

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

M A S T E R   I N D E X

OCTOBER 12, 2016

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

<u>WITNESSES:</u>	<u>PAGE</u>
RAFAELINA DUVAL (RESUMED)	
CROSS-EXAMINATION BY MS. SWISS	6329
REDIRECT EXAMINATION BY MR. MCMILLAN	6409
RE-CROSS-EXAMINATION BY MS. SWISS	6456

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

M A S T E R   I N D E X

OCTOBER 12, 2016

EXHIBITS

<u>DEFENDANTS'</u>	<u>MARKED</u>	<u>RECEIVED</u>	<u>WITHDRAWN REJECTED</u>
1249	6343		
1250.84	6351		
1251.8	6353		
1252.7-8	6360		
1253	6389		
48	6330		

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

1 CASE NUMBER: BC470714  
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL  
3 LOS ANGELES, CALIFORNIA WEDNESDAY, OCTOBER 12, 2016  
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE  
5 APPEARANCES: (AS HERETOFORE NOTED.)  
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606  
7 TIME: 8:36 A.M.  
8

9 ---000---

10  
11 THE COURT: I HAVE THE LIST OF EXHIBITS  
12 IDENTIFIED. AND ON THE FIRST PAGE, 3, 4, 6, 8, 9 ARE  
13 RECORDS -- YOU SEE HOSPITALS, EAST LA REGIONAL CENTER,  
14 SODERBERG, AND OCCUPATIONAL THERAPY DEVELOPMENTAL  
15 EVALUATION. IS THERE A STIPULATION TO THESE OR ANY  
16 PART OF THESE?

17 MR. GUTERRES: YOUR HONOR, ON 3, 4, 6, 8, AND  
18 9, 9 IS ALREADY PART OF EXHIBIT 24, SO I DON'T KNOW IF  
19 WE REALLY NEED IT, BUT -- I MEAN, I DON'T REALLY HAVE A  
20 STRONG OBJECTION, IT'S JUST ALREADY IN AS PART OF  
21 ANOTHER EXHIBIT. IT'S AN ATTACHMENT TO THE  
22 JURISDICTION DISPOSITION REPORT, WHICH IS EXHIBIT 24,  
23 WHICH HAS ALREADY BEEN ADMITTED.

24 THE COURT: AND ALL THESE PAGES, 1328 THROUGH  
25 1334, ARE ALL PART OF EXHIBIT 24?

26 MR. GUTERRES: I BELIEVE THAT'S CORRECT, YOUR  
27 HONOR. THIS IS THE OCCUPATIONAL THERAPIST'S --

28 THE COURT: RIGHT.

1 MR. GUTERRES: -- REPORT.

2 THE COURT: OKAY. AND 24 IS IN EVIDENCE, SO  
3 DO YOU WANT THAT AS A SEPARATE EXHIBIT?

4 MR. MCMILLAN: YOUR HONOR, AS TO NO. 9, OUR  
5 FEELING IS THAT EXHIBIT 24 IS 372 PAGES. AND JUST FOR  
6 EASE OF PRESENTATION TO THE JURY AND CLOSING, AND I  
7 THINK ALSO FOR THEM IN THE BACK ROOM, IF THEY'RE ABLE  
8 TO JUST HAVE THE DOCUMENT, IT'S ONLY A FIVE-PAGE  
9 DOCUMENT, RATHER THAN HAVING THEM DIG THROUGH 372  
10 PAGES, UNTABBED PAGES.

11 THE COURT: WELL, MR. GUTERRES DOESN'T HAVE  
12 ANY REAL OBJECTION ANYWAY.

13 MR. MCMILLAN: OKAY.

14 THE COURT: SO 9 WILL BE RECEIVED.

15 MR. GUTERRES: OKAY. IF THAT'S THE CASE THEN,  
16 YOUR HONOR, THAT'S REALLY MY -- IT'S JUST THAT A NUMBER  
17 OF THESE ARE ALREADY IN EXHIBIT 24. I KNOW THE  
18 METHODIST HOSPITAL RECORDS, DR. YIM'S RECORDS, EAST LA  
19 RECORDS, YOU KNOW, A LOT WAS INCLUDED ALREADY AS PART  
20 OF THE ADDITIONAL INFORMATION REPORTS TO THE COURT  
21 AND/OR THE ACTUAL JURISDICTIONAL/DISPOSITION REPORT  
22 WHICH IS EXHIBIT 24. OTHERWISE, I DON'T REALLY HAVE AN  
23 OBJECTION TO -- AS I UNDERSTAND IT, ON EXHIBIT 8, THEY  
24 ONLY WANT THE ONE ADDITIONAL PAGE AS OPPOSED TO THE  
25 ENTIRE RECORDS OF DR. SODERBERG.

26 THE COURT: JUST HAVE THE ONE PAGE LISTED?

27 MR. PARIS: THAT'S CORRECT.

28 THE CLERK: I'M GOING TO NEED A COPY OF THAT

1 LIST BECAUSE I'M NOT SURE WHAT THAT PAGE IS.

2 MR. PARIS: IT'S THE ONE THAT WAS ALREADY  
3 IDENTIFIED, 1284.

4 THE COURT: 001284.

5 (A DISCUSSION WAS HELD OFF THE RECORD.)

6 MR. MCMILLAN: YOUR HONOR, THE ONLY ISSUE THAT  
7 WE WOULD HAVE WITH THE METHODIST AND DR. YIM RECORDS --  
8 AND I DON'T KNOW THAT WE'VE DONE THIS YET, BUT WE NEED  
9 TO DO A PAGE-BY-PAGE COMPARISON TO MAKE SURE THAT THE  
10 COMPLETE RECORDS THAT WERE PROVIDED BY THE HOSPITAL  
11 CUSTODIAN AND CUSTODIAN OF DR. YIM'S OFFICE MATCH UP  
12 WITH WHAT WAS PUT IN THE EXHIBIT 24, THE JURIS/DISPO  
13 REPORT, BECAUSE ONE OF OUR ISSUES IN THIS CASE IS THAT  
14 INCOMPLETE INFORMATION WAS PROVIDED TO THE COURT. AND  
15 WE CAN DO THAT MAYBE OVER THE LUNCH HOUR, GO THROUGH  
16 PAGE BY PAGE TO MAKE SURE EVERYTHING IS THERE.

17 MR. GUTERRES: YOUR HONOR, I HAVE NO OBJECTION  
18 TO -- THAT SAVES TIME. THERE'S GOING TO BE OTHERS  
19 WE'RE GOING TO HAVE MORE OF A FIGHT ON.

20 THE COURT: YEAH.

21 MR. GUTERRES: SO I DON'T HAVE A PROBLEM.  
22 THAT'S FINE, 3 THROUGH 9.

23 THE COURT: 3 THROUGH 9?

24 MR. GUTERRES: IF THEY WANT THE ENTIRE  
25 EXHIBIT 8, WHICH IS SODERBERG'S, I HAVE NO OBJECTION TO  
26 SODERBERG'S ENTIRE EXHIBIT 8 GOING IN.

27 MR. PARIS: JUST THIS ONE PAGE FROM EXHIBIT 8  
28 WILL SUFFICE.

1 THE COURT: YOU JUST WANT THE ONE PAGE FROM  
2 SODERBERG?

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

4 THE COURT: ALL RIGHT. WELL, THE PAGES LISTED  
5 ON 3, 4, 6, 8, AND 9, THERE'S NO OBJECTION BY THE  
6 DEFENDANT; CORRECT?

7 MS. NAU: THAT'S CORRECT, YOUR HONOR.

8 MR. GUTERRES: YES, YOUR HONOR. I'M SORRY.

9 THE COURT: OKAY. SO THE PAGES IDENTIFIED IN  
10 3, 4, 6, 8, AND 9 WILL BE RECEIVED.

11 MR. GUTERRES: WE HAVE NO OBJECTION TO 29.

12 (A DISCUSSION WAS HELD OFF THE RECORD.)

13 THE COURT: IS THAT --

14 MR. PARIS: ONE SECOND, YOUR HONOR.

15 MR. MCMILLAN: YOUR HONOR, SOME OF THESE  
16 THINGS WE DISCUSSED AT THE END OF THE DAY YESTERDAY,  
17 AND THAT WAS PLAINTIFF'S REQUEST FOR LIMITING  
18 INSTRUCTION ON SOME OF THE COURT DOCUMENTS. THEY ARE  
19 HEARSAY DOCUMENTS, BUT WE NEED THEM IN EVIDENCE TO  
20 SHOW, YOU KNOW, AS EVIDENCE THAT THE STATEMENTS WERE  
21 MADE OR WERE NOT MADE OR WHATEVER FOR THE COURT.

22 THE CONCERN IS THAT THE JURY UNDERSTANDS THAT  
23 THEY'RE NOT NECESSARILY BEING ADMITTED AND PROVIDED TO  
24 THE JURY FOR THE TRUTH OF THE MATTERS ASSERTED IN THE  
25 DOCUMENTS BECAUSE THEY'RE SECOND- AND THIRD-WORD  
26 HEARSAY IN SOME INSTANCES, BUT RATHER THEY'RE BEING  
27 ADMITTED SO THE JURY CAN SEE WHAT WAS SAID AND WHAT THE  
28 SOCIAL WORKERS WERE THINKING AT THE TIME, IF THAT'S

1 WHAT WAS GOING ON, BUT NOT NECESSARILY FOR THE TRUTH OF  
2 THE MATTERS STATED IN THOSE DOCUMENTS.

3 SO WE PROPOSED A LIMITING INSTRUCTION SORT OF  
4 IN CONFORMANCE WITH WHAT WE HAD TALKED ABOUT -- OR WHAT  
5 PLAINTIFF HAD TALKED ABOUT YESTERDAY EVENING BEFORE WE  
6 DEPARTED.

7 THE COURT: RIGHT. AND YOU HAD A SUGGESTED  
8 INSTRUCTION ON THAT THIS MORNING?

9 MR. MCMILLAN: I DID, AND I PROVIDED A COPY TO  
10 COUNSEL. WE HAVEN'T HAD A CHANCE TO MEET AND CONFER ON  
11 IT YET, BUT THAT WOULD BE PLAINTIFF'S REQUEST, IS THAT  
12 WE DO WANT THESE REPORTS AND THINGS COMING IN BECAUSE  
13 THEY HAVE TO BE THERE. IT'S LIKE A DEFAMATION CASE,  
14 THE DEFAMATORY STATEMENT HAS TO BE IN EVIDENCE. BUT IN  
15 OUR VIEW, THERE NEEDS TO BE A CLEAR INSTRUCTION TO THE  
16 JURY THAT THEY'RE NOT TO BE, YOU KNOW, DEEMED TRUE, BUT  
17 RATHER THAT, YOU KNOW, THEY'RE FOR THE PURPOSE OF  
18 SHOWING WHAT WAS SAID OR WHAT WAS THOUGHT AT THE TIME  
19 BY WHOEVER DRAFTED THE REPORT, THAT SORT OF THING.

20 MR. GUTERRES: YOUR HONOR, THE CONCERN I HAVE,  
21 YOU KNOW, THAT'S TRUE OF NOT ONLY COURT REPORTS, AND  
22 LIMITING IT TO COURT REPORTS IS WHAT I THINK MIGHT BE  
23 PROBLEMATIC. WE'VE GOT OUT-OF-COURT STATEMENTS,  
24 MEDICAL RECORDS, THERAPEUTIC RECORDS, ALL SORTS OF  
25 RECORDS THAT ARE GOING IN. SO WHAT I'VE BEEN PROVIDED  
26 IS A PROPOSED INSTRUCTION THAT LIMITS THAT TO ONLY THE  
27 COURT REPORTS, AND I DON'T THINK THAT THAT'S  
28 NECESSARILY AN ACCURATE STATEMENT.

1           MR. MCMILLAN:  WHAT'S AT ISSUE IN THE CASE,  
2           YOUR HONOR, I DON'T KNOW -- FOR EXAMPLE, THE MEDICAL  
3           RECORDS -- I DON'T KNOW THERE'S ANY CHALLENGE FROM  
4           EITHER SIDE.  WITH THE EXCEPTION OF ONE THING THAT  
5           LOOKS LIKE IT MIGHT BE AN INTERLINEATION, I DON'T THINK  
6           THERE'S ANY CHALLENGE FROM ANYBODY ON EITHER SIDE WITH  
7           RESPECT TO THE MEDICAL RECORDS, THAT THERE'S UNTRUE OR  
8           MISLEADING STATEMENTS IN THOSE RECORDS THAT WERE  
9           CREATED BY THIRD-PARTY DOCTORS LONG BEFORE AND EVEN  
10          LONG AFTER THE JUVENILE DEPENDENCY PROCESS.

11                  WHAT'S AT ISSUE HERE IS WHETHER OR NOT THERE  
12          WERE FALSE AND MISLEADING STATEMENTS MADE IN THE  
13          REPORTS TO THE COURT THAT THE COURT MADE ITS DECISION  
14          BASED ON.

15                  SO THAT, I GUESS, WOULD BE PLAINTIFF'S  
16          RESPONSE TO DEFENDANTS' CONCERNS.

17                  THAT BEING SAID, I DON'T KNOW -- WELL, WE'LL  
18          JUST LEAVE IT AT THAT FOR THE MOMENT.  I DON'T KNOW  
19          THAT WE NECESSARILY HAVE A PROBLEM EXPANDING IT TO ALL  
20          DOCUMENTS, FRANKLY, BECAUSE, SURE, IN THE CLASSIC  
21          SENSE, I THINK MOST OF THESE THINGS HAVE HEARSAY  
22          INFORMATION IN THEM.

23                  THE COURT:  ALL RIGHT.  WELL, IT SEEMS TO ME  
24          WHAT MR. GUTERRES IS SAYING IS TRUE, THAT IN MANY OF  
25          THESE DOCUMENTS, THERE MAY BE SOMETHING SAID WHICH --  
26          WHICH IS HEARSAY.  AND SO IF -- ARE YOU --

27                  MR. GUTERRES:  YOUR HONOR, MAYBE WE CAN JUST  
28          MOVE ON, AND MR. MCMILLAN AND I AT OUR SIDE CAN HAVE A



1 DISCUSSION ABOUT HOW -- WHAT KIND OF LIMITING -- WE  
2 HAVEN'T REALLY HAD A CHANCE TO TAKE A LOOK AT IT AND  
3 DISCUSS IT. WE'RE KIND OF THROWING IDEAS TO THE COURT,  
4 BUT IN THE INTEREST OF TIME, WE'RE HAPPY TO JUST ADVISE  
5 WHICH REPORTS WE DON'T HAVE AN ISSUE WITH.

6 MR. MCMILLAN: AND YOUR HONOR, WE DON'T HAVE A  
7 PROBLEM WITH THAT SO LONG AS IT'S CLEAR THAT WE WOULD  
8 BE AGREEING IN CONCEPT SUBJECT TO THE IDEA THAT THERE'S  
9 GOING TO BE SOME KIND OF LIMITING INSTRUCTION, IF THAT  
10 IS, IN FACT, WHAT YOUR HONOR DECIDES TO DO.

11 THE COURT: WHATEVER THE WORDING OF THE  
12 LIMITING INSTRUCTION IS, IS YOUR PROPOSAL THAT THE  
13 COURT WOULD GIVE A LIMITING INSTRUCTION LISTING A LONG  
14 LIST OF EXHIBITS THAT ARE RECEIVED ONLY FOR THE LIMITED  
15 PURPOSE OF NOT FOR THE TRUTH OF THE MATTER STATED BUT  
16 ONLY TO SHOW WHAT IS SAID?

17 MR. MCMILLAN: UM --

18 THE COURT: OR WAS SAID?

19 MR. MCMILLAN: I HAVEN'T DONE IT THAT WAY  
20 BEFORE. I MEAN, I'M NOT ADVERSE TO THE IDEA OF GIVING  
21 A LIST OF DOCUMENTS THAT WAY.

22 THE WAY THAT I'VE DONE THIS BEFORE IS THE WAY  
23 IT IS HERE: JUST THE COURT REPORTS YOU'VE SEEN,  
24 THEY'RE BEING ADMITTED FOR THE LIMITED PURPOSE OF  
25 SHOWING WHAT WAS SAID OR THOUGHT BY THE AUTHOR AT THE  
26 TIME, NOT TRUTH OF THE MATTERS ASSERTED.

27 AND THAT'S ESSENTIALLY WHAT WE'RE LOOKING FOR,  
28 IT'S JUST TO ACCOMMODATE MR. GUTERRES'S CONCERNS. I

1 DON'T NECESSARILY HAVE AN OBJECTION TO EXPANDING THAT,  
2 JUST OUR POSITION IS THAT WHAT'S AT ISSUE IN THE CASE  
3 REALLY IS ALLEGEDLY FALSE STATEMENTS AND OMISSIONS MADE  
4 TO THE COURT BY THE GOVERNMENT IN ITS REPORTS. SO  
5 THAT'S WHY IT'S SORT OF NARROWED DOWN TO JUST THE STUFF  
6 THAT'S REALLY AT ISSUE HERE.

7 I DON'T SEE THE MEDICAL RECORDS AND OTHER  
8 THINGS -- I MEAN, YEAH, THERE MAY BE SOME INACCURATE  
9 INFORMATION HERE AND THERE IN SOME OF THEM, BUT I DON'T  
10 SEE THAT AS BEING THE FOCUS OF THE CASE OR THE ISSUE  
11 THAT'S REALLY IN DISPUTE IN THE CASE.

12 THE COURT: ALL RIGHT. WELL, IN ANY EVENT,  
13 TELL ME WHAT YOU ARE PROPOSING.

14 MR. MCMILLAN: WHAT I'M PROPOSING IS THE  
15 LIMITING INSTRUCTION THAT I'VE GIVEN -- OR THAT I'VE  
16 PROVIDED TO THE COURT THIS MORNING. THAT'S WHAT  
17 PLAINTIFF IS PROPOSING.

18 MS. SWISS: YOUR HONOR, MAY OUR IT  
19 PROFESSIONAL POWER UP TO MAKE SURE IT ALL WORKS WHILE  
20 WE'RE DOING THIS?

21 THE COURT: YES, GO AHEAD.

22 I HAVE TO TAKE A SHORT RECESS.

23 (RECESS)

24 THE COURT: LET ME GO BACK TO MY QUESTION,  
25 THEN. UNFORTUNATELY, WE HAVEN'T GOTTEN VERY MUCH DONE,  
26 BUT THE -- BUT WE DO NEED TO GET THESE ISSUES LOOKED  
27 AT.

28 SO FAR IN THE TRIAL, I HAVEN'T TOLD THE JURY

1 THAT ANY EVIDENCE HAS BEEN ADMITTED FOR A LIMITED  
2 PURPOSE. SO -- AND CHANCES ARE PRETTY GOOD THAT THAT  
3 MAY OR MAY NOT HAPPEN, BUT SO MANY OF THE EXHIBITS, THE  
4 JURY NEVER KNOWS WHETHER AN EXHIBIT HAS BEEN ADMITTED  
5 AT ALL, ONE WAY OR ANOTHER, BECAUSE WE DON'T DO  
6 EXHIBITS IN FRONT OF THE JURY.

7 SO ARE YOU PROPOSING, THEN, THAT AN  
8 INSTRUCTION WOULD BE GIVEN AS TO WHAT EXHIBITS HAVE  
9 BEEN RECEIVED FOR A LIMITED PURPOSE? I DON'T KNOW HOW  
10 ELSE WE WOULD LET THE JURY KNOW THAT SOMETHING HAS BEEN  
11 ADMITTED FOR A LIMITED PURPOSE.

12 MR. MCMILLAN: THAT IS THE PLAINTIFF'S  
13 SUGGESTION.

14 THE COURT: OKAY. SO WE WOULD HAND THEM  
15 INSTRUCTION, A LIST OF WHATEVER EXHIBITS HAVE BEEN  
16 ADMITTED FOR A LIMITED PURPOSE; CORRECT? YOU KNOW, I  
17 GAVE YOU SOMETHING, THIS IS PRETTY CLOSE TO 206. I  
18 HAVEN'T COMPARED IT, BUT CACI HAS THE INSTRUCTION ON  
19 EVIDENCE RECEIVED FOR A LIMITED PURPOSE, AND WE CAN FIX  
20 THAT TO INCLUDE THE NUMBERS OF EXHIBITS ADMITTED FOR A  
21 LIMITED PURPOSE.

22 MR. MCMILLAN: THAT WOULD SUFFICE.

23 THE COURT: OKAY. DOES THAT SOUND SENSIBLE TO  
24 YOU, MR. GUTERRES?

25 MR. GUTERRES: I THINK THAT WORKS, YOUR HONOR.

26 THE COURT: OKAY. SO WILL WE BE ABLE THEN --  
27 YOU HAVE IDENTIFIED IN HERE CERTAIN RECORDS, BUT THAT  
28 DESCRIPTION MAY OR MAY NOT WORK FOR US, BUT WE COULD

1 TAKE A LOOK AT THE INSTRUCTION AS LONG AS WE HAVE THE  
2 CONCEPT. AND SO MY QUESTION IS, AS WE GO THROUGH  
3 THESE, THEN, EITHER THEY'LL BE -- THE DOCUMENT WILL BE  
4 RECEIVED INTO EVIDENCE, RECEIVED INTO EVIDENCE FOR A  
5 LIMITED PURPOSE ONLY, OR NOT RECEIVED.

6 MR. MCMILLAN: THAT MAKES SENSE.

7 THE COURT: ALL RIGHT. NOW, ON THE ONES THAT  
8 WE JUST TALKED ABOUT ON THE FIRST PAGE OF THE INDEX  
9 PROVIDED TO US BY MR. PARIS, AND ALSO IN THE LIST OF  
10 EXHIBITS MARKED FOR IDENTIFICATION PREPARED BY THE  
11 CLERK, WE'VE INDICATED THAT 3, 4, 6, 8, AND 9, AS TO  
12 THE PAGES WHICH ARE DESIGNATED AND HAVE BEEN MARKED FOR  
13 IDENTIFICATION, WOULD BE RECEIVED.

14 MR. GUTERRES, IF THERE IS SOME PART OF THESE  
15 DOCUMENTS -- OF ANY OF THE DOCUMENTS THAT WE'VE  
16 RECEIVED INTO EVIDENCE WHICH YOU BELIEVE SHOULD BE  
17 RECEIVED FOR A LIMITED PURPOSE, WOULD IT WORK THAT  
18 WE'LL GO AS FAR AS WE CAN AND THEN YOU -- KNOWING WHAT  
19 IS GOING TO BE RECEIVED EITHER IN ITS ENTIRETY OR FOR A  
20 LIMITED PURPOSE, YOU CAN ADVISE US LATER, AND  
21 MR. MCMILLAN COULD AS WELL, OF ANY PORTION THEY BELIEVE  
22 SHOULD BE ALSO INCLUDED IN THE LIST OF RECEIVED FOR A  
23 LIMITED PURPOSE.

24 MR. GUTERRES: THAT'S FINE. I THINK WE CAN  
25 PROBABLY -- ONCE WE GET THOSE EXHIBITS IN, WE CAN THEN  
26 SHARE OUR LISTS AS TO WHICH ONES WE THINK SHOULD BE IN  
27 FOR A LIMITED PURPOSE AND THEN PROVIDE THAT TO THE  
28 COURT. AND IF THERE'S A DISPUTE, WE CAN THEN HAVE THE

1 COURT DECIDE.

2 THE COURT: ALL RIGHT. AND THEN I SUPPOSE  
3 THAT I SHOULD RESERVE TO YOU THE RIGHT TO WITHDRAW AN  
4 EXHIBIT -- IF THE COURT'S RULING IS IT'S FOR ONLY A  
5 LIMITED PURPOSE, THAT THEN WHOEVER HAS OFFERED THAT  
6 EXHIBIT WOULD HAVE THE OPTION OF WITHDRAWING IT FROM --  
7 AS BEING OFFERED IN EVIDENCE.

8 MR. MCMILLAN: THAT MAKES SENSE.

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

10 THE COURT: OKAY. SO THEN AS TO -- AGAIN, I'M  
11 STILL ON THE FIRST PAGE, BUT NO. 29, REQUEST TO CHANGE  
12 COURT ORDER DATED FEBRUARY 2, 2010, YOU ARE OFFERING  
13 THAT FOR A LIMITED PURPOSE.

14 BUT YOU DON'T HAVE ANY OBJECTION TO THE  
15 EXHIBIT ONE WAY OR THE OTHER, DO YOU, MR. GUTERRES?

16 MR. GUTERRES: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. SO 29 IS GOING TO BE  
18 RECEIVED. AND THAT IS ONE THAT -- DO YOU WANT TO THINK  
19 FURTHER ABOUT THIS BEING RECEIVED FOR A LIMITED  
20 PURPOSE? IN OTHER WORDS, HE'S SAYING ON THESE COURT  
21 DOCUMENTS THAT PURPOSE OF THESE DOCUMENTS ISN'T TO  
22 PROVE A FACT, IT'S SIMPLY TO SHOW WHAT WAS -- WHAT WAS  
23 DONE OR WHAT WAS STATED.

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

25 THE COURT: SO 29 CAN BE RECEIVED FOR A  
26 LIMITED PURPOSE?

27 MR. GUTERRES: YES, YOUR HONOR.

28 THE COURT: ALL RIGHT. THEN NEXT IN ORDER

1       WOULD BE 31, WHICH IS BEING OFFERED -- ACTUALLY, IT WAS  
2       IDENTIFIED BY THE DEFENDANT.

3               IS THAT TO BE RECEIVED FOR A LIMITED PURPOSE?

4               MR. GUTERRES: IT'S ACTUALLY -- IT'S THE  
5       COURT'S ORDER, YOUR HONOR, SO.

6               THE COURT: WELL, THE COURT'S ORDER IS THE  
7       COURT'S ORDER.

8               MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR, THE  
9       COURT'S ORDER IS THE COURT'S ORDER, BUT, YOU KNOW, THE  
10      ESTABLISHED RULE ON COURT DOCUMENTS, PARTICULARLY COURT  
11      ORDERS OR JUDGMENTS, IS THAT THE FACT OF THE MATTER OF  
12      THE ENTRY OF THE JUDGMENT IS EVIDENCE THAT THE JUDGMENT  
13      WAS ENTERED, BUT THE STATEMENTS IN THE JUDGMENT ITSELF  
14      ARE NOT NECESSARILY, YOU KNOW, NONHEARSAY. SO IF WE  
15      LOOK, I THINK IT'S *SANTOSKY VS. KRAMER* WHERE WE TALK  
16      ABOUT -- AND IT COMES IN THE CONTEXT OF JUDICIAL NOTICE  
17      OF DOCUMENTS THAT WERE FILED BY THE COURTS, I THINK --  
18      WE CAN ACCEPT THE EVIDENCE INTO EVIDENCE FOR THE  
19      PURPOSE OF ESTABLISHING THAT THE EVENTS OCCURRED, AND A  
20      JUDGMENT WAS ISSUED, AND EVEN, WHERE THERE'S SPECIFIC  
21      FINDINGS, WHAT THOSE FINDINGS WERE. BUT THOSE ARE NOT  
22      ACCEPTED INTO EVIDENCE, TYPICALLY, FOR THE TRUTH OF THE  
23      MATTER ASSERTED.

24              SO PLAINTIFF WOULD ASSERT THE SIMILAR  
25      OBJECTION THAT WE DON'T HAVE A PROBLEM WITH IT COMING  
26      IN SO LONG AS IT'S FOR THE LIMITED PURPOSE OF SHOWING  
27      THAT WHATEVER HAPPENED THERE HAPPENED.

28              THE COURT: WELL, I'M DOUBTFUL OF THIS --

1 THAT'S NOT QUITE A CORRECT STATEMENT. I'M NOT SURE  
2 I'VE EVER HAD ANYONE RAISE THAT ISSUE WITH ME BEFORE.  
3 BUT I KNOW THE COURT HAS THE AUTHORITY TO JUDICIALLY  
4 NOTICE AN ORDER OF THE COURT, AND I BELIEVE WITHOUT A  
5 LIMITATION. SO I'M GOING TO RECEIVE THIS. BECAUSE IT  
6 IS SUBJECT TO JUDICIAL NOTICE, AND -- AND IT'S BEING  
7 OFFERED BY THE DEFENDANT, I'M RECEIVING IT WITHOUT  
8 LIMITATION.

9 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR. I  
10 UNDERSTAND THAT. PLAINTIFF MAINTAINS THEIR OBJECTION,  
11 AND IF YOU DON'T MIND --

12 THE COURT: NO, GO AHEAD.

13 MR. MCMILLAN: -- I'D LIKE TO PROVIDE BRIEFING  
14 ON THAT ISSUE.

15 THE COURT: YEAH. I'M WILLING TO REVISIT THAT  
16 WHEN YOU HAVE AN OPPORTUNITY. I DON'T WANT TO KEEP  
17 GETTING --

18 MR. MCMILLAN: IT WOULD BE SHORT.

19 THE COURT: OKAY. GOOD.

20 MR. MCMILLAN: IT WOULD BE SHORT, LIKE ONE  
21 PARAGRAPH.

22 MR. GUTERRES: YOUR HONOR DOESN'T HAVE ENOUGH  
23 PAPERWORK BACK THERE?

24 THE COURT: JUST CITE ME TO SOMETHING.

25 MR. MCMILLAN: ALL RIGHT. I'LL GET JUST THE  
26 CASE CITE AND I'LL BRING IT --

27 THE COURT: YEAH, I'LL READ IT.

28 MR. MCMILLAN: OKAY. I'LL BRING IT MAYBE

1 TOMORROW MORNING.

2 THE COURT: OKAY. NOW, THE SAME THING WOULD  
3 BE TRUE OF NO. 32, WHICH IS A COURT ORDER.

4 NOW, 43 IS LAST MINUTE INFORMATION FOR THE  
5 COURT AND THAT'S BEING OFFERED BY THE PLAINTIFF FOR THE  
6 LIMITED PURPOSE OF SHOWING WHAT WAS REPORTED.

7 MR. MCMILLAN: CORRECT.

8 THE COURT: AND NOT FOR THE TRUTH OF THIS.

9 DO YOU AGREE WITH THAT, MR. GUTERRES?

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

11 THE COURT: SO 43 WILL BE RECEIVED FOR A  
12 LIMITED PURPOSE.

13 45 IS THE REQUEST TO CHANGE COURT ORDER, AND I  
14 BELIEVE THAT, IN KEEPING WITH THE OTHER REQUEST TO  
15 CHANGE A COURT ORDER WHICH WE RECEIVED FOR A LIMITED  
16 PURPOSE, THAT THAT WOULD BE AGREEABLE, MR. GUTERRES.

17 MR. GUTERRES: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. SO 45 WILL BE RECEIVED  
19 FOR THE LIMITED PURPOSE.

20 NO. 52, THIS IS DR. EGGE'S.

21 MR. GUTERRES: WE HAVE NO OBJECTION TO 52,  
22 YOUR HONOR.

23 THE COURT: OKAY.

24 MR. MCMILLAN: IT'S LIMITED PURPOSE, YOUR  
25 HONOR, THE LETTER -- I NEED TO LOOK AND MAKE SURE WHICH  
26 ONE THIS IS, BUT I BELIEVE THAT -- OH, HE HAS IT OUT.  
27 YEAH, THIS WOULD BE FOR A LIMITED PURPOSE. IT'S A  
28 LETTER FROM MS. SCHEELE TO DR. EGGE, AND, YEAH, IT



1 WOULD BE FOR THE LIMITED PURPOSE OF SHOWING WHAT WAS  
2 SAID, WHAT WAS REPORTED BY DR. EGGE TO SOCIAL SERVICES.

3 MR. GUTERRES: WELL, YOUR HONOR, THIS IS THE  
4 DOCTOR'S OPINION AND STATEMENTS REGARDING WHAT TESTS  
5 HAVE AND HAVE NOT BEEN DONE.

6 THE COURT: I DON'T REMEMBER THE LETTER BUT I  
7 DON'T DOUBT WHAT YOU'RE TELLING ME. A BASIS FOR  
8 RECEIVING THE LETTER -- THE LETTER ITSELF IS HEARSAY.  
9 AN EXCEPTION TO THE HEARSAY RULE THAT COULD PERMIT THE  
10 ADMISSIBILITY OF THE LETTER IS A BUSINESS RECORD. IF  
11 THAT'S THE GROUND FOR OFFERING THE LETTER, HOWEVER, A  
12 BUSINESS RECORD CAN BE RECEIVED ONLY TO THE EXTENT IT  
13 IS A RECORD OF AN ACT, CONDITION, OR EVENT. THEREFORE,  
14 ANY OPINION PORTION OF THE LETTER WOULD NOT BE  
15 RECEIVED.

16 IT THEREFORE SEEMS TO ME THAT IF EVERYONE  
17 AGREES TO THAT AS A BUSINESS RECORD, THAT WE CAN  
18 HOPELESSLY COMPLICATE THIS AS FAR AS A JURY IS  
19 CONCERNED BY RECEIVING THE LETTER FOR -- RECEIVING  
20 THOSE PARTS OF THE LETTER IN EVIDENCE THAT ARE A RECORD  
21 OF AN ACT, CONDITION, OR EVENT, AND RECEIVING THE  
22 FURTHER PART THAT REPRESENTS OPINION FOR THE LIMITED  
23 PURPOSE OF DEMONSTRATING WHAT WAS TOLD.

24 MR. PARIS: YOUR HONOR, PLAINTIFF CAN WITHDRAW  
25 EXHIBIT 52. WE DON'T --

26 MR. GUTERRES: YOUR HONOR --

27 MR. PARIS: IT SOUNDS OVERLY COMPLEX. WE  
28 DON'T NEED TO CONFUSE THE JURY WITH THAT FORM OF A

1       LIMITING INSTRUCTION FOR THIS LETTER, SO WE WILL  
2       WITHDRAW THE REQUEST FOR 52.

3               MR. GUTERRES: WE WOULD REQUEST THAT IT BE  
4       ADMITTED.

5               THE COURT: NOW, DON'T DO IT BECAUSE I'VE  
6       HOPELESSLY COMPLICATED IT. BUT IT POINTS OUT -- LOOK,  
7       WE HAVE THE SAME ISSUE WITH OTHER THINGS.

8               SO DEFENDANT IS OFFERING 52. ALL RIGHT. AND  
9       I'LL -- I'LL HAVE TO TAKE A LOOK AT THE LETTER TO SEE  
10      WHAT IT SAYS. I DON'T REMEMBER.

11              NO. 53 IS A LETTER FROM THE PLAINTIFF TO  
12      SCHEELE BEING OFFERED BY DEFENDANT.

13              ANY OBJECTION?

14              MR. MCMILLAN: NO, WE DON'T HAVE ANY OBJECTION  
15      TO THAT, YOUR HONOR.

16              THE COURT: 53 WILL BE RECEIVED.

17              82 ARE THE DELIVERED SERVICE LOGS FOR THE  
18      PERIOD DESIGNATED AND THE PAGES DESIGNATED.

19              MR. GUTERRES: YES, DEFENSE WOULD OBJECT.

20              THE COURT: OBJECTION TO THE?

21              MR. GUTERRES: TO THE ENTIRETY. I MEAN, IT'S  
22      GOT -- IF WE'RE GOING TO BE TALKING ABOUT HEARSAY,  
23      THOSE ARE ALL STATEMENTS -- IT'S CONTACTS WITH THIRD  
24      PARTIES, STATEMENTS ABOUT WHO THEY'VE TALKED TO, AND --  
25      ET CETERA. THAT WOULD BE TRUE FOR BOTH 82 AND 85  
26      BECAUSE BOTH OF THEM ARE DELIVERED SERVICE LOGS.

27              THE COURT: ALL RIGHT. SO THESE WILL HAVE TO  
28      BE SET ASIDE.

1 MR. MCMILLAN: YOUR HONOR, THERE'S SEVERAL  
2 DIFFERENT APPROACHES TO THIS.

3 ONE, FIRST OF ALL, IT'S AN OFFICIAL COUNTY  
4 RECORD THAT IS REQUIRED BY LAW TO BE MAINTAINED. THE  
5 WAY IT ACTUALLY WORKS IS CWS/CMS IS A STATE-RUN,  
6 STATE-OWNED, STATE-OPERATED DATABASE, AND THERE'S AN  
7 AGREEMENT BETWEEN THE STATE AND EVERY COUNTY IN THE  
8 STATE TO USE THIS DATABASE TO INSERT THEIR TRUTHFUL,  
9 HONEST, ACCURATE INFORMATION SO THAT ALL OF THESE  
10 REPORTS CAN BE GENERATED BY THE CWS/CMS SYSTEM AT THE  
11 PARTICULAR LOCATION OR SITE WHERE THE COUNTY IS  
12 PROCESSING THESE PETITIONS, DETENTION REPORTS,  
13 JURISDICTION REPORTS, THOSE SORTS OF THINGS. SO,  
14 NUMBER ONE, IT'S DATA THAT'S REQUIRED TO BE MAINTAINED  
15 BY LAW.

16 THE COURT: SO -- AND I DO UNDERSTAND THAT.  
17 SO WHAT I REALLY NEED IS WHAT EXCEPTION TO THE HEARSAY  
18 RULE ARE YOU RELYING UPON IN OFFERING 82 AND 85?

19 MR. MCMILLAN: THAT, NUMBER ONE, IT'S LEGALLY  
20 OPERATIVE LANGUAGE. IT IS THE INFORMATION THAT IS AT  
21 THE CENTER OF THE DISPUTE IN THIS CASE. VERY SIMILAR  
22 TO A DEFAMATION CASE WHERE THE DEFAMATORY STATEMENT IS  
23 ITSELF HEARSAY, BUT IT'S LEGALLY OPERATIVE LANGUAGE.

24 SO, NUMBER ONE, IT'S LEGALLY OPERATIVE.

25 NUMBER TWO, IT'S A BUSINESS RECORD.

26 NUMBER THREE, WITH RESPECT TO PARTICULAR  
27 REPORTS THAT ARE CONTAINED IN THE DSL THAT WERE MADE BY  
28 THE DEFENDANTS IN THIS CASE, SOME OF THOSE WOULD BE

1       ADMISSIONS AGAINST INTEREST OR STATEMENTS OF PARTY  
2       OPPONENTS OR PARTY-AFFILIATED OPPONENTS. I DON'T HAVE  
3       A PROBLEM NECESSARILY WITH A LIMITING INSTRUCTION, BUT  
4       AGAIN, THEY'RE NOT NECESSARILY THERE FOR THE TRUTH OF  
5       THE MATTERS ASSERTED BECAUSE THEY -- FOR OUR PURPOSE,  
6       I'M NOT SURE IF THEY WOULD BE, BUT THEY ARE A RECORD OF  
7       WHAT THE PARTICULAR SOCIAL WORKER IN QUESTION REPORTED  
8       INTO THE SYSTEM.

9                SO IN THAT SENSE, I'M NOT EVEN SURE THEY'RE A  
10       HEARSAY PURPOSE.

11               THE COURT: SO YOU'RE SUGGESTING THERE'S A  
12       NONHEARSAY PURPOSE?

13               MR. MCMILLAN: CORRECT.

14               THE COURT: MR. GUTERRES?

15               MR. GUTERRES: YOUR HONOR, THERE ARE BASICALLY  
16       100 PAGES OF CONTACTS THAT THEY'VE TRIED TO SNEAK IN  
17       SPANNING A TIME FRAME OF OCTOBER 1ST OF 2009 THROUGH  
18       AUGUST OF 2010 IN EXHIBIT 82, AND IN EXHIBIT 85, AGAIN,  
19       ANOTHER 17 PAGES OF -- THAT SPANS A TIME FRAME OF  
20       AUGUST OF 2010 THROUGH OCTOBER. TO THE EXTENT THAT  
21       THERE ARE ALLEGED REPRESENTATIONS MADE THAT PLAINTIFF  
22       IS ASSERTING WERE MISLEADING OR -- MR. MCMILLAN'S  
23       ALREADY READ THOSE, AND HAS CROSS-EXAMINED. SO AS TO  
24       THOSE PARTICULAR STATEMENTS, THEY'VE ALREADY BEEN  
25       TESTIFIED TO. AND AS TO THE OTHERS, IT'S NOT RELEVANT,  
26       IT'S MISLEADING, AND IT'S GOING TO CONFUSE THE ISSUES.

27               I THINK TO THE EXTENT THAT HE WANTS TO  
28       INTRODUCE THIS TO ADDRESS THOSE STATEMENTS THAT ARE AT

1       ISSUE, IT'S CUMULATIVE ALSO BECAUSE HE'S ALREADY  
2       BASICALLY READ IT TO THE WITNESS AND THE WITNESS HAS  
3       ALREADY TESTIFIED TO THOSE.

4                SO THAT WOULD BE OUR OBJECTION, YOUR HONOR.

5                THE COURT: ALL RIGHT. I'LL HAVE TO TAKE A  
6       LOOK AT THEM.

7                MR. MCMILLAN: YOUR HONOR, IF I MIGHT JUST ADD  
8       ONE THING. WHILE IT'S TRUE, AS TO SELECT SEGMENTS OF  
9       THE CWS RECORDS, THOSE WERE READ TO THE PARTICULAR  
10      WITNESS IN THE DEPOSITION, CROSS-EXAMINED ON THOSE  
11      PARTICULAR SELECT PIECES, BUT THERE'S A LOT OF OTHER  
12      INFORMATION IN THERE THAT WOULD BE EXCULPATORY IN  
13      NATURE THAT WAS NOT PRESENTED OR DISCLOSED TO THE COURT  
14      IN REPORTING. AND THEN THERE'S ALSO OTHER MONITORING  
15      REPORTS THAT PROVIDE A COMPARISON OF WHAT MS. SCHEELE  
16      DID VERSUS WHAT OTHER DISINTERESTED, NEUTRAL MONITORS  
17      WERE DOING IN REPORTING. SO IN THAT SENSE, AGAIN, THE  
18      ENTIRE RECORD IS MEANINGFUL AND, IN OUR VIEW, VERY  
19      HIGHLY RELEVANT TO WHAT WENT ON HERE. THE WHOLE CASE  
20      IS ABOUT WHAT THEY KNEW VERSUS WHAT THEY REPORTED.  
21      WHAT THEY KNEW, OR WHAT THEY PURPORTEDLY KNEW, IS IN  
22      THOSE DELIVERED SERVICE LOGS AND IT'S REQUIRED BY LAW  
23      TO BE THERE.

