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M A S T E R I N D E X

OCTOBER 11, 2016

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

<u>WITNESSES:</u>	<u>PAGE</u>
RAFAELINA DUVAL	
DIRECT EXAMINATION BY MR. MCMILLAN	6015
CROSS-EXAMINATION BY MS. SWISS	6110



1 CASE NUMBER: BC470714  
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL.  
3 LOS ANGELES, CALIFORNIA TUESDAY, OCTOBER 11, 2016  
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE  
5 APPEARANCES: (AS HERETOFORE NOTED.)  
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606  
7 TIME: 8:32 A.M.

8

9

---OOO---

10

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

13 A COUPLE THINGS I WANT TO COVER WITH YOU.

14 THE ISSUE OF THE INCLUSION OF CERTAIN ANSWERS  
15 TO REQUESTS FOR ADMISSIONS REGARDING DR. EGGE; WHAT'S  
16 THE OPPOSITION TO IT?

17 MS. SWISS: THE DOCTOR IS NOT A DEFENDANT, SO  
18 IT'S IRRELEVANT IS THE SHORT ANSWER.

19 THE COURT: WELL, IN THEIR DEPOSITION, WHICH  
20 HAS BEEN PLAYED TO THE JURY, DIDN'T SHE TESTIFY TO  
21 THESE SAME THINGS?

22 MR. MCMILLAN: SHE DID SAY THAT SHE WAS  
23 EMPLOYED BY THE COUNTY OF LOS ANGELES IN HER DEPOSITION  
24 THAT WAS PLAYED TO THE JURY.

25 THE COURT: RIGHT. SO WHY DO WE NEED THIS?

26 MR. MCMILLAN: REALLY, THE ONLY PLACE WHERE IT  
27 COMES INTO PLAY IS THE ADMISSIONS MADE BY THE COUNTY OF  
28 LOS ANGELES. WE'RE NOT REQUESTING THAT ANY ADMISSIONS

1 OF DR. EGGE BE PRESENTED TO THE JURY IN ANY FORM.

2 THE COURT: JUST TO THE COUNTY --

3 MR. MCMILLAN: JUST TO THE COUNTY, CORRECT.

4 THAT THE COUNTY ADMITS THAT ALL OF THESE PEOPLE THAT  
5 WERE INVOLVED IN THIS WHOLE CONTINUUM OF EVENTS WERE AT  
6 ALL TIMES CARRYING OUT THE CUSTOMS OF DEFENDANT COUNTY  
7 OF LOS ANGELES IN THEIR HANDLING OF THE MATTER  
8 *IN RE: RD.* THAT IS THE ADMISSION.

9 MS. SWISS: AND THE DEFENSE POSITION IS  
10 DR. EGGE WAS A DEFENDANT IN THIS CASE. THERE'S NO  
11 DISPUTE THAT SHE WAS EMPLOYED BY THE COUNTY OF  
12 LOS ANGELES. THE PLAINTIFF VOLUNTARILY DISMISSED HER  
13 BEFORE OUR MSJ WAS GRANTED. AND THE PLAINTIFF'S NOW  
14 TRYING TO MAKE THIS A BACKDOOR MEDICAL MALPRACTICE CASE  
15 AGAINST DR. EGGE AND THE COUNTY, AND THAT'S JUST NOT  
16 PART OF THIS LAWSUIT.

17 THE COURT: YEAH. WELL, I DON'T THINK THAT'S  
18 WHAT HE'S ATTEMPTING TO DO.

19 WHAT YOU WANT IS SHE WAS AN EMPLOYEE AND SHE  
20 DIDN'T CONSIDER THERE TO BE ANY IMMEDIATE PROBLEM.

21 MR. MCMILLAN: THAT IS -- THAT IS CORRECT,  
22 THAT SHE'S AN EMPLOYEE AGENT OF THE COUNTY, AND SHE HAD  
23 THE OPPORTUNITY -- I THINK WE GAVE YOUR HONOR THE JONES  
24 CASE. IT'S A RECENT 9TH CIRCUIT OPINION THAT  
25 RELATES -- THAT'S VERY SIMILAR TO THE ONE HERE, WHERE A  
26 COUNTY DOCTOR WHO WAS THEIR CHILD ABUSE SPECIALIST DID  
27 A BUNCH OF THINGS, AND THE 9TH CIRCUIT SAID YES, NUMBER  
28 ONE, HE CAN BE RESPONSIBLE. AND NUMBER TWO, THE FACT

1 THAT THE DOCTOR, THE COUNTY'S DOCTOR IS SAYING AND  
2 DOING THINGS IS RELEVANT TO THE ISSUES, YOU KNOW,  
3 NUMBER ONE, OF EXIGENCY, AND NUMBER TWO, OF THE CUSTOM  
4 AND PRACTICE AND THINGS LIKE THAT.

5 THE COURT: I'VE HEARD ENOUGH.

6 MS. SWISS: YOUR HONOR?

7 THE COURT: YES.

8 MS. SWISS: THE JONES CASE IS OUR CASE,  
9 MR. GUTERRES AND MYSELF, AND THE DOCTOR IN THAT CASE IS  
10 FROM UCLA, IS NOT A COUNTY EMPLOYEE. IT'S COMPLETELY  
11 DIFFERENT. THAT CASE IS NOT THE SAME AS HERE. IN THAT  
12 CASE, THE SOCIAL WORKERS WANTED QUALIFIED IMMUNITY  
13 WHICH WAS UPHELD BY THE 9TH CIRCUIT ON THEIR SUMMARY  
14 JUDGMENT.

15 THE COURT: SO READ TO ME AGAIN THE ADMISSION  
16 THAT YOU WANT. IT'S A COUNTY ADMISSION; CORRECT?

17 MR. MCMILLAN: IT'S A COUNTY ONLY.

18 THE COURT: YEAH.

19 MR. MCMILLAN: AND IT IS THAT -- IT INCLUDES  
20 EVERYBODY.

21 THE COURT: NO, I UNDERSTAND, BUT READ THE  
22 SUBSTANCE. WHAT'S BEING ADMITTED?

23 MR. MCMILLAN: THAT THE VARIOUS -- THESE  
24 EMPLOYEES WERE AT ALL TIMES CARRYING OUT THE CUSTOMS OF  
25 DEFENDANT COUNTY OF LOS ANGELES IN THEIR HANDLING OF *IN*  
26 *THE MATTER OF RYAN D., SUPERIOR COURT OF CALIFORNIA*  
27 *COUNTY OF LOS ANGELES, CASE NO. CK79670.*

28 THE COURT: ALL RIGHT. THE --

1 MR. MCMILLAN: AND THERE'S ONE MORE, YOUR  
2 HONOR.

3 THE COURT: ALL RIGHT.

4 MR. MCMILLAN: THIS IS ALSO BY THE COUNTY  
5 ONLY. IT'S NO. 8, AND THAT'S THAT ALL THE EMPLOYEES  
6 WERE AT ALL TIMES ACTING WITHIN THE COURSE AND SCOPE OF  
7 THEIR DUTIES AS EMPLOYEES OF THE COUNTY OF LOS ANGELES  
8 IN THEIR HANDLING OF THE UNDERLYING JUVENILE DEPENDENCY  
9 MATTER.

10 SO IT'S ONLY THOSE TWO THAT RELATE TO  
11 DR. EGGE.

12 THE COURT: ALL RIGHT. THE FIRST ONE IS  
13 IRRELEVANT AS TO DR. EGGE.

14 MR. MCMILLAN: OKAY.

15 THE COURT: SO THE OBJECTION WILL BE  
16 SUSTAINED.

17 THE SECOND ONE, THERE IS RELEVANCE THAT SHE  
18 WAS AN EMPLOYEE IN THE COURSE AND SCOPE, AND THE  
19 OBJECTION WILL BE OVERRULED.

20 THERE'S GOING TO BE NO ISSUE ABOUT DR. EGGE'S  
21 BEING SUBMITTED TO THIS JURY, OTHER -- THAT IS, AS TO  
22 ANY QUESTION ABOUT -- AS COMPLYING WITH OR NOT  
23 COMPLYING WITH THE STANDARD OF CARE OR ANY OTHER BASIS  
24 OF LIABILITY.

25 IT'S MY UNDERSTANDING THAT YOU'RE ASKING TO  
26 HAVE HER EMPLOYMENT CONFIRMED BY THE ANSWER TO REQUEST  
27 FOR ADMISSION ON THE SUBJECT OF HER STATED BELIEF THAT  
28 THERE WAS NOTHING IMMEDIATE -- SOME IMMEDIATE DANGER TO

1 THIS CHILD.

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

3 THE COURT: THAT'S OKAY.

4 MS. SWISS: AND OUR POSITION IS THAT'S ALSO  
5 GOING TO BE CUMULATIVE NOW BECAUSE SHE'S ALREADY  
6 TESTIFIED TO THAT. SO WHY DO WE NEED TO CONFUSE THE  
7 JURY WITH ANOTHER REQUEST FOR ADMISSION ON A PERSON  
8 THAT'S NOT -- A DEFENDANT THAT'S GOING TO PREJUDICE THE  
9 SOCIAL WORKERS BY LUMPING THE DOCTOR IN, WHO HAS  
10 SPECIALIZED KNOWLEDGE AND SKILLS AND TRAINING, AND THE  
11 SOCIAL WORKER HAS COME TO RELY ON THAT DOCTOR. IT'S  
12 CONFUSING.

13 THE COURT: I UNDERSTAND. THAT'S THE RULING.

14 MR. MCMILLAN: THANK YOU, YOUR HONOR.

15 MS. SWISS: THANK YOU, YOUR HONOR.

16 THE COURT: NEXT TODAY, WE HAVE THE  
17 DEFENDANT'S MOTION *IN LIMINE* WHICH WE DISCUSSED LAST  
18 WEEK, WHICH WAS TO EXCLUDE EVIDENCE OF SOMETHING WE --  
19 FOR NONDISCLOSURE OF MEDICAL EXPENSES OR ECONOMIC  
20 DAMAGES IN DISCOVERY. AND THE MOTION WAS TO EXCLUDE  
21 EVIDENCE OF THOSE SPECIFIED ECONOMIC DAMAGES ON THE  
22 GROUND OF THE FAILURE TO DISCLOSE. COURT HAD READ AND  
23 CONSIDERED THE MOTION IN OPPOSITION, WHICH -- TO THE  
24 EXTENT IT WAS IN OPPOSITION.

25 THE DEFENDANT'S MOTION *IN LIMINE* IS DENIED ON  
26 TWO GROUNDS. ONE, THE COURT CONSIDERS THE MOTION TO BE  
27 INSUFFICIENT TO ESTABLISH WHAT IT ASSERTS BECAUSE OF  
28 THE FAILURE TO INCLUDE OR PROVIDE TO THE COURT

1 ATTACHMENT NO. 1. BUT MORE IMPORTANTLY BECAUSE -- AND  
2 THE PRIMARY REASON FOR THE DENIAL OF THE MOTION IS THAT  
3 THE COURT FEELS THAT THERE WAS A DISCOVERY REMEDY  
4 AVAILABLE TO THE MOVING PARTY AT THE TIME OF THE  
5 FAILURE -- OR OF THE FILING BY THE PLAINTIFF OF  
6 OBJECTIONS TO THE SUPPLEMENTAL OR FOLLOW-UP REQUEST FOR  
7 PRODUCTION AND THE SUPPLEMENTAL OR FOLLOW-UP  
8 INTERROGATORY, BOTH OF WHICH -- ONE WAS ASKING FOR THE  
9 PRODUCTION OF DOCUMENTS NOT PRODUCED BEFORE AND THE  
10 OTHER INTERROGATORY WAS ASKING FOR AN UPDATE OF THE  
11 ANSWERS TO PREVIOUS INTERROGATORIES, WHICH WOULD HAVE,  
12 IF ANSWERED, PROVIDED INFORMATION ABOUT THE  
13 SUBSEQUENTLY -- ABOUT THE ECONOMIC DAMAGES THAT HAD NOT  
14 PREVIOUSLY BEEN DISCLOSED.

15 AND THE REMEDY WOULD HAVE -- SHOULD HAVE BEEN  
16 TO SEEK AN ORDER COMPELLING RATHER THAN WAITING NOW  
17 MORE THAN A YEAR AND A HALF OR SO TO COME TO THE COURT  
18 WITH A MOTION *IN LIMINE* TO EXCLUDE.

19 THE NEXT THING I WANT TO DISCUSS IS WHAT  
20 FURTHER HAS OCCURRED SINCE I LAST SAW YOU. AND WE'RE  
21 EXCUSING MS. SWISS FROM THIS DISCUSSION, WHO WAS  
22 OCCUPIED OTHERWISE.

23 MS. SWISS: YES, THANK YOU.

24 THE COURT: FOR WHICH I HOPE YOUR HUSBAND  
25 REMAINS GRATEFUL.

26 MS. SWISS: YES, VERY MUCH SO.

27 THE COURT: AS TO WHAT IS TO BE DONE TO BE  
28 ABLE TO ADDRESS THE EXHIBITS WHICH PLAINTIFF IS ASKING



1 TO HAVE ADMITTED INTO EVIDENCE, WE HAD A STIPULATION AS  
2 TO FOUR OF THEM, WHICH I REALLY -- I MUST SAY DOESN'T  
3 REPRESENT A GREAT DEAL OF PROGRESS. SO MY QUESTION IS:  
4 WHERE ARE WE ON THIS? BECAUSE I'M GOING TO SOLVE THE  
5 PROBLEM IF WE DON'T HAVE A RESOLUTION BY COUNSEL.

6 GOOD MORNING, MR. PARIS.

7 MR. PARIS: GOOD MORNING.

8 SO WE HAVEN'T HAD ANY FURTHER PROGRESS ONTO  
9 THESE EXHIBITS AFTER FRIDAY. WE HAD DISCUSSED ON  
10 FRIDAY PROVIDING SOME FORM OF INDEX TO THE JURY TO  
11 ALLOW THEM TO DETERMINE WHICH EXHIBIT CORRESPONDS WITH  
12 WHICH DEPOSITION EXHIBITS BECAUSE AS THEY'VE BEEN  
13 TAKING NOTES, THEY'VE BEEN TAKING NOTES BASED ON THE  
14 DEPOSITION EXHIBITS. SO AS WE'RE TRYING TO REDUCE THIS  
15 DUPLICATION OF EXHIBITS, WE'RE GOING TO NEED SOME FORM  
16 OF INDEX TO ALLOW THEM TO KNOW WHICH TRIAL EXHIBIT  
17 THAT'S BEING ADMITTED CORRESPONDS WITH THE DEPOSITION  
18 EXHIBITS.

19 I'M CURRENTLY DRAFTING THAT UP AS TO THOSE  
20 EXHIBITS THAT HAVE ALREADY BEEN ADMITTED, BUT WE'VE HAD  
21 NO FURTHER PROGRESS ON ANY OTHERS.

22 THE COURT: ALL RIGHT. WELL, KEEP UP THAT  
23 WORK, AND -- BECAUSE IT'S TIME TO GET SOMETHING DONE.

24 WE WILL BE CONVENING, BEGINNING TOMORROW, AT  
25 8:00 A.M. EVERY MORNING FOR COUNSEL, AT LEAST THOSE  
26 COUNSEL WHO WILL HAVE A RESPONSIBILITY FOR DISCUSSION  
27 OF ADMISSIBILITY OF EXHIBITS. I WILL ALSO, AS OF  
28 TOMORROW, BE RECESSING AT 4:00 P.M. RATHER THAN

1 4:30 P.M. AS FAR AS THE JURY IS CONCERNED, UNTIL WE  
2 HAVE ADDRESSED ALL OF THE EXHIBITS.

3 THE OTHER THING, I NEED TO GO BACK FOR JUST A  
4 MOMENT TO THE REQUEST FOR ADMISSIONS -- SO I THINK  
5 THAT'LL TAKE CARE OF IT FOR NOW, MR. PARIS. THANK YOU  
6 FOR THE UPDATE.

7 AND I WANT TO GO BACK NOW TO THE ISSUE ABOUT  
8 THE REQUEST FOR ADMISSIONS FOR A MOMENT BECAUSE YOU,  
9 MR. MCMILLAN, WERE GOING TO PREPARE SOME SORT OF WHAT  
10 IN EFFECT WOULD BE A STIPULATION OF THE COUNSEL THAT WE  
11 WOULD PRESENT TO THE JURY.

12 MR. MCMILLAN: CORRECT. AND I HAVE THAT HERE  
13 WITH ME TODAY, SUBJECT TO THE COURT'S RULING THAT JUST  
14 HAPPENED.

15 THE COURT: ALL RIGHT. SO WE DON'T NEED TO  
16 HAVE THE STIPULATION YET TODAY. BUT IF YOU HAVE IT,  
17 HAVE YOU GIVEN IT TO DEFENSE COUNSEL SO THEY'LL BE  
18 READY TO TAKE A LOOK AT IT?

19 MR. MCMILLAN: THEY DO --

20 THE COURT: AND THEN, AFTER THE CONTENT HAS  
21 BEEN AGREED TO -- I'M NOT EXPECTING AGREEMENT AS TO THE  
22 ONE REQUEST FOR ADMISSION AS TO DR. EGGE. BUT AS TO  
23 THE REMAINING ONES, WE'LL THEN DECIDE IN WHAT MANNER  
24 THE STIPULATION WILL BE PRESENTED TO THE JURY.

25 YOU HAVE SUGGESTED, MR. MCMILLAN, THAT IT  
26 COULD SIMPLY BE READ BY YOU AS A STIPULATION AS PART OF  
27 YOUR EVIDENCE BEFORE YOU REST YOUR CASE. THAT'S  
28 PERFECTLY SATISFACTORY. IF YOU WANT TO READ THE

1 STIPULATION, THAT'S THE WAY WE'LL DO IT.

2 MR. MCMILLAN: OKAY. I APPRECIATE THAT, YOUR  
3 HONOR. THAT IS HOW I'D LIKE TO PROCEED.

4 THE COURT: OKAY. NOW, THE REASON -- FIRST OF  
5 ALL, THIS MORNING, WE DIDN'T HAVE YOU HERE AT 8:00.  
6 AND THE REASON I'M NOT GOING TO START THIS -- THE DEATH  
7 MARCH THROUGH THE EXHIBITS TODAY IS THAT I'M ASSUMING  
8 YOU HAVE WITNESSES LINED UP THROUGH THE DAY, AND I  
9 DON'T WANT TO THROW THAT OFF. BUT EVERYBODY NOW  
10 UNDERSTANDS THE HOURS ARE GOING TO BE SHORTENED FOR THE  
11 JURY TO 4:00 P.M. UNTIL WE FINISH WITH THE EXHIBITS,  
12 AND COUNSEL HENCEFORTH WILL BE EXPECTED TO BE HERE AT  
13 8:00 A.M. EVERY DAY UNTIL I MAKE A FURTHER ORDER. THAT  
14 FURTHER ORDER WILL OCCUR POSSIBLY WHEN WE FINISH WITH  
15 THE EXHIBITS, ALTHOUGH IT'S POSSIBLE FOR ME TO ADDRESS  
16 SOME OTHER ISSUES.

17 OKAY?

18 MR. MCMILLAN: AFFIRMATIVE, YOUR HONOR. I  
19 HAVE THAT, I DID REPORT THAT -- HAVE THAT IN MY NOTES.

20 THE COURT: SO THEN I DID RECEIVE THIS MORNING  
21 A FURTHER TRIAL BRIEF ON MATERIALITY AND CAUSATION,  
22 WHICH IS AN ISSUE WE DISCUSSED LAST FRIDAY. AND I  
23 DON'T THINK MR. DANER IS PRESENT, AND I HAVEN'T HAD A  
24 CHANCE, OBVIOUSLY, TO READ THAT BRIEF. WE MAY HAVE A  
25 FEW MOMENTS HERE IN WHICH I'LL BE ABLE TO, AND WE'LL  
26 SEE WHAT TIME THE JURORS GET HERE. HOWEVER, I HAVE --  
27 I HAVE, IN MY OWN MIND, RESOLVED THE ISSUE, BUT I WILL  
28 WAIT UNTIL I'VE HAD A CHANCE TO READ THE FURTHER BRIEF

1 THAT WAS TRIED -- FILED THIS MORNING. AND AFTER THAT,  
2 IF I HAVE ANY ADDITIONAL COMMENTS OR QUESTIONS, I'LL  
3 ASK YOU ABOUT IT. BUT I HAVE ALSO SPENT A GREAT DEAL  
4 OF TIME OVER THE WEEKEND ON THIS ISSUE, AND I'M NOT  
5 SURE THERE'S ANYTHING FURTHER TO SAY. BUT I WON'T KNOW  
6 THAT UNTIL I READ THE BRIEF OF WHICH MR. DANER IS  
7 PROBABLY THE AUTHOR.

8 MR. MCMILLAN: THAT'S CORRECT.

9 THE COURT: SO DOES COUNSEL HAVE ANYTHING ELSE  
10 AT THIS TIME? IF NOT, WE'LL RECESS UNTIL THE JURORS  
11 GET HERE.

12 MR. GUTERRES: YES, YOUR HONOR. WE HAVE NO  
13 OBJECTION TO THE PHOTOGRAPHS THAT WERE IDENTIFIED. I  
14 HAD ADVISED MR. MCMILLAN THAT WE HAD NO OBJECTIONS TO  
15 606 AND 608 --

16 THE COURT: RIGHT. THOSE I THINK --

17 MR. GUTERRES: AND WE ALSO DON'T HAVE ANY  
18 OBJECTIONS TO 610, 614, 620, 623, 625, 631, 644, 648,  
19 655, 658, 660, 662, 663, 665, AND 666, WHICH ARE THE  
20 PHOTOS THAT -- ALL OF THE PHOTOS THAT MR. MCMILLAN  
21 HANDED --

22 THE COURT: IN THAT PACKET?

23 MR. GUTERRES: IN THAT PACKET, YES.

24 THE COURT: THERE'S NO OBJECTION?

25 MR. GUTERRES: NO.

26 THE COURT: SO THEY ALL MAY BE RECEIVED.

27 MR. MCMILLAN: THANK YOU, YOUR HONOR.

28 AND THANK YOU, MR. GUTERRES.

1           THE COURT: DO YOU HAVE ANYTHING ELSE AT THE  
2 MOMENT? IF NOT, I'LL TRY TO TAKE ADVANTAGE OF THIS  
3 TIME TO READ THE LATEST BRIEF.

4           MR. MCMILLAN: I DO HAVE ONE LAST THING. I  
5 FORGOT TO FILE IT THIS MORNING. IT'S SORT OF IN  
6 CONJUNCTION WITH THE SUPPLEMENTAL TRIAL BRIEF. AND  
7 IT'S A -- I KNOW YOU'RE GOING TO LOVE THIS -- IT'S  
8 ANOTHER SPECIAL INSTRUCTION, BUT IT'S DERIVED FROM AND  
9 BASED ON 9TH CIRCUIT MODEL INSTRUCTION NO. 9.29, WHICH  
10 DEALS DIRECTLY WITH THE ISSUE OF JUDICIAL DECEPTION  
11 CLAIMS BUT IN A CRIMINAL CONTEXT AS OPPOSED TO THIS,  
12 JUVENILE DEPENDENCY. BUT I'VE LEFT ATTACHED TO IT ALL  
13 OF THE 9TH CIRCUIT COMMENTS AND USE NOTES AND ALL OF  
14 THAT FOR YOUR HONOR'S --

15           THE COURT: WELL, SOME OF THESE INSTRUCTIONS  
16 EVENTUALLY MAY HAVE TO BE PUT INTO A JURY INSTRUCTION  
17 FORM THAT WE CAN USE TO GIVE TO THE JURY. BUT IT'S  
18 CONTENT FOR NOW, SO IF YOU HAVE ADDITIONAL INSTRUCTION,  
19 FILE IT WITH THE CLERK. I'VE BEEN OVER THE  
20 INSTRUCTIONS IN A GREAT DEAL OF DETAIL ALSO OVER THE  
21 WEEKEND, AS WELL AS THE VERDICT FORM, LATEST ITERATION  
22 OF THE VERDICT FORM 1. IN OUR DISCUSSIONS ON FRIDAY,  
23 WE DIDN'T REALLY TALK ABOUT VERDICT FORM 2, WHICH HAS  
24 TO DO WITH THE DISCRIMINATION CLAIMS. SO I ALSO INTEND  
25 DURING OUR EXPANDED HOURS TO BEGIN ADDRESSING  
26 SPECIFICALLY EACH OF THESE DIFFERENT CLAIMS IN THE  
27 VERDICT FORM.

28           SO FILE YOUR INSTRUCTION, AND IT WILL BE

1        CONSIDERED ALONG WITH ALL THE OTHERS. I WILL TELL YOU,  
2        HOWEVER, THAT THE VAST MAJORITY OF THE SPECIAL  
3        INSTRUCTIONS WHICH YOU HAVE ASKED FOR ARE NOT GOING TO  
4        BE GIVEN. IF THIS IS BASED ON A PATTERN INSTRUCTION  
5        FROM THE 9TH CIRCUIT, IT HAS MORE -- IT IS MORE LIKELY  
6        TO BE GIVEN BUT I'LL HAVE TO SEE WHAT IT SAYS. AND YOU  
7        NOTICE I DIDN'T SAY ALL OF THE SPECIAL INSTRUCTIONS,  
8        BUT THERE'S A VERY LARGE NUMBER OF THEM.

9                MR. MCMILLAN: UNDERSTOOD.

10               THE COURT: A GREAT NUMBER OF THEM ARE NOT  
11               GOING TO BE GIVEN.

12               I'VE ALSO BEEN THROUGH THE DEFENDANTS'  
13               INSTRUCTIONS. AND I DO HAVE QUESTIONS ABOUT NEARLY ALL  
14               THE INSTRUCTIONS THAT HAVE BEEN SUBMITTED. BUT BEFORE  
15               I GET TO THE INSTRUCTIONS, WE'RE GOING TO GET TO THE  
16               VERDICT FORM, AND THIS IS GOING TO BE RESOLVED.

17               SO THE FIRST THING I'M GOING TO DO WHEN WE  
18               HAVE TIME IS GO THROUGH THE -- WHATEVER THE FIRST CLAIM  
19               IS IN VERDICT FORM NO. 1, WHICH IS THE UNWARRANTED  
20               SEIZURE CLAIM, AND THE DIFFERENT QUESTIONS, AND WE'RE  
21               GOING TO TALK ABOUT -- SPECIFICALLY ABOUT WORDING AND  
22               SOME -- AND -- WELL, WE'RE GOING TO GO THROUGH THEM IN  
23               THE ORDER IN WHICH THEY ARE ON THE VERDICT FORM AS WE  
24               HAVE TIME. WE'RE RUNNING OUT OF TIME. A LOT OF THE  
25               DISCUSSION WE'VE HAD HAS BEEN VERY HELPFUL BUT IT SEEMS  
26               LIKE MANY THINGS HAVEN'T BEEN RESOLVED. THEY WILL  
27               START BEING RESOLVED THIS WEEK.

28               MR. MCMILLAN: THANK YOU, YOUR HONOR.

1 MS. NAU: THANK YOU, YOUR HONOR.

2 MR. MCMILLAN: JUST ONE LAST QUESTION: WOULD  
3 IT BE HELPFUL TO YOUR HONOR -- AND I ASSUME YOU HAVE  
4 ACCESS TO THE 9TH CIRCUIT WEBSITE WHERE THEY HAVE THE  
5 MODEL --

6 THE COURT: IT'S SOMETHING I'VE NEVER LOOKED  
7 AT, AND I DON'T KNOW WHETHER I HAVE ACCESS TO THEM OR  
8 NOT. I'VE NEVER HAD REASON TO LOOK AT IT.

9 MR. MCMILLAN: WOULD IT BE HELPFUL FOR YOUR  
10 HONOR -- BECAUSE THIS IS MODIFIED TO FIT A JUVENILE  
11 DEPENDENCY SITUATION. WOULD IT BE HELPFUL IF I JUST  
12 PRINTED OUT AND BROUGHT, EITHER AFTER LUNCH OR  
13 TOMORROW --

14 THE COURT: IT PROBABLY WOULD BECAUSE I DON'T  
15 KNOW THAT I HAVE THEM ON MY COMPUTER. I'M SURE I HAVE  
16 ACCESS TO THEM, BUT I'M NOT GREATLY ADEPT AT THE --  
17 I'LL CALL IT RESEARCH SCIENCE.

18 MR. MCMILLAN: OKAY. YOUR HONOR, I THINK THAT  
19 THE ISSUE HAS BEEN RESOLVED. I'VE BEEN INFORMED THAT  
20 THE ORIGINAL MODEL JURY INSTRUCTION 9.29 IS ATTACHED AS  
21 EXHIBIT B TO MR. DANER'S DECLARATION.

22 THE COURT: GOOD.

23 MR. MCMILLAN: SO IF THERE'S ANYTHING  
24 ADDITIONAL THAT YOU WOULD LIKE FROM THAT WEBSITE, I'D  
25 BE HAPPY TO PRINT IT OUT AND GET IT TO YOU.

26 THE COURT: OKAY. FOR NOW, I DON'T NEED  
27 ANYTHING.

28 ALL RIGHT. LET ME JUST HAVE -- I'VE TAKEN A

1 QUICK LOOK AT THE TRIAL BRIEF FILED THIS MORNING. I  
2 WILL GO OVER, READ IT IN MORE DETAIL, BUT IT DOES  
3 COVER -- IT DOES COVER MANY OF THE ISSUES THAT I FEEL  
4 LIKE -- THAT WERE THE PRODUCT OF MY FURTHER WORK ON  
5 THIS OVER THE WEEKEND.

6 AND I TAKE, IN LOOKING AT -- I HAVEN'T HAD A  
7 CHANCE TO LOOK AT THE BRIEF IN FULL, BUT WE'RE GOING TO  
8 HAVE TWO DIFFERENT ISSUES AS TO WHAT I'LL CALL  
9 DECEPTIVE REPORTING, IN BROAD TERMS. ONE IS AS TO THE  
10 DEFENDANTS PENDER, ROGERS, AND BALIBAN IN RELATIONSHIP  
11 TO THE DETENTION HEARING, AND SCHEELE AND NELSON IN  
12 RELATIONSHIP TO THE JURISDICTION HEARING. AND EACH OF  
13 THOSE TWO CLAIMS I BELIEVE WILL HAVE TO BE ADDRESSED  
14 SEPARATELY.

15 AND I'M NOT LIMITING TO THE PERSONS. I DON'T  
16 RECALL WHO ALL REPORTED FOR THE JURISDICTION HEARING.  
17 BUT THERE'S REALLY TWO DIFFERENT ISSUES: ONE IS FOR  
18 DETENTION; ONE IS FOR JURISDICTION. AND EACH OF THOSE  
19 WILL HAVE TO BE EVALUATED ON THEIR MERITS.

20 ALL RIGHT. WE'RE IN RECESS.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 MS. SWISS: THANK YOU, YOUR HONOR.

23 (RECESS)

24 THE COURT: ALL RIGHT. EVERYBODY READY?

25 MR. MCMILLAN: YES, YOUR HONOR.

26 THE COURT: ALL RIGHT. I'M TOLD ALL THE  
27 JURORS ARE HERE, SO WE'LL GET THE JURORS IN.

28 AND WE'RE GOING TO RESUME WITH THE TESTIMONY



1 OF MS. DUVAL?

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

3 THE COURT: THANK YOU.

4 (JURY PRESENT)

5 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON  
6 THE RECORD. EVERYBODY IS PRESENT.

7 GOOD MORNING TO ALL OF OUR JURORS.

8 AND WE'RE READY TO PROCEED. IT'S MY  
9 UNDERSTANDING WE'LL BE CONTINUING WITH THE TESTIMONY OF  
10 MS. DUVAL. WE'LL ASK HER TO RESUME THE STAND, PLEASE.

11 MR. MCMILLAN: THANK YOU, YOUR HONOR.

12

13 RAFAELINA DUVAL,

14 WAS CALLED AS A WITNESS AND, HAVING BEEN PREVIOUSLY

15 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

16

17 DIRECT EXAMINATION

18 BY MR. MCMILLAN:

19 Q MS. DUVAL, BEFORE WE BROKE LAST THURSDAY, WE  
20 WERE TALKING ABOUT A NEUROLOGIST THAT YOU HAD RETAINED  
21 TO HELP YOU IN THE JUVENILE DEPENDENCY PROCEEDINGS.

22 DO YOU REMEMBER THAT?

23 A YES, I DO.

24 Q MA'AM, CAN YOU MOVE THE MICROPHONE UP A LITTLE  
25 BIT?

26 A YES, I CAN.

27 Q AND SORT OF TURN IT SO IT ACTUALLY -- IT IS  
28 DIRECTIONAL.

1            TELL US A LITTLE BIT, IF YOU WOULD, ABOUT YOUR  
2 REASON FOR RETAINING DR. LOTT.

3            A        I WANTED A SECOND OPINION OF AN ASSESSMENT, A  
4 NEUROLOGICAL ASSESSMENT DONE FOR MY SON, RYAN.

5            Q        AND HOW DID YOU GO ABOUT FINDING DR. LOTT?

6            A        MY ATTORNEY AND I, AT THE TIME, WE FOUND A  
7 GROUP THAT SPECIALIZES IN FINDING EXPERTS FOR CASES.

8            Q        FOR COURT CASES?

9            A        COURT CASES, YES.

10          Q        WHAT'S THE NAME OF THAT GROUP?

11          A        FORENSISGROUP.

12          Q        WELL, OBVIOUSLY AT SOME POINT YOU RETAINED  
13 DR. LOTT; RIGHT?

14          A        YES.

15          Q        AT WHAT POINT WAS IT THAT YOU ACTUALLY  
16 RETAINED DR. LOTT?

17                    PERHAPS I CAN HELP GIVE YOU A RANGE IN TIMING.  
18 IF YOU CAN TURN TO THE EXHIBIT BOOK IN FRONT OF YOU, IT  
19 SHOULD BE EXHIBIT NO. 43.

20                    (PLAINTIFF'S EXHIBIT NO. 43, WAS MARKED  
21 FOR IDENTIFICATION BY THE COURT.)

22 BY MR. MCMILLAN:

23          Q        DO YOU RECOGNIZE THAT EXHIBIT NO. 43?

24          A        YES.

25          Q        WHAT IS EXHIBIT NO. 43?

26          A        IT'S A LAST MINUTE INFORMATION FOR THE COURT.

27          Q        DO YOU RECALL WHETHER OR NOT -- WELL, LOOKING  
28 AT THE UPPER RIGHT-HAND CORNER OF EXHIBIT NO. 43,

1       THERE'S A HEARING DATE THERE.

2               DO YOU RECALL THAT HEARING?

3           A       I SEE THE HEARING DATE.

4           Q       OKAY.  WELL, LET ME ASK YOU THIS; IT'S REALLY  
5       WHAT I'M LOOKING FOR.

6               THE HEARING DATE THERE, APRIL 12, 2010, DOES  
7       THAT HELP REFRESH YOUR RECOLLECTION AT LEAST AS TO SOME  
8       SORT OF RANGE, DATE RANGE WHEN IT WAS THAT YOU FIRST  
9       RETAINED DR. LOTT?

10          A       YES.

11          Q       OKAY.  AND WHAT'S YOUR RECOLLECTION?

12          A       EARLY MARCH.

13          Q       EARLY MARCH.

14               SO AFTER YOU RETAINED DR. LOTT, DO YOU  
15       RECALL -- AND IF YOU DON'T, THAT'S FINE -- BUT DO YOU  
16       RECALL ANY EXCHANGES THAT MAY HAVE HAPPENED BETWEEN  
17       DR. LOTT AND YOU AND YOUR ATTORNEY?

18          A       YES.

19          Q       OKAY.  CAN YOU SHARE THAT WITH US?

20          A       YES.  THERE'S -- THERE WAS THIS PROCESS IN  
21       PLACE BY FORENSIS WHERE THE EXPERT WILL TALK TO THE  
22       ATTORNEY AND THE ATTORNEY WILL TALK TO THE EXPERT,  
23       EXPLAIN THE CASE AND WHAT THE CASE WAS ABOUT, AND  
24       DISCUSSIONS ABOUT FEES AND WHEN THOSE PAYMENTS NEEDED  
25       TO BE MADE.  SO ALL THAT LOGISTICS WILL BE WORKED OUT  
26       THROUGH THE ATTORNEY.

27          Q       AM I UNDERSTANDING CORRECTLY THAT ALL OF THAT  
28       WOULD HAVE HAPPENED BEFORE APRIL 12TH, 2010?

1           A     ABSOLUTELY.

2           Q     AND THE ASSESSMENT THAT YOU WANTED TO GET DONE  
3           FOR THAT SECOND OPINION, DO YOU RECALL WHEN THAT  
4           HAPPENED ROUGHLY, THAT ASSESSMENT?

5           A     IT WAS THE VERY BEGINNING OF APRIL, APRIL 1ST  
6           OR 2ND, SOMETHING IN THAT RANGE.

7           Q     WERE YOU PRESENT AT THAT ASSESSMENT?

8           A     I WAS.

9           Q     WHO ELSE WAS PRESENT AT THAT ASSESSMENT?

10          A     MY SON, RYAN; MS. SCHEELE, VICTORIA SCHEELE;  
11          THERE WAS A NURSE IN THE ROOM; AND DR. LOTT.

12          Q     WHY WAS MS. SCHEELE THERE?

13          A     SHE HAD LET ME KNOW PRIOR TO THE ASSESSMENT  
14          THAT SHE NEEDED TO BE THERE.

15          Q     BUT DID SHE EXPLAIN TO YOU WHY, WHY SHE NEEDED  
16          TO BE THERE?

17          A     SHE JUST TOLD ME SHE NEEDED TO BE THERE. I  
18          DIDN'T ASK WHY.

19          Q     SO HOW DID THE ASSESSMENT GO?

20          A     DR. LOTT DID HIS ASSESSMENT AND HE MADE  
21          RECOMMENDATIONS AFTER.

22          Q     DID HE REDUCE THOSE RECOMMENDATIONS TO  
23          WRITING, IF YOU KNOW?

24          A     YES. HE -- HE INSTRUCTED HIS NURSE TO FIND  
25          APPOINTMENTS FOR THE DIFFERENT RECOMMENDATIONS HE WAS  
26          GIVING US, AND HE ALSO GAVE ME SORT OF A WRITING OF  
27          WHAT THOSE RECOMMENDATIONS WERE AND THE TIMES AND DATES  
28          OF WHEN HE WANTED THOSE THINGS DONE.

1 Q WERE THOSE RECOMMENDATIONS, IF YOU KNOW -- AND  
2 YOU MAY NOT KNOW -- BUT IF YOU KNOW, WERE THOSE  
3 RECOMMENDATIONS ALSO PROVIDED TO MS. SCHEELE?

4 A YES, SHE WAS THERE.

5 Q DURING THIS ASSESSMENT, WHEN YOU WERE IN THE  
6 ROOM AND MS. SCHEELE WAS IN THE ROOM AND DR. LOTT WAS  
7 THERE IN THE ROOM, WAS THERE EVER ANY CONFLICT ABOUT  
8 WHETHER OR NOT DR. LOTT KNEW THIS WAS A COURT-INVOLVED  
9 CASE?

10 A NO. DR. LOTT CAME IN, HE ASKED QUESTIONS, BUT  
11 I NEVER HEARD ANYTHING ABOUT HIM SAYING THAT THIS WAS  
12 NOT A COURT CASE.

13 Q NOW, GOING BACK TO THIS LAST MINUTE  
14 INFORMATION -- IT'S EXHIBIT NO. 43 -- DO YOU RECALL  
15 WHETHER OR NOT YOU HAD A HEARING ON OR AROUND APRIL 12,  
16 2010?

17 A I DON'T RECALL. THERE WERE HEARINGS THAT I  
18 ATTENDED. SOME HEARINGS I DIDN'T NEED TO BE THERE,  
19 SO...

20 Q OKAY. AT SOME POINT IN TIME, THOUGH, DID YOU  
21 RECEIVE A COPY OF THIS LAST MINUTE INFORMATION FOR THE  
22 COURT?

