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STRIKE THIS PAGE

1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES
3 LOS ANGELES, CALIFORNIA MONDAY, OCTOBER 31, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ELORA DORINI, CSR NO. 13755
7 TIME: 8:07 A.M.
8

9 ---000---

10
11 THE COURT: WE'RE ON THE RECORD. I HAVE A
12 NUMBER OF MATTERS TO BE COVERED. I RECEIVED, JUST NOW,
13 THE -- THE POWERPOINT OF DEFENDANT'S CLOSING ARGUMENT
14 FROM THE DEFENSE. BUT HAS -- HAVE YOU HAD AN
15 OPPORTUNITY TO SEE THAT?

16 MR. MCMILLAN: I HAVE, YOUR HONOR, AND WE
17 DON'T HAVE OBJECTION TO THE EXHIBITS THAT WERE ADMITTED
18 INTO EVIDENCE -- PIECES OF THOSE BEING PRESENTED ON
19 VIDEO.

20 WHAT WE DO HAVE OBJECTION TO IS THE
21 PRESENTATION OF ROUGH TRANSCRIPTS AS A -- AS OPPOSED TO
22 CERTIFIED TRANSCRIPTS OF THE TRIAL TESTIMONY.

23 IT'S MY UNDERSTANDING THAT THEY WANT TO
24 PRESENT SNIPPETS OF TESTIMONY AS PRESENTED, BUT THEY
25 ONLY GOT ROUGH TRANSCRIPTS THAT ARE UNCORRECTED,
26 UNCERTIFIED, AND UNVERIFIED. AND I DON'T THINK THAT'S
27 APPROPRIATE UNDER THE LAW.

28 WITH RESPECT TO THE SNIPPETS OF JURY

1 INSTRUCTIONS, VERDICT FORMS, AND THE PARTICULAR
2 EXHIBITS ACTUALLY ADMITTED, I DON'T HAVE ANY
3 OBJECTIONS.

4 THE COURT: ALL RIGHT. I UNDERSTAND. WOULD
5 YOU JUST CITE ME TO A PAGE YOU THINK IS UNCERTIFIED?
6 FOR EXAMPLE, I DO SEE SOME TRANSCRIPT ON PAGE 4 --

7 MR. MCMILLAN: THAT'S UNCERTIFIED.

8 THE COURT: HOW DO WE KNOW THAT'S NOT A
9 CERTIFIED -- IN LOOKING AT IT?

10 MR. MCMILLAN: BECAUSE THAT'S WHAT MS. NAU
11 REPRESENTED TO ME, IS THAT NONE OF THESE ARE FROM THE
12 CERTIFIED TRANSCRIPTS. SECONDLY, WE'VE ALSO BEEN
13 ORDERING ROUGH TRANSCRIPTS DURING THE PROCEEDINGS. NOT
14 FOR EVERY DAY, BUT FOR MOST DAYS.

15 AND TO THE EXTENT THAT A CERTIFIED TRANSCRIPT
16 WOULD HAVE BEEN ORDERED, WE ALSO WOULD HAVE ORDERED A
17 COPY OF IT, MAINLY BECAUSE IT'S CHEAPER. BUT IT'S MY
18 UNDERSTANDING THAT NO CERTIFIED TRANSCRIPTS WERE
19 ORDERED DURING THE TRIAL.

20 MS. SWISS: THAT'S TRUE. IT'S ALL ROUGH
21 TRANSCRIPTS, YOUR HONOR. THAT'S WHAT WE ORDERED.
22 THAT'S WHAT THE COURT REPORTER SENT TO BOTH SIDES
23 THROUGHOUT THE DURATION OF THIS TRIAL. AND THOSE
24 SNIPPETS ARE FROM THE ROUGHS.

25 WE CAN MAKE THAT CLEAR TO THE JURY DURING
26 CLOSING ARGUMENTS, BUT WE WOULD REQUEST THAT WE BE
27 ALLOWED TO USE IT. AND IT'S DEMONSTRATIVE.

28 THE COURT: IT WON'T QUALIFY AS DEMONSTRATIVE.

1 BUT THE OBJECTION IS OVERRULED. BUT COUNSEL CANNOT
2 REPRESENT TO THE JURY THAT THIS IS THE ACTUAL
3 TESTIMONY.

4 YOU REPRESENT -- TELL THEM WHAT IT IS. IT'S
5 FROM THE ROUGH TRANSCRIPT, AND YOUR RECOLLECTION OF THE
6 EVIDENCE OF THE TRANSCRIPT. ONLY THE OFFICIAL
7 TRANSCRIPT OF THE COURT IS EVIDENCE OF WHAT THE WITNESS
8 TESTIFIED TO.

9 SO YOU CAN USE IT WITH THAT PROVISION.
10 ANYTHING ELSE ON THIS, MR. MCMILLAN?

11 MR. MCMILLAN: THAT WAS THE ONLY COMPLAINT,
12 THAT IT'S UNCERTIFIED.

13 THE COURT: ALL RIGHT. DO YOU HAVE A
14 POWERPOINT TYPE OF --

15 MR. MCMILLAN: NO, YOUR HONOR. ALL WE HAVE --

16 THE COURT: YOU'RE GOING TO DO IT THE
17 OLD-FASHIONED WAY.

18 MR. MCMILLAN: WE HAVE CLIPS, VERY SHORT CLIPS
19 OF THE VIDEO TESTIMONY THAT WAS ACTUALLY PRESENTED TO
20 THE JURY AS APPROVED BY THE COURT.

21 THE COURT: DID YOU CITE THOSE TO DEFENSE
22 COUNSEL?

23 MR. MCMILLAN: I DON'T HAVE CITATIONS, BUT I
24 DID ASK HER TO COME OVER AND LOOK THROUGH THEM WITH ME.
25 THEY'RE NOT VERY LONG, MOST OF THEM. SHE HASN'T DONE
26 THAT YET.

27 MS. SWISS: WE HAVE NOT YET HAD THE
28 OPPORTUNITY TO DO THAT. DO YOU -- YOU DON'T HAVE

1 THE -- JUST THE CITATIONS, I MEAN --

2 MR. MCMILLAN: WE DON'T. MOST OF THIS STUFF
3 WAS PUT TOGETHER LATE IN THE EVENING ON SATURDAY AND
4 THEN SUNDAY, AND WE DIDN'T EVEN FINISH IT UP COMPLETELY
5 TIL THIS MORNING.

6 MS. SWISS: WE JUST NEED A CHANCE TO TAKE A
7 LOOK.

8 THE COURT: YEAH. YOU'LL GET A CHANCE TO DO
9 THAT. WE HAVE A LOT OF THINGS TO COVER. SO WE'LL GO
10 ON TO SOME OTHER THINGS.

11 ONE OF THE ISSUES THAT AROSE OVER THE WEEKEND,
12 AND THE RECORD SHOULD REFLECT THAT, AS WE HAD AGREED AT
13 OUR OFF-THE-RECORD MEETINGS ON FRIDAY WITH COUNSEL AND
14 COURT OVER INSTRUCTIONS, VERDICT FORM, AND OTHER
15 ISSUES, THERE WAS STILL SOME WORK TO BE DONE OVER THE
16 WEEKEND.

17 AND SO IT WAS AGREED THAT THE PARTIES WOULD BE
18 IN COMMUNICATION WITH EACH OTHER, CERTAINLY THROUGH
19 EMAIL, AND THAT AS TO VARIOUS MATTERS, THE COURT WOULD
20 BE ALSO A RECIPIENT OF THE EMAIL.

21 EVENTUALLY, AND THE EMAILS STARTED FAIRLY
22 EARLY IN THE MORNING, I THINK THE FIRST ONE I GOT WAS
23 MR. MCMILLAN'S, WHICH WAS CONSIDERABLY BEFORE THE
24 DEADLINE THAT WE HAD SET.

25 I THINK IT WAS, WAS IT 1:00 P.M.?

26 MR. MCMILLAN: I THINK THE DEADLINE WAS 1:00,
27 BUT MR. GUTERRES AND I GOT TOGETHER --

28 THE COURT: EVERYONE MET THE DEADLINE,

1 WHATEVER IT WAS. AND THEN FOLLOWING THE DEADLINE AND
2 THE LAST OF THE EMAILS THAT I RECEIVED, I DID SEND AN
3 EMAIL BACK TO COUNSEL ADDRESSING CERTAIN ISSUES.

4 ONE OF THE ISSUES THAT HAD ARISEN WAS THAT
5 MR. GUTERRES MADE A REQUEST FOR INCLUSION OF A QUESTION
6 IN THE VERDICT FORM BASED ON THE IMMUNITY PROVIDED BY
7 GOVERNMENT CODE SECTION 820.2, AS WELL AS AN
8 INSTRUCTION ON THAT IMMUNITY.

9 MY RESPONSE ON THAT ISSUE WAS THAT, FIRST OF
10 ALL, I WAS NOT MAKING ANY RULINGS BY EMAIL, BUT I DID
11 WANT COUNSEL TO KNOW WHERE WE WERE ON THESE DIFFERENT
12 ISSUES, AND ABLE TO ASSIST YOU IN YOUR PREPARATIONS FOR
13 TODAY.

14 I INDICATED THAT MY RULING WOULD BE, AND NOW
15 IS, THAT THE DEFENDANT'S REQUESTED INSTRUCTION ON
16 GOVERNMENT CODE SECTION 820.2 WILL NOT BE GIVEN, AND
17 THE QUESTION BASED THEREON WILL NOT BE INCLUDED IN THE
18 VERDICT FORM.

19 THAT I WILL -- JUST FOR CLARITY'S SAKE,
20 INDICATE THAT THE REQUEST FOR THE ADDITIONAL QUESTION
21 BASED ON THE GOVERNMENT CODE SECTION 820.2 WAS A
22 QUESTION IN THE CAUSE OF ACTION FORM, ALLEGED UNRUH ACT
23 VIOLATION.

24 THE BASIS OF THAT DENIAL OF THE QUESTION AND
25 THE INSTRUCTION ON 820.2 IS BASED ON THE CALIFORNIA
26 SUPREME COURT CASE OF BARNER, B-A-R-N-E-R VERSUS LEEDS,
27 L-E-E-D-S, AT 24 CAL.4TH 676.

28 AND THAT PAGES 684, 685 OF THAT OPINION, THE

1 SUPREME COURT, CITING ALSO A PRIOR SUPREME COURT, THE
2 NAME OF WHICH I FORGET, BUT IT'S INCLUDED IN THE
3 CITATIONS ON THOSE PAGES, INDICATED THAT NOT ALL ACTS
4 REQUIRE A PUBLIC EMPLOYEE TO CHOOSE AMONG ALTERNATIVES.
5 STAND -- MEET THE -- IT'S THE -- SEEMS TO ENTAIL THE
6 USE OF DISCRETION WITHIN THE MEANING OF SECTION 820.2.

7 THE SUPREME COURT POINTED OUT THAT UNDER THE
8 STATUTE, IMMUNITY IS RESERVED TO THOSE BASIC POLICY
9 DECISIONS WHICH HAVE BEEN EXPRESSLY PERMITTED TO
10 COORDINATE WITH THE GOVERNMENT.

11 SUCH AREAS AS QUASI-LEGISLATIVE POLICY-MAKING
12 ARE SUFFICIENT TO CALL FOR JUDICIAL ABSTENTION FROM
13 INTERFERENCE. ON THE OTHER HAND, THERE'S NO BASIS FOR
14 IMMUNITY FOR LOWER-LEVEL DECISIONS THAT MERELY
15 IMPLEMENT A BASIC POLICY ALREADY FORMULATED.

16 THEY -- IN LOOKING AT A NUMBER OF OTHER CASES,
17 WHICH I'M NOT GOING TO CITE TO YOU, THERE'S A CASE
18 SOMEWHERE, AS WE MIGHT EXPECT, ON NEARLY EVERY KIND OF
19 DIFFERENT ACT SOMEONE -- CHOICE THAT SOMEONE COULD
20 MAKE, NONE OF WHICH WERE SPECIFICALLY APPLICABLE TO
21 WHAT WE HAVE.

22 BUT MY VIEW WAS THAT, BASED ON THE SUPREME
23 COURT'S GUIDANCE ON THE EXTENT OF THE IMMUNITY GRANTED
24 BY 820.2, THAT THE CLAIMS IN THIS CASE, ON WHICH THE --
25 WHICH ARE THE BASIS TO THE UNRUH ACT CLAIM FOR SUCH
26 THINGS AS FAILURE TO PROVIDE A BILINGUAL INTERPRETER AT
27 VISITATION, PERHAPS CLEANLINESS OF THE PREMISES AND SO
28 ON, DO NOT RISE TO THE LEVEL APPARENTLY THAT THE

1 SUPREME COURT REQUIRES.

2 I'LL -- I'VE MADE AN ATTEMPT, AND WAS UNABLE
3 TO DO SO, TO FIND A CASE MORE SPECIFICALLY APPLICABLE
4 TO THE ISSUES IN THIS CASE, AND WAS UNABLE TO DO SO.

5 SO I READILY ADMIT THAT I DO NOT HAVE SPECIFIC
6 CASE AUTHORITY FOR THIS, BUT I'M RELYING ON, AS I JUST
7 STATED AND FOR THE REASONS I JUST STATED, ON THE
8 SUPREME COURT.

9 THE NEXT ISSUE THAT I ADDRESSED IN THE EMAIL
10 WAS THAT I RECEIVED A DEFENDANT'S REQUESTED SPECIAL
11 INSTRUCTION NUMBER 7 -- EXCUSE ME, 37. AND THEN I ALSO
12 RECEIVED AN ALTERNATIVE FORM TO NUMBER 37.

13 AND THE ALTERNATIVE FORM THAT I RECEIVED BY
14 EMAIL, AND THAT WAS FROM -- I'VE FORGOTTEN WHETHER IT'S
15 SPECIFICALLY MR. MCMILLAN OR MR. PRAGER, BUT IT WAS ONE
16 OF THE TWO --

17 THAT I INDICATED I WOULD GIVE, AND THE REASON
18 THAT I DECLINED TO GIVE THE DEFENDANT'S REQUESTED
19 SPECIAL INSTRUCTION NUMBER 37 IS I FELT THERE WAS SOME
20 LACK OF CLARITY IN WHAT IT STATED AND WAS CAPABLE OF
21 BEING MISCONSTRUED.

22 WE ALSO HAD A PLAINTIFF'S REQUESTED
23 INSTRUCTION NUMBER 704.1. AND I'M SPEAKING FROM
24 MEMORY. I DON'T HAVE THE DOCUMENT SPECIFICALLY IN
25 FRONT OF ME, BUT I BELIEVE THAT WAS THE INSTRUCTION
26 DEFINING THE TERM "REGARDED AS."

27 AND I INDICATED THAT IT ALSO DID NOT ADDRESS
28 SATISFACTORILY THE STATUTORY LANGUAGE INCLUDED IN

1 DEFENDANT'S OFFERED INSTRUCTION, BASED ON 42 US CODE
2 SECTION 12012.

3 I ALSO SUGGESTED AT THE TIME, MAYBE SOME
4 FURTHER DISCUSSION MIGHT BE ABLE TO RESOLVE ANY
5 DIFFERENCES. I DON'T KNOW IF -- DID IT?

6 MR. PRAGER: IT DIDN'T RESOLVE IT, YOUR HONOR,
7 BUT IF I MAY, I DID PROPOSE SOMETHING THAT THE COURT
8 MAY ACCEPT TO MS. NAGY, AND THAT IS, USE DEFENDANTS'
9 EXHIBIT -- I'M SORRY, INSTRUCTION NUMBER 17, AND JUST
10 STRIKE THE LAST PARAGRAPH.

11 AND THE REASON I THINK THE LAST PARAGRAPH IS
12 PROBLEMATIC IS BECAUSE IT DISCUSSES TRANSITORY
13 CONDITIONS. BUT IN THIS CASE, IT'S A PERCEIVED
14 DISABILITY.

15 SO THE FACT IT'S TRANSITORY, THAT UNDERLYING
16 CONDITION COULD OR COULD NOT BE TRANSITORY DOESN'T
17 REALLY MATTER BECAUSE MS. DUVAL NEVER HAD MUNCHAUSEN.
18 AND THAT'S WHY I WAS CONFUSED ABOUT THAT, AND THAT'S
19 WHAT I DISAGREED WITH.

20 SO PLAINTIFF SUGGESTED IF WE STRIKE THE THIRD
21 PARAGRAPH, WE COULD USE DEFENDANT'S EXHIBIT 17.

22 THE COURT: ALL RIGHT. LET ME SEE IF I
23 HAVE 17 WITH ME.

24 MR. PRAGER: I HAVE IT IN FRONT OF ME, YOUR
25 HONOR. I CAN OFFER THE COURT --

26 THE COURT: YES, IF YOU HAVE IT. I'VE GOT --
27 I'M SURE I'VE GOT IT HERE BUT IF YOU HAVE IT, IT WILL
28 SAVE ME FROM SEARCHING THROUGH A PILE OF DOCUMENTS.

1 AND YOUR -- WELL, NOW I'VE GOT BOTH OF THEM.
2 IT'S THE SAME ONE FROM -- WITH EXHIBIT 17, YOUR
3 SUGGESTION IS TO DO WHAT?

4 MR. PRAGER: STRIKE THE THIRD PARAGRAPH.

5 THE COURT: IT DOES NOT INCLUDE A DISABILITY
6 IMPAIRMENT WHICH IS TRANSITORY OR MINOR?

7 MR. PRAGER: CORRECT. BECAUSE THE CASE IS
8 ABOUT PERCEIVED.

9 THE COURT: BECAUSE WHAT?

10 MR. PRAGER: THE CASE IS ABOUT A PERCEIVED
11 DISABILITY, NOT AN ACTUAL DISABILITY. SO THE FACT THEY
12 PERCEIVED DISABILITY, THE UNDERLYING NONEXISTENT
13 DISABILITY, COULD BE TRANSITORY OR NOT, DOESN'T HAVE
14 ANY RELEVANCE TO THE CASE.

15 THE COURT: WHY ISN'T IT IN THE CODE THEN?
16 BECAUSE THAT'S ORDERED SPECIFICALLY TO THE STATUTORY
17 LANGUAGE ABOUT DEFINING THE PHRASE, "REGARDED AS
18 DISABLED."

19 MR. PRAGER: BECAUSE IN CASES WHERE THERE'S A
20 PHYSICAL DISABILITY, LIKE A WHEELCHAIR USER WE TALKED
21 ABOUT, IF THE PERSON HAD A DISABILITY THAT WAS
22 TRANSITORY, LIKE GOUT, FOR EXAMPLE, THAT CAME AND WENT,
23 UNDER FEDERAL LAW, IT'S HARDER TO QUALIFY AS A
24 VIOLATION OF THE ADA.

25 UNDER STATE LAW, WE USE THE TERM, "LIMITED,"
26 SO IT'S EASIER TO QUALIFY. BUT IN ANY EVENT, WHEN
27 YOU'VE GOT A PERCEIVED DISABILITY, I THINK THE CODE
28 SAYS IT DOESN'T APPLY BECAUSE THE PERSON NEVER HAD THE

1 CONDITION IN THE FIRST PLACE.

2 THE COURT: ALL RIGHT. I UNDERSTAND YOUR
3 ARGUMENT, AND I'M NOT GOING TO SPEND A LOT OF TIME OVER
4 THIS. I'M GOING TO GIVE THE DEFENSE INSTRUCTION
5 NUMBER 17 THAT THEY ORDERED, SPECIFICALLY THE FEDERAL
6 CODE SECTION 42 USC 12102, AND THAT LANGUAGE IS
7 INCLUDED IN THERE.

8 AND IT SPECIFICALLY IS -- ADDRESSES -- THE
9 ISSUE OF BEING REGARDED AS HAVING A DISABILITY. SO I'M
10 NOT GOING TO BE ABLE TO, I THINK, ADDRESS ANY FURTHER
11 THE NICETIES THAT YOU SUGGEST.

12 I'M NOT SUGGESTING YOU'RE WRONG, BUT AT THIS
13 POINT, MY VIEW IS IT'S IN THE STATUTE, AND THAT'S WHAT
14 I'M GOING TO GIVE.

15 I ALSO INDICATED IN THE EMAIL THAT WE RECEIVED
16 A PACKAGE OF ADDITIONAL INSTRUCTIONS, WHICH ALL WERE
17 GIVEN A 700 OR 800 NUMBER. THERE WAS AN AGREEMENT THAT
18 PLAINTIFF'S REQUESTED SPECIAL INSTRUCTIONS
19 NUMBERS 701, 703, 751, 800, AND 801 COULD BE GIVEN.

20 AND I INDICATED THAT MY DECISION WOULD BE
21 BECAUSE OF THAT AGREEMENT THAT THEY WOULD BE GIVEN.

22 THERE WERE ADDITIONAL INSTRUCTIONS THAT --
23 WHICH THERE WAS NO AGREEMENT, AND THOSE WERE
24 NUMBERS 700, 700.5, 705, 706, 707, 756.1, 802, 803,
25 AND 805. BECAUSE THEY'RE OFFERED, I NEED TO FIND OUT
26 FROM YOU WHY THEY SHOULD BE GIVEN.

27 DO YOU HAVE THEM IN FRONT OF YOU, MR. PRAGER?

28 MR. PRAGER: I DO, YOUR HONOR.

1 THE COURT: SO I JUST REFER TO THEM BY NUMBER?

2 MR. PRAGER: YES, SIR.

3 THE COURT: NUMBER 700 RELATES TO WHAT IS
4 STATED -- RELATES TO THE VOCATIONAL REHABILITATION
5 CLAIM AND REFERS TO, IN GENERAL TERMS, WHAT IS STATED
6 IN 29, UNITED STATES CODE SECTION 794, SUBSECTIONS A
7 AND B. THE QUESTION IS WHAT'S THE REASONING FOR GIVING
8 THAT.

9 MR. PRAGER: YOUR HONOR, 700 AND 700.5 ARE
10 DEFINITIONAL. WE UNDERSTOOD THAT THE COURT WANTED
11 DEFINITIONS OF ANYTHING THAT WOULD BE AN ELEMENT TO THE
12 CODE FOR THE CLAIM, SO THEY WERE OFFERED JUST FOR
13 DEFINITIONAL PURPOSES ONLY.

14 THE COURT: ALL RIGHT. DEFENSE, WHAT DO YOU
15 WANT TO SAY ON THIS?

16 UNFORTUNATELY, WE ALL REALIZE AT THIS POINT
17 THAT WE WILL ALSO NOT BE TIMELY TODAY WITH THE JURY.
18 LET'S GO AHEAD.

19 MY VIEW IS -- OF WHAT YOU'VE SUBMITTED HERE,
20 AND I'LL HEAR FROM THE DEFENSE, I DON'T THINK
21 SUBSECTION A DEFINES ANYTHING. I THINK IT IS A
22 STATEMENT OF -- IS A STATEMENT OF GENERAL PURPOSE.

23 SUBSECTION B, WHICH YOU QUOTED IN HERE, DOES
24 DEFINE -- I'D HAVE TO GO READ IT, AND UNFORTUNATELY, I
25 DID NOT DO THAT YET.

26 BUT YOU STATE IN HERE THAT IT DEFINES PROGRAM
27 OR ACTIVITY AS "ALL OF THE OPERATIONS," ET CETERA.
28 THAT MAY BE DEFINITIONAL -- MAY BE A DEFINITION THAT

1 COULD BE GIVEN.

2 BECAUSE ELEMENT TWO OF WHAT PLAINTIFF HAS TO
3 PROVE IN THE CLAIM FOR A VIOLATION OF REHABILITATION
4 ACT IS THAT SHE WAS QUALIFIED TO PARTICIPATE IN OR
5 RECEIVE THE BENEFITS OF COUNTY OF LOS ANGELES'S
6 SERVICES, PROGRAMS, OR ACTIVITIES.

7 AND SO I THINK SUBSECTION B MAY BE
8 DEFINITIONAL, ALTHOUGH I JUST HAVE A QUESTION MYSELF AS
9 TO WHETHER THE WORDS THEMSELVES, IF THERE'S ANY NEED TO
10 DEFINE WHAT A SERVICE, PROGRAM, OR ACTIVITY IS.

11 DEFENSE, WHAT DO YOU HAVE TO SAY ABOUT THIS?

12 MR. GUTERRES: YOUR HONOR, IF --

13 THE COURT: DOESN'T REALLY DEFINE WHAT THEY
14 ARE IN HERE. WHAT IT REALLY SAYS IS THE SAME THING
15 THAT WE HAVE IN THE ELEMENT OF WHAT HAS TO BE PROVEN.

16 MR. GUTERRES: AGREED, YOUR HONOR. I AGREE,
17 THE COURT'S COMMENTS, SUB A REALLY HAS NO RELEVANCE TO
18 THE ISSUES IN THE CASE SINCE MS. DUVAL IS NOT A
19 HANDICAPPED INDIVIDUAL, AND THAT'S WHAT SUB A SPEAKS
20 TO. AND THEN B, I DON'T KNOW THAT IT'S REALLY
21 NECESSARY, YOUR HONOR.

22 THE COURT: ALL RIGHT. ANYTHING ELSE WITH
23 THAT, MR. PRAGER?

24 MR. PRAGER: YOUR HONOR, IN THE INTEREST OF
25 TIME, WE CAN WITHDRAW THEM, 700 AND 705, BECAUSE WE'D
26 LIKE TO GET THE JURY IN AND GET THEM GOING AS SOON AS
27 POSSIBLE.

28 THE COURT: WELL, I DON'T WANT TO GET THE JURY

1 IN AT THE COST OF DEPRIVING ANYONE OF THEIR RIGHTS, SO
2 I DON'T INTEND TO DO THAT.

3 IF YOU FEEL THIS SHOULD BE GIVEN, I'VE
4 INDICATED I REALLY DON'T SEE IT MORE THAN IN 700.5.
5 THAT'S MY VIEW, CERTAINLY NOT YOURS. YOU WOULDN'T HAVE
6 OFFERED THESE IF YOU SHARED THAT VIEW.

7 MR. PRAGER: TRUE.

8 THE COURT: SO IF YOU'RE OFFERING THEM, I'M
9 GOING TO REFUSE THEM, BUT I'M PERFECTLY HAPPY -- I
10 WON'T SAY HAPPY, I HAVE NO POSITION ON IT ONE WAY OR
11 THE OTHER -- BUT IF YOU'RE OFFERING THEM, I'M GOING TO
12 REFUSE THEM. BUT I'M NOT IN ANY WAY SUGGESTING THAT
13 YOU SHOULD WITHDRAW THEM.

14 MR. PRAGER: VERY GOOD. I AGREE. THANK YOU,
15 YOUR HONOR.

16 THE COURT: ALL RIGHT. THE NEXT ONE IN
17 QUESTION IS NUMBER 705, WHICH STATES THAT THE
18 REHABILITATION ACT APPLIES TO ALL RECIPIENTS OF FEDERAL
19 FINANCIAL ASSISTANCE.

20 I THINK THAT IS AN ELEMENT THAT IS IN THE --
21 IN WHAT PLAINTIFF MUST PROVE ON THAT CLAIM. BECAUSE
22 IT'S AN ELEMENT IN THERE, I DON'T KNOW -- I DON'T
23 REALLY SEE A REASON WHY I SHOULD GIVE AN INSTRUCTION
24 TELLING THE JURY WHY THAT ELEMENT IS THERE.

25 WE CERTAINLY HAVE EVIDENCE ON IT. I THINK THE
26 EVIDENCE IS UNCONTROVERTED, ACTUALLY. I'M NOT EVEN
27 SURE WE NEEDED TO INCLUDE THAT ELEMENT, IN LIGHT OF THE
28 STATE OF THE EVIDENCE, BUT IT'S IN THERE AND I DON'T

1 WANT TO GO BACK AND START REDOING THESE.

2 SO, AGAIN, JUST MY THOUGHT ON IT IS I DON'T
3 KNOW THAT WE NEED IT BECAUSE WE HAVE INCLUDED IT AS AN
4 ELEMENT OF WHAT MUST BE PROVEN.

5 MR. PRAGER: VERY GOOD, YOUR HONOR.

6 THE COURT: OKAY. OUR NEXT ONE THEN WOULD BE
7 THE -- NUMBER 706, WHICH AGAIN GIVES SOME EXPLANATION
8 AS WHAT'S REQUIRED UNDER SECTION 504. AND, AGAIN, I
9 THINK THIS IS DESCRIPTIVE PERHAPS OF THE REASON WHY
10 WE'RE GIVING THE ELEMENTS TO THE JURY TO DECIDE.

11 BUT I DON'T KNOW THAT I NEED TO CITE TO THEM
12 THE AUTHORITY FOR BEING ABLE TO ASK THEM -- FOR ASKING
13 THEM TO SATISFY THOSE REQUIREMENTS.

14 AND SO, AGAIN, IT WOULD SEEM TO ME THAT IT'S
15 REALLY SUPERFLUOUS OF -- IF WE WERE TEACHING A CLASS IN
16 LAW SCHOOL, OR ELSEWHERE, I THINK IT'S MORE -- THIS
17 WOULD BE A MORE EXPANSIVE APPROACH TO HELPING PEOPLE
18 UNDERSTAND WHAT IT IS THAT'S PROVIDED AND THEN, WHAT
19 MUST BE PROVEN TO PROVE A CLAIM.

20 BUT I DON'T FEEL WE OWE THAT EXPLANATION TO A
21 JURY. WE'RE NOT HERE TO TEACH THEM A CLASS ON THE LAW.
22 WE'RE HERE TO TELL THEM WHAT THEY HAVE TO DECIDE. SO,
23 AGAIN, MY VIEW IS THAT I'LL REFUSE IT OR NOT.

24 I'M NOT ASKING YOU TO WITHDRAW ANY OF THESE.
25 BUT I'M STATING THE REASON WHY.

26 MR. PRAGER: THANK YOU, YOUR HONOR.

27 THE COURT: NUMBER 707 IS THE NEXT ONE. AND
28 THIS GIVES TWO ELEMENTS OF THE THINGS THAT WE'VE

1 ALREADY AGREED, AND ONE OF THE INSTRUCTIONS WILL NEED
2 TO BE PROVEN. AND IT WOULD SEEM TO ME THAT -- THAT THE
3 INSTRUCTION IS OFFERED, WHICH THE COURT IS GIVING.

4 THIS LAW MUST BE PROVEN TO ESTABLISH A CLAIM
5 UNDER THE VOCATIONAL REHABILITATION ACT IS SUFFICIENT
6 TO COVER IT. AS I RECALL, BOTH OF THESE QUESTIONS ARE
7 IN THAT INSTRUCTION TO THE JURY. SO I, AGAIN, I DON'T
8 SEE A REASON TO GIVE THIS.

9 THIS, AGAIN, IS I THINK A FURTHER, AND PERHAPS
10 MORE COMPREHENSIVE STATEMENT TO HELP THE JURY
11 UNDERSTAND WHY THEY'RE BEING ASKED THE QUESTIONS
12 THEY'RE ASKED, BUT I DON'T VIEW THAT TO BE THE PURPOSE
13 OF JURY INSTRUCTIONS.

14 AND IN FACT, IT'S BEEN SO LONG SINCE I'VE BEEN
15 IN A CRIMINAL COURT I'VE REALLY FORGOTTEN THE PATTERN
16 OF INSTRUCTIONS IN THE FEDERAL COURT, BUT I CERTAINLY
17 HAVE GREAT FAMILIARITY WITH THE CACI INSTRUCTIONS, AS
18 WELL AS THE PREDECESSOR, BAJI.

19 AND I WAS ONE OF THE AUTHORS OF INSTRUCTIONS
20 IN BOTH BAJI AS WELL AS CACI. AND IF YOU LOOK AT THE
21 FORMAT USED IN STATE COURTS, BAJI FIRST -- INSTRUCTIONS
22 FIRST CAME OUT IN, I REMEMBER AS BEING THE LATE 1930S.
23 COULD BE OFF A DECADE OR TWO.

24 BUT THEY'VE BEEN AROUND FOR A LONG WHILE. IF
25 YOU LOOK AT THEM, THEY DON'T GIVE INSTRUCTIONS TO THE
26 JURY OF WHAT THE GENESIS IS OF AN INSTRUCTION THAT'S
27 GIVEN.

28 SO UNLESS THERE'S SOME REASON WHY I WOULD

1 INSTRUCT ON THESE TWO ELEMENTS AGAIN, I DON'T SEE THAT
2 I NEED TO. I'M GOING TO REFUSE IT.

3 MR. PRAGER: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. NEXT ONE IS -- I
5 DIDN'T GET IT IN NUMERICAL ORDER, WE'LL EXCUSE THAT --
6 IS NUMBER 756.1. AND, AGAIN, THIS IS PINPOINT
7 INSTRUCTION ON ONE OF THE ELEMENTS THAT HAS TO BE
8 GIVEN, SO FOR THE SAME REASON AS THE PREVIOUS ONE, I
9 DON'T INTEND TO GIVE IT.

10 NEXT IN THE ORDER I HAVE, WHICH IS AGAIN, NOT
11 NECESSARILY THE NUMERICAL ORDER, IS YOUR SPECIAL
12 INSTRUCTION NUMBER 802, DEFINING A DISABILITY UNDER
13 CALIFORNIA LAW. YOU HAD SOME QUESTIONS ABOUT SOME OF
14 THE WORDING IN THE ONES WE'RE GOING TO GIVE.

15 BUT, SPECIFICALLY, WE ARE, IN 703, GIVING A
16 DEFINITION OF DISABLED UNDER THE ADA. AND IF -- AND
17 UNDER NUMBER 800, WHICH IS TO BE GIVEN, GIVING THE
18 ELEMENTS FOR A CLAIM UNDER THE UNRUH ACT, WE HAVEN'T
19 GIVEN A DEFINITION.

20 MR. PRAGER: I THINK THERE WAS A DEFINITION
21 UNDER FEDERAL LAW OF "SUBSTANTIALLY LIMITED," AND THE
22 DIFFICULTY IS UNDER STATE LAW, IT'S "LIMITED." AND WE
23 DID OFFER 805 TO EXPLAIN THAT AS WELL. AND THAT'S WHY
24 THESE INSTRUCTIONS ARE HERE.

25 BECAUSE IT'S POSSIBLE THEY COULD DEFEND TWO
26 FEDERAL CLAIMS, AND THEN HAVE TO GET TO THE STATE CLAIM
27 STANDING ALONE, AND HAVE TO APPLY A DEFINITION FOR
28 DISABILITY.

1 THE COURT: WELL, I'M WILLING TO GIVE THE
2 DEFINITION OF DISABILITY, I THINK, FOR -- UNDER THE
3 UNRUH ACT.

4 WE'LL GET TO 805 IN A MINUTE BECAUSE I DON'T
5 THINK 805 SHOULD BE GIVEN, BUT I WOULD CERTAINLY
6 CONSIDER A DEFINITION OF DISABILITY, WHICH IS SLIGHTLY
7 DIFFERENT, I AGREE, UNDER THE UNRUH ACT THAN IT IS
8 UNDER THE ADA.

9 MS. SWISS, DO YOU WANT TO ADDRESS THAT, OR
10 MR. GUTERRES, OR MS. NAU, OR ANYONE ELSE AT DEFENSE
11 TABLE?

12 MS. SWISS: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. WELL, DO YOU HAVE ANY
14 OBJECTION TO THAT BEING GIVEN? I'M GOING TO HAVE TO --
15 ALL THESE ARE GOING TO HAVE BE CLEANED UP. I WOULDN'T
16 SEND -- HONESTLY, I WOULDN'T SEND IT TO A JURY, BUT
17 THAT'S A SEPARATE ISSUE.

18 I'M JUST TRYING TO FIGURE NOW WHAT I'M GOING
19 TO READ TO THEM. THE JURY WON'T SEE. SO WE WILL HAVE
20 A CHANCE TO CLEAN THEM UP.

21 MS. SWISS: THAT'S FINE, YOUR HONOR.

22 THE COURT: OKAY. THE NEXT PROPOSED ONE
23 IS 803, WHICH DEFINES A MENTAL DISABILITY UNDER STATE
24 LAW. AND IT WOULD SEEM TO ME ALSO THAT BECAUSE ONE OF
25 THE ISSUES IN THE CASE IS BEING REGARDED AS OR
26 PERCEIVED AS HAVING MUNCHAUSEN BY PROXY, AND THAT IS A
27 MENTAL AS OPPOSED TO A PHYSICAL LIMITATION.

28 SO AS TO THE DEFENSE, IS THERE ANY

1 OBJECTION -- I KNOW THERE WAS PREVIOUSLY -- BUT AS
2 YOU'RE LOOKING AT IT NOW IN MORE DETAIL, DO YOU HAVE
3 ANY OBJECTION?

4 MS. SWISS: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. NEXT ONE, 805, IS A
6 STATEMENT OF WHAT THE CALIFORNIA LEGISLATURE INTENDED
7 IN PROMULGATING THE UNRUH ACT. AND I'M NOT GOING TO
8 GIVE THAT FOR THE REASON I PREVIOUSLY STATED. I DON'T
9 THINK IT'S NECESSARY.

10 AND THE NEXT ONE IS 810, DEFINING DELIBERATE
11 INDIFFERENCE, WHICH IS DEFINED AS THE "CONSCIOUS OR
12 RECKLESS DISREGARD OF CONSEQUENCES." I HAVE GIVEN --
13 WE ARE GIVING AN INSTRUCTION ON RECKLESS DISREGARD.

14 DO WE NEED THIS --

15 MR. PRAGER: THERE IS A -- DELIBERATE
16 INDIFFERENCE IS AN ELEMENT OF NUMBER 3 ON THE VERDICT
17 FORM. AND THIS --

18 THE COURT: ALL RIGHT.

19 MR. PRAGER: -- THIS ELEMENT WAS ACTUALLY
20 DEFINED BY THE DEFENSE. THEY OFFERED IT, AND THEN THEY
21 WITHDREW IT. AND I THINK IT'S AN ACCURATE STATEMENT OF
22 THE LAW, SO WE JUST OFFERED IT OURSELVES AS NUMBER 810.
23 BUT ON THE VERDICT FORM QUESTION NUMBER 3, THERE IS A
24 STATEMENT, DELIBERATE INDIFFERENCE.

25 THE COURT: ON NUMBER 3, UNDER THE -- UNRUH
26 ACT CLAIM?

27 MR. PRAGER: THAT'S ACTUALLY -- I BELIEVE IT'S
28 A FEDERAL CLAIM, YOUR HONOR.

1 THE COURT: EXCUSE ME. I WAS LOOKING AT THE
2 WRONG VERDICT FORM.

3 MR. PRAGER: RIGHT. VERDICT FORM NUMBER 2,
4 YOUR HONOR.

5 THE COURT: WELL, THAT'S THE QUESTION.
6 DELIBERATE INDIFFERENCE. WILL YOU TAKE A QUICK LOOK AT
7 THAT, MS. SWISS?

8 MS. SWISS: YES, YOUR HONOR. YOUR HONOR, THE
9 ONLY ISSUE WOULD BE, WE'RE GIVING THE CACI INSTRUCTION,
10 I BELIEVE REGARDING DELIBERATE INDIFFERENCE. 3000,
11 THAT'S WHAT CITE IT IS. IS IT SOMETHING DIFFERENT?

12 THE COURT: IS IT -- WELL --

13 MS. SWISS: CACI 3000'S ACTUALLY NOT IN THE
14 PACKET, SO MAYBE --

15 THE COURT: WE USED 3051 INSTEAD OF --

16 MS. SWISS: IT WAS ALL CLEAR AS MUD ON FRIDAY,
17 BUT NOW THAT WE'RE HERE AGAIN...

18 THE COURT: 3051 DOESN'T INCLUDE REFERENCE TO
19 DELIBERATE INDIFFERENCE OR RECKLESS DISREGARD FOR -- SO
20 I DON'T -- I WOULDN'T MIND DEFINING IT, BUT IT APPEARS
21 TO ME TO BE BASED ON THE INSTRUCTIONS WHICH WE AGREED
22 TO, DOESN'T REFER TO DELIBERATE INDIFFERENCE.

