

1 CASE NUMBER: BC470714
2 CASE NAME: RAFAELINA DUVAL VS. COUNTY OF LOS
3 ANGELES, ET AL.
4 LOS ANGELES, CALIFORNIA WEDNESDAY, AUGUST 24, 2016
5 DEPARTMENT: 89 HON. WILLIAM A. MACLAUGHLIN, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: ADRA L. PITTMAN, CSR NO. 13298
8 TIME: MORNING SESSION
9

10 THE COURT: GOOD MORNING. BE SEATED, PLEASE.

11 ALL RIGHT. WE'RE ON THE RECORD IN DUVAL V. COUNTY OF
12 LOS ANGELES. WE HAVE -- LET'S SEE. WE HAVE MR. MCMILLAN
13 PRESENT.

14 MR. MCMILLAN: GOOD MORNING, YOUR HONOR.

15 THE COURT: MR. PRAGER.

16 MR. PRAGER: GOOD MORNING, YOUR HONOR.

17 THE COURT: MS. SWISS.

18 MS. SWISS: GOOD MORNING, YOUR HONOR.

19 THE COURT: MR. KING.

20 MR. KING: GOOD MORNING, YOUR HONOR.

21 THE COURT: AND MS. CHUNG.

22 MS. CHUNG: GOOD MORNING, YOUR HONOR.

23 THE COURT: AND --

24 MS. SWISS: AND THEY'LL BE HERE SHORTLY.

25 THE COURT: OKAY. I RECALL WHEN YOU WERE LAST HERE,
26 THAT I THINK THAT WAS MENTIONED. I THINK THAT, AS I RECALL,
27 THERE WAS SOMETHING ABOUT THEIR APPEARANCES.

28 ALL RIGHT. I HAVE RULINGS ON THE PLAINTIFF'S MOTIONS

1 IN LIMINE THAT WERE UNDER SUBMISSION. WHICH WERE EITHER
2 UNDER SUBMISSION OR HAD BEEN DEFERRED. THIS INCLUDED
3 MOTIONS 4, 5, 6, 7, 9 AND 10. ALSO, RULINGS ON THE
4 DEFENDANTS' MOTIONS IN LIMINE, WHICH WERE UNDER SUBMISSION
5 OR DEFERRED, 6, 7, 9, 13, 14, 15 AND 16.

6 I HAVE RULING ON THE OBJECTIONS TO THE DEPOSITION
7 TESTIMONY OF LYNNE BOWLES, B-O-W-L-E-S, CONDON, C-O-N-D-O-N.
8 FIRST NAME, L-Y-N-N-E. I HAVE ALSO A RULING ON THE
9 PLAINTIFF'S OBJECTIONS TO THE OFFERED OPINIONS OF JOY
10 RUSSELL.

11 EACH OF YOU -- EACH OF THE SIDES, PURSUANT TO MY
12 REQUEST, DID FILE WITH THE COURT A LIST OF THE OPINIONS YOU
13 EXPECTED TO ELICIT FROM THE CERTAIN EXPERTS AS TO THE
14 PLAINTIFF. THIS NUMBER OF EXPERTS THAT, I THINK, WAS NOT A
15 SPECIFICATION, BUT I CAN GET TO THOSE AT A LATER TIME. AND
16 THEN ALSO HAVE A RULING ON THE OBJECTIONS TO THE OPINIONS
17 MADE BY THE DEFENSE AS TO THE OPINIONS OF MR. DOMINGUEZ,
18 DR. WEINRAUB, AND DR. ACHAR.

19 IS THAT HOW YOU PRONOUNCE IT?

20 MR. MCMILLAN: IT'S "ACHAR."

21 THE COURT: "ACHAR." OKAY. A-C-H-A-R.

22 MR. MCMILLAN: CORRECT.

23 THE COURT: I KNOW YOU TELL ME THAT EVERY TIME YOU'RE
24 HERE. SO I GUESS YOU'LL HAVE TO KEEP TELLING ME UNTIL I
25 FINALLY COMMIT THAT TO MEMORY, WHICH IS THE SECOND THING TO
26 GO. SO I'M GOING TO GIVE YOU THOSE IN A MOMENT, AND YOU'LL
27 NEED SOME TIME TO TAKE A LOOK AT THEM.

28 I ALSO RECEIVED THE PROPOSED JURY QUESTIONNAIRE IN

1 THIS CASE, AND IT IS SUBSTANTIALLY DIFFERENT FROM WHAT I HAD
2 IN MIND. AND WE CAN GET TO THAT AT SOME TIME THIS MORNING,
3 AND AT THAT TIME, I'LL TELL YOU -- I'LL GO OVER WITH
4 YOU -- I'VE MADE A LIST OF THE QUESTIONS THAT ARE INCLUDED.
5 IT'S A NINE-PAGE QUESTIONNAIRE, WHICH IS PROBABLY MORE THAN
6 TWICE AS LONG AS I INTEND TO USE.

7 AND SO I'LL GO OVER WITH YOU A NUMBER OF QUESTIONS
8 WHICH I REALLY DON'T THINK ARE GOING TO GET ASKED AT ALL;
9 OTHERS THAT MAY BE ASKED, AND WHICH PROBABLY COULD BE
10 MODIFIED TO GET THE SAME INFORMATION, BUT PERHAPS IN A
11 DIFFERENT FORM. AND SO WE'LL GET TO THAT.

12 I ALSO RECEIVED FROM THE PLAINTIFF A -- I'M NOT SURE
13 WHAT THE RIGHT DESCRIPTION IS, BUT I'LL CALL IT A FURTHER
14 DESIGNATION OF DEPOSITION TESTIMONY FROM MRS. DUVAL'S
15 MOTHER, AND ALSO, GUY TRIMARCHI. AGAIN, I MAY NOT BE
16 PRONOUNCING IT CORRECTLY, BUT IT WAS -- IT'S
17 T-R-I-M-A-R-C-H-I.

18 THAT FURTHER DESIGNATION INCLUDED SOME OF THE -- OR
19 PERHAPS MANY OF THE EXCERPTS THAT HAD PREVIOUSLY BEEN
20 DESIGNATED, BUT I NOTICED, INCLUDED EXCERPTS OF A DEPOSITION
21 THAT HAD NOT PREVIOUSLY BEEN DESIGNATED.

22 AND I SEE A SOMEWHAT QUESTIONING LOOK ON YOUR FACE,
23 MS. SWISS. DID YOU GET THOSE FURTHER DESIGNATIONS?

24 MS. SWISS: I'M NOT SURE. I DON'T THINK SO, BUT I
25 COULD BE WRONG. I'VE GOT A LOT OF PEOPLE WORKING ON THIS
26 CASE WITH ME.

27 MR. MCMILLAN: I'M THINKING MAYBE THEY'RE NOT FURTHER
28 DESIGNATIONS. WHAT ADRIAN AT MY OFFICE MAY HAVE DONE -- IN

1 FACT, I'M SURE HE'S DONE THIS. I DON'T KNOW WHETHER OR NOT
2 HE'S FILED ALL OF THEM. BUT WITH THE RULINGS THAT WE HAD
3 LAST TIME, WE WENT THROUGH AND REDID THE EXCERPTS FOR THE
4 COURT FILING WITH THE BRACKETING, TO INCLUDE WHAT HAD BEEN
5 BASICALLY APPROVED BY THE COURT. AND I'M WONDERING IF THAT
6 MIGHT BE WHAT YOU'RE REFERENCING TO.

7 THE COURT: WELL, I'LL TAKE A LOOK AT IT FURTHER, BUT
8 I COMPARED -- WE'LL BE TAKING A RECESS SHORTLY SO YOU CAN --
9 EVERYONE CAN TAKE A LOOK AT THE RULINGS THAT I'VE STATED
10 WILL BE PROVIDED TO YOU IN JUST A MOMENT, AND I'LL GO GET
11 THOSE AND TAKE A LOOK AT THEM.

12 IT APPEARED TO ME WHEN I LOOKED AT THEM, WHEN THEY
13 CAME IN, THAT THERE WAS TESTIMONY DESIGNATED WHICH HAD NOT
14 BEEN IN THE EARLIER DESIGNATION. BUT I'LL CONFIRM THAT, AND
15 I'LL BE HAPPY TO -- I DON'T KNOW WHETHER YOU BROUGHT ALL
16 THAT WITH YOU OR NOT. I HOPE YOU DIDN'T --

17 MR. MCMILLAN: I DIDN'T.

18 THE COURT: -- BECAUSE, I DON'T KNOW, EVEN ALL FOUR OF
19 YOU COULDN'T CARRY ALL OF THE PAPER I GOT.

20 MR. MCMILLAN, YOUR OFFICE IS PROLIFIC IN PAPERWORK.

21 MR. MCMILLAN: THANK YOU, YOUR HONOR. I THINK.

22 THE COURT: WELL, I'M NOT SURE. IT CERTAINLY IS NOT A
23 CRITICISM. IT MAY NOT BE A COMPLIMENT, BUT IT CERTAINLY IS
24 TRUE. THERE'S A GREAT DEAL OF PAPERWORK, AND I WOULDN'T
25 EXPECT YOU TO BE CARRYING THAT. BUT I WILL PULL OUT THE
26 ORIGINAL DESIGNATION OF THE TESTIMONY THAT I HAVE, AS WELL
27 AS THE ONES I RECEIVED MORE RECENTLY.

28 I JUST WANTED TO TELL YOU THAT, IF MY IMPRESSION IS

1 INCORRECT, AND IF ANYTHING GETS SOLVED AS TO WHAT WE'RE
2 SUPPOSED TO DO WITH IT; BUT MY CONCERN WAS THAT IF IT'S
3 DESIGNATING ADDITIONAL TESTIMONY, I'M NOT REALLY INTENDING
4 TO GO THROUGH THIS AGAIN.

5 THIS HAS BEEN, NOT ONLY FOR YOUR OFFICE BUT FOR THE
6 COURT, EXTREMELY TIME CONSUMING WITH THOSE DEPOSITIONS. AND
7 SO IT'S NOT MY INTENTION ONCE I MAKE A RULING THAT WE'RE
8 GOING TO HAVE FURTHER DESIGNATIONS. OTHERWISE, YOU'RE GOING
9 TO HAVE AN ENDLESS PROCESS, AND I THINK THAT WON'T BE
10 PRODUCTIVE FOR US.

11 AND THERE'S A GREAT DEAL OF PRESS -- AND WHICH IS
12 ANOTHER THING, TOO, THAT I WANTED TO ASK ABOUT. AFTER GOING
13 THROUGH ALL THAT, I DON'T KNOW WHAT -- I DON'T KNOW WHAT THE
14 PLAINTIFF'S INTENTIONS ARE IN THE -- SPECIFICALLY AS THE
15 WITNESSES WHO WILL TESTIFY. I KNOW WE HAVE A WITNESS LIST,
16 BUT IN MY EXPERIENCE, THE WITNESS LIST IS ALMOST INVARIABLY
17 MORE EXTENSIVE THAN THE ONE -- THAN THE WITNESSES WHO
18 ACTUALLY TESTIFY.

19 AND THERE'S A GOOD REASON FOR THAT. ONE OF WHICH IS
20 THAT ALL PARTIES WANT TO MAKE SURE THAT THEY PUT SOMEONE ON
21 THE LIST, EVEN IF THEY'RE NOT SURE THEY'RE GOING TO CALL
22 THEM, BECAUSE, AMONG OTHER THINGS, YOU DON'T WANT TO HAVE AN
23 OBJECTION TO CALLING A WITNESS WITH THE OTHER SIDE OBJECTING
24 ON THE GROUND THAT THE PERSON WAS NEVER DESIGNATED ON THE
25 WITNESS LIST.

26 BUT I ALSO THINK THAT TRIAL IS A PROCESS. AND AS
27 YOU'RE GOING ALONG AND PUTTING THE EVIDENCE IN, CONTINUING
28 DECISIONS ARE MADE ABOUT WHETHER IT'S REALLY GOING TO BE

1 NECESSARY TO CALL SOMEBODY. AND SO I THINK FOR SEVERAL
2 REASONS, WE END UP WITH FEWER PERSONS TESTIFYING THAN ARE ON
3 THE WITNESS LIST.

4 HAVING SAID THAT, IT DOES STRIKE ME, IN HAVING NOW
5 REVIEWED THE DESIGNATED TESTIMONY FROM 21 DIFFERENT
6 DEPOSITIONS OF COUNTY EMPLOYEES, THERE'S A GREAT DEAL OF
7 REDUNDANCY. AND SO DESIGNATION OF SOMEONE AS A WITNESS IS
8 ONE THING, BUT WHEN IT COMES TO TRIAL IN THE CASE, I DON'T
9 REALLY INTEND TO HAVE MULTIPLE WITNESSES TESTIFYING TO
10 ESSENTIALLY THE SAME THING.

11 AND I'M JUST GOING TO LEAVE IT UP TO YOU TO MAKE THE
12 DECISIONS AS TO WHO'S GOING TO GET CALLED, BUT I'LL JUST
13 TELL YOU THAT, BY AND LARGE, WE'RE NOT GOING TO HAVE A
14 NUMBER OF PEOPLE COMING IN AND REALLY JUST TESTIFYING TO THE
15 SAME THING THAT'S ALREADY BEEN SAID, AND SOMETIMES MORE THAN
16 ONCE.

