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M A S T E R I N D E X

SEPTEMBER 22, 2016

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M A S T E R I N D E X

SEPTEMBER 22, 2016

EXHIBITS

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9	2738		
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1 CASE NUMBER: BC470714
2 CASE NAME: DUVAL V COUNTY OF LOS ANGELES, ET AL
3 LOS ANGELES, CALIFORNIA THURSDAY, SEPTEMBER 22, 2016
4 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: ALISIA PATRICIO, CSR NO. 13606
7 TIME: 9:22 A.M.

8

9

---OOO---

10

11 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.

12 EVERYONE MAY BE SEATED. EVERYONE IS PRESENT.

13 GOOD MORNING TO ALL OF OUR JURORS.

14 AND MR. MCMILLAN, WOULD YOU LIKE TO CALL YOUR

15 NEXT WITNESS?

16 MR. MCMILLAN: YES, YOUR HONOR. WE WOULD CALL

17 ROBERT POWELL.

18 THE COURT: ALL RIGHT.

19

20 ROBERT POWELL,

21 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY

22 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

23

24 THE CLERK: FOR THE RECORD, PLEASE STATE YOUR

25 NAME AND SPELL YOUR FIRST AND LAST NAME.

26 THE WITNESS: MY NAME IS ROBERT POWELL. FIRST

27 NAME IS SPELLED R-O-B-E-R-T, LAST NAME IS SPELLED

28 P-O-W-E-L-L.

1 THE COURT: THANK YOU.

2 GO AHEAD, MR. MCMILLAN.

3 MR. MCMILLAN: THANK YOU, YOUR HONOR.

4

5 DIRECT EXAMINATION

6 BY MR. MCMILLAN:

7 Q MR. POWELL, WE KNOW EACH OTHER; RIGHT?

8 A WE DO.

9 Q WELL, BEFORE WE GET INTO THAT, CAN YOU TELL US
10 A LITTLE BIT -- NOT TOO MUCH, BUT A LITTLE BIT -- ABOUT
11 WHAT YOU DO FOR A PROFESSION?

12 A TO CLARIFY "A LITTLE BIT," THAT I AM A LAWYER,
13 SO I WILL TRY TO KEEP IT BRIEF.

14 I AM A LAWYER IN CALIFORNIA.

15 DO YOU WANT TO KNOW ABOUT MY PRACTICE AREAS OF
16 LAW?

17 Q YEAH, WE CAN START WITH THAT.

18 A CURRENTLY, ABOUT 80 PERCENT OF MY PRACTICE IS
19 SUING CHILD PROTECTIVE SERVICE AGENCIES AND/OR LAW
20 ENFORCEMENT IN CALIFORNIA FOR THE UNLAWFUL REMOVAL OF
21 CHILDREN AND OTHER CLAIMS THAT ARE ASSOCIATED WITH HOW
22 THEY HANDLE THAT PROCESS.

23 I ALSO HAVE PRACTICED FAMILY LAW FOR 25 YEARS.
24 IT CURRENTLY OCCUPIES MAYBE 10 OR 15 PERCENT OF MY
25 PRACTICE.

26 AND I ALSO, WITHIN THE FIRST YEAR OF MY
27 BECOMING A LAWYER, I HAD MY FIRST JUVENILE DEPENDENCY
28 CASE, AND I BEGAN PRACTICING IN JUVENILE DEPENDENCY

1 COURTS. AND THAT OCCUPIES 10 TO 15 PERCENT, AGAIN, OF
2 MY PRACTICE AT ANY GIVEN TIME.

3 Q THANK YOU. I GUESS I GOT A LITTLE BIT AHEAD
4 OF MYSELF. I PROBABLY SHOULD HAVE ASKED A LITTLE BIT
5 OF FOUNDATIONAL INFORMATION FIRST.

6 CAN YOU TELL US A LITTLE BIT ABOUT YOUR
7 EDUCATION?

8 A RECEIVED MY COLLEGE DEGREE FROM SAN JOSE STATE
9 UNIVERSITY IN SOCIOLOGY, WITH A CRIMINOLOGY MINOR.
10 THEN WENT TO SANTA CLARA UNIVERSITY, RECEIVED MY LAW
11 DEGREE THERE. THREE CLASSES SHORT OF AN MBA, WHICH
12 WILL HAUNT ME FOR THE REST OF MY LIFE, APPARENTLY. AND
13 THAT'S MY EDUCATION.

14 WHAT WAS THE REST OF YOUR QUESTION?

15 Q I THINK THAT PRETTY MUCH SUMS IT UP.
16 EDUCATION.

17 A WELL, LET ME BE CLEAR: AS A LAWYER, WE HAVE A
18 CONTINUING EDUCATION REQUIREMENT THAT REQUIRES US TO
19 TAKE 25 HOURS OF CONTINUING EDUCATION EVERY THREE
20 YEARS, I BELIEVE IT IS. AND MINE'S COMING UP.

21 Q WHILE WE'RE ON THAT SUBJECT, YOU SAID THAT YOU
22 DO HAVE AN ELEMENT OF YOUR PRACTICE THAT INVOLVES WORK
23 IN THE JUVENILE DEPENDENCY COURT.

24 IS THERE SOME ADDITIONAL TRAINING THAT YOU
25 TAKE SPECIFICALLY FOR THAT PURPOSE?

26 A SO THERE IS SOME THAT YOU CAN TAKE, AND I JUST
27 RECENTLY TOOK AN 8.5-HOUR CLASS ON THAT SPECIFIC
28 SUBJECT FROM ONE OF THE GREATEST JUVENILE APPELLATE

1 ATTORNEYS IN THE STATE, JANET SHERWOOD.

2 BUT IT'S NOT REQUIRED. YOU CAN PRACTICE IN
3 THE JUVENILE DEPENDENCY COURT IF YOU'VE NEVER HAD ANY
4 TRAINING SPECIFIC TO JUVENILE DEPENDENCY.

5 Q AND IN YOUR YEARS OF PRACTICE IN THE JUVENILE
6 COURT, HAVE YOU COME ACROSS ATTORNEYS PRACTICING IN
7 THAT COURT WHO DIDN'T HAVE THAT SPECIFIC TRAINING?

8 A I'M SURE I HAVE. I DON'T THINK I QUIZZED
9 THEM, BUT IT'S TYPICALLY DONE BY LEARNING ON THE JOB,
10 UNLESS YOU'RE A COURT-APPOINTED ATTORNEY. THEN THEY
11 WILL TYPICALLY HAVE SOME REQUIREMENTS THAT THEIR FIRMS
12 REQUIRE THEM TO TAKE IN TERMS OF FORMAL TRAINING.

13 AND I'M GOING TO NEED TO BRING MY LEG UP AND
14 SIT CROSS-LEGGED, NOT OUT OF DISRESPECT, BUT OUT OF
15 BEING 56 YEARS OLD AND HAVING A BAD BACK. SO I'M GOING
16 TO SHIFT AROUND. I JUST WANT YOU TO KNOW THAT.

17 Q UNDERSTOOD. I DON'T THINK ANYBODY HAS AN
18 OBJECTION TO THAT.

19 A OKAY, BECAUSE IT'S ALREADY HURTING.

20 Q IF YOU NEED TO PUT YOUR LEG UP, YOU CAN DO
21 THAT --

22 A I'M GOING TO DO THAT. THANK YOU.

23 Q NOW, TO BECOME AN ATTORNEY, AFTER YOU
24 COMPLETED LAW SCHOOL, DID YOU HAVE TO TAKE ANY SORT OF
25 EXAM OR ANYTHING LIKE THAT?

26 A YEAH, EVERY CALIFORNIA ATTORNEY IS REQUIRED --
27 I BELIEVE EVERY CALIFORNIA ATTORNEY IS REQUIRED; I HOPE
28 THEY ARE -- TO TAKE THE BAR EXAM, WHICH IS A THREE-DAY

1 COURSE, VERY EXHAUSTIVE, AND IT IS DEFINITELY
2 UNDERSTOOD TO BE ONE OF THE MOST HARD ATTORNEY TESTS
3 THAT YOU CAN TAKE IN THE UNITED STATES. DEFINITELY ONE
4 OF THE TOUGHEST.

5 Q AND YOU HAD TO PASS THAT TO GET YOUR LICENSE
6 TO PRACTICE LAW?

7 A YES, I DID.

8 Q WHEN WAS THAT?

9 A 1992, I THINK, IS WHEN I WAS SWORN IN, SO
10 SOMEWHERE BEFORE THAT, LITTLE BIT BEFORE THAT.

11 Q SO YOU'VE BEEN AN ATTORNEY, THEN, SINCE 1992.
12 AND I DON'T RECALL, DID YOU SAY YOU STARTED
13 OUT IN FAMILY LAW OR JUVENILE?

14 A FIRST, I WENT INTO PRACTICE FOR MYSELF
15 DIRECTLY AFTER PASSING THE BAR. I HAD A YOUNG FAMILY,
16 AND I SAID "I'M GOING TO DO THIS ON MY OWN; I'M READY
17 TO PRACTICE." WHEN YOU DO THAT, YOU'RE KIND OF
18 LIMITED, UNLESS YOU HAVE A BIG WAR CHEST, WHICH I DID
19 NOT HAVE. SO I CHOSE FAMILY LAW BECAUSE IT WAS A CASH
20 AREA OF LAW. I DIDN'T MUCH LIKE THE CRIMINAL LAW. I
21 HAVE DONE SOME CRIMINAL LAW; I'VE DONE SOME WORKERS'
22 COMP. BUT I WENT DIRECTLY INTO FAMILY LAW. AND THEN,
23 SHORTLY THEREAFTER, I PICKED UP MY FIRST JUVENILE
24 DEPENDENCY CASE, AN OLDER BROTHER OF A FRIEND OF THE
25 FAMILY.

26 Q AND THAT WAS BACK IN -- YOUR FIRST JUVENILE
27 CASE, THAT WAS BACK WHEN?

28 A '93.

1 Q OKAY. SO VERY EARLY IN YOUR CAREER.

2 AND EVER SINCE 1993, YOU'VE CONTINUED TO WORK
3 IN THE JUVENILE COURTS?

4 A INDEED.

5 Q AND IN THE FAMILY COURTS?

6 A INDEED.

7 Q AT WHAT POINT IN YOUR CAREER DID YOU START
8 SORT OF GETTING INTO THIS CIVIL RIGHTS WORK?

9 A IT WAS EITHER 1998 OR 1999. IN ONE OF MY
10 JUVENILE DEPENDENCY CASES, THE CLIENT ACTUALLY
11 CONTACTED ME AND ADVISED ME THAT SHE HAD FOUND A CASE
12 WHERE THEY HAD -- THE AGENCY HAD BEEN SUED, AND SHE
13 SENT ME THE CASE. AND I READ IT AND I CONTACTED THE
14 PLAINTIFF'S ATTORNEY.

15 AND HE EXPLAINED TO ME THAT, TO HIS KNOWLEDGE,
16 THERE WAS ONLY HIM AND HIS TWO COLLEAGUES THAT WERE
17 DOING THIS AREA OF LAW. AND HE SAID IT WAS DESPERATELY
18 AN AREA THAT NEEDED LAWYERS, AND HE WOULD GIVE ME THE
19 PASSWORD TO HIS COMPUTER SYSTEM AND GIVE ME ANYTHING I
20 NEEDED, AND THAT'S WHERE IT STARTED.

21 Q THAT WAS IN 19--?

22 A I WANT TO SAY THE COMPLAINT WAS FILED IN 1998.
23 IT COULD HAVE BEEN 1999. THE CASE WAS *DONNA PRIOR*
24 *VERSUS THE COUNTY OF SANTA CLARA*.

25 Q AND YOU -- DID YOU STAY IN THAT CASE UNTIL THE
26 VERY END?

27 A I DID.

28 Q THEN, AFTER THAT CASE, DID YOU DO MORE OF THAT

1 TYPE OF WORK?

2 A A LOT MORE.

3 Q WHAT WAS IT THAT DREW YOU INTO THAT FROM YOUR
4 CASH PRACTICE OF FAMILY LAW AND JUVENILE DEPENDENCY?

5 A HAVING BY THAT TIME ALREADY HANDLED SEVERAL
6 JUVENILE DEPENDENCY MATTERS, I WAS JUST APPALLED ON A
7 PERSONAL LEVEL OF THE MANNER IN WHICH THESE CASES
8 PROCEED IN THE SYSTEM, ON SO MANY LEVELS.

9 AND I'M AN ADVOCATE FOR MY CHILDREN, AS I'M
10 SURE ALL OF US ARE. I ALSO COACHED CHILDREN FOR YEARS.
11 I'VE COACHED OVER 350 CHILDREN IN FOOTBALL, BASKETBALL,
12 A LITTLE BIT OF VOLLEYBALL, AND A LOT OF SOCCER. AND
13 WHEN YOU SEE WHAT HAPPENS TO THESE PEOPLE WHEN THEY
14 HAVE THEIR CHILDREN TAKEN, IT CAN REALLY AFFECT YOU.
15 AND IT REALLY AFFECTED ME. AND I KNEW THAT I HAD THE
16 WHEREWITHAL AND THE PASSION TO FIGHT IT, SO IT
17 BECAME -- IT'S A HUGE PART OF WHAT I DO AND WHO I AM.

18 Q RIGHT. THESE ATTORNEYS YOU TALKED ABOUT BACK
19 IN '98, '99, THAT GAVE YOU FULL ACCESS TO ALL THEIR
20 DATA, DO YOU STILL KEEP IN CONTACT WITH THEM?

21 A ABSOLUTELY.

22 Q WHO ARE THEY?

23 A THE ORIGINAL THREE WERE DONNIE COX, DENNIS
24 ATCHLEY, AND PAUL LEEHEY, WHO WORKED TOGETHER. DENNIS
25 AND DONNIE WERE ONE FIRM; PAUL WAS HIS OWN. BUT THEY
26 WERE -- I THINK THEY WERE, LIKE, GRADE-SCHOOL BUDDIES.

27 AND AFTER THAT, SOME PEOPLE HAVE COME TO OUR
28 ATTENTION, INCLUDING YOURSELF. THEN THERE'S DAVID

1 BEAUVAIS OUT OF OAKLAND; THERE'S ANDY MILLER OUT OF
2 SACRAMENTO; THERE'S PETER JOHNSON NOW; THERE'S JILL
3 WEINBERGER (PHONETIC). I WOULD PUT THE NUMBER MYSELF,
4 RIGHT NOW, AT 12 ATTORNEYS, TO MY KNOWLEDGE, WHO DO
5 THIS AS A REGULAR PART OF THEIR BUSINESS IN THE STATE
6 OF CALIFORNIA. AND THAT, GIVEN THE NUMBERS OF
7 ATTORNEYS IN THE STATE OF CALIFORNIA, IS SAD. I'LL
8 JUST USE THAT WORD.

9 Q NOW, AT SOME POINT AS YOU'RE GOING THROUGH
10 YOUR CAREER, THE MIX OF YOUR BUSINESS, YOUR CASES THAT
11 YOU'RE BRINGING IN, THAT SORT OF STARTED TO CHANGE OVER
12 TIME?

13 A YES.

14 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT
15 PROGRESSION, THAT EVOLUTION?

16 A AS SOON AS I STARTED DOING THIS LITIGATION
17 AGAINST THE CHILD PROTECTIVE SERVICE AGENCIES, IT JUST
18 GREW. AND IT GREW EXPONENTIALLY. THERE'S SUCH A NEED.
19 AS I JUST SAID, THERE'S LIKE 12 ATTORNEYS NOW, TODAY.
20 AND BACK THEN, YOU COULD COUNT THEM ON ONE HAND.

21 SO WORD WOULD GET AROUND, EVEN SOCIAL WORKERS
22 WOULD ON OCCASION -- STILL DO -- WOULD TELL PEOPLE TO
23 GO TO ME BECAUSE THEY FELT SOMETHING WAS WRONG. AND
24 THAT'S NOT UNCOMMON. STILL HAPPENS TO THIS DAY.

25 Q THAT'S AN INTERESTING POINT.

26 HAVE YOU EVER HAD A SOCIAL WORKER FROM THE
27 COUNTY OF LOS ANGELES SEND SOMEONE TO YOU OR CONTACT
28 YOU?

1 A ABSOLUTELY, I HAVE. NOW, UNDERSTAND,
2 90 PERCENT OF THE TIME, THEY ARE VERY ADAMANT WITH THE
3 PERSON: "DO NOT TELL HIM I SENT YOU. DON'T GIVE HIM
4 MY NAME." BECAUSE, OF COURSE, OF THEIR OWN
5 REPERCUSSIONS AT WORK.

6 I'VE ALSO BEEN CONTACTED AND REPRESENT TWO
7 AUTHORS OF A BOOK ABOUT THE JUVENILE DEPENDENCY SYSTEM
8 IN LOS ANGELES, MR. JULIAN DOMINGUEZ AND MELINDA
9 MURPHY. AND THEY ACTUALLY HIRED ME JUST BECAUSE HE WAS
10 AFRAID THAT WHEN HE WROTE THIS BOOK, THERE WOULD BE
11 PROBLEMS, AND HE WANTED MY NAME IN THE MIX, IF YOU
12 WILL.

13 Q SO HE HIRED YOU --

14 A PROPHYLACTICALLY.

15 Q JUST IN CASE?

16 A JUST IN CASE.

17 Q DO YOU KNOW, WHEN HE PUBLISHED HIS BOOK -- YOU
18 SAID THERE WAS A CO-AUTHOR; RIGHT?

19 A IT WAS THE TWO OF THEM.

20 Q WHEN THEY PUBLISHED THEIR BOOK, WERE THEY BOTH
21 SOCIAL WORKERS WITH THE COUNTY OF LOS ANGELES?

22 A NO. JULIAN, BY THE TIME HE PUBLISHED IT, I
23 THINK HE HAD RETIRED -- I MEAN, LIKE WEEKS BEFORE. AND
24 MELINDA WAS NO LONGER WORKING FOR THE COUNTY, BUT SHE
25 WAS AND STILL IS, I BELIEVE, A SOCIAL WORKER FOR ONE OF
26 THE CONTRACT FIRMS THAT PROVIDE THE COURT-APPOINTED
27 ATTORNEYS. AND I THINK SHE'S STILL DOING THAT.

28 Q AND DO YOU KEEP IN CONTACT WITH BOTH OF THEM?

1 A I KEEP IN CONTACT WITH EVERYONE.

2 Q WE SORT OF GOT OFF THE POINT A LITTLE BIT. I
3 INTERRUPTED YOU WHEN YOU BROUGHT UP THIS ISSUE OF
4 SOCIAL WORKERS SOMETIMES SENDING PEOPLE TO YOU.

5 YOU WERE EXPLAINING TO US ABOUT THE EVOLUTION
6 OF THE MAKEUP OF YOUR LAW PRACTICE FROM FAMILY TO JUVIE
7 TO CIVIL RIGHTS, AND THE SEGUE INTO CIVIL RIGHTS, AND I
8 INTERRUPTED YOU IN THAT. AND I APOLOGIZE.

9 IF YOU COULD SORT OF CONTINUE THAT, AND I'LL
10 TRY TO NOT INTERRUPT YOU AGAIN.

11 A WELL, I CAN ONLY SAY THAT, AGAIN, THERE ARE SO
12 FEW THAT I THINK WHENEVER MY NAME WOULD COME OUT, OR
13 ONE OF MY OPINIONS -- I HAD A VERY SIGNIFICANT OPINION
14 COME OUT IN 2007 FROM THE 9TH CIRCUIT COURT OF APPEAL.
15 AND WHEN THAT HIT THE MEDIA, THOSE FAMILIES AND PARENTS
16 WHO ARE OUT THERE AND ARE DESPERATE AND SEE SOMETHING
17 VICTORIOUS ON BEHALF OF PARENTS, THE PHONE STARTS
18 RINGING OFF THE HOOK, SO.

19 Q WHEN YOU SAY YOU HAD AN OPINION COME OUT, CAN
20 YOU EXPLAIN WHAT THAT MEANS A LITTLE BIT?

21 A WELL, EVERY COURT, INCLUDING THIS COURT, AT
22 TIMES RENDERS DECISIONS IN CASES. SOMETIMES THEY'RE ON
23 SMALLER MATTERS, MOTIONS THAT ARE BROUGHT, ARGUMENTS
24 ABOUT DISCOVERY. AND THEN, OF COURSE, THEY ISSUE
25 DECISIONS ON -- IN TRIALS. SOMETIMES -- THERE'S NOT
26 ALWAYS A JURY EMPANELLED -- SOMETIMES THE JUDGE IS THE
27 JURY AND HE ISSUES THE DECISION.

28 BUT DECISIONS FOR THE MOST PART, WHEN YOU'RE

1 TALKING ABOUT THEM, ARE APPELLATE COURT DECISIONS.

2 IS THAT WHAT YOU WANT ME TO DESCRIBE?

3 Q RIGHT. WHEN YOU'RE TALKING ABOUT -- YOU
4 REFERENCED AN OPINION THAT CAME OUT IN 2007, AND I JUST
5 WANTED TO MAKE SURE THAT EVERYBODY UNDERSTOOD WHAT THAT
6 MEANT, OPINION.

7 A OKAY.

8 Q FROM WHERE, AND WHAT THE EFFECT OF THE OPINION
9 IS IN TERMS OF PRECEDENT, I GUESS, IS THE RIGHT WORD.

10 A OKAY. SO THIS IS GOING TO SOUND LIKE A
11 TEACHER FOR A LITTLE BIT, AND I APOLOGIZE TO THOSE WHO
12 ALREADY KNOW THIS.

13 WE HAVE TWO SYSTEMS OF JUSTICE HERE IN THE
14 UNITED STATES, TYPICALLY A STATE AND A FEDERAL. RIGHT?
15 WE'RE IN STATE COURT RIGHT NOW. STATE COURTS CAN HEAR
16 FEDERAL CASES AS WELL. YOU CAN CHOOSE TO FILE IN STATE
17 COURT; I CHOOSE TO FILE THEM MOSTLY IN FEDERAL COURT.
18 BUT IT DOESN'T MATTER. THE JUDGES, THEY'VE ALL HAD THE
19 SAME EDUCATION AND KNOWLEDGE.

20 IN THE -- WHAT IS CALLED THE TRIAL COURT --
21 THIS IS THE TRIAL COURT. SAME THING IN THE FEDERAL
22 COURT. THERE IT'S CALLED THE DISTRICT COURT, BUT IT'S
23 A TRIAL COURT. IF THEY MAKE A DECISION, A RULING IN A
24 CASE, AND YOU'RE UNHAPPY WITH IT, YOU CAN APPEAL IT TO
25 A HIGHER COURT. AND IN BOTH STATE OR FEDERAL, THEY'RE
26 CALLED APPELLATE COURTS.

27 IN OUR AREA, WHERE WE LIVE -- AND I ASSUME YOU
28 ALL LIVE AROUND HERE -- OURS IS CALLED THE 9TH CIRCUIT

1 COURT OF APPEAL. THE 9TH CIRCUIT COURT OF APPEAL, WHEN
2 IT RENDERS A DECISION, ITS EFFECT IS ACROSS NINE STATES
3 AND TWO ISLANDS, THE NORTH MARIANA ISLANDS AND GUAM.
4 SO BASICALLY 11 DIFFERENT AREAS THAT ARE AFFECTED AND
5 ARE SUPPOSED TO FOLLOW WHATEVER THAT 9TH CIRCUIT COURT
6 OPINION SAID.

7 SO THEY WILL HAVE A HOLDING IN THE OPINION.
8 THEY WILL MAKE A RULING ON SOMETHING. AND THAT IS
9 PRECEDENTIAL IN THE SENSE THAT ANYONE UNDERNEATH THE
10 9TH CIRCUIT, IN THOSE NINE STATES OR THOSE TWO ISLAND
11 NATIONS, IS EXPECTED TO FOLLOW THAT LAW. IT'S SUPPOSED
12 TO CLARIFY -- IT'S SUPPOSED TO CLARIFY AN AREA OF LAW,
13 OR SOMETIMES IT'LL CREATE A NEW STATEMENT ABOUT THE
14 LAW.

15 SO I THINK THAT ANSWERS YOUR QUESTION.

16 Q I THINK SO. THANK YOU.

17 AND WHILE WE'RE TALKING ABOUT THESE APPELLATE
18 COURT CASES, IN YOUR CAREER, HAVE YOU, YOURSELF,
19 BROUGHT CASES UP TO THE APPELLATE COURT?

20 A YES, NUMEROUS.

21 Q SPECIFICALLY TO THE ISSUES THAT ARE INVOLVED
22 IN THIS TRIAL, THE 14TH AMENDMENT RIGHT TO FAMILIAL
23 ASSOCIATION, HAVE YOU PROSECUTED APPEALS IN THE
24 9TH CIRCUIT, OR ANY OTHER COURT -- OR ANY OTHER
25 APPELLATE COURT, RELATED TO ISSUES STEMMING FROM
26 ALLEGED VIOLATIONS OF THE RIGHT TO FAMILIAL
27 ASSOCIATION?

28 A OKAY. WELL, TO BE CLEAR, IN THE STATE

1 APPELLATE COURT SYSTEM, WHERE IT EMANATES FROM A
2 JUVENILE DEPENDENCY CASE, YOU'RE NOT ARGUING CIVIL
3 RIGHTS VIOLATIONS. SO THAT'S GOING TO BE JUST --
4 YOU'RE NOT ARGUING EXIGENT CIRCUMSTANCES BECAUSE IT'S
5 NOT COVERED BY THE STATE COURT AND THEIR RULINGS.

6 BUT IN THE FEDERAL COURT, YES. AND, IN FACT,
7 ALL OF MY TRIPS TO THE 9TH CIRCUIT HAVE BEEN CASES
8 ABOUT UNLAWFUL REMOVAL OF CHILDREN, I THINK ALL BUT ONE
9 IN THE ABSENCE OF A WARRANT. AND THEN I HAD ONE CASE
10 THAT HAD TO DO, STRANGELY ENOUGH, WITH A REPOSSESSION.
11 BUT THERE ACTUALLY ARE CIVIL RIGHTS ISSUES INVOLVED IN
12 A REPOSSESSION CONTEXT.

13 SO YES, NUMEROUS. AND I WANT TO SAY IT'S SIX
14 OR SEVEN CASES THAT I'VE TAKEN UP TO THE 9TH CIRCUIT ON
15 UNLAWFUL REMOVAL.

16 Q OKAY. IN ADDITION TO UNLAWFUL REMOVAL -- AND
17 JUST TO CLARIFY, WHEN YOU SAY UNLAWFUL REMOVAL, WE'RE
18 JUST TALKING ABOUT THE INITIAL SEIZURE OF THE CHILD
19 FROM THE PARENTS' CARE?

20 A CORRECT.

21 Q IN ADDITION TO THAT, HAVE YOU ALSO PROSECUTED
22 APPEALS BEFORE THE 9TH CIRCUIT IN RELATION TO ANY OTHER
23 TYPE OF INAPPROPRIATE OR ALLEGED INAPPROPRIATE CONDUCT
24 IN THE CONTEXT OF A JUVENILE DEPENDENCY PROCEEDING?

25 A I DON'T KNOW THAT I'VE APPEALED WHAT WOULD BE
26 CONSIDERED THE CONTINUING DETENTION OF CHILDREN. I DID
27 HAVE A CASE WHERE I WAS VICTORIOUS -- *ANDERSON-FRANCOIS*
28 *VS. COUNTY OF SONOMA* -- IN CONVINCING THE DISTRICT

1 COURT THAT THE JUVENILE COURT DOES NOT MAKE RULINGS ON
2 WHETHER OR NOT A REMOVAL IS LAWFUL WHEN IT'S BEEN DONE
3 PRIOR TO THE COURT'S INVOLVEMENT. AND THE DEFENDANTS
4 APPEALED THAT AND OTHER ISSUES, AND THEY WENT UP, BUT
5 THEY DECIDED NOT TO APPEAL THAT ISSUE, AND THEY LOST ON
6 THE EXIGENT REMOVAL, SO.

7 THERE IS A DISTRICT COURT OPINION OUT THERE --
8 DISTRICT COURT OPINIONS, IF I MAY BE A TEACHER A BIT
9 MORE, ARE -- THEY'RE NOT PRECEDENTIAL IN THE SENSE THAT
10 SOMEONE HAS TO FOLLOW THEM, BUT THEY'RE PERSUASIVE. SO
11 IN ANOTHER DISTRICT COURT -- YOU CAN HAND ANOTHER
12 DISTRICT COURT AN OPINION FROM A DIFFERENT DISTRICT
13 COURT AND SAY, "HEY, YOU KNOW, HERE'S HOW THIS COURT
14 HANDLED IT, HERE'S WHAT THEY FOUND." AND THAT JUDGE
15 COULD SAY "THAT'S GREAT" OR HE COULD IGNORE IT ENTIRELY
16 IF HE WISHES TO.

17 Q AND YOU TALKED A LITTLE BIT ABOUT YOUR -- WAS
18 THAT YOUR FIRST ONE, THE ONE IN 2007, FOR THE
19 9TH CIRCUIT?

20 A I THINK BELTRAN WAS MY FIRST PUBLISHED
21 DECISION.

22 THAT'S ANOTHER THING. THERE'S BEEN A CHANGE
23 IN THE LAW.

24 Q WELL, LET ME ENTER THE QUESTION.

25 A OH, SORRY.

26 Q CAN YOU GIVE US A BRIEF RUNDOWN ABOUT THE
27 CHANGE OF THE LAW THAT WAS AFFECTED BY BELTRAN?

28 MR. GUTERRES: OBJECTION. YOUR HONOR, THAT'S

1 A NARRATIVE. THERE'S NO FOUNDATION. RELEVANCE.

2 THE COURT: OBJECTION OF LACK OF FOUNDATION IS
3 OVERRULED.

4 NEVERTHELESS, I DON'T THINK THIS IS
5 SUFFICIENTLY RELEVANT TO WHAT WE'RE DOING HERE. I
6 THINK WE SHOULD MOVE ON TO SOMETHING ELSE.