24               THE COURT: ALL RIGHT. WELL, NO RULING.

25               MR. GUTERRES: YOUR HONOR, ONE LAST THING ON  
26      EXHIBIT 85. THOSE ARE ALL CONTACTS THAT START AUGUST  
27      OF 2010, WHICH IS AFTER THE TRIAL IN THE DEPENDENCY  
28      COURT. SO IT REALLY HAS NO BEARING ON ANY ALLEGED

1 ISSUES WITH REGARD TO REPRESENTATION THAT ULTIMATELY  
2 LED TO THE DECISION OF THE COURT WHICH IS AT ISSUE  
3 HERE.

4 MR. MCMILLAN: AND YOUR HONOR, JUST BRIEF  
5 RESPONSE TO THAT. YESTERDAY, DURING MS. DUVAL'S  
6 CROSS-EXAMINATION, THEY WERE BRINGING HER ALL KINDS OF  
7 DOCUMENTS THAT CAME AFTER THE FACT, AFTER THE JUDGMENT  
8 WAS ENTERED. I'M NOT SURE IF NOW THEY'RE SAYING THAT  
9 NONE OF THOSE ARE RELEVANT EITHER AND THEY'RE GOING TO  
10 WITHDRAW THAT OR WHAT, BUT THE FACT REMAINS THAT THEY  
11 ARE GOING INTO ISSUES THAT WENT BEYOND -- IN THEIR  
12 CROSS-EXAMINATION, IMMEDIATELY, THEY WENT INTO ISSUES  
13 THAT GO BEYOND THE JUDGMENT.

14 MS. SWISS: THE ONLY DOCUMENT USED IN THE  
15 CROSS-EXAMINATION OF PLAINTIFF WAS A LANGUAGE FORM SHE  
16 SIGNED ON SEPTEMBER 9, 2010, WHICH IS IRRELEVANT TO THE  
17 CONTACT NOTES FROM AUGUST 16TH TO OCTOBER 4TH. SO THE  
18 REPRESENTATION THAT THERE WERE ALL KINDS OF DOCUMENTS,  
19 I DON'T BELIEVE IS TRUE.

20 THE COURT: YEAH, I'VE HEARD ENOUGH. NO  
21 RULING. WE'LL TAKE SOME DAYS OFF FROM THE JURY FOR ME  
22 TO READ THESE HUNDREDS OF PAGES THAT OBVIOUSLY ARE  
23 GOING TO BE IN CONFLICT. SO WE'LL DO THAT.

24 NEXT ONE IS 98, LETTER TO JUDGE NASH FROM  
25 DR. CHARLES NIESEN.

26 MR. GUTERRES: DEFENSE HAS NO OBJECTION.

27 THE COURT: PARDON, MR. GUTERRES?

28 MR. GUTERRES: WE HAVE NO OBJECTION, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT. 98 WILL BE RECEIVED.

3 NEXT IS 167, WHICH IS TWO PAGES OF RD'S  
4 MEDICAL RECORDS FROM LA COUNTY USC MEDICAL CENTER.

5 MR. GUTERRES: SO, FOR EXAMPLE, IN THIS  
6 MEDICAL EXAMINATION FORM, IT'S GOT INFORMATION OF WHAT  
7 MS. DUVAL REPRESENTED TO THE INDIVIDUAL AT THE COUNTY  
8 WITH REGARD TO BABY RYAN'S ALLERGIES. OUR POSITION  
9 WOULD BE, WELL, THAT'S MAYBE WHAT SHE REPRESENTED BUT  
10 TO THE EXTENT IT'S BEING BROUGHT IN AS TO THE TRUTH OF  
11 THE MATTER ASSERTED, I THINK IT WOULD BE HEARSAY.

12 THE COURT: IS THAT TRUE OF BOTH PAGES?

13 MR. GUTERRES: FOR -- YES. IT BASICALLY  
14 SPEAKS TO, ON PAGE 1, WHAT SHE INDICATES TO THE DOCTOR  
15 WITH REGARD TO BABY RYAN'S FOOD ALLERGIES.

16 THE COURT: ALL RIGHT. SO YOU'RE OBJECTING ON  
17 THE GROUND OF HEARSAY?

18 MR. GUTERRES: YES. OR IT CAN BE BROUGHT IN  
19 FOR THE LIMITED PURPOSE.

20 THE COURT: OF WHAT WAS SAID?

21 MR. MCMILLAN: YOUR HONOR, WITH RESPECT TO  
22 PAGE 002019, IF IT'S FOR A LIMITED PURPOSE, PLAINTIFF  
23 HAS NO OBJECTION TO THAT.

24 WITH RESPECT TO 002030, THAT IS ACTUALLY THE  
25 DOCUMENT WHERE THE COUNTY'S CHILD ABUSE EXPERT MEDICAL  
26 DOCTOR, DR. EVANS, WENT THROUGH HER OWN ASSESSMENT AS  
27 TO WHETHER OR NOT THE CHILD EXPERIENCED SEVERE PAIN,  
28 SEXUAL ABUSE, EXHIBITS UNUSUAL, UNCONTROLLABLE

1 BEHAVIOR, DOES THE CHILD SEEM TO BE DISCONNECTED -- SHE  
2 CHECKED "NO" ON ALL OF THOSE.

3 SO OUR POSITION WOULD BE THAT THE COUNTY'S  
4 EXPERT DID AN ASSESSMENT ON THIS CHILD AND CAME TO HER  
5 CONCLUSIONS, AND THAT HER CONCLUSIONS ARE AN ADMISSION.  
6 THEY GO DIRECTLY TO THE ISSUE OF EXIGENCY.

7 THE COURT: ALL RIGHT. I'LL HAVE TO LOOK AT  
8 THE DOCUMENT.

9 PAGE 2019 OF EXHIBIT 167 WILL BE RECEIVED FOR  
10 A LIMITED PURPOSE. NO RULING AT THIS TIME ON  
11 PAGE 2030.

12 NO. 175, RD'S MEDICAL RECORDS FROM HARBOR-UCLA  
13 MEDICAL CENTER.

14 MR. GUTERRES: I HAVE NO OBJECTION TO --  
15 THAT'S FINE, YOUR HONOR, 175.

16 THE COURT: MAY BE RECEIVED?

17 MR. GUTERRES: YES.

18 THE COURT: ALL RIGHT. IT WILL BE RECEIVED.  
19 OFF THE RECORD FOR A MOMENT.

20 (A DISCUSSION WAS HELD OFF THE RECORD.)

21 THE COURT: WHEN WE HAVE A CHANCE TO RESUME  
22 THIS, WHICH WILL BE PROBABLY 4:00 O'CLOCK THIS  
23 AFTERNOON, WE'LL BE AT EXHIBIT 176.

24 (A DISCUSSION WAS HELD OFF THE RECORD.)

25 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.  
26 COUNSEL ARE PRESENT. WE'RE OUTSIDE THE PRESENCE OF THE  
27 JURY.

28 MR. MCMILLAN, I THINK PERHAPS MR. PARIS



1 POINTED THIS OUT TO YOU, THAT WHILE YOU WERE ON A VERY  
2 SHORT BREAK, THAT EXHIBIT 175 THAT'S MARKED IN THE  
3 INDEX PROVIDED TO US BY MR. PARIS, THAT IT INCLUDES  
4 WHAT APPEARS TO BE WOULD BE THE ENTIRE RECORD OF  
5 HARBOR-UCLA MEDICAL CENTER, PAGES 2169 THROUGH 2255.  
6 BUT MR. GUTERRES POINTED OUT TO US THAT THE ONLY --  
7 ONLY ONE PAGE OF EXHIBIT 175 HAS BEEN IDENTIFIED ON THE  
8 RECORD, AND THAT IS PAGE 2251.

9 MR. MCMILLAN: YOUR HONOR, I'M NOT SURE THAT  
10 THAT'S CORRECT. I HAVE TO LOOK AT -- WE'VE BEEN  
11 GETTING THE ROUGH TRANSCRIPTS. I HAVE TO GO BACK AND  
12 LOOK AT DR. ACHAR'S TESTIMONY. BUT I BELIEVE -- THIS  
13 IS JUST FROM MEMORY, SO I DON'T WANT TO -- I DON'T WANT  
14 THE COURT TO THINK THAT, IF I'M WRONG ON THIS, I'M  
15 INTENTIONALLY MISREPRESENTING ANYTHING -- BUT I BELIEVE  
16 THAT VIRTUALLY THE ENTIRETY OR MOST OF DR. ACHAR'S  
17 TESTIMONY ABOUT THE CONDITION OF THE CHILD WAS BASED ON  
18 THE FAILURE TO THRIVE MEDICAL RECORDS, WHICH WE DID  
19 IDENTIFY AND DISCUSS IN DETAIL DURING HIS TESTIMONY.

20 AND I BELIEVE THAT THAT IS WHEN -- I HAVE TO  
21 LOOK AND SEE WHAT THAT PARTICULAR PAGE IS. I SUSPECT  
22 IT'S THE PAGE FROM THE NOVEMBER 3RD RECORD THAT HAD THE  
23 INTERLINEATION SORT OF TRAILING OFF THE SIDE OF THE  
24 PAGE, AND I THINK THAT'S WHAT THAT RECORD IS. BUT WE  
25 ACTUALLY IDENTIFIED AND DISCUSSED THE ENTIRE RECORD.  
26 IN FACT, I THINK THAT THERE WAS SIGNIFICANT  
27 CROSS-EXAMINATION OF DR. ACHAR ON THE ISSUE OF THAT  
28 RECORD, WHETHER OR NOT HE GOT A COMPLETE RECORD.

1           AND AS I RECALL, WE ACTUALLY WENT THROUGH A  
2 LITTLE EXHIBIT WAR WITH THAT, YOU KNOW, PLAINTIFF'S  
3 EXHIBITS VERSUS DEFENDANT'S EXHIBITS. AND THE POINT OF  
4 ALL THAT WAS TO SHOW THAT DR. ACHAR ACTUALLY DID GET  
5 THE COMPLETE MEDICAL RECORD AS IT WAS PROVIDED TO US.

6           THAT'S MY RECOLLECTION OF TESTIMONY. WHETHER  
7 OR NOT THAT'S SUFFICIENT, I -- WE CAN TALK ABOUT THAT,  
8 BUT I DO RECALL THAT BEING THE ISSUE WITH DR. ACHAR.

9           THE COURT: WELL, WE'LL HAVE TO REVISIT 175  
10 WHEN YOU HAVE AN OPPORTUNITY TO CHECK WHATEVER YOU'RE  
11 GOING TO CHECK, AND WE'LL HAVE THE DISCUSSION. BUT I  
12 HAVE -- I DO HAVE AN OBJECTION. AND MEDICAL RECORDS  
13 CAN QUALIFY AS -- I'LL JUST REPEAT IT -- CAN QUALIFY AS  
14 A BUSINESS RECORD, AND A BUSINESS RECORD IS ADMISSIBLE  
15 ONLY TO THE EXTENT THAT IT'S A RECORD OF AN ACT,  
16 CONDITION, OR EVENT. AS A RESULT OF THAT, ALMOST --  
17 ALMOST NEVER, AND I CAN TELL YOU NOT WITHIN MY  
18 RECOLLECTION, DO MEDICAL RECORDS FROM A HOSPITAL COME  
19 INTO EVIDENCE IN TOTO, ABSENT A STIPULATION.

20           SO IF THEY ARE BEING OFFERED, EVEN THOUGH HE'S  
21 RELIED ON THEM, THEY DO NOT BECOME EVIDENCE IN THE  
22 CASE. AN EXPERT IS ENTITLED TO TESTIFY AS TO WHAT  
23 THEY'VE RELIED UPON, BUT THE FACT THEY RELIED UPON THEM  
24 IS NOT A GROUND FOR ADMISSIBILITY. SO THEY WOULD HAVE  
25 TO HAVE AN INDEPENDENT GROUND OF ADMISSIBILITY.

26           AND IF THESE RECORDS, EITHER THERE'S A  
27 STIPULATION THEY ARE THE RECORDS, OR THE RECORDS HAVE  
28 BEEN DELIVERED TO THE COURT WITH A DECLARATION OF

1 AFFIDAVIT OF A CUSTODIAN OF RECORDS SUFFICIENT TO  
2 SATISFY THE REQUIREMENTS OF SECTION -- I THINK IT'S  
3 1271 OF THE EVIDENCE CODE, I'LL CONSIDER IT.

4 AND IF THERE IS A SUFFICIENT BASIS FOR THE  
5 RECORDS, THEN ONLY THAT PORTION WHICH IS THE RECORD OF  
6 AN ACT, CONDITION, OR EVENT WILL BE ADMISSIBLE, AND  
7 WILL BE INCUMBENT ON THE PLAINTIFF OF THESE 86 PAGES TO  
8 BE ABLE TO POINT OUT TO THE COURT WHAT SATISFIES THAT  
9 CONDITION AND WHAT DOESN'T. AND IF I AGREE, THEN THE  
10 RECORDS WOULD HAVE TO BE REDACTED AND ONLY THAT PORTION  
11 WOULD COME IN. NOW, THE ONE PAGE THAT WAS IN ISSUE,  
12 APPARENTLY THERE WAS AN AGREEMENT THAT THAT CAN BE  
13 RECEIVED, BUT WE'LL WAIT AND SEE WHAT -- WHAT YOUR --  
14 LOOKING BACK AT WHATEVER RECORDS YOU HAVE, AND MAYBE  
15 YOU EVEN HAVE THE TRANSCRIPT.

16 SO I DON'T RECALL, BUT IT'S ENTIRELY POSSIBLE,  
17 CERTAINLY, THAT THESE ARE RECORDS THAT CAN BE RELIED  
18 UPON. BUT THE FACT, AS I'VE STATED, THAT AN EXPERT  
19 RELIED ON THEM DOESN'T MAKE THEM ADMISSIBLE.

20 MR. GUTERRES: UNDERSTOOD, YOUR HONOR. AND WE  
21 DO HAVE AND WE CAN LODGE WITH THE COURT THE DEPOSITION  
22 OF THE CUSTODIAN OF RECORDS FOR HARBOR-UCLA, AND HE  
23 BROUGHT WITH HIM THE ENTIRE CHART, WHICH WAS THEN  
24 ATTACHED TO THE DEPOSITION.

25 THE COURT: ALL RIGHT. WELL, THAT PROVIDES  
26 FOUNDATION; IT DOESN'T PROVIDE ADMISSIBILITY. THE RULE  
27 OF ADMISSIBILITY IS AS I'VE STATED.

28 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR.

1           MR. GUTERRES:  AND YOUR HONOR, WE WOULD JUST  
2           REQUEST THAT OBVIOUSLY TO THE EXTENT THERE'S MORE OF  
3           THESE WHERE PLAINTIFF DISAGREES WITH THE COURT'S  
4           INFORMATION WITH REGARD TO WHAT'S BEEN IDENTIFIED, THAT  
5           AT LEAST WE BE NOTIFIED IN ADVANCE SO THAT WE'RE NOT --  
6           I'M JUST RELYING ON THE PLAINTIFF'S REPRESENTATION THAT  
7           HE'S ACCURATELY REFLECTED WHAT THE EXHIBITS ARE, AND  
8           THEN --

9           THE COURT:  WELL, AND MR. MCMILLAN CAN CHECK  
10          IF HE CHOOSES TO, AND MORE IS IDENTIFIED THAN THE  
11          CLERK'S RECORD SHOWS TO BE IDENTIFIED.  BUT I DO RELY  
12          ON THE CLERK'S RECORD OF WHAT'S BEEN IDENTIFIED.  I CAN  
13          ALSO CHECK BACK ON MY OWN NOTES BECAUSE I TYPICALLY  
14          MAKE A NOTE OF WHAT HAS BEEN TESTIFIED TO BY A WITNESS.  
15          AND I DON'T RELY ON THAT AS MUCH AS I RELY ON THE  
16          CLERK'S RECORD.  SO THERE WOULD BE A NUMBER OF  
17          QUESTIONS TO BE ANSWERED ABOUT 1275 -- EXCUSE ME, ABOUT  
18          EXHIBIT -- WHATEVER IT WAS WE JUST TALKED ABOUT.

19          MR. MCMILLAN:  175, YOUR HONOR.

20          THE COURT:  175.

21          MR. MCMILLAN:  AND YOUR HONOR, I UNDERSTAND  
22          THAT.  AGAIN, I MADE THE POINT THIS IS JUST FROM MY  
23          RECOLLECTION, AS TO THE LIST THAT WAS PUT TOGETHER.  
24          THE FIRST TIME I FIGURED OUT THERE WAS AN ISSUE WAS  
25          JUST NOW WHEN I WALKED IN FROM THE RESTROOM.  AND I DO  
26          HAVE THE ROUGH TRANSCRIPT FROM DR. ACHAR, AND I'LL LOOK  
27          THROUGH THAT, BUT I'M FAIRLY SURE THAT WE DID IDENTIFY  
28          SPECIFICALLY BY EXHIBIT NUMBER, AS WE WERE GOING

1 THROUGH HIS LIST, THE EXHIBITS THAT HE WAS TALKING  
2 ABOUT.

3 THE COURT: ALL RIGHT. BUT AGAIN, THAT IS NOT  
4 A GROUND OF ADMISSIBILITY.

5 MR. MCMILLAN: UNDERSTOOD.

6 THE COURT: SO, FRANKLY, YOU CAN CHECK THAT.  
7 I DON'T THINK IT'S GOING TO MAKE A LOT OF DIFFERENCE  
8 BECAUSE -- FOR THE REASONS I'VE STATED, THAT THAT --  
9 THE FACT AN EXPERT'S RELIED ON SOMETHING, DOESN'T MAKE  
10 IT ADMISSIBLE.

11 MR. MCMILLAN: RIGHT. I UNDERSTAND THAT, YOUR  
12 HONOR, AND I WAS ACTUALLY JUST RESPONDING TO THE --

13 THE COURT: IT JUST REALLY GOES TO FOUNDATION  
14 FOR THE OPINION, YOU KNOW, THE EXPERT IS ENTITLED TO  
15 RELY UPON -- I FORGET THE SECTION, 801 OR 802, THAT  
16 SAYS THAT THEY CAN EXPRESS OPINIONS BASED ON RELIABLE  
17 SOURCES OF INFORMATION. THERE'S NO OBJECTION TO HIS  
18 OPINIONS. AND HAD THERE BEEN, I'M QUITE SURE THE  
19 RULING WOULD HAVE BEEN THAT THE MEDICAL RECORDS OF A  
20 KNOWN INSTITUTION SUCH AS HARBOR-UCLA WOULD BE A PROPER  
21 BASIS FOR RELIANCE OF AN EXPERT. BUT THAT'S A WHOLE  
22 DIFFERENT ISSUE.

23 ALL RIGHT. SO WE HAVE -- I HAVE AN E-MAIL  
24 FROM JUROR NO. 8, MS. MANZANO:

25 "I WOULD LIKE TO REQUEST LEAVE  
26 EARLY TOMORROW, OCTOBER 13TH, FOR MY  
27 MOM'S DOCTOR'S APPOINTMENT WITH THE  
28 CITY OF HOPE ONCOLOGY AT 4:00 P.M. I

1           WOULD LIKE TO ASK FOR PERMISSION TO  
2           LEAVE THE COURTROOM AT 3:00 P.M."

3           I'M GOING TO GRANT THAT REQUEST. THE CITY OF  
4           HOPE, AS WE ALL KNOW, DEALS WITH CANCER ISSUES, AND I  
5           THINK THAT SHE SHOULD BE ABLE TO ACCOMPANY HER MOTHER.  
6           SO TOMORROW WILL BE 3:00.

7           ALL RIGHT. ARE WE ALL SET FOR THIS MORNING,  
8           OR IS IT TIME FOR LUNCH?

9           I GUESS THE LAUGH MEANS THAT WE'RE ALL READY.  
10          SO NOW WE WILL ASK DEANNA TO GET OUR JURORS  
11          IN.

12          (JURY PRESENT)

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

15          MS. DUVAL, YOU MAY RESUME THE STAND.

16          BEFORE WE CONTINUE, MS. MANZANO, I HAVE  
17          RECEIVED YOUR INQUIRY, AND YES, WE WILL DO THIS  
18          TOMORROW.

19          JUROR NO. 8: THANK YOU, SIR.

20          THE COURT: YOU'RE WELCOME.

21          ALL RIGHT. MS. SWISS, WOULD YOU LIKE TO  
22          CONTINUE?

23

24

RAFAELINA DUVAL,

25          WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY

26          SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

27

28          ///

## CROSS-EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BY MS. SWISS:

Q GOOD MORNING, MS. DUVAL.

A GOOD MORNING.

Q NOW, YOU WERE PRESENT FOR THE ADJUDICATION HEARING IN THE DEPENDENCY CASE; CORRECT?

A I WAS.

Q AND THAT WAS THE TRIAL THAT HAPPENED IN AUGUST OF 2010?

A YES.

Q OKAY. NOW, BEFORE THAT TRIAL, YOU PREPARED WITH YOUR ATTORNEY; CORRECT?

A I'M SORRY. I DON'T KNOW WHAT YOU MEAN, PREPARED?

Q WELL, YOU DISCUSSED WITH YOUR ATTORNEY WHAT WITNESSES YOU WOULD CALL TO TESTIFY ON YOUR BEHALF?

MR. MCMILLAN: ATTORNEY-CLIENT PRIVILEGE, YOUR HONOR. OBJECTION.

THE COURT: SUSTAINED.

BY MS. SWISS:

Q YOU HAD YOUR BINDER OF MEDICAL RECORDS THAT YOU WANTED TO SUBMIT TO THE COURT FOR CONSIDERATION IN THE TRIAL?

A NO.

Q NO?

YOU FILED A WITNESS LIST WITH THE DEPENDENCY COURT, ISN'T THAT TRUE?

MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.

1 CALLS FOR SPECULATION ON THE PART OF THIS WITNESS.

2 THE COURT: OVERRULED.

3 THE WITNESS: I DON'T REMEMBER THAT DOCUMENT.

4 BY MS. SWISS:

5 Q LET'S TAKE A LOOK AT EXHIBIT 48.

6 (DEFENDANTS' EXHIBIT NO. 48, WAS MARKED  
7 FOR IDENTIFICATION BY THE COURT.)

8 BY MS. SWISS:

9 Q PLEASE TAKE A LOOK AT EXHIBIT 48.

10 DOES THAT REFRESH YOUR RECOLLECTION THAT YOU  
11 FILED A WITNESS LIST IN THE CASE?

12 MR. MCMILLAN: OBJECTION, YOUR HONOR.

13 MISSTATES THE DOCUMENT.

14 THE COURT: OVERRULED.

15 THE WITNESS: I'M SORRY, I DON'T RECALL SEEING  
16 THIS. MAYBE THAT MY ATTORNEY FILED IT ON MY BEHALF,  
17 BUT I DON'T RECALL EVER SEEING THIS PARTICULAR  
18 DOCUMENT. MAYBE HE DIDN'T SHOW IT TO ME.

19 BY MS. SWISS:

20 Q OKAY.

21 A SORRY.

22 Q AND ROBERT HOWELL IS YOUR ATTORNEY; CORRECT?

23 A YES, HE WAS.

24 Q AND THE CAPTION IS *IN RE: MATTER OF RYAN* AND  
25 THEN HIS LAST NAME?

26 A YES.

27 Q AND THE CAPTION IS MOTHER'S WITNESS LIST?

28 A YES.



1 Q AND YOU'RE RYAN'S MOTHER; CORRECT?

2 A I AM.

3 Q AND THE DOCUMENT IS SIGNED BY ROBERT HOWELL,  
4 ATTORNEY FOR MOTHER, RAFAELINA DUVAL?

5 A YES.

6 Q AND THE DOCUMENT HAS A STAMP ON THERE, FILED  
7 WITH THE LOS ANGELES SUPERIOR COURT; CORRECT? ON THE  
8 FIRST PAGE, PAGE 990?

9 A YES.

10 Q NOW, THE WITNESSES THAT YOU INTENDED TO CALL  
11 AT THE TRIAL, THEY INCLUDED YOURSELF; RIGHT?

12 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
13 CALLS FOR SPECULATION ON THE PART OF THIS WITNESS.

14 THE COURT: SUSTAINED AS TO FOUNDATION.

15 ALTHOUGH THE QUESTION CAN BE ASKED  
16 DIFFERENTLY.

17 BY MS. SWISS:

18 Q BUT YOU TESTIFIED AT THE ADJUDICATION; RIGHT?

19 A YES.

20 Q AND MR. MILLS TESTIFIED?

21 A YES.

22 Q AND YOUR LACTATION CONSULTANT,  
23 MS. BAGHDASSARIAN, SHE TESTIFIED?

24 A YES, SHE DID.

25 Q AND MS. PENDER TESTIFIED?

26 A I BELIEVE SO. I THINK SO.

27 Q AND MS. NELSON, SHE TESTIFIED?

28 A I DON'T REMEMBER IF SHE DID OR NOT.

1 Q OKAY. AND YOU HAD TWO EXPERT WITNESSES  
2 TESTIFY AS WELL; CORRECT?

3 A YES.

4 Q AND THAT WAS DR. LOTT; CORRECT?

5 A YES.

6 Q AND DR. NIESEN?

7 A YES.

8 Q AND YOU DIDN'T CALL ANY OTHER WITNESSES TO  
9 TESTIFY; CORRECT?

10 A I DON'T REMEMBER IF THERE WERE ANYONE ELSE WHO  
11 TESTIFIED.

12 Q WELL, YOUR MOTHER DIDN'T TESTIFY; CORRECT?

13 A CORRECT.

14 Q AND YOUR FATHER DID NOT TESTIFY; CORRECT?

15 A NO.

16 Q NONE OF YOUR FAMILY MEMBERS TESTIFIED?

17 A NO.

18 Q AND YOUR FRIEND, NORISSA ENNIS, SHE DIDN'T  
19 TESTIFY?

20 A NO.

21 Q AND DR. YIM, SHE DIDN'T TESTIFY; RIGHT?

22 A NO.

23 Q DR. GILL, SHE DIDN'T TESTIFY?

24 A NO.

25 Q NOW, DO YOU RECALL IF YOU SUBMITTED AN EXHIBIT  
26 LIST FOR DOCUMENTS TO BE PUT IN FRONT OF THE JUVENILE  
27 COURT DURING THE TRIAL?

28 A I DON'T REMEMBER.

1 Q IF YOU COULD TURN THE PAGE TO EXHIBIT 49, AND  
2 THAT'S BATES-STAMPED 993 AND 994. AND IT ACTUALLY  
3 CONTINUES TO 1003.

4 MS. DUVAL, DOES THAT REFRESH YOUR RECOLLECTION  
5 THAT YOU INTENDED TO OFFER EXHIBITS AT THE TIME OF THE  
6 TRIAL IN THE ADJUDICATION?

7 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
8 CALLS FOR SPECULATION. ASSUMES FACTS ON THE PART OF  
9 THIS WITNESS.

10 THE COURT: THE OBJECTION LACKING FOUNDATION  
11 IS SUSTAINED.

12 BUT AGAIN, THE SUBJECT MATTER MAY BE -- THE  
13 QUESTION COULD BE REFRAMED.

14 BY MS. SWISS:

15 Q MS. DUVAL, THIS IS A DOCUMENT FILED BY YOUR  
16 ATTORNEY, MR. ROBERT HOWELL, CORRECT?

17 A YES, HE FILED THIS.

18 Q AND IT'S SIGNED ROBERT HOWELL, ATTORNEY FOR  
19 MOTHER, RAFAELINA DUVAL, ON PAGE 994?

20 A YES.

21 Q AND IT'S *IN RE: MATTER OF RYAN* AND THEN HIS  
22 LAST NAME?

23 A YES.

24 Q AND IT'S CAPTIONED MOTHER'S EXHIBIT LIST;  
25 CORRECT?

26 A YES.

27 Q AND IT'S GOT THE FILE STAMP ON IT THAT IT WAS  
28 FILED WITH THE COURT?

1           A     YES.

2           Q     JUNE 7, 2010?

3           A     YES.

4           Q     NOW, THIS DOCUMENT YOUR ATTORNEY FILED ON YOUR  
5 BEHALF, IT HAS THREE ATTACHMENTS; CORRECT? EXHIBITS A,  
6 B, AND C?

7           A     YES, I SEE THERE ARE THREE ATTACHMENTS HERE.

8           Q     AND EXHIBIT A IS A TELEPHONE MESSAGE BY  
9 DR. YIM?

10          A     YES.

11          Q     AND THAT'S REGARDING A CONVERSATION SHE HAD  
12 WITH YOU ON JUNE 22, 2009?

13          A     HOLD ON A SECOND, PLEASE.

14          Q     IT'S BATES 996.

15          A     YES, I'M QUICKLY READING THE MESSAGE. I'M  
16 SORRY.

17                    YES, I SEE THAT.

18          Q     AND EXHIBIT B IS ANOTHER PHONE MESSAGE BY  
19 DR. YIM REGARDING A CONVERSATION WITH THE FATHER ON  
20 JUNE 25, 2009; CORRECT?

21                    THAT'S BATES 998.

22          A     YES, I SEE THAT.

23          Q     AND EXHIBIT C TO YOUR EXHIBIT LIST IS THE  
24 LETTER FROM YOUR LACTATION CONSULTANT,  
25 MS. BAGHDASSARIAN, TO DR. YIM, DATED APRIL 16, 2009?

26          A     YES.

27          Q     STARTS ON BATES NO. 1000?

28          A     YES, I SEE THAT.

1 Q AND THERE'S ACTUALLY A FOURTH EXHIBIT,  
2 LETTER D, MOTHER'S LOG OF MEDICAL APPOINTMENTS, THAT  
3 WAS SUBMITTED TO THE JUVENILE COURT. THAT'S  
4 BATES 1003.

5 DO YOU SEE THAT?

6 A YES.

7 Q THOSE ARE THE EXHIBITS THAT YOUR ATTORNEY  
8 FILED ON YOUR BEHALF TO USE AT THE TRIAL?

9 A YES.

10 Q NOW, WE'VE HAD A LOT OF DISCUSSION IN THIS  
11 CASE ABOUT YOUR DISAGREEMENTS WITH STATEMENTS MADE IN  
12 COURT REPORTS.

13 DO YOU REMEMBER, GENERALLY, THAT TESTIMONY?

14 A YES.

15 Q IT'S BEEN QUITE A BIT.

16 NOW, IN THE DEPENDENCY CASE, YOUR ATTORNEY  
17 FILED ON YOUR BEHALF SOME OBJECTIONS TO SOME OF THOSE  
18 STATEMENTS IN THE REPORTS.

19 DO YOU RECALL THAT?

20 A I VAGUELY REMEMBER SOMETHING I READ YESTERDAY,  
21 BUT I DON'T KNOW WHAT YOU'RE REFERRING TO.

22 Q IF YOU COULD TAKE A LOOK AT EXHIBIT 50.

23 A I AM THERE.

24 Q AND THAT'S ANOTHER DOCUMENT FILED ON YOUR  
25 BEHALF BY YOUR ATTORNEY; CORRECT?

26 A YES.

27 Q AND IT'S BATES 1015 AND 1016?

28 A YES.

1 Q AND IT'S SIGNED BY ROBERT HOWELL, ATTORNEY FOR  
2 MOTHER, RAFAELINA DUVAL?

3 A YES.

4 Q AND IT WAS FILED *IN THE MATTER OF RYAN* AND  
5 THEN HIS LAST NAME?

6 A YES.

7 Q AND IT'S CAPTIONED MOTHER'S 355 OBJECTIONS.  
8 DO YOU SEE THAT?

9 A YES.

10 Q AND YOUR ATTORNEY FILED ON YOUR BEHALF WITNESS  
11 STATEMENTS CONTAINED IN THE DETENTION REPORT,  
12 STATEMENTS MADE BY DR. EVANS; RIGHT?

13 A I --

14 Q UNDER NO. 1?

15 A THAT'S WHAT IT SAYS HERE.

16 Q OKAY. AND YOUR ATTORNEY OBJECTED TO  
17 STATEMENTS MADE IN THE DETENTION REPORT BY WENDY CRUMP?

18 A THAT AS WELL, YES.

19 Q AND STATEMENTS MADE IN THE DETENTION REPORT BY  
20 DR. JASMEET GILL; CORRECT?

21 A YES.

22 Q AND YOUR ATTORNEY'S OBJECTION WAS OBJECTING TO  
23 THOSE STATEMENTS UNLESS THE PARTIES ARE MADE AVAILABLE  
24 AT THE TIME OF TRIAL; CORRECT?

25 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
26 SPECULATION ON THE PART OF THIS WITNESS.

27 THE COURT: SUSTAINED.

28 ///

1 BY MS. SWISS:

2 Q WELL, IN THE DOCUMENT, LINES 19 AND 20, YOUR  
3 ATTORNEY'S OBJECTION WAS TO THE STATEMENTS UNLESS THE  
4 PEOPLE CAME IN TO TESTIFY THEMSELVES; CORRECT?

5 MR. MCMILLAN: OBJECTION. FOUNDATION.  
6 SPECULATION AS TO THIS WITNESS.

7 THE COURT: SUSTAINED AS TO THIS WITNESS.

8 BY MS. SWISS:

9 Q NOW, YOUR ATTORNEY DID NOT CALL DR. EVANS TO  
10 TESTIFY AT THE ADJUDICATION; CORRECT?

11 A NO.

12 Q AND YOU DIDN'T CALL WENDY CRUMP TO TESTIFY?

13 MR. MCMILLAN: OBJECTION. FOUNDATION.  
14 SPECULATION AS TO THIS WITNESS.

15 THE COURT: SUSTAINED AS TO THE FORM OF THE  
16 QUESTION.

17 YOU CAN ASK THAT DIFFERENTLY.

18 BY MS. SWISS:

19 Q YOUR ATTORNEY DID NOT CALL WENDY CRUMP TO COME  
20 AND TESTIFY AT THE ADJUDICATION; CORRECT?

21 A I'M NOT SURE. I THINK HE WANTED TO CALL HER.  
22 I'M NOT SURE WHAT HAPPENED AS TO WHY SHE DIDN'T APPEAR.  
23 THAT'S MY UNDERSTANDING.

24 Q BUT SHE DIDN'T APPEAR; CORRECT?

25 A CORRECT, SHE DIDN'T APPEAR.

26 Q AND AGAIN, DR. GILL, SHE DIDN'T TESTIFY;  
27 RIGHT?

28 A SHE DIDN'T APPEAR EITHER.

1 Q NOW, BACK TO DR. LOTT AND DR. NIESEN,  
2 MR. BUDIN CAME HERE AND TESTIFIED THAT YOU TOLD HIM  
3 THAT TWO EXPERTS WERE NOT ALLOWED TO TESTIFY ON YOUR  
4 BEHALF.

5 DO YOU REMEMBER THAT?

6 A I REMEMBER HIM SAYING THAT, YES.

7 Q BUT DR. LOTT AND DR. NIESEN, THOSE WERE THE  
8 EXPERTS THAT TESTIFIED ON YOUR BEHALF; CORRECT?

9 A THEY DID TESTIFY.

10 Q SO MR. BUDIN WAS MISTAKEN?

11 MR. MCMILLAN: OBJECTION. ARGUMENT.  
12 FOUNDATION. SPECULATION.

13 THE COURT: OVERRULED.

14 THE WITNESS: BOTH DR. LOTT AND DR. NIESEN  
15 WERE VERY LIMITED AS TO THEIR TESTIMONY, SO TO ME IT'S  
16 LIKE AS IF THEY DIDN'T TESTIFY BECAUSE THE OPINIONS  
17 THEY HAD WERE NOT FULLY EXPRESSED DURING THE  
18 PROCEEDINGS. AND THAT'S WHAT I CONVEYED TO MY  
19 THERAPY -- DURING THERAPY, HOW FRUSTRATED I WAS.  
20 BY MS. SWISS:

21 Q BUT THAT'S NOT WHAT MR. BUDIN SAID; RIGHT?

22 MR. MCMILLAN: OBJECTION. ARGUMENT.  
23 MISSTATES TESTIMONY.

24 THE COURT: SUSTAINED.

25 BY MS. SWISS:

26 Q WELL, YOU AGREE WITH ME THAT MR. BUDIN CAME  
27 HERE AND TESTIFIED THEY YOU TOLD HIM THAT THEY WERE NOT  
28 ALLOWED TO TESTIFY; RIGHT?



1           A       I JUST TOLD YOU WHAT I SAID TO MR. BUDIN.

2           Q       OKAY.  NOW, AT THE END OF THE EVIDENCE IN THE  
3           ADJUDICATION, BEFORE THE JUDICIAL OFFICER MADE HER  
4           DECISION, DO YOU RECALL THE ATTORNEYS MAKING ARGUMENTS  
5           TO THE JUDGE ON HOW THE JUDGE SHOULD RULE?

6           A       I DON'T REMEMBER RIGHT NOW.  IT WAS SO MUCH  
7           GOING ON AT ONCE, RIGHT NOW I DON'T REMEMBER.

8           Q       DO YOU RECALL MR. HOWELL TELLING THE JUDGE WHY  
9           THE COURT SHOULD RULE IN YOUR FAVOR?

10           MR. MCMILLAN:  OBJECTION.  LACKS FOUNDATION.  
11           SPECULATION.

12           THE COURT:  OVERRULED.

13           THE WITNESS:  I DON'T RECALL RIGHT NOW.  I  
14           DON'T REMEMBER EVERYTHING THAT WAS SAID RIGHT NOW.  
15           BY MS. SWISS:

16           Q       DO YOU RECALL THE ATTORNEY FOR THE COUNTY  
17           MAKING ARGUMENTS WHY THEY SHOULD -- WHY THE COURT  
18           SHOULD RULE BASED ON THE RECOMMENDATIONS OF DCFS?

19           A       I CAN'T RECALL RIGHT NOW.

20           THE COURT:  MS. DUVAL, WILL YOU TRY TO KEEP  
21           YOUR VOICE UP A LITTLE BIT?  I WANT TO MAKE SURE  
22           EVERYONE CAN HEAR YOU.

23           THE WITNESS:  SORRY.  YES.

24           BY MS. SWISS:

25           Q       AND DO YOU RECALL THAT THE ARGUMENT MADE BY  
26           THE ATTORNEY FOR THE COUNTY WAS THAT THE PETITION  
27           SHOULD BE SUSTAINED AGAINST YOU AND THAT BABY RYAN  
28           SHOULD REMAIN WITH HIS FATHER BECAUSE THAT WAS IN THE

1 BEST INTEREST OF THE CHILD?

2 A I DON'T REMEMBER IF THAT WAS EXACTLY WHAT WAS  
3 SAID BUT -- IF IT IS, I DON'T KNOW.

4 Q AND DO YOU RECALL THE ATTORNEY FOR BABY RYAN  
5 AGREEING WITH THE DEPARTMENT'S RECOMMENDATION TO  
6 SUSTAIN THE PETITION AND FOR RYAN TO REMAIN WITH HIS  
7 FATHER BECAUSE THAT'S IN HIS BEST INTEREST?

8 MR. MCMILLAN: OBJECTION. FOUNDATION.  
9 SPECULATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: AS I SIT HERE, I DON'T RECALL,  
12 BUT IF YOU HAVE SOMETHING TO SHOW ME, I'LL BE GLAD TO  
13 READ IT AND SEE IF I REMEMBER.

14 BY MS. SWISS:

15 Q DO YOU RECALL THAT THE FATHER'S ATTORNEY ALSO  
16 AGREED WITH THE DEPARTMENT'S RECOMMENDATION TO SUSTAIN  
17 THE PETITION AND THAT RYAN SHOULD REMAIN IN THE CUSTODY  
18 OF HIS FATHER BECAUSE THAT WAS IN THE BEST INTEREST OF  
19 THE CHILD?

20 A I DON'T RECALL RIGHT NOW.

21 Q NOW, YESTERDAY YOU DID TESTIFY THAT THE COURT  
22 IN THE ADJUDICATION MADE SOME RULINGS; CORRECT?

23 A YES.

24 Q AND THE COURT DID SUSTAIN THE PETITION;  
25 CORRECT?

26 A YES.

27 Q AND THE COURT ORDERED THAT RYAN SHOULD REMAIN  
28 IN THE CUSTODY OF HIS FATHER BECAUSE THAT WAS IN HIS

1 BEST INTEREST; CORRECT?

2 MR. MCMILLAN: OBJECTION. MISSTATES HER  
3 TESTIMONY AS OF YESTERDAY.

4 THE COURT: OVERRULED.

5 THE WITNESS: I'M SORRY, CAN YOU REPEAT THE  
6 QUESTION?

7 MR. KING: IF WE CAN HAVE IT READ BACK,  
8 PLEASE.

9 THE COURT: YES.

10 PLEASE READ IT BACK.

11 AND PLEASE TRY TO KEEP YOUR VOICE UP,  
12 MS. DUVAL.

13 THE WITNESS: OKAY.

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

16 "QUESTION: AND THE COURT ORDERED  
17 THAT RYAN SHOULD REMAIN IN THE CUSTODY  
18 OF HIS FATHER BECAUSE THAT WAS IN HIS  
19 BEST INTEREST; CORRECT?")

20 THE WITNESS: I BELIEVE THAT'S WHAT THE COURT  
21 SAID.

22 BY MS. SWISS:

23 Q AND YOU TESTIFIED YESTERDAY THAT ONE OF THE  
24 REASONS THAT THE COURT MADE ITS RULING WAS BECAUSE  
25 THERE WAS EVIDENCE THAT YOU WEREN'T FOLLOWING THE  
26 DIRECTIONS OF DR. YIM AS TO WHAT TO FEED THE BABY?  
27 THAT'S WHAT YOU SAID YESTERDAY?

28 A WHAT I SAID YESTERDAY WAS THAT THE -- I

1 REMEMBER THE COURT STATING ITS REASONS AS OF WHY THEY  
2 WERE SUBSTANTIATING THE PETITION FROM THE DEPARTMENT.  
3 AND AS I SIT HERE, I RECALL ABOUT TWO REASONS WHY.

4 Q AND ONE OF THOSE WAS ABOUT DR. YIM; RIGHT?

5 A YES.

6 Q THERE WAS ACTUALLY QUITE A NUMBER OF REASONS  
7 THAT THE COURT GAVE IN MAKING ITS RULING; ISN'T THAT  
8 TRUE?

9 MR. MCMILLAN: LACKS FOUNDATION. SPECULATION.

10 THE COURT: OVERRULED.

11 THE WITNESS: IT COULD BE.

12 BY MS. SWISS:

13 Q WELL, YOU ATTENDED THE HEARING; RIGHT?

14 A I DID.

15 Q YOU WERE THERE ON AUGUST 9, 2010?

16 A YES.

17 Q AND ISN'T IT TRUE THAT THE COURT FOUND THAT  
18 NONE OF THE PARTIES DISPUTED THAT RYAN WAS DIAGNOSED  
19 WITH FAILURE TO THRIVE?