23 A YES, I SAW THIS LAST MINUTE INFORMATION.

24 Q DO YOU RECALL ROUGHLY WHEN?

25 JUST AN ESTIMATE IS FINE.

26 A COULD HAVE BEEN THAT DAY.

27 Q SORRY?

28 A COULD HAVE BEEN THAT DAY.

1 Q DID YOU READ IT WHEN YOU RECEIVED IT?

2 A YES.

3 Q DID YOU SEE ANYTHING IN THERE -- I SHOULDN'T  
4 SAY "ANYTHING," THAT'S PRETTY BROAD.

5 DO YOU SEE IN THERE, THE FOURTH LINE DOWN, IT  
6 SAYS:

7 "CSW SCHEELE INDICATED THAT SHE  
8 CONTACTED DR. LOTT OF [SIC] INFORMED  
9 HIM THAT THE DEVELOPMENT ASSESSMENT WAS  
10 COURT-ORDERED. DR. LOTT REPORTED THAT  
11 HE WAS UNAWARE THAT THIS MATTER WAS  
12 COURT-INVOLVED."

13 DO YOU RECALL READING THAT WHEN YOU RECEIVED  
14 THIS LAST MINUTE INFORMATION?

15 A I DID.

16 Q WAS THAT A TRUE STATEMENT?

17 A NO.

18 Q IN FACT, YOU WERE PAYING DR. LOTT AS YOUR  
19 RETAINED EXPERT?

20 A YES.

21 Q AND IF YOU TURN TO THE PAGE NO. 000973 OF THE  
22 SAME EXHIBIT.

23 A I'M THERE.

24 Q WHAT IS THAT?

25 A THIS IS A PAGE DETAILING THE SCHEDULES OF THE  
26 OTHER RECOMMENDATIONS OR ASSESSMENTS THAT DR. LOTT  
27 WANTED TO DO ON BABY RYAN.

28 Q AT THE BOTTOM THERE, WHERE IT SAYS "SCHEDULED

1 TESTING REQUESTED BY DR. LOTT," DO YOU SEE THAT?

2 A YES.

3 Q DID HE EXPLAIN TO YOU AT ALL WHY IT WAS THAT  
4 HE WAS LOOKING FOR GENETICS/GASTROENTEROLOGY IN AN MRI?

5 A YES.

6 Q CAN YOU SHARE THAT WITH US?

7 A HE WANTED TO RULE OUT POSSIBLE CONDITIONS, AND  
8 HE FELT THAT AN MRI CAN HELP US SEE IF THERE'S ANY  
9 BRAIN ABNORMALITIES, IF THERE'S SOMETHING GOING ON WITH  
10 THE BABY AS FAR AS ANY GENETIC CONDITIONS OR ANYTHING  
11 IN HIS STOMACH, OR JUST TO RULE OUT DIFFERENT  
12 CONDITIONS HE THOUGHT MAY BE NEEDED.

13 Q WELL, I NOTICE ON THE LAST MINUTE INFORMATION,  
14 IT'S APRIL 12TH. SO THAT'S ABOUT FIVE MONTHS INTO THIS  
15 JUVENILE DEPENDENCY PROCESS.

16 IS THAT YOUR RECOLLECTION?

17 A YES.

18 Q DO YOU HAVE ANY UNDERSTANDING AS TO WHETHER OR  
19 NOT FIVE MONTHS INTO THIS THE STUFF THAT DR. LOTT WAS  
20 REQUESTING HERE -- WHETHER OR NOT THAT HAD EVEN BEEN  
21 DONE?

22 A IT WASN'T DONE BECAUSE THERE WERE SEVERAL  
23 HEARINGS BEFORE THIS WHERE WE HAD REQUESTED FOR AN MRI,  
24 AND WE EVEN PUT A 388 PETITION, WHICH WAS DENIED, TO  
25 GET AN MRI DONE FOR MY SON.

26 Q AND THEN DR. LOTT CAME HERE AND MADE THE  
27 RECOMMENDATION AGAIN?

28 MS. SWISS: OBJECTION. LEADING.

1 THE COURT: SUSTAINED.

2 BY MR. MCMILLAN:

3 Q DID DR. LOTT MAKE THE RECOMMENDATION AGAIN  
4 THAT AN MRI, GENETICS AND GASTROENTEROLOGY, BE DONE?

5 A YES.

6 Q DO YOU HAVE ANY UNDERSTANDING AS TO WHETHER OR  
7 NOT THE GOVERNMENT RESISTED THAT EFFORT --

8 A YES.

9 Q -- TO GET THOSE TESTS DONE?

10 A YES, THEY DID.

11 Q DID ANYBODY EVER EXPLAIN TO YOU WHY THEY WERE  
12 RESISTING GETTING THESE RULE-OUT TESTS DONE?

13 A YES.

14 Q WHO WAS THAT?

15 A VICTORIA SCHEELE. WHAT I HEARD THROUGH THE  
16 COURT IN THE HEARINGS THAT I WAS THERE.

17 Q LET'S START WITH VICTORIA SCHEELE.

18 WHY DID VICTORIA SCHEELE TELL YOU THEY WERE  
19 RESISTING GETTING THESE RULE-OUT TESTS DONE?

20 MS. SWISS: OBJECTION. HEARSAY.

21 THE COURT: SUSTAINED.

22 BY MR. MCMILLAN:

23 Q WELL, YOU'RE SUING MS. SCHEELE; RIGHT?

24 A I AM.

25 Q IN PART YOU'RE SUING MS. SCHEELE -- WELL, WHY  
26 ARE YOU SUING MS. SCHEELE?

27 A SHE LIED ON REPORTS ABOUT ME, SHE  
28 DISCRIMINATED AGAINST ME AND MY PARENTS, SHE TREATED ME



1 HORRIBLY.

2 Q SO GOING BACK FOR A MOMENT TO THIS  
3 CONVERSATION THAT YOU HAD WITH MS. SCHEELE, WHAT DID  
4 SHE TELL YOU WERE THE REASONS WHY THEY WERE SO  
5 RESISTANT TO THIS RULE-OUT TESTING?

6 MS. SWISS: OBJECTION. HEARSAY. LACKS  
7 FOUNDATION.

8 THE COURT: SUSTAINED AS TO HEARSAY.  
9 BY MR. MCMILLAN:

10 Q YOUR HONOR, CAN I HAVE A QUESTION, SIDEBAR?

11 THE COURT: SURE.

12 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
13 SIDEBAR.)

14 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE  
15 PRESENT.

16 MR. MCMILLAN?

17 MR. MCMILLAN: I'M JUST HAVING A LITTLE BIT  
18 OF -- I'M STRUGGLING WITH THE HEARSAY OBJECTION. SHE'S  
19 A PARTY OPPONENT. SHE'S A PARTY-AFFILIATED WITNESS.  
20 THE COUNTY IS ITSELF A DEFENDANT IN THE CASE. I'M NOT  
21 EXACTLY SURE HOW MS. SCHEELE'S STATEMENTS TO MS. DUVAL  
22 WOULD CONSTITUTE INADMISSIBLE HEARSAY. I WANT TO TRY  
23 TO WORK AROUND IT IF I CAN. IF IT'S A FOUNDATIONAL  
24 PROBLEM, THEN MAYBE I CAN ADDRESS IT, BUT I'M NOT  
25 SEEING IT.

26 THE COURT: NO, I DIDN'T SUSTAIN THE OBJECTION  
27 AS TO FOUNDATION. I SUSTAINED IT AS HEARSAY. IT'S A  
28 STATEMENT YOU'RE OFFERING FOR THE TRUTH OF THE MATTER.

1 AND IT IS -- YOU HAVEN'T CITED TO ME AN EXCEPTION TO  
2 THE HEARSAY RULE THAT WOULD PERMIT IT.

3 MR. MCMILLAN: STATEMENT AGAINST INTEREST  
4 PARTY OPPONENT.

5 THE COURT: IT'S NOT AGAINST HER INTEREST.

6 MR. MCMILLAN: IT'S AGAINST HER EMPLOYERS,  
7 AGAINST THE COUNTY THAT OPERATES THROUGH ITS PEOPLE.

8 THE COURT: YEAH, I DON'T THINK IT'S A  
9 STATEMENT AGAINST INTEREST. IT SIMPLY IS HEARSAY THAT  
10 YOU'RE ASKING FOR THE TRUTH OF THE MATTER, WHY SHE SAID  
11 THAT SHE'S RESISTING. YOU HAVEN'T SHOWN ME A  
12 NONHEARSAY PURPOSE, AND YOU HAVEN'T SHOWN ME AN  
13 EXCEPTION.

14 MR. MCMILLAN: OKAY. I'LL WORK ON THAT.

15 THE COURT: OKAY.

16 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
17 OPEN COURT IN THE PRESENCE OF THE  
18 JURY.)

19 BY MR. MCMILLAN:

20 Q GOING BACK FOR A MOMENT TO THIS CONVERSATION  
21 WITH MS. SCHEELE, DO YOU RECALL ROUGHLY WHEN THAT  
22 HAPPENED?

23 MAYBE I CAN HELP YOU. WAS IT AT A HEARING?  
24 AT A VISIT?

25 A AT A VISIT.

26 Q DO YOU RECALL A GENERAL TIME FRAME, WITHIN A  
27 30-DAY WINDOW -- I DON'T NEED THE EXACT DATE OR TIME --  
28 WHEN THAT VISIT OCCURRED?

1           A     EARLY APRIL.

2           Q     SORRY?

3           A     EARLY APRIL.

4           Q     AND THIS CONVERSATION THAT YOU HAD -- WELL,  
5     LET ME ASK YOU THIS FIRST:  WAS MS. SCHEELE THE MONITOR  
6     AT THAT VISIT, OR THE PERSON SUPERVISING THE VISIT?

7           A     YES.

8           Q     THIS CONVERSATION THAT YOU HAD WITH  
9     MS. SCHEELE, AT WHAT POINT DID IT TAKE PLACE?  WAS IT  
10    BEFORE, DURING, OR AFTER THE VISIT?

11          A     AFTER.

12          Q     JUST GENERALLY SPEAKING, WHAT WAS GOING ON  
13    AFTER THE VISIT, BETWEEN YOU AND MS. SCHEELE?

14          A     SHE HAD TOLD ME THAT THE -- SHE WAS CONCERNED  
15    ABOUT ME, THAT SHE SAW ME MAKING ALL THESE EFFORTS AND  
16    THAT THINGS WERE NOT GOING TO GO MY WAY, AND SHE WAS  
17    CONCERNED ABOUT IT.

18          Q     LET ME JUST STOP YOU RIGHT THERE.  SHE'S  
19    TELLING YOU THINGS AREN'T GOING TO GO YOUR WAY.

20                   DID YOU HAVE SOME REACTION TO THAT?

21                   MS. SWISS:  OBJECTION.  LEADING.  CALLS FOR  
22    HEARSAY.

23                   MR. MCMILLAN:  I'LL WITHDRAW THAT, YOUR HONOR,  
24    JUST TO SAVE TIME.

25                   BY MR. MCMILLAN:

26          Q     DID YOU HAVE SOME REACTION WHEN MS. SCHEELE IS  
27    TELLING YOU THOSE THINGS?

28          A     YES.

1 Q SHARE THAT WITH US. WHAT WAS YOUR REACTION?

2 A I WAS SURPRISED AND I WAS UPSET.

3 Q WHY?

4 A BECAUSE THE PROCEEDINGS ARE NOT OVER. THERE  
5 ARE STILL TESTS TO BE DONE. AND SHE'S ALREADY TELLING  
6 ME THAT ALL THESE THINGS I'M DOING, THEY'RE NOT GOOD.  
7 AND I'M NOT GOING TO -- TO WIN.

8 Q DID SHE SAY ANYTHING ELSE DURING THAT  
9 CONVERSATION?

10 A YES.

11 Q SHARE THAT WITH US.

12 A SHE SAID THAT MY ATTORNEY WAS PUTTING THINGS  
13 IN MY HEAD, AND THAT SHE JUST WANTED TO MAKE SURE THAT  
14 I WAS GOING TO BE OKAY.

15 Q I'M NOT UNDERSTANDING. WHAT DO YOU MEAN, SHE  
16 WANTED TO MAKE SURE YOU'RE GOING TO BE OKAY?

17 MS. SWISS: OBJECTION. SPECULATION. HEARSAY.

18 THE COURT: SUSTAINED AS TO SPECULATION.

19 BY MR. MCMILLAN:

20 Q AT THAT POINT IN TIME, WHEN YOU WERE IN THE  
21 DEPTHS OF THAT CONVERSATION WITH MS. SCHEELE, DID YOU  
22 HAVE AN UNDERSTANDING OF WHAT SHE MEANT, YOU, WHAT SHE  
23 MEANT WHEN SHE ASKED YOU WHETHER OR NOT YOU'RE GOING TO  
24 BE OKAY?

25 A YES.

26 Q WHY DON'T YOU SHARE THAT UNDERSTANDING WITH  
27 US?

28 A BASICALLY, SHE HAD A CONCERN THAT I WOULDN'T

1 BE ABLE TO HANDLE THE FACT THAT I WAS GOING TO LOSE.

2 Q DID YOU RESPOND IN ANY WAY?

3 A I DID.

4 Q SHARE THAT WITH US.

5 A WELL, I ASKED HER, HOW CAN SHE KNOW I'M GOING  
6 TO LOSE IF THERE ARE TESTS TO BE DONE, AND DR. LOTT HAS  
7 NOT EVEN COMPLETED HIS FULL EVALUATION, AND THERE'S  
8 STILL NOT REPORTS THAT HE HAS GIVEN TO THE COURT? HOW  
9 CAN SHE KNOW THAT?

10 Q DID SHE ANSWER YOUR QUESTION?

11 A SHE DID.

12 Q WHAT DID SHE SAY?

13 A SHE SAID THAT SHE DOESN'T KNOW HOW I WANT THE  
14 BABY TO HAVE AN MRI AND TO HAVE ALL THESE INTERVENTIONS  
15 BECAUSE THAT CAN PUT THE BABY AT RISK. AND WE JUST  
16 ARGUED AT THAT POINT ABOUT IT.

17 Q HOW DID THE CONVERSATION END?

18 A SHE TOLD ME THAT THINGS ARE NOT GOING TO GO MY  
19 WAY, AND THAT BY THE TIME THEY ARE DONE WITH ME, I  
20 WOULDN'T BE ABLE TO GET OUT OF BED.

21 Q WHAT DID YOU DO WHEN YOU HEARD THAT?

22 A I TOLD HER THAT FOR MY SON, I WILL GET OUT OF  
23 BED. AND I PICKED UP THE TOYS AND I JUST WALKED OUT.

24 MR. MCMILLAN: ONE MOMENT.

25 BY MR. MCMILLAN:

26 Q DO YOU RECALL ABOUT HOW OLD HE WAS THEN?

27 A 23 MONTHS, I THINK. SOMETHING LIKE THAT.

28 Q THERE'S A BINDER UP THERE, OR THERE SHOULD

1 BE -- ACTUALLY, THEY'RE RIGHT THERE NEXT TO YOU.  
2 THERE'S A STACK OF PICTURES. IF YOU COULD SORT THROUGH  
3 THOSE PICTURES THERE, AND FIND ME, IF YOU WOULD, IF  
4 THERE IS ONE, A PICTURE OF BABY RYAN AT AROUND THAT  
5 AGE. AND ON THE BACK THERE SHOULD BE SOME NUMBERS, I  
6 GUESS THEY'RE TAGGED ON THOSE.

7 A YOU MEAN PICTURES AROUND THIS TIME?

8 Q YEAH. WITHIN, YOU KNOW, 30 DAYS OR SO, PLUS  
9 OR MINUS, IF YOU HAVE SOMETHING.

10 A I DON'T SEE PICTURES FROM AROUND THAT TIME  
11 HERE.

12 Q WELL, LET ME ASK YOU THIS: WERE YOU ALLOWED  
13 TO TAKE PICTURES DURING THESE MONITORED VISITS?

14 MS. SWISS: OBJECTION. RELEVANCE.

15 THE COURT: SUSTAINED.

16 BY MR. MCMILLAN:

17 Q NOW, AT SOME POINT IN TIME, YOU STARTED  
18 TREATING WITH DR. BUDIN; DO YOU REMEMBER THAT? WHEN  
19 DID YOU FIRST START TREATING WITH DR. BUDIN?

20 I'M SORRY, ACTUALLY, IT'S NOT DOCTOR. I THINK  
21 IT'S MR. BUDIN, THE THERAPIST; CORRECT?

22 A YES.

23 Q AT WHAT POINT IN TIME DID YOU FIRST START  
24 TREATING WITH MR. BUDIN?

25 A NOVEMBER 2009.

26 Q DO YOU REMEMBER ROUGHLY WHEN IN NOVEMBER 2009?

27 A THE FIRST ONE WAS NOVEMBER 10TH, AROUND THERE.

28 Q DID YOU CONTINUE -- WELL -- YEAH, DID YOU

1 CONTINUE TREATING WITH DR. BUDIN?

2 A YES.

3 Q FOR HOW LONG?

4 I'M SORRY, I CALLED HIM DOCTOR AGAIN TOO.

5 MR. BUDIN.

6 DID YOU CONTINUE TREATING WITH MR. BUDIN?

7 A YES.

8 Q UNTIL WHEN?

9 A UNTIL PRESENT.

10 Q NOW, IN THESE SESSIONS THAT YOU WOULD HAVE  
11 WITH MR. BUDIN, DID YOU EVER DISCUSS WITH HIM YOUR  
12 CONVERSATIONS WITH MS. SCHEELE?

13 A YES.

14 Q MORE THAN ONCE?

15 A YES.

16 Q DID HE HAVE ANY SUGGESTIONS FOR YOU ABOUT HOW  
17 YOU MIGHT DEAL WITH YOUR CONCERNS ABOUT WHAT  
18 MS. SCHEELE WAS REPORTING TO THE COURTS?

19 MS. SWISS: OBJECTION. RELEVANCE.

20 THE COURT: OVERRULED.

21 THE WITNESS: NUMEROUS TIMES, YES.

22 BY MR. MCMILLAN:

23 Q I'M SORRY?

24 A NUMEROUS TIMES, YES.

25 Q WHAT WERE SOME OF HIS SUGGESTIONS ABOUT HOW  
26 YOU MIGHT DEAL WITH THAT SITUATION?

27 A REQUEST VIDEOTAPING. ASK HER FOR  
28 ACCOMMODATIONS.

1 Q ASK HER FOR WHAT? I'M SORRY.

2 A ACCOMMODATIONS.

3 ASK HER FOR REPORTS, MEDICAL REPORTS. OR TO  
4 HAVE THIRD PARTIES, NEUTRAL THIRD PARTIES PRESENT AT  
5 OUR VISITS.

6 Q LET ME MAKE SURE I'VE GOT THIS RIGHT. I'VE  
7 GOT HIS SUGGESTION THAT YOU REQUEST ACCOMMODATIONS,  
8 MEDICAL INFORMATION REPORTS, POTENTIALLY A VIDEOTAPE OF  
9 THE VISITS, OR THAT A NEUTRAL THIRD PARTY BE PRESENT TO  
10 WITNESS THE VISITS.

11 DID I GET THAT RIGHT?

12 A YES.

13 Q LET'S JUST START WITH VIDEOTAPE.

14 DID YOU MAKE THAT REQUEST OF MS. SCHEELE?

15 A YES.

16 Q TELL US, HOW DID THAT GO?

17 A SHE SAID NO; SHE DENIED IT.

18 Q DID SHE SAY WHY?

19 A BECAUSE THE DEPARTMENT JUST DOESN'T DO THAT.

20 Q BUT DID SHE EXPLAIN WHY?

21 A THAT WAS THE WHY, THE DEPARTMENT JUST DOESN'T  
22 DO THAT.

23 Q WELL, DID YOU ASK HER WHY NOT?

24 A THAT WAS WHAT I WAS TOLD AND THAT'S WHERE I  
25 LEFT IT.

26 Q WHAT ABOUT THE IDEA OF HAVING A NEUTRAL THIRD  
27 PARTY THERE TO WITNESS THE VISITS?

28 A SHE SAID NO.



1 Q DID YOU ASK HER WHY NOT?

2 A SHE SAID THAT SHE WAS THE ONE ASSIGNED TO THE  
3 CASE AND SHE WILL STAY AS THE PERSON IN THE CASE.

4 Q WHAT ABOUT THESE MEDICAL REPORTS OR MEDICAL  
5 INFORMATION? WHAT WAS IT THAT YOU WERE LOOKING FOR  
6 THERE?

7 A I HAD REQUESTED FOR THE MEDICAL RECORDS TO SEE  
8 IF ANY OF THE TESTS HAD BEEN DONE. AND ONE PERSON --  
9 SHE SAID THAT THEY WERE DONE, AND THEN DR. EGGE SAID,  
10 "WELL, NO, THEY HAVEN'T BEEN DONE." AND SO THERE WAS  
11 LIKE THIS BACK AND FORTH. AND I SPECIFICALLY ASKED HER  
12 AND SENT HER A LETTER, YOU KNOW, "TELL ME WHERE -- YOU  
13 KNOW, I'M ALLOWED TO HAVE THE MEDICAL RECORDS."

14 Q DID SHE EVER GET YOU THOSE MEDICAL RECORDS  
15 THAT YOU WERE LOOKING FOR?

16 A I ENDED UP REQUESTING IT AFTER -- AFTER THE  
17 CONVERSATION WITH HER.

18 Q AND THEN THESE ACCOMMODATIONS, WHAT ARE WE  
19 TALKING ABOUT THERE? WHAT ACCOMMODATIONS?

20 A PEACEFUL VISITATION. I HAD ASKED IF THEY  
21 COULD CLEAN THE ROOMS BEFORE I CAME TO THE VISITS  
22 BECAUSE THEY WERE REALLY, REALLY DIRTY. AND I HAD  
23 ASKED HER TO STOP STRESSING ME OUT OR TALKING,  
24 INTERRUPTING MY VISITS FOR NO REASONABLE -- NOTHING  
25 REASONABLE, TO STOP SO THAT I COULD FOCUS ON HAVING MY  
26 TIME WITH MY SON.

27 Q WHEN YOU SAY STOP INTERRUPTING VISITS, WHAT  
28 SORT OF INTERRUPTIONS ARE WE TALKING ABOUT THERE?

1           A       THERE WERE ALL SORTS OF THINGS. ONE DAY,  
2           RIGHT IN THE MIDDLE OF THE VISIT, I WAS JUST HOLDING MY  
3           BABY AND SHE'S ACCUSING ME OF SUFFOCATING THE BABY.  
4           AND I'M LIKE "WHAT?" LIKE, "WHAT ARE YOU TALKING  
5           ABOUT?"

6                    ANOTHER TIME, IT WAS JUST CORRECTING MY  
7           PARENTING, ASKING ME -- ASKING ME TO LET HER COACH ME,  
8           NOT TO KISS THE BABY, NOT TO SING IN SPANISH. IT WAS  
9           ALL KINDS OF STUFF.

10          Q       WHAT DO YOU MEAN, NOT TO SING TO HIM IN  
11          SPANISH?

12          A       SHE HAD PROHIBITED ME FROM SPEAKING OR SINGING  
13          IN SPANISH TO MY SON.

14          Q       DID YOU ASK HER IF THEY COULD MAKE  
15          ACCOMMODATIONS FOR THAT, MAYBE GET A SPANISH  
16          INTERPRETER?

17          A       I DID.

18          Q       WHAT DID SHE SAY?

19          A       SHE SAID NO, SHE WAS THE CASEWORKER AND SHE  
20          WAS GOING TO STAY IN THE CASE. SO I ASKED TO SPEAK TO  
21          HER SUPERVISOR.

22          Q       DID YOU GET TO SPEAK WITH HER SUPERVISOR?

23          A       I DID.

24          Q       HOW DID THAT GO?

25          A       IT WAS DENIED.

26          Q       WHAT SORT OF SONGS DID YOU USED TO SING TO  
27          YOUR SON?

28                    MS. SWISS: OBJECTION. RELEVANCE.

1 THE COURT: OVERRULED.

2 THE WITNESS: NURSERY RHYMES IN SPANISH.

3 BY MR. MCMILLAN:

4 Q DO YOU REMEMBER ANY OF THE NAMES?

5 A YES.

6 Q CAN YOU SHARE THOSE WITH US?

7 A YES.

8 Q CAN YOU SHARE THE NAMES OF THE SONGS?

9 A PÍO PÍO, ARROZ CON LECHE.

10 Q DID YOU EVER -- WHEN YOU USED TO FEED  
11 BABY RYAN, WHEN YOU WERE TRYING TO GIVE HIM NEW FOODS  
12 AND THINGS, DID YOU SING TO HIM THEN?

13 A YES.

14 Q WHY?

15 A TO CREATE A HAPPY MOMENT, TO DISTRACT HIM  
16 WHEN -- AT TIMES WHEN HE JUST WOULDN'T EAT. JUST TO --  
17 TO BE HAPPY DURING THE MEALTIME.

18 Q AND WHEN YOU WERE AT THESE MONITORED VISITS,  
19 WERE YOU TRYING TO FEED YOUR BABY THEN?

20 A YES, AT TIMES.

21 Q AND HOW DID YOU GO ABOUT DOING THAT? DID  
22 YOU -- WOULD YOU SING HIM A SONG?

23 A YES.

24 MS. SWISS: OBJECTION. LEADING.

25 THE COURT: SUSTAINED.

26 BY MR. MCMILLAN:

27 Q HOW DID YOU GO ABOUT TRYING TO GET YOUR SON TO  
28 EAT DURING THOSE VISITS?

1           A       I WILL SING, I WILL TURN PLAY INTO  
2 OPPORTUNITIES TO EAT AND BE HAPPY AND HAVE SNACKS  
3 THROUGH OUR PLAY.

4           Q       WERE YOU PRAISED FOR THAT? IN THESE REPORTS?

5           A       NO.

6           MS. SWISS: OBJECTION. VAGUE.

7           THE COURT: SUSTAINED.

8 BY MR. MCMILLAN:

9           Q       IF YOU RECALL, HOW WERE -- THESE EFFORTS THAT  
10 YOU'VE JUST DESCRIBED FOR US, HOW WERE THOSE REFLECTED  
11 IN THE COURT REPORTS?

12           MS. SWISS: OBJECTION. CALLS FOR SPECULATION.  
13 HEARSAY.

14           THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16           Q       WELL, YOU READ THE COURT REPORTS WHEN YOU GOT  
17 THEM, DIDN'T YOU?

18           A       I DID.

19           Q       EVERY ONE YOU EVER GOT?

20           A       YES.

21           Q       AND IN THOSE COURT REPORTS, THOSE COURT  
22 REPORTS THAT YOU READ WHEN YOU GOT THEM, DID YOU HAVE A  
23 CHANCE TO LOOK AND SEE WHETHER OR NOT THE ACTIVITIES  
24 DURING YOUR VISITS, YOUR MONITORED VISITS, WERE BEING  
25 REPORTED IN THOSE WRITTEN REPORTS?

26           A       I READ THE REPORTS, AND I SAW WHAT THEY SAID  
27 ABOUT THE ACTIVITIES IN THE VISIT, YES.

28           Q       DID YOU EVER SEE IN ANY OF THOSE REPORTS ANY

1 COMMENTS SPECIFICALLY ABOUT HOW YOU WERE INTERACTING  
2 WITH YOUR BABY, WHETHER IT BE FEEDING, SINGING,  
3 PLAYING, ANY OF THAT?

4 A YES.

5 Q OKAY. SHARE WITH US, IF YOU WOULD, HOW YOUR  
6 ACTIVITIES -- AND LET'S JUST FOCUS FOR A MOMENT ON THIS  
7 ONE VISIT WHEN YOU WERE WANTING TO SING TO YOUR SON.

8 HOW WAS THAT REFLECTED IN THE REPORT?

9 MS. SWISS: OBJECTION. SPECULATION. CALLS  
10 FOR HEARSAY.

11 THE COURT: OVERRULED.

12 THE WITNESS: IT WAS PORTRAYED IN A NEGATIVE  
13 WAY, AS MY SON BEING UNINTERESTED IN THE NURSERY RHYMES  
14 OR THE SINGING.

15 BY MR. MCMILLAN:

16 Q AND WHAT ABOUT YOU? WERE YOU PORTRAYED IN  
17 SOME WAY?

18 A YES.

19 Q SHARE WITH US, HOW WERE YOU PORTRAYED?

20 MS. SWISS: OBJECTION. SPECULATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: I WAS -- THE REPORT SAID THAT I  
23 WAS OUT OF ATTUNEMENT WITH MY SON, THAT I WASN'T  
24 PICKING UP HIS CUES, OR THAT I -- I WOULDN'T PROPERLY  
25 CARE FOR HIM IN DIFFERENT INSTANCES.

26 BY MR. MCMILLAN:

27 Q THIS WAS IN MORE THAN JUST ONE REPORT?

28 A YES.

1 Q HOW MANY REPORTS DID YOU HAVE THIS SORT OF  
2 NEGATIVE PORTRAYAL?

3 A EVERY REPORT. I HAVEN'T SEEN A REPORT WHERE  
4 I'VE DONE ANYTHING GOOD.

5 Q NOW, ATTUNEMENT. DID YOU UNDERSTAND WHAT THAT  
6 MEANT, ATTUNEMENT? CAN YOU EXPLAIN FOR US WHAT DOES  
7 ATTUNEMENT MEAN?

8 A ATTUNEMENT IS AWARENESS, JUST BEING AWARE OR  
9 IN TUNE WITH MY SON, SEEING WHAT HE NEEDS AND BEING  
10 ABLE TO PROVIDE WHAT HE NEEDS.

11 Q NOW, YOUR SON, WHEN YOU WERE BREAST-FEEDING  
12 YOUR SON, COULD YOU TELL WHEN HE WAS DONE?

13 A YES.

14 Q HOW?

15 A HE WILL FALL ASLEEP.

16 Q COULD YOU TELL WHEN HE WAS HUNGRY?

17 A YES.

18 Q HOW?

19 A HE WILL LATCH ON AND FEED.

20 Q HOW ABOUT LATER, AS YOU'RE FEEDING THE -- THE  
21 BABY SORT OF MIGRATED FROM BREAST MILK TO CEREALS,  
22 SOLID FOODS, THAT SORT OF THING, COULD YOU TELL WHEN HE  
23 WAS HUNGRY?

24 A YES.

25 Q HOW?

26 A HE WILL OPEN HIS MOUTH, REACH OUT FOR FOOD, HE  
27 WILL ENGAGE IN FEEDING. IF -- LET'S SAY THE WHOLE  
28 FAMILY IS SITTING DOWN, AND AT ONE POINT I'LL GO "YUM,

1 YUM, YUM," AND HE WILL MAKE THE SAME GESTURES, "OH,  
2 YUM." SO THAT'S LIKE HOW I KNEW.

3 Q SO WHEN WE GET BACK TO THIS ISSUE OF  
4 ATTUNEMENT, JUST IN YOUR OPINION, WERE YOU ABLE TO  
5 SENSE OR READ WHAT THE BABY NEEDED?

6 A YES.

7 Q AND THAT WAS BASED ON YOUR EXPERIENCE FROM  
8 BIRTH UNTIL NOVEMBER 3RD?

9 MS. SWISS: OBJECTION. LEADING.

10 THE COURT: SUSTAINED.

11 BY MR. MCMILLAN:

12 Q WHAT WAS THAT BASED ON?

13 A IT WAS BASED ON THE TRAINING THAT I GOT BEFORE  
14 TO TEACH ME HOW TO KNOW, AND FROM ME DOING IT AND --  
15 AND SEEING MY SON AND WHAT HE NEEDED AND BEING ABLE TO  
16 PICK THOSE THINGS UP AND DOING IT.

17 Q NOW, GOING FORWARD TO -- YOU TALKED A LITTLE  
18 BIT LAST WEEK ABOUT HOW YOU FOUND OUT THAT YOU WERE ON  
19 THIS CACI LIST.

20 DO YOU REMEMBER THAT?

21 A YES.

22 Q DO YOU KNOW, SITTING HERE TODAY, IF YOU ARE  
23 LISTED ON THE CALIFORNIA JUSTICE DEPARTMENT'S CHILD  
24 ABUSE CENTRAL INDEX?

25 A YES.

26 Q AND ARE YOU?

27 A YES.

28 Q BEFORE YOU HAD YOUR BABY, DID YOU EVER WORK

1 WITH CHILDREN?

2 A YES.

3 MS. SWISS: OBJECTION. RELEVANCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES, I DID.

6 BY MR. MCMILLAN:

7 Q EXPLAIN TO US IN WHAT CAPACITY?

8 A I MENTORED CHILDREN. I TAUGHT CHILDREN'S  
9 CLASSES FOR MANY YEARS. I MENTORED WOMEN WHO HAVE  
10 CHILDREN. SO AT LEAST 15 YEARS OF DOING THAT.

11 Q DO YOU DO ANY OF THAT SORT OF STUFF NOW?

12 A NO.

13 Q WHY NOT?

14 A I CAN'T. IF THERE'S A BACKGROUND CHECK, IT'S  
15 GOING TO COME UP THAT I'M REGISTERED IN THE CALIFORNIA  
16 CHILD ABUSE INDEX.

17 Q WOULD YOU LIKE TO BE ABLE TO DO THOSE THINGS?

18 A YES.

19 Q WHY IS THAT MEANINGFUL TO YOU?

20 A I WOULD LIKE TO VOLUNTEER AT ACTIVITIES AT MY  
21 SON'S SCHOOL IF I'M ABLE. I WOULD LIKE TO PARTICIPATE  
22 IN COACHING, YOU KNOW, I PRACTICE A LOT OF SPORTS, SO I  
23 WOULD LIKE TO CONTINUE THE WORK THAT I'VE DONE IN THE  
24 PAST WITH CHILDREN, SPECIALLY WITH REVOLVING MY SON.

25 Q THE WORK THAT YOU'VE DONE WITH CHILDREN, WHY  
26 IS THAT IMPORTANT TO YOU?

27 MS. SWISS: OBJECTION. RELEVANCE. ASKED AND  
28 ANSWERED.



1 THE COURT: OVERRULED.

2 THE WITNESS: I'VE GIVEN A LOT TO MY COMMUNITY  
3 IN THAT WAY, CHILDREN AT RISK. SPECIFICALLY, I SERVED  
4 CHILDREN OF SINGLE MOMS IN NEW YORK CITY, IN HARD-HIT  
5 AREAS, HERE IN SOUTH LA. I HAVE DEDICATED A LOT OF  
6 TIME INTO THAT.

7 BY MR. MCMILLAN:

8 Q BUT WHY? WHY IS THAT IMPORTANT TO YOU?

9 A TO HELP PEOPLE. I LIKE TO HELP PEOPLE.

10 Q NOW, AT SOME POINT AS THIS JUVENILE DEPENDENCY  
11 PROCESS IS MARCHING ALONG, DO YOU FILE A DISCRIMINATION  
12 COMPLAINT?

13 A I DID.

14 Q WHY DID YOU DO THAT?

15 A I KEPT REQUESTING FOR ACCOMMODATIONS AND I  
16 WASN'T BEING HEARD.

17 Q ACCOMMODATIONS FOR WHAT?

18 A ACCOMMODATIONS FOR CLEANING THE ROOMS BEFORE I  
19 GOT TO THE DCFS OFFICES; ACCOMMODATION FOR A BILINGUAL  
20 SOCIAL WORKER SO MY MOM CAN PARTICIPATE IN THE VISITS  
21 AND I CAN SING IN SPANISH TO MY SON; ACCOMMODATIONS FOR  
22 PEACEFUL PARENTING SO I CAN HAVE PEACEFUL VISITS AND  
23 FOCUS ON MY VISITATION AND BONDING WITH MY SON AND NOT  
24 HAVING TO FEEL THREATENED AND HARASSED AND TREMOR  
25 AND -- SO THOSE WERE THE ACCOMMODATIONS I REQUESTED.  
26 AND I WASN'T BEING HEARD.

27 Q WHEN YOU SAY ACCOMMODATIONS FOR THE DIRTY  
28 ROOMS, WHY WAS IT IMPORTANT TO YOU THAT THE ROOMS NOT

1 BE DIRTY?

2 A I KEPT BREAKING OUT DURING THE VISIT, OR  
3 SNEEZING, AND IN ONE OCCASION I COULDN'T BREATHE  
4 BECAUSE, YOU KNOW, THE ROOM WAS SO DIRTY. SO I KEPT  
5 ASKING FOR THE ROOMS TO BE CLEANED, AND THEY WERE  
6 DENIED. SO I WILL HAVE TO TAKE WIPES AND LITERALLY  
7 WIPE THE AREA AND BRING MY OWN BLANKETS AND SIT ON IT  
8 BECAUSE THEY JUST WOULDN'T DO IT.

9 Q AND THEN YOU SAID SO THAT YOU'RE -- YOU WANTED  
10 THE ACCOMMODATIONS OF SPANISH SPEAKING MONITORS SO YOUR  
11 MOM COULD PARTICIPATE?

12 DID I GET THAT RIGHT?

13 A YES.

14 Q EXPLAIN TO ME THE SITUATION WITH RESPECT TO  
15 YOUR MOM COMING TO THESE VISITS.

16 DID THAT HAPPEN REGULARLY?

17 A YES, MY MOM WILL COME INTO THE VISIT, AND SHE  
18 WILL BE SOMEWHAT RESTRICTED BECAUSE SHE COULDN'T SPEAK,  
19 FULLY, THE LANGUAGE. AND THEN, IF WE WANTED TO SING,  
20 SHE REALLY COULDN'T FOLLOW ALONG WITH ANY ENGLISH  
21 SONGS. SO IT WAS HARD. IT WAS VERY DIFFICULT.

22 Q HOW LONG DID THAT GO ON?

23 A ALMOST TOWARDS THE END OF THE CASE, LIKE UNTIL  
24 MAYBE JULY OF 2010.

25 Q BUT AT SOME POINT, DID SOMEONE REQUEST THAT  
26 YOUR MOM NOT COME TO VISITS?

27 A YES.

28 Q WHO WAS THAT?

1           A     VICTORIA SCHEELE.

2           Q     DID THAT HAPPEN JUST ONCE OR ON MORE THAN ONE  
3 OCCASION?

4           A     SEVERAL OCCASIONS.

5           Q     AND WHAT WAS THE OUTFALL OF ALL THAT?

6           A     MY MOM ENDED UP NOT BEING ABLE TO VISIT WITH  
7 MY SON.

8           Q     DID MS. SCHEELE EXPLAIN WHY IT WAS THAT YOUR  
9 MOM WAS NOT ALLOWED TO VISIT WITH HER GRANDSON?

10          A     SHE JUST SAID THE VISITATIONS WERE JUST FOR ME  
11 AND MY SON, RYAN, AND IT DIDN'T INCLUDE MY MOM.

12          Q     THE LAST THING I THINK THAT YOU GAVE ME IN  
13 THAT LIST WAS TREMORS.

14                   WHAT WAS IT ABOUT YOUR TREMORS THAT YOU WERE  
15 SPEAKING WITH MS. SCHEELE ABOUT?

16          A     EVERY TIME SHE CAME IN AND HAD THESE ARGUMENTS  
17 WITH ME DURING THE VISITS, I WOULD BEGIN TO TREMOR.  
18 AND THEN I COME IN AND READ ALL THIS STUFF, AND I SEE  
19 HOW THEY PORTRAY MY TREMORS ON THE REPORTS. SO I FELT  
20 THAT IT WAS ON PURPOSE THAT THEY WERE DOING IT.

21          Q     WELL, AT ANY POINT IN TIME, DID YOU TALK TO  
22 MS. SCHEELE ABOUT WHY IT WAS, WHAT THE CAUSE OF YOUR  
23 TREMORS WAS?

24          A     I DID.

25          Q     SHARE THAT WITH US.

26          A     IT WAS OUR FIRST OR SECOND MEETING EVER, I  
27 DISCLOSED TO HER THAT I HAVE A NEUROLOGICAL CONDITION,  
28 THAT I TREMOR, THAT MY BROTHER AND MY FATHER HAD IT AS

1 WELL, AND THAT THEY ARE WORSE WHEN I'M UNDER STRESS.

2 Q JUST FOR A MOMENT -- SKIPPING AWAY FROM  
3 MS. SCHEELE FOR A MOMENT, DO YOU REMEMBER WHEN YOU HAD  
4 YOUR FIRST MONITORED VISIT WITH MS. PENDER?

