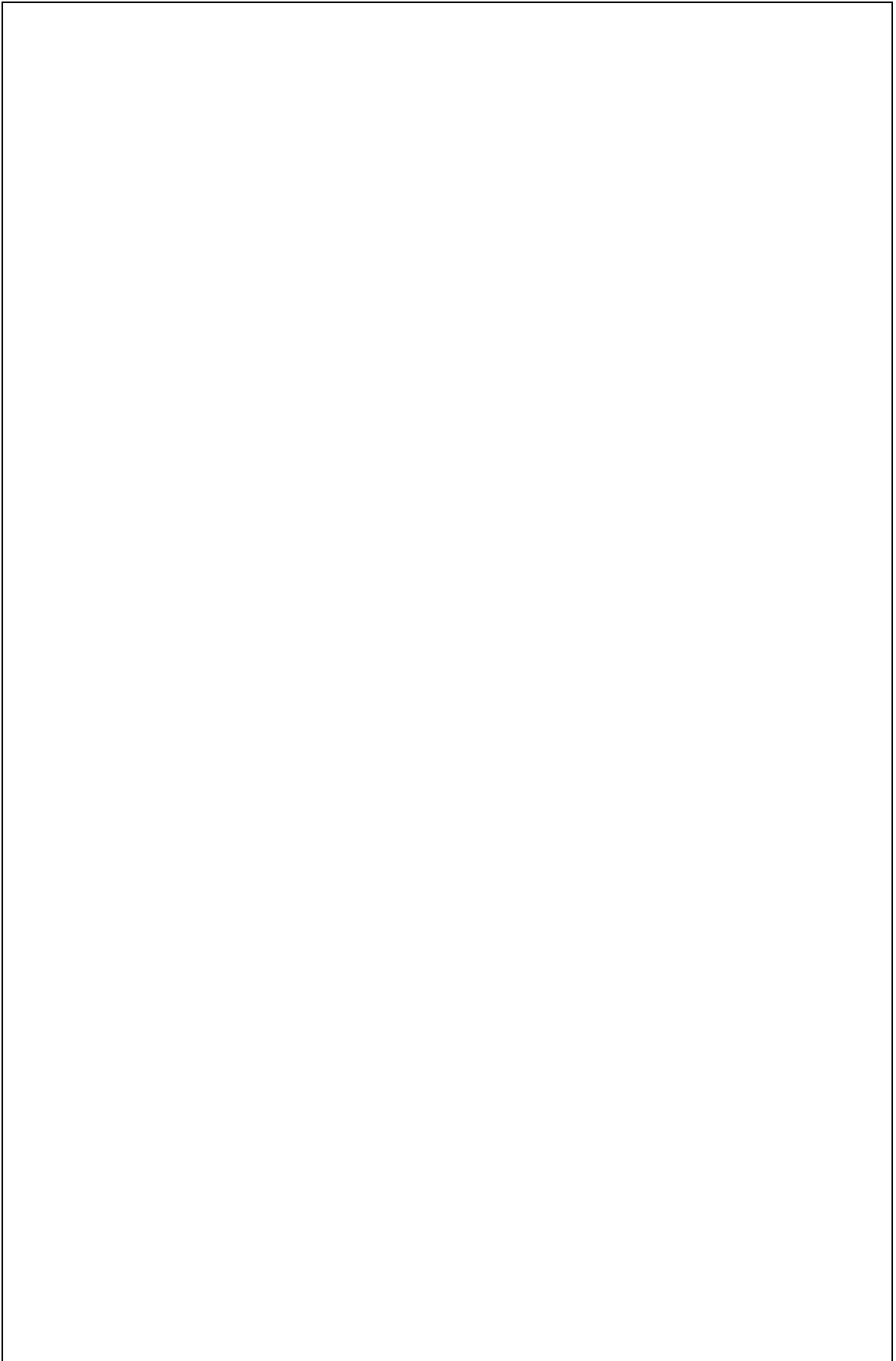


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1 CASE NUMBER: BC470714  
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES  
3 LOS ANGELES, CALIFORNIA WEDNESDAY, OCTOBER 26, 2016  
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN  
5 APPEARANCES: (AS HERETOFORE NOTED.)  
6 REPORTER: ELORA DORINI, CSR NO. 13755  
7 TIME: 8:25 A.M.

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11 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE  
12 PRESENT. LOOKING AT THE LIST OF EXHIBITS STILL TO BE  
13 ADDRESSED. AND ON THE LIST THAT MR. PARIS HAD  
14 PREVIOUSLY PREPARED FOR US, THE FIRST ONE IS  
15 EXHIBIT 52. AND THAT IS THE LETTER FROM DR. EGGE TO  
16 DCFS DATED JUNE 11, 2010.

17

18

19

20

IT SEEMS TO ME THAT THAT LETTER IS ONE -- I'LL  
HEAR FROM YOU -- BUT IT SEEMS TO ME THAT THAT'S ONE OF  
THOSE EXHIBITS WHICH SHOULD BE RECEIVED FOR A LIMITED  
PURPOSE.

21

22

23

24

IT WAS THE FOLLOW-UP LETTER THAT SEVERAL --  
THE LETTER WAS IDENTIFIED BY DEFENDANT, ORIGINALLY. SO  
MY QUESTION IS, IF THERE'S AN OBJECTION BY PLAINTIFF,  
I'D LIKE TO HEAR THE OBJECTION.

25

26

27

28

AS I'VE ALREADY STATED, THIS LETTER WAS SENT  
TO DCFS AND WAS SUBMITTED TO THE JUVENILE COURT. AND  
IF I RECALL CORRECTLY, IT EVEN HAS THE -- EVEN THOUGH  
IT'S A LITTLE HARD TO READ -- THE INDICATION THAT IT

1 WAS RECEIVED IN EVIDENCE.

2 I THINK IT SHOULD NOT BE RECEIVED FOR THE  
3 TRUTH OF THE MATTER STATED BECAUSE THE ISSUE, REALLY,  
4 IS WHAT INFORMATION WAS PROVIDED TO THE COURT. SO I'M  
5 HAPPY TO HEAR FROM PLAINTIFF.

6 MR. PARIS: I GUESS WE WOULD OBJECT ON THE  
7 BASIS OF RELEVANCE, AT THIS POINT. WHEN I MADE THE  
8 EXHIBIT, IT WAS MADE -- I MEAN, PRIOR TO YOUR HONOR'S  
9 RULING.

10 THE COURT: YES. I'M SORRY. AND I UNDERSTAND  
11 EXACTLY WHAT YOU'RE REFERRING TO. I'M NOT SURE THERE  
12 WAS ANY RELEVANCE BECAUSE IT WAS SUBSEQUENT TO THE  
13 DETENTION HEARING.

14 AND THE ONLY THING AT ISSUE AT THE PRESENT  
15 TIME IS, AS FAR AS THE NON-DISCRIMINATION CLAIMS, IT IS  
16 THE DETENTION ON NOVEMBER 3RD -- DETENTION HEARING ON  
17 NOVEMBER 6TH.

18 MR. PARIS: THAT'S CORRECT.

19 MR. GUTERRES: YOUR HONOR, I THINK IT'S STILL  
20 RELEVANT. IT SPEAKS TO THE INFORMATION THAT WAS  
21 PROVIDED AND THAT WAS GIVEN, BACK IN NOVEMBER.

22 I MEAN, THIS LETTER ACTUALLY SPEAKS TO THE  
23 INFORMATION THAT WAS COMMUNICATED AND THAT THE FAILURE  
24 TO THRIVE CLINIC HAD IN NOVEMBER, WHICH IS THE  
25 APPLICABLE TIME FRAME.

26 AND THEREFORE, I THINK IT'S CONSISTENT WITH  
27 THE INFORMATION THAT WAS GIVEN TO DCFS AT THAT TIME. I  
28 THINK IT'S, THEREFORE, RELEVANT, WITH REGARD TO THE

1 INFORMATION THAT WAS COMMUNICATED TO DCFS.

2 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT  
3 IT. I DON'T THINK I AGREE, BUT LET ME TAKE A LOOK AT  
4 IT. DON, NUMBER 52, PLEASE.

5 THE OBJECTION IS SUSTAINED. NUMBER 52 WILL  
6 NOT BE RECEIVED. IT WAS -- THERE IS EVIDENCE IN THE  
7 DETENTION REPORT AS TO WHAT DR. EGGE HAD ADVISED THE --  
8 SOMEBODY. I THINK IT WAS PENDER, BUT I'M NOT SURE.

9 AND THAT INFORMATION IS IN THE DETENTION  
10 REPORT. THE -- BECAUSE THE ONLY CLAIM RELATING TO  
11 DETENTION IS THE ONE -- THE CAUSE OF ACTION FOR -- AND  
12 WHAT I'LL CALL THE IMPROPER DETENTION OF THE CHILD ON  
13 NOVEMBER 3RD, THE --

14 AND THE QUESTION IS, WHAT INFORMATION DID DCFS  
15 HAVE AT THE TIME OF THE DETENTION. THEY DID NOT HAVE  
16 THIS LETTER.

17 SO THE DECISION AS TO WHETHER OR NOT THERE  
18 WAS -- BASICALLY, THE QUESTION'S GOING TO BE, WAS THERE  
19 AN EXIGENT CIRCUMSTANCE AT THE TIME OF THE DETENTION OF  
20 THE CHILD LATE IN THE DAY ON NOVEMBER 3RD. AND THIS  
21 LETTER, WRITTEN AT A SUBSEQUENT TIME, IS NOT ADMISSIBLE  
22 ON THAT ISSUE.

23 MR. GUTERRES: YOUR HONOR, THEN, PERHAPS IF WE  
24 COULD ADDRESS BRIEFLY, I KNOW THAT THE COURT HAD ASKED  
25 MR. PRAGER ABOUT THE HARM, RELATIVE TO THE  
26 DISCRIMINATION CLAIMS.

27 THE COURT: YES.

28 MR. GUTERRES: AND AS I UNDERSTOOD IT, AND AS

1 IT WAS -- IT WAS ADDRESSED BY MR. PRAGER THAT THE HARM  
2 IS SIMPLY THAT WE DIDN'T -- THAT DCFS DIDN'T MAKE A  
3 RECOMMENDATION.

4 I GUESS, ALTHOUGH SHE RECEIVED THE  
5 REUNIFICATION SERVICES, IF THE HARM THAT PLAINTIFF IS  
6 GOING TO BE ARGUING IS LIMITED TO THE FAILURE OF THE  
7 DEPARTMENT TO MAKE THE RECOMMENDATION FOR REUNIFICATION  
8 SERVICES, WITHOUT ANY OTHER HARM, THEN I CAN UNDERSTAND  
9 THE COURT'S RULING ON RELEVANCE.

10 IF THEY'RE TRYING TO MAKE ANOTHER ARGUMENT,  
11 FOR EXAMPLE, THAT MS. DUVAL LOST CUSTODY OF HER CHILD  
12 AS A RESULT OF SOMETHING, THEN I THINK THERE MAY BE  
13 SOME RELEVANCE. AND WE WOULD HAVE SOME ARGUMENTS.

14 MS. SWISS: ADDITIONALLY, THIS LETTER IS  
15 ADDRESSED TO VICTORIA SCHEELE, WHO IS A DEFENDANT FOR  
16 THE IIED CLAIMS, AS WELL AS THE DISCRIMINATION CLAIMS.

17 AND THIS LETTER THAT SHE RECEIVED AND PUT IN  
18 HER CONTACT NOTES AND THEN WAS ULTIMATELY SENT TO THE  
19 JUVENILE COURT, GOES TO HER DEFENSE AS TO ANY OF HER  
20 CONDUCT, AND ANY OF HER STATEMENTS IN HER DELIVERED  
21 SERVICE LOGS, AS TO HER OPINIONS ABOUT WHAT WAS GOING  
22 ON WITH THE SERVICES SHE WAS PROVIDING TO MS. DUVAL.

23 AND THIS LETTER THAT SHE RECEIVED FROM THE  
24 DOCTOR GOES TO SHOW THAT, WITH REGARD TO HER  
25 OBSERVATIONS AND HER DOCUMENTATION, THAT THERE WAS  
26 ANOTHER PURPOSE BESIDES A POTENTIALLY DISCRIMINATORY  
27 PURPOSE FOR WHAT SHE --

28 THE REPORTER: SLOW DOWN. SLOW DOWN.

1 MS. SWISS: AND SO, I GUESS, THE ULTIMATE  
2 QUESTION IS -- BESIDES NOT JUST THIS EXHIBIT BUT THE  
3 REMAINING EXHIBITS, AS TO WHETHER THEY'RE RELEVANT OR  
4 NOT -- IS, SPECIFICALLY, WHAT HARM IS BEING ALLEGED.

5 SO THAT WE KNOW WHAT EVIDENCE WOULD BE  
6 RELEVANT FOR THE JURY TO DECIDE THAT.

7 THE COURT: ALL RIGHT. WE'LL HAVE TO -- I'LL  
8 HAVE TO TAKE A RECESS.

9 MR. GUTERRES: AND IF I MAY JUST POINT OUT  
10 THAT THE REMAINING -- SO WE HAVE THE DETENTION, THE  
11 WARRANTLESS DETENTION THAT'S ADDRESSED AS TO THE  
12 COUNTY, MS. ROGERS, AND MS. PENDER.

13 AND THEN, FOLLOWING THE DETENTION ARE THE  
14 INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS CLAIMS  
15 AGAINST SCHEELE AND NELSON. AND THEN THE DISABILITY  
16 DISCRIMINATION CLAIMS, WHICH RELATE TO CONDUCT AFTER  
17 THE DETENTION.

18 THE COURT: ALL RIGHT. YES, BUT I AGREE  
19 THAT'S WHAT WE HAVE -- WHAT'S THE RELEVANCE OF THIS  
20 LETTER -- I DON'T KNOW WHAT THEY'RE CLAIMING IS THE  
21 BASIS FOR INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS.

22 THEY'RE SAYING SCHEELE AND WHOEVER THE OTHER  
23 ONE IS, NELSON, WAS IT?

24 MR. GUTERRES: NELSON.

25 THE COURT: DID SOMETHING INTENTIONALLY TO  
26 INFLECT THIS SERIOUS EMOTIONAL DISTRESS. SO I'LL HAVE  
27 TO ASK, MR. MCMILLAN, WHAT IS THE CLAIM AGAINST -- I  
28 KNOW IT'S FOR INTENTIONAL INFLECTION, AGAINST SCHEELE

1 AND NELSON, WHAT IS IT THAT --

2 MR. MCMILLAN: WITH RESPECT TO SCHEELE, IT'S  
3 FAIRLY SIMPLE AND STRAIGHTFORWARD. IT'S THE CONDUCT  
4 THAT SHE EXHIBITED TOWARDS AND WITH MS. DUVAL.

5 THE COURT: DURING THOSE VISITS?

6 MR. MCMILLAN: DURING THOSE VISITS. AND, YOU  
7 KNOW, THAT SORT OF FORMS THE BASIS FOR THAT.

8 THERE WAS SIGNIFICANT TESTIMONY ABOUT, I  
9 THINK, THERE WAS A CONVERSATION WHERE MISS SCHEELE SAID  
10 SOMETHING ABOUT MS. DUVAL BEING A COW, AND HOW, IF  
11 SHE'S GETTING PREGNANT AGAIN, SHE HAS TO LET THEM KNOW.

12 AND THERE WAS SOME ISSUE ABOUT WHETHER OR NOT  
13 THE DEPARTMENT WOULD THEN TAKE THAT BABY. THERE WAS A  
14 WHOLE BUNCH OF STUFF THAT HAPPENED IN THOSE  
15 FACE-TO-FACE --

16 THE COURT: I RECALL, SOME OF THAT YOU  
17 QUESTIONED HER ABOUT --

18 MR. MCMILLAN: RIGHT. AND SOME WAS ON VIDEO.

19 THE COURT: RIGHT. AND NELSON --

20 MR. MCMILLAN: NELSON, I THINK THE RECORD IS  
21 THAT THERE WAS THE -- I HAVE TO GO BACK AND LOOK AT THE  
22 TRANSCRIPT ON THE VIDEO BECAUSE I'M NOT SURE HOW DEEPLY  
23 THEY GOT INTO IT -- OR DID I QUESTION NELSON?

24 I'M NOT SURE HOW DEEPLY I GOT INTO IT -- I  
25 THINK I QUESTIONED NELSON. AND I'M NOT SURE HOW DEEPLY  
26 I GOT INTO IT WITH HER IN HER LIVE TESTIMONY, BUT SHE  
27 ALSO HAD AT LEAST ONE, SHE SAYS TWO, AND THERE VERY  
28 WELL MIGHT HAVE BEEN TWO FACE-TO-FACE CONTACTS WITH

1 MS. DUVAL.

2 THE COURT: ALL RIGHT. YOU MIGHT WANT TO TAKE  
3 A LOOK AT THOSE. BUT -- SO THE INTENTIONAL INFLICTION  
4 IS BASED ON THE INTERACTION BETWEEN SCHEELE AND NELSON  
5 WITH THE PLAINTIFF?

6 MR. MCMILLAN: CORRECT.

7 THE COURT: AND THE HARM CLAIMED IS THE  
8 EMOTIONAL DISTRESS THAT SHE SUFFERED AS A RESULT OF  
9 THEIR STATEMENTS, CONDUCT, ALL OF THAT, TOWARDS HER.

10 RIGHT?

11 MR. MCMILLAN: THAT'S CORRECT.

12 THE COURT: OKAY. SO THE ADDITIONAL QUESTION  
13 WHICH, I THINK -- SO I UNDERSTAND -- I DON'T THINK THIS  
14 LETTER WOULD REALLY HAVE ANYTHING TO DO WITH THESE  
15 PERSONAL INTERACTIONS.

16 TO ME, THE ADDITIONAL QUESTION IS, AND I  
17 BELIEVE MR. GUTERRES MENTIONED A FEW MINUTES AGO, WAS  
18 IT'S UNCLEAR AS TO WHAT DAMAGE IS BEING CLAIMED IN THE  
19 DISCRIMINATION CLAIMS.

20 MR. MCMILLAN, DO YOU KNOW WHAT THE DAMAGE IS  
21 THAT'S BEING CLAIMED IN THE DISCRIMINATION CLAIMS?

22 MR. MCMILLAN: NOT EXACTLY. I KNOW THAT HE'S  
23 WORKING ON HIS CLOSING ARGUMENTS. BUT I WASN'T PART OF  
24 THAT PROCESS. SO I -- I WAS BUSY WORKING ON THIS STUFF  
25 LAST NIGHT.

26 I WENT OUT IN THE HALLWAY LOOKING FOR HIM. HE  
27 WANTED ME TO GET HIM IF SOMETHING CAME UP THAT WE  
28 NEEDED HIM FOR, BUT I'M NOT SURE IF HE'S IN THE HALLWAY



1 OR IN THE JURY ROOM --

2 THE COURT: I THINK HE WENT IN THE JURY ROOM  
3 WITH THE ATTORNEY FROM THEIR OFFICE --

4 MR. MCMILLAN: WOULD YOU MIND IF I JUST RUN  
5 AND GET HIM?

6 THE COURT: NO, NOT AT ALL. PLEASE DO.  
7 I'M SORRY TO INTERRUPT YOUR DISCUSSIONS.

8 MR. PRAGER: NOT A PROBLEM, YOUR HONOR.

9 THE COURT: BUT THE ISSUE HAS COME UP ON THE  
10 VERY FIRST EXHIBIT THAT WE'RE ADDRESSING. SO WE  
11 HAVEN'T MADE A LOT OF PROGRESS.

12 AS TO WHAT IS THE DAMAGE THAT IS BEING CLAIMED  
13 IN THE DISCRIMINATION CLAIMS. SO JUST BY WAY OF  
14 BACKGROUND, WHAT -- ON THE DETENTION CLAIMS, WE HAVE  
15 THE WARRANTLESS DETENTION OF THE CHILD.

16 AND THEN THERE'S THE CAUSE OF ACTION FOR  
17 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS. AND I  
18 KNOW THESE ARE REALLY MATTERS THAT ARE GOING TO BE  
19 ADDRESSED BY MR. MCMILLAN.

20 WE'VE TALKED ABOUT IT, ABOUT WHAT IS THE BASIS  
21 OF THE CLAIM. THE QUESTION AROSE ON AN ISSUE OF  
22 RELEVANCE OF SOME OF THESE DOCUMENTS, OF WHAT IS THE  
23 CLAIM OF DAMAGE IN THE DISCRIMINATION CLAIMS.

24 PUT ASIDE, FOR A MOMENT, THE UNRUH ACT CLAIM.

25 MR. PRAGER: OKAY.

26 THE COURT: BECAUSE WE ALREADY MENTIONED THAT  
27 NOTHING ELSE, VIOLATION OF THE CIVIL RIGHTS OF A PERSON  
28 COULD AMONG OTHER THINGS, AT A MINIMUM, PROVIDE FOR

1 PENALTY.

2 SO ON THE FEDERAL CLAIMS, WHAT IS THE HARM  
3 THAT'S BEING CLAIMED -- THE HARM -- THE DAMAGE THAT'S  
4 BEING CLAIMED FOR WHATEVER HARM YOU SAY OCCURRED?

5 MR. PRAGER: COULD I JUST ASK, FOR MY OWN  
6 EDIFICATION, ARE WE TALKING ABOUT A SPECIFIC DOCUMENT  
7 SO I COULD TRY AND TAILOR MY COMMENTS TO IT, OR IS IT  
8 MORE OF A GENERAL QUESTION?

9 THE COURT: WE'RE TRYING TO -- IN ORDER TO BE  
10 ABLE TO MAKE A DETERMINATION -- I DON'T THINK I NEED  
11 THE DISCUSSION ON THE DOCUMENT BUT IT'S EXHIBIT 52.  
12 AND THAT WAS A LETTER OF DR. EGGE IN JUNE, 2010, TO  
13 DCFS.

14 MY INITIAL REACTION WAS THAT IT'S NOT RELEVANT  
15 BECAUSE I BELIEVED THAT IT RELATED ONLY TO THE  
16 DETENTION ISSUES, AS TO WHETHER OR NOT THE CHILD SHOULD  
17 BE DETAINED.

18 AND MY INITIAL VIEW WAS, IT WAS NOT RELEVANT  
19 BECAUSE THE QUESTION OF WHETHER THE CHILD SHOULD HAVE  
20 BEEN DETAINED IN THE FIRST PLACE, WHICH IS THE CAUSE OF  
21 ACTION REMAINING, DEPENDED ON WHATEVER INFORMATION WAS  
22 AVAILABLE TO DCFS AT THE TIME.

23 AND THEY'RE MAKING A DECISION TO EITHER TAKE  
24 THE CHILD OR NOT TAKE THE CHILD, OR WHATEVER OTHER  
25 OPTIONS THEY WERE CONSIDERING.

26 IN RESPONSE TO THAT TENTATIVE, DEFENSE COUNSEL  
27 HAS RAISED -- THEY THINK THIS COULD BE RELEVANT,  
28 DEPENDING ON WHAT THE CLAIM IS OF THE HARM -- FOR THE

1 HARM CLAIMED AND THE DAMAGE RESULTING FROM IT.

2 NOW, I DO NOT YET SEE THAT CONNECTION, BUT I  
3 UNDERSTAND WHAT THEIR ARGUMENT IS. SO I DON'T WANT TO  
4 FOCUS ON THIS LETTER FIRST, AS TO WHETHER IT WOULD BE  
5 RELEVANT TO WHATEVER CLAIM IS BEING MADE FOR  
6 DISCRIMINATION.

7 BUT I WOULD NEED -- I THINK I NEED TO KNOW  
8 WHAT IT IS YOUR CLAIM IS. WE STARTED TO HAVE THIS  
9 DISCUSSION A FEW DAYS AGO, AND THEN DID NOT PURSUE IT  
10 BECAUSE I DENIED THE MOTION FOR A NON-SUIT ON THE  
11 GROUNDS ON WHICH THEY HAD MADE THE MOTION.

12 AND THEN FELT THAT ON THE GROUNDS THAT HAD  
13 BEEN RAISED, IT WAS NOT NECESSARY FOR ME TO ADDRESS  
14 THIS ISSUE OF DAMAGE. SO THAT'S THE CONTEXT THAT CAME  
15 UP BECAUSE OF THIS LETTER.

16 BUT THE BIGGER QUESTION IS -- AS MR. GUTERRES  
17 PROPERLY POINTED OUT, THERE'S PROBABLY A NUMBER OF  
18 EXHIBITS THAT WOULD BE IN THE SAME CATEGORY OR TYPE OF  
19 DOCUMENT AS EXHIBIT 52.

20 MR. PRAGER: THE -- OVERALL BIG PICTURE --

21 THE COURT: YES.

22 MR. PRAGER: -- IS THAT MS. DUVAL WAS SUBJECT  
23 TO, AS SHE PUTS IT, BULLYING, DISCRIMINATION, IMPROPER  
24 CONDUCT BY VARIOUS SOCIAL WORKERS IN THE CASE BECAUSE  
25 SHE WAS PERCEIVED AS HAVING THIS MENTAL ILLNESS.

26 SHE WAS TREATED DIFFERENTLY IN THE DELIVERY OF  
27 SERVICES WHEN SHE RECEIVED SERVICES. BECAUSE, WE  
28 UNDERSTAND, THERE'S TWO ISSUES HERE.

1           ONE, THE INITIAL RECOMMENDATION AGAINST  
2 SERVICES, WHICH PLAINTIFF ALLEGES IS BASED UPON AN  
3 UNLAWFUL -- THE DECISION TO DENY SERVICES WAS BASED ON  
4 AN UNLAWFUL CHARACTERISTIC, NAMELY, THE PERCEPTION THAT  
5 MOTHER HAS MUNCHAUSEN'S.

6           AND BECAUSE THE MOTHER HAD MUNCHAUSEN'S, THERE  
7 WAS A RECOMMENDATION AGAINST SERVICES. THAT BY ITSELF  
8 IS ACTIONABLE. NOW, WE KNOW THAT SERVICES WERE  
9 PROVIDED.

10           THERE IS AN ARGUMENT THAT SERVICES PROVIDED  
11 WERE NOT EQUAL, FAIR, OR COMPLIANT WITH THE LAW. SO,  
12 FOR EXAMPLE, 45CFR84.4, JUST TO PULL ONE NUMBER OUT OF  
13 A HAT, TALKS ABOUT THE REQUIREMENT OF THE REHAB ACT.

14           SO UNDER THE REHAB ACT, THEY HAVE TO -- THE  
15 GOVERNMENT MUST PROVIDE SERVICES THAT ARE  
16 NON-DISCRIMINATORY AND EFFECTUATE THE OBJECTIVES OF THE  
17 STATUTE.

18           AND THE ARGUMENT HERE IS THAT THE SOCIAL  
19 WORKERS WERE ENGAGING IN CONDUCT TO FRUSTRATE THE  
20 PURPOSE OF THE STATUTE AND DENY MS. DUVAL SERVICES,  
21 EVEN ONCE THEY BEGAN PROVIDING SERVICES TO HER.

22           THAT'S KIND OF A PART OF THE BIG PICTURE. AND  
23 THEN, YOU KNOW, OF COURSE WE CAN GO DOWN MANY DECISION  
24 TREES THERE AS WELL.

25           THE COURT: ALL RIGHT.

26           MS. SWISS: YOUR HONOR, THEN, EXHIBIT 52 IN  
27 PARTICULAR IS THE LETTER DIRECTED TO MS. SCHEELE WHO IS  
28 THE SOCIAL WORKER PROVIDING THE SERVICES TO MS. DUVAL

1 AND WOULD --

2 AND SHE TESTIFIED THAT SHE PROVIDED COACHING  
3 TO MS. DUVAL ON HER PARENTING SKILLS, SPECIFICALLY ON  
4 LETTING THE CHILD FREE PLAY, AND TO ALLOW THE CHILD --  
5 HOW TO EAT AND THAT SORT OF COACHING.

6 THIS LETTER WOULD GO TO SHOW THAT MS. SCHEELE  
7 RECEIVED IT, UNDERSTOOD THAT THE CHILD DID NOT HAVE ANY  
8 MEDICAL REASONS FOR HIS FAILURE TO THRIVE, AND  
9 THEREFORE, IN ASSISTING THE MOTHER IN REUNIFYING WITH  
10 HER SON, TO SHOW HER HOW TO PROPERLY FEED THE CHILD,  
11 PROPERLY CARE FOR THE CHILD, SO, ULTIMATELY, SHE COULD  
12 REUNIFY WITH HER CHILD.

13 SO THIS LETTER GOES TO SHOW THAT SHE HAD BASIS  
14 FOR HER CONDUCT IN THE WAY SHE COMMUNICATED WITH  
15 MS. DUVAL THAT WAS NOT FOR A DISCRIMINATORY PURPOSE.

16 THE COURT: ALL RIGHT.

17 MR. PRAGER: I OBJECT: IT LACKS FOUNDATION ON  
18 THE -- BEFORE I ARRIVED IN THE ROOM. SO I CAN'T ANSWER  
19 ANY QUESTIONS, YOUR HONOR. (LAUGHTER)

20 THE COURT: I'M NOT GOING TO ASK YOU TO, AT  
21 LEAST FOR THE MOMENT.

22 MR. PARIS: YOUR HONOR, THERE'S NOTHING IN  
23 THIS LETTER ABOUT COACHING OR ANY TECHNIQUES FOR THE  
24 CHILD. IT'S ALL ABOUT PHYSICAL CONDITION --

25 THE COURT: IT IS. AND I THINK THEIR ARGUMENT  
26 IS THAT THE LETTER DOESN'T ADDRESS, SPECIFICALLY,  
27 SERVICES.

28 THEIR ARGUMENT IS THAT THIS IS INFORMATION

1 THAT SCHEELE HAD AND, BECAUSE OF THE CLAIM OF  
2 DISCRIMINATION IN THE FAILURE TO PROVIDE SERVICES, OR  
3 FAILURE TO PROVIDE ALL SERVICES THAT SHE REASONABLE  
4 WOULD BE ENTITLED TO, THAT THIS GAVE HER CERTAIN  
5 INFORMATION THAT --

6 SO THAT RAISES A FURTHER QUESTION: DID  
7 SCHEELE RELY ON THIS?

8 MS. SWISS: SHE TESTIFIED THAT SHE DID RELY ON  
9 IT. SHE TESTIFIED SHE RECEIVED IT, AND SHE ENTERED A  
10 THE DELIVERED SERVICE LOG CONTACT THAT SHE HAD READ IT,  
11 CONSIDERED IT, AND PUT IT IN THE FILE.

12 THE COURT: THAT'S IN THE DSL?

13 MS. SWISS: IT IS, AND --

14 THE COURT: THAT'S THE NEXT EXHIBIT TO BE  
15 TALKED ABOUT, NUMBER 82.

16 MS. SWISS: YES, YOUR HONOR. AND SHE LAID THE  
17 FOUNDATION FOR THAT SPECIFIC ENTRY IN HER DIRECT  
18 EXAMINATION.

19 THE COURT: ALL RIGHT. I'M NOT QUESTIONING  
20 YOU. I WOULD JUST LIKE TO HAVE YOU CITE ME TO WHICH  
21 ENTRIES IN THE DSL YOU'RE REFERRING TO.

22 MS. SWISS: I BELIEVE IT'S THE JUNE 11TH --

23 THE COURT: RIGHT AROUND THE SAME DATE?

24 MS. SWISS: CORRECT.

25 MR. MCMILLAN: YOUR HONOR, THERE'S ANOTHER  
26 ISSUE AS TO MS. SCHEELE'S TESTIMONY ABOUT THE SPECIFIC  
27 LETTER.

28 AND I COULD BE WRONG BECAUSE, YOU KNOW, A LOT

1 OF FOG HERE, BUT I DO SEEM TO RECALL HER SPECIFICALLY  
2 SAYING THAT SHE GOT THE LETTER, AND SHE FORWARDED IT ON  
3 TO, I THINK -- ACTUALLY, I'M NOT SURE SHE -- I THINK  
4 SHE PUT IT IN THE FILE.

5 SHE JUST GOT THE LETTER, SHE PUT IT IN THE  
6 FILE, HAD NO IDEA WHAT HAPPENED WITH IT AFTER THAT.

7 THAT'S THE EXTENT OF HER TESTIMONY ON THIS  
8 LETTER, AS I RECALL IT.

9 THE COURT: NOW, WE DO KNOW THAT IT -- AND  
10 IT'S SHOWN ON THE FACE OF THE LETTER, WE DO KNOW THAT  
11 IT WAS SUBMITTED TO THE COURT. BUT THAT'S A DIFFERENT  
12 ISSUE.

13 MR. MCMILLAN: THERE'S NOTHING IN THE DSL  
14 ENTRY THAT SAYS ANYTHING ABOUT HER CONSIDERING IT OR  
15 THE VERY SPECIFIC MEDICAL INFORMATION CONTAINED IN IT.

16 IN RELATION TO MS. SCHEELE'S APPROACH TO  
17 MS. DUVAL, IN HER COACHING, OR IN HER -- I THINK  
18 MS. DUVAL TERMED IT AS "HARASSING" CONDUCT, THERE'S  
19 NOTHING IN THIS LETTER THAT WOULD RELATE TO THAT.

20 AND THERE'S BEEN NO TESTIMONY PROVIDED TO  
21 DEMONSTRATE THAT MS. SCHEELE RELIED ON THE INFORMATION  
22 IN THIS LETTER AT ALL. CERTAINLY, FROM THE TIME THAT  
23 SHE WAS APPOINTED ON TO THE CASE, SOMETIME IN, I THINK  
24 DECEMBER, ALL THE WAY THROUGH JUNE 11TH.

25 AND THEN, AFTER JUNE 11TH, I BELIEVE HER  
26 TESTIMONY WAS THAT SHE ONLY CONTINUED TO PROVIDE  
27 SERVICES, AT THAT POINT, FOR, LIKE, ANOTHER MONTH OR  
28 SOMETHING.

1           SO EVEN IF, SOMEHOW, THERE WERE SOME TESTIMONY  
2 BY MS. SCHEELE SAYING OH, I RELIED ON THIS LETTER IN  
3 PROVIDING SERVICES, WHICH I'M PRETTY SURE THERE'S NOT,  
4 IT WOULD ONLY BE FOR A VERY SHORT WINDOW OF TIME.

5           BECAUSE THIS LETTER DIDN'T EVEN EXIST DURING  
6 THE BULK OF MS. SCHEELE'S INTERACTIONS.

7           THE COURT: RIGHT. THE THING YOU MENTIONED  
8 ABOUT THE TESTIMONY IN THIS LETTER VAGUELY RINGS A BELL  
9 WITH ME AS WELL. YOU'VE GOT THE TRANSCRIPT OF  
10 SCHEELE'S TESTIMONY.

11           AND I HAVE LOOKED AT THE DSL, EXHIBIT 82, AND  
12 ON PAGE 001555, THERE'S AN ENTRY, THE SECOND ONE FROM  
13 THE BOTTOM OF THE PAGE, DATED JUNE 14TH, INDICATING  
14 THAT THE PERSON MAKING THE ENTRY IS VICTORIA SCHEELE.

15           AND THE LETTER -- I MEAN THE ENTRY -- IF  
16 YOU'VE GOT A LETTER -- CLEARLY SHE'S SAYING SHE  
17 RECEIVED IT, AND THE LETTER'S BEEN FILED. BUT WE DO  
18 KNOW IT DID GET FILED WITH THE COURT LATER.

19           AND I THINK THAT THAT'S A DIFFERENT ISSUE THAN  
20 WHAT WE'RE TALKING ABOUT HERE. UNDERSTAND WHAT THE  
21 CLAIM IS, ABOUT THE FAILURE TO PROVIDE SERVICES.

22           IF THERE'S TESTIMONY THAT ANY DECISION SHE  
23 MADE ABOUT PROVIDING THE SERVICES WAS BASED, EITHER IN  
24 WHOLE OR IN PART, ON THIS LETTER, THEN I THINK THAT  
25 CREATES A DIFFERENT SCENARIO.

26           I, UNFORTUNATELY, JUST DON'T HAVE A MEMORY OF  
27 WHAT SHE SAID, IF AT ALL, ABOUT THIS LETTER, BEYOND  
28 THAT I'D SEEN THIS ENTRY. IT DOES, AS I'VE ALREADY



1 STATED, CAUSE ME TO HAVE A VERY VAGUE RECOLLECTION OF  
2 HER TESTIMONY, WHICH I THINK WAS PRETTY MUCH CONSISTENT  
3 WITH WHAT THIS NOTE SAYS.

4 YES, SHE GOT IT, AND SHE PUT IT IN THE FILE.  
5 BUT THERE MAY BE MORE, AND I'M NOT SAYING THERE ISN'T.  
6 DO YOU HAVE HER TRANSCRIPT --

7 MS. SWISS: I HAVE IT IN MY EMAIL, SO I WILL  
8 PULL THAT UP FOR THE COURT. IF WE CAN, MAYBE, COME  
9 BACK --

10 THE COURT: OKAY. WHAT I'M GOING TO DO --  
11 AND -- AT THIS POINT I'M NOT RECEIVING 52 INTO EVIDENCE  
12 BECAUSE OF LACK OF RELEVANCE.

13 BUT I WILL GIVE YOU THE OPPORTUNITY TO PROVIDE  
14 US WITH SOME FURTHER INFORMATION ABOUT HER TESTIMONY,  
15 IF HER TESTIMONY GIVES US MORE INFORMATION THAN WHAT'S  
16 IN THE NOTE AND WHAT MY VAGUE RECOLLECTION IS ABOUT HER  
17 HAVING RECEIVED IT AND PUTTING IT IN THE FILE.

18 I DON'T REMEMBER HER HAVING, REALLY, MUCH  
19 TESTIMONY ON THAT SUBJECT. BUT THAT'S MY MEMORY.  
20 THAT'S NOT THE RECORD.

21 MS. SWISS: I WILL LOOK AT THE RECORD AND  
22 PROVIDE IT TO THE COURT.

23 THE COURT: OKAY. THAT WILL BE GOOD.

24 MR. PRAGER, I'M GOING TO LET YOU GET BACK.

25 MR. PRAGER: VERY GOOD, YOUR HONOR.

26 THE COURT: AND THANKS VERY MUCH FOR HELPING  
27 US WITH THIS. IF I HAVE A QUESTION, WE'LL SEND  
28 MR. MCMILLAN WITH HIS BADGE BACK THERE.

1 THE NEXT ISSUE -- NEXT EXHIBIT THAT'S ON OUR  
2 LIST TO BE CONSIDERED IS NUMBER 82. AND THE LIST IS  
3 VERY SPECIFIC AS TO THE PAGES. AND THESE ARE DSL  
4 ENTRIES AT VARIOUS TIMES. WE'LL TAKE A LOOK AS TO WHAT  
5 THE SPECIFIC ONES ARE.