20 A I HAVE NO RECOLLECTION, BUT IT SOUNDS LIKE --  
21 I DON'T DISPUTE IT, SO.

22 Q AND THERE WAS NO DISPUTE THAT RYAN WAS  
23 DIAGNOSED WITH DEVELOPMENTAL DELAYS; RIGHT?

24 A CORRECT.

25 Q AND ISN'T IT TRUE THAT THE COURT FOUND THAT  
26 YOU, MS. DUVAL, WERE RESPONSIBLE FOR RYAN'S FAILURE TO  
27 THRIVE?

28 A IF THAT'S WHAT YOU'RE SAYING. I DON'T

1 REMEMBER IF THAT'S EXACTLY HOW THE COURT SAID IT, BUT  
2 IF YOU HAVE SOMETHING TO REFRESH MY MEMORY.

3 Q WE CAN MARK THE NEXT EXHIBIT IN ORDER.

4 THE CLERK: THAT WOULD BE 1249.

5 BY MS. SWISS:

6 Q EXHIBIT 1249 WILL BE VOLUME 2 OF 2 OF THE  
7 RECORD OF THE TRANSCRIPT FROM THE DEPENDENCY APPEAL.

8 (DEFENDANTS' EXHIBIT NO. 1249, WAS  
9 MARKED FOR IDENTIFICATION BY THE  
10 COURT.)

11 BY MS. SWISS:

12 Q WE'RE GOING TO TAKE A LOOK AT PAGE 306, AND  
13 THAT PAGE IS PART OF THE STATEMENTS OF THE COURT IN  
14 RULING ON THE ADJUDICATION ON AUGUST 9, 2010.

15 I'M LOOKING AT THE SECOND PARAGRAPH, LINES 7  
16 THROUGH 13.

17 DO YOU SEE THAT, MS. DUVAL?

18 A I SEE THAT.

19 Q AND DOES THAT REFRESH YOUR RECOLLECTION THAT  
20 THE COURT FOUND THAT YOU WERE RESPONSIBLE FOR RYAN'S  
21 FAILURE TO THRIVE?

22 A THAT REFRESHES MY RECOLLECTION, YES.

23 Q AND THE COURT ALSO FOUND THAT RYAN WAS  
24 SUBSTANTIALLY IN YOUR CARE?

25 A YES.

26 Q AND THE COURT ALSO FOUND THAT YOU WERE RYAN'S  
27 PRIMARY CARETAKER AND HE HAD LIMITED CONTACT WITH HIS  
28 FATHER?

1           A     YES.

2           Q     AND THE COURT ALSO FOUND THAT, WHEN RYAN BEGAN  
3 TO VISIT HIS FATHER, THAT YOU DIRECTED WHAT THE FATHER  
4 WAS TO FEED AND NOT FEED BABY RYAN?

5           A     THAT'S WHAT THE COURT FOUND.

6           Q     NOW, THE COURT ALSO FOUND THAT RYAN WAS  
7 DISMISSED AS A PATIENT FROM DR. YIM BECAUSE OF THE  
8 FAILURE TO FOLLOW DR. YIM'S RECOMMENDATIONS ON WHAT TO  
9 FEED THE BABY?

10          A     THAT'S WHAT IT SAYS HERE, YES.

11          Q     AND ON PAGE 307, THE COURT ALSO FOUND THAT --  
12 THE COURT ALSO MADE A STATEMENT THAT YOU WOULD LIKE THE  
13 COURT -- YOU, MS. DUVAL, WOULD LIKE THE COURT TO  
14 BELIEVE THAT RYAN WAS DISMISSED AS A PATIENT BECAUSE OF  
15 THE PARENTS' CONFLICT; CORRECT?

16          A     THAT'S WHAT IT SAYS HERE, YES.

17          Q     AND THE COURT FOUND THAT THAT WAS JUST NOT  
18 SUPPORTED BY THE EVIDENCE; RIGHT?

19                   MR. MCMILLAN: OBJECTION.

20                   YOUR HONOR, CAN I HAVE A QUICK SIDEBAR?

21                   THE OBJECTION IS BASED ON FOUNDATIONAL AND  
22 REFRESHMENT OF RECOLLECTION -- IMPROPER REFRESHMENT OF  
23 RECOLLECTION.

24                   THE COURT: ALL RIGHT.

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

27                   THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE  
28 PRESENT.

1           YES, MR. MCMILLAN?

2           MR. MCMILLAN:   ESSENTIALLY, THIS IS NO  
3           DIFFERENT FROM JUST READING THE DOCUMENT.   SHE'S GOING  
4           LINE BY LINE, JUST SAYING, "RIGHT?"   THERE'S NO  
5           QUESTION ABOUT WHETHER OR NOT SHE REMEMBERS SPECIFIC  
6           FINDINGS OR ANYTHING ELSE.   THERE'S NO QUESTIONS ABOUT  
7           WHETHER OR NOT OR READING THIS TO HERSELF REFRESHES HER  
8           RECOLLECTION OR WHAT THAT REFRESHED RECOLLECTION NOW  
9           IS.   ESSENTIALLY, WHAT SHE'S DOING IS JUST READING A  
10          LINE AND SAYING "THAT'S RIGHT, THAT'S RIGHT, THAT'S  
11          RIGHT."   IT'S REALLY NO DIFFERENT FROM WHAT WAS  
12          OBJECTED TO YESTERDAY.

13          THE COURT:   I THINK THAT'S CORRECT.

14          IF YOU'RE ASKING HER FOR HER RECOLLECTION OF  
15          WHAT THE JUDGE DID AND SHE SAYS SHE HAS NO  
16          RECOLLECTION, YOU'RE ENTITLED TO SHOW HER THE -- A  
17          DOCUMENT TO SEE IF THAT REFRESHES HER RECOLLECTION.  
18          BUT IT IS CORRECT, AND I DID MENTION THIS YESTERDAY,  
19          THAT YOU CAN'T JUST READ FROM THE DOCUMENT.   THE  
20          QUESTION IS DOES IT REFRESH HER RECOLLECTION OR NOT,  
21          AND IF IT DOES, DID THE JUDGE MAKE ANY FINDING ON  
22          SOMETHING OR -- SHE CAN SAY "YES," THEN WHAT WAS IT?  
23          IF SHE SAYS, "I DON'T RECALL," YOU CAN SHOW IT TO HER  
24          AND ASK IF THAT REFRESHES HER RECOLLECTION, AND EITHER  
25          IT DOES OR IT DOESN'T.   IF IT DOES, THEN SHE SHOULD  
26          TESTIFY AS TO WHAT HER RECOLLECTION IS, AND NOT JUST  
27          READ FROM THE DOCUMENT.

28          MS. SWISS:   UNDERSTOOD.   TRYING NOT TO READ.

1 I'M TRYING TO MAKE IT AS WHAT THE COURT'S STATEMENTS  
2 WERE, SO I WILL BE MORE COGNIZANT.

3 THE COURT: OKAY. THANK YOU.

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
5 OPEN COURT IN THE PRESENCE OF THE  
6 JURY.)

7 BY MS. SWISS:

8 Q MS. DUVAL, ISN'T IT TRUE THAT IN THE  
9 DEPENDENCY COURT, THE COURT MADE A FINDING THAT YOU  
10 WERE NOT GIVING RYAN THE RECOMMENDED FOODS THAT WERE  
11 RECOMMENDED BY THE PROFESSIONALS?

12 MR. MCMILLAN: FOUNDATION. SPECULATION.  
13 OBJECTION.

14 THE COURT: OVERRULED.

15 THE WITNESS: YES, IT SAYS THAT'S --

16 MR. MCMILLAN: OBJECTION. MOVE TO STRIKE.

17 THE COURT: I'M SORRY TO INTERRUPT, BUT THE  
18 QUESTION IS DO YOU HAVE A RECOLLECTION OF THE COURT  
19 MAKING A CERTAIN FINDING THAT SHE STATED TO YOU. IF  
20 YOU -- SO YOU NEED TO ANSWER THAT EITHER YES, YOU HAVE  
21 A RECOLLECTION OF SOMETHING THAT THE COURT DID, OR YOU  
22 DON'T. AND THAT'S UP TO YOU. I DON'T KNOW WHAT  
23 YOUR -- WHAT YOUR MEMORY IS. BUT YOU -- DO YOU  
24 UNDERSTAND WHAT I'M TELLING YOU?

25 IN OTHER WORDS, YOU'RE LOOKING AT THIS  
26 TRANSCRIPT, AND THE QUESTION IS YOUR MEMORY, NOT  
27 SPECIFICALLY WHAT'S IN THE TRANSCRIPT.

28 THE WITNESS: NO, I DON'T RECALL RIGHT NOW.



1 BY MS. SWISS:

2 Q IF YOU CAN TAKE A LOOK AT PAGE 305, LINES 16  
3 TO 23. JUST READ THAT TO YOURSELF.

4 A I'M DONE.

5 Q DOES THAT REFRESH YOUR RECOLLECTION THAT THE  
6 COURT FOUND -- OF THE COURT'S FINDING --

7 THE COURT: AND I'M SORRY TO INTERRUPT, BUT I  
8 HEARD YOU SAY "PAGE 305."

9 DO YOU MEAN PAGE 307?

10 MS. SWISS: YES, PAGE 307, LINES 16 TO 23.

11 THE COURT: ALL RIGHT. WELL, BOTH THE  
12 REPORTER AND I HEARD 305.

13 THE WITNESS: I HEARD FROM 305.

14 THE COURT: DID YOU AS WELL? ALL RIGHT.

15 SO SHE'S ASKING YOU NOW TO LOOK AT PAGE 307,  
16 LINES 16 TO 23, AND JUST ASKING YOU TO READ THAT TO  
17 YOURSELF, NOT OUT LOUD. AND LET HER KNOW AFTER YOU'VE  
18 READ IT.

19 THE WITNESS: I'M READY.

20 BY MS. SWISS:

21 Q DOES THAT REFRESH YOUR RECOLLECTION OF THE  
22 COURT'S FINDING?

23 A IT DOES.

24 Q AND WHAT'S YOUR RECOLLECTION?

25 A THAT -- THAT ALTHOUGH I NEVER WITHHELD FOODS,  
26 THAT THE COURT FELT THAT I FAILED TO GIVE THE  
27 RECOMMENDED FOODS BY MEDICAL PROFESSIONALS.

28 MR. MCMILLAN: OBJECTION, YOUR HONOR. MOVE TO

1 STRIKE. THE WITNESS WAS JUST READING THE DOCUMENT AS  
2 OPPOSED TO A MEMORY.

3 THE COURT: THE MOTION IS DENIED.

4 GO AHEAD, BUT WHEN YOU'RE ASKED A QUESTION  
5 ABOUT YOUR MEMORY, THEN STATE WHAT YOUR MEMORY IS. AND  
6 WE'LL GO AHEAD AND SHE'LL ASK MORE QUESTIONS, AND WE'LL  
7 TRY TO MAKE THIS CLEARER TO YOU IF NECESSARY.

8 GO AHEAD AND ASK YOUR NEXT QUESTION.

9 BY MS. SWISS:

10 Q NOW, ISN'T IT TRUE, MS. DUVAL, THAT IN MAKING  
11 ITS RULING IN THE DEPENDENCY CASE, THE JUDICIAL OFFICER  
12 MADE A FINDING THAT THERE WERE MEDICAL TESTS DONE TO  
13 RULE OUT THE POSSIBLE CAUSES FOR THE FAILURE TO THRIVE  
14 AND THAT THE RESULTS OF THOSE TESTS WERE ALL NEGATIVE?

15 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
16 SPECULATION. COMPOUND. EVIDENCE CODE SECTION 765.

17 THE COURT: OVERRULED.

18 DO YOU REMEMBER THE QUESTION?

19 THE WITNESS: I DON'T REMEMBER IF THAT'S WHAT  
20 THE COURT SAID.

21 THE COURT: WE'LL HAVE THE REPORTER READ IT  
22 BACK TO YOU.

23 (THE PREVIOUS QUESTION WAS READ BACK BY  
24 THE COURT REPORTER AS FOLLOWS:

25 "QUESTION: NOW, ISN'T IT TRUE,  
26 MS. DUVAL, THAT IN MAKING ITS RULING IN  
27 THE DEPENDENCY CASE, THE JUDICIAL  
28 OFFICER MADE A FINDING THAT THERE WERE

1 MEDICAL TESTS DONE TO RULE OUT THE  
2 POSSIBLE CAUSES FOR THE FAILURE TO  
3 THRIVE AND THAT THE RESULTS OF THOSE  
4 TESTS WERE ALL NEGATIVE?")

5 THE WITNESS: I DON'T REMEMBER.

6 BY MS. SWISS:

7 Q IF YOU COULD LOOK AT PAGE 311, LINES 19 TO 26.  
8 PLEASE READ THAT TO YOURSELF AND LET ME KNOW WHEN  
9 YOU'RE READY.

10 A I'M SORRY, WHAT LINE?

11 Q PAGE 311, LINES 19 TO 26.

12 A THANKS.

13 I'M DONE.

14 Q DOES THAT REFRESH YOUR RECOLLECTION THAT THE  
15 COURT MADE A FINDING THAT --

16 THE COURT: NO, NO. THE QUESTION IS: DOES  
17 THAT REFRESH YOUR RECOLLECTION?

18 AFTER READING THAT, DOES THAT REFRESH YOUR  
19 RECOLLECTION? DO YOU NOW REMEMBER SOMETHING?

20 THE WITNESS: NO.

21 THE COURT: ALL RIGHT. THEN THAT'S YOUR  
22 ANSWER.

23 BY MS. SWISS:

24 Q MS. DUVAL, DO YOU RECALL THE COURT IN THE  
25 DEPENDENCY CASE MAKING THE FINDING THAT MR. MILLS  
26 CONFIRMED THAT THE REASON RYAN WAS DISMISSED FROM  
27 DR. YIM'S PRACTICE WAS BECAUSE YOU WERE NOT FOLLOWING  
28 THE DOCTOR'S RECOMMENDATIONS ON WHAT TO FEED THE BABY?

1 A I DON'T RECALL.

2 Q YOU CAN TAKE A LOOK AT PAGE 315, LINES 21 TO  
3 28, CONTINUING TO PAGE 316, 1 TO 5.

4 A I'M DONE.

5 Q DOES THAT REFRESH YOUR RECOLLECTION?

6 A NO.

7 Q MS. DUVAL, AFTER THE ADJUDICATION, YOU  
8 TESTIFIED YESTERDAY THAT YOUR -- THAT YOU FILED AN  
9 APPEAL; CORRECT?

10 A YES.

11 Q AND YOU HAD A NEW ATTORNEY FOR THAT APPEAL;  
12 CORRECT?

13 A YES.

14 Q KAREN DODD?

15 A YES.

16 Q AND MS. DODD FILED A BRIEF TO THE COURT OF  
17 APPEAL ON YOUR BEHALF?

18 MR. MCMILLAN: FOUNDATION -- OBJECTION.  
19 FOUNDATION. SPECULATION.

20 THE COURT: OVERRULED.

21 DO YOU KNOW?

22 THE WITNESS: YES.

23 THE COURT: ALL RIGHT.

24 BY MS. SWISS:

25 Q AND IT WAS PRETTY LENGTHY; RIGHT? I MEAN,  
26 OVER 100 PAGES?

27 A I DON'T REMEMBER HOW MANY PAGES IT WAS.

28 Q AND ON YOUR APPEAL, YOU ARGUED -- YOUR

1 ATTORNEYS ARGUED ON YOUR BEHALF THAT BABY RYAN SHOULD  
2 HAVE BEEN ABLE TO UNDERGO THE MRI AND THE TESTING;  
3 ISN'T THAT TRUE?

4 A SOUNDS LIKE WHAT WAS ON THE BRIEF. I DON'T  
5 REMEMBER EVERYTHING THAT WAS ON THE BRIEF, BUT IT  
6 SOUNDS LIKE IT.

7 Q AND ISN'T IT TRUE THAT IN YOUR APPELLATE BRIEF  
8 YOU ALSO ARGUED THAT THE STATEMENTS THAT YOU WERE  
9 DISCHARGED FROM DR. YIM'S PRACTICE BECAUSE YOU WEREN'T  
10 FOLLOWING HER RECOMMENDATIONS -- YOU ALSO MADE THE  
11 ARGUMENT THAT THAT WASN'T TRUE; CORRECT?

12 A I DON'T REMEMBER IF THAT'S THE ARGUMENT THAT'S  
13 MADE ON THE BRIEF. I WILL HAVE TO LOOK AT THE BRIEF TO  
14 REFRESH MY RECOLLECTION.

15 Q WE CAN MARK THE NEXT EXHIBIT IN ORDER, SHOULD  
16 BE 1250, AND THAT IS APPELLATE MOTHER'S OPENING BRIEF  
17 IN THE CASE *IN RE: R.D.*

18 (DEFENDANTS' EXHIBIT NO. 1250.84, WAS  
19 MARKED FOR IDENTIFICATION BY THE  
20 COURT.)

21 BY MS. SWISS:

22 Q IF YOU COULD TAKE A LOOK AT PAGE 84, THE  
23 HEADING THERE.

24 MS. DUVAL, DOES THAT HEADING ON PAGE 84  
25 REFRESH YOUR RECOLLECTION AS TO WHAT ARGUMENT YOU MADE  
26 ON THE APPEAL?

27 A YES.

28 Q AND WHAT IS THAT RECOLLECTION?

1           A        THAT THERE WAS NOTHING IN THE MEDICAL RECORDS  
2           THAT SHOW I WAS NOT FOLLOWING THE DOCTOR'S  
3           RECOMMENDATIONS.

4           Q        AND YOU TESTIFIED YESTERDAY THAT YOU LOST THAT  
5           APPEAL; CORRECT?

6           A        YES.

7           Q        AND DID YOU -- AND YOU RECEIVED A -- YOU  
8           RECEIVED A COPY OF THE APPELLATE COURT'S RULING?

9           A        YES.

10          Q        AND DO YOU RECALL THAT THE COURT OF APPEAL  
11          MADE A FINDING THAT RD WAS BORN HEALTHY WITHOUT  
12          COMPLICATIONS?

13                 MR. MCMILLAN: OBJECTION. FOUNDATION.  
14          SPECULATION. ALSO LEGAL OPINION CONCLUSION AS TO  
15          FINDINGS BY THE APPELLATE COURT.

16                 THE COURT: OVERRULED.

17                 THE QUESTION IS DO YOU RECALL WHETHER OR NOT  
18          THE APPELLATE COURT MADE THE FINDING THAT SHE STATED.

19                 DO YOU RECALL?

20                 THE WITNESS: WHAT ARE THE FINDINGS? SORRY.  
21          BY MS. SWISS:

22          Q        ISN'T IT TRUE THAT THE APPELLATE COURT MADE  
23          ITS RULING THAT RD WAS BORN HEALTHY WITHOUT  
24          COMPLICATIONS?

25                 MR. MCMILLAN: OBJECTION. MISSTATES THE  
26          OPINION.

27                 THE WITNESS: I DON'T RECALL.

28                 THE COURT: ALL RIGHT. OVERRULED.

1 SHE STATED SHE DOESN'T RECALL.

2 BY MS. SWISS:

3 Q WE CAN MARK THE NEXT EXHIBIT IN ORDER,  
4 EXHIBIT 1251. IT'S THE APPELLATE COURT'S DECISION IN  
5 THE MATTER OF *IN RE: R.D.*

6 (DEFENDANTS' EXHIBIT NO. 1251.8, WAS  
7 MARKED FOR IDENTIFICATION BY THE  
8 COURT.)

9 BY MS. SWISS:

10 Q IF YOU CAN TAKE A LOOK AT PAGE 8, THE SECOND  
11 BIG PARAGRAPH STARTING WITH "WE FIND."

12 A I'M DONE READING IT.

13 Q DOES THAT REFRESH YOUR RECOLLECTION?

14 A NO.

15 Q DO YOU RECALL THAT THE APPELLATE COURT MADE A  
16 FINDING THAT SUBSTANTIAL EVIDENCE SUPPORTED THE  
17 DEPENDENCY COURT'S DECISION TO REMOVE RYAN FROM YOUR  
18 CUSTODY AND PLACE HIM WITH HIS FATHER?

19 MR. MCMILLAN: OBJECTION, YOUR HONOR.  
20 IMPROPER -- IT'S IMPROPER REFRESHMENT OF RECOLLECTION.

21 THE COURT: THE OBJECTION TO THE FORM OF THE  
22 QUESTION IS SUSTAINED.

23 BY MS. SWISS:

24 Q DO YOU RECALL THE APPELLATE COURT'S FINDING?

25 THE COURT: MS. DUVAL --

26 THE WITNESS: I'M TRYING --

27 THE COURT: -- YOU'RE READING THE DOCUMENT.

28 RIGHT NOW, THE QUESTION IS: DO YOU RECALL, AS

1 YOU'RE SITTING HERE --

2 THE WITNESS: NOT RIGHT NOW.

3 THE COURT: -- THE FINDING OF THE APPELLATE  
4 COURT?

5 THE WITNESS: I DON'T REMEMBER.

6 THE COURT: ALL RIGHT. THEN JUST WAIT UNTIL  
7 ANOTHER QUESTION IS ASKED.

8 BY MS. SWISS:

9 Q NOW, IF YOU LOOK IN THAT SAME PARAGRAPH, IF  
10 YOU COULD JUST READ THE LAST SENTENCE TO YOURSELF AND  
11 LET ME KNOW WHEN YOU'RE FINISHED.

12 A OKAY.

13 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO THE  
14 COURT'S FINDING?

15 A NOT RIGHT NOW.

16 Q DO YOU DISAGREE THAT THE SENTENCE YOU JUST  
17 READ IS PART OF THE COURT'S FINDINGS?

18 MR. MCMILLAN: OBJECTION. CALLS FOR A LEGAL  
19 CONCLUSION OR OPINION FROM A LAY WITNESS. ALSO  
20 ARGUMENT.

21 THE COURT: SUSTAINED.

22 BY MS. SWISS:

23 Q NOW, IN THE APPELLATE COURT'S OPINION,  
24 EXHIBIT 1251 -- STRIKE THAT.

25 THE APPELLATE COURT DIDN'T MAKE ANY FINDING  
26 REGARDING THE STATEMENTS OF DR. YIM, DID IT?

27 MR. MCMILLAN: LACKS FOUNDATION. CALLS FOR  
28 SPECULATION ON THE PART OF THIS WITNESS.



1 THE COURT: SUSTAINED.

2 BY MS. SWISS:

3 Q YOU REVIEWED THIS APPELLATE DECISION WHEN YOU  
4 RECEIVED IT; CORRECT?

5 A NOT ENTIRELY, NO.

6 Q YOUR UNDERSTANDING WAS THAT YOU LOST THE  
7 APPEAL? UNDERSTOOD?

8 A YES.

9 Q NOW, YOU TESTIFIED YESTERDAY THAT YOU'VE ALSO  
10 BEEN LITIGATING AGAINST MR. MILLS IN THE FAMILY COURT;  
11 CORRECT?

12 A YES.

13 Q AND YOU TESTIFIED YESTERDAY THAT YOU HAD FILED  
14 AN APPEAL IN THE FAMILY COURT AS WELL; CORRECT?

15 A YES.

16 Q AND IN THAT APPEAL, YOU REPRESENTED YOURSELF?

17 A YES.

18 Q AND IN THAT APPEAL, MR. MILLS ALSO REPRESENTED  
19 HIMSELF; CORRECT?

20 A YES.

21 Q AND THE COUNTY WAS NOT ANY PARTY TO THE FAMILY  
22 COURT PROCEEDINGS; CORRECT?

23 A NOT DIRECTLY, NO.

24 Q AND DCFS DIDN'T FILE ANY BRIEFS IN THE FAMILY  
25 COURT?

26 A NO.

27 Q RIGHT?

28 AND THAT DCFS DIDN'T FILE ANY BRIEFS IN THE

1 APPELLATE COURT IN THE FAMILY CASE; CORRECT?

2 A CORRECT.

3 Q SO IN THE FAMILY COURT, YOU FILED YOUR OWN  
4 BRIEF; RIGHT?

5 A YES.

6 Q AND YOU DID THE RESEARCH, YOU PREPARED IT AND  
7 FILED IT?

8 A YES.

9 Q AND THEN YOU RECEIVED THE FAMILY COURT'S --  
10 I'M SORRY -- YOU RECEIVED THE APPELLATE COURT'S RULING  
11 FROM THE FAMILY LAW CASE; CORRECT?

12 A YES.

13 Q AND THAT WAS FROM MARCH OF 2014?

14 A I DON'T RECALL THE EXACT DATE, BUT WHENEVER IT  
15 WAS, I RECEIVED IT WHEN THEY SENT IT.

16 Q AND WHEN YOU RECEIVED THAT APPEAL OPINION, YOU  
17 READ THAT; CORRECT?

18 A NOT ENTIRELY, NO.

19 Q YOU DIDN'T READ THE WHOLE OPINION? IS THAT  
20 WHAT I HEARD?

21 A YES.

22 Q THE APPEAL YOU FILED IN THE FAMILY COURT, THAT  
23 WAS BASED ON THE FAMILY COURT'S DECISION NOT TO MODIFY  
24 THE ORDERS REGARDING CUSTODY AND VISITATION; RIGHT?

25 A AFTER OUR TRIAL IN 2012, YES.

26 Q YOU HAD A TRIAL IN THE FAMILY COURT; RIGHT?

27 A YES.

28 Q AND YOU ASKED THE COURT TO MODIFY VISITATION

1 WITH YOUR SON; RIGHT?

2 A YES.

3 Q AND CUSTODY; RIGHT?

4 A YES.

5 Q AND THE FAMILY COURT DISAGREED; CORRECT?

6 A YES.

7 Q AND THEN YOU FILED YOUR APPEAL; RIGHT?

8 A YES.

9 Q AND YOU ARGUED IN THE FAMILY COURT THAT  
10 MR. MILLS AND DCFS AND THE DOCTORS WERE CONSPIRING  
11 AGAINST YOU IN THE DEPENDENCY PROCEEDINGS?

12 MR. MCMILLAN: OBJECTION. ASSUMES FACTS.  
13 ARGUMENT.

14 THE COURT: OVERRULED.

15 DID YOU MAKE THAT ARGUMENT?

16 THE WITNESS: I MADE SEVERAL ARGUMENTS. I  
17 DON'T RECALL ALL OF THEM RIGHT NOW. BUT THE ONES I DO  
18 RECALL, IT WAS ABOUT FALSE STATEMENTS BEING GIVEN TO  
19 THE JUVENILE COURT THAT ENDED WITH THIS EXIT ORDER.  
20 BY MS. SWISS:

21 Q SO YOU ARGUED TO THE FAMILY COURT THAT THE  
22 SOCIAL WORKERS LIED ABOUT YOU; RIGHT?

23 A I DID.

24 Q AND YOU ARGUED IN THE FAMILY COURT THAT  
25 MR. MILLS WAS LYING ABOUT YOU; RIGHT?

26 A I DON'T REMEMBER EXACTLY IF THAT'S WHAT I  
27 SAID, BUT COULD BE.

28 Q AND YOU ALSO ARGUED IN THE FAMILY COURT THAT

1 DCFS HAD DISCRIMINATED AGAINST YOU ON THE BASIS OF  
2 RACE, COUNTRY OF ORIGIN, DISABILITY?

3 A I RECALL SPECIFICALLY ARGUING THE  
4 DISCRIMINATION ON DISABILITY AND ATTACHING DOCUMENTS --  
5 EVIDENCE TO SUPPORT THAT, YES.

6 Q AND THAT'S WHAT YOU FILED IN FAMILY COURT;  
7 RIGHT?

8 A YES.

9 Q NOW, YOU ALSO ARGUED IN THE FAMILY COURT THAT  
10 YOU UNDERSTOOD THAT THE DEPENDENCY CASE THAT YOU  
11 APPEALED, YOU LOST; RIGHT? YOU TOLD THE FAMILY COURT  
12 THAT?

13 A I MAY HAVE SAID SO. I DON'T RECALL AT THIS  
14 MOMENT IF THAT'S EXACTLY WHAT I SAID, BUT COULD BE.

15 Q DO YOU RECALL ARGUING IN THE FAMILY COURT THAT  
16 THE APPELLATE DECISION FROM THE DEPENDENCY CASE WAS  
17 BASED ON RECORDS THAT WERE SUPPOSED TO MAKE YOU LOOK  
18 LIKE AN UNFIT MOTHER?

19 A I DON'T RECALL SPECIFICALLY IF THAT'S WHAT I  
20 SAID, BUT COULD BE.

21 Q NOW, YOU SAID THAT YOU HAD THIS TRIAL IN THE  
22 FAMILY COURT; RIGHT?

23 A YES.

24 Q AND AFTER THAT TRIAL IN THE FAMILY COURT,  
25 THAT'S WHERE THE COURT ORDERED THAT YOUR VISITATION IS  
26 THREE DAYS A WEEK FOR EIGHT HOURS TOTAL?

27 A IT'S NOT THREE DAYS A WEEK. I -- THE  
28 VISITATION WAS TWO DAYS, TWO AND A HALF HOURS, AND

1 TWICE A MONTH, THREE HOURS. SO ONE -- TWO WEEKS OUT OF  
2 THE MONTH, IT'S A LITTLE LONGER.

3 Q AND THE FAMILY COURT ALSO ORDERED THAT YOU  
4 WERE NOT TO FEED RYAN ANY FOOD THAT WAS NOT PROVIDED BY  
5 THE FATHER?

6 A BASED ON THE EXIT ORDERS, YES.

7 Q AND THE FAMILY COURT ALSO ORDERED YOU TO PAY  
8 THE CHILD SUPPORT; RIGHT?

9 A YES.

10 Q AND AT THE TIME OF THAT TRIAL IN APRIL OF  
11 2013, YOU WERE BEHIND ON CHILD SUPPORT OVER \$10,000;  
12 CORRECT?

13 A ONLY FOR THE PERIOD IN DEPENDENCY. THOSE TEN  
14 MONTHS THAT WE WERE IN DEPENDENCY, ONLY FOR THAT. EVER  
15 SINCE, CHILD SUPPORT IS PAID ON TIME.

16 Q NOW, YOU TESTIFIED YESTERDAY THAT YOU ALSO  
17 LOST YOUR APPEAL IN THE FAMILY COURT; RIGHT?

18 A I DID.

19 Q AND THE APPELLATE COURT FOR THE FAMILY  
20 PROCEEDING ALSO MADE SOME SPECIFIC FINDINGS; ISN'T THAT  
21 TRUE?

22 A I DON'T REMEMBER SPECIFICALLY WHAT THE FAMILY  
23 COURT APPEAL SAID, NOT RIGHT NOW.

24 Q DO YOU RECALL THAT THE FAMILY -- THE APPELLATE  
25 COURT FOR THE FAMILY LAW DECISION -- WELL, YOU AGREE --  
26 STRIKE THAT.

27 YOU AGREE WITH ME THAT THE APPELLATE COURT  
28 AFFIRMED WHAT THE FAMILY COURT'S RULING WAS; CORRECT?

1           A        THAT WAS THE OUTCOME, YES.

2           Q        AND YOU RECALL THAT ONE OF THE REASONS FOR  
3        THAT DECISION WAS THAT YOU HAVEN'T TAKEN RESPONSIBILITY  
4        FOR RYAN'S FAILURE TO THRIVE CONDITION?

5                   MR. MCMILLAN:  OBJECTION, YOUR HONOR.  CALLS  
6        FOR A LEGAL OPINION FROM A LAY WITNESS.  ALSO -- ALSO,  
7        IT IS MISLEADING AS TO THE APPEAL PURPOSE OR STANDARDS.

8                   THE COURT:  OBJECTIONS ARE OVERRULED.

9                   DO YOU RECALL THAT OR NOT?

10                  THE WITNESS:  NO.

11                  THE COURT:  ALL RIGHT.

12       BY MS. SWISS:

13           Q        I'D LIKE TO MARK THE NEXT EXHIBIT IN ORDER,  
14        EXHIBIT 1252, AND THAT'S THE DECISION BY THE COURT OF  
15        APPEAL *IN THE MATTER RAFAELINA DUVAL VS. RYAN MILLS*,  
16        DATED MARCH 11, 2014.

17                   (DEFENDANTS' EXHIBIT NO. 1252.7-8, WAS  
18        MARKED FOR IDENTIFICATION BY THE  
19        COURT.)

20       BY MS. SWISS:

21           Q        I'D LIKE YOU TO TAKE A LOOK AT PAGE 7,  
22        STARTING WITH "IN THIS CASE," CONTINUING ON TO PAGE 8,  
23        THAT FIRST PARAGRAPH.

24           A        I'M DONE.

25                   THE COURT:  YOU'VE READ IT?  ALL RIGHT.

26       BY MS. SWISS:

27           Q        DOES THAT REFRESH YOUR RECOLLECTION?

28           A        NO.

1 THE COURT: BREAK?

2 THE WITNESS: YEAH.

3 THE COURT: MS. SWISS, WE'RE GOING TO TAKE A  
4 MORNING RECESS AT THIS TIME FOR APPROXIMATELY  
5 10 MINUTES. ALL JURORS, PLEASE REMEMBER THE  
6 ADMONITION.

7 (JURY EXCUSED)

8 MR. MCMILLAN: YOUR HONOR?

9 THE COURT: YES -- JUST WE'RE ON THE RECORD.  
10 COUNSEL ARE PRESENT OUTSIDE THE PRESENCE OF THE JURY.  
11 YES.

12 MR. MCMILLAN: YES, YOUR HONOR. AND I'M NOT  
13 SURE THAT I'M FORMULATING THE OBJECTION PROPERLY, BUT  
14 THE REAL PROBLEM THAT I HAVE WITH GOING INTO THE,  
15 QUOTE/UNQUOTE, FINDINGS, FACTUAL FINDINGS OF AN  
16 APPELLATE COURT IN AN APPELLATE COURT DECISION, IS THAT  
17 WHEN WE'RE LOOKING AT AN APPEAL THAT'S TAKEN BASED ON  
18 THE SUBSTANTIAL EVIDENCE STANDARD OF REVIEW, THE  
19 APPELLATE COURT DOESN'T MAKE ANY FACTUAL FINDINGS. THE  
20 APPELLATE COURT TAKES ALL OF THE FACTS THAT ARE  
21 SUPPORTIVE OF THE UNDERLYING JUDGMENT AS TRUE, AND THEN  
22 SAYS, IS THERE ENOUGH EVIDENCE HERE THAT WAS BEFORE THE  
23 TRIAL COURT TO SUPPORT WHAT THE TRIAL COURT DID? AND  
24 THE FINDING IS EITHER WE MEET SUBSTANTIAL EVIDENCE OR  
25 WE DON'T.

26 SO TO COME IN HERE AND START SAYING THAT THE  
27 APPELLATE COURT MADE FINDINGS THAT YOU DIDN'T FEED YOUR  
28 CHILD, MADE FINDINGS THAT THIS, THAT, OR THE OTHER

1       THING DID OR DIDN'T HAPPEN, IS MISLEADING TO THE JURY.  
2       THEY'RE NOT APPELLATE ATTORNEYS.  THEY DON'T -- I  
3       PRESUME THEY DON'T UNDERSTAND IT, EVEN THOUGH THEY'VE  
4       HAD AN APPELLATE ATTORNEY TRY TO EXPLAIN IT.  IT'S  
5       COMPLEX LAW.  AND ATTORNEYS GET STANDARDS OF REVIEW  
6       WRONG ALL THE TIME.  AND IF ATTORNEYS CAN'T FIGURE IT  
7       OUT, I DON'T SEE HOW A JURY CAN NECESSARILY FIGURE IT  
8       OUT.

9                SO I REALLY TAKE ISSUE WITH THE ENTIRE LINE OF  
10       QUESTIONING WHERE WE'RE ASKING THE WITNESS, "THE  
11       APPELLATE COURT MADE THESE FINDINGS; RIGHT?  THIS  
12       FINDING?  THAT FINDING?  THE OTHER FINDING?"  THE ONLY  
13       ISSUE ON THE APPEAL IS EITHER THE STANDARD OF REVIEW  
14       WAS MET, SO THE APPEAL WAS AFFIRMED, OR IT WASN'T.

15               NOW, I DON'T HAVE, NECESSARILY, PROBLEMS WITH  
16       ARGUMENTS THAT SHE MAY HAVE MADE ON APPEAL, BUT WITH  
17       RESPECT TO APPELLATE COURT FINDINGS OF FACT, IT DOESN'T  
18       HAPPEN.  IT'S MISLEADING.

19               SO THAT'S MY CONTINUING OBJECTION TO THE WAY  
20       IT'S BEEN ADDRESSED.

21               THE COURT:  ALL RIGHT.  I WASN'T AWARE OF A  
22       CONTINUING OBJECTION UNTIL NOW.

23               AND WHAT ARE YOU ASKING THE COURT TO DO?

24               MR. MCMILLAN:  I WOULD LIKE THE COURT TO,  
25       NUMBER ONE, LET THE JURY KNOW THAT THESE FINDINGS ON  
26       APPEAL ARE NOT FINDINGS.  I THINK THERE NEEDS TO BE A  
27       CURATIVE INSTRUCTION.

28               AND, NUMBER TWO, TO I GUESS REALLY JUST



1       ADMONISH MS. SWISS THAT THESE ARE NOT FINDINGS AND SHE  
2       SHOULDN'T BE ASKING THE QUESTIONS IN THAT MANNER  
3       BECAUSE IT'S MISLEADING.

4               THE COURT:   THE QUESTIONS RELATING TO THE --  
5       THE QUESTIONS THAT WERE ASKED PERTAINING TO FINDINGS OF  
6       THE COURT OF APPEAL IN THE FAMILY LAW CASE WERE  
7       IMPROPER.

8               MS. SWISS:   YOUR HONOR, THERE WAS NO  
9       OBJECTION.

10              THE COURT:   WELL, THERE WERE A COUPLE OF  
11       OBJECTIONS, BUT I OVERRULED OBJECTIONS BECAUSE I DIDN'T  
12       FEEL THAT THEY WERE STATING CORRECT GROUNDS TO  
13       CHALLENGE WHAT WAS OCCURRING.

14              NOW THAT THE ISSUE HAS ARISEN OF A STANDING  
15       OBJECTION AND A STATEMENT OF DIFFERENT GROUNDS THAN  
16       WERE ASSERTED AT THE TIME, I'M NOW CONSIDERING THE  
17       SUBJECT.

18              AS AN EXAMPLE OF A QUESTION TO WHICH AN  
19       OBJECTION WAS MADE WHICH I OVERRULED IS AS FOLLOWS:  
20       FOLLOWING THE QUESTION:

21              Q.   AND YOU RECALL THAT ONE OF THE  
22       REASONS FOR THE DECISION WAS YOU  
23       HAVEN'T TAKEN RESPONSIBILITY FOR RYAN'S  
24       FAILURE TO THRIVE CONDITION?

25              MR. MCMILLAN:  OBJECTION, YOUR HONOR.  
26       CALLS FOR A LEGAL OPINION FROM A LAY  
27       WITNESS.  ALSO -- ALSO, IT IS  
28       MISLEADING AS TO THE APPEAL PURPOSE OR

1                   STANDARDS."

2                   I OVERRULED THAT OBJECTION AT THE TIME BECAUSE  
3                   I DID NOT FEEL IT WAS CALLING FOR A LEGAL OPINION,  
4                   BUT -- BY A LAY WITNESS. AND THE OBJECTION ABOUT  
5                   MISLEADING AS TO APPEAL PURPOSE OR STANDARD APPEARS TO  
6                   BE NOW WHAT MR. MCMILLAN HAS ELABORATED UPON BUT  
7                   FRANKLY WAS NOT UNDERSTOOD BY ME AT THE TIME AS RAISING  
8                   THIS ISSUE.

9                   THE PROBLEM IS THAT IN THE ASKING OF THESE  
10                  QUESTIONS, YOU HAVE CONTINUED TO ASK QUESTIONS BY  
11                  RECITING THE VERY INFORMATION FROM THE OPINION THAT YOU  
12                  WOULD OTHERWISE NOT BE ABLE TO OBTAIN FROM THE WITNESS.  
13                  AND IT IS TRUE THAT THERE WAS NO SUCH FINDING BY THE  
14                  APPELLATE COURT. WHAT THE APPELLATE COURT DID WAS,  
15                  AMONG OTHER THINGS, SAY THAT THIS IS A SETTLED MATTER.  
16                  IT'S THE LAST SENTENCE:

17                         "IT IS *RES JUDICATA*, A SETTLED  
18                         MATTER, AND CANNOT BE REVISITED BY THE  
19                         FAMILY COURT."

20                  REFERRING TO FINDINGS THAT MAY HAVE BEEN MADE  
21                  IN THE DEPENDENCY CASE.

22                  SO WITH THE OBJECTION NOW HAVING BEEN MADE, OR  
23                  AT LEAST THE FURTHER EXPLANATION BY MR. MCMILLAN ON THE  
24                  BASIS OF HIS OBJECTION, I THINK IT IS CORRECT, AND THIS  
25                  IS NOT A PROPER WAY OF TRYING TO PRESENT EVIDENCE TO  
26                  THE JURY OF WHAT AN APPELLATE COURT HAS SAID OR DONE.

27                  NOW, HE AGREES -- MR. MCMILLAN AGREES THAT  
28                  QUESTIONS CAN BE ASKED OF CONTENTIONS THAT WERE MADE,

1 AND PARTICULARLY SO IN THE FAMILY LAW CASE WHERE SHE  
2 WAS REPRESENTING HERSELF. AND CERTAINLY THERE CAN  
3 BE -- I DON'T BELIEVE HE OBJECTED TO THOSE. I CAN LOOK  
4 BACK AND SEE, BUT I DON'T THINK HE DID OBJECT TO THOSE  
5 QUESTIONS, WHAT SHE CONTENDED.

6 I THINK IT IS ALSO FAIR GAME TO ASK WHAT  
7 CONTENTIONS WERE MADE IN THE APPEAL FROM THE JUVENILE  
8 CASE WHERE SHE WAS REPRESENTED BY AN ATTORNEY BECAUSE  
9 SHE MAY OR MAY NOT RECALL WHAT CONTENTIONS WERE MADE,  
10 AS, IN FACT, I THINK SHE INDICATED, AT LEAST TO SOME,  
11 THAT SHE DID NOT KNOW. BUT I THINK THAT'S ALSO FAIR  
12 GAME, AND I -- THERE MAY HAVE BEEN SOME OBJECTIONS TO  
13 THOSE, BUT I DON'T THINK THAT'S THE SUBJECT NOW THAT  
14 MR. MCMILLAN IS ADDRESSING. BECAUSE HE WAS  
15 REPRESENTING HER INTEREST, SHE MAY OR MAY NOT KNOW WHAT  
16 ARGUMENTS MADE ON HER BEHALF -- WHAT WAS MADE ON HER  
17 BEHALF.