5 A YES.

6 Q DID YOU HAVE A SIMILAR CONVERSATION WITH HER?

7 A I HAD THAT CONVERSATION WITH HER PRIOR TO OUR  
8 FIRST MONITORED VISIT.

9 Q WHEN?

10 A WHEN SHE FIRST CAME TO MY HOUSE.

11 Q OH, OKAY. SO BACK IN OCTOBER, LIKE 22ND,  
12 21ST, SOMETHING LIKE THAT?

13 A YES.

14 Q SHARE WITH US JUST BRIEFLY WHAT IT WAS, THE  
15 SUBSTANCE OF THAT CONVERSATION, JUST WHERE YOU WERE  
16 TALKING TO MS. PENDER ABOUT YOUR TREMORS.

17 A SHE WAS SITTING IN MY LIVING ROOM, AND WE'RE  
18 GOING THROUGH PAPERWORK AND SHE'S ASKING ME ALL THESE  
19 QUESTIONS ABOUT HISTORY OF ME AND MY SON AND THE ISSUES  
20 AT THE TIME. AND I DISCLOSED TO HER THAT IF SHE SAW ME  
21 SHAKING, IT'S BECAUSE I HAVE A NEUROLOGICAL DISORDER.  
22 IT'S OKAY, THAT'S WHAT IT IS.

23 Q NOW, THIS NEUROLOGICAL DISORDER, DOES IT HAVE  
24 A NAME?

25 A YES.

26 Q WHAT IS THAT NAME?

27 A ESSENTIAL TREMOR, FAMILIAL TREMOR.

28 Q HAVE YOU ACTUALLY GONE TO A DOCTOR TO BE

1 TREATED FOR THIS CONDITION?

2 A YES.

3 Q OKAY. GOING FORWARD NOW TO YOUR  
4 JURISDICTIONAL -- WELL, ACTUALLY, WE'RE NOT DONE WITH  
5 DISCRIMINATION COMPLAINT YET. I'M SORRY.

6 YOU WERE TELLING US THAT YOU DID FILE A  
7 COMPLAINT FOR DISCRIMINATION.

8 CAN YOU SHARE WITH US THAT PROCESS? WHAT WAS  
9 THE PROCESS THAT YOU UNDERTOOK TO MAKE THAT COMPLAINT  
10 KNOWN TO THE COUNTY?

11 A SINCE I COULDN'T GET THE HELP I NEEDED, I  
12 TRIED TO FIND THE FORM NEEDED TO FILE A CIVIL RIGHTS --  
13 THE CIVIL RIGHTS DISCRIMINATION. COULDN'T FIND IT  
14 ANYWHERE, WENT TO DIFFERENT OFFICES -- IT WAS JUST HARD  
15 TO FIND.

16 FINALLY, I WAS ABLE TO FIND THE FORM AND I  
17 SUBMITTED IT TO THEIR OFFICE IN SHATTO PLACE.

18 Q WHERE DID YOU ULTIMATELY FIND THE FORMS?

19 A THROUGH AN ATTORNEY WHO I ASKED IF HE COULD  
20 GET ME THE FORM.

21 Q SO YOU GOT THE FORM.

22 DID YOU FILL IT OUT?

23 A YES.

24 Q AND THEN YOU FILED IT AT SHATTO PLACE?

25 A YES.

26 Q ROUGHLY, WHEN WAS THAT?

27 A MARCH 2010.

28 Q MARCH 2010.

1 I'M GOING TO ASK YOU TO TURN -- HOLD ON A  
2 SECOND -- TURN TO -- I THINK IT'S NO. 202. AND I THINK  
3 I HAVE TO GET THE BOOK FOR YOU.

4 IS 207 IN THAT BOOK? I'M ACTUALLY NOT QUITE  
5 READY FOR --

6 A NO, IT ENDS ON 206.

7 Q SORRY. WE'RE GOING TO GET TO THAT ONE, JUST  
8 NOT QUITE YET.

9 (PLAINTIFF'S EXHIBIT NO. 207.2732-2750  
10 WAS MARKED FOR IDENTIFICATION BY THE  
11 COURT.)

12 BY MR. MCMILLAN:

13 Q OKAY. SO WE HAVE YOU TO EXHIBIT NO. 207.  
14 GIVE ME ONE SECOND TO GET ME THERE.

15 ALL RIGHT. OKAY. IF YOU CAN LOOK AT EXHIBIT  
16 NO. 207, PAGE NO. 002732.

17 A OKAY.

18 Q ALL THE WAY THROUGH -- ALL THE WAY THROUGH --  
19 WHERE'S MY YELLOW SHEET? SORRY.

20 2732 THROUGH 2750. THERE WE GO.

21 I'M GOING TO ASK YOU FIRST -- YOU DON'T  
22 NECESSARILY NEED TO READ IT IN DETAIL YET, BUT I'M  
23 GOING TO ASK YOU FIRST IF THAT BATES RANGE IS AN  
24 ACCURATE, TRUE, AND CORRECT COPY OF THE CIVIL RIGHTS  
25 COMPLAINT OF DISCRIMINATORY TREATMENT THAT YOU FILED.

26 A YES.

27 Q SO THERE'S A LOT OF INFORMATION HERE.

28 CAN YOU GIVE US THE SUMMARY, THE GENERAL GIST

1 OF WHAT IT WAS YOU WERE COMPLAINING ABOUT?

2 A YES.

3 Q PLEASE DO.

4 A VIOLATION OF CIVIL RIGHTS BASED ON RACE,  
5 RELIGION, NATIONAL ORIGIN, POLITICAL AFFILIATION,  
6 DISABILITY, AGE, MARITAL STATUS.

7 Q OKAY.

8 A TO SEVERAL SOCIAL WORKERS.

9 Q WERE YOU MAKING CLAIMS AGAINST ALL OF THE  
10 SEVERAL SOCIAL WORKERS ON ALL OF THOSE BASES?

11 DO YOU UNDERSTAND MY QUESTION?

12 A I DO.

13 Q WAS YOUR COMPLAINT THE SAME AGAINST EVERY  
14 SOCIAL WORKER?

15 A NO. DIFFERENT BASES WERE TO DIFFERENT SOCIAL  
16 WORKERS.

17 Q OKAY. LET'S JUST START, THEN, WITH RACE.

18 YOU MADE A COMPLAINT AGAINST SOMEBODY BASED ON  
19 RACIAL DISCRIMINATION?

20 A YES.

21 Q WHO?

22 A SUSAN PENDER AND VICTORIA SCHEELE.

23 Q WHAT WAS THE REASON THAT YOU PUT DOWN IN YOUR  
24 COMPLAINT -- WHY WAS IT YOU WERE COMPLAINING AGAINST  
25 MS. PENDER ON THE BASIS OF RACIAL DISCRIMINATION?

26 A I HAD TOLD MS. PENDER I FED MY SON, RYAN,  
27 FOODS FROM THE DOMINICAN REPUBLIC. AND ON ONE OCCASION  
28 SHE MADE IT SEEM LIKE THOSE FOODS WERE NOT GOOD ENOUGH.

1 AND I WAS SURPRISED BY THAT BECAUSE I GREW UP ON THOSE  
2 FOODS AND I TURNED OUT TO BE OKAY. SO I FELT LIKE I  
3 WAS BEING SINGLED OUT BASED ON THAT.

4 Q FOODS FROM THE DOMINICAN REPUBLIC, LIKE WHAT  
5 SORTS OF FOODS?

6 A RICE, PORRIDGE, RICE AND BEANS, DISHES MADE  
7 WITH CORN, THOSE KIND OF THINGS.

8 Q OKAY. STILL ON RACE, WAS THERE ANYTHING ELSE  
9 BESIDES WHAT YOU'VE ALREADY SHARED WITH US IN RELATION  
10 TO MS. PENDER AND THE BASIS FOR YOUR RACIAL  
11 DISCRIMINATION CLAIM AGAINST HER?

12 A AT THE TIME, I FELT THAT BECAUSE THE FATHER OF  
13 MY SON WAS WHITE, THAT I WAS GETTING A DIFFERENT  
14 TREATMENT BECAUSE I'M BLACK HISPANIC.

15 Q AND THEN AS TO MS. SCHEELE, I THINK YOU SAID  
16 YOU ALSO MADE SOME COMPLAINTS AGAINST HER?

17 A YES.

18 Q WHAT WERE THE BASES OF THE COMPLAINTS MADE  
19 AGAINST MS. SCHEELE?

20 A RACE, NATIONAL ORIGIN, AND DISABILITY.

21 Q NATIONAL ORIGIN, WHY WERE YOU RAISING A  
22 COMPLAINT AGAINST MS. SCHEELE AS TO NATIONAL ORIGIN?

23 A WELL, SIMILAR. I SPEAK SPANISH. SHE KNEW I  
24 SPEAK SPANISH. I REQUESTED FOR A BILINGUAL MONITOR FOR  
25 MY VISITS, AND I WAS DENIED THAT ACCOMMODATION.

26 Q WELL, DID YOU ASK HER MORE THAN ONCE?

27 A YES.

28 Q HOW MANY TIMES DID YOU ASK HER FOR THAT



1 ACCOMMODATION?

2 A AT LEAST THREE TIMES.

3 Q DID YOU EVER ASK HER IN WRITING?

4 A I DON'T RECALL IF I HAD ASKED HER IN WRITING.

5 Q AND THEN I THINK YOU ALSO SAID THAT YOU  
6 COMPLAINED AGAINST MS. SCHEELE ON THE BASIS OF  
7 DISABILITY?

8 A YES.

9 Q SHARE WITH US, WHAT WAS THAT -- WHAT WAS THAT  
10 ALL ABOUT?

11 A SHE HAD SUGGESTED TO ME AND IN REPORTS THAT I  
12 HAD PSYCHOSOCIAL ISSUES, THAT I HAD POSSIBLE  
13 MUNCHAUSEN, AND THEN HARASSING ME OVER MY TREMORS, I  
14 FELT DISCRIMINATED BY MS. SCHEELE.

15 Q WHAT ABOUT -- WE'VE COVERED MS. PENDER AND  
16 MS. SCHEELE.

17 DID YOU COMPLAIN ABOUT ANOTHER SOCIAL WORKER  
18 AS WELL?

19 A YES.

20 Q WHO WAS THAT?

21 A CANDIS NELSON.

22 Q AND WE HAVEN'T GOTTEN TO HER YET IN THE  
23 GENERAL FLOW OF THINGS, BUT IN RELATION TO THE JUVENILE  
24 DEPENDENCY PROCESS THAT YOU WERE INVOLVED IN, WHAT WAS  
25 HER RELATIONSHIP TO YOU, MS. NELSON?

26 A SHE WAS THE DEPENDENCY INVESTIGATOR FOR THE  
27 CASE.

28 Q AND WHAT WAS THE BASIS OF YOUR COMPLAINT

1 AGAINST MS. NELSON?

2 A POLITICAL AFFILIATION AND DISABILITY.

3 Q POLITICAL AFFILIATION, WHAT WAS THAT ALL  
4 ABOUT?

5 A WELL, IN ONE OF THE ATTACHMENTS TO THE COURT,  
6 I NOTICED SHE WENT ONTO MY FACEBOOK PAGE AND PRINTED  
7 ALL THE STUFF ABOUT -- I DIDN'T EVEN KNOW WHY SHE WENT  
8 ONTO -- OR WHY IT WAS RELEVANT TO BRING UP MY FACEBOOK  
9 ACCOUNT ON POLITICAL ISSUES THAT I MAY HAVE OR I MAY  
10 TAKE A STAND ON. I DIDN'T KNOW WHAT WAS THE RELEVANCE  
11 TO THE PROCEEDINGS IN DEPENDENCY PROCEEDINGS.

12 Q SO I GUESS YOU DO HAVE SOME POLITICAL  
13 PERSUASIONS AND POSTINGS ON FACEBOOK?

14 A I DID AT THAT TIME, YES.

15 Q YOU DON'T ANYMORE?

16 A I DO STILL.

17 Q DIDN'T LEARN YOUR LESSON?

18 A I AM...

19 Q THEN YOU ALSO COMPLAINED ABOUT -- I THINK YOU  
20 SAID DISCRIMINATION; IS THAT RIGHT? I'M SORRY, NOT --  
21 THAT'S VAGUE. WHAT -- DISABILITY DISCRIMINATION.

22 YOU COMPLAINED ABOUT CANDIS NELSON IN RELATION  
23 TO DISABILITY DISCRIMINATION?

24 A YES.

25 Q SHARE WITH US, WHAT WAS THAT ABOUT?

26 A IT WAS REGARDING MS. NELSON SUGGESTING THAT I  
27 HAD MUNCHAUSEN SYNDROME BY PROXY WHEN SHE WASN'T  
28 QUALIFIED TO MAKE THOSE STATEMENTS IN COURT REPORTS.

1 Q NOW, TELL US ABOUT THE PROCESS, THAT YOU FILED  
2 THIS COMPLAINT -- AND AGAIN, I HAVEN'T GONE THROUGH IT  
3 WITH YOU IN DETAIL, BUT THERE'S A LOT OF HANDWRITTEN  
4 MATERIAL IN HERE. AND IF YOU CAN JUST LOOK THROUGH  
5 PARTICULARLY 002732 THROUGH 002741.

6 AND MY REAL QUESTION IS: IS THAT ALL YOUR  
7 HANDWRITING?

8 A NOT ALL OF IT, NO.

9 Q WHICH PAGES CONTAIN WRITING THAT IS NOT YOUR  
10 HANDWRITING?

11 A 002733, IT GOES BOTH MY HANDWRITING AND THE  
12 INVESTIGATOR'S HANDWRITING. 2734, -35, -36. -37  
13 MOSTLY IS MINE EXCEPT A SENTENCE WHERE SOMEONE WROTE ON  
14 IT. AND THE SAME WITH 2738.

15 Q THAT IS, IT'S MOSTLY YOURS?

16 A MOSTLY MINE BUT THE INVESTIGATOR WROTE ON IT  
17 AS WELL.

18 IN REGARDS TO 2739, SOME OF IT IS MINE AND  
19 MOST OF IT IS THE INVESTIGATOR. 2740 IS ALL THE  
20 INVESTIGATOR. AND 2741 AS WELL.

21 Q IS ALSO THE INVESTIGATOR?

22 A YES.

23 Q THEN I SEE A CONSENT FORM.

24 IS THAT YOUR SIGNATURE ON THE CONSENT FORM AT  
25 002742?

26 A YES.

27 Q AND THEN IT CARRIES ON WITH SOME HANDWRITTEN  
28 DOCUMENTS AT 002746 ALL THE WAY THROUGH TO 002750.

1 DO YOU SEE THAT?

2 A YES.

3 Q THE HANDWRITING CONTAINED ON THOSE, THE FIVE  
4 PAGES, IS THAT ALL YOUR HANDWRITING OR IS IT A MIXTURE  
5 LIKE THE OTHERS?

6 A SOME ARE A MIXTURE AND SOME ARE NOT.

7 Q OKAY. WHY DON'T WE DO THIS: IT SEEMS LIKE  
8 MOST OF THEM -- AND CORRECT ME IF YOU DISAGREE, BUT IT  
9 SEEMS LIKE MOST OF THE PAGES HERE CONTAIN BOTH YOUR  
10 HANDWRITING AND SOME OTHER PERSON'S HANDWRITING.

11 A YES.

12 Q OKAY. WHO IS THAT OTHER PERSON?

13 A MICHELLE HOCHSTEIN. ON -- ON THE PAGES 2746  
14 THROUGH 2750 IS BOTH OF OUR HANDWRITINGS.

15 Q SO THE LAST SET OF HANDWRITTEN PAGES, THOSE  
16 ARE BOTH YOU AND MS. HOCHSTEIN?

17 A YES.

18 Q WHAT ABOUT THE FIRST SET OF HANDWRITTEN PAGES,  
19 FROM 2733 ALL THE WAY THROUGH 2741, ARE THOSE ALSO YOU  
20 AND MS. HOCHSTEIN?

21 A NO, THIS IS NOT HER SIGNATURE.

22 Q WHICH ONE ARE YOU LOOKING AT?

23 A THE 2734 THROUGH 2741.

24 Q SO NONE OF THOSE ARE MS. HOCHSTEIN?

25 A NO. DIFFERENT TYPE OF HANDWRITING TOO. NO.

26 Q OKAY. DO YOU KNOW WHO THAT WAS THAT WAS  
27 WRITING THAT OTHER INFORMATION?

28 A WELL, THE ONLY PERSON I SAT DOWN AND DID THIS

1 WITH WAS MS. MORGAN-NICHOLS.

2 Q OKAY.

3 A SO I'M NOT SURE IF THIS IS HER SIGNATURE OR --

4 Q OKAY. MAYBE I CAN HELP YOU OUT. LET'S GO  
5 BACK TO THE PROCESS.

6 YOU FILED THIS COMPLAINT; RIGHT?

7 A YES.

8 Q DID YOU GET A PHONE CALL, A LETTER, AN E-MAIL,  
9 SOMETHING SOMEWHERE WHERE SOMEBODY IS CONTACTING YOU TO  
10 SAY "WE GOT THE COMPLAINT"?

11 A I GOT A PHONE CALL.

12 Q FROM WHO?

13 A LYNETTE MORGAN-NICHOLS.

14 Q WHO IS LYNETTE MORGAN-NICHOLS?

15 A AT THE TIME, SHE WAS OVERSEEING THE -- OR SHE  
16 WAS A MANAGER OF THE CIVIL RIGHTS INVESTIGATION UNIT --

17 Q OKAY.

18 A -- OF DCFS.

19 Q OKAY. SHARE WITH US THE SUBSTANCE OF WHAT  
20 HAPPENED DURING THAT PHONE CALL.

21 A SHE ASKED ME TO COME IN FOR AN INTERVIEW SO  
22 THAT THEY CAN REVIEW MY CLAIM.

23 Q DID YOU DO THAT?

24 A YES, I DID.

25 Q TELL US ABOUT THAT. WHAT HAPPENED AT THAT  
26 INTERVIEW?

27 A I CAME IN. WE DISCUSSED THE ISSUES IN THE  
28 ORIGINAL COMPLAINT. AND THEN THEY TOLD ME THAT I

1       NEEDED TO PUT IT IN THIS FORMAT IN ORDER THEM TO BE  
2       ABLE TO DO AN INVESTIGATION AND SPEAK TO THE DIFFERENT  
3       SOCIAL WORKERS, AND THEN THEY WILL LET ME KNOW WHAT THE  
4       OUTCOME WAS.

5           Q       OKAY. AND WHEN YOU SAY "THIS FORMAT," JUST SO  
6       WE HAVE A CLEAR RECORD, WHAT IS IT EXACTLY THAT YOU  
7       WERE REFERENCING WHEN YOU SAID "THIS FORMAT"?

8           A       I HAD TO MAKE STATEMENTS IN THIS -- THIS TYPE  
9       OF FORMS.

10          Q       HOLD ON A SECOND. THE FORMS THAT ARE DEPICTED  
11       IN EXHIBIT NO. 207, WHICH SPECIFIC BATES NUMBERS ARE  
12       YOU REFERENCING?

13          A       2733 THROUGH 2741.

14          Q       OKAY. AND THOSE ARE THE FORMS THAT THEY  
15       WANTED YOU TO BE MORE SPECIFIC ABOUT IN YOUR COMPLAINT?

16          A       YES.

17          Q       EACH OF THOSE FORMS, IF YOU LOOK AT THE BOTTOM  
18       OF THEM -- WE CAN USE 2733 AS AN EXAMPLE. IT SAYS:

19                    "I'VE READ THE ABOVE STATEMENT AND  
20                    IT IS MY OWN, WRITTEN BY THE  
21                    INVESTIGATOR IN THE ABOVE-REFERENCED  
22                    ALLEGED DISCRIMINATION COMPLAINT. MY  
23                    SIGNATURE BELOW INDICATES THAT I ACCEPT  
24                    AND DECLARE UNDER THE PENALTY OF  
25                    PERJURY UNDER THE LAWS OF THE STATE OF  
26                    CALIFORNIA THAT THE FOREGOING IS TRUE  
27                    AND CORRECT."

28                    FIRST, DID I READ THAT CORRECTLY?

1           A     YES.

2           Q     IN EVERY ONE OF THOSE FORMS, DOES IT HAVE A  
3     SIMILAR STATEMENT?  ACTUALLY, AN IDENTICAL STATEMENT?

4           A     YES.

5           Q     AND WHEN YOU SIGNED THOSE FORMS, DID YOU READ  
6     THAT STATEMENT?

7           A     YES.

8           Q     YOU UNDERSTOOD IT?

9           A     YES.

10          Q     AND JUST CHECK FOR ME, IF YOU COULD, BECAUSE,  
11     FRANKLY, I CAN'T DECIPHER THE SIGNATURES.

12                    ARE THE SIGNATURES ON THE BOTTOMS OF EACH OF  
13     THOSE PAGES YOURS?

14          A     ONE IS MINE AND ONE IS THE OTHER PERSON.

15          Q     OH, WHERE IT SAYS "INVESTIGATOR'S SIGNATURE,"  
16     THAT'S SOMEBODY ELSE?

17          A     YES.

18          Q     SO TELL ME, THIS -- THIS FILLING-OUT-THIS-FORM  
19     PROCESS, HOW DID THAT GO?  WERE YOU THERE DOING IT  
20     ALONE?  WAS SOMEBODY WITH YOU?  HOW DID THAT GO?

21          A     NO, THE INVESTIGATOR WAS THERE.  AND BECAUSE  
22     IT WAS UNDER PENALTY OF PERJURY, I WANTED TO FILL IT  
23     OUT SO IT'S MY THOUGHTS.

24                    AND SHE SAID, "WELL, NO, I HAVE TO WRITE ON IT  
25     AS WELL."

26                    AND I SAID, "WELL, YOU WRITE ON IT, BUT I'M  
27     GOING TO MAKE SURE THAT WHATEVER I'M SIGNING UNDER  
28     PENALTY OF PERJURY IS WHAT I BELIEVE HAPPENED."

1                   AND SO THAT'S WHY YOU SEE ALL THIS BACK AND  
2 FORTH, HER WRITING, MY WRITING BECAUSE I DIDN'T WANT TO  
3 SIGN UNDER PENALTY OF PERJURY TO WHAT SOMEBODY ELSE IS  
4 WRITING.

5                   SO THAT'S -- THAT WAS THE PROCESS OF ALL THIS.

6           Q        AND WAS IT MS. MORGAN-NICHOLS THAT YOU MET  
7 WITH FIRST OR MS. HOCHSTEIN, IF YOU REMEMBER?

8           A        MS. MORGAN-NICHOLS FIRST.

9           Q        AND HOW LONG WAS THAT MEETING, THAT INTERVIEW?

10          A        AT LEAST TWO HOURS, MAYBE THREE. I DON'T  
11 REMEMBER EXACTLY.

12          Q        WAS THAT THE ONLY MEETING THAT YOU HAD WITH  
13 MS. MORGAN-NICHOLS IN RELATION TO FILLING OUT THESE  
14 FORMS?

15          A        YES. THIS TIME, YES.

16          Q        WAS THERE ANOTHER TIME?

17          A        I WAS CALLED BACK A SECOND TIME, AND  
18 MS. NICHOLS INTRODUCED ME TO MS. HOCHSTEIN, WHO WAS  
19 GOING TO TAKE THE STATEMENTS ALL OVER AGAIN.

20          Q        HOW MUCH TIME PASSED BETWEEN YOUR FIRST  
21 MEETING WITH MS. MORGAN-NICHOLS WHERE YOU FILLED OUT  
22 ALL THESE FORMS WITH HER AND YOUR NEXT MEETING, WHERE  
23 SHE INTRODUCED YOU TO MS. HOCHSTEIN?

24          A        A MONTH AND LIKE A WEEK.

25          Q        OKAY. SO YOU MET WITH MS. HOCHSTEIN.

26                   AND DID MS. MORGAN-NICHOLS, DID SHE ATTEND  
27 THAT MEETING WITH THE TWO OF YOU AS WELL?

28          A        NO. SHE JUST INTRODUCED US AND THEN SHE



1 ALLOWED MS. HOCHSTEIN TO DO THE INVESTIGATION AGAIN,  
2 THE INTERVIEW.

3 Q AND TELL US ABOUT THAT. WHAT HAPPENED THERE  
4 WITH MS. HOCHSTEIN?

5 A I EXPLAINED TO HER WHY I THOUGHT I NEEDED TO  
6 BRING THIS COMPLAINT. WE WENT IN LENGTH DISCUSSING MY  
7 CONCERNS, MY FEELINGS ABOUT HOW I WAS BEING PORTRAYED.  
8 AND SHE ASKED ME A LOT OF QUESTIONS. AND I HAD ASKED  
9 HER TO ATTACH THIS TYPED NOTE --

10 Q YOU NEED TO GIVE US THE BATES NUMBER.

11 A 002743 AND 002745.

12 -- AS PART OF MY INVESTIGATION SO THAT IT IS  
13 CLEAR WHAT MY COMPLAINT WAS.

14 Q OKAY. AND JUST SO THAT THE RECORD IS CLEAR,  
15 YOU SAID 02743 AND 002745, BUT THERE'S A PAGE THERE IN  
16 THE MIDDLE?

17 A -44, SORRY.

18 Q RIGHT. THAT WAS MY QUESTION. DID YOU INTEND  
19 TO SAY 002743 ALL THE WAY THROUGH AND INCLUDING 002745?

20 A YES. SORRY ABOUT THAT.

21 Q THAT'S A STATEMENT THAT YOU TYPED UP?

22 A YES.

23 Q AND YOU GAVE IT TO MS. HOCHSTEIN AT THIS  
24 MEETING?

25 A YES.

26 Q HOW LONG WAS THIS INTERVIEW WITH  
27 MS. HOCHSTEIN? HOW LONG DID THAT LAST?

28 A APPROXIMATELY THE SAME AMOUNT OF TIME. WE HAD

1 TO DO EVERYTHING ALL OVER AGAIN, WHICH WAS TO FILL OUT  
2 ALL THESE STATEMENTS.

3 Q DID SHE EXPLAIN TO YOU WHY IT WAS THAT YOU  
4 WERE NEEDING TO GO BACK THERE AND DO THIS ALL OVER  
5 AGAIN?

6 A I DON'T REMEMBER IF THAT WAS DISCUSSED.

7 Q AND I SEE HERE ON THE FIRST -- IF YOU GO BACK  
8 TO 002732, AT THE BOTTOM OF THE PAGE, NEXT TO YOUR  
9 NAME, THERE'S A DATE THERE AS THE COMPLAINT OF  
10 DISCRIMINATORY TREATMENT?

11 A YES.

12 Q IS THAT THE DATE THAT YOU FILED THIS COMPLAINT  
13 OF DISCRIMINATORY TREATMENT WITH THE COUNTY OF  
14 LOS ANGELES DEPARTMENT OF CHILDREN AND FAMILY SERVICES?

15 A YES.

16 Q AND IF WE GO TO THE FIRST INTERVIEW STATEMENT,  
17 THERE'S A DATE THERE, JUNE 2, 2010, DOWN AT THE BOTTOM.

18 DO YOU SEE THAT?

19 A YES.

20 Q CORRECT ME IF I'M WRONG, BUT THAT'S THE DATE  
21 OF YOUR INTERVIEW?

22 A YES.

23 Q WITH MS. MORGAN-NICHOLS?

24 A YES, THE FIRST INTERVIEW.

25 Q THEN THE SECOND INTERVIEW WITH MS. HOCHSTEIN,  
26 IF WE LOOK AT 002746 AS AN EXAMPLE, THAT WOULD HAVE  
27 BEEN JULY 7, 2010?

28 A YES.

1           Q       WERE THERE ANY FURTHER MEETINGS AFTER THE  
2 SECOND ONE WITH MS. HOCHSTEIN, ANY FURTHER IN-PERSON  
3 MEETINGS?

4           A       NO.

5           Q       ANY TELEPHONE CALLS OR E-MAILS, SOMETHING  
6 LOOKING FOR MORE INFORMATION FROM YOU?

7           A       NO.

8           Q       WHEN IS THE NEXT COMMUNICATION THAT YOU HAD  
9 WITH ANYBODY FROM THE COUNTY OF LOS ANGELES RELATIVE TO  
10 YOUR COMPLAINT OF DISCRIMINATION?

11          A       I RECEIVED A LETTER SOMETIME IN OCTOBER.

12          Q       A LETTER FROM WHO?

13          A       FROM MS. HOCHSTEIN.

14          Q       OKAY. IF I CAN GET YOU TO TURN TO EXHIBIT  
15 NO. 202. AND I'LL GET IT FOR YOU BECAUSE IT'S IN A  
16 DIFFERENT BOOK.

17                   ALL RIGHT. EXHIBIT 202, BATES NO. 002692.

18                   CAN YOU DESCRIBE FOR US WHAT THAT IS?

19          A       THIS IS THE LETTER I RECEIVED FROM  
20 MS. HOCHSTEIN IN OCTOBER.

21          Q       AND IT SAYS HERE:

22                   "LETTER OF DETERMINATION, CDSS/CRB  
23 CASE NO. 1059121."

24                   DO YOU SEE THAT?

25          A       YES.

26          Q       DO YOU HAVE ANY UNDERSTANDING AS TO WHAT THAT  
27 MEANS THERE, LETTER OF DETERMINATION?

28          A       YES, THAT THEY MADE A DECISION ABOUT MY

1 COMPLAINT.

2 Q OKAY. AND THEN THIS LETTER WAS -- WHAT'S YOUR  
3 UNDERSTANDING OF THE PURPOSE OF THIS LETTER?

4 A TO LET ME KNOW THE OUTCOME OF THE  
5 INVESTIGATION.

6 Q AND WHAT WAS THE OUTCOME?

7 A THAT BASED ON THEIR INVESTIGATION THERE WAS A  
8 VIOLATION OF MY CIVIL RIGHTS BASED ON MY DISABILITIES.

9 Q IN FACT, IT SAYS, FIRST PARAGRAPH:

10 "I HAVE THOROUGHLY INVESTIGATED  
11 YOUR COMPLAINT OF DISCRIMINATION. MY  
12 INVESTIGATION INCLUDED REVIEWING  
13 PERTINENT FACTS AND INTERVIEWING THE  
14 SUBJECTS OF THE INVESTIGATION AND YOUR  
15 WITNESSES.

16 "BASED ON MY INVESTIGATION, I HAVE  
17 CONCLUDED YOUR COMPLAINT REVEALED A  
18 VIOLATION OF YOUR CIVIL RIGHTS ON THE  
19 BASIS OF YOUR DISABILITY. THERE IS  
20 EVIDENCE THAT DEPARTMENTAL STAFF  
21 INVOLVED IN YOUR CASE SUBJECTED YOU TO  
22 INAPPROPRIATE CONDUCT, DENIED YOU  
23 BENEFITS OR SERVICES, OR TREATED YOU  
24 DISPARATELY BASED ON YOUR DISABILITY."  
25 FIRST, DID I READ ALL OF THAT CORRECTLY?

26 A YES.

27 Q DO YOU RECALL WHEN IT WAS THAT YOU ACTUALLY  
28 RECEIVED THIS LETTER?

1 A SOMETIME IN OCTOBER.

2 Q DID YOU DO ANYTHING IN RESPONSE TO HAVING  
3 RECEIVED THIS LETTER?

4 A YES. I WROTE BACK.

5 Q TO WHO?

6 A TO MS. HOCHSTEIN, AND CC'D THE CALIFORNIA  
7 DEPARTMENT OF SOCIAL SERVICES.

8 Q DID MS. HOCHSTEIN RESPOND TO YOU?

9 A SOMEONE ELSE RESPONDED TO ME.

10 Q DO YOU REMEMBER WHO?

11 A MS. CONDON.

12 Q I'M SORRY?

13 A MS. CONDON.

14 Q IS THAT LYNNE CONDON?

15 A YES.

16 Q WHAT DID SHE TELL YOU?

17 A THAT THERE WAS NO EVIDENCE OF DISCRIMINATION  
18 BASED ON RACE AND SOME OF THE OTHER CATEGORIES I WAS  
19 CLAIMING.

20 Q OKAY. SHE TOLD YOU THERE WAS NO EVIDENCE OF  
21 DISCRIMINATION BASED ON SOME OF THE OTHER CATEGORIES?

22 A CORRECT.

23 Q WHAT DID SHE TELL YOU ABOUT THE DISCRIMINATION  
24 BASED ON DISABILITY?

25 A THAT THERE WAS EVIDENCE OF THE DISCRIMINATION  
26 ON THE DISABILITY.

27 Q AND THAT CAME DIRECTLY FROM MS. CONDON?

28 A YES.

1 Q IF I CAN GET YOU TO TURN TO EXHIBIT -- I'LL  
2 GET IT FOR YOU -- 705.

3 (PLAINTIFF'S EXHIBIT NO. 705, WAS  
4 MARKED FOR IDENTIFICATION BY THE  
5 COURT.)

6 BY MR. MCMILLAN:

7 Q DO YOU RECOGNIZE EXHIBIT 705?

8 A YES.

9 Q WHAT IS EXHIBIT 705?

10 A IT IS THE LETTER THAT I RECEIVED FROM  
11 MS. CONDON.

12 Q AND THIS WAS IN RESPONSE TO A LETTER THAT YOU  
13 HAD SENT TO HER; IS THAT RIGHT?

14 A YES.

15 Q AND WHAT YOU SEE HERE AS EXHIBIT NO. 705, IS  
16 THAT A TRUE AND ACCURATE DEPICTION OF THE LETTER THAT  
17 YOU RECEIVED, AT LEAST INSOFAR AS YOU RECALL?

18 A YES.

19 Q IT SAYS HERE, IN THE SECOND PARAGRAPH -- WELL,  
20 LET ME ASK YOU THIS FIRST: WHEN YOU WROTE TO HER,  
21 ASIDE FROM YOUR CONCERNS ABOUT THE OTHER VARIETIES OF  
22 DISCRIMINATION, IS THERE ANYTHING ELSE THAT YOU  
23 COMPLAINED TO HER OR SOUGHT INQUIRY OF HER ABOUT?

24 A YES.

25 Q WHAT IS THAT?

26 A WHAT WAS THE REMEDY PROCESS, THE GRIEVANCE  
27 PROCESS FOR ME NOW THAT THERE WAS A FINDING, A POSITIVE  
28 FINDING?

1 Q AND SHE TELLS YOU WHAT THE PROCESS IS, DOESN'T  
2 SHE?

3 A YES.

4 Q LET'S JUST READ IT TOGETHER.

5 SECOND PARAGRAPH:

6 "IN REGARDS TO YOUR CONCERNS ABOUT  
7 'APPROPRIATE CORRECTIVE ACTION,' DCFS  
8 HAS AN INTERNAL PROCESS TO REMEDY THE  
9 BEHAVIOR OF DEPARTMENTAL STAFF THAT  
10 WERE FOUND TO HAVE SUBJECTED YOU TO  
11 INAPPROPRIATE CONDUCT, DENIED YOU  
12 BENEFITS OR SERVICES, OR TREATED YOU  
13 DISPARATELY BASED ON YOUR DISABILITY."  
14 DID I READ THAT RIGHT?

15 A YES.

16 Q DID ANYBODY EVER TELL YOU WHAT WOULD HAPPEN TO  
17 THESE PEOPLE?

18 A NO.

19 Q DO YOU KNOW INDEPENDENTLY OF THIS LITIGATION,  
20 ON YOUR OWN, WHETHER OR NOT ANY OF THESE PEOPLE WERE  
21 EVER DISCIPLINED IN ANY WAY?

22 A NO.

23 Q NOBODY EVER TOLD YOU THAT?

24 AND WITH RESPECT TO YOUR SON, THE FINDINGS  
25 AGAINST YOU IN THE JUVENILE DEPENDENCY COURT, DID THE  
26 COUNTY OR ANYBODY ELSE, TO YOUR KNOWLEDGE, EVER DO  
27 ANYTHING TO ADDRESS HOW THESE DISCRIMINATION FINDINGS  
28 MIGHT HAVE IMPACTED THE OUTCOME OF THAT CASE?

1 MS. SWISS: OBJECTION. LACKS FOUNDATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: NO.

4 BY MR. MCMILLAN:

5 Q ALL RIGHT. GOING BACK TO OUR PROGRESSION  
6 ALONG IN THE JUVENILE DEPENDENCY CASE, IT STILL KEEPS  
7 GOING WHILE THIS DISCRIMINATION INVESTIGATION IS GOING  
8 ON, DOESN'T IT?

9 A YES.

10 Q DID ANY OF THE SOCIAL WORKERS, TO YOUR  
11 KNOWLEDGE OR RECOLLECTION, EVER BRING UP IN COURT --  
12 LET'S JUST START WITH THEIR WRITTEN REPORTS.

13 DID THEY EVER BRING UP IN COURT TO LET THE  
14 JUDGE KNOW THAT THEY WERE THE SUBJECTS OF A  
15 DISCRIMINATION INVESTIGATION?

16 MS. SWISS: OBJECTION. LACKS FOUNDATION.

17 THE COURT: SUSTAINED.

18 BY MR. MCMILLAN:

19 Q LET GO BACK. I THINK WE TALKED A LITTLE BIT  
20 ABOUT THE REPORTS AND HOW YOU RECEIVED THEM IN EACH  
21 STAGE OF THE PROCESS.

22 DO YOU REMEMBER THAT?

23 A YES.

24 Q AND I THINK YOU SAID YOU READ EACH OF THOSE  
25 REPORTS?

26 A YES.

27 Q DID YOU READ THE FINAL REPORT IN THE CASE?

28 A YES.



1 Q DID YOU READ ALL THE REPORTS THAT WERE FILED  
2 WITH THE COURT IN JULY OF 2010?

3 A YES.

4 Q DID YOU READ ALL OF THE REPORTS THAT WERE  
5 FILED WITH THE COURT IN JUNE OF 2010?

6 A YES.

7 Q DID YOU READ ALL OF THE COURT REPORTS THAT  
8 WERE FILED WITH THE COURT IN MAY OF 2010?

9 A YES.

10 Q WHAT ABOUT APRIL?

11 A YES.

12 Q AND MARCH?

13 A YES.

14 Q IN ANY OF THOSE REPORTS THAT YOU READ, ANY OF  
15 THEM, FROM THE DATE THAT YOU FILED YOUR DISCRIMINATION  
16 COMPLAINT TO THE END OF THE CASE, DID YOU EVER SEE  
17 ANYBODY MENTION TO THE COURT THAT THEY WERE THE SUBJECT  
18 OF A CIVIL RIGHTS INVESTIGATION?

19 A NO.

20 Q DID YOU EVER SEE ANY MENTION IN ANY OF THOSE  
21 REPORTS THAT A DETERMINATION HAD BEEN MADE THAT SOME OF  
22 THESE PEOPLE HAD IN FACT DISCRIMINATED AGAINST YOU?

23 MS. SWISS: OBJECTION. LACKS FOUNDATION.  
24 MISSTATES EVIDENCE.

25 THE COURT: OVERRULED.

26 THE WITNESS: NO, NOT TO ME.

27 BY MR. MCMILLAN:

28 Q I'M SORRY?

1           A     NO.

2           Q     AND THEN AT THAT HEARING, THE LAST HEARING,  
3     AUGUST 9TH, 2010 -- DO YOU REMEMBER THAT HEARING?

4           A     YES.

5           Q     DO YOU REMEMBER WHAT HAPPENED AT THAT HEARING?

6           A     YES.

7           Q     WHY DON'T YOU SHARE WITH US WHAT HAPPENED AT  
8     THAT HEARING.

9           A     THE COURT MADE ITS DECISION TO SUBSTANTIATE  
10    THE COUNTY'S ALLEGATIONS.

11          Q     AND IN THAT HEARING, DO YOU RECALL THE COURT  
12    FROM THE BENCH READING INTO THE RECORD THE REASONS WHY  
13    THE JUDGE WAS MAKING HER DECISION?

14          A     YES.

15          Q     DO YOU REMEMBER WHAT THOSE REASONS WERE?

16          A     YES.

17          Q     JUST TAKE A DEEP BREATH.

18                MR. MCMILLAN:  MAYBE THE MORNING BREAK, YOUR  
19    HONOR?

20                THE COURT:  YES, WE'LL TAKE THE MORNING RECESS  
21    AT THIS TIME, APPROXIMATELY 10 MINUTES.  ALL JURORS,  
22    PLEASE REMEMBER THE ADMONITION.