6 AGAIN, IT WOULD SEEM TO ME THAT ANY DSL ENTRY  
7 UP TO THE DETENTION HEARING IS SOMETHING THAT COULD BE  
8 RECEIVED FOR THE LIMITED PURPOSE OF SHOWING WHAT  
9 INFORMATION WAS KNOWN OR RELIED UPON, AS OPPOSED TO  
10 ACCEPTING IT FOR THE TRUTH OF THE MATTER.

11 AND THEN THERE'S A QUESTION SOME OF THESE  
12 PAGES PROBABLY GO BEYOND.

13 MR. MCMILLAN: RIGHT. I THINK IT'S FROM --  
14 PAGE 14 TO 88 IS AFTER THE DETENTION HEARING.

15 THE COURT: POST-HEARING.

16 MR. MCMILLAN: POST-DETENTION, CORRECT. OH,  
17 I'M SORRY. IT WOULD BE BATES NUMBER -- 1496 IS --  
18 OKAY. LET ME START OVER.

19 1483 THROUGH AND INCLUDING 1496 IS  
20 PRE-DETENTION HEARING, THE LAST ENTRY BEING  
21 NOVEMBER 5TH, 2009. AND THEN, FROM 1507 ALL THE WAY  
22 THROUGH 1562 IS GOING TO BE POST-DETENTION HEARING.

23 YOU KNOW WHAT? THIS IS OUR REDACTED VERSION  
24 WE BROUGHT INTO COURT A FEW DAYS AGO. SO LET ME GIVE  
25 YOU THE --

26 THE COURT: I HAVE IT IN FRONT OF ME. AND  
27 JUST IN LOOKING AT IT, THERE ARE --

28 MR. MCMILLAN: IT LOOKS LIKE ON 1497 THERE IS

1 ALSO A --

2 THE COURT: THERE IS ONE ENTRY ON 1497 THAT IS  
3 DATED NOVEMBER 6TH. I THINK IT'S --

4 MR. MCMILLAN: LAURA AUSTIN.

5 THE COURT: IT'S THE ONE ABOUT LAURA AUSTIN,  
6 AND I THINK IT'S A LITTLE UNCLEAR AS TO WHEN THAT  
7 OCCURRED ON THE 6TH.

8 AND FRANKLY, LOOKING AT THE INFORMATION, I  
9 THINK THAT IS REALLY A STATEMENT OF THINGS THEY'RE  
10 GOING TO DO. SO I DON'T THINK IT'S TOO IMPORTANT.

11 BUT THE PREVIOUS ONE -- THE LAST ONE BEFORE  
12 THAT BEGINS IN THE LOWER THIRD OF PAGE 1496 AND IT  
13 DOES -- AND THAT IS DATED NOVEMBER 5, AND IT DOES CARRY  
14 OVER TO THE TOP OF PAGE 1497.

15 AND LOOKING AT THE EXHIBIT ITSELF, THE FIRST  
16 ENTRY PERTAINING TO THIS MATTER IS ON 1483.

17 MR. MCMILLAN: CORRECT.

18 THE COURT: SO WE'VE GOT PAGES 1483 TO 14 --  
19 POTENTIALLY TO THE TOP OF 1497.

20 MR. MCMILLAN: CORRECT.

21 THE COURT: NOW, I DON'T KNOW THAT WE HAD  
22 TESTIMONY ON ALL OF THESE.

23 MR. MCMILLAN: I DON'T THINK WE DO. I THINK  
24 WE HAVE TESTIMONY, YOUR HONOR, AND IT MAY OR NOT BE  
25 SUFFICIENT.

26 BUT WE HAVE TESTIMONY ABOUT WHAT IT IS, WHAT  
27 THE DOCUMENT ITSELF IS, HOW IT'S REQUIRED TO BE  
28 MAINTAINED, AND, AT LEAST AS TO THE PEOPLE THAT

1 TESTIFIED, EITHER IN THEIR DEPOSITIONS --

2 I THINK I WAS PRETTY THOROUGH WITH IT IN THEIR  
3 DEPOSITIONS, BUT WE ALSO COVERED IT DURING LIVE  
4 TESTIMONY, THAT THE MAIN ACT, WHEN YOU'RE...

5 THE OCCURRENCE OF THE EVENT, THEY'RE UNDER  
6 A -- I DON'T REMEMBER IF IT WAS A STATUTORY OR A POLICY  
7 OBLIGATION TO RECORD THE INFORMATION.

8 AND THAT THEY WERE, AS NEARLY AS -- THEY  
9 CLAIMED, ANYWAY, THEY WERE TRUTHFUL, HONEST, AND  
10 ACCURATE IN THEIR REPORTING OF THE INFORMATION THAT'S  
11 CONTAINED IN THE LOG.

12 SO, AS TO PEOPLE LIKE LAURA AUSTIN, EVEN  
13 THOUGH SHE DID NOT TESTIFY, I THINK THERE HAS BEEN  
14 SUFFICIENT FOUNDATION LAID TO SUGGEST THAT EVEN HER  
15 ENTRIES, A LITTLE BIT SMALL, THE PUBLIC HEALTH NURSE --  
16 SHOULD BE ADMISSIBLE, AT LEAST TO THE EXTENT  
17 THAT MS. PENDER OR MS. ROGERS TESTIFIED THAT THEY  
18 RELIED ON THE INFORMATION THAT WAS APPARENT ON THE FACE  
19 OF THE DELIVERED SERVICE LOG.

20 AND, AGAIN, IT WOULD BE ONLY FOR THE LIMITED  
21 PURPOSE --

22 THE COURT: IS THERE AN OBJECTION TO THE  
23 ENTRIES, BEGINNING WITH THE FIRST ONE, WHICH IS  
24 OCTOBER 19TH, THROUGH THE ONES ON NOVEMBER 6TH?

25 MR. GUTERRES: AS I UNDERSTAND IT, THE OFFER,  
26 AT THIS POINT, WOULD BE TO ALLOW EXHIBIT 82, 1483  
27 THROUGH 1487, YOUR HONOR?

28 THE COURT: IT'S ACTUALLY 14 -- THE TOP PART

1 OF --

2 MR. GUTERRES: 1497, I'M SORRY.

3 THE COURT: 1497, YEAH.

4 MR. GUTERRES: AND IT WOULD BE FOR THE LIMITED  
5 PURPOSE?

6 THE COURT: I BELIEVE IT SHOULD BE FOR THE  
7 LIMITED PURPOSE BECAUSE, AGAIN, WE'RE TALKING ABOUT THE  
8 PROPRIETY OF THE DETENTION, AND SO THIS WOULD BE  
9 INFORMATION.

10 I THINK THE EVIDENCE DOES SAY -- THE REASON TO  
11 KEEP THIS IS SO EVERYONE KNOWS WHAT'S GOING ON. AND  
12 EVEN THOUGH WE DIDN'T HAVE TESTIMONY OVER ALL OF THEM,  
13 THE QUESTION IS WHAT INFORMATION DID THEY HAVE  
14 AVAILABLE TO THEM AT THE TIME OF THE DETENTION.

15 MS. SWISS: YOUR HONOR, I THINK THAT WE ARE  
16 OKAY WITH THAT, BUT THERE ARE CERTAIN STATEMENTS, SUCH  
17 AS THE STATEMENTS FROM THE PASTOR NEYLAND, THAT  
18 WOULDN'T BE RELEVANT.

19 THERE MIGHT BE SOME REDACTIONS THAT MIGHT NEED  
20 TO BE MADE. THAT'S THE EXAMPLE THAT COMES TO MIND.

21 THE COURT: I THINK THERE'S SEVERAL OF THESE  
22 THAT, FRANKLY, WE DON'T NEED TO CONSIDER AT ALL. IT'S  
23 A DIFFERENT SITUATION WITH THE REFERENCE TO  
24 PASTOR NEYLAND. AND I'VE SAID ALL ALONG THAT THAT'S  
25 JUST -- THAT HAD TO DO WITH SOMETHING ELSE ENTIRELY.

26 I THINK THAT WAS INFORMATION THAT COULD HAVE  
27 BEEN CONSIDERED BY THE COURT IN DETERMINING, ONCE THEY  
28 DECIDED TO DETAIN THE CHILD, THEY THEN HAD TO MAKE THE

1 DECISION AS TO WHO CUSTODY WOULD BE -- WOULD RECEIVE  
2 CUSTODY OF THE CHILD.

3 AND I THINK THE COURT CERTAINLY COULD HAVE  
4 CONSIDERED THAT INFORMATION IN MAKING THE DECISION  
5 WHETHER OR NOT TO GIVE CUSTODY TO THE FATHER. I DON'T  
6 THINK -- I NEVER FELT, AND I STILL DON'T -- THAT IT HAS  
7 ANYTHING TO DO WITH THE DECISION TO DETAIN.

8 SO I'VE AGREED WITH THAT ALL ALONG. THAT'S  
9 BEEN MY POSITION ALL ALONG. AND EVEN IN THE RULINGS I  
10 MADE ABOUT THE -- ON THE LEGAL ISSUE OF THE "BUT FOR"  
11 ANALYSIS ON THE CLAIM OF DECEPTION --

12 I ACCEPTED JUST ABOUT EVERYTHING THAT THE  
13 PLAINTIFF SAID SHOULD HAVE BEEN IN THE REPORT, OR WHAT  
14 SHOULDN'T HAVE BEEN THIS THE REPORT, WHICH MOSTLY HAD  
15 TO DO WITH DR. GILL, ALTHOUGH THERE WAS A QUESTION ALSO  
16 WITH THE FRIEND, NERISSA ENNIS.

17 AND I THINK THERE'S SOME OTHER ENTRIES IN  
18 HERE. I DON'T SEE ANY HARM TO THEM. SOME OF THEM JUST  
19 SAY, I ORDERED THE RECORDS. SO THERE'S NO HARM TO IT.  
20 IT DOESN'T HAVE ANYTHING.

21 EXCEPT IT DOES, I SUPPOSE, ALSO JUST INDICATE  
22 INFORMATION WAS AVAILABLE. SOMEONE WOULD KNOW, YEAH,  
23 THESE RECORDS HAVE BEEN ORDERED.

24 MR. GUTERRES: IF WE COULD HAVE -- ALLOW ME,  
25 MAYBE DURING THE LUNCH HOUR, TO JUST GO THROUGH THAT.  
26 I DON'T THINK I'M GOING TO HAVE A PROBLEM. I JUST  
27 WANTED TO GO THROUGH THAT. I DON'T THINK I'LL HAVE A  
28 PROBLEM.

1 I JUST WANTED TO GO THROUGH WITHIN THOSE PAGE  
2 RANGES.

3 THE COURT: YES. MY TENTATIVE -- MY RULING ON  
4 THIS IS YES. THE DSL FOR THIS PERIOD, WHICH BEGINS ON  
5 PAGE 001483 THROUGH THE END OF THE LAST ENTRY BEFORE OR  
6 UP TO THE DETENTION, WHICH IS AT THE TOP OF PAGE 1497,  
7 WILL BE RECEIVED, SUBJECT TO REDACTION.

8 AT LEAST, I'LL CONSIDER WHETHER SOMETHING  
9 OUGHT TO BE REDACTED. I THINK THAT PART ABOUT NEYLAND  
10 SHOULD BE REDACTED.

11 MR. MCMILLAN: YEAH, I THINK, YOUR HONOR,  
12 THERE'S AN ADEQUATE RECORD BEEN LAID ON THAT. AT  
13 LEAST, FOR OUR PURPOSES, I WOULD AGREE, WE DON'T HAVE A  
14 PROBLEM REDACTING THE ENTRY FOR NOVEMBER 2ND, FOR  
15 PASTOR NEYLAND, THAT APPEARS ON BATES NUMBER 1494.

16 THE COURT: YES. THAT'S THE BOTTOM OF --

17 MR. MCMILLAN: AND I BELIEVE THAT'S THE ONLY  
18 ENTRY FOR PASTOR NEYLAND IN THE ENTIRE EXHIBIT.

19 THE COURT: YEAH. ON THE BOTTOM OF 1494 IS  
20 CERTAINLY ONE I WOULD AGREE WE SHOULD REDACT. I'LL  
21 GIVE YOU THE OPPORTUNITY TO DO THAT.

22 NOW, IN ADDITION TO THOSE, WERE THERE  
23 ADDITIONAL ENTRIES THAT YOU WERE OFFERING AT THIS TIME?  
24 ANYTHING POST-NOVEMBER. THE LAST ONE WAS DATED  
25 NOVEMBER 6TH.

26 MR. MCMILLAN: THE ONES THAT WE WERE OFFERING  
27 INTO EVIDENCE, WE ACTUALLY PREPARED A REDACTED  
28 EXHIBIT 82 FOR THE COURT AND FOR COUNSEL. I DON'T

1 REMEMBER WHEN THAT WAS, EITHER. MIGHT HAVE BEEN A WEEK  
2 OR TWO WEEKS AGO.

3 THE COURT: I HAVE IT RIGHT HERE. I WAS  
4 TRYING TO COMMIT IT TO MEMORY.

5 MR. MCMILLAN: BASICALLY, WHAT WE WOULD BE  
6 OFFERING WOULD BE THE UNREDACTED PAGES IN THAT  
7 EXHIBIT -- THAT VERSION OF EXHIBIT 82 THAT YOU'VE GOT  
8 UP THERE, WITH THE EXCEPTION THAT WE WOULD GO AHEAD AND  
9 GO BACK AND REDACT THE NEYLAND ENTRY ON 1494.

10 AND I'M NOT SURE --

11 THE COURT: OKAY. I DO SEE -- LOOK, I'M GOING  
12 TO ASK YOU TO DO THIS:

13 I JUST SAW ONE -- SEE IF I CAN PULL IT UP  
14 AGAIN. THERE IS ONE THAT STARTS ON THE BOTTOM OF 1556,  
15 AN ENTRY OF JUNE 17TH, MADE BY SCHEELE. AND THIS  
16 DOES -- THIS IS ONE ABOUT -- WHERE SCHEELE SAID, I SEE  
17 YOU'RE GETTING BIGGER.

18 MOTHER SAID, NO, I'M JUST GETTING FAT. MOTHER  
19 ASKED WHY CSW WOULD ASK. AND CSW EXPLAINED THAT,  
20 BECAUSE THERE'S AN OPEN CASE, IF SHE WERE PREGNANT, IT  
21 WOULD BE A CONCERN.

22 DO YOU WANT TO TAKE A LOOK AT THOSE AND SEE IF  
23 ANY OF THOSE SECTION NEED TO COME IN?

24 MR. MCMILLAN: YEAH, I'LL TAKE ANOTHER --  
25 JUST, FOR PURPOSES OF WHAT WE'RE DOING HERE, I WAS  
26 VERY, VERY FOCUSED, MAYBE TOO FOCUSED, ON THE  
27 WARRANTLESS SEIZURE. BUT YES, I'LL LOOK AT THAT THIS  
28 EVENING, OR MAYBE OVER THE LUNCH HOUR. AND WE'LL GET



1 THAT FIGURED OUT.

2 YEAH, THERE IS OTHER INFORMATION IN THERE.

3 THE COURT: ALL RIGHT. SO THEN WE'LL MOVE  
4 ALONG. WE GOTTEN THROUGH THIS WITH GREAT PROGRESS.  
5 NUMBER 85 WAS PREVIOUSLY WITHDRAWN.

6 SO THE NEXT ONE ON OUR LIST IS -- BEING  
7 OFFERED IS NUMBER 178, WHICH IS THE HARBOR REGIONAL  
8 CENTER EARLY INTERVENTION INDIVIDUALIZED FAMILY SERVICE  
9 PLAN.

10 MS. SWISS: YOUR HONOR, BEFORE WE GET TO THAT,  
11 I DON'T KNOW IF THE COURT WANTS TO BACKTRACK, BUT I WAS  
12 ABLE TO PULL UP THE TESTIMONY FROM MS. SCHEELE  
13 REGARDING EXHIBIT 52, IF THE COURT WOULD LIKE TO READ  
14 IT ON MY LAPTOP. OR -- I DON'T KNOW HOW ELSE TO GET IT  
15 TO YOU.

16 THE COURT: SURE. I'D BE HAPPY TO READ IT ON  
17 YOUR LAPTOP.

18 (PAUSE IN THE PROCEEDINGS)

19 THE COURT: BACK ON THE RECORD. I'LL PUT IT  
20 ON THE RECORD AS WELL, IF ANYONE WOULD LIKE. WOULD IT  
21 MAKE YOUR FIRM PAY YOU MORE MONEY IF I PUT IT ON THE  
22 RECORD?

23 MS. SWISS: I DON'T THINK SO.

24 THE COURT: HOW ABOUT YOU, MR. PARIS?

25 MR. PARIS: I DON'T BELIEVE SO, YOUR HONOR.

26 MR. MCMILLAN: YOUR HONOR, YOU MIGHT RECALL  
27 OUR DISCUSSION IN THE JURY ROOM YESTERDAY.

28 THE COURT: YES, I DO.

1 MR. MCMILLAN: COULD BE BENEFICIAL.

2 THE COURT: SHOULD WE -- SHOULD I PUT  
3 SOMETHING ON THE RECORD, AND WE'LL GET IT PRINTED OUT  
4 AND SEND IT TO MOM? (LAUGHTER)

5 MR. MCMILLAN: I THINK THAT'S A GOOD IDEA.

6 THE COURT: OR OTHERS. YOU NEVER KNOW. ALL  
7 RIGHT.

8 WELL, IN ANY EVENT, WE'RE ON THE RECORD, AND  
9 MS. SWISS DID PULL UP FOR US, ON HER LAPTOP, THE  
10 TESTIMONY ABOUT MS. SCHEELE, IN REFERENCE TO  
11 EXHIBIT 52.

12 AND I THINK THAT THAT TESTIMONY REALLY IS --  
13 IS, REALLY, PRETTY MUCH, JUST IN A FEW MORE WORDS, OF  
14 WHAT THE ENTRY WAS, ABOUT HAVING RECEIVED IT, AND  
15 PUTTING IT IN THE FILE.

16 IT DID HAVE THE ADDITIONAL INFORMATION THAT  
17 SHE SENT TO MS. NELSON BECAUSE SHE THOUGHT THIS WAS  
18 INFORMATION THE COURT OUGHT TO HAVE.

19 BUT I DON'T SEE -- THERE IS NO TESTIMONY ABOUT  
20 HER RELYING ON THAT IN ANY WAY IN ANY DECISIONS SHE  
21 MADE, OR THINGS THAT SHE DID OR DIDN'T DO.

22 AND SO MY RULING ON EXHIBIT 52 WILL REMAIN THE  
23 SAME: IT WILL NOT BE RECEIVED.

24 MS. SWISS: THANK YOU, YOUR HONOR.

25 THE COURT: THEN ON 82, THE DEFENSE WILL TAKE  
26 A LOOK AT THE ONES I SAID WOULD BE RECEIVED, TO SEE IF  
27 THERE'S SOMETHING THAT SHOULD BE REDACTED.

28 AND MR. MCMILLAN, YOU'LL TAKE A LOOK AT THE

1 ONES POST-NOVEMBER 6TH TO SEE IF THERE'S ANYTHING THERE  
2 THAT WOULD APPEAR TO BE RELEVANT TO YOU, EITHER ON THE  
3 CLAIM OF INTENTIONAL INFLICTION OR ON A CLAIM OF  
4 DISCRIMINATION.

5 MR. MCMILLAN: I PROBABLY WILL NEED TO SPEND  
6 TIME TOGETHER WITH MR. PRAGER OVER THE LUNCH HOUR.

7 THE COURT: THAT WILL BE FINE. SO GOING TO  
8 NUMBER 178, THEN, WHICH IS THE -- I ALREADY RECITED  
9 WHAT IT IS, THIS FAMILY SERVICE PLAN. I DON'T REMEMBER  
10 THAT DOCUMENT. SO I'M GOING TO ASK DON TO GET ME 178.

11 MR. PARIS: YOUR HONOR, PLAINTIFF IS PREPARED  
12 TO WITHDRAW EXHIBIT 178.

13 THE COURT: ALL RIGHT. 178'S WITHDRAWN.

14 SO THE 205 --

15 MR. GUTERRES: COURT ALREADY RULED ON 205,  
16 YOUR HONOR.

17 THE COURT: I ALREADY RULED ON 205, AND I SAID  
18 NO. IT WILL NOT BE RECEIVED. SO NEXT WOULD BE 207.

19 MR. MCMILLAN: YOUR HONOR, I THINK I NEED TO  
20 GO GET MR. PRAGER. BECAUSE I BELIEVE THE NEXT THREE  
21 PAGES OR SO ARE DISCRIMINATION EXHIBITS.

22 THE COURT: OKAY. WHERE CAN WE PICK UP AGAIN?

23 MR. MCMILLAN: ON PAGE 3 OF 7 AT EXHIBIT  
24 NUMBER 327.

25 THE COURT: I WAS WONDERING, IT -- DOESN'T  
26 327 -- ISN'T THAT ONE THAT MR. PRAGER WOULD ADDRESS FOR  
27 US?

28 MR. MCMILLAN: ACTUALLY, YES, BECAUSE IT'S THE

1 TITLE 48 STUFF THAT'S A REQUIRED ELEMENT UNDER ONE OF  
2 THOSE.

3 THE COURT: YOU THINK SO?

4 MR. MCMILLAN: SO, I'M SORRY, IT'S --

5 MR. GUTERRES: YOUR HONOR, WE WOULD OBJECT.  
6 WHATEVER IS RELATED TO TITLE 4E HAS ALREADY BEEN  
7 TESTIFIED TO. AND THIS HAS A LOT MORE INFORMATION THAT  
8 IS COMPLETELY IRRELEVANT. WE WOULD OBJECT.

9 MR. MCMILLAN: SHOULD I GO GET --

10 MR. GUTERRES: WE CAN MOVE ON IT. THAT WAY WE  
11 CAN, HOPEFULLY, HAVE MR. PRAGER COME BACK AT ONCE AND  
12 JUST MOVE ON TO THE ONES THAT MR. MCMILLAN CAN ADDRESS.

13 THE COURT: SO IT LOOKS TO ME LIKE MAYBE THE  
14 NEXT ONE WOULD BE 370 AT THE BOTTOM OF PAGE 3. THIS  
15 IS -- I'M REALLY NOT SURE WHAT -- THIS IS ON THE  
16 DECEPTION ISSUE.

17 MR. MCMILLAN: IT'S IN THE DECEPTION --  
18 TRIMARCHI PMK DECEPTION DEPOSITION. BUT IT'S ACTUALLY  
19 THE POLICY ON THE UP-FRONT ASSESSMENT. AND I THINK  
20 THAT ACTUALLY BLEEDS OVER TO MR. PRAGER'S SIDE OF THE  
21 CASE ON THE JUDICIAL -- ON THE DISCRIMINATION SIDE.

22 THE COURT: ALL RIGHT. AND THEN 373 WOULD  
23 APPEAR TO FALL IN THAT CATEGORY, TOO.

24 MR. MCMILLAN: I THINK THAT'S PROBABLY  
25 CORRECT.

26 THE COURT: ALL RIGHT. NOW, TO 599. WE  
27 ADDRESSED THAT --

28 MR. GUTERRES: YOUR HONOR, SO THESE ARE SOME

1 OF THE EXHIBITS THAT WE ADDRESSED. THESE ARE THE  
2 DAMAGE EXHIBITS, THE 599 SERIES THAT --

3 THE COURT: YES.

4 MR. GUTERRES: GIVEN THE RULING AND WHAT'S  
5 BEEN ELICITED BY THE PLAINTIFF AS THE HARM, I DON'T  
6 BELIEVE 599 IS RELEVANT.

7 599 SPEAKS TO INVOICES FOR EXPERTS USED BY  
8 MS. DUVAL IN THE JUVENILE PROCEEDINGS. MEDICAL BILLS  
9 FOR BABY RYAN. THE HARM THAT HAS BEEN EXPRESSED BY THE  
10 PLAINTIFFS IS THE HARMED CLAIMED DUE TO COMMENTS MADE  
11 TO MS. DUVAL.

12 IN OTHER WORDS, EMOTIONAL DISTRESS BY  
13 MS. DUVAL AND/OR HOW MS. DUVAL WAS TREATED DIFFERENTLY.  
14 MEDICAL BILLS THAT RELATE TO BABY RYAN, THEREFORE, HAVE  
15 NO BEARING ON THE DAMAGES BEING CLAIMED BY MS. DUVAL.

16 THE COURT: ALL RIGHT. AND I UNDERSTAND THE  
17 POINT YOU'RE MAKING. BUT LET ME JUST ASK YOU THIS:

18 IN TERMS OF THE COMMENTS MADE TO HER -- FOR  
19 EXAMPLE, WE JUST TALKED ABOUT SCHEELE, AND PERHAPS  
20 SOMETHING SAID BY NELSON -- I DON'T KNOW WHETHER  
21 PLAINTIFF INTENDS TO CLAIM SOME KIND OF ECONOMIC DAMAGE  
22 ARISING FROM THAT.

23 BUT ON THE CLAIM ARISING OUT OF THE DETENTION  
24 IS AN ADDITIONAL QUESTION TO BE ADDRESSED.

25 MR. GUTERRES: WELL, YOUR HONOR, THE  
26 WARRANTLESS SEIZURE WOULD ONLY RELATE TO THREE DATES:  
27 FROM THE TIME OF THE DETENTION WITHOUT THE WARRANT  
28 UNTIL THE DETENTION HEARING.

1           ONCE THE COURT HAS ISSUED THE ORDER, IT'S  
2           PURSUANT TO A COURT ORDER. SO THE DAMAGES, IF ANY,  
3           THAT RELATE TO THE WARRANTLESS SEIZURE WOULD ONLY BE  
4           FOR THE THREE DAYS THAT WE DETAINED WITHOUT THE  
5           WARRANT.

6           THE COURT: AND YOU'RE TALKING ABOUT ECONOMIC  
7           DAMAGES.

8           MR. GUTERRES: CORRECT.

9           THE COURT: BECAUSE I'M SURE THE CLAIM OF  
10          EMOTIONAL DISTRESS WOULD NOT BE LIMITED --

11          MR. GUTERRES: YEAH, THAT'S GENERAL DAMAGES,  
12          YOUR HONOR. THERE'S NO EVIDENCE OF THESE INVOICES  
13          SPEAKING TO ANYTHING HAVING TO DO WITH MS. DUVAL.

14          THE COURT: OKAY. AND --

15          MR. MCMILLAN: WELL, YOUR HONOR, I HAVEN'T  
16          ACTUALLY HAD A CHANCE TO SIT DOWN AND LOOK THROUGH  
17          THOSE WITH THESE ISSUES IN MIND.

18          ALTHOUGH, JUST INTUITIVELY, AS I'M SITTING  
19          HERE, THE ARGUMENT MAKES SENSE THAT, CERTAINLY, IN  
20          LIGHT OF YOUR HONOR'S RULINGS ON THE NON-SUIT ON  
21          MATERIALITY, I DON'T SEE HOW THERE WOULD BE A CLAIM TO  
22          RECOVER, JUST FOR EXAMPLE, THE ATTORNEY'S FEES INCURRED  
23          IN DEFENSE IN THE UNDERLYING JUVENILE DEPENDENCY CASE.

24          THE COURT: RIGHT. JUST ONE THING I'M  
25          THINKING ABOUT, AND I DON'T WANT TO PLANT A SEED, BUT  
26          JUST IN THINKING AND HAVING HEARD THE ARGUMENT, SHE DID  
27          SEE MR. BUDIN.

28          MR. MCMILLAN: SHE DID. SHE DID. AND THAT

1       WOULD BE --

2               THE COURT:   AND I HONESTLY DON'T REMEMBER WHEN  
3       THAT STARTED.   AND I DO REMEMBER HIS TESTIMONY IN  
4       GENERAL TERMS.   I'M JUST SAYING, MAYBE THERE'S  
5       SOMETHING IN WHAT MR. BUDIN SAID THAT COULD BE,  
6       ARGUABLY, AN ECONOMIC DAMAGE.

7               MR. MCMILLAN:   RIGHT.

8               THE COURT:   THAT'S A POSSIBILITY.

9               MR. GUTERRES:   THAT WAS PURSUANT TO COURT  
10       ORDER, YOUR HONOR.

11              THE COURT:   PARDON?

12              MR. GUTERRES:   PURSUANT TO COURT ORDER.   THE  
13       JUVENILE COURT'S ORDER.   THEY'RE THERE FOR COUNSELING  
14       AND PARENTING.

15              THE COURT:   OKAY.

16              MR. MCMILLAN:   YOUR HONOR, I'M NOT SURE  
17       THERE'S EVIDENCE OF THAT IN THIS RECORD.   I DON'T  
18       RECALL.   I DON'T KNOW THAT ANY OF THE MINUTE ORDERS OR  
19       ANYTHING ELSE GOT MOVED INTO EVIDENCE THAT WOULD HAVE  
20       REFLECTED THAT.

21              I DO KNOW THAT SHE BEGAN, PURSUANT TO HER  
22       TESTIMONY AND MR. BUDIN'S TESTIMONY, SHE BEGAN SERVICES  
23       WITH HIM, I BELIEVE, ON NOVEMBER 11TH.

24              AND THEN HAS CONTINUED WITH HIM THROUGH, EVEN,  
25       TODAY.   ALTHOUGH, IN THE LAST COUPLE YEARS, I THINK, ON  
26       A MORE SPORADIC BASIS.   IT WASN'T REGULARLY SCHEDULED  
27       OR REGULARLY PLANNED.

28              BUT I DON'T RECALL -- I'M NOT SAYING THAT IT

1 DIDN'T COME INTO EVIDENCE, BUT I DON'T RECALL THAT IT  
2 WAS COURT ORDERED, OR WHETHER IT WAS COURT ORDERED.

3 THE COURT: WELL, I DON'T EITHER, BUT IT DID  
4 OCCUR TO ME THAT IT IS ONE POSSIBLE EXPENSE, EVEN IF  
5 SHE PAID FOR, AND EVEN IF SHE DID IT PURSUANT TO COURT  
6 ORDER.

7 IF THERE IS SOMETHING ABOUT THAT THAT HAD TO  
8 DO WITH EMOTIONAL DISTRESS AND THE CHILD BEING TAKEN  
9 FROM HER MOTHER, WHICH SHE SAYS, OBVIOUSLY, OCCURRED --  
10 AND I UNDERSTAND.

11 BASICALLY, THE EVIDENCE SAYS SHE GOES TO THIS  
12 TDM ON THE 3RD, NOT REALLY KNOWING WHAT WAS GOING TO  
13 OCCUR, AND THEN AT THE END OF THE DAY, INDICATION  
14 SOMEWHERE, MAYBE 6:00, 6:30, ALL OF A SUDDEN THEY SAY,  
15 WE'RE TAKING THE CHILD.

16 AND I THINK THAT A TRIER OF FACT COULD  
17 REASONABLY CONCLUDE THAT THAT WOULD BE A CAUSATIVE  
18 FACTOR IN SUFFERING EMOTIONAL DISTRESS. WHETHER OR NOT  
19 WHEN SHE SOUGHT BUDIN...

20 I'M NOT SAYING IT IS, BUT I'M SAYING THAT'S  
21 ONE THING THAT, MAYBE, YOU SHOULD TAKE A LOOK AT TO  
22 MAKE A DECISION. I WOULD AGREE, AS TO WHAT I RECALL,  
23 MOST OF THE OTHER EXPENSES, I'M NOT RECALLING ANYTHING  
24 ELSE THAT I THINK WOULD EVEN HAVE THE POTENTIAL.

25 BUT, AGAIN, WHY DON'T WE DEFER ON THOSE THREE.  
26 WE HAVE THE THREE EXHIBITS THAT MR. PARIS EXPLAINED TO  
27 US THE OTHER DAY, 599, 600, AND 603, THAT YOU CAN TAKE  
28 A LOOK AT.



1           AND WE'LL SEE, FIRST OF ALL, IF ANY PART OF  
2           THAT WOULD BE OFFERED BY PLAINTIFF, IN LIGHT OF THE  
3           PRESENT STATUS OF THE CASE. IF NOT, WE WON'T WORRY  
4           ABOUT IT. IF SO, YOU CAN TELL US WHAT IT IS AND WE'LL  
5           MAKE A DECISION.

6           MR. MCMILLAN: OKAY. THAT MAKES SENSE. ALSO,  
7           YOUR HONOR, WITH RESPECT TO MR. BUDIN, I'LL HAVE TO GO  
8           BACK AND LOOK AT THE ROUGH TRANSCRIPT, BUT I BELIEVE  
9           THAT HE GAVE TESTIMONY AS TO WHAT HE WOULD EXPECT, IN  
10          TERMS OF FUTURE TREATMENT, AS WELL.

11          THE COURT: YES. THAT'S TRUE. HE DID.

12          MR. MCMILLAN: OKAY.

13          THE COURT: I'M JUST TALKING ABOUT --

14          MR. MCMILLAN: THE EXHIBIT ITSELF.

15          THE COURT: YEAH. THAT -- FOR THE EXHIBIT  
16          ITSELF, THE TESTIMONY THAT HE GAVE ABOUT FUTURE IS  
17          DIFFERENT BECAUSE THERE'S NO BILL FOR THAT.

18          MR. MCMILLAN: RIGHT.

19          THE COURT: AND SO, YOU TAKE A LOOK AT THOSE  
20          AND WE'LL SEE IF THERE'S ANYTHING THAT COULD BE  
21          RECEIVED FROM THOSE THREE EXHIBITS.

22          THE NEXT ONE, THEN, IS 692. THAT HAS BEEN  
23          WITHDRAWN.

24          MR. PARIS: THAT'S CORRECT.

25          THE COURT: AND THE NEXT AFTER THAT IS  
26          NUMBER 704, WHICH IS THE DECLARATION OF MS. CONDEN.

27          MR. GUTERRES: WE'RE BACK TO MR. PRAGER'S  
28          EXHIBITS.

1 THE COURT: IS THAT -- SO WOULD THAT BE TRUE  
2 OF 705, AND 710, 719? JUST LOOKING AT THE LIST, THAT  
3 WOULD TAKE US ALL THE WAY TO --

4 MR. GUTERRES: 730, YOUR HONOR.

5 THE COURT: OVER TO --

6 MR. MCMILLAN: ALL THE WAY THROUGH -- WELL...

7 THE COURT: THAT WOULD TAKE US THROUGH 721.

8 MR. MCMILLAN: I THINK, YOUR HONOR --

9 MR. GUTERRES: YES.

10 THE COURT: SO THE NEXT ONE WE COULD ADDRESS  
11 WITHOUT HIM IS BEGINNING WITH 730.

12 MR. GUTERRES: I DON'T KNOW IF PLAINTIFF STILL  
13 INTENDS TO OFFER THAT. BUT --

14 THE COURT: WE'LL FIND OUT RIGHT NOW.

15 MR. MCMILLAN: WE HAVE TO LOOK, YOUR HONOR, AT  
16 ONE OF THE EMAILS TO SEE WHAT THE DATE IS. THAT WOULD  
17 BE THE EXHIBIT NUMBER 730, 23201 THROUGH 23202.

18 MR. GUTERRES: WELL, THE FIRST ONE IS ACTUALLY  
19 A CASE -- AN OPINION IN A CASE, WHICH IS THE KAREN R.  
20 VERSUS RAUL R. I DON'T KNOW IF --

21 MR. MCMILLAN: RIGHT. WE HAVEN'T GOTTEN TO  
22 THAT YET. I'M JUST TRYING TO FIGURE OUT WHETHER WE'RE  
23 GOING TO WITHDRAW ALL OF THEM OR JUST SOME OF THEM. SO  
24 IF YOU CAN JUST GIVE US A MINUTE TO FIGURE THAT OUT.

25 MR. PARIS: YOUR HONOR, IN LIGHT OF THE  
26 COURT'S RECENT RULING, WE CAN WITHDRAW THOSE PORTIONS  
27 OF EXHIBIT 730 ON -- BATES MARKED, THE FIRST ENTRY  
28 BATES MARKED 23189 THROUGH 23199. THE SECOND ENTRY

1 BATES MARKED 23201 THROUGH 23202.

2 MR. GUTERRES: YOU'RE WITHDRAWING?

3 MR. PARIS: YEAH. WE'LL BE WITHDRAWING. THE  
4 THIRD ENTRY WILL ALSO BE WITHDRAWN, THE ONES BATES  
5 MARKED 23203 THROUGH 23204. AND THEN THE FIFTH ENTRY  
6 HERE WILL BE WITHDRAWN, BATES MARKED AT 23213  
7 THROUGH 23217.

8 THE COURT: ALL RIGHT. SO THE ONE AREA THAT  
9 YOU WANT IS THE ONES AT 23206 THROUGH 23211?

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

11 THE COURT: OKAY. WE'LL TAKE A LOOK AT THEM.

12 ALL RIGHT. I'VE LOOKED AT THEM. WHAT'S THE  
13 PURPOSE OF THESE, MR. MCMILLAN?

14 MR. MCMILLAN: YOUR HONOR, THE -- IT'S  
15 ACTUALLY -- I BELIEVE IT'S JUST ONE PAGE. AND IT'S THE  
16 PAGE BEARING BATES NUMBER 023206. AND THE EMAIL  
17 STRING -- WE'RE ACTUALLY FOCUSED ON THE ONE FOR  
18 THURSDAY, MAY 20, 2010, AT 3:31 P.M.

19 MR. GUTERRES: I THOUGHT YOU JUST  
20 WITHDREW 23206.

21 MR. MCMILLAN: NO, THAT'S THE ONLY ONE HE DID  
22 NOT WITHDRAW.

23 THE COURT: THE OTHER ONES THAT ARE LISTED  
24 IN 730 HAVE BEEN WITHDRAWN. THIS ONE, WHICH IS THE  
25 FOURTH ONE DOWN ON PAGE 6 OF THE LIST, THEY SAID THEY  
26 WERE OFFERING, WITH THOSE EMAILS ON THESE PAGES, 023206  
27 THROUGH 023211.

28 MR. GUTERRES: I WAS LOOKING AT THE WRONG ONE,

1 YOUR HONOR. MY APOLOGIES.

2 THE COURT: ALL RIGHT. SO I SEE THE ONE  
3 YOU'RE REFERRING TO ON THURSDAY, MAY 20, 3:31.

4 MR. MCMILLAN: AND IT'S THE SPECIFIC REFERENCE  
5 TO VICTORIA SCHEELE. I BELIEVE THAT IS THE ONLY PAGE  
6 OF THAT EXHIBIT THAT WE WOULD BE OFFERING.