17 AND AN EXAMPLE OF THAT IS YOU'LL FIND ON THE -- ONE OF
18 THE MOTIONS IN LIMINE WAS THE DEFENDANT MADE, AND YOU'LL
19 KNOW THE NUMBER. THERE WERE FOUR ATTORNEYS THAT HAD BEEN
20 DESIGNATED AS NONRETAINED EXPERTS BY THE PLAINTIFF, AND THE
21 MOTION IN LIMINE WAS TO EXCLUDE THEM. THAT MOTION IN LIMINE
22 IS BEING DENIED, AND YOU'LL FIND THAT IN THE RULINGS.

23 AND THE MOTION, IF YOU'LL RECALL -- WELL, THE MOTION
24 WAS TO EXCLUDE ALL FOUR. IN THE TEXT OF THE MOTION ITSELF,
25 THEIR ARGUMENT WAS MADE ONLY AGAINST THREE. AND THAT WAS
26 NOTED BY PLAINTIFF IN YOUR OPPOSITION TO THE MOTION THAT THE
27 MOTION DIDN'T EVEN ADDRESS THE FOURTH ONE, WHOSE LAST NAME
28 WAS LOCILANTRO, OR SOMETHING LIKE THAT?

1 MR. MCMILLAN: LACILENTO, YES.

2 THE COURT: OKAY. WHILE I DENIED THE MOTION TO
3 EXCLUDE THEM AS WITNESSES, YOU'RE NOT GOING TO HAVE ALL FOUR
4 OF THEM TESTIFY. IT'S JUST NOT GOING TO HAPPEN. THAT'S
5 JUST GOING TO BE REDUNDANT TESTIMONY. AND I'VE LOOKED AT
6 THE DEPOSITIONS AND -- SO THAT'S THE KIND OF THING I'M
7 TALKING ABOUT.

8 THE SAME THING WITH THE COUNTY EMPLOYEES, WITH THE 21
9 DEPOSITIONS. NOW, I KNOW A COUPLE OF THEM TESTIFIED IN A
10 DIFFERENT CAPACITY, AND I'M NOT REALLY ADDRESSING THAT FOR
11 THE MOMENT. BUT IN READING THAT, THE TESTIMONY GETS REALLY
12 REPETITIVE. AND WHEN YOU'RE DEALING WITH THE DEPOSITIONS
13 THAT YOU WANT TO HAVE, IN MOST INSTANCES THERE'S A VIDEO,
14 BUT IN SOME OF THEM, IT APPEARS THERE'S NOT A VIDEO. SO
15 THERE WOULD BE A PROPOSAL THAT YOU'RE GOING TO READ EXCERPTS
16 FROM THE DEPOSITION.

17 HOWEVER THAT DEPOSITION TESTIMONY IS PRESENTED, ONE,
18 IF YOU DID ALL 21 OF THEM, I'M AFRAID THE JURORS WOULD GO
19 OUT ON STRIKE. AND SO I THINK WHEN IT COMES TO BOTH THOSE
20 COUNTY EMPLOYEES TO BE PRESENTED THROUGH DEPOSITION AS WELL
21 AS THE LAWYERS, YOU'RE GOING TO HAVE TO JUSTIFY TO ME WHICH
22 ONES -- YOU MAY BE CALLED UPON -- I WON'T SAY YOU'LL HAVE
23 TO. YOU MAY BE CALLED UPON TO JUSTIFY WHY THOSE ARE THE
24 ONES THAT YOU'RE INTENDING TO PRESENT, BECAUSE IT'S MY
25 INTENTION THAT WE WILL AVOID UNNECESSARILY REPETITIVE
26 TESTIMONY.

27 NOW, I RECOGNIZE, I DO RECOGNIZE, THAT THOSE ARE
28 COUNTY EMPLOYEES, AND THAT MANY OF THEM HELD DIFFERENT

1 POSITIONS; BUT IN MANY INSTANCES, THEIR TESTIMONY STILL ENDS
2 UP JUST THE SAME. SO, ANYWAY, I'LL GIVE YOU THE -- AND THE
3 RECORD SHOULD REFLECT THAT MR. GUTERRES --

4 MR. GUTERRES: MY APOLOGIES, YOUR HONOR, FOR BEING
5 LATE.

6 THE COURT: NO, I HAD RECALLED THAT YOU WERE GOING TO
7 BE RETAINED THIS MORNING. AND I JUST WANTED THE RECORD TO
8 REFLECT THAT YOU DID COME IN TOWARDS THE LATTER PART OF MY
9 REMARKS, JUST TO SHOW THAT YOU ARE HERE.

10 MR. GUTERRES: THANK YOU, YOUR HONOR.

11 THE COURT: SO MS. SWISS WILL TELL YOU WHAT WE
12 COVERED, BUT BASICALLY JUST EXPLAINING -- I THINK IT'S GOING
13 TO TAKE YOU ALL A WHILE TO BE ABLE TO MATCH THOSE UP AND SEE
14 WHAT THEY ARE. SO WE'LL BE IN RECESS.

15 (BRIEF RECESS.)

16 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.

17 SO, MR. MCMILLAN, LET'S BEGIN WITH YOU. DO YOU HAVE
18 ANY QUESTIONS ON WHAT YOU'VE SEEN?

19 MR. MCMILLAN: YEAH, YOUR HONOR, I DID AS TO THE
20 COURT'S RULING ON NO. 15. THAT WAS THE ORGANIZATIONAL
21 PSYCHOLOGIST, ALANDRIA SAFER.

22 THE COURT: RIGHT.

23 MR. MCMILLAN: AND I'M JUST SORT OF CURIOUS THERE.
24 SHE GOES DIRECTLY TO THE ISSUE OF CULTURE, WHICH IS SORT OF
25 THE UNDERPINNINGS OF HOW CUSTOMS AND PRACTICES DEVELOP. AND
26 PART OF HER AREA OF EXPERTISE RELATES PURELY TO THE FUNCTION
27 OF TRAINING, RECURRENT TRAINING, AND THE EFFECT THAT THAT
28 HAS ON THE BEHAVIOR OF THE PEOPLE THAT ARE SUBJECT TO THE

1 TRAINING.

2 I CAN UNDERSTAND, ON SOME OF THE DECISIONS TO SUSTAIN
3 OBJECTIONS, WHERE THOSE MIGHT HAVE COME FROM. BUT THE
4 UNDERPINNINGS OF HER OPINIONS IN RELATION TO TRAINING, THE
5 EFFECT IT HAS; OR RECURRENT TRAINING, THE EFFECT IT HAS; AND
6 THE VARIOUS MANAGEMENT STYLES, WHICH SHE WAS ABLE TO GLEAN
7 FROM HER REVIEW NOT ONLY OF MR. DOMINGUEZ'S DEPOSITION, BUT
8 ALSO FROM THE DEPOSITION TESTIMONY OF THE PERSONS MOST
9 KNOWLEDGEABLE.

10 MS. LYNNE BOWLES CONDON -- I THINK SHE HAD THREE
11 DIFFERENT DEPOSITIONS. AS WELL AS MS. MINER, IN THE
12 DEPOSITION ON TRAINING. AND MR. TRIMARCHI, THE PMK,
13 DEPOSITION ON POLICIES. AND THEN ALSO ON ENFORCEMENT AND
14 DISCIPLINE THAT CAME FROM LYNNE CONDON.

15 COBBLING ALL OF THOSE AND THAT INFORMATION TOGETHER,
16 SHE'S PARTICULARLY WELL SUITED BECAUSE OF HER AREA OF
17 EXPERTISE, ORGANIZATIONAL PSYCHOLOGY, TO RENDER OPINIONS
18 ABOUT NOT ONLY THE IMPACT OF THE TRAINING AND LACK OF
19 RECURRENT TRAINING, BUT ALSO ON THE IMPACT OF FAILURE TO
20 DISCIPLINE ERRANT WORKERS WHEN THEY'RE BROUGHT TO THE
21 ATTENTION OF THE AGENCY.

22 AND THAT TESTIMONY APPEARS, IN MY VIEW, QUITE CLEARLY
23 IN LYNNE BOWLES CONDON'S DEPOSITION, AND ALSO THROUGHOUT THE
24 DEPOSITIONS OF THE VARIOUS SUPERVISORY SOCIAL WORKERS DURING
25 THE CASE. THEY ALL TESTIFIED THEY'VE NEVER DISCIPLINED
26 ANYBODY FOR PERJURY. THEY'VE NEVER DISCIPLINED ANYBODY FOR
27 SUPPRESSING EXCULPATORY EVIDENCE. THEY'VE NEVER DISCIPLINED
28 ANYBODY FOR LYING IN COURT REPORTS, OR FOR SEIZING CHILDREN

1 WITHOUT A WARRANT WHEN A WARRANT SHOULD HAVE BEEN OBTAINED.

2 ALL OF THESE STATEMENTS SUPPORT MS. SAFER'S OPINIONS
3 THAT THE CULTURE OF THE AGENCY IS WHAT CAUSED THE PROBLEM
4 HERE. AND THAT CULTURE IS EXPRESSED IN THE LACK OF --

5 THE COURT: WELL, LET ME ASK YOU, WHAT DIFFERENCE DOES
6 IT MAKE WHAT CAUSED THE PROBLEM? I READ ALL THAT, AND I
7 THOUGHT IT WAS A -- LOOK, I UNDERSTAND WHAT YOU'RE SAYING,
8 AND I FULLY EXPECTED WE WOULD BE HAVING A DISCUSSION ON
9 THIS, BECAUSE THAT WAS GRANTING THE MOTION PROBABLY YOU
10 DIDN'T EXPECT. BUT HAVING READ WHAT SHE HAD TO SAY, I
11 DIDN'T SEE THAT IT CONTRIBUTED ANYTHING, REALLY, TO THE
12 CASE.

13 I DON'T CARE WHAT THE CULTURE IS. YOU HAVE WITNESSES
14 TESTIFYING AS TO WHAT ACTUALLY WAS GOING ON, AND THEN SHE
15 WAS GIVING REASONS WHY SHE BELIEVES THESE ACTS, OR FAILURE
16 TO ACT, HAVE OCCURRED.

17 I DON'T THINK IT MAKES ANY DIFFERENCE AS TO SOMEONE'S
18 FAILURE TO ACT, WHEN THEY SHOULD HAVE ACTED, OR ACTING WHEN
19 THEY SHOULDN'T, OR ACTING IN A WAY THAT THEY SHOULDN'T. AND
20 THAT, TO ME, WAS MORE AKIN TO WHAT SHE HAD TO SAY. I DIDN'T
21 SEE EVIDENTIARY VALUE IN IT. AND I THOUGHT IT WAS REALLY
22 MORE SUITED FOR A LECTURE AT UC SAN DIEGO.

23 DOES SHE TEACH THERE? SHE TEACHES SOMEWHERE, DOESN'T
24 SHE?

25 MR. MCMILLAN: I THINK, SAN DIEGO STATE.

26 THE COURT: OKAY. AND IT'S NO DISRESPECT -- WHAT I'M
27 SAYING IS NOT DISRESPECTFUL OF HER IN ANY WAY, OR ANY OF THE
28 OPINIONS SHE GAVE ABOUT HER VIEW AS TO WHY CERTAIN THINGS

1 HAPPENED.

2 WELL, THE QUESTION IS: WHAT DID HAPPEN? AND YOUR
3 EVIDENCE OF THE CULTURE IN THE PLACE, THE ACTUAL EVIDENCE OF
4 CULTURE IN THE PLACE, ASSUMING THAT IT'S TRUE, IS THEY HAD
5 NO POLICY ABOUT WHAT THEY WERE SUPPOSED TO DO, AND GETTING A
6 WARRANT TO DETAIN. AND THAT CERTAINLY IS GOING TO BE PART
7 OF YOUR EVIDENCE.

8 AND I SEE THAT IN DOING THE READING OF THE DEPOSITION
9 EXCERPTS OF THE COUNTY EMPLOYEES. AND WHAT DIFFERENCE DOES
10 IT MAKE WHY SHE THINKS THIS HAPPENS? ONE OF HER OPINIONS
11 IS, WELL, IF YOU DON'T DISCIPLINE, THEN THEY'RE GOING TO GO
12 AHEAD AND DO SOMETHING WRONG AGAIN. WELL, OKAY. MAYBE THEY
13 WILL; MAYBE THEY WON'T.

14 AND THE QUESTION IS: DID THE EMPLOYEES FAIL TO DO
15 SOMETHING THAT THEY SHOULD HAVE DONE, AND IF THEY DIDN'T,
16 WAS THIS TOLERATED BY THE ORGANIZATION? THAT COMES FROM
17 EVIDENCE OF THE ACTUAL PEOPLE INVOLVED.

