

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable D. Craig Brown, Circuit Court Judge

NATHANIEL MITCHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000069

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA ABRAHAM EDWARDS
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3727

ATTORNEYS FOR RESPONDENT

RECEIVED

JUL 01 2019

S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 13-17, 2002	1
INDICTMENT AND SENTENCING SHEET	1053
APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 8, 2007	1056
APPLICATION FOR POST-CONVICTION RELIEF FILED NOVEMBER 5, 2007	1066
RETURN AND MOTION TO DISMISS.....	1085
APPLICANT'S MOTION FOR DISCLOSURE OF DISCOVERY FILED OCTOBER 8, 2007.....	1092
APPLICANT'S MOTION FOR APPOINTMENT OF COUNSEL FILED OCTOBER 8, 2007.....	1107
ORDER GRANTING APPLICANT'S MOTION TO APPOINT COUNSEL AND MOTION FOR DISCLOSURE OF DISCOVERY FILED SEPTEMBER 11, 2008.....	1109
AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF.....	1111
APPLICANT'S MOTION FOR ABEYANCE AND/OR DISMISS WITHOUT PREJUDICE FILED JANUARY 23, 2012.....	1114
RESPONSE TO APPLICANT'S MOTION TO HOLD PCR IN ABEYANCE AND/OR DISMISS WITHOUT PREJUDICE FILED FEBRUARY 20, 2012	1135
ORDER OF APPOINTMENT FILED AUGUST 17, 2012	1139
ORDER TO HOLD POST-CONVICTION RELIEF APPLICATION IN ABEYANCE FILED SEPTEMBER 14, 2015	1141
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR NEW TRIAL FILED JANUARY 14, 2015.....	1144
TRANSCRIPT OF MOTION FOR NEW TRIAL DATED FEBRUARY 9, 2015	1177
TRANSCRIPT OF MOTION FOR NEW TRIAL DATED APRIL 16, 2015	1351
ORDER DENYING MOTION FOR NEW TRIAL FILED JULY 30, 2015	1405

AMENDMENT TO POST-CONVICTION RELIEF APPLICATION FILED FEBRUARY 17, 2016.....	1410
AMENDMENT TO POST-CONVICTION RELIEF APPLICATION FILED JUNE 6, 2016	1413
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 12, 2016	1415
APPLICANT'S EXHIBIT NO. 1 (JURY NOTE).....	1504
ORDER OF DISMISSAL FILED DECEMBER 14, 2018.....	1505

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
) DOCKET NO. 00-GS-40-50660

THE STATE)
))
VS.) TRANSCRIPT OF RECORD
))
NATHANIEL MITCHELL,)
))
DEFENDANT)

MAY 13 - MAY 17, 2002
COLUMBIA, SOUTH CAROLINA

BEFORE:

HONORABLE HENRY F. FLOYD, JUDGE.

APPEARANCES:

KATHRYN LUCK CAMPBELL, ESQ.
VANESSA COOPER, ESQ.
ATTORNEYS FOR THE PLAINTIFF

DOUG STRICKLER, ESQ.
LEE COGGIOLA, ESQ.
ATTORNEYS FOR THE DEFENDANT

KAREN TRACY
OFFICIAL COURT REPORTER

I N D E X

WITNESSESMAY 13, 2002

DR. ALLISON DEFELICE (IN CAMERA)

DIRECT EXAMINATION BY MS. CAMPBELL	14
CROSS-EXAMINATION BY MS. COGGIOLA	23
REDIRECT EXAMINATION BY MS. CAMPBELL	28

N.G. (IN CAMERA)

DIRECT EXAMINATION BY MS. CAMPBELL	41
CROSS-EXAMINATION BY MS. COGGIOLA	46

INVESTIGATOR DALE JONES (IN CAMERA)

DIRECT EXAMINATION BY MS. COOPER	51
CROSS-EXAMINATION BY MS. COGGIOLA	68

N.G. (BY VIDEOTAPE)

DIRECT EXAMINATION BY MS. CAMPBELL	114
CROSS-EXAMINATION BY MS. COGGIOLA	126

MAY 14, 2002

DR. ROBERT HUBBIRD

DIRECT EXAMINATION BY MS. CAMPBELL	138
CROSS-EXAMINATION BY MR. STRICKLER	179
REDIRECT EXAMINATION BY MS. CAMPBELL	217

WITNESSES (CONT'D)

DR. LINDA CHRISTMANN

DIRECT EXAMINATION BY MS. CAMPBELL	228/257
DIRECT EXAMINATION BY MS. CAMPBELL (IC)	252
CROSS-EXAMINATION BY MR. STRICKLER (IC)	252
CROSS-EXAMINATION BY MR. STRICKLER	261
REDIRECT EXAMINATION BY MS. CAMPBELL	276

DR. ANNE ABEL

DIRECT EXAMINATION BY MS. CAMPBELL	280
CROSS-EXAMINATION BY MR. STRICKLER	304
REDIRECT EXAMINATION BY MS. CAMPBELL	319

MAY 15, 2002

DR. TIMOTHY CLOSE

DIRECT EXAMINATION BY MS. CAMPBELL	325
CROSS-EXAMINATION BY MR. STRICKLER	363
REDIRECT EXAMINATION BY MS. CAMPBELL	388

DR. RONALD BURNS

DIRECT EXAMINATION BY MS. CAMPBELL	392
CROSS-EXAMINATION BY MR. STRICKLER	412
REDIRECT EXAMINATION BY MS. CAMPBELL	426
RECROSS-EXAMINATION BY MR. STRICKLER	431

DR. BRYAN RABON

DIRECT EXAMINATION BY MS. CAMPBELL	432
CROSS-EXAMINATION BY MR. STRICKLER	436
REDIRECT EXAMINATION BY MS. CAMPBELL	439

WITNESSES (CONT'D)

SHARI JONES

DIRECT EXAMINATION BY MS. COOPER	440
CROSS-EXAMINATION BY MS. COGGIOLA	453

VALERIE WILSON

DIRECT EXAMINATION BY MS. COOPER	455
CROSS-EXAMINATION BY MS. COGGIOLA	463
REDIRECT EXAMINATION BY MS. COOPER	468

FARY (COOKIE) GRANT

DIRECT EXAMINATION BY MS. COOPER	468
CROSS-EXAMINATION BY MS. COGGIOLA	480

(N.G.)'S VIDEOTAPED TESTIMONY WAS PLAYED FOR THE JURY.)	485

DR. ALLISON DEFELICE

DIRECT EXAMINATION BY MS. CAMPBELL	485
CROSS-EXAMINATION BY MS. COGGIOLA	496

DALE JONES

DIRECT EXAMINATION BY MS. COOPER	497
CROSS-EXAMINATION BY MS. COGGIOLA	670
REDIRECT EXAMINATION BY MS. COOPER	676

DR. WAYNE ROSS

DIRECT EXAMINATION BY MR. STRICKLER	547
CROSS-EXAMINATION BY MS. CAMPBELL	586
REDIRECT EXAMINATION BY MR. STRICKLER	624
RECROSS-EXAMINATION BY MS. CAMPBELL	630

WITNESSES (CONT'D)MAY 16, 2001

(INDIVIDUAL VOIR DIRE OF THE JURORS
REGARDING JUROR MCCRAVY'S NOTE TO THE COURT.) 641

MARY M. TATE

DIRECT EXAMINATION BY MS. COGGIOLA	694
CROSS-EXAMINATION BY MS. CAMPBELL	699

CARL BROWN

DIRECT EXAMINATION BY MS. COGGIOLA	703
CROSS-EXAMINATION BY MS. CAMPBELL	709

MARIE KEITT

DIRECT EXAMINATION BY MS. COGGIOLA	710
CROSS-EXAMINATION BY MS. CAMPBELL	717

CYNTHIA GREEN

DIRECT EXAMINATION BY MS. COGGIOLA	719
CROSS-EXAMINATION BY MS. CAMPBELL	726

PATRICIA SMITH

DIRECT EXAMINATION BY MS. COGGIOLA	728

KIMBERLY KENNEDY

DIRECT EXAMINATION BY MS. COGGIOLA	736
CROSS-EXAMINATION BY MS. CAMPBELL	745
REDIRECT EXAMINATION BY MS. COGGIOLA	752

WITNESSES (CONT'D)

HOPE DEAMBROGIO

DIRECT EXAMINATION BY MS. COGGIOLA	753
CROSS-EXAMINATION BY MS. CAMPBELL	767

NATHANIEL MITCHELL

DIRECT EXAMINATION BY MS. COGGIOLA	774
CROSS-EXAMINATION BY MS. CAMPBELL	823
REDIRECT EXAMINATION BY MS. COGGIOLA	889
RECROSS-EXAMINATION BY MS. CAMPBELL	891

DR. CLAY NICHOLS
(REPLY)

DIRECT EXAMINATION BY MS. CAMPBELL	892
CROSS-EXAMINATION BY MR. STRICKLER	910
REDIRECT EXAMINATION BY MS. CAMPBELL	928

BRIAN METZS
(REPLY)

DIRECT EXAMINATION BY MS. COOPER	930
CROSS-EXAMINATION BY MS. COGGIOLA	940

STATEMENTS

OPENING STATEMENT BY MS. COOPER	105
OPENING ON THE LAW BY MS. CAMPBELL	964
CLOSING STATEMENT BY MS. CAMPBELL	994
OPENING STATEMENT BY MS. COGGIOLA	111
CLOSING STATEMENT BY MS. COGGIOLA	978

CHARGES TO THE JURY

PRETRIAL CHARGE	98
JURY CHARGE	1,024
VERDICT	1,043
CERTIFICATE OF REPORTER	1,053

E X H I B I T S

(STATE'S EXHIBITS)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>E.V.</u>
1	ADVICE OF RIGHTS	57	509
2	STATEMENT - TYPED	62	514
3	STATEMENT - WRITTEN	67	532
4	PHOTO	293	403
5	PHOTO	293	
6	PHOTO		293
7	PHOTO		293
8	PHOTO		293
9	PHOTO		293
10	CT SCAN		339
11	CT SCAN		339
12	CT SCAN		339
13	CT SCAN		339
14	CT SCAN		339
15	CT SCAN		339
16	CT SCAN		339
17	CT SCAN		339
18	PHOTO (AUTOPSY)	401	
19	PHOTO		401
20	HANDWRITTEN NOTE 3/27 8:05		458

E X H I B I T S

(STATE'S EXHIBITS - CONTINUED)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>E.V.</u>
21	VIDEO TESTIMONY-(G.		483
22	PHOTO		504
23	PHOTO		504
24	PHOTO		504
25	PHOTO		504
26	DEFENDANT'S BELT		506
27	4 BELTS		506
28	MAP		540
29	PHOTO		835
30	PHOTO		835

(DEFENDANT'S EXHIBITS)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>E.V.</u>
1	D.S.S. LICENSE		762

E X H I B I T S
(COURT'S EXHIBITS)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>
1	DEFENDANT'S REQUESTED VOIR DIRE	11
2	VIDEOTAPE	30
3	NOTE FROM JUROR DIETRICH	136
4	CD OF PRESENTATION	483
5	NOTE FROM JUROR MCCRAVY	636
6	DEFENDANT'S REQUESTED CHARGE	693
7	NOTE FROM JURY	1,043

1 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 WAS
2 MARKED FOR IDENTIFICATION ONLY.)

3 THE COURT: DO WE HAVE PRETRIAL MOTIONS IN
4 THIS CASE?

5 MS. CAMPBELL: YES, SIR.

6 THE COURT: HOW MANY?

7 MS. CAMPBELL: THE LENGTHIEST WILL BE THE
8 MOTION ON THE CHILD WITNESS. WE'RE MOVING TO HAVE
9 HER TESTIMONY VIDEOTAPED AS A SPECIAL WITNESS, AND
10 I HAVE DR. ALLISON DEFELICE, AS WELL AS THE NEW
11 FOSTER MOTHER OF THE CHILD TO TESTIFY AS TO THOSE
12 ISSUES. WE ALSO HAVE THE VIDEOTAPE EQUIPMENT HERE
13 AND READY TO GO, SO ASSUMING YOU RULE THAT THAT
14 WOULD BE APPROPRIATE IN THIS CASE -- THE SIX YEAR
15 OLD WITNESS INVOLVED, YOUR HONOR, WHO WITNESSED
16 THE BEATING OF THE TWO YEAR OLD.

17 IN ADDITION WE ALSO HAVE SOME -- THE
18 DEFENDANT MADE MULTIPLE STATEMENTS BOTH AT THE
19 HOSPITAL AND LATER TO POLICE, LAW ENFORCEMENT, AND
20 WE'VE GOT TWO OFFICERS AS FAR AS ON THE ADVICE OF
21 RIGHTS.

22 THE COURT: CAN YOU GIVE ME SOME ESTIMATE AS
23 TO HOW LONG YOU THINK IT WILL TAKE TO DO THESE
24 THINGS?

25 MS. CAMPBELL: I ASSUME IT WILL TAKE THE REST

1 OF THE MORNING TO DO THE HEARING AND TO DO THE
2 TESTIMONY OF THE CHILD. I THINK WE CAN PICK A
3 JURY THIS AFTERNOON AND POSSIBLY -- OR DO THE
4 HEARINGS AFTER LUNCH AND POSSIBLY PICK A JURY THIS
5 AFTERNOON AND MAYBE DO OPENINGS TODAY. THERE'S A
6 LOT OF MEDICAL TESTIMONY IN THIS CASE, YOUR HONOR.
7 I'VE GOT THE DOCTORS LINED UP STARTING AT
8 9:00 A.M. IN THE MORNING OR WHATEVER YOU CHOOSE.

9 THE COURT: I GUESS WE COULD PICK A JURY NOW
10 AND SEND THEM -- UNLESS YOU WANT TO HOLD THEM?

11 MS. COGGIOLA: YOUR HONOR, I DON'T THINK WE
12 EVEN HAVE A LIST OF THE JURY QUALIFICATIONS. WE
13 HAVE THE SHORT LIST FROM THE CLERK, BUT NOT THE --

14 MS. CAMPBELL: IF THAT'S WHAT YOU PREFER TO
15 DO, THAT'S FINE. THE ONLY THING THAT I WAS TRYING
16 TO DO -- IT'S JUST BECAUSE THE VIDEOTAPE PEOPLE
17 AND EVERYTHING ARE HERE, BUT WHATEVER YOU WANT TO
18 DO, JUDGE, IS FINE.

19 THE COURT: BRING THEM BACK AT 2:30.

20 MS. CAMPBELL: IT'S A FIVE AND FIVE CASE,
21 YOUR HONOR.

22 THE COURT: FIVE AND FIVE? WE MAY HAVE A
23 HOST OF CHILDREN PROBLEMS. 2:30.

24 THE CLERK: YES, SIR.

25 THE COURT: ALL RIGHT. ARE YOU READY TO

1 PROCEED ON THE VIDEO ISSUE?

2 MS. CAMPBELL: YES, YOUR HONOR, THE CASE IS
3 THE STATE VERSUS NATHANIEL MITCHELL. HE IS
4 CHARGED WITH HOMICIDE BY CHILD ABUSE, AND IT'S
5 INDICTMENT NUMBER 00-GS-40-50660. YOUR HONOR, WE
6 DID FILE A MOTION ABOUT TWO WEEKS AGO TO -- THERE
7 IS A CHILD WHO IS NOW SIX, WHO WAS FOUR AT THE
8 TIME SHE WITNESSED THE EVENT, YOUR HONOR, WHO IS A
9 WITNESS IN THE CASE.

10 WE ARE MOVING, PURSUANT TO SOUTH CAROLINA
11 CODE SECTION 16-3-1530 SUBSECTION C, WHICH ALLOWS
12 IN CERTAIN CASES OF CERTAIN TYPES OF WITNESSES
13 THAT VIDEOTAPED TESTIMONY CAN BE DONE WHERE THE
14 DEFENDANT IS ALLOWED TO VIEW IT THROUGH A
15 VIDEOTAPE MACHINE. IN THIS CASE, YOUR HONOR, HE
16 WOULD BE IN THE NEXT ROOM WITH ONE OF HIS COUNSEL
17 WHILE THE OTHER ONE STAYED IN HERE AND QUESTIONED
18 THE WITNESS, WHO IS A SIX YEAR OLD CHILD.

19 I DO HAVE AT LEAST ONE WITNESS, YOUR HONOR,
20 AS TO THAT ISSUE. THAT WOULD BE DR. ALLISON
21 DEFELICE. SHE IS A LOCAL PSYCHOLOGIST AT THE
22 A.R.C., WHICH IS THE ASSESSMENT RESOURCE CENTER
23 HERE IN RICHLAND COUNTY. I WOULD AT THIS TIME,
24 AND I HAVE ALREADY GIVEN TO DEFENSE COUNSELS FOR
25 PURPOSES JUST OF THIS HEARING, YOUR HONOR, AND

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

14

1 WILL NOW HAND UP A COPY OF HER C.V. TO YOU.

2 THE COURT: FIRST OF ALL, LET ME ASK IS THERE
3 ANY OBJECTION?

4 MS. COGGIOLA: YES, YOUR HONOR, WE WOULD
5 OBJECT.

6 THE COURT: ALL RIGHT. YOU MAY PROCEED.

7 MS. CAMPBELL: THE STATE WOULD CALL ALLISON
8 DEFELICE.

9 DR. ALLISON DEFELICE,

10 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR
12 NAME FOR THE RECORD.

13 THE WITNESS: ALLISON DEFELICE.

14 DIRECT EXAMINATION

15 (IN CAMERA)

16 BY MS. CAMPBELL:

17 Q DR. DEFELICE, WHERE ARE YOU EMPLOYED?

18 A I'M EMPLOYED AT THE A.R.C., WHICH IS THE
19 ASSESSMENT AND RESOURCE CENTER. IT IS A JOINT
20 EFFORT OF WILLIAM S. HALL PSYCHIATRIC INSTITUTE,
21 THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF
22 MEDICINE, AND CHILDREN'S HOSPITAL OF PALMETTO
23 RICHLAND, BUT TECHNICALLY I'M EMPLOYED BY WILLIAM
24 S. HALL PSYCHIATRIC INSTITUTE.

25 Q AND HOW LONG HAVE YOU BEEN WORKING AT THE

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

15

1 A.R.C.?

2 A SINCE SEPTEMBER OF 1995.

3 Q AND WHAT DO YOU DO THERE?

4 A I'M THE CLINICAL DIRECTOR, WHICH MEANS THAT I
5 NOT ONLY PROVIDE FORENSIC INTERVIEWS OF CHILDREN
6 SUSPECTED OF CHILD ABUSE OR WHO ARE EYEWITNESSES
7 TO VIOLENT CRIMES, BUT ALSO I SUPERVISE THE MENTAL
8 HEALTH STAFF, SO THAT INCLUDES THERAPISTS,
9 FORENSIC INTERVIEWERS, CHILD LIFE SPECIALISTS. SO
10 I PROVIDE GUIDANCE AND SUPERVISION ON PRACTICE.

11 Q CAN YOU TELL THIS JUDGE A LITTLE BIT ABOUT
12 YOUR EDUCATION AND TRAINING?

13 A SURE. MY UNDERGRADUATE DEGREE IS FROM EMORY
14 UNIVERSITY. I GRADUATED IN 1988 WITH A DOUBLE
15 MAJOR IN PSYCHOLOGY AND ENGLISH LITERATURE. I
16 CAME TO THE UNIVERSITY OF SOUTH CAROLINA IN THE
17 FALL OF 1989 AND COMPLETED MY PH.D. IN CLINICAL
18 COMMUNITY PSYCHOLOGY IN 1996. I DID MY PRE-
19 DOCTORATE INTERNSHIP AT HALL INSTITUTE AND STUDIED
20 AT THE A.R.C. FOR A FULL YEAR UNDER DR. ANN ABEL
21 AND THEN BECAME EMPLOYED AS THE CLINICAL DIRECTOR
22 IN SEPTEMBER OF 1995.

23 IN ADDITION TO THAT FORMAL TRAINING IS ALSO
24 THE CONTINUING EDUCATION, SPECIFICALLY IN MATTERS
25 OF FORENSIC INTERVIEWING AND CHILD SEXUAL ABUSE

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

16

1 AND CHILD PHYSICAL ABUSE.

2 Q AND YOU HAD GIVEN ME EARLIER A COPY OF YOUR
3 C.V. OR RESUME, HOWEVER YOU WANT TO CALL IT, AND
4 IS THAT ACCURATE?

5 A IT IS ACCURATE EXCEPT THAT I HAVE NOT UPDATED
6 IT IN THE LAST YEAR. THERE HAVE BEEN ADDITIONAL
7 -- I AM FACULTY FOR TWO NATIONAL TRAINING GROUPS
8 AND SO I CONTINUE TO PROVIDE ADDITIONAL TRAININGS
9 THAT ARE NOT YET REFLECTED ON THE C.V. THAT'S THE
10 ONLY SUBSTANTIAL DIFFERENCE.

11 Q SO YOU'VE HAD ADDITIONAL TRAINING AND BEEN ON
12 ADDITIONAL BOARDS OR FACULTY THAT'S JUST NOT
13 LISTED ON THERE, BUT OTHERWISE IT'S CORRECT; IS
14 THAT RIGHT?

15 A CORRECT.

16 Q HAVE YOU BEEN QUALIFIED BEFORE IN COURTS OF
17 SOUTH CAROLINA AS AN EXPERT WITNESS?

18 A YES, I HAVE.

19 Q CAN YOU TELL THE JUDGE WHAT DIFFERENT AREAS
20 YOU HAVE BEEN QUALIFIED IN?

21 A I WILL TRY. I'VE BEEN QUALIFIED AS AN EXPERT
22 IN CHILD DEVELOPMENT HERE IN RICHLAND COUNTY,
23 CHILD PSYCHOLOGY, FORENSIC INTERVIEWING OF
24 CHILDREN, AND AN EXPERT IN CHILD SEXUAL ABUSE
25 ISSUES. TO THE BEST OF MY RECOLLECTION, THOSE ARE

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

17

1 THE PRIMARY CATEGORIES THAT I'VE BEEN QUALIFIED
2 BEFORE.

3 Q AND THAT'S BEEN IN THE COURTS OF SOUTH
4 CAROLINA THAT YOU'VE BEEN QUALIFIED AS AN EXPERT
5 IN THOSE AREAS?

6 A CORRECT.

7 Q ON MORE THAN ONE OCCASION?

8 A YES.

9 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
10 OFFER DR. DEFELICE AS AN EXPERT IN CHILD
11 PSYCHIATRY, EXCUSE ME, PSYCHOLOGY, AND FORENSIC
12 INTERVIEWING.

13 THE COURT: DO YOU WISH TO QUESTION HER?

14 MS. COGGIOLA: ~~NO FURTHER QUESTIONS.~~

15 THE COURT: YOU MAY PROCEED.

16 BY MS. CAMPBELL:

17 Q DR. DEFELICE, DID YOU EVER HAVE AN
18 OPPORTUNITY, IN THIS CASE, TO COME INTO CONTACT
19 WITH A LITTLE GIRL NAMED N.G.

20 A YES, I DID.

21 Q WHEN DID YOU FIRST COME IN CONTACT WITH HER?

22 A THE FIRST TIME I CAME INTO CONTACT WITH
23 N.G. WAS APRIL 7TH OF 2000.

24 Q APRIL 7TH OF 2000?

25 A CORRECT.

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

18

1 Q AND AT THAT TIME, WHAT WAS PURPOSE OF YOU
2 MAKING CONTACT WITH N.G. ?

3 A OKAY. WE WERE AWARE AT THAT TIME THAT
4 N.G. S LITTLE SISTER, MINOR HAD BEEN -- WAS
5 DECEASED, AND THE PRIMARY REASON FOR ME
6 INTERVIEWING N.G. HAD TO DO WITH COLLECTING
7 INFORMATION REGARDING WHETHER OR NOT SHE HERSELF
8 HAD BEEN THE VICTIM OF MALTREATMENT, SPECIFICALLY
9 PHYSICAL ABUSE.

10 SECONDARILY TO THAT, IT WAS AN OPPORTUNITY TO
11 ASK HER ANY FOLLOW-UP QUESTIONS. SHE RECENTLY HAD
12 BEEN TO THE FUNERAL OF HER LITTLE SISTER. SHE HAD
13 BEEN THROUGH AN INVESTIGATIVE INTERVIEW WITH LAW
14 ENFORCEMENT AND D.S.S., SO ANY ADDITIONAL
15 INFORMATION GATHERED ON THAT POINT WAS SECONDARY
16 TO HER OWN HISTORY OF CHILD ABUSE.

17 Q AT THAT INTERVIEW, A PART OF THAT INTERVIEW,
18 YOU WERE AWARE THAT SHE HAD WITNESSED AN ALLEGED
19 BEATING INVOLVING HER SISTER?

20 A THAT'S CORRECT.

21 Q AND THAT WAS THE DAY SHE DIED?

22 A TO THE BEST OF MY UNDERSTANDING, YES.

23 Q AND DURING THAT INTERVIEW, WERE YOU ABLE TO
24 ELICIT SIMILAR INFORMATION THAT SHE HAD ALREADY
25 PROVIDED TO THE POLICE ABOUT THAT BEATING?

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

19

1 A YES.

2 Q AND WERE YOU ALSO AT THAT TIME ABLE TO MAKE
3 AN ASSESSMENT AS TO HER FEAR OR POSSIBLE FEAR OF
4 NATHANIEL MITCHELL?

5 A AT THAT TIME, WHEN SHE CAME IN AT THE AGE OF
6 FOUR -- I'M GOING TO REFERENCE MY NOTES QUICKLY.

7 I -- (PAUSE) YOU ASKED ME IF SHE TALKED ABOUT FEAR
8 OF THE ALLEGED PERPETRATOR, AND AT THE TIME THAT

9 SHE WAS FOUR, THE INFORMATION THAT I COLLECTED
10 FROM HER WAS MORE ABOUT THE FACTS OF HER HISTORY
11 AND NOT ABOUT HER EMOTIONAL STATE. SHE WAS GOING
12 THROUGH A LOT OF CHANGES AT THAT TIME IN
13 PLACEMENT. SHE WAS ACTUALLY FAIRLY DISORGANIZED.

14 Q SUBSEQUENT TO THAT OVER THE NEXT TWO YEARS,
15 DID N.G. CONTINUE TO BE SEEN IN YOUR CLINIC?

16 A YES, SHE WAS.

17 Q AND WAS THAT NECESSARILY BY YOU?

18 A NO.

19 Q WAS THAT BY OTHER PEOPLE AT YOUR CLINIC?

20 A CORRECT. WHOEVER DOES THE FORENSIC
21 INTERVIEWING DOES NOT CONDUCT THE PSYCHOTHERAPY,
22 SO SHE WAS SEEN FOR THERAPY BY OTHER PROVIDERS AT
23 THE A.R.C.

24 Q AND IN PREPARATION FOR THIS CASE HERE TODAY,
25 YOU WERE ABLE TO REVIEW THOSE RECORDS?

1 A YES.

2 Q SUBSEQUENT TO HER BEING SEEN BY OTHER
3 PSYCHOTHERAPISTS, DID YOU ALSO HAVE AN OPPORTUNITY
4 TO RE-INTERVIEW N.G. AT MY REQUEST?

