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M A S T E R I N D E X

SEPTEMBER 26, 2016

CHRONOLOGICAL INDEX OF WITNESSES

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M A S T E R I N D E X

SEPTEMBER 26, 2016

EXHIBITS

PLAINTIFF'S	MARKED	RECEIVED	REJECTED
EXHIBIT 572	3309		
DEFENDANT'S	MARKED	RECEIVED	REJECTED
	NONE	OFFERED	

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

1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES
3 LOS ANGELES, MONDAY, SEPTEMBER 26, 2016
4 CALIFORNIA
5 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: ELORA DORINI, CSR NO. 13755
8 TIME: 8:49 A.M.

9

10 ---OOO---

11

12 THE COURT: WE'RE ON THE RECORD. GOOD
13 MORNING, EVERYBODY. COUNSEL ARE PRESENT.

14 MS. SWISS: YOUR HONOR, THE WITNESS -- THE
15 FIRST WITNESS THIS MORNING IS IN THE COURTROOM. I'M
16 NOT SURE IF THERE'S SOMETHING THAT WE -- THAT NEEDS TO
17 BE ADDRESSED THAT HE SHOULD BE -- EXCLUDED BEFORE WE
18 GET TOO FAR.

19 THE COURT: I'M NOT GOING TO TALK ABOUT HIS
20 TESTIMONY. ARE YOU?

21 MS. SWISS: NO. BUT I DIDN'T KNOW.

22 THE COURT: THAT'S FINE. ALL RIGHT. DO A
23 COUPLE OF THINGS. ONE, I HAVE RECEIVED A REQUEST, AND
24 I THINK COUNSEL DID JUST -- DEFENSE COUNSEL DID JUST
25 THIS MORNING -- OF A REQUEST BY PLAINTIFF TO MOVE
26 EXHIBITS INTO EVIDENCE.

27 AND IT IS TWELVE OR SO PAGES LONG, LISTING
28 NUMEROUS EXHIBITS THAT APPARENTLY WERE EXHIBITS TO

1 DEPOSITIONS. I DON'T SUSPECT YOU'VE HAD A CHANCE TO
2 REVIEW THAT YET, MR. GUTERRES.

3 MR. GUTERRES: WE HAVE NOT BEEN GIVEN AN
4 OPPORTUNITY TO REVIEW, YOUR HONOR. BUT WE WILL LOOK AT
5 IT.

6 THE COURT: SO. WE'LL ADDRESS THAT AFTER
7 DEFENSE HAS AN OPPORTUNITY TO LOOK AT IT. I ALSO WAS
8 HANDED, THIS MORNING, A NUMBER OF PAGES, WHICH APPEARS
9 TO BE PRE-PRODUCTION OF CERTAIN INFORMATION OR PANELS
10 THAT WERE INCLUDED IN A PRESENTATION BY DR. ACHAR, OF
11 NATIONAL GEOGRAPHIC CHANNEL.

12 MR. MCMILLAN: THAT'S CORRECT, YOUR HONOR.
13 AND WHAT WE WOULD LIKE TO DO IS, NOT NECESSARILY ADMIT
14 THESE INTO EVIDENCE, BUT IT WOULD STREAMLINE HIS
15 TESTIMONY, JUST FOR DEMONSTRATIVE PURPOSES ONLY, IF HE
16 CAN SHOW THE SLIDES, TALK ABOUT THEM, JUST MOVE
17 THROUGH THAT PART OF HIS BACKGROUND, TRAINING, AND
18 EXPERIENCE.

19 THE COURT: WHAT DOES THIS PERTAIN TO, IN
20 TERMS OF EVIDENCE?

21 MR. MCMILLAN: PARTICULARLY CATCH-UP GROWTH
22 AND HIS EXPERTISE IN DEALING WITH MALNOURISHED CHILDREN
23 AND THE SORTS OF THINGS YOU -- THEY ARE EXPECTED TO
24 EXPERIENCE WHEN THEY START GETTING NUTRITION. IN BROAD
25 GENERAL TERMS, I GUESS, THAT'S PROBABLY THE SIMPLEST
26 WAY TO PUT IT.

27 THE COURT: MS. SWISS, ARE YOU OR MR. GUTERRES
28 GOING TO BE HANDLING THE DEFENSE'S QUESTIONING OF

1 DR. ACHAR?

2 MS. SWISS: IT WILL BE MYSELF, YOUR HONOR.

3 THE COURT: ALL RIGHT. SO YOU WANT ME TO TALK
4 ABOUT THIS -- THE DOCUMENTS I'VE BEEN GIVEN THAT
5 MR. MCMILLAN PROPOSES TO SHOW ALONG WITH THE
6 DR. ACHAR'S TESTIMONY?

7 MS. SWISS: YES.

8 THE COURT: AND IS THERE ANY OBJECTION?

9 MS. SWISS: WE DO OBJECT, YOUR HONOR. IT'S
10 IRRELEVANT. THIS POWERPOINT'S IRRELEVANT. THE DOCTOR
11 CAN EXPLAIN HIS BACKGROUND AND HIS EXPERIENCE WITH
12 DOCTORS WITHOUT BORDERS WITHOUT A LENGTHY POWERPOINT
13 THAT DOESN'T HAVE ANYTHING TO DO WITH THE MINOR CHILD
14 IN THIS CASE.

15 NONE OF THE -- THE TRAGEDIES IN AFRICA IS
16 NOTHING TO DO WITH THIS CASE. IT'S SIMPLY IRRELEVANT.

17 THE COURT: WHAT -- THAT WAS THE REACTION I
18 HAD WHEN I LOOKED AT THEM, MR. MCMILLAN. THAT'S WHY
19 I'M INQUIRING NOW. THIS -- THE PURPOSE OF THIS IS TO
20 PROVIDE CERTAIN DEMONSTRATIVE SUPPORT TO HIS TESTIMONY
21 ABOUT WHAT?

22 MR. MCMILLAN: HIS EXPERTISE AND HOW THAT
23 EXPERTISE WAS DEVELOPED IN TREATING CHILDREN WHO ARE
24 SEVERELY MALNOURISHED AND FAILURE TO THRIVE.

25 AND THE RESULTS THAT, THROUGH THAT VERY
26 SPECIALIZED TRAINING AND EXPERIENCE, THAT YOU WOULD
27 EXPECT TO SEE ONCE NUTRITION, ADEQUATE NUTRITION IS
28 PROVIDED.

1 AND THE SPEED AND ALACRITY WITH WHICH YOU
2 WOULD SEE THAT CHANGE IN DEVELOPMENT, IF WE'RE LOOKING
3 AT PURELY A NUTRITIONAL DEFICIT PROBLEM. IT RELATES TO
4 THE CATCH-UP GROWTH, THE ANTICIPATED CATCH-UP GROWTH.

5 THE COURT: SO THERE'S NO QUESTION HE'S GOING
6 TO TESTIFY. AND I PREVIOUSLY HAVE RULED ON OPINIONS
7 THAT WOULD BE RECEIVED AND SOME THAT WOULDN'T. AND I
8 RECOGNIZE THE SUBJECT MATTER OF HIS TESTIMONY. BUT
9 WE'RE NOT GOING TO PUT ON THE NATIONAL GEOGRAPHIC SHOW
10 AS PART OF HIS TESTIMONY.

11 HOPEFULLY, THERE'S NO OBJECTION TO, AND
12 CERTAINLY WITHIN REASON, I CERTAINLY HAVE NO OBJECTION
13 TO QUESTIONING OF A SUBSTANTIAL NATURE ABOUT HIS
14 EXPERIENCE AND QUALIFICATION FOR THE OPINIONS HE'S
15 GOING TO GIVE.

16 BUT I THINK THAT -- I THINK THE TESTIMONY
17 SHOULD -- SHOULD BE SUFFICIENT ITSELF TO ESTABLISH HIS
18 EXPERTISE. AND I THINK THAT THIS DEMONSTRATIVE -- THE
19 DEMONSTRATIVE DOCUMENTS ARE UNNECESSARY TO ESTABLISH
20 EXPERTISE.

21 AND I THINK THEY ARE NOT EVIDENTIARY, AND I
22 THINK THEREFORE, SHOULD NOT BE SHOWN.

23 MR. MCMILLAN: THANK YOU, YOUR HONOR.

24 MS. SWISS: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT.

26 MR. MCMILLAN: I THINK THERE WAS ONE MORE
27 ISSUE, YOUR HONOR. AND I DON'T KNOW IF IT NECESSARILY
28 NEEDS TO BE ON THE RECORD. THAT'S THE VERDICT FORM. I

1 KIND OF PUT SOME TIME IN ON THAT OVER THE WEEKEND.

2 THE COURT: YES, I SEE THAT YOU DID.

3 MR. MCMILLAN: AND I JUST WANT TO GET A LITTLE
4 BIT OF GUIDANCE. MAKE SURE I'M GOING DOWN THE RIGHT
5 TRACK --

6 THE COURT: I ALSO DIDN'T HAVE TIME BECAUSE I
7 JUST RECEIVED IT THIS MORNING. I ALSO PUT IN TIME OVER
8 THE WEEKEND ON THE VERDICT FORM. AND IT APPEARED TO
9 ME, JUST A VERY QUICK GLANCE, THAT WHAT YOU LODGED WITH
10 THE COURT THIS MORNING SEEMED TO BE FOLLOWING,
11 GENERALLY, WHAT I HAD IN MIND.

12 AND I ALSO HAVE JUST RECEIVED IT. HAVEN'T HAD
13 AN OPPORTUNITY TO STUDY IT. BUT, JUST AS AN EXAMPLE, I
14 LEFT IT IN CHAMBERS BECAUSE IT APPEARED THAT WE WEREN'T
15 GOING TO HAVE AN OPPORTUNITY TO DISCUSS THE VERDICT
16 FORMS THIS MORNING BEFORE WE GET THE JURY IN.

17 HAVE MADE A LISTING OF THE QUESTIONS THAT I
18 THOUGHT SHOULD BE INCLUDED IN THE VERDICT FORM THAT
19 WOULD ADDRESS THE 1983 CLAIMS, THE STATE CLAIM, THE --
20 AND THE INTENTIONAL INFLICTION.

21 AS WE HAD DISCUSSED, WE'LL HAVE TO DECIDE
22 WHETHER OR NOT TO HAVE A SEPARATE VERDICT FORM FOR THE
23 DISCRIMINATION CLAIMS.

24 ALTHOUGH I WAS INCLINED AND STILL INCLINE THAT
25 WE COULD VERY REASONABLY HAVE TWO VERDICT FORMS, ONE
26 WHICH WOULD COVER THE, IN BROAD TERMS, THE CLAIMS
27 ARISING OUT OF THE 1983 TYPE OF CLAIM, AND THEN A
28 SEPARATE ONE FOR THE DISCRIMINATION CLAIMS.

1 AND IT LOOKED TO ME -- AND I THINK I ALSO GOT
2 ONE THIS MORNING ON THE DISCRIMINATION --

3 MR. PRAGER: NO, YOUR HONOR.

4 THE COURT: STILL WORKING ON IT?

5 MR. PRAGER: WE'RE GOING TO MODEL -- IF YOU
6 LIKE WHAT MR. MCMILLAN DID, THEN WE WOULD TAKE OUR CUE
7 FROM THAT.

8 THE COURT: OKAY.

9 MR. PRAGER: AND WE STILL HAVE A LITTLE MORE
10 WORK TO DO ON THE FEDERAL SIDE BECAUSE THERE ISN'T A
11 CACI FORM THAT LENDS ITSELF TO THAT VERDICT FORM.
12 CERTAINLY THE UNRUH DISABLED PERSONS ACT CLAIMS HAVE
13 THE CACI FORM THE COURT'S AWARE OF.

14 AND IF YOU'RE SATISFIED THE NEW FORM PLAINTIFF
15 HAS OFFERED TO YOU, WE CAN VERY SIMPLY TRY AND
16 CONSOLIDATE THE COUNTY AND THE TWO INDIVIDUAL
17 DEFENDANTS ON THE UNRUH DISABLED PERSON CLAIMS INTO
18 THE FORM THAT MR. MCMILLAN GAVE YOU AND YOU LIKE.

19 WE STILL HAVE TO FIGURE OUT THE FEDERAL.

20 THE COURT: I UNDERSTAND. AND I THINK THAT'S
21 THE WAY TO APPROACH IT FOR -- WHEN I GET THE TIME,
22 WHICH, DEPENDING, MAY NOT BE UNTIL OVERNIGHT, TONIGHT
23 SOMETIME. AND EVEN THAT PRESENTS SORT OF A CHALLENGE.

24 BUT YES, I'LL TAKE A LOOK AT IT. BECAUSE IT
25 APPEARED TO ME WHAT YOU SUBMITTED THIS MORNING WAS
26 CONSISTENT WITH WHAT I HAD INDICATED, WHAT I THOUGHT WE
27 OUGHT TO DO.

28 MR. MCMILLAN: GREAT.

1 THE COURT: SO I'LL TAKE A LOOK AT IT. AND
2 ASSUMING -- ASSUMING THAT IT IS, OR WITH ANY
3 CORRECTIONS TO BE MADE TO IT, I THINK THEN YOU'LL HAVE
4 GUIDANCE TO DISCRIMINATION ELEMENT.

5 BUT I THINK THERE'S CERTAINLY, EVEN IF THERE
6 ISN'T A FEDERAL VERDICT FORM OR PATTERN INSTRUCTIONS ON
7 THOSE CLAIMS -- SHOULD BE ABLE TO EXTRACT FROM THE
8 STATUTES THEMSELVES WHAT THE ELEMENTS OF SUCH A CLAIM
9 WOULD BE.

10 AND FROM THAT, I THINK THAT WE COULD NOT ONLY
11 DETERMINE WHAT INSTRUCTIONS SHOULD BE GIVEN, BUT ALSO
12 THEN WHAT THE VERDICT FORM WOULD LOOK LIKE.

13 BUT I AGREE, LET'S SEE IF WHAT WE HAVE AT THIS
14 POINT GIVES THE OVERALL FORM AND APPROACH TO LEADING
15 THE JURORS THROUGH THE ISSUES THAT THEY ARE GOING TO
16 HAVE TO DECIDE.

17 MR. MCMILLAN: AND YOUR HONOR, THERE'S ONE --
18 THERE'S TWO LAST THINGS, REALLY. I JUST WANT TO MAKE
19 SURE I UNDERSTAND CORRECTLY THE PROCEDURE THAT WE NEED
20 TO FOLLOW HERE. WE HAVE EXHIBIT 168.

21 IT'S ALREADY BEEN ADMITTED INTO EVIDENCE, AND
22 I'D LIKE TO BE ABLE TO USE IT WITH DR. ACHAR, PUT IT UP
23 ON THE SCREEN SO THE JURY CAN KIND OF FOLLOW ALONG AND
24 SEE WHAT HE'S TALKING ABOUT.

25 DO I NEED TO ASK PERMISSION? THIS ONE'S
26 ALREADY BEEN ADMITTED.

27 THE COURT: BECAUSE IT'S BEEN ADMITTED, YOU
28 CAN USE IT.

1 MR. MCMILLAN: OKAY. THEN I HAVE TWO MORE
2 THAT ARE BASICALLY, AT THIS POINT, BLANK FORMS. ONE IS
3 THE DENVER -- I DON'T KNOW WHAT IT'S CALLED, I'VE
4 FORGOTTEN. IT'S A DEVELOPMENTAL DIAGNOSTIC TOOL THAT
5 THEY USE TO SORT OF FIGURE OUT WHERE THE CHILD IS
6 DEVELOPMENTALLY.

7 I'VE ALREADY GIVEN A COPY TO DEFENSE COUNSEL.
8 THEY HAVE NO OBJECTION TO IT. I'D LIKE TO PUT THAT UP
9 ON THE SCREEN. SINCE IT'S NOT YET IN EVIDENCE, DO I
10 NEED TO --

11 THE COURT: AGAIN, IF THERE'S NO OBJECTION TO
12 IT, YOU CAN SHOW IT. AND I THINK THAT OUR GENERAL
13 AGREEMENT HAD BEEN THAT IF THERE'S NO OBJECTION TO
14 SOMETHING BEING SHOWN, WE CAN DEEM THAT IT MAY BE
15 RECEIVED IN EVIDENCE.

16 IS THAT CORRECT, MR. GUTERRES?

17 MR. GUTERRES: THAT'S CORRECT.

18 THE COURT: ALL RIGHT.

19 MR. PRAGER: SO WE PROBABLY JUST NEED A -- AN
20 EXHIBIT NUMBER OR SOMETHING.

21 THE COURT: YES, WE SHOULD GIVE IT AN EXHIBIT
22 NUMBER. ANYTHING THAT DOESN'T HAVE A NUMBER YET, GET
23 THE NUMBERS, THE NEXT ONES IN ORDER, FROM DON. AND SO,
24 MARKED AND AS LONG AS THERE'S NO OBJECTION, THEY CAN BE
25 SHOWN, AND THEY WILL BE RECEIVED IN EVIDENCE.

26 MR. MCMILLAN: OKAY, EXCELLENT. THANK YOU
27 VERY MUCH.

28 THE COURT: I DO HAVE, ON THESE PRINTOUTS OF

1 THE, WHAT APPEARS TO BE SOME FORM OF A POWERPOINT. IS
2 THIS 572, FOR IDENTIFICATION?

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

4 (PLAINTIFF'S EXHIBIT NO. 572 WAS MARKED
5 FOR IDENTIFICATION BY THE COURT.)

6 THE COURT: OKAY. SO, AND FOR THE PURPOSES OF
7 THE RECORD -- I HOPE I HAVEN'T MISCOUNTED. THE
8 PAPERS -- THERE ARE PAGES STUCK TOGETHER. 572 HAS NOT
9 BEEN PAGINATED, BUT BY MY COUNT, THERE ARE 27 PAGES.

10 MR. MCMILLAN: THAT'S CORRECT.

11 THE COURT: AND THIS WILL BE GIVEN TO THE
12 CLERK TO BE MARKED AS EXHIBIT 572, ONE DASH HOWEVER
13 MANY PAGES THERE ARE, FOR IDENTIFICATION.

14 MR. MCMILLAN: THE LAST ONE, YOUR HONOR, WAS A
15 AGE TWO TO TWENTY-YEAR-OLD BOYS, CDC GROWTH CHART. AND
16 I'VE ALREADY SHOWN THIS TO COUNSEL. THERE'S NO
17 OBJECTION TO IT. WE'LL BE REFERENCING IT, REFERRING TO
18 IT DURING THE EXAMINATION AS WELL.

19 THE COURT: THAT'S FINE.

20 MR. MCMILLAN: THANKS, YOUR HONOR. THERE'S
21 ONE LAST ONE I NEEDED TO ADDRESS WITH THEM. I DON'T
22 KNOW WHETHER THEY'LL HAVE AN OBJECTION OR NOT. COULD I
23 HAVE JUST A MOMENT TO DO THAT --

24 THE COURT: SURE. WE'LL BE OFF THE RECORD FOR
25 A MOMENT.

26 (PAUSE IN THE PROCEEDINGS)

27 MR. MCMILLAN: YOUR HONOR, THERE WAS ONE THING
28 THAT WE NEEDED TO DO ON THE RECORD THIS MORNING, AND MY

1 FAULT, I FORGOT ABOUT IT. EVEN THOUGH IT WAS SITTING
2 RIGHT IN FRONT OF ME, IF IT WERE A SNAKE IT WOULD HAVE
3 BIT ME. AND THAT WAS IDENTIFY THE VIDEO DVDS THAT HAVE
4 BEEN PRESENTED.

5 YOUR HONOR REQUESTED THAT WE GIVE THEM THE
6 DVDS, WE GET THEM OUT SO WE COULD ATTACH THEM TO THE
7 RECORD. WE GOT THAT DONE OVER THE WEEKEND AS WELL.
8 AND I'D LIKE TO GO THROUGH AND JUST IDENTIFY THEM.

9 THE COURT: GO AHEAD.

10 MR. MCMILLAN: OKAY. EXHIBIT NUMBER 768 IS
11 GUY TRIMARCHI, VOLUME I. EXHIBIT 769 IS TRIMARCHI,
12 VOLUME II. 770 IS MS. SCHEELE, VOLUME I. 771 IS
13 MS. SCHEELE, VOLUME II. 772 IS MR. SANDERS. 773 IS
14 KIMBERLY ROGERS. 774 IS MS. PINEDO, VOLUME I.

15 775 IS MS. PINEDO, VOLUME II. 776 IS
16 MS. PENDER, VOLUME I. 777 IS MS. PENDER,
17 VOLUME II. 778 IS MS. NELSON, VOLUME I. 779 IS
18 MS. NELSON, VOLUME II. 780 IS DR. EGGE, VOLUME I. 781
19 IS DR. EGGE, VOLUME II. 782 IS MUZEYYAN BALABAN. 783
20 IS URBANA DUVAL. 784 IS DR. CHARLES SOPHIE, VOLUME I.

21 THE COURT: THANK YOU.

22 MR. MCMILLAN: YES, YOUR HONOR. AND THEN I'LL
23 JUST DELIVER THESE TO THE CLERK.

24 (PAUSE IN THE PROCEEDINGS)

25 THE COURT: ALL RIGHT. ALL JURORS ARE
26 PRESENT. EVERYBODY READY?

27 MR. MCMILLAN: YES, YOUR HONOR.

28 MS. SWISS: YES, YOUR HONOR.

1 THE COURT: ALL RIGHT. BRING THE JURORS IN,
2 PLEASE.

3 (JURY PRESENT)

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

6 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
7 EVERYONE MAY BE SEATED. EVERYBODY IS PRESENT. GOOD
8 MORNING TO ALL OF OUR JURORS.

9 AND, MR. MCMILLAN, WILL YOU CALL YOUR NEXT
10 WITNESS, PLEASE.

11 MR. MCMILLAN: YOUR HONOR, PLAINTIFF WOULD
12 CALL DR. SURAJ ACHAR.

13 THE COURT: THANK YOU VERY MUCH. GO AHEAD,
14 MR. MCMILLAN.

15

16 SURAJ ACHAR, M.D., FAAP,
17 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
18 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

19

20 DIRECT EXAMINATION

21 BY MR. MCMILLAN:

22 Q THANK YOU, YOUR HONOR.

23 DR. ACHAR, JUST TO START OFF, CAN YOU GIVE US
24 A LITTLE BIT OF BACKGROUND ON WHO YOU ARE AND WHAT YOU
25 DO.

26 A OKAY. SO I'M A PROFESSOR OF FAMILY MEDICINE
27 IN PUBLIC HEALTH AT THE UNIVERSITY OF CALIFORNIA SCHOOL
28 OF MEDICINE IN SAN DIEGO. I TEACH MEDICAL STUDENTS,

1 RESIDENTS, FELLOWS, AT THE UNIVERSITY.

2 I DO FAMILY MEDICINE AND SPORTS MEDICINE AT
3 BOTH UCSD SCHOOL OF MEDICINE, AND RADY CHILDREN'S
4 HOSPITAL IN SAN DIEGO.

5 Q AND AS PART OF YOUR PRACTICE, DO YOU -- HAVE
6 YOU EVER GIVEN ANY SPECIFIC CLASSES THAT RELATE TO
7 MANDATED REPORTERS AND THE DUTIES ATTENDANT TO A
8 MANDATED REPORTER?

9 A YES, I DO THIS FAIRLY FREQUENTLY, BOTH FOR OUR
10 RESIDENTS AND FELLOWS AT UCSD SCHOOL OF MEDICINE, AND
11 AS WELL AS FOR FAMILY DOCTORS AROUND THE COUNTRY. I
12 DID THIS IN WASHINGTON, D.C. IN 2014 AS PART OF OUR
13 ANNUAL SCIENTIFIC ASSEMBLY.

14 Q DO YOU HAVE ANY SPECIFIC OR PARTICULARIZED
15 EXPERIENCE IN DEALING WITH OR TREATING MALNOURISHED
16 CHILDREN?

17 A YES, I DO. SO, I WENT TO MEDICAL SCHOOL WITH
18 A DREAM THAT I WOULD ONE DAY WORK FOR DOCTORS WITHOUT
19 BORDERS. ANOTHER NAME FOR THIS ORGANIZATION IS CALLED
20 MSF, OR MÉDECINS SANS FRONTIÈRES. AND THAT WAS MY
21 GOAL. I WROTE IT IN MY PERSONAL STATEMENT BEFORE I
22 WENT TO MEDICAL SCHOOL.

23 AND AFTER I FINISHED MEDICAL SCHOOL, AND AFTER
24 THE REQUIRED THREE YEARS OF TRAINING AFTER MEDICAL
25 SCHOOL AND RESIDENCY TRAINING, I THEN DID WORK FOR
26 DOCTORS WITHOUT BORDERS.

27 AND I WAS POSTED IN THE FAR NORTHEASTERN
28 CORNER OF KENYA, ON THE BORDER WITH SOMALIA AND

1 ETHIOPIA. AND MY JOB THERE WAS TO TAKE CARE OF
2 MALNOURISHED CHILDREN BETWEEN THE AGE OF ZERO AND 5.

3 Q DID YOU HOLD ANY PARTICULAR -- WELL, LET ME
4 ASK YOU THIS FIRST.

5 DID YOU YOURSELF ACTUALLY TREAT CHILDREN?

6 A YES. WE HAD A TEAM OF 14 PEOPLE AS PART OF
7 OUR MSF TEAM IN NORTHEASTERN KENYA. THIS REGION HAS
8 BEEN SUFFERING, AS YOU KNOW, FAMINES AT DIFFERENT
9 TIMES. AT THE TIME THAT I WAS THERE, AND 45 PERCENT OF
10 THE CHILDREN WERE MALNOURISHED.

11 AND THE POPULATION, WE HAD 500,000 PEOPLE IN
12 THE CITY THAT I WORKED IN. AND SO WE TOOK -- I TOOK
13 CARE OF THOUSANDS AND THOUSANDS OF CHILDREN WITH
14 MALNUTRITION, BOTH IN TWO CENTERS. I WORKED EVERY
15 SINGLE DAY.

16 WE HAD AN INTENSIVE CARE CENTER FOR THE MOST
17 SEVERELY MALNOURISHED CHILDREN. AND I WOULD SEE
18 CHILDREN TWICE A DAY, EVERY SINGLE DAY. AND THEN WE
19 HAD SUPPLEMENTAL FEEDING CENTERS FOR ONCE THE CHILDREN
20 GRADUATED FROM OUR INTENSIVE FEEDING PROGRAM.

21 THEY STARTED EATING BETTER AND IMPROVING THEIR
22 CATCH-UP GROWTH. WE'D MOVE THEM OVER TO A SUPPLEMENTAL
23 FEEDING CENTER, AND SUPPORT THEM FOR A WHILE. WE HAD
24 THREE OF THOSE, WITH OVER 2,000 CHILDREN AT ALL TIMES.

25 Q WAS THAT 2,000 CHILDREN IN EACH, OR 2,000
26 CHILDREN TOTAL?

27 A I THINK TOTAL WAS ABOUT 2,000 CHILDREN IN ALL
28 THREE OF THOSE CENTERS. PLUS ABOUT 100 TO 150 VERY

1 SEVERELY MALNOURISHED CHILDREN IN OUR INTENSIVE FEEDING
2 PROGRAM. WE CALLED IT THERAPY FEEDING CENTER.

3 Q CAN YOU JUST GIVE US A BRIEF DESCRIPTION OF
4 HOW -- JUST THE PROCESS -- HOW IT WOULD WORK, IF -- YOU
5 KNOW, YOU'D HAVE A CHILD THAT COMES IN THAT'S SEVERELY
6 MALNOURISHED.

7 AT SOME POINT, SOMETHING HAPPENS WITH THE
8 CHILD. CAN YOU JUST SORT OF RUN US THROUGH THAT
9 PROCESS?

10 A YEAH. SO THIS OBVIOUSLY IS A REGION THAT HAS
11 TRUE ENVIRONMENTAL MALNUTRITION OR FAILURE TO THRIVE.
12 THESE CHILDREN DIDN'T HAVE FOOD, SOMETIMES FOR MONTHS.
13 AND THE STORIES WERE THE SAME STORIES.

14 THEY WOULD COME IN AND TELL ME THE SAME
15 STORIES. I'D SAY, WHAT HAVE THE CHILDREN BEEN GIVEN TO
16 EAT? AND THE MOTHERS WOULD INVARIABLY SAY, TEA. AND
17 IT WOULD BE AS LONG AS A MONTH, SOMETIMES, THAT THEY
18 HADN'T EATEN ANYTHING.

19 AND SO THESE CHILDREN WERE SOMETIMES SEVERELY
20 MALNOURISHED. ONE CHILD I REMEMBER, ENNIS, THAT WE
21 TOOK CARE OF. SHE CAME IN, TWO-AND-A-HALF YEARS OLD,
22 WEIGHED LESS THAN TEN POUNDS. AND I JUST COULDN'T
23 BELIEVE IT.

24 THAT'S JUST NOT PHYSICALLY POSSIBLE, FOR A
25 CHILD TO GET THIS LOW. SO I WENT AND WEIGHED HER
26 MYSELF, AND IT WAS TRUE, THAT SHE WEIGHED LESS THAN TEN
27 POUNDS.

28 SO WE HAD CHILDREN OF ALL AGES IN THIS

1 PROGRAM, IN OUR SUPPLEMENTAL FEEDING CENTER. WE HAD
2 CHILDREN A LITTLE OVER FIVE AS WELL, BECAUSE SIBLINGS
3 WERE ALLOWED TO COME WITH THEIR MALNOURISHED SIBLINGS.

4 AND SO WHAT WE WOULD DO IS WE WOULD ASSESS THEM
5 RIGHT AWAY FOR THEIR MEDICAL NEEDS. BECAUSE MOST
6 SEVERELY MALNOURISHED KIDS SOMETIMES WOULD BE ANOREXIC.
7 THEY WOULDN'T WANT TO EAT BECAUSE THEY WERE SICK.

8 AND THEY WOULD BE SICK FROM TUBERCULOSIS,
9 PNEUMONIA WAS THE MOST COMMON PROBLEM I SAW, DIARRHEAL
10 DISEASES. I ACTUALLY SAW POLIO THERE AS WELL. AND SO
11 WE WOULD TREAT THEM.

12 AND AS SOON AS WE GOT THEIR MEDICAL CONDITIONS
13 UNDER TREATMENT, WITHIN A FEW DAYS, THEY WOULD BE ON
14 HIGH-ENERGY MILK, AND HIGH-ENERGY FEEDINGS THAT WE
15 WOULD GIVE THEM AROUND THE CLOCK. AND WE WOULD SEE
16 RAPID CATCH-UP GROWTH.

17 AND THE CHILDREN, WITHIN DAYS, WOULD START
18 GAINING WEIGHT AND GOING TOWARDS THE NORMAL CURVE FOR
19 CHILDREN THEIR AGE, AND WITHIN WEEKS, FOR -- PRETTY
20 MUCH ALL THE CHILDREN.

21 AND THEN ONCE THEY WERE STABILIZED IN OUR
22 INTENSIVE FEEDING PROGRAM, WE WOULD MOVE THEM TO OUR
23 SUPPLEMENTAL FEEDING PROGRAM.

24 NOW, SOME CHILDREN WOULD SHOW UP WITH MODERATE
25 MALNUTRITION, WERE NOT SICK. THEY WERE ABLE TO EAT,
26 AND WE WOULD START THEM RIGHT AWAY IN THE SUPPLEMENTAL
27 PROGRAM CENTERS THAT WE HAD.

28 Q SO THEY WOULD JUST GO DIRECTLY, THEY'D BYPASS

1 THE ACUTE CENTER?

2 A YES.

3 Q IN YOUR EXPERIENCES WITH DOCTORS WITHOUT
4 BORDERS IN AFRICA, CAN YOU GIVE US AN ESTIMATE OF HOW
5 MANY IN THE ACUTE CENTER -- HOW MANY CHILDREN DURING
6 YOUR ENTIRE TIME THERE YOU TREATED?

7 A IN THE THERAPEUTIC FEEDING CENTER, MAYBE A
8 THOUSAND. I WAS THERE FOR SIX MONTHS, AND THIS AREA
9 HAD 45 PERCENT GLOBAL MALNUTRITION. SO WE TOOK CARE
10 OF 100, 150. BUT THEY WOULDN'T BE IN THE THERAPEUTIC
11 FEEDING CENTER TOO LONG.

12 WE WOULD TRANSITION THEM AS SOON AS THEY
13 BECAME STABILIZED, IN TERMS OF CATCH-UP GROWTH, TO THE
14 SUPPLEMENTAL FEEDING CENTER.

15 Q DID YOU GUYS ACTUALLY KEEP TRACK OF THE DATA
16 THAT THIS CATCH-UP GROWTH -- HOW MUCH IT TOOK TO GET
17 THE CHILD BACK ON TRACK IN YOUR THERAPEUTIC FEEDING
18 CENTERS.

19 DID YOU ACTUALLY TRACK THAT DATA?

20 A WE TRACKED THE DATA IN BOTH CENTERS, THE
21 SUPPLEMENTAL FEEDING CENTERS AS WELL AS THE THERAPEUTIC
22 FEEDING CENTERS. WE MEASURED WEIGHTS ON ALL CHILDREN.
23 TWICE A DAY IN THE THERAPEUTIC FEEDING CENTERS, AND
24 ONCE A DAY IN THE SUPPLEMENTAL FEEDING CENTERS.

25 AND WE HAD A TEAM, A LARGE TEAM AS YOU CAN
26 IMAGINE, NUTRITIONISTS, LOCAL SOMALIS BECAUSE THIS IS A
27 SOMALI COMMUNITY, WHO WERE WORKING FOR US AND TRAINING
28 TO BE NUTRITIONISTS.

1 AND THEY WOULD MONITOR THE DIARRHEA EPISODES,
2 AND THE VOMITING EPISODES, AND THE NUTRITION IN. AND
3 THEY WOULD MEASURE THE WEIGHTS FOR US AND MONITOR THE
4 EATING OF THE CHILDREN. AND WE KEPT IT ON A GRAPH, AND
5 WE WOULD WATCH THIS GRAPH GO RIGHT UP.

6 AND IF THERE WAS A PROBLEM, IF THERE WAS SOME
7 CHILD THAT WASN'T GOING UP, I WOULD GO TO THAT CHILD,
8 LISTEN CLOSELY TO THEIR LUNGS. SOMETIMES WE'D EVEN GET
9 AN X-RAY, WHICH IS AN EXTRAORDINARY TEST FOR US, A
10 CHEST X-RAY THERE.

11 THERE WAS ONLY ONE AVAILABLE IN THE WHOLE
12 TOWN. AND SO WE WOULD GET AN X-RAY TO LOOK FOR
13 PNEUMONIA, AND WE'D TREAT WITH ANTIBIOTICS IF THEY HAD
14 IT. SO WE WOULD BE RIGHT ON THESE KIDS WITHIN DAYS IF
15 THEY WEREN'T GAINING WEIGHT.

16 Q AND WHEN YOU RECEIVED A CHILD INTO THE ACUTE
17 THERAPEUTIC -- IS THAT WHAT YOU CALL IT --

18 A THERAPEUTIC FEEDING CENTER.

19 Q -- THERAPEUTIC FEEDING CENTER, WHEN YOU
20 RECEIVED A CHILD INTO THE THERAPEUTIC FEEDING CENTER,
21 TYPICALLY HOW LONG DID IT TAKE THOSE CHILDREN BEFORE
22 YOU SAW SUFFICIENT CATCH-UP GROWTH THAT YOU FELT
23 COMFORTABLE MOVING THEM OUT TO THE SUPPLEMENTAL
24 CENTERS?

25 A TYPICALLY IT WOULD BE A FEW WEEKS. WE WOULD
26 START SEEING CATCH-UP GROWTH, NOT IN THE FIRST FEW
27 DAYS. IT WAS USUALLY JUST TO STABILIZE THEM IN THE
28 FIRST TWO OR THREE DAYS. BUT AROUND TWO, THREE DAYS,

1 YOU'D START SEEING THE CURVE GO UP.

2 AND BY A FEW WEEKS, IT WOULD GO UP
3 DRAMATICALLY. SOME CHILDREN STAYED IN OUR TFCS LONGER.
4 I REMEMBER ONE CHILD WHO WAS SO SEVERELY MALNOURISHED,
5 HE STAYED IN OUR TFC FOR MONTHS AND MONTHS. HE DIDN'T
6 TALK. AND WE, WE JUST COULDN'T TRANSFER HIM OUT.

7 BUT EVENTUALLY HE TALKED AND GOT BETTER, AND
8 WE WERE ABLE TO TRANSFER HIM. BUT THE MAJORITY OF
9 KIDS, WE SAW CATCH-UP GROWTH WITHIN WEEKS.

10 Q THIS PARTICULAR CHILD THAT WAS THERE FOR A FEW
11 MONTHS, DO YOU RECALL, LIKE, HOW MANY MONTHS? WAS IT
12 YEARS, OR --

13 A HE WAS THERE FOR FIVE MONTHS, I THINK.

14 Q BUT WITHIN THAT FIVE-MONTH PERIOD, FINALLY, HE
15 DID START PICKING UP?

16 A NO. HE GAINED WEIGHT WITHIN A MONTH, ACTUALLY
17 WITHIN WEEKS. BUT THE PROBLEM IS HE WASN'T TALKING.
18 AND HE WASN'T BEHAVING AS -- IN THE SAFE WAY THAT WE
19 FELT LIKE HE WAS READY TO TRANSITION TO THE -- THE
20 SUPPLEMENTAL FEEDING CENTERS WERE NOT EASY.

21 THE CHILDREN WERE NOT LIVING IN THE
22 SUPPLEMENTAL FEEDING CENTERS WITH THEIR MOTHERS LIKE IN
23 THE THERAPEUTIC FEEDING CENTER. THEY WOULD COME DAILY.
24 THEY WOULD WALK, SOMETIMES AS FAR AS 15 KILOMETERS
25 AWAY, IN THE DESERT TEMPERATURES AS HIGH AS
26 110 DEGREES.

27 THEY'D WALK BAREFOOT TO THE CENTER IN THE
28 MORNING. THE KIDS WHO CAME FROM FAR AWAY WOULD STAY.

1 AND THEN IN THE AFTERNOON, WE WOULD FEED THEM AGAIN,
2 AND THEN THEY WOULD GO HOME.

3 SO IT'S -- YOU HAD TO BE ABLE TO TALK,
4 OBVIOUSLY. IN THIS CASE, THIS CHILD WASN'T ABLE TO
5 TALK. SO HE DID GET TRANSFERRED TO THE SUPPLEMENTAL
6 FEEDING CENTER QUICKLY, BUT MOST KIDS DID WITHIN WEEKS.

7 Q BUT THE TRANSFER -- THE DELAY IN TRANSFER WITH
8 HIM WAS NOT BECAUSE HE FAILED TO GAIN WEIGHT RAPIDLY.
9 IT WAS BECAUSE OF HIS INABILITY TO COMMUNICATE?

10 A YES.

11 Q IS THERE ANYTHING ELSE ABOUT YOUR EXPERIENCES
12 WITH DOCTORS WITHOUT BORDERS THAT YOU FELT WAS
13 PARTICULARLY MEANINGFUL, WITH RESPECT TO YOUR
14 ASSIGNMENT IN THIS CASE?

15 A YEAH. THE ROLE OF THE MOTHERS. SO THE --
16 INEVITABLY ALL THE TIMES THAT THE CHILDREN WOULD COME,
17 THEY WERE COMING WITH THEIR MOTHERS. AND THE MOTHERS
18 WERE KEY FOR US. WE HAD ONE CHOLERA EPIDEMIC DURING
19 THE TIME.

20 AND ONE MOTHER BROUGHT TWINS, AND SHE HAD TO
21 HELP KEEP BOTH OF HER TWINS ALIVE. AND THAT WAS A
22 MIRACLE, TO ABLE TO GO FROM ONE TO THE OTHER RAPIDLY.
23 SO THE RELATIONSHIP BETWEEN THE MOTHERS AND THE
24 CHILDREN WAS CRITICAL.

25 A FEW TIMES WE FOUND CHILDREN IN THE COMMUNITY
26 WHOSE MOTHERS AND FATHERS HAD PERISHED AND PASSED AWAY.
27 AND FOR THOSE CHILDREN, IT WAS VERY HARD TO TAKE CARE
28 OF THEM WITHOUT THEIR MOTHER THERE SUPPORTING THEM.

1 BECAUSE WE WOULD PROVIDE THE NUTRITION. WE
2 WOULD DO THE EVALUATIONS FOR MEDICAL PROBLEMS. WE
3 WOULD TREAT THEM WITH ANTIBIOTICS OR ANTIMALARIALS IF
4 NECESSARY FOR THEIR ILLNESS.

5 BUT THE MOTHERS WOULD THEN MAKE SURE THE
6 CHILDREN WERE BATHED, MAKE SURE THE CHILDREN GOT THE
7 FOOD, WERE EATING AND WERE PART OF OUR TEAM.

8 AND IT WAS CRITICAL FOR US TO HAVE THE
9 MOTHERS, WHEN WE HAD CHILDREN. AND WE HAD A FEW WHOSE
10 PARENTS DIED. WHAT I DESPERATELY TRIED TO DO WAS PAIR
11 THE BABIES WITH ANOTHER MOTHER, AND FIND ANOTHER MOTHER
12 THAT COULD BE -- THAT WOULD TAKE THEM.

13 AND THAT TOOK A PROCESS BUT THAT WAS CRITICAL
14 FOR SURVIVAL. WITHOUT THE MOTHERS THESE KIDS WOULD NOT
15 SURVIVE.

16 Q AND THAT WAS UNIVERSALLY YOUR EXPERIENCE THE
17 ENTIRE TIME YOU WERE IN AFRICA?

18 A YES.

19 Q AND HOW LONG WAS IT THAT YOU WERE IN AFRICA?

20 A SIX MONTHS.

21 Q AND THAT SIX-MONTH PERIOD -- I DON'T THINK I
22 ASKED YOU THIS, YEAH I DID -- BUT IN THAT SIX-MONTH
23 PERIOD, CAN YOU GIVE AN ESTIMATE, IN TOTAL, INCLUDING
24 THE THERAPEUTIC FEEDING CENTER CHILDREN AND THE
25 SUPPLEMENTAL FEEDING CENTER CHILDREN, THAT YOU TREATED
26 YOURSELF DURING THAT SIX-MONTH PERIOD?

27 A SO AGAIN, I WASN'T ALONE. I HAD FOUR
28 LOGISTICIANS. WE HAD FOUR NURSES. WE WERE -- OUR TEAM

1 WAS FROM ELEVEN COUNTRIES -- OF STAFF. AND WE WORKED
2 TOGETHER. IN FACT, THE LOGISTICIANS DID A LOT OF GOOD
3 WORK.

4 THEY MADE THE SANITATION SYSTEMS FOR US WHERE
5 THEY BUILT TOILETS FOR US, FOR OUR FAMILIES AND
6 CHILDREN. THEY HELPED WITH WATER, MADE SURE THE WATER
7 WAS GOOD FOR US.

8 AND SO, AS A TEAM, I WOULD DO ROUNDS WITH MY
9 NUTRITIONIST ON ALL THE CHILDREN IN THE TFCS TWICE A
10 DAY. AND I WOULD GO TO ROUNDS ONCE A WEEK IN THE FSC
11 WHERE I HAD AN ASSIGNED NURSE, A REGISTERED NURSE FROM
12 SPAIN OR FRANCE, IN CHARGE OF THAT CENTER.

13 AND I WOULD ROUND, AND THEY WOULD BRING ME THE
14 SICKEST KIDS TO SEE. BUT IN TOTAL, IT'S MANY THOUSANDS
15 OF KIDS.

16 THE COURT: SO BEFORE WE GO ANY FURTHER, I'M
17 GOING TO ASK THAT THE QUESTIONS CALL FOR SPECIFIC
18 INFORMATION, RATHER THAN BROAD, OPEN QUESTIONS.

19 AND, DOCTOR, I'M GOING TO ASK YOU TO TRY TO
20 CONCENTRATE AS BEST YOU CAN IN ANSWERING THE QUESTIONS.
21 WHAT WE'RE DOING HERE IS A LITTLE DIFFERENT FROM
22 TRAINING, SCHOOL AND TRAINING RESIDENTS AND SO ON.

23 AND ONE OF THE REASONS WE HAVE THE DIFFERENCE
24 IS THAT ONLY -- IT'S ONE OF THE COURT'S OBLIGATIONS TO
25 MAKE SURE THAT THE EVIDENCE THAT WE HEAR IS EVIDENCE
26 THAT CAN BE RECEIVED.

27 AND ONE OF THE WAYS WE DO THAT IS THROUGH
28 ASKING VERY SPECIFIC QUESTIONS. THE OTHER SIDE AND THE

1 COURT CAN DETERMINE WHETHER OR NOT THE QUESTION IS
2 PROPER. AND THAT THEN LENDS ITSELF TO US RECEIVING
3 EVIDENCE THAT WE CAN RECEIVE.

4 SO I UNDERSTAND IT'S A DIFFERENT SETTING. AND
5 WE HAVEN'T GOTTEN THAT FAR YET. PERHAPS YOU'VE
6 TESTIFIED IN COURT BEFORE. BUT WHETHER YOU HAVE OR
7 NOT, I NEED TO HAVE YOU ANSWER THE QUESTION, RATHER
8 THAN ELABORATE ON IT.

9 IF SOMETHING FURTHER BEYOND THE ANSWER YOU
10 GIVE IS CALLED FOR, THEN ONE OF THE ATTORNEYS WILL HAVE
11 AN OPPORTUNITY TO ASK THAT QUESTION. BUT I HAVE TO
12 PROTECT THE INTEGRITY OF OUR PROCESS, AND I CAN'T DO
13 THAT IF WE GET VERY LENGTHY ANSWERS THAT GO BEYOND THE
14 QUESTION ITSELF.

15 SO GO AHEAD, MR. MCMILLAN.

16 MR. MCMILLAN: THANK YOU, YOUR HONOR.

17 BY MR. MCMILLAN:

18 Q HE RAISED A GOOD POINT. HAVE YOU TESTIFIED IN
19 A COURTROOM BEFORE LIKE THIS ONE?

20 A ONCE BEFORE.

21 Q HOW LONG AGO WAS THAT?

22 A I DON'T REMEMBER.

23 Q SO, LONG ENOUGH THAT YOU DON'T REMEMBER.
24 GOING BACK JUST FOR A MOMENT TO YOUR CURRENT PRACTICE.

25 IN YOUR FAMILY PRACTICE, IN YOUR CURRENT
26 CASELOAD, PATIENT LOAD, DO YOU HAVE ANY OF YOUR OWN
27 PATIENTS WHO ARE SUFFERING FROM A FAILURE TO THRIVE
28 CONDITION?