18 AND SO I UNDERSTAND WHAT YOU'RE SAYING, AND I THINK I
19 PROBABLY HAVE SAID ALL I NEED TO SAY AT THE MOMENT AS TO MY
20 VIEW THAT THAT TESTIMONY DOESN'T ADD ANYTHING TO ANY ISSUE
21 IN THE CASE. SHE'S EXPLAINING WHY CERTAIN THINGS HAPPENED
22 OR DIDN'T HAPPEN. AT LEAST FROM HER POINT OF VIEW. WELL, I
23 DON'T SEE EVIDENTIARY VALUE TO THAT, AS FAR AS THE LAWSUIT
24 IS CONCERNED.

25 NOW, IF DCFS, FOR EXAMPLE, WAS GOING TO GET SOME KIND
26 OF PERFORMANCE REVIEW IN ORDER TO -- AND MAYBE I SHOULDN'T
27 SINGLE THEM OUT, BECAUSE THEY'RE A PARTY TO THE CASE.

28 LET'S JUST TAKE ANY GOVERNMENTAL AGENCY WHO'S GOING TO

1 HAVE SOME SORT OF PERFORMANCE AUDITED IN THE ATTEMPT TO KEEP
2 THEMSELVES OPERATING IN THE MOST EFFICIENT AND SERVICEABLE
3 WAY. MAYBE THEY WOULD BENEFIT FROM TALKING WITH SOMEONE
4 LIKE HER AS TO WHAT THEY WOULD NEED TO DO, AT LEAST IN HER
5 OPINION, TO MAKE THEIR EMPLOYEES MORE ACCOUNTABLE, PERFORM
6 BETTER, TO REDUCE -- I THINK YOU NEVER ELIMINATE ALL
7 PROBLEMS. EVERY ORGANIZATION HAS THEIR OWN SET OF PROBLEMS.
8 PROBABLY EVERY INDIVIDUAL DOES TOO.

9 THE ONLY ONE I'LL EXCEPT FOR THAT IS I HAVE A GOLDEN
10 RETRIEVER DOG THAT SEEMS TO HAVE NO PROBLEMS. AT LEAST AS
11 HE SEES IT.

12 MR. MCMILLAN: WELL, AS YOU SEE IT TOO. I MEAN,
13 YOU'RE THE ONE THAT TAKES CARE OF HIM; RIGHT?

14 THE COURT: YEAH. ACTUALLY, HE'S MY DAUGHTER'S DOG,
15 THAT I BABYSIT VERY FREQUENTLY, AND HE'S BECOME ESSENTIALLY
16 MY DOG.

17 ANYWAY, I'M NOT MAKING LIGHT OF IT. BUT THAT WAS MY
18 THINKING. I'M NOT ASKING YOU TO ACCEPT IT. I'M
19 JUST -- I THINK WHAT YOU WERE RAISING WAS A QUESTION AS TO
20 WHY I GRANTED THE MOTION, BECAUSE AS YOU SEE IT, SHE HAD
21 TESTIMONY OF VALUE. AND MY VIEW WAS THAT IT DIDN'T HAVE
22 VALUE IN TERMS OF THE ISSUES IN THIS LITIGATION. IT COULD
23 VERY WELL BE OF VALUE WITH A DIFFERENT CONTEXT. BUT NOT
24 HERE. SO --

25 MR. MCMILLAN: THEN WITH RESPECT TO NO. 16 --

26 THE COURT: NOW, INCIDENTALY, I WILL ON MY
27 OWN -- I'M NOT GOING TO HAVE EVERYTHING BE RECURRING; THAT
28 EVERY TIME WE HAVE AN ARGUMENT, I'M GOING TO TAKE A LOOK AT

1 SOMETHING FURTHER. I WILL TAKE A LOOK ON MY OWN AT HER
2 TESTIMONY AGAIN, OR HER OPINIONS AGAIN, AS THEY WERE LISTED.
3 AND IF I HAVE ANY CHANGE OF VIEW ON THIS, I WILL CERTAINLY
4 LET EVERYBODY KNOW.

5 MR. MCMILLAN: I APPRECIATE THAT, YOUR HONOR. ONE
6 MORE THING ON HER, IF YOU ARE INCLINED TO GO BACK AND LOOK
7 AT IT, IS WITH RESPECT TO WE HAVE BASICALLY TWO DIFFERENT
8 VARIANTS OF THE MONELL CLAIM. ONE FOR THE CONSTITUTIONALLY
9 DEFECTIVE, OR INADEQUATE, TRAINING; AND THEN THE OTHER FOR
10 THE FAILURE TO SUPERVISE DISCIPLINE. AND THOSE ARE TWO
11 DISTINCT CLAIMS, HAVE SEPARATE JURY INSTRUCTIONS AND ACTUAL
12 VERDICT FORMS IN RELATION TO EACH.

13 AND HER TESTIMONY WITH RESPECT TO TRAINING GOES TO THE
14 ISSUE OF THE INADEQUACY OF THE TRAINING, WHETHER OR NOT IT
15 WAS ADEQUATE, WHETHER OR NOT THEY SHOULD HAVE BEEN DOING
16 RECURRING TRAINING OR A DIFFERENT TYPE OF TRAINING.

17 AND HER TESTIMONY ON THAT, I THINK, IS BEYOND THE TENT
18 OF THE AVERAGE JUROR. I MEAN, MOST JURORS DON'T NECESSARILY
19 KNOW, FROM A MANAGEMENT PERSPECTIVE, THE IMPORT, OR THE
20 IMPORTANCE, OF TRAINING, AND RECURRENT TRAINING, AND
21 REINFORCING TRAINING. AND SHE DOES HAVE A SUBSTANTIAL
22 AMOUNT OF TESTIMONY ON THE ISSUE OF THE INADEQUACY OF THE
23 TRAINING.

24 THE COURT: AND JUST TO REFRESH MY MEMORY, WHAT WAS
25 THE FOUNDATION FOR HER OPINIONS ON THAT? BECAUSE I REALIZED
26 AS I WAS LOOKING AT THAT, THAT THAT APPEARED TO BE THE
27 PURPOSE OF, OR AT LEAST THE SUBJECT, TO WHICH SOME OF HER
28 OPINIONS WAS DIRECTED. BUT I THOUGHT THAT WHAT SHE WAS

1 TALKING, AS I VIEWED WHAT SHE HAD TO SAY, WAS MORE
2 HYPOTHESIS AS OPPOSED TO AN OPINION BASED ON A FOUNDATION
3 WHICH PERMITS GIVING AN OPINION TO THAT EXTENT.

4 MR. MCMILLAN: ARE YOU TALKING ABOUT THE EVIDENTIARY
5 FOUNDATION FOR HER --

6 THE COURT: YES, YES.

7 MR. MCMILLAN: OKAY. IT WOULD HAVE BEEN DERIVED FROM
8 THE DEPOSITIONS OF BETH MINOR, WITH RESPECT TO TRAINING; AND
9 THEN, IN PART, FROM GUY TRIMARCHI, BECAUSE --

10 THE COURT: WHOSE DEPO WAS THAT?

11 MR. MCMILLAN: PERSON MOST KNOWLEDGEABLE, BETH MINER;
12 AND PERSON MOST KNOWLEDGEABLE, GUY TRIMARCHI.

13 THE COURT: OKAY.

14 MR. MCMILLAN: MR. TRIMARCHI WAS ON THE ISSUE OF
15 POLICY. MS. MINOR WAS ON THE ISSUE OF TRAINING. BUT YOU
16 REALLY HAVE TO LOOK AT THOSE TWO DEPOSITIONS TOGETHER,
17 BECAUSE TRAINING DERIVES FROM POLICY, AND ACTUALLY, THE
18 DEPARTMENTS --

19 THE COURT: AND WHO BESIDES MINOR? I'M SORRY. I JUST
20 DIDN'T PICK UP THE NAME.

21 MR. MCMILLAN: GUY TRIMARCHI.

22 THE COURT: OH, TRIMARCHI. IN THE DEPO ON POLICY?

23 MR. MCMILLAN: RIGHT. IT WOULD BE THE POLICY PMK FROM
24 TRIMARCHI, AND THEN THE TRAINING PMK WITH MINOR.

25 THE COURT: OKAY. ALL RIGHT. WELL --

26 MR. MCMILLAN: THEN, TO A CERTAIN EXTENT, THE
27 BEGINNING PORTIONS OF THE DEPOSITIONS OF KIMBERLY ROGERS,
28 SUSAN PENDER, AND MUZEYYEN BALABAN, BECAUSE IN THE BEGINNING

1 OF THOSE, THEY SORT OF GO THROUGH AND EXHIBIT THEIR EITHER
2 LACK OF UNDERSTANDING OF WHAT THEY WERE TRAINED OR, YOU
3 KNOW, MISUNDERSTANDING OF WHAT THEY WERE ORIGINALLY TRAINED
4 WAY BACK WHEN.

5 THE COURT: SO INCIDENTALLY, IS IT YOUR CONTENTION
6 THAT THERE'S A BASIS FOR MONELL LIABILITY WHEN THE TRAINING
7 IS LESS EFFECTIVE THAN SOME ACADEMIC THAT SAYS IT SHOULD BE?

8 MR. MCMILLAN: WELL, THAT COULD -- THE OPINION
9 ABOUT --

10 THE COURT: IN OTHER WORDS, IT'S THE QUALITY AS
11 OPPOSED TO AN ABSENCE OF TRAINING. BUT IF THERE IS SOME
12 SORT OF REGULAR TRAINING PROVIDED, ARE YOU CONTENDING THAT
13 IF SOMEONE OPINES THAT IT REALLY ISN'T EFFECTIVE BECAUSE
14 PEOPLE ONLY RETAIN A CERTAIN AMOUNT OF WHAT'S PRESENTED TO
15 THEM ORALLY AND AUDIBLY AS OPPOSED TO VISUAL, THAT THEN IT'S
16 INADEQUATE TRAINING AS TO A MONELL VIOLATION?

17 MR. MCMILLAN: I UNDERSTAND THE QUESTION. AND I WOULD
18 SUGGEST THAT, YES, INADEQUATE TRAINING, TO THE EXTENT THAT
19 THE COUNTY HAS KNOWLEDGE OF THE INADEQUACY, OR SHOULD KNOW
20 OF THE INADEQUACY; AND THAT THAT INADEQUATE TRAINING IS THE
21 MOVING FORCE BEHIND THE VIOLATIONS, OR THAT CAUSES THE
22 VIOLATIONS, THEN, YES, THAT CAN SUPPORT A MONELL CLAIM.

23 AND HERE, IT'S ANTICIPATED THAT BETH MINOR, THE PERSON
24 MOST KNOWLEDGEABLE, WHEN SHE'S CALLED IN THEIR CASE AND
25 CHIEF, SHE WILL SAY THAT SHE WAS AWARE, AND THE COUNTY WAS
26 AWARE, THAT WHAT MS. SAFER IS SAYING IS TRUE. AND THAT
27 UNTIL -- I THINK IT WAS UNTIL 2013, ACTUALLY, THEY DIDN'T DO
28 ANYTHING TO ADDRESS THAT INADEQUATE TRAINING.

1 SO, YES, WHEN YOU TAKE THE COUNTY'S KNOWLEDGE -- IT
2 GOES TO THE ISSUE OF DELIBERATE INDIFFERENCE. IF WE HAVE
3 TRAINING, BUT WE'RE DELIBERATELY INDIFFERENT TO THE NEED FOR
4 FURTHER, BETTER, OR MORE TRAINING, AND THAT LACK OF FURTHER,
5 BETTER, OR MORE TRAINING CAUSES THE SOCIAL WORKERS TO NOT
6 UNDERSTAND WHAT THEY'RE SUPPOSED TO BE DOING AND TO GO OUT
7 AND VIOLATE PEOPLE'S RIGHTS, THEN, YES, THAT CAN GIVE RISE
8 TO A MONELL LIABILITY.

9 THE COURT: WHICH ONE WAS IT? WAS IT MINOR WHO SAID
10 THAT THEY KNEW IT WAS INADEQUATE?

11 MR. MCMILLAN: BETH MINOR ACTUALLY SAYS THAT, AS A
12 PERSON MOST KNOWLEDGEABLE -- I HAVE TO CHECK. I DON'T KNOW
13 IF IT'S IN THIS CASE. BUT IT WAS MY INTENTION TO USE HER
14 PRIOR SWORN TESTIMONY ON HER FROM OTHER CASES I'VE DONE WITH
15 HER TO IMPEACH HER IF SHE GOES SIDWAYS ON ME ON THAT ISSUE.

16 THE COURT: ALL RIGHT. SO WHAT ELSE DID YOU -- YOU
17 STARTED OUT BY TELLING ME THAT THERE WERE CERTAIN THINGS
18 HERE IN PARTICULAR ABOUT WHAT SAFER HAS TO SAY THAT YOU
19 THINK IS SPECIFIC TO THE CASE AS OPPOSED TO THEORETICAL.
20 WHAT FURTHER ALONG THAT LINE? WAS THERE SOMETHING ELSE
21 BESIDES THIS YOU WANTED TO MENTION?