5 A YES.

6 Q WHEN DID THAT TAKE PLACE?

7 A ON APRIL 15TH, 2002.

8 Q SO THAT WAS ABOUT A MONTH AGO?

9 A CORRECT.

10 Q AND WHAT DID I REQUEST THAT YOU DO AT THAT
11 TIME?

12 A AT THAT TIME THERE WERE A FEW DIFFERENT
13 ISSUES, ONE WAS TO ASSESS N.G. A'S COMPETENCE AND
14 ALSO TO ASSESS THE MEMORY, HER MEMORY OF THE
15 EVENTS SURROUNDING THE DEATH OF HER SISTER
16 MINOR, SINCE THERE HAD BEEN A TWO YEAR TIME LAG.
17 ALSO, I WAS ASKED BY YOU TO ASSESS HER CURRENT
18 EMOTIONAL FUNCTIONING IN RELATION TO THOSE EVENTS
19 IN TERMS OF CONSIDERATION OF WHETHER OR NOT IT
20 WOULD BE IN HER BEST PSYCHOLOGICAL INTERESTS TO
21 TESTIFY BEFORE THE DEFENDANT.

22 Q OKAY. AND WERE YOU ABLE TO CONDUCT AN
23 INTERVIEW?

24 A YES, I WAS.

25 Q AND THAT INTERVIEW, IN FACT, WAS VIDEOTAPED;

DIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

21

1 IS THAT CORRECT?

2 A YES, IT WAS.

3 Q DURING THAT INTERVIEW TELL THE JUDGE WHAT, IF
4 ANYTHING, YOU WERE ABLE TO ASSERT FIRST ABOUT HER
5 COMPETENCY.

6 A HER COMPETENCY IS GREAT. SHE'S -- IN TERMS
7 OF WHAT ONE EXPECT A SIX YEAR OLD TO DO. WE USE A
8 STANDARDIZED COMPETENCY ASSESSMENT DEVELOPED BY
9 ATTORNEY TOM LYON AND KAREN SAYWITZ, WHO'S A
10 PSYCHOLOGIST, AND THIS HAS BEEN USED IN CERTAIN
11 STATES AND COURTS, BUT IN ANY EVENT IT SHOWS --
12 THE CHILD DEMONSTRATES THROUGH AN OBJECTIVE
13 PROCESS HER UNDERSTANDING THE DIFFERENCE BETWEEN
14 TRUTH AND LYING, AND SHE WAS 100 PERCENT
15 PROFICIENT, AND THEN THE MORAL IMPERATIVE TO TELL
16 THE TRUTH AND SHE WAS 100 PERCENT PROFICIENT.

17 Q SUBSEQUENT TO MAKING THAT ASSESSMENT, DID YOU
18 THEN EXPLORE WHETHER OR NOT SHE HAD ANY
19 INDEPENDENT MEMORY OF WHAT HAPPENED TO HER SISTER
20 WHEN SHE WITNESSED THAT?

21 A YES, AND SHE DID.

22 Q SHE WAS ABLE TO ACCOUNT?

23 A YES.

24 Q AND WAS THE ACCOUNT SHE GAVE YOU TWO YEARS
25 LATER, OR APPROXIMATELY TWO YEARS LATER,

1 CONSISTENT WITH YOUR INITIAL INTERVIEW OF HER?

2 A YES, IT WAS.

3 Q FINALLY, I ALSO ASKED YOU, AND IN PREPARATION
4 OF GOING TO COURT, YOU WERE TRYING TO MAKE AN
5 ASSESSMENT AS TO HER PSYCHOLOGICAL STATE INVOLVING
6 THE DEFENDANT NATHANIEL MITCHELL?

7 A YES.

8 Q AND HAVE YOU FORMED ANY OPINIONS IN THAT
9 AREA?

10 A YES, I HAVE.

11 Q AND WHAT WERE YOUR OPINIONS THERE?

12 A THAT SHE DOESN'T REFER TO HIM BY NAME, BUT
13 THAT SHE IS AFRAID OF MR. MITCHELL, THAT HE IS THE
14 SOLE FIGURE THAT SHE IDENTIFIES AS SOMEBODY WHO
15 FRIGHTENS HER. I WOULD NOT CONSIDER IT TO BE IN
16 HER BEST INTEREST TO BE EXPOSED TO HIM, SINCE HER
17 ASSOCIATIONS WITH HIM ARE PURELY IN RELATION TO
18 DAMAGE THAT HE CAUSED HER IN THE LOSS OF HER
19 LITTLE SISTER.

20 Q AND IN FACT, DID YOU DIRECTLY ASK HER ABOUT
21 HOW SHE FELT ABOUT THE DEFENDANT?

22 A YES, I DID.

23 Q AND WHAT DID SHE EXPRESS TO YOU AT THAT TIME?

24 A THAT SHE WAS SCARED.

25 Q AND IN YOUR EXPERT OPINION, WOULD HER ABILITY

CROSS OF DEFELICE BY COGGIOLA
(IN CAMERA)

23

1 TO TESTIFY BE INHIBITED BY THE PRESENCE OF THE
2 DEFENDANT IN THE COURTROOM?

3 A ABSOLUTELY, YES.

4 Q AND IN YOUR EXPERT OPINION, HAVING TO FACE
5 THE DEFENDANT AGAIN, HOW WOULD THAT AFFECT HER
6 PSYCHOLOGICALLY?

7 A OBVIOUSLY, ONE CAN NEVER PREDICT WITH
8 ABSOLUTE CERTAINTY HOW SOMETHING WILL AFFECT
9 SOMEBODY; HOWEVER, MY BEST CLINICAL JUDGMENT WOULD
10 BE THAT EXPOSING HER TO SOMEBODY WHO SHE HAS
11 CLEARLY STATED FRIGHTENS HER AND WHO SHE CLEARLY
12 ASSOCIATES WITH THE DEATH OF HER LITTLE SISTER IS
13 VERY LIKELY TO DESTABILIZE HER AND MAY CAUSE HER
14 LONG-TERM SETBACKS IN TERMS OF ANXIETY, MANAGEMENT
15 OF PRIOR DISTRESSING EVENTS, AND SHE IS CURRENTLY
16 STABLE.

17 I THINK IT WOULD BE VERY RISKY TO EXPOSE HER
18 TO SORT OF THE PENULTIMATE STIMULUS FOR THE PAST.

19 MS. CAMPBELL: THAT'S ALL I'D HAVE OF THIS
20 WITNESS, YOUR HONOR, ON THIS ISSUE.

21 THE COURT: CROSS-EXAMINATION?

22 MS. COGGIOLA: THANK YOU.

23 CROSS-EXAMINATION

24 (IN CAMERA)

25 BY MS. COGGIOLA:

CROSS OF DEFELICE BY COGGIOLA
(IN CAMERA)

24

1 Q GOOD MORNING, DR. DEFELICE.

2 A GOOD MORNING.

3 Q THE -- SO REALLY THE ISSUE OF WHETHER N.G.
4 WAS FEARFUL OF BEING AROUND NATHANIEL MITCHELL DID
5 NOT COME UP UNTIL THE 14TH OF -- I'M SORRY,
6 APRIL 15TH OF THIS YEAR?

7 A CORRECT.

8 Q WHEN YOU DID THE LAB?

9 A IN TERMS OF MY ASSESSMENT.

10 Q IN TERMS OF YOUR ASSESSMENT? OKAY.

11 A CORRECT.

12 Q AND THAT ENTIRE INTERVIEW WAS VIDEOTAPED,
13 WASN'T IT?

14 A YES, IT WAS.

15 Q AND I DO BELIEVE THAT'S AVAILABLE WITH THE
16 STATE?

17 A CORRECT.

18 Q ISN'T IT TRUE THAT DURING THAT INTERVIEW FOR
19 A LONG PERIOD OF TIME SHE COULD NOT EVEN REMEMBER
20 OR IDENTIFY THE PERSON THAT SHE LIVED WITH,
21 MEANING MR. MITCHELL, AT THE START OF THE
22 INTERVIEW?

23 A I WOULD NOT CHARACTERIZE ANY ASPECT OF THE
24 INTERVIEW AS BEING WHAT I WOULD CALL A LONG TIME
25 FOR A SIX YEAR OLD. I'M NOT SURE WHAT ASPECT OF

CROSS OF DEFELICE BY COGGIOLA
(IN CAMERA)

25

1 THE TAPE YOU'RE TALKING ABOUT, BUT SHE WAS
2 ORIENTED TO THE PRESENT ORIGINALLY, BUT SHE
3 CERTAINLY WAS ABLE TO IDENTIFY ULTIMATELY ON THE
4 BASIS OF THE QUESTION OF THE LOSS OF MINOR. SHE
5 WAS ABLE TO IDENTIFY IN HER LANGUAGE WHO SHE LIVED
6 WITH AT THAT TIME.

7 Q OKAY. ONCE SHE -- MY RECOLLECTION AND AGAIN
8 I HAVE VIEWED THE VIDEOTAPE AND, YOU KNOW,
9 CERTAINLY TOOK MY NOTES, AND YOU CAN RECALL FROM
10 YOURS. I ALSO HAVE A SUMMARY THAT I BELIEVE YOU
11 PREPARED FOR THIS, BUT AT THE BEGINNING SHE DID
12 NOT REMEMBER THAT SHE HAD A SISTER. WOULD THAT BE
13 ACCURATE TO SAY, AT THE BEGINNING OF THE
14 INTERVIEW?

15 A ON THE BASIS OF MY RECORDS THERE'S ABSOLUTELY
16 NOTHING TO SUGGEST THAT. I'M NOT SURE WHAT PIECE
17 OF THE DIALOG THAT YOU'RE TALKING ABOUT, BUT IF
18 YOU'LL REFRESH MY MEMORY, I'LL BE HAPPY TO COMMENT
19 ON IT.

20 Q OKAY.

21 MS. COGGIOLA: YOUR HONOR, AT THIS TIME WE
22 MIGHT REQUEST THAT THAT VIDEOTAPE BE SHOWN OF THE
23 ACTUAL INTERVIEW THAT WAS DONE ON THE 15TH OF
24 APRIL, 2002.

25 THE COURT: HOW LONG IS THAT VIDEOTAPE, DO

CROSS OF DEFELICE BY COGGIOLA
(IN CAMERA)

26

1 YOU KNOW?

2 MS. CAMPBELL: IT'S ABOUT A 20-25 MINUTE
3 TAPE.

4 THE COURT: ALL RIGHT.

5 MS. CAMPBELL: WE CAN SHOW IT, YOUR HONOR.
6 IN FACT, WE'LL MOVE IT INTO EVIDENCE.

7 THE COURT: I THINK THAT'S PROBABLY GOOD.

8 DO YOU WANT TO QUESTION HER ON OTHER ISSUES?

9 MS. COGGIOLA: I GUESS, IF I COULD SAVE ANY
10 FURTHER QUESTIONS UNTIL AFTER THE VIEWING OF THE
11 VIDEO, YOUR HONOR.

12 THE COURT: THAT'S FINE. I DON'T WANT TO
13 LOSE MY TRAIN OF THOUGHT, THOUGH, DOING THIS. THE
14 OPINIONS YOU GAVE AS TO THE PSYCHOLOGICAL IMPACT,
15 YOU HOLD THOSE TO A REASONABLE DEGREE OF
16 PSYCHOLOGICAL CERTAINTY?

17 THE WITNESS: YES, SIR.

18 THE COURT: THAT MOST PROBABLY THERE WOULD BE
19 A PSYCHOLOGICAL IMPACT?

20 THE WITNESS: YES, SIR, I DO. I'LL HOLD
21 THAT TO A REASONABLE DEGREE OF PSYCHOLOGICAL
22 CERTAINTY.

23 THE COURT: ALL RIGHT. DO YOU WANT TO SET IT
24 UP? HOW DO YOU WANT TO SHOW IT?

25 MS. CAMPBELL: YES, SIR, IF THEY WANT TO GET

CROSS OF DEFELICE BY COGGIOLA
(IN CAMERA)

27

1 A VCR, WE CAN SHOW IT. I DIDN'T KNOW IF SHE
2 WANTED TO MOVE ON TO OTHER AREAS OF QUESTIONING OR
3 WHAT.

4 THE COURT: I THINK THAT'S PROBABLY HER
5 BIGGEST HANG-UP.

6 MS. COGGIOLA: YES, YOUR HONOR. THE ISSUE IS
7 THAT MY -- MS. CAMPBELL MADE THE VIDEOTAPE
8 AVAILABLE TO US AND IN THE VIEWING OF IT AND
9 TAKING NOTES THAT INITIALLY THE CHILD DID NOT
10 REMEMBER THAT SHE HAD A SISTER, AND DR. DEFELICE
11 REMINDED HER OF MINOR AND THEN HAD SOME PROBLEMS
12 GETTING HER TO REMEMBER WHO SHE HAD LIVED WITH AT
13 THE TIME. THEN IN THE END, SHE SAID ARE YOU
14 SCARED OF THAT MAN.

15 MY SENSE IS THAT -- AND I'M TRYING NOT TO MIX
16 UP MY ISSUE OF COMPETENCY WITH MY ISSUE OF THE
17 VIDEOTAPING. I UNDERSTAND THAT THOSE ARE TWO
18 DIFFERENT ISSUES TODAY, SO AT THIS POINT I'M
19 BRINGING IT IN ONLY IN TERMS OF IF A MONTH AGO THE
20 CHILD DID NOT REMEMBER WHO MR. MITCHELL WAS, THAT
21 I WOULD SIMPLY ARGUE THAT THE CASE LAW -- AND I
22 CAN CERTAINLY ARGUE THIS AT THE END, REQUIRES REAL
23 TRAUMA NOT OF THE COURTROOM, BUT OF AN INDIVIDUAL
24 PERSON AND BEING AROUND THAT PERSON.

25 IF I DON'T RECALL THE TAPE ACCURATELY, THEN

REDIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

28

1 WE'LL BE FINE FROM THERE, BUT THAT IS MY
2 RECOLLECTION.

3 MS. CAMPBELL: AND, YOUR HONOR, WE INTENDED
4 ALL ALONG TO OFFER THE TAPE FOR YOUR REVIEW PRIOR
5 TO YOUR MAKING ANY RULING. I THINK DR. DEFELICE
6 CAN EXPLAIN HER INTERPRETATION OF WHAT HAPPENED
7 FAIRLY DECENTLY.

8 THE COURT: OKAY. AS SOON AS WE GET IT WE'LL
9 WATCH IT.

10 MS. CAMPBELL: CAN I FOLLOW-UP WITH SOME
11 QUESTIONS OF HER BASED ON THAT LINE OF
12 QUESTIONING?

13 THE COURT: SURE.

14 REDIRECT EXAMINATION

15 (IN CAMERA)

16 BY MS. CAMPBELL:

17 Q DR. DEFELICE, WHEN YOU INITIALLY QUESTIONED
18 N.G. -- HAS N.G. BEEN THROUGH A SERIES OF
19 FOSTER HOMES?

20 A YES, SHE HAS.

21 Q THERE HAVE BEEN MANY HOMES THAT N.G. HAS
22 BEEN IN; IS THAT CORRECT?

23 A YES.

24 Q WHEN YOU FIRST TALKED TO HER -- AND I KNOW
25 THIS VIDEOTAPE IS GOING TO SHOW THAT YOU ASKED HER

REDIRECT OF DEFELICE BY CAMPBELL
(IN CAMERA)

29

1 ABOUT HER PRESENT FAMILY; IS THAT CORRECT?

2 A WE USUALLY START OUT BY ASKING WHO THE CHILD
3 IS PRESENTLY LIVING WITH, SO I PRESUME THAT'S WHAT
4 I DID IN THIS CASE.

5 Q AND THEN YOU ALSO ASKED HER ABOUT OTHER
6 PEOPLE SHE HAD LIVED WITH, AND SHE WAS ABLE TO
7 RECALL DIFFERENT NAMES?

8 A THAT'S CORRECT.

9 Q AT ANY TIME DID SHE DENY THAT MINOR WAS HER
10 SISTER?

11 A NO.

12 Q AND CAN YOU EXPLAIN WHY SHE BROUGHT UP HER
13 PRESENT FAMILY FIRST AND THEN OTHER FAMILIES SHE
14 HAD BEEN WITH SINCE THEN? HOW DOES THAT WORK?
15 CAN YOU EXPLAIN THAT TO THE JUDGE?

16 A IN LARGE PART BECAUSE WE ESTABLISH -- WE
17 FOLLOW A PARTICULAR INTERVIEW FORMAT THAT INCLUDES
18 RAPPORT BUILDING WHERE WE ASK THE CHILDREN WITH
19 WHOM DO THEY LIVE NOW AND THEN WE WORK OUR WAY,
20 AFTER ESTABLISHING RAPPORT AND ESTABLISHING
21 COMPETENCY, THEN WE WORK OUR WAY INTO THE MATTERS
22 AT HAND AND COLLECT MORE SPECIFIC INFORMATION, BUT
23 I CAN ALSO NOTE THAT THE CHILD WHILE IN
24 PSYCHOTHERAPY AT A.R.C. -- WE HAVE NOTES ALL ALONG
25 WHERE THE CHILD CERTAINLY RECALLED HER SISTER

1 MINOR . THAT'S JUST DOCUMENTED THROUGHOUT THE
2 RECORD.

3 THE COURT: OKAY.

4 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR HONOR.

5 THE COURT: OKAY.

6 MS. CAMPBELL: THEY'RE BRINGING THE VCR -- I
7 HOPE THEY'RE BRINGING THE VCR IN HERE.

8 MS. CAMPBELL: YOUR HONOR, MAY SHE STEP DOWN?

9 THE COURT: SURE.

10 (WHEREUPON, THE VIDEOTAPE WAS SHOWN
11 BEFORE HIS HONOR.)

12 MS. CAMPBELL: YOUR HONOR, WE'D JUST LIKE TO
13 MAKE THAT AS A COURT'S EXHIBIT AT THIS TIME.

14 (WHEREUPON, COURT'S EXHIBIT NUMBER 2 WAS
15 MARKED FOR IDENTIFICATION ONLY.)

16 THE COURT: ARE YOU READY TO PROCEED?

17 MS. CAMPBELL: YES, SIR.

18 THE COURT: YOU MAY RETAKE THE STAND.

19 MS. COGGIOLA: YOUR HONOR, I DON'T HAVE ANY
20 FURTHER QUESTIONS OF DR. DEFELICE.

21 THE COURT: I'M SORRY. DO YOU HAVE ANY OTHER
22 QUESTIONS FOR THIS WITNESS?

23 MS. CAMPBELL: JUST TO FOLLOW-UP FOR THIS
24 RECORD.

25 BY MS. CAMPBELL:

REDIRECT OF DEFELICE BY CAMPBELL 31
(IN CAMERA)

1 Q DR. DEFELICE, IN YOUR EXPERT OPINION, WOULD
2 THE DEFENDANT'S PRESENCE, THE DEFENDANT HIMSELF,
3 WOULD HIS PRESENCE INHIBIT N.G. A'S ABILITY TO
4 RELATE THESE EVENTS TO THE COURT?

5 A IN MY OPINION IT WOULD.

6 Q TO A REASONABLE DEGREE OF MEDICAL CERTAINTY?

7 A TO A REASONABLE DEGREE OF PSYCHOLOGICAL
8 CERTAINTY, YES.

9 Q AND IN ADDITION TO THAT IF SHE HAD TO TESTIFY
10 IN THE DEFENDANT'S PRESENCE, WOULD THAT IN YOUR
11 OPINION HARM HER PSYCHOLOGICALLY?

12 A IT'S MY OPINION THAT IT WOULD PLACE HER AT
13 UNWARRANTED RISK FOR EMOTIONAL TRAUMA, YES.

14 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR HONOR.

15 THE COURT: TELL ME HOW YOU CAME TO THAT
16 CONCLUSION BASED ON THAT TAPE.

17 THE WITNESS: MY CONCLUSION NOT ONLY ON THE
18 BASIS OF THAT TAPE, BUT ALSO THE TOTALITY OF THE
19 MENTAL HEALTH RECORDS. WE HAVE A MENTAL HEALTH
20 RECORD THAT SPANS FROM APRIL OF 2000 TO APRIL OF
21 2002, AND THERE ARE CONSISTENT THREADS IN THE
22 THERAPEUTIC CONTACT, BUT IN ADDITION JUST IN TERMS
23 OF LOOKING AT THAT TAPE, THIS IS A CHILD WHO
24 CLEARLY DEMONSTRATES A PREOCCUPATION WITH DEATH,
25 CLEARLY DEMONSTRATES AN UNDERSTANDING OF THE LOSS,

1 THE DEATH OF HER SISTER AND RIGHTLY OR WRONGLY,
2 SHE MAKES THE CAUSAL ATTRIBUTION THAT IT WAS A
3 DEATH CAUSED BY THIS FATHER.

4 THEN SHE CITES STRICTLY THAT THERE'S ONE
5 PERSON IN THE WORLD THAT SHE'S SCARED OF. I ASKED
6 HER -- I GAVE HER A FEW DIFFERENT OPTIONS, A FEW
7 DIFFERENT OPPORTUNITIES IF THERE WERE ANY OTHER
8 PEOPLE IN THIS WORLD, I ASKED HER, WHO INCITED
9 FEAR, AND SHE SAID NO.

10 SO WHAT I KNOW IS SHE HAS ONE VERY PROFOUND
11 -- SHE HAS MANY LOSSES, MULTIPLE FOSTER CARE
12 PLACEMENTS, LOSS OF HER BIOLOGICAL PARENTS, ET
13 CETERA, BUT SHE ALSO HAS THE MORBID LOSS OF HER
14 SISTER.

15 SHE MAKES A CAUSAL ATTRIBUTION TO THE
16 DEFENDANT. SHE ALSO INDICATES THAT SHE WAS
17 MALTREATED OR AT LEAST SPANKED. THERE IS PHYSICAL
18 EVIDENCE THAT CORROBORATES THAT SHE SUSTAINED
19 PHYSICAL INJURIES PRIOR TO OR DURING THAT TIME.

20 SO TAKING ALL OF THAT TOTALITY OF
21 CIRCUMSTANCES, SIR, I WOULD SAY THAT WHILE THIS IS
22 A GIRL WHO IS CURRENTLY FUNCTIONING WELL, THAT IT
23 WOULD BE PLACING HER IN DIRECT LINE WITH THE
24 STIMULUS THAT CAUSES HER THE GREATEST ANXIETY AND
25 DISTRESS.

1 THE COURT: MS. CAMPBELL?

2 MS. CAMPBELL: I HAVE NOTHING FURTHER ON
3 THAT.

4 THE COURT: ALL RIGHT. THANK YOU, MA'AM.
5 YOU MAY STEP DOWN.

6 THE WITNESS: THANK YOU.

7 THE COURT: HOW DO YOU READ STATE VS. MURRELL
8 WHEN THEY USE THE WORD OR IN A LIST OF PEOPLE THAT
9 I COULD CONSIDER AND THEN THEY USE CONJUNCTIVE AND
10 CHILD?

11 MS. CAMPBELL: I'M SORRY, STATE VS. MURRELL?

12 THE COURT: I'M ON PAGE TWO OF THE -- WELL,
13 I'M LOOKING AT HEAD NOTE 1. IT SAYS, IN MAKING
14 THE DETERMINATION, THE TRIAL COURT SHOULD CONSIDER
15 THE TESTIMONY OF EXPERT WITNESSES, PARENTS OR
16 ~~OTHER RELATIVES, OTHER CONCERNED OR RELEVANT~~
17 ~~PARTIES, AND THE CHILD.~~

18 MS. CAMPBELL: THAT'S UNDER...

19 THE COURT: I'M JUST CURIOUS AS TO WHY THEY
20 USE "OR" IN CERTAIN PLACES AND "AND" IN OTHERS.
21 (PAUSE)

22 MS. CAMPBELL: I'M SORRY, YOUR HONOR. I
23 THINK THAT WAS ADDRESSED IN BRAY, WHICH IS THE
24 MOST RECENT OPINION IN THIS CASE. WHEN IT TALKS
25 ABOUT IT IN MURRELL, HOW IT SETS OUT SPECIFICALLY

1 THAT THE JUDGE SHOULD INTERVIEW THE CHILD ITSELF
2 -- BUT THEN IN BRAY IT REVISES THAT, IN THE
3 SUPREME COURT, NOT THE COURT OF APPEALS BRAY. I
4 CAN HAND THAT UP AT THIS TIME, YOUR HONOR.

5 IT SAID THAT FINALLY THE COURT OF APPEALS
6 PLACES GREAT EMPHASIS ON THE TRIAL JUDGE'S PERSON
7 TO INTERVIEW THE VICTIM, AND I THINK THAT'S IN
8 PART WHAT THEY'RE SAYING "AND" THE CHILD AND "OF"
9 THE CHILD. IN RULING, THE COURT SUGGESTED THAT
10 PRIOR TO INTERVIEWING THE CHILD, CERTAIN
11 CONDITIONS BE MET --

12 WE DID NOT HOWEVER MANDATE SUCH A PROCEDURE.
13 WE DECLINED TO IMPOSE THE TRIAL COURT TO A
14 CATEGORICALLY PREREQUISITE OF A PERSONAL INTERVIEW
15 WITH THE CHILD PRIOR TO EMPLOYING ALTERNATIVE
16 PROCEDURES.

17 AS NOTED, WE THINK IT COULD STRENGTHEN THE
18 GROUNDS TO TRY TO ESTABLISH ANY CATEGORICAL
19 EVIDENTIARY PREREQUISITES. SIMILAR OTHER CASES
20 ADDRESSING THE MATTER CONSISTENTLY HELD THAT
21 EXPERT TESTIMONY STANDING ALONE IS SUFFICIENT TO
22 SUPPORT A FINDING OF NECESSITY. I WOULD HAND THAT
23 UP, YOUR HONOR. THAT WOULD BE 535 S.E.2D 636
24 DECIDED JULY 31ST OF THE YEAR 2000.
25 SPECIFICALLY THEY AGREE WITH THE OUTCOME IN

1 THE COURT OF APPEALS BRAY, BUT THEY RULED THAT IT
2 WAS A TECHNICAL VIOLATION JUST IN THAT THE
3 PROCEDURE WAS VIOLATED AND THAT THE JUDGE SHOULD
4 NOT PUT ON THE RECORD THE SPECIFIC FINDINGS AS TO
5 WHY IT WOULD BE NECESSARY AND THE BASIS OF THAT.

6 I ALSO HAVE THE COURT OF APPEALS OPINION, BUT
7 WHERE THEY OVERRULED THAT. I DON'T KNOW IF YOU
8 WANT IT.

9 YOUR HONOR, IN THIS CASE I THINK IT'S
10 SOMEWHAT UNIQUE IN THAT THE CHILD -- WE DO HAVE
11 THE VIDEOTAPE AS PART OF EVIDENCE AND PART OF THE
12 BASIS IN WHICH YOU CAN SEE ON THE VIDEOTAPE WHERE
13 THE CHILD IS BEING INTERVIEWED THAT SHE EXPRESSES
14 REPEATEDLY HER FEAR OF THE DEFENDANT, WHICH I
15 THINK WOULD SATISFY EVEN IF YOU WERE TO --
16 ALTHOUGH, YOUR HONOR, THE CHILD IS AVAILABLE IF
17 YOU WISH TO INTERVIEW HER.