1 A YES.

2 Q HOW MANY WOULD THAT BE?

3 A I HAVE --

4 Q CURRENTLY.

5 A I HAVE TWO WAYS I TAKE CARE OF PATIENTS AT
6 UCSD AND AT RADY'S CHILDREN'S HOSPITAL. ONE IS DIRECT
7 PATIENTS WHO ARE ON MY PANEL. AND I HAVE ONE CHILD
8 WITH FAILURE TO THRIVE THAT I'VE BEEN TAKING CARE OF
9 SINCE BIRTH, AND NOW HE'S THREE YEARS OLD.

10 AND I ALSO SEE ONE CHILD IN A RESIDENT CLINIC
11 THAT IS ALSO HAVING FAILURE TO THRIVE.

12 Q WHAT IS A RESIDENT CLINIC?

13 A SO, MY JOB INCLUDES TAKING CARE OF PATIENTS
14 DIRECTLY WHO COME TO SEE ME AS A DOCTOR, AND I AM THEIR
15 DOCTOR OF RECORD. ONLY I ALSO TEACH RESIDENTS WHO ARE
16 FINISHED MEDICAL SCHOOL, AND NOW ARE TRAINING IN FAMILY
17 MEDICINE.

18 OR -- I TEACH FELLOWS IN SPORTS MEDICINE. AND
19 FOR THAT, I HAVE CLINICS THAT I ATTEND -- THAT I
20 SUPERVISE THE CARE BEING GIVEN BY THE RESIDENTS AND
21 FELLOWS. AND IN THAT SETTING, I ALSO SEE CHILDREN WITH
22 A FAILURE TO THRIVE.

23 Q SO IS A RESIDENT A MEDICAL DOCTOR YET, OR ARE
24 THEY --

25 A YES. A RESIDENT'S A MEDICAL DOCTOR.

26 Q SO THEY JUST HAVEN'T DONE ANY SPECIALIZED
27 TRAINING YET?

28 A THEY ARE DOING THEIR SPECIALIZATION DURING

1 THAT RESIDENCY.

2 Q WHAT IS A FELLOW?

3 A A FELLOW -- AND SO, IT'S JUST AN EXAMPLE,
4 INTERNAL MEDICINE IS A THREE-YEAR RESIDENCY. FAMILY
5 MEDICINE IS A THREE-YEAR RESIDENCY. A FELLOW THAT WE
6 HAVE IN SPORTS MEDICINE, OR MAYBE CARDIOLOGY FOR
7 INTERNAL MEDICINE, THESE ARE FELLOWS.

8 Q SO IT WOULD BE FOR FURTHER -- FOR AN AREA OF
9 FURTHER SPECIALIZATION?

10 A YES.

11 Q HOW LONG OR -- AND I DON'T KNOW THIS, MAYBE IT
12 DIFFERS DEPENDING ON THE AREA OF SPECIALIZATION -- BUT
13 IS THERE SORT OF A TYPICAL PERIOD OR LENGTH OF TIME
14 THAT A DOCTOR WOULD BE A FELLOW BEFORE THEY'RE ALLOWED
15 TO PRACTICE IN THAT SPECIALTY?

16 DO YOU UNDERSTAND MY QUESTION?

17 A YEAH. USUALLY IT VARIES BETWEEN ONE AND MAYBE
18 FOUR YEARS.

19 Q AND THAT VARIATION, IT'S -- IF I'M -- IS THAT
20 VARIATION DEPENDENT ON THE TYPE OF SPECIALTY THAT
21 THEY'RE GOING INTO?

22 A YES.

23 Q ARE YOU AWARE OF WHETHER OR NOT THERE IS A
24 SPECIALTY FOR CHILD ABUSE PEDIATRICS?

25 A NOW I AM AWARE.

26 Q DO YOU HAVE ANY UNDERSTANDING AS TO HOW LONG,
27 IN THAT SPECTRUM OF ONE TO FOUR YEARS, HOW LONG IT
28 TAKES BEFORE A FELLOW IN CHILD ABUSE PEDIATRICS BECOMES

1 A SPECIALIST IN CHILD ABUSE PEDIATRICS?

2 A I DO NOT REMEMBER.

3 Q FAILURE TO THRIVE, WHAT IS IT?

4 A OKAY. SO, FAILURE TO THRIVE IS A GENERIC TERM
5 THAT REFERS TO A CHILD OR INFANT, THE FIRST YEAR OF
6 LIFE.

7 AND A CHILD WOULD BE, AFTER THAT, TO A NUMBER
8 OF YEARS -- A CHILD OR INFANT IS NOT GAINING WEIGHT
9 APPROPRIATELY ACCORDING TO AN AGE-BASED GROWTH CURVE,
10 OR AGE-BASED TYPICAL NORM.

11 OR -- THAT'S ONE WAY OF DEFINING FAILURE TO
12 THRIVE. ANOTHER WAY OF DEFINING FAILURE TO THRIVE IS A
13 CHILD THAT HAS GAINED WEIGHT, BUT HAS NOW STOPPED
14 GAINING WEIGHT AND IS GETTING PROPORTIONALLY LESS
15 WEIGHT COMPARED TO AGE-BASED NORMS.

16 SO WE WOULD CALL THAT CROSSING ISOBARS. AN
17 ISOBARS IS DEFINED BY A NORMATIVE WEIGHT PERCENTILE FOR
18 A CERTAIN AGE. THE OTHER DEFINITIONS THAT HAVE BEEN
19 USED FOR FAILURE TO THRIVE ALSO RELATE TO HEIGHT -- SO
20 A HEIGHT BELOW A CERTAIN LEVEL, LIKE UNDER TENTH
21 PERCENTILE FOR AGE, AS AN EXAMPLE.

22 OR, LAST BUT NOT LEAST, A RATIO BETWEEN THE
23 HEIGHT AND THE WEIGHT, WHERE A CHILD'S RATIO OF WEIGHT
24 TO THEIR HEIGHT IS PROPORTIONALLY LOW.

25 AND OFTENTIMES, THIS WOULD BE UNDER TENTH
26 PERCENTILE OR UNDER FIFTH PERCENTILE. IN PUBLISHED
27 STUDIES, MAYBE EVEN AS LOW AS UNDER THE THIRD
28 PERCENTILE FOR THAT AGE GROUP.

1 Q IS THERE -- HOW DO WE -- HOW DO YOU, RATHER,
2 GO ABOUT DIAGNOSING FAILURE TO THRIVE?

3 A THE FIRST THING WE DID IN AFRICA, OR HERE IN
4 THE UNITED STATES, THE FIRST THING IS WE MEASURE THE
5 HEIGHT AND THE WEIGHT OF THE CHILD AT THE VISIT THAT
6 YOU'RE SEEING THEM.

7 THE NEXT THING IS YOU LOOK AT THE PREVIOUS
8 HEIGHTS AND WEIGHTS TO SEE IF THE CHILD AT ONE TIME WAS
9 NORMAL AND IS NOW NOT THRIVING OR NOT GAINING ENOUGH
10 WEIGHT OR HEIGHT, A PROPORTIONAL DECREASE IN HEIGHT OR
11 WEIGHT.

12 Q AND THEN DO YOU PLOT THAT DATA OUT SOMEHOW?

13 A YES. SO, THE CENTERS FOR DISEASE CONTROL HAS
14 GIVEN US NORMATIVE VALUES FOR THE UNITED STATES
15 CHILDREN, AND THE WHO HAS GIVEN US NORMATIVE VALUES FOR
16 CHILDREN WORLDWIDE.

17 Q NORMATIVE VALUES. WHAT DOES THAT MEAN?

18 A SO THAT MEANS THE -- WHERE THE NORMAL WEIGHT
19 WOULD BE FOR A CHILD OF THAT AGE. AND THEY HAVE
20 PERCENTILES, 95TH, 85TH, 75TH, 50TH, 25TH, ET CETERA,
21 GOING DOWN TO -- SOMETIMES THESE CURVES GO DOWN TO THE
22 FIFTH OR THIRD PERCENTILE.

23 THAT'S THE LAST ONE, WHICH IS TWO STANDARD
24 DEVIATIONS BELOW NORMAL.

25 Q LET ME SHOW YOU, UP ON THE SCREEN. MIGHT HELP
26 TO HAVE A VISUAL. IT'S EXHIBIT NUMBER 168. ONE
27 MOMENT. HOLD ON A SECOND, SHE'S WRITING OUT SOME
28 HANDWRITING ON IT, I THINK THAT MIGHT ACTUALLY BE

1 THE...

2 I'M GOING TO SHOW YOU EXHIBIT NUMBER 168. AND
3 I'LL REPRESENT TO YOU THAT THIS IS THE GROWTH CHART
4 DEVELOPED AND TAKEN BY DR. YIM DURING HER PERIOD OF
5 TREATMENT.

6 AND WE DON'T NECESSARILY NEED TO GO INTO THE
7 DATA RIGHT NOW. I JUST SORT OF WANTED TO TALK ABOUT
8 THIS, THE ISOBARS AND HOW DO YOU DESCRIBE -- WHAT IT IS
9 EXACTLY WE'RE LOOKING AT THERE.

10 A SO FOR THAT DATE, THIS CURVE, YOU SEE THE
11 WHOLE CURVE, BUT ON THE BOTTOM, WE SEE THE WEIGHT
12 NORMATIVE VALUES.

13 ON THE TOP, THIS ONE IS THE HEIGHT. AND WE
14 HAVE CURVES LIKE THIS FOR HEAD CIRCUMFERENCE, AND THE
15 BODY MASS INDEX FOR THE WEIGHT/HEIGHT RATIO.

16 AND THE MIDDLE BAR IN THESE CURVES IS THE 50TH
17 PERCENTILE FOR WEIGHT AND FOR HEIGHT. AND THEN THIS
18 WOULD BE HIGHER, MAYBE 75TH, AND 85TH, 95TH, AND
19 SIMILARLY, DOWN HERE, DOWN TO EITHER FIFTH OR THIRD
20 PERCENTILE.

21 AND IT WILL OFTEN BE LABELED. AND THESE
22 CURVES ARE EITHER DEVELOPED BY THE CDC OR THE WHO.

23 Q AND WHEN YOU WERE WORKING WITH IN AFRICA WITH
24 DOCTORS WITHOUT BORDERS, DID YOU USE A SIMILAR CHART OR
25 GRAPH TO PLOT OUT HOW YOUR CHILDREN WERE DOING?

26 A YES.

27 Q AND EARLIER YOU TALKED ABOUT, WITH THE
28 SEVERELY MALNOURISHED CHILDREN, WHEN YOU STARTED GIVING

1 THEM ADEQUATE NUTRITION, THAT YOU'D SEE A CHANGE IN
2 THEIR GROWTH PATTERN?

3 A YES.

4 Q CAN YOU DESCRIBE --

5 A I'M GOING TO SHOW YOU WHAT THAT MIGHT LOOK
6 LIKE. SO THIS IS THE GROWTH CURVE FOR BABY RYAN. AND
7 YOU CAN SEE, AT FIRST, HE WAS 50TH PERCENTILE. BUT
8 SOMEWHERE ALONG THE -- ON THE BOTTOM OF THIS CURVE, HE
9 STARTED CROSSING ISOBARS.

10 AND WE WOULD CALL THAT FAILURE TO THRIVE. SO
11 HE'S GOING FROM 50TH TO 25TH TO LESS THAN THE FIFTH
12 PERCENTILE. AND OVER HERE, WAY BELOW THE CURVE. SO WE
13 COULD ADDRESS HIM.

14 EVEN THOUGH HE HASN'T GONE BELOW THE
15 50TH PERCENTILE, WE COULD SAY THIS IS FAILURE TO THRIVE
16 BECAUSE HE'S CROSSING THE LINES DOWNWARD. OBVIOUSLY,
17 OVER HERE, HE'S DEFINITELY FAILURE TO THRIVE.

18 WHAT WE SAW IN AFRICA IS, WHEN WE HAVE
19 CHILDREN, WE JUST GET ONE POINT. WE HAVE NO PREVIOUS
20 RECORDS BECAUSE THEY HAD NO PREVIOUS DOCTORS THERE IN
21 AFRICA TO TAKE CARE OF PATIENTS.

22 WE HAD ONE POINT. WE'D FEED THEM. AND IT
23 WOULD BE WITHIN DAYS OR WEEKS THEY WOULD START SHOOTING
24 UP IN THE NORMAL CURVE. AND ONCE IT GOT CLOSE, WE
25 MOVED THEM TO OUR SUPPLEMENTAL FEEDING CENTER.

26 IF THEY DIDN'T, I WOULD GO RIGHT AWAY TO
27 ASSESS WHAT IS WRONG. DO THEY HAVE PNEUMONIA? DO THEY
28 HAVE A -- MALARIA, THAT I MISSED, OR TUBERCULOSIS --

1 SOME OF THEM HAD -- AND START TREATING THAT.

2 AND ONCE THAT TREATMENT STARTED WORKING, BOOM,
3 THEY WOULD COME RIGHT UP.

4 Q AND THAT WAS UNIVERSAL, ACROSS ALL THE
5 PATIENTS THAT YOU TREATED?

6 A YES.

7 Q NOW, WHEN WE'RE LOOKING AT -- LET'S ASSUME FOR
8 THE MOMENT WE'RE ALREADY BEYOND FAILURE TO THRIVE.
9 WE'VE SAID THE CHILD'S DEFINITELY FAILURE TO THRIVE.

10 WHAT ARE SOME OF THE STEPS THAT YOU WOULD
11 EXPECT TO TAKE IN ORDER TO GO ABOUT DIAGNOSING OR
12 FIGURING OUT WHAT THE CAUSE OF THE FAILURE TO THRIVE
13 IS?

14 A SO HERE AT UCSD OR RADY'S CHILDREN'S HOSPITAL,
15 HERE IN THE UNITED STATES, WE'LL TRY TO FIGURE OUT WHAT
16 IS THE ETIOLOGY OF THIS. AND THERE'S THREE.

17 INADEQUATE NUTRITION, WHICH IS THE MAJORITY.
18 TOO MUCH LOSS OF NUTRITION. SO CHILDREN MAY LOSE
19 NUTRITION IN THEIR BOWELS FROM, LIKE, DIARRHEA. OR A
20 VERY HIGH NUTRITION NEED, LIKE HIGH METABOLISM.

21 NOW, IN THE UNITED STATES, OFTENTIMES, LIKE IN
22 THIS CASE WHERE DR. BERKOWITZ MENTIONED FOR RYAN, WE
23 WILL SEE MULTIPLE CAUSES IN THE SAME CHILD. SO WE CALL
24 IT MULTIFACTORIAL.

25 A GOOD EXAMPLE IS A DISEASE CALLED CROHN'S
26 DISEASE, WHERE, IF A CHILD HAS THIS, THEY MAY NOT EAT
27 WELL BECAUSE THEY'RE NOT FEELING GOOD. SO INADEQUATE
28 NUTRITION. THEY MAY HAVE DIARRHEA BECAUSE THEIR BOWELS

1 HAVE AN AUTOIMMUNE DISEASE, AND THEY LOSE IT.

2 AND THEY HAVE A FEVER SOMETIMES, SO THEY HAVE
3 A HIGH METABOLISM RATE. SO ALL THREE CAUSES CAN LEAD
4 TO FAILURE TO THRIVE IN THAT CHILD.

5 Q ASIDE FROM, LIKE, ILLNESSES LIKE BACTERIAL
6 INFECTIONS OR FLU, SOME PATHOGEN, ARE THERE OTHER
7 CAUSES THAT -- OR OTHER THINGS THAT CAN CAUSE FAILURE
8 TO THRIVE?

9 A THE MAJORITY OF CHILDREN -- AND MY CHILD I
10 DEAL WITH RIGHT NOW WHO'S HAD FAILURE TO THRIVE SINCE
11 HE WAS A BABY, AND NOW HE'S THREE YEARS OLD, AND HE'S
12 STILL LESS THAN ONE PERCENTILE, AND I SAW HIM JUST LAST
13 WEEK -- THE MAJORITY OF THESE CHILDREN ACTUALLY HAVE A
14 NON-ORGANIC CAUSE IN THE UNITED STATES.

15 IT'S DIFFERENT THAN THE ENVIRONMENTAL CAUSES
16 THAT WE SAW IN AFRICA, WHERE THEY DIDN'T HAVE ENOUGH
17 FOOD. HERE IN THE UNITED STATES, WE SEE A LOT OF OTHER
18 POSSIBLE REASONS FOR WHY CHILDREN ARE FAILING TO
19 THRIVE.

20 SOME OF IT IS GENETIC. AND WE CAN UNCOVER
21 THAT THEY HAVE A CONDITION, LIKE A GENETIC PROBLEM LIKE
22 TURNER SYNDROME, WHICH IS A CHROMOSOMAL PROBLEM THAT WE
23 UNCOVER, AND WE SEE AHA, THEY HAVE AN ULCER.

24 OTHER REASONS INCLUDE JUST CHILDREN THAT DO
25 NOT EAT. AND THAT MAKES A BIG PERCENTAGE OF OUR CLINIC
26 POPULATION AT RADY'S CHILDREN'S HOSPITAL, FAILURE TO
27 THRIVE CLINIC. A BIG PERCENTAGE OF CHILDREN THAT JUST
28 DON'T EAT. IT'S NOT ORGANIC, BUT IT'S NOT

1 ENVIRONMENTAL EITHER.

2 THEY'RE BEING GIVEN THE OPPORTUNITY TO EAT,
3 THEY'RE SENT TO NUTRITION. THEY'RE OFTENTIMES SENT TO
4 OCCUPATIONAL THERAPY TO HELP WITH CHEWING AND
5 SWALLOWING PROBLEMS THEY MAY HAVE. BUT THEY STILL JUST
6 DON'T EAT. AND SO THEN IT'S A BIG PART OF THESE KIDS.

7 Q AND HOW COMMON IS THAT, THE SITUATION THAT YOU
8 JUST DESCRIBED, WHERE THE CHILDREN JUST, FOR WHATEVER
9 REASON, DON'T EAT?

10 A WELL, IN MY PATIENTS WHO IS NOT GAINING
11 WEIGHT, I SEND THEM TO FAILURE TO THRIVE CLINIC AT
12 RADY'S CHILDREN'S HOSPITAL, WHICH IS OUR CHILDREN'S
13 CENTER IN SAN DIEGO THAT TAKES CARE OF ABOUT 600,000
14 KIDS IN THE SAN DIEGO AREA.

15 IT'S A BIG CHILDREN'S HOSPITAL, AND WE HAVE
16 TWO DOCTORS THAT RUN THERE. AND I CALL THEM UP, AND MY
17 PATIENTS WOULD GO MULTIPLE TIMES. AND JUST, MY PATIENT
18 IS NOT GAINING WEIGHT. AND I'M ASKING THEM, WELL HOW
19 COMMON IS IT, AND THEY SAID, THIS IS FAIRLY COMMON.

20 I EVEN TALKED TO THE NUTRITIONIST, WHO SEES
21 THE PATIENTS, THAT, HOW COME YOU GUYS AREN'T DOING
22 BETTER, MY PATIENT'S NOT GAINING WEIGHT, AND SHE SAID,
23 YEAH, WE GET THIS PROBLEM.

24 SO I DID SOME RESEARCH. AND I HAD A PAPER
25 PUBLISHED IN CLINICAL PEDIATRICS IN OCTOBER 2008,
26 AND IN DOING --

27 Q DOCTOR, ONE MOMENT. TWO THINGS. YOU HAVE TO
28 SLOW DOWN A LITTLE BIT, BECAUSE SHE'S TRYING TO TYPE

1 DOWN EVERYTHING YOU THAT SAY, AND WHEN IT COMES OUT SO
2 QUICKLY, SHE HAS A LITTLE BIT OF TROUBLE --

3 THE COURT: WE'LL HAVE A FAILURE TO THRIVE OF
4 OUR COURT REPORTER.

5 BY MR. MCMILLAN:

6 Q BUT SECONDARILY, WITH RESPECT TO THE QUESTION,
7 WAS THAT ARTICLE HELPFUL FOR YOU IN DETERMINING A ROUGH
8 ESTIMATE OF HOW FREQUENT IT IS THAT WE SEE THESE
9 CHILDREN WHO HAVE A FAILURE TO THRIVE DUE TO SOME SORT
10 OF CHEWING OR SENSORY ISSUE?

11 A YES. SO THIS ARTICLE, THEY -- THIS IS AN
12 ARTICLE WRITTEN BY DOCTORS -- ENDOCRINOLOGISTS,
13 SPECIALISTS IN HORMONES, WHO ARE AT CHILDREN'S HOSPITAL
14 IN ANN ARBOR MICHIGAN, AT THE UNIVERSITY OF MICHIGAN.

15 AND THEY FOUND THAT THE MAJORITY OF PATIENTS
16 WITH FAILURE TO THRIVE, 90 PERCENT, THE ETIOLOGY IS
17 NON-ORGANIC OR PURELY NUTRITIONAL.

18 SO VERY RARELY DO THEY FIND ANYTHING ELSE THAT
19 THEY CAN EXPLAIN FOR THE FAILURE TO THRIVE IN THEIR
20 CLINIC. AND THEY SAID IN THIS PAPER, THAT IT'S
21 TEN PERCENT OF ALL REFERRALS TO THEM IS FAILURE TO
22 THRIVE KIDS.

23 Q SO GOING TO YOUR SPECIFIC ASSIGNMENT IN THIS
24 CASE, OBVIOUSLY YOU'VE SPOKEN TO ME MANY TIMES BEFORE.
25 RIGHT?

26 A YES.

27 Q WHEN DID WE FIRST START COMMUNICATING? DO YOU
28 RECALL?

1 A 2014.

2 Q AND DO YOU RECALL INITIALLY, WHY IT WAS I WAS
3 COMING TO YOU?

4 A WELL, BECAUSE YOU KNEW THAT I HAVE HAD
5 EXPERIENCE WITH MALNOURISHED CHILDREN AND CHILDREN WITH
6 FAILURE TO THRIVE.

7 Q AND AS WE SPOKE, AT SOME POINT AN ASSIGNMENT
8 SORT OF DEVELOPED OUT OF ALL THAT. RIGHT?

9 A YES.

10 Q WHAT WAS THE -- YOUR ASSIGNMENT WITH RESPECT
11 TO THIS CASE?

12 A IT WAS TO REVIEW ALL THE MEDICAL RECORDS, THE
13 SOCIAL WORKER NOTES, THE CARE FOR RYAN, AND HIS
14 OUTCOME. AND TO FIGURE OUT WHAT CAUSED THIS.

15 Q AND WHEN YOU SAY REVIEW ALL OF THE MEDICAL
16 RECORDS, DO YOU HAVE A LIST, SORT OF AN INVENTORY OF
17 THE VARIOUS RECORDS THAT YOU REVIEWED AND ANALYZED IN
18 FORMING YOUR OPINIONS?

19 A YES.

20 Q OKAY. I BELIEVE THAT'S AT TAB B IN YOUR
21 NOTEBOOK.

22 A YES.

23 Q CAN YOU JUST VERY BRIEFLY IDENTIFY, FOR THE
24 RECORD, WHAT RECORDS YOU REVIEWED. AND THEN ONCE WE
25 GET THAT LIST, WE'LL GO AHEAD AND GO BACK AND TALK
26 ABOUT HOW THEY FACTORED INTO YOUR OPINIONS.

27 A SO I HAVE THE RECORDS FROM METHODIST HOSPITAL
28 WHERE BABY RYAN WAS BORN, AND I REVIEWED THOSE. I HAVE

1 THE RECORDS FROM DR. YIM AND HER PARTNER DR. COLO, WHO
2 WAS BABY RYAN'S PEDIATRICIAN FOR THE FIRST -- PERIOD OF
3 HIS LIFE, THROUGH THIS CURVE HERE.

4 I HAVE THE RECORDS FROM A NUTRITIONIST THAT
5 MOM WAS -- MOM SOUGHT OUT HELP FOR. MOM SOUGHT OUT
6 HELP TO SEE A NUTRITIONIST AT THE REQUEST OF A
7 DR. FEDDER. THIS NUTRITIONIST I HAVE THE RECORDS FOR
8 IS WENDY CRUMP.

9 I HAVE THE SUBPOENAED RECORDS FROM THE LOS
10 ANGELES COUNTY USC CLINIC THAT BABY WAS REFERRED TO
11 AFTER THE INITIAL QUERY BY WENDY CRUMP FOR AN
12 EVALUATION OF NEGLECT AND HEALTH PROBLEMS. THIS IS THE
13 RECORD OF DR. EVANS.

14 Q AND I'M SORRY, THAT WAS AT THE CATC CLINIC?

15 A YES, THE LA COUNTY USC CATC CLINIC.

16 Q DO YOU ALSO HAVE THE RECORDS FROM THE EASTERN
17 LOS ANGELES REGIONAL CENTER, THE OCCUPATIONAL
18 THERAPIST, I BELIEVE HER NAME WAS ANGELA ESPINOSA?

19 A YES.

20 Q GO AHEAD, THE NEXT ONE IN ORDER?

21 A I HAVE THE RECORDS FROM DR. LAUREN FEDDER,
22 ONE-PAGE RECORD WHERE THE BABY WAS SEEN. I HAVE
23 RECORDS FROM DR. MARGARET SODERBERG. THAT'S AN
24 ALLERGIST, WHO MOM WAS REFERRED TO, TO EVALUATE FOR
25 ALLERGIES CAUSING THE FAILURE TO THRIVE.

26 I HAVE A BIG STACK OF RECORDS FROM HARBOR-UCLA
27 FAILURE TO THRIVE CLINIC. I HAVE SOME OTHER RECORDS
28 THAT ARE SIMILAR, OVERLAPPED, PRODUCED BY DR. EGGE FOR

1 THE HARBOR-UCLA FAILURE TO THRIVE CLINIC.

2 I HAVE DEVELOPMENTAL RECORDS AND A
3 DEVELOPMENTAL EVALUATION FROM THE REGIONAL CENTER AT
4 HARBOR REGIONAL CENTER. AND THESE ARE CENTERS THAT,
5 JUST FOR THE JURY TO KNOW, THAT ARE SET UP TO TAKE CARE
6 OF SPECIAL NEEDS CHILDREN.

7 I HAVE RECORDS FROM MILLER HOSPITAL IN
8 LONG BEACH. I HAVE RECORDS FROM COLUMBIA PEDIATRIC
9 MEDICAL GROUP. THIS IS THE LAST RECORD THAT I WAS ABLE
10 TO OBTAIN THAT GO UP TO HIS AGE OF FIVE.

11 Q I'M SORRY. YOU SAID GO UP TO AGE OF --

12 A FIVE. FIVE YEARS ONE MONTH, I THINK THAT WAS
13 THE LAST RECORDS THAT I WAS ABLE TO GET. I HAVE
14 RECORDS FROM HEALTHCARE PARTNERS. I HAVE
15 GASTROENTEROLOGY RECORDS FROM ASSOCIATES OF SOUTHERN
16 CALIFORNIA.

17 I HAVE RECORDS FROM A SPEECH THERAPIST,
18 JACK SINJAY SPEECH THERAPY. I HAVE DELIVERED SERVICE
19 LOGS PRINTED BY VICTORIA SCHEELE. I HAVE DELIVERED
20 SERVICE LOGS PRINTED BY BLAS CABANBAN. I HAVE AN
21 UP-FRONT ASSESSMENT BY HILLSIDES OF RAFAELINA DUVAL.

22 I HAVE A DETENTION REPORT AND ADDENDUM REPORT.
23 I HAVE THESE LAST-MINUTE INFORMATION FOR THE COURT.
24 THESE WERE DOCUMENTS PRODUCED BY SOCIAL WORKERS, GIVEN
25 TO THE JUDGE AFTER AND BEFORE THE REMOVAL OF BABY RYAN.
26 I HAVE A JURISDICTION DISPO REPORT.

27 NOW, IT'S BEEN -- I HAVE AN IEP, ONE IEP
28 IN 2012, 2013. IEP IS AN INDIVIDUAL EDUCATION PLAN

1 DONE BY THE SCHOOL TAKING CARE OF RYAN. AND THIS IS
2 MANDATED FEDERAL PROGRAM TO HELP CHILDREN WITH SPECIAL
3 NEEDS DO WELL IN SCHOOL.

4 I HAVE READ DEPOSITIONS, I DON'T HAVE IT WITH
5 ME, FOR RYAN MILLS, DR. SOPHIE, DR. BERKOWITZ,
6 DR. EGGE.

7 Q IS THERE ANYTHING ELSE, ASIDE FROM REVIEWING
8 ALL THESE RECORDS AND DEPOSITIONS AND REPORTS, IS THERE
9 ANYTHING ELSE THAT YOU DID AS PART OF YOUR EFFORT TO
10 FORM YOUR OPINIONS AND TESTIFY HERE TODAY?

11 A I ALSO TALKED TO A DR. MANUEL PUELLO IN THE
12 DOMINICAN REPUBLIC ABOUT THE CARE PROVIDED TO
13 LINA DUVAL.

14 Q WHAT WAS THE PURPOSE OF THAT RESEARCH?

15 A TO GET A HISTORY OF HER TREMORS.

16 Q OKAY. DOES THAT PRETTY MUCH COVER THE LIST OF
17 DOCUMENTS AND MATERIALS THAT YOU REVIEWED AND ANALYZED
18 IN COMING TO YOUR OPINIONS?

19 A YES.

20 Q OKAY. BEFORE WE GET INTO YOUR SPECIFIC
21 OPINIONS, I'D LIKE TO SORT OF GO THROUGH -- CLEARLY
22 THERE'S A LOT HERE. I DON'T WANT TO GO IN DETAIL
23 THROUGH ALL OF IT.

24 BUT IF YOU COULD JUST GIVE US SORT OF THE HIGH
25 POINTS, AND WE CAN START WITH -- ACTUALLY, YOU TELL US
26 WHERE TO START. THE HIGH POINTS OF THE RECORDS THAT
27 RELATED TO YOUR OPINION OR ASSISTED YOU IN COMING TO
28 YOUR CONCLUSION.

1 WHERE IS THE FIRST ONE WE SHOULD BE LOOKING
2 AT?

3 MS. SWISS: OBJECTION: VAGUE, CALLS FOR A
4 NARRATIVE.

5 THE COURT: SUSTAINED.

6 BY MR. MCMILLAN:

7 Q LET'S JUST START WITH EXHIBIT A, THE
8 SUBPOENAED RECORDS FROM METHODIST HOSPITAL. YOU
9 REVIEWED THOSE. CORRECT?

10 A YES.

11 Q WAS THERE ANYTHING OF SIGNIFICANCE TO YOUR
12 OPINIONS HERE TODAY THAT YOU FOUND IN THOSE RECORDS?

13 A WELL, THESE RECORDS, MOM REALLY WANTED TO
14 CONTINUE TO BREASTFEED, BUT BREASTFEEDING WAS DIFFICULT
15 FOR HER AT FIRST, AND THE RECORDS DOCUMENT THAT. AND
16 THAT MOM WAS REALLY PUSHED -- REALLY WANTED TO MAKE
17 SURE BABY GOT THE CHANCE TO GET BREASTFED.

18 Q IS THERE ANYTHING WRONG WITH THAT?

19 A NO. ACTUALLY, WE'RE -- AT UCSD, WE'RE A
20 REGIONAL BREASTFEEDING CENTER. AND WE'RE MANDATED TO
21 DO EDUCATION, ALL OF US DOCTORS, TO UNDERSTAND THE
22 VALUE OF BREASTFEEDING, AND HOW IMPORTANT IT IS TO
23 SUPPORT MOMS WHO WANT TO BREASTFEED AND BREASTFEED
24 ALONE. AND OUR HOSPITAL HAS SPECIAL ACCOMMODATIONS FOR
25 THIS.

26 Q WHY IS IT IMPORTANT TO BREASTFEED?

27 A BREAST MILK IS THE -- ONE OF THE MOST
28 ESSENTIAL NUTRIENTS THAT A BABY CAN GET. IT IS TRUE.

1 FORMULA HAS THE SAME CALORIES PER OUNCE AS BREAST MILK.

2 BUT BREAST MILK HAS PASSIVE IMMUNITY, CALLED
3 IGA, THAT WE CAN TRANSMIT TO BABIES, THAT PROTECTS
4 BABIES FROM INFECTION. AND FORMULA DOESN'T HAVE THIS.
5 BREAST MILK HAS SOMETHING ALSO THAT IS GOOD FOR BRAIN
6 DEVELOPMENT.

7 SO BABIES WHO ARE BREASTFED MAY HAVE A LITTLE
8 HIGHER IQ. BREAST MILK HAS A COUPLE PARTS TO IT THAT
9 WE DO NOT HAVE A WAY TO FORMULATE IN A FORMULA.

10 ONE LAST, MOST IMPORTANT THING, IT'S THE MOST
11 HYPO-ALLERGIC (SIC), WHICH MEANS THAT SOME FORMULAS,
12 BABIES CAN ACTUALLY HAVE A BAD RESPONSE TO, AND NOT BE
13 ABLE TO ABSORB, OR GET AN ALLERGY TO.

14 BREAST MILK IS UNIVERSALLY HYPO-ALLERGIC
15 (SIC).

16 Q GOING TO THE NEXT RECORDS, THE RECORDS OF
17 DR. YIM AND DR. COLO. JUST FOR PURPOSES OF THE RECORD,
18 IT'S EXHIBIT NUMBER 168, AND THE METHODIST HOSPITAL
19 RECORDS WERE EXHIBIT NUMBER 3.

20 BUT GOING TO DR. YIM'S RECORDS -- FIRST, LET
21 ME ASK YOU, DID YOU REVIEW THOSE RECORDS IN DETAIL?

22 A I DID.

23 Q AS PART OF YOUR REVIEW, DID YOU YOURSELF
24 ACTUALLY PLOT OUT, JUST TO DOUBLE CHECK, DR. YIM'S
25 NOTES ON THAT GROWTH CHART? DID YOU DO THE SAME SORT
26 OF PROCESS?

27 A YES.

28 Q AND WHAT WAS YOUR CONCLUSION AFTER HAVING GONE

1 THROUGH AND DONE THAT ANALYSIS AND PLOTTED IT YOURSELF?

2 A I ALSO CONCLUDED, LIKE DR. YIM, THAT BABY
3 STARTED TO DEVELOP HIS FAILURE TO THRIVE AT A CERTAIN
4 POINT IN HIS CARE WITH DR. YIM.

5 Q AND CAN WE TELL THAT -- YOU TALKED EARLIER
6 ABOUT CROSSING ISOBARS. YOU SEE THIS FIRST POINT HERE,
7 AND THEN HE DROPS TO A LOWER ISOBAR.

8 IS THAT WHAT YOU'RE TALKING ABOUT AS A FIRST
9 INDICATOR, THAT THAT MIGHT BE WHERE HE STARTED TO
10 DEVELOP THIS PROBLEM?

11 A YES. I AGREE WITH DR. YIM THAT RIGHT AROUND
12 THREE TO FOUR MONTHS, THAT BABY STARTED TO DEVELOP HIS
13 PROBLEM, FAILURE TO THRIVE.

14 THERE WAS A HINT HERE, AND DEFINITELY BY HERE,
15 THAT BABY HAD FAILURE TO THRIVE BECAUSE HE CROSSED TWO
16 ISOBARS AND ALSO GOT TO THE LOWER ONE, WHICH IS THE
17 DEFINITION OF FAILURE TO THRIVE BY --

18 Q OKAY. THAT DOT THAT WE SEE AT, WHAT IS THAT,
19 LIKE FOUR MONTH AND A WEEK?

20 A FIVE MONTHS.

21 Q THAT ONE WOULD BE JUST DEFINITELY FAILURE TO
22 THRIVE, ALL ON ITS OWN?

23 A YES.

24 Q SO SOMETIME BEFORE MONTH FIVE, IT WOULD HAVE
25 BEEN CLEAR THIS CHILD WAS FAILING TO THRIVE?

26 A YES.

27 Q IN REVIEW OF DR. YIM'S RECORDS, COULD YOU TELL
28 WHETHER OR NOT -- WELL, NUMBER ONE, WHETHER OR NOT SHE

1 WAS AWARE THAT THERE WAS A PROBLEM GOING ON THERE?

2 A DR. YIM WAS AWARE ABOUT THIS, AND SHE ALSO WAS
3 AWARE ABOUT DEVELOPMENTAL DELAYS THAT WERE HAPPENING
4 WITH THE CHILD. FOR EXAMPLE, AT A VISIT AT SEVEN
5 MONTHS TWO WEEKS, SHE DID A DEVELOPMENTAL EVALUATION.

6 AND BABY PASSED MOST THINGS, BUT FAILED TO
7 PASS THE ROLLING OVER, WHICH IS NORMAL FOR BABIES AT
8 THIS TIME TO BE ABLE TO DO. AND SHE RECOGNIZED THAT
9 THIS WAS NOT JUST FAILURE TO THRIVE, BUT A
10 DEVELOPMENTAL DELAY.

11 SHE ALSO WAS WORKING WITH MOM TO FIND
12 SOLUTIONS TO HELP BABY, AND REFERRED BABY TO AN
13 OCCUPATIONAL THERAPIST WHO SPECIALIZED IN THE ORAL
14 MOTOR MOTIONS THAT BABY WOULD NEED TO GET HELP WITH, TO
15 HELP BABY EAT BETTER.

16 Q WHAT -- I NOTICED THAT YOU WERE REFERENCING A
17 PAGE IN THE BOOK IN FRONT OF YOU. WAS PAGE NUMBER WAS
18 THAT?

19 A THIS PAGE IS BATES-STAMPED 000921.

20 Q OKAY, I SEE. WERE THERE ANY OTHER RECORDS OF
21 DR. YIM'S THAT YOU REVIEWED THAT WOULD INDICATE THAT
22 DR. YIM WAS SORT OF IN THE PROCESS OF FIGURING OUT WHAT
23 IT WAS THAT WAS GOING ON WITH THIS BABY?

24 A YEAH. MOM WAS SO WORRIED ABOUT BABY AT THIS
25 POINT THAT DR. YIM, SHE RECOGNIZED RIGHT AWAY THAT BABY
26 WAS NOT EATING WELL, AND SHE TALKED ABOUT EATING
27 STRIKES.

28 NOW, THIS TERM COMES OUT OVER AND OVER AND

1 OVER AGAIN IN BABY RYAN'S LIFE, IN THE ENTIRE MEDICAL
2 RECORDS, THROUGH FIVE YEARS THAT I HAVE. AND MOM
3 RECOGNIZED IT FIRST.

4 DR. YIM ALSO ASKED QUESTIONS ABOUT DEVELOPMENT
5 AT THIS TIME, AND SHE FOUND THAT THERE WAS PROBLEMS.
6 THE CHILD WAS ABLE TO PULL TO A STAND, BUT WASN'T
7 CRAWLING AT AN APPROPRIATE LEVEL.

8 SO DR. YIM AND MOM WERE BOTH WORRIED AND
9 TRYING TO FIND SOLUTIONS. MOM ACTUALLY CALLED ON
10 JUNE 18, 2009, AND --

11 Q WHAT PAGE?

12 A THIS IS PAGE 000938. AND DR. YIM THEN DECIDED
13 THAT WE BETTER GET AN OCCUPATIONAL THERAPIST INVOLVED
14 TO TRY TO HELP THE BABY'S EATING. HE WAS HAVING
15 TROUBLE HERE, AND MOM AGREED. MOM FOLLOWED ALL THE
16 RECOMMENDATIONS.

17 DR. YIM THEN, AFTER THAT, EVEN SUGGESTED LET'S
18 REFER BABY TO REGIONAL CENTER, WHICH IS WHERE SPECIAL
19 NEEDS BABIES IN CALIFORNIA GO FOR EXTRA SERVICES AND
20 TESTING THAT ARE DONE BY SPECIALISTS. AND MOM AGREED.

21 Q LET ME STOP YOU RIGHT THERE.

22 DO YOU HAVE ANY UNDERSTANDING, OR HAVE YOU
23 DEVELOPED AN UNDERSTANDING THROUGH YOUR REVIEW OF THE
24 RECORDS, WHETHER OR NOT MS. DUVAL WAS ACTUALLY ABLE TO
25 GET THE CHILD INTO THE REGIONAL CENTER IN JUNE OF 2009,
26 WHEN IT WAS THAT DR. YIM STARTED RECOMMENDING THAT?

27 A I DON'T REMEMBER IF SHE WAS INITIALLY -- INTO
28 THE REGIONAL CENTER RIGHT THEN.

1 Q OKAY.

2 A BUT I DO SEE THAT MOM WAS, DURING THIS TIME,
3 ATTEMPTING DIFFERENT METHODS TO FEED BABY, WITH LITTLE
4 SUCCESS. AND DR. YIM AND MOM WERE TRYING TO FIND
5 SOLUTIONS FOR THIS, AND IT WAS DOCUMENTED IN THE
6 RECORD.

7 Q GOING ON TO THE RECORDS FROM THE EASTERN LOS
8 ANGELES REGIONAL CENTER, YOU TOUCHED ON THIS A LITTLE
9 BIT. THAT WOULD BE TRIAL EXHIBIT NUMBER 6 AND NUMBER
10 9. YOU TOUCHED ON THIS A LITTLE BIT, BUT HAVE YOU EVER
11 WORKED WITH A REGIONAL CENTER BEFORE?

12 A YES.

13 Q OKAY. CAN YOU DESCRIBE JUST BRIEFLY, NOT TOO
14 MUCH DETAIL, JUST BRIEFLY, WHAT IT IS THAT A REGIONAL
15 CENTER DOES, WHEN YOU'VE BEEN WORKING WITH THEM?

16 A SOME OF THE TAX DOLLARS THAT WE GET FOR
17 CIGARETTE TAXES GO TO SUPPORT THESE REGIONAL CENTERS.
18 AND THEY ARE MANNED BY TEAMS OF EXPERTS.
19 PSYCHOLOGISTS, SPEECH THERAPISTS, USUALLY THERE'S A
20 DOCTOR IN CHARGE.

21 AND THEY WILL DO EXTENSIVE EVALUATIONS FOR
22 CHILDREN WHO ARE HAVING TROUBLE WITH DEVELOPMENT, OR
23 TROUBLE WITH FEEDING OR FAILURE TO THRIVE, TO HELP THE
24 DOCTORS, AS PART OF A BIG TEAM, TO BETTER TAKE CARE OF
25 CHILDREN. SO THAT'S WHAT THEY DID IN THIS CASE TOO.

26 Q AND YOUR REVIEW OF THE EASTERN LOS ANGELES
27 REGIONAL CENTER RECORDS, WAS THERE ANYTHING OF NOTE IN
28 THE EVALUATION BY ANGELA ESPINOZA THAT FACTORED INTO

1 YOUR OPINIONS AND CONCLUSIONS IN THIS CASE?

2 A YES.

3 Q CAN YOU DESCRIBE, JUST BRIEFLY FOR US WHAT
4 THAT WOULD BE?

5 A IT -- RIGHT AWAY, IT'S NOTED THAT MOM HAD BEEN
6 REFERRED AND FOLLOWED UP WITH THE REGIONAL CENTER FOR
7 THE EVALUATION OF THEIR CHILD. RIGHT AWAY THEY NOTED
8 THAT RYAN WAS DELAYED IN MULTIPLE AREAS.

9 HE WAS SIGNIFICANTLY DELAYED IN MOTOR AREAS
10 AND SIGNIFICANTLY DELAYED IN SENSORY AREAS, AS WELL AS
11 MENTAL COGNITIVE ABILITIES.

12 THEY NOTED HIS AGE-APPROPRIATE LEVEL WAS MORE
13 LIKE NINE OR TEN MONTHS WHEN HIS AGE AT THE TIME OF
14 BEING SEEN WAS 13 OR 14 MONTHS. 13.9 MONTHS.

15 THEY NOTICED SOMETHING VERY INTERESTING, AND
16 MAYBE ONE REASON WHY MOM HESITATED TO GIVE RYAN SOLIDS.
17 THEY NOTICED THAT EVEN AT 13 MONTHS, HE WAS HAVING
18 DIFFICULTY HOLDING UP HIS POSTURE.

19 AND WE DON'T USUALLY START SOLIDS FOR SOME
20 BABIES WHO CAN'T MAINTAIN TRUNCAL SUPPORT. BECAUSE IF
21 YOU IMAGINE EATING WHILE LYING DOWN, THE RISK OF
22 ASPIRATION, THAT MEANS FOOD GOING INTO YOUR LUNGS, IS
23 TOO HIGH.

24 SO TO BE ABLE TO EAT SOLIDS, WE HAVE TO BE
25 ABLE TO HOLD OUR BODIES UP. AND EVEN AT THIS POINT, 13
26 MONTHS, 13.9 MONTHS, RYAN WAS HAVING DIFFICULTY. WHEN
27 THEY PLACED HIM ON HIS BACK, HE COULDN'T EVEN FIGURE
28 OUT HOW TO ROLL OVER, AT 13 MONTHS.

1 Q WHY IS THAT IMPORTANT TO YOUR OPINIONS AND
2 CONCLUSIONS IN THIS CASE?

3 A ONE OF THE COMPLAINTS ABOUT MOM THAT WAS
4 RAISED WAS DID SHE DELAY FEEDING RYAN SOLIDS.
5 NORMALLY, WE -- DOCTORS SUPPORT SOLE USE OF BREAST
6 MILK.

7 AMERICAN ACADEMY OF PEDIATRICS, THE CDC,
8 AMERICAN ACADEMY OF FAMILY PHYSICIANS FOR SIX -- UP TO
9 SIX TO EIGHT MONTHS. NOW, IT DEPENDS ON THE CHILDREN.

10 SOME CHILDREN CAN START EARLIER IF THEY HAVE
11 THIS TRUNCAL TONE AND THEY'RE READY TO SWALLOW, AND
12 THEY HAVE GOOD ORAL MOTOR ABILITY, BUT SOME CHILDREN
13 HAVE TO START LATER.

14 IF THEY HAVE CEREBRAL PALSY, AND THEY HAVE
15 WEAKNESS, AND YOU START FEEDING THEM AT SEVEN MONTHS,
16 THEY COULD ASPIRATE, AND THAT COULD BE DANGEROUS, OR
17 EVEN DEADLY FOR THEM. SO WE MAY START FEEDING THEM
18 SOLIDS LATER.