23                    (JURY EXCUSED)

24                    (RECESS)

25                    (JURY PRESENT)

26                THE COURT:  EVERYONE READY?

27                MR. MCMILLAN:  YES.

28                THE COURT:  EVERYBODY MAY BE SEATED.  WE'RE ON

1 THE RECORD. EVERYBODY IS PRESENT.

2 GO AHEAD, MR. MCMILLAN.

3 MR. MCMILLAN: ARE YOU READY?

4 BY MR. MCMILLAN:

5 Q BEFORE THE BREAK, WE WERE TALKING ABOUT -- YOU  
6 WERE SHARING WITH US THE EVENTS OF AUGUST 9, 2010, AT  
7 THE FINAL HEARING IN YOUR JUVENILE DEPENDENCY CASE.

8 DO YOU REMEMBER THAT?

9 A YES.

10 Q DO YOU REMEMBER WHETHER OR NOT AT THAT  
11 HEARING, WHEN THE JUDGE ANNOUNCED HER DECISION, DID SHE  
12 READ INTO THE RECORD THE REASONS WHY SHE WAS DOING THE  
13 THINGS SHE WAS DOING?

14 A SHE DID.

15 Q DO YOU REMEMBER WHAT THOSE REASONS WERE?

16 A I REMEMBER SOME OF THEM.

17 Q WHY DON'T YOU SHARE WITH US SOME OF THE  
18 REASONS THE JUDGE RELIED ON IN MAKING HER DECISIONS.

19 A BECAUSE OF THE WAY MY SON WAS FED AND CARED  
20 FOR; BECAUSE I HAD BEEN DISMISSED FROM DR. YIM'S  
21 PRACTICE FOR NOT FOLLOWING HER RECOMMENDATIONS. SOME  
22 OTHERS WERE REGARDING NOT GETTING -- NOT HAVING A  
23 PEDIATRICIAN AND STUFF LIKE THAT. I DON'T REMEMBER  
24 EVERYTHING.

25 Q FOCUSING FOR A MOMENT ON WHAT THE COURT SAID  
26 IN OPEN COURT ABOUT DR. YIM'S DISMISSING YOU FROM HER  
27 PRACTICE BECAUSE YOU REFUSED TO FOLLOW HER DIRECTIONS.

28 WAS THAT ABOUT FEEDING?

1           A       ANY RECOMMENDATION THAT DR. YIM GAVE ME THAT I  
2 DIDN'T FOLLOW.

3           Q       NOW, DID DR. YIM -- YOU WERE AT EVERY HEARING  
4 WHERE -- WELL, WERE YOU AT EVERY HEARING WHERE  
5 WITNESSES TESTIFIED?

6           A       YES.

7           Q       DID DR. YIM EVER COME IN, TAKE THE STAND, AND  
8 SWEAR TO TELL THE WHOLE TRUTH AND NOTHING BUT THE  
9 TRUTH?

10          A       NO.

11          Q       WHAT ABOUT DR. GILL? DID SHE EVER TESTIFY IN  
12 THAT TRIAL?

13          A       NO.

14          Q       WHO WAS IT, IF YOU RECALL, THAT TOLD THE COURT  
15 THAT DR. YIM SAID THESE THINGS ABOUT YOU?

16          A       THE -- ONE OF THE WORKERS WAS THE ONE WHO  
17 TESTIFIED, WHICH IS SUSAN PENDER.

18          Q       AND WHAT ABOUT DR. GILL? BECAUSE I NOTICED IN  
19 SOME OF THESE REPORTS IT TALKED ABOUT DR. GILL SAYING  
20 SOME PRETTY BAD THINGS.

21                   DID SOMEBODY EVER COME IN AND SHARE WITH THE  
22 COURT EXACTLY WHAT IT WAS THAT DR. GILL SAID OR  
23 SUPPOSEDLY SAID?

24          A       THE SAME THING THAT WAS STATED ON THE REPORTS,  
25 THAT DR. GILL SAID THAT I WAS DISMISSED BECAUSE I  
26 DIDN'T FOLLOW ANY OF THE RECOMMENDATIONS GIVEN BY  
27 DR. YIM.

28          Q       WAS THAT TRUE?

1 A NO.

2 Q WAS DR. GILL EVEN YOUR DOCTOR?

3 A NO.

4 Q WHAT ABOUT DR. YIM? DID YOU FOLLOW HER  
5 INSTRUCTIONS AND ADVICE?

6 A YES.

7 Q IN RELATION TO FEEDING, DID YOU FOLLOW HER  
8 ADVICE?

9 A YES.

10 Q WERE THERE ANY DOCTORS FROM BIRTH UNTIL  
11 NOVEMBER 3RD, 2009, WHOSE INSTRUCTIONS AND ADVICE YOU  
12 REFUSED TO FOLLOW?

13 A NO.

14 Q ONCE SOCIAL SERVICES BECAME INVOLVED IN YOUR  
15 LIFE, DID YOU FOLLOW THEIR INSTRUCTIONS?

16 A YES.

17 Q TO THE LETTER?

18 A TO THE BEST OF MY ABILITIES, YES.

19 Q DID THEY EVER COMPLAIN AT YOU THAT,  
20 "MS. DUVAL, YOU'RE JUST NOT DOING WHAT WE WANT YOU TO  
21 DO"?

22 A NOT PRIOR TO NOVEMBER 3RD, NO.

23 Q SO YOU LOST THAT HEARING, AUGUST 9TH; RIGHT?

24 A YES.

25 Q AND THE JUDGE ISSUED AN ORDER COMING OUT OF  
26 THAT?

27 MS. SWISS: OBJECTION. LEADING.

28 THE COURT: SUSTAINED.

1                   PLEASE ASK DIRECT QUESTIONS AND STOP  
2 TESTIFYING.

3 BY MR. MCMILLAN:

4           Q       DID THE JUDGE ISSUE AN ORDER COMING OUT OF  
5 THAT HEARING?

6           A       YES.

7           Q       WHAT WAS THE NATURE OF THAT ORDER?

8           A       IT WAS EXIT ORDERS TO BE ADOPTED BY THE FAMILY  
9 COURT.

10          Q       WHAT WAS YOUR UNDERSTANDING OF THE IMPORTANCE  
11 OF THAT ORDER?

12          A       THAT I WAS TO ABIDE BY THOSE ORDERS GOING  
13 FORWARD, INDEFINITELY.

14          Q       WHAT SORT OF SUBJECT MATTER WAS COVERED IN  
15 THAT ORDER?

16          A       I COULD ONLY HAVE VISITS WITH MY SON UNDER  
17 SUPERVISION OF A PROFESSIONAL MONITOR OR A MONITOR  
18 APPROVED BY THE FATHER. I COULD ONLY FEED MY SON,  
19 RYAN, WHATEVER THE FATHER PROVIDED. AND I LOST CUSTODY  
20 OF MY SON AND ONLY HAVE MINIMUM VISITATION.

21          Q       ON THOSE VISITATIONS, AT LEAST COMING OUT OF  
22 AUGUST 9TH, THAT AUGUST 9, 2010, HEARING, HOW LONG WERE  
23 THOSE VISITS PERMITTED TO BE?

24          A       COMING OUT, IT WAS ONE AND A HALF HOURS,  
25 TUESDAYS AND THURSDAYS.

26          Q       AT SOME POINT IN TIME, DID THAT CHANGE?

27          A       YES.

28          Q       WHEN?

1           A       I BELIEVE DECEMBER OF 2010 OR SOMETIME AROUND  
2       THAT TIME.

3           Q       AND JUST SO THAT WE HAVE SORT OF A TIME BASIS  
4       OF COMPARISON, THE NOVEMBER 3RD VISITATION  
5       RESTRICTIONS, WAS THERE ANY DIFFERENCE BETWEEN THOSE  
6       TIME LIMITATIONS AND THE AUGUST 9TH TIME LIMITATIONS?

7           A       I'M SORRY. CAN YOU REPEAT THE QUESTION AGAIN?

8           Q       YEAH. LET ME BACK UP A LITTLE BIT.

9                   DO YOU RECALL THAT ON NOVEMBER 3RD, WHEN THE  
10       CHILD WAS FIRST TAKEN FROM YOU, FROM THAT POINT FORWARD  
11       YOU WERE GIVEN MONITORED VISITS; IS THAT RIGHT?

12          A       YES.

13          Q       HOW LONG WERE THOSE MONITORED VISITS? WHAT  
14       WAS THE SCHEDULE?

15          A       TUESDAYS AND THURSDAYS, ONE AND A HALF HOURS.  
16       IT STARTED 3:30 TO 5:00, BUT AFTER THE DEPENDENCY  
17       PROCEEDINGS WERE OVER, THEN IT BECAME A LITTLE LATER.

18          Q       SO THE TIME OF THE VISIT CHANGED, BUT NOT THE  
19       DURATION?

20          A       RIGHT.

21          Q       OKAY. SO FROM AUGUST 9TH UNTIL SOMETIME IN  
22       DECEMBER 2010, WAS IT STILL TUESDAYS AND THURSDAYS FOR  
23       ONE AND A HALF HOURS?

24          A       YES.

25                   MS. SWISS: OBJECTION. LEADING.

26                   THE COURT: SUSTAINED.

27                   PLEASE ASK DIRECT QUESTIONS, MR. MCMILLAN.

28       ///

1 BY MR. MCMILLAN:

2 Q DID THE FREQUENCY OR DURATION OF THESE VISITS  
3 CHANGE AT ANY POINT IN TIME FROM NOVEMBER 3RD, 2009,  
4 UNTIL DECEMBER OF 2010?

5 A YES.

6 Q THEY DID?

7 A AROUND DECEMBER OF 2010.

8 Q OKAY. BACK UP. THAT'S NOT MY QUESTION.

9 STARTING AT NOVEMBER 3, 2009, MARCHING FORWARD  
10 TO THE DAY BEFORE THE CHANGE IN DECEMBER OF 2010, WAS  
11 THE FREQUENCY AND DURATION OF THE VISITS THE SAME?

12 A THEY WERE THE SAME.

13 Q OKAY. WHAT CHANGED IN DECEMBER 2010?

14 A THE -- MY ABILITY TO SHARE THE MONITORING COST  
15 WITH THE FATHER, AND I WAS GIVEN A LITTLE BIT MORE TIME  
16 WITH MY SON DURING THE VISITATION.

17 Q HOW MUCH MORE TIME WERE YOU GIVEN?

18 A AN EXTRA HOUR.

19 Q SO DID THAT MAKE IT -- WELL, WAS IT AN EXTRA  
20 HOUR PER WEEK OR AN EXTRA HOUR PER VISIT?

21 A AN EXTRA HOUR PER VISIT. AND AT THE TIME  
22 THERE COULD BE AN INCREASE TO SATURDAY, EVENTUALLY.

23 Q OKAY. DID SATURDAYS GET ADDED ON IN  
24 DECEMBER 2010?

25 A I DON'T REMEMBER EXACTLY IF IT WAS IN DECEMBER  
26 OF 2010, BUT EVENTUALLY THERE WAS A SATURDAY VISIT --  
27 EVERY-OTHER-SATURDAY VISIT ADDED ON.

28 Q OKAY. BUT AM I CORRECT SO FAR THAT IN



1 DECEMBER 2010, YOUR VISITS WERE EXPANDED FROM ONE AND A  
2 HALF HOURS TO TWO AND A HALF HOURS?

3 MS. SWISS: OBJECTION. LEADING. ASKED AND  
4 ANSWERED.

5 THE COURT: OVERRULED. ON THIS PARTICULAR  
6 QUESTION.

7 THE WITNESS: CORRECT.

8 BY MR. MCMILLAN:

9 Q NOW YOU'D ALSO MENTIONED SOMETHING ABOUT  
10 PAYMENT OF EXPENSES FOR THESE MONITORS.

11 WHAT'S THAT ALL ABOUT?

12 A FOLLOWING THE EXIT ORDERS, I NEEDED TO BE  
13 MONITORED ANY TIME I VISITED WITH MY SON, RYAN. AND IT  
14 HAD TO EITHER BE A PROFESSIONAL MONITOR OR A MONITOR  
15 THE FATHER APPROVED. PROFESSIONAL MONITORS, THEY  
16 CHARGE.

17 Q WELL, LET ME ASK YOU FIRST, DID YOU MAKE ANY  
18 ATTEMPTS WITH FATHER TO GET SOMEBODY HE WOULD APPROVE  
19 BESIDES THE PROFESSIONALS?

20 MS. SWISS: OBJECTION. RELEVANCE.

21 THE COURT: OVERRULED.

22 THE WITNESS: YES.

23 BY MR. MCMILLAN:

24 Q TELL US ABOUT THAT. HOW DID THAT GO?

25 A I ASKED FOR HELP TO SOME OF MY FRIENDS. SOME  
26 OF THEM ARE TEACHERS, NURSES, MANDATED REPORTERS OF  
27 SOME SORT. AND I SAID, "LOOK, I HAVE ALL THESE PEOPLE  
28 WHO CAN MONITOR MY VISITS, AND THAT WAY THERE'S NO

1 CHARGE."

2 AND HE SAID NO.

3 Q SO THESE PROFESSIONAL MONITORS -- LET'S JUST  
4 FOCUS RIGHT NOW BACK ON THE TIME PERIOD FROM  
5 AUGUST 2010 TO DECEMBER 2010 -- HOW MUCH WERE YOU  
6 PAYING PER VISIT?

7 A AT FIRST, IT WAS BETWEEN \$35 AND \$45 AN HOUR,  
8 BUT THERE WAS A LAPSE WHERE THERE WAS NO VISITATION AT  
9 ALL.

10 Q OKAY. SO THE PRICE, THOUGH, THE COST OF THE  
11 MONITORS WAS \$35 TO \$45 AN HOUR?

12 A YES.

13 Q AND THIS LAPSE IN VISITATION, HOW LONG WAS  
14 THAT? I GUESS LET ME ASK YOU THIS WAY: HOW MANY  
15 VISITS WERE MISSED?

16 A ALMOST TWO MONTHS, I THINK. I -- I DON'T  
17 REMEMBER RIGHT NOW, BUT IT WAS ALMOST LIKE TWO MONTHS'  
18 WORTH OF VISITATION.

19 Q AND THEN DID THE -- AT THIS POINT IN TIME,  
20 FROM AUGUST 2010 UNTIL -- LET'S JUST RESTRICT IT TO  
21 NOVEMBER 2010 FOR THE MOMENT, DID THAT COST PER VISIT  
22 CHANGE AT ALL FROM THAT RANGE, \$35 TO \$45 AN HOUR?

23 A NO.

24 Q WERE YOU PAYING THE WHOLE THING?

25 A YES.

26 Q DID YOU KEEP YOUR RECEIPTS?

27 A YES.

28 Q HAVE YOU KEPT YOUR RECEIPTS OVER THE YEARS FOR

1 ALL YOUR VISITS?

2 A YES.

3 Q AT ANY POINT IN TIME, DID THE COST OF THOSE  
4 MONITORS CHANGE?

5 A YES.

6 Q WHICH DIRECTION, UP OR DOWN?

7 A UP.

8 Q TO WHAT?

9 A BECAUSE OF THE INCREASE IN TIME, WHATEVER THE  
10 INCREASE OF TIME WAS. SO IF IT WAS THE HOUR, THEN IT  
11 WAS \$70 PER VISIT OR WHATEVER THE TIME HAD CHANGED.

12 Q OKAY. I THINK I UNDERSTAND WHAT YOU'RE  
13 SAYING. IT'S THAT THE TOTAL COST OF THE VISIT WAS  
14 DETERMINED BY THE HOURS?

15 A CORRECT.

16 Q MY QUESTION IS: DID THE HOURLY CHARGE, THAT  
17 \$35 TO \$45 AN HOUR RANGE, DID THAT EVER CHANGE OVER  
18 TIME? THE HOURLY CHARGE?

19 A YES. IN SOME INSTANCE IT WAS MAYBE TO 50. I  
20 MEAN, IT WASN'T SIGNIFICANT, BUT 50 IS THE MOST I PAID  
21 FOR.

22 Q NOW, YOU SAID EARLIER AT SOME POINT IN TIME  
23 MR. MILLS STARTED PAYING FOR PART OF THAT.

24 DID I GET THAT RIGHT?

25 A YES.

26 Q WHEN DID THAT HAPPEN?

27 A IT MIGHT -- IT'S EITHER BETWEEN DECEMBER AND  
28 MARCH OF 2011. DECEMBER 2010 TO MARCH OF 2011, BETWEEN

1       THERE, THE COURT ORDERED THAT WE SHARE THE MONITORING  
2       EXPENSE.

3           Q       AND DO YOU RECALL AT WHAT POINT IN TIME IT WAS  
4       THAT YOU ACTUALLY STARTED GETTING A WEEKEND VISIT?

5           A       AROUND THE SAME TIME.

6           Q       THAT SAME TIME PERIOD?

7           A       YES.

8           Q       AND THE WEEKEND VISIT, WAS THAT EVERY WEEKEND  
9       OR HOW DID THAT WORK?

10          A       AT FIRST, IT WAS EVERY WEEKEND. AND THEN RYAN  
11       MILLS SAID THAT IT WAS TOO MUCH FOR HIM TO DO THOSE  
12       VISITS, AND THEN IT BECAME EVERY OTHER SATURDAY FOR  
13       THREE HOURS. AND THAT'S HOW IT'S BEEN.

14          Q       OKAY. SO NOW, TODAY, WHAT IS THE FREQUENCY  
15       AND TIME OF YOUR VISITS WITH YOUR SON?

16          A       SO TUESDAYS AND THURSDAYS, IT'S TWO AND A HALF  
17       HOURS, AND EVERY OTHER SATURDAY, IT'S THREE HOURS.

18          Q       WHAT TIME ARE YOUR VISITS ON TUESDAY AND  
19       THURSDAY?

20          A       4:30 TO 7:00.

21          Q       WHERE DO THEY TAKE PLACE?

22          A       CURRENTLY, IN CERRITOS.

23          Q       HAVE YOU EVER MISSED A VISIT?

24          A       UNFORTUNATELY, I HAVE MISSED ONE VISIT ON MY  
25       OWN, YES.

26          Q       I'M SORRY?

27          A       UNFORTUNATELY, I MISSED ONE VISIT IN THE LAST,  
28       YOU KNOW, SEVEN YEARS. YES.

1 Q WHY DID YOU MISS THAT VISIT?

2 A I HAD TO GO AND BURY MY DAD.

3 Q BEFORE THAT, IN THESE VISITS, WERE YOUR FOLKS  
4 PERMITTED TO COME?

5 A THEY WERE ABLE TO PARTICIPATE IN SOME OF THE  
6 VISITS, YES.

7 Q WAS THAT THE VISITS BEFORE OR AFTER THE  
8 DEPENDENCY PROCEEDING?

9 A AFTER.

10 Q THAT VISIT THAT YOU MISSED, WHEN WAS THAT?

11 A ONE WAS IN APRIL OF 2011.

12 Q NOW, AT THESE VISITS, EVEN TODAY, ARE YOU  
13 ALLOWED TO FEED YOUR SON?

14 A NO. ONLY WHATEVER HIS FATHER PACKS FOR HIM TO  
15 EAT.

16 Q ARE YOU PERMITTED TO CELEBRATE HOLIDAYS WITH  
17 YOUR SON?

18 A IF MY VISITATION FALLS ON THAT DAY, YES.

19 Q HOW ABOUT BIRTHDAYS?

20 A I MAKE SURE THAT IN ONE OF THOSE VISITATIONS  
21 HE HAS HIS BIRTHDAY PARTIES, YES.

22 Q AT THOSE BIRTHDAYS, IS HE ALLOWED TO INVITE  
23 GUESTS, FRIENDS?

24 A YES.

25 Q AND HE JUST RECENTLY HAD A BIRTHDAY?

26 A YES.

27 Q TELL US A LITTLE BIT ABOUT THAT PARTY. AND  
28 FOCUS -- I'D LIKE TO FOCUS JUST ON, FIRST, WHERE IT

1 WAS.

2 A HE LIKES THIS PLACE CALLED JOHNNY'S INCREDIBLE  
3 PIZZA. IT HAS AN ARCADE, AND HE LOVES GOING THERE. SO  
4 I MADE SURE THAT WE HAD A ROOM FOR HIM TO HAVE HIS  
5 BIRTHDAY THERE.

6 Q DID HE HAVE FRIENDS THAT CAME?

7 A YES. A LOT OF MY FRIENDS AND THEIR CHILDREN  
8 CAME, AND SOME FAMILY, SO.

9 Q WAS THERE A CAKE?

10 A YES.

11 Q DID HE EAT THE CAKE?

12 MS. SWISS: OBJECTION. RELEVANCE.

13 THE COURT: SUSTAINED.

14 BY MR. MCMILLAN:

15 Q LET ME ASK YOU, UNDER THE TERMS OF YOUR  
16 MONITORED VISITATION, WERE YOU ALLOWED TO FEED YOUR SON  
17 ANY OF THAT CAKE?

18 MS. SWISS: OBJECTION. LACKS FOUNDATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: NO, ONLY THE CAKE PROVIDED BY  
21 HIS DAD FOR THE BIRTHDAY.

22 BY MR. MCMILLAN:

23 Q DID HIS DAD PROVIDE A CAKE?

24 A HE PROVIDED A PIECE OF CAKE, YES.

25 Q WAS IT THE SAME AS YOUR CAKE OR A DIFFERENT  
26 CAKE?

27 A IT WAS A DIFFERENT CAKE.

28 Q WHAT KIND OF CAKE?

1 MS. SWISS: OBJECTION. RELEVANCE.

2 THE COURT: SUSTAINED.

3 BY MR. MCMILLAN:

4 Q WELL, DID RYAN EAT THAT CAKE?

5 MS. SWISS: OBJECTION. RELEVANCE.

6 THE COURT: SUSTAINED.

7 BY MR. MCMILLAN:

8 Q I WANT YOU TO TURN -- ACTUALLY, I MAY NEED TO  
9 GET IT FOR YOU. HOLD ON. EXHIBIT NO. 586. I'M PRETTY  
10 CERTAIN I DO NEED TO GET THAT FOR YOU.

11 ALL RIGHT. THAT EXHIBIT NO. 586, WHAT IS  
12 THAT?

13 (PLAINTIFF'S EXHIBIT NO. 586 WAS MARKED  
14 FOR IDENTIFICATION BY THE COURT.)

15 MS. SWISS: I'M SORRY, CAN YOU JUST GIVE ME  
16 ONE SECOND.

17 MR. MCMILLAN: SURE, SORRY.

18 AND WHILE YOU'RE DOING THAT, IT'S BATES  
19 NO. 007421.

20 MS. SWISS: OKAY.

21 BY MR. MCMILLAN:

22 Q MS. DUVAL?

23 A YES.

24 Q EXHIBIT NO. 586, WHAT IS THAT?

25 A IT'S A SPREADSHEET WITH THE DIFFERENT EXPENSES  
26 THAT I'VE INCURRED IN REGARDS TO VISITATION OR MEDICAL  
27 OR CHILD SUPPORT, SICK, VACATION TIME, MILEAGE, JUST  
28 EXPENSES RELATED TO THE LITIGATION OF THE LITIGATION OR

1 THE ALLEGATIONS.

2 Q IS THIS A SPREADSHEET -- OR DID YOU CREATE  
3 THIS SPREADSHEET?

4 A I CREATED THIS SPREADSHEET.

5 Q YOURSELF?

6 A YES.

7 Q WHAT WAS THE PROCESS -- IF YOU COULD DESCRIBE  
8 FOR US, WHAT WAS THE PROCESS THAT YOU WENT THROUGH IN  
9 PUTTING TOGETHER THE DATA TO CREATE THIS SPREADSHEET?

10 A FIRST, I CREATED TABS FOR EACH OF THE  
11 DIFFERENT TYPE OF EXPENSES I WAS INCURRING. FOR  
12 EXAMPLE, VISITATION EXPENSE OR MEDICAL RECORDS FOR --  
13 OR MEDICAL EXPENSES, FOR MYSELF OR FOR MY SON, THAT I  
14 WAS INCURRING AFTER NOVEMBER 3RD. THERE WERE ALSO  
15 ATTORNEYS' FEES OR COURT COSTS THAT I WAS INCURRING AS  
16 I WAS TRYING TO DEFEND MYSELF OF THE ALLEGATIONS THE  
17 DEPARTMENT HAD LODGED AGAINST ME.

18 SO I KEPT RECEIPTS OF ALL THOSE THINGS, AND I  
19 CREATED TABS TO GET TO WHAT THE TOTAL WAS OF EACH AND  
20 EVERY ONE OF THOSE EXPENSES.

21 Q I'M SORRY. YOU HAVE TO SPEAK UP.

22 A TO GET THE TOTAL OF WHAT THOSE EXPENSES WERE.

23 Q AND THE TOTAL OF THOSE EXPENSES, AS REFLECTED  
24 ON THIS SPREADSHEET THAT YOU CREATED, IS THAT DEPICTED  
25 HERE NEXT TO GRAND TOTAL?

26 A YES.

27 Q WHAT IS THAT TOTAL AMOUNT?

28 A \$194,430.



1 Q OKAY. AND WHEN YOU TALK ABOUT THE LEGAL  
2 EXPENSES, ARE YOU -- WHAT LEGAL EXPENSES ARE YOU  
3 TALKING ABOUT?

4 A THOSE RELATED TO DEPENDENCY PROCEEDINGS AND  
5 FAMILY LAW PROCEEDINGS OR APPELLATE PROCEEDINGS THAT I  
6 MAY HAVE PAID OUT OF POCKET --

7 Q OKAY.

8 A -- FOR.

9 Q WHILE YOU'RE ON THE SUBJECT OF APPEALS, DID  
10 YOU APPEAL THE ORDER OF THE JUVENILE DEPENDENCY COURT?

11 A YES.

12 Q AND WHAT WAS THE RESULT OF THAT APPEAL?

13 A I LOST.

14 Q AND THEN IN THE FAMILY COURT, DID YOU EVER  
15 APPEAL ANY OF THE ORDERS OUT OF THE FAMILY COURT?

16 A I DID.

17 Q WHAT WERE THE RESULTS OF THOSE APPEALS?

18 A I LOST.

19 Q WHEN YOU WERE UP ON APPEAL, DID YOU HAVE THE  
20 ABILITY TO CALL WITNESSES TO COME AND RETRY THE CASE?

21 A NO.

22 Q SO AM I CORRECT, THEN, THAT THIS -- THE COURT  
23 COSTS OR FEES AND THINGS THAT YOU'RE TALKING ABOUT,  
24 THAT DOES NOT INCLUDE ANY PORTION OF THIS CASE?

25 A CORRECT.

26 Q SO MISCELLANEOUS EXPENSES, I SEE THAT IS A  
27 LIST ON YOUR SPREADSHEET HERE.

28 WHAT IS THAT?

1           A        THOSE WERE COSTS I HAD INCURRED THAT DID NOT  
2       RELATE TO EITHER MEDICAL OR VISITATION OR LEGAL FEES.  
3       IT COULD HAVE BEEN VISITATION ACTIVITIES OR IT COULD  
4       HAVE BEEN OTHER TYPES OF -- LIKE PARENTING CLASSES THAT  
5       I TOOK, THAT THEY'RE NOT LEGAL, BUT IT'S EXPENSES THAT  
6       I INCURRED IN TRYING TO MEET THE EXPECTATIONS OF THE  
7       DEPARTMENT OR -- SO, THAT KIND OF STUFF.

8           Q        NOW WHEN YOU SAY ACTIVITIES, "VISITATION  
9       ACTIVITIES" AND THOSE EXPENSES, DESCRIBE FOR US A  
10      LITTLE BIT, WHAT SORTS OF ACTIVITIES ARE YOU TALKING  
11      ABOUT?

12          A        WE -- I TRIED TO MAKE THE VISITATION FUN AND  
13      POSITIVE.  AND HE SIGNS UP FOR MUSIC CLASS IF HE WANTS  
14      TO, OR IF HE WANTS TO DO TAEKWONDO, HE'S BEEN DOING  
15      THAT.  IF HE WANTS TO GO TO AN ARCADE OR SOMEWHERE,  
16      USUAL I HAVE TO PAY NOT JUST FOR HIM OR MYSELF BUT ALSO  
17      FOR THE MONITOR.  SO THOSE ARE THE KIND OF EXPENSES  
18      THAT WILL BE RELATED TO THE VISITATION.

19          Q        SO I'LL SHOW YOU WHAT WE'LL MARK AS -- OR HAS  
20      ALREADY BEEN MARKED AND ADMITTED AS EXHIBIT 662.

21          A        OKAY.

22          Q        WHERE WAS THIS?

23          A        THIS IS AT IRVINE REGIONAL PARK.

24          Q        DID YOU HAVE TO PAY FOR THE RABBIT?

25          A        FOR THE PICTURE, YES.

26          Q        FOR THE PICTURE?

27          A        YES.

28          Q        IS THE COST OF THAT PICTURE REFLECTED

1       SOMEWHERE IN THIS SPREADSHEET?

2           A       IT SHOULD BE, YES.

3           Q       NOW, THERE'S ANOTHER LINE ITEM HERE, SAYS  
4       "CHILD SUPPORT PAYMENTS."

5                   WHAT IS THAT?  WHAT'S THAT ALL ABOUT?

6           A       I HAVE TO MAKE CHILD SUPPORT PAYMENTS EVERY  
7       MONTH TO RYAN MILLS.

8           Q       HOW MUCH?

9           A       IT HAS CHANGED SINCE THE DEPENDENCY  
10       PROCEEDINGS, BUT RIGHT NOW, AS OF TODAY, IT'S \$250 A  
11       MONTH.

12          Q       AND THE TOTAL HERE, THAT \$50,600, WHAT DOES  
13       THAT REFLECT?

14          A       ALL THE PAYMENTS THAT HAVE BEEN MADE SINCE THE  
15       AUGUST 2010 HEARING OR TRIAL.

16          Q       ARE THERE ANY ARREARAGES?  MEANING ARE THERE  
17       ANY AMOUNTS THAT YOU HAVEN'T PAID, YOU'RE BEHIND ON?

18          A       YES, AND THOSE ARE INCLUDED THERE AS WELL.

19          Q       OKAY.  THEN "SICK AND PERSONAL VACATION HOURS  
20       LOST," WHAT DOES THAT REFER TO?

21          A       WELL, LIKE FOLLOWING NOVEMBER OF 2009, I HAD  
22       TO TAKE A LOT OF TIME FROM WORK TO BE AT HEARINGS, TO  
23       GO HERE, GO THERE.  SO I WILL USE MY VACATION TIME OR  
24       MY SICK TIME TO BE ABLE TO MAKE IT TO HEARINGS OR TO GO  
25       SOMETIMES EVEN TO MY VISITATION.

26          Q       NOW, AS THIS WHOLE -- THE JUVENILE DEPENDENCY  
27       PROCESS WAS GOING ON -- I WANT TO RESTRICT THIS JUST TO  
28       NOVEMBER 3RD TO AUGUST 10TH.  NOVEMBER 3RD, 2009, TO

1 AUGUST 10, 2010.

2 YOUR INVOLVEMENT IN THESE PROCEEDINGS, DID IT  
3 EVER REQUIRE YOU TO TAKE TIME OFF WORK OR MISS WORK?

4 MS. SWISS: OBJECTION. RELEVANCE.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES.

7 BY MR. MCMILLAN:

8 Q CAN YOU GIVE US -- WELL, LET ME ASK YOU, IN  
9 THIS LINE ITEM ON YOUR SPREADSHEET, SICK/PERSONAL  
10 VACATION HOURS LOST, IS THAT AMOUNT OF TIME INCLUDED  
11 HERE IN THIS NUMBER?

12 A YES.

13 Q OKAY. SO THAT \$8,103.99, THAT'S INCLUSIVE OF  
14 ALL THE STUFF YOU'VE DESCRIBED?

15 A YES.

16 Q THIS IRS PENALTY FOR 401(K) WITHDRAWAL, \$226,  
17 WHAT IS THAT?

18 A THAT IS I HAD TO WITHDRAW FROM MY 401(K) AND I  
19 WAS PENALIZED FOR WITHDRAWING.

20 Q WHY DID YOU HAVE TO WITHDRAW FROM YOUR 401(K)?

21 MS. SWISS: OBJECTION. RELEVANCE.

22 THE COURT: OVERRULED.

23 THE WITNESS: BECAUSE I COULDN'T AFFORD  
24 VISITATION AND I WAS WILLING TO DRAW ON MY 401(K) TO  
25 SEE MY SON.

26 BY MR. MCMILLAN:

27 Q GOING ON TO EXHIBIT -- WELL, LET ME ASK YOU  
28 THIS, FIRST, BEFORE WE MOVE ON: THIS SPREADSHEET THAT

1 YOU'VE PUT TOGETHER HERE, TO THE BEST OF YOUR ABILITY,  
2 DOES IT ACCURATELY AND TRULY REFLECT THE COSTS AND  
3 EXPENSES THAT YOU'VE INCURRED AS A RESULT OF WHAT  
4 BRINGS US HERE?

5 A YES, UP TO THE POINT WHEN THIS WAS CREATED,  
6 YES.

7 Q AND WHEN WAS THIS CREATED?

8 A I BELIEVE THIS COPY IS MAYBE, I THINK, A YEAR  
9 OLD. I'M NOT SURE. I THINK IT'S A YEAR OLD. THERE  
10 HAS BEEN UPDATES --

11 Q SO LIKE --

12 A -- TO THIS.

13 Q -- LIKE AUGUST 2015, MAYBE?

14 A COULD BE, YES.

15 Q SINCE AUGUST 2015, HAVE THERE BEEN ADDITIONAL  
16 VISITATION EXPENSES?

17 A YES.

18 Q ROUGHLY HOW MUCH, IF YOU CAN GIVE US AN  
19 ESTIMATE?

20 A MAYBE AROUND 13,000.

21 Q WHAT ABOUT PAID MEDICAL EXPENSES? HAS THERE  
22 BEEN ANY ADDITIONAL MEDICAL EXPENSES THAT AROSE FROM  
23 ANYTHING IN THIS CASE?

24 A NO. I THINK THAT'S STILL THE SAME.

25 Q WHAT ABOUT UNPAID MEDICAL EXPENSES? HAVE  
26 THERE BEEN ANY ADDITIONAL UNPAID MEDICAL EXPENSES THAT  
27 AROSE IN THE INTERIM IN THIS CASE?

28 A SOME.

1 Q WHAT UNPAID MEDICAL EXPENSES?

2 A THERAPY VISITS.

3 Q WOULD THAT BE MR. BUDIN?

4 A YES.

5 Q ANYBODY ELSE?

6 A NO.

7 Q CAN YOU GIVE US AN ESTIMATE OF -- WELL, FIRST,  
8 LET ME ASK YOU THIS: HAVE YOU BEEN ABLE TO PAY  
9 MR. BUDIN EVERYTHING YOU OWED HIM?

10 A NO.

11 Q HOW MUCH DO YOU OWE HIM THAT'S NOT INCLUDED IN  
12 EXHIBIT 586?

13 A FOR NOW, I ONLY HAVE THIS BECAUSE HE HASN'T  
14 GIVEN ME A BILL.

15 Q THEN PAID AND UNPAID LEGAL FEES, I THINK YOU  
16 TOLD US THAT PART OF THOSE LEGAL FEES WERE FEES  
17 INCURRED IN THE FAMILY LAW CASE; IS THAT RIGHT?

18 A AS WELL AS DEPENDENCY, YES.

19 Q OKAY. GOING FORWARD FROM AUGUST OF LAST YEAR,  
20 ROUGHLY, WHEN YOU PREPARED THIS EXHIBIT NO. 586, GOING  
21 FORWARD FROM THERE TO TODAY, HAVE YOU INCURRED  
22 ADDITIONAL LEGAL FEES IN THE FAMILY LAW PROCEEDING?

23 A YES.

24 Q ESTIMATE FOR ME HOW MUCH?

25 A I WOULD SAY ABOUT \$3- TO \$4,000.

26 Q AND SIX PERSONAL VACATION HOURS LOSS, HAS THAT  
27 NUMBER CHANGED AT ALL FROM THE NUMBER THAT'S REFLECTED  
28 ON YOUR SPREADSHEET HERE IN EXHIBIT 586?

1           A     NO, I DON'T THINK SO.

2           Q     AND WHAT ABOUT THIS GENERAL MILEAGE LINE ITEM,  
3 HAS THAT CHANGED?

4           A     NO, NOT REALLY, OTHER THAN THE MILEAGE FOR  
5 VISITATION. SO THERE MAY HAVE BEEN A SLIGHT CHANGE. I  
6 DON'T REMEMBER RIGHT NOW WHAT THE TOTAL NUMBER IS ON  
7 THAT.

8           Q     OKAY. SO JUST SO THAT WE'RE CLEAR, IN  
9 ADDITION TO WHAT'S REFLECTED ON EXHIBIT 586,  
10 SICK/PERSONAL VACATION HOURS, AN ADDITIONAL 3- TO 4,000  
11 HAS BEEN INCURRED IN THE LAST YEAR OR SO. IS THAT  
12 RIGHT SO FAR?

13           MS. SWISS: OBJECTION. MISSTATES THE  
14 TESTIMONY.

15           THE COURT: OVERRULED.

16           THE WITNESS: SICK/PERSONAL VACATION HOURS  
17 HAVE NOT CHANGED.

18 BY MR. MCMILLAN:

19           Q     OH, MY WRITING -- IT'S PAID AND UNPAID LEGAL  
20 FEES. I'M SORRY. SHE GOT THAT ONE RIGHT. I'M SORRY.

21                   I HAVE ALL THESE LINES.

22                   SO THE PAID/UNPAID LEGAL FEES, THAT HAS  
23 CHANGED IN THAT IT'S GONE -- YOU'VE INCURRED AN  
24 ADDITIONAL \$3- TO \$4,000 SINCE AUGUST 2015?

25           A     YES.

26           Q     AND THEN -- THERE WAS ANOTHER ONE, AND I CAN'T  
27 TELL WHERE MY LINE GOES.

28                   WHAT WAS THE OTHER? VISITATION?

1           A       IT WAS THE GENERAL MILEAGE, LIKE ME COMING TO  
2 COURT FOR FAMILY LAW HEARINGS, OR ME GOING TO GET  
3 MEDICAL RECORDS AT HARBOR-UCLA OR SOMETHING LIKE THAT.

4           Q       THE ONE I WAS LOOKING AT, THOUGH, AND I WAS  
5 HAVING TROUBLE WITH MY LINES ON MY PAGE -- CORRECT ME  
6 IF I'M WRONG -- IT WAS THE VISITATION EXPENSES THAT  
7 SINCE AUGUST OF LAST YEAR UNTIL NOW HAVE CONTINUED TO  
8 BE INCURRED IN THE AMOUNT OF ABOUT \$13,000?

9           A       YES.

10          Q       SO OTHER THAN THOSE TWO INCREASES, DOES THIS  
11 SPREADSHEET THAT YOU HAVE DEPICTED HERE AS EXHIBIT  
12 NO. 586, TO THE BEST OF YOUR ABILITY, A TRUE, COMPLETE,  
13 AND ACCURATE DEPICTION OF YOUR TOTAL LOSSES THAT YOU'VE  
14 SUFFERED AS A RESULT OF YOUR INVOLVEMENT WITH THE  
15 DEFENDANTS IN THIS CASE?

16          A       YES, AND IN ADDITION TO CHILD SUPPORT PAYMENTS  
17 THERE HAS BEEN PAYMENTS MADE AS WELL. SO ADDING ON TO  
18 VISITATION EXPENSE, LEGAL FEES, CHILD SUPPORT, THOSE  
19 ARE THE THREE MAIN CATEGORIES THAT HAVE BEEN UPDATED.