22 MR. MCMILLAN: NO. I THINK JUST THE TRAINING ISSUE IS
23 IT.

24 THE COURT: OKAY.

25 ALL RIGHT. WELL, I'LL -- I FIND THIS CASE IS
26 OCCUPYING NEARLY ALL OF MY TIME. AND IT'S UNFORTUNATE,
27 BECAUSE I DO HAVE OTHER MATTERS. BUT I'LL TAKE A FURTHER
28 LOOK AT THAT. I'VE SPENT A LOT OF TIME ON THIS, BUT IT

1 DOESN'T MEAN THAT I WOULDN'T LOOK AT IT FURTHER. BUT I'M
2 DOING IT ON MY OWN. MY RULING IS MY RULING, BUT I'M JUST
3 TELLING YOU, I'LL TAKE A LOOK.

4 MR. MCMILLAN: SURE. I UNDERSTAND, AND I APPRECIATE
5 IT.

6 THE COURT: OKAY. ANYTHING ELSE BEFORE MS. SWISS
7 WANTS TO GO?

8 MR. MCMILLAN: JUST WITH RELATION TO NO. 16.

9 THESE WERE THE INDIVIDUAL PLAINTIFFS WHO HAVE
10 THEMSELVES GIVEN NOTICE TO THE COUNTY OF WHAT THEY BELIEVE
11 WERE VIOLATIONS OF THEIR RIGHTS. THEY GAVE NOTICE VIA A
12 LAWSUIT, WHICH I THINK EVERY INSTANCE WAS SETTLED BY THE
13 COUNTY. AND I UNDERSTAND THE LAWSUITS AND THE
14 SETTLEMENTS -- THOSE DON'T HAVE ANYTHING TO DO WITH
15 ANYTHING.

16 BUT WE ARE REQUIRED TO PROVE UP A PATTERN OR PRACTICE.
17 WE ARE REQUIRED -- AND THAT'S UNDER THE MONELL CLAIM. WE
18 ARE REQUIRED TO COME IN AND SHOW OTHER SIMILAR INSTANCES OF
19 ALLEGED MISCONDUCT AND NOTICE BY THE COUNTY THAT THIS SORT
20 OF STUFF AT LEAST WAS ALLEGED TO HAVE BEEN GOING ON --

21 THE COURT: THE LAWYERS AREN'T GOING TO DO THAT.
22 WE'RE GOING TO HAVE THEIR CLIENTS AND THEN THE LAWYERS BOTH
23 COME IN AND TESTIFY. BECAUSE I DIDN'T MATCH UP ALL THE
24 NAMES, BUT I DID, IN READING THE -- WHICH ADMITTEDLY WAS NOT
25 A CAREFUL READING. BUT I DID READ WHAT THE LAWYERS HAD TO
26 SAY, TO GET AN IDEA AS TO WHETHER OR NOT I THOUGHT THEY
27 SHOULD BE EXCLUDED WITHOUT ANY OPPORTUNITY TO POTENTIALLY
28 TESTIFY TO SOMETHING, AND MADE THE DECISION THEY COULDN'T.

1 BUT AMONG OTHER THINGS, MOST OF THOSE NAMES OF THOSE
2 FORMER PARTIES TO LITIGATION IN A CASE AGAINST THE COUNTY
3 RANG A BELL WITH ME FROM LOOKING AT THOSE DEPOSITIONS. I
4 THINK EVERY ONE OF THEM WAS REPRESENTED BY SOME ONE OF THOSE
5 FOUR ATTORNEYS, EXCEPT POSSIBLY AT LEAST ONE OR TWO THAT
6 WERE REPRESENTED BY YOU. AND I KNOW YOU'RE NOT INTENDING TO
7 BE A WITNESS.

8 MR. MCMILLAN: THAT'S CORRECT. I DON'T INTEND TO BE A
9 WITNESS. I GUESS WHAT I WAS REALLY LOOKING FOR WAS A POINT
10 OF CLARIFICATION.

11 I REMEMBER LAST TIME WE WERE HERE, THERE WAS SOME
12 DISCUSSION ABOUT WHETHER THE ATTORNEYS COULD TESTIFY ABOUT
13 WHAT THEY DID FOR THESE CLIENTS VERSUS THE CLIENTS
14 TESTIFYING THEMSELVES.

15 AND I GUESS WHAT I'M REALLY LOOKING FOR HERE IS NOT SO
16 MUCH TO CHANGE THE RULING, BUT JUST TO CLARIFY EXACTLY, AND
17 I THINK YOU HAVE, THAT THE ATTORNEY WILL BE PERMITTED, AT
18 LEAST IN SOME SENSE, TO TESTIFY ABOUT WHAT HAPPENED WITH
19 EACH OF THESE INDIVIDUALS.

20 THE COURT: WELL, I THINK THE ATTORNEYS CAN TESTIFY AS
21 TO CONTENTIONS THAT THEY MADE ON BEHALF OF THEIR CLIENTS IN
22 LITIGATION AGAINST THE COUNTY. NOT AGAINST OTHER COUNTIES.

23 MR. MCMILLAN: RIGHT.

24 THE COURT: BUT I THINK THEY CAN -- YOU KNOW, WE'RE
25 GOING TO RUN INTO POTENTIALLY AN ISSUE -- WHATEVER THE
26 ATTORNEYS HAVE TO SAY, I THINK IT WILL BE GREATLY
27 CIRCUMSCRIBED BY -- IS IT SECTION 827? WE'RE NOT GOING TO
28 RUN -- WE'RE NOT GOING TO PERMIT TESTIMONY THAT IS, BY

1 STATUTE, CONFIDENTIAL.

2 BUT I THINK THERE ARE THINGS THE ATTORNEYS CAN TESTIFY
3 TO. AND CERTAINLY, MATTERS OF PUBLIC RECORD THEY CAN
4 CERTAINLY TESTIFY TO. I THINK THE ABILITY TO TESTIFY ABOUT
5 MATTERS OF PUBLIC RECORD WOULD PROBABLY, I BELIEVE, SATISFY
6 WHAT YOU ATTEMPT TO SHOW, WAS THAT NOTICE TO THE COUNTY.
7 AND I THINK THERE'S OTHER THINGS THE ATTORNEYS SAID, BUT I
8 DON'T WANT TO HIGHLIGHT MYSELF AS TO ANYTHING THAT YOU SAY
9 OR NOT, BECAUSE MY JOB ISN'T TO COACH ANYBODY.

10 BUT I DID FEEL -- IN READING THOSE DEPOSITIONS OF THE
11 ATTORNEYS, I DID SEE OTHER THINGS THAT I THOUGHT THEY COULD
12 SAY THAT DID NOT RUN INTO ANY PROSCRIPTION BY STATUTE. IN
13 OTHER WORDS, I THINK THERE'S MORE THEY CAN SAY THAN THINGS
14 OF JUST NOTICE, BUT I THINK THE NOTICE IS IMPORTANT.
15 AND THAT'S AN IMPORTANT ISSUE IN YOUR CASE, BECAUSE YOU'RE
16 BASICALLY GOING TO HAVE TO PROVE THAT THE COUNTY WAS AWARE
17 THAT SOME PROBLEM EXISTED, AND HOW THEY RESPONDED TO IT OR
18 DIDN'T RESPOND TO IT.

19 MR. MCMILLAN: I THINK THAT CLEARS UP THE QUESTIONS I
20 HAD WITH RELATION TO 16.

21 THE COURT: YEAH. AND MY VIEW OF THIS -- AND I'LL
22 JUST TAKE THIS A LITTLE FURTHER, BECAUSE I DID DENY THE
23 MOTION TO EXCLUDE THE ATTORNEYS.

24 I'M GRANTING THE ONE AS TO THE INDIVIDUAL PARTIES.
25 THEY COULD TESTIFY AS TO WHAT HAPPENED TO THEM, BUT I DON'T
26 THINK THAT'S A DIRECTION THAT WE SHOULD GO, BECAUSE I HAVE
27 NO INTENTION OF STARTING TO LITIGATE EVERY ONE OF THEIR
28 CASES. AND THEY BEING THE PARTY WOULD KNOW WHAT HAPPENED TO

1 THEM.

2 BUT WHAT HAPPENED TO THEM ISN'T REALLY THE ISSUE.
3 IT'S THE ISSUE OF WHAT THE COUNTY WAS PUT ON NOTICE OF.
4 THAT'S WHY I FELT THAT THE ATTORNEYS WOULD BE THE ONES TO DO
5 THAT AND NOT THE INDIVIDUALS THEMSELVES. SO I MADE THAT
6 DISTINCTION. IF THAT'S AN INVALID DISTINCTION, YOU CAN TELL
7 ME, AND I WOULD LOOK AT IT FURTHER.

8 THAT WAS THE REASON FOR PERMITTING THE ATTORNEYS, BUT
9 NOT PERMITTING THE INDIVIDUALS TO COME IN AND THEN START
10 AGAIN. ALL THAT WOULD DO, TO ME, WOULD BE TO START TRYING
11 AS A SEPARATE LAWSUIT THE VALIDITY OF WHAT THEY SAY HAPPENED
12 TO THEM. I THINK THAT CAN BE ACCOMPLISHED BY WHAT THE
13 ATTORNEYS SAY.

14 MR. MCMILLAN: RIGHT. I --

15 THE COURT: AT LEAST YOU UNDERSTAND.

16 MR. MCMILLAN: I UNDERSTAND.

17 THE COURT: ALL RIGHT. IN ALL THE RULINGS I MAKE, I
18 NEVER ASK YOU TO AGREE. I JUST WANTED TO -- WELL, IF WE
19 NEEDED AGREEMENT, WE WOULDN'T GET VERY FAR.

20 MR. MCMILLAN: WELL, I WAS JUST LOOKING FOR
21 UNDERSTANDING. AND I UNDERSTAND THE REASONING BEHIND IT.
22 THAT MAKES SENSE.

23 THE COURT: OKAY. AND THAT'S WHAT I WOULD HOPE TO
24 ACCOMPLISH IN THE DISCUSSION WE HAVE, IS TO BE ABLE TO AT
25 LEAST EXPLAIN TO YOU WHAT I'M THINKING SO YOU UNDERSTAND IT.
26 NO NEED TO ACCEPT IT. BUT CERTAINLY, IT IS PART OF MY JOB
27 TO MAKE SURE THAT, TO THE BEST I'M ABLE, TO BE ABLE TO GIVE
28 CLARITY TO YOU OF ANY RULING I MAKE.

1 MR. MCMILLAN: WELL, THANK YOU, YOUR HONOR. I
2 APPRECIATE IT. AND YOU'VE CLARIFIED FOR ME. THAT WAS
3 REALLY MY QUESTION. I WASN'T REALLY OPPOSING, NECESSARILY.
4 I GUESS I WAS, BUT I WAS LOOKING MORE FOR AN UNDERSTANDING
5 OF WHAT WAS GOING ON THERE.

6 THE COURT: WELL, IF YOU WANTED TO, YOU'D WANT TO GET
7 ALL THESE PEOPLE ON THE STAND. AND WE COULD TAKE SIX, EIGHT
8 MONTHS AND TRY THIS CASE AND TRY THEIR SEPARATE CASES. AND
9 WHEN ALL WAS DONE, THE ISSUES IN THIS CASE WOULDN'T HAVE
10 CHANGED.

11 MR. MCMILLAN: RIGHT.

12 THE COURT: AND WE'RE NOT GOING TO NEED ALL OF THEM IN
13 ORDER FOR YOU TO HAVE MORE THAN WHAT, FROM YOUR POINT OF
14 VIEW, IS SUFFICIENT EVIDENCE TO PROVE WHATEVER IT IS YOU'RE
15 GOING TO BE REQUIRED TO PROVE.

16 MR. MCMILLAN: THANK YOU, YOUR HONOR.

17 THE COURT: OKAY.

18 SO, MS. SWISS? NOW IS YOUR CHANCE.

19 MS. SWISS: THANK YOU, YOUR HONOR. I WILL GO THROUGH
20 THE MOTIONS IN ORDER THAT THE PLAINTIFF DID. MAYBE THAT
21 WOULD BE THE --

22 THE COURT: THAT WILL BE FINE.

23 MS. SWISS: -- BEST WAY.

24 REGARDING MOTION IN LIMINE 15, THAT THE COURT HAS
25 DECIDED THAT IT MAY TAKE A LOOK AT REGARDING MS. SAFER, OUR
26 POSITION IS THAT THE COURT SHOULD STAND BY ITS RULING, IN
27 THAT MS. SAFER TRULY HAS NO FOUNDATION, TRULY HAS NO BASIS,
28 FOR THE OPINIONS THAT SHE'S GIVING.

1 SHE'S NEVER BEEN A SOCIAL WORKER. SHE'S NEVER WORKED
2 FOR THE COUNTY OF LOS ANGELES. SHE'S NEVER TRAINED SOCIAL
3 WORKERS, DEVELOPED POLICIES, OR WORKED WITH ANY
4 ORGANIZATIONS WHICH DO THE JOB THAT THE COUNTY OF LOS
5 ANGELES, DEFENDANTS IN THIS CASE, HAVE DONE. SO HER
6 HYPOTHESES ARE NOT BASED ON ANYTHING THAT IS APPROPRIATE
7 OPINION TESTIMONY.