19 AND IN THIS CASE, THERE'S EVIDENCE FROM THE
20 REGIONAL CENTER RIGHT AWAY THAT RYAN HAS HAD TROUBLE
21 HERE. ANOTHER THING IS, THIS EVIDENCE IS VERY
22 IMPORTANT, IT SHOWS RYAN DOESN'T JUST HAVE A PROBLEM
23 WITH NUTRITION.

24 RYAN HAS A GLOBAL PROBLEM. DR. YIM WAS TRYING
25 TO FIGURE IT OUT, AND ALL THE DOCTORS TODAY HAVE BEEN
26 TRYING TO FIGURE OUT WHAT IS GOING ON WITH RYAN, WHY IS
27 RYAN NOT GAINING WEIGHT --

28 Q WAIT JUST ONE MOMENT. YOU SAID ALL THE

1 DOCTORS, EVEN UP TO TODAY?

2 A UP TO TODAY.

3 Q AS OF TODAY, OR THE MOST RECENT INFORMATION
4 YOU HAVE, WHAT'S BABY RYAN'S CONDITION?

5 A WELL, THE --

6 MS. SWISS: OBJECTION: FOUNDATION.

7 THE WITNESS: THE LAST --

8 THE COURT: JUST A MOMENT.

9 OVERRULED. GO AHEAD.

10 THE WITNESS: THE LAST MEDICAL RECORDS THAT
11 I'VE SEEN, THAT I'VE GOTTEN ACCESS TO, AND BABY RYAN'S
12 OVER FIVE YEARS OLD, HE STILL HAS FAILURE TO THRIVE.
13 HE STILL HAS DEVELOPMENTAL DELAY.

14 AND THE DOCTORS ARE STILL ACTUALLY ORDERING
15 THE SAME TESTS THAT HAVE ALREADY BEEN ORDERED ON RYAN
16 BEFORE. AND THE SAME REFERRALS THAT HAVE BEEN DONE
17 BEFORE, STILL TRYING TO SEARCH FOR ANSWERS TO WHY
18 RYAN'S NOT GAINING WEIGHT AND DEVELOPING.

19 BY MR. MCMILLAN:

20 Q HAVE YOU DONE THE CALCULATIONS THAT WE'VE BEEN
21 TALKING ABOUT HERE, FOR THE GROWTH CHART, AND THAT SORT
22 OF STUFF? HAVE YOU DONE THE CALCULATIONS FROM DAY ONE,
23 UP TO AT LEAST AS FAR AS YOU HAD RECORDS FOR?

24 A YES.

25 Q LET'S TALK ABOUT THAT JUST A LITTLE BIT. I
26 THINK I GAVE YOU, OR YOU SHOULD HAVE UP THERE SOMETHING
27 THAT LOOKS LIKE THIS, LIKE THE CHART?

28 A UH-HUH.

1 Q AND FOR THE RECORD, IT'S EXHIBIT NUMBER 785.
2 AND JUST BRIEFLY, IF YOU COULD DESCRIBE FOR US WHAT
3 THAT IS, AND MAYBE HOW WE USE IT OR WHAT WE USE IT FOR.

4 A SO THIS IS A CHART MADE BY THE CENTERS FOR
5 DISEASE CONTROL. FOR BOYS IN THE UNITED STATES. AND
6 IT'S BASED ON NORMATIVE DATA FROM CHICAGO, AND HOW WE
7 UNDERSTAND HOW BOYS GROW.

8 BOYS AND GIRLS HAVE A DIFFERENT CHART. AND
9 THIS HAS A HEIGHT AND THE WEIGHT FOR TWO TO
10 TWENTY YEARS OLD. CAN YOU PUSH IT UP?

11 Q YES.

12 A SO HERE IS ZERO. HERE IS TWO, I THINK, TWO
13 ACTUALLY. ALL THE WAY UP TO TWENTY. AND SO IF YOU
14 PLOT RYAN'S CURVE ON THE OTHER CHART THAT WE HAVE, HE
15 REMAINED BELOW THE CURVE THE ENTIRE TIME.

16 AND IF YOU PLOT THE CURVE HERE, UP TO AGE
17 FIVE, HE ALWAYS STAYS BELOW THE CURVE. HE NEVER
18 CATCHES UP GROWTH. DESPITE BEING REMOVED FROM MOM, IT
19 DOESN'T CHANGE HIS GROWTH.

20 IN FACT, WHEN YOU REMOVED FROM MOM, HE SLOWS
21 DOWN. IN SPITE OF ALL THE EFFORTS OF THE FAILURE TO
22 THRIVE CLINIC, HE FLATTENS OUT EVEN WORSE.

23 Q AND -- WELL, LET'S JUST SKIP RIGHT AHEAD FOR
24 THE MOMENT. WE'LL GET BACK TO WHERE WE WERE.

25 BUT IN YOUR LIST THAT YOU JUST GAVE US, THE
26 FAILURE TO THRIVE CLINIC, IS THAT AT EXHIBIT -- OR
27 RATHER, TAB NUMBER H, TRIAL EXHIBIT NUMBER 1076?

28 A YES.

1 Q AND IF YOU CAN TURN TO PAGE 1076.15, IT WILL
2 BE -- LOOKS LIKE THIS.

3 A YES.

4 Q IF WE LOOK AT -- THAT'S EXHIBIT
5 NUMBER 1076.15 -- WHAT IS IT THAT WE'RE SEEING THERE?

6 A THIS IS THE RECORD FROM THE FAILURE TO THRIVE
7 CLINIC AT HARBOR-UCLA. SO RYAN -- DR. YIM NOTICED THAT
8 RYAN'S FALLING OFF THE CURVE. THEN, DR. FEDDER NOTICED
9 THAT RYAN FALLS OFF THE CURVE EVEN FURTHER.

10 AND NOW RYAN GOES TO HARBOR-UCLA FAILURE TO
11 THRIVE CLINIC THAT SPECIALIZES IN KIDS THAT FALL OFF
12 THE CURVE, THAT ARE NOT GAINING WEIGHT.

13 AND YOU CAN SEE, DURING THIS ENTIRE TIME, FROM
14 15 MONTHS OUT TO 27 MONTHS, HE NEVER GAINS WEIGHT. HE
15 DOESN'T HAVE ANY CATCH-UP GROWTH. SO WHAT DO WE MEAN
16 BY CATCH-UP GROWTH?

17 CATCH-UP GROWTH IS WEIGHT GAIN TWO TO THREE
18 TIMES FASTER THAN WHAT HE SHOULD BE GAINING WEIGHT.
19 MAYBE HE'S GAINING WEIGHT AT SEVEN, EIGHT, TEN GRAMS A
20 DAY, WHEN HE SHOULD BE GAINING WEIGHT AT 12 TO 30 GRAMS
21 A DAY.

22 IF HE HAD A PURELY NUTRITIONAL PROBLEM, IF MOM
23 WAS NOT GIVING HIM FOOD, HE WOULD HAVE GONE -- AND WE
24 CHANGED HIM TO DAD'S HOUSE, AND DAD FED HIM. HE'S
25 STILL LIKE THIS.

26 AND HE -- JUST LIKE THE CHILDREN IN AFRICA,
27 WHO WERE MALNOURISHED AND DIDN'T HAVE FOOD, HE'D MAKE
28 THE CURVE WITHIN WEEKS OR MONTHS. AT THE LATEST,

1 WITHIN A MONTH, HE SHOULD BE RIGHT UP THERE, BUT HE
2 NEVER DOES THE ENTIRE TIME.

3 Q AND IF WE COMPARE THAT DR. YIM'S EARLIER CHART
4 UP TO TWELVE MONTHS, CAN YOU TELL US, I MEAN, WHAT IS
5 IT WE'RE SEEING THERE?

6 A SO IT SHOWS YOU THAT, HERE WE GO, ABOUT THREE
7 TO FOUR MONTHS, SOMETHING HAPPENS TO RYAN, AND HE STOPS
8 EATING. AND WE REALLY DON'T KNOW, EVEN TODAY, WHY THIS
9 HAPPENED, WHY DOES RYAN GO ON STRIKES AND JUST NOT EAT.

10 AND SO YOU SEE, HE FALLS OFF THE CURVE. AND
11 DESPITE THE INTERVENTIONS OF EXPERTS, WHO NOW ARE USING
12 PHYSICAL THERAPY, OCCUPATIONAL THERAPY, SPEECH THERAPY,
13 AND YOU CAN SEE HOW MANY VISITS HE'S GETTING EVERY
14 MONTH SEEING THE SPECIALISTS OVER HERE, THAT HE DOESN'T
15 GAIN WEIGHT.

16 HE JUST REMAINS ON THIS LOW GROWTH CURVE, THAT
17 ACTUALLY CONTINUES TO SPREAD. THE DIFFERENCE BETWEEN
18 THE 50TH PERCENTILE HERE AND THERE IS ACTUALLY GETTING
19 BIGGER IN THE ENTIRE TIME THAT HE'S AT FAILURE TO
20 THRIVE CLINIC.

21 Q NOW, ARE YOU ABLE, AND I DON'T KNOW THIS, ARE
22 YOU ABLE, BASED ON YOUR EDUCATION, TRAINING,
23 EXPERIENCE, AND DOCUMENTS THAT YOU'VE SEEN, ARE YOU
24 ABLE TO DETERMINE WHETHER OR NOT THIS FAILURE TO THRIVE
25 CONDITION, AT LEAST A COMPONENT OF IT, WAS CAUSED IN
26 ANY WAY BY MS. DUVAL?

27 A YEAH. I CAN ANSWER THAT QUESTION.

28 Q PLEASE.

1 A SO IF YOU WERE IN, LIKE IN AFRICA, AND YOU
2 DIDN'T HAVE FOOD, YOU JUST HAD TEA, AND THEN ALL OF A
3 SUDDEN, YOU COME TO OUR THERAPEUTIC FEEDING CENTER, WE
4 GIVE YOU FOOD.

5 YOUR WEIGHT GOES UP WITHIN DAYS OR WEEKS, AS
6 LONG AS YOU DON'T HAVE A MEDICAL CONDITION LIKE
7 PNEUMONIA THAT MAKES YOU REALLY SICK, OR ONCE WE START
8 TREATING THAT.

9 IF MS. DUVAL, WHO WAS ACTUALLY THE OPPOSITE,
10 ADVOCATING, TRYING TO FIND SOLUTIONS, TRYING TO LOOK
11 FOR REASONS WHY HER BABY WASN'T GAINING WEIGHT.

12 IF SHE WAS ONE WHO WAS NEGLECTING BABY, AND WE
13 PUT BABY IN A SITUATION WHERE THERE'S NO NEGLECT, AND
14 WE'RE FEEDING BABY, THEN WE WOULD THINK THERE WAS NO
15 PROBLEM WITH BABY.

16 IF THERE WAS A PROBLEM WITH BABY, WE'D HAVE
17 SEEN THE WEIGHT GAIN RIGHT UP HERE. SO THIS ALONE
18 PROVES THAT MS. DUVAL HAD NOTHING TO DO WITH BABY'S
19 FAILURE TO THRIVE.

20 Q COULD YOU TELL FROM THE RECORDS THAT YOU
21 REVIEWED, THAT LONG LIST, WHAT -- WHETHER OR NOT THERE
22 WAS ANY INDICATION AS TO WHAT MIGHT BE CAUSING THIS
23 CONDITION?

24 A YEAH. IF WE GO BACK TO THE RECORDS WE WERE
25 JUST REVIEWING, THE EASTERN REGIONAL CENTER RECORDS,
26 YOU WILL NOTICE SOMETHING.

27 AT 13 MONTHS, THE EASTERN REGIONAL CENTER, IN
28 THEIR SUMMARY, THEY SAID RYAN HAS A SENSORY PROCESSING

1 DISORDER THAT'S INTERFERING WITH HIS MOTOR PLANNING,
2 COORDINATION, AND MOBILITY.

3 AND DR. BERKOWITZ ALSO SAYS THIS, THAT HE HAD
4 A SENSORY PROCESSING INTEGRATION DISORDER. AND I THINK
5 THIS IS WHY BABY RYAN AND MANY BABIES, MANY CHILDREN
6 AROUND THE COUNTRY, DESPITE INTERVENTIONS, DON'T GAIN
7 WEIGHT.

8 IN THIS STUDY THAT WE TALKED ABOUT, FROM THE
9 UNIVERSITY OF MICHIGAN, SCHOOL OF MICHIGAN DATA,
10 30 PERCENT OF THEIR KIDS DIDN'T GAIN WEIGHT.

11 AND THE 30 PERCENT, THEY DIDN'T FOLLOW UP, SO
12 THEY DON'T KNOW WHAT HAPPENED WITH THE OTHER
13 30 PERCENT, BUT JUST DIDN'T GAIN WEIGHT, EVEN THOUGH IT
14 WAS PURELY NUTRITIONAL, AND THEY HAD RULED OUT
15 EVERYTHING ELSE.

16 SO WE DON'T REALLY KNOW WHAT CAUSES THIS
17 SENSORY PROBLEM. IS IT TEXTURES -- SOME BABIES WITH
18 AUTISM, FOR EXAMPLE, GET SCARED AND FEEL STRANGE WITH
19 CERTAIN TEXTURES, COULD IT BE A TEXTURE ISSUE. COULD
20 IT BE A FEELING --IT'S NOT JUST ABNORMAL.

21 BABIES CAN'T EXPLAIN TO US WHAT'S GOING ON
22 WHEN THEY DON'T EAT. THEY JUST BECOME FUSSY. SO WE
23 DON'T KNOW, EVEN TODAY I THINK, WHAT THE CAUSE OF THIS
24 IS FOR RYAN AND MANY CHILDREN AROUND THE COUNTRY.

25 Q NOW, YOU TALKED ABOUT -- A LITTLE BIT EARLIER,
26 ABOUT ALL THE TESTS THAT THEY WERE RUNNING OVER AT
27 HARBOR, AND THEN LATER DOCTORS, AND I JUST WANT TO
28 RESTRICT FOR THE MOMENT JUST BETWEEN NOVEMBER 3RD, 2009

1 AND AUGUST 9TH OF 2010. ARE YOU WITH ME?

2 A YES.

3 Q DURING THAT TIME PERIOD, AND WE CAN SEE SOME
4 OF THE DATA POINTS ON THIS EXHIBIT NUMBER 1076.5, THOSE
5 WERE RECORDED BY HARBOR. CORRECT?

6 A YES.

7 Q WAS THAT DURING THE TIME PERIOD BETWEEN
8 NOVEMBER 3RD, 2009 AND AUGUST 9TH, 2010?

9 A YEAH. THIS IS THE FIRST ONE, NOVEMBER 3RD,
10 AND THIS IS AUGUST 9TH, 2010. SO THIS IS 2009, 2010.

11 Q OKAY. COULD YOU TELL, IN THE RECORDS THAT YOU
12 REVIEWED, INCLUDING THE DELIVERED SERVICE LOGS, WHETHER
13 OR NOT THIS INFORMATION WAS BEING COMMUNICATED TO
14 VICTORIA SCHEELE, CANDIS NELSON, THE SOCIAL WORKERS ON
15 THE CASE?

16 A YES. THERE -- IN THE DELIVERED SERVICE LOGS,
17 THEY TALKED TO DR. EGGE, FOR EXAMPLE, AND THEY REVIEWED
18 THE RECORDS. THEY CALLED THE CLINIC AT TIMES AND
19 TALKED TO STAFF MEMBERS AT THE CLINIC.

20 Q COULD YOU TELL WHETHER OR NOT THE SPECIFIC
21 INFORMATION WAS BEING IMPARTED TO THE SOCIAL WORKERS,
22 THAT THIS BABY WAS NOT GAINING WEIGHT?

23 A THEY WERE REVIEWING THE RECORDS, AND THAT
24 WOULD STILL -- WHEN THEY WOULD CALL FOR FOLLOW-UP, THEY
25 WOULD STILL GET THE SAME DIAGNOSES. FAILURE TO THRIVE,
26 GLOBAL DEVELOPMENTAL DELAY.

27 Q NOW, AS PART OF YOUR ASSIGNMENT AND REVIEW, I
28 ASKED YOU TO GO THROUGH THE DETENTION REPORT AND THE

1 JURISDICTIONAL REPORT AND LOOK AT THE MEDICAL
2 INFORMATION THAT WAS BEING GIVEN TO THE COURT.

3 DO YOU RECALL THAT?

4 A YES.

5 Q DID YOU DO ANYTHING WITH THOSE REPORTS TO
6 SATISFY YOURSELF AS TO WHETHER OR NOT THE MEDICAL
7 INFORMATION BEING PROVIDED TO THE COURT WAS ACCURATE?

8 A YES. SO, IT WASN'T. SO THE COURT WAS GETTING
9 INFORMATION CALLED THE LAST-MINUTE INFORMATION FROM THE
10 COURT (SIC), AND IT WASN'T ACCURATE.

11 IT WASN'T THE INFORMATION THAT WAS IN THE
12 MEDICAL RECORDS AND WHAT THEY WERE HEARING. AND SO IT
13 WAS ALMOST DECEIVING. SO THERE'S A -- ONE I'M LOOKING
14 AT HERE, LAST-MINUTE INFORMATION GIVEN TO THE COURT
15 ON 1/22/2010, SO IT'S ABOUT --

16 Q CAN YOU IDENTIFY THE PARTICULAR EXHIBIT, PAGE
17 NUMBER --

18 A BATES NUMBER 003847.

19 Q WHAT TAB ARE YOU UNDER?

20 A I'M UNDER -- I'M IN THE TAB H.

21 Q AND WHAT WAS THE DATE AGAIN THAT YOU WERE
22 REFERENCING?

23 A THE DATE IS 1/22/2010.

24 Q ONE MOMENT TO CATCH UP.

25 MS. SWISS: YOUR HONOR, I'D ASK THE EXHIBIT
26 NUMBER BE IDENTIFIED.

27 THE COURT: YES.

28 MR. MCMILLAN: IT'S WHAT I'M LOOKING FOR HERE.

1 YOUR HONOR, MAY I APPROACH?

2 THE COURT: SURE.

3 MR. MCMILLAN: YOUR HONOR, DO WE MIND IF AT
4 THE NEXT BREAK I FIND THAT AND IDENTIFY IT? I KNOW
5 IT'S IN THE 260 RANGE BUT WE'RE HAVING TROUBLE --

6 MS. SWISS: YOUR HONOR, I'D LIKE TO TAKE A
7 LOOK AT IT DURING THE QUESTIONING.

8 THE COURT: I THINK WE'D BETTER IDENTIFY IT SO
9 THAT SHE IS ABLE TO LOOK AT IT.

10 MR. MCMILLAN: OKAY.

11 THE COURT: 263? USING THE BATES NUMBER AS
12 OPPOSED TO THE ACTUAL PAGE NUMBER. THAT'S ALL RIGHT.
13 IF YOU'LL GIVE US THE BATES NUMBER.

14 MR. MCMILLAN: THE BATES NUMBER IS 003847 OF
15 EXHIBIT NUMBER 263.

16 THE COURT: WHY DON'T YOU HOLD ON FOR JUST A
17 MOMENT SO MS. SWISS CAN TAKE A LOOK AT WHAT SHE HAS.

18 DO YOU HAVE THAT, MS. SWISS?

19 MS. SWISS: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT. GO AHEAD,
21 MR. MCMILLAN.

22 BY MR. MCMILLAN:

23 Q OKAY. SORRY ABOUT THAT. ANYWAY, EXHIBIT
24 NUMBER 263. WHAT DID YOU FIND OF SIGNIFICANCE IN
25 NUMBER 263, RELATIVE TO THE INACCURATE REPORTING OF THE
26 MEDICAL INFORMATION TO THE COURT?

27 A SO THE BIG ISSUE HERE IS, WAS THE DECISION
28 CORRECT TO REMOVE BABY RYAN. IF IT WAS CORRECT, THE

1 JUDGE NEEDS INFORMATION TO SHOW THAT BABY RYAN ACTUALLY
2 IS DOING BETTER THAN HE WAS BEFORE, WHEN HE WAS UNDER
3 THE CARE OF MOTHER.

4 MS. SWISS: OBJECTION: FOUNDATION, YOUR
5 HONOR. REGARDING THE COURT.

6 THE COURT: SUSTAINED.

7 BY MR. MCMILLAN:

8 Q LET'S JUST --

9 MS. SWISS: MOVE TO STRIKE, YOUR HONOR.

10 THE COURT: THE MOTION TO STRIKE IS GRANTED.
11 THE ANSWER -- LAST ANSWER OF THE WITNESS IS ORDERED
12 STRICKEN IN ITS ENTIRETY. AND THE JURY WILL DISREGARD
13 IT. GO AHEAD.

14 BY MR. MCMILLAN:

15 Q LET'S JUST STAY VERY SPECIFIC FOR THE MOMENT.
16 I DON'T NECESSARILY WANT TO TALK TO YOU ABOUT WHAT'S
17 PROPER OR IMPROPER, OKAY. DR. ACHAR?

18 THE WITNESS: YES. SO SPECIFICALLY --

19 THE COURT: WAIT. HE'S GOING TO ASK ANOTHER
20 QUESTION.

21 BY MR. MCMILLAN:

22 Q THIS PARTICULAR DOCUMENT, WHAT WAS IT? THE
23 SPECIFIC MEDICAL INFORMATION THAT WAS REPORTED TO THE
24 COURT IN THIS LAST-MINUTE INFORMATION BY MS. NELSON.
25 WHAT WAS IT SHE REPORTED TO THE COURT THAT WAS
26 INACCURATE, MEDICALLY?

27 A THREE THINGS. NUMBER ONE, SHE REPORTED THAT
28 RYAN'S GROWTH IS BETTER. AND THIS WAS NOT TRUE, BASED

1 ON THE RECORDS FROM HARBOR-UCLA. AND EVEN THE REPORT
2 SAYS RYAN'S GROWTH IS NOW AT A RATE OF TEN GRAMS PER
3 DAY AS OPPOSED TO FIVE GRAMS PER DAY.

4 THAT IS STILL BELOW WHERE WE WOULD EXPECT RYAN
5 TO BE. IF HE HAD BEEN GETTING CATCH-UP GROWTH, HE
6 SHOULD BE 30 GRAMS PER DAY. AND THE JUDGE DOESN'T KNOW
7 THAT.

8 THE OTHER THING THAT'S MENTIONED HERE, THE
9 FATHER REPORTS THAT RYAN IS SITTING UP. THAT SOUNDS
10 GOOD IN GENERAL. BUT SITTING UP IS SUPPOSED TO HAPPEN
11 AT SIX MONTHS OF AGE. RYAN'S 18 MONTHS OF AGE NOW.

12 SO IT APPEARS TO BE LIKE RYAN'S IMPROVING,
13 WHEN HE WAS SITTING UP ALREADY WITH DR. YIM WAY BACK,
14 BEFORE HE WAS OUT OF CUSTODY OF MOM.

15 LAST THING ON THIS REPORT THAT'S INTERESTING
16 IS, THEY COMMENT ABOUT MOM'S CONCERNS ABOUT SENSORY
17 INTEGRATION DISORDER THAT THE REGIONAL CENTER HAD
18 ALREADY DOCUMENTED.

19 THAT DR. BERKOWITZ ALSO HAD DOCUMENTED AND
20 FELT THE CHILD HAD. AND MOM WAS SO WORRIED, COULD THIS
21 BE THE REASON WHY HER BABY IS NOT EATING. THEY
22 REPORTED THAT MOM PROVIDED ADDITIONAL RESEARCH IN
23 QUOTES, THAT SHE COMPILED IN AN EFFORT TO BECOME MORE
24 INFORMED OF TREATING HER CHILD'S SPECIAL NEEDS PER
25 MS. DUVAL.

26 AND THEY THEN GO ON TO SAY, THEY NOTE,
27 "MOTHER'S ANXIOUS AND INAPPROPRIATE FEEDING TECHNIQUES
28 LEADING TO HER CHILD'S REFUSAL TO EAT." THEY ACTUALLY

1 SAY MOM IS THE CAUSE STILL.

2 NOW THAT HE IS WITH DAD FOR SIX MONTHS ONLY,
3 AND MOM SEES HIM ONLY ONCE A WEEK, THEY REPORT TO THE
4 JUDGE THAT MOM IS STILL CAUSING HIM NOT TO EAT, PER
5 THIS REPORT.

6 MS. SWISS: YOUR HONOR, I'D LIKE TO OBJECT,
7 AND MOVE TO STRIKE THE WITNESS'S COMMENTARY. IT DOES
8 NOT REFLECT WHAT IS SPECIFICALLY WRITTEN IN THE
9 LAST-MINUTE INFORMATION IN THE REPORT.

10 THE COURT: HOLD ON.

11 THE UNDERLYING OBJECTION IS SUSTAINED. THE
12 MOTION TO STRIKE IS GRANTED. THAT PORTION OF THE
13 ANSWER, BEGINNING WITH, "THEY ACTUALLY SAY MOM IS THE
14 CAUSE STILL," AND THE REMAINDER OF THAT ANSWER IS
15 ORDERED STRICKEN, AND THE JURY WILL DISREGARD IT.

16 BY MR. MCMILLAN:

17 Q OKAY. DOCTOR, IF YOU CAN LOOK ABOUT FOUR
18 LINES UP FROM THE BOTTOM OF THE PAGE, THE SENTENCE
19 BEGINNING WITH "HOWEVER."

20 DO YOU SEE THAT?

21 A YES.

22 Q AND IT SAYS: "HOWEVER, THERE CONTINUES TO BE
23 NOTATIONS OF MOTHER'S ANXIOUS AND INAPPROPRIATE FEEDING
24 TECHNIQUES, LEADING TO THE CHILD'S REFUSAL TO EAT."
25 FIRST OF ALL, DID I READ THAT CORRECTLY?

26 A YES.

27 Q OKAY. IS THAT WHAT YOU JUST WERE REFERRING TO
28 WHEN YOU WERE SAYING THEY WERE, ESSENTIALLY,

1 INSINUATING THAT MOTHER WAS CONTINUING TO CAUSE THE
2 FAILURE TO THRIVE?

3 THE COURT: THE -- YOU CANNOT ASK THAT
4 QUESTION.

5 MR. MCMILLAN: OKAY.

6 THE COURT: I HAVE STRICKEN THE PRIOR ANSWER.
7 THAT PORTION OF THE ANSWER I ADVISED THE JURY IS
8 STRICKEN, AND THEY MUST DISREGARD IT. THEREFORE,
9 YOU'RE NOT GOING TO ASK A QUESTION ABOUT SOMETHING THAT
10 IS NOT IN EVIDENCE.

11 MR. MCMILLAN: UNDERSTOOD. THAT MAKES LOGICAL
12 SENSE TO ME.

13 THE COURT: THANK YOU.

14 MR. MCMILLAN: I APOLOGIZE.

15 BY MR. MCMILLAN:

16 Q LET ME ASK THIS A DIFFERENT WAY.

17 THAT SENTENCE I JUST READ YOU, HOW DO YOU
18 INTERPRET THAT?

19 A MY INTERPRETATION IS THEY STILL DON'T
20 UNDERSTAND THAT MOM IS RIGHT, THAT BABY HAS A SENSORY
21 PROBLEM.

22 AND THE SENSORY INTEGRATION DISORDER THAT MOM
23 IS WORRIED ABOUT, THAT THE REGIONAL CENTER HAS
24 IDENTIFIED, AND THAT DR. BERKOWITZ HAS AGREED THAT THE
25 CHILD HAS, IS POSSIBLY AT THE HEART OF WHY HE IS STILL
26 NOT EATING.

27 AND, IN FACT, THIS REPORT TO THE JUDGE SEEMS
28 TO SUGGEST TO ME THAT MOM IS SO ANXIOUS AND,

1 "INAPPROPRIATE FEEDING TECHNIQUES LEADING TO HER
2 CHILD'S REFUSAL TO EAT," THAT THERE'S STILL A BLAME TO
3 MOM, ALMOST, FOR TRYING HER BEST TO FIND AN ANSWER TO
4 HER SON'S PROBLEM.

5 MS. SWISS: OBJECTION: MOTION TO STRIKE AS
6 FOUNDATION AND SPECULATION.

7 THE COURT: THE ENTIRE ANSWER?

8 MS. SWISS: YES, YOUR HONOR.

9 THE COURT: THE OBJECTION AS TO SPECULATION IS
10 SUSTAINED. THE MOTION TO STRIKE IS GRANTED. THE
11 ENTIRE ANSWER IS ORDERED STRICKEN, AND THE JURY WILL
12 DISREGARD IT.

13 BY MR. MCMILLAN:

14 Q LOOKING AT THE LAST SENTENCE THAT BEGINS WITH
15 "AND THE DIFFERENCE." I GUESS THE LAST PART OF THAT
16 SAME SENTENCE, ACTUALLY, "AND THE DIFFERENCE IN THE
17 CHILD'S PRESENTATION AND DEVELOPMENT IN THE FATHER'S
18 CARE."

19 DO YOU SEE THAT?

20 A YES.

21 Q DID YOU SEE, WHEN YOU DID THIS REVIEW OF
22 MEDICAL RECORDS, THESE CHARTS, THESE DATA POINTS, DID
23 YOU SEE ANY DIFFERENCE IN THE CHILD'S PRESENTATION AND
24 DEVELOPMENT IN FATHER'S CARE, VERSUS THE TIME WHEN HE
25 WAS IN MOTHER'S CARE?

26 A NO, I DIDN'T. IN FACT, IT WAS ALMOST GETTING
27 WORSE.

28 THE COURT: JUST A MOMENT. THE ANSWER TO THE

1 QUESTION WAS, "NO, I DIDN'T." THAT PORTION AFTER THAT
2 IS ORDERED STRICKEN AS NONRESPONSIVE. ASK THE NEXT
3 QUESTION. SUSTAINED.

4 MR. MCMILLAN: THANK YOU, YOUR HONOR.

5 BY MR. MCMILLAN:

6 Q CAN YOU EXPLAIN FOR US WHAT YOU MEAN WHEN YOU
7 SAY YOU DIDN'T SEE A DIFFERENCE BETWEEN THE CHILD'S
8 PRESENTATION AND DEVELOPMENT IN FATHER'S CARE VERSUS
9 MOTHER'S CARE?

10 A AT HARBOR-UCLA FAILURE TO THRIVE CLINIC, THEY
11 WERE FOLLOWING THE BABY VERY CLOSELY FOR TWO BIG
12 PROBLEMS. ONE IS FAILURE TO THRIVE, AND THE OTHER IS
13 GLOBAL DEVELOPMENTAL DELAY.

14 DELAY IN FINE MOTOR, GROSS MOTOR, LANGUAGE,
15 AND SOCIAL SKILLS. AND THESE DID NOT GET BETTER. THE
16 GLOBAL LANGUAGE DELAY. THE WEIGHT, AS YOU CAN SEE, DID
17 NOT GET BETTER IN THE FAILURE TO THRIVE CLINIC.

18 SO AT FIRST, THE -- THEY DIDN'T ORDER TESTING,
19 BUT LATER THEY STARTED ORDERING LOTS OF TESTING TO FIND
20 OUT WHY IT WAS NOT GETTING BETTER.

21 Q WAS THERE ANYTHING ELSE SIGNIFICANT IN THIS
22 LAST-MINUTE INFORMATION REPORT, FROM A MEDICAL
23 PERSPECTIVE ONLY, THAT RELATED TO THE OPINIONS YOU WERE
24 ASKED TO COME IN AND GIVE IN THIS CASE?

25 A YEAH. IT'S INTERESTING. IF YOU LOOK AT THE
26 SECOND PARAGRAPH, IT SAYS THEY NOTED, "MATERNAL
27 GRANDMOTHER REPEATEDLY SMOTHERING RYAN WITH KISSES AND
28 HUGS TO THE POINT THAT IT HAS INTERFERED WITH HIM

1 FEEDING HIMSELF ON OCCASION."

2 Q WHY IS THAT SIGNIFICANT TO YOU?

3 A IT'S STRANGE TO ME THAT THEY WOULD BE SAYING
4 THAT HUGGING A BABY AND KISSING A BABY WOULD STOP HIM
5 FROM FEEDING.

6 MS. SWISS: OBJECTION: MOVE TO STRIKE,
7 SPECULATION, FOUNDATION.

8 THE COURT: OVERRULED.

9 BY MR. MCMILLAN:

10 Q AS A MEDICAL DOCTOR, BASED ON THE RECORDS THAT
11 YOU DID REVIEW, AND THE NOTATIONS IN THOSE RECORDS, DID
12 YOU SEE ANY EVIDENCE THAT MOTHER'S, MS. DUVAL'S ANXIOUS
13 OR INAPPROPRIATE FEEDING TECHNIQUES LED TO THE CHILD'S
14 REFUSAL TO EAT?

15 A NO.

16 Q WHAT DID YOU SEE?

17 A BASED UPON THIS REPORT, THE LAST-MINUTE
18 INFORMATION --

19 Q DOCTOR, IN THE RECORDS THAT YOU REVIEWED, WE
20 KNOW WHAT SHE'S SAYING TO THE JUDGE IN THE REPORT.

21 IN THE RECORDS THAT YOU REVIEWED, WHAT DID YOU
22 SEE THAT WOULD LEAD YOU TO SAY, NO, THERE WAS NOTHING
23 IN THE MOTHER'S ANXIOUS OR INAPPROPRIATE FEEDING
24 TECHNIQUES THAT LED TO THE CHILD'S REFUSAL TO EAT.

25 WHY DO YOU SAY THAT?

26 THE COURT: I THINK THAT'S -- I THINK YOU CAN
27 STATE THAT MORE CLEARLY SO EVERYONE UNDERSTANDS WHAT
28 THE DOCTOR -- I KNOW WHAT YOU'RE TRYING TO ASK. BUT --

1 MR. MCMILLAN: IT GOT MUDDLED UP.

2 THE COURT: I'M NOT GOING TO ASK THE QUESTION
3 FOR YOU, BUT I THINK YOU CAN ASK IT --

4 MR. MCMILLAN: LET ME TRY AGAIN.

5 THE COURT: WAS THERE SOMETHING INAPPROPRIATE
6 WITH THE MOTHER'S FEEDING?

7 MR. MCMILLAN: OKAY. (LAUGHTER) THANK YOU.

8 THE COURT: I SAID I WASN'T GOING TO ASK THE
9 QUESTION. I USED THAT ONLY AS AN EXAMPLE.

10 MR. MCMILLIAN: WELL YOUR HONOR, I APPRECIATE
11 IT. I THINK IT'S A GREAT QUESTION. I'LL ASK THE
12 QUESTION.

13 BY MR. MCMILLAN:

14 Q WAS THERE ANYTHING INAPPROPRIATE THAT YOU SAW,
15 IN ANY OF THE MEDICAL RECORDS, IN RELATION TO
16 MS. DUVAL'S FEEDING OF HER CHILD?

17 A NO.

18 Q NOW, YOU'VE HAD A CHANCE OVER THE YEARS TO
19 ACTUALLY SPEAK WITH MS. DUVAL?

20 A YES.

21 Q ON MORE THAN OCCASION?

22 A YES.

23 Q WHEN WAS THE MOST RECENT TIME THAT YOU HAD A
24 CHANCE TO SPEAK WITH HER?

25 A IN AUGUST.

26 Q SO JUST LAST MONTH?

27 A YES.

28 Q UNDER WHAT CIRCUMSTANCE WAS THAT?

1 A I WENT TO SEE MS. DUVAL AND HER SON RYAN AT
2 HIS BIRTHDAY.

3 Q WAS THERE ANYTHING SIGNIFICANT OF NOTE THAT
4 YOU SAW THERE?

5 A YEAH. I CAME TO RYAN'S BIRTHDAY, AND I
6 NOTICED -- I WATCHED RYAN. VERY AMICABLE, VERY SOCIAL
7 YOUNG BOY, VERY INTERACTIVE, CUTE KID. SMALL, SMALL
8 FOR HIS AGE.

9 BUT ONE THING BIG I SAW THERE IS, THERE WAS A
10 BIRTHDAY PARTY FOR RYAN. AND THERE WAS CAKE GIVEN, AND
11 THE ONLY CHILD IN THE WHOLE ROOM, THERE WAS 15 KIDS,
12 THAT DIDN'T WANT THE CAKE WAS RYAN.

13 AND THEN THERE WAS A CUPCAKE GIVEN, JUST FOR
14 RYAN, PACKAGED BY FATHER, AND RYAN WOULDN'T TOUCH IT.
15 SO THE MONITOR ACTUALLY CAME TO HELP RYAN. AND SHE CUT
16 THE FROSTING OFF FROM THE CUPCAKE TO SEE IF RYAN WOULD
17 EITHER EAT ONE OR THE OTHER. HE WOULDN'T TOUCH IT.

18 ALL THE OTHER KIDS WERE LOOKING AT THE
19 DELICIOUS CUPCAKE AND ALL THE KIDS WERE EATING THAT
20 OTHER CAKE, BUT RYAN WOULDN'T TOUCH EITHER.

21 AFTER A WHILE, I WENT OVER TO RYAN AND SAT
22 WITH CUTE LITTLE RYAN AND TRIED TO ENCOURAGE RYAN TO
23 TOUCH THE CUPCAKE, JUST TOUCH THE CUPCAKE, AND HE
24 WOULDN'T EVEN DO THAT. EVENTUALLY, JUST GAVE UP, AND
25 WE WENT ON TO OPENING PRESENTS, ET CETERA.

26 Q SO WHY WAS IT THAT YOU -- WHAT'S THE
27 SIGNIFICANCE OF THAT EFFORT THAT YOU HAD, TO TRY TO GET
28 RYAN TO JUST TOUCH THE CUPCAKE?

1 A WELL, YOU CAN SEE IN SOME OF THE MEDICAL
2 RECORDS FOR RYAN -- AND I HAVE PERSONAL EXPERIENCE IN
3 CARING FOR CHILDREN WITH THE SAME PROBLEM -- THAT ONE
4 OF THE FIRST STEPS THAT WE EMBARK ON, TRY TO HELP
5 CHILDREN WHO REFUSE TO EAT, IS TO HAVE THEM JUST TOUCH
6 THE FOOD.

7 TO MAKE -- TO FEEL LIKE IT'S NOT BURNING OR
8 DANGEROUS FOR THEM. THE NEXT STEP MIGHT BE TO LICK THE
9 FOOD, JUST PUT THEIR TONGUE ON IT. THEN WE MIGHT HAVE
10 THEM BITE A PIECE OF THE FOOD.

11 AND SLOWLY, BUT SLOWLY, THIS IS A TECHNIQUE
12 THAT'S USED TO HELP CHILDREN ENCOURAGE TO EAT BETTER.
13 AND WE CAN INTRODUCE A NEW FOOD ONE AT A TIME WITH THIS
14 SLOW TECHNIQUE.

15 AND AFTER ABOUT SIX OR SO TIMES A CHILD EATS
16 IT, THEY'LL START EATING IT MORE REGULARLY. AND SO
17 THIS TOUCHING IS A WELL-DESCRIBED MEDICAL -- IN MEDICAL
18 LITERATURE, TO GET A CHILD TO MOVE TOWARDS EATING.

19 Q AND YOU WEREN'T ABLE TO EVEN GET HIM TO TOUCH
20 THE CUPCAKE?

21 A NO.

22 Q DID THAT STRIKE YOU -- JUST FROM A MEDICAL
23 PERSPECTIVE, DID THAT STRIKE YOU AS ODD?

24 A YES. THIS IS ONE OF THE MORE SEVERE CASES OF
25 A CHILD REFUSAL TO EAT THAT I'VE EVER SEEN.

26 Q WHEN YOU WERE THERE AT THE BIRTHDAY PARTY, WHO
27 ELSE WAS THERE?

28 A I BROUGHT MY SON THERE TO THE BIRTHDAY PARTY,

1 AND THERE WAS FAMILY MEMBERS. RYAN'S THERE, HIS
2 MATERNAL GRANDFATHER WAS THERE, AS WELL AS FRIENDS OF
3 MS. DUVAL. MANY FRIENDS OF MS. DUVAL AND THEIR
4 CHILDREN.

5 Q DID YOU GET A CHANCE TO TALK WITH ANY OF
6 MS. DUVAL'S FRIENDS OR FAMILY?

7 MS. SWISS: OBJECTION: RELEVANCE.

8 THE COURT: SUSTAINED.

9 BY MR. MCMILLAN:

10 Q WHILE YOU WERE -- WELL, LET ME ASK YOU THIS.

11 WHEN YOU ARE LOOKING AT A CHILD WHO HAS ONE OF
12 THESE PROBLEMS, IS IT IMPORTANT TO TRY TO GET A FULL
13 HISTORY ON THE CHILD OF THEIR INTERACTIONS WITH THE
14 PARENTS, FAMILY, EXTENDED FAMILY, THINGS LIKE THAT?

15 A YES.

16 Q AND DID YOU DO THAT AT THAT BIRTHDAY PARTY?

17 A YES.

18 Q WHAT DID YOU LEARN?

19 A I LEARNED THAT LINA DUVAL HAS MANY FRIENDS WHO
20 HAVE BEEN WITH HER FOR ALL THIS TIME, AND HAVE
21 SUPPORTED HER THROUGH THIS AMAZING TRIAL THAT'S HARD TO
22 BEAR.

23 I MET ONE OF HER FRIENDS WHO TALKED ABOUT HOW
24 SHE TRUSTED LINA WITH HER OWN BABIES WHEN THEY WERE
25 LITTLE, OR HAD LINA BABYSIT THEM AT NUMEROUS TIMES, AND
26 TRUSTED HER ABOVE ANY OTHER FRIEND TO CARE FOR HER
27 CHILDREN.

28 MS. SWISS: OBJECTION: MOVE TO STRIKE AS

1 HEARSAY, THE PART ABOUT WHAT HER FRIENDS TOLD HIM. AND
2 RELEVANCE.

3 THE COURT: OVERRULED.

4 BY MR. MCMILLAN:

5 Q AND DOCTOR, WHEN YOU -- IN THESE CONVERSATIONS
6 THAT YOU HAD WITH THE PEOPLE AT THE BIRTHDAY PARTY, DID
7 YOU ALSO GET A CHANCE TO TALK TO THEM ABOUT THEIR
8 INTERACTIONS WITH RYAN OVER THE YEARS?

9 A YES.

10 Q DID YOU LEARN ANYTHING OF SIGNIFICANCE ABOUT
11 BABY RYAN'S CONDITION OR BABY RYAN THROUGH THOSE
12 CONVERSATIONS?

13 A YES.

14 Q PLEASE EXPLAIN.

15 A I LEARNED THAT HE'S HAD THIS PROBLEM
16 CONTINUOUSLY. THAT HE GETS WITH MOM -- THE VISITS THAT
17 MOM GETS WITH HIM, AND AT TIMES FRIENDS ARE ABLE TO
18 PARTICIPATE, LIKE BIRTHDAY PARTIES, HE STILL ALSO
19 REFUSES TO EAT.

20 Q THERE'S A TERM THAT'S COME UP, THAT'S
21 "DYSMORPHIC." CAN YOU EXPLAIN TO US WHAT THAT MEANS,
22 LIKE DYSMORPHIC FEATURES?

23 A YES. DYSMORPHIA IS A TERM THAT, IN MEDICAL --
24 IN MEDICINE, THAT DESCRIBES SOMETHING LOOKING
25 DIFFERENT.

26 Q AND DYSMORPHIA, WHEN YOU'RE LOOKING AT A YOUNG
27 CHILD OR A BABY, IS THAT SOMETHING IMPORTANT TO NOTE?

28 A YES.

1 Q WHY?

2 A BECAUSE IN THE WORKUP OF A CHILD WITH FAILURE
3 TO THRIVE, WE TRY TO FIND IS THERE SOME OTHER REASON
4 FOR THE BABY NOT GAINING WEIGHT ACCORDING TO THE
5 EXPECTED CURVE. AND ONE OF THE REASONS IS GENETIC.

6 IF A BABY HAS DOWN SYNDROME, THEY WOULD HAVE A
7 FACE THAT HAS A VERY SMALL MOUTH AND A SMALL CHIN.
8 THAT MIGHT HELP YOU FIGURE OUT THEY HAVE AN EXTRA
9 CHROMOSOME 21.

10 AND THESE BABIES, THEY DON'T GAIN WEIGHT LIKE
11 NORMAL BABIES, SO WE HAVE A NEW CURVE JUST FOR THEM.

12 Q WHEN YOU -- DID YOU REVIEW DR. -- I THINK YOU
13 SAID YOU DID REVIEW DR. SODERBERG'S RECORDS?

14 A YES.

15 Q THERE'S A NOTATION IN THERE, FLK. ARE YOU
16 FAMILIAR WITH THAT?

17 A YES.

18 Q CAN YOU EXPLAIN TO US WHAT THAT MEANS?

19 A IT'S NOT MEANT TO BE PEJORATIVE. IT'S MEANT
20 TO HELP DOCTORS UNDERSTAND THERE MIGHT BE A GENETIC
21 PROBLEM WITH THE BABY. IT'S A SHORT MNEMONIC FOR
22 FUNNY-LOOKING KID.

23 Q AND WHEN WE SEE A NOTATION LIKE FLK, ARE WE
24 TALKING ABOUT THE DYSMORPHIA YOU JUST DESCRIBED, IS
25 THAT WHAT WE'RE TALKING ABOUT?

26 A YES.

27 Q AND, MAKE SURE I'M UNDERSTANDING YOU
28 CORRECTLY, THAT THAT MAY BE A RED FLAG FOR FURTHER

1 TESTING ON GENETIC ISSUES?

2 A YES.

3 Q DID YOU SEE ANY INDICATION BEFORE NOVEMBER 3RD
4 OF 2009, DID YOU SEE ANY INDICATION IN THE MEDICAL
5 RECORD THAT ANY COUNTY CLINIC, ANY DOCTOR ANYWHERE, DID
6 ANY GENETIC TESTING AT ALL?

7 A NO.

8 Q DO YOU RECALL WHEN WAS THE VERY FIRST TIME
9 WHEN ANY GENETIC TESTING WAS DONE?

10 A NO.

11 Q DO YOU RECALL WHETHER OR NOT BY JANUARY --
12 LET'S SEE THE DATE OF THAT REPORT -- DO YOU RECALL
13 WHETHER OR NOT BY JANUARY 4TH, 2010, ANY GENETIC
14 TESTING AT ALL, OF ANY KIND, HAD BEEN DONE?