7 THE COURT: ALL RIGHT. WHAT THAT DOES SHOW  
8 US? THE QUESTION -- THE ONE THAT'S BEFORE, THE ONE  
9 THAT APPARENTLY PROMPTED THAT REPLY, WAS AN EMAIL TO,  
10 IT SAYS, FROM DR. EGGE TO RYAN MILLS.

11 SAYING, DR. NIESEN, I'M PARAPHRASING, PAGED ME  
12 YESTERDAY, MS. DUVAL'S HIRED ANOTHER PEDIATRIC.  
13 MEANWHILE, JUST WANT TO DISCUSS RYAN'S CASE, IS THAT  
14 OKAY WITH YOU. AND THEN HIS RESPONSE, APPARENTLY, WAS,  
15 HE SAYS, YOU HAVE TO TALK TO VICTORIA AGAIN.

16 MR. MCMILLAN: RIGHT. AND THAT WOULD JUST BE  
17 THE FOUNDATIONAL PRECURSOR, OR A FOUNDATIONAL PRECURSOR  
18 TO MS. SCHEELE'S INTERACTIONS WITH MS. DUVAL DURING HER  
19 CONFERENCES AND MONITORED VISITS IN OR -- IN OR AROUND  
20 THE TIME FRAME OF MAY 20, 2010.

21 AND THAT WOULD BE THE ONLY RELEVANCE OF IT.

22 THE COURT: WHAT DOES THIS HAVE TO DO WITH IT?

23 MR. MCMILLAN: WELL, IT WOULD GO TO, NOT  
24 NECESSARILY SHOW --

25 THE COURT: HIS FURTHER RESPONSE --

26 MR. MCMILLAN: RIGHT. IT SAYS, ALREADY DID.

27 THE COURT: THESE ARE A LITTLE HARD TO FOLLOW  
28 AS YOU LOOK AT THEM.

1 MR. MCMILLAN: THEY GO IN REVERSE.

2 THE COURT: RIGHT. IT LOOKS TO ME LIKE THE  
3 "ALREADY DID" ACTUALLY MIGHT HAVE BEEN FROM EGGE.  
4 BECAUSE IT APPEARS THAT MILLS' RESPONSE WAS, I GUESS  
5 YOU HAVE TO TALK TO VIRGINIA AGAIN, AND ABOVE THAT IS,  
6 ALREADY DID.

7 DO YOU SEE WHAT I'M REFERRING TO?

8 MR. MCMILLAN: I SEE, BUT THE TO AND FROM  
9 LINE, THE "FROM" IS ALSO RYAN MILLS. IT LOOKS LIKE A  
10 GMAIL ADDRESS. AND "TO" IS TO A YAHOO EMAIL ADDRESS  
11 FOR MR. MILLS. SO IT LOOKS LIKE, WHETHER IT WAS ERROR  
12 OR NOT, IT LOOKS LIKE HE MIGHT HAVE BEEN EMAILING  
13 HIMSELF.

14 GO UP ONE PAGE. YEAH, IT LOOKS LIKE HE MAY  
15 HAVE BEEN EMAILING HIMSELF, OR --

16 THE COURT: WELL, I'M GOING TO -- ALL RIGHT.  
17 IT'S A LITTLE HARD TO DECIPHER. IT MAKES SENSE TO ME  
18 THAT THE FIRST ONE COMES FROM EGGE, SAYING, BASICALLY,  
19 IS IT OKAY WITH YOU.

20 HE RESPONDS, GUESS YOU HAVE TO TALK TO  
21 VICTORIA AGAIN. THEN THERE'S SOMETHING, ALREADY DID.  
22 TO ME, THAT WOULD MAKE SENSE THAT HE SAYS, YOU GOT TO  
23 TALK TO VICTORIA. SHE SAYS, DR. EGGE, ALREADY DID.

24 SO SHE WAS STILL CHECKING WITH HIM ABOUT, WAS  
25 IT OKAY BECAUSE, AT THIS POINT IN TIME, HE'S GOT  
26 CUSTODY. AND SO I THINK HER QUESTION WAS, IS IT OKAY  
27 IF HE SEES THIS DOCTOR.

28 MR. MCMILLAN: I AGREE WITH YOUR

1 INTERPRETATION. THAT WOULD MAKE SENSE. OTHERWISE, THE  
2 "ALREADY DID" IS JUST --

3 THE COURT: OTHERWISE, IT WOULD REALLY BE  
4 NONSENSICAL.

5 MR. MCMILLAN: RIGHT.

6 THE COURT: UNLESS, AFTER SENDING THE MESSAGE,  
7 GUESS YOU HAVE TO TALK TO VICTORIA AGAIN, HE THEN  
8 ADDS -- IT'S POSSIBLE HE THEN ADDED, AFTER HE SAYS THAT  
9 "ALREADY DID," THAT HE HAD ALREADY TALKED TO VICTORIA.  
10 THAT'S POSSIBLE.

11 MR. MCMILLAN: THAT'S POSSIBLE.

12 THE COURT: BUT MY QUESTION IS: I DON'T SEE  
13 WHAT THIS ADDS TO THE CASE, EVIDENTIARY-WISE, BECAUSE  
14 THE ISSUE, AGAIN, IS SCHEELE'S INTERACTIONS WITH YOUR  
15 CLIENT. AND SO --

16 MR. MCMILLAN: RIGHT. WELL, WE HAVE TO SHOW  
17 AN UNDERLYING MOTIVATION. AND I MEAN, IT IS AN  
18 INTENTIONAL TORT. AND MAYBE UNDERLYING MOTIVATION IS  
19 NOT AN ELEMENT, AT LEAST, NOT EXPRESSLY AN ELEMENT OF  
20 THE CLAIM.

21 BUT I THINK, IN ORDER FOR IT TO MAKE SENSE TO  
22 SOMEBODY, I WOULD ASK MYSELF, WHY WOULD MS. SCHEELE BE  
23 DOING THESE THINGS TO MS. DUVAL.

24 THE COURT: ALL RIGHT. WELL, THE REST OF THIS  
25 CHAIN HERE, GOING TO PAGE 2011 -- EXCUSE ME, 23211,  
26 WHICH IS WHAT WAS DESIGNATED, IT JUST LOOKS TO ME LIKE  
27 EMAILS GOING BACK AND FORTH, BUT I DON'T SEE --

28 MR. MCMILLAN: THE ONLY ONE THAT REFERENCES

1 MS. SCHEELE IS THE 23206.

2 THE COURT: OKAY.

3 MR. MCMILLAN: AND THAT'S THE ONLY PAGE OF  
4 THAT DESIGNATION THAT WE WOULD OFFERING.

5 THE COURT: THAT YOU WANT -- AND, IN FACT,  
6 IT'S THIS --

7 MR. MCMILLAN: IN FACT, I THINK, JUST THAT --  
8 YEAH, I THINK IT'S JUST THAT EMAIL, ACTUALLY. BECAUSE  
9 THE EMAIL ON THE BOTTOM PORTION OF THE PAGE LOOKS LIKE  
10 IT RELATES TO SOMETHING ELSE.

11 THE COURT: MY QUESTION IS: WHAT DOES THIS  
12 SHOW THAT HAS ANYTHING TO DO -- MS. SCHEELE EITHER DID  
13 SOMETHING OR DIDN'T DO SOMETHING. IF YOUR CONTENTION  
14 IS THAT SHE -- WHAT?

15 MR. MCMILLAN: WELL, I THINK PART OF HER  
16 UNDERLYING MOTIVATION FOR HER ALLEGED MEAN-SPIRITED  
17 TREATMENT OF MS. DUVAL IS BECAUSE SHE CHOSE SIDES IN  
18 THIS DISPUTE ON HER OWN, IRRESPECTIVE OF WHAT WAS GOING  
19 ON IN THE CASE OR IN THE COURT.

20 SHE MADE A DECISION ABOUT HOW SHE WAS GOING TO  
21 TREAT MS. DUVAL.

22 THE COURT: ALL RIGHT. THIS EMAIL ISN'T  
23 PROBATIVE OF THAT, ONE WAY OR ANOTHER.

24 MR. MCMILLAN: OKAY.

25 THE COURT: SO LET ME MAKING THE RULING.

26 MR. MCMILLAN: SURE.

27 THE COURT: SO, UNDERSTANDING IT'S THIS ONE  
28 EMAIL WHICH IS ON 23206, IT'S THE APPROXIMATE TOP HALF

1 OF THE PAGE, GIVEN THE SEQUENCE WE TALKED ABOUT, I  
2 DON'T FIND ANY RELEVANCE. AND IT'S NOT GOING TO BE  
3 RECEIVED.

4 NEXT ONE IS 788. THIS IS A LIST OF RECORDS  
5 THAT DR. WEINRAUB REVIEWED. THAT'S NOT REALLY  
6 EVIDENCE.

7 MR. PARIS: AT THIS TIME, PLAINTIFF WILL  
8 WITHDRAW THAT OFFER. THE WITNESS WALKED OFF WITH OUR  
9 ONLY COPY OF IT.

10 MS. SWISS: YOUR HONOR, I REALLY WANT THAT IN.  
11 (LAUGHTER.)

12 THE COURT: SO YOU DON'T HAVE A COPY OF YOUR  
13 OWN WORK?

14 MS. SWISS: PRINT THAT ONE FOR YOUR MOM.

15 MR. MCMILLAN: NOBODY KNOWS, ACTUALLY, WHAT  
16 FILE IT'S STORED IN.

17 THE COURT: OKAY. LOOK. GETTING OVER TO THE  
18 TOP OF PAGE 7, THE NEXT ONE IDENTIFIED IN THE LIST, AND  
19 I'VE GOT IT, FORTUNATELY, I'VE GOT MINE. IT'S ACTUALLY  
20 BEEN IDENTIFIED AS 1018.

21 BUT THIS IS THE ADDENDUM TO THE INITIAL REPORT  
22 THAT WAS SENT TO THE STATE. SO, AGAIN, THIS WOULD BE A  
23 PRAGER ISSUE.

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

25 THE COURT: AND THEN THE NEXT ONE AFTER THAT  
26 IS EXHIBIT 1064, WHICH -- AND THERE'S TWO ENTRIES.  
27 IT'S BETWEEN THE TWO OF THEM, AND THESE ARE BEING  
28 OFFERED BY THE DEFENDANT, OUR PAGES 1655 AND 1656,



1 2015, 2018, AND 2380.

2 MR. GUTERRES: YOUR HONOR, THIS WAS THE CHG  
3 TESTING THAT WAS DONE, IF THE COURT HASN'T FOUND IT  
4 YET, BUT THAT REALLY WENT TO THE EXCULPATORY EVIDENCE.  
5 SO WE'LL WITHDRAW IT. IT'S POST-DETENTION.

6 THE COURT: ALL RIGHT.

7 MR. GUTERRES: AND IT'S TESTING ON BABY RYAN.  
8 SO...

9 THE COURT: ALL RIGHT. WHICH PAGES WERE THAT?

10 MR. GUTERRES: 1655 AND 1656.

11 THE COURT: THAT'S WITHDRAWN. OKAY. AND THEN  
12 THE NEXT CITATION WAS TO 2015, 2018...

13 MR. MCMILLAN: YOUR HONOR, I THINK THOSE ARE  
14 MR. PRAGER ISSUES. THEY APPEAR TO BE THE PRIMARY  
15 LANGUAGE DESIGNATION FORMS.

16 THE COURT: ALL RIGHT. 2015, 2018, AND 2380?

17 MR. MCMILLAN: RIGHT.

18 THE COURT: YEAH. I DO HAVE 2015 AND 2018 IN  
19 FRONT OF ME. AND THESE ARE THE FORMS ON PRIMARY  
20 LANGUAGE DESIGNATION. SO YOU WANT TO HAVE MR. PRAGER  
21 ADDRESS THOSE? THEN, 2380, I DON'T HAVE THAT HERE.

22 MR. MCMILLAN: IT'S THE SAME FORM, BUT IT WAS  
23 FILLED OUT LATER. AFTER THE ENTIRE CASE HAD CLOSED  
24 OUT, THERE WAS ANOTHER INVESTIGATION THAT STEMMED FROM  
25 DR. NIESEN'S REFERRAL.

26 MS. SWISS: ACTUALLY, I THINK IT'S BACKWARDS.  
27 I THINK 2018 IS THE LATER ONE. BUT 2380 IS THE ONE  
28 FROM 10/20/09.

1 MR. MCMILLAN: YES, 10/20 -- OH, OKAY, YEAH,  
2 YEAH, YEAH. YOU'RE RIGHT.

3 THE REPORTER: WHICH ONE IS THE OTHER ONE?

4 MS. SWISS: THE OTHER ONE THAT'S NOT RELEVANT  
5 WOULD BE 2018, (SIC) AND THAT'S THE ONE THAT'S  
6 DATED 9/9/10, I THINK.

7 MR. MCMILLAN: WELL, THERE'S ONE  
8 DATED 8/16/10, ALSO. AND THAT WOULD HAVE BEEN AFTER  
9 THE CASE CLOSED.

10 THE COURT: JUST BY ORIENTATION ON THIS, THE  
11 ONE WHICH IS PAGE 2015 IS THE PRIMARY LANGUAGE  
12 DESIGNATION. IT'S DATED AUGUST 16TH OF 2010.

13 MS. SWISS: YOUR HONOR, I BELIEVE THAT WAS THE  
14 ONE MS. DUVAL TESTIFIED WAS SIGNED BY MR. MILLS.

15 MR. MCMILLAN: RIGHT.

16 MS. SWISS: I CAN GO BACK IN MY NOTES BECAUSE  
17 I KNOW THAT THERE WERE TWO OF THEM. SHE SIGNED ONE WAS  
18 MR. MILLS ONLY. I HAVE NO IDEA HERE, SO LET ME JUST  
19 CONFIRM BEFORE WE GO ANY FURTHER.

20 THE COURT: SO THOSE THREE PAGES, THEN, WILL  
21 BE THINGS WE'RE GOING TO ADDRESS WITH MR. PRAGER.

22 SO THE NEXT TO BE ADDRESSED ARE CERTAIN PAGES,  
23 THAT WOULD BE EXHIBIT NUMBER 1076. AND THERE'S A --  
24 THEY'RE DESIGNATED HERE AS UCLA MEDICAL RECORDS FOR THE  
25 CHILD. AND THEY RUN FROM 1076.1 THROUGH 1076.163. SO  
26 IF I'M FIGURING IT OUT CORRECTLY, THAT'S ABOUT 163  
27 PAGES.

28 MR. PARIS: IN LIGHT OF THE COURT'S RECENT

1 RULING, THIS EXHIBIT IS NO LONGER RELEVANT. AND  
2 PLAINTIFF WILL BE WITHDRAWING.

3 THE COURT: SO YOU'RE WITHDRAWING. ALL RIGHT.

4 SO THE NEXT ONE WE HAVE IS EXHIBIT 177, WHICH  
5 IS DESIGNATED AS DOCUMENT, "BUDIN FILE," AND THEN IT  
6 LISTS CERTAIN PAGES FROM THE BUDIN FILE.

7 MS. SWISS: AND BACKING UP, YOUR HONOR, TO THE  
8 QUESTION THE COURT HAD EARLIER ABOUT MR. BUDIN'S  
9 BILLING. I DID FIND THE TRANSCRIPT FROM MS. SCHEELE'S  
10 TESTIMONY, WITH REGARD TO THAT. IT'S VERY SHORT.

11 "WHY DID YOU CALL MR. BUDIN." ANSWER,  
12 "BECAUSE THAT'S PART OF MY JOB AS A SOCIAL WORKER, AND  
13 IT WAS PART OF THE COURT ORDERS THAT WE WERE TO MAKE  
14 SURE THAT MOM WAS CONNECTED WITH A THERAPIST."

15 AND IT CONTINUES ON FROM THERE.

16 THE COURT: ALL RIGHT. SO HAVING CONNECTED  
17 WITH THE THERAPIST, WHICH WOULD BE PART OF YOUR  
18 ARGUMENT THAT YOU WERE PROVIDING SERVICES, BUT FROM HER  
19 POINT OF VIEW, IF SHE INCURRED THE EXPENSE FOR  
20 MR. BUDIN, I THINK IT'S STILL A QUESTION AS TO WHETHER  
21 ANY OF THAT WAS RELATED TO -- WHAT IT WAS RELATED TO.

22 MS. SWISS: IF IT'S COURT ORDERED, THEN THE  
23 COUNTY DIDN'T MAKE HER ATTEND THERAPY OR NOT. IT'S THE  
24 JUVENILE COURT THAT MADE THAT ORDER.

25 SO THE QUESTION OF PAYMENT FOR THAT SERVICE  
26 SHOULD HAVE BEEN RAISED AT THE JUVENILE COURT LEVEL, AS  
27 OPPOSED TO MAKING THE COUNTY PAY FOR THAT SPECIFIC  
28 SERVICE. AND ESPECIALLY, THE ONGOING TREATMENT AND

1 FUTURE TREATMENT.

2 THE COURT: I THINK THAT WE'RE GOING TO HAVE  
3 HEAR THE ARGUMENT ABOUT ANY BUDIN EXPENSE UNTIL AFTER  
4 MR. MCMILLAN'S HAD AN OPPORTUNITY TO TAKE A LOOK AT IT,  
5 WHETHER IT'S EVEN WORTH GETTING INTO OR NOT.

6 AND EVEN IF YOU THINK IT'S -- MAYBE IT'S IN  
7 RELATIONSHIP TO SOME, I THINK ANOTHER DECISION BEFORE  
8 WE EVEN DISCUSS WHETHER SOME OF THAT IS ADMISSIBLE, IS,  
9 DO YOU WANT TO BE BOTHERED WITH IT.

10 MR. MCMILLAN: RIGHT. AND AS I RECALL FROM  
11 HIS TESTIMONY, HE ONLY CHARGED HER FOR CERTAIN OF THE  
12 VISITS. I BELIEVE HIS RATES WERE REMARKABLY LOW.

13 THE COURT: THEY WERE -- YES.

14 MR. MCMILLAN: AND I'M NOT SURE THAT THE TOTAL  
15 AMOUNT OF WHAT SHE ACTUALLY PAID HIM EXCEEDED 2  
16 OR \$3,000.

17 THE COURT: RIGHT.

18 MR. MCMILLAN: HE DID GIVE AN ESTIMATE FOR  
19 FUTURE TREATMENT. THAT CERTAINLY WOULDN'T HAVE BEEN  
20 COURT ORDERED OR ANYTHING LIKE THAT. AND HE GAVE HIS  
21 TESTIMONY ABOUT HIS IMPRESSIONS AND WHAT CAUSED HER  
22 DISTRESS, AT LEAST INSOFAR AS HE SAW IT.

23 BUT IT VERY WELL MAY BE, THAT, IN FACT, BY  
24 EVEN OFFERING THAT \$2,000 OR \$3,000 TO THE JURY, THAT  
25 MAY MINIMIZE THE IMPACT THIS HAD ON HER. AND I'M  
26 CONSIDERING, SERIOUSLY, WHETHER WE'RE GOING TO --

27 THE COURT: THAT'S WHY I SUGGESTING --

28 MR. GUTERRES: IF MR. MCMILLAN'S SO GENEROUS

1 AND WILLING TO WITHDRAW, WE MIGHT ACTUALLY WANT IT IN.

2 (LAUGHTER.)

3 THE COURT: DON'T DO THAT TO US, MR. GUTERRES.

4 MR. MCMILLAN: WE NEED TO REOPEN IF HE'S GOING  
5 THERE.

6 THE COURT: ALL RIGHT. ON THE RECORDS FROM  
7 THE BUDIN FILE IN ANY EVENT, WHICH IS 1077, OFFERED BY  
8 PLAINTIFF, ARE THE RECORDS -- DO YOU ACTUALLY WANT ANY  
9 OF THOSE RECORDS?

10 MR. MCMILLAN: I KNOW THAT SOME OF THEM WERE  
11 ALREADY ADMITTED --

12 THE COURT: I THINK THAT, IF I'M READING THIS  
13 CORRECTLY, AND I'VE GOT MR. PARIS'S DOCUMENT, ONE HE  
14 DID, IN THE COLUMN FOR ADMITTING, HE LISTED THREE PAGE  
15 NUMBERS, 1077.39, 1077.41, AND 1077.48. AND I THINK HE  
16 WAS INDICATING THOSE HAD ALREADY BEEN RECEIVED.

17 IS THAT CORRECT, MR. PARIS?

18 MR. PARIS: THAT'S CORRECT, YOUR HONOR. THOSE  
19 WERE THE PAGES.

20 THE COURT: SO THE QUESTION, REALLY, IS THE  
21 REMAINING PAGES -- WELL, ACTUALLY, THE REMAINING PAGES  
22 ARE REALLY VERY FEW.

23 MR. MCMILLAN: RIGHT.

24 THE COURT: SO --

25 (PAUSE IN THE PROCEEDINGS)

26 MS. SWISS: 1064, THE PRIMARY LANGUAGE FORMS,  
27 JBCT2015 AND 2018, DEFENDANTS WILL WITHDRAW. BUT WE  
28 ASK THAT THE COURT RECEIVE JBCT2380. AND THAT IS THE

1 FORM THAT MS. DUVAL TESTIFIED THAT SHE DID SIGN IN  
2 2009, OCTOBER 2009.

3 THE COURT: ALL RIGHT. THAT'S GOOD. WHEN WE  
4 GET MR. MCMILLAN BACK, WE CAN ADDRESS THAT. AND THEN,  
5 ON THE BUDIN FILES, THREE OF THOSE PAGES LISTED AS  
6 BEING AT ISSUE ACTUALLY HAVE BEEN RECEIVED.

7 SO THE REMAINING ONES TO BE ADDRESSED  
8 BE 1077.18, AND .19, .31, AND .57.

9 MR. PARIS: IN LIGHT OF THE COURT'S RECENT  
10 RULING, THE REMAINING ONES ARE WITHDRAWN AS THEY ARE NO  
11 LONGER RELEVANT.

12 THE COURT: OKAY. THANKS, MR. PARIS.

13 AND THEN WE HAVE DEFENDANT OFFERING A  
14 NUMBER 1085, HILLSIDES FILES. AND THE PAGES DESIGNATED  
15 ARE BATES NUMBERS 1085.42 THROUGH .49.

16 MS. SWISS: YOUR HONOR, I BELIEVE THAT IS THE  
17 SPECIFIC UP-FRONT ASSESSMENT. AND MY UNDERSTANDING IS  
18 THAT IT HAS ALREADY BEEN ADMITTED AS PART OF  
19 EXHIBIT 24. SO WE DON'T NEED IT TO COME IN TWICE, BUT  
20 ONCE.

21 THE COURT: RIGHT.

22 MS. SWISS: THAT'S OUR REQUEST. SO OUR  
23 UNDERSTANDING IS IT'S CURRENTLY BEEN RECEIVED. I KNOW  
24 THAT PLAINTIFF MADE REPRESENTATIONS IT WAS ASKING THAT  
25 THE COURT -- THAT IT WAS WITHDRAWING REQUESTS TO  
26 RECEIVE CERTAIN PARTS OF EXHIBIT 24.

27 I HAVEN'T COMPARED THAT. BUT IT'S THE  
28 DEFENDANT'S INTENTION TO OPPOSE THAT. SO MAYBE THAT

1 CAN BE ADDRESSED AT THE SAME TIME.

2 THE COURT: ALL RIGHT.

3 MR. PARIS: PLAINTIFF WILL OBJECT TO  
4 EXHIBIT 1085 AS LACKING FOUNDATION AND HEARSAY.

5 THE COURT: ALL RIGHT. YOU THINK IT'S ALREADY  
6 BEEN RECEIVED?

7 MS. SWISS: IT HAS. IT'S PART OF EXHIBIT 24.  
8 WITH A LIMITING INSTRUCTION.

9 THE COURT: SO THIS IS DUPLICATIVE.

10 MR. MCMILLAN: IT'S ALSO DUPLICATIVE,  
11 YOUR HONOR, BUT, IF YOU RECALL, YESTERDAY, AND AS YOU  
12 MAY RECALL, EXHIBIT 24 HAS BEEN SORT OF A MOVING TARGET  
13 AS WE'VE BEEN GOING THROUGH.

14 BECAUSE THERE'S 372 PAGES, AND MUCH OF IT WAS  
15 WITHDRAWN -- WAS IDENTIFIED YESTERDAY AS BEING  
16 WITHDRAWN BY PLAINTIFF. AND I THINK WE WERE GOING TO  
17 COME BACK AND DISCUSS IT IN SOME MEASURE TODAY.

18 BUT A LOT OF THOSE WITHDRAWALS WERE,  
19 NUMBER ONE, BASED ON THE FACT THAT ONLY CERTAIN OF THE  
20 ATTACHMENTS TO EXHIBIT 24 WERE ACTUALLY ADMITTED INTO  
21 EVIDENCE IN THE UNDERLYING JUVENILE DEPENDENCY  
22 PROCEEDING.

23 SO I DON'T KNOW THAT ANYTHING THAT WAS NOT  
24 ADMITTED WOULD HAVE BEEN RELEVANT, NUMBER ONE. AND I  
25 THINK THAT WAS ALSO PRIOR TO THE COURT'S RULING ON THE  
26 NON-SUIT.

27 I'M NOT SURE THAT ANY OF THOSE ATTACHMENTS,  
28 ANY LONGER, WOULD NECESSARILY BE RELEVANT, IN LIGHT OF

1 THE COURT'S RECENT RULINGS ON THE NON-SUIT MOTION ON  
2 MATERIALITY.

3 MR. GUTERRES: YOUR HONOR, SINCE MR. MCMILLAN  
4 HAS NOT YET BEEN ABLE TO HAVE AN OPPORTUNITY TO  
5 IDENTIFY THE ACTS OF MS. NELSON THAT GAVE RISE TO THE  
6 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, PERHAPS  
7 WE HAVE TO DEFER ADDRESSING EXHIBIT 24, OR THE  
8 HILLSIDES.

9 BECAUSE HILLSIDES IS ALREADY PART OF  
10 EXHIBIT 24. SO IT MIGHT GIVE US A BETTER PERSPECTIVE  
11 ON...

12 THE COURT: ACCORDING TO THE LIST I HAVE FROM  
13 THE CLERK, EXHIBIT 24 HAS BEEN ADMITTED INTO EVIDENCE.  
14 AND IT IS NOT LISTED AS ONE ADMITTED FOR A LIMITED  
15 PURPOSE. YOU THINK THAT MAY BE INCORRECT?

16 MS. SWISS: YES.

17 THE COURT: OKAY. AND IT WOULD SEEM TO ME --

18 MR. GUTERRES: BECAUSE IF YOU MAY RECALL,  
19 YOUR HONOR, I DID SHOW PORTIONS OF EXHIBIT 24, AND  
20 THEN -- I ASKED FOR PERMISSION BEFORE I SHOWED THOSE.

21 AND IT WAS DURING THE EXAMINATION OF  
22 MR. MILLS. AND BEFORE I SHOWED EACH ONE OF THOSE,  
23 YOUR HONOR ACTUALLY INSTRUCTED THE JURY THAT IT WAS  
24 GOING TO BE USED FOR THE LIMITED PURPOSE.

25 THE COURT: WELL, JUST THINKING ON THE BROADER  
26 SUBJECT HERE BECAUSE, ACCORDING TO THE CLERK'S RECORD,  
27 24 HAS BEEN RECEIVED, NOT FOR A LIMITED PURPOSE. BUT  
28 IT WOULD SEEM TO ME -- LET ME STOP MYSELF TO SAY THAT I



1 HAVE GONE THROUGH EXHIBIT 24, AND IT IS A TEDIOUS JOB.

2 AND THERE IS A LARGE NUMBER OF DOCUMENTS IN  
3 THERE THAT, HONESTLY, NO ONE WOULD CARE ABOUT. AND  
4 CERTAINLY, THE JURORS WOULDN'T. BUT THE TRUTH IS, MORE  
5 IMPORTANTLY, I DON'T THINK THE PARTIES WOULD.

6 BUT THERE ARE SOME, AND THERE MAY BE OTHERS,  
7 BUT I'M A LITTLE SURPRISED THAT, ACCORDING TO THE  
8 COURT'S RECORD, IT WAS SIMPLY ADMITTED WITHOUT  
9 LIMITATION.

10 BECAUSE A NUMBER OF THE THINGS IN THERE REALLY  
11 DO RELATE TO THE SUBJECT OF WHAT INFORMATION -- WHAT  
12 WOULD BE PRESENTED AND AVAILABLE. AND YOU KNOW, WHO --  
13 THIS IS INFORMATION SOMEONE HAD.

14 AND SO THAT'S REALLY OFFERED, NOT FOR THE  
15 TRUTH OF IT, BUT FOR THE LIMITED PURPOSE OF SHOWING  
16 WHAT INFORMATION SOMEONE WAS ACTING ON. AND THE CLERK  
17 CAN TELL US WHEN -- DO YOU HAVE THE RECORDS?

18 WHEN WAS EXHIBIT 24 RECEIVED IN EVIDENCE?

19 THE CLERK: IT WAS RECEIVED ON SEPTEMBER 27TH.

20 THE COURT: SEPTEMBER 27TH. ALL RIGHT. I  
21 BELIEVE THAT WE WOULD HAVE TO -- AND MAYBE MS. SWISS  
22 HAS THIS -- WOULD HAVE TO READ THE TRANSCRIPT TO SEE  
23 WHAT OCCURRED. IN LOOKING AT MY OWN NOTES FOR THAT  
24 DATE --

25 THE CLERK: THAT'S THE DATE THAT IT WAS MARKED  
26 FOR ID.

27 MR. GUTERRES: I THINK THAT WAS THE -- I HAVE  
28 IT ON THE 27TH AT 2:50 P.M. THAT'S WHEN IT WAS

1 IDENTIFIED OR MARKED.

2 THE COURT: IT WAS IDENTIFIED, ACCORDING TO MY  
3 NOTES, IN THE CROSS-EXAMINATION OF DR. ACHAR. AND I  
4 DON'T HAVE THE EXACT TIME. BUT I KNOW IN THAT  
5 EXAMINATION, ACCORDING TO MY NOTES, NOW, MY NOTES ARE  
6 NOT THE RECORD, BUT I DO, ACCORDING TO MY NOTES, HAVE  
7 THE PAGE, WHATEVER THE PAGE IS.

8 I JUST WROTE DOWN THE LAST THREE DIGITS OF 466  
9 AND 668 TO 694, WHICH IS THE UP-FRONT ASSESSMENT HE WAS  
10 QUESTIONED ABOUT. AND THEN I DO HAVE A NOTE OF --  
11 ABOUT EXHIBIT 24, THE JURISDICTION REPORT, CONSISTING  
12 OF 24 PAGES.

13 ACCORDING TO MY NOTE, MAY VERY WELL HAVE BEEN  
14 RECEIVED AT THAT TIME. AND I ALSO HAVE A NOTE,  
15 FURTHER, ABOUT EXHIBIT 24, ABOUT RECORDS THAT ARE  
16 RELEVANT. SO I'M NOT SURE WHAT THE STATUS IS. AND I  
17 THINK THAT WE WILL HAVE TO CHECK THE TRANSCRIPT.

18 MS. SWISS: I CAN DO THAT, YOUR HONOR.

19 MR. MCMILLAN: YOUR HONOR, TO ADD SOMETHING  
20 INTO THE MIX, I DON'T REMEMBER THE DATE THAT IT WAS,  
21 BUT DURING THE FIRST CONFERENCE WE HAD BETWEEN COUNSEL  
22 IN THE JURY ROOM, WE DID --

23 I THINK I WAS ADDRESSING, MAYBE, VERDICT FORMS  
24 AND JURY INSTRUCTIONS, MR. PARIS AND MR. GUTERRES WERE  
25 ADDRESSING EVIDENTIARY ISSUES IN THE VARIOUS LISTS OF  
26 EXHIBITS.

27 AND IN THAT CONFERENCE, WE AGREED, AS I RECALL  
28 IT, THAT, TO THE EXTENT ANY OF THE REPORTS WERE COMING

1 INTO EVIDENCE, THEY WOULD ALL BE FOR A LIMITED PURPOSE,  
2 AND THAT INCLUDED OR WAS TO INCLUDE EXHIBIT NUMBER 24.

3 I REMEMBER WE CAME OUT, AND MR. PARIS READ  
4 SOMETHING INTO THE RECORD. I DON'T RECALL WHETHER  
5 EXHIBIT 24 WAS ON THAT, BUT IN THAT READING INTO THE  
6 RECORD OF THE EXHIBITS TO BE ADMITTED, HE DID NOT MAKE  
7 NOTE, AS I RECALL, OF THE LIMITATION.

8 I FOLLOWED UP WITH MR. GUTERRES THE FOLLOWING  
9 MORNING. JUST TO SAY, HEY LOOK, WE NEED TO GET ON THE  
10 RECORD, PUT THIS ON THE RECORD, IF YOU'RE GOING TO  
11 DISPUTE IT. HE SAID NO.

12 THAT WAS THE AGREEMENT. SO --

13 MS. SWISS: I THINK WE ALL AGREE IT SHOULD BE  
14 FOR A LIMITED PURPOSE. SO WE JUST WANT TO FIGURE OUT  
15 WHEN THE COURT MADE THAT ORDER. SO THAT'S WHY I WAS  
16 GOING TO LOOK FOR IT.

17 MR. MCMILLAN: OKAY, I UNDERSTAND. I JUST  
18 WANT TO MAKE SURE IT WAS CLEAR WHAT WE WERE TALKING  
19 ABOUT, BECAUSE IT WAS SOUNDING LIKE WE WERE GOING DOWN  
20 THE TRACK OF NOT HAVING A LIMITED PURPOSE AT ALL.

21 THE COURT: THE CLERK'S RECORD INDICATES  
22 THAT 24 WAS RECEIVED IN EVIDENCE ON SEPTEMBER 27TH --  
23 OH, THAT'S WHEN IT WAS MARKED.

24 MS. SWISS: I KNOW THAT WE PUBLISHED IT DURING  
25 THE TESTIMONY OF MR. MILLS, WHICH WOULD HAVE BEEN  
26 AROUND OCTOBER 13TH, ONCE THE DEFENSE STARTED THE CASE.

27 I CAN'T REMEMBER IF ANY PART OF EXHIBIT 24 WAS  
28 PUBLISHED IN PLAINTIFF'S CASE. SO I THINK IT'S RIGHT

1       AROUND THAT TIME, MAYBE AROUND WHEN PLAINTIFFS RESTED.  
2       SO THAT'S WHAT I'M LOOKING AT RIGHT NOW.

3               MR. MCMILLAN: ALL RIGHT. I THINK THAT'S  
4       CORRECT, YOUR HONOR. I DON'T RECALL, AS I'M SITTING  
5       HERE, PUBLISHING, ON THE SCREEN, ANY PORTION OF  
6       EXHIBIT 24 UNTIL AFTER YOU GUYS -- OR, THE DEFENDANTS  
7       STARTED THEIR CASE IN CHIEF.

8               MR. GUTERRES: YOUR HONOR, I'M LOOKING AT --  
9       THE COURT'S SHEET ON OCTOBER 11TH, I DON'T KNOW IF --  
10      AT LEAST, THAT'S WHERE I FIND EXHIBIT 24 AS BEING  
11      ADMITTED.

12              I DON'T KNOW IF IT -- BUT AT LEAST, AS OF  
13      OCTOBER 11TH, IT WAS IN. LOOKING AT THE COURT'S -- AND  
14      THEN I'M LOOKING AT A SHEET FOR OCTOBER 6TH, AND IT'S  
15      NOT MARKED. SO JUST TO GIVE YOU SOME GUIDANCE.

16              THE CLERK: THAT HELPS.

17              MR. MCMILLAN: TOO MANY DOCUMENTS IN THIS  
18      CASE.

19              MR. GUTERRES: ALSO LOOKING AT MY NOTES,  
20      YOUR HONOR, ON OCTOBER 11TH, AT THE NOON RECESS, I HAVE  
21      REFERENCE TO US DISCUSSING A CERTAIN NUMBER OF  
22      EXHIBITS. AND I HAVE, IN MY NOTES, EXHIBIT 24 AS BEING  
23      ONE OF THOSE THAT WAS DISCUSSED.

24              SO MAYBE OCTOBER 11TH IS THE DATE WE NEED TO  
25      LOOK AT. AND THE COURT REPORTER FOR BOTH THE 6TH AND  
26      THE 11TH WAS MS. PATRICIO.

27              THE COURT: I WANT TO FIND OUT WHERE THEY ARE  
28      NOW, WHAT THEY WERE WORKING ON IN THE JURY ROOM, AS TO

1 THE DISCRIMINATION AND THE VERDICT FORM.

2 AND THEN MAYBE YOU AND -- I THINK, AND  
3 MR. GUTERRES NEED TO TAKE CARE OF YOUR VERDICT FORM  
4 NUMBER 1, AND NARROW IT DOWN TO SOME WORDS, AS OPPOSED  
5 TO -- (SIMULTANEOUS SPEAKING) --

6 MR. MCMILLAN: "PROMULGATE," NO, I THINK  
7 "PROMULGATE," WE RESOLVED.

8 THE COURT: I THINK WE SOLVED THAT ONE BEFORE.

9 MR. MCMILLAN: I THINK IT WAS ARTICULABLE  
10 VERSUS PARTICULARIZE.

11 THE COURT: YES. LET'S TAKE A SHORT RECESS.

12 (PAUSE IN THE PROCEEDINGS)

13 THE COURT: I WANT TO GO ON THE RECORD AT THIS  
14 TIME. WE'RE BACK ON THE RECORD. AND COUNSEL ARE  
15 PRESENT.

16 WHILE WE'VE BEEN OFF THE RECORD, WE'VE BEEN  
17 HAVING DISCUSSIONS TO WHAT HAPPENED REGARDING THE  
18 ADMISSION OF EXHIBIT 24 OR ANY PORTIONS THEREOF. THE  
19 COURT RECORD INDICATES THE ENTIRE EXHIBIT WAS RECEIVED,  
20 BUT NEITHER I NOR COUNSEL BELIEVE THAT WAS THE CASE.

21 THEREFORE, BECAUSE WE'VE BEEN UNABLE TO  
22 RESOLVE THIS, SPECIFICALLY BY REFERENCE TO TRANSCRIPT  
23 OF THE PROCEEDINGS OR ANY OTHER DOCUMENT, ANY ORDER  
24 MADE BY THE COURT PREVIOUSLY, RECEIVING EXHIBIT 24  
25 IN TOTO, IN EVIDENCE, WITHOUT LIMITATION, IS RESCINDED  
26 BY THE COURT.