8 THE DEPOSITIONS OF MS. MINOR AND MR. TRIMARCHI, AS TO
9 THE COUNTY POLICIES AND THE TRAINING, ARE WHAT THEY ARE.
10 AND IT WILL GET INTO EVIDENCE AS APPROPRIATE. WE DON'T NEED
11 ANOTHER PERSON WITHOUT A BASIS COMING OVER THE TOP TO REPEAT
12 WHAT THOSE OTHER PEOPLE HAVE SAID.

13 AS FAR AS THE ARGUMENT THAT THE TESTIMONY GOES TO
14 INADEQUATE OR IMPROPER TRAINING OF THE COUNTY, AGAIN,
15 THERE'S NO FOUNDATION FOR THIS WITNESS TO TESTIFY ABOUT
16 INADEQUATE TRAINING. AND THE STANDARD IS THAT THE PLAINTIFF
17 HAS TO SHOW THAT THE TRAINING RESULTED IN A CONSTITUTIONAL
18 VIOLATION AND SHOW THAT THERE WAS DELIBERATE INDIFFERENCE ON
19 THE PART OF THE COUNTY IN ITS TRAINING OR FAILURE TO TRAIN.

20 WHICH THIS WITNESS OFFERS NO OPINION REGARDING THAT IN
21 THE DEPOSITION THAT I TOOK OF HER. AND SO IT WOULD BE AN
22 ADDITIONAL OPINION, AND IT'S NOT BASED ON ANY FOUNDATION.

23 THE COURT: INCIDENTALLY, IF YOU CAN KEEP YOUR TRAIN
24 OF THOUGHT, BECAUSE I JUST WANTED TO INTERJECT SOMETHING,
25 BUT I DON'T WANT TO HAVE YOU GET LOST IN YOUR TRAIN OF
26 THOUGHT EITHER. I KNOW I'M EASILY DISTRACTED. SO I DON'T
27 WANT TO DISTRACT YOU.

28 WHAT I WAS GOING TO SAY WAS, AS I POINTED OUT, I MADE

1 THE RULING. I DID SAY I'M GOING TO TAKE A LOOK AT IT
2 FURTHER AFTER LISTENING TO WHAT EVERYBODY HAS TO SAY, BUT
3 I'M GOING TO DO THAT ON MY OWN.

4 IF I BELIEVE THAT MY RULING IS INCORRECT, I'M
5 PERFECTLY WILLING TO CORRECT MY RULING; BUT I WOULD ONLY DO
6 SO AFTER NOTICE TO THE PARTIES OF THE INTENTION TO DO SO, OR
7 AT LEAST TO RECONSIDER ON MY OWN. AND BY DOING THAT, AMONG
8 OTHER THINGS, IT MEANS THAT YOU WOULD HAVE NOTICE OF THAT I
9 AM AT LEAST RECONSIDERING.

10 IT DOESN'T MEAN THERE WOULD BE A DIFFERENT RULING. IT
11 JUST MEANS THAT BY RECONSIDERING, IT MEANS THAT I'M GOING TO
12 CONSIDER IT FURTHER. AND YOU WOULD HAVE AN OPPORTUNITY AT
13 THAT TIME TO BE HEARD ON IT. AT LEAST I THINK YOU SHOULD
14 HAVE AN OPPORTUNITY, AND I WILL GIVE YOU THAT OPPORTUNITY.

15 MS. SWISS: UNDERSTOOD.

16 THE COURT: AND THE OTHER THINGS THAT YOU SAID, I
17 THINK I CAN JUST WAIT TILL I TAKE A LOOK AT IT AND DECIDE
18 EVEN IF I'M GOING TO LOOK -- WHEN I LOOK AT IT MYSELF,
19 THAT'S FOR THE PURPOSE OF TRYING TO DECIDE, SHOULD I GIVE
20 YOU NOTICE THAT I'M ON MY OWN GOING TO RECONSIDER.

21 AS I SAID, IF I DO, THEN YOU'LL HAVE AN OPPORTUNITY TO
22 BE HEARD. AND I WOULD PROBABLY GIVE YOU MORE INFORMATION AT
23 THAT TIME OF WHAT I'VE LOOKED AT THAT HAS CAUSED ME TO AT
24 LEAST RECONSIDER. SO YOU'LL GET TO MAKE THE ARGUMENT.

25 MS. SWISS: THANK YOU, YOUR HONOR.

26 MOVING ON TO MOTION IN LIMINE 16. THAT'S REGARDING
27 THE PRIOR PLAINTIFFS. THE COUNTY AGREES WITH THE COURT'S
28 RULING TO PRECLUDE ALL OF THOSE PLAINTIFFS FROM TESTIFYING.

1 BUT THE COUNTY DOES DISAGREE WITH THE COURT'S RULING ON THE
2 DEFENDANTS' MOTION IN LIMINE 6. THAT IS REGARDING THE
3 ATTORNEYS TESTIFYING.

4 THE COURT: RIGHT.

5 MS. SWISS: THE ARGUMENT BEING THAT WE'RE GOING DOWN
6 THE SAME SLIPPERY SLOPE WHERE THAT THE PLAINTIFFS WOULD BE
7 TESTIFYING. THE ATTORNEYS SAYING ON THE STAND THAT, "YES, I
8 HAVE SUED THE COUNTY OF LOS ANGELES, AND I HAVE MADE THESE
9 ALLEGATIONS ON BEHALF OF CLIENTS," IS NOT APPROPRIATE
10 EVIDENCE FOR THIS MONELL CASE. IT'S NOT HELPING THE JURY TO
11 DECIDE ANYTHING OTHER THAN THE OTHER PLAINTIFFS HAVE SUED
12 THE COUNTY.

13 AND NONE OF THE ATTORNEYS THAT ARE PLANNING TO TESTIFY
14 HAVE EVER SUED THE COUNTY ON A CASE SIMILAR TO THIS. THERE
15 HAVE BEEN NO FAILURE-TO-THRIVE CASES THAT ARE IN THE
16 REPERTOIRE OF THESE ATTORNEYS.

17 AND IT IS CREATING A SLIPPERY SLOPE AND A PRECEDENT
18 FOR OTHER CASES, WHERE IT WILL INVITE ATTORNEYS TO FILE
19 LAWSUITS AND THEN TESTIFY IN EACH OTHER'S TRIAL SAYING, "WE
20 BROUGHT ALL OF THESE LAWSUITS AGAINST THE COUNTY OF LOS
21 ANGELES. LOOK AT HOW TERRIBLE THEY ARE," WHETHER OR NOT
22 THEY HAVE MERIT.

23 AND REGARDLESS, THERE'S NO JUDGMENTS. THERE HAVE BEEN
24 NO JURY TRIALS IN ANY OF THESE CASES. AND NONE OF THESE
25 ATTORNEYS CAN TESTIFY THAT THEY'VE WON MOTIONS IN THEIR
26 FAVOR OR HAD JUDGMENTS IN THEIR FAVOR ON ANY OF THESE CASES.
27 SO THERE'S NO ADJUDICATION ON THE MERITS OF ANY OF THESE
28 CASES.

1 AND IT'S ONLY GOING TO POTENTIALLY LENGTHEN THE TRIAL,
2 BECAUSE THE COUNTY WILL BE BRINGING A REBUTTAL CASE. AND
3 THERE ARE PLENTY OF ATTORNEYS THAT DO WHAT MR. GUTERRES AND
4 MS. NAU AND I DO TO DEFEND THE COUNTY.

5 THE COURT: YEAH. SO ON THAT MOTION, THE MOTION WAS
6 TO EXCLUDE THEM. IN OTHER WORDS, NOT TO LET THEM TESTIFY AT
7 ALL. AND SO MY DECISION IS NOT TO EXCLUDE THEM, BUT I DID
8 NOT STATE WHAT THEY CAN TESTIFY TO.

9 AND I DELIBERATELY STOPPED WHEN I WAS MAKING THE
10 COMMENT AT THE TIME THAT I FELT, IN READING THEIR
11 DEPOSITIONS, THAT THERE WERE CERTAIN THINGS THAT I BELIEVE
12 COULD BE TESTIFIED TO THAT WOULDN'T SEND US DOWN A
13 SLIPPERY -- THAT WOULD BE ON A SUBJECT THAT IS RELEVANT IN
14 THE CASE AND PROBATIVE OF THAT SUBJECT WITHOUT GETTING ON
15 THE SLIPPERY SLOPE, WHERE I DON'T INTEND TO GO, OF GETTING
16 INTO A TRIAL ON THE MERITS OF OTHER CASES.

17 AND SO THAT'S WHY, WHEN I'M ASKED TO EXCLUDE -- AND
18 THIS IS DESPITE WHATEVER ARGUMENTS WERE MADE IN THE MOTION
19 AS TO WHY THEY SHOULD BE EXCLUDED, OR ANY OPPOSITION. ONCE
20 I HAVE A MOTION TO EXCLUDE, I THINK THAT I'M ENTITLED, IF I
21 SEE SOMETHING THAT HASN'T BEEN ARGUED BUT IS IN THE
22 TESTIMONY, THAT I SHOULD NOT GRANT A MOTION TO EXCLUDE.

23 SO I DON'T WANT TO GO BEYOND THAT, BECAUSE I DON'T
24 THINK THAT YOU WOULD WANT ME, CERTAINLY AT THIS TIME, TO
25 TALK ABOUT WHAT I SAW THAT I THINK COULD BE EVIDENCE IN THE
26 CASE, BECAUSE THEN I'M GIVING SOME FORM OF ADVICE TO THE
27 OTHER SIDE. AND YOU WOULDN'T WANT ME TO DO THAT. AND I
28 SHOULDN'T DO THAT. AND SO IT WAS MY INTENTION TO NOT DO

1 THAT.

2 AND, BUT WHEN YOU MOVE TO EXCLUDE, WHAT YOU'RE TELLING
3 ME IS THERE'S NOTHING THESE PERSONS CAN SAY -- IN THIS CASE,
4 HAVE SAID, BECAUSE I DON'T KNOW WHAT ALL THEY COULD SAY, BUT
5 I KNOW WHAT THEY HAVE SAID IN THEIR DEPOSITIONS -- THAT
6 COULD BE RECEIVED IN EVIDENCE. AND I SAW CERTAIN THINGS
7 THAT I THOUGHT POTENTIALLY COULD BE.

8 SO I'M JUST NOT GOING TO -- I UNDERSTAND -- AND I DO
9 UNDERSTAND YOUR CONCERN. AND I'VE LOOKED AT THIS ISSUE FOR
10 SOME LENGTH AND -- WHICH DOESN'T, AGAIN, MEAN THAT MY RULING
11 IS CORRECT.

12 I TELL YOU THAT ONLY IN THE SENSE THAT I THOUGHT ABOUT
13 WHAT YOU'RE SAYING AND LOOKED AT IT FROM THAT POINT OF VIEW;
14 AND LOOKED AT THE TESTIMONY AND MADE THE DECISION THAT I
15 THINK THERE ARE THINGS THESE ATTORNEYS COULD SAY, AND,
16 THEREFORE, SHOULD NOT BE EXCLUDED ENTIRELY. DOESN'T MEAN
17 EVERYTHING THEY MIGHT WANT TO SAY OR THE PLAINTIFF MAY WANT
18 TO ELICIT FROM THEM WILL COME INTO EVIDENCE, BUT I DID SEE
19 SOME THINGS THAT I THOUGHT POTENTIALLY COULD BE RECEIVED IN
20 EVIDENCE.

21 MS. SWISS: UNDERSTOOD, YOUR HONOR. AND IF THAT IS
22 THE CASE, AND DEPENDING ON WHAT THAT TESTIMONY MAY BE, WE
23 WOULD ASK THE COURT AGAIN TO RECONSIDER THE ISSUE OF
24 BIFURCATION OF THE MONELL ISSUES TO NOT PREJUDICE THE
25 INDIVIDUAL DEFENDANTS WHO ARE BEING SUED, AND NONE OF WHICH
26 HAVE BEEN SUED, BY THESE PARTICULAR ATTORNEYS WHO ARE
27 PLANNING ON TESTIFYING IN THIS TRIAL.

28 THE COURT: WELL, I'VE ALREADY -- I MADE THE RULING

1 AGAINST BIFURCATION. AT THIS POINT, THE ONLY ONE THAT COULD
2 ASK ME TO DO THAT WOULD BE ME. IT'S TOO LATE FOR THE
3 PARTIES. AND I CERTAINLY, AT THIS TIME, HAVE NO INTENTION
4 OF RECONSIDERING THAT DECISION. SO I REALLY AM NOT GOING
5 TO.

6 MS. SWISS: UNDERSTOOD.

7 THE COURT: YEAH.

8 MS. SWISS: MY FINAL REQUEST, YOUR HONOR, IS THAT THE
9 MOTION IN LIMINE -- DEFENDANTS' MOTION IN LIMINE 19, TO
10 PRECLUDE THE TESTIMONY OF UNDISCLOSED WITNESSES -- I DON'T
11 BELIEVE WE HAVE A FINAL RULING.

12 I KNOW THE TENTATIVE WAS -- FROM THE LAST HEARING, WAS
13 TO DENY THAT MOTION, BECAUSE THE MOTION IS NOT SPECIFIC
14 ABOUT WHAT WITNESSES SHOULD BE EXCLUDED. WE PROVIDED A
15 SUPPLEMENTAL BRIEF TO THE COURT, AND I WOULD REQUEST THAT
16 THE COURT TAKE A LOOK AT THAT SO WE HAVE A FINAL RULING.