18 THE COURT: ALL RIGHT. MS. COGGIOLA.

19 MS. COGGIOLA: THANK YOU, YOUR HONOR. IN
20 TERMS OF JUST THE VIDEOTAPE ITSELF AND TRYING TO
21 STICK STRICTLY WITH THE ISSUE OF THE VIDEO,
22 WHETHER SHE WOULD BE ON VIDEOTAPE, I WOULD ARGUE
23 THAT THERE WAS NOT A GREAT SHOWING OF FEAR, THAT,
24 IN FACT, IT TOOK A LONG TIME TO EVEN GET TO THAT
25 POINT STARTING WITH -- I WOULD TAKE EXCEPTION TO

1 THIS, BUT DR. DEFELICE STATING THAT LUCK AND I ARE
2 KIND OF LIKE A TEAM, MEANING THAT THE CHILD SHOULD
3 POSSIBLY NEED TO PLEASE HER.

4 DID YOU EVER HAVE ANOTHER GIRL IN THE FAMILY?
5 NO, I WAS THE ONLY GIRL. AND DID YOU KNOW THE
6 MITCHELLS? IT TOOK A WHILE TO EVEN GET TO WHO THE
7 MITCHELLS WERE, AND THEN SORT OF MOVING ON BEYOND
8 THAT, MY RECOLLECTION IS THAT PRIOR TO THE BRAY
9 THERE WAS NO DISCUSSION OF FEAR OF THE FATHER OR
10 PAPA OR WHATEVER NAME SHE HAD USED. SHE COULDN'T
11 COME UP WITH HIS REAL NAME AND THAT'S OKAY. SHE'S
12 A YOUNG CHILD, BUT UNTIL THE VERY END THERE REALLY
13 WASN'T ANY DISCUSSION ABOUT FEAR.

14 IT CAME ABOUT IN THE -- ARE THERE PEOPLE
15 YOU'RE SCARED OF? DOES THAT MAN MAKE YOU FEEL
16 SAFE? NO. DOES HE MAKE YOU FEEL SCARED? YES.
17 AND THEN FINALLY THE QUESTION, ARE YOU SCARED OF
18 THAT FATHER, AND THEN ARE YOU SCARED OF ANYONE
19 ELSE? NO, NO ONE ELSE.

20 YOUR HONOR, I WOULD ALSO REFERENCE STATE V.
21 LEWIS THAT JUST TALKS ABOUT HOW THEY EXPLORE THE
22 DEGREE OF TRAUMA. I'M LOOKING AT SECTION B. ON
23 PAGE FOUR OF THIS.

24 IT TALKS ABOUT THE FACT THAT THE TRIAL COURT
25 MUST FIND THAT THE CHILD WITNESS WOULD BE

1 TRAUMATIZED NOT BY THE COURTROOM GENERALLY, BUT BY
2 THE PRESENCE OF THE DEFENDANT AND THAT THE DENIAL
3 OF A FACE-TO-FACE CONFRONTATION IS NOT NEEDED TO
4 FURTHER THE STATE'S INTEREST IN PROTECTING THE
5 CHILD WITNESS FROM TRAUMA UNLESS IT IS THE
6 PRESENCE OF THE DEFENDANT THAT CAUSES THE TRAUMA.

7 I WOULD ARGUE, YOUR HONOR, THIS 1996 COURT OF
8 APPEALS CASE, I WOULD ARGUE THAT ONLY -- THAT THIS
9 CHILD HAS CLEARLY SUFFERED A GREAT DEAL OF LOSS IN
10 HER VERY YOUNG LIFE AND, OBVIOUSLY, TRYING TO DO A
11 RECITATION OF THINGS THAT HAVE HAPPENED TO HER IS
12 DIFFICULT, BUT NOWHERE UNTIL THE VERY END WHEN THE
13 QUESTIONS WERE POSED TO HER DID SHE, ON HER OWN,
14 SAY, ~~I DON'T WANT TO SEE THAT MAN, I DON'T WANT TO~~
15 ~~BE NEAR THAT MAN. I AM AFRAID OF THAT MAN. DON'T~~
16 LET ME GET NEAR HIM, OR EVEN IN CHILD-LIKE TERMS
17 UNTIL QUESTIONED ABOUT DOES HE MAKE YOU FEEL SAFE
18 OR ARE YOU SCARED OF THE FATHER?

19 YOUR HONOR, I WOULD SAY IT DOES NOT MEET THE
20 STANDARD THAT OUR COURTS HAVE SET OUT FOR DENYING
21 MR. MITCHELL HIS RIGHT TO CONFRONTATION BASED ON
22 THE FACT THAT THIS IS A FRAGILE CHILD WITNESS,
23 THAT I DON'T BELIEVE THE TRAUMA HAS BEEN -- OR
24 RATHER THAT THE POTENTIAL FOR THE CHILD BEING
25 TRAUMATIZED BY BEING IN THE ROOM WITH HIM HAS BEEN

1 PRESENTED IN COURT TODAY. I WOULD ASK YOU TO DENY
2 THEIR MOTION.

3 MS. CAMPBELL: YOUR HONOR, I WOULD RESPOND IN
4 WEST IT'S ALMOST A SIMILAR SITUATION. IN THIS
5 CASE IT'S STRONGER THAN IN WEST OR IN BRAY FOR
6 THAT MATTER AS FAR AS THE FINDINGS. WE ASKED
7 SPECIFICALLY NOT WHETHER THE COURTROOM WOULD BE
8 TRAUMATIC BECAUSE WE'RE GOING TO HAVE THE
9 TESTIMONY IN THE COURTROOM.

10 WE ASKED SPECIFICALLY OF OUR EXPERT, AND
11 THERE'S NO QUESTION ABOUT HER QUALIFICATION, THEY
12 STIPULATED TO, ABOUT WHETHER OR NOT THIS WOULD BE
13 TRAUMATIC OR WOULD INHIBIT HER ABILITY, IN HER
14 EXPECT OPINION, TO GIVE TESTIMONY, YES.

15 ON THE SECOND PRONG, GOING FURTHER THAN THAT,
16 WOULD IT AFFECT HER PSYCHOLOGICALLY, YES, THERE
17 WOULD BE A GREAT RISK OF AFFECTING HER.

18 I WOULD CITE AND HAND UP WEST, YOUR HONOR.
19 IN THIS CASE THEY TALK ABOUT HOW IT JUST WOULDN'T
20 BE IN THE BEST INTERESTS OF THE CHILD. WE HAVEN'T
21 ASKED IF THE COURTROOM WOULD BE TRAUMATIC. SHE'S
22 GOING TO BE IN THIS COURTROOM, SHE'S GOING TO BE
23 RIGHT HERE IN THIS COURTROOM WITH YOU ON THE
24 BENCH. THE ONLY THING THAT WOULD BE DIFFERENT
25 WOULD BE THAT THE DEFENDANT WOULD BE IN THE NEXT

1 ROOM WATCHING IT ON A VIDEO CAMERA.

2 SO OUR QUESTIONS HAVE NOT BEEN TOWARDS JUST
3 GENERALLY WHETHER THE FAMILY WOULD HAVE A BAD
4 EFFECT, GENERALLY WHETHER OR NOT THE COURTROOM
5 WOULD HAVE A BAD EFFECT. WE ASKED SPECIFICALLY
6 WHETHER OR NOT THIS DEFENDANT -- THIS CHILD --
7 YOUR HONOR, I DON'T KNOW HOW YOU GET A CHILD TO
8 ELICIT WHO ALL SHE IS SCARED OF BECAUSE MOST
9 CHILDREN DON'T LIKE TO TALK ABOUT WHAT THEY'RE
10 SCARED OF, WITHOUT DIRECTLY ASKING THEM, BUT THIS
11 EXPERT WHO HAS DONE HUNDREDS OF THESE FORENSIC
12 EXAMINATIONS BROUGHT IT OUT PRETTY SKILLFULLY: DO
13 YOU FEEL SAFE HERE, DO YOU FEEL DIFFERENT WITH
14 ANYONE ELSE, YES.

15 THE ONLY PERSON SHE NAMES CLEARLY ON THE
16 VIDEOTAPE IS THIS PERSON, HIM. SHE EXPRESSES
17 UNEQUIVOCALLY THE ONLY PERSON SHE HAS THIS GREAT
18 FEAR FOR IS THE PERSON SHE THINKS CAUSED HER
19 LITTLE SISTER'S DEATH. I THINK THIS RECORD IS
20 ABUNDANT IN ITS SPECIFICS AS TO HER FEAR OF THE
21 DEFENDANT, NOT OF OTHER PEOPLE, NOT OF THE
22 COURTROOM, NOT OF THE WHOLE PROCEDURE, BUT OF THE
23 DEFENDANT HIMSELF AND THAT IT WOULD AFFECT -- IN
24 THE EXPERT TESTIMONY THAT YOU HAVE TO CONSIDER,
25 YOUR HONOR, IN HER OPINION, THAT IT WOULD IN HER

1 OPINION AFFECT HER ABILITY TO NUMBER ONE ELICIT
2 TESTIMONY AND NUMBER TWO THAT IT WOULD HARM HER
3 PSYCHOLOGICALLY.

4 I WOULD HAND UP WEST AT THIS TIME, YOUR
5 HONOR.

6 THE COURT: WELL, SHE MIGHT NOT EVEN
7 RECOGNIZE HIM, MS. COGGIOLA.

8 MS. COGGIOLA: THAT --

9 THE COURT: IF YOU PUT HER IN THE COURTROOM
10 WITH HIM, SHE MIGHT.

11 MS. COGGIOLA: VERY POSSIBLY. YOU KNOW, I
12 QUESTION THE CHARACTERIZATION OF GREAT FEAR THAT
13 EVEN CAME FROM THIS VIDEOTAPE. I DIDN'T HEAR
14 GREAT FEAR AT ALL.

15 I THINK SHE ANSWERED THE QUESTIONS AND OUR
16 EXPERT DR. DEFELICE HAS SAID THAT -- I BELIEVE SHE
17 SAID THAT IT WOULD PLACE HER AT RISK FOR
18 PSYCHOLOGICAL TRAUMA.

19 THE COURT: I THINK SHE ANSWERED THE
20 QUESTION, ANSWERED MY QUESTION, TO A REASONABLE
21 DEGREE OF PSYCHOLOGICAL CERTAINTY THAT MOST
22 PROBABLY IT WOULD, SO I THINK I WOULD ACCEPT THAT
23 ANSWER INsofar AS IT HAS ANYTHING TO DO WITH THAT.

24 YOU ALL COME UP HERE JUST A MINUTE.

25 (WHEREUPON, THERE WAS A BENCH CONFERENCE

DIRECT OF N. G. BY CAMPBELL 41
(IN CAMERA)

1 HELD.)

2 THE COURT: ALL RIGHT. FOR PURPOSES OF
3 PROCEEDING, I'M GOING TO GRANT THE STATE'S REQUEST
4 AT THIS TIME FOR PURPOSES OF INTERVIEWING THE
5 CHILD. I'LL ASK THAT THE DEFENDANT BE SENT TO THE
6 VIDEO ROOM AND WE'LL HAVE BOTH MS. COGGIOLA AND
7 MS. CAMPBELL INTERVIEW THE CHILD IN THIS
8 COURTROOM.

9 I THINK IT WILL TAKE ABOUT FIVE MINUTES FOR
10 THEM TO GET WHATEVER THEY HAVE TO DO, SO WE'LL BE
11 RIGHT BACK.

12 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

13 (WHEREUPON, THE DEFENDANT WAS MOVED FROM
14 THE COURTROOM TO THE VIDEO VIEWING
15 ROOM.)

16 THE COURT: ALL RIGHT, MADAM CLERK.

17 N.G.

18 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 MS. CAMPBELL: YOU'LL TELL THE TRUTH?

20 (THE WITNESS NODS HEAD IN THE
21 AFFIRMATIVE.)

22 MS. CAMPBELL: YOU HAVE TO SAY YES OR NO.

23 THE WITNESS: YES.

24 THE CLERK: YOU SWEAR TO TELL THE TRUTH?

25 THE WITNESS: YES.

1 THE CLERK: OKAY. JUST HAVE A SEAT RIGHT
2 HERE. CAN YOU STATE YOUR FULL NAME? CAN YOU
3 STATE YOUR NAME FOR ME?

4 MS. CAMPBELL: I'M GOING TO PULL THE CHAIR A
5 LITTLE CLOSER TO THE MICROPHONE, OKAY? JUST SAY
6 YOUR NAME INTO THE MICROPHONE, OKAY? WHAT IS YOUR
7 NAME?

8 THE WITNESS: N.G.

9 MS. CAMPBELL: OKAY. CAN YOU SAY IT A LITTLE
10 LOUDER FOR ME PLEASE? TALK INTO BOTH OF THEM.
11 CAN YOU SAY YOUR NAME AGAIN?

12 THE WITNESS: N.G.

13 DIRECT EXAMINATION

14 (IN CAMERA)

15 BY MS. CAMPBELL:

16 Q N.G. , HOW OLD ARE YOU?

17 A SIX.

18 Q WHERE DO YOU GO TO SCHOOL?

19 A LEAPHART ELEMENTARY.

20 Q LEAPHART ELEMENTARY. WHAT GRADE ARE YOU IN
21 THERE?

22 A KINDERGARTEN.

23 Q WHO IS YOUR TEACHER?

24 A MS. HOOTEN.

25 Q MS. HOOTEN?

1 A MS. HOOTEN AND MS. WIGGINS.

2 Q AND MS. WIGGINS. RIGHT NOW I JUST WANT TO
3 ASK YOU A FEW QUESTIONS ABOUT HOW YOU FEEL ABOUT
4 CERTAIN PEOPLE, OKAY. DO YOU SEE YOUR MAMA HERE
5 IN THE COURTROOM TODAY?

6 A YES, MA'AM.

7 Q CAN YOU POINT HER OUT FOR THE JUDGE? CAN YOU
8 POINT TO HER?

9 A (INDICATING)

10 Q THIS IS HER SITTING HERE IN THIS PRETTY BLUE
11 SUIT?

12 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

13 Q AND HAVE YOU BEEN IN HERE BEFORE?

14 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

15 Q AND DO YOU KNOW WHERE THE JUDGE SITS?

16 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

17 Q WHERE DOES THE JUDGE SIT?

18 A UP THERE.

19 Q THAT WOULD BE THAT MAN UP THERE?

20 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

21 Q HE'S THE JUDGE?

22 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

23 Q AND YOU UNDERSTAND THAT WHEN YOU COME IN HERE
24 YOU'RE SUPPOSED TO TELL THE TRUTH ABOUT THINGS,
25 RIGHT?

1 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
2 Q I WANT TO ASK YOU SOME QUESTIONS, N.G.
3 DO YOU REMEMBER YOUR LITTLE SISTER, MINOR ?
4 A YES, MA'AM.
5 Q WHAT HAPPENED TO MINOR ?
6 A SHE DIED.
7 Q SHE DIED? AND DO YOU REMEMBER THE DAY
8 MINOR DIED?
9 A ~~(THE WITNESS SHAKES HEAD IN THE NEGATIVE.)~~
10 Q YOU DON'T REMEMBER IT?
11 A ~~(THE WITNESS SHAKES HEAD IN THE NEGATIVE.)~~
12 Q DO YOU REMEMBER WHO YOU WERE LIVING WITH WHEN
13 MINOR DIED?
14 A YES, MA'AM.
15 Q WHO WERE YOU --
16 A I DON'T KNOW THE MOTHER.
17 Q YOU DON'T KNOW THE MOTHER'S NAME? DO YOU
18 KNOW WHAT YOU CALLED THE FATHER?
19 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
20 Q WHAT DID YOU CALL THE FATHER?
21 A PAPA.
22 Q PAPA?
23 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
24 Q AND DO YOU REMEMBER SEEING THE FATHER WITH
25 MINOR THE DAY SHE DIED?

DIRECT OF N. G. BY CAMPBELL 45
(IN CAMERA)

1 A YES, MA'AM.

2 Q AND DO YOU REMEMBER WHAT THE FATHER WAS DOING
3 TO MINOR ?

4 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

5 Q AND WHAT WAS HE DOING?

6 A SPANKING HER.

7 Q AND THAT FATHER, THAT PAPA, HAD HE EVER
8 SPANKED YOU BEFORE?

9 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

10 YEAH, HE SPANKED ALL OF US BEFORE.

11 Q ALL OF YOU? AND WHO ALL WAS LIVING THERE?

12 WHO ALL WERE THE CHILDREN IN THE HOUSE?

13 A H.G. , ME, AND MINOR .

14 Q AND THAT DAY HE SPANKED MINOR ?

15 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

16 Q AND WHAT HAPPENED WHEN HE SPANKED MINOR ?

17 A SHE DIED.

18 Q SHE DIED. HOW DID THAT MAKE YOU FEEL?

19 A SAD.

20 Q AND HOW DID YOU FEEL ABOUT PAPA?

21 A MAD.

22 Q MAD?

23 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

24 Q DO YOU HAVE ANY OTHER -- WHAT OTHER FEELINGS

25 DO YOU HAVE ABOUT PAPA? DO YOU FEEL GOOD OR BAD

1 ABOUT PAPA?

2 A BAD.

3 Q DO YOU WANT TO SEE HIM AGAIN?

4 A (WITNESS SHAKES HEAD IN THE NEGATIVE.)

5 Q YOU HAVE TO ANSWER OUT LOUD.

6 A NO, MA'AM.

7 Q AND WHY DON'T YOU WANT TO SEE HIM AGAIN?

8 A BECAUSE HE DID STRANGE STUFF TO US.

9 Q HE DID STRANGE STUFF TO US?

10 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

11 Q SO YOU DON'T WANT TO SEE HIM?

12 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

13 Q DO YOU WANT TO ANSWER SOME QUESTIONS THE
14 JUDGE MIGHT HAVE FOR YOU?

15 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

16 Q WILL YOU ANSWER HIS QUESTIONS, TOO?

17 A YES, MA'AM.

18 Q JUST ABOUT YOUR FEELINGS, OKAY?

19 A YES, MA'AM.

20 THE COURT: MS. COGGIOLA, DO YOU HAVE
21 ANYTHING?

22 CROSS-EXAMINATION

23 (IN CAMERA)

24 BY MS. COGGIOLA:

25 Q HI, N.G.

CROSS OF N. G. BY COGGIOLA 47
(IN CAMERA)

1 A HI.

2 Q I'M LEE COGGIOLA, AND I AM PART OF THIS TRIAL
3 HERE TODAY WITH MS. CAMPBELL, OKAY.

4 HAVE YOU SEEN PAPA SINCE THE DAY THAT
5 HAPPENED? HAVE YOU EVER SEEN HIM AGAIN?

6 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

7 Q YOU'VE NEVER SEEN HIM AGAIN SINCE THAT DAY?
8 CAN YOU ANSWER ME WITH A WORD, YES OR NO?

9 A YES, MA'AM.

10 Q AND YOU NODDED NO. YOU MEAN YOU HAVE NOT
11 SEEN HIM SINCE THEN?

12 A NO, MA'AM.

13 MS. COGGIOLA: OKAY. IF YOU COULD ANSWER
14 SOME QUESTIONS THAT THE JUDGE HAS.

15 MS. CAMPBELL: HE'S GOING TO BE THE LAST ONE
16 TO ASK YOU QUESTIONS, N.G.

17 THE COURT: I DON'T THINK I HAVE ANY.
18 THE VIDEO WAS WORKING, RIGHT?

19 MS. CAMPBELL: YES.

20 OKAY, N.G. THAT'S ALL FOR RIGHT NOW. YOU
21 CAN GET DOWN, OKAY? DO YOU WANT TO GO BACK IN
22 THE OFFICE?

23 (THE WITNESS NODS HEAD IN THE
24 AFFIRMATIVE.)

25 MS. CAMPBELL: OKAY. YOU CAN GO BACK THERE.

1 LET YOUR MOM TAKE YOU.

2 THE COURT: OKAY. I'LL CONSIDER THE
3 TESTIMONY OF THE PSYCHOLOGIST, AS WELL AS
4 N.G. 'S TESTIMONY, AND LISTEN TO THE ARGUMENTS
5 OF COUNSEL.

6 I FIND THAT PURSUANT TO SECTION 16-3-1530 --
7 1510, 20, AND 30 THAT THE STATE SHOULD BE
8 PERMITTED TO VIDEO THE TESTIMONY OF N.G.
9 DURING THAT TIME, SHE WOULD GIVE TESTIMONY IN THE
10 COURTROOM IN THE PLACE SHE WAS AND WOULD BE
11 AVAILABLE FOR CROSS-EXAMINATION BY THE DEFENDANT'S
12 ATTORNEY.

13 DURING THAT TIME THE DEFENDANT SHOULD BE
14 PLACED IN A SUITABLE ROOM ADJACENT TO THE
15 COURTHOUSE -- COURTROOM, FOR THE PURPOSES OF
16 CONSIDERING AND WATCHING THE TESTIMONY BY WAY OF
17 VIDEO AND AUDIO.

18 ADDITIONALLY, SECOND COUNSEL WILL BE WITH THE
19 DEFENDANT DURING THE TIME MS. COGGIOLA IS HERE FOR
20 PURPOSES OF COMMUNICATING BACK AND FORTH, AND IF
21 MS. COGGIOLA WANTS THE HEADPHONES AVAILABLE, WE'LL
22 GIVE YOU SOME LEEWAY. IN OTHER WORDS, YOU'LL HAVE
23 COMMUNICATION, HOWEVER YOU'D LIKE TO HAVE IT, WITH
24 MR. STRICKLER AND WITH YOUR CLIENT.

25 I'LL MAKE THAT FINDING ON THE BASIS THAT

1 THERE WERE ESSENTIALLY THREE ISSUES THAT WERE PUT
2 FORTH DURING THE TESTIMONY OF THE PSYCHOLOGIST. I
3 AGREE THAT AFTER VIEWING THAT AND LISTENING TO HER
4 TESTIMONY, AS WELL, THAT SHE IS COMPETENT. I
5 BELIEVE THAT SHE DOES HAVE AN INDEPENDENT MEMORY.

6 I THOUGHT THE PSYCHOLOGIST DID A GOOD JOB OF
7 NOT NECESSARILY LEADING HER TO GIVE CERTAIN
8 INFORMATION.

9 AS TO THE PSYCHOLOGICAL IMPACT, WHILE I HAD
10 SOME CONCERN ABOUT THAT AND ABOUT EXACTLY WHAT SHE
11 MEANT WHEN SHE WAS BEING INTERVIEWED BY THE
12 PSYCHOLOGIST, I THINK A VIDEO WOULD CLEARLY SHOW
13 THE MOST TRAUMATIC MOVE THAT THE CHILD MADE DURING
14 ANY OF THE QUESTIONING, WHETHER IT WAS WITH THE
15 PSYCHOLOGIST, MS. CAMPBELL OR MS. COGGIOLA, WAS IN
16 RESPONSE TO THE QUESTION ABOUT SEEING OR BEING
17 AROUND NATHANIEL MITCHELL. IT WAS ALMOST
18 STRIKING.

19 I'M SATISFIED THAT SHE IS AFRAID OF HIM. SHE
20 DOESN'T WANT TO SEE HIM AGAIN, AND I THINK THAT
21 MR. MITCHELL'S CONSTITUTIONAL RIGHT OF
22 CONFRONTATION IS DULY PROTECTED UNDER THE OUTLINE
23 THAT I'VE JUST GIVEN, SO I'LL GRANT YOUR RIGHT TO
24 DO THAT.

25 MECHANICALLY, WE STILL HAVE SOME MORE MOTIONS

1 LEFT, RIGHT?

2 MS. CAMPBELL: YES, YOUR HONOR. WE'RE READY
3 TO GO FORWARD WITH THE VIDEOTAPING ANYTIME YOU ARE
4 READY OF HER TESTIMONY TO BE PLAYED AT A LATER
5 TIME.

6 THE COURT: YES, I THINK WE'LL HAVE TO --
7 WELL, I GUESS WHAT WE COULD DO IS BREAK FOR LUNCH,
8 COME BACK AND START ON THE MOTIONS AND THEN --

9 MS. CAMPBELL: IF WE COULD DO THE VIDEOTAPING
10 FIRST, JUST BECAUSE THE PEOPLE ARE HERE, AND I
11 THINK MS. COGGIOLA IS IN AGREEMENT WITH THAT.

12 THE COURT: WELL, WE CAN DO THAT. I JUST --
13 WHEN ARE WE GOING TO PICK THE JURY?

14 MS. CAMPBELL: WHENEVER, YOU KNOW, OR RIGHT
15 AFTER WE PICK THE JURY, WHATEVER...

16 THE COURT: I THINK WE SHOULD PICK THE JURY
17 AND THAT WOULD BE LESS STRESS ON EVERYBODY ABOUT
18 DOING THE VIDEO.

19 MS. CAMPBELL: THEN THE ONLY MOTIONS WE HAVE
20 ARE TWO -- I THINK IT'S TWO WITNESSES, ON THE
21 JACKSON V. DENNO.

22 THE COURT: OKAY. ALL RIGHT. WHAT WE'LL DO
23 IS WE'LL COME BACK AND START ON THE MOTIONS AND --
24 IF WE COULD BE BACK HERE BY 2:00 THEN WE COULD
25 START ON THE MOTIONS FOR A LITTLE BIT AND THE JURY

DIRECT OF JONES BY COOPER
(IN CAMERA)

51

1 WILL BE HERE BY 2:30. YOU ALL CAN'T DO THIS IN
2 THIRTY MINUTES I DON'T THINK.

3 MS. CAMPBELL: THE TESTIMONY OF THE CHILD?

4 MS. COGGIOLA: I WOULD HATE TO BE LIMITED TO
5 THAT ON THIS PARTICULAR WITNESS.

6 THE COURT: ALL RIGHT THEN. BE BACK AT 2:00
7 THEN.

8 MS. CAMPBELL: THANK YOU, JUDGE.

9 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

10 THE COURT: ARE YOU READY ON YOUR JACKSON V.
11 DENNO?

12 MS. COOPER: YES, YOUR HONOR. AT THIS TIME
13 THE STATE CALLS INVESTIGATOR DALE JONES TO THE
14 STAND.

15 THE CLERK: PLEASE COME FORWARD. PLACE YOUR
16 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

17 DALE JONES,
18 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: HAVE A SEAT AND STATE YOUR NAME
20 FOR THE RECORD, PLEASE.

21 THE WITNESS: SERGEANT DALE L. JONES, JR.

22 DIRECT EXAMINATION

23 (IN CAMERA)

24 BY MS. COOPER:

25 Q INVESTIGATOR JONES, CAN YOU PLEASE TELL JUDGE

DIRECT OF JONES BY COOPER
(IN CAMERA)

52

1 FLOYD WHERE YOU'RE EMPLOYED?

2 A YES, I AM EMPLOYED BY THE RICHLAND COUNTY
3 SHERIFF'S DEPARTMENT.

4 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

5 A I'VE BEEN THERE SINCE 1988.

6 Q AND WHAT IS YOUR TITLE?

7 A I'M THE SERGEANT ASSIGNED TO THE DESK
8 SERGEANT AREA, WHICH IS THE MAIN ADMINISTRATIVE
9 PORTION OF THE HEADQUARTERS AREA.

