT  
11 EVOLVED OVER THE YEARS. CORRECT?

12 A YES.

13 Q NOW, ISN'T IT TRUE THAT WHEN BABY RYAN WAS  
14 FIRST DIAGNOSED BY YOU, THERE WAS A FAILURE TO THRIVE  
15 CONDITION, IN PARENTHESIS, ENVIRONMENTAL, CLOSED  
16 PARENTHESIS?

17 A YES.

18 Q AND THE FAILURE TO THRIVE WAS IN FACT A  
19 MULTIFACTORIAL FAILURE TO THRIVE. CORRECT?

20 A CORRECT.

21 Q THE FACTORS THAT YOU HAD TO CONSIDER AS PART  
22 OF THE BABY RYAN'S PRESENTATION INCLUDED ORAL  
23 AVERSIONS. CORRECT?

24 A YES.

25 MR. GUTERRES: OBJECTION: VAGUE AS TO TIME.

26 THE COURT: OVERRULED. YOU'RE STILL TALKING  
27 ABOUT THE FIRST VISIT?

28 MR. PRAGER: YEAH. I SAID AT PRESENTATION.

1 THE WITNESS: I BELIEVE SO.

2 BY MR. PRAGER:

3 Q WHAT IS AN ORAL AVERSION?

4 A ORAL AVERSION IS WHEN A CHILD USUALLY DOES NOT  
5 LIKE ANY TEXTURE THAT COMES INTO THEIR MOUTH.

6 THEY'LL TAKE A BOTTLE OR NURSE, BUT OTHERWISE  
7 IF THERE'S ANY FOOD, THEY'LL TEND TO PUSH THE FOOD OUT  
8 AND NOT WANT TO TAKE ANYTHING, AS I SAY, THAT HAS  
9 TEXTURE OR SOLID, OR ANYTHING OTHER THAN THE BREAST OR  
10 A BOTTLE.

11 Q IS IT TRUE THAT ORAL AVERSION MAY ALSO  
12 IMPLICATE BREASTFEEDING AS WELL?

13 MR. GUTERRES: VAGUE AND AMBIGUOUS, OBJECTION.

14 THE COURT: OVERRULED.

15 THE WITNESS: I'M NOT SURE I UNDERSTAND THE  
16 QUESTION.

17 THE COURT: SUSTAINED.

18 BY MR. PRAGER:

19 Q IF A CHILD HAS AN ORAL AVERSION, COULD THE  
20 ORAL AVERSION IMPACT THAT CHILD'S ABILITY TO  
21 BREASTFEED?

22 A THAT WOULD BE DISTINCTLY UNUSUAL, AND --  
23 BECAUSE THAT'S WHAT CHILDREN WITH ORAL AVERSIONS  
24 USUALLY DO. IT'S OKAY UNTIL THERE'S A NEED TO  
25 INTRODUCE OTHER FOODS.

26 SO THAT'S -- THE TYPICAL HISTORY OF AN ORAL  
27 AVERSION. IF IT HAD STARTED FROM BIRTH, IT WOULD HAVE  
28 BEEN DEFINITE EFFECTS NOTED EARLY ON IF YOU'RE NOT ABLE

1 TO NURSE.

2 Q SUCH AS REQUIRING A SYRINGE TO FEED A BABY  
3 SHORTLY AFTER BIRTH. CORRECT?

4 MR. GUTERRES: OBJECTION: SPECULATION, NO  
5 FOUNDATION. INCOMPLETE HYPOTHETICAL.

6 THE COURT: OVERRULED. DO YOU UNDERSTAND WHAT  
7 HE'S ASKING?

8 THE WITNESS: HE'S ASKING ME, IF SOMEONE  
9 COULDN'T NURSE, WOULD YOU FEED THEM WITH A SYRINGE.

10 MR. PRAGER: I'LL REPHRASE.

11 THE COURT: LET HIM REPHRASE THE QUESTION.  
12 BY MR. PRAGER:

13 Q DOCTOR, IT'S TRUE THAT PARENTS ARE ENCOURAGED  
14 TO OFFER BREAST MILK THROUGH A SMALL PLASTIC CATHETER  
15 AT THE END OF A SYRINGE IN THEIR MOUTH. ISN'T THAT  
16 TRUE?

17 A I'M NOT FAMILIAR WITH DOING THAT.

18 Q OKAY. HAVE YOU EVER HEARD THE TERM, "SLOW  
19 FEEDER"?

20 A YES.

21 Q WHAT DOES SLOW FEEDER MEAN?

22 A THAT SOMEBODY IS SLOW WHEN THEY EAT.

23 Q AND WHAT'S THE SIGNIFICANCE OF BEING A SLOW  
24 FEEDER IN RELATION TO FAILURE TO THRIVE PATIENTS?

25 A MOM NEEDS TO HAVE A LOT OF PATIENCE TO GET THE  
26 FOOD IN.

27 Q AND THAT MEANS BABY HAS TO BE GIVEN A LOT OF  
28 EFFORT TO GET THE FOOD IN TOO. CORRECT?



1           A     NO.  A SLOW FEEDER IS A SLOW FEEDER.  A BABY  
2 WHO HAS OTHER DIFFICULTIES THAT INVOLVE EFFORT.  YOU  
3 TALK ABOUT A BABY WHO HAD NOT JUST SLOWNESS, BUT UNABLE  
4 TO LATCH ON, WEAK SUCK, POOR SWALLOW, DISCOORDINATED  
5 SWALLOW.

6                   THERE WOULD BE OTHER TERMS THAT WE USE.  SO  
7 SLOW FEEDER JUST MEANS BABY'S SLOW.

8           Q     AND FOR THE FAILURE TO LATCH ON, YOU JUST  
9 MENTIONED, WOULD YOUR RECOURSE TO BE RECOMMEND A  
10 LACTATION CONSULTANT?

11          A     YES.

12          Q     DO YOU KNOW IF MS. DUVAL DID, IN FACT, HIRE A  
13 LACTATION CONSULTANT?

14          A     I'M NOT SURE.

15          Q     YOU DON'T KNOW?

16          A     I DON'T KNOW.

17          Q     AND TODAY, WHEN YOU ARRIVED TO COURT, DID YOU  
18 MEET MR. GUTERRES?

19          A     YES.

20          Q     DID YOU BOTH SIT OUT IN THE HALLWAY?

21          A     YES.

22          Q     DID YOU BOTH REVIEW DOCUMENTS TOGETHER?

23          A     NO.

24          Q     AND HOW LONG WAS THAT MEETING TODAY BEFORE YOU  
25 TESTIFIED?

26          A     MAYBE 10 MINUTES.

27          Q     AND BEFORE -- WHEN WAS THE LAST TIME YOU  
28 ACTUALLY REVIEWED ANY MEDICAL RECORDS FOR BABY RYAN

1 BEFORE BEING SHOWN RECORDS HERE TODAY?

2 A I THINK WHEN I MET WITH YOU, WHENEVER THAT  
3 WAS.

4 Q SO THAT WOULD HAVE BEEN FEBRUARY 11, 2015.  
5 DOES THAT SOUND ABOUT RIGHT?

6 A IT SEEMS LONGER AGO THAN THAT, BUT THAT COULD  
7 BE RIGHT. 2015.

8 Q AND IT'S TRUE THAT BABY RYAN HAD ORAL  
9 AVERSIONS WHEN YOU FIRST MET HIM. CORRECT?

10 A YES.

11 Q WOULD YOU DESCRIBE BABY RYAN AS A SLOW FEEDER  
12 WHEN YOU FIRST MET HIM?

13 A THAT WOULD BE PART OF THE ORAL AVERSIONS.

14 Q WOULD YOU DESCRIBE HIM AS A POOR CHEWER WHEN  
15 YOU FIRST MET HIM?

16 A YES.

17 Q NOW, ISN'T IT TRUE THAT, IN THE EVOLUTION OF  
18 FAILURE TO THRIVE, FAILURE TO THRIVE IS NOW CONSIDERED  
19 A SYMPTOM RATHER THAN A DIAGNOSIS?

20 A ABSOLUTELY. IT'S THE TITLE OF THE DOCS, I  
21 GUESS.

22 Q OKAY. AND ISN'T IT TRUE THAT BABY RYAN IS  
23 DEVELOPMENTALLY DELAYED?

24 A YES.

25 Q WHEN DID YOU LAST HAVE AN OPPORTUNITY TO SEE  
26 BABY RYAN?

27 A I THINK IN 2010.

28 Q DID YOU EVER ASK MR. GUTERRES TO TRY AND

1 ARRANGE A MEETING WITH BABY RYAN BEFORE COMING HERE  
2 TODAY?

3 MR. GUTERRES: OBJECTION: ATTORNEY-CLIENT.

4 MR. PRAGER: I'LL WITHDRAW IT AND REPHRASE,  
5 YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 BY MR. PRAGER:

8 Q DOCTOR, YOU WANT TO GIVE YOUR BEST TESTIMONY  
9 TODAY. RIGHT?

10 A ALWAYS.

11 Q WOULD IT ENABLE YOU TO TESTIFY HERE TODAY TO  
12 HAVE SEEN BABY RYAN TODAY BEFORE YOU TESTIFIED?

13 A NO.

14 Q OKAY. BECAUSE YOU'RE TESTIFYING ABOUT THE  
15 EVENTS CONTEMPORANEOUS WITH HIS APPEARANCE AT YOUR  
16 CLINIC. CORRECT?

17 A YES.

18 Q SO YOU DON'T KNOW HOW BABY RYAN IS DOING RIGHT  
19 NOW?

20 A NO. I'D LOVE TO SEE HIM.

21 Q WHY WOULD YOU LOVE TO SEE HIM?

22 A I LIKE TO KNOW HOW THE CHILDREN I'VE CARED FOR  
23 HAVE DONE.

24 Q IS THERE ANY REASON WHY YOU DID NOT MAKE A  
25 REQUEST TO MEET WITH BABY RYAN BEFORE COMING HERE  
26 TODAY, IF YOU FAILED TO DO SO?

27 MR. GUTERRES: OBJECTION: RELEVANCE.

28 THE COURT: SUSTAINED.

1 BY MR. PRAGER:

2 Q WHEN BABY RYAN LEFT YOUR CARE, DO YOU KNOW  
3 WHAT PERCENTILE IN TERMS OF GROWTH HE WAS IN?

4 A ABOUT THE FIRST PERCENTILE.

5 Q WHAT IT SURPRISE YOU TO LEARN THAT BABY RYAN  
6 IS IN THE FIRST PERCENTILE TODAY?

7 A NO.

8 Q ISN'T IT TRUE THAT NOTHING IN MOM'S CARE WHILE  
9 SHE HAD CUSTODY OF BABY RYAN WOULD CAUSE LONG-TERM  
10 DELAYS IN BABY RYAN?

11 A I DON'T THINK I COULD ANSWER THAT QUESTION.

12 Q YOU DON'T RECALL?

13 A I'M NOT SAYING I DON'T RECALL. I DON'T THINK  
14 I CAN ANSWER THAT QUESTION IN TERMS OF LONG-TERM  
15 EFFECTS.

16 MR. PRAGER: YOUR HONOR, I'D LIKE TO READ FROM  
17 THE WITNESS'S DEPOSITION PAGE 18 -- PAGE 135 LINES 18  
18 THROUGH 25.

19 THE COURT: I DON'T HAVE THE DEPOSITION.

20 MR. GUTERRES: YOUR HONOR, IF I COULD HAVE THE  
21 QUESTION REREAD BEFORE --

22 THE COURT: WELL, THERE WAS NO QUESTION  
23 PENDING AFTER SHE GAVE HER LAST ANSWER. HE THEN SAID  
24 HE WANTED TO READ FROM THE DEPOSITION.

25 MR. GUTERRES: I'M SORRY, IF I COULD HAVE THE  
26 LAST QUESTION AND ANSWER AND THEN --

27 THE COURT: SURE. BEFORE THE REQUEST TO READ  
28 THE LAST QUESTION AND ANSWER.

1 (THE RECORD WAS READ AS REQUESTED)

2 MR. GUTERRES: I'M SORRY. THE ONE BEFORE  
3 THAT.

4 (THE RECORD WAS READ AS REQUESTED)

5 MR. GUTERRES: NO OBJECTION, YOUR HONOR.

6 THE COURT: GO AHEAD.

7 MR. PRAGER: IT'S TRUE --

8 THE COURT: BEGIN, "QUESTION," PLEASE.

9 MR. PRAGER: QUESTION: IT'S TRUE THAT NOTHING  
10 IN YOUR EVALUATION OF MS. DUVAL'S SON WOULD SUGGEST TO  
11 YOU HE WOULD HAVE LONG-TERM LASTING DEVELOPMENTAL  
12 DELAYS BECAUSE OF HIS MOTHER'S CARE. CORRECT?

13 AND ANSWER: RIGHT. I THINK THE ETIOLOGY OF  
14 HIS DEVELOPMENTAL DELAY WAS NEVER FIRMLY ESTABLISHED.  
15 BY MR. PRAGER:

16 Q HAVING ORAL AVERSIONS IN AND OF ITSELF IS NOT  
17 FAILURE TO THRIVE. CORRECT?

18 A FAILURE TO THRIVE IS A SYMPTOM, NOT A  
19 DIAGNOSIS.

20 Q SO MY STATEMENT WAS CORRECT THEN?

21 A RIGHT. ORAL AVERSIONS CAN BE A FACTOR THAT  
22 CONTRIBUTES TO GROWTH IMPAIRMENT.

23 Q AND THE ORAL AVERSION MAY APPEAR AS FAILURE TO  
24 THRIVE. CORRECT?

25 MR. GUTERRES: OBJECTION: VAGUE.

26 THE COURT: OVERRULED. IF YOU UNDERSTAND IT.

27 THE WITNESS: WE WOULD NOT USE THE TERM, DID  
28 YOU SAY "APPEAR"?

1 BY MR. PRAGER:

2 Q YES.

3 A WE WOULD USE THE TERM, "PRESENT." ORAL  
4 AVERSION CAN PRESENT AS FAILURE TO THRIVE.

5 SO IN OTHER WORDS, THE SYMPTOM OF GROWTH  
6 IMPAIRMENT MIGHT BE RELATED TO NOT EATING, AND THEIR  
7 NOT EATING A NUTRITIONALLY SOUND DIET COULD BE RELATED  
8 TO ORAL AVERSION.

9 Q SO THE ANSWER TO MY QUESTION WAS YES?

10 A IF YOU RESTATED YOUR QUESTION.

11 Q LET'S JUST MOVE ALONG. NOW, IT'S TRUE THAT  
12 FOR A CHILD WITH AN ORAL AVERSION, THAT IS, NOT EATING  
13 BECAUSE OF THE CHILD'S ORAL AVERSION, MAY BE  
14 MISUNDERSTOOD AS A PARENT THAT IS NOT OFFERING FOOD TO  
15 THAT CHILD. ISN'T THAT TRUE?

16 A NOT IN MY EXPERIENCE.

17 Q IS IT CORRECT THAT WHEN A CHILD IS FAILURE TO  
18 THRIVE AND HAS AN ORAL AVERSION, MEDICAL STAFF MAY MAKE  
19 AN ATTRIBUTION THAT THE PROBLEM IS WITH THE MOM NOT  
20 FEEDING THE CHILD PROPERLY?

21 MR. GUTERRES: OBJECTION: FOUNDATION,  
22 SPECULATION.

23 THE COURT: OVERRULED.

24 THE WITNESS: SO JUST TO CLARIFY. OKAY, IF  
25 YOU KNOW A CHILD HAS AN ORAL AVERSION, THEN YOU WOULD  
26 NOT CONCLUDE, IN MY OPINION, THAT THERE WAS WILLFUL  
27 WITHHOLDING OF FOOD.

28 BUT YOU WOULD LOOK TO WHAT ACTION PLANS HAD

1 BEEN INITIATED TO DEAL WITH THE ORAL AVERSION, AND IF  
2 THE PARENT WAS COMPLYING WITH THAT ACTION PLAN.

3 BY MR. PRAGER:

4 Q AND I'M SORRY. YOU SAID YOU WOULD NOT  
5 CONCLUDE THE PARENT WAS WILLFULLY WITHHOLDING FOOD.  
6 CORRECT?

7 A YES.

8 Q WHAT DID YOU MEAN BY THE STATEMENT, WILLFULLY  
9 WITHHOLDING FOOD?

10 A WILLFULLY, INTENTIONALLY, JUST SAYING I'M NOT  
11 GOING TO FEED YOU.

12 Q DO YOU HAVE ANY KNOWLEDGE ABOUT WHETHER OR NOT  
13 DCFS MADE AN ALLEGATION AGAINST MS. DUVAL THAT SHE  
14 WILLFULLY, INTENTIONALLY WITHHELD FOOD FROM HER SON?

15 A I DID -- I WOULD SAY THAT WAS NOT AN  
16 ALLEGATION THAT I HAD EVER HEARD. SO I WOULD SAY NO.

17 Q AND IF YOU LEARNED THAT THERE WAS ANY  
18 SUGGESTION THAT MS. DUVAL WILLFULLY AND INTENTIONALLY  
19 WITHHELD FOOD FROM HER SON, IS IT CORRECT THAT YOUR  
20 RESPONSE COULD BE THAT BABY RYAN'S ORAL AVERSION WOULD  
21 BE THE EXPLANATION OR PART OF THE EXPLANATION FOR BABY  
22 RYAN'S FAILURE TO THRIVE?

23 MR. GUTERRES: OBJECTION: SPECULATION, NO  
24 FOUNDATION.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES, IT WOULD EXPLAIN ABOUT THE  
27 ORAL AVERSION -- BE EXPLAINED BY THE ORAL AVERSION.

28

1 BY MR. PRAGER:

2 Q NOW, IT'S TRUE SOME CHILDREN JUST DON'T EAT.  
3 CORRECT? OR THEY DON'T EAT ENOUGH?

4 A YES, AND SOME CHILDREN SEEM TO EAT ENOUGH AND  
5 JUST DON'T GAIN WEIGHT.

6 Q DO YOU HAVE MY OUTLINE?

7 A I CAN'T LOOK INTO YOUR MIND.

8 Q WELL, YOU'VE TESTIFIED OVER A THOUSAND TIMES.  
9 RIGHT?

10 A I'VE BEEN SEEING FAILURE TO THRIVE KIDS FOR A  
11 LONG TIME.

12 Q RIGHT. BUT YOU'VE TESTIFIED IN COURT OVER A  
13 THOUSAND TIMES. RIGHT?

14 A OH, YES.

15 Q AND IT'S TRUE FROM YOUR PERSPECTIVE THAT  
16 CUSTODY ISSUES SHOULD NOT IMPACT THE TIME OF MEDICAL  
17 CARE OFFERED TO A CHILD. CORRECT?

18 A ABSOLUTELY.

19 Q AND IT'S TRUE THAT YOU WOULD NEVER FORM THE  
20 BELIEF THAT A MOM WAS WILLFULLY AND INTENTIONALLY  
21 FAILING TO FEED HER CHILD. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q YOU HAVE A SAYING, CORRECT ME IF I'M WRONG, I  
24 DON'T DO "WHO DID IT." CORRECT?

25 A RIGHT. I DON'T DO "WHO DID IT."

26 Q WHAT DOES THAT MEAN?

27 A IT'S USUALLY MORE RELEVANT TO CHILD HOMICIDE  
28 CASES AND SEVERE ABUSE CASES. AND I JUST SAY WHAT MY



1 MEDICAL FINDINGS ARE, AND WHAT COULD ACCOUNT FOR THEM.

2 BUT WHO THE RESPONSIBLE PARTY WAS OR WHO  
3 PERPETRATED IT, THAT'S NOT MY DOMAIN. I'M A  
4 PEDIATRICIAN.

5 Q THAT'S THE JOB FOR DCFS?

6 A OR LAW ENFORCEMENT, SOMEONE I CALL AN  
7 INVESTIGATIVE OFFICER, INVESTIGATIVE INDIVIDUAL.

8 Q NOW, IT'S TRUE THAT YOU'RE OF THE OPINION BABY  
9 RYAN WAS ONE OF THOSE CHILDREN WITH SLOW WEIGHT GAIN  
10 EVEN IN THE FACE OF SUFFICIENT NUTRITION. CORRECT?

11 A YES.

12 Q YOU, YOURSELF, DO NOT MAKE RECOMMENDATIONS  
13 THAT A CHILD BE TAKEN FROM HIS OR HER HOME BECAUSE YOU  
14 DON'T KNOW THE RISK FACTORS THAT ARE AT HOME. CORRECT?

15 A THAT'S CORRECT.

16 Q YOU'VE NEVER RECOMMENDED TAKING A CHILD FROM A  
17 HOME. CORRECT?

18 A THAT'S CORRECT.

19 Q YOU MENTIONED A MEMO AGO ABOUT RISK FACTORS.  
20 RISK FACTORS APPEAR IN CASES OF PHYSICAL INJURY WITH  
21 CHILDREN. CORRECT?

22 A YES.

23 Q BUT IN CASES OF NEGLECT, THOSE SAME RISK  
24 FACTORS ARE NOT CONSIDERED BY YOU. CORRECT?

25 A THERE ARE DIFFERENT RISK FACTORS THAT WOULD BE  
26 TAKEN INTO CONSIDERATION.

27 Q LET ME REPHRASE THE QUESTION AND ASK IT THIS  
28 WAY: YOU BASE ANY CONCERN YOU HAVE ABOUT PARENTAL

1       NEGLECT BASED ON THE MEDICAL EVIDENCE.   CORRECT?

2           A       YES.  I'D SAY ON THE MEDICAL EVIDENCE AND THEN  
3       ON THE COMPLIANCE BY THE PARENT WITH MEDICAL  
4       RECOMMENDATIONS.

5           Q       AND DO YOU NOT MAKE RECOMMENDATIONS REGARDING  
6       REMOVING A CHILD FROM A HOME BECAUSE THAT IS A DRASTIC  
7       GOVERNMENTAL INTERVENTION?

8           A       I DON'T MAKE IT BECAUSE IT'S NOT MY PURVIEW.  
9       I WOULD JUST REPORT WHAT MY FINDINGS WERE.

10          Q       NOW, DO YOU KNOW IF BABY RYAN HAD  
11       HYPOTONICITY?

12          A       HE DID.

13          Q       WHAT IS HYPOTONICITY?

14          A       IT'S WHERE YOUR MUSCLE TONE ISN'T AS SORT OF  
15       STRONG AS IT SHOULD BE.  SO IT WOULD BE LIKE FLOPPY.

16          Q       AND BY FLOPPY, ARE YOU SUGGESTING THAT A CHILD  
17       COULD NOT SIT UP, IN, FOR EXAMPLE, IN A CHILD SEAT AND  
18       BE FED BECAUSE THEY LACK THE CORE STRENGTH TO DO SO?

19          A       IT WOULD BE THAT THE CHILD COULDN'T SIT UP ON  
20       THEIR OWN IN A SEAT OR A BABY CHAIR.  THEY COULDN'T --  
21       WITH RYAN, HIS HYPOTONICITY WAS WHAT WE CALL TRUNCAL,  
22       SO LIKE IN HIS CHEST.

23                 SO HE WOULD FLOP OVER, BUT, PROBABLY, IF YOU  
24       PUT HIM PROPERLY IN A CHAIR, THAT WOULD HELP HIM  
25       MAINTAIN HIS TRUNCAL SUPPORT.

26          Q       AND IF THERE WAS A RECOMMENDATION FROM HIS  
27       TREATING PEDIATRICIAN TO DELAY THE INTRODUCTION OF  
28       SOLID FOODS BECAUSE OF HIS CONDITION, YOU WOULD AGREE

1 WITH THAT RECOMMENDATION?

2 MR. GUTERRES: OBJECTION: VAGUE AS TO TIME.

3 THE COURT: OVERRULED.

4 THE WITNESS: I GUESS I'D SAY AT WHAT POINT IN  
5 TIME?

6 BY MR. PRAGER:

7 Q WELL, WOULD IT DEPEND ON THE DEGREE THE CHILD  
8 IS SUFFERING THE CONDITION?

9 A NO. I WOULDN'T AGREE WITH THAT BECAUSE  
10 THERE'RE MECHANISMS TO ENSURE STABILITY OF THE TRUNK.  
11 AND IT'S IMPORTANT TO INTRODUCE CERTAIN FOODS, AGAIN,  
12 TO AVOID THE DEVELOPMENT OF AN ORAL AVERSION BY TOO  
13 LATE AN INTRODUCTION OF TEXTURED FOODS.

14 Q NOW, IT'S TRUE THAT BABY RYAN HAS  
15 DEVELOPMENTAL DELAYS. CORRECT?

16 A YES.

17 Q AND WHAT TO MY KNOWLEDGE, ARE THE SYMPTOMS OF  
18 FRAGILE X ON THE PRESENTATION OF A MALE CHILD?

19 A SO, FOR FRAGILE X, MOST OF THE TIME THE  
20 PRESENTATION IS RELATED TO COGNITIVE IMPAIRMENT --  
21 SPEECH DELAY.

22 AND AUTISTIC FEATURES, REPETITIVE HAND  
23 MOVEMENTS, LACK OF CONTACT, AND USUALLY HYPOTONICITY  
24 RATHER THAN HYPOTONICITY.

25 Q NOW, IT'S TRUE THAT YOU HAVE TO TAKE THE  
26 FAMILY'S MEDICAL HISTORY UPON PRESENTATION WITH YOUR  
27 PATIENT. CORRECT?

28 A YES.

1 Q WHY?

2 A MAYBE YOU'RE CLUELESS TO THE SPECIFIC PROBLEMS  
3 THE PATIENT HAS.

4 Q NOW, IT'S TRUE THAT MANY CONDITIONS ARE  
5 INHERITED?

6 A YES.

7 MR. GUTERRES: OBJECTION: VAGUE.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES.

10 BY MR. PRAGER:

11 Q AND YOU WANT TO KNOW THAT INFORMATION IN  
12 TRYING TO REACH THE MOST COMPLETE DIAGNOSIS PROPER --  
13 POSSIBLE. CORRECT?

14 A YES. AND YOU ALSO WANT TO KNOW ABOUT THE  
15 HEALTH OF THE PEOPLE CARING FOR THE PATIENT.

16 Q THANK YOU. AND TO YOUR KNOWLEDGE, WHAT IS  
17 MS. DUVAL'S MEDICAL HISTORY IN THAT RECORD THAT WOULD  
18 BE GERMANE TO BABY RYAN?

19 A I WAS NOT AWARE OF ANYTHING THAT WAS GERMANE.

20 Q ARE YOU AWARE, YOU CAN ANSWER YES OR NO, OF  
21 WHETHER OR NOT MS. DUVAL HAS A HISTORY OF FAMILIAL  
22 TREMORS?

23 A I DON'T KNOW. NO.

24 Q AND YOU'RE UNAWARE OF ANY NEUROLOGIC HISTORY  
25 THAT MS. DUVAL HAS. CORRECT?

26 A I BELIEVE I WAS TOLD ABOUT SOME PSYCHOLOGY  
27 HISTORY.

28 Q DO YOU KNOW ABOUT ANY MEDICAL, PHYSICAL,

1 MEDICAL HISTORY OTHER THAN PSYCHOLOGY ISSUES?

2 A NO.

3 Q THAT INFORMATION WOULD BE RELEVANT TO YOU IN  
4 REACHING DIAGNOSES ABOUT YOUR PATIENT. CORRECT?

5 A IF THERE WAS RELEVANT HISTORY.

6 Q AND HAVING A CHILD WHOSE MOTHER MAY HAVE  
7 NEUROGENIC FAMILY HISTORY OF NEUROLOGIC PROBLEMS WOULD  
8 BE IMPORTANT TO YOU. WOULDN'T IT?

9 MR. GUTERRES: OBJECTION: SPECULATION, LACKS  
10 FOUNDATION.

11 THE COURT: SUSTAINED AS IT'S PHRASED.

12 MR. PRAGER: I'LL WITHDRAW IT, YOUR HONOR.

13 BY MR. PRAGER:

14 Q YOU TALKED EARLIER ABOUT AN MRI FOR BABY RYAN.  
15 CORRECT?

16 A YES.

17 Q YOU ARE NOT A NEUROLOGIST. CORRECT?

18 A THAT IS CORRECT.

19 Q YOU ARE NOT A PEDIATRIC NEUROLOGIST. CORRECT?

20 A THAT IS CORRECT.

21 Q DO YOU KNOW DR. NIESEN?

22 A YES.

23 Q AND YOU WOULD AGREE, HE'S A FINE UPSTANDING  
24 CITIZEN OF THIS COMMUNITY. CORRECT?

25 A I'M NOT GOING TO ANSWER THAT QUESTION.

26 Q OKAY. AND IT'S TRUE THAT DR. NIESEN  
27 RECOMMENDED AN MRI. CORRECT?

28 A I BELIEVE SO.

1 Q DO YOU KNOW IF -- DO YOU KNOW DR. LOTT?

2 A I DO KNOW DR. LOTT.

3 Q DO YOU FIND HIM TO BE A FINE PHYSICIAN IN THIS  
4 COMMUNITY?

5 A YES.

6 Q DO YOU KNOW IF DR. LOTT RECOMMENDED AN MRI?

7 A HE DID.

8 Q AND YOU DISAGREED WITH DR. LOTT AND DID NOT  
9 PERFORM AN MRI. CORRECT?

10 A THAT IS CORRECT.

11 Q AND DR. LOTT'S SPECIALTY IS WHAT?

12 A HE'S A CHILD NEUROLOGIST.

13 Q AND WHAT IS THE BENEFIT OF HAVING AN MRI DONE  
14 WITH A CHILD WITH POTENTIAL FAILURE TO THRIVE, IF ANY?

15 A NONE.

16 Q HAVE YOU EVER SPOKEN TO A NEUROLOGIST ABOUT  
17 WHAT I'LL CALL, IN LAY TERMS, WATER ON THE BRAIN?

18 A HYDROCEPHALUS, YES.

19 Q AND DO YOU KNOW IF AN MRI WOULD DEMONSTRATE  
20 THE PRESENCE OR ABSENCE OF WATER IN THE BRAIN?

21 A IT COULD DEMONSTRATE HYDROCEPHALUS, BUT YOU  
22 WOULDN'T SEE IT WITH MICROCEPHALY.

23 Q OKAY.

24 A YOU GET A LARGE HEAD WITH HYDROCEPHALUS.

25 Q THANK YOU. WE'RE GOING THERE NEXT. SO WITH  
26 MICROCEPHALY, ARE THERE ANY POTENTIAL CLINICAL BENEFITS  
27 OF GETTING AN MRI?

28 A ONLY IF THERE'RE OTHER ABNORMAL NEUROLOGICAL

1 FINDINGS.

2 Q SUCH AS?

3 A SEIZURES.

4 Q ANYTHING ELSE?

5 A PARALYSIS.

6 Q HOW ABOUT DELAYED DEVELOPMENT?

7 A WE DO NOT DO IT FOR CHILDREN WITH JUST DELAYED  
8 DEVELOPMENT.

9 Q WHEN YOU SAY WE, DO YOU MEAN --

10 A I MEAN THE MEDICAL COMMUNITY.

11 Q WHEN YOU SAY WE, DO YOU MEAN THE STAFF AT YOUR  
12 FAILURE TO THRIVE CLINIC?

13 A NO. I'M TALKING ABOUT THE BROADER MEDICAL  
14 COMMUNITY.

15 Q SO WHAT IS YOUR UNDERSTANDING, IF ANY, WHY  
16 DR. LOTT RECOMMENDED AN MRI BE DONE FOR THIS CHILD?

17 A BECAUSE THAT'S WHAT PEDIATRIC NEUROLOGISTS DO.  
18 THAT'S THE FIRST THING THEY SAY. THEY SOMETIMES WON'T  
19 EVEN SEE A CHILD UNTIL THE CHILD HAS AN MRI.

20 Q IT'S TRUE THAT FAILURE TO THRIVE IS NOW CALLED  
21 GROWTH IMPAIRMENT?

22 A IT'S ALWAYS BEEN CALLED GROWTH IMPAIRMENT.

23 Q IN FACT, THERE WAS SOME DISCUSSION ABOUT YOU  
24 CHANGING YOUR CLINIC'S NAME?

25 A NEVER.

26 Q NEVER?

27 A NEVER.

28 Q DID A STAFF PERSON TELL YOU IT WAS A BAD NAME?

1 MR. GUTERRES: OBJECTION: RELEVANCE.

2 THE COURT: SUSTAINED.

3 BY MR. PRAGER:

4 Q WHAT IS A HOSPITAL HOLD?

5 MR. GUTERRES: OBJECTION: RELEVANCE.

6 THE COURT: SUSTAINED.

7 BY MR. PRAGER:

8 Q IT'S TRUE THAT WHEN BABY RYAN PRESENTED TO  
9 YOUR CLINIC, YOU HAD TO EVALUATE HIS SAFETY AS WE  
10 DISCUSSED. CORRECT?

11 MR. GUTERRES: ASKED AND ANSWERED.

12 THE COURT: SUSTAINED.

13 BY MR. PRAGER:

14 Q IT'S TRUE THAT IF YOU WERE CONCERNED ABOUT  
15 BABY RYAN'S SAFETY, YOU HAD THE ABILITY TO ENSURE THAT  
16 HE REMAINED IN YOUR CLINIC UNTIL YOU ADDRESSED YOUR  
17 SAFETY CONCERNS FOR HIS WELL BEING?

18 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

19 THE COURT: SUSTAINED.

20 BY MR. PRAGER:

21 Q NOW, YOU MENTIONED THAT BABY RYAN WAS  
22 UNDERGOING VARIOUS TREATMENTS. CORRECT?

23 A SORRY. YOUR VOICE WENT DOWN. WAS GOING TO GO  
24 ON VARIOUS TREATMENTS?

25 Q I'LL REPHRASE IT. YOU MENTIONED THAT BABY  
26 RYAN WAS UNDERGOING VARIOUS TREATMENTS. CORRECT?

27 A YES.

28 Q YOU MENTIONED OCCUPATIONAL THERAPY. CORRECT?



1           A     YES.

2           Q     WHAT WAS THE GOAL OF THE OCCUPATIONAL THERAPY  
3     THAT BABY RYAN WAS GOING TO, TO YOUR KNOWLEDGE?

4           A     TO MY KNOWLEDGE, IT WAS TO ADDRESS THE ORAL  
5     AVERSION SO THAT HE WOULD BE RECEPTIVE TO TEXTURED  
6     FOODS, TO THINGS IN HIS MOUTH.

7           Q     AND ISN'T IT TRUE THAT MS. DUVAL HAD ALREADY  
8     BEGUN THAT THERAPY WITH HER SON PRIOR TO ARRIVING AT  
9     YOUR CLINIC?

10          A     THAT WAS MY UNDERSTANDING.

11          Q     AND ISN'T IT TRUE THAT WHETHER THE MOTHER  
12     ARRANGED FOR THE THERAPY OR THE FATHER ARRANGED FOR THE  
13     THERAPY, THE DESIRED OUTCOME WOULD BE THE SAME?

14          A     YES.

15          Q     THERE WAS NO REASON TO BELIEVE THAT THE CHILD  
16     DID BETTER IN THIS THERAPY BECAUSE IT WAS BEING  
17     ARRANGED BY THE FATHER AFTER THE BABY WAS REMOVED FROM  
18     HIS MOTHER.   CORRECT?

19          A     IT'S NOT THE ARRANGEMENTS, IT'S COMPLIANCE  
20     WITH THE RECOMMENDATIONS.

21          Q     SO IT'S TRUE THAT THE SUCCESS OF THE THERAPY  
22     WOULD NOT DEPEND ON WHICH PARENT WAS DELIVERING THE  
23     CHILD TO THE PRACTITIONER.   CORRECT?

24          A     RIGHT.   IT WOULD DEPEND ON THE COMPLIANCE OF  
25     THE PARENTS AND THE RECOMMENDATIONS.

26          Q     NOW, WAS THERE ALSO SOME OTHER TIME OF THERAPY  
27     THAT COULD BE OFFERED TO HELP BABY RYAN WITH HIS ORAL  
28     AVERSION, OTHER THAN OCCUPATIONAL THERAPY?

1           A        THAT'S THE METHODOLOGY THAT WE USE, WHICH IS  
2           AGAIN, GETTING A CHILD ACCUSTOMED TO THINGS IN THEIR  
3           MOUTH.

4           Q        WAS THERE SOME TYPE OF THERAPY, WHERE, I THINK  
5           YOU CALLED MECHANICALLY, YOU WORKED WITH THE CHILD'S  
6           MOUTH?

7           A        THAT'S PART OF OCCUPATIONAL THERAPY.

8           Q        AND EVEN THOUGH THE CHILD IS 15 MONTHS AND MAY  
9           NOT BE VERBAL, YOUR EXPERIENCE IS THE CHILD WILL STILL  
10          HAVE POSITIVE RESPONSE TO THE THERAPY?

11          A        YES.

12          Q        NOW, YOU MENTIONED DR. EGGE. CORRECT?

13          A        YES.

14          Q        YOU MENTIONED SHE WAS A FELLOW WORKING UNDER  
15          YOU. CORRECT?

16          A        YES.

17          Q        YOU DID JUST STATE THAT THE FELLOW WAS THREE  
18          YEARS OF WORK UNDER YOUR DIRECTION, BUT IF YOU WOULD,  
19          IN VERY BRIEF BROADER SENSE, WHAT IS A FELLOW?

20          A        SO, A FELLOW IS AN INDIVIDUAL, IN TERMS OF  
21          MEDICAL FELLOW, AN INDIVIDUAL WHO HAS FINISHED WHAT WE  
22          WOULD CALL THE CORE TRAINING PROGRAM.

23                    SO IN PEDIATRICS, IT WOULD BE THE CORE  
24          TRAINING IN PEDIATRICS. SHE HAD THREE YEARS OF  
25          PEDIATRICS, AND THEN AN ADDITIONAL YEAR AS A CHIEF  
26          RESIDENT IN PEDIATRICS.

27                    AND SHE, I THINK, WORKED IN-BETWEEN -- I DON'T  
28          REMEMBER THAT EXACTLY -- BEFORE SHE BECAME A FELLOW.

1           SO, THE TITLE OF FELLOW IS SOMETHING THAT'S  
2           DESIGNATED BY THE ACCREDITATION COUNCIL ON GRADUATION  
3           MEDICAL EDUCATION, AND THIS DESIGNATES A SPECIFIC  
4           PERIOD OF ADVANCED EDUCATION IN A SUB-AREA WITHIN  
5           PEDIATRICS.