7 BY MR. MCMILLAN:

8 Q LET ME ASK YOU, THESE APPELLATE DECISIONS THAT
9 COME OUT OF THE 9TH CIRCUIT, ARE COUNTY GOVERNMENTS
10 BOUND BY THOSE DECISIONS AS WELL?

11 A WELL, THEY'RE HANDCRAFTED FOR COUNTY
12 GOVERNMENTS, ESPECIALLY CHILD PROTECTIVE SERVICE SOCIAL
13 WORKERS, BECAUSE THAT'S WHAT THEY ALL ADDRESS.

14 Q AND, IN FACT, SOME OF THOSE -- YOUR DECISIONS
15 SPECIFICALLY INFORM THE COUNTIES AND THEIR SOCIAL
16 WORKERS, SPECIFICALLY, "YOU CAN'T DO THIS ANYMORE," OR
17 SOMETHING TO THAT EFFECT?

18 A THEY CERTAINLY SHOULD. THEY CERTAINLY SHOULD.
19 THAT'S KIND OF THE POINT OF HAVING A SYSTEM OF LAW AND
20 HAVING WRITTEN DECISIONS THAT ARE PUBLISHED, SO THAT
21 EVERYBODY KNOWS WHAT THE LAW IS. IT'S TO HELP LAWYERS
22 IN DECIDING WHAT CASES TO TAKE, AND IF THEY WANT TO
23 CHALLENGE THE LAW, THEY CAN.

24 YES, THAT'S THE WHOLE, I THINK, THE PURPOSE OF
25 PUBLISHING JUDICIAL DECISIONS.

26 Q AND SOME OF THESE -- I THINK YOU SAID IT WAS
27 SIX OR SEVEN PUBLISHED OPINIONS THAT YOU HAVE THAT YOU
28 PROSECUTED --

1 A NO, I DON'T BELIEVE ALL SEVEN ARE PUBLISHED.
2 I WANT TO SAY FOUR OF THE SEVEN ARE PUBLISHED.

3 Q WHAT DOES THAT MEAN, WHEN WE SAY "PUBLISHED"?

4 A WELL, THEY ALL END UP ON A PIECE OF PAPER, OR
5 NOWADAYS ON AN ELECTRONIC PIECE OF PAPER AT THE VERY
6 LEAST. BUT PUBLISHED MEANS YOU CAN -- YOU CITE THEM.
7 YOU KNOW, YOU CITE THEM IN OTHER CASES. YOU SAY, "I
8 ARGUE THAT THIS CASE APPLIES BECAUSE WE HAVE A SIMILAR
9 SET OF FACTS HERE." SO THAT'S WHAT PUBLISHED MEANS.

10 AND IF I MAY COMPLETE THIS THOUGHT, THERE WAS
11 A CHANGE IN THE LAW, AND I WANT TO SAY IT WAS FOUR TO
12 FIVE YEARS AGO, WHERE BEFORE YOU COULD ONLY CITE --
13 WELL, I'M ONLY CITING FEDERAL LAW -- YOU COULD ONLY
14 CITE PUBLISHED OPINIONS. BUT THEN, AT LEAST IN FEDERAL
15 LAW -- DON'T KNOW ABOUT THE STATE -- THEY, I WANT TO
16 SAY FOUR TO FIVE YEARS AGO, OPENED IT UP AND SAID NO,
17 YOU CAN CITE ANY DECISION THAT YOU WANT. YOU KNOW, YOU
18 CAN USE IT FOR PRECEDENTIAL -- AFTER A CERTAIN DATE, I
19 WANT TO SAY 2010.

20 Q AND HOW MANY OF THOSE DECISIONS THAT YOU HAD
21 UP IN THE APPELLATE -- 9TH CIRCUIT APPELLATE COURT
22 RELATED TO THE ISSUE OF WHETHER OR NOT IT IS LAWFUL
23 UNDER THE CONSTITUTION TO SEIZE A CHILD FROM ITS PARENT
24 WITHOUT FIRST GETTING A WARRANT, WHERE THERE IS NO
25 EXIGENT CIRCUMSTANCE?

26 A OTHER THAN THE REPOSSESSION CASE, ALL MY CASES
27 HAVE DEALT WITH THAT, EVERY ONE OF THE PUBLISHED AND
28 EVEN THE UNPUBLISHED.

1 Q AND THE OUTFALL OF THOSE PUBLISHED DECISIONS
2 WHERE THE 9TH CIRCUIT IS TELLING THE COUNTIES AND
3 SOCIAL WORKERS AND EVERYBODY ELSE, ALL OF THOSE, WERE
4 THEY TELLING THE COUNTY AND THE SOCIAL WORKERS YOU
5 CAN'T SEIZE KIDS WITHOUT A WARRANT EXCEPT IN EXIGENCY?

6 A SO, YES.

7 BUT THAT BELTRAN CASE, TO THE EXTENT I CAN
8 EXPLAIN, THAT ALSO SAID THAT SOCIAL WORKERS CANNOT LIE
9 IN REPRESENTING THINGS TO THE JUVENILE COURT. THEY'RE
10 NOT GOING TO HAVE IMMUNITY FOR THAT. MEANING THEY'RE
11 NOT IMMUNE, YOU KNOW, LIKE JUST LIKE YOU CAN'T GET A
12 COLD, YOU CAN'T GET SUED. THEY SAID, "NO, YOU'RE NOT
13 GOING TO GET THAT. YOU'RE GOING TO BE TREATED LIKE
14 POLICE OFFICERS." POLICE OFFICERS ARE EXPECTED TO TELL
15 THE TRUTH. SO THAT WAS KIND OF THE HOLDING THERE. AND
16 THAT WAS AN INTERMEDIATE HOLDING. THAT CASE THEN
17 RETURNED TO THE TRIAL COURT.

18 MR. GUTERRES: OBJECTION. YOUR HONOR, MOVE TO
19 STRIKE AFTER "YES" AS NONRESPONSIVE.

20 THE COURT: THE UNDERLYING OBJECTION OF
21 NONRESPONSIVE IS SUSTAINED. MOTION TO STRIKE IS
22 GRANTED. ALL PORTION OF THE ANSWER AFTER THE WORDS,
23 "SO, YES," ARE ORDERED STRICKEN, THE JURY DISREGARD IT.

24 AND MR. MCMILLAN, THIS WITNESS IS NOT HERE TO
25 INSTRUCT US ON THE LAW. THIS COURT WILL ALONE DECIDE
26 WHAT THE LAW IS THAT APPLIES TO THIS CASE. AND SO IT'S
27 TIME FOR US TO MOVE ON.

28 MR. MCMILLAN: UNDERSTOOD, YOUR HONOR.

1 BY MR. MCMILLAN:

2 Q LET'S GO AHEAD AND MOVE ON TO THE JUVENILE
3 COURT PROCESS.

4 YOU TESTIFIED EARLIER THAT YOU BEGAN
5 PRACTICING IN THE JUVENILE COURT BACK IN 1993?

6 A YES.

7 Q AND YOU'VE CONTINUED TO PRACTICE IN THE
8 JUVENILE COURT SINCE THAT TIME?

9 A ABSOLUTELY.

10 Q EVEN UP TO TODAY?

11 A EVEN UP TO TODAY.

12 Q IN WHAT AREAS OF CALIFORNIA, WHAT GEOGRAPHIC
13 AREAS OF THE STATE DO YOU PRACTICE IN JUVENILE COURTS?

14 A I HAVE PRACTICED IN 28 OF THE -- I BELIEVE 56?
15 THE COURT: 56.

16 THE WITNESS: -- 56 CALIFORNIA COUNTIES IN THE
17 JUVENILE COURT SYSTEM.

18 THE COURT: ACTUALLY, 58.

19 THE WITNESS: 58.

20 WHATEVER IT IS, I'VE DONE 28 OF THEM. AND THE
21 MAJORITY OF MY WORK IS IN THE BAY AREA WHERE I'M
22 LOCATED, OF COURSE.

23 BY MR. MCMILLAN:

24 Q HAVE YOU EVER PRACTICED IN THE JUVENILE
25 DEPENDENCY COURT DOWN HERE IN LOS ANGELES?

26 A ABSOLUTELY.

27 Q AND HAVING PRACTICED IN THE -- I THINK YOU
28 JUST SAID 28?

1 A YES.

2 Q -- 28 COUNTIES, DO YOU SEE THAT THE PROCESS,
3 THAT IS THE STEPS IN THE PROCEDURE FROM BEGINNING TO
4 END, ARE PRETTY MUCH THE SAME PROCEDURALLY?

5 A YES, THEY'RE ESTABLISHED BY CALIFORNIA
6 STATUTES, SO THEY ARE ALMOST IDENTICAL. THERE'S
7 NUANCES, BUT THE STEPS ARE PRETTY WELL LAID OUT.

8 Q SURE. AND THAT'S BY WRITTEN LAW, BY STATUTE?

9 A RIGHT. WRITTEN LAW, STATUTE. WELFARE AND
10 INSTITUTION CODE SECTIONS -- WELL, NEVER MIND.

11 Q OVERALL, IN ALL THOSE 28 COUNTIES, SINCE 1993,
12 CAN YOU GIVE AN ESTIMATE OF HOW MANY TIMES YOU'VE
13 EITHER APPEARED IN A CASE OR CONSULTED ON A JUVENILE
14 DEPENDENCY CASE?

15 MR. GUTERRES: OBJECTION. RELEVANCE.

16 THE COURT: SUSTAINED.

17 BY MR. MCMILLAN:

18 Q CAN YOU GIVE US AN ESTIMATE HOW MANY JUVENILE
19 DEPENDENCY CASES YOU HAVE WORKED ON IN LOS ANGELES
20 COUNTY?

21 A NOW, DOES THIS INCLUDE CIVIL RIGHTS CASES?

22 Q JUST JUVENILE DEPENDENCY CASES.

23 A OKAY. JUST JUVENILE DEPENDENCY CASES.

24 SO I WANT TO SAY -- AND "WORKED ON," DOES THAT
25 INCLUDE CONSULTING WITH OTHER ATTORNEYS? OR DOES THAT
26 MEAN I'M ACTUALLY ON THE RECORD AS ONE OF THE ATTORNEYS
27 OF RECORD?

28 Q LET'S START WITH CONSULTED.

1 WELL, JUST GIVE ME THE WHOLE --

2 A OKAY. CONSULTED, THE NUMBER IS QUITE LARGE
3 BECAUSE I AM SOUGHT BY OTHER ATTORNEYS IN LOS ANGELES
4 FOR CONSULTATION, AND THAT OCCURS A LOT. YESTERDAY,
5 TWO SEPARATE CASES. SO, I MEAN, THAT NUMBER IS LARGE.
6 IS IT 100? IT WOULD BE SAFE TO SAY 100. IT WOULD BE
7 SAFE TO SAY 100.

8 CASES THAT I'VE THEN APPEARED IN AND ACTUALLY
9 TAKEN IT TO SOMETHING LITIGATION-WISE -- I'M USUALLY
10 NOT RETAINED FOR DETENTION BECAUSE THEY DON'T FIND ME
11 THAT FAST; IT'S AFTER THE CHILDREN HAVE BEEN TAKEN THEY
12 FIND ME -- THAT'S IN THE NEIGHBORHOOD OF, I WANT TO
13 SAY, SIX TO EIGHT.

14 Q AND THROUGH YOUR EXPERIENCE THROUGHOUT THE
15 STATE OF CALIFORNIA, THE STATUTES, AND THOSE SIX TO
16 EIGHT CASES THAT YOU YOURSELF HAVE ACTUALLY LITIGATED
17 IN LOS ANGELES JUVENILE DEPENDENCY COURT, YOU FEEL
18 COMFORTABLE THAT YOU'VE BECOME FAMILIAR ENOUGH WITH THE
19 PROCEDURAL PROCESS TO BE ABLE TO GIVE US A LITTLE
20 RUNDOWN ON THAT HERE TODAY?

21 THAT'S A "YES" OR "NO" QUESTION.

22 A THAT'S A "YES" ANSWER.

23 Q I'D LIKE YOU TO DESCRIBE FOR US JUST --
24 WITHOUT A LOT OF DETAILS, JUST THE STEPS THAT WE GO
25 THROUGH TO START AND THEN THE VARIOUS HEARINGS TO GET
26 TO THE END.

27 A OKAY.

28 Q JUST THE LIST, NOT A LOT OF DETAIL ABOUT IT.

1 A I'LL DO MY BEST.

2 THE INITIAL HEARING AFTER A CHILD HAS BEEN
3 REMOVED -- AND IN SOME RARE INSTANCES WHERE A CHILD HAS
4 NOT BEEN REMOVED -- IS CALLED A DETENTION HEARING.
5 FROM THERE, IT WILL EITHER GO TO A CONTESTED DETENTION
6 HEARING IF AN ATTORNEY ASKS FOR IT -- BUT THE COURT
7 COULD EITHER GIVE YOU THE CONTESTED DETENTION HEARING
8 OR THEY COULD JUMP TO WHAT WOULD BE THE NEXT PROCEEDING
9 IF YOU DIDN'T ASK FOR A CONTESTED DETENTION HEARING,
10 AND THAT IS CALLED A JURISDICTION HEARING.

11 SO THEN, AFTER THE JURISDICTION HEARING --
12 ALTHOUGH MANY COUNTIES COMBINE THEM, AN EXPRESS
13 VIOLATION OF STATUTE -- THERE IS A DISPOSITION HEARING.
14 AND THEN, IF JURISDICTION WAS MAINTAINED -- OH, SO
15 JURISDICTION IS KIND OF LIKE "THE TRIAL," IF YOU WILL,
16 THE BIG EVENT. IF JURISDICTION IS NOT SUSTAINED,
17 YOU'RE DONE.

18 IF IT IS SUSTAINED, THEN THERE'S DISPOSITION.
19 AND THEN DISPOSITION WILL INCLUDE WHATEVER THE FAMILY
20 IS SUPPOSED TO DO, THE PARENTS ARE SUPPOSED TO DO TO
21 GET THEIR KIDS BACK.

22 AND THEN THERE WILL BE REVIEW HEARINGS, WHICH
23 STATUTORILY ARE PRESCRIBED AT ABOUT EVERY SIX -- NOT AT
24 ABOUT -- EVERY SIX MONTHS. HOW YOU CALCULATE THAT SIX
25 MONTHS IS NOT SIMPLE, BUT IT'S EVERY SIX MONTHS. AND
26 THAT CAN RUN UP TO THREE SIX-MONTH PERIODS, 18 MONTHS.
27 IF THERE'S A SPECIAL SHOWING MADE AT THE END OF THE
28 18 MONTHS, IT CAN BE EXTENDED TO 24.

1 AND THAT'S A LITTLE DIFFERENT IF IT'S A CHILD
2 AGED THREE OR YOUNGER. IT'S A LOT SHORTER, A LOT
3 SHORTER.

4 Q LET'S GO BACK TO THE VERY BEGINNING, THAT
5 DETENTION HEARING.

6 BY THE TIME WE GET TO A DETENTION HEARING,
7 WE'RE IN COURT; RIGHT?

8 A YES.

9 Q IS THERE SOMETHING THAT HAPPENS BEFORE WE GET
10 INTO COURT, SOMETHING TO START THE PROCESS?

11 A SOMETHING HAPPENS --

12 MR. GUTERRES: OBJECTION, YOUR HONOR.
13 OVERBROAD.

14 THE COURT: OVERRULED.

15 MR. GUTERRES: CALLS FOR A NARRATIVE.

16 THE COURT: OVERRULED.

17 IT'S A GIVEN THAT SOMETHING HAS HAPPENED;
18 THAT'S WHAT HE SAID. SO LET'S MOVE ON TO THAT.
19 BY MR. MCMILLAN:

20 Q YOU CAN ANSWER THE QUESTION.

21 A OKAY. SO EITHER CHILDREN HAVE BEEN TAKEN, OR
22 THERE'S BEEN AN INVESTIGATION AND THEN THEY CAN FILE
23 WHAT'S CALLED A NONDETAINED PETITION. BUT IN THE VAST
24 MAJORITY OF THE CASES, THE CHILD OR CHILDREN HAVE BEEN
25 TAKEN.

26 Q OKAY. YOU MENTIONED THE PHRASE, YOU CALLED IT
27 A "NONDETAINED PETITION"?

28 A RIGHT. MEANING WE HAVEN'T YET TAKEN

1 POSSESSION OF YOUR CHILDREN. THAT WOULD BE THE AGENCY
2 SPEAKING: "WE HAVE NOT YET TAKEN POSSESSION OF YOUR
3 CHILDREN."

4 Q OKAY. WHAT'S THE PETITION? WHAT IS THAT
5 PART?

6 A SIMILAR TO IN A CRIMINAL CASE, SOMEONE HAS TO
7 SAY WHAT THE ALLEGATIONS ARE AGAINST YOU AS A CRIMINAL;
8 SOMEONE HAS TO SAY WHAT THE ALLEGATIONS ARE AGAINST YOU
9 AS A PARENT. SO IT'S THE SAME THING. SIMILAR.

10 Q AND YOU'VE REVIEWED MANY OF THESE PETITIONS
11 OVER YOUR CAREER?

12 A HUNDREDS.

13 Q CAN YOU JUST GIVE US SORT OF AN IDEA OF THE
14 STRUCTURE OF THE PETITION? WHAT'S REQUIRED TO BE IN
15 IT?

16 A ALLEGATIONS. THERE'S VARIOUS KINDS OF CLAIMS
17 THAT ARE STATUTORILY PRESCRIBED THAT THE AGENCY CAN
18 MAKE. YOU KNOW, SEVERE PHYSICAL ABUSE, INTENTIONAL
19 ABUSE, FAILING TO PROTECT, SEXUAL ABUSE, EMOTIONAL
20 ABUSE, CRUELTY. THERE'S AN INJURY TO SIBLING; IF ONE
21 GETS HURT, THEY CAN TAKE BOTH YOUR KIDS AND SAY, "WELL,
22 YOU HURT THAT KID; WE'RE TAKING THIS KID TOO." AND
23 THEY'RE SUPPOSED TO LAY OUT THE ALLEGATIONS THAT
24 SUPPORT WHY YOU FIT INTO ONE OF THOSE SUBSECTIONS.

25 Q OKAY. AND WHEN YOU SAY "THE ALLEGATIONS THAT
26 SUPPORT WHY YOU FIT IN ONE OF THOSE SUBSECTIONS," WOULD
27 THAT BE THE FACTUAL STATEMENT?

28 A YES. IT'S SUPPOSED TO BE A FACTUAL STATEMENT.

1 Q AND THAT FACTUAL STATEMENT, IS THERE
2 ANYTHING ON THE DOCUMENT, THE PETITION ITSELF -- WELL,
3 LET ME ASK YOU THIS: THAT GETS FILED WITH THE COURT;
4 RIGHT?

5 A YES.

6 Q THAT'S WHAT STARTS THE --

7 A THAT'S WHAT STARTS THE PROCESS.

8 AND IN THE EVENT THAT THEY HAVE DECIDED TO
9 SEEK A WARRANT TO REMOVE A CHILD, THEY WILL
10 FREQUENTLY -- AND THE STATUTE ADDRESSES IT -- THEY WILL
11 FREQUENTLY FILE THE PETITION AT THE SAME TIME TO GIVE
12 THE COURT A LITTLE MORE SOMETHING TO REVIEW WHEN IT'S
13 TRYING TO DECIDE IF IT'S GOING TO GRANT YOUR WARRANT.

14 Q SO ON THE PETITION THOUGH, IS THERE ANYTHING
15 ABOUT IT, OR IN THE CONTENT OF THE PETITION, TO SORT OF
16 LET THE READER KNOW THAT, YEAH, EVERYTHING IN HERE IS
17 TRUE?

18 A WELL, YOU MEAN THE DECLARATION UNDER PENALTY
19 OF PERJURY AT THE VERY BOTTOM OF THE DOCUMENT? THAT
20 WOULD SUFFICE, YES.

21 Q AND EVERY PETITION YOU'VE EVER SEEN IN EVERY
22 COUNTY, INCLUDING THE COUNTY OF LOS ANGELES, HAS THAT
23 STATEMENT AT THE BOTTOM OF THE FAX:

24 "I DECLARE THAT THE FOREGOING IS
25 TRUE AND CORRECT UNDER PENALTY OF
26 PERJURY"?

27 A MUCH OF THE JUVENILE DEPENDENCY SYSTEM IS RUN
28 BY FORMS, AND THEY ARE ADOPTED FOR USE BY THE JUDICIAL

1 COUNCIL, SO THEY'RE MANDATORY. AND YES, EVERY ONE OF
2 THEM HAS THAT.

3 Q AND BASED ON YOUR EXPERIENCE IN LITIGATING
4 JUVENILE DEPENDENCY CASES AND THE SPECIALIZED TRAINING
5 THAT YOU'VE HAD YOU TALKED TO US EARLIER ABOUT, WHAT'S
6 YOUR UNDERSTANDING OF THE ROLE THAT SOCIAL WORKERS PLAY
7 IN RELATION TO THE COURT AND THE REPORTS THEY MAKE TO
8 THE COURT?

9 A THE ROLE OF THE SOCIAL WORKER, WHILE SIMILAR
10 IN MANY WAYS TO A POLICE OFFICER, WHO'S SUPPOSED TO GO
11 OUT AND DO A FACT-GATHERING, INCLUDING GOOD AND BAD
12 FACTS -- THAT PART IS VERY SIMILAR.

13 BUT A SPECIAL ASPECT OF THE JUVENILE
14 DEPENDENCY SYSTEM THAT YOU'LL NEVER HEAR IN THE
15 CRIMINAL SYSTEM IS THAT THE SOCIAL WORKERS ARE THE ARM
16 OF THE COURT. THEY'RE LIKE THE ARM OF THE COURT,
17 MEANING THEY ARE -- THE JUDGE CAN'T GO OUT AND
18 INTERVIEW PEOPLE AND, YOU KNOW, TALK TO DOCTORS, TALK
19 TO -- HE CAN'T DO THAT. HE DOESN'T HAVE TIME.

20 AND SO THE SOCIAL WORKERS ARE EXPECTED TO DO
21 THAT, BUT THEIR WORK IS EXPECTED TO BE LIKE POLICE
22 OFFICERS, FACT-GATHERING, GOOD AND BAD, AND OPENLY, YOU
23 KNOW, DISCLOSING EVIDENCE.

24 Q WOULD IT BE FAIR TO SAY THAT THE SOCIAL
25 WORKER -- AS AN ARM OF THE COURT, TO USE YOUR PHRASE --
26 IS SORT OF LIKE THE NEUTRAL EYES AND EARS OF THE COURT?

27 A WELL, THEY ARE DEFINITELY NOT SUPPOSED TO
28 PERFORM THEIR WORK IN A BIASED FASHION, IF THAT'S WHAT

1 YOU MEAN. THEY ARE SUPPOSED TO, AGAIN, REPORT THE
2 GOOD; REPORT THE BAD; YOU DECIDE.

3 Q LET THE JUDGE DECIDE?

4 A YES.

5 Q WITH ALL THE INFORMATION?

6 A WITH ALL THE INFORMATION.

7 Q AND WHEN YOU SAY BOTH THE GOOD AND THE BAD,
8 HAVE YOU HEARD THE TERM "EXCULPATORY" BEFORE?

9 A YES.

10 Q CAN YOU DESCRIBE FOR US, JUST IN A GENERAL
11 SENSE, IN THE PRACTICE THAT YOU DO IN JUVENILE
12 DEPENDENCY COURT, SORT OF WHAT THAT MEANS, "EXCULPATORY
13 INFORMATION"?

14 A OKAY. I'M GOING TO GET IN TEACHER MODE AGAIN.
15 CULPABLE, IF YOU'RE CULPABLE FOR SOMETHING, IT
16 MEANS YOU DID IT. HE WAS CULPABLE FOR STEALING THE
17 APPLE FROM THE CART. IF SOMETHING IS EXCULPATORY, IT
18 MEANS IT GOES AGAINST THE IDEA, THE PROPOSITION THAT
19 YOU'RE CULPABLE.

20 SO YOU -- THIS -- YOU KNOW, JIM IS CULPABLE
21 FOR STEALING THE APPLE FROM THE CART. BUT THERE'S
22 EVIDENCE THAT JIM WAS IN ANOTHER COUNTRY ON THE DAY
23 THAT THE APPLE WAS STOLEN FROM THE CART. THAT WOULD BE
24 EXCULPATORY. HE COULDN'T HAVE STOLEN THE APPLE, UNLESS
25 HE HAD A VERY LONG ARM.

26 Q WHEN WE'RE TALKING ABOUT THAT CONCEPT,
27 EXCULPATORY EVIDENCE, WOULD THE CREDIBILITY OF A
28 WITNESS, FOR EXAMPLE, WOULD THAT BE SOMETHING THAT

1 WOULD BE EXCULPATORY?

2 THAT IS, IF THERE WAS SOMETHING IN THE SOCIAL
3 WORKER'S INVESTIGATION THAT REASONABLY LED HER TO
4 BELIEVE THAT A PARTICULAR WITNESS MIGHT NOT BE TELLING
5 HER THE TRUTH, IS THAT SOMETHING THAT IS ALSO
6 EXCULPATORY?

7 A WELL, YES. AND IT GOES BOTH WAYS. I MEAN, IF
8 YOU HAVE A REASON TO BELIEVE THAT SOMEONE IS TELLING
9 YOU THE TRUTH BECAUSE MAYBE THE THINGS THEY'RE SAYING
10 ARE MATCHING UP, IF THEY'RE MAKING SENSE, THEN THAT'S
11 DEFINITELY SOMETHING TO TAKE INTO ACCOUNT, SOMETHING TO
12 CREDIT THAT PERSON WITH.

13 AND VICE VERSA, IF PEOPLE ARE SAYING THINGS
14 THAT DON'T MAKE SENSE, DON'T FIT WITH THE OTHER FACTS
15 AND KNOWN CIRCUMSTANCES, WELL, THEN THEY'RE SUPPOSED TO
16 REPORT THAT TOO.

17 Q AND IN THIS REPORTING, IS THIS -- THESE THINGS
18 WE'VE BEEN TALKING ABOUT, THE INCULPATORY, THE
19 EXCULPATORY, JUST ALL THE INFORMATION -- IS THAT
20 SOMETHING THAT IS SUPPOSED TO BE IN EVERY FILING WITH
21 THE JUVENILE COURT, OR IS IT JUST CERTAIN REPORTS OR
22 FILINGS?

23 A IT'S IN EVERY REPORT. NOW, THAT DOESN'T MEAN
24 THAT IF A CASE STARTED IN JANUARY, AND YOU'RE NOW
25 WRITING A REPORT IN APRIL BECAUSE THE CASE HAS GONE ON
26 THAT LONG, YOU ARE SUPPOSED TO, LIKE, RE-INCLUDE ALL
27 THAT STUFF FROM JANUARY. BUT WHATEVER YOU'VE LEARNED
28 MORE, YOU SHOULD BE TELLING THE COURT.

1 THERE'S A PHRASE THAT WE LEARNED IN MY
2 TRAINING BY JANET SHERWOOD: "IF YOU KNOW IT, THE COURT
3 NEEDS TO KNOW IT." VERY SIMPLE.

4 Q RIGHT.

5 A BECAUSE IN THEORY, YOU, AS THE SOCIAL WORKER,
6 ARE NOT SUPPOSED TO BE MAKING THE ULTIMATE DECISIONS.

7 Q NOW, WE TALKED ABOUT THE NONDETAINED PETITION
8 ALREADY, AND THAT'S WHERE THE CHILD HAS NOT BEEN SEIZED
9 BUT THE SOCIAL WORKER IS GOING IN COURT AND PERHAPS
10 EXPLAINING TO THE COURT WHY MAYBE THE CHILD SHOULD BE
11 DETAINED?

12 A WELL, THEY DON'T HAVE TO. AND THERE'S BEEN
13 OCCASIONS WHERE I'VE SEEN NONDETAINED PETITIONS, AND
14 THEY'RE STILL NOT ASKING TO DETAIN, THEY'RE JUST
15 SAYING -- THE WAY I EXPLAIN IT IS: THEY THINK THAT
16 THEY NEED TO BE PART OF THE FAMILY. THERE NEEDS TO BE
17 MOM AND DAD AND CPS. AND THAT'S A SIMPLE WAY TO LOOK
18 AT IT.

19 THEY'RE SAYING, "THERE'S ENOUGH ISSUES HERE.
20 WE'RE NOT GOING TO TAKE YOUR KID. BUT WE NEED TO BE
21 PART OF THE FAMILY AND WE NEED TO MAYBE GET SOME ISSUES
22 ADDRESSED." AND THAT WOULD BE A NONDETAINED SITUATION.

23 Q OKAY. THEN IN THE DETAINED SITUATION, WHERE
24 WE'VE SEIZED THE CHILD, THAT'S WHERE WE WOULD FILE --
25 OR THE SOCIAL WORKERS WOULD FILE THE JUST REGULAR
26 PETITION?

27 A YES. AND TO BE CLEAR, THE PETITIONS ARE THE
28 SAME. THE PETITION IS THE SAME. IT'S THE REPORT THAT

1 THEY FILE ALONG WITH IT WHERE THEY'RE SAYING WHETHER
2 THEY WANT TO TAKE THE CHILD OR NOT TAKE THE CHILD. AND
3 THERE IS A BOX ON THE PETITION THAT YOU CAN SAY WHETHER
4 YOU HAVE ALREADY OR YOU HAVE NOT. YOU CAN DO THAT.

5 Q OKAY.

6 MR. GUTERRES: OBJECTION. YOUR HONOR, MOVE TO
7 STRIKE AFTER THE ANSWER "YES" AS NONRESPONSIVE.

8 THE COURT: UNDERLYING OBJECTION IS OVERRULED.
9 THE MOTION TO STRIKE IS DENIED.

10 GO AHEAD.

11 MR. MCMILLAN: THANK YOU, YOUR HONOR.

12 BY MR. MCMILLAN:

13 Q NOW, THE FIRST HEARING, I THINK, IN THAT LIST
14 THAT YOU GAVE US A LITTLE BIT EARLIER -- AFTER THE
15 PETITION IS FILED, WE NOW HAVE A CASE MOVING, WHETHER
16 IT'S A DETAINED OR NONDETAINED CASE -- THE FIRST
17 HEARING IS THE DETENTION HEARING; IS THAT CORRECT?