23 MR. PRAGER: I'M SORRY. YOU MEAN 351, YOUR
24 HONOR?

25 THE COURT: I'M SORRY. THE INSTRUCTIONS WHICH
26 HAVE BEEN AGREED UPON TO BE GIVEN ON THE ELEMENTS OF
27 PROOF OF THE ADA CLAIM, TO WHICH QUESTION NUMBER 3 IN
28 THE VERDICT FORM REFERS, DOES NOT INCLUDE ANY ELEMENT

1 OF DELIBERATE INDIFFERENCE.

2 THE -- DO YOU HAVE THE 751 IN FRONT OF YOU,
3 MR. PRAGER?

4 MR. PRAGER: I DO. I CAN EXPLAIN THE
5 DISCREPANCY, YOUR HONOR. THESE ARE THE CORRECT
6 ELEMENTS FOR THE ADA CLAIM.

7 WHEN A PERSON SEEKS MONETARY DAMAGES, THE
8 DELIBERATE INDIFFERENCE STANDARD HAS TO BE ADDRESSED,
9 AND THAT'S WHY IT'S IN THE INSTRUCTION. SO WE CAN ADD
10 IT TO 751 IF THE COURT WANTS.

11 AND THAT WAS THE CONCERN DEFENSE COUNSEL
12 BROUGHT UP LAST WEEK, WHICH IS WHY WE MODIFIED THE
13 VERDICT FORM IN THIS ITERATION, AND WE WERE SATISFIED
14 WITH IT. BUT I RECOGNIZE WHAT THE COURT'S POINTING OUT
15 NOW, AND THANK YOU FOR CALLING IT TO OUR ATTENTION.

16 SO IT'S ACTUALLY A PROPER ELEMENT WHEN YOU'RE
17 SEEKING MONETARY DAMAGE AS IN THIS CASE. SO CAN WE
18 MODIFY, YOUR HONOR, 751, JUST TO ADD THE ELEMENT
19 DELIBERATE INDIFFERENCE?

20 THE COURT: WELL, LOOKING AT IT RIGHT NOW, I
21 HAVE NO IDEA. WE SPENT THREE DAYS LAST WEEK OVER THIS,
22 AND NOW, FIVE MINUTES BEFORE THE JURY IS SUPPOSED TO BE
23 HERE, WE'RE TALKING ABOUT MAKING A MODIFICATION TO THE
24 VERDICT FORM. I'LL -- I'LL HAVE TO COME BACK TO THIS
25 ONE.

26 MR. PRAGER: YOUR HONOR, I THINK THE VERDICT
27 FORM IS ACCEPTABLE. I JUST THINK THE ERROR WAS IN THE
28 INSTRUCTION.

1 THE COURT: TO INSTRUCT ON SOMETHING THAT --
2 THAT REALLY WON'T BE THE WAY WE SHOULD DO IT. IF THE
3 INSTRUCTION IS RELEVANT TO THE SUBJECT MATTER, THEN OF
4 COURSE IT SHOULD BE GIVEN.

5 AND THE VERDICT FORM AS IS PRESENTLY
6 CONSTRUCTED, IT HAS NO RELEVANCE TO WHAT THE JURY'S
7 BEING ASKED TO DECIDE. SO I'LL HAVE TO COME BACK TO
8 THAT.

9 MR. PRAGER: OKAY.

10 THE COURT: ANOTHER ISSUE WHICH WAS NOT
11 ADDRESSED IN THE EXCHANGE OF EMAILS THAT I RECALL WAS
12 THE DEFENDANT'S REQUEST FOR SPECIAL INTERROGATORIES TO
13 BE SUBMITTED TO THE JURY.

14 ON THE -- WHICH I BELIEVE WOULD BE AS TO THE
15 FIRST CAUSE OF ACTION -- OR THE CAUSE OF ACTION FOR THE
16 SEIZURE?

17 MS. SWISS: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 MR. MCMILLAN: YOU RULED ON THAT, I BELIEVE,
20 EITHER THURSDAY OR FRIDAY, YOUR HONOR.

21 THE COURT: WE HAD THE DISCUSSION. I DON'T
22 RECALL IF IT WAS ON THE RECORD.

23 MR. MCMILLAN: UNDERSTOOD.

24 THE COURT: SO I'M JUST BRINGING UP THE ISSUE
25 TO MAKE SURE BECAUSE AS I'VE TOLD YOU MANY TIMES,
26 MEMORY'S THE SECOND THING TO GO. I DON'T REMEMBER
27 WHETHER IT WAS ON THE RECORD.

28 I DO RECALL THE DISCUSSION. AND I'VE

1 INDICATED THAT I'M NOT GOING TO GIVE THE SPECIAL
2 INTERROGATORIES. THAT IS THE RULING.

3 AND THE REASON WHY I'M NOT DOING SO IS I
4 BELIEVE THAT THERE IS NO FACTUAL ISSUE THAT NEEDS TO BE
5 DECIDED FOR THE COURT TO BE ABLE TO MAKE A DECISION AS
6 TO WHETHER OR NOT THERE'S A QUALIFIED IMMUNITY FOR WHAT
7 OCCURRED.

8 I ALSO THINK THAT ONCE THE JURY MAKES WHATEVER
9 FINDINGS THEY DO IN ANSWERING THE QUESTIONS ON
10 EXIGENCY, THAT THE ISSUE WILL HAVE RESOLVED ITSELF. IF
11 THEY FIND AN EXIGENCY THERE WILL BE NO LIABILITY AND
12 THERE WILL BE NO QUESTION OF QUALIFIED IMMUNITY.

13 IF THEY DON'T FIND EXIGENCY, MY VIEW IS THERE
14 CANNOT BE A QUALIFIED IMMUNITY, SO I'M NOT GOING TO DO
15 IT.

16 MR. MCMILLAN: THANK YOU, YOUR HONOR.

17 THE COURT: WE STILL HAVE QUITE A BIT TO GO
18 OVER BECAUSE I HAVE A NUMBER OF QUESTIONS. NOW ALSO
19 ABOUT THE ISSUE THAT WAS JUST RAISED BY MR. PRAGER.
20 BUT I ALSO HAVE QUESTIONS ON A NUMBER OF THESE
21 INSTRUCTIONS.

22 SO I'M GOING TO GO TO THE ISSUES THAT I HAVE
23 ON THE INSTRUCTIONS. THESE ARE ISSUES SEPARATE AND
24 APART FROM THE ONES WE JUST ADDRESSED. I'LL GO BACK
25 -- I'LL BE GETTING TO THOSE SHORTLY AS TO HOW SOME OF
26 THOSE I'VE INDICATED WOULD BE GIVEN -- BE ADDRESSED.

27 ALL RIGHT. I'VE RESOLVED ONE QUESTION. I HAD
28 TWO VERSIONS OF 3001 HAVING TO DO WITH POLICY OR

1 CUSTOM. THE MORE RECENT ONE, I BELIEVE, IS THE ONE
2 WHICH WE AGREED WOULD BE GIVEN.

3 THE ONLY DIFFERENCE BETWEEN THE TWO IS THAT IN
4 THE EARLIER ITERATION, THE WORDING WAS DIRECTED TO THE
5 COUNTY OF LOS ANGELES, WHEREAS IN THE LATER, I BELIEVE
6 LATER, AND I COULD BE WRONG, THAT'S WHY I'M ASKING, IT
7 WAS REFERRED TO AS THE LOS ANGELES COUNTY DEPARTMENT OF
8 FAMILY AND CHILDREN SERVICES.

9 AT THIS POINT, I WAS UNCLEAR AS TO WHICH ONE
10 WAS BEING ASKED FOR. THE ONE JUST MENTIONING THE
11 COUNTY, WHICH IS THE DEFENDANT MENTIONED IN THE VERDICT
12 FORM, OR THE ONE REFERRING TO THE LOS ANGELES COUNTY
13 DCFS. WHICH ONE WAS IT THAT YOU WANTED?

14 MR. MCMILLAN: I BELIEVE THE MOST CURRENT ONE
15 WAS THE ONE REFERENCING THE LOS ANGELES COUNTY
16 DEPARTMENT OF CHILDREN AND FAMILY SERVICES.

17 THE COURT: THAT WAS MY RECOLLECTION TOO, AND
18 THAT'S THE ONE I HAD IN THE PACKAGE. BUT I HAD THIS
19 OTHER ONE, WHICH I BELIEVE WAS THE EARLIER ITERATION.
20 SO THE ONE WE AGREED ON IS THE ONE REFERRING TO LOS
21 ANGELES COUNTY DCFS.

22 MR. MCMILLAN: CORRECT. AND I THINK THAT'S
23 CONSISTENT WITH THE VERDICT FORM. IF YOU LOOK AT
24 PAGE 3, PARAGRAPH 6 -- OR QUESTION NUMBER 6, IT
25 REFERENCES THE LOS ANGELES COUNTY DEPARTMENT OF
26 CHILDREN AND FAMILY SERVICES.

27 THE COURT: NEXT QUESTION I HAVE IS ON 751,
28 WHICH WE'VE JUST BEEN DISCUSSING. THE QUESTION I

1 HAVE -- DO YOU HAVE 751 IN FRONT OF YOU, MR. PRAGER?

2 MR. PRAGER: I DO, YOUR HONOR.

3 THE COURT: DO WE NEED QUESTION NUMBER THREE,
4 IS MY QUESTION.

5 MR. PRAGER: THAT'S THE "BUT FOR," IF YOU
6 WOULD, TEST, AND THAT'S WHAT WE -- WE COULD JUST COME
7 BACK TO ON DELIBERATE INDIFFERENCE. I THINK FOR
8 MONETARY DAMAGES IN THIS CASE THE ANSWER IS YES, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT. SO AGAIN, WE HAVE
11 CONTINUING QUESTIONS ABOUT 751. THE REASON I ASK ABOUT
12 NUMBER 3, IS NUMBER 3 IS JUST A DIFFERENT WAY OF
13 STATING WHAT'S IN QUESTIONS 1 AND 2, AS I SEE IT.

14 MR. PRAGER: OKAY. BUT YOUR HONOR, I THINK WE
15 COULD JUST CHANGE IT TO, "WAS THE COUNTY'S ACT DONE
16 WITH DELIBERATE INDIFFERENCE OR INTENTIONAL
17 DISCRIMINATION," AND RECTIFY, OR RECONCILE 751 ON THE
18 VERDICT FORM RIGHT HERE.

19 THE COURT: ALL RIGHT. I'LL COME BACK TO THAT
20 ONE. I HAVEN'T RESOLVED THAT DELIBERATE INDIFFERENCE.

21 NEXT QUESTION I HAD WAS 701, BUT IN LOOKING AT
22 IT, AND I HAVE NO NOTES WITH IT INDICATING THAT I HAVE
23 ANY QUESTION, LOOKING AT THE INSTRUCTION IT APPEARS TO
24 ME THAT -- APPEARS TO BE AN APPROPRIATE INSTRUCTION.
25 THIS IS ONE WHICH HAD BEEN AGREED TO BY THE DEFENDANT.

26 MR. PRAGER: THANK YOU, YOUR HONOR.

27 THE COURT: ALL RIGHT. NOW, MR. PRAGER,
28 LOOKING AT 751, YOU'RE SUGGESTING THAT THERE SHOULD BE

1 AN ADDITIONAL --

2 MR. PRAGER: I THINK WE CAN JUST MODIFY:
3 "PLAINTIFF WAS SUBJECTED TO DISCRIMINATION BY DEFENDANT
4 BY REASON OF PERCEIVED DISABILITY," AND JUST ASK THE
5 SAME QUESTION NUMBER 3 ON THE VERDICT FORM, WHICH
6 WAS -- JUST DETAIL THAT THE DEFENDANT'S CONDUCT MUST BE
7 DONE WITH DELIBERATE INDIFFERENCE OR INTENTIONAL
8 DISCRIMINATION OF THE PLAINTIFF'S RIGHTS.

9 THE COURT: ALL RIGHT. SO -- I'M SORRY --
10 YOU'RE SUGGESTING THAT WE ADD SOMETHING TO THE
11 INSTRUCTION?

12 MR. PRAGER: YES, YOUR HONOR.

13 THE COURT: AND THEN THE NECESSITY OF THAT,
14 YOU MENTIONED IT'S A REQUIREMENT TO BE ABLE TO AWARD
15 DAMAGES?

16 MR. PRAGER: CORRECT, IN AN ADA CASE, YOUR
17 HONOR.

18 THE COURT: RIGHT. AND WHERE ON 751 WOULD
19 THAT ELEMENT BE?

20 MR. PRAGER: I THINK WE ADD A NUMBER 4, OR
21 CHANGE NUMBER 3, QUESTION NUMBER 3, TO READ THE SAME AS
22 QUESTION NUMBER 3 ON THE VERDICT FORM NUMBER 2, WITH
23 SOME MODIFICATION, OF COURSE.

24 IT WOULD JUST BE, "DEFENDANT'S CONDUCT WAS
25 DONE WITH DELIBERATE INDIFFERENCE OR INTENTIONAL
26 DISCRIMINATION."

27 THE COURT: ALL RIGHT. SO YOU WANT QUESTION
28 NUMBER 3 TO BE THE -- THIS IN FACT WOULD SOLVE MY

1 QUESTION ABOUT WHETHER WE NEEDED QUESTION NUMBER 3 AT
2 ALL BECAUSE I THOUGHT IT WAS REDUNDANT WITH THE FIRST
3 TWO QUESTIONS.

4 SO THE CHANGES YOU'RE SUGGESTING WOULD MATCH
5 QUESTION 3 ON THE VERDICT FORM, WHICH WE'VE AGREED TO,
6 AND THAT WOULD NOT BE REDUNDANT. IT WOULD IN FACT BE A
7 STATEMENT OF -- THIS IS AN ADDITION --

8 MR. PRAGER: CORRECT. FRIDAY, THERE WAS A
9 FEVERISH ELEMENT TO TRY AND COMBINE FORMS AND SAVE
10 SPACE. AND I JUST THINK THIS WAS AN ERROR IN THAT
11 REGARD.

12 THE COURT: ALL RIGHT. I'M GOING TO -- ALL
13 RIGHT. I HATE TO DO THIS BECAUSE OF THE TIME ELEMENT,
14 BUT I THINK IT'S IMPORTANT ENOUGH THAT WE'LL GO OFF THE
15 RECORD AND HAVE YOU, MR. PRAGER, CONSULT WITH MS. SWISS
16 AND MR. GUTERRES OVER THIS WORDING SO THAT THE ELEMENT
17 IN 751 WOULD MATCH UP WITH QUESTION NUMBER 3.

18 MS. SWISS: THANK YOU, YOUR HONOR.

19 (PAUSE IN THE PROCEEDINGS)

20 THE COURT: ALL RIGHT. WE'RE BACK ON THE
21 RECORD. YOU WANT TO FINISH UP WHAT YOU'RE DOING THERE,
22 MS. NAU?

23 MR. MCMILLAN: SORRY?

24 THE COURT: WE HAVE TO GET THAT DONE ANYWAY.
25 YOU WANT TO FINISH UP WHAT YOU'RE DOING?

26 MR. MCMILLAN: IT WILL PROBABLY TAKE
27 ANOTHER 10 MINUTES OR SO.

28 THE COURT: WELL, LET'S DO IT DIFFERENTLY

1 THEN. I WANT HER TO GET THIS DONE BECAUSE YOU'RE ALL
2 GOING TO HAVE TO TAKE SOME TIME TO LOOK AT THE
3 INSTRUCTIONS. BUT I HAVE NOW BEEN GIVEN A FURTHER
4 ITERATION OF INSTRUCTION NUMBER 751 IN WHICH QUESTION
5 NUMBER 3 HAS BEEN CHANGED.

6 AND THIS IS AGREEABLE TO YOU, MR. PRAGER?

7 MR. PRAGER: YES, YOUR HONOR. THANK YOU.

8 THE COURT: AND MR. GUTERRES, MS. SWISS, THIS
9 IS AGREEABLE TO YOU?

10 MR. GUTERRES: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. AND THEN -- AND THEN
12 YOU WANT THE INSTRUCTION ON DELIBERATE INDIFFERENCE
13 DEFINED TO FOLLOW THAT INSTRUCTION?

14 MR. PRAGER: YES, YOUR HONOR.

15 THE COURT: OKAY. ALL RIGHT. I JUST HAVE A
16 COUPLE OF SHORTER QUESTIONS AS TO THE INSTRUCTIONS.
17 AND IN A MOMENT, AS SOON AS WE FINISH THE QUESTIONS I
18 HAVE ON THE INSTRUCTIONS, I'M GOING TO FURNISH THE
19 INSTRUCTIONS TO COUNSEL IN THE FORM AND ORDER IN WHICH
20 THEY'RE GOING TO BE GIVEN.

21 THE INSTRUCTIONS ARE IN TWO PACKAGES: THE
22 INSTRUCTIONS ON THE ELEMENTS ON THE CASE, AND OTHER
23 MATTERS RELATING TO THE EVIDENCE ET CETERA. EVERYTHING
24 EXCEPT THE 5000 SERIES WILL BE IN THE -- ONE COLLECTION
25 OR PACKAGE.

26 AND THEN THE 5000 INSTRUCTIONS, WHICH ARE THE
27 ONES I'LL GIVE AFTER CLOSING ARGUMENTS, JUST AS WE'RE
28 READY TO SEND THE JURORS OUT, WILL BE THE SECOND AND

1 SMALLER ONE.

2 I JUST HAD A QUICK QUESTION. MR. GUTERRES, WE
3 DID HAVE -- I'VE FORGOTTEN IF WE'VE HAD THE DISCUSSION
4 OR NOT. WE HAD THE -- ORIGINALLY THE REQUEST FOR 5001,
5 THE INSTRUCTION ON INSURANCE.

6 DO YOU STILL WANT AN INSTRUCTION? AND IT WAS
7 REQUESTED A LONG TIME AGO.

8 MR. GUTERRES: I DON'T THINK THAT'S NECESSARY,
9 YOUR HONOR. I DON'T THINK THERE'S BEEN ANY DISCUSSION
10 ABOUT IT.

11 THE COURT: I DON'T THINK SO. THIS IS NOT AN
12 INSURANCE-TYPE CASE. I JUST WANT TO MAKE SURE IT WAS
13 AGREEABLE. 5001 ON THE INSURANCE WON'T BE GIVEN.

14 MR. MCMILLAN: YOUR HONOR, THERE WAS AN ERROR
15 THAT I SAW IN INSTRUCTION 3003 FROM LAST WEEK. I
16 PROVIDED MR. GUTERRES A COPY THIS MORNING, AS WELL AS
17 THE COURT CLERK. IT'S ACTUALLY A PRETTY SIMPLE ERROR.

18 IT'S THE TRAINING INSTRUCTION ON COUNTY OF LOS
19 ANGELES' FAILURE TO ADEQUATELY TRAIN. IT SHOULD BE,
20 "FAILURE TO ADEQUATELY TRAIN AND/OR SUPERVISE."

21 THE VERDICT FORM IS RELATED TO BOTH TRAINING
22 AND SUPERVISION, BUT THERE'S NO INSTRUCTION FOR
23 SUPERVISION. THE SUPERVISION INSTRUCTION, AT LEAST
24 INsofar AS I RECALL IT, SHOULD READ, "TRAINING AND/OR
25 SUPERVISION OF ITS EMPLOYEES."

26 AND I'VE MADE THOSE CHANGES IN THIS PROPOSED
27 REPLACEMENT, AND I JUST WANT TO MAKE SURE THAT DOESN'T
28 SLIP THROUGH THE CRACKS.

1 THE COURT: DID YOU GIVE IT TO THE CLERK?

2 MR. MCMILLAN: I DID. I CAN GIVE HIM ANOTHER
3 ONE. I THINK I HAVE ONE.

4 THE COURT: MS. SWISS, MR. GUTERRES, HAVE YOU
5 SEEN THAT, JUST THE ADDITION OF THE WORDS, "AND/OR
6 SUPERVISE"?

7 MS. SWISS: WE HAVE, YOUR HONOR. THERE'S NO
8 OBJECTION.

9 THE COURT: ALL RIGHT. I WILL MAKE THAT
10 CHANGE. THE OTHER QUESTION THAT I HAD WAS A -- 5005.
11 THIS IS THE ONE ON MULTIPLE PARTIES. AND THE ONE THAT
12 I HAVE IS OBVIOUSLY OUT OF DATE. BECAME OUT OF DATE AS
13 THIS TRIAL PROGRESSED.

14 SO THE DEFENSE MAY HAVE HAD AN UPDATED ONE ON
15 THIS, AND I'VE HAD SO MANY INSTRUCTIONS SUBMITTED, IN
16 THE HUNDREDS, THAT I MAY HAVE LOST TRACK OF AN UPDATED
17 VERSION OF THIS.

18 MS. SWISS: I'M SORRY, YOUR HONOR, WHAT
19 WAS 5005 AGAIN?

20 THE COURT: 5005 WAS MULTIPLE PARTIES.

21 MS. SWISS: RIGHT. WE BELIEVE WE ADDRESSED
22 THAT BY WAY OF THE VERDICT FORM, WAS HOW WE RESOLVED
23 THE ISSUES.

24 THE COURT: YES, WE DID, INCLUDING THE ONE
25 THAT WAS JUST BEING GIVEN TO ME ABOUT CERTAIN PARTIES,
26 AND CERTAIN PERSONAL.

27 MS. SWISS: RIGHT.

28 THE COURT: SO WE WON'T NEED 5005.

1 MS. SWISS: CORRECT.

2 THE COURT: OKAY. LAST QUESTION THAT I HAVE,
3 WE TALKED ABOUT THIS PREVIOUSLY. THIS IS NOT A
4 QUESTION OF WHETHER -- WE HAVE THE ONE ON 5018 ON AUDIO
5 OR VIDEO RECORDINGS, AND IT REFERS TO A TRANSCRIPT.

6 WE'VE ALREADY GIVEN INSTRUCTIONS ON
7 DEPOSITIONS INCLUDING THAT THE WORDING ON THAT
8 INSTRUCTION, "DEPOSITION," INCLUDES VIDEO DEPOSITIONS.
9 AND WE DO HAVE SOME DISCS.

10 I DON'T KNOW WHAT'S ON THOSE.

11 MR. GUTERRES: I THINK THOSE ARE THE
12 DEPOSITION EXCERPTS THAT WERE PLAYED, YOUR HONOR.

13 THE COURT: OKAY. IT WOULD SEEM TO ME THAT WE
14 DON'T NEED 5018.

15 MR. GUTERRES: I DON'T THINK IT'S NECESSARY,
16 YOUR HONOR.

17 THE COURT: YEAH, IF IT'S ONE OF OUR VIDEO
18 RECORDINGS THAT'S BEEN ADMITTED INTO EVIDENCE...

19 MR. MCMILLAN: YEAH, IF WE WERE TO USE IT,
20 YOUR HONOR, WE'D HAVE TO UPDATE THE INSTRUCTION ANYWAY
21 BECAUSE IT SAYS A TRANSCRIPT OF THE RECORDING HAS BEEN
22 PROVIDED TO YOU.

23 THE COURT: RIGHT. SO MY APOLOGIES --

24 MR. MCMILLAN: AND NO SUCH --

25 THE COURT: I DON'T THINK WE NEED THIS. WE DO
26 TELL THEM WE'VE GOT VIDEO DEPOSITIONS, AND WE TOLD THEM
27 AT THE TIME IT'S IN THE INSTRUCTIONS. SO MY QUESTION
28 IS, MAY THIS EXHIBIT BE DEEMED WITHDRAWN?

1 MR. MCMILLAN: PLAINTIFF AGREES THAT IT MAY BE
2 DEEMED WITHDRAWN.

3 THE COURT: MR. GUTERRES?

4 MR. GUTERRES: YES, YOUR HONOR, IT MAY BE
5 WITHDRAWN.

6 THE COURT: ALL RIGHT. AGAIN, WE'RE -- OVER
7 THE LAST -- I'M SURE IT WON'T BE LAST -- BUT WE HAVE
8 HAD STIPULATION AGREEMENT ON THE VERDICT FORMS, BOTH
9 VERDICT FORM ONE AND VERDICT FORM TWO. CORRECT?

10 MR. GUTERRES: YES, YOUR HONOR.

11 THE COURT: AND EVERYBODY AGREES, THOSE ARE
12 THE VERDICT FORMS TO BE USED?

13 MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR.

14 THE COURT: OKAY. SO THE NEXT THING IS I'M
15 GOING TO GIVE THE INSTRUCTIONS TO COUNSEL. WE'RE GOING
16 TO GO OFF THE RECORD. I'LL GIVE THE INSTRUCTIONS TO BE
17 GIVEN.

18 YOU'LL NOTICE THAT A LOT OF THESE, AS I
19 MENTIONED, A LOT OF THESE ARE IN FORM I WOULD NEVER
20 SEND TO A JURY, SO THERE'S GOING TO HAVE TO BE SOME
21 CLEANING UP.

22 WE'LL FIGURE OUT HOW TO GET THAT DONE. SO
23 THEY ARE IN A RATHER LESS FORMAL PRESENTATION THAN WE
24 WOULD USE IN PRESENTING TO THE JURY.

25 SO I'M GOING TO GIVE THEM TO COUNSEL, AND
26 ASKING -- AND INSTRUCTING YOU TO TAKE A LOOK AT THE
27 INSTRUCTIONS.

28 SOME OF THEM INCLUDE MY HANDWRITTEN WORDS.

1 YOU'LL JUST HAVE TO TRUST THAT I'M ABLE TO READ MY
2 HANDWRITING BECAUSE NO ONE ELSE CAN. AND YOU'LL SEE
3 THESE ARE IN THE FORM AND THE ORDER IN WHICH I INTEND
4 TO GIVE THEM.

5 PLEASE UNDERSTAND WHEN YOU LOOK AT THEM,
6 VISUALLY, THEY ARE NOT GOING TO JURY LOOKING LIKE THIS.
7 THEY'LL BE CLEANED UP. SO WE NEED TO HAVE EACH SIDE
8 LOOK AT THEM. WE'LL NEED TO GO ON THE RECORD THAT --
9 ABOUT THE INSTRUCTIONS.

10 WE'LL HAVE A BRIEF RECESS WHILE YOU'RE DOING
11 THAT.

12 (PAUSE IN THE PROCEEDINGS)

13 THE COURT: WE'RE ON THE RECORD AND COUNSEL
14 ARE PRESENT. THERE'S A FEW LAST THINGS THAT I WANT TO
15 PUT ON THE RECORD. ONE IS, YOU KNOW WE HAVE TO SELECT
16 AN ALTERNATE. THE CLERK WILL CALL ONE OF THE
17 ALTERNATES AFTER THE JURY IS IN.

18 WE DID HAVE A DISCUSSION OFF THE RECORD, THAT
19 WE DO HAVE ONE JUROR, NUMBER 8. THE COURT HAD PROMISED
20 WOULD HAVE -- TO BE ABLE ON WEDNESDAY OF THIS WEEK TO
21 ATTEND TO A SIGNIFICANT IMPORTANT MATTER INVOLVING ONE
22 OF HER PARENTS.

23 AND THAT JUROR HAS TOLD THE COURT ATTENDANT
24 THAT SHE'S VERY HAPPY TO CONTINUE HER SERVICE IN THE
25 CASE SO LONG AS SHE CAN HAVE WEDNESDAY OFF. I WILL
26 REASSURE HER OF THAT.

27 THE NEXT THING I WANT TO MENTION TO YOU, AND
28 WE'RE GOING TO TALK ABOUT THE INSTRUCTIONS IN JUST A

1 MOMENT, BUT DO THE PARTIES WAIVE THE REPORTING OF THE
2 READING OF THE INSTRUCTIONS BY THE COURT?

3 MR. GUTERRES: THAT'S FINE, YOUR HONOR.

4 MR. MCMILLAN: THAT'S FINE, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU FOR ASSUMING
6 I'LL READ THEM CORRECTLY. PLEASE ALSO REMEMBER THAT WE
7 HAVE TIME LIMITS ON THE CLOSING ARGUMENTS. 90 MINUTES
8 PER SIDE. I DON'T -- I'M WILLING TO BE A TIMEKEEPER,
9 BUT WOULD RATHER NOT.

10 MR. MCMILLAN: I HAVE A TIMEKEEPER, YOUR
11 HONOR, AND HE HAS CARDS.

12 MR. KING: SORT OF.

13 THE COURT: AND IN THE OPENING TO THE JURY
14 TODAY, THE PLAINTIFF'S OPENING IS GOING TO BE SPLIT
15 BETWEEN MR. MCMILLAN AND MR. PRAGER. I'M GOING TO
16 LEAVE THE SPLIT OF THAT TO YOU.

17 MR. MCMILLAN, YOU'RE -- YOU'LL BE DOING THE
18 REBUTTAL, PLAINTIFF'S REBUTTAL FOLLOWING DEFENSE
19 COUNSEL'S ARGUMENT. CORRECT?

20 MR. MCMILLAN: AFFIRMATIVE, YOUR HONOR.

21 THE COURT: AND MR. GUTERRES, OR MS. SWISS,
22 WILL YOU -- WHO WILL BE GIVING THE CLOSING?

23 MS. SWISS: IT WILL BE ME.

24 THE COURT: ALL RIGHT. SO I'LL KNOW WHO TO
25 CALL ON. I'M LEAVING THE TIME LIMIT TO YOU.

26 AND THE REASON I'D RATHER HAVE YOU DO IT
27 YOURSELF IS THAT I WOULD PREFER TO HAVE IT APPEAR, AT
28 LEAST TO THE JURY, THAT THE LIMITATION, WHATEVER IT

1 MIGHT BE, IS VOLUNTARY, NOT IMPOSED BY THE COURT.

2 BUT REMEMBER THAT IT'S UP TO PLAINTIFF HOW YOU
3 DIVIDE UP YOUR 90 MINUTES, BOTH BETWEEN -- IN THE
4 OPENING BETWEEN MR. MCMILLAN AND MR. PRAGER.

5 AND THAT IN YOUR REBUTTAL ARGUMENT, YOU'LL
6 ONLY HAVE THAT AMOUNT OF TIME LEFT BETWEEN THE TIME THE
7 TWO OF YOU CONSUMED AND THE 90-MINUTE LIMIT.

8 MS. SWISS, YOU'LL JUST NEED SOMEONE TO LET YOU
9 KNOW WHEN YOUR TIME IS ABOUT OVER SO YOU'LL BE ABLE TO
10 PACE IF TO A CONCLUSION IF NECESSARY.

11 MS. SWISS: UNDERSTOOD.

12 MR. MCMILLAN: YOUR HONOR, WHATEVER THEY DON'T
13 USE, THEIR 90 MINUTES --

14 MS. SWISS: FILIBUSTER, I'LL MAKE SURE.

15 THE COURT: THAT WON'T BE AGREED.

16 MR. MCMILLAN: JUST CHECKING. (LAUGHTER).

17 THE COURT: WHILE WE WERE OFF THE RECORD A FEW
18 MINUTES AGO, THE COUNSEL WERE GIVEN THE OPPORTUNITY TO
19 SEE THE INSTRUCTIONS IN THE FORM AND THE ORDER IN WHICH
20 THEY'LL BE GIVEN.

21 YOU HAVE SEEN THOSE INSTRUCTIONS,
22 MR. MCMILLAN?

23 MR. MCMILLAN: YES, YOUR HONOR.

24 THE COURT: AND IS THE ORDER IN WHICH THEY'RE
25 GOING TO BE GIVEN, AND/OR ANY WORDING, AT THIS POINT,
26 AGREEABLE TO YOU?

27 MR. MCMILLAN: THAT'S FINE, YOUR HONOR.

28 THE COURT: AND I BELIEVE THAT ALL OF THE

1 INSTRUCTIONS THAT PLAINTIFF HAS REQUESTED, EXCEPT FOR
2 THOSE THAT WE ADDRESSED ON THE RECORD THIS MORNING, ARE
3 BEING GIVEN. CORRECT?

4 MR. MCMILLAN: I BELIEVE THAT'S CORRECT. CAN
5 YOU SAY THAT ONE MORE TIME? I'M SORRY.

6 THE COURT: I WANT TO MAKE SURE THAT ALL OF
7 THE INSTRUCTIONS WHICH PLAINTIFF HAS REQUESTED, WHICH
8 IS THE RESULT BY A PROCESS WE'VE GONE THROUGH DURING
9 THE COURSE OF THE TRIAL.

10 BUT AS OF THE CONCLUSION OF THE EVIDENCE AND
11 OUR DELIBERATIONS LAST WEEK TO -- OVER THE INSTRUCTIONS
12 AND THE VERDICT FORM, IT'S MY UNDERSTANDING THAT THE
13 COURT IS GIVING ALL OF THE INSTRUCTIONS THAT HAVE BEEN
14 REQUESTED AT THIS STAGE BY PLAINTIFF EXCEPT FOR THOSE
15 FEW WHICH WERE MENTIONED THIS MORNING ON THE RECORD.

16 MR. MCMILLAN: I BELIEVE THAT IS CORRECT.
17 MR. PRAGER'S INDICATING, THOUGH, THAT 801 -- FORGET IT.
18 I BELIEVE THAT'S CORRECT.

19 THE COURT: ALL RIGHT. AND MS. SWISS, YOU'VE
20 ALSO SEEN THE INSTRUCTIONS AND THE ORDER AND FORM IN
21 WHICH THEY'LL BE GIVEN. CORRECT?

22 MS. SWISS: CORRECT.

23 THE COURT: AND IT'S MY UNDERSTANDING THAT,
24 WITH THE EXCEPTION OF THE INSTRUCTIONS THAT HAVE BEEN
25 MENTIONED THIS MORNING ON THE RECORD, THAT THE COURT IS
26 GIVING ALL INSTRUCTIONS WHICH HAVE BEEN CURRENTLY, AT
27 THIS STAGE OF THE CASE, REQUESTED?

28 MS. SWISS: CORRECT.

1 THE COURT: AND IS THERE ANYTHING ABOUT THE
2 FORM OR THE ORDER OF THE INSTRUCTIONS TO WHICH YOU
3 OBJECT AND WANT TO PLACE YOUR OBJECTION ON THE RECORD?

4 MS. SWISS: NO, YOUR HONOR.

5 THE COURT: OKAY. IS EVERYBODY READY THEN?

6 MS. SWISS: YES, YOUR HONOR.

7 MR. MCMILLAN: THAT'S KIND OF A RELATIVE
8 QUESTION.

9 THE COURT: WELL --

10 MR. MCMILLAN: READY AS I'M GOING TO BE.
11 HOW'S THAT?

12 THE COURT: TOOK US QUITE AN EFFORT FOR US
13 EVEN TO GET HERE. SO, YES, AT THE MOMENT. BECAUSE YOU
14 AND ME -- ACTUALLY YOU'LL HAVE A LITTLE WHILE TO CATCH
15 YOUR BREATH.

16 WE HAVE A FEW INSTRUCTIONS TO GIVE TO THE
17 JURY. AND AS I MENTIONED, THERE'LL BE A RECESS AFTER I
18 GIVE THE INSTRUCTIONS SO WE CAN MAKE SURE ALL THE
19 JURORS HAVE BEEN AWAKENED AND RESUSCITATED AND THEY
20 WILL BE ABLE TO LISTEN TO YOUR ARGUMENT.

21 (JURY PRESENT)

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

24 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
25 EVERYONE MAY BE SEATED. EVERYONE IS PRESENT. GOOD
26 MORNING TO OUR JURORS.

27 THE FIRST ORDER OF BUSINESS TODAY WILL BE FOR
28 THE CLERK TO SELECT THE NAME OF THE NEXT ALTERNATE

1 JUROR.

2 THE CLERK: ELEANOR HAAN. H-A-A-N.

3 THE COURT: WHILE MS. HAAN IS BEING SEATED,
4 THERE IS ONE OTHER JURY MATTER THAT I DO WANT TO
5 ADDRESS.

6 MS. MANZANO, I STILL RECALL THE MATTER THAT
7 YOU HAVE TO TAKE CARE OF ON WEDNESDAY. IT'S MY
8 UNDERSTANDING FROM THE COURT ATTENDANT THAT IF YOU
9 COULD BE EXCUSED ON WEDNESDAY, THE JURY NOT BE IN
10 DELIBERATION, YOU WOULD LIKE TO CONTINUE YOUR SERVICE.
11 IS THAT CORRECT?

12 THE JUROR: (NO AUDIBLE RESPONSE.)

13 THE COURT: ALL RIGHT. YOU NODDED YES. AND
14 THAT'S WHAT WE'RE GOING TO DO. YOU'VE SPENT SO MUCH
15 TIME HERE THAT, LONGER FOR ALL OF YOU THAN WAS
16 ANTICIPATED.

17 BUT YOU DO HAVE A MATTER THAT IS OF SUCH
18 IMPORTANCE THAT WE'D LIKE, FIRST OF ALL, TO RETAIN YOUR
19 SERVICES TO FINISH THIS JOB, BUT ALSO PERMIT YOU TO
20 TAKE CARE OF THAT IMPORTANT MATTER.

21 SO THAT'S WHAT WE'RE GOING TO DO.

22 THE JUROR: THANK YOU, YOUR HONOR.

23 THE COURT: THANK YOU.

24 SO MEMBERS OF THE JURY, I'M ABOUT TO GIVE YOU
25 THE INSTRUCTIONS THAT WILL APPLY TO THE CASE. THEY'RE
26 GOING TO BE GIVEN IN TWO SEGMENTS.

27 ONE, AND YOU CAN SEE THEM HERE, THE BULK OF
28 THE INSTRUCTIONS I'M GOING TO GIVE TO YOU NOW, THESE

1 INSTRUCTIONS REALLY APPLY TO THE CASE EVIDENTIARY
2 MATTERS AND THE ISSUES IN THE CASE AND WHO HAS TO PROVE
3 WHAT, AND ISSUES LIKE THAT.

4 THERE'S A CONSIDERABLY SHORTER SET OF
5 INSTRUCTIONS THAT I WILL GIVE YOU AFTER THE ATTORNEYS
6 HAVE COMPLETED THEIR CLOSING ARGUMENTS. AND THOSE
7 INSTRUCTIONS WILL JUST BE RELATED MOSTLY TO PROCEDURAL
8 MATTERS ABOUT WHAT HAPPENS THEN AT THAT POINT.

9 THE INSTRUCTIONS THAT I AM GIVING YOU AT THIS
10 TIME, INCLUDING THE CONCLUDING INSTRUCTIONS I'LL GIVE
11 AFTER THE CLOSING ARGUMENTS OF COUNSEL, AS WELL AS THE
12 INSTRUCTIONS WHICH I GAVE YOU AT THE BEGINNING OF THE
13 CASE, AND CERTAIN INSTRUCTIONS WHICH WERE GIVEN TO YOU
14 DURING THE CASE, WILL BE PROVIDED TO YOU IN WRITTEN
15 FORM FOR YOUR DELIBERATIONS WHILE YOU'RE IN THE JURY
16 ROOM.

17 I MENTION THAT TO YOU FOR SEVERAL PURPOSES,
18 THE PRIMARY ONE OF WHICH, AT THE PRESENT TIME, IS THAT
19 WITH EVERYTHING ELSE IN THE CASE, YOU'RE FREE TO TAKE
20 NOTES AS YOU CHOOSE, BUT YOU'RE NOT REQUIRED TO DO SO.

21 BUT I WANT YOU UNDERSTAND THAT YOU WILL NOT
22 HAVE TO RELY ON YOUR NOTES OR MEMORY AS TO WHAT THE
23 COURT'S INSTRUCTIONS HAVE BEEN BECAUSE YOU WILL HAVE
24 THEM WITH YOU IN THE JURY ROOM.

25 SO I'LL LEAVE IT UP TO YOU AS TO WHAT YOU WANT
26 TO DO ABOUT THAT.

27 (WHEREUPON, THE JURY INSTRUCTIONS WERE
28 READ BY THE COURT AND NOT REPORTED)

1 THE COURT: I NEED TO DIGRESS FOR A MOMENT AND
2 SEE COUNSEL AT SIDEBAR. THIS NEEDS TO BE ON THE
3 RECORD.

4 (THE FOLLOWING PROCEEDINGS WERE HELD AT
5 THE SIDEBAR OUTSIDE THE PRESENCE OF THE
6 JURY)

7 THE COURT: IN THIS INSTRUCTION, I'VE STATED
8 THAT I HAVE EXPLAINED TO THEM THAT CERTAIN EVIDENCE WAS
9 ADMITTED FOR A LIMITED PURPOSE. AND THERE'S NO
10 QUESTION THAT THAT IS TRUE.

11 IT GOES ON -- AS I JUST READ, IT SAYS, "YOU
12 MAY CONSIDER THAT EVIDENCE ONLY FOR THE LIMITED PURPOSE
13 THAT I DESCRIBED AND NOT FOR ANY OTHER PURPOSE."