6           SO THERE ARE FELLOWSHIPS IN NEUROLOGY,  
7           PEDIATRIC CARDIOLOGY, PEDIATRIC ENDOCRINOLOGY.

8           MR. PRAGER: DO YOU WANT TO TAKE A BREAK, YOUR  
9           HONOR?

10          THE COURT: FEW MORE MINUTES.

11          BY MR. PRAGER:

12          Q       NOW, IT'S TRUE AS A PHYSICIAN AT THE FAILURE  
13          TO THRIVE CLINIC, YOUR JOB IS TO BE NEUTRAL. CORRECT?

14          A       IS TO BE NEUTRAL? MY JOB IS TAKE CARE OF THE  
15          CHILDREN.

16          Q       THANK YOU. YOUR JOB IS NOT TO TAKE CARE OF  
17          ONE SIDE OR THE OTHER. CORRECT?

18          A       ABSOLUTELY.

19          Q       HAVE YOU EVER SENT AN EMAIL TO EITHER PARENT  
20          THAT YOU WERE TAKING CARE OF THEIR CHILD, SUGGESTING  
21          THAT WE HAVE TO FATTEN THEM UP FOR COURT?

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

24          THE COURT: SUSTAINED.

25          BY MR. PRAGER:

26          Q       MAY I APPROACH WITH EXHIBIT 789?

27          THE COURT: YES.

28

1 BY MR. PRAGER:

2 Q TAKE A LOOK AT EXHIBIT 789 FOR A MOMENT. LET  
3 ME DRAW YOUR ATTENTION TO THE BOTTOM RIGHT-HAND CORNER.

4 DOCTOR, DO KIDS COME WITH OWNER'S MANUALS?

5 A UNFORTUNATELY NOT.

6 Q ALL RIGHT, LET ME DRAW YOUR ATTENTION, AND YOU  
7 CAN READ IT TO YOURSELF FIRST, TO THE BOTTOM CORNER OF  
8 PAGE 26 OF EXHIBIT 789. YOU'VE READ THAT. CORRECT?

9 A YES.

10 Q DO YOU AGREE WITH WHAT WE'RE REFERRING TO AS  
11 THE OWNER'S MANUAL HERE, THAT THERE MAY BE SOLID FOODS  
12 TO BE INTRODUCED IN THE FIRST 6 TO 8 MONTHS?

13 A IT'S NOT THE OWNER'S MANUAL. IT'S THE  
14 RESOURCE BOOK FROM FIRST FIVE LA.

15 AND IF YOU GOT THE OWNER'S MANUAL IN THE  
16 AMERICAN ACADEMY OF PEDIATRICS, IT WOULD BE A BIT  
17 DIFFERENT, BUT I ACCEPT THAT THIS IS SOMETHING THAT  
18 PARENTS WOULD USE. AND IT SAYS YOUR BABY'S FIRST SOLID  
19 FOODS, 6 TO 8 MONTHS.

20 THE COURT: WE GET CONFUSED. SO MANY MANUALS.

21 MR. PRAGER: DO YOU WANT TO TAKE A SHORT  
22 RECESS? I CAN LOOK AT MY NOTES AND BE DONE QUICKLY.

23 THE COURT: TAKE THE MORNING RECESS AT THIS  
24 TIME. APPROXIMATELY 10 MINUTES. ALL JURORS, PLEASE  
25 REMEMBER THE ADMONITION.

26 (JURY EXCUSED)

27 (PAUSE IN THE PROCEEDINGS)

28 (JURY PRESENT)

1 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
2 COURT IN THE PRESENCE OF THE JURY)

3 THE COURT: EVERYONE MAY BE SEATED. ON THE  
4 RECORD. EVERYBODY'S PRESENT. GO AHEAD, MR. PRAGER.

5 MR. PRAGER: THANK YOU, YOUR HONOR.

6 BY MR. PRAGER:

7 Q DOCTOR, DO YOU RECALL BEING ASKED BY  
8 MR. GUTERRES ABOUT DYSMORPHIC FEATURES?

9 A YES.

10 Q HAVE YOU EVER HEARD THE TERM FLK?

11 A YES.

12 Q REMIND US, WHAT DOES IT STANDS FOR?

13 A WE DON'T USE IT ANYMORE, BUT IT STANDS FOR  
14 FUNNY-LOOKING KID.

15 Q WITH REGARD TO THE ACTUAL FEATURES THAT A  
16 PHYSICIAN MAY REFERENCE WHEN DOCUMENTING IN A PATIENT'S  
17 MEDICAL CHART, FLK, DID YOU SAY EARS ARE FEATURES?

18 A NO. I DIDN'T MENTION ANY OF THE FEATURES.  
19 IT'S MORE A GESTALT. THAT IS, YOU HAVE A LOOK, AND YOU  
20 GO, HMM, THAT KID'S A LITTLE FUNNY-LOOKING.

21 Q OKAY. IT'S TRUE THAT LOW-SET EARS ARE A  
22 DYSMORPHIC FEATURE?

23 A THEY COULD BE, BUT THEY DON'T HAVE TO BE.

24 Q AND IT'S ALSO TRUE THAT CUPPED EARS CAN BE A  
25 DYSMORPHIC FEATURE?

26 A THEY CAN BE AN ISOLATED FINDING, WHICH  
27 WOULDN'T THEN QUALIFY A CHILD AS DYSMORPHIC.

28 Q THANK YOU. BUT IF YOU HAD MULTIPLE SYMPTOMS

1 OR PRESENTATIONS FOR DYSMORPHIC FEATURES, WOULD THAT  
2 TEND TO SUGGEST A GREATER CORRELATION?

3 MR. GUTERRES: OBJECTION: INCOMPLETE  
4 HYPOTHETICAL, LACKS FOUNDATION, SPECULATION.

5 THE COURT: OVERRULED.

6 THE WITNESS: NO.

7 BY MR. PRAGER:

8 Q NO. OKAY. NOW, DO YOU KNOW -- DO YOU KNOW,  
9 AT SOME POINT IN TIME IN 2010, WHETHER YOUR CLINIC  
10 RECOMMENDED AN MRI FOR BABY RYAN?

11 A WE DID NOT RECOMMEND AN MRI.

12 Q YOUR CLINIC DID NOT RECOMMEND AN MRI IN  
13 SEPTEMBER 2010. CORRECT?

14 A THAT'S MY RECOLLECTION. WE DID NOT RECOMMEND  
15 AN MRI. IT WAS SUGGESTED BY OUTSIDE PHYSICIANS.

16 Q DO YOU KNOW IN 2010 IF DR. EGGE EVER SUPPORTED  
17 BABY RYAN UNDERGOING AN MRI?

18 A I BELIEVE SHE DID NOT SUPPORT THAT.

19 Q LET ME ASK THE QUESTION A LITTLE BROADER THEN.  
20 DO YOU KNOW IF AT ANY TIME THAT DR. EGGE WAS  
21 TAKING CARE OF BABY RYAN, IF SHE RECOMMENDED AN MRI FOR  
22 BABY RYAN?

23 A TO THE BEST OF MY KNOWLEDGE, THAT WAS NOT A  
24 RECOMMENDATION.

25 Q DO YOU KNOW IF THERE WAS ANY NEUROLOGIC  
26 CONSULTS REQUESTED BY DR. EGGE FOR BABY RYAN IN THE  
27 YEAR 2010?

28 A AGAIN, TO THE BEST OF MY KNOWLEDGE, THERE WAS

1 NOT.

2 Q DO YOU KNOW IF BABY RYAN WAS EVER DIAGNOSED  
3 WITH SENSORY INTEGRATION DISORDER?

4 A ONLY AS RELATES TO ORAL AVERSION.

5 Q WHAT IS SENSORY INTEGRATION DISORDER?

6 A IT'S HOW YOU USE YOUR SENSES TO NAVIGATE  
7 THROUGH THE ENVIRONMENT AND THROUGH LIFE.

8 Q AND WOULD THAT BE MORE THAN JUST THE SENSE OF  
9 TASTE?

10 A ORAL AVERSION DOESN'T HAVE TO DO WITH A SENSE  
11 OF TASTE. IT HAS TO DO WITH HOW YOU MANIPULATE THINGS  
12 IN YOUR ORAL CAVITY.

13 Q THANK YOU. WHY DON'T YOU JUST TELL US WHICH  
14 SENSES ARE INVOLVED WHEN YOU SAY MULTIPLE SENSES FOR  
15 SENSORY INTEGRATION DISORDER.

16 A SO MY EXPERIENCE WITH SENSORY INTEGRATION  
17 DISORDER IS USUALLY RELATED TO A KINESTHETIC SENSE.  
18 THAT IS A BALANCE OF THE ENVIRONMENT NOT ISOLATED  
19 THROUGH THE VISUAL, AUDITORY, BUT HOW ONE MANIPULATES  
20 THROUGH AN ENVIRONMENT.

21 Q SO, DOCTOR, WE'VE TALKED ABOUT THE CHART --  
22 STRIKE THAT.

23 WE'VE TALKED ABOUT THE HARBOR-UCLA MEDICAL  
24 CENTER GROWTH CHART THAT WAS PUT BEFORE YOU AS  
25 EXHIBIT 52, PAGE 1052. CORRECT? YOU DON'T NEED IT.  
26 JUST A FOUNDATIONAL QUESTION.

27 A OKAY.

28 Q CORRECT?

1           A     YES.

2           Q     PERFECT.  AND THERE'S A GRAPH ON THE CHART.  
3 CORRECT?

4           A     YES.

5           Q     AND THE GRAPH IS THE NORMAL DEVELOPMENT FOR  
6 CHILDREN.  CORRECT?

7           A     THE GRAPH IS THE RANGE FOR HEIGHT, WEIGHT,  
8 HEAD CIRCUMFERENCE, FOR CHILDREN AT VARIOUS AGES.  IT'S  
9 A POPULATION-BASED GRAPH.

10          Q     THANK YOU.  THE JURY'S SEEN IT.  LET ME JUST  
11 CONFIRM WITH YOU THAT IF A CHILD'S VALUES AS PLOTTED ON  
12 THE GRAPH GO UNDERNEATH THE NORMAL RANGE, THAT IS A BAD  
13 THING?

14          A     IT'S POTENTIALLY A BAD THING, BUT 1 PERCENT OF  
15 THE ENTIRE POPULATION WILL BE BELOW THE FIRST  
16 PERCENTILE.

17          Q     ARE YOU TALKING ABOUT PEOPLE YOU MIGHT CALL  
18 SHORT STATURE?

19          A     SHORT STATURE, LOW WEIGHT.  SO IF WE HAVE 30  
20 MILLION CHILDREN IN THE UNITED STATES, AND 1 PERCENT OF  
21 THEM ARE GOING TO BE BELOW THAT, THAT'S -- YOU CAN DO  
22 THE MATH.  300,000 CHILDREN WOULD BE BELOW THE FIRST  
23 PERCENTILE.

24          Q     THANK YOU.  AS A GENERAL RULE, THEN, AS THE  
25 GRAPH GOES UP, ANY VALUE THAT DOES NOT CORRESPOND IN  
26 THE RISE IN THE GRAPH OR FLAT LINE IS NOT OPTIMAL.  
27 CORRECT?

28          A     I'M NOT SURE I UNDERSTAND YOUR QUESTION.



1 MR. GUTERRES: OBJECTION: VAGUE.

2 MR. PRAGER: I'LL REPHRASE IT.

3 BY MR. PRAGER:

4 Q LET ME ASK IT THIS WAY: THERE ARE ISOBARS ON  
5 THIS GRAPH. CORRECT?

6 A IT'S NOT A BAR GRAPH.

7 Q WHAT DO YOU CALL THE LINES ON --

8 A THEY'RE PERCENTILES.

9 Q OKAY. WHAT DO YOU CALL THE ACTUAL PHYSICAL  
10 DEPICTION ON THE GRAPH, FOR, FOR EXAMPLE, 15 MONTHS?

11 A IT'S A GRID. RIGHT? IT'S A GRID WITH A Y  
12 AXIS AND AN X AXIS.

13 THE X AXIS IS THE BOTTOM, AND THAT'S THE AGE,  
14 AND THE Y AXIS IS THE SPECIFIC MEASUREMENTS. THE LINES  
15 ON IT REPRESENT PERCENTILE, SO DEVIATIONS FROM THE  
16 MEAN.

17 Q WHAT DO YOU CALL THAT CURVE?

18 A A GROWTH CURVE.

19 Q OKAY. SO IF A CHILD IS BELOW THE GROWTH  
20 CURVE, THAT IS SUBOPTIMAL?

21 A NOT NECESSARILY. THERE'S SOME PEOPLE WHO ARE  
22 THIN, SOME PEOPLE WHO ARE HEAVY, SOME WHO ARE SHORT,  
23 AND SOME WHO ARE TALL. SO IT'S MORE THE PATTERN OF  
24 GROWTH AS OPPOSED TO AN ABSOLUTE VALUE AT A POINT IN  
25 TIME.

26 MR. PRAGER: THANK YOU, YOUR HONOR.

27 THE COURT: MR. GUTERRES.

28

## REDIRECT EXAMINATION

1  
2 BY MR. GUTERRES:

3 Q DR. BERKOWITZ, MR. PRAGER -- I THINK YOU HAD  
4 BEEN ASKED A NUMBER OF QUESTIONS REGARDING ORAL  
5 AVERSIONS.

6 CAN THERE BE ENVIRONMENTAL OR EXTRINSIC  
7 FACTORS THAT COULD LEAD TO AN ORAL AVERSION?

8 MR. PRAGER: OBJECTION: FOUNDATION, YOUR  
9 HONOR.

10 THE COURT: OVERRULED.

11 THE WITNESS: THERE CAN BE.

12 BY MR. GUTERRES:

13 Q AND CAN YOU GIVE US AN EXAMPLE?

14 A SO, SOMETIMES A BABY WHO'S BEEN IN A NEONATAL  
15 INTENSIVE CARE UNIT AND HAD A TUBE THROUGH THEIR MOUTH  
16 DEVELOP AN ORAL AVERSION. SO THAT WOULD BE SOMETHING  
17 EXTERNAL.

18 SOMETIMES A CHILD WHO HASN'T HAD THE  
19 OPPORTUNITY TO EXPERIENCE TEXTURE OR FOOD, THEN WHEN  
20 THEY'RE -- WHEN IT'S INTRODUCED, DOESN'T LIKE THAT  
21 SENSATION, ESPECIALLY IF THE CHILD'S BEEN BREAST-FED OR  
22 BOTTLE-FED.

23 SO THAT AN EARLIER INTRODUCTION WOULD HAVE  
24 AVOIDED IT. AND SOMETIMES THERE'S CHILDREN WHO SEEM TO  
25 HAVE AN AVERSION TO THINGS IN THEIR MOUTH.

26 Q MR. PRAGER HAD SHOWN YOU A DOCUMENT, AND I  
27 THINK IT WAS EXHIBIT 789. I DON'T KNOW IF YOU STILL  
28 HAVE THAT UP THERE.

1           BUT YOU HAD MENTIONED AN ALTERNATIVE TO THE  
2 BOOKLET HERE, PARENT'S GUIDE. AND THAT WAS PUT OUT BY  
3 WHAT ORGANIZATION?

4           A       WELL, THAT ONE IS FROM FIRST FIVE LA. BUT THE  
5 AMERICAN ACADEMY OF PEDIATRICS HAS THIS SORT OF  
6 DOCUMENTS AND POLICY STATEMENTS RELATED TO CHILDREN'S  
7 NUTRITION.

8           Q       AND WHAT'S THE RECOMMENDATION OF THE AMERICAN  
9 ACADEMY OF PEDIATRICS AS IT RELATES TO THE INTRODUCTION  
10 OF SOLIDS?

11          A       THAT IT BE SOMETIME BETWEEN 4 AND 6 MONTHS OF  
12 AGE. OFTEN A LONGER DELAY FOR BREAST-FED BABIES,  
13 FORMULA-FED BABIES. USUALLY AT FOUR MONTHS, WE  
14 INTRODUCE SOLIDS. BREAST-FED, MAYBE SIX MONTHS.

15          Q       MR. PRAGER ALSO ASKED YOU ABOUT THE STATEMENT,  
16 I BELIEVE IT WAS ELICITED IN YOUR DEPOSITION, ABOUT, "I  
17 DON'T DO WHO DID --"

18          A       I DON'T DO "WHO DID IT."

19          Q       "WHO DID IT." AND THAT IS SOMETHING THAT  
20 RELATES TO INDIVIDUALS IN THE MEDICAL PROFESSION?

21          A       WHEN I USE THAT PHRASE, IT'S MORE FOR -- I  
22 THINK AS I SAID -- WITH PHYSICAL INJURIES, I, BEING THE  
23 PERSON WHO MAKES THE DETERMINATION OF WHO WAS  
24 RESPONSIBLE.

25          Q       AND THE DECISION AS TO WHETHER OR NOT A CHILD  
26 MIGHT BE IN DANGER, OR IF THERE'S AN ENDANGERMENT  
27 ISSUE, WOULD THAT GENERALLY BE OUTSIDE YOUR PURVIEW?

28          A       WELL, IF I HAVE A CONCERN THAT A CHILD IS IN

1 DANGER, AND IT'S A PHYSICAL DANGER, THEN I WOULD CALL  
2 THE HOTLINE AND NOTIFY DCFS OR LAW ENFORCEMENT.

3 IF THEY'VE ALREADY BEEN NOTIFIED AND THEY'RE  
4 INVOLVED ALREADY, THEN IT WOULD JUST BE SHARING MY  
5 MEDICAL INFORMATION WITH THAT ORGANIZATION.

6 IF I'M WORKING IN THE EMERGENCY DEPARTMENT AND  
7 LAW ENFORCEMENT BRINGS IN A CHILD WITH A HEAD INJURY,  
8 THEN I CAN EXPLAIN TO THEM, THIS TYPE OF HEAD INJURY --  
9 THIS IS WHAT WE FOUND.

10 THIS IS WHAT IT WOULD BE INDICATIVE OF.

11 Q AND WITH REGARD TO BABY RYAN, DO YOU RECALL  
12 HOW IT IS THAT BABY RYAN CAME TO THE ATTENTION OF THE  
13 FAILURE TO THRIVE CLINIC?

14 A YES. HE WAS REFERRED IN BY THE DEPARTMENT OF  
15 CHILDREN AND FAMILY SERVICES.

16 Q IF A CHILD IS NOT PROVIDED WITH PROPER  
17 NUTRITION, FOR EXAMPLE, FOR SIX MONTHS, CAN THAT HAVE  
18 AN IMPACT ON HIS BECOMING DEVELOPMENTALLY DELAYED?

19 MR. PRAGER: OBJECTION: OVERBROAD, VAGUE,  
20 INCOMPLETE HYPOTHETICAL.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 BY MR. GUTERRES:

24 Q AND HOW SO?

25 A SUBOPTIMAL, YOUR BRAIN REQUIRES FOOD AND  
26 NUTRIENTS FOR GROWTH AND DEVELOPMENT, AND IF YOU'RE NOT  
27 GETTING THE AMOUNT OF FOOD THAT YOUR BODY NEEDS, THAT  
28 WILL AFFECT THE GROWTH OF YOUR BRAIN AND THE

1 DEVELOPMENT OF YOUR BRAIN.

2 Q AND SO IF A PARENT IS NOT FOLLOWING  
3 RECOMMENDATIONS OF A NUTRITIONIST WITH REGARD TO THE  
4 TYPES OF FOODS THAT SHOULD BE GIVEN TO A CHILD, THAT  
5 COULD CAUSE FURTHER DEVELOPMENTAL DELAYS?

6 MR. PRAGER: OBJECTION: BEYOND THE SCOPE,  
7 YOUR HONOR.

8 THE WITNESS: IT COULD.

9 BY MR. GUTERRES:

10 Q AND DOES THE DURATION OF THE DEPRIVATION OF  
11 PROPER NUTRITION ALSO CORRELATE WITH THE AMOUNT OF --  
12 OR -- WITHDRAWN.

13 IS THERE A CORRELATION BETWEEN THE AMOUNT OF  
14 DEPRIVATION OF PROPER NUTRITION TO A CHILD OF THAT AGE,  
15 A SIX-MONTH OLD WITH THE AMOUNT OF POTENTIAL  
16 DEVELOPMENTAL DELAY THE KID MAY ENCOUNTER?

17 A YES.

18 Q AND WOULD THAT ALSO HAVE A CORRELATION BETWEEN  
19 THAT CHILD'S ABILITY TO TRY TO RECOVER ONCE THAT HAS  
20 BEEN IDENTIFIED AND THE PROPER NUTRITIONIST HAS BEEN  
21 GIVEN?

22 MR. PRAGER: OBJECTION: CALLS FOR  
23 SPECULATION, LACKS FOUNDATION, VAGUE AS TO THAT CHILD.  
24 INCOMPLETE HYPOTHETICAL.

25 THE COURT: OVERRULED.

26 THE WITNESS: YES.

27 BY MR. GUTERRES:

28 Q CAN YOU EXPLAIN?

1           A       THE LONGER THE DEPRIVATION, THE LONGER THE  
2 PERIOD FOR RECOVERY. JUST TO REPHRASE WHAT YOU ASKED.

3           Q       THANK YOU. YOU SAY IT A LOT BETTER THAN I DO.  
4 ONE MINUTE?

5           MR. GUTERRES: THANK YOU, DOCTOR. I  
6 APPRECIATE YOUR TIME.

7           THE COURT: MR. PRAGER.

8           MR. PRAGER: THANK YOU, YOUR HONOR.

9

10                                   REXCROSS-EXAMINATION

11 BY MR. PRAGER:

12           Q       A MOMENT AGO, YOU WERE ASKED ABOUT CHILD  
13 SAFETY. CORRECT? SO LET ME FOLLOW UP WITH THAT. IT'S  
14 TRUE THAT AT HARBOR-UCLA HOSPITAL, THERE IS A SHERIFF'S  
15 DEPARTMENT. CORRECT?

16           A       YES.

17           Q       AND IF YOU HAD A CONCERN ABOUT THE SAFETY OF A  
18 PATIENT IN YOUR CLINIC, IT'S TRUE YOU HAVE THE RIGHT TO  
19 CALL THE SHERIFF TO COME ASSIST YOU WITH THAT PATIENT.  
20 CORRECT?

21           MR. GUTERRES: OBJECTION: THAT'S OUTSIDE THE  
22 SCOPE.

23           THE COURT: OVERRULED.

24           THE WITNESS: SO IF IT WAS A PHYSICAL THREAT,  
25 OR SOMEBODY RUNNING OUT OF THE CLINIC WITH A CHILD WHO  
26 WAS IN DANGER, THERE'S A CODE THAT WE USE TO GET THE  
27 SHERIFF'S ASSISTANCE.

28

1 BY MR. PRAGER:

2 Q BUT TO BE CLEAR, FOR A MEDICAL NEGLECT CASE,  
3 IF YOU WERE CONCERNED ABOUT THE WELFARE OF THE CHILD,  
4 YOU HAD THE RIGHT TO CALL THE SHERIFF TO COME INTERVENE  
5 AND KEEP THE CHILD THERE?

6 A NO. WE WOULD NOT DO THAT. WE WOULD CALL THE  
7 HOTLINE AND MAKE A REPORT. AND IF AN INDIVIDUAL LEAVES  
8 WHILE WE'RE ON THE PHONE, THEN THE SHERIFF'S DEPARTMENT  
9 IS THE ONE WHO GOES OUT.

10 IT WOULD BE DCFS, LAW ENFORCEMENT, OR WHATEVER  
11 WAS IN THAT JURISDICTION.

12 Q HAVE YOU HEARD THE TERM, "HOSPITAL HOLD"?

13 A YES.

14 Q PLEASE EXPLAIN WHAT A HOSPITAL HOLD IS.

15 A A HOSPITAL HOLD IS WHEN THE DEPARTMENT OF  
16 CHILDREN AND FAMILY SERVICES PUTS A HOLD ON A CHILD.  
17 IT'S DONE WHEN THE CHILD IS A PATIENT IN THE HOSPITAL  
18 AND THAT CHILD CANNOT BE DISCHARGED UNTIL THERE'S A  
19 SAFE ENVIRONMENT FOR THE CHILD TO BE DISCHARGED TO.

20 Q AND AS A PHYSICIAN, YOU HAVE THE RIGHT TO  
21 ADMIT THAT CHILD YOU'RE CONCERNED ABOUT TO THE HOSPITAL  
22 AND ASK FOR THE HOLD TO BE PLACED. CORRECT?

23 A YOU DON'T ACTUALLY ASK FOR THE HOLD. WE WOULD  
24 REPORT THE CASE, EXPLAIN THE CONCERNS, AND DCFS  
25 INDEPENDENTLY WILL MAKE A DETERMINATION ABOUT PLACING A  
26 HOLD.

27 Q YOU DO HAVE THE RIGHT TO ADMIT THE CHILD,  
28 HOWEVER, TO ENSURE THE CHILD'S MEDICAL NEEDS ARE MET AT

1 THAT MOMENT IN TIME?

2 A AGAIN, IF THE PARENT REFUSES, IF THE PARENT  
3 SAYS, I'M NOT STAYING HERE, I'M OUTTA HERE AND GOES TO  
4 LEAVE WITH THE CHILD, IN THAT CASE, WE WOULD MAKE THE  
5 CALL, BUT THEN WE WOULD ALERT THE SHERIFF'S DEPARTMENT  
6 THAT THIS CHILD'S IN IMMINENT DANGER.

7 Q IT'S ALSO TRUE, YOU HAVE THE RIGHT TO CALL THE  
8 DEPENDENCY COURT TO ATTEMPT TO GET A COURT ORDER.  
9 CORRECT?

10 MR. GUTERRES: OBJECTION: RELEVANCE.

11 MR. PRAGER: TO ENSURE THE SAFETY -- I'LL  
12 WITHDRAW.

13 BY MR. PRAGER:

14 Q IT'S ALSO TRUE YOU HAVE THE RIGHT TO CONTACT  
15 THE DEPENDENCY COURT AND ATTEMPT TO GET AN ORDER TO  
16 PROTECT THE CHILD. CORRECT?

17 THE COURT: OVERRULED.

18 THE WITNESS: WE USUALLY GO JUST THROUGH THE  
19 HOTLINE AND MAKE THE REPORT THERE AND DON'T  
20 INDEPENDENTLY CALL THE DEPENDENCY COURT.

21 BY MR. PRAGER:

22 Q THANK YOU. IT'S TRUE, HOWEVER, THAT YOU HAVE  
23 THE ABILITY TO CALL THE DEPENDENCY COURT FOR  
24 ASSISTANCE?

25 A RIGHT. AND WHEN WE CALL THAT INTO PLAY IS  
26 WHEN THERE'S A MEDICAL ISSUE AND THE PARENT IS REFUSING  
27 TREATMENT.

28 Q SO BACK IN 2009, '10, IF A DOCTOR AT THE



1 FAILURE TO THRIVE CLINIC SAW A PATIENT AND BELIEVED  
2 THAT THE PATIENT WAS IN IMMEDIATE DANGER IF ALLOWED TO  
3 LEAVE, WHAT'S THE PROCESS THE DOCTOR MAY FOLLOW TO  
4 ENSURE THE CHILD IS PROVIDED EMERGENCY CARE AND/OR NOT  
5 ALLOWED TO LEAVE THE CLINIC?

6 A RIGHT. SO IF YOU REALLY THOUGHT THAT CHILD  
7 WAS GOING TO DIE, WHICH IS WHAT WE WOULD CONSIDER  
8 EMERGENCY, AGAIN, IT WOULD DEPEND --

9 IF YOU'RE SAYING THIS CHILD HAS NOT -- IT HAS  
10 NOT BEEN REPORTED YET, AND THEY'RE RIGHT THERE, AND  
11 THEY'RE ABOUT TO GO OUT THE DOOR, YOU WOULD CALL THE  
12 HOTLINE AND ALERT THE SHERIFF'S DEPARTMENT ONSITE.

13 Q THAT'S ALSO TRUE FOR CHILDREN YOU THINK ARE IN  
14 IMMINENT DANGER?

15 A IMMINENT MEDICAL DANGER OR PHYSICAL DANGER.

16 MR. PRAGER: YOUR HONOR, I'D LIKE TO READ  
17 PAGE 22, LINES 5 THROUGH 22 OF THAT PAGE.

18 MR. GUTERRES: NO OBJECTION, YOUR HONOR.

19 MR. PRAGER: "QUESTION: BACK IN  
20 2009-2010, IF A DOCTOR AT THE FAILURE  
21 TO THRIVE CLINIC SAW A PATIENT AND  
22 BELIEVED THAT THE PATIENT WAS GOING TO  
23 BE PUT IN IMMEDIATE DANGER IF ALLOWED  
24 TO LEAVE WITH THE CAREGIVER, WHAT'S THE  
25 PROCESS THAT A DOCTOR MIGHT FOLLOW TO  
26 ENSURE THAT THE CHILD IS PROVIDED  
27 EMERGENCY CARE OR NOT ALLOWED TO LEAVE  
28 THE CLINIC?"

1           ANSWER:  OKAY.  SO YOU REALLY HAVE TWO  
2           OPTIONS.  ONE WOULD BE TO ADMIT THE  
3           CHILD TO THE HOSPITAL.  RIGHT?  SO THE  
4           HOSPITAL IS A SAFE PLACE.  AND YOU  
5           WOULD ADMIT THE CHILD TO THE HOSPITAL.  
6           THE SECOND, WHICH IS TO MAKE AN  
7           IMMEDIATE REPORT TO THE CHILD ABUSE  
8           HOTLINE.  AND IT REALLY WOULDN'T BE A  
9           HOLD IN THE HOSPITAL, BUT AT HARBOR, IF  
10          THERE WAS IMMEDIATE DANGER, WE CALL THE  
11          SHERIFF'S DEPARTMENT.  THE SHERIFF IS  
12          ONSITE AND THEY WOULD COME OVER. "

13  BY MR. PRAGER:

14           Q     SO LET'S MOVE ON TO THE ISSUE ABOUT  
15           NOURISHMENT.  DO YOU RECALL BEING ASKED THAT?

16           A     I'M SORRY.  THERE WASN'T A QUESTION FROM WHAT  
17           YOU JUST READ.

18           Q     WE'RE READY TO MOVE ON.  ARE YOU READY?

19           A     I'M READY FOR YOUR QUESTION.  I WAS JUST --  
20           THE COURT:  ASK THE NEXT QUESTION.

21  BY MR. PRAGER:

22           Q     IT'S TRUE THAT THERE IS NO MEDICAL INFORMATION  
23           TO SUGGEST THAT BABY RYAN WAS DEPRIVED OF FOOD FOR SIX  
24           MONTHS.  CORRECT?

25           A     THAT'S CORRECT.

26           MR. PRAGER:  THANK YOU.  NOTHING FURTHER, YOUR  
27           HONOR.

28           THE COURT:  ANYTHING ELSE, MR. GUTERRES?

1 MR. GUTERRES: NO QUESTIONS.

2 THE COURT: THANK YOU, DOCTOR, VERY MUCH. AND  
3 YOU ARE EXCUSED. MR. GUTERRES, CALL YOUR NEXT WITNESS,  
4 OR MS. SWISS. I'M NOT SURE.

5 MR. GUTERRES: YES, YOUR HONOR. THANK YOU.  
6 THE DEFENSE AT THIS POINT WOULD CALL MUZEYYEN BALABAN.

7  
8 MUZEYYEN BALABAN,  
9 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY  
10 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

11  
12 DIRECT EXAMINATION

13 BY MR. GUTERRES:

14 Q GOOD MORNING, DR. BALABAN.

15 A GOOD MORNING, MR. GUTERRES.

16 Q YOU ARE CURRENTLY EMPLOYED BY WHOM?

17 A I'M EMPLOYED BY DCFS.

18 Q AND HOW LONG HAVE YOU BEEN WITH THE  
19 DEPARTMENT?

20 A ON SUNDAY, IT WILL 24 YEARS.

21 Q CONGRATULATIONS. AND WHAT IS YOUR CURRENT  
22 POSITION?

23 A I AM A REGIONAL ADMINISTRATOR.

24 Q AND BRIEFLY, COULD YOU JUST LET US KNOW WHAT  
25 YOUR JOB FUNCTIONS ARE AS A REGIONAL ADMINISTRATOR?

26 A I AM IN CHARGE OF THE REGION OR OFFICE THAT  
27 COVERS A REGION. WE COVER ABOUT 52 ZIP CODES IN  
28 PASADENA AREA AND SURROUNDING NEIGHBORHOOD PROVIDING

1 CHILD PROTECTIVE SERVICES, AND I AM IN CHARGE OF THAT  
2 ENTIRE OPERATION.

3 Q AND IN THE 2009 -- IN NOVEMBER 2009 TIME  
4 FRAME, WHAT WAS YOUR POSITION WITH THE DEPARTMENT?

5 A I WAS AN ASSISTANT REGIONAL ADMINISTRATOR AT  
6 METRO NORTH OFFICE.

7 Q AND AS THE ASSISTANT REGIONAL ADMINISTRATOR,  
8 WHAT IN GENERAL WOULD BE YOUR JOB FUNCTIONS?

9 A I WAS IN CHARGE OF THE SECTION AND THE PORTION  
10 OF THE OPERATION BASICALLY PROVIDING CHILD PROTECTIVE  
11 SERVICES FOR THE SOCIAL WORKERS AND SUPERVISORS, AND IN  
12 CHARGE OF SOME SPECIALIZED PROGRAMS.

13 Q AND YOU WERE ASSIGNED TO A PARTICULAR OFFICE?

14 A IN PART OF THE EMERGENCY SECTION IN METRO  
15 NORTH OFFICE.

16 Q AND COULD YOU JUST BRIEFLY LET US KNOW WHERE  
17 THAT OFFICE WAS AT THE TIME?

18 A AT THE TIME, IT WAS IN WHAT WE CALLED BORAX  
19 BUILDING IN WILSHIRE AND WESTMORELAND, ABOUT RIGHT IN  
20 AROUND KOREATOWN.

21 Q NOW, DID YOU HAVE SOME INVOLVEMENT WITH THE  
22 CASE INVOLVING BABY RYAN AND MS. DUVAL AND MR. MILLS?

23 A I DID NOT HAVE ANY INVOLVEMENT WITH THE CASE  
24 UNTIL I ACTUALLY HAD A DETENTION REPORT AND SIGNED THE  
25 DETENTION REPORT.

26 Q OKAY. AND ON NOVEMBER 3RD -- PARDON ME --  
27 NOVEMBER -- YES -- ON NOVEMBER 3RD, 2009, ARE YOU AWARE  
28 THAT THERE WAS A TDM AT -- INVOLVING MS. DUVAL AND BABY

1 RYAN?

2 A I CAME TO BE AWARE THROUGH THESE PROCEEDINGS.  
3 I WAS NOT AWARE AT THE TIME.

4 Q ON NOVEMBER 3RD, 2009, WERE YOU AT THE METRO  
5 NORTH OFFICE AT THE TIME OF THE TDM?

6 A I WAS NOT. I WAS OUT OF THE OFFICE THAT DAY.

7 Q AND HOW DO YOU KNOW THAT?

8 A I WAS AT AN ALL-DAY CONFERENCE TRAINING, AND  
9 IT IS ON MY OFFICIAL DEPARTMENT TRANSCRIPTS, AND ALSO  
10 ON MY CALENDAR.

11 Q AND DO YOU REMEMBER BEING CONSULTED BY ANYONE  
12 ON THAT DAY, NAMELY, NOVEMBER 3RD, 2009, REGARDING  
13 ANYTHING HAVING TO DO WITH THE TDM INVOLVING BABY RYAN?

14 A I WAS NOT CONSULTED ON THIS CASE AT ALL.

15 Q ARE THERE MORE THAN ONE ARA ASSIGNED TO THE  
16 METRO NORTH OFFICE WHERE YOU WERE ASSIGNED TO, BACK IN  
17 NOVEMBER OF 2009?

18 A YES. THERE WERE FIVE OF US.

19 Q AND IF YOU HAPPENED NOT TO BE PRESENT, WHAT  
20 WOULD BE THE PROTOCOL FOR A SUPERVISING CHILDREN'S  
21 SOCIAL WORKER IF THEY NEEDED TO CONSULT WITH THEIR  
22 SUPERVISOR?

23 A EITHER PARTNER ARA IN THE ER SECTION COULD  
24 COVER IT, OR IF MY PARTNER WAS NOT AVAILABLE, ONE OF  
25 THE OTHER RAS WOULD PROVIDE COVERAGE FOR ME OR ANYONE  
26 WHO WAS ABSENT.

27 Q AND YOU JUST USED AN ACRONYM FOR ER. SO  
28 EVERYONE KNOWS WHAT YOU'RE TALKING ABOUT WHEN YOU SAY

1 ER, COULD YOU PLEASE EXPLAIN WHAT YOU MEANT?

2 A SURE. IT'S EMERGENCY RESPONSE SECTION. AND  
3 WE HAVE TWO SECTIONS, EMERGENCY RESPONSE AND PTA  
4 SERVICES SECTIONS. SO WE HAVE -- ROUTINELY PROVIDE  
5 COVERAGE FOR ALL THE SECTIONS IF ONE OF US WAS OUT.

6 Q AND THE EMERGENCY RESPONSE SECTION WOULD BE --  
7 TELL US WHAT THE EMERGENCY RESPONSE SECTION GENERALLY  
8 DOES.

9 A EMERGENCY RESPONSE SECTION, IN AT LEAST THE  
10 METRO NORTH, CONSISTED OF ABOUT 10, 11 SUPERVISORS AT  
11 THE TIME WITH OVER, I BELIEVE, 70 SOCIAL WORKERS OR SO,  
12 AND THEY PROVIDED FRONT-END SERVICES WITH CLIENTS.

13 WHEN THE REFERRAL CAME TO THE HOTLINE AND  
14 HOTLINE TOOK THE REFERRAL, IF A DAYTIME REFERRAL, THEN  
15 IT CAME TO THE DAYTIME RESPONSE SECTION FOR THE WORKERS  
16 TO GO OUT AND INVESTIGATE THE REFERRALS.

17 Q AND BY THE TIME YOU BECAME INVOLVED OR YOU  
18 WERE FIRST MADE AWARE OF BABY RYAN, HAD THE DETENTION  
19 ALREADY TAKEN PLACE?