18 A CORRECT.

19 Q IS THERE A REPORT OR SOMETHING THAT THE COURT
20 NEEDS TO GET FROM THE COUNTY FOR THAT HEARING?

21 A YES. IT GOES BY VARIOUS NAMES: DETENTION
22 REPORT, INITIAL HEARING REPORT -- THERE MAY BE OTHER
23 NAMES. DETENTION REPORT IS THE MOST COMMON.

24 Q AND DO THE SAME RULES THAT YOU JUST TALKED TO
25 US ABOUT EARLIER, ABOUT INCLUDING ALL THE
26 INFORMATION -- THE EXCULPATORY, THE INCULPATORY, ALL
27 THE INFORMATION -- IN THAT REPORT, THOSE SAME RULES
28 APPLY TO THAT REPORT?

1 A WELL, MORE SO IN THE REPORT EVEN THAN IN THE
2 PETITION BECAUSE YOU KIND OF -- YOU CAN ALLEGE IN THE
3 PETITION ULTIMATE FACTS, BUT IN THE DETENTION REPORT,
4 YOU'RE SUPPOSED TO GIVE THE BACKGROUND, THE DETAIL.

5 YOU UNDERSTAND WHAT I'M SAYING?

6 Q I THINK SO.

7 A YOU COULDN'T FIT A WHOLE DETENTION REPORT INTO
8 A PETITION, SO THEY DO WORK HAND IN HAND. AND THAT --
9 NEVER MIND.

10 Q AND THE QUESTION WAS DO THE SAME RULES
11 APPLY --

12 A OF COURSE.

13 Q -- TO THE DETENTION REPORT REGARDING THE
14 INCLUSION OF THE EXCULPATORY INFORMATION?

15 A YES, AS I SAY, EVEN MORE SO. AND OF COURSE,
16 THE TRUTHFULNESS APPLIES AS WELL.

17 Q AND THOSE DETENTION REPORTS, TO YOUR
18 UNDERSTANDING, THOSE ARE TYPICALLY ACCEPTED INTO
19 EVIDENCE AT THESE INITIAL DETENTION HEARINGS?

20 A THEY'RE REQUIRED TO BE CONSIDERED BY THE
21 COURT. THEY'RE REQUIRED, SO OF COURSE THEY'RE TAKEN
22 INTO CONSIDERATION. IT SAYS:

23 "SHALL READ AND CONSIDER."

24 Q THE DETENTION HEARING, WHEN THE JUDGE TAKES
25 THAT DETENTION REPORT AND READS IT, WHAT IS THE PROCESS
26 THAT WE GO THROUGH AT THAT HEARING?

27 YOU'VE GONE TO DETENTION HEARINGS BEFORE;
28 CORRECT?

1 A YES. THAT, I'VE DONE OVER A HUNDRED TIMES.

2 Q OKAY. CAN YOU JUST RUN US THROUGH THAT
3 PROCESS AT THAT FIRST HEARING?

4 A THERE ARE A FEW THINGS --

5 MR. GUTERRES: OBJECTION, YOUR HONOR.
6 RELEVANCE. NO FOUNDATION.

7 THE COURT: OVERRULED. GO AHEAD.

8 THE WITNESS: AT A DETENTION HEARING, THERE
9 ARE A COUPLE THINGS THAT HAVE TO BE DONE. THERE HAS TO
10 BE COUNSEL APPOINTED FOR THE PARENTS -- LET ME GET
11 THROUGH SOME OF THE MUNDANE STUFF -- COUNSEL HAS TO BE
12 APPOINTED TO THE PARENTS IF THEY DIDN'T GET THEIR OWN;
13 THEY HAVE TO DETERMINE IF ANY OF THE FAMILY MEMBERS
14 HAVE INDIAN HERITAGE BECAUSE THEN THERE'S A WHOLE
15 DIFFERENT SET OF LAWS CALLED ICWA THAT COVER THAT.

16 THE REPORT WILL INFORM THE COURT, IN THEORY,
17 ABOUT THE HEALTH AND WELL-BEING OF THE CHILD OR
18 CHILDREN IN FOSTER CARE. AND THEN, IN TERMS OF THE
19 HEARING, WHAT IS SUPPOSED TO HAPPEN OR WHAT CAN HAPPEN
20 IS THE PARENT CAN REQUEST THAT CONTESTED DETENTION
21 HEARING. THAT'S SOMETHING THAT IS DONE, ALBEIT
22 INFREQUENTLY. AND THEN THEY CAN HAVE A HEARING WITHIN
23 THREE DAYS -- BY STATUTE, IT HAS TO BE HELD WITHIN
24 THREE DAYS -- ON THE ISSUE OF WHETHER THE CHILD OR
25 CHILDREN CAN BE RETURNED TO THE PARENTS, EVEN IF THE
26 AGENCY IS GOING TO PUSH ON TO THE JURISDICTION TRIAL
27 AND STILL TRY TO BE -- I'M GOING TO SAY IT -- A MEMBER
28 OF THE FAMILY.

1 BY MR. MCMILLAN:

2 Q IS THERE ANY SPECIAL TYPE OF FINDING THAT
3 NEEDS TO BE MADE AT THE DETENTION HEARING REGARDING THE
4 INFORMATION IN THE DETENTION REPORT AND PETITION, IN
5 ORDER TO KEEP THE CHILD?

6 A SO BY STATUTE ALREADY, IT SAYS THAT ALL THE
7 THINGS THAT ARE ALLEGED IN THAT PETITION ARE DEEMED
8 TRUE. THAT'S WHY YOU CAN ASK FOR A CONTESTED. IF YOU
9 GET TO A CONTESTED, THEN YOU CAN BASICALLY ARGUE "NO,
10 THEY'RE NOT TRUE, AND HERE'S SOME EVIDENCE." BUT IF
11 NOT, IF YOU DON'T ASK FOR THE CONTESTED, YOU'RE GOING
12 TO A PRIMA FACIE HEARING. AND THAT MEANS, YOU KNOW, ON
13 ITS FACE, WE'RE GOING TO ASSUME WHAT THIS SOCIAL WORKER
14 WROTE IN HERE IS TRUE, AND WE'RE GOING TO DECIDE
15 ACCORDINGLY WHETHER OR NOT THIS CHILD FALLS UNDER THE
16 STATUTE THAT GOVERNS CHILDREN IN THE JUVENILE
17 DEPENDENCY SYSTEM.

18 Q OKAY. SO AT THAT FIRST DETENTION HEARING, IF
19 IT'S NOT CONTESTED, EVERYTHING THAT'S BEEN ALLEGED
20 AGAINST THE PARENT IN THE PETITION IN THE DETENTION
21 REPORT IS DEEMED TRUE?

22 A CORRECT. AND SO IT'S A TWO-STEP PROCESS
23 THOUGH, RIGHT? YOU'VE DEEMED IT TRUE, AND NOW YOU ASK
24 YOURSELF: EVEN IF TRUE, OR AS TRUE, DOES THE CHILD
25 FALL UNDER THE LAW THAT'S SUPPOSED TO PROTECT CHILDREN?
26 AND THERE CAN BE OCCASION WHERE THE PETITION IS
27 ACTUALLY TOO WEAK AND A COURT COULD SAY, "YEAH, I FIND
28 THAT IT'S TRUE, BUT IT STILL DOESN'T MEAN THAT THIS

1 CHILD FALLS UNDERNEATH THE WELFARE AND INSTITUTION
2 CODE, SECTION 300."

3 MR. MCMILLAN: YOUR HONOR, CAN I HAVE A VERY
4 BRIEF SIDEBAR?

5 THE COURT: YES.

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

8 THE COURT: WE'RE AT SIDEBAR. COUNSEL ARE
9 PRESENT.

10 MR. MCMILLAN: YES, YOUR HONOR. MS. CHUNG
11 PASSED ME A NOTE, OUR OCCUPATIONAL THERAPIST IS HERE.
12 SHE HAS TO BE GONE BY 11:30 A.M. I'D LIKE TO GET HER
13 ON AND BE SEEN.

14 THE COURT: SO YOU WANT TO INTERRUPT AT THIS
15 TIME?

16 MR. MCMILLAN: YEAH, I'D LIKE TO INTERRUPT.

17 THE COURT: THAT'S FINE.

18 MR. MCMILLAN: THANK YOU, YOUR HONOR.

19 (THE FOLLOWING PROCEEDINGS WERE HELD IN
20 OPEN COURT IN THE PRESENCE OF THE
21 JURY.)

22 THE COURT: SO LADIES AND GENTLEMEN OF THE
23 JURY, WE'RE GOING TO INTERRUPT THE TESTIMONY OF
24 MR. POWELL TO BE ABLE TO PLACE ANOTHER WITNESS ON THE
25 STAND WHO HAS SOME TIME CONSTRAINTS. WHEN THIS OCCURS,
26 DON'T PUT ANY IMPORTANCE ON IT. IT'S JUST TO
27 ACCOMMODATE THE SCHEDULES OF WITNESSES.

28 SO MS. CHUNG, ARE YOU CALLING THE NEXT

1 WITNESS?

2 MS. CHUNG: YES, YOUR HONOR, ANGELA ESPINOZA.

3 THE COURT: ALL RIGHT. PLEASE COME UP HERE BY
4 THE WITNESS STAND.

5

6 ANGELA ESPINOZA PUOPOLO,
7 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
8 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

9

10 THE CLERK: FOR THE RECORD, PLEASE STATE YOUR
11 NAME AND SPELL YOUR FIRST AND LAST NAME.

12 THE WITNESS: OKAY. IT'S ANGELA ESPINOZA
13 PUOPOLO, P-U-O-P-O-L-O.

14 THE CLERK: AND YOUR FIRST NAME, PLEASE?

15 THE WITNESS: ANGELA, A-N-G-E-L-A.

16 THE COURT: ESPINOZA?

17 THE WITNESS: PUOPOLO, YEAH.

18 THE COURT: IS THAT A HYPHENATED --

19 THE WITNESS: NO.

20 THE COURT: ONE WORD?

21 THE WITNESS: MM-HMM -- NO, NO, NO. IT'S NOT
22 ALL ONE WORD. TWO WORDS.

23 THE COURT: ALL RIGHT.

24 GO AHEAD, MS. CHUNG.

25

26 DIRECT EXAMINATION

27 BY MS. CHUNG:

28 Q GOOD MORNING, MS. ESPINOZA.

1 A GOOD MORNING.

2 Q THE LAST NAME WAS?

3 A PUOPOLO.

4 Q PUOPOLO.

5 A I GOT MARRIED SINCE I DID --

6 Q CAN YOU PLEASE TELL US WHAT IS YOUR
7 OCCUPATION?

8 A I'M AN OCCUPATIONAL THERAPIST.

9 Q AND WHAT IS AN OCCUPATIONAL THERAPIST?

10 A I HAVE A SPECIALTY IN PEDIATRICS. SO I LOOK
11 AT CHILDREN FROM PRE-MATURITY, SO FROM NEWBORN, AND
12 ASSESS AND TREAT ALL THE WAY UP THROUGH -- MY CASELOAD
13 NOW IS ABOUT CHILDREN FOUR OR FIVE YEARS OLD. BETWEEN
14 FOUR AND FIVE IS THE OLDEST CHILDREN I SEE.

15 Q AND WHEN YOU SEE THESE CHILDREN, WHAT KIND OF
16 SERVICES DO YOU PROVIDE?

17 A WELL, I HAVE A PRIVATE PRACTICE, SO I SEE
18 CHILDREN IN A VARIETY OF DIFFERENT SETTINGS. A COUPLE
19 TIMES A WEEK, I SEE CHILDREN IN A NEONATAL -- LEVEL 3
20 IN NEONATAL INTENSIVE CARE. SO THOSE WOULD BE
21 PREMATURE BABIES, BABIES THAT ARE BORN WITH EITHER
22 BIRTH DEFECTS OR BIRTH INJURIES OR JUST DIFFICULTY
23 BREATHING BECAUSE OF THEIR PREMATURETY.

24 I SEE CHILDREN THROUGH THE REGIONAL CENTER,
25 AND THOSE CHILDREN ARE REFERRED EITHER BY PARENTS,
26 PHYSICIANS, FAMILY MEMBERS TO THE REGIONAL CENTER
27 BECAUSE THEY HAVE CONCERNS REGARDING THEIR DEVELOPMENT.
28 SO IN THOSE CASES, I DO DEVELOPMENTAL ASSESSMENTS, I

1 LOOK AT -- I ALSO HAVE A SPECIALTY IN FEEDING
2 DISORDERS. SO I LOOK AT THEIR FEEDING, IF THAT'S
3 SOMETHING THAT IS OF A CONCERN. I DO A VARIETY OF
4 DIFFERENT THINGS WITHIN THAT POPULATION.

5 Q SO SOME PATIENTS YOU ACTUALLY TREAT AND SOME
6 YOU JUST DO THE ASSESSMENTS FOR?

7 A RIGHT. AND I ACTUALLY DON'T DO MUCH TREATMENT
8 NOW. I JUST DO ASSESSMENTS. AND I ALSO WORK AS A
9 CONSULTANT. SO I READ REPORTS OF OTHER THERAPISTS AND
10 MAKES DECISIONS IN TERMS OF WHAT KIND OF THERAPEUTIC
11 SERVICES THEY NEED, OR EQUIPMENT.

12 Q SO ARE YOU KIND OF LIKE AN OVERSEER, A QUALITY
13 CONTROL TYPE OF PERSON FOR AN OCCUPATIONAL THERAPIST --

14 A AT THE REGIONAL CENTER, IN MY CONSULTANT
15 CAPACITY, IT'S MORE SERVICE PLANNING. SO I SOMETIMES
16 MANAGE A MEETING WHERE DECISIONS ARE MADE AS FAR AS
17 ELIGIBILITY FOR THE REGIONAL CENTER. SO MYSELF AND A
18 TEAM WOULD LOOK AT A REPORT, OR A NUMBER OF REPORTS,
19 AND DETERMINE WHETHER OR NOT A CHILD IS ELIGIBLE TO BE
20 PART OF THE REGIONAL CENTER, AND THEN WITHIN THAT
21 MEETING, AFTER WE READ THE REPORTS, DETERMINE WHAT
22 SERVICES THEY NEED. DO THEY NEED PHYSICAL THERAPY?
23 OCCUPATIONAL THERAPY? AN EDUCATIONAL PROGRAM?
24 REFERRALS TO OTHER SPECIALTY PHYSICIAN GROUPS, YOU
25 KNOW, LIKE NEUROLOGY, GENETICS, THOSE KINDS OF THINGS,
26 MAKE THOSE KIND OF RECOMMENDATIONS. NUTRITION.

27 AND THEN I ALSO REVIEW THE CHARTS OF
28 ONGOING -- OF CONSULT- -- I'M A LITTLE NERVOUS -- OF

1 CLIENTS. AND IN MY CAPACITY AS THE OT CONSULTANT FOR
2 THE EAST LA REGIONAL CENTER, I REVIEW CHARTS FOR
3 CONSUMERS FROM BIRTH THROUGH THE ENTIRE SPECTRUM OF
4 LIFE, UNTIL DEATH, AND DETERMINE WHETHER THEY NEED
5 CONTINUED THERAPY SERVICES OR SPECIALIZED EQUIPMENT. I
6 SOMETIMES GO INTO GROUP HOMES AND LOOK AT WHAT THEIR
7 LIVING SITUATION IS AND DETERMINE WHETHER THERE IS
8 MODIFICATIONS OR ADJUSTMENTS THAT NEED TO BE MADE.

9 SO I DO QUITE A FEW THINGS.

10 Q A LOT, IT SOUNDS LIKE.

11 A YEAH.

12 Q MS. ESPINOZA, HOW LONG HAVE YOU BEEN AN
13 OCCUPATIONAL THERAPIST?

14 A I ACTUALLY FIGURED THIS OUT LAST NIGHT,
15 41 YEARS.

16 Q CAN YOU TELL ME A LITTLE BIT ABOUT HOW ONE
17 BECOMES AN OCCUPATIONAL THERAPIST?

18 A NOW IT'S A MASTER'S-LEVEL DEGREE. I WENT TO
19 USC AND GOT A DEGREE IN OT FROM THERE. AND THEN YOU
20 HAVE TO DO A SIX-MONTH INTERNSHIP, TAKE BOARDS, EVERY
21 YEAR, YOU HAVE TO MAINTAIN -- YOU HAVE TO BE LICENSED.
22 EVERY YEAR YOU HAVE TO MAINTAIN YOUR LICENSE, YOU HAVE
23 TO TAKE A CERTAIN DEGREE OF CONTINUING EDUCATION
24 COURSES EVERY YEAR AND RENEW YOUR LICENSE.

25 Q EVERY YEAR?

26 A EVERY TWO YEARS.

27 Q OH, EVERY TWO YEARS.

28 CAN YOU GO AHEAD AND OPEN THAT BINDER RIGHT IN

1 FRONT OF YOU TO EXHIBIT NO. 9, PLEASE.

2 A NO. 9?

3 Q YES.

4 A THESE ARE ALL 200S.

5 Q I APOLOGIZE. IT'S THE ONE BEHIND YOU.

6 (PLAINTIFF'S EXHIBIT NO. 9, WAS MARKED

7 FOR IDENTIFICATION BY THE COURT.)

8 BY MS. CHUNG:

9 Q TAKE A LOOK AT THAT DOCUMENT. IS THAT A
10 DOCUMENT THAT YOU RECOGNIZE?

11 A YES, IT IS.

12 Q AND WHAT IS IT?

13 A IT'S AN EVALUATION THAT I DID ON RYAN DUVAL ON
14 SEPTEMBER 29TH, 2009.

15 Q AND DID YOU CREATE THAT REPORT?

16 A I DID.

17 THE COURT REPORTER: I'M SORRY. WHAT WAS THE
18 DATE?

19 THE WITNESS: SEPTEMBER 29TH, 2009.

20 BY MS. CHUNG:

21 Q AND YOU CREATED THIS REPORT?

22 A I DID.

23 Q WHY DID YOU MEET WITH BABY RYAN TO CREATE THIS
24 REPORT?

25 A THE REFERRAL WAS MADE, AND I DON'T -- THIS
26 REPORT DOESN'T SAY THAT IT WAS DONE -- WHO INITIALLY
27 MADE THE REFERRAL, WHETHER IT WAS THE MOTHER OR SOMEONE
28 ELSE. IF IT WAS AN AGENCY, LIKE DCFS, I WOULD HAVE HAD

1 THAT IN THE REASON FOR REFERRAL. SO THAT MAKES ME
2 THINK THAT THE FAMILY OR THE PEDIATRICIAN MADE THE
3 REFERRAL TO THE REGIONAL CENTER AND WANTED TO HAVE AN
4 ASSESSMENT DONE TO SEE IF HE WOULD BE ELIGIBLE.

5 Q AND WHY DID YOU CREATE THIS REPORT FOR BABY
6 RYAN?

7 A IN ORDER TO DETERMINE WHETHER OR NOT HE'D BE
8 ELIGIBLE FOR SERVICES THAT ARE PROVIDED THROUGH THE
9 REGIONAL CENTER SYSTEM.

10 Q WHEN DID YOU CREATE THIS REPORT?

11 A OKAY. I SAW HIM SEPTEMBER 29TH. I WOULD HAVE
12 EITHER WRITTEN IT THAT DAY OR I WOULD HAVE WRITTEN IT
13 WITHIN THE NEXT DAY.

14 Q AND IF YOU WOULDN'T MIND FOR ME FLIPPING
15 THROUGH THE NEXT COUPLE OF PAGES FROM 1328 ALL THE WAY
16 TO 1334.

17 DOES THAT LOOK LIKE A TRUE AND ACCURATE COPY
18 OF YOUR REPORT?

19 A OH -- YES, IT DOES.

20 Q NOW, YOU MET WITH BABY RYAN AND MS. DUVAL ON
21 SEPTEMBER 29TH, 2009; IS THAT CORRECT?

22 A YOU HAVE TO EXCUSE ME BECAUSE I DO NOT
23 REMEMBER SEPTEMBER 29TH, 2009.

24 Q I UNDERSTAND --

25 A BUT BY WHAT I WROTE, I MET WITH HIM, HIS
26 MOTHER, AND HIS GRANDMOTHER AT THE REGIONAL CENTER.

27 Q AND IN YOUR REPORT, ON PAGE 1330, FIVE LINES
28 DOWN IN THAT FIRST FULL PARAGRAPH, IT STATES:

1 "IT APPEARS THAT RYAN'S ABILITY TO
2 DRIVE -- OR DRIVE TO INITIATE A NOVEL
3 MOVEMENT IN ORDER TO EXPERIENCE ITS
4 RESULT AND THEN TO PRACTICE IN ORDER TO
5 DRIVE HIS ABILITY TO CHANGE POSITIONS
6 AND EVENTUALLY ACHIEVE INDEPENDENT
7 MOBILITY IS SIGNIFICANTLY DECREASED."

8 A RIGHT.

9 Q HOW CAN YOU TELL?

10 A WATCHING HIM.

11 Q SO --

12 A HE JUST SAT THERE. FROM THIS REPORT, WHAT IT
13 DESCRIBES IS THAT HE SAT THERE AND DIDN'T MOVE.

14 HE'S -- AT THIS POINT, HE WAS ALMOST 14 MONTHS
15 OF AGE. CHILDREN THIS AGE, THEY'LL SIT FOR A LITTLE
16 BIT, THEY'LL EXPLORE. I USUALLY PLACE TOYS ON THE
17 FLOOR -- FROM THE DESCRIPTION, HE WAS SITTING ON THE
18 FLOOR. I SIT ON THE FLOOR WITH THEM, USUALLY INITIALLY
19 NOT, LIKE, RIGHT UP CLOSE BECAUSE I WANT TO -- WHILE
20 I'M INTERVIEWING THE FAMILY OR A MOM, WANT TO ESTABLISH
21 TO THE CHILD THAT I'M NOT -- THEY'RE NOT THERE TO GET A
22 SHOT, I'M NOT THERE TO HURT THEM. I'M HERE TO PRESENT
23 AND PLAY.

24 AND SO I TALK TO MOM FIRST; I GIVE TOYS; I
25 ENGAGE THE CHILD. FROM THIS DESCRIPTION, HE DIDN'T DO
26 ANYTHING. HE JUST SAT THERE.

27 Q DOES THAT -- HOW IS THAT SIGNIFICANT TO YOU AS
28 AN OCCUPATIONAL THERAPIST?

1 A WELL, FROM THE REST OF THE DESCRIPTION, IT
2 SOUNDS LIKE HE'S A LITTLE GUY THAT, AT THAT TIME -- AND
3 WHAT I WROTE WAS NOVEL SITUATIONS, TOYS, NOVEL PEOPLE
4 WEREN'T SOMETHING THAT HE WAS DRIVEN TO SEEK OUT, TO
5 COME CLOSE TO.

6 CHILDREN WILL, YOU KNOW, AFTER A COUPLE OF
7 MINUTES, EITHER WALK OR CRAWL OVER, DEPENDING ON THEIR
8 AGE, AND COME AND LOOK AND SEE WHAT I HAVE OR LOOK AT
9 IT, REACH FOR IT. IF THEY HAVE THE ABILITY TO MOVE AND
10 UNSEAT THEMSELVES, TO ROTATE AND TURN AND REACH FOR A
11 TOY ON THE SIDE, THEY DO IT.

12 AND I BRING A VARIETY -- AND THEN WITHIN
13 THAT -- MY OFFICE IS WHERE THIS HAPPENED. I HAVE A TON
14 OF STUFF FOR ALL KINDS OF AGES. SO THERE WOULD HAVE
15 BEEN BRIGHT, NOISY TOYS; THERE WOULD BE TOYS THAT MOVE
16 AROUND; TOYS THAT DIDN'T. SO JUST A VARIETY OF
17 DIFFERENT THINGS TO SEE WHAT HE WOULD DO SPONTANEOUSLY.

18 Q AND DID HE HAVE THE ABILITY, WHEN YOU SAW HIM
19 AT 14 MONTHS, TO MOVE AROUND?

20 A THE REST OF THE REPORT INDICATES THAT NO, THAT
21 HE IS A LITTLE GUY THAT WAS MOST COMFORTABLE JUST BEING
22 PLACED IN ONE PLACE. AND IF YOU CHALLENGED HIS SITTING
23 BALANCE, HE WASN'T ABLE TO MAINTAIN HIS BALANCE. HE'S
24 PERFECTLY FINE SITTING IN A WIDE-BASE KIND OF SITTING
25 POSITION, BUT DIDN'T SPONTANEOUSLY ROTATE HIS TRUNK OR
26 ATTEMPT TO REACH FOR TOYS. AND WHEN I MOVED HIM, HE
27 WAS UNCOMFORTABLE WITH IT.

28 Q IT STATES IN YOUR REPORT:

1 "HE DOES APPEAR TO BE A HAPPY AND
2 CONTENT LITTLE BOY, BUT HE WAS OBSERVED
3 TO ALSO BE EASILY DISREGULATED AND HAVE
4 DIFFICULTY WITH CALMING HIMSELF."

5 A DO YOU WANT ME TO DESCRIBE THAT?

6 Q YES, PLEASE.

7 A OKAY. SO WHAT THAT WOULD MEAN IS IF YOU GAVE
8 HIM SOMETHING -- OR WHEN HE WAS SITTING THERE, HE WAS
9 FINE -- FROM THE DESCRIPTION, HE WAS SITTING NEXT TO
10 HIS MOM, SO HE WAS FINE THERE. BUT IF I MOVED HIM OR
11 SHIFTED HIS CENTER OF GRAVITY OR CHALLENGED HIS
12 BALANCE, THEN HE GOT VERY NERVOUS AND WOULD START TO
13 CRY. AND HE WASN'T A LITTLE GUY THAT YOU COULD SAY,
14 "OH, IT'S OKAY. IT'S OKAY. I'LL BACK UP," OR, "I'LL
15 GIVE YOU ANOTHER TOY," OR, "I'LL DISTRACT YOU." HE
16 CONTINUED TO CRY AND NEEDED, LIKE, HIS MOM TO HELP HIM
17 IN ORDER TO CALM HIMSELF DOWN.

18 Q SO SOMETHING FAMILIAR?

19 A SOMETHING FAMILIAR, YES. OR MORE THAN JUST
20 BEING DISTRACTED.

21 LIKE SOME CHILDREN YOU CAN JUST SAY -- YOU
22 KNOW, BASICALLY YOU APOLOGIZE, LIKE, "OH, I'M SORRY. I
23 MOVED YOU TOO FAST." AND YOU CAN BACK OFF AND OFFER
24 THEM SOMETHING THAT THEY'D BE INTERESTED IN, TOYS
25 THAT'S APPROPRIATE FOR THEIR AGE, AND THEY'LL CALM
26 DOWN.

27 AND THEN YOU CAN -- ASSESSING CHILDREN, LITTLE
28 CHILDREN, IS SORT OF -- IT'S AN ON-AND-OFF KIND OF

1 THING. IT'S LIKE YOU APPROACH, YOU RETREAT. YOU TRY
2 TO APPROACH AGAIN. YOU SEE HOW MUCH THEY CAN DO. AND
3 THEN YOU MAY GET TO A POINT WHERE IT'S A LITTLE
4 CHALLENGING FOR THEM, AND THEN YOU RETREAT AGAIN. SO
5 IT'S LIKE A DANCE, YOU GO BACK AND FORTH UNTIL YOU GET
6 THEM TO DO THE MOST THAT THEY CAN DO FOR YOU.

7 Q DID YOU -- SO DOES THAT MEAN HE'S NOT ABLE TO
8 ADAPT TO NEW EXPERIENCES AS EASILY?

9 A HE HAD DIFFICULTY. THIS SEEMS TO INDICATE
10 THAT HE HAD DIFFICULTY WITH THAT.

11 Q FURTHER ON DOWN THE PARAGRAPH, IT STATES:

12 "AT THIS TIME, HE DOES APPEAR TO
13 BE EASILY OVERWHELMED, AND, FROM THE
14 REPORT GIVEN BY THE MOTHER, APPEARS TO
15 SHUT DOWN, WHICH IS DEMONSTRATED BY HIS
16 BEING CONTENT WITH SOLELY SITTING IN
17 ONE POSITION OR BEING CARRIED, AS WELL
18 AS HIS LACK OF DRIVE AND PLEASURE WITH
19 EATING."

20 WHAT DO YOU MEAN BY THAT?

21 A AS I SAID, I THINK IN THAT INTERVIEW, IN THAT
22 PERIOD OF TIME, IF YOU DIDN'T ENGAGE HIM OR CHALLENGE
23 HIM OR PRESENT SOMETHING TO HIM, HE WAS PERFECTLY
24 CONTENT TO SIT THERE NEXT TO MOM. AND THAT WAS ALL HE
25 WAS CONTENT -- YOU KNOW, SO HE PROBABLY SMILED AND
26 SHOWED INTEREST IN THE TOYS THAT WERE CLOSE, BUT IF YOU
27 APPROACHED HIM OR TRIED TO CHALLENGE HIM, THEN --
28 CHALLENGE HIS MOVEMENT OR CHALLENGE HIM BY DISTRACTING

1 HIM WITH SOMETHING, PRESENTING HIM MORE THINGS, HAVING
2 HIM REACH FOR SOMETHING -- THAT THAT WAS TOO MUCH FOR
3 HIM.

4 Q WHAT IS DYSPRAXIA?

5 A DYSPRAXIA IS DIFFICULTY WITH INITIATING
6 MOVEMENT, PURPOSEFUL MOVEMENT. SO THE TERM IS USED FOR
7 FINE MOTOR/GROSS MOTOR MOVEMENTS, SO CHILDREN HAVE
8 DIFFICULTY INITIATING HOW TO, LET'S SAY -- AN EXAMPLE
9 WOULD BE MAYBE LIKE HOW TO WEIGHT SHIFT, HOW TO PICK UP
10 A GLASS. SO DYSPRAXIC CHILDREN CAN HAVE DIFFICULTY --
11 THEY SEE IT, THEY WANT IT, BUT THEY DON'T KNOW HOW TO
12 GET THERE. THEY DON'T KNOW HOW TO GET THEIR HANDS
13 THERE. AND IF THEY DO, THEY DON'T KNOW HOW TO GET IT
14 BACK TO WHERE THEY WANT IT TO BE, LIKE EITHER AT
15 MIDLINE OR TO THEIR MOUTH OR SOMETHING.