27 WE WILL, THEREFORE, HAVE TO ADDRESS EXHIBIT 24  
28 AS TO WHAT PORTIONS ARE BEING OFFERED AND FOR WHAT

1 PURPOSE THEY MAY BE RECEIVED.

2 I'M THEREFORE DIRECTING THAT PLAINTIFF'S  
3 COUNSEL AND DEFENSE COUNSEL WILL HAVE TO REVIEW  
4 EXHIBIT 24 AND BE ABLE TO SPECIFY TO THE COURT, AND TO  
5 EACH OTHER, THE PORTIONS WHICH THEY WISH TO HAVE IN  
6 EVIDENCE. IF EVERYBODY WANTS EVERYTHING IN EVIDENCE,  
7 THEN I'LL RECEIVE IT ALL IN EVIDENCE.

8 IF ANYBODY WANTS ANYTHING, SOMETHING LESS THAN  
9 THE ENTIRE PACKAGE, THEN YOU'LL HAVE TO SHOW US -- TELL  
10 US WHAT IT IS, AND THEN I'LL HAVE TO DETERMINE WHETHER  
11 IT CAN BE ADMITTED AS EVIDENCE, ADMITTED FOR A LIMITED  
12 PURPOSE, OR NOT ADMITTED AT ALL.

13 UNFORTUNATELY, I DON'T KNOW WHAT ELSE TO DO.  
14 BUT BECAUSE I RECOGNIZE THE EXTENT OF THAT EXHIBIT, AND  
15 I THINK, WHILE WE WERE OFF THE RECORD, I MENTIONED  
16 HAVING GONE THROUGH THAT EXHIBIT MYSELF AND REALIZED  
17 HOW EXTENSIVE IT IS.

18 AND REALIZED THAT I THINK THERE'S A LOT OF  
19 PAGES IN THERE THAT NO ONE WOULD CARE ABOUT, ONE WAY OR  
20 THE OTHER. PROBABLY A WASTE OF TIME. YOU WOULDN'T  
21 WANT TO CONSIDER IT YOURSELF, AND THE JURY WOULD NEVER  
22 WANT TO CONSIDER IT.

23 SO THAT'S THE ORDER FOR NOW. SO EXHIBIT 24  
24 WILL GO BACK ON OUR LIST.

25 MS. NAU: I HATE TO ADMIT THAT MR. PRAGER'S  
26 RIGHT, BUT --

27 THE COURT: LET ME TELL YOU SOMETHING.  
28 THIS -- JUST A GENERALITY, I THINK THERE'S GREATER

1 CREDIBILITY TO ANYONE, INCLUDING WITNESSES, ATTORNEYS  
2 WHO GO BEFORE US, EVERY ONE OF US MAKES A MISTAKE OVER  
3 SOMETHING.

4 AND I THINK IF WE DO, RATHER THAN PERSIST IN  
5 THE MISTAKE, IT'S FAR BETTER TO JUST SAY I WAS WRONG,  
6 AND GO ON FROM THERE.

7 MR. PRAGER: THANK YOU FOR YOUR COMMENTS,  
8 COUNSEL, BUT ACTUALLY, MR. PARIS IS THE ONE WHO PULLED  
9 UP 3067 AND GOT OUR ATTENTION. SO WE HAVE TO GIVE  
10 MR. PARIS A GREAT DEAL OF CREDIT HERE, IN CONFIRMING --

11 THE COURT: MR. PARIS, WE'RE GOING TO HAVE TO  
12 GET SOMETHING FOR YOU TO TAKE HOME. (LAUGHTER.)

13 MR. PRAGER: BUT I DO REALIZE, NOW, THAT  
14 THERE'S AN UNNECESSARY QUESTION IN THE VERDICT FORM  
15 BASED ON -- WE ASKED FOR HARM, AND THEN THE SUBSTANTIAL  
16 FACTOR FOR HARM IN THE NEXT QUESTION.

17 AND WE'LL HAVE TO CONFER ABOUT THAT, BECAUSE  
18 IN LOOKING AT 3067 ANEW, I REALIZE WE DON'T NEED BOTH  
19 QUESTIONS.

20 THE COURT: I HAVEN'T SEEN YOUR VERDICT FORM,  
21 BUT, YEAH, IT IS ONE QUESTION, AS TO WHETHER --

22 MR. PRAGER: SO I THINK WE'RE BACK TO BEING  
23 CLOSER.

24 THE COURT: DID THAT GIVE YOU A BASIS TO GO  
25 BACK AND HAVE SOME FURTHER DISCUSSION?

26 MS. NAU: YES. WE ARE IN AGREEMENT THAT, IF  
27 THE GOAL IS TO CLEAVE AS CLOSELY AS POSSIBLE TO VERDICT  
28 FORMS AS SET FORTH BY CACI, THEN I WOULD AGREE THAT WE

1 CAN CONSOLIDATE THOSE TWO QUESTIONS, IF THAT'S WHAT THE  
2 VERDICT FORM SAYS.

3 THE COURT: WHY DON'T YOU TRY. WHAT WE'LL  
4 DO -- WE'RE GOING TO ADDRESS THE EXHIBITS WITH YOU, BUT  
5 YOU'RE LUCKY YOU WEREN'T HERE THIS MORNING.

6 BECAUSE THE TRUTH IS, IF COUNSEL COULD TELL  
7 YOU PRIVATELY, IT'S A LITTLE TEDIOUS GOING THROUGH  
8 THESE THINGS. AND MAYBE I DON'T TO NEED THE USE THE  
9 WORD, LITTLE.

10 MR. PRAGER: YOUR HONOR, BASED ON THE COURT'S  
11 COMMENTS EARLIER, OFF THE RECORD, I APPARENTLY HAD A  
12 MURDEROUS MORNING ANYWAY, MYSELF.

13 THE COURT: THAT'S TRUE. WHY DON'T YOU TWO GO  
14 BACK. THAT WILL BE A BIG HELP TO ALL OF US.

15 WHAT I INTEND TO DO IS, THIS AFTERNOON,  
16 PROBABLY STARTING AT 1:30, WE'LL GO BACK AND, AS WE DID  
17 AS WE WENT THROUGH THE EXHIBITS EARLIER, SKIP CERTAIN  
18 ONES WHICH WE ALL DESIGNATED WERE PRAGER EXHIBITS, AND  
19 YOU WON'T HAVE TO WORRY ABOUT THAT.

20 AND WE'LL GO BACK AND SEE IF WE CAN GO THROUGH  
21 THOSE. THAT WILL GET US A LONG WAY, AND THANK YOU,  
22 VERY MUCH. NOW, THE QUESTION IS, WHO IS GOING TO GO  
23 THROUGH 24?

24 MR. GUTERRES: YOUR HONOR, WE'VE ALREADY BEEN  
25 GIVEN CERTAIN PAGES. WE WERE UNDER THE IMPRESSION THAT  
26 IT WAS ALREADY IN -- THE ENTIRETY OF THE DOCUMENT WAS  
27 IN. SO -- WHICH IS WHY SOME OF THE ADDITIONAL  
28 EXHIBITS, WE WEREN'T EVEN GOING TO BOTHER WITH.



1           SO UNLESS THE NUMBERS THAT -- OR THE BATES  
2 RANGES OF EXHIBIT 24 HAVE CHANGED NOW, WE CAN, AT  
3 LEAST -- WE CAN START WITH THAT AND THEN SEE IF WE WANT  
4 ADDITIONAL PAGES OF THAT.

5           THE COURT: ALL RIGHT.

6           MR. MCMILLAN: WHY DON'T WE GET TOGETHER,  
7 MAYBE MR. GUTERRES, MYSELF, MR. PARIS, GET TOGETHER  
8 OVER THE LUNCH HOUR AND WEED OUR WAY THROUGH IT.  
9 THERE'S BIG SECTIONS OF IT, LIKE THE NOTICES, THAT'S  
10 PROBABLY 30 PAGES. I THINK EVERYBODY AGREES THAT'S  
11 USELESS STUFF.

12          THE COURT: THERE'S ALSO SOME, WHAT I'LL CALL  
13 MEDICAL NOTES IN THERE, WHICH ARE INCOMPREHENSIBLE TO A  
14 LAYPERSON.

15          MR. MCMILLAN: RIGHT.

16          THE COURT: SO IF YOU WANT THEM IN TO SHOW  
17 THEY WERE THERE, THAT WHAT WAS THERE, THAT'S FINE. AND  
18 THEN AGAIN, THAT'S A LIMITED PURPOSE. WILL YOU BE ABLE  
19 TO DO THAT OVER THE LUNCH HOUR WITH MR. MCMILLAN,  
20 MR. GUTERRES?

21          MR. GUTERRES: YEAH, I THINK I ALREADY HAVE  
22 THE PAGES THEY WANT. SO I JUST WANTED TO LOOK AT  
23 ADDITIONAL PAGES THAT WE MAY WANT. I MEAN, I'VE  
24 ALREADY PUBLISHED CERTAIN DOCUMENTS WITH MR. MILLS.

25          SO I DON'T BELIEVE THEY'VE INCLUDED THAT, AND  
26 I'M PROBABLY GOING TO WANT THOSE INCLUDED. THE JURY'S  
27 ALREADY SEEN THEM.

28          MR. MCMILLAN: THAT'S WHY I'M THINKING IT

1 MIGHT BE PRODUCTIVE TO SIT DOWN TOGETHER WITH A LITTLE  
2 THING OF STICKIES AND JUST GO THROUGH IT. I THINK, TO  
3 THE EXTENT THERE IS A DISPUTE SOMEWHERE, IT'S GOING TO  
4 BE OVER A VERY LIMITED NUMBER OF PAGES.

5 MS. SWISS: JUST DO IT RIGHT NOW.

6 MR. MCMILLAN: WELL, I MEAN, IT'S 372 PAGES.  
7 I DON'T THINK IT NEEDS TO BE ON THE RECORD. WE COULD  
8 USE THE NEXT 35 MINUTES TO DO SOMETHING MORE  
9 PRODUCTIVE. MAYBE JURY INSTRUCTIONS, VERDICT FORMS,  
10 SOMETHING LIKE THAT.

11 THE COURT: I'M GOING TO HAVE YOU DO THAT. I  
12 WANT TO -- YOU KNOW, SEEMS LIKE WE STILL HAVE THE  
13 LUXURY OF TIME, REMEMBER MY COMMENT YESTERDAY.

14 YOU KNOW, IT SEEMS SIMPLE UNTIL YOU START  
15 DOING IT, AND THEN, WHEN YOU GO THROUGH ALL THESE  
16 THINGS TO BRING IT ALL TO A CONCLUSION, YOU REALIZE  
17 THAT IT'S NOT AS SIMPLE AS -- SEEM AS YOU WERE THINKING  
18 ABOUT IT.

19 AND IT USUALLY TAKES LONGER. THAT'S WHY I  
20 ALLOWED US THE EXTRA TIME. BUT YOU HAVE TO USE THE  
21 EXTRA TIME WELL. SO I'LL ASK YOU DO THAT, EXHIBIT 24.  
22 I'M PERFECTLY WILLING TO LET THE ENTIRE EXHIBIT IN FOR  
23 A LIMITED PURPOSE.

24 AND I SUPPOSE THAT THE ONLY PROBLEM WITH THAT  
25 IS IF THERE'S AN OBJECTION TO SOME SPECIFIC PAGE OR  
26 PAGES, EVEN FOR A LIMITED PURPOSE, THEN WE'D HAVE TO  
27 ADDRESS IT. AND THAT'S THE PROBLEM. NO MATTER HOW WE  
28 GO ABOUT THIS, YOU'RE GOING TO END UP HAVING TO GO

1 THROUGH IT.

2 MR. MCMILLAN: ALL RIGHT. WE CAN DO THAT.  
3 JUST SIT DOWN AND PLOW THROUGH IT.

4 THE COURT: SO LET ME ASK YOU THIS: ON THE  
5 VERDICT FORM FOR WHAT WE CALL VERDICT FORM ONE, WE WERE  
6 DOWN, AS OF YESTERDAY, TO JUST A FEW WORDS, AS TO --

7 MR. MCMILLAN: CORRECT.

8 THE COURT: WE HAD EVERYTHING, THE ELEMENTS,  
9 YOU KNOW, THE QUESTIONS, AND JUST, HERE AND THERE,  
10 THERE'S A QUESTION OR TWO ABOUT WHAT WORD WAS THE MOST  
11 APPROPRIATE WORD TO USE.

12 MR. MCMILLAN: THAT'S CORRECT.

13 THE COURT: I REMEMBER, IN FACT, YOU WERE  
14 LOOKING UP CASES THAT GAVE AN ALTERNATIVE TO  
15 ARTICULABLE AS ONE OF THE WORDS.

16 SO WHAT I'D LIKE TO HAVE YOU DO, IF YOU WOULD,  
17 AT THIS TIME, BETWEEN NOW AND NOON, I NEED TO HAVE YOU  
18 WITH ONE OF EITHER -- YES, OH, YES. MS. SWISS, YOU MAY  
19 BE OUR VERDICT FORM EXPERT.

20 AND WHILE MR. GUTERRES IS TAKING A LOOK,  
21 PERHAPS, AT 24 TO SEE IF THERE ARE SPECIFIC THINGS HE  
22 WANTS, WE OUGHT TO SOLVE THE WORD THING. I DON'T THINK  
23 THAT IT WILL -- THAT THE FEW WORD DISPUTES SHOULD BE  
24 THAT IMPORTANT TO US. I THINK THAT OUGHT TO BE  
25 RESOLVED.

26 MR. MCMILLAN: AND I THINK, YOUR HONOR, IT  
27 PRETTY MUCH IS NARROWED DOWN TO QUESTION NUMBER 3, THE  
28 DEFENSE OF EXIGENCY.

1           AND PLAINTIFF'S POSITION IS THAT IT SHOULD  
2       READ THAT, "HAVE DEFENDANTS PROVEN THEY POSSESS  
3       SPECIFIC PARTICULARIZED FACTS," AS OPPOSED TO THE  
4       "ARTICULABLE FACTS."

5           AND I HAVE THE CASE CITE HERE, A COMBINATION  
6       OF TWO CASES.   SPECIFIC COMES FROM RC, AND  
7       PARTICULARIZED COMES FROM A CASE CALLED BAILEY, I  
8       BELIEVE.

9           THE COURT:   YOU CITED TO THAT TO US YESTERDAY.

10          MS. SWISS:   VERY QUICKLY --

11          THE COURT:   I DON'T KNOW IF MS. SWISS IS ABLE  
12       TO GET THE CITATION.

13          MS. SWISS:   WE DID LOOK AT IT YESTERDAY,  
14       TOGETHER, AND THE ONLY ISSUE IS, WHEN WE MET ALL  
15       TOGETHER ON FRIDAY, THE ORIGINAL VERSION, OR THE  
16       VERSION WE WERE USING ON FRIDAY SAID, "SPECIFIC,  
17       REASONABLE, AND ARTICULABLE FACTS."

18          AND AFTER THE REVISIONS MADE BY PLAINTIFF'S  
19       COUNSEL, "REASONABLE" WAS REMOVED, "ARTICULABLE" WAS  
20       REMOVED, AND "PARTICULARIZED" WAS PUT IN ITS PLACE.

21          SO I THINK THAT WE COULD, MAYBE, COME TO AN  
22       AGREEMENT IF WE ADDED "REASONABLE" BACK IN.   SO IT  
23       WOULD READ, "SPECIFIC, REASONABLE, AND PARTICULARIZED  
24       FACTS."

25          MR. MCMILLAN:  THERE'S A REASON, YOUR HONOR,  
26       THAT WE REMOVED THAT.  IT'S ACTUALLY IN ONE OF OUR  
27       SPECIAL JURY INSTRUCTIONS AS WELL.  AND THERE'S A  
28       REASON THAT WE REMOVED THE "REASONABLE" LANGUAGE.

1           AND I BELIEVE THAT THAT'S BECAUSE, IN THE  
2           STATEMENT OF BLACK LETTER LAW IN ONE OF THE CASES,  
3           EITHER RC OR BAILEY, IT DID NOT, SPECIFICALLY DID NOT  
4           INCLUDE THE "REASONABLE" COMPONENT.

5           AND I THINK THAT WHERE THE REASONABLENESS  
6           COMES INTO THE -- INTO PLAY IS WHETHER OR NOT, BASED ON  
7           THE SPECIFIC AND PARTICULARIZED FACTS, THE CONDUCT WAS  
8           REASONABLE. BUT IT'S NOT WHETHER OR NOT THE FACTS IN  
9           HAND, THEMSELVES, WERE REASONABLE.

10           WHAT THE STANDARD IS, IS THERE HAS TO BE A  
11           SHOWING THAT THERE WAS SPECIFIC, PARTICULAR  
12           INFORMATION --

13           THE COURT: I GOT IT. I HAVE THE DISPUTE. SO  
14           WHY DON'T YOU DO THIS. GO OFF THE RECORD. YOU TWO  
15           TALK. AND IF YOU GOT THE CASE YOU WANT TO CITE TO ON  
16           THIS, GIVE IT TO HER. AND JUST SIT HERE AND TALK ABOUT  
17           IT. AND WE'LL BE OFF THE RECORD.

18           MR. MCMILLAN: SURE.

19           MS. SWISS: AGREED.

20           THE COURT: AND THEN, IN THE MEANTIME, I WILL  
21           BRING YOU A LIST OF THE CACI INSTRUCTIONS THAT I  
22           BELIEVE SHOULD BE GIVEN ON THE -- ON THE CAUSES OF  
23           ACTION YOU'RE DEALING WITH, OVER THE WARRANTLESS  
24           DETENTION AND THE INTENTIONAL INFLICTION.

25           AND THEN, YOU TAKE A LOOK AT THOSE AND SEE  
26           WHETHER THERE'S AGREEMENT THEY SHOULD BE GIVEN. BUT  
27           ALSO THEN, YOU'LL BE ABLE, OVER THE LUNCH HOUR -- YOU  
28           HAVE A LOT TO DO OVER THE LUNCH HOUR -- YOU'LL BE ABLE

1 TO PICK OUT -- YOU'VE GOT MR. PARIS, HE'S WORKING  
2 ALREADY.

3 MR. MCMILLAN: I SEE HIM CUTTING THROUGH IT.

4 THE COURT: YES. TO BE ABLE TO LOOK AT THE  
5 SPECIAL INSTRUCTIONS THAT HAVE BEEN REQUESTED, YOU  
6 THINK SHOULD BE GIVEN IN CONNECTION WITH THOSE CAUSE OF  
7 ACTION.

8 YOU CAN PICK OUT THE CACI INSTRUCTIONS, BUT I  
9 WANT TO SEE -- TALK ABOUT THIS, AND I'LL HAVE THEM FOR  
10 YOU IN JUST A FEW MINUTES. I BELIEVE I MADE A LIST,  
11 AND IT'S ON MY DESK. BUT IF NOT, I CAN GET THEM VERY  
12 QUICKLY.

13 (PAUSE IN THE PROCEEDINGS)

14 THE COURT: WE'RE ON THE RECORD. AND COUNSEL  
15 ARE PRESENT.

16 I WAS HANDED, A FEW MINUTES AGO, THE  
17 DEFENDANT'S MOTION FOR DIRECTED VERDICT ON PLAINTIFF'S  
18 CLAIMS ON EACH OF THE THREE DISCRIMINATION CLAIMS THE  
19 PLAINTIFF MADE PURSUANT TO THE UNRUH ACT STATE LAW AS  
20 WELL AS THE ADA AND REHAB ACTS.

21 AND A MOTION FOR NON-SUIT ON THE INTENTIONAL  
22 INFLECTION CLAIM.

23 MR. MCMILLAN: YOUR HONOR, THE STIPULATION  
24 THAT WE HAD TO FILE A MOTION FOR NON-SUIT EXTENDED FOR  
25 A LIMITED TIME.

26 I'M NOT SURE IT GOES ON AD INFINITUM INTO THE  
27 FUTURE, BUT CERTAINLY IT WAS NEVER THE INTENTION OF THE  
28 PLAINTIFF TO ALLOW FOR THE SERIAL FILING OF NON-SUIT

1 MOTIONS.

2 NUMBER ONE, I HAVEN'T SEEN IT --

3 THE COURT: EXCUSE ME. I MAY HAVE  
4 MISCHARACTERIZED THE MOTION. IT'S FOR A DIRECTED  
5 VERDICT AS OPPOSED TO A NON-SUIT. I DID STATE IT WAS  
6 FOR A DIRECTED VERDICT.

7 SO THIS IS A MOTION, NOT FOR A NON-SUIT, WHICH  
8 HAS BEEN COMPLETED, BUT DIRECTED VERDICT, WHICH IS A  
9 VERDICT TO BE MADE AT THE CONCLUSION OF THE EVIDENCE.

10 AND DID YOU GET A COPY OF IT? YOU'RE LOOKING  
11 AT IT RIGHT NOW, MR. PRAGER?

12 MR. PRAGER: WE HAVEN'T HAD A CHANCE TO DIGEST  
13 IT.

14 THE COURT: WE'LL HAVE TO TAKE IT UP THIS  
15 AFTERNOON, AND I'LL RESERVE ANY COMMENT TIL THEN. SO  
16 I'LL EXPECT WE WILL ADDRESS IT AT 1:30.

17 SO WE'LL BE IN RECESS NOW.

18 COUNSEL, YOU HAVE CERTAIN THINGS YOU'RE DOING,  
19 YOU'RE WELCOME TO REMAIN HERE TO DO THEM. YOU CAN DO  
20 THEM ELSEWHERE. WE'LL MAKE THE JURY ROOM AVAILABLE TO  
21 YOU IF YOU'D LIKE, BUT AT 1:30, WE'LL RECONVENE ON THE  
22 RECORD TO, AMONG OTHER THINGS, ADDRESS THIS.

23 (LUNCH WAS TAKEN FROM 11:56 A.M. TO 1:25 P.M.)

24 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE  
25 PRESENT.

26 IN ADDITION TO THE MOTION I RECEIVED FROM THE  
27 DEFENDANTS SHORTLY BEFORE LUNCH, I JUST RECEIVED  
28 PLAINTIFF'S MOTION FOR DIRECTED VERDICT ON THE CAUSE OF

1 ACTION FOR DETAINMENT OF THE CHILD, INCLUDING CRIMINAL  
2 LIABILITY OF THE COUNTY FOR THAT CONDUCT.

3 MR. MCMILLAN: I BELIEVE, YOUR HONOR, IT'S  
4 LIMITED TO TWO ISSUES. ONE IS THE ISSUE OF EXIGENCY,  
5 AS TO WHICH THE DEFENDANTS BEAR THE BURDEN OF PROOF.

6 AND THEN, SECONDARILY, IT ADDRESSES THE MONELL  
7 ASPECT OF FAILING TO HAVE A PROCEDURE IN PLACE, AND  
8 THAT SORT OF THING.

9 THE COURT: WELL, I DON'T KNOW THAT YOU'RE  
10 REALLY SAYING SOMETHING DIFFERENT FROM WHAT I SAID, BUT  
11 I AM LOOKING AT YOUR POINTS AND AUTHORITIES THAT  
12 ACCOMPANY YOUR MOTION.

13 AND THE VERY FIRST POINT IS, IT IS UNDISPUTED  
14 THAT DEFENDANTS PENDER AND ROGERS ACTED UNDER COLOR OF  
15 LAW. THAT IS AN ELEMENT OF THE CLAIM OF UNLAWFUL  
16 DETAINER.

17 FURTHER, THE DEFENDANTS PENDER AND ROGERS  
18 VIOLATED PLAINTIFF'S CONSTITUTIONAL RIGHTS WHEN THEY  
19 SEIZED R.D. SO I THINK MY CHARACTERIZATION OF THE  
20 MOTION MAY BE BETTER THAN YOURS, EVEN THOUGH IT'S YOUR  
21 MOTION.

22 MR. MCMILLAN: I THINK YOU'RE RIGHT.

23 THE COURT: TAKING WHAT YOU GAVE ME IN  
24 WRITING, WHAT WE CALL IT PROBABLY WON'T HELP US DECIDE  
25 IT, IN ANY EVENT.

26 MR. MCMILLAN: RIGHT.

27 THE COURT: SO I'M HAPPY TO HEAR FROM COUNSEL  
28 AS TO WHEN YOU THINK THESE MOTIONS SHOULD BE ADDRESSED.



1 BECAUSE I'LL TELL YOU ONE THING, WITH THE TIMING WE  
2 HAVE, I'M TRYING TO AVOID, IF AT ALL POSSIBLE, PUTTING  
3 THE JURORS OFF UNTIL MONDAY.

4 ALL THAT WILL DO IS INCREASE THE LIKELIHOOD OF  
5 A PROBLEM WITH THE JURORS. WE ALREADY HAVE -- WE'RE  
6 DOWN TO TWO ALTERNATES, AND I EXCUSED MR. VAN METER  
7 YESTERDAY. SO IN ESSENCE, WE'RE DOWN TO ONE ALTERNATE,  
8 BECAUSE SOMEONE WILL BE PICKED TO REPLACE HIM.

9 AND YOU RECALL THAT JUROR NUMBER 4, MANZANO,  
10 THAT I GUARANTEED HER THAT ON WEDNESDAY, WHEN SHE HAS  
11 TO GO TO CITY OF HOPE WITH HER MOTHER FOR WHAT IS,  
12 WITHOUT QUESTION, SURGERY FOR CANCER, THAT SHE'D BE  
13 PERMITTED TO DO SO.

14 SO WE'RE RUNNING SHORT. AND I DON'T KNOW WHAT  
15 OTHER EMERGENCIES YOU MIGHT HAVE, SO I'M DOING THE BEST  
16 I CAN TO AVOID IT.

17 ALTHOUGH WE CONTINUE TO HAVE A NUMBER OF  
18 ISSUES PRESENTED THAT ARE GOING -- THEY'RE STILL TAKING  
19 ADDITIONAL TIME AND DETRACTING, AT LEAST IN MY CASE,  
20 FROM THE THINGS THAT I NEED TO DO.

21 I THINK A NUMBER OF YOU HAVE BEEN WORKING ON  
22 YOUR ISSUES. AND I'M NOT GIVING UP ON BEING ABLE TO  
23 GET THE JURORS IN HERE ON FRIDAY. MY QUESTION TO YOU  
24 IS, NOW, WITH THESE MOTIONS, WHEN DO YOU WANT TO  
25 ADDRESS THEM?

26 MR. MCMILLAN: YOUR HONOR, OVER THE -- WE  
27 MIGHT BE ABLE TO DO IT SOMEWHAT PIECEMEAL -- OVER THE  
28 LUNCH BREAK I WAS ABLE TO LOOK AT THE MOTION, AT LEAST

1       INSOFAR AS IT RELATED TO THE IIED CLAIM AND, JUST AT  
2       FIRST GLANCE, IT APPEARS TO ME IT RAISES ONLY FACTUAL  
3       ISSUES.

4                AND THERE IS DISPUTED EVIDENCE IN THE RECORD,  
5       SO IT'S NOT CLEAR TO ME THAT THE MOTION FOR DIRECTED  
6       VERDICT, AS TO IIED, CAN BE GRANTED, AS A MATTER OF  
7       LAW. SO I THINK THAT WE CAN PROBABLY ADDRESS THE  
8       ARGUMENT IMMEDIATELY.

9                I DON'T KNOW THAT I WOULD DO A WHOLE LOT OF  
10       BRIEFING ON IT. I DON'T RECALL SEEING A LOT OF CASE  
11       LAW CITED ON IT IN THE DEFENDANT'S BRIEF ON THE ISSUE.

12               WITH RESPECT TO THE MOTION FOR DIRECTED  
13       VERDICT, WE SORT OF TALKED ABOUT THIS, OR AT LEAST THIS  
14       CONCEPT LEADING UP TO --

15               AND MIGHT EVEN HAVE BEEN, IF I'M REMEMBERING  
16       CORRECTLY, DURING SOME OF THE CONVERSATIONS THAT WE'VE  
17       HAD EARLIER, MAYBE EVEN A COUPLE WEEKS AGO -- ABOUT  
18       THIS CONCEPT THAT THE DEFENDANT'S BURDEN IS TO SHOW  
19       EXIGENCY.

20               THEY HAVE TO DO IT BY SPECIFIC PARTICULARIZED  
21       EVIDENCE, AND SPECULATIVE INJURY IS INSUFFICIENT -- OR  
22       SPECULATION, SPECULATION ABOUT AN INJURY IS  
23       INSUFFICIENT. AND THERE'S A WHOLE BODY OF VERY  
24       WELL-DEVELOPED CASE LAW AROUND THAT CONCEPT.

25               AND A LOT OF THE QUESTIONS THAT WE POSED TO  
26       MS. ROGERS AND MS. PENDER, BOTH IN THEIR VIDEO  
27       DEPOSITIONS AND THAT WERE PLAYED TO THE JURY, AND THEN  
28       ALSO LIVE, WHILE THEY TESTIFIED ON THE STAND, RELATED

1 TO THE ELEMENTS THAT REST WITH THE DEFENDANT TO PROVE.

2 AND MANY OF THOSE QUESTIONS WERE SPECIFICALLY  
3 TAILORED TO ELICIT RESPONSES WE BELIEVE ARE NECESSARY  
4 TO SHOW THAT THERE WAS SIMPLY NO EXIGENCY.

5 AND THAT NO REASONABLE SOCIAL WORKER IN THAT  
6 POSITION, UNDER THOSE CIRCUMSTANCES, COULD HAVE THOUGHT  
7 THERE WAS AN EXIGENCY, JUST BASED ON THEIR EVIDENCE,  
8 BASED ON THEIR CROSS, AND EVEN SOME OF THEIR DIRECT  
9 TESTIMONY.

10 AND WHAT WE'VE TRIED TO DO HERE IN THIS MOTION  
11 IS PULL OUT, FROM THE DAILY ROUGHS AND OTHER EVIDENCE  
12 THAT WAS PRESENTED, THE SPECIFIC WORDS AND PHRASES THEY  
13 USED IN THEIR TESTIMONY TO SHOW THAT THEY DO NOT MEET  
14 THEIR BURDEN.

15 SO OUR POSITION IS THAT, UNDER BOTH ARCY AND  
16 ROGERS, AND MAYBE EVEN WALLACE AND MABE, THEY CANNOT  
17 SHOW AN EXIGENCY. AND THAT ISSUE SHOULD BE RESOLVED,  
18 AS A MATTER OF LAW. THAT'S THE NUT OF IT.

19 THE COURT: SO MY QUESTION TO YOU,  
20 MR. MCMILLAN, HAD BEEN --

21 MR. MCMILLAN: I THINK I WAS NONRESPONSIVE.

22 THE COURT: WELL, I DON'T HAVE THE PRIVILEGE  
23 OF MAKING MOTIONS TO OBJECT ON THE GROUNDS OF  
24 NONRESPONSIVE, AND TO STRIKE. SO I'LL JUST -- I THINK  
25 IN SOME WAYS, IMPLICITLY, YOU'VE ANSWERED THE QUESTION.

26 MY QUESTION WAS, TO YOU, NOW, WITH THESE  
27 MOTIONS, WHEN DO YOU WANT TO ADDRESS THEM.

28 AND I TAKE IT FROM YOUR ANSWER, BECAUSE YOU

1 PARTIALLY, AT LEAST, ARGUED YOUR MOTION, THAT  
2 APPARENTLY YOU'D LIKE TO ADDRESS YOURS NOW. AND SO, ON  
3 YOUR MOTION, I PROBABLY REALLY NEED TO ASK THE DEFENSE  
4 BECAUSE THEY'RE THE ONES THAT NEED TO RESPOND.

5 WHEN I WAS ASKING YOU, I WAS THINKING MORE  
6 OF -- BUT IT WAS NOT EXPLICIT. I WAS THINKING MORE OF  
7 WHEN YOU WOULD LIKE TO ADDRESS THE DEFENDANT'S MOTION,  
8 TOO. BUT I CAN COME BACK TO THAT.

9 SO, MR. GUTERRES, MS. SWISS, ARE YOU THE ONE  
10 WHO WILL BE RESPONDING ON THESE?

11 MS. SWISS: WE HAVE YET TO FLIP A COIN. BUT  
12 AS FAR AS WHEN WE ARGUE THE MOTION, WE WILL BE PREPARED  
13 TO DO THAT TOMORROW MORNING. AND I BELIEVE OUR  
14 OPPOSITION IS ALREADY IN THE WORKS. IT SHOULD BE FILED  
15 THIS AFTERNOON.

16 THE COURT: ALL RIGHT. AND I DON'T KNOW  
17 WHETHER YOU WANT TO FILE ANY OPPOSITION TO THEIRS,  
18 BECAUSE YOU'RE PERFECTLY ENTITLED TO JUST ARGUE IT.

19 IN FACT, IT IS NOT UNCOMMON, MOTIONS FOR  
20 DIRECTED VERDICT ARE COMMONLY DONE ON ARGUMENT, WITHOUT  
21 POINTS AND AUTHORITIES. BUT THEY'RE ALSO COMMONLY DONE  
22 WITH POINTS AND AUTHORITIES. IN OTHER WORDS, THEY CAN  
23 BE DONE EITHER WAY.

24 JUST, IN ASKING THE QUESTION, SHOULD NOT BE  
25 TAKEN THAT I AM SUGGESTING THAT YOU WANT TO FILE OR  
26 SHOULD FILE POINTS AND AUTHORITIES. I THINK THE MOTION  
27 NEEDS TO STAND ON ITS OWN MERITS.

28 AND I HAD, OVER THE LUNCH HOUR, READ

1 DEFENDANT'S MOTION. AND ACTUALLY, BEFORE TAKING THE  
2 BENCH, I DID READ YOUR MOTION, ALTHOUGH I DID NOT HAVE  
3 THE OPPORTUNITY TO READ THE SUPPORTING CITATIONS  
4 THAT -- MOST OF WHICH ARE CITATIONS TO TESTIMONY.

5 ALTHOUGH I THINK MOST OF THE TESTIMONY I WAS  
6 FAMILIAR WITH. BUT I HAVEN'T READ THE WHOLE THING  
7 BECAUSE OF THAT.

8 SO THEY FEEL THEY'LL BE READY TO FILE AN  
9 OPPOSITION. I DON'T REALLY WANT TO ENCOURAGE REALLY  
10 ANY MORE PAPER. I'M GOING TO BE VACATING MY CHAMBERS  
11 SOON BECAUSE IT'S FILLED WITH PAPER FROM THIS CASE.

12 BUT THE MOTION WAS MADE IN WRITING AND, VERY  
13 CLEARLY, AS FAR AS I'M CONCERNED, EACH SIDE HAS THE --  
14 SHOULD HAVE THE OPPORTUNITY TO FILE THE OPPOSITION.

15 BECAUSE THE MOTIONS WERE MADE IN WRITING, I  
16 THINK IT'S ONLY APPROPRIATE THAT YOU SHOULD HAVE THE  
17 OPPORTUNITY. IT'D BE YOUR CHOICE WHETHER TO TAKE THE  
18 OPPORTUNITY OR NOT, OR RELY ON IT.

19 SO WHAT YOU WANT TO DO ON THEIR MOTION?

20 MR. MCMILLAN: I JUST HEARD FROM MR. PRAGER --  
21 I THINK WE CAN ARGUE IT ORALLY RIGHT NOW.

22 THE COURT: ALL RIGHT. AS STATED, I HAVE READ  
23 THE DEFENDANT'S MOTION FOR DIRECTED VERDICT REGARDING  
24 PLAINTIFF'S DISABILITY, DISCRIMINATION, AND INTENTIONAL  
25 INFLECTION AND EMOTIONAL DISTRESS CLAIMS.

26 WHO IS GOING TO ADDRESS THAT? WILL THAT BE  
27 YOU, MS. NAU?

28 MS. NAU: IT IS, YOUR HONOR.

1 THE COURT: I READ THE MOTION IN ITS ENTIRETY.  
2 BEFORE WE HEAR FROM THE OTHER SIDE, IS THERE SOMETHING  
3 YOU WANT TO TELL ME THAT'S NOT IN YOUR MOTION?

4 MS. NAU: THERE'S NOT.

5 THE COURT: ALL RIGHT. WELL, YOU THEN HAVE  
6 THE OPPORTUNITY TO --

7 MS. NAU: YOUR HONOR, I'D LIKE TO CLARIFY.  
8 ALL OF THE EVIDENCE THAT'S CITED, MOST OF IT IS QUOTED.  
9 HOWEVER, I DO HAVE A COMPENDIUM, LIKE A DECLARATION  
10 ATTACHING ALL THIS STUFF THAT'S BEING FINALIZED AT OUR  
11 OFFICE NOW.

12 I DON'T EXPECT IT -- I DON'T KNOW THAT IT  
13 MATTERS TO YOU, BUT IF YOU WOULD PREFER TO WAIT FOR  
14 THOSE THINGS, THEY'LL BE FILED THIS AFTERNOON.

15 THE COURT: WHY DON'T WE DO THIS: WHY DON'T  
16 WE HEAR WHAT THE DEFENSE HAS TO SAY. AND AFTER WE HEAR  
17 WHAT THEY HAVE TO SAY, THEN WE CAN DISCUSS FURTHER  
18 WHETHER YOU SHOULD GO AHEAD AND FILE THE ADDITIONAL  
19 DOCUMENT BEFORE I RULE.

20 MS. NAU: THANK YOU, YOUR HONOR.

21 THE COURT: WE'RE HEARING THE ARGUMENT AT THIS  
22 TIME. I DON'T KNOW WHAT'S GOING TO HAPPEN AS A RESULT  
23 OF YOUR ARGUMENT. BUT I CAN TELL YOU WE'RE NOT  
24 STOPPING, NO MATTER WHAT, THE WORK THAT IS UNDERWAY,  
25 UNLESS YOUR MOTION IS GRANTED.

26 THEN CERTAIN THINGS WOULD NOT -- WOULD BE  
27 STOPPED. WHAT I'M GETTING AT IS, WE DON'T HAVE THE  
28 LUXURY OF HOLDING UP OTHER PREPARATIONS TO GET THIS

1 CASE TO THE JURY, IN THE EVENT THERE'S NOT AN IMMEDIATE  
2 RULING.

3 SO WE'LL FIND OUT. WE'LL HAVE THAT  
4 DISCUSSION.

5 THE MOTION -- DEFENDANT'S MOTION IS DIRECTED  
6 TO THE CLAIMS UNDER THE UNRUH ACT, ADA, AND THE REHAB  
7 ACT. AND I KNOW THOSE HAVE BEEN AN AREA THAT  
8 PLAINTIFF'S COUNSEL, AMONG THEMSELVES, HAVE DELEGATED  
9 TO MR. PRAGER.