20 A YES, IT DID.

21 Q AND SO WHAT WAS YOUR INVOLVEMENT THEN, IN  
22 CONNECTION WITH, FOR LACK OF A BETTER WORD, THE BABY  
23 RYAN CASE?

24 A I HAD TO REVIEW AND SIGN THE DETENTION REPORT  
25 BECAUSE PER DEPARTMENT'S POLICY, IF A CHILD WHO'S UNDER  
26 FIVE YEARS OF AGE IS REMOVED FROM ONE PARENT AND THEN  
27 PLACED WITH ANOTHER PARENT, THEN ARA SIGNATURE IS  
28 REQUIRED PER POLICY.

1           SO THAT'S WHEN THE REPORT CAME TO ME, ON  
2 NOVEMBER 5TH, I BELIEVE FOR ME TO REVIEW TO MAKE SURE  
3 THAT THAT WAS THE CASE.

4           Q       AND JUST BRIEFLY TELL US YOUR PROCEDURE IN THE  
5 REVIEW OF THE DETENTION REPORT THAT YOU WERE INVOLVED  
6 IN.

7           A       I GET THE REPORT, WITH ALL THE ATTACHMENTS AND  
8 WHATEVER IS AVAILABLE AT THE TIME. I REVIEWED THE  
9 ENTIRE REPORT, AND IF THERE ARE ANY INCONSISTENCIES, I  
10 LOOK AT THE INCONSISTENCIES, AND THEN I ASK QUESTIONS.

11                   I MAY REQUIRE FURTHER INFORMATION, AND THEN I  
12 LOOK AT THE -- AND ESPECIALLY THE FATHER'S PROTECTIVE  
13 CAPACITIES, AND EVERYTHING LOOKING FINE, AND CHECKING  
14 OUT. THEN I SIGN THE REPORT AND GIVE IT BACK TO THE  
15 REPORTING SUPERVISOR.

16                   MR. GUTERRES: THANK YOU VERY MUCH.

17                   THE COURT: MR. KING.

18

19                                   CROSS-EXAMINATION

20 BY MR. KING:

21           Q       MS. BALABAN, GOOD MORNING.

22           A       GOOD MORNING.

23           Q       YOU AND I HAVE NEVER MET. HAVE WE?

24           A       WE HAVE NOT.

25           Q       IF I ASK YOU ANY QUESTION YOU DON'T  
26 UNDERSTAND, JUST LET US KNOW. YOU'RE A DOCTOR OF  
27 PHILOSOPHY. IS THAT RIGHT?

28           A       YES.

1 Q YOU DID YOUR UNDERGRAD IN ISTANBUL, TURKEY.  
2 CORRECT?

3 A YES.

4 Q YOUR GRADUATE WORK, YOU DID HERE IN THE U.S.  
5 IS THAT CORRECT?

6 A YES, I DID.

7 Q YOU'RE AN RA NOW. CORRECT?

8 A YES, I AM.

9 Q AND IN 2009, YOU WERE AN ARA. TRUE?

10 A THAT'S CORRECT.

11 Q AN ARA, THAT'S CONSIDERED A MANAGEMENT  
12 POSITION. RIGHT?

13 A YES.

14 Q AND YOU KNOW, THE MANAGERS AND SUPERVISORS IN  
15 THE DEPARTMENT, YOU'RE RESPONSIBLE FOR ENSURING THAT  
16 THE POLICIES AND PRACTICE OF THE DEPARTMENT ARE PUT  
17 INTO PLAY. CORRECT?

18 A PARTIALLY.

19 Q YOU'RE RESPONSIBLE FOR ENSURING THAT  
20 SUPERVISORS, SUCH AS THE SUPERVISING CHILDREN'S SOCIAL  
21 WORKERS, CARRY OUT THE POLICIES AND PROCEDURES OF THE  
22 DEPARTMENT. TRUE?

23 A PARTIALLY.

24 Q OKAY. SO WHAT THAT MEANS IS, IF YOU'RE  
25 CONTACTED BY A SUPERVISING CHILDREN'S SOCIAL WORKER FOR  
26 CONSULTATION, WHEN THAT PERSON IS MAKING A DECISION TO  
27 SEIZE A CHILD, YOU'RE SUPPOSED TO GIVE THAT PERSON  
28 ADVICE. RIGHT?



1           A        THAT CAN HAPPEN.

2           Q        WELL, IF SOMEONE -- IF A SUPERVISING SOCIAL  
3       WORKER CONTACTS YOU AND SAYS, "YOU KNOW, I'M AT A TDM,  
4       AND I'M GOING TO MAKE THIS DECISION HERE TO SEIZE THIS  
5       CHILD," YOU HAVE TO ENSURE THAT THEY'RE FOLLOWING THE  
6       POLICIES AND PRACTICES OF THE DEPARTMENT.    RIGHT?

7           A        YES.    I DO.

8           Q        SO THE SUPERVISING SOCIAL WORKER IN THIS CASE  
9       IS MS. KIMBERLY ROGERS.    TRUE?

10          A        YES.

11          Q        SO SHE CONTACTS YOU ON NOVEMBER 3RD, 2009, FOR  
12       CONSULTATION.   DO YOU GIVE HER ADVICE?

13                   MR. GUTERRES:   OBJECTION:   LACKS FOUNDATION.

14                   THE COURT:    SUSTAINED.

15                   MR. GUTERRES:   SPECULATION.

16       BY MR. KING:

17          Q        YOUR TESTIMONY ON DIRECT EXAMINATION WAS THAT  
18       MS. ROGERS DID NOT CONTACT YOU ON NOVEMBER 3RD, 2009.  
19       THAT'S CORRECT?

20          A        THAT'S CORRECT.

21                   MR. KING:   YOUR HONOR, I WOULD LIKE TO DIRECT  
22       THE COURT AND COUNSEL'S ATTENTION TO MS. ROGERS'S  
23       DEPOSITION.   PAGE 321, LINE 22 THROUGH PAGE 322,  
24       LINE 6.

25                   MR. GUTERRES:   OBJECTION, YOUR HONOR.  
26       IMPROPER IMPEACHMENT.   AND IT'S ALSO AN INCOMPLETE  
27       RECORD.

28                   THE COURT:    SUSTAINED.   THIS IS NOT THE TIME

1 TO READ ROGERS' DEPOSITION. I'M SORRY. I WAS GIVEN  
2 ROGERS' DEPOSITION.

3 MR. KING: THAT'S CORRECT, YOUR HONOR.

4 THE COURT: YOU'RE NOT GOING TO READ ROGERS'  
5 DEPOSITION TO ATTEMPT TO IMPEACH THIS WITNESS.

6 BY MR. KING:

7 Q WERE YOU AWARE THAT, IN FACT, MS. ROGERS, IN  
8 HER DEPOSITION, INDICATED SHE CONSULTED HER SUPERVISOR,  
9 MS. BALABAN, PRIOR TO SEIZING THE CHILD AT THE TDM?

10 MR. GUTERRES: OBJECTION: MISSTATES  
11 TESTIMONY. NO FOUNDATION.

12 THE COURT: OVERRULED.

13 MR. GUTERRES: YOUR HONOR, MAY WE APPROACH?

14 THE COURT: ALL RIGHT.

15 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
16 THE SIDEBAR OUTSIDE THE PRESENCE OF THE  
17 JURY).

18 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE  
19 PRESENT. HOLD ON. I GOT TO HEAR FROM HIM.

20 MR. KING: I THOUGHT I WAS IN TROUBLE.

21 THE COURT: YOU'LL GET YOUR SHOT.

22 MR. GUTERRES: YOUR HONOR, THE TESTIMONY, IF  
23 YOU CONTINUE DOWN, BASICALLY, MS. ROGERS AT PAGE 322  
24 LINES 18 THROUGH 25 SAYS SHE DOESN'T RECALL AND WASN'T  
25 SURE IT WAS MS. BALABAN THAT WAS HER DIRECT SUPERVISOR.

26 THE COURT: THAT'S TRUE. I'VE READ THE PART  
27 THAT YOU RECITED. AND WHAT SHE SAID WAS, I CONTACTED  
28 PENDER AND MY SUPERVISOR.

1           YOU THEN ASKED LATER, WHO HER SUPERVISOR WAS  
2           AT THAT POINT IN TIME. SHE SAYS BALABAN. YOU GO DOWN  
3           THE PAGE, SHE SAYS, I DON'T KNOW FOR SURE THAT  
4           MS. BALABAN WAS MY DIRECT SUPERVISOR AT THE TIME  
5           BECAUSE I KNOW I HAD TWO.

6           SO THAT TESTIMONY ISN'T SUFFICIENT -- I DON'T  
7           KNOW WHAT ELSE MS. ROGERS HAS SAID. BUT ON THE BASIS  
8           OF THE DEPOSITION YOU'RE INTENDING TO READ AS WELL AS  
9           THE ADDITIONAL PORTIONS, SHE ISN'T SAYING THAT BALABAN  
10          WAS HER SUPERVISOR AT THAT TIME.

11          SO THAT'S THE PROBLEM, JUST THE FORM OF THE  
12          QUESTION.

13          MR. KING: OKAY.

14          THE COURT: I DON'T RECALL FROM THE VIDEO  
15          DEPOSITION IF THERE ARE OTHER -- OF ROGERS -- I DON'T  
16          RECALL IF THERE WAS SPECIFIC TESTIMONY LATER THAT SAYS  
17          IT WASN'T BALABAN SHE TALKED TO.

18          BUT BASED ON WHAT YOU'VE SHOWN ME HERE, SHE  
19          ISN'T SAYING THAT. SHE SAID, I TALKED TO A SUPERVISOR.  
20          I'M NOT SURE I TALKED TO HER.

21          MR. KING: OKAY.

22          MR. MCMILLAN: YOUR HONOR, I BELIEVE --

23          THE COURT: YOU KNOW, MR. MCMILLAN --

24          MR. MCMILLAN: I'M SORRY.

25          THE COURT: THIS IS MR. KING'S WITNESS. I'LL  
26          HEAR FROM HIM.

27          MR. KING: I UNDERSTAND THE COURT'S POSITION.  
28          THE STATEMENT OF ANY PARTY CAN BE USED AT ANY POINT IN

1 TIME, AND OBVIOUSLY IF I INTRODUCE A PORTION OF THE  
2 TRANSCRIPT, THE DEFENSE CAN ALWAYS ASK THAT ANOTHER  
3 PORTION BE READ OR ON REDIRECT, BRING UP OTHER PORTIONS  
4 OF THE TRANSCRIPT.

5 SO OUR POSITION IS THAT WE SHOULD BE ABLE TO  
6 PLAY OR READ THE PORTIONS OF THE TRANSCRIPT AS  
7 REQUESTED.

8 THE COURT: WELL, I'M NOT UNDERSTANDING QUITE  
9 WHAT YOU'RE SAYING HERE. IF YOU'RE SAYING YOU WANT TO  
10 USE HER DEPOSITION AT SOME TIME TO IMPEACH HER  
11 TESTIMONY, THERE'S NO --

12 I'M DEALING RIGHT NOW WITH THE QUESTION, TO  
13 THE EFFECT, ARE YOU AWARE THAT ROGERS TESTIFIED SHE  
14 CONTACTED YOU. AND YOU HAVEN'T SHOWN ME ANY BASIS THAT  
15 THERE WAS IN FACT THAT TESTIMONY. IF YOU CAN, THAT'S  
16 FINE.

17 MR. KING: OKAY. I THOUGHT I DID. BUT I  
18 THINK THE COURT'S CONCERN IS SHE INDICATES THAT  
19 MS. BALABAN, INDICATES IT COULD BE ANOTHER SUPERVISOR  
20 AS WELL.

21 MR. MCMILLAN: AND WHILE WE'RE HERE, YOUR  
22 HONOR, IT'S MY BELIEF THAT I CAN USE A STATEMENT OF A  
23 DEFENDANT FOR ANY PURPOSE AT ANY TIME.

24 THE COURT: NOT TO CROSS-EXAMINE THIS WITNESS.

25 MR. KING: OKAY.

26 THE COURT: YOU'VE BEEN GIVEN THE OPPORTUNITY  
27 TO PRESENT ROGERS' TESTIMONY, AND YOU CAN READ A  
28 PERSON'S DEPOSITION OF A PARTY. NOT AT ANY TIME,

1           DEPENDING ON THE PROCEEDINGS IN THE CASE.

2                   AND I'M TELLING YOU RIGHT NOW YOU'RE NOT GOING  
3           TO USE SOMEONE ELSE'S DEPOSITION TO ATTACK -- TO  
4           IMPEACH THIS WITNESS'S TESTIMONY.  IT'S NOT HER  
5           TESTIMONY.

6                   MR. KING:  THANK YOU.

7                   MR. GUTERRES:  YOUR HONOR, IF I MAY BRING TO  
8           THE COURT'S ATTENTION:  PAGE 198, WHICH WAS PLAYED FOR  
9           THE JURY, AT LINES 14 THROUGH 17, SHE'S ASKED ABOUT WHO  
10          HER ADMINISTRATOR WAS.

11                   AND THERE WERE TWO, EITHER MUZEYYAN BALABAN OR  
12          RICHARD MIYAKE.  AND THAT'S THE STATEMENT.

13                   THE COURT:  OKAY.

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

16                   MR. KING:  MAY I CONTINUE, YOUR HONOR?

17                   THE COURT:  YES.  GO AHEAD, MR. KING.

18          BY MR. KING:

19                   Q       MS. BALABAN, YOU TESTIFIED YOU WERE IN FACT  
20          WORKING ON NOVEMBER 3RD, 2009.  CORRECT?

21                   A       WORKING AS BEING IN TRAINING -- AS A WORKDAY,  
22          YOU MEAN?

23                   Q       YEAH.  YOU WENT TO WORK THAT DAY?

24                   A       YES.

25                   Q       AND YOU WERE AN ARA THAT DAY?

26                   A       YES, I WAS.

27                   Q       DID YOU EVER RECEIVE CALLS WHILE YOU'RE  
28          OUTSIDE OF THE OFFICE?

1           A       NOT WHILE WE'RE IN TRAINING BECAUSE WE'RE  
2 INSTRUCTED TO TURN ALL ELECTRONIC DEVICES OFF.

3           Q       DO YOU HAVE -- IF YOU HAVE A SOCIAL WORKER  
4 THAT CONTACTS YOU FOR CONSULTATION AS AN RA, ARA, IT'S  
5 IMPORTANT THAT YOU SPEAK TO THAT PERSON ABOUT WHETHER  
6 IN FACT THERE'S EXIGENCY PRESENT, PRIOR TO AUTHORIZING  
7 A SEIZURE. CORRECT?

8           MR. GUTERRES: OBJECTION: SPECULATION, NO  
9 FOUNDATION. IT'S ALSO OUTSIDE THE SCOPE.

10          THE COURT: SUSTAINED AS TO OUTSIDE THE SCOPE.  
11 BY MR. KING:

12          Q       WAS THERE ANOTHER ARA THAT WAS WORKING ON  
13 NOVEMBER 3RD, 2009, THAT YOU'RE AWARE OF?

14          A       YES, THERE WERE FOUR OTHER ONES.

15          Q       AND IN YOUR POSITION AS AN ARA, HAVE YOU EVER  
16 EXPERIENCED A TIME WHEN A SUPERVISING SOCIAL WORKER  
17 CONSULTS WITH YOU PRIOR TO MAKING A SEIZURE?

18          MR. GUTERRES: OBJECTION: RELEVANCE.

19          THE COURT: SUSTAINED.

20 BY MR. KING:

21          Q       IS IT IMPORTANT FOR A SOCIAL WORKER TO ENSURE  
22 THAT EXIGENCY EXISTS PRIOR TO DETAINING A CHILD?

23          MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

24          THE COURT: SUSTAINED.

25 BY MR. KING:

26          Q       YOU DID SIGN THE DETENTION REPORT IN THIS  
27 CASE. CORRECT?

28          A       YES, I DID.

1 Q DID YOU REVIEW THE DETENTION REPORT BEFORE YOU  
2 SIGNED IT?

3 A YES, I DID.

4 Q DID YOU DO ANY INVESTIGATION ON YOUR OWN PRIOR  
5 TO SIGNING THE DETENTION REPORT?

6 A YOU MEAN INDEPENDENT INVESTIGATION ON MY OWN?

7 Q ANY SORT OF INVESTIGATION.

8 A I DID NOT DO AN INDEPENDENT INVESTIGATION.

9 Q IS IT INCUMBENT UPON YOU AS A SUPERVISOR, WHEN  
10 YOU SIGN A DOCUMENT UNDER PENALTY OF PERJURY TO, IN  
11 FACT, ENSURE THAT THE CONTENTS OF THE DOCUMENT ARE  
12 ACCURATE?

13 A I EXPECT MY SUBORDINATES TO BE TRUTHFUL AND  
14 ACCURATE, AND I TRULY RELY ON THEIR INFORMATION AS  
15 TRUTHFUL AND AS ACCURATE.

16 Q BUT DO YOU DO ANYTHING YOURSELF TO ENSURE  
17 THAT, BEFORE YOU SIGN A DOCUMENT UNDER PENALTY OF  
18 PERJURY, TO ENSURE THAT THE CONTENTS OF THAT DOCUMENT  
19 ARE, IN FACT, TRUE?

20 A I RELY ON THE INFORMATION, BUT IF I SEE ANY  
21 INCONSISTENCIES, THEN I WILL ASK FOR FURTHER  
22 INFORMATION AND CLARIFICATION ON THE INFORMATION.

23 HOWEVER, IT'S IMPOSSIBLE TO DO INDEPENDENT  
24 INVESTIGATION AND SECOND-GUESS OVER A HUNDRED WORKERS'  
25 WORK. AND WHEN YOU'RE RECEIVING ABOUT A THOUSAND  
26 REFERRALS PER MONTH, 12,000 REFERRALS PER YEAR, SO I  
27 HAVE TO RELY ON MY SUBORDINATES' INFORMATION TO BE  
28 TRUTHFUL AND ACCURATE.

1 Q SO YOUR ANSWER IS YOU DO NOTHING WITH THE  
2 EXCEPTION OF RELY ON THE INFORMATION THAT YOU'RE  
3 PROVIDED. CORRECT?

4 MR. GUTERRES: OBJECTION: ARGUMENTATIVE.

5 THE COURT: OVERRULED. WELL, THAT'S AN  
6 ACCURATE STATEMENT. YOU CAN ASK THAT DIFFERENTLY.

7 I DON'T WANT TO MAKE A MYSTERY OUT OF WHAT I  
8 WAS SAYING. WHEN I SAID IT WAS INACCURATE, IT WAS JUST  
9 YOU LEFT OUT -- SHE SAYS SHE RELIES ON IT, BUT SHE DOES  
10 REVIEW IT FOR INCONSISTENCIES AND SO ON.

11 AND I THINK YOUR QUESTION WAS DIRECTED TO  
12 THAT, IS THAT THE EXTENT OF WHAT SHE DOES. THAT'S WHY  
13 I SUSTAINED ON THAT OBJECTION.

14 MR. KING: THANK YOU.

15 BY MR. KING:

16 Q OTHER THAN LOOKING FOR INCONSISTENCIES, DO YOU  
17 DO ANYTHING ELSE INDEPENDENTLY TO ENSURE THE  
18 TRUTHFULNESS, THE HONESTY, THE ACCURATENESS OF THE  
19 DOCUMENT BEFORE YOU SIGN IT UNDER PENALTY OF PERJURY?

20 A I REVIEW THE ATTACHMENT FOR PROFESSIONALS. I  
21 REVIEW ALL THE PROFESSIONALS' ASSESSMENTS AND WHAT  
22 THEIR STATEMENTS ARE, AND I LOOK AT ALL THE  
23 INCONSISTENCIES.

24 I RELY ON THE INFORMATION GIVEN, AND THEN LOOK  
25 FOR THE PROFESSIONAL INFORMATION ESPECIALLY IN THE  
26 REPORT.

27 Q SO WHEN YOU LOOK AT THE REPORT, YOU ALSO GET A  
28 STACK OF MEDICAL RECORDS. RIGHT?



1           A        WHATEVER IS AVAILABLE AT THE TIME.

2           Q        SO IF YOU GOT MEDICAL RECORDS IN THIS CASE  
3           ALONG WITH THE DETENTION REPORT, YOU GO THROUGH THE  
4           DETENTION REPORT TO ENSURE THAT'S WHAT WRITTEN IN THE  
5           DETENTION REPORT IS CONSISTENT WITH WHAT'S IN THE  
6           MEDICAL RECORDS.    TRUE?

7           A        WHATEVER IS GIVEN TO ME AT THE TIME THAT I  
8           REVIEW IT, AS BEST AS I UNDERSTAND.

9           Q        CORRECT.    SO IF YOU RECEIVE MEDICAL RECORDS,  
10          LET'S SAY, DR. GILL, AND THEN YOU HAVE A DETENTION  
11          REPORT THAT SAYS THAT DR. GILL INDICATES THAT THE MAIN  
12          REASON THAT THE FAMILY'S BEING DISMISSED FROM HER CARE  
13          IS BECAUSE THE MOTHER REFUSES TO FOLLOW DIRECTIONS, AND  
14          THEN YOU LOOK IN THE MEDICAL REPORTS AND THERE'S NO  
15          SUCH THING, THAT'S AN INCONSISTENCY.    TRUE?

16          MR. GUTERRES:   OBJECTION:   SPECULATION, NO  
17          FOUNDATION.

18          THE COURT:    OVERRULED.    WOULD THAT BE AN  
19          INCONSISTENCY?

20          THE WITNESS:   I CANNOT TELL YOU WHAT WAS GIVEN  
21          TO ME AT THE TIME, BUT IF I SEE INCONSISTENCIES AND  
22          GLARING INCONSISTENCIES, I WILL DEFINITELY FOLLOW UP ON  
23          THAT.

24          BY MR. KING:

25          Q        MY QUESTION IS, WOULD THAT BE AN  
26          INCONSISTENCY?

27          THE COURT:    YOU'RE ASKING HER TO ASSUME  
28          CERTAIN FACTS ARE TRUE.

1 MR. KING: CORRECT.

2 THE COURT: AND IF THEY WERE TRUE, THAT WOULD  
3 BE AN INCONSISTENCY?

4 THE WITNESS: IT MAY BE.

5 BY MR. KING:

6 Q MIGHT BE? WHY WOULD IT NOT BE?

7 MR. GUTERRES: OBJECTION: SPECULATION.

8 THE COURT: SUSTAINED.

9 BY MR. KING:

10 Q AS AN ARA SIGNING A DOCUMENT UNDER PENALTY OF  
11 PERJURY, DO YOU HAVE ANY RESTRICTIONS ON YOU WHEREBY  
12 YOU CAN'T CONTACT THE DOCTOR TO ENSURE THAT WHAT'S --  
13 IS IN THE REPORT IS TRULY WHAT HAS OCCURRED?

14 A WE DON'T HAVE ANY RESTRICTIONS ON CONTACTING.

15 Q IN FACT, THE SOCIAL WORKERS HAVE AN OBLIGATION  
16 TO MAINTAIN CONTACT NOTES. TRUE?

17 A THAT'S CORRECT.

18 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

19 THE COURT: SUSTAINED.

20 BY MR. KING:

21 Q DID YOU REVIEW THE CONTACT NOTES PRIOR TO  
22 SIGNING THE DETENTION REPORT IN THIS CASE?

23 A IT REALLY HAS BEEN SUCH A LONG TIME, I CANNOT  
24 TELL YOU WHAT EXACTLY I REVIEWED ON THIS PARTICULAR  
25 CASE.

26 Q SO YOU MIGHT HAVE REVIEWED THE CONTACT NOTES  
27 IN THIS CASE PRIOR TO SIGNING OFF ON THE DETENTION  
28 REPORT. CORRECT?

1           A       I MAY HAVE.

2           Q       AND IF YOU REVIEWED THE CONTACT NOTES, AND YOU  
3 SAW SOMETHING THAT WAS INCONSISTENT WITH WHAT WAS IN  
4 THE DETENTION REPORT, YOU WOULD HAVE NOTED THAT.  
5 CORRECT?

6           MR. GUTERRES:  OBJECTION:  SPECULATION, NO  
7 FOUNDATION.

8           THE COURT:  OVERRULED.

9           THE WITNESS:  I MAY HAVE.

10          BY MR. KING:

11          Q       WELL, YOU HAVE AN OBLIGATION TO, DON'T YOU?

12          A       IF I SEE INCONSISTENCIES, I WOULD.

13          Q       DON'T YOU HAVE AN OBLIGATION TO ENSURE THAT  
14 THE SUPERVISING SOCIAL WORKERS AND THE SOCIAL WORKERS  
15 ARE, IN FACT, COMPLYING WITH THE POLICIES AND  
16 OBLIGATIONS OF THE COUNTY?

17          MR. GUTERRES:  OBJECTION:  ASKED AND ANSWERED.

18          THE COURT:  SUSTAINED.

19          BY MR. KING:

20          Q       PART OF YOUR RESPONSIBILITY AS A SUPERVISOR IS  
21 TO ENSURE THAT ALL THE RELEVANT AND NECESSARY  
22 INFORMATION GOES INTO THE DETENTION REPORT.  CORRECT?

23          A       THAT'S CORRECT.

24          Q       THAT INCLUDES EXCULPATORY EVIDENCE.  CORRECT?

25          A       THAT'S CORRECT.

26          Q       EXCULPATORY EVIDENCE IS NECESSARY AND  
27 IMPORTANT TO BE INCLUDED IN THE DETENTION REPORT.  
28 CORRECT?

1 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES.

4 BY MR. KING:

5 Q I MEAN, YOU WERE TRAINED EVEN PRIOR TO 2009  
6 THAT SOCIAL WORKERS HAVE AN AFFIRMATIVE DUTY TO  
7 DISCLOSE EXCULPATORY EVIDENCE. CORRECT?

8 MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 BY MR. KING:

12 Q I MEAN, YOUR SOCIAL WORKERS ARE TRAINED THAT  
13 IF THEY FAIL TO DISCLOSE EXCULPATORY EVIDENCE, THEY  
14 COULD LOSE THE CASE, THEY COULD LOSE THEIR JOB, AND  
15 THEY COULD BE SUED. CORRECT?

16 MR. GUTERRES: COMPOUND. OBJECTION.

17 THE COURT: OVERRULED. IT IS COMPOUND. BUT  
18 IT'S ANSWERABLE. GO AHEAD. AND THEN -- CAN YOU ANSWER  
19 THAT?

20 THE WITNESS: I'M SORRY. CAN YOU REPEAT THAT  
21 AGAIN.

22 THE COURT: WE'LL HAVE THE REPORTER READ IT  
23 BACK. BECAUSE I DON'T REMEMBER IT EITHER. AND THEN  
24 AFTER YOU ANSWER, WE'RE GOING TO TAKE THE NOON RECESS.

25 THE WITNESS: OKAY.

26 (THE RECORD WAS READ AS REQUESTED)

27 THE WITNESS: ARE YOU ASKING ME IF THEY WERE  
28 TRAINED ON THAT?

1 BY MR. KING:

2 Q YES.

3 A I HOPE SO.

4 Q ME TOO.

5 THE COURT: WE'RE GOING TO TAKE THE NOON  
6 RECESS. ALL JURORS, PLEASE REMEMBER THE ADMONITION.  
7 SEE YOU BACK AT 1:30.

8 (JURY EXCUSED)

9 (LUNCH WAS TAKEN FROM 11:59 A.M. TO 1:31 P.M.)

10 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE  
11 PRESENT. WHEN WE GET THE JURORS IN, YOU KNOW, THIS  
12 MORNING, I TOLD THEM I'D GIVE THEM A TIMING UPDATE.

13 AND I'M GOING TO FIND OUT WHO HAS THE TIME  
14 PROBLEM, BUT I'M GOING TO TELL THEM THIS CASE WILL NOT  
15 FINISH NEXT WEEK. BEYOND THAT, IT'S A LITTLE HARD FOR  
16 ME TO SAY.

17 FOR ALL YOUR INFORMATION, IT WILL HAVE TO  
18 FINISH THE FOLLOWING WEEK. AND I THINK WE'RE CAPABLE  
19 OF THAT, BUT WE ARE GOING TO HAVE TWO DAYS OFF FROM THE  
20 JURY.

21 AND SO I'M GOING TO FIND OUT BY TELLING THEM  
22 THAT THE CASE WILL NOT FINISH BY NEXT WEEK, AND I'M  
23 GOING TO HAVE FURTHER UPDATES NEXT WEEK. IF THAT  
24 CREATES ANY PROBLEMS OR HARDSHIPS, IF SO, I'LL HAVE  
25 THEM TELL ME WHAT THE HARDSHIP IS.

26 I THINK THAT'S THE BEST WE CAN TELL THEM. THE  
27 SECOND ISSUE IS, WE ARE GOING TO HAVE TO HAVE DAYS OFF  
28 NEXT WEEK IN ORDER TO DEAL WITH THESE OTHER ISSUES. I

1 DON'T KNOW HOW WE'RE GOING TO GET IT DONE WITH ALL THE  
2 DIFFICULTIES WE SEEM TO HAVE OVER EXHIBITS.

3 BUT WE HAVE OTHER ISSUES AS WELL. AND PART OF  
4 THE -- WHAT I HAVE TO HAVE IS -- WE DO HAVE, FROM THE  
5 PLAINTIFF, A LISTING WE WERE GIVEN A DAY OR TWO AGO OF  
6 THINGS THAT THEY SAY WAS FALSE, THINGS THEY SAID WERE  
7 INCOMPLETE AND WHATEVER ELSE, AND THINGS THAT SHOULD  
8 HAVE BEEN IN THAT WEREN'T THERE.

9 IT'S A RATHER EXTENSIVE LIST. AND IT'S GOING  
10 TO TAKE SOME SUBSTANTIAL TIME TO GO THROUGH THE LIST  
11 AND REVIEW THE LIST AGAINST THE THREE MAJOR, YOU KNOW,  
12 WHAT WAS FILED WITH THE COURT AND SO ON AT THAT TIME.

13 I DON'T THINK IT'S GOING TO HAPPEN VERY EASILY  
14 AND VERY QUICKLY. BUT MY QUESTION IS, MR. GUTERRES, IF  
15 YOU'RE PLANNING ON FILING SOME DOCUMENT IN RESPONSE TO  
16 WHAT WE HAVE RECEIVED.

17 MR. GUTERRES: WE ARE, WHICH IS WE -- MS. NAU  
18 IS DILIGENTLY WORKING ON TRYING TO GET SOME KIND OF A  
19 RESPONSE. I UNDERSTOOD THAT COURT HAD NOT YET GIVEN  
20 THE PLAINTIFFS A DEADLINE AS TO WHEN THEIR FINAL  
21 VERSION OF THAT IS GOING TO BE.

22 THE COURT: NO, I HAVEN'T BECAUSE THEY'RE  
23 WORKING ON THAT. BUT WE HAVE TO HAVE A FINAL VERSION.  
24 I HOPE WHAT WE ALREADY RECEIVED IS A FINAL VERSION  
25 BECAUSE IT WAS REALLY EXTENSIVE. BUT IF THAT'S NOT THE  
26 FINAL VERSION, MR. MCMILLAN, YOU'RE GOING TO HAVE TO  
27 TELL ME.

28 MR. MCMILLAN: YOUR HONOR, WE DISCUSSED THIS,

1 I THINK AT THE END OF THE DAY, YESTERDAY. BUT WHAT WE  
2 HAD GIVEN TO YOUR HONOR YESTERDAY WAS REPORT BY REPORT,  
3 EXCULPATORY, AND FALSE, ET CETERA.

4 AND THEN WITH A LITTLE BIT OF DISCUSSION AND  
5 FURTHER ELUCIDATION FROM YOUR HONOR, IT SOUNDED LIKE  
6 WHAT WE SHOULD HAVE OR WANTED TO DO WAS ACTUALLY GO  
7 THROUGH THE TRANSCRIPT OF PROCEEDINGS WHERE THE JUDGE  
8 STATED HER BASES FOR HER RULINGS ON THE RECORD, AND  
9 JUST ADDRESS THOSE BASES.

10 THAT'S WHAT WE'VE BEEN WORKING ON --

11 (SIMULTANEOUS SPEAKING)

12 THE COURT: THAT WOULD BE VERY USEFUL TO HAVE.  
13 IF WE HAVE IT THAT WAY, WE CAN LOOK AT WHAT WAS SAID,  
14 AND SEE WHAT THE CONTENTIONS ARE ABOUT FALSE, LACK,  
15 EXCULPATORY, SHOULD HAVE INCLUDED SOMETHING ELSE.

16 AND THAT'S A GOOD WAY OF LOOKING AT IT. SO  
17 I'M ASSUMING WE'RE NOT GOING TO GET THAT TIL MONDAY.

18 MR. MCMILLAN: IT WAS OUR INTENTION --  
19 EVERYONE'S WORKING ON THAT VERY, VERY LATE INTO THE  
20 EVENING LAST NIGHT, EVERYBODY'S WORKING ON IT AT THE  
21 APARTMENT. MR. PARIS IS NOT HERE, HE'S WORKING ON THAT  
22 PROJECT. HOPING TO HAVE SOMETHING BY 4:00 P.M. TODAY.

23 THE COURT: WHAT DAYS DO I TELL THE JURY -- I  
24 DON'T NEED TO TELL THEM IF IT'S NOT GOING TO BE MONDAY.  
25 I'M GOING TO SEND THE JURY HOME FOR AT LEAST TWO DAYS  
26 IN ORDER TO ADDRESS ALL OF THIS.

27 AND IF ONE OF THOSE DAYS IS GOING TO BE  
28 MONDAY, THEN I NEED TO TELL THEM ABOUT COMING BACK.

1 AND DOESN'T HAVE TO BE MONDAY, OR TUESDAY, WHATEVER.  
2 JUST KNOW WHEN WE HAVE IT, WE'RE GUILTY -- WE JUST HAVE  
3 TO HAVE IT IN ORDER TO BE ABLE TO DO OUR WORK.

4 MR. MCMILLAN: YOUR HONOR, FROM OUR  
5 PERSPECTIVE, WE'D RATHER NOT HAVE THEM GONE CONSECUTIVE  
6 DAYS. MAYBE MONDAY/FRIDAY, MONDAY/WEDNESDAY.

7 THE COURT: I DON'T THINK MONDAY/FRIDAY IS  
8 GOING TO WORK WELL. I DON'T KNOW HOW LONG THE DEFENSE  
9 EVIDENCE IS GOING TO BE, BUT AS OF LAST WEEK, THEY WERE  
10 INDICATING THEY HAD 4 OR 5 DAYS OF TESTIMONY.

11 MR. GUTERRES: AS THE COURT CAN SEE BY MY  
12 DIRECT, WE'VE BEEN TRYING TO KEEP IT VERY SHORT.

13 THE COURT: I DO SEE THAT. AND WHAT I NEED TO  
14 KNOW IS -- WE CAN CERTAINLY DO EXHIBITS, BUT I'M NOT  
15 SATISFIED -- NOT BLAMING ANYONE -- JUST TELLING YOU I'M  
16 NOT SATISFIED.

17 AND I DON'T FEEL WE'VE HAD MEANINGFUL MEETING  
18 AND CONFERRING OVER THE EXHIBITS. I KNOW WE'VE HAD A  
19 LOT OF TALK ABOUT IT, AND A LOT OF WORK HAS BEEN DONE  
20 BY MR. PARIS. I THINK HE'S REALLY GIVEN US SOMETHING  
21 TO WORK WITH.

22 AND IT'S VERY CLEAR BY THE SHORTENING EACH  
23 TIME WE GET THE NEW VERSION THAT THERE'S A SIGNIFICANT  
24 NUMBER OF EXHIBITS THAT PLAINTIFFS HAVE LOOKED AT THAT  
25 WE REALLY DON'T NEED.

26 AND SO YOU HAVE REDUCED THE NUMBER. BUT WE  
27 STILL HAVE A 19-PAGE DOCUMENT WITH CLOSE TO 120  
28 EXHIBITS LISTED ON THERE, WHICH WE'VE ONLY HAD A RULING



1 ON SO FAR, PROBABLY COUNT THE NUMBER NO MORE THAN TEN.

2 AND WITH ALL THE OBJECTIONS WE HAVE TO A  
3 NUMBER OF THESE, ANY ARGUMENT WE'RE GOING TO HAVE IS  
4 SUBSTANTIALLY TRUNCATED. BY AND LARGE, CAN LOOK AT THE  
5 DOCUMENT AND KNOW IF IT'S GOING TO BE ADMISSIBLE OR  
6 NOT. WE'RE GOING TO HAVE TO GET THAT DONE.

7 MR. GUTERRES: WHAT WE WILL ENDEAVOR TO DO  
8 OVER THIS WEEKEND IS TAKE MR. PARIS'S EXCEL SHEET AND  
9 PERHAPS ADD A COLUMN FOR OUR OBJECTIONS, AND WE CAN  
10 PERHAPS SUBMIT THAT TO THE COURT. AND THEN THE COURT  
11 CAN JUST LOOK AT IT AND RULE.

12 THE COURT: ALL RIGHT.

13 MR. GUTERRES: MAYBE THAT WILL EXPEDITE  
14 THINGS.

15 THE COURT: WE'RE RUNNING OUT OF TIME TO GET  
16 THESE THINGS DONE. WE STILL HAVEN'T TALKED ABOUT THE  
17 VERDICT FORM WHICH IS AT BEST A STARTING -- NOT REALLY  
18 A STARTING POINT, BUT FROM THE DISCUSSIONS WE NEED TO  
19 HAVE, IT'S EQUIVALENT TO A STARTING POINT.

20 BUT THE VERDICT FORM CAN'T BE DECIDED UNTIL  
21 WE'VE HEARD A MOTION FOR A NEW TRIAL, AND WE PROBABLY  
22 NEED TO HEAR THAT AS WELL -- NOT A NEW TRIAL, FOR A  
23 NON-SUIT. SO WE NEED TO HEAR THAT.

24 AND WE'LL NEVER BE ABLE TO DECIDE WHAT THE  
25 VERDICT FORM IS GOING TO BE UNTIL YOU GET A RULING ON A  
26 MOTION FOR NON-SUIT.