16 Q DID BABY RYAN EXHIBIT DYSPRAXIA WHEN YOU SAW
17 HIM?

18 A I'D HAVE TO GO THROUGH AND REMEMBER.
19 CAN YOU HELP ME FIND WHERE THAT WAS?

20 Q JUST THE WORD "DYSPRAXIA"?

21 A YEAH, WHEREVER IT IS.

22 Q IT'S SIX LINES UP FROM THE BOTTOM OF THAT SAME
23 PARAGRAPH.

24 A OH, IT'S IN THAT PARAGRAPH.

25 YES. AND DYSPRAXIA ISN'T SOMETHING THAT YOU
26 NECESSARILY DIAGNOSED WITHIN THE FIRST SESSION. IT'S
27 SOMETHING THAT YOU WOULD -- IT'S SOMETHING YOU WOULD
28 MONITOR FOR AFTER THE FIRST -- LIKE, IF YOU DID AN

1 ASSESSMENT AND YOU WERE GOING TO BE THE ONGOING
2 THERAPIST, IT'S SOMETHING THAT YOU WOULD CONTINUE TO
3 LOOK FOR AND SEE IF OTHER -- IN OTHER SITUATIONS, THAT
4 YOU SAW IT.

5 BUT I FELT LIKE THAT IS SOMETHING THAT WAS
6 PROBABLE AND SOMETHING THAT SHOULD CONTINUE TO BE
7 LOOKED AT.

8 Q DID YOU FIND, IN YOUR EVALUATION OF BABY RYAN,
9 WAS HE ABLE TO -- STRIKE THAT. I'M SORRY.

10 THERE'S ANOTHER STATEMENT, THE VERY LAST
11 SENTENCE OF THAT PARAGRAPH:

12 "THIS MAY ALSO CAUSE HIM TO BE
13 HYPERVIGILANT AND MORE RESISTIVE TO
14 OUTSIDE INFLUENCES ON HIS BODY AND
15 CAUSE HIM TO STAY WITH MOVEMENTS AND
16 FOODS WHICH ARE FAMILIAR."

17 TELL US A LITTLE BIT ABOUT WHAT YOU MEAN
18 THERE.

19 A CHILDREN THAT ARE UNCOMFORTABLE WITH MOVEMENT,
20 SO CHILDREN LIKE HIM THAT, AT THAT TIME, PRESENTED
21 WHERE HE JUST WANTED -- HE WAS HAPPY TO SIT IN ONE
22 PLACE. HE DIDN'T LIKE TO HAVE HIS ABILITY TO SIT OR
23 HIS MOVEMENTS CHALLENGED. I THINK IN ANOTHER SECTION I
24 WROTE ABOUT, WHEN LAID ON HIS BACK, HE JUST LAID THERE
25 AND DIDN'T MOVE. AND WHEN I PLACED HIM IN QUADRIPE
26 WITH SUPPORT, HE JUST STAYED THERE AND DIDN'T TRY AND
27 SHIFT HIMSELF OUT OF THAT POSITION, AND WAS
28 UNCOMFORTABLE WITH IT.

1 WHAT I WOULD MEAN THERE IS THAT CHILDREN THAT
2 HAVE DIFFICULTY SPONTANEOUSLY INITIATING MOVEMENT OR
3 SPONTANEOUSLY GETTING THEMSELVES OUT OF WHATEVER
4 POSITION YOU PUT THEM IN, THEY BECOME HYPERVIGILANT.
5 THEY LOOK TO SEE -- LIKE, IF THEY'RE SITTING, THEY
6 DON'T WANT TO BE TIPPED OFF THEIR CENTER OF GRAVITY
7 BECAUSE THEY FALL. AND SO THEY JUST BECOME MORE
8 VIGILANT, LIKE ANYTHING AROUND THEM IS SCARY. SO
9 THEREFORE, THEY BECOME RESISTANT TO OUTSIDE INFLUENCES.
10 SO IF THERE'S NOISES OR MOVEMENT THAT WASN'T EXPECTED,
11 THOSE THINGS ARE SCARY, AND SO YOU LOOK OUT FOR THEM.

12 Q MS. PUOPOLO, LET'S GO TO PAGE 1333. THAT'S
13 PAGE 6 OF YOUR REPORT. THAT'S THE SUMMARY SECTION.

14 CAN YOU PLEASE TELL US, BASED ON YOUR
15 EVALUATION OF BABY RYAN, WHAT WERE YOUR FINDINGS?

16 A HE -- WITH THE DEVELOPMENTAL ASSESSMENTS THAT
17 WERE DONE, HE SCORED WITHIN THE MODERATE DELAYED RANGES
18 IN FINE MOTOR COGNITION -- THAT'S HOW WE PROBLEM
19 SOLVE -- AND SOCIAL SKILLS. THERE WERE SIGNIFICANT
20 DELAYS IN GROSS MOTOR SKILLS. HIS LANGUAGE SKILLS AND
21 SELF-HELP WERE WITHIN AN AVERAGE RANGE FOR HIS AGE, SO.

22 HE DISPLAYED DIFFICULTY WITH SENSORY
23 PROCESSING, WHICH INTERFERED WITH HIS MOTOR PLANNING,
24 HIS ABILITY TO SEQUENCE MOTOR MOVEMENTS. SO IN ORDER
25 TO CHANGE A POSITION, IN ORDER TO ROLL, YOU HAVE --
26 THERE'S A NUMBER OF MOVEMENTS THAT ARE SEQUENCED IN
27 ORDER TO BE ABLE TO DO THAT. SO HE WASN'T ABLE TO
28 INITIATE AND DO THAT ON HIS OWN.

1 HE HAD POOR COORDINATION. HIS FLOOR MOBILITY
2 WAS IMPACTED, AND HE WASN'T ABLE TO ACHIEVE
3 PREAMBULATION SKILLS. SO ABILITY TO TRANSITION OUT OF
4 SITTING, TRANSITION INTO QUADRIPEDE -- SO ONTO ALL
5 FOURS -- OUT OF THAT UP INTO, LIKE, HALF-KNEEL, UP INTO
6 STANDING.

7 I ALSO FOUND THAT -- DURING THE COURSE OF THE
8 EVALUATION, HE WAS GIVEN SOME SOFT FOODS TO EAT. HE
9 SHOWED THE MOTOR ABILITY TO EAT, BUT HE ONLY ATE SMALL
10 AMOUNTS WHEN HE WAS THERE.

11 AND I THINK THAT WAS IT.

12 Q BASED ON YOUR EVALUATION AND YOUR PERSONAL
13 OBSERVATIONS OF BABY RYAN, IF HE CAN'T SIT, WOULD THAT
14 COMPLICATE THINGS IF HE WAS TRYING TO EAT?

15 A HE COULD SIT. HE DID SIT INDEPENDENTLY. HE
16 COULDN'T MOVE OUT OF SITTING. SO IF YOU JUST SAT
17 HIM -- YOU TOOK HIM AND YOU SAT HIM, HE SAT FINE.

18 Q OKAY.

19 A AND HE COULD REACH -- ACCORDING TO THIS, HE
20 COULD REACH FOR THINGS THAT WERE DIRECTLY IN FRONT OF
21 HIM.

22 Q HOW LONG WAS YOUR EVALUATION OF BABY RYAN?

23 A I DON'T REMEMBER. THE AVERAGE IS AN HOUR AND
24 15 MINUTES TO AN HOUR AND A HALF.

25 Q AND FOR THAT ENTIRE TIME, YOU'RE THERE
26 INTERACTING WITH THE CHILD OR WATCHING?

27 A THE CHILD AND THE FAMILY, YES.

28 Q OKAY. AND YOUR FINDINGS THAT WE JUST

1 DISCUSSED, WAS THIS CONFIRMED BY MS. DUVAL THAT THIS
2 HAD BEEN AN ONGOING PROBLEM FOR BABY RYAN?

3 MS. NAU: OBJECTION. VAGUE AND OVERBROAD.

4 THE COURT: YES, THE REPORT COVERS QUITE A BIT
5 OF GROUND. SUSTAINED.

6 I THINK YOU SHOULD ASK HER TO ADDRESS SOME
7 SPECIFIC FINDING OR GROUP OF FINDINGS.

8 BY MS. CHUNG:

9 Q (READING:)

10 "WHERE RYAN DOES DISPLAY
11 SIGNIFICANT DIFFICULTIES WITH SENSORY
12 PROCESSING, WHICH IS INTERFERING WITH
13 HIS MOTOR PLANNING, ABILITY TO SEQUENCE
14 MOVEMENT, AND COORDINATION."

15 IS THAT -- WAS THAT CONFIRMED BY MS. DUVAL
16 PRIOR TO YOUR EVALUATION, THAT THIS WAS AN ONGOING
17 PROBLEM?

18 IF YOU REMEMBER.

19 A I DON'T. WHAT I CAN TELL YOU IS THAT WHEN I
20 SEE A CHILD, REGARDLESS OF WHERE IT'S AT, BECAUSE
21 THEY'RE ALWAYS ACCOMPANIED BY THE PARENT OR THE PRIMARY
22 CAREGIVER, THE QUESTION I ASK IS: WHAT IS YOUR
23 CONCERN? WHY ARE YOU HERE? WHY WAS A REFERRAL MADE?

24 IT APPEARS THAT WHAT WAS REPORTED AS A CONCERN
25 WAS HIS EATING. THE REASON -- AND I'LL ELABORATE. THE
26 REASON WHY ALL THIS OTHER INFORMATION IS INCLUDED
27 BESIDES JUST LOOKING AT HIS EATING IS THAT, TO
28 DETERMINE -- THE REASON THE EVAL IS DONE IS THAT

1 THE REGIONAL CENTER -- IN ORDER FOR THE REGIONAL CENTER
2 TO DETERMINE THE ELIGIBILITY OF A CHILD TO GET SERVICES
3 IN ANY AREA, THE STATE MANDATES THAT ALL FIVE
4 DEVELOPMENTAL AREAS NEED TO BE ASSESSED. AND A THIRD
5 DELAY IS THE CRITERIA FOR ELIGIBILITY.

6 SO IT'S NOT UNUSUAL FOR CHILDREN TO COME IN
7 AND THE PARENTS SAY, "I'M ONLY CONCERNED ABOUT HIS
8 SPEECH." THE SPEECH THERAPIST WILL COME IN, IF THEY'RE
9 AN OLDER CHILD, AND THEY WILL DO A SPEECH EVAL; THE
10 OCCUPATIONAL THERAPIST WILL COME IN AND DO A
11 DEVELOPMENTAL -- I MEAN A -- YEAH, A DEVELOPMENTAL
12 EVAL, AND LOOK AT ALL THE AREAS, AND LOOK AT SPEECH IN
13 RELATION TO COGNITION AND TO SOCIAL SKILLS, AND LOOK TO
14 SEE.

15 SO IT'S NOT UNUSUAL FOR A FAMILY TO SAY, "I
16 HAVE ONLY THIS ONE CONCERN" -- AND I'LL GIVE THE
17 EXAMPLE OF SPEECH -- BUT IN REALITY, THE REASON THEY'RE
18 NOT TALKING IS THERE'S COGNITIVE ISSUES, THERE'S SOCIAL
19 LANGUAGE ISSUES, WHICH IS AUTISM, AND THE FAMILY IS NOT
20 AWARE OF IT OR IS AWARE BUT THAT'S NOT WHAT THEY'RE
21 TELLING US, OR TELLING ME.

22 SO IN TERMS OF HIS MOTOR PLANNING, I DON'T
23 KNOW THAT THE MOM RECOGNIZED THAT AS AN ISSUE.

24 Q WHAT WERE YOUR FINDINGS AS FAR AS BABY RYAN'S
25 MOTOR SKILLS?

26 A MOTOR SKILLS?

27 Q YES. FINE/GROSS MOTOR SKILLS, IF HE WAS
28 MEETING THOSE DEVELOPMENTAL MILESTONES?

1 A OH.

2 Q I'M SORRY.

3 A NO, THAT'S OKAY. THAT WAS -- WE'VE BEEN
4 TALKING ABOUT THAT THE WHOLE TIME, THAT'S WHY.

5 THE REPORT INDICATES THAT THERE WAS
6 SIGNIFICANT DELAY IN ALL OF HIS GROSS MOTOR SKILLS.
7 THE BAYLEY -- THIS IS AN OLDER VERSION OF THE BAYLEY
8 THAT WAS DONE AT THAT TIME. SINCE THEN, THERE'S A
9 NEWER VERSION. BUT IN THAT, THE BAYLEY PUTS TOGETHER
10 THE SCORES FOR GROSS AND FINE MOTOR AND CALL IT THE
11 MOTOR SCORE. AND THAT SHOWED A SIGNIFICANT DELAY.

12 THERE'S ANOTHER ASSESSMENT THAT I DID, AND
13 THAT SEPARATES GROSS AND FINE MOTOR. AND SO IT SAID
14 THAT HIS GROSS MOTOR SCORES -- AND MIND YOU, HE'S
15 13.9 MONTHS -- HE WAS FUNCTIONING AT A SIX-MONTH LEVEL,
16 AND HIS FINE MOTOR SCORE WAS BETWEEN NINE AND TEN. SO
17 HE COMPLETED EVERYTHING AT THE NINE-MONTH LEVEL AND WAS
18 DOING A FEW THINGS AT THE TEN-MONTH LEVEL.

19 Q WHAT WERE YOUR RECOMMENDATIONS AFTER YOUR
20 EVALUATION?

21 A THEY WERE FOR OCCUPATIONAL THERAPY, ONE TIME A
22 WEEK, TO ASSIST WITH HIS FINE MOTOR FEEDING AND THE
23 SENSORY-BASED -- AND TO PROVIDE SENSORY-BASED
24 ACTIVITIES TO ADDRESS THOSE. AND THEN PHYSICAL THERAPY
25 EVALUATION, AS WELL AS A SOCIAL AND EMOTIONAL CONSULT
26 AND A NUTRITION CONSULT AND AN INFANT PROGRAM. SO
27 THAT'S LIKE -- SO THAT USUALLY MEANS, WITH CHILDREN
28 THIS LITTLE, THERE'S AN INFANT SPECIALIST, AN INFANT

1 TEACHER THAT COMES IN AND PROVIDES SERVICES ONE TIME A
2 WEEK, USUALLY AN HOUR, IN THE HOME.

3 Q MS. ESPINOZA, DO YOU KNOW WHAT MANDATED
4 REPORTER IS?

5 A YES, I DO.

6 Q ARE YOU A MANDATED REPORTER?

7 A OF COURSE.

8 Q AND WHEN YOU SAW BABY RYAN ON SEPTEMBER 29TH,
9 2009, WAS THERE ANYTHING ABOUT HIM THAT LED YOU TO
10 BELIEVE THAT HE MAY BE IN IMMINENT HARM OF PHYSICAL
11 INJURY OR DEATH?

12 A NO.

13 Q HAVE YOU EVER HAD ANY CONTACT WITH ANY SOCIAL
14 WORKERS WITH REGARDS TO BABY RYAN'S SENSORY EVALUATION
15 ON SEPTEMBER 29TH?

16 A NO.

17 Q DID ANY HEALTH NURSE CONTACT YOU TO DISCUSS
18 ANY OF YOUR FINDINGS REGARDING BABY RYAN?

19 A I DON'T RECALL THAT.

20 Q DID ANY SOCIAL WORKER CONTACT YOU REGARDING
21 YOUR FINDINGS?

22 A I DON'T RECALL THAT EITHER.

23 MS. CHUNG: THANK YOU.

24 THE COURT: MS. NAU?

25

26 CROSS-EXAMINATION

27 BY MS. NAU:

28 Q GOOD MORNING, MS. ESPINOZA.

1 A GOOD MORNING.

2 Q I'M CORRECT THAT THE ONLY TIME THAT YOU EVER
3 EVALUATED BABY RYAN WAS SEPTEMBER 29TH, 2009; RIGHT?

4 A YES.

5 Q AND DO YOU HAVE ANY INDEPENDENT RECOLLECTION
6 OF THAT ASSESSMENT?

7 A NO.

8 Q SO THE ONLY -- ALL OF YOUR TESTIMONY TODAY IS
9 BASED SOLELY ON WHAT'S INCLUDED IN YOUR EVALUATION THAT
10 WE'VE BEEN GOING THROUGH; RIGHT?

11 A YES.

12 Q AM I RIGHT THAT THE SOLE PURPOSE OF YOUR
13 ASSESSMENT OF BABY RYAN ON SEPTEMBER 29TH WAS TO
14 DETERMINE HIS ELIGIBILITY FOR THE REGIONAL CENTER'S
15 PROGRAMS?

16 A YES.

17 Q SO YOU DID NOT MAKE ANY DIAGNOSIS OF BABY RYAN
18 ON THAT DATE; RIGHT?

19 A NO.

20 Q AS AN OCCUPATIONAL THERAPIST, DO YOU MAKE
21 DIAGNOSES?

22 A THAT'S FUNNY. THERE ARE TIMES THAT I DO. I
23 WOULD SAY THERE -- YOU KNOW, IF THERE IS -- HOW DO I
24 PUT THIS?

25 YEAH, THERE ARE TIMES THAT I DO.

26 THE COURT: MS. NAU, EXCUSE ME. I'VE HAD A
27 REQUEST TO TAKE A MORNING RECESS, SO I'M GOING TO --
28 WE'LL TAKE A 10-MINUTE RECESS AT THIS TIME.

1 ALL JURORS, PLEASE REMEMBER THE ADMONITION.

2 (JURY EXCUSED)

3 (RECESS)

4 (JURY PRESENT)

5 THE COURT: WE'RE BACK ON THE RECORD.

6 EVERYONE MAY BE SEATED. EVERYONE IS PRESENT. THE

7 WITNESS IS ON THE STAND.

8 MS. NAU, YOU MAY CONTINUE.

9 MS. NAU: THANK YOU, YOUR HONOR.

10 BY MS. NAU:

11 Q MS. ESPINOZA, JUST BRIEFLY, WHAT IS YOUR
12 EDUCATION AS IT RELATES TO YOUR PROFESSION AS AN
13 OCCUPATIONAL THERAPIST?

14 A I HAVE A BACHELOR OF SCIENCE IN OCCUPATIONAL
15 THERAPY.

16 Q AND SO YOU'RE NOT A MEDICAL DOCTOR; CORRECT?

17 A NO -- RIGHT.

18 Q SO JUST BEFORE THE BREAK, YOU SAID THERE ARE
19 INSTANCES IN WHICH YOU'VE DIAGNOSED CERTAIN CONDITIONS;
20 RIGHT?

21 A RIGHT.

22 Q BUT IF YOU DID MAKE A DIAGNOSIS OF BABY RYAN
23 IN THIS ASSESSMENT ON SEPTEMBER 29TH, THAT WOULD HAVE
24 BEEN IN YOUR REPORT; RIGHT?

25 A CORRECT.

26 Q FOR INSTANCE, IF YOU HAD DETERMINED THAT BABY
27 RYAN HAD A SENSORY INTEGRATION DISORDER, THAT WOULD
28 HAVE BEEN INCLUDED IN YOUR REPORT?

1 A I SAID HE HAD A -- I THINK I SAID HE HAD A
2 SENSORY PROCESSING -- HE HAD DIFFICULTIES WITH SENSORY
3 PROCESSING, WHICH WOULD HAVE INDICATED, AT THAT TIME, A
4 DISORDER.

5 Q BUT YOU DIDN'T DIAGNOSE HIM WITH ANY DISORDER
6 AT THAT TIME?

7 A CORRECT.

8 Q CAN I DIRECT YOUR ATTENTION TO PAGE 1 OF YOUR
9 REPORT, WHICH IS BATES NO. 1328, WHERE IT SAYS
10 BACKGROUND INFORMATION.

11 HAVE YOU HAD A CHANCE TO REVIEW THIS
12 BACKGROUND INFORMATION RECENTLY?

13 A YES.

14 Q AND IS ALL OF THE INFORMATION PROVIDED IN THAT
15 SECTION BASED ON INFORMATION THAT MS. DUVAL HAD TOLD
16 YOU?

17 A YES.

18 Q FOR INSTANCE, IN THE SECOND PARAGRAPH, AROUND
19 THE THIRD LINE, IT READS:

20 "HE IS REPORTED TO HAVE ALLERGIC
21 REACTIONS TO TOMATOES AND AT TIMES TO
22 MILK PRODUCTS AND FISH."

23 THAT'S BASED SOLELY ON MS. DUVAL REPORTED THAT
24 TO YOU?

25 A YES.

26 Q SO YOU DID NOT TEST THE CHILD FOR ALLERGIES;
27 RIGHT?

28 A NO.

1 Q DID YOU HAVE ANY OTHER MEDICAL RECORD OR
2 EVIDENCE THAT BABY RYAN, IN FACT, HAD ALLERGIES?

3 A NO.

4 Q SO YOU RELIED ON MS. DUVAL'S PROVIDING YOU
5 WITH ACCURATE INFORMATION IN COMPLETING YOUR REPORT;
6 RIGHT?

7 A YES.

8 Q AND THEN I'LL MOVE ON TO PAGE 5, WHICH IS
9 BATES NO. 1332. THERE'S A SECTION CALLED
10 SELF-CARE/FEEDING. THERE'S INFORMATION IN THIS
11 PARAGRAPH -- LET'S SEE -- ACTUALLY, IT'S ON THE NEXT
12 PAGE, SAME PARAGRAPH, BUT AT THE TOP OF PAGE 6, BATES
13 NO. 1333 -- THAT STATES:

14 "BABY RYAN WILL NOT EAT MACARONI
15 AND CHEESE OR TORTILLAS. HE DOES NOT
16 EAT MEATS AND WILL NOT EAT CHICKEN."

17 IS THAT BASED SOLELY ON MS. DUVAL'S REPORT OF
18 WHAT THE CHILD WAS EATING AT THAT TIME?

19 A YES.

20 Q SO YOU DID NOT OBSERVE HIM TRY TO EAT OR
21 REFUSE THESE FOODS; RIGHT?

22 A CORRECT.

23 Q BUT YOU DID OBSERVE BABY RYAN EAT A NUMBER OF
24 FOODS, WHICH I BELIEVE INCLUDED AVOCADO, CORN, AND
25 NECTARINES?

26 A CORRECT.

27 Q IS THAT RIGHT?

28 A YES.

1 Q AND WERE THOSE FOODS -- DID YOU PROVIDE THOSE
2 FOODS OR ARE THOSE THE FOODS THAT MS. DUVAL --

3 A THEY WERE PROVIDED BY MS. DUVAL.

4 Q -- BROUGHT WITH HER? OKAY.

5 AND DID YOU REQUEST THAT MS. DUVAL BRING ANY
6 KIND OF FOOD TO THE APPOINTMENT THAT DAY?

7 A I DON'T RECALL SPECIFICALLY, BUT WHEN -- LIKE
8 IN THE VERY FIRST PARAGRAPH, IT WAS WRITTEN THAT THERE
9 WAS A CONCERN WITH HIS ORAL MOTOR EATING SKILLS. IT
10 WOULD HAVE BEEN REQUESTED. NORMALLY, I REQUEST -- OR
11 AT THAT TIME, THE SECRETARY WHO WOULD HAVE PROBABLY
12 MADE THE APPOINTMENT WOULD HAVE REQUESTED -- THAT FOODS
13 BE PROVIDED BECAUSE WITHIN MY OFFICE, I DON'T HAVE -- I
14 DON'T KEEP FOOD.

15 Q AND DO THEY TYPICALLY REQUEST CERTAIN KINDS OF
16 FOODS?

17 A NO. USUALLY, IF I REQUEST, OR THE SECRETARY
18 AT THAT TIME, I HAD THEM TOLD TO TELL THE PARENTS TO
19 BRING SOMETHING THAT EITHER THE CHILD EATS WELL, AND
20 ALSO SOMETHING THEY HAVE DIFFICULTY WITH.

21 Q SO THE LAST SENTENCE IN THIS PARAGRAPH, YOU
22 STATE THAT:

23 "BABY RYAN HAS THE ABILITY TO CHEW
24 AND MANAGE -- OR HIS ABILITY TO CHEW
25 AND MANAGE DENSER FOODS COULD NOT BE
26 ASSESSED DURING THE SESSION."

27 AND THAT'S BECAUSE MEATS AND CHICKEN WEREN'T
28 BROUGHT BY MS. DUVAL THAT DAY; RIGHT?

1 A OR FOODS THAT WOULD MIMIC THE SAME KINDS OF
2 DENSITY AND RESISTANCE.

3 Q OKAY. SO THERE WERE NO DENSE FOODS BROUGHT BY
4 MS. DUVAL THAT DAY; IS THAT RIGHT?

5 A CORRECT.

6 Q BUT WITH REGARDS TO THE FOODS THAT BABY RYAN
7 DID EAT, YOU STATED THAT HE DEMONSTRATED GOOD INTEREST
8 IN THE FOOD; IS THAT RIGHT?

9 A CORRECT.

10 Q AND MS. ESPINOZA, ARE YOU BEING PAID FOR YOUR
11 TESTIMONY HERE TODAY?

12 A NO.

13 MS. NAU: I HAVE NOTHING FURTHER. THANK YOU.

14 THE COURT: ALL RIGHT. THANK YOU.

15 MS. CHUNG, ANYTHING FURTHER?

16 MS. CHUNG: YES, YOUR HONOR.

17

18 REDIRECT EXAMINATION

19 BY MS. CHUNG:

20 Q IN BATES NO. 1333, YOU WRITE THAT RYAN DOES
21 DISPLAY SIGNIFICANT DIFFICULTIES WITH SENSORY
22 PROCESSING. AND COUNSEL JUST MENTIONED SENSORY
23 INTEGRATION DISORDER.

24 WAS THERE EVIDENCE OF SENSORY INTEGRATION
25 DISORDER?

26 A THERE'S -- FROM -- I BELIEVE I SAID THERE WAS
27 SOME INDICATIONS THAT THERE WERE DYSPRAXIA, WHICH IS
28 WITHIN THAT GROUPING OF A SENSORY INTEGRATION DISORDER.

1 Q AND AVOCADOS, DO YOU KNOW IF THOSE ARE HIGH IN
2 CALORIES OR LOW IN CALORIES?

3 A HIGH IN CALORIES. IT'S ONE OF THE FOODS THAT
4 I RECOMMEND TO PARENTS WHEN A CHILD IS SMALL OR THEY
5 WANT TO INCREASE THEIR CALORIE LOAD. IT'S A FOOD ALSO
6 THAT IS NOT ALLERGENIC, AND WE ACTUALLY USE IT QUITE
7 OFTEN WITH BABIES IN THE NICU. IT'S ONE OF THEIR FIRST
8 FOODS.

9 Q WHEN YOU'RE DOING THESE ASSESSMENTS, YOU MEET
10 THE PARENT AND SORT OF DEVELOP SOME KIND OF RAPPORT; IS
11 THAT CORRECT?

12 A YES.

13 Q WHEN YOU GET THE HISTORY FROM A PARENT ALSO,
14 YOU DO THAT SO YOU CAN ACCURATELY AND COMPLETELY
15 GENERATE YOUR REPORT; TRUE?

16 A CORRECT.

17 MS. NAU: OBJECTION -- SORRY. OBJECTION.
18 LEADING. MOVE TO STRIKE THE RESPONSE.

19 THE COURT: OVERRULED.

20 BY MS. CHUNG:

21 Q DID YOU FIND MS. DUVAL TO BE CREDIBLE WHEN YOU
22 MET WITH HER?

23 A I CAN'T REMEMBER IT, SO I CAN'T REALLY ANSWER
24 THAT.

25 Q IS THERE ANY REASON FOR YOU TO BELIEVE THAT
26 MS. DUVAL WAS NOT BEING TRUTHFUL WHEN SHE WAS ANSWERING
27 YOUR QUESTIONS?

28 A I CAN'T ANSWER THAT SPECIFIC -- WHAT I CAN SAY

1 IS IF I FEEL THAT A PARENT IS SAYING A CHILD CAN OR
2 CANNOT DO SOMETHING AND I SEE IT OR DON'T SEE IT, I
3 MAKE THAT COMMENT. SO IF A PARENT SAYS, "OH, HE CAN'T
4 DO X, Y, OR Z," BUT I SEE IT OR I TRY TO FACILITATE IT
5 AND I SEE IT, THEN I WRITE "PARENT SAID HE CAN'T DO
6 THIS, BUT I SAW IT." OR "PARENTS SAID HE CAN DO
7 SOMETHING" -- LIKE "HE DOES LOOK ME IN THE EYE," BUT
8 THROUGHOUT THE SESSION I NOTICED HE'S NOT, THEN I'LL
9 SAY SOMETHING LIKE "BUT IT WASN'T OBSERVED."