15 A NOT THAT I KNOW OF.

16 Q HOW ABOUT AN MRI? COULD YOU TELL WHETHER OR
17 NOT AN MRI WAS DONE ON THIS CHILD? ANY POINT BEFORE
18 AUGUST 9TH, 2010?

19 A I DON'T RECALL THAT AN MRI HAS EVER BEEN DONE
20 ON RYAN.

21 Q IS AN MRI ONE OF THE TESTS THAT YOU MIGHT RUN
22 ON A CHILD WITH FAILURE TO THRIVE IF YOU CAN'T FIGURE
23 OUT WHAT'S WRONG?

24 A YES.

25 Q WHY IS THAT?

26 A WELL, THE CLINICAL PRACTICE GUIDELINES BY THE
27 AMERICAN ACADEMY OF PEDIATRICS AND AMERICAN ACADEMY OF
28 NEUROLOGY HAVE EVALUATED WHAT SHOULD BE A GOOD

1 EVALUATION FOR A CHILD WITH FAILURE TO THRIVE.

2 AND THEY INCLUDE GENETIC TESTING, SPECIFIC
3 GENETIC TESTING LIKE FISH TESTING, AND THEY INCLUDE
4 IMAGING, LIKE MRI.

5 AND THE REVIEWS HAVE SUGGESTED MRI MAY BE THE
6 BEST OF ALL THE TESTS TO TRY TO FIND OUT IF THERE IS
7 GENETIC SYNDROME CAUSING FAILURE TO THRIVE.

8 Q MR. MCMILLAN: AND AS FAR AS YOU CAN TELL --
9 THE COURT: SORRY TO INTERRUPT. WE'RE GOING
10 TO HAVE TO TAKE A SHORT MORNING BREAK. WE'RE GOING TO
11 LIMIT IT TO TEN MINUTES, AND I DO MEAN TEN MINUTES.
12 ALL JURORS, PLEASE REMEMBER THE ADMONITION.

13 (JURY EXCUSED)

14 (PAUSE IN THE PROCEEDINGS)

15 (JURY PRESENT)

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

18 THE COURT: BACK ON THE RECORD. EVERYBODY IS
19 PRESENT. EVERYONE MAY BE SEATED.

20 GO AHEAD, MR. MCMILLAN.

21 BY MR. MCMILLAN:

22 Q OKAY. THANK YOU, YOUR HONOR.

23 I THINK WE PRETTY MUCH DEALT WITH THE
24 LAST-MINUTE INFORMATION. WHAT'S THE NEXT SIGNIFICANT
25 DOCUMENT IN ORDER THAT YOU FOUND -- LET ME JUST
26 REPHRASE THAT, TRY TO MAKE IT SIMPLE.

27 WHAT'S THE NEXT LAST INFORMATION THAT YOU WANT
28 TO TALK ABOUT?

1 MS. SWISS: OBJECTION: VAGUE.

2 THE COURT: YEAH.

3 MS. SWISS: CALLS FOR A NARRATIVE.

4 THE COURT: WE'RE GOING TO PROCEED BY
5 QUESTIONS. DO YOU --

6 MR. MCMILLAN: ALL RIGHT.

7 THE COURT: AND I'M NOT GOING TO GIVE YOU THE
8 NEXT QUESTION.

9 BY MR. MCMILLAN:

10 Q DOCTOR, YOU DID REVIEW OTHER LAST INFORMATION
11 REPORTS THAT EITHER MS. NELSON OR MS. SCHEELE SENT TO
12 THE COURT. IS THAT CORRECT?

13 A YES.

14 Q OKAY. DID YOU REVIEW A LAST INFORMATION
15 PROVIDED TO THE COURT BY MS. CANDIS NELSON ON MARCH 8,
16 2010?

17 A I DID.

18 Q DID YOU NOTE ANYTHING OF SIGNIFICANCE IN THAT
19 REPORT? AND I'M REALLY RESTRICTING THIS JUST TO
20 MEDICAL INFORMATION OR INFORMATION RELATED TO THE
21 CHILD'S DEVELOPMENT THAT WAS REPORTED TO THE COURT.

22 MS. SWISS: I WOULD ASK THAT THE PLAINTIFF'S
23 COUNSEL IDENTIFY THE EXHIBIT.

24 MR. MCMILLAN: OH, I'M SORRY. IT'S EXHIBIT
25 NUMBER 264, INFORMATION FOR THE COURT OFFICER
26 DATED 3/8/2010, BATES NUMBER 002849.

27 THE COURT: AS TO THE QUESTION, ASKING ABOUT
28 NOTING ANYTHING OF SIGNIFICANCE, I THINK YOUR QUESTION

1 NEEDS TO BE A LITTLE BIT MORE FOCUSED. IT'S MUCH TOO
2 BROAD.

3 BY MR. MCMILLAN:

4 Q DO YOU SEE, TOWARDS THE MIDDLE OF THE PAGE --
5 I'M SORRY, ABOUT FIVE LINES DOWN, ACTUALLY, FROM THE
6 TOP OF THE PAGE, IT SAYS, IT STARTS WITH, "MOTHER IS
7 REPORTEDLY." ARE YOU WITH ME?

8 A YES.

9 Q SAYS: "MOTHER IS REPORTEDLY SMOTHERING THE
10 CHILD DURING MANY OF THE VISITS."

11 WAS THAT STATEMENT THAT MS. NELSON MADE TO THE
12 JUDGE THERE IN HER REPORT SIGNIFICANT TO YOUR OPINIONS
13 IN THIS CASE?

14 A YES. THAT -- YES.

15 Q HOW SO?

16 A THAT REINFORCES THE SAME OPINION THAT I HAD
17 FOR THE LAST INFORMATION GIVEN TO THE JUDGE
18 ON 1/22/2010. THIS ONE REFERS MORE TO MOTHER.

19 BUT BASICALLY, INSINUATES THAT MOM HAS A STYLE
20 THAT IS BAD FOR BABY. SMOTHERING, KIND OF GETS THAT
21 SENSE THAT IT'S NOT GOOD.

22 Q IN YOUR REVIEW OF THE MEDICAL --

23 MS. SWISS: I'M SORRY. OBJECTION: MOVE TO
24 STRIKE AS SPECULATION, INSINUATION BY COURT.

25 THE COURT: YES, THE UNDERLYING OBJECTION OF
26 SPECULATION IS SUSTAINED. MOTION TO STRIKE IS GRANTED.

27 THAT PORTION OF THE ANSWER THAT SAYS THAT
28 SAYS, "BASICALLY," AND THEREAFTER, "INSINUATES THAT MOM

1 HAS A STYLE," ET CETERA, THE REMAINDER OF THAT ANSWER
2 IS ORDERED STRICKEN. THE JURY WILL DISREGARD IT.

3 BY MR. MCMILLAN:

4 Q DOCTOR, IN YOUR REVIEW OF THE MEDICAL RECORDS
5 FOR THE PERIOD OF TIME WHEN MS. DUVAL HAD CUSTODY OF
6 THE CHILD, WAS THERE ANY INDICATION IN THOSE RECORDS
7 THAT MOTHER'S STYLE WAS SMOTHERING TO THE CHILD AND
8 THAT THAT SOMEHOW CAUSED THE CHILD SOME PROBLEM?

9 A NO.

10 Q WHAT DID YOU DISCOVER IN YOUR REVIEW OF THOSE
11 RECORDS, WITH RESPECT TO THAT ISSUE, SMOTHERING THE
12 CHILD OR PARENTING TECHNIQUE?

13 A SO IN THE SERVICE LOGS, THEY REPORT MONITORED
14 VISITS WITH MOTHER. AND IT'S TRUE THAT MOTHER CAME TO
15 THE VISITS, THAT SHE GOT TO SEE HER BABY ONCE A WEEK
16 WAS THE PLAN.

17 SHE WOULD HAVE FOOD, SHE WOULD HAVE GAMES, SHE
18 WOULD HAVE THINGS THAT SHE WOULD DO THAT WERE VERY
19 INTERACTIVE WITH HER CHILD. THE -- ALL OF THE
20 INTERACTIONS THAT SHE DID WERE MEANT TO HELP HER BABY.

21 Q WHAT ABOUT --

22 MS. SWISS: OBJECTION: MOVE TO STRIKE AS
23 SPECULATION, FOUNDATION FROM THIS MEDICAL WITNESS.

24 THE COURT: THE OBJECTION SPECULATION IS
25 SUSTAINED. THE MOTION TO STRIKE IS GRANTED.

26 THAT PORTION THAT, "THE -- ALL OF THE
27 INTERACTIONS THAT SHE DID WERE MEANT TO HELP HER BABY"
28 IS ORDERED STRICKEN. THE JURORS WILL DISREGARD.

1 BY MR. MCMILLAN:

2 Q DOCTOR, WE TALKED A LITTLE BIT EARLIER IN THE
3 DAY ABOUT YOUR OWN PRACTICE AND THE CHILDREN THAT YOU
4 TREAT IN YOUR OWN PRACTICE.

5 DO YOU REMEMBER THAT?

6 A YES.

7 Q DO YOU GIVE YOUR PARENTS, THE PARENTS OF YOUR
8 PATIENTS, INSTRUCTIONS OR ADVICE AT ALL ABOUT
9 INTERACTING WITH THEIR CHILDREN WHO MAY BE HAVING THESE
10 PROBLEMS, THESE FAILURE TO THRIVE PROBLEMS, AND HOW
11 THEY SHOULD GO ABOUT THOSE INTERACTIONS?

12 A YES.

13 Q IS THERE A RECOMMENDATION IN THE MEDICAL
14 LITERATURE THAT SUGGESTS WHAT IT IS THAT YOU'RE
15 SUPPOSED TO BE DOING WITH A BABY WHO HAS THESE SORTS OF
16 PROBLEMS?

17 A YES.

18 Q CAN YOU DESCRIBE FOR US WHAT THE MEDICAL
19 LITERATURE TELLS US WE'RE SUPPOSED TO BE DOING, IN
20 TERMS OF INTERACTION?

21 A YES. THE AMERICAN ACADEMY OF PEDIATRICS AND
22 AMERICAN ACADEMY OF FAMILY PHYSICIANS, THE AAP AND
23 AAFP, THEY RECOMMEND LESS VIDEO AND SCREEN TIME WITH
24 OUR CHILDREN.

25 THEY WANT, ESPECIALLY CHILDREN WITH SPECIAL
26 NEEDS, TO HAVE AS MUCH TIME DIRECTLY WITH THE PARENTS
27 TALKING TO THEM AND INTERACTING WITH THEM, PLAYING
28 GAMES WITH THEM, AS MUCH AS POSSIBLE, RATHER THAN ON

1 THE PHONE, IPHONE GAMES OR WATCHING TV.

2 Q SO THIS INTERACTION, IT'S A GOOD THING?

3 A YES.

4 Q IT'S SOMETHING THAT'S RECOMMENDED BY MEDICAL
5 PROFESSIONALS?

6 A YES.

7 Q AND WHEN WE'RE LOOKING AT THIS INTERACTION,
8 PARTICULARLY WITH A SPECIAL NEEDS CHILD, IS IT
9 IMPORTANT TO HAVE SOME STRUCTURE TO THAT INTERACTION?

10 A YES.

11 Q WHY IS THAT?

12 A SO THEY -- IT TRIES TO ADDRESS THEIR SPECIAL
13 NEEDS.

14 Q AND THE CHILD BENEFITS FROM THAT?

15 A YES.

16 Q HOW?

17 A WELL, IF YOU HAVE A CHILD THAT'S REFUSING TO
18 EAT, USING A PLAN WHERE YOU HAVE A CHILD TOUCH THE
19 FOOD, THEN MAYBE LICK THE FOOD, TASTE THE FOOD, IS A
20 GOOD TECHNIQUE TO HELP A CHILD GET TO A POINT OF EATING
21 THAT FOOD.

22 IF A CHILD HAS A LANGUAGE DELAY, OR IS NOT
23 SPEAKING, WHAT WE CAN DO IS WE CAN SIT WITH THE CHILD,
24 AND CONSTANTLY REDIRECT THE CHILD FROM HUMMING OR
25 MAKING A FOCUS ON ONE PIECE OF A GAME TO MORE OF THE
26 EYE CONTACT WITH THE PARENT, AND BABBLING BACK AND
27 FORTH WITH THE CHILD.

28 AND THESE TECHNIQUES HAVE BEEN SHOWN TO BE

1 HELPFUL, HELP THESE CHILDREN IMPROVE.

2 Q AND IN YOUR MEDICAL OPINION, DOCTOR, IS THAT
3 SORT OF CONDUCT SMOTHERING TO A CHILD?

4 A NO.

5 Q IS IT INAPPROPRIATE TO THE CHILD?

6 A NO.

7 Q FURTHER DOWN THE PAGE ON BATES NUMBER 003849,
8 STILL ON EXHIBIT 264, THE INFORMATION FOR THE COURT
9 OFFICER GIVEN TO THE COURT BY CANDIS NELSON ON MARCH 8,
10 2010.

11 THE LAST PARAGRAPH SAYS: "RYAN CONTINUES TO
12 GAIN WEIGHT AND NOW WEIGHS OVER 17 POUNDS AS OF
13 FEBRUARY 19, 2010.

14 "THE FAILURE TO THRIVE CLINIC HAS REPORTED
15 THAT RYAN IS MAKING SUCH PROGRESS THAT IT'S ONLY
16 NECESSARY FOR HIM -- FOR THEM TO SEE HIM ONCE EVERY
17 THREE MONTHS FOR CHECK-UPS."

18 DID I READ THAT RIGHT?

19 A YES.

20 Q DID YOU REVIEW THE MEDICAL RECORDS OF THE
21 HARBOR-UCLA FAILURE TO THRIVE CLINIC FOR THE TIME
22 PERIOD OF MARCH 2010?

23 A YES.

24 Q WAS PART OF YOUR REVIEW TO CHECK WHETHER OR
25 NOT THIS STATEMENT THAT MS. NELSON MADE TO THE COURT
26 WAS IN FACT TRUE?

27 A YES.

28 Q TELL US WHAT YOU FOUND IN THE RECORDS?

1 A FIRST OF ALL, THE -- IT'S FALSE. THE -- THERE
2 WAS A VISIT ON 2/9/2010, SO IT MIGHT BE A TYPO, INSTEAD
3 OF 2/19/2010. AT THAT TIME, THE CHILD'S BMI, THE BODY
4 MASS INDEX, WAS THE SAME AS WHEN THE CHILD CAME IN.

5 STILL THE SAME AMOUNT OF FAILURE TO THRIVE,
6 HAS NOT HAD ANY CATCH-UP GROWTH. THE NEXT LINE THEY
7 SAY THAT THEY REPORTED, THAT THEY ARE DOING SO WELL,
8 THAT IT IS ONLY NECESSARY TO SEE THEM EVERY THREE
9 MONTHS.

10 WELL, THE 2/9 VISIT SAYS COME BACK IN TWO
11 WEEKS. AND THEN THE NEXT VISIT ON 2/23 SAYS COME BACK
12 IN FOUR WEEKS. SO THIS CHILD IS BEING ASKED TO COME
13 BACK EVERY MONTH.

14 BUT THE JUDGE IS HEARING THAT THE CHILD IS
15 TOLD TO COME BACK EVERY THREE MONTHS BECAUSE THEY'RE
16 DOING SO WELL. JUST THE OPPOSITE.

17 THEY'RE DOING POORLY IN BOTH, THE FAILURE TO
18 THRIVE, AND GLOBAL DEVELOPMENTAL DELAY IS SO BAD THAT
19 THE FAILURE TO THRIVE IS BRINGING THIS CHILD BACK AT
20 TWO- AND FOUR-WEEK INTERVALS.

21 Q CAN YOU FIND US, JUST VERY QUICKLY HERE, IN
22 THE FAILURE TO THRIVE RECORDS THAT YOU REVIEWED, THE
23 TIME PERIOD, THE REPORTS, THE MEDICAL REPORTS FROM THE
24 TIME PERIOD, THE VISIT IMMEDIATELY PRIOR TO THIS
25 MARCH 8, 2010 REPORT?

26 A SO THIS ONE TALKS ABOUT 2/19/2010. THERE WAS
27 NO VISIT OF 2/19, BUT I THINK THAT MIGHT BE A TYPO.
28 IT'S 2/9/2010, AND THE BATES-STAMP IS 1076.108.

1 Q ONE MOMENT TO CATCH UP.

2 THE COURT: WHAT EXHIBIT?

3 MR. MCMILLAN: OH, IT'S EXHIBIT NUMBER 1076,
4 YOUR HONOR.

5 BY MR. MCMILLAN:

6 Q AND I'M SORRY, WHAT WAS THE --

7 A 1076.108.

8 Q OKAY, I'M WITH YOU.

9 A SO, WHAT THIS NOTE --

10 THE COURT: EVERYONE, JUST A MOMENT SO BOTH
11 MS. SWISS AND I CAN GET THERE.

12 MS. SWISS: 1076.108?

13 THE WITNESS: YES.

14 MS. SWISS: MINE DOESN'T GO THAT FAR. MAY I
15 SEE --

16 MR. MCMILLAN: ARE YOU LOOKING AT YOUR BINDER
17 OR THE PLAINTIFF'S BINDERS?

18 MS. SWISS: WELL, 1076.108.

19 MR. MCMILLAN: I CAN SHOW YOU.

20 THE COURT: DID YOU FIND IT?

21 MS. SWISS: I DID NOT.

22 MR. MCMILLAN: WELL. CAN WE HAVE A SIDEBAR
23 REAL QUICK?

24 THE COURT: SURE.

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

28 MR. MCMILLAN: THEY'RE GOING TO BRING THE

1 BINDER UP.

2 THE COURT: IT'S JUST FINDING IT. AND
3 HERE -- 1076, WHICH JUST HAS -- WHICH IS FROM HARBOR --

4 MR. MCMILLAN: IT'S THE SAME THING I'VE GOT.

5 THE COURT: YEAH. THAT'S WHERE IT BEGINS.
6 BUT AFTER THAT, WE DON'T HAVE -- APPEAR TO BE CLINIC --

7 MR. MCMILLAN: I UNDERSTAND. WHAT I'M LOOKING
8 FOR IS -- DID YOU BRING UP THE BINDER WITH YOU?

9 MR. PRAGER: I THINK THIS IS IT.

10 MR. MCMILLAN: NO, IT'S NOT.

11 THE COURT: YOURS IS PROBABLY THE SAME AS
12 MINE.

13 MS. SWISS: THIS IS OUR EXHIBITS. MAYBE --
14 THERE MUST HAVE BEEN A PRINTING ERROR OR SOMETHING.
15 THIS IS MY BATES LABEL AT THE BOTTOM.

16 THE COURT: WE'LL GET IT STRAIGHTENED OUT.

17 MR. MCMILLAN: LET'S SEE WHAT WE HAVE
18 HERE. 17608 (SIC). THERE IT IS. SOMEBODY CAN USE OUR
19 BOOK. I DON'T MIND.

20 THE COURT: IT'S MORE IMPORTANT FOR MS. SWISS
21 TO BE ABLE TO SEE IT. GO AHEAD.

22 MR. MCMILLAN: THANK YOU.

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

25 MR. MCMILLAN: YOUR HONOR, AFTER ALL THAT,
26 I'VE SORT OF FORGOTTEN WHERE I WAS. I WANTED TO BE
27 EXACT.

28 THE COURT: BESIDES ALL THE CONVERSATION WE

1 WERE HAVING ABOUT FINDING THE ACTUAL PAGE, YOU WERE
2 ASKING ABOUT SOME ENTRY THAT WAS -- I'VE NOW FORGOTTEN
3 THE DATE.

4 MR. MCMILLAN: GIVE ME ONE MOMENT.

5 BY MR. MCMILLAN:

6 Q ALL RIGHT. I THINK I'VE GOT IT. I THINK THE
7 PRECURSOR TO THAT WHOLE EPISODE WE JUST HAD WAS A
8 DISCUSSION ABOUT THE INFORMATION FOR COURT OFFICER THAT
9 MS. NELSON FILED WITH THE COURT ON MARCH 8, 2010.

10 WE'VE TALKED A LITTLE BIT ABOUT THE CONTENT
11 THAT SHE GAVE TO THE JUDGE.

12 DO YOU REMEMBER THAT?

13 THE WITNESS: YES.

14 BY MR. MCMILLAN:

15 Q AND THEN I ASKED YOU, LET'S GO LOOK AT THE
16 HARBOR-UCLA FOR THE MEDICAL RECORD FOR THE VISIT, YOU
17 KNOW, BEFORE THAT COURT REPORT, TO SEE WHAT IT SAYS.

18 DO YOU REMEMBER THAT?

19 A YES.

20 Q SO NOW I THINK THAT WE'VE SORTED OUT IT'S
21 EXHIBIT 1076.108. DO YOU HAVE THAT OPEN IN FRONT OF
22 YOU?

23 A YES.

24 Q OKAY. SO WHAT I'D LIKE YOU TO TELL US IS
25 WHETHER OR NOT YOU COULD FIND MEDICAL EVIDENCE IN THE
26 RECORD TO SUPPORT THE STATEMENTS, THE FACTUAL
27 STATEMENTS, THAT MS. NELSON WAS MAKING TO THE COURT ON
28 MARCH 8, 2010.

1 A NO. QUITE THE CONTRARY, IT WAS THE OPPOSITE.

2 Q CAN YOU EXPLAIN THAT.

3 A SO IT SAYS HERE: "THE FAILURE TO THRIVE
4 CLINIC HAS REPORTED THAT RYAN IS MAKING SUCH PROGRESS
5 THAT IT'S ONLY NECESSARY FOR THEM TO SEE HIM ONCE EVERY
6 THREE MONTHS FOR CHECK-UPS."

7 SO THEY TALK ABOUT A VISIT OF 2/19, WHICH
8 ACTUALLY, PROBABLY WAS 2/9, AND ON THE 2/9 VISIT,
9 BECAUSE THERE'S NO 2/19 VISIT, THEY NOTE A COUPLE
10 THINGS. THEY NOTE, NUMBER ONE, HIS BODY MASS INDEX HAS
11 NOT IMPROVED. NUMBER TWO --

12 Q I'M SORRY, YOU SAID --

13 A HIS BODY MASS INDEX. THAT MEANS THE RATIO OF
14 HEIGHT TO WEIGHT, IS THE SAME WHEN HE CAME INTO THE
15 FAILURE TO THRIVE CLINIC MONTHS BEFORE. THEY NOTE THAT
16 HE'S JUST STARTED TO CRAWL. HE'S 18 MONTHS OLD.
17 CRAWLING SHOULD BE DONE BETWEEN SIX AND TEN MONTHS.

18 THEY NOTED THAT HE'S JUST STARTING TO BABBLE.
19 AND BABBLING, ACCORDING THE DENVER DEVELOPMENTAL
20 SCREENING TOOL THAT I'M USING HERE, SHOULD BE DONE BY
21 TEN MONTHS.

22 SO HE'S DOING ACTIVITIES THAT ARE NORMAL FOR A
23 TEN-MONTH-OLD, FOR THE FIRST TIME AT 18 MONTHS. THEY
24 ALSO SAY HE NEEDS TO COME BACK IN TWO WEEKS, NOT THREE
25 MONTHS, TO GET -- CATCH UP ON HIS IMMUNIZATIONS THAT'S
26 BEHIND.

27 AND THEY WANT TO CONTINUE BOTH OCCUPATIONAL
28 THERAPY TO HELP THE ORAL MOTOR, AND PHYSICAL THERAPY TO

1 HELP HIM WITH GAIT AND WALKING, WHICH, HE IS SO FAR
2 BEHIND, HE SHOULD BE DOING THAT WAY BEFORE NOW.

3 THE NEXT VISIT BEFORE THIS REPORT TO THE JUDGE
4 IS 2/23, SO I THINK THAT 2/19 WAS PROBABLY AN ERROR.

5 Q CAN YOU GIVE US THE PAGE NUMBER YOU'RE TALKING
6 ABOUT?

7 A PAGE NUMBER IS 1076.105. AND AT THIS VISIT,
8 AGAIN, THAT -- HE IS NOT MAKING SUCH PROGRESS THAT IT
9 IS ONLY NECESSARY FOR THEM TO SEE HIM ONCE EVERY THREE
10 MONTHS. DR. BERKOWITZ SEES HIM THEN, AND DR. BERKOWITZ
11 SAYS FOLLOW UP IN FOUR WEEKS.

12 AND WHY? WELL, HE'S STILL NOT MAKING CATCH-UP
13 GROWTH. HIS GROWTH IS TEN GRAMS A DAY, WHICH IS NOT
14 CATCH-UP GROWTH. HE STILL NEVER MADE CATCH-UP GROWTH.
15 HE'S STILL ON -- IT SAYS NOW ABLE TO CRAWL, BUT HE'S
16 NOT WALKING. HE'S 18-1/2 MONTHS.

17 WE SEE NO PANTOGRAPH. BUT THE BOTTOM LINE,
18 THEY SAY, HE'S STILL GOT FAILURE TO THRIVE, THE NUMBER
19 ONE DIAGNOSIS. AND THE NUMBER TWO DIAGNOSIS IS DELAYED
20 MOTOR SKILLS. SO HE HASN'T IMPROVED IN ANY OF THE
21 AREAS THAT WERE EXPECTED FOR HIM TO IMPROVE ON.

22 AND SO HE STILL NEEDS, ACCORDING TO
23 DR. BERKOWITZ, CLOSE FOLLOW-UP. THAT'S THE LAST VISIT
24 I HAVE BEFORE THE 3/8 REPORT.

25 Q THANK YOU, DOCTOR. THERE WAS A DOCUMENT I SAW
26 YOU REFERENCE, AND I THINK THAT YOU MENTIONED THAT YOU
27 CALLED IT THE DENVER DEVELOPMENT SOMETHING?

28 A YES.

1 Q WHAT IS THAT DOCUMENT? WHAT'S THE ACTUAL FULL
2 NAME OF IT, FIRST OF ALL?

3 A THE DENVER DEVELOPMENTAL SCREENING FORM.

4 Q WHAT IS THE DENVER DEVELOPMENTAL SCREENING
5 FORM?

6 A IT'S A ONE-PAGE DOCUMENT THAT HELPS DOCTORS,
7 PEDIATRICIANS, FAMILY DOCTORS, AND SPECIALISTS TO
8 UNDERSTAND WHAT WOULD BE NORMAL DEVELOPMENT FOR FINE
9 MOTOR, GROSS MOTOR, SPEECH AND SOCIAL SKILLS FOR A BABY
10 OF A CERTAIN AGE.

11 AND IT'S PLOTTED IN A GRAPH SO YOU CAN SHARE
12 IT WITH FAMILIES, AND THEY CAN SEE IF THEIR CHILD IS ON
13 PAR FOR WHAT THEY SHOULD BE FOR THEIR AGE.

14 Q OKAY. I'M GOING TO SHOW YOU WHAT'S BEEN
15 PREVIOUSLY MARKED AS EXHIBIT NUMBER 786. AND I HOPE
16 YOU HAVE ONE. IF YOU DON'T, LET ME KNOW.

17 OKAY, CAN YOU SORT OF RUN US THROUGH THIS
18 CHART ON EXHIBIT 786, JUST SORT OF EXPLAIN WHAT IT IS
19 WE'RE LOOKING AT?

20 A NOW, BECAUSE IT'S PROJECTING IT, YOU'RE NOT
21 ABLE TO SEE IT VERY EASILY. BUT JUST TO GIVE YOU A
22 CONCEPT HERE, THIS PART OF THE CURVE IS GROSS MOTOR,
23 THIS PART OF THE CURVE IS LANGUAGE, THIS PART OF THE
24 CURVE IS FINE MOTOR, AND THE ONE LAST ONE, SOCIAL.

25 AND IF YOU GO TO THE VERY TOP, YOU CAN SEE
26 AGES. AND WHAT THIS MEANS, THIS CURVE, IS THIS IS THE
27 EXPECTED NORMAL RANGE FOR A CHILD TO DEVELOP THIS
28 SKILL.

1 AND WHAT DOCTORS CAN USE WHEN FAMILIES COME
2 IN, AND A CHILD DOING A SKILL, SAY AT FOUR MONTHS, AS
3 PREDICTED THERE. THEY CAN SAY WOW, LOOK AT HOW AMAZING
4 YOUR BABY'S DOING. AND CONGRATULATE THEM AND MAKE MOM
5 AND DAD FEEL VERY HAPPY.

6 IF A CHILD IS STILL NOT DOING THE SKILL OVER
7 HERE, UP TO 25 PERCENT, GET THAT SKILL A LITTLE LATER,
8 WE CAN REASSURE MOM AND DAD AND SAY IT'S OKAY, THEY'RE
9 STILL WITHIN THE NORM, THEY'LL CATCH UP, THEY'LL MAKE
10 IT.

11 BUT IF YOU'RE PAST THIS, THEN DOCTORS NEED TO
12 ASK QUESTIONS. NOW, THE WAY WE DIAGNOSE DEVELOPMENTAL
13 DELAY, WE HAVE TWO SECTIONS. BOTH SOCIAL, FINE MOTOR,
14 LANGUAGE, OR GROSS MOTOR. TWO SECTIONS.

15 IF YOU'RE BEHIND IN EVEN THE GRAPH HERE, THEN
16 YOU HAVE A DEVELOPMENTAL DELAY.

17 AND NOW WHAT THE DOCTORS NEED TO DO IS REFER
18 TO SPECIALISTS AND TEAMS, SUCH AS A FAILURE TO THRIVE
19 TEAM, TO TRY TO FIND OUT, WHAT CAN WE -- WHAT'S THE
20 CAUSE OF THIS, AND WHAT CAN WE DO ABOUT IT.

21 Q THANK YOU. GOING BACK FOR A MOMENT TO EXHIBIT
22 NUMBER 264 -- LET ME ASK YOU THIS FIRST.

23 IN DOING YOUR STUDY HERE FOR THIS CASE, YOU
24 ALSO HAD THE OPPORTUNITY TO REVIEW THE DEPOSITION OF
25 RYAN MILLS. CORRECT?

26 A YES.

27 Q WAS THERE -- DID YOU SEE ANYTHING IN
28 MR. MILLS' DEPOSITION WHERE HE EXPRESSED THAT HE WAS

1 HAVING SOME OF THE IDENTICAL PROBLEMS FEEDING RYAN,
2 THAT MS. DUVAL WAS HAVING, BACK WHEN SHE HAD CUSTODY OF
3 THE CHILD?

4 A YES.

5 Q WHAT SORTS OF PROBLEMS?

6 A HE DESCRIBED HUNGER STRIKES FOR THE BABY TOO.

7 Q WHEN YOU SAY HUNGER STRIKES, WHAT ARE WE
8 TALKING ABOUT?

9 A HE DESCRIBED THAT BABY WOULD GO PERIODS OF
10 TIME, AS LONG AS A WEEKEND, AND JUST NOT EAT MUCH, OR
11 EAT VERY, VERY LITTLE.

12 Q AND THAT WAS EVEN AS OF THE DATE OF THE
13 DEPOSITION, I THINK SOMETIME IN 2014. RIGHT?

14 A YES.

15 Q THERE'S ANOTHER DEVELOPMENTAL STATEMENT MADE
16 ON EXHIBIT NUMBER 264.

17 DOWN TOWARDS THE BOTTOM OF THE PAGE, SAYS:
18 "RYAN IS NOW ABLE TO CRAWL AND STAND WHILE HOLDING ON
19 TO AN OBJECT. RYAN IS OBSERVED SAYING MAMA, AND DADA,
20 AND IS MORE ACTIVE AND EXPLORATORY IN HIS ENVIRONMENT."

21 DO YOU SEE THAT?

22 A YES.

23 Q FIRST, I GUESS, DID I READ THAT CORRECTLY?

24 A YES.

25 Q DEVELOPMENTALLY, IF WE'RE TELLING THE JUDGE IN
26 THIS REPORT, THE CHILD'S DOING GREAT, DEVELOPMENTALLY
27 RYAN IS NOW ABLE TO CRAWL AND STAND, HOPEFULLY ON TO AN
28 OBJECT, IS THAT GREAT?

1 A NO. THAT'S HORRIBLE AT THIS AGE. THAT'S
2 BEYOND BAD. SO NORMALLY, CHILDREN SHOULD BE ABLE TO
3 STAND, HOLDING ON AT THE VERY LATEST, BY EIGHT MONTHS,
4 NINE MONTHS.

5 THIS WOULD NEVER BE NORMAL, AT -- I DON'T KNOW
6 HOW OLD IS HE, 18, 19 MONTHS NOW, HE'S SO FAR BEHIND.

7 Q ABOUT 19.

8 A AND SO ALSO, THE OTHER ONE ABOUT CRAWLING, WE
9 TALKED ABOUT THAT. THAT'S NORMALLY SOMETHING A CHILD
10 WOULD DO BY TEN MONTHS, NOT 18 MONTHS.

11 MAMA AND DADA, ACCORDING TO THE DENVER
12 DEVELOPMENTAL, SHOULD BE -- CHILD SHOULD BE ABLE TO DO
13 THIS BY NINE MONTHS. ALL CHILDREN.

14 ANY CHILD THAT'S NOT, YOU'RE KIND OF
15 WONDERING, WELL, COULD THERE BE A LANGUAGE DELAY.

16 Q THANK YOU. BEFORE I MOVE ON FROM EXHIBIT 264,
17 FROM A MEDICAL PERSPECTIVE, WAS THERE ANYTHING ELSE
18 SIGNIFICANT THAT YOU NOTED IN THIS COURT REPORT?

19 A YEAH. THERE'S A LAST LINE HERE THAT'S VERY
20 STRANGE, THAT THE JUDGE SAW. IT SAYS:

21 "CSW SCHEELE INDICATED THAT RYAN SEEMS TO
22 EXPRESS MORE FREE WILL AND AUTONOMY WITH HIS FATHER,
23 AND APPEARS TO DEVELOP A PASSIVITY WITH HIS MOTHER,
24 BELIEVED TO BE A RESPONSE TO MOTHER'S OVERBEARING AND
25 RIGID PARENTING TECHNIQUES."

26 Q HOW IS THAT IMPORTANT FROM A MEDICAL
27 PERSPECTIVE?

28 A YEAH. I THINK WHAT WE REALLY EXPECT IF A

1 CHILD GETS TO SEE ONE PARENT ONLY FOUR HOURS A WEEK, WE
2 WOULD EXPECT THE CHILD MAYBE DOESN'T HAVE THE BEST
3 INTERACTION WITH THAT PARENT THAT ONLY SEES THEM FOUR
4 HOURS A WEEK, VERSUS THE PARENT THAT MIGHT SEE THEM
5 LONGER.

6 AND WE WOULDN'T -- WE RARELY -- DOCTORS, IN
7 GENERAL, PEDIATRICIANS AND FAMILY DOCTORS, WHAT WE
8 TEACH OUR MEDICAL STUDENTS IS NOT TO JUDGE PARENTS, BUT
9 TO BE MORE SUPPORTIVE AND EMPATHETIC AND FIND
10 SOLUTIONS.

11 AND WE WOULD RARELY ASCRIBE A PARENT TO RIGID
12 PARENTING TECHNIQUES. I'VE ALMOST NEVER DONE THAT IN
13 MY 20 YEARS PRACTICE.

14 MS. SWISS: OBJECTION: MOVE TO STRIKE AS
15 SPECULATION, FOUNDATION, SOCIAL WORKER, AND RELEVANCE.

16 THE COURT: WHICH PORTION? IT'S A RATHER LONG
17 ANSWER.

18 MS. SWISS: THE PORTION REGARDING THE CRITIQUE
19 OF THE SOCIAL WORKER'S COURT REPORT.

20 THE COURT: OVERRULED.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 BY MR. MCMILLAN:

23 Q NOW, WE KNOW THAT, AS OF NOVEMBER 3RD, 2009,
24 THE BABY HAD ALREADY BEEN DIAGNOSED AS FAILURE TO
25 THRIVE AND AS SUFFERING FROM THE SENSORY INTEGRATION
26 DISORDER. RIGHT?

27 A YES.

28 Q AND ALL THE SPECIALTY CARE THAT YOU MENTIONED

1 EARLIER, THE THINGS LIKE OCCUPATIONAL THERAPIST,
2 ALLERGIST, SPECIALIST FOR FAILURE TO THRIVE.

3 THROUGH YOUR REVIEW OF THE MEDICAL CARE
4 RECORDS, LEADING UP TO, NOT AFTER, BUT LEADING UP TO
5 NOVEMBER 3RD, 2009 -- WERE YOU ABLE TO TELL WHETHER OR
6 NOT MS. DUVAL WAS ALREADY SEEKING OUT THAT HELP?

7 A YES.

8 Q TELL US ABOUT THAT.

9 A SHE WAS ASKING DR. YIM FOR REFERRALS AND
10 SUPPORT TO GET TO SEE A SPECIALIST TO FIND HELP FOR HER
11 SON.

12 Q AND THEN WITH DR. FEDDER, THAT'S WHERE SHE GOT
13 REFERRED TO THE REGIONAL CENTER?

14 A YES.

15 Q FINALLY MADE IT IN?

16 A YES.

17 Q AND THEN DID YOU HAVE A CHANCE, I THINK WE
18 TALKED ABOUT THE REGIONAL CENTER EVALUATION OF
19 OCCUPATIONAL THERAPIST ANGELA ESPINOZA.

20 A YES.

21 Q SO WAS THERE ANY EVIDENCE THAT YOU SAW IN THE
22 MEDICAL RECORDS THAT YOU REVIEWED, TO SUGGEST THAT
23 SOMEHOW MOTHER WAS FAILING HER CHILD IN SEEKING MEDICAL
24 CARE?

25 A NO.

26 Q WAS THERE ANY EVIDENCE THAT YOU SAW IN THE
27 MEDICAL RECORDS LEADING UP TO NOVEMBER 3RD, 2009, THAT
28 WOULD SUGGEST THAT MS. DUVAL WAS INTENTIONALLY AND

1 WILLFULLY FAILING AND REFUSING TO FEED HER 15-MONTH-OLD
2 BABY?

3 A NO.

4 Q WAS THERE ANYTHING YOU SAW IN THE MEDICAL
5 RECORDS LEADING UP TO NOVEMBER 3RD, 2009, THAT WOULD
6 SUGGEST THAT ANYTHING MS. DUVAL DID CAUSED THE BABY'S
7 FAILURE TO THRIVE?

8 A NO.

9 Q NOW, MR. GUTERRES, MONDAY THIS WEEK, OR LAST
10 WEEK, HE STOOD IN FRONT OF THE JURY, AND HE SAID WE
11 SAVED THIS BABY'S LIFE.

12 IS THERE ANYTHING YOU SAW IN ANY OF THE
13 MEDICAL RECORDS, BEFORE OR AFTER NOVEMBER 3RD, 2009,
14 THAT WOULD SUPPORT THAT STATEMENT?

15 A NO. JUST THE OPPOSITE.

16 Q MR. GUTERRES, HE ALSO STOOD UP --

17 THE COURT: THAT'S NOT A PROPER FORM OF
18 QUESTION. OPENING STATEMENTS ARE NOT EVIDENCE. DIRECT
19 YOUR QUESTIONS AS TO EVIDENCE, PLEASE.

20 BY MR. MCMILLAN:

21 Q AS OF THE LAST TIME THAT YOU HAD ANY DATA
22 RELATIVE TO RYAN DUVAL, WHETHER IT BE FROM THE MEDICAL
23 RECORDS, YOUR OWN PERSONAL INTERACTION, ANY DATA AT
24 ALL, IS IT TRUE THAT TODAY BABY RYAN IS THRIVING?

25 A NO. THE -- NORMALLY -- CAN I ANSWER THAT
26 WITH --

27 THE COURT: HE MAY ASK YOU AN EXPLANATION. IF
28 THE ANSWER IS NO, LET'S WAIT FOR THE NEXT QUESTION.

1 BY MR. MCMILLAN:

2 Q THE ANSWER IS NO?

3 A NO.

4 Q CAN YOU PLEASE EXPLAIN.

5 A YEAH. SO THE TERM FAILURE TO THRIVE, WE TRY
6 TO RESERVE THIS FOR JUST CHILDREN UP TO AGE TWO. AND
7 AFTER AGE TWO, WE TRY TO HAVE A BETTER DIAGNOSIS, LIKE
8 SOMETHING SPECIFIC THAT EXPLAINS WHY OUR BABIES ARE NOT
9 GAINING THE PROPER WEIGHT.

10 AND IT'S RARE THAT WE CONTINUE TO USE THE TERM
11 FAILURE TO THRIVE BEYOND AGE TWO AND ON.

12 AND I THINK THE FACT THAT THE LAST MEDICAL
13 RECORDS THAT I WAS ABLE TO SEE FROM COLUMBIA PEDIATRICS
14 WHEN HE WAS FIVE YEARS, ONE MONTH, WHERE THEY STILL
15 USED THE TERM FAILURE TO THRIVE, WHERE THEY STILL USED
16 THE TERM GLOBAL DEVELOPMENTAL DELAY, AND WHERE THEY'RE
17 STILL ORDERING TESTS, SOME THAT HAVE ALREADY BEEN DONE,
18 REORDERING THEM, SUGGESTS THAT EVEN TO THOSE RECORDS,
19 WE DON'T KNOW THE CAUSE, AND ULTIMATELY MAYBE EVEN
20 TODAY.

21 Q WELL, LET'S GO BACK TO THAT BIRTHDAY PARTY FOR
22 A MOMENT. YOU BROUGHT YOUR SON WITH YOU. YES?

23 A YES.

24 Q HOW OLD IS YOUR SON?

25 A HE'S -- HE WAS TEN AT THE TIME.

26 Q TEN. OKAY. DID YOU GET A CHANCE TO OBSERVE
27 HIM INTERACTING WITH RYAN?

28 A YES.

1 Q DID YOU GET A CHANCE TO SORT OF COMPARE THEIR
2 STATURE?

3 A YES.

4 Q WERE YOU ABLE TO DRAW ANY CONCLUSIONS ABOUT
5 WHETHER OR NOT RYAN IS STILL EXHIBITING SYMPTOMS OF A
6 GROWTH DELAY, THROUGH THOSE OBSERVATIONS?

7 A YES.

8 Q PLEASE EXPLAIN.

9 A YES. RYAN'S STILL BELOW THE FIRST PERCENTILE
10 FOR HIS AGE, BASED ON HIS HEIGHT AT THE TIME I SAW HIM,
11 AND HE'S KIND OF REMAINED BELOW THE FIRST PERCENTILE
12 FOR ALL THE RECORDS FOR HIS AGE.

13 SOCIALLY, RYAN IS A REALLY AMICABLE CHILD,
14 VERY SOCIAL STILL. BUT HIS PHYSICAL DEVELOPMENT IS
15 VERY -- LESS, SMALL. VERY SMALL.

16 Q DOES HE STILL HAVE CUPPED EARS?

17 A HE DOES.

18 Q STILL HAS ODD FACIAL FEATURES?

19 A YES.

20 Q SO NONE OF THAT RESOLVED OVER THE COURSE OF
21 THE LAST 83 MONTHS SINCE HE WAS REMOVED FROM MS. DUVAL?

22 A NO.

23 Q LET'S GO TO EXHIBIT 262. BATES NUMBER 00384,
24 THE HEARING -- OR THE REPORT FILED BY MS. CANDIS NELSON
25 FOR THE HEARING DATED APRIL 12, 2010. YOU WITH ME?

26 A YES. OH, HEARING DATE -- I HAVE HEARING
27 DATE 6/21.

28 Q I THINK YOU ARE PROBABLY LOOKING AT THE NEXT

1 ONE.

2 A I DON'T HAVE THE HEARING DATE 8/12.

3 Q I'LL JUST SHOW YOU MINE. EXHIBIT 262, BATES
4 NUMBER 003844 (SIC). TAKE A LOOK AT THAT. IF YOU
5 COULD READ THE YELLOW HIGHLIGHT IN THE, I THINK IT'S
6 THE SECOND PARAGRAPH DOWN OR SO.

7 THE FIRST YELLOW HIGHLIGHT ON THE PAGE.

8 A YEAH. IT SAYS: "CSW SCHEELE DISCUSSED THE
9 FINDING WITH THE FAILURE TO THRIVE CLINIC, AND IT WAS
10 REPORTED THAT RYAN'S HEAD CIRCUMFERENCE HAS IMPROVED."

11 Q OKAY. SO ARE YOU ABLE TO GO LOOK AT THE
12 FAILURE TO THRIVE CLINIC RECORDS AND LET US KNOW HOW
13 THE CHILD'S DOING ON THAT DAY, LEADING UP TO THAT DAY?

14 A ALTHOUGH RYAN HAS GLOBAL DEVELOPMENTAL DELAY
15 AND FAILURE TO THRIVE DOCUMENTED IN THE RECORDS, PRIOR
16 TO THIS DAY, HE NEVER REALLY HAD HEAD CIRCUMFERENCE
17 THAT WAS BELOW THE FIFTH PERCENTILE.

18 IT WAS ALWAYS IN THE NORMAL RANGE. AND I
19 THINK IT STILL REMAINS LOW, BUT NORMAL RANGE.

20 Q AND, IN FACT, HEAD CIRCUMFERENCE IS GRAPHED ON
21 A DIFFERENT CHART. IF WE LOOK AT EXHIBIT 168
22 AND 1076.15, OR IS THAT LENGTH?

23 A THAT'S LENGTH AT THE TOP.

24 Q DO WE HAVE A GRAPH FOR HEAD CIRCUMFERENCE?

25 A YES. IT MAY -- MY GUESS IS -- I MEAN, I'M
26 PRETTY MUCH SURE IT'S IN THE HARBOR-UCLA RECORDS, BUT
27 IT ALSO MAY BE IN DR. YIM'S RECORD.

28 Q LET'S DO THIS. I'M GOING TO HAVE ONE OF MY

1 PEOPLE HERE TRY AND FIND THE HEAD CIRCUMFERENCE CHART,
2 PROBABLY IN HARBOR-UCLA. LOOK IN, PARTICULARLY EXHIBIT
3 NUMBER 1076. SHOULD BE IN OUR LIST.

4 AND IN THE MEANTIME, SINCE THIS DID CATCH MY
5 ATTENTION, LET'S TALK ABOUT THIS. THE LENGTH. LENGTH
6 WE'RE PLOTTING THAT TOO, ALL ALONG THE TIME PERIOD FROM
7 HIS FIRST VISIT WITH DR. YIM UP TO HIS LAST VISIT WITH
8 HARBOR-UCLA. WHAT DOES THAT TELL US?