10 HE GAVE THE OPENING STATEMENT ON IT,  
11 QUESTIONED THE WITNESSES ON IT, HAS BEEN WORKING ON THE  
12 VERDICT FORM, AND INSTRUCTIONS ON IT. SO I'M GOING TO  
13 ASK MR. PRAGER IF HE WOULD LIKE TO RESPOND TO THAT PART  
14 OF THE MOTION.

15 MR. PRAGER: THANK YOU, YOUR HONOR. I THINK  
16 MR. PARIS SHOULD, BUT I WILL.

17 THE COURT: I THINK WE SHOULD ALL GO HOME AND  
18 JUST LEAVE THIS TO MR. PARIS TO FIGURE OUT FOR ALL OF  
19 US. ALL RIGHT.

20 MR. PRAGER DID GIVE THE CLERK, WHO JUST PASSED  
21 TO ME, CERTAIN DOCUMENTS WHICH I BELIEVE I HAD RECEIVED  
22 PREVIOUSLY, BUT I THINK, AT LEAST, I REMEMBER SEEING  
23 THESE, BUT I WANT THE RECORD TO BE CLEAR.

24 MR. PRAGER: I'LL PUT THEM IN THE RECORD FOR  
25 THE COURT, YOUR HONOR. VERY QUICKLY. SORRY -- VERY  
26 SLOWLY AND DELIBERATELY.

27 THE COURT: SLOWLY WILL BE IMPORTANT, NOT ONLY  
28 FOR THE COURT REPORTER, BUT ALSO FOR ME.

1           LET ME POINT OUT JUST A COUPLE THINGS THAT I  
2           HAVE SOME CONCERN ABOUT, WHICH YOU CAN THEN ADDRESS IN  
3           YOUR ARGUMENT.

4           THE BASIS OF THE MOTION ON WHAT WE'LL CALL THE  
5           DISCRIMINATION CLAIMS IS THAT THEY CONTEND THERE IS NO  
6           EVIDENCE ESTABLISHING THAT PLAINTIFF WAS DENIED ANY  
7           COUNTY PROGRAMS OR SERVICES ON THE BASIS OF HER  
8           PERCEIVED DISABILITIES.

9           IN EACH OF THE THREE DIFFERENT BASES FOR THE  
10          DISABILITY CLAIMS, IN THE ONE RELATING TO THE ADA, ONE  
11          OF THE PROVISIONS OF THE ADA IS THAT, TO ESTABLISH A  
12          CLAIM -- I'M SKIPPING THE FIRST TWO ELEMENTS BUT  
13          GETTING TO NUMBER THREE --

14          THAT THE PARTY MAKING THE CLAIM WAS EITHER,  
15          "EXCLUDED FROM PARTICIPATION IN, OR DENIED THE BENEFITS  
16          OF THE PUBLIC ENTITY'S SERVICES, PROGRAMS, ACTIVITIES,  
17          OR WAS OTHERWISE DISCRIMINATED AGAINST BY THE PUBLIC  
18          ENTITY."

19          IT SEEMS TO ME THAT THE LATTER PHRASE, "OR WAS  
20          OTHERWISE DISCRIMINATED AGAINST BY THE PUBLIC ENTITY,"  
21          IS A BROADER AND MORE GENERAL STATEMENT OF THE BASIS  
22          FOR RECOVERY.

23          IN OTHER WORDS, RECOVERY UNDER THE ADA ISN'T  
24          LIMITED TO THE FAILURE TO PROVIDE THE BENEFIT OF A  
25          PUBLIC ENTITY'S SERVICES, PROGRAMS OR ACTIVITIES.  
26          THERE IS, UNDER THE REHAB ACT, AGAIN, A THIRD ELEMENT  
27          AS SET FORTH IN THE MOTION -- I THINK WE ALL AGREE THIS  
28          IS TRUE --



1           ALSO INDICATES THAT TO ESTABLISH A CLAIM UNDER  
2 THAT ACT, THE PARTY MAKING THE CLAIM MUST SHOW THAT --  
3 IN THIS INSTANCE, "SHE" -- WAS "DENIED THE BENEFIT OR  
4 SERVICES SOLELY BY REASON OF HIS OR HER HANDICAP." AND  
5 I THINK THE -- THIS LANGUAGE IS ALSO OF A BROAD NATURE,  
6 INDICATING THAT IT CAN BE SERVICES.

7           I READ THAT PROVISION AS NOT REQUIRING A  
8 SHOWING OF A SPECIFIC PROGRAM THAT WAS AVAILABLE, AS  
9 OPPOSED TO OTHER SERVICES THAT WOULD OTHERWISE BE  
10 PROVIDED TO, BASICALLY, EVERYBODY ELSE.

11           AND THEN, UNDER THE UNRUH ACT, AND MS. NAU HAS  
12 ONE SET FORTH, THIS FOR US, SO IT'S ALL IN THIS ONE  
13 DOCUMENT, SAYS THAT THE PLAINTIFF MUST ESTABLISH THAT  
14 SHE WAS DENIED "THE FULL AND EQUAL ACCOMMODATIONS,  
15 ADVANTAGES, FACILITIES, PRIVILEGES OR SERVICES IN THE  
16 BUSINESS ESTABLISHMENT."

17           AND I ALSO CONSIDER THAT TO BE RATHER BROAD  
18 LANGUAGE THAT GOES BEYOND SPECIFIC, IDENTIFIABLE  
19 PROGRAMS.

20           SO I'M STARTING OUT BY TELLING YOU THAT I  
21 DON'T KNOW WHAT YOU'RE GOING TO ARGUE TO ME, BUT IN  
22 LOOKING AT THE MOTION, I THINK THAT THE REQUIREMENTS  
23 FOR PROVING A CLAIM UNDER EACH OF THESE STATUTES IS  
24 BROADER THAN JUST SPECIFIC PROGRAMS.

25           AND THAT THE DISCUSSION IN THE MOTION IS THAT  
26 THE PLAINTIFF CAN'T SHOW -- CAN'T SHOW SHE WAS DENIED  
27 COUNTY SERVICES OR PROGRAMS. THAT MAY OR MAY NOT BE  
28 TRUE. BUT SERVICES IS A BROADER WORD. AND MY

1 UNDERSTANDING IS THAT MAY BE THE BASIS OF A CLAIM.

2 AND THE -- IT GOES ON TO POINT OUT, WHICH I  
3 THINK IS ALSO TRUE, DEPENDENCY PROCEEDINGS ARE NOT  
4 THEMSELVES SERVICES. WELL, THAT'S TRUE, BUT I DON'T  
5 THINK THAT ANSWERS THE QUESTION, AS FAR AS I'M  
6 CONCERNED.

7 AND THEN, THERE WAS NO EVIDENCE THAT THE  
8 JUVENILE COURT'S DECISIONS TO DETAIN RYAN AND/OR  
9 TERMINATE THE PLAINTIFF'S PARENTAL RIGHTS ARE BASED ON  
10 THE ALLEGED DISCRIMINATION BY THE SOCIAL WORKERS. AND  
11 I THINK THAT'S TRUE AS WELL.

12 AND THIS IS AN AREA THAT MAY BE SAYING MORE  
13 THAN NECESSARY, BUT I THINK NOT. I DON'T THINK THAT --  
14 IF YOUR CLAIM IS LIMITED TO A JUVENILE COURT'S DECISION  
15 TO TERMINATE THE PARENTAL RIGHTS, IF THAT IS THE BASIS  
16 AND THE FOUNDATION OF YOUR CLAIM, THEN I DON'T THINK  
17 THAT THE CLAIM COULD PROCEED.

18 BECAUSE I DON'T BELIEVE THAT THERE'S ANY  
19 EVIDENCE THAT WOULD PERMIT ANYONE, OTHER THAN BY PURE  
20 SPECULATION, TO DETERMINE THAT YOUR -- THAT THE  
21 JUVENILE COURT'S DECISIONS HAVEN'T BEEN SHOWN TO BE  
22 BASED ON WHATEVER THE SOCIAL WORKERS DID.

23 I'M NOT STATING THAT VERY WELL. SO WHAT I'M  
24 GETTING AT IS, AT LEAST ONE OF THE THINGS THAT --

25 BECAUSE I'M NOT CERTAIN OF ALL THE BASES ON  
26 WHICH YOU'RE MAKING THE CLAIM, BUT IF YOUR CLAIM IS  
27 BASED ON SOMETHING ARISING OUT OF THE JUVENILE COURT'S  
28 DECISION, IF IT'S BASED ON A DECISION REQUIRING CERTAIN

1 THINGS TO OCCUR, AND THEY DIDN'T OCCUR, THAT MAY BE A  
2 DIFFERENT SUBJECT.

3 BUT IF IT'S BASED ON THE FAILURE OF THE  
4 JUVENILE COURT TO ORDER A CERTAIN SERVICE TO BE  
5 PROVIDED, I DON'T THINK THAT WOULD BE PERMISSIBLE.

6 BUT MY UNDERSTANDING OF YOUR CASE, MR. PRAGER,  
7 IS THAT IT ISN'T BASED ON THAT. IT'S BASED ON  
8 SOMETHING ELSE. THAT'S WHAT I'D LIKE TO HEAR FROM YOU.

9 MR. PRAGER: THANK YOU, YOUR HONOR. THE TRUTH  
10 IS THAT MS. DUVAL WAS DENIED SERVICES, GIVEN LESSER  
11 SERVICES AND UNEQUAL TREATMENT BECAUSE OF HER  
12 DISABILITY.

13 THE FIRST PIECE OF EVIDENCE THAT'S BEEN  
14 ADMITTED, AND THERE IS AN IMPORTANT POINT HERE: WE ARE  
15 NOT DONE ADMITTING EVIDENCE IN THIS CASE.

16 SO TO HAVE THE DIRECTED VERDICT THIS MINUTE  
17 MEANS THAT SOME INFORMATION IS STILL PENDING BEFORE THE  
18 COURT, SO WE DON'T KNOW IF THE JURY WOULD BE ABLE TO  
19 HEAR THAT INFORMATION OR NOT.

20 THE COURT: ALL RIGHT, THEN I THINK WE'LL NOT  
21 GO ANY FURTHER BECAUSE YOU'RE REFERRING TO THE FACT  
22 THAT ALL -- THERE'S NOT BEEN A RULING ON ALL EXHIBITS.

23 MR. PRAGER: BECAUSE SOME OF THE EXHIBITS THAT  
24 I COULD REFER TO ARE STILL PENDING. FOR  
25 EXAMPLE, 343 --

26 THE COURT: YOU DON'T HAVE TO GIVE ME AN  
27 EXAMPLE.

28 I'M AWARE, HAVING GONE THROUGH OUR LIST THIS

1 MORNING WITH MR. PARIS, AS WELL AS YOU, BUT PRIMARILY  
2 MR. PARIS AND MR. MCMILLAN, THERE ARE A NUMBER OF  
3 EXHIBITS ON THE LIST TO BE ADDRESSED WHICH WE  
4 SPECIFICALLY DESIGNATED TO BE ADDRESSED BY YOU.

5 BECAUSE YOU WERE ENGAGED IN A DIFFERENT DAY  
6 JOB, WE DIDN'T HAVE A CHANCE TO GET TO THEM. SO I  
7 THINK ON YOUR ARGUMENT ON THAT, WE'LL GO NO FURTHER.

8 ON THE CLAIM, MR. MCMILLAN, IF YOU'RE THE ONE  
9 TO ADDRESS THE INTENTIONAL INFLECTION, WE CAN DO THAT  
10 NOW, OR WE CAN DO IT WHEN WE RETURN TO MR. PRAGER.

11 MR. MCMILLAN: I'M OKAY DOING IT NOW.

12 THE COURT: I'M HAPPY TO HEAR IT NOW. I WILL  
13 BE ABLE TO UNDERSTAND YOUR ARGUMENT AND REMEMBER IT  
14 TOMORROW.

15 MR. MCMILLAN: SURE. FAIR ENOUGH. I'VE  
16 ALREADY COVERED SOME OF THE ARGUMENT. JUST REVIEWING  
17 IT AGAIN HERE WHILE MR. PRAGER WAS PRESENTING. AND IT  
18 SEEMS TO ME THAT THE MOTION WAS FOCUSED ON THE INTENT  
19 OF THE PARTIES, WHICH IS CUSTOMARILY A QUESTION FOR THE  
20 JURY.

21 AND THEN, THE SECOND PART OF IT SAYS THERE'S  
22 NO EVIDENCE THAT THE CONDUCT OF THE DEFENDANTS ACTUALLY  
23 CAUSED SEVERE EMOTIONAL DISTRESS.

24 WELL, I THINK MR. BUDIN SPECIFICALLY TESTIFIED  
25 ABOUT WHAT CAUSED MS. DUVAL'S EMOTIONAL DISTRESS. AND  
26 THERE WERE SEVERAL DIFFERENT STRESSORS OVER THE COURSE  
27 OF TIME, THE FIRST ONE, OBVIOUSLY, BEING THE SEIZURE OF  
28 THE CHILD.

1           BUT THEN HE ALSO TESTIFIED ABOUT HOW THE  
2 CONDUCT OF MS. SCHEELE AT SOME OF THESE VISITS, WHERE  
3 MS. DUVAL TESTIFIED SHE WAS HARASSED BY MS. SCHEELE IN  
4 VARIOUS DIFFERENT WAYS --

5           AND WE TALKED ABOUT SOME OF THOSE EARLIER IN  
6 THE DAY -- THAT THOSE ALSO CAUSED FURTHER  
7 DECOMPENSATION, EMOTIONAL DECOMPENSATION IN MS. DUVAL.

8           AND THEN THERE WAS ALSO TESTIMONY ABOUT WHEN  
9 SHE WOULD GET THESE REPORTS AND LOOK AT THEM. AND IN  
10 IT, THERE WERE SOME HEINOUS THINGS SAID THAT JUST  
11 WEREN'T TRUE, AND THAT, IN AND OF ITSELF --

12           I THINK IT'S ARTHUR MILLER, THE DEATH OF A  
13 SALESMAN. THE QUOTE IS, "WHAT'S IN MY NAME." I DON'T  
14 KNOW THE REST OF IT, OTHER THAN, "AT LEAST LEAVE ME MY  
15 NAME." SO THE VALUE, THE HUMAN VALUE OF NOT BEING LIED  
16 ABOUT, SEPARATE AND APART FROM WHATEVER THE RESULT OF  
17 THE LIE IS.

18           WHEN SOMEBODY LIES ABOUT YOU, AND YOU MAY EVEN  
19 HAVE SEEN THIS -- I'M GUILTY. IN ME. I TAKE PERSONAL  
20 OFFENSE WHEN SOMEBODY DOES THAT TO ME, AND I THINK I  
21 EVEN DID THAT HERE IN COURT, AND I APOLOGIZE FOR THAT.  
22 I KNOW WHEN IT HAPPENED, IT'S SPECIFIC IN MY MIND.

23           BUT IT'S A HUMAN REACTION THAT WE'RE LOOKING  
24 AT WHEN WE'RE TALKING ABOUT SEVERE EMOTIONAL DISTRESS.  
25 AND WHETHER IT'S IN THE FORM OF DEROGATORY OR FALSE  
26 STATEMENTS OR ACTIONS, WHATEVER IT IS, THAT GIVES RISE  
27 TO AN EMOTIONAL RESPONSE.

28           SEPARATE AND APART FROM WHETHER THE CHILD'S

1 REMOVED OR LOST OR WHATEVER IT IS, JUST THE LAYING OF  
2 THE LASH ON THE BACK IS ENOUGH TO CAUSE A HARM.

3 THE COURT: ALL RIGHT. LET ME -- IF I'M  
4 INTERRUPTING YOUR ARGUMENT, PERHAPS I AM -- THE MOTION  
5 ON THIS PARTICULAR CLAIM IS BASED ON THE ALLEGED  
6 FAILURE TO ESTABLISH THE ELEMENTS OF INTENT AND  
7 CAUSATION.

8 I NOTICED, IN LOOKING AT VERDICT FORM ONE,  
9 WHICH WE HAVEN'T ADOPTED YET, THAT IN, I THINK IT'S  
10 QUESTION NUMBER ONE, AND I DON'T HAVE IN FRONT OF ME,  
11 BUT QUESTION NUMBER ONE ASKED THE JURY TO DECIDE IF  
12 THEY INTENDED TO DO CERTAIN -- CERTAIN -- SOMETHING.

13 IF YOU LOOK AT THE CACI FORM FOR VERDICT ON  
14 THIS CLAIM, IT WILL REMIND ALL OF US THAT THERE'S TWO  
15 BASES FOR FINDING AN INTENTIONAL INFLICTION OF  
16 EMOTIONAL DISTRESS.

17 ONE IS THROUGH INTENT AND THE OTHER IS -- HAD  
18 TO DO WITH RECKLESS DISREGARD. AND BOTH THOSE  
19 QUESTIONS ARE INCLUDED IN THE FORM VERDICT, AND SHOULD  
20 BE AND, I BELIEVE, ARE INCLUDED IN THE CACI  
21 INSTRUCTION. WE'LL TAKE A LOOK BACK AT IT. I DIDN'T  
22 CHECK THE INSTRUCTION.

23 MR. MCMILLAN: THE VERDICT FORM DOES NOT HAVE  
24 IT, YOUR HONOR.

25 THE COURT: IT DOES NOT. THAT'S BEEN POINTED  
26 THAT OUT. BUT I THINK THAT MAY BE A FLAW IN THE  
27 VERDICT FORM. AND I'LL CHECK THE CACI INSTRUCTION --  
28 I'VE GOT IT RIGHT HERE, LET ME TAKE A LOOK.

1           MR. MCMILLAN: YOUR HONOR, IT'S ACTUALLY UNDER  
2 ELEMENT 1600, ELEMENT NUMBER 2, THAT "NAME OF  
3 DEFENDANT" INTENDED TO CAUSE EMOTIONAL DISTRESS, OR  
4 THAT "NAME OF DEFENDANT" ACTED WITH RECKLESS DISREGARD  
5 OF THE PROBABILITY THAT "NAME OF PLAINTIFF" WOULD  
6 SUFFER.

7           THE COURT: YES. SO MY POINT IN RAISING THIS  
8 IS -- MS. NAU WANTS TO SPEAK. BUT MY POINT IN RAISING  
9 THIS IS THAT THE MOTION WAS BASED ON THE INTENTION,  
10 THAT THERE'S A FAILURE TO ESTABLISH INTENT OR  
11 CAUSATION.

12           I'LL HEAR FROM YOU IN A MOMENT, MS. NAU. I'LL  
13 TRY NOT TO BE UNNECESSARILY VERBOSE.

14           IT DID OCCUR TO ME, IN LOOKING AT THIS, THAT  
15 ONE, EVEN IF THERE WAS A FAILURE OR ABSENCE OF PROOF OF  
16 INTENT, THAT DOESN'T ENTITLE -- THAT DOESN'T MEAN THE  
17 CLAIM FAILS, BECAUSE IT COULD BE BASED ON RECKLESS  
18 DISREGARD.

19           RECKLESS DISREGARD, IN TURN, IS DEFINED BY  
20 CACI, ONE OF THE INSTRUCTIONS THAT I MADE A NOTE THAT  
21 WE WOULD INCLUDE. BUT MY POINT IN RAISING THAT IS THAT  
22 RECKLESS DISREGARD WAS NOT EVEN MENTIONED IN THE  
23 MOTION.

24           ON THE ISSUE OF CAUSATION, I DO -- I LOOK AT  
25 IT AS BEING A QUESTION OF FACT, AT LEAST AS TO, IN  
26 LIGHT OF WHAT OCCURRED, WAS THAT A SUBSTANTIAL FACTOR  
27 IN CAUSING HARM.

28           SO AS TO THIS CAUSE OF ACTION ONLY, I HAD A

1 CONCERN AFTER READING IT, WHETHER I REALLY NEEDED TO  
2 HEAR A LOT OF ARGUMENT, BUT I DIDN'T WANT TO DEPRIVE  
3 YOU OF THE OPPORTUNITY.

4 AND I WANTED TO GIVE MS. NAU SOMETHING TO BE  
5 ABLE TO RESPOND TO, WHICH WERE MY OWN CONCERNS, THAT  
6 MS. NAU, I THINK THE BASIS FOR INTENTIONAL INFLICTION  
7 CAN BE EITHER INTENT, AND --

8 PUTTING ASIDE, FOR THE MOMENT, WHETHER THERE'S  
9 SUFFICIENT EVIDENCE WHICH, CIRCUMSTANTIALLY, COULD  
10 PERMIT A JURY TO DETERMINE THAT CERTAIN THINGS WERE  
11 INTENDED -- ON THE ISSUE OF RECKLESS DISREGARD, IT'S  
12 NOT ADDRESSED IN THE MOTION. AND THAT IS ANOTHER  
13 BASIS.

14 MS. NAU: YOUR HONOR, I -- WE WENT OVER THIS  
15 ELEMENT. IT WAS INITIALLY IN PLAINTIFF'S VERDICT FORM,  
16 THE RECKLESS DISREGARD, AND IF YOU LOOK AT THE CACI,  
17 THE RECKLESS DISREGARD STANDARD IS ONLY APPLICABLE IN  
18 CASES WHERE CONDUCT IS DIRECTED AT A THIRD PARTY.

19 AND SO THE INSTRUCTION IS -- AND THAT'S WHY WE  
20 OMITTED LAST WEEK WHEN WE WENT OVER THESE ELEMENTS,  
21 THAT'S WHY WE DECIDED THAT THAT ELEMENT WAS NOT  
22 APPLICABLE IN THIS CASE. INTENTIONAL CONDUCT IS  
23 REQUIRED WHEN THE IIED CLAIM IS A DIRECT CLAIM.

24 THE COURT: AND I UNDERSTAND WHAT -- I DO  
25 UNDERSTAND WHAT THE WORDING IS IN CACI. SO GO AHEAD,  
26 NOW, AND ADDRESS OTHER POINTS.

27 MS. NAU: SO OUR POSITION IS THAT INTENTIONAL  
28 CONDUCT IS REQUIRED. AND TO THE EXTENT -- THE



1 DIFFICULTY HERE IS THAT PLAINTIFF'S IIED CLAIM HAS BEEN  
2 A NUMBER OF DIFFERENT THINGS AND BASED ON A NUMBER OF  
3 DIFFERENT FACTS.

4 TO THE EXTENT THAT THE IIED CLAIM IS BASED ON  
5 THE DEFENDANTS' REPORTING OF HER CONDITIONS, OF HER  
6 TREMORS CONDITION, HER MUNCHAUSEN SYNDROME BY PROXY,  
7 WHICH IS THE ONLY CONDUCT ALLEGED ON THE PART OF  
8 CANDIS NELSON THAT, EVEN THEORETICALLY, COULD RISE TO  
9 THAT LEVEL.

10 THAT IS NOT CONDUCT THAT'S INTENDED TO CAUSE  
11 MS. DUVAL EMOTIONAL DISTRESS. AND THERE'S NO EVIDENCE  
12 OF THAT. BOTH MS. SCHEELE AND MS. NELSON TESTIFIED  
13 THAT THE REASON FOR THEIR REPORTING WHAT THEY DID IS  
14 BECAUSE OF WHAT THEY OBSERVED.

15 AND MS. SCHEELE, IN FACT, HER OBSERVATIONS  
16 WERE NOT MADE DIRECTLY TO THE JUVENILE COURT. HER  
17 OBSERVATIONS WENT INTO HER DELIVERED SERVICE LOGS.

18 SHE FILED ONE COURT REPORT THAT HAD NOTHING  
19 WHATSOEVER TO DO WITH THESE ISSUES. SO TO THE EXTENT  
20 THAT PLAINTIFF'S CLAIM IS BASED ON THE REPORTS, THE  
21 INTENTION ELEMENT HAS NOT BEEN SATISFIED.

22 TO THE EXTENT HER CLAIM IS BASED ON SOMETHING  
23 ELSE, SOME OTHER -- THE INTERACTIONS, I KNOW  
24 MR. MCMILLAN HAS IDENTIFIED SOME AS AGAINST  
25 MS. SCHEELE, I HAVEN'T HEARD ANYTHING REGARDING  
26 MS. NELSON, ANY OTHER CONDUCT, OTHER THAN HER WRITING  
27 THESE REPORTS.

28 THE CAUSATION ELEMENT HAS NOT BEEN SATISFIED

1 BECAUSE THERE'S NO EVIDENCE THAT THAT CONDUCT CAUSED  
2 PLAINTIFF SEVERE EMOTIONAL DISTRESS. AND I KNOW WE'VE  
3 BROUGHT UP THE ISSUE ON NON-SUIT OF CONDUCT RISING TO  
4 THE LEVEL OF EXTREME AND OUTRAGEOUS.

5 AT THE TIME, PERHAPS WE DIDN'T UNDERSTAND  
6 PLAINTIFF'S CLAIM TO BE -- IF IT IS, YOU KNOW,  
7 INTERACTIONS WITH MS. SCHEELE IN THIS HARASSING  
8 ENVIRONMENT, THAT DOES NOT RISE TO THE LEVEL REQUIRED  
9 FOR INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS.

10 AND THAT'S NOT, IN OUR VIEW, A QUESTION FOR  
11 THE JURY. THERE'S CASE LAW THAT SAYS NAME-CALLING AND  
12 STUFF LIKE THAT DOES NOT RISE TO THE LEVEL OF CONDUCT  
13 THAT'S REQUIRED FOR THIS CLAIM.

14 SO THE DEFENDANT'S MOTION IS TWOFOLD, AND  
15 THAT'S BECAUSE PLAINTIFF'S THEORIES SEEM TO BE TWOFOLD.

16 AND IN ANY EVENT, WHETHER THIS CLAIM PROCEEDS  
17 OR NOT, IF IT IS ON A VERDICT FORM, I THINK IT NEEDS TO  
18 BE CLARIFIED FOR THE JURY WHAT THEY'RE DECIDING, WHAT  
19 IS THE CONDUCT AT ISSUE IN THIS CLAIM.

20 I THINK THERE ARE REASONS TO DENY THE CLAIM,  
21 NO MATTER WHAT IT'S BASED ON, WHICH WE'VE GONE OVER.

22 THE COURT: GO AHEAD.

23 MS. NAU: I'D LIKE TO ADD ONE MORE THING,  
24 YOUR HONOR.

25 WITH REGARD TO CACI 1605, WHICH PROVIDES AN  
26 AFFIRMATIVE DEFENSE FOR PRIVILEGED CONDUCT, TO THE  
27 EXTENT THAT PLAINTIFF'S CLAIM IS BASED ON REPORTS TO  
28 THE COURT -- AND AGAIN, THAT'S THE ONLY BASIS FOR THE

1 CLAIM AGAINST MS. NELSON THAT I'VE HEARD --

2 THAT IS PRIVILEGED CONDUCT, PRIVILEGED BY  
3 CIVIL CODE SECTION 47, WHICH IS AN ISSUE OF LAW FOR THE  
4 COURT TO DECIDE, AS I'M TOLD.

5 THE COURT: LET ME ASK YOU ONE MORE QUESTION,  
6 THEN. MR. MCMILLAN REALLY WANTS TO HAVE HIS SAY.

7 I'LL GET BACK TO YOU, MR. MCMILLAN.

8 MR. MCMILLAN: THANK YOU.

9 THE COURT: THIS IS A SOMEWHAT GENERAL  
10 QUESTION:

11 WHEN YOU SAY THAT INTENT HASN'T BEEN PROVEN,  
12 WOULD YOU AGREE WITH ME THAT, IN MOST INSTANCES, INTENT  
13 WOULD HAVE TO BE INFERRED FROM THINGS THAT OCCURRED,  
14 BECAUSE IT IS VERY RARE THAT SOMEBODY WILL SAY, YEAH, I  
15 REALLY INTENDED TO GET YOU?

16 IN OTHER WORDS, IN OTHER CIRCUMSTANCES, EVEN  
17 OTHER CIRCUMSTANCES, IT'S PRETTY RARE PEOPLE ADMIT THAT  
18 THEY'RE INTENDING TO CAUSE SOME HARM TO SOMEBODY.

19 SO I'M PRETTY SURE YOU WOULD AGREE WITH ME YOU  
20 HAVE TO LOOK TO SEE, FROM THE CIRCUMSTANCES, THAT THE  
21 CIRCUMSTANCES ARE SUFFICIENT THAT SOMEONE COULD INFER  
22 THE REQUIRING INTENT.

23 WOULD YOU AGREE WITH THAT?

24 MS. NAU: SOMEWHAT.

25 THE COURT: TELL ME WHY NOT ENTIRELY.

26 MS. NAU: THE ELEMENT ISN'T JUST INTENDED  
27 CONDUCT. IT'S INTENDED TO CAUSE EMOTIONAL DISTRESS.  
28 AND YOU'RE RIGHT, WE LOOKED TO THE CIRCUMSTANCES, BUT

1 TO THE EXTENT THAT IT'S WRITING THINGS IN COURT  
2 REPORTS, THERE IS NO --

3 THE COURT: I'M NOT TALKING ABOUT THE COURT  
4 REPORTS RIGHT NOW. I UNDERSTAND YOUR POINT THERE, AND  
5 THAT -- I ALREADY STARTED OUT BEFORE --

6 ON THE DISCRIMINATION CLAIMS, IN INDICATING  
7 THAT I DON'T THINK THAT, ON THE DISCRIMINATION CLAIMS,  
8 THAT IT IS A SUFFICIENT BASIS FOR THOSE THAT, IF THE  
9 JUVENILE COURT DID NOT PROVIDE OR ORDER SOME SERVICE.

10 BECAUSE I'M NOT GOING TO -- I JUST DON'T  
11 THINK, AS WE HAD THIS DISCUSSION BEFORE ON OTHER  
12 SUBJECTS, THAT YOU EVER LET THE JURY SPECULATE AS TO  
13 WHAT A JUDICIAL OFFICER DID.

14 SO I'M NOT TALKING ABOUT THAT. AND FOR THE  
15 MOMENT, I UNDERSTAND YOU'RE CLAIMING, AT LEAST AS TO  
16 NELSON, AND PERHAPS AS TO BOTH, BUT AT LEAST TO ONE OR  
17 MORE, THAT THE -- ANY CLAIMED INFLICTION OF EMOTIONAL  
18 DISTRESS CAN'T BE BASED ON REPORTING TO THE COURT  
19 BECAUSE OF SECTION 47 PRIVILEGE.

20 CORRECT?

21 MS. NAU: THAT'S RIGHT.

22 THE COURT: OKAY. SO -- I'VE GOT ANOTHER  
23 MATTER THAT I'VE GOT TO GET TO.

24 JUST GOING BACK TO THE QUESTION, PUTTING ASIDE  
25 WHATEVER PRIVILEGE MIGHT APPLY TO REPORTING TO THE  
26 COURT, AND I'VE TOLD YOU GENERALLY, AND I'VE SAID THIS  
27 THROUGHOUT THE CASE PRETTY CONSISTENTLY, I DON'T  
28 THINK --

1 I'M NOT AWARE OF ANY CIRCUMSTANCE IN WHICH YOU  
2 LET A JURY SPECULATE WHAT A JUDICIAL OFFICER WOULD HAVE  
3 DONE.

4 I THINK IF THAT EVER BECOMES AN ISSUE, AS IT  
5 DID IN THE "BUT FOR" ANALYSIS, THAT THAT IS A LEGAL  
6 ISSUE, WHICH AN ISSUE OF LAW WITHIN THE PROVINCE OF THE  
7 COURT AND NOT THE JURY.

8 SO LET ME JUST GO BACK TO THIS ISSUE OF  
9 INTENT. IT JUST SEEMED TO ME THAT ALMOST NEVER DO YOU  
10 GET SOMEONE ADMITTING THEY INTENDED, SPECIFICALLY, TO  
11 HARM SOMEONE. ONCE IN A WHILE, IT DOES, SOMETIMES  
12 MAYBE IN THE HEAT OF PASSION, SOMETHING LIKE THAT, BUT  
13 BY AND LARGE, YOU DON'T.

14 AND SO, IN MY EXPERIENCE, IN THE GREAT  
15 MAJORITY OF INSTANCES WHERE INTENT IS INVOLVED, YOU  
16 HAVE TO LOOK AT WHAT OCCURRED, THE CIRCUMSTANCES, TO  
17 DETERMINE, ON AN ISSUE LIKE THIS, IS THERE A SUFFICIENT  
18 BASIS IN THE CIRCUMSTANCES THAT A TRIER OF FACT COULD  
19 INFER INTENT.

20 I'M NOT ARGUING WITH YOU, SO MUCH AS JUST  
21 TRYING TO HAVE A DISCUSSION ABOUT IT.

22 MS. NAU: I'M IN GENERAL AGREEMENT WITH YOU.  
23 TO THE EXTENT WE'RE NOT TALKING ABOUT COURT REPORTING,  
24 THAT KIND OF THING, IF WE'RE TALKING ABOUT A  
25 PERSON-TO-PERSON INTERACTION, I BELIEVE THAT THE INTENT  
26 CAN BE INFERRED.

27 OUR ISSUE ON THOSE CLAIMS, AS WE UNDERSTAND  
28 THEM, THE INTERACTIONS WITH MS. SCHEELE, GOES TO THE

1 OTHER ELEMENTS OF THE IIED CLAIM, WHICH IS THE  
2 CAUSATION OF HER SUFFERING SEVERE EMOTIONAL DISTRESS.

3 THE COURT: AND IF I'M ALSO UNDERSTANDING YOUR  
4 ARGUMENT, YOU'RE ALSO SUGGESTING, IN ANY EVENT, THAT  
5 EACH OF THESE TWO DEFENDANTS NEED TO BE TREATED  
6 SEPARATELY, THAT IS, ON THEIR OWN MERITS.

7 IN OTHER WORDS, OF THE -- IT'S POSSIBLE THAT  
8 YOUR MOTION BE GRANTED AS TO ONE AND NOT AS TO ANOTHER.  
9 BECAUSE EACH IS ENTITLED TO THEIR OWN INDEPENDENT  
10 CONSIDERATION.

11 MS. NAU: YES, YOUR HONOR.

12 THE COURT: SO GIVE ME THE LAST NOTE THERE,  
13 BECAUSE I NEED TO -- I WANT TO HEAR FROM MR. MCMILLAN.

14 BUT I DO HAVE TWO ATTORNEYS HERE I NEED TO SEE  
15 ON ANOTHER MATTER THAT HAS ALREADY BEEN DELAYED BECAUSE  
16 OF THIS CASE, AND I'M TRYING TO FIND A SOLUTION FOR  
17 THEM.

18 AND I HAVE ANOTHER, FURTHER PROBLEM, WHICH IS  
19 WHY YOU'RE HERE. I'LL TALK TO YOU ABOUT IT IN A  
20 MINUTE. GO AHEAD.

21 MS. NAU: WE DO THINK THAT EACH DEFENDANT'S  
22 CLAIM SHOULD BE EVALUATED ON ITS MERITS.

23 TO THE EXTENT WE'RE NOT TALKING ABOUT WRITING  
24 IN COURT REPORTS, THERE'S ABSOLUTELY NO CONDUCT ON THE  
25 PART OF MS. NELSON THAT'S BEEN INTRODUCED IN EVIDENCE  
26 THAT WOULD RISE TO THE LEVEL OF EXTREME AND OUTRAGEOUS  
27 OR HAVE CAUSED PLENTY OF EMOTIONAL DISTRESS.

28 THE COURT: OKAY. SO, MR. MCMILLAN, YOU HAD

1 SOMETHING YOU WANTED TO SAY. SAY IT SUCCINCTLY.

2 MR. MCMILLAN: VERY QUICKLY. TO THE EXTENT  
3 YOUR HONOR IS CONSIDERING A CIVIL CODE 47 ISSUE,  
4 GOVERNMENT CODE SECTION 820.21 SPECIFICALLY PROVIDES,  
5 IN THE CONTEXT OF THIS SORT OF CASE WHERE WE'RE DEALING  
6 WITH SOCIAL WORKERS DOING THINGS, MAKING STATEMENTS,  
7 COMMUNICATING, THOSE SORTS OF THINGS --

8 THE COURT: THERE ARE CERTAIN THINGS THAT ARE  
9 STILL ACTIONABLE IF DONE WITH MALICE.

10 MR. MCMILLAN: CORRECT. IN FACT, IT  
11 SPECIFICALLY SAYS, "NOTWITHSTANDING ANY OTHER PROVISION  
12 OF LAW, THE CIVIL IMMUNITIES --"

13 THE COURT: I'M FAMILIAR WITH IT BECAUSE YOU  
14 EDUCATED ME.

15 MR. MCMILLAN: THANK YOU, YOUR HONOR.

16 THAT'S THE FIRST POINT. SECONDARILY, ON THE  
17 RECKLESS ISSUE, I'VE GOT THE JURY INSTRUCTION USE NOTES  
18 HERE FOR 1600. IT SAYS ABSOLUTELY NOTHING ABOUT THIRD  
19 PARTIES.

20 WHAT IT SAYS IS, "WHERE RECKLESS DISREGARD OF  
21 THE PLAINTIFF'S INTEREST IS THE THEORY OF RECOVERY, THE  
22 PRESENCE OF THE PLAINTIFF AT THE TIME THE OUTRAGEOUS  
23 CONDUCT OCCURS IS RECOGNIZED AS AN ELEMENT."

24 SO RECKLESS DISREGARD IS AVAILABLE. I DON'T  
25 HAVE A CLEAR RECOLLECTION OF WHY IT'S NOT ON THE  
26 VERDICT FORM.

27 THE COURT: WELL, MAYBE JUST SOMETHING THAT  
28 WE'VE OVERLOOKED AS WE'VE GONE ALONG.

1 MS. SWISS: WE DISCUSSED IT SPECIFICALLY LAST  
2 WEEK. THAT WAS PART -- I BELIEVE IT WAS IN THE FORM,  
3 AND WE TOOK IT OUT AFTER DISCUSSION. SO WE CAN  
4 CONTINUE THAT DISCUSSION BUT WE ALL -- ALL PARTIES AND  
5 THE COURT HAD THAT ISSUE.

6 THE COURT: ALL RIGHT. AT THIS POINT, THAT'S  
7 AS FAR AS I THINK WE CAN GO WITH THIS MOTION. AND I DO  
8 NEED TO GO OFF THE RECORD TO ADDRESS ANOTHER MATTER.

9 (PAUSE IN THE PROCEEDINGS)

10 THE COURT: WE'LL RETURN, THEN, TO THE  
11 DEFENDANT'S MOTION WHEN WE HAVE ALL THE EVIDENCE  
12 COMPLETED.

13 MR. PRAGER: REFLECTING ON IT, DO WE EXPECT TO  
14 FINISH TODAY? I WASN'T HERE -- I DON'T EVEN HOW FAR  
15 YOU GUYS GOT.