10 Q WE'RE NOT PAYING YOU FOR YOUR TIME HERE?

11 A NO.

12 Q BUT EARLIER YOU HAD MENTIONED ABOUT YOUR
13 PARKING AND --

14 A OH, YES, YOU'RE REIMBURSING ME FOR PARKING.

15 Q YES.

16 MS. CHUNG: I THINK THAT'S ALL I HAVE, YOUR
17 HONOR. THANK YOU.

18 THE COURT: ALL RIGHT. ANY FURTHER, MS. NAU?

19 MS. NAU: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.
21 YOU ARE EXCUSED.

22 THE WITNESS: THANK YOU.

23 THE COURT: YOU'RE WELCOME.

24 MR. MCMILLAN: YOUR HONOR, IF YOU'LL GIVE ME
25 ONE SECOND.

26 THE COURT: HELLO, MR. POWELL.

27 THE WITNESS: THANK YOU, YOUR HONOR.

28 MR. MCMILLAN: IS THAT BOOK NO. 12? OKAY. IT

1 WILL BE RIGHT THERE NEXT TO YOU.

2 OH, HEY, DON'T USE THOSE. THOSE ARE SOMEBODY
3 ELSE'S.

4 THE WITNESS: IT HASN'T BEEN OPENED.

5 MR. MCMILLAN: NO, THE WATER BOTTLES, YOU CAN
6 USE. ALL RIGHT.

7 THE WITNESS: TOO HIGHFALUTIN FOR ME.

8 THE COURT: ALL RIGHT. MR. POWELL, YOU ARE
9 STILL UNDER OATH, AND YOU UNDERSTAND THAT?

10 THE WITNESS: YES, YOUR HONOR.

11 THE COURT: THANK YOU.

12 GO AHEAD, MR. MCMILLAN.

13 MR. MCMILLAN: THANK YOU, YOUR HONOR.

14

15 DIRECT EXAMINATION

16 BY MR. MCMILLAN:

17 Q WHEN WE LEFT OFF, WE WERE SPEAKING A LITTLE
18 BIT ABOUT THE DETENTION HEARING PROCESS.

19 DO YOU REMEMBER THAT?

20 A I DO.

21 Q DO YOU REMEMBER ROUGHLY WHERE WE LEFT OFF?

22 A I BELIEVE I EXPLAINED TO YOU ABOUT YOU CAN
23 REQUEST CONTESTED HEARINGS; WE COVERED THAT. WE
24 COVERED NONDETAINED. I THINK WE FINISHED DETENTION
25 HEARINGS. PRIMA FACIE, WE DISCUSSED THAT.

26 Q AT THE DETENTION HEARING, TYPICALLY, DOES THE
27 JUDGE ISSUE ORDERS BASED ON WHAT WAS PRESENTED TO HIM
28 BY THE GOVERNMENT AND THE DETENTION REPORT?

1 A YES, ALWAYS. HAS TO.

2 Q AND THAT WOULD INCLUDE ORDERS TO EITHER GIVE
3 THE CHILD BACK TO THE PARENT OR CONTINUE TO KEEP THE
4 CHILD AWAY FROM THE PARENT?

5 A IN THEORY, BOTH ARE POSSIBLE.

6 Q AND THE JUDGE MIGHT ALSO AT THAT POINT ISSUE
7 ORDERS REGARDING VISITATION, AS AN EXAMPLE?

8 A INDEED. VISITATION, ANY LIMITS ON VISITATION,
9 ANY PRESCRIPTIONS AGAINST THIS OR THAT.

10 Q SOMETIMES THEY GET QUITE SPECIFIC?

11 A YES. THEY WILL ALSO FREQUENTLY MAKE ORDERS
12 ABOUT THE DEPARTMENT SEEKING OUT ANY RELATIVES FOR
13 PLACEMENT. THAT'S A REAL COMMON -- IN FACT, THAT'S A
14 REQUIRED INQUIRY.

15 Q AND THEN AFTER THE DETENTION HEARING AND THESE
16 ORDERS HAVE BEEN ISSUED, OUTSIDE OF COURT, ON THE CASE
17 MANAGEMENT SIDE OF THINGS, YOU'VE HAD EXPERIENCE WITH
18 THAT AS WELL; RIGHT?

19 A WELL, IF THERE'S CASE MANAGEMENT IN THE
20 STANDARD SENSE IN WHICH A CIVIL ATTORNEY MIGHT LOOK AT
21 IT, WE DON'T HAVE THAT.

22 IF THERE WAS A DISCUSSION AT THE DETENTION
23 HEARING ABOUT A NEED TO MAYBE HAVE SOME INTERIM TIME
24 WHERE WE'RE GOING TO DISCUSS CASE MANAGEMENT OR TRIAL
25 SETTING OR -- THEN IT TYPICALLY GETS BROUGHT UP AT THE
26 DETENTION HEARING AND THE COURT WILL SET A DATE FOR
27 THAT.

28 BUT WE DON'T HAVE, AS IN YOUR TYPICAL CIVIL

1 CASE, A CASE MANAGEMENT CONFERENCE LIKE THIS COURT
2 RE- -- I'VE NEVER PRACTICED IN THIS COURT, BUT THEY
3 WILL TYPICALLY SAY, "HEY, WE'RE GOING TO HAVE -- I WANT
4 TO CHECK IN WITH YOU GUYS EVERY 90 DAYS," WHATEVER IT
5 IS. WE DON'T HAVE THAT.

6 Q THE NEXT HEARING THAT TYPICALLY HAPPENS AFTER
7 THE DETENTION HEARING, WHAT IS THAT?

8 A THAT WOULD BE THE JURISDICTION.

9 Q WHAT'S THE PURPOSE OF THE JURISDICTION
10 HEARING? WHAT ARE WE DOING THERE?

11 A OKAY. SO THERE'S THE LAW ABOUT WHAT CHILDREN
12 ARE CHILDREN WHO SHOULD BE -- SHOULD HAVE THE STATE
13 INVOLVED, WELFARE AND INSTITUTION CODE SECTION 300.
14 AND THE WAY THAT IT'S EXPRESSED IS THE AGENCY IS TRYING
15 TO PROVE THAT THE CHILD IS A CHILD WHO FALLS UNDER ONE
16 OF THE LAWS -- AGAIN, SERIOUS PHYSICAL ABUSE, EMOTIONAL
17 ABUSE, SEXUAL ABUSE. THROUGH THEIR PLEADINGS AND
18 THROUGH THEIR EVIDENCE, THEY'RE TRYING TO SHOW THAT
19 THIS KID FITS INTO THIS CATEGORY, SUBSECTION A,
20 SUBSECTION B.

21 AND IF THE COURT AGREES AND IT SAYS THAT THE
22 PETITION HAS BEEN SUSTAINED, THEN YOU WILL MOVE TO THAT
23 DISPOSITION PHASE. BUT NOW THE CHILD IS A MORE
24 OFFICIAL, IF YOU WILL, WARD OF THE COURT THAN DURING
25 THAT PHASE BETWEEN DETENTION, WHICH IS CONSIDERED
26 TEMPORARY.

27 Q AND AT THE JURISDICTION HEARING, IS THERE A
28 REPORT OR SOME KIND OF COMMUNICATION BETWEEN THE COUNTY

1 AND ITS SOCIAL WORKERS AND THE COURT?

2 A IN ALL COUNTIES THAT I'VE PRACTICED IN BUT
3 ONE, A WHOLE NEW REPORT IS GENERATED BECAUSE, ALTHOUGH
4 THE LAW SAYS THAT IF YOUR CHILD IS IN THE POSSESSION OF
5 THE AGENCY, YOU'RE SUPPOSED TO HAVE TRIAL IN 15 DAYS,
6 THAT LITERALLY, VIRTUALLY NEVER HAPPENS.

7 SO YOU'RE HAVING YOUR TRIAL NOW AND YOU'RE
8 THREE MONTHS, FOUR MONTHS SINCE YOU'VE HAD YOUR
9 DETENTION HEARING. THEY FILL OUT -- ARE SUPPOSED TO
10 FILE A JURISDICTION REPORT THAT KIND OF TELLS THE COURT
11 WHAT MORE THEY'VE LEARNED SINCE WHEN THEY INITIALLY GOT
12 INVOLVED, AND HOW ARE THINGS GOING: WHERE ARE THE KIDS
13 PLACED; HOW ARE THEY DOING; ARE THEIR MEDICAL NEEDS
14 BEING MET? HOW ARE THE PARENTS; ARE THEY ENROLLING IN
15 CLASSES OR THERAPY OR WHATEVER IT IS THAT THE AGENCY
16 HAS REQUESTED THEM TO ENROLL IN? BECAUSE THE COURT
17 CAN'T HAVE ORDERED THEM TO DO SO UNTIL JURISDICTION.

18 Q OKAY. SO THIS JURISDICTION REPORT, YOU KNOW
19 THE RULES WE TALKED ABOUT EARLIER ABOUT THEY HAVE TO GO
20 OUT AND GATHER UP ALL THE FACTS, ALL THE INFORMATION --
21 THE INCULPATORY INFORMATION, THE EXCULPATORY
22 INFORMATION, ALL OF THAT -- PUT THAT IN THE REPORT SO
23 THE JUDGE CAN MAKE HIS DECISION BASED ON ALL AVAILABLE
24 INFORMATION.

25 DOES THAT SAME RULE APPLY TO THE JURISDICTION
26 REPORT?

27 A YES.

28 AND IN THE INTEREST OF TIME, EVERY REVIEW

1 HEARING, EVERY HEARING THAT IS IN THE PROCESS, THEY ARE
2 SUPPOSED TO DO THAT. THEY ARE SUPPOSED TO HAVE MADE A
3 REASONABLE INVESTIGATION, REASONABLE INQUIRY, CONTACTED
4 CERTAINLY ALL THE OBVIOUS WITNESSES OR PARTICIPANTS WHO
5 MIGHT HAVE KNOWLEDGE THAT WOULD BE USEFUL TO THE COURT.
6 THAT'S AT EVERY STAGE.

7 Q SO EVERY REPORT --

8 MR. GUTERRES: OBJECTION, YOUR HONOR. I'M
9 GOING TO MOVE TO STRIKE THAT LAST RESPONSE AFTER THE
10 WORD "YES" AS NONRESPONSIVE.

11 THE COURT: OBJECTION OVERRULED. MOTION TO
12 STRIKE IS DENIED.

13 GO AHEAD.

14 MR. MCMILLAN: THANK YOU, YOUR HONOR. THAT
15 ACTUALLY JUST CUT OUT ABOUT MAYBE 20 MINUTES OF MY
16 EXAMINATION, SO I'LL MOVE BEYOND THE REPORT.

17 BY MR. MCMILLAN:

18 Q JUST TO SUM IT UP, ALL REPORTS THAT GO FROM
19 THE COUNTY'S HANDS, THE SOCIAL WORKERS' HANDS INTO THE
20 HANDS OF THE COURT, THEY'RE REQUIRED TO BE TRUTHFUL,
21 ACCURATE, AND COMPLETE; CORRECT?

22 A THAT'S A VERY SIMPLE WAY TO PUT IT, YES.

23 Q NOW, WE'LL MOVE ON A LITTLE BIT AND GET TO
24 YOUR SPECIFIC EXPERIENCE WITH THE COUNTY OF
25 LOS ANGELES.

26 HAVE YOU EVER BEEN IN A SITUATION WHERE YOU
27 REPRESENTED A PARENT IN MAKING THEIR COMPLAINTS KNOWN
28 TO THE COUNTY OF LOS ANGELES?

1 MR. GUTERRES: OBJECTION. VAGUE. OVERBROAD.

2 THE COURT: OVERRULED.

3 THE WITNESS: NUMEROUS TIMES.

4 BY MR. MCMILLAN:

5 Q WALK US THROUGH THAT PROCESS -- WELL, FIRST OF
6 ALL, HOW WOULD A PARENT COME TO YOU TO HELP THEM MAKE A
7 COMPLAINT TO THE COUNTY OF LOS ANGELES?

8 A IT WOULD SEEM THAT THE VAST MAJORITY OF THE
9 PEOPLE WHO COME TO ME, COME TO ME THROUGH THE INTERNET.
10 THEY'VE READ ABOUT ME OR THEY'VE READ A CASE OR
11 SOMETHING. THAT'S WHERE THEY COME FROM. THEY CALL,
12 AND THERE'S SOME INITIAL VETTING THAT IS DONE BY MY
13 STAFF, AND IF THEY THINK IT SHOULD BE PROMOTED UP FOR
14 MY REVIEW, THEN I'LL DO IT. I'LL REVIEW IT.

15 Q AND YOU'LL --

16 A WE CAN'T TAKE -- WE CANNOT POSSIBLY TAKE ALL
17 THE CASES. I REGRET THAT. I'M BUT ONE MAN. WE CANNOT
18 TAKE THEM ALL.

19 Q WHEN YOU SAY "WE CANNOT POSSIBLY TAKE ALL THE
20 CASES," CAN YOU --

21 A I CAN TELL YOU THAT NEVER, EVER DOES A MONTH
22 GO BY THAT WE HAVE NOT RECEIVED A CALL FROM SOMEONE
23 ABOUT A CASE IN LOS ANGELES. NEVER, EVER.

24 Q AND THAT'S THE ENTIRE SINCE YOU'VE BEEN DOING
25 THE CIVIL RIGHTS OR -- WHEN DID YOU START THE CIVIL
26 RIGHTS WORK, AGAIN?

27 A 1998 WAS THE CASE OF PRIOR. I WOULD SAY THAT
28 THAT STATEMENT I JUST MADE DOESN'T RUN ALL THE WAY BACK

1 TO 1998, BUT IT MIGHT RUN BACK TO THE EARLY 2000S,
2 2002, 2003.

3 Q HOW MANY OF THESE -- HOW MANY TIMES HAVE YOU
4 GIVEN THE COUNTY OF LOS ANGELES A NOTICE OF A
5 PARENT'S ALLEGATIONS OF MISCONDUCT?

6 A AT LEAST IN A FORMAL SENSE, I WANT TO SAY
7 EIGHT TIMES. COULD BE SEVEN AND IT COULD BE NINE, BUT
8 AT LEAST.

9 Q SO SOMEWHERE BETWEEN SEVEN AND NINE, BUT YOU
10 FEEL MOST COMFORTABLE SAYING EIGHT?

11 A YEAH.

12 Q AND OUT OF THOSE EIGHT TIMES, JUST VERY
13 BRIEFLY, CAN YOU CATEGORIZE FOR ME THE TYPES OF
14 COMPLAINTS THAT YOU'RE PUTTING THE COUNTY ON NOTICE OF?

15 A WE'RE PUTTING THEM ON NOTICE OF THE FACT THAT
16 WE DO NOT BELIEVE THERE WERE EXIGENT CIRCUMSTANCES TO
17 REMOVE THE CHILD, OR CHILDREN, BECAUSE IT'S FREQUENTLY,
18 OF COURSE, MORE THAN ONE CHILD.

19 THAT THEY HAVE NOT BEEN TRUTHFUL IN DOCUMENTS
20 SUBMITTED TO THE COURT, AND THIS WOULD INCLUDE THOSE
21 DOCUMENTS YOU'VE TALKED ABOUT: DETENTION REPORTS,
22 PETITIONS. I'VE LITERALLY, IN SOME OF THE DOCUMENTS IN
23 WHICH I'VE SHARED MY COMPLAINANTS' COMPLAINTS, PUT IN
24 LANGUAGE FROM THE PETITION AND POINTED OUT WHERE THAT'S
25 NOT TRUE, THAT'S NOT TRUE, THAT'S NOT TRUE. SO THAT'S
26 WHAT THEY FALL INTO.

27 AND THEY ALMOST ALWAYS, IN MY OWN PERSONAL
28 PRACTICE -- BECAUSE I SEE NO POINT IN COMPLAINING

1 UNLESS THERE'S A HOPE FOR CHANGE -- I MYSELF ALWAYS
2 WANT TO HAVE A CASE THAT HAS A REMOVAL THAT I FEEL IS
3 NOT APPROPRIATE.

4 Q AND WHEN YOU SAY THAT, "HOPE FOR CHANGE," WHAT
5 DO YOU MEAN BY THAT?

6 A HOPE FOR CHANGE. HOPE FOR CHANGE. THAT
7 SOMEDAY YOU AND I ARE OUT OF WORK. OR AT LEAST OUT OF
8 THIS KIND OF WORK; I'M PRETTY SURE WE CAN'T STOP
9 DIVORCES.

10 Q NOW, IN THE PROCESS, YOU DON'T JUST GIVE THE
11 COUNTY THIS NOTICE OF THESE COMPLAINTS; RIGHT? YOU GET
12 TO GO THROUGH AN INVESTIGATION PROCESS?

13 A YES.

14 Q CAN YOU DESCRIBE FOR US JUST BRIEFLY THE STEPS
15 IN THAT PROCESS, THE VARIOUS THINGS THAT YOU MIGHT GET
16 TO DO TO TRY TO FIGURE OUT, YOU KNOW, IF THERE REALLY
17 IS SOMETHING TO THE ALLEGATIONS THAT YOU'RE MAKING?

18 MR. GUTERRES: OBJECTION. RELEVANCE.
19 OVERBROAD.

20 THE COURT: SUSTAINED.

21 BY MR. MCMILLAN:

22 Q DO YOU KNOW WHO GUY TRIMARCHI IS?

23 A I DO.

24 THE COURT REPORTER: SAY THAT NAME AGAIN?

25 MR. MCMILLAN: T-R-I-M-A-R- --

26 THE COURT: -R-C-H-I. HIS FIRST NAME IS GUY,
27 G-U-Y.

28 MR. MCMILLAN: YES. THANK YOU, YOUR HONOR.

1 THE WITNESS: YES, I HAVE.

2 BY MR. MCMILLAN:

3 Q YOU'VE MET HIM BEFORE IN PERSON?

4 A OH, YEAH, AT LEAST ONCE AND I WANT TO SAY
5 TWICE.

6 Q IN WHAT CONTEXT?

7 A THERE'S AN OPPORTUNITY AFTER I LET THEM KNOW
8 THAT MY CLIENTS HAVE SOME COMPLAINTS ABOUT THEM TO
9 SPEAK TO PEOPLE UNDER OATH.

10 Q HAVE YOU SPOKEN TO MR. TRIMARCHI UNDER OATH?

11 A YES. AND AGAIN, ABSOLUTELY, FOR SURE, ONE
12 TIME, AND I THINK IT'S TWICE.

13 Q DID YOU SPEAK WITH MR. TRIMARCHI UNDER OATH
14 REGARDING ISSUES ABOUT LOS ANGELES COUNTY'S WARRANT
15 POLICIES?

16 A ABSOLUTELY.

17 Q IN THAT CONVERSATION WITH MR. TRIMARCHI UNDER
18 OATH, DID YOU LEARN ANYTHING ABOUT WHEN IT WAS THAT THE
19 COUNTY OF LOS ANGELES ACTUALLY STARTED GETTING REMOVAL
20 WARRANTS?

21 A I WANT TO SAY IT'S EARLY 2010 IS THE FIRST
22 TIME THEY WROTE THINGS UP AND SET IN PLACE THE
23 PROCESSES FOR IF A SOCIAL WORKER WANTED TO GET ONE,
24 THAT THEY COULD DO THAT.

25 Q DO YOU KNOW WHO BETH MINOR IS?

26 A I DO.

27 Q WHO'S BETH MINOR?

28 A I'VE DEPOSED HER AT LEAST ONCE AS WELL, AS

1 WHAT'S CALLED A PERSON MOST -- I'M SORRY -- PERSON MOST
2 KNOWLEDGEABLE. I'VE SPOKEN TO HER UNDER OATH AS A
3 PERSON MOST KNOWLEDGEABLE.

4 Q AND WHAT SORTS OF THINGS DID YOU TALK TO
5 MS. MINOR ABOUT AS A PERSON MOST KNOWLEDGEABLE?

6 A UNFORTUNATELY, I CAN'T RECALL IF SHE WAS PUT
7 FORTH AS THE PERSON MOST KNOWLEDGEABLE ON TRAINING OR
8 POLICIES. I WANT TO SAY TRAINING, BUT IF YOU'RE GOING
9 TO GET INTO ANY DETAILS, THEN I'M PROBABLY NOT GOING TO
10 BE ABLE TO PROVIDE THEM. I DIDN'T GO RIFLE MY LIBRARY
11 FOR THIS.

12 Q I'M GOING TO GO WITH TRAINING FOR THE MOMENT.

13 A OKAY.

14 Q DO YOU RECALL -- AND YOU MAY NOT RECALL. IF
15 YOU DON'T, JUST TELL US THAT.

16 DO YOU RECALL WHETHER OR NOT -- LET ME ASK IT
17 THIS WAY: DO YOU RECALL WHEN IT WAS MS. MINOR TOLD YOU
18 IN THIS INTERVIEW UNDER OATH THAT THE COUNTY OF LOS
19 ANGELES FIRST STARTED TRAINING ITS SOCIAL WORKERS ABOUT
20 THIS WARRANT PROCESS/WARRANT PROCEDURE/WARRANT
21 REQUIREMENT TO SEIZE A CHILD FROM A PARENT?

22 A AGAIN, I DON'T KNOW THAT -- IF I CAN ATTRIBUTE
23 IT TO BETH MINOR SPECIFICALLY OR GUY TRIMARCHI
24 SPECIFICALLY, BUT I KNOW THAT THEY DIDN'T EVEN HAVE THE
25 PROCESS IN PLACE UNTIL EARLY 2010. SO MY RECOLLECTION
26 IS THAT IT WAS SOMETIME SEVERAL MONTHS THEREAFTER THAT
27 THEY WERE ABLE TO PUT TOGETHER A TRAINING ON IT.

28 Q AND THAT TRAINING, WERE YOU ABLE TO GET A COPY

1 OF THAT TRAINING?

2 A WELL, WHEN YOU SAY "THAT TRAINING," IT'S
3 CHANGED OVER TIME. AND I HAVE, OF COURSE, RECEIVED
4 COPIES OF THEM, AND I'VE -- GOING TO BE REQUESTING SOON
5 TO SEE THE MOST -- LATEST ONE.

6 Q ALSO, IN THESE INTERVIEWS, WERE YOU ABLE TO
7 TALK TO EITHER MS. MINOR OR MR. TRIMARCHI ABOUT THIS
8 CONCEPT OF HONESTY IN COURT REPORTING?

9 A YES, I CERTAINLY WAS ABLE TO. I DON'T KNOW IF
10 I SPECIFICALLY DID WITH EITHER OF THOSE TWO BECAUSE,
11 AGAIN, MR. TRIMARCHI COMES CLEAR TO MY MEMORY AS A
12 POLICY GUY. YEAH.

13 Q WELL, LET ME ASK YOU AGAIN, AND IF YOU DON'T
14 REMEMBER THAT'S PERFECTLY FINE.

15 DO YOU REMEMBER WHETHER OR NOT YOU ASKED
16 MR. TRIMARCHI IF THE COUNTY OF LOS ANGELES ACTUALLY HAD
17 A SPECIFIC WRITTEN POLICY DIRECTING ITS SOCIAL WORKERS
18 THAT THEY HAVE TO BE TRUTHFUL, ACCURATE, AND COMPLETE
19 IN THOSE REPORTS THEY'RE GIVING TO THE COURT?

20 MR. GUTERRES: OBJECTION. FOUNDATION.
21 SPECULATION.

22 THE COURT: OVERRULED.

23 THE WITNESS: I DO NOT RECALL IF I ASKED HIM
24 IF THEY HAD PUT IN A WRITTEN POLICY. BUT IT IS A
25 QUESTION THAT I ASK IN ANY OF THOSE CIRCUMSTANCES WHERE
26 I'M SPEAKING TO PERSONS MOST KNOWLEDGEABLE LIKE
27 MR. TRIMARCHI. SO I CAN ONLY SAY THAT I WOULD BE
28 CONFIDENT THAT I HAD ASKED HIM ABOUT THAT VERY ISSUE,

1 WHETHER THEY HAVE TRAININGS AND POLICIES THAT ARE
2 SUPPOSED TO INFORM THEIR EMPLOYEES TO BE TRUTHFUL,
3 HONEST, AND ACCURATE AND THOROUGH WHEN THEY PROVIDE
4 REPORTS TO A COURT.

5 BY MR. MCMILLAN:

6 Q AND ONE OF THE REASONS THAT YOU WOULD ASK
7 THESE PERSONS MOST KNOWLEDGEABLE THAT QUESTION IS
8 BECAUSE THAT'S ONE OF THE ISSUES THAT THE PARENTS YOU
9 WERE HELPING --

10 THE COURT: OKAY. BEFORE YOU ANSWER THE
11 QUESTION, I'D LIKE TO SEE COUNSEL FOR JUST A MOMENT.

12 MR. MCMILLAN: SURE.

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

15 THE COURT: ALL RIGHT. WE'RE AT SIDEBAR WITH
16 COUNSEL.

17 WHILE THERE ARE NO OBJECTIONS, MR. MCMILLAN,
18 IN YOUR QUESTIONING OF THE WITNESSES YOU'VE QUESTIONED
19 SO FAR, ALMOST INVARIABLY YOU TESTIFY IN YOUR QUESTION.
20 AND BECAUSE IT IS DIRECT EXAMINATION AND NOW WE'RE
21 DEALING WITH CERTAIN ISSUES, SPECIFIC ISSUES IN THIS
22 CASE, IT WOULD BE MORE APPROPRIATE FOR YOU TO ASK
23 QUESTIONS THAT WILL ELICIT INFORMATION FOR THE QUESTION
24 RATHER THAN GIVING THE INFORMATION TO THE WITNESS AND
25 ASKING THEM TO CONFIRM YOUR VIEW OF THAT.

26 MR. MCMILLAN: OKAY.

27 THE COURT: IN OTHER WORDS, LET'S ASK DIRECT
28 QUESTIONS; ALL RIGHT?

1 MR. MCMILLAN: I UNDERSTAND.

2 THE COURT: THANK YOU.

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

6 THE COURT: MR. MCMILLAN, GO AHEAD. PERHAPS
7 YOU CAN REPHRASE THE QUESTION FOR US.

8 BY MR. MCMILLAN:

9 Q I DON'T ACTUALLY REMEMBER THE QUESTION.

10 THE WITNESS: SHE WROTE IT DOWN.

11 THE COURT: WELL, I'M NOT GOING TO READ IT
12 BACK, BUT --

13 MR. MCMILLAN: HOW ABOUT THE GENERAL GIST?

14 MR. GUTERRES: WELL, YOUR HONOR, I WILL OBJECT
15 AS LEADING.

16 THE COURT: SUSTAINED.

17 HOLD ON ONE SECOND. I'LL GET THE GIST FOR
18 YOU.

19 MR. POWELL HAD TESTIFIED THAT -- YOU ASKED HIM
20 WHETHER OR NOT HE HAD ASKED MS. MINOR OR MR. TRIMARCHI
21 SPECIFIC QUESTIONS ABOUT HONESTY IN COURT REPORTING,
22 AND HE SAID THAT HE WAS ABLE TO, HE DIDN'T RECALL
23 SPECIFICALLY IF HE HAD.

24 AND THEN YOU ASKED HIM, IN EFFECT, WHY HE
25 WOULD ASK SUCH QUESTIONS.

26 DOES THAT HELP REFRESH YOUR RECOLLECTION?

27 MR. MCMILLAN: THAT DOES, THANK YOU YOUR
28 HONOR.

1 THE COURT: OKAY. THAT'S GOOD.

2 THE WITNESS: WELL --

3 THE COURT: I'M GOING TO HAVE HIM REPHRASE THE
4 QUESTION SO YOU KNOW WHAT YOU SHOULD ANSWER.

5 THE WITNESS: ALL RIGHT. BUT I WOULD LOVE TO
6 CLARIFY MY TESTIMONY.

7 THE COURT: ALL RIGHT. WELL, MR. MCMILLAN
8 WILL TAKE CARE OF THAT WITH YOU ALSO, I'M SURE.

9 THE WITNESS: OKAY.

10 BY MR. MCMILLAN:

11 Q YOU REMEMBER BEFORE THE SHORT BREAK THAT WE
12 WERE TALKING ABOUT THE TIMES THAT YOU SIT DOWN AND
13 SPEAK WITH PERSONS MOST KNOWLEDGEABLE FOR THE COUNTY OF
14 LOS ANGELES UNDER OATH, AND WE WERE SPECIFICALLY
15 TALKING ABOUT SOME OF THE POLICIES AND TRAINING ABOUT
16 HONESTY IN COURT REPORTING.

17 DO YOU REMEMBER THAT?

18 A YES.

19 Q OKAY. WHY IS IT THAT YOU WOULD ASK THOSE
20 SORTS OF QUESTIONS OF THE COUNTY PERSONS MOST
21 KNOWLEDGEABLE?

22 A BECAUSE IN EVERY CASE THAT I'M DEALING WITH,
23 THERE IS SOME ISSUE OF THAT NATURE. SOMETIMES IT'S
24 RAMPANT AND THROUGHOUT; SOMETIMES IT'S SPOTTY, NOT
25 RAMPANT. BUT IT'S IN EVERY CASE THAT I HAVE. SO I ASK
26 ABOUT IT. AND WHILE I DON'T RECALL -- MEANING I CAN'T
27 RECALL I SPECIFICALLY ASKED THIS PERSON THE QUESTION,
28 IN POLICY OR TRAINING, ABOUT TRUTH AND HONESTY -- I DO,

1 EVERY SINGLE TIME.

2 AND THE ANSWERS I GET IS "YES, WE HAVE IT;
3 YES, WE" -- THEY MIGHT NOT HAVE A WRITTEN POLICY THAT
4 SAYS IT, BUT THEY WILL HAVE IT IN TRAINING. I ASSURE
5 YOU OF THAT. AND THAT INCLUDES LOS ANGELES COUNTY AND
6 EVERY OTHER COUNTY.

7 Q AND RESTRICTING TO POLICY JUST FOR A MOMENT,
8 DO YOU THEN ASK THE COUNTY TO GO AHEAD AND PRODUCE THE
9 POLICY, TO SHOW YOU?

10 A YEAH, I'VE USUALLY OBTAINED IT BEFORE I HAVE
11 THE OPPORTUNITY TO SPEAK TO THEM UNDER OATH.

12 Q DO THOSE POLICIES -- WELL, LET ME ASK YOU
13 THIS: THE SPECIFIC LANGUAGE THAT YOU DO REMEMBER THE
14 POLICIES SAYING, WHAT IS IT?

15 IF YOU KNOW, IF YOU REMEMBER.

16 A ALL RIGHT. A LOT OF THE POLICIES INCORPORATE
17 STATE REGULATIONS WHICH ADDRESS THINGS LIKE BEING
18 THOROUGH AND ACCURATE AND HONEST IN COURT REPORTS,
19 TITLE 31 REGULATIONS THAT GOVERN SOCIAL WORK IN THE
20 STATE OF CALIFORNIA. SO I CAN ONLY TELL YOU, WITHOUT
21 LOOKING AT ONE, THAT THEY DO ADDRESS BEING THOROUGH,
22 BEING ACCURATE, AND BEING, IN THAT SENSE, TRUTHFUL.