17 THE COURT: OKAY.

18 I'M JUST LOOKING BACK. ON JULY 11TH I DID DENY MOTION
19 NO. 19.

20 MS. SWISS: OKAY. AND THAT WAS THE FINAL RULING?

21 THE COURT: YEAH.

22 MS. SWISS: OKAY.

23 THE COURT: AND THE REASON FOR THAT IS -- IT MAY BE
24 THAT THE DISCUSSION WE HAD AT THE TIME COULD HAVE CAUSED
25 SOME UNCERTAINTY AS TO WHETHER THERE WAS A RULING ON THAT
26 MOTION OR NOT.

27 BECAUSE ON THAT TYPE OF MOTION, TO EXCLUDE SOMETHING
28 THAT HASN'T BEEN DISCLOSED IN DISCOVERY, WHETHER IT BE

1 IDENTITY OF A WITNESS OR A PIECE OF EVIDENCE THAT SHOULD
2 HAVE BEEN DISCLOSED, ALMOST INVARIABLY, I DENY THE MOTION ON
3 THE GROUND THAT IF I MAKE THE ORDER YES, THAT I'M NOT GOING
4 TO LET ANYONE TESTIFY WHO WASN'T DISCLOSED IN DISCOVERY.
5 BUT IF THE OTHER SIDE CALLS SUCH A WITNESS, WE THEN HAVE TO
6 MAKE THE SAME KIND OF INQUIRY TO FIND OUT WHETHER THE
7 MOTION'S GOING TO APPLY TO THAT PERSON.

8 SO THE REASON I DENY THAT KIND OF MOTION OVER
9 DISCOVERY, TO EXCLUDE ANYTHING THAT WASN'T DISCLOSED IN
10 DISCOVERY, IS THAT I CAN'T MAKE A MEANINGFUL ORDER. MEANING
11 THAT EACH TIME I SAY, "YEAH, WE'RE NOT GOING TO LET YOU DO
12 THAT," THEN WHEN WE GET TO IT, WE HAVE TO MAKE THE DECISION,
13 IS THIS SOMETHING THAT SHOULD BE EXCLUDED OR NOT.

14 SO THE WAY I ALWAYS APPROACH THAT IS IF THEY CALL A
15 WITNESS THAT HAS NOT BEEN DISCLOSED IN DISCOVERY, THEN THE
16 TIME TO OBJECT TO IT IS AT THAT TIME, BECAUSE THEN WE KNOW
17 WHO IT IS, AND THAT YOU'RE SEEKING TO HAVE EXCLUDED.

18 AND THEN WHEN YOU MAKE THAT OBJECTION, OR YOU MAKE
19 THAT MOTION TO EXCLUDE, OR OBJECTION TO THEM BEING CALLED,
20 THEN YOU NEED TO GIVE ME THE DISCOVERY THAT CALLED FOR THE
21 DISCLOSURE OF THAT PERSON. ONCE I'M SHOWN THAT DISCOVERY
22 WHICH I BELIEVE REASONABLY WOULD HAVE CALLED FOR THE
23 DISCLOSURE, THEN IF THE BURDEN SHIFTS TO THE OTHER SIDE, TO
24 SHOW ME A REASON WHY THEY SHOULD BE PERMITTED TO TESTIFY.

25 AND THERE ARE SOME REASONS WHY SOMEONE NOT DISCLOSED
26 IN DISCOVERY AS A WITNESS NEVERTHELESS WOULD BE PERMITTED TO
27 TESTIFY. A COMMON REASON, OR AT LEAST A SIMPLE REASON,
28 WOULD BE THAT THE IDENTITY OF THAT PERSON WAS NOT DISCOVERED

1 UNTIL SOMETIME AFTER THE DISCOVERY RESPONSES.
2 THE PERSON RESPONDING TO DISCOVERY, AS YOU KNOW, DOES NOT
3 HAVE AN OBLIGATION, SPONTANEOUSLY AND ON THEIR OWN, TO
4 UPDATE ANSWERS TO DISCOVERY. WHICH IS WHY VERY OFTEN IT'S
5 PRETTY COMMON AS YOU GET DOWN CLOSE TO TRIAL THAT THERE WILL
6 BE SOME ADDITIONAL DISCOVERY PROPOUNDED ASKING IF THERE'S
7 ANY CHANGE IN ANYTHING.

8 SO I DO THAT WITH WITNESSES. I WOULD DO IT, FOR
9 EXAMPLE, IF THERE WAS SOME EVIDENCE OF -- OTHER THAN
10 EVIDENTIARY, IF THERE'S A DOCUMENT THAT WAS ATTEMPTED TO BE
11 OFFERED INTO EVIDENCE, AND IT WAS NEVER DISCLOSED IN
12 DISCOVERY. I'D HAVE YOU MAKE THE SAME KIND OF MOTION TO
13 EXCLUDE IT ON THE GROUND THAT IT SHOULD HAVE BEEN DISCLOSED
14 IN DISCOVERY THAT WAS PROPOUNDED AND IT WAS NOT.

15 AND, AGAIN, I WOULD HAVE YOU MAKE THE SAME SHOWING.
16 SHOW ME THE DISCOVERY. SHOW ME THAT IT WASN'T IDENTIFIED IN
17 ANY WAY. THEN I'LL TURN TO THE OTHER SIDE AND SAY, "OKAY.
18 IT WASN'T DISCLOSED THEN. AND SO WHY SHOULD I LET YOU USE
19 IT?"

20 MS. SWISS: I UNDERSTAND.

21 THE COURT: AND THEN THEY GIVE ME THEIR REASONS.

22 AND SOMETIMES IT'S A LITTLE -- I THINK A COMMON REASON
23 THAT IF THAT OCCURS AT ALL -- IT DOESN'T HAPPEN
24 FREQUENTLY -- IS WHAT I SAID, THAT IF SOMETHING WAS LEARNED
25 AFTER THEY PROPOUNDED THE DISCOVERY. BUT IT'S SIMILAR TO
26 KENNEMUR MOTIONS, TO EXCLUDE OPINIONS THAT WEREN'T GIVEN IN
27 THE DEPOSITION.

28 SOMETIMES SOMEONE DOES FIND SOMETHING AFTERWARDS, AND

1 WHILE THEY DON'T AMEND THEIR DISCOVERY RESPONSE, OR THEY
2 DON'T HAVE THEM CORRECT THEIR DEPOSITION OR SOMETHING; BUT
3 SOMETIMES THEY JUST -- COUNSEL SENT A LETTER. THIS HAPPENS
4 MORE OFTEN WITH EXPERTS THAN IT DOES, I THINK, WITH
5 WITNESSES.

6 BUT SOMETIMES THEY WILL SEND A LETTER SAYING, "I KNOW
7 YOU TOOK OUR EXPERT'S DEPOSITION ON SUCH-AND-SUCH A DATE,
8 BUT WE DO HAVE ADDITIONAL OPINIONS. AND I'M ADVISING YOU OF
9 THE ADDITIONAL OPINIONS, AND WE'RE MAKING THE WITNESS
10 AVAILABLE FOR FURTHER DEPOSITION FOR YOU." SOMETHING LIKE
11 THAT.

12 SO, ANYWAY, SUBSEQUENTLY DISCOVERED MATTERS IS OFTEN A
13 REASON WHY IT WASN'T DISCLOSED EARLIER. AND THE WAY TO
14 ADDRESS IT ISN'T THROUGH A GENERAL MOTION JUST SAYING,
15 "YEAH, WE'RE NOT GOING TO PERMIT THAT," BECAUSE WE MIGHT
16 PERMIT IT, TO BEGIN WITH, IS "MAYBE, IF SOMEONE OR SOMETHING
17 WAS DISCOVERED LATER."

18 SO THAT'S THE REASON ON 19, BUT I DID HAVE A RULING.

19 MS. SWISS: UNDERSTOOD.

20 THE COURT: BUT I UNDERSTAND IF -- I BELIEVE I HAD
21 THIS DISCUSSION WITH YOU AT THE TIME, ABOUT HOW TO HANDLE
22 THINGS WITH DISCOVERY MOTIONS. I BELIEVE THAT ONLY BECAUSE
23 IT'S MY CUSTOM AND PRACTICE TO DO IT. IT DOESN'T MEAN I DID
24 IT IN THIS CASE. BUT IF WE DID, THEN THAT DISCUSSION MIGHT
25 HAVE CAUSED YOU TO WONDER WHETHER OR NOT THERE'D BEEN A
26 RULING.

27 BUT THAT'S --

28 MS. SWISS: UNDERSTOOD.

1 THE COURT: -- MY RULING.

2 MS. SWISS: I THINK THAT'S ALL ON THE MOTIONS. THANK
3 YOU.

4 THE COURT: OKAY. THANKS.

5 DURING THE TIME WHILE YOU WERE TAKING A LOOK AT THE
6 RULINGS I GAVE YOU, I DID LOOK BACK. AND AS I WAS DOING IT,
7 I RECEIVED ANOTHER BUNDLE OF DOCUMENTS FROM YOUR OFFICE,
8 MR. MCMILLAN, AS TO A NUMBER OF MORE WITNESSES. AND I
9 DIDN'T COMMIT ALL OF THEIR NAMES TO MEMORY, BUT IT APPEARS
10 THAT THERE ISN'T ANYTHING NEW OR DIFFERENT.

11 I THINK IT WAS JUST, AS YOU DESCRIBED, A UPDATED, IN
12 LIGHT OF THE RULINGS THAT WERE MADE, IN LOOKING AT IT. SO I
13 DON'T THINK THERE'S ANYTHING TO BE DONE ABOUT THAT.

14 MR. MCMILLAN: EXCELLENT.

15 THE COURT: SO I'LL BE HAPPY TO HEAR OTHER THINGS YOU
16 WANT TO ACCOMPLISH. AND I'LL TELL YOU A COUPLE THINGS. LET
17 ME TELL YOU ABOUT HOW WE'LL BE PROCEEDING ON THE 12TH.

18 ON FRIDAY OF THAT WEEK OF SEPTEMBER 12TH, THE 16TH, WE
19 WILL NOT HAVE THE JURY IN. AND THE REASON FOR THAT IS I
20 HAVE A NUMBER OF MATTERS THAT WERE SET ON THAT DAY THAT ARE
21 REALLY OF SOMEWHAT URGENT NATURE. AND THEY WERE SET
22 ORIGINALLY WHEN WE WERE GOING TO BE GOING TO TRIAL ON
23 AUGUST 8TH, OR WHATEVER IT WAS.

24 AND I REALLY CAN'T CHANGE IT, BECAUSE ONE OF THE
25 MATTERS HAS TO DO WITH A NATIONWIDE MDL LITIGATION WHERE AS
26 TO THE CALIFORNIA CASES THAT WERE PART OF THAT MDL
27 LITIGATION, WHICH I WAS RESPONSIBLE FOR SETTling, THERE'S
28 CERTAIN DECISIONS THAT HAVE TO BE MADE ABOUT THOSE CASES

1 BEFORE SIMILAR ISSUES ARE RAISED IN OTHER COURTS NATIONWIDE.

2 EVERYONE NATIONWIDE NEEDS TO HAVE ME RULE FIRST ON
3 CERTAIN ISSUES ARISING OUT OF THE SETTLEMENT. AND SO I
4 DON'T WANT TO GO BEYOND THAT. THAT'S SET FOR THAT DAY, FOR
5 HEARING, AMONG OTHER THINGS; AND I'LL HAVE OTHER MATTERS SET
6 THAT DAY. SO I JUST THINK THE BETTER THING WILL BE THAT WE
7 WON'T HAVE THE JURY IN ON THAT FRIDAY.

8 I WILL LET YOU KNOW BEFORE THEN WHETHER OR NOT I MAY
9 HAVE YOU ALL COME IN, BECAUSE I RECEIVED AND I HAVE NOT YET
10 HAD THE TIME TO GO THROUGH AND SORT OUT ALL OF THE JURY
11 INSTRUCTIONS THAT HAVE BEEN REQUESTED. AND I THINK, JUST IN
12 SEEING THE NUMBER OF REQUESTS I'VE HAD, INCLUDING A NUMBER
13 OF SPECIFIC INSTRUCTIONS, THAT THE SOONER THESE GET
14 ADDRESSED, THE BETTER OFF WE'LL BE.

15 SO I MAY VERY WELL HAVE YOU ALL COME IN ON THAT DAY,
16 BUT I WANTED TO LET YOU KNOW THERE WON'T BE WITNESSES OR
17 ANYTHING GOING ON BEFORE THE JURY. I WILL TRY TO GET TO
18 THOSE ON MY OWN BEFORE THEN. AND IF I'M ABLE, I'LL HAVE THE
19 CLERK LET YOU KNOW WHETHER OR NOT I'M GOING TO HAVE YOU COME
20 IN ON THAT DAY. ALTHOUGH, ONE THING YOU'LL KNOW, NO
21 WITNESSES, NO JURY THAT DAY. IF I DO HAVE YOU COME IN, IT
22 WILL JUST BE OVER ISSUES WITH THE INSTRUCTIONS AND VERDICT
23 FORMS.