18 BUT I THINK TO ASK QUESTIONS IN -- MANY OF  
19 THESE QUESTIONS IN THE FORM THAT YOU HAVE, WHERE -- AND  
20 EVEN THOUGH IT IS CROSS-EXAMINATION, FOR YOU TO BE  
21 PRESENTING THE APPELLATE COURT OPINIONS IN YOUR  
22 QUESTION AND ASKING HER TO AGREE OR NOT AGREE I DON'T  
23 THINK IS AN APPROPRIATE LINE OF QUESTIONING FOR THIS  
24 WITNESS.

25 IF YOU WANT A JURY TO BE ADVISED OF -- OR TO  
26 LEARN OF WHAT THE REASONING WAS AND ANY FINDINGS -- AND  
27 I SAY IF THERE WERE ANY -- BY APPELLATE COURT IN ANY OF  
28 THESE MATTERS, THEN YOU'LL HAVE TO CONSIDER BY WHAT

1 MEANS YOU COULD GET THAT INFORMATION BEFORE THE JURY.  
2 BUT I DON'T THINK IT WILL OCCUR BY QUESTIONING THE  
3 WITNESS AND ASKING QUESTIONS IN SUCH A WAY THAT IN  
4 EFFECT ARE RECITING PARTS OF THE OPINION. THAT ISN'T  
5 HOW THAT INFORMATION WILL GET BEFORE A JURY, IF IT EVER  
6 DOES.

7 SO TO THE EXTENT THAT YOU HAVE NOW MADE THIS  
8 OBJECTION OF A GENERAL NATURE, I'M AGREEING WITH THE  
9 OBJECTION, MR. MCMILLAN, TO THE EXTENT -- AND I'M NOT  
10 SURE TO WHAT EXTENT YOUR OBJECTION IS BEING MADE, WHEN  
11 YOU -- YOU MIGHT HAVE REFERRED TO THIS LINE OF  
12 QUESTIONING. I DON'T KNOW WHERE THAT LINE NECESSARILY  
13 BEGINS IN YOUR ESTIMATION. BUT I AM AGREEING THAT THIS  
14 IS NOT AN APPROPRIATE WAY OF ATTEMPTING TO PUT BEFORE  
15 THE JURY WHAT AN APPELLATE COURT HAS SAID.

16 IT WAS FAIR TO ASK IF SHE LOST, AND IT'S FAIR  
17 TO ASK IF YOU APPEALED, CERTAINLY, AND I DON'T BELIEVE  
18 THERE WERE ANY OBJECTIONS TO EITHER QUESTIONS ABOUT  
19 APPEALING OR ABOUT WHETHER SHE PREVAILED OR NOT. I  
20 THINK IT WAS ALSO FAIR -- AND I DON'T RECALL IF THERE  
21 WERE SOME OBJECTIONS TO AN EXHIBIT LIST AND TO A  
22 WITNESS LIST, BUT YOU DID CHANGE YOUR QUESTIONS TO ASK,  
23 IN ESSENCE: WHO DID TESTIFY, AND WHAT DOCUMENTS DID  
24 YOU PRESENT? AND I DON'T THINK AS TO THOSE THERE WERE  
25 ANY OBJECTIONS, BUT IF THERE WERE, I THINK PROPERLY  
26 OVERRULED. AND I DON'T THINK THAT'S ANY ARGUMENT  
27 THAT'S BEING MADE BY MR. MCMILLAN AT THE PRESENT TIME.

28 SO THERE WERE A NUMBER OF THINGS ABOUT THIS

1       WHOLE PROCESS THAT YOU CAN ASK THE WITNESS ABOUT, BUT  
2       NOT TO INTRODUCE BY MEANS OF QUESTIONING THE WITNESS  
3       SOMETHING THAT THE APPELLATE COURT HAS SAID.  THE  
4       RESULT, SHE CAN TESTIFY TO.

5               MS. SWISS:  YOUR HONOR, YESTERDAY, IN  
6       MR. MCMILLAN'S DIRECT EXAMINATION, HE SPECIFICALLY  
7       ASKED MS. DUVAL, STARTING WITH THE DEPENDENCY, THE  
8       ADJUDICATION, IF SHE WAS THERE AND WHAT THE COURT'S  
9       RULING WAS AND THE REASONS FOR THAT RULING.  AND SHE  
10      TESTIFIED TO HER RECOLLECTION.  I FEEL LIKE I SHOULD BE  
11      ABLE TO CROSS-EXAMINE HER ON THE ADDITIONAL REASONS  
12      THAT WERE LEFT OUT.

13             THE COURT:  BUT SHE WAS A WITNESS TO THAT.  
14      THAT'S VERY DIFFERENT THAN QUESTIONING ABOUT THE  
15      APPELLATE COURT DECISION.  SHE'S NOT A WITNESS TO THAT.  
16      SHE WAS A WITNESS TO PROCEEDINGS IN THE DEPENDENCY  
17      COURT.  AND SHE DID TESTIFY TO -- YESTERDAY TO AT LEAST  
18      ONE THING THAT SHE RECALLED HAVING BEEN SAID BY THE  
19      COURT.  SHE IS NOT A WITNESS TO WHAT THE APPELLATE  
20      COURT HAS SAID.  AND BOTH OF THESE I THINK WERE  
21      NONPUBLISHED OPINIONS.  AND IT IS NOT AN APPROPRIATE  
22      WAY TO TRY TO GET TO THE CONTENT OF THOSE OPINIONS  
23      WHERE SHE IS NOT A WITNESS, SHE SIMPLY HAS READ IT.

24             YOU MAY AS WELL ASK -- PUT MR. MCMILLAN ON THE  
25      STAND AND ASK HIM WHAT THE COURT SAID.

26             MS. SWISS:  WE'D NEVER GET OUT OF HERE.

27             MR. MCMILLAN:  I DON'T MIND GOING UP THERE.

28             THE COURT:  I DON'T THINK THAT'S SOMETHING YOU

1 WANT TO DO ANYWAY.

2 BUT I THINK THERE IS A DIFFERENCE BETWEEN WHAT  
3 SHE OBSERVED VISUALLY, AUDIBLY, WHATEVER, AT THE  
4 HEARING. I THINK IT'S A FAIR QUESTION ABOUT WHAT  
5 WITNESSES SHE CALLED OR DIDN'T CALL. I THINK IT'S FAIR  
6 THAT SHE HAD THE OPPORTUNITY TO PRESENT WITNESSES AND  
7 DOCUMENTARY EVIDENCE. BUT I DON'T THINK IT'S FAIR TO  
8 BE QUESTIONING HER ABOUT WHAT AN APPELLATE COURT HAS  
9 SAID.

10 I DON'T THINK THAT'S -- I'M NOT SUGGESTING  
11 THAT I KNOW HOW YOU GET THAT INFORMATION BEFORE THE  
12 JURY. I'M JUST SAYING I KNOW THAT THAT'S NOT THE WAY  
13 IT WILL BE DONE.

14 MS. SWISS: UNDERSTOOD.

15 THE COURT: SO NOW WHAT, MR. MCMILLAN?

16 MR. MCMILLAN: YOUR HONOR, JUST WITH RESPECT  
17 TO THE QUESTIONS THAT INCLUDED THE WORDS "FINDINGS OF  
18 THE APPELLATE COURT, THIS, THAT," I WOULD REQUEST A  
19 CURATIVE INSTRUCTION TO THE JURY THAT THE COURT OF  
20 APPEAL DOESN'T MAKE FINDINGS OTHER THAN AS TO THE  
21 STANDARDS OF REVIEW AND WHETHER OR NOT THOSE WERE MET,  
22 AND THEN EITHER AFFIRMING OR REVERSING IN THE MANDATE.  
23 THE FINDINGS WOULD BE THE OUTCOME, AND WHETHER OR NOT  
24 THE STANDARD OF REVIEW WAS MET.

25 MS. SWISS: THE QUESTIONS THAT I ASKED ARE NOT  
26 EVIDENCE. AND THEY WEREN'T OBJECTED TO AT THE TIME,  
27 SO --

28 THE COURT: WELL, SOME WERE OBJECTED TO. I

1 DON'T THINK ALL OF THEM WERE. I DON'T WANT TO GO BACK  
2 THROUGH TO SEE TO WHICH ONES OBJECTIONS WERE MADE --  
3 AND MAYBE THEY WERE TO EACH. I DON'T RECALL. I  
4 HAVEN'T GONE BACK THROUGH THE TRANSCRIPT TO MAKE THAT  
5 DETERMINATION AS TO WHETHER THERE WAS AN OBJECTION TO  
6 EVERY QUESTION.

7 IT IS TRUE THAT -- THAT WHAT MS. SWISS HAS  
8 JUST STATED, THAT QUESTIONS ARE NOT EVIDENCE. AND I  
9 HAVE GIVEN THAT INSTRUCTION IN PRELIMINARY INSTRUCTIONS  
10 ALREADY GIVEN TO THE JURY AND MAY OR MAY NOT REPEAT  
11 THAT INSTRUCTION IN THE CONCLUDING INSTRUCTIONS.  
12 TYPICALLY, I DON'T GIVE THE SAME INSTRUCTION AT THE END  
13 OF A CASE THAT I GAVE AT THE BEGINNING OF THE CASE,  
14 ALTHOUGH ALL INSTRUCTIONS, WHENEVER THEY ARE GIVEN, ARE  
15 SENT TO THE JURY. AND THE JURY WILL -- HAS HEARD -- I  
16 THINK THERE WERE TWO DIFFERENT INSTRUCTIONS IN  
17 100 SERIES -- I KNOW THERE'S ONE, I BELIEVE THERE'S  
18 ACTUALLY TWO WHICH MENTION THAT WHAT COUNSEL SAY IS NOT  
19 EVIDENCE. AND ALSO THAT I GAVE THE INSTRUCTION THAT  
20 QUESTIONS ARE NOT EVIDENCE; IT IS ONLY THE ANSWER.

21 SO THAT INSTRUCTION HAS ALREADY BEEN GIVEN TO  
22 THE JURY. AND AT THE MOMENT, I'M NOT INCLINED TO GIVE  
23 A FURTHER INSTRUCTION, ALTHOUGH I WILL PERMIT YOU TO  
24 DRAFT WHAT YOU THINK SUCH AN INSTRUCTION SHOULD BE AND  
25 I'LL CONSIDER WHETHER TO GIVE IT OR NOT.

26 MS. SWISS: IN THAT REGARD, YOUR HONOR, THE  
27 COURT HAS ALREADY COMMENTED THAT MR. MCMILLAN'S DIRECT  
28 EXAMINATION THROUGHOUT THIS CASE HAS BEEN IN THE FORM

1 OF LEADING QUESTIONS. SO WE WOULD ASK THE COURT TO  
2 CONSIDER SOME TYPE OF INSTRUCTION ON THAT AS WELL, THAT  
3 LEADING QUESTIONS ON DIRECT SHOULD NOT BE CONSIDERED --

4 THE COURT: WELL --

5 MS. SWISS: -- AS PROPER.

6 THE COURT: -- AGAIN, I'D HAVE THE SAME  
7 RESPONSE.

8 I'M LESS INCLINED TO DO THAT -- WE'VE HAD A  
9 PROGRESSION IN THE MANNER IN WHICH I HAVE RULED ON  
10 MR. MCMILLAN'S RATHER FREQUENT LEADING QUESTIONS.  
11 ORIGINALLY, I SIMPLY AFFIRMED THE OBJECTIONS WHEN THEY  
12 WERE MADE. MORE RECENTLY, I HAVE GIVEN --  
13 UNFORTUNATELY, MORE TIMES THAN I WISH I HAD BEEN CALLED  
14 UPON TO DO -- DIRECTIONS TO ASK ONLY DIRECT QUESTIONS  
15 AND NOT TESTIFY.

16 I BELIEVE THAT NOTHING FURTHER IS NECESSARY AT  
17 THIS TIME, ALTHOUGH IF THERE IS A CONTINUING, REPEATED  
18 LEADING QUESTIONS WHICH ARE REALLY TESTIMONIAL IN  
19 NATURE, THEN I'LL HAVE TO CONSIDER WHAT FURTHER I MIGHT  
20 DO. BUT I THINK, WHEN THINGS LIKE THAT ARE OCCURRING,  
21 THAT A PROGRESSIVE APPROACH TO THE RULING AND  
22 ADMONITION TO COUNSEL IS AN APPROPRIATE APPROACH.

23 I WILL SAY, MR. MCMILLAN, THAT IT IS TRUE THAT  
24 A GREAT MAJORITY OF YOUR QUESTIONS ARE LEADING  
25 QUESTIONS. THEY REALLY BECOME TESTIMONIAL IN NATURE.  
26 AND I HAVE POINTED THAT OUT, NOW, IN FRONT OF THE JURY.  
27 I'VE TOLD YOU THAT AT SIDEBAR; I NOW, IN RULING, HAVE  
28 DONE SO IN FRONT OF THE JURY. AND I WOULDN'T WANT IT



1 TO GO ANY FURTHER WITH ANY KIND OF DIRECTION OR  
2 REPRIMAND BEFORE THE JURY. THAT'S SOMETHING THAT I  
3 WOULD DO ONLY IF I FELT THAT THE CONDUCT WHICH THE  
4 COURT FINDS TO BE OBJECTIONABLE CONTINUED DESPITE THE  
5 COURT'S RULINGS AND ADMONITIONS. AND I DO WANT YOU TO  
6 REMEMBER THAT.

7 I DON'T WANT TO DO IT AS TO ANY OF YOU.

8 AND I MUST SAY I RECOGNIZE THE DIFFICULTY IN  
9 FRAMING QUESTIONS. CROSS-EXAMINATION IS EASIER THAN  
10 DIRECT EXAMINATION. IT MAY TAKE MORE PREPARATION, SO  
11 I -- BUT JUST IN TERMS OF FRAMING THE QUESTIONS, IT'S  
12 EASIER TO ASK A LEADING QUESTION CROSS-EXAMINATION THAN  
13 IT IS TO ASK DIRECT QUESTIONS WHEN YOU'RE THE PROPONENT  
14 OR CALLING THE WITNESS AND IT'S NOT AN ADVERSARIAL  
15 WITNESS. SO I RECOGNIZE THE DIFFICULTY.

16 AND IN SOME INSTANCES, A LEADING QUESTION --  
17 NOT ALL LEADING QUESTIONS ARE SUBJECT TO OBJECTION.  
18 SOME OF THEM ARE OFTEN UNNECESSARY AFTER A WITNESS HAS  
19 SAID SOMETHING AND THEN THE ATTORNEY SAYS, "SO YOU'RE  
20 SAYING SO AND SO," RIGHT AFTER THEY JUST SAID IT.  
21 WELL, THAT'S A LEADING QUESTION. IF IT'S ON AN  
22 IMPORTANT SUBJECT, I SUSTAIN THE OBJECTION. IF I LOOK  
23 AT IT AS REALLY BEING NOTHING MORE THAN SUMMARY IN  
24 NATURE, AND PARTICULARLY WHERE THERE MAY NOT HAVE BEEN  
25 A PERFECTLY CLEAR ANSWER ON THE PART OF A WITNESS, THAT  
26 IS PERMISSIBLE FOR -- HOPEFULLY FOR BETTER  
27 UNDERSTANDING. BUT BY AND LARGE, IF IT'S YOUR WITNESS,  
28 NOT THE 776 WITNESS, THE QUESTIONS NEED TO BE DIRECT

1 QUESTIONS, NOT LEADING AND SUGGESTIVE QUESTIONS. SO I  
2 HOPE WE DON'T HAVE TO GO ANY FURTHER WITH THAT AS WELL.

3 SO I HOPE I'VE ANSWERED YOUR CONCERN. AND I'M  
4 NOT SUGGESTING THAT YOU NECESSARILY AGREE WITH WHAT  
5 I'VE SAID, BUT AT LEAST I'VE EXPLAINED TO YOU HOW I'VE  
6 APPROACHED THIS AND THAT I DO INTEND, IF IT CONTINUES,  
7 TO CONSIDER SOMETHING FURTHER. AND THAT REALLY SHOULD  
8 BE AVOIDED IF AT ALL POSSIBLE. AND THAT'S TRUE OF ALL  
9 COUNSEL. I THINK YOU'RE ALL ENTITLED TO SOME LEEWAY,  
10 BUT THAT LEEWAY DOES NOT INCLUDE CONTINUED TESTIMONIAL  
11 QUESTIONS, NOR AN INSTANCE LIKE THIS WHERE I THINK THAT  
12 YOU WERE REALLY ATTEMPTING TO GET THE WITNESS TO RECITE  
13 OR AGREE WITH CERTAIN THINGS THAT HAVE BEEN SAID.

14 BUT IT IS TRUE THAT CERTAINLY IN THE APPELLATE  
15 DECISION ON THE FAMILY LAW CASE, THEY DIDN'T MAKE  
16 FINDINGS. IN FACT, THEIR RULING WAS IT'S ALREADY BEEN  
17 DECIDED AND SAYING "WE'RE NOT GOING BACK THERE."

18 I DON'T KNOW ABOUT ALL OF YOU, BUT I'D LIKE A  
19 SHORT BREAK MYSELF.

20 MR. MCMILLAN: THANK YOU, YOUR HONOR.

21 (RECESS)

22 (JURY PRESENT)

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

25 MS. SWISS, WOULD YOU LIKE TO CONTINUE, PLEASE?

26 MS. SWISS: THANK YOU, YOUR HONOR.

27 BY MS. SWISS:

28 Q MS. DUVAL, YOU TESTIFIED PREVIOUSLY REGARDING

1 MONITORED VISITS AT THE DCFS OFFICE.

2 DO YOU REMEMBER, GENERALLY, THAT TESTIMONY?

3 A WHICH SPECIFIC ONE DO YOU MEAN?

4 Q JUST IN GENERAL, YOU TESTIFIED THAT YOU  
5 ENGAGED IN VISITS WITH YOUR SON THAT WERE SUPERVISED;  
6 RIGHT?

7 A YES.

8 Q OKAY. AND YOUR FRIEND, NORISSA ENNIS, SHE  
9 SUPERVISED A NUMBER OF THOSE VISITS; CORRECT?

10 A YES.

11 Q AND WHEN MS. ENNIS WAS SUPERVISING YOUR  
12 VISITS, DID YOU ASK HER TO CLEAN THE VISITATION ROOMS?

13 A I DON'T RECALL EVER ASKING HER TO CLEAN THE  
14 ROOM FOR ME.

15 Q DID YOU ASK MS. ENNIS IF YOU COULD CHANGE  
16 ROOMS BECAUSE THEY WERE DIRTY?

17 A NOT TO MS. ENNIS, NO.

18 Q I'M SORRY?

19 A NOT TO MS. ENNIS, NO.

20 Q AND YOU DIDN'T REQUEST ANY ACCOMMODATIONS FROM  
21 MS. ENNIS DURING THE VISITS; CORRECT?

22 A NOT TO MS. ENNIS, NO.

23 Q NOW, MUNCHAUSEN BY PROXY, WE'VE TALKED ABOUT  
24 THAT A LOT IN THIS CASE.

25 ISN'T IT TRUE, MS. DUVAL, THAT THE FIRST  
26 MENTION OF MUNCHAUSEN BY PROXY IN THE DEPENDENCY CASE  
27 WAS A COMMENT MADE BY YOUR ATTORNEY AT THE DETENTION  
28 HEARING?

1 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
2 CALLS FOR SPECULATION. ARGUMENT. ASSUMES FACTS.

3 THE COURT: SUSTAINED AS TO SPECULATION.

4 YOU COULD ASK THAT DIFFERENTLY.

5 BY MS. SWISS:

6 Q YOU ATTENDED THE DETENTION HEARING ON  
7 NOVEMBER 3, 2009; CORRECT?

8 A I DID, YES.

9 Q AND YOUR ATTORNEY WAS SCOTT CLARK; CORRECT?

10 A YES.

11 Q AND HE MADE ARGUMENTS TO THE COURT ON YOUR  
12 BEHALF; CORRECT?

13 A HE DID, YES.

14 Q AND ISN'T IT TRUE THAT HE ARGUED TO THE COURT  
15 ON NOVEMBER 3, 2009, THAT THIS WASN'T A CASE OF  
16 MUNCHAUSEN SYNDROME BY PROXY?

17 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
18 CALLS FOR SPECULATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: IN RESPONSE TO THE PETITION,  
21 YES, HE DID.

22 BY MS. SWISS:

23 Q HE SAID THAT TO THE COURT; CORRECT?

24 A YES.

25 Q AND ISN'T IT TRUE THAT THE NEXT TIME THAT  
26 MUNCHAUSEN SYNDROME BY PROXY WAS BROUGHT UP IN THE  
27 DEPENDENCY CASE WAS WHEN YOU TOLD MS. BUSTOS DURING  
28 YOUR UP-FRONT ASSESSMENT THAT YOU THOUGHT MR. MILLS AND

1 HIS FAMILY WERE ACCUSING YOU OF HAVING MUNCHAUSEN  
2 SYNDROME BY PROXY?

3 A YES.

4 Q AND MS. BUSTOS PUT THAT IN HER REPORT; RIGHT?

5 A I'M NOT SURE WHAT YOU MEAN BY SHE PUT THAT IN  
6 THE REPORT.

7 Q WELL, MS. BUSTOS WAS HERE.

8 YOU WERE HERE FOR THAT TESTIMONY; RIGHT?

9 A YES.

10 Q AND WE DISCUSSED THE UP-FRONT ASSESSMENT, THE  
11 DOCUMENT THAT SHE HAD PREPARED?

12 A YES.

13 Q AND IT'S TRUE THAT SHE TESTIFIED THAT SHE  
14 WROTE DOWN IN HER REPORT THAT YOU REPORTED TO HER THAT  
15 THE FATHER'S FAMILY WAS ACCUSING YOU OF HAVING  
16 MUNCHAUSEN SYNDROME BY PROXY; RIGHT?

17 A THAT WAS PART OF HER REPORT, YES.

18 Q AND THEN THAT REPORT WAS SUBMITTED TO THE  
19 JUVENILE COURT; CORRECT?

20 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
21 CALLS FOR SPECULATION ON THE PART OF THIS WITNESS.

22 THE COURT: SUSTAINED.

23 BY MS. SWISS:

24 Q YOU WERE AWARE THAT THE UP-FRONT ASSESSMENT  
25 WAS SENT TO DCFS; CORRECT?

26 MR. MCMILLAN: LACKS FOUNDATION. CALLS FOR  
27 SPECULATION ON THE PART OF THIS WITNESS. OBJECTION.

28 THE COURT: OVERRULED.

1 THE WITNESS: I DIDN'T KNOW WHAT WAS GOING TO  
2 HAPPEN TO THAT ASSESSMENT.

3 BY MS. SWISS:

4 Q WELL, YOU SIGNED A CONSENT FORM WHEN YOU  
5 AGREED TO THE UP-FRONT ASSESSMENT, CORRECT, AT  
6 HILLSIDES?

7 A THE CONSENT TO PARTICIPATE, YES.

8 Q AND PART OF THAT CONSENT WAS THE UNDERSTANDING  
9 THAT DCFS WOULD GET THAT REPORT; RIGHT?

10 MR. MCMILLAN: OBJECTION. ARGUMENT. LACKS  
11 FOUNDATION. SPECULATION.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DON'T RECALL IF I READ THAT AT  
14 THE MOMENT BUT -- I DON'T RECALL.

15 BY MS. SWISS:

16 Q AND YESTERDAY YOU TESTIFIED -- YOU TESTIFIED  
17 THAT BEFORE THE JURISDICTION/DISPOSITION HEARING THAT  
18 YOUR ATTORNEY BROUGHT YOU THAT JURISDICTION/DISPOSITION  
19 REPORT WITH ALL OF THOSE ATTACHMENTS, THE 300-SOMETHING  
20 PAGES.

21 DO YOU REMEMBER THAT TESTIMONY?

22 A YOU'RE REFERRING TO THE HEARING ON  
23 JANUARY 4TH, 2010?

24 Q YES.

25 A YES.

26 Q OKAY. AND ONE OF THE ATTACHMENTS TO THAT  
27 REPORT WAS THE UP-FRONT ASSESSMENT; RIGHT?

28 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.

1 CALLS FOR SPECULATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES, THAT WAS ONE OF THE  
4 ATTACHMENTS THERE.

5 BY MS. SWISS:

6 Q AND YOU DISAGREED THAT THE SOCIAL WORKERS --  
7 MS. NELSON SUBMITTED THE STATEMENTS REGARDING  
8 MUNCHAUSEN BY PROXY TO THE COURT; RIGHT?

9 MR. MCMILLAN: OBJECTION. VAGUE AND AMBIGUOUS  
10 AS PHRASED.

11 THE COURT: SUSTAINED. IT'S UNCLEAR TO ME.  
12 BY MS. SWISS:

13 Q WELL, YOU TESTIFIED YESTERDAY IN MARCH OF 2010  
14 THAT YOU FILED YOUR CIVIL RIGHTS COMPLAINT WITH THE  
15 DCFS CIVIL RIGHTS UNIT; CORRECT?

16 A YES, I DID.

17 Q AND PART OF THAT CIVIL RIGHTS COMPLAINT WAS  
18 THAT CANDIS NELSON IMPROPERLY REFERRED TO YOU AS HAVING  
19 MUNCHAUSEN SYNDROME BY PROXY?

20 A THAT WAS ONE OF MY COMPLAINTS WITH THAT, YES.

21 Q OKAY. AND YOU AGREE WITH ME THAT MS. NELSON  
22 RECEIVED THE INFORMATION ABOUT MUNCHAUSEN BY PROXY FROM  
23 THE UP-FRONT ASSESSMENT; CORRECT?

24 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
25 CALLS FOR SPECULATION ON THE PART OF THIS WITNESS.

26 THE COURT: SUSTAINED.

27 BY MS. SWISS:

28 Q DO YOU KNOW WHERE MS. NELSON GOT THE

1 INFORMATION REGARDING MUNCHAUSEN SYNDROME BY PROXY?

2 A I DON'T KNOW. IT COULD BE ANYWHERE. I'M NOT  
3 SURE WHERE SHE WAS GETTING IT FROM.

4 Q BUT YOU WOULD AGREE WITH ME THAT THE UP-FRONT  
5 ASSESSMENT STATED -- MADE A STATEMENT REGARDING  
6 MUNCHAUSEN BY PROXY, AND THAT WAS ATTACHED TO HER  
7 REPORT; RIGHT?

8 MR. MCMILLAN: OBJECTION. COMPOUND.

9 THE COURT: OVERRULED.

10 THE WITNESS: I'M SORRY. CAN YOU REPEAT THE  
11 QUESTION, PLEASE?

12 BY MS. SWISS:

13 Q SURE. YOU AGREE WITH ME THAT YOU RECEIVED THE  
14 JURISDICTION/DISPOSITION REPORT; RIGHT? AND THAT WAS  
15 THE ONE PREPARED BY MS. NELSON; RIGHT?

16 A YES.

17 Q AND IT ATTACHED THE UP-FRONT ASSESSMENT;  
18 RIGHT?

19 A OKAY.

20 Q AND THE UP-FRONT ASSESSMENT MADE THE  
21 STATEMENTS ABOUT MUNCHAUSEN BY PROXY; RIGHT?

22 A THE UP-FRONT ASSESSMENT HAD THE STATEMENT I  
23 MADE ABOUT MUNCHAUSEN, YES.

24 Q WELL, IT ALSO HAD STATEMENTS THAT FURTHER  
25 PSYCHIATRIC EVALUATION SHOULD BE DONE FOR A NUMBER OF  
26 THINGS; CORRECT?

27 MR. MCMILLAN: OBJECTION. INCOMPLETE.  
28 MISLEADING. MISSTATES THE DOCUMENT.



1 THE COURT: OVERRULED.

2 THE WITNESS: NO, I DISAGREE WITH THAT. THE  
3 WAY I UNDERSTOOD THE REPORT WAS THAT THERE WAS NO  
4 EVIDENCE FOR MUNCHAUSEN AND THAT IF THE DEPARTMENT  
5 WANTED TO OR CONTINUED TO HAVE THAT CONCERN THEY SHOULD  
6 REQUEST FOR FURTHER TESTING. BUT SHE DIDN'T DIAGNOSE  
7 ME WITH MUNCHAUSEN THEN, NO.

8 BY MS. SWISS:

9 Q NO, NO ONE DIAGNOSED YOU WITH IT, I AGREE.  
10 AND IF MY QUESTION WAS UNCLEAR, I APOLOGIZE.

11 WELL, WE DISCUSSED YESTERDAY THAT THE  
12 RECOMMENDATIONS IN THE JURISDICTION/DISPOSITION REPORT  
13 REQUESTED A 730 EVALUATION FOR THE WHOLE FAMILY; RIGHT?

14 MR. MCMILLAN: OBJECTION -- OBJECTION. IT  
15 MISSTATES THE DOCUMENTARY EVIDENCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: I'M SORRY. COULD YOU REPEAT THE  
18 QUESTION? I LOST THE THREAD.

19 BY MS. SWISS:

20 Q SURE. THE JURISDICTION/DISPOSITION REPORT  
21 REQUESTED A 730 EVALUATION FOR BOTH YOU AND MR. MILLS;  
22 RIGHT?

23 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
24 ALSO MISSTATES THE DOCUMENT.

25 THE COURT: OVERRULED.

26 BY MS. SWISS:

27 Q WELL, WE DISCUSSED IT YESTERDAY; DO YOU RECALL  
28 THAT?

1 I'M JUST TRYING TO LAY A FOUNDATION TO MY NEXT  
2 QUESTION.

3 A I DON'T RECALL THE WORDING OF IT. SORRY.

4 Q OKAY. SO YOU FILED A COMPLAINT AGAINST  
5 MS. NELSON FOR MENTIONING MUNCHAUSEN BY PROXY TO THE  
6 COURT; RIGHT? YOUR CIVIL RIGHTS COMPLAINT?

7 A YES.

8 Q AND YOU NEVER FILED ANY TYPE OF COMPLAINT  
9 AGAINST MS. BUSTOS; RIGHT?

10 A NO.

11 Q AND YOU NEVER FILED ANY KIND OF COMPLAINT  
12 AGAINST HILLSIDES?

13 A NO.

14 Q NOW, ANOTHER PART OF YOUR CIVIL RIGHTS  
15 COMPLAINT THAT YOU TESTIFIED TO YESTERDAY WITH YOUR  
16 ATTORNEY WAS THAT YOU WERE OFFENDED WHEN MS. SCHEELE  
17 ASKED YOU IF YOU WERE PREGNANT.

18 DO YOU RECALL THAT?

19 A YES.

20 Q AND ISN'T IT TRUE THAT IN THE UP-FRONT  
21 ASSESSMENT, MS. BUSTOS ALSO ASKED YOU IF YOU WERE  
22 PREGNANT?

23 A I DON'T RECALL IF SHE DID AT THIS TIME, BUT --

24 Q IF YOU CAN -- I'M SORRY.

25 A BUT HOW YOU ASK I THINK MAKES A BIG  
26 DIFFERENCE. SO I DON'T RECALL IF MS. BUSTOS ASKED.

27 Q I'M LOOKING FOR EXHIBIT 290.

28 NOW, DURING THE UP-FRONT ASSESSMENT,

1 MS. BUSTOS ASKED YOU A SERIES OF QUESTIONS; RIGHT?

2 A SHE DID.

3 Q AND SHE TYPED THE ANSWERS INTO A COMPUTER  
4 PROGRAM?

5 A SHE HAD A TABLET WITH HER, SO WHATEVER -- SHE  
6 WAS TAKING NOTES.

7 Q OKAY.

8 A SOME SORT OF NOTES.

9 Q IF YOU COULD TAKE A LOOK AT -- EXHIBIT 290 IS  
10 THE UP-FRONT ASSESSMENT, AND IT'S BATES 3923 THROUGH  
11 3930.

12 IF I COULD DIRECT YOUR ATTENTION TO PAGE 3924,  
13 IF YOU COULD READ THE PARAGRAPH UNDER MEDICAL STATUS  
14 JUST TO YOURSELF, AND LET ME KNOW WHEN YOU'RE FINISHED.

15 A I AM DONE READING THIS STATEMENT.

16 Q DOES THAT PARAGRAPH REFRESH YOUR RECOLLECTION  
17 AS TO WHETHER MS. BUSTOS ASKED YOU IF YOU WERE PREGNANT  
18 DURING THE UP-FRONT ASSESSMENT?

19 A NO, BUT IT SEEMS LIKE SHE PUT IN HERE THAT I  
20 SAID NO.

21 Q AND AGAIN, YOU DIDN'T FILE ANY KIND OF  
22 COMPLAINT AGAINST MS. BUSTOS; RIGHT?

23 A I DID NOT.

24 Q AND NOT AGAINST HILLSIDES?

25 A NO.

26 Q NOW, IN AUGUST OF 2009, YOU HAD A FAMILY LAW  
27 ATTORNEY; CORRECT?

28 A YES.

1 Q AND THAT WAS AZAD JINGOZIAN,  
2 J-I-N-G-O-Z-I-A-N; IS THAT RIGHT?

3 A YES.

4 Q AND YOU HAD THAT ATTORNEY REPRESENTING YOU IN  
5 THE CUSTODY ISSUES WITH MR. MILLS; IS THAT RIGHT?

6 A YES, HE WAS REPRESENTING ME AT THE TIME.

7 Q AND AT THAT TIME IS WHEN ALL THE BACK AND  
8 FORTH WAS GOING ON ABOUT FINDING A DOCTOR FOR  
9 BABY RYAN; IS THAT RIGHT?

10 A YES, THERE WAS A REQUEST FOR CONSENT TO FIND  
11 DOCTORS.

12 Q AND YOU TESTIFIED THAT YOU WERE VERY CONCERNED  
13 THAT RYAN WASN'T GAINING WEIGHT PROPERLY AT THAT TIME;  
14 RIGHT?

15 A YES.

16 Q AND THAT HE WAS DEVELOPMENTALLY DELAYED, YOU  
17 WERE ALSO CONCERNED FOR THAT?

18 A YES.

19 Q AND THERE WAS A SERIES OF BACK-AND-FORTH  
20 LETTERS BETWEEN YOUR FAMILY LAW ATTORNEY AND  
21 MR. MILLS'S FAMILY LAW ATTORNEY AT THAT TIME; RIGHT?

22 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
23 CALLS FOR SPECULATION.

24 THE COURT: SUSTAINED.

25 BY MS. SWISS:

26 Q IN AUGUST -- ON AUGUST 6, 2009, DID YOU HAVE  
27 YOUR FAMILY LAW ATTORNEY WRITE A LETTER TO MR. MILLS'S  
28 FAMILY ATTORNEY?

1 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
2 CALLS FOR SPECULATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: SOME OF THOSE LETTERS WERE  
5 WRITTEN WITHOUT EVEN MY KNOWLEDGE. SO THE RESPONSES  
6 BACK AND FORTH, SOME OF THOSE I HAD NO SPECIFIC  
7 KNOWLEDGE OF.

8 MS. SWISS: MOVE TO STRIKE AS NONRESPONSIVE.

9 THE COURT: THE OBJECTION IS SUSTAINED. THE  
10 MOTION TO STRIKE IS GRANTED. THE ENTIRE ANSWER WILL BE  
11 STRICKEN AND THE JURY DISREGARD IT.

12 YOU MAY ASK THE QUESTION AGAIN IF YOU LIKE.

13 MS. SWISS: IF I COULD ASK THE REPORTER TO  
14 READ IT BACK, PLEASE.

15 THE COURT: ALL RIGHT. WE'LL ASK THE REPORTER  
16 TO READ BACK THE QUESTION.

17 (THE PREVIOUS QUESTION WAS READ BACK BY

18 THE COURT REPORTER AS FOLLOWS:

19 "QUESTION: IN AUGUST -- ON  
20 AUGUST 6, 2009, DID YOU HAVE YOUR  
21 FAMILY LAW ATTORNEY WRITE A LETTER TO  
22 MR. MILLS'S FAMILY ATTORNEY?")

23 THE WITNESS: I DON'T RECALL.

24 BY MS. SWISS:

25 Q DO YOU RECALL HAVING YOUR ATTORNEY SEND A  
26 LETTER TO MR. MILLS'S ATTORNEY IN AUGUST 2009 SAYING  
27 THAT, IN FACT, BABY RYAN'S DEVELOPMENT WAS NORMAL FOR  
28 HIS AGE?

1 MR. MCMILLAN: OBJECTION. FOUNDATION.  
2 SPECULATION. IMPROPER REFRESHMENT OF RECOLLECTION.

3 THE COURT: SUSTAINED.

4 BY MS. SWISS:

5 Q I'LL SHOW YOU PAGES FROM EXHIBIT 1064. IT'S  
6 BATES-LABELED JVCT956 TO 957.

7 A I'M SORRY. WHAT NUMBER?

8 Q I'M GOING TO HAND IT TO YOU.

9 MS. DUVAL, DO YOU RECOGNIZE THIS DOCUMENT?

10 A YES.

11 Q THIS IS A DOCUMENT SENT FROM YOUR FAMILY LAW  
12 ATTORNEY, MR. JINGOZIAN; CORRECT?

13 A YES.

14 Q AND IT'S ADDRESSED TO MR. AMIR AHARONOV --  
15 LAST NAME, A-H-A-R-O-N-O-V.

16 CORRECT?

17 A YES.

18 Q AND THAT'S MR. MILLS'S FAMILY LAW ATTORNEY;  
19 CORRECT?

20 A YES, AT THE TIME.

21 Q AT THE TIME.

22 AND THE LETTER IS DATED AUGUST 6, 2009;  
23 CORRECT?

24 A YES.

25 Q NOW, TAKING A LOOK AT THAT SECOND PARAGRAPH,  
26 DOES THAT REFRESH YOUR RECOLLECTION OF MY --

27 A YES.

28 Q -- QUESTION A FEW MINUTES AGO OF WHETHER YOU

1 ASKED YOUR ATTORNEY TO SEND A LETTER TO MR. MILLS'S  
2 ATTORNEY SAYING THAT BABY RYAN'S DEVELOPMENT WAS NORMAL  
3 FOR HIS AGE?

4 MR. MCMILLAN: OBJECTION. MISSTATES THE  
5 LETTER. LACKS FOUNDATION. CALLS FOR SPECULATION.

6 THE COURT: SUSTAINED AS TO THE FOUNDATION.  
7 BY MS. SWISS:

8 Q MS. DUVAL, DID YOU INSTRUCT YOUR ATTORNEY TO  
9 SEND THIS LETTER?

10 A IN PART, YES.

11 Q AND YOU GAVE HIM INFORMATION TO WRITE IN THE  
12 LETTER?

13 MR. MCMILLAN: OBJECTION. ATTORNEY-CLIENT  
14 PRIVILEGE.

15 THE COURT: SUSTAINED.  
16 BY MS. SWISS:

17 Q YOUR ATTORNEY PUT SOME INFORMATION IN THE  
18 LETTER REGARDING YOUR SON; RIGHT?

19 A HE DID.

20 Q AND TO YOUR KNOWLEDGE, HAD YOUR ATTORNEY MET  
21 YOUR SON?

22 A HE DID.

23 Q YOU TOLD -- ON HOW MANY OCCASIONS DID YOUR  
24 ATTORNEY SEE YOUR SON?

25 A I DON'T RECALL RIGHT NOW, BUT AT LEAST TWO.

26 Q AND WAS THAT AROUND AUGUST 6, 2009, WHEN THIS  
27 LETTER WAS WRITTEN?

28 A I BELIEVE PRIOR TO THAT.

1 Q DID YOU REQUEST YOUR ATTORNEY SEND TO  
2 MR. MILLS'S ATTORNEY STATEMENTS ABOUT RYAN'S  
3 DEVELOPMENT WHEN HE WAS A YEAR OLD?

4 MR. MCMILLAN: OBJECTION. ATTORNEY-CLIENT  
5 PRIVILEGE.

6 THE COURT: SUSTAINED.  
7 BY MS. SWISS:

8 Q WHEN RYAN WAS A YEAR OLD, I THINK YOU  
9 TESTIFIED HE COULD CRAWL BACKWARDS?

10 A HE COULD.

11 Q AND YOU -- AT A YEAR OLD, HE COULD ROLL BY  
12 HIMSELF?

13 A SOMETIMES.

14 Q AND WHEN HE WAS A YEAR OLD, HE COULD STAND  
15 WITH ASSISTANCE?

16 A YES.

17 Q AND WHEN HE WAS A YEAR OLD, HE WOULD INTERACT  
18 WITH PEOPLE AROUND HIM?

19 A YES.

20 Q AND SO AT THAT TIME YOU THOUGHT HE WAS  
21 DEVELOPING NORMALLY; RIGHT?

22 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
23 SPECULATION.

24 THE COURT: OVERRULED.

25 THE WITNESS: NO, AT THE TIME, I HAD CONCERNS  
26 THAT HE WAS MISSING MAJOR MILESTONES. THERE WAS ALSO  
27 SPECIFIC ISSUES THAT NEEDED TO BE ADDRESSED THAT --  
28 THAT HE SHOULD HAVE ALREADY BEEN DOING AND HE WASN'T



1 DOING YET.

2 BY MS. SWISS:

3 Q YOUR ATTORNEY TOLD MILLS'S ATTORNEY THAT  
4 BABY RYAN WAS NORMAL; TRUE?

5 MR. MCMILLAN: OBJECTION. MISSTATES --  
6 ACTUALLY, OBJECTION. LACKS FOUNDATION. CALLS FOR  
7 SPECULATION. IT'S ARGUMENT.

8 THE COURT: SUSTAINED AS TO SPECULATION.

9 BY MS. SWISS:

10 Q WELL, MS. DUVAL, ON THE SECOND PARAGRAPH, THE  
11 FIRST SENTENCE, IF YOU COULD READ THAT TO YOURSELF.  
12 LET ME KNOW WHEN YOU'RE READY.

13 A I'VE READ IT.

14 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO  
15 WHETHER YOUR ATTORNEY TOLD MR. MILLS'S ATTORNEY THAT  
16 THE BABY WAS NORMAL AS OF THIS LETTER?

17 MR. MCMILLAN: OBJECTION. FOUNDATION.  
18 SPECULATION. ALSO IMPROPER REFRESHMENT OF  
19 RECOLLECTION.

20 THE COURT: SUSTAINED AS TO IMPROPER  
21 REFRESHING OF RECOLLECTION.

22 BY MS. SWISS:

23 Q NOW, DURING THIS BACK-AND-FORTH TIME BETWEEN  
24 YOUR FAMILY LAW ATTORNEY AND MR. MILLS'S FAMILY LAW  
25 ATTORNEY IN THE EVENTS LEADING UP TO THE VISIT WITH  
26 MS. CRUMP THAT STARTED THIS WHOLE THING, BACK IN AUGUST  
27 OF 2009, YOU HAD CONCERNS THAT BABY RYAN HAD SOME FOOD  
28 ALLERGIES; IS THAT RIGHT?