10 Q AND WHAT WAS YOUR TITLE ON MARCH 28TH OF
11 2000?

12 A I WAS A CHILD ABUSE SPECIALIST INVESTIGATOR.

13 Q AND AS AN INVESTIGATOR WITH THE CHILD ABUSE
14 SECTION, WHAT WERE YOUR DUTIES?

15 A I WOULD BE ASSIGNED CASES OF SUSPECTED CHILD
16 ABUSE AND WOULD SUBSEQUENTLY INVESTIGATE WHATEVER
17 INFORMATION WE HAD TO EITHER CLEAR OR CONFIRM THE
18 INFORMATION.

19 Q AND WHEN DID YOU BECOME INVOLVED IN THE CASE
20 AGAINST NATHANIEL MITCHELL?

21 A THAT WOULD HAVE BEEN ON MARCH 29TH --

22 CORRECTION, MARCH 30TH OF 2000.

23 Q AND WHAT WAS BROUGHT TO YOUR ATTENTION
24 CONCERNING THIS CASE? HOW WAS IT PRESENTED TO
25 YOU?

DIRECT OF JONES BY COOPER
(IN CAMERA)

53

1 A IT WAS PRESENTED IN THE FORM OF AN INCIDENT
2 REPORT THAT HAD BEEN WRITTEN BY ONE OF OUR WORKERS
3 THAT WORKED AT THE D.S.S. OFFICE ON THE 29TH
4 INDICATING THAT WE HAD A CHILD THAT WAS IN
5 RICHLAND MEMORIAL HOSPITAL IN THE PEDIATRIC UNIT
6 THAT WAS IN CRITICAL CONDITION.

7 Q AND WAS THERE ANY INDICATION OF SUSPECTED
8 CHILD ABUSE IN THAT REPORT?

9 A YES, MA'AM, THERE WAS.

10 Q AND COULD YOU TELL THE JUDGE THE
11 INVESTIGATION YOU UNDERWENT AND WHAT LED YOU TO
12 ENCOUNTER THE DEFENDANT NATHANIEL MITCHELL?

13 A YES, MA'AM. AS PART OF THE INVESTIGATION I
14 WENT TO THE HOSPITAL. I SPOKE WITH SOME OF THE
15 DOCTORS, SOCIAL WORKERS, ET CETERA. I WAS GIVEN
16 INFORMATION THAT THE FOSTER PARENT OF THE VICTIM
17 WAS A MR. NATHANIEL MITCHELL. I BRIEFLY SPOKE
18 WITH HIM AT THAT TIME AT THE HOSPITAL JUST TO
19 ASCERTAIN THAT THERE WERE TWO OTHER CHILDREN IN
20 THE HOUSEHOLD, THAT THEY HAD BEEN REMOVED AND WERE
21 AT ANOTHER LOCATION. I TOLD HIM I WOULD BE
22 FOLLOWING UP WITH HIM AT A LATER TIME.

23 SUBSEQUENT TO THAT PORTION OF THE
24 INVESTIGATION WE DID MANAGE TO GO AHEAD AND
25 RECEIVE A SEARCH WARRANT AND A WARRANT FOR ASSAULT

DIRECT OF JONES BY COOPER
(IN CAMERA)

54

1 AND BATTERY WITH INTENT TO KILL AT THAT TIME AND
2 WERE SUBSEQUENTLY LOOKING TO TALK TO HIM AND FOUND
3 HIM AT HIS RESIDENCE.

4 Q AND WHERE DOES HE LIVE?

5 A HE LIVES AT [REDACTED], WHICH IS IN
6 RICHLAND COUNTY.

7 Q AND WHEN YOU ARRIVED THERE, WHO DID YOU GO
8 WITH TO HIS RESIDENCE?

9 A SERGEANT LANCY WEEKS WITH THE SHERIFF'S
10 DEPARTMENT. SHE WAS MY IMMEDIATE SUPERVISOR AT
11 THE TIME.

12 Q AND WHAT WAS YOUR PURPOSE OF GOING TO THE
13 RESIDENCE?

14 A WE WERE GOING TO THE RESIDENCE BASICALLY FOR
15 THE SEARCH WARRANT TO BE ABLE TO GO AHEAD AND
16 PHOTOGRAPH THE LOCATION WHERE THE INCIDENT HAD
17 OCCURRED AND ALSO TO -- THEY HAD INDICATED THAT
18 THERE WAS BRUISING ON THE VICTIM MINOR [REDACTED]
19 BUTTOCKS AREA, WHICH WAS BELIEVED TO BE CAUSED BY
20 THE POSSIBILITY OF A BELT, AND WE WERE LOOKING TO
21 SECURE THIS BELT.

22 Q AND WHEN YOU ARRIVED THERE, WERE THE
23 MITCHELLS PRESENT?

24 A YES, MA'AM. BOTH MR. AND MRS. MITCHELL WERE
25 THE ONLY TWO PEOPLE PRESENT AT THE RESIDENCE AT

DIRECT OF JONES BY COOPER
(IN CAMERA)

55

1 THAT TIME.

2 Q AND WERE YOU REQUIRED TO EXECUTE THE SEARCH
3 WARRANT?

4 A NO, MA'AM. UPON MAKING CONTACT WITH THEM I
5 EXPLAINED, AS I HAD PREVIOUSLY TOLD THEM, THAT I'D
6 BE MAKING CONTACT BACK WITH THEM, AND I HAD
7 EXPLAINED TO THEM AT THAT TIME THAT WE WOULD BE
8 NEEDING TO TALK WITH THEM ABOUT THIS INCIDENT,
9 THAT I WOULD NEED TO PHOTOGRAPH THE INCIDENT WHERE
10 THE ALLEGED ACCIDENT HAD OCCURRED, AND I REQUESTED
11 A CONSENT TO SEARCH, WHICH THEY BOTH AGREED TO AND
12 SIGNED.

13 Q AND BOTH MR. AND MRS. MITCHELL ALLOWED YOU
14 INTO THEIR RESIDENCE?

15 A YES, MA'AM, THEY DID.

16 Q AND WHAT DID YOU DO ONCE YOU ENTERED THEIR
17 RESIDENCE?

18 A WHEN SERGEANT WEEKS AND I ENTERED THE
19 RESIDENCE, I HAD A 35-MILLIMETER CAMERA, AS WELL
20 AS A DIGITAL CAMERA, AND I DID PHOTOGRAPH THE
21 ENTIRE RESIDENCE.

22 Q AFTER YOU DID THAT, WHERE DID YOU GO WITH THE
23 MITCHELLS?

24 A THEY ALSO HAD GIVEN ME SEVERAL BELTS AT THAT
25 TIME. AT THAT TIME I HAD REQUESTED THAT THEY

1 WOULD VOLUNTARILY COME WITH US TO HEADQUARTERS TO
2 SPEAK WITH US. MRS. MITCHELL RODE WITH SERGEANT
3 WEEKS AND MR. MITCHELL RODE WITH MYSELF.

4 Q AND WAS MR. MITCHELL UNDER ARREST AT THIS
5 TIME?

6 A NO, THEY WERE NOT. THEY WERE BOTH ADVISED
7 THAT IT WAS VOLUNTARY.

8 Q AND TELL JUDGE FLOYD EXACTLY WHAT HAPPENED
9 WHEN YOU ARRIVED AT THE HEADQUARTERS?

10 A WHEN WE ARRIVED THERE AT HEADQUARTERS,
11 MRS. MITCHELL WENT WITH SERGEANT WEEKS INTO HER
12 OFFICE. I WENT INTO ANOTHER SMALLER CONFERENCE
13 ROOM, WHICH WAS RIGHT AT THE BACK OF THE OFFICE.
14 I WAS MET THERE BY THE D.S.S. STATE WORKER,
15 MS. GRANT, WHO SAT IN ON MY INTERVIEW WITH HIM AT
16 THAT TIME.

17 Q AND EXPLAIN TO THE JUDGE EXACTLY WHAT YOU DID
18 TO BEGIN THIS INTERVIEW PROCESS.

19 A THE FIRST THING I DID WAS TO ADVISE HIM OF
20 HIS RIGHTS OF WHICH MR. MITCHELL DID SIGN AND
21 WAIVE.

22 Q OKAY. I'M GOING TO SHOW YOU THIS DOCUMENT
23 AND ASK YOU IF YOU RECOGNIZE IT.

24 A YES, MA'AM. THAT'S THE FORM THAT I USED ON
25 THAT PARTICULAR EVENING.

DIRECT OF JONES BY COOPER
(IN CAMERA)

57

1 Q AND DO YOU SEE YOUR SIGNATURE ANYWHERE?

2 A YES, MA'AM. IN TWO LOCATIONS, BOTH WHERE I
3 GAVE HIM THE ADVISEMENT OF RIGHTS AND THEN ALSO
4 UNDER THE WAIVER AS A WITNESS.

5 MS. COOPER: YOUR HONOR, AT THIS TIME THE
6 STATE WOULD SEEK TO INTRODUCE THE ADVICE OF RIGHTS
7 FORM AS STATE'S EXHIBIT NUMBER 1.

8 MS. COGGIOLA: WITHOUT OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER 1 WAS
11 ADMITTED INTO EVIDENCE.)

12 BY MS. COOPER:

13 Q INVESTIGATOR JONES, PLEASE RELATE TO THE
14 JUDGE ALL THE PERTINENT INFORMATION AS TO
15 LOCATION, TIME, AND PLACE.

16 A YES, MA'AM. AT THE VERY TOP PORTION IT GIVES
17 THE DEFENDANT'S NAME, WHICH WAS NATHANIEL
18 MITCHELL, IT WAS AT THE LOCATION OF 5623 TWO NOTCH
19 ROAD, WHICH IS THE HEADQUARTERS. MYSELF WAS THE
20 INVESTIGATING OFFICER. THE DATE WAS MARCH 30TH OF
21 2000, AND THE TIME WAS AT 21:00 HOURS, WHICH WOULD
22 BE 9:00 P.M.

23 Q AND PLEASE GO OVER -- DESCRIBE FOR THE JUDGE
24 EXACTLY WHAT YOU DID WITH MR. MITCHELL CONCERNING
25 READING HIM HIS MIRANDA RIGHTS.

1 A YES, MA'AM. THE NEXT PORTION ON THIS FORM
2 WOULD BE THE ACTUAL RIGHTS THEMSELVES. WHAT I
3 WOULD DO IS THAT I WOULD READ IT SENTENCE BY
4 SENTENCE. THE FIRST SENTENCE IS, "BEFORE WE ASK
5 YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR
6 RIGHTS." AFTER HE ACKNOWLEDGED THAT, I THEN PUT A
7 CHECK MARK BESIDE THAT.

8 THE SECOND IS, "YOU HAVE A RIGHT TO REMAIN
9 SILENT." I PUT A CHECK MARK BESIDE THAT AFTER HE
10 ACKNOWLEDGED THAT.

11 "ANYTHING YOU SAY CAN BE USED AGAINST YOU IN
12 COURT". I THEN ACKNOWLEDGED THAT ON THE LEFT HAND
13 SIDE, WHICH HE ACKNOWLEDGED HE DID.

14 "YOU HAVE A RIGHT TO TALK TO A LAWYER FOR
15 ADVICE BEFORE WE ASK YOU ANY QUESTIONS OR HAVE A
16 LAWYER WITH YOU DURING ANY QUESTIONING." AFTER HE
17 ACKNOWLEDGED THAT, I CHECKED THAT OFF.

18 "IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE
19 APPOINTED TO YOU BEFORE ANY QUESTIONING IF YOU
20 WISH." I CHECKED THAT OFF AFTER HE ACKNOWLEDGED
21 IT.

22 AND "IF YOU DECIDE TO ANSWER QUESTIONS NOW
23 WITHOUT A LAWYER PRESENT YOU STILL HAVE THE RIGHT
24 TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE
25 RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK

DIRECT OF JONES BY COOPER
(IN CAMERA)

59

1 TO A LAWYER." I CHECKED THAT AFTER HE
2 ACKNOWLEDGED THAT AND ASKED HIM AGAIN, "DO YOU
3 UNDERSTAND ALL THOSE RIGHTS THAT I JUST READ TO
4 YOU." HE INDICATED HE DID AND HE THEN SIGNED IT
5 RIGHT BELOW THAT.

6 Q WHO WITNESSED THAT?

7 A BOTH MYSELF AND INVESTIGATOR GRANT FROM
8 D.S.S., WHO WAS PRESENT.

9 Q DID HE INDICATE WHETHER OR NOT AT ANY TIME
10 THAT HE HAD ANY QUESTIONS ABOUT HIS MIRANDA
11 RIGHTS?

12 A NO, MA'AM, HE DID NOT.

13 Q AND DID HE AT ANY TIME AT THIS POINT INVOKE
14 HIS MIRANDA RIGHTS?

15 A NO, MA'AM, HE DID NOT.

16 Q WHAT DID YOU DO NEXT?

17 A I THEN WENT TO THE NEXT PHASE OF THE
18 DOCUMENT, WHICH IS A WAIVER OF RIGHTS. I READ
19 THIS TO HIM. IT SAYS, "I HAVE READ THIS STATEMENT
20 OF YOUR RIGHTS TO YOU. I UNDERSTAND AND KNOW WHAT
21 MY RIGHTS ARE", WHICH IS INDICATING THAT HE
22 UNDERSTOOD WHAT HIS RIGHTS WERE. "I AM WILLING TO
23 TALK AND ANSWER QUESTIONS. I UNDERSTAND AND KNOW
24 WHAT I AM DOING. NO PROMISES HAVE BEEN MADE TO
25 ME. NO PRESSURE OR COERCION OF ANY KIND HAS BEEN

DIRECT OF JONES BY COOPER
(IN CAMERA)

60

1 USED AGAINST ME."

2 I THEN ASKED HIM IF HE UNDERSTOOD WHAT THE
3 WORD COERCION MEANS. I BELIEVE HE INDICATED HE
4 DID, BUT I ALWAYS EXPLAIN TO THEM THAT THAT'S
5 STATING THAT BASICALLY WE'RE NOT TRYING TO BEAT
6 YOU OR STAND HERE WITH A RUBBER HOSE OVER YOU OR
7 ANYTHING OF THAT NATURE TO GET YOU TO COOPERATE
8 WITH US. HE SAID, YES, HE UNDERSTOOD THAT, AND
9 SIGNED THAT.

10 Q WAS THAT WITNESSED, AS WELL?

11 A YES, THAT WAS ALSO WITNESSED BY MYSELF AND
12 INVESTIGATOR GRANT OF D.S.S.

13 Q AND WHAT QUESTIONS DID YOU ASK HIM REGARDING
14 HIS EDUCATIONAL BACKGROUND AND HIS ABILITY TO
15 UNDERSTAND HIS RIGHTS?

16 A AS A PART OF ALL MY STATEMENTS, I ALWAYS ASK
17 THEM WHETHER OR NOT THEY'RE ABLE TO READ AND
18 WRITE. HE INDICATED THAT HE COULD. I ALSO ASKED
19 HIM HOW FAR HE HAD GONE IN SCHOOL AND WHERE HE HAD
20 GONE TO SCHOOL. HE INDICATED THAT HE GRADUATED
21 FROM SPRING VALLEY HIGH SCHOOL.

22 I ALSO ALWAYS ASK AT THE VERY START OF ALL MY
23 QUESTIONS WHETHER THEY'RE UNDER THE INFLUENCE OF
24 ANY DRUGS OR ALCOHOL AT THE PRESENT TIME. HE
25 INDICATED THAT NO, HE WAS NOT, AND WAS HE ABLE TO

DIRECT OF JONES BY COOPER
(IN CAMERA)

61

1 DISTINGUISH THE DIFFERENCE BETWEEN THE TRUTH AND A
2 LIE, AND HE INDICATED HE WAS.

3 Q OKAY. I'M GOING TO PRESENT TO YOU ANOTHER
4 DOCUMENT AND ASK YOU IF YOU CAN IDENTIFY THAT.

5 A YES, MA'AM. THAT WOULD BE A COPY OF THE
6 STATEMENT THAT I ACTUALLY TOOK, THE SWORN WRITTEN
7 STATEMENT, THAT I TOOK THAT EVENING FROM HIM.

8 Q AND HOW MANY PAGES IS IT?

9 A THERE'S A TOTAL OF FIVE PAGE.

10 Q AND WHO WAS PRESENT WHEN YOU TOOK HIS
11 STATEMENT?

12 A THIS WOULD HAVE BEEN MYSELF, INVESTIGATOR
13 GRANT, AND THE DEFENDANT MR. MITCHELL.

14 Q DO YOU SEE YOUR SIGNATURE ON THAT DOCUMENT?

15 A YES, MA'AM, I DO.

16 MS. COOPER: YOUR HONOR, AT THIS TIME I'D
17 LIKE TO INTRODUCE THIS AS STATE'S EXHIBIT NO. 2,
18 THE STATEMENT BY NATHANIEL MITCHELL.

19 MS. COGGIOLA: NO OBJECTION.

20 THE COURT: WITHOUT OBJECTION.

21 MS. COGGIOLA: IS THAT BEING ADMITTED FOR
22 IDENTIFICATION AT THIS POINT?

23 THE COURT: WELL, THEY'VE OFFERED IT FOR
24 EVIDENCE.

25 MS. COOPER: WE CAN DO IT FOR PURPOSES OF

1 IDENTIFICATION AT THIS POINT.

2 MS. COOPER: FOR PURPOSES OF THIS HEARING.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 WAS
4 MARKED FOR IDENTIFICATION ONLY.)

5 BY MS. COOPER:

6 Q INVESTIGATOR JONES, DID YOU THREATEN OR
7 COERCE THIS DEFENDANT IN ANY MANNER?

8 A NO, MA'AM, I DID NOT.

9 Q DID YOU MAKE ANY PROMISES OF REWARD TO GET
10 HIM TO WAIVE HIS RIGHTS?

11 A NO, MA'AM, I DID NOT.

12 Q HOW ABOUT ANY PROMISES OF LENIENCY?

13 A NO, MA'AM, I DID NOT.

14 Q DID YOU DEPRIVE HIM IN ANY WAY OF
15 ACCOMMODATIONS, SUCH AS FOOD, WATER, OR USE OF THE
16 RESTROOM?

17 A NO, MA'AM. ON SEVERAL OCCASIONS I OFFERED IF
18 HE NEEDED TO GO TAKE A BREAK TO GO TO THE RESTROOM
19 OR GET A DRINK OR ANYTHING OF THAT NATURE. HE
20 DECLINED IT ALL.

21 MS. COOPER: YOUR HONOR, AT THIS TIME I'D ASK
22 THAT THE INVESTIGATOR PUBLISH THE STATEMENT OF THE
23 DEFENDANT.

24 THE COURT: WHY DO I NEED TO HEAR WHAT THE
25 STATEMENT SAYS?

DIRECT OF JONES BY COOPER
(IN CAMERA)

63

1 MS. COOPER: OKAY. JUST -- I -- OKAY.

2 BEG THE COURT'S INDULGENCE. (PAUSE)

3 BY MS. COOPER:

4 Q NOW, AFTER YOU TOOK THAT STATEMENT FROM THE
5 DEFENDANT -- WHAT HAPPENED AFTER YOU TOOK THAT
6 STATEMENT?

7 A AFTER I TOOK THE STATEMENT, I STEPPED OUT OF
8 THE OFFICE TO SPEAK WITH MY SUPERVISOR AND ADVISE
9 HER OF THE STATUS AT THAT TIME.

10 Q AND WHAT DID YOU DO WITH THE ARREST WARRANT
11 FOR ASSAULT AND BATTERY WITH INTENT TO KILL?

12 A AT THAT TIME INVESTIGATOR BRIAN METZS WAS
13 PRESENT, WHO WAS AN EVENING SHIFT INVESTIGATOR AND
14 I ADVISED HIM THAT DUE TO THE FACT I HAD SIGNED
15 THE WARRANT, I WOULD NEED SOMEONE ELSE TO ACTUALLY
16 SERVE IT. I ASKED HIM TO STEP IN TO SERVE THE
17 WARRANT. HE WAS PRESENT AND AWARE OF THE
18 CIRCUMSTANCES AROUND THIS PARTICULAR INTERVIEW AND
19 OF WHAT HAD TRANSPIRED UP TO THIS PARTICULAR
20 POINT.

21 Q AND SO WHO WAS RESPONSIBLE FOR BRIEFING
22 INVESTIGATOR METZS?

23 A MYSELF AND SERGEANT WEEKS WERE BOTH IN A
24 GROUP AND DISCUSSED IT BETWEEN THE THREE OF US,
25 BUT I PRIMARILY HAD BRIEFED HIM.

1 Q DESCRIBE FOR JUDGE FLOYD EXACTLY WHAT TOOK
2 PLACE ONCE THE DEFENDANT WAS SERVED WITH THE
3 ARREST WARRANT FOR ASSAULT AND BATTERY WITH INTENT
4 TO KILL.

5 A YES, MA'AM. WHEN WE STEPPED BACK IN, I
6 INITIALLY EXPLAINED TO HIM, MR. MITCHELL, THAT I
7 WAS ABLE TO PROVE FROM MEDICAL EVIDENCE THAT WHAT
8 HE HAD TOLD ME WAS NOT THE TRUTH AND THAT WE COULD
9 PROVE SO IN COURT. HE WAS STILL STICKING WITH THE
10 SAME STORY. HE DIDN'T WANT TO CHANGE ANYTHING AT
11 THAT POINT. I THEN INSTRUCTED INVESTIGATOR METZS
12 TO SERVE THE ARREST WARRANT. WHEN HE SERVED THE
13 ARREST WARRANT FOR ASSAULT AND BATTERY WITH INTENT
14 TO KILL, YOU COULD SEE A CHANGE IN HIS DEemeanOR.

15 Q A CHANGE IN WHOSE DEemeanOR?

16 A IN MR. MITCHELL'S DEemeanOR. HE HAD LOWERED
17 HIS HEAD AND WAS BEGINNING TO BREATHE HEAVIER.
18 YOU COULD SEE THAT THE STRESS WAS BUILDING UP ON
19 HIM AT THAT POINT.

20 AT THAT POINT INVESTIGATOR METZS ASKED HIM IF
21 HE WANTED TO TELL US ANYTHING DIFFERENT THAN WHAT
22 HE HAD PREVIOUSLY TOLD US. HE EVENTUALLY HAD
23 GIVEN A SECOND STATEMENT.

24 Q AND BEFORE HE GAVE THAT SECOND STATEMENT,
25 WHAT ABOUT -- WHAT, IF ANYTHING, WAS MENTIONED

DIRECT OF JONES BY COOPER
(IN CAMERA)

65

1 ABOUT HIS MIRANDA RIGHTS?

2 A INVESTIGATOR METZS SHOWED HIM A SIMILAR
3 STATEMENT FORM. MINE WAS A TYPED VERSION. HIS
4 WAS A HANDWRITTEN ONE, BUT IT STILL HAS THE
5 MIRANDA WARNING RIGHTS AT THE VERY TOP OF THE
6 STATEMENT, AND HE READ THAT AND INITIALED IT.

7 Q I'M GOING TO SHOW YOU THIS DOCUMENT AND ASK
8 YOU IF YOU RECOGNIZE IT.

9 A YES, MA'AM. THAT WAS THE SECOND STATEMENT
10 THAT HE GAVE THAT EVENING.

11 Q AND DOES YOUR HANDWRITING APPEAR ON IT?

12 A YES, MA'AM. I'M A NOTARY, AND I NOTARIZED
13 THE STATEMENT THAT WAS TAKEN BY INVESTIGATOR
14 METZS.

15 Q AND YOU WERE PRESENT WHEN HE WAS REMINDED OF
16 HIS MIRANDA RIGHTS?

17 A THAT'S CORRECT.

18 Q AND EXPLAIN FOR JUDGE FLOYD EXACTLY WHAT THE
19 DEFENDANT WAS INSTRUCTED TO DO CONCERNING HIS
20 MIRANDA RIGHTS.

21 A ON THIS PARTICULAR DOCUMENT INVESTIGATOR
22 METZS ASKED HIM TO -- IF HE WAS ABLE TO READ AND
23 WRITE, WHICH WE HAD ALREADY INDICATED EARLIER HE
24 WAS, AND HE ASKED HIM TO READ THE PARAGRAPH
25 HIMSELF THAT INDICATED HIS MIRANDA RIGHTS ON HERE,

1 WHICH HE DID AND INITIALED THAT, ACKNOWLEDGED
2 THAT, ON THE BOTTOM RIGHT HAND CORNER.

3 Q WHAT TIME DID THIS INTERVIEW BEGIN?

4 A THIS INTERVIEW BEGAN JUST MOMENTS AFTER WE
5 HAD SERVED THE ARREST WARRANT ON HIM, AND IT
6 INDICATES ON THE DOCUMENT 0036, WHICH WOULD HAVE
7 BEEN 36 MINUTES AFTER MIDNIGHT.

8 Q AND WHEN -- REMIND ME AGAIN OF THE FIRST
9 STATEMENT. WHEN DID THAT BEGIN AND END, THE FIRST
10 STATEMENT?

11 A THE FIRST STATEMENT WE STARTED AT 2100, WHICH
12 WOULD HAVE BEEN 9:00 P.M. AND WE ENDED IT, I
13 BELIEVE IT WAS 2250, WHICH WOULD BE 10:50 P.M.

14 Q AND THIS SECOND STATEMENT BY INVESTIGATOR
15 METZS BEGAN WHEN?

16 A THIS WAS AT 0036, WHICH WOULD HAVE BEEN 36
17 MINUTES AFTER MIDNIGHT.

18 Q AND WHEN DID THAT END?

19 A THIS ONE ENDED AT 0049, SO 49 MINUTES AFTER
20 MIDNIGHT.

21 Q OKAY. AND SO AGAIN EXPLAIN WHAT THE
22 DEFENDANT WAS REQUIRED TO DO AS TO THE PARAGRAPH,
23 THE FIRST PARAGRAPH?

24 A HE WAS ASKED TO READ THE RIGHTS. ONCE HE
25 READ THEM AND ACKNOWLEDGED THAT HE UNDERSTOOD THEM

DIRECT OF JONES BY COOPER
(IN CAMERA)

67

1 AND WAS WILLING TO WAIVE THEM, HE THEN INITIALED
2 THE RIGHTS.

3 Q DO HIS INITIALS APPEAR ON THAT WARRANT?

4 A YES, THEY DO.

5 MS. COOPER: YOUR HONOR, AT THIS POINT THE
6 STATE WISHES TO INTRODUCE THE SECOND STATEMENT,
7 STATE'S EXHIBIT 3 FOR I.D.