24 OKAY?

25 MR. GUTERRES: YOUR HONOR, ON THE 12TH, WE CAN BE
26 CONSIDERED ENGAGED?

27 THE COURT: YES.

28 MR. GUTERRES: SO THAT I CAN LET MY OTHER CASES KNOW

1 THAT I'M ENGAGED?

2 THE COURT: YEAH.

3 MR. GUTERRES: THANK YOU, YOUR HONOR.

4 THE COURT: WE WILL BE ENGAGED.

5 OKAY. AND THAT DOES GET ME TO -- I THINK JUST BEFORE
6 YOU GOT HERE THIS MORNING, MR. GUTERRES, I'D MENTIONED I'VE
7 LOOKED AT THE PROPOSED JURY QUESTIONNAIRE. AND MUCH LONGER
8 THAN I INTEND. INCLUDES A NUMBER OF QUESTIONS WHICH I'M NOT
9 GOING TO PERMIT.

10 SO WHAT I PROPOSE THAT WE DO AT THIS POINT IS THAT WE
11 CAN GO OFF THE RECORD. I DON'T THINK IT REALLY NEEDS TO BE
12 DONE ON THE RECORD -- AT LEAST ALL THE DISCUSSION WE MIGHT
13 HAVE. AND WHAT I WILL DO IS GIVE YOU THE NUMBERS OF
14 QUESTIONS THAT ARE IN HERE, THAT NO MATTER WHAT THIS ENDS UP
15 BEING, THESE QUESTIONS AREN'T GOING TO BE IN IT. AND THEN
16 I'LL GIVE YOU NUMBERS OF QUESTIONS THAT I THINK IF YOU WANT
17 THEM IN, FINE. A COUPLE OF THEM I THINK COULD BE MODIFIED,
18 TO MAKE THEM A LITTLE SIMPLER.

19 I'LL JUST SAY THIS, THAT THIS WAS MORE EXTENSIVE THAN
20 I INTEND. AND ONE OF THE REASONS IS THAT THERE'S 49
21 QUESTIONS. I DON'T WANT TO HAVE JURORS DOWN HERE ALL DAY
22 FILLING OUT A JUROR QUESTIONNAIRE. AND I THINK THE
23 QUESTIONS YOU HAD IN HERE WERE VERY THOUGHTFUL, AND I
24 THINK IT CERTAINLY WOULD ACQUIRE A GREAT DEAL OF
25 INFORMATION. BUT I DON'T -- IT'S NOT WHAT WE'RE GOING TO DO
26 IN THIS CASE.

27 UNLESS THERE'S SOMETHING ELSE THAT YOU WANT TO HAVE
28 ADDRESSED ON THE RECORD AT THIS TIME -- MR. PRAGER?

1 MR. PRAGER: YES, YOUR HONOR.

2 THANK YOU, YOUR HONOR. ONE ISSUE REGARDING THE DEPO
3 RULINGS, AND I'LL DO IT VERY SUCCINCTLY. THERE'S ONE
4 GROUPING I'D LIKE TO ASK THE COURT TO CONSIDER, IF I MAY.

5 IN THE DEPOSITION RULING REGARDING LYNNE BOWLES CONDON
6 INDIVIDUALLY, THE SECTIONS 38 THROUGH 44, AND NO. 48. AND
7 HERE'S OUR DIFFICULTY WITH THE RULINGS AS THEY'VE BEEN
8 GIVEN.

9 THE COURT: OKAY. WHICH DEPOSITION IS THIS?

10 MR. PRAGER: LYNNE CONDON INDIVIDUALLY.

11 THE COURT: INDIVIDUALLY?

12 MR. PRAGER: YES.

13 THE COURT: OKAY.

14 MR. PRAGER: THIS IS THE RULING YOU GAVE US THIS
15 MORNING, YOUR HONOR.

16 THE COURT: YES.

17 MR. PRAGER: OKAY?

18 AND WE'RE TALKING ABOUT WITH THE OBJECTIONS THAT ARE
19 SUSTAINED AND OVERRULED, 38 THROUGH 44, AND 48.

20 AND THE PROBLEM WE HAVE WITH THE RULINGS, YOUR HONOR,
21 IS THERE'S A HOLE IN THE PLAINTIFF'S CASE WITH THE RULINGS
22 BETWEEN THE MIL NO. 11 AND THE RULINGS AT THIS PART OF
23 MS. CONDON'S DEPOSITION. AND THE HOLE IS THAT MS. DUVAL WAS
24 GIVEN A LETTER SAYING THAT SHE WAS THE VICTIM OF
25 DISCRIMINATION AND SHE HAD THE RIGHT TO APPEAL. AND SHE DID
26 NOT APPEAL BECAUSE SHE WAS TOLD THERE WAS A POSITIVE FINDING
27 OF DISCRIMINATION.

28 IN LITIGATION WE LEARNED THAT THE COUNTY HAD ATTEMPTED

1 TO WRITE THREE DIFFERENT REPORTS AND GIVE THEM TO THE STATE
2 AND TAKE BACK THOSE FINDINGS. THE STATE'S TESTIFIED THAT
3 THEY'RE SATISFIED; THE FIRST REPORT IS IT, AND THEIR
4 INVESTIGATION IS CLOSED. AND THE COUNTY IS SAYING THAT
5 THOSE FINDINGS ARE NOT CLOSED, BECAUSE THEY HAVE DONE THREE
6 ADDITIONAL REPORTS.

7 THE DIFFICULTY IS THAT THE COUNTY NEVER SENT THE
8 PLAINTIFF A LEGALLY REQUIRED LETTER TELLING HER THERE'S BEEN
9 A CHANGE IN THE FINDING, WHICH GIVES HER THE RIGHT TO
10 APPEAL. WITHOUT THAT LETTER, SHE CAN'T APPEAL. AND THE
11 COUNTY DID NOT SEND THAT LETTER TO HER.

12 THE COURT: YEAH. ISN'T YOUR CLIENT GOING TO TESTIFY
13 TO THAT? SHE NEVER GOT A LETTER?

14 MR. PRAGER: SHE CAN. BUT THE DIFFICULTY WE HAVE IS
15 THAT WE DON'T KNOW WHAT EVIDENCE WILL BE ADMITTED, AND THAT
16 SHE WILL BE PREVENTED FROM SAYING THAT. SHE ALSO MUST
17 TESTIFY THAT SHE COULD ONLY HAVE LEARNED OF THOSE ADDITIONAL
18 LETTERS THROUGH DEPOSITIONS THAT OCCURRED IN THIS CASE.

19 THE COURT: WELL, I DON'T THINK IT MAKES ANY
20 DIFFERENCE WHEN SHE LEARNED OF THEM. YOUR POINT IS -- AND I
21 UNDERSTAND THE POINT -- THAT SHE WASN'T GIVEN NOTICE THERE
22 WAS ANYTHING TO APPEAL.

23 MR. PRAGER: CORRECT.

24 THE COURT: RIGHT?

25 SHE'S GOING TO TESTIFY SHE NEVER GOT -- SHE GOT AN
26 ORIGINAL LETTER, I THINK, DIDN'T SHE?

27 MR. PRAGER: SHE GOT THE ORIGINAL LETTER SAYING --

28 THE COURT: YEAH. AND THEN SHE NEVER GOT ANOTHER

1 LETTER AFTER THAT, PERIOD.

2 MR. PRAGER: RIGHT. AND THE HARD PART FOR US IS THAT
3 48 SPECIFICALLY SAYS THAT IT'S ABOUT WHETHER OR NOT THE
4 PLAINTIFF HAS THE RIGHT TO APPEAL TO THE STATE OR TO THE
5 FEDERAL GOVERNMENT TO MAKE A REDETERMINATION OR CONFIRM THE
6 FINDINGS OF THE COUNTY.

7 SO THE PROBLEM IS I GET MS. DUVAL ON THE STAND, OR
8 MR. MCMILLAN DOES; SHE TESTIFIES TO ALL OF THIS; AND NOW WE
9 WANT TO TALK ABOUT THE FACT THAT SHE NEVER APPEALED ANY
10 FURTHER BECAUSE SHE HAS NO LETTER TO DO SO.

11 THE DEFENSE IS GOING TO OBJECT AND SAY IT CALLS FOR A
12 LEGAL CONCLUSION. AND NOW SHE'S A LAY WITNESS TALKING ABOUT
13 WHAT HER APPELLATE RIGHTS ARE, BASED ON ONE LETTER SHE GOT,
14 VERSUS THE DIRECTOR OF THE CIVIL RIGHTS UNION --

15 THE COURT: ALL RIGHT. BUT JUST TELL ME THE ONES.
16 YOU'RE ASKING ME ABOUT 38 THROUGH 44?

17 MR. PRAGER: AND 48.

18 THE COURT: AND 48. WELL, THE RULING IS THE RULING,
19 BUT I WILL TAKE A LOOK AT IT.

20 MR. PRAGER: ALL RIGHT.

21 THE COURT: AND I UNDERSTAND YOUR POINT. AND I DON'T
22 REMEMBER WORD FOR WORD WHAT WAS SAID. I JUST CERTAINLY DO
23 REMEMBER THE SUBJECT MATTER OF THOSE PASSAGES. AND I
24 OBVIOUSLY HAD A REASON AS TO WHY I WAS SUSTAINING AN
25 OBJECTION.

26 MR. PRAGER: I CAN TELL YOU WHY. BECAUSE THERE WERE
27 ATTORNEY-CLIENT PRIVILEGE OBJECTIONS, BECAUSE THE ALLEGATION
28 IS THE WITNESS TESTIFIED, ADVICE OF COUNSEL, SHE DID NOT

1 SEND THE LETTER.

2 THE COURT: THAT'S RIGHT.

3 MR. PRAGER: SO WE UNDERSTAND WHY YOU RULED THE WAY
4 YOU DID. THE PROBLEM WE HAVE IS THE COUNTY'S GOING LIKE
5 THIS, AND THE STATE'S GOING LIKE THIS.

6 THE STATE'S SAYING, "THE FINDING IS COMPLETE. IT'S
7 BEEN REPORTED TO THE FEDERAL GOVERNMENT AS COMPLETE AND
8 SATISFIED. THE INVESTIGATION IS OVER."

9 AND THE COUNTY'S SAYING, "NO, THE INVESTIGATION IS NOT
10 OVER. WE HAVE SENT THREE MORE LETTERS TO THE STATE."

11 BUT THE COUNTY NEVER SENT ANY LETTERS TO THE PLAINTIFF --

12 THE COURT: YEAH, I UNDERSTAND THAT. AND IT DOESN'T
13 LEAVE A HOLE IN YOUR CASE. YOU'VE GOT A CLIENT WHO'S GOING
14 TO SAY, "I NEVER GOT ANYTHING. I GOT JUST ONE LETTER. I
15 NEVER GOT ANYTHING ELSE."

16 MR. PRAGER: THANK YOU. AND I JUST --

17 THE COURT: SO IT DOESN'T LEAVE A HOLE IN YOUR CASE.
18 YOU MAY WANT MS. CONDON TO BE TESTIFYING ABOUT SOMETHING SHE
19 WAS TOLD BY ONE OF THE COUNTY ATTORNEYS, WHAT TO DO, BUT I
20 THINK SHE DID SAY THAT SHE NEVER SENT A LETTER. AND I DON'T
21 BELIEVE THAT THAT WAS EXCLUDED.

22 MR. PRAGER: I THINK IT WAS.

23 THE COURT: WAS IT? OKAY. WELL, I'LL TAKE A LOOK AT
24 THAT.

25 MR. PRAGER: AND JUST ONE LAST THING TO LEAVE WITH
26 YOU, IF I COULD?

27 THE COURT: SURE.

28 MR. PRAGER: IN CRIMINAL PARLANCE -- AND THIS IS NOT A

1 CRIMINAL CASE, CLEARLY.

2 THE COURT: RIGHT.

3 MR. PRAGER: -- WE TALK ABOUT A LAWYER WHO HAS A
4 MURDER SUSPECT AS A CLIENT. THE CLIENT CALLS THE LAWYER AND
5 SAYS, "I BURIED THE GUN BEHIND A TREE." AND THE LAWYER GOES
6 OUT AND LOOKS BEHIND THE TREE AND SEES THE GUN AND DOESN'T
7 DISTURB THE EVIDENCE.

8 THE ILLUSTRATION IN LAW SCHOOL IS THE LAWYER, WHO
9 PICKS UP THE GUN AND TAKES IT BACK TO HIS OFFICE AND STICKS
10 IT IN HIS DESK DRAWER, CAN BE SUBPOENAED TO TESTIFY AND
11 PRODUCE THE GUN IF HE HAS THE GUN, OR SHE HAS THE GUN.

12 HERE, CONDON SAYS SHE WANTS TO SEND THE LETTER, BUT
13 THE COUNTY SAID SHE CANNOT SEND THE LETTER. WHICH IS VERY
14 DIFFERENT THAN SAYING, "I TALKED TO MY LAWYER," AND WHATEVER
15 ELSE THEY DISCUSSED. THIS IS AKIN, IN OUR VIEW, TO THE
16 LAWYER TELLING CONDON TO GO GET THE GUN, PUT IT IN HER DESK
17 DRAWER, AND DON'T TELL ANYBODY ABOUT IT.