1           A     YES.

2           Q     AND SPECIFICALLY YOU WERE CONCERNED THAT HE  
3     HAD ALLERGIES TO MILK; RIGHT?

4           A     THAT'S -- YES.

5           Q     AND ALSO FISH; RIGHT?

6           A     YES.

7           Q     AND IN OCTOBER 2009, YOU TOOK THE BABY TO  
8     DR. SODERBERG; RIGHT?

9           A     I DID, YES.

10          Q     AND DR. SODERBERG TOLD YOU THAT BABY RYAN  
11     DIDN'T HAVE ANY FOOD ALLERGIES; IS THAT CORRECT?

12                   MR. MCMILLAN:  OBJECTION.  MISSTATES  
13     TESTIMONY.  MISSTATES EVIDENCE.

14                   THE COURT:  OVERRULED.

15                   THE WITNESS:  SHE HAD SAID THAT THERE WAS A  
16     PLUS/MINUS 1 ON MILK.

17                   BY MS. SWISS:

18          Q     BUT THAT MEANT HE WASN'T ALLERGIC TO MILK;  
19     RIGHT?

20                   MR. MCMILLAN:  OBJECTION.  FOUNDATION.  
21     SPECULATION.  CALLS FOR EXPERT OPINION FROM LAY  
22     WITNESS.

23                   THE COURT:  SUSTAINED.

24                   BY MS. SWISS:

25          Q     YOUR UNDERSTANDING WAS THAT HE WAS NOT  
26     ALLERGIC TO MILK; RIGHT?

27                   MR. MCMILLAN:  OBJECTION.  ARGUMENT.

28                   THE COURT:  OVERRULED.

1 THE WITNESS: AT THE TIME, THE REPORT SHE GAVE  
2 ME WAS PLUS/MINUS 1, SO IT COULD BE, COULD NOT BE.  
3 SO -- TO MILK SPECIFICALLY. TO OTHER THINGS, HE DIDN'T  
4 HAVE ALLERGIES.

5 BY MS. SWISS:

6 Q I'D LIKE TO SHOW YOU A DOCUMENT IN THE NEXT  
7 EXHIBIT IN ORDER -- I'M SORRY, I LOST THE NUMBER.

8 THE CLERK: 1253.

9 BY MS. SWISS:

10 Q 1253.

11 (DEFENDANTS' EXHIBIT NO. 1253, WAS  
12 MARKED FOR IDENTIFICATION BY THE  
13 COURT.)

14 BY MS. SWISS:

15 Q MS. DUVAL, DO YOU RECOGNIZE THAT DOCUMENT?

16 A YES.

17 Q AND THAT IS THE DECLARATION OF RAFAELINA DUVAL  
18 THAT WAS FILED IN THIS LITIGATION; CORRECT?

19 A YES.

20 Q AND IF YOU TURN TO PAGE 17, THAT'S YOUR  
21 SIGNATURE; CORRECT?

22 A YES.

23 Q AND YOU SIGNED THIS DECLARATION UNDER PENALTY  
24 OF PERJURY THAT THE CONTENTS WERE TRUE AND CORRECT?

25 A YES.

26 Q AND IT'S DATED MARCH 31, 2015?

27 A YES.

28 Q NOW, IF I CAN -- NOW, THIS DECLARATION, YOU

1 PREPARED IT; RIGHT?

2 A MY ATTORNEYS PREPARED IT FOR ME.

3 Q AND YOU REVIEWED IT; CORRECT?

4 A YES.

5 Q AND YOU MADE SURE THAT YOU WERE TELLING THE  
6 TRUTH UNDER PENALTY OF PERJURY BEFORE YOU SIGNED IT;  
7 RIGHT?

8 A YES.

9 Q AND YOU WANTED TO MAKE SURE YOU WERE TELLING  
10 THE TRUTH BEFORE YOU FILED IT WITH THE COURT; RIGHT?

11 A YES.

12 Q OKAY. IF I CAN DIRECT YOUR ATTENTION TO  
13 PAGE 7, PARAGRAPH 35.

14 MS. SWISS: WITH THE COURT'S PERMISSION, I'D  
15 LIKE TO READ THAT PARAGRAPH.

16 MR. MCMILLAN: ONE MOMENT, YOUR HONOR.

17 WHICH PARAGRAPH?

18 MS. SWISS: PARAGRAPH 35. I HANDED YOU A  
19 COPY.

20 MR. MCMILLAN: OH, YOU DID. I'M SORRY. I  
21 DIDN'T SEE THAT.

22 MS. SWISS: IT'S PAGE 7.

23 PERMISSION TO READ THE FIRST SENTENCE OF  
24 PARAGRAPH 35.

25 THE COURT: ANY OBJECTION?

26 MR. MCMILLAN: NO, YOUR HONOR.

27 THE COURT: GO AHEAD.

28 ///

1 BY MS. SWISS:

2 Q IT STATES:

3 "I PROMPTLY MADE AN APPOINTMENT  
4 WITH DR. SODERBERG, WHO FOUND NO  
5 ALLERGIES, AND RD'S BLOOD TESTS CAME  
6 BACK NEGATIVE."

7 NOW, ON NOVEMBER 3RD, AFTER YOU'D ALREADY BEEN  
8 TO DR. SODERBERG, YOU THEN TOOK THE BABY TO THE FAILURE  
9 TO THRIVE CLINIC; CORRECT?

10 A I DID, YES.

11 Q AND THAT WAS NOVEMBER 3RD, 2009; TRUE?

12 A YES.

13 Q AND THAT'S WHEN YOU SAW DR. EGGE; RIGHT?

14 A YES.

15 Q AND YOU MADE SOME -- YOU SPOKE WITH DR. EGGE;  
16 RIGHT?

17 A I DID, I SPOKE TO DR. EGGE.

18 Q AND YOU GAVE HER A LITTLE BIT OF HISTORY OF  
19 WHAT WAS GOING ON WITH THE BABY; RIGHT?

20 A YES.

21 Q AND SPECIFICALLY, YOU TOLD DR. EGGE THAT  
22 BABY RYAN WAS ALLERGIC TO TOMATOES AND MILK; ISN'T THAT  
23 CORRECT?

24 A I DON'T RECALL RIGHT NOW SPECIFICALLY WHAT I  
25 TOLD DR. EGGE, BUT IN THE PAST, I -- I HAD A CONCERN AT  
26 ONE POINT THAT HE HAD AN ALLERGY TO MILK AND TOMATO.

27 Q AND THAT WAS TRUE AS OF NOVEMBER 3RD, 2009,  
28 YOUR CONCERN?

1           A       BY THEN I HAD SEEN DR. SODERBERG, SO I WAS  
2       WAITING FOR THE BLOOD TEST RESULTS BY THEN.

3           Q       BUT YOU HAD THE RESULTS FROM DR. SODERBERG IN  
4       OCTOBER; RIGHT?

5           MR. MCMILLAN:   OBJECTION.   VAGUE AND AMBIGUOUS  
6       AS TO WHICH RESULTS.

7           THE COURT:   SUSTAINED.

8           I THINK AT THIS TIME WE'LL TAKE THE BREAK FOR  
9       THE NOON RECESS.

10          MS. SWISS:   THANK YOU, YOUR HONOR.

11          THE COURT:   I'M GOING TO ASK OUR ALTERNATE  
12       JURORS, HAHN AND KMET, TO STAY FOR JUST A MOMENT SO I  
13       CAN TALK TO YOU.

14          SO ALL OTHER JURORS, WE'LL RESUME AT 1:30.

15          ALL JURORS, PLEASE REMEMBER THE ADMONITION  
16       DURING RECESS TO HAVE NO CONTACT WITH ANYONE.   DO NOT  
17       SEEK OR RECEIVE ANY INFORMATION ABOUT ANY ISSUE,  
18       PERSON, OR SUBJECT MATTER OF THIS CASE.   DO NOT FORM  
19       ANY OPINION NOR EXPRESS ANY OPINION.

20          WE ARE NOW IN RECESS.

21          (JURY EXCUSED)

22          THE COURT:   YOU CAN STEP DOWN, MS. DUVAL.

23          THE WITNESS:   THANK YOU.

24          THE COURT:   WE'RE ON THE RECORD.   COUNSEL ARE  
25       PRESENT.   OUR JURORS KMET AND HAHN ARE PRESENT.

26          MS. KMET, WHAT I WANTED TO ASK YOU -- AND I'LL  
27       START OUT BY PREFACING MY QUESTION BY SAYING THAT  
28       MEMORY IS THE SECOND THING TO GO -- BUT I HAVE A MEMORY

1 THAT DURING -- WHEN WE BEGAN THE JURY SELECTION ABOUT  
2 YOU INDICATING YOU HAD A -- I REMEMBER IT AS BEING A  
3 TRIP OR SOME OTHER OBLIGATION IN THE LATTER PART OF  
4 OCTOBER. AND I TOLD YOU AT THE TIME, "DON'T WORRY;  
5 WE'RE GOING TO BE DONE."

6 SO MY MEMORY IS CORRECT?

7 MS. KMET: YES.

8 THE COURT: MAYBE IT'S NOT THE SECOND THING.

9 AND REFRESH ME, AT THE TIME, I DIDN'T GET A  
10 DETAILED -- I REMEMBER IT BEING THE DATE OF  
11 OCTOBER 28TH. IS THAT --

12 MS. KMET: OCTOBER 25TH.

13 THE COURT: 25TH?

14 MS. KMET: YES. AND IT'S OUT OF THE COUNTRY.

15 THE COURT: AND YOU'RE LEAVING -- AND THIS IS  
16 PREPLANNED AND PREARRANGED?

17 MS. KMET: YES. AND IT'S NONREFUNDABLE.

18 THE COURT: OKAY. AND -- ALL RIGHT. I'M  
19 GOING TO LET YOU GO TAKE THE NOON RECESS, BUT I'LL KEEP  
20 THAT IN MIND. AND WE'LL KEEP IN TOUCH WITH YOU OVER  
21 IT, DEPENDING ON HOW THE TRIAL GOES, TO MAKE SURE.  
22 BECAUSE I REMEMBER TELLING YOU AT THE TIME, "DON'T  
23 WORRY ABOUT IT; WE'LL BE DONE." AND I MAY OR MAY NOT  
24 HAVE TOLD YOU, WHICH I OFTEN DO, THAT IF YOU WERE  
25 SELECTED AS A JUROR THAT YOU COULD BE EXCUSED. I DON'T  
26 REMEMBER DOING THAT IN THIS CASE; I REMEMBER A  
27 DISCUSSION. BUT I AM AWARE OF IT, AND YOU HAVE  
28 REFRESHED MY RECOLLECTION AS TO THE DATE. SO I WILL

1 KEEP IT IN MIND AND WILL NOT FORGET THAT.

2 MS. KMET: YOU DID SAY, "IF WE'RE NOT, YOU CAN  
3 GO."

4 THE COURT: OKAY.

5 MS. KMET: BECAUSE THAT WAS VERY IMPORTANT.

6 THE COURT: I DID. THAT'S NORMALLY WHAT I  
7 WOULD SAY. SO OKAY, YOU CAN GO.

8 AND MS. HAHN, I HAVE YOUR MESSAGE ABOUT THE  
9 PLANNED TRIP YOU AND YOUR HUSBAND HAVE.

10 IS THAT STILL ON?

11 MS. HAHN: YES.

12 THE COURT: OKAY. I'LL -- I DO HAVE THE  
13 DETAILS OF THAT IN THE MESSAGE YOU CONVEYED TO ME. SO  
14 I WANTED TO ACKNOWLEDGE TO BOTH OF YOU THAT I AM AWARE  
15 OF YOUR SITUATION, WILL NOT FORGET IT, AND WE'LL BE IN  
16 TOUCH WITH YOU, PROBABLY MS. HAHN BEFORE MS. KMET. AND  
17 I'LL GET BACK TO YOU, PERHAPS SOMETIME TODAY, BUT  
18 CERTAINLY VERY SOON.

19 ALL RIGHT?

20 MS. HAHN: OKAY.

21 THE COURT: OKAY. THANK YOU FOR REFRESHING MY  
22 MEMORY ON THIS. AND WE'RE NOW IN RECESS. WE'LL SEE  
23 YOU BACK AT 1:30.

24 (LUNCH RECESS)

25 THE COURT: EVERYONE READY?

26 MR. MCMILLAN: I BELIEVE SO.

27 THE COURT: ALL RIGHT. LET'S GET THE JURORS  
28 IN, PLEASE.



1 (JURY PRESENT)

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

4 MS. DUVAL, YOU MAY BE SEATED TOO.

5 MS. NAJARA, I RECEIVED THE MESSAGE YOU SENT  
6 THROUGH DEANNA. I'M ANTICIPATING THAT THERE WON'T BE A  
7 PROBLEM. IF IT TURNS OUT THAT I THINK THERE IS, I'LL  
8 LET YOU KNOW.

9 LET'S GO AHEAD.

10 BY MS. SWISS:

11 Q GOOD AFTERNOON, MS. DUVAL.

12 A GOOD AFTERNOON.

13 Q NOW, YOU ONLY MET WITH DR. SODERBERG IN HER  
14 OFFICE THAT ONE TIME; CORRECT?

15 A YES.

16 Q AND THAT WAS OCTOBER 27TH, 2009, THEREABOUTS?

17 A ABOUT, YES.

18 Q AND YOU WERE HERE WHEN DR. SODERBERG  
19 TESTIFIED; CORRECT?

20 A I WAS.

21 Q AND YOU HEARD HER TESTIFY THAT AT THAT VISIT,  
22 SHE DID THE SKIN TEST FOR BABY RYAN'S ALLERGIES;  
23 CORRECT?

24 A YES.

25 Q AND SHE TOLD YOU THE RESULTS OF THAT SKIN TEST  
26 AT THAT APPOINTMENT ON OCTOBER 27TH, 2009; CORRECT?

27 A I DON'T RECALL IF THAT'S WHAT SHE SAID, BUT.

28 Q BUT THAT'S TRUE, RIGHT, SHE GAVE YOU THE

1 RESULTS OF THE SKIN TEST THERE IN THE OFFICE THAT DAY?

2 A YES.

3 Q AND THE RESULTS OF THE SKIN TEST WERE THAT  
4 PLUS 1 FOR MILK AND EGGS; RIGHT?

5 A CORRECT.

6 Q AND COMPLETELY NEGATIVE FOR EVERYTHING ELSE;  
7 RIGHT?

8 A YES.

9 Q SO WHEN YOU WENT TO THE FAILURE TO THRIVE  
10 CLINIC ON NOVEMBER 3RD, YOU HAD THE RESULTS OF THE SKIN  
11 TEST THAT DR. SODERBERG DID; RIGHT?

12 A ONLY THAT ONE, YES.

13 Q OKAY. NOW, IN THIS CASE, IN THE DEPENDENCY  
14 CASE, YOU NEVER HAD ANY DIRECT CONTACT WITH MUZEYYEN  
15 BALABAN; CORRECT?

16 A I DON'T THINK SO, NO.

17 Q AND YOU NEVER HAD ANY CONTACT WITH TIKA SMITH?

18 A I DON'T RECALL IF I DID.

19 Q NOTHING COMES TO MIND; RIGHT?

20 A NO.

21 Q OKAY. NOW, WE TALKED EARLIER, AND YOU  
22 DISCUSSED YESTERDAY WITH YOUR ATTORNEY THE CIVIL RIGHTS  
23 COMPLAINT THAT YOU FILED IN MARCH OF 2010.

24 A YES.

25 Q DID YOU EVER INFORM THE JUVENILE COURT THAT  
26 YOU HAD FILED THE CIVIL RIGHTS COMPLAINT CLAIMING THAT  
27 YOU WERE BEING DISCRIMINATED AGAINST BY THE SOCIAL  
28 WORKERS?

1 A NO.

2 Q AND YOU -- AND YOUR ATTORNEY ON YOUR BEHALF  
3 NEVER INFORMED THE COURT --

4 MR. MCMILLAN: OBJECTION --

5 BY MS. SWISS:

6 Q -- ABOUT --

7 MR. MCMILLAN: SORRY. GO AHEAD.

8 BY MS. SWISS:

9 Q AND YOUR ATTORNEY ON YOUR BEHALF, TO YOUR  
10 KNOWLEDGE, NEVER BROUGHT THAT TO THE JUVENILE COURT'S  
11 ATTENTION?

12 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
13 CALLS FOR SPECULATION.

14 THE COURT: SUSTAINED AS TO SPECULATION.

15 BY MS. SWISS:

16 Q DO YOU KNOW IF YOUR ATTORNEY EVER BROUGHT THAT  
17 TO THE COURT'S ATTENTION, THE CIVIL RIGHTS COMPLAINT?

18 A I DON'T KNOW IF HE DID.

19 Q NOW, DR. YIM, WHEN SHE WAS TREATING BABY RYAN,  
20 SHE RECOMMENDED TO YOU THAT YOU START SOLIDS AT ABOUT  
21 SIX MONTHS OF AGE; TRUE?

22 MR. MCMILLAN: OBJECTION. MISSTATES PRIOR  
23 TESTIMONY.

24 THE COURT: OVERRULED.

25 THE WITNESS: CAN YOU REPEAT THE QUESTION,  
26 PLEASE?

27 BY MS. SWISS:

28 Q DR. YIM RECOMMENDED THAT YOU START BABY RYAN

1 ON SOLID FOODS WHEN HE WAS ABOUT SIX MONTHS OF AGE?

2 A YES, WE TALKED ABOUT IT.

3 Q AND YOU WANTED TO DELAY THAT, THE INTRODUCTION  
4 OF SOLID FOODS; TRUE?

5 A YES, I GAVE HER MY CONCERNS FOR DELAYING IT.

6 Q AND YOU WEREN'T ACTUALLY THE FIRST PERSON TO  
7 GIVE BABY RYAN SOLID FOODS; ISN'T THAT TRUE?

8 MR. MCMILLAN: LACKS FOUNDATION. CALLS FOR  
9 SPECULATION.

10 THE COURT: SUSTAINED AS TO SPECULATION.

11 BY MS. SWISS:

12 Q DO YOU KNOW WHO THE FIRST PERSON WAS TO GIVE  
13 RYAN SOLID FOODS?

14 A I DON'T. I THOUGHT I WAS THE FIRST ONE.

15 Q NOW, BABY RYAN STARTED HAVING VISITS WITH HIS  
16 FATHER, MR. MILLS, AROUND SIX MONTHS; RIGHT?

17 A YES.

18 Q AND YOU HAD CONVERSATIONS WITH MR. MILLS ABOUT  
19 FEEDING THE BABY; RIGHT?

20 A YES.

21 Q AND IT WAS IMPORTANT TO YOU THAT HE RECEIVE  
22 BREAST MILK; RIGHT?

23 A YES.

24 Q AND IT WAS IMPORTANT TO YOU TO DELAY SOLID  
25 FOODS SO -- RIGHT?

26 MR. MCMILLAN: OBJECTION. ARGUMENTIVE.

27 THE COURT: OVERRULED.

28 THE WITNESS: I'M SORRY. I'M NOT

1 UNDERSTANDING YOUR QUESTION.

2 BY MS. SWISS:

3 Q I'LL REPHRASE.

4 A THANKS.

5 Q WHEN BABY RYAN STARTED VISITING WITH HIS DAD,  
6 WHEN HE WAS SIX MONTHS OLD, YOU WERE STILL OF THE  
7 OPINION OF DELAYING THE INTRODUCTION OF SOLID FOODS;  
8 ISN'T THAT TRUE?

9 A YES, I HAD THAT CONCERN.

10 Q AND YOU DISCUSSED THAT WITH MR. MILLS; RIGHT?

11 A YES, I DID.

12 Q AND MR. MILLS HAD A DIFFERENT OPINION ON WHEN  
13 TO START SOLIDS; ISN'T THAT TRUE?

14 A YES.

15 Q AND HE ACTUALLY STARTED INTRODUCING SOLID  
16 FOODS TO BABY RYAN WITHOUT YOUR CONSENT; ISN'T THAT  
17 TRUE?

18 MR. MCMILLAN: OBJECTION. LACKS FOUNDATION.  
19 CALLS FOR SPECULATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: I ACTUALLY DIDN'T KNOW THAT. I  
22 DIDN'T KNOW THAT THROUGHOUT THAT TIME, HE WAS GIVING  
23 HIM SOLID FOODS.

24 BY MS. SWISS:

25 Q AT SOME POINT, YOU FOUND OUT THAT MR. MILLS  
26 WAS GIVING THE BABY SOLID FOODS; CORRECT?

27 A YES.

28 Q AND YOU WERE UPSET ABOUT THAT, WEREN'T YOU?

1           A       I WAS SHOCKED. THAT'S WHEN I ASKED, I NEVER  
2 GOT A STRAIGHTFORWARD RESPONSE.

3                    SO ANGRY? NO. SURPRISED AND NOT KNOWING WHY  
4 I COULDN'T GET A STRAIGHT ANSWER, YES.

5           Q       IN FACT, YOU WERE SO SURPRISED THAT YOU  
6 BROUGHT THE ISSUE TO THE ATTENTION OF THE FAMILY COURT;  
7 ISN'T THAT TRUE?

8           A       I MAY HAVE, YES.

9           Q       I'M GOING TO SHOW YOU A DOCUMENT MARKED  
10 EXHIBIT 1064. IT'S BATES-STAMPED JVCT919 THROUGH 923.

11                   MS. DUVAL, DO YOU RECOGNIZE THIS DOCUMENT,  
12 EXHIBIT 1064, BATES 919 TO 923?

13           A       YES.

14           Q       AND THIS IS THE DECLARATION THAT YOU SUBMITTED  
15 TO THE FAMILY COURT; TRUE?

16           A       YES.

17           Q       AND THIS WAS AT THE TIME THAT YOU WERE  
18 REPRESENTING YOURSELF IN THE FAMILY COURT; TRUE?

19           A       YES.

20           Q       AND THE SIGNATURE ON THE LAST PAGE, THAT'S  
21 YOURS; TRUE? PAGE 923?

22           A       YES.

23           Q       AND YOU SIGNED IT ON JUNE 10, 2009?

24           A       YES.

25           Q       YOU PREPARED THIS DECLARATION?

26           A       I MAY HAVE GOTTEN HELP PREPARING IT, BUT I SAW  
27 IT, YES.

28           Q       WELL, YOU WERE REPRESENTING YOURSELF; RIGHT?

1           A       TRUE, YES.

2           Q       AND YOU FILED IT WITH THE FAMILY COURT?

3           A       YES.

4           Q       AND YOU TOLD THE TRUTH IN THIS DECLARATION;  
5 RIGHT?

6           A       I DID.

7           Q       NOW, ISN'T IT TRUE, MS. DUVAL, YOU ARGUED TO  
8 THE FAMILY COURT THAT MR. MILLS WAS GIVING THE BABY  
9 SOLID FOODS WITHOUT YOUR KNOWLEDGE?

10          A       LET ME REFRESH MY RECOLLECTION REALLY QUICKLY.  
11 I'M SORRY.

12                   CAN I GET THE QUESTION REREAD? SORRY.

13                   THE COURT: YES.

14                   PLEASE REREAD IT.

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

17                   "QUESTION: NOW, ISN'T IT TRUE,  
18 MS. DUVAL, YOU ARGUED TO THE FAMILY  
19 COURT THAT MR. MILLS WAS GIVING THE  
20 BABY SOLID FOODS WITHOUT YOUR  
21 KNOWLEDGE?")

22                   THE WITNESS: I'M SEEING HERE WHAT I TOLD THE  
23 FAMILY COURT, AND BY THIS TIME, I HAD KNOWLEDGE. IT  
24 WAS THE FACT THAT HE JUST DECIDED TO DO IT WITHOUT  
25 TALKING ABOUT IT.

26 BY MS. SWISS:

27           Q       SO MR. MILLS WAS FEEDING THE BABY SOLIDS  
28 WITHOUT TELLING YOU; RIGHT?

1           A     YES.

2           Q     AND THIS DECLARATION -- I'M SORRY.  I'M NOT  
3     SURE IF I ASKED YOU.

4                     THIS DECLARATION YOU SUBMITTED TO THE COURT  
5     WAS IN JUNE 2009; RIGHT?

6           A     YES.

7           Q     SO BY THEN THE BABY WAS OVER TEN MONTHS OLD?

8           A     YES.

9           Q     NOW, YESTERDAY, WITH YOUR ATTORNEY, YOU  
10    DISCUSSED DAMAGES THAT YOU'RE CLAIMING IN THIS LAWSUIT.

11                    DO YOU RECALL THAT?

12          A     YES.

13          Q     AND YOU TESTIFIED REGARDING SEVERAL  
14    SPREADSHEETS THAT YOU HAD CREATED; RIGHT?

15          A     YES.

16          Q     AND THE RECEIPTS FOR SOME OF THOSE EXPENSES,  
17    YOU -- YOU SUBMITTED FOR -- I'M SORRY.  STRIKE THAT.

18                    AND YOU ATTACHED SOME OF THOSE RECEIPTS, AND  
19    YOU DISCUSSED THOSE WITH YOUR ATTORNEY YESTERDAY;  
20    CORRECT?

21          A     YES.

22          Q     AND THOSE ARE RECEIPTS FOR SOME OF THE  
23    EXPENSES THAT YOU'RE CLAIMING?

24          A     YES.

25          Q     NOW, THOSE EXPENSES THAT YOU'RE CLAIMING,  
26    THOSE ARE COSTS THAT YOU INCURRED; TRUE?

27          A     YES.

28          Q     AND THOSE ARE COSTS THAT YOU FEEL SHOULD BE



1 REIMBURSED BY SOMEBODY ELSE; TRUE?

2 A BY THE COUNTY, YES.

3 Q AND YOU SHOULDN'T HAVE TO PAY FOR ANY OF  
4 THOSE; TRUE?

5 A I PAID FOR THEM, SO.

6 Q BUT YOU WANT TO BE REIMBURSED?

7 A HOPEFULLY, YES.

8 Q NOW, YOU TESTIFIED YESTERDAY THAT SOME OF  
9 THOSE REQUESTS FOR REIMBURSEMENTS ARE FOR ACTIVITIES  
10 THAT YOU ENGAGED WITH YOUR SON DURING YOUR VISITS;  
11 TRUE?

12 A YES.

13 Q FOR EXAMPLE, GOING TO THE ARCADE; RIGHT?

14 A YES.

15 Q AND IT'S YOUR POSITION THAT COUNTY SHOULD HAVE  
16 TO REIMBURSE YOU FOR YOUR SON GOING TO THE ARCADE?

17 A NOT JUST MY SON GOING TO THE ARCADE, NO.

18 Q NO?

19 A NOT JUST MY SON GOING TO THE --

20 Q NOT JUST YOUR SON.

21 BUT YOU AS WELL?

22 A YES.

23 MR. MCMILLAN: OBJECTION. VAGUE.

24 THE COURT: OVERRULED.

25 BY MS. SWISS:

26 Q THAT WAS A YES?

27 A YES.

28 Q IF -- AND ALSO FOR THE MONITOR; RIGHT?

1           A     YES.

2           Q     SO IF YOU DID NOT HAVE TO HAVE THE MONITOR,  
3     WOULDN'T YOU STILL TAKE YOUR SON TO THE ARCADE ON  
4     OCCASION?

5           MR. MCMILLAN:   SPECULATION.   OBJECTION.

6           THE COURT:   OVERRULED.

7           THE WITNESS:   NOT UNDER THE CIRCUMSTANCES THAT  
8     I HAVE TO NOW.

9     BY MS. SWISS:

10          Q     YOU TESTIFIED THAT RYAN LIKES GOING TO THE  
11     ARCADE; RIGHT?

12          A     HE DOES.

13          Q     AND YOU'D WANT TO DO FUN THINGS WITH HIM;  
14     RIGHT?

15          A     I DO.

16          Q     AND SO YOU PAY FOR THOSE THINGS, ALL PARENTS  
17     DO; RIGHT?

18          A     YES.

19          Q     MR. MCMILLAN SHOWED THE PICTURE OF THE EASTER  
20     BUNNY, AND YOU AND YOUR SON; RIGHT?

21          A     YES.

22          Q     AND YOU WANTED TO BE -- YOU WANTED TO BE  
23     REIMBURSED FOR THAT PICTURE WITH THE EASTER BUNNY?

24          A     IT'S PART OF MY ACTIVITY DURING THE  
25     VISITATION.

26          Q     SO IF YOU DIDN'T HAVE THE SUPERVISED  
27     VISITATION, YOU WOULDN'T HAVE BOUGHT THE PICTURE WITH  
28     THE EASTER BUNNY?

1           A       I PROBABLY WILL HAVE DONE SOMETHING A LITTLE  
2 DIFFERENT THAN WHAT I DID.

3           Q       NOW, THE CHILD SUPPORT PAYMENTS, THOSE  
4 PAYMENTS ARE MONEY THAT YOU PAY FOR RYAN; TRUE?

5           A       YES.

6           Q       NOW, DCFS HAS NOT BEEN INVOLVED IN YOUR LIFE  
7 SINCE THE ADJUDICATION IN AUGUST 2010; TRUE?

8           A       YOU COULD SAY THAT, YES.

9           Q       SO DCFS HAS NOT BEEN A PART OF THE MONITORING  
10 OF VISITS SINCE 2010; TRUE?

11          A       CORRECT.

12          Q       DCFS DIDN'T DICTATE WHERE YOU HAD YOUR VISITS  
13 SINCE 2010; TRUE?

14          A       YES.

15          Q       NOW, YOU TESTIFIED YESTERDAY THAT AFTER THE  
16 ADJUDICATION, YOU MISSED ABOUT TWO MONTHS OF VISITS;  
17 TRUE?

18          A       AN ESTIMATE, SOMETHING LIKE THAT.

19          Q       AND THAT WAS AFTER DCFS WAS NO LONGER INVOLVED  
20 IN YOUR CASE; TRUE?

21          A       YES.

22          Q       AND THE MISSED VISITS WERE ISSUES UNRELATED TO  
23 THE COUNTY; TRUE?

24          A       I DON'T VIEW IT THAT WAY, BUT --

25          Q       WELL, THE ISSUES WITH THE MISSED VISITS WERE  
26 BECAUSE YOU AND MR. MILLS WERE TRYING TO FIGURE OUT THE  
27 MONITOR; TRUE?

28          A       I COULDN'T AFFORD A PROFESSIONAL MONITOR.

1 THAT WAS THE ISSUE WITH -- WITH THAT.

2 Q THAT WAS THE ISSUE?

3 A RIGHT.

4 Q NOW, YESTERDAY YOU TESTIFIED THAT ONCE DCFS  
5 BECAME INVOLVED IN THE CASE IN 2009, THAT YOUR INCOME  
6 DECREASED.

7 DO YOU RECALL THAT?

8 A I DON'T RECALL IF THAT'S EXACTLY WHAT I SAID.  
9 I SAID I HAD -- I DO RECALL SAYING THAT I HAD TO TAKE  
10 SOME TIME OFF.

11 Q BUT SPECIFICALLY REGARDING YOUR INCOME, DO YOU  
12 RECALL TESTIFYING THAT YOUR SALARY DECREASED BECAUSE  
13 YOU HAD TO SPEND SO MUCH TIME DEALING WITH DCFS AND THE  
14 WHOLE PROCESS?

15 MR. MCMILLAN: OBJECTION. MISSTATES  
16 TESTIMONY.

17 THE COURT: OVERRULED.

18 THE WITNESS: I DON'T RECALL EXACTLY WHAT I  
19 SAID. I'M SORRY.

20 BY MS. SWISS:

21 Q IS THAT A TRUE STATEMENT, THAT YOUR SALARY  
22 DECREASED ONCE DCFS BECAME INVOLVED?

23 A THROUGH MY BUSINESS, YES. I HAD TO LET GO  
24 SOME CLIENTS DURING DEPENDENCY.

25 Q AND THE DEPENDENCY CASE, THAT WAS FROM ROUGHLY  
26 OCTOBER, END OF OCTOBER 2009 THROUGH AUGUST 2010; TRUE?

27 A YES.

28 Q AND ISN'T IT TRUE, MS. DUVAL, THAT IN 2010,

1 YOUR SALARY ACTUALLY INCREASED FROM 2009?

2 MR. MCMILLAN: OBJECTION. YOUR HONOR. VAGUE,  
3 AMBIGUOUS. AND COMPOUND.

4 IF I CAN HAVE A SIDEBAR?

5 THE COURT: ALL RIGHT.

6 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
7 SIDEBAR.)

8 THE COURT: WE'RE AT SIDEBAR.

9 MR. MCMILLAN?

10 MR. MCMILLAN: YEAH. WHAT'S HAPPENING HERE IS  
11 MS. SWISS IS CONFLATING HER LOSS OF BUSINESS INCOME --  
12 SHE HAD HER OWN SIDE BUSINESS DOING ACCOUNTING. SHE'S  
13 MAKING NO CLAIM FOR THAT. SHE'S GIVING NO AMOUNTS FOR  
14 THAT; SHE'S NOT MAKING A CLAIM. BUT MS. SWISS IS  
15 CONFLATING SALARY WITH BUSINESS INCOME. SHE'S ALREADY  
16 TESTIFIED THAT, YEAH, SHE LOST BUSINESS INCOME, BUT NOT  
17 AS TO THE AMOUNT. AND NOW WE HAVE THIS CONTRAST,  
18 "WELL, YOUR SALARY WENT UP." BUT IT SOUNDS TO ME LIKE  
19 THE TWO ARE BEING CONFLATED.

20 MS. SWISS: WELL, YOU CAN CLEAR ANY  
21 AMBIGUITIES ON REDIRECT, BUT MY POINT IS COUNSEL  
22 DISCUSSED EXHIBIT 593 YESTERDAY, WHICH TALKED ABOUT HER  
23 SELF-EMPLOYMENT INCOME, AND THE AMOUNTS REFLECT THAT  
24 THEY INCREASED IN 2010, 2011, AND 2012.

25 MR. MCMILLAN: THAT'S WAGES. SELF-EMPLOYMENT  
26 INCOME IS BLANK. THAT'S A COMPLETELY DIFFERENT LINE  
27 ITEM.

28 MS. SWISS: OKAY. WAGES, THE NUMBERS GO UP.

1 THAT'S ALL I'M GOING TO TALK ABOUT. YOU CAN CLEAR THAT  
2 UP ON REDIRECT.

3 MR. MCMILLAN: THAT'S FINE. I'M NOT -- AS  
4 LONG AS YOU'RE NOT TALKING ABOUT WAGES. WAGES IS A  
5 JOB. BUSINESS IS A SIDE BUSINESS.

6 MS. SWISS: OKAY.

7 THE COURT: ALL RIGHT.

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

11 BY MS. SWISS:

12 Q I'M NOT SURE IF THERE'S A QUESTION PENDING.

13 THE COURT: THE QUESTION WAS:

14 "AND ISN'T IT TRUE, MS. DUVAL,  
15 THAT IN 2010 YOUR SALARY ACTUALLY  
16 INCREASED FROM 2009?"

17 THE WITNESS: SLIGHTLY, YES.

18 BY MS. SWISS:

19 Q I'M SORRY?

20 A YES.

21 Q IT DID?

22 A YES.

23 Q AND YOUR WAGES ACTUALLY INCREASED IN 2011 AS  
24 WELL?

25 A YES.

26 Q AND ALSO IN 2012; TRUE?

27 A YES.

28 MS. SWISS: NO FURTHER QUESTIONS.

1 THE COURT: MR. MCMILLAN?

2 MR. MCMILLAN: THANK YOU, YOUR HONOR.

3

4

REDIRECT EXAMINATION

5 BY MR. MCMILLAN:

6 Q WE'LL START WITH THE LAST THING FIRST SINCE  
7 THAT'S FRESHEST ON OUR MIND.

8 YOU TESTIFIED -- GEE WHIZ, I DON'T KNOW WHEN  
9 THAT WAS, YESTERDAY OR THE DAY BEFORE -- ABOUT A SIDE  
10 BUSINESS THAT YOU WERE RUNNING, DOING SOME ACCOUNTING.

11 DO YOU REMEMBER THAT TESTIMONY?

12 A YES.

13 Q DID YOU DRAW WAGES OR SALARY FROM THAT SIDE  
14 BUSINESS?

15 A NO.

16 Q OKAY. DID YOU MAKE A CLAIM HERE IN THIS CASE  
17 FOR ANY LOSS OF THAT SIDE BUSINESS?

18 I THINK YOU TESTIFIED YOU HAD TO SHUT IT DOWN;  
19 RIGHT?

20 A YES.

21 Q DID YOU MAKE A CLAIM HERE FOR ANY LOSS THAT  
22 YOU INCURRED AS A RESULT OF SHUTTING DOWN YOUR SIDE  
23 BUSINESS?

24 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

25 THE COURT: OVERRULED.

26 THE WITNESS: NO.

27 BY MR. MCMILLAN:

28 Q SO THAT'S NOT HERE? THAT'S NOT PART OF THIS

1 CASE?

2 A NO.

3 Q WHEN WE'RE TALKING ABOUT SALARY, WHAT IS THAT?  
4 WHAT ARE WE TALKING ABOUT?

5 A SALARY IS WHAT I GOT PAID DURING MY -- LET'S  
6 SAY MY DAY JOB.

7 Q AND I THINK IT WAS EXHIBIT NO. FIVE- --

8 MR. MCMILLAN: DO YOU HAVE THE SPREADSHEET? I  
9 THINK IT'S 586 OR SOMETHING.

10 BY MR. MCMILLAN:

11 Q WHILE WE'RE LOOKING, MAYBE I CAN JUST DO IT  
12 VERBALLY.

13 YOU REMEMBER YOU SUBMITTED A SPREADSHEET -- I  
14 THINK IT WAS YESTERDAY, ACTUALLY -- THAT DETAILED WHAT  
15 YOU BELIEVED WERE THE LOSSES THAT YOU'VE INCURRED IN  
16 THIS CASE?

17 MS. SWISS: OBJECTION. LEADING.

18 THE COURT: OVERRULED.

19 THE WITNESS: YES.

20 BY MR. MCMILLAN:

21 Q ON THAT SPREADSHEET -- AND I THINK WE'VE GOT  
22 IT.

23 MR. MCMILLAN: THANK YOU.

24 BY MR. MCMILLAN:

25 Q IT'S EXHIBIT NO. 586. AND IF YOU DON'T HAVE  
26 IT THERE IN FRONT OF YOU, I CAN GRAB IT FOR YOU.

27 A I DON'T.

28 Q OKAY. ON THAT SPREADSHEET THERE, POINT OUT



1 FOR ME, IF YOU WOULD, WHERE IT IS THAT YOU MAKE A CLAIM  
2 OF ANY KIND FOR LOST BUSINESS -- OR LOST SALARY?

3 A NOWHERE IN THIS SPREADSHEET I'M MAKING A CLAIM  
4 FOR LOST SALARY. HOWEVER, I'M MAKING A CLAIM FOR LOST  
5 TIME.

6 Q UNDER WHICH HEADING IS THAT REFLECTED?

7 A UNDER SICK/PERSONAL VACATION HOURS LOST.

8 Q OKAY. AND WHAT WAS IT THAT YOU WERE TRYING TO  
9 EXPRESS HERE ON YOUR SPREADSHEET IN TERMS OF YOUR  
10 SICK/PERSONAL VACATION HOURS LOST? WHAT DOES THAT  
11 MEAN? WHAT ARE WE TALKING ABOUT?

12 MS. SWISS: OBJECTION. EXCEEDS THE SCOPE.

13 THE COURT: OVERRULED.

14 THE WITNESS: WELL, I HAD TO USE MY SICK TIME,  
15 MY PERSONAL TIME, MY VACATION TIME TO GO TO COURT, GO  
16 TO VISITATION EARLY. OTHERWISE, I WOULD HAVE BEEN  
17 UNPAID FOR THE TIME THAT I TOOK OFF.

18 BY MR. MCMILLAN:

19 Q THANK YOU. I ALWAYS LIKE TO WORK IN REVERSE,  
20 SO LET'S GO TO THE NEXT ONE.

21 MISSED VISITS. MS. SWISS ASKED YOU ABOUT SOME  
22 OF THE VISITS THAT YOU MISSED DURING THE TIME AFTER  
23 AUGUST 2010.

24 DO YOU RECALL THAT TESTIMONY?

25 A VAGUELY, YES.

26 Q AND I THINK THE QUESTION WAS SOMETHING ALONG  
27 THE LINES OF DCFS DIDN'T HAVE ANYTHING TO DO WITH THOSE  
28 MISSED VISITS.

1 DO YOU RECALL THAT?

2 A YES.

3 Q AND I THINK YOUR ANSWER WAS "NOT DIRECTLY."

4 WHAT DID YOU MEAN BY THAT?

5 A HAD THE ALLEGATIONS NOT BEEN SUSTAINED, HAD  
6 EVERYTHING THAT WENT ON IN DEPENDENCY HADN'T HAPPENED,  
7 I WOULD HAVE NOT BEEN IN THAT SITUATION ALTOGETHER  
8 WHERE I HAD TO HAVE MONITORED VISITATIONS WITH MY SON.

9 Q SO ASIDE FROM THE MONITORED VISITATIONS WITH  
10 YOUR SON, IS THERE ANY OTHER WAY THAT YOUR INVOLVEMENT  
11 WITH DCFS HAS IMPACTED YOUR LIFE?

12 MS. SWISS: OBJECTION. EXCEEDS THE SCOPE.

13 THE COURT: SUSTAINED.

14 BY MR. MCMILLAN:

15 Q OKAY. ON THE ISSUE OF CHILD SUPPORT, I THINK  
16 THAT MS. SWISS JUST ASKED YOU ABOUT THE CHILD SUPPORT  
17 THAT YOU NOW HAVE TO PAY FOR YOUR SON.

18 DO YOU REMEMBER THAT?

19 A YES.

20 Q WHO DO YOU WRITE THOSE CHECKS TO?

21 A RYAN MILLS.

22 Q YOU DON'T WRITE THEM TO YOUR SON?

23 A NO.

24 Q AND BEFORE DCFS BECAME INVOLVED IN YOUR LIFE,  
25 WERE YOU PAYING CHILD SUPPORT?

26 A NO.

27 Q WERE YOU RECEIVING CHILD SUPPORT?

28 A YES.

1 Q HOW MUCH?

2 MS. SWISS: OBJECTION. RELEVANCE.

3 THE COURT: SUSTAINED.

4 BY MR. MCMILLAN:

5 Q OKAY. THE EASTER BUNNY PICTURE -- WE'LL COME  
6 BACK TO THAT. THIS IS WARMING UP.

7 NOW, THERE WAS QUITE A BIT A DISCUSSION WITH  
8 MS. SWISS ABOUT THIS ISSUE BETWEEN YOU AND MR. MILLS  
9 OVER WHEN TO START FEEDING THE BABY SOLID FOODS.