27 MR. GUTERRES: YES, SIR.

28 THE COURT: AND SO WHATEVER COMES OUT OF THAT,

1 THEN AT LEAST WE'LL KNOW WHAT THE CLAIMS ARE, AND NEED  
2 TO BE ADDRESSED, AND TAKE A LOOK THEN.

3 AND WHETHER WE'VE ASKED THE QUESTIONS, WHETHER  
4 THEY WERE THE QUESTIONS THAT NEED TO BE REWORDED,  
5 WHETHER THERE'S SOME WE DON'T NEED, MORE WE DO NEED,  
6 ONLY AFTER THAT CAN WE ADDRESS THE JURY INSTRUCTIONS  
7 THAT EVERYBODY'S OFFERED, MATCH UP, AND PROVIDE THE  
8 INSTRUCTION WE NEED TO BE ABLE TO ANSWER THOSE  
9 QUESTIONS.

10 IN A LOT OF CASES, IT'S PRETTY EASY, AND YOU  
11 DON'T HAVE A VERDICT FORM AND JURY INSTRUCTIONS IN A  
12 LOT OF CASES BEFORE YOU EVER START. THIS IS NOT ONE OF  
13 THOSE CASES. SO THERE'S GOING TO BE MORE DAYS OFF.  
14 THE QUESTION IS, WILL MONDAY BE ONE OF THOSE DAYS.

15 AND MONDAY WILL ONLY BE ONE OF THOSE DAYS IF  
16 YOU HAVE A MEANINGFUL MEET AND CONFER OVER EXHIBITS  
17 AND/OR I HAVE THE COMPLETED STATEMENT, DOCUMENT FROM  
18 PLAINTIFF AS TO WHAT SHOULD OR SHOULD NOT HAVE BEEN  
19 SUBMITTED TO THE JUVENILE COURT, AS WELL AS AN  
20 OPPORTUNITY FOR SOME RESPONSE ON THE PART OF THE  
21 DEFENSE.

22 SO YOU TELL ME WHAT YOU WANT TO DO, AND WHAT  
23 DAY YOU WANT TO HAVE OFF, BUT IT'S GOING TO HAVE TO BE  
24 DONE.

25 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR.

26 MR. GUTERRES: YOUR HONOR, AND JUST BRIEFLY,  
27 BASED ON THE PRELIMINARY DOCUMENT ON THE MATERIAL  
28 OMISSIONS, ONE OF THE PROBLEMS WE'RE ALSO HAVING IS

1 THAT SOME OF THE REPRESENTATIONS OR OMISSIONS DON'T  
2 GIVE US A CITE AS TO WHERE THEY'RE GETTING SOME OF  
3 THESE ALLEGED STATEMENTS.

4 SO WE'RE LEFT WITH A BLANKET STATEMENT THAT WE  
5 NEED TO KIND OF RESPOND TO.

6 THE COURT: WELL, I AGREE. AND I TOLD YOU I  
7 ALREADY STARTED ON SOME OF THESE, LOOKING AT IT. AND  
8 IT'S A LITTLE HARD TO TRACK.

9 MR. GUTERRES: UNDERSTOOD. I WANTED TO RAISE  
10 THE ISSUES BUT WE'RE TRYING TO WORK ON A RESPONSE IN  
11 ANTICIPATION OF WHAT MAY BE THE FINAL ONE, AND IT'S  
12 KIND OF DIFFICULT TO RESPOND TO A DOCUMENT WHEN YOU  
13 DON'T HAVE --

14 THE COURT: YOU HAVE PEOPLE WORKING ON IT.

15 MR. MCMILLAN: YOUR HONOR, JUST SO IT'S CLEAR,  
16 WE DIDN'T HAVE A CONCEPTION THAT THIS WEEK WE WOULD BE  
17 SPENDING A SUBSTANTIAL AMOUNT OF TRIAL PORING OVER THE  
18 TRIAL RECORD FOR TESTIMONY THAT ACTUALLY CAME IN AT  
19 TRIAL, TO PUT TOGETHER SOMETHING THAT REALLY IS  
20 STARTING TO LOOK LIKE A SEPARATE STATEMENT THAT YOU  
21 WOULD DO ON A MOTION FOR SUMMARY JUDGMENT.

22 I'M NOT COMPLAINING BUT WE'RE LOOKING AT,  
23 DOING THE BEST WE CAN GETTING THAT ALL TOGETHER WITH  
24 SPECIFIC CITATIONS TO THIS TRIAL RECORD.

25 AND ONE THING I WAS LOOKING AT AND THINKING  
26 ABOUT THE CRUNCH CAUSED BY THE MATERIALITY ISSUE, AND I  
27 DON'T KNOW IF THIS WORKS OR NOT, BUT WE ALL AGREE THAT  
28 MATERIALITY APPEARS TO BE A PURE LEGAL ISSUE FOR THE

1 COURT TO DECIDE.

2 I THINK WE GOT THAT KIND OF FLESHED OUT NOW.  
3 IF THAT IS THE CASE, AND I DON'T KNOW THAT IT'S  
4 POSSIBLE HERE, BUT I HAVE HAD CASES BEFORE I GOT INTO  
5 THIS KIND OF WORK, EQUITABLE ISSUES OR JURY  
6 ISSUES, 17200-CASE, 17504-CASE, MAYBE.

7 THE JURY WILL DECIDE CERTAIN FACTS AND THE  
8 COURT WILL DECIDE CERTAIN ISSUES. AS I RECALL, THE  
9 COURT IS PERMITTED AT THE DISCRETION OF THE COURT THE  
10 ORDER THAT IT MAKES ITS DECISIONS TO IT CAN MAKE ITS  
11 LEGAL DECISIONS EITHER AFTER OR BEFORE THE JURY MAKES A  
12 JURY.

13 THE COURT: THE MOTION FOR NON-SUIT CAN BE  
14 RULED UPON AT ANY TIME INCLUDING, AND THERE'S A FAIRLY  
15 RECENT CASE, AND I THINK THERE'S AN APPELLATE DECISION  
16 UPHOLDING IT.

17 ONE OF THE JUDGES IN THIS COURT RULED ON A  
18 MOTION FOR NEW TRIAL -- I MEAN FOR THE NON-SUIT, WHEN  
19 THE JURY WAS DELIBERATING. AND I THINK GRANTED A  
20 NON-SUIT.

21 AND THE QUESTION WAS, WAS THAT TOO LATE, AND  
22 THE COURT OF APPEAL SAID NO. THE MOTION NEEDS TO BE  
23 MADE AT A CERTAIN TIME, BUT THERE'S NOTHING THAT  
24 INDICATES WHEN THE COURT HAS TO RULE ON IT.

25 BUT I DO WANT TO MAKE CLEAR, IF I CAN, BECAUSE  
26 WE'VE HAD SOME EVIDENCE THAT SIMPLY CONTESTS THE  
27 LEGITIMACY OF WHAT SOMEONE HAS SAID, PARTICULARLY TRUE  
28 IN THE MEDICAL FIELD.

1           THE ISSUE IS NOT GOING TO BE WHETHER WHAT WAS  
2 REPORTED TO THE JUVENILE COURT WAS NOT TRUE BECAUSE THE  
3 SOURCE OF THE INFORMATION DIDN'T SAY IT, OR THAT THERE  
4 WAS OTHER EVIDENCE PRESENTED TO THE JUVENILE COURT THAT  
5 WOULD SHOW THAT THAT WAS AN UNTRUE STATEMENT.

6           THE DECISION OF WHETHER SOMETHING WAS FALSE,  
7 WHETHER SOMETHING SHOULD HAVE BEEN SAID THAT WASN'T,  
8 RELATES TO WHAT WAS REPORTED IN JUVENILE COURT.

9           IT ISN'T IMPORTANT IN THIS INQUIRY FOR US TO  
10 DETERMINE THE TRUTH OF THOSE MATTERS. THE QUESTION IS,  
11 WHAT WAS REPORTED AND WAS IT TRUE. WAS IT -- WAS IT AN  
12 INCORRECT STATEMENT OF THE EVIDENCE THAT HAD BEEN  
13 ACQUIRED AT THAT TIME.

14           AS AN EXAMPLE, A SOCIAL WORKER PUTS IN ONE OF  
15 THOSE REPORTS, THE DOCTOR SO AND -- DOCTOR A SAYS SO  
16 AND SO. IF DOCTOR A SAID SO AND SO, THEN THAT'S A  
17 CORRECT STATEMENT.

18           IF WHAT DOCTOR SO AND SO SAID WAS NOT TRUE,  
19 BUT THERE'S NO EVIDENCE THE SOCIAL WORKER KNEW IT  
20 WASN'T TRUE, IT'S IRRELEVANT.

21           IT WOULD ONLY BE IF THE SOCIAL WORKER REPORTED  
22 SOMETHING THAT WAS AN UNTRUE STATEMENT OF WHAT SOME  
23 SOURCES SAID. WE'RE NOT GOING TO DELVE INTO WHETHER A  
24 CHILD HAD A CERTAIN DIAGNOSIS OR A FAILURE OF  
25 DIAGNOSIS.

26           THE QUESTION IS, AS FAR AS TRUTH OR FALSITY IS  
27 CONCERNED, IF A SOCIAL WORKER REPORTED AS A RESULT OF  
28 SOMETHING, WHAT THE RESULT WAS AND THAT WAS NOT A TRUE

1 STATEMENT.

2 HAVE I MADE THAT CLEAR? PERHAPS NOT.

3 MR. MCMILLAN: I'M NOT SURE. LET ME JUST USE  
4 AN EXAMPLE. FOR EXAMPLE, WE HAVE A LOT OF REPORTING  
5 ABOUT WHAT DR. GILL SAID IN QUOTES WITH SOME VERY  
6 SPECIFIC LANGUAGE.

7 DR. GILL SAYS THE CONVERSATION NEVER HAPPENED.  
8 WOULD THAT BE THE TYPE OF CONFLICT WE'RE LOOKING AT IN  
9 DETERMINING --

10 THE COURT: WELL, I THINK SO, BECAUSE THE  
11 SOCIAL WORKER SAID DR. GILL SAID SO AND SO. DR. GILL  
12 SAID, I NEVER SAID THAT. THAT IS THEN AN UNTRUTHFUL --  
13 IT IS EVIDENCE OF AN UNTRUTHFUL STATEMENT TO THE COURT.

14 AND I THINK FOR THE DETERMINATION THE COURT  
15 HAS TO MAKE AS A MATTER OF LAW IS NOT TO RESOLVE THE  
16 FACTUAL ISSUE OF WHETHER OR NOT THE DOCTOR SAID IT.

17 BECAUSE THE SOCIAL WORKER SAYS I DID, OR THE  
18 DOCTOR DID, AND THE DOCTOR SAID NO, I DIDN'T. I THINK  
19 THE JURY CAN DECIDE THAT. I THINK THE PURPOSE OF  
20 INQUIRY RULING AS A MATTER OF LAW IS THAT YOU'RE  
21 CONTENDING THAT WAS AN UNTRUTHFUL STATEMENT. OKAY?

22 AND BECAUSE YOU'RE CONTENDING THAT'S AN  
23 UNTRUTHFUL STATEMENT, I DON'T KNOW THAT IS SOMEHOW  
24 TRUTHFUL OR UNTRUTHFUL. I'M ASSUMING YOU'RE SAYING  
25 IT'S UNTRUTHFUL, AND IF THE COURT NEVER HEARD THAT,  
26 WOULD THAT HAVE MADE A DIFFERENCE.

27 EITHER THAT, NOT THE ONE THING, BUT ALL THESE  
28 THINGS YOU SAY ARE UNTRUTHFUL. IF YOU TOOK THOSE OUT

1 OF THE REPORT, DID THE JUDICIAL OFFICER STILL HAVE THEN  
2 A REPORT, WHICH WOULD -- A REASONABLE JUDICIAL OFFICER  
3 COULD MAKE THE RULING THEY MADE.

4 MR. MCMILLAN: SO LET ME ASK -- I UNDERSTAND  
5 INCLUDING BOTH OMISSIONS AND FABRICATIONS, BUT JUST TO  
6 MAKE SURE I UNDERSTAND.

7 BECAUSE WHAT YOU'RE SAYING MAY STREAMLINE  
8 SUBSTANTIALLY, IF I'M UNDERSTANDING CORRECTLY, MAY  
9 STREAMLINE SUBSTANTIALLY THE WORK WE'RE DOING ON THIS  
10 LIST WITH SUPPORTING EVIDENCE.

11 THE COURT: YEAH, THE LACK OF TRUTH, THE  
12 UNTRUTHFULNESS THAT WE'D BE LOOKING AT IS IN THE  
13 REPORTING. WE'RE NOT LOOKING AT WHETHER WHAT A WITNESS  
14 SAID WAS UNTRUE.

15 BECAUSE THE LEGAL SUFFICIENCY OF THE DECISION  
16 OF THE COURT WOULD BE BASED ON A DETERMINATION OF WHAT  
17 WAS SAID TO THE COURT.

18 SO YOU'RE SAYING IT'S UNTRUE. THEN, IN MAKING  
19 A DECISION, USING THE EXAMPLE, SOCIAL WORKER SAYS  
20 DR. GILL SAID SO AND SO, YOU SAY THAT IS UNTRUE, AND  
21 YOUR EVIDENCE TO SUPPORT THAT IS, THE DOCTOR SAYS I  
22 NEVER SAID THAT.

23 I DON'T DECIDE WHETHER THE DOCTOR SAID IT OR  
24 NOT. I DECIDE, IF THAT'S THE CONTENTION, THAT'S  
25 UNTRUE. IF YOU PUT THAT ASIDE, AND THE OTHER THINGS  
26 YOU SAY ARE UNTRUTHFUL, IF YOU PUT THAT ASIDE, IS THERE  
27 SUFFICIENT EVIDENCE PRESENTED TO THE JUVENILE COURT  
28 THAT WOULD REASONABLE PERMIT THE JUDICIAL OFFICER TO

1 MAKE THE DECISION THEY DID.

2 MR. MCMILLAN: I THINK I UNDERSTAND.

3 THE COURT: SO I'M NOT GOING TO DECIDE IN THAT  
4 EXAMPLE WHETHER DR. GILL SAID IT OR NOT. BUT YOU'RE  
5 SAYING IT'S UNTRUTHFUL.

6 REMEMBER THE QUESTIONS IN THE VERDICT FORM.  
7 FIRST QUESTION UNDER DECEPTION DID THEY MAKE AN  
8 UNTRUTHFUL -- BASICALLY PARAPHRASING, THEY MAKE A  
9 DELIBERATELY OR INTENTIONALLY UNTRUTHFUL STATEMENT OR  
10 STATEMENT OF FACT WITH RECKLESS DISREGARD THAT -- TO  
11 THE COURT.

12 AND THE JURY WOULD DECIDE THEN, IF THEY'RE  
13 PERMITTED TO DO SO. THEY WOULD DECIDE, DID DR. GILL  
14 REALLY SAY THAT OR NOT. SO THE JURY WOULD THEN DECIDE  
15 IF THEY THOUGHT IT HAD NOT BEEN SAID.

16 THEN IN THE DECISION THEY WOULD MAKE, YES,  
17 THERE WAS A -- THEY HAVE TO DECIDE WHETHER IT'S  
18 DELIBERATE.

19 BUT I THINK IF A WITNESS IS SAYING A DOCTOR  
20 SAID SOMETHING, AND THE DOCTOR SAID NO, I DIDN'T,  
21 PROBABLY SATISFIES -- PRETTY MUCH THE DELIBERATE -- IF  
22 YOU DECIDE -- IF THE JURY DECIDES THE STATEMENT WAS  
23 NEVER MADE.

24 I DON'T KNOW HOW ELSE SOMEONE COULD QUOTE  
25 SOMEBODY AND NOT BE DELIBERATE IF, IN FACT, THE  
26 STATEMENT WAS NEVER MADE. SOME OTHERS ARE OF A LESSER  
27 NATURE.

28 THAT IS WHERE IT'S MAYBE MORE EQUIVOCAL AS TO



1 WHAT THE JURY WOULD DECIDE. BUT IN ANY EVENT, THE JURY  
2 HAS TO DECIDE, IF THEY GET A CHANCE TO DECIDE, WHETHER  
3 THERE WERE INTENTIONAL STATEMENTS MADE OR STATEMENTS  
4 MADE WITH RECKLESS DISREGARD OF TRUTH, WHICH WERE  
5 UNTRUE TO THE COURT.

6 I'M NOT GOING TO DECIDE THAT. I'M GOING TO  
7 DECIDE BASED ON THE CHALLENGE STATEMENT, ALTHOUGH IF  
8 YOU CHALLENGE IT, IT CAN'T BE JUST BECAUSE YOU SAY  
9 THAT'S NOT TRUE.

10 YOU CAN'T TELL ME, FOR EXAMPLE, WHEN THE  
11 SOCIAL WORKER SAID DR. GILL SAID SO AND SO, YOU CAN'T  
12 JUST SAY, WELL, THAT'S UNTRUE, THEREFORE, DISREGARD IT.  
13 YOU NEED TO POINT TO ME, SOMEBODY, IN THIS INSTANCE, I  
14 NEVER SAID THAT.

15 OKAY. FROM MY CONSIDERATION, I WOULD LOOK AT  
16 WHAT THE COURT SAID IT DID, WHAT WAS RELIED UPON, AND  
17 WHAT WAS SUBMITTED TO THE COURT.

18 BECAUSE THE STATEMENTS THE COURT MAKES DON'T  
19 NECESSARY COVER ALL THE EVIDENCE THEY RECEIVED, AND  
20 THAT'S WHY IT'S GOING TO BE A PAINSTAKING JOB TO REVIEW  
21 EVERYTHING THEY DID RECEIVE.

22 I'LL CERTAINLY LOOK AT WHAT THEY SAID THEY  
23 RELIED ON, BUT THE QUESTION IS STILL, WAS THERE  
24 INFORMATION BEFORE THE COURT WHICH EITHER DID OR DID  
25 NOT PERMIT A JUDICIAL OFFICER TO MAKE THAT DECISION.

26 IT'S NOT THAT WE HAVE TO AGREE WITH THE  
27 EVIDENCE OR DISAGREE WITH IT. THE QUESTION IS, WAS  
28 THERE SUFFICIENT EVIDENCE PRESENTED TO THE COURT WHICH

1 A REASONABLE JUDICIAL OFFICER COULD HAVE MADE THAT  
2 DECISION ON, KIND OF WHAT A COURT OF APPEAL DOES.

3 MR. MCMILLAN: IT SEEMS LIKE THAT.

4 THE COURT: WELL, MANY ISSUES ON APPEAL,  
5 THAT'S BY AND LARGE, WE KNOW APPEALS DON'T REVISIT  
6 GRANTING OF A NEW TRIAL. THEY LOOK TO SEE WAS THERE A  
7 SUFFICIENT BASIS FOR THE TRIAL COURT JUDGE TO HAVE MADE  
8 THE DECISION. AND SOMETIMES THEY SAY NO.

9 ANYWAY, THIS IS GOING ON TOO LONG WITH THIS.  
10 I WANT TO GET THE JURORS IN. I WANT YOU TO UNDERSTAND  
11 WE'RE FOCUSED ON WHAT WAS SAID, OR NOT SAID.

12 NOT THE UNDERLYING TRUTH OF WHAT WAS SAID,  
13 JUST WHETHER THE STATEMENT THAT A CERTAIN THING WAS  
14 SAID WAS TRUE OR NOT. SO THERE'S A LOT OF THINGS, AND  
15 YOU PUT ON EVIDENCE OF CONTESTING SOME OF THE DIAGNOSES  
16 OF -- THAT WERE MADE.

17 FRANKLY, WASN'T AN OBJECTION, BUT SOME OF THAT  
18 WAS NOT REALLY MEANINGFUL TO THE CLAIMS MADE IN THIS  
19 CASE BECAUSE -- REMEMBER, WE HAD THIS DISCUSSION AT THE  
20 VERY BEGINNING. IT'S NOT A MEDICAL MALPRACTICE CASE.

21 WE'RE NOT QUESTIONING WHETHER THE DOCTOR'S  
22 COMPLIED WITH THE STANDARD OF CARE. SHOULD A DOCTOR  
23 HAVE ORDERED AN ADDITIONAL TEST? FRANKLY, THAT DOESN'T  
24 MAKE ANY DIFFERENCE. QUESTION IS, DID A SOCIAL WORKER  
25 REPORT ACCURATELY WHAT SOME TESTS HAD SHOWN OR NOT  
26 SHOWN.

27 NOW, YOU MAY ARGUE THAT YOU HAVE EVIDENCE THAT  
28 THERE SHOULD HAVE BEEN MORE SAID -- THERE'S MORE TESTS

1 THAT WERE DONE THAT WEREN'T MENTIONED AND SHOULD HAVE  
2 BEEN BECAUSE THEY KNEW THAT. BUT EVERYTHING FOCUSES ON  
3 WHAT THE REPORT WAS.

4 SO I DON'T WANT TO HAVE A LOT OF ARGUMENT --  
5 THERE WON'T BE ANY ARGUMENT OVER WHETHER THE UNDERLYING  
6 FACT -- ALLEGED FACTS WAS TRUE OR NOT. IT WAS A  
7 QUESTION OF WHAT WAS REPRESENTED TO THE COURT. AND WAS  
8 THAT SUFFICIENT OR NOT SUFFICIENT FOR THEM TO MAKE THE  
9 DECISION.

10 MR. MCMILLAN: I THINK I UNDERSTAND WHAT  
11 YOU'RE LOOKING FOR. AND WE'VE TRIED TO A GREAT  
12 EXTENT -- I UNDERSTAND THAT WE'RE NOT TRYING A MEDICAL  
13 MALPRACTICE CASE, AND THE ISSUE REALLY IS, AND THIS HAS  
14 BEEN THE ISSUE FROM THE BEGINNING, WHAT WAS REPORTED TO  
15 THE COURT.

16 WAS IT TRUE, AND DID THEY KNOW AT THE TIME  
17 WHETHER IT WAS TRUE OR NOT. AND THAT'S IT.

18 IT'S NOT WHETHER OR NOT YOU SHOULD HAVE DONE  
19 MORE, OR LESS SHOULD HAVE BEEN DONE, WHAT ONE SIDE OR  
20 THE OTHER SHOULD HAVE BEEN DOING.

21 WAS IT REPORTED TO THE COURT? WAS THAT TRUE?  
22 AND IF IT WAS NOT TRUE, DID THEY KNOW OR SHOULD THEY  
23 HAVE KNOWN IT WASN'T TRUE WHEN THEY MADE THE REPORT,  
24 ESSENTIALLY.

25 AND THEN SAME THING WITH RESPECT TO THE  
26 OMISSIONS, AND DID THEY HAVE THE INFORMATION, THE --

27 THE COURT: SO YOUR CONTENTION IS, YES, THEY  
28 DID HAVE THIS INFORMATION, IT WAS MATERIAL AND THEY

1 DIDN'T PUT IT IN. SO THE LAST THING I WANT TO SAY ON  
2 THIS. I DO WANT TO GET THE JURORS IN.

3 IN THIS PARTICULAR CONTEXT, MATERIALITY HAS A  
4 LITTLE DIFFERENT EMPHASIS TO IT THAN IT DOES IN TERMS  
5 OF EVIDENCE IN THE TRIAL.

6 BECAUSE THE CIRCUIT COURTS AND A NUMBER OF  
7 THOSE DECISIONS THAT YOU CITED TO ME AND THAT I'VE  
8 MENTIONED, WE'VE ALL MENTIONED IN SOME OF THE  
9 DISCUSSION WE'VE HAD, HAVE DEFINED MATERIALITY AS TO  
10 WHETHER OR NOT IT WOULD MAKE A DIFFERENCE.

11 IF IT WOULDN'T MAKE A DIFFERENCE, IT'S NOT  
12 MATERIAL. IF IT WOULD -- COULD MAKE A DIFFERENCE, THEN  
13 IT IS MATERIAL.

14 MR. MCMILLAN: CORRECT.

15 THE COURT: OKAY. SO WE'RE ON THE SAME PAGE  
16 ON THAT. MR. PRAGER, DID YOU WANT TO --

17 MR. GUTERRES: YOUR HONOR, CAN I JUST HAVE  
18 TWO MINUTES JUST SO THAT I CAN LINE UP CERTAIN  
19 WITNESSES FOR MONDAY?

20 THE COURT: SURE.

21 (JURY PRESENT)

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

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

26 BEFORE WE CONTINUE WITH THE WITNESS, I  
27 PROMISED THE JURORS THIS MORNING THAT I'D TRY TO GIVE  
28 THEM MORE INFORMATION ABOUT WHEN WE CAN EXPECT THE

1 TRIAL TO BE COMPLETED.

2 I CANNOT AT THE MOMENT GIVE YOU A DATE WHEN IT  
3 WILL COMPLETED, BUT I CAN TELL YOU IT WILL NOT BE  
4 COMPLETED NEXT WEEK. THE TRIAL WILL GO INTO THE  
5 FOLLOWING WEEK.

6 I WILL GIVE YOU MORE INFORMATION NEXT WEEK AS  
7 I -- AS WE ARE ABLE TO GET BETTER INFORMATION ABOUT  
8 EXACTLY HOW LONG -- MUCH LONGER IT WOULD TAKE.

9 NOW, I'M AWARE -- AND INCIDENTALLY, THERE ARE  
10 GOING TO BE SOME DAYS OFF WHEN YOU WILL NOT BE HERE,  
11 AND I WANT YOU TO UNDERSTAND THAT THAT IS ALL PART OF  
12 THE TRIAL, BUT NOT YOUR PART OF THE TRIAL, AS I  
13 MENTIONED THIS MORNING.

14 THERE ARE A NUMBER OF MATTERS THAT CAN BE  
15 DECIDED ONLY AMONG COUNSEL AND THE COURT. SO THERE  
16 WILL BE SOME TIME OFF, AND I WILL ADVISE YOU PROBABLY  
17 ON MONDAY WHAT DAYS, IF ANY, WE'LL BE OFF NEXT WEEK, AS  
18 FAR AS YOU'RE CONCERNED IT.

19 PLEASE UNDERSTAND WHEN I SAY IT'S A DAY OFF,  
20 WE'RE TALKING ABOUT YOU. OR I DON'T WANT YOU TO HAVE  
21 TO -- ALREADY HAVE. FOR EXAMPLE, YOU WERE ALL HERE AT  
22 1:30, AND IT'S 2:00 O'CLOCK NOW.

23 THAT'S BECAUSE WE'VE BEEN ADDRESSING THE  
24 MATTER, WHICH WE SHOULD BE ADDRESSING THESE THINGS TO  
25 TRY TO GIVE YOU THE BEST INFORMATION.

26 AND INCIDENTALLY, IN TELLING YOU THAT THIS  
27 TRIAL WON'T BE FINISHED NEXT WEEK, IT WILL GO AT LEAST  
28 INTO THE FOLLOWING WEEK, YOU SHOULD NOT DRAW ANY KIND

1 OF INFERENCE FROM THAT.

2 REMEMBER WHEN I TOLD YOU, MATTERS, UNLESS IT'S  
3 EVIDENCE YOU HEAR FROM THE STAND, YOU DON'T CONSIDER  
4 IT. YOUR DECISIONS ARE BASED ON EVIDENCE RECEIVED IN  
5 THE TRIAL, AND NOT MATTERS OUTSIDE THE EVIDENCE.

6 SO DON'T AT ANY TIME TRY TO FIGURE OUT WHAT  
7 ARE THEY DOING. IF YOU SHOULD KNOW WHAT WE'RE DOING, I  
8 WOULD HAVE TOLD YOU WHAT WE'RE DOING.

9 AND IT'S NOT THIS CASE. THAT IS TRUE IN ALL  
10 CASES. IN TELEVISION, IN MOVIES, THEY HAVE A TRIAL.  
11 IF THE MOVIE'S TWO HOURS LONG, THEY COVER A WHOLE TRIAL  
12 IN THE TWO HOURS. THOSE DAYS ARE LONG GONE.

13 A TELEVISION SHOW TYPICALLY IS A ONE-HOUR  
14 SHOW. THEY'LL DO A WHOLE LOT OF THINGS IN ONE HOUR,  
15 AND SHOW YOU THINGS A JURY WOULD NEVER SEE, AND TELL  
16 YOU THINGS A JURY WOULD NEVER HEAR.

17 THE REAL PROCESS I THINK IS MUCH MORE  
18 PROTECTIVE OF THE RIGHTS OF THE PARTIES THAN IS  
19 DEPICTED. I'M NOT CRITICIZING WHAT THEY DO. THEY'RE  
20 IN THE BUSINESS OF ENTERTAINING, WE'RE NOT.

21 WE'RE IN THE BUSINESS OF TRYING TO PROTECT THE  
22 RIGHTS OF THESE PEOPLE, EVERYONE WHO IS INVOLVED. SO  
23 PART OF THAT JOB -- I TOLD YOU THAT YOUR JOB IS TO  
24 DECIDE WHAT THE EVIDENCE HAS SHOWN, AND BASED ON THE  
25 INSTRUCTIONS OF LAW, TO ANSWER CERTAIN QUESTIONS IN  
26 WHAT WE CALL A SPECIAL VERDICT.

27 THE COURT'S JOB IS TO DECIDE WHAT LAW APPLIES  
28 TO THE CASE, AND TO DECIDE QUESTIONS AND ISSUES OF

1 EVIDENCE. IT ALSO INCLUDES, WHICH WE NORMALLY DON'T  
2 MENTION, THE MANNER IN WHICH WE PROCEED.

3 ONE OF THE THINGS WE TALK ABOUT ON A REGULAR  
4 BASIS IS, WHO ARE THE WITNESSES COMING UP, DO WE NEED  
5 TO HAVE THAT WITNESS, HOW LONG SHOULD THAT WITNESS'S  
6 TESTIMONY TAKE.

7 ALL OF THIS IS DONE TO TRY TO KEEP THE TRIAL  
8 WITHIN BOUNDS, TO USE YOUR TIME AS WELL AS WE POSSIBLY  
9 CAN. I'M NOT TELLING YOU I THINK I'VE DONE A GOOD JOB  
10 OF DOING THAT IN THIS CASE, BUT IT ISN'T BECAUSE OF  
11 LACK OF EFFORT.

12 AND SO I TOLD YOU, THE TRIAL WILL BE  
13 CONTINUING THROUGH NEXT WEEK. SOME DAY OR DAYS NEXT  
14 WEEK, YOU WILL NOT BE HERE. AND I WILL TELL YOU MORE  
15 AS SOON AS I'M ABLE TO.

16 NOW, UNDERSTANDING THAT, I DO UNDERSTAND THAT  
17 SEVERAL PERSONS HAVE EXPRESSED CONCERN, OR, AT LEAST  
18 HAVE ASKED THE QUESTION OF DEANNA AS TO WHEN IT WILL  
19 END. IT CREATES A PROBLEM.

20 WHAT I'VE TOLD YOU NOW AS TO WHERE WE ARE,  
21 THAT YOU'RE GOING TO BE HERE, THIS CASE WILL NOT GO TO  
22 THE JURY NEXT WEEK. IT'S GOING TO HAVE BE SOMETIME  
23 DURING THE FOLLOWING WEEK.

24 I AM AWARE OF ONE OF OUR ALTERNATE JURORS -- I  
25 HAVEN'T FORGOTTEN THAT. IS THERE ANYONE ELSE, HAVING  
26 THIS INFORMATION, THAT YOU WOULD SUFFER A HARDSHIP IF  
27 YOU WERE ASKED TO CONTINUE IN YOUR SERVICE ON THIS  
28 TRIAL BEYOND THIS NEXT WEEK INTO THE FOLLOWING WEEK?

1           IF SO, I MIGHT AS WELL FIND OUT WHAT PROBLEMS  
2 YOU HAVE. ANY? NOT AT THIS TIME. I'LL STAY IN TOUCH  
3 WITH YOU OVER THIS, BY THE WAY.

4           WE'RE NOT -- I'M NOT BEING DELIBERATE IN NOT  
5 TELLING YOU WHAT WE TALK ABOUT WHEN YOU'RE NOT HERE  
6 BECAUSE IT ISN'T EVIDENCE. SO NO REASON FOR YOU TO  
7 EVEN CONSIDER IT.

8           BUT WE READILY ACKNOWLEDGE AND TALK TO YOU ALL  
9 THE TIME. WE'RE WELL AWARE OF THAT. WE MEET BEFORE  
10 YOU GET HERE IN THE MORNING, AFTER YOU LEAVE IN THE  
11 AFTERNOON, WE MEET WHEN YOU'RE NOT HERE AT ALL.

12           AND THAT'S THE REASON YOU'RE NOT HERE, BECAUSE  
13 THERE WON'T BE A DAY IN WHICH EVIDENCE IS BEING  
14 PRESENTED. BUT A LOT OF OTHER THINGS HAVE TO GET DONE.  
15 THAT'S WHERE WE ARE.

16           I DO WANT TO GET BACK TO OUR WITNESS, IF WE  
17 CAN. MR. KING IS RARING TO GO.

18           MR. KING: RARING TO GO.

19 BY MR. KING:

20           Q     MS. BALABAN, BEFORE THE BREAK WE WERE TALKING  
21 ABOUT HOW SOCIAL WORKERS HAVE AN AFFIRMATIVE DUTY TO  
22 INCLUDE EXCULPATORY EVIDENCE TO THE COURT.

23                     DO YOU REMEMBER THAT?

24           A     I DO.

25           Q     ISN'T THAT TRUE THAT AN ARA ALSO HAS AN  
26 AFFIRMATIVE DUTY TO INCLUDE EXCULPATORY INFORMATION  
27 BEFORE SIGNING OFF ON A DETENTION REPORT?

28           A     NOT TO INCLUDE. BUT I HAVE TO REVIEW THE



1 REPORT AND RELY ON THE INFORMATION AND EXPECT THAT  
2 INFORMATION IS ALREADY INCLUDED IN THE REPORT.

3 Q WELL, IS IT TRUE THAT AS AN ARA, YOU HAVE A  
4 DUTY TO INCLUDE EXCULPATORY EVIDENCE TO THE COURT?

5 A NOT PERSONALLY.

6 MR. KING: YOUR HONOR, PERMISSION TO READ FROM  
7 THE WITNESS'S DEPOSITION. IT WOULD BE PAGE 50 LINES 13  
8 THROUGH 24.

9 THE COURT: DO I HAVE THAT DEPOSITION? IF I  
10 DO, I HAVE TEMPORARILY MISPLACED IT, WHICH MY WIFE  
11 ACCUSES ME OF DOING ALL THE TIME. AND, UNFORTUNATELY,  
12 SHE'D WANT ME TO TELL YOU SHE'S ALWAYS CORRECT. I'D  
13 SAY SHE'S OFTEN CORRECT.

14 I DO HAVE IT NOW. THANK YOU.

15 MR. GUTERRES: OBJECTION, YOUR HONOR. IT'S  
16 IMPROPER IMPEACHMENT BASED ON SCOPE OF THE QUESTION.

17 THE COURT: OBJECTION'S OVERRULED. YOU MAY  
18 READ IT.

19 MR. KING: THANK YOU, YOUR HONOR.

20 (A VIDEO EXCERPT WAS PLAYED)

21 BY MR. KING:

22 Q SO, MS. BALABAN, ASSUMING THAT THE EVIDENCE  
23 SUPPORTS THAT THE DIAGNOSIS BY THE REGIONAL CENTER THAT  
24 THE CHILD'S SENSORY INTEGRATION DISORDER INDICATES THAT  
25 THE CHILD'S SUFFERED FAILURE TO THRIVE -- SORRY.

26 LET ME REPHRASE THAT.

27 ASSUMING THAT THE EVIDENCE SUPPORTS THAT THE  
28 DIAGNOSIS BY THE EAST LA REGIONAL CENTER OF THE CHILD'S

1       SENSORY INTEGRATION DISORDER INDICATES THAT IT CANNOT  
2       TELL WHETHER OR NOT THE DIAGNOSIS IS THE RESULT OF  
3       PARENTAL ABUSE, WOULD YOU CONSIDER THAT TO BE  
4       EXCULPATORY INFORMATION?

5               MR. GUTERRES:  OBJECTION:  FOUNDATION,  
6       SPECULATION ON THE PART OF THIS WITNESS.

7               THE COURT:  SUSTAINED.

8       BY MR. KING:

9               Q       THE DETENTION REPORT THAT YOU REVIEWED HAD  
10       SEVERAL ATTACHMENTS.  IS THAT RIGHT?

11              A       I'M NOT SURE WHAT IT HAD, IF ANY.

12              Q       YOU MAY HAVE IT IN FRONT OF YOU.  THERE'S AN  
13       EXHIBIT, IT WOULD BE EXHIBIT 12.  STARTING WITH  
14       BATES 000014.  AND IF YOU WANT TO GO AHEAD AND LOOK AT  
15       PAGE 9 OF THE REPORT, BATES 000022 DOWN AT THE BOTTOM  
16       OF THE PAGE.

17              A       ON THE TOP RIGHT CORNER?  IS THAT WHAT YOU'RE  
18       REFERRING TO?

19              Q       IF YOU GO TO BATES 000022, WHICH IS THE TOP  
20       RIGHT.

21              A       OKAY.

22              Q       AND YOU GO ALL THE WAY DOWN WHERE IT INDICATES  
23       ATTACHMENT.

24              A       YES.

25              Q       OKAY.  WAS THERE AN ATTACHMENT OF A REPORT  
26       FROM THE CATC CLINIC TO THE DETENTION REPORT WHEN YOU  
27       RECEIVED IT?

28              A       I CANNOT RECALL IF THERE WAS OR NOT.

1 Q WHEN YOU GET THE DETENTION REPORT, YOU REVIEW  
2 THE DETENTION REPORT AS WELL AS THE ATTACHMENTS.  
3 CORRECT?

4 A IT'S POSSIBLE. BUT NOT ALL THE TIME.

5 Q YOU TOLD US EARLIER THAT IT'S IMPORTANT FOR  
6 YOU TO ENSURE THAT THERE AREN'T ANY INCONSISTENCIES  
7 PRIOR TO SIGNING OFF OF A DETENTION REPORT. TRUE?

8 A I HAVE TO CORRECT MY STATEMENT AND SAY I  
9 MISSTATED SAYING "ANY." I HAVE TO SAY "GLARING  
10 INCONSISTENCIES."

11 THERE MAY BE SOME INCONSISTENCIES, AND I MAY  
12 NOT BE ABLE TO CATCH THEM, BUT I LOOK AT THE GLARING  
13 INCONSISTENCIES.

14 THE COURT: I'M NOT SURE IT WAS CLEAR THAT THE  
15 EXCERPT THAT WAS PLAYED WAS AN EXCERPT FROM THE PAGE  
16 AND LINES MENTIONED.