18 THANK YOU.

19 THE COURT: YEAH, FOR THE MOMENT, I'M MISSING A LITTLE
20 BIT OF THE SIMILARITY BETWEEN THE GUN AND THIS LETTER, BUT I
21 WILL TAKE A LOOK AT 38 TO 44, AND 48.

22 MR. PRAGER: THANK YOU.

23 THE COURT: ANYTHING ELSE?

24 MS. NAU: YOUR HONOR, I WOULD JUST STATE I HAVEN'T HAD
25 A CHANCE TO REVIEW ALL OF THOSE SECTIONS, BUT WITH REGARD TO
26 NO. 48, WHICH PLAINTIFF'S COUNSEL IS FOCUSED ON, THE
27 QUESTION AND ANSWER THERE ASKS MS. CONDON WHETHER OR NOT
28 MS. DUVAL WAS DENIED AN OPPORTUNITY TO FILE AN APPEAL WITH

1 CDSS. AND PLAINTIFF'S OBJECTION WAS ON THE GROUNDS THAT
2 THAT CALLS FOR A LEGAL CONCLUSION.

3 AND MS. CONDON IS NOT AN ATTORNEY. AND ASKING WHETHER
4 OR NOT MS. DUVAL --

5 THE COURT: ACTUALLY, SHE IS AN ATTORNEY.

6 MR. PRAGER: SHE IS AN ATTORNEY, YOUR HONOR.

7 MS. NAU: SORRY.

8 THE COURT: I THINK I KEPT MOST OF THAT EVIDENCE OUT,
9 BECAUSE I THINK IT'S IRRELEVANT; BUT DON'T ARGUE TO ME SHE'S
10 NOT AN ATTORNEY.

11 MS. NAU: OKAY. WELL, I DON'T THINK THAT SHE CAN
12 TESTIFY AS TO WHETHER MS. DUVAL HAD THE OPPORTUNITY TO FILE
13 AN APPEAL. AND AS YOU STATED, MS. DUVAL HERSELF WILL BE
14 ABLE TO TESTIFY TO THAT, AS WILL HER ATTORNEY AT THE TIME.

15 SO THAT'S OUR RESPONSE TO NO. 48.

16 THE COURT: ALL RIGHT.

17 AND DO YOU HAVE MS. NAU'S APPEARANCE? BECAUSE SHE ALSO
18 CAME IN AFTER WE STARTED.

19 THE REPORTER: YES, YOUR HONOR.

20 THE COURT: OKAY.

21 ALL RIGHT. ANYTHING ELSE?

22 MR. MCMILLAN: THERE IS SOMETHING I FORGOT TO MENTION
23 EARLIER. AND THE WAY IT CAME UP IS IN DIVVYING UP
24 WITNESSES, WE'RE PREPARING OUR CROSS-EXAMINATION OUTLINES.
25 AND I KNOW THAT, YOUR HONOR, WHEN WE HAD ADDRESSED THE ISSUE
26 OF SPLITTING OPENINGS AND SPLITTING THE MAIN CLOSING, THAT
27 THAT WAS GOING TO BE OKAY; BUT YOUR HONOR HAD EXPRESSED, I
28 THINK, NOT JUST RESERVATIONS, BUT HAD SAID SPECIFICALLY THAT

1 WE WON'T BE SPLITTING WITNESSES.

2 THE PROBLEM THAT'S ARISEN WITH THAT -- AND IT'S ONLY
3 IN RELATION TO TWO WITNESSES. IT'S MS. VICTORIA SCHEELE AND
4 MS. CANDIS NELSON. THOSE ARE THE TWO WITNESSES AS TO WHOM
5 POSITIVE DISCRIMINATION FINDINGS WERE MADE. SO THEY'RE KEEN
6 AND CRUCIAL TO THAT PORTION OF THE CASE. BUT THEY'RE ALSO
7 PEOPLE THAT ARE UNDER ATTACK ON THE 1983 -- THE
8 CONSTITUTIONAL PORTION OF THE CASE. AND THOSE ARE TWO VERY
9 DIFFERENT AND COMPLEX AND NUANCED AREAS OF LAW.

10 AND, I MEAN, THE PROBLEM I WOULD HAVE WITH
11 CROSS-EXAMINING EITHER OF THOSE TWO WITNESSES IS I DON'T
12 KNOW ENOUGH ABOUT THE AREA OF LAW OR THE ISSUES THAT NEED TO
13 BE ELICITED FROM THOSE WITNESSES TO ADEQUATELY DO THAT JOB,
14 WHERE MR. PRAGER DOES. AND I THINK THE SAME HOLDS TRUE FOR
15 THE 1983 CONSTITUTIONAL SIDE, WITH RESPECT TO MR. PRAGER. I
16 MEAN, WE BOTH HAVE VERY DIFFERENT AREAS OF SPECIALIZATION.

17 AND SO MY REQUEST WOULD BE, AS TO THOSE TWO WITNESSES
18 ONLY, IF WE COULD SPLIT THEM NONDUPLICATIVE. I'D DO THE
19 CONSTITUTIONAL PORTION. MR. PRAGER WOULD DO THE DISABILITY
20 DISCRIMINATION PORTION.

21 THE COURT: I THINK YOU'RE UNDER ESTIMATING YOUR
22 ABILITY TO QUESTION THE WITNESS -- BOTH OF YOU. BUT
23 I -- MR. GUTERRES?

24 MR. GUTERRES: YOUR HONOR, I DON'T THINK THAT THAT'S
25 CALLED FOR ANYWHERE IN THE -- IT'S GENERALLY -- AND IT'S
26 ALWAYS BEEN, AS FAR AS I'VE PRACTICED, AND AS FAR AS JOHN
27 COLLINS HAS BEEN PRACTICING, THAT IT'S ONE TASK, ONE LAWYER.
28 IRRESPECTIVE OF, YOU KNOW, EXPERTISE OR NOT. OTHERWISE, YOU

1 KNOW, WE CAN BE SPLITTING -- YOU KNOW, I COULD HAVE THREE
2 LAWYERS QUESTIONING, IF WE'RE GOING TO BE DOING IT BY ISSUE
3 OR SUBJECT MATTER.

4 I JUST -- IT'S UNCALLED FOR. THEY HAVE -- THAT'S A
5 STRATEGY DECISION. THE LAWYER'S GOING TO HAVE TO MAKE A
6 CHOICE AS TO WHO THEY WANT TO CROSS-EXAMINE A PARTICULAR
7 WITNESS. BUT I THINK IT WOULD BE EXTREMELY PREJUDICIAL TO
8 BE HAVING DIFFERENT LAWYERS QUESTIONING A SINGLE WITNESS AT
9 ANY GIVEN POINT.

10 MR. MCMILLAN: YOUR HONOR, ONE THING I MIGHT
11 ADD -- AND I FORGOT ABOUT THAT TOO, AND I APOLOGIZE -- IS
12 THAT THIS EXACT ISSUE CAME UP VERY EARLY IN THE CASE. AND I
13 BELIEVE IT WAS IN FRONT OF JUDGE ROSENFELD.

14 AND WE CAME BEFORE THE JUDGE. WE MADE A ACTUAL
15 MOTION, I BELIEVE, IN RESPONSE TO AN OBJECTION AT A
16 DEPOSITION, WHEN WE WERE BOTH TAKING OUR RESPECTIVE PORTIONS
17 OF THE DEPOSITION. AND THE JUDGE ISSUED A SPECIFIC ORDER,
18 SEVERING THE DEPOSITION, SO THAT BOTH OF US COULD ADDRESS
19 THE PARTICULAR WITNESS AS TO THE ISSUES WE WERE -- YOU KNOW,
20 THE AREAS OF EXPERTISE THAT WE HAD.

21 SO THAT ORDER DOES EXIST. IT DID HAPPEN. I KNOW THAT
22 IT'S SOMEWHAT IRREGULAR, BUT IT IS OUT THERE. AND WE'VE
23 BEEN OPERATING IN THE CASE AND DOING THE DEPOSITIONS, THE
24 DISCOVERY, UNDER THAT ORDER. SO IT'S NOT SOMETHING NEW
25 THAT'S TOTALLY FOREIGN. IT MAY BE FOREIGN IN THE GENERAL
26 SENSE BUT NOT SPECIFIC TO THIS CASE.

27 MR. GUTERRES: AND THE DISCOVERY IS CLOSED. WE'RE NOW
28 IN TRIAL.

1 MR. MCMILLAN: BUT DEPOSITIONS ARE TO BE CONDUCTED AS
2 IF AT TRIAL. SO THE SAME SORT OF REASONING, I THINK, WOULD
3 APPLY.

4 THE COURT: I DON'T THINK THAT'S GOING TO HAPPEN.

5 MR. MCMILLAN: OKAY. I HAD TO ASK.

6 THE COURT: NO, I UNDERSTAND. THE WORST THAT HAPPENS
7 IF YOU ASK IS IF YOU GET TURNED DOWN, YOU KNOW?

8 MR. MCMILLAN: RIGHT.

9 THE COURT: SO, NO. I THINK THAT YOU ARE SUFFICIENTLY
10 VERSED IN THIS KIND OF CASE, MR. MCMILLAN, THAT I THINK THAT
11 YOU'RE PERFECTLY CAPABLE, AND I BELIEVE MR. PRAGER'S
12 PERFECTLY CAPABLE, OF CONDUCTING A COMPLETE EXAMINATION OF
13 THESE WITNESSES.

14 AND I MAY HAVE SET A BAD PRECEDENT BY LETTING YOU HAVE
15 CERTAIN ARGUMENT, OR THE TWO OF YOU ARGUE CERTAIN THINGS;
16 BUT THAT'S AS FAR AS I THINK WE'RE GOING TO GO WITH IT.

17 MR. MCMILLAN: OKAY.

18 THE COURT: AND, NOW, I DID HAVE ONE OTHER THING TOO.
19 I DID MENTION, IN THE RULINGS ON THE DEPOSITIONS, THAT IN
20 HOCHSTEIN'S DEPOSITION, I GOT LOST. AND I SPENT -- I JUST
21 WANT TO TALK TO YOU ABOUT HOW I GO ABOUT THIS. AND I CAN GO
22 GET MY NOTES AS TO WHERE I GOT LOST.

23 MR. PRAGER?

24 MR. PRAGER: YOUR NOTES INDICATED IN THE RULING THAT
25 YOU HAD A QUESTION ON NOS. 30 AND 31. SO I'M PREPARED TO
26 ANSWER THAT QUESTION FOR YOU.

27 THE COURT: OH, OKAY. BUT THAT WAS ON --

28 MR. PRAGER: -- HOCHSTEIN.

1 MS. NAU: YOUR HONOR, WE DON'T HAVE ANY RULINGS ON
2 HOCHSTEIN.

3 THE COURT: BECAUSE -- YES. 30 AND 31 WERE --

4 MR. PRAGER: THERE'S A NUMBERING ERROR.

5 THE COURT: THIS IS THE RULING ON CONDON'S DEPOSITION,
6 THAT IN 30 AND 31, ARGUMENTS AND NUMBERS WEREN'T MATCHING
7 UP. AND SO IT WAS JUST UNCLEAR TO ME AS TO -- I'M PERFECTLY
8 HAPPY TO RULE ON IT.

9 THIS IS ON THE RULING I GAVE YOU TODAY ON CONDON.
10 THAT'S WHERE 30 AND 31 IS.

11 MR. PRAGER: YOUR HONOR, I'M SORRY. I WAS UNDER THE
12 IMPRESSION THAT THE COURT HAD A QUESTION. AND I'M SORRY IF
13 I'M FORGETTING WHERE I DERIVED IT FROM AT THIS MOMENT, BUT
14 MY UNDERSTANDING WAS THAT IT WAS AT QUESTION NO. 30, WHICH
15 WOULD BE -- I HAVE IT TAGGED.

16 SO I BELIEVE IT'S ON PAGE 20.

17 THE COURT: WELL, LOOK, I THINK THE BEST THING TO DO,
18 MAYBE, IS FOR ME TO GET THE DOCUMENTS I RECEIVED ON HER
19 DEPOSITION, AND I CAN POINT OUT TO YOU SPECIFICALLY WHERE MY
20 CONFUSION IS. I DON'T EVEN KNOW IT NEEDS TO BE A PART OF
21 THE RECORD. JUST SO LONG AS I HAVE SOME CLARITY AS TO WHAT
22 I'M RULING ON, I'LL BE HAPPY TO DO SO.

23 AND I WAS GOING TO MENTION THE SAME THING IN
24 HOCHSTEIN. AND I CAN'T EXPLAIN WHY, AND I HAVEN'T HAD A
25 CHANCE TO GO BACK TO THAT TO TAKE A LOOK AT IT TO SEE; BUT I
26 SPENT WHAT I CONSIDER TO BE AN INORDINATE AMOUNT OF TIME AND
27 FINALLY GAVE UP, BECAUSE I JUST GOT LOST AS TO WHAT
28 OBJECTIONS ARE BEING MADE TO WHAT TESTIMONY.