23 BECAUSE, OBVIOUSLY, IF YOU'RE NOT ACCURATE AND
24 YOU'RE NOT TRUTHFUL -- AND IN LOS ANGELES, IN THE
25 COMPUTER FORMAT THAT COMES UP FOR THEM TO WRITE THINGS,
26 THERE WILL EVEN BE HEADINGS THAT SAY, YOU KNOW, "BE
27 SURE TO INCLUDE" -- OR I DON'T KNOW HOW THEY WORD IT,
28 BUT "INCLUDE EXCULPATORY INFORMATION, EXCLUDE FAMILY

1 STRENGTHS" --

2 THE COURT REPORTER: INCLUDE OR --

3 THE WITNESS: INCLUDE -- NOT EXCLUDE FAMILY
4 STRENGTHS, BUT TO INCLUDE THEM.

5 THEY ENCOURAGE, I'M SURE, THE SOCIAL WORKERS
6 TO DO THAT.

7 BY MR. MCMILLAN:

8 Q SO IF I HEAR YOU CORRECTLY, THERE ARE SOME
9 POLICIES THAT REQUIRE THAT, TRUTHFUL?

10 A THEY CALL FOR IT, YES. REQUIREMENT IS -- I
11 DON'T KNOW WHAT YOU MEAN BY THE TERM "REQUIRE." IF YOU
12 DON'T DO IT --

13 Q IT'S A MANDATE?

14 A -- I DON'T KNOW WHAT THEY DO TO THEM.

15 Q OKAY. WELL, IN THESE INTERVIEWS THAT YOU'VE
16 DONE -- WE'LL START WITH MR. TRIMARCHI AND MS. MINOR --
17 UNDER OATH, DID YOU TALK TO THEM AT ALL ABOUT
18 DISCIPLINE, WHETHER OR NOT THEY DISCIPLINE THEIR
19 WORKERS TO MAKE SURE THEY FOLLOW THOSE POLICIES?

20 A ABSOLUTELY. ONCE -- THE DISCIPLINE ASPECT OF
21 THE KIND OF CASES THAT YOU'RE DOING, THAT I DO, IS
22 NOT -- IS OF FAIRLY RECENT ORIGIN. THAT'S ALL I CAN
23 SAY. I WANT TO SAY IT'S THE LAST SIX TO NINE YEARS
24 THAT THAT BECAME AN ASPECT OF A PLAINTIFF -- A PARENT'S
25 COMPLAINT, THAT, YOU KNOW, SOMETHING THAT THE COUNTY
26 ITSELF DID CONTRIBUTED TO WHY THEIR CHILD GOT TAKEN.

27 Q SO WHY IS IT THAT IN THESE INTERVIEWS IT'S
28 IMPORTANT TO YOU TO FIND OUT WHETHER OR NOT THE COUNTY

1 DISCIPLINES ITS WORKERS WHEN THEY DON'T FOLLOW THOSE
2 RULES AND PROCEDURES YOU JUST TALKED ABOUT?

3 A BECAUSE IT SUPPORTS, UNDER THE LAW -- AS I
4 UNDERSTAND IT, IT SUPPORTS MY CLIENT'S CLAIM THAT NOT
5 ONLY MIGHT THIS ONE PARTICULAR SOCIAL WORKER BE
6 RESPONSIBLE FOR WHAT HAPPENED TO THEM THAT IS WRONG BUT
7 THAT THE COUNTY ITSELF IS ALSO RESPONSIBLE FOR WHAT
8 HAPPENS TO THE CLIENT THAT IS WRONG, ERGO THE REMOVAL
9 OF THE CHILD.

10 Q I'M NOT UNDERSTANDING.

11 CAN YOU CLARIFY FOR US HOW IT MIGHT BE THAT
12 THIS DISCIPLINE ISSUE SOMEHOW TRANSLATES INTO THE
13 COUNTY BEING WRONG?

14 A WELL, BECAUSE IF YOU'RE NOT DISCIPLINING OR
15 REPRIMANDING WHEN CONDUCT ISN'T APPROPRIATE OR VIOLATES
16 POLICY -- OR VIOLATES LAW, OF COURSE -- THERE WOULD BE
17 NO INCENTIVE TO STOP DOING IT. AND AT SOME POINT, YOU
18 SHOULD PROBABLY BE RESPONSIBLE.

19 MAY I PROVIDE AN EXAMPLE? IF MY CHILD WAS
20 CONSTANTLY GOING OVER TO THE NEIGHBOR'S YARD AND
21 STEALING HIS CHICKEN'S EGGS AND I NEVER DISCIPLINE HIM,
22 HE'S GOING TO KEEP STEALING MY NEIGHBOR'S EGGS. THAT
23 COMES FROM A FARM BACKGROUND, BUT -- SO THERE'S THAT.
24 AND THEN, AT SOME POINT, YOU COULD SAY, "GEE,
25 MR. POWELL, I THINK YOU'RE KIND OF RESPONSIBLE FOR YOUR
26 KID STEALING MY EGGS." I'D HAVE A HARD TIMING ARGUING
27 WITH YOU.

28 Q GOING BACK TO THOSE SEVEN TO NINE TIMES THAT

1 YOU SPECIFICALLY HAVE GONE TO THE COUNTY OF LOS ANGELES
2 TO HELP PARENTS GIVE THE COUNTY NOTICE OF THE
3 ALLEGATIONS OF MISCONDUCT, WHAT ARE THE TYPICAL
4 ALLEGATIONS -- WELL, LET ME ASK YOU THIS FIRST: ARE
5 THERE TYPICAL ALLEGATIONS THAT YOU MAKE IN THOSE
6 DOCUMENTS?

7 MR. GUTERRES: OBJECTION. ASKED AND ANSWERED.

8 THE COURT: SUSTAINED.

9 BY MR. MCMILLAN:

10 Q MAYBE I DID AND I JUST FORGOT.

11 OH, I DIDN'T ASK THIS: WHAT IS A WARRANT?

12 A A WARRANT IS ESSENTIALLY AN EXCEPTION TO THE
13 4TH AMENDMENT. IF YOU WANT TO SUMMARIZE IT, THAT'S
14 WHAT A WARRANT IS.

15 Q THAT WAS PROBABLY A LITTLE BIT OBTUSE.

16 A I HOPE EVERYBODY KNOWS THE 4TH AMENDMENT. BUT
17 A WARRANT IS A DOCUMENT THAT IS A COURT AUTHORIZING A
18 GOVERNMENT AGENT TO DO SOMETHING THAT THEY OTHERWISE
19 COULD NOT DO OR IT WOULD BE VIOLATION OF SOMEONE'S
20 CIVIL RIGHTS. HOW'S THAT?

21 Q MUCH BETTER. THANK YOU.

22 JUST TO SUM UP, A WARRANT IS A TYPE OF COURT
23 ORDER PERMITTING THE GOVERNMENT TO DO SOMETHING --

24 A YOU LIKE YOUR ANSWER --

25 MR. GUTERRES: OBJECTION. LEADING.

26 THE COURT: SUSTAINED AS TO LEADING. WE DON'T
27 NEED TO SUM UP. HE GAVE A VERY CLEAR ANSWER.

28 THE WITNESS: THE SECOND TIME, RIGHT? THE

1 SECOND TIME?

2 THE COURT: YEAH, WE GAVE YOU A COUPLE
3 OPPORTUNITIES.

4 BY MR. MCMILLAN:

5 Q NOW, IN THESE SEVEN TO NINE TIMES THAT YOU'VE
6 PUT THE COUNTY ON NOTICE ABOUT THESE ALLEGATIONS, IN
7 ADDITION TO SPEAKING WITH MR. TRIMARCHI AND MS. MINOR
8 UNDER OATH, WERE YOU ALSO ABLE TO INTERVIEW THE
9 PARTICULAR SOCIAL WORKERS UNDER OATH THAT WERE INVOLVED
10 IN THOSE CASES?

11 A YES.

12 Q AND DID YOU ASK THOSE SOCIAL WORKERS -- TO
13 START WITH THE TRAINING ON WARRANTS -- SPECIFIC
14 QUESTIONS ABOUT THE TRAINING THEY HAD ON WARRANTS?

15 MR. GUTERRES: OBJECTION. RELEVANCE.

16 THE COURT: OVERRULED.

17 THE WITNESS: YES.

18 BY MR. MCMILLAN:

19 Q VERY BRIEFLY, IS THERE A TYPICAL RESPONSE THAT
20 YOU WOULD GET WHEN YOU WOULD ASK THAT QUESTION?

21 MR. GUTERRES: OBJECTION. OVERBROAD.

22 THE COURT: OVERRULED.

23 MR. GUTERRES: VAGUE AS TO TIME AND RELEVANCE.

24 THE COURT: SUSTAINED AS TO THE TIMING.

25 BY MR. MCMILLAN:

26 Q LET'S RESTRICT IT TO PRIOR TO JANUARY 1ST,
27 2010.

28 A WELL, THEN THAT ANSWER --

1 MR. GUTERRES: OBJECTION. NO FOUNDATION.

2 THE COURT: OVERRULED.

3 THE WITNESS: THAT ANSWER IS VERY SIMPLE.

4 THEY HAD NONE. VERY SIMPLE; THEY HAD NONE.

5 BY MR. MCMILLAN:

6 Q AND THEY TOLD YOU THAT UNDER OATH?

7 A MORE THAN ONE.

8 Q HOW MANY?

9 A I DON'T KNOW. I'VE TAKEN A LOT OF SOCIAL
10 WORKERS' DEPOSITIONS.

11 Q SAME QUESTION WITH RELATION TO --

12 A I'VE SPOKEN WITH THEM UNDER OATH.

13 Q SAME QUESTION WITH RELATION TO THAT OBLIGATION
14 WE TALKED ABOUT EARLIER ABOUT TRUTHFUL, ACCURATE, AND
15 COMPLETE COURT REPORTS.

16 DID YOU HAVE AN OPPORTUNITY TO ASK EACH OF
17 THOSE SOCIAL WORKERS UNDER OATH, PRIOR TO JANUARY 1ST,
18 2010, ABOUT TRAINING THEY MIGHT HAVE HAD OR MIGHT NOT
19 HAVE HAD RELATIVE TO THAT OBLIGATION TO TELL THE TRUTH?

20 A YES.

21 Q WHAT'S THE TYPICAL RESPONSE?

22 A I HAVE YET TO HAVE A SOCIAL WORKER RESPOND
23 THAT THEY BELIEVE THEY'RE SUPPOSED TO LIE OR CONCEAL,
24 SO EVERY ONE OF THEM HAS AGREED WITH ME THAT THEY
25 EITHER UNDERSTAND OR IT WAS INCLUDED IN THEIR TRAINING
26 THAT THEY ARE TO BE TRUTHFUL, THOROUGH, AND ACCURATE.
27 SO EVERY ONE IN EVERY COUNTY THAT I'VE EVER DEALT WITH.

28 Q AND SPECIFIC WITH RELATION TO THE COUNTY OF

1 LOS ANGELES IN THOSE SWORN INTERVIEWS, DID YOU ALSO ASK
2 THE SOCIAL WORKERS WHETHER OR NOT THEY THEMSELVES HAD
3 EVER BEEN DISCIPLINED FOR DISHONESTY WITH THE COURT?

4 A I WOULD FOR SURE DO THAT AND I WOULD GO BEYOND
5 THAT.

6 Q HOW SO?

7 A AS A MATTER OF PRACTICE -- AGAIN, ONCE THE
8 DISCIPLINE ISSUE BECAME A RELEVANT FACTOR -- I WOULD
9 TAKE THEM THROUGH: WHERE DO THEY WORK? BECAUSE IN A
10 COUNTY LIKE LOS ANGELES, THERE ARE NUMEROUS REGIONAL
11 OFFICES. I DON'T REMEMBER OFF THE TOP OF MY HEAD, BUT
12 I THINK THERE'S MORE THAN A HANDFUL. AND EVERY
13 REGIONAL OFFICE WILL HAVE DIFFERENT UNITS WITHIN THE
14 SOCIAL SERVICE AGENCY, ONE OF WHICH IS EMERGENCY
15 RESPONSE, WHICH IS THE ONES WHO TYPICALLY ARE THE ONES
16 REMOVING CHILDREN.

17 AND I WILL ALWAYS ASK, YOU KNOW, "HOW MANY ARE
18 IN YOUR UNIT AT THAT REGIONAL OFFICE?" THE ANSWERS
19 VARY BETWEEN FIVE TO TWELVE.

20 AND THEN, "HOW MANY UNITS LIKE YOURS ARE IN
21 THAT REGIONAL OFFICE?" AND THAT CAN VARY, THREE TO
22 FIVE, WHATEVER IT IS.

23 AND THEN I'LL ASK THEM NOT ONLY HAVE THEY EVER
24 BEEN DISCIPLINED FOR REMOVING A CHILD -- OR REPRIMANDED
25 EVEN BECAUSE I DON'T THINK YOU HAVE TO NECESSARILY BE
26 DISCIPLINED, BUT MAYBE YOU SHOULD HAVE A REPRIMAND.
27 AND I'LL ASK THEM IF THEY HAVE, AND THE ANSWER IS
28 UNIFORMLY "NO."

1 AND THEN I'LL ASK THEM IF THEY'VE HEARD OF
2 ANYONE ELSE THAT DOES THEIR WORK THAT THEY DO. AND I
3 THINK MAYBE ONE TIME ONE PERSON SAID THEY'D HEARD OF IT
4 ONCE. MAYBE TWICE. BUT IN TERMS OF THEM EVER -- THE
5 PERSONS I'VE HAD IN FRONT OF ME THAT I'M TALKING TO
6 UNDER OATH -- BEING DISCIPLINED, NO.

7 Q AND YOU ASK THOSE SAME QUESTIONS AS TO EACH OF
8 THESE LOS ANGELES COUNTY SOCIAL WORKERS THAT YOU'RE
9 INTERVIEWING UNDER OATH?

10 A AND THEIR SUPERVISORS.

11 Q AND THEIR SUPERVISORS.

12 HAVE YOU EVER INTERVIEWED AN -- DO YOU KNOW
13 WHAT AN ARA IS?

14 A YES.

15 Q WHAT'S AN ARA?

16 A THE ACRONYM EXACTLY, I -- REGIONAL --
17 ADMINISTRATIVE REGIONAL ASSISTANT OR -- IT'S A HIGHER
18 LEVEL ABOVE SUPERVISORS.

19 Q CLOSE ENOUGH.

20 A IS IT UP THERE SOMEWHERE?

21 Q I DON'T THINK YOU CAN SEE IT ON THE BOARDS
22 THAT ARE SET UP BUT IT IS THERE.

23 A I KNOW TWO OF THOSE WORDS ARE IN THERE.

24 Q NO, THAT'S GOOD. JUST OUT OF ORDER.

25 SO YOU HAVE -- OR HAVE YOU HAD ONE OF THESE
26 SWORN INTERVIEWS WITH AN ASSISTANT REGIONAL
27 ADMINISTRATOR?

28 A I DON'T KNOW FOR SURE. I CAN'T SAY IF I

1 RECALL SPEAKING TO AN ARA.

2 Q DOES THE NAME MUZEYYEN BALABAN RING A BELL?

3 A NO, AND IT WOULD. THAT'S A CATCHY NAME.

4 Q GOING BACK JUST FOR A MOMENT TO THE QUESTIONS
5 WE HAD EARLIER ABOUT EXCULPATORY EVIDENCE: IF THERE
6 HAD BEEN, DURING THE COURSE OF A -- ONE OF THESE
7 JUVENILE PROCEEDINGS THAT YOU SPOKE TO US ABOUT FROM
8 BEGINNING TO THE TRIAL, SOMEWHERE IN THE MIDDLE OF
9 THAT -- IF THERE HAD BEEN A POSITIVE FINDING THAT ONE
10 OF THE SOCIAL WORKERS OR TWO OF THE SOCIAL WORKERS IN
11 THAT CASE DISCRIMINATED AGAINST THE PARENT, IS THAT THE
12 TYPE OF EVIDENCE WE'RE TALKING ABOUT WHEN WE SAY
13 EXCULPATORY EVIDENCE?

14 MR. GUTERRES: OBJECTION. FOUNDATION.
15 SPECULATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: IT IS IN THAT VEIN THAT WE
18 DISCUSSED BRIEFLY OF CREDIBILITY, AND BIAS IS AN ISSUE
19 THAT, OF COURSE, IS INHERENTLY RELATED TO CREDIBILITY.
20 IF YOU'RE BIASED, YOU MIGHT NOT BE CREDIBLE. I'M SURE
21 THAT WILL COME UP HERE TODAY. AND THAT IS SOMETHING
22 THAT SHOULD BE DISCLOSED, OF COURSE.

23 AND I WILL TELL YOU THAT REALLY, IN REALITY,
24 THAT SOCIAL WORKERS THEMSELVES SHOULD ASK TO BE TAKEN
25 OFF OF A CASE JUST LIKE A JUDGE WOULD. YOU KNOW, IF IT
26 TURNED OUT THIS JUDGE WAS -- HIS DAUGHTER WAS YOUR
27 WIFE, HE WOULD SAY, "I CAN'T BE YOUR JUDGE." SAME
28 THING.

1 BY MR. MCMILLAN:

2 Q JUST GENERALLY SPEAKING, ARE ISSUES OF
3 CREDIBILITY, OR LACK OF CREDIBILITY, IF THERE IS
4 EVIDENCE OF LACK OF CREDIBILITY, WOULD THAT ALSO BE
5 EXCULPATORY IN NATURE?

6 A YES, BROADLY PAINTED UNDER THE TERM
7 "EXCULPATORY," IT WOULD DEFINITELY BE EXCULPATORY IN
8 NATURE. IT WOULD BE THAT KIND OF EVIDENCE THAT YOU
9 WOULD NEED TO DISCLOSE BECAUSE, IF THERE'S A CONCERN
10 ABOUT YOUR BEING CREDIBLE, IT MEANS THAT YOU PROBABLY
11 HAVEN'T TOLD THE TRUTH ABOUT SOMETHING.

12 Q AND IF THERE WAS EVIDENCE OF THAT, THAT A
13 PARTICULAR WITNESS MAYBE DIDN'T TELL THE TRUTH ABOUT
14 SOMETHING, THAT'S SOMETHING YOU SHOULD DISCLOSE TO THE
15 COURT?

16 MR. GUTERRES: OBJECTION. LEADING.

17 THE COURT: SUSTAINED.

18 BY MR. MCMILLAN:

19 Q IS THAT SOMETHING THAT SHOULD BE DISCLOSED TO
20 THE COURT?

21 A YES. ABSOLUTELY. THESE ARE FAMILIES' LIVES
22 THAT THEY'RE DEALING IN. THIS CAN BE WORSE THAN
23 INCARCERATION.

24 MR. GUTERRES: MOVE TO STRIKE AFTER THE
25 RESPONSE "YES" AS NONRESPONSIVE.

26 THE COURT: UNDERLYING OBJECTION IS SUSTAINED.
27 MOTION TO STRIKE IS GRANTED. ALL PORTIONS OF THE
28 ANSWER AFTER THE WORD "YES" ARE ORDERED STRICKEN AND

1 THE JURY WILL DISREGARD THEM.

2 GO AHEAD.

3 MR. MCMILLAN: THANK YOU, YOUR HONOR.

4 BY MR. MCMILLAN:

5 Q HAVE YOU EVER DEALT WITH A CASE RELATED TO
6 FAILURE TO THRIVE, SPECIFICALLY?

7 A YES. NUMBER --

8 Q WHEN WAS THAT?

9 A PARDON ME?

10 Q WHEN WAS THAT?

11 A WELL. I'VE DONE IT A NUMBER OF TIMES, BOTH IN
12 THE JUVENILE DEPENDENCY COURT AND IN A COUPLE THAT LED
13 TO A CIVIL RIGHTS -- A PERSON COMPLAINING ABOUT THEIR
14 CIVIL RIGHTS TO A COUNTY.

15 Q HAVE ANY OF THOSE BEEN SPECIFICALLY WITH THE
16 COUNTY OF LOS ANGELES?

17 A I'VE HAD ONE WITH THE COUNTY OF LOS ANGELES IN
18 WHICH THE CLAIM WAS THAT THE CHILDREN WERE
19 MALNOURISHED. THEY WERE A LITTLE OLD FOR THE -- WHAT'S
20 TYPICAL "FAILURE TO THRIVE." THAT'S TYPICALLY RESERVED
21 FOR INFANTS AND TODDLERS WHO ARE COMPLETELY RELIANT ON
22 THEIR PARENTS TO BE NOURISHED. BUT I'VE HAD KIND OF A
23 "YOU'RE NOT FEEDING YOUR KIDS" CLAIM, YES, "YOU'RE NOT
24 FEEDING THEM."

25 IN FACT, I THINK THE CLAIM WAS "YOU'RE ONLY
26 FEEDING THEM POP-TARTS AND CRACKERS AND THINGS LIKE
27 THAT." A FAMILY THAT WAS -- ATE WAY BETTER THAN I DO.

28 Q DO YOU RECALL WHAT -- WELL, LET ME ASK YOU

1 THIS FIRST: WAS THERE A HOSPITAL OR DOCTOR INVOLVED
2 SOMEWHERE IN THE MIX IN THAT PARTICULAR CASE?

3 MR. GUTERRES: OBJECTION. OVERBROAD. VAGUE.

4 THE COURT: OVERRULED.

5 THE WITNESS: WAS THAT OVERRULED?

6 THE COURT: OVERRULED. YES.

7 THE WITNESS: WELL, I THINK THEY -- I THINK
8 ONE OF THE ISSUES WAS THEY NEVER DID TAKE THE KIDS --
9 OH, SORRY. STRIKE THAT.

10 SO YES, THERE WERE DOCTORS INVOLVED BECAUSE
11 IT'S PART OF LOS ANGELES'S POLICY, AFTER THEY TAKE
12 CHILDREN, THEY FREQUENTLY HAVE TO GO IN A VERY SHORT
13 PERIOD OF TIME TO SOME KIND OF A MEDICAL EVALUATION OR
14 CHECKUP. BUT THERE WAS NOTHING IN THE SENSE OF THE
15 PARENTS AND DOCTORS, REALLY.

16 BY MR. MCMILLAN:

17 Q SO YOU SAID IT WAS THEY WERE FEEDING THEM
18 POP-TARTS AND CRACKERS.

19 DID THE CHILDREN GET SEIZED FROM THEIR PARENTS
20 AND THEN THE ALLEGATIONS -- HOW --

21 A YES.

22 Q -- DESCRIBE FOR ME HOW THAT WENT.

23 A SO YES, THEY GOT SEIZED. AND THEN THE
24 ALLEGATIONS CAME FROM THE PROCESS OF THAT SEIZURE, OF
25 COMING INTO THEIR RESIDENCE.

26 I'M NOT SURE IF I'M ANSWERING YOUR QUESTION.
27 I'M GOING TO ASK YOU TO REPHRASE.

28 Q OKAY. WHAT I'M REALLY LOOKING FOR -- I'LL TRY

1 TO HELP YOU NARROW IT DOWN -- IS IN THE PROCESS WHERE
2 THIS FAILURE TO THRIVE ALLEGATION CAME UP, WAS THERE AN
3 ALLEGATION THAT THERE WAS FAILURE TO THRIVE AND THAT'S
4 WHY THEY SEIZED THE CHILDREN, OR DID FAILURE TO THRIVE
5 COME UP LATER?

6 A OH --

7 MR. GUTERRES: OBJECTION. NO FOUNDATION.
8 MISSTATES THE TESTIMONY.

9 THE COURT: IT DOES. THE OBJECTION MISSTATING
10 THE EVIDENCE IS SUSTAINED.

11 HE'S TOLD YOU THERE'S A DISTINCTION BETWEEN
12 THE FAILURE TO THRIVE AND THE CIRCUMSTANCE HE WAS
13 DEALING WITH EVEN THOUGH THEY'RE SIMILAR -- POTENTIAL
14 SIMILAR CONSEQUENCES. BUT THEY ARE DIFFERENT CONCEPTS,
15 SO IT'S KIND OF A -- I DON'T THINK IT'S GOING TO BE
16 PRODUCTIVE FOR US TO PURSUE THIS ON THAT CASE AS HE'S
17 DESCRIBED IT.

18 MR. MCMILLAN: SURE. I UNDERSTAND.

19 BY MR. MCMILLAN:

20 Q IN THAT PARTICULAR CASE, DID THEY HAVE A
21 WARRANT WHEN THEY SEIZED THE CHILD OR CHILDREN?

22 A NO.

23 Q HOW MANY CHILDREN?

24 A TWO.

25 Q DID THE CHILDREN ULTIMATELY GET RETURNED TO
26 THEIR PARENTS?

27 A YES.

28 Q AFTER ABOUT HOW LONG?

1 A SEVEN MONTHS.

2 Q DID YOU DEAL WITH THE JUVENILE DEPENDENCY CASE
3 IN THAT SITUATION?

4 A I DID.

5 Q AND THEN DID YOU DO ANYTHING AFTER THE
6 JUVENILE DEPENDENCY CASE STILL WITH THOSE PARENTS IN
7 RELATION TO THAT SITUATION?

8 A I TOOK THEIR COMPLAINTS TO THE COUNTY. I
9 NOTICED THEM OF THEIR COMPLAINTS.

10 Q AND OBVIOUSLY ONE OF THE COMPLAINTS WAS THE
11 LACK OF A WARRANT; RIGHT?

12 A THAT WAS A BIG ONE.

13 Q WERE THERE ANY OTHER COMPLAINTS THAT YOU PUT
14 THE COUNTY ON NOTICE OF?

15 A SO THAT WOULD BE ONE OF THOSE THAT I REFERRED
16 TO EARLIER AS THE LINE -- OR THE -- I'M TRYING TO
17 CHOOSE MY WORDS CAREFULLY. THAT WOULD BE ONE OF THOSE
18 CASES WHERE, AS I SAID, THE UNTRUTHFULNESS RAN RATHER
19 RAMPANT FROM INCEPTION THROUGH TO COMPLETION.

20 Q DO YOU KNOW WHETHER OR NOT, OR HAVE YOU ASKED
21 IN ANY OF THESE SWORN INTERVIEWS, WHETHER OR NOT THE
22 PARTICULAR WORKERS IN THAT CASE WERE DISCIPLINED --
23 WERE REPRIMANDED?

24 A THE ONE WE WERE JUST TALKING ABOUT?

25 Q RIGHT.

26 A YES. THAT'S ANOTHER ONE WHERE I WOULD HAVE
27 ASKED WHETHER THEY WERE -- BECAUSE I WILL, OF COURSE,
28 ASK THEM UNDER OATH WHETHER THEY WERE REPRIMANDED OR

1 DISCIPLINED FOR THE VERY CIRCUMSTANCES THAT I'M THERE
2 TALKING TO THEM ABOUT. AND THAT ANSWER, AGAIN,
3 UNIFORMLY, "NO."

4 Q HAVE YOU HEARD THE TERM "EXIT ORDER" BEFORE?

5 A YES.

6 Q CAN YOU DESCRIBE FOR US WHAT THAT MEANS? TELL
7 US ABOUT THAT.

8 A IN A JUVENILE DEPENDENCY CASE THAT HAS LED TO
9 A JURISDICTION FINDING AND THEN IS GOING TO GO TO
10 DISPOSITION, WHICH IS WHAT ARE WE GOING TO DO NOW, THAT
11 THIS CHILD IS GOING TO BE KIND OF A CHILD OF THE COURT
12 OR THE AGENCY IS GOING TO BE PART OF THE FAMILY, THEY
13 CAN DISMISS THE CASE. THEY CAN DISMISS IT RIGHT AT THE
14 DISPOSITION HEARING OR THEY CAN DO THEIR CASE PLAN, GO
15 TO THERAPY, COUNSELING, SUBSTANCE ABUSE, WHATEVER IT
16 IS, AND THEN AT SOME POINT THE CASE GETS DISMISSED.

17 IF IT'S A NONINTACT FAMILY, THEN THAT'S THE
18 ONLY TIME YOU NEED IT. YOU DON'T NEED IT WITH A
19 HAPPILY MARRIED COUPLE, OR AT LEAST A MARRIED COUPLE.
20 THEN YOU CAN HAVE EXIT ORDERS THAT WILL, IF THERE WAS
21 ALREADY AN EXISTING CASE BETWEEN THIS NONINTACT COUPLE,
22 NONINTACT PARENTS, IT WILL GO INTO THAT CASE, AND IF
23 NOT, IT WILL CREATE A CASE. YOU WILL HAVE EXIT ORDERS
24 OUT OF THE JUVENILE COURT THAT WILL CREATE A CASE THAT
25 COVERS ISSUES LIKE CUSTODY AND VISITATION. IT DOESN'T
26 COVER ISSUES LIKE SUPPORT. THERE IS NO PROPERTY TO, IN
27 THEORY, DISTRIBUTE BETWEEN TWO UNMARRIED PEOPLE.

28 BUT THAT IS WHAT AN EXIT ORDER IS. IT IS

1 BASICALLY AN ORDER FROM THE JUVENILE COURT SAYING,
2 "HERE IS WHAT WE ORDERED WHILE WE HAD JURISDICTION OVER
3 THESE PEOPLE, AND UNTIL SOMETHING CHANGES, THIS IS
4 GOING TO BE THE ORDER OF THE DAY ON HOW THESE PEOPLE
5 PARENT THEIR CHILD."

6 Q AND WHERE DOES THAT ORDER GO?

7 A SO, AGAIN, IF THERE WASN'T AN EXISTING FAMILY
8 LAW CASE BETWEEN THOSE PARENTS, THEN IT WILL START A
9 FAMILY LAW CASE IN THE COUNTY. AND THAT COULD BE A
10 WHOLE ARGUMENT THE LAWYERS CAN HAVE ABOUT WHAT COUNTY,
11 BUT TYPICALLY IT'S IN THE COUNTY THAT THE JUVENILE
12 DEPENDENCY MATTER WAS HEARD.

13 Q IF I COULD GET YOU IN VOLUME XII. IT SHOULD
14 BE THE ONE RIGHT UP THERE IN FRONT OF YOU. IF IT'S
15 NOT, PLEASE LET ME KNOW.

16 A IT IS.

17 Q TURN TO EXHIBIT NO. 248.

18 (PLAINTIFF'S EXHIBIT NO. 248, WAS
19 MARKED FOR IDENTIFICATION BY THE
20 COURT.)