17 MR. KING: CERTAINLY, YOUR HONOR.

18 THE COURT: BUT, MR. KING, THE NEXT THING I  
19 WANT TO SAY IS AT THAT POINT IN TIME, BOTH THE CLERK  
20 AND I LOST THE TRANSCRIPTION OF THE TRANSCRIPT THAT  
21 ENDED AS OF PLAYING OF THE VIDEOTAPED DEPOSITION.

22 (PAUSE IN THE PROCEEDINGS)

23 THE COURT: ALL RIGHT. YOU CAN GO AHEAD,  
24 MR. KING.

25 MR. KING: THANK YOU.

26 BY MR. KING:

27 Q MS. BALABAN, YOU WERE INDICATING THAT PRIOR TO  
28 THE BREAK, WHEN YOU TESTIFIED THAT YOU ACTUALLY MIS --

1 YOU MISSTATED YOUR OBLIGATIONS AS AN ARA?

2 A THE WORD "ANY." I WOULD SAY -- I SAID THE  
3 WORD "ANY" INCONSISTENCIES, I HAVE TO SAY "GLARING"  
4 INCONSISTENCIES.

5 Q WELL, WHEN YOU SIGNED UNDER PENALTY OF  
6 PERJURY -- YOU UNDERSTAND THAT THE DETENTION REPORT IS  
7 GOING TO BE SUBMITTED TO THE COURT. CORRECT?

8 A CORRECT.

9 Q AND YOU UNDERSTAND THAT THE DETENTION REPORT  
10 IS THE PRIMARY EVIDENCE USED BY THE COURT IN ORDER TO  
11 DETERMINE WHETHER OR NOT THE COURT IS GOING TO TAKE  
12 AWAY CUSTODY FROM THE PARENT AND GIVE IT TO THE  
13 DEPARTMENT. CORRECT?

14 A YES.

15 Q SO IT'S INCUMBENT UPON YOU TO ENSURE THAT THE  
16 INVESTIGATION THAT'S DONE IS THOROUGH. CORRECT?

17 A WELL, I HAVE TO REMIND YOU AGAIN. MY CHARGE  
18 TO REVIEW THIS DETENTION REPORT WAS TO REVIEW FOR BABY  
19 RYAN'S REMOVAL -- NOT FOR BABY RYAN'S REMOVAL,  
20 NECESSARILY, BUT IT WAS TO BE PLACED WITH THE FATHER.

21 SO THE PLACEMENT OF HIM WITH THE FATHER,  
22 THAT'S WAS WHAT I WAS CHARGED TO DO, AND THAT WAS MY  
23 PRIMARY FOCUS.

24 Q OKAY. BUT IF THERE ARE INCONSISTENCIES, AND  
25 NOW YOU TOLD US THEY HAVE TO BE GLARING  
26 INCONSISTENCIES, THEN YOU WOULD NOTE THOSE AS WELL.  
27 CORRECT?

28 A IF THERE WERE GLARING INCONSISTENCIES, I WOULD

1       SEE IT.  IF THERE WERE NONE OR IF I REVIEWED THE  
2       INFORMATION AND IT WAS SATISFYING, AND THE REPORT WAS  
3       DETAILED ENOUGH, AND THERE WAS FIRSTHAND INFORMATION,  
4       MULTIPLE CONFIRMATIONS, THEN I WOULD RELY ON THE  
5       INFORMATION.

6                AND I WOULD RELY ON MY SUBORDINATES REPORTING  
7       EVERY, YOU KNOW, FACTS OR THE INFORMATION THAT THEY  
8       HAVE, TRUTHFULLY.

9                Q       WHEN YOU SAY FIRSTHAND INFORMATION, WHAT DO  
10       YOU MEAN?

11               A       THAT THEY HAVE SPOKEN OR HAD PERSONAL CONTACT  
12       WITH THE INFORMATION SOURCE.

13               Q       SO YOU ASSUMED, FOR EXAMPLE, THAT YOUR SOCIAL  
14       WORKERS SPOKE TO DR. GILL.  CORRECT?

15               A       SURE.

16               Q       OKAY.  AND DID YOU GO THROUGH THE CONTACT  
17       NOTES IN ORDER TO ENSURE WHETHER OR NOT THAT WAS DONE?

18               A       I DON'T KNOW.  I CAN'T RECALL ON THIS  
19       PARTICULAR CASE IF I DID OR NOT.

20               Q       AND WHEN YOU TALK ABOUT GLARING  
21       INCONSISTENCIES, IF IN THE REPORT, THE REPORT INDICATES  
22       THAT THE CATC CLINIC DIAGNOSED FAILURE TO THRIVE AS AN  
23       ENVIRONMENTAL FACTOR, WHEN IN FACT, THE RECORDS  
24       INDICATE THAT THE CATC CLINIC COULD NOT DIAGNOSE  
25       FAILURE TO THRIVE AND THAT MORE TESTING IS NEEDED,  
26       WOULD YOU CONSIDER THAT TO BE A GLARING INCONSISTENCY?

27               MR. GUTERRES:  OBJECTION:  SPECULATION,  
28       FOUNDATION.

1 THE COURT: WELL, THE OBJECTION OF SPECULATION  
2 IS OVERRULED. BUT THE FORM OF YOUR QUESTION, WAS YOUR  
3 RECITATION OF THE EVIDENCE.

4 YOU CAN ASK A HYPOTHETICAL IF YOU CHOOSE TO,  
5 ALTHOUGH I HOPE IT'S PERTINENT TO THIS WITNESS'S  
6 TESTIMONY, WHICH IS VERY LIMITED IN THE FIRST PLACE,  
7 BUT YOU ARE NOT PERMITTED TO STATE WHAT YOU THINK THE  
8 EVIDENCE IS.

9 YOU CAN ASK A HYPOTHETICAL AND SEE IF THAT,  
10 BASED ON ASSUMING THOSE FACTS TO BE TRUE, WOULD THAT --  
11 WOULD SHE DO SOMETHING.

12 MR. KING: SURE.

13 BY MR. KING:

14 Q FROM LOOKING AT THE DETENTION REPORT OF BATES  
15 PAGE 000022, DOES IT REFRESH YOUR RECOLLECTION AS TO  
16 WHETHER OR NOT THE ATTACHMENT INCLUDES THE REPORT FROM  
17 THE CATC CLINIC?

18 A I DO NOT RECALL.

19 Q TAKING A LOOK AT PAGE 000022 AT THE BOTTOM  
20 WHERE IT SAYS ATTACHMENT, DOES LOOKING AT THAT PAGE --

21 A I DID GO OVER IT.

22 Q DID IT REFRESH YOUR RECOLLECTION AS TO WHETHER  
23 OR NOT, IN FACT THAT REPORT WAS ATTACHED?

24 A I DO NOT RECALL.

25 Q OKAY. NOW, IF WE ASSUME THAT THE CATC CLINIC  
26 INDICATES THAT IT COULD NOT DIAGNOSE THE CAUSE OF THE  
27 FAILURE TO THRIVE, AND MUCH MORE TESTING IS NEEDED,  
28 WHEREAS IN THE REPORT, IT INDICATES THAT THE CATC

1 CLINIC DIAGNOSED FAILURE TO THRIVE AS HAVING  
2 ENVIRONMENTAL CAUSES, WOULD THAT BE SOMETHING THAT YOU  
3 WOULD FIND TO BE INCONSISTENT?

4 A YOU'RE ASKING ME TO PLACE MY MIND BACK TO 2009  
5 AND THINK WHAT I WOULD HAVE THOUGHT OR THOUGHT WHAT  
6 WOULD BE INCONSISTENCIES. I CAN'T TELL YOU, THAT WOULD  
7 BE IMPOSSIBLE.

8 Q WELL, I'M JUST SAYING HYPOTHETICALLY HERE  
9 TODAY. AS A HYPOTHETICAL, IF, IN FACT, THE DETENTION  
10 REPORT INDICATES THAT THE CATC CLINIC DIAGNOSED FAILURE  
11 TO THRIVE, ENVIRONMENTAL CLINIC (SIC).

12 AND YOU HAVE A REPORT THAT SAYS CATC CANNOT  
13 DIAGNOSE FAILURE TO THRIVE BECAUSE MORE TESTING IS  
14 NEEDED.

15 WOULD YOU FIND THAT TO BE INCONSISTENT?

16 A POSSIBLE.

17 Q AND THAT'S SOMETHING YOU WOULD BE LOOKING FOR  
18 AS AN ARA, PRIOR TO SIGNING OFF ON THIS DETENTION  
19 REPORT. CORRECT?

20 A INCONSISTENCIES, YES.

21 Q GLARING INCONSISTENCIES?

22 A GLARING INCONSISTENCIES.

23 Q AND ASSUMING FOR THE MOMENT THAT THE FAILURE  
24 TO THRIVE CLINIC AT UCLA ALSO INDICATES THAT  
25 ENVIRONMENTAL FACTORS MAY BE ONE FACTOR CAUSING THE  
26 FAILURE TO THRIVE, BUT MORE TESTING NEEDS TO BE DONE.

27 HOWEVER, IN THE REPORT, IT INDICATES THAT THE  
28 FAILURE TO THRIVE CLINIC INDICATES THAT THE FAILURE TO

1 THRIVE IN THIS CASE WAS DUE TO ENVIRONMENTAL CAUSES  
2 ONLY. WOULD YOU FIND THAT TO BE AN INCONSISTENT?

3 A POSSIBLE.

4 MR. GUTERRES: SPECULATION, YOUR HONOR.

5 THE COURT: OVERRULED.

6 BY MR. KING:

7 Q WELL, GETTING BACK TO EXCULPATORY INFORMATION,  
8 ASSUMING THERE WAS EVIDENCE THAT THE MOTHER DID  
9 EVERYTHING SHE COULD TO FEED THE CHILD, WOULD THAT BE  
10 EXCULPATORY INVITATION?

11 A BY THE SOCIAL WORKER, YOU MEAN, IF IT WAS PUT  
12 IN THE REPORT?

13 Q YEAH, ASSUMING THERE WAS A FACT, AND YOU'RE  
14 LOOKING FOR EXCULPATORY EVIDENCE AS WELL AS INCULPATORY  
15 EVIDENCE. CORRECT?

16 A YES.

17 Q AND YOU'RE RELYING ON THE SOCIAL WORKERS TO DO  
18 THEIR JOB ACCURATELY. CORRECT?

19 A YES.

20 Q TRUTHFULLY. CORRECT?

21 A YES.

22 Q HONESTLY. CORRECT?

23 A YES.

24 Q OKAY. AND PART OF THAT OBLIGATION OF THE  
25 SOCIAL WORKER THAT YOU'RE RELYING ON IS FOR THEM TO DO  
26 ALL OF THOSE THINGS. TRUE?

27 A TRUE.

28 Q AND IF THE SOCIAL WORKERS HAVE FACTS THAT SHOW



1 THAT THE MOTHER DID EVERYTHING THAT SHE COULD TO FEED  
2 THE CHILD, IS THAT SOMETHING YOU WOULD EXPECT TO BE PUT  
3 IN THE REPORT?

4 MR. GUTERRES: OBJECTION: VAGUE, IT'S AN  
5 INCOMPLETE HYPOTHETICAL, SPECULATION, FOUNDATION.

6 THE COURT: SUSTAINED AS TO THE SPECULATION.  
7 AND INCOMPLETENESS. THAT'S NOT ENOUGH INFORMATION TO  
8 GIVE AN ANSWER.

9 BY MR. KING:

10 Q NOW, YOU'VE ALSO TOLD US THAT PART OF YOUR  
11 OBLIGATION OR DUTIES IN SIGNING OFF ON THIS DETENTION  
12 REPORT WAS TO ENSURE THAT THE CHILD WOULD BE SAFE BEING  
13 PLACED WITH THE FATHER.

14 IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q OKAY. DID YOU DO ANY INDEPENDENT  
17 INVESTIGATION IN ORDER TO ASSESS THAT DETERMINATION?

18 A I'M NOT REQUIRED TO DO ANY INDEPENDENT  
19 INVESTIGATION. IT'S IMPOSSIBLE TO DO IT.

20 SO I HAVE TO RELY, AGAIN, ON MY SOCIAL  
21 WORKERS', MY SUBORDINATES' INFORMATION, THAT IT'S  
22 TRUTHFUL AND ACCURATE, AND IT HAS THE DETAILS THAT I  
23 NEED FOR ME TO MAKE THAT DETERMINATION.

24 Q AND WHEN YOU SAY YOU'RE NOT REQUIRED TO DO IT,  
25 BUT AS AN ARA, IF YOU CHOOSE TO DO IT, YOU COULD  
26 CONDUCT A FURTHER ASSESSMENT. CORRECT?

27 A I COULD.

28 Q OKAY. AND IF -- ASSUMING YOU WERE INFORMED

1 THAT NEGLECT WAS SUBSTANTIATED AGAINST THE FATHER,  
2 WOULD YOU STILL HAVE SIGNED THIS DOCUMENT UNDER PENALTY  
3 OF PERJURY THAT THE CHILD BE PLACED WITH THE FATHER?

4 MR. GUTERRES: OBJECTION: SPECULATION, NO  
5 FOUNDATION, INCOMPLETE HYPOTHETICAL.

6 THE COURT: SUSTAINED.

7 BY MR. KING:

8 Q YOU DID REVIEW THE DETENTION REPORT. CORRECT?

9 A YES.

10 Q AND YOU INDICATED BEFORE YOU NEVER SPOKE TO  
11 MS. ROGERS PRIOR TO HER DECISION TO DETAIN BABY RYAN.  
12 HAVE YOU SINCE SPOKEN WITH MS. ROGERS ABOUT HER  
13 DECISION TO DETAIN BABY RYAN?

14 MR. GUTERRES: OBJECTION: RELEVANCE.

15 THE COURT: SUSTAINED.

16 BY MR. KING:

17 Q IF, IN YOUR REVIEW OF THE DETENTION REPORT,  
18 YOU RECEIVED INFORMATION THAT NEGLECT WAS SUBSTANTIATED  
19 AGAINST THE FATHER, ALONG WITH EVERYTHING YOU ALREADY  
20 KNOW PRIOR TO SIGNING OFF ON THE DETENTION REPORT,  
21 WOULD YOU STILL HAVE SIGNED OFF ON THE DETENTION  
22 REPORT?

23 MR. GUTERRES: OBJECTION: INCOMPLETE  
24 HYPOTHETICAL, NO FOUNDATION, SPECULATION.

25 THE COURT: SUSTAINED. MAY I SEE COUNSEL,  
26 PLEASE.

27 MR. KING: SURE, YOUR HONOR.

28

1 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
2 THE SIDEBAR OUTSIDE THE PRESENCE OF THE  
3 JURY)

4 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE  
5 PRESENT. MR. KING, WE HAVE GONE FAR BEYOND THE DIRECT  
6 EXAMINATION OF THIS WITNESS.

7 YOU HAD THE OPPORTUNITY TO PLAY MS. BALABAN'S  
8 DEPOSITION DURING YOUR CASE IN CHIEF, WHATEVER YOU  
9 CHOSE, AND I DON'T REMEMBER NOW IF HER DEPOSITION WAS  
10 SHOWN OR NOT, BUT IF IT WAS, THEN YOU HAD THE  
11 OPPORTUNITY TO SPECIFY WHAT INFORMATION YOU WANTED.

12 WE'RE NOT NOW, IN THIS CROSS-EXAMINATION,  
13 WHICH IS ON A VERY LIMITED SUBJECT, GOING TO GO ANY  
14 FURTHER WITH THESE CONTINUING QUESTIONS.

15 SHE'S ALREADY TOLD YOU -- SO MANY TIMES I'VE  
16 LOST TRACK -- WHAT SHE PERCEIVED HER JOB TO BE AND WHAT  
17 HER ROLE WAS. I'M NOT GOING TO ALLOW ANY MORE  
18 QUESTIONING, WHICH IS BASICALLY FOR THE PLAINTIFF TO  
19 HAMMER YOUR THEORIES OF THE CASE.

20 YOU HAVE MORE THAN ENOUGH ANSWERS TO THESE  
21 QUESTIONS SO FAR THAT WOULD CONFIRM YOUR BELIEF THAT  
22 SHE -- THAT THE ARA IS SUPPOSED TO DO AN INDEPENDENT  
23 INVESTIGATION. SO ENOUGH.

24 MR. KING: OKAY, YOUR HONOR. AND MAYBE MY  
25 QUESTION WASN'T CLEAR THERE. SHE'S INDICATING THAT  
26 SHE'S ASSURING THAT IN FACT PLACEMENT WITH THE FATHER  
27 IS APPROPRIATE UNDER THE CIRCUMSTANCES.

28 AND -- I HAVE FOUNDATION TO SHOW, I'M ASKING

1 THE QUESTION IF SHE FOUND THAT THE FATHER --

2 THE COURT: I KNOW WHAT YOU'RE DOING. I'VE  
3 SAID ENOUGH. LET'S DIRECT OUR QUESTIONS TO THIS  
4 LIMITED CROSS-EXAMINATION.

5 YOU HAD MORE THAN AMPLE OPPORTUNITY. I  
6 PERMITTED WHAT I PERMITTED TO THE EXTENT SHE SAID IT  
7 WAS HER JOB TO FIND ANY INCONSISTENCIES. SHE ALSO  
8 STATED SHE HAS NO INDEPENDENT RECOLLECTION OF THIS  
9 MATTER.

10 AND I THINK NOW YOU'VE HAD MORE THAN ENOUGH  
11 OPPORTUNITY TO ASK QUESTIONS TO ESPOUSE YOUR THEORY OF  
12 THE CASE, BUT ENOUGH IS ENOUGH.

13 MR. KING: THANK YOU, YOUR HONOR.

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

16 BY MR. KING:

17 Q MS. BALABAN, IF WE GO TO THE LAST PAGE OF  
18 EXHIBIT NUMBER 12, BATES IS 000024. LAST PAGE OF THE  
19 REPORT IS WHERE YOU SIGNED UNDER PENALTY OF PERJURY  
20 THAT THE CONTENTS OF THE REPORT IS TRUE AND CORRECT.  
21 IS THAT TRUE?

22 A YES.

23 Q BUT AS YOU'RE SITTING TODAY, YOU TOLD US THAT  
24 YOU DID NOTHING TO CONFIRM THAT THE CONTENTS OF THE  
25 REPORT WERE TRUE AND CORRECT.

26 MR. GUTERRES: OBJECTION: ASKED AND ANSWERED.

27 THE COURT: SUSTAINED.

28

1 BY MR. KING:

2 Q WHEN YOU SIGNED UNDER PENALTY OF PERJURY, DOES  
3 IT SAY THERE WHAT ROLE YOU PLAYED WHEN YOU SIGNED UNDER  
4 PENALTY OF PERJURY?

5 A I'M NOT CLEAR WHAT YOU MEAN BY THAT.

6 Q WELL, IT APPEARS AS IF YOU -- THERE'S A  
7 QUALIFICATION WHERE YOU'RE SAYING, I'M SIGNING UNDER  
8 PENALTY OF PERJURY THAT EVERYTHING IN THE REPORT IS  
9 TRUE AND CORRECT, BUT I ONLY REALLY ASSESSED THE REPORT  
10 TO LOOK INTO THINGS CONCERNING DAD'S PLACEMENT. RIGHT?

11 A THAT'S CORRECT. YES.

12 Q OKAY. DOES IT SAY ANYWHERE ON THIS DOCUMENT  
13 THAT YOU'RE ONLY SIGNING THIS DOCUMENT AS IT PERTAINS  
14 TO THE PLACEMENT WITH THE FATHER?

15 A IT DOES NOT.

16 Q DOES IT SAY ANYWHERE ON THIS DOCUMENT THAT  
17 YOU'RE TELLING THE JUDGE THAT YOU, YOURSELF, DON'T KNOW  
18 WHETHER THE INFORMATION IN THE REPORT IS ACTUALLY TRUE?

19 A IT DOES NOT. BUT THEY EXPECT IT TO BE THAT  
20 WAY.

21 Q THE JUDGE EXPECTS YOU TELL THE TRUTH WHEN YOU  
22 SIGN UNDER PENALTY OF PERJURY. RIGHT?

23 A OUR DEPARTMENT AND COURT IS AWARE THAT WE DO  
24 NOT DO INDEPENDENT INVESTIGATIONS, AND WE RELY ON THE  
25 INFORMATION OF OUR SUBORDINATES.

26 THEIR TRUTHFULNESS, AND ACCURATENESS, AS THEY  
27 BRING US THE INFORMATION, FIRSTHAND INFORMATION,  
28 DETAILS CONFIRMED BY OTHERS AND PROFESSIONALS.

1           SO WE DO SIGN THE REPORT UNDER PENALTY OF  
2 PERJURY. HOWEVER, THEY DO NOT EXPECT OR THINK THAT  
3 WE'VE GONE OUT AND DONE INDEPENDENT INVESTIGATION ON  
4 OUR OWN.

5           MR. KING: YOUR HONOR, I OBJECT AS  
6 NONRESPONSIVE AND MOVE TO STRIKE.

7           THE COURT: SUSTAINED. THE MOTION TO STRIKE  
8 IS GRANTED. THE ENTIRE ANSWER WILL BE STRICKEN. AND  
9 THEN THE QUESTION WILL NOT BE PERMITTED.

10           YOU'RE ASKING WHAT A JUDGE EXPECTS. SHE'S NOT  
11 A JUDGE. SHE CAN'T TESTIFY WHAT A JUDGE EXPECTS.  
12 BY MR. KING:

13           Q       AGAIN, THERE'S NO QUALIFICATION UNDER YOUR  
14 PENALTY OF PERJURY THAT YOU DO NOT PERSONALLY KNOW OF  
15 THE FACTS THAT YOU'RE ATTESTING TO. CORRECT?

16           MR. GUTERRES: OBJECTION: ASKED AND ANSWERED.

17           THE COURT: SUSTAINED.

18 BY MR. KING:

19           Q       LAST QUESTION FOR YOU, MS. BALABAN. AS PART  
20 OF YOUR TRAINING, AT SOME POINT PRIOR TO 2009, DID YOU  
21 LEARN THAT AN UNQUALIFIED STATEMENT OF THAT WHICH ONE  
22 KNOWS TO BE TRUE IS EQUIVALENT TO A STATEMENT THAT ONE  
23 KNOWS TO BE FALSE?

24           MR. GUTERRES: OBJECTION: OUTSIDE THE SCOPE  
25 OF THE DIRECT.

26           THE COURT: SUSTAINED.

27           MR. KING: THANK YOU, YOUR HONOR. YOUR HONOR,  
28 I HAVE NO FURTHER.

1 THE COURT: MR. GUTERRES?

2 MR. GUTERRES: NO, YOUR HONOR.

3 THE COURT: THANK YOU, MS. BALABAN. YOU HAVE  
4 CONCLUDED YOUR TESTIMONY. MS. BALABAN, YOU ARE  
5 EXCUSED. I MENTION THAT BECAUSE THAT MEANS YOU DO NOT  
6 HAVE TO RETURN IF YOU CHOOSE NOT TO.

7 YOU'RE ABLE -- AND I KNOW YOU'RE A PARTY. I'M  
8 TELLING YOU I'M EXCUSING YOU AS A WITNESS.

9 CALL YOUR NEXT WITNESS.

10 MS. SWISS: THE DEFENSE CALLS  
11 MS. KIMBERLY ROGERS.

12  
13 KIMBERLY ROGERS,  
14 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY  
15 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

16  
17 THE COURT: THANK YOU. GO AHEAD, MS. SWISS.

18 MS. SWISS: THANK YOU.

19  
20 DIRECT EXAMINATION

21 BY MS. SWISS:

22 Q GOOD AFTERNOON, MS. ROGERS.

23 A GOOD AFTERNOON.

24 Q ARE YOU CURRENTLY EMPLOYED?

25 A YES, I AM.

26 Q WHO IS YOUR EMPLOYER?

27 A THE DEPARTMENT OF CHILDREN AND FAMILY  
28 SERVICES, LOS ANGELES COUNTY.

1 Q AND HOW LONG HAVE YOU BEEN WITH DCFS?

2 A I BEGAN MY CAREER WITH THE DEPARTMENT IN 1997  
3 AS A CHILDREN'S SOCIAL WORKER.

4 Q NOW, WHAT IS YOUR CURRENT POSITION?

5 A I AM A SUPERVISING CHILDREN'S SOCIAL WORKER.

6 Q AND THAT IS WHAT WE'VE BEEN CALLING AN SCSW?

7 A YES.

8 Q AND AS AN SCSW, WHAT ARE YOUR CURRENT JOB  
9 DUTIES, JUST BRIEFLY?

10 A OKAY. CURRENTLY, I AM A CO-LOCATED SCSW AT  
11 THE TRANSITIONAL SHELTER HERE, PROGRAM FOR THE  
12 DEPARTMENT. SO I SUPERVISE CHILDREN'S SOCIAL WORKERS  
13 WHO ARE, LIKE, LIAISONS BETWEEN THE DEPARTMENT AND THE  
14 TEMPORARY SHELTER.

15 Q OKAY. NOW DIRECTING YOUR ATTENTION TO  
16 OCTOBER 2009. YOU WERE WITH THE DEPARTMENT THEN.  
17 RIGHT?

18 A YES.

19 Q OKAY. AND WHAT WAS YOUR JOB IN OCTOBER  
20 OF 2009?

21 A I WAS AN EMERGENCY RESPONSE SUPERVISING  
22 CHILDREN'S SOCIAL WORKER.

23 Q AND WHAT WERE YOUR JOB DUTIES AT THAT TIME?

24 A AT THAT TIME I WAS TASKED WITH SUPERVISING THE  
25 WORK AND THE SAFETY INVESTIGATIONS OF MY CSWS.

26 I WAS REQUIRED TO MAKE SURE THERE WAS CONSTANT  
27 COMMUNICATION, AND ENSURE THAT THE DURING THEIR  
28 INVESTIGATION, WHATEVER INFORMATION THAT THEY HAD



1 GATHERED DURING THEIR INVESTIGATION, WE REVIEW THAT  
2 INFORMATION AND TAKE THAT INTO CONSIDERATION.

3 Q NOW, YOU TESTIFIED THAT YOU WERE AN ER SCSW?

4 A CORRECT.

5 Q WHAT -- STRIKE THAT.

6 HOW MANY CSWS OR CHILDREN'S SOCIAL WORKERS DID  
7 YOU PERSONALLY SUPERVISE IN OCTOBER OF 2009?

8 A IT HAD TO BE 6 TO 7. TYPICALLY AROUND SIX.  
9 SOMETIMES MORE.

10 Q OKAY. AND WERE YOU INVOLVED IN THE REFERRAL  
11 REGARDING RAFAELINA DUVAL?

12 A YES.

13 Q OKAY. AND HOW DID YOU COME TO BE INVOLVED  
14 WITH THE REFERRAL REGARDING BABY RYAN?

15 A THE REFERRAL WAS ASSIGNED TO MY CHILDREN'S  
16 SOCIAL WORKER, SUSAN PENDER.

17 OUR -- AT THE TIME, THE EMERGENCY RESPONSE HAD  
18 A TRANSFER ASSIGNMENT DESK, OR AN ASSIGNMENT DESK, SO  
19 THE ASSIGNMENT CLERK WOULD ASSIGN A REFERRAL  
20 INVESTIGATION TO A UNIT.

21 AND THEN WHOEVER THE WORKER WAS THAT WAS  
22 ASSIGNED TO THAT INVESTIGATION -- IF IT WAS -- IT WAS  
23 IN MY UNIT, IT WAS SUSAN, SO THAT'S HOW WE RECEIVED THE  
24 REFERRAL.

25 Q OKAY. SO DID YOU ACTUALLY RECEIVE THE  
26 REFERRAL FIRST, AND THEN YOU ASSIGNED IT SUSAN, OR A  
27 DIFFERENT PROCESS?

28 A ACTUALLY, YES. IT WOULD COME, IT WOULD

1 BE ASSIGNED, IT WOULD BE PLACED IN MY WORKER'S INBOX,  
2 WHAT WE CALL IT. SO THEY HAVE INBOX OF ALL OF THEIR  
3 REFERRALS THAT THEY'RE ASSIGNED TO CONDUCT AN  
4 INVESTIGATION.

5 SO THEY ASSIGNED IT TO HER INBOX, THEY BRING  
6 ME THE ACTUAL HARD COPY OF THE REFERRAL, AND THEN A  
7 REFERRAL CARD SCREENER NARRATIVE THAT TELLS US WHY THE  
8 FAMILY WAS BROUGHT TO THE DEPARTMENT'S ATTENTION, THE  
9 ALLEGATIONS.

10 Q OKAY. AND THEN WHAT DO YOU DO WITH IT?

11 A THEN WE REVIEW THE INFORMATION THAT WE HAVE,  
12 AND WE -- WHAT I WOULD DO WAS DISCUSS, LIKE, CERTAIN  
13 THINGS THAT THE WORKER WOULD DO TO LOOK OUT FOR WHEN  
14 THEY'RE CONDUCTING A RISK ASSESSMENT AND SAFETY  
15 INVESTIGATION.

16 AND THIS REFERRAL IN PARTICULAR CAME IN, IT  
17 CAME IN AS A GENERAL NEGLECT AGAINST BOTH PARENTS,  
18 MS. RAFAELINA DUVAL AND FATHER RYAN MILLS.

19 Q OKAY. AND SO WHAT DID YOU DO WITH IT?

20 A WELL, WE WENT OVER IT. WE READ THE  
21 INFORMATION AND THERE WAS SOME CONCERN THAT THE CHILD,  
22 THE BABY RYAN, WAS NOT BEING PROPERLY FED. SO WE HAD  
23 TO CONDUCT WHAT WE CALLED A NEGLECT ASSESSMENT  
24 INVESTIGATION.

25 Q AND YOU DIDN'T PERSONALLY GO OUT AND DO THE  
26 INVESTIGATION?

27 A NO. THAT WAS NOT MY ROLE.

28 Q OKAY. SO DO YOU KNOW WHAT THE INVESTIGATION

1 CONSISTED OF?

2 MR. KING: OBJECTION: LACK OF FOUNDATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES.

5 BY MS. SWISS:

6 Q OKAY. CAN YOU EXPLAIN TO US YOUR  
7 UNDERSTANDING OF THE INVESTIGATION?

8 A JUST TO BE CLEAR, YOU'RE SAYING, LIKE, WHAT  
9 WOULD BE THE WORKER BE REQUIRED TO DO, OR...

10 Q WHAT YOUR UNDERSTANDING OF WHAT WAS ACTUALLY  
11 DONE.

12 A WHAT WAS ACTUALLY -- OH. MY WORKER,  
13 SUSAN PENDER AT THE TIME, SHE COMPLIED WITH THE NEGLECT  
14 AND ALSO SEVERE NEGLECT POLICIES AND PROCEDURES.

15 SO WHAT SHE WAS REQUIRED TO DO, WHEN YOU FIRST  
16 RECEIVE A REFERRAL IS REACH OUT TO THE REPORTING PARTY  
17 AND INQUIRE, LIKE, IS THIS WHAT YOU HAD REPORTED TO THE  
18 DEPARTMENT, SO THAT WE CAN START FROM THERE.

19 SOMETIMES INFORMATION IS REPORTED AND IT'S NOT  
20 WHAT THE REPORTING PARTY SAID THEY INTENDED TO REPORT.  
21 SO WE HAVE TO FIRST FIND OUT WHERE TO START IF WE HAVE  
22 SOME INFORMATION AND GO OFF OF THAT.

23 AND THEN FROM THERE, THE WORKER RESPONDS BY  
24 TRYING TO REACH OUT TO THE PARENT WHEN IT'S BEEN  
25 ALLEGED TO BE NEGLECT -- NEGLIGENT.

26 Q SO IN THIS CASE, DOES THAT MEAN SPEAKING WITH  
27 THE REPORTING PARTY, MS. CRUMP, AND THEN SPEAKING WITH  
28 THE PARENTS?

1           A     YES.

2           Q     OKAY.

3           A     AND ANY OTHER PROFESSIONALS, PERTINENT  
4 COLLATERALS.

5           Q     AND DO YOU KNOW IF THAT WAS DONE IN THIS CASE?

6           A     YES.

7           Q     AND HOW DO YOU KNOW THAT?

8           A     BASED OFF OF THE INFORMATION THAT WAS GATHERED  
9 FROM OUR MEDICAL PROVIDERS, BABY RYAN'S MEDICAL  
10 RECORDS, FAMILY MEMBERS, FRIENDS.

11                   THERE'S INTERVIEWS THAT TAKE PLACE WITH THE  
12 SIGNIFICANT PARTIES OR PERSONS INVOLVED.

13           Q     NOW, YOU MENTIONED MEDICAL PROFESSIONALS. HOW  
14 DO YOU -- HOW DOES THE DEPARTMENT GET THE MEDICAL  
15 PROFESSIONALS' INFORMATION DURING AN INVESTIGATION OF  
16 AN ER REFERRAL?

17           A     IN THE PARTICULAR CASE, WE HAD MOTHER REFERRED  
18 TO THE CATCH CLINIC, THE CATC CLINIC. AND THERE WE  
19 HAVE MEDICAL PROFESSIONALS WHO ARE CHILD ABUSE EXPERTS,  
20 CHILD ABUSE AND NEGLECT EXPERTS.

21                   SO THOSE WOULD BE THE PERSONS THAT, BASED ON  
22 THEIR ASSESSMENTS, THAT INFORMATION WE WOULD RELY ON TO  
23 DETERMINE LIKE, WHAT'S THE MEDICAL WELFARE OF THE BABY.

24           Q     DO YOU KNOW IF BABY RYAN WAS REFERRED TO ANY  
25 OTHER PROFESSIONALS DURING THE INVESTIGATION OF THE  
26 REFERRAL?

27           A     YES.

28           Q     AND WHAT OTHER MEDICAL PROFESSIONALS?

1           A       HE WAS ALSO REFERRED TO A NUTRITIONIST, HE WAS  
2 REFERRED AN ALLERGIST, HE WAS REFERRED TO THE UCLA  
3 FAILURE TO THRIVE CLINIC.

4           Q       NOW, WHO MADE THE DECISION TO REFER THE BABY  
5 TO ALL THESE DIFFERENT MEDICAL PROFESSIONALS?

6           A       AS A SOCIAL WORKER, YOU WOULD MAKE THE  
7 REFERRAL SO THAT YOU CAN HAVE THE CHILD RECEIVE, LIKE,  
8 WHAT WE CALL A FORENSIC EXAMINATION.

9                   AN EXAMINATION TO DETERMINE, AS I MENTIONED,  
10 WHAT THE MEDICAL WELFARE AND CONDITION OF THE CHILD IS.  
11 AND FROM THERE, IF THERE'S ADDITIONAL, YOU KNOW,  
12 ASSESSMENTS REQUIRED FROM PROFESSIONALS, THEY CAN BE  
13 REFERRED TO A SPECIALIST.

14           MR. KING: OBJECTION: YOUR HONOR, MOVE TO  
15 STRIKE AS NONRESPONSIVE.

16           THE COURT: THE OBJECTION IS SUSTAINED.  
17 MOTION TO STRIKE IS GRANTED. THE ANSWER WILL BE  
18 STRICKEN. AND THE JURY WILL DISREGARD.

19           MS. SWISS: IF I COULD ASK THE REPORTER TO  
20 REPEAT THE QUESTION.

21                   (THE RECORD WAS READ AS REQUESTED)

22 BY MS. SWISS:

23           Q       WHO MADE THE REFERRAL, WHO -- I'M SORRY -- WHO  
24 MADE THE DECISION TO REFER THE BABY TO THE MEDICAL  
25 PROFESSIONALS?

26           A       MY WORKER, SUSAN PENDER.

27           Q       AND WOULD YOU HAVE A PART IN THAT?

28           A       I WOULD NOT -- NOT MUCH. IT WOULD JUST BE

1       LIKE, OKAY, REFER THEM TO THIS PROFESSIONAL, AND FROM  
2       THERE, IF YOU NEEDED TO REFER TO AN ADDITIONAL  
3       PROFESSIONAL, WE WOULD.

4           Q       AND WOULD YOU RELY ON WHAT THE MEDICAL  
5       PROFESSIONAL WOULD SAY REGARDING OTHER REFERRALS TO  
6       OTHER MEDICAL PROFESSIONALS?

7           MR. KING:   OBJECTION:   LACKS FOUNDATION,  
8       VAGUE.

9           THE COURT:   OVERRULED.

10          THE WITNESS:   YES.

11       BY MS. SWISS:

12          Q       OKAY.   SO TELL ME, IN THIS PARTICULAR CASE,  
13       HOW DID YOU SUPERVISE MS. PENDER?   EXPLAIN TO US HOW  
14       THAT PROCESS WENT.

15          A       WELL, IN THIS PARTICULAR CASE, I MONITORED --  
16       I MAINTAINED CONSTANT COMMUNICATION WHEN MS. PENDER --  
17       WHEN MS. PENDER WOULD RECEIVE ANY INFORMATION, WHETHER  
18       IT WAS PROVIDED BY THE MOM -- MOTHER, OR FATHER, OR  
19       DOCTORS, LIKE I SAID, PROFESSIONALS, WE WOULD TAKE THAT  
20       INTO CONSIDERATION AND WE'D GO OVER IT, WE'D DISCUSS  
21       IT.

22          Q       NOW, THERE WAS A LOT OF MEDICAL INFORMATION  
23       THAT'S BEEN DISCUSSED AT LENGTH IN THIS TRIAL, THAT  
24       CAME UP DURING THE INVESTIGATION OF THE REFERRAL.   IS  
25       THERE A -- WELL, YOU'RE NOT A MEDICAL PROFESSIONAL.  
26       RIGHT?

27          A       NO, MA'AM.

28          Q       IS THERE SOMEBODY AT THE DEPARTMENT OF

1 CHILDREN AND FAMILY SERVICES THAT ASSISTS SOCIAL  
2 WORKERS IN UNDERSTANDING THE MEDICAL INFORMATION THAT'S  
3 GATHERED IN THE INVESTIGATIONS?

4 A OH, YES. OUR PUBLIC HEALTH NURSES.

5 Q NOW, WHAT IS YOUR UNDERSTANDING OF WHAT THE  
6 PUBLIC HEALTH NURSE'S ROLE IS AT THE DEPARTMENT THAT  
7 YOU WORK WITH?