9 A WELL, IT KIND OF SHOWS A SIMILAR PROBLEM. AND
10 WHEN WE THINK ABOUT LENGTH TO AGE, WE USE THE TERM
11 STUNTED.

12 AND FORTUNATELY, RYAN IS IN THE FAILURE TO
13 THRIVE ZONE FOR LENGTH TO AGE, BUT HE IS MOVING TOWARD
14 MORE THE NORMAL FIFTH PERCENTILE, I THINK THIS MIGHT
15 BE, OR THIRD PERCENTILE.

16 HE'S GETTING CLOSER TO THE NORMAL FOR LENGTH,
17 EVEN THOUGH THE WEIGHT HAS NOT IMPROVED ENOUGH -- OR
18 IMPROVED AT ALL.

19 Q SO IF WE DO A COMPARISON OF HIS LENGTH, AM I
20 CORRECT, IT APPEARS THAT, IN TERMS OF HIS HEIGHT, HE'S
21 SORT OF STARTING TO CATCH UP A LITTLE BIT?

22 A YES. BUT WE STILL DECLARE THIS FAILURE TO
23 THRIVE.

24 Q THEN WHEN WE COMPARE THAT WITH THE WEIGHT,
25 EVEN THOUGH HE STARTED TO GROW TALLER, HE'S STILL NOT
26 PUTTING ON THAT CATCH-UP GROWTH WEIGHT?

27 A ABSOLUTELY NOT. CATCH-UP GROWTH WEIGHT WOULD
28 HAVE BEEN THE CURVE THAT WOULD LEAD TO THE CROSS OF

1 THESE NORMAL ZONES. SO HIS WEIGHT REMAINS ACTUALLY
2 DIVERGING FROM THE NORM.

3 Q WHEN YOU SAY DIVERGING FROM THE NORMAL, WHAT
4 DO YOU MEAN?

5 A HIS GROWTH IS SO SLOW, IT'S NOT EVEN NORMAL
6 RATE OF GROWTH FOR HIS AGE. IT'S BELOW, AND CATCH-UP
7 GROWTH WOULD BE TWO TO THREE TIMES THAT.

8 Q WHY IS IT THAT WE DON'T SEE THAT SAME
9 DEVIATION HAPPENING WITH HIS HEIGHT?

10 A WELL, THE HEIGHT IS SPARED. IT'S THE LAST
11 THING THAT GOES, IN KIDS WITH MALNUTRITION. THE MOST
12 SEVERELY MALNOURISHED BABIES, THEY WILL DROP DOWN IN
13 HEIGHT TOO.

14 BUT THIS IS OFTEN SPARED, WHILE WEIGHT IS THE
15 ONE THAT'S FIRST NOTICEABLE. THAT'S WHY MOST STUDIES,
16 WHEN THEY TALK ABOUT FAILURE TO THRIVE, THEY TALK ABOUT
17 WEIGHT MOSTLY.

18 Q I'VE ALSO SEEN SOME MENTION IN THE MEDICAL
19 RECORDS OF BMI. WHAT IS THAT?

20 A BODY MASS INDEX. MOST AMERICANS NOW KNOW WHAT
21 THIS MEANS IN TERMS OF THE OTHER PROBLEM, OBESITY,
22 WHERE YOUR WEIGHT IS TOO HIGH FOR YOUR HEIGHT.

23 AND IN FAILURE TO THRIVE, THERE'S A CHART WE
24 HAVE, ANOTHER CHART WHICH YOU'RE GOING TO MAYBE FIND,
25 IN WHICH HEAD CIRCUMFERENCE FROM ONE -- FROM THE CDC,
26 WITH HEAD CIRCUMFERENCE ON ONE SECTION, AND BODY MASS
27 INDEX ON THE LOWER SECTION.

28 AND THAT WILL SHOW THE SEVERE FAILURE TO

1 THRIVE ALSO.

2 Q I THINK WE MAY HAVE FOUND THE ANSWER TO OUR
3 QUESTION ON HEAD CIRCUMFERENCE. I'LL JUST LEND YOU
4 MINE. IT'S EXHIBIT NUMBER 733, BATES NUMBER 23734.
5 WHAT ARE WE LOOKING AT THERE?

6 A IT SAYS -- THIS IS A CDC FORM FOR HEAD
7 CIRCUMFERENCE. AND THE BOTTOM WOULD BE BODY MASS
8 INDEX.

9 AND IT'S RYAN'S NAME ON THE TOP, RYAN DUVAL,
10 AND IT'S THE BIRTH TO 36 MONTHS, ONE, AND IT'S A
11 TWELVE-MONTH RECORD, WHICH DOCUMENTS THAT HE'S IN THE
12 NORMAL ZONE BETWEEN TENTH AND 25TH PERCENTILE FOR HEAD
13 CIRCUMFERENCE.

14 Q I'M LOOKING AT THE WEIGHT, AND WE'RE WAY OFF
15 THE CHART, AND I'M LOOKING AT THE HEIGHT OR THE LENGTH,
16 AND WE'RE AT THE LOW END OF THE CHART. HOW IS IT
17 POSSIBLE THAT THE HEAD CIRCUMFERENCE CAN BE IN A NORMAL
18 RANGE?

19 A YEAH. SO IF HEAD CIRCUMFERENCE IS SMALL, WE
20 CALL THAT MICROCEPHALY. MICRO MEANS SMALL, AND
21 CEPHALY, LATIN TERM FOR BRAIN. IF THE HEAD
22 CIRCUMFERENCE IS NORMAL, WE WOULD CALL THIS NORMAL.

23 AND THE REASON THAT HAPPENS IS THE BODY WILL
24 PRESERVE CALORIES TO THE VITAL ORGANS. SO IF YOU HAVE
25 TO LOSE CALORIES, WHERE WE'LL SEE IT IS IN THE BUTT OR
26 THE LEGS OR THE ARMS OF A CHILD.

27 BUT THE LAST PLACE IS THE HEAD CIRCUMFERENCE.
28 SO CHILDREN HAVE TO BE SEVERELY MALNOURISHED TO DROP

1 THEIR HEAD CIRCUMFERENCE. AND THE MOST COMMON CAUSE IS
2 A BRAIN DISORDER.

3 Q SO IS IT SIGNIFICANT, THEN, THAT WHEN WE'RE
4 REPORTING TO THE COURT THIS HEAD CIRCUMFERENCE, IS IT
5 SIGNIFICANT THAT WE DON'T, ALONG WITH THAT INFORMATION,
6 GIVE THE COURT THE BMI AND THE WEIGHT AND THE
7 DEVELOPMENT OF THE CHILD?

8 MS. SWISS: OBJECTION: LACKS FOUNDATION.

9 THE COURT: SUSTAINED AS TO GIVING TO THE
10 COURT. HE'S HERE AS A MEDICAL WITNESS, NOT AN EXPERT
11 ON WHAT'S REPORTED TO THE COURT.

12 BY MR. MCMILLAN:

13 Q LET ME ASK THIS. AS A MEDICAL DOCTOR, IF
14 YOU'RE TRYING TO ASSESS WHETHER OR NOT THIS CHILD IS
15 TRULY IMPROVING, WOULD IT BE IMPORTANT, MAYBE EVEN
16 CRITICAL, FOR YOU TO KNOW WHAT'S GOING ON WITH THE
17 WHOLE PICTURE, THE HEAD CIRCUMFERENCE, THE LENGTH, THE
18 WEIGHT, THE BMI?

19 A YES.

20 Q WHY?

21 A BECAUSE THE BMI AND THE WEIGHT ARE MORE
22 SENSITIVE MEASURES FOR FAILURE TO THRIVE THAN HEAD
23 CIRCUMFERENCE.

24 SO IF YOU DIDN'T HAVE THAT, YOU WOULD MISS SO
25 MANY CHILDREN. NINETY PERCENT OF CHILDREN WITH FAILURE
26 TO THRIVE MIGHT HAVE NORMAL HEAD CIRCUMFERENCE, AND YOU
27 WOULD NOT EVEN KNOW THAT THEY WERE STILL HAVING FAILURE
28 TO THRIVE.

1 Q AND AS A MEDICAL DOCTOR, YOU HAVE TO COUNSEL
2 PARENTS ABOUT SOME DIFFICULT DECISIONS WITH THEIR
3 CHILD. RIGHT?

4 A YES.

5 Q AND IN MAKING THOSE DIFFICULT DECISIONS ABOUT
6 THE CARE FOR A CHILD, IS IT APPROPRIATE TO LEAVE OUT
7 SOME OF THESE MEASUREMENTS?

8 A NO.

9 Q WHY NOT?

10 A BECAUSE THE WEIGHT IS SO IMPORTANT FOR
11 CHILDREN WITH FAILURE TO THRIVE. WE'VE GOT TO GET THE
12 WEIGHT UP TO A LEVEL THAT'S SAFE FOR THE CHILD.

13 Q IN FACT, THAT'S THE MOST CRITICAL MEASUREMENT
14 WE NEED TO LOOK AT WHEN WE'RE TRYING TO DETERMINE
15 WHETHER OR NOT THIS CHILD REALLY IS IMPROVING. WE NEED
16 TO LOOK AT THE WEIGHT.

17 IS THAT RIGHT?

18 A THE WEIGHT OR THE WEIGHT VERSUS HEIGHT. THE
19 BMI.

20 Q LET ME LOOK REAL QUICK AT THE COURT REPORT.
21 THE SECOND HIGHLIGHTED SENTENCE AT THE BOTTOM OF --
22 WHAT EXHIBIT NUMBER WAS THAT AGAIN? I'M SORRY.

23 A 262.

24 Q 262. SECOND HIGHLIGHTED SENTENCE AT THE
25 BOTTOM OF 262, CAN YOU READ THAT FOR US?

26 A "PER CSW, RYAN CONTINUES TO PROGRESS IN HIS
27 FATHER'S CARE, AND CONTINUES TO SHOW IMPROVEMENTS IN
28 HIS WEIGHT GAIN, SOCIALIZATION, FREE EXPLORATION, AND

1 OVERALL DEVELOPMENT."

2 Q WELL, CAN YOU TURN BACK TO TAB NUMBER H, THAT
3 WOULD BE THE FAILURE TO THRIVE CLINIC RECORDS, TRIAL
4 EXHIBIT NUMBER 1076, AND FIND FOR US THE DATE THAT
5 CORRESPONDS WITH THE DATE OF THAT COURT REPORT?

6 A YES.

7 Q OKAY. AND WHAT DO WE SEE THERE?

8 A WE SEE --

9 Q ACTUALLY, FIRST, I'M SORRY TO INTERRUPT. GIVE
10 ME THE PAGE NUMBER.

11 A PAGE NUMBER IS 1076.103.

12 Q AND WHAT DO WE SEE THERE?

13 A WE SEE A WEIGHT, BUT IT DOESN'T GIVE US ON THE
14 PERCENTILES WHAT IT IS. WE SEE A HEAD CIRCUMFERENCE,
15 WE SEE EVIDENCE THAT HE'S -- WHAT -- IN THE VERY FIRST
16 LINE, HE'S EATING LESS TABLE FOODS.

17 IT ALSO -- WE HAVE SOME INFORMATION ABOUT HIS
18 DEVELOPMENT WHERE HE SAYS PAPA. WHERE IT SAYS HE SAYS
19 PAPA. WHICH NORMALLY WOULD BE SOMETHING THAT WE'D
20 EXPECT NON-SPECIFICALLY BY NINE MONTHS.

21 AND THEN THE DIAGNOSIS IS FAILURE TO THRIVE
22 AND GLOBAL DEVELOPMENTAL DELAY. NUTRITION CONSULT, AND
23 NOW THE HARBOR-UCLA FAILURE TO THRIVE CLINIC IS ASKING
24 FOR HELP TO GET HIS GLOBAL THERAPY BETTER.

25 THEY'RE REFERRING HIM OUT OF THEIR CLINIC BACK
26 TO THE REGIONAL CENTER FOR MORE RESOURCES TO PUT TO
27 BEAR TO HELP RYAN.

28 Q SO IS THE BABY HERE MAKING GREAT STRIDES AND

1 IMPROVING?

2 A NO.

3 Q IN FACT, WE'RE BRINGING IN REINFORCEMENTS?

4 A YES.

5 Q AND YOU SAID THAT THEY GIVE YOU THE WEIGHT
6 HERE, BUT THEY DIDN'T DO THE CALCULATION TO FIGURE OUT
7 THE PERCENTAGE OR THE BMI. ARE YOU ABLE TO DO THAT
8 CALCULATION?

9 A YES. I CAN EITHER DO IT WITH MY PHONE APP OR
10 I CAN LOOK AT THE GRAPH THAT'S IN HERE.

11 Q WHICH ONE'S THE MOST EFFICIENT?

12 A PHONE.

13 Q I THINK YOU HAVE TO GET PERMISSION TO TURN IT
14 ON, THOUGH.

15 THE COURT: WELL, YOU JUST NEED THE
16 CALCULATOR, DON'T YOU?

17 THE WITNESS: (NO AUDIBLE RESPONSE)

18 THE COURT: ALL RIGHT. TURN IT ON. I THINK
19 THE CALCULATOR PROBABLY WORKS REGARDLESS. AT LEAST
20 MINE DOES.

21 THE WITNESS: OKAY. SO HE IS 19 MONTHS OLD.
22 AND HIS LENGTH IS 75, 75 INCHES. CENTIMETERS, MAYBE --
23 BY MR. MCMILLAN:

24 Q CENTIMETERS.

25 A OKAY. AND HIS WEIGHT IS 7.82 KILOS. SO WHAT
26 I HAVE, I DIDN'T PUT THE HEAD CIRCUMFERENCE IN, BUT
27 WHAT I HAVE IS HIS LENGTH IS LESS THAN THE FIRST
28 PERCENTILE, AND HIS WEIGHT IS LESS THAN THE FIRST

1 PERCENTILE.

2 SO HE'S FAILURE TO THRIVE FOR BOTH. HE HASN'T
3 IMPROVED AT THIS POINT.

4 THE COURT: AND WE'RE GOING TO RECESS AT THIS
5 TIME. WE'RE IN RECESS. WE'LL RESUME AT 1:30. ALL
6 JURORS PLEASE REMEMBER THE ADMONITION. HAVE NO
7 COMMUNICATION WITH ANYBODY ON ANY PERSON OR SUBJECT OR
8 ISSUE IN THIS CASE.

9 DO NOT FORM ANY OPINION OR EXPRESS ANY
10 OPINION. WE'LL RESUME AT 1:30.

11 (LUNCH WAS TAKEN FROM 12:00 P.M. TO 1:31 P.M.)

12 THE COURT: ALL RIGHT. GET THE JURORS IN,
13 PLEASE.

14 (JURY PRESENT)

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

17 THE COURT: WE'RE ON THE RECORD. EVERYONE MAY
18 BE SEATED. EVERYBODY IS PRESENT. DR. ACHAR IS ON THE
19 STAND, AND YOU MAY CONTINUE, MR. MCMILLAN.

20 MR. MCMILLAN: THANK YOU, YOUR HONOR.

21 BY MR. MCMILLAN:

22 Q ALL RIGHT. WE'RE GOING TO TRY TO STREAMLINE A
23 LITTLE BIT. WE'RE GOING TO CUT AHEAD TO THE
24 LAST-MINUTE INFORMATION FOR THE COURT DATED
25 JUNE 21, 2010, BY CANDIS NELSON, TIKA SMITH. EXHIBIT
26 NUMBER 261, BATES NUMBER 3841. AND ARE YOU THERE,
27 DOCTOR?

28 A YES.

1 Q IF YOU CAN TURN TO THE SECOND PAGE, THAT WOULD
2 BE BATES 3842, THE FIRST SENTENCE THERE UNDER
3 ASSESSMENT:

4 "THIS CASE CAME TO THE ATTENTION OF DCFS AS A
5 RESULT OF SEVERE NEGLECT OF THE CHILD, RYAN DUVAL, WHO
6 IS REPORTEDLY SUFFERING FROM FAILURE TO THRIVE WHILE IN
7 THE ONGOING CUSTODY OF HIS MOTHER WITH MINIMAL
8 VISITATION WITH HIS FATHER."

9 FIRST, LET ME ASK YOU, WITH RESPECT TO SEVERE
10 NEGLECT OF THE CHILD, AFTER YOUR REVIEW OF ALL THESE
11 MEDICAL RECORDS, DID YOU FIND ANY MEDICAL EVIDENCE THAT
12 THIS CHILD HAS BEEN SEVERELY NEGLECTED?

13 A NO.

14 Q AND I THINK YOU SPOKE A LITTLE BIT EARLIER
15 ABOUT YOUR REVIEW OF THE CATC CLINIC RECORDS OF
16 DR. EVANS.

17 A YES.

18 Q DOES THAT CLINIC VISIT WITH DR. EVANS, DOES
19 THAT FACTOR AT ALL INTO YOUR OPINION HERE THAT THE
20 CHILD -- THERE'S NO EVIDENCE OF SEVERE NEGLECT OF THIS
21 CHILD?

22 A YES.

23 Q LET'S TURN BACK THERE FOR A MOMENT, AND YOU
24 CAN EXPLAIN TO US HOW. IT WOULD BE TAB E. AND IT'S
25 SPECIFICALLY EXHIBIT NUMBER 10. AND IF YOU COULD TURN
26 FOR ME TO THE PAGE BEARING BATES NUMBER 002019,
27 EXHIBIT 10. LET ME KNOW WHEN YOU'RE THERE.

28 A I'M THERE.

1 Q OKAY. THERE'S A SERIES OF CHECK BOXES DOWN
2 ALONG THE LEFT-HAND SIDE OF THE PAGE, AND THERE'S SOME
3 STATEMENTS NEXT TO THOSE. I'LL JUST LOOK AT THE FIRST
4 ONE HERE. IT SAYS:

5 "INFANTS ZERO TO TWO YEARS OR HIGH-RISK
6 CHILDREN MUST BE MEDICALLY EXAMINED WITHIN THREE DAYS
7 OF THE INITIAL PLACEMENT. HIGH-RISK MEANS ONE OR THE
8 MORE FOLLOWING CONDITIONS EXIST:

9 "PAST OR PRESENT MEDICAL CHRONIC ILLNESS,
10 CRYING, POSSIBLE CONTAGIOUS DISEASE, ON MEDICATION,
11 AND/OR A SOCIAL PROBLEM."

12 FIRST, DID I READ THAT CORRECTLY?

13 A YES.

14 Q AND THEN BELOW IT THERE'S A SERIES OF OTHER
15 QUESTIONS AND CHECK BOXES. RIGHT?

16 A YES.

17 Q AND IN YOUR REVIEW OF THIS PARTICULAR PAGE OF
18 THE MEDICAL RECORDS, WHAT'S THE SIGNIFICANCE OF WHAT'S
19 GOING ON HERE?

20 A SO DR. EVAN'S FIRST STEP IS TO EVALUATE IF
21 THERE'S ANY EMERGENCY THAT SHE FOUND FOR RYAN DUVAL,
22 AND IF SHE DID, SHE COULD CATEGORIZE IT AS A HIGH-RISK
23 CASE. AND SHE DIDN'T.

24 THERE'S NO EVIDENCE OF SOMETHING SIGNIFICANT,
25 PAST OR PRESENT, AND INCLUDING SOCIAL PROBLEMS THAT SHE
26 IDENTIFIED.

27 Q NOW, DOWN AT THE -- TOWARDS THE BOTTOM OF THE
28 PAGE, BUT NOT ALL THE WAY DOWN, YOU SEE SOME PHYSICAL

1 EXAMINATION RESULTS.

2 AGE ONE YEAR, TWO MONTHS, HEIGHT IN THE FOURTH
3 PERCENTILE, WEIGHT IN THE BELOW-THIRD PERCENTILE, HEAD
4 CIRCUMFERENCE IS AT THE EIGHTH PERCENTILE.

5 IN SEEING THOSE DATA POINTS THERE, DOES THAT
6 LOOK LIKE A CHILD THAT WOULD BE IN DISTRESS, IF YOU CAN
7 TELL?

8 A WELL, THIS -- THAT LOOKS LIKE A CHILD WITH
9 FAILURE TO THRIVE, SEVERE FAILURE TO THRIVE, YES.

10 Q OKAY. AND THEN, IF YOU TURN TO -- IF YOU TURN
11 TO PAGE 002030, AND IT'S STILL IN EXHIBIT 10,
12 DR. EVAN'S RECORDS.

13 CAN YOU EXPLAIN TO US WHAT THIS IS, TITLED
14 MENTAL HEALTH SCREENING TOOL, CHILD ZERO TO 5 YEARS?

15 MS. SWISS: I OBJECT. I'M SORRY.
16 MR. MCMILLAN, I DON'T HAVE THAT PAGE IN EXHIBIT 10.

17 THE COURT: DID YOU FIND IT?

18 MS. SWISS: NO. MY EXHIBIT 10 IS ONLY THREE
19 PAGES.

20 THE COURT: DEFENSE COPY DOESN'T HAVE THAT
21 PAGE OR THE LAST ONE.

22 MR. MCMILLAN: ONE SECOND, YOUR HONOR. OKAY.
23 SORRY ABOUT THAT. ALL RIGHT. I APOLOGIZE. THAT ONE
24 WAS ON ME.

25 BY MR. MCMILLAN:

26 Q IT'S EXHIBIT 167. 2030 IS THE BATES NUMBER.
27 AND DOCTOR, IF I COULD GET YOU TO DO ME A FAVOR IN YOUR
28 BOOK UP THERE, WRITE 167 AT THE TOP OF THAT PAGE. THAT

1 WOULD BE GREAT.

2 OKAY. NOW WE'RE BACK ON TRACK. THAT
3 PAGE, 2030, EXHIBIT 167 -- YOU WANT ME TO WAIT, YOUR
4 HONOR?

5 THE COURT: I APPRECIATE IT SO I CAN SEE THE
6 DOCUMENT. ALL RIGHT. I HAVE PAGE 2030. IS THAT THE
7 LAST -- IS THAT THE ONE YOU'RE ON?

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

9 THE COURT: OKAY.

10 BY MR. MCMILLAN:

11 Q OKAY. 2030, WHAT IS THAT?

12 A SO THIS IS A DOCUMENT FROM THE COUNTY OF LOS
13 ANGELES DEPARTMENT OF CHILDREN AND FAMILY SERVICES.
14 THIS WAS DATED OCTOBER 21, 2009. AND THIS IS THE
15 CONTINUATION OF THE NOTES BY DR. EVANS WHO HAS BEEN --
16 REFERRED THE PATIENT FROM DCFS TO EVALUATE THIS CHILD.

17 DR. EVANS ON THIS PAGE EVALUATED FOUR THINGS.
18 NUMBER ONE, DR. EVANS CHECKED OFF NO FOR THE QUESTION,
19 "HAS THE CHILD EXPERIENCED SEVERE PHYSICAL OR SEXUAL
20 ABUSE, EXTREME OR CHRONIC NEGLECT, OR BEEN EXPOSED TO
21 EXTREME VIOLENT BEHAVIOR OR TRAUMA?"

22 AND DR. EVANS CHECKED OFF NO. NUMBER TWO,
23 "DOES THE CHILD --"

24 Q HOLD ON, DOCTOR. BEFORE WE MOVE ON TO
25 NUMBER TWO, WHAT'S THE SIGNIFICANCE IN MEDICAL TERMS,
26 WHAT'S THE SIGNIFICANCE OF DR. EVANS EXAMINING AND
27 ASSESSMENT OF THE CHILD AND CHECKING NO IN PARTICULAR,
28 IN RELATION TO THE EXTREME OR CHRONIC NEGLECT?

1 A YES, DR. EVANS DID A FULL EXAM OF THIS CHILD
2 AND UNCOVERED THAT THE CHILD HAS FAILURE TO THRIVE AND
3 DEVELOPMENTAL DELAY, AND ASSESSED IF THERE WAS ANY
4 RELATION TO NEGLECT AS A POSSIBLE CAUSE, AND
5 SPECIFICALLY SAID NO.

6 Q GOING ON TO NUMBER TWO THERE, UNDER BEHAVIOR,
7 SHE CHECKED THAT OFF AS NO AS WELL. RIGHT?

8 A YES. AND SO --

9 Q GO AHEAD. WHAT'S THE SIGNIFICANCE?

10 A SO BABIES AND YOUNG CHILDREN CAN'T NECESSARILY
11 EXPLAIN A HISTORY. SO THE DOCTORS USE BEHAVIOR
12 EVALUATION TO MAKE SURE THE BABIES ARE SAFE.

13 AND THIS QUESTION, "DOES THE CHILD EXHIBIT
14 UNUSUAL OR UNCONTROLLABLE BEHAVIOR?" AND DR. EVANS
15 SAID NO.

16 Q AND THEN GOING ON TO QUESTION NUMBER THREE,
17 "DOES THIS CHILD SEEM TO BE DISCONNECTED, DEPRESSED,
18 EXCESSIVELY PASSIVE OR WITHDRAWN?"

19 AND SHE ALSO CHECKED NO THERE. WHAT'S THE
20 SIGNIFICANCE OF THAT?

21 A THOSE MIGHT ALSO BE FINDINGS FOR CHILD
22 NEGLECT. A CHILD THAT'S BEEN NEGLECTED OR ABUSED MAY
23 HAVE THESE FINDINGS AS WELL. AS PART OF HER FULL
24 ASSESSMENT OF BABY RYAN, AND SHE CHECKED OFF NO.

25 Q AND THE LAST ONE ON THIS PAGE, NUMBER FOUR,
26 UNDER PLACEMENT CHILD CARE EDUCATION STATUS IT SAYS:
27 "DOES THIS CHILD EXHIBIT BEHAVIORS THAT MAY NOT ALLOW
28 HIM OR HER TO REMAIN IN HIS CURRENT LIVING OR CHILD

1 CARE SITUATION?"

2 AND SHE CHECKS NO TO THAT. WHAT'S THE
3 SIGNIFICANCE OF HER CHECKING NO TO THAT ONE?

4 A AT THE TIME THE BABY WAS STILL WITH MOM, SO
5 DR. EVANS FELT THAT STAYING WITH MOM WAS CORRECT, AND
6 THERE'S NO INDICATION FOR CHANGING THAT SITUATION FOR
7 BABY.

8 Q IS THERE ANYTHING ELSE ON THAT PARTICULAR PAGE
9 OF SIGNIFICANCE TO YOUR OPINIONS THAT YOU FORMED IN
10 THIS CASE?

11 A NO.

12 Q SO GOING BACK NOW TO THAT LAST-MINUTE
13 INFORMATION THAT MS. NELSON AND MS. SMITH PREPARED FOR
14 THE COURT FOR THE HEARING DATE ON JUNE 21, 2010.

15 AND FOCUSING FOR A MOMENT ON THIS STATEMENT,
16 "THE CASE CAME TO THE ATTENTION OF DCFS AS A RESULT OF
17 SEVERE NEGLECT OF THE CHILD."

18 DID YOU USE DR. EVANS' RECORDS, THE ONES WE
19 JUST WENT OVER, PLAYING A PART AND FORMING A BASIS FOR
20 YOUR OPINION THAT THERE WAS NO SEVERE NEGLECT OF THIS
21 CHILD?

22 A YES.

23 Q HOW SO?

24 A DR. EVANS WAS REFERRED TO SEE THIS PATIENT
25 FROM DCFS TO EVALUATE THIS CHILD FOR THIS PROBLEM. AND
26 HE SPECIFICALLY EVALUATED THIS CHILD IN MULTIPLE WAYS
27 AS A SPECIALIST COULD, AND DIDN'T FIND ANY EVIDENCE OF
28 NEGLECT, LET ALONE SEVERE NEGLECT.

1 Q AND THEN THERE IS ANOTHER STATEMENT IN HERE,
2 SAYS: "HOWEVER, MOTHER CONTINUES TO WORK ON TRYING TO
3 FIND EXPLANATION FOR RYAN'S DEVELOPMENTAL ISSUES, WHICH
4 EXONERATE HER. SHE CONTINUES TO SEEK SOME DIAGNOSIS OR
5 AILMENT TO FIX OR RESEARCH FOR RYAN."

6 BY JUNE 21ST OF 2010, THE MEDICAL RECORDS ARE
7 INDICATING THAT THERE IS SOME PROBLEM THAT RYAN HAS,
8 INTERNALLY. RIGHT?

9 A YES.

10 Q SO IN YOUR REVIEW OF ALL THIS MEDICAL
11 EVIDENCE, DID YOU FIND ANY EVIDENCE TO SUGGEST THAT
12 SOMEHOW RAFAELINA WAS DOING THE WRONG THING IN HER
13 TREATMENT OF THE BABY?

14 A NO.

15 Q OKAY. ANOTHER HERE:

16 "RYAN HAS BEEN UNDER THE CARE OF MULTIPLE
17 SERVICE PROVIDERS AND MEDICAL PROFESSIONALS WHO HAVE
18 NOTED NEGLECT OR LACK OF STIMULATION IN EARLY CHILDHOOD
19 AS THE SOURCE OF HIS DELAYS."

20 LET ME ASK YOU THIS FIRST. WITH A CHILD LIKE
21 RYAN, WHERE WE HAVE THAT SENSORY INTEGRATION DISORDER
22 AND DEVELOPMENTAL DELAY, IS THAT SOMETHING THAT'S
23 CAUSED BY LACK OF STIMULATION IN EARLY CHILDHOOD?

24 A NO.

25 Q IS THERE SOME CONDITION THAT LACK OF
26 STIMULATION IN EARLY CHILDHOOD MIGHT CAUSE?

27 A WELL, THE ANSWER IS WE DON'T KNOW FOR --
28 PERSONALLY. BUT DR. YIM, DR. FEDDER, DR. EVANS,

1 DR. EGGE, DR. BERKOWITZ, ALL THE DOCTORS THAT EVALUATED
2 RYAN, NONE OF THEM FOUND A LINK OR BLAMED LACK OF
3 STIMULATION AS A SOURCE OF HIS DELAYS.

4 THEY, IN FACT, WERE LOOKING FOR
5 GASTROINTESTINAL PROBLEMS, LUNG PROBLEMS, GENETIC
6 PROBLEMS, OTHER POTENTIAL CAUSES FOR THIS, BUT THEY
7 DIDN'T -- THEY DIDN'T ATTRIBUTE ANY OF HIS DELAYS TO
8 LACK OF STIMULATION IN EARLY CHILDHOOD.

9 THERE'S NO MEDICAL DOCTORS OR MEDICAL RECORDS
10 THAT MAKE THAT LINK.

11 Q SO LET ME MAKE SURE I UNDERSTAND THIS
12 CORRECTLY. THROUGHOUT THE MEDICAL EVIDENCE THAT YOU
13 REVIEWED IN THIS CASE, THERE IS NO SUGGESTION BY ANY
14 LICENSED PROFESSIONAL THAT LACK OF STIMULATION IN EARLY
15 CHILDHOOD WAS THE SOURCE OF RYAN DUVAL'S DELAYS?

16 A THERE'S NO EVIDENCE.

17 Q NEXT ONE SAYS HERE, ACTUALLY PART OF THE SAME
18 SENTENCE, SAYS: "COMPLETE COMPLIANCE BY HIS FATHER."

19 NOW, YOU REVIEWED THE MEDICAL RECORDS FOR
20 HARBOR-UCLA LOOKING TO SEE IF, IN FACT, FATHER DID HAVE
21 COMPLETE COMPLIANCE WITH ALL THEIR RECOMMENDATIONS AND
22 INSTRUCTIONS. RIGHT?

23 A YES.

24 Q TELL US WHAT YOU FOUND.

25 A WELL, LIKE MANY PARENTS, FATHER DIDN'T COMPLY
26 WITH ALL THE RECOMMENDATIONS. HE NO-SHOWED ON A NUMBER
27 OF VISITS, AND CANCELED SOME VISITS AS WELL. ALTHOUGH
28 HIS FAMILY AND FATHER APPEARED TO BE TRYING TO HELP

1 RYAN, THEY MISSED BEING IN COMPLETE COMPLIANCE.

2 Q AND WHEN YOU WENT THROUGH MS. DUVAL'S RECORDS,
3 PARTICULARLY THE RECORDS FROM BIRTH TO JUNE 2010, WHEN
4 YOU HAD REGULAR PEDIATRIC CARE, DID YOU SEE ANY
5 INDICATION IN THERE ANYWHERE THAT MOM EVER MISSED AN
6 APPOINTMENT OR DIDN'T DO SOMETHING THE DOCTOR WANTED
7 HER TO DO?

8 A NO. EXCEPT ONCE, AND DR. YIM ADDRESSED THIS.
9 SO ONE TIME, MOM TOOK BABY TO AN URGENT CARE DOCTOR WHO
10 WANTED TO GIVE BABY ANTIBIOTICS FOR A POSSIBILITY OF A
11 VIRAL INFECTION.

12 MOM DECIDED NOT TO GIVE THE ANTIBIOTICS, AND
13 YET FOLLOWED UP WITH DR. YIM, WHO SAID THAT WAS A GOOD
14 DECISION, AND FELT ALSO THAT THE BABY HAD A VIRAL
15 INFECTION. AND NORMALLY THEY DO NOT GIVE ANTIBIOTICS
16 FOR THAT.

17 Q THAT SORT OF BRINGS US TO THIS ISSUE OF
18 DELAYED VACCINATIONS. IN YOUR PRACTICE, IN TEACHING
19 YOUR OWN STUDENTS, IS THERE SOMETHING THAT YOU DEAL
20 WITH IN YOUR FAMILY PRACTICE, FAMILY CARE IN RELATIONS
21 TO DELAYED VACCINATION?

22 A YES.

23 Q CAN YOU EXPLAIN THAT FOR US PLEASE?

24 A YES, WE DEAL WITH ALL THE TIME. I HAD A
25 FAMILY, A MOTHER AND FATHER CAME TO SEE ME WITH THEIR
26 SEVENTH-GRADER, ASKING ME TO SIGN A FORM SO THEY DIDN'T
27 HAVE TO TAKE TETANUS.

28 NOW, CALIFORNIA HAS A LAW THAT REQUIRES

1 VACCINATIONS TO BE GIVEN BEFORE SCHOOL ENTRY AT A
2 CERTAIN POINT. AND I HAD TO MAKE THE DECISION WHAT TO
3 DO WITH THIS. THE CHILD WAS SUPPOSED TO GET TETANUS,
4 BUT I UNDERSTOOD WHAT MOM WAS WORRIED ABOUT.

5 MOM TURNED TO ME AND SHE SAID, MY CHILD HAS
6 AUTISM TENDENCIES, AND GOTTEN FIVE TETANUS SHOTS
7 ALREADY, AND ALL THESE VACCINATIONS. AND MOM IN HER
8 HEARTS OF HEARTS, KNOWING THAT HER CHILD HAS AUTISM,
9 DIDN'T WANT TO GIVE ANYMORE VACCINATIONS.

10 SHE FELT THAT WAS RESPONSIBLE. NOW, I KNEW
11 THE VACCINE WAS NOT CAUSING AUTISM IN HER CHILD. THE
12 SCIENTIFIC EVIDENCE PROVES THAT. BUT I WENT ALONG WITH
13 MOM AND SUPPORTED MOM WITH DELAYED VACCINATION
14 SCHEDULE, AND GAVE HER A NOTE FOR THE SCHOOL, AND
15 CALLED THE SCHOOL REPRESENTATIVE AND SAID THIS IS WHAT
16 I'M DOING.

17 I'M GOING TO HELP THIS MOM AND HER FAMILY
18 TREAT THEIR AUTISM, BUT I HAVE -- I'M GOING TO AGREE TO
19 GIVE A DELAY IN THE VACCINATION, WHICH WON'T LIKELY
20 HARM THEIR SON FOR ONE YEAR, AND WE'LL CLOSELY MONITOR.

21 SO ABOUT 20, 30 PERCENT OF MY PATIENTS NOW
22 ERRONEOUSLY WANT A DELAY IN VACCINATION. AND HOW WE
23 TRAIN OUR MEDICAL STUDENTS AND RESIDENTS TO HANDLE THIS
24 IS TO BE EMPATHETIC AND SUPPORTIVE, AND TRY TO
25 NEGOTIATE THE MOST VACCINES FOR THE KIDS, AND GIVE THE
26 OTHER ONES A LITTLE BIT LATER.

27 MS. SWISS: OBJECTION: MOVE TO STRIKE AS
28 NONRESPONSIVE, RELEVANCE.

1 THE COURT: OVERRULED. MOVE TO STRIKE IS
2 DENIED.

3 BY MR. MCMILLAN:

4 Q IN YOUR REVIEW OF DR. YIM'S RECORDS, WERE YOU
5 ABLE TO DETERMINE WHETHER DR. YIM HERSELF WAS
6 SUPPORTIVE OF RAFAELINA'S DECISION TO DELAY THE
7 VACCINATION SCHEDULE?

8 A SHE WAS.

9 Q AND IS THAT FAIRLY NORMAL IN YOUR PRACTICE
10 THAT -- TO SUPPORT THE PARENT IN THAT EFFORT?

11 A THE WAY WE TEACH OUR MEDICAL STUDENTS AND
12 RESIDENTS IS TO BE EMPATHETIC AND SYMPATHETIC WITH
13 PARENTS AND TRY TO EDUCATE THEM ABOUT THE IMPORTANCE OF
14 VACCINES.

15 AND YOU GIVE THEM AS MANY VACCINES AS
16 POSSIBLE, BUT IF A FAMILY MEMBER REALLY DON'T WANT IT,
17 WE WILL FIND A WAY TO STILL TAKE CARE OF THEM AND DO A
18 DELAYED SCHEDULE AS MUCH AS WE CAN.

19 Q NOW, THIS LAW THAT YOU TALKED ABOUT THAT
20 REQUIRED CERTAIN VACCINES BE GIVEN TO A CHILD BEFORE
21 THEY ENTER SCHOOL, THAT WAS PAST ENACTED AFTER 2009.
22 CORRECT?

23 MS. SWISS: OBJECTION: SPECULATION,
24 FOUNDATION.

25 BY MR. MCMILLAN:

26 Q IF YOU KNOW.

27 THE COURT: OVERRULED. GO AHEAD.

28 THE WITNESS: YES, IT WAS LATER.

1 BY MR. MCMILLAN:

2 Q NOW, STILL ON THE DELAYED VACCINATION ISSUE.

3 DOES A DELAY IN VACCINATING THE CHILD DURING
4 THE FIRST YEAR OF LIFE, CAN THAT CONTRIBUTE TO CAUSING
5 THE FAILURE TO THRIVE?

6 A NO, IT HAS NO LINK.

7 Q NO LINK.

8 A NO LINK.

9 Q AND THEN THE NEXT SENTENCE AFTER WE TALKED
10 ABOUT COMPLETE COMPLIANCE WITH FATHER, EXHIBIT 261
11 PAGE 3842, THE NEXT PART OF THIS SENTENCE SAYS:

12 "AND APPROPRIATE GROWTH AND IMPROVEMENT IS IN
13 HIS DEVELOPMENT SINCE PLACEMENT WITH FATHER."

14 NOW, WE SKIPPED AHEAD FROM WHERE WE LEFT OFF
15 BEFORE LUNCH, AND WE'RE ALREADY IN JUNE. WHAT I'D LIKE
16 TO DO IS GO TO THE NEAREST APPOINTMENT IN THE FAILURE
17 TO THRIVE RECORDS.

18 NEAREST APPOINTMENT BEFORE JUNE 21, 2010, WHEN
19 THIS LAST-MINUTE INFORMATION WAS FILED WITH THE COURT,
20 AND LET'S TAKE A LOOK HOW BABY RYAN IS DOING IN TERMS
21 OF HIS APPROPRIATE GROWTH AND IMPROVEMENT AND
22 DEVELOPMENT SINCE BEING PLACED WITH HIS FATHER.

23 A YEAH. SO THE GROWTH WE CAN SEE, AND RIGHT
24 HERE ON THE GRAPH, AS YOU CAN SEE, THERE IS NO CHANGE
25 IN HIS GROWTH. HE'S STILL HAVING NO CATCH-UP GROWTH.

26 THE DEVELOPMENT ALSO WE CAN SEE ON
27 PAGE 1076.98. YOU CAN SEE THE PROBLEMS WITH
28 DEVELOPMENT THAT ARE STILL THERE. SO HE IS ONE YEAR,

1 NINE MONTHS OLD. HOW OLD IS HE NOW? ALMOST TWO YEARS
2 OLD?

3 Q TWENTY-TWO MONTHS.

4 A YEAH. SO BABIES START PUTTING TWO WORDS
5 TOGETHER AS EARLY AS TEN MONTHS, AND ALL BABIES SHOULD
6 BE PUTTING TWO WORDS TOGETHER BY AS EARLY AS
7 SIXTEEN MONTHS.

8 Q AND FOR THAT, YOU'RE REFERRING TO A DOCUMENT
9 IN YOUR HANDS --

10 A THE DEVELOPMENTAL SCALE WE TALKED ABOUT.

11 Q AND THAT'S EXHIBIT NUMBER 786?

12 A MM-HMM. AND MAMA, DADA NON-SPECIFIC SHOULD BE
13 DONE BY EIGHT MONTHS. SO HE IS STILL VERY BEHIND IN
14 HIS LANGUAGE. IF YOU LOOK AT THIS NOTE, THEY MENTION
15 ON HIS NEURO EXAM IN THE MIDDLE OF THE NOTE, HYPOTONIA.

16 WHICH MEANS HE STILL DOESN'T HAVE GOOD MUSCLE
17 TENSION. SO EVEN AT THIS AGE, HIS MUSCLE TENSION IS
18 NOT GOOD. AND HE'S BEEN OUT OF MOM'S CARE NOW FOR
19 NEARLY HALF HIS LIFE, OR AT LEAST NINE MONTHS SINCE HE
20 WAS TAKEN OUT OF MOM'S CARE.

21 HE'S STILL GOT HYPERTONIA. AND THE FIRST
22 DIAGNOSIS IS GLOBAL DEVELOPMENTAL DELAY, AND SECOND
23 DIAGNOSIS IS FAILURE TO THRIVE.

24 AND AT THIS POINT, THE DOCTOR IS STRUGGLING
25 AGAIN TO FIGURE OUT WHAT IS GOING ON, AND TESTS TO
26 MEASURE HIS THYROID GLAND, AND TESTS TO MEASURE HIS
27 STOOL, TO SEE IF HE'S ABSORBING, ORDERING CHROMOSOME
28 STUDIES AND GENE TESTS TO TRY TO FIND OUT DOES HE HAVE

1 A GENETIC CONDITION.

2 SO HE IS NOT IMPROVING AND THE DOCTORS DON'T
3 KNOW WHY. SO IT DOESN'T MAKE SENSE, THIS STATEMENT
4 THAT HE HAS GROWTH AND IMPROVEMENT IN DEVELOPMENT SINCE
5 PLACEMENT WITH HIS FATHER.

6 Q NEXT SENTENCE SAYS:

7 "AS THE CHILD WAS IN MOTHER'S CARE FOR THE
8 LARGE MAJORITY OF THE TIME AS AN INFANT, WITH FATHER
9 HAVING MINIMUM VISITS, THE NEGLECT IN HIS PARENTING
10 RESULTING IN DEVELOPMENTAL DELAYS AND FAILURE TO THRIVE
11 MUST, MUST BE ATTRIBUTED TO MOTHER AS THE CHILD'S
12 PRIMARY CAREGIVER."

13 AT THIS POINT IN TIME, IS THERE ANY MEDICAL
14 EVIDENCE, ANYWHERE, TO SUPPORT THE PROPOSITION THAT THE
15 NEGLECT IN BABY RYAN'S PARENTING RESULTING IN THE
16 DEVELOPMENTAL DELAYING AND FAILURE TO THRIVE MUST BE
17 ATTRIBUTED TO HIS MOTHER?

18 A NO. DR. BERKOWITZ SAID NO, DR. EGGE DOESN'T
19 SAY THIS, DR. FEDDER DOESN'T SAY THIS, DR. EVANS
20 SPECIFICALLY ADDRESSED THIS AND SAID NO, DR. YIM SAID
21 NO. NONE OF THE DOCTORS TAKING CARE OF BABY SAID THIS.

22 Q NOW, YOU ACTUALLY REVIEWED DR. BERKOWITZ'S
23 DEPOSITION IN THIS CASE AS PART OF YOUR EFFORT TO
24 GATHER UP INFORMATION TO RENDER YOUR OPINIONS HERE?

25 A YES.

26 Q DOES DR. BERKOWITZ EXPLAIN IN SOME SENSE WHAT
27 IT WAS THAT WAS CAUSING THIS CHILD'S TROUBLE?

28 A SHE GIVES THE BEST EXPLANATION THAT SHE CAN.

1 Q WHICH IS?

2 A SHE THINKS IT'S MULTIFACTORIAL, AND SHE ALSO
3 AGREES WITH MOTHER THAT IT HAS SOMETHING TO DO WITH
4 ORAL AVERSIONS AND SENSORY INTEGRATION PROBLEMS.

5 Q THESE ORAL AVERSIONS AND SENSORY INTEGRATION
6 PROBLEMS, THAT'S NOTHING THAT THE MOTHER CAUSED, IS IT?

7 A NO, THAT'S WHAT MOTHER WAS MOST WORRIED ABOUT
8 AND WAS BLAMED TO BE WORRIED ABOUT.

9 Q WHAT DO YOU MEAN WHEN YOU SAY BLAMED TO BE
10 WORRIED ABOUT?

11 A IN THESE REPORTS, IT SEEMED THAT MOTHER IS
12 ACTIVELY LOOKING FOR ANSWERS THAT THE DOCTORS DON'T
13 AGREE WITH. AND ONE -- ON ONE DAY, VICTORIA SCHEELE
14 QUESTIONED MOM.

15 DID YOU GET THIS DIAGNOSIS FROM THE FAILURE TO
16 THRIVE CLINIC OR WHERE DID YOU GET IT FROM. AND WE HAD
17 WHAT WE CALLED -- AN UNLICENSED PERSON AT FAILURE TO
18 THRIVE CLINIC WHO, I THINK HER NAME WAS OLGA, WHO
19 RESPONDED BY READING THE CHART TO VICTORIA SCHEELE,
20 SAID, NO IT'S NOT IN THE CHART DIAGNOSIS.