21 THE WITNESS: I HAVE IT.

22 BY MR. MCMILLAN:

23 Q I'M NOT GOING TO ASK YOU SPECIFIC QUESTIONS
24 ABOUT THIS PARTICULAR ORDER, BUT I WOULD LIKE YOU TO
25 JUST SORT OF TAKE A LOOK AT IT AND TELL ME IF THAT IS
26 SORT OF THE TYPICAL EXIT ORDER YOU MIGHT SEE COMING OUT
27 OF JUVENILE DEPENDENCY COURT?

28 A WELL, TO BE CLEAR, THE FORM IS AN ADOPTED

1 FORM. SO THAT PART IS BEYOND TYPICAL; IT IS IDENTICAL.
2 THE THINGS THAT ARE TYPED IN IT, I'D ASK IF YOU CAN
3 CLARIFY WHAT YOU MEAN BY "TYPICAL."

4 Q WELL, IF YOU CAN TURN TO PAGE -- UP IN THE
5 RIGHT-HAND CORNER -- BATES 003778.

6 A YES.

7 Q SEE THERE'S VISITATION THERE?

8 A SO YOU'RE TALKING ABOUT ITEM 1(B)(4):

9 "MOTHER WILL HAVE VISITS EVERY
10 TUESDAY AND THURSDAY FROM 3:30 TO
11 5:30 P.M.?"

12 Q CORRECT.

13 A WELL, I CAN ONLY SAY IT'S NOT UNHEARD OF.

14 Q THAT HAPPENS?

15 A THAT HAPPENS.

16 Q THEN ITEM NO. 2 DOWN THERE, SUPERVISED
17 VISITATION?

18 A YEAH, ITEM 2A AND B. SO, YEAH, IF THEY'RE
19 GOING TO BE ORDERED TO BE SUPERVISED -- OR -- HMM.

20 SO THIS HAS "SUPERVISED VISITATION" IS THE
21 FORM LANGUAGE IN THE FORM, YOU SEE. BUT THEN IT TALKS
22 ABOUT A MONITOR. SO I'M NOT SURE IF THIS IS SAYING --
23 YEAH, IT IS SUPERVISED VISITATION.

24 SO THAT IS NOT UNCOMMON, THAT THERE WOULD BE
25 SOMEONE APPROVED TO MONITOR. IT'S NOT THAT COMMON THAT
26 YOU'RE GOING TO HAVE THE FATHER MONITOR IF THIS WAS A
27 NONINTACT COUPLE UNLESS THEY'RE, LIKE, REALLY ON GOOD
28 TERMS; RIGHT? YOU'RE NOT GOING TO FORCE TWO PEOPLE

1 TOGETHER WHO ARE DIVORCED OR DON'T GET ALONG WITH EACH
2 OTHER OR FIGHT AND ARGUE SO THAT ONE CAN SUPERVISE THE
3 VISIT OF THE CHILD WITH THE OTHER. THAT'S A RECIPE FOR
4 DISASTER.

5 Q SO THAT THING THERE, "MONITOR APPROVED BY
6 FATHER," THAT'S NOT SOMETHING THAT YOU TYPICALLY SEE?

7 A OH, I'M SORRY. I READ IT WRONG. THAT'S NOT
8 SAYING THE MONITOR WOULD BE THE FATHER. SO THAT'S
9 FINE. IT'S -- "APPROVED BY FATHER" IS NOT UNCOMMON,
10 THAT THE OTHER PARENT HAS TO APPROVE THE MONITOR. SO
11 IT'S -- I THOUGHT IT SAID FATHER.

12 Q THEN ON PAGE 003779, TOWARDS THE BOTTOM OF THE
13 PAGE --

14 A UH-HUH.

15 Q -- THERE'S A STATEMENT THERE.

16 DO YOU HAVE ANY UNDERSTANDING WHAT IMPACT THIS
17 EXIT ORDER HAS ON THE FAMILY COURT, WHEN IT MOVES OVER
18 TO FAMILY COURT, WITH RESPECT TO VISITATION AND THAT
19 SORT OF THING?

20 MR. GUTERRES: OBJECTION. NO FOUNDATION.
21 SPECULATION.

22 THE COURT: SUSTAINED.

23 BY MR. MCMILLAN:

24 Q LET ME ASK YOU THIS FIRST: YOU'VE PRACTICED
25 BOTH IN FAMILY LAW AND DEPENDENCY; CORRECT?

26 A I'VE PRACTICED IN FAMILY LAW FOR 25 YEARS.

27 Q AND DEPENDENCY FOR?

28 A 24 YEARS.

1 Q HAVE YOU EVER HAD A CASE IN THAT ENTIRE TIME
2 WHERE YOU HAD A DEPENDENCY CASE RESOLVED WITH AN EXIT
3 ORDER THAT WENT OVER TO FAMILY LAW AND YOU CONTINUED IN
4 THE MATTER?

5 A OF COURSE.

6 Q HOW MANY TIMES, ESTIMATE?

7 A NOT A LOT. UNDER FIVE.

8 Q OKAY.

9 A BUT EXIT ORDERS I'VE DEALT WITH COUNTLESS
10 TIMES JUST PICKING UP A FAMILY LAW CASE THAT AT SOME
11 POINT IN ITS HISTORY WAS INVOLVED IN THE JUVENILE
12 DEPENDENCY SYSTEM.

13 Q AND WHAT'S YOUR UNDERSTANDING, BASED ON THAT
14 PARTICULAR EXPERIENCE, OF THE EFFECT OF THIS EXIT ORDER
15 WHEN IT GOES OVER TO FAMILY COURT?

16 MR. GUTERRES: OBJECTION, YOUR HONOR.
17 FOUNDATION. AND RELEVANCE.

18 THE COURT: OVERRULED. GO AHEAD.

19 THE WITNESS: IT'S THE ORDER. IT'S THE ORDER.
20 IT'S REALLY NOT, IN EFFECT, ANY DIFFERENT THAN IF YOU
21 HAD YOUR TRIAL IN FRONT OF THE FAMILY COURT AND THE
22 FAMILY COURT MADE THE ORDER. IT'S AN ORDER OF THE
23 COURT. IT'S THE ORDER.

24 BY MR. MCMILLAN:

25 Q WELL, LET'S JUST SAY, FOR EXAMPLE, THAT THE
26 PARENT DOESN'T AGREE WITH YOU OR THEY WANT TO TRY TO
27 CHANGE THE ORDER?

28 A WELL, THEY CAN DO THAT. THE -- I DON'T KNOW

1 IF THE WORD "PROBLEM" IS RIGHT, BUT IN ORDER TO DO
2 THAT, THEY HAVE TO SHOW A SUBSTANTIAL CHANGE IN
3 CIRCUMSTANCES UNDER THE LAW.

4 SO IF YOU JUST -- LET'S SAY YOU HAD AN EXIT
5 ORDER ON JANUARY 1ST. YOU CAN'T RUSH INTO COURT ON
6 JANUARY 7TH, LET'S SAY, AND ARGUE THAT YOU WANT IT TO
7 BE CHANGED. THERE HAS TO BE WHAT'S -- THE MAGIC WORDS
8 OR THE LEGAL WORDS ARE "SUBSTANTIAL CHANGE OF
9 CIRCUMSTANCES." AND THAT CAN BE MANY THINGS.

10 Q WHAT'S AN EXAMPLE OF MAYBE ONE OF THOSE MANY
11 THINGS?

12 MR. GUTERRES: OBJECTION. OVERBROAD.
13 RELEVANCE.

14 THE COURT: OVERRULED.

15 THE WITNESS: A CHILD GETTING OLDER IS
16 SOMETHING THAT CAN BE A SUBSTANTIAL CHANGE OF
17 CIRCUMSTANCES. IF YOU HAVE A YOUNG CHILD THAT'S PART
18 OF A JUVENILE DEPENDENCY CASE THAT WAS IN SOME WAY
19 INJURED OR AFFECTED BY A PARENT AND THEY WERE
20 NONVERBAL, THEY CAN'T TALK, THEN THERE MIGHT BE A
21 HIGHER LEVEL OF CONCERN IF THE JURISDICTION WAS
22 SUSTAINED AND NOW AN EXIT ORDER HAS BEEN ISSUED WITH
23 ORDERS LIKE WHAT YOU HAVE HERE IN THIS EXHIBIT. SO
24 THAT WOULD BE A SUBSTANTIAL CHANGE OF CIRCUMSTANCES.

25 IF A PARENT WAS GOING TO MOVE AWAY, POSSIBLY,
26 OR MOVE A CERTAIN DISTANCE, THAT COULD BE A SUBSTANTIAL
27 CHANGE OF CIRCUMSTANCES. IF A PARENT WAS CONVICTED OF
28 A CRIME, THAT COULD BE A SUBSTANTIAL CHANGE OF

1 CIRCUMSTANCES.

2 SO THERE'S A WHOLE PANOPLY, AND THAT'S WHY THE
3 LAW DOESN'T EVEN ATTEMPT TO LAY OUT EVERY EXAMPLE, BUT
4 TO GIVE YOU A GENERAL -- AN IDEA OF A STANDARD THAT YOU
5 NEED TO MEET.

6 BY MR. MCMILLAN:

7 Q AND IN YOUR EXPERIENCE IN THOSE FAMILY LAW
8 CASES WHERE YOU'VE HAD EXIT ORDERS OUT OF JUVENILE
9 DEPENDENCY COURT AND THEN YOU FOLLOW THE CASE INTO
10 FAMILY COURT, CAN YOU SHARE WITH US A LITTLE BIT ABOUT
11 WHETHER OR NOT YOU WERE ABLE TO GET OUT FROM UNDER
12 THOSE EXIT ORDERS?

13 A WELL --

14 MR. GUTERRES: OBJECTION. RELEVANCE.
15 OVERBROAD.

16 THE COURT: SUSTAINED AS TO OVERBROAD.

17 BY MR. MCMILLAN:

18 Q HAVE YOU YOURSELF ACTUALLY BEEN ABLE -- IN
19 FAMILY COURT, AFTER ONE OF THESE JUVENILE
20 PROCEEDINGS -- BEEN SUCCESSFUL IN GETTING THE
21 RESTRICTION FROM AN EXIT ORDER LIFTED?

22 A I HAVE, BUT IT HASN'T ALWAYS BEEN BY WAY OF
23 LITIGATION. IT'S OFTENTIMES BEEN BY WAY OF COMPROMISES
24 WITH THE OTHER PARENT.

25 Q HAVE YOU EVER BEEN ABLE TO DO IT SUCCESSFULLY
26 IN THE COURT PROCESS BY WAY OF LITIGATION?

27 A AT LEAST ONE -- AT LEAST ONE INSTANCE COMES TO
28 MIND.

1 Q HOW LONG DID THAT TAKE YOU?

2 MR. GUTERRES: OBJECTION. RELEVANCE.

3 THE COURT: OVERRULED --

4 MR. GUTERRES: OVERBROAD.

5 THE COURT: SUSTAINED AS TO THE SINGLE
6 INSTANCE IN WHICH HE'S ABLE TO DO IT ON THE GROUND OF
7 RELEVANCE.

8 DON'T ANSWER THE QUESTION.

9 THE WITNESS: OKAY. I WON'T.

10 THE COURT: YOU KNOW WHAT "OVERRULED" AND
11 "SUSTAINED" MEANS?

12 THE WITNESS: I'M PRETTY SURE -- PRETTY CLEAR
13 ON THAT. I THINK I'VE HEARD THEM BEFORE SOMEWHERE.

14 THE COURT: YES.

15 BY MR. MCMILLAN:

16 Q NOW, IN YOUR GENERAL PRACTICE, YOU BELONG TO
17 VARIOUS GROUPS AND ORGANIZATIONS, PRACTICE GROUPS,
18 THOSE SORTS OF THINGS?

19 A WHAT WERE THE WORDS OF THE MARX BROTHER? I
20 WOULDN'T BE A MEMBER OF ANY GROUP THAT WOULD HAVE ME.

21 I'VE BEEN A MEMBER OF A LOCAL BAR ASSOCIATION
22 IN THE PAST, I'VE BEEN A CERTIFIED FAMILY LAW
23 SPECIALIST IN THE PAST, IF THAT'S WHAT YOU MEAN.

24 Q THAT HELPS.

25 AND IN YOUR PRACTICE, YOU HAVE COLLEAGUES THAT
26 YOU WORK WITH SOMETIMES ON CASES?

27 A YES. MOSTLY I'M A BIT OF A LONE WOLF WITH MY
28 OWN EMPLOYEES AND MY OWN ATTORNEYS' EMPLOYEES, BUT,

1 YES, I HAVE.

2 Q BUT YOU DO TALK TO YOUR COLLEAGUES FREQUENTLY
3 ON THE TELEPHONE ABOUT CASES?

4 A FREQUENTLY. FREQUENTLY.

5 Q AND YOU ALL SHARE INFORMATION AND DEVELOP
6 THOUGHTS, IDEAS, THOSE SORTS OF THINGS?

7 MR. GUTERRES: OBJECTION. LEADING.

8 THE COURT: SUSTAINED.

9 BY MR. MCMILLAN:

10 Q IN THOSE CONVERSATIONS, HAS THE ISSUE OF
11 THESE -- HAS THE ISSUE OF THE DIFFICULTY OF REMOVING
12 THE RESTRICTIONS ON A FAMILY EXIT ORDER EVER BEEN
13 ADDRESSED IN THAT CONTEXT?

14 MR. GUTERRES: OBJECTION. LEADING.

15 THE COURT: OVERRULED AS TO LEADING.

16 IT CALLS FOR A "YES" OR "NO," AND DON'T GO
17 BEYOND THAT.

18 THE WITNESS: OKAY. THEN CAN I ASK FOR A
19 READBACK OF THE QUESTION?

20 THE COURT: SURE.

21 (THE PREVIOUS QUESTION WAS READ BACK BY
22 THE COURT REPORTER AS FOLLOWS:

23 "QUESTION: IN THOSE
24 CONVERSATIONS, HAS THE ISSUE OF
25 THESE -- HAS THE ISSUE OF THE
26 DIFFICULTY OF REMOVING THE RESTRICTIONS
27 ON A FAMILY EXIT ORDER EVER BEEN
28 ADDRESSED IN THAT CONTEXT?")

1 THE WITNESS: YES.

2 BY MR. MCMILLAN:

3 Q AND HOW?

4 MR. GUTERRES: OBJECTION. RELEVANCE.

5 THE COURT: SUSTAINED.

6 MR. MCMILLAN: THAT'S IT, YOUR HONOR. I'M
7 DONE. THANK YOU.

8 THE COURT: WELL, I DON'T KNOW ABOUT THE
9 WITNESS, BUT I KNOW ABOUT THE JURY. IT'S LUNCHTIME,
10 AND WE'RE GOING TO TAKE THE NOONTIME RECESS. ALL
11 JURORS, PLEASE REMEMBER THE ADMONITION: HAVE NO
12 COMMUNICATION WITH ANYBODY, NO MATTER WHO INITIATES IT,
13 ABOUT ANY SUBJECT OR ISSUE OR PERSON INVOLVED IN THIS
14 CASE. DO NOT FORM NOR EXPRESS ANY OPINION ON ANY ISSUE
15 IN THE CASE.

16 WE'LL RESUME AT 1:30.

17 (JURY EXCUSED)

18 THE COURT: WE'LL SEE COUNSEL AT 1:30.

19 MR. MCMILLAN: THANK YOU, YOUR HONOR.

20 MR. GUTERRES: THANK YOU, YOUR HONOR.

21 (LUNCH RECESS)

22 THE COURT: EVERYBODY READY?

23 MR. MCMILLAN: YES, YOUR HONOR.

24 THE COURT: OKAY.

25 (JURY PRESENT)

26 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.

27 EVERYONE MAY BE SEATED. EVERYBODY IS PRESENT
28 AND READY TO PROCEED.

1 MR. GUTERRES?

2 MR. GUTERRES: NO QUESTIONS, YOUR HONOR.

3 THE COURT: ALL RIGHT. MR. POWELL, YES,
4 YOU'RE HEADED OUT THE DOOR. THANKS VERY MUCH.

5 THE WITNESS: THANK YOU, YOUR HONOR.

6 THE COURT: YOU ARE EXCUSED.

7 THE WITNESS: TAKE CARE.

8 THE COURT: MR. MCMILLAN, YOUR NEXT WITNESS.

9 (A DISCUSSION WAS HELD OFF THE RECORD.)

10 MR. MCMILLAN: ALL RIGHT. SO THAT'S
11 INTERESTING.

12 WE HAVE THE DEPOSITION OF VALERE ANN BAGGIO,
13 BUT IT'S NOT VIDEO. IT'S DOCUMENT. AND I'LL NEED A
14 PERSON TO SIT UP THERE AND PLAY THE PART OF MS. BAGGIO.

15 THE COURT: HAVE YOU FOUND THE PERSON YOU'RE
16 GOING TO PUT UP THERE?

17 MR. MCMILLAN: I HAVE A PERSON, AND
18 PROBABLY --

19 MR. GUTERRES: YOUR HONOR, MAY WE APPROACH?

20 THE COURT: YES.

21 (THE FOLLOWING PROCEEDINGS WERE HELD AT
22 SIDEBAR.)

23 THE COURT: ALL RIGHT. WE'RE AT SIDEBAR.
24 COUNSEL ARE PRESENT.

25 MR. GUTERRES: WE DON'T HAVE -- WE WEREN'T
26 ADVISED THAT THEY WERE PLANNING ON CALLING MS. BAGGIO
27 TODAY OR PLAYING HER DEPOSITION. THE LINEUP WAS THEY
28 WERE GOING TO CALL MR. POWELL, AND THAT'S WHAT WE'RE

1 PREPARED TO LOOK AT. THEY NEVER TOLD US THAT
2 MS. BAGGIO IS GOING TO BE A WITNESS FOR TODAY. THAT'S
3 IN VIOLATION OF --

4 MS. SWISS: HER AGREEMENT.

5 MR. GUTERRES: THAT WE BE INFORMED AT LEAST
6 36 HOURS IN ADVANCE.

7 MR. MCMILLAN: YOUR HONOR, FIRST OF ALL, WE'VE
8 BEEN TELLING THEM IN THE LAST THREE DATES THAT WE DON'T
9 KNOW WHEN SHE'LL COME UP, IF THERE'S A GAP SOMEWHERE,
10 BECAUSE SHE'S SHORT AND SMALL. WE HAVE A GAP, SO
11 THERE'S NO PROBLEM.

12 SECONDARILY, AS FAR AS I UNDERSTAND IT, THEY
13 WERE TOLD THAT TRIMARCHI WILL BE THE VIDEO TO PLAY IN
14 THE AFTERNOON BECAUSE HE'S LONG ENOUGH TO CONSUME THAT
15 GAP OF TIME. NOW THEY'RE SAYING THEY THOUGHT IT WAS
16 SMITH. THERE'S SOME NOTATIONS THAT YOU MAY HAVE GIVEN
17 THEM STICKIES --

18 THE COURT: HAVEN'T WE PREVIOUSLY --

19 MR. MCMILLAN: YEAH, WE HAD.

20 THE COURT: -- HAD A RULING ON WHAT PORTIONS
21 COULD BE READ?

22 MR. MCMILLAN: ABSOLUTELY.

23 MR. GUTERRES: WE DON'T HAVE OUR VERSIONS
24 BECAUSE THE AGREEMENT IS WE WOULD BE TOLD WITHIN
25 36 HOURS IN ADVANCE.

26 THE COURT: WELL, I DON'T AGREE, BUT WE'VE
27 ALREADY RULED AS TO WHAT MAY BE READ OR NOT READ, AS IT
28 CREATES A SURPRISE.

1 MS. SWISS: CORRECT, YOUR HONOR, BUT THERE'S
2 NO NOTE TELLING US THE LINEUP, AND MS. BAGGIO WAS NEVER
3 ON THE LINEUP.

4 MR. MCMILLAN: WE SPECIFICALLY DISCUSSED THIS
5 TWICE.

6 MS. SWISS: AND IT WAS NOT ON THE LINEUP.

7 MR. MCMILLAN: AND WE TOLD YOU WE MAY USE THEM
8 AS A GAP FILLER; WE JUST DIDN'T KNOW WHO WAS GOING TO
9 HAPPEN BECAUSE WE --

10 MS. SWISS: THEN YOU SHOULD GIVE US NOTICE.

11 MR. GUTERRES: -- THOSE NAMES, YOUR HONOR.

12 MR. MCMILLAN: HOW MANY TIMES DO WE HAVE TO
13 TALK ABOUT IT?

14 MS. SWISS: WE AGREED, 36 HOURS. WE AGREED.
15 AND I SAID TO YOU, YOU DID NOT HAVE IT. YOU NEVER
16 REPEATED IT MIGHT BE TODAY.

17 MR. MCMILLAN: AGAIN, THAT'S NOT TRUE.

18 MS. SWISS: YOU TOLD US IT WAS GOING TO BE
19 MS. SMITH. THAT'S WHAT YOU TOLD US IT WAS GOING TO BE.

20 MR. MCMILLAN: I COMPLETELY DISAGREE WITH YOU.

21 MR. GUTERRES: WELL, MR. MCMILLAN, YOU'VE BEEN
22 DIRECTING US TO TALK TO MS. CHUNG, AND MS. CHUNG IS THE
23 ONE WHO I SPOKE TO LAST NIGHT. AND I CONFIRMED WHO SHE
24 WAS GOING TO CALL, AND AT NO TIME DID SHE EVER SAY
25 BAGGIO WAS GOING TO BE ON THAT LIST FOR TODAY.

26 THE COURT: ALL RIGHT. SO THE POTENTIAL HARM
27 YOU SEE IS THEY WON'T READ IT CORRECTLY?

28 MR. GUTERRES: WELL, WE WOULD LIKE TO BE ABLE

1 TO FOLLOW THROUGH WITH THE TESTIMONY. WE DON'T HAVE
2 MS. BAGGIO, SO IF THEY WANT TO GIVE US MS. BAGGIO'S
3 DEPOSITION SO WE CAN FOLLOW ALONG, THAT'S NOT AN ISSUE.

4 MR. MCMILLAN: WE HAVE HER CERTIFIED
5 TRANSCRIPT HERE.

6 MR. GUTERRES: BUT WE WOULD LIKE TO FOLLOW
7 ALONG --

8 MS. SWISS: -- SPECIFIC TESTIMONY.

9 MR. GUTERRES: -- UNLESS YOU'RE GOING TO BE
10 TELLING US PAGE AND LINE AS TO HOW TO FOLLOW ALONG.
11 THAT'S THE PROBLEM.

12 MR. MCMILLAN: I HAVE THIS ON MY LAPTOP, ON A
13 COMPUTER. DO YOU GUYS HAVE A LAPTOP HERE? I CAN GIVE
14 YOU A COPY OF THE FILE, A PDF, SO YOU'LL HAVE IT.

15 MR. GUTERRES: IF WE CAN ACCESS THAT, THAT
16 WOULD SOLVE A MAJOR ISSUE.

17 MR. MCMILLAN: IT'LL TAKE ME ABOUT 15 MINUTES
18 OR SO TO TRANSFER THOSE FILES.

19 THE COURT: DO WE HAVE SOMETHING ELSE?

20 MR. GUTERRES: MS. SMITH.

21 MR. MCMILLAN: I DON'T HAVE SMITH.

22 MR. GUTERRES: YOUR HONOR, IF THEY TELL US
23 THEY'RE GOING TO BE CALLING A CERTAIN WITNESS, THEN
24 THAT'S WHO THEY SHOULD BE PREPARED TO PRESENT.

25 MR. MCMILLAN: -- ON YOUR STICKIES, CERTAIN
26 WITNESS HE'S IDENTIFIED. LOOK AT IT.

27 MR. GUTERRES: OKAY. AND MS. CHUNG, WHEN I
28 CONFIRMED YESTERDAY, SHE TOLD ME SHE WAS BRINGING IN

1 SMITH.

2 MR. MCMILLAN: I DON'T KNOW. I WASN'T IN THAT
3 CONVERSATION. I CAN TELL YOU THAT WE'VE BEEN DOING OUR
4 LOGISTICAL PLANNING EVERY NIGHT, LOOKING AT IT, AND MY
5 UNDERSTANDING WAS THIS ONE AND MINOR HAD BEEN TRAILING
6 SINCE WEDNESDAY AS --

7 MS. SWISS: NOT MINOR.

8 MR. MCMILLAN: NOT MINOR, I'M SORRY.

9 -- AND VICTOR HAVE BEEN TRAILING SINCE
10 WEDNESDAY AS GAP FILLERS IN CASE WE HAD A GAP. YOU'VE
11 KNOWN THIS.

12 MS. SWISS: NO.

13 MR. GUTERRES: YOU'VE SAID THE LINEUP OF THE
14 WITNESSES HAS BEEN -- TO TALK TO MS. CHUNG. THAT'S
15 WHAT YOU'VE SAID. THAT'S -- THAT'S WHAT WE'VE BEEN
16 FOLLOWING, AND --

17 MR. MCMILLAN: ALL RIGHT. SO WE HAVE AN
18 IMPASSE.

19 HOW ARE WE GOING TO RESOLVE THIS?

20 MR. GUTERRES: SO IF YOU DON'T GIVE ME
21 WHATEVER WE CAN TO BE ABLE TO FOLLOW UP --

22 MR. MCMILLAN: I'LL NEED 15 MINUTES TO LOAD
23 THE FILES ONTO THEIR LAPTOPS.

24 YOU KNOW WHAT WE COULD DO -- WELL, YOU GUYS,
25 YOU HAVE -- I SENT YOU THE VIDEOS THAT WE HAVE VIDEOS
26 OF BECAUSE YOU GUYS CAME DOWN WITH A HARD DRIVE COPY OF
27 THEM ALL, SO I PRESUME YOU HAVE THOSE.

28 MS. SWISS: THE VIDEO, WE DON'T HAVE IT HERE.

1 I'M NOT GOING TO FOLLOW THE VIDEO. WE NEED THE
2 HIGHLIGHTED TRANSCRIPT.

3 MR. MCMILLAN: I NEED 15 MINUTES TO TRANSFER
4 THE FILES.

5 THE COURT: ALL RIGHT. I'M GOING TO SEND THE
6 JURY OUT FOR APPROXIMATELY 15 MINUTES.

7 THIS IS BORDERING ON AN ABSURDITY, HONESTLY.
8 THE COURT HAS PREVIOUSLY RULED ON THE TESTIMONY THAT
9 CAN BE GIVEN, THIS WITNESS AND WHATNOT. SO I HONESTLY
10 CANNOT SEE ANY -- EVEN A POTENTIAL HARM, UNLESS YOU
11 WERE SAYING YOU THINK THEY WERE GOING TO READ SOMETHING
12 THAT THEY WEREN'T ENTITLED TO READ.

13 IS THAT WHAT YOU'RE SUGGESTING?

14 MS. SWISS: THERE'S A POTENTIAL ISSUE,
15 ESPECIALLY SINCE THE WITNESS ISN'T GOING TO BE READING
16 THE TESTIMONY. WE DON'T KNOW. WE WERE ENTITLED TO BE
17 ABLE TO FOLLOW THE COURT'S ORDER.

18 MR. MCMILLAN: I CAN SHOW YOU WHAT WE'VE DONE.
19 WE HAVE TWO BINDERS. THE SPECIFIC TESTIMONIES, THE
20 QUESTIONS ARE HIGHLIGHTED IN YELLOW SO AS TO AVOID
21 CONFUSION. THE ANSWERS ARE HIGHLIGHTED IN GREEN TO
22 AVOID CONFUSION.

23 MS. SWISS: AGREED. AND I WANT TO MAKE SURE I
24 CAN FOLLOW ALONG WITH THOSE HIGHLIGHTS. THAT'S ALL.

25 MR. GUTERRES: E-MAIL THAT TO US AND WE CAN --

26 THE COURT: IS THIS ALL WE HAVE FOR THE REST
27 OF THE DAY?

28 MR. MCMILLAN: ALL I'VE GOT IS BAGGIO AND

1 TRIMARCHI.

2 MR. GUTERRES: SO E-MAIL US.

3 MR. MCMILLAN: YEAH, I CAN DO THAT. IT WILL
4 JUST TAKE ME A FEW MINUTES.

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

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
9 I'M GOING TO HAVE TO DECLARE A RECESS. IT WILL BE
10 APPROXIMATELY 15 MINUTES. ALL JURORS, PLEASE REMEMBER
11 THE ADMONITION.

12 (JURY EXCUSED)

13 MR. MCMILLAN: IT'LL JUST TAKE ME A MOMENT,
14 YOUR HONOR.

15 THE COURT: FINE.

16 (RECESS)

17 MR. MCMILLAN: YOUR HONOR, IS IT OKAY IF SHE
18 GOES AHEAD AND GETS UP THERE?

19 THE COURT: YES. AND DO YOU HAVE AN ESTIMATE
20 OF HOW LONG THIS IS GOING TO TAKE?

21 MR. MCMILLAN: THIS ONE, WE TIMED IT. IF I
22 REMEMBER CORRECTLY, I THINK IT'S LIKE 12 MINUTES.

23 THE COURT: OKAY.

24 MR. MCMILLAN: MAYBE 15 MINUTES SOMETHING LIKE
25 THAT.

26 THE COURT: AND THAT'S ALL WE'VE GOT, THEN,
27 FOR TODAY?

28 MR. MCMILLAN: NO, WE HAVE THE VIDEO OF

1 MR. TRIMARCHI. THE READ OF MS. BAGGIO IS ABOUT
2 10 MINUTES, AND THEN MR. TRIMARCHI SHOULD GET US PRETTY
3 CLOSE TO 4:30.

4 MS. SWISS: BUT WE'RE NOT --

5 MR. MCMILLAN: OH, IT'S 3:30.

6 MR. KING: IS IT 3:00 OR 3:30 --

7 MR. MCMILLAN: I'M SORRY, YOUR HONOR. I HAVE
8 A LOT FLOATING AROUND UP HERE.

9 THE COURT: THAT'S ALL RIGHT. YEAH, WE'RE
10 GOING TO RECESS NO LATER THAN 5 MINUTES OF 3:00 BECAUSE
11 I PROMISED THOSE JURORS I'D GET THEM OUT TO GET TO
12 THEIR -- IT'S MEDICAL APPOINTMENTS IN EACH INSTANCE.