8 A OUR PUBLIC HEALTH NURSES, THEY ASSIST US WITH  
9 BEING ABLE TO CLARIFY WHAT MEDICAL INFORMATION THAT WE  
10 RECEIVE.

11 SINCE WE'RE NOT DOCTORS, THEY SPEAK A  
12 DIFFERENT LANGUAGE. JUST LIKE US, WE SPEAK A DIFFERENT  
13 SOCIAL WORKER LANGUAGE. SO WE HAVE OUR PUBLIC HEALTH  
14 NURSES TO BE ABLE TO INTERPRET WHAT THE DOCTOR IS  
15 SAYING.

16 Q HOW DOES THAT WORK?

17 A WHEN WE RECEIVE THE MEDICAL RECORDS, WE'LL SIT  
18 DOWN WITH THEM, AND THEN THEY'LL POINT OUT, LIKE, THIS  
19 IS WHAT WE SEE, OR THESE ARE THE DIAGNOSIS, OR THESE  
20 ARE THE OBSERVATIONS, ASSESSMENTS, RESULTS OF TESTS.

21 IT JUST DEPENDS ON WHAT'S GOING ON WITH THE  
22 CHILD.

23 Q OKAY. NOW, IN THIS PARTICULAR CASE, DID THE  
24 PROCESS OF WORKING WITH A PUBLIC HEALTH NURSE HAPPEN?

25 A ABSOLUTELY. YES.

26 Q AND CAN YOU EXPLAIN A LITTLE BIT ABOUT HOW  
27 THAT WORKED IN THIS CASE?

28 MR. KING: OBJECTION, YOUR HONOR: VAGUE,

1 LACKS FOUNDATION.

2 THE COURT: SUSTAINED AS TO THE WAY IN WHICH  
3 IT'S ASKED. YOU CAN RESTATE THAT. I THINK YOU WANT TO  
4 KNOW WHAT HAPPENED.

5 BY MS. SWISS:

6 Q WHAT HAPPENED WITH REGARD TO CONSULTING WITH  
7 THE PUBLIC HEALTH NURSE IN THIS CASE?

8 MR. KING: OBJECTION: LACKS FOUNDATION.

9 THE COURT: OVERRULED. THE QUESTION IS, DO  
10 YOU KNOW?

11 THE WITNESS: YES.

12 THE COURT: OKAY. THEN GO AHEAD.

13 THE WITNESS: IN THIS CASE, WHEN WE RECEIVED  
14 THE -- LIKE, THERE WAS -- IT WAS AN ABUNDANCE OF  
15 MEDICAL INFORMATION. AND WHEN WE RECEIVED IT, WHAT WE  
16 DID WAS, WE CONTACTED OUR PUBLIC HEALTH NURSE.

17 WE ASKED HER TO COME SIT DOWN AND ASSIST US  
18 WITH WHAT WE NEEDED. TO ASSIST US, I'M SORRY, IN BEING  
19 ABLE TO DETERMINE WHAT WAS GOING ON OR WHAT WE NEEDED  
20 TO DO.

21 SO WHAT SHE WAS TASKED TO DO IS ATTEND A  
22 FACE-TO-FACE IN-PERSON VISIT WITH THE CHILD AND HIS  
23 PARENT. IN-HOME WITH PERSON -- IN-PERSON HOME VISIT.

24 BY MS. SWISS:

25 Q OKAY.

26 A SO -- LAURA BATES, WHO IS A PUBLIC HEALTH  
27 NURSE, WOULD GO OUT WITH THE SOCIAL WORKER, MS. PENDER,  
28 AND THEY WOULD SIT DOWN AND MEET WITH THE FAMILY AND



1 CONDUCT A SAFETY INVESTIGATION.

2 Q DID THE PUBLIC HEALTH NURSE IN THIS CASE  
3 ASSIST YOU IN INTERPRETING OTHER MEDICAL INFORMATION?  
4 DOCUMENTS, FOR EXAMPLE?

5 A YES.

6 Q AND WHAT DO YOU RECALL ABOUT THAT PROCESS?

7 A IT REALLY WAS INFORMATIVE IN RELATION TO  
8 IDENTIFYING, LIKE, THE MILESTONES THAT A ONE-YEAR-OLD  
9 SHOULD BE MEETING.

10 SHE ALSO SHOWED US AND CLARIFIED, AND WE  
11 LOOKED AT THE GROWTH CHART, HOW HIS CONDITION SEEMED TO  
12 BE DETERIORATING UNDER THE CARE OF HIS MOTHER.

13 MR. KING: OBJECTION: YOUR HONOR, LACKS  
14 FOUNDATION, CALLS FOR SPECULATION.

15 THE COURT: OVERRULED.

16 BY MS. SWISS:

17 Q WHAT -- DID YOU LEARN ANY OTHER INFORMATION  
18 FROM THE PUBLIC HEALTH NURSE WITH REGARD TO THE MEDICAL  
19 RECORDS DURING THE INVESTIGATION?

20 A WITH THE MEDICAL RECORDS, IT WAS VERY  
21 CONCERNING THAT IT DID NOT APPEAR THAT HE WAS BEING  
22 PROPERLY FED.

23 MR. KING: OBJECTION: LACKS FOUNDATION. I'M  
24 SORRY, I'M NOT SURE IF SHE WAS DONE WITH HER ANSWER.

25 THE COURT: OVERRULED. WERE YOU FINISHED WITH  
26 THAT ANSWER?

27 THE WITNESS: YES.

28 THE COURT: ALL RIGHT.

1 THE WITNESS: WHEN I MENTIONED HE WAS NOT  
2 BEING PROPERLY FED, WE LOOKED AT MEDICAL RECORDS THAT  
3 WERE SENT IN SIX MONTHS PRIOR TO THE FAMILY'S  
4 INVOLVEMENT.

5 AND WE SAW THAT BABY RYAN BASICALLY HAD NOT  
6 GAINED ANY WEIGHT. NOT ONE POUND IN ABOUT SIX MONTHS,  
7 AND WE WERE TRYING TO UNDERSTAND, OKAY, WELL WHAT'S  
8 GOING ON WITH THIS.

9 EVEN THOUGH THERE WAS INFORMATION THAT WAS  
10 SAYING THAT THE FAMILY HAD BEEN REFERRED OR THE MOTHER  
11 HAD BEEN -- RECOMMENDED TO PROVIDE HIM WITH SOLID FOODS  
12 AND FEED HIM, IF HE'S NOT GAINING ANY WEIGHT, WE WERE  
13 TRYING TO FIGURE OUT WHAT IS THE REASON BEHIND THIS.

14 THAT'S WHY WE HAD TO RELY ON THE MEDICAL  
15 PROFESSIONALS TO CONDUCT AN ASSESSMENT.

16 BY MS. SWISS:

17 Q NOW, AT SOME POINT IN THE INVESTIGATION OF THE  
18 REFERRAL, WAS A TEAM DECISION-MAKING MEETING HELD?

19 A YES.

20 Q WHY WAS THAT?

21 A WE WOULD DO THAT TO BRING THE FAMILY AND THEIR  
22 SUPPORT SYSTEMS TOGETHER SO THAT THEY CAN DEVELOP A  
23 POSSIBLE SAFETY CASE PLAN FOR THIS CHILD.

24 THE GOAL IS NOT TO GO IN THERE SAYING WE'RE  
25 GOING TO REMOVE. WE'RE TRYING TO DEVELOP A PLAN AND  
26 WORK WITH THE FAMILY TO FIGURE OUT WHAT IS GOING ON  
27 WITH THIS FAMILY, WHAT WAS WORKING WITH THIS FAMILY,  
28 WHAT SUPPORT SYSTEMS DID THEY HAVE IN PLACE WITH

1 ASSISTANCE.

2 SO, BASICALLY, MY WORKER WOULD NEED TO CONTACT  
3 THE FAMILY, AGAIN, LET THEM KNOW WE WOULD LIKE TO BRING  
4 THEM TOGETHER.

5 WE EXPLAINED TO THE MOTHER THAT SHE'S WELCOME  
6 TO INVITE ANYONE THAT SHE WOULD LIKE TO IN SUPPORT OF,  
7 YOU KNOW, OF HER BEING -- IN SUPPORT OF ANY DECISIONS  
8 THAT WOULD HAVE BEEN MADE IN THE BEST INTEREST OF BABY  
9 RYAN'S SAFETY.

10 Q DID YOU ALSO MAKE THAT REQUEST TO MR. MILLS?

11 A YES.

12 Q AND WHAT DID YOU TELL MR. MILLS TO DO, AS FAR  
13 AS ATTENDING THE TDM?

14 A SAME THING. WE SAID YOU CAN INVITE ANYONE  
15 THAT YOU CAN FEEL CAN PROVIDE YOU SUPPORT, AND THEN WE  
16 MENTION WE'RE TRYING TO ASSIST THE FAMILY WITH SERVICES  
17 SO THAT THEY CAN ADDRESS THEIR NEEDS.

18 Q NOW, DO YOU RECALL THE SPECIFIC DATE OF THE  
19 REFERRAL IN THIS CASE?

20 A YES.

21 Q WHAT?

22 A OCTOBER 19, 2009.

23 Q OKAY. AND DO YOU RECALL THE DATE OF THE TEAM  
24 DECISION-MAKING MEETING IN THIS CASE?

25 A YES.

26 Q WHAT'S THAT?

27 A NOVEMBER 3RD, 2009.

28 Q WHY WAS THE TEAM DECISION-MAKING MEETING

1 SCHEDULED FOR NOVEMBER 3RD, 2009?

2 A WE KNEW AT THAT TIME THAT WE WOULD HAVE THE  
3 RESULTS FROM THE UCLA FAILURE TO THRIVE CLINIC MEDICAL  
4 PROVIDER, THE RESULTS OF THAT MEDICAL EXAMINATION, ANY  
5 TESTING.

6 WE DIDN'T WANT TO GO INTO THE MEETING, WE'RE  
7 SAYING, OKAY, WE KNOW IT'S THIS. WE WANTED TO MAKE  
8 SURE WE HAD ALL THE INFORMATION. MOTHER HAD PROVIDED A  
9 LOT OF INCONSISTENT -- OR REPORTS THAT SAID THAT THERE  
10 WAS SOMETHING WRONG WITH RYAN.

11 AND WE WERE THINKING, WELL, IS IT ALLERGIES,  
12 IS IT, YOU KNOW, THE VISITS, CONTRIBUTING TO WHY HE'S  
13 NOT THRIVING, WHY HE'S NOT GROWING.

14 SO WE WANTED -- WE WERE THINKING, TO TAKE INTO  
15 CONSIDERATION MOTHER'S REPORTS, THERE MAY HAVE BEEN  
16 SOMETHING MEDICALLY WRONG WITH RYAN.

17 BUT WE KNEW FOR SURE THAT WE WOULD HAVE THAT  
18 INFORMATION BY THE 3RD BECAUSE THAT'S WHAT WE WERE  
19 TOLD, THAT THEY WOULD HAVE THE RESULTS BY THAT DAY.

20 MR. KING: YOUR HONOR, OBJECTION:  
21 NONRESPONSIVE, EVERYTHING AFTER, "MOTHER HAD PRODUCED  
22 (SIC) RECORDS."

23 THE COURT: THE OBJECTION IS SUSTAINED.

24 MR. KING: MOVE TO STRIKE, YOUR HONOR.

25 THE COURT: MOTION TO STRIKE IS GRANTED. THAT  
26 PART OF THE ANSWER BEGINS, "AND WE WERE THINKING,"  
27 ET CETERA, TO THE END OF THE ANSWER, IS ORDERED  
28 STRICKEN. AND THE JURY DISREGARD IT.

1 BY MS. SWISS:

2 Q MS. ROGERS, BEFORE THE TEAM DECISION-MAKING  
3 MEETING, WHAT INFORMATION DID YOU HAVE WITH REGARD TO  
4 RYAN'S CONDITION?

5 MR. KING: OBJECTION: VAGUE, OVERBROAD.

6 THE COURT: OVERRULED. GO AHEAD.

7 THE WITNESS: ONCE AGAIN, WHAT --

8 BY MS. SWISS:

9 Q WHAT INFORMATION -- GOING INTO THE -- BEFORE  
10 THE TDM, WHAT INFORMATION DID YOU HAVE REGARDING RYAN'S  
11 CONDITION?

12 A WE HEARD THAT HE HAD BEEN DIAGNOSED WITH  
13 FAILURE TO THRIVE, WHICH WAS IDENTIFIED AS A CONDITION  
14 THAT WAS THREATENING TO HIS LIFE.

15 AND FROM -- BASED ON THE CATC CLINIC  
16 EXAMINATION, THE DOCTOR HAD ASSESSED THAT IT WAS  
17 FAILURE TO THRIVE AS A RESULT OF NON-ORGANIC OR  
18 NON-MEDICAL-RELATED REASONS. AND THAT IT WAS  
19 ENVIRONMENTAL.

20 BUT THEY WANTED FURTHER TESTING TO ENSURE --  
21 TO RULE OUT IF THERE WERE ANY MEDICAL CONDITIONS  
22 RELATED TO WHY RYAN HAD NOT BEEN GROWING AND GAINING  
23 WEIGHT, AND WHY HE WAS SEVERELY DEVELOPMENTALLY  
24 DELAYED.

25 Q SO THE CATC CLINIC -- SO BABY RYAN WAS SEEN AT  
26 THE CATC CLINIC?

27 A YES.

28 Q AND YOU JUST TESTIFIED THAT THE CATC CLINIC

1 REQUESTED FURTHER TESTING?

2 A YES.

3 Q AND DO YOU KNOW IF THAT FURTHER TESTING WAS  
4 DONE?

5 A YES.

6 Q AND WHERE WAS THAT DONE?

7 A AT THE UCLA FAILURE TO THRIVE CLINIC.

8 Q OKAY. GOING INTO THE TEAM DECISION-MAKING  
9 MEETING, WHAT INFORMATION DID YOU HAVE REGARDING BABY  
10 RYAN'S CONDITION OR FROM -- WHAT -- STRIKE THAT.

11 GOING INTO THE TDM, WHAT INFORMATION DID YOU  
12 HAVE REGARDING BABY RYAN THAT YOU RECEIVED FROM THE  
13 MOTHER?

14 A FROM -- LIKE, BASED ON INFORMATION THAT SHE  
15 PROVIDED US?

16 Q YES.

17 A REASONS WHY WE -- OKAY.

18 SHE INDICATED THAT THE VISITATION WITH FATHER  
19 WAS VERY DISRUPTIVE. THAT HE MAY POSSIBLY HAVE  
20 ALLERGIES.

21 THAT -- SHE INDICATED THAT THERE -- THAT SHE  
22 HAD BEEN FEEDING HIM AND THAT SHE HAD BEEN COMPLIANT  
23 WITH THE PHYSICIAN'S -- WITH THE CHILD'S MEDICAL  
24 PROVIDER'S RECOMMENDATIONS. BUT WE HAD INFORMATION  
25 THAT STATED OTHERWISE.

26 MR. KING: OBJECTION: NONRESPONSIVE, MOVE TO  
27 STRIKE. BEGINNING WITH, "BUT WE HAD INFORMATION."

28 THE WITNESS: THAT'S WHAT WE HAD.

1 THE COURT: JUST A MOMENT. THE OBJECTION  
2 NONRESPONSIVE IS SUSTAINED. MOTION TO STRIKE IS  
3 GRANTED.

4 MR. KING: THANK YOU.

5 THE COURT: THAT PART OF THE ANSWER THAT SAID,  
6 "WE HAD INFORMATION THAT STATED OTHERWISE," IS ORDERED  
7 STRICKEN. THE JURY DISREGARD IT.

8 BY MS. SWISS:

9 Q MS. ROGERS, WHAT OTHER INFORMATION DID YOU  
10 HAVE REGARDING BABY RYAN'S CONDITION, GOING INTO THE  
11 TDM?

12 A WE HAD THE INFORMATION -- WE HAD THE -- WE HAD  
13 RECEIVED INFORMATION FROM HIS FAILURE TO THRIVE  
14 EXAMINATION RESULTS, AND IT INDICATED THAT HIS  
15 CONDITION WAS A RESULT OF HIS ENVIRONMENT.

16 THERE WAS NO MEDICAL-RELATED INFORMATION  
17 IDENTIFIED.

18 Q GOING INTO THE TEAM DECISION-MAKING MEETING,  
19 DID YOU HAVE ANY INFORMATION FROM DR. SODERBERG?

20 A I CAN'T RECALL EXACT INFORMATION THAT WE HAD  
21 AT THAT MEETING.

22 Q DID YOU HAVE ANY INFORMATION REGARDING WHETHER  
23 RYAN HAD ANY FOOD ALLERGIES, GOING INTO THE TDM?

24 A YES, WE DID HAVE SOME INFORMATION THAT HE DID  
25 NOT HAVE ANY FOOD ALLERGIES.

26 Q NOW, DID YOU HAVE INFORMATION THAT YOU  
27 GATHERED FROM THE BABY'S FATHER, GOING INTO THAT TEAM  
28 DECISION-MAKING MEETING?

1           A     YES.

2           Q     AND WHAT WAS THAT INFORMATION?

3           A     HE HAD EXPRESSED CONCERNS THAT BABY RYAN WAS  
4 NOT BEING PROPERLY FED.

5           MR. KING:   OBJECTION --

6           THE WITNESS:   AND HE WAS CONCERNED ABOUT HIS  
7 DEVELOPMENT.

8           MR. KING:   OBJECT, YOUR HONOR:   CALLS FOR  
9 HEARSAY.

10          THE COURT:   OVERRULED.

11          BY MS. SWISS:

12          Q     CAN YOU BE ANY MORE SPECIFIC REGARDING THAT  
13 INFORMATION?

14          A     THERE WAS SOME TENSION BETWEEN THE PARENTS,  
15 AND THEY HAD DIFFICULTY TRYING TO DETERMINE WHICH  
16 DOCTOR THE CHILD NEEDED TO BE -- COULD BE SEEN BY.

17                  AND WE ALSO -- WE ALSO KNEW, THAT WAS JUST  
18 ANOTHER THING, THAT BABY RYAN HADN'T BEEN SEEN BY A  
19 PEDIATRICIAN IN OVER THREE MONTHS PRIOR TO OUR  
20 INVOLVEMENT.

21          Q     DID YOU HAVE ANY INFORMATION, GOING INTO THE  
22 TDM, AS TO THE SOLID FOODS THAT BABY RYAN WAS BEING  
23 FED?

24          A     I DON'T RECALL.

25          Q     DID YOU HAVE ANY INFORMATION, GOING INTO THE  
26 TDM, REGARDING WHETHER BABY RYAN WAS BEING FED SOLID  
27 FOODS?

28          A     WE HAD INFORMATION THAT THE PARENTS WERE



1 SAYING THAT THEY WERE FEEDING HIM SOLID FOODS. BUT WE  
2 DIDN'T -- I DON'T RECALL, LIKE, EXACTLY WHAT THEY WERE  
3 FEEDING HIM.

4 Q DID YOU HAVE ANY INFORMATION, GOING INTO THE  
5 TDM, FROM THE NUTRITIONIST WENDY CRUMP?

6 A YES.

7 Q WHAT INFORMATION DID YOU HAVE FROM MS. CRUMP?

8 A WE HAD INFORMATION THAT THAT SHE ALSO HAD  
9 CONCERNS IN REGARDS TO RYAN BEING UNDERNOURISHED, BEING  
10 UNDERWEIGHT.

11 THERE WERE CONCERNS IN REGARDS TO WHETHER THE  
12 PARENTS WERE ABLE TO ENSURE THAT HE WAS GOING TO BE  
13 ABLE TO EAT PROPERLY. SHE ALSO INDICATED SHE HAD  
14 CONCERNS THAT MOTHER MAY NOT BE ABLE TO COMPLY WITH THE  
15 DOCTOR'S RECOMMENDED DIETARY PLAN.

16 Q AND WHAT WAS YOUR UNDERSTANDING OF THAT  
17 CONCERN?

18 MR. KING: OBJECTION: LACKS FOUNDATION, CALLS  
19 FOR SPECULATION, ALSO HEARSAY.

20 THE COURT: OVERRULED.

21 THE WITNESS: I'M SORRY. ONCE AGAIN?  
22 BY MS. SWISS:

23 Q WHAT WAS YOUR UNDERSTANDING OF MS. CRUMP'S  
24 CONCERN THAT MS. DUVAL WOULD NOT COMPLY WITH THE  
25 DIETARY RECOMMENDATIONS FOR BABY RYAN?

26 A THE CONCERN WAS THAT SHE HAD RECEIVED THE  
27 INFORMATION. SHE -- FROM WHAT I CAN RECALL, THE  
28 PARENTS WERE AWARE OF WHAT THEY NEEDED TO FEED BABY

1 RYAN, THE HIGH-CALORIC, HIGH-PROTEIN FOODS.

2 THEY WERE AWARE OF WHAT THE CHILD NEEDED TO BE  
3 FED. AND BOTH PARENTS HAD STATED THAT THEY WERE  
4 FEEDING THE CHILD, BUT HE WAS NOT MAKING ANY  
5 DEVELOPMENTAL PROGRESS. HE COULD NOT MEET ANY  
6 MILESTONES. HE WAS IN A VERY POOR CONDITION.

7 Q DID YOU EVER MEET BABY RYAN?

8 A YES.

9 Q DO YOU RECALL THE FIRST TIME YOU MET HIM?

10 A YES.

11 Q WHEN WAS THAT?

12 A I BELIEVE THAT WAS THE DAY OF THE TDM.

13 Q WHAT DO YOU RECALL ABOUT MEETING BABY RYAN?

14 MR. KING: OBJECTION: VAGUE, YOUR HONOR.

15 THE COURT: OVERRULED.

16 THE WITNESS: WHAT I RECALL WAS THAT BABY RYAN  
17 DIDN'T APPEAR TO BE YOUR AVERAGE ONE-YEAR-OLD. IT WAS  
18 VERY, VERY CONCERNING. HE WAS EXTREMELY THIN. HE WAS  
19 VERY SMALL FOR HIS AGE.

20 HE COULDN'T MEET -- AT THE TIME, FROM WHAT WE  
21 OBSERVED, HE COULDN'T MEET ANY MILESTONES. HE COULDN'T  
22 SIT UP. HE COULDN'T CRAWL. HE BARELY SPOKE. HE  
23 SEEMED LIKE HE WAS VERY WEAK AND FRAGILE.

24 WE WERE EXTREMELY CONCERNED, GIVEN THAT, YOU  
25 KNOW, THERE WERE REPORTS THAT HE WAS BEING FED, BUT HE  
26 WASN'T ABLE TO DEMONSTRATE ANY OF THE MILESTONES, ANY  
27 OF THE DEVELOPMENT MILESTONES THAT A TYPICAL  
28 ONE-YEAR-OLD HAS.

1 BY MS. SWISS:

2 Q NOW, THE TEAM DECISION-MAKING MEETING. WHAT  
3 WAS THE PROCEDURE FOR THE TEAM DECISION-MAKING MEETING  
4 IN THIS CASE?

5 A FOR OUR TEAM DECISION-MAKING MEETINGS, OUR  
6 FAMILIES COME TOGETHER IN THE MEETING ROOM. AND WE  
7 DISCUSS THE FAMILY -- WELL, FIRST OF ALL, WE EXPLAIN  
8 WHAT THE MEETING IS ABOUT.

9 WE TELL THEM THAT THIS IS A PROCESS WHICH WE  
10 ARE COMING TOGETHER TO COME UP WITH EXACTLY WHAT THE  
11 MEETING SAYS, A TEAM DECISION-MAKING MEETING, BECAUSE  
12 WE RECOGNIZE THE FAMILIES ARE EXPERTS IN THEIR FAMILY.  
13 THEY KNOW WHAT'S WORKING.

14 SO WE HAVE THEM COME TOGETHER, IN HOPES, YOU  
15 KNOW, IN HOPES THAT WE CAN DEVELOP A -- WE CAN COME TO  
16 A CONSENSUS IN DEVELOPING A SAFETY CASE PLAN FOR THE  
17 FAMILY.

18 WE DISCUSS THE FAMILY'S STRENGTHS, WHAT'S  
19 WORKING, WE DISCUSS THE FAMILY'S NEEDS, AND WE DISCUSS  
20 IDEAS OR SERVICES THAT WE CAN PROVIDE THE FAMILY TO  
21 ADDRESS THE ISSUES OF CONCERN.

22 Q NOW, YOU ALREADY TESTIFIED THAT YOU INVITED  
23 THE MOTHER TO BRING HER SUPPORT SYSTEM. AND THEN THE  
24 FATHER TO BRING A SUPPORT SYSTEM.

25 DID DCFS INVITE ANY PEOPLE TO ATTEND THE TDM?

26 A YES.

27 Q AND WHO DID DCFS INVITE?

28 A WE INVITED OUR PUBLIC HEALTH NURSE. WE

1 INVITED THE REGIONAL CENTER, I BELIEVE IT WAS THE CASE  
2 MANAGER AT THE TIME. WE INVITED THE NUTRITIONIST. AND  
3 I BELIEVE THAT WAS IT.

4 Q AND DID MS. PENDER ATTEND?

5 A YES.

6 Q AND YOU ATTENDED?

7 A YES.

8 Q OKAY. NOW, DO YOU RECALL THIS TDM?

9 A VAGUELY, BUT YES.

10 Q WHAT DO YOU RECALL?

11 A I RECALL WE HAD AN EXTENSIVE DISCUSSION IN  
12 REGARDS TO RYAN'S CONDITION. WE ALSO TALKED ABOUT  
13 MAYBE WAYS IN WHICH WE COULD POSSIBLY KEEP HIM UNDER  
14 MOTHER'S CUSTODY AND CARE.

15 WE TALKED ABOUT WHAT FATHER COULD DO TO HELP  
16 WITH THE ISSUES. WE TALKED ABOUT WHAT HE SHOULD BE  
17 FED. WE TALKED ABOUT HOW HIS CURRENT CONDITION WAS  
18 LIFE-THREATENING, IN THE SENSE THAT --

19 WHEN WE WERE INFORMED BY OUR PUBLIC HEALTH  
20 NURSE WHO BROKE DOWN THE MEDICAL INFORMATION, RYAN'S  
21 RECORDS, IT WAS BROUGHT TO OUR ATTENTION THAT HIS  
22 CONDITION COULD BE LIFE-THREATENING BECAUSE HIS BRAIN  
23 DEVELOPMENT WAS BEING IMPACTED.

24 AND IT COULD EVEN POSSIBLY LEAD TO, LIKE, EVEN  
25 FATAL RESULTS IF HE WASN'T ABLE TO RECEIVE THE  
26 NUTRIENTS OR THE FOODS THAT HE NEEDED TO BE ABLE TO  
27 GROW AND DEVELOP AND THRIVE.

28 MR. KING: I'M GOING TO OBJECT AS

1 NON-RESPONSIVE TO EVERYTHING AFTER, "BRAIN  
2 DEVELOPMENT."

3 THE COURT: OBJECTION OVERRULED.

4 BY MS. SWISS:

5 Q NOW, DO YOU KNOW WHEN BABY RYAN WAS SEEN AT  
6 THE FAILURE TO THRIVE CLINIC?

7 A YES.

8 Q WHEN WAS THAT?

9 A NOVEMBER 3RD, 2009.

10 Q AND THAT'S THE SAME DAY AS THE TDM?

11 A YES.

12 Q OKAY. SO WHAT NEW INFORMATION DID YOU RECEIVE  
13 AT THE TDM THAT YOU DIDN'T HAVE BEFOREHAND?

14 A WE RECEIVED THAT THERE WERE NO MEDICAL-RELATED  
15 CONDITIONS, WE WERE INFORMED THERE WAS NO -- NO  
16 ALLERGIES. WE LEARNED THAT MOTHER HADN'T IN FACT  
17 COMPLIED WITH THE DOCTOR'S RECOMMENDATIONS.

18 WE -- WE LEARNED THAT -- WELL, I LEARNED THAT  
19 MOTHER WAS RESIDING -- THAT RYAN WAS BASICALLY RESIDING  
20 UNDER MOTHER'S CARE ABOUT 88 PERCENT OF THE TIME, AND  
21 HE WAS WITH FATHER ABOUT 12 PERCENT OF THE TIME.

22 AND AT THE TIME WE WERE LOOKING AT WHO CAN  
23 SERVE THIS CHILD --

24 THE REPORTER: (REPORTER CLARIFICATION.)

25 THE WITNESS: WE WERE TRYING TO DETERMINE,  
26 LIKE, WHAT SUPPORTS WERE IN PLACE FOR THE FAMILIES SO  
27 THAT THEIR NEEDS COULD BE ADDRESSED.

28 BUT AT THAT MEETING, WE DIDN'T -- EVEN THOUGH

1 MOTHER WAS COOPERATIVE, THERE WAS NO MENTION OF, LIKE,  
2 THERE BEING ANY, LIKE, ISSUES IN REGARDS TO HER BEING  
3 ABLE TO PROPERLY FEED HIM.

4 IT WAS OTHER REASONS, IT WAS NEVER THAT SHE  
5 WASN'T FEEDING HIM.

6 Q WHAT DO YOU MEAN, OTHER REASONS?

7 A WE WERE LOOKING AT, HE'S NOT GROWING, WHAT  
8 WOULD BE THE CAUSE OF THAT.

9 AND, FROM THE INFORMATION THAT WE RECEIVED  
10 FROM OUR MEDICAL PROVIDERS, ALL THE CONCERNS WERE  
11 ASSUMING THAT HE WAS NOT RECEIVING THE PROPER  
12 NUTRIENTS, HE WAS NOT BEING FED PROPERLY.

13 AND AS A RESULT, IT HAD RESULTED IN HIM BEING  
14 SEVERELY DEVELOPMENTALLY DELAYED.

15 Q NOW, YOU MENTIONED IN A PRIOR RESPONSE THAT  
16 YOU LEARNED AT THE TDM THAT MOTHER HAD NOT COMPLIED  
17 WITH MEDICAL PROFESSIONALS. WHAT DID YOU MEAN BY THAT?

18 A WHEN WE LOOKED AT THE INFORMATION, IT  
19 INDICATED THAT RYAN'S CONDITION WAS SO POOR THAT HE  
20 NEEDED TO BE SEEN, LIKE, EVERY TWO WEEKS TO MONITOR HIS  
21 WEIGHT AND HIS CONDITION.

22 AND THERE WAS TOO LONG OF A LAPSE, LIKE, THREE  
23 MONTHS IS A SIGNIFICANT PERIOD NOT TO HAVE ANY MEDICAL  
24 TREATMENT OR CARE.

25 ALSO, THE NUTRITIONIST. THERE WAS A  
26 RECOMMENDATION, WE UNDERSTAND, THAT BABY RYAN AND THE  
27 FAMILY WAS SUPPOSED TO MEET WITH A NUTRITIONIST.  
28 ALSO -- THAT TOOK A WHILE. THAT WAS MONTHS LATER.

1                   SO IT JUST SEEMS LIKE WHEN YOU HAVE A  
2 RECOMMENDATION, YOU JUMP RIGHT ON IT. IT'S THE  
3 RESPONSIBILITY OF OUR PARENTS TO ENSURE THAT THEIR  
4 CHILDREN, THAT THEIR NEEDS WERE BEING MET.

5           Q       DID YOU -- STRIKE THAT.

6                   SO YOU LEARNED -- YOU JUST TESTIFIED THAT YOU  
7 LEARNED THAT THE NUTRITIONIST HAD MADE SOME  
8 RECOMMENDATIONS.

9                   DO YOU KNOW WHAT THE RECOMMENDATIONS WERE FROM  
10 THE NUTRITIONIST, AS TO WHAT THE BABY SHOULD BE FED?

11           A       I RECALL THAT SHE MENTIONED HE NEEDED TO BE  
12 FED HIGH-CALORIC AND PROTEIN FOODS, SO WE UNDERSTOOD  
13 THAT HE SHOULD BE HAVING SOMETHING THAT WOULD ALLOW HIM  
14 TO GROW.

15                   AT THAT MEETING, THE MOTHER HAD EXPRESSED WHAT  
16 SHE WAS FEEDING, FATHER EXPRESSED WHAT HE WAS FEEDING,  
17 BUT THERE WERE JUST CONCERNS THAT THEY WEREN'T  
18 ACTUALLY --

19                   THEY WEREN'T ABLE TO FOLLOW, FOR THAT MOTHER  
20 IN PARTICULAR, BECAUSE THE CHILD WAS UNDER HER PRIMARY  
21 CARE, WASN'T ABLE TO FOLLOW THROUGH WITH THOSE  
22 RECOMMENDATIONS.

23                   EVEN AT THE MEETING, SHE WAS FEEDING RYAN, THE  
24 BABY RYAN. AND SHE HAD FED HIM, I SAW PAPER-THIN  
25 SLICED CUCUMBER SLICES, A GRAPE LIKE THAT SIZE  
26 (GESTURING) CUT UP FOUR DIFFERENT WAYS, AND SHE WAS  
27 FEEDING HIM, BUT WE WERE THINKING, LIKE, YOU NEED MORE  
28 SUBSTANCE, AND CARBOHYDRATES AND THINGS THAT WOULD HELP

1 HIM GAIN SOME WEIGHT.

2 MR. KING: I'M GOING TO OBJECT AS  
3 NONRESPONSIVE AFTER, "WE WERE THINKING." IT'S ALSO A  
4 NARRATIVE RESPONSE.

5 THE COURT: THE OBJECTION IS SUSTAINED. THE  
6 MOTION TO STRIKE IS GRANTED. THAT PART OF THE ANSWER  
7 THAT BEGAN WITH, "BUT WE WERE THINKING -- SUBSTANCE,  
8 AND CARBOHYDRATE AND THINGS," ET CETERA IS ORDERED  
9 STRICKEN TO THE END OF THAT ANSWER, ALL BE STRICKEN.  
10 THE JURY DISREGARD IT.

11 BY MS. SWISS:

12 Q DID YOU ASK THE MOTHER IF SHE WAS FEEDING BABY  
13 RYAN HIGH-CALORIE FOODS?

14 A YES.

15 Q AND WHAT DID SHE SAY?

16 A YES.

17 Q WHAT DID SHE SAY SHE WAS FEEDING THE BABY?

18 A I CAN'T --

19 MR. KING: OBJECTION: ASKED AND ANSWERED.  
20 ALSO CALLS FOR SPECULATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: SHE GAVE THE LIST OF FOODS. SHE  
23 PROVIDED SOME FOOD ITEMS THAT SHE WAS FEEDING BABY  
24 RYAN, BUT I CAN'T RECALL AT THIS EXACT TIME, FROM 2009.

25 BY MS. SWISS:

26 Q SO IF YOU ASKED MOM IF SHE WAS FEEDING THE  
27 BABY THE HIGH-CALORIE FOODS AND SHE SAID YES, THEN WHAT  
28 WAS THE PROBLEM?



1 MR. KING: OBJECTION: OVERBROAD, VAGUE, CALLS  
2 FOR SPECULATION, LACKS FOUNDATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: THE PROBLEM IS IF YOU'RE FEEDING  
5 YOUR CHILD ALL OF THESE HIGH-PROTEIN CALORIC FOODS,  
6 THERE SHOULD BE SOME REASONING AS TO WHY HE'S NOT  
7 GAINING WEIGHT.

8 WHY HE'S NOT ABLE TO MEET ANY MILESTONES, WHY  
9 HE'S NOT DEVELOPING. THERE WAS NO REASONABLE  
10 EXPLANATION. IF YOU'RE FEEDING HIM THESE FOODS, WHY  
11 HE'S NOT GROWING, WHY HE'S NOT THRIVING.

12 MR. KING: OBJECTION, YOUR HONOR: LACKS  
13 FOUNDATION, CALLS FOR MEDICAL OPINION.

14 THE COURT: OVERRULED.

15 BY MS. SWISS:

16 Q SO DURING THE TDM, THERE WAS A DECISION MADE  
17 TO DETAIN THE BABY FROM MOM. RIGHT?

18 A YES.

19 Q TELL ME HOW THAT DECISION WAS ARRIVED AT.

20 A IT WAS ARRIVED AT BECAUSE WE LOOKED AT ALL OF  
21 THE INFORMATION THAT WE HAD GATHERED FROM SEVERAL  
22 MEDICAL PROFESSIONALS.

23 WE ALSO LOOKED AT THE MOTHER PROVIDING THE  
24 REPORTS OR INCONSISTENT STATEMENTS ABOUT HER COMPLYING  
25 WITH THE DOCTOR'S RECOMMENDATIONS.

26 THE CONCERNS FROM OUR NUTRITIONIST, SAYING SHE  
27 DIDN'T THINK THAT MOTHER WOULD BE ABLE TO COMPLY WITH  
28 THOSE RECOMMENDATIONS. THE FACT THAT BABY RYAN HAD A

1 LIFE-THREATENING CONDITION WAS VERY, VERY CONCERNING  
2 FOR US.

3 AGAIN, AT THAT TIME, HE WAS 15 MONTHS. AND WE  
4 DETERMINED THAT THERE WAS -- HE WAS IN IMMEDIATE  
5 IMMINENT DANGER OF SUFFERING POSSIBLY A SEVERE OR  
6 SERIOUS PHYSICAL INJURY IF HE'S NOT -- IF HE REMAINS IN  
7 THE SAME ENVIRONMENT UNDER THE CARE OF THE MOTHER.

8 Q NOW, THE BABY WAS -- THE DECISION WAS MADE TO  
9 DETAIN THE BABY FROM MOM. WHO ACTUALLY MADE THAT  
10 DECISION?

11 A IT WAS A DECISION, ACTUALLY, I HAD THE  
12 AUTHORIZATION TO PLACE THE CHILD INTO PROTECTIVE  
13 CUSTODY.

14 Q NOW, DID SUSAN HAVE THE AUTHORITY TO MAKE THAT  
15 DECISION?

16 A NO, NOT ON HER OWN.

17 Q MS. PENDER. I APOLOGIZE, YOUR HONOR.

18 A NOT ON HER OWN, NO.

19 Q NOW, THERE WAS ALSO A DECISION MADE TO PLACE  
20 THE BABY WITH DAD. WEREN'T THERE ALSO CONCERNS  
21 REGARDING DAD'S CARE OF THE BABY?