16 THE COURT: WE HAVE A FEW THAT THEY'RE STILL  
17 LOOKING INTO, BUT WE GOT -- WE ADDRESSED ALL OF THEM.  
18 THERE'S SOME WE HAVE TO GO BACK TO, LIKE EXHIBIT 24,  
19 WHAT PARTS ARE GOING TO COME IN. THE ONES WE HAVE LEFT  
20 ARE ON THE DISCRIMINATION CLAIMS.

21 MR. PRAGER: WITH THE TIME I HAD, BETWEEN THE  
22 SERVICE OF THE MOTION AND COMING BACK TO ADDRESS YOU, I  
23 THINK I CAN GIVE YOU A CASE, OR MAYBE TWO CASES, TO  
24 SUPPORT. THE INFORMATION WE ALREADY OFFERED, YOU MAY  
25 BENEFIT FROM.

26 AND THAT WOULD PROBABLY BE THE EXTENT OF WHAT  
27 ELSE I MIGHT RESPOND FOR YOU.

28 THE COURT: OKAY. SO TOMORROW -- YOU WANT A



1 CHANCE TO DIGEST THE PLAINTIFF'S MOTION. SO WE'LL  
2 ADDRESS THIS IN THE MORNING?

3 MS. SWISS: YES, YOUR HONOR, AND OUR  
4 OPPOSITION IS EN ROUTE BEFORE THE END OF THE DAY.

5 THE COURT: WE DO HAVE A LOT TO GET DONE. I'M  
6 STARTING TO GET CONCERNED ABOUT WHETHER WE'RE GOING TO  
7 GET TO THE JURY ON FRIDAY. WE'RE GOING TO DO THE BEST  
8 WE CAN.

9 SO DOES ANYONE NEED A BREAK RIGHT NOW?  
10 MR. PRAGER, DO YOU HAVE THE BENEFIT OF MR. PARIS'S LIST  
11 THAT HE PUT TOGETHER?

12 MR. PRAGER: YES, YOUR HONOR.

13 THE COURT: ALL RIGHT. THIS ONE WE'RE WORKING  
14 OFF THIS MORNING IS THE 7-PAGE LIST. BEFORE WE GET TO  
15 THAT, I KNOW YOU HAD SOME FURTHER DISCUSSIONS ABOUT THE  
16 ISSUE WE DISCUSSED EARLIER ON THE VERDICT FORM TWO.  
17 DID THE TWO OF YOU GET THAT RESOLVED?

18 MR. PRAGER: YOUR HONOR, HONESTLY, THE WAY YOU  
19 LEFT IT BEFORE LUNCH, YOU SAID YOU WANTED TO ADDRESS  
20 THE DIRECTED VERDICT MOTION, SO I LEFT AND I GOT STUFF  
21 TOGETHER TO PROVIDE INFORMATION FOR YOU ON THAT.

22 THE COURT: SO YOU DON'T HAVE THAT?

23 MR. PRAGER: NO. WE WERE PRETTY CLOSE, BUT  
24 I'M SORRY, WE HAD TO CHANGE GEARS, AND --

25 THE COURT: ALL RIGHT. WE'LL SEE AS FAR --  
26 HOW FAR WE CAN GET. BUT I'M GETTING INCREASINGLY  
27 SKEPTICAL THAT WE CAN GET TO THE JURY ON FRIDAY, BUT  
28 WE'LL SEE.

1           ON THE LIST THAT WE'RE WORKING FROM, THE FIRST  
2 ONE IS ON THE FIRST PAGE, WHICH IS NUMBER 207.

3           MS. SWISS: YOUR HONOR, WITH REGARD TO 207, I  
4 BELIEVE WE'D ALREADY PUT ON THE RECORD, AND THE COURT  
5 HAS RECEIVED THE STIPULATION BETWEEN COUNSEL FOR  
6 PAGES 2732 THROUGH 2750.

7           MR. PRAGER: THAT'S CORRECT, YOUR HONOR.

8           THE COURT: THAT IS CORRECT. THOSE PAGES HAVE  
9 BEEN RECEIVED IN EVIDENCE. IS THERE AN ADDITIONAL PART  
10 OF THAT THAT YOU WANT TO ADDRESS, MR. PRAGER?

11          MR. PRAGER: YES, YOUR HONOR. IT'S THE  
12 SECTION REGARDING -- WE'VE OFFERED 2869, YOUR HONOR.

13          MS. SWISS: NO. THAT'S NOT ON THE LIST. THE  
14 ONLY OTHER PAGE ON THE LIST WAS PAGE 2876, WHICH,  
15 DURING THE CROSS-EXAMINATION OF MS. ROGERS, THE  
16 PLAINTIFF USED THE DOCUMENT TO REFRESH MS. ROGERS'S  
17 RECOLLECTION.

18          THEN WE HAD A SIDEBAR, AND THE COURT DID NOT  
19 ALLOW ANY FURTHER DISCUSSION WITH REGARD TO THE CIVIL  
20 RIGHTS INVESTIGATION.

21          THE COURT: ACCORDING TO MY NOTES, THE ONLY  
22 ADDITIONAL PAGES ARE 2876, 2877, AND 2910.

23          MR. PRAGER: SO YOUR HONOR, I THINK, WITH  
24 REGARD TO 2876, TO MAKE SURE I HAVE THAT CORRECT, WE DO  
25 NOT NEED TO MOVE THAT INTO EVIDENCE.

26          THE COURT: OKAY. AND HOW ABOUT 2877?

27          MR. PRAGER: I DO NOT BELIEVE THAT WE NEED TO  
28 MOVE THAT INTO EVIDENCE EITHER, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. PRAGER: 28910 (SIC) IS A STATEMENT FROM  
3 MS. ENNIS, AND I BELIEVE SHE AUTHENTICATED IT DURING  
4 HER TESTIMONY. AND IT WAS ALSO REFERENCED IN  
5 MS. SCHEELE'S DIRECT EXAMINATION. SHE REFRESHED HER  
6 RECOLLECTION WITH IT.

7 WE WOULD MOVE THIS INTO EVIDENCE, YOUR HONOR.  
8 AND WE CAN LIMIT THE USE OF THE DOCUMENT AS WELL.

9 THE COURT: ALL RIGHT. ON -- LET ME JUST, FOR  
10 THE PURPOSE OF THE RECORD, STATE THAT PAGE 2910,  
11 PREVIOUSLY MARKED FOR IDENTIFICATION IS THE FIRST PAGE  
12 OF A TWO-PAGE DOCUMENT. SO IT'S ACTUALLY 2910 AND 2911  
13 THAT WOULD COMPRISE THE DOCUMENT.

14 AND SO -- MS. SWISS, HELP ME WITH THIS ONE.

15 MS. SWISS: YOUR HONOR, THERE HAS BEEN -- THE  
16 DEFENSE OBJECTS TO THIS EXHIBIT BEING RECEIVED INTO  
17 EVIDENCE. I DON'T BELIEVE MS. ENNIS LAID FOUNDATION  
18 FOR THIS DOCUMENT IN HER TESTIMONY.

19 I BELIEVE THE ONLY TIME IT WAS REFERENCED  
20 DURING THE TRIAL WAS DURING THE TESTIMONY OF  
21 MS. SCHEELE, WHEN PLAINTIFF'S COUNSEL TRIED TO REFRESH  
22 HER RECOLLECTION OF A DISCUSSION BETWEEN MS. ENNIS AND  
23 MS. SCHEELE, WHICH WOULD BE THE BOTTOM OF THE LAST  
24 PARAGRAPH ON PAGE 2910.

25 THE DOCUMENT IS A HEARSAY STATEMENT. AND I  
26 BELIEVE THE ONLY PAGE THAT WAS IDENTIFIED DURING  
27 MS. SCHEELE'S TESTIMONY WAS THIS 2910. SO NO OTHER  
28 PART OF THE DOCUMENT WAS REFERENCED DURING THE

1 PLAINTIFF'S OR THE DEFENDANT'S CASE.

2 MR. PRAGER: YOUR HONOR, IF I MAY SUGGEST,  
3 LET'S TRY TO SIMPLIFY THIS. COUNSEL'S CORRECT THAT  
4 ONLY THE FIRST PAGE WAS OFFERED THROUGH MS. SCHEELE.  
5 I'LL GO BACK AND VERIFY IF MS. ENNIS AUTHENTICATED IT  
6 DURING HER TESTIMONY.

7 I COULD BE MIS-RECOLLECTING AT THIS TIME. AND  
8 THEN IF SHE DOES NOT AUTHENTICATE IT, WE'D STILL ASK  
9 ONLY THAT 2910 BE ADMITTED AS --

10 MS. SWISS: MS. SCHEELE CAN'T LAY A FOUNDATION  
11 FOR A DOCUMENT THAT WAS PURPORTEDLY PREPARED BY  
12 MS. ENNIS OR, POTENTIALLY, BY ANOTHER PERSON. IT'S  
13 ENTIRELY HEARSAY.

14 THE COURT: ACCORDING TO THE DOCUMENT, 2911,  
15 THIS APPEARS TO BE -- IT'S SIGNED BY  
16 MICHELLE HOCHSTEIN. AND THE DOCUMENT ON THE SECOND  
17 PAGE CALLS FOR THE SIGNATURE OF THE PERSON MAKING THE  
18 STATEMENT.

19 AND I'VE NOTICED ON THIS 2911, FOR SIGNATURE,  
20 IT SAYS "UNAVAILABLE," MEANING THAT IT NEVER WAS  
21 SIGNED.

22 I DON'T SEE A BASIS TO RECEIVE THIS. SO  
23 PAGE 2910, ALONE, WILL NOT BE RECEIVED IN EVIDENCE.  
24 THE PORTION ALREADY RECEIVED IN EVIDENCE WILL, OF  
25 COURSE, REMAIN IN EVIDENCE.

26 NEXT ONE, WE HAVE 219. ALL RIGHT. THIS IS  
27 BEING OFFERED BY PLAINTIFF. MS. SWISS?

28 MS. SWISS: EXHIBIT 219, SPECIFICALLY BATES

1 RANGE 3081, 3082, ARE PAGES FROM ONE OF THE CIVIL  
2 RIGHTS INVESTIGATION REPORTS.

3 THE COURT HAS PREVIOUSLY RULED ON OTHER  
4 REPORTS OR OTHER VERSIONS OF THE REPORTS AND HAS NOT  
5 RECEIVED THOSE INTO EVIDENCE. SO I THINK THE COURT  
6 SHOULD CONTINUE THAT RULING AND NOT RECEIVE EXHIBIT 219  
7 INTO EVIDENCE ON THE GROUNDS THAT THEY ARE HEARSAY.

8 AND THE TWO PAGES FROM THIS REPORT, SHOULD  
9 THEY BE ADMITTED INTO EVIDENCE, WOULD BE IMPROPER  
10 CONCLUSIONS AND MISLEADING BECAUSE IT'S ONLY PART OF  
11 THE REPORT.

12 THE COURT: THE LIST I HAVE FROM THE CLERK, I  
13 DON'T EVEN SEE THAT THIS HAS BEEN MARKED FOR  
14 IDENTIFICATION.

15 THE CLERK: IT'S NOT.

16 MR. PRAGER: YOUR HONOR, IT APPEARS THAT THIS  
17 WAS RULED ON.

18 THE COURT: IT WAS?

19 MR. PRAGER: YEAH. SO LET'S KEEP MOVING.

20 MS. SWISS: IT WAS NOT RECEIVED? OR --

21 MR. PARIS: LET ME CHECK.

22 THE COURT: ACTUALLY, THAT'S THE INDICATION  
23 FROM THE CLERK'S LIST, I RULED ON THESE TWO PAGES, 3081  
24 AND 3082. AND THAT WOULD INDICATE TO ME, FROM THE LIST  
25 WE RECEIVED FROM THE CLERK, THAT I DENIED THEIR  
26 ADMISSIBILITY BECAUSE THEY AREN'T LISTED AS HAVING BEEN  
27 RECEIVED.

28 MS. SWISS: NOW I SEE THAT ON THE CLERK'S

1 LIST.

2 THE COURT: THAT'S THE PRIOR RULING,  
3 MR. PRAGER.

4 MR. PRAGER: YES, THANK YOU, YOUR HONOR.  
5 THE NEXT ONE, YOUR HONOR, WOULD BE  
6 EXHIBIT 222.

7 THE COURT: RIGHT.

8 MR. PRAGER: THAT'S BATES NUMBER 3090. THIS  
9 IS A LETTER OF DETERMINATION FROM MS. NELSON. OUR  
10 POSITION IS THAT THIS IS ADMISSIONS AGAINST INTEREST BY  
11 A PARTY OPPONENT, THAT DOCUMENTS THAT MS. NELSON WAS  
12 FOUND TO HAVE VIOLATED MS. DUVAL'S CIVIL RIGHTS.

13 MS. SWISS: YOUR HONOR, EXHIBIT 222, AS WE  
14 PREVIOUSLY HAD DISCUSSED, IS A DRAFT LETTER, AS WELL AS  
15 THE EXHIBIT 225, WHICH IS ANOTHER DRAFT LETTER.

16 WHEN WE PREVIOUSLY DISCUSSED THIS, DON'T KNOW  
17 WHEN, WE HAD POINTED OUT TO THE COURT THAT EXHIBIT 226  
18 HAS THE COVER LETTER FROM LYNETTE MORGAN-NICHOLS TO THE  
19 PERSON FROM THE STATE, INDICATING:

20 "THIS IS OUR REPORT AS OF AUGUST 2ND, 2010,  
21 AND THE DRAFT LETTERS TO THE SUBJECTS OF INTEREST,"  
22 WHICH WOULD INCLUDE EXHIBITS 222 AND 225. THOSE  
23 LETTERS, THE DRAFT LETTERS ARE UNSIGNED, THEY'RE DATED  
24 JULY 31ST, 2010.

25 AND COUNSEL HAD PREVIOUSLY SHOWED THE COURT  
26 THE TESTIMONY, PLAYED TO THE JURY, OF CANDIS NELSON,  
27 WHO TESTIFIED THAT SHE RECEIVED A LETTER LIKE THIS AT  
28 SOME POINT.

1           BUT SHE COULD NOT STATE WHAT DATE SHE HAD  
2 RECEIVED IT BECAUSE THE LETTER PRESENTED TO HER DURING  
3 HER DEPOSITION WAS A DRAFT LETTER.

4           AND THEREFORE, NO EVIDENCE -- THERE IS NO  
5 EVIDENCE, AT THIS POINT, THAT THIS LETTER WAS EVER SENT  
6 AND RECEIVED ON THIS DATE OF JULY 31ST, 2010, BY  
7 MS. NELSON.

8           AND THERE WAS, AGAIN, SIMILAR TESTIMONY FROM  
9 MS. SCHEELE IN THE DEPOSITION EXCERPTS PLAYED TO THE  
10 JURY. SO THEREFORE, THERE'S NO FOUNDATION LAID FOR  
11 THESE DOCUMENTS. THEY ARE DRAFTS, THEY ARE HEARSAY,  
12 AND THEY WOULD BE MISLEADING TO THE COURT AND TO THE  
13 JURY.

14           MR. PRAGER: YOUR HONOR, MAY I RESPOND?

15           THE COURT: YES.

16           MR. PRAGER: IN THE DEPO THAT WAS READ TO THE  
17 JURY, AT PAGE -- I BELIEVE IT'S 299, I'LL READ TO THE  
18 COURT:

19           QUESTION: NOW, YOU KNEW FROM THE LETTER,  
20 WHICH WAS DATED JULY 31ST, 2010, THAT YOU WERE FOUND TO  
21 HAVE VIOLATED MS. DUVAL'S CIVIL RIGHTS. CORRECT?

22           THERE WAS AN OBJECTION BY MS. SCHULTZ.  
23 ASSUMES FACTS.

24           THEN, QUESTION: DO YOU WANT THE LETTER?

25           ANSWER: THAT'S -- I'M TRYING TO THINK BACK.  
26 YES. THAT'S WHAT THE LETTER STATED, THE ONE THAT I  
27 RECEIVED.

28           MS. SWISS: THAT'S PARTIAL TESTIMONY. AND

1 THAT'S FROM MS. NELSON. THERE IS THE OTHER TESTIMONY  
2 FROM THAT DEPOSITION, WAS THAT SHE RECALLED RECEIVING A  
3 LETTER LIKE THAT, BUT SHE DID NOT RECALL WHEN SHE  
4 RECEIVED IT.

5 AND THAT'S WHAT COUNSEL READ THE LAST TIME.  
6 YOU CAN'T READ ONE PART WITHOUT THE OTHER. AND I CAN  
7 PULL UP THE SAME THING IF WE NEED TO DO THAT.

8 MR. PRAGER: THE DIFFICULTY IS THE COUNTY HAS  
9 THE LETTER. WE DON'T HAVE ACCESS TO THE LETTER. WE  
10 TOOK THE DEPOSITION OF BOTH MS. SCHEELE AND MS. NELSON,  
11 AND ASKED FOR THESE DOCUMENTS, AND THIS IS THE  
12 INFORMATION THAT WE OBTAINED.

13 THERE ARE OTHER DRAFT LETTERS IN THE FILE THAT  
14 ARE VERY DIFFERENT THAN EXHIBIT 222 AND EXHIBIT 225.  
15 SO WE THINK THAT THESE LETTERS WERE AUTHENTICATED BY  
16 MS. SCHEELE AND NELSON, RESPECTIVELY, AND THAT,  
17 THEREFORE, SINCE THE --

18 IN FACT, THESE WERE PRODUCED FROM THE STATE,  
19 AND WERE SENT TO THE STATE BY THE COUNTY, THAT THEY ARE  
20 CREDIBLE, AND THEY WERE PART OF THE INVESTIGATION, AND  
21 THEY WERE REFERENCED BY ADDITIONAL PERSONS IN THIS  
22 CASE.

23 THE COURT: AND THE TESTIMONY YOU JUST READ  
24 FROM MS. NELSON, THAT WAS PRETTY BRIEF. CAN YOU GO  
25 BACK AND READ THAT FOR ME?

26 MR. PRAGER: YES.

27 QUESTION: NOW, YOU KNEW FROM THE LETTER,  
28 WHICH WAS DATED JULY 31ST, 2010, THAT YOU WERE FOUND TO



1 HAVE VIOLATED MS. DUVAL'S CIVIL RIGHTS. CORRECT?

2 MS. SCHULTZ: OBJECTION: ASSUMES FACTS.

3 QUESTION: DO YOU WANT THE LETTER?

4 ANSWER: THAT'S -- I'M TRYING TO THINK BACK.

5 YES. THAT'S WHAT THE LETTER STATED. THE ONE THAT I  
6 RECEIVED.

7 AND, AGAIN, YOUR HONOR, IT'S AT PAGE 299 --

8 THE COURT: I'M GOOD. THAT'S FINE.

9 MS. SWISS: THAT STATEMENT DOES NOT STATE --  
10 DOES NOT AUTHENTICATE THAT SHE RECEIVED THE LETTER ON  
11 OR ABOUT THE DATE IN EXHIBIT 222 OF JULY 31ST, 2010.

12 AND FURTHERMORE, AT THIS POINT, I'M NOT SURE  
13 THE RELEVANCE OF THIS LETTER TO THIS SPECIFIC CASE IF  
14 THE JUDICIAL DECEPTION CLAIMS ARE NO LONGER AT ISSUE.

15 THE COURT: THE DATE SHE RECEIVED IT, I DON'T  
16 THINK IS PARTICULARLY IMPORTANT TO ME. IT MAY BE TO  
17 COUNSEL. SHE SAYS SHE RECEIVED IT.

18 BUT I DON'T THINK HER TESTIMONY ABOUT  
19 RECEIVING IT ACTUALLY AUTHENTICATES THE LETTER. SHE  
20 JUST SAYS SHE GOT THE LETTER. TO GET THIS IN IS A  
21 HEARSAY OBJECTION. AND YOUR VIEW, AMONG OTHER THINGS,  
22 IS THEN TO ADMISSION.

23 MR. PRAGER: RIGHT.

24 THE COURT: OKAY. WHAT DID MICHELLE HOCHSTEIN  
25 HAVE TO SAY ABOUT THIS?

26 MR. PRAGER: I WOULD HAVE TO LOOK, BUT MY  
27 BELIEF IS -- I WOULD HAVE TO GO TO HER DEPO AND GET HER  
28 EXHIBITS. I BELIEVE MS. HOCHSTEIN AUTHENTICATED THE



1 THE --

2 MR. PRAGER: THIS IS THE TRANSMISSION COVER  
3 PAGE, SIGNED BY MS. MORGAN-NICHOLS, FROM THE CIVIL  
4 RIGHTS UNIT TO THE STATE, CONFIRMING THAT MS. DUVAL IS  
5 THE VICTIM OF DISABILITY DISCRIMINATION.

6 AND THE LETTERS -- THERE'S A SERIES OF  
7 EXHIBITS ATTACHED TO IT AS WELL. WE WERE OFFERING  
8 PAGE 22 -- I'M SORRY. PAGE 3111 AND 3130.

9 MS. SWISS: COUNSEL, YOU SAID OF EXHIBIT 226,  
10 THE ONLY PAGES YOU'RE ASKING FOR ARE PAGES 3111  
11 AND 3130?

12 MR. PRAGER: YES. THOSE ARE THE ONES THAT  
13 WERE IDENTIFIED.

14 MS. SWISS: AS FAR AS EXHIBIT 226, I BELIEVE  
15 THAT PAGE 3130 IS ALREADY PART OF ANOTHER EXHIBIT THAT  
16 WE HAD STIPULATED TO, AND THAT IS PAGES FROM  
17 EXHIBIT 207.

18 WE STIPULATED TO PAGES 2732 THROUGH 2750,  
19 WHICH WOULD HAVE BEEN MS. DUVAL'S CIVIL RIGHTS  
20 COMPLAINT.

21 BECAUSE PAGE 3130 APPEARS TO BE ONE OF THE  
22 PAGES THAT MS. DUVAL SUBMITTED TO THE CIVIL RIGHTS UNIT  
23 AS HER COMPLAINT. SO THAT PAGE, I THINK, IF COUNSEL  
24 CAN VERIFY, I THINK WE CAN AGREE ON TO WITHDRAW.

25 MR. PRAGER: YES, I THINK WE CAN, YOUR HONOR.  
26 I THINK THAT CAN BE WITHDRAWN.

27 THE COURT: DOES THAT APPEAR TO BE A CORRECT  
28 STATEMENT?

1 MR. PRAGER: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. I WON'T RECEIVE 3130  
3 BECAUSE IT'S ALREADY IN EVIDENCE.

4 MS. SWISS: AND THEN, PAGE 3111 IS THE FIRST  
5 PAGE OF ONE OF THE CIVIL RIGHTS INVESTIGATION REPORTS,  
6 AND THE SAME REPORT THE COURT HAD PREVIOUSLY NOT  
7 RECEIVED. WE WOULD ASK THE COURT TO FOLLOW THROUGH  
8 WITH THAT RULING, AS FAR AS THIS PAGE, 3111.

9 THE COURT: 3111, THE FACE PAGE, IS IN  
10 EVIDENCE?

11 MS. SWISS: IT IS NOT IN EVIDENCE.

12 THE COURT: NOT IN EVIDENCE.

13 MS. SWISS: CORRECT. THAT IS THE FIRST PAGE  
14 OF ONE OF THE REPORTS PREPARED BY MS. HOCHSTEIN, AND  
15 THE COURT HAS PREVIOUSLY RULED THAT THE CIVIL RIGHTS  
16 INVESTIGATION REPORTS WOULD NOT BE RECEIVED INTO  
17 EVIDENCE AS HEARSAY.

18 SO WE WOULD ASK FOR THE SAME RULING, AS FAR AS  
19 THIS PAGE.

20 MR. PRAGER: YOUR HONOR, I THINK WE NEED TO  
21 JUST WITHDRAW IT AND KEEP MOVING.

22 THE COURT: ALL RIGHT.

23 MR. PRAGER: THE NEXT IS 233, YOUR HONOR.

24 THE COURT: ALL RIGHT. THIS IS -- ACCORDING  
25 TO THE CLERK'S LIST, AS TO EXHIBIT 233, ONLY PAGE 3734  
26 WAS MARKED FOR IDENTIFICATION.

27 WE'LL ALL NOTE THAT THERE IS NO PAGE 3734 FOR  
28 EXHIBIT 233. SO THAT CANNOT BE -- MR. PRAGER, DID

1 LYNETTE MORGAN-NICHOLS TESTIFY IN HER DEPOSITION ABOUT  
2 HAVING SENT THIS LETTER?

3 MR. PRAGER: YOUR HONOR, I'M AT A LOSS BECAUSE  
4 THE TABLE DOES NOT RECONCILE WITH THE BATES NUMBER. SO  
5 I'M NOT SURE WHERE THE BREAKDOWN IS.

6 WHAT I CAN TELL IS THAT I BELIEVE,  
7 MS. SCHEELE'S DEPOSITION, SHE DISCUSSED IT. I WILL  
8 HAVE TO GO BACK AND CHECK IF MS. MORGAN-NICHOLS ALSO  
9 ADDRESSED THE FOUNDATION OF THIS DOCUMENT IN HER DEPO.

10 MS. SWISS: MS. SCHEELE TESTIFIED IN HER  
11 DEPOSITION THAT SHE HAD NEVER SEEN THIS LETTER BEFORE,  
12 AND SHE DID NOT RECEIVE IT.

13 THIS LETTER WAS PREPARED INTERNALLY BY THE  
14 CIVIL RIGHTS UNIT, LYNETTE MORGAN-NICHOLS, TO HER BOSS,  
15 LYNNE CONDEN, IN REQUESTING CORRECTIVE ACTION FOR  
16 VICTORIA SCHEELE AFTER THE INITIAL CONCLUSION OF THE  
17 CIVIL RIGHTS INVESTIGATION.

18 THE TESTIMONY IN THIS CASE WAS THAT NO SOCIAL  
19 WORKER WAS DISCIPLINED AND SO, THEREFORE, THERE WAS NO  
20 FOLLOW-THROUGH WITH THIS LETTER, BASED ON THE INTERNAL  
21 REVIEW OF THE ACTIONS OF, IN THIS CASE, MS. SCHEELE, BY  
22 THE DEPARTMENT.

23 THIS LETTER IS NOT AUTHENTICATED, IT CONTAINS  
24 HEARSAY, AND IT WOULD ALSO BE MISLEADING TO THE JURY  
25 SINCE IT'S REQUESTING DISCIPLINE, CORRECTIVE ACTION.

26 AND THE EVIDENCE IN FRONT OF THE JURY IS THAT  
27 THE LATER CONCLUSION OF THE CIVIL RIGHTS INVESTIGATION  
28 UNIT WAS THAT THERE NO DISCRIMINATION BY MS. SCHEELE,

1 AND THEREFORE, NO DISCIPLINE WAS IMPOSED.

2 SO WE WOULD REQUEST THAT THE COURT NOT RECEIVE  
3 THIS DOCUMENT INTO EVIDENCE.

4 THE COURT: GO AHEAD, MR. PRAGER.

5 MR. PRAGER: MS. SCHEELE'S DEPOSITION WAS  
6 TAKEN BEFORE MS. CONDEN'S DEPOSITION. AND THE  
7 INFORMATION ELICITED DURING THAT DEPOSITION WAS TO  
8 PROVE THE ABSENCE OF A FACT.

9 AND THAT WAS THAT SHE WAS BEING -- IT WAS, AT  
10 THAT TIME, EVIDENCE SHE WAS SUPPOSED TO BE DISCIPLINED,  
11 AND IT WAS PROVEN SHE HAD NOT BEEN DISCIPLINED.

12 THE COURT: ALL RIGHT. I THINK THAT  
13 MS. SCHEELE'S TESTIMONY, ABOUT NOT RECEIVING THIS, IS  
14 NOT RELEVANT TO THE LETTER. IT'S A MEMORANDUM,  
15 WHATEVER YOU WANT TO CALL IT.

16 IT PURPORTS TO BE TO MS. CONDEN. IT PURPORTS  
17 TO BE FROM MORGAN-NICHOLS. SO I THINK THE  
18 AUTHENTICATION OF THE DOCUMENT, IF ANY, SHOULD COME  
19 FROM MORGAN-NICHOLS.

20 MR. PRAGER: OKAY.

21 THE COURT: AND IF THE PURPOSE -- THEN, THE  
22 SECOND QUESTION IS, ONE OF THE OBJECTIONS THAT'S BEEN  
23 STATED --

24 MR. PRAGER: YOUR HONOR, I UNDERSTAND THE  
25 COURT'S REASONING.

26 THE COURT: I WANTED TO GO FURTHER. THERE'S A  
27 FURTHER OBJECTION AS TO HEARSAY. AND I WOULD NEED THE  
28 AUTHENTICATION FROM THE AUTHOR, MORGAN-NICHOLS, THAT

1 THIS -- THIS IS HER LETTER. SHE, YOU KNOW, SENT IT.

2 MR. PRAGER: I'VE HEARD THE COURT ABOUT 222,  
3 FOR EXAMPLE, ABOUT 233, FOR EXAMPLE, SO I THINK, WITH  
4 THIS CATEGORY OF DOCUMENT, THE THING TO DO IS IDENTIFY  
5 THE CONCERN, IF THE COURT HAS THAT CONCERN.

6 THEN, WHEN WE RECESS, WE'LL CONFIRM THE  
7 AUTHENTICITY OF THE DOCUMENT, IF IT WAS AUTHENTICATED,  
8 AND THEN WE CAN REPORT THAT BACK TO THE COURT. AND I  
9 THINK THAT WILL SAVE SOME TIME.

10 THE COURT: ALL RIGHT. SO THE NEXT ONE  
11 IS 290. THIS IS BEING OFFERED BY THE DEFENDANT, WHICH  
12 IS HILLSIDES FAMILY PRESERVATION SUMMARY AND  
13 ASSESSMENTS.

14 MS. SWISS: YOUR HONOR, EXHIBIT 290 IS THE  
15 HILLSIDES DOCUMENT, THE UP-FRONT ASSESSMENT.

16 AND I BELIEVE WE PREVIOUSLY DISCUSSED, IT IS  
17 PART OF EXHIBIT 24 THAT WAS ATTACHED TO THE  
18 JURISDICTION DISPOSITION REPORT, HAS PREVIOUSLY BEEN  
19 RECEIVED WITH THE LIMITING INSTRUCTION, AND THAT'S  
20 EXHIBIT 24, BATES 688 THROUGH 695.

21 THE DEFENDANTS WOULD REQUEST THAT THIS PART OF  
22 EXHIBIT 24 BE ADMITTED INTO EVIDENCE FOR THE LIMITED  
23 PURPOSE OF WHAT WAS RECEIVED BY DCFS, AND THEN REPORTED  
24 TO THE JUVENILE COURT. AND IT'S RELEVANT TO THE CAUSES  
25 OF ACTION AGAINST CANDIS NELSON.

26 THE COURT: THIS HAS ALSO BEEN RECEIVED?

27 MS. SWISS: EXHIBIT 290 HAS NOT BEEN  
28 RECEIVED --

1 THE COURT: NO, THE DOCUMENT ITSELF, THE  
2 UP-FRONT ASSESSMENT, HAS PREVIOUSLY BEEN RECEIVED?

3 MS. SWISS: YES, AS AN EXHIBIT TO EXHIBIT 24.

4 THE COURT: 24. WITH THE LIMITING  
5 INSTRUCTION.

6 MS. SWISS: CORRECT. SO, THEREFORE, WE'RE NOT  
7 ASKING FOR 290 TO BE RECEIVED, BUT THAT THE PAGES, AS  
8 THE EXHIBIT TO EXHIBIT 24, BE RE-RECEIVED INTO  
9 EVIDENCE, IN LIGHT OF THE COURT'S RULING TODAY.

10 THE COURT: I DON'T RE-RECEIVE. IF I RECEIVED  
11 IT IN EVIDENCE, IF THIS WAS PART OF THE 24 THAT WAS  
12 RECEIVED IN EVIDENCE FOR A LIMITING PURPOSE, I'M NOT  
13 GOING TO DO THE SAME DOCUMENT AGAIN, OR GO BACK AND  
14 RE-RECEIVE. IF I RECEIVED IT, IT'S RECEIVED.

15 MR. MCMILLAN: YOUR HONOR, IT'S MY  
16 UNDERSTANDING, WHERE WE ARE RIGHT NOW ON EXHIBIT 24 IS  
17 THAT THE COURT'S RECEIVING OF THE DOCUMENT INTO  
18 EVIDENCE HAD BEEN RESCINDED.

19 AND WE WERE GOING TO GO THROUGH IT AND LOOK AT  
20 IT AND ADDRESS IT AT A SEPARATE TIME. THIS  
21 EXHIBIT 290, WHICH IS A STAND-ALONE VERSION OF THE  
22 UP-FRONT ASSESSMENT, HAS NOT BEEN RECEIVED.

23 AND WE HAVE OBJECTIONS TO IT, THE SIMILAR  
24 OBJECTIONS THAT WE WILL HAVE TO THAT PORTION OF  
25 EXHIBIT 24 THAT CONSISTS OF THE UP-FRONT ASSESSMENT.

26 NAMELY, THAT IT'S LACKING IN FOUNDATION, IT  
27 CONSISTS ALMOST ENTIRELY OF HEARSAY, AND SECOND-ORDER  
28 HEARSAY, AND THE DOCUMENT ITSELF IS HEARSAY.



1           AND ON TOP OF THAT, I ACTUALLY DON'T KNOW THAT  
2 IT'S RELEVANT ANY LONGER TO ANYTHING AT PLAY IN THIS  
3 CASE.

4           THE COURT: ALL RIGHT. SO, DON, COULD YOU GET  
5 EXHIBIT 290, PLEASE.

6           MR. MCMILLAN: IN ADDITION, YOUR HONOR,  
7 THERE'S BEEN SIGNIFICANT TESTIMONIAL EVIDENCE ABOUT  
8 THIS DOCUMENT'S -- THIS DOCUMENT, THE CONTENTS OF THE  
9 DOCUMENT, AND THE TRUSTWORTHINESS OF THE CONTENTS.

10           SO TO THAT EXTENT, IT WOULD ALSO BE CUMULATIVE  
11 OF WHAT'S ALREADY IN EVIDENCE BEFORE THE JURY VIA  
12 TESTIMONY.

13           THE COURT: SO, MS. SWISS, SOME PORTION, IF  
14 NOT ALL OF THIS REPORT FROM HILLSIDES, IS INCLUDED IN  
15 24.

16           MR. GUTERRES: YES, YOUR HONOR.

17           THE COURT: AND 24, I RECALL, WAS A SUBMISSION  
18 OF THE JURISDICTION REPORT.

19           AND AT LEAST PART OF MR. MCMILLAN'S OBJECTION  
20 IS THAT, IN LIGHT OF THE COURT'S RULINGS ELIMINATING  
21 THE CLAIMS OF DECEPTION FOR EITHER THE DETENTION  
22 HEARING OR THE JURISDICTION DISPOSITION HEARING, AND  
23 THAT THIS DOCUMENT WAS BASED ON AN INTERVIEW OCCURRING  
24 AFTER THE DETENTION, WHAT WOULD BE THE RELEVANCE OF  
25 THIS, IN VIEW OF THE FACT THAT THE SUBMISSIONS FOR THE  
26 JURISDICTION HEARING WERE NOT AN ISSUE ANY LONGER IN  
27 THE CASE?

28           MS. SWISS: MS. NELSON CURRENTLY HAS FOUR

1 CAUSES OF ACTION AGAINST HER: THE IIED, THE STATE  
2 CIVIL RIGHTS, AND THE TWO FEDERAL DISCRIMINATION  
3 CLAIMS.

4 THE ONLY ACTIONS IDENTIFIED THUS FAR BY  
5 PLAINTIFF IN THE EVIDENCE IN THE CASE, THAT SHE SOMEHOW  
6 DISCRIMINATED AGAINST, OR HER OUTRAGEOUS CONDUCT, WAS  
7 PUTTING MUNCHAUSEN SYNDROME BY PROXY INTO THIS  
8 JURISDICTION REPORT, AND THEN RECOMMENDING "NO  
9 REUNIFICATION SERVICES" ON THE BASIS OF PERCEIVED  
10 MUNCHAUSEN BY PROXY.

11 SO THE PLAINTIFF HAS YET TO IDENTIFY ANY OTHER  
12 CONDUCT. SO THEREFORE, IF THE COURT GRANTED THE  
13 NON-SUIT MOTION AS TO MS. NELSON, THEN THERE MIGHT BE  
14 AN ARGUMENT THAT THIS DOCUMENT WOULD NOT BE RELEVANT.

15 BUT AS IT STANDS, THAT'S THE ONLY CONDUCT  
16 WHICH MS. NELSON IS ALLEGED TO HAVE DONE THAT CAUSED  
17 PLAINTIFF ANY HARM.

18 SO IF IT DID NOT COME INTO EVIDENCE, IT WOULD  
19 SEVERELY PREJUDICE MS. NELSON'S ABILITY TO DEFEND  
20 HERSELF AND ALLOW THE JURY TO VIEW THE DOCUMENT FOR  
21 ITSELF.

22 THE AUTHOR OF THE DOCUMENT, MS. BUSTOS,  
23 TESTIFIED AND AUTHENTICATED THE DOCUMENT, THAT SHE  
24 PREPARED IT.

25 WE ARE NOT OFFERING IT FOR THE TRUTH OF THE  
26 MATTER ASSERTED. WE'RE OFFERING FOR IT A NON-HEARSAY  
27 PURPOSE AND TO SHOW THAT THE REASON MS. NELSON WROTE  
28 ABOUT THE UP-FRONT ASSESSMENT IN HER REPORT WAS THAT IT

1 WAS INFORMATION PROVIDED BY THE PROFESSIONAL.

2 AND SHE WAS NOT WRITING MUNCHAUSEN BY PROXY IN  
3 HER COURT REPORT FOR ANY DISCRIMINATORY PURPOSE. IT  
4 WAS USED TO REPORT THE INFORMATION RECEIVED. AND IT  
5 WAS ATTACHED TO THE JURISDICTION DISPOSITION REPORT TO  
6 THE COURT.

7 PLAINTIFF'S CROSS-EXAMINATION OF MS. NELSON  
8 INCLUDED ALLEGATIONS THAT SHE DID NOT PROPERLY  
9 SUMMARIZE THE UP-FRONT ASSESSMENT IN HER REPORT. BUT  
10 THE FACT THAT SHE ACTUALLY ATTACHED IT NEGATES ANY  
11 IMPROPER SUMMARY OF MEDICAL EVIDENCE BY THE SOCIAL  
12 WORKER.