13 WHEN WE FINISH THIS, WHAT ELSE DO WE HAVE?

14 MR. KING: VIDEO, YOUR HONOR.

15 MR. MCMILLAN: JUST VIDEO OF MR. TRIMARCHI. I
16 HAVE TWO VOLUMES; I'LL JUST PLAY ONE. THAT WILL GET US
17 OUT OF HERE.

18 THE COURT: OKAY. THAT'S FINE. LET GET THEM
19 IN HERE.

20 (JURY PRESENT)

21 THE COURT: ALL RIGHT. WE'RE ON THE RECORD.

22 EVERYBODY IS PRESENT AND YOU MAY BE SEATED.

23 BEFORE WE GO AHEAD, MS. KMET, I RECEIVED YOUR
24 MESSAGE. I WON'T BE ABLE TO RESPOND TO YOUR QUESTION
25 UNTIL MONDAY.

26 MS. KMET: OKAY. THAT'S FINE.

27 THE COURT: ACTUALLY, I FORGOT WHERE WE WERE.
28 I'LL PROBABLY BE ABLE TO RESPOND TO YOU BY TOMORROW.

1 MS. KMET: OKAY. THAT'S FINE.

2 THE COURT: OKAY, MR. MCMILLAN.

3 MR. MCMILLAN: THE PLAINTIFF WILL BE READING
4 FROM THE DEPOSITION OF COUNTY PERSON MOST
5 KNOWLEDGEABLE, VALERE ANN BAGGIO.

6 THE COURT: ALL RIGHT.

7 AND SO OUR JURORS UNDERSTAND, AND I THINK YOU
8 DO, MOST OF THE DEPOSITIONS THAT WOULD BE READ INTO
9 EVIDENCE IN THIS CASE WILL BE DONE THROUGH PLAYING THE
10 VIDEO TAPE. BUT IN THIS INSTANCE, THE TESTIMONY OF THE
11 WITNESS WILL BE PRESENTED THROUGH A READING OF THE
12 QUESTIONS AND ANSWERS. THE PERSON WE HAVE ON THE STAND
13 IS TAKING THE PLACE OF THE WITNESS, SO THE QUESTIONS
14 WILL BE READ BY MR. MCMILLAN, THE ANSWERS WILL BE GIVEN
15 BY THE PERSON READING THE ANSWERS.

16 AGAIN, REMEMBER A DEPOSITION IS SWORN
17 TESTIMONY, AND WHETHER IT'S PRESENTED BY A VIDEOTAPE OR
18 PRESENTED TO YOU IN THIS MANNER OR SOME OTHER MANNER IS
19 THE SAME AS TESTIMONY PRESENTED IN COURT.

20 GO AHEAD, MR. MCMILLAN.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 (WHEREUPON AN EXCERPT OF THE DEPOSITION
23 OF VALERE ANN BAGGIO WAS READ.)

24 THE COURT: ALL RIGHT, LOOK -- I'M SORRY TO
25 INTERRUPT.

26 I BELIEVE THAT, IN THIS INSTANCE, WE NEED TO
27 HAVE THE READING OF THE DEPOSITION REPORTED BY THE
28 REPORTER. IN THE VIDEO DEPOSITIONS, THE VIDEO CAN BE

1 INCLUDED AND INCORPORATED AS PART OF THE RECORD. THIS
2 IS NOT --

3 THE COURT REPORTER: IT'S NOT GOING TO BE
4 ATTACHED, YOUR HONOR?

5 THE COURT: THE RECORD REFLECTS AN EXCERPT
6 FROM THE DEPOSITION WAS PLAYED.

7 THE COURT REPORTER: I'M GOING TO CHANGE THAT
8 TO READ "READ."

9 THE COURT: YES. AND WE'RE GOING TO HAVE TO
10 HAVE IT REPORTED. OTHERWISE, WE WON'T HAVE A RECORD OF
11 WHAT WAS SAID.

12 THE COURT REPORTER: OH, OKAY. SO IT'S NOT
13 THE SAME AS THE VIDEOS?

14 THE COURT: IT'S NOT THE SAME AS A VIDEO
15 DEPOSITION.

16 THE COURT REPORTER: OKAY.

17 MR. MCMILLAN: WE COULD TALK ABOUT IT FOR A
18 SECOND.

19 THE COURT: YES.

20 (THE FOLLOWING PROCEEDINGS WERE HELD AT
21 SIDEBAR.)

22 THE COURT: SIDEBAR. COUNSEL IS PRESENT.
23 YES.

24 MR. MCMILLAN: YEAH, WE FILED -- AFTER YOUR
25 HONOR ISSUED YOUR RULINGS, WE PUT TOGETHER A NEW FILING
26 THAT'S NONSYSTEMATIC WITH THE RULINGS AND WE FILED
27 THAT. SO IT'S PART OF THE CLERK'S TRANSCRIPT.

28 THE COURT: WELL, I DON'T CARE HOW WE DO IT,

1 BUT I NOTICED SHE WASN'T MAKING A RECORD.

2 MR. MCMILLAN: SURE.

3 THE COURT: AND NORMALLY WE DON'T TAKE A
4 DEPOSITION TRANSCRIPT AND MAKE IT PART OF THE RECORD,
5 UNFORTUNATELY, I THINK.

6 MR. MCMILLAN: HOWEVER --

7 MR. GUTERRES: I AGREE, YOUR HONOR, I THINK
8 IT'S BEST TO JUST HAVE IT REPORTED --

9 THE COURT: I THINK IT SHOULD BE REPORTED.

10 MR. GUTERRES: -- BY THE COURT REPORTER.

11 THE COURT: I'M GOING TO DIRECT THE REPORTER
12 TO REPORT IT.

13 (THE FOLLOWING PROCEEDINGS WERE HELD IN
14 OPEN COURT IN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: ALL RIGHT. I'M GOING TO HAVE
17 THE -- MR. MCMILLAN BEGIN AT THE BEGINNING, AND
18 DIRECTING THAT THE COURT REPORTER REPORT THE READING OF
19 THE DEPOSITION.

20 GO AHEAD, MR. MCMILLAN.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR.

22 (WHEREUPON THE FOLLOWING DEPOSITION
23 EXCERPT WAS READ INTO THE RECORD AS
24 FOLLOWS:)

25

26 BY MR. MCMILLAN:

27 Q. OKAY. CAN YOU PLEASE STATE AND
28 SPELL FOR US YOUR FULL NAME?

1 A. VALERE BAGGIO. V-A-L-E-R-E,
2 B-A-G-G-I-O.

3 Q. WHAT POSITION DO YOU CURRENTLY HOLD
4 WITH THE COUNTY OF LOS ANGELES?

5 A. SUPERVISING CHILDREN'S SOCIAL
6 WORKER.

7 Q. IS THAT WHAT WE CALL A SCSW?

8 A. CORRECT.

9 Q. HOW LONG HAVE YOU DONE THAT?

10 A. SUPERVISING?

11 Q. YES.

12 A. 2006.

13 Q. CURRENTLY, AN SCSW, WHAT -- I DON'T
14 KNOW WHAT YOU CALL IT.

15 WHAT UNIT OR DIVISION ARE YOU WITH?

16 A. JUVENILE COURT SERVICES, INTAKE AND
17 DETENTION CONTROL.

18 Q. THAT'S WHAT WE CALL AN IDC WORKER?

19 A. CORRECT.

20 Q. HOW LONG HAVE YOU BEEN WITH INTAKE
21 AND DETENTION CONTROL?

22 A. I WAS AN IDC SOCIAL WORKER FIRST,
23 SO APPROXIMATELY 2002, 2003. I THINK
24 IT'S 2002.

25 Q. OKAY. NOW, CORRECT ME IF I'M
26 WRONG, BUT IDC IS NOT INVOLVED IN THE
27 PROCUREMENT OF WARRANTS; THAT WOULD BE
28 SOMETHING THAT EMERGENCY RESPONSE UNITS

1 TAKE CARE OF.

2 CORRECT?

3 A. WE FACILITATE.

4 Q. WHAT DO YOU MEAN BY "FACILITATE"?

5 A. THEY CONTACT INTAKE AND DETENTION
6 CONTROL AND SPEAK TO SOMETHING WE NOW
7 HAVE CALLED THE WARRANT LIAISON, AND WE
8 FACILITATE GETTING THE PAPERWORK
9 THROUGH COUNTY COUNSEL AND TO THE
10 COURTHOUSE, SIGNED BY A JUDGE, AND
11 DELIVERED BACK TO THE REGION.

12 Q. THE "WARRANT DESK," HAVE YOU HEARD
13 THAT PHRASE BEFORE?

14 A. YES.

15 Q. THE WARRANT DESK, IS THAT PART OF
16 IDC?

17 A. IT IS NOW, YES.

18 Q. WHEN YOU SAY "IT IS NOW," WHAT DO
19 YOU MEAN?

20 A. THERE WASN'T A WARRANT DESK PER SE
21 AFFILIATED WITH INTAKE AND DETENTION
22 CONTROL UNTIL APPROXIMATELY 2009, IN
23 DECEMBER, WE CREATED IT.

24 Q. PRIOR TO -- CORRECT ME IF I'M
25 WRONG, I WANT TO MAKE SURE I UNDERSTAND
26 YOU RIGHT -- PRIOR TO DECEMBER 2009,
27 THERE WAS NO WARRANT DESK; CORRECT?

28 A. CORRECT.

1 Q. PRIOR TO DECEMBER 2009, WAS THERE A
2 MECHANISM IN PLACE WHEREBY SOCIAL
3 WORKERS COULD OBTAIN PROTECTIVE CUSTODY
4 WARRANTS AS OPPOSED TO SEARCH WARRANTS
5 OR SOME OTHER KIND OF WARRANT?

6 A. YES.

7 Q. WHAT WAS THAT?

8 A. THEY WOULD SUBMIT A DOCUMENT CALLED
9 A 729 TO THE JUVENILE COURT.

10 Q. ON THEIR OWN?

11 A. YES, TO OBTAIN A PROTECTIVE CUSTODY
12 WARRANT.

13 Q. THAT'S NOT SOMETHING THAT WOULD GO
14 THROUGH IDC?

15 A. NO.

16 Q. NO, I'M WRONG, OR NO, IT'S NOT
17 SOMETHING?

18 A. NO, IT'S NOT, UNLESS IT WAS
19 ATTACHED TO A DETENTION REPORT --
20 SORRY. IF THERE WAS -- IF THERE WERE
21 REQUESTING -- IF THEY WERE REQUESTING A
22 WARRANT, A PROTECTIVE CUSTODY WARRANT,
23 BECAUSE THE CHILD WAS AT LARGE AND IT
24 WAS ATTACHED TO A DETENTION REPORT, WE
25 WOULD PROCESS IT.

26 Q. NOW, THERE'S A DIFFERENCE, ISN'T
27 THERE, BETWEEN A PROTECTIVE CUSTODY
28 WARRANT -- AT LEAST IN THE NOMENCLATURE

1 THAT YOU USE WITH THE DEPARTMENT OF
2 CHILDREN AND FAMILY SERVICES, THERE'S A
3 DIFFERENCE BETWEEN A PROTECTIVE CUSTODY
4 WARRANT AND A WARRANT WHICH PERMITS YOU
5 TO ACTUALLY DETAIN A CHILD FROM ITS
6 PARENT; CORRECT?

7 A. CORRECT.

8 Q. THE PROTECTIVE CUSTODY WARRANT IS A
9 WARRANT THAT YOU WOULD SEEK FROM A
10 JUDGE IF, FOR EXAMPLE, A CHILD WHO'S
11 ALREADY IN CUSTODY HAS GONE AWOL?

12 A. CORRECT.

13 Q. THEN YOU WOULD GET A WARRANT FOR
14 THE -- FROM A JUDGE TO ACTUALLY GO OUT
15 AND FIND THAT CHILD AND BRING THAT
16 CHILD BACK?

17 A. CORRECT.

18 Q. WHAT DO YOU CALL THE WARRANT
19 THAT -- WE'RE NOT DEALING WITH THE
20 CHILD THAT'S ALREADY IN CUSTODY THAT'S
21 GONE AWOL. WE'RE DEALING WITH THE
22 CHILD THAT'S IN THE CUSTODY OF ITS
23 PARENTS.

24 WHAT DO YOU CALL THAT TYPE OF WARRANT
25 IN LOS ANGELES COUNTY DCFS
26 NOMENCLATURE?

27 A. A REMOVAL ORDER.

28 Q. A REMOVAL ORDER.

1 AM I CORRECT THAT PRIOR TO
2 DECEMBER 2009 THERE WAS NO MECHANISM IN
3 PLACE BY WHICH A SOCIAL WORKER COULD
4 OBTAIN A REMOVAL ORDER?

5 A. YES.

6 MR. MCMILLAN: EXCUSE ME, YOUR HONOR. THERE'S
7 A LINE SKIPPED THERE.

8 BY MR. MCMILLAN:

9 Q. YOU'VE BEEN THERE SINCE 2003;
10 RIGHT?

11 A. YES.

12 Q. OKAY. YOU CAN GO AHEAD AND ANSWER
13 THE QUESTION.

14 A. NO, NOT THROUGH IDC.

15 Q. WHAT ABOUT ANY OTHER MECHANISM THAT
16 YOU KNOW OF?

17 A. I KNOW THERE WAS A SEARCH WARRANT
18 PROCESS THROUGH THE JUVENILE COURT.

19 Q. BUT THAT'S A SEARCH WARRANT, RIGHT,
20 NOT A REMOVAL WARRANT?

21 A. CORRECT.

22 Q. BUT YOU DO KNOW THAT IT WASN'T
23 UNTIL DECEMBER 2009 THAT THE DEPARTMENT
24 OF CHILDREN AND FAMILY SERVICES OF THE
25 COUNTY OF LOS ANGELES STARTED GETTING
26 REMOVAL WARRANTS?

27 A. CORRECT.

28 Q. AND DO YOU KNOW THAT -- AND YOU DO

1 KNOW THAT PRIOR TO DECEMBER 2009 THERE
2 WAS, IN FACT, NO MECHANISM IN PLACE
3 WITH THE COUNTY OF LOS ANGELES
4 DEPARTMENT OF CHILDREN AND FAMILY
5 SERVICES WHEREBY A SOCIAL WORKER COULD
6 APPLY FOR A REMOVAL WARRANT?

7 A. CORRECT.

8 Q. WHAT STEPS, IF ANY, DID YOU TAKE TO
9 PREPARE YOURSELF TO TESTIFY AS THE
10 VOICE OF THE COUNTY OF LOS ANGELES WITH
11 REGARD TO THE INTAKE DETENTION CONTROL
12 WARRANT REPORT?

13 IF THE ONLY THING THAT YOU DID WAS
14 SPEAK TO ATTORNEYS TO PREPARE YOURSELF,
15 I'M NOT GOING TO ASK YOU ABOUT YOUR
16 CONVERSATIONS. THAT'S THE SUBSTANCE OF
17 YOUR CONVERSATIONS. THAT'S NOT WHAT
18 I'M INTERESTED IN.

19 WHAT I'M INTERESTED IN IS WHAT YOU
20 DID -- IF YOU READ MATERIALS; IF YOU
21 GOT ON THE COMPUTER AND LOOKED THINGS
22 UP; IF YOU LOOKED AT HANDBOOKS,
23 POLICIES, PROCEDURES, GUIDELINES --
24 WHAT YOU YOURSELF DID TO PREPARE
25 YOURSELF TO COME HERE TODAY AS THE
26 VOICE OF THE COUNTY OF LOS ANGELES TO
27 ANSWER OUR QUESTIONS.

28 A. I ACTUALLY DID NOT REVIEW ANYTHING.

1 I JUST COMMUNICATED WITH COUNTY
2 COUNSEL.

3 Q. OKAY. SO JUST CONVERSATIONS WITH
4 COUNSEL; THAT'S IT?

5 A. CORRECT.

6 Q. DID YOU ALSO REVIEW -- GOING OVER
7 TO THE NEXT PAGE WHERE THE HEADLINE
8 READS "CATEGORIES OF REQUESTED
9 DOCUMENTS."

10 WHEN YOU RECEIVED THIS -- ACTUALLY, I
11 THINK IT'S ONE MORE PAGE. YEAH, SEE
12 ABOUT THERE? SEE THERE, ABOUT -- I
13 DON'T KNOW -- A THIRD OF THE WAY DOWN
14 THE PAGE, IT SAYS "CATEGORY OF
15 REQUESTED DOCUMENTS"?

16 DID YOU REVIEW THOSE CATEGORIES OF
17 REQUESTED DOCUMENTS WHEN YOU READ THIS
18 NOTICE OF DEPOSITION?

19 A. I DID.

20 Q. OKAY. AND IF I COULD DRAW YOUR
21 ATTENTION SPECIFICALLY TO ITEM NO. 7.
22 TOWARDS THE BOTTOM OF THE PAGE IT SAYS,
23 QUOTE, 'ANY AND ALL DOCUMENTS RELATING
24 TO THE NUMBERS OF CHILDREN SEIZED
25 WITHOUT A WARRANT OR PARENTAL CONSENT
26 DURING THE TIME PERIOD SPANNING
27 NOVEMBER 3RD, 2004, THROUGH NOVEMBER
28 3RD, 2009.'

1 FIRST, DID I READ THAT CORRECTLY?

2 A. YES.

3 Q. WHAT EFFORTS, IF ANY, DID YOU TAKE
4 TO LOCATE DOCUMENTS RESPONSIVE TO THAT
5 REQUEST NO. 7?

6 A. I DID NOT BECAUSE I WOULDN'T KNOW
7 WHERE TO BEGIN.

8 Q. I DON'T UNDERSTAND.

9 A. I DON'T KNOW WHERE TO COME BY THOSE
10 DOCUMENTS. I DON'T KNOW IF THOSE
11 DOCUMENTS EXIST, IF THERE'S A NUMBER.

12 Q. DID YOU UNDERTAKE ANY EFFORT AT ALL
13 AT YOUR WORKPLACE TO ASK, FOR EXAMPLE,
14 YOUR SUPERVISOR OR SOMEBODY IN IT,
15 SOMEBODY WHO WOULD BE MORE
16 KNOWLEDGEABLE THAN YOU, ABOUT WHERE
17 THAT INFORMATION WOULD BE? DID YOU
18 SEEK OUT THEIR ADVICE OR THEIR HELP?

19 A. I DID NOT.

20 Q. IS THERE A REASON YOU DID NOT?

21 MS. SWISS: I WOULD CAUTION YOU NOT TO
22 REVEAL ANY ATTORNEY-CLIENT PRIVILEGE.

23 BY MR. MCMILLAN:

24 Q. WELL, IF YOUR ATTORNEY TOLD YOU NOT
25 TO GO OUT AND LOOK FOR DOCUMENTS,
26 THAT'S REALLY NOT WHAT I'M LOOKING FOR.
27 I'M WONDERING WHY.

28 OTHER THAN YOUR ATTORNEY TELLING YOU

1 NOT TO LOOK, WHY DID YOU NOT LOOK?

2 A. ASIDE FROM CATEGORY 28, I REVIEWED
3 THIS DOCUMENT YESTERDAY.

4 Q. FROM DECEMBER TWO THOUSAND- --
5 LET'S JUST START IN 2009 -- WHAT TYPES
6 OF INFORMATION DO YOU KNOW FOR SURE,
7 YOURSELF, THE COUNTY KEPT TRACK OF?

8 A. THE CONSULTS REQUESTING THE TYPE OF
9 WARRANT, WHETHER IT WAS A REMOVAL ORDER
10 OR A SCHOOL INTERVIEW OR A SEARCH
11 WARRANT THAT CAME IN FROM A REGIONAL
12 OFFICE, AND THE RESULTS OF THAT
13 CONSULT.

14 Q. AND BY "RESULTS," YOU MEAN EITHER
15 THE SEEKING OF A WARRANT OR THE
16 REFRAINING FROM SEEKING A WARRANT?

17 A. OR IF THE REMOVAL ORDER WAS
18 OBTAINED OR DENIED.

19 Q. LET ME MAKE SURE I UNDERSTAND THIS:
20 BEGINNING IN DECEMBER 2009, YOU KNEW
21 FOR A FACT THAT THE COUNTY OF LOS
22 ANGELES BEGAN KEEPING TRACK OF CONSULTS
23 REQUESTING WARRANTS, THE RESULTS OF
24 THOSE CONSULTS -- FOR EXAMPLE, WHETHER
25 OR NOT THE WARRANT WAS OBTAINED OR
26 WHETHER OR NOT THE WARRANT APPLICATION
27 WAS DENIED; RIGHT?

28 A. CORRECT.

1 Q. IS THERE ANYTHING ELSE THAT YOU
2 STARTED KEEPING TRACK OF OTHER THAN
3 THOSE THREE ITEMS?

4 A. THAT WOULD BE IT.

5 Q. NOW, YOU'VE WORKED AT IDC SINCE
6 2003; RIGHT?

7 A. CORRECT.

8 Q. IN EITHER A CAPACITY AS A CSW OR A
9 SUPERVISING CSW; RIGHT?

10 A. CORRECT.

11 Q. AND DURING THE COURSE OF THAT --
12 WHAT IS THAT, 12 YEARS, ROUGHLY?

13 A. CORRECT.

14 Q. DURING THE COURSE OF THAT 12 YEARS,
15 YOU'VE SEEN CHANGES AND DEVELOPMENTS IN
16 YOUR AGENCY; RIGHT?

17 A. CORRECT.

18 Q. AND YOU'VE SEEN -- FOR EXAMPLE, A
19 GREAT EXAMPLE WOULD BE YOU'VE SEEN THE
20 TRANSITION FROM NOT GETTING WARRANTS TO
21 GETTING WARRANTS; RIGHT?

22 A. CORRECT.

23 Q. AND THAT TRANSITION HAPPENED IN
24 ABOUT 2009; RIGHT?

25 A. CORRECT.

26 Q. DECEMBER 2009; RIGHT?

27 A. CORRECT.

28 Q. WHEN YOU SAW THAT TRANSITION

1 HAPPENING, DID ANYBODY EVER COME AND
2 TALK TO YOU ABOUT WHY IT WAS THEY WERE
3 GOING THROUGH THAT TRANSITION?

4 A. NOT SPECIFICALLY, NO.

5 Q. HOW ABOUT GENERALLY?

6 A. THE MAJORITY OF THE CHANGES THAT
7 HAVE TRANSPIRED THROUGH THE COUNTY HAVE
8 BEEN DUE TO A LAWSUIT.

9 Q. IS IT YOUR UNDERSTANDING, BASED ON
10 YOUR EXPERIENCE WITH THE AGENCY THESE
11 LAST 12 YEARS, THAT THE TRANSITION FROM
12 NOT GETTING WARRANTS TO GETTING
13 WARRANTS THAT OCCURRED IN
14 DECEMBER 2009, THAT THAT CAME ABOUT AS
15 THE RESULT OF A LAWSUIT?

16 A. I BELIEVE SO.

17 Q. DO YOU REMEMBER WHICH LAWSUIT, OR
18 WAS IT SEVERAL?

19 A. I DON'T KNOW.

20 Q. SAME WITH REGARD TO THIS
21 RECORDKEEPING AND DATA ACCUMULATION
22 WITH CONSULTS ON WARRANTS, OBTAINING
23 WARRANTS, GETTING APPLICATIONS DENIED:
24 DID THE EFFORT TO KEEP TRACK OF THAT
25 DATA, TO YOUR UNDERSTANDING, ALSO COME
26 ABOUT AS THE RESULT OF A LAWSUIT?

27 A. I BELIEVE THE KEEPING TRACK OF THE
28 DATA BY MY OFFICE CAME DUE TO IT WAS

1 SOMETHING NEW THAT WAS TO MY OFFICE,
2 AND WE WERE JUST TRYING TO TRACK WHAT
3 WAS GOING ON, IF WE WERE GOING TO NEED
4 ADDITIONAL STAFF DUE TO THE INCREASING
5 WORKLOAD.

6 Q. OKAY. AND I'M CORRECT, THEN, PRIOR
7 TO DECEMBER 2009, YOUR OFFICE DID NOT,
8 IN FACT, TRACK THAT SORT OF DATA AT
9 ALL?

10 A. TO MY KNOWLEDGE, NO.

11 Q. AND PART OF THE REASON FOR THAT WAS
12 PRIOR TO DECEMBER 2009 IT WAS NOT THE
13 CUSTOM AND HABIT OF SOCIAL WORKERS
14 WORKING WITH THE COUNTY OF LOS ANGELES
15 DEPARTMENT OF CHILDREN AND FAMILY
16 SERVICES TO SEEK OR OBTAIN REMOVAL
17 WARRANTS?

18 A. CORRECT.

19 Q. AM I ALSO CORRECT THAT THE PROCESS
20 OF ACTUALLY APPLYING FOR WARRANTS AND
21 SEEKING WARRANTS BEGAN ON OR ABOUT
22 DECEMBER 16, 2009?

23 A. CORRECT.

24 Q. HAVE YOU EVER RECEIVED ANY TRAINING
25 REGARDING HOW IT IS YOU'RE SUPPOSED TO
26 FILL OUT OR A SOCIAL WORKER IS SUPPOSED
27 TO FILL OUT ONE OF THESE AFFIDAVITS IN
28 SUPPORT OF AN APPLICATION TO OBTAIN A

1 WARRANT?

2 A. I WENT THROUGH THE INITIAL TRAINING
3 THAT WAS PUT ON BY THE TRAINING
4 DIVISION.

5 Q. DO YOU KNOW WHEN THAT TRAINING
6 OCCURRED?

7 A. I DO NOT RECALL.

8 Q. DOES FEBRUARY 2010 SOUND RIGHT?

9 A. IT MAY.

10 Q. DO YOU KNOW WHO GAVE THAT TRAINING?

11 A. SEVERAL COUNTY COUNSELS. IT
12 DEPENDED ON WHICH OFFICE YOU ATTENDED.

13 Q. WAS THAT TRAINING MANDATORY FOR ALL
14 CSWS AND SCSWS?

15 A. IT WAS.

16 Q. DID ANYBODY OTHER THAN THE
17 ATTORNEYS SPEAK TO YOU ABOUT TESTIFYING
18 HERE TODAY?

19 A. NO.

20 Q. WHEN IS THE FIRST TIME THAT YOU
21 DISCOVERED THAT YOU WOULD BE TESTIFYING
22 AS THE VOICE OF COUNTY OF LOS ANGELES
23 AT THIS DEPOSITION?

24 A. LAST WEEK, THAT WEDNESDAY OR
25 THURSDAY MEETING I HAD WITH COUNTY
26 COUNSEL.

27 Q. NOW, ONCE YOU STARTED THESE WARRANT
28 PROCEDURES, DO YOU KNOW WHETHER OR NOT

1 ANYTHING WAS DONE TO MAKE SURE THAT
2 SOCIAL WORKERS WERE ACTUALLY SEEKING
3 WARRANTS WHERE THEY SHOULD BE SEEKING
4 WARRANTS?

5 A. I DON'T KNOW.

6 MR. MCMILLAN: THAT CONCLUDES THE READING,
7 YOUR HONOR.

8 THE COURT: OKAY.

9 MS. SWISS, MR. GUTERRES, IS THERE ANY PORTION
10 OF THAT DEPOSITION THAT YOU WOULD WANT TO READ INTO THE
11 RECORD AT THIS TIME?

12 MR. GUTERRES: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 THEN NEXT, MR. MCMILLAN?

15 MR. MCMILLAN: NEXT ONE WOULD BE THE VIDEOTAPE
16 DEPOSITION OF MR. GUY TRIMARCHI, PERSON MOST
17 KNOWLEDGEABLE. AND IT'LL TAKE JUST A SECOND FOR THE
18 PROJECTOR TO WARM UP.

19 LET ME JUST GET RID OF THAT.

20 I APOLOGIZE, YOUR HONOR. THAT -- I HAD IT ALL
21 SET UP, BUT THINGS GOT MESSED AROUND WITH A LITTLE BIT.

22 OKAY. SO IT SHOULD BE ON. ALL RIGHT.

23 (WHEREUPON AN EXCERPT OF THE VIDEOTAPED
24 DEPOSITION OF GUY TRIMARCHI WAS
25 PLAYED.)

26 MR. MCMILLAN: YOUR HONOR, I HIT THE WRONG
27 ONE.

28 MS. SWISS: YOUR HONOR, WE HAVE TO OBJECT.

1 THIS IS NOT THE CORRECT --

2 THE COURT: NO, I UNDERSTAND.

3 MR. MCMILLAN: I'M TRYING TO STOP IT HERE. IT
4 IS THE WRONG ONE. I APOLOGIZE.

5 (WHEREUPON AN EXCERPT OF THE VIDEOTAPED
6 DEPOSITION OF GUY TRIMARCHI WAS
7 PLAYED.)

8 THE COURT: ALL RIGHT. WE'RE GOING TO RECESS
9 AT THIS TIME. WE'RE GOING TO RESUME AT 9:00 A.M.
10 TOMORROW MORNING. ALL JURORS, PLEASE REMEMBER THE
11 ADMONITION: NO COMMUNICATION WITH ANYONE ABOUT ANY
12 SUBJECT OR ISSUE OR PERSON INVOLVED IN THIS CASE. DO
13 NOT FORM NOR EXPRESS ANY OPINION ON ANY ISSUE IN THIS
14 CASE.

15 WE'RE IN RECESS. WE'LL SEE YOU AT 9:00 A.M.
16 (JURY EXCUSED)

17 THE COURT: AND I'LL SEE COUNSEL AT 8:30.

18 MR. MCMILLAN: THANK YOU, YOUR HONOR.

19 MR. GUTERRES: THANK YOU, YOUR HONOR.

20 (RECESS)

21
22 (WHEREUPON, AT THE HOUR OF 4:55 P.M.,
23 THE PROCEEDING ADJOURNED.)

24

25 ---OOO---

26

27 (NEXT PAGE IS 3001.)

28