22 A YES.

23 MR. KING: OBJECTION: LEADING, YOUR HONOR.

24 THE COURT: OVERRULED.

25 BY MS. SWISS:

26 Q YES?

27 A YES.

28 Q AND WHAT WERE THOSE CONCERNS?

1           A       OUR CONCERNS WERE THAT WOULD FATHER BE ABLE TO  
2 COMPLY WITH THE DOCTOR'S RECOMMENDATIONS SO THAT RYAN  
3 COULD GET BETTER AND HOPEFULLY IMPROVE.

4           Q       AND DID YOU COME TO A CONCLUSION ABOUT WHETHER  
5 DAD WOULD BE ABLE TO COMPLY?

6           A       YES.

7           Q       AND WHAT WAS THAT CONCLUSION?

8           A       THE WAY IN WHICH HE EXPRESSED HIS WILLINGNESS  
9 TO DO WHATEVER IT TOOK TO HELP HIS SON, TO HELP HIM,  
10 YOU KNOW, TO TRY TO GET HIM TO BE ABLE TO DEVELOP AND  
11 GROW.

12          Q       CAN YOU BE MORE SPECIFIC?

13          A       HE HAD SUPPORT, HE INDICATED HE WOULD TAKE OFF  
14 WORK, HE WAS VERY COOPERATIVE IN THE SENSE THAT HE WAS  
15 WILLING TO WORK WITH THE DEPARTMENT. AND ALSO DO  
16 WHATEVER IT TOOK TO ASSIST HIS SON.

17          Q       WHAT DO YOU MEAN BY, WHATEVER IT TOOK? WHAT  
18 KIND OF THINGS?

19          A       IF HE HAD TO TAKE OFF TO TAKE HIM TO  
20 APPOINTMENTS, REGIONAL CENTER APPOINTMENTS, FAILURE TO  
21 THRIVE APPOINTMENTS, HE WAS WILLING TO DO WHATEVER IT  
22 TOOK.

23          Q       WHAT ABOUT FEEDING THE BABY? DID HE -- WHAT  
24 DID HE SAY -- WHAT DID HE REPORT THAT HE WOULD DO, WITH  
25 REGARD TO FEEDING THE BABY?

26                   MR. KING: OBJECTION, YOUR HONOR: CALLS FOR  
27 HEARSAY.

28                   THE COURT: OVERRULED. THERE'S A NON-HEARSAY

1 PURPOSE FOR THIS.

2 THE WITNESS: I'M SORRY?

3 BY MS. SWISS:

4 Q WHAT DID MR. MILLS REPORT THAT HE WOULD DO IN  
5 REGARDS TO FEEDING THE BABY?

6 A HE WOULD FOLLOW THE RECOMMENDATIONS OF THE  
7 DOCTORS AND THE NUTRITIONISTS IN REGARDS TO KEEPING A  
8 LOG OF THE FOOD ITEMS THAT HE WAS FEEDING THE CHILD --  
9 HIS SON, SO THAT HE COULD REPORT BACK TO THE DOCTORS  
10 AND KEEP A LOG OF THAT.

11 HE INDICATED HE WOULD HAVE THE SUPPORT FROM  
12 FAMILY MEMBERS TO PROVIDE CHILD CARE IF NECESSARY. HE  
13 WAS WILLING TO ATTEND ANY SERVICES THAT COULD HELP HIS  
14 FAMILY.

15 Q AND WHAT WAS MOM'S RESPONSE -- STRIKE THAT.  
16 DID YOU ASK MOM THOSE SAME QUESTIONS?

17 A OH, YES.

18 Q AND WHAT WAS MOM'S RESPONSE?

19 A IF I RECALL, SHE DIDN'T TAKE RESPONSIBILITY.  
20 SHE JUST -- IT WAS ANOTHER REASON -- SHE NEVER OWNED UP  
21 TO -- THERE MAY BE SOME ISSUES WITH ME BEING ABLE TO  
22 PROPERLY FEED MY CHILD.

23 IT WAS, SHE WANTED TO DO THINGS HER WAY. SHE  
24 WAS INTENT THAT, I'M GOING TO FEED HIM, THAT, YOU KNOW,  
25 SHE FELT SHE WANTED TO FEED HIM, AND WE WERE LOOKING AT  
26 WELL, WHAT DID HE NEED, WHAT WAS IT THAT HE REALLY  
27 NEEDED.

28 SO WE DIDN'T SEE -- WE DIDN'T ASSESS THAT SHE

1 WOULD BE WILLING TO WORK WITH THE DEPARTMENT. RYAN AT  
2 THIS TIME WAS 15 MONTHS, AND SHE HADN'T DEMONSTRATED  
3 THAT SHE WAS ABLE TO FEED HIM APPROPRIATELY.

4 MR. KING: YOUR HONOR, OBJECT. LACKS  
5 FOUNDATION, THE WITNESS IS TESTIFYING IN A NARRATIVE.

6 THE COURT: THOSE OBJECTIONS ARE OVERRULED.  
7 BY MS. SWISS:

8 Q MS. ROGERS, WHEN IN THE COURSE OF THE TDM WAS  
9 THE DECISION MADE TO DETAIN THE BABY?

10 A WE NORMALLY DETERMINED AT THE END OF OUR TEAM  
11 DECISION-MAKING MEETING.

12 Q CAN YOU EXPLAIN THAT PROCESS IN THIS CASE?

13 A WE SIT DOWN, WE LOOK AT THE INFORMATION, WE  
14 LOOK, AGAIN, AT WHAT'S WORKING, WHAT ARE THE CONCERNS,  
15 WHAT IDEAS, WHAT SERVICES WE CAN COME UP WITH TO ENSURE  
16 RYAN'S SAFETY UNDER THE CARE OF HIS CUSTODIAL PARENT.

17 THERE WAS A MOMENT IN WHICH IT WAS VERY  
18 INTENSE FOR MOM. ONCE, WE EXPRESSED THAT WE NEEDED TO  
19 HAVE A BREAK BECAUSE THERE WAS A MOMENT IN WHICH SHE  
20 WAS CLEARLY UPSET. HER PARENTS WERE UPSET. BUT WE HAD  
21 A SHORT BREAK.

22 I WOULD HAVE, AT THAT TIME, CONSULTED WITH MY  
23 SUPERVISOR, MY ADMINISTRATOR AT THE TIME, IN REGARDS TO  
24 HOW WE WERE PROCEEDING WITH THE FAMILY.

25 Q AND DID YOU ACTUALLY CONSULT WITH YOUR  
26 SUPERVISOR THAT DAY?

27 A I BELIEVE SO, YES.

28 Q AND DO YOU KNOW WHO YOU CONSULTED WITH?

1           A       I CAN'T RECALL AT THIS TIME.

2           Q       AND AFTER THE BREAK, WHAT HAPPENED?

3           A       WE CAME UP -- WE ALL CAME BACK TOGETHER.  AND  
4 WE ALL DEVELOPED A PLAN TO -- WELL, WE DETERMINED THAT  
5 WE WOULD HAVE TO PLACE RYAN -- BABY RYAN INTO  
6 PROTECTIVE CUSTODY BECAUSE WE IDENTIFIED HIM TO BE IN  
7 IMMEDIATE IMMINENT DANGER OF HARM IF HE WERE TO REMAIN  
8 UNDER THE CUSTODIAL CARE OF HIS MOTHER AT THE TIME.

9                   SO WE DETERMINED THAT WE WOULD PLACE HIM IN  
10 PROTECTIVE CUSTODY.  WE WOULD PROVIDE THE MOTHER WITH  
11 FAMILY REUNIFICATION SERVICES, AND PROVIDE THE FATHER  
12 WITH FAMILY MAINTENANCE BECAUSE WE WERE GOING TO HAVE  
13 HIM PLACED UNDER HIS CARE.

14                   THE COURT:  MS. SWISS, WE'RE GOING TO TAKE THE  
15 AFTERNOON RECESS AT THIS TIME.  APPROXIMATELY  
16 10 MINUTES.  ALL JURORS, PLEASE REMEMBER THE  
17 ADMONITION.

18   (JURY EXCUSED)

19   (PAUSE IN THE PROCEEDINGS)

20   (JURY PRESENT)

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

23                   THE COURT:  EVERYONE MAY BE SEATED.  EVERYONE  
24 IS PRESENT.  WE'RE ON THE RECORD.

25                   BEFORE WE CONTINUE WITH THE EXAMINATION OF THE  
26 WITNESS, I -- IN PROOF THAT MY WIFE IS OFTEN CORRECT  
27 ABOUT MY FORGETTING THINGS, WHEN WE STARTED THIS  
28 AFTERNOON, I SAID THAT YOU WOULD BE HERE ON MONDAY.

1            THAT WAS RIGHT AFTER MY TELLING THE LAWYERS  
2            THAT THEY'D BE HERE ON MONDAY BUT YOU WOULDN'T.  
3            PROVING PERHAPS WHAT I SAID BEFORE, THE MEMORY'S THE  
4            SECOND THING TO GO, BUT IN THIS INSTANCE, THAT MEMORY  
5            SEEMED TO FAIL ME IN A SPAN OF ABOUT 60 SECONDS.

6            BUT WHEN I SAY MEMORY'S THE SECOND THING TO  
7            DO, IT DOESN'T NECESSARILY INDICATE HOW QUICKLY IT WILL  
8            HAPPEN. IN MY CASE, THAT WAS A MISTAKE. YOU WILL NOT  
9            BE HERE ON MONDAY.

10            YOU'LL BE ORDERED, WHEN WE RECESS, TO BE BACK  
11            AT 9:00 A.M. ON TUESDAY. I'LL TELL YOU THAT AGAIN,  
12            IT'S MY MISTAKE, FOR WHICH I APOLOGIZE.

13            IT TURNS OUT THAT ALL THE ATTORNEYS WERE  
14            THINKING OF TRYING TO SEND A MESSAGE, BUT THOUGHT A  
15            MISSILE DIRECTED AT THE JUDGE WOULD PROBABLY NOT BE A  
16            GOOD IDEA.

17            SO THEY DID IT DIFFERENTLY AFTER WE TOOK THE  
18            RECESS. AND I APOLOGIZE FOR THAT MISTAKE, AND  
19            APOLOGIZE TO THEM AS WELL. SO.

20            MS. SWISS, YOU MAY CONTINUE.

21            MS. SWISS: THANK YOU, YOUR HONOR.

22            BY MS. SWISS:

23            Q        MS. ROGERS, IF YOU RECALL, HOW LONG WAS THAT  
24            TDM?

25            A        IT MAY HAVE BEEN A LITTLE OVER TWO HOURS.

26            Q        DID YOU OBSERVE BABY RYAN BEING FED ANY SNACKS  
27            OR ANY FOOD AT THE TDM?

28            MR. KING: OBJECTION: ASKED AND ANSWERED.

1 THE COURT: OVERRULED. THIS MAY BE MY MEMORY  
2 FAILURE AGAIN. IF IT IS, I APOLOGIZE, MR. KING.

3 MR. KING: NO PROBLEM.

4 THE COURT: I DON'T REMEMBER THAT. SO WE'LL  
5 HAVE THE WITNESS ANSWER IT.

6 THE WITNESS: YES.

7 BY MS. SWISS:

8 Q WHAT DID YOU OBSERVE?

9 A HE WAS EATING VERY THINLY-SLICED CUCUMBERS,  
10 AND SLICED GRAPES. BARELY EATING THOSE.

11 THE COURT: AND I DO APOLOGIZE, YOU WERE  
12 CORRECT. NOW WE'VE HEARD IT TWICE.

13 THE WITNESS: YOU REMEMBER THAT. (LAUGHTER).

14 BY MS. SWISS:

15 Q WHO WAS FEEDING HIM AT THE TDM?

16 A I BELIEVE IT WAS EITHER MOM OR GRANDMOTHER.

17 Q AND DO YOU KNOW WHO BROUGHT THE SNACKS FOR  
18 BABY RYAN?

19 A I'M PRETTY SURE THE MOTHER PROVIDED THE FOOD  
20 THAT DAY.

21 Q NOW, AFTER THE DETENTION, AFTER THE TDM, WHAT  
22 HAPPENED NEXT, IN REGARDS TO WHAT PROCEDURE DCFS  
23 UNDERTOOK WITH REGARDS TO RYAN?

24 A AFTER THE TEAM DECISION-MAKING MEETING, MOTHER  
25 RAFAELINA DUVAL REQUESTED TO SPEAK WITH ME. SHE HAD  
26 SOME CONCERNS.

27 AND THEN WE HAD A DISCUSSION. AND FROM THERE,  
28 THAT'S WHEN MY WORKER WAS REQUIRED TO START PUTTING



1 TOGETHER INFORMATION SO THAT SHE COULD BEGIN THE  
2 WRITING OF THE DETENTION REPORT OR PETITION.

3 Q AND WHAT'S THE DETENTION REPORT?

4 A A DETENTION REPORT IS THE PETITION THAT IS  
5 COMPRISED OF INFORMATION AND FINDINGS FROM OUR SAFETY  
6 INVESTIGATION.

7 SO IT WOULD ENTAIL THE INTERVIEWS THAT MY  
8 CHILDREN'S SOCIAL WORKER WOULD HAVE HAD WITH THE  
9 MEDICAL PROFESSIONALS, RYAN'S PEDIATRIC PROVIDERS,  
10 ANYONE THAT COULD PROVIDE INFORMATION.

11 AS I MENTIONED, THE NUTRITIONIST, FAMILY  
12 MEMBERS, REGIONAL CENTER SERVICES.

13 Q NOW, IN THE DETENTION REPORT, WELL -- STRIKE  
14 THAT.

15 DID DCFS DECIDE TO FILE THE PETITION AGAINST  
16 ANYBODY WITH REGARDS TO BABY RYAN?

17 A YES.

18 MR. KING: OBJECTION, YOUR HONOR: LACKS  
19 FOUNDATION, CALLS FOR SPECULATION AS TO THIS WITNESS.

20 THE COURT: OVERRULED.

21 BY MS. SWISS:

22 Q AND YOUR ANSWER WAS?

23 A YES.

24 Q AND WHO WAS THE PETITION FILED AGAINST?

25 A IT WAS FILED AGAINST MOTHER, MS. DUVAL, FOR  
26 ALLEGATIONS OF -- FOR SUBSTANTIATED ALLEGATIONS OF  
27 SEVERE NEGLECT. AND THEY WERE ALSO FILED AGAINST  
28 FATHER RYAN MILLS, FOR ALLEGATIONS OF GENERAL NEGLECT.

1 Q AND HOW CAN YOU FILE AGAINST BOTH MOM AND DAD  
2 IF THE BABY'S STILL WITH DAD?

3 A WHAT YOU'RE DOING IS YOU'RE ASSESSING THE RISK  
4 LEVEL OF THE CHILD. AND EVEN THOUGH YOU MAY HAVE A  
5 PARENT THAT MAY HAVE ALLEGATIONS SUBSTANTIATED AGAINST  
6 THEM, WE HAVE TO TAKE INTO ACCOUNT, ARE THOSE CONCERNS  
7 GOING TO CAUSE ANY TYPE OF DETRIMENT OR HARM TO THE  
8 WELFARE OF THIS CHILD.

9 DO THEY HAVE THE CAPACITY. DO THEY HAVE THE  
10 ABILITY TO BE ABLE TO PROVIDE THEIR CHILD WITH THE  
11 APPROPRIATE CARE OR WITH PROPER CARE SO THAT THEY'LL BE  
12 ABLE TO GROW AND BE HAPPY CHILDREN.

13 Q AND SO IN THIS CASE, WHAT DID YOU DO TO MAKE  
14 THAT DETERMINATION THAT THE BABY WOULD BE OKAY WITH  
15 DAD?

16 A HE DIDN'T HAVE HIM FOR A SIGNIFICANT PERIOD OF  
17 TIME FOR THE DEPARTMENT TO IDENTIFY HIM AS THE CAUSE OF  
18 WHY THE BABY WAS FAILURE TO THRIVE.

19 HE ONLY HAD HIM FOR A PERIOD OF  
20 ABOUT 12 PERCENT OF THE TIME, AND MOM HAD HIM  
21 ABOUT 88 PERCENT OF THE TIME.

22 SO SINCE HE HAD NOT HAD HIM, BABY RYAN, UNDER  
23 HIS PRIMARY CARE, WE WERE TRYING TO ALLOW HIM TO BE  
24 WITH THE FATHER TO SEE IF POSSIBLY HE COULD MEET THE  
25 REQUIREMENTS AND THE RECOMMENDATIONS OF THE MEDICAL  
26 PROVIDERS.

27 MR. KING: OBJECTION: NONRESPONSIVE, YOUR  
28 HONOR. MOVE TO STRIKE.

1 THE COURT: OVERRULED.

2 BY MS. SWISS:

3 Q MS. ROGERS, THE DETENTION REPORT. DID YOU  
4 PREPARE THAT?

5 A NO.

6 Q WHO DID?

7 A MY CHILDREN'S SOCIAL WORKER, SUSAN PENDER AT  
8 THE TIME.

9 Q NOW, DID YOU HAVE ANY ROLE WITH REGARDS TO  
10 THAT DETENTION REPORT?

11 A I HAD TO REVIEW IT. AND ENSURE THAT SHE HAD  
12 THE PERTINENT INFORMATION INCLUDED.

13 Q NOW, WHAT DID YOU DO IN YOUR REVIEW?

14 A WE HAD DISCUSSIONS IN REGARDS TO THE TOTALITY  
15 OF ALL OF THE INFORMATION AND EVIDENCE THAT WE HAD  
16 RELIED ON TO COME TO OUR DETERMINATION THAT THE CHILD  
17 HAD TO BE PLACED IN PROTECTIVE CUSTODY AND PLACED WITH  
18 THE FATHER AT THE TIME.

19 SO WE SIT DOWN AND GO OVER MEDICAL RECORDS,  
20 INFORMATION, PAST RECORDS, THE NEW INFORMATION THAT WAS  
21 PROVIDED TO OUR ATTENTION.

22 Q AND DID YOU DO THAT IN THIS CASE?

23 A YES.

24 Q DID YOU DO ANYTHING ELSE IN REGARDS TO  
25 PREPARATION OF THE DETENTION REPORT?

26 A NO. JUST -- NO.

27 Q DO YOU RECALL IF YOU REVIEWED ANY RECORDS  
28 BEFORE THE DETENTION REPORT WAS COMPLETED?

1 A YES.

2 Q WHAT DID YOU REVIEW?

3 A THE -- BABY RYAN'S MEDICAL RECORDS, HIS GROWTH  
4 CHART, THE FAILURE TO THRIVE -- THE UCLA FAILURE TO  
5 THRIVE CLINIC NOTES AND INFORMATION. AND ALL OF THE  
6 MEDICAL-RELATED -- ANYTHING THAT COULD GIVE US  
7 INFORMATION IN REGARDS TO THE CHILD'S CONDITION.

8 MS. SWISS: THANK YOU, MS. ROGERS. NO FURTHER  
9 QUESTIONS.

10 THE COURT: MR. KING.

11 MR. KING: THANK YOU, YOUR HONOR.

12

13 CROSS-EXAMINATION

14 BY MR. KING:

15 Q GOOD AFTERNOON, MS. ROGERS.

16 A GOOD AFTERNOON.

17 Q MS. ROGERS, WHEN DID YOU GET INVOLVED IN THE  
18 CASE INVOLVING BABY RYAN?

19 A ON OCTOBER 19, 2009.

20 Q OKAY. AND THAT WAS BY WAY OF  
21 MS. SUSAN PENDER. CORRECT?

22 A THE REFERRAL INVESTIGATION HAD BEEN ASSIGNED  
23 TO MY WORKER, YES. SUSAN PENDER.

24 Q AND YOU'RE FAMILIAR WITH THE CONTACT NOTES  
25 PROCESS. IS THAT CORRECT?

26 A YES.

27 Q OKAY. AND PART OF THE DECISION THAT YOU  
28 ULTIMATELY MADE TO DETAIN BABY RYAN WAS INVOLVED --

1 INVOLVING YOUR COMMUNICATIONS WITH MS. PENDER AS WELL  
2 AS YOUR REVIEW OF THE CONTACT NOTES. CORRECT?

3 A YES.

4 Q AND YOU RELY UPON THE CONTACT NOTES IN DOING  
5 YOUR JOB AS A SUPERVISING CHILDREN'S SOCIAL WORKER.  
6 TRUE?

7 A WE DO REVIEW THE CONTACTS, YES.

8 Q OKAY. YOU TESTIFIED DURING YOUR DIRECT  
9 EXAMINATION THAT THERE WAS NO HISTORY OF ALLERGIES  
10 PRIOR TO THE DETENTION HEARING ON NOVEMBER 3RD, 2009?

11 MS. SWISS: OBJECTION: MISSTATES TESTIMONY.

12 THE COURT: OVERRULED.

13 MS. SWISS: VAGUE AS TO DETENTION HEARING ON  
14 NOVEMBER 3RD, 2009.

15 MR. KING: I CAN REPHRASE, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 BY MR. KING:

18 Q THE TEAM DECISION MEETING WHICH TOOK PLACE ON  
19 NOVEMBER 3RD, 2009. YOUR PRIOR TESTIMONY WAS THAT  
20 THERE WAS NO HISTORY OF ALLERGIES. TRUE?

21 A WE DID NOT RECEIVE ANY INFORMATION THAT BABY  
22 RYAN HAD ALLERGIES, YES.

23 Q AND ISN'T IT TRUE THAT IN THE CONTACT NOTES,  
24 MS. LAURA AUSTIN ACTUALLY SPOKE TO DR. SODERBERG, WHO  
25 INDICATED THAT THE BABY HAS ALLERGIC RHINITIS, "ONE  
26 PLUS" TO MILK, AND "ONE PLUS" TO EGG WHITE. ISN'T THAT  
27 TRUE?

28 MS. SWISS: OBJECTION: IMPROPER REFRESHMENT

1 OF RECOLLECTION. COUNSEL IS READING FROM A DOCUMENT.

2 THE COURT: OVERRULED.

3 THE WITNESS: MY UNDERSTANDING THAT HE DID NOT  
4 HAVE ANY FOOD ALLERGIES.

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

7 THE COURT: THE OBJECTION IS OVERRULED.

8 BY MR. KING:

9 Q SO YOU WOULD AGREE THAT ON NOVEMBER 3RD, THAT  
10 THERE IS AN ENTRY THAT IN FACT BABY RYAN HAD ALLERGIC  
11 RHINITIS, "ONE PLUS" TO MILK, AND "ONE PLUS" TO EGG, BY  
12 LAURA AUSTIN. CORRECT?

13 MS. SWISS: OBJECTION: LACKS FOUNDATION,  
14 CALLS FOR SPECULATION.

15 THE COURT: OVERRULED. THE QUESTION IS, WAS  
16 THERE AN ENTRY TO THAT EFFECT.

17 THE WITNESS: BASED ON THE NOTES, THERE WAS AN  
18 ENTRY, YES.

19 BY MR. KING:

20 Q OKAY. AND YOU AGREE THAT MILK AND EGGS ARE  
21 FOOD. TRUE?

22 A YES.

23 Q SO THE NOTES REFLECT THAT BABY RYAN DID HAVE  
24 AN ALLERGIC REACTION PRIOR TO NOVEMBER 3RD, 2009?

25 MS. SWISS: OBJECTION: MISSTATES THE  
26 EVIDENCE.

27 THE COURT: OVERRULED.

28 THE WITNESS: AGAIN, MY UNDERSTANDING WAS THAT

1 HE DID NOT HAVE ANY ALLERGIES TO FOODS -- TO ANY TYPE  
2 OF FOODS THAT HE WOULD BE ALLERGIC TO.

3 BY MR. KING:

4 Q YOU ALSO TESTIFIED THAT, PRIOR TO THE TEAM  
5 DECISION MEETING, BABY RYAN WAS SEEN AT THE CATC  
6 CLINIC. DO YOU REMEMBER THAT TESTIMONY?

7 A YES.

8 Q AND YOU INDICATED IN FACT THAT THE CATC CLINIC  
9 MADE A DETERMINATION THAT BABY RYAN SUFFERED FAILURE TO  
10 THRIVE BASED ON ENVIRONMENTAL CAUSES. REMEMBER THAT  
11 TESTIMONY?

12 A YES.

13 Q WELL, ISN'T IT TRUE THAT ON OCTOBER 22ND, THAT  
14 THE CATC CLINIC ACTUALLY REPORTED THAT THE BABY'S  
15 FAILURE TO THRIVE --

16 THAT IN FACT IT WAS DIFFICULT TO TELL FOR SURE  
17 AT THIS POINT WHETHER IT WAS DIRECTLY DUE TO PARENT  
18 NEGLECT? AND THAT FURTHER LAB TESTING WOULD NEED TO BE  
19 DONE, AND THAT THEY WERE WAITING ON RESULTS?

20 A COULD YOU ANSWER THAT -- WHAT IS -- THERE'S A  
21 LOT IN THAT QUESTION.

22 Q OKAY.

23 A BREAK DOWN THE -- I'LL BREAK DOWN THE FIRST  
24 HALF.

25 Q SURE.

26 A YOU ASKED ME WAS I AWARE THAT THE FAILURE TO  
27 THRIVE HAD SAID HE HAD ALLERGIES, IS THAT WHAT YOU'RE  
28 SAYING?

1 Q WELL, I'LL REPHRASE MY QUESTION. BABY RYAN  
2 WAS TAKEN TO THE CATC CLINIC ON OCTOBER 22ND, 2009.  
3 CORRECT?

4 A YES.

5 Q AND AT THAT TIME, THE REPORT FROM THE CATC  
6 CLINIC IS IN FACT THAT THEY WERE UNABLE TO DETERMINE  
7 THE CAUSES OF BABY RYAN'S FAILURE TO THRIVE. ISN'T  
8 THAT TRUE?

9 A THEY WEREN'T ABLE TO DETERMINE ALL OF THE  
10 CAUSES, CORRECT, YES, AND THEY REQUESTED FURTHER  
11 TESTING.

12 Q ISN'T IT TRUE THAT, IN FACT, THE FAILURE TO  
13 THRIVE CLINIC WERE NOT ABLE TO DETERMINE ANY CAUSES?

14 A NO. THAT'S NOT TRUE.

15 Q IF YOU COULD TURN TO EXHIBIT 82. I'LL GET  
16 THAT FOR YOU.

17 MS. SWISS: I'M SORRY, COUNSEL, 82?

18 THE COURT: YES.

19 MR. MCMILLAN: ARE YOU FAMILIAR WITH  
20 EXHIBIT 82?

21 MS. SWISS: IF YOU COULD JUST GIVE ME A  
22 SECOND.

23 MR. MCMILLAN: OKAY.

24 MS. SWISS: OKAY.

25 THE COURT: FOR CLARITY'S SAKE, EXHIBIT 82  
26 APPEARS -- RUNS FROM PAGES BATES NUMBERS 1483  
27 THROUGH 1570.

28 MR. KING: YES.



1 THE COURT: SO THAT WOULD BE 87 PAGES THAT  
2 YOU'RE ASKING IF SHE IS FAMILIAR WITH.

3 MR. KING: CORRECT.

4 THE COURT: ALL RIGHT.

5 THE WITNESS: YES. THOSE ARE THE DELIVERED  
6 SERVICE LOGS.

7 BY MR. KING:

8 Q OKAY. IF WE COULD GO TO BATES STAMP 001487,  
9 PLEASE.

10 A I'M THERE.

11 Q AND, IN FACT, ON OCTOBER 22ND OF 2009, WE HAVE  
12 AN ENTRY BY MS. SUSAN PENDER. CORRECT? RIGHT IN THE  
13 MIDDLE OF THE PAGE?

14 A THERE'S THREE CONTACTS, SO -- YES, I SEE IT.  
15 IT'S AT THE BOTTOM. CORRECT.

16 Q CORRECT. AND MS. PENDER DOCUMENTS A  
17 COMMUNICATION WITH THE CATC CLINIC WHERE THE CATC  
18 CLINIC INFORMS HER THAT IT'S DIFFICULT TO TELL FOR SURE  
19 WHETHER THIS IS DIRECTLY DUE TO THE PARENT'S NEGLIGENCE  
20 AND THAT FURTHER TESTING IS REQUIRED. CORRECT?

21 MS. SWISS: OBJECTION: IMPROPER REFRESHMENT  
22 OF RECOLLECTION. COUNSEL IS IMPROPERLY READING FROM AN  
23 EXHIBIT.

24 THE COURT: OVERRULED.

25 THE WITNESS: MAY I HAVE ONE MOMENT TO LOOK AT  
26 THIS? BECAUSE THERE'S A LOT THAT'S SAID.

27 BY MR. KING:

28 Q GO AHEAD.

1           A       YOU HAD ASKED ME TO LOOK AT ONE SENTENCE  
2           AND...IT DOES STATE THAT THE DOCTOR SAID THAT BABY  
3           RYAN --

4           THE COURT:   THERE'S NO QUESTION PENDING RIGHT  
5           NOW.

6           MR. KING:   OKAY.

7           THE COURT:   THE STATEMENT OF THE WITNESS WILL  
8           BE ORDERED STRICKEN.   THE JURY DISREGARD IT.   WE WILL  
9           PROCEED BY QUESTIONS AND ANSWERS.

10          AND ONE QUESTION I HAD, JUST FOR THE SAKE OF  
11          CLARITY, IT APPEARS TO ME THAT THERE ARE FOUR DIFFERENT  
12          NOTES OF -- ON THAT PAGE.

13          MR. KING:   YOUR HONOR, I'M SPEAKING OF THE ONE  
14          ABOUT HALFWAY DOWN ON THE PAGE, CONTACT DATE 10/22.  
15          WHICH BEGINS WITH "CSW --"

16          THE COURT:   IF YOU'RE GOING TO ASK THE WITNESS  
17          QUESTIONS ABOUT SUSAN PENDER'S NOTES ON OCTOBER 22ND,  
18          MAYBE YOU SHOULD JUST -- IS IT THE ONE WHICH BEGINS,  
19          APPROXIMATELY MIDDLE OF THE PAGE, "CSW RECEIVED A PHONE  
20          CALL"?

21          MR. KING:   CORRECT, YOUR HONOR.

22          THE COURT:   OKAY.   I'M JUST ASKING THIS FOR  
23          CLARITY.   DO YOU UNDERSTAND WHAT NOTE HE'S ASKING YOU  
24          ABOUT?

25          THE WITNESS:   I DO.   HE WAS ASKING ME TO LOOK  
26          AT ONE PARTICULAR PART WHICH EXPLAINS --

27          THE COURT:   DON'T -- FOR THE MOMENT, I JUST  
28          WANT TO MAKE SURE THAT ALL OF US ARE LOOKING AT THE

1 SAME NOTE.

2 IS THAT THE ONE YOU'RE LOOKING AT?

3 THE WITNESS: THAT'S THE ONE I'M LOOKING AT.

4 THE COURT: OKAY. LET'S GO AHEAD FROM THERE,  
5 THEN.

6 BY MR. KING:

7 Q SO YOU WOULD AGREE THAT THE CONTACT NOTE FROM  
8 THE CATC CLINIC BY MS. SUSAN PENDER INDICATES THAT THE  
9 CATC CLINIC REPORTED TO HER THAT IT WAS DIFFICULT TO  
10 TELL FOR SURE WHETHER OR NOT THE FAILURE TO THRIVE  
11 CONDITION OF THE CHILD WAS DUE TO THE PARENT'S NEGLECT.

12 A MAY I EXPLAIN?

13 Q WELL, IF YOU CAN ANSWER THAT YES OR NO.

14 A YES, THAT'S PART OF IT, YES.

15 Q SO IN FACT, THE FAILURE TO THRIVE CLINIC DID  
16 NOT MAKE A DIAGNOSIS THAT -- I'M SORRY, THE CATC CLINIC  
17 DID NOT MAKE A DIAGNOSIS THAT THE CHILD'S FAILURE TO  
18 THRIVE WAS CAUSED BY ENVIRONMENTAL FACTORS. TRUE?

19 A BASED ON THIS CONTEXT, THAT IS NOT CORRECT.

20 Q CONTEXT: "CSW RECEIVED A PHONE CALL FROM  
21 DR. EVANS AT THE CATC CLINIC WHO HAD DONE THE EXAM ON  
22 BABY RYAN. DR. EVANS STATED THAT DUE TO RYAN'S WEIGHT  
23 BEING BELOW THE CHART, HE IS DEFINITELY DIAGNOSED AS  
24 FAILURE TO THRIVE."

25 A THAT'S CORRECT.

26 Q "DR. EVANS STATED THAT IT WOULD BE DIFFICULT  
27 TO TELL FOR SURE AT THIS POINT WHETHER THIS WAS  
28 DIRECTLY DUE TO PARENTS' NEGLECT.

1           "HOWEVER, DOCTOR HAD ALREADY RULED OUT SOME  
2 NUMEROUS POSSIBLE ORGANIC CAUSES. DR. EVANS DID SOME  
3 LAB TESTS AND IS WAITING ON RESULTS.

4           "DOCTOR FURTHER STATED SHE GAVE MOTHER FOUR  
5 SPECIFIC RECOMMENDATIONS. ONE: CONTINUE WITH  
6 NUTRITION. TWO: FOLLOW UP WITH RC. THREE: SEE  
7 ALLERGIST TO RULE OUT ALLERGIES. FOUR: FOLLOW UP WITH  
8 HUB AGAIN IN A MONTH."

9           THE WITNESS: THAT'S CORRECT.

10          MS. SWISS: OBJECTION --

11          THE COURT: WAS THERE A QUESTION IN THERE?

12          MR. KING: YES. HERE COMES THE QUESTION, YOUR  
13 HONOR.

14          MS. SWISS: I'M OBJECTING. I'M SORRY. BEFORE  
15 WE GET THERE.

16          MOVE TO STRIKE COUNSEL'S RECITATION OF THE  
17 DELIVERED SERVICE LOG CONTACT ENTRY. IMPROPER  
18 IMPEACHMENT, IMPROPER REFRESHMENT OF RECOLLECTION.

19          THE COURT: THE OBJECTION UP TO READING THE  
20 ENTRY, JUST SIMPLY READING IT, IS SUSTAINED. ALL THAT  
21 COUNSEL STATED IS ORDERED STRICKEN ON THE GROUND THAT  
22 IT'S NOT A QUESTION.

23          NOW, YOU CAN GO AHEAD AND ASK A QUESTION. BUT  
24 IT NEEDS TO BE A QUESTION.

25          BY MR. KING:

26           Q       SURE. IS THERE ANY PART OF THE DELIVERED  
27 SERVICE LOG ENTRY THAT WE JUST REVIEWED THAT INDICATES  
28 THAT THE CATC CLINIC MADE A DIAGNOSIS THAT THE FAILURE

1 TO THRIVE WAS CAUSED BY ENVIRONMENTAL FACTORS?

2 IF YOU CAN ANSWER, YES OR NO.

3 A NO.

4 Q YOU ALSO TESTIFIED WITH REGARDS TO COOPERATION  
5 OF MR. RYAN MILLS. DO YOU REMEMBER THAT TESTIMONY?

6 A YES.

7 Q AND PRIOR TO NOVEMBER 3RD, 2009, HAD YOU EVER  
8 MET MR. MILLS?

9 A NO.

10 Q THROUGHOUT THE COURSE OF YOUR INVOLVEMENT IN  
11 THIS CASE, YOU SPOKE TO SUSAN PENDER ABOUT MR. MILLS  
12 AND REVIEWED THE CONTACT NOTES CONCERNING MR. MILLS.  
13 CORRECT?

14 A YES.

15 Q AND WERE YOU AWARE THAT -- LET ME HAVE YOU  
16 TURN TO BATES NUMBER 0491, IF YOU COULD.

17 THE WITNESS: WHICH ONE?

18 MR. KING: 0491.

19 THE COURT: I THINK YOU MEAN 01491.

20 MR. KING: 001491. THANK YOU.

21 THE WITNESS: OKAY.

22 BY MR. KING:

23 Q AND THERE'S A CONTACT FROM MS. SUSAN PENDER  
24 WITH MR. RYAN MILLS ON OCTOBER 30TH, 2009. AT THE  
25 BOTTOM OF THE PAGE.

26 DO YOU SEE THAT?

27 A YES.

28 Q AND DID YOU REVIEW THE CONTACT NOTE FROM

1 MS. PARRAS INDICATING THAT:

2 "SHE HAD TO EXPLAIN NUMEROUS TIMES TO THE  
3 FATHER THAT THE CHILD WAS ASSIGNED TO A SPECIFIC  
4 REGIONAL CENTER BASED ON THE MOTHER'S ADDRESS, AND  
5 THERE WASN'T A CHOICE REGARDING LOCATION THAT THEY  
6 WOULD GO TO?"

7 THE COURT: I'M SORRY. MR. KING. SORRY TO  
8 INTERRUPT, BUT YOU YOU'RE DOING IT AGAIN WHAT I TOLD  
9 YOU NOT TO DO. DON'T READ FROM THE DOCUMENT. THAT IS  
10 NOT A QUESTION.

11 ASK QUESTIONS, PLEASE.

12 BY MR. KING:

13 Q DID YOU RELY ON -- THANK YOU, YOUR HONOR.

14 DID YOU RELY ON THE ENTRY OF OCTOBER 30TH,  
15 2009, IN FORMING THAT OPINION THAT FATHER WOULD BE  
16 COOPERATIVE IN TAKING CUSTODY OF THE CHILD?

17 A WE LOOKED AT A LOT OF INFORMATION. THE  
18 DELIVERED SERVICE LOGS IS A PART OF IT, YES.

19 Q AND, IN FACT, THE FATHER -- YOU KNEW, THEN,  
20 THAT THE FATHER WAS NOT COOPERATIVE WITH REGARDS TO THE  
21 CHILD'S VISITATION WITH THE DOCTORS, PRECEDING THE TEAM  
22 DECISION MEETING. IS THAT TRUE?

23 MS. SWISS: OBJECTION: MISSTATES THE  
24 EVIDENCE.

25 THE COURT: OVERRULED. HE'S ASKING YOU A  
26 QUESTION NOW. JUST LISTEN TO THE QUESTION, AND ANSWER  
27 THE QUESTION. I'M NOT LETTING HIM READ THE DOCUMENT TO  
28 YOU. HE'S NOW ASKING WHAT YOU KNEW.

1 THE WITNESS: I UNDERSTAND THAT THE PARENTS  
2 DID HAVE SOME DISCORD.

3 BY MR. KING:

4 Q AND YOU UNDERSTOOD THAT THE PERIOD OF TIME  
5 THAT YOU TESTIFIED, FOR APPROXIMATELY THREE MONTHS  
6 WHERE THE BABY DID NOT SEE A NUTRITIONIST, YOU  
7 UNDERSTOOD THAT THAT WAS BECAUSE THE FATHER PUT UP ROAD  
8 BLOCKS. CORRECT?