13 MR. MCMILLAN: YOUR HONOR, ON TOP OF ALL THAT,  
14 I DON'T BELIEVE -- AND THIS IS JUST FROM RECALL, I  
15 HAVEN'T LOOKED YET -- I DON'T BELIEVE THE UP-FRONT  
16 ASSESSMENT HAS A "ADMITTED" STICKER ON IT, OR PERHAPS  
17 WAS EVEN IDENTIFIED ON EXHIBIT 60 BY MS. WORK, WHEN SHE  
18 TESTIFIED.

19 MS. SWISS: YOUR HONOR, THE DEFENDANT'S  
20 POSITION WOULD BE THAT, REGARDLESS OF WHAT WAS ACTUALLY  
21 ADMITTED INTO EVIDENCE BY THE JUVENILE COURT, THE  
22 JUVENILE COURT AND THE ATTORNEY FOR THE COUNTY, WHO WAS  
23 ARGUING WHAT EXHIBITS SHOULD BE RECEIVED BY THE  
24 JUVENILE COURT DURING THE DEPENDENCY PROCEEDINGS, ARE  
25 NOT AT TRIAL IN THIS MATTER.

26 MS. NELSON, THE SOCIAL WORKER, IS AT TRIAL IN  
27 MATTER. AND WHAT MATTERS IS HER CONDUCT. SHE RECEIVED  
28 THIS REPORT, ATTACHED IT TO HER COURT REPORT, AND THEN

1 FILED WITH THE JUVENILE COURT.

2 WHETHER OR NOT IT WAS ACCEPTED INTO EVIDENCE  
3 IS IRRELEVANT FOR THE PURPOSES OF MS. DUVAL'S CLAIM  
4 AGAINST MS. NELSON THAT MS. NELSON MISCHARACTERIZED THE  
5 CONTENTS OF THE REPORT AND SHOULD NOT HAVE SUBMITTED IT  
6 TO THE JUVENILE COURT.

7 IT GOES TO THE ISSUE OF RECKLESS DISREGARD OR  
8 INTENTIONAL CONDUCT.

9 MR. MCMILLAN: I'M THINKING, YOUR HONOR, ABOUT  
10 RECKLESS DISREGARD.

11 AND THERE WAS SUBSTANTIAL TESTIMONY AND  
12 DOCUMENTARY EVIDENCE ALREADY ADMITTED REGARDING THE  
13 POLICIES WHERE THEY REPEAT, I THINK, SIX TIMES IN A  
14 SINGLE POLICY, DO NOT REFERENCE OR ATTACH THE UP-FRONT  
15 ASSESSMENT IN YOUR JURIS DISPO REPORT.

16 AND THEN I SEEM TO ALSO RECALL  
17 DR. STEVEN SANDERS, IN HIS VIDEO TESTIMONY,  
18 SPECIFICALLY SAYING, WE DO NOT SUPPORT REFERENCING OR  
19 ATTACHING UP-FRONT ASSESSMENTS IN THE COURT REPORTS  
20 BECAUSE THEY CONTAIN INFORMATION THAT MAY NOT BE TRUE.

21 AND SO -- IT'S SORT OF A DOUBLE-EDGED SWORD,  
22 BECAUSE IF WE'RE LOOKING AT RECKLESS DISREGARD, THAT  
23 SURE SOUNDS LIKE RECKLESS DISREGARD TO ME.

24 IF WE HAVE A POLICY, AND UPPER MANAGEMENT  
25 SAYING, DON'T DO IT, AND SHE DOES IT ANYWAY... BUT ON  
26 THE OTHER HAND, I'M NOT SURE THAT'S AN EVIDENTIARY  
27 ISSUE TO BE ADDRESSING RIGHT NOW.

28 I THINK IT'S STILL NOT RELEVANT, I THINK IT'S

1 STILL HEARSAY, BUT I'M THINKING, NOW, ABOUT THIS  
2 RECKLESS DISREGARD CONCEPT.

3 THE COURT: WELL, AS YOU CAN SEE, THIS IS JUST  
4 A COMMENT -- WE'RE NOT GOING TO GET THIS DONE. AND  
5 TOMORROW MORNING, I'M GOING TO HAVE THE COURT ATTENDANT  
6 BEGIN CALLING THE JURORS AND CALLING THEM OFF FOR  
7 FRIDAY.

8 PUTTING THAT ASIDE, IT'S NOT A RULING ON THIS  
9 DOCUMENT. AND I'M LOOKING BACK AT THE ARGUMENTS TO  
10 MAKE SURE I CAN APPRECIATE THE POINTS BEING MADE BY  
11 MS. SWISS AND THE POINTS BEING MADE ON BEHALF OF THE  
12 PLAINTIFF.

13 I THINK ONE OF THE PROBLEMS IS, IT STILL  
14 REMAINS QUITE UNCLEAR TO ME AS TO WHAT, EXACTLY, THE  
15 CLAIMS ARE ON THE DISCRIMINATION CASES -- CLAIMS, AND  
16 IT'S HARD TO ANTICIPATE WHERE THAT'S GOING TO GO.

17 I MEAN, I HEARD SOME INFORMATION FROM  
18 MR. PRAGER, BUT IT -- IT WAS A SUMMARY STATEMENT TO THE  
19 COURT, NOT AS ARGUMENT THAT HE WOULD INTEND TO MAKE.  
20 SO HAVING SAID THAT --

21 MR. MCMILLAN: YOUR HONOR, BEFORE WE CALL THE  
22 JURY OFF FOR FRIDAY --

23 THE COURT: WELL, THAT'S TOMORROW MORNING.  
24 THAT'S NOT TODAY.

25 MR. MCMILLAN: OKAY.

26 THE COURT: REMAINS TO BE SEEN, BUT THIS IS --  
27 WHAT WE ARE GOING THROUGH TODAY IS, I THINK, AN EXAMPLE  
28 OF THE CONCERN I EXPRESSED, GENERALLY, ABOUT IT ALWAYS

1 TAKES LONGER THAN WE ANTICIPATE.

2 AND WE TRY TO BUILD IN A TIME FACTOR OF  
3 SAFETY, BUT WE ARE STILL SO FAR AWAY THAT I WON'T MAKE  
4 ANY DECISION ON THAT UNTIL TOMORROW MORNING. BUT I'LL  
5 CERTAINLY BE LOOKING AT IT THEN.

6 THERE ARE ONLY SO MANY HOURS IN THE DAY, AND I  
7 KNOW EVERYONE IS WORKING VERY HARD. SO IT'S NOT  
8 ANYTHING DIRECTED AT COUNSEL. BUT I CAN TELL YOU THAT  
9 I HAVE WORKED ON THIS CASE EVERY DAY, CONTINUOUSLY,  
10 SINCE SEPTEMBER 12TH.

11 I HAVE BEEN IN THIS COURTHOUSE EVERY NON-COURT  
12 DAY WORKING ON THE CASE BECAUSE I'VE BEEN IMMERSSED IN  
13 BRIEFS OVER EVERY ISSUE. AND MORE THAN I THINK, THAT  
14 PERHAPS ANY OF US EVER ANTICIPATED INITIALLY. AND  
15 THERE IS A LIMIT.

16 I DO SLEEP FOUR HOURS A NIGHT, I DO. AND  
17 THERE'S A LITTLE BIT OF TIME OF GETTING TO AND FROM  
18 WORK. BUT IT'S VERY FAIR TO SAY THAT I'M DEVOTING  
19 BETWEEN 16 TO 18 HOURS A DAY TO THIS CASE.

20 I HAVE, EVERY DAY SINCE SEPTEMBER 12TH, TRYING  
21 TO READ AND APPRECIATE AND UNDERSTAND ALL THAT YOU  
22 SUBMITTED TO THE COURT. AND I WILL CONTINUE TO DO SO  
23 TONIGHT AND TOMORROW. AND OVER THIS WEEKEND, AS  
24 NECESSARY.

25 BUT IF IT'S NECESSARY OVER THIS WEEKEND, IT  
26 MEANS WE HAVEN'T GOTTEN TO THE JURY. AND --

27 MR. MCMILLAN: RIGHT.

28 THE COURT: SO WHAT WE HAVE IS, BETWEEN NOW

1 AND THEN -- THIS IS NOTHING MORE THAN TO EXPLAIN THAT  
2 IN THE MORNING, I'M GOING TO TAKE A LOOK TO SEE WHERE  
3 WE'RE AT. BECAUSE I DON'T KNOW WHETHER IT'S GOING TO  
4 BE POSSIBLE TO HAVE EVERYTHING READY TO GO.

5 WE STILL HAVE NOT -- THERE'S STILL MANY THINGS  
6 TO DO. SO HAVING SAID THAT, I DO -- I WANT TO GO BACK  
7 TO THE ARGUMENTS THAT MS. SWISS HAD MADE ON THIS  
8 DOCUMENT, WHICH ARE SIGNIFICANT.

9 MR. MCMILLAN: YOUR HONOR, TO SAVE A LITTLE  
10 BIT OF TIME, WE'VE DISCUSSED IT HERE, AND, SO LONG AS  
11 IT'S SOLELY FOR A LIMITED PURPOSE, THEN WE WILL  
12 WITHDRAW OUR OBJECTION TO IT.

13 AND IT SHOULD -- BUT IF IT COMES AT ALL, IT  
14 SHOULD COME IN AS PART OF EXHIBIT NUMBER 24.

15 MS. SWISS: IT SHOULD OR SHOULD NOT?

16 MR. MCMILLAN: IT SHOULD.

17 MS. SWISS: WE AGREE WITH THAT. IT WOULD BE  
18 EXHIBIT 24, BATES 686 THROUGH 695.

19 MR. MCMILLAN: AND, YOUR HONOR, JUST SO THAT  
20 WE'RE CLEAR, PLAINTIFF'S AGREEMENT WOULD BE THAT IT'S  
21 SOLELY FOR THE LIMITED PURPOSE OF SHOWING WHAT WAS DONE  
22 OR WHAT WAS PRESENTED BY MS. NELSON.

23 NOT FOR THE TRUTH OF THE MATTER SET FORTH IN  
24 THE LETTER -- OR THE UP-FRONT ASSESSMENT.

25 THE COURT: WELL, I DO THINK THAT --

26 MS. SWISS: WE'RE REQUESTING THE ENTIRETY OF  
27 EXHIBIT 24 BE ADMITTED FOR THAT EXACT LIMITED PURPOSE.

28 MR. MCMILLAN: SURE. WELL --

1 MS. SWISS: AND WE HAVE YET TO DETERMINE WHICH  
2 PARTS OF IT, BUT WE HAVE NO OBJECTION TO PLAINTIFFS --

3 THE COURT: I THINK THE PARTS WE WOULD  
4 PROBABLY WANT IN EVIDENCE WOULD BE ONES THAT ARE FOR A  
5 LIMITED PURPOSE BECAUSE THEY ALL GO TO WHAT SOMEONE  
6 KNEW, WHAT SOMEONE SAID, WHAT SOMEONE MAY HAVE BEEN  
7 ACTING ON.

8 MR. MCMILLAN: OR WHAT THEY DID.

9 THE COURT: YES. AND --

10 MR. MCMILLAN: AND YOUR HONOR, WHILE WE'RE ON  
11 EXHIBIT 24, MR. PARIS HAS GIVEN ME THE BATES RANGE OF  
12 THE 24-PAGE REPORT ITSELF, WHICH IS 446 THROUGH 469.  
13 AND PLAINTIFFS HAVE NO OBJECTION TO THAT COMING IN,  
14 AGAIN, SUBJECT TO THE LIMITED PURPOSE.

15 AND THEN, ALSO, PAGES NUMBERED 501, 520  
16 THROUGH 521, 525 THROUGH 526, 537 THROUGH 538, AND 539  
17 THROUGH 540. ALL OF THOSE, PLAINTIFF WOULD AGREE TO  
18 ADMITTING FOR THE LIMITED PURPOSE. OR SUBJECT TO THE  
19 LIMITED PURPOSE INSTRUCTION.

20 MR. GUTERRES: I'M SORRY. ARE THOSE THE SAME  
21 BATES NUMBERS THAT WERE DISCUSSED AND REPRESENTED TO  
22 THE COURT YESTERDAY?

23 MR. PARIS: PREVIOUSLY, WITH THE ADDITION  
24 OF 539 AND 540.

25 THE COURT: ALL RIGHT. IN LIGHT OF WHAT  
26 COUNSEL HAS SAID, THEN, 290 WILL NOT BE RECEIVED. BUT  
27 THAT PORTION OF EXHIBIT 24 WHICH IS PAGES -- BATES  
28 PAGES 686 THROUGH 695, WHICH ARE THIS REPORT, WILL BE



1 RECEIVED FOR THE LIMITED PURPOSE.

2 IN ADDITION, THE DEFENSE HAS OFFERED TO HAVE  
3 EXHIBIT 24, IN ITS ENTIRETY, ADMITTED FOR A LIMITED  
4 PURPOSE. THAT HAS NOT BEEN AGREED TO BY PLAINTIFF, BUT  
5 PLAINTIFF DOES AGREE THAT THE 24-PAGE REPORT --

6 THAT'S THE JURISDICTION REPORT?

7 MR. MCMILLAN: AFFIRMATIVE, THAT'S CORRECT.

8 THE COURT: -- WHICH IS AT PAGES 446 THROUGH  
9 469 OF EXHIBIT 24, MAY BE RECEIVED FOR A LIMITED  
10 PURPOSE. YOU WANT IT RECEIVED, DO YOU NOT?

11 MR. GUTERRES: YES, YOUR HONOR. AND  
12 MR. GUTERRES CAN ADDRESS THE ADDITIONAL PORTIONS OF  
13 EXHIBIT 24 THE DEFENDANTS WOULD ASK TO BE RECEIVED, IF  
14 THE COURT WANTS TO DO THAT AT THIS TIME.

15 THE COURT: WELL, WHAT I'D LIKE TO DO IS  
16 FINISH WITH THE PARTS THAT HAVE ALREADY BEEN RECITED TO  
17 ME. OTHERWISE I'LL BE SCROLLING BACK THROUGH THE  
18 TRANSCRIPT AGAIN.

19 PLAINTIFFS ALSO HAVE NO OBJECTION TO  
20 PAGES 501, 520 THROUGH 521, 525 THROUGH 526, 537  
21 THROUGH 538, 539 THROUGH 540, ALL OF EXHIBIT 24, BEING  
22 RECEIVED FOR A LIMITED PURPOSE.

23 AND, AGAIN, BECAUSE YOU'RE OFFERING THE ENTIRE  
24 EXHIBIT, I ASSUME THERE'S NO OBJECTION TO THOSE.

25 MR. GUTERRES: THAT'S CORRECT.

26 MS. SWISS: THAT'S CORRECT.

27 THE COURT: ALL RIGHT. SO, MR. GUTERRES, DO  
28 YOU HAVE ADDITIONAL PAGES OF 24 THAT YOU WANT TO

1 ADDRESS AT THIS TIME? OR IS THIS SOMETHING YOU'LL ALSO  
2 BE WORKING ON OVER THE EVENING?

3 MR. GUTERRES: I'VE ALREADY DONE THIS OVER THE  
4 LUNCH HOUR.

5 THE COURT: OKAY.

6 MR. GUTERRES: SO IN ADDITION TO THE PAGES  
7 THAT WERE IDENTIFIED, THE DEFENSE WOULD THEN ALSO ASK,  
8 AS PART OF THE -- EXHIBIT 24, FOR PURPOSES OF -- WITH  
9 THE LIMITING INSTRUCTION, THAT BATES 482, WHICH IS --  
10 ACTUALLY, IT MARKS WHAT THE ATTACHMENTS ARE ON THE  
11 JURISDICTION DISPOSITION REPORT. AND THEN --

12 THE COURT: CAN I JUST ASK YOU ABOUT 482 --

13 MR. GUTERRES: EXHIBIT 24 --

14 THE COURT: I KNOW. MY PAGE IS JUST WHAT I'LL  
15 CALLING A DIVIDER PAGE, JUST SAYS, ATTACHMENT TO  
16 MEDICAL RECORDS.

17 MR. GUTERRES: CORRECT. YES. I WANTED THAT  
18 TO REFLECT THAT -- SO IT WAS THE RECORDS FOLLOWING --  
19 THAT MR. MCMILLAN HAS ACTUALLY REQUESTED, NAMELY, 501  
20 AND 520 THROUGH 521, ARE PART OF THE ATTACHMENT 2 TO  
21 THE REPORT.

22 MR. MCMILLAN: I DON'T THINK WE HAVE ANY  
23 OBJECTION TO THIS COVER PAGE.

24 THE COURT: ALL RIGHT. SO PAGE 482 WILL BE  
25 RECEIVED FOR THE LIMITED PURPOSE.

26 MR. GUTERRES: ALONG WITH 489 OF EXHIBIT 24.

27 MR. MCMILLAN: YEAH. THAT APPEARS,  
28 YOUR HONOR, TO HAVE BEEN ADMITTED.

1 THE COURT: IT WAS ADMITTED, ACCORDING TO  
2 THIS, AT THE -- IN THE JUVENILE COURT. UNFORTUNATELY,  
3 I CANNOT -- I CAN READ THE PART THAT SAYS IT'S  
4 ADMITTED. AND I KNOW THIS IS A MARKING THAT WAS USED  
5 ON THE DOCUMENTS RECEIVED IN THE JUVENILE COURT.

6 I'M SIMPLY UNABLE, ON MY COPY, TO READ THE  
7 SPECIFIC ADDITIONAL INFORMATION. BUT I DON'T HAVE ANY  
8 DOUBT IT WAS RECEIVED. IT WAS ADMITTED INTO EVIDENCE  
9 IN THE JUVENILE COURT.

10 MR. MCMILLAN: YOUR HONOR, THE -- I'M NOT SURE  
11 THAT IT'S -- I THINK THAT IT'S -- I'M NOT SURE WHAT  
12 PURPOSE IT HAS HERE. I THINK IT MIGHT ACTUALLY NOT BE  
13 RELEVANT TO ANY ISSUE THAT'S CURRENTLY STILL IN THE  
14 CASE.

15 THE COURT: WELL, I KNOW IT'S PART OF THE  
16 MEDICAL RECORDS THAT WERE FURNISHED.

17 MR. MCMILLAN: YEAH.

18 THE COURT: AND IT WILL HAVE WHATEVER  
19 RELEVANCE IT HAS. AGAIN, THIS REASON, FOR A LIMITED  
20 PURPOSE, IS NOT FOR TRUTH OF IT, BUT TO SHOW WHAT  
21 WAS -- SO PAGE 489 WILL BE RECEIVED FOR THE LIMITED  
22 PURPOSE.

23 MR. GUTERRES: THEN 555 THROUGH 562.

24 MR. MCMILLAN: ONE MOMENT, YOUR HONOR.

25 MR. GUTERRES: THOSE ARE SODERBERG'S FAX COVER  
26 SHEET.

27 MR. MCMILLAN: YOUR HONOR, THIS ACTUALLY LOOKS  
28 TO ME TO BE DUPLICATIVE. I THINK IT'S

1 EXHIBIT NUMBER -- WHAT IS IT, NUMBER 8, IT'S  
2 DUPLICATIVE OF EXHIBIT NUMBER 8, FIRST OF ALL.

3 AND SECOND OF ALL, IT DOES NOT APPEAR TO HAVE  
4 BEEN ADMITTED INTO EVIDENCE IN THE JUVENILE DEPENDENCY  
5 PROCEEDINGS.

6 MR. GUTERRES: PRIMARILY, I'M INTERESTED IN  
7 THE FAX COVER SHEET TO ESTABLISH THAT THERE WAS A  
8 COMMUNICATION WITH DR. SODERBERG, AND THAT THE  
9 DEPARTMENT DID RECEIVE THE RECORDS BEFORE THE TDM, OR  
10 ON THE DATE OF THE TDM.

11 MR. MCMILLAN: AND ACTUALLY, THERE'S A FAX  
12 TIME STAMP ON IT, YOUR HONOR, THAT SAYS  
13 DECEMBER 18, 2009, AT 9:02 A.M.

14 I'M NOT SURE WHAT THE SIGNIFICANCE OF THAT IS,  
15 BUT I THINK IT RAISES ANOTHER ISSUE ABOUT THE  
16 FOUNDATION FOR THIS PARTICULAR RENDITION OF THIS  
17 DOCUMENT.

18 AND, IN FACT, ALL OF THE PAGES HERE SEEM TO  
19 BEAR THE SAME FAX TIME/DATE STAMP OF DECEMBER 18TH,  
20 WHICH WOULD HAVE BEEN WELL BEYOND NOVEMBER 3RD.

21 THE COURT: IT IS -- WHAT IS PRIOR TO THE  
22 SUBMISSION OF THE JURISDICTION REPORT, AND THAT'S  
23 THE -- HE'S OFFERING IT, I BELIEVE, AGAIN, FOR THE  
24 LIMITED PURPOSE OF SHOWING MEDICAL INFORMATION THAT WAS  
25 INCLUDED IN THE REPORT.

26 MR. MCMILLAN: I DON'T DISAGREE WITH THAT,  
27 YOUR HONOR. AND I SUPPOSE IT'S OKAY. MOST OF OUR  
28 CROSS-EXAMINATIONS -- I'M NOT SURE I REALIZED THIS WAS

1 EVEN IN THERE, BUT I THINK MOST OF OUR  
2 CROSS-EXAMINATIONS WERE TIED TO EXHIBIT NUMBER 8.

3 SO TO THE EXTENT WE'RE GOING TO LET THE  
4 DUPLICATIVE RECORD IN, I WOULD LIKE TO KEEP IN, ALSO,  
5 THE EXHIBIT THAT HAS BEEN ADMITTED INTO -- AS TO WHICH  
6 THE JURY'S TAKEN NOTES AND THINGS LIKE THAT.

7 MR. GUTERRES: THAT'S FINE, YOUR HONOR.

8 THE COURT: TELL ME WHAT'S FINE.

9 MR. GUTERRES: MR. MCMILLAN'S SAYING THAT THIS  
10 MAY BE SOMEWHAT DUPLICATIVE. BUT WHAT'S IMPORTANT FOR  
11 ME TO SHOW, WHAT I WOULD LIKE TO BE ABLE TO ESTABLISH,  
12 IS WHAT CERTAIN KEY DOCUMENTS WERE ATTACHED TO THE  
13 JURISDICTION DISPOSITION REPORT THAT MS. NELSON HAD AT  
14 THE TIME THAT THAT GOT SUBMITTED.

15 MR. MCMILLAN: IT'S DUPLICATIVE, BUT --

16 THE COURT: THOSE PAGES WILL BE RECEIVED. I  
17 DON'T THINK THE JURY WILL BE CONFUSED BY SEEING -- WE  
18 WANT TO AVOID IT, BUT I DON'T THINK THEY'LL BE CONFUSED  
19 BY SEEING THE SAME THING TWICE.

20 IF THEY DO, WE DON'T KNOW WHAT EXHIBITS THE  
21 JURY MAY CHOOSE TO LOOK AT. THAT WILL BE THEIR CHOICE,  
22 IN ANY EVENT.

23 MR. MCMILLAN: AS IT IS, THEY'RE GOING TO HAVE  
24 A THICK STACK.

25 THE COURT: PAGES 555 THROUGH --

26 MR. GUTERRES: 562, YOUR HONOR.

27 THE COURT: YES. THAT IS THAT COMPLETE RECORD  
28 THROUGH PAGE 562, FOR THE LIMITED PURPOSE.

1 MR. GUTERRES: YES. ALL OF THESE DOCUMENTS  
2 IN 24 ARE FOR THE LIMITED PURPOSE.

3 THE COURT: I KNOW, AND WE'VE ALL SAID IT  
4 ENOUGH TIMES. BUT MAYBE IT'S BETTER TO SAY IT EACH  
5 TIME SO WE DON'T HAVE TO GO LOOKING BACK THROUGH THE  
6 TRANSCRIPT AGAIN, IF SOME QUESTION ARISES IN OUR MIND  
7 AT A LATER TIME.

8 GO AHEAD, MR. GUTERRES.

9 MR. GUTERRES: YES, YOUR HONOR. THEN WE WOULD  
10 ASK THAT 593, AGAIN, WHICH IS A DIVIDER WITH THE FAMILY  
11 LAW COURT DOCUMENTS THAT WERE ATTACHED.

12 THE COURT: AND IS IT JUST THE DIVIDER PAGE?

13 MR. GUTERRES: YES.

14 MR. MCMILLAN: I DON'T KNOW THAT THE DIVIDER  
15 PAGE STANDING ALONE IS PARTICULARLY MEANINGFUL, BUT I  
16 ANTICIPATE SOME OTHER PAGES THAT ARE GOING TO BE  
17 IDENTIFIED.

18 AND IF I'M CORRECT IN MY ANTICIPATION, I THINK  
19 THAT THOSE WOULD BE LACKING IN FOUNDATION, HEARSAY, AND  
20 PREJUDICIAL UNDER 352, OR RATHER, UNDULY PREJUDICIAL  
21 UNDER 352. ALSO NOT RELEVANT ANY LONGER.

22 THE COURT: KEEP TRACK. PROBABLY MS. SWISS  
23 AND MR. PARIS ARE THE ONES THAT WILL KEEP TRACK. WE'LL  
24 COME BACK TO PAGE 593 AFTER WE SEE WHAT FAMILY LAW  
25 DOCUMENTS YOU'RE ASKING TO HAVE ADMITTED, IF ANY.

26 MR. GUTERRES: THE DECLARATION OF MR. MILLS,  
27 WHICH WAS 615 THROUGH 623, WHICH IS PUBLISHED TO THE  
28 JURY. AND THE FOUNDATION WAS LAID THROUGH MR. MILLS.

1 THE COURT: DID THE DOCUMENT THAT WENT -- PART  
2 OF THE REPORT, HAVE ALL THESE HANDWRITTEN NOTES ON IT?

3 MR. MCMILLAN: I BELIEVE -- THAT'S THE REPORT  
4 WE HAVE, AND ALSO THE SECOND BATES STAMP THERE. WHEN  
5 WE RECEIVED THE RECORDS FROM THE COUNTY, THEY WERE  
6 SHUFFLED. AND WHAT I PERSONALLY HAD TO DO WAS, I KNEW  
7 THIS WAS THE APPELLATE CLERK'S TRANSCRIPT.

8 SO THAT BATES NUMBER WAS THERE. AND I  
9 PERSONALLY HAD TO SIT DOWN AND UN-SHUFFLE A MYRIAD OF  
10 DOCUMENTS, RELYING ON THAT BATES NUMBER FROM THE  
11 CLERK'S TRANSCRIPT, ASSUMING THAT WAS THE CLERK'S  
12 TRANSCRIPT ON APPEAL.

13 AND THAT IS HOW I, PERSONALLY, ASSEMBLED  
14 EXHIBIT 24 IN ITS TOTALITY. THEN AT DEPOSITION, I  
15 WOULD GO AND TRY GET EACH OF THE DEONENTS, NAMELY,  
16 MS. NELSON TO AUTHENTICATE IT, AND SHE NEVER COULD.

17 SO WHAT WE HAVE HERE IS MY BEST ESTIMATE OF  
18 WHAT TRULY WENT IN FRONT OF THE JUVENILE COURT. SO  
19 THIS DOCUMENT HERE, IF IT'S COMING INTO EVIDENCE AS  
20 PART OF EXHIBIT 24, ALL I CAN TELL YOU IS, IT'S MY BEST  
21 ESTIMATE OF WHAT BELONGED THERE AT THE TIME.

22 AND NONE OF THE DEFENDANTS COULD, ACTUALLY, IN  
23 THEIR DEPOSITIONS, AUTHENTICATE IT. AND NONE OF THEM  
24 ACTUALLY HAVE DONE SO HERE IN TESTIMONY.

25 MS. SWISS: ALL THESE DOCUMENTS CAME FROM THE  
26 JUVENILE COURT WHO HAD JURISDICTION OVER THEM, SO THEY  
27 WERE PRODUCED TO ALL THE PARTIES IN HAPHAZARD FORM.  
28 YEARS AFTER THE ACTUAL DEPENDENCY CASE.

1           BUT SINCE THE DOCUMENT CAME FROM THE JUVENILE  
2 COURT, I BELIEVE WE ALL PRESUME THAT IT CAME FROM THE  
3 DCFS AND/OR JUVENILE COURT FILES.

4           MR. MCMILLAN: THE MAIN PROBLEM IS IT DID NOT  
5 COME IN ITS CURRENT FORM. THIS IS MY PERSONAL WORK  
6 PRODUCT, AND I SLAVED AT THIS FOR HOURS AND HOURS AND  
7 HOURS. AND I'M NOT SURE IT IS WHAT WAS ACTUALLY FILED  
8 WITH THE COURT. SO THAT'S ONE OF THE PROBLEMS THAT WE  
9 FACE WITH IT.

10          THE COURT: WHAT HE'S PROPOSING, IN ANY EVENT,  
11 THIS DECLARATION --

12          MR. MCMILLAN: I'M SORRY?

13          THE COURT: MR. GUTERRES IS PROPOSING THAT  
14 THIS DECLARATION BE RECEIVED. FOR A LIMITED PURPOSE.

15          MR. MCMILLAN: WE HAVE THE SAME OBJECTIONS:  
16 IT'S HEARSAY, LARGELY HEARSAY, IT WASN'T ADMITTED IN  
17 JUVENILE COURT -- UNDERLYING JUVENILE COURT PROCEEDING,  
18 WE BELIEVE IT'S UNDULY PREJUDICIAL.

19          BUT IT LOOKS LIKE, IN THE MARGIN NOTES,  
20 SOMEBODY, AND I'M NOT SURE FOUNDATION'S BEEN LAID FOR  
21 THE MARGIN NOTES, BUT IT LOOKS LIKE SOMEBODY HAS GONE  
22 THROUGH AND ACTUALLY SAID WHAT THEY THOUGHT ABOUT IT.

23          SO IT LOOKS LIKE, ALMOST, ITEM BY ITEM. YOU  
24 KNOW, THERE'S A STATEMENT THERE --

25          THE COURT: IT DOES, ON A NUMBER OF PAGES, IT  
26 DOES APPEAR THAT WAY. SOMEONE HAS -- THERE'S A LOT OF  
27 MARGIN NOTES.

28          MR. MCMILLAN: RIGHT.



1 MS. SWISS: THIS DOCUMENT WAS ALREADY  
2 PUBLISHED TO THE JURY, YOUR HONOR, WITH THE NOTES,  
3 BECAUSE IT WAS PREVIOUSLY RECEIVED INTO EVIDENCE FOR  
4 THE LIMITED PURPOSE. SO THIS OBJECTION IS FAR BELATED.

5 MR. MCMILLAN: WELL, I DON'T RECALL, ACTUALLY,  
6 YOUR HONOR, SEEING THE MARGIN NOTES, AND I DON'T THINK  
7 IT WAS PUBLISHED TAKEN FROM EXHIBIT 24.

8 THE WAY I RECALL MANY OF THOSE COMING IN IS,  
9 THE DEFENDANTS HAVE SEPARATED PAGES AND STAPLED THEM  
10 TOGETHER IN LITTLE PACKETS. AND THEN THEY GIVE THE  
11 WITNESS ONE AND GIVE ME ONE AND PUBLISH IT. AND I  
12 DON'T ACTUALLY RECALL SEEING THE MARGIN NOTES.

13 MR. GUTERRES: IT WAS WITH MR. MILLS,  
14 YOUR HONOR.

15 MR. MCMILLAN: I RECALL WHO IT WOULD HAVE BEEN  
16 WITH, BUT I DON'T REMEMBER SEEING A VERSION WITH THE  
17 MARGIN NOTES ON IT PUBLISHED. IT MAY HAVE HAPPENED,  
18 I'M NOT SAYING IT DIDN'T HAPPEN. BUT I DON'T RECALL  
19 THEM ACTUALLY USING THE MARKED EXHIBIT 24 FOR THAT  
20 PURPOSE.

21 THE COURT: MY RECOLLECTION ON THAT IS PRETTY  
22 THIN. IT IS THAT I BELIEVE THAT IT WAS, BECAUSE I  
23 REMEMBER HAVING SOME CONCERN, AT THE TIME THAT IT WAS  
24 USED, ABOUT THE MARGIN NOTES.

25 MR. MCMILLAN: OKAY.

26 THE COURT: AND I DON'T KNOW THAT THEY REALLY  
27 ADD OR DETRACT MUCH, ONE WAY OR ANOTHER. BUT THAT WAS  
28 MY RECOLLECTION OF HAVING SOME CONCERN ABOUT THAT. NOT

1 A GREAT DEAL, BECAUSE I DON'T THINK ANYONE FOCUSED ON  
2 THAT.

3 MS. SWISS: YOUR HONOR, MY NOTES FROM  
4 MR. MILLS'S TESTIMONY WAS THAT EXHIBIT 24, IN  
5 PARTICULAR, PAGE 623, WAS THE FIRST PAGE IDENTIFIED IN  
6 HIS TESTIMONY, WHICH WOULD BE FROM EXHIBIT 24.

7 AND IT WAS THE, I BELIEVE, THE SIGNATURE PAGE  
8 WHERE HE AUTHENTICATED THAT THIS WAS HIS DECLARATION  
9 THAT HE SIGNED UNDER PENALTY OF PERJURY. AND THAT WAS  
10 FROM HIS TESTIMONY ON OCTOBER 13TH.

11 MR. MCMILLAN: YOUR HONOR, ONE OTHER THING.  
12 THIS IS ON THE ISSUE OF 352, AND UNDUE PREJUDICE. JUST  
13 BY WAY OF EXAMPLE, THERE'S A STATEMENT IN HERE, PAGE 6,  
14 LINE 12, SAYS:

15 "IN ADDITION, PETITIONER HAS WARNED ME TO KEEP  
16 OUR SON AWAY FROM MEXICANS, DUE TO HER CONCERNS  
17 REGARDING SWINE FLU. MY FIANCÉE IS OF MEXICAN  
18 DESCENT."

19 THERE'S A LOT OF DIATRIBE AND VITRIOL IN THIS  
20 THING. AND I DON'T RECALL THEM, NUMBER ONE, GOING  
21 THROUGH THIS LINE BY LINE, PAGE BY PAGE WITH THE  
22 WITNESS, SO THE JURY CERTAINLY DIDN'T SEE THE ENTIRE  
23 THING.

24 BUT THERE'S MORE OF THAT SORT OF STUFF IN  
25 HERE. IT REALLY IS A VITRIOLIC DIATRIBE BY MR. MILLS.  
26 AND I THINK IT'S PREJUDICIAL. IT'S HIGHLY PREJUDICIAL,  
27 AND UNDULY SO, IN ADDITION TO ALL THE OTHER OBJECTIONS  
28 THAT I'VE ALREADY INTERPOSED.

1 THE COURT: WHAT IS THE -- IF THIS IS TO BE  
2 RECEIVED FOR LIMITED PURPOSE, WHAT'S THE LIMITED  
3 PURPOSE?

4 MR. GUTERRES: IT'S, AGAIN, INFORMATION THAT  
5 THE DEPARTMENT HAD AT THE TIME THAT CORROBORATES  
6 INFORMATION THAT WE HAD, WITH REGARD TO MOM NOT  
7 FOLLOWING RECOMMENDATIONS, YOU KNOW, BASICALLY  
8 DICTATING WHAT THE CHILD WAS EATING.

9 WHICH ALL CORROBORATES THE TESTIMONY OF  
10 MS. SCHEELE, MS. PENDER, YOU KNOW, AS TO WHAT THEY  
11 WERE -- WHAT THE SITUATION WAS THAT THEY WERE OBSERVING  
12 WITH MOM'S CONDUCT.

13 THE COURT: WELL, ASSUMING THAT'S A LEGITIMATE  
14 LIMITED PURPOSE, I THINK DO THINK THERE'S A NUMBER OF  
15 THINGS ABOUT THIS DOCUMENT THAT WOULD GO BEYOND ANY  
16 SUCH LIMITED PURPOSE.

17 AND TO CONSIDER IT IN ITS ENTIRETY, I THINK,  
18 IS UNWARRANTED. AND THEREFORE, IF YOU WANT TO PROPOSE  
19 TO US, WHICH I KNOW YOU CAN'T DO AT THE MOMENT, A  
20 REDACTED VERSION -- BECAUSE THERE ARE A NUMBER OF  
21 THINGS IN HERE, WHICH --

22 MR. GUTERRES: YOUR HONOR, WE'LL ENDEAVOR TO  
23 DO THAT BY TOMORROW. WHAT I CAN TRY TO DO IS COVER  
24 THOSE ADDITIONAL PAGES SO THAT AT LEAST EVERYONE KNOWS  
25 WHAT ADDITIONAL PAGES I WANT ON 24.

26 AND THEN, TO THE EXTENT MR. MCMILLAN HAS  
27 OBJECTIONS, MAYBE HE CAN TELL US NOW, AND WE CAN TRY TO  
28 COME TO A SOLUTION THAT WE CAN PROPOSE.

1 THE COURT: I AGREE. LET'S GO AHEAD AND SEE  
2 WHAT OTHER PAGES YOU HAVE AT THIS TIME, FROM THIS  
3 EXHIBIT 24.

4 MR. GUTERRES: SO MOVING ON TO THE NEXT  
5 PORTION OF THAT -- I WILL ENDEAVOR TO GO THROUGH  
6 PAGES 615 THROUGH 636 AND TRY TO PRESENT A MORE  
7 REDACTED VERSION. TO THE EXTENT I CAN DO THAT TONIGHT,  
8 I'LL TRY TO DO THAT AND MAYBE EMAIL IT TO MR. MCMILLAN.

9 637 THROUGH 638, WHICH IS ANOTHER DOCUMENT I  
10 PUBLISHED AND PRESENTED DURING MR. MILLS'S EXAMINATION.

11 MR. MCMILLAN: THESE ARE ATTORNEY LETTERS.  
12 THERE'S BEEN NO FOUNDATION AT ALL LAID FOR THE  
13 PREPARATION OF THE LETTER. CONTAINS MULTIPLE HEARSAY.

14 AND IT'S NOT CLEAR WHO THE SENDER WAS, OR  
15 ANYTHING ON IT, REALLY. IT DOES HAVE A CC LINE,  
16 R. MILLS, BUT IT ALSO IS, FOR THE SAME REASONS,  
17 IT'S 352, HEARSAY, LACKING IN FOUNDATION.

18 AND I DO NOT BELIEVE IT'S RELEVANT TO AN ISSUE  
19 CURRENTLY AT PLAY IN THE CASE.

20 MR. GUTERRES: AND THE RESPONSE TO THAT AS  
21 WELL, YOUR HONOR, THEN, IT WOULD BE THE NEXT  
22 DOCUMENT, 639 THROUGH 640.