21 BUT SHE'S UNLICENSED, AND SHE WASN'T ACTIVELY
22 CARING FOR THE PATIENT.

23 Q AND WHEN YOU SAY SHE CALLED OLGA, THAT WOULD
24 BE SCHEELE?

25 A YES.

26 Q AND THAT'S REFLECTED IN THE DOCUMENTS YOU
27 REVIEWED HERE?

28 A YES.

1 Q ARE THERE OTHER INDICATIONS IN THE DOCUMENTS
2 THAT YOU REVIEWED IN PREPARATION FOR YOUR TESTIMONY
3 HERE TODAY THAT WOULD INDICATE THAT THE PEOPLE WRITING
4 THESE REPORTS, NAMELY, MS. NELSON AND MS. SMITH -- THE
5 NAMES APPEAR ON A FEW -- THAT THEY HAD THIS INFORMATION
6 FROM THE FAILURE TO THRIVE CLINIC AT THE TIME THEY
7 WROTE THE REPORTS?

8 A YES.

9 Q AND HOW DO WE KNOW THAT?

10 A BECAUSE THEY COMMENT ON THE FAILURE TO THRIVE
11 DATA AND HOW RYAN IS IMPROVING.

12 Q IS THAT IN THE DELIVERED SERVICE LOGS?

13 A YES.

14 Q BUT THEY DON'T COMMENT ON THAT -- OR THEY
15 DON'T ACCURATELY PROVIDE THE INFORMATION FROM THOSE
16 MEDICAL VISITS IN THESE COURT REPORTS?

17 A YES --

18 MS. SWISS: OBJECTION: LEADING, MISSTATES THE
19 TESTIMONY.

20 THE COURT: SUSTAINED.

21 BY MR. MCMILLAN:

22 Q HAVE YOU HAD AN OPPORTUNITY TO TAKE THESE
23 REPORTS, THESE LAST-MINUTE INFORMATION, DISPO REPORTS
24 AND COMPARE THEM SIDE-BY-SIDE WITH ALL THE MEDICAL
25 RECORDS OF THE CHILD THAT RELATE TO THE DATES OF THESE
26 REPORTS?

27 A YES.

28 Q DO THE REPORTS THAT WERE GIVEN TO THE COURT

1 ACCURATELY REFLECT WHAT'S IN THE MEDICAL RECORDS?

2 MS. SWISS: OBJECTION: VAGUE AS TO WHICH
3 REPORTS, WHICH MEDICAL RECORDS.

4 THE COURT: SUSTAINED.

5 BY MR. MCMILLAN:

6 Q LET'S GO WITH THIS REPORT, EXHIBIT 261,
7 LAST-MINUTE INFORMATION FROM THE HEARING ON
8 JUNE 21, 2010.

9 DID YOU DO A SIDE-BY-SIDE COMPARISON OF THIS
10 REPORT FROM THE HARBOR-UCLA FAILURE TO THRIVE CLINIC
11 MEDICAL RECORDS?

12 A YES.

13 Q SPECIFICALLY WITH THE DATE THAT CORRELATES
14 WITH THE DATE OF THIS REPORT, JUNE 21, 2010?

15 A YES.

16 Q DID YOU FIND -- WERE YOU ABLE TO FIGURE OUT
17 WHETHER OR NOT THE MEDICAL AND DEVELOPMENTAL DATA
18 REPORTED TO THE JUDGE ACCURATELY REFLECTED WHAT WAS
19 ACTUALLY IN THE MEDICAL RECORDS?

20 A YES.

21 Q AND WHAT WAS YOUR CONCLUSION?

22 A NO, JUST THE OPPOSITE.

23 Q JUST THE OPPOSITE. AND THEN THERE'S ANOTHER
24 SENTENCE IN THIS REPORT, SAYS:

25 "THIS, IN CONNECTION WITH THE ISSUES JUST
26 PRIOR TO DETENTION IN WHICH MOTHER WAS CONTINUING TO
27 BREASTFEED, DESPITE RECOMMENDATIONS BY THE DOCTORS FOR
28 SOLID FOODS, SEEMS TO SHOW A PATTERN OF MOTHER

1 REJECTING MEDICAL ADVICE AND RELYING ON HER OWN
2 RESEARCH."

3 NOW, THIS SEEMS TO BE REFERENCING THE TIME
4 DR. YIM, PRIOR TO DETENTION -- WAS THERE ANY EVIDENCE
5 IN THERE THAT -- LET ME ASK YOU THIS FIRST.

6 CONTINUING TO BREASTFEED, IS THERE ANYTHING
7 WRONG WITH CONTINUING TO BREASTFEED A BABY, I DON'T
8 KNOW, FOR A YEAR, EVEN?

9 A NO, THAT'S WHAT'S RECOMMEND BY THE CDC AND THE
10 WHO.

11 Q THAT WAS THEIR RECOMMENDATION --

12 A BREASTFEED AS LONG AS DESIRED IS RECOMMENDED.

13 Q AS LONG AS DESIRED?

14 A YES.

15 Q SO THERE IS NO SET TIME LIMIT LIKE A
16 YEAR, 15 MONTHS, 24 MONTHS?

17 A NO.

18 Q AND THEN YOU ALREADY TALKED ABOUT THIS A
19 LITTLE BIT SO I DON'T WANT TO GO INTO IT AGAIN TOO
20 DEEPLY, BUT WHERE WE HAVE A BABY LIKE THIS, TRUNCAL
21 DEVELOPMENT PROBLEMS, CAN'T SIT UP VERY WELL.

22 IN YOUR MEDICAL OPINION, IS IT APPROPRIATE TO
23 PERHAPS DELAY SOLID FOODS FOR A LITTLE BIT LONGER TO
24 ALLOW THE CHILD TO DEVELOP BETTER? IS THAT RIGHT?

25 A YEAH. THERE'S SOME BABIES THAT HAVE A HARD
26 TIME OF SOLID FOODS. THEY COULD HAVE HYPOTONIA, THEY
27 MAY BE AT HIGHER RISK TO ASPIRATE FOOD INTO THEIR
28 LUNGS. SO THERE'S SOME BABIES LIKE THIS, YOU HAVE TO

1 DELAY A LITTLE IN STARTING SOLID FOODS.

2 Q SO IS THERE ANY MEDICAL PROBLEM, YEAH, WAS
3 THERE ANY MEDICAL PROBLEM WITH MOM SORT OF HOLDING OFF
4 ON THE SOLID FOODS UNTIL, YOU KNOW, SEVEN,
5 SEVEN-AND-A-HALF MONTHS AS OPPOSED TO THE SIX MONTHS?

6 A NO.

7 Q AND THE LAST THING I WANT TO COVER ON THIS
8 PARTICULAR COURT REPORT THAT MS. NELSON GAVE TO THE
9 COURT IN JUNE 2010. THE BOTTOM OF PAGE, LAST
10 PARAGRAPH, FOUR LINES DOWN FROM THE TOP OF IT, SAYS:

11 "AT THIS TIME RYAN HAS BEEN IN HIS FATHER'S
12 CARE FOR A PERIOD OF SIX MONTHS, AND APPEARS TO BE
13 HAPPY AND HEALTHY."

14 IN YOUR MEDICAL OPINION, WAS THIS BABY
15 HEALTHY?

16 A NO.

17 Q CAN YOU EXPLAIN?

18 A WELL, WE TALKED ABOUT THIS ALREADY. HE'S
19 BEHIND IN LANGUAGE, HE'S BEHIND IN GROWTH, BOTH HEIGHT
20 AND WEIGHT, HE'S BEHIND IN DEVELOPMENT, AND HE'S GOT
21 LOW MUSCLE TONE.

22 THAT'S VERY UNUSUAL FOR A BABY OF THIS AGE TO
23 BE LOW MUSCLE TONE, HYPOTONIA. SO THESE DIAGNOSES ARE
24 VERY SERIOUS DIAGNOSES. GLOBAL DEVELOPMENTAL DELAY,
25 AND FAILURE TO THRIVE. SO.

26 Q SO THIS STATEMENT HERE IN THIS REPORT, THAT
27 THE BABY APPEARS TO BE HAPPY AND HEALTHY, IS THAT AT
28 ODDS FOR MEDICAL INFORMATION AVAILABLE JUNE 2010 FOR

1 THIS PERIOD OF TIME?

2 MS. SWISS: OBJECTION: SPECULATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: YES. THEY'RE SO WORRIED --

5 THE COURT: YOU ANSWERED. YES. LET'S GO ON
6 TO THE NEXT QUESTION.

7 THE WITNESS: YES.

8 BY MR. MCMILLAN:

9 Q IN REVIEWING THE MEDICAL RECORDS THAT
10 CORRELATE TO JUNE 21, 2010, IS THERE SOME PARTICULAR
11 CONCERN THAT THE MEDICAL CARE PROVIDERS ARE RAISING IN
12 THESE RECORDS?

13 A YEAH. THEY'RE LOOKING FOR CAUSES FOR WHY HE'S
14 NOT IMPROVING. AND THEY'RE LOOKING NOW BEYOND JUST
15 ENDOCRINE TESTING.

16 THEY'RE TESTING, THE HORMONE TEST FOR THE
17 THYROID GLAND, BUT THEY'RE ALSO DOING GENETIC SCREENING
18 TESTS AND TRYING TO SEE IF THERE'S GENETIC ARRAYS THAT
19 COULD BE WRONG WITH THIS CHILD THAT COULD EXPLAIN HIS
20 LACK OF IMPROVEMENT.

21 Q SO THE DOCTORS KNOW HE'S NOT IMPROVING?

22 A THE DOCTORS THINK HE'S FAILING TO THRIVE.

23 Q FAST-FORWARD NOW TO AUGUST 9, 2010. THAT'S
24 THE LAST HEARING, LAST REPORT FILED IN THE JUVENILE
25 DEPENDENCY CASE, THE LAST REPORT IN THAT MATTER.

26 AND MS. SCHEELE, SHE FILES A LAST-MINUTE
27 INFORMATION TO THE COURT DATED AUGUST 9, 2010. DID YOU
28 HAVE A CHANCE TO REVIEW THE HARBOR-UCLA MEDICAL RECORDS

1 THAT CORRELATE TO THAT DATE?

2 MS. SWISS: OBJECTION: WHAT REPORT?

3 MR. MCMILLAN: I'M SORRY. EXHIBIT 260 BATES
4 NUMBER 003839. MAY I, YOUR HONOR?

5 THE COURT: YES, GO AHEAD.

6 MR. MCMILLAN: THANK YOU.

7 BY MR. MCMILLAN:

8 Q ARE YOU WITH ME, DOCTOR, NUMBER 260?

9 A YES.

10 Q AND IT'S THE AUGUST 9, 2010, LAST-MINUTE
11 INFORMATION.

12 A YES.

13 Q AND WERE YOU ABLE TO CORRELATE THE RECORDS
14 FROM THE VISITS IN HARBOR-UCLA, OR TO HARBOR-UCLA WITH
15 THIS REPORT HERE? EXHIBIT 260?

16 A YES.

17 Q OKAY. WHAT DID YOU LEARN IN REVIEWING THOSE
18 MEDICAL RECORDS?

19 A YES. SO DR. DERIDDER IS A DOCTOR AT
20 HARBOR-UCLA FAILURE TO THRIVE CLINIC WHO TOOK OVER THE
21 CARE OF BABY RYAN WITH THE SUPERVISION OF DR. BERKOWITZ
22 AFTER DR. EGGE LEFT.

23 AND DR. BERKOWITZ LAST SAW THE CHILD ON 7/6 --
24 ON THE LAST VISIT BEFORE THIS REPORT. AND AT THAT
25 TIME, THE CHILD STILL CANNOT WALK WITHOUT HOLDING
26 SOMEONE'S HAND. AND THIS CHILD IS NOW 23 MONTHS OLD.

27 SO NORMALLY, CHILDREN SHOULD BE WALKING WELL
28 WITHOUT ANY SUPPORT BY 15 MONTHS. THEY NORMALLY START

1 MUCH EARLIER, SOMETIMES AS EARLY AS TEN MONTHS.

2 SO HE'S STILL NEEDING PHYSICAL THERAPY TO
3 IMPROVE HIS BALANCE. HE STILL NEEDS SPEECH THERAPY TO
4 IMPROVE HIS LANGUAGE, WHICH IS BEHIND.

5 IN FACT, DURING THIS VISIT, HE DIDN'T SPEAK AT
6 ALL. THE CHILD DIDN'T UTTER ONE WORD THE ENTIRE VISIT
7 WITH DR. BERKOWITZ.

8 SO DR. BERKOWITZ'S UNDERSTANDING IS THIS CHILD
9 HAS FAILURE TO THRIVE STILL, AND THIS CHILD HAS GROSS
10 MOTOR DELAYS STILL. AND SHE RECOMMENDED FOLLOW-UP IN
11 ONE MONTH, AND CONTINUE ALL THE THERAPIES.

12 SO THAT DOESN'T LOOK LIKE VERY GOOD
13 DEVELOPMENTAL STRIDES.

14 Q NOW, LET ME ASK YOU THIS. YOU REVIEWED THE
15 LAST-MINUTE INFORMATION. DOES MS. SCHEELE TELL THE
16 COURT ANY OF THAT INFORMATION THAT YOU JUST TOLD US
17 HERE TODAY?

18 MS. SWISS: OBJECTION: LACKS FOUNDATION,
19 CALLS FOR SPECULATION.

20 THE COURT: ALL RIGHT. ARE YOU ASKING WHAT'S
21 IN EXHIBIT 260?

22 MR. MCMILLAN: YES.

23 THE COURT: ALL RIGHT. THE OBJECTION IS
24 OVERRULED. BUT, DOCTOR, HE'S SIMPLY ASKING YOU
25 SOMETHING ABOUT WHAT'S SAID OR NOT SAID IN 260. WHY
26 DON'T WANT YOU MAKE IT CLEAR WHAT YOU'RE ASKING.

27 MR. MCMILLAN: OKAY.

28

1 BY MR. MCMILLAN:

2 Q YOU JUST TALKED TO US ABOUT WHAT'S REFLECTED
3 IN THE MEDICAL RECORDS ABOUT THE DEVELOPMENTAL PROGRESS
4 OF THIS CHILD. RIGHT? AND AM I CORRECT THAT IT'S NOT
5 LOOKING GOOD?

6 A NO, IT'S NOT IMPROVING.

7 Q DOES MS. SCHEELE TELL THE COURT IN HER REPORT
8 ON AUGUST 9TH THE CHILD'S NOT IMPROVING?

9 A NO, SHE DOESN'T.

10 Q DOES SHE TELL THE COURT IN HER REPORT ON
11 AUGUST 9TH THAT THE CAUSE OF THE CHILD'S FAILURE TO
12 THRIVE, ACCORDING TO DR. BERKOWITZ, IS MULTIFACTORIAL?

13 A NO, SHE DOESN'T.

14 Q DOES SHE TELL THE COURT IN THIS AUGUST 9, 2010
15 REPORT THAT THE ENVIRONMENT THE CHILD WAS STAYING IN
16 WAS NOT THE CAUSE OF THE CHILD'S FAILURE TO THRIVE?
17 DOES SHE TELL THE COURT THAT?

18 A NO, SHE DOESN'T.

19 Q ISN'T THAT WHAT DR. BERKOWITZ SAID IN HER
20 DEPOSITION?

21 A YES. THAT'S WHAT SHE SAID.

22 Q AND YOU REVIEWED THE NOTES WHERE MS. SCHEELE
23 ACTUALLY COMMUNICATED WITH THE PEOPLE OVER AT THE
24 FAILURE TO THRIVE CLINIC WHEN ALL THIS WAS GOING ON.

25 WAS IT -- COULD YOU TELL FROM YOUR REVIEW OF
26 THOSE NOTICES, WHETHER OR NOT THAT INFORMATION HAD BEEN
27 IMPARTED TO MS. SCHEELE AT THE TIME SHE WAS WRITING
28 THESE REPORTS TO THE COURT?

1 A I COULD TELL, YES.

2 Q WAS SHE GETTING THE INFORMATION?

3 A YES. SHE COMMENTED, SHE WAS SPEAKING TO THE
4 DOCTORS THERE AT THE CLINIC.

5 Q BUT THE INFORMATION WAS NOT IN THE COURT
6 REPORTS.

7 A IT IS NOT.

8 Q AND LET'S SKIP TO -- THERE'S ONE PARTICULAR
9 EXHIBIT I WANTED TO TALK TO YOU ABOUT BEFORE WE SKIP
10 ON, AND I THINK WE'RE GOING TO BE HEADING TOWARDS
11 WRAPPING THIS UP.

12 IT'S, I BELIEVE, UNDER TAB I, AND IT'S EXHIBIT
13 NUMBER 729. BATES NUMBER 22784.

14 MS. SWISS: REPEAT THE BATES NUMBER.

15 MR. MCMILLAN: 022784.

16 BY MR. MCMILLAN:

17 Q IT'S A HARBOR-UCLA MEDICAL CENTER CHART NOTE
18 DATED NOVEMBER 3RD, 2009.

19 AND BEFORE WE GET INTO THIS, DO YOU GIVE YOUR
20 STUDENTS, WHEN YOU'RE TEACHING YOUR MEDICAL STUDENTS,
21 DO YOU GIVE THEM ANY INSTRUCTIONS ON PROPER CHARTING
22 PROTOCOLS AND HOW YOU'RE SUPPOSED TO CHART INFORMATION?

23 A YES.

24 Q AND WHEN WE HAVE A CHANGE ON A CHART,
25 SOMEBODY'S GOING TO GO BACK AND INTERLINEATE SOMETHING,
26 IS THERE SOME PROTOCOL THAT'S SUPPOSED TO BE FOLLOWED?

27 A YES.

28 Q CAN YOU EXPLAIN TO THAT US?

1 A THAT'S CALLED AN ADDENDUM. THE PROTOCOL IS
2 YOU HAVE TO SIGN IT AND DATE IT. AND I TEACH MY
3 FELLOWS AND STUDENTS TO WRITE AN EXPLANATION WHY
4 THEY'RE MAKING THIS CHANGE.

5 Q OKAY. BEFORE WE GET INTO THE SUBSTANCE OF
6 THIS PARTICULAR CHART, JUST REVIEWING IT, DO YOU NOTICE
7 ANYTHING THAT WOULD NOT COMPORT WITH THE STANDARD OF
8 PRACTICE, WITH RESPECT TO CHARTING THE INFORMATION IN
9 THE MEDICAL CHARTS?

10 MS. SWISS: OBJECTION: FOUNDATION, RELEVANCE.

11 THE COURT: SUSTAINED AS TO RELEVANCE.

12 BY MR. MCMILLAN:

13 Q OKAY. LET'S JUST GO THROUGH THE CHART. CAN
14 YOU TELL US WHAT THE DIAGNOSIS IS ON
15 NOVEMBER 3RD, 2009? THAT'S THE FIRST FAILURE TO THRIVE
16 CLINIC VISIT.

17 A FAILURE TO THRIVE, PARENTAL DISCORD, TRUNCAL
18 HYPERTONICITY, DELAYED GROSS MOTOR ATTENDED, SIX MONTHS
19 MILESTONE, DELAYED VACCINATION. AND THOSE ARE THE
20 DIAGNOSES.

21 Q OKAY. OVER TOWARDS THE RIGHT-HAND SIDE OF THE
22 PAGE, ABOUT HALFWAY DOWN, THERE'S SOME HANDWRITTEN
23 NOTES THERE IN A LITTLE BOX.

24 DO YOU SEE THOSE?

25 A YES.

26 Q AND THERE'S SOME NUMBERS BY THE NOTES. ONE,
27 TWO, THREE, FOUR. THE NUMBER ONE, ACTUALLY, CAN YOU
28 DECIPHER FOR ME?

1 A YEAH. IT LOOKS LIKE AN ADDENDUM TO THE NOTE,
2 IF -- TRYING TO FIT IT IN BECAUSE THE NOTE WAS ALREADY
3 WRITTEN.

4 IT WAS CURVED AROUND THE CORNER OF THE NOTE,
5 AND IT SAYS ENVIRONMENT, I THINK. AND THAT'S -- LOOKS
6 TO ME LIKE AN ADDENDUM TO THIS NOTE.

7 Q IS THERE A DATE OR A SIGNATURE OR A NAME OR
8 ANYTHING ANYWHERE NEAR THAT ADDENDUM?

9 A NO.

10 Q DOES THAT MEET WHAT YOU WOULD REGULARLY
11 EXPECT, AND WHAT YOU WOULD TEACH YOUR STUDENTS TO DO?
12 IS THAT PROPER?

13 MS. SWISS: OBJECTION: RELEVANCE.

14 THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16 Q IN REVIEWING THIS NOTE, DOCTOR, DOES THAT
17 ADDENDUM BEAR ANY SIGNIFICANCE TO YOU?

18 MS. SWISS: OBJECTION: RELEVANCE.

19 THE COURT: SUSTAINED.

20 BY MR. MCMILLAN:

21 Q ASIDE FROM THAT, ARE THERE ANY OTHER
22 INTERLINEATIONS IN THIS NOTE?

23 A YEAH. THERE'S ANOTHER ONE, THAT COMES IN A
24 BIT STRANGE. THE FOOD ALLERGIES, TOMATO, MILK,
25 SQUIGGLY LINE IN PER, MOM, LAST-MINUTE INFORMATIONS AND
26 DID HE UNDERSTAND.

27 Q AND THAT'S ANOTHER ONE OF THOSE THINGS THAT
28 SHOULD BE SIGNED, DATES AND PLAIN?

1 MS. SWISS: OBJECTION: RELEVANCE.

2 THE COURT: SUSTAINED.

3 BY MR. MCMILLAN:

4 Q DOWN AT THE BOTTOM OF THIS NOTE, THERE'S SOME
5 NURSING NOTES. IT LOOKS LIKE WE HAVE MR. RYAN MILLS'S
6 PHONE NUMBER, AND MR. RYAN MILLS'S EMAIL ADDRESS, AND
7 THEN THERE'S SOME OTHER INFORMATION THERE.

8 WHAT'S THE SIGNIFICANCE OF THAT OTHER
9 INFORMATION?

10 MS. SWISS: OBJECTION: RELEVANCE,
11 SPECULATION.

12 THE COURT: SUSTAINED AS TO SPECULATION.

13 BY MR. MCMILLAN:

14 Q LET ME ASK YOU THIS. YOU SEE THE PART WHERE
15 IT SAYS MOM IS AGITATED, DAD IS CALM. NOW, DURING YOUR
16 WORK ON THIS CASE, YOU'VE ALSO BEEN ABLE TO PROVIDE AN
17 ASSESSMENT OF MS. DUVAL HERSELF IN RELATION TO HER
18 TREMORS?

19 A I GOT A HISTORY.

20 Q A HISTORY.

21 A YES.

22 Q TELL US A LITTLE BIT ABOUT THAT HISTORY. WHAT
23 STEPS DID YOU GO THROUGH TO OBTAIN THE HISTORY THAT YOU
24 NEEDED TO SATISFY YOURSELF, TO FORM YOUR OPINIONS HERE?

25 A WELL, I WAS ASKED TO TALK TO A DOCTOR IN THE
26 DOMINICAN REPUBLIC, WHICH I DID. I ALSO TALKED TO
27 LINA DUVAL, AND I TALKED TO HER MOTHER ABOUT THIS.

28 Q AND WHAT DID YOU LEARN THROUGH THOSE

1 CONVERSATIONS? WHAT DID YOU LEARN ABOUT THE DOCUMENTED
2 HISTORY OF MS. DUVAL'S TREMORING CONDITION?

3 A SO DR. PUELLO IN THE DOMINICAN REPUBLIC, HE
4 AND I TALKED ON MARCH 23RD IN THE MORNING. AND HE TOLD
5 ME THAT THERE WAS DOCUMENTED EVIDENCE OF LINA DUVAL
6 HAVING TREMORS AS A VERY YOUNG AGE, AND COMING TO SEE A
7 DOCTOR FOR TREATMENT TO TREMORS AT AGE BETWEEN SEVEN TO
8 TEN.

9 AND HE ALSO REMEMBERS TAKING CARE OF FAMILY
10 MEMBERS OF LINA DUVAL, WHO ALSO HAD TREMOR OF THE SAME
11 NATURE.

12 Q AND THROUGH YOUR TAKING OF THE HISTORY AND
13 CONVERSATIONS WITH HER EARLIER TREATING PHYSICIANS AND
14 HER MOM, AND EVEN HER, WERE YOU ABLE TO SATISFY
15 YOURSELF TO A REASONABLE MEDICAL CERTAINTY, THAT, YES,
16 SHE HAS A DOCUMENTED HISTORY OF BEING DIAGNOSED WITH
17 FAMILIAL TREMORS?

18 A YES.

19 Q NOW, I THINK WE SHOULD BE -- OKAY. IF I CAN
20 GET YOU TO TURN TO TAB S. IT'S THE TAB NUMBER S, IN
21 EXHIBIT NUMBER 1085. AND IT STARTS WITH 1085.42 AND
22 CONTINUES THROUGH 1085.49. OKAY. ARE YOU THERE?

23 A I'M THERE, YES.

24 Q WHAT IS THAT?

25 A THIS IS AN ASSESSMENT OF MOM BY HILLSIDES
26 FAMILY PRESERVATION.

27 Q WHAT IS YOUR UNDERSTANDING OF WHAT IT IS THAT
28 HILLSIDES FAMILY PRESERVATION DOES?

1 A THEY DO ASSESSMENTS FOR DCFS OF CLIENTS SENT
2 TO THEM.

3 Q OKAY. AND IF YOU CAN TURN TO PAGE
4 NUMBER 1085.48, STARTS AT THE BOTTOM, AND CONTINUES TO
5 THE TOP OF .49. THERE'S DIAGNOSTIC IMPRESSIONS THERE?

6 A YES.

7 Q BEFORE WE GET INTO THIS, LET'S TALK ABOUT YOUR
8 PRACTICE.

9 FIRST OF ALL, AS A FAMILY MEDICAL CARE
10 PROVIDER AND AS A TEACHER OF RESIDENTS AND FELLOWS, DO
11 YOU HAVE EXPERIENCE TRAINING YOUR PHYSICIANS ABOUT HOW
12 TO DO THIS TYPE OF ASSESSMENT?

13 A YES.

14 Q AND IS IT SOMETHING THAT YOU REGULARLY, OR AT
15 LEAST SOMETIMES, WILL ACTUALLY GO THROUGH IN YOUR
16 PRACTICE AND TEACH YOUR STUDENTS TO DO?

17 A YES.

18 Q WHAT IS THE PURPOSE?

19 A THIS IS TO GIVE DIAGNOSTIC IMPRESSION FOR
20 PATIENT CARE, SO WE CAN IMPROVE PATIENT CARE IN THE
21 FUTURE.

22 Q AND ARE THERE ANY SPECIAL REQUIREMENTS OR
23 LICENSES THAT SOMEBODY WOULD HAVE TO HAVE IN ORDER TO
24 ACTUALLY DO ONE OF THESE ASSESSMENTS?

25 A YES.

26 Q WHAT SORT OF LICENSE WOULD PERMIT THAT?

27 A YOU HAVE TO BE A LICENSED PROVIDER. IF YOU DO
28 THIS WITHOUT A LICENSE, YOU'RE PRACTICING WITHOUT A

1 LICENSE.

2 SO DOCTORS WHO ARE LICENSED IN THE STATE OF
3 CALIFORNIA AS PHYSICIANS AND SURGEONS, THEY CAN DO
4 THIS. NURSE PRACTITIONERS, WHO ARE LICENSED, THEY CAN
5 DO THIS. PHYSICIAN ASSISTANTS, WHO ARE LICENSED, THEY
6 CAN DO THIS.

7 STUDENTS, BY THE WAY, OF ANY OF THESE, CANNOT
8 DO THIS WITHOUT A LICENSE. LICENSED CLINICAL SOCIAL
9 WORKERS CAN DO THIS WHO ARE LICENSED AND HAVE THE
10 REQUISITE EXPERIENCE AND WORK TOGETHER IN TEAMS.

11 BUT NOT NON-LICENSED SOCIAL WORKERS, THIS
12 CANNOT BE DONE. IT'S PRACTICING WITHOUT A LICENSE.

13 Q SO LET ME ASK YOU THIS. LET'S ASSUME FOR A
14 MOMENT THAT I HAVE A STUDENT.

15 WHAT DO YOU CALL A -- UNDERSTUDY, OR WHAT
16 WOULD BE THE TERM THAT YOU WOULD USE FOR SOMEBODY
17 THAT'S NOT YET HAS A LICENSE, BUT IS WORKING FOR YOU IN
18 SOME MEDICAL CAPACITY.

19 WHAT WOULD YOU CALL THAT PERSON?

20 A IT COULD BE A SOCIAL WORKER INTERN, A
21 PSYCHOLOGY INTERN, IT COULD BE A MEDICAL STUDENT, IT
22 COULD BE A NURSE PRACTITIONER STUDENT.

23 IT COULD BE A PHYSICIAN ASSISTANT STUDENT, IT
24 COULD BE AN INTERN, OR MEDICAL RESIDENT, MD, DO, WHO
25 HASN'T GOT THE LICENSE.

26 Q SO LET'S ASSUME IT'S ONE OF THESE PEOPLE
27 WORKING ON A LICENSE BUT NOT THERE YET. IF THEY GO
28 OUT, WITHOUT SUPERVISION, THEY CONDUCT THE ASSESSMENT,

1 THEN COME BACK TO THE OFFICE, WRITE UP THE REPORT,
2 BEFORE SIGNING OFF ON THE REPORT -- WELL, ACTUALLY, LET
3 ME ASK YOU.

4 UNDER THAT CIRCUMSTANCE, WHERE THE LICENSED
5 PROFESSIONAL HAD ZERO CONTACT WITH THE SUBJECT OF THE
6 INTERVIEW, ZERO CONTACT, IS IT GOING TO BE PROPER TO
7 SIGN OFF ON THAT ASSESSMENT?

8 MS. SWISS: OBJECTION: FOUNDATION,
9 SPECULATION, ALSO RELEVANCE, YOUR HONOR.

10 THE COURT: ALL RIGHT. WILL THAT BE IT? ANY
11 MORE? ALL RIGHT. OVERRULED.

12 YOU'RE ASKING HIM WHO CAN SIGN A REPORT LIKE
13 THIS?

14 MR. MCMILLAN: YEAH. THAT'S ACTUALLY A GOOD
15 WAY TO PUT IT.

16 THE COURT: MAYBE THAT'S WHAT WE SHOULD HAVE
17 ASKED AND SAVED A LOT OF THIS. ALL RIGHT.

18 DO YOU UNDERSTAND THE QUESTION?

19 THE WITNESS: YES.

20 THE COURT: YOU KNOW, THE SUBJECT OF THIS
21 REPORT, WHICH IS NOT DISCLOSED YET.

22 THE WITNESS: YES.

23 THE COURT: ALL RIGHT. WHO'S THE -- DO YOU
24 KNOW WHO IS LICENSED TO SIGN THIS REPORT, THIS KIND OF
25 REPORT?

26 THE WITNESS: YES.

27 THE COURT: ALL RIGHT.

28

1 BY MR. MCMILLAN:

2 Q WHO IS PERMITTED TO SIGN THIS KIND OF REPORT?

3 A THE LICENSED CLINICAL SOCIAL WORKER.

4 Q AND BEFORE SIGNING THIS REPORT, DID THE
5 LICENSED CLINICAL SOCIAL WORKER ACTUALLY HAVE TO ASSESS
6 THE PATIENT?

7 MS. SWISS: OBJECTION: FOUNDATION,
8 SPECULATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 BY MR. MCMILLAN:

12 Q SO IF WE JUST HAD AN MSW, SOMEBODY TRAINING
13 FOR THEIR LICENSE, DID THE CONTACT, DID THE ASSESSMENT,
14 WROTE THE REPORT, AND THEN THE LICENSED PERSON SIGNED
15 IT WITHOUT ACTUALLY CONTACTING THE SUBJECT OF THE
16 EVALUATION, THAT WOULDN'T BE PROPER?

17 MS. SWISS: OBJECTION: FOUNDATION,
18 SPECULATION.

19 THE COURT: OVERRULED.

20 THE WITNESS: NO. IT WOULDN'T BE PROPER.

21 BY MR. MCMILLAN:

22 Q OKAY. NOW, YOU HAD A CHANCE TO GO THROUGH
23 THIS UP-FRONT ASSESSMENT, AND THERE'S SOME DIAGNOSTIC
24 IMPRESSIONS HERE.

25 ARE YOU YOURSELF ABLE, BASED ON THE DATA YOU
26 HAD, BASED ON YOUR CONTACT OVER THE YEARS, WERE YOU
27 YOURSELF ABLE TO RUN A SORT OF COMPARISON AND
28 DIAGNOSTIC IMPRESSION?

1 A NO.

2 Q IN LOOKING AT THE REPORT HERE THOUGH, BASED ON
3 THE INFORMATION AND DATA THAT IS CONTAINED IN THE
4 REPORT, AND TURNING TO EXHIBIT NUMBER 1085, WERE YOU
5 ABLE TO TELL WHETHER OR NOT THE DIAGNOSES THAT ARE
6 LISTED HERE ARE SUPPORTED BY THE DATA IN THE REPORT?

7 MS. SWISS: OBJECTION: MISSTATES THE EVIDENCE
8 REGARDING DIAGNOSES.

9 MR. MCMILLAN: YOUR HONOR, I'LL WITHDRAW THE
10 QUESTION AND TRY AGAIN. IT'S OKAY.

11 BY MR. MCMILLAN:

12 Q YOU SEE THE PART WHERE IT SAYS DIAGNOSTIC
13 IMPRESSION?

14 A YES.

15 Q EXPLAIN TO US WHAT THAT MEANS, AS A LICENSED
16 MEDICAL PRACTITIONER. WHAT DOES THAT MEAN WHEN YOU
17 READ A DOCUMENT THAT SAYS DIAGNOSIS IMPRESSION?

18 A DIAGNOSIS.

19 Q FIRST ONE SAYS: "AXIS I, 300 --"

20 THE COURT: JUST A MOMENT. BEFORE YOU RECITE
21 THE CONTENT OF THE DOCUMENT, ARE YOU INTENDING TO ASK
22 HIM WHETHER OR NOT HE AGREES WITH THESE DIAGNOSES?

23 MR. MCMILLAN: WELL, I'M -- I WAS GOING TO ASK
24 HIM, THERE'S VERY SPECIFIC CRITERIA THAT NEED TO BE
25 MET.

26 THE COURT: ALL RIGHT, THEN YOU BETTER
27 ESTABLISH A FOUNDATION. I HAVEN'T HEARD IT IN THE
28 TESTIMONY SO FAR.

1 BY MR. MCMILLAN:

2 Q ARE YOU FAMILIAR, WITH YOUR OWN EXPERIENCE,
3 TRAINING AND PRACTICE, EVEN IN YOUR OWN PRACTICE, WITH
4 GENERALIZED ANXIOUS DISORDER AND THE CRITERIA THAT MUST
5 BE MET IN ORDER TO DIAGNOSE A PERSON WITH GENERALIZED
6 ANXIOUS DISORDER?

7 A I AM.

8 Q WHAT ARE THOSE CRITERIA?

9 A SO YOU HAVE TO HAVE THE CONDITION FOR SIX
10 MONTHS OR GREATER. YOU DON'T WANT TO DIAGNOSE SOMEONE
11 WITH GENERALIZED ANXIOUS DISORDER WHO JUST HAD A
12 STRESSFUL EVENT RECENTLY, WITH A CONDITION THAT
13 ACTUALLY NEEDS TO BE PRESENT FOR OVER SIX MONTHS.

14 THAT'S ACCORDING TO THE CODE THAT WE USE, THE
15 DIAGNOSTICS AND STATISTICAL MANUAL CREATED BY THE
16 AMERICAN ACADEMY OF PSYCHOLOGY. THE OTHER PARTS THAT
17 YOU MUST MEET, NUMBER TWO, IT HAS TO HAVE AN EFFECT ON
18 THE SOCIAL OR OCCUPATIONAL FUNCTIONING OF THE PERSON
19 WHO HAS THE ANXIETIES.

20 SO THAT ALSO HAS TO BE MET. LAST BUT NOT
21 LEAST, IT CAN'T BE EXPLAINED BY SOMETHING ELSE THAT THE
22 PATIENT HAS. SO IF PATIENT IS WITHDRAWING FROM
23 ALCOHOL, YOU DON'T WANT TO ATTRIBUTE IT TO GENERALIZED
24 ANXIOUS DISORDER.

25 NOR IF A PATIENT WAS IN A CONCENTRATION CAMP.
26 YOU CAN'T ATTRIBUTE IT TO GENERALIZED ANXIOUS DISORDER
27 EITHER BECAUSE ALL OF US WOULD BE ANXIOUS IF WE WERE IN
28 A CONCENTRATION CAMP.

1 SO TO MAKE THE DIAGNOSIS, YOU HAVE TO HAVE
2 THESE THINGS, OVER SIX MONTHS, EFFECT ON SOCIAL AND
3 OCCUPATIONAL, AND NOT BE EXPLAINED BY SOMETHING ELSE.
4 AND THE EVIDENCE IN THIS CHART DOESN'T SHOW THOSE
5 THINGS.

6 MS. SWISS: OBJECTION: RELEVANCE, FOUNDATION,
7 MOVE TO STRIKE.

8 THE COURT: SUSTAINED AS TO FOUNDATION. LET
9 ME SEE COUNSEL, SIDEBAR, PLEASE.

10 (THE FOLLOWING PROCEEDINGS WERE HELD AT
11 THE SIDEBAR OUTSIDE THE PRESENCE OF THE
12 JURY).

13 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE
14 PRESENT. YOU'RE ASKING HIM NOW WHAT WOULD BE WITHIN
15 THE PURVIEW OF A PSYCHIATRIST AND POSSIBLY A
16 PSYCHOLOGIST.

17 A FAMILY PRACTITIONER THAT, WHICH IS THE
18 EVIDENCE THAT WE HAVE RECEIVED SO FAR. AND
19 PEDIATRICIAN DOES NOT QUALIFY HIM TO EXPRESS OPINIONS
20 ON WHAT'S REQUIRED BY THE DSM, AND THE VARIOUS CRITERIA
21 NECESSARY, AND INCLUDED IN THE DIFFERENT AXES, PLURAL,
22 THAT ARE PART OF THIS REPORT.

23 NOW, THERE HAVEN'T BEEN OBJECTIONS TO A NUMBER
24 OF THINGS WHICH MAY OR MAY NOT BE WITHIN HIS EXPERTISE,
25 BUT YOUR ONLY QUESTION YOU ASKED HIM TO PROVIDE A
26 FOUNDATION TO THIS, WAS HE FAMILIAR.

27 WELL, I'M FAMILIAR WITH IT, BUT I'M SURE NOT
28 QUALIFIED TO TESTIFY TO IT. AND YOU HAVEN'T

1 ESTABLISHED ANYTHING FURTHER ABOUT HIM THAT QUALIFIES
2 HIM TO TESTIFY TO THE REQUIREMENTS OF THE DIFFERENT
3 AXES UNDER THE DSM, AND SPECIFICALLY, I DON'T HAVE IT
4 IN FRONT OF ME, DSM IV.

5 AND THESE CHANGE FROM TIME TO TIME. AND THEN,
6 EVEN IF HE'S FAMILIAR WITH IT, SO FAR THERE'S NOTHING I
7 HEARD ABOUT HIS EDUCATION, TRAINING, OR EXPERIENCE THAT
8 WOULD QUALIFY HIM TO DO THIS.

9 NOW, IN FACT, WHEN YOU STARTED YOUR
10 QUESTIONING OF HIM, YOU NEVER DID ESTABLISH -- YOU
11 ESTABLISHED HE'S A DOCTOR. WE NEVER HEARD ABOUT WHAT
12 HIS EDUCATION WAS, YOU KNOW, WHERE, WHAT, AND WHAT ALL
13 HIS DIFFERENT TRAINING HAD BEEN.

14 AND I DON'T KNOW WHETHER HE'S QUALIFIED OR
15 NOT, BUT WE HAVEN'T EVEN COME CLOSE TO HIM GIVING
16 ESSENTIALLY OPINIONS THAT WOULD NORMALLY COME FROM A
17 PSYCHOLOGIST OR PSYCHIATRIST. THEY'RE THE ONES WHO USE
18 THE DSM.

19 MS. SWISS: YOUR HONOR, I ALSO BELIEVE THAT
20 THE SCOPE TRYING TO BE ELICITED FROM THIS WITNESS IS
21 OUTSIDE THE DESIGNATION OF THE PLAINTIFF, AND IT'S ALSO
22 IRRELEVANT SINCE THE HILLSIDES WORKERS ARE NOT ON TRIAL
23 HERE, IT'S THE DCFS WORKERS.

24 THE COURT: I'M NOT SURE WHY WE'RE GOING INTO
25 THIS. I DON'T KNOW HOW THIS REPORT IS GOING TO SEE THE
26 LIGHT OF THIS DAY IN THIS CASE. I DON'T KNOW WHAT THE
27 DEFENSE IS GOING TO PRESENT.

28 BUT I THINK IT'S GONE AS HE'S TESTIFIED HE

1 UNDERSTANDS WHO WAS LICENSED TO SIGN SOMETHING LIKE
2 THIS, WHICH I HAVE SOME DOUBTS WHETHER HE DOES OR NOT.

3 I'M NOT DISBELIEVING HE SAYS HE DOES, BUT THAT
4 DOESN'T MAKE HIM A PSYCHIATRIST OR A PSYCHOLOGIST TO
5 KNOW WHO'S QUALIFIED TO DO THIS.

6 IF YOU'RE GOING TO HAVE HIM CRITIQUE, ATTEMPT
7 TO DISCREDIT THE PERSON WHO MADE THE EXAMINATION AND
8 THE DIAGNOSIS IS NOT QUALIFIED TO DO SO, NOW YOU WANT
9 HIM TO TESTIFY AS TO THAT PERSON IS NOT QUALIFIED, AND
10 HE AGREES WITH, OR DISAGREED WITH THESE DIFFERENT
11 DIAGNOSES.

12 I DON'T KNOW WHAT HE WAS DESIGNATED FOR, BUT
13 WE'RE NOT EVEN CLOSE TO HAVING HIM BE ABLE TO TESTIFY
14 TO THIS. IF YOU'RE GOING TO PERSIST WITH THIS LINE OF
15 QUESTIONING, I'LL TELL MS. SWISS, IF YOU'RE OBJECTING
16 ON THE GROUNDS THAT EXCEEDS HIS GROUNDS OF THIS
17 WITNESS, YOU'RE GOING TO HAVE TO SHOW ME WHAT THE
18 DESIGNATION WAS.

19 AND AS A MATTER OF THE DESIGNATION, I WOULDN'T
20 BE SURPRISED IF IT EXCEEDS HIS DESIGNATION. IT'S HARD
21 FOR ME TO IMAGINE TO DESIGNATE A PRACTITIONER TO
22 TESTIFY TO PSYCHIATRIC AND PSYCHOLOGICAL DIAGNOSIS.

23 CERTAINLY CAN TESTIFY TO RESPONSES THAT
24 PATIENTS HAVE THAT'S DEALING WITH THEIR SUBJECT MATTER.
25 THAT IS, THEY CAN TELL WHEN SOMEONE'S UPSET OR NERVOUS
26 OR SOMETHING LIKE THAT.

27 THOSE AREN'T THE DIAGNOSES HERE. BUT HE GIVES
28 DIAGNOSIS SHE'S PARANOID AND OTHER THINGS --

1 MR. MCMILLAN: ALL RIGHT. WELL, I THINK WE'LL
2 JUST MOVE ON THEN. I MIGHT GO BACK. I THOUGHT I HAD
3 ADEQUATELY COVERED HIS TRAINING AND EDUCATION AND
4 EXPERIENCE, PERHAPS NOT. I CAN RECOVER --

5 THE COURT: HIS TRAINING IS IN THE FIELD.
6 HE'S GOING TO HAVE HAD SOME OTHER TRAINING YOU WOULD
7 NORMALLY GET IN THE PEDIATRICIAN --

8 MR. MCMILLAN: IN ORDER --

9 THE COURT: WHAT THE CRITERIA FOR EACH OF
10 THESE AXES, AND WHETHER OR NOT THE HISTORY THEY HAVE
11 SATISFIES THESE OR NOT, I MEAN, I'M NOT AN EXPERT IN
12 THIS MYSELF, BUT I CERTAINLY HEARD THIS KIND OF
13 TESTIMONY FOR MANY MANY YEARS, AND I'VE --

14 MR. MCMILLAN: LET ME JUST, ACTUALLY, LET ME
15 ASK HIM, AND IF IT TURNS OUT HE HASN'T --

16 THE COURT: IT'S GOING TO BE SOMETHING HE'S
17 MORE THAN FAMILIAR WITH.

18 MR. MCMILLAN: OKAY. UNDERSTOOD.

19 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
20 COURT IN THE PRESENCE OF THE JURY)

21 BY MR. MCMILLAN:

22 Q DOCTOR, WE'RE GOING TO BACK UP JUST A LITTLE
23 BIT. I'M GOING TO START WITH, AND WE'LL JUST GO
24 THROUGH IT FAIRLY QUICKLY, YOUR EDUCATION.

25 CAN YOU DESCRIBE FOR US FROM, WELL, UNDERGRAD
26 ON, WHAT YOUR EDUCATIONAL BACKGROUND IS, LEADING TO
27 YOUR LICENSURE?

28 A OKAY. I HAVE A BACHELOR'S DEGREE IN FRENCH

1 LITERATURE FROM UNIVERSITY OF CALIFORNIA SANTA CRUZ.
2 THEN I WENT TO MEDICAL SCHOOL IN STATE UNIVERSITY NEW
3 YORK IN BUFFALO.

4 I CAME TO HERE UCSD TO COMPLETE A RESIDENCY IN
5 FAMILY AND PREVENTIVE MEDICINE. THAT WAS THREE YEARS.
6 I LEFT TO DO DOCTORS WITHOUT BORDERS, AND CAME TO DO A
7 FELLOWSHIP IN SPORTS MEDICINE, AND I'VE BEEN TEACHING
8 AT THE UNIVERSITY EVER SINCE.