8 MS. COGGIOLA: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER 3 WAS
11 MARKED FOR IDENTIFICATION ONLY.)

12 BY MS. COOPER:

13 Q INVESTIGATOR JONES, DURING THE SECOND
14 INTERVIEW OF -- THIS SAME NIGHT, THE SECOND
15 STATEMENT, DID YOU OR INVESTIGATOR METZ IN ANY
16 WAY THREATEN OR COERCE MR. MITCHELL TO GIVE THAT
17 STATEMENT?

18 A NO, MA'AM, WE DID NOT.

19 Q DID YOU MAKE AGAIN ANY PROMISES OF LENIENCY
20 OR PROMISES OF REWARD TO GET HIM TO MAKE THAT
21 STATEMENT?

22 A NO, MA'AM, NO ONE DID.

23 Q DID YOU PREVENT HIM FROM USING THE RESTROOM
24 OR RECEIVING WATER OR FOOD?

25 A NO, MA'AM, WE DID NOT.

CROSS OF JONES BY COGGIOLA
(IN CAMERA)

68

1 MS. COOPER: BEG THE COURT'S INDULGENCE.

2 (PAUSE)

3 MS. COOPER: YOUR HONOR, THAT'S ALL THE
4 QUESTIONS I HAVE OF THIS WITNESS.

5 THE COURT: CROSS-EXAMINATION, MS. COGGIOLA?

6 MS. COGGIOLA: THANK YOU.

7 CROSS-EXAMINATION

8 (IN CAMERA)

9 BY MS. COGGIOLA:

10 Q GOOD AFTERNOON INVESTIGATOR JONES, HOW ARE
11 YOU?

12 A I'M DOING FINE.

13 Q THE EVENING YOU HAVE DOWN HERE IS MARCH 30TH;
14 IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q AND THAT'S WHEN YOU STARTED, AT 9:00?

17 A WE STARTED AT 9:00, YES.

18 Q AND THAT WAS BASED ON THIS CHILD GOING TO THE
19 HOSPITAL, I ASSUME, ON THE 28TH?

20 A THAT'S CORRECT, MA'AM.

21 Q DO YOU ALL EVER VIDEOTAPE THESE INTERVIEWS?

22 A NO, MA'AM, WE DO NOT.

23 Q DO YOU HAVE THE EQUIPMENT AT THE RICHLAND
24 COUNTY SHERIFF'S DEPARTMENT?

25 A NO, MA'AM, NOT TO MY KNOWLEDGE. THEY MIGHT

CROSS OF JONES BY COGGIOLA
(IN CAMERA)

69

1 HAVE VIDEO EQUIPMENT FOR USE OUT ON CRIME SCENES,
2 BUT I'VE NEVER SEEN THEM SET UP OR USED FOR
3 INTERVIEWS.

4 Q YOU DON'T HAVE THEM USED FOR INTERVIEWS? AND
5 I THINK YOU SAID THAT AFTER YOU WENT OUT TO
6 DISCUSS WITH INVESTIGATOR METZS THE WARRANT; IS
7 THAT CORRECT, YOU CAME BACK AND SAID YOU HAD JUST
8 RECEIVED SOME MEDICAL EVIDENCE?

9 A NO. WE EXPLAINED TO HIM THAT WITH THE
10 MEDICAL EVIDENCE WE HAD UP TO THIS POINT WE WOULD
11 BE ABLE TO DISPROVE HIS STATEMENT THAT HE HAD
12 GIVEN TO US AT THAT TIME.

13 Q OKAY. SO THAT WAS AFTER THE FIRST STATEMENT
14 THAT YOU TOOK?

15 A CORRECT, CORRECT.

16 Q AND THEN YOU LEFT AND CAME BACK AND SAID THAT
17 BASED ON THE MEDICAL EVIDENCE THAT YOU ALREADY
18 HAD...

19 A CORRECT.

20 Q DID HE REMAIN IN THE OFFICE OR WHEREVER YOU
21 WERE DOING THIS AT THE SHERIFF'S DEPARTMENT THE
22 ENTIRE TIME?

23 A YES, MA'AM.

24 Q SO DURING THAT PERIOD OF TIME BETWEEN ALMOST
25 11:00 AND 12:00, 12:30 I GUESS, DID HE REMAIN IN

1 THERE?

2 A YES, HE WAS IN THERE DURING THE BRIEF MOMENT
3 THAT I WAS OUT WITH INVESTIGATOR METZS WITH
4 MS. GRANT.

5 Q AND THEN YOU SAID THAT YOU FINISHED YOURS
6 ABOUT 10:50 AND THE SECOND STATEMENT WAS TAKEN
7 ABOUT 12:30 OR THIRTY SIX MINUTES AFTER MIDNIGHT;
8 IS THAT CORRECT?

9 A CORRECT.

10 Q FOR THAT HOUR-AND-A-HALF DID HE REMAIN IN
11 THAT ROOM?

12 A YES, MA'AM.

13 Q OKAY, WERE YOU WITH HIM DURING THAT PERIOD OF
14 TIME?

15 A WHEN I FINISHED MY INITIAL STATEMENT, THAT
16 WAS -- THEN I WAS TYPING SOME OF THAT STATEMENT SO
17 THERE WAS SOME OF THAT TIME IN THERE WHILE WE WERE
18 ACTUALLY GETTING IT TYPED AND SIGNED AND THOSE
19 TYPES OF THINGS.

20 Q OKAY. AND HE STAYED IN THE ROOM?

21 A YES, MA'AM.

22 MS. COGGIOLA: OKAY. I HAVE NO FURTHER
23 QUESTIONS.

24 THE COURT: ANYTHING FURTHER FROM THE STATE?

25 MS. COOPER: NO, YOUR HONOR.

1 THE COURT: THANK YOU. YOU MAY STEP DOWN.

2 ANY FURTHER WITNESSES?

3 MS. COOPER: NO, YOUR HONOR.

4 THE COURT: ANYTHING ON REPLY?

5 MS. COGGIOLA: NO WITNESSES, YOUR HONOR.

6 THE COURT: ALL RIGHT. BASED ON THE EVIDENCE
7 BEFORE ME, I FIND THAT AS TO THOSE STATEMENTS THAT
8 THE APPROPRIATE MIRANDA WARNINGS WERE GIVEN, THAT
9 HE UNDERSTOOD AND VOLUNTARILY WAIVED HIS RIGHTS
10 WHEN HE GAVE THE FIRST STATEMENT, AND THEN THE
11 SECOND STATEMENT HE LIKEWISE GAVE THEM. I SEE NO
12 EVIDENCE OF ANY INVOLUNTARINESS, COERCION, OR
13 THREATS THAT WOULD RISE TO THE LEVEL AS A MATTER
14 OF LAW TO MAKE THE STATEMENT INADMISSIBLE, SO I
15 FIND THAT -- MAKE THAT FINDING BY THE GREATER
16 WEIGHT OR PREPONDERANCE OF THE EVIDENCE.

17 THE STATEMENTS WILL BE ALLOWED TO BE
18 INTRODUCED, AND I'LL CHARGE THE JURY ON THE ISSUE
19 OF VOLUNTARINESS AT THAT TIME.

20 MS. COOPER: THANK YOU, YOUR HONOR.

21 THE COURT: ANYTHING FURTHER BEFORE WE BRING
22 THE JURY UP?

23 MS. COOPER: NO, YOUR HONOR.

24 MS. COGGIOLA: YOUR HONOR, JUST A COUPLE OF
25 VERY BRIEF...

1 WE WOULD AT THIS TIME LIKE TO RENEW OUR RULE
2 FIVE AND BRADY MOTIONS DISCOVERY. I BELIEVE THERE
3 HAS BEEN A LOT OF DISCOVERY BACK AND FORTH. I
4 HAVE NO REASON TO BELIEVE THERE IS ANYTHING WE
5 HAVEN'T RECEIVED.

6 THE COURT: MADAM SOLICITOR, ARE YOU
7 SATISFIED WITH BRADY AND RULE FIVE?

8 MR. COOPER: YES, SIR.

9 MS. COGGIOLA: YOUR HONOR, I KNOW YOUR
10 POLICY, BUT WE MOVE TO SEQUESTER THE WITNESSES
11 DURING THE COURSE OF THE TRIAL.

12 THE COURT: DO YOU THINK YOU'RE GOING TO HAVE
13 MANY?

14 MS. CAMPBELL: NO FACT WITNESS OTHER THAN THE
15 CHILD. THAT IS THE ONLY EYEWITNESS TESTIMONY THAT
16 WE'D HAVE.

17 THE COURT: I WOULD DECLINE TO SEQUESTER.
18 I HAVE ONE OTHER COMPLICATED TIMING PROBLEM
19 FOR YOU ALL.

20 DO YOU WANT TO HEAR IT UP HERE?

21 (WHEREUPON, A BENCH CONFERENCE WAS
22 HELD.)

23 THE COURT: ALL RIGHT. MADAM CLERK, WE'RE
24 READY FOR THE JURY WHENEVER WE CAN GET THEM.

25 THE CLERK: YES, SIR.

1 THE COURT: CAN YOU GIVE ME THE ADDRESS OR
2 LOCATION IN CASE SOMEBODY KNOWS?

3 MS. COOPER: [REDACTED]

4 THE COURT: COLUMBIA?

5 MS. COOPER: YES, SIR.

6 THE COURT: IS THAT'S EAST, NORTH, SOUTH OR
7 WEST?

8 MS. COGGIOLA: NORTHEAST.

9 MS. COOPER: NORTHEAST.

10 THE COURT: OKAY.

11 MS. COGGIOLA: YOUR HONOR, IF I COULD JUST
12 PUT ON THE RECORD, I WOULD LIKE TO MOVE TO ALLOW
13 NATHANIEL MITCHELL TO REMAIN OUT ON BOND DURING
14 HIS TRIAL. HE HAS BEEN OUT FOR, GOSH A
15 YEAR-AND-A-HALF, A LITTLE OVER A YEAR. IN FACT,
16 IT WAS A VERY UNIQUE SITUATION, BECAUSE WHEN HE
17 WAS INCARCERATED AT THE DETENTION CENTER, ONE
18 NIGHT THEY LET HIM GO ACCIDENTALLY, AND HE KEPT
19 CALLING ME AT HOME, TO WHICH I SORT OF CHASTISED
20 HIM, AND HE WAS CALLING TO TELL ME THEY HAD LET
21 HIM OUT AND HOW COULD HE GET BACK IN BECAUSE HE
22 DIDN'T WANT TO GET IN TROUBLE.

23 HE HAS BEEN COMPLETELY RESPONSIBLE ABOUT
24 ALWAYS, ALWAYS BEING IN OUR OFFICE IN PREPARATION
25 FOR THE TRIAL. HE HAS A LARGE FAMILY HERE IN

1 TOWN. WE WOULD ASK THE COURT TO CONSIDER ALLOWING
2 HIM TO REMAIN OUT ON BOND.

3 THE COURT: I, AS A MATTER OF POLICY, TRY TO
4 BE CONSISTENT ABOUT THAT. FRANKLY, WHEN THE CASE
5 IS CALLED IT IS THEN THE SHERIFF'S LIABILITY. I
6 REALLY DON'T WANT TO IMPOSE ON THE SHERIFF. HE
7 HAS EXCESSIVE LIABILITY IF SOMETHING SHOULD
8 HAPPEN, SO I WILL DENY THAT MOTION.

9 THE CLERK: THE JURY IS HERE, BUT THERE ARE
10 ONLY 39.

11 THE COURT: OKAY. WE'RE MISSING ONE. WE
12 HAVE 39. I THINK WE HAVE ENOUGH. WE'LL JUST
13 PROCEED.

14 THE CLERK: DO YOU WANT TO PROCEED WITH THAT?

15 THE COURT: YES, WE'LL JUST PROCEED WITH THE
16 39 WE'VE GOT.

17 ALL RIGHT. GOOD AFTERNOON, LADIES AND
18 GENTLEMEN. MY NAME IS HENRY FLOYD. I'M THE
19 PRESIDING JUDGE FOR GENERAL SESSIONS HERE IN
20 RICHLAND COUNTY FOR THIS YEAR.

21 YOU'RE GETTING CALLED UP FOR THE PURPOSES OF
22 THE STATE CALLING TO TRIAL OF THE CASE OF STATE OF
23 SOUTH CAROLINA VS. NATHANIEL MITCHELL.

24 MR. MITCHELL HAS BEEN INDICTED BY THE
25 RICHLAND COUNTY GRAND JURY FOR HOMICIDE BY CHILD

1 ABUSE. THE STATE ALLEGES IN ITS INDICTMENT THAT
2 NATHANIEL MITCHELL DID IN RICHLAND COUNTY ON OR
3 ABOUT MARCH 28TH, 2000, DID CAUSE THE DEATH OF A
4 CHILD UNDER THE AGE OF 11 TO WHIT, MINOR.

5 , BY CHILD ABUSE OR NEGLECT AND THE DEATH
6 OCCURRED UNDER CIRCUMSTANCES MANIFESTING IN
7 EXTREME INDIFFERENCE TO HUMAN LIFE, ALL IN
8 VIOLATION OF SOUTH CAROLINA CODE SECTION 16-3-85
9 SUBSECTIONS A-1.

10 MR. MITCHELL HAS PLED NOT GUILTY TO THOSE
11 ALLEGATIONS. THAT WOULD REQUIRE THE STATE OF
12 SOUTH CAROLINA TO PROVE BY COMPETENT EVIDENCE TO A
13 TRIAL JURY BEYOND A REASONABLE DOUBT THOSE
14 ALLEGATIONS. IF THEY CAN DO THAT, THE STATE IS
15 ENTITLED TO A CONVICTION AT YOUR HANDS. IF THEY
16 CANNOT DO THAT, MR. MITCHELL IS ENTITLED TO AN
17 ACQUITTAL BY THE TRIAL JURY'S HANDS.

18 I NEED TO ASK YOU A SERIES OF QUESTIONS TO
19 DETERMINE YOUR FAIRNESS AND IMPARTIALITY TO SIT IN
20 JUDGMENT OF THIS CASE.

21 IF YOU DO NEED TO RESPOND TO ANY ONE OF THE
22 QUESTIONS, WE'D SIMPLY ASK THAT YOU TO STAND IN
23 PLACE AND GIVE US YOUR NAME SO THAT WE CAN MAKE A
24 RECORD.

25 THERE ARE -- THERE WILL BE AT LEAST ONE

1 QUESTION OF SOME PERSONAL NATURE THAT IF YOU DO
2 NEED TO RESPOND TO THAT WE'LL BE GLAD TO ENTERTAIN
3 YOUR RESPONSE UP HERE PRIVATELY.

4 FIRST OF ALL IS THERE ANY MEMBER OF THE JURY
5 PANEL WHO IS RELATED BY BLOOD, CONNECTED BY
6 MARRIAGE, OR EMPLOYMENT OR A PERSONAL ACQUAINTANCE
7 WITH THE DEFENDANT, NATHANIEL MITCHELL?

8 MR. MITCHELL, WOULD YOU STAND AND FACE THE
9 JURY FOR ME, PLEASE, SIR? IF SO, PLEASE INDICATE
10 BY STANDING.

11 (THERE WAS NO RESPONSE.)

12 ALL RIGHT. THANK YOU, SIR.

13 THE FOLLOWING PEOPLE MAY TESTIFY DURING THE
14 COURSE OF THE TRIAL, AND I'LL DO IT IN GROUPS OF
15 FIVE OR SIX NAMES. IF THE NAMES RING A BELL OR IF
16 YOU NEED SOME MORE INFORMATION IN ORDER TO
17 RESPOND, I'LL BE GLAD TO DO THAT FOR YOU.

18 THE SAME QUESTION WOULD BE, IS THERE ANY
19 MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD,
20 CONNECTED BY MARRIAGE, OR EMPLOYMENT, OR A CLOSE
21 PERSONAL ACQUAINTANCE WITH ANY OF THE FOLLOWING
22 WITNESSES: MARK FORMAN WITH THE RICHLAND COUNTY
23 SHERIFF'S DEPARTMENT, N.G. , H.G.
24 , INVESTIGATOR DALE JONES OF THE RICHLAND
25 COUNTY SHERIFF'S DEPARTMENT, FARY COOKIE GRANT,

1 SHARI JONES, OR JEROME JONES.

2 ANY MEMBER OF THE JURY PANEL NEEDS TO RESPOND
3 TO THE RELATIONSHIP QUESTION SO FAR?

4 (THERE WAS NO RESPONSE.)

5 OKAY, AND CONTINUING WITH THE LIST: VALERIE
6 WILSON, DR. ALLISON DEFELICE, DR. RONALD BURNS,
7 DR. LENWOOD SMITH, DR. ROBERT HUBBIRD, DR. LINDA
8 CHAPMAN, DR. ANNE ABEL. DOES ANY MEMBER OF THE
9 JURY PANEL NEED TO RESPOND TO ANY OF THE
10 RELATIONSHIP QUESTIONS IN REGARD TO ANY OF THESE
11 PERSONS?

12 MR. STRICKLER: EXCUSE ME, YOUR HONOR, IT'S
13 DR. CHRISTMANN.

14 THE COURT: DID I MISPRONOUNCE IT?

15 MR. STRICKLER: CHAPMAN, I BELIEVE YOU SAID
16 CHAPMAN, YOUR HONOR.

17 THE COURT: CHRISTMAN, C-H-R-I-S-T-M-A-N
18 (SIC) ..

19 YES, MA'AM.

20 PROSPECTIVE JUROR: I KNOW DR. CHRISTMANN.
21 DO I NEED TO RESPOND?

22 THE COURT: YES, MA'AM. COULD YOU STAND AND
23 GIVE US YOUR NAME, PLEASE, MA'AM?

24 PROSPECTIVE JUROR: SHEILA FRAZIER.

25 THE COURT: COULD YOU -- THE FACT THAT -- YOU

1 ARE A PATIENT OF HERS?

2 PROSPECTIVE JUROR: MY DAUGHTER IS.

3 THE COURT: YOUR DAUGHTER IS. OKAY, THAT'S
4 NOT A DISQUALIFIER IN AND OF ITSELF. THE QUESTION
5 IS, COULD YOU LISTEN TO ALL OF THE EVIDENCE FROM
6 ALL THE SOURCES AND BE FAIR AND IMPARTIAL IN THIS
7 TRIAL?

8 PROSPECTIVE JUROR: YES.

9 THE COURT: I'LL LEAVE YOU IN THE PANEL.

10 ANYONE ELSE? CONTINUING WITH --

11 MR. STRICKLER: ONE MORE, YOUR HONOR.

12 PROSPECTIVE JUROR: I'M SORRY, MY NAME IS
13 BONNIE MUELLER. I KNOW AN OFFICER JONES. I DON'T
14 KNOW HIS FIRST NAME, SO I DON'T KNOW IF IT'S
15 OFFICER DALE JONES.

16 THE COURT: I SAID OFFICER, I MEAN
17 INVESTIGATOR DALE JONES. THAT'S OFFICER JONES
18 RIGHT THERE.

19 PROSPECTIVE JUROR: NO.

20 THE COURT: DON'T KNOW HIM? OKAY.

21 CONTINUING WITH THE LIST: DR. TIMOTHY CLOSE,
22 DIANE REED, PHESHE JOHNSON; IS THAT CORRECT?
23 DR. KENT HUDSON, KIMBERLY KENNEDY, INVESTIGATOR
24 BRYAN METZS WITH THE RICHLAND COUNTY SHERIFF'S
25 DEPARTMENT, DR. BRIAN RABON, DR. CLAY NICHOLS,

1 LULA HEALTEY. ANY MEMBER OF THE JURY WHO NEEDS TO
2 RESPOND TO ANY OF THE RELATIONSHIP QUESTIONS TO
3 ANY OF THESE POTENTIAL WITNESSES? IF SO, PLEASE
4 INDICATE BY STANDING.

5 (THERE WAS NO RESPONSE.)

6 ALL RIGHT. THE STATE ALLEGES THAT THE
7 INCIDENT HAPPENED ON MARCH 28TH, 2000.

8 THE LOCATION OF THE ALLEGED INCIDENT IS AT
9 [REDACTED] IN COLUMBIA. THAT IS IN THE
10 NORTHEAST SECTION OF THE COLUMBIA AREA. I GIVE
11 YOU THAT INFORMATION TO ASK YOU THIS: IS THERE
12 ANY MEMBER OF THE JURY PANEL WHO KNOWS ANYTHING
13 ABOUT THE FACTS OF THIS CASE? IF SO, PLEASE
14 INDICATE.

15 (THERE WAS NO RESPONSE.)

16 ANY MEMBER OF THE JURY PANEL REMEMBER READING
17 OR LISTENING OR WATCHING ANY MEDIA ACCOUNT OF THIS
18 ALLEGED INCIDENT BACK IN MARCH OF 2000?

19 YES, SIR.

20 PROSPECTIVE JUROR: I'M --

21 THE COURT: GIVE ME YOUR NAME FIRST AND THEN
22 ANSWER THE QUESTION, YES OR NO, OKAY?

23 PROSPECTIVE JUROR: JIM MANCINI.

24 THE COURT: DID YOU SEE, HEAR OR LISTEN OR
25 WATCH SOME ACCOUNT?

1 PROSPECTIVE JUROR: IF IT HAPPENED IN A
2 PUBLIC PLACE, YES.

3 THE COURT: NO. THIS WAS IN A HOME.

4 PROSPECTIVE JUROR: OKAY.

5 THE COURT: ANYBODY ELSE?

6 YES, MA'AM.

7 PROSPECTIVE JUROR: I'M VICTORIA GARDNER. I
8 THINK I REMEMBER THIS CHILD. I WORK IN THE
9 OPERATING ROOM AT RICHLAND MEMORIAL HOSPITAL.

10 THE COURT: ALL RIGHT. HANG ON JUST A
11 MOMENT. NOW LISTEN TO MY QUESTION, ALL RIGHT?

12 SO WERE YOU PRESENT DURING ANY PART OF THIS
13 OR HAD ANY DISCUSSION WITH ANYONE IN THE HOSPITAL
14 ABOUT THE CASE OR ACCESS TO INFORMATION?

15 PROSPECTIVE JUROR: COMING INTO WORK EVERYONE
16 WAS TALKING ABOUT IT.

17 THE COURT: ALL RIGHT. LET ME LET YOU COME
18 DOWN HERE AND TALK TO YOU ABOUT IT.

19 (WHEREUPON, THE POTENTIAL JUROR
20 APPROACHED THE BENCH.)

21 CAN YOU TELL ME WHAT YOU HEARD ABOUT IT?

22 PROSPECTIVE JUROR: IF THIS IS THE SAME
23 CHILD, THAT SHE WAS SEVERELY BEATEN. SHE HAD BEEN
24 BEATEN AND SHE WAS IN VERY BAD, CRITICAL
25 CONDITION.

1 THE COURT: AND SO YOU CAME TO KNOW THAT
2 INFORMATION?

3 PROSPECTIVE JUROR: YES.

4 THE COURT: ALL RIGHT. I THINK I'D BETTER
5 LET HER GO. AND WHAT IS YOUR NAME AGAIN, PLEASE,
6 MA'AM?

7 PROSPECTIVE JUROR: VICTORIA GARDNER.

8 THE COURT: ALL RIGHT. IF YOU'LL JUST HAVE A
9 SEAT WITH THE JURY. WE'LL LET YOU OUT.

10 ALL RIGHT. MS. GARDNER IS EXCUSED FOR CAUSE.

11 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
12 FORMED OR EXPRESSED ANY OPINION AS TO THE
13 INNOCENCE OR GUILT OF MR. NATHANIEL MITCHELL? IF
14 SO, PLEASE INDICATE.

15 (THERE WAS NO RESPONSE.)

16 ANY MEMBER OF THE JURY PANEL HAVE ANY
17 PARTICULAR INTEREST IN THE OUTCOME OF THIS CASE?
18 IF SO, PLEASE INDICATE.

19 (THERE WAS NO RESPONSE.)

20 THE PROSECUTORS IN THE CASE ARE KATHERINE
21 LUCK CAMPBELL AND VANESSA COOPER TO MY RIGHT.
22 DEFENDING MR. MITCHELL ARE MS. LEE COGGIOLA AND
23 DOUG STRICKLER TO MY LEFT. IS THERE ANY MEMBER OF
24 THE JURY PANEL WHO HAS ANY BUSINESS, PROFESSIONAL,
25 OR SOCIAL RELATIONSHIP WITH EITHER OF -- WITH ANY

1 OF THESE FOUR ATTORNEYS? IF SO, PLEASE INDICATE.

2 (THERE WAS NO RESPONSE.)

3 IS THERE ANY MEMBER OF THE JURY PANEL OR
4 MEMBER OF YOUR IMMEDIATE FAMILY EMPLOYED BY THE
5 FIFTH CIRCUIT SOLICITOR'S OFFICE OR THE RICHLAND
6 COUNTY PUBLIC DEFENDER'S OFFICE? IF SO, PLEASE
7 INDICATE.

8 (THERE WAS NO RESPONSE.)

9 ANY MEMBER OF THE JURY PANEL OR A MEMBER OF
10 YOUR IMMEDIATE FAMILY EMPLOYED BY THE RICHLAND
11 COUNTY SHERIFF'S DEPARTMENT? IF SO, PLEASE
12 INDICATE.

13 (THERE WAS NO RESPONSE.)

14 ANY MEMBER OF THE JURY PANEL OR A MEMBER OF
15 YOUR IMMEDIATE FAMILY EMPLOYED BY ANY CIVILIAN OR
16 MILITARY LAW ENFORCEMENT AGENCY, BE IT AT THE
17 FEDERAL, STATE, LOCAL, OR COUNTY LEVEL?

18 YES, MA'AM.

19 PROSPECTIVE JUROR: I HAVE A BROTHER-IN-LAW
20 IN THE F.B.I.; HE'S A SPECIAL AGENT.

21 THE COURT: AND THE FACT THAT YOU HAVE THAT
22 RELATIONSHIP, WOULD THAT AFFECT YOUR ABILITY TO BE
23 FAIR AND IMPARTIAL IN THIS CASE?

24 PROSPECTIVE JUROR: WHAT DO YOU MEAN?

25 THE COURT: WHAT I'M TRYING TO GET TO IS CAN

1 YOU LISTEN TO THE EVIDENCE FROM ALL THE SOURCES
2 AND BE FAIR AND AGREE TO DECIDE THE CASE BASED
3 UPON WHAT IS PRESENTED IN THIS COURTROOM WITHOUT
4 ANY OUTSIDE INFLUENCE?

5 PROSPECTIVE JUROR: YES.

6 THE COURT: ALL RIGHT. LET ME HAVE YOUR
7 NAME, PLEASE.

8 PROSPECTIVE JUROR: BONNIE MUELLER.

9 THE COURT: THANK YOU. I'LL LET YOU HAVE A
10 SEAT.

11 PROSPECTIVE JUROR: MY NAME IS WILL DILLARD.
12 MY UNCLE WORKS FOR D.S.S.

13 THE COURT: OKAY, I'LL GET TO THAT IN JUST A
14 MINUTE. LET ME ASK YOU THIS THOUGH, THE FACT
15 THAT YOU HAVE AN UNCLE THAT WORKS FOR THE
16 DEPARTMENT OF SOCIAL SERVICES -- WHAT'S HIS NAME?