14 AND THE REASON I CALLED YOU TO SIDEBAR IS I
15 DON'T RECALL THAT I EVER TOLD THEM WHAT THE LIMITED
16 PURPOSE WAS.

17 I KNOW THAT WE TOLD THEM IT WAS RECEIVED FOR A
18 LIMITED PURPOSE, BUT I'M NOT SURE IT WAS DESCRIBED WHAT
19 THE LIMITED PURPOSE WAS.

20 MR. MCMILLAN: I THINK THE LIMIT OF THE
21 DESCRIPTION WAS NOT FOR THE -- AS I RECALL IT, WE
22 DIDN'T HAVE THE ENTIRE LIMITATION HERE.

23 THE COURT: YES.

24 MR. MCMILLAN: IT WAS JUST THE LIMITED PURPOSE
25 OF NOT FOR THE TRUTH OF THE MATTER.

26 THE COURT: IT WAS RECEIVED NOT FOR THE TRUTH
27 OF THE MATTER, BUT -- I'M NOT SURE. MANY RULINGS WERE
28 JUST -- AND THE OBJECTIONS THAT WERE OVERRULED IS

1 THERE'S A NON-HEARSAY PURPOSE.

2 MR. MCMILLAN: RIGHT.

3 THE COURT: SO I'M NOT SURE IF THEY'VE BEEN
4 TOLD EXACTLY --

5 MR. MCMILLAN: AND RIGHT --

6 THE COURT: AND AS I MENTIONED, TOO, I HAD A
7 NOTE ON THIS INSTRUCTION, WHICH I DIDN'T SEE, TO RAISE
8 THIS ISSUE WITH YOU BEFORE WE STARTED.

9 BUT IT SEEMS TO ME THAT ALL OF THIS EVIDENCE,
10 IF FOR A -- EVIDENCE ADMITTED FOR THIS LIMITED PURPOSE,
11 I COULD AT THIS POINT -- BEFORE TELLING THEM WHICH ONES
12 THAT WERE PUT INTO EVIDENCE THAT WERE RECEIVED, NOT FOR
13 THE TRUTH OF THE MATTER, BUT AS EVIDENCE OF WHAT WAS
14 KNOWN AND CONSIDERED AT THE TIME.

15 MR. MCMILLAN: I THINK --

16 THE COURT: WOULD THAT BE AGREEABLE?

17 MR. GUTERRES: THAT'S AGREEABLE.

18 MS. SWISS: THAT'S AGREEABLE.

19 THE COURT: OR WHAT WAS BELIEVED --

20 MR. MCMILLAN: WHAT WAS HEARD -- I THINK WHAT
21 WAS REPORTED TO THE PARTICULAR PERSON. I THINK THE WAY
22 WE HAVE IT WRITTEN HERE IS FINE. RATHER --

23 THE COURT: WHAT WAS REPORTED IN THESE
24 DOCUMENTS?

25 MR. MCMILLAN: MM-HMM.

26 THE COURT: OKAY. THEN I'LL STICK WITH THIS.

27 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
28 COURT IN THE PRESENCE OF THE JURY)

1 (WHEREUPON, THE JURY INSTRUCTIONS WERE
2 READ BY THE COURT AND NOT REPORTED)
3 THE COURT: I'LL PAUSE NOW TO TAKE A TEST TO
4 SEE WHO REMEMBERS ALL THE INSTRUCTIONS. (LAUGHTER)
5 PLEASE REMEMBER, YOU'LL HAVE THE INSTRUCTIONS.

6 (WHEREUPON, THE JURY INSTRUCTIONS WERE
7 READ BY THE COURT AND NOT REPORTED)
8 THE COURT: THAT CONCLUDES THE INSTRUCTIONS ON
9 THE ISSUES AND THE EVIDENCE IN THIS CASE. THE NEXT
10 STEP WILL BE -- WE'LL BE HEARING THE ARGUMENT FROM
11 PLAINTIFF'S COUNSEL.

12 AND BEFORE WE DO, HOWEVER, BECAUSE I KNOW THIS
13 IS SO VERY EXCITING TO HEAR THESE INSTRUCTIONS, WE'RE
14 GOING TO TAKE A SHORT RECESS.

15 YOU FOLKS, GIVE YOU A CHANCE TO STRETCH AND
16 TAKE CARE OF ANY OTHER NEEDS YOU MIGHT HAVE, AND ALSO
17 TO GIVE COUNSEL A FEW MOMENTS TO GET SET UP.

18 DURING THIS BRIEF RECESS, WHICH WE'LL KEEP
19 TO 10 MINUTES, PLEASE REMEMBER THE ADMONITION. WE'RE
20 NOW IN RECESS.

21 (JURY EXCUSED)

22 (PAUSE IN THE PROCEEDINGS)

23 THE COURT: WE'LL GET THE JURORS IN, PLEASE.

24 (JURY PRESENT)

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

27 (CLOSING ARGUMENT)

28 THE COURT: ALL RIGHT. EVERYONE MAY BE

1 SEATED. WE'RE ON THE RECORD. EVERYONE IS PRESENT.
2 WE -- MR. MCMILLAN, NOW YOU HAVE AN OPPORTUNITY TO
3 SPEAK WITH THE JURORS.

4 PLEASE REMEMBER, AS I PREVIOUSLY INSTRUCTED
5 YOU, THE STATEMENTS OF COUNSEL ARE NOT EVIDENCE. BUT
6 NEVERTHELESS, CLOSING ARGUMENTS ARE VERY IMPORTANT TO
7 ASSIST IN THE CONSIDERATION OF WHAT THE EVIDENCE HAS
8 SHOWN, AND WHAT THE SIGNIFICANCE OF THAT EVIDENCE IS.

9 AND I THEREFORE ASK YOU TO PAY COMPLETE
10 ATTENTION TO ALL OF THE ATTORNEYS IN THEIR CLOSING
11 ARGUMENTS. MR. MCMILLAN, YOU MAY PROCEED.

12 MR. MCMILLAN: THANK YOU, YOUR HONOR.

13 IT'S BEEN SEVEN WEEKS. REMEMBER WHEN I FIRST
14 LEFT HOME, CAME UP HERE TO BE WITH YOU, STILL WARM, MY
15 KIDS, THEY WERE STILL ON SUMMER VACATION. NOW, YOU GET
16 UP HERE AND YESTERDAY IT WAS RAINING. COOL IN THE
17 MORNINGS.

18 BEEN HERE TOGETHER A LONG, LONG TIME. YOU
19 REMEMBER WHEN WE FIRST MET, I THINK YOU ALL WERE
20 SITTING OUT THERE, AND I STOOD RIGHT OVER THERE. AND I
21 MADE YOU A SERIES OF PROMISES. REMEMBER WHAT THEY
22 WERE?

23 I PROMISED THAT WE WOULD PROVE TO YOU THAT
24 THESE DEFENDANTS, MS. PENDER, MS. SCHEELE, MS. ROGERS,
25 MS. BALABAN, I'M SORRY -- MS. SCHEELE, MS. PENDER,
26 MS. ROGERS, AND MS. NELSON.

27 YOU MAY HAVE NOTICED AT POINTS DURING THE
28 TRIAL, I HAD A LITTLE MEMORY LEAKAGE GOING ON. IT'S A

1 LOT OF INFORMATION TO JAM IN HERE. HOPEFULLY I DON'T
2 HAVE TOO MUCH OF THAT AS WE'RE GOING THROUGH THIS
3 PROCESS.

4 ANYWAY, I MADE A PROMISE TO ALL OF YOU, AND
5 THAT PROMISE WAS THAT WE WOULD PROVE TO YOU THAT THESE
6 DEFENDANTS, THEY ABUSED THEIR POWER. AND WE LEARNED, I
7 THINK IT WAS FROM JUDGE NASH, WHEN HE TESTIFIED,
8 REMEMBER HIM?

9 WE LEARNED THAT WITH GREAT POWER COMES A
10 TREMENDOUS RESPONSIBILITY. AND THAT GREAT POWER, IT'S
11 CIRCUMSCRIBED AND CONTROLLED BY RULES, LAWS. IT'S
12 THOSE SAFEGUARDS THAT WE TALKED SO MUCH ABOUT OVER THE
13 LAST SEVEN WEEKS.

14 I PROMISED TO PROVE TO YOU THAT THESE
15 DEFENDANTS, THEY ABUSED THEIR POWER, AND THEY BETRAYED
16 THE TRUST THAT WE PUT IN THEM AS A COMMUNITY. AND DAY
17 AFTER DAY, WITNESS AFTER WITNESS, WE SHOWED YOU THAT
18 WHAT WE SAID -- THAT VERY FIRST DAY, WHEN I STOOD RIGHT
19 OVER THERE -- WHAT WE SAID WAS TRUE AND CORRECT.

20 NOW, I KNOW THAT AT SOME POINTS AS WE WENT
21 THROUGH THIS TRIAL, THINGS GOT KIND OF SLOW. IT WAS
22 ALMOST LIKE WE WERE STUCK AT TIMES IN A QUAGMIRE, JUST
23 SLOGGING THROUGH THE MUD.

24 AND I KNOW THAT AT SOME POINTS, CERTAIN
25 WITNESSES, I KIND OF LOST MY COOL. GOT A LITTLE ANGRY.
26 AND I APOLOGIZE FOR THAT. I APOLOGIZE TO ALL OF YOU,
27 AND I APOLOGIZE TO HIS HONOR. AS A PROFESSIONAL
28 ADVOCATE, IT'S NOT MY JOB TO BE ANGRY. I'M ONLY HUMAN.

1 I APOLOGIZE FOR THAT FRAILTY.

2 NOW, YOU ALL PERFORM, AND YOU'VE BEEN TOLD
3 THIS BY THE COURT ALREADY, THAT YOU PERFORM A VERY
4 IMPORTANT FUNCTION AS A JURY.

5 AND THE FACT THAT YOU ARE HERE SAYS A LOT
6 ABOUT WHO YOU ARE. A LOT OF PEOPLE GOT THAT JURY
7 SUMMONS IN THE MAIL. BUT YOU CAME, AND YOU STUCK IT
8 OUT LONGER THAN ANYBODY EXPECTED OF YOU.

9 WE RECOGNIZE THE SACRIFICES THAT YOU'VE MADE,
10 AND YOU'RE GOING TO CONTINUE TO MAKE. I JUST WANT TO
11 LET YOU KNOW FROM ME AND FROM THE REST OF OUR TEAM,
12 MS. DUVAL, WE APPRECIATE THAT SACRIFICE, AND WE
13 UNDERSTAND WHAT YOU'VE DONE HERE FOR US. AND WE THANK
14 YOU FOR IT.

15 NOW, YOU'VE HEARD A LOT OF EVIDENCE. AND NOW
16 YOU'VE GOTTEN TO THE POINT WHERE YOU HAVE TO ANSWER
17 SOME QUESTIONS.

18 AND REALLY WHAT THIS CASE IS ALL ABOUT, ALL
19 THESE COMPLEXITIES, THE LAW, THE WITNESSES, ALL THE
20 STUFF YOU'VE SEEN AND HEARD, IT'S ALL ABOUT
21 ANSWERING -- I WON'T SAY A FEW SIMPLE QUESTIONS,
22 BECAUSE THERE'S LIKE 18 OR 19 OF THEM.

23 IT'S ABOUT ANSWERING THE FAIRLY SIMPLE
24 QUESTIONS ON THIS VERDICT FORM. THE FIRST ONE STARTS
25 WITH UNWARRANTED SEIZURE. WE ONLY HAVE TWO DEFENDANTS
26 THERE, IT'S MS. PENDER AND MS. ROGERS.

27 YOU HAVE TO ANSWER, DID THEY REMOVE OR
28 PARTICIPATE IN MAKING THE DECISION TO REMOVE RAFAELINA

1 DUVAL'S CHILD FROM HER CARE WITHOUT FIRST GETTING A
2 WARRANT.

3 THEN THE RELATED QUESTION, AND THE REASON I'M
4 GOING TO SHOW YOU THESE TOGETHER IS BECAUSE I HAVE SOME
5 VIDEO CLIPS TO REFRESH EVERYBODY'S RECOLLECTION, THE
6 RELATED QUESTION HERE IS THE DEFENSE OF EXIGENCY.

7 AND THAT'S WHERE THE CRUX OF THE WHOLE FIGHT
8 IS. AND THIS IS DEFENDANT'S BURDEN OF PROOF. IT'S NOT
9 OURS.

10 THEY HAVE TO PROVE THAT AT THE TIME THEY
11 SEIZED BABY RYAN, THEY HAD IN THEIR POSSESSION SPECIFIC
12 AND ARTICULABLE FACTS TO SHOW THAT RAFAELINA DUVAL'S
13 SON WAS LIKELY TO EXPERIENCE SERIOUS BODILY HARM IN THE
14 TIME IT WOULD TAKE TO OBTAIN A WARRANT.

15 NOW, YOU'VE SEEN A LOT OF THE TRAINING AND
16 WHAT THE COUNTY OF LOS ANGELES TRAINS ITS WORKERS IS
17 THAT YOU CAN GET A WARRANT IN 3 TO 6 HOURS. THAT'S THE
18 TRAINING THAT THEY PROVIDE.

19 WHEN WE'RE LOOKING AT THE SPECIFIC LANGUAGE OF
20 THIS QUESTION, THERE'S BEEN SOME DEBATE ABOUT THE
21 MEANING OF THE WORD "ARTICULABLE."

22 AND YOU MIGHT THINK IT MEANS SOMETHING LIKE --
23 NOTICE HIS HONOR'S LAUGHING, IT'S BEEN A SERIOUS
24 DEBATE -- BUT, WHAT I THINK YOU CAN GO WITH IS
25 PARTICULARIZED FACTS. SPECIFIC AND PARTICULARIZED
26 FACTS.

27 ARTICULABLE. WE USED DICTIONARY.COM, GOOGLE,
28 WEBSTERS', ALL SORTS OF DIFFERENT SEARCH ENGINES.

1 "ARTICULATE" IS CLEARLY DEFINED.

2 "ARTICULABLE" APPEARS TO BE A LEGAL TERM, BUT
3 IN MY VIEW, IT MEANS ABLE TO BE EXPRESSED IN WORDS,
4 MEANING WE DON'T SPECULATE, WE DON'T ACT ON HUNCHES, WE
5 DON'T ACT ON FEELINGS.

6 IF WE CAN EXPRESS THE REASONS IN WORDS,
7 SPECIFIC, AND PARTICULARIZED WORDS, THEN AND ONLY THEN
8 CAN WE SHOW THAT WE HAVE FACTS TO SHOW THE CHILD'S
9 LIKELY TO SUFFER SERIOUS BODILY INJURY IN THE TIME IT
10 WOULD TAKE TO OBTAIN A WARRANT.

11 I REMEMBER IN THE VERY BEGINNING, I TOLD YOU
12 GUYS THAT IT'S A TWO-PART TEST FOR EXIGENCY. THE
13 DEFENDANTS HAVE TO PROVE BOTH ELEMENTS TO GET IT.

14 THE SECOND ELEMENT THEY HAVE TO PROVE -- THEY
15 HAVE TO PROVE THAT THE REMOVAL OF RAFAELINA DUVAL'S SON
16 FROM HER CARE WITHOUT FIRST OBTAINING A WARRANT WAS
17 REASONABLY NECESSARY TO AVERT A SPECIFIC INJURY ON
18 NOVEMBER 3RD, 2009.

19 WHAT THAT MEANS IS THAT AT THE TIME THEY
20 SEIZED THE CHILD, AT THE TIME THEY SEIZE HIM, THEY HAVE
21 TO HAVE IN MIND A SPECIFIC INJURY THAT THEY'RE TRYING
22 TO AVERT.

23 A SPECIFIC INJURY THEY BELIEVE, THEY HAVE
24 EVIDENCE, THE CHILD IS LIKELY TO SUFFER IN 3 TO 6
25 HOURS. AND THE ONLY WAY TO REASONABLY PREVENT THAT
26 INJURY, THAT SPECIFIC INJURY, IS TO SEIZE THE CHILD
27 THERE AND THEN.

28 SO WITH THAT, WE'LL TALK ABOUT THE EVIDENCE --

1 ACTUALLY, WE WON'T TALK ABOUT THE EVIDENCE. I'M GOING
2 TO SHOW YOU THE EVIDENCE.

3 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
4 DEPOSITION WAS PLAYED)

5 MR. MCMILLAN: SO THERE WE CAN SEE THAT
6 MS. ROGERS AND MS. PENDER TOGETHER MADE THE DECISION TO
7 SEIZE THE CHILD. AND REMEMBER THE FIRST QUESTION IS:

8 "DID DEFENDANTS REMOVE OR PARTICIPATE IN
9 MAKING THE DECISION TO REMOVE RAFAELINA DUVAL'S CHILD
10 FROM HER CARE WITHOUT FIRST OBTAINING A WARRANT?"

11 BASED ON THIS TESTIMONY, YOU VIEWED IT DURING
12 TRIAL, THE ANSWER TO BOTH OF THOSE QUESTIONS, WE THINK
13 SHOULD BE YES.

14 MOVING ON TO THE DEFENSE OF EXIGENCY. AS
15 VERDICT FORM QUESTION NUMBER 2.

16 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
17 DEPOSITION WAS PLAYED)

18 MR. MCMILLAN: SO THAT'S QUESTION NUMBER 2.
19 WE GO ON TO QUESTION NUMBER 3, AND THAT'S, IF YOU
20 RECALL, THAT'S THE SPECIFIC INJURY. WHAT WAS THE
21 SPECIFIC INJURY THAT THEY WERE TRYING TO AVERT BY
22 SEIZING THIS CHILD?

23 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
24 DEPOSITION WAS PLAYED)

25 MR. MCMILLAN: SO NO SPECIFIC INJURY. YOU'LL
26 GET THE JURY INSTRUCTIONS AND THE LAW IS VERY CLEAR ON
27 THIS. THE LAW DOESN'T SAY THAT A SPECIFIC DIAGNOSIS IS
28 GOOD ENOUGH.

1 THE LAW DOESN'T SAY THAT WE CAN SPECULATE
2 ABOUT WHAT MAY HAVE HAPPENED OR MIGHT HAVE HAPPENED IF
3 WE DIDN'T SEIZE THE CHILD. THE LAW IS VERY CLEAR, AND
4 SO IS THE VERDICT FORM.

5 WAS THERE A SPECIFIC INJURY, WAS THERE
6 SPECIFIC AND PARTICULARIZED EVIDENCE TO SHOW A SPECIFIC
7 INJURY WAS GOING TO HAPPEN IN 3 TO 6 HOURS IF WE DID
8 NOT ACT RIGHT NOW. THAT'S THE QUESTION.

9 THE ANSWER TO BOTH OF THOSE QUESTIONS, BASED
10 ON THIS TESTIMONY, SHOULD BE NO. NO, THERE WAS NO
11 EMERGENCY, AND NO, THERE WAS NO SPECIFIC INJURY IN
12 MIND.

13 THE NEXT QUESTION THAT WE HAVE -- SUBSTANTIAL
14 FACTOR. AND THE JUDGE TALKED TO YOU A LITTLE BIT ABOUT
15 SUBSTANTIAL FACTOR, AND WHAT THAT MEANS.

16 AND THE QUESTION YOU HAVE ON THE VERDICT FORM,
17 IT'S QUESTION NUMBER 4:

18 "WAS THE REMOVAL OF RAFAELINA DUVAL'S CHILD
19 FROM HER CARE WITHOUT FIRST OBTAINING A WARRANT, A
20 SUBSTANTIAL FACTOR IN CAUSING HARM TO RAFAELINA DUVAL?"

21 NOW, JURY INSTRUCTION NUMBER 430 TELLS US THAT
22 IT IS ENTIRELY UP TO YOU TO DECIDE THIS QUESTION.
23 BECAUSE A SUBSTANTIAL FACTOR IN CAUSING HARM IS A
24 FACTOR THAT A REASONABLE PERSON, A REASONABLE PERSON
25 WOULD CONSIDER TO HAVE CONTRIBUTED TO THE HARM.

26 AND WHEN WE'RE TALKING ABOUT REASONABLE
27 PEOPLE, WE'RE TALKING ABOUT THE CONSCIENCE OF THE
28 COMMUNITY. WHAT WOULD YOUR COMMUNITY CONSIDER? WHAT

1 DO YOU CONSIDER IS REASONABLE?

2 AND THERE MAY SOME DISCUSSION THAT, YOU KNOW,
3 OTHER THINGS, OTHER PEOPLE, OTHER CONDUCT, OTHER WORDS
4 CAUSED THESE, YOU KNOW, MS. DUVAL SOME HARM. AND
5 INSTRUCTION NUMBER 431 DEALS WITH THAT.

6 IT TELLS US WITH THAT PERSON'S CONDUCT MAY
7 COMBINE WITH ANOTHER FACTOR TO CAUSE HARM. AND IF ANY
8 PERSON'S CONDUCT WAS A SUBSTANTIAL FACTOR AS DEFINED IN
9 NUMBER 430, THEN THAT'S ENOUGH. IT DOESN'T MATTER IF
10 THERE WERE OTHER CAUSES.

11 SO WE HAVE TO REMEMBER -- I DON'T HAVE A VIDEO
12 CLIP OF HIM, OTHERWISE I WOULD PLAY IT, BUT WE REMEMBER
13 MR. BUDIN. HE TESTIFIED. HE WAS THE LICENSED CLINICAL
14 SOCIAL WORKER, THE THERAPIST THAT TREATED MS. DUVAL
15 FROM NOVEMBER 11, 2009, EVEN SOMEWHAT TIL TODAY.

16 HE CAME IN, HE TOLD YOU HIS STORY. HE SHARED
17 HIS EXPERIENCES. AND WHAT HE TESTIFIED TO WAS THAT THE
18 SEIZURE OF MS. DUVAL'S BABY ON NOVEMBER 3RD, 2009, THAT
19 EVENING, NOVEMBER 3RD, CAUSED A RIFT IN HER PSYCHE.

20 CAUSED A WOUND THAT WAS SO DEEP, AND SO
21 LONG-LASTING THAT SHE SUFFERS FROM IT TO AN EXTENT EVEN
22 TODAY AND WILL PROBABLY FOR THE REST OF HER LIFE.
23 THAT'S A SUBSTANTIAL FACTOR.

24 NOW, HE ALSO TESTIFIED THAT SOME OF THE THINGS
25 THAT OTHER DEFENDANTS DID LATER IN THE CASE, AND WE'LL
26 GET TO MS. SCHEELE, BUT SOME OF THE THINGS OTHER
27 DEFENDANTS DID LATER IN THE CASE, ALSO CONTRIBUTED TO
28 EXACERBATING OR WORSENING THE HARM, THAT EMOTIONAL

1 INJURY.

2 BUT THE TRIGGERING EVENT THAT STARTED IT, THAT
3 TORE THAT CHUNK OF FLESH FROM HER HEART, THAT HAPPENED
4 ON NOVEMBER 3RD, 2009, AT THAT TEAM DECISION-MAKING
5 MEETING. AND IT WAS MS. PENDER AND MS. ROGERS THAT DID
6 IT.

7 WHICH BRINGS US TO QUESTION NUMBER 5, AND
8 THAT'S A QUESTION ABOUT MALICE, OPPRESSION, OR FRAUD.

9 "AS TO ANY DEFENDANT THAT YOU ANSWERED YES IN
10 QUESTION NUMBER 1, DID THAT DEFENDANT ENGAGE IN CONDUCT
11 WITH MALICE, OPPRESSION, OR FRAUD?"

12 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
13 DEPOSITION WAS PLAYED)

14 MR. MCMILLAN: SO THAT NIGHT ON NOVEMBER 3RD,
15 WHEN MS. PENDER AND MS. ROGERS WERE THERE IN THAT ROOM,
16 YOU REMEMBER THE SCENE? THERE WAS A LOT GOING ON, AND
17 MS. DUVAL, SHE'S LEANING OVER TO HELP HER BABY, AND HER
18 SHIRT HIKED UP A LITTLE BIT.

19 AND THERE WAS MS. PENDER AND MS. CRUMP SITTING
20 ACROSS THE TABLE. AND THEY STARTED SORT OF SNICKERING.
21 AND MS. DUVAL'S FATHER, HE WAS THERE, AND HE SAW THIS,
22 AND HE STARTED TO GET UPSET.

23 NOT ONLY AT THAT, BUT AT THE WAY THE WHOLE THE
24 MEETING WAS GOING, THE WAY THEY WERE TREATING HIS
25 DAUGHTER. REMEMBER WHAT HE SAID? HE SAID, DON'T YOU
26 SEE? DON'T YOU SEE WHAT THEY'RE DOING? THEY'RE
27 DISCRIMINATING AGAINST YOU. SHE'S WHITE TRASH.
28 COCKROACHES.

1 THAT'S WHEN THE SOCIAL WORKERS, THEY STOOD UP
2 AND THEY STOPPED THE MEETING. THEY WEREN'T HAPPY.
3 THEY WALKED OUT. THEY CAME BACK A LITTLE BIT LATER.
4 WE'RE TAKING THE BABY AND GIVING HIM TO THE FATHER,
5 HERE AND NOW.

6 YOU REMEMBER MS. DUVAL WHEN SHE TESTIFIED
7 ABOUT THAT. THEY TOOK HER DOWN INTO A ROOM. DARK
8 ROOM. MS. PENDER TOLD HER -- MR. MILLS CAME WALKING
9 OUT OF THE CORNER.

10 GIVE HIM THE BABY NOW, AND SHE BEGGED HIM.
11 SHE BEGGED HER. SHE BEGGED MS. PENDER, DON'T DO THIS.
12 YOU DON'T KNOW WHAT YOU'RE DOING. YOU'RE MAKING A
13 MISTAKE.

14 SHE BEGGED THE FATHER TO TAKE THE MILK THAT
15 SHE BROUGHT WITH HER, LEFT IT THERE ON THE TABLE. THAT
16 WAS THE NIGHT THAT HER LIFE CHANGED FOREVER. AND
17 MS. PENDER, SHE KNEW IT.

18 AND YOU'RE GOING TO HAVE THE DELIVERED SERVICE
19 LOG BACK IN THE JURY LOUNGE WITH YOU. AND YOU CAN GO
20 THROUGH THOSE, FROM OCTOBER 19TH ALL THE WAY UP TO
21 NOVEMBER 3RD, AND BEYOND, TO NOVEMBER 5TH.

22 AND YOU'LL SEE FOR YOURSELVES THAT EARLY ON,
23 AS EARLY AS, I THINK IT WAS OCTOBER 22ND, AT THE CATC
24 CLINIC, YOU'RE GOING TO GET THOSE RECORDS --

25 AND YOU CAN SEE THAT THE MEDICAL FACILITY THAT
26 THE COUNTY USES TO DETERMINE WHETHER OR NOT THERE'S
27 CHILD ABUSE, THEY FOUND THAT, NO, THEY COULDN'T SAY
28 THAT THIS CHILD -- THE FAILURE TO THRIVE, WAS CAUSED BY

1 PARENTAL NEGLECT.

2 THEY WERE RUNNING TESTS. THE TESTS HADN'T
3 BEEN COMPLETED TO RULE OUT NON-ORGANIC CAUSES, AND BY
4 THE TIME WE GOT TO THE FAILURE TO THRIVE CLINIC ON
5 NOVEMBER 3RD WITH DR. EGGE, THE TESTS STILL HADN'T COME
6 BACK.

7 DR. EGGE DIDN'T PERFORM ANY TESTS. ALL SHE
8 DID WAS EXAMINE THE BABY PHYSICALLY. NO BLOOD WORK, NO
9 MRIS, NO EEGS, NOTHING.

10 YOU'LL HAVE THOSE RECORDS. THEN WITH RESPECT
11 TO MS. ROGERS -- I MAY START SPEEDING UP HERE BECAUSE
12 I'M RUNNING OUT OF TIME.

13 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
14 DEPOSITION WAS PLAYED)

15 MR. MCMILLAN: SO WE KNOW WHAT THE SOCIAL
16 WORKERS KNEW, AND WE KNOW WHEN THEY KNEW IT. YOU'LL
17 GET TO READ THE INSTRUCTION ON MALICE, OPPRESSION, OR
18 FRAUD, AND THERE'S DEFINITIONS FOR EACH OF THOSE TERMS.

19 WE DON'T NEED TO PROVE ALL OF THEM. WE ONLY
20 NEED TO PROVE ONE OF THEM. EITHER MALICE, OPPRESSION,
21 OR FRAUD. ANY ONE WILL SUFFICE.

22 AND WHEN YOU'RE MAKING THESE DECISIONS, BY THE
23 WAY, ON THIS VERDICT FORM, AT LEAST NINE OF YOU HAVE TO
24 AGREE TO THE ANSWER TO EACH QUESTION, THAT'S FOR SURE.

25 BUT IT DOESN'T NECESSARILY HAVE TO BE THE SAME
26 NINE ON EVERY QUESTION, SO KEEP THAT IN MIND AS YOU'RE
27 GOING THROUGH THIS PROCESS.

28 I'M GOING TO MOVE ON NOW TO OUR CLAIM AGAINST

1 THE COUNTY OF LOS ANGELES, ITSELF, FOR ITS PRACTICE OR
2 CUSTOM OR LACK OF POLICY TO PREVENT THESE SORTS OF
3 WARRANTLESS SEIZURES FROM HAPPENING.

4 AND THERE'S A SERIES OF QUESTIONS THERE. I'M
5 NOT GOING TO GO THROUGH THEM RIGHT NOW BECAUSE I HAVE A
6 VERY STRICT TIME LIMITATION AND IT'S RUNNING OUT ON ME
7 QUICK.

8 BUT I WILL READ TO YOU AGAIN THE IMPORTANT
9 STIPULATION REGARDING THE ADMISSIONS THAT THE COUNTY
10 AND THE DEFENDANTS HAVE MADE IN THIS CASE, ON THIS
11 PARTICULAR SECTION OF THE VERDICT FORM THAT BEGINS WITH
12 QUESTION NUMBER 6 AND CONTINUES ALL THE WAY THROUGH
13 QUESTION NUMBER 9.

14 AND IT SAYS: "IN THIS CASE, DEFENDANT COUNTY
15 OF LOS ANGELES HAS ADMITTED THE FOLLOWING FACTS AND THE
16 PARTIES AGREE THAT THESE FACTS ARE ESTABLISHED." THAT
17 MEANS THEY CANNOT BE CONTESTED. THEY ARE ESTABLISHED.

18 "THAT ON NOVEMBER 3RD, 2009, THE COUNTY OF LOS
19 ANGELES SEIZED R.D. FROM THE CUSTODY OF HIS MOTHER,
20 RAFAELINA DUVAL, WITHOUT HER CONSENT.

21 "THAT KIMBERLY ROGERS, SUSAN PENDER,
22 VICTORIA SCHEELE, AND CANDIS NELSON WERE AT ALL TIMES
23 CARRYING OUT THE CUSTOMS OF DEFENDANT COUNTY OF LOS
24 ANGELES IN THEIR HANDLING OF THE MATTER OF RYAN D.
25 SUPERIOR COURT CALIFORNIA CASE NUMBER CK 79670."

26 AND THIS IS IMPORTANT BECAUSE YOU'LL SEE IT
27 ALSO IN THE JURY INSTRUCTIONS, THE DEFINITION OF
28 CUSTOM, HABITUAL CUSTOM. "AS USED HEREIN, CUSTOM MEANS

1 A CUSTOMARY, WIDESPREAD OR WELL-SETTLED PRACTICE."

2 THE NEXT STIPULATION IS MORE OR LESS THE SAME
3 LANGUAGE, BUT IT'S AGREEING THAT ALL OF THESE
4 DEFENDANTS, AT ALL TIMES WHEN THEY WERE DOING THESE
5 THINGS, WERE ACTING WITHIN THE PERFORMANCE OF THEIR
6 DUTIES, THE COURSE AND SCOPE OF THEIR DUTIES AS
7 EMPLOYEES OF THE COUNTY OF LOS ANGELES.

8 SO WITH THAT, WE'LL MOVE ON TO THE ISSUE ON
9 TRAINING. ACTUALLY, THERE'S ONE VIDEO I DO WANT TO
10 PLAY VERY QUICKLY FOR YOU ON THE ISSUE OF CUSTOM AND
11 PRACTICE POLICY.

12 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
13 DEPOSITION WAS PLAYED)

14 MR. MCMILLAN: OKAY. I AM JUST ABOUT OUT OF
15 TIME. I MAY BLEED OVER A LITTLE BIT, ROB FROM
16 SOMEWHERE ELSE TO GET THIS DONE. I TRY NOT TO DO THAT
17 MUCH. SO WE'VE GOTTEN THROUGH THE POLICY. THE NEXT
18 ONE WE HAVE IS THE TRAINING. THE SUPERVISION.

19 AND I'VE GOT A VIDEO FOR THAT.

20 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
21 DEPOSITION WAS PLAYED)

22 MR. MCMILLAN: OKAY. NOW, THIS IS VERY
23 TECHNICAL STUFF, BUT IT'S IMPORTANT STUFF. WE TRUST
24 THESE PEOPLE WITH A TREMENDOUS AMOUNT OF POWER OVER OUR
25 FAMILIES, OUR CHILDREN, OUR LIVES.

26 YOU WOULD THINK -- AND YOU MIGHT EXPECT THAT
27 WHEN THE GOVERNMENT COMES KNOCKING ON YOUR DOOR,
28 THEY'RE AT LEAST TRAINED ABOUT THE LAW, A PROCESS --

1 THAT THERE'S AT LEAST A MECHANISM IN PLACE FOR THEM TO
2 FOLLOW THE LAW.

3 IT'S NOT, THIS IS NOT AN UNIMPORTANT THING, A
4 TRIVIAL THING. THIS IS OUR CONSTITUTION, THE GOVERNING
5 LAW OF OUR COUNTRY. THEY DON'T HAVE A PROCEDURE,
6 SOCIAL WORKERS DON'T KNOW -- AREN'T CLEAR ON THE
7 PROCESS, AND YET THEY'RE OUT THERE SEIZING CHILDREN IN
8 OUR COMMUNITY.

9 THERE'S ALSO SOMETHING TO SAY ABOUT THE
10 TRAINING AND SUPERVISION, OR LACK OF SUPERVISION. IF
11 YOU RECALL, MS. CONDEN TESTIFIED THAT SHE NEVER
12 SUPERVISED A SOCIAL WORKER IN HER ENTIRE TIME WITH THE
13 AGENCY.

14 SHE WAS A TOP PERFORMANCE MANAGEMENT. HER JOB
15 WAS DISCIPLINE, NEVER DISCIPLINED A WORKER AFTER -- FOR
16 SEIZING A CHILD WITHOUT FIRST OBTAINING A WARRANT, EVEN
17 THOUGH THE COUNTY HAD BEEN SUED MULTIPLE TIMES.

18 YOU HEARD MR. COX AND MR. POWELL. BOTH OF
19 THEM TESTIFIED FOR QUITE SOME TIME ABOUT THE WORK THEY
20 DO, THE WORK WE ALL DO, TO TRY TO BRING THE GOVERNMENT
21 IN COMPLIANCE WITH LAW.

22 REMEMBER WHAT THEY SAID ABOUT THE COUNTY OF
23 LOS ANGELES, ITS TRAINING, ITS SUPERVISION, ITS FAILURE
24 TO DISCIPLINE ITS WORKERS, AT LEAST IN THEIR
25 EXPERIENCES.

26 THE LAST QUESTION WE HAVE RELATES TO
27 MS. VICTORIA SCHEELE, AND THERE'S NO TIME TO SHOW YOU.
28 I'LL JUST EXPLAIN IT TO YOU.

1 IT'S INTENTIONAL INFLECTION OF EMOTIONAL
2 DISTRESS. AND THE COURT HAS READ YOU THE INSTRUCTIONS,
3 YOU'LL HAVE THE VERDICT FORM. THERE'S 3, 4, 5, BASIC
4 QUESTIONS YOU'LL HAVE TO ANSWER.

5 AND WE BELIEVE THE ANSWER TO EACH OF THOSE
6 SHOULD BE YES, BASED ON THE CONDUCT THAT YOU'VE SEEN
7 OVER THE LAST SEVEN WEEKS. SO I WILL PLAY YOU THE LAST
8 VIDEO AND THAT RELATES TO DAMAGES.

9 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
10 DEPOSITION WAS PLAYED)

11 MR. MCMILLAN: NOW, WHEN WE GET TO THE
12 QUESTION OF DAMAGES, THERE'S PAST NON-ECONOMIC DAMAGES,
13 AND THAT'S THE EMOTIONAL DISTRESS, THE EMOTIONAL PAIN,
14 THE ANGUISH, THE SUFFERING.

15 SHE'S ALSO ENTITLED, AND YOU'LL SEE THIS IN
16 THE INSTRUCTIONS IN THE VERDICT FORM -- THAT SHE ALSO
17 CONTINUES TO SUFFER, INJURIES INTO THE FUTURE. HARM,
18 THE SAME LOSS OF ENJOYMENT OF LIFE, THAT SAME GAP OF
19 HER PSYCHE.

20 AND I'VE STRUGGLED WITH THIS A LITTLE BIT.
21 HOW DO YOU PLACE A VALUE ON WHAT WAS TAKEN, WHAT WAS
22 LOST? IT'S A VERY DIFFICULT QUESTION, BUT IT'S A
23 QUESTION YOU'RE GOING TO HAVE THE ANSWER.

24 SO I LOOKED AT IT, AND I SAID, WELL, HOW MANY
25 DAYS HAS IT BEEN SINCE BABY RYAN WAS TAKEN FROM HER ON
26 NOVEMBER 3RD, AND IT TURNS OUT -- I HOPE MY MATH IS
27 RIGHT, YOU GUYS CAN CHECK ME -- IT'S 2,554 DAYS.

28 NOW, WHAT KIND OF VALUE DO WE PLACE ON EACH OF

1 THOSE DAYS? IT'S ANOTHER DIFFICULT QUESTION. CLEARLY,
2 THE INITIAL DAYS SHOULD HAVE A HIGHER VALUE THAN THE
3 TRAILING-ON DAYS BECAUSE WE KNOW TIME HEALS MOST
4 WOUNDS. NOT ALL, BUT WITH THE PASSAGE OF TIME, I WOULD
5 EXPECT THINGS TO GET A LITTLE BIT BETTER DAY BY DAY.

6 SO FOR THE FIRST THREE DAYS, I WOULD SUGGEST
7 \$300,000 PER DAY. AND THEN FOR THE FOLLOWING DAYS UP
8 UNTIL TODAY, I THINK IT WOULD DIMINISH SOMEWHAT FROM
9 EACH DAY TO THE NEXT, STARTING FROM 300,000 DOWN TO
10 MAYBE 2,000, OR \$1,000 A DAY.

11 ONE THING THAT YOU MIGHT DO IS, I THOUGHT
12 ABOUT THIS AS WELL, IS, THE WAY THAT YOU COULD TRACK
13 OUT THE TOTAL VALUE OF THOSE DAMAGES IS TO INTEGRATE
14 THEM OVER TIME. THE CHANGE IN TIME VERSUS THE CHANGE
15 IN DAMAGES.

16 IF YOU CAN CALCULATE WHAT THAT VALUE IS, I
17 WOULD EXPECT IT TO COME TO SOMEWHERE AROUND
18 THREE-AND-A-HALF MILLION DOLLARS.

19 BUT THAT DOESN'T ANSWER THE QUESTION WITH
20 RESPECT TO FUTURE DAMAGES, THE DAMAGES THAT SHE FEELS
21 EVERY DAY. AND THAT'S A SIMILARLY DIFFICULT QUESTION.

22 YOU HAVE A JURY INSTRUCTION ON LIFE
23 EXPECTANCY. MR. BUDIN TESTIFIED THAT SHE'LL CARRY THIS
24 WOUND WITH HER THE REST OF HER LIFE. IT'S 43 YEARS.
25 AND I'VE CALCULATED THAT FOR YOU AS WELL.

26 ACTUALLY, I CALCULATED 41 YEARS. I WAS OFF,
27 BUT LET'S ADD 700 OR SO TO MY NUMBER. 14,965 DAYS. A
28 LOT OF DAYS. HOW MUCH FOR THOSE DAYS? I THINK YOU

1 WOULD APPLY THE SAME PRINCIPLE.

2 WHATEVER THE END NUMBER YOU CAME WITH -- TO,
3 ON YOUR PAST DAMAGES, WHATEVER THAT NUMBER IS,
4 A THOUSAND, 2,000, WHATEVER IT IS PER DAY, I THINK YOU
5 WOULD TAKE THAT AND THEN EXTRAPOLATE THAT OUT OVER
6 THE 41 YEARS.