23 MR. MCMILLAN: AND WE WOULD HAVE THE SAME  
24 OBJECTIONS ON THAT, YOUR HONOR. LACKING IN FOUNDATION,  
25 HEARSAY, ALSO 352 PREJUDICE, AND RELEVANCE.

26 THE ADDITIONAL OBJECTION WOULD BE THAT THERE'S  
27 BEEN NO EVIDENCE OR FOUNDATION LAID TO SHOW THAT THIS  
28 WAS ACTUALLY AN AUTHORIZED TRANSMISSION BY MS. DUVAL.

1           IT WAS SOMETHING HER LAWYER SENT, A LETTER HER  
2           LAWYER SENT. WE DIDN'T HEAR FROM HER LAWYER, WE DIDN'T  
3           HEAR FROM HER ABOUT IT, AND THERE'S JUST NO FOUNDATION  
4           FOR IT.

5           MR. GUTERRES: WHICH IS WHY IT'S IN THE  
6           REPORT, YOUR HONOR, AND IT WOULD BE FOR THE LIMITED  
7           PURPOSE AGAIN.

8           THE INFORMATION THE DEPARTMENT HAD AT THE TIME  
9           THAT CORROBORATES WHAT THE SOCIAL WORKERS, THE  
10          INFORMATION THAT THE SOCIAL WORKERS HAD RECEIVED, WITH  
11          REGARD TO THE CUSTODY ISSUES AND THE SITUATION AT HAND.

12          THE COURT: ALL RIGHT.

13          THE -- I GUESS THE QUESTION I HAVE IS, IF WE  
14          STILL HAD THE ISSUE OF DECEPTION BY A SOCIAL WORKER IN  
15          THE PREPARATION OF AND FILING OF THE JURISDICTION  
16          DISPOSITION REPORT, AND ALL THE ATTACHMENTS THAT WE  
17          WANT WITH IT, THERE I CAN SEE A LIMITED PURPOSE, TO BE  
18          ABLE TO JUSTIFY WHAT THEY SAID.

19          IN THIS INSTANCE, NOT ONLY -- WHAT IS IN THIS,  
20          THESE TWO LETTERS, THAT --

21          MR. GUTERRES: THIS IS ALL INFORMATION THAT  
22          PREDATES THE DETENTION.

23          THE COURT: AND DO WE HAVE ANY EVIDENCE THAT  
24          THIS WAS --

25          MR. GUTERRES: THE DELIVERED SERVICE LOG THAT  
26          THE COURT INTENDS TO ALLOW FOR PURPOSES FOR THE LIMITED  
27          PURPOSES, THAT'S EXHIBIT 82, ON PAGE 14, BATES  
28          LABELED 1490.

1           THERE'S REFERENCES TO MOTHER COMING TO THE  
2           SOCIAL WORKER'S OFFICE BECAUSE SHE HAD A LOT OF  
3           DOCUMENTS TO GIVE THE SOCIAL WORKER, INCLUDING  
4           TRANSCRIPTS FROM FAMILY LAW COURT, COPIES OF ONGOING  
5           EMAILS, DOCUMENTATION FROM DOCTORS, ET CETERA.

6           SO I THINK IT GOES TO SHOW DOCUMENTS AND  
7           INFORMATION THAT THE DEPARTMENT HAD BEFORE THE  
8           DETENTION.

9           THE COURT: WELL, THAT REFERENCE IN THAT  
10          SERVICE LOG TO BEGIN WITH, WHAT'S THE DATE OF THAT?

11          MR. GUTERRES: OCTOBER 23, 2009.

12          THE COURT: ALL RIGHT. WELL, THE DESCRIPTION  
13          YOU JUST READ TO ME FROM THE SERVICE LOG CERTAINLY  
14          ISN'T SUFFICIENT FOR ME TO BE ABLE TO TELL IF THESE TWO  
15          LETTERS ARE PART OF THAT.

16          IN OTHER WORDS, IT WAS MORE A GENERAL  
17          DESCRIPTION OF THE TYPE OF DOCUMENT. AND I DON'T  
18          REMEMBER THE LETTERS, BUT EVEN IF I DID, I DON'T KNOW  
19          THAT THESE ARE THE LETTERS.

20          AND SO THE OBJECTION TO THESE FOUR PAGES, THE  
21          TWO LETTERS RUNNING FROM 637 THROUGH 640, WILL BE  
22          SUSTAINED, AND THOSE PAGES WILL NOT BE RECEIVED.

23          MR. GUTERRES: SO THE COURT'S ALREADY  
24          RECEIVED 686 THROUGH 695, SO THE ONLY OTHER SECTION  
25          WOULD BE 808 THROUGH 816, WHICH IS ATTACHMENT 11, THE  
26          REGIONAL CENTER ASSESSMENT. AGAIN, FOR THE LIMITED  
27          PURPOSE.

28          MR. MCMILLAN: YOUR HONOR, ACTUALLY, THE

1 REGIONAL CENTER ASSESSMENT IS ALREADY IN EVIDENCE AS  
2 EXHIBIT NUMBER 9, WITHOUT ANY LIMITED PURPOSE. SO I  
3 DON'T KNOW THAT WE HAVE A PROBLEM WITH THIS COMING IN  
4 AGAIN. IT'S JUST DUPLICATIVE.

5 THE COURT: YEAH, 9, PAGES 1328 THROUGH 1334,  
6 IS IN EVIDENCE. AND IT'S MY BELIEF THAT THAT IS THEIR  
7 REPORT. WE COULD TAKE A QUICK LOOK, IF YOU WANT TO.

8 MR. MCMILLAN: IT LOOKS LIKE THE ONLY  
9 DIFFERENCE WOULD BE, YOUR HONOR, I THINK THIS ONE HAS A  
10 COVER LETTER THAT WE ACTUALLY LIKE, SO WE'D LIKE THIS  
11 ONE ALSO TO BE ADMITTED.

12 THE COURT: SO YOU ACTUALLY WANT THE COVER  
13 LETTER IN?

14 MR. MCMILLAN: YEAH, IT'S 8093. BUT I GUESS  
15 IT'S ACTUALLY 809, YOUR HONOR. LOOKS LIKE THERE MIGHT  
16 HAVE BEEN ANOTHER BATES NUMBER THAT GOT OVER-MARKED OR  
17 SOMETHING.

18 MR. GUTERRES: THERE IS NO OBJECTION BY  
19 PLAINTIFF?

20 MR. MCMILLAN: YEAH. WE'RE FINE WITH 808  
21 THROUGH --

22 MR. GUTERRES: 816.

23 MR. MCMILLAN: 816, WE'RE FINE WITH THAT  
24 COMING IN. AGAIN THOUGH, IN THIS PACKAGE, FOR THE  
25 LIMITED PURPOSE.

26 THE COURT: YES. AGAIN FOR THE LIMITED  
27 PURPOSE. OKAY. SO WE JUST HAVE A COUPLE OF THESE  
28 ITEMS.

1 MR. GUTERRES: WE'LL REVIEW THAT DECLARATION  
2 AND TRY TO SUBMIT A REDACTED VERSION OF THAT.

3 THE COURT: ALL RIGHT. SO WHAT I'D LIKE TO DO  
4 AT THIS TIME IS FOR US TO REVIEW THE MATTERS TO BE DONE  
5 AND KNOW WHAT WE'RE GOING TO BE ADDRESSING TOMORROW.

6 AMONG OTHER THINGS, THAT WILL INCLUDE, AS LONG  
7 AS YOU JUST MENTIONED IT, PROPOSED REDACTIONS TO THE  
8 MILLS DECLARATION, WHICH IS IN EXHIBIT 24.

9 WE'LL TAKE A LOOK AT IT AND SEE IF THAT WOULD  
10 BE RECEIVED. ON A COUPLE OF THE EXHIBITS --

11 MR. PRAGER: YOUR HONOR?

12 THE COURT: YES. YOU HAVE THE LIST OF THE  
13 ONES YOU WERE GOING TO CHECK ON FOR US?

14 MR. PRAGER: I DO. THE LIST THAT WE WILL BE  
15 CHECKING ON IS 222, 225, 233. AND THE ISSUE THAT THE  
16 COURT ASKED FOR US TO CONFIRM IS THAT THERE WAS  
17 AUTHENTICATION AS TO THE TRANSMISSION OF THE DOCUMENTS.

18 THE COURT: RIGHT.

19 MR. PRAGER: AND COULD I TRY AND MAKE YOU  
20 SLEEP A LITTLE BETTER TONIGHT?

21 THE COURT: YES.

22 MR. PRAGER: COULD WE WITHDRAW 343, 344,  
23 AND 345? SO IT'S LESS STUFF WE HAVE TO DEAL WITH IN  
24 THE FUTURE.

25 THE COURT: ALL RIGHT. I WANT TO MAKE SURE  
26 THE CLERK -- MR. MCMILLAN.

27 MR. MCMILLAN: YES, YOUR HONOR.

28 THE COURT: YOU WERE GOING TO BE TAKING A LOOK



1 AT THE --

2 MR. MCMILLAN: 82.

3 THE COURT: THE MEDICAL EXPENSES IN THE --

4 MR. MCMILLAN: I FORGOT ABOUT THAT.

5 THANK YOU.

6 THE COURT: 599, 600, AND 603. AND LET US  
7 KNOW IF YOU'RE GOING TO BE CLAIMING SOME OR NOT. IN  
8 OTHER WORDS, WE NEED TO ADDRESS, AND IF YOU ARE, WHICH  
9 ONES.

10 MR. MCMILLAN: RIGHT, I UNDERSTAND,  
11 YOUR HONOR, AND, IN FACT, WHAT I INTEND TO DO IS --  
12 THAT'S NOT A DECISION I THINK I CAN MAKE WITHOUT MY  
13 CLIENT'S CONSENT. BUT I'LL -- I'M GOING TO BE TRYING  
14 TO GET AUTHORITY TO JUST WITHDRAW THOSE.

15 BUT I'LL KNOW THAT LATER TONIGHT.

16 THE COURT: MR. PRAGER?

17 MR. PRAGER: YES, SIR.

18 THE COURT: UNFORTUNATELY, I'M DEALING NOW,  
19 LOOKING BACK AT THE LIST, AND TRYING TO REMEMBER ALL  
20 THAT WE DID, BUT ON THE -- WHAT DID WE DO WITH 704?

21 MR. PRAGER: WE'VE NOT REACHED IT, AS FAR AS I  
22 KNOW, YOUR HONOR. THE NEXT IN ORDER THAT I HAD  
23 WAS 243, 24 -- I'M SORRY, I MISSPOKE. 343, 344,  
24 AND 345.

25 THE COURT: THOSE HAVE BEEN WITHDRAWN.

26 MR. PRAGER: IF I MISSPOKE A SECOND AGO, THEN  
27 THAT'S CORRECT. IT'S 343, 344, 345 TO BE WITHDRAWN.

28 THE COURT: ALL RIGHT. SO WE WILL PICK UP

1 WITH 370.

2 MR. PRAGER: YES. AND I THINK THAT'S --

3 MS. SWISS: 370, I BELIEVE, IS THE COUNTY  
4 POLICY REGARDING USE OF THE UP-FRONT ASSESSMENT.

5 MR. PRAGER: OKAY. I HAVE BEEN GOING THROUGH,  
6 LOOKING AT WHAT I HAVE EXPECT TO HAVE NEXT. I EXPECT  
7 MY NEXT NUMBERS TO BE IN THE 700S. I THINK THEY'RE UP  
8 ON THE WITNESS STAND. IF I CAN -- AFTER WE'RE DONE,  
9 I'LL GO, TRY AND COLLECT THEM AND GET READY FOR  
10 EVERYONE TOMORROW.

11 THE COURT: THAT WOULD BE FINE. ALL RIGHT.  
12 AFTER TRIMARCHI, THE NEXT ONES THAT WE'D BE ADDRESSING  
13 WOULD BEGIN WITH 704.

14 MR. PRAGER: THEY SHOULD, IF MY READ IS  
15 CORRECT. 704 IS CONDEN, WHICH IS ME.

16 THE COURT: RIGHT. THAT'S WHAT I'M SAYING.  
17 I'M JUST TRYING TO PICK UP WHAT ORDER WE'RE IN.

18 ALL RIGHT. NOW, IN ADDITION, I NEED THE  
19 VERDICT FORMS. IF THERE'S ANYTHING UNRESOLVED, I'LL  
20 RESOLVE IT.

21 MR. PRAGER: OKAY.

22 MR. MCMILLAN: VERY GOOD.

23 THE COURT: I TOLD YOU THAT I WOULD GIVE YOU  
24 CACI INSTRUCTIONS THAT I BELIEVE WOULD APPLY, SOME OF  
25 WHICH MAY REQUIRE A MODIFICATION. AND ON THESE, AND  
26 I'M REFERRING TO THE ONES ON WHAT WE'LL CALL VERDICT  
27 FORM NUMBER ONE.

28 AND WE'LL TAKE JUST A MOMENT. I HAVE THAT

1 LIST ON MY DESK.

2 (PAUSE IN THE PROCEEDINGS)

3 THE COURT: WE'RE BACK ON THE RECORD. SO,  
4 MR. MCMILLAN, AND MS. SWISS, ARE YOU GOING TO BE THE  
5 ONE KEEPING TRACK OF THIS?

6 MS. SWISS: SURE.

7 THE COURT: I JUST WANT TO MAKE SURE, IF  
8 ANYONE HAS ANY QUESTION.

9 THERE'S NOT A LARGE NUMBER, BUT THE CACI  
10 INSTRUCTIONS ON WHAT I'LL CALL THE DETENTION ISSUE  
11 WOULD INCLUDE 3000. AND I KNOW THAT MODIFIED VERSIONS  
12 OF 3000 WERE PROVIDED TO THE COURT, BUT THEY ARE BASED  
13 ON 3000.

14 430, WHICH IS AN INSTRUCTION ON SUBSTANTIAL  
15 FACTOR. THERE WAS A REQUEST FOR 431 ON MULTIPLE  
16 FACTORS, WHICH I THINK DOES NEED TO BE CONSIDERED.

17 3005 AND 3026.

18 ON MONELL ISSUES, THE CACI INSTRUCTIONS -- I  
19 WANT TO MAKE SURE THE RIGHT ONE -- ON MONELL, THE CACI  
20 INSTRUCTIONS I IDENTIFIED ARE 3001, 3002, AND 3003.

21 ON THE EXIGENCY ISSUE, THERE IS A CACI  
22 INSTRUCTION AT 3026, WHICH I DON'T THINK IS  
23 SATISFACTORY.

24 MR. MCMILLAN: I AGREE.

25 THE COURT: AND SO, I THINK THAT WE'RE GOING  
26 TO HAVE -- IT PRESENTS THE IDEA BUT IN LOOKING AT IT, I  
27 JUST DIDN'T SEE IT AS REALLY APPLYING TO WHAT WE HAVE  
28 HERE.

1           SO THIS IS PROBABLY, EVEN THOUGH I'M  
2 IDENTIFYING IT TO YOU, WE'RE GOING TO NEED SPECIALS.  
3 AND I KNOW SOME BEEN SUGGESTED. I'LL JUST GIVE YOU THE  
4 NUMBERS THAT I HAVE IDENTIFIED.

5           ON PUNITIVE DAMAGES AGAINST -- THE ISSUE OF  
6 PUNITIVE DAMAGES AGAINST INDIVIDUAL DEFENDANTS, WE  
7 WOULD NEED 201, WHICH IS THE INSTRUCTION ON CLEAR AND  
8 CONVINCING EVIDENCE, WHICH IS NECESSARY FOR, THEN, A  
9 FINDING OF MALICE, FRAUD, OR OPPRESSION.

10          AND THE INSTRUCTION I BELIEVE WOULD APPLY TO  
11 OUR INDIVIDUAL DEFENDANTS IS 3941. AND THAT, YOU'LL  
12 SEE WHEN YOU LOOK AT IT, THEY HAVE INSTRUCTIONS FOR  
13 INDIVIDUALS, ENTITIES, AND SO ON, FIRST PHASE, SECOND  
14 PHASE. WE WOULD NEED THE ONE FOR FIRST PHASE, AND SO  
15 THAT'S THE ONE I IDENTIFIED.

16          ON THE INTENTIONAL INFLICTION, THE ONES I'VE  
17 IDENTIFIED, AT LEAST SO FAR, ARE 1600, 1602, 1603,  
18 AND 1604.

19          THERE IS A REQUEST IN FOR INSTRUCTIONS FROM  
20 THE 3900 SERIES, WHICH I HAVE NOT GONE THROUGH YET, ON  
21 DAMAGES. AND THE ONES I ATTEMPTED TO IDENTIFY WERE  
22 REFERRED TO MORE AS LIABILITY INSTRUCTIONS AND ISSUES.

23          SO IN THE MORNING, AS SOON AS WE HAVE TIME, I  
24 DO INTEND TO GO THROUGH THE REQUESTS FOR INSTRUCTIONS  
25 WE'VE HAD.

26          I'LL TELL YOU, GENERALLY SPEAKING, WE HAVE  
27 REQUESTS FOR INSTRUCTIONS FOR THE 100 SERIES. I'VE  
28 ALREADY GIVEN THE ONES FROM 100 SERIES THAT I THINK

1 WOULD APPLY, AND I DON'T INTEND TO GIVE THEM AGAIN.

2 THE ONES I'VE ALREADY GIVEN WILL BE INCLUDED,  
3 HOWEVER, IN THE PACKAGE OF INSTRUCTIONS THAT GOES TO  
4 JURY. I JUST DON'T THINK I'LL READ THEM AGAIN.

5 WE ALSO HAVE A NUMBER OF INSTRUCTIONS FROM  
6 THE 5000 SERIES. AND SOME OF THOSE ARE DUPLICATIVE OF  
7 INSTRUCTIONS ALREADY GIVEN IN THE 100 SERIES, AND I  
8 TYPICALLY DO NOT GIVE THE SAME INSTRUCTION AGAIN. THAT  
9 INCLUDES 5001, 5002, AND 5003.

10 THERE ARE SEVERAL INSTRUCTIONS REQUESTED:

11 5013, WHICH APPLIES TO A DEADLOCKED JURY.  
12 IT'S AN INSTRUCTION I WOULD USE IF THAT ARISES BUT IT  
13 WON'T BE IN THE INITIAL GROUP.

14 5014, WHICH HAS TO DO WITH SUBSTITUTION OF AN  
15 ALTERNATE JUROR. I WON'T DO THAT UNLESS THAT OCCURS  
16 DURING JURY DELIBERATION. THAT WHAT IT'S APPLIES TO.

17 THAT'S THE ONE THAT TELLS, IF YOU RECALL, THAT  
18 IF WE HAVE TO SUBSTITUTE A JUROR DURING DELIBERATIONS,  
19 THEY'RE INSTRUCTED TO GO BACK AND START ALL OVER AGAIN.  
20 BECAUSE WE HAVE TO HAVE 12 PERSONS RETURNING A VERDICT  
21 THAT HAVE DELIBERATED ON EVERY ISSUE.

22 5019 IS QUESTIONS FROM JURORS. WE HAVEN'T HAD  
23 ANY. I'M NOT -- SO I'M NOT EXPECTING TO GIVE IT. I'M  
24 JUST TELLING YOU I'LL PROBABLY BE READING THAT OUT.

25 5021, I JUST HAD A QUESTION ABOUT. THAT'S  
26 ABOUT ELECTRONIC EVIDENCE, AND I DON'T KNOW THAT  
27 PLAYING OF THE DEPOSITIONS IS REALLY ELECTRONIC  
28 EVIDENCE. I WILL BE GIVING THE INSTRUCTION ON

1 DEPOSITIONS.

2 AND YOU RECALL, I PREVIOUSLY TOLD THEM THAT A  
3 DEPOSITION CAN BE PRESENTED BY READING FROM THE  
4 TRANSCRIPT. IT CAN BE GIVEN THROUGH A VIDEOTAPE OF THE  
5 DEPOSITION. AND I DON'T THINK WE HAVE ELECTRONIC  
6 EVIDENCE EXCEPT FOR THAT.

7 SO MY THOUGHT IS THAT I'LL SIMPLY TAKE A LOOK  
8 AT THE INSTRUCTION ON DEPOSITIONS. IT'S AROUND 206.  
9 WHATEVER IT IS. AND MAYBE ADD SOME LANGUAGE TO MAKE  
10 SURE IT'S CLEAR THAT WHAT WE'RE TELLING THEM ARE  
11 DEPOSITIONS AS EVIDENCE, THAT IT INCLUDES THE VIDEO.

12 NUMBER 5090 IS DISCHARGE INSTRUCTION AFTER WE  
13 RECEIVE A VERDICT. I DON'T ACTUALLY USE THAT  
14 INSTRUCTION BUT IN MY OWN WORDS, I TELL THEM THE SAME  
15 THING. AND SO IF ANYONE WANTS ME TO USE THE ACTUAL  
16 INSTRUCTION, SO BE IT.

17 BUT I TELL THE JURORS MORE THAN JUST THAT WHEN  
18 WE'RE DONE AND READY TO DISCHARGE.

19 WE ALSO HAD REQUESTS FOR THREE INSTRUCTIONS  
20 FROM BAJI, NUMBERS 1520, 1521, AND 1522. MY INTENTION  
21 AT THIS TIME, YOU CAN LOOK AT IT, IS THAT I WOULD  
22 GIVE 1520.

23 1521 IS ONE I WOULD NOT GIVE. THAT HAS TO DO  
24 WITH THE JUDGE COMMENTING ON THE EVIDENCE, AND I  
25 HAVEN'T, AND I WON'T. AND THEREFORE, THE CACI  
26 INSTRUCTION ON JUDGE'S COMMENT, WHICH I THINK IS 5016,  
27 I ALSO WON'T BE GIVING BECAUSE I WON'T COMMENT, AND I  
28 HAVEN'T.

1           THE LAST BAJI INSTRUCTION IS 1522, WHICH I  
2           DON'T INTEND TO GIVE BECAUSE I FEEL IT'S COVERED BY  
3           INSTRUCTION 5000, WHICH I DO INTEND TO GIVE.

4           SO THE ONES THAT I HAVEN'T ADDRESSED WITH YOU  
5           ARE THOSE -- WELL, LET ME ALSO GO THROUGH HERE. I'LL  
6           TELL YOU WHAT MY GENERAL INTENT IS.

7           200, WHICH IS BURDEN OF PROOF, WE'LL MAYBE  
8           HAVE TO ADD THE LANGUAGE ABOUT THE BURDEN OF PROOF ON  
9           THE EXIGENCY. WE TALKED ABOUT THAT BEFORE, AND I THINK  
10          THAT CAN BE PRETTY EASILY DONE TO BE DESCRIBED.

11          201 IS ONE ON CLEAR AND CONVINCING EVIDENCE.  
12          I'VE ALREADY INDICATED THAT CAN BE GIVEN BECAUSE THEY  
13          MUST PROVE MALICE, FRAUD, OR OPPRESSION BY CLEAR AND  
14          CONVINCING.

15          I WOULD INTEND TO GIVE 202.

16          I HAD A REQUEST FOR 203, PARTY HAVING POWER TO  
17          PRODUCE BETTER EVIDENCE. THE DIRECTIONS FOR USE ON  
18          THAT IS, DON'T GIVE IT IF THERE'S NO EVIDENCE THAT THE  
19          PARTY PRODUCING INFERIOR EVIDENCE HAD THE POWER TO  
20          PRODUCE SUPERIOR EVIDENCE.

21          I DON'T THINK WE'VE HAD ANY EVIDENCE THAT  
22          SOMEONE HAD THE ABILITY TO PRODUCE SOMETHING MORE.

23          MR. MCMILLAN: WELL, THERE --

24          THE COURT: WELL, WE TRY. THIS IS NOT TALKING  
25          ABOUT WHAT THEY COULD HAVE REPORTED. AND I'VE ACTUALLY  
26          COVERED A LOT OF THAT IN MY RULING OVER DECEPTION.

27          I DON'T MIND GIVING IT, DESPITE THE  
28          INSTRUCTION. IT APPLIES TO EVERYBODY. IF EITHER SIDE

1 WANTS, BOTH SIDES -- ANYONE WANT IT, OR DON'T CARE?

2 MR. GUTERRES: I DON'T THINK WE NEED IT,  
3 YOUR HONOR.

4 THE COURT: I'LL GIVE IT. IT WAS AGREED TO, I  
5 THINK, BY EVERYBODY, SO I'LL GIVE IT.

6 205, FAILURE TO EXPLAIN OR DENY EVIDENCE, I'LL  
7 GIVE.

8 206 IS THE ONE ON -- OH, EVIDENCE LIMITED --  
9 ADMITTED FOR A LIMITED PURPOSE, AND WE WILL, CLEARLY,  
10 BE GIVING IT.

11 BUT IT SEEMS TO ME WE SHOULD DO WHAT YOU DID  
12 BEFORE, MR. MCMILLAN, IS TO GIVE THE INSTRUCTION AND  
13 TELL THEM SPECIFICALLY WHAT THE EXHIBITS ARE THAT HAVE  
14 BEEN RECEIVED FOR LIMITED PURPOSE.

15 THAT WILL TAKE A LITTLE BIT OF DOING. AND IT  
16 STRIKES ME THAT MAY BE ONE OF MR. PARIS'S PROJECTS, BUT  
17 I'LL LEAVE THAT UP TO YOU.

18 MR. MCMILLAN: I THINK THAT'S A GREAT  
19 SUGGESTION, YOUR HONOR. DON'T WANT HIM RUNNING OUT OF  
20 WORK.

21 THE COURT: 207, EVIDENCE APPLICABLE TO ONE  
22 PARTY, I'LL GIVE. BECAUSE SOME EVIDENCE APPLIES TO  
23 ONE, AND SOME EVIDENCE APPLIES TO ANOTHER.

24 208 -- I SAID IT'S 206 -- 208 IS THE  
25 DEPOSITION. I'LL GIVE THAT. AND I'LL TALK TO YOU AT  
26 THE TIME. WE'LL WORK ON THE LANGUAGE, MAKE SURE THEY  
27 UNDERSTAND VIDEO DEPOSITIONS THEY SAW ARE DEPOSITIONS.

28 209 HAD TO DO WITH INTERROGATORIES. WE



1 HAVEN'T HAD ANY, SO I WILL SAY NO. AND I ASSUME THAT  
2 CAN BE DEEMED WITHDRAWN. CORRECT?

3 MR. MCMILLAN: CORRECT.

4 THE COURT: 210 WAS REQUEST FOR ADMISSIONS,  
5 AND WE DO -- WE DIDN'T GIVE IT TO THEM AS REQUEST FOR  
6 ADMISSIONS, WE TOLD THEM CERTAIN FACTS WERE  
7 ESTABLISHED.

8 SO WE DIDN'T PRESENT ANYTHING THAT WAS  
9 PRESENTED AS A REQUEST FOR ADMISSION. SO MY VIEW IS,  
10 IN LIGHT OF THE STIPULATION, WHICH SPEAKS FOR ITSELF,  
11 WE DON'T NEED 210.

12 MR. GUTERRES: WITHDRAWN, YOUR HONOR.

13 MR. MCMILLAN: I THINK I AGREE WITH  
14 YOUR HONOR. I DON'T RECALL IF THERE'S A CACI  
15 INSTRUCTION FOR STIPULATIONS. I THINK THERE IS, BUT I  
16 DON'T REMEMBER THE LAST TIME I USED IT.

17 THE COURT: I'VE ALREADY GIVEN AN INSTRUCTION  
18 TO THE JURY IN THE 100 SERIES, THAT EVIDENCE CAN BE  
19 RECEIVED BY STIPULATION.

20 AND IF YOU'LL RECALL, AT THE TIME I GAVE THAT,  
21 I DIGRESSED TO TELL THEM THAT THEY WOULDN'T HAVE TO  
22 GUESS WHEN THERE WAS A STIPULATION, THAT WE WOULD BE  
23 VERY SPECIFIC IN TELLING THEM TO WHAT WAS BEING  
24 STIPULATED, AND THAT THEY WERE INSTRUCTED TO ACCEPT  
25 THOSE FACTS AS HAVING BEEN PROVEN FOR THE PURPOSE OF  
26 THIS CASE.

27 I SO TOLD THEM AT THE TIME, AND SO TOLD THEM  
28 AT THE TIME YOU RECITED THE STIPULATION. SO I THINK

1 THAT STIPULATIONS ARE COVERED.

2 MR. MCMILLAN: OKAY.

3 THE COURT: 212, STATEMENTS OF A PARTY  
4 OPPONENT WILL BE GIVEN.

5 218 WAS THE NEXT BAJI ONE. THE CACI ONE IS  
6 THERE ABOUT STATEMENTS MADE TO A PHYSICIAN. THOSE WILL  
7 BE GIVEN.

8 219 IS EXPERT WITNESS TESTIMONY, WILL BE  
9 GIVEN. 220, ON EXPERT WITNESS TESTIMONY, WILL BE  
10 GIVEN. 221, EXPERT TESTIMONY, WILL BE GIVEN.

11 WE HAD REQUESTS FOR 223, WHICH THE INSTRUCTION  
12 ON OPINION TESTIMONY FROM LAY WITNESSES. I THINK WE'VE  
13 HAD THAT. I WAS TRYING TO REMEMBER BACK, IF WE HAD  
14 OPINION TESTIMONY FROM A LAY WITNESS, AS OPPOSED TO AN  
15 EXPERT.

16 NOW, SOME PERSON YOU WOULD NORMALLY THINK AS  
17 BEING LAY WITNESSES MIGHT INCLUDE MR. DOMINGUEZ,  
18 MS. RUSSELL, BUT THEY ACTUALLY WERE TESTIFYING AS  
19 EXPERTS.

20 SO I WAS TRYING TO REMEMBER IF WE HAD ANYONE  
21 ELSE EXPRESSING AN OPINION, AND MY THOUGHT IS, I DIDN'T  
22 RECALL IT OFFHAND.

23 MS. SWISS: WHAT ABOUT THE NUTRITIONIST,  
24 WENDY CRUMP? I MEAN, SHE'S A NUTRITIONIST, SO I DON'T  
25 KNOW IF THAT COMES AS EXPERT OR LAY.

26 THE COURT: I CONSIDER HER TO BE AN EXPERT.  
27 WHAT I WAS GOING TO SAY WAS, I DON'T THINK THERE'S ANY  
28 HARM IN GIVING THE INSTRUCTION.

1           AND THEN, IF WE GIVE IT, IT COVERS -- IF  
2           SOMEBODY THINKS OF SOMEONE THAT WAS GIVING AN OPINION  
3           AND WASN'T AN EXPERT, THERE'S NO HARM TO THEM. MY  
4           THOUGHT IS, WHY DON'T WE JUST GIVE IT.

5           MR. MCMILLAN: WE HAVE NO OBJECTION,  
6           YOUR HONOR.

7           THE COURT: OKAY, I'LL GIVE IT.

8           MR. MCMILLAN: AND THAT WAS 223, RIGHT?

9           THE COURT: 223.

10          AND THEN WE HAD 224, TESTIMONY OF A CHILD. WE  
11          DIDN'T -- THAT WILL BE DEEMED WITHDRAWN.

12          GIVEN THE TIME, WE STILL HAVE QUITE A LIST OF  
13          OTHER FORM INSTRUCTIONS. AND WE'LL JUST HAVE THE  
14          DISCUSSION. IN FACT, ON A NUMBER OF THOSE -- WE'RE  
15          GOING TO HAVE ADDRESS A NUMBER OF THOSE.

16          CERTAINLY, MANY OF THEM I'VE ALREADY MARKED, I  
17          BELIEVE SHOULD BE GIVEN, BUT WE'LL GO THROUGH THE LIST  
18          TOMORROW.

19          SO WHAT I WANT TO HAVE FROM YOU TOMORROW, IN  
20          THIS REGARD, IS YOUR READINESS TO DISCUSS EACH OF THE  
21          CACI INSTRUCTIONS, OR IN THIS INSTANCE, THERE'S ALSO  
22          THE THREE BAJI INSTRUCTIONS THAT HAVE BEEN REQUESTED.

23          AND TO BE ABLE TO TELL US TOMORROW -- I'D LIKE  
24          THIS FIRST THING IN THE MORNING, WHICH MAY BE A LITTLE  
25          DEMANDING, WITH EVERYTHING YOU HAVE TO DO, BUT IT'S  
26          SOMETHING WE ARE GOING TO HAVE TO BE ADDRESSING  
27          TOMORROW, AND WE'RE GOING TO HAVE TO GET TO IT --

28          WOULD BE SPECIAL INSTRUCTIONS THAT ARE BEING

1 REQUESTED AT THIS TIME, IN LIGHT OF WHERE WE ARE IN THE  
2 CASE.

3 SO WE'LL NEED TO KNOW WHAT THEY ARE, AND THEN  
4 DO OUR BEST TO BE ABLE TO ADDRESS THEM. I'M GOING TO  
5 DO MY BEST TO GET ALL THIS DONE TOMORROW. I'M STILL  
6 SKEPTICAL, BUT YOU NEVER KNOW. SO WE'LL SEE.

7 ALSO THEN, IN VERDICT FORM NUMBER TWO, HAS  
8 THAT BEEN AGREED TO?

9 MR. PRAGER: I HAVE HER CELL NUMBER. I'LL  
10 CALL OPPOSING COUNSEL. I THINK WE'RE PRETTY CLOSE.

11 THE COURT: OKAY. AND THEN, ALSO, YOU WERE  
12 TALKING WITH HER ABOUT INSTRUCTIONS.

13 MR. PRAGER: WE'VE BEEN ON THAT FOR A WHILE,  
14 AND I THINK WE'RE EXCEPTIONALLY CLOSE ON THAT.

15 THE COURT: YOU'RE GOING TO HAVE TO HAVE THOSE  
16 TOMORROW. I THINK THERE MAY BE A FEW CACI  
17 INSTRUCTIONS, BUT I SUSPECT THE VAST MAJORITY OF  
18 INSTRUCTIONS ON THAT WOULD BE -- I KNOW THERE'S CACI  
19 INSTRUCTIONS ON THE UNRUH ACT.

20 MR. PRAGER: YOU'RE CORRECT. WE'VE OFFERED  
21 THOSE.

22 THE COURT: ON YOUR FEDERAL CLAIMS, I THINK  
23 YOU HAD SOME NINTH CIRCUIT SUGGESTIONS, INSTRUCTIONS  
24 AND OTHER SOURCES, SO WE'LL HAVE TO GO OVER THOSE AS  
25 WELL.

26 MS. SWISS: YOUR HONOR, THERE'S ONE ADDITIONAL  
27 ISSUE WE HAVE. WE DID NOT GET THE CHANCE TO DISCUSS  
28 YET TODAY, IF I COULD BRING THAT TO THE COURT'S

1 ATTENTION.

2 THE COURT: AND THAT IS SERVICE --

3 MS. SWISS: THAT IS THE DEFENDANTS' REQUEST  
4 FOR CERTAIN INTERROGATORIES TO BE POSED TO THE JURY. I  
5 DID NOT HAVE A CHANCE TO BRIEF THE ISSUE FOR THE COURT,  
6 BUT I DID BRING A COPY OF THE CASE WHICH I HAVE RELIED  
7 ON IN THE PAST, IN OTHER INSTANCES.

8 AND THAT'S THE CASE OF ZELLNER, Z-E-L-L-N-E-R.  
9 AND THAT IS 494 F3RD.344. AND THE ACTUAL PINPOINT SITE  
10 IS ON PAGE 368. AND I HAVE A COPY FOR THE COURT AND  
11 FOR OPPOSING COUNSEL, IF THAT ISSUE CAN BE ADDRESSED  
12 TOMORROW, AS WELL. IT'S GOING TO HAVE TO BE.

13 THE COURT: IT'S GOING TO BE ADDRESSED. IF WE  
14 DON'T GET IT TOMORROW IT'S BECAUSE WE'RE NOT READY TO  
15 GO ON FRIDAY. WE'RE GOING TO GET TO WHATEVER WE CAN  
16 TOMORROW. THAT WILL BE HELPFUL, TO HAVE THE CASE.

17 WE'LL ALSO HAVE TO ADDRESS THE MOTIONS.

18 MR. GUTERRES: YOUR HONOR, IF WE COULD GET  
19 FROM PLAINTIFF'S COUNSEL, SOME GUIDANCE, AGAIN, ON  
20 IDENTIFYING WHAT CONDUCT MS. NELSON IS ALLEGED TO HAVE  
21 DONE, WITH REGARD TO THE INTENTIONAL INFLECTION, IT  
22 WOULD GIVE US SOME GUIDANCE ON THE RELEVANCE OF  
23 EXHIBITS.

24 THE COURT: THAT WILL HELP US IN THAT  
25 DISCUSSION. ALL RIGHT. WELL, YOU CAN SEE WE HAVE OUR  
26 WORK CUT OUT FOR US. SO I'M SURE YOU UNDERSTAND MY  
27 CONCERN. BUT WE'RE GOING TO DO THE BEST WE CAN.

28 MR. PRAGER: VERY GOOD, YOUR HONOR.

1 MS. SWISS: THANK YOU, YOUR HONOR.

2 THE COURT: NOTHING MORE CAN BE EXPECTED. SO  
3 I'LL SEE YOU AT 8:00. OH, ONE OTHER -- YOU WERE GOING  
4 TO IDENTIFY, MAYBE BOTH SIDES, THE DSL --

5 MR. MCMILLAN: RIGHT.

6 THE COURT: -- PORTIONS THAT WOULD BE, AGAIN,  
7 WOULD BE A LIMITED PURPOSE, TO IDENTIFY.

8 MR. MCMILLAN: YEAH. I'LL TAKE CARE OF THAT  
9 TONIGHT, YOUR HONOR. AND WE'LL TRY AND GET THE  
10 REDACTIONS DONE TOO, SO THAT WHEN WE BRING IT IN, IT'S  
11 A FINISHED PRODUCT, OR AS CLOSE TO A FINISHED PRODUCT  
12 AS WE CAN GET IT.

13 THE COURT: JUST DO YOUR BEST. I'VE ALREADY  
14 PLEADED FOR YOU. I'M NOT SURE I CAN DO ANYMORE THAN I  
15 HAVE. BUT I RECOGNIZE THAT COUNSEL CAN'T DO ANY MORE  
16 THAN CAN REASONABLY BE DONE. SO IT'S A TWO-WAY STREET.  
17 SO I'LL SEE YOU IN THE MORNING.

18

19 (WHEREUPON, AT THE HOUR OF 4:46 P.M.,

20 THE PROCEEDINGS WERE ADJOURNED.)

21

22 ---OOO---

23

24 (THE NEXT PAGE NUMBER IS 9601)

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