20          Q       OKAY. HOW MUCH ADDITIONAL HAS BEEN INCURRED  
21 SINCE AUGUST 2015 FOR THE CHILD SUPPORT PAYMENTS?

22          A       PROBABLY ABOUT 3,000, OR AROUND THERE,  
23 ROUGHLY.

24          Q       OKAY. SO OTHER THAN THOSE THREE ITEMS -- THAT  
25 IS, THE 3- TO 4,000 FOR YOUR PAID AND UNPAID LEGAL  
26 FEES, THE 13,000 ADDITIONAL FOR THE VISITATION  
27 EXPENSES, AND THE 3- TO 4,000 FOR THE CHILD SUPPORT --  
28 THOSE THINGS ALL TAKEN TOGETHER WITH THE INFORMATION ON



1 EXHIBIT 586, IS THAT A TRUE, COMPLETE, AND ACCURATE  
2 REFLECTION OF THE DAMAGES THAT YOU'VE SUFFERED AS A  
3 RESULT OF YOUR INVOLVEMENT WITH THESE DEFENDANTS, TO  
4 THE BEST OF YOUR ABILITY?

5 A YES.

6 Q GOING ON TO NO. 587 -- AND THAT'S BATES  
7 NO. 007423 THROUGH 007434.

8 (PLAINTIFF'S EXHIBIT NO. 587.7423-7434  
9 WAS MARKED FOR IDENTIFICATION BY THE  
10 COURT.)

11 BY MR. MCMILLAN:

12 Q WHAT IS THAT?

13 A THAT IS THE DETAIL OF THE MONITOR VISITATION  
14 EXPENSE.

15 Q AND IS THIS A TRUE AND ACCURATE DEPICTION OF  
16 THE DETAIL EXPENSE OF YOUR MONITORED VISITS THAT YOU  
17 RECORDED?

18 A YES, UP TO JUNE 16, 2015.

19 Q UP TO JUNE 16TH -- WHAT DID YOU SAY, WHAT  
20 YEAR? I'M SORRY.

21 A 2015.

22 Q 2015.

23 THEN TURNING TO EXHIBIT NO. 588, WHAT IS THAT?  
24 (PLAINTIFF'S EXHIBIT NO. 588.7436-7441  
25 WAS MARKED FOR IDENTIFICATION BY THE  
26 COURT.)

27 THE WITNESS: THIS IS THE DETAILS OF THE PAID  
28 MEDICAL AND PRESCRIPTION EXPENSE THAT I INCURRED DURING

1 THE DEPENDENCY PROCEEDINGS AND SOME AFTER.

2 BY MR. MCMILLAN:

3 Q AND IS THIS EXHIBIT NO. 588 A TRUE, ACCURATE,  
4 AND COMPLETE DEPICTION AND REFLECTION OF THOSE  
5 EXPENSES, AT LEAST TO THE BEST OF YOUR KNOWLEDGE?

6 A YES.

7 Q GOING TO EXHIBIT NO. 590 -- ACTUALLY, DID I  
8 GET THE BATES RANGE ON THAT LAST ONE? I DON'T KNOW IF  
9 I DID.

10 IT'S BATES NOS. 007436 THROUGH 007441;  
11 CORRECT? AND THAT WAS EXHIBIT NO. 588.

12 A YES.

13 Q IF YOU CAN GO TO EXHIBIT NO. 589.

14 (PLAINTIFF'S EXHIBIT NO. 589, WAS  
15 MARKED FOR IDENTIFICATION BY THE  
16 COURT.)

17 BY MR. MCMILLAN:

18 Q WHAT'S REFLECTED THERE?

19 A UNPAID MEDICAL EXPENSES AND PRESCRIPTION.

20 Q OKAY. AND THE INFORMATION REFLECTED HERE, IS  
21 THAT A TRUE AND ACCURATE REFLECTION OR DEPICTION OF  
22 YOUR UNPAID MEDICAL AND PRESCRIPTION EXPENSES INCURRED  
23 AS A RESULT OF YOUR INVOLVEMENT WITH THE DEFENDANTS IN  
24 THIS CASE?

25 A UP TO THIS POINT, YES.

26 Q THEN THE NEXT ONE, THIS EXHIBIT NO. 590, IT'S  
27 ONE PAGE, 007445.

28 ///

1 (PLAINTIFF'S EXHIBIT NO. 590, WAS  
2 MARKED FOR IDENTIFICATION BY THE  
3 COURT.)

4 BY MR. MCMILLAN:

5 Q WHAT IS THAT?

6 A THIS WERE THE LIST OF PERSONAL LOANS THAT I'VE  
7 TAKEN FROM FAMILY, FRIENDS FOR DIFFERENT PURPOSES. AND  
8 THEN THE -- SOME EXPENSES RELATED TO PARENTING CLASSES.  
9 SORT OF THOSE MISCELLANEOUS EXPENSES I WAS TALKING  
10 ABOUT EARLIER.

11 Q GOING TO EXHIBIT NO. 591, WHAT IS THAT?  
12 (PLAINTIFF'S EXHIBIT NO. 591, WAS  
13 MARKED FOR IDENTIFICATION BY THE  
14 COURT.)

15 THE WITNESS: THESE ARE THE PAID AND UNPAID  
16 LEGAL FEES AS WELL AS COURT COSTS.

17 BY MR. MCMILLAN:

18 Q AND 592? AND 592 IS A LITTLE LONGER, IT'S  
19 BATES NO. 007449 THROUGH 007451.

20 (PLAINTIFF'S EXHIBIT NO. 592, WAS  
21 MARKED FOR IDENTIFICATION BY THE  
22 COURT.)

23 THE WITNESS: YES. THIS IS THIS DETAIL FOR  
24 THE CHILD SUPPORT PAYMENTS THAT I'VE MADE AS WELL AS  
25 THE ARREARS.

26 BY MR. MCMILLAN:

27 Q OKAY. AND IS THIS A TRUE, ACCURATE, AND  
28 COMPLETE DEPICTION, AT LEAST INSOFAR AS YOU UNDERSTAND

1 IT, OF THE AMOUNTS OF CHILD SUPPORT EITHER PAID OR IN  
2 ARREARS THROUGH AND INCLUDING JUNE 5, 2015?

3 A YES. UP TO THIS POINT.

4 Q RIGHT. BUT WE'VE ALREADY COVERED EARLIER,  
5 RIGHT, THE ADDITIONAL AMOUNTS THAT HAVE BEEN INCURRED  
6 SINCE JUNE/JULY/AUGUST 2015; RIGHT?

7 A YES.

8 Q OKAY. SO WE'RE NOT GOING TO GO BACK AND, YOU  
9 KNOW, REPLAY THAT GROUND.

10 IF YOU LOOK AT NO. 593, BATES NO. 007453, WHAT  
11 IS THAT?

12 (PLAINTIFF'S EXHIBIT NO. 593, WAS  
13 MARKED FOR IDENTIFICATION BY THE  
14 COURT.)

15 THE WITNESS: THIS IS A DETAIL OF MY WAGES  
16 SINCE 2006, THROUGH 2014. AND SOME SELF-EMPLOYMENT  
17 INCOME THAT I HAD FROM MY BUSINESS.

18 BY MR. MCMILLAN:

19 Q WHAT SORT OF BUSINESS DID YOU HAVE?

20 A I HAD A SMALL ACCOUNTING BUSINESS, WHERE I  
21 PROVIDE ACCOUNTING SERVICES TO VERY SMALL BUSINESSES,  
22 SMALL BUSINESS IN THE LA AREA.

23 Q WHEN DID YOU START THAT BUSINESS?

24 A WHEN I WAS IN COLLEGE, IN 2005, AS A JUNIOR IN  
25 COLLEGE.

26 Q WHEN DID YOU -- OR HAVE YOU STOPPED THAT  
27 BUSINESS? DO YOU STILL ENGAGE IN THAT BUSINESS?

28 A YES, I TRIED WHEN PERMITTED, YES.

1 Q DID ANY OF THESE GOINGS-ON IN THE DEPENDENCY  
2 PROCESS IMPACT IN ANY WAY YOUR ABILITY TO CONDUCT THAT  
3 BUSINESS?

4 A FOR A WHILE, YES.

5 Q OKAY. HOW?

6 A NO TIME DURING THE DEPENDENCY PROCEEDINGS.  
7 YOU KNOW, THE CLIENTS THAT I HAD AT THE TIME, I HAD TO  
8 LET THEM GO. AND THAT WHOLE YEAR AND THE FOLLOWING  
9 YEAR, IT WAS HARD TO FIND THE TIME TO WORK ON MY  
10 BUSINESS. IT TAKES A LOT OF EFFORT TO DO THAT.

11 Q IS ANY OF THE LOST INCOME THAT YOU WOULD HAVE  
12 DERIVED FROM YOUR BUSINESS INCLUDED IN YOUR SPREADSHEET  
13 THAT WE TALKED ABOUT EARLIER? I THINK IT WAS 586. ANY  
14 OF THAT LOST EARNING ABILITY INCLUDED IN EXHIBIT 586?

15 A NO, I HAVEN'T -- I HAVEN'T MADE ANY  
16 PROJECTIONS AS TO WHAT THE LOSSES WOULD BE.

17 Q ARE YOU ABLE TO GIVE US AN ESTIMATE OF WHAT  
18 THOSE LOSSES WERE?

19 MS. SWISS: OBJECTION. CALLS FOR SPECULATION.  
20 FOUNDATION.

21 THE COURT: OVERRULED. CALLS FOR A YES OR NO.  
22 EITHER YOU CAN OR YOU CAN'T.

23 THE WITNESS: I COULD WITH SOME TIME, YES.

24 BY MR. MCMILLAN:

25 Q BUT NOT SITTING HERE RIGHT NOW, TODAY?

26 A NOT RIGHT NOW. I HAVE TO LOOK AT THE  
27 NUMBERERS.

28 Q THEN GOING ON TO EXHIBIT NO. 594, WHAT IS

1 THAT?

2 (PLAINTIFF'S EXHIBIT NO. 594, WAS  
3 MARKED FOR IDENTIFICATION BY THE  
4 COURT.)

5 THE WITNESS: THOSE ARE THE SICK/PERSONAL  
6 VACATION HOURS THAT I LOST FROM THE DATE OF OCTOBER OF  
7 2009 UNTIL TWO THOUSAND- -- JUNE OF 2012.

8 BY MR. MCMILLAN:

9 Q AND IS THIS DETAIL REPORT A TRUE, ACCURATE,  
10 AND COMPLETE DEPICTION OF THE AMOUNT OF SICK/PERSONAL  
11 VACATION HOURS THAT YOU LOST AS A RESULT OF YOUR  
12 INVOLVEMENT WITH THESE DEFENDANTS?

13 A YES.

14 Q GOING ON TO NO. 595, IT'S BATES NO. 007457.

15 (PLAINTIFF'S EXHIBIT NO. 595, WAS  
16 MARKED FOR IDENTIFICATION BY THE  
17 COURT.)

18 BY MR. MCMILLAN:

19 Q WHAT'S THAT A DEPICTION OF?

20 A THIS IS A DETAIL OF THE MILEAGE FOR SOME OF  
21 THE PARENTING CLASSES THAT I HAD TO ATTEND OR IF I HAD  
22 TO COME TO COURT FOR FAMILY LAW HEARINGS OR DEPENDENCY  
23 PROCEEDINGS, THAT WOULD BE FOUND IN HERE.

24 Q AND IS THIS, THE INFORMATION REFLECTED HERE, A  
25 TRUE, ACCURATE, AND COMPLETE RENDITION OF THE MILEAGE  
26 EXPENSES THAT YOU INCURRED IN GOING TO THESE MEETINGS  
27 AND CLASSES AND THINGS AS A RESULT OF YOUR INVOLVEMENT  
28 WITH THESE DEFENDANTS?

1           A     YES.

2           Q     GOING ON TO EXHIBIT NO. 596, IT'S BATES  
3     NO. 007459 THROUGH AND INCLUDING 007460.

4                     (PLAINTIFF'S EXHIBIT NO. 596.7459-7460  
5                     WAS MARKED FOR IDENTIFICATION BY THE  
6                     COURT.)

7     BY MR. MCMILLAN:

8           Q     WHAT IS THAT?

9           A     THESE WERE PAY STUBS DATING BACK TO NOVEMBER  
10    OF 2011, AND ONE FOR DECEMBER OF 2010.

11          Q     AND ARE THESE THE TRUE AND ACCURATE COPIES OF  
12    THE PAY STUBS THAT YOU HAVE FROM THAT TIME PERIOD?

13          A     YES.  THERE'S SOME FROM 2012 AND 2009 AS WELL,  
14    YES.

15          Q     OKAY.  GOING ON TO EXHIBIT NO. 597, AND THAT'S  
16    BATES NOS. 007462 THROUGH 007463.

17                     (PLAINTIFF'S EXHIBIT NO. 597.7462-7463  
18                     WAS MARKED FOR IDENTIFICATION BY THE  
19                     COURT.)

20    BY MR. MCMILLAN:

21          Q     WHAT IS THAT?

22          A     THESE WERE A DETAIL OF MEDICAL APPOINTMENTS  
23    THAT REFLECTED ALL THE MEDICAL APPOINTMENTS MY SON,  
24    RYAN, HAD ATTENDED OR THAT WERE SCHEDULED.

25          Q     OKAY.  AND IS THAT, THE INFORMATION DEPICTED  
26    IN EXHIBIT NO. 597, TO THE BEST OF YOUR KNOWLEDGE, A  
27    TRUE, ACCURATE, AND COMPLETE DEPICTION OF THE SCHEDULE  
28    OF ALL THESE APPOINTMENTS?

1           A     YES.

2           Q     GOING TO EXHIBIT NO. 598, AND IT INCLUDES  
3 BATES NOS. 007466 THROUGH AND INCLUDING 007470.

4                     (PLAINTIFF'S EXHIBIT NO. 598.7466-7470,  
5                     WAS MARKED FOR IDENTIFICATION BY THE  
6                     COURT.)

7 BY MR. MCMILLAN:

8           Q     THAT PACKET THERE, WHAT IS THAT?

9           A     THESE ARE THE ACTUAL -- SOME OF THE RECEIPTS  
10 TO THE DETAILS ABOVE, TO THE DETAILS. BUT NOT  
11 EVERYTHING, JUST A FEW.

12          Q     AND WE'LL MOVE PAST EXHIBITS 599, 600, AND 601  
13 FOR THE MOMENT.

14                     LET'S GO TO EXHIBIT NO. 602. THAT INCLUDES  
15 BATES NO. 007862 --

16          A     I'M SORRY. I DON'T HAVE A 602.

17          Q     OH, I'M SORRY.

18                     OKAY. SO SINCE WE STARTED ON 602, LET'S JUST  
19 FINISH THAT. AND I DON'T RECALL IF I ALREADY GAVE THE  
20 BATES NUMBER RANGE ON THAT OR NOT. IT'S 007862 THROUGH  
21 007867.

22                     (PLAINTIFF'S EXHIBIT NO. 602.7862-7867  
23                     WAS MARKED FOR IDENTIFICATION BY THE  
24                     COURT.)

25 BY MR. MCMILLAN:

26          Q     WHAT IS THAT EXHIBIT NO. 602?

27          A     THESE ARE SOME MONITORING, VISITATION  
28 MONITORING RECEIPTS FOR MY VISITS.



1 Q IS THAT THE MONITORING VISITATION RECEIPTS FOR  
2 ALL OF YOUR VISITS? JUST IN THAT EXHIBIT, 602.

3 A NOT FOR ALL MY VISITS. THIS IS 2013, SOME ARE  
4 2014.

5 Q SO THAT'S SOME OF YOUR VISITS BUT NOT ALL?

6 A CORRECT.

7 Q OKAY. CAN I GET YOU TO TURN TO EXHIBIT  
8 NO. 599.

9 (PLAINTIFF'S EXHIBIT NO. 599.7472-7530,  
10 WAS MARKED FOR IDENTIFICATION BY THE  
11 COURT.)

12 THE WITNESS: OKAY.

13 BY MR. MCMILLAN:

14 Q AND EXHIBIT NO. 599 STARTS AT BATES NO. 007472  
15 AND CONTINUES THROUGH 007530; CORRECT?

16 A YES.

17 Q WHAT -- WHAT ARE THE DOCUMENTS IN THAT STACK?

18 A PAYMENTS TO FORENSISGROUP FOR EXPERT SERVICE  
19 OF DR. LOTT.

20 Q LET ME ASK YOU JUST A GENERAL QUESTION. I  
21 DON'T KNOW THAT I NECESSARILY NEED THE SPECIFICS.

22 JUST GENERALLY, WHEN WE'RE LOOKING AT THIS  
23 STACK OF PAGES, WHAT SORTS OF DATA ARE IN HERE?

24 A MEDICAL, PAYMENTS FOR MEDICAL EXPENSES, AND  
25 INCLUDING EXPERT OPINIONS.

26 Q ARE THESE THE ACTUAL RECEIPTS FOR THOSE  
27 PAYMENTS?

28 A YES.

1 Q AND THESE RECEIPTS, HOW DO THEY RELATE TO THE  
2 SPREADSHEET THAT WE TALKED ABOUT IN EXHIBIT NO. 586?

3 A THEY WILL BE THE BACKUP FOR THOSE CHARGES IN  
4 EACH TAB RELATING TO WHATEVER EXPENSE FOR, LET'S SAY,  
5 THE MEDICAL -- THE PAID MEDICAL EXPENSES FOR THAT  
6 PERIOD.

7 THE COURT: MR. MCMILLAN, WE'LL TAKE THE NOON  
8 RECESS AT THIS TIME. WE'LL RESUME AT 1:30.

9 ALL JURORS, PLEASE REMEMBER THE ADMONITION TO  
10 HAVE NO CONTACT WITH ANYONE ABOUT ANY SUBJECT OR ISSUE  
11 OR ANY PERSON INVOLVED IN THIS CASE. DO NOT FORM NOR  
12 EXPRESS ANY OPINION ON ANY SUBJECT OR ISSUE HEREIN.

13 WE ARE NOW IN RECESS.

14 (JURY EXCUSED)

15 (LUNCH RECESS)

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

18 MR. MCMILLAN?

19 MR. MCMILLAN: YES, YOUR HONOR?

20 THE COURT: DO YOU HAVE AN ESTIMATE OF HOW  
21 MUCH LONGER YOUR DIRECT EXAMINATION WILL BE?

22 MR. MCMILLAN: PRETTY QUICK. I WAS HOPING TO  
23 GET IT DONE BEFORE NOON. I'VE GOT JUST A COUPLE MORE  
24 EXHIBITS OF SOURCE DATA FOR HER TO AUTHENTICATE AND  
25 THEN A COUPLE OF WRAP-UP QUESTIONS IF I CAN FIND MY  
26 OUTLINE. AND THEN WE'LL REST AND -- WELL, I GUESS WE  
27 WON'T REST BECAUSE THEY HAVE THEIR CROSS-EXAMINATION.

28 THE COURT: AND MS. SWISS, YOU'LL BE DOING

1 CROSS-EXAMINATION?

2 MS. SWISS: YES, YOUR HONOR.

3 THE COURT: I KNOW IT'S A LITTLE DIFFICULT TO  
4 PREDICT, BUT I'M EXPECTING THERE WILL BE SUBSTANTIAL  
5 CROSS-EXAMINATION?

6 MS. SWISS: YES, YOUR HONOR.

7 THE COURT: AND POTENTIALLY FOR THE REST OF  
8 THE AFTERNOON?

9 MS. SWISS: I WOULD THINK SO. AND THAT'S ONE  
10 OF OUR CONCERNS IS WHAT TIME WE'RE ADJOURNING TODAY.  
11 I'D LIKE TO BE ABLE TO FINISH WITH THIS TODAY. WE'VE  
12 GOT WITNESSES LINED UP FOR OUR CASE.

13 THE COURT: WELL, THAT RAISES A QUESTION IN  
14 MIND, BEING A TUESDAY, A DAY FOR VISITATION BY  
15 MS. DUVAL, OF HOW LATE WE CAN GO AND STILL ACCOMMODATE  
16 HER.

17 THE WITNESS: 3:15, YOUR HONOR.

18 THE COURT: 3:15?

19 THE WITNESS: YES.

20 MR. MCMILLAN: I THINK WE ALSO HAD -- OR MAYBE  
21 WE DIDN'T. I DON'T RECALL.

22 MS. SALINAS, DID SHE HAVE TUESDAY DOCTOR  
23 APPOINTMENTS AS WELL TOO?

24 THE COURT: NO. THAT PROBLEM WAS CURED.

25 MR. MCMILLAN: OH, OKAY.

26 THE COURT: IF YOU RECALL, SHE HAD -- IT MAY  
27 BE IN AN E-MAIL, BUT MY UNDERSTANDING IS THAT, AFTER  
28 HAVING SENT THE MESSAGE ASKING FOR THE TIME, THAT SHE

1 THEN SENT A SUBSEQUENT MESSAGE, WHICH I DON'T SEE AT  
2 THE MOMENT, BUT SENT IT TO THE COURT ATTENDANT,  
3 ADVISING THAT SHE APPARENTLY HAD FOUND ANOTHER PROVIDER  
4 AND THAT SHE WOULD NO LONGER NEED THE AFTERNOONS OFF.

5 MR. GUTERRES: OH, GREAT.

6 THE COURT: IS THAT CORRECT, DEANNA?

7 DEANNA: YES.

8 THE COURT: SO.

9 MR. GUTERRES: WELL, YOUR HONOR, MAY I SUGGEST  
10 THAT IF WE HAVE TO END EARLY, THAT WE USE THE REST OF  
11 THE TIME TO GO OVER EXHIBITS? I'VE SPOKEN TO MR. PARIS  
12 TODAY, AND I'VE TOLD HIM AFTER THE LUNCH HOUR WE'RE  
13 WILLING TO STIPULATE TO A COUPLE MORE EXHIBITS, AND I'M  
14 READY TO GIVE THOSE TO THE COURT.

15 I HAVE HANDED AND SENT AN E-MAIL ALREADY TO  
16 OPPOSING COUNSEL, BUT EXHIBITS 12, 498, 24, 26 --

17 THE COURT: WAIT, THAT'S -- WE'LL PUT THEM ON  
18 THE RECORD. YEAH, I WOULD INTEND THAT WE WOULDN'T LOSE  
19 THE TIME.

20 SO WE WILL RECESS IN TIME FOR MS. DUVAL TO  
21 KEEP HER APPOINTMENT THIS AFTERNOON. BUT ONCE SHE HAS  
22 FINISHED HER TESTIMONY, WHICH WILL CERTAINLY BE BEFORE  
23 THE NEXT SCHEDULED VISITATION, I DON'T INTEND TO TAKE  
24 ANY MORE TIME OFF, UNDERSTANDING THAT SHE MAY HAVE  
25 TO -- WILL HAVE TO LEAVE EARLY ON OTHER DAYS. BUT I  
26 DON'T INTEND TO TAKE FURTHER TIME OFF.

27 I'M VERY CONCERNED THAT I'M GOING TO HAVE TO  
28 ADDRESS, VERY SHORTLY, CERTAIN HARDSHIP CLAIMS THAT

1 WERE MADE BY SEVERAL OF OUR ALTERNATE JURORS, WHICH --  
2 AND BECAUSE THE CASE IS TAKING MORE TIME THAN  
3 ANTICIPATED, I HAVE A CONCERN AS TO WHAT FURTHER  
4 PROBLEMS WE MIGHT HAVE WITH JURORS BECAUSE OF WHAT  
5 TURNS OUT TO BE AN INACCURATE TIME ESTIMATION. SO --  
6 AND THERE ARE OTHER MATTERS THAT I WILL ADDRESS WITH  
7 YOU THIS AFTERNOON THAT WILL CONSUME MORE TIME, MORE  
8 TIME WITHOUT THE JURY PRESENT.

9 SO LET'S TAKE ADVANTAGE OF THE TIME WE HAVE  
10 NOW AND GET THE JURORS IN.

11 I DO HAVE ONE LAST ISSUE I NEED TO ADDRESS  
12 BEFORE WE DO THAT. AND THAT IS I'M CERTAINLY WELL  
13 AWARE OF THE NUMBER OF EXHIBITS, BEGINNING WITH 586,  
14 WHICH WAS A TYPED SUMMATION OF HER CLAIMED DAMAGES. I  
15 ANTICIPATE THAT THERE MAY BE OBJECTIONS BY THE DEFENSE  
16 TO THE ADMISSIBILITY OF ANY OF THIS SERIES OF EXHIBITS  
17 BEGINNING WITH 586, AND THE PRESENT TIME WE'VE GONE  
18 THROUGH 599 AND THEN 602. SO I'M GUESSING WE'RE GOING  
19 TO GET TO 600 AND 601 AS WELL, AND PERHAPS SOME OTHERS.

20 AND I BELIEVE THAT -- I BELIEVE, AGAIN, TAKING  
21 INTO CONSIDERATION WE HAVE ONLY LIMITED TIME THIS  
22 AFTERNOON, THAT I CAN ADDRESS THE ISSUE WITH YOU  
23 FURTHER AFTER WE HAVE TO RECESS THIS AFTERNOON. AND MY  
24 CONCERN IS THAT IF OBJECTIONS ARE SUSTAINED -- I'M NOT  
25 SAYING THEY WILL, BUT IF THEY ARE -- TO THOSE EXHIBITS,  
26 THEN IT MAY REQUIRE FURTHER TESTIMONY FROM THE WITNESS,  
27 WHICH WOULD BE FURTHER DIRECT EXAMINATION. AND I'M  
28 GOING TO, EVEN THOUGH -- WHEN YOU COMPLETE YOUR DIRECT

1 EXAMINATION AND WE BEGIN THE CROSS-EXAMINATION THIS  
2 AFTERNOON, I WILL ADVISE YOU THAT, DEPENDING ON THE  
3 RULINGS ON THESE EXHIBITS, THAT IF IT'S NECESSARY, I  
4 WILL PERMIT YOU TO REOPEN YOUR DIRECT EXAMINATION TO  
5 ADDRESS ANY ISSUES THAT MAY ARISE FROM THE SUSTAINING  
6 OF ANY OBJECTION TO THOSE EXHIBITS. THIS IS NOT  
7 TELLING YOU WHAT I WILL DO, BUT I AM AWARE OF WHERE WE  
8 ARE IN THE CASE, AND CERTAINLY AFTER MANY, MANY YEARS  
9 I'VE BEEN INVOLVED IN THIS BUSINESS, THAT WE NEED TO  
10 ANTICIPATE WHAT MAY OCCUR.

11 SO WITH THOSE STATEMENTS, I'M GOING TO ASK THE  
12 COURT ATTENDANT TO GET THE JURORS IN SO WE CAN TAKE  
13 ADVANTAGE OF WHAT LITTLE TIME WE HAVE THIS AFTERNOON  
14 FOR ACTUAL TESTIMONY.

15 (JURY PRESENT)

16 THE COURT: EVERYONE MAY BE SEATED. WE'RE ON  
17 THE RECORD. EVERYBODY IS PRESENT.

18 MS. DUVAL, IF YOU'LL PLEASE TAKE THE STAND  
19 AGAIN.

20 AND MR. MCMILLAN, YOU MAY CONTINUE.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 BY MR. MCMILLAN:

23 Q MS. DUVAL, DO YOU RECALL WHEN WE BROKE FOR THE  
24 NOON RECESS, I THINK WE WERE TALKING ABOUT EXHIBIT 599.  
25 AND EXHIBIT NO. 599, CAN YOU GIVE US JUST A BRIEF SORT  
26 OF GENERAL OVERVIEW OF WHAT IT WAS THAT 599 CONSISTS  
27 OF.

28 A PAID MEDICAL BILLS.

1 Q AND THE DOCUMENTS CONTAINED IN EXHIBIT  
2 NO. 599, BEARING BATES NO. 007472 THROUGH AND INCLUDING  
3 007530, ARE THOSE INVOICES TRUE AND ACCURATE DEPICTIONS  
4 OF THE VARIOUS EXPENSES THAT YOU INCURRED UNDER THE  
5 CATEGORY ON YOUR SPREADSHEET FOR MEDICAL EXPENSES?

6 A YES. THERE IS ALSO -- 007529 AND -30, THEY  
7 ARE SICK TIME -- JUST THE DETAIL OF THE SICK TIME AND  
8 VACATION OR PERSONAL TIME I USED AS WELL. SO IT'S IN  
9 THAT RANGE.

10 Q OKAY. SO THOSE TWO PAGES -- 7530, 7529 -- ARE  
11 A DEPICTION OF THE TIME THAT YOU HAD TO TAKE OFF WORK?

12 A YES.

13 Q IS THAT RIGHT?

14 A YES.

15 Q ALL RIGHT. TURNING TO EXHIBIT NO. 600.  
16 NO. 600 IS BATES NOS. 007532 THROUGH 007769;  
17 CORRECT? THE LAST PAGE IS -69?

18 (PLAINTIFF'S EXHIBIT NO. 600.7532-7769  
19 WAS MARKED FOR IDENTIFICATION BY THE  
20 COURT.)

21 THE WITNESS: YES.

22 BY MR. MCMILLAN:

23 Q OKAY. AND THAT PILE OF DOCUMENTS THERE, WHAT  
24 IS DEPICTED IN THERE?

25 A THOSE ARE MEDICAL BILLS FOR MYSELF, PAID  
26 MEDICAL BILLS FOR MYSELF.

27 Q AND ARE THESE TRUE AND ACCURATE COPIES OF THE  
28 MEDICAL BILLS THAT PROVIDE THE BACKUP FOR YOUR DATA IN

1 YOUR SPREADSHEET?

2 A YES.

3 Q WHICH CATEGORY DO THEY RELATE TO IN YOUR  
4 SPREADSHEET?

5 I THINK IT WAS 586.

6 A PAID MEDICAL BILLS.

7 Q ALL RIGHT. IN A DIFFERENT BOOK, I THINK WE'LL  
8 GO TO EXHIBIT NO. 601. AND I'LL FIND THAT FOR YOU IF  
9 IT'S NOT UP THERE ALREADY.

10 601, YEAH THAT'S IT.

11 ALL RIGHT. 601 BEGINS WITH 007771 AND  
12 CONTINUES THROUGH 007860; IS THAT CORRECT?

13 (PLAINTIFF'S EXHIBIT NO. 601.7771-7860  
14 WAS MARKED FOR IDENTIFICATION BY THE  
15 COURT.)

16 THE WITNESS: YES.

17 BY MR. MCMILLAN:

18 Q WHAT ARE THOSE?

19 A THESE ARE PAID MONITORING RECEIPTS, VISITATION  
20 MONITORING RECEIPTS.

21 Q ARE THESE ALL OF THE RECEIPTS FOR PAID  
22 MONITORS THAT YOU'VE HAD OVER THE YEARS?

23 A YES, 2010 TO 2015.

24 Q I SEE ON PAGE 007771, THE FIRST RECEIPT HERE  
25 IS -- IT'S UPSIDE DOWN, BUT IT'S JUNE 11, 2015; IS THAT  
26 CORRECT?

27 A YES, THERE'S THAT.

28 Q OKAY. DOES THIS EXHIBIT NO. 601 INCLUDE



1 RECEIPTS FOR VISITS THAT YOU'VE PAID FOR SINCE JUNE 11,  
2 2015?

3 A NO.

4 Q DOES THIS EXHIBIT 601 RELATE TO ONE OF THE  
5 LINE ITEMS IN THAT SPREADSHEET THAT YOU PUT TOGETHER  
6 THAT'S EXHIBIT NO. 586?

7 A YES.

8 Q WHICH ONE?

9 A MONITORED VISITATION EXPENSE.

10 Q TO THE EXTENT THAT THERE ARE RECEIPTS IN HERE,  
11 IN EXHIBIT 601, THAT CONTINUE THROUGH JUNE 11, 2015,  
12 ARE THESE, TO THE BEST OF YOUR KNOWLEDGE, TRUE AND  
13 ACCURATE COPIES OF THE RECEIPTS THAT YOU'VE MAINTAINED  
14 OVER THE YEARS FOR YOUR MONITORED VISITS?

15 A YES. I NOTICE THERE'S SOME ON 602 AS WELL.

16 Q YEAH, I THINK WE SPOKE ABOUT 602 A LITTLE BIT  
17 EARLIER, SO WE'RE GOING SKIP THAT ONE.

18 A SURE.

19 Q IF I CAN GET YOU TO TURN TO EXHIBIT NO. 603,  
20 BEGINS WITH BATES NO. 007869 AND CONTINUES THROUGH  
21 007891.

22 (PLAINTIFF'S EXHIBIT NO. 603.7869-7891,  
23 WAS MARKED FOR IDENTIFICATION BY THE  
24 COURT.)

25 BY MR. MCMILLAN:

26 Q DO YOU SEE THAT THERE?

27 A YES.

28 Q OKAY. WHAT'S THAT PILE OF DOCUMENTS THERE?

1 AND IF YOU NEED TO TAKE A MOMENT TO THUMB THROUGH THEM,  
2 THAT'S FINE.

3 BUT THAT PILE OF DOCUMENTS THERE, WHAT ARE  
4 THOSE RELATED TO?

5 A THERE ARE SOME MEDICAL RECEIPTS -- THERE'S  
6 ONE. AND THEN THE REST OF THEM ARE CHILD SUPPORT --  
7 ONE CHILD SUPPORT STATEMENT. AND THERE'S OTHER  
8 VISITATION EXPENSE, LIKE OUT OF THE MISCELLANEOUS TAB.  
9 AND THERE'S SOME UNPAID LEGAL FEES RELATED TO FAMILY  
10 COURT AND DEPENDENCY. AND THERE ARE SEVERAL PARKING  
11 RECEIPTS, LIKE ALL UNDER MISCELLANEOUS CHARGES AND  
12 COURT COSTS.

13 Q WELL, IF YOU CAN TURN TO BATES NO. 007875 AS  
14 AN EXAMPLE, THERE'S A RECEIPT THERE FROM BIG LOTS,  
15 THERE'S SOME RECEIPTS THERE FROM 99 CENTS ONLY STORES,  
16 ROSS.

17 DO YOU SEE THOSE?

18 A YES.

19 Q WHAT ARE THOSE RELATED TO?

20 A TOYS, HALLOWEEN COSTUME OR HALLOWEEN  
21 DECORATIONS THAT I MAY HAVE BOUGHT DURING THE VISIT IF  
22 MY SON WANTED TO DECORATE THE HOUSE OR THAT KIND OF  
23 STUFF.

24 Q SO THIS EXHIBIT NO. 603, WHICH LINE ITEM ON  
25 THE SPREADSHEET DO THESE SOURCE DOCUMENTS RELATE TO?

26 A IT WOULD BE UNDER -- ON THE FIRST ONE, UNDER  
27 MONITORED VISITATION, ON THE BOTTOM, THERE'S VISITATION  
28 ACTIVITY THAT WILL BE RIGHT BEFORE THE TOTAL OF THE

1 VISITATION EXPENSE.

2 Q AND ALL OF THESE RECEIPTS HERE THAT COMPOSE  
3 EXHIBIT NO. 603, ARE THEY TRUE AND ACCURATE COPIES AND  
4 DEPICTIONS OF THE RECEIPTS THAT YOU'VE MAINTAINED OVER  
5 THE COURSE OF THE YEARS?

6 A YES.

7 Q NOW, GOING BACK FOR JUST A MOMENT, YOU'D  
8 TALKED TO US A LITTLE BIT EARLIER ABOUT AN APPEAL FROM  
9 A FAMILY LAW ORDER.

10 DO YOU REMEMBER THAT TESTIMONY?

11 A YES.

12 Q DID YOU HIRE AN ATTORNEY TO PROSECUTE THAT  
13 APPEAL?

14 A NO.

15 Q WHO DID THAT? WHO PROSECUTED THAT APPEAL?

16 A MYSELF.

17 Q IS THERE A REASON THAT YOU DIDN'T HIRE AN  
18 ATTORNEY TO PROSECUTE THE APPEAL?

19 MS. SWISS: OBJECTION. RELEVANCE.

20 THE COURT: SUSTAINED.

21 BY MR. MCMILLAN:

22 Q HAVE YOU HAD AN OPPORTUNITY -- OR HAVE YOU HAD  
23 AN OPPORTUNITY TO GO OUT AND GET AN ESTIMATE, IN TERMS  
24 OF ATTORNEY'S FEES, OF WHAT IT'S GOING TO TAKE GOING  
25 FORWARD FROM TODAY TO TRY TO RESOLVE, FIGHT AND RESOLVE  
26 THE ISSUES IN FAMILY COURT?

27 A YES.

28 MS. SWISS: OBJECTION. RELEVANCE.

1 THE COURT: OVERRULED.

2 BY MR. MCMILLAN:

3 Q CAN YOU SHARE WITH US -- WELL, LET ME ASK YOU  
4 THIS FIRST: HOW MANY DIFFERENT ATTORNEYS HAVE YOU  
5 SPOKEN WITH?

6 A AT LEAST THREE.

7 Q HAVE YOU BEEN ABLE TO ESTABLISH AN ESTIMATE OF  
8 WHAT IT'S GOING TO COST YOU TO GET THE PROBLEMS IN THE  
9 FAMILY COURT RESOLVED SO THAT YOU CAN START HAVING MORE  
10 TIME WITH YOUR SON?

11 A RANGE, ESTIMATES, SURE.

12 Q CAN YOU SHARE THAT WITH US?

13 A THE LATEST I GOT WAS ABOUT A MONTH OLD, AND  
14 JUST TO TRY TO GET RID OF THE MONITORING SITUATION, IT  
15 WILL BE CLOSE TO \$75- TO \$100,000.

16 Q AND IN YOUR DISCUSSIONS WITH THAT ATTORNEY --  
17 YOU SAID JUST "TO GET RID OF THE MONITORING SITUATION,"  
18 WHAT DOES THAT MEAN?

19 A HAVING TO COME UP WITH A CHANGE OF  
20 CIRCUMSTANCES, DOING POSSIBLE EVALUATIONS, RESEARCH,  
21 AND POSSIBLE APPELLATE RECOURSE IF -- IN CASE I LOSE  
22 THOSE MOTIONS.

23 Q AND I WANT TO MAKE SURE I DIDN'T MISUNDERSTAND  
24 YOU: THAT'S JUST TO GET THE MONITOR LIFTED?

25 A YES.

26 Q DID YOU TALK TO THESE ATTORNEYS ABOUT WHAT  
27 IT'S GOING TO TAKE -- BEYOND GETTING THE MONITOR  
28 LIFTED -- WHAT IT'S GOING TO TAKE TO ACTUALLY GET MORE

1 TIME?

2 A YES.

3 Q WERE THEY ABLE TO GIVE YOU AN ESTIMATE ON  
4 THAT?

5 A YES.

6 Q CAN YOU SHARE THAT WITH US?

7 A OVER A COURSE OF TIME, LET'S SAY WE'RE TALKING  
8 ABOUT TWO YEARS, FOR EXAMPLE, IT WOULD DEFINITELY BE  
9 OVER \$150,000. ON AN ESTIMATE.

10 Q NOW, I'D LIKE TO SORT OF SHIFT GEARS A LITTLE  
11 BIT. WE'RE GETTING CLOSE HERE.

12 SINCE YOUR SON WAS TAKEN FROM YOU, HOW HAS  
13 YOUR LIFE CHANGED?

14 A ON MONITORED VISITATION, I ALWAYS HAVE SOMEONE  
15 THERE JUDGING EVERYTHING I DO, MY PARENTING,  
16 EVERYTHING. I'M UNABLE TO HAVE A SIT-DOWN MEAL WITH MY  
17 SON WHERE IF WE GO SOMEWHERE, I HAVE TO COME UP WITH  
18 REASONS OR MAKE UP EXCUSES AS OF WHY WE CAN'T SIT AT  
19 THE TABLE AND JUST EAT. I CONSTANTLY FEEL JUDGED FROM  
20 PEOPLE WHEN I TELL THEM THAT I HAVE A SON AND HE  
21 DOESN'T LIVE WITH ME.

22 SO THERE HAS BEEN A LOT THAT HAS CHANGED  
23 SINCE.

24 Q WHAT ABOUT RELATIONSHIP-WISE? DO YOU HAVE  
25 SOMEONE IN YOUR LIFE?

26 MS. SWISS: OBJECTION. RELEVANCE.

27 THE COURT: OVERRULED.

28 THE WITNESS: I DON'T.

1 BY MR. MCMILLAN:

2 Q IS THERE A REASON WHY NOT?

3 MS. SWISS: OBJECTION. RELEVANCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: BECAUSE WHEN I MEET SOMEONE AND  
6 I TELL THEM THAT DCFS TOOK MY CHILD, THAT I'M FIGHTING  
7 THESE ALLEGATIONS. YOU KNOW, PEOPLE DON'T WANT TO DEAL  
8 WITH IT AND I DON'T WANT TO PUT MYSELF IN THAT  
9 SITUATION OVER AND OVER AGAIN.