7 AND, AGAIN, WITH THE PASSAGE OF TIME, MAYBE
8 THAT DIMINISHES SOMEWHAT. THAT STILL COMES TO A VERY
9 LARGE NUMBER.

10 IT'S SOMEWHERE, IF YOU START AT MAYBE \$500 OR
11 A THOUSAND DOLLARS PER DAY, AND EXTRAPOLATE OUT TO 100
12 OR \$200 PER DAY BY THE END, IT COMES OUT TO AN
13 ADDITIONAL, ROUGHLY, FIVE MILLION DOLLARS. THAT'S WHAT
14 WE BELIEVE THE REASONABLE VALUE OF MS. DUVAL'S LOSS
15 WAS.

16 AND WITH THAT, I HAVE A LOT MORE TO SAY, BUT
17 I'M OVER MY TIME LIMIT, I'M ROBBING FROM OTHER AREAS TO
18 GET TO WHERE I NEED TO GET, SO WE'LL LISTEN TO THE
19 DISCRIMINATION PART OF THE CASE FROM MR. PRAGER.

20 AND THEN WE'LL HEAR FROM THE DEFENDANTS. AND
21 THEY'LL GIVE YOU THEIR EXCUSES. AND WE'LL TALK AGAIN
22 BEFORE WE'RE DONE.

23 MR. PRAGER: GOOD MORNING. DR. KING SAID,
24 INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE.
25 AND AS YOU'VE HEARD, AT THE OPENING OF THIS CASE, THE
26 DEFENSE MADE YOU VERY SPECIFIC PROMISES.

27 THE DEFENSE TOLD YOU THAT THEY WOULD SHOW THE
28 INVESTIGATION THAT RESULTED IN CONCLUSIONS THAT

1 MS. DUVAL SUFFERED DISABILITY-BASED DISCRIMINATION, HAD
2 BEEN RESCINDED. THAT A DIFFERENT FINDING HAD BEEN
3 MADE.

4 THEY PROMISED YOU THAT AT THE END OF THE CASE,
5 YOU'D UNDERSTAND THE SOCIAL WORKERS, NELSON, AND
6 SCHEELE, DID NOTHING WRONG. DID THEY KEEP THOSE
7 PROMISES? WHAT DOES THE EVIDENCE SHOW? NO. NO, THEY
8 DIDN'T.

9 WE START WITH EXHIBIT 220, WHICH WAS SHOWN
10 DURING -- OH, I'M SORRY -- WHICH WAS DISCUSSED DURING
11 TRIAL. YOU KNOW THAT MICHELLE HOCHSTEIN MADE VERY
12 SPECIFIC FINDINGS ABOUT MS. DUVAL -- MADE VERY SPECIFIC
13 FINDINGS ABOUT DISCRIMINATION THAT MS. DUVAL SUFFERED.

14 AND YOU KNOW THAT MS. MORGAN-NICHOLS WAS HER
15 SUPERVISOR. SHE WAS THE LEAD CIVIL RIGHTS INVESTIGATOR
16 FOR THE CIVIL RIGHTS UNIT FOR THE COUNTY OF LOS ANGELES
17 CIVIL RIGHTS UNIT (SIC). AND WHAT DID SHE DO?

18 ON AUGUST 2ND, 2010, AS YOU'RE AWARE, AFTER
19 THE INVESTIGATION WAS COMPLETED, SHE SENT THE CIVIL
20 RIGHTS BUREAU FOR THE STATE A LETTER, AND SAID, WE
21 FOUND EVIDENCE THAT MS. DUVAL'S CIVIL RIGHTS WERE
22 VIOLATED, BASED ON DISABILITY. WHAT HAPPENED NEXT?

23 EXHIBIT 202. YOU KNOW THAT MS. DUVAL GOT A
24 LETTER, AND IT SAID, FROM MS. HOCHSTEIN -- WHICH I'LL
25 SHOW YOU IN A SECOND -- THAT MS. HOCHSTEIN AND THE
26 DEPARTMENT HAD CAREFULLY CONSIDERED ALL THE EVIDENCE.

27 AND BASED ON THE INVESTIGATION, THEY CONCLUDED
28 THE COMPLAINT REVEALED A VIOLATION OF MS. DUVAL'S CIVIL

1 RIGHTS BASED ON DISABILITY.

2 "THERE IS EVIDENCE THAT THE DEPARTMENT STAFF,
3 MS. SCHEELE AND NELSON, INVOLVED IN YOUR CASE SUBJECTED
4 YOU TO INAPPROPRIATE CONDUCT, DENIED YOU BENEFITS AND
5 TREATED YOU DISPARATELY."

6 NOW, THEY DID NOT SUSTAIN EVERY COMPLAINT THAT
7 MS. DUVAL MADE. SO THEY TOLD MS. DUVAL, IN ACCORDANCE
8 WITH THE LAW, AS IT SAYS RIGHT HERE, "IF YOU DO NOT
9 AGREE WITH THIS FINDING, YOU HAVE THE RIGHT TO FILE AN
10 APPEAL WITH THE STATE OR FILE AN APPEAL WITH THE US
11 DEPARTMENT OF HEALTH AND HUMAN SERVICES."

12 AND IF YOU RECALL, MS. SWART, THE FIRST
13 WITNESS THAT TESTIFIED IN THE CASE, SHE TOLD US THAT
14 SHE, HERSELF, SENT LA DCFS BETWEEN \$700,000,000 AND
15 \$900,000,000 IN 2009 ALONE.

16 AS A RESULT OF THAT, WE KNOW FEDERAL FUNDS ARE
17 RECEIVED FROM THE DEPARTMENT OF US -- US DEPARTMENT OF
18 HEALTH AND HUMAN SERVICES, WHICH GIVES THEM THE RIGHT
19 TO HEAR ANY APPEALS BY MS. DUVAL REGARDING THIS
20 DISCRIMINATION.

21 BUT MS. DUVAL DIDN'T. SHE HAD A FINDING THAT
22 SHE SUFFERED DISCRIMINATION. SO SHE MOVED ON. AND IT
23 WASN'T UNTIL THIS CASE THAT SHE LEARNED SOMETHING
24 DIFFERENT. SHE LEARNED THAT THE COUNTY OF LOS ANGELES
25 WAS ATTEMPTING TO TAKE BACK THOSE FINDINGS.

26 WE KNOW THAT DCFS VIOLATED THEIR OWN POLICIES
27 BY ATTACHING THE UP-FRONT ASSESSMENT TO THE COURT
28 REPORT. DR. SANDERS, WHO IS NELSON'S BOSS, SAID SO.

1 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
2 DEPOSITION WAS PLAYED)

3 MR. PRAGER: AND YOU CAN ALSO -- YOU ALSO
4 HEARD FROM MS. NELSON HERSELF.

5 (WHEREUPON, AN EXCERPT FROM A VIDEOTAPED
6 DEPOSITION WAS PLAYED)

7 MR. PRAGER: SO WE KNOW THAT BOTH MS. NELSON
8 AND HER BOSS ADMIT, EVEN NOW, THAT SHE VIOLATED POLICY
9 WHEN SHE ATTACHED THE UP-FRONT ASSESSMENT TO THE COURT
10 REPORTS.

11 SHE MADE REFERENCE TO MUNCHAUSEN BY PROXY,
12 WHICH RESULTED IN MS. DUVAL BEING PERCEIVED AS IF SHE
13 HAD THE MENTAL ILLNESS, MUNCHAUSEN BY PROXY, WHICH SHE
14 DID NOT. AND THERE WAS NO EVIDENCE SHE EVER DID.

15 AND WHAT INFORMATION DID THE COUNTY OFFER YOU
16 IN THIS CASE TO SHOW THAT THEIR INITIAL FINDINGS WERE
17 WITHDRAWN OR WERE WRONG? NOTHING.

18 THEY DIDN'T CALL SCHEELE ON THIS ISSUE. THEY
19 DIDN'T CALL HOCHSTEIN TO TALK TO YOU. THEY DIDN'T CALL
20 MORGAN-NICHOLS TO TALK TO YOU.

21 AND THEY DIDN'T GET CONDEN TO COME TALK TO YOU
22 TO EXPLAIN WHY MS. HOCHSTEIN'S ORIGINAL FINDINGS WERE
23 WRONG, AND WHY YOU SHOULD NO LONGER RELY ON THAT SINGLE
24 PIECE OF EVIDENCE THAT SAYS MS. DUVAL WAS THE VICTIM OF
25 DISABILITY-BASED DISCRIMINATION.

26 AND WHAT YOU ALSO LEARNED IN THE DEPOSITION
27 READS, AND I KNOW THEY WERE LONG, AND WE WERE TRYING TO
28 SAVE TIME TO GET THIS CASE TO YOU FASTER -- YOU

1 LEARNED, ONE:

2 THAT MS. CONDEN KNEW THAT SHE OWED LETTERS TO
3 MS. DUVAL IF THE COUNTY WAS GOING TO ADVANCE THE
4 POSITION THEY HAD CHANGED THEIR MIND.

5 AND MS. CONDEN SAID IN HER DEPOSITION THAT,
6 WHEN THE COUNTY TRIED TO ARGUE THEY CHANGED ITS MIND,
7 THEY OWED A LETTER OF REDETERMINATION TO MS. DUVAL.
8 TWICE: ONCE FOR SCHEELE, AND ONCE FOR NELSON.

9 BUT THEY NEVER SENT LETTERS OF REDETERMINATION
10 TO MS. DUVAL. WHY? BECAUSE THEIR ATTORNEYS IN THE
11 CASE TOLD MS. CONDEN SHE COULDN'T SEND LETTERS OF
12 REDETERMINATION TO MS. DUVAL IN THIS CASE.

13 WHICH MEANS MS. DUVAL COULD NEVER EVEN ATTEMPT
14 TO APPEAL THE SUGGESTION THERE WAS A REDETERMINATION
15 BECAUSE SHE WAS NEVER GIVEN THE KEY TO THAT APPEAL TO
16 THE FEDERAL GOVERNMENT, OR TO THE STATE GOVERNMENT.
17 SHE NEVER GOT THAT LETTER SAYING SHE HAD THE RIGHT TO
18 APPEAL.

19 SO WHEN YOU HEAR THE COUNTY TALK TO YOU NEXT
20 ABOUT WHY YOU SHOULD NO LONGER BELIEVE MS. DUVAL WAS
21 THE VICTIM OF DISCRIMINATION, MAKE SURE THAT THEY
22 EXPLAIN THAT TO YOU FULLY AND COMPLETELY.

23 AND MAKE SURE ALSO THEY EXPLAIN TO YOU THAT
24 AFTER THIS CASE, MS. CONDEN SAID SHE CHANGED PROCEDURE.
25 AND THE PROCEDURE IS NOW, THERE WILL BE NO MORE
26 SUSTAINED FINDINGS OF VIOLATION OF A PERSON'S CIVIL
27 RIGHTS UNTIL SHE APPROVES IT FIRST.

28 AND YOU HEARD FROM MR. URQUIZO, THE MAN FROM

1 THE STATE, WHO IS ON THAT LETTER, WHO GOT THE LETTER
2 FROM MS. MORGAN-NICHOLS, SAYING, YES, THE STATE
3 RECEIVED EVERYTHING.

4 YES, THE STATE REVIEWED EVERYTHING. YES, THE
5 STATE TOLD THE COUNTY OF LOS ANGELES TO GO BACK AND
6 DISCIPLINE, RETRAIN MS. SCHEELE AND MS. NELSON.

7 AND YOU KNOW IN THIS CASE, THE COUNTY HAS
8 ADMITTED THAT NO ONE WAS EVER DISCIPLINED BECAUSE OF
9 THIS CASE, AND NO ONE WAS EVER RETRAINED BECAUSE OF
10 THIS CASE.

11 WHICH MEANS THIS DISCRIMINATION COULD HAPPEN
12 AGAIN TO SOMEONE ELSE IF THE COUNTY DOES NOT ENFORCE
13 THEIR OWN DISCIPLINE AND ENSURE THEIR WORKERS ARE
14 PLAYING BY THE RULES.

15 NOW, YOU'RE WELL AWARE THAT THERE'S ALMOST TWO
16 CASES IN THIS MATTER. AND THE SECOND ONE, THE
17 DISABILITY ONE, IS THE ONE WE'RE TALKING ABOUT RIGHT
18 NOW. AND YOU'RE GOING TO HAVE TWO VERDICT FORMS TO GO
19 THROUGH.

20 AND THIS IS THE VERDICT FORM FOR THE
21 DISABILITY CASE. AND THIS IS VERDICT FORM TWO. AND
22 YOU'LL BE ASKED TO ANSWER A SERIES OF QUESTIONS ABOUT
23 THIS VERDICT FORM. SO LET'S GO OVER IT.

24 NOW, THERE ARE THREE DIFFERENT CLAIMS OF
25 DISCRIMINATION. THERE ARE THREE CLAIMS THAT MS. DUVAL
26 IS PURSUING BASED ON DISABILITY DISCRIMINATION. TWO
27 ARE FEDERAL, ONE IS STATE.

28 THE FIRST FEDERAL CLAIM THAT YOU'LL BE ASKED

1 TO ADDRESS IS THE AMERICAN WITH DISABILITIES ACT. AND
2 BEFORE -- AND I'LL READ THE QUESTION TO YOU:

3 "WAS RAFAELINA DUVAL REGARDED AS HAVING A
4 PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS
5 ONE OF HER MAJOR LIFE ACTIVITIES BY AN EMPLOYEE OF THE
6 COUNTY OF LOS ANGELES?"

7 EVERYONE HERE UNDERSTANDS THE COUNTY DID NOT
8 INDEPENDENTLY ACT. IT ACTS THROUGH ITS AGENTS, SO THE
9 AGENTS HAD TO DO THIS CONDUCT TO MS. DUVAL.

10 BEFORE WE CAN ANSWER THE FIRST QUESTION, WE
11 HAVE TO TALK ABOUT WHAT "REGARDED AS" MEANS, SO YOU
12 UNDERSTAND HOW TO ANSWER THE QUESTION.

13 "REGARDED AS" MEANS WHEN YOU DON'T HAVE A
14 DISABILITY, YOU DON'T HAVE AN IMPAIRMENT, BUT THE
15 GOVERNMENT TREATS YOU AS IF YOU HAVE AN IMPAIRMENT.
16 THAT IS THE "REGARDED AS" TEST.

17 AND AS YOU KNOW FROM HEARING THE READ
18 TESTIMONY OF MS. HOCHSTEIN, SHE CONCLUDED THAT THE
19 COUNTY DID REGARD MS. DUVAL AS DISABLED.

20 SO WAS IT ALL RIGHT FOR THE DEFENDANTS TO
21 MISCHARACTERIZE THE UP-FRONT ASSESSMENT AND LABEL
22 MS. DUVAL AS MENTALLY ILL? NO. OF COURSE NOT.

23 WAS IT OKAY FOR THEM TO WRITE SHE WAS NERVOUS
24 AND ANXIOUS AROUND BABY RYAN WHEN THEY KNEW SHE HAD
25 TREMORS? NO.

26 DID THE DEFENDANTS TREAT MS. DUVAL AS HAVING
27 MUNCHAUSEN OR MENTAL ILLNESS WHEN SHE DID NOT? YES.
28 SO WE ASK YOU TO WRITE YES HERE.

1 QUESTION NUMBER 2: "WAS RAFAELINA DUVAL
2 EXCLUDED FROM PARTICIPATION IN OR DENIED THE BENEFITS
3 OF SERVICES, PROGRAMS, OR ACTIVITIES OF THE COUNTY OF
4 LOS ANGELES, OR SUBJECTED TO DISCRIMINATION BY AN
5 EMPLOYEE OF THE COUNTY OF LOS ANGELES BECAUSE SHE WAS
6 REGARDED AS DISABLED?"

7 DID THEY -- DID THE COUNTY KNOW THAT CALLING
8 MS. DUVAL MUNCHAUSEN, SHE WOULD GET LESSER SERVICES?
9 YES. THEY'RE THE ONES RECOMMENDING THAT SHE GET THESE
10 SERVICES, OR LESSER SERVICES IN THE CASE OF DENYING
11 FAMILY REUNIFICATION SERVICES.

12 DID NELSON KNOW WHEN SHE WROTE MS. DUVAL
13 SHOULD NOT GET REUNIFICATION SERVICES SHE WAS DENYING
14 SERVICES TO MS. DUVAL? YES. SO WE ASK YOU TO CHECK
15 NUMBER 2, YES.

16 THE NEXT QUESTION IS: "WAS DEFENDANT COUNTY
17 OF LOS ANGELES -- COUNTY OF LOS ANGELES'S EXCLUSION,
18 DENIAL, OR DISCRIMINATION OF RAFAELINA DUVAL DONE WITH
19 DELIBERATE INDIFFERENCE OR INTENTIONAL DISCRIMINATION
20 OF HER RIGHTS?"

21 DELIBERATE INDIFFERENCE IS A LEGAL TERM WHICH
22 WE HAVE TO DEFINE FOR YOU. YOU'VE ALREADY HEARD THE
23 JUDGE READ ONE INSTRUCTION TO YOU ABOUT THAT.

24 LET ME JUST OFFER TO YOU HERE THAT,
25 "DELIBERATE INDIFFERENCE IS THE CONSCIOUS OR RECKLESS
26 DISREGARD OF THE CONSEQUENCES OF ONE'S OWN ACTS OR
27 OMISSIONS."

28 IT'S MORE THAN NEGLIGENCE OR CARELESSNESS.

1 IT'S WHEN THE DEFENDANTS KNOW THE RISKS AND DO IT
2 ANYWAY. DID THE COUNTY KNOW LABELING MS. DUVAL WITH
3 MUNCHAUSEN WOULD HARM HER? OF COURSE, YES.

4 WOULD THE COUNTY KNOW THAT OTHERS WOULD TREAT
5 HER DIFFERENTLY BECAUSE SHE WAS LABELED AS MUNCHAUSEN?
6 YES. WAS THIS CONDUCT DONE WITH DELIBERATE
7 INDIFFERENCE OF MS. DUVAL'S RIGHTS? WE BELIEVE YES.
8 SO WE ASK YOU TO CHECK NUMBER 3 YES.

9 THE NEXT SECTION IS THE REHABILITATION ACT.
10 AND THIS LAW IS A LITTLE BIT DIFFERENT ONLY TO THE
11 EXTENT THAT THE PERSON -- OH, SORRY -- GOVERNMENT HAS
12 TO RECEIVE PUBLIC MONEY FOR THIS TO APPLY.

13 WHICH MEANS WHEN THEY RECEIVE MONEY FROM THE
14 HEALTH AND HUMAN SERVICES DEPARTMENT, THE SECTION --
15 THE REHABILITATION ACT SECTION APPLIES TO THEM.

16 THE LANGUAGE IS A LITTLE BIT DIFFERENT BUT THE
17 CONCEPTS ARE THE SAME. NUMBER 4: "WAS RAFAELINA DUVAL
18 REGARDED AS HAVING A DISABILITY, IMPAIRMENT, BY COUNTY
19 OF LOS ANGELES AND/OR ITS EMPLOYEES."

20 HERE, THE TERM'S A LITTLE BIT DIFFERENT. IT'S
21 IMPAIRMENT AND DISABILITY, AND THE ANALYSIS IS THE
22 SAME, THE "REGARDED AS" ANALYSIS IS THE SAME. SO WE
23 ASK YOU TO CHECK YES.

24 NEXT QUESTION IS: "WAS RAFAELINA DUVAL
25 OTHERWISE QUALIFIED TO PARTICIPATE IN THE BENEFITS OR
26 SERVICES BY THE COUNTY OF LOS ANGELES?"

27 "OTHERWISE QUALIFIED" JUST REALLY MEANS, IN
28 THIS CASE, BECAUSE SHE NEVER HAD MUNCHAUSEN, SHE'S JUST

1 LIKE ONE OF US. IS SHE JUST LIKE ONE OF US? YES. WAS
2 SHE DESERVING OF ALL THE SERVICES DCFS HAD TO OFFER?
3 YES. SO WE ASK YOU TO CHECK NUMBER 5, YES.

4 THE NEXT QUESTION IS: "DID THE COUNTY OF LOS
5 ANGELES RECEIVE FEDERAL FINANCIAL ASSISTANCE?"

6 AND, AGAIN, WE KNOW FROM MS. SWART THAT THEY
7 RECEIVED 700 MILLION TO \$900 MILLION IN 2009. SO THE
8 ANSWER IS YES.

9 NEXT QUESTION IS: "WAS RAFAELINA DUVAL DENIED
10 BENEFITS OR SERVICES BY THE COUNTY OF LOS ANGELES
11 AND/OR ITS EMPLOYEES SOLELY BECAUSE SHE WAS REGARDED AS
12 BEING DISABLED?"

13 YOU'RE GOING TO LEARN AS YOU GO THROUGH THE
14 INSTRUCTIONS, THE "REGARDED AS" TEST QUALIFIES FOR
15 PEOPLE THAT DON'T HAVE DISABILITIES, BUT THE STATE
16 TREATS THEM, THE GOVERNMENT TREATS THEM AS IF THEY'RE
17 DISABLED.

18 BECAUSE THE GOVERNMENT'S PERCEPTION OF THEM,
19 OR BECAUSE THE GOVERNMENT MISTAKENLY BELIEVES THAT THEY
20 HAVE A DISABILITY, OR THEY PROVIDE SERVICES TO A PERSON
21 THAT DOES NOT HAVE A DISABILITY OR DENIES THEM SERVICES
22 BECAUSE THE GOVERNMENT IS ACTING AS IF THEY DO HAVE A
23 DISABILITY.

24 SO THE ANALYSIS HERE IS VERY SIMILAR TO THE
25 ADA QUESTION NUMBER 3, AND WE ASK YOU TO CHECK YES.

26 NOW THE NEXT QUESTION IS A STATE
27 DISCRIMINATION CASE. IN THIS SITUATION, YOU HAVE TO
28 ANSWER QUESTIONS ABOUT NELSON AND SCHEELE, BASED UPON

1 THEIR INDIVIDUAL CONDUCT. SO THE FIRST QUESTION IS:

2 "AS TO EACH DEFENDANT LISTED BELOW, ANSWER THE
3 FOLLOWING QUESTION: DID DEFENDANT DENY OR AID OR
4 INCITE A DENIAL OF AND/OR DISCRIMINATE OR MAKE A
5 DISTINCTION THAT DENIED FULL AND EQUAL ACCOMMODATIONS
6 OR ADVANTAGES OR FACILITIES OR PRIVILEGES OR SERVICES
7 TO RAFAELINA DUVAL?"

8 QUITE A MOUTHFUL. WHAT IT'S SAYING THERE, IS
9 DID MS. NELSON AND MS. SCHEELE AND THE COUNTY, THROUGH
10 ITS AGENTS, DENY OR INCITE A DENIAL OF SOMEONE'S
11 RIGHTS? AND THE ANSWER IS YES.

12 YOU ALREADY HAVE SEEN EXHIBIT 202. YOU'VE
13 SEEN EXHIBIT 220.

14 YOU HEARD THE TESTIMONY OF MS. HOCHSTEIN THAT
15 BECAUSE OF NELSON'S REPORTING OF MUNCHAUSEN BY PROXY IN
16 COURT REPORTS, AS WELL AS HER CONVERSATION THAT DID NOT
17 OCCUR WITH DR. YIM, THAT THERE WAS A RECOMMENDATION TO
18 DENY MS. DUVAL SERVICES.

19 YOU HEARD EXTENSIVE EVIDENCE ABOUT MS. SCHEELE
20 AND THE WAY MS. SCHEELE TREATED MS. DUVAL DURING THEIR
21 TIME TOGETHER. THE EVIDENCE SHOWS THAT MS. DUVAL WAS
22 ENTITLED TO NON-JUDGMENTAL MONITORING SERVICES, WHICH
23 SHE DID NOT GET.

24 THAT WOULD BE A VIOLATION OF HER RIGHTS. AND
25 BECAUSE OF THOSE VIOLATIONS, WE ASK YOU TO CHECK YES AS
26 TO ALL QUESTIONS ON NUMBER 8.

27 NOW, THE NEXT QUESTION IS MORE OF A
28 HOUSEKEEPING DETAIL, JUST LIKE IN THE WARRANTLESS

1 REMOVAL CASE YOU HEARD ABOUT.

2 THE LANGUAGE IS "SUBSTANTIAL FACTOR," WHICH
3 MEANS WAS THE CONDUCT A CAUSE. NOT THE ONLY CAUSE, BUT
4 A CAUSE. AND HERE, YOU'RE ASKED, DID NELSON'S CONDUCT
5 CAUSE HARM TO MS. DUVAL? WELL, WAS MS. SCHEELE'S
6 DISCRIMINATORY COURT REPORTING A FACTOR IN CAUSING
7 MS. DUVAL HARM? YES.

8 AGAIN, CONDEN NEVER SENT MS. DUVAL A RIGHT TO
9 APPEAL, AND YET THE COUNTY WILL PROBABLY STAND UP AND
10 TELL YOU IN A MINUTE THAT THEY CHANGED THEIR FINDINGS.
11 THAT DENIES HER THE RIGHT TO FILE AN APPEAL WITH THE
12 STATE AND FEDERAL GOVERNMENT. THAT'S A DENIAL OF HER
13 RIGHTS.

14 SO MS. DUVAL CANNOT YET CLEAR THE STIGMA OF
15 BEING LABELED MENTALLY ILL UNTIL SHE HAS THE BENEFIT OF
16 YOUR VERDICT IN THIS CASE. SO WE ASK THAT YOU CHECK
17 ALL ANSWERS TO NUMBER 9 YES.

18 IF YOU ANSWER ANY QUESTION NO, THUS FAR --
19 STRIKE THAT. LET ME REPHRASE THAT. IF YOU ANSWER 8
20 AND 9 NO, YOU WILL NOT GET AN OPPORTUNITY TO AWARD
21 DAMAGES TO MS. DUVAL.

22 WE BELIEVE THE EVIDENCE HAS SHOWN THAT SHE HAS
23 SUFFERED REAL INJURIES. SHE'S BEEN STIGMATIZED AS
24 BEING MENTALLY ILL. SHE'S BEEN TOLD THAT SHE'S A BAD
25 PERSON BY THE SOCIAL WORKERS. IS THAT RIGHT? NO.

26 SHE TRIED TO TAKE ADVANTAGE OF ALL THE
27 SAFEGUARDS WE TALKED ABOUT AT THE BEGINNING OF THIS
28 CASE. HAVE THE RIGHT TO APPEAL, TO HAVE AN

1 INVESTIGATION.

2 AND BECAUSE THE COUNTY'S REFUSING TO EVEN GIVE
3 HER A LETTER TODAY WHICH SAYS THAT SHE IS NOT -- THAT
4 SHE WAS DISCRIMINATED AGAINST, OR THE RIGHT TO APPEAL
5 TO SOMEONE ELSE, SHE'S STILL SUFFERING THAT STIGMA.

6 AND AS WE TALKED ABOUT, YOU'RE THE ONLY JURY
7 THAT SHE'S GOING TO SEE TO GIVE HER AN OPPORTUNITY TO
8 GET A VERDICT TO ELIMINATE OR REMOVE THAT STIGMA.

9 SO WE'VE REALLY CONSIDERED WHAT WOULD BE A
10 REASONABLE AMOUNT THAT YOU CAN OFFER. CERTAINLY
11 BETWEEN 2009 AND TODAY, UNTIL YOUR VERDICT IS
12 DELIVERED, AND YOU HAVE THE CHANCE TO REMOVE THAT
13 STIGMA FOR HER, WE THINK \$500,000 IS A FAIR NUMBER.

14 YOU CAN GIVE MORE, OR YOU CAN GIVE LESS. IT
15 DEPENDS ON HOW YOU PERCEIVE THE SITUATION, AND WHAT YOU
16 THINK WOULD COMPENSATE HER FULLY FOR THAT HARM. SO
17 THAT WOULD BE \$3,500,000.

18 NOW, THERE'S ALSO FUTURE HARM. MS. DUVAL'S
19 TALKED ABOUT THE FACT SHE'S AFRAID THAT DCFS WILL COME
20 BACK AND HARM HER.

21 SHE'S TALKED ABOUT THE FACT THAT SHE DOESN'T
22 REALLY DATE BECAUSE WHEN SHE DOES DATE, THIS SITUATION
23 FOLLOWS HER AND EXPOSES HER, AND MEN LOSE INTEREST IN
24 DATING HER.

25 SHE HAS A GREAT DEAL -- DEGREE OF LONELINESS
26 ABOUT THAT, AND THE OTHER ASPECTS OF THIS CASE. SO YOU
27 HAVE TO DECIDE WHAT NUMBER WOULD BE APPROPRIATE
28 COMPENSATION FOR HER GOING FORWARD IN THE FUTURE.

1 YOU'VE ALREADY HEARD HER LIFE EXPECTANCY IS
2 OVER 40 YEARS, SO WE SUGGEST IT'S GOING TO BE LESS THAN
3 \$500,000 A YEAR. YOU HAVE TO DECIDE WHAT THAT NUMBER
4 IS GOING TO BE.

5 WE WOULD OFFER A RANGE OF BETWEEN A HUNDRED
6 THOUSAND DOLLARS AND \$300,000 PER YEAR, BASED ON YOUR
7 EXPERIENCE, AND WHAT YOU THINK WOULD HELP HER OVERCOME
8 THE STIGMA OF BEING LABELED AS MUNCHAUSEN. AND ALL OF
9 THE EVENTS YOU HEARD ABOUT THROUGHOUT THIS CASE.

10 IF YOU WERE TO TAKE AN AVERAGE OF
11 AROUND \$250,000 FOR 40 YEARS, THAT NUMBER WOULD BE
12 AROUND \$10 MILLION. AND WHAT YOU'RE ASKED TO DO HERE
13 IS ADD THE TWO TO REACH A VERDICT OF \$13,500,000.

14 AND YOU ARE FREE TO AWARD THE NUMBER THAT YOU
15 SEE FIT. THIS IS A SUGGESTION AS TO -- BASED ON THE
16 EVIDENCE YOU'VE HEARD THUS FAR, AND HOW SHE'S
17 EXPERIENCED THESE DIFFICULTIES.

18 THERE'S ONE MORE THING YOU HAVE TO DO ON THIS
19 VERDICT FORM, IF YOU CHOOSE TO. AND THAT IS, YOU HAVE
20 THE RIGHT TO AWARD A PENALTY AGAINST THE DEFENDANTS.
21 YOU KNOW, THIS IS ON PUNITIVE DAMAGES. YOU'LL SEE
22 INSTRUCTIONS ABOUT PUNITIVE DAMAGES. THIS IS THE
23 PENALTY.

24 AND THE PENALTY'S STRENGTH, AS YOU'LL SEE IN
25 ONE OF YOUR JURY INSTRUCTIONS, AS NO LESS THAN HER
26 ACTUAL DAMAGES, AND NO MORE THAN THREE TIMES HER ACTUAL
27 DAMAGES.

28 SO NO MATTER WHAT NUMBER YOU PICK, IT SHOULD

1 BE NOT LESS THAN HER ACTUAL DAMAGES AND NOT MORE THAN
2 THREE TIMES THAT.

3 IF YOU GIVE HER, FOR EXAMPLE, \$3 MILLION HERE,
4 THEN IT WOULD NOT BE MORE -- WELL, LET'S JUST USE
5 \$13 MILLION BECAUSE IT'S RIGHT HERE. \$13 MILLION
6 TIMES 3 IS ABOUT \$41 MILLION. SO THE RANGE WOULD BE
7 \$13,500,000 TO \$41 MILLION.

8 NOBODY WANTS YOU, NO ONE'S ASKING YOU TO AWARD
9 A PENALTY THAT LARGE. WHAT WE WANT YOU TO CONSIDER IS,
10 DEPENDING ON THE NUMBER YOU DELIBERATE ON, INTENT,
11 PERHAPS AWARD A NUMBER EQUAL TO THAT.

12 OR IF YOU THINK THE CONDUCT IS EGREGIOUS, IF
13 YOU THINK THEY FAILED TO SEND THE DUE PROCESS LETTER,
14 IF YOU THINK THAT CONDUCT IS WARRANTING OF THAT, GIVE
15 HER THIS NUMBER AGAIN, OR MAYBE 50 PERCENT MORE THAN
16 THAT NUMBER. SO YOUR VERDICT COULD BE AROUND \$27
17 MILLION FOR THE HARM THAT SHE'S BEEN THROUGH.

18 FINAL THING I'LL SAY IS THAT THE EVIDENCE IS
19 FOR YOU TO CONSIDER ALONE. NO ONE, NO ONE HAS THE
20 RIGHT TO TELL YOU HOW TO DELIBERATE AND REACH YOUR
21 CONCLUSIONS IN THIS CASE.

22 IF PRESIDENT OBAMA WALKED IN THE DOOR AND
23 STOOD RIGHT HERE AND TOLD YOU WHAT HE THOUGHT YOU
24 SHOULD DO IN THIS CASE, IT'S WITHIN YOUR RIGHTS TO SAY
25 THANK YOU, BUT WE ARE GOING TO DELIBERATE TOGETHER AND
26 REACH OUR OWN DECISION WITHOUT YOUR INPUT.

27 THANK YOU FOR YOUR ATTENTION TODAY.

28 THE COURT: WE'RE GOING TO TAKE THE NOON

1 RECESS AT THIS TIME. ALL JURORS PLEASE REMEMBER THE
2 ADMONITION. HAVE NO COMMUNICATION WITH ANYBODY ABOUT
3 ANY SUBJECT OR ISSUE OR PERSON INVOLVED IN THIS CASE.

4 I'D APPRECIATE IF YOU'LL BE QUIET IN THE
5 COURTROOM UNTIL I'M FINISHED. AND YOU MUST NOT FORM
6 NOR EXPRESS ANY OPINION ON ANY SUBJECT INVOLVED IN THE
7 CASE. WE'RE IN RECESS UNTIL 1:30.

8 (PAUSE IN THE PROCEEDINGS)

9 (JURY EXCUSED)

10 THE COURT: ALL RIGHT. I'M ON THE RECORD. WE
11 HAVE SO MANY INSTRUCTIONS THAT ARE IN SUCH ABOMINABLE
12 CONDITION THAT THEY SIMPLY CANNOT GO TO THE JURY. SO
13 COUNSEL WILL HAVE TO TAKE SOME RESPONSIBILITY TO PUT
14 THE INSTRUCTIONS IN A FORMAT THAT WOULD BE ACCEPTABLE.

15 YOU CAN TALK AMONG YOURSELVES AS TO WHO WILL
16 UNDERTAKE WHAT RESPONSIBILITY, BUT --AND I'LL GIVE YOU,
17 ONCE YOU'VE DECIDED THAT THE INSTRUCTIONS MUST BE
18 RE-PREPARED TO BE SUBMITTED.

19 MS. SWISS: YOUR HONOR, THE -- THE DEFENDANTS
20 OVER THE WEEKEND UNDERTOOK MOST OF THAT. SO IF THE
21 COURT HAS ADDITIONAL CHANGES, I THINK WE'VE ALREADY GOT
22 IT IN THE FORMAT.

23 THE COURT: I HAVEN'T SEEN WHAT YOU HAVE.

24 MS. SWISS: OKAY.

25 MR. GUTERRES: WE SUBMITTED A PACKET WITH
26 INSTRUCTIONS ON THE JURY FORMAT. BUT I KNOW THAT, IN
27 GOING THROUGH THE COURT'S INSTRUCTIONS THAT WERE READ,
28 THERE HAD BEEN ADDITIONAL ANNOTATIONS, SO THOSE

1 ANNOTATIONS WILL HAVE TO BE MADE.

2 BUT OTHER THAN THAT --

3 THE COURT: LOOK, THERE'S SOMETHING IN WRITING
4 ON THE INSTRUCTIONS, ALL RIGHT? THEY'D ALREADY BEEN
5 TOLD THAT. BUT WE HAVE A NUMBER OF INSTRUCTIONS THAT
6 AREN'T EVEN IN THE FORM OF A JURY INSTRUCTION.

7 MS. SWISS: AND I THINK THAT THEY ARE NOW.
8 MR. MCMILLAN SENT THE DEFENDANTS, OVER THE WEEKEND, THE
9 PACKET THAT WE AGREED TO ON FRIDAY, AND I BELIEVE THAT
10 WE PUT THEM ALL INTO THE PROPER FORMAT.

11 SO I BELIEVE IT EXISTS. WE JUST HAVE TO GET
12 THAT TO THE COURT.

13 SO WE CAN FIGURE THAT OUT OVER THE LUNCH HOUR.

14 THE COURT: ALL RIGHT. WHO HAS THIS PACKAGE?

15 MS. NAU: I HAVE A COPY RIGHT HERE, YOUR
16 HONOR. I BELIEVE ONE WAS SUBMITTED THIS MORNING, BUT I
17 CAN GIVE YOU THIS ONE.

18 MS. SWISS: YOUR HONOR, I BELIEVE THE PACKET
19 THAT WAS JUST HANDED TO YOU ARE THE INSTRUCTIONS FOR
20 VERDICT FORM NUMBER 1.

21 THE INSTRUCTIONS FOR VERDICT FORM 2 ARE HERE
22 IN MY HAND, AND WE NEED TO MAKE SURE THAT THEY'RE THE
23 CORRECT ONES BASED ON THE COURT'S RULINGS THIS MORNING,
24 BUT THEY ARE ALL ALSO ON THE CORRECT FORMAT.

25 THE COURT: ALL RIGHT.

26 MS. SWISS: AND I HAVE A LIST OF THE ORDER
27 THAT THE COURT HAS INDICATED IT WAS GIVING THE
28 INSTRUCTIONS, SO WE CAN MAKE SURE THAT WE HAVE THEM IN

1 THE CORRECT ORDER ON THE CORRECT FORMS.

2 THE COURT: ALL RIGHT. IS THAT PACKAGE
3 SOMETHING YOU CAN GIVE TO ME?

4 MS. SWISS: YES.

5 THE COURT: AT THIS TIME? I THINK THERE'S
6 GOING TO BE QUITE A FEW MORE. SO I'LL HAVE TO FIGURE
7 IT OUT. ALL RIGHT. WE'RE IN RECESS.

8 (LUNCH WAS TAKEN FROM 12:06 P.M. TO 1:32 P.M.)

9 THE COURT: LET'S GET THE JURORS IN, PLEASE.

10 (JURY PRESENT)

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

13 THE COURT: EVERYONE PLEASE BE SEATED. WE'RE
14 ON THE RECORD. EVERYONE IS PRESENT. MS. SWISS, WOULD
15 YOU LIKE TO PROCEED, PLEASE.

16 MS. SWISS: LADIES AND GENTLEMEN, GOOD
17 AFTERNOON. HAPPY HALLOWEEN. WE'VE BEEN HERE IN THIS
18 COURTROOM TOGETHER FOR A LONG TIME.

19 AND I KNOW MR. MCMILLAN THANKED YOU, BUT
20 TRULY, BOTH SIDES, WE THANK YOU FOR YOUR SERVICE AND
21 YOUR ATTENTION TO THIS MATTER.

22 ALL OF THE TIME, THE WORK, THE EFFORT, IT
23 COMES DOWN TO THIS. AND IT'S ALMOST TIME FOR YOU TO
24 FINALLY GET TO DELIBERATE AND MAKE YOUR DECISION.

25 NOW, YOU HEARD THE PLAINTIFF'S CLOSING
26 ARGUMENT. AND NOW I'M MAKING THE CLOSING ARGUMENT ON
27 BEHALF OF THE DEFENDANTS. AND AFTER I'M FINISHED, YOU
28 WILL HEAR FROM PLAINTIFF'S COUNSEL ONE MORE TIME, AND

1 THAT'S CALLED THE REBUTTAL ARGUMENT.

2 AND THE REASON THAT PLAINTIFF GETS TO TALK TO
3 YOU ONE MORE TIME BEFORE YOU BEGIN YOUR DELIBERATIONS
4 IS BECAUSE IT'S THE PLAINTIFF WHO HAS THE BURDEN OF
5 PROOF FOR EACH CAUSE OF ACTION.

6 THE PLAINTIFF HAS TO PROVE TO YOU ALL OF HER
7 CAUSES OF ACTION BY A PREPONDERANCE OF THE EVIDENCE,
8 THAT THE EVIDENCE IS MORE LIKELY THAN NOT IN HER FAVOR.