17 PROSPECTIVE JUROR: RICK SPARROW.

18 THE COURT: THE FACT THAT THAT RELATIONSHIP
19 EXISTS, WOULD THAT AFFECT YOUR ABILITY TO LISTEN
20 TO ALL THE EVIDENCE AND BE FAIR AND IMPARTIAL?

21 PROSPECTIVE JUROR: NO, SIR.

22 THE COURT: YOU CAN BE FAIR? OKAY. WE'LL
23 LEAVE YOU IN THE PANEL.

24 YES, MA'AM, SOMEBODY ELSE.

25 PROSPECTIVE JUROR: BACARA DUCKETT. MY STEP-

1 DAD DID WORKS FOR RICHLAND COUNTY.

2 THE COURT: ALL RIGHT. AND MA'AM, THE FACT
3 THAT YOU HAVE THAT RELATIONSHIP, WOULD THAT AFFECT
4 YOUR ABILITY TO LISTEN TO THE EVIDENCE HERE IN THE
5 COURTROOM AND DECIDE ON THE FACTS PRESENTED?

6 PROSPECTIVE JUROR: NO.

7 THE COURT: I'LL LEAVE YOU IN THE PANEL.

8 YES, SIR.

9 PROSPECTIVE JUROR: MATT COLBURN, MY WIFE'S
10 UNCLE WORKS FOR THE COLUMBIA P.D.

11 THE COURT: ALL RIGHT, AND THE FACT THAT YOU
12 HAVE THAT RELATIONSHIP, WOULD THAT AFFECT YOUR
13 ABILITY TO BE FAIR AND IMPARTIAL?

14 PROSPECTIVE JUROR: YES.

15 THE COURT: IT WOULD? AND YOUR LAST NAME,
16 PLEASE?

17 PROSPECTIVE JUROR: COLBURN.

18 ALL RIGHT, MR. COLBURN, ~~WE'RE GOING TO EXCUSE~~
19 YOU FOR CAUSE.

20 THE COURT: YES, MA'AM. JUST HAVE A SEAT
21 UNTIL WE CAN GET TO THE PANEL.

22 YES, MA'AM.

23 PROSPECTIVE JUROR: WANDA RYAN. I HAVE A
24 NEPHEW WHO WORKS FOR THE LEXINGTON COUNTY
25 SHERIFF'S DEPARTMENT.

1 THE COURT: ALL RIGHT. MA'AM, THE FACT THAT
2 YOU HAVE THAT RELATIONSHIP, WOULD THAT AFFECT YOUR
3 ABILITY TO LISTEN TO THE EVIDENCE IN THIS CASE AND
4 BE FAIR AND IMPARTIAL?

5 PROSPECTIVE JUROR: NO, SIR.

6 THE COURT: I'LL LEAVE YOU IN THE PANEL.

7 ALL RIGHT. IS THERE ANY MEMBER OF THE JURY
8 PANEL OR A MEMBER OF YOUR IMMEDIATE FAMILY A
9 MEMBER OF OR CONTRIBUTOR TO SUCH ORGANIZATIONS AS
10 C.A.V.E., C.A.D.R.E., M.A.D.D., OR S.A.D.D.? IF
11 SO PLEASE INDICATE BY STANDING.

12 (THERE WAS NO RESPONSE.)

13 THE NEXT TWO QUESTIONS ARE SOMEWHAT PERSONAL
14 IN NATURE, BUT IF YOU DO NEED TO RESPOND TO THEM
15 WE'LL BE GLAD TO TALK TO YOU ABOUT THEM DOWN HERE.
16 LET ME ASK THEM TOGETHER.

17 NUMBER ONE, IS THERE ANY MEMBER OF THE JURY
18 PANEL WHO HAS HAD A CLOSE FAMILY MEMBER OR A CLOSE
19 FRIEND WHO HAS BEEN THE VICTIM OF CHILD ABUSE OR A
20 SIMILAR OFFENSE? THE OTHER QUESTION IS WHETHER OR
21 NOT ANY MEMBER OF THE JURY PANEL OR A MEMBER OF
22 YOUR IMMEDIATE FAMILY OR A CLOSE ACQUAINTANCE HAS
23 BEEN INVESTIGATED BY A LAW ENFORCEMENT AGENCY,
24 INCLUDING THE DEPARTMENT OF SOCIAL SERVICES,
25 REGARDING ALLEGED CHILD ABUSE.

1 IF THERE IS ANYBODY WHO NEEDS TO RESPOND TO
2 THOSE QUESTIONS, I'LL BE GLAD TO TALK TO YOU DOWN
3 HERE PRIVATELY ABOUT IT.

4 COME ON DOWN.

5 THE COURT: HOW ARE YOU DOING?

6 PROSPECTIVE JUROR: HI.

7 THE COURT: YOUR NAME FIRST.

8 PROSPECTIVE JUROR: MARCELLA PHARR.

9 THE COURT: YES.

10 PROSPECTIVE JUROR: MY SISTER.

11 THE COURT: AND WHAT HAPPENED IN THE CASE?

12 PROSPECTIVE JUROR: SHE WAS FOUND GUILTY.

13 THE COURT: SHE WAS FOUND GUILTY. THE FACT
14 THAT YOU HAD THAT EXPERIENCE IN THE FAMILY, WOULD
15 THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL
16 IN THIS CASE?

17 PROSPECTIVE JUROR: ~~IT WOULD~~

18 THE COURT: SO YOU COULDN'T SIT IN ON THIS?

19 PROSPECTIVE JUROR: NO.

20 THE COURT: MS. PHARR IS EXCUSED FOR CAUSE.

21 OKAY, ANYONE ELSE?

22 YES, MA'AM. HI.

23 PROSPECTIVE JUROR: I'VE WORKED WITH KIDS,
24 AND I CAN'T DO SOMETHING LIKE THIS. I CAN'T DO
25 IT.

1 THE COURT: YOU DON'T THINK YOU COULD SIT
2 THERE?

3 PROSPECTIVE JUROR: I CAN'T.

4 THE COURT: ALL RIGHT. OKAY, AND YOUR NAME
5 IS MS. KOLB. I'LL EXCUSE YOU FOR CAUSE.

6 (WHEREUPON, A BENCH CONFERENCE WAS
7 HELD.)

8 THE COURT: ALL RIGHT. ANYONE ELSE?

9 PROSPECTIVE JUROR: I DON'T THINK THIS MEANS
10 ANYTHING.

11 THE COURT: THAT'S OKAY -- DO YOU HAVE A
12 QUESTION?

13 PROSPECTIVE JUROR: CAROL ADAMS. I HAVE AN
14 EX-BROTHER-IN-LAW WHO SEXUALLY MOLESTED TWO OTHER
15 KIDS, BUT IT'S DONE HISTORY AND IT'S BEEN DEALT
16 WITH AND OVER IT.

17 THE COURT: ALL RIGHT. YOU CAN SIT THROUGH.

18 ALL RIGHT, LET ME REVISIT THE ISSUE OF
19 RELATIONSHIPS. THE FOLLOWING PEOPLE MAY ALSO
20 TESTIFY DURING THE COURSE OF THE TRIAL. I'M
21 ASKING FOR ANYBODY WHO IS RELATED BY BLOOD OR
22 CONNECTED BY MARRIAGE OR EMPLOYMENT OR A CLOSE
23 PERSONAL ACQUAINTANCE: PASTOR SUSIE COBB, MARY
24 KEITH, PATRICIA SMITH, JANIE MOORE, GUY ROGERS,
25 CARL BROWN, CYNTHIA GREEN, DOROTHY GREEN, MARY

1 TATE, ROSS BURGESS. ANY MEMBER OF THE JURY PANEL
2 RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR
3 EMPLOYMENT OR A CLOSE PERSONAL ACQUAINTANCE OF
4 THESE FAMILY MEMBERS -- ACQUAINTANCES OF
5 MR. MITCHELL? DOES ANYBODY NEED TO RESPOND TO
6 THAT OR IS THERE A NAME THAT RINGS A BELL?

7 (THERE WAS NO RESPONSE.)

8 ALL RIGHT. NOW LADIES AND GENTLEMEN, YOU
9 HAVE HEARD THE SUBJECT MATTER OF THE ACTION. YOU
10 HAVE MET THE DEFENDANT. YOU KNOW AT LEAST THE
11 NAMES OF THE WITNESSES WHO WILL TESTIFY. YOU'VE
12 MET THE ATTORNEYS, BOTH THE DEFENSE AND THE
13 PROSECUTORS IN THE CASE.

14 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
15 NOT HERETOFORE RESPONDED OF ANY BIAS OR ANY
16 PREJUDICE IN CONNECTION WITH THE SUBJECT MATTER OR
17 ANYTHING ABOUT THE CASE? IF SO, PLEASE INDICATE.

18 COME ON DOWN, SIR.

19 *THE COURT:* WHILE HE'S COMING LET ME ASK THE
20 LAST QUESTION: IS THERE ANY MEMBER OF THE JURY
21 PANEL WHO IS AWARE OF ANY BIAS OR PREJUDICE IN
22 CONNECTION WITH THIS CASE OR KNOWS OF ANY REASON
23 WHATSOEVER WHY HE OR SHE COULD NOT GIVE NATHANIEL
24 MITCHELL OR THE STATE OF SOUTH CAROLINA A FAIR AND
25 IMPARTIAL TRIAL? IF SO PLEASE INDICATE.

1 YES, SIR.

2 PROSPECTIVE JUROR: MY NAME IS JACK TATUM.

3 I'M A MEMBER OF THE RICHLAND COUNTY SHERIFF'S
4 FOUNDATION AND LAST YEAR I LOST A BUSINESS PARTNER
5 TO MURDER HERE IN RICHLAND COUNTY.

6 JOHNNY GASSER AND WARREN GIESE'S CHILDREN
7 ATTEND MY SON'S SCHOOL. I WORKED REAL CLOSE WITH
8 THEM AND HELPED THEM SOLVE THE HOMICIDE OF MY
9 PARTNER.

10 THE COURT: WOULD THAT PUT YOU ON THE SPOT?

11 PROSPECTIVE JUROR: IT WOULD BE
12 UNCOMFORTABLE. I JUST WANTED TO BRING IT UP.

13 THE COURT: YOU TELL ME IF IT AFFECTS YOUR
14 ABILITY TO BE FAIR AND IMPARTIAL.

15 PROSPECTIVE JUROR: WE JUST GOT THROUGH THE
16 TRIAL. IT WAS MURDER.

17 THE COURT: THAT'S FINE. I'LL EXCUSE YOU FOR
18 CAUSE.

19 PROSPECTIVE JUROR: THANK YOU.

20 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
21 THE STATE?

22 MS. CAMPBELL: NOT FROM THE STATE, YOUR
23 HONOR.

24 THE COURT: FROM THE DEFENSE?

25 MS. COGGIOLA: NOTHING FURTHER, YOUR HONOR.

1 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
2 THE STRIKE PROCESS IS THE CLERK WILL RANDOMLY DRAW
3 NAMES FROM THE BOX. WE'LL ASK YOU TO SIMPLY STAND
4 IN PLACE WHEN YOUR NAME IS CALLED. THE STATE GETS
5 AN OPPORTUNITY TO SEAT YOU AS A JUROR. THEY CAN
6 STRIKE YOU OR SEAT YOU FOR NO REASON AT ALL. IF
7 THEY SAY SEAT YOU OR SWEAR YOU, THEN THE QUESTION
8 IS PASSED OVER TO THE DEFENSE. THEY LIKEWISE HAVE
9 THE RIGHT TO SEAT YOU OR STRIKE YOU AS A JUROR FOR
10 ANY REASON OR NO REASON AT ALL.

11 PLEASE DON'T BE PERSONALLY OFFENDED OR UPSET
12 IF YOU'RE STRUCK BY EITHER SIDE. THEY HAVE A
13 NUMBER OF STRIKES THEY'RE GOING TO EXERCISE. THE
14 STRIKES ARE FIVE FOR THE STATE AND FIVE FOR THE
15 DEFENSE. IF BOTH SIDES PASS UPON YOU, WE'D ASK
16 THAT YOU TO COME OUT AND HAVE A SEAT IN THE JURY
17 BOX UNTIL WE GET A JURY OF 12 PLUS ONE ALTERNATE.

18 MADAM CLERK.

19 THE CLERK: YES, SIR.

20 NUMBER 265, FRANK VANROAD. WHAT SAYS THE
21 STATE?

22 MS. CAMPBELL: PLEASE PRESENT MR. VANROAD.

23 THE CLERK: WHAT SAYS THE DEFENSE?

24 MS. COGGIOLA: PLEASE EXCUSE MR. VANROAD.

25 THE CLERK: PLEASE HAVE A SEAT.

1 NUMBER 10, RUTHIL ANDREWS.

2 PROSPECTIVE JUROR: RUTHI ANDREWS.

3 THE CLERK: IS IT RUTHIE, R-U-T-H-I-E?

4 PROSPECTIVE JUROR: JUST AN "I" ON THE END.

5 THE CLERK: I, OKAY.

6 WHAT SAYS THE STATE?

7 MS. CAMPBELL: PLEASE PRESENT MS. ANDREWS.

8 THE CLERK: WHAT SAYS THE DEFENSE?

9 MS. COGGIOLA: PLEASE SEAT MS. ANDREWS.

10 THE CLERK: PLEASE COME FORWARD AND HAVE A
11 SEAT IN THE JURY BOX.

12 NUMBER 214, PATRICIA RANDOLPH.

13 WHAT SAYS THE STATE?

14 MS. CAMPBELL: PLEASE PRESENT MS. RANDOLPH.

15 THE CLERK: WHAT SAYS THE DEFENSE?

16 MS. COGGIOLA: PLEASE SEAT MS. RANDOLPH.

17 THE CLERK: PLEASE COME FORWARD TO THE JURY
18 BOX.

19 NUMBER 36, ARTHUR BROWN.

20 WHAT SAYS THE STATE?

21 MS. CAMPBELL: PLEASE PRESENT MR. BROWN.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MS. COGGIOLA: PLEASE SEAT MR. BROWN.

24 THE CLERK: PLEASE COME FORWARD TO THE JURY
25 BOX.

1 NUMBER 114, WANDA HAYNES.

2 WHAT SAYS THE STATE?

3 MS. CAMPBELL: PLEASE PRESENT MS. HAYNES.

4 THE CLERK: WHAT SAYS THE DEFENSE?

5 MS. COGGIOLA: PLEASE SEAT MS. HAYNES.

6 THE CLERK: PLEASE COME FORWARD AND HAVE A

7 SEAT IN THE JURY BOX.

8 NUMBER 283, MEGAN WRIGHT.

9 WHAT SAYS THE STATE?

10 MS. CAMPBELL: PLEASE PRESENT MS. WRIGHT.

11 THE CLERK: WHAT SAYS THE DEFENSE?

12 MS. COGGIOLA: PLEASE EXCUSE MS. WRIGHT.

13 THE CLERK: PLEASE HAVE A SEAT.

14 NUMBER 172, EDWIN MCCRAVY.

15 WHAT SAYS THE STATE?

16 MS. CAMPBELL: PLEASE PRESENT MR. MCCRAVY.

17 THE CLERK: WHAT SAYS THE DEFENSE?

18 MS. COGGIOLA: PLEASE SEAT MR. MCCRAVY.

19 THE CLERK: PLEASE COME FORWARD TO THE JURY

20 BOX.

21 NUMBER 280, SUSAN WILSON.

22 WHAT SAYS THE STATE?

23 MS. CAMPBELL: PLEASE PRESENT MS. WILSON.

24 THE CLERK: WHAT SAYS THE DEFENSE?

25 MS. COGGIOLA: PLEASE SEAT MS. WILSON.

1 THE CLERK: PLEASE COME FORWARD TO THE JURY
2 BOX.

3 NUMBER 224, DOROTHY ROGERS.

4 WHAT SAYS THE STATE?

5 MS. CAMPBELL: PLEASE PRESENT MS. ROGERS.

6 THE CLERK: WHAT SAYS THE DEFENSE?

7 MS. COGGIOLA: PLEASE SEAT MS. ROGERS.

8 THE CLERK: PLEASE COME FORWARD TO THE JURY
9 BOX.

10 NUMBER 16, CHRISTOPHER BARKER.

11 WHAT SAYS THE STATE?

12 MS. CAMPBELL: PLEASE PRESENT MR. BARKER.

13 THE CLERK: WHAT SAYS THE DEFENSE?

14 MS. COGGIOLA: PLEASE SEAT MR. BARKER.

15 THE CLERK: PLEASE COME FORWARD TO THE JURY

16 BOX.

17 NUMBER 4, CAROL ADAMS.

18 WHAT SAYS THE STATE?

19 MS. CAMPBELL: PLEASE PRESENT MS. ADAMS.

20 THE CLERK: WHAT SAYS THE DEFENSE?

21 MS. COGGIOLA: PLEASE EXCUSE MS. ADAMS FROM
22 THIS TRIAL.

23 THE CLERK: PLEASE HAVE A SEAT.

24 NUMBER 3, JANICE ABLE.

25 WHAT SAYS THE STATE?

1 MS. CAMPBELL: PLEASE PRESENT MS. ABLE.

2 THE CLERK: WHAT SAYS THE DEFENSE?

3 MS. COGGIOLA: PLEASE SEAT MS. ABLE.

4 THE CLERK: PLEASE COME FORWARD TO THE JURY
5 BOX.

6 NUMBER 228, KARIN SALISBURY.

7 WHAT SAYS THE STATE?

8 MS. CAMPBELL: PLEASE PRESENT MS. SALISBURY.

9 THE CLERK: WHAT SAYS THE DEFENSE?

10 MS. COGGIOLA: PLEASE EXCUSE MS. SALISBURY.

11 THE CLERK: PLEASE HAVE A SEAT.

12 THE DEFENSE HAS USED FOUR STRIKES.

13 NUMBER 69, JEFF DIETRICH.

14 WHAT SAYS THE STATE?

15 MS. CAMPBELL: PLEASE PRESENT MR. DIETRICH.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MS. COGGIOLA: PLEASE SEAT THE JUROR.

18 THE CLERK: COME PLEASE FORWARD TO THE JURY
19 BOX.

20 NUMBER 100, ERIN GRADDICK.

21 WHAT SAYS THE STATE?

22 MS. CAMPBELL: PLEASE PRESENT MS. GRADDICK.

23 THE CLERK: WHAT SAYS THE DEFENSE?

24 MS. COGGIOLA: PLEASE SEAT MS. GRADDICK.

25 THE CLERK: COME FORWARD PLEASE TO THE JURY

1 BOX.

2 NUMBER 70, WILLIAM DILLARD.

3 WHAT SAYS THE STATE?

4 MS. CAMPBELL: PLEASE PRESENT MR. DILLARD.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MS. COGGIOLA: PLEASE SEAT MR. DILLARD.

7 THE CLERK: PLEASE COME FORWARD TO THE JURY

8 BOX.

9 THE COURT: GET ONE ALTERNATE, ONE AND TWO.

10 THE CLERK: NUMBER 218, VENSON REESE.

11 WHAT SAYS THE STATE?

12 MS. CAMPBELL: PLEASE EXCUSE MR. REESE.

13 THE CLERK: PLEASE HAVE A SEAT.

14 NUMBER 88, SHEILA FRAZIER.

15 DOES THE STATE CHALLENGE FOR CAUSE?

16 MS. CAMPBELL: PLEASE PRESENT MS. FRAZIER.

17 THE CLERK: WHAT SAYS THE DEFENSE?

18 MS. COGGIOLA: PLEASE EXCUSE MS. FRAZIER.

19 THE CLERK: PLEASE HAVE A SEAT.

20 NUMBER 174, BILLIE MCKIE.

21 DOES THE STATE CHALLENGE FOR CAUSE?

22 MS. CAMPBELL: PLEASE PRESENT MS. MCKIE.

23 THE CLERK: WHAT SAYS THE DEFENSE?

24 MS. COGGIOLA: PLEASE SEAT MS. MCKIE.

25 THE CLERK: PLEASE COME FORWARD TO THE JURY.

1 BOX.

2 THE COURT: ANY OBJECTION OR EXCEPTION TO THE
3 SELECTION OF THE JURY BY THE STATE?

4 MS. CAMPBELL: NONE FROM THE STATE, YOUR
5 HONOR.

6 THE COURT: ANY FROM THE DEFENSE?

7 MS. COGGIOLA: NO, YOUR HONOR.

8 THE COURT: I FIND THE JURY QUALIFIED BY THE
9 STATUTORY REQUIREMENTS UNDER BATSON V. KENTUCKY
10 AND GENERAL V. ALABAMA.

11 ALL RIGHT, LADIES AND GENTLEMEN, THOSE OF YOU
12 WHO WERE NOT ASKED TO SERVE ON THIS CASE, YOU MAY
13 GO BACK DOWN TO THE JURY ASSEMBLY ROOM.

14 THANK YOU VERY MUCH. HAVE A NICE DAY.

15 (WHEREUPON, THE UNSELECTED JURORS LEFT
16 THE COURTROOM.)

17 THE COURT: WE'LL HAVE TO PUT THEM IN THE
18 GRAND JURY ROOM.

19 ANY REASON NOT TO SWEAR THE JURY FROM THE
20 STATE OR THE DEFENSE?

21 (THERE WAS NO RESPONSE.)

22 THE COURT: NONE. ALL RIGHT. LADIES AND
23 GENTLEMEN, IN JUST A MOMENT, THE CLERK IS GOING TO
24 ASK YOU TO STAND AND BE SWORN IN.

25 I WOULD ASK YOU TO -- AS FAR AS BREAKS ARE

1 CONCERNED, IS EVERYBODY OKAY?

2 (THERE WAS NO RESPONSE.)

3 THE COURT: LET ME TELL YOU A LITTLE BIT
4 ABOUT WHAT WE'RE GOING TO DO.

5 WE HAD TO GO TO SCHOOL LAST WEEK SO NONE OF
6 US WERE HERE. THERE ARE A COUPLE OF THINGS THAT
7 ARE PRETRIAL ISSUES THAT WE HAVE TO FINISH UP THIS
8 AFTERNOON, SO WE'RE GOING TO SWEAR YOU IN, LET THE
9 TWO SIDES MAKE THEIR OPENING STATEMENTS AND THEN
10 SEND YOU HOME AND BRING YOU BACK TOMORROW. YOU
11 WON'T BE COMING BACK TOMORROW UNTIL 11:00.

12 UNFORTUNATELY I -- WELL, I GUESS IT'S NOT
13 UNFORTUNATE. EVERY NOW AND THEN THEY PULL US UP
14 TO THE SUPREME COURT AND WE SIT ON CASES, SO IN
15 THE MORNING I'VE GOT TO BE OVER THERE FOR ABOUT
16 TWO HOURS, SO WE WON'T ACTUALLY START UNTIL 11:00
17 IN THE MORNING, BUT I'LL GO OVER THAT WITH YOU A
18 LITTLE MORE LATER.

19 THAT IS A MULTI-DAY CASE. WE'LL BE HERE MOST
20 LIKELY THROUGH AT LEAST UNTIL WEDNESDAY OR MAYBE
21 EVEN THURSDAY. JUST GET PLENTY OF REST.

22 ALL RIGHT, MADAM CLERK, IF YOU'LL SWEAR THE
23 JURY, PLEASE.

24 THE CLERK: YES, SIR.

25 PLEASE STAND AND RAISE YOUR RIGHT HANDS TO BE

1 SWORN.

2 (WHEREUPON, THE JURY WAS SWORN.)

3 THE CLERK: PLEASE HAVE A SEAT.

4 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN,
5 IN THE MORNING WHEN YOU REPORT, THE BAILIFFS WILL
6 SHOW YOU WHERE TO REPORT, I WANT YOU TO SELECT A
7 FOREPERSON FROM AMONG YOUR NUMBER. YOU CAN DO
8 THAT BY MAJORITY VOTE. EVERYBODY CAN PARTICIPATE
9 IN THAT PROCESS EXCEPT FOR THE ALTERNATE, THEN IF
10 YOU WILL ALWAYS SIT ON THAT BACK ROW SO I CAN KEEP
11 TRACK OF YOU DURING THE TRIAL. NOW WHOEVER YOU
12 SELECT AS THE FOREPERSON CAN COME TO WHERE THE
13 LADY IN THE GREEN TOP IS THERE. OTHER THAN THAT,
14 THE REST OF YOU CAN KIND OF SIT WHERE YOU LIKE
15 DURING THE COURT OF THE TRIAL.

16 HOW MANY OF HAVE SERVED ON A JURY BEFORE?

17 (INDICATING)

18 THE COURT: THAT'S ABOUT AVERAGE NOWADAYS.

19 OKAY. WELL, LET ME GIVE -- PARTICULARLY THOSE OF
20 YOU WHO HAVE NOT SERVED, LET ME GIVE YOU A LITTLE
21 OUTLINE ABOUT WHAT WE'RE GOING TO DO AND KIND OF A
22 REFRESHER FOR THOSE WHO HAVE SERVED BEFORE.

23 PRETRIAL CHARGE

24 THE COURT: AS I'VE INDICATED TO YOU, THERE'S
25 A DISPUTE BETWEEN THE STATE AND MR. MITCHELL IN

1 THIS CASE, AND WHEN THAT HAPPENS WE IMPANEL A JURY
2 OF FAIR AND IMPARTIAL PEOPLE LIKE YOU TO LISTEN TO
3 THE EVIDENCE AND DECIDE THE QUESTION OF FACTS
4 ABOUT THE CASE.

5 WE DO THAT BY THE WAY OF A TRIAL. A TRIAL IS
6 ESSENTIALLY DIVIDED UP INTO FIVE DIFFERENT PARTS.
7 THE FIRST PART IS COMING UP IN JUST A MOMENT WHEN
8 THE ATTORNEYS WILL MAKE BRIEF OPENING STATEMENTS
9 TO YOU GIVING YOU A ROAD MAP, IF YOU WILL, ABOUT
10 HOW THEY INTEND TO PROCEED AND A LITTLE BIT ABOUT
11 WHAT YOU CAN EXPECT FROM THEIR POINT OF VIEW
12 DURING THE COURSE OF THE TRIAL.

13 THE SECOND PART OF THE TRIAL IS THE
14 EVIDENTIARY PHASE. THAT'S WHEN THE WITNESSES GET
15 ON THE STAND AND TESTIFY UNDER OATH ABOUT WHAT
16 THEY KNOW OR DON'T KNOW ABOUT THE FACTS AS THE
17 CASE MAY BE. DURING THAT TIME WE WILL HAVE DIRECT
18 EXAMINATION AND CROSS-EXAMINATION, REDIRECT AND
19 RECROSS-EXAMINATION, AS NECESSARY. THERE MAY ALSO
20 BE SOME PHYSICAL EVIDENCE FOR YOU TO CONSIDER
21 DURING THAT PHASE OF THE TRIAL, AS WELL.

22 THE THIRD PART OF THE TRIAL IS THAT THE
23 ATTORNEYS WILL GET AN OPPORTUNITY, AFTER ALL THE
24 EVIDENCE HAS BEEN PRESENTED TO YOU, TO SUM UP BY
25 WAY OF A CLOSING ARGUMENT. DURING THAT TIME THEY

1 CAN TALK WITH YOU ABOUT WHAT THEY THINK THE
2 EVIDENCE HAS SHOWN OR NOT SHOWN. THEY CAN ALSO
3 TALK TO YOU ABOUT THE LEGAL PRINCIPLES THAT THEY
4 THINK ARE APPLICABLE TO THE CASE.