10 DO YOU REMEMBER THAT?

11 A YES.

12 Q AND SHE ASKED YOU IF YOU'D TALKED TO DR. YIM  
13 ABOUT WHAT TO DO IN RELATION TO FEEDING THE BABY SOLID  
14 FOODS.

15 DO YOU RECALL THAT?

16 A YES.

17 Q WHAT DID YOU TELL DR. YIM, IF ANYTHING, IN  
18 RELATION TO A CONCERN ABOUT FEEDING THE BABY SOLID  
19 FOODS AT SIX MONTHS?

20 A I HAD TALKED TO DR. YIM ABOUT THE FACT THAT HE  
21 WASN'T SITTING UP IN HIS HIGH CHAIR YET. AND I HAD A  
22 CONCERN THAT, WITH WHAT WE'RE FEEDING, THE LAST THING I  
23 WANT IS TO HAVE A CHOKING BABY OR SOMETHING GOING THE  
24 OPPOSITE WAY, ESPECIALLY WITH THE FEEDING HISTORY WE'VE  
25 BEEN HAVING. AND SHE UNDERSTOOD. AND SHE WAS OKAY  
26 WITH THAT.

27 MS. SWISS: OBJECTION. MOVE TO STRIKE "SHE  
28 WAS OKAY," THE LAST SENTENCE, AS SPECULATION.

1 THE COURT: MOTION TO -- OBJECTION TO THE  
2 SPECULATION IS SUSTAINED. THE MOTION TO STRIKE IS  
3 GRANTED. AND THE STATEMENT THAT "SHE WAS OKAY WITH  
4 THAT" WILL BE ORDERED STRICKEN.

5 MR. MCMILLAN: THANK YOU, YOUR HONOR.

6 BY MR. MCMILLAN:

7 Q IN THIS CONVERSATION THAT YOU HAD WITH  
8 DR. YIM, DID SHE RESPOND TO YOUR CONCERNS?

9 A SHE DID.

10 Q WHAT DID SHE TELL YOU?

11 A SHE TOLD ME SHE UNDERSTOOD MY CONCERN AND SHE  
12 WAS FINE IF WE DELAYED IT A LITTLE BIT MORE.

13 Q DO YOU REMEMBER ROUGHLY WHEN IT WAS IN TERMS  
14 OF TIMING WHEN YOU HAD THIS CONVERSATION?

15 A IT WAS THE VISIT WHEN SHE WAS TESTING FOR  
16 MILESTONES. SO IT WOULD HAVE BEEN AROUND THE SIX-MONTH  
17 MARK.

18 Q NOW, AT SOME POINT, WE KNOW YOU DID BEGIN  
19 FEEDING SOLID FOODS.

20 DO YOU RECALL THAT TESTIMONY FROM MS. SWISS  
21 THIS AFTERNOON?

22 MS. SWISS: OBJECTION. LEADING.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES.

25 BY MR. MCMILLAN:

26 Q WHEN WAS THAT EXACTLY?

27 A IT WAS AT SEVEN AND A HALF MONTHS. IT WAS IN  
28 THE MIDDLE OF MARCH -- MID-MARCH OF 2009.

1 Q AT THAT POINT IN TIME -- PUTTING YOURSELF BACK  
2 TO THAT POINT IN TIME, NOT WHAT YOU KNOW TODAY -- WHAT  
3 WAS YOUR UNDERSTANDING WITH RESPECT TO WHETHER OR NOT  
4 THE BABY HAD ALREADY BEEN EATING SOLID FOODS? WHETHER  
5 IT WAS WITH YOU OR SOMEBODY ELSE?

6 A THAT HE WASN'T. HE WASN'T GIVEN SOLID FOODS  
7 ANYWHERE. ALL I UNDERSTOOD WAS THAT HE WAS GIVEN  
8 TEething BISCUITS. THAT'S ALL I KNEW THEN.

9 Q WERE YOU ALSO GIVING HIM TEething BISCUITS?

10 A YES.

11 Q EXHIBIT NO. -- ACTUALLY WE HAVE THE EASTER  
12 BUNNY BACK UP, IT'S ALL WARMED UP, SO LET'S JUST DEAL  
13 WITH THAT.

14 THIS EASTER BUNNY PICTURE, DO YOU RECALL WHERE  
15 THAT WAS?

16 A YES.

17 Q WHY DID YOU GO TO THAT PARTICULAR PLACE THAT  
18 DAY, ON THAT VISIT?

19 A BECAUSE MY SON LOVES IT THERE.

20 Q DID YOU HAVE TO PAY TO GET IN?

21 MS. SWISS: OBJECTION. RELEVANCE.

22 THE COURT: SUSTAINED.

23 BY MR. MCMILLAN:

24 Q LOOKING AT THAT PICTURE -- AND THIS SORT OF  
25 LEADS INTO DR. SODERBERG, SO LET'S GO BACK TO HER AND  
26 LOOK AT -- I THINK IT'S EXHIBIT NO. 8, BATES  
27 NO. 001266.

28 DO YOU HAVE THAT THERE IN FRONT OF YOU?

1           A     I DON'T.

2           Q     LET ME FIND IT.

3                     IT'S BATES NO. 001266.

4                     NOW, YOU RECALL MS. SWISS WAS ASKING YOU ABOUT  
5 YOUR VISIT TO DR. SODERBERG ON THE DAY WHEN SHE DID  
6 THAT SKIN TEST ON BABY RYAN.

7                     DO YOU RECALL THAT TESTIMONY?

8           A     YES.

9           Q     AND I THINK YOU'D SAID SOMETHING ALONG THE  
10 LINES OF IT WAS PLUS/MINUS 1 FOR MILK.

11                    DO YOU RECALL THAT?

12          A     YES, THAT'S WHAT I SAID.

13          Q     OKAY. I'D LIKE TO DRAW YOUR ATTENTION TO  
14 1266, IT'S ABOUT THE MIDDLE OF THE PAGE -- YOU KNOW,  
15 I'LL JUST POINT IT OUT FOR YOU BECAUSE IT MIGHT BE  
16 DIFFICULT FOR YOU TO FIND IT. RIGHT HERE.

17                    IN REVIEWING THAT ENTRY ON THE DOCUMENT, DOES  
18 THAT REFRESH YOUR RECOLLECTION AS TO WHAT THE TEST  
19 RESULTS WERE IN DR. SODERBERG'S OFFICE THAT DAY?

20          A     YES.

21                    MS. SWISS: OBJECTION. IMPROPER REFRESHMENT  
22 OF RECOLLECTION.

23                    THE COURT: WELL, SUSTAINED.

24                    YOU HAVE -- YOU'D HAVE TO ASK FIRST IF SHE HAS  
25 A RECOLLECTION.

26                    MR. MCMILLAN: OH, I'M SORRY.

27 BY MR. MCMILLAN:

28          Q     LET ME BACK UP. BEFORE REVIEWING THAT

1 DOCUMENT, DID YOU HAVE A CLEAR RECOLLECTION OF WHAT THE  
2 TEST RESULTS WERE FOR THE SKIN TEST THAT DAY ON  
3 BABY RYAN?

4 A VAGUELY.

5 Q SO YOU DID HAVE A RECOLLECTION?

6 A I JUST REMEMBER THAT IT WAS A PLUS 1 TO MILK.

7 Q OKAY. AND LOOKING AT THIS DOCUMENT, DOES THAT  
8 ALTER YOUR RECOLLECTION IN ANY WAY?

9 MS. SWISS: OBJECTION. FOUNDATION. IMPROPER  
10 REFRESHMENT OF RECOLLECTION.

11 THE COURT: SUSTAINED.

12 YOU HAVE TO ASK IF IT REFRESHES HER  
13 RECOLLECTION.

14 MR. MCMILLAN: OKAY.

15 BY MR. MCMILLAN:

16 Q IN LOOKING AT THAT DOCUMENT, DOES THE DATA  
17 THERE REFRESH YOUR RECOLLECTION AS TO WHAT THE RESULTS  
18 WERE THAT DAY?

19 A YES.

20 Q OKAY. NOW THAT YOUR RECOLLECTION HAS BEEN  
21 REFRESHED, CAN YOU TELL US WHAT THE RESULTS WERE?

22 A YES.

23 MS. SWISS: OBJECTION. THE WITNESS IS  
24 READING.

25 THE COURT: SHE ANSWERED YES. THE OBJECTION  
26 IS OVERRULED.

27 THEN YOU HAVE TO ASK WHAT IS HER RECOLLECTION.  
28 AND YOU HAVE TO ANSWER IT WITHOUT LOOKING AT

1 THE DOCUMENT IF YOU'RE TESTIFYING ABOUT YOUR  
2 RECOLLECTION.

3 DO YOU WANT TO ASK THOSE QUESTIONS?

4 MR. MCMILLAN: YES.

5 LET'S DO THIS TO AVOID --

6 THE COURT: HAVE I REFRESHED YOUR  
7 RECOLLECTION?

8 BY MR. MCMILLAN:

9 Q LET'S JUST CLOSE THAT BOOK FOR A MOMENT NOW  
10 THAT YOU'VE READ THE DOCUMENT.

11 IS YOUR RECOLLECTION REFRESHED?

12 A YES.

13 Q GIVE US YOUR REFRESHED RECOLLECTION.

14 A 1+ TO MILK AND EGGS, AND ALL OTHER NEGATIVE.

15 Q OKAY. AND THEN UP AT TO TOP -- YOU CAN OPEN  
16 IT AGAIN NOW.

17 A WHAT NUMBER?

18 Q I'M SORRY, NO. 8.

19 THE COURT: 1266 OF EXHIBIT 8.

20 BY MR. MCMILLAN:

21 Q RIGHT, 1266 OF EXHIBIT 8.

22 A I'M THERE.

23 Q NOW, IF YOU CAN LOOK AT THE PICTURE ON THAT  
24 SCREEN THERE -- OH, YOU KNOW WHAT, MAYBE IT'S EASIER  
25 FOR YOU -- LET ME TELL YOU WHICH EXHIBIT NUMBER. 662.

26 THE COURT: YOU CAN ALSO LOOK AT IT ON THE  
27 SCREEN, WHICHEVER IS MORE -- WELL, SHE HAS IT RIGHT  
28 THERE. WHICHEVER YOU'RE MORE COMFORTABLE WITH.



1 BY MR. MCMILLAN:

2 Q ABOUT HOW OLD IS HE IN THIS PICTURE?

3 A SEVEN YEARS.

4 Q SEVEN YEARS OLD.

5 AND YOU SEE HIS LEFT EAR THERE, IT'S KIND OF  
6 CUPPED OUT?

7 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES.

10 MS. SWISS: OBJECTION. RELEVANCE.

11 THE COURT: OVERRULED.

12 BY MR. MCMILLAN:

13 Q DO YOU RECALL DR. SODERBERG, IN THAT MEETING  
14 THAT YOU HAD WITH HER WHEN SHE DID THE SKIN TEST ON  
15 BABY RYAN, DO YOU RECALL ANYTHING ELSE SHE SAID ABOUT  
16 THE BABY THAT DAY?

17 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

18 THE COURT: SUSTAINED.

19 BY MR. MCMILLAN:

20 Q GOING TO EXHIBIT NO. 1253. YOU CAN PUT  
21 AWAY -- I'LL TAKE CARE OF THAT.

22 1253. THAT WAS THE DECLARATION OF RAFAELINA  
23 DUVAL IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.

24 DO YOU HAVE THAT THERE IN FRONT OF YOU?

25 IF I CAN GET YOU TO TURN TO PAGE 7,  
26 SPECIFICALLY PARAGRAPH 35.

27 MR. MCMILLAN: IT'S EXHIBIT NO. 1253.

28 THE COURT: YES, GO AHEAD.

1 MR. MCMILLAN: OKAY.

2 BY MR. MCMILLAN:

3 Q DO YOU RECALL MS. SWISS READ PARAGRAPH 35 TO  
4 YOU?

5 A YES.

6 Q AND IT SAID:

7 "I PROMPTLY MADE AN APPOINTMENT  
8 WITH DR. MARGARET SODERBERG, WHO FOUND  
9 NO ALLERGIES AND RD'S BLOOD TEST CAME  
10 BACK NEGATIVE. DR. SODERBERG DID NOT  
11 MAKE A SUSPECTED CHILD ABUSE" --

12 MS. SWISS: OBJECTION. MISSTATES THE -- MY  
13 IMPEACHMENT. I DIDN'T READ THE WHOLE PARAGRAPH.

14 MR. MCMILLAN: DOCTRINE OF COMPLETENESS, YOUR  
15 HONOR.

16 MS. SWISS: IMPROPER REFRESHMENT OF  
17 RECOLLECTION.

18 THE COURT: SHE STATED THAT SHE RECALLS THAT  
19 PARAGRAPH BEING READ TO HER. SHE SAID YES. THE  
20 OBJECTION IS TO THE NEXT QUESTION WHICH GOES BEYOND THE  
21 FIRST SENTENCE, WHICH IS THE ONLY PORTION THAT SHE WAS  
22 QUESTIONED ABOUT.

23 MR. MCMILLAN: LET ME BACK UP.

24 BY MR. MCMILLAN:

25 Q WHEN MS. SWISS READ THAT PARAGRAPH TO YOU, DID  
26 SHE READ YOU THE WHOLE THING, OR JUST PART OF IT?

27 A JUST PART OF IT.

28 Q WHAT PART DID SHE NOT READ US?

1 MS. SWISS: OBJECTION. I DON'T EVEN KNOW --  
2 RELEVANCE? IT'S IMPROPER SOMETHING, YOUR HONOR.

3 THE COURT: IT'S IMPROPER REDIRECT. IF THAT'S  
4 THE OBJECTION --

5 MS. SWISS: YES.

6 THE COURT: -- STATED SOMEWHAT DIFFERENTLY,  
7 IT'S SUSTAINED.

8 BY MR. MCMILLAN:

9 Q DO YOU RECALL ANYTHING ELSE THAT DR. SODERBERG  
10 DID OR DIDN'T DO THAT DAY WHEN SHE DID THE SKIN TEST ON  
11 YOUR SON?

12 MS. SWISS: OBJECTION. BEYOND THE SCOPE.

13 THE COURT: SUSTAINED.

14 BY MR. MCMILLAN:

15 Q LET'S JUST FOCUS FOR A MOMENT ON THE  
16 APPOINTMENT YOU MADE. WE'VE ALREADY TALKED ABOUT THE  
17 SKIN TEST AND THE RESULTS OF THAT.

18 WAS THERE SOME BLOOD DRAWN THAT DAY TOO?

19 MS. SWISS: OBJECTION. BEYOND THE SCOPE.

20 THE COURT: SUSTAINED.

21 BY MR. MCMILLAN:

22 Q AT WHAT POINT IN TIME DID YOU LEARN THAT  
23 BABY RYAN DIDN'T SHOW -- OR DIDN'T TEST FOR ALLERGIES?  
24 WHEN WAS THAT?

25 MS. SWISS: OBJECTION. VAGUE. LACKS  
26 FOUNDATION. OUTSIDE THE SCOPE.

27 THE COURT: OVERRULED.

28 THE WITNESS: SORRY. CAN YOU REPEAT THE

1 QUESTION?

2 MR. MCMILLAN: I'M SORRY, YOUR HONOR. CAN WE  
3 HAVE IT REREAD?

4 WELL, I CAN RE-ASK IT.

5 BY MR. MCMILLAN:

6 Q AT WHAT POINT IN TIME DID YOU LEARN THAT THE  
7 TEST RESULTS HAD COME BACK AND THAT BABY RYAN WAS  
8 NEGATIVE FOR ALLERGIES?

9 MS. SWISS: OBJECTION. VAGUE AS TO TEST  
10 RESULTS.

11 THE COURT: OVERRULED. HE'S ASKING TEST  
12 RESULTS SPECIFICALLY RELATING TO ALLERGIES.

13 MR. MCMILLAN: CORRECT.

14 THE WITNESS: DURING THE DEPENDENCY  
15 PROCEEDINGS.

16 BY MR. MCMILLAN:

17 Q WAS THAT AFTER NOVEMBER 3RD?

18 A YES.

19 Q SO AT THE TIME THAT YOU SIGNED THIS  
20 DECLARATION UNDER PENALTY OF PERJURY, WAS THIS  
21 STATEMENT HERE, IN PARAGRAPH 35, IN FACT, ACCURATE?

22 A YES.

23 Q WITH RESPECT TO -- THERE'S ONE MORE NOTE HERE  
24 ON -- WITH RESPECT TO YOUR MEETING WITH DR. SODERBERG,  
25 DID YOU LEARN IN THAT MEETING ANYTHING ELSE ABOUT YOUR  
26 CHILD THAT MIGHT HAVE INDICATED AN ALLERGIC CONDITION?

27 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

28 THE COURT: OVERRULED.

1 THE WITNESS: YES, I DID.

2 BY MR. MCMILLAN:

3 Q CAN YOU SHARE WITH US? WHAT ELSE DID YOU  
4 LEARN?

5 A THAT HE WAS -- THERE WAS SIGNS OF ALLERGIC  
6 RHINITIS, SOME DERMATITIS, AND COBBLESTONES ON HIS  
7 EYELIDS.

8 Q DID YOU HAVE A CONVERSATION WITH DR. SODERBERG  
9 ABOUT THAT?

10 A I DON'T RECALL RIGHT NOW IF I DID OR NOT.

11 Q THAT'S FINE.

12 ALL RIGHT. MS. SWISS ALSO TALKED TO YOU ABOUT  
13 THE DECLARATION THAT YOU FILED, I THINK IT'S EXHIBIT  
14 NO. 1064.

15 IT'S CORRECT THAT AT THIS POINT IN TIME, I  
16 THINK IT'S JUNE 10, 2009 -- WELL, LET ME ASK YOU: WERE  
17 YOU -- DID YOU HAVE AN ATTORNEY OR WERE YOU  
18 REPRESENTING YOURSELF?

19 A I WAS REPRESENTING MYSELF.

20 Q IN PUTTING TOGETHER YOUR DECLARATION OR YOUR  
21 ARGUMENTS WITH THE FAMILY LAW COURT, DID YOU DO LEGAL  
22 RESEARCH?

23 MS. SWISS: OBJECTION. RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. MCMILLAN:

26 Q DID YOU HAVE ANY LEGAL ASSISTANCE WHEN YOU  
27 WERE PUTTING TOGETHER THIS DECLARATION?

28 MS. SWISS: OBJECTION. RELEVANCE.

1 THE COURT: OVERRULED.

2 THE WITNESS: YES.

3 BY MR. MCMILLAN:

4 Q TO WHAT EXTENT?

5 A TO DO SOME LEGAL RESEARCH FOR ME ON SOME OF  
6 THE ISSUES THAT WERE PRESENTED TO THE FAMILY COURT.  
7 AND ALSO LETTERS FROM ATTORNEY -- FROM RYAN MILLS'S  
8 ATTORNEYS AS WELL.

9 Q IN HERE, IN PARAGRAPH 11, I THINK THAT'S THE  
10 PARAGRAPH MS. SWISS TALKED TO YOU ABOUT WHERE IT WAS  
11 SOME ISSUE ABOUT THE FATHER, RYAN MILLS, GIVING THE  
12 BABY SOME SOLID FOODS WITHOUT YOUR KNOWLEDGE.

13 DO YOU RECALL THAT TESTIMONY?

14 MS. SWISS: OBJECTION. LEADING.

15 THE COURT: OVERRULED.

16 THE WITNESS: YES, I RECALL THAT.

17 BY MR. MCMILLAN:

18 Q OKAY. WHAT TIME PERIOD WERE YOU REFERENCING  
19 WHEN YOU WERE WRITING THIS DECLARATION IN JUNE OF 2009?

20 A THE PERIOD BETWEEN SIX MONTHS AND SEVEN AND A  
21 HALF MONTHS.

22 Q OKAY. SO THIS WASN'T CURRENT AS OF JUNE?

23 MS. SWISS: OBJECTION. LEADING.

24 THE COURT: SUSTAINED.

25 BY MR. MCMILLAN:

26 Q WAS THIS STATEMENT IN HERE THAT YOU WERE  
27 MAKING INTENDED BY YOU AT THAT POINT IN TIME TO BE  
28 REFLECTIVE OF THE PRESENT -- THEN PRESENT SITUATION?

1 MS. SWISS: OBJECTION. LEADING.

2 THE COURT: SUSTAINED.

3 BY MR. MCMILLAN:

4 Q EXHIBIT 290, IF YOU CAN TURN TO THAT. WELL,  
5 ACTUALLY, YOU DON'T NEED TO TURN TO IT. I JUST HAVE A  
6 COUPLE QUESTIONS ABOUT IT. THAT WOULD BE THE UP-FRONT  
7 ASSESSMENT.

8 DO YOU RECALL TESTIFYING TO MS. SWISS ABOUT  
9 SITTING FOR AN UP-FRONT ASSESSMENT -- YEAH, SITTING FOR  
10 AN UP-FRONT ASSESSMENT?

11 A YES.

12 Q WAS THAT UP-FRONT ASSESSMENT -- WHOSE IDEA WAS  
13 THAT?

14 A IT WAS A REFERRAL FROM THE COUNTY SOCIAL  
15 WORKERS.

16 Q DO YOU RECALL WHO IT WAS THAT GAVE YOU THE  
17 REFERRAL?

18 A MS. BUSTOS SAID IT WAS FROM SUSAN PENDER.

19 Q HOW DID YOU FIND OUT THAT YOU NEEDED TO GO SIT  
20 FOR THIS UP-FRONT ASSESSMENT?

21 MS. SWISS: OBJECTION. LACKS FOUNDATION.  
22 MISSTATES EVIDENCE.

23 THE COURT: OVERRULED.

24 THE WITNESS: I LEARNED FROM MS. BUSTOS, WHEN  
25 SHE CALLED ME, THAT SHE HAD BEEN GIVEN MY PERMISSION  
26 FOR AN ASSESSMENT.

27 MS. SWISS: MOVE TO STRIKE AS HEARSAY.

28 THE COURT: OVERRULED. NONHEARSAY PURPOSE.

1 BY MR. MCMILLAN:

2 Q WAS THE UP-FRONT ASSESSMENT SOMETHING THAT YOU  
3 REQUESTED?

4 A NO.

5 Q DID ANYBODY EVER TALK TO YOU AND ADVISE YOU  
6 THAT YOU HAD A CHOICE AS TO WHETHER OR NOT -- DID THEY  
7 ADVISE YOU WHETHER OR NOT YOU HAD A CHOICE TO GO SIT  
8 FOR THAT UP-FRONT ASSESSMENT?

9 MS. SWISS: OBJECTION. ASKED AND ANSWERED.  
10 LEADING.

11 THE COURT: OVERRULED, ALL GROUNDS.

12 THE WITNESS: NO ONE INFORMED ME IF I HAD A  
13 CHOICE OR NOT, BUT I DID IT TO BE COOPERATIVE.

14 BY MR. MCMILLAN:

15 Q DID YOU NEED TO PAY FOR THAT UP-FRONT  
16 ASSESSMENT? WERE YOU CHARGED IN ANY WAY?

17 A NO.

18 Q DO YOU HAVE ANY IDEA WHO DID PAY FOR THAT  
19 UP-FRONT ASSESSMENT?

20 MS. SWISS: OBJECTION. LACKS FOUNDATION.  
21 SPECULATION.

22 THE COURT: SUSTAINED -- ARE YOU FINISHED?

23 MS. SWISS: YES.

24 THE COURT: I DIDN'T HEAR EVERYTHING YOU SAID.

25 MS. SWISS: FOUNDATION AND SPECULATION.

26 THE COURT: SUSTAINED.

27 BY MR. MCMILLAN:

28 Q ALSO, THERE WAS A QUESTION BY MS. SWISS -- A



1 COUPLE, ACTUALLY -- RELATED TO WHEN MS. SCHEELE ASKED  
2 YOU ABOUT IF YOU WERE PREGNANT.

3 DO YOU REMEMBER THAT TESTIMONY?

4 A YES.

5 Q AND I THINK THAT YOU'D SAID THAT, YEAH, IT  
6 OFFENDED YOU?

7 A YES.

8 Q WHY?

9 A THE MANNER IN WHICH I WAS ASKED, THE WAY I WAS  
10 ASKED, AND WHAT WAS SAID AFTER WAS HURTFUL.

11 Q WHAT WAS SAID AFTER?

12 A BASICALLY THAT IF I EVER HAVE ANOTHER CHILD,  
13 I -- YOU KNOW, JUST BECAUSE I HAD AN OPEN CASE WITH THE  
14 DEPARTMENT, THAT I COULD LOSE THAT CHILD AS WELL.

15 Q OKAY. BACK ON THE UP-FRONT ASSESSMENT, ON THE  
16 ISSUE OF MUNCHAUSEN BY PROXY, MS. SWISS SPOKE WITH YOU  
17 A LITTLE BIT ABOUT THAT TOO.

18 DO YOU RECALL THAT?

19 A YES.

20 Q NOW I ACTUALLY DO NEED YOU TO TURN TO  
21 EXHIBIT 290.

22 A I DON'T KNOW WHERE THAT IS.

23 Q I'LL GET THAT FOR YOU. I'LL GIVE YOU THE  
24 SPECIFIC BATES NUMBER IN A SECOND.

25 NOW, THIS UP-FRONT ASSESSMENT, WHEN IS THE  
26 VERY FIRST TIME THAT YOU ACTUALLY SAW IT AND WERE ABLE  
27 TO READ IT?

28 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

1 RELEVANCE.

2 THE COURT: OVERRULED.

3 THE WITNESS: SORRY. CAN I HAVE THE QUESTION  
4 AGAIN?

5 BY MR. MCMILLAN:

6 Q SURE. THE QUESTION WAS: WHEN IS THE FIRST  
7 TIME THAT YOU ACTUALLY SAW THE UP-FRONT ASSESSMENT AND  
8 WERE ABLE TO READ IT?

9 A THE HEARING OF JANUARY 4TH OF 2010, THAT  
10 AFTERNOON.

11 Q WAS IT BEFORE, DURING, OR AFTER THE HEARING?

12 A AFTER THE HEARING.

13 Q AND WHEN YOU READ IT -- WELL, LET ME ASK YOU  
14 THIS FIRST, DO YOU RECALL, IN THE UP-FRONT ASSESSMENT,  
15 THE ASSESSOR ADDRESSING IN SOME WAY THIS QUESTION OR  
16 ISSUE ABOUT MUNCHAUSEN SYNDROME BY PROXY?

17 A YES.

18 Q NOW I'M GOING TO ASK YOU TO NOT READ THE  
19 DOCUMENT BECAUSE IF YOU RECALL WE WANT YOUR  
20 RECOLLECTION.

21 WHAT DO YOU RECALL OF THAT ISSUE, THE  
22 ASSESSMENT FOR MUNCHAUSEN SYNDROME BY PROXY?

23 A THAT MS. BUSTOS HAD WRITTEN THAT I DID NOT  
24 MEET THE CRITERIA FOR MUNCHAUSEN SYNDROME BY PROXY,  
25 THAT IT MAY HAVE BEEN CONFUSED WITH ME BEING  
26 KNOWLEDGEABLE OF MY SON'S CONDITIONS, AND -- THAT'S  
27 WHAT I RECALL OFF THE TOP OF MY HEAD.

28 Q OKAY. NOW, WITH RESPECT TO THE

1 JURISDICTION/DISPOSITION REPORT, I THINK YOU JUST SAID  
2 YOU READ THAT THAT AFTERNOON.

3 THAT PART YOU JUST TOLD US THAT YOU REMEMBER,  
4 DO YOU RECALL WHETHER OR NOT THAT WAS INCLUDED IN THE  
5 REPORT THAT WAS FILED WITH THE COURT?

6 MS. SWISS: OBJECTION. LEADING.

7 THE COURT: OVERRULED.

8 THE WITNESS: NO.

9 BY MR. MCMILLAN:

10 Q NO, YOU DON'T RECALL?

11 A NO, IT WASN'T.

12 Q IT WAS NOT?

13 A NO.

14 Q OKAY. GOING ON TO MS. ENNIS, NORISSA ENNIS,  
15 MS. SWISS TALKED TO YOU ABOUT SOME OF THE MONITORED  
16 VISITS THAT MS. ENNIS DID BETWEEN YOU AND YOUR SON AT  
17 THE DCFS OFFICES.

18 DO YOU RECALL THAT TESTIMONY?

19 A YES.

20 Q OKAY. AND SHE ASKED YOU WHETHER OR NOT YOU  
21 EVER COMPLAINED OR ASKED MS. ENNIS TO ACCOMMODATE YOU.

22 DO YOU RECALL THAT?

23 A I DO.

24 Q AND DID YOU EVER ASK MS. ENNIS TO ACCOMMODATE  
25 YOUR NEEDS?

26 A NO.

27 Q WHY NOT?

28 A IT'S NOT HER RESPONSIBILITY. I'M NOT THERE

1 BECAUSE OF HER. I'M THERE BECAUSE OF THE COUNTY.

2 Q DID YOU EVER ASK SOMEBODY AT THE COUNTY TO  
3 ACCOMMODATE YOUR NEEDS?

4 A YES.

5 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

6 THE COURT: SUSTAINED.

7 MS. SWISS: MOVE TO STRIKE THE ANSWER.

8 THE COURT: THE ANSWER WILL BE STRICKEN, JURY  
9 DISREGARD IT.

10 BY MR. MCMILLAN:

11 Q OKAY. IF YOU CAN GO TO EXHIBIT NO. 24. THAT  
12 MAY NOT BE IN FRONT OF YOU EITHER. LET'S SEE IF WE CAN  
13 DO THIS WITHOUT ME GOING UP THERE AND GETTING THE  
14 EXHIBIT.

15 DO YOU RECALL MS. SWISS WAS TALKING TO YOU  
16 ABOUT A REQUEST BY SOCIAL SERVICES TO GET  
17 730 EVALUATIONS FOR EVERYONE? DO YOU RECALL EARLIER IN  
18 THE MORNING SHE ASKED ABOUT THAT?

19 A YES.

20 Q OKAY. DO YOU REMEMBER, AS YOU'RE SITTING HERE  
21 RIGHT NOW, WHETHER OR NOT, IN FACT, THE SOCIAL WORKERS  
22 ASKED FOR PSYCHOLOGICAL EVALUATIONS ON EVERYBODY?

23 A IT WASN'T ON EVERYBODY, NO. IT WAS ONLY ON  
24 ME.

25 Q WAS IT ONLY ON YOU?

26 A YES.

27 Q EXHIBIT NO. 29, I BELIEVE THAT WAS YOUR  
28 REQUEST TO CHANGE COURT ORDERS.

1 DO YOU RECALL THAT?

2 A I THINK THERE WAS TWO REQUESTS.

3 Q I'M SORRY?

4 A I THINK THERE WAS TWO REQUESTS. I DON'T  
5 REMEMBER EXACTLY WHAT THE EXHIBIT LOOKED LIKE. I'M  
6 SORRY.

7 Q YOU KNOW, CAN YOU CHANGE THE ANGLE OF YOUR  
8 MIKE SO THAT IT POINTS RIGHT AT YOUR MOUTH?

9 A I THINK THERE WAS TWO REQUESTS THAT I WENT  
10 OVER. I'M NOT SURE.

11 Q RIGHT. I BELIEVE THAT'S CORRECT. AND I THINK  
12 IT'S EXHIBIT 29, AND ANOTHER ONE MIGHT HAVE BEEN  
13 EXHIBIT NO. 45.

14 DO YOU RECALL -- AND JUST SO WE'RE CLEAR, WERE  
15 THOSE REQUESTS TO CHANGE ORDERS, WERE THEY GRANTED OR  
16 DENIED?

17 A THEY WERE DENIED.

18 Q DO YOU KNOW WHETHER OR NOT THE COUNTY OPPOSED  
19 THOSE REQUESTS?

20 A I BELIEVE THEY DID.

21 Q DO YOU REMEMBER WHETHER OR NOT THE COUNTY  
22 OPPOSED THOSE -- OR, IF YOU REMEMBER WHAT EVIDENCE THE  
23 COUNTY GAVE, IF ANY --

24 MS. SWISS: OBJECTION --

25 BY MR. MCMILLAN:

26 Q -- IN IT'S OPPOSITION TO THOSE REQUESTS?

27 MS. SWISS: OBJECTION. FOUNDATION.

28 THE COURT: SUSTAINED AS TO FOUNDATION.

1                   YOU CAN ASK IT DIFFERENTLY.

2           BY MR. MCMILLAN:

3           Q       LET ME ASK: DO YOU KNOW WHAT EVIDENCE, IF  
4           ANY, THE COUNTY GAVE TO SUPPORT ITS OPPOSITION TO YOUR  
5           REQUEST TO CHANGE THE COURT ORDERS?

6           A       I DON'T RECALL RIGHT NOW.

7           Q       LET ME ASK YOU: DO YOU REMEMBER THERE BEING  
8           AN ACTUAL PHYSICAL HEARING ON EITHER OF THOSE REQUESTS?

9           A       I BELIEVE THERE WERE HEARINGS ON THOSE, YES.

10          Q       DID YOU GO TO THOSE HEARINGS?

11          A       I DON'T KNOW IF I WENT TO THOSE.

12          Q       LET ME SEE HERE.

13                   LET ME ASK YOU, IF YOU CAN GO TO EXHIBIT  
14          NO. 31 -- AND IF YOU DON'T HAVE IT THERE IN FRONT OF  
15          YOU, LET ME KNOW AND I'LL COME FIND IT.

16                   AND BEFORE YOU LOOK AT THAT, DO YOU REMEMBER  
17          WHY IT WAS THAT THE COURT DENIED YOUR REQUEST TO CHANGE  
18          ITS ORDERS?

19                   MS. SWISS: OBJECTION. IMPROPER REFRESHING OF  
20          RECOLLECTION.

21                   THE COURT: OVERRULED.

22          BY MR. MCMILLAN:

23          Q       THE QUESTION WAS: DO YOU REMEMBER WHY IT WAS?

24          A       I DON'T RECALL.

25          Q       OKAY. NOW I'D LIKE YOU TO LOOK AT EXHIBIT 31,  
26          MIDDLE OF THE PAGE, SUBPARAGRAPH B.

27          A       OKAY.

28          Q       DOES THAT REFRESH YOUR RECOLLECTION OF WHY IT

1 WAS THE COURT DENIED YOUR REQUEST TO CHANGE ITS ORDERS?

2 MS. SWISS: OBJECTION. IMPROPER QUESTIONING  
3 ON REFRESHING OF RECOLLECTION.

4 THE COURT: SUSTAINED. SHE SAID SHE DIDN'T  
5 EVEN REMEMBER ATTENDING A HEARING ON THIS, SO --

6 MR. MCMILLAN: LET ME BACK UP.

7 BY MR. MCMILLAN:

8 Q AT SOME POINT IN TIME -- I RECOGNIZE YOU DON'T  
9 REMEMBER ATTENDING THE HEARING.

10 AT SOME POINT IN TIME, DID YOU LEARN WHETHER  
11 OR NOT THE COURT HAD GRANTED OR DENIED YOUR PETITION TO  
12 CHANGE ITS ORDERS?

13 A YES.

14 Q AT WHAT POINT IN TIME DID YOU LEARN THAT?

15 A WHEN THE ORDER CAME BACK AS DENIED WITHIN  
16 24 HOURS.

17 Q OKAY. AND I THINK MS. SWISS COVERED THIS WITH  
18 YOU, BUT YOU READ THAT ORDER WHEN YOU GOT IT?

19 MS. SWISS: OBJECTION. LEADING.

20 THE COURT: OVERRULED.

21 THE WITNESS: YES.

22 BY MR. MCMILLAN:

23 Q OKAY. AND DO YOU KNOW -- DID YOU KNOW THEN  
24 WHY IT WAS THAT THE COURT DID NOT CHANGE ITS ORDERS?

25 A YES.

26 Q PLEASE SHARE WITH US.

27 A THERE WAS NO CHANGE OF CIRCUMSTANCES, AND ALSO  
28 BECAUSE OF THE MEDICAL STATUS OF THE BABY AT THAT TIME,

1 THAT HE WAS SICK.

2 Q DID YOU HAVE ANY UNDERSTANDING WHAT THE COURT  
3 MEANT WHEN IT SAID THAT THERE WAS NO CHANGE IN  
4 CIRCUMSTANCES?

5 A I THINK SO, YES.

6 Q WHAT WAS YOUR UNDERSTANDING?

7 A THAT I DIDN'T PROVIDE ANY EVIDENCE THAT  
8 SOMETHING HAD CHANGED FROM WHEN THE COURT MADE ITS  
9 ORDERS.

10 Q AND WHEN YOU SAY "SOMETHING HAD CHANGED FROM  
11 WHEN THE COURT MADE ITS ORDERS," WHAT SPECIFIC TIME  
12 PERIOD ARE YOU TALKING ABOUT? WHICH ORDER?

13 A THE ORDER BACK ON OUR JANUARY 4TH, 2010,  
14 HEARING.

15 Q AND AS TO THE NEXT REQUEST FOR CHANGE OF  
16 ORDER, I THINK THAT WAS EXHIBIT NO. -- I THINK WE SAID  
17 FORTY- -- WAS IT 43?

18 THE COURT: 45.

19 MR. MCMILLAN: 45, THANK YOU, YOUR HONOR.

20 BY MR. MCMILLAN:

21 Q EXHIBIT NO. 45, THAT'S WHEN -- DO YOU RECALL  
22 WHEN IT WAS THAT YOU FILED THAT ONE?

23 AND IF YOU DON'T, JUST LET ME KNOW, AND WE'LL  
24 GO THROUGH THE REFRESHMENT PROCESS.

25 A I DON'T.

26 Q OKAY. IF YOU CAN LOOK AT EXHIBIT 45, BATES  
27 NO. 000978, UP IN THE UPPER RIGHT-HAND CORNER THERE,  
28 THERE'S SOME INFORMATION.



1                   CAN YOU REVIEW IT TO YOURSELF, IN THE  
2                   RIGHT-HAND CORNER.

3                   A        OKAY.

4                   Q        DOES THAT REFRESH YOUR RECOLLECTION AS TO WHEN  
5                   THIS REQUEST TO CHANGE COURT ORDERS WAS FILED?

6                   A        YES.

7                   Q        DO YOU KNOW WHETHER OR NOT THAT REQUEST TO  
8                   CHANGE COURT ORDERS WAS GRANTED?

9                   A        IT WAS DENIED.

10                  Q        DO YOU KNOW WHETHER OR NOT THE COUNTY, WHEN  
11                  YOU FILED -- OR WHEN -- WHEN THIS REQUEST TO CHANGE  
12                  COURT ORDERS WAS FILED, DO YOU KNOW WHETHER OR NOT THE  
13                  COUNTY OPPOSED IT?

14                  A        I DON'T RECALL.

15                  Q        DO YOU RECALL WHY IT WAS DENIED?

16                            MS. SWISS:  OBJECTION.  CALLS FOR SPECULATION  
17                            ON BEHALF OF THE COURT.

18                            THE COURT:  OVERRULED.  WHENEVER A QUESTION  
19                            CALLS FOR A "YES" OR "NO" ANSWER, EITHER YOU RECALL OR  
20                            YOU DON'T.

21                            THE WITNESS:  I DON'T RECALL.

22                            BY MR. MCMILLAN:

23                            Q        CAN I GET YOU TO TURN TO EXHIBIT NO. 46.

24                            A        I'M SORRY.  I REALIZED I WAS IN THE WRONG  
25                            EXHIBIT.  I WAS ON 46.

26                            Q        I THINK THAT'S WHERE WE ARE, 46.

27                            I'M SORRY, AT WHAT POINT IN TIME WERE YOU ON  
28                            THE WRONG EXHIBIT?

1 A THE WHOLE TIME.

2 Q THE WHOLE TIME?

3 A YES. I WAS ON 46, ON THIS EXHIBIT.

4 Q OKAY. I DON'T ACTUALLY REMEMBER WHAT I ASKED  
5 YOU ABOUT 45.

6 WELL, LET'S JUST CARRY ON. ON NO. 46, DO YOU  
7 KNOW WHAT THAT IS?

8 A THAT IS THE STAMPED ORDER FROM THE COURT.

9 Q DO YOU RECALL WHETHER OR -- OR DO YOU RECALL  
10 WHY IT WAS THE COURT -- ACTUALLY, LET ME JUST ASK YOU  
11 THIS.

12 DO YOU RECALL WHETHER OR NOT THE COURT DENIED  
13 THE ORDER?

14 A YES, IT WAS DENIED.

15 Q DO YOU RECALL WHY IT WAS DENIED?

16 A NO, I DON'T RECALL RIGHT NOW.

17 Q DOES YOUR REVIEW OF THE DOCUMENT HELP REFRESH  
18 YOUR RECOLLECTION AS TO WHY IT WAS DENIED?

19 A YES.

20 Q HOW CAN YOU TELL?

21 A BECAUSE ALL OF THE REQUESTS THAT I MADE, I  
22 WASN'T ABLE TO GET DONE.

23 Q WHEN YOU SAY "ALL OF THE REQUESTS THAT YOU  
24 MADE," WHAT DO YOU MEAN?

25 A I HAD REQUESTED FOR SPECIFIC -- FOR THE COURT  
26 TO ALLOW SPECIFIC TESTS, SUCH AS AN MRI, GI OR GENETICS  
27 TEST, AND THOSE THINGS, I LEARNED THEY WERE DENIED.  
28 AND THE ORDER IS HERE. MORE TIME WITH MY SON, AND THE

1 COURT DENIED THAT AS WELL BECAUSE I DIDN'T GET MORE  
2 TIME.

3 Q I THINK WE'RE DONE WITH THAT ONE FOR THE  
4 MOMENT.

5 LOOKING AT EXHIBIT NO. 1064. AND THIS IS SORT  
6 OF A BIG EXHIBIT, SO THERE'S THREE DIFFERENT BATES  
7 NUMBERS. IT'S JVCT2015, JVCT2018, AND JVCT2380.