9 SO BEFORE WE GET INTO THE EVIDENCE, THAT'S
10 WHAT I'M GOING TO TALK WITH YOU ABOUT, WHAT I BELIEVE
11 THE EVIDENCE HAS SHOWN IN THESE PAST SEVEN WEEKS.

12 LET'S TAKE A LOOK AT THE DECISIONS THAT YOU'RE
13 GOING TO HAVE TO MAKE AS THE JURY. SO FIRST, YOU'RE
14 GOING TO HAVE TO DECIDE IF THE DECISION MADE BY
15 SUPERVISOR KIMBERLY ROGERS AND CHILDREN'S SOCIAL
16 WORKERS SUSAN PENDER TO TAKE BABY RYAN INTO PROTECTIVE
17 CUSTODY WAS JUSTIFIED.

18 THEN YOU'RE GOING TO HAVE TO DECIDE IF EXIGENT
19 CIRCUMSTANCES EXISTED. BECAUSE BABY RYAN WAS IN
20 IMMINENT DANGER OF EXPERIENCING SERIOUS BODILY INJURY
21 THAT JUSTIFIED THE SOCIAL WORKERS TAKING HIM INTO
22 PROTECTIVE CUSTODY WITHOUT FIRST STOPPING, DOING
23 PAPERWORK, GOING INTO COURT, TALKING TO THE JUDGE AND
24 GETTING A WARRANT.

25 IF YOU FIND THAT BABY RYAN -- THAT THE TAKING
26 OF BABY RYAN INTO PROTECTIVE CUSTODY WITHOUT THAT
27 WARRANT WAS IMPROPER, THAT'S WHEN YOU LOOK AT THE
28 QUESTION REGARDING THE CUSTOMS AND PRACTICES OF THE

1 COUNTY OF LOS ANGELES.

2 ONLY IF YOU FIND THAT THEY SHOULD HAVE GOTTEN
3 A WARRANT. YOU WILL HAVE TO DECIDE IF THE CUSTOMS AND
4 PRACTICES OF THE COUNTY OF LA WAS THE MOVING FORCE
5 BEHIND ANY CONSTITUTIONAL VIOLATIONS SUFFERED BY
6 MS. DUVAL.

7 AFTER SITTING HERE AND LISTENING TO ALL OF THE
8 EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN, THE ANSWER
9 TO THOSE QUESTIONS IS YES. YES, TAKING BABY RYAN INTO
10 PROTECTIVE CUSTODY WAS JUSTIFIED.

11 AND YES, EXIGENT CIRCUMSTANCES DID EXIST TO
12 DETAIN HIM RIGHT THEN AND THERE AFTER THE TDM INSTEAD
13 OF WAITING ANY LONGER.

14 NOW, YOU ALSO HEARD FROM MR. PRAGER ON THE
15 DISCRIMINATION PART OF THIS CASE. AND ONE OF THE
16 SERIES OF DECISIONS YOU'LL HAVE TO MAKE IS WHETHER
17 CANDIS NELSON AND VICTORIA SCHEELE DISCRIMINATED
18 AGAINST MS. DUVAL ON THE BASIS OF A PERCEIVED
19 DISABILITY.

20 AND WHETHER MS. SCHEELE'S CONDUCT WAS SO
21 OUTRAGEOUS THAT IT WAS OUTSIDE OF THE BOUNDS OF WHAT
22 HUMANS SHOULD TOLERATE IN CIVILIZED SOCIETY. AND
23 LADIES AND GENTLEMEN, THE ANSWERS TO THOSE QUESTIONS IS
24 SIMPLY NO.

25 MS. DUVAL WAS NOT DISCRIMINATED AGAINST ON THE
26 BASIS OF ANY DISABILITY, AND NO, MS. SCHEELE'S CONDUCT
27 WAS NOT OUTRAGEOUS. SO THOSE ARE THE DECISIONS THAT
28 YOU'RE GOING TO HAVE TO MAKE AS THE JURY, THE TRIERS OF

1 THE FACTS.

2 LET'S TAKE A LOOK AT SOME OF THE INFORMATION
3 AND THE EVIDENCE THAT YOU WILL NEED TO MAKE YOUR
4 DECISIONS.

5 NOW, WITH REGARD TO EXIGENT CIRCUMSTANCES,
6 THIS IS THE QUESTION THAT YOU ARE GOING TO HAVE TO
7 ANSWER ON THE VERDICT FORM.

8 AND FOR THIS DEFENSE OF EXIGENCY, THE
9 DEFENDANTS, MS. PENDER AND MS. ROGERS, THEY HAVE THE
10 BURDEN OF PROOF TO SHOW YOU THAT IT WAS MORE LIKELY
11 THAN NOT THAT AT THE TIME THEY SEIZED BABY RYAN, THEY
12 POSSESSED SPECIFIC AND ARTICULABLE FACTS TO SHOW THAT
13 MS. DUVAL'S SON WAS LIKELY TO EXPERIENCE SERIOUS BODILY
14 HARM IN THE TIME IT WOULD TAKE TO GET A WARRANT.

15 NOW, WHAT ARE EXIGENT CIRCUMSTANCES? THIS IS
16 THE JURY INSTRUCTION THAT YOU WILL HAVE TO REVIEW.
17 QUESTION -- WELL, PART ONE IS THE SAME AS THE VERDICT
18 FORM.

19 AND PART TWO, YOU'LL HAVE TO DECIDE IF THE
20 REMOVAL OF BABY RYAN WITHOUT OBTAINING THE WARRANT WAS
21 REASONABLY NECESSARY TO AVERT A SPECIFIC INJURY.

22 WHAT WAS THE EVIDENCE? WHAT WAS THE
23 INFORMATION THAT MS. PENDER AND MS. ROGERS HAD AT THE
24 MOMENT THEY MADE THAT DECISION IN THE TDM?

25 NOW, WE ALL HEARD MS. CRUMP TESTIFY,
26 WENDY CRUMP, THE NUTRITIONIST, SHE FIRST MET BABY RYAN,
27 MR. MILLS, AND MS. DUVAL, ON OCTOBER 16, 2009. AND
28 THAT VISIT IS WHAT STARTED THIS WHOLE CHAIN OF EVENTS

1 AND WHY WE'RE HERE TODAY.

2 MS. CRUMP TESTIFIED THAT SHE WAS ALARMED AT
3 BABY RYAN'S APPEARANCE WHEN SHE FIRST SAW HIM, AND AT
4 THIS POINT, HE WAS JUST ABOUT 14-1/2 MONTHS OLD. MY
5 RECOLLECTION OF THE TESTIMONY FROM MS. CRUMP IS AS
6 FOLLOWS.

7 BABY WAS SMALL FOR HIS AGE, HE WASN'T
8 BABBLING, HE JUST SAT THERE. LADIES AND GENTLEMEN,
9 MS. CRUMP TESTIFIED THAT ONE-YEAR-OLDS DON'T JUST SIT
10 THERE WITHOUT SQUIRMING AND TRYING TO RUN AROUND. THIS
11 WAS ALARMING FOR HER, THIS WAS CAUSE FOR GREAT CONCERN.

12 IN THAT MEETING, MOM AND DAD WERE THERE WITH
13 THE BABY, AND MS. CRUMP ASKED MOTHER WHAT HAD THE BABY
14 EATEN IN THE LAST 24 HOURS. THIS WAS THE 24-HOUR FOOD
15 INTAKE.

16 MS. CRUMP, IN MY RECOLLECTION OF THE
17 TESTIMONY, TESTIFIED THAT HE JUST WASN'T GETTING ENOUGH
18 FOOD. THERE WAS SOME KIND OF CONCERN AS TO WHAT BABY
19 RYAN WAS BEING FED.

20 THE LAST THREE LINES, IN ORDER FOR HIM TO HAVE
21 THIS LOW OF A WEIGHT, THERE HAD TO HAVE BEEN SOMETHING
22 THAT CAUSED THAT.

23 AND THAT WOULD BE SOMETHING IN REGARDS TO
24 FEEDING. MS. CRUMP WAS ALARMED. SHE WAS CONCERNED.
25 AND SHE MADE THOSE CONCERNS VERY SPECIFIC IN HER
26 TESTIMONY.

27 SHE SAT HERE AND SHE SAID, BASED ON
28 THE 24-HOUR FOOD INTAKE THAT WAS PROVIDED BY MS. DUVAL,

1 THE MOTHER, WHO WAS RESPONSIBLE FOR FEEDING THIS BABY,
2 THIS BABY WAS ONLY RECEIVING 30 TO 50 PERCENT OF THE
3 CALORIES HE NEEDED.

4 HE WAS SUPPOSED TO BE GETTING 1000
5 TO 1300 CALORIES A DAY, AND BY MS. CRUMP'S
6 CALCULATIONS, HE WAS ONLY GETTING 385 TO 600 CALORIES
7 PER DAY. A 14-MONTH-OLD BABY GETTING HALF THE
8 NUTRITION. THESE NUMBERS ARE SHOCKING.

9 MS. CRUMP, MANDATED REPORTER, FELT THAT SHE
10 HAD TO REPORT THIS. SHE HAD TO DECIDE WHETHER THE
11 CAUSE FOR CONCERN WAS SO GREAT THAT IT WAS HER
12 OBLIGATION TO GET CHILD PROTECTIVE SERVICES TO GET THE
13 DEPARTMENT OF CHILDREN AND FAMILY SERVICES INVOLVED.

14 SHE HAD CONCERNS, AND SHE TESTIFIED TO THOSE
15 CONCERNS. SHE SAW THE BABY JUST SITTING THERE, 14
16 MONTHS OLD. SHE WAS CONCERNED WITH DEVELOPMENTAL
17 DELAYS AND BRAIN DEVELOPMENT BEING AFFECTED.

18 MS. CRUMP ALSO TESTIFIED THAT SHE WAS
19 OBSERVING MOM AND DAD SO WORRIED ABOUT THEIR OWN
20 CUSTODY ISSUES, THEIR OWN ISSUES WITH EACH OTHER, THAT
21 THEY DIDN'T REALIZE THE VAST SERIOUSNESS OF THE BABY'S
22 ISSUES.

23 BUT AS A NUTRITIONIST, SHE GAVE THEM
24 INFORMATION TO HELP THEIR BABY. WHAT WAS THE
25 INFORMATION SHE GAVE THEM?

26 AT THAT FIRST VISIT ON OCTOBER 16TH, SHE
27 LISTED HIGH-CALORIE FOODS, HOW TO GET THIS BABY THE
28 FOOD THAT HE NEEDED, HOW TO SAFELY GAIN WEIGHT, HOW TO

1 SAFELY GET PROTEIN, HOW TO SAFELY INCREASE HIS CALORIE
2 INTAKE TO THE 1000 TO 1300 CALORIES PER DAY.

3 HERE, LADIES AND GENTLEMEN, YOU'LL HAVE THIS
4 EXHIBIT, EXHIBIT 1089, WITH THE MULTITUDE OF DIFFERENT
5 FOODS. SO MOM AND DAD LEFT THAT VISIT ARMED WITH THE
6 AMMUNITION TO SET BABY RYAN ON THE RIGHT PATH.

7 MS. CRUMP ALSO TESTIFIED THAT SITTING THERE ON
8 OCTOBER 16TH, SHE GAVE THE PARENTS THE LIST OF FOODS,
9 AND MOTHER, MS. DUVAL, WAS ALREADY DISMISSIVE OF THE
10 FOODS, SAYING THAT THE BABY DIDN'T LIKE THEM OR THAT HE
11 HAD ALLERGIES TO THESE FOODS.

12 SO RIGHT THERE, RIGHT WHEN SHE WAS SITTING IN
13 THE NUTRITIONIST'S OFFICE, MS. DUVAL WAS ALREADY
14 RESISTANT TO TRYING NEW THINGS, TO TRYING TO GET HER
15 BABY TO THE APPROPRIATE HEALTHY WEIGHT.

16 NOW, MS. CRUMP CALLED IN THE REFERRAL ON
17 OCTOBER 19TH, AND THAT'S WHEN MY CLIENTS, MS. PENDER
18 AND MS. ROGERS, BECAME INVOLVED.

19 MS. PENDER, YOU HEARD, SPOKE WITH MS. CRUMP,
20 HEARD MS. CRUMP'S CONCERNS FOR HERSELF. SHE DID SOME
21 RESEARCH ON THE FAILURE TO THRIVE WITHIN THE
22 DEPARTMENTAL POLICIES, AND SHE CONTACTED MS. DUVAL FOR
23 THAT INITIAL VISIT.

24 NOW, WE HEARD A LOT OF TESTIMONY ABOUT THIS
25 MEETING AT MS. DUVAL'S HOME, WHERE MS. PENDER CAME, AND
26 THEY HAD A DISCUSSION, AND SHE SAW THE BABY. NOW,
27 REMEMBER, MS. CRUMP SAW THE BABY, AND SHE WAS SHOCKED
28 AT HIS APPEARANCE.

1 COUPLE OF DAYS LATER ON OCTOBER 20TH,
2 MS. PENDER SAW THE BABY, AND SHE WAS ALSO VERY
3 CONCERNED WITH HIS APPEARANCE. MS. PENDER TESTIFIED HE
4 WAS 15 MONTHS OLD, BUT HE LOOKED LIKE A SIX-MONTH-OLD.
5 DEVELOPMENTALLY, HE LOOKED SIX TO NINE MONTHS.

6 NOW, IN THE TESTIMONY, WE LISTENED TO WHAT
7 HAPPENED AT THIS MEETING BETWEEN MS. DUVAL AND
8 MS. PENDER, AND HOW MOTHER PRESENTED THESE BINDERS OF
9 MEDICAL EVIDENCE AND ALL OF THIS INFORMATION THAT SHE
10 HAD GATHERED WITH REGARD TO THE BABY'S CONDITION.

11 SHE EXPLAINED TO MS. PENDER ALL OF THE
12 PROBLEMS SHE HAD BEEN HAVING SINCE MR. MILLS BECAME
13 INVOLVED IN THE BABY'S LIFE. AND SHE LAMENTED HOW
14 VISITATION WAS CAUSING THE NURSING STRIKES, CAUSING HIM
15 TO HAVE THESE PROBLEMS WHEN HE CAME HOME.

16 SHE LAMENTED THAT THE REASON BABY RYAN HADN'T
17 BEEN TO THE DOCTOR IN MONTHS WAS BECAUSE OF THE
18 FATHER'S UNWILLINGNESS TO AGREE ON A DOCTOR, AND SHE
19 ALSO TOLD MS. PENDER ABOUT HER CONCERN FOR THE BABY'S
20 ALLERGIES.

21 WHAT YOU DIDN'T HEAR REGARDING THAT MEETING
22 WAS THAT MOTHER TOOK THE ADVICE SHE RECEIVED ON
23 OCTOBER 16TH FROM THE NUTRITIONIST, AND THAT SHE WAS
24 GIVING THE BABY THESE HIGH-CALORIE FOODS, OR AT LEAST
25 TRYING TO, TRYING TO GET HIM TO WHERE HE SHOULD BE.

26 MS. PENDER TESTIFIED THAT SHE ASKED MS. DUVAL
27 TO PUT THE BABY ON THE FLOOR JUST TO LET HIM SEE WHAT
28 HE COULD DO DEVELOPMENTALLY, AND MS. DUVAL WAS EVEN

1 RESISTANT TO THAT SUGGESTION.

2 MS. PENDER TESTIFIED, DO YOU RECALL IF RYAN
3 COULD MOVE AROUND AND PLAY WITH TOYS? AND MS. DUVAL
4 TOLD HER THAT THE BABY WASN'T COMFORTABLE GOING ON THE
5 FLOOR. HE DID NOT PLAY WITH TOYS OR ANYTHING LIKE THAT
6 IN MS. PENDER'S PRESENCE.

7 NOW, MS. PENDER ALSO TESTIFIED THAT PART OF
8 HER JOB IN ANY INVESTIGATION IN AN EMERGENCY RESPONSE
9 REFERRAL IS TO SEE IF THERE'S FOOD IN THE HOME. SHE'S
10 SUPPOSED TO LOOK IN THE REFRIGERATOR, LOOK IN THE
11 CABINETS. AND MS. PENDER DID THAT HERE.

12 MS. PENDER TESTIFIED SHE LOOKED IN MS. DUVAL'S
13 REFRIGERATOR, SHE LOOKED IN THE CABINETS, SHE WAS AWARE
14 OF THE LIST OF FOODS PROVIDED BY MS. CRUMP, AND SHE
15 TESTIFIED, I DID NOT SEE ANY OF THOSE FOODS IN THE
16 REFRIGERATOR OR IN THE CABINETS.

17 SHE DIDN'T SEE HIM BEING FED ANY OF THOSE
18 FOODS. AND OF COURSE, AS PART OF HER INVESTIGATION,
19 THE NEXT LOGICAL STEP WOULD BE TO ASK THE PARENT WHY.
20 WHAT MS. PENDER DID SEE WAS THE BABY BEING FED
21 CUCUMBERS AND GRAPES.

22 CUCUMBERS AND GRAPES, NOT THE HIGH-PROTEIN,
23 DENSE HIGH-CALORIE FOODS. MS. PENDER ASKED THE
24 QUESTION, WHY AREN'T YOU FEEDING THE BABY THE FOODS THE
25 NUTRITIONIST RECOMMENDED, AND MS. DUVAL'S RESPONSE WAS
26 SHE WAS AFRAID THE BABY WAS ALLERGIC, AND, AGAIN, THE
27 BABY DIDN'T LIKE CERTAIN FOODS.

28 SO THE INVESTIGATION CONTINUED. WITHIN THE

1 NEXT COUPLE OF DAYS IS WHEN THE BABY WAS SEEN BY
2 DR. EVANS AT THE CATC CLINIC, AND WE TALKED ABOUT THIS
3 APPOINTMENT MANY TIMES IN THE TESTIMONY.

4 AND THE TESTIMONY THAT YOU'VE HEARD WAS THAT
5 DR. EVANS DIAGNOSED BEFORE WITH FAILURE TO THRIVE.
6 THAT WAS THE INITIAL DIAGNOSIS, AND ACCORDING TO THE
7 DOCUMENTS THAT YOU WERE ABLE TO SEE, DR. EVANS WAS NOT
8 ABLE TO LOCATE OR DETERMINE ANY ORGANIC CAUSE FOR THE
9 FAILURE TO THRIVE.

10 BUT SHE ORDERED THE TESTING TO BE DONE TO RULE
11 OUT ANY ORGANIC CAUSES. THAT'S NOT THE END OF THE
12 INQUIRY, LADIES AND GENTLEMEN. THE DOCTORS WERE
13 LOOKING FOR WHY BABY RYAN WASN'T GAINING WEIGHT.

14 TESTING'S BEING DONE, THE INVESTIGATION
15 CONTINUES, AND DCFS, MS. PENDER SPECIFICALLY, IS
16 PROVIDED WITH INFORMATION FROM MS. DUVAL DIRECTLY
17 REGARDING WHAT THE FAMILY LAW SITUATION HAD BEEN.

18 MULTIPLE DOCUMENTS, DECLARATIONS THAT HAD BEEN
19 FILED IN COURT BACK AND FORTH, ALL KIND OF RECORDS.
20 AND SOME OF THE INFORMATION THAT DCFS HAD WAS A
21 DECLARATION FILED BY THE FATHER, MR. MILLS.

22 NOW, THIS DECLARATION IS PART OF EXHIBIT 24,
23 AND MR. MILLS WAS QUESTIONED ABOUT IT. AND YOU'LL GET
24 IT BACK IN THE JURY ROOM, BUT MR. MILLS REPORTED TO THE
25 FAMILY COURT HIS CONCERNS ABOUT BABY RYAN.

26 THE CONCERN ABOUT BREASTFEEDING ONLY. HIS
27 CONCERN THAT SOLID FOODS NEED TO BE INTRODUCED AT AN
28 EARLIER TIME. THIS DECLARATION WAS FILED WITH THE

1 FAMILY COURT BACK IN JUNE WHEN THE BABY WAS TEN MONTHS
2 OLD.

3 MR. MILLS REPORTED THAT THE MOTHER WAS NOT
4 INTRODUCING SOLID FOODS TO THE BABY, AND THAT THIS WAS
5 AGAINST THE ADVICE OF THE PEDIATRICIAN AT THAT TIME.

6 NOW, YOU HEARD TESTIMONY FROM MS. DUVAL THAT
7 SHE ALSO FILED A DECLARATION WITH THE FAMILY LAW COURT
8 IN OR ABOUT JUNE OF 2009 IN RESPONSE TO MR. MILLS'S
9 DECLARATION, IN RESPONSE TO HIS ALLEGATIONS THAT SHE
10 WASN'T FEEDING THE BABY. WHAT WAS HER RESPONSE?

11 HER RESPONSE WAS SHE WAS ANGRY THAT THE DAD
12 WAS FEEDING THE BABY SOLID FOODS. SHE'S TRYING TO
13 MONITOR THE BABY'S FOOD INTAKE TO SUCH AN EXTENT TO THE
14 BABY'S DETRIMENT.

15 NOW, THE FOOD ALLERGIES. ON OR ABOUT
16 OCTOBER 27TH OR SO, THE BABY IS SEEN BY THE ALLERGIST,
17 DR. SODERBERG, WHO CAME IN AND TESTIFIED. AND SHE
18 PERFORMED THE SKIN TEST ON BABY RYAN, AND THE BLOOD
19 TEST LATER ON.

20 WHAT DR. SODERBERG SAID WAS THE BABY WAS "PLUS
21 ONE" TO MILK, AND "PLUS ONE" TO EGG WHITES, AND SHE
22 CAME AND TESTIFIED HERSELF THAT THAT MEANS THAT THE
23 BABY'S NOT ALLERGIC TO THOSE FOODS. NONE OF THE OTHER
24 THINGS CAME UP POSITIVE.

25 SHE ALSO TESTIFIED THAT SHE TOLD THE PARENTS
26 THAT DAY THAT SHE DIDN'T BELIEVE THE BABY HAD ANY FOOD
27 ALLERGIES. DR. SODERBERG TESTIFIED THAT FOOD ALLERGIES
28 REALLY HAD NOTHING TO DO WITH THE FAILURE TO THRIVE.

1 THE BABY JUST NEEDED TO BE FED.

2 AT THIS POINT, THE FIRST VISIT WITH WENDY
3 CRUMP WAS WHAT, OCTOBER 16TH, AND THEN WE GET TO
4 DR. SODERBERG ON OCTOBER 27TH. THE NEXT VISIT WITH
5 WENDY CRUMP IS OCTOBER 30, 2009. SO IT'S ABOUT TWO
6 WEEKS LATER.

7 AND THE PARENTS COME WITH THE BABY, BACK TO
8 MS. CRUMP, ARMED WITH THEIR FOOD LOGS. THIS IS WHAT
9 WE'VE BEEN FEEDING THE BABY THE LAST TWO WEEKS, AFTER
10 WE WERE ARMED WITH THE AMMUNITION WHAT TO THE FEED THE
11 BABY, WHAT TO TRY.

12 NOW, MS. CRUMP TESTIFIED THAT AT THE SECOND
13 VISIT TWO WEEKS LATER, THE BABY WAS STILL ONLY BEING
14 FED 30 TO 50 PERCENT OF THE CALORIES. NOWHERE NEAR
15 ENOUGH PROTEIN. THERE WAS STILL NOT ENOUGH FOOD. SHE
16 WASN'T FEEDING HER BABY.

17 30 TO 50 PERCENT OF THE CALORIE NEEDED AND THE
18 PROTEIN HE WAS GETTING, LESS THAN 30 PERCENT.
19 MS. CRUMP, YOU HEARD TESTIMONY, SPOKE AGAIN TO
20 MS. PENDER ABOUT HOW THIS NEXT VISIT WAS GOING, AND
21 THEN WE ALL HEARD ON NOVEMBER 3RD, THE BABY WAS SEEN BY
22 THE FAILURE TO THRIVE CLINIC.

23 SPECIFICALLY, THE BABY WAS SEEN BY DR. EGGE,
24 AND DR. EGGE IS THE ONE THAT MADE THE DIAGNOSIS. SHE
25 DIAGNOSED THE BABY WITH FAILURE TO THRIVE FROM
26 ENVIRONMENTAL CAUSES.

27 NOW, YOU HEARD DR. BERKOWITZ TESTIFY FAILURE
28 TO THRIVE IS NOT WHAT THEY CALL A RULE-OUT DIAGNOSIS.

1 FAILURE TO THRIVE IS NOT SOMETHING THAT YOU HAVE TO
2 TEST FOR ANYTHING AND EVERYTHING UNDER THE SUN TO THEN
3 COME UP WITH, WELL, IT MUST BE FAILURE TO THRIVE.
4 THAT'S NOT HOW IT WORKS.

5 SHE DETERMINED THAT IT WAS FROM ENVIRONMENTAL
6 CAUSES. NOW, YOU HEARD MS. DUVAL TESTIFY ABOUT THE
7 VISIT WITH DR. EGGE.

8 AND EVEN AT THE VISIT WITH DR. EGGE ON
9 NOVEMBER 3RD, SHE'S TELLING THE DOCTOR THAT SHE'S
10 THINKING THE BABY IS ALLERGIC TO TOMATOES AND MILK AND
11 EGGS, EVEN THOUGH THE BABY HAD JUST GONE TO
12 DR. SODERBERG A COUPLE DAYS BEFORE, AND DR. SODERBERG
13 TOLD THEM RIGHT THERE IN THE VISIT, THE BABY DOESN'T
14 HAVE FOOD ALLERGIES.

15 DR. EGGE MAKES THIS DIAGNOSIS, SPEAKS WITH
16 MS. PENDER, AND THE REPORT IS SENT FROM THE PUBLIC
17 HEALTH NURSE TO DCFS RIGHT AFTER THE APPOINTMENT. AND
18 WE ALL HEARD THE TESTIMONY THAT RIGHT AFTER THIS
19 DOCTOR'S APPOINTMENT WAS THE TDM.

20 THE TEAM DECISION-MAKING MEETING. NOW, WHAT
21 IS THE TEAM DECISION-MAKING MEETING? THIS IS A SERVICE
22 THAT IS PROVIDED BY DCFS.

23 THIS IS THE CHANCE, NOW THAT WE HAVE ALL OF
24 THE INFORMATION FROM THESE PROFESSIONALS, WITH THE
25 PARENTS, WITH THE GRANDPARENTS, WITH THE SUPPORT
26 SYSTEMS FOR ALL OF THE FAMILY, TO FIGURE OUT A PLAN
27 THAT WOULD BE IN THE BEST INTEREST OF THIS BABY, THIS
28 BABY WHO HAS NOW HAD A MEDICAL DIAGNOSIS OF FAILURE TO

1 THRIVE FROM ENVIRONMENTAL CAUSES.

2 THIS IS THE CHANCE FOR THEM TO SHOW THAT THEY
3 ARE GOING TO COMPLY WITH THE RECOMMENDATIONS OF THE
4 MEDICAL PROFESSIONALS AND FEED THE BABY. WHAT HAPPENS
5 AT THE TDM?

6 NOW, MS. CRUMP TOLD US THAT SHE REPORTED AT
7 THE TDM, SHE REPORTED TO THE SOCIAL WORKERS THAT
8 MS. DUVAL DID NOT COMPLY WITH HER RECOMMENDATIONS AFTER
9 THE OCTOBER 16TH MEETING. AND THAT AS OF OCTOBER 30TH,
10 SHE WAS STILL NOT COMPLYING.

11 IN FACT, WE HEARD TESTIMONY THAT AT THE TEAM
12 DECISION-MAKING MEETING, MS. DUVAL IS SITTING THERE
13 FEEDING THE BABY CUCUMBERS AND GRAPES. AGAIN,
14 CUCUMBERS AND GRAPES, AND NONE OF THE FOODS THAT WERE
15 LISTED ON THE EXTENSIVE LIST BY WENDY CRUMP AS TO HOW
16 TO GET THIS BABY SOME MORE PROTEIN AND SOME MORE
17 CALORIES.

18 MS. CRUMP TESTIFIED SHE TOLD THE SOCIAL
19 WORKERS HER DETERMINATION WAS THAT HER RECOMMENDATIONS
20 WERE NOT BEING FOLLOWED.

21 AT THE TDM, MS. CRUMP TESTIFIED THE CHILD WAS
22 UNDERWEIGHT, MS. DUVAL WAS NOT COOPERATIVE, NOT
23 COOPERATIVE WITH THE RECOMMENDATIONS TO FEED THE BABY
24 THE HIGH-CALORIE FOODS SO THAT HE COULD SAFELY GAIN
25 WEIGHT.

26 THAT IS WHAT SHE SAT IN THE MEETING WITH ALL
27 OF THE PEOPLE AND SAID, THAT'S THE INFORMATION THAT
28 MS. PENDER AND MS. ROGERS HAD BEFORE THEY MADE THEIR

1 DECISION. THIS WAS THE POINT WHERE MS. ROGERS AND
2 MS. PENDER FELT THAT EXIGENT CIRCUMSTANCES DID EXIST.

3 THEY NEEDED TO TAKE THIS BABY INTO PROTECTIVE
4 CUSTODY AND PLACE WITH THE FATHER. THIS BABY WAS SO
5 UNDERWEIGHT, NO ORGANIC CAUSES, NO ALLERGIES, BABY WAS
6 WITH MOM 88 PERCENT OF THE TIME.

7 MOM WOULD NOT FOLLOW THE RECOMMENDATIONS. THE
8 BABY HAD ALREADY BEEN DIAGNOSED WITH GLOBAL
9 DEVELOPMENTAL DELAYS. THERE WERE CONCERNS EXPRESSED
10 THAT HIS BRAIN DEVELOPMENT WAS ALREADY SEVERELY
11 AFFECTED.

12 THE SOCIAL WORKERS DECIDED THEY COULD NOT LET
13 THIS BABY SUFFER ANYMORE. NOW, THE BABY WAS TAKEN INTO
14 PROTECTIVE CUSTODY. AND KIMBERLY ROGERS HERSELF
15 EXPLAINED THE REASONS FOR THAT. WHAT DID SHE SAY?

16 WHAT WAS THE INFORMATION THAT SHE LEARNED AT
17 THE TDM THAT SHE DIDN'T HAVE BEFOREHAND? THERE WERE NO
18 MEDICAL CONDITIONS. THERE WERE NO ALLERGIES. SHE
19 LEARNED THAT THE MOTHER DID NOT COMPLY WITH THE
20 DOCTOR'S INSTRUCTIONS.

21 BABY WAS WITH MOTHER 88 PERCENT OF THE TIME,
22 AND THEY WERE LOOKING AT WHO, IN THIS MEETING, WHO OF
23 THE BABY'S CARETAKERS, MOTHER AND FATHER, WOULD PUT THE
24 SUPPORT IN PLACE TO GET THE BABY WHAT HE NEEDED.

25 YOU HEARD TESTIMONY. MOTHER TOOK THE BABY TO
26 ALL THE DOCTOR APPOINTMENTS THAT DCFS SAID. BUT
27 THERE'S NO EVIDENCE THAT MS. DUVAL ACTUALLY FOLLOWED
28 THE RECOMMENDATIONS FROM THOSE DOCTORS.

1 YOU CAN'T JUST DOCTOR-HOP. YOU HAVE TO
2 ACTUALLY FOLLOW THE ADVICE TO GET THE BABY THE HELP
3 THAT HE NEEDS. SO WHAT HAPPENED?

4 THE SOCIAL WORKERS MADE THE DETERMINATION TO
5 TAKE THE BABY INTO CUSTODY AND PLACE THE BABY WITH HIS
6 FATHER. AND AT THAT MEETING, THE SOCIAL WORKERS WITH
7 ALL OF THE INFORMATION, AND AFTER HEARING EVERYONE'S
8 CONCERNS, DAD WAS WILLING TO FEED THE BABY. THAT'S IT.

9 MOM WOULDN'T DO IT. MOM WOULD NOT FEED HER
10 BABY. AND SO THE BABY WAS PLACED WITH DAD. NOW, THE
11 PLAINTIFF IS TELLING YOU THE BABY SHOULDN'T HAVE BEEN
12 TAKEN WITHOUT A WARRANT BECAUSE A BABY OR CHILD CANNOT
13 BE TAKEN FROM A PARENT WITHOUT CONSENT, EXIGENT
14 CIRCUMSTANCES, OR THIS COURT RECORD.

15 NOW, WE KNOW THERE WAS NO CONSENT, AND THE
16 PLAINTIFF IS ARGUING THAT THERE WAS NO EXIGENT
17 CIRCUMSTANCES. THAT THE BABY, IN PLAINTIFF'S VIEW, WAS
18 NOT SUFFERING FROM THIS IMMINENT HARM. BUT LADIES AND
19 GENTLEMEN, THIS BABY'S ALREADY BEEN SUFFERING.

20 HE WAS NOT GETTING PROPER NUTRITION, HE'D
21 ALREADY SUFFERED DEVELOPMENTAL DELAYS. HOW MUCH LONGER
22 SHOULD THEY HAVE WAITED?

23 NOW, PLAINTIFF'S OWN EXPERT, DR. WEINBERG CAME
24 IN, AND HE TESTIFIED HIMSELF, BOTH IN HIS DEPOSITION
25 AND HERE IN COURT, WHERE THERE'S A DIAGNOSIS OF
26 NON-ORGANIC OR ENVIRONMENTAL FAILURE TO THRIVE, THAT IT
27 WOULD BE UNADVISABLE TO LEAVE THE CHILD WITH THE
28 CAREGIVER.

1 AND THAT'S FROM PLAINTIFF'S OWN EXPERT. YOU
2 HEARD FROM PLAINTIFF'S OWN EXPERT, DR. NIESEN. HE
3 THOUGHT THE BABY'S CONDITION WAS SO SEVERE, HE THOUGHT
4 THE BABY SHOULD BE HOSPITALIZED AND FED THROUGH A
5 G-TUBE.

6 HE EVEN WROTE A LETTER TO JUDGE NASH, WHO CAME
7 IN HERE AND TESTIFIED THAT HE THOUGHT THE BABY'S
8 CONDITION WAS SO SERIOUS. YOU ALSO HEARD IN THE
9 EVIDENCE THAT MS. DUVAL WAS CONCERNED THAT THE BABY
10 WASN'T EATING PROPERLY BECAUSE HE HAD SENSORY
11 INTEGRATION DISORDER.

12 YOU HEARD THE OCCUPATIONAL THERAPIST ANGELA
13 ESPINOZA COME IN AND TESTIFY, SHE DIDN'T DIAGNOSE
14 SENSORY INTEGRATION DISORDER. DR. BERKOWITZ, THE HEAD
15 OF THE FAILURE TO THRIVE CLINIC FOR OVER 30 YEARS,
16 TESTIFIED THAT BABY RYAN WAS HER PATIENT.

17 AND THE ONLY SENSORY ISSUE THAT THE BABY HAD
18 WAS AN ORAL AVERSION, AN ORAL AVERSION THAT COULD BE
19 DEVELOPED BECAUSE THE BABY WASN'T INTRODUCED SOLIDS
20 EARLY ENOUGH IN LIFE.

21 NOW, DR. BERKOWITZ SAID IT'S IMPORTANT TO
22 INTRODUCE FOODS AGAIN TO AVOID THE DEVELOPMENT OF AN
23 ORAL DIVERSION BY TOO LATE IF AN INTRODUCTION OF
24 TEXTURED FOODS.

25 NOW, OF COURSE, YOU HEARD FROM PLAINTIFF'S
26 SOCIAL WORKER EXPERT, MR. DOMINGUEZ. HE DIDN'T AGREE
27 WITH THE DETENTION.

28 BUT HE TESTIFIED THAT IN HIS SHORT TIME AS AN

1 EMERGENCY RESPONSE WORKER, HE ONLY DETAINED TWO
2 CHILDREN HIMSELF, AND IN THOSE TWO CASES, THE PARENTS
3 ACTUALLY ADMITTED THAT THEY HAD ABUSED THEIR CHILDREN.

4 HE TESTIFIED THAT YOU NEED PROOF POSITIVE
5 BEFORE YOU CAN DETAIN A CHILD, BUT LADIES AND
6 GENTLEMEN, THAT'S NOT THE STANDARD. THAT'S NOT THE
7 LAW. DCFS CAN'T WAIT UNTIL THERE'S PROOF POSITIVE IN
8 EVERY SINGLE CASE BEFORE DETAINING CHILDREN THAT ARE IN
9 NEED.

10 YOU ALSO HEARD FROM JOI RUSSELL, WHO BEFORE
11 SHE RETIRED WAS THE DEPUTY DIRECTOR OF DCFS, AND WAS A
12 SOCIAL WORKER AND SUPERVISOR, GOING UP THE CHAIN OF
13 COMMAND FOR OVER 30 YEARS.

14 AND SHE TESTIFIED THAT, BASED ON THE
15 INFORMATION THAT MS. PENDER AND MS. ROGERS HAD AT THE
16 TIME OF THE DETENTION, THAT THEY ACTED CORRECTLY, AND
17 THEY DID -- THEY ACTED AS A REASONABLE SOCIAL WORKER
18 WOULD HAVE DONE WITH THE INFORMATION THAT THEY HAD AT
19 THAT TIME.

20 AT THE TIME OF THE DETENTION, YOU HEARD
21 MS. PENDER AND MS. ROGERS. THEY BELIEVED THIS BABY WAS
22 IN IMMINENT DANGER OF SUFFERING SERIOUS BODILY INJURY
23 IN THE TIME IT WOULD HAVE TAKEN TO GET A WARRANT.

24 AND SO THEY TOOK THE BABY INTO PROTECTIVE
25 CUSTODY, PLACED HIM WITH THE FATHER, UNTIL THE COURT
26 COULD GET INVOLVED. THE COURT NEEDED TO INTERVENE AND
27 MAKING A RULING, WHICH THE COURT DID.

28 THE DETENTION WAS ON NOVEMBER 3RD, AND THE

1 COURT MADE A RULING ON NOVEMBER 6TH. AND THAT RULING
2 WAS THAT THERE WAS PRIMA FACIA EVIDENCE, AND A BASIS TO
3 DETAIN BABY RYAN FROM MS. DUVAL.

4 THE COURT FOUND THAT BABY RYAN WAS A PERSON
5 DESCRIBED UNDER THE WELFARE AND INSTITUTIONS CODE UNDER
6 SECTION 300 B, FOR NEGLECT, AND AS PLED E, SEVERE
7 NEGLECT.

8 THE COURT ALSO FOUND AT THAT DETENTION HEARING
9 THAT REASONABLE EFFORTS HAD BEEN MADE BY DCFS TO
10 PREVENT THE DETENTION, BUT THAT THE DETENTION FROM
11 MS. DUVAL WAS IN THE BEST INTEREST OF BABY RYAN.

12 THEREFORE, LADIES AND GENTLEMEN, THE ANSWER TO
13 THE QUESTION AS TO WHETHER EXIGENT CIRCUMSTANCES
14 EXISTED IS YES.

15 NOW, FURTHER, YOU'RE GOING TO HAVE TO ANSWER
16 THE QUESTION WHETHER TAKING THE BABY INTO PROTECTIVE
17 CUSTODY WITHOUT THAT WARRANT WAS A SUBSTANTIAL FACTOR
18 IN CAUSING MS. DUVAL HARM.

19 AND THE ANSWER TO THAT QUESTION, AS TO WHETHER
20 IT WAS A SUBSTANTIAL FACTOR CAUSING MS. DUVAL HARM, IS
21 NO.

22 BABY RYAN NEEDED TO BE TAKEN INTO PROTECTIVE
23 CUSTODY BY THE COURT -- THE JUVENILE COURT. THE
24 JUVENILE COURT MADE A DECISION IN THE CHILD'S BEST
25 INTEREST. THE DECISION IS NOT ABOUT MS. DUVAL. IT'S
26 ABOUT THE BABY.

27 NOW, YOU ARE THE JURY, YOU ARE THE FINDERS OF
28 FACT. YOU WILL MAKE THE DECISION.

1 AND IF YOU FIND AGAINST MS. PENDER AND
2 MS. ROGERS, AND IF YOU DETERMINE THAT BABY RYAN SHOULD
3 HAVE REMAINED IN HIS MOTHER'S CUSTODY UNTIL DCFS COULD
4 OBTAIN A WARRANT, AND THAT MS. DUVAL WAS HARMED DURING
5 THAT THREE DAYS BEFORE THE COURT MADE ITS RULING, THEN
6 YOU'RE GOING TO HAVE TO ANSWER THE NEXT QUESTIONS ON
7 THE JURY FORM RELATED TO THE CUSTOM AND PRACTICE OF
8 DCFS.