9 A I UNDERSTAND THAT IT WAS -- IT WAS ALSO MOTHER  
10 AND FATHER. IT WAS A COMBINATION OF THE BOTH. IT  
11 WASN'T ONE-SIDED.

12 Q DID YOU UNDERSTAND THAT THERE WAS A FAMILY  
13 COURT ORDER THAT PREVENTED THE MOTHER FROM TAKING THE  
14 CHILD TO THE DOCTOR BECAUSE OF WHAT THE FATHER ASKED  
15 THE FAMILY COURT TO DO?

16 A THAT'S PART OF IT, YES.

17 Q AND YOU ALSO UNDERSTOOD THAT, EVEN AS EARLY AS  
18 NOVEMBER 2ND, THE FATHER INDICATED THAT HE DIDN'T WANT  
19 TO HAVE ANYTHING TO DO WITH THE BABY?

20 A I DON'T RECALL ANY OF THAT.

21 Q OKAY. DID YOU REVIEW A CONTACT NOTE ON  
22 NOVEMBER 2ND, 2009?

23 MS. SWISS: OBJECTION: VAGUE AS TO TIME WHEN  
24 SHE REVIEWED THE CONTACT.

25 THE COURT: YES. THE OBJECTION IS SUSTAINED.  
26 DID YOU REVIEW, YOU HAVE TO GIVE A TIME FRAME.

27 MR. KING: SURE.

28 THE COURT: SO, WAS IT YESTERDAY, WAS IT A

1 GIVEN DATE.

2 BY MR. KING:

3 Q PRIOR TO THE TDM MEETING, TEAM DECISION  
4 MEETING ON NOVEMBER 3RD, 2009, YOU HAVE REVIEWED ALL  
5 THE CONTACT NOTES UP UNTIL THAT POINT. CORRECT?

6 A I WAS IN CONSULTATION CONSTANTLY WITH MY  
7 WORKER. WHEN WE'RE IN CONSULTATION, WE DON'T GO OVER  
8 THE NOTES NECESSARILY WORD BY WORD. WE'RE HAVING A  
9 DISCUSSION.

10 Q AND YOUR WORKER WAS MS. SUSAN PENDER?

11 A YES.

12 Q AND YOU TALKED TO MS. SUSAN PENDER ABOUT A  
13 CONTACT THAT SHE RECEIVED ON NOVEMBER 2ND OF 2009, THE  
14 DAY BEFORE THE TEAM DECISION MEETING. RIGHT?

15 A I DON'T RECALL.

16 Q OKAY. WOULD MAYBE LOOKING AT THE TEAM -- YOU  
17 WANT TO GO AHEAD AND LOOK AT BATES 001492? SEE IF THAT  
18 REFRESHES YOUR RECOLLECTION?

19 A WHICH CONTACT?

20 Q RIGHT IN THE MIDDLE.

21 A WITH OUR PUBLIC HEALTH NURSE, ELIZABETH SMALL?

22 Q YES.

23 A ONE MOMENT, PLEASE.

24 THE COURT: AND REFRESHES HER RECOLLECTION AS  
25 TO WHAT?

26 MR. KING: AS TO WHETHER OR NOT YOU REVIEWED  
27 THE CONTACT.

28 THE COURT: WHETHER SHE HAD SEEN THIS



1 PARTICULAR NOTE?

2 MR. KING: CORRECT.

3 THE COURT: ON NOVEMBER 2ND OR 3RD?

4 MR. KING: YEAH, JUST PRIOR TO THE TEAM  
5 DECISION MEETING.

6 THE COURT: ALL RIGHT. TDM. OKAY.

7 THE WITNESS: I'D HAVE TO READ THE CONTACT TO  
8 REFRESH MY RECOLLECTION. I DON'T RECALL AT THIS TIME.

9 THE COURT: HE'S ASKING YOU TO TAKE A LOOK AT  
10 IT. AND THEN ANSWER THE QUESTION, DID YOU SEE THIS  
11 NOTE BEFORE THE TDM.

12 THE WITNESS: THANK YOU.

13 THE COURT: ONLY YOU CAN TELL US THAT.

14 THE WITNESS: OKAY. ONE MOMENT, PLEASE. YES.  
15 I RECALL THAT MS. PENDER HAD SPOKEN WITH THE -- WITH  
16 MS. DEJESUS. YES.

17 BY MR. KING:

18 Q AND ARE YOU ALSO FAMILIAR THAT MS. PENDER  
19 SPOKE TO MINISTER REESE NEYLAND ON NOVEMBER 2ND, 2009,  
20 THE DAY BEFORE THE TDM?

21 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE,  
22 RELEVANCE.

23 THE COURT: OVERRULED.

24 BY MR. KING:

25 Q AND THAT WOULD BE BATES NUMBER 001494. THAT  
26 WOULD BE THE LAST ENTRY ON THE BOTTOM.

27 A YOUR QUESTION IS, DO I RECALL THIS NOTE?

28 Q RIGHT. OR DOES THIS HELP REFRESH YOUR

1 RECOLLECTION THAT YOU DISCUSSED THE SUBSTANCE OF THIS  
2 CONTACT WITH MS. PENDER PRIOR TO MAKING THE DECISION AT  
3 THE TEAM DECISION MEETING TO SEIZE THE BABY FROM THE  
4 MOM AND GIVE IT TO THE DAD?

5 A I DON'T RECALL AT THIS TIME.

6 Q AND ARE YOU LOOKING AT THE BATES 001494, THE  
7 LAST ENTRY?

8 A YES, YOU'RE ASKING IF I RECALL. I'D HAVE TO  
9 READ IT THOROUGHLY.

10 Q WELL, AT THE TIME OF YOUR DECISION TO SEIZE  
11 THE BABY FROM THE MOTHER AND GIVE TO THE FATHER, WERE  
12 YOU AWARE OF A CONTACT BY MS. PENDER FROM PASTOR  
13 REECE NEYLAND INDICATING THAT THE FATHER HAD DENIED  
14 THAT HE WAS EVEN THE FATHER OF THE BABY?

15 A AT THE TIME WHEN WE PLACED THE CHILD INTO  
16 TEMPORARY PROTECTIVE CUSTODY?

17 Q YES.

18 A I DON'T RECALL. I UNDERSTAND THAT THE MOTHER  
19 DID HAVE A FAITH-BASED SUPPORT GROUP, AND SHE HAD A  
20 RELATIONSHIP WITH HER PASTOR, BUT WE WERE CONDUCTING A  
21 CHILD SAFETY INVESTIGATION.

22 Q OKAY. SO YOU WERE AWARE THAT AT SOME POINT,  
23 THE FATHER DENIED THAT HE EVEN HAD SEXUAL RELATIONS  
24 WITH MS. DUVAL?

25 MS. SWISS: OBJECTION: FOUNDATION, RELEVANCE.

26 THE COURT: SUSTAINED AS TO RELEVANCE.

27 BY MR. KING:

28 Q WERE -- AT THE TIME YOU MADE YOUR DECISION AT

1 THE TEAM DECISION MEETING TO TAKE THE BABY FROM THE  
2 MOTHER AND GIVE IT TO THE FATHER, WERE YOU AWARE THAT  
3 THE DAY BEFORE, THERE WAS A CONTACT WHICH INDICATED  
4 THAT THE FATHER WAS RELUCTANT TO BE INVOLVED IN THE  
5 CHILD'S LIFE?

6 A AT WHAT TIME? THE DAY BEFORE THE TEAM  
7 DECISION-MAKING MEETING?

8 Q THAT THERE WAS A CONTACT NOTE THE DAY BEFORE  
9 THE TEAM DECISION MEETING THAT THE FATHER HAD NOTIFIED  
10 HIS PASTOR, PASTOR NOTIFIES THE DEPARTMENT THAT THE  
11 FATHER INDICATED THAT HE'S RELUCTANT TO BE IN THE  
12 BABY'S LIFE, AND THAT HE INFORMED OTHERS THAT HE NEVER  
13 HAD SEXUAL RELATIONS WITH THE MOM?

14 MS. SWISS: OBJECTION: VAGUE, RELEVANCE.

15 THE COURT: SUSTAINED AS TO RELEVANCE. I WANT  
16 NO MORE QUESTIONS ON THIS NOW.

17 MR. KING: OKAY, YOUR HONOR.

18 BY MR. KING:

19 Q NOW, YOU DO AGREE THAT BABY RYAN DID NOT  
20 APPEAR TO BE NEAR DEATH AT THE TDM. TRUE?

21 A HE WAS NOT NEAR DEATH. NO.

22 Q AND, IN FACT, AT THE TDM, MOM BROUGHT FOOD  
23 WITH HER, AND SHE WAS FEEDING THE BABY?

24 A SHE BROUGHT FOOD, BUT IT WOULDN'T BE WHAT WE  
25 WOULD CONSIDER TO BE HIGH-PROTEIN FOODS, NO.

26 Q WHEN YOU SAY WE, ARE YOU --

27 A WHAT THE NUTRITIONIST HAD REPORTED, OUR  
28 MEDICAL PROFESSIONALS WOULD HAVE LISTED AS A

1 HIGH-PROTEIN FOOD ITEM. OR HIGH-CALORIC FOOD ITEM.

2 Q NOW, WHEN YOU'RE AT THE TDM, IF THERE'S A  
3 DANGER THAT EXISTS BEFORE THE TDM, YOU DON'T WAIT TO  
4 SEIZE THE CHILD AT THE TDM. RIGHT?

5 A IT DOESN'T REALLY WORK LIKE THAT. IF YOU  
6 WOULD ALLOW ME TO EXPLAIN.

7 Q IF I MAY, MY QUESTION IS JUST THIS, IF YOU CAN  
8 ANSWER YES OR NO: DO YOU AGREE IF THERE'S A DANGER  
9 BEFORE THE TDM, YOU DON'T WAIT FOR THE TDM TO SEIZE THE  
10 CHILD?

11 MS. SWISS: OBJECTION: VAGUE, INCOMPLETE  
12 HYPOTHETICAL, AND SPECULATION.

13 THE COURT: OVERRULED. DO YOU UNDERSTAND WHAT  
14 HE'S ASKING?

15 THE WITNESS: YES. I BELIEVE --

16 THE COURT: ALL RIGHT. THEN PLEASE ANSWER.

17 THE WITNESS: OKAY. IF THERE IS AN IMMEDIATE  
18 DANGER, LIKE, THERE'S SOMETHING THAT'S GOING TO CAUSE  
19 SIGNIFICANT SERIOUS INJURY OR HARM AT THAT PARTICULAR  
20 MOMENT, THAT'S AN IMMEDIATE DANGER.

21 WE WERE LOOKING AT, NOT ONLY IMMEDIATE, WE  
22 WERE LOOKING AT IMMINENT DANGER IF THIS CHILD WERE TO  
23 CONTINUE TO SUFFER UNDER -- BEING MALNOURISHED AND  
24 UNDERFED.

25 SO IT MAY NOT BE IMMEDIATE, LIKE YOU'RE ABOUT  
26 TO PASS AWAY, BUT IT CAN CAUSE SOME VERY SERIOUS  
27 PHYSICAL INJURY, AND IT CAN BE LIFE-THREATENING. SO WE  
28 WERE LOOKING AT THAT.

1 (SIMULTANEOUS SPEAKING)

2 BY MR. KING:

3 Q OKAY. SO YOU WERE LOOKING AT THE SEVERITY OF  
4 THE INJURY. IS THAT CORRECT?

5 A WE WERE LOOKING AT THE TOTALITY OF EVERYTHING.  
6 WE WERE LOOKING AT A LOT. SO, YES.

7 Q MY QUESTION IS THIS: IF WE HAVE A CHILD WHO  
8 HAS A DANGER, BUT THERE'S 2 HOURS WHERE WE CAN GO AND  
9 GET A WARRANT, ISN'T IT POLICY THAT WE IN FACT GET THE  
10 WARRANT RATHER THAN SEIZE THE CHILD?

11 MS. SWISS: OBJECTION: FOUNDATION, ASSUMES  
12 FACTS NOT IN EVIDENCE.

13 THE COURT: OVERRULED.

14 THE WITNESS: WHAT'S YOUR QUESTION AGAIN?

15 BY MR. KING:

16 Q MY QUESTION IS THIS: IN ORDER TO SEIZE THE  
17 CHILD, THE SOCIAL WORKER HAS TO BELIEVE THAT THE CHILD  
18 IS IN A POSITION WHERE THEY ARE GOING TO SUFFER SEVERE  
19 BODILY INJURY OR DEATH WITHIN 3 TO 6 HOURS THAT IT  
20 WOULD TAKE TO GET A WARRANT. CORRECT?

21 A I DON'T HAVE ANY INFORMATION THAT SAYS THAT  
22 THERE'S A TIME LIMIT IN WHICH THE CHILD WOULD HAVE  
23 SUSTAINED SERIOUS -- SEVERE PHYSICAL INJURY.

24 AT THE TIME, BABY RYAN, WE DIDN'T KNOW WHAT  
25 WOULD HAPPEN TO HIM. WHAT WE WERE TOLD WAS THAT HE HAD  
26 A LIFE-THREATENING -- OR WHAT WE UNDERSTOOD WAS THAT  
27 HIS CONDITION WAS THREATENING TO HIS LIFE AND  
28 DEVELOPMENT.

1 MR. KING: YOUR HONOR, I OBJECT. MOVE TO  
2 STRIKE AS NONRESPONSIVE.

3 THE COURT: THE OBJECTION IS SUSTAINED. THE  
4 ANSWER IS ORDERED STRICKEN. AND THE JURY WILL  
5 DISREGARD IT.

6 BY MR. KING:

7 Q YOU TESTIFIED THAT ON NOVEMBER 3RD, THAT  
8 MS. DUVAL TOOK BABY RYAN TO SEE DR. EGGE. CORRECT?

9 A YES.

10 Q AND DR. EGGE'S A COUNTY DOCTOR. TRUE?

11 A I BELIEVE AT THE TIME, YES.

12 Q NOW, YOU AGREE THAT IF THERE WAS A NEED FOR  
13 IMMEDIATE MEDICAL ATTENTION, DR. EGGE WOULD NOT HAVE  
14 RELEASED BABY RYAN. TRUE?

15 MS. SWISS: OBJECTION: CALLS FOR SPECULATION.

16 THE COURT: SUSTAINED.

17 BY MR. KING:

18 Q DO YOU AGREE THAT IF THERE'S A NEED FOR  
19 MEDICAL ATTENTION, A DOCTOR WOULD NOT RELEASE A BABY?

20 MS. SWISS: OBJECTION: CALLS FOR SPECULATION.

21 THE COURT: SUSTAINED.

22 BY MR. KING:

23 Q AT THE END OF THE MEETING, ONCE YOU SEIZED  
24 BABY RYAN, DID YOU GUYS CALL AN AMBULANCE?

25 A NO.

26 Q YOU DIDN'T TRANSPORT THE CHILD TO THE  
27 HOSPITAL. IS THAT TRUE?

28 A HE JUST CAME FROM THE HOSPITAL.

1 Q HE HAD A SPECIALIST APPOINTMENT EARLIER THAT  
2 DAY. CORRECT?

3 A YES. WITH DR. EGGE.

4 Q AND ISN'T THAT TRUE THAT IF THERE IS A NEED  
5 FOR IMMEDIATE MEDICAL ATTENTION THAT THE DOCTOR WOULD  
6 NOT HAVE RELEASED RYAN?

7 MS. SWISS: OBJECTION: ASKED AND ANSWERED,  
8 SPECULATION.

9 THE COURT: SUSTAINED. AND I'VE SUSTAINED  
10 THAT TWICE NOW. SO THAT WILL BE ENOUGH OF ASKING THAT  
11 QUESTION.

12 MR. KING: YOUR HONOR, I'D LIKE TO READ FROM  
13 THE WITNESS'S DEPOSITION, IF I COULD.

14 MS. SWISS: THERE'S NO QUESTION PENDING, YOUR  
15 HONOR.

16 THE COURT: YES. THERE'S NO QUESTION PENDING  
17 AT THE PRESENT TIME.

18 BY MR. KING:

19 Q DO YOU AGREE THAT ON THE DATE OF THE TDM, YOU  
20 HAD NO -- NO ONE HAD TOLD YOU THAT MS. DUVAL DID NOT  
21 FEED HER CHILD. TRUE?

22 A SHE SAID SHE FED HER CHILD, YES.

23 Q AND, IN FACT, NO ONE HAD TOLD YOU THAT SHE  
24 FAILED TO FEED HER CHILD. RIGHT?

25 A WE WERE TOLD THAT RYAN WAS UNDERFED AND  
26 SEVERELY MALNOURISHED. YES.

27 MR. KING: I WILL OBJECT. MOVE TO STRIKE,  
28 YOUR HONOR.

1 THE COURT: THE OBJECTION IS SUSTAINED. THE  
2 MOTION TO STRIKE IS GRANTED. THE ANSWER WILL BE  
3 STRICKEN. AND THE JURY DISREGARD IT. GO AHEAD.

4 BY MR. KING:

5 Q MY QUESTION IS: ON ANY DATE DURING THE COURSE  
6 OF YOUR INVESTIGATION LEADING TO NOVEMBER 3RD, 2009,  
7 DID ANYONE TELL YOU THAT MS. DUVAL DID NOT FEED HER  
8 CHILD?

9 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

10 THE COURT: WELL, WE DIDN'T GET AN ANSWER. SO  
11 PLEASE ANSWER THAT QUESTION. HAD ANYONE TOLD YOU THAT?

12 THE WITNESS: NO.

13 BY MR. KING:

14 Q NOW, WOULD YOU ALSO AGREE THAT THERE WAS NO  
15 NEW INFORMATION THAT WAS RECEIVED AT THE TDM THAT YOU  
16 HAD GOING INTO THE TDM?

17 MS. SWISS: OBJECTION: VAGUE.

18 THE COURT: THE OBJECTION VAGUE IS SUSTAINED.  
19 YOU CAN REPHRASE IT.

20 MR. KING: OKAY.

21 THE COURT: BUT LET ME JUST POINT OUT, JUST TO  
22 EASE THIS. I THINK THE WAY IT WAS ASKED, YOU SAID  
23 THERE WAS NO NEW INFORMATION THAT YOU HAD. I THINK YOU  
24 WANTED NO NEW INFORMATION THAT YOU HADN'T HAD BEFORE  
25 THE TDM.

26 MR. KING: OKAY. I'LL BACK UP. THANK YOU,  
27 YOUR HONOR.

28



1 BY MR. KING:

2 Q YOU TALKED ABOUT THE FACT THAT EARLIER THAT  
3 DAY BABY RYAN HAD WENT TO SEE -- WENT AND SAW DR. EGGE.  
4 CORRECT?

5 A YES.

6 Q AND PRIOR TO SEEING DR. EGGE, BABY RYAN WAS  
7 SEEN AT THE CATC CLINIC ON OCTOBER 22ND. CORRECT?

8 A YES.

9 Q NOW, WOULD YOU AGREE THAT BETWEEN OCTOBER 22ND  
10 AND THE TIME THAT BABY RYAN WENT TO SEE DR. EGGE ON  
11 NOVEMBER 3RD, THAT THE INFORMATION THAT THE DEPARTMENT  
12 KNEW CONCERNING THE BABY'S SITUATION WAS EXACTLY THE  
13 SAME?

14 A NO, THAT'S NOT CORRECT.

15 Q SO WHAT NEW INFORMATION DID YOU HAVE FROM  
16 OCTOBER 22ND TO THE MORNING OF NOVEMBER 3RD?

17 A ON NOVEMBER 3RD, IT WAS CONFIRMED THAT BABY  
18 RYAN HAD FAILURE TO THRIVE AS A RESULT OF ENVIRONMENTAL  
19 FACTORS.

20 THERE WAS NO MEDICAL OR NON-ORGANIC-RELATED  
21 REASONING AS TO WHY HE HAD BEEN SEVERELY UNDERWEIGHT,  
22 MALNOURISHED, AND AS A RESULT WAS SEVERELY  
23 DEVELOPMENTALLY DELAYED.

24 Q AND THIS INFORMATION THAT BABY RYAN WAS  
25 FAILURE TO THRIVE DUE TO ENVIRONMENTAL FACTORS, IS THAT  
26 IN YOUR CONTACT NOTES?

27 A THAT'S IN THE MEDICAL REPORTS FROM DR. EGGE.

28 Q SO THE MEDICAL REPORTS FROM DR. EGGE ON

1 NOVEMBER 3RD, 2009 -- LET ME ASK YOU THIS:

2 AT THE TIME YOU MADE THE DECISION TO SEIZE  
3 BABY RYAN ON NOVEMBER 3RD, 2009, DID YOU HAVE THAT  
4 MEDICAL REPORT?

5 A WE RECEIVED THE ACTUAL HARD COPY OF THE  
6 MEDICAL REPORT, I BELIEVE, LATER. THAT DAY, THERE WAS  
7 A VERBAL -- THERE WAS SOME COMMUNICATION WITH DR. EGGE.

8 MR. KING: YOUR HONOR, I'M GOING TO OBJECT AS  
9 NONRESPONSIVE, MOVE TO STRIKE.

10 THE COURT: THE OBJECTION IS OVERRULED.  
11 MOTION TO STRIKE IS DENIED. THE ANSWER WAS, SHE DIDN'T  
12 HAVE A HARD COPY OF THE MEDICAL REPORT.

13 MR. KING: SORRY, YOUR HONOR, YOU DIDN'T  
14 SUSTAIN THE OBJECTION?

15 THE COURT: I'M OVERRULING THE OBJECTION. SHE  
16 DID ANSWER THE QUESTION. SHE GAVE YOU MORE INFORMATION  
17 THAN THE QUESTION CALLED FOR, BUT SHE DID ANSWER.

18 BY MR. KING:

19 Q WITH REGARD TO THE CONTACT NOTES, WOULD YOU  
20 AGREE THAT THE POLICY OF THE DEPARTMENT IS THAT, IF  
21 IT'S NOT DOCUMENTED IN THE CONTACT NOTES, IT DIDN'T  
22 HAPPEN?

23 MS. SWISS: OBJECTION: OUTSIDE THE SCOPE.

24 THE COURT: OVERRULED.

25 THE WITNESS: YOUR QUESTION IS, IF IT'S NOT IN  
26 THE CONTACT NOTE, IT DIDN'T HAPPEN?

27 BY MR. KING:

28 Q YEAH, ARE YOU TRAINED, IS THAT SOMETHING

1 THAT'S CONSISTENT WITH YOUR TRAINING?

2 A WE'RE TRAINED TO DOCUMENT INFORMATION, AND  
3 THERE ARE STANDARDS TO DOCUMENTATION, BUT THAT  
4 PARTICULAR STATEMENT MAY NOT NECESSARILY BE TRUE.

5 MR. KING: YOUR HONOR, I'D LIKE TO READ FROM  
6 THE WITNESS'S DEPOSITION.

7 THE COURT: ALL RIGHT.

8 MR. KING: PAGE 74, LINES 21 TO 75, LINES 3.

9 THE COURT: IS THERE ANY OBJECTION?

10 MS. SWISS: JUST A SECOND, YOUR HONOR, IF I  
11 MAY. MAY I HAVE A SIDEBAR? THERE IS AN OBJECTION,  
12 YES.

13 THE COURT: ALL RIGHT.

14 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
15 THE SIDEBAR OUTSIDE THE PRESENCE OF THE  
16 JURY)

17 THE COURT: WE'RE AT SIDEBAR.

18 MS. SWISS: YOUR HONOR, THE REQUEST TO READ  
19 PAGE 74, LINES 21 TO 25, AND THEN PAGE 75, LINES 1  
20 TO 3, IS INCOMPLETE OF THE WITNESS'S TESTIMONY ON THAT  
21 LINE OF QUESTIONING.

22 THE QUESTIONING --

23 THE COURT: I UNDERSTAND WHAT'S THERE. SO  
24 YOUR OBJECTION IS THAT THIS IS NOT IMPEACHING?

25 MS. SWISS: CORRECT.

26 THE COURT: AT THIS POINT IN TIME, AS TO THE  
27 STATE OF THE RECORD AT THIS MOMENT, THE OBJECTION IS  
28 SUSTAINED.

1           BEFORE YOU'RE GOING TO READ FROM THE  
2 DEPOSITION, I THINK YOU'RE GOING TO HAVE TO HAVE A  
3 LITTLE MORE TESTIMONY. BECAUSE RIGHT NOW THIS  
4 TESTIMONY IS NOT IMPEACHING WHAT SHE SAID.

5           THERE MAY BE A GROUND FOR READING THIS, BUT...

6           MR. KING: OKAY, YOUR HONOR. I THOUGHT ASKED  
7 HER THE EXACT QUESTION --

8           THE COURT: IF THE ANSWER ISN'T WHAT SHE --  
9 THE ANSWER IN THIS DEPOSITION IS NOT IMPEACHING OF WHAT  
10 SHE SAID. I'M JUST SAYING YOU CAN INQUIRE FURTHER.

11           I'M NOT STOPPING YOU FROM USING THE DEPOSITION  
12 AS SOON AS THERE'S A BASIS IN THE RECORD. THE  
13 STATEMENT OF THE DEPOSITION IS TECHNICALLY NOT  
14 INCONSISTENT WITH WHAT SHE JUST TESTIFIED TO.

15           WITH A LITTLE MORE QUESTIONING, IT MAY BECOME  
16 SO, BUT I'M JUST SAYING RIGHT AT THE MOMENT, IT'S NOT.  
17 AND THAT'S WHY I'M SUSTAINING THE OBJECTION AT THIS  
18 TIME.

19           MR. KING: THANK YOU, YOUR HONOR.

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

22           THE COURT: I'M SORRY. GO AHEAD, MR. KING.  
23 BY MR. KING:

24           Q MS. ROGERS, AS PART OF YOUR TRAINING, YOU'RE  
25 TAUGHT TO INCLUDE EVERYTHING IN THE CONTACT NOTES.  
26 CORRECT?

27           A AS REASONABLE AS POSSIBLE, YES.

28           Q OKAY. AND THERE IS -- PART OF YOUR TRAINING

1 IS THAT IF SOMETHING OCCURRED AND IT'S NOT IN THE  
2 CONTACT NOTES, THEN IT'S AS IF IT NEVER HAPPENED AT  
3 ALL?

4 A IT'S LIKE A DOUBLE-EDGED SWORD. WE'RE TRAINED  
5 TO, AGAIN, DOCUMENT PERTINENT INFORMATION. IT MAY NOT  
6 BE EXACTLY EVERYTHING, WORD FOR WORD DURING EVERY  
7 CONTACT. SO WE HAVE TO SUMMARIZE A LOT OF INFORMATION  
8 AT TIMES.

9 Q SURE. BUT CONTACT WITH A DOCTOR, FOR EXAMPLE,  
10 THAT'S SOMETHING THAT WOULD BE IMPORTANT TO PUT IN YOUR  
11 CONTACT NOTES. CORRECT?

12 A YES.

13 Q OKAY. SO THEN YOU AGREE THAT IF THERE'S NO  
14 INDICATION THAT A CONTACT WITH A DOCTOR WAS MADE ON A  
15 GIVEN DATE, THEN, ACCORDING TO YOUR POLICY, THAT'S AS  
16 IF IT NEVER HAPPENED?

17 MS. SWISS: OBJECTION: VAGUE, INCOMPLETE  
18 HYPOTHETICAL, CALLS FOR SPECULATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: I DON'T RECALL AT THIS TIME.

21 MR. KING: YOUR HONOR, AT THIS POINT, I'D LIKE  
22 TO READ FROM THE WITNESS'S DEPOSITION, PAGE 74 LINE 23,  
23 TO 75, LINE 3.

24 MS. SWISS: OBJECTION: IMPROPER IMPEACHMENT.

25 THE COURT: SUSTAINED AS TO THE USE OF THAT  
26 PASSAGE AT THIS TIME.

27 BY MR. KING:

28 Q YOU WOULD AGREE THAT DOCUMENTATION IS VERY

1           IMPORTANT.   CORRECT?

2           A       YES.

3           Q       AND AM I CORRECT THAT IN YOUR TRAINING  
4 MATERIALS, YOUR WRITTEN MATERIALS, IT SPECIFICALLY  
5 STATES, IF IT'S NOT IN THE CONTACT NOTES, IT DIDN'T  
6 HAPPEN.   AM I CORRECT ABOUT THAT?

7           A       I DON'T RECALL READING THOSE EXACT WORDS AT  
8 THIS TIME.

9                   MR. KING:   YOUR HONOR, I'D FIRST LIKE TO READ  
10 FROM THE WITNESS'S DEPOSITION ON PAGE 74 FROM LINE 20  
11 TO PAGE 75, LINE 3.

12                   MS. SWISS:   OBJECTION:   IMPROPER IMPEACHMENT.

13                   THE COURT:   SUSTAINED.

14 BY MR. KING:

15           Q       ARE YOU SAYING THAT YOU DON'T RECALL, OR ARE  
16 YOU SAYING THAT THAT STATEMENT IS NOT PART OF YOUR  
17 TRAINING?

18           A       I DON'T RECALL.

19           Q       WOULD TAKING A LOOK AT YOUR DEPOSITION  
20 TRANSCRIPT HELP YOU REFRESH YOUR RECOLLECTION?

21           A       IT'S BEEN A WHILE.

22           Q       WOULD YOU CONSIDER LOOKING AT IT TO SEE IF IT  
23 REFRESHES YOUR RECOLLECTION?

24                   MS. SWISS:   OBJECTION:   IMPROPER QUESTIONING,  
25 IMPROPER CROSS-EXAMINATION --

26                   THE COURT:   SUSTAINED.

27                   MR. KING:   YOUR HONOR, IF I MAY APPROACH THE  
28 WITNESS AND SHOW HER A COPY OF HER DEPOSITION

1 TRANSCRIPT TO SEE IF IT REFRESHES HER RECOLLECTION.

2 THE COURT: THERE'S NO REASON TO DO SO AT THIS  
3 TIME. THERE ARE DIFFERENT QUESTIONS THAT MAY LEAD TO  
4 THAT RESULT. BUT NOT THE ONES THAT HAVE BEEN ASKED SO  
5 FAR.

6 BY MR. KING:

7 Q MS. ROGERS, THE POINT I'M GETTING AT IS, AS  
8 PART OF YOUR TRAINING AS A SUPERVISING SOCIAL WORKER,  
9 IT'S IMPORTANT TO DOCUMENT CONTACTS WITH DOCTORS.  
10 CORRECT?

11 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

12 THE COURT: SUSTAINED.

13 BY MR. KING:

14 Q WOULD YOU AGREE THAT IF A CONTACT IS MADE, IF  
15 IT'S ALLEGED THAT A CONTACT IS MADE WITH A DOCTOR, AND  
16 IT'S NOT IN THE CONTACT REPORTS, ACCORDING TO YOUR  
17 TRAINING, YOU'RE TRAINED THAT IF IT'S NOT DOCUMENTED,  
18 IT NEVER HAPPENED?

19 MS. SWISS: OBJECTION: VAGUE, ASKED AND  
20 ANSWERED.

21 THE COURT: SUSTAINED AS TO ASKED AND  
22 ANSWERED.

23 BY MR. KING:

24 Q YOU TESTIFIED EARLIER THAT THERE WAS NO LAB  
25 WORK OR TESTING DONE FROM OCTOBER 22ND TO NOVEMBER 3RD.  
26 IS THAT CORRECT?

27 MS. SWISS: OBJECTION: MISSTATES TESTIMONY,  
28 FOUNDATION.

1 THE COURT: OVERRULED.

2 THE WITNESS: CAN YOU STATE THAT AGAIN?

3 BY MR. KING:

4 Q SURE. WE WERE TALKING ABOUT THE CATC CLINIC  
5 ON OCTOBER 22ND, AND ALL THE MEDICAL INFORMATION THAT  
6 YOU HAD PRIOR TO MAKING THE DETERMINATION TO SEIZE BABY  
7 RYAN ON NOVEMBER 3RD, 2009.

8 DO YOU REMEMBER THAT?

9 A YES.

10 Q ISN'T THAT TRUE THAT, FOLLOWING THE CATC  
11 CLINIC ON OCTOBER 22ND, UP UNTIL THE TIME OF  
12 NOVEMBER 3RD, 2009, THERE HAD BEEN NO FURTHER TESTING  
13 DONE?

14 MS. SWISS: OBJECTION: FOUNDATION,  
15 SPECULATION.

16 THE COURT: SUSTAINED AS TO HOW THE QUESTION  
17 WAS ASKED.

18 BY MR. KING:

19 Q WERE YOU AWARE OF ANY LAB TESTS THAT WERE DONE  
20 BETWEEN OCTOBER 22ND AND NOVEMBER 3RD?

21 A I CAN'T RECALL AT THIS TIME. I'D HAVE TO  
22 REVIEW THE CATC CLINIC MEDICAL REPORT.

23 THE COURT: I THINK MAYBE THIS WOULD BE A GOOD  
24 MOMENT TO TAKE THE AFTERNOON RECESS, MR. KING. SO WE  
25 ARE GOING TO RECESS.

26 AS FAR AS JURORS ARE CONCERNED, YOU ARE TO  
27 RETURN TUESDAY MORNING AT 9:00 A.M. AND PLEASE, IN THE  
28 INTERIM, REMEMBER THE ADMONITION. HAVE NO CONTACT WITH



1 ANYBODY ABOUT ANYTHING TO DO WITH THIS CASE, ANY  
2 PERSON, ANY SUBJECT, ANY ISSUE IN THE CASE.

3 DON'T SEEK NOR RECEIVE FROM ANYBODY ANY  
4 INFORMATION ON SUCH SUBJECTS. DO NOT FORM ANY OPINION,  
5 NOR EXPRESS ANY OPINION. WE'RE NOW IN RECESS.

6 (JURY EXCUSED)

7 THE COURT: WE'RE ON THE RECORD. AND COUNSEL  
8 ARE PRESENT. ALL JURORS LEFT THE COURTROOM. SO I'LL  
9 SEE COUNSEL MONDAY MORNING AT 8:30.

10 AND I EXPECT BETWEEN NOW AND THEN, EVEN THOUGH  
11 I RECOGNIZE IT'S A WEEKEND, THAT THERE MUST BE  
12 MEANINGFUL MEET AND CONFER ABOUT THE EXHIBIT LIST AS TO  
13 WHAT -- WE'RE GOING TO GO THROUGH THESE ONE AT A TIME.

14 WE'RE WASTING A HUGE AMOUNT OF TIME AND MANY  
15 OF THE ISSUES ABOUT ADMISSIBILITY OF THESE COULD BE  
16 DECIDED RATHER EASILY BY COUNSEL. SO YOU ARE TO MEET  
17 AND CONFER ON THAT SUBJECT.

18 IF THE ANSWER IS, YOU HAD A LEGITIMATE MEET  
19 AND CONFER AND YOU CAN'T AGREE ON ANY OF THESE, THEN  
20 I'LL ACCEPT THAT.

21 BUT MY CONCERN IS -- EVERYBODY'S HAD TO DO A  
22 GREAT DEAL OF WORK. AND I KNOW EVERYONE'S WORKING.  
23 AND I UNDERSTAND IT'S VERY HARD TO HAVE A MEET AND  
24 CONFER WHEN YOU'RE WORKING AT NIGHT, EVERYONE ELSE IS,  
25 BUT IT'S GOT TO BE DONE SO YOU CAN MAKE PROGRESS ON  
26 THIS ON MONDAY.

27 AND THEN ON MONDAY ALSO, I WILL SAY THAT I DID  
28 RECEIVE BUT HAVE NOT YET HAD A CHANCE TO TAKE A LOOK AT

1 IT, BUT ON BEHALF OF ALL OF YOU, YOU DID DELIVER TO THE  
2 COURT, A SHORT TIME AGO, THE INDEX OF THE INFORMATION  
3 OF THE ALLEGED FALSE STATEMENTS, FABRICATED EVIDENCE,  
4 AND/OR ET CETERA, EXCULPATORY EVIDENCE.

5 AND SO WE'RE GOING TO HAVE TO HAVE THE DEFENSE  
6 TAKE A LOOK AT THIS.

7 MR. GUTERRES: IS THIS IT, YOUR HONOR?

8 THE COURT: PARDON?

9 MR. GUTERRES: THIS IS THE OFFICIAL DOCUMENT  
10 WE CAN -- WE'RE GOING TO GO OFF OF?

11 THE COURT: THAT IS WHAT'S BEEN GIVEN TO US.

12 MR. MCMILLAN: I HAVEN'T SEEN IT, YOUR HONOR,  
13 YET, SO I'M ASSUMING IT IS.

14 THE COURT: WELL, IF ANY OF YOU HERE  
15 CONTRADICT MS. CHUNG, WE'LL HAVE TO KNOW THE REASON  
16 WHY.

17 MR. MCMILLAN: I DON'T THINK I HAVE THE  
18 COURAGE TO DO THAT.

19 THE COURT: SO AS FAR AS WE KNOW, YES. THIS  
20 DOES NOT PRECLUDE SOME CHANGES, CORRECTIONS, AS THEY  
21 ARE -- LONG AS THEY ARE NOT A WHOLE NEW SET OF  
22 OBJECTION OR OBJECTIONS.

23 IN OTHER WORDS, IF YOU SEE SOMETHING  
24 TYPOGRAPHICAL OR IT ISN'T STATED QUITE THE WAY IT'S  
25 INTENDED TO BE STATED, WE CAN CORRECT THAT. BUT YES,  
26 THIS IS, MY UNDERSTANDING, IS THE SUBSTANCE OF THE  
27 INFORMATION OR LACK OF INFORMATION THAT'S AT ISSUE.

28 AND I'LL NEED TO KNOW MONDAY MORNING WHERE YOU

1 ARE IN LOOKING AT THIS, SO THAT WE CAN THEN GET  
2 SCHEDULED AND FIGURE OUT WHEN WE ARE GOING TO BE HAVING  
3 FURTHER PROCEEDINGS IN CONNECTION WITH THIS.

4 SO THANKS A LOT. AND I'LL SEE YOU ALL MONDAY  
5 MORNING.

6  
7 (WHEREUPON, AT THE HOUR OF 4:31 P.M.,  
8 THE PROCEEDINGS WERE ADJOURNED.)

9  
10 ---OOO---

11  
12 (THE NEXT PAGE IS 7201)

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