5 THE FOURTH PART OF THE TRIAL IS WHEN I'LL
6 GIVE YOU A SET OF LEGAL INSTRUCTIONS THAT YOU'LL
7 NEED TO USE TO APPLY TO THE FACTS OF THE CASE.
8 FOR EXAMPLE, I'LL GIVE YOU A LIST OF ELEMENTS AS
9 TO WHAT CONSTITUTES HOMICIDE BY CHILD ABUSE, SO
10 YOU CAN SEE WHETHER OR NOT THE STATE HAS PUT
11 EVIDENCE THERE TO MATCH UP WITH THE ELEMENTS IN
12 ORDER TO DETERMINE WHETHER OR NOT THEY'VE MET
13 THEIR BURDEN OF PROOF.

14 I'LL ALSO DEFINE THAT BURDEN OF PROOF FOR YOU
15 A LITTLE MORE CLEARLY, THAT IS, PROOF BEYOND A
16 REASONABLE DOUBT.

17 I'LL GIVE YOU SOME DEFINITIONS ABOUT THE
18 PRESUMPTION OF INNOCENCE AND SOME TOOLS THAT
19 YOU'LL NEED TO ASSIST YOURSELVES IN CARRYING OUT
20 YOUR RESPONSIBILITY IN DECIDING WHAT IS THE TRUTH
21 ABOUT THIS CONTROVERSY.

22 THEN LASTLY AND MOST IMPORTANTLY, LATER ON
23 THIS WEEK YOU'LL GO BACK IN THE JURY ROOM AND
24 DELIBERATE AMONG YOURSELVES AND RESOLVE THIS
25 DISPUTE BETWEEN THE STATE AND MR. MITCHELL.

1 LET ME ASK YOU TO DO THREE THINGS UNDER YOUR
2 OATH TO PROTECT AND PROMOTE THE INTEGRITY OF THE
3 JURY PROCESS AND THE JUDICIAL DECISION.

4 NUMBER ONE, PLEASE DON'T MAKE UP YOUR MIND
5 ABOUT THE OUTCOME OF THIS CASE UNTIL YOU'VE HEARD
6 ALL THE EVIDENCE AND ALL THE ARGUMENTS AND
7 CHARGES, AND MOST IMPORTANTLY YOUR FELLOW JURORS'
8 VIEWS ABOUT THIS CASE.

9 A TRIAL IS A LITTLE BIT LIKE A JIGSAW PUZZLE.
10 IT COMES IN A PIECE AT A TIME, SO UNTIL YOU GET
11 ALL THE PIECES TOGETHER, YOU WON'T KNOW WHAT THE
12 PICTURE LOOKS LIKE, SO JUST KEEP AN OPEN MIND
13 THROUGHOUT THE COURSE OF THE TRIAL.

14 THE SECOND PART OF THE INSTRUCTIONS I'LL GIVE
15 YOU IS GOING TO AND FROM THE COURTHOUSE EITHER
16 GOING HOME OR GOING TO LUNCH OR WHATEVER THIS
17 WEEK, PLEASE DON'T DISCUSS THE CASE WITH ANYONE OR
18 ALLOW ANYONE TO DISCUSS IT WITH YOU. IF ANYONE
19 TRIES TO DO THAT, YOU JUST LET US KNOW AND WE'LL
20 DEAL WITH THAT ISSUE. YOU'VE BEEN CHOSEN TO COME
21 HERE INTO THIS COURTROOM AND LISTEN TO WHATEVER
22 EVIDENCE IS PRESENTED AND DECIDE WHAT TO BELIEVE
23 AND NOT TO BELIEVE ABOUT THAT EVIDENCE WITHOUT ANY
24 OUTSIDE INFLUENCE.

25 THE THIRD THING THAT I WOULD ASK YOU TO DO

1 IS, EVEN THOUGH YOU'RE GOING TO ULTIMATELY MAKE
2 THE DECISION, WHILE THE TRIAL IS IN PROGRESS IF
3 YOU'RE ON A BREAK OR IF YOU GO TO LUNCH TOGETHER
4 OR SOMETHING LIKE THAT, PLEASE DON'T DISCUSS THE
5 CASE EVEN AMONG YOURSELVES.

6 FOR EXAMPLE, IF YOU WERE TO GET BACK THERE IN
7 THAT JURY ROOM OR ON A LUNCH BREAK WITH ONE OF
8 YOUR FELLOW JURORS AND SAY, "YOU KNOW, I DIDN'T
9 BELIEVE THAT WITNESS OR I REALLY LIKED THAT
10 WITNESS," THAT'S A PROCESS BY WHICH YOU'D BE
11 MAKING UP YOUR MIND AND THAT WOULDN'T BE FAIR TO
12 DO UNTIL YOU'VE HEARD ALL THE EVIDENCE.

13 NOW, LET ME TALK VERY BRIEFLY ABOUT THE
14 VARIOUS ROLES OF THE PEOPLE. YOU'VE MET THE CLERK
15 AND THE BAILIFF AND KNOW WHAT THEY DO. THE LADY
16 RIGHT HERE IS THE COURT REPORTER. SHE TAKES DOWN
17 EVERYTHING THAT'S SAID, AND THE LADY SITTING
18 BESIDE ME IS A LAW CLERK WHO DOES RESEARCH AND
19 THAT KIND OF STUFF FOR ME. AND THE VARIOUS
20 ATTORNEYS, YOU'VE MET THE PROSECUTING ATTORNEYS
21 AND YOU'VE MET THE DEFENSE ATTORNEYS. THEY HAVE
22 THEIR RESPECTIVE JOBS.

23 LET ME TALK JUST A MOMENT ABOUT WHAT YOUR JOB
24 IS AS OPPOSED TO MINE, SO WE DON'T GET TANGLED UP
25 IN OUR ROLES.

1 OUR SUPREME COURT AND OUR LEGISLATURE SAYS
2 THAT A TRIAL JURY CAN BASE ITS DECISION IN A CASE
3 LIKE THIS ON WHAT WE CALL ADMISSIBLE EVIDENCE.
4 THERE, OBVIOUSLY, IS ANOTHER TYPE OF EVIDENCE,
5 WHICH IS INADMISSIBLE. THE MOST COMMON TYPE OF
6 EVIDENCE THAT YOU SEE OBJECTIONS TO FROM TIME TO
7 TIME IS SOMETHING THAT'S HEARSAY. THAT MEANS IT
8 WAS SAID OUTSIDE THE COURT. THAT PERSON IS NOT
9 HERE TO TESTIFY.

10 SOMETIMES HEARSAY IS ADMISSIBLE AND SOMETIMES
11 IT'S NOT. SOMETIMES THERE ARE SOME GRAY AREAS ON
12 OTHER THINGS THAT HAVE TO BE RULED ON. SO WHEN
13 THESE ATTORNEYS MAKE SOME OBJECTIONS LIKE THEY DO
14 AND THEY THINK SOME EVIDENTIARY RULE IS BEING
15 VIOLATED, IT'S MY JOB TO RULE AND DECIDE ON WHAT'S
16 ADMISSIBLE AND WHAT'S NOT.

17 PLEASE DON'T ATTACH ANY SIGNIFICANCE TO THE
18 FACT THAT I MIGHT RULE FOR ONE SIDE OR THE OTHER
19 ON SOME EVIDENTIARY PROCEDURE ISSUE. I HAVE TO
20 CALL IT LIKE I SEE IT. IF I MAKE AN ERROR, THE
21 SUPREME COURT WILL CORRECT ME.

22 YOU TAKE THIS EVIDENCE THAT YOU ARE ALLOWED
23 TO CONSIDER IN THIS CASE AND BASE YOUR DECISION
24 SOLELY ON THAT WITHOUT ANY OUTSIDE INFLUENCE.

25 GENERALLY, TOMORROW WE'LL GO ABOUT AN HOUR,

1 AN HOUR AND A HALF, SOMETIMES WE PUSH IT A LITTLE
2 FURTHER IF WE CAN, UNTIL WE GET ALL THE EVIDENCE
3 IN. WE NORMALLY BREAK FOR LUNCH ABOUT 1:00 AND
4 TRY TO GO UNTIL 5:00, 5:30 SOMEWHERE IN THAT
5 NEIGHBORHOOD. IF IT LOOKS LIKE WE ARE GOING TO
6 RUN OUT OF TIME, WE MIGHT PUSH IT A LITTLE HARDER
7 ON WEDNESDAY OR THURSDAY. WE'LL JUST HAVE TO WAIT
8 AND SEE.

9 NORMALLY WE'LL START AT 9:00, AND I WOULD
10 HAVE DONE THAT TOMORROW EXCEPT FOR THAT ONE
11 PROBLEM.

12 ALL RIGHT. WITH THAT HAVING BEEN SAID, WE'LL
13 START WITH THE OPENING STATEMENTS AND AFTER THAT
14 WE'LL LET YOU GO HOME AND THEN COME BACK IN THE
15 MORNING AT 11:00 AND THE BAILIFFS WILL COME AND
16 SHOW YOU WHERE TO GO AND WE'LL GO AT IT TOMORROW
17 UNTIL ABOUT 5:00, 5:30, SOMEWHERE IN THAT
18 NEIGHBORHOOD.

19 ALL RIGHT, THAT HAVING BEEN SAID, WE'LL START
20 WITH THE OPENING STATEMENTS AND THEN AFTER THAT
21 WE'LL LET YOU GO HOME AND THEN COME BACK TOMORROW
22 AT 11:00. THE BAILIFF WILL SHOW YOU WHERE TO COME
23 TOMORROW, AND THEN WE'LL GO TOMORROW UNTIL ABOUT
24 5:00 OR 5:30.

25 ALL RIGHT, MADAM SOLICITOR, ARE YOU READY TO

1 PROCEED?

2 MS. COOPER: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MS. COOPER: THANK YOU, YOUR HONOR. MAY IT
5 PLEASE THE COURT.

6 OPENING STATEMENT

7 MS. COOPER: GOOD AFTERNOON, LADIES AND
8 GENTLEMEN.

9 MINOR BARELY STOOD A CHANCE WHEN
10 SHE WAS BORN AT ONLY 31 WEEKS ON [REDACTED] OF
11 1997.

12 SHE WAS BORN SO PREMATURELY THAT HER
13 RESPIRATORY SYSTEM HAD HARDLY DEVELOPED, AND SHE
14 HAD TO BE PLACED ON A HEART MONITOR DURING THE
15 FIRST FEW MONTHS OF HER LIFE. EVEN THOUGH THE
16 ODDS WERE AGAINST HER, SHE WAS ABLE TO FIGHT
17 STRONG AND GET OFF OF THAT HEART MONITOR. YOU
18 SEE, THE REASON WHY SHE WAS BORN SO PREMATURELY
19 WAS BECAUSE HER MOTHER, HER BIOLOGICAL MOTHER,
20 USED CRACK COCAINE WHILE SHE WAS PREGNANT WITH
21 MINOR

22 ONCE MINOR RECOVERED SHE WAS PLACED AND
23 TAKEN AWAY FROM HER DRUG ADDICTED MOTHER AND PUT
24 INTO THE HOME OF THAT MAN, NATHANIEL MITCHELL, AND
25 HIS FORMER WIFE, SONYA MITCHELL, WHERE SHE WAS

1 PLACED IN THEIR CARE AS FOSTER PARENTS.

2 AS I TOLD, YOU WHEN SHE WAS BORN SHE BARELY
3 STOOD A CHANCE BECAUSE OF THE ELEMENTS OF CRACK
4 COCAINE IN HER SYSTEM, BUT LADIES AND GENTLEMEN,
5 SHE DIDN'T STAND A CHANCE WHEN THAT MAN, NATHANIEL
6 MITCHELL, 6'3" AND 289 POUNDS, PICKED HER UP ON
7 MARCH 28TH, 2000, AND SHOOK HER VIOLENTLY BECAUSE
8 SHE HAD WET HER BED.

9 YOU'RE GOING TO HEAR TESTIMONY, LADIES AND
10 GENTLEMEN, ABOUT HOW RATHER THAN TAKING OR CALLING
11 911 TO COME GET -- BECAUSE SOMETHING WAS WRONG
12 WITH MINOR , RATHER THAN CALLING 911, NATHANIEL
13 MITCHELL CALLED HIS WIFE WHO WAS AWAY AT WORK. HE
14 WAS THE ONLY ADULT WITH THIS CHILD WHEN SHE ALL OF
15 THE SUDDEN, ACCORDING TO HIM, JUST STIFFENED UP.

16 RATHER THAN TAKING HER TO THE NEAREST
17 HOSPITAL, HE AND HIS WIFE DRIVE ALL THE WAY ACROSS
18 TOWN TO RICHLAND PALMETTO -- PALMETTO RICHLAND
19 MEMORIAL HOSPITAL WHEN THE PROVIDENCE NORTHEAST
20 HOSPITAL WAS RIGHT DOWN THE ROAD FROM WHERE THEY
21 LIVED.

22 YOU'RE ALSO GOING TO HEAR TESTIMONY THAT WHEN
23 THE DOCTORS FIRST SAW MINOR THEY IMMEDIATELY
24 TOOK HER INTO THE EMERGENCY ROOM TO OPERATE,
25 BECAUSE HER BRAIN WAS SWELLING, IT WAS BLEEDING,

1 AND THERE WAS SO MUCH PRESSURE BUILDING UP THAT
2 SURGEONS HAD TO OPEN UP HER SKULL AND TRY TO
3 DEFLATE THE PRESSURE OF THE BLOOD THAT WAS SEEPING
4 INTO HER BRAIN FROM BEING BRUTALLY BEATEN.

5 YOU'RE GOING TO HEAR HOW DR. SMITH COULDN'T
6 DO ANYTHING FOR THIS POOR LITTLE GIRL. HE
7 LITERALLY OPENED UP HER SKULL AND HER BRAIN OOOZED
8 OUT. YOU'RE GOING TO HEAR SOME GRUESOME TESTIMONY
9 ABOUT EXACTLY WHAT HAPPENED TO MINOR , WHO WAS
10 ONLY TWO YEARS OLD.

11 YOU'RE ALSO GOING TO HEAR FROM OTHER DOCTORS,
12 WHO ARE EXPERTS IN THE FIELD AND YOU'LL HEAR FROM
13 THEM. THEY ARE COMING TO TESTIFY ABOUT THEIR
14 FINDINGS AND EXAMINATIONS OF MINOR AND HOW SHE
15 HAD RETINAL HEMORRHAGES IN BOTH EYES. THERE WAS
16 BLEEDING IN BOTH EYES. YOU'LL HEAR HOW THAT IS
17 CONSISTENT WITH CHILD ABUSE, A SPECIFIC SYNDROME,
18 SHAKEN BABY SYNDROME.

19 YOU'RE GOING TO HEAR FROM SEVERAL OTHER
20 WITNESSES IN THE MEDICAL FIELD. YOU'RE GOING TO
21 HEAR FROM A DOCTOR WHO REVIEWED HER C.A.T. SCANS
22 AND SAW THAT NOT ONLY WAS THERE A SEVERE SUBDURAL
23 HEMATOMA, WHICH IS BLEEDING IN THE BRAIN, BUT THAT
24 THERE WAS ALSO EVIDENCE OF A PRIOR OLDER ABUSE OR
25 -- I'M SORRY, OF A SUBDURAL HEMATOMA, WHICH IS

1 CONSISTENT WITH POSSIBLE ABUSE.

2 LADIES AND GENTLEMEN, YOU'RE ALSO GOING TO
3 HEAR, BESIDES FROM ALL THESE EXPERTS, FROM THE
4 ~~AUTOPSY DOCTOR WHO PHOTOGRAPHED THE BUTTOCKS OF~~
5 MINOR DURING THE AUTOPSY AND CUT IT OPEN TO MAKE
6 SURE THAT THERE WAS A BRUISE, ~~THERE WAS EVIDENCE~~
7 ~~OF BRUISING ON THE BUTTOCKS OF THIS LITTLE GIRL.~~

8 NOT ONLY THAT, YOU'RE GOING TO HEAR FROM AN
9 EYEWITNESS WHO SAW IT HAPPEN. SHE WAS ONLY FOUR
10 YEARS OLD AT THE TIME. HER NAME IS N.G.

11 SHE'S SIX YEARS OLD NOW. YOU'RE GOING
12 TO HEAR IT THROUGH VIDEOTAPE, HOW SHE SAW PAPA,
13 HER FOSTER FATHER, SPANK MINOR WITH A BELT REAL
14 HARD. SHE WAS ONLY A BABY, AND HE DID IT BECAUSE
15 SHE WET HER BED.

16 YOU'RE ALSO GOING TO HEAR FROM DAYCARE
17 WORKERS, ESPECIALLY MRS. JONES, SHARI JONES. SHE
18 RUNS THE EDUCATION EXPRESS DAYCARE CENTER, WHERE
19 MINOR AND HER SIBLINGS, ~~HODARI AND NAUTICA,~~ ALSO
20 WENT. THEY ALSO LIVED TOGETHER IN THE MITCHELL
21 HOME.

22 YOU'RE GOING TO HEAR ABOUT HOW MRS. JONES
23 STARTED FEELING CONCERNED ABOUT MINOR BECAUSE
24 ~~THEY WERE DOCUMENTING BRUISES ON HER FREQUENTLY,~~
25 AND ALSO THESE BRUISES WERE IN PLACES WHERE IT WAS

1 INCONSISTENT FOR THEM TO BE FOR A TODDLER WHO'S
2 LEARNING HOW TO WALK. THESE BRUISES WERE ON HER
3 BUTTOCKS AND THIGHS AND BACK, NOT ON HER KNEES,
4 HANDS AND ELBOWS AS ANY CHILD WOULD GET WHEN
5 THEY'RE LEARNING HOW TO WALK, UNEASY AND UNSTEADY
6 ON THEIR FEET.

7 YOU'LL ALSO HEAR FROM VALERIE WILSON AND
8 IRENE DESSOW, WHO ARE DAYCARE WORKERS WHO TOOK
9 CARE OF MINOR AND HOW SHE WAS DOING FINE THE DAY
10 BEFORE ON MARCH 27TH, THE DAY BEFORE SHE WAS
11 PRESENTED TO THE HOSPITAL IN A CATATONIC STATE.

12 YOU'RE GOING TO ALSO HEAR FROM VALERIE WILSON
13 HOW THE DAY BEFORE, SHE NOTICED A BEATING MARK
14 ON -- A BRUISE MARK ON MINOR AND WHEN SHE ASKED
15 THE DEFENDANT WHERE IT CAME FROM, WHAT HAPPENED,
16 HE SAID, "OH, DON'T WORRY ABOUT IT, IT'S A BUG
17 BITE."

18 LASTLY, LADIES AND GENTLEMEN, YOU'RE GOING TO
19 HEAR FROM THE INVESTIGATORS INVOLVED IN THIS CASE
20 AND THERE ARE THREE. INVESTIGATOR FARY COOKIE
21 GRANT, SHE'S WITH THE DEPARTMENT OF SOCIAL
22 SERVICES. SHE WAS THE FIRST ONE TO GO TO THE
23 HOSPITAL AS SOON AS SHE FOUND OUT THAT ONE OF THE
24 CHILDREN IN THE STATE'S CUSTODY WAS PRESENTED IN
25 THE EMERGENCY ROOM WITH A SEVERE BEATING AND BRAIN

1 SWELLING AND BRUISING TO HER BUTTOCKS AND RETINAL
2 HEMORRHAGES IN BOTH EYES.

3 YOU'LL HEAR HOW SHE, ALONG WITH INVESTIGATOR
4 DALE JONES FROM THE RICHLAND COUNTY SHERIFF'S
5 DEPARTMENT, WENT TO THE RESIDENCE OF THE DEFENDANT
6 WHERE HE VOLUNTARILY AGREED TO GO WITH THEM TO THE
7 RICHLAND COUNTY SHERIFF'S DEPARTMENT AND WHERE HE
8 WAS GIVEN AN OPPORTUNITY TO EXPLAIN WHAT HAPPENED
9 TO MINOR .

10 YOU'LL HEAR HOW HE GIVES FIRST ONE VERSION
11 THAT SHE JUST STIFFENED UP. THEN YOU'LL HEAR HOW
12 HE CHANGED HIS STORY WHEN CONFRONTED WITH THE
13 MEDICAL EVIDENCE IN THIS CASE, AND THAT HE ADMITS
14 TO SHAKING HER TO TRY TO RESUSCITATE HER BECAUSE
15 THE THREE YEAR OLD, H.G. , PUSHED HER DOWN AND
16 THAT'S WHEN SHE STARTED GAGGING FOR BREATH, AND
17 THAT'S WHEN SHE STOPPED BREATHING AND THAT HE
18 SIMPLY SHOOK HER TO BRING HER BACK TO LIFE, TO
19 BRING BREATH BACK INTO HER BODY.

20 LADIES AND GENTLEMEN, AFTER YOU HEAR ALL THE
21 EVIDENCE IN THIS CASE -- AND THAT IS TESTIMONY,
22 IT'S NOT WHAT I ASK, OR WHAT MS. CAMPBELL ASKS, OR
23 MS. COGGIOLA OR MR. STRICKLER ASKS; THAT'S NOT
24 EVIDENCE. IT'S WHAT THE ANSWERS ARE FROM THIS
25 WITNESS STAND. ONCE YOU CONSIDER ALL OF THE

1 EVIDENCE IN THIS CASE, LADIES AND GENTLEMEN, I ASK
2 THAT YOU REACH A VERDICT THAT BRINGS JUSTICE TO
3 MINOR AND ONE THAT SPEAKS THE TRUTH.

4 THE DEFENDANT WAS CHARGED WITH HOMICIDE BY
5 CHILD ABUSE AND THE LAW OF HOMICIDE BY CHILD ABUSE
6 SIMPLY IS AS FOLLOWS: A PERSON IN SOUTH CAROLINA
7 IS GUILTY OF THIS CRIME IF HE CAUSES THE DEATH OF
8 A CHILD UNDER THE AGE OF 11 WHILE COMMITTING CHILD
9 ABUSE OR NEGLECT AND THAT THE DEATH OCCURS UNDER
10 CIRCUMSTANCES MANIFESTING AN EXTREME INDIFFERENCE
11 TO HUMAN LIFE.

12 I ASK THAT YOU PAY CAREFUL ATTENTION TO ALL
13 OF THE TESTIMONY AND THAT YOU FOLLOW YOUR OATH
14 THAT YOU JUST TOOK, YOU APPLY THE FACTS THAT YOU
15 HEAR TO THE LAW IN THIS CASE, AND THAT YOU BRING A
16 VERDICT THAT SPEAKS THE TRUTH, AND THAT IS FINDING
17 NATHANIEL MITCHELL GUILTY OF HOMICIDE BY CHILD
18 ABUSE.

19 THANK YOU.

20 THE COURT: MS. COGGIOLA.

21 OPENING STATEMENT

22 MS. COGGIOLA: THANK YOU, YOUR HONOR. MAY IT
23 PLEASE THE COURT.

24 GOOD AFTERNOON, LADIES AND GENTLEMEN.

25 I'M LEE COGGIOLA, AND ALONG WITH DOUG

1 STRICKLER, IT IS MY PRIVILEGE TO REPRESENT
2 NATHANIEL MITCHELL.

3 THERE IS NO EVENT SADDER IN THIS WORLD THAN
4 THE DEATH OF A CHILD. THERE IS NO WAY THAT ANY OF
5 US CAN JUSTIFY THIS OR SOMETIMES EVEN ACCEPT IT,
6 WHATEVER THE CIRCUMSTANCES.

7 SO THIS BECOMES AN INCREDIBLY SAD CASE FROM
8 THE BEGINNING, BECAUSE THERE IS THE DEATH OF A
9 CHILD, MINOR . SHE DIED AT A LITTLE OVER
10 TWO YEARS OF AGE.

11 MS. COOPER TOLD YOU A SUMMARY OF THE EVIDENCE
12 THAT YOU'RE GOING TO HEAR. YOU'RE GOING TO HEAR
13 SOMETHING ELSE. YOU'RE GOING TO HEAR FROM
14 NATHANIEL MITCHELL. YOU'RE GOING TO GET TO KNOW
15 NATHANIEL MITCHELL AND WHO HE IS. YOU'RE GOING TO
16 LEARN ABOUT A MARRIAGE THAT WAS DEAR TO HIM.
17 YOU'RE GOING TO LEARN ABOUT THE DESIRE TO HAVE
18 CHILDREN AND THE INABILITY TO HAVE CHILDREN, AND
19 THE DECISIONS MADE TO BRING CHILDREN INTO THEIR
20 HOME.

21 AS MS. COOPER SAID, FIRST H.G. ., THE LITTLE
22 BROTHER, AND THEN A LITTLE WHILE LATER TWO
23 SISTERS, ONE OF WHOM WAS MINOR . SHE WAS
24 16 MONTHS OLD WHEN SHE MOVED INTO THE MITCHELL'S
25 HOME. YOU WILL HEAR ABOUT A LOVING HOME, AND YOU

1 WILL HEAR ABOUT LOVING PEOPLE.

2 THIS IS A TERRIBLY SAD CASE, BUT THIS IS
3 NATHANIEL MITCHELL'S DAY IN COURT. THE STATE HAS
4 THE BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT
5 THE HARM DONE TO MINOR WAS DONE BY MY
6 CLIENT, NATE MITCHELL, AND THAT IS A HUGE BURDEN.

7 REASONABLE DOUBT IS NOT SOMETHING THAT WE
8 JUST TAKE LIGHTLY. I THINK WITH ALL THE TV SHOWS
9 THAT WE WATCH NOW, THERE ARE SO MANY THAT HAVE TO
10 DO WITH COURTROOM CASES, AND IT SEEMS LIKE THEY'RE
11 ALWAYS YELLING THINGS LIKE "IN MY CHAMBERS" OR "TO
12 THE BENCH" OR "REASONABLE DOUBT." IT FALLS INTO
13 SOME OF THE LITANY OF CONVERSATION THAT WE HAVE
14 WHEN WE LOOK AT CRIMINAL CASES.

15 REASONABLE DOUBT IS THE BEDROCK OF OUR SYSTEM
16 IN THIS COUNTRY, AND THEY DO HAVE A BURDEN.
17 THEY'VE ACCEPTED THAT BURDEN, AND WE BRING YOU
18 NATE MITCHELL. YOU WILL GET TO MEET HIM. YOU
19 WILL GET TO KNOW HIM.

20 THANK YOU.

21 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN.
22 WE'LL LET YOU GO HOME TONIGHT AND ASK YOU TO BE
23 BACK HERE AT 11:00, AND WE'LL HAVE THAT JURY ROOM
24 CLEARED OUT BY IN THE MORNING SO THAT WHEN THEY
25 COME BACK THEY CAN JUST COME THROUGH THE DOOR AND

DIRECT OF N. G. BY CAMPBELL 114
(BY VIDEOTAPE)

1 MEET THEM THERE, OKAY? ALL RIGHT. YOU ALL HAVE A
2 GOOD EVENING, AND WE'LL SEE YOU IN THE MORNING AT
3 11:00.

4 (WHEREUPON, THE JURY LEFT OPEN COURT AT
5 APPROXIMATELY 3:36 P.M.)