9 THIS IS THE JURY INSTRUCTION. TO ESTABLISH
10 THIS CLAIM, MS. DUVAL HAS THE BURDEN OF PROOF. SHE HAS
11 TO PROVE, AND SHE HAS TO PROVE WITH THE EVIDENCE THAT
12 YOU HAVE HEARD, THIS LONG-STANDING CUSTOM OR PRACTICE
13 OF REMOVING CHILDREN WITHOUT OBTAINING A WARRANT, OR
14 THAT THERE WAS AN OFFICIAL POLICY OR PROCEDURE
15 REQUIRING THAT A WARRANT BE OBTAINED.

16 YOU HAVE TO DETERMINE NUMBER 2, DCFS
17 EMPLOYEES, MS. PENDER AND MS. ROGERS. NUMBER 3, THEN
18 NUMBER 4, THAT THE CONDUCT OF TAKING THE BABY WITHOUT A
19 WARRANT VIOLATED HER RIGHT TO CONTINUED CARE, CUSTODY,
20 OR CONTROL, AND THAT THE TAKING OF THE BABY WITHOUT A
21 WARRANT WAS THE MOVING FORCE, WAS THE LONG-STANDING
22 CUSTOM AND PRACTICE OF DCFS.

23 THESE ARE THE SPECIFIC QUESTIONS ON THE
24 VERDICT FORM. DID THE COUNTY HAVE THIS OFFICIAL CUSTOM
25 AND/OR PRACTICE, OR DID THE COUNTY FAIL TO ENACT AN
26 OFFICIAL POLICY OR PROCEDURE.

27 NOW, THE PLAINTIFF HAS ARGUED THAT THIS
28 ALLEGED ILLEGAL DETENTION WITHOUT A WARRANT WAS DUE TO

1 THE LACK OF PROPER POLICIES AND IMPROPER CUSTOMS AND
2 PRACTICES OF DCFS.

3 BUT, LADIES AND GENTLEMEN, IT'S NO SECRET IN
4 THIS TRIAL THAT AFTER THIS DETENTION, STARTING IN
5 DECEMBER 2009, THERE WAS A MAJOR REVAMPING OF THE
6 POLICIES AND THE PROCEDURES REGARDING OBTAINING OF
7 WARRANTS BY THE COUNTY.

8 AND YOU HEARD JUDGE NASH COME IN AND TESTIFY
9 REGARDING HOW IT AFFECTED THE COURT PROCEDURES, AND HOW
10 THEY WERE GOING TO MAKE THAT ALL WORK. THERE WAS THE
11 CREATION OF THE WARRANT DESK, AND THERE ARE POLICIES TO
12 GO ALONG WITH IT.

13 NOW, THAT'S GREAT AND ALL, BUT POLICIES AND
14 PROCEDURES ARE ALL DIFFERENT, BUT THAT CHANGE IN HOW IT
15 WAS DONE BEFORE OR AFTER IS NOT RELEVANT.

16 THE QUESTION IS WHAT WAS THE INFORMATION --
17 WHAT WAS THE CUSTOM AND PRACTICE AND POLICY ON
18 NOVEMBER 3RD, 2009 -- THE INFORMATION THAT MS. ROGERS
19 AND MS. PENDER HAD WHEN THEY WERE MAKING THE ACTUAL
20 DECISION.

21 NOW, YOU HEARD FRANCESCA LERUE COME IN AND
22 TESTIFY THERE WAS A CUSTOM AND PRACTICE IN DCFS ON HOW
23 THE GET WARRANTS IN -- BEFORE NOVEMBER 2009. THAT ALL
24 THE WARRANTS WERE THE SAME.

25 SERVICE, A SEARCH WARRANT, OR A PROTECTIVE
26 CUSTODY WARRANT, OR OTHER KIND OF WARRANTS. THEY WERE
27 ALL CALLED WARRANTS IN DCFS LINGO.

28 AND THE PROCESS IS THE SOCIAL WORKER AND

1 SUPERVISOR GO OVER TO THE COUNTY COUNSEL, AND THE
2 COUNTY COUNSEL GUIDES THEM THROUGH THAT PROCESS. AND
3 THE SOCIAL WORKERS AREN'T ATTORNEYS, THAT'S WHY THEY GO
4 TO COUNSEL.

5 AND THEY FIGURE OUT HOW TO OBTAIN THE WARRANTS
6 THAT THEY NEED, WHEN THEY NEED THEM, AND IF THEY NEED
7 THEM. AND SO THE SOCIAL WORKERS ARE GUIDED FROM -- BY
8 COUNTY COUNSEL, WHO CONNECTS WITH THE COURT SYSTEM TO
9 FIGURE OUT HOW TO DO THAT.

10 SO, NO, DCFS DIDN'T HAVE ITS OWN CHECK-THE-BOX
11 FORMS. THAT'S BECAUSE IT WAS HANDLED BY A DIFFERENT
12 DEPARTMENT, BY COUNTY COUNSEL.

13 AND SHE ALSO TESTIFIED, MS. LERUE, THAT AS AN
14 ARA, AS THE ASSISTANT REGIONAL ADMINISTRATOR OVER HER
15 OFFICE, THAT SHE ACTUALLY CONSULTED WITH SUBORDINATES,
16 THE SUPERVISORS UNDER HER, THE SOCIAL WORKERS UNDER
17 HER.

18 IF THEY NEEDED WARRANTS AND DIFFERENT
19 PROCEDURES, SHE PROVIDED HER GUIDANCE TO HER PEOPLE AT
20 THAT TIME. AND SHE ALSO TESTIFIED THAT BEFORE THE
21 JUVENILE COURT REVAMPED ITS PROCEDURES, THAT SOCIAL
22 WORKERS AND COUNTY COUNSEL COULD GO TO DIFFERENT
23 JUDGES.

24 NOT JUST THE JUVENILE COURT JUDGES, BUT JUDGES
25 IN THE OTHER COURTROOMS IN LOS ANGELES COUNTY TO OBTAIN
26 WARRANTS IF THEY NEEDED THEM.

27 HERE'S THE TESTIMONY, MY RECOLLECTION OF THE
28 TESTIMONY OF MS. LERUE ABOUT THE TYPES OF WARRANTS AND

1 HOW THE PROCESS WORKED. THERE'S A DISCUSSION. SHE
2 CAN'T TELL YOU IF IT'S A SEARCH WARRANT OR REMOVAL
3 WARRANT BECAUSE THAT WAS ALL THE SAME AT THAT TIME.

4 THE DEPOSITION OF GUY TRIMARCHI WAS PLAYED,
5 THE VIDEO WAS PLAYED BY PLAINTIFFS. AND THAT
6 INDIVIDUAL IS THE PERSON MOST KNOWLEDGEABLE REGARDING
7 THE POLICIES OF DCFS AT THAT TIME.

8 AND HE TESTIFIED THAT THE POLICY, THE OFFICIAL
9 POLICY IN PLACE AT THAT TIME WAS CALLED OBTAINING A
10 SEARCH WARRANT. AND IT LAID OUT, STEP BY STEP, THE
11 APPROPRIATE PROCEDURES.

12 NOW, TRAINING. WE ALL SAT HERE WITH WITNESS
13 AFTER WITNESS WHEN PLAINTIFF'S COUNSEL PUT UP ALL THOSE
14 POWERPOINT SLIDES, ALL THOSE PIECES OF TRAINING THAT
15 WERE GIVEN TO SOCIAL WORKERS AT VARIOUS POINTS IN TIME
16 REGARDING WARRANTS.

17 THERE'S NO DOUBT THAT THERE WAS TRAINING ON
18 WARRANTS. I THINK THAT POINT WAS KIND OF BEAT TO
19 DEATH. AND SPECIFICALLY, THE QUESTION THAT YOU MAY
20 HAVE TO ANSWER IS WHETHER MS. ROGERS AND MS. PENDER,
21 THE PEOPLE THAT ACTUALLY DETAINED THIS CHILD, IF THEY
22 HAD THE TRAINING.

23 AND MS. PENDER TESTIFIED THAT, YES, SHE DID
24 RECEIVE THAT TRAINING. SHE WAS TAUGHT, BEFORE
25 NOVEMBER 2009, THAT YOU HAVE TO HAVE REASONABLE AND
26 ARTICULABLE EVIDENCE TO SUGGEST THE CHILD IS IN
27 IMMEDIATE DANGER OF SUFFERING SEVERE BODILY INJURY OR
28 DEATH IN THE TIME IT WOULD TAKE TO GET THAT WARRANT IN

1 ORDER TO SEIZE THE CHILD.

2 MS. ROGERS, SHE ALSO TESTIFIED THAT SHE
3 RECEIVED TRAINING PRIOR TO 2009, PRIOR TO NOVEMBER OF
4 2009.

5 SO, LADIES AND GENTLEMEN, MS. PENDER AND
6 MS. ROGERS DETAINED BABY RYAN BECAUSE THEY BELIEVED
7 THEY HAD EXIGENT CIRCUMSTANCES AND THAT ALTHOUGH THEY
8 WERE AWARE OF WARRANTS AND THE NEED AND WHEN TO GET
9 WARRANTS, THEY FELT IT WAS NOT REQUIRED IN THIS
10 CIRCUMSTANCE BECAUSE OF THE IMMINENT INJURY OF BABY
11 RYAN WHO WAS NOT BEING FED.

12 NOW, PLAINTIFF ALSO ARGUES THAT IT WOULD ONLY
13 TAKE A COUPLE HOURS TO GET THIS WARRANT. WHY DIDN'T
14 THEY JUST PUT THE DETENTION ON PAUSE AND GO AND FILL
15 OUT THE PAPERWORK, AND GO THROUGH THIS PROCEDURE. IT'S
16 ONLY A COUPLE OF HOURS. RIGHT? BUT NOT REALLY A
17 COUPLE OF HOURS.

18 YOU HEARD JUDGE NASH TESTIFY, AND HE SAID 3
19 TO 6 HOURS, 3 TO 6 HOURS IS ABOUT THE LENGTH OF TIME
20 THAT THE JUDGE WOULD TAKE TO LOOK AT THE DOCUMENTS AND
21 MAKE A DETERMINATION BECAUSE THE JUDGE HAS TO SIGN OFF
22 ON THIS UNDER THE LAW.

23 AND MS. LERUE TESTIFIED THAT TO GO THROUGH THE
24 PROCESS -- FOR THE SOCIAL WORKER AND THE SUPERVISOR TO
25 MAKE THE DETERMINATION THAT WE PROBABLY NEED ANOTHER
26 OPINION ON WHAT TO DO NEXT, TO GO TO COUNTY COUNSEL,
27 FOR COUNTY COUNSEL TO SAY, YES.

28 WE SHOULD TRY TO GET A WARRANT FOR THEM TO PUT

1 THE DOCUMENTS TOGETHER, HAVE THOSE REVIEWED AND
2 APPROVED, THEN FIND A JUDGE THAT WAS AVAILABLE IN ANY
3 OF THE COURTS AND ACTUALLY HAVE A JUDICIAL OFFICER
4 REVIEW AND SIGN OFF, AND THEN GO AND HAVE THE WARRANT
5 EXECUTED -- MS. LERUE TESTIFIED THAT COULD BE UPWARDS
6 OF 15 TO 24 HOURS.

7 MAYBE EVEN LONGER, DEPENDING ON TIME OF DAY,
8 ET CETERA. HERE'S A PORTION OF WHAT MY RECOLLECTION OF
9 MS. LERUE'S TESTIMONY IS. IT WAS A LONG PROCESS. 15
10 TO 24 HOURS.

11 AGAIN, THE LENGTHY AMOUNT OF TIME THAT IT
12 WOULD HAVE TAKEN FOR MS. PENDER AND MS. ROGERS TO GET
13 THAT WARRANT ON NOVEMBER 3RD IN FACE OF THE FACT THAT
14 MS. DUVAL WAS NOT FEEDING THE BABY THE APPROPRIATE
15 FOODS, EVEN SITTING AT THE TDM.

16 WHAT SHE WAS FEEDING THE BABY SUPPORTS
17 MS. ROGERS'S AND MS. PENDER'S BELIEF THAT THEY HAD
18 EXIGENT CIRCUMSTANCES. THE COUNTY HAD THE APPROPRIATE
19 CUSTOMS AND PRACTICE AT THE TIME OF THE DETENTION, AND
20 THAT CUSTOM AND PRACTICE, IT DID NOT CAUSE MS. DUVAL
21 ANY HARM.

22 SO THE ANSWER TO THE QUESTION AS TO WHETHER IT
23 WAS A CUSTOM OR PRACTICE OR LACK OF A POLICY WAS THE
24 MOVING FORCE BEHIND THE CONSTITUTIONAL VIOLATION OF
25 MS. DUVAL IS NO.

26 LET'S SWITCH GEARS. LET'S TALK ABOUT THE
27 DISCRIMINATION CLAIMS AGAINST CANDIS NELSON AND
28 VICTORIA SCHEELE. NOW, YOU HEARD PLAINTIFF'S ARGUMENT

1 REGARDS MS. NELSON. LITERALLY, WHAT SHE IS ALLEGED
2 TO HAVE DONE IS WRITE THE WORDS MUNCHAUSEN BY PROXY IN
3 ONE COURT REPORT FILED JANUARY 4, 2010.

4 THAT'S JUST NOT DISCRIMINATION ON THE BASIS OF
5 A DISABILITY OR A PERCEIVED DISABILITY. NOW, LET'S
6 TAKE A LOOK BACK AT TO WHERE MUNCHAUSEN BY PROXY EVEN
7 CAME FROM IN THE FIRST PLACE.

8 NOW, MS. DUVAL TESTIFIED HERSELF THAT THE
9 FIRST TIME MUNCHAUSEN BY PROXY EVER CAME UP IN THE
10 DEPENDENCY CASE WAS AT THE DETENTION HEARING WHERE HER
11 ATTORNEY, MR. CLARK, SAID, YOUR HONOR, THIS IS NOT A
12 MUNCHAUSEN BY PROXY CASE. THAT WAS HIS STATEMENT.

13 THEN, LATER IN NOVEMBER 2009, MS. DUVAL
14 VOLUNTARILY WENT AND SAT FOR THE UP-FRONT ASSESSMENT
15 THAT WAS DONE BY MONIQUE BUSTOS FROM HILLSIDES. NOW,
16 YOU HEARD MS. BUSTOS TESTIFY, SHE CAME IN, AND SHE SAID
17 IT WAS MS. DUVAL, HERSELF, WHO BROUGHT UP MUNCHAUSEN IN
18 THE UP-FRONT ASSESSMENT.

19 MS. BUSTOS TESTIFIED THAT MOTHER TOLD HER SHE
20 BELIEVED IT WAS MR. MILLS AND HIS FAMILY WHO WAS
21 FRAMING HER AS HAVING MUNCHAUSEN. SO MS. BUSTOS, DOING
22 HER JOB IN THIS EVALUATION, INCLUDED WHAT MS. DUVAL
23 TOLD HER IN HER ASSESSMENT, IN HER OWN REPORT.

24 NOW, THIS IS PART OF EXHIBIT 24. THIS IS PART
25 OF THE UP-FRONT ASSESSMENT. AND YOU'LL BE ABLE TO SEE
26 THE ENTIRE DOCUMENT IN THE JURY ROOM. AND MS. BUSTOS
27 REPORTED MS. DUVAL DESCRIBES THE CUSTODY HEARINGS AS
28 VERY STRESSFUL BECAUSE OF INTIMIDATION BY RYAN AND HIS

1 FAMILY.

2 SHE CLAIMS IT IS HIS FAMILY WHOSE CREATED
3 THESE FALSE ALLEGATIONS OF STARVING HER CHILD AND
4 MUNCHAUSEN BY PROXY. SO MS. BUSTOS, IN DOING HER JOB,
5 MAKES THE RECOMMENDATION THAT MS. DUVAL UNDERGO FURTHER
6 EVALUATION.

7 SHE SAYS, AND THIS IS AGAIN FROM THAT UP-FRONT
8 ASSESSMENT THAT YOU'LL GET TO TAKE A LOOK AT, FURTHER
9 ASSESSMENT IS NEEDED IN A PSYCHIATRIC EVALUATION IN
10 ORDER TO DIAGNOSE MS. DUVAL.

11 YOU ALSO NEED INVESTIGATION, LAB FINDINGS,
12 RECOMMENDATIONS FROM DOCTORS. THIS DISORDER MUST BE
13 DISTINGUISHED FROM A MENTAL DISORDER IN THE INDIVIDUAL,
14 AND DISTINGUISHED FROM ABUSE THAT IS NOT MOTIVATED BY
15 THE GOAL OF INDIRECTLY ASSUMING THE SICK ROLE.

16 NOW, WHAT MS. BUSTOS TESTIFIED, AND NOBODY'S
17 DISAGREEING, MS. BUSTOS DIDN'T DIAGNOSIS MS. DUVAL WITH
18 MUNCHAUSEN BY PROXY. SOCIAL WORKERS DIDN'T DIAGNOSIS
19 MS. DUVAL WITH MUNCHAUSEN BY PROXY. IN FACT, ALL OF
20 THE EVIDENCE IS THAT SHE WAS NEVER DIAGNOSED WITH THIS
21 DISORDER.

22 SO WHAT'S THE HARM? WHAT IS BEING ALLEGED?
23 MS. NELSON, HER JOB IN THE INVESTIGATION IS TO GIVE
24 INFORMATION FROM THE PROFESSIONALS TO THE COURT SO THE
25 COURT HAS THE INFORMATION TO MAKE ITS DECISION.

26 AND YOU HEARD TESTIMONY FROM BOTH SIDES THAT
27 THIS REPORT, WHERE THIS UP-FRONT ASSESSMENT WAS
28 ATTACHED WAS 370-SOMETHING PAGES WITH ALL OF THE

1 MEDICAL RECORDS AND OTHER INFORMATION THAT HAD BEEN
2 OBTAINED.

3 NOW, MS. NELSON ATTACHES MS. BUSTOS'S REPORT
4 TO HER JURISDICTION DISPOSITION REPORT THAT SHE FILED
5 WITH THE JUVENILE COURT, AND THEREFORE, THE COURT COULD
6 HAVE THE INFORMATION STRAIGHT FROM THE HORSE'S MOUTH,
7 SO TO SPEAK.

8 AND THERE'S BEEN ALL KINDS OF CRITICISM IN
9 THIS CASE THAT BECAUSE MS. NELSON PUT THE SENTENCE
10 ABOUT MUNCHAUSEN BY PROXY IN HER REPORT, THAT SHE HAS
11 IMPROPERLY DIAGNOSED MS. DUVAL, HAS CREATED THIS
12 STIGMA.

13 WELL, LET'S TAKE A LOOK AT WHAT MS. NELSON
14 ACTUALLY PUT IN HER REPORT. SO THIS IS FROM
15 EXHIBIT 24. AND THAT'S THE FIRST PAGE OF THE REPORT.

16 AND MS. NELSON REPORTS, WITH A CONCERN FOR
17 POSSIBLE MUNCHAUSEN BY PROXY AND OTHER PERSONALITY
18 DISORDERS FOR MOTHER, COUPLED WITH THE UNCERTAINTY OF
19 THE EVENTS WHICH LED TO THE CHILD'S SIGNIFICANT STUNTED
20 DEVELOPMENT WHILE IN MOTHER'S CARE, FURTHER ASSESSMENT
21 IS NECESSARY.

22 MS. NELSON DOES NOT DIAGNOSE MS. DUVAL WITH
23 ANYTHING. SHE REPORTS THE SAME CONCERNS THAT
24 MS. BUSTOS HAD, AND SHE MAKES HER RECOMMENDATIONS TO
25 THE COURT.

26 NOW, LET'S TAKE A LOOK AT THE RECOMMENDATION
27 FROM MS. NELSON. THIS IS ALSO FROM EXHIBIT 24, THE
28 ACTUAL COURT REPORT. HER RECOMMENDATION IS THE FAMILY

1 BE ORDERED THE 730 EVALUATION BY A COURT APPOINTED
2 EXPERT.

3 AND WE HEARD TESTIMONY THAT THE 730 EVALUATION
4 IS DONE BY AN INDEPENDENT PSYCHOLOGIST OR PROFESSIONAL,
5 AND THEY DO THEIR ASSESSMENT OF THE PERSON THAT THE
6 COURT ORDERED IT FOR, WHETHER IT'S MOTHER, FATHER,
7 WHOEVER IT IS.

8 AND THEY DO THEIR INDEPENDENT REPORT TO THE
9 JUVENILE COURT. AND THEN THE JUVENILE COURT HAS MORE
10 INFORMATION TO MAKE THE DECISIONS FOR THAT PARTICULAR
11 CASE.

12 SO MS. NELSON TOOK THE HILLSIDES REPORT, SENT
13 IT TO THE COURT, AND SAID HEY, HILLSIDES SAYS FURTHER
14 ASSESSMENT. I'M GOING TO RECOMMEND FURTHER ASSESSMENT,
15 AND THEN THE COURT WILL HAVE MORE INFORMATION.

16 NOW, WHAT ACTUALLY HAPPENED WITH REGARD TO
17 THIS REPORT? YOU HEARD MS. DUVAL TESTIFY HERSELF AT
18 THE HEARING BEFORE WHICH THIS REPORT WAS FILED.

19 THE HEARING ON JANUARY 4, 2010, THAT HAD THE
20 RECOMMENDATION FOR THE 730 EVALUATION, MS. DUVAL'S
21 ATTORNEY OBJECTED AND SAID, YOUR HONOR, I DON'T WANT MY
22 CLIENT TO HAVE TO UNDERGO THE PSYCHOLOGICAL TESTING.
23 AND THE COURT AGREED.

24 THE COURT AGREED WITH MS. DUVAL. THE COURT
25 DID NOT ORDER ANY PSYCHOLOGICAL TESTING FOR HER. DID
26 NOT ORDER ANY PSYCHOLOGICAL TESTING FOR THE FATHER, FOR
27 ANYONE. THAT WAS THE END OF THE DISCUSSION.

28 MS. DUVAL HERSELF TESTIFIED TO THAT. THE

1 COURT SUGGESTS THE 730 EVALUATION, DID YOU OBJECT TO
2 THAT? SHE SAID, YES. AND THE COURT DIDN'T ORDER IT.

3 SO, AGAIN, WHERE'S THE STIGMA? WHERE'S THE
4 CONSTITUTIONAL VIOLATION? WHERE IS IT? IT'S JUST NOT
5 THERE.

6 ROBBIE WERK CAME IN AND TESTIFIED. SHE WAS
7 THE ATTORNEY FOR THE DEPARTMENT IN THE DEPENDENCY CASE.
8 SHE WAS THE TRIAL ATTORNEY. AND SHE TESTIFIED
9 MUNCHAUSEN BY PROXY HAD NO PART IN THE DEPENDENCY
10 PROCEEDINGS AT ALL.

11 AFTER THIS HEARING, NO PSYCHOLOGICAL TESTING,
12 NEVER CAME UP AGAIN. IT WAS NEVER BROUGHT UP DURING
13 THE TRIAL. THAT'S WHAT MS. WERK SAID.

14 NOW, MS. DUVAL BROUGHT UP MUNCHAUSEN WITH
15 HER -- THROUGH HER ATTORNEY AT THE DETENTION HEARING.
16 HE BROUGHT IT UP AGAIN DURING THE HILLSIDES ASSESSMENT,
17 AND IT DOESN'T COME UP AGAIN UNTIL TWO MONTHS AFTER
18 THIS JANUARY 4TH HEARING, WHEN MS. DUVAL FILES HER
19 COMPLAINT WITH THE CIVIL RIGHTS UNIT.

20 MARCH 8, 2010, SHE FILES HER COMPLAINT THAT
21 SHE'S BEEN DISCRIMINATED AGAINST. AND WHAT IS HER
22 COMPLAINT?

23 SHE TELLS -- SHE COMPLAINS THAT SHE HAD BEEN
24 DISCRIMINATED ON THE BASIS OF HER SEX, NATIONAL ORIGIN,
25 RELIGION, POLITICAL AFFILIATION, MARITAL STATUS, AND
26 DISABILITY. THAT'S WHAT SHE TELLS THE CIVIL RIGHTS
27 UNIT. AND PLAINTIFF'S ENTIRE ARGUMENT THAT MS. DUVAL
28 WAS DISCRIMINATED AGAINST STEMS FROM THE INITIAL

1 CONCLUSION DONE BY THE CIVIL RIGHTS UNIT.

2 MICHELLE HOCHSTEIN'S DEPOSITION WAS READ, AND
3 SHE WAS THE INITIAL INVESTIGATOR. AND SHE TESTIFIED,
4 "MY INITIAL CONCLUSION WAS THAT MS. NELSON
5 DISCRIMINATED AGAINST MS. DUVAL ON THE BASIS OF
6 PERCEIVED DISABILITY OF MUNCHAUSEN."

7 THIS CONCLUSION THAT MS. HOCHSTEIN MADE, SHE
8 ARRIVED AT WITHOUT EVER HAVING THE UP-FRONT ASSESSMENT.
9 WE HEARD THAT IN THE LATER TESTIMONY. IT'S UNDISPUTED.

10 AND YOU'VE HEARD MR. URQUIZO, YOU HEARD THE
11 DEPOSITIONS READ OF MS. HOCHSTEIN, MS. MORGAN-NICHOLS,
12 AND MS. CONDON THAT THE INITIAL CONCLUSION WAS CHANGED
13 WHEN MORE INFORMATION WAS OBTAINED BY MS. HOCHSTEIN.

14 AND, IN FACT, MR. URQUIZO FROM THE STATE SAID
15 YES, THE COUNTY MADE FOUR DIFFERENT REPORTS, AND
16 SUBMITTED THOSE TO THE STATE. THAT WAS HIS
17 UNDERSTANDING.

18 AND IT'S UNDISPUTED THAT THE LAST REPORT FOUND
19 THAT NONE OF MS. DUVAL'S CIVIL RIGHTS WERE VIOLATED.
20 IN FACT, IN THE DEPOSITION READ BY PLAINTIFF,
21 MS. CONDON TESTIFIED THAT THE INITIAL CONCLUSION THAT
22 MS. NELSON HAD VIOLATED OR DISCRIMINATED AGAINST THE
23 PLAINTIFF, WAS BASED ON THE WRONG PREMISE.

24 SHE TESTIFIED THERE WAS NO NEXUS BETWEEN
25 MS. NELSON'S INCLUSION OF THE WORDS MUNCHAUSEN BY PROXY
26 IN HER REPORT AND THE DENIAL OF ANY SERVICES OR
27 BENEFITS TO MS. DUVAL.

28 NOW, DR. SANDERS, HE WAS THE ORIGINAL

1 ADMINISTRATOR ABOVE CANDIS NELSON. AND YOU SAW HIS
2 VIDEO DEPOSITION PLAYED. AND DURING THE CIVIL RIGHTS
3 INVESTIGATION, AFTER THE INITIAL CONCLUSIONS,
4 DR. SANDERS WAS ACTUALLY CONSULTED BY THE CIVIL RIGHTS
5 UNIT.

6 AND DR. SANDERS CONFIRMED THAT MS. NELSON, AS
7 THE DEPENDENCY INVESTIGATOR, WAS REQUIRED TO GIVE THE
8 JUVENILE COURT THE INFORMATION FROM HILLSIDES.

9 MR. MCMILLAN: OBJECTION, YOUR HONOR:
10 MISSTATES THE TESTIMONY.

11 THE COURT: OVERRULED. THE JURY WILL DECIDE
12 WHAT THE TESTIMONY WAS.

13 MS. SWISS: HERE IS THE EXHIBIT. EXHIBIT 502
14 THAT YOU'LL GET, THE FULL EMAIL CHAIN. AND HE REPORTED
15 TO THE DCFS CIVIL RIGHTS UNIT AND TO HUMAN RESOURCES
16 THAT NO FURTHER ACTION IS INDICATED.

17 MS. NELSON IS NOT SUPPOSED TO BE DISCIPLINED
18 OR PUNISHED BECAUSE OF HER REPORTING MUNCHAUSEN BY
19 PROXY SYNDROME TO THE JUVENILE COURT.

20 DR. SANDERS REVIEWED THE UP-FRONT ASSESSMENT,
21 WHICH REFERENCED THE NEED TO ASSESS THE MUNCHAUSEN BY
22 PROXY, AND THEREFORE, EXPLAINED AND JUSTIFIED WHY THE
23 SOCIAL WORKER WOULD REPORT THAT TO THE JUVENILE COURT
24 IN THE FIRST PLACE. THAT'S IT.

25 NOW, THE TESTIMONY THAT MS. NELSON VIOLATED
26 THE POLICY, SHE WASN'T SUPPOSED TO ACTUALLY ATTACH THE
27 DOCUMENT IN HER REPORT.

28 WELL, THE EXPERT JOI RUSSELL TESTIFIED THAT IN

1 HER OPINION, THE UP-FRONT ASSESSMENT WAS SO COMPLICATED
2 THAT EVEN THOUGH THE POLICY WAS "DON'T ATTACH IT," THAT
3 IT WAS NECESSARY IN THIS CASE TO ATTACH THE DOCUMENT SO
4 THAT THE COURT WOULD HAVE ALL OF THE INFORMATION.

5 AGAIN, STRAIGHT FROM THE HORSE'S MOUTH AS TO
6 WHAT THE RECOMMENDATIONS WERE, AND WHY. AND, AGAIN,
7 THE COURT DENIED THE 730 EVALUATION.

8 NOW, THE PLAINTIFF'S ARGUMENT IS THAT THE
9 HARM, SHE WAS DISCRIMINATED AGAINST BASED ON THIS
10 PERCEIVED MUNCHAUSEN BY PROXY. AND THE DISCRIMINATION
11 WAS THAT MS. NELSON DIDN'T RECOMMEND THAT MS. DUVAL
12 RECEIVE FAMILY REUNIFICATION SERVICES. THAT WAS THE
13 ACT, THAT WAS THE DISCRIMINATION.

14 BUT THAT'S NOT WHAT THE EVIDENCE SHOWS. THE
15 EVIDENCE IS THAT THE RECOMMENDATION FOR NO
16 REUNIFICATION SERVICES WAS MADE BY THE DEPARTMENT AT
17 THE TIME OF THE DETENTION. IT WAS IN THE PETITION, AND
18 MS. PINEDO CAME IN AND TESTIFIED.

19 AND SHE SAID THAT BECAUSE THE ALLEGATIONS IN
20 THE CASE FELL UNDER THE WELFARE AND INSTITUTIONS CODE
21 300 E FOR THE SEVERE NEGLECT OF A CHILD UNDER FIVE,
22 THAT MS. DUVAL WAS WILLFULLY AND INTENTIONALLY NOT
23 FEEDING THE BABY THE FOODS RECOMMENDED BY THE
24 NUTRITIONIST, THAT PER POLICY, SHE WAS TO RECOMMEND NO
25 REUNIFICATION SERVICES.

26 THIS IS THE ADDENDUM REPORT FILED WITH THE
27 PETITION. IT'S EXHIBIT 13. THIS WAS FILED
28 NOVEMBER 6, 2009. AND IT SAYS NO REUNIFICATION

1 SERVICES. SO MS. NELSON'S RECOMMENDATION IN JANUARY IS
2 NO DIFFERENT.

3 SO DID MS. NELSON DISCRIMINATE AGAINST
4 MS. DUVAL BECAUSE OF THE HILLSIDES REPORT THAT SAYS
5 MUNCHAUSEN? IT JUST DOESN'T ADD UP.

6 NOW, IN FACT, AT THE DETENTION HEARING,
7 DESPITE THE PETITION AND THE RECOMMENDATION, THE COURT
8 DIDN'T FOLLOW DCFS'S RECOMMENDATION. THE COURT DID
9 ORDER FAMILY REUNIFICATION SERVICES FOR MS. DUVAL.

10 AND SHE RECEIVED THEM. SHE RECEIVED THEM UP
11 UNTIL THE TIME THE COURT TERMINATED JURISDICTION IN
12 AUGUST 2010, AND DCFS WAS NO LONGER INVOLVED WITH THE
13 BABY. SO THE PLAINTIFF JUST HAS NO CASE AGAINST
14 MS. NELSON.

15 SHE INCLUDED THE UP-FRONT ASSESSMENT AND THE
16 STATEMENT REGARDING HER RECOMMENDATION IN THE REPORT
17 BASED ON THE INFORMATION SHE HAD FROM HILLSIDES. SHE
18 GAVE ALL THE INFORMATION TO THE COURT. AND THE COURT
19 AGREED WITH MS. DUVAL, AND THERE WAS JUST NO
20 DISCRIMINATION.

21 HERE'S THE QUESTION ABOUT DISCRIMINATION WITH
22 REGARD TO THE INDIVIDUALS, CANDIS NELSON AND VICTORIA
23 SCHEELE: DID THE DEFENDANT DENY OR AID OR INCITE OF A
24 DENIAL OF, DISCRIMINATE AGAINST MS. DUVAL? THE ANSWER
25 IS NO.

26 NOW, THE ANSWER TO THAT QUESTION WITH REGARD
27 TO MS. SCHEELE IS ALSO NO. MS. SCHEELE WAS THE
28 ASSIGNED FAMILY MAINTENANCE AND REUNIFICATION WORKER.

1 SHE WAS THE ONE TASKED WITH ACTUALLY PROVIDING THE
2 SERVICES TO THE FAMILY.

3 AND MS. DUVAL IS CLAIMING THAT HER CONDUCT WAS
4 SO OUTRAGEOUS THAT IT CAUSED HER EMOTIONAL DISTRESS.
5 AND SHE'S ALSO CLAIMING THAT SCHEELE DISCRIMINATED
6 AGAINST HER WITH REGARD TO HER PERCEIVED DISABILITIES.

7 NOW, YOU HEARD MS. SCHEELE TESTIFY ABOUT THE
8 SERVICES THAT SHE ACTUALLY PROVIDED. AND MS. SCHEELE
9 TESTIFIED THAT SHE PROVIDED HER WITH A MONITORED
10 VISITATION.

11 SHE TESTIFIED SHE WAS TO ASSIST THE MOTHER IN
12 FEEDING THE CHILD PROPERLY, GENERAL COACHING, MAKE SURE
13 SHE WAS IN COUNSELING.

14 MS. SCHEELE WAS NOT HIRED BY DCFS TO BE A
15 BABYSITTER FOR MS. DUVAL. SHE IS A PROFESSIONALLY
16 TRAINED SOCIAL WORKER WHOSE SPECIFIC ROLE WAS TO
17 PROVIDE THE FAMILY REUNIFICATION SERVICES.

18 NOW, WE KNOW THE ISSUES IN THIS CASE WAS THAT
19 MS. DUVAL WAS NOT FEEDING THE BABY THE FOODS FROM THE
20 NUTRITIONIST. AND SHE WAS NOT ALLOWING THE BABY TO
21 SELF-PLAY, TO BE PUT ON THE FLOOR, AND TO EXPLORE, AND
22 TO FIGURE OUT HOW TO DEVELOP ON HIS OWN.

23 THOSE WERE THE SPECIFIC THINGS THAT
24 MS. SCHEELE, IN MONITORING THE VISITS, WAS TRYING TO
25 ADDRESS. MS. SCHEELE MONITORED OVER 70 VISITS, AND SHE
26 PROVIDED CONSTRUCTIVE CRITICISM TO MS. DUVAL.

27 THE VERY THINGS THAT SHE WAS TRYING TO ADDRESS
28 AS A PROFESSIONAL ARE THE THINGS THAT NOW MS. DUVAL IS

1 CLAIMING ARE THE HARASSING THINGS, THAT'S THE HARASSING
2 CONDUCT.

3 THIS GOES ALONG WITH THE EVIDENCE OF
4 MS. DUVAL'S ATTITUDE ABOUT PARENTING BABY RYAN IN THE
5 FIRST PLACE. SHE KNEW BEST, AND SHE WAS GOING TO DO
6 THINGS HER WAY, EVEN WHEN IT SEVERELY IMPEDED THE
7 HEALTH OF HER SON.

8 LET'S TALK ABOUT INTENTIONAL INFLICTION OF
9 EMOTIONAL DISTRESS. MS. DUVAL IS CLAIMING THAT
10 MS. SCHEELE'S CONDUCT WAS SO OUTRAGEOUS, IT GOES BEYOND
11 ALL POSSIBLE BOUNDS OF DECENCY. IT SHOULDN'T BE
12 TOLERATED IN A CIVILIZED SOCIETY. THAT'S THE CLAIM.

13 AND THE EVIDENCE IS JUST SIMPLY NOT THERE.
14 LET'S TALK BRIEFLY ABOUT SOME OF THE THINGS THAT THE
15 PLAINTIFF TOOK ISSUE WITH, WITH REGARD TO MS. SCHEELE'S
16 INTERACTIONS.

17 THE SPANISH LANGUAGE MONITOR, THE BILINGUAL
18 MONITOR. YOU HEARD THE TESTIMONY, MS. DUVAL HERSELF
19 CHOSE THE LANGUAGE OF THE CASE. THERE ARE OTHER
20 MONITORS AVAILABLE FOR OTHER LANGUAGES, BUT YOU HAVE TO
21 ASK FOR IT.

22 AND THE TESTIMONY IS MS. SCHEELE WAS NEVER
23 ASKED HERSELF FOR A BILINGUAL MONITOR. AND ONCE THE
24 REQUEST WAS MADE, THE TESTIMONY IS THAT ONE WAS
25 ACTUALLY PROVIDED, BUT IT WASN'T UNTIL JULY OF 2010,
26 RIGHT BEFORE THE ADJUDICATION HEARING.

27 MS. SCHEELE WAS MONITORING THE VISITS STARTING
28 IN LATE DECEMBER 2009, AND THE ISSUE NEVER AROSE FOR

1 MONTHS, AND ALL OF A SUDDEN, THIS IS A CAUSE OF ACTION.

2 SHE'S ALSO CLAIMING MATERNAL GRANDMOTHER WAS
3 ASKED NOT TO PARTICIPATE IN THE VISITS, AND YOU HEARD
4 THE TESTIMONY.

5 MS. SCHEELE WAS THERE TO PROVIDE SERVICES TO
6 THE MOTHER TO PROVIDE REUNIFICATION SERVICES, TEACH HER
7 THE SKILLS TO LET THE BABY SELF-DIRECT AND PLAY, TEACH
8 THE BABY HOW TO EAT AND ENJOY THE HIGH-CALORIE, HIGH
9 PROTEIN-FOODS.

10 AND SO THE DECISION WAS MADE BY MS. SCHEELE TO
11 HAVE GRANDMA COME FOR A VISIT ONCE A WEEK, NOT TWICE A
12 WEEK, SO THAT THE FOCUS CAN BE ON REUNIFICATION.

13 THIS ISN'T ABOUT MATERNAL GRANDMOTHER, THIS IS
14 ABOUT THE BEST INTEREST OF THE BABY AND THE ABILITY OF
15 THE MOTHER TO BE ABLE TO REUNIFY WITH HER SON.

16 NOW, WE ALSO HEARD TESTIMONY THAT MS. DUVAL
17 DID NOT FEEL IT WAS APPROPRIATE FOR MS. SCHEELE TO ASK
18 HER IF SHE WAS PREGNANT. BUT IT WAS HER JOB TO DO
19 THAT. SHE HAD TO.

20 AND SHE TESTIFIED HOW UNCOMFORTABLE IT WAS FOR
21 HER TO ASK THAT QUESTION, AND FOR IT NOT TO BE
22 IMPROPER. WHAT DID SHE SAY? MS. SCHEELE SAID IT WAS
23 AN AWKWARD QUESTION TO ASK ANYONE, AND BY POLICY, SHE'S
24 REQUIRED TO ASK. NOW, THAT'S JUST NOT ACTIONABLE.

25 AND WE ALSO HEARD TESTIMONY THAT MS. BUSTOS
26 FROM HILLSIDES, ALSO IN HER ASSESSMENT, ASKED MS. DUVAL
27 IF SHE WAS PREGNANT. IT WENT INTO THE UP-FRONT
28 ASSESSMENT, IT WENT INTO THE REPORT.

1 ACCORDING TO MS. DUVAL, SHE IS NOT PREGNANT AT
2 THIS TIME. SO INTERESTINGLY, MS. DUVAL SUES
3 CANDIS NELSON FOR MENTIONING MUNCHAUSEN BY PROXY IN HER
4 REPORT, AND VICTORIA SCHEELE FOR ASKING HER IF SHE'S
5 PREGNANT, BUT SHE HASN'T SUED MS. BUSTOS FOR THE EXACT
6 SAME THING. IT'S JUST NOT THERE.