8 DO YOU STILL HAVE THOSE UP THERE IN FRONT OF  
9 YOU?

10 A NO.

11 Q MS. SWISS HAD TALKED TO YOU ABOUT EACH OF  
12 THESE DOCUMENTS EARLY IN THE DAY.

13 DO YOU REMEMBER THAT?

14 A YES.

15 Q IF I CAN START WITH JVCT2015, IT'S THE PRIMARY  
16 LANGUAGE DESIGNATION FORM.

17 DO YOU REMEMBER SPEAKING WITH MS. SWISS ABOUT  
18 IT?

19 A YES.

20 Q LET ME ASK YOU, DID YOU REVIEW THIS FORM  
21 BEFORE YOU SIGNED IT?

22 MS. SWISS: OBJECTION. RELEVANCE.

23 THE COURT: SUSTAINED.

24 BY MR. MCMILLAN:

25 Q WELL, WHEN YOU SIGNED THIS FORM, WHAT WAS YOUR  
26 UNDERSTANDING OF WHAT IT WAS YOU WERE SIGNING?

27 MS. SWISS: OBJECTION. RELEVANCE.

28 THE COURT: OVERRULED.

1 THE WITNESS: DO YOU MEAN 2015?

2 BY MR. MCMILLAN:

3 Q YES, 2015.

4 A I DIDN'T SIGN 2015.

5 Q OH, MY BAD. I'M SORRY.

6 2380. THAT'S THE SAME FORM BUT OCTOBER 20,  
7 2009; RIGHT?

8 A YES.

9 Q MY MISTAKE. I APOLOGIZE.

10 WHAT WAS YOUR UNDERSTANDING OF WHAT IT WAS YOU  
11 WERE SIGNING WHEN YOU SIGNED THAT FORM?

12 A MY UNDERSTANDING WAS THAT I WAS SIGNING THIS  
13 FORM JUST FOR THE PURPOSE OF GETTING ANY TYPE OF  
14 REPORTS FROM THE DEPARTMENT, AND I WAS CHOOSING THE  
15 LANGUAGE THAT I WOULD COMMUNICATE WITH THEM, NOT WITHIN  
16 MY FAMILY. SO WHEN I SIGNED THIS, I WAS TOLD THAT I  
17 COULD CHANGE AT ANY TIME, AND THAT THIS WAS MAINLY  
18 DOCUMENTS. SO I READ ENGLISH. MY MOM IS NOT GOING TO  
19 BE READING ALL THIS STUFF. SO THAT'S MY UNDERSTANDING,  
20 THAT IT WAS JUST DOCUMENTS, NOT, YOU KNOW, ANYTHING  
21 ELSE OTHER THAN COMMUNICATION BETWEEN ME, THE SOCIAL  
22 WORKER, OR THIRD PARTIES.

23 Q IF YOU LOOK DOWN AT THE BOTTOM LEFT-HAND  
24 CORNER OF JVCT02380, THERE'S A NUMBER THERE, DCFS 485.  
25 DO YOU SEE THAT?

26 A YES.

27 Q DO YOU HAVE ANY UNDERSTANDING AS TO THE  
28 SIGNIFICANCE OF THAT NUMBER?

1           A     NO.

2           Q     DID ANYBODY EVER EXPLAIN TO YOU WHETHER OR  
3 NOT -- OR WHAT IMPACT YOUR SIGNING OF THIS FORM MIGHT  
4 HAVE IN RELATION TO YOUR VISITATION MONITORS?

5           A     NO.

6           Q     AND GOING ON TO -- THERE'S ONE OF THESE I  
7 THINK YOU SAID WAS NOT YOUR SIGNATURE. WAS THAT  
8 201- -- MUST HAVE BEEN 2015; IS THAT RIGHT?

9           A     YES.

10          Q     DO YOU RECOGNIZE WHOSE SIGNATURE IS ON THE  
11 BOTTOM OF THE FORM THERE?

12          A     IT'S RYAN MILLS.

13          Q     WELL, BELOW HIS?

14          A     NO, DON'T KNOW WHO THAT SIGNATURE IS.

15          Q     OKAY. THEN ON THE OTHER ONE, 2018, THIS IS  
16 ALSO THE DCFS 485 FORM.

17                    THAT'S YOUR SIGNATURE THERE IN THE MIDDLE OF  
18 THE PAGE, ISN'T IT?

19          A     YES.

20          Q     WHEN WAS IT THAT YOU SIGNED THIS DOCUMENT?

21          A     IN SEPTEMBER, SEPTEMBER 9TH OF 2010.

22          Q     WHY WERE YOU SIGNING THIS DOCUMENT IN  
23 SEPTEMBER OF 2010?

24          A     BECAUSE THERE WAS A CALL THAT I RECEIVED FROM  
25 A SOCIAL WORKER WANTING TO COMMUNICATE WITH ME, AND  
26 THEY GAVE ME THE FORM AS TO, AGAIN, WHAT LANGUAGE AM I  
27 PICKING TO COMMUNICATE WITH THEM.

28          Q     DID YOU EVER LEARN WHY IT WAS THAT THIS SOCIAL

1 WORKER IN SEPTEMBER OF 2010 WAS WANTING TO COMMUNICATE  
2 WITH YOU?

3 MS. SWISS: OBJECTION. RELEVANCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES.

6 BY MR. MCMILLAN:

7 Q SHARE THAT WITH US.

8 A THERE WAS A REFERRAL MADE TO THE DEPARTMENT AT  
9 THE TIME.

10 Q BY "REFERRAL" -- WHAT DO YOU MEAN WHEN YOU SAY  
11 "THERE WAS A REFERRAL MADE"?

12 A A REFERRAL OF CHILD ABUSE MADE TO THE  
13 DEPARTMENT.

14 Q DID YOU EVER -- DID ANYBODY EVER TALK TO YOU  
15 ABOUT WHY IT WAS THEY WERE CALLING YOU FOR THAT?

16 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES. I WAS ASKED TO MEET --

19 BY MR. MCMILLAN:

20 Q HOLD ON.

21 YOUR ANSWER WAS YES?

22 A YES.

23 Q PLEASE SHARE.

24 A I WAS ASKED TO MEET WITH THE SOCIAL WORKER  
25 THAT WAS HANDLING THAT INVESTIGATION. AND -- AND I  
26 WENT WHERE THEY ASKED ME TO GO, AND I MET WITH THEM.

27 Q DID YOU GIVE AN INTERVIEW?

28 A YES.

1 Q IN THAT INTERVIEW, DID THEY -- HOW DID THAT  
2 GO? DID THEY ASK YOU QUESTIONS?

3 A YES.

4 Q WHAT SORT OF QUESTIONS DID THEY ASK YOU?

5 A WHAT THE PREVIOUS ALLEGATIONS AGAINST ME WERE,  
6 WHAT I THOUGHT ABOUT IT, HOW IT ENDED. THAT'S MY --  
7 THE BULK OF THE RECOLLECTION I HAVE RIGHT NOW.

8 Q AND IF YOU KNOW, WHAT WAS THE OUTFALL OF THAT  
9 INVESTIGATION?

10 A I LEARNED THAT IT WAS CLOSED AT SOME POINT AS  
11 UNFOUNDED OR UNSUBSTANTIATED. I THINK IT'S UNFOUNDED.

12 Q WHO HAD CUSTODY OF THE CHILD AT THAT POINT?

13 A RYAN MILLS.

14 Q DO YOU KNOW WHO THE SUBJECT OF THE  
15 INVESTIGATION WAS?

16 A I BELIEVE IT WAS RYAN MILLS.

17 Q OKAY. WE SPOKE WITH MS. SWISS EARLIER ABOUT  
18 EXHIBIT NO. 1247, THAT WAS THE CHILD SAFE VISITATION  
19 LETTER FROM MR. MARTINEZ.

20 DO YOU RECALL THAT?

21 A YES.

22 Q AND SHE HAD ASKED YOU SOME QUESTIONS ABOUT  
23 WHAT -- WHY IT WAS THAT MR. MARTINEZ WAS TERMINATING  
24 SERVICES, THE MONITORING SERVICES?

25 A YES.

26 Q IF I CAN GET YOU TO TURN TO -- THEY'RE NOT  
27 BATES-NUMBERED -- EXHIBIT 2 -- LET ME JUST COUNT THE  
28 PAGES INTO THE RECORD.

1 THE SIXTH PAGE IN ON EXHIBIT NO. 1247.

2 A IT'S THE ONE DATED 2/23/2016 ON THE BOTTOM?

3 Q YEAH, BUT I THINK THAT THEY ALL MAY HAVE THAT  
4 DATE.

5 A EXHIBIT 2?

6 Q OKAY. THE SIXTH PAGE IN OF THE EXHIBIT IS  
7 FINE. IT'S THE ONE THAT'S THE E-MAIL TO YOU FROM GUS,  
8 FEBRUARY -- YEAH, FEBRUARY 22, 2016, AT 6:56 P.M.

9 ARE YOU THERE?

10 A OKAY.

11 Q OKAY. NOW BEFORE YOU GO THROUGH THAT, DO YOU  
12 RECALL HAVING SOME COMMUNICATIONS WITH MR. MARTINEZ  
13 RELATIVE TO THE VISITATION THAT WAS AT ISSUE HERE?

14 A SORRY. SAY THAT AGAIN?

15 Q DO YOU RECALL HAVING COMMUNICATIONS WITH  
16 MR. MARTINEZ ABOUT THE VISITATION THAT WAS AT ISSUE  
17 HERE IN THIS LETTER WHERE HE WAS DISCONTINUING HIS  
18 SERVICES?

19 A YES.

20 Q SHARE WITH US IF YOU CAN WHY IT WAS THAT  
21 MR. MARTINEZ WAS WRITING YOU THIS E-MAIL.

22 MS. SWISS: OBJECTION. SPECULATION.  
23 BY MR. MCMILLAN:

24 Q LET ME BACK UP.

25 DO YOU KNOW WHY IT WAS THAT MR. MARTINEZ WAS  
26 WRITING YOU THIS E-MAIL?

27 A YES.

28 Q SHARE WITH US, WHY IS THAT?



1           A       HE WAS ASKING ME NOT TO SPANK MY SON DURING  
2 THE VISITATION.

3           Q       AND DID HE GIVE YOU ANY GUIDANCE ABOUT WHAT  
4 HAPPENED AT THE VISITATION AND PERHAPS HOW TO HANDLE  
5 IT?

6           MS. SWISS:  OBJECTION.  RELEVANCE.

7           THE COURT:  OVERRULED.

8           THE WITNESS:  NO.

9 BY MR. MCMILLAN:

10          Q       DID HE SHARE WITH YOU HIS OWN OBSERVATIONS OF  
11 WHAT HE SAW AT THAT VISIT?

12          A       YES.

13          Q       PLEASE SHARE THAT WITH US.

14          A       HE TOLD ME THAT HE KNOWS WHY I WAS  
15 DISCIPLINING RYAN, BUT -- AND -- AND HE UNDERSTOOD WHY,  
16 BUT HE WAS ASKING ME NOT TO -- NOT TO DO THAT.

17          Q       OKAY.  DID HE EXPRESS TO YOU AT ALL WHETHER HE  
18 THOUGHT -- OR WHETHER OR NOT HE THOUGHT THE CHILD HAD  
19 BEEN INJURED IN SOME WAY AS A RESULT OF THAT  
20 DISCIPLINE?

21          A       NO.

22          Q       NO, OR YOU DON'T RECALL?

23          A       NO, HE DIDN'T EXPRESS THAT THERE WAS ANY  
24 INJURY DURING THE VISITATION.

25          Q       OH, OKAY.  I UNDERSTAND.

26                   I THOUGHT YOU WERE SAYING NO, HE DIDN'T --

27          A       NO, THERE WAS NO INJURY.

28          Q       AND THEN IF YOU CAN GO TO EXHIBIT NO. 3 OF THE

1 SAME EXHIBIT, IT'S TRIAL EXHIBIT 1247 BUT INTERNAL  
2 EXHIBIT NO. 3. IT WILL BE THE SEVENTH PAGE IN. AND  
3 THAT'S AN E-MAIL DATED APRIL 7, 2016, ALSO FROM  
4 MR. MARTINEZ.

5 DO YOU RECALL THE INCIDENT THAT HE'S  
6 REFERENCING HERE IN THIS APRIL 7, 2016, E-MAIL?

7 A YES.

8 Q OKAY. TURN THE E-MAIL OVER.

9 SHARE WITH US WHAT YOU RECALL OF THAT  
10 INCIDENT.

11 A WE WERE AT THE ARCADE, AND WE WERE HAVING A  
12 GREAT TIME. WE WENT TO THE STORE, KIND OF TO CLAIM  
13 PRIZES. AND WE WERE COMING OUT, AND ALL OF A SUDDEN,  
14 MY SON STARTS, RIGHT ON THE -- LIKE, AT THE EXIT, HE  
15 STARTS KICKING ME AND SCREAMING ALL THESE THINGS. AND  
16 THERE'S PEOPLE COMING BY, AND I'M TALKING TO HIM.

17 I SAID, "HEY, YOU KNOW WHAT, LET'S TALK ON THE  
18 SIDE HERE, AND, YOU KNOW, YOU CAN'T BE HITTING, KICKING  
19 ME."

20 AND HE CONTINUES ON, AND HE'S SAYING ALL THESE  
21 THINGS, "MY DAD SAID THIS, AND I WANT TO GO TO JAIL,"  
22 ALL THIS STUFF.

23 AND I WAS AFRAID AT THE MOMENT THAT HE WAS  
24 GOING TO HIT HIMSELF WITH THE BARS THAT ARE AROUND.  
25 AND I'M TALKING TO HIM; HE'S NOT LISTENING. AND JUST  
26 TO KIND OF GET HIS ATTENTION, I JUST WENT, LIKE, "LET'S  
27 GO, PLEASE" I JUST PULLED HIM ASIDE AND TALKED TO HIM  
28 ON THE SIDE.

1                   AND THAT WAS THE INCIDENT.

2           Q        AND MR. MARTINEZ, DO YOU HAVE ANY  
3 UNDERSTANDING AS TO WHY IT WAS HE WROTE YOU THIS E-MAIL  
4 ON APRIL 7, 2016?

5                   MS. SWISS: OBJECTION. MISSTATES THE E-MAIL.

6                   MR. MCMILLAN: OH, ACTUALLY, I WITHDRAW THAT.  
7 BY MR. MCMILLAN:

8           Q        WHO IS MS. MONIQUE ARRENAS (PHONETIC)?

9           A        SHE WAS THE MONITOR FOR THAT VISIT.

10          Q        IN THAT E-MAIL THAT WE WERE JUST REFERENCING,  
11 IT WAS -- WAS -- IT WAS MS. ARRENAS THAT WROTE THE  
12 E-MAIL, AS FAR AS YOU KNOW?

13          A        YES, BOTH MS. ARRENAS, AND I RECEIVED ONE FROM  
14 MR. MARTINEZ AS WELL.

15          Q        ON THIS E-MAIL THAT MS. ARRENAS SENT, DO YOU  
16 HAVE ANY UNDERSTANDING AS TO WHY IT WAS SHE WAS WRITING  
17 THIS E-MAIL?

18          A        TO STATE WHAT HAPPENED DURING THE VISIT.

19          Q        AND THEN ON THE LOWER PART OF THE E-MAIL,  
20 THERE'S SOME COMMENTS ABOUT WHAT YOUR SON SAID.

21                   DO YOU HAVE ANY UNDERSTANDING AS TO WHY IT WAS  
22 THAT SHE WAS DETAILING THOSE COMMENTS?

23          A        YES.

24          Q        PLEASE SHARE.

25          A        AS WE WERE WALKING OUT AND HE WAS MAKING ALL  
26 THE STATEMENTS, WE WERE BOTH REALLY ALARMED. AND SHE  
27 TOLD ME, LIKE, "I'M ALARMED AT WHAT HE'S SAYING."

28                   AND I'M LIKE, "I GET IT." AND I WAS -- YOU

1 KNOW, WE WERE BOTH TALKING TO MY SON AND TRYING TO, YOU  
2 KNOW, JUST CALM HIM DOWN A BIT.

3 Q AND THE END RESULT WAS YOU ENDED UP SPANKING  
4 YOUR SON AGAIN?

5 A EARLIER.

6 Q AT THAT VISIT?

7 A YES.

8 Q OKAY. AND AS A RESULT OF THOSE TWO SPANKINGS,  
9 WHAT HAPPENED WITH RELATION TO CHILD SAFE VISITATIONS  
10 AND MR. MARTINEZ'S CONTINUED MONITORING OF YOUR VISITS?

11 A HE DECIDED NOT TO CONTINUE TO MONITOR MY  
12 VISITS.

13 THE COURT: MR. MCMILLAN, WE'RE GOING TO TAKE  
14 THE AFTERNOON RECESS AT THIS TIME, APPROXIMATELY  
15 10 MINUTES.

16 ALL JURORS, PLEASE REMEMBER THE ADMONITION.

17 (JURY EXCUSED)

18 (RECESS)

19 THE COURT: ARE WE READY?

20 MS. SWISS: YES, YOUR HONOR.

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

22 (JURY PRESENT)

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

25 BEFORE WE GO AHEAD, I'VE NOTICED SOME OF OUR  
26 JURORS HAVE SWEATERS AND JACKETS TODAY. IT MAY BE A  
27 LITTLE BRISK IN THE COURTROOM. WE HAVE NO THERMOSTAT  
28 FOR THIS COURTROOM, SO IT SEEMS TO HAVE A MIND OF ITS

1 OWN. AND I CAN TELL YOU THAT I HAPPENED TO BE IN HERE  
2 THE ENTIRE LAST WEEKEND, SATURDAY, SUNDAY, AND MONDAY,  
3 AND IT WAS SO HOT IN HERE THAT I HAD TO MOVE TO ANOTHER  
4 PART OF THE COURTHOUSE. AND THEN WE COME IN YESTERDAY,  
5 AND EVEN MORE SO TODAY, SOMEWHERE, WHATEVER CONTROLS --  
6 I DON'T THINK IT'S WHOEVER -- CONTROLS THE TEMPERATURE  
7 IN HERE HAS APPARENTLY HAD A CHANGE OF MIND. SO FOR  
8 THOSE OF YOU WHO NEED A SWEATER AND JACKET, GOOD  
9 THINKING. FOR THOSE OF YOU WHO DON'T HAVE ONE WITH  
10 YOU, I DON'T KNOW IF IT'LL BE ANY DIFFERENT TOMORROW,  
11 SO YOU MIGHT WANT TO BRING ONE.

12 ANYWAY, WE'RE READY TO GO AHEAD.

13 MR. MCMILLAN: THANK YOU, YOUR HONOR.

14 BY MR. MCMILLAN:

15 Q GOING BACK FOR A MOMENT TO PAGE 7 OF  
16 EXHIBIT 1247, MS. DUVAL, DO YOU RECALL -- AND JUST TURN  
17 THAT OVER FOR A MINUTE.

18 DO YOU RECALL THE THINGS YOUR SON WAS SAYING  
19 DURING THIS -- I DON'T EVEN KNOW WHAT TO CALL IT --  
20 MELTDOWN?

21 A A FEW, YES.

22 Q I'M SORRY?

23 A A FEW, YES.

24 Q YOU'VE REALLY GOT TO LEAN INTO THE MIKE.

25 A I RECALL A FEW, YES.

26 Q OKAY. SHARE WITH US WHAT YOU DO RECALL.

27 A HIM SAYING THAT HE WANTS TO GO TO JAIL, THAT  
28 HE WANTS SOMEONE TO SHOOT HIM.

1 Q IS THAT ALL YOU RECALL?

2 A RIGHT NOW, YES.

3 Q OKAY. NOW I'D LIKE YOU TO TURN TO PAGE 7 OF  
4 EXHIBIT 1247, AND THE BOTTOM PORTION OF THAT E-MAIL,  
5 JUST READ IT TO YOURSELF.

6 A OKAY.

7 Q DOES THAT REFRESH YOUR -- TURN IT BACK OVER.  
8 DOES THAT REFRESH YOUR RECOLLECTION AS TO SOME  
9 OF THE OTHER THINGS THAT YOUR SON SAID THAT DAY?

10 A YES.

11 Q PLEASE SHARE.

12 A THAT HE WANTS TO SIT IN JAIL WITHOUT WATER,  
13 AND THAT HE HITS HIS STEPMOM.

14 Q HOW DID THAT VISIT END?

15 A I TALKED TO HIM, I TALKED ABOUT THE IMPORTANCE  
16 OF NOT HITTING MAMA, I TRIED TO CALM HIM DOWN AND  
17 ASSURE HIM THAT I LOVE HIM, AND THAT IF IT IS UP TO ME,  
18 HE'LL NEVER SIT IN JAIL.

19 Q ALL RIGHT. GOING TO EXHIBIT NO. 1248.

20 ALL RIGHT. ARE YOU AT EXHIBIT NO. 1248?

21 A YES.

22 Q WHO IS SHIRLEY DOUGLASS?

23 A SHIRLEY DOUGLASS IS THE OWNER OF A MONITORING  
24 AGENCY BY THE NAME OF DOUGLASS AND ASSOCIATES.

25 Q NOW, DO YOU RECALL A LITTLE BIT EARLIER IN THE  
26 DAY, MS. SWISS EXAMINED YOU REGARDING SOME SORT OF  
27 FALLING OUT OR DISPUTE THAT YOU HAD WITH MS. DOUGLASS?

28 A YES.

1 Q CAN YOU SHARE WITH US WHAT THAT WAS ALL ABOUT?

2 A YES. THROUGHOUT THE TIME THAT MS. DOUGLASS  
3 PROVIDED US SERVICES, THERE WERE OFTEN TIMES -- THERE  
4 WERE TIMES THAT I ASKED FOR REPORTS, LIKE ACTIVITY  
5 REPORTS OR DECLARATIONS, AND THERE WERE DISCLOSURES,  
6 LIKE BY MY SON, THAT WERE NOT INCLUDED. AND IN THIS --  
7 IN THIS PARTICULAR TIME, WHEN I ASKED THE MONITOR, WHO  
8 HAD BEEN AT EVERY ONE OF THESE VISITS, I SAID, "WELL,  
9 THE DISCLOSURES THAT -- THE DISCLOSURES, WHY ARE THEY  
10 NOT IN HERE? BECAUSE I WOULD LIKE TO BRING IT UP TO  
11 THE COURT. IT'S IMPORTANT."

12 AND SHE SAYS, "WELL, I HAD IT. SHIRLEY TOOK  
13 IT OUT."

14 AND VERY POLITELY, RESPECTFULLY, I CALLED  
15 SHIRLEY DOUGLASS. AND I SAID, "WELL, WHY DID YOU TAKE  
16 THAT OUT?"

17 AND SHE SAYS, "NO, I ONLY FIXED THE GRAMMAR.  
18 I DIDN'T TAKE ANYTHING OUT."

19 I WENT BACK TO THE MONITOR. THE MONITOR GAVE  
20 ME AN UNSIGNED COPY AND A SIGNED COPY AND THE COPY THAT  
21 MS. DOUGLASS HAD EDITED. AND BETWEEN THE THREE COPIES,  
22 THE ONE THAT DIDN'T HAVE THE DISCLOSURES WERE THE ONE  
23 MS. DOUGLASS EDITED. AND I HAD A PROBLEM WITH THAT.

24 Q WHY DID YOU HAVE A PROBLEM WITH THAT?

25 MS. SWISS: OBJECTION. RELEVANCE.

26 THE COURT: SUSTAINED.

27 BY MR. MCMILLAN:

28 Q LET ME BACK UP A LITTLE BIT.

1           WHEN YOU TALK ABOUT THIS DISPUTE OVER THE  
2           DISCLOSURES BEING INCLUDED OR NOT INCLUDED IN THE  
3           REPORT, WAS THAT WHAT CAUSED THIS FRICTION BETWEEN YOU  
4           AND MS. DOUGLASS?

5           MS. SWISS:   OBJECTION.   LEADING.

6           THE COURT:   SUSTAINED.

7           BY MR. MCMILLAN:

8           Q           WHAT WAS THE ROOT CAUSE OF THE FRICTION  
9           BETWEEN YOU AND MS. DOUGLASS?

10          A           THE DENIAL --

11          MS. SWISS:   OBJECTION.   ASKED AND ANSWERED.

12          THE COURT:   OVERRULED.   GO AHEAD.

13          THE WITNESS:  THE DENIAL THAT SHE DIDN'T TAKE  
14          THE STATEMENTS MY SON HAD MADE OUT.

15          BY MR. MCMILLAN:

16          Q           WHAT STATEMENTS HAD YOUR SON MADE?

17          A           THINGS HE HAD HEARD FROM DIFFERENT PEOPLE  
18          WITHIN, YOU KNOW, THE FAMILY.  AND I -- THERE WAS JUST  
19          DIFFERENT STATEMENTS THAT WERE MADE.

20          Q           GIVE US AN EXAMPLE.  DO YOU REMEMBER WHAT  
21          SORTS OF DIFFERENT STATEMENTS?

22          A           I DON'T RECALL RIGHT NOW, BUT IT WAS NEGATIVE  
23          STATEMENTS TOWARDS ME, DISPARAGING ME IN FRONT OF MY  
24          SON.

25          Q           OKAY.  GOING ON TO EXHIBIT NO. 53, THAT WAS  
26          YOUR OPEN LETTER TO MS. SCHEELE.  MS. SWISS SPOKE WITH  
27          YOU A LITTLE BIT ABOUT THAT EARLIER IN THE DAY.

28                       DO YOU RECALL THAT?



1           A     YES.

2           Q     AND I THINK THAT SHE TALKED TO YOU ABOUT A  
3     COUPLE PARAGRAPHS OF THAT LETTER.

4                     DO YOU REMEMBER THAT?

5           A     YES.

6           Q     I'LL ASK YOU SOMETHING SHE DIDN'T ASK YOU  
7     ABOUT.

8                     WHY WAS IT THAT YOU WERE SENDING MS. SCHEELE  
9     THIS OPEN LETTER?

10                    MS. SWISS:  OBJECTION.  OUTSIDE THE SCOPE.

11                    THE COURT:  OVERRULED.

12                    THE WITNESS:  I SENT HER THE LETTER BECAUSE I  
13     FELT SHE WAS PLAYING GAMES WITH ME IN REGARDS TO  
14     MEDICAL RECORDS.

15     BY MR. MCMILLAN:

16           Q     WHAT DO YOU MEAN, "PLAYING GAMES WITH YOU IN  
17     REGARDS TO THE MEDICAL RECORDS"?

18           A     I HAD ASKED HER ABOUT CERTAIN TESTS AND  
19     CERTAIN MEDICAL RECORDS, HOW I COULD HAVE ACCESS TO.  
20     BECAUSE AT THE TIME I WAS UNDER THE IMPRESSION THAT I  
21     COULDN'T HAVE ANY ACCESS.  AND SHE KEPT SAYING "OH,  
22     DR. EGGE SAID THIS, DR. EGGE SAID THAT."

23                     AND I SAID, "OKAY, WELL, LET ME CALL  
24     DR. EGGE."  I PAGED DR. EGGE.  I TALKED TO DR. EGGE.  
25     AND DR. EGGE IS TELLING ME SOMETHING COMPLETELY  
26     DIFFERENT THAN WHAT MS. SCHEELE IS TELLING ME.

27                     SO AT THE TIME, I THOUGHT, "WELL, LET'S WRITE  
28     YOU BOTH A LETTER, AND LET'S FIGURE OUT WHAT IS THE

1 TRUTH HERE." SO THAT'S WHAT PROMPTED ME TO WRITE THE  
2 LETTER.

3 Q AND WHEN WAS IT THAT YOU WROTE THIS LETTER,  
4 THIS OPEN LETTER TO MS. SCHEELE?

5 A IT WAS BACK IN APRIL OF 2010.

6 Q UP UNTIL APRIL 2010, HAD YOU BEEN ABLE TO GET  
7 A COMPLETE SET OF MEDICAL RECORDS?

8 MS. SWISS: OBJECTION. OUTSIDE THE SCOPE.

9 THE COURT: SUSTAINED.

10 BY MR. MCMILLAN:

11 Q WELL, MS. SWISS SPOKE WITH YOU THIS MORNING  
12 ABOUT DRS. NIESEN AND LOTT AND HOW THEY TESTIFIED TO  
13 SOME EXTENT IN YOUR JUVENILE TRIAL.

14 DO YOU REMEMBER THAT?

15 A YES.

16 Q AND YOU'D ACTUALLY GIVEN AN ANSWER -- LET ME  
17 SEE IF I CAN FIND IT. IT WAS SOMETHING ALONG THE LINES  
18 OF "NOT COMPLETELY," IN REFERENCE TO THE TESTIMONY.

19 DO YOU REMEMBER THAT LINE OF INQUIRY FROM THIS  
20 MORNING?

21 A YES.

22 Q WHAT DID YOU MEAN BY THAT, WHEN YOU TOLD  
23 MS. SWISS THAT DRS. LOTT AND NIESEN WEREN'T ABLE TO  
24 TESTIFY COMPLETELY ABOUT THEIR OPINIONS?

25 A BECAUSE DURING THE DEPENDENCY HEARINGS WHERE  
26 BOTH EXPERTS WERE TESTIFYING, THE COUNTY SAID THAT THE  
27 DOCTORS DIDN'T HAVE THE COMPLETE MEDICAL RECORDS. AND  
28 GIVEN THAT -- WELL, TWO MONTHS BEFORE, I'M HAVING THIS

1       ISSUE ABOUT DO WE HAVE THE COMPLETE MEDICAL RECORDS?  
2       ARE THESE ALL THE MEDICAL RECORDS?  AND THEN, A VISIT  
3       BEFORE, MS. SCHEELE IS ACCUSING ME OF NOT -- PURPOSELY  
4       NOT GIVING THE EXPERTS THE COMPLETE MEDICAL RECORDS.  
5       IT WAS JUST FRUSTRATING ALL AROUND.  AND SO THE COURT  
6       FOUND THAT MAYBE THE EXPERTS DIDN'T HAVE ALL THE  
7       MEDICAL RECORDS.

8           Q       TO YOUR KNOWLEDGE, WERE YOU EVER ABLE TO  
9       OBTAIN ALL OF THE MEDICAL RECORDS FOR YOUR SON DURING  
10      THE PERIOD FROM NOVEMBER 3RD, 2009, THROUGH AUGUST 9TH,  
11      2010?

12           MS. SWISS:  OBJECTION.  FOUNDATION.  
13      SPECULATION.  OUTSIDE THE SCOPE.

14           THE COURT:  SPECULATION AND OUTSIDE THE SCOPE  
15      ARE SUSTAINED.

16      BY MR. MCMILLAN:

17           Q       WAS THERE ANYBODY -- WELL.

18           ALL RIGHT.  GOING TO EXHIBIT NO. 49, THAT'S  
19      THE EXHIBIT LIST FROM YOUR JUVENILE DEPENDENCY CASE YOU  
20      SPOKE TO MS. SWISS ABOUT EARLIER IN THE DAY TODAY.

21           DO YOU RECALL THAT?

22           A       I DO.  I DON'T HAVE IT IN FRONT OF ME.

23           Q       YOU MAY NOT NEED IT.  WE'LL SEE.

24           DO YOU RECALL TALKING WITH US ABOUT A -- I  
25      GUESS IT'S EXHIBIT A, WHICH WAS A TELEPHONE MESSAGE  
26      REGARDING A CONVERSATION WITH MOTHER.  DO YOU RECALL  
27      MS. SWISS TALKING TO YOU ABOUT THAT THIS MORNING?

28           A       YES, I RECALL THAT.

1 Q OKAY. WITHOUT LOOKING AT THE DOCUMENT, DO YOU  
2 RECALL WHAT THE CONTEXT OF THAT TELEPHONE MESSAGE WAS?

3 A YES.

4 Q CAN YOU SHARE THAT WITH US.

5 A IT WAS REGARDING SETTING UP AN APPOINTMENT FOR  
6 OCCUPATIONAL SERVICES AT A -- PCDA.

7 Q WHAT IS PCDA?

8 A PASADENA CHILD DEVELOPMENT ASSOCIATES.

9 Q AND WHAT WAS THE NATURE OF THE PHONE MESSAGE  
10 THAT SHE WAS LEAVING YOU?

11 A IT WAS REGARDING SCHEDULING. I DON'T RECALL  
12 ALL THE -- BUT IT WAS REGARDING SCHEDULING THE  
13 APPOINTMENT FOR RYAN TO SEE...

14 Q WHO WAS SCHEDULING THE APPOINTMENT, IF YOU  
15 RECALL? WAS IT YOU OR DR. YIM OR SOMEBODY ELSE?

16 A I DON'T RECALL.

17 Q OKAY. I'LL GO AHEAD AND -- LET'S TURN TO  
18 EXHIBIT NO. 49.

19 AND I'LL ASK YOU TO JUST READ THAT TO YOURSELF  
20 WHILE I'M WALKING BACK.

21 A OKAY.

22 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO WHAT  
23 WAS GOING ON WITH RESPECT TO SETTING THIS APPOINTMENT  
24 WITH PCDA?

25 A YES.

26 Q OKAY. CAN YOU PLEASE SHARE WITH US YOUR  
27 REFRESHED RECOLLECTION?

28 A AFTER DR. YIM HAD GIVEN THE RECOMMENDATION,

1 SHE TOLD ME SHE WOULD TRY TO CALL. SO THAT'S WHAT SHE  
2 DID. AND THEN SHE LEFT SEVERAL MESSAGES, AND SHE  
3 CALLED ME BACK TO SAY THAT SHE WAS ABLE TO GET IN TOUCH  
4 WITH THEM, LEFT THEM MY INFORMATION, AND SHE WAS  
5 ADVISING ME THAT THEY WOULD BE CALLING ME BACK. AND IN  
6 CASE THAT THEY DIDN'T, SHE WOULD RECOMMEND REGIONAL  
7 CENTER INSTEAD. AND THAT WAS THE CONTENT OF THAT  
8 CONVERSATION.

9 Q AND WERE YOU EVENTUALLY ABLE TO GO INTO PCDA?

10 A I WAS --

11 MS. SWISS: OBJECTION. LEADING. RELEVANCE.

12 THE COURT: OVERRULED.

13 THE WITNESS: I RECEIVED THAT CALL FROM THEM,  
14 I SPOKE TO THE COORDINATOR THERE, AND THEY WERE READY  
15 TO GIVE US APPOINTMENTS THERE.

16 BY MR. MCMILLAN:

17 Q WELL, DID YOU GET AN APPOINTMENT?

18 A I DID.

19 Q DID YOU GO TO THE APPOINTMENT?

20 A NO.

21 Q WHY NOT?

22 A BECAUSE WHEN I COMMUNICATED TO RYAN MILLS THAT  
23 I HAD AN APPOINTMENT, HE DID NOT CONSENT TO THE  
24 APPOINTMENT.

25 MR. MCMILLAN: ALL RIGHT. YOUR HONOR, I  
26 BELIEVE THAT IS IT.

27 THE COURT: DO YOU HAVE ANYTHING FURTHER,  
28 MS. SWISS?

1 MS. SWISS: VERY BRIEFLY.

2 THE COURT: ALL RIGHT.

3

4

REXCROSS-EXAMINATION

5 BY MS. SWISS:

6 Q MS. DUVAL, EARLIER YOU TESTIFIED THAT YOUR  
7 RECOLLECTION OF THE JURISDICTION/DISPOSITION REPORT  
8 THAT WAS FILED BY DCFS ON JANUARY 4, 2010, RECOMMENDED  
9 THAT ONLY YOU RECEIVE A 730 EVALUATION.

10 DO YOU REMEMBER THAT TESTIMONY?

11 A YES.

12 Q I'D LIKE TO SHOW YOU EXHIBIT 24, BATES-STAMPED  
13 468.

14 MS. SWISS: AND, YOUR HONOR, THIS IS AN  
15 EXHIBIT THAT HAS BEEN RECEIVED INTO EVIDENCE. I'D LIKE  
16 PERMISSION TO PUT THE PAGE ON THE ELMO.

17 THE COURT: YES.

18 BY MS. SWISS:

19 Q MS. DUVAL, CAN YOU SEE THE SCREEN OKAY?

20 A YES.

21 Q AND CAN YOU TAKE A LOOK AT NO. 9 THERE?

22 A YES.

23 Q DOES THAT REFRESH YOUR RECOLLECTION, NO. 9,  
24 THAT DCFS ACTUALLY RECOMMENDED THAT THE WHOLE FAMILY  
25 RECEIVE THE 730 EVALUATION?

26 A I THOUGHT THAT WAS REFERRING TO MY FAMILY.

27 Q YOU?

28 A YES.

1 Q AND MR. MILLS?

2 A I DIDN'T HAVE THAT UNDERSTANDING, NO.

3 MS. SWISS: I HAVE NO FURTHER QUESTIONS.

4 THE COURT: MR. MCMILLAN?

5 MR. MCMILLAN: YOUR HONOR, I DON'T HAVE ANY  
6 FURTHER QUESTIONS.

7 THE COURT: ALL RIGHT.

8 MS. DUVAL, YOU CAN STEP DOWN. THANK YOU VERY  
9 MUCH.

10 NEXT, MR. MCMILLAN?

11 MR. MCMILLAN: YOUR HONOR, AT THIS POINT IN  
12 TIME, WE HAVE THE STIPULATION. AND PLAINTIFF WOULD  
13 LIKE TO READ THE STIPULATION TO THE JURY.

14 THE COURT: ALL RIGHT.

15 AND MR. GUTERRES?

16 MR. GUTERRES: ONE MINUTE, YOUR HONOR, JUST  
17 LET ME GET THE STIPULATION OUT.

18 THE COURT: SURE.

19 MR. MCMILLAN: I HAVE AN EXTRA COPY IF ANYBODY  
20 NEEDS IT.

21 THE COURT: YES.

22 WHILE WE'RE GETTING THAT, THE JURORS WILL  
23 RECALL THAT IN THE INSTRUCTIONS I GAVE YOU JUST BEFORE  
24 WE BEGAN WITH THE OPENING STATEMENTS WITH COUNSEL IN  
25 THE EVIDENCE OF THE CASE, THAT I MENTIONED SOMETIMES  
26 EVIDENCE CAN BE RECEIVED THROUGH A STIPULATION. AND BY  
27 "A STIPULATION," WE MEAN THE PARTIES HAVE AGREED THAT  
28 CERTAIN FACTS ARE TRUE.

1 WE DO HAVE A STIPULATION WHICH IS ABOUT TO BE  
2 READ TO YOU BY MR. MCMILLAN. AND YOU MUST ACCEPT THE  
3 FACTS STATED IN THAT STIPULATION AS HAVING BEEN  
4 ESTABLISHED AS BEING TRUE FOR THE PURPOSES OF THIS  
5 ACTION, AND NO FURTHER EVIDENCE IS NECESSARY TO  
6 ESTABLISH THOSE FACTS.

7 GO AHEAD, MR. MCMILLAN.

8 MR. MCMILLAN: THANK YOU, YOUR HONOR.

9 "STIPULATION REGARDING ADMISSION  
10 OF FACTS. IN THIS CASE, DEFENDANT  
11 COUNTY OF LOS ANGELES HAS ADMITTED THE  
12 FOLLOWING FACTS, AND THE PARTIES AGREE  
13 THAT THESE FACTS ARE ESTABLISHED.

14 "ONE, THAT PLAINTIFF RAFAELINA  
15 DUVAL HAS A RIGHT TO FAMILIAL  
16 ASSOCIATION PROTECTED BY THE UNITED  
17 STATES CONSTITUTION.

18 "TWO, THAT AS OF NOVEMBER 3RD,  
19 2009, THE COUNTY OF LOS ANGELES KNEW  
20 THAT A PARENT AND CHILD HAD A  
21 CONSTITUTIONAL RIGHT TO FAMILIAL  
22 ASSOCIATION.

23 "THREE, THAT AS OF NOVEMBER 3RD,  
24 2009, THE COUNTY OF LOS ANGELES KNEW  
25 THAT DUE PROCESS REQUIRES THAT SOCIAL  
26 WORKERS TO OBTAIN A WARRANT PRIOR TO  
27 SEIZING A CHILD FROM THE CUSTODY OF HIS  
28 OR HER PARENTS WITHOUT CONSENT UNLESS



1 EXIGENT CIRCUMSTANCES EXIST.

2 "FOUR, THAT ON NOVEMBER 3RD, 2009,  
3 THE COUNTY OF LOS ANGELES SEIZED RD  
4 FROM THE CUSTODY OF HIS MOTHER,  
5 RAFAELINA DUVAL, WITHOUT CONSENT.

6 "FIVE, THAT ON NOVEMBER 3RD, 2009,  
7 WHEN COUNTY SOCIAL WORKERS KIMBERLY  
8 ROGERS AND SUSAN PENDER REMOVED RYAN  
9 DUVAL FROM THE CUSTODY OF HIS MOTHER,  
10 RAFAELINA DUVAL, MS. ROGERS AND  
11 MS. PENDER WERE ACTING PURSUANT TO THE  
12 COUNTY OF LOS ANGELES'S CHILD  
13 DETAINMENT POLICY.

14 "SIX, THAT KIMBERLY ROGERS, SUSAN  
15 PENDER, AND MUZEYYEN BALABAN WERE AT  
16 ALL TIMES CARRYING OUT THE POLICIES OF  
17 DEFENDANT COUNTY OF LOS ANGELES IN  
18 THEIR HANDLING OF THE MATTER -- IN  
19 THEIR HANDLING OF '*IN THE MATTER OF*  
20 *RYAN D., SUPERIOR COURT OF CALIFORNIA,*  
21 *COUNTY OF LOS ANGELES, CASE*  
22 *NO. CK79670.*'

23 "SEVEN, THAT ELBA PINEDO, KIMBERLY  
24 ROGERS, SUSAN PENDER, MUZEYYEN BALABAN,  
25 VICTORIA SCHEELE, CANDIS NELSON, AND  
26 TIKA SMITH WERE AT ALL TIMES CARRYING  
27 OUT THE CUSTOMS OF DEFENDANT COUNTY OF  
28 LOS ANGELES IN THEIR HANDLING OF '*IN*

1           THE MATTER OF RYAN D., SUPERIOR COURT  
2           OF CALIFORNIA, COUNTY OF LOS ANGELES,  
3           CASE NO. CK79670.' AS USED HEREIN,  
4           'CUSTOM' MEANS A CUSTOMARY, WIDESPREAD,  
5           OR WELL-SETTLED PRACTICE.