10 BY MR. MCMILLAN:

11 Q WHAT DO YOU MEAN WHEN YOU SAY YOU "DON'T WANT  
12 TO PUT YOURSELF IN THAT SITUATION OVER AND OVER AGAIN"?

13 A BEING CONSTANTLY JUDGED OR FEELING LIKE I'M  
14 HAVING TO EXPLAIN, CONSTANTLY EXPLAIN TO PEOPLE WHY I'M  
15 IN THE SITUATION I'M IN.

16 Q WHAT ABOUT YOUR RELATIONSHIP WITH YOUR SON  
17 OVER THE YEARS? YOU'VE HAD THESE VISITS, AND NOW HE'S  
18 OLDER. HOW IS THAT?

19 A I TRY TO KEEP IT POSITIVE, BUT IT'S DIFFICULT  
20 AT TIMES.

21 Q EXPLAIN.

22 A YOU KNOW, SOMETIMES HE COMES AND HE TELLS ME,  
23 "OH, YOU KNOW, DADDY SAYS YOU TRIED TO KILL ME WHEN I  
24 WAS 15 MONTHS OLD," OR "YOU ABANDONED ME WHEN I WAS  
25 LITTLE," AND I -- I TRY TO TELL HIM THAT, YOU KNOW,  
26 THOSE ARE ADULT CONVERSATIONS, AND THAT I LOVE HIM.  
27 BUT IT HURTS ME TO KNOW THAT THAT'S WHAT HE THINKS.  
28 AND THAT HE'S SO -- HE'S SO LITTLE, HE DOESN'T

1 UNDERSTAND. SO IT'S HARD, IT'S DIFFICULT IN THAT WAY.

2 Q NOW, I WANT TO FOCUS FOR A MOMENT ON ONE OF  
3 THESE VISITS WHERE YOU HAD A CONVERSATION LIKE THAT  
4 WITH YOUR SON AND THERE WAS SOME DISCIPLINE METED OUT.

5 DO YOU REMEMBER THAT?

6 A YES.

7 Q CAN YOU SHARE WITH US WHAT -- FIRST, JUST  
8 START WITH WHAT HAPPENED AT THE VISIT.

9 A HE CAME TO THE VISIT; WE WERE AT AN ARCADE.  
10 HE WAS SAYING ALL THESE THINGS, "OH, MY DAD SAID YOU  
11 TRIED TO KILL ME WHEN I WAS 15 MONTHS OLD, AND YOU'RE A  
12 BAD PERSON." AND HE STARTED KICKING AND HITTING ME.

13 AND I ASKED HIM TO, YOU KNOW, TO STOP, THAT  
14 THOSE THINGS WERE NOT TRUE. AND HE JUST WOULDN'T. AND  
15 I SPANKED HIM ON HIS BOTTOM.

16 Q NOW, WAS THERE A MONITOR, A PERSON SUPERVISING  
17 THAT VISIT?

18 A YES.

19 Q DID THEY HAVE ANYTHING TO SAY ABOUT WHAT  
20 UNFOLDED THERE?

21 A YES. THEY WROTE A REPORT ABOUT IT.

22 Q SHARE WITH US; WHAT WAS THE TENOR OF THAT  
23 REPORT?

24 A THE MONITOR ADVISED ME THAT I WAS NOT SUPPOSED  
25 TO DISCIPLINE MY SON DURING THE VISIT, EVEN THOUGH THAT  
26 WAS HIS BEHAVIOR. AND BECAUSE OF THAT, HE HAD  
27 TERMINATED THE VISIT.

28 Q WAS THERE -- WERE THERE ANY OTHER

1 RAMIFICATIONS OF THAT EPISODE?

2 A YES.

3 Q WHAT?

4 A I DIDN'T HAVE A MONITOR FOR A FEW WEEKS. I  
5 HAD TO COME TO COURT ON AN *EX PARTE* BASIS, MEANING AS  
6 AN EMERGENCY, TO TRY TO REPLACE THE MONITOR THAT LEFT.  
7 AND I DIDN'T SEE MY SON FOR A FEW WEEKS.

8 Q NOW, WITH RESPECT TO YOUR SON'S CURRENT  
9 CONDITION, DO YOU HAVE ACCESS TO ANY OF HIS MEDICAL  
10 INFORMATION?

11 A I DO NOT.

12 Q WHY NOT?

13 A I DON'T HAVE -- I DON'T HAVE ANY WAY OF  
14 KNOWING ANYTHING MEDICAL ABOUT HIM. I HAVE NO LEGAL  
15 CUSTODY OR LEGAL STANDING TO REQUEST ANY TYPE OF  
16 MEDICAL INFORMATION REGARDING MY SON.

17 Q WHAT ABOUT EDUCATIONAL INFORMATION? DO YOU  
18 HAVE ANY ACCESS TO HIS EDUCATION RECORDS OR HOW HE'S  
19 DOING IN SCHOOL, THAT SORT OF THING?

20 A I DO NOT.

21 Q ALL RIGHT. THANK YOU, MS. DUVAL.

22 MR. MCMILLAN: YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MS. SWISS?

25

26 CROSS-EXAMINATION

27 BY MS. SWISS:

28 Q GOOD AFTERNOON, MS. DUVAL.



1           A       GOOD AFTERNOON.

2           Q       NOW, MR. MCMILLAN WAS JUST ASKING YOU ABOUT  
3       THAT RECENT ISSUE OF DISCIPLINE DURING THE MONITORED  
4       VISITS?

5           A       YES.

6           Q       NOW, GUS MARTINEZ, HE'S THE SUPERVISED  
7       MONITOR?

8           A       YES, HE WAS.

9           Q       OKAY.   AND HE WORKS FOR CHILD SAFE  
10      VISITATIONS; IS THAT RIGHT?

11          A       YES.

12          Q       OKAY.   AND BEFORE HE AGREED TO BE THE MONITOR,  
13      YOU HAD TO SIGN AN AGREEMENT RETAINING HIS SERVICES;  
14      CORRECT?

15          A       YES.

16          Q       OKAY.   AND PART OF THAT AGREEMENT INCLUDES  
17      RULES TO BE FOLLOWED DURING THE VISITATIONS; RIGHT?

18          A       YES.

19          Q       AND ONE OF THOSE RULES THAT YOU SIGNED SAYS:

20                    "I WILL NOT USE PHYSICAL  
21                    PUNISHMENT OR THREATEN TO USE PHYSICAL  
22                    PUNISHMENT WITH THE CHILD DURING  
23                    VISITS."

24          A       YES.

25          Q       OKAY.   AND YOU SIGNED THAT ABOUT JUNE OF 2015?

26          A       YES.

27          Q       OKAY.   NOW, THIS INCIDENT THAT HAPPENED, WAS  
28      THAT -- AT THE ARCADE -- THAT WAS APRIL OF 2016?

1           A       YES, THAT SOUNDS ABOUT RIGHT.

2           Q       OKAY.  AND THEN, IN APRIL OF 2016,  
3 MR. MARTINEZ WROTE TO YOU AND SAID THAT HE WAS  
4 TERMINATING MONITORING THE VISITS?

5           A       YES.

6           Q       AND THAT WAS BECAUSE YOU FAILED TO COMPLY WITH  
7 THE TERMS OF THE AGREEMENT; CORRECT?

8           A       YES.

9           Q       AND THE ISSUE THAT HAPPENED AT THE ARCADE IN  
10 APRIL OF 2016, THAT WASN'T THE FIRST INCIDENT REGARDING  
11 PHYSICAL PUNISHMENT OF RYAN WHILE MR. MARTINEZ WAS  
12 SUPERVISING THE VISITS, WAS IT?

13          A       NO.

14          Q       SO IN FEBRUARY OF 2016, THERE WAS A PRIOR  
15 INCIDENT; CORRECT?

16          A       YES.

17          Q       AND AT THAT INCIDENT, THAT WAS AT THE MALL?  
18 IN FRONT OF THE BEST BUY STORE?

19          A       OH, YES.

20          Q       AND RYAN WENT TO TAEKWONDO; RIGHT?

21          A       YES.

22          Q       AND HE FED THE DUCKS?

23          A       YES.

24          Q       AND THEN YOU TOLD HIM IT WAS TIME TO GO;  
25 RIGHT?

26          A       YES.

27          Q       AND HE THREW A TANTRUM?

28          A       I WOULD HAVE TO LOOK AT THE REPORT TO --

1 Q SURE.

2 A -- REFRESH MY RECOLLECTION.

3 I'M SORRY.

4 Q I DON'T KNOW THE NEXT EXHIBIT IN ORDER, BUT I  
5 CAN SHOW YOU...

6 THE COURT: DON?

7 THE CLERK: 1247.

8 (DEFENDANTS' EXHIBIT NO. 1247, WAS  
9 MARKED FOR IDENTIFICATION BY THE  
10 COURT.)

11 BY MS. SWISS:

12 Q IT'S THE THIRD-TO-LAST PAGE.

13 DO YOU SEE THAT?

14 A YES.

15 Q IF YOU COULD TAKE A LOOK AT THAT REPORT AND  
16 LET ME KNOW WHEN YOU'RE READY.

17 A I'M DONE.

18 Q OKAY. DOES THAT E-MAIL REFRESH YOUR  
19 RECOLLECTION OF RYAN'S TANTRUM THAT DAY?

20 A YES.

21 Q AND YOU RESPONDED BY TWO OPEN-HAND SPANKINGS  
22 TO HIS BUTTOCKS WHILE STATING "YOU DON'T HIT YOUR  
23 MOTHER LIKE THAT"; CORRECT?

24 A YES.

25 Q AND THEN THE MONITOR SENT YOU THIS E-MAIL  
26 REMINDING YOU OF THE AGREEMENT THAT YOU SIGNED TO NOT  
27 USE PHYSICAL PUNISHMENT ON YOUR SON?

28 A YES.

1 Q OKAY. DO YOU KNOW SHIRLEY DOUGLASS?

2 A YES.

3 Q AND SHIRLEY DOUGLASS IS A DIFFERENT MONITOR?

4 A YES.

5 Q AND SHE WORKS FOR A VISITATION AGENCY?

6 A SHE -- SHE OWNS THAT AGENCY, YES.

7 Q OKAY. DOUGLASS AND ASSOCIATES?

8 A YES.

9 Q AND SHE SUPERVISED SOME OF YOUR VISITATIONS  
10 WITH RYAN; CORRECT?

11 A YES.

12 Q AND SHE ALSO CANCELLED HER SERVICES?

13 A YES.

14 Q AND SHE CANCELLED SERVICES BECAUSE OF  
15 DISAGREEMENTS BETWEEN YOURSELF AND HER AGENCY?

16 A YOU CAN SAY THAT, YES.

17 Q I'LL SHOW YOU THE NEXT EXHIBIT IN ORDER, 1248.

18 IF YOU COULD JUST TAKE A LOOK AT THAT. LET ME  
19 KNOW WHEN YOU'RE READY.

20 (DEFENDANTS' EXHIBIT NO. 1248, WAS  
21 MARKED FOR IDENTIFICATION BY THE  
22 COURT.)

23 BY MS. SWISS:

24 Q AND FOR THE RECORD, EXHIBIT 1248 IS AN E-MAIL  
25 FROM SHIRLEY DOUGLASS TO -- IT SAYS UNDISCLOSED  
26 RECIPIENTS BUT IT IDENTIFIES "DEAR MS. DUVAL AND  
27 MR. MILLS."

28 AND WHILE MS. DUVAL IS READING THAT,

1 EXHIBIT 1247 IS A REPORT FROM GUS MARTINEZ OF CHILD  
2 SAFE VISITATIONS DATED APRIL 11, 2016.

3 THE WITNESS: I'M DONE.

4 BY MR. MCMILLAN:

5 Q OKAY. THANK YOU.

6 DOES THAT E-MAIL REFRESH YOUR RECOLLECTION OF  
7 THE IMPASSE BETWEEN SHIRLEY DOUGLASS AND YOURSELF?

8 A YES.

9 Q AND WHY DID MS. DOUGLASS CANCEL THOSE  
10 VISITATIONS?

11 A MS. DOUGLASS AND I HAD HAD A DISAGREEMENT OVER  
12 A REPORT THAT ONE OF THE MONITORS HAD GIVEN ME A FEW  
13 MONTHS OR MAYBE A YEAR BEFORE THIS TIME.

14 Q AND YOU DISAGREED WITH THE MONITOR'S REPORT,  
15 WHAT WAS GOING ON DURING THOSE VISITS?

16 A HER MONITOR, HER EMPLOYEE, HAD TOLD ME ONE  
17 THING, AND WHEN I ASKED MS. DOUGLASS ABOUT WHAT HER OWN  
18 EMPLOYEE HAD TOLD ME, SHE DENIED IT AS BEING SO. SO I  
19 DIDN'T KNOW WHO TO BELIEVE, HER EMPLOYEE OR HER.

20 Q AND SO SHE CANCELLED THE VISITATIONS BECAUSE  
21 YOU COULD NOT COME TO AN AGREEMENT?

22 A THAT KEPT BEING THE RECURRING PROBLEM, YES.

23 Q NOW, THE E-MAIL, FIRST THE SECOND PARAGRAPH,  
24 MS. DOUGLASS WRITES:

25 "AS MONITORS, WE ARE GOVERNED BY  
26 THE STANDARD 5.20, UNIFORM STANDARDS OF  
27 PRACTICE FOR PROVIDERS OF SUPERVISED  
28 VISITATION. OUR PROFESSION IS NOT

1           REGULATED.  THEREFORE, MS. DUVAL, YOU  
2           CANNOT TELL ME WHAT ANOTHER MONITOR IS  
3           DOING AND SAY I SHOULD DO THE SAME, NOR  
4           CAN YOU FORCE ME TO DO SOMETHING THAT  
5           MONITORS DO NOT HAVE THE POWER TO DO.  
6           IF THE JUDGE DID NOT MAKE AN ORDER WE  
7           ARE TO PROVIDE REPORTS TO THE COURT ON  
8           A REGULAR BASIS, IT WILL NOT BE DONE."  
9           DID I READ THAT CORRECTLY, THE FIRST PART OF  
10          THAT PARAGRAPH?

11           MR. MCMILLAN:  OBJECTION, YOUR HONOR.  
12          HEARSAY.

13           THE COURT:  OVERRULED.

14           THE WITNESS:  YES, YOU READ IT CORRECTLY.

15          BY MS. SWISS:

16           Q        OKAY.  IT CONTINUES:

17                    "THE JUDGE HAS ENOUGH DOCUMENTS TO  
18                    READ PERTAINING TO COURT MATTERS.

19                    "ALSO, YOU SAID YOU HELD ME  
20                    RESPONSIBLE FOR AN INACCURATE  
21                    DECLARATION THAT WAS DONE BY ONE OF MY  
22                    INDEPENDENT MONITORS THREE YEARS AGO."  
23                    DO YOU SEE THAT?

24           A        YES.

25           Q        CONTINUES:

26                    "FOR THE RECORD, I REVIEW ALL  
27                    DECLARATIONS AS IT PERTAINS TO FORMAT,  
28                    SPELLING, GRAMMAR, ET CETERA, BECAUSE

1 THE AGENCY'S NAME IS ON IT, NOT THE  
2 CONTENTS OF THE DECLARATION. ANYTHING  
3 I DELETED ON THE DECLARATION DATED  
4 SEPTEMBER 25, 2011, IS BECAUSE IT FIT  
5 INTO ONE OF THOSE STATED CATEGORIES.

6 "IF I DELETED ANYTHING THAT WAS  
7 PERTINENT TO YOUR CASE, MS. DUVAL, YOU  
8 SHOULD HAVE ASKED THE INDEPENDENT  
9 MONITOR TO CORRECT IT AND RESUBMIT IT  
10 TO MY APPROVAL -- FOR MY APPROVAL OR  
11 NOT TURN IN THE DECLARATION AND ASK THE  
12 JUDGE TO DISMISS US FOR NOT DOING OUR  
13 JOBS. BUT NEITHER OPTION WAS DONE."  
14 DO YOU SEE THAT?

15 A I SEE THAT'S WHAT SHE SAYS, YES.

16 Q DURING YOUR TESTIMONY, YOU ALSO HAD AN ISSUE  
17 WITH NOT BEING ABLE TO SPEAK SPANISH TO YOUR SON DURING  
18 YOUR SUPERVISED VISITATIONS WITH MS. SCHEELE; DO YOU  
19 RECALL THAT?

20 A YES.

21 Q AND THAT'S BECAUSE YOU SPEAK SPANISH; RIGHT?

22 A I DO.

23 Q AND YOUR MOM SPEAKS ALMOST ONLY SPANISH;  
24 RIGHT?

25 A YES.

26 Q AND YOU WANTED YOUR MOM TO BE ABLE TO  
27 PARTICIPATE IN THOSE VISITS WHEN SHE COULD; RIGHT?

28 A YES.

1 Q NOW, ISN'T IT TRUE, MS. DUVAL, THAT YOU  
2 ACTUALLY GOT TO CHOOSE THE LANGUAGE OF THE VISITS?

3 A I'M SORRY. AT WHAT PERIOD OF TIME?

4 Q ISN'T IT TRUE, MS. DUVAL, THAT ON  
5 OCTOBER 20TH, 2009, YOU SIGNED A FORM ENTITLED PRIMARY  
6 LANGUAGE DESIGNATION FORM FOR PARENTS/LEGAL  
7 GUARDIANS/CHILDREN?

8 A THAT IS CORRECT. I SIGNED THAT FORM.

9 Q OKAY. AND I'LL GO AHEAD AND SHOW THAT TO YOU.  
10 IT'S PART OF EXHIBIT 1064, AND IT'S BATES-STAMPED 2380.

11 (DEFENDANTS' EXHIBIT NO. 1064.2380, 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 THERE'S A SIGNATURE THERE IN THE MIDDLE OF  
18 THE PAGE; DO YOU SEE THAT?

19 A YES.

20 Q DO YOU RECOGNIZE THAT SIGNATURE?

21 A ONE OF THEM IS MY SIGNATURE.

22 Q OKAY. AND DO YOU KNOW THE OTHER SIGNATURE?

23 A IT LOOKS LIKE RYAN MILLS'S SIGNATURE.

24 Q OKAY. SO YOU BELIEVE THAT BOTH YOU AND  
25 MR. MILLS SIGNED THIS FORM?

26 A YES.

27 Q YES?

28 AND AT THE TOP THERE, THE SECOND LINE, IT







1 THE COURT.)

2 MS. SWISS: MAY I PROCEED?

3 THE COURT: YES, GO AHEAD.

4 BY MS. SWISS:

5 Q MS. DUVAL, ON PAGE 2015, THAT IS ANOTHER OF  
6 THE LANGUAGE FORMS THAT WE JUST TALKED ABOUT THAT WAS  
7 THE SAME FORM AS 2380?

8 DO YOU AGREE WITH ME?

9 A IT'S THE SAME TYPE OF FORM, YES.

10 Q AND IS THAT YOUR SIGNATURE ON THERE?

11 A NOT ON 2015.

12 Q UNDER PARENT/GUARDIAN, THAT'S NOT YOURS?

13 A NO.

14 Q IS THAT MR. MILLS'S?

15 A IT LOOKS LIKE IT, YES.

16 Q LOOKS LIKE MR. MILLS, OKAY.

17 AND THAT ONE IS DATED AUGUST 16TH, 2010;

18 RIGHT?

19 A YES.

20 Q NOW, IF YOU LOOK AT PAGE 2018, THAT'S THE SAME  
21 FORM AS 2380?

22 A IT'S THE SAME TYPE OF FORM, YES.

23 Q OKAY. AND THAT ONE, IS THAT YOUR SIGNATURE?

24 A THAT'S MY SIGNATURE, YES.

25 Q OKAY. AND THAT ONE'S DATED SEPTEMBER 9, 2010?

26 A YES.

27 Q AND THAT FORM, YOU CHECKED THE BOX FOR ENGLISH  
28 AS WELL?

1           A     YES.

2           Q     OKAY.  NOW GOING BACK TO THE DETENTION  
3 HEARING, WE TALKED ABOUT YOUR ATTORNEY.

4                     AND HIS NAME WAS SCOTT CLARK; IS THAT RIGHT?

5           A     YES.

6           Q     AND HE WAS A PRIVATELY-RETAINED ATTORNEY;  
7 CORRECT?

8           A     YES.

9           Q     MEANING HE WAS NOT APPOINTED BY THE COURT;  
10 CORRECT?

11          A     THAT'S CORRECT.

12          Q     SO YOU ACTUALLY FOUND HIM OF YOUR OWN ACCORD;  
13 CORRECT?

14          A     YES.

15          Q     AND YOU PAID HIS RETAINER?

16          A     YES.

17          Q     AND HE AGREED TO PROVIDE YOU LEGAL SERVICES TO  
18 REPRESENT YOU IN THE DEPENDENCY CASE; CORRECT?

19          A     YES.

20          Q     AND THE DETENTION HEARING -- WELL, THE  
21 DETENTION WAS SEPTEMBER 3RD; RIGHT?

22                     MR. MCMILLAN:  OBJECTION.  MISSTATES --  
23 BY MS. SWISS:

24          Q     I'M SORRY.  NOVEMBER 3RD, 2009; CORRECT?

25          A     I'M SORRY.

26          Q     I APOLOGIZE.  THE DETENTION WAS NOVEMBER 3RD,  
27 2009; CORRECT?

28          A     YES.

1 Q AND THE HEARING WAS NOVEMBER 6, 2009?

2 A YES.

3 Q AND SOMEWHERE IN THAT THREE-DAY SPAN, YOU  
4 RETAINED MR. CLARK?

5 A YES.

6 Q AND YOU MET WITH HIM BEFORE YOU AGREED TO HIRE  
7 HIM; CORRECT?

8 A YES.

9 Q YOU CALLED HIM ON THE PHONE FIRST?

10 A THAT SOUNDS RIGHT, YES.

11 Q AND THEN YOU SET A MEETING; RIGHT?

12 A YES.

13 Q YOU WENT TO HIS OFFICE?

14 A YES.

15 Q AND BEFORE YOU PAID HIM ANY MONEY, YOU WANTED  
16 TO MAKE SURE HE KNEW WHAT HE WAS TALKING ABOUT; RIGHT?

17 MR. MCMILLAN: OBJECTION. ARGUMENT.

18 THE COURT: OVERRULED.

19 THE WITNESS: I RETAINED HIM WHEN I WENT TO  
20 HIS OFFICE, SO I GOT HIS SERVICES.

21 THE COURT REPORTER: GOT HIS?

22 THE WITNESS: HIS SERVICES.

23 BY MS. SWISS:

24 Q OKAY. AND -- SORRY.

25 ARE YOU FINISHED?

26 A YES, I WAS CLARIFYING FOR HER.

27 Q OKAY. AND YOU TESTIFIED EARLIER THAT YOU HAVE  
28 AT YOUR HOUSE ALL THESE BINDERS WITH THE MEDICAL

1 RECORDS AND INFORMATION ABOUT RYAN; CORRECT?

2 A YES.

3 Q AND DID YOU BRING ALL OF THOSE RECORDS WHEN  
4 YOU MET WITH MR. CLARK?

5 A NO.

6 Q YOU DIDN'T GIVE HIM ALL OF THE INFORMATION  
7 THAT HE -- THAT YOU HAD ORGANIZED AT YOUR HOUSE SO THAT  
8 HE COULD REPRESENT YOU?

9 MR. MCMILLAN: OBJECTION. THAT'S COMPOUND.  
10 ALSO ARGUMENTATIVE.

11 THE COURT: OVERRULED.

12 THE WITNESS: THAT'S NOT WHAT HE HAD ASKED ME  
13 TO BRING WITH ME AT THE TIME.

14 BY MS. SWISS:

15 Q YOU WENT TO HIS OFFICE, YOU MET WITH HIM;  
16 RIGHT?

17 A YES.

18 Q AND YOU PAID HIM SOME MONEY?

19 A YES.

20 Q AND HE SHOWED UP AT THE HEARING ON  
21 NOVEMBER 6TH; CORRECT?

22 A YES.

23 Q AND YOU WENT TO THAT HEARING AS WELL; RIGHT?

24 A YES.

25 Q AND DID YOU BRING THE BINDERS OF ALL THE  
26 INFORMATION THAT YOU HAD GATHERED TO THAT HEARING?

27 A NO.

28 Q AND DID YOU ASK YOUR ATTORNEY TO ALLOW YOU TO

1 CALL WITNESSES OR HAVE A CONTESTED DETENTION HEARING?

2 MR. MCMILLAN: ATTORNEY-CLIENT PRIVILEGE.

3 OBJECTION.

4 THE COURT: SUSTAINED.

5 BY MS. SWISS:

6 Q DID YOU ASK YOUR -- DID YOU HAVE THE COURT  
7 RULE ON WHETHER YOU COULD HAVE A DETENTION HEARING THAT  
8 WAS CONTESTED SO YOU COULD PUT ON EVIDENCE AND  
9 WITNESSES?

10 MR. MCMILLAN: OBJECTION. FOUNDATION.  
11 SPECULATION. ALSO IMPLICATES ATTORNEY-CLIENT  
12 PRIVILEGE.

13 THE COURT: OVERRULED.

14 THE WITNESS: I'M SORRY. CAN YOU REPEAT THE  
15 QUESTION?

16 BY MS. SWISS:

17 Q IT WAS A LITTLE CONVOLUTED. LET ME REPHRASE.  
18 AT THE DETENTION HEARING, DID YOU ASK THE  
19 COURT TO ALLOW YOU TO HAVE A CONTESTED DETENTION  
20 HEARING WHERE YOU COULD PUT ON EVIDENCE AND WITNESSES?

21 A I -- I DID ASK THAT OF MR. CLARK, YES. SO  
22 HOWEVER HE DID IT, I'M ASSUMING THAT'S HOW IT WAS DONE.

23 Q YOU WERE AT THE HEARING; CORRECT?

24 A I WAS.

25 Q AND DID YOUR ATTORNEY ASK THE COURT FOR A  
26 CONTESTED DETENTION HEARING?

27 A FROM WHAT I RECALL, HE SAID THAT WE DIDN'T  
28 AGREE WITH THE ALLEGATIONS, SO I THINK THAT'S -- THAT'S

1 CONTESTING THE HEARING.

2 Q BUT DID HE -- YOU DIDN'T HEAR HIM ASK THE  
3 JUDGE TO ALLOW YOU TO GO ON THE STAND AND SAY YOUR  
4 PART, DID YOU? AT THAT HEARING?

5 A I DON'T REMEMBER RIGHT NOW IF HE SAID THAT OR  
6 NOT.

7 Q OKAY. NOW, MR. CLARK, HE WAS YOUR ATTORNEY IN  
8 JANUARY OF 2010 DURING THE JURISDICTION/DISPOSITION  
9 HEARING; RIGHT?

10 A YES, HE WAS.

11 Q OKAY. AND THAT HEARING WAS -- STRIKE THAT.  
12 BEFORE THAT HEARING, THAT'S WHEN YOU ASKED  
13 MR. BUDIN TO WRITE A LETTER ON YOUR BEHALF?

14 DO YOU RECALL THAT?

15 MR. MCMILLAN: OBJECTION. MISSTATES  
16 TESTIMONY. LACKS FOUNDATION. SPECULATION.

17 THE COURT: OVERRULED.

18 THE WITNESS: YES, I ASKED MR. BUDIN TO WRITE  
19 A PROGRESS LETTER.

20 BY MS. SWISS:

21 Q AND THAT LETTER WAS ADDRESSED TO MR. CLARK;  
22 RIGHT?

23 A YES.

24 Q AND YOU EXPECTED THAT MR. CLARK WOULD PRESENT  
25 THAT LETTER TO THE JUVENILE COURT; RIGHT?

26 A YES.

27 Q OKAY. NOW, AT THAT HEARING, THE  
28 JURISDICTION/DISPOSITION HEARING, THAT'S THE HEARING



1 WHERE I BELIEVE YOU TESTIFIED THAT YOU HAD RECEIVED THE  
2 JURISDICTION/DISPOSITION REPORT.

3 DO YOU RECALL THAT?

4 A YES.

5 Q AND THAT'S THE REPORT THAT ATTACHES THE  
6 UP-FRONT ASSESSMENT?

7 A YES.

8 Q AND THAT IS THE REPORT WHERE DCFS RECOMMENDS  
9 THAT THE FAMILY, MR. MILLS AND MS. DUVAL, UNDERGO A  
10 730 PSYCHOLOGICAL EVALUATION?

11 A YES.

12 Q AND -- NOW, MR. BUDIN, WHEN HE WAS HERE, HE  
13 RECOMMENDED TO YOU THAT THERE SHOULD BE AN INDEPENDENT  
14 PSYCHOLOGICAL ASSESSMENT, DIDN'T HE?

15 A YES.

16 Q BUT AT THAT HEARING, IN JANUARY OF 2010, YOU  
17 ACTUALLY OBJECTED TO UNDERGOING THE 730 EVALUATION;  
18 CORRECT?

19 A YES --

20 MR. MCMILLAN: OBJECTION --

21 BY MS. SWISS:

22 Q AND THE COURT AGREED WITH YOUR OBJECTION;  
23 RIGHT?

24 A YES.

25 Q SO THE REPORT SAYS 730 EVALUATION FOR  
26 EVERYBODY; RIGHT? THAT'S WHAT THE DCFS REPORT SAYS?

27 MR. MCMILLAN: OBJECTION. FOUNDATION.  
28 SPECULATION.

1 THE COURT: OVERRULED.

2 THE WITNESS: THE REPORT SUGGESTS THAT  
3 730 EVAL.

4 BY MS. SWISS:

5 Q AND YOU OBJECTED TO THAT; RIGHT?

6 A YES.

7 Q AND THE COURT DIDN'T ORDER IT; RIGHT?

8 A NO. NO.

9 Q AND THE JUVENILE COURT NEVER ORDERED ANY  
10 PSYCHOLOGICAL EVALUATION FOR YOU OR MR. MILLS AT ANY  
11 TIME; CORRECT?

12 A CORRECT.

13 Q DID YOU TELL MR. BUDIN THAT YOU OBJECTED TO  
14 THE 730 EVALUATION?

15 A I BELIEVE WE TALKED ABOUT IT, YES.

16 Q YOU TOLD HIM YOU DIDN'T WANT TO HAVE THAT  
17 INDEPENDENT TESTING DONE?

18 A NO.

19 Q YOU NEVER TOLD HIM?

20 A NO, THAT'S NOT WHAT I SAID TO HIM.

21 Q MR. BUDIN ALSO TOLD YOU TO GET A NEW LAWYER,  
22 DIDN'T HE?

23 A NO.

24 Q WELL, YOU WERE HERE WHEN HE WAS TESTIFYING;  
25 RIGHT?

26 A I WAS.

27 Q AND HE SAID THAT YOU SHOULD GET A MORE  
28 COMPETENT ATTORNEY?

1           A       I DON'T RECALL THAT, BUT -- I DON'T KNOW.

2           I -- I DON'T RECALL THAT.

3           Q       BUT YOU DID GET A NEW ATTORNEY; CORRECT?

4           A       I DID.

5           Q       AND YOUR NEW ATTORNEY, MR. ROBERT HOWELL, WITH  
6           AN H?

7           A       YES.

8           Q       AND YOU RETAINED HIM JANUARY 28, 2009?

9           A       YES.

10          Q       NOW, WHEN YOU RETAINED MR. HOWELL, YOU FILED  
11          SOME MOTIONS WITH THE DEPENDENCY COURT; RIGHT?

12          A       YES.

13          Q       AND BEFORE YOU HIRED MR. HOWELL, DID YOU MEET  
14          WITH HIM?

15          A       YES.

16          Q       AND DID YOU BRING HIM THOSE BINDERS WITH ALL  
17          THE INFORMATION THAT YOU HAD AT YOUR HOUSE ABOUT YOUR  
18          SON?

19          A       I DIDN'T, BUT WE TALKED ABOUT IT, YES.

20          Q       I'D LIKE YOU TO TAKE A LOOK AT EXHIBIT 29.

21                   (DEFENDANTS' EXHIBIT NO. 29, WAS MARKED  
22                   FOR IDENTIFICATION BY THE COURT.)

23          BY MS. SWISS:

24          Q       DO YOU HAVE THAT BINDER IN FRONT OF YOU?

25                   THE COURT:   WHY DON'T YOU HELP HER.

26          BY MS. SWISS:

27          Q       I DON'T KNOW WHAT YOU HAVE, SO LET ME HELP.

28          A       THANK YOU.

1 Q OKAY.

2 A THANK YOU.

3 Q MS. DUVAL, DO YOU KNOW WHAT THAT IS?

4 A IT'S A REQUEST TO CHANGE COURT ORDER.

5 Q THAT'S A REQUEST TO CHANGE COURT ORDER FILED  
6 BY YOUR ATTORNEY ON FEBRUARY 2, 2010?

7 A YES.

8 Q AND ON THE SECOND PAGE, PAGE 836, THAT  
9 DESCRIBES THE MOTION THAT MR. HOWELL FILED ON YOUR  
10 BEHALF?

11 A YES.

12 Q AND UNDER NO. 8:

13 "WHAT ORDER OR ORDERS DO YOU WANT  
14 THE JUDGE TO MAKE NOW?"  
15 DO YOU SEE THAT?

16 A YES.

17 Q AND IT SAYS:

18 "MOTHER IS REQUESTING VISITATION  
19 BE AT LEAST FOUR TO FIVE TIMES PER WEEK  
20 FROM 3:15 TO 5:15, AND THAT EITHER  
21 RISSA ENNIS OR THE MGM (BOTH HAVE  
22 CLEARED FINGERPRINTING) BE ALLOWED TO  
23 MONITOR IN ORDER FOR MOTHER NOT TO HAVE  
24 TO DRIVE 1.5 HOURS TO GET TO THE DCFS  
25 OFFICE."

26 DO YOU SEE THAT?

27 A YES.

28 Q AND WOULD YOU AGREE WITH ME THAT MGM STANDS

1 FOR MATERNAL GRANDMOTHER?

2 A YES.

3 Q OKAY. SO AT THIS POINT, IN FEBRUARY, YOU WERE  
4 ASKING FOR MORE VISITATION; RIGHT?

5 A YES.

6 Q AND THERE WAS A HEARING ON THAT ORDER;  
7 CORRECT?

8 A I DON'T REMEMBER. I'M SORRY, I DON'T REMEMBER  
9 IF THERE WAS.

10 Q IF YOU CAN TURN TO EXHIBIT 31. LET ME KNOW  
11 WHEN YOU'RE THERE.

12 (DEFENDANTS' EXHIBIT NO. 31, WAS MARKED  
13 FOR IDENTIFICATION BY THE COURT.)

14 THE WITNESS: I'M THERE. I'M THERE.

15 BY MS. SWISS:

16 Q OKAY. AND THAT'S THE COURT ORDER FOR YOUR  
17 MOTION; RIGHT?

18 A YES.

19 Q AND THE DATE ON THAT ORDER IS 2/11/10?

20 A YES.

21 Q AND IT STATES:

22 "THE REQUEST IS DENIED BECAUSE --  
23 AND THE BOX B IS CHECKED -- THE REQUEST  
24 DOES NOT STATE NEW EVIDENCE OR A CHANGE  
25 OF CIRCUMSTANCES."

26 DO YOU SEE THAT?

27 A YES.

28 Q AND THE BOX C IS CHECKED:

1                   "THE PROPOSED CHANGE OF ORDER,  
2                   RECOGNITION OF SIBLING RELATIONSHIPS OR  
3                   TERMINATION OF JURISDICTION, DOES NOT  
4                   PROMOTE THE BEST INTEREST OF THE  
5                   CHILD."

6                   DO YOU SEE THAT?

7                   A        YES.

8                   Q        AND THE BOX D IS CHECKED, DO YOU SEE THAT?

9                   A        YES.

10                  Q        AND THERE, THERE'S HANDWRITING, AND I BELIEVE  
11                  IT READS:

12                               "ALSO, CHILD IS MEDICALLY  
13                               CHALLENGED AND DIAGNOSED AS FAILURE TO  
14                               THRIVE.   SOCIAL WORKER MUST TAKE THIS  
15                               INTO CONSIDERATION WHEN ARRANGING  
16                               VISITS."

17                   DO YOU SEE THAT?

18                  A        YES.

19                  Q        AND THEN THERE'S A SIGNATURE ABOVE THE LINE  
20                  FOR JUDICIAL OFFICER?

21                  A        YES.

22                  Q        AND IT APPEARS THAT JUDICIAL OFFICER MARTINEZ  
23                  SIGNED THAT?

24                  A        YES.

25                  Q        AND ON THE NEXT PAGE OF EXHIBIT 31, THERE'S A  
26                  LETTER FROM THE COURT; CORRECT?

27                  A        YES.

28                  Q        AND THAT'S INFORMING YOU THAT THE MOTION WAS

1 DENIED?

2 A YES.

3 Q AND YOU RECEIVED THAT LETTER RIGHT? IT HAS  
4 YOUR ADDRESS ON THERE AT THE BOTTOM?

5 A IT DOES, YES.

6 Q IT ALSO HAS MR. HOWELL'S ADDRESS; CORRECT?

7 A YES.

8 Q NOW, IF YOU COULD TURN TO EXHIBIT 32. LET ME  
9 KNOW WHEN YOU'RE READY.

10 (DEFENDANT'S EXHIBIT NO. 32, WAS MARKED  
11 FOR IDENTIFICATION BY THE COURT.

12 THE WITNESS: I AM THERE.

13 BY MS. SWISS:

14 Q AND THAT'S THE MINUTE ORDER FROM THAT  
15 FEBRUARY 11, 2010, HEARING?

16 A YES.

17 Q AND THAT'S THE ORDER THAT WAS ISSUED BY THE  
18 JUDGE OF WHAT HAPPENED IN COURT THAT DAY?

19 A YES.

20 Q NOW, MR. HOWELL MADE ANOTHER MOTION ON YOUR  
21 BEHALF DURING THIS CASE; RIGHT?

22 A I BELIEVE SO, YES.

23 Q AND IF YOU CAN TURN TO EXHIBIT 45.

24 (DEFENDANTS' EXHIBIT NO. 45, WAS MARKED  
25 FOR IDENTIFICATION BY THE COURT.)

26 BY MS. SWISS:

27 Q LET ME KNOW WHEN YOU'RE READY.

28 A OKAY.

1           Q     NOW, EXHIBIT 45, THAT'S ANOTHER REQUEST TO  
2 CHANGE COURT ORDER THAT MR. HOWELL FILED ON YOUR  
3 BEHALF; RIGHT?

4           A     YES.

5           Q     AND THAT ONE WAS FILED APRIL 22, 2010?

6           A     YES.

7           Q     AND ON THE SECOND PAGE, BATES 979 -- DO YOU  
8 SEE THAT PAGE?

9           A     YES.

10          Q     OKAY. NOW, NO. 6, IT SAYS -- IT ASKS WHAT  
11 ORDER YOU FEEL SHOULD BE CHANGED; RIGHT?

12          A     YES.

13          Q     AND IT SAYS:

14                     "ON APRIL 12, 2010, THE JUDGE MADE  
15 THE FOLLOWING ORDER THAT YOU FEEL  
16 SHOULD BE CHANGED: NO FURTHER TESTING  
17 ORDERED BY THE COURT."

18                     DO YOU SEE THAT?

19          A     YES.

20          Q     AND UNDER NO. 7, YOU HAVE THE OPTION TO GIVE  
21 NEW INFORMATION THAT THE JUDGE DID NOT HAVE WHEN THE  
22 ORIGINAL DECISION WAS MADE?