9 Q AND DO YOU HAVE ANY PROFESSIONAL
10 CERTIFICATIONS OR SPECIALTIES?

11 A YES.

12 Q DESCRIBE THOSE FOR US.

13 A SO I HAVE A CERTIFICATE, AND I'M QUALIFIED IN
14 SPORTS MEDICINE, AND I'M BOARD CERTIFIED IN FAMILY
15 MEDICINE.

16 Q WHAT DOES THAT MEAN, BOARD CERTIFIED IN FAMILY
17 MEDICINE? WHAT SPECIFICALLY DOES THAT COVER?

18 A THAT COVERS TAKING CARE OF BABIES, TO OLDER
19 ADULTS. IT'S A LITTLE DIFFERENT THAN PEDIATRICS OR
20 INTERNAL MEDICINE. PEDIATRICS IS ZERO TO 18, AND
21 INTERNAL MEDICINE IS 18 TO END OF LIFE. FAMILY
22 MEDICINE BRIDGES THOSE TWO.

23 Q SO YOU BASICALLY COVER FROM BIRTH TO DEATH?

24 A YES.

25 Q DO YOU HAVE ANY AWARDS, RECOGNITIONS, THOSE
26 SORTS OF THINGS?

27 A YES.

28 Q WHAT DO YOU HAVE?

1 A SO I'VE BEEN NAMED TOP DOCTOR IN SAN DIEGO BY
2 THE SAN DIEGO MEDICAL SOCIETY FOR THE LAST EIGHT, NINE
3 YEARS OR LONGER IN BOTH FAMILY MEDICINE AND SPORTS
4 MEDICINE, AND I'VE BEEN NAMED OTHER TOP DOCTOR AWARDS,
5 AMERICA'S TOP DOCTOR, ET CETERA.

6 Q AND ASIDE FROM BEING A DOCTOR AT -- WELL, ARE
7 YOU A DOCTOR AT UCSD?

8 A YES.

9 Q OKAY. AND THEY HAVE THEIR OWN HOSPITAL
10 FACILITIES AND MEDICAL FACILITIES THERE?

11 A YES.

12 Q OKAY. ASIDE FROM BEING A DOCTOR AT UCSD, DO
13 YOU SERVE ON ANY BOARDS OR COMMITTEES AT UCSD?

14 A YES, I DO.

15 Q WHICH ONES?

16 A RISK MANAGEMENT.

17 Q ANY OTHERS?

18 A NO.

19 Q HAVE YOU HAD ANY SPECIALIZED TRAINING IN THE
20 AREA OF PSYCHOLOGY OR PSYCHIATRY, THAT SORT OF THING?

21 A YES.

22 Q CAN YOU PLEASE DESCRIBE THAT FOR US?

23 A AS PART OF THE REQUIREMENTS FOR THE AMERICAN
24 BOARD OF FAMILY PRACTICE, WE HAVE TO STUDY PSYCHIATRY
25 AND PSYCHOLOGY AS PART OF OUR TRAINING. IT'S PART OF
26 OUR BOARD TESTING.

27 IT'S REQUIRED TO GET BOARD TESTED AS WE FINISH
28 OUR TRAINING, AND THEN EVERY TEN YEARS. AND DURING THE

1 TIME, ALSO WE HAVE SPECIALIZED TRAININGS THAT ARE
2 REQUIRED FROM ALL THE AREAS, INCLUDING PSYCHIATRY, FOR
3 THE MEDICAL BOARD.

4 Q AS PART OF THE TRAINING, DO YOU LEARN ABOUT
5 THE VARIOUS MENTAL DISORDERS OR PSYCHIATRIC DISORDERS
6 THAT EXIST?

7 A YES.

8 Q DO YOU LEARN ABOUT HOW TO DIAGNOSE THEM?

9 A YES.

10 Q AND IS THAT PART OF THE TRAINING, THAT NOT
11 ONLY ARE YOU REQUIRED TO HAVE IN TERMS OF YOUR
12 EDUCATION, BUT THAT YOU ALSO HAVE TO TEST ON FOR YOUR
13 LICENSURE?

14 A YES.

15 Q AND IN YOUR PRACTICE, DO YOU DO THESE SORTS OF
16 ASSESSMENTS?

17 A YES.

18 Q DO YOU TEACH AT ALL AT UCSD ABOUT THESE SORT
19 OF ASSESSMENTS AND HOW THEY'RE DONE?

20 A YES.

21 Q IS THERE A MANUAL OR A TOOL OF SOME KIND THAT
22 YOU TEACH YOUR STUDENTS, THAT YOU USE TO DIAGNOSE THE
23 VARIOUS MENTAL DISORDERS OR MENTAL ISSUES?

24 A YES.

25 Q DESCRIBE THEM FOR US. WHAT IS IT?

26 A THE MANUAL THAT WE USE IS CALLED A DIAGNOSTIC
27 AND STATISTICAL MANUAL, OR OTHERWISE KNOWN AS DSM. AND
28 IT'S FROM THE AMERICAN ACADEMY OF PSYCHIATRY.

1 Q NOW, FROM TIME TO TIME, THE DSM, THERE'S
2 REVISIONS AND CHANGES THAT ARE MADE?

3 A YES.

4 Q AND AS PART OF YOUR PRACTICE, IN YOUR
5 PRACTICE, DO YOU KEEP TRACK OF THOSE CHANGES?

6 A YES.

7 Q HOW DO YOU DO THAT?

8 A ONE OF THE WAYS THAT I KEEP TRACK IS I TEACH
9 ABOUT THESE THINGS. SO IT HELPS ME TO LEARN TO BE A
10 TEACHER. ANOTHER WAY IS WE USE RESOURCES.

11 SO EVERY DAY WHEN WE'RE TAKING CARE OF
12 PATIENTS, EVERY SINGLE PATIENT THAT COMES TO OUR STUDY,
13 WE TEST THEM FOR ANXIETY AND DEPRESSION. EVERY PATIENT
14 THAT COMES IN EVERY SINGLE DAY.

15 AS PART OF OUR ROUTINE PRACTICE, WE HAVE TWO
16 SCREENING QUESTIONS THAT HELP US THINK, OH, WE NEED TO
17 TEST FURTHER.

18 SO WE ALSO USE ELECTRONIC RESOURCES -- SO ONE
19 OF THE COMMON RESOURCES THAT WE USE AT UCSD SCHOOL OF
20 MEDICINE AND AT RADY'S CHILDREN'S HOSPITAL AS WELL
21 IS --

22 THE REPORTER: STOP STOP STOP. I CANNOT KEEP
23 UP WITH HIM.

24 THE COURT: YOU HAVE TO JUST SLOW DOWN. IT'LL
25 GO FASTER.

26 THE WITNESS: OKAY. SO TO KEEP UP-TO-DATE,
27 THERE'S MULTIPLE OTHER ELECTRONIC RESOURCES THAT WE USE
28 TO TAKE CARE OF PATIENTS.

1 BY MR. MCMILLAN:

2 Q THERE'S MULTIPLE OTHER ELECTRONIC RESOURCES
3 THAT YOU USE, LIKE WHAT, FOR EXAMPLE?

4 A TO TAKE CARE OF PATIENTS AND TO EVALUATE THEM.

5 Q AND THE -- YOU MENTIONED THE DSM, THE DSM,
6 WHAT'S THE CURRENT VERSION OF THE DSM?

7 A DSM FIVE.

8 Q DO YOU KNOW WHEN DSM WAS RELEASED?

9 A TWO YEARS AGO.

10 Q DO YOU KNOW WHICH VERSION OF THE DSM WAS IN
11 USE BACK IN 2009, NOVEMBER?

12 A YES.

13 Q WHAT VERSION WAS THAT?

14 A DSM FOUR.

15 Q BASED ON YOUR TRAINING, EDUCATION, AND
16 EXPERIENCE THAT YOU'VE EXPRESSED TO US SO FAR HERE, CAN
17 YOU TELL US -- WELL, LET ME ASK YOU THIS FIRST.

18 IN PREPARING TO COME HERE AND TESTIFY TODAY,
19 DID YOU REVIEW THE DIAGNOSTIC CRITERIA THAT WERE SET
20 OUT IN DSM FOUR?

21 A YES.

22 Q FOR EACH OF THE DISORDERS IDENTIFIED HERE IN
23 THIS HILLSIDES REPORT?

24 A YES.

25 Q AND THEN YOU REVIEWED THE DATA THAT WAS
26 COLLECTED IN THE HILLSIDES -- AS REFLECTED IN THE
27 HILLSIDES REPORT AS WELL. CORRECT?

28 A YES.

1 Q WHAT WERE THE DIAGNOSTIC IMPRESSIONS THAT
2 MS. BUSTOS, THE MSW, GAVE TO -- FOR MS. DUVAL?

3 MS. SWISS: OBJECTION: EXCEEDS THE SCOPE OF
4 THE DESIGNATION OF THIS WITNESS, FOUNDATION.

5 THE COURT: ALL RIGHT. TAKE THE AFTERNOON
6 RECESS AT THIS TIME. APPROXIMATELY TEN MINUTES. ALL
7 JURORS PLEASE REMEMBER THE ADMONITION.

8 (JURY EXCUSED)

9 THE COURT: ON THE RECORD. COUNSEL ARE
10 PRESENT. ALL JURORS LEFT THE COURTROOM. MS. SWISS,
11 YOU PREPARED TO SHOW ME THE DESIGNATION THAT WAS THE
12 BASIS OF YOUR OBJECTION?

13 MS. SWISS: YOUR HONOR, WHAT I'VE GOT -- YES,
14 WHAT I HAVE TO SHOW YOU IS THE COURT'S RULING ON THE
15 LIST OF OPINIONS THAT THE COURT HAS ASKED US IN ONE OF
16 THE FINAL STATUS CONFERENCES TO SEND TO THE COURT.

17 AND THEN THE COURT'S -- THE OBJECTION TO THE
18 COURT'S RULING, ON THE SPECIFIC OBJECTIONS, SO -- YES.

19 THE COURT: ALL RIGHT.

20 MR. MCMILLAN: SO -- YOUR HONOR, MAY I?

21 THE COURT: PARDON?

22 MR. MCMILLAN: I WAS JUST GOING, I GUESS, TO
23 RESPOND TO THE OBJECTION THAT IN PRETRIAL, WE'VE GONE
24 THROUGH THE LIST OF EXPERT OPINIONS AND THE OBJECTION,
25 THE BASES, THINGS LIKE THAT, YOUR HONOR HAD ISSUED
26 VARIOUS SPECIFIC RULINGS.

27 THE COURT: YES, I DID.

28 MR. MCMILLAN: AND THIS SPECIFIC AREA, AT

1 LEAST IN MY VIEW, AND I'M THE FIRST TO SAY I COULD BE
2 WRONG, BUT IN MY VIEW --

3 THE COURT: JUST TELL ME WHICH ONE YOU
4 THINK --

5 MR. MCMILLAN: NUMBER 24, AND THAT RELATES TO
6 THE CONCLUSION THAT THE FALSE ATTRIBUTION OF MUNCHAUSEN
7 BY PROXY SYNDROME OF THE SOCIAL WORKERS. NOW, THEY DO
8 THAT IN YOUR JURIS DISPO REPORT, WHICH WE'RE GOING TO
9 BE COMING TO SHORTLY.

10 BUT IN THAT JURIS DISPO REPORT, AND IN THE
11 TESTIMONY IN DEPOSITION, THEY CLAIM THAT, OH, WE
12 WEREN'T THE ONES COMING UP WITH THIS, THIS WAS IN
13 HILLSIDES. BUT THE PROBLEM WITH HILLSIDES IS THAT THE
14 DIAGNOSIS LAID OUT THERE, THERE'S NO FACTUAL BASIS FOR
15 THEM.

16 SO IN ESSENCE, IT IS FALSE, AND THEY'RE A
17 CONTRACT FACILITY. THEY ARE UNDER CONTRACT, DOES THESE
18 ASSESSMENTS ALL THE TIME FOR DCFS, IF I RECALL
19 CORRECTLY. THEY GET \$400,000 A QUARTER FOR DOING THESE
20 THINGS, AND MS. BUSTOS TESTIFIED THAT EVERY PARENT THAT
21 COMES OUT OF THAT FACILITY WITH AN UP-FRONT ASSESSMENT
22 GETS A DIAGNOSIS.

23 AND WHAT DR. ACHAR CAN AND WILL SAY, IF HE'S
24 PERMITTED, IS THAT THE DATE OF -- THAT WAS COLLECTED OF
25 MS. DUVAL AT THAT ASSESSMENT ITSELF, INTERNAL TO THE
26 REPORT, DOESN'T SUPPORT THE LABELS THAT THEY PUT ON
27 HER.

28 THE COURT: WELL, THAT DOESN'T SEEM TO ME TO

1 BE OPINION NUMBER 24 THAT YOU DESIGNATED.

2 MR. MCMILLAN: IT WOULD BE A NECESSARY
3 FOUNDATIONAL OPINION TO GET TO OPINION 24.

4 THE COURT: ALL RIGHT. SHOW ME IN THIS
5 EXHIBIT WHERE CSWS FALSELY LABELED MS. DUVAL AS
6 SUFFERING FROM DISORDER. I HAVEN'T READ THAT, IT'S NOT
7 THE DIAGNOSIS, AT LEAST NOT IN THOSE WORDS.

8 MR. MCMILLAN: THE HILLSIDES UP-FRONT
9 ASSESSMENT DOESN'T SAY THE SOCIAL WORKERS FALSELY DID
10 THIS. WHAT IT SAYS, AND THEY MISCONSTRUED IT, IN OUR
11 VIEW, OF COURSE, INTENTIONALLY, TO SAY -- I'M SORRY,
12 DOCTOR, WHICH TAB WAS HILLSIDES BEHIND?

13 THE WITNESS: TAB S.

14 MR. MCMILLAN: THANK YOU. WHAT THE HILLSIDES
15 REPORT SAYS, AND MS. BUSTOS ALSO SAID THIS IN HER
16 DEPOSITION, WAS THAT AT THE ASSESSMENT, MS. DUVAL
17 BROUGHT UP THE CONCERN THAT FATHER'S TRYING TO PAINT ME
18 AS MUNCHAUSEN BY PROXY.

19 SO WITH THAT CONCERN THAT MS. DUVAL RAISED
20 WITH THE ASSESSOR -- THE ASSESSOR WENT AHEAD AND DID AN
21 ASSESSMENT FOR MUNCHAUSEN BY PROXY AND SAID THE FULL
22 CRITERIA FOR MUNCHAUSEN BY PROXY ARE NOT MET.

23 BUT IN LIGHT OF THIS CONCERN, IN ORDER TO
24 DIAGNOSE HER WITH MUNCHAUSEN BY PROXY, FURTHER
25 ASSESSMENT WOULD BE NECESSARY.

26 THEN THE ASSESSOR GOES ON TO SAY THAT THIS
27 MOTHER COULD BE BEING CONFUSED, IN REFERENCE TO THE
28 FATHER AND HIS FAMILY'S ACCUSATIONS. THIS MOTHER'S --

1 COULD BE BEING CONFUSED WITH A MOTHER WHO IS MEDICALLY
2 KNOWLEDGEABLE ABOUT HER SON'S SENSORY INTEGRATION
3 DISORDER.

4 FROM THAT -- WITH THAT STATEMENT, THOUGH, WE
5 STILL HAVE THESE DIAGNOSTIC IMPRESSIONS THAT ARE GIVEN,
6 WHICH DON'T REALLY LINE UP WITH THE CRITERIA THAT ARE
7 SET OUT IN THE DSM.

8 AND THE DATA THAT SHE COLLECTED IN HER
9 ASSESSMENT, AND WHAT HAPPENED WHEN THE SOCIAL WORKER
10 TOOK THAT INFORMATION, TWISTED THIS AROUND, IS OH,
11 MY --

12 THE COURT: WHAT I'M GOING TO -- OUR REPORTER
13 SEEMS TO BE DISTRESSED. AND WE'RE GOING TO TAKE OUR
14 RECESS FOR A FEW MINUTES, AND THEN WE'LL COME BACK TO
15 DISCUSS. SHE'S SHOWING STRESS. LET'S TAKE THE BREAK.

16 (PAUSE IN THE PROCEEDINGS)

17 THE COURT: ALL RIGHT. WE'RE BACK ON THE
18 RECORD. AND COUNSEL ARE PRESENT. WE'RE OUTSIDE THE
19 PRESENCE OF THE JURY. MR. MCMILLAN AND DR. ACHAR ARE
20 BOTH GOING TO HAVE TO SLOW DOWN SO THE TESTIMONY AND
21 QUESTIONS CAN BE REPORTED.

22 I WANT TO GO BACK TO THE ISSUE THAT WE WERE
23 DISCUSSING, WHICH I DON'T SEE ANY NUMBER 24, DESIGNATED
24 FOR DR. ACHAR, WHICH I DID OVER THE OBJECTION. BUT I
25 REALLY DON'T SEE ANY CONNECTION BETWEEN THAT OPINION
26 AND THE OPINIONS THAT YOU WERE APPARENTLY GOING TO ASK
27 ABOUT THESE --

28 MR. MCMILLAN: UP FRONT.

1 THE COURT: LIST OF DIAGNOSTIC IMPRESSIONS.
2 AND I KNOW YOU WERE TRYING TO EXPLAIN IT TO ME, BUT
3 THE -- WHAT I HEARD SO FAR DIDN'T HELP ME IN SEEING A
4 CONNECTION.

5 MR. MCMILLAN: WE'LL MOVE ON FROM THAT, YOUR
6 HONOR. I'M NOT GOING TO ARGUE THAT.

7 THE COURT: ALL RIGHT. I'VE ALREADY OVERRULED
8 THE OBJECTION TO NUMBER 24, WHICH IS THE OPINION --
9 WHICH YOU CAN GO TO.

10 MR. MCMILLAN: RIGHT.

11 THE COURT: AND IN -- AT SIDEBAR EARLIER
12 BEFORE YOUR LAST QUESTIONING OF THE DOCTOR, I RAISED
13 THE ISSUE ABOUT THE FAILURE OF THE RECORD UP TO THAT
14 POINT TO ESTABLISH A BASIS FOR THE DOCTOR TO BE
15 EXPRESSING OPINIONS ABOUT WHAT ARE ESSENTIALLY
16 PSYCHIATRIC AND/OR PSYCHOLOGICAL OPINIONS.

17 I AM FAMILIAR WITH THE DSM AS WELL AS THE
18 PREVIOUS VERSION THAT HE MENTIONED, WHICH IS
19 NUMBER FOUR AND NUMBER FIVE. AND NOW YOU ASKED SOME
20 QUESTIONS, AND YOU MAY WANT TO PURSUE THAT.

21 I BELIEVE THAT HIS TESTIMONY ESTABLISHES A
22 BASIS FOR EXPRESSING OF -- THAT IS SUFFICIENT BASIS TO
23 EXPRESS EXPERT OPINIONS, ALTHOUGH I DON'T KNOW WHETHER
24 THOSE WERE WITHIN HIS DESIGNATION. AND I CERTAINLY
25 DON'T SEE A CONNECTION WITH NUMBER 24, SO THAT'S MY
26 PROBLEM.

27 MR. MCMILLAN: I UNDERSTAND, YOUR HONOR. BUT
28 LET ME ASK THIS. WOULD IT BE PERMISSIBLE AT LEAST TO

1 HAVE HIM PROVIDE US THE CRITERIA UNDER DSM FOUR FOR
2 GENERALIZED ANXIETY DISORDER AND PERSONALITY DISORDER?
3 IF WE GO NO FURTHER THAN THAT, JUST, WHAT ARE THE
4 CRITERIA.

5 MS. SWISS: THAT'S OUTSIDE THE SCOPE OF THE
6 DESIGNATION OF THIS WITNESS. AND WHILE -- AND IT
7 HASN'T BEEN A FOUNDATION FOR THAT.

8 THIS WITNESS TESTIFIED THAT HE HAD SOME
9 CLASSES REGARDING PSYCHIATRIC STUDIES, AND HE TOOK SOME
10 BOARDS, BUT HE'S NOT A BOARD CERTIFIED PSYCHIATRIST OR
11 A PSYCHOLOGIST. THAT HAS BEEN ESTABLISHED.

12 THE COURT: WELL, I AGREE WITH YOU. HE'S NOT,
13 AT LEAST NOT FROM THE TESTIMONY, BUT I THINK THAT GOES
14 TO THE WEIGHT OF THE TESTIMONY, RATHER THAN THE
15 ADMISSIBILITY.

16 I THINK THAT THERE WAS SUFFICIENT EVIDENCE
17 WHAT HE TESTIFIED TO, TO BE ABLE TO TESTIFY ABOUT THESE
18 DIAGNOSES, BUT THE ANSWER TO YOUR QUESTION IS NO.

19 MR. MCMILLAN: MAN, I THOUGHT YOU WERE LEADING
20 UP TO A YES.

21 THE COURT: I ALREADY SAID YOU CAN GO AHEAD
22 AND ASK HIM ABOUT WHAT IS 24, BUT I HAVEN'T BEEN SHOWN
23 SUFFICIENT CONNECTION. AND BY THEMSELVES, I THINK THAT
24 THAT IS OPINION TESTIMONY, AND THAT WASN'T ONE OF THE
25 OPINIONS DESIGNATED HERE.

26 MR. MCMILLAN: FAIR ENOUGH, YOUR HONOR. THANK
27 YOU. WE'LL JUST MOVE ON FROM THE UP-FRONT ASSESSMENT.
28 I DON'T THINK THERE'S MUCH MORE TO TALK ABOUT THERE

1 WITHOUT GETTING INTO THOSE AREAS.

2 (PAUSE IN THE PROCEEDINGS)

3 THE COURT: LET'S GET THE JURORS BACK IN. I
4 DO WANT TO REMIND BOTH COUNSEL AND OUR WITNESS WE'VE
5 GOT TO SLOW IT DOWN.

6 (JURY PRESENT)

7 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
8 COURT IN THE PRESENCE OF THE JURY)

9 THE COURT: ALL RIGHT. WE'RE BACK ON THE
10 RECORD. EVERYONE MAY BE SEATED. EVERYBODY'S PRESENT.
11 DR. ACHAR'S ON THE STAND, AND YOU MAY CONTINUE,
12 MR. MCMILLAN.

13 MR. MCMILLAN: THANK YOU, YOUR HONOR.

14 BY MR. MCMILLAN:

15 Q WE'RE GOING TO MOVE ALONG, DOCTOR, TO TAB
16 NUMBER U, EXHIBIT 1028. DOCUMENT ENTITLED
17 JURISDICTIONAL DISPOSITION REPORT, SIGNED BY
18 MS. CANDIS NELSON, MS. TIKA SMITH ON DECEMBER 30, 2009.

19 GIVE YOU A MOMENT WHILE EVERYBODY CATCHES UP.

20 MS. SWISS: I FOUND IT, YOUR HONOR.

21 THE COURT: I FOUND IT AS WELL. I'M JUST
22 DOING -- WRESTLING WITH THE BINDER.

23 BY MR. MCMILLAN:

24 Q DR. ACHAR, IF YOU COULD TURN TO 1028.20 OF
25 THAT EXHIBIT, 1028. FIRST, LET ME ASK YOU.

26 IS THIS ALSO ONE OF THE DOCUMENTS THAT YOU
27 REVIEWED AS PART OF THE PROCESS OF PREPARING AND
28 RESEARCHING AND ASSIMILATING DATA TO RENDER YOUR

1 OPINIONS HERE IN THE COURT TODAY?

2 A YES.

3 Q IF YOU LOOK AT THE BOTTOM OF EXHIBIT 1028.20,
4 THE LAST PARAGRAPH THERE, IT SAYS:

5 "IN SPEAKING TO MOTHER, SHE HAS RECENTLY
6 BECOME ENTHRALLED WITH RESEARCH ON A SENSORY DISORDER
7 AS SHE REPORTS WAS INDICATED AS ONE OF THE CONCERNS FOR
8 RYAN BY REGIONAL CENTER.

9 "MOTHER REPORTED THAT SHE HAS LEARNED THAT
10 CHILDREN WHO SUFFER FROM SOME TYPES OF SENSORY DISORDER
11 CAN BE PICKY EATERS WHICH MAY EXPLAIN RYAN'S REFUSAL TO
12 EAT CERTAIN FOODS OR EAT SMALLER PORTIONS THAN
13 DESIRED."

14 FIRST, DOCTOR, DID I READ THAT CORRECTLY?

15 A YES.

16 Q OKAY. FIRST, LET ME ASK YOU. THIS ISSUE
17 ABOUT CHILDREN WITH SENSORY DISORDERS. IS IT TRUE THAT
18 THEY CAN BE PICKY EATERS OR NOT TRUE?

19 A IT IS TRUE.

20 Q AND DO WE KNOW WHY THAT IS?

21 A NO.

22 Q JUST PICKY EATERS?

23 A YES.

24 Q AND IS IT TRUE OR NOT TRUE THAT THIS SENSORY
25 DISORDER MAY EXPLAIN RYAN'S REFUSAL TO EAT CERTAIN
26 FOODS OR EAT SMALLER PORTIONS THAN DESIRED?

27 A YES.

28 MS. SWISS: OBJECTION: FOUNDATION.

1 THE COURT: OVERRULED.

2 BY MR. MCMILLAN:

3 Q I DON'T RECALL, DOCTOR, DID YOU ANSWER THAT
4 LAST QUESTION?

5 A YES. I SAID YES.

6 Q OKAY. I'M SORRY. NOW, AS PART OF YOUR REVIEW
7 OF THE DOCUMENTS YOU WERE PROVIDED, ALSO INCLUDED THE
8 REVIEW OF THE DEPOSITION OF DR. BERKOWITZ AS I RECALL?

9 A YES.

10 Q DID SHE HAVE ANYTHING TO SAY ABOUT THE
11 INFORMATION HERE IN THIS LAST PARAGRAPH?

12 A SHE DID.

13 Q WHAT -- SHARE THAT WITH US.

14 A SO SHE SAID A NUMBER OF THINGS. WE HAVE
15 CHILDREN JUST -- WHO JUST DON'T PUT ON WEIGHT. THEY'RE
16 LIKE SOME ADULTS, THEY SEEM TO BE SLOWER GAINERS AND
17 GROWERS, EVEN IN THE FACE OF BEING GIVEN ADEQUATE
18 NUTRITION.

19 SHE GOES ON TO SAY, IN THE QUESTION SHE GETS,
20 SO A SENSORY INTEGRATION DISORDER MIGHT BE ONE OF THOSE
21 CONDITIONS, CORRECT. AND THEN, DR. BERKOWITZ RESPONDS,
22 YES, PARTICULARLY ORAL AVERSION, WHICH WOULD BE
23 SENSORY.

24 SO RYAN, I HAD RYAN HAD EVIDENCE OF THAT, AND
25 THAT'S WHY HE WAS GETTING OCCUPATIONAL THERAPY.

26 MS. SWISS: YOUR HONOR, I WOULD REQUEST THAT
27 THE WITNESS IDENTIFY FOR THE RECORD WHAT HE'S READING.

28 THE COURT: YES, WILL YOU PLEASE DO THAT,

1 DOCTOR?

2 THE WITNESS: YES, IT IS FROM THE DEPOSITION
3 OF DR. CAROL BERKOWITZ, IN DUVAL COUNTY OF LOS ANGELES
4 ET AL, KRAMM COURT REPORTING, PAGE 87. AND THERE'S
5 OTHER PAGES, TOO, I COULD IDENTIFY.

6 BY MR. MCMILLAN:

7 Q PROBABLY SHOULD GIVE THE PAGE NUMBER THAT YOU
8 READ FROM.

9 A PAGE 69 AND PAGE 87.

10 Q OKAY. THANK YOU. AND DOCTOR, AFTER ALL OF
11 YOUR REVIEW OF ALL THESE RECORDS AND ALL YOUR ANALYSIS,
12 DO YOU AGREE OR DISAGREE WITH DR. BERKOWITZ THERE?

13 A I AGREE.

14 Q I'D LIKE TO TURN YOUR ATTENTION TO THE NEXT
15 PAGE, THAT WOULD BE 1028.21. WE DON'T HAVE TO COVER A
16 LOT OF TIME ON THIS. FIRST SENTENCE, ABOUT BABY RYAN:

17 "HE APPEARS TO CONTINUE TO GAIN WEIGHT IN HIS
18 FATHER'S CUSTODY, DESPITE HIM BEING SICK AT LEAST TWO
19 TIMES, AND MOTHER'S REPORTED STRESS RELATED TO HIS
20 DETENTION."

21 FIRST, DID I READ THAT CORRECTLY?

22 A OH, YES, I SEE IT. YES.

23 THE COURT: WHICH PARAGRAPH IS THIS?

24 MR. MCMILLAN: IT'S THE FIRST PARAGRAPH, TOP
25 OF THE PAGE, 1028.21, THE LAST TWO LINES.

26 THE COURT: ALL RIGHT. THANK YOU. GO AHEAD.

27 BY MR. MCMILLAN:

28 Q OKAY. DID I READ THAT CORRECTLY?

1 A YES.

2 Q AND DID YOU, AS PART OF YOUR REVIEW OF ALL OF
3 THE MEDICAL RECORDS, GET A CHANCE TO GO BACK AND LOOK
4 AT THE MEDICAL RECORDS FOR BABY RYAN LEADING UP TO
5 DECEMBER 3RD, 2009, WHEN THIS REPORT WAS DRAFTED AND
6 SENT TO THE COURT?

7 A YES.

8 Q AND THROUGH THAT REVIEW, WERE YOU ABLE TO TELL
9 WHETHER OR NOT -- WELL, LET ME JUST ASK IT THIS WAY.
10 WAS RYAN AT THIS POINT IN TIME, DECEMBER 30, 2009, WAS
11 HE EXPERIENCING CATCH-UP GROWTH AS WE TALKED ABOUT
12 EARLIER?

13 MS. SWISS: OBJECTION: ASKED AND ANSWERED.

14 THE COURT: SUSTAINED.

15 BY MR. MCMILLAN:

16 Q SKIP DOWN TO THE NEXT PARAGRAPH, SIX LINES
17 DOWN. LAST PARAGRAPH, BOTTOM OF THE PAGE, SIX LINES
18 DOWN FROM THE TOP OF THAT LAST PARAGRAPH, BEGINS WITH
19 "HOWEVER." ARE YOU WITH ME?

20 A YES.

21 Q SAYS: "HOWEVER, THE FACT REMAINS THAT WHILE
22 MOTHER MAINTAINED 80 PERCENT OF THE CUSTODY OF THE
23 CHILD -- "

24 MS. SWISS: OBJECTION: MISREAD THE NUMBER.

25 MR. MCMILLAN: LET ME TRY AGAIN.

26 BY MR. MCMILLAN:

27 Q "HOWEVER, THE FACT REMAINS THAT WHILE MOTHER
28 MAINTAINED 88 PERCENT OF THE CUSTODY OF THE CHILD, THE

1 CHILD'S DEVELOPMENT STUNTED, AND THE CHILD WAS
2 DIAGNOSED WITH FAILURE TO THRIVE DUE TO ENVIRONMENTAL
3 FACTORS.

4 "IN ADDITION, THE CHILD'S REGULAR
5 PEDIATRICIAN, DR. YIM, DISCONTINUED SERVICES DUE TO
6 MOTHER'S FAILURE TO COMPLY WITH HER RECOMMENDATIONS.

7 "WITH THE CONCERN FOR POSSIBLE MUNCHAUSEN BY
8 PROXY AND OTHER PERSONALITY DISORDERS FOR MOTHER,
9 COUPLED WITH THE SURE UNCERTAINTY OF THE EVENTS WHICH
10 LED TO THE CHILD'S SIGNIFICANT STUNTED DEVELOPMENT
11 WHILE IN MOTHER'S CARE, FURTHER ASSESSMENT IS
12 NECESSARY."

13 FIRST, DID I READ THAT CORRECTLY?

14 A YES.

15 Q OKAY. WHEN WE TALK ABOUT STUNTED, STUNTED
16 DEVELOPMENT, WHAT DOES THAT MEAN?

17 A THAT -- NORMALLY, WE USE THE TERM STUNTED TO
18 REFER TO HEIGHT. BUT IN THIS CASE, I THINK THE TERM
19 REFERS TO THE GLOBAL DEVELOPMENTAL DELAY OF THE CHILD.

20 MS. SWISS: OBJECTION: MOVE TO STRIKE AS
21 SPECULATION.

22 THE COURT: THE OBJECTION IS SUSTAINED AS TO
23 SPECULATION.

24 BY MR. MCMILLAN:

25 Q IN YOUR MEDICAL PRACTICE, WHAT IS IT THAT IS
26 MEANT WHEN WE'RE SAYING STUNTED, IN THIS CONTEXT?
27 DEVELOPMENT IS STUNTED?

28 MS. SWISS: OBJECTION: RELEVANCE.

1 THE COURT: SUSTAINED.

2 BY MR. MCMILLAN:

3 Q LET'S FOCUS FOR A MOMENT ON "DIAGNOSED WITH
4 FAILURE TO THRIVE DUE TO ENVIRONMENTAL FACTORS." WAS
5 THIS CHILD EVER DIAGNOSED?

6 THE CAUSE OF THIS CHILD'S FAILURE TO THRIVE,
7 WAS IT EVER DIAGNOSED AS BEING CAUSED BY ENVIRONMENTAL
8 FACTORS?

9 A THERE'S ONE NOTE IN A SQUIGGLY LINE BY
10 DR. EGGE WHERE SHE ADDS IN, APPEARS TO BE ADDING IN THE
11 WORD ENVIRONMENT, BUT AFTER THAT, THE FOLLOW-UP CARE,
12 FAILURE TO THRIVE, DOESN'T REFER TO ENVIRONMENTAL
13 FACTORS. AND IN HER DEPOSITION, DR. BERKOWITZ SAYS
14 THIS WAS MULTIFACTORIAL.

15 Q OKAY. IN FACT, IN HER DEPOSITION,
16 DR. BERKOWITZ SAID THAT THE BABY WAS DIAGNOSED WITH
17 FAILURE TO THRIVE THAT MIGHT HAVE AN ENVIRONMENTAL
18 COMPONENT. IS THAT RIGHT?

19 MS. SWISS: OBJECTION: LEADING, FOUNDATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: YES. SHE SAID IN PAGE 59, SO IT
22 IS REALLY MULTIFACTORIAL, WITH THE ENVIRONMENT BEING
23 ONE COMPONENT.

24 BY MR. MCMILLAN:

25 Q ALL RIGHT. I AM NEARING THE END OF MY BOOK.
26 SORT OF BRINGS US FULL CIRCLE TO YOUR OPINIONS.

27 ALL THIS REVIEW, ALL THIS WORK YOU DID WITH
28 ALL THESE MEDICAL RECORDS, DOCTOR, THE PURPOSE OF ALL

1 THAT WORK WAS TO COME INTO COURT HERE AND FORMULATE AND
2 GIVE YOUR OPINIONS IN THIS CASE.

3 AM I CORRECT ON THAT?

4 A YES.

5 Q AND DID YOU FORMULATE SOME SPECIFIC OPINIONS
6 ABOUT THIS CASE?

7 A I DID.

8 Q AND CAN YOU PROVIDE US THOSE OPINIONS?

9 A SO OPINION NUMBER ONE, BABY RYAN HAS TWO
10 PROBLEMS THAT ARE RELATED. FAILURE TO MAINTAIN
11 APPROPRIATE WEIGHT AND GROWTH, AND GLOBAL DEVELOPMENTAL
12 DELAY. NEITHER OF THESE TWO CONDITIONS ARE RELATED TO
13 MATERNAL CARE OR MATERNAL NEGLECT.

14 Q OPINION NUMBER TWO.

15 A OPINION NUMBER TWO, THE DEFENDANTS INCORRECTLY
16 ATTRIBUTED FAILURE TO THRIVE TO BABY RYAN BASED ON
17 PURPOSEFUL MATERNAL NEGLECT OR EVEN FACTITIOUS DISORDER
18 BY PROXY, ALSO KNOWN AS MUNCHAUSEN BY PROXY, WHEN THERE
19 WAS NO MEDICAL EVIDENCE TO SUPPORT SUCH A CONCLUSION.

20 Q OPINION NUMBER THREE?

21 A THE CAUSE OF BABY RYAN'S FAILURE TO THRIVE
22 CONDITION IS MULTIFACTORIAL.

23 Q AND OPINION NUMBER FOUR.

24 A IT IS WITHOUT A DOUBT THAT MOTHER'S DEVOTION
25 TO BREASTFEEDING AND HER VIEWS ON CERTAIN FOODS DID NOT
26 CAUSE BABY RYAN'S FAILURE TO THRIVE.

27 Q SLOW DOWN JUST A LITTLE BIT. OPINION
28 NUMBER FIVE.

1 A MS. DUVAL HAS A DOCUMENTED HISTORY OF
2 ESSENTIAL TREMORS OR FAMILIAL TREMORS.

3 Q AND BASED ON ALL THE WORK YOU DID ON THESE
4 OPINIONS, DID YOU ALSO FORM SOME CONCLUSIONS ABOUT THAT
5 CASE?

6 A YES.

7 Q OKAY. CAN YOU PLEASE GIVE US THOSE
8 CONCLUSIONS?

9 A IN THEIR FILING WITH THE JUVENILE COURT, DCFS,
10 CHILDREN'S SOCIAL WORKERS IMPROPERLY ATTRIBUTED THE
11 CAUSE OF BABY RYAN'S FAILURE TO THRIVE TO PURPOSEFUL
12 MATERNAL NEGLECT, WHEN THERE WAS NO MEDICAL EVIDENCE TO
13 SUGGEST THAT BABY RYAN'S CONDITION WAS CAUSED BY THE
14 CONDUCT OF THE MOTHER.

15 Q AND THE NEXT CONCLUSION.

16 A CSWS FALSELY INSINUATED THAT MS. DUVAL WAS
17 SUFFERING FROM FACTITIOUS DISORDER BY PROXY, AKA,
18 MUNCHAUSEN BY PROXY, A DIAGNOSIS WHICH THEY ARE NOT
19 QUALIFIED TO MAKE, AND FOR WHICH THERE WAS NO EVIDENCE.

20 Q DOCTOR, HAVE ALL THE OPINIONS AND CONCLUSIONS
21 THAT YOU'VE RENDERED HERE TODAY, BEEN, AT LEAST IN YOUR
22 VIEW, CORRECT TO A REASONABLE AGREE OF MEDICAL
23 CERTAINTY?

24 A YES.

25 MR. MCMILLAN: THANK YOU, DOCTOR. I HAVE NO
26 FURTHER QUESTIONS.

27 THE COURT: MS. SWISS.

28 MS. SWISS: THANK YOU.

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CROSS-EXAMINATION

BY MS. SWISS:

Q DR. ACHAR, GOOD AFTERNOON.

A GOOD AFTERNOON.

Q BEEN HERE ALL DAY, DROVE HERE THIS MORNING
FROM SAN DIEGO?

A NO. CAME LAST NIGHT.

Q AS YOU IMAGINE, I'VE GOT SOME FOLLOW-UP
QUESTIONS AFTER THE LENGTHY TESTIMONY TODAY, BUT I'LL
TRY TO KEEP IT AS SUCCINCT AS I CAN AND HIT ALL THE
AREAS.

NOW, YOU NEVER COMPLETED A FULL MEDICAL EXAM
OF BABY RYAN. IS THAT CORRECT?

A THAT IS CORRECT.

Q AND YOU DID MEET HIM ABOUT A MONTH AGO AT HIS
BIRTHDAY. CORRECT?

A CORRECT.

Q DO YOU CONSIDER YOUR INTERACTIONS WITH HIM AT
HIS BIRTHDAY PARTY TO BE A MEDICAL EVALUATION?

A NO.

Q AND THAT BIRTHDAY PARTY, THERE WAS AN
INDEPENDENT MONITOR THERE. CORRECT?

A YES.

Q AND WAS THE MONITOR MADE AWARE THAT YOU WERE
THERE ASSESSING RYAN?

A I DON'T KNOW.

Q YOU DIDN'T TELL THE MONITOR THAT. CORRECT?

A I DIDN'T AT FIRST KNOW WHO THE MONITOR WAS,

1 NO.

2 Q BUT THEN YOU FIGURED IT OUT?

3 A YES.

4 Q AND YOU DIDN'T TELL THE MONITOR. CORRECT?

5 A NO.

6 Q UNDERSTOOD. NOW, YOU'VE BEEN RETAINED AS AN
7 EXPERT WITNESS BY THE PLAINTIFF, MS. DUVAL IN THIS
8 CASE. CORRECT?

9 A I THINK I WAS RETAINED BY SHAWN MCMILLAN.

10 Q OKAY. AND YOU WERE BEING PAID FOR YOUR WORK
11 IN THIS CASE?

12 A YES, MY -- I HAVE AN HOURLY RATE FOR MY TIME.

13 Q WHAT IS YOUR HOURLY RATE?

14 A \$300.

15 Q AND WHEN YOU WENT TO THIS BIRTHDAY PARTY, WERE
16 YOU BEING PAID TO ATTEND?

17 A YES.

18 Q AND THE BIRTHDAY PARTY WAS IN LOS ANGELES
19 SOMEWHERE?

20 A YES.

21 Q SO YOU DROVE FROM SAN DIEGO TO LOS ANGELES AND
22 ATTENDED A BIRTHDAY PARTY AND DROVE BACK, AND YOU WERE
23 PAID FOR THAT?

24 A I WAS PAID FOR THE ENTIRE TIME, YES.

25 Q AND HOW LONG WAS THAT?

26 A SEVEN HOURS.

27 Q DID YOU BRING A BIRTHDAY GIFT?

28 A NO.

1 Q ISN'T IT CUSTOMARY TO BRING A BIRTHDAY GIFT TO
2 A BIRTHDAY PARTY?

3 A I THINK A BIRTHDAY GIFT WAS BROUGHT FOR US.

4 Q BY MR. MCMILLAN?

5 A YES.

6 Q DID MR. MCMILLAN ATTEND THE PARTY?

7 A NO.

8 Q DID ANY OF THE ATTORNEYS SITTING HERE ATTEND
9 THAT PARTY?

10 A NO.

11 Q HOW MUCH HAVE YOU BEEN PAID TO DATE FOR YOUR
12 WORK IN THIS CASE?

13 A I DON'T REMEMBER THE -- BUT I CAN GUESS, IF
14 YOU'D LIKE.

15 Q I DON'T WANT YOU TO GUESS, BUT IF YOU CAN GIVE
16 US AN ESTIMATE BASED ON YOUR HOURLY RATE AND A NUMBER
17 OF HOURS GENERALLY THAT YOU PUT INTO YOUR WORK?

18 A I THINK IT'S ABOUT \$20,000.

19 Q AND YOU'RE BEING PAID TO BE HERE TODAY.
20 CORRECT?

21 A YES.

22 Q OKAY. WHAT'S YOUR RATE FOR YOUR TESTIMONY
23 HERE IN TRIAL?

24 A I CHARGE \$3,000 FOR THE WHOLE DAY.

25 Q PLUS YOUR TRAVEL AND HOTEL EXPENSES?

26 A THE HOTEL EXPENSES, YES.

27 Q NOW, WE'VE MET BEFORE, HAVEN'T WE?

28 A YES.

1 Q I TOOK YOUR DEPOSITION MANY MOONS AGO?

2 A YES.

3 Q AND DO YOU REMEMBER TELLING ME IN THE
4 DEPOSITION THAT THAT WAS THE FIRST TIME THAT YOU HAD
5 MET MS. DUVAL?

6 A YES.

7 Q THAT WAS THE DATE YOU MET HER, RIGHT BEFORE
8 THE DEPOSITION?

9 A YES.

10 Q OKAY. SINCE THEN, YOU'VE HAD OTHER MEETINGS
11 AND CONVERSATIONS WITH HER?

12 A AT LEAST ONE OTHER CONVERSATION WITH HER.

13 Q WHEN WAS THAT CONVERSATION?

14 A I DON'T REMEMBER.

15 Q WHAT WAS IT REGARDING?

16 A THE TREMORS.

17 Q AND THEN YOU CONTACTED HER FORMER DOCTOR IN
18 THE DOMINICAN REPUBLIC. IS THAT CORRECT?

19 A I DID.

20 Q AND YOU HAD HAVE CONVERSATION, THAT WAS DOCTOR
21 P-U-E-L-L-O. IS THAT RIGHT?

22 A I THINK SO.

23 Q AND WHAT LANGUAGE WAS THAT CONVERSATION IN?

24 A COMBINATION OF SPANISH AND ENGLISH.

25 Q HOW LONG WAS THAT CONVERSATION?

26 A I DON'T REMEMBER.

27 Q WAS IT MINUTES, HOURS?

28 A I THINK IT WAS AROUND 20 MINUTES.

1 Q AND HAVE YOU SPOKEN WITH URBANA DUVAL, THE
2 PLAINTIFF'S MOTHER, REGARDING HER TREMORS?

3 A YES.

4 Q AND THAT WAS ONE CONVERSATION?

5 A ONE CONVERSATION.

6 Q HOW LONG WAS THAT CONVERSATION?

7 A I DON'T REMEMBER.

8 Q WHEN WAS THAT CONVERSATION?

9 A AROUND THE SAME TIME I TALKED TO THE DOCTOR IN
10 THE DOMINICAN REPUBLIC.

11 Q AND WAS THE CONVERSATION WITH
12 MS. URBANA DUVAL, WAS THAT VIA TELEPHONE OR SOME
13 OTHER --

14 A TELEPHONE.

15 Q AND THAT WAS IN SPANISH, I PRESUME?

16 A YES.

17 Q SO THE DOCTOR IN DOMINICAN REPUBLIC,
18 DR. PUELLO, HE TOLD YOU THAT HE HAS BEEN THE DOCTOR FOR
19 MS. RAFAELINA DUVAL?

20 A HE HAD BEEN THE DOCTOR FOR THE FAMILY OF
21 MS. RAFAELINA DUVAL, AND HE HAD THE MEDICAL CHART FOR
22 HIS FATHER, WHO WAS THE DOCTOR OF MS. RAFAELINA DUVAL,
23 BUT WHO HAS PASSED AWAY.

24 Q OKAY. SO THE DOCTOR YOU SPOKE TO DID NOT
25 ACTUALLY TREAT MS. DUVAL. HE TREATED HER FAMILY?

26 A I'M NOT SURE. I DON'T REMEMBER ASKING IF HE'S
27 EVER TREATED -- I DON'T REMEMBER IF I ASKED HAVE YOU
28 EVER TREATED MS. DUVAL, BUT IN TERMS OF THE TREMORS, HE

1 WAS REFERRING TO MEDICAL RECORDS THAT HIS FATHER HAD
2 READ.

3 Q SO HIS FATHER WAS ACTUALLY THE DOCTOR FOR
4 MS. DUVAL?

5 A YES.

6 Q AND THAT'S THE DOCTOR WHO PASSED AWAY?

7 A YES.

8 Q OKAY. AND SO, BASED ON DR. PUELLO'S REVIEW OF
9 HIS FATHER'S MEDICAL RECORDS, AND TALKING TO MS. DUVAL
10 AND HER MOTHER, YOU'VE COME TO THE CONCLUSION WITH A
11 DEGREE OF MEDICAL CERTAINTY THAT MS. DUVAL SUFFERS FROM
12 FAMILIAL TREMORS?