7 NOW, MS. DUVAL ALSO TOOK ISSUE WITH
8 MS. SCHEELE'S HAVING CONTACTED MR. BUDIN. MS. SCHEELE
9 TESTIFIED IT'S PART OF HER JOB TO CONTACT THE THERAPIST
10 TO CONFIRM THAT HER CLIENTS ARE ACTUALLY RECEIVING THE
11 THERAPY.

12 SHE DID THE SAME THING WITH MR. MILLS. IT'S
13 JUST REQUIRED. SHE CALLED HIM TO MAKE SURE THAT SHE
14 WAS RECEIVING SERVICES.

15 PERHAPS MS. DUVAL TOOK ISSUE WITH MS. SCHEELE
16 CONTACTING MR. BUDIN BECAUSE OF THE PATTERN AND THE
17 EVIDENCE THAT MS. DUVAL WANTED TO BE THE ONLY SOURCE OF
18 INFORMATION TO THE PROFESSIONALS.

19 SHE DIDN'T WANT ANYONE CONTACTING MR. BUDIN TO
20 TELL HIM, EVEN THOUGH MR. BUDIN RECOMMENDED THAT THEY
21 GO THROUGH THE 730 EVALUATION PROCESS. SHE DIDN'T TELL
22 HIM THAT SHE DIDN'T OBJECT TO THAT REQUEST MADE BY
23 DCFS. YOU HEARD HIM TESTIFY TO THAT.

24 AND SHE DIDN'T WANT MR. BUDIN TO KNOW, THE TWO
25 EXPERTS IN THE ADJUDICATION, DR. LOTT AND DR. NIESEN,
26 ACTUALLY DID TESTIFY. BUT SHE TOLD MR. BUDIN THAT THEY
27 WERE PRECLUDED FROM TESTIFYING.

28 IT WAS A SIMILAR SITUATION WITH THE WHOLE

1 ISSUE WITH DR. LOTT AND VICTORIA SCHEELE.

2 NOW, MS. SCHEELE MADE THE RECOMMENDATION WHEN
3 SHE WENT TO THE VISIT WITH DR. LOTT THAT, HEY, IF YOU
4 HAVE A DIAGNOSIS THAT'S DIFFERENT THAN THE FAILURE TO
5 THRIVE CLINIC, THEN YOU GUYS ARE THE MEDICAL
6 PROFESSIONALS, YOU GUYS ARE THE DOCTORS.

7 YOU NEED TO TALK, YOU NEED TO FIGURE OUT
8 WHAT'S GOING ON WITH THIS BABY, AND IF YOU CAN SHARE
9 THAT MEDICAL EVIDENCE AND MEDICAL INFORMATION, AND
10 FIGURE OUT THE BEST SOLUTION FOR THE BABY.

11 MR. MCMILLAN: OBJECTION: MISSTATES THE
12 TESTIMONY.

13 THE COURT: OVERRULED.

14 MS. SWISS: MS. DUVAL DID NOT EVEN WANT TO
15 TELL DR. LOTT THAT THE BABY WAS BEING TREATED FOR
16 FAILURE TO THRIVE. SHE FORBADE THE DOCTOR'S
17 COMMUNICATION AT FIRST, AND EVEN WROTE A LETTER TO THAT
18 EFFECT.

19 IF SHE WANTED HER SON TO GET WELL, WHY
20 WOULDN'T SHE WANT THE DOCTORS TO COMMUNICATE? NONE OF
21 THIS CONDUCT BY MS. SCHEELE IS OUTRAGEOUS, AND THE
22 ANSWERS TO THE QUESTION ON THE VERDICT FORM RELATED TO
23 THIS INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
24 SHOULD BE NO.

25 NOW, MS. SCHEELE'S ALSO BEING SUED FOR
26 DISCRIMINATION ON THE BASIS OF THIS PERCEIVED
27 DISABILITY, AND, AGAIN, WHAT EVIDENCE IS THERE TO
28 SUPPORT THIS? WHAT DISCRIMINATION? THERE IS NONE.

1 PLAINTIFF AGAIN IS LATCHING ON TO THIS INITIAL
2 CONCLUSION OF MICHELLE HOCHSTEIN TO SOMEHOW SHOW THAT
3 MS. SCHEELE'S DOCUMENTATION OF MS. DUVAL'S TREMORS WAS
4 DISCRIMINATION ON THE BASIS OF A DISABILITY, BUT
5 MS. DUVAL IS NOT DISABLED.

6 IN FACT, HER OWN EXPERT TESTIFIED THAT SHE WAS
7 NOT DISABLED. TO BE DISABLED UNDER THE LAW, YOUR
8 DISABILITY HAS TO IMPEDE ONE OF YOUR MAJOR LIFE
9 ACTIVITIES. AND DR. ACHAR AGREED WITH THAT.

10 THE FAMILIAL TREMORS DID NOT PREVENT MS. DUVAL
11 FROM BEING UNABLE TO PARTICIPATE IN ANY LIFE
12 ACTIVITIES, SO HOW CAN HER TREMORS BE A PERCEIVED
13 DISABILITY? IT JUST DOESN'T MAKE ANY SENSE.

14 AND YOU HEARD THE TESTIMONY THAT THE TREMORS
15 WERE DOCUMENTED, NOT JUST BY VICTORIA SCHEELE BUT MANY
16 OTHERS. AND YOU'LL GET THOSE DELIVERED SERVICE LOGS.

17 THAT'S WHAT HAPPENED. THEY ARE TRAINED TO
18 REPORT WHAT THEY OBSERVED IN THE VISITS. IT'S JUST
19 SOMETHING THAT HAPPENED. IT'S NOT OUTRAGEOUS, IT'S NOT
20 DISCRIMINATORY.

21 THERE'S NO EVIDENCE THAT MS. SCHEELE DENIED
22 MS. DUVAL ANY SERVICE OR TREATED HER ANY DIFFERENTLY
23 THAN ANY OTHER PERSON. HERE'S PART OF THE VERDICT FORM
24 WITH REGARD TO THE FEDERAL DISCRIMINATION. AND THE
25 ANSWER TO THOSE QUESTIONS IS NO.

26 SHE WASN'T PERCEIVED AS HAVING ANY DISABILITY.
27 SHE WASN'T EXCLUDED FROM ANY PARTICIPATION IN ANY
28 SERVICES.

1 ONE OF THE ISSUES, THE ELEMENTS FOR THE REHAB
2 ACT ARE BASICALLY THE SAME. AND, AGAIN, MOM WAS NOT
3 REGARDED AS HAVING A DISABILITY. AND SHE WAS NOT,
4 UNDER NUMBER 7, SHE WAS NOT DISCRIMINATED OR DENIED
5 BENEFITS OR SERVICES SOLELY BECAUSE SHE WAS REGARDED AS
6 BEING DISABLED FACILITY. "SOLELY" IS THE KEY WORD.

7 IT'S JUST NOT THERE. LADIES AND GENTLEMEN,
8 IT'S ABOUT THAT TIME. IT'S ABOUT THE TIME FOR YOU TO
9 DELIBERATE, MAKE YOUR DECISIONS.

10 AND THE DEFENDANT'S POSITION IS THAT NO ONE
11 VIOLATED ANY OF MS. DUVAL'S CIVIL RIGHTS. AND THAT SHE
12 SHOULD NOT BE ENTITLED TO MY MONEY DAMAGES, BUT THAT'S
13 YOUR DECISION TO MAKE.

14 NOW, REMEMBER THE PLAINTIFF HAS THE BURDEN OF
15 PROOF. AFTER YOU WEIGH THE EVIDENCE, AND IF YOU COME
16 TO THE DETERMINATION THAT ALL THINGS ARE EQUAL, THEN
17 YOU MUST RULE IN THE DEFENDANT'S FAVOR.

18 IT'S THE PLAINTIFF'S BURDEN TO TIP THE SCALES
19 IN HER FAVOR. IF SHE HASN'T DONE THAT, IF SHE HASN'T
20 TIPPED THE SCALES MORE LIKELY THAN NOT BY THE
21 PREPONDERANCE OF THE EVIDENCE, THEN YOU CANNOT RULE IN
22 HER FAVOR.

23 NOW, YOU HEARD THE PLAINTIFF'S ARGUMENTS ABOUT
24 DAMAGES, HER ALLEGED DAMAGES, HER EMOTIONAL DISTRESS.
25 AND YES, HAVING A CHILD TAKEN INTO PROTECTIVE CUSTODY
26 IS A DISTRESSING THING.

27 BUT LADIES AND GENTLEMEN, BABY RYAN WAS TAKEN
28 INTO PROTECTIVE CUSTODY IN ORDER TO SAVE HIS LIFE. AND

1 THAT WAS JUSTIFIED. AND IF IT WAS JUSTIFIED, THEN THAT
2 MEANS MS. DUVAL SHOULD NOT BE AWARDED ANY DAMAGES.

3 IF YOU DO FEEL THAT DCFS SHOULD HAVE STOPPED
4 AND GOTTEN A WARRANT BEFORE TAKING BABY RYAN INTO
5 PROTECTIVE CUSTODY, THEN PERHAPS YOU MIGHT FEEL THAT
6 SHE SHOULD BE ENTITLED TO COMPENSATION.

7 AND I WOULD SUGGEST THAT SHE WOULD BE ONLY
8 ENTITLED TO COMPENSATION FOR THE THREE DAYS BETWEEN THE
9 TEAM DECISION-MAKING MEETING ON NOVEMBER 3RD AND THE
10 DETENTION HEARING ON NOVEMBER 6TH, WHERE THE COURT MADE
11 THE ORDER THAT BABY RYAN IS TO BE IN HIS FATHER'S
12 CUSTODY.

13 AT THAT POINT, ONCE THE COURT MADE AN ORDER,
14 THE SOCIAL WORKERS COULDN'T JUST PUT THE BABY BACK.
15 ALL OF THE PARTIES HAD TO FOLLOW THE COURT'S ORDERS,
16 WHICH THEY DID.

17 SO MS. DUVAL SHOULD NOT BE COMPENSATED FOR ANY
18 PERIOD OF TIME FOR HER DISTRESS AFTER THE JUVENILE
19 COURT MADE ITS ORDER.

20 SO IF YOU DECIDE TO AWARD MONEY DAMAGES, IT
21 SHOULD BE AT MOST FOR THOSE THREE DAYS. I WOULD
22 SUGGEST THAT A REASONABLE AMOUNT FOR THOSE THREE DAYS
23 WOULD BE AT MOST 10,000 PER DAY.

24 AS FOR THE DISCRIMINATION CLAIMS AND THE
25 INTENTIONAL INFLICTION CLAIM, PLAINTIFF JUST HASN'T MET
26 HER BURDEN.

27 SHE WAS NOT DISCRIMINATED AGAINST ON THE BASIS
28 OF ANY DISABILITY. SHE IS NOT DISABLED. NO ONE

1 PERCEIVED HER AS BEING DISABLED. AND SHE WAS NOT
2 DENIED ANY SERVICES SOLELY ON THAT BASIS.

3 SO HERE WE ARE. IT'S ABOUT YOUR TIME TO
4 DELIBERATE. AND WHEN YOU DO, I WOULD ASK THAT YOU
5 THINK ABOUT THE STATE OF MIND OF THE FOUR SOCIAL
6 WORKERS DOING THEIR JOB. THESE FOUR WOMEN, WHO HAVE
7 DEDICATED THEIR LIVES TO HELPING CHILDREN AND FAMILIES.

8 THESE FOUR WOMEN WHO ARE PROFESSIONALLY
9 TRAINED TO MAKE THE TOUGH DECISIONS AND MAKE
10 RECOMMENDATIONS IN THE BEST INTEREST OF CHILDREN WHO
11 CANNOT SPEAK FOR THEMSELVES.

12 WHEN BABY RYAN WAS TAKEN INTO PROTECTIVE
13 CUSTODY, HE WAS 15 MONTHS OLD, AND 14 POUNDS. AND WHEN
14 SOCIAL WORKERS DO NOT ACT, CHILDREN CAN DIE. DCFS
15 SAVED BABY RYAN'S LIFE. I HOPE YOU AGREE WITH THAT.
16 THANK YOU.

17 THE COURT: THANK YOU VERY MUCH. WE'RE GOING
18 TO TAKE THE AFTERNOON RECESS AT THIS TIME. BE
19 APPROXIMATELY 15 MINUTES. ALL JURORS PLEASE REMEMBER
20 THE ADMONITION.

21 (JURY EXCUSED)

22 THE COURT: WE'RE IN RECESS. MR. MCMILLAN, I
23 GAVE A COUPLE EXTRA MINUTES SO YOU CAN REDO YOUR
24 TECHNOLOGY.

25 (PAUSE IN THE PROCEEDINGS)

26 THE COURT: WE'RE ALL SET.

27 (JURY PRESENT)

28

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

3 THE COURT: ALL RIGHT. EVERYONE MAY BE
4 SEATED. WE'RE ON THE RECORD. EVERYONE IS PRESENT.
5 MR. MCMILLAN, YOU MAY PROCEED.

6 MR. MCMILLAN: THANK YOU, YOUR HONOR. GOT
7 22 MINUTES, SO I'M GOING TO TRY TO RIP THROUGH THIS
8 PRETTY QUICK.

9 I GOT A BIG PILE HERE. YOU CAN SEE US WORKING
10 HERE DURING MS. SWISS'S CLOSING ARGUMENT, ALL THE
11 EVIDENCE, TRYING TO CONTEST EVERYTHING SHE WAS SAYING.
12 I GOT IT ALL PILED UP AND READY TO GO, BUT I DON'T KNOW
13 IF I CAN GET THROUGH IT IN THE 22 MINUTES.

14 I WILL START WITH CROSS-EXAMINATIONS. YOU
15 REMEMBER THE CROSS-EXAMINATIONS? THAT'S MY FAVORITE
16 PART OF THE CASE.

17 IN CROSS-EXAMINATION, THAT'S WHERE THE TRUTH
18 REALLY COMES OUT BECAUSE YOU'RE ABLE TO GET IN THERE,
19 YOU'RE ABLE TO DIG AND START PULLING THREADS, AND WHEN
20 YOU GET ON A GOOD THREAD, AND YOU START PULLING AND
21 PULLING AND PULLING AND THE WHOLE CARPET STARTS TO FALL
22 APART.

23 THAT'S CROSS-EXAMINATION. SO WHO GOT
24 CROSS-EXAMINED? WHO GOT THEIR DEPOSITIONS READ TO YOU
25 WHEN THEY WOULDN'T ANSWER OUR QUESTIONS HONESTLY?
26 REMEMBER, JUST ABOUT EVERY SINGLE ONE OF THEIR
27 WITNESSES.

28 WE READ DEPOSITIONS OF WENDY CRUMP. WE READ

1 DEPOSITIONS, I BELIEVE, OF DR. BERKOWITZ. WE READ
2 DEPOSITIONS, I BELIEVE, MAY HAVE SHOWN HER DEPOSITION,
3 MAY HAVE READ IT, OF SUSAN PENDER. SAME WITH
4 CANDIS NELSON, MS. ROGERS.

5 EVERY SINGLE ONE OF THEM, THEY GOT UP HERE,
6 TOOK AN OATH, LOOKED YOU STRAIGHT IN THE EYE. DID THEY
7 TELL YOU THE TRUTH? I CAN'T TELL YOU WHETHER THEY DID
8 OR NOT, THAT'S YOUR DECISION TO MAKE.

9 BUT I WOULD SUGGEST TO YOU, AND I CAME ACROSS
10 THIS -- I HAVE KIDS OF MY OWN, AND WHEN THEY WERE
11 LITTLE, -- THEY'RE OLDER NOW -- I LIKED TO READ TO THEM
12 AT NIGHT. ONE OF MY FAVORITE THINGS TO DO.

13 AND I HAD THIS SERIES OF BOOKS. IT'S CALLED
14 BERENSTAIN'S BEARS. AND, YOU KNOW, IT'S INTERESTING
15 BECAUSE WE TRY TO TEACH OUR CHILDREN FROM A VERY YOUNG
16 AGE THE IMPORTANCE OF BEING HONEST AND BEING JUST.

17 JAN AND STAN BERENSTAIN, ONE OF THE BOOKS IN
18 THEIR SERIES, IT'S CALLED THE BERENSTAIN BEARS AND THE
19 TRUTH. AND IT KIND OF REMINDS ME OF THIS.

20 IN THE STORY, THERE'S THE TWO KIDS PLAYING
21 SOCCER IN THE HOUSE, AND THEY BREAK THEIR MOM'S
22 FAVORITE LAMPS. AND MOM COMES HOME AND FINDS THE LAMP,
23 AND SHE STARTS ASKING QUESTIONS ABOUT IT.

24 AND THE KIDS COME UP WITH ALL KIND OF
25 DIFFERENT STORIES. SOME OF THEM SOUND PRETTY GOOD,
26 PRETTY CREDIBLE, LOGICAL. THE MOM KEEPS DIGGING AND
27 LOOKING, AND SHE FINDS THE SHARDS. AND THEY'RE IN A
28 BOX, HIDDEN.

1 AND SHE TELLS HER KIDS, WHAT HURTS ME MOST --
2 WHAT HURTS ME MOST IS THAT YOU LIED TO ME. BECAUSE
3 ONCE YOU'VE BROKEN THAT TRUST, ONCE YOU'VE BROKEN THAT
4 TRUST, IT CAN NEVER BE FIXED. THERE WILL ALWAYS BE
5 DOUBT.

6 JAN AND STAN BERENSTAIN SAY IT BETTER THAN I
7 EVER COULD. NO MATTER HOW YOU HOPE, NO MATTER HOW YOU
8 TRY, YOU CAN'T MAKE TRUTH FROM A LIE. AND THAT'S WHERE
9 WE ARE. THAT'S WHERE WE ARE.

10 SO LET'S LOOK AT MS. DUVAL AND HER CONCERNS
11 AND CARE FOR HER BABY. SHE SAYS IN THIS DECLARATION --
12 REMEMBER, MS. SWISS PUT UP A DECLARATION OF RYAN MILLS,
13 SORT OF A SANITIZED CLEANED-UP VERSION -- YOU'LL GET
14 THE ORIGINAL. IT'S IN EXHIBIT 24.

15 IT COMES RIGHT BEFORE MS. DUVAL'S DECLARATION,
16 BATES NUMBER 632 OF EXHIBIT 24. YOU'LL HAVE THEM IN
17 THERE. I WANT YOU TO PAY PARTICULAR THE MARGIN NOTES.
18 I WANT YOU TO PAY ATTENTION TO THE MARGIN NOTES THAT
19 MS. DUVAL WROTE ON MR. MILL'S DECLARATION.

20 AND PAY PARTICULAR ATTENTION TO THE NOTES SHE
21 WROTE IN THE BIG BOLD LETTERS WITH AN EXCLAMATION POINT
22 RIGHT ON THE FRONT COVER.

23 AND THIS IS WHAT SHE SAYS, AT LEAST PARTIALLY
24 IN RESPONSE -- AND YOU'LL HAVE THIS WHEN YOU'RE BACK IN
25 THERE, AND YOU SPEND YOUR TIME AND LOOK AT IT. THIS IS
26 WHAT SHE SAYS ABOUT HER BABY.

27 THE BABY HAS GIVEN MEANING TO MY LIFE BEYOND
28 WHAT I EVER EXPERIENCED. THROUGHOUT THE PREGNANCY,

1 DURING THE INFANCY OF BABY RYAN, AND NOW, RIGHT NOW
2 ALLERGY IS THE CENTER OF MY UNIVERSE.

3 RESPONDENT SEEMS TO BELIEVE NOW THAT THE BEST
4 INTEREST OF OUR BABY IS TO REMOVE HIM, REMOVE ME FROM
5 HIS LIFE, UTILIZING HIS WEALTH AND THE SKILL OF HIS
6 ATTORNEYS.

7 SO LET'S GO BACK AND THINK A LITTLE BIT ABOUT
8 CREDIBILITY AND RELIABILITY OF THE EVIDENCE.

9 AND ONE OF THE FIRST THINGS THAT YOU'RE GOING
10 TO BE ABLE TO DO FOR YOURSELVES WITHOUT US THROWING
11 THINGS UP ON THE SCREEN AND LIMITING YOUR ACCESS TO
12 INFORMATION, DUE LARGELY TO CONSTRAINTS OF TIME, IS
13 YOU'RE GOING TO GET TO GO THROUGH THESE DOCUMENTS AND
14 LOOK AND SEE FOR YOURSELF WHAT THESE PEOPLE ARE
15 SUPPOSED TO DO.

16 AND THEN YOU'RE GOING TO GET TO SEE WHAT THEY
17 DID. AND I'M GOING TO ASK YOU -- MS. SWISS TALKED
18 ABOUT A DETENTION HEARING, A JURISDICTION REPORT, AND
19 THERE'S A DELIVERED SERVICE LOG, THAT'S EXHIBIT
20 NUMBER 82.

21 AND YOU'RE GOING TO WANT TO PAY PARTICULAR
22 ATTENTION TO THE DELIVERED SERVICE LOG ENTRIES THAT
23 START WITHIN TEN DAYS, PLUS OR MINUS, OF NOVEMBER 3RD.
24 AND LOOK IN THERE, AND SEE WHAT YOU DON'T FIND.

25 AND THE REASON IT'S IMPORTANT IS BECAUSE
26 THERE'S BEEN A LOT SAID ABOUT THIS EXIGENT
27 CIRCUMSTANCES. REMEMBER THAT? WE'VE BEEN OVER THAT A
28 THOUSAND TIMES IN THIS TRIAL.

1 DOCUMENTATION IS KEY, DOCUMENT DOCUMENT
2 DOCUMENT. ALWAYS PUT IT IN YOUR CONTACT NOTES. SEE
3 THAT? AND WHAT DOES IT SAY? WERE THERE EXIGENT
4 CIRCUMSTANCES, DESCRIBE IN DETAIL. RIGHT?

5 AND WHAT HAPPENS IF WE DON'T DESCRIBE IN
6 DETAIL IN OUR DELIVERED SERVICE LOGS OR CONTACT NOTES,
7 IF IT ISN'T IN YOUR NOTES, DID IT REALLY HAPPEN?

8 THAT'S THE QUESTION WE HAVE TO ASK OURSELVES
9 WHEN WE'RE WONDERING EXACTLY WHAT SPECIFIC INJURY THE
10 SOCIAL WORKERS WERE TRYING TO AVOID.

11 WHEN WE'RE LOOKING FOR THE SPECIFIC,
12 ARTICULABLE, PARTICULARIZED EVIDENCE TO SHOW THAT THIS
13 BABY WAS GOING TO DIE IF THESE SOCIAL WORKERS DIDN'T
14 SEIZE HIM THAT NIGHT.

15 THESE ARE RULES, THE RULES THEY HAVE TO
16 FOLLOW, THE SAFEGUARDS WE TALKED SO MUCH ABOUT, IN THE
17 BEGINNING. AND I THINK WE SPOKE WITH JUDGE NASH ABOUT
18 THE SAFEGUARDS. WHILE WE'RE ON JUDGE NASH, I REMEMBER
19 HIS TESTIMONY DIFFERENTLY.

20 MAYBE THAT'S PREDICTABLE, BUT ALL THAT
21 TESTIMONY THAT MS. SWISS WAS PUTTING UP ON THE
22 SCREEN -- NOTICE SHE DIDN'T TELL YOU, BY THE WAY, THAT
23 THAT IS A CERTIFIED TRANSCRIPT OF THESE TRIAL
24 PROCEEDINGS.

25 NO, SHE DIDN'T SAY THAT. WHAT SHE SAID, AND
26 SHE WAS VERY CAREFUL WITH HER LANGUAGE, SHE SAID THIS
27 IS MY RECOLLECTION, THIS IS MY RECOLLECTION OF THE
28 TESTIMONY.

1 SO WE HAVE A JURY INSTRUCTION, SORT OF
2 INTERESTING. IT TELLS YOU THAT WHATEVER THE ATTORNEYS
3 SAY THEIR RECOLLECTION IS, THEIR FEELINGS ABOUT THE
4 EVIDENCE, WHATEVER THE ATTORNEYS SAY, IT'S NOT
5 EVIDENCE.

6 SO ALL THIS STUFF THAT SHE JUST THREW UP HERE
7 FOR THE LAST HOUR-AND-A-HALF -- AND I'VE BEEN DIGGING
8 THROUGH MY NOTES, TRYING TO FIGURE OUT, GOD, THERE'S SO
9 MUCH THERE, HOW AM I GOING TO DEAL WITH THAT IN
10 22 MINUTES -- IT'S JUST HER THOUGHTS.

11 ALL OF IT. THE ONLY STUFF THAT'S IN EVIDENCE
12 OR THE ACTUAL DOCUMENTS THAT SHE PUT UP, AND YEAH, SHE
13 PUT UP LITTLE SNIPPETS, LITTLE PIECES OF THEM, YOU'RE
14 GOING TO GET THE WHOLE THING.

15 AND IF AFTER SEVEN WEEKS OF BEING HERE WITH
16 US, AND LOOKING THROUGH ALL OF THIS, AND HEARING THE
17 TESTIMONY, IF YOU THINK YOU NEED TO DOUBLE-CHECK
18 SOMETHING, I URGE YOU TO DO IT.

19 THERE'S ANOTHER WAY YOU CAN DOUBLE CHECK: THE
20 COURT REPORTER. SHE'S HERE FOR YOU. SHE'S HERE FOR
21 US, TOO, AND THE COURT. BUT SHE'S HERE FOR YOU. AND
22 IT'S A VERY, VERY IMPORTANT ROLE.

23 BECAUSE, YOU SEE, IF THERE IS A CONFLICT
24 BETWEEN WHAT WE'RE SAYING HAPPENED AND WHAT MS. SWISS
25 CLAIMS WAS SAID, THERE'S A CONFLICT.

26 AND IF THERE'S ANY DOUBT IN YOUR MIND, SHE
27 WILL FEEL UNAPPRECIATED IF YOU DON'T ASK HER TO READ
28 YOU BACK THAT TESTIMONY AND RESOLVE THE CONFLICT.

1 SHE'S HERE FOR YOU. THAT'S WHAT SHE DOES.

2 SO I'M GOING ASK YOU GUYS TO DO THAT. IF
3 THERE'S ANY ISSUE, YOU DON'T REMEMBER SOMETHING, OR
4 EVEN I SAID SOMETHING YOU DON'T REMEMBER IT COMING OUT
5 THAT WAY, ASK HER. SHE'S HERE TO CLEAR IT UP. SHE'S
6 THE OFFICIAL RECORD.

7 SO LET'S TRY TO MOVE THROUGH SOME OF THIS AS
8 QUICKLY AS WE CAN. I HAVE 11 MINUTES LEFT. I HAVE TO
9 MOVE PRETTY QUICK.

10 MS. SWISS: OBJECTION, YOUR HONOR: POST-ITS
11 ARE NOT APPROPRIATE DISPLAYS.

12 MR. MCMILLAN: IT'S ALL ARGUMENT.

13 THE COURT: YOU DON'T NEED TO SHOW THEM YOUR
14 POST-ITS.

15 MR. MCMILLAN: I CAN TAKE THEM OFF. I'LL JUST
16 SAY THE WORDS. THAT'S FINE.

17 WE'LL START WITH THIS ONE. SHE CAME UP, THE
18 PLAINTIFFS HAVE NO CASE, NO CASE, NOTHING. WE'RE HERE
19 SEVEN WEEKS BECAUSE THEY HAVE NO CASE.

20 WHERE'S MS. MORGAN-NICHOLS, DID SHE COME IN
21 HERE TO TESTIFY? I DON'T RECALL SEEING HER IN HERE.

22 AND I DON'T RECALL SEEING WHO ELSE,
23 MS. CONDON. LYNNE BOWLES CONDON, THE ONE THAT PULLED
24 THE PLUG ON THE CIVIL RIGHTS INVESTIGATION. WHERE IS
25 SHE AT? I DON'T SEE HER EITHER, DID SHE COME IN? I
26 DON'T REMEMBER SEEING HER.

27 MS. HOCHSTEIN. MS. HOCHSTEIN IS THE ONLY HERO
28 IN THIS CASE, AT LEAST ON THE DEFENSE SIDE.

1 MS. HOCHSTEIN, SHE DID A THOROUGH INVESTIGATION OF
2 MS. DUVAL'S COMPLAINT OF DISCRIMINATION.

3 THAT INCLUDED REVIEWING PERTINENT FACTS,
4 INTERVIEWING THE SUBJECTS OF THE INVESTIGATION, AND
5 MS. DUVAL'S WITNESSES.

6 AND BASED ON MS. HOCHSTEIN'S THOROUGH AND
7 COMPLETE INVESTIGATION, SHE CONCLUDED THAT MS. DUVAL'S
8 COMPLAINT REVEALED A VIOLATION OF HER CIVIL RIGHTS ON
9 THE BASIS OF DISABILITY.

10 THIS IS THE LETTER THEY SENT MS. DUVAL. THIS
11 IS THE LETTER. IF IT HAD SAID SOMETHING DIFFERENT LIKE
12 NO DISCRIMINATION, IT WOULD HAVE TRIGGERED MS. DUVAL'S
13 APPELLATE RIGHTS, AND SHE COULD HAVE GONE UP TO THE
14 STATE, GONE TO THE FEDERAL GOVERNMENT.

15 SHE COULD HAVE DONE A LOT OF THINGS TO UNWIND
16 WHO HE WAS GOING ON BACK IN DEPENDENCY COURT WITH THIS
17 COMPLAINT. BUT THEY SAY SHE WAS SENT ANOTHER LETTER.
18 THEY COME IN LATER, YEARS LATER AND SAY GEE WHIZ, WE
19 CAN'T DENY THE LETTER IS OUT THERE. WE SENT IT TO HER.

20 BUT WHAT WE DID BEHIND THE SCENES THAT WE
21 NEVER TOLD ANYBODY ABOUT IS WE WENT IN, AND UNWOUND
22 EVERYTHING THAT WAS DONE FACTUALLY TO SUPPORT THIS
23 LETTER, AND WE HID IT.

24 WE HID IT FROM MS. DUVAL BECAUSE WE KNEW THAT
25 SHE WOULD FIGHT US, SO WE HID IT FROM HER UNTIL THIS
26 CASE. AND SHE TOLD YOU WHEN SHE DISCOVERED THIS
27 UNWINDING OF THEIR THOROUGH AND COMPLETE
28 INVESTIGATION -- IT WAS AT MS. CONDON'S DEPOSITION.

1 AND MS. CONDON, SHE WAS ASKED AT HER
2 DEPOSITION -- AND I'LL TELL YOU RIGHT NOW, THIS IS
3 ACTUALLY WHAT WAS READ TO THE JURY. IT'S A COPY OF THE
4 TRANSCRIPT. OR ACTUALLY READ TO YOU.

5 THIS IS A COPY OF WHAT WAS READ TO YOU DURING
6 TRIAL. IT'S NOT MY BEST ESTIMATION OF WHAT WAS SAID.
7 LET'S READ THE QUESTIONS TOGETHER. SAYS:

8 "THANK YOU. YOU MENTIONED THE LAST
9 TIME WE MET, YOU COULD NOT SEND
10 MS. DUVAL A LETTER ADVISING HER OF THE
11 REDETERMINATION OF HER CLAIMS BECAUSE
12 YOUR COUNTY COUNSEL -- SORRY -- YOUR
13 ATTORNEYS ADVISED YOU NOT TO. CORRECT?
14 ANSWER: I BELIEVE I STATED AT A POINT
15 IN TIME WELL AFTER EVERYTHING HAD
16 TRANSPIRED. YES.

17 QUESTION: WHAT YOU'RE SAYING IS WHEN
18 YOU FIRST LEARNED THAT MS. DUVAL WAS
19 NEVER SENT A LETTER OF REDETERMINATION,
20 YOU DESIRED TO HAVE ONE SENT TO HER BUT
21 YOU COULD NOT DO SO ON THE ADVICE OF
22 COUNSEL. CORRECT?

23 ANSWER: YES."

24 SO THE ATTORNEYS ARE THE ONES HIDING THINGS.
25 THE ATTORNEYS ARE THE ONES DIRECTING THE COUNTY NOT TO
26 ADHERE TO THE RULES THAT PROTECT MS. DUVAL'S RIGHTS.
27 THE RULES THAT PROTECT EVERY DISABLED PERSON'S RIGHTS.
28 IT'S THE ATTORNEYS THAT ARE DRIVING THAT DECISION. AND

1 IT IS A CONSCIOUS DECISION.

2 UP-FRONT ASSESSMENT, LET'S TALK ABOUT THAT A
3 LITTLE BIT. I DON'T RECALL EXACTLY WHICH EXHIBIT -- I
4 THINK EXHIBIT 24 -- THEY SAID IT'S OKAY, IT'S OKAY,
5 IT'S OKAY TO ATTACH THE UP-FRONT ASSESSMENT TO THE
6 JURISDICTION REPORT. IT'S NOT A BIG DEAL.

7 WELL, HERE IS EXHIBIT 328. THAT IS THE
8 OFFICIAL POLICY REGARDING THE MAKING OF JURISDICTION
9 DISPOSITION REPORTS. AND WHAT DOES IT SAY RIGHT THERE,
10 BIG BOLD LETTERS, "DO NOT MAKE REFERENCE TO OR ATTACH
11 THE UP-FRONT ASSESSMENT."

12 NOW, YOU WOULD THINK SINCE IT'S IN BOLD, AND
13 IT'S THE OFFICIAL POLICY, SAYING IT ONCE THERE WOULD BE
14 ENOUGH. BUT THE COUNTY, AND I ATTRIBUTE THIS MAINLY TO
15 GUY TRIMARCHI, HE WAS THE POLICY MANAGER FOR 13 YEARS,
16 AND HE KNOWS HIS STUFF.

17 BUT HE PUT THIS HERE, AND LO AND BEHOLD, WE
18 SEE IT AGAIN. LET ME TELL YOU THE BATES NUMBER ON
19 THAT, 004586. THEN HE SAYS IT AGAIN, THOUGH IN THE
20 SAME POLICY.

21 AND THIS IS ON PAGE NUMBER 4588, SAYS: "DO
22 NOT ATTACH ANY SDM TOOLS OR UP-FRONT ASSESSMENT WHEN
23 SUBMITTING DOCUMENTS TO THE COURT." SO WE HAVE IT IN
24 THERE TWICE.

25 YOU'D THINK TWICE WAS ENOUGH FOR HIM TO REALLY
26 FEEL HE WAS GETTING THE MESSAGE SUNK IN SO PEOPLE LIKE
27 CANDIS NELSON WOULD KNOW, DON'T ATTACH THE ASSESSMENT.

28 TWICE WASN'T ENOUGH. SAME POLICY, 4589, BIG

1 BOLD LETTERS, DO NOT MAKE REFERENCE TO OR ATTACH THE
2 UP-FRONT ASSESSMENT. THAT'S THREE TIMES.

3 THREE TIMES A CHARM, I'VE HEARD THAT. BUT NO
4 SUCH LUCK HERE. HE GOES FOR A FOURTH TIME. SAME
5 POLICY: DO NOT MAKE REFERENCE TO OR ATTACH THE
6 UP-FRONT ASSESSMENT.

7 SO I'M ASKING YOU. WHEN JOI RUSSEL, A PAID
8 EXPERT WHO USED TO WORK WITH THE COUNTY OF LOS ANGELES
9 AS A REGIONAL ADMINISTRATOR, WHEN SHE CAME IN HERE AND
10 TESTIFIED THAT, OH, IT'S OKAY, IT'S OKAY TO ATTACH THE
11 UP-FRONT ASSESSMENT BECAUSE THIS WAS REALLY COMPLEX.

12 THERE IS NO EXCEPTION. I URGE YOU TO GO
13 THROUGH THIS POLICY. THERE IS NO EXCEPTION IN HERE
14 THAT SAYS OH, WHEN IT'S COMPLEX, YOU CAN GO AHEAD AND
15 THROW ANYTHING YOU WANT IN THAT REPORT, INCLUDING THE
16 UP-FRONT ASSESSMENT.

17 THAT IS NOT THE CASE. BUZZ THROUGH THAT.

18 YOUR BABY'S FIRST SOLID FOODS. REMEMBER THE
19 ALLEGATIONS HERE WHERE MS. DUVAL WILLFULLY AND
20 INTENTIONALLY REFUSED TO PROPERLY FEED HER BABY? WHAT
21 WAS THE TESTIMONY THAT YOU RECALL?

22 YOU RECALL DR. YIM COMING IN HERE AND
23 TESTIFYING ABOUT WHAT HE COUNSELED MOM, ABOUT WHEN SHE
24 SHOULD FEED THE BABY, WHAT SHE SHOULD FEED THE BABY?
25 IT'S IN HER RECORDS.

26 YOU'LL HAVE THEM ALL IN THERE WITH YOU.
27 ANOTHER THING THAT YOU'LL HAVE IN THERE WITH YOU, IS
28 YOU'LL BE ABLE TO TELL WHEN IT WAS EXACTLY, ACTUALLY,

1 THAT THE BABY'S WEIGHT STARTED TO DROP OFF.

2 NOW, THERE'S BEEN A LOT OF TESTIMONY, MOST OUT
3 OF THE COUNTY'S WITNESSES, THAT OH, IT WAS SOMETHING TO
4 DO WITH MR. MILLS. LOOK AT THESE MEDICAL RECORDS.

5 AND YOU'LL SEE THE BABY'S WEIGHT GAIN
6 TRAJECTORY STARTS TO CROSS ISOBARS IN A NEGATIVE
7 DIRECTION AT THREE MONTHS, CROSSES THE FIRST ISOBAR.
8 THE NEXT ONE IS AT FOUR MONTHS.

9 SO ALL THE COMPLAINING ABOUT HOW SOMEHOW THE
10 RELATIONSHIP BETWEEN MOM AND DAD BACK IN MARCH IMPACTED
11 THE BABY'S ABILITY TO GAIN WEIGHT, THAT'S HOKUM.

12 LOOK AT THE MEDICAL RECORDS, MEDICAL RECORDS
13 BY DISINTERESTED THIRD PARTY DOCTORS, WHO ARE CARING
14 FOR A PATIENT. THOSE DON'T LIE.

15 AND WHILE WE'RE ON THAT SUBJECT, IF YOU LOOK
16 AT -- HEARD THIS COUPLE TIMES FROM MS. ROGERS AND
17 MS. PENDER. THE CATC CLINIC TOLD US THAT THE BABY'S
18 FAILURE TO THRIVE WAS DUE TO ENVIRONMENTAL CAUSES.

19 FIRST OF ALL, WE KNOW THAT'S NOT TRUE. YOU
20 HAVE THE RECORDS. YOU CAN LOOK AT THEM. IT'S IN THE
21 DELIVERED SERVICE LOG ENTRY NUMBER 1, AND THEN ALSO THE
22 CATC CLINIC RECORDS.

23 YOU'LL SEE IT THERE. SO WE KNOW FIRST OF ALL
24 THAT'S NOT TRUE. THAT WAS NEVER SOMETHING THAT WAS
25 STATED BY DR. EVANS.

26 WHAT WE KNOW ABOUT THE FAILURE TO THRIVE
27 CLINIC RECORDS, AND YOU'LL GET TO SEE THIS, IT'S REALLY
28 WEIRD, IS THERE'S THIS TRAILING-LIKE ENVIRONMENTAL

1 PARENTHESIS. IT GOES DOWN THE SIDE OF THE PAGE.

2 AND I DON'T KNOW IF YOU RECALL, DR. ACHAR
3 TESTIFIED ABOUT WHAT HE TEACHES HIS MEDICAL STUDENTS
4 WITH REGARD TO DOCUMENTATION AND CHANGES TO
5 DOCUMENTATION.

6 WHERE THERE'S A CHANGE, IT'S SUPPOSED TO BE
7 INITIALED, DATED, WITH A DESCRIPTION OF WHY THE CHANGE.
8 AND YOU DON'T JUST INTERLINEATE THINGS.

9 SO WHEN YOU LOOK AT THAT DOCUMENT, ASK
10 YOURSELF WHEN EXACTLY WAS IT THAT THESE EXTRA LITTLE
11 THINGS GOT PUT ON THAT DOCUMENT BECAUSE THAT'S AN
12 ISSUE. BUT IT'S NOT THAT BIG OF AN ISSUE, AND I'LL
13 TELL YOU WHY.