23          A     YES.

24          Q     AND IT SAYS:

25                     "AFTER EXAMINATION BY MOTHER'S  
26 EXPERT, DR. LOTT (SEE CV, EXHIBIT 1) A  
27 DIAGNOSIS OF MICROCEPHALY HAS BEEN MADE  
28 WHICH REQUIRES FURTHER TESTING TO



1 DETERMINE THE CAUSE AND ENSURE THAT A  
2 PROPER COURSE OF TREATMENT IS PUT INTO  
3 PLACE IMMEDIATELY (SEE EXPLANATION OF  
4 THE TESTS, EXHIBIT 2). MOTHER HAS  
5 ATTEMPTED TO WORK WITH CSW TO NO AVAIL  
6 (SEE LETTER TO CSW, EXHIBIT 3)."

7 DID I READ THAT CORRECTLY?

8 A YES.

9 Q SO MR. HOWELL WAS ASKING THE COURT ON YOUR  
10 BEHALF TO PERMIT DR. LOTT TO DO ALL THOSE TESTS THAT  
11 YOU WANTED?

12 A YES.

13 Q UNDER NO. 8, WHAT ORDERS YOU'RE ASKING THE  
14 JUDGE TO MAKE, IT SAYS:

15 "THAT THE MOTHER BE ALLOWED TO  
16 TAKE THE CHILD TO SCHEDULED MEDICAL  
17 APPOINTMENTS FOR GENETIC TESTS, GI  
18 TEST, AND FOR AN MRI (SEE EXHIBIT 4).  
19 FURTHER, THAT MOTHER BE ALLOWED TO TAKE  
20 THE CHILD TO THE TESTS WITHOUT A  
21 MONITOR OR AN APPROVED MONITOR NOT FROM  
22 DCFS.

23 "MOTHER IS ALSO REQUESTING  
24 INCREASED VISITATION TO THREE TIMES PER  
25 WEEK FOR TWO TO THREE HOURS AND AN  
26 APPROVED MONITOR NOT FROM DCFS."

27 DO YOU SEE THAT?

28 A YES.

1 Q DID I READ THAT CORRECTLY?

2 A YES.

3 Q SO YOU ASKED THE COURT ON APRIL 12TH, AT THE  
4 HEARING, TO ALLOW THE MRI AND THE TESTING TO BE DONE BY  
5 DR. LOTT; RIGHT?

6 A YES.

7 Q AND THEN THE COURT SAID NO; RIGHT?

8 A CORRECT.

9 Q AND THEN YOU HAD YOUR ATTORNEY FILE THIS  
10 MOTION WITH EVEN MORE DOCUMENTS FOR THE COURT'S  
11 CONSIDERATION; RIGHT?

12 A YES.

13 Q AND THE COURT DENIED THAT MOTION; CORRECT?

14 A YES.

15 Q NOW, IF YOU CAN TAKE A LOOK AT EXHIBIT 53.

16 (DEFENDANTS' EXHIBIT NO. 53, WAS MARKED

17 FOR IDENTIFICATION BY THE COURT.)

18 BY MS. SWISS:

19 Q IS IT IN THAT BINDER?

20 A YES. I'M ACTUALLY THERE.

21 Q OKAY. NOW, EXHIBIT 53, THAT'S A LETTER THAT  
22 YOU WROTE TO MS. SCHEELE; CORRECT?

23 A YES.

24 Q AND THAT'S THE LETTER THAT YOU SUBMITTED TO  
25 THE JUVENILE COURT IN SUPPORT OF YOUR MOTION TO ASK THE  
26 COURT TO ALLOW THE MRI OF RYAN; RIGHT?

27 A I DON'T KNOW IF THAT WAS SUBMITTED AS WELL.

28 Q OKAY. WELL, WE JUST LOOKED AT EXHIBIT 45;

1 RIGHT?

2 A YES.

3 Q AND THAT WAS YOUR MOTION?

4 A YES.

5 Q AND UNDER NO. 7, ON PAGE BATES 979, THE LAST  
6 LINE SAYS:

7 "MOTHER HAS ATTEMPTED TO WORK WITH  
8 CSW TO NO AVAIL (SEE LETTER TO CSW,  
9 EXHIBIT 3)."

10 DO YOU SEE THAT?

11 A YES.

12 Q AND THAT MOTION WAS DATED APRIL 22, 2010?

13 A YES.

14 Q AND THEN EXHIBIT 53 IS YOUR LETTER TO  
15 MS. SCHEELE, AND THAT'S DATED APRIL 21, 2010?

16 A YES.

17 Q ON EXHIBIT 53, THE SECOND PAGE, BATES 1056,  
18 THAT'S YOUR SIGNATURE; CORRECT?

19 A YES.

20 Q AND YOU SENT THE LETTER TO MS. SCHEELE, CC'D  
21 ROBERT HOWELL -- THAT'S YOUR ATTORNEY; RIGHT?

22 A YES.

23 Q MELISSA EGGE, THAT'S THE DOCTOR FROM FAILURE  
24 TO THRIVE?

25 A YES.

26 Q AND THEN KAREN VANCE. THAT'S MS. SCHEELE'S  
27 SUPERVISOR?

28 A YES.

1           Q       NOW, THIS IS YOUR LETTER TO MS. SCHEELE TRYING  
2 TO TELL HER WHY YOU THINK THE MRI SHOULD BE PERFORMED;  
3 RIGHT?

4           MR. MCMILLAN:  OBJECTION.  MISSTATES THE  
5 EVIDENCE.

6           THE COURT:  OVERRULED.  SHE CAN ANSWER.

7           THE WITNESS:  NO, NOT NECESSARILY THAT.

8 BY MS. SWISS:

9           Q       WELL, THIS IS THE LETTER WHERE YOU'RE ASKING  
10 FOR ALL OF THE MEDICAL RECORDS; RIGHT?

11          A       YES.

12          Q       AND YOU ASK MS. SCHEELE FOR ALL THOSE RECORDS;  
13 RIGHT?

14          A       YES.

15          Q       AND IN THE FOURTH PARAGRAPH, YOU STATE:

16                   "AS A MOTHER WHO, CONTESTING  
17 ALLEGATIONS OF NEGLIGENCE, I HAVE ASKED  
18 THE COURT FOR A SECOND OPINION BY AN  
19 EXPERT TO MAKE AN ASSESSMENT OF RYAN  
20 ALEXANDER.  THE REQUEST WAS GRANTED.  
21 DR. IRA LOTT IS A WELL KNOWN  
22 NEUROLOGIST, PROFESSOR OF PEDIATRICS,  
23 PROFESSOR OF NEUROLOGY, CHIEF OF  
24 PEDIATRIC NEUROLOGY DIVISION, ASSOCIATE  
25 DEAN OF CLINICAL NEUROSCIENCES, AND THE  
26 DIRECTOR OF NEUROSCIENCES DEVELOPMENT  
27 FOR THE UCI HEALTH SYSTEMS."  
28 DID I READ THAT CORRECTLY?



1           BEST INTEREST AND WELLBEING OF RYAN  
2           ALEXANDER THAT THE TESTS ARE PERFORMED  
3           AS REQUESTED BY DR. LOTT BECAUSE OF THE  
4           PRELIMINARY DIAGNOSIS OF MICROCEPHALY."

5           DID I READ THAT CORRECTLY?

6           MR. MCMILLAN:  OBJECTION, YOUR HONOR.  IT'S  
7           INCOMPLETE, MISLEADING.  MISSTATES THE EVIDENCE.

8           THE COURT:  OVERRULED.

9           BY MS. SWISS:

10          Q       DID I READ THAT CORRECTLY?

11          A       THE LATTER PART, YES.

12          Q       OKAY.  NOW, THIS LETTER IS FOLLOWING THE  
13                 APPOINTMENT THAT YOU HAD DISCUSSED EARLIER TODAY WHERE  
14                 YOU TOOK BABY RYAN TO SEE DR. LOTT AND MS. SCHEELE WAS  
15                 PRESENT; CORRECT?

16          A       IT WAS A FEW WEEKS AFTER THAT, YES.

17          Q       OKAY.  AND THE APPOINTMENT WITH DR. LOTT WHERE  
18                 MS. SCHEELE ATTENDED, THAT WAS ON APRIL 1ST, 2010?  
19                 DOES THAT SOUND ABOUT RIGHT?

20          A       YES.

21          Q       NOW, ISN'T IT TRUE, MS. DUVAL, THAT AT THE  
22                 APPOINTMENT WITH DR. LOTT, THE NURSE SPECIFICALLY ASKED  
23                 YOU IF RYAN WAS RECEIVING ANY SPECIALIZED CARE FOR HIS  
24                 CONDITIONS?

25          A       I DON'T RECALL RIGHT NOW IF SHE ASKED ME THAT.  
26                 I DON'T REMEMBER.

27          BY MS. SWISS:

28          Q       IF YOU WANT TO TAKE A LOOK AT EXHIBIT 43.

1           NOW, EXHIBIT 43 IS THE LAST MINUTE INFORMATION  
2 FILED BY DCFS ON APRIL 12, 2010; WOULD YOU AGREE WITH  
3 ME?

4           A     I SEE, YES, IT'S THE LAST MINUTE INFORMATION.

5           Q     AND THAT'S THE ONE WITH THE ADMITTED INTO  
6 EVIDENCE STICKER ON IT?

7           A     YES.

8           Q     NOW, IN THAT REPORT, TOWARDS THE END OF THE  
9 7TH LINE, IT STARTS OFF "CSW SCHEELE INDICATED."  
10 DO YOU SEE THAT?

11          A     YES.

12          Q     (READING:)

13                   "CSW SCHEELE INDICATED THAT PRIOR  
14 TO THE ASSESSMENT, A NURSE ASKED ABOUT  
15 ANY SPECIALIZED CARE FOR THE CHILD AND  
16 WHICH MOTHER DENIED. CSW SCHEELE  
17 INTERVENED AND REMINDED MOTHER OF  
18 RYAN'S PARTICIPATION IN THE FAILURE TO  
19 THRIVE CLINIC AT HARBOR-UCLA MEDICAL  
20 CENTER. MOTHER INDICATED THAT SHE DID  
21 NOT CONSIDER THIS TO BE SPECIALIZED  
22 CARE.

23                   "DURING THE ASSESSMENT,  
24 CSW SCHEELE INFORMED DR. LOTT THAT THE  
25 CHILD IS UNDER THE CARE OF THE FAILURE  
26 TO THRIVE CLINIC AT HARBOR-UCLA MEDICAL  
27 CENTER. DR. LOTT REPORTED THAT HE WAS  
28 UNAWARE OF RYAN'S CARE BY THE FAILURE

1 TO THRIVE CLINIC.

2 "FURTHER, DR. LOTT REPORTED THAT  
3 MOTHER TOLD HIM THAT THE CHILD IS  
4 GETTING WORSE, AND THAT ALTHOUGH HE  
5 WEIGHS MORE HIS BODY SEEMS SMALLER AND  
6 HIS LEGS ARE SMALLER AS OPPOSED TO THE  
7 CHUBBY PRESENTATION WHEN HE WAS IN HER  
8 CUSTODY. DR. LOTT MEASURED THE CHILD'S  
9 HEAD, AND BASED ON ITS SMALL SIZE (THAT  
10 OF AN EIGHT-MONTH OLD) AN MRI WAS  
11 ORDERED TO RULE OUT MICROCEPHALY.  
12 DR. LOTT ALSO ORDERED GENETIC TESTING  
13 AND A REFERRAL TO A GI SPECIALIST."

14 DID I READ THAT CORRECTLY?

15 A YOU READ IT CORRECTLY.

16 Q AND DOES THAT REFRESH YOUR RECOLLECTION THAT  
17 THE NURSE ASKED YOU IF THE BABY WAS UNDERGOING  
18 SPECIALIZED CARE ON APRIL 1ST, 2010?

19 MR. MCMILLAN: OBJECTION. HEARSAY. SECOND  
20 WORD HEARSAY.

21 THE COURT: OVERRULED.

22 THE QUESTION IS: SAYING THAT, DOES THAT  
23 REFRESH YOUR RECOLLECTION OF WHAT'S SAID THERE OR NOT?

24 THE WITNESS: IT DOESN'T.

25 THE COURT: ALL RIGHT.

26 BY MS. SWISS:

27 Q I'M SORRY, THE ANSWER WAS?

28 A IT DOESN'T.



1 Q IT DOES NOT. OKAY.

2 WERE YOU AWARE THAT, FOLLOWING THE APPOINTMENT  
3 WITH DR. LOTT, THAT VICTORIA SCHEELE DISCUSSED  
4 DR. LOTT'S RECOMMENDATIONS WITH THE FAILURE TO THRIVE  
5 CLINIC?

6 MR. MCMILLAN: LACKS FOUNDATION. SPECULATION.

7 THE COURT: THE --

8 MR. MCMILLAN: OBJECTION. SORRY.

9 THE COURT: REGARDLESS OF THE ORDER IN WHICH  
10 IT'S PRESENTED, IT'S OVERRULED.

11 BUT PLEASE JUST ANSWER THE QUESTION ASKING  
12 WHETHER YOU WERE AWARE OF SOMETHING OR NOT. YOU CAN  
13 ANSWER THAT "YES" OR "NO."

14 THE WITNESS: I WAS NOT AWARE OF WHAT SHE  
15 DISCUSSED WITH FAILURE TO THRIVE CLINIC.

16 BY MS. SWISS:

17 Q THE NEXT PARAGRAPH:

18 "FOLLOWING THE ASSESSMENT,  
19 CSW SCHEELE DISCUSSED THE FINDING WITH  
20 THE FAILURE TO THRIVE CLINIC AND IT WAS  
21 REPORTED THAT RYAN'S HEAD CIRCUMFERENCE  
22 HAS IMPROVED WITH HIS WEIGHT GAIN SINCE  
23 HE HAS BEEN UNDER THEIR CARE AND THAT  
24 THEY DISAGREED WITH DR. LOTT'S  
25 FINDINGS.

26 "CSW SCHEELE EXCHANGED CONTACT  
27 INFORMATION BETWEEN DR. LOTT AND THE  
28 FAILURE TO THRIVE CLINIC. THE TWO

1 DOCTORS WERE ASKED TO CONSULT ABOUT THE  
2 FINDINGS IN ORDER TO DEVELOP A  
3 UNIFORMED COURSE OF ACTION FOR RYAN'S  
4 TREATMENT IN ORDER TO PREVENT THE  
5 POSSIBILITY OF HIM UNDERGOING  
6 UNNECESSARY TESTING AND PROCEDURES.

7 "IN ADDITION, A COMPLETE COPY OF  
8 RYAN'S MEDICAL RECORDS HAS BEEN  
9 COMPILED AND WILL BE PROVIDED TO  
10 DR. LOTT AS HE HAS REQUESTED PRIOR TO  
11 HIM COMPLETING HIS FINAL WRITE-UP.  
12 MOTHER LEARNED OF THESE INSTRUCTIONS BY  
13 CSW SCHEELE."

14 AND THE SENTENCE GOES ON.

15 DID I READ THE FIRST PART OF THAT CORRECTLY?

16 A YES.

17 Q DOES THAT REFRESH YOUR RECOLLECTION THAT YOU  
18 WERE INFORMED ABOUT MS. SCHEELE DISCUSSING DR. LOTT'S  
19 FINDINGS WITH THE FAILURE TO THRIVE CLINIC?

20 A IT DOES.

21 Q AND ISN'T IT TRUE THAT YOU ACTUALLY CALLED THE  
22 FAILURE TO THRIVE CLINIC AND FORBID THEM FROM  
23 CONSULTING WITH DR. LOTT?

24 A I DID NOT.

25 Q THAT'S NOT TRUE?

26 A I DID NOT.

27 Q AND THE SENTENCE CONTINUES:

28 "MOTHER LEARNED OF THESE

1 INSTRUCTIONS BY CSW SCHEELE AND CALLED  
2 THE FAILURE TO THRIVE CLINIC AND FORBID  
3 THEM FROM CONSULTING WITH DR. LOTT."  
4 DO YOU SEE THAT?

5 A I SEE THAT.

6 Q DOES THAT REFRESH YOUR RECOLLECTION?

7 MR. MCMILLAN: OBJECTION, YOUR HONOR. IT'S  
8 ARGUMENT. SHE DIDN'T SAY SHE DIDN'T REMEMBER.

9 THE COURT: THAT OBJECTION --

10 MR. MCMILLAN: CAN I AMEND THE OBJECTION?

11 THE COURT: THE OBJECTION IS OVERRULED, BUT I  
12 NEED TO SEE COUNSEL.

13 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
14 SIDEBAR.)

15 THE COURT: WE'RE AT SIDEBAR WITH COUNSEL.

16 THE OBJECTION OF ARGUMENT IS OVERRULED.

17 HOWEVER, THIS IS NOT THE APPROPRIATE WAY TO ASK SOMEONE  
18 ABOUT REFRESHING THEIR RECOLLECTION. YOU MAY HAVE THEM  
19 LOOK AT A DOCUMENT TO SEE IF IT REFRESHES THEIR  
20 RECOLLECTION, AND THEY CAN ANSWER YES OR NO. BUT  
21 DURING THIS CASE, AND CERTAINLY DURING THIS  
22 CROSS-EXAMINATION, BUT ALSO DURING MUCH OF A NUMBER OF  
23 EXAMINATIONS BY MR. MCMILLAN -- EVERYBODY HAS BEEN  
24 READING FROM THE DOCUMENTS. AND NO ONE GETS TO DO  
25 THAT.

26 SO UNTIL YOU ESTABLISH A BASIS FOR BEING ABLE  
27 TO READ FROM THE DOCUMENT -- BUT WHEN THE QUESTIONS ARE  
28 ONE OF REFRESHING RECOLLECTION, THE APPROPRIATE WAY OF

1 DOING IT IS POINTING OUT TO THEM A CERTAIN LOCATION IN  
2 THE DOCUMENT AND ASKING WHETHER IT REFRESHES THEIR  
3 RECOLLECTION OR NOT. IF IT DOESN'T, IT DOESN'T.

4 SO YOU DON'T GET TO READ DOCUMENTS. THAT'S --  
5 I HAVEN'T RAISED THIS BEFORE BECAUSE, MR. MCMILLAN, YOU  
6 DID THIS TO A GREAT EXTENT AS WELL AND THEN ALWAYS  
7 ASKED "DID I READ THAT CORRECTLY," WHICH IS TOTALLY  
8 UNNECESSARY. AND I THINK THAT BECAUSE WE NOW HAVE THE  
9 OBJECTION TO YOUR USE OF THE DOCUMENT, THAT IT'S  
10 IMPORTANT THAT EVERYBODY REMEMBER HOW TO USE A  
11 DOCUMENT.

12 MS. SWISS: UNDERSTOOD.

13 THE COURT: THANK YOU.

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

17 BY MS. SWISS:

18 Q MS. DUVAL, YOU TESTIFIED THAT YOU DID NOT CALL  
19 THE FAILURE TO THRIVE CLINIC AND FORBID THEM FROM  
20 CONSULTING WITH DR. LOTT; IS THAT RIGHT?

21 A CORRECT.

22 Q OKAY. BUT YOU DIDN'T WANT DR. LOTT CONSULTING  
23 THE FAILURE TO THRIVE CLINIC, DID YOU?

24 MR. MCMILLAN: OBJECTION. ARGUMENT.

25 THE COURT: OVERRULED.

26 THE WITNESS: I DID. I JUST ASKED THEM TO  
27 TAKE THE PROPER STEPS TO DO THAT.

28 ///

1 BY MS. SWISS:

2 Q YOU FILED YOUR CIVIL RIGHTS COMPLAINT, AND  
3 PART OF THE COMPLAINT WAS AGAINST MS. SCHEELE; IS THAT  
4 CORRECT?

5 A YES.

6 Q AND ISN'T IT TRUE THAT YOU ACTUALLY FILED PART  
7 OF YOUR COMPLAINT ARGUING THAT MS. SCHEELE VIOLATED  
8 YOUR HIPAA RIGHTS BY GIVING CONTACT INFORMATION FOR  
9 DR. LOTT TO THE FAILURE TO THRIVE CLINIC?

10 A I DON'T THINK THAT WAS WHAT I WAS REFERRING TO  
11 AT THE TIME. I WOULD HAVE --

12 Q YOU CAN TAKE A LOOK AT EXHIBIT 226. IT'S  
13 PAGE 3130.

14 (DEFENDANTS' EXHIBIT NO. 226.3130, WAS  
15 MARKED FOR IDENTIFICATION BY THE  
16 COURT.)

17 BY MS. SWISS:

18 Q LET ME KNOW WHEN YOU'RE READY.

19 A I'M READY.

20 Q EXHIBIT 226, PAGE 3130, IS THAT A PAGE FROM  
21 YOUR CIVIL RIGHTS COMPLAINT AGAINST THE COUNTY?

22 A YES.

23 Q AND UNDER SIGNATURE, IS THAT YOUR SIGNATURE?

24 A YES.

25 Q AND IT'S DATED 6/2/10?

26 A YES.

27 Q IF YOU CAN GO AHEAD AND READ THAT TO YOURSELF,  
28 THAT PARAGRAPH -- WELL, FIRST, IS THAT PARAGRAPH IN

1 YOUR HANDWRITING?

2 A SOME OF IT, YES.

3 Q IS THE FIRST LINE NOT YOUR HANDWRITING?

4 A MOST OF IT IS NOT.

5 Q AND THE REMAINDER, IS THAT YOUR HANDWRITING?

6 A YES.

7 Q OKAY. AND IT IS SIGNED UNDER PENALTY OF  
8 PERJURY; CORRECT?

9 A YES.

10 Q PLEASE READ THAT PARAGRAPH TO YOURSELF AND LET  
11 ME KNOW WHEN YOU'RE READY.

12 A I READ IT.

13 Q DOES THAT PARAGRAPH REFRESH YOUR RECOLLECTION  
14 AS TO WHETHER YOU FILED THE CIVIL RIGHTS COMPLAINT  
15 AGAINST MS. SCHEELE BECAUSE SHE GAVE EXPERT WITNESS  
16 CONTACT INFORMATION WITHOUT ASKING YOU IF SHE COULD DO  
17 SO?

18 A IT REFRESHES MY RECOLLECTION, YES.

19 Q AND WHAT IS YOUR RECOLLECTION?

20 A I SPOKE TO MS. SCHEELE SEVERAL TIMES ABOUT  
21 THIS ISSUE. I HAD SIGNED A CONTRACT WITH FORENSIS  
22 WHICH DETAILED HOW INFORMATION WAS TO BE DISCLOSED FROM  
23 AND TO THE EXPERT. AND I ASKED MS. SCHEELE  
24 SPECIFICALLY IF SHE COULD GO THROUGH MY COUNSEL TO  
25 REQUEST THAT BECAUSE AT THE TIME IT WAS MY  
26 UNDERSTANDING I COULDN'T JUST SAY YES OR NO. I WAS  
27 BOUND BY A SEPARATE AGREEMENT WITH A THIRD PARTY, AND  
28 I -- THAT WAS THE ISSUE. SHE NEEDED TO GO THROUGH THE

1 PROPER AVENUE TO DO THAT. I COULDN'T JUST GIVE HER  
2 CONSENT MYSELF, JUST SAY "OH, YES, GO" BECAUSE THERE  
3 WAS ANOTHER AGREEMENT IN PLACE.

4 THE COURT: ALL RIGHT. MS. SWISS, WE'RE GOING  
5 TO RECESS AT THIS TIME.

6 AND FOR ALL THE JURORS, WE'RE RECESSING UNTIL  
7 TOMORROW MORNING AT 9:00 A.M.

8 ALL JURORS, PLEASE REMEMBER THE ADMONITION TO  
9 HAVE NO CONTACT WITH ANYBODY AND DO NOT FORM NOR  
10 EXPRESS ANY OPINION ON ANY SUBJECT OR ISSUE IN THE  
11 CASE.

12 THE -- WE HAVE OTHER MATTERS TO ADDRESS IN  
13 THIS CASE AT THIS TIME, AND FOR THAT REASON, I'M GOING  
14 TO HAVE YOU RETURN TOMORROW MORNING.

15 (JURY EXCUSED)

16 THE COURT: ALL RIGHT. WE'LL TAKE AN  
17 APPROXIMATE 10-MINUTE RECESS.

18 YOU CAN GO, MS. DUVAL.

19 WE'LL TAKE AN APPROXIMATE 10-MINUTE RECESS,  
20 AND THEN WE'LL CONDUCT SOME BUSINESS.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 MR. GUTERRES: THANK YOU, YOUR HONOR.

23 (RECESS)

24 THE COURT: WE'RE GOING TO GO ON THE RECORD.  
25 AND WE ARE ON THE RECORD AND COUNSEL ARE PRESENT  
26 OUTSIDE THE PRESENCE OF THE JURY, WHO HAVE BEEN EXCUSED  
27 FOR THE DAY.

28 AS LONG AS I HAVE MR. DANER HERE, LET ME

1 ADDRESS AN ISSUE THAT HE'S BEEN WORKING ON WITH OUR  
2 DISCUSSION LAST FRIDAY. I'M NOT GOING TO SPEND A LOT  
3 OF TIME ON THIS, BUT I'LL JUST TELL YOU WHAT WE'RE  
4 GOING TO DO -- BUT I DO HAVE A QUESTION.

5 MR. DANER, MY VIEW IS IN A 1983 CLAIM FOR  
6 JUDICIAL DECEPTION, THAT THERE IS A "BUT FOR" TEST  
7 THAT -- THAT WHEN THERE'S A CLAIM THAT THERE WAS A  
8 DELIBERATE -- AND WE DON'T HAVE TO WORRY ABOUT THAT --  
9 DISREGARD FOR THE TRUTH OF STATEMENTS MADE TO A  
10 COURT -- IN OTHER WORDS, REPRESENTATIONS -- AND/OR A  
11 DECEPTION IN THE FAILURE TO HAVE PROVIDED INFORMATION  
12 THAT SHOULD HAVE BEEN PROVIDED, OR -- INCLUDING  
13 EXCULPATORY INFORMATION, THAT IT BECOMES A QUESTION OF  
14 LAW AS TO IF WHAT SHOULD HAVE BEEN PROVIDED -- IS  
15 CONTENDED SHOULD HAVE BEEN PROVIDED WAS INCLUDED, AND  
16 THAT WHAT SHOULD NOT HAVE BEEN PRESENTED BECAUSE IT WAS  
17 FALSE IS ELIMINATED. IT'S A QUESTION OF LAW FOR THE  
18 COURT TO DECIDE WHETHER OR NOT THE DECISION WOULD HAVE  
19 BEEN ANY DIFFERENT.

20 THIS ISSUE USUALLY COMES UP IN MOST OF THE  
21 CASES NOT AT TRIAL BUT COMES UP IN GRANTING OF SUMMARY  
22 JUDGMENTS. BUT I THINK THE TEST MUST BE THE SAME AT  
23 TRIAL. I DON'T THINK THE TEST CHANGES WHETHER YOU'RE  
24 IN TRIAL OR IN SUMMARY JUDGMENT. I SUPPOSE MAYBE HAD  
25 EVEN COME UP AT A DEMURRER STAGE BUT I'M NOT SURE  
26 WHETHER ANY OF THE CASES DID -- IN THE FEDERAL CASES, I  
27 KNOW IT'S A MOTION TO DISMISS NOT A DEMURRER, BUT IT'S  
28 ESSENTIALLY THE SAME THING.



1           SO IT APPEARS TO ME THAT AT SOME POINT IN  
2 TIME -- AND I THINK IT MAY BE APPROACHING RATHER  
3 QUICKLY -- THAT THE COURT NEEDS TO HOLD A HEARING AND  
4 MAKE THAT DETERMINATION. I THINK THAT THE POINTS AND  
5 AUTHORITIES THAT YOU FILED THIS MORNING WERE PERHAPS  
6 STATING IT IN A SOMEWHAT DIFFERENT WAY THAT STATED  
7 ESSENTIALLY THE SAME THING. AND IT'S FOR THAT REASON,  
8 AMONG OTHER THINGS, THAT IN YOUR POINTS AND AUTHORITIES  
9 YOU POINTED OUT INFORMATION WHICH YOU THOUGHT WAS  
10 UNTRUE, CERTAIN INFORMATION THAT WAS PERHAPS DECEPTIVE  
11 BECAUSE WHATEVER HAD BEEN SUBMITTED DIDN'T STATE THE  
12 ENTIRE PICTURE, AND SOME PERHAPS YOU THINK IS  
13 EXCULPATORY. AND YOU ATTEMPTED TO POINT OUT A NUMBER  
14 OF EXAMPLES OF THIS.

15           THERE ARE ADDITIONAL QUESTIONS THAT I BELIEVE  
16 WOULD BE QUESTIONS OF FACT, WHICH I'LL COME BACK TO IN  
17 A MOMENT. BUT IT APPEARS TO ME THAT BEFORE THE CLAIMS  
18 FOR DECEPTION -- DECEPTION IN THE DETENTION HEARING AND  
19 DECEPTION AT THE SUBSEQUENT HEARINGS ON -- ONE WAS  
20 JANUARY 10TH AND THE OTHER ONE WAS IN AUGUST,  
21 AUGUST 9TH OR 10TH -- THAT A DETERMINATION HAS TO BE  
22 MADE THAT IF THE MATTERS THAT PLAINTIFF CONTENDS ARE  
23 UNTRUE WERE ELIMINATED, AND THE MATTERS WHICH PLAINTIFF  
24 CONTENDS SHOULD HAVE BEEN INCLUDED, EITHER FOR  
25 COMPLETENESS OR BECAUSE OF AN EXCULPATORY NATURE, HAD  
26 BEEN INCLUDED, WHETHER OR NOT THE PERSON -- IN THIS  
27 CASE, IT'S THE COMMISSIONER -- BUT THE JUDICIAL OFFICER  
28 WOULD HAVE HAD GROUNDS TO MAKE THE SAME DECISION.

1           IF THE ANSWER -- IF THE COURT'S ANSWER TO THAT  
2 IS YES, THE SAME ANSWER -- IF THERE WAS A SUFFICIENT  
3 GROUND FOR THE SAME ANSWER TO HAVE OCCURRED OR BE  
4 GIVEN, THEN THOSE CLAIMS DON'T GO TO THE JURY. IF THE  
5 COURT'S ANSWER IS NO, THE DECISION WOULD NOT HAVE BEEN  
6 MADE, THEN I THINK THERE ARE STILL QUESTIONS THAT A  
7 JURY HAS TO ANSWER, INCLUDING THEY HAVE TO FIND THEM TO  
8 BE INTENTIONAL OR WITH RECKLESS DISREGARD FOR THE  
9 TRUTH. BUT THAT WOULD JUST CAUSE US TO BE TAKING A  
10 LOOK AT WHAT FURTHER A JURY WOULD HAVE TO DECIDE IN  
11 ORDER TO PREVAIL ON A DECEPTION CLAIM.

12           NOW, I HAVEN'T SEEN THIS QUITE SET OUT THIS  
13 WAY BY ANYONE, BUT THAT'S -- FROM THE WORK THAT I DID  
14 ON THIS OVER THE WEEKEND, AS WELL AS READING YOUR  
15 POINTS AND AUTHORITIES TODAY, AS WELL AS THE BRIEFS,  
16 AGAIN, WHICH HAVE BEEN PREVIOUSLY SUBMITTED -- THAT'S  
17 MY VIEW OF WHERE WE HAVE TO GO. SO I'M TELLING  
18 EVERYBODY THAT I THINK THIS IS COMING UP SOON, THAT I'M  
19 GOING TO GIVE EVERYBODY A CHANCE TO DISSUADE ME FROM  
20 THIS, ALTHOUGH I THINK YOUR CHANCES OF THAT ARE NOT  
21 VERY GOOD BECAUSE SOMEBODY HAS TO MAKE THE DECISION,  
22 THE "BUT FOR" DECISION.

23           AND AS I TOLD YOU THE OTHER DAY, I DON'T  
24 BELIEVE THAT'S SOMETHING WE WOULD EVER HAVE A JURY DO.  
25 I THINK THE JURY CAN ANSWER OTHER QUESTIONS ABOUT  
26 WHETHER THERE WERE THE MISREPRESENTATIONS OR WHATEVER.  
27 I THINK WE CAN ALSO ASK THE JURY TO ANSWER THE QUESTION  
28 WHEN WE MAKE A FINDING WHETHER IT WAS INTENT- -- THOSE

1 WERE INTENTIONAL OR WITH RECKLESS DISREGARD. BUT I  
2 DON'T THINK THE LAST QUESTION -- AS THE "BUT FOR THAT,  
3 WOULD THE DECISION RECENTLY HAVE BEEN THE SAME?" -- CAN  
4 GO TO THE JURY.

5 SO, THAT IS -- I AM EXPRESSING MY PRESENT  
6 INTENT. WE'RE GOING TO GET TO THIS RATHER QUICKLY, SO  
7 I'M GOING TO HAVE TO HAVE -- FIRST OF ALL, I'LL FIND  
8 OUT -- WHEN I SAY "RATHER QUICKLY," I'M NOT TALKING  
9 ABOUT LATER TODAY OR FIRST THING IN THE MORNING. BUT I  
10 HAVE YOUR BRIEF, AND I'LL NEED TO KNOW IF YOU ARE  
11 RELYING ON ANYTHING ELSE BESIDES WHAT WAS SAID IN YOUR  
12 BRIEF. YOU'RE GOING TO HAVE TO GIVE ME A LIST OF WHAT  
13 WAS SAID YOU CONSIDER TO BE FALSE, A LIST OF WHAT  
14 WASN'T SAID THAT YOU BELIEVE SHOULD HAVE BEEN SAID,  
15 INCLUDING EXCULPATORY INFORMATION, FOR PURPOSES OF  
16 COMPLETENESS.

17 THAT WILL NEED TO BE GIVEN TO THE DEFENSE SO  
18 THEY WILL HAVE AN OPPORTUNITY TO BE ABLE TO RESPOND TO  
19 THAT CONTENTION. AND THEN, ONCE THAT IS DONE, WE'LL  
20 HAVE THE HEARING ON IT AND I'LL MAKE THE DETERMINATION.

21 I'M HAPPY TO HEAR FROM YOU NOW BUT I'M NOT  
22 REQUIRING YOU TO SAY ANYTHING FURTHER AT THIS TIME  
23 BECAUSE YOU MAY WANT TO CONSIDER IT FURTHER.

24 MR. DANER: YOUR HONOR, ONE THING I WOULD JUST  
25 ADDRESS BRIEFLY IS THAT IN ORDER TO SURVIVE SUMMARY  
26 JUDGMENT, PLAINTIFF HAS TO MAKE A SUBSTANTIAL SHOWING  
27 THAT THESE WERE MATERIAL FALSE STATEMENTS AND MATERIAL  
28 EXCULPATORY EVIDENCE AND MATERIAL ADMISSIONS, AND THAT,

1 BUT FOR THESE, THERE WOULD BE A DIFFERENT OUTCOME.  
2 PLAINTIFFS HERE SURVIVED SUMMARY JUDGMENT.

3 THE COURT: I'M AWARE.

4 MR. DANER: SO WHAT WOULD HAPPEN, THEN, IS  
5 THERE WOULD BE TWO JUDGES -- IN THIS CASE, THERE WOULD  
6 BE TWO JUDGES POTENTIALLY MAKING MATERIALITY  
7 DETERMINATIONS ON THE SAME ISSUE, WHEN IT LOOKS LIKE,  
8 WHEN YOU LOOK AT WHAT *HERVEY V. ESTES* AND *LISTON*, WHAT  
9 THEY WERE SAYING IS THAT ONCE YOU'VE SURVIVED THAT  
10 MATERIALITY DETERMINATION ON A SUMMARY JUDGMENT MOTION,  
11 THE ISSUE SHOULD THEN GO TO THE JURY.

12 AS WE'VE PRESENTED TODAY, THE MODEL JURY  
13 INSTRUCTION 9.29 SEEMS TO BACK THIS UP BECAUSE IT'S  
14 SAYING THE JURY INSTRUCTION OF WHETHER OR NOT THESE  
15 FALSE STATEMENTS AND SUPPRESSED EXCULPATORY EVIDENCE  
16 WERE USED AGAINST THE PLAINTIFF, THEN YOU CAN FIND FOR  
17 JUDICIAL DECEPTION. SO THAT WOULD BE THE ONLY CONCERN  
18 THAT I HAVE AT THIS -- ONE OF THE ONLY CONCERNS THAT I  
19 HAVE AT THIS JUNCTURE.

20 THE COURT: AND I DO UNDERSTAND THE CONCERN  
21 THAT YOU'RE EXPRESSING. AND THE CONCERN THAT I AM  
22 EXPRESSING IN RESPONSE TO THAT IS THAT THE MOTION FOR  
23 SUMMARY JUDGMENT WAS BASED ON WHATEVER INFORMATION WAS  
24 PROVIDED TO IT AT THE TIME. THE DECISION THE TRIAL  
25 COURT HAS TO MAKE HAS TO BE BASED ON THE EVIDENCE  
26 PRODUCED IN THE TRIAL. I DO NOT BELIEVE THAT ONCE --  
27 THAT A DETERMINATION IN MOTION FOR SUMMARY JUDGMENT  
28 TIES THE TRIAL COURT'S HANDS AND PRECLUDES IT FROM

1 MAKING ITS OWN DECISION BASED ON THE EVIDENCE IN THE  
2 CASE AS TO WHAT THE ANSWER TO -- IT PRECLUDES THE COURT  
3 FROM EVEN MAKING THE INQUIRY. BECAUSE WHAT YOU'RE  
4 TELLING ME AT THIS POINT IS BASICALLY THAT WE WOULD NOT  
5 ASK ANY QUESTION OF THE JURY, THAT IN EFFECT YOU HAVE A  
6 DIRECTED VERDICT -- NOT QUITE A DIRECTED VERDICT, BUT  
7 THAT IT HAS ALREADY BEEN DECIDED, AS A MATTER OF LAW,  
8 THAT IF THESE MISREPRESENTATIONS WERE MADE, THE FAILURE  
9 TO INCLUDE THINGS HAD OCCURRED, THAT IT IS ALREADY  
10 DETERMINED THAT THAT IS A -- ESTABLISHES THE RIGHT TO A  
11 CLAIM FOR DECEPTION.

12 AND I DON'T FEEL THAT I'M BOUND BY A COURT'S  
13 RULING, PRIOR RULING, WITHOUT HAVING HEARD THE EVIDENCE  
14 IN TRIAL OF MAKING THAT DETERMINATION.

15 MR. DANER: THE OTHER ASPECT --

16 THE COURT: NO, LOOK, I'M JUST TELLING YOU I  
17 UNDERSTAND YOUR ARGUMENT. AND IF YOU CAN CONVINCE ME  
18 FURTHER THAT, IN EFFECT, AT THE TRIAL I'M BOUND BY WHAT  
19 SOME JUDGE DID IN LAW AND MOTION, SO BE IT.

20 MR. DANER: WELL, IF YOU LOOK OUTSIDE THAT,  
21 THEN, IF YOU LOOK BACK INTO *HERVEY V. ESTES*, THEY  
22 CONSIDERED OTHER DISTRICT -- OTHER FEDERAL DISTRICTS'  
23 CIRCUIT COURT OF APPEALS' HANDLING OF THE MATTER.  
24 THOSE OTHER CIRCUITS WERE SAYING THE ISSUE OF  
25 MATERIALITY WAS A QUESTION OF FACT FOR THE JURY, A  
26 QUESTION OF MIXED LAW AND FACT. BUT *HERVEY V. ESTES*  
27 SAID IT'S THE SUMMARY JUDGMENT STAGE ON QUALIFIED  
28 IMMUNITY IN THE 9TH CIRCUIT, THAT -- THAT THE SUMMARY

1 JUDGMENT STAGE IN THE 9TH CIRCUIT, THAT IS NOT THE  
2 ISSUE. IT'S A QUESTION OF LAW AT THAT TIME WHEN  
3 CONSIDERING IT.

4 SO *HERVEY V. ESTES* DID NOT FORECLOSE THAT IT  
5 WAS AN ISSUE OF LAW IN FACT OR AN ISSUE OF FACT. IT  
6 SIMPLY SAID AT SUMMARY JUDGMENT FOR QUALIFYING  
7 IMMUNITY, MATERIALITY DETERMINATION IS A QUESTION OF  
8 LAW. AND IF WE SURVIVED THAT, THE QUESTION WOULD THEN  
9 GO TO THE JURY.