6           "EIGHT, THAT ELBA PINEDO, KIMBERLY  
7           ROGERS, SUSAN PENDER, VICTORIA SCHEELE,  
8           CANDIS NELSON, MELISSA EGGE, AND TIKA  
9           SMITH WERE AT ALL TIMES ACTING WITHIN  
10          THE COURSE AND SCOPE OF THEIR DUTIES AS  
11          EMPLOYEES OF THE COUNTY OF LOS ANGELES  
12          IN THEIR HANDLING OF '*IN THE MATTER OF*  
13          *RYAN D., SUPERIOR COURT OF CALIFORNIA,*  
14          *COUNTY OF LOS ANGELES, CASE*  
15          *NO. CK79670.'*

16          "NINE, NONE OF THE INDIVIDUAL  
17          DEFENDANTS IN THIS CASE WERE  
18          DISCIPLINED FOR FABRICATING EVIDENCE IN  
19          THE JUVENILE DEPENDENCY COURT  
20          PROCEEDING '*IN THE MATTER OF RYAN D.,*  
21          *SUPERIOR COURT OF CALIFORNIA, COUNTY OF*  
22          *LOS ANGELES, CASE NO. CK79670.'*

23          "IN THIS CASE, DEFENDANT KIMBERLY  
24          ROGERS HAS ADMITTED THE FOLLOWING  
25          FACTS, AND THE PARTIES AGREE THAT THESE  
26          FACTS ARE ESTABLISHED:

27          "ONE, THAT SHE WAS AT ALL TIMES  
28          CARRYING OUT THE CHILD DETENTION POLICY

1 OF DEFENDANT COUNTY OF LOS ANGELES  
2 DEPARTMENT OF CHILDREN FAMILY SERVICES  
3 IN HER HANDLING OF '*IN THE MATTER OF*  
4 *RYAN D., SUPERIOR COURT OF CALIFORNIA,*  
5 *COUNTY OF LOS ANGELES, CASE*  
6 *NO. CK79670.'*

7 "TWO, THAT SHE WAS AT ALL TIMES  
8 CARRYING OUT THE CUSTOMS, MEANING THE  
9 PERMANENT, WIDESPREAD OR WELL-SETTLED  
10 PRACTICES OF THE DEFENDANT COUNTY OF  
11 LOS ANGELES DEPARTMENT OF CHILDREN AND  
12 FAMILY SERVICES, IN HER HANDLING OF '*IN*  
13 *THE MATTER OF RYAN D., SUPERIOR COURT*  
14 *OF CALIFORNIA, COUNTY OF LOS ANGELES,*  
15 *CASE NO. CK79670.'*

16 "THREE" --  
17 I NEED A SIP OF WATER.

18 "THREE, THAT SHE WAS AT ALL TIMES  
19 ACTING IN THE PERFORMANCE OF HER  
20 OFFICIAL DUTIES IN HER HANDLING OF '*IN*  
21 *THE MATTER OF RYAN D., SUPERIOR COURT*  
22 *OF CALIFORNIA, COUNTY OF LOS ANGELES,*  
23 *CASE NO. CK79670.'*

24 "FOUR, THAT ON NOVEMBER 3RD, 2009,  
25 KIMBERLY ROGERS DETAINED RD FROM THE  
26 CUSTODY OF HIS MOTHER, RAFAELINA DUVAL.

27 "FIVE, THAT ON NOVEMBER 3RD, 2009,  
28 KIMBERLY ROGERS MADE THE DECISION TO

1 DETAIN RD FROM THE CUSTODY OF HIS  
2 MOTHER, RAFAELINA DUVAL, WITHOUT FIRST  
3 OBTAINING A COURT ORDER OR WARRANT  
4 AFTER CONSULTING WITH HER SUPERVISOR AT  
5 THE TEAM DECISION-MAKING MEETING.

6 "SIX, THAT ON NOVEMBER 3RD, 2009,  
7 RAFAELINA DUVAL DID NOT CONSENT TO HAVE  
8 HER SON, RD, DETAINED FROM HER CUSTODY.

9 "SEVEN, THAT ON NOVEMBER 3RD,  
10 2009, MORE THAN TWO HOURS HAD ELAPSED  
11 BETWEEN THE BEGINNING OF THE TEAM  
12 DECISION-MAKING MEETING AND THE MOMENT  
13 THAT RD WAS DETAINED FROM THE CUSTODY  
14 OF HIS MOTHER, RAFAELINA DUVAL.

15 "IN THIS CASE, DEFENDANT SUSAN  
16 PENDER HAS ADMITTED THE FOLLOWING FACTS  
17 AND THE PARTIES AGREE THAT THESE FACTS  
18 ARE ESTABLISHED:

19 "ONE, THAT SHE WAS AT ALL TIMES  
20 CARRYING OUT THE CHILD DETENTION  
21 POLICIES OF THE DEFENDANT COUNTY OF LOS  
22 ANGELES DEPARTMENT OF CHILDREN AND  
23 FAMILY SERVICES IN HER HANDLING OF '*IN*  
24 *THE MATTER OF RYAN D., SUPERIOR COURT*  
25 *OF CALIFORNIA, COUNTY OF LOS ANGELES,*  
26 *CASE NO. CK79670.'*

27 "TWO, THAT SHE WAS AT ALL TIMES  
28 CARRYING OUT THE CUSTOMS, MEANING THE

1 PERMANENT, WIDESPREAD, OR WELL-SETTLED  
2 PRACTICES OF THE DEFENDANT COUNTY OF  
3 LOS ANGELES DEPARTMENT OF CHILDREN AND  
4 FAMILY SERVICES IN HER HANDLING OF '*IN*  
5 *THE MATTER OF RYAN D., SUPERIOR COURT*  
6 *OF CALIFORNIA, COUNTY OF LOS ANGELES,*  
7 *CASE NO. CK79670.'*

8 "THREE, THAT SHE WAS AT ALL TIMES  
9 ACTING IN THE PERFORMANCE OF HER  
10 OFFICIAL DUTIES IN HER HANDLING OF '*IN*  
11 *THE MATTER OF RYAN D., SUPERIOR COURT*  
12 *OF CALIFORNIA, COUNTY OF LOS ANGELES,*  
13 *CASE NO. CK79670.'*

14 "FOUR, THAT ON NOVEMBER 3RD, 2009,  
15 MORE THAN TWO HOURS HAD ELAPSED BETWEEN  
16 THE BEGINNING OF THE TEAM  
17 DECISION-MAKING MEETING AND THE MOMENT  
18 THAT RD WAS DETAINED FROM THE CUSTODY  
19 OF HIS MOTHER, RAFAELINA DUVAL."  
20 AND WITH THAT, YOUR HONOR, PLAINTIFF RESTS,  
21 SUBJECT TO THE EVIDENTIARY ISSUES.

22 THE WITNESS: YES. ALL RIGHT.

23 LET ME SEE COUNSEL FOR A MOMENT, PLEASE.

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

26 THE COURT: ALL RIGHT. WE'RE AT SIDEBAR.  
27 COUNSEL ARE PRESENT.

28 MR. GUTERRES, WHAT DO YOU WANT TO DO WITH THIS

1 TIME OF DAY AT THIS POINT, PLAINTIFF HAVING JUST  
2 RESTED?

3 MR. GUTERRES: GO HOME.

4 THE COURT: I WAS HOPING YOU'D SAY THAT. SO  
5 GIVE ME A SECOND OPTION.

6 MS. SWISS: COCKTAILS.

7 THE COURT: WELL, GIVE ME MORE -- WE'LL FIND  
8 ALL THE OPTIONS AND ALL THREE OF YOU CAN SUGGEST.

9 MR. GUTERRES: YOUR HONOR, WE DO INTEND TO  
10 MOVE FOR A DIRECTED VERDICT OF NONSUIT ON CERTAIN OF  
11 THE DEFENDANTS AND CERTAIN OF THE ISSUES. AND GIVEN  
12 THE TIME, PERHAPS WE COULD DO THAT OUTSIDE THE PRESENCE  
13 SINCE WE ONLY HAVE FIVE MORE MINUTES BEFORE THE --

14 THE COURT: RIGHT. WELL, I THINK THAT'S A  
15 PRETTY GOOD OPTION. SO THAT'S WHAT WE'RE GOING TO DO.  
16 IN OTHER WORDS, I'M GOING TO SEND THE JURY HOME FOR THE  
17 DAY.

18 MR. KING: SINCE WE HAVE A SHORTENED DAY  
19 TOMORROW, SHOULD WE SEE IF THE JURORS CAN COME A LITTLE  
20 EARLIER?

21 THE COURT: SHE ASKED TO QUIT AT  
22 3:00 TOMORROW, SO YES, WE DO HAVE A SHORTENED DAY.

23 SO YOUR THOUGHT IS WHAT?

24 MR. KING: MAYBE WE START AT 8:30 WITH THE  
25 JURY, OR EVEN 8:45.

26 THE COURT: HERE'S WHAT I THOUGHT WE WILL DO.  
27 I PREVIOUSLY HAD INDICATED THAT WHEN PLAINTIFF RESTS  
28 THAT IT WOULD BE SUBJECT TO OUR HAVING ADDRESSED THE

1 EXHIBITS. AND TECHNICALLY, THERE NEEDS TO BE A RULING  
2 ON ALL THE EXHIBITS BEFORE A COURT WOULD RULE ON ANY  
3 MOTION, UNLESS WE HAVE A STIPULATION. AND DEPENDING ON  
4 WHERE WE ARE, WE CAN ADDRESS THAT LATER, BUT I THINK  
5 THAT IT DOES NEED TO BE COMPLETED. SO MY THOUGHT IS  
6 THAT -- AND LET ME ADD TO THAT, THAT IT IS PRESENTLY MY  
7 INTENTION, SO THAT WE CAN FACILITATE HEARING THE  
8 EVIDENCE, THAT I WILL DEFER MAKING A RULING ON THE  
9 MOTION FOR SUMMARY JUDGMENT -- EXCUSE ME, FOR A  
10 DIRECTED VERDICT IN ORDER THAT WE PROCEED WITH THE  
11 EVIDENCE IN THE CASE. IN SO DOING, I WILL ACKNOWLEDGE  
12 THAT THE MOTION FOR NONSUIT MUST BE ADDRESSED SOLELY ON  
13 THE EVIDENCE PRESENTED IN THE PLAINTIFF'S CASE, AND THE  
14 COURT CAN NOT AND WILL NOT CONSIDER EVIDENCE THAT MAY  
15 BE PRESENTED IN THE DEFENDANT'S CASE. AND THE PURPOSE  
16 OF DOING THAT IS SIMPLY TO TRY TO USE THE JURY'S TIME  
17 AS WELL AS WE POSSIBLY CAN.

18 I WOULD ALSO, PERHAPS AS A FURTHER REASON FOR  
19 DOING THAT, I'D INDICATED TO BOTH SIDES THAT, FOR THE  
20 ISSUES WE DISCUSSED YESTERDAY, THAT I WOULD LIKE  
21 WHATEVER POINTS AND AUTHORITIES THE PARTIES HAVE BY NO  
22 LATER THAN THE CLOSE OF BUSINESS TODAY. JUST A FEW  
23 MINUTES AGO, I WAS HANDED A BRIEF ON BEHALF OF THE  
24 DEFENDANTS, WHICH I ACKNOWLEDGE HAVING SEEN BUT HAVE  
25 NOT READ. I'M JUST AWARE OF WHAT IT IS. AND WE HAVE  
26 YET TO HEAR FROM MR. DANER.

27 MR. MCMILLAN: WE WILL.

28 THE COURT: AND DO YOU HAVE A BRIEF?

1 MR. MCMILLAN: NOT YET, BUT I EXPECT ONE  
2 WITHIN ABOUT 15, 20 MINUTES.

3 THE COURT: WELL, IN ANY EVENT, IT SEEMS TO ME  
4 THAT IT'S ALSO GOING TO BE TO EVERYBODY'S ADVANTAGE, IN  
5 LISTENING TO YOUR ARGUMENT, MAKING ANY DECISION I'D BE  
6 CALLED UPON TO MAKE, FOR US ALL TO HAVE HAD AN  
7 OPPORTUNITY TO READ AND DIGEST THOSE BRIEFS. SO WE CAN  
8 DISCUSS THAT.

9 BUT I THINK FOR NOW THAT I WILL SEND THE JURY  
10 HOME. AND THE ONLY REASON I'M HESITATING TO TELL THEM  
11 WHAT TIME TO COME BACK IN THE MORNING, ONLY ONE OF THEM  
12 NOW KNOWS THAT THEY'RE GOING TO BE RECESSING TOMORROW  
13 AT 3:00, AND THAT WAS OUR JUROR MANZANO, WHO MADE THE  
14 QUESTION. AND I PROBABLY WILL WAIT TO TELL THE REST OF  
15 THEM TOMORROW. BUT THEY MAY KNOW THAT ANYWAY; THAT'S  
16 THE KIND OF THING THEY COULD TALK ABOUT OUT IN THE  
17 HALLWAY. THAT HAS NOTHING TO DO WITH THE SUBJECT  
18 MATTER OF CASE.

19 SO I'M THINKING -- I'M THINKING TO TELL THEM  
20 TO COME IN AT 9:30 TOMORROW MORNING, WHICH WOULD --

21 MR. MCMILLAN: -- GIVE US SOME TIME.

22 THE COURT: -- GIVE US SOME TIME FOR THE  
23 MOTION FOR NONSUIT, AS WELL AS, HOPEFULLY, TO BE ABLE  
24 TO ADDRESS SOME OF THE EXHIBITS AS WELL.

25 MR. MCMILLAN: DO YOU WANT US AT 8:00, YOUR  
26 HONOR?

27 THE COURT: YES. I MUST CONFESS TO YOU THAT  
28 I'M A LITTLE TIRED TODAY, AND I DON'T KNOW WHETHER IT'S



1 DUE TO THIS CASE OR SOMETHING ELSE. PERSONALLY, I'D  
2 PREFER TO HAVE YOU COME BACK IN ABOUT A WEEK. BUT THAT  
3 WON'T HAPPEN.

4 MR. GUTERRES: YOU DID LIKE MY FIRST  
5 SUGGESTION.

6 THE COURT: YES, I DID.

7 ALL RIGHT. THAT'S WHAT WE'RE GOING TO DO.

8 MR. MCMILLAN: THANK YOU, YOUR HONOR.

9 MR. GUTERRES: THANK YOU, YOUR HONOR.

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

13 THE COURT: ALL RIGHT. WE'RE BACK ON THE  
14 RECORD.

15 WE'RE GOING TO RECESS NOW AS FAR AS THE JURY  
16 IS CONCERNED. WE'RE GOING TO RESUME AGAIN, AS FAR AS  
17 THE JURORS ARE CONCERNED, AT 9:30 TOMORROW MORNING.

18 AND BETWEEN NOW AND THEN, PLEASE REMEMBER THE  
19 ADMONITION TO NOT HAVE ANY COMMUNICATION WITH ANYONE ON  
20 ANY SUBJECT OR ISSUE OR PERSON INVOLVED IN THE CASE.  
21 DO NOT SEEK NOR RECEIVE INFORMATION FROM ANY SOURCE ON  
22 ANY OF THE ISSUES, SUBJECT, OR PERSON. AND DO NOT FORM  
23 NOR EXPRESS ANY OPINION ON ANY ISSUE OR SUBJECT MATTER  
24 IN THE CASE.

25 AS FAR AS THE JURY IS CONCERNED, THEN, WE ARE  
26 RECESSED UNTIL 9:30 TOMORROW MORNING.

27 (JURY EXCUSED)

28 THE COURT: AND AS FAR AS COUNSEL IS

1 CONCERNED, I WANT TO TAKE A BRIEF RECESS, ABOUT  
2 5 MINUTES OR SO, AND THEN WE'LL ADDRESS SOME FURTHER  
3 BUSINESS.

4 MR. MCMILLAN: THANK YOU, YOUR HONOR.

5 MS. SWISS: THANK YOU, YOUR HONOR.

6 (RECESS)

7 THE COURT: I HOPE MR. GUTERRES DIDN'T TAKE ME  
8 AT MY WORD AND LEAVE FOR A WEEK.

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

10 THE COURT: GOOD.

11 MS. SWISS: I HOPE NOT. BUT IT WOULD CALL FOR  
12 SPECULATION. I DON'T KNOW.

13 THE COURT: HE'LL BE BACK IN A MOMENT.

14 MS. SWISS: HE SHOULD BE. I'M ASSUMING HE RAN  
15 TO THE RESTROOM.

16 THE COURT: THAT'S FINE. WE'LL WAIT FOR HIM.

17 MR. GUTERRES: MY APOLOGIES, YOUR HONOR.

18 THE COURT: THAT'S ALL RIGHT. WE ARE ON THE  
19 RECORD NOW AND COUNSEL ARE PRESENT.

20 SO MY QUESTION IS: WHAT DO YOU WANT TO DO  
21 WITH THE TIME THAT WE HAVE? I KNOW MR. GUTERRES HAS  
22 HIS MOTION TO MAKE, BUT I DON'T KNOW THAT RECEIVING THE  
23 BRIEF THAT WE CAN EXPECT TO GET FROM -- THAT'S AUTHORED  
24 BY MR. DANER WILL BE HERE.

25 AND WOULD YOU PREFER TO TAKE A LOOK AT THAT  
26 BEFORE YOU GAVE YOUR -- MADE YOUR MOTION?

27 MR. GUTERRES: I THINK THAT THAT MIGHT BE  
28 BETTER.

1 THE COURT: YEAH, IT CERTAINLY OCCURS TO ME  
2 THAT IT WOULD BE. SO WHAT I'M THINKING IS MAYBE WE  
3 SHOULD RESUME WITH ALL OF YOU AT 8:00 A.M. TOMORROW.

4 AND MR. MCMILLAN, YOU CAN ARRANGE, I'M SURE,  
5 TO GET WHATEVER BRIEF WILL BE -- YOU'LL BE FILING TO  
6 MR. GUTERRES, IT COULD BE E-MAILED TO HIM, SO HE CAN  
7 HAVE A CHANCE TO LOOK AT IT OVER THE EVENING.

8 MR. MCMILLAN: I CAN DO THAT, YOUR HONOR. BUT  
9 I'VE RECEIVED A TEXT, AND I'M EXPECTING AT ANY MOMENT  
10 SOMEONE TO COME BURSTING THROUGH THE DOORS WITH PAPERS.  
11 SO I KNOW WE DID RENT AN APARTMENT FOR THIS TRIAL, AND  
12 IT'S ABOUT TWO BLOCKS AWAY. AND I PRESUME THEY'RE  
13 WALKING. SO IT MIGHT BE FIVE OR TEN MINUTES' WALK, BUT  
14 I BELIEVE THEY ARE ON THEIR WAY HERE WITH IT.

15 THE COURT: WELL, WE CAN CERTAINLY HANG ON.  
16 IN ANY EVENT, IT MAY BE WORTH DOING SO MR. GUTERRES HAS  
17 IT IN HAND WITH HIM. AND WE COULD -- AND MAYBE THAT'S  
18 THE BEST THING TO DO.

19 WE DO HAVE A LITTLE TIME BEFORE WE WOULD  
20 NORMALLY QUIT, AND WE COULD TAKE A FURTHER LOOK AT  
21 THE -- SOME OF THE EXHIBITS DURING THAT TIME. ALTHOUGH  
22 IT DID OCCUR TO ME -- AND WE WILL, BUT IT DID OCCUR TO  
23 ME THAT SOME -- SOME FURTHER CONSULTATION AMONG ALL OF  
24 YOU MAY EXPEDITE THIS PROCESS. RIGHT NOW, WE'RE ON  
25 PAGE 3 OF A LIST OF 33 PAGES LONG.

26 THE CLERK: THERE'S A NEW LIST FOR TODAY.

27 MR. PARIS: YOUR HONOR?

28 THE COURT: YES.

1 MR. PARIS: I'VE PROVIDED THIS REVISED LIST  
2 AND NARROWED IT DOWN AND DID SOME FORMATTING.

3 A COUPLE OF THINGS: I'VE MARKED ON THERE  
4 WHICH ONES WE'VE ALREADY RULED ON -- OR WITH -- SUBJECT  
5 TO THE LIMITING INSTRUCTION. BUT AS TO -- AND I  
6 BELIEVE IT WAS MENTIONED DURING THE MORNING SESSION --  
7 EXHIBIT 175, I DID GO THROUGH AND RECHECK, AND I'VE  
8 MODIFIED THAT ONE FOR THE ONE PAGE THAT WAS IDENTIFIED.  
9 PLAINTIFF BELIEVES THAT THERE ARE OTHER EXHIBITS THAT  
10 WILL PROVIDE THE MEDICAL INFORMATION THAT WE NEED.

11 SO 175 WILL BE -- THE OFFERING WILL BE THAT  
12 ONE PAGE THAT WAS IDENTIFIED.

13 THE COURT: ALL RIGHT.

14 MR. PARIS: WHICH IS BATES NO. 002251.

15 THE COURT: MR. GUTERRES, DO YOU FEEL LIKE  
16 DIGGING THAT OUT?

17 MR. GUTERRES: SURE.

18 NO OBJECTION, YOUR HONOR.

19 THE COURT: IT WILL BE RECEIVED.

20 NO. 176 IS IDENTIFIED AS RD'S PEDIATRIC  
21 BILLING SUMMARY. AND THIS CONSISTS OF APPARENTLY ONE  
22 PAGE, 002369.

23 MR. GUTERRES: I DON'T KNOW ABOUT THE NAME OF  
24 THE DOCUMENT, BUT INSOFAR AS THE ONE PAGE, BATES 2369  
25 OF EXHIBIT 176, WE HAVE NO OBJECTION, YOUR HONOR.

26 THE COURT: IT WILL BE RECEIVED.

27 NEXT IS 178, WHICH IS IDENTIFIED ON OUR LIST  
28 AS THE HARBOR REGIONAL CENTER EARLY INTERVENTION

1 INDIVIDUALIZED FAMILY SERVICE PLAN. THIS IS PAGES  
2 BATES-NUMBERED 002417 THROUGH 002490. SO THAT'S A  
3 73-PAGE DOCUMENT.

4 MR. GUTERRES: YOUR HONOR, WE DON'T THINK  
5 THERE'S ANYTHING REALLY RELEVANT IN THERE. TALKS ABOUT  
6 HIS IEP. WE JUST DON'T SEE A NEED FOR IT. I THINK  
7 IT'S --

8 THE COURT: I'LL TAKE A LOOK AT THAT, GO  
9 THROUGH IT AGAIN. I'LL TAKE A LOOK AT THAT AS SOON AS  
10 I HAVE A CHANCE.

11 NO. 81 IS --

12 MR. GUTERRES: 181?

13 THE COURT: EXCUSE ME, 181, YES, THE NEXT IN  
14 ORDER, IS CHARACTERIZED AS THE DECLARATION OF CYNTHIA  
15 HERNANDEZ BUTER, DATED MARCH 19, 2015.

16 MR. GUTERRES: WE WOULD OBJECT TO THIS, YOUR  
17 HONOR. THIS IS THE DECLARATION THAT HAS THE  
18 STATISTICAL INFORMATION IN CHARTS. WHAT'S BEEN  
19 TESTIFIED TO IS, I THINK, WHAT THE COURT ALLOWED, AND I  
20 THINK TRYING TO GET THE EXHIBIT 181 IS CUMULATIVE AND  
21 IT HAS A NUMBER OF INFORMATION THAT I THINK IS NOT  
22 NECESSARY AND IS PROBABLY GOING TO BE MISLEADING.

23 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT  
24 IT.

25 183 IS THE DECLARATION OF JASMEET GILL, M.D.,  
26 DATED JULY 22, 2014, BEARING BATES NOS. 002557 THROUGH  
27 002559. SO THAT'S A THREE-PAGE DOCUMENT.

28 MR. GUTERRES: YOUR HONOR, WE ALSO FEEL THAT A

1 LOT OF THIS INFORMATION IS CUMULATIVE TO WHAT DR. YIM  
2 HAS ALREADY TESTIFIED TO.

3 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT  
4 THAT.

5 THE NEXT IN ORDER IS 202, WHICH IS A LETTER OF  
6 DETERMINATION FROM MICHELLE HOCHSTEIN TO PLAINTIFF,  
7 DATED OCTOBER 4, 2010, BEARING BATES NO. PAGES 002692  
8 THROUGH 002693, TWO PAGES.

9 MR. GUTERRES: WE WOULD OBJECT TO THIS, TO THE  
10 LETTER.

11 THE COURT: ON WHAT GROUND?

12 MR. GUTERRES: IT'S HURTFUL. PREJUDICIAL.

13 THE COURT: DO WE HAVE A FURTHER OBJECTION?  
14 OR ADDITIONAL?

15 MR. GUTERRES: THAT ONE WON'T WORK?

16 THE COURT: WELL, SOMETIMES IT CAN IF YOU HAVE  
17 A 352 ISSUE. BUT I REMEMBER THIS LETTER WITHOUT  
18 LOOKING AT IT, AND I DON'T THINK THERE'S GOING TO BE A  
19 352 BASIS FOR EXCLUDING IT.

20 SO DO YOU HAVE AN ADDITIONAL GROUND YOU'D LIKE  
21 TO STATE?

22 MR. GUTERRES: THAT WOULD BE MY OBJECTION,  
23 YOUR HONOR.

24 THE COURT: ALL RIGHT. THAT OBJECTION WILL BE  
25 OVERRULED AND 202 WILL BE RECEIVED.

26 NEXT ONE IS 203, WHICH IS A DECLARATION OF THE  
27 CUSTODIAN OF RECORDS FOR THE CALIFORNIA DEPARTMENT OF  
28 SOCIAL SERVICES BEARING BATES-NUMBERED PAGES 002695 TO

1 002703.

2 I DON'T KNOW WHY WE WOULD HAVE A DECLARATION  
3 OF A CUSTODIAN OF RECORDS RECEIVED IN EVIDENCE  
4 UNLESS -- I'M NOT EVEN SURE IT NEEDS TO BE RECEIVED  
5 INTO EVIDENCE. EVEN IF WE HAVE AN OBJECTION TO LACK OF  
6 FOUNDATION FOR THE RECORDS, IT MAY BE THAT IT WOULD BE  
7 RECEIVED IN EVIDENCE. THEN THE REAL QUESTION IS DO WE  
8 HAVE A DECLARATION THAT WOULD MEET THE REQUIREMENTS FOR  
9 VERIFYING BUSINESS RECORDS? SO I DON'T -- WELL, IT'S  
10 CALLED THE DECLARATION.

11 DOES THIS ALSO INCLUDE, BESIDES THE  
12 DECLARATION, CERTAIN RECORDS FROM DCFS?

13 MR. PRAGER: YOUR HONOR, I BELIEVE IT DOES.  
14 AND I THINK THIS IS ALL --

15 THE COURT: IT LOOKS LIKE THE MOMENT HAS  
16 ARRIVED.

17 MR. PRAGER: THE CAVALRY HAS ARRIVED.

18 MR. GUTERRES: YOUR HONOR, THIS IS JUST THE  
19 DECLARATION.

20 THE COURT: IT'S JUST THE DECLARATION?

21 MR. GUTERRES: YES. AND WE WOULD AGREE WITH  
22 THE COURT'S POSITION. I DON'T KNOW WHY IT HAS TO BE  
23 ADMITTED INTO EVIDENCE. IT DOESN'T INCLUDE ANY  
24 ATTACHMENTS OTHER THAN THE ACTUAL SUBPOENA.

25 THE COURT: YES. I'M NOT GOING TO RECEIVE IT  
26 IN EVIDENCE, BUT THIS IS WITHOUT PREJUDICE TO OFFERING  
27 IT AGAIN IN THE EVENT IT BECOMES PERTINENT AS EVIDENCE.

28 MR. PRAGER: IF I COULD JUST FINISH FOR THE

1 RECORD -- BEFORE THE CAVALRY ARRIVED -- THE WITNESS  
2 ALSO, I THINK, LAID THE FOUNDATION FOR THE RECEIPT OF  
3 THE DOCUMENT THROUGH HIS TESTIMONY. AND THE DOCUMENTS  
4 ARE IN OUR EXHIBIT LIST; THEY'RE JUST A DIFFERENT  
5 NUMBER. SO THE DECLARATION HAS THIS NUMBER, AND  
6 EXHIBITS ARE NUMBERED SEQUENTIALLY IN A DIFFERENT  
7 ORDER.

8 THE COURT: ALL RIGHT. WELL, MY RULING IS  
9 GOING TO BE AS I'VE STATED. I'M NOT RECEIVING 203 AT  
10 THIS TIME. BUT FOR THE REASONS THAT I'VE STATED, THAT  
11 RULING WILL BE WITHOUT PREJUDICE TO RENEWAL IN THE  
12 EVENT WE FIND ANY REASON WHY IT SHOULD BE RECEIVED INTO  
13 EVIDENCE. NORMALLY WE DON'T RECEIVE CUSTODIAN OF  
14 RECORDS DECLARATIONS.

15 MR. MCMILLAN: YOUR HONOR, I THINK THAT OUR  
16 PRELIMINARY BRIEF IS HERE. AND IN KEEPING WITH YOUR  
17 HONOR'S REQUEST OF YESTERDAY, AT LEAST INSOFAR AS I  
18 RECALL IT, YOU HAD REQUESTED THAT PLAINTIFFS PUT  
19 TOGETHER A LIST OF ALL OF THE -- WHAT WE BELIEVE ARE  
20 THE MATERIALLY FALSE STATEMENTS AND ALL OF WHAT WE  
21 BELIEVE ARE THE MATERIAL OMISSIONS.

22 NOW, THERE WAS SOMEWHAT OF A LIMITED PERIOD OF  
23 TIME TO PUT THAT ALL TOGETHER. WE'VE DONE THE BEST WE  
24 CAN WITH WHAT WE'VE FILED, BUT WE'RE CONTINUING THAT  
25 EFFORT WITH AN INDEX AND SPREADSHEET WHERE WE LIST THE  
26 PARTICULAR ITEM AND THEN TAG IT TO THE PARTICULAR AREA  
27 IN THE TRANSCRIPT OR THE CURRENT RECORD WHERE THE  
28 EVIDENTIARY SUPPORT FOR THAT ITEM CAN BE FOUND. THOSE



1 SPREADSHEET LISTS ARE NOT YET COMPLETE, BUT WE'VE MADE  
2 AN EFFORT TO GET THE BIG ONES IN THE BRIEF THAT YOU'VE  
3 GOT THERE. THE ONES THAT, YOU KNOW, ARE HUGE, IN OUR  
4 VIEW, ARE IN THAT BRIEF.

5 MR. GUTERRES: IT'S A LOT OF READING.

6 THE COURT: I DON'T KNOW THAT IT WILL BE  
7 NECESSARY TO CONSIDER ALL OF THIS. IT IS CORRECT THAT  
8 MR. DANER HAS DONE WHAT I ASKED HIM TO DO, WHICH WAS TO  
9 DESIGNATE WHAT THE PLAINTIFF CONTENDS WAS FALSE  
10 REPORTING, AS WELL AS WHAT THEY CONTEND WAS OMITTED  
11 FROM THE REPORT THAT SHOULD HAVE BEEN REPORTED. I  
12 DON'T KNOW YET WHETHER THAT IS NECESSARY TO BE  
13 CONSIDERED TOMORROW, ALTHOUGH, UNFORTUNATELY, IT MIGHT.  
14 AND THIS WILL INDICATE WHAT WE TALKED ABOUT ON THE  
15 RECORD JUST BEFORE SENDING THE JURY HOME FOR THE DAY,  
16 THAT SOME TIME IS PROBABLY GOING TO BE NECESSARY FOR  
17 EVERYBODY TO BE ABLE TO ORGANIZE THEIR POSITION ON THIS  
18 CASE.

19 LET ME ASK MR. DANER AN ENTIRELY DIFFERENT  
20 QUESTION.

21 MR. DANER: YES, YOUR HONOR.

22 THE COURT: BY CHANCE, DID WE FIND THE MAGIC  
23 CASE IN HERE THAT TELLS US EXACTLY WHAT WE'RE SUPPOSED  
24 TO DO?

25 MR. DANER: YOUR HONOR, IN ALL HONESTY, I DID  
26 NOT HAVE ANY TIME TO REALLY GO AND RESEARCH ADDITIONAL  
27 CASE LAW.

28 THE COURT: ALL RIGHT.

1 MR. DANER: I ASSEMBLED THE CASES THAT  
2 STRUCTURED WHAT COULD GIVE YOUR HONOR SOME GUIDANCE ON  
3 WHAT IS AND WHAT ISN'T MATERIALITY AND THEN PLUG IT  
4 INTO THE BIG ISSUES THAT WE FELT REALLY WOULD HIGHLIGHT  
5 THAT.

6 THE COURT: ALL RIGHT. THAT'S UNDERSTANDABLE.  
7 I'M NOT SURE THERE IS A MAGIC CASE, WHAT I'M REFERRING  
8 TO AS THE MAGIC CASE, THAT WOULD TELL US WHAT TO DO  
9 WITH THE SITUATION THAT WE'RE LOOKING AT IN TRIAL. I  
10 HAVE A FEELING IF THE CASE WAS OUT THERE, PROBABLY BOTH  
11 SIDES WOULD HAVE FOUND IT AND BEEN AWARE OF IT. SO  
12 IT'S A PRETTY GOOD ASSUMPTION THAT A SPECIFIC CASE IS  
13 NOT GOING TO GIVE US THE SPECIFIC ANSWER, THAT WE'RE  
14 GOING TO HAVE TO FIND THE ANSWER OURSELVES FROM  
15 CONSIDERATION OF THE CASES WE DO KNOW OF AND TRY TO  
16 DETERMINE WHAT THEY WERE INSTRUCTING US.

17 MR. DANER: YEAH.

18 THE COURT: OKAY. THAT'S FINE. THANKS VERY  
19 MUCH.

20 MR. DANER: YOU'RE WELCOME, YOUR HONOR.

21 THE COURT: WELL, THE NEXT EXHIBIT -- WE'RE  
22 JUST GOING TO DO A COUPLE MORE -- IS NO. 205, WHICH IS  
23 THE -- IS CHARACTERIZED IN OUR LISTING AS THE  
24 CALIFORNIA DFS DISCRIMINATION COMPLAINT SUMMARY,  
25 BEARING PAGES BATES-NUMBERED 002710 THROUGH 002712.

26 I DON'T HAPPEN TO RECALL THIS DOCUMENT, SO  
27 WITHOUT LOOKING IT UP, DO YOU KNOW WHAT THIS DOCUMENT  
28 IS, MR. GUTERRES?

1 MR. GUTERRES: YES, YOUR HONOR. AGAIN, I  
2 THINK MR. URQUIZO WAS QUESTIONED SPECIFICALLY AS TO  
3 EVERY SINGLE ENTRY JUST ABOUT. I THINK THIS WOULD JUST  
4 BE CUMULATIVE.

5 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT  
6 IT.

7 MR. GUTERRES: THIS IS THE ONE THAT HAD THE  
8 BASES FOR THE DISCRIMINATION COMPLAINT. IT'S KIND OF A  
9 CHECK BOX.

10 THE COURT: RIGHT. OKAY. I DO RECALL THAT  
11 NOW.

12 MR. PRAGER: YOUR HONOR, I THINK THIS IS THE  
13 PRIMARY DOCUMENT THAT HE RELIED UPON, THAT HE  
14 AUTHENTICATED WHEN HE WAS TESTIFYING HERE, AS TO THE  
15 STATE'S RECORDS AND THE EVENTS AS HE TESTIFIED TO THEM  
16 BASED UPON HIS REVIEW OF THESE RECORDS AS WELL. SO I  
17 THINK THESE ARE CRITICAL TO BE ADMITTED.

18 THE COURT: WELL, I UNDERSTAND WHAT YOU SAID.  
19 I MENTIONED EARLIER THE FACT THAT SOMEONE IS RELYING ON  
20 SOMETHING DOESN'T MAKE IT ADMISSIBLE. IT HAS TO BE  
21 ADMISSIBLE ON ITS OWN MERITS, NOT ADMISSIBLE FOR THE  
22 TRUTH OF THE MATTER ASSERTED THEREIN, EXCEPT ON ITS OWN  
23 MERITS, NOT BECAUSE SOMEONE RELIED ON IT.

24 MR. PRAGER: UNDERSTOOD. AND I DO THINK THAT  
25 THERE IS -- THE POINT OF THE DECLARATION REPORT THAT'S  
26 IN THESE RECORDS IS THESE RECORDS DO DOCUMENT PHYSICAL  
27 EVENTS ABOUT WHEN DOCUMENTS WERE RECEIVED, WHEN THEY  
28 WERE TRANSMITTED. AND TO THAT EXTENT, I THINK THAT

1       THEY SHOULD BE ADMITTED AS BUSINESS RECORDS BECAUSE  
2       THEY DO DOCUMENT THE TRANSACTIONS THE DEPARTMENT WAS  
3       INVOLVED IN.

4               THE COURT:  I'LL TAKE A LOOK AT IT.  BUT I'M  
5       WONDERING IF THERE'S ANY -- WHAT'S THE RELEVANCE OF THE  
6       DATES THEY WERE RECEIVED AND WHEN THINGS WERE SENT?

7               MR. PRAGER:  WE HAVEN'T GOTTEN TO WHAT WE'LL  
8       CALL THE END OF THE CIVIL RIGHTS INVESTIGATION TOO  
9       DEEPLY YET.  WE EXPECT THE DEFENSE TO OFFER THE THIRD  
10      AND FOURTH VERSIONS OF THE REPORTS FOR THE CIVIL RIGHTS  
11      INVESTIGATION, AND THESE DATES WILL BECOME MORE GERMANE  
12      BECAUSE THERE WILL BE TESTIMONY -- THERE WAS TESTIMONY  
13      ALREADY ABOUT WHAT HAS BEEN CALLED THE SECOND AMENDED  
14      CIVIL RIGHTS REPORT AND THE FINAL AMENDED CIVIL RIGHTS  
15      REPORT.

16              SO THE STATE HASN'T SENT THIS INFORMATION, AND  
17      THE COUNTY WE EXPECT WILL TESTIFY THEY HAVE NOT TAKEN  
18      CERTAIN ACTION PENDING FURTHER INFORMATION FROM THE  
19      STATE, WHICH IS WHY THE DATES ARE RELEVANT.

20              THE COURT:  WELL, IT MAY BE THAT THAT'S GOING  
21      TO HAVE TO BE ADDRESSED LATER WHEN I CAN DETERMINE THAT  
22      THERE IS RELEVANCE TO IT.  SO RIGHT NOW I'VE GOT IT IN  
23      MY LIST OF THINGS TO LOOK AT.

24              MR. PRAGER:  VERY GOOD, YOUR HONOR.

25              THE COURT:  DOESN'T MEAN THERE'S GOING TO BE A  
26      RULING ON EVERYTHING AT THIS TIME.

27              SO, 207?

28              MR. GUTERRES:  207, YOUR HONOR IS THE LETTER

1 FROM MS. NICHOLS TO THE CIVIL RIGHTS BUREAU OF THE  
2 STATE. IT INCLUDES THE SECOND AMENDED REPORT OF  
3 INVESTIGATION. IT CONTAINS A NUMBER OF -- IT CONTAINS  
4 ALL SORTS OF HEARSAY.

5 THE COURT: ALL RIGHT. I'LL TAKE A FURTHER  
6 LOOK AT THAT.

7 MR. PRAGER: YOUR HONOR, IF I MAY?

8 THE COURT: YES.

9 MR. PRAGER: I DON'T HAVE IN OUR 207 THE COVER  
10 LETTER. WHAT WE HAVE IS THE ACTUAL COMPLAINT OF  
11 DISCRIMINATORY TREATMENT THAT MS. DUVAL WROTE IN HER  
12 OWN HAND, AND THAT'S BATES NO. 2732, WHICH SHE  
13 AUTHENTICATED DURING HER TESTIMONY. AND THEN WE DO  
14 HAVE ADDITIONAL DOCUMENTS THAT RUN FROM BATES NO. 2733  
15 THROUGH -- I'LL HAVE TO DOUBLE CHECK, YOUR HONOR, BUT  
16 IT SHOULD BE 274- -- I'M SORRY, 2750, AND THOSE WERE  
17 ALL AUTHENTICATED BY HER. AND THE FIRST DOCUMENT WAS  
18 THE CHARGING COMPLAINT AGAINST THE DEFENDANTS, WHICH  
19 OUTLINES BOTH THE FACTUAL BASIS FOR HER COMPLAINT AND  
20 THE CATEGORIES OF DISCRIMINATION THAT SHE WAS ALLEGING  
21 AGAINST THE DEFENDANTS.

22 SO I THINK THAT DOCUMENT WOULD BE VERY  
23 RELEVANT FOR THE JURY TO RECEIVE AND REVIEW IN MAKING  
24 THEIR DECISIONS ABOUT THIS CASE.

25 THE COURT: ALL RIGHT. WELL, AS I INDICATED,  
26 I HAVE TO TAKE A LOOK AT IT, AND I'LL -- IF I DON'T  
27 RECALL ALL OF YOUR ARGUMENT FROM THIS MOMENT, THEN YOU  
28 CAN GIVE IT TO ME AFTER I HAVE A CHANCE TO LOOK AT IT.

1 I'M TRYING TO FIND DOCUMENTS THAT WE CAN GET  
2 INTO EVIDENCE WITHOUT SPENDING A GREAT DEAL OF TIME  
3 BECAUSE WE'RE STILL ON PAGE 4 OF 25. AND SO WE STILL  
4 HAVE A LOT OF WORK, AND I'M NOT GOING TO STOP RIGHT NOW  
5 TO READ THESE DOCUMENTS.

6 MR. PRAGER: UNDERSTOOD.

7 THE COURT: SO IT'S ON THE LIST TO BE LOOKED  
8 AT.

9 MR. PRAGER: THANK YOU, YOUR HONOR.

10 MR. GUTERRES: YOUR HONOR, IF I MAY, IN GOING  
11 THROUGH THIS, IT IS OUR INCLINATION THAT, YOU KNOW,  
12 MOST OF THE LAST MINUTE IN COURT REPORTS -- IF WE CAN  
13 FIGURE OUT WHICH VERSION IS THE ONE THAT WAS ADMITTED,  
14 WE MAY AGREE TO THOSE. SO JUST GOING THROUGH THIS --  
15 AND I HAVEN'T ACTUALLY PULLED THE DOCUMENTS, BUT, YOU  
16 KNOW, WE'RE GOING TO HAVE ISSUES WITH THE CIVIL RIGHTS  
17 REPORTS AND INVESTIGATION. BUT AS WE GET IN TOWARDS  
18 THE 260S AND THE LAST-MINUTE INFORMATION TO THE COURT,  
19 THOSE MAY BE AREAS THAT WE MAY BE ABLE TO COME TO SOME  
20 AGREEMENT WITH. I JUST HAVE TO PULLED THE ACTUAL  
21 EXHIBIT AND MAKE SURE THAT'S THE ONE THAT --

22 THE COURT: ALL RIGHT.

23 I THINK WE'RE GOING TO RECESS AT THIS TIME, IN  
24 ANY EVENT. AND SO I'LL SEE COUNSEL AT 8:00 A.M.  
25 TOMORROW.

26 MR. GUTERRES: THANK YOU, YOUR HONOR.

27 MR. MCMILLAN: THANK YOU, YOUR HONOR.

28 (RECESS)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(WHEREUPON, AT THE HOUR OF 4:35 P.M.,  
THE PROCEEDING ADJOURNED.)

---000---

(NEXT PAGE IS 6601.)