14 DR. BERKOWITZ, REMEMBER WHEN SHE TESTIFIED,
15 SHE WAS SPECIFICALLY ASKED -- AND I DON'T REMEMBER IF
16 IT WAS IN THE DEPOSITION READ THAT WAS PROVIDED TO YOU,
17 I THINK MY MOM READ THAT -- OR WHETHER WHEN IT WAS
18 LIVE.

19 BUT WHAT SHE SAID, WHAT SHE SAID WHEN SHE WAS
20 ASKED ABOUT THIS ENVIRONMENTAL OR FAILURE TO THRIVE DUE
21 TO ENVIRONMENTAL CAUSES, SHE STOPPED AND SAID NO, IT
22 WASN'T DUE TO ENVIRONMENTAL CAUSES.

23 THE ENVIRONMENT MAY HAVE BEEN ONE COMPONENT.
24 AND WHEN SHE TALKED ABOUT THE ENVIRONMENT, SHE TALKED
25 ABOUT THE PSYCHO-SOCIAL STRESSORS IN THE PARENTS' LIFE,
26 THE MOTHER AND THE FATHER.

27 AND WHEN WE'RE TALKING ABOUT PSYCHO-SOCIAL
28 STRESSORS, THAT'S A TWO-WAY STREET. THAT'S NOT -- IT

1 TAKES TWO TO TANGO. RIGHT? TAKES TWO PEOPLE TO HAVE
2 THOSE KIND OF STRESSORS.

3 SO WHEN THEY COME OUT AND SAY, OH, IT WAS DUE
4 TO ENVIRONMENTAL CAUSES, AND IT WAS ALL MOM'S FAULT
5 BECAUSE SHE HAD THE CHILD 88 PERCENT OF THE TIME,
6 DR. BERKOWITZ TOLD US THAT THAT IS NOT THE CASE.

7 AND, AGAIN, IF YOU REMEMBER IT DIFFERENTLY,
8 SHE'S HERE FOR YOU. SHE'LL PROBABLY HIT ME WHEN THIS
9 IS ALL OVER, BUT SHE'S HERE FOR YOU, AND SHE CAN THE
10 RESOLVE THE CONFLICT. SHE'S THE OFFICIAL RECORD.

11 ALL RIGHT, I HAVE ABOUT 30 SECONDS LEFT. WITH
12 THAT WE'LL TALK ABOUT DAMAGES REALLY QUICK. IT'S BEEN
13 A DIFFICULT QUESTION FOR ME. AND WE WENT OUT OVER THE
14 BREAK, AND WE LOOKED UP FOOTBALL.

15 FOOTBALL PLAYERS, AVERAGE FOOTBALL PLAYERS
16 STARTING TWO POINT -- 2.3, \$2.6 MILLION A YEAR, FOR HOW
17 MANY GAMES A YEAR? THE TOP PAID FOOTBALL PLAYER WAS
18 24-SOME-ODD MILLION DOLLARS A YEAR. FOR FOOTBALL.

19 A PAINTING AT THE GETTY, REMEMBER THAT, WAY
20 BACK IN VOIR DIRE? \$120 MILLION. THAT SOUNDS
21 PRICELESS, BUT WE KNOW THERE'S A PRICE. AND WE THINK
22 THAT WHAT WAS TAKEN HERE FROM MS. DUVAL, THAT'S
23 PRICELESS.

24 BUT YOU HAVE A TOUGH JOB. YOU HAVE TO -- YOU
25 HAVE TO FIGURE OUT WHAT THE VALUE IS. YOU HAVE TO
26 PLACE A VALUE ON THAT.

27 I THINK WITH THAT, I'M 30 SECONDS OVER. THANK
28 YOU, YOUR HONOR.

1 THE COURT: THANK YOU. SO, LADIES AND
2 GENTLEMEN, WHEN YOU GO TO THE JURY ROOM, THE FIRST
3 THING YOU DO IS TO CHOOSE A PRESIDING JUROR.

4 AND THE PRESIDING JUROR SHOULD SEE TO IT THAT
5 YOUR DISCUSSIONS ARE ORDERLY AND THAT EVERYONE HAS A
6 FAIR TO SAY CHANCE TO BE HEARD.

7 IT IS YOUR DUTY TO TALK WITH ONE ANOTHER IN
8 THE JURY ROOM AND CONSIDER THE VIEWS OF ALL THE JURORS.
9 EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY
10 AFTER YOU HAVE CONSIDERED THE EVIDENCE WITH THE OTHER
11 MEMBERS OF THE JURY.

12 FEEL FREE TO CHANGE YOUR MIND IF YOU'RE
13 CONVINCED THAT YOUR POSITION SHOULD BE DIFFERENT. YOU
14 SHOULD ALL TRY TO AGREE, BUT DO NOT GIVE UP YOUR HONEST
15 BELIEFS JUST BECAUSE THE OTHERS THINK DIFFERENTLY.

16 ALSO, PLEASE DO NOT STATE YOUR OPINIONS TOO
17 STRONGLY AT THE BEGINNING OF YOUR DELIBERATIONS OR
18 IMMEDIATELY PLAN ON HOW YOU ARE GOING TO VOTE. KEEP AN
19 OPEN MIND THAT YOUR FELLOW JURORS CAN EASILY SHARE
20 IDEAS ABOUT THE CASE.

21 YOU SHOULD USE YOUR OWN COMMON SENSE, BUT DO
22 NOT USE OR CONSIDER ANY SPECIAL TRAINING OR UNIQUE
23 PERSONAL EXPERIENCE THAT ANY OF YOU HAVE IN MATTERS
24 INVOLVED IN THIS CASE. YOUR TRAINING OR EXPERIENCE IS
25 NOT A PART OF THE EVIDENCE RECEIVED IN THE CASE.

26 SOMETIMES JURORS DISAGREE OR HAVE QUESTIONS
27 ABOUT THE EVIDENCE ABOUT WHAT THE WITNESSES SAID IN
28 THEIR TESTIMONY. IF THAT HAPPENS, YOU MAY ASK TO HAVE

1 TESTIMONY READ BACK TO YOU, OR ASK TO SEE ANY EXHIBITS
2 ADMITTED INTO EVIDENCE THAT HAVE ALREADY BEEN PROVIDED
3 TO YOU.

4 ALSO, JURORS MAY NEED FURTHER EXPLANATION
5 ABOUT THE LAWS THAT APPLY TO THE CASE. IF THAT HAPPENS
6 DURING YOUR DISCUSSIONS, WRITE DOWN YOUR QUESTIONS AND
7 GIVE THEM TO THE COURT ATTENDANT.

8 I'LL TALK TO THE ATTORNEYS BEFORE I ANSWER, SO
9 IT MAY TAKE SOME TIME, AND YOU SHOULD CONTINUE YOUR
10 DELIBERATIONS WHILE YOU WAIT FOR MY ANSWER. I'LL DO MY
11 BEST TO ANSWER THE QUESTIONS WHEN YOU WRITE ME A NOTE.

12 BY THE WAY, DO NOT TELL YOU HOW YOU VOTED ON
13 AN ISSUE UNTIL AND UNLESS I ASK FOR THIS INFORMATION IN
14 OPEN COURT.

15 AT LEAST NINE JURORS MUST AGREE ON A VERDICT.
16 WHEN YOU'VE FINISHED FILLING OUT THE FORM, YOUR
17 PRESIDING JUROR MUST WRITE THE DATE AND SIGN IT AT THE
18 BOTTOM, AND NOTIFY THE COURT ATTENDANT THAT YOU'RE
19 READY TO PRESENT YOUR VERDICT IN THE COURTROOM.

20 YOUR DECISION MUST BE BASED ON THE PERSONAL
21 EVALUATION OF THE EVIDENCE PRESENTED IN THE CASE. EACH
22 OF YOU MAY BE ASKED IN OPEN COURT HOW YOU VOTED ON EACH
23 QUESTION, AND I'M GOING TO TALK TO YOU ABOUT THAT IN A
24 MOMENT.

25 WHILE I KNOW YOU WOULD NOT DO THIS, I AM
26 REQUIRED TO ADVISE YOU THAT YOU MUST NOT BASE YOUR
27 DECISIONS ON CHANCE, SUCH AS A FLIP OF A COIN.

28 AS AN EXAMPLE, IF YOU DECIDE TO AWARD DAMAGES,

1 YOU MAY NOT AGREE IN ADVANCE SIMPLY TO ADD UP THE
2 AMOUNT EACH JUROR THINKS IS RIGHT, AND THEN WITHOUT
3 FURTHER DELIBERATION, MAKE THE AVERAGE YOUR VERDICT.

4 DURING YOUR DELIBERATIONS, YOU MAY TAKE
5 BREAKS, BUT DO NOT DISCUSS THIS CASE WITH ANYONE,
6 INCLUDING EACH OTHER, UNTIL ALL OF YOU ARE BACK IN THE
7 JURY ROOM.

8 I'VE NOT INTENDED BY ANYTHING I'VE SAID OR
9 DONE, BY ANY QUESTIONING THAT I'VE ASKED OR ANY RULINGS
10 I'VE MADE, TO SUGGEST HOW YOU SHOULD DECIDE ANY
11 QUESTION OF FACT, OR THAT I BELIEVE OR DISBELIEVE ANY
12 WITNESS.

13 IF ANYTHING I HAVE DONE OR SAID SEEMS TO SO
14 INDICATE, YOU MUST DISREGARD IT AND FORM YOUR OWN
15 OPINION.

16 THE COUNTY OF LOS ANGELES, AS YOU KNOW, IS A
17 PARTY IN THIS LAWSUIT. THE COUNTY OF LOS ANGELES IS
18 ENTITLED TO THE SAME FAIR AND IMPARTIAL TREATMENT THAT
19 YOU WOULD GIVE TO AN INDIVIDUAL.

20 YOU MUST DECIDE THIS CASE WITH THE SAME
21 FAIRNESS AS IF YOU WERE DECIDING THE CASE BETWEEN
22 INDIVIDUALS. INSTRUCTIONS -- WHEN YOU USE WORDS LIKE
23 PERSON, HE, OR SHE, INSTRUCTIONS REFER TO A PARTY.

24 THOSE INSTRUCTIONS ALSO APPLY TO THE COUNTY OF
25 LOS ANGELES. MUZEYYAN BALABAN, ELBA PINEDO, AND TIKA
26 SMITH ARE NO LONGER PARTIES TO THIS CASE.

27 BUT THE ISSUES REMAINING FOR YOU TO RESOLVE BY
28 YOUR DELIBERATIONS ARE AS SET FORTH IN THE INSTRUCTIONS

1 AND ON THE VERDICT FORMS.

2 DURING THE TRIAL, SOME TESTIMONY WAS GIVEN IN
3 SPANISH. THAT OCCURRED IN ONE OF THE VIDEO DEPOSITIONS
4 THAT WAS PLAYED TO YOU. AN INTERPRETER PROVIDED A
5 TRANSLATION FOR YOU AT THE TIME THAT THE TESTIMONY WAS
6 GIVEN IN THE DEPOSITION.

7 YOU MUST RELY SOLELY ON THE TRANSLATION
8 PROVIDED BY THE INTERPRETER. IF YOU UNDERSTOOD THE
9 LANGUAGE SPOKEN BY THE WITNESS, DO NOT RETRANSLATE ANY
10 TESTIMONY FOR OTHER JURORS.

11 IF YOU'VE TAKEN NOTES DURING THE TRIAL, YOU
12 MAY TAKE YOUR NOTEBOOKS WITH YOU INTO THE JURY ROOM.
13 YOU MAY USE YOUR NOTES ONLY TO HELP YOU REMEMBER WHAT
14 HAPPENED DURING THE TRIAL.

15 YOUR INDEPENDENT RECOLLECTION OF THE EVIDENCE
16 SHOULD GOVERN YOUR VERDICT. YOU SHOULD ALSO NOT ALLOW
17 YOURSELVES TO BE INFLUENCED BY THE NOTES OF OTHER
18 JURORS IF THOSE NOTES DIFFER FROM WHAT YOU REMEMBER.

19 AT THE END OF THE TRIAL, AT THE TIME YOU ARE
20 DISCHARGED FROM SERVICE IN THIS CASE, YOUR NOTES WILL
21 BE COLLECTED AND DESTROYED, OR YOU WILL HAVE THE OPTION
22 OF TAKING THEM WITH YOU.

23 IF YOU LEAVE THEM, THEY WILL BE COLLECTED AND
24 DESTROYED. THAT WILL OCCUR WITHOUT ANYONE, INCLUDING
25 THE COURT ATTENDANT OR ANYONE ELSE, EVER LOOKING AT
26 YOUR NOTES.

27 THIS WAS MENTIONED IN CLOSING ARGUMENT. YOU
28 MAY REQUEST IN WRITING THAT TRIAL TESTIMONY BE READ TO

1 YOU. I'LL HAVE THE COURT REPORTER READ THE TESTIMONY
2 TO YOU. YOU MAY REQUEST THAT ALL OR PART OF A
3 WITNESS'S TESTIMONY BE READ. ANY REQUEST SHOULD BE AS
4 SPECIFIC AS POSSIBLE.

5 IT WILL BE HELPFUL IF YOU CAN STATE THE NAME
6 OF THE WITNESS, THE SUBJECT OF THE TESTIMONY YOU WOULD
7 LIKE TO HAVE READ, AND THE NAME OF THE ATTORNEY OR
8 ATTORNEYS ASKING THE QUESTION WHEN THE TESTIMONY WAS
9 GIVEN.

10 WHEN TESTIMONY IS BEING READ TO YOU, WHICH
11 WOULD OCCUR IN THE JURY ROOM, THE COURT REPORTER IS NOT
12 PERMITTED TO TALK WITH YOU WHEN SHE IS READING THE
13 TESTIMONY YOU'VE REQUESTED. WHILE THE COURT REPORTER
14 IS READING THE TESTIMONY YOU MAY NOT DELIBERATE OR
15 DISCUSS THE CASE.

16 ALSO, YOU MUST NOT ASK THE COURT REPORTER TO
17 READ TESTIMONY THAT WAS NOT SPECIFICALLY MENTIONED IN A
18 WRITTEN REQUEST. IF YOUR NOTES DIFFER FROM THE
19 TESTIMONY, YOU MUST ACCEPT THE COURT REPORTER'S RECORD
20 AS ACCURATE. IN THIS REGARD, AS I MENTIONED, YOU
21 CANNOT ASK FOR ADDITIONAL TESTIMONY.

22 THE REASON FOR THAT IS -- THE REASON WE HAVE
23 YOU MAKE A WRITTEN REQUEST IS SO THAT I CAN IDENTIFY
24 FROM THE RECORD OF THE COURT WHAT TESTIMONY SHOULD BE
25 REREAD IN ANSWERING IN RESPONSE THE QUESTION YOU'VE
26 ASKED. AND THE COURT SOLELY IS THE PERSON TO DETERMINE
27 WHAT EVIDENCE CAN BE READ.

28 I'M GOING TO GIVE YOU TWO VERDICT FORMS, AND

1 EACH OF THEM WILL HAVE QUESTIONS YOU MUST ANSWER. I'VE
2 ALREADY INSTRUCTED YOU ON THE LAW YOU ARE TO USE IN
3 ANSWERING THESE QUESTIONS.

4 YOU MUST FOLLOW MY INSTRUCTIONS AND THE FORMS
5 CAREFULLY. YOU MUST CONSIDER EACH QUESTION SEPARATELY.
6 ALTHOUGH YOU MAY DISCUSS THE EVIDENCE AND THE ISSUES TO
7 BE DECIDED IN ANY ORDER, YOU MUST ANSWER THE QUESTIONS
8 ON THE VERDICT FORMS IN THE ORDER THEY APPEAR, AND
9 BEGINNING ON VERDICT FORM ONE FIRST. AFTER YOU ANSWER
10 THE QUESTION, THE FORM TELLS YOU WHAT TO DO NEXT.

11 AS I'VE STATED, AT LEAST NINE OF YOU MUST
12 AGREE ON AN ANSWER BEFORE ALL OF YOU CAN MOVE ON TO THE
13 NEXT QUESTION. HOWEVER, THE SAME NINE OR MORE PEOPLE
14 DO NOT HAVE TO AGREE ON EACH ANSWER. SO I WANT TO MAKE
15 SURE YOU ALL UNDERSTAND THAT.

16 IT'S UP TO YOU TO DECIDE IN WHAT ORDER YOU
17 WANT TO DECIDE ON THE VERDICT FORMS, BUT WHEN IT COMES
18 TO ANSWERING THE QUESTIONS THEMSELVES, YOU MUST FOLLOW
19 THEM IN THE ORDER THEY ARE ON THE VERDICT FORM. SO AS
20 AN EXAMPLE, VERDICT FORM ONE HAS A TOTAL OF 18
21 QUESTIONS.

22 AND YOU MAY NOT ANSWER ALL OF THE THEM, OR YOU
23 MAY ANSWER ALL OF THEM. IT WILL DEPEND ON YOUR ANSWERS
24 TO THE QUESTIONS AS YOU PROCEED. VERDICT FORM TWO,
25 WHICH MUST BE ANSWERED ONLY AFTER YOU'VE COMPLETED THE
26 QUESTIONS ON VERDICT FORM ONE, HAS 11 ADDITIONAL
27 QUESTIONS. AGAIN, YOU MAY OR MAY NOT ANSWER ALL OF
28 THEM.

1 NOW, THE REASON FOR ANSWERING THE QUESTIONS IN
2 THE ORDER WHICH THEY ARE IN THE VERDICT FORMS AND IN
3 THE NUMBERS OF THE VERDICT FORMS IS THAT AFTER EACH
4 QUESTION, I GIVE VERY SPECIFIC INSTRUCTIONS TO YOU AS
5 TO WHAT TO DO NEXT.

6 FOR THOSE OF YOU WHO HAVE BEEN A JUROR BEFORE,
7 YOU'RE FAMILIAR WITH WHAT I'M TALKING ABOUT. FOR THOSE
8 OF YOU WHO HAVEN'T DONE IT BEFORE, WE ARE VERY
9 SPECIFIC. AND AFTER EACH QUESTION, WE WILL GIVE YOU
10 DIRECTIONS AS TO WHAT TO DO NEXT, DEPENDING ON WHAT
11 YOUR ANSWER HAS BEEN TO THAT QUESTION.

12 SO THAT'S WHY IT'S IMPORTANT TO FOLLOW THE
13 QUESTIONS IN THE ORDER IN WHICH THEY ARE ON THE VERDICT
14 FORM.

15 NOW, ALL OF 12 OF YOU MUST DELIBERATE ON AND
16 ANSWER EACH QUESTION REGARDLESS OF HOW YOU VOTED ON ANY
17 EARLIER QUESTION. UNLESS THE VERDICT FORM TELLS ALL 12
18 JURORS TO STOP AND ANSWER NO FURTHER QUESTIONS, EACH
19 JUROR MUST DELIBERATE AND VOTE ON ALL THE REMAINING
20 QUESTIONS.

21 SO AGAIN, I WANT TO STOP THERE AND MAKE SURE
22 THIS IS CLEAR. AFTER EACH QUESTION, A TYPICAL
23 QUESTION, WON'T BE AFTER EACH ONE, BUT A TYPICAL
24 QUESTION WILL BE, IF YOU'VE ANSWERED YES TO THIS
25 QUESTION, THEN THEY'LL TELL YOU WHAT QUESTION TO ANSWER
26 NEXT.

27 NOW, IT MAY BE, WHEN YOU ANSWER -- WE'LL CALL
28 IT THE FIRST QUESTION -- AND YOU DIDN'T ANSWER IT YES,

1 AND YOU'RE TOLD IF YOU ANSWERED YES, THEN ANSWER
2 QUESTION NUMBER SO AND SO. IT WILL TELL YOU, YOU MUST
3 STILL DELIBERATE ON THE NEXT QUESTION THAT YOU'RE TOLD
4 TO ADDRESS.

5 AND I HOPE THAT'S CLEAR, BECAUSE NINE OR MORE
6 HAVE TO AGREE TO THE ANSWER TO EACH QUESTION. BUT AS I
7 STATED, IT DOES NOT HAVE TO BE THE SAME NINE.

8 AND SO EVERYBODY, UNTIL YOU'RE TOLD EITHER
9 YOU'VE REACHED THE END OF THE VERDICT FORM -- AND AT
10 SOME POINT IN TIME, YOU'LL BE TOLD TO HAVE THE VERDICT
11 FORM SIGNED BY YOUR PRESIDING JUROR AND DATED AND
12 RETURN IT TO THE COURT ATTENDANT.

13 UNTIL YOU REACH THAT POINT IN ANY VERDICT
14 FORM, THEN ALL OF YOU MUST ANSWER EACH QUESTION
15 REGARDLESS OF WHAT ANSWERS YOU MAY HAVE GIVEN
16 PREVIOUSLY.

17 DOES EVERYBODY UNDERSTAND THAT? I'VE HAD THIS
18 COME UP. ONE TIME WE'RE POLLING A JURY, AND ONE OF THE
19 JURORS THAT I SAID, YOU KNOW, DID YOU ANSWER THAT
20 QUESTION? NO, THAT WASN'T MY ANSWER TO THAT QUESTION.
21 I THOUGHT EVERYONE SAID YOU'VE ANSWERED THESE
22 QUESTIONS. WELL I ANSWERED, WHATEVER. I ANSWERED NO
23 TO THE FIRST QUESTION, I DIDN'T ANSWER ANY OF THE
24 OTHERS.

25 WELL, THAT'S NOT THE WAY IT WORKS. ALL 12
26 JURORS HAVE TO DELIBERATE ON EACH QUESTION AND ANSWER
27 EACH QUESTION UNTIL THE DIRECTIONS IN THE VERDICT FORM
28 TELL YOU IT'S FINISHED.

1 WHEN YOU ARE FINISHED FILLING OUT THE FORMS,
2 YOUR PRESIDING JUROR MUST WRITE THE DATE AND SIGN IT AT
3 THE BOTTOM OF THE LAST PAGE OF EACH OF THE VERDICT
4 FORMS AND THEN NOTIFY THE COURT ATTENDANT YOU'RE READY
5 TO PRESENT YOUR VERDICT IN THE COURTROOM.

6 NOW, I MENTIONED POLLING THE JURY TO YOU.
7 AFTER YOUR VERDICT IS READ IN OPEN COURT, YOU MAY BE
8 ASKED INDIVIDUALLY TO INDICATE WHETHER THE VERDICT
9 EXPRESSES YOUR PERSONAL VOTE.

10 THIS IS REFERRED TO AS POLLING THE JURY, AND
11 IS DONE TO ENSURE THAT AT LEAST NINE JURORS HAVE AGREED
12 TO EACH DECISION.

13 AS I TOLD YOU, THE VERDICT FORMS THAT YOU WILL
14 RECEIVE ASK YOU TO ANSWER SEVERAL QUESTIONS, AND YOU
15 MUST VOTE SEPARATELY ON EACH QUESTION. AND ALTHOUGH
16 NINE OR MORE JURORS MUST AGREE ON EACH ANSWER, IT DOES
17 NOT HAVE TO BE THE SAME NINE FOR EACH ANSWER.

18 THEREFORE, IT IS IMPORTANT FOR EACH OF YOU TO
19 REMEMBER HOW YOU VOTED ON EACH QUESTION SO THAT IF THE
20 JURY IS POLLED AFTER WE RECEIVE YOUR VERDICT, EACH OF
21 YOU WILL BE ABLE TO ANSWER ACTUALLY HOW YOU VOTED.

22 EACH OF YOU WILL BE PROVIDED A DRAFT COPY OF
23 THE VERDICT FORMS FOR YOUR USE IN KEEPING TRACK OF YOUR
24 VOTES. SO WE DON'T ASK YOU TO REMEMBER INDEPENDENTLY.

25 EACH OF YOU WILL HAVE A SET OF THESE TWO
26 VERDICT FORMS, SO YOU'LL BE ABLE TO GO ALONG AND MARK
27 YOUR OWN ANSWER TO EACH OF THE QUESTIONS.

28 AND IF WE POLL THE JURY, WHICH IS COMMONLY

1 DONE, WE'LL EXPLAIN TO YOU A LITTLE BIT MORE THE
2 QUESTION YOU'LL BE ASKED AND HOW YOU MUST RESPOND TO
3 THAT QUESTION, BUT JUST REMEMBER YOU NEED TO KEEP TRACK
4 OF HOW YOU VOTED ON EACH QUESTION THAT WAS ANSWERED IN
5 THE VERDICT FORM.

6 NOW, DURING THE TRIAL, MATERIALS HAVE BEEN
7 SHOWN TO YOU TO HELP EXPLAIN TESTIMONY OR OTHER
8 EVIDENCE IN THE CASE. SOME OF THOSE MATERIALS HAVE
9 BEEN ADMITTED INTO EVIDENCE, AND YOU'LL BE ABLE TO
10 REVIEW THEM DURING YOUR DELIBERATIONS.

11 OTHER MATERIALS HAVE ALSO BEEN SHOWN TO YOU
12 DURING THE TRIAL, BUT THEY HAVE NOT BE ADMITTED INTO
13 EVIDENCE. YOU WILL, THEREFORE, NOT BE ABLE TO REVIEW
14 THEM DURING YOUR DELIBERATIONS, BECAUSE THEY ARE NOT
15 THEMSELVES EVIDENCE OR PROOF OF ANY FACTS.

16 YOU MAY, HOWEVER, CONSIDER THE TESTIMONY GIVEN
17 IN CONNECTION WITH THOSE MATERIALS.

18 NOW, AS TO OUR ONE REMAINING ALTERNATE JUROR,
19 THE JURY WILL SOON BEGIN DELIBERATING, AND YOU ARE
20 STILL AN ALTERNATE JUROR AND ARE BOUND MY EARLIER
21 INSTRUCTIONS ABOUT YOUR CONDUCT.

22 UNTIL THE JURY IS DISCHARGED, DO NOT TALK
23 ABOUT THE CASE, ANY OF THE PEOPLE, OR ANY SUBJECT
24 INVOLVED IN IT WITH ANYONE, NOT EVEN YOUR FAMILY OR
25 FRIENDS, AND NOT EVEN WITH THE OTHER JURORS.

26 DO NOT HAVE ANY CONTACT WITH THE DELIBERATING
27 JURORS, AND ALSO DO NOT DECIDE HOW YOU WOULD VOTE IF
28 YOU WERE DELIBERATING. DO NOT FORM OR EXPRESS ANY

1 OPINION ABOUT THE ISSUES IN THIS CASE UNLESS YOU ARE
2 SUBSTITUTED FOR ONE OF THE DELIBERATING JURORS.

3 AND I'LL TELL YOU, IT GETS A LITTLE TEDIOUS
4 FOR YOU. YOU'RE GOING TO BE SITTING THIS OUT IN THE
5 HALLWAY, SO I'D SUGGEST, UP TO YOU, I'D BRING SOMETHING
6 TO WORK WITH, LAPTOP, SMART PHONE, OR ANYTHING YOU WANT
7 TO READ.

8 PLEASE, REMEMBER THAT INSTRUCTION. YOU HAVE
9 NO COMMUNICATION WITH ANYBODY UNLESS AND UNTIL WE CALL
10 YOU IN AND SUBSTITUTE YOU IN AS ONE OF THE REGULAR
11 JURORS DELIBERATING IN THE CASE.

12 AT THIS POINT I'M GOING TO ASK THE CLERK TO
13 SWEAR THE COURT ATTENDANT, PLEASE.

14 (COURT ATTENDANT SWORN.)

15 THE COURT: WELL, DEANNA'S COMING OVER TO
16 COLLECT ALL OF YOU. LET ME JUST MENTION THAT WE EXPECT
17 DELIBERATIONS TO OCCUR DURING THE USUAL COURT HOURS
18 THAT WE EXPECT THE JURORS TO BE HERE.

19 BEGINNING AT APPROXIMATELY 9:00, WE'LL TAKE A
20 BREAK, LEAVE IT UP TO YOU WHEN TO TAKE A BREAK. ALSO,
21 WE'LL TAKE THE NOON BREAK, AND THEN YOU'LL DELIBERATE
22 UNTIL APPROXIMATELY 4:30 IN THE AFTERNOON.

23 WE DO GIVE YOU SOME LATITUDE IN SETTING YOUR
24 OWN HOURS, WHICH YOU WILL DO IN CONJUNCTION WITH OUR
25 COURT ATTENDANT. ANY VARIANCE FROM THE USUAL COURT
26 HOURS FOR OUR JURORS, YOU'LL HAVE TO HAVE HER APPROVAL
27 FIRST.

28 (JURY EXCUSED)

1 THE COURT: WE'RE ON THE RECORD. COUNSEL ARE
2 PRESENT. AND ALL JURORS HAVE LEFT THE COURTROOM. I
3 HAVE SEVERAL THINGS TO COVER WITH YOU AT THIS POINT.

4 YOU HEARD ME TELL THE JURORS ABOUT THE
5 APPROXIMATE HOURS WE ASK THEM TO KEEP. GIVEN THE TIME
6 OF DAY, I'M REALLY EXPECTING THAT THEY WILL BE LEAVING
7 VERY SHORTLY.

8 IF THERE'S ANY SIGNIFICANT VARIATION IN THE
9 TIMES IN WHICH THEY'RE HERE, DEANNA WILL BE ABLE TO KEEP
10 YOU ADVISED, AS WILL I.

11 IF WE GET A REQUEST, FOR EXAMPLE, WHICH WE DO
12 SOMETIMES DURING DELIBERATIONS WHERE THEY GET A LITTLE
13 TIRED, READY TO TAKE A BREAK FOR THE DAY, WE SOMETIMES
14 WILL LET THEM GO EARLIER AND KEEP YOU ADVISED.

15 DURING THE JURY DELIBERATIONS, YOU ARE FREE TO
16 LEAVE.

17 YOU ARE NOT REQUIRED TO BE HERE, BUT IF YOU'RE
18 NOT HERE IN THE COURTROOM OR THE IMMEDIATE VICINITY
19 OUTSIDE THE COURTROOM, AND YOU WANT TO BE NOTIFIED IN
20 THE EVENT WE RECEIVE ANY COMMUNICATION FROM THE JURY OR
21 THERE BE A QUESTION OR NOTIFICATION THEY HAVE A
22 VERDICT, AND YOU'RE NOT PRESENT, YOU MUST HAVE GIVEN A
23 CONTACT TO OUR COURT ATTENDANT AND/OR CLERK LETTING US
24 KNOW WHERE YOU ARE IN THE COURTHOUSE AND/OR HOW WE CAN
25 REACH YOU BY YOUR CELL PHONE.

26 IN OTHER WORDS, YOU MIGHT BE DOWN AT STARBUCKS
27 IMPROVING THE LOCAL ECONOMY. IF WE KNOW YOU'RE THERE,
28 THEN WE'LL CALL YOU. YOUR CELL PHONES WORK DOWN THERE.

1 BUT IF YOU'RE SOMEPLACE IN THE COURTHOUSE,
2 LIKE IN THE CAFETERIA OR SOMETHING, JUST LET US KNOW SO
3 WE DO HAVE COMMUNICATION TO GET IN TOUCH WITH YOU RIGHT
4 AWAY. IF YOU'RE NOT WHERE YOU TOLD US YOU ARE, BE
5 CLOSE BECAUSE I CAN'T HAVE DEANNA LEAVING THE
6 COURTHOUSE EXCEPT MAYBE STARBUCKS.

7 AND IF WE DON'T REACH YOU ON THE PHONE, I WILL
8 DEEM THAT TO BE A WAIVER OF YOUR RIGHT TO BE NOTIFIED
9 TO HAVE A CONTACT WITH THE JURY. IF WE DO GET A
10 COMMUNICATION, WE WILL NOTIFY AS QUICKLY AS WE POSSIBLY
11 CAN.

12 SOMETIMES I'M ABLE TO TALK TO YOU ABOUT IT ON
13 THE PHONE, BUT MOST OFTEN I'LL HAVE YOU COME BACK TO
14 THE COURTROOM SO WE CAN DISCUSS THE QUESTION ITSELF, AS
15 WELL AS WHAT ANY PROPOSED RESPONSE WOULD BE TO THE
16 QUESTION.

17 OUR COURT ATTENDANT IS THE ONE WHO IS IN
18 CHARGE OF THE JURY. BUT IT MAY OCCUR THAT AT THE GIVEN
19 MOMENT WHEN WE HEAR -- THERE'S A BUZZER SYSTEM, SO WE
20 CAN TELL BY THE BUZZ WHETHER THERE'S A COMMUNICATION OR
21 A VERDICT.

22 WHEN WE HAVE A BUZZ INDICATING THERE'S AN
23 INDICATION, TYPICALLY TO A QUESTION, IF DEANNA'S NOT
24 AVAILABLE, I ASK OUR CLERK TO ALSO TO BE ABLE TO
25 RESPOND TO THAT.

26 IN ORDER TO DO THAT, BECAUSE THE COURT
27 ATTENDANT IS CHARGED WITH THE RESPONSIBILITY OF CONTROL
28 OF THE JURY, WE WANT AND NEED YOUR STIPULATION THAT THE

1 CLERK MAY ALSO HAVE CONTACT WITH THE JURY FOR THE SAME
2 PURPOSES THAT THE COURT ATTENDANT MAY BE IN CONTACT
3 WITH THEM. AGREEABLE?

4 MR. MCMILLAN: AGREEABLE.

5 MR. GUTERRES: SO STIPULATED.

6 THE COURT: OKAY. THE CLERK HAS -- TAKE A
7 LITTLE BIT OF DOING TO GET ALL THE EXHIBITS TOGETHER
8 THAT ARE GOING TO THE JURY. HE WILL SHOW TO YOU THAT
9 COMPILATION OF EXHIBITS BEFORE THEY ARE TAKEN INTO THE
10 JURY.

11 HE'LL TELL YOU AS SOON AS IT'S READY. YOU CAN
12 REVIEW IT, IF YOU WISH. IF YOU DON'T, THEN YOU'RE
13 WAIVING THE RIGHT TO DO SO. BUT I SUGGEST TO YOU THAT
14 EVERYBODY SHOULD TAKE A LOOK AT THE EXHIBITS TO MAKE
15 SURE THE ONES GOING TO THE JURY SHOULD BE GOING TO THE
16 JURY.

17 SIMILARLY, THE INSTRUCTIONS WILL BE PROVIDED
18 TO THE JURORS. AS I'VE TOLD YOU, I WILL PUT TOGETHER
19 ALL THE INSTRUCTIONS INCLUDING THE ONES WE GAVE AT THE
20 BEGINNING OF THE CASE, AND THE TWO SETS OF INSTRUCTIONS
21 WE GAVE TODAY.

22 THOSE WILL ALSO BE SHOWN TO YOU, SO YOU SHOULD
23 TAKE A LOOK AT THEM TO REASSURE YOURSELF THAT ALL THE
24 INSTRUCTIONS THAT HAVE BEEN GIVEN ARE GOING TO THE JURY
25 ROOM, AND THERE'S NO INSTRUCTIONS THAT WERE NOT GIVEN
26 GOING TO THE JURY ROOM. ANYBODY HAVE ANY QUESTIONS?

27 MS. SWISS: NO, YOUR HONOR.

28 THE COURT: ALL RIGHT. IF SOMETHING MAY COME

1 TO MIND, I'D BE HAPPY TO KEEP YOU ADVISED OF EVERYTHING
2 THAT'S HAPPENING, EVERYTHING THAT'S GOING ON. SO WE'LL
3 BE IN RECESS NOW.

4 I WILL TELL YOU, AS I THINK ALL OF YOU KNOW,
5 9:30 TOMORROW MORNING, I HAVE ANOTHER JURY PANEL
6 ARRIVING. AND I WILL BE BEGINNING JURY SELECTION IN
7 ANOTHER CASE. I WISH I HAD A BREAK. I WAS INTENDING
8 THAT WE WERE GOING TO HAVE A BREAK, BUT IT DIDN'T WORK
9 OUT THAT WAY.

10 BUT WHATEVER IS BEING DONE IN THAT JURY PANEL
11 WILL NOT INTERFERE WITH OUR DOING WHATEVER'S NECESSARY
12 TO BRING THIS CASE TO A CONCLUSION.

13 SO AS AN EXAMPLE, IF WE RECEIVE A
14 COMMUNICATION, WE'LL BE IN CONTACT WITH YOU RIGHT AWAY.
15 AND AS SOON AS I HAVE ALL OF YOU HERE, OR A DESIGNATED
16 REPRESENTATIVE FOR EACH SIDE, WE'LL HANDLE EVERY
17 COMMUNICATION AS WE WOULD EVEN IF WE WEREN'T PROCEEDING
18 THEM.

19 I'M ALSO AWARE OF THE POTENTIAL FOR A SECOND
20 PHASE OF TRIAL, DEPENDING ON THE ANSWERS IN THE VERDICT
21 FORM. IF THERE IS A SECOND PHASE OF THE TRIAL, I WILL
22 RECESS THE OTHER MATTER FOR AS LONG AS IS NECESSARY FOR
23 US TO COMPLETE THE SECOND PHASE.

24 SO I WANT YOU TO BE REASSURED THAT THE JURY
25 SELECTION IN THE OTHER MATTER WILL NOT INTERFERE IN ANY
26 WAY WITH BRINGING THIS CASE TO ITS CONCLUSION.

27 AS THE ATTORNEYS KNOW, THE REASON FOR THE
28 TIMES IS THAT I ORDERED THOSE JURORS THAT ARE ARRIVING

1 TOMORROW MORE THAN SIX WEEKS AGO, AT A TIME WHEN I
2 BELIEVED I'D BE ABLE TO PROCEED WITHOUT INTERRUPTION OF
3 THAT CASE.

4 IN THAT REGARD, I DON'T KNOW, AND I DON'T SAY
5 THIS IN ANY CONDESCENDING WAY AT ALL, I DON'T MEAN IT
6 THAT WAY, I'M NOT AWARE IF YOU'RE DOING A SECOND PHASE
7 OF DAMAGE IN THE CASE.

8 I'M NOT GOING TO TELL YOU HOW TO PRESENT YOUR
9 EVIDENCE. TYPICALLY, IT WILL GO VERY QUICKLY. WHAT
10 YOU SHOULD DO IS TAKE A LOOK, ONE INSTRUCTION IN CACI,
11 AND I THINK ONLY ONE INSTRUCTION THAT IS NECESSARY TO
12 TELL THE JURORS WHAT TO DO.

13 AND THERE'S ALSO A CACI SUGGESTED VERDICT
14 FORM, WHICH REALLY INQUIRES IN THE SECOND PHASE OF A
15 CASE LIKE THIS, NOTHING MORE THAN REALLY ONE QUESTION.
16 JUST THE QUESTION IS, IT MAY HAVE TO LIST DIFFERENT
17 PERSONS THAN WHAT I FIND THE PUNITIVE DAMAGES TO BE.

18 BUT YOU NEED TO BE PREPARED FOR THAT, BECAUSE
19 I DO INTEND TO PROCEED IMMEDIATELY, IMMEDIATELY
20 DEPENDING, OF COURSE, ON THE TIME OF DAY. IF WE GET
21 THE VERDICT AT 4:15 OR 4:30 IN THE AFTERNOON, WE'RE NOT
22 GOING TO STAY LATE TO DO IT. WE START THE NEXT
23 MORNING.

24 BUT THERE IS TYPICALLY, PARTICULARLY IN A CASE
25 LIKE THIS, WHERE WE DO NOT HAVE A FORTUNE 500 COMPANY
26 AS TO SUBSTANTIAL QUESTIONS AS TO WHAT THEIR NET WORTH
27 MIGHT BE, TYPICALLY IN A CASE LIKE THIS, WHERE THERE'S
28 JUST INDIVIDUALS INVOLVED, THE SECOND PHASE EVIDENCE IS

1 VERY QUICK.

2 SO I CALL THAT TO YOUR ATTENTION, SO YOU NEED
3 TO HAVE THAT IN MIND TO BE READY AT ANY TIME. AS I
4 SAID, WE'LL DO IT WITH SOME COMMON SENSE. IT WILL NOT
5 BE A SUICIDE MISSION.

6 MR. MCMILLAN: THANK YOU.

7 THE COURT: SO WITH THAT, AGAIN, WE'LL BE IN
8 RECESS.

9
10 (WHEREUPON, AT THE HOUR OF 4:18 P.M.,
11 THE PROCEEDINGS WERE ADJOURNED.)

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16 (THE NEXT PAGE NUMBER IS 10501)

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