10 THIS IS SOMETHING THAT IN OTHER CAUSES OF  
11 ACTION WOULD OCCUR. IF WE WANTED TO LOOK AT A LEGAL  
12 MALPRACTICE ACTION WHERE THE JURY WOULD ESSENTIALLY  
13 HAVE A TRIAL WITHIN A TRIAL, AND WE NEED TO CONSIDER  
14 THAT. WHAT THEY'D BASICALLY BE DOING IS STEPPING BACK  
15 INTO ANOTHER JURY'S DETERMINATION OR OTHER JUDGE'S  
16 PRIOR DETERMINATION WITH ESSENTIALLY THE NEW TRIAL  
17 WITHIN THE TRIAL.

18 SO THAT TYPE OF DETERMINATION AND FACT-FINDING  
19 BY THE JURY IS NOT UNHEARD OF IN THESE TYPE OF  
20 SITUATIONS. WE FEEL THAT THE MODEL JURY INSTRUCTION  
21 9.29 THAT WE POINTED OUT KIND OF SHOWS THAT.

22 THE COURT: SO WHAT YOU'RE SUGGESTING IS THAT  
23 WE JUST SEND THE MATTER TO THE JURY, AND THE JURY  
24 WOULDN'T HAVE TO DECIDE MATERIALITY.

25 "MATERIALITY" REALLY MEANS -- IS -- IS ANOTHER  
26 WORD FOR SAYING "BUT FOR," YOU KNOW, THE DECEPTIVE  
27 INFORMATION HAS ALREADY BEEN DECIDED. SO ALL WE'D HAVE  
28 TO ASK THE JURY ON YOUR DECEPTION CAUSES OF ACTION ARE

1 JUST A QUESTION OF WERE THEY MADE, YOU KNOW, WHAT -- A  
2 DECEPTIVE STATEMENT OR A DECEPTIVE OMISSION, DID THEY  
3 OCCUR? AND THEN THE AND WHAT? AND WAS IT INTENTIONAL?  
4 YOU SHOULDN'T EVEN HAVE TO DECIDE, THEN, WAS THERE  
5 HARM?

6 MR. DANER: WELL, YOUR HONOR, WHAT WE ACTUALLY  
7 HAVE IN THE JURY INSTRUCTIONS -- WE ACTUALLY SET FORTH  
8 INSTRUCTIONS THAT WOULD INSTRUCT THE JURY ON WHAT  
9 EVIDENCE WOULD BE MATERIAL, WHAT THEY COULD CONSIDER TO  
10 BE MATERIAL FOR BOTH THE LAW AND EXCULPATORY EVIDENCE.  
11 AND THEN WE ALSO SET FORTH THE PROCEDURES.

12 THE COURT: I'M NOT GOING TO LET THE JURY  
13 DECIDE MATERIALITY. IT'S A QUESTION OF LAW.  
14 MATERIALITY IS THE SAME AS THE "BUT FOR." WAS THERE  
15 DECEPTIVE INFORMATION, AND BUT FOR THE DECEPTIVE  
16 INFORMATION WOULD THE DECISION OF THE COURT HAVE BEEN  
17 THE SAME OR WOULD IT NOT? IF IT WAS NOT, YOU HAVE A  
18 CAUSE OF ACTION. IF IT WOULD HAVE BEEN THE SAME, YOU  
19 DON'T. SO THE JURY -- SO YOUR POINT THAT I THINK -- IT  
20 SEEMS TO ME THAT, IF YOU'RE CORRECT, THAT I AM BOUND BY  
21 THE DENIAL OF A MOTION FOR SUMMARY JUDGMENT OR SUMMARY  
22 ADJUDICATION OR THOSE CAUSES OF ACTION, THEN IT GOES TO  
23 THE JURY AND THE JURY WON'T EVEN DECIDE MATERIALITY.  
24 THAT, TO ME, IS WHAT MATERIALITY IS ALL ABOUT. AND  
25 I'VE READ A NUMBER OF CASES THAT SAY THAT, THAT THAT'S  
26 EXACTLY WHAT MATERIALITY IS.

27 SO FROM -- IT WOULD APPEAR THAT IF YOU'RE  
28 CORRECT, THE JURY IS NEVER GOING TO DECIDE MATERIALITY.

1 YOU'RE SAYING THE COURT WHO RULED IN THE MOTION FOR  
2 SUMMARY JUDGMENT, SUMMARY ADJUDICATION HAS ESTABLISHED  
3 IN THIS CASE, AS A MATTER OF LAW, THAT THE DECISION  
4 WOULD HAVE BEEN THE SAME.

5 I'M ASSUMING THE DECISION WOULD NOT HAVE BEEN  
6 MADE, IT WOULD HAVE BEEN DIFFERENT; AND, THEREFORE, THE  
7 JURY WOULDN'T EVEN DECIDE MATERIALITY.

8 MR. DANER: OKAY. YOUR HONOR, WOULD YOU BE  
9 ABLE TO PROVIDE SOME TYPE OF TIME FRAME ON WHEN YOU  
10 WOULD WANT THE ADDITIONAL LIST OF THESE?

11 THE COURT: QUICK. YEAH, I'D SAY NO LATER  
12 THAN BY THE END OF BUSINESS TOMORROW.

13 MR. DANER: OKAY.

14 THE COURT: BECAUSE -- WELL, THE ISSUE HAS TO  
15 GET DECIDED. WE HAVE TO GET TO A VERDICT FORM; WE HAVE  
16 TO GET TO THE JURY INSTRUCTION. WE'VE SPENT A GREAT  
17 DEAL OF TIME TALKING ABOUT IT WITHOUT -- WITH MAKING  
18 SOME PROGRESS, BUT NOT A GREAT DEAL. NOT ENOUGH FOR US  
19 TO BE ABLE TO SAY THAT HERE IS WHAT WE'RE GOING TO BE  
20 GOING WITH. AND EVERYBODY NEEDS TO KNOW THAT. AND IT  
21 WAS -- IT IS INTERESTING THAT THE CASES SAY THIS ISSUE  
22 OF THE "BUT FOR" IS SUPPOSED TO BE DECIDED AS EARLY IN  
23 A CASE AS POSSIBLE. AND I'M NOT SURE -- SO IT PROBABLY  
24 COULD HAVE BEEN DONE EARLIER, BUT IT HASN'T BEEN DONE.  
25 IT'S GOING TO HAVE TO GET DONE.

26 AND I THINK THAT IF YOU'RE GOING TO -- IF MY  
27 TENTATIVE DECISION AS TO WHAT NEEDS TO BE DONE IS TO BE  
28 CHANGED, THEN IT'S BECAUSE YOU WILL HAVE CONVINCED ME



1 THAT I HAVE NO OPTION, THAT I AM NOT -- THAT THE  
2 DECISION, THE "BUT FOR" DECISION, THE MATERIALITY HAS  
3 ALREADY BEEN DECIDED, AND THEREFORE I SHOULD MAKE NO  
4 DECISION. BUT THE TRUTH IS THE JURY WILL MAKE NO  
5 DECISION EITHER BECAUSE THAT'S AN ISSUE OF LAW.

6 MR. DANER: I UNDERSTAND, YOUR HONOR. AND I  
7 WILL MAKE SURE TO COMPILE THE LIST OF ALL THE --

8 THE COURT: OKAY. NOW, REMEMBER, I DO THINK  
9 IT'S A JURY QUESTION TO DECIDE: WERE THERE  
10 MISSTATEMENTS? WERE THERE OMISSIONS? AND WERE THEY  
11 INTENTIONAL AND -- AND/OR -- INTENTIONAL OR WITH  
12 RECKLESS DISREGARD OF THE TRUTH? IF THE ANSWER TO  
13 EITHER OF THOSE IS NO, THEN YOUR CLIENT WOULDN'T  
14 PREVAIL ON THOSE CAUSES OF ACTION. BUT MATERIALITY, BY  
15 WHAT YOU'RE TELLING ME, I'M BOUND BY THE PRIOR  
16 DECISION. AND THAT'S A LEGAL DECISION. SO IF I'M  
17 BOUND BY IT, SO IS THE JURY.

18 MR. DANER: I UNDERSTAND, YOUR HONOR. I WILL  
19 GO AHEAD AND --

20 THE COURT: AND THIS IS TRUE FOR THE DEFENSE  
21 TOO, THAT YOU'RE GOING TO HAVE TO GIVE SOME THOUGHT AS  
22 TO WHAT IS THE PRIOR DECISION -- DOES THE PRIOR  
23 DECISION BIND THE COURT, AND IF IT DOES, WHAT DOES THE  
24 JURY THEN DECIDE? BECAUSE ONE THING NO ONE IS GOING TO  
25 CONVINC ME OF IS WE'RE GOING TO GIVE IT BACK TO THE  
26 JURY. IF YOU SAY I'M BOUND, SO IS THE JURY. YOU'RE  
27 NOT GOING TO HAVE THE JURY THEN SECOND-GUESSING THE  
28 JUDGE WHO GRANTED -- OR WHO DENIED THE MOTION FOR

1 SUMMARY ADJUDICATION OR THOSE CAUSES OF ACTION.

2 SO, WHERE DOES THAT LEAVE US? THAT LEAVES  
3 US -- NOW, ALL OF YOU -- LOOK, ALL OF YOU TRY THESE  
4 CASES, AND WHAT I DON'T KNOW IS WHETHER YOU SIMPLY HAVE  
5 NEVER ADDRESSED THIS ISSUE BEFORE OR WHETHER YOU HAVE  
6 AND YOU'RE NOT TELLING ME WHAT YOU KNOW. AND I -- I'M  
7 NOT SAYING IT'S EITHER OF THOSE. BUT WE HAVE A FIRM  
8 REPRESENTING THE PLAINTIFF WHO APPARENTLY DOES THIS  
9 ESSENTIALLY FOR -- THAT'S YOUR PRACTICE, I KNOW THAT  
10 THE DEFENSE HAS BEEN INVOLVED IN CERTAIN OTHER CASES, I  
11 DON'T KNOW TO WHAT EXTENT. AND I'VE FOUND, IN  
12 DISCUSSING THIS ISSUE, I DON'T THINK I'VE GOTTEN A  
13 GREAT DEAL OF CLARITY FROM ANYONE ABOUT WHAT THE RULES  
14 ARE. AND IT MAKES ME CONCERNED, CAUSES ME TO HAVE SOME  
15 CONCERN THAT MAYBE YOU DON'T KNOW BECAUSE MAYBE YOUR  
16 OTHER CASES HAVE BEEN DECIDED AT A MOTION FOR SUMMARY  
17 JUDGMENT FOR BETTER OR FOR WORSE, ONE WAY OR ANOTHER,  
18 OR MAYBE NO ONE'S TELLING ME WHAT YOU KNOW IN THE HOPE  
19 THAT I'LL MAKE A DIFFERENT DECISION.

20 MR. MCMILLAN: YOUR HONOR, IF I CAN ADDRESS  
21 THAT?

22 THE COURT: SURE.

23 MR. MCMILLAN: YOU ARE CORRECT THAT THIS  
24 SPECIFIC ISSUE ABOUT WHETHER THE "BUT FOR" QUESTION --  
25 WHETHER BUT FOR THE LIES OR THE SUPPRESSIONS OR  
26 OMISSIONS A DIFFERENT DECISION WOULD HAVE BEEN  
27 REACHED -- I HAVE NEVER ADDRESSED THAT ISSUE AT A TRIAL  
28 COURT OR A TRIAL LEVEL. THE ONLY ONE OF THIS SORT OF

1 CASE THAT I'VE EVER TRIED BEFORE, YOU HAVEN'T. AND ALL  
2 OF THE ISSUES THAT WE ADDRESSED THERE ARE FAIRLY  
3 WELL-BRIEFED AND LAID OUT IN THE APPELLATE DECISIONS  
4 AND IN THE SUBSEQUENT APPEALS ON THE WAY UP. AND  
5 NOBODY EVER RAISED -- I DIDN'T CONSIDER IT; I DON'T  
6 THINK EVEN THE COURTS CONSIDERED THE QUESTION OF  
7 WHETHER OR NOT THE LIES WOULD HAVE BEEN -- OR THE  
8 RESULT WOULD HAVE BEEN DIFFERENT BUT FOR OTHER  
9 INFORMATION.

10 AND I CAN TELL YOU, IN *FOGARTY*, THE TRIGGERING  
11 EVENT -- AND THERE WAS EVIDENCE ON THE TRIGGERING EVENT  
12 THAT CAUSED THE JUDGE TO SEIZE THE CHILDREN, OR TO  
13 ORDER THE SEIZURE OF THE CHILDREN -- WAS SPECIFIC  
14 STATEMENTS MADE IN OPEN COURT BY THE SOCIAL WORKERS.  
15 AND I DON'T REMEMBER IF IT WAS THE SOCIAL WORKERS  
16 THEMSELVES WHO USED THE WORD "TRIGGERED" OR COUNTY  
17 COUNSEL. SOMEBODY USED THE WORD "TRIGGERED," AND THAT  
18 SORT OF WAS THE END OF THE DISCUSSION OR ANALYSIS  
19 INsofar AS IT MIGHT HAVE RELATED TO CAUSATION. BUT IT  
20 NEVER REALLY CAME UP IN TERMS OF -- LIKE THE FRANKS  
21 ANALYSIS. I THINK THAT'S WHAT YOU'RE GOING BACK TO  
22 NOW, IS THAT WE'RE LOOKING AT, BUT FOR THE OMISSIONS OR  
23 MISSTATEMENTS, WOULD THE RESULT HAVE BEEN DIFFERENT?

24 WE'VE JUST NEVER REALLY FACED THAT ISSUE  
25 BEFORE. WE'VE ADDRESSED IT ON SUMMARY JUDGMENT BEFORE,  
26 AND IN FACT THAT'S WHERE A LOT OF THE CASE LAW AND  
27 BRIEFING IS COMING FROM. THAT'S ONE OF THE REASONS  
28 WE'RE ABLE TO PUT SOMETHING TOGETHER ON FAIRLY SHORT

1 NOTICE IS THAT IT COMES UP FREQUENTLY IN SUMMARY  
2 JUDGMENT. IF WE HAVE A BUNCH OF ALLEGED LIES, WERE  
3 THEY MATERIAL? IF THEY'RE MATERIAL, THEN SUMMARY  
4 JUDGMENT'S DENIED AND WE MOVE FORWARD AND THE CASE  
5 USUALLY RESOLVES AT THAT POINT.

6 THE COURT: NOW, THESE ISSUES, THE THINGS I'VE  
7 BEEN TALKING ABOUT ARE IN THE CASES YOU'VE CITED TO ME,  
8 SO I'M NOT SUGGESTING SOMEONE HASN'T GIVEN ME  
9 AUTHORITY. BUT NONE OF THESE CASES ADDRESS -- THAT I'M  
10 ABLE TO READ -- EXACTLY WHAT DO YOU DO WITH IT IN  
11 TRIAL. BUT THERE'S NO QUESTION THEY ESTABLISH WHAT THE  
12 RULE IS, AND THAT'S INCLUDED IN THE *CHISM* CASE WHICH  
13 YOU'D CITED TO ME. *CHISM* WAS ALSO CITED IN YOUR  
14 *MARSHALL* CASE. *CHISM* WAS VERY CLEAR ABOUT -- AND THAT  
15 WAS TALKING ABOUT A SEARCH WARRANT, BUT I DON'T THINK  
16 THE RULE IS ANY DIFFERENT.

17 AND THEN, IN *CHISM*, THEY CITED TO THE  
18 *HERVEY VS. ESTES* CASE AND ALSO THE *LISTON VS. COUNTY OF*  
19 *RIVERSIDE*. THERE'S SEVERAL OTHER CASES, INCLUDING  
20 *SMITH VS. ALMADA*, *LOMBARDI VS. CITY OF EL CAJON*, ALL OF  
21 WHICH HAVE ADDRESSED ONE ASPECT OF THIS OR ANOTHER.

22 AND SO I THINK THE TEST IS THERE. WHAT NONE  
23 OF THEM TELL US IS: WHAT DO YOU DO IN TRIAL?

24 MR. MCMILLAN: RIGHT. AND WE'VE BEEN  
25 STRUGGLING WITH THAT. I MEAN, MR. DANER'S BEEN STAYING  
26 UP LATE NIGHTS, I HAVE TOO. WE'RE LOOKING FOR  
27 SOMETHING THAT ANSWERS THE QUESTION ABOUT WHAT YOU DO  
28 AT TRIAL ONCE WE'VE GOTTEN PAST SUMMARY JUDGMENT. WE

1 KNOW WHAT THE TEST IS ON SUMMARY JUDGMENT. THAT IS  
2 VERY CLEARLY LAID OUT.

3 THE COURT: WELL, AND HERE --

4 MR. MCMILLAN: THE QUESTION IS --

5 THE COURT: EXCUSE ME, I INTERRUPTED.

6 I WAS GOING TO SAY WE HAVE THE ADDITIONAL  
7 FACTOR THAT WHAT DO WE DO IN TRIAL WHEN A MOTION FOR  
8 SUMMARY ADJUDICATION IN THESE CAUSES OF ACTION HAVE  
9 PREVIOUSLY BEEN DENIED?

10 MR. MCMILLAN: RIGHT. IT'S AN ISSUE -- IT'S A  
11 GAP IN THE LAW, AT LEAST INsofar AS WE HAVEN'T FOUND  
12 ANYTHING THAT CLEARLY RESOLVES THE ISSUE. I MEAN,  
13 THERE'S -- I THINK MR. DANER HAS POINTED THIS OUT --  
14 THERE'S CASES ON BOTH SIDES OF THE FENCE, SOME THAT SAY  
15 THAT ONCE YOU MAKE IT PAST SUMMARY JUDGMENT, THEN THE  
16 CASE SHOULD GO TO THE JURY. THERE'S OTHERS THAT SAY WE  
17 STILL HAVE THIS HANG-UP. I DON'T KNOW WHAT THE ANSWER  
18 IS.

19 THE COURT: WELL, AND SO WITH THOSE THAT SAY  
20 ONCE YOU'RE PAST SUMMARY JUDGMENT, WHAT THEY'RE SAYING  
21 IS THAT ISSUE HAS BEEN DECIDED, THAT BECOMES, IN  
22 EFFECT, THE LAW OF THE CASE AND IS -- THEN IT BECOMES  
23 DECIDED. AND IF THAT'S THE CASE, THE JURY DOESN'T HAVE  
24 TO DECIDE VERY MUCH.

25 MR. MCMILLAN: BUT I DON'T KNOW THAT THEY'RE  
26 STATED THAT CLEARLY -- THAT IT STATES IT THAT CLEARLY.  
27 IF IT DID, WE'D BE GIVING YOU THE CASE RIGHT NOW,  
28 SAYING "HERE YOU GO."

1           THE COURT:  NO, THEY DIDN'T.  YOU'RE  
2  ABSOLUTELY RIGHT, THEY DIDN'T SAY THAT.  BUT THE EFFECT  
3  THAT -- IF WHAT YOU'RE CHARACTERIZING CERTAIN OF THOSE  
4  DECISIONS IS CORRECT, THAT ONCE YOU PASS SUMMARY  
5  JUDGMENT, SUMMARY ADJUDICATION, THAT IF IT'S IN YOUR  
6  FAVOR, IN EFFECT, THE COURT DENIES IT, THAT THEN  
7  ENTITLES YOU TO GO TO THE JURY WITHOUT ANY FURTHER  
8  CONSIDERATION.  AND ONE OF THE REASONS I DON'T THINK  
9  THAT IS SO IS THAT WHAT DO WE ASK THE JURY TO DECIDE?  
10  BECAUSE WHEN THEY DENIED THE SUMMARY JUDGMENT -- AGAIN,  
11  I DON'T WANT TO KEEP SAYING THEM BOTH; IT'S ACTUALLY  
12  SUMMARY ADJUDICATION ON A SPECIFIC CAUSE OF ACTION --  
13  IT'S ON THE GROUND THAT THERE'S A FACTUAL ISSUE.  AND I  
14  THINK IN THIS CASE HE DIDN'T DENY IT AS A MATTER OF --  
15  ON A LEGAL BASIS.  I THINK THE FINDING WAS -- I'LL LOOK  
16  BACK AT THE ORDER, BUT I THINK IT WAS FACTUAL ISSUES.

17           MR. MCMILLAN:  I THINK YOUR HONOR IS CORRECT,  
18  THAT HE FOUND A TRIABLE ISSUE OF FACT AS TO A WHOLE  
19  BUNCH OF THINGS.  I DO NOT RECALL HIM COMING IN AND  
20  SAYING THERE'S A TRIABLE ISSUE OF FACT ON THIS  
21  FABRICATION AND THAT FABRICATION WAS MATERIAL.

22           I MEAN, OUR POSITION OBVIOUSLY IS THAT THE  
23  MATERIALITY ANALYSIS WOULD BE AN ANALYSIS THAT THE  
24  COURT COULD TAKE BEFORE EVEN LOOKING AT THE FACTS  
25  BECAUSE IF NONE OF THE ALLEGED FALSE STATEMENTS,  
26  ASSUMING THEY'RE TRUE, NONE OF THEM ARE MATERIAL, THEN  
27  WE DON'T EVEN HAVE TO GO DEEPER INTO THE SUMMARY  
28  JUDGMENT.

1           THE COURT: TRUE. THAT'S RIGHT. AND THE  
2 QUESTION IS -- WELL, WE HAVE A NUMBER OF QUESTIONS. I  
3 WON'T KEEP REPEATING. WE HAVE A NUMBER OF DIFFERENT  
4 QUESTIONS FOR WHICH I HAVEN'T SEEN AN ANSWER IN ANY OF  
5 THE CASES CITED. BUT IT WOULD STRIKE ME THAT IF THE  
6 RULING IS IT WAS A QUESTION OF FACT, IS THAT SAYING  
7 WE'RE GOING TO LET THE JURY -- WE'RE GOING TO LET THE  
8 JURY THEN DECIDE THE "BUT FOR"? I DON'T THINK SO, WHEN  
9 ALL THE CASES SAY THAT'S AN ISSUE OF LAW. SO I DON'T  
10 KNOW.

11           AND THEN, IF THEY DON'T, IF THEY'RE NOT GOING  
12 TO DECIDE THAT, IF IT'S DECIDED EITHER BY THE RULING ON  
13 THE MOTION FOR SUMMARY ADJUDICATION OR DECIDED BY THE  
14 COURT IN TRIAL, AS I'M PROPOSING TO DO, I DON'T  
15 THINK -- I THINK THE ONLY THING THE JURY HAS TO ANSWER  
16 AT THAT POINT IN TIME IS WERE THEY MADE, AND WAS THE  
17 DECEPTION INTENTIONAL OR WITH RECKLESS DISREGARD? AND  
18 IF THEY DO, THEN THOSE CAUSES OF ACTION ARE DECIDED.  
19 BECAUSE WE DON'T EVEN WANT TO ASK THEM IF IT CAUSED  
20 HARM BECAUSE THAT'S THE WHOLE IDEA IN THE "BUT FOR"  
21 ANALYSIS.

22           MAYBE YOU CAN FIND OUT -- MAYBE YOU CAN ASK IF  
23 IT CAUSED HARM, WHERE A JURY SAID, "YEAH, THIS  
24 HAPPENED," BUT THERE WAS NO HARM. I DON'T KNOW.

25           MR. MCMILLAN: WELL, THEN --

26           THE COURT: MAYBE THEY DO.

27           MR. MCMILLAN: AS I'M SITTING HERE THINKING  
28 ABOUT IT, YOUR HONOR, JUST WITH THE SORT OF DIALOGUE

1 GOING ON, I'M THINKING ABOUT THE SUMMARY JUDGMENT  
2 STANDARD. AND I DON'T REMEMBER IF IT WAS *AGUILAR VS.*  
3 *ATLANTIC RICHFIELD* OR A DIFFERENT CASE, BUT IF -- WHERE  
4 THE COURT IS GOING THROUGH THE ANALYSIS ON SUMMARY  
5 JUDGMENT, IF THERE'S A WAY, LEGALLY -- IF THERE'S A  
6 LEGAL, A PURE LEGAL ISSUE, WHICH I THINK WE ALL AGREE  
7 THAT THE MATERIALITY IS A LEGAL ISSUE -- IF THERE'S A  
8 PURE LEGAL ISSUE THAT, DECIDED ONE WAY OR THE OTHER,  
9 WILL EITHER ADVANCE OR KILL THE CASE -- AND I DON'T  
10 KNOW WHAT THE ANSWER TO THIS QUESTION IS WITHOUT DOING  
11 MORE RESEARCH -- BUT DOESN'T THE COURT FIRST LOOK AT  
12 THAT ISSUE BEFORE IT PLOWS DOWN INTO THE MOUNTAINS OF  
13 EVIDENCE THAT MIGHT RAISE A TRIABLE ISSUE OF FACT?

14 AND IF THE COURT DOES DO THAT, OR IF THE  
15 COURT'S REQUIRED TO DO THAT -- I DON'T KNOW THE  
16 ANSWER -- BUT IF THE COURT IS REQUIRED TO UNDERTAKE  
17 THAT LEGAL QUESTION ANALYSIS FIRST, THEN IT WOULD MAKE  
18 SENSE THAT IF WE'RE -- WE HAVE AN ORDER THAT'S TALKING  
19 ABOUT TRIABLE ISSUES OF FACT EXISTING, THEN THE COURT  
20 MUST HAVE DECIDED -- NECESSARILY MUST HAVE DECIDED THE  
21 LEGAL ISSUE FIRST, OTHERWISE IT WOULDN'T EVEN GET TO  
22 THE ISSUE OF WHETHER OR NOT THERE WAS A TRIABLE ISSUE  
23 OF FACT.

24 I MEAN, I DON'T KNOW IF THAT MAKES ANY SENSE  
25 OR NOT, BUT JUST AS WE'RE SITING HERE TALKING ABOUT IT,  
26 THAT'S WHAT SPRINGS INTO MY HEAD. SO I DON'T KNOW IF  
27 THAT HELPS.

28 THE COURT: I READ THE RULING, BUT THAT'S BEEN



1 A LONG ENOUGH TIME AGO -- MEANING MORE THAN  
2 FIVE MINUTES AGO -- THAT I DON'T RECALL SPECIFICALLY,  
3 ALTHOUGH MY RECOLLECTION IS THAT A SUMMARY ADJUDICATION  
4 OF THOSE CAUSES OF ACTION WAS DENIED BECAUSE OF ISSUES  
5 OF FACT.

6 MR. MCMILLAN: THAT IS CORRECT.

7 THE COURT: AND IF THAT'S THE RULING, IT MAY  
8 BE THAT THE TRIAL COURT -- THE CALENDAR COURT JUDGE  
9 DIDN'T DO WHAT SHOULD HAVE BEEN DONE.

10 MR. MCMILLAN: WELL, IT IS CORRECT, THE  
11 SUMMARY JUDGMENT ORDER, THE WAY IT IS WRITTEN, IT SAYS  
12 TRIABLE ISSUES OF FACT. MY ONLY ISSUE WITH THAT WOULD  
13 BE THE LOGICAL SEQUENCING THAT WE WOULD GO THROUGH TO  
14 GET TO A TRIABLE ISSUE OF FACT. THERE'S NO INDICATION  
15 IN THAT HEARING RECORD, INSOFAR AS I CAN TELL, THAT  
16 JUDGE LINFIELD DID A MATERIALITY ANALYSIS OTHER THAN,  
17 YOU KNOW, I WOULD JUST THINK THAT, IN THE LOGICAL  
18 SEQUENCING, YOU WOULD LOOK AT MATERIALITY FIRST BEFORE  
19 YOU DIG INTO -- THIS WAS A VERY HEAVILY LITIGATED --  
20 THERE WERE FIVE SUMMARY JUDGMENT MOTIONS. THERE WAS  
21 LIKE 7,200-SOMETHING PAGES OF INFORMATION. AND I WOULD  
22 THINK THAT THE FIRST STEP WOULD BE TO LOOK AT THE  
23 QUESTION OF MATERIALITY TO DECIDE WHETHER OR NOT I EVEN  
24 HAVE TO GO FURTHER AND START DIGGING THROUGH ALL THAT  
25 STUFF.

26 I DON'T KNOW IF THERE'S CASE LAW THAT REQUIRES  
27 THAT SORT OF SEQUENCING. I HAVEN'T LOOKED AT THE ISSUE  
28 YET, IT'S JUST SOMETHING I'M THINKING ABOUT AS WE'RE

1 TALKING ABOUT THE ORDER AND HOW IT CAME ABOUT AND  
2 WHETHER OR NOT THOSE ISSUES WERE OR WERE NOT ALREADY  
3 NECESSARILY DECIDED. JUST DON'T KNOW THE ANSWER.

4 THE COURT: WELL, MR. DANER, DO WHAT YOU CAN  
5 TO PROVIDE US WITH ANY FURTHER GUIDANCE.

6 AND MR. GUTERRES AND MS. SWISS MUST NOW HAVE  
7 SOMEONE BACK IN THE OFFICE WHO WILL UNDOUBTEDLY BE  
8 ASKED TO DO THE SAME.

9 MR. DANER: YOUR HONOR, I JUST WANTED TO ADD  
10 ONE LAST THING. IF IT CAME ACROSS THAT I WAS SAYING  
11 THAT THE SUMMARY JUDGMENT ORDER, THE JUDGE CAME OUT AND  
12 SAID I'M MAKING A MATERIALITY DETERMINATION, THAT WAS  
13 NOT MY INTENTION TO REPRESENT THAT. IN THE PAPERS --

14 THE COURT: NO, I --

15 MR. DANER: -- IT WAS THE SEQUENCING.

16 THE COURT: YEAH, I DIDN'T TAKE WHAT YOU WERE  
17 SAYING TO INDICATE THAT. I JUST THOUGHT THAT WHAT YOU  
18 WERE SAYING WAS THAT THE TRIAL COURT SHOULD NOT REVISIT  
19 A DECISION MADE, A LEGAL DECISION EARLIER IN THE CASE,  
20 WORDS TO THAT EFFECT. I'M NOT STATING THAT VERY WELL,  
21 BUT I BELIEVE THAT'S WHAT YOU WERE SAYING.

22 MR. DANER: WHAT I WAS SAYING EARLIER -- I  
23 GUESS IT'S CLOSE TO SOME ASPECTS OF IT. BUT I NOW  
24 UNDERSTAND THE DIRECTION THAT WE NEED TO GO AND I WILL  
25 MAKE SURE TO GET WHATEVER I CAN DONE BY TOMORROW, CLOSE  
26 OF BUSINESS.

27 THE COURT: WELL, DO THE BEST YOU CAN BECAUSE  
28 I'M GOING TO HAVE TO GET THIS DECIDED. AND I'VE SAID

1 IT A NUMBER OF TIMES SO I WON'T SAY IT AGAIN BUT I HAVE  
2 CONCERN ABOUT THE LENGTH OF THE CASE AND THE PROSPECT  
3 OF BEGINNING TO LOSE JURORS. I DON'T WANT THAT TO  
4 HAPPEN. EVERYONE'S PUT A GREAT DEAL OF EFFORT INTO IT.  
5 SO I'M HOPING NOT TO RUSH TO A DECISION ON ANYTHING,  
6 BUT HOPE TO ADDRESS ISSUES AS SOON AS WE REASONABLY  
7 CAN. AND THIS IS TRUE, AGAIN, FOR BOTH SIDES.

8 I'D LIKE TO HAVE SOMETHING BY THE END OF  
9 TOMORROW. IF IT'S NOT POSSIBLE TO PUT IT TOGETHER,  
10 THEN IT'S NOT POSSIBLE. SO I'M NOT GOING TO HOLD THAT  
11 AGAINST ANYONE. I'M LOOKING FOR ASSISTANCE IN TRYING  
12 TO DECIDE SOMETHING FOR WHICH SO FAR I HAVEN'T BEEN  
13 ABLE TO FIND AN ANSWER. AND DO YOUR BEST.

14 MR. DANER: I WILL, YOUR HONOR. THANK YOU.

15 THE COURT: OKAY.

16 WE'VE TAKEN UP MOST OF THE AFTERNOON TIME, BUT  
17 THE ONE THING THAT WE COULD DO IS MR. GUTERRES TOLD US  
18 EARLIER THAT THERE WERE SOME EXHIBITS THAT THEY HAVE NO  
19 ISSUE ABOUT BEING RECEIVED. AND MAYBE WE SHOULD GET  
20 THAT ON THE RECORD SO THAT EVERYBODY WILL KNOW WHAT WE  
21 ARE GOING TO HAVE TO ADDRESS AS WELL AS WHAT WE WON'T.

22 MR. GUTERRES: THANK YOU, YOUR HONOR.  
23 THERE'S -- WITHIN THE DOCUMENTS THAT PLAINTIFFS HAVE  
24 MOVED OR TRIED TO MOVE INTO EVIDENCE OR AT LEAST  
25 IDENTIFIED AS WANTING TO MOVE INTO EVIDENCE, THERE ARE  
26 A NUMBER OF DUPLICATE DOCUMENTS. AND WE HAD KIND OF  
27 INDICATED IN OUR DISCUSSIONS THAT WE WOULD BE PREPARED  
28 TO AGREE TO ONE DOCUMENT AND PERHAPS PROVIDE THE COURT

1 WITH AN INDEX THAT REFERENCES SOME OF THESE DOCUMENTS  
2 AS BEING BASICALLY -- BECAUSE, UNFORTUNATELY, THEY'VE  
3 BEEN IDENTIFIED -- THE SAME DOCUMENT MAY HAVE BEEN  
4 IDENTIFIED WITH DIFFERENT WITNESSES BY A DIFFERENT  
5 NUMBER.

6 THE COURT: RIGHT. I'M NOT SURE YOU'D EVEN  
7 HAVE TO GIVE ME THAT EXPLANATION. IF THERE ARE  
8 DOCUMENTS THAT ARE IDENTIFIED BY DIFFERENT WITNESSES  
9 AND PERHAPS BY DIFFERENT NUMBERS, I SURE HOPE YOU WON'T  
10 DO THAT AGAIN IN YOUR DISCOVERY. BUT MORE IMPORTANTLY,  
11 I THINK IF THAT'S THE CASE, THEN THE ADDITIONAL -- WE  
12 ONLY NEED TO HAVE ANY DOCUMENT ONCE. AND IT WOULD SEEM  
13 TO ME THAT THE OTHERS CAN BE SIMPLY WITHDRAWN. AND  
14 THAT OUGHT TO SIMPLIFY IT.

15 MR. GUTERRES: SO I'VE BEEN WORKING WITH  
16 MR. PARIS IN TRYING TO COME TO SOME AGREEMENT. AND I  
17 THINK IF WE CAN REACH THE AGREEMENT, THEN I WOULD ASK  
18 THAT THEY WITHDRAW THE DUPLICATES BECAUSE THAT WOULD  
19 AVOID A LOT OF US HAVING TO GO THROUGH THIS DISCUSSION.

20 BUT IN ANY EVENT, I BELIEVE WHAT I WAS TRYING  
21 TO ADDRESS WAS THE ONES THAT WE HAVE AGREED TO. AND  
22 THAT'S EXHIBITS 12, 498, 24, 26, 35, 63, AND  
23 EXHIBIT 392. AND THAT'S BATES -- THESE ARE THE BATES  
24 RANGES IN EXHIBIT 392 -- IT'S 1077.39 THROUGH -41 --  
25 -.41. SO 392.1077.39, -1077.40, AND -1077.41.

26 THE COURT: ALL RIGHT. WE STILL HAVE A LARGE  
27 NUMBER TO ADDRESS. AND SO AT THIS POINT --

28 MR. GUTERRES: WE WILL ENDEAVOR, YOUR HONOR --

1 AND I APOLOGIZE FOR INTERRUPTING. THERE'S A COUPLE  
2 MORE THAT I JUST HAVEN'T BEEN ABLE TO FIND. FOR THE  
3 MOST PART, A LOT OF THE COURT REPORTS WE WILL AGREE IN  
4 CONCEPT. YOU KNOW, IT'S JUST REACHING AN AGREEMENT ON  
5 WHICH VERSION IT IS. AND I THINK THOSE ARE PROBABLY  
6 GOING TO BE THE ONES THAT WE WILL AGREE TO AS FAR AS A  
7 STIPULATION.

8 THE COURT: ALL RIGHT. WELL, WHAT I WAS GOING  
9 TO SUGGEST IS THAT -- GO AHEAD, MR. MCMILLAN.

10 MR. MCMILLAN: YEAH, THERE'S JUST ONE OTHER  
11 ISSUE THAT WE'RE TALKING ABOUT AMONGST COUNSEL IN  
12 TRYING TO FIGURE OUT HOW TO DEAL WITH IT, IS THE COURT  
13 REPORTS THEMSELVES -- AND THIS RELATES ONLY TO THE  
14 COURT REPORTS, I BELIEVE -- CONSISTS OF MULTIPLE ORDER  
15 OF HEARSAY. WE WOULD LIKE TO PROPOSE A LIMITING  
16 INSTRUCTION TO GO IN WITH THESE COURT REPORTS, SIMPLY  
17 THAT THEY'RE NOT BEING OFFERED FOR THE TRUTH OF  
18 ANYTHING STATED IN THEM, BUT RATHER ARE JUST BEING  
19 OFFERED FOR THE FACT THAT THESE ARE THE STATEMENTS THAT  
20 WERE MADE AND --

21 THE COURT: THE FACT OF WHAT WAS SAID.

22 MR. MCMILLAN: CORRECT. AND THAT WOULD BE THE  
23 SCOPE OF THE LIMITING INSTRUCTION. I HAVE ONE AT MY  
24 OFFICE THAT I USED ONCE BEFORE IN AN EARLIER CASE LIKE  
25 THIS, AND THAT WENT ALL THE WAY UP AND IT WITHSTOOD  
26 SCRUTINY. AND I'D LIKE TO USE THAT, BUT I DON'T HAVE  
27 ACCESS TO IT YET. I HAVE TO SEE IF I CAN GET MY DAD TO  
28 LOOK IT UP AND FIND IT.

1           THE COURT:  ALL RIGHT.  WELL, MR. GUTERRES,  
2           MAYBE OVER THE EVENING, YOU'LL BE ABLE TO FIND THOSE  
3           ADDITIONAL EXHIBITS AND WE CAN GET THAT ON THE RECORD  
4           IN THE MORNING.  GIVEN THE TIME, WE'RE GOING TO RECESS,  
5           BUT COUNSEL, AS I INDICATED THIS MORNING, APPEAR AT  
6           8:00 O'CLOCK IN THE MORNING, AND WE'RE JUST GOING TO  
7           START GOING THROUGH THE LIST.  I DON'T CARE HOW MANY  
8           TIMES THEY'RE MENTIONED, I DON'T CARE IF IT'S -- AND  
9           WE'LL JUST ADDRESS EACH EXHIBIT, EXHIBIT BY EXHIBIT.  
10          THERE'S NO OTHER WAY TO DO THIS THAT I'VE EVER  
11          DISCOVERED.  AND SO WE'LL START GOING THROUGH THEM.

12                 MR. MCMILLAN:  WE'LL GET IT DONE.

13           THE COURT:  THE CLERK HAS A LIST.  I'LL  
14           PROBABLY START AT THE TOP OF THE LIST OF EXHIBITS  
15           MARKED FOR IDENTIFICATION THAT ONLY -- NOT YET RECEIVED  
16           IN EVIDENCE, AND JUST START GOING THROUGH THEM.  
17           WHOEVER IS OFFERING THEM, BE PREPARED TO TELL ME THE  
18           BASIS FOR IT TO BE RECEIVED IN EVIDENCE.  EVERYBODY HAS  
19           THE LIST.  I THINK DON WILL GIVE YOU A CURRENT LIST  
20           HERE BEFORE YOU LEAVE.  AND THOSE WHO ARE OPPOSING BE  
21           ABLE TO STATE THE GROUNDS OF OPPOSITION.  AND WE'RE  
22           GOING TO KEEP DOING THIS UNTIL WE GET THEM DONE.

23                 MS. SWISS:  UNDERSTOOD.

24                 MR. MCMILLAN:  THANK YOU, YOUR HONOR.

25           THE COURT:  SO I'LL SEE YOU IN THE MORNING,  
26           8:00 A.M.

27                         (RECESS)

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(WHEREUPON, AT THE HOUR OF 4:19 P.M.,  
THE PROCEEDING ADJOURNED.)

---OOO---

(NEXT PAGE IS 6301.)