13 A YES.

14 Q HAVE YOU COME TO THE CONCLUSION THAT THESE
15 FAMILIAL TREMORS HAVE CAUSED HER TO BE UNABLE TO
16 PARTICIPATE IN ANY MAJOR LIFE ACTIVITIES?

17 A NO, I DID NOT.

18 Q YOU DID NOT COME TO THAT CONCLUSION?

19 A NO, I DID NOT.

20 Q THANK YOU. NOW, YOU TESTIFIED EARLIER THAT
21 YOU REVIEWED DR. SODERBERG'S RECORDS?

22 A YES.

23 Q AND SHE WAS AN ALLERGIST WHO TESTED BABY RYAN.
24 IS THAT CORRECT?

25 A YES.

26 Q AND ARE YOU AWARE THAT BABY RYAN WAS NOT
27 DIAGNOSED WITH ALLERGIES BY DR. SODERBERG?

28 A I HAVE SOME RECORDS FROM DR. SODERBERG IN

1 FRONT OF ME, AND IT APPEARS BASED ON THESE RECORDS THAT
2 SHE (SIC) WAS DIAGNOSED WITH SOME ALLERGIES.

3 Q CAN YOU TELL ME THE PAGE YOU'RE REFERRING TO?

4 A PAGE NUMBER 001284.

5 Q AND DO YOU KNOW WHAT EXHIBIT THAT IS?

6 A OH, YES. LET ME LOOK. EXHIBIT 8, I HAVE
7 HERE. IS THAT THE WRONG NUMBER?

8 Q I THINK THAT MATCHES MY RECORD.

9 A OKAY.

10 Q IS IT TRUE, BASED ON YOUR REVIEW OF THE
11 RECORDS OF DR. SODERBERG, THAT THE ALLERGIES YOU'RE
12 REFERRING TO ARE THE PLUS ONE FOR MILK AND EGGS?

13 A YES.

14 Q AND ISN'T IT TRUE THAT BACK IN 2009, A PLUS
15 ONE FOR MILK AND EGGS IS ACTUALLY A -- A CHILD IS NOT
16 ALLERGIC TO THOSE?

17 A NOT NECESSARILY. NO, THAT IS NOT TRUE.

18 Q WHAT'S THE BASIS FOR THAT?

19 A I THINK FOOD ALLERGIES, DECIDING IF A CHILD
20 HAS FOOD ALLERGIES, IS A LITTLE BIT MORE COMPLICATED
21 THAN JUST A SKIN TEST.

22 I THINK THE SKIN TEST HELPS. AND THESE SKIN
23 TESTS SUGGESTED SOME REACTION IN THE SKIN TO THE
24 ANTIGEN, THAT IS THE PROTEIN OF COW'S MILK AND EGG
25 WHITES IN THE SKIN OF THIS CHILD.

26 BUT TO ANSWER YOUR QUESTION CORRECTLY, WE USE
27 HISTORY ALSO AS PART OF OUR ANALYSIS OR WHETHER
28 SOMEBODY MAY HAVE AN ALLERGY TO A FOOD. AND SO I THINK

1 IT'S NOT CLEAR THAT, BASED ON THIS, WHETHER OR NOT
2 SHE (SIC) HAS THOSE ALLERGIES, BUT IT'S SUGGESTIVE.

3 Q ARE YOU AWARE THAT DR. SODERBERG HAS ALREADY
4 BEEN HERE TO TESTIFY IN THIS CASE?

5 A YES.

6 Q AND DID YOU GET A CHANCE TO REVIEW HER
7 TESTIMONY?

8 A NO.

9 Q ARE YOU AWARE THAT SHE TESTIFIED THAT SHE DID
10 NOT DIAGNOSE THE BABY WITH ALLERGIES TO MILK OR EGG?

11 MR. MCMILLAN: OBJECTION: MISSTATES
12 TESTIMONY.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DIDN'T GET TO SEE HER
15 TESTIMONY.

16 BY MS. SWISS:

17 Q THANK YOU. NOW, DOCTOR, YOU TESTIFIED EARLIER
18 ABOUT THE SIX MONTHS YOU SPENT IN KENYA?

19 A YES.

20 Q WHEN WAS THAT?

21 A 1997.

22 Q AND YOU TESTIFIED EARLIER THAT YOU HAVE --
23 YOU'RE CURRENTLY TREATING TWO CHILDREN IN THE UNITED
24 STATES WHO HAVE BEEN DIAGNOSED WITH FAILURE TO THRIVE?

25 A YES. ONE OF THEM I'VE BEEN TAKING CARE OF
26 SINCE BIRTH, AND HE'S NOW THREE YEARS OLD, AND I SEE
27 HIM MONTHLY.

28 Q NOW, YOU COMPLETED YOUR STUDIES TO BE A DOCTOR

1 IN 1993. IS THAT CORRECT?

2 A MEDICAL SCHOOL.

3 Q MEDICAL SCHOOL. AND THEN AFTER, WAS THAT YOUR
4 RESIDENCY?

5 A YES.

6 Q OKAY. NOW, ISN'T IT TRUE, DOCTOR, THAT
7 FROM 1993 TO THE PRESENT, THAT YOU HAVE TREATED UNDER
8 TEN CHILDREN IN THE UNITED STATES WHO HAVE BEEN
9 DIAGNOSED WITH FAILURE TO THRIVE?

10 A MAYBE, YES.

11 Q YOU WOULD AGREE WITH ME?

12 A YES.

13 Q AND YOU TESTIFIED AT LENGTH ABOUT BABY RYAN
14 DID NOT EXPERIENCE CATCH-UP GROWTH.

15 DO YOU RECALL THAT?

16 A YES.

17 Q OKAY. AND THERE'S SOME OPINIONS THAT YOU
18 AGREED WITH DR. CAROL BERKOWITZ ON.

19 DO YOU REMEMBER THAT?

20 A YES.

21 Q OKAY. AND ARE YOU AWARE THAT DR. BERKOWITZ
22 RUNS THE FAILURE TO THRIVE CLINIC AT HARBOR-UCLA?

23 A YES.

24 Q ARE YOU AWARE THAT SHE HAS WORKED THERE FOR
25 OVER 30 YEARS?

26 A NOW I'M AWARE OF THAT.

27 Q WELL, YOU REVIEWED HER DEPOSITION. CORRECT?

28 A YES. BUT THAT WAS A WHILE AGO.

1 Q AND YOU WERE AWARE, FROM YOUR REVIEW OF THE
2 DEPOSITION, THAT SHE HAS TREATED HUNDREDS OF PATIENTS,
3 CHILDREN, WHO HAVE BEEN DIAGNOSED WITH FAILURE TO
4 THRIVE?

5 A THAT SOUNDS REASONABLE.

6 Q OKAY. IN FACT, DR. BERKOWITZ HAS DEDICATED
7 HER WHOLE LIFE TO TREATING CHILDREN WITH FAILURE TO
8 THRIVE. ISN'T IT TRUE?

9 MR. MCMILLAN: OBJECTION: FOUNDATION,
10 SPECULATION.

11 THE COURT: OVERRULED. DO YOU RECALL?

12 THE WITNESS: NO, I DON'T RECALL.

13 BY MS. SWISS:

14 Q ARE YOU AWARE THAT DR. BERKOWITZ, WHO'S WORKED
15 AT THE FAILURE TO THRIVE CLINIC FOR 30 YEARS, DISAGREES
16 WITH YOUR STATEMENT THAT THIS CHILD SHOULD HAVE
17 EXPERIENCED CATCH-UP GROWTH IN THE TIME THAT YOU'VE
18 STATED?

19 MR. MCMILLAN: OBJECTION: MISSTATES
20 TESTIMONY, ALSO ARGUMENTATIVE.

21 THE WITNESS: NO, I'M NOT AWARE OF --

22 THE COURT: I HAVE TO RULE ON THE OBJECTION.

23 IT'S OVERRULED.

24 BY MS. SWISS:

25 Q NOW, YOU TESTIFIED THAT YOU ARE HERE BECAUSE
26 YOU WERE RETAINED BY MR. MCMILLAN ON BEHALF OF
27 MS. DUVAL. CORRECT?

28 A CORRECT.

1 Q WOULD YOU CONSIDER YOURSELF TO BE AN ADVOCATE
2 ON BEHALF OF MS. DUVAL, OR A NEUTRAL EXPERT?

3 A A NEUTRAL EXPERT.

4 Q NOW, YOU'RE AWARE THAT MS. DUVAL HAS HIRED
5 OTHER MEDICAL EXPERTS IN THE PAST. TRUE?

6 A NO.

7 Q NOW, ARE YOU AWARE THAT THERE WAS A TRIAL IN
8 THE DEPENDENCY COURT WHERE MS. DUVAL ACTUALLY CALLED
9 TWO DIFFERENT MEDICAL EXPERTS TO TESTIFY ON HER BEHALF?

10 A NO.

11 MR. MCMILLAN: OBJECTION: ASSUMES FACTS,
12 ARGUMENT.

13 THE COURT: OVERRULED.

14 BY MS. SWISS:

15 Q WERE YOU PROVIDED A COPY OF THE TESTIMONY OF
16 MS. DUVAL'S MEDICAL EXPERTS WHO TESTIFIED ON HER BEHALF
17 IN THE ADJUDICATION HEARING FOR THE DEPENDENCY
18 PROCEEDINGS?

19 A NO.

20 Q YOU DID NOT REVIEW THE TRIAL TESTIMONY OF
21 DR. I-R-A LOTT WHO TESTIFIED ON BEHALF OF MS. DUVAL?

22 A I DON'T BELIEVE SO.

23 Q AND YOU DID NOT REVIEW THE MEDICAL -- THE
24 TESTIMONY OF MEDICAL EXPERT CHARLES NEESON, WHO
25 TESTIFIED ON PLAINTIFF'S BEHALF AT THE ADJUDICATION
26 PROCEEDING IN THE DEPENDENCY CASE?

27 A I DON'T REMEMBER THIS, NO.

28 Q NOW, ARE YOU AWARE THAT BOTH DR. LOTT AND

1 DR. NEESON HAD THEIR DEPOSITIONS TAKEN IN THIS CASE?

2 A I DON'T REMEMBER. NO.

3 Q SO YOU DID NOT REVIEW THE DEPOSITION TESTIMONY
4 OF DR. LOTT FROM THIS CASE?

5 A I DON'T REMEMBER.

6 Q AND YOU DID NOT REVIEW THE DEPOSITION
7 TESTIMONY OF DR. NEESON FROM THIS CASE?

8 A I DON'T REMEMBER.

9 Q NOW, YOU'RE NOT A SOCIAL WORKER. CORRECT?

10 A NO.

11 Q AND YOU'VE NEVER GONE THROUGH ANY TRAINING AS
12 A SOCIAL WORKER. CORRECT?

13 A NO.

14 Q AND YOU DON'T HAVE ANY LEGAL TRAINING.
15 CORRECT?

16 A NO.

17 Q AND YOUR PRACTICE IS DEDICATED TO SAN DIEGO?

18 A YES.

19 Q AND YOU TESTIFIED EARLIER THAT THERE'S
20 ACTUALLY A FAILURE TO THRIVE CLINIC AT RADY'S. IS THAT
21 CORRECT?

22 A YES.

23 Q AND DO YOU KNOW IF IT'S SIMILAR TO THE FAILURE
24 TO THRIVE CLINIC AT HARBOR-UCLA?

25 A I WOULD ASSUME SO, YES.

26 Q YOU NEVER WORKED AT ANY FAILURE TO THRIVE
27 CLINIC. CORRECT?

28 A NO.

1 Q BUT THERE ARE DEDICATED DOCTORS AT RADY'S
2 WHERE YOU WORK WHO HANDLE FAILURE TO THRIVE EVERY DAY?

3 A YES.

4 Q NOW, IN YOUR PRACTICE AS A DOCTOR, YOU ARE A
5 MANDATED REPORTER, CORRECT? WE TALKED ABOUT THAT
6 EARLIER.

7 A YES.

8 Q AND ISN'T IT TRUE, DOCTOR, THAT YOU HAVE NEVER
9 HAD ANY PERSONAL CONTACT WITH ANYONE FROM THE LOS
10 ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY
11 SERVICES?

12 A THAT IS CORRECT.

13 Q AND ISN'T IT TRUE, DOCTOR, THAT YOU'VE ONLY
14 MADE ONE MANDATED REPORT IN YOUR WHOLE LIFE?

15 A THAT IS CORRECT.

16 Q AND THAT WAS IN VENTURA COUNTY?

17 A YES.

18 Q WHEN YOU WERE A STUDENT?

19 A NO.

20 Q WHEN YOU WERE -- WHAT YEAR WAS THAT?

21 A 1998, 1999. SOMETHING IN THAT RANGE.

22 Q YOU NEVER TESTIFIED IN COURT IN ANY DEPENDENCY
23 PROCEEDING IN THAT CASE. CORRECT?

24 A NO.

25 Q OKAY. NOW, IN THE DOCUMENTS THAT YOU
26 REVIEWED, YOU'VE GOT THAT BINDER THERE. IS THAT
27 CORRECT?

28 A YES.

1 Q AND THERE'S VARIOUS TABS, A THROUGH Z OR
2 SOMETHING?

3 A YES.

4 Q AND WHERE DID YOU GET THAT BINDER?

5 A DOCTOR -- SHAWN MCMILLAN PREPARED THIS FOR ME.

6 Q SO MR. MCMILLAN SPECIALLY CRAFTED THIS BINDER
7 TO GIVE TO YOU TO REVIEW WITH CERTAIN EXHIBITS?

8 A YES.

9 Q DOES THAT BINDER CONTAIN EVERYTHING YOU
10 REVIEWED IN THE CASE?

11 A I DON'T KNOW.

12 Q HAVE YOU REVIEWED ANY OF THE DEPOSITIONS OF
13 THE SOCIAL WORKERS IN THIS CASE?

14 A YES.

15 Q WHICH SOCIAL WORKERS?

16 A I THINK I'VE REVIEWED -- I DON'T REMEMBER
17 THE -- ALL THE DEPOSITIONS BECAUSE I'VE BEEN WORKING
18 WITH THIS CASE FOR THREE YEARS NOW.

19 Q WELL -- I'M SORRY.

20 A GO AHEAD.

21 Q WHEN I TOOK YOUR DEPOSITION, YOU TOLD ME YOU
22 DIDN'T REVIEW ANY SOCIAL WORKERS'S DEPOSITIONS.

23 DO YOU RECALL THAT?

24 A I DON'T REMEMBER.

25 Q DID YOU REVIEW ALL THE DEPOSITIONS AFTER I
26 ASKED YOU ABOUT IT, FROM THE TIME OF THE DEPOSITION TIL
27 GETTING HERE TODAY?

28 A I -- I DON'T REMEMBER.

1 Q NONE OF THEM STAND OUT?

2 A DR. BERKOWITZ'S DEPOSITION STANDS OUT TO ME,
3 YEAH.

4 Q DR. BERKOWITZ ISN'T A SOCIAL WORKER. RIGHT?

5 A YES.

6 Q DID YOU REVIEW THE DEPOSITION OF WENDY CRUMP,
7 THE NUTRITIONIST?

8 A I DON'T REMEMBER.

9 Q OKAY. DID YOU REVIEW MS. DUVAL'S DEPOSITION?

10 A YES.

11 Q HOW ABOUT LAURA AUSTIN?

12 A I DON'T REMEMBER.

13 Q HOW ABOUT MARIA SCHNAUTZ (PH), DID YOU REVIEW
14 THAT DEPOSITION?

15 A I DON'T REMEMBER.

16 Q DID YOU REVIEW MS. BUSTOS, B-U-S-T-O-S?

17 A I DON'T REMEMBER.

18 Q AND YOU ALREADY TESTIFIED THAT YOU DIDN'T
19 RECEIVE A COPY OF THE ADJUDICATION TRANSCRIPT FROM THE
20 DEPENDENCY CASE. CORRECT?

21 A CORRECT.

22 MR. MCMILLAN: ASKED AND ANSWERED.

23 MS. SWISS: JUST FOUNDATIONAL.

24 BY MS. SWISS:

25 Q IS THAT A YES?

26 A YES.

27 Q SO YOU DID NOT REVIEW THE TESTIMONY OF
28 ROSA BAGDAZARIAN, MS. DUVAL'S LACTATION CONSULTANT FROM

1 THE ADJUDICATION?

2 A I DON'T REMEMBER.

3 Q AND YOU HAVEN'T SEEN ANY MEDICAL RECORDS
4 BETWEEN THE CHILD AT AGE FIVE TO TODAY. CORRECT?

5 A NO.

6 Q AND YOU JUST WENT TO HIS BIRTHDAY, HE JUST
7 TURNED EIGHT?

8 A YES.

9 Q HOW LONG WERE YOU AT THAT PARTY?

10 A TWO PLUS HOURS. TWO, THREE HOURS.

11 Q DID YOU EAT THE CAKE?

12 A YES.

13 Q ALL RIGHT. WE'RE GOING TO TAKE A LOOK AT A
14 FEW OF THESE EXHIBITS. NOW, CAN YOU LOOK AT
15 EXHIBIT 264.

16 DO YOU HAVE THAT?

17 A LET ME FIND OUT.

18 Q WELL, WE TALKED ABOUT IT EARLIER.

19 A YEAH. BUT I HAVE DIFFERENT NUMBERS, I THINK,
20 FOR THIS ONE.

21 Q MR. MCMILLAN TOLD ME IT SHOULD BE TAB H, IF
22 THAT HELPS.

23 A YEP. I GOT IT.

24 Q AND WE'RE LOOKING AT -- OH JEEZ -- AND THAT'S
25 THE INFORMATION FOR COURT OFFICER DATED 3/8/2010? OR
26 IS THAT A WHOLE BUNCH OF STUFF?

27 A LOS ANGELES COUNTY HARBOR-UCLA MEDICAL CENTER
28 MEDICAL RECORD. THAT'S WHAT I HAVE. THIS IS FAILURE

1 TO THRIVE RECORDS, IS WHAT I HAVE.

2 Q I'D LIKE FOR YOU TO TURN TO THE LAST-MINUTE
3 INFORMATION FOR THE COURT, 3/8/2010.

4 A OKAY.

5 Q DID YOU FIND THAT ONE?

6 A YES.

7 Q OKAY. NOW, IF YOU TAKE A LOOK AT THAT, UNDER
8 "PROGRESS," DO YOU SEE THAT?

9 A YES.

10 Q PARAGRAPH RIGHT UNDERNEATH THAT, STARTS WITH
11 "RYAN CONTINUES"?

12 A YES. YES.

13 Q NOW, THE SENTENCE SAYS: "RYAN CONTINUES TO
14 GAIN WEIGHT AND NOW WEIGHS OVER 17 POUNDS AS
15 OF 2/19/2010." DO YOU SEE THAT?

16 A YES.

17 Q AND YOU TESTIFIED EARLIER THAT YOU DIDN'T HAVE
18 ANY KIND OF VISIT CORRELATED WITH 2/19/2010. DID YOU?

19 A NO, I DID NOT.

20 Q CAN YOU TURN TO EXHIBIT 35. AND I'LL TRY TO
21 HELP YOU OUT. IT SHOULD BE UP HERE. YOU HAVE IT,
22 DOCTOR? I KNOW YOU'VE GOT A LOT UP THERE.

23 A YES.

24 Q OKAY. NOW, YOU SEE EXHIBIT 35, BATES NUMBER
25 LOOKS LIKE 8905. DOES THAT LOOK THE SAME IN GENERAL AS
26 EXHIBIT 264? SEEMS TO BE ANOTHER COPY OF THE SAME
27 REPORT?

28 A YES.

1 Q AND YOU SEE IN THE BOTTOM OF EXHIBIT 35 ON
2 THAT PAGE, 8905, THERE'S A LITTLE STAMP THERE, SAYS
3 ADMITTED INTO EVIDENCE?

4 A YES.

5 Q AND THERE'S ALSO A STAMP ON THERE THAT SAYS
6 FILED WITH LOS ANGELES SUPERIOR COURT, MARCH 8, 2010?

7 A YES.

8 Q OKAY. AND YOU SEE ON THE NEXT PAGE, 891, AND
9 I JUST WANT TO CLARIFY FOR THE RECORD, IT LOOKS LIKE
10 THE FIRST PAGE OF THIS EXHIBIT IS 890, THERE'S AN INK
11 MARK, AND THE SECOND PAGE OF THE EXHIBIT IS 891.

12 A CORRECT.

13 Q AND YOU SEE SOME SIGNATURES THERE?

14 A YES.

15 Q NOW, TAKING A LOOK AT EXHIBIT 264 VERSUS
16 EXHIBIT 35. DOES 264 HAVE THE SIGNATURES FROM THE
17 SOCIAL WORKERS ON THERE?

18 A NO.

19 Q AND TAKING A LOOK AT EXHIBIT 35, IT ACTUALLY
20 HAS AN ATTACHMENT TO THE REPORT. ISN'T THAT CORRECT?

21 A YES.

22 Q AND THAT ATTACHMENT, THAT APPEARS TO BE A
23 MEDICAL RECORD FROM NANCY LAST NAME E-G-I-Z-I-I?

24 A YES.

25 Q AND DO YOU SEE ON THAT ATTACHMENT TO THE
26 REPORT, THE DATE OF THE EVALUATION?

27 A YES.

28 Q WHAT IS THAT DATE?

1 A 2/19/2010.

2 Q 2/19/2010. ISN'T THAT CORRECT?

3 A CORRECT.

4 Q AND LOOKING AT THE NEXT PAGE OF THAT
5 EVALUATION, ACTUALLY, TWO PAGES IN, PAGE 894, LOOKING
6 AT THE BOTTOM?

7 A OKAY.

8 Q IT SAYS FEEDING/ORAL MOTOR. DO YOU SEE THAT?

9 A YES.

10 Q AND IT SAYS RYAN'S WEIGHT IS 17.5 POUNDS. DO
11 YOU SEE THAT?

12 A YES.

13 Q NOW, LOOKING BACK AT THE FIRST PAGE OF
14 EXHIBIT 35, THE SENTENCE SAYS:

15 "RYAN CONTINUES TO GAIN WEIGHT AND NOW WEIGHS
16 OVER 17 POUNDS AS OF 2/19/2010?"

17 THE WITNESS: YOUR HONOR, CAN I FIND OUT WHAT
18 THE KILOGRAMS OF THIS IS?

19 MS. SWISS: RELEVANCE.

20 BY MS. SWISS:

21 Q THE REPORT SAYS 17.5 POUNDS AT THE TOP. THE
22 REPORT FILED WITH THE COURT SAYS 17 POUNDS.

23 A YEAH. THE REASON I SAY THIS IS, PHYSICAL
24 THERAPISTS GENERALLY WERE NOT WEIGHING CHILDREN, AND
25 I'M WONDERING WHERE THEY GOT THIS WEIGHT.

26 I DON'T KNOW, IT COULD BE A CORRECT WEIGHT, IT
27 COULD BE A RECORDED WEIGHT, BUT WE DO HAVE A WEIGHT
28 FROM THE FAILURE TO THRIVE CLINIC IN THE REPORTS

1 BEFORE. AND I JUST WANT TO COMPARE TO SEE IF THIS WAS
2 THE RECORDED WEIGHT.

3 Q NOT AT THIS TIME. THANKS FOR THE QUESTION,
4 BUT MR. MCMILLAN CAN TAKE THAT UP WITH YOU IF
5 NECESSARY. NOW, YOU SEE THIS REPORT HAS THE ACTUAL
6 REPORT THAT WAS FILED WITH THE COURT, ACTUALLY HAS
7 MS. EGIZII'S EVALUATION ATTACHED TO IT.

8 DO YOU SEE THAT?

9 A YES.

10 Q SO THIS INFORMATION FOR THE COURT ATTACHES THE
11 REPORT WHERE THE INFORMATION CAME FROM. WOULDN'T THAT
12 BE SAFE TO ASSUME?

13 A POSSIBLY, YES.

14 Q OKAY. NOW, THE NEXT SENTENCE IN EXHIBIT 35 ON
15 PAGE 890 SAYS: "THE FAILURE TO THRIVE CLINIC REPORTED
16 THAT RYAN IS MAKING SUCH PROGRESS THAT IT IS ONLY
17 NECESSARY FOR THEM TO SEE HIM ONCE EVERY THREE MONTHS
18 FOR CHECK-UPS."

19 DO YOU SEE THAT?

20 A YES.

21 Q AND EARLIER TODAY, YOU TESTIFIED THAT YOU
22 DISAGREED THAT THE MEDICAL RECORDS SAID THAT. ISN'T
23 THAT CORRECT?

24 A THE FAILURE TO THRIVE CLINIC NEVER SAID THAT.
25 THEY SAID FOLLOW UP IN TWO WEEKS, FOLLOW UP IN FOUR
26 WEEKS, ET CETERA.

27 Q THE FAILURE TO THRIVE CLINIC, THAT'S AT
28 HARBOR-UCLA?

1 A YES.

2 Q HAVE YOU LOOKED AT THE FAILURE TO THRIVE
3 CLINIC'S RECORD OF 1/19/10? BATES LABELED 2369.

4 A YES.

5 THE COURT: OF WHAT EXHIBIT?

6 MS. SWISS: COUNSEL, YOU'VE GOT IT. COUNSEL,
7 WHAT EXHIBIT IS THAT?

8 MR. MCMILLAN: 733.

9 BY MS. SWISS:

10 Q DO YOU HAVE DEFENSE EXHIBIT 733?

11 MR. PRAGER: PLAINTIFF'S EXHIBIT.

12 MS. SWISS: I'M SORRY. IT'S PLAINTIFF'S
13 EXHIBIT.

14 MR. GUTERRES: 167.

15 BY MS. SWISS:

16 Q EXHIBIT 167. YOU HAVE THE PAGE 2369, DOCTOR?

17 A YES.

18 Q MAY I PROCEED?

19 A YES.

20 THE COURT: WHAT IS THE EXHIBIT NUMBER?

21 MS. SWISS: 167.

22 THE COURT: ALL RIGHT.

23 BY MS. SWISS:

24 Q AND YOU SEE ON THE RIGHT COLUMN, ADVICE AND
25 MEDICATIONS. DO YOU SEE THAT?

26 A YES.

27 Q AND YOU SEE UNDER NUMBER THREE, IT SAYS RETURN
28 TO FTT, AND THEN THERE'S A SQUIGGLE MARK WITH A ONE

1 ABOVE IT?

2 A YES.

3 Q AND THEN MONTHS?

4 A YES.

5 Q FROM LOOKING AT THAT RECORD, DOES IT APPEAR TO
6 YOU THAT THERE'S ACTUALLY A THREE CROSSED OUT AND
7 CHANGED TO A ONE?

8 A YES.

9 Q NOW, LOOKING BACK AT EXHIBIT 35, BATES
10 LABELED 890, THE NEXT SENTENCE SAYS:

11 "HOWEVER, FATHER HAS REQUESTED TO MAINTAIN THE
12 MONTHLY CHECK-UPS WITH THE CLINIC." DO YOU SEE THAT?

13 A YES.

14 Q AND WOULD YOU AGREE WITH ME THAT THE THREE
15 CROSSED OUT TO A ONE MIGHT INDICATE THAT THIS DOCTOR
16 SUGGESTED THAT THEY MEET EVERY THREE MONTHS, BUT
17 CHANGED IT TO A ONE ON THE FATHER'S REQUEST?

18 MR. MCMILLAN: SPECULATION -- OBJECTION.

19 BY MS. SWISS:

20 Q NOW, YOU TESTIFIED EARLIER THAT THE SOCIAL
21 WORKER LIED TO THE COURT AND SAID THERE WAS NO EVIDENCE
22 THAT THE FAILURE TO THRIVE CLINIC SUGGESTED THAT THE
23 BABY COME BACK EVERY THREE MONTHS? ISN'T THAT TRUE?

24 A YES.

25 Q BUT YOU AGREE THAT WITH THE JANUARY 19, 2010,
26 VISIT, THERE IS A POSSIBILITY WITH THE THREE CROSSED
27 OUT TO A ONE, THAT THERE ACTUALLY WAS THAT STATEMENT?

28 MR. MCMILLAN: OBJECTION: SPECULATION.

1 THE COURT: OVERRULED.

2 MR. MCMILLAN: LACKS FOUNDATION, YOUR HONOR.

3 THE COURT: OVERRULED.

4 THE WITNESS: I AGREE.

5 BY MS. SWISS:

6 Q OKAY. NOW, YOU REVIEWED THE MEDICAL RECORDS
7 OF DR. YIM. IS THAT CORRECT?

8 A CORRECT.

9 Q AND YOU AGREE THAT DR. YIM RECOMMENDED THAT
10 BABY RYAN START SOLIDS ABOUT SIX MONTHS OR SO?

11 A THAT SOUNDS APPROPRIATE, BUT I'D HAVE TO
12 REFRESH MY MEMORY BY LOOKING AT THE RECORDS. WHAT I --
13 I CAN ANSWER THAT QUESTION NOW.

14 Q I'M SORRY?

15 A I CAN ANSWER YOUR QUESTION BETTER NOW.

16 Q OKAY.

17 A SO ON BATES 000922, THERE'S A SIX-MONTH
18 CHECK-UP. AND THERE'S A DISCUSSION ABOUT SOLIDS. AND
19 DR. YIM DOESN'T SAY START SOLIDS. SHE SAYS MOTHER
20 PREFERS TO WAIT UNTIL EIGHT MONTHS OF AGE.

21 Q NOW, IN REVIEWING -- DID YOU REVIEW THE
22 DEPOSITION OF DR. YIM?

23 A YES.

24 Q AND WOULD YOU AGREE WITH ME THAT DR. YIM
25 TESTIFIED THAT THE MOTHER FOLLOWED ALL OF HER
26 RECOMMENDATIONS?

27 A YES.

28 Q NOW, YOU HAVEN'T REVIEWED THE PRIOR TESTIMONY

1 OF THE LACTATION CONSULTANT, MS. BAGDAZARIAN, YOU
2 ALREADY SAID THAT. CORRECT?

3 A CORRECT.

4 Q ARE YOU AWARE THAT MS. BAGDAZARIAN TESTIFIED
5 THAT SHE RECOMMENDED THAT BABY RYAN ONLY RECEIVE BREAST
6 MILK FOR THE FIRST 12 MONTHS OF LIFE?

7 MR. MCMILLAN: OBJECTION: MISSTATES
8 TESTIMONY.

9 THE COURT: OVERRULED.

10 THE WITNESS: YEAH. I DON'T REMEMBER -- I
11 DON'T -- I DON'T KNOW.

12 BY MS. SWISS:

13 Q ARE YOU AWARE THAT MS. BAGDAZARIAN ALSO
14 TESTIFIED THAT MS. DUVAL FOLLOWED ALL OF HER
15 RECOMMENDATIONS AND INSTRUCTIONS?

16 A I DON'T KNOW.

17 Q SO IF WE HAVE ONE DOCTOR SAYING MS. DUVAL
18 FOLLOWED HER INSTRUCTIONS TO START SOLIDS AT EIGHT
19 MONTHS, AND ANOTHER CONSULTANT SAID MS. DUVAL FOLLOWED
20 ALL OF HER INSTRUCTIONS AND DIDN'T START SOLIDS UNTIL
21 AFTER 12 MONTHS, WE GOT OF A BIT OF A DISCREPANCY.

22 WOULDND'T YOU AGREE?

23 MR. MCMILLAN: SPECULATION, ARGUMENT --
24 OBJECTION.

25 THE COURT: OVERRULED. THE QUESTION IS, IS
26 THAT A DISCREPANCY.

27 THE WITNESS: IT MAY NOT BE. IT MAY HAVE TO
28 DO WITH WHEN THESE TWO PROVIDERS SAW THE PATIENT.

1 FOR EXAMPLE, ONE PROVIDER MIGHT HAVE
2 RECOGNIZED THE TRUNCAL HYPOTONICITY, THE LOSS OF MOTOR
3 CONTROL, AND BEEN A LITTLE BIT MORE HESITANT TO START
4 SOLIDS FOR FEAR OF ENDANGERING BABY, WHILE ANOTHER
5 PROVIDER MAY HAVE SEEN THE CHILD AT A DIFFERENT TIME
6 AND NOT BEEN ALERTED.

7 SO JUST BECAUSE TWO PROVIDERS MAKE DIFFERENT
8 RECOMMENDATIONS DOESN'T MEAN THAT'S A DISCREPANCY. IT
9 COULD BE A CHANGE IN THE UNDERSTANDING OF THE CLINICAL
10 CARE.

11 MS. SWISS: MOVE TO STRIKE AS NONRESPONSIVE,
12 SPECULATION.

13 THE COURT: MOTION TO STRIKE IS DENIED.
14 BY MS. SWISS:

15 Q BUT YOU DON'T REALLY KNOW BECAUSE YOU HAVEN'T
16 REVIEWED ALL THE TESTIMONY FROM MS. BAGDAZARIAN AND
17 DR. YIM, HAVE YOU?

18 A I DON'T REMEMBER.

19 Q NOW, DOCTOR, YOU ARE NOT A BOARD CERTIFIED
20 PSYCHIATRIST. IS THAT CORRECT?

21 A NO, I'M NOT.

22 Q THAT'S A DIFFERENT SPECIALTY?

23 A YES.

24 Q AND YOU'VE NEVER DIAGNOSED ANY PATIENT WITH
25 MUNCHAUSEN BY PROXY SYNDROME, HAVE YOU?

26 A NO.

27 Q NOW, YOU TESTIFIED EARLIER THAT A DELAY IN
28 VACCINATION HAS NO LINK TO FAILURE TO THRIVE. CORRECT?

1 A CORRECT.

2 Q WHAT IF A CHILD WHO IS SUFFERING FROM FAILURE
3 TO THRIVE GETS SICK AND AS A RESULT HE CAN'T EAT?
4 WOULDNT'T THAT BE A LINK?

5 MR. MCMILLAN: OBJECTION, YOUR HONOR:
6 INCOMPLETE HYPOTHETICAL.

7 THE COURT: SUSTAINED.

8 BY MS. SWISS:

9 Q YOU TESTIFIED EARLIER ABOUT YOUR TREATMENT OF
10 PATIENTS IN KENYA, REGARDING OTHER REASONS THEY WERE
11 NOT ABLE TO STAY NOURISHED, SUCH AS IF THEY HAD
12 DIARRHEA OR VOMITING.

13 DO YOU RECALL THAT?

14 A CORRECT.

15 Q AND IN YOUR EXPERIENCE, IF THE CHILD IS
16 SUFFERING FROM DIARRHEA AND VOMITING, THAT COULD BE A
17 CONTRIBUTING FACTOR TO THEIR INABILITY TO GAIN WEIGHT.
18 IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q AND IS THAT THE SAME FOR THE OTHER CONDITIONS
21 YOU TALKED ABOUT, LIKE PNEUMONIA?

22 A YES.

23 Q AND TUBERCULOSIS?

24 A YES.

25 Q CHOLERA?

26 A YES.

27 Q AND I THINK YOU SAID CROHN'S DISEASE?

28 A YES.

1 Q AND TURNER DISEASE?

2 A YES.

3 Q AND CEREBRAL PALSY?

4 A YES.

5 Q DID YOU REVIEW ANY RECORDS IN THIS CASE THAT
6 BABY RYAN WAS SUFFERING FROM ANY OF THOSE?

7 A NO. HE WASN'T.

8 Q HE WAS NOT?

9 A HE WAS NOT.

10 Q DID YOU REVIEW RECORDS IN THIS CASE THAT ONCE
11 BABY RYAN WAS BEING TREATED BY THE FAILURE TO THRIVE
12 CLINIC, THAT HE DID SUFFER FROM SOME COMMON CHILDHOOD
13 ILLNESSES, COLD, FEVER, FLU?

14 A YES, I DID REVIEW THOSE RECORDS.

15 Q AND YOU SAW THAT?

16 A YES.

17 Q AND WOULD YOU AGREE WITH ME THAT A CHILD BEING
18 TREATED WITH FAILURE TO THRIVE, WHO GETS A COLD, MIGHT
19 NOT BE GAINING WEIGHT AS AN OTHERWISE HEALTHY CHILD?

20 A FOR A VERY SHORT TIME, FOR A FEW DAYS, YES.

21 Q THE SAME QUESTION WITH REGARD TO THE FLU.
22 CHILD'S GOT THE FLU. HE'S NOT EATING FOR A FEW DAYS,
23 THAT WOULD CONTRIBUTE TO POOR WEIGHT GAIN. WOULDN'T
24 IT?

25 A YES.

26 Q AND YOU SAW THAT WITH BABY RYAN?

27 A YES.

28 Q AND DO YOU HAVE EXHIBIT 263 IN FRONT OF YOU?

1 BATES 821?

2 A CAN YOU GIVE ME MORE INFORMATION? IT MIGHT
3 HELP ME FIND IT.

4 Q IT'S THE LAST-MINUTE INFORMATION FOR THE COURT
5 DATED JANUARY 2ND, 2010.

6 A NO, I DO NOT HAVE THAT.

7 Q DO YOU HAVE EXHIBIT 26? IT SHOULD BE IN A
8 BINDER IN FRONT OF YOU.

9 A OH, YES.

10 Q I THINK THAT ONE.

11 A YES. I HAVE 16 IN THE BINDER HERE.
12 SIXTEEN -- 1/22, I HAVE THE 1/22.

13 Q SO YOU HAVE IN FRONT OF YOU EXHIBIT 263,
14 PAGE 3847?

15 A YES.

16 Q AND YOU ALSO HAVE EXHIBIT 26 BATES 821? IT'S
17 THE OTHER BOOK, SAME PAGE.

18 A OTHER BOOK, YES.

19 Q NOW, EARLIER TODAY, WHEN YOU WERE QUESTIONED
20 BY MR. MCMILLAN, WE WERE DISCUSSING PAGE 3847 OF
21 EXHIBIT 263.

22 DO YOU AGREE WITH ME?

23 A YES.

24 Q AND YOU SEE ON EXHIBIT 26 PAGE 821, APPEARS TO
25 BE A DIFFERENT VERSION OF THE SAME REPORT?

26 A LOOKS TO ME THE SAME VERSION.

27 Q AND PAGE 821, THAT PAGE HAS THE SIGNATURES ON
28 IT. DO YOU SEE THAT?

1 A YES.

2 Q AND IT ALSO HAS THE STAMP, ADMITTED INTO
3 EVIDENCE?

4 A YES.

5 Q NOW, DO YOU ALSO SEE THAT EXHIBIT 26 IS
6 MULTIPLE PAGES?

7 A YES.

8 Q AND EXHIBIT 263 IS UNSIGNED AND IS ONLY ONE
9 PAGE. CORRECT?

10 A YES.

11 Q NOW, TAKE A LOOK AT THE LAST PARAGRAPH ON
12 EXHIBIT 26 IN THE MIDDLE, FOURTH LINE DOWN, THE
13 SENTENCE THAT BEGINS, "THE RESEARCH MOTHER."

14 A OKAY. YES, I GOT IT.

15 Q I'M ACTUALLY GOING TO BACK UP TO THE SENTENCE
16 BEFORE THAT.

17 A OKAY.

18 Q "MOTHER PROVIDED ADDITIONAL IN QUOTES,
19 RESEARCH, THAT SHE HAS COMPILED IN AN EFFORT TO BECOME
20 MORE INFORMED OF TREATING HER CHILD'S SPECIAL NEEDS PER
21 MS. DUVAL. THE RESEARCH MOTHER PROVIDED IS
22 RESPECTFULLY ATTACHED FOR THE COURT'S REVIEW."

23 DO YOU SEE THAT?

24 A YES.

25 Q DID I READ THAT CORRECTLY?

26 A YES.

27 Q AND IF YOU FLIP TO THE REMAINING PAGES OF
28 EXHIBIT 26, THERE'S ABOUT FOUR OR FIVE PAGES THERE.

1 DO YOU SEE THAT?

2 A YES.

3 Q AND THEY'RE BATES LABELED 822 THROUGH 828?

4 A YES.

5 Q DO YOU SEE THAT?

6 A I SEE THAT.

7 Q WOULD YOU AGREE WITH ME THAT THESE PAGES
8 APPEAR TO BE ATTACHMENTS TO THIS REPORT SUBMITTED BY
9 THE SOCIAL WORKER TO THE COURT?

10 MR. MCMILLAN: OBJECTION: SPECULATION.

11 THE COURT: OVERRULED.

12 THE WITNESS: YEAH, IT APPEARS TO BE.

13 BY MS. SWISS:

14 Q AND TAKING JUST A QUICK LOOK AT THOSE PAGES,
15 WOULD YOU AGREE WITH ME THAT THESE PAGES ATTACHED TO
16 THE COURT REPORT APPEAR TO BE THE ADDITIONAL RESEARCH
17 THAT MS. DUVAL PROVIDED TO THE SOCIAL WORKER TO SUBMIT
18 TO THE COURT?

19 A YES.

20 Q IN THE PREVIOUS PARAGRAPH, LAST SENTENCE, DO
21 YOU SEE THAT IT SAYS: "FATHER ALSO REPORTS THAT RYAN
22 HAS BEGUN TO SIT UP FROM A PRONE POSITION BY HIMSELF."
23 DO YOU SEE THAT?

24 A YES.

25 Q WHAT DOES IT MEAN TO MOVE FROM A -- TO BEGIN
26 TO SIT UP FROM A PRONE POSITION?

27 A THAT MEANS WHAT IT SAYS. THAT YOU CAN GET UP.

28 Q SO IF A CHILD WAS LYING DOWN, HE CAN SIT UP ON

1 HIS OWN?

2 A YES.

3 Q AND YOU TESTIFIED EARLIER THAT THIS WAS A
4 FALSE OR MISLEADING STATEMENT?

5 A YES.

6 Q AND THAT WAS BECAUSE THE BABY COULD ALREADY
7 SIT UP?

8 A NOT ONLY THAT --

9 Q BUT YES?

10 A THE MOST IMPORTANT REASON I TESTIFIED THAT
11 THIS IS FALSE AND MISLEADING IT APPEARS ALMOST LIKE
12 RYAN IS IMPROVING WHEN IN FACT HE'S 18 MONTHS. THIS
13 SHOULD BE DONE AT SIX MONTHS.

14 THIS IS WAY, WAY BEYOND NORMAL DEVELOPMENT.
15 THIS IS A SIGN OF A BABY THAT'S REALLY IN NEED OF
16 SPECIAL SERVICES AND STRUGGLING.

17 MS. SWISS: MOVE TO STRIKE EVERYTHING AFTER
18 YES.

19 THE COURT: THE -- HE DIDN'T SAY YES, YOU DID.
20 SO THAT'S WHY I'M HESITATING. SO THE -- THE FOLLOWING
21 QUESTION OF COUNSEL, BUT YES, AND THE ANSWER
22 THEREAFTER, "MOST IMPORTANT REASON," ARE ORDERED
23 STRICKEN.

24 YOU MAY BE ABLE TO PICK UP ON THIS. BUT IT'S
25 DIFFICULT TO PIECE TOGETHER WHAT WAS ASKED AND WHAT WAS
26 RESPONSIVE. SO WE CAN RESUME THAT, WHICH WE'LL DO
27 TOMORROW.

28 WE'LL TAKE THE AFTERNOON RECESS AT THIS TIME.

1 ALL JURORS PLEASE REMEMBER THE ADMONITION. NO
2 COMMUNICATION WITH ANYBODY, DON'T LET ANYONE
3 COMMUNICATE WITH YOU, ABOUT ANY PERSON OR SUBJECT OR
4 ISSUE IN THE CASE.

5 DO NOT FORM ANY OPINION NOR EXPRESS ANY
6 OPINION ABOUT ANY SUBJECT OR ISSUE IN THE CASE.

7 (JURY EXCUSED)

8 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.
9 AND ALL JURORS LEFT THE COURTROOM. I KNOW EARLIER WE
10 INQUIRED ABOUT THE DOCTOR'S SCHEDULE.

11 HE SAID HE PROBABLY -- I DON'T WANT TO QUOTE
12 IT EXACTLY, BUT MY OVERALL IMPRESSION WAS HE COULD
13 PROBABLY GET BACK TOMORROW, BUT IT WAS A LITTLE -- YOU
14 WEREN'T CERTAIN, BUT IT WOULD BE TIGHT.

15 I REMEMBER THAT. SO I DON'T KNOW THAT
16 ANYTHING HAS CHANGED SINCE THEN. AND SO MY SUGGESTION
17 WOULD BE IF YOU WERE ABLE TO GET BACK TOMORROW, IT
18 WOULD BE IN THE AFTERNOON.

19 THE WITNESS: YES.

20 THE COURT: SO WHY DON'T WE LEAVE THIS, THEN.
21 IF YOU'RE UNABLE TO RETURN TOMORROW AFTERNOON, YOU GOT
22 AHOLD OF MR. MCMILLAN AND LET HIM KNOW, AND THEN WE'LL
23 FIND ANOTHER TIME. WOULD THAT BE AGREEABLE?

24 THE WITNESS: YES.

25 THE COURT: BUT YOU DO UNDERSTAND AND AGREE
26 THAT UPON REASONABLE NOTICE AND TAKING YOUR SCHEDULE
27 INTO CONSIDERATION, YOU ARE ORDERED TO APPEAR UNTIL WE
28 COMPLETE YOUR TESTIMONY?

1 THE WITNESS: OKAY.

2 THE COURT: ALL RIGHT? THANKS VERY MUCH
3 DOCTOR. AND THEN I'LL SEE COUNSEL 8:30 TOMORROW
4 MORNING.

5 MR. MCMILLAN: YES, YOUR HONOR.

6 MR. GUTERRES: THANK YOU, YOUR HONOR.

7 MS. SWISS: THANK YOU, YOUR HONOR.

8

9 (WHEREUPON, AT THE HOUR OF 4:33 P.M.,
10 THE PROCEEDINGS WERE ADJOURNED.)

11

12 ---OOO---

13

14 (THE NEXT PAGE NUMBER IS 3601)

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