6 THE COURT: ALL RIGHT. DO YOU NEED ABOUT
7 FIVE MINUTES TO SWAP AROUND?

8 (WHEREUPON, THE DEFENDANT WAS MOVED FROM
9 THE COURTROOM TO THE VIDEO VIEWING
10 ROOM.)

11 THE COURT: I THINK SHE NEEDS TO BE RE-SWORN.

12 (WHEREUPON, THE TESTIMONY OF THE CHILD
13 WITNESS, N.G. , WAS VIDEOTAPED
14 AS FOLLOWS.)

15 THE CLERK: COME FORWARD, PLEASE. PLACE THIS
16 HAND ON THE BIBLE, RAISE YOUR RIGHT HAND, OKAY?

17 N.G.

18 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: YOU SWEAR TO TELL THE TRUTH,
20 RIGHT? (THE WITNESS NODS HEAD IN THE
21 AFFIRMATIVE.)

22 THE CLERK: CAN YOU ANSWER ME?

23 THE WITNESS: YES, MA'AM.

24 THE COURT: IF YOU'LL HAVE A SEAT RIGHT HERE
25 FOR ME. STATE YOUR FULL NAME, OKAY? STATE YOUR

DIRECT OF N.G. BY CAMPBELL 115
(BY VIDEOTAPE)

1 NAME.

2 THE WITNESS: MY NAME IS N.G.

3 DIRECT EXAMINATION

4 (BY VIDEOTAPE)

5 BY MS. CAMPBELL:

6 Q N.G., HOW OLD ARE YOU?

7 A SIX.

8 Q DO YOU GO TO SCHOOL?

9 A YES, MA'AM.

10 Q WHERE DO YOU GO TO SCHOOL?

11 A LEAPHART ELEMENTARY SCHOOL.

12 Q AND AT LEAPHART ELEMENTARY SCHOOL, WHAT GRADE
13 ARE YOU IN?

14 A KINDERGARTEN.

15 Q AND WHO ARE YOUR TEACHERS?

16 A MS. HOOTEN AND MS. WIGGINS.

17 Q MS. WHO?

18 A MS. HOOTEN AND MS. WIGGINS.

19 Q MS. HOOTEN AND MS. WIGGINS?

20 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

21 Q N.G., WHO DO YOU LIVE WITH NOW?

22 A I LIVE WITH LULA HEALTEY.

23 Q IS THAT YOUR MAMA?

24 A UH-HUH.

25 Q AND WHO ELSE LIVES WITH YOU AND LULA HEALTEY?

1 A STERLING, KENDALL, AND H.G.
2 Q WHO ARE KENDALL, STERLING, AND H.G. ?
3 A MY BROTHERS.
4 Q YOUR BROTHERS?
5 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
6 Q AND ARE THEY OLDER OR YOUNGER THAN YOU?
7 A THEY'RE NOT OLDER THAN ME.
8 Q WHO IS NOT OLDER?
9 A H.G. .
10 Q SO H.G. IS YOUNGER THAN YOU?
11 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
12 Q IS HE BIGGER OR LITTler THAN YOU?
13 A LITTLE.
14 Q AND WHAT ABOUT KENDALL, IS HE BIGGER OR
15 LITTler THAN YOU?
16 A BIGGER THAN ME.
17 Q IS HE OLDER THAN YOU?
18 A UH-HUH.
19 Q AND WHO IS YOUR OTHER BROTHER?
20 A STERLING.
21 Q AND IS STERLING OLDER THAN YOU?
22 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
23 Q AND WHO IS THE BIGGEST OUT OF KENDALL AND
24 STERLING?
25 A STERLING.

DIRECT OF N. G. BY CAMPBELL 117
(BY VIDEOTAPE)

1 Q AND IS HE THE OLDEST?
2 A UH-HUH.
3 Q DO YOU KNOW HOW OLD HE IS?
4 A (THE WITNESS SHAKES IN THE NEGATIVE.)
5 Q DOES ANYBODY ELSE LIVE WITH YOU AND YOUR
6 BROTHERS IN THAT HOUSE NOW?
7 A MY GRANDMA.
8 Q YOUR GRANDMA. WHAT'S YOUR GRANDMOTHER'S
9 NAME?
10 A ELLEN.
11 Q ELLEN IS HER NAME?
12 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
13 Q IS THAT ALL THAT LIVES THERE IN THAT
14 HOUSEHOLD WITH YOU RIGHT NOW?
15 A UH-HUH.
16 Q BUT YOU HAVEN'T ALWAYS LIVED IN THAT HOUSE,
17 HAVE YOU? HAVE YOU LIVE WITH OTHER FAMILIES?
18 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
19 Q AND AT DIFFERENT TIMES HAVE YOU HAD OTHER
20 BROTHERS AND SISTERS?
21 A (THERE WAS NO RESPONSE.)
22 Q DO YOU REMEMBER, N.G. ? ARE YOU NERVOUS,
23 N.G. ?
24 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
25 Q OKAY. WELL, JUST LISTEN TO MY QUESTION, AND

1 IF YOU DON'T -- IF I CONFUSE YOU, TELL ME TO
2 REPEAT IT, OKAY? SO YOU HAVE LIVED WITH SOME
3 OTHER PEOPLE TOO; IS THAT RIGHT?

4 A YES, MA'AM.

5 Q DO YOU REMEMBER ANY OF THOSE PEOPLE'S NAMES?

6 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

7 Q CAN YOU TELL ME A COUPLE, JUST A COUPLE?

8 A I DON'T KNOW TWO.

9 Q YOU DON'T KNOW TWO?

10 A (THE WITNESS SHAKES IN THE NEGATIVE.)

11 Q WERE THERE SOME OTHER BOYS THAT YOU LIVED
12 WITH AT SOME TIME, SOME OTHER CHILDREN?

13 A UH-HUH.

14 Q OKAY. AND I WANT TO TURN YOUR ATTENTION BACK
15 TO A SPECIFIC TIME WHEN YOU LIVED WITH YOUR LITTLE
16 BROTHER H.G. , AND DID YOU USED TO HAVE A LITTLE
17 SISTER NAMED MINOR ?

18 A UH-HUH, NOT WITH THE OTHER FAMILY.

19 Q OKAY, BUT AT ONE TIME YOU HAD A SISTER NAMED
20 MINOR , DIDN'T YOU?

21 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

22 Q DO YOU REMEMBER WHO YOU WERE LIVING WITH WHEN
23 MINOR LIVED WITH YOU?

24 A UH-HUH.

25 Q DID H.G. LIVE WITH YOU THEN, TOO?

DIRECT OF N. G. BY CAMPBELL 119
(BY VIDEOTAPE)

1 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
2 Q WHO ALL DID YOU LIVE WITH?
3 A I DON'T KNOW THE MOTHER'S NAME.
4 Q YOU DON'T KNOW THE MOTHER'S NAME, BUT THERE
5 WAS A MOTHER, RIGHT?
6 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
7 Q THERE WAS A MOTHER THAT LIVED THERE WITH YOU?
8 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
9 Q WHO ELSE LIVED THERE BESIDES THE MOTHER?
10 A PAPA.
11 Q PAPA?
12 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
13 Q SO IT WAS PAPA, THE MOTHER, THEN YOU?
14 A PAPA IS THE DADDY.
15 Q PAPA IS THE DADDY. AFTER PAPA THE DADDY,
16 THEN THERE WAS A MOTHER, RIGHT?
17 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
18 Q YOU JUST DON'T REMEMBER WHAT YOU CALLED HER,
19 RIGHT?
20 A (THERE WAS NO RESPONSE.)
21 Q DID H.G. LIVE THERE?
22 A YES, MA'AM.
23 Q DID MINOR LIVE THERE?
24 A YES, MA'AM.
25 Q AND HOW BIG WAS MINOR WHEN SHE LIVED THERE?

1 A SMALL.

2 Q SMALL?

3 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

4 Q HOW SMALL?

5 A REALLY RIGHT THERE (INDICATING).

6 Q SO SHE WAS SMALLER THAN YOU THEN?

7 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

8 Q DO YOU KNOW THE DIFFERENCE BETWEEN THE TRUTH

9 AND A LIE?

10 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

11 Q IS IT GOOD TO TELL A LIE?

12 A (THE WITNESS SHAKES IN THE NEGATIVE.)

13 Q YOU HAVE TO ANSWER OUT LOUD, OKAY?

14 A NO, MA'AM.

15 Q IT'S NOT GOOD TO TELL A LIE. WHAT HAPPENS IF

16 YOU TELL A LIE?

17 A I GET IN TROUBLE.

18 Q AND YOU UNDERSTAND HERE TODAY THAT WE NEED TO

19 KNOW THE TRUTH, RIGHT? AND YOU'RE GOING TO TELL

20 US THE TRUTH ABOUT WHAT HAPPENED? IS IT OKAY IF

21 WE TALK ABOUT WHAT HAPPENED TO MINOR ? YOU DON'T ...

22 LIKE TO TALK ABOUT THIS, DO YOU?

23 A (THERE WAS NO RESPONSE.)

24 Q OKAY. BACK WHEN YOU WERE LIVING WITH PAPA

25 AND MINOR AND H.G. AND THE MOTHER, DO YOU

DIRECT OF N. G. BY CAMPBELL 121
(BY VIDEOTAPE)

1 REMEMBER THE DAY THAT MINOR HAD TO GO TO THE
2 HOSPITAL?

3 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

4 Q DO YOU REMEMBER THE DAY THAT YOU WOKE UP AND
5 HEARD MINOR AND WHAT WAS HAPPENING WITH PAPA?

6 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

7 Q DO YOU REMEMBER WHAT PAPA WAS DOING TO
8 MINOR ?

9 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

10 Q CAN YOU TELL ME ABOUT THAT?

11 A HE WAS SPANKING HER HARD AND HARDER AND SHE
12 DIED.

13 Q AND SHE DIED?

14 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

15 Q WHEN YOU SAID HE WAS SPANKING HER HARD, HOW
16 WAS HE SPANKING HER, DO YOU REMEMBER WHAT PART OF
17 HER BODY HE WAS HITTING?

18 A HER BACK.

19 Q HER BACK?

20 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

21 Q WAS IT HER BACK AREA UP HERE?

22 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

23 Q WAS THERE ANY OTHER PART OF HER BODY HE WAS
24 HITTING?

25 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

DIRECT OF N. G. BY CAMPBELL 122
(BY VIDEOTAPE)

1 Q WHEN HE WAS HITTING HER IN THE BACK AREA,
2 WHERE WAS SHE, WHERE WAS THIS HAPPENING?
3 A IN HIS ROOM.
4 Q IN HIS ROOM. WOULD THAT BE IN PAPA'S ROOM?
5 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
6 Q AND WHERE WAS MINOR IN PAPA'S ROOM?
7 A IT'S BY OUR ROOM.
8 Q IT WAS BY YOUR ROOM?
9 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
10 Q WAS MINOR IN HIS ROOM, THOUGH?
11 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
12 Q WAS SHE STANDING UP OR SITTING DOWN OR WHAT?
13 A LAYING DOWN.
14 Q ON WHAT?
15 A ON THE BED.
16 Q AND WHERE WAS PAPA WHEN HE WAS SPANKING HER?
17 A HE WAS STANDING ON THE FLOOR.
18 Q HE WAS STANDING ON THE FLOOR?
19 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
20 Q AND DID YOU HEAR HIM SAY ANYTHING?
21 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)
22 Q DID YOU HEAR HER SAYING ANYTHING?
23 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)
24 Q DID YOU SAY ANYTHING TO PAPA WHEN YOU WENT IN
25 THERE AND SAW WHEN WHAT HE WAS DOING?

DIRECT OF N. G. BY CAMPBELL 123
(BY VIDEOTAPE)

1 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)
2 Q DO YOU REMEMBER WHY PAPA WAS SPANKING HER
3 THAT MORNING?
4 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
5 Q WHY WAS THAT?
6 A BECAUSE SHE PEED IN THE BED AND LAST NIGHT
7 SHE KEPT ON TURNING ON THE LIGHTS. I COULDN'T
8 SLEEP.
9 Q SO SHE PEED IN THE BED; IS THAT WHAT YOU TOLD
10 ME?
11 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
12 Q AND YOU COULDN'T SLEEP BECAUSE OF WHY?
13 A BECAUSE SHE WAS TURNING THE LIGHTS ON, OFF
14 AND ON.
15 Q AND BECAUSE SHE PEED IN THE BED. IS THAT WHY
16 PAPA WAS SPANKING HER?
17 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
18 Q AFTER PAPA SPANKED HER, WHAT HAPPENED TO
19 MINOR , DO YOU REMEMBER?
20 A SHE DIED.
21 Q DID SHE HAVE TO GO TO THE HOSPITAL?
22 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
23 Q DO YOU REMEMBER WHO TOOK HER TO THE HOSPITAL?
24 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
25 Q WHO WAS THAT?

1 A MY DADDY -- ALL OF US WENT.

2 Q TO THE HOSPITAL?

3 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

4 Q WHERE WAS THE MOTHER? DID THE MOTHER COME
5 HOME?

6 A UH-HUH.

7 Q WHERE HAD SHE BEEN?

8 A SHE WAS AT WORK.

9 Q AND THEN SHE CAME HOME?

10 A UH-HUH.

11 Q DO YOU REMEMBER WHAT MINOR WAS WEARING WHEN
12 HE WAS SPANKING HER?

13 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

14 Q WHAT WAS SHE WEARING?

15 A SHE WASN'T WEARING ANYTHING.

16 Q SHE WASN'T WEARING ANYTHING?

17 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

18 Q AND YOU SAID EARLIER HE WAS STANDING UP?

19 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

20 Q WAS HE STANDING UP ON THE BED?

21 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

22 Q WHERE WAS HE STANDING?

23 A ON THE FLOOR.

24 Q WAS IT NEXT TO THE BED?

25 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

DIRECT OF N. G. BY CAMPBELL 125
(BY VIDEOTAPE)

1 Q AND MINOR WAS ON THE BED?

2 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

3 Q AND THAT'S WHERE HE WAS SPANKING HER?

4 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

5 Q AND YOU SAW THAT WITH YOUR OWN EYES, RIGHT?

6 A YES, MA'AM.

7 Q DO YOU REMEMBER WHAT HE WAS SPANKING HER

8 WITH?

9 A ~~HIS BELT.~~

10 Q HIS BELT?

11 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

12 Q AND IT WAS AFTER THAT THAT MINOR HAD TO GO

13 TO THE HOSPITAL -- THAT MINOR DIED?

14 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

15 Q AND WHEN DID MINOR DIE THAT DAY, DO YOU

16 KNOW?

17 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

18 Q BUT SHE HAD TO GO TO THE HOSPITAL THAT DAY;

19 IS THAT RIGHT?

20 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

21 Q OKAY, N.G. , I'M NOT GOING TO ASK YOU ANY

22 MORE QUESTIONS, BUT YOU'RE GOING TO HAVE TO ANSWER

23 SOME OF THIS LADY'S QUESTIONS. IS THAT OKAY?

24 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

25 MS. CAMPBELL: THANK YOU VERY MUCH.

CROSS-EXAMINATION(BY VIDEOTAPE)

BY MS. COGGIOLA:

Q HI, MINOR. (SIC) I'M LEE. DO YOU
REMEMBER MEETING ME THIS MORNING?

A YES, MA'AM.

Q I HAVE SOME QUESTIONS FOR YOU. DO YOU
REMEMBER ABOUT A MONTH AGO WHEN YOU WERE OVER -- I
THINK THEY CALL IT THE FISH ROOM? IT'S OVER AT --
IS WHERE DR. ALLISON IS?

A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

Q DO YOU REMEMBER BEING OVER THERE AND THEY HAD
A CAMERA IN THE ROOM?

A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

Q AND I THINK YOU WERE ASKED A LOT OF QUESTIONS
ABOUT WHAT HAPPENED TO MINOR. DO YOU REMEMBER
THAT?

A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

Q AND I THINK YOU TALKED ABOUT A LOT OF
DIFFERENT PEOPLE YOU HAD LIVED WITH, DIDN'T YOU?

A UH-HUH.

Q DO YOU REMEMBER TALKING ABOUT AFTER YOU HAD
SEEN -- I THINK YOU SAID THAT YOU SAW PAPA
SPANKING MINOR, RIGHT?

A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

CROSS OF N. G. BY COGGIOLA 127
(BY VIDEOTAPE)

1 Q WAS THAT BECAUSE SHE HAD PEED IN THE BED OR
2 DID YOU SAY ANYTHING -- YOU SAID TODAY SOMETHING
3 ABOUT TURNING THE LIGHTS OFF AND ON AND KEEPING
4 YOU AWAKE?
5 A YEAH.
6 Q HAD SHE DONE THAT?
7 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
8 ~~SHE PEED IN THE BED, THAT'S WHY.~~
9 Q OKAY. THAT'S WHY HE SPANKED HER?
10 A ~~YES, MA'AM.~~
11 Q SO IT DIDN'T HAVE ANYTHING TO DO WITH THE
12 LIGHTS BEING TURNED OFF AND ON?
13 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)
14 Q DO YOU REMEMBER TELLING DR. ALLISON THAT
15 YOU -- THAT YOU AND H.G. AND MINOR HAD THEN
16 ~~GONE TO SCHOOL THAT DAY?~~
17 A ~~YES, MA'AM, WE GO TO THE SAME SCHOOL.~~
18 Q AND HAD YOU GONE TO SCHOOL THAT DAY AFTER --
19 A WE HAD TO GO TO THE NURSERY.
20 Q YOU WENT TO THE NURSERY, AND I THINK YOU ALSO
21 TOLD DR. ALLISON THAT YOU CALLED THE POLICE THAT
22 DAY. DID YOU CALL THE POLICE?
23 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)
24 Q YOU DID? DID YOU KNOW HOW TO CALL THE
25 POLICE? DID YOU USE THE TELEPHONE?

1 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

2 Q AND WHEN YOU CALLED THE POLICE, WHAT DID YOU

3 -- YOU SAID THAT MAMA -- THE MOTHER HAD BEEN AT
4 WORK, RIGHT?

5 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

6 Q WAS SHE HOME BY THE TIME YOU CALLED THE
7 POLICE?

8 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

9 Q SHE HAD ALREADY COME HOME?

10 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

11 Q DID SHE ASK YOU TO CALL THE POLICE?

12 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

13 Q DO YOU REMEMBER WHETHER THE POLICE -- I THINK
14 YOU SAID THAT THE POLICE CAME AND TOOK HIM AWAY.

15 ~~DID THE POLICE COME AND TAKE PAPA AWAY?~~

16 A YES, MA'AM.

17 Q THEY DID FROM WHEN YOU WERE STILL AT HOME?

18 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

19 Q I THINK YOU TOLD DR. ALLISON TOO THAT THE
20 MOTHER THREW HIM OUT OF THE HOUSE. DID SHE DO
21 THAT?

22 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

23 Q DO YOU -- AND IT WAS QUITE A WHILE BEFORE
24 THIS, BUT DO YOU REMEMBER ANOTHER TIME WHEN YOU
25 MET -- I THINK IT'S THIS DOCTOR AND SHE CALLS

CROSS OF N. G. BY COGGIOLA 129
(BY VIDEOTAPE)

1 HERSELF ALLISON. DO YOU REMEMBER TALKING TO
2 DR. ALLISON RIGHT AFTER MINOR DIED?

3 A YES, MA'AM.

4 Q DO YOU REMEMBER THAT MEETING, TOO? I THINK
5 THAT WAS IN THE FISH ROOM TOO, WASN'T IT? WAS
6 THAT MAYBE IN THE FISH ROOM?

7 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

8 Q DO YOU REMEMBER WHAT -- WHEN SHE ASKED YOU
9 WHY PAPA HAD SPANKED MINOR, DO YOU REMEMBER WHAT
10 YOU SAID BACK THEN?

11 A (THERE WAS NO RESPONSE.)

12 Q DID YOU SAY IT WAS BECAUSE SHE WOULDN'T PULL
13 HER PANTS UP?

14 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

15 Q DO YOU REMEMBER THAT AT ALL? YOU CAN TELL ME
16 IF YOU DON'T REMEMBER SOMETHING QUITE ALL RIGHT?

17 A NO, MA'AM.

18 Q YOU DON'T REMEMBER THAT?

19 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

20 Q AND YOU DON'T REMEMBER SAYING THAT MINOR
21 HAD BEEN IN YOUR ROOM AT THAT TIME?

22 A I REMEMBER SHE WAS IN MY ROOM.

23 Q I'M SORRY. WHAT?

24 A I REMEMBER SHE WAS IN MY ROOM.

25 Q YOU REMEMBER SHE WAS IN YOUR ROOM WHEN SHE --

1 OKAY. BUT YOU DON'T REMEMBER SAYING THAT SHE GOT
2 SPANKED BECAUSE SHE WOULDN'T PULL HER PANTS UP?

3 A (THE WITNESS SHAKES HEAD IN THE NEGATIVE.)

4 Q WHEN WAS SHE IN YOUR ROOM? DO YOU REMEMBER?

5 A WHEN WE HAD TO GO TO BED. SHE SLEEPS IN MY
6 ROOM.

7 Q SHE SLEEPS IN YOUR ROOM, BUT I THINK YOU
8 SAID --

9 A AND IT WASN'T BUT ME AND MINOR.

10 Q SO H.G. HAD HIS OWN ROOM AND YOU AND
11 MINOR SHARED A ROOM?

12 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

13 Q WERE YOU -- I THINK YOU TOLD DR. ALLISON A
14 FEW WEEKS AGO WHEN YOU WERE WITH HER THAT YOU WOKE
15 UP AND YOU HEARD THIS GOING ON AT FIRST. WERE YOU
16 IN YOUR ROOM THEN?

17 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

18 Q WAS THAT -- WHERE DID YOU GO THEN?

19 A IN HIS ROOM.

20 Q IN HIS ROOM. WAS THAT WHEN YOU -- DID YOU --
21 WHO CALLED THE MOTHER? DID YOU CALL THE MOTHER?
22 DID YOU SAY YOU HAD CALLED THE MOTHER TO COME HOME
23 FROM WORK? BUT YOU DID?

24 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

25 Q AND THEN WHEN SHE CAME HOME SHE TOLD YOU TO

CROSS OF N. G. BY COGGIOLA 131
(BY VIDEOTAPE)

1 CALL THE POLICE?

2 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

3 MS. COGGIOLA: YOUR HONOR, IF I COULD STEP IN
4 THE BACK.

5 THE COURT: CUT THE VIDEO OFF.

6 MS. COGGIOLA: I'LL BE RIGHT BACK.

7 (WHEREUPON, MS. COGGIOLA LEFT THE
8 COURTROOM BRIEFLY.)

9 (PAUSE)

10 MS. COGGIOLA: N.G. , THANK YOU VERY MUCH
11 FOR ANSWERING MY QUESTIONS. I'M NOT GOING TO ASK
12 YOU ANYTHING MORE TODAY, OKAY?

13 THE WITNESS: (THE WITNESS NODS HEAD IN THE
14 AFFIRMATIVE.)

15 THE COURT: MADAM SOLICITOR, ANYTHING ELSE?

16 MS. CAMPBELL: NO, SIR.

17 THE COURT: OKAY. THEN THE VIDEO DEPOSITION
18 IS CLOSED.

19 ANYTHING ELSE WE NEED TO DEAL WITH?

20 (WHEREUPON, THE CHILD WITNESS WAS
21 ESCORTED OUT OF THE COURTROOM.)

22 (WHEREUPON, THE DEFENDANT WAS RETURNED
23 TO THE COURTROOM.)

24 MS. COGGIOLA: YOUR HONOR, I WOULD LIKE TO
25 RENEW MY CHALLENGE, I GUESS, TO THE COMPETENCY OF

1 THIS WITNESS IN TERMS OF -- I UNDERSTAND THAT SHE
2 HAS ANSWERED QUESTIONS ABOUT HOW IT'S WRONG TO
3 TELL A LIE AND HOW YOU MUST TELL THE TRUTH, BUT I
4 WOULD QUESTION HER ABILITY TO RECALL FACTS
5 CORRECTLY, WHICH I THINK IT WAS SOUTH CAROLINA
6 DEPARTMENT OF SOCIAL SERVICES V. DOVE AND STATE V.
7 MEAD WOULD BE THE TWO CASES THAT PART OF
8 COMPETENCY WOULD BE THE ABILITY TO RECALL ACCURATE
9 FACTS.

10 HER ANSWERS ON APRIL 15TH OF THIS YEAR, 2002
11 -- SHE IS ADDING FACTS THAT ARE CERTAINLY NOT PART
12 OF THE EVIDENCE AT ALL AND NOT -- I THINK IT WOULD
13 NOT BE DISPUTED, BUT FOR THE FACT THE POLICE NEVER
14 WERE CALLED TO THE HOUSE. HE WAS NEVER TAKEN AWAY
15 BY THE POLICE. THESE ARE FACTS THAT ARE IN SUCH
16 QUESTION THAT I WOULD DISPUTE WHETHER SHE ACTUALLY
17 CAN RECALL THE EVENTS.

18 HER INCONSISTENT STATEMENTS FROM THE TIME OF
19 THE EVENT AND TODAY, I THINK CERTAINLY WILL BE
20 ARGUABLY BEFORE THE JURY, BUT I WOULD SAY THAT
21 BASED UPON THE FACTS THAT SHE RECOUNTED A MONTH
22 AGO IN PREPARATION FOR THE TRIAL BEING COMPLETELY
23 INACCURATE WOULD QUESTION WHETHER SHE IS ABLE TO
24 PROVIDE ANY COMPETENT TESTIMONY WHATSOEVER.

25 THE COURT: YES, MA'AM.

1 MS. CAMPBELL: YOUR HONOR, I THINK THERE'S
2 ABSOLUTELY NO INCONSISTENCY OTHER THAN MINOR
3 THINGS IN THE CHILD'S STATEMENT.

4 AS FAR AS -- YOU KNOW, THIS IS A CASE IN MEAD
5 WHERE THIS PERSON ADMITS TO LYING AND PERJURING
6 HERSELF ON PRIOR OCCASIONS.

7 THE CHILD GAVE BASICALLY THE SAME RENDITION
8 EVERY TIME. AS FAR AS WHETHER OR NOT SHE HAD
9 TRIED TO CALL THE POLICE SHE HAS BEEN CONSISTENT
10 WITH THAT. THE POLICE DID SHOW UP THAT NIGHT AND
11 TAKE HIM AWAY.

12 THE COURT: I THINK THE THING THAT SHE HAS
13 BEEN CONSISTENT ON, AND WHY I THINK THE STATE IS
14 OFFERING THE WITNESS, IS TO PROVE THE SPANKING.

15 MS. CAMPBELL: YES, SIR.

16 THE COURT: SHE'S BEEN VERY CONSISTENT ABOUT
17 THAT, WHAT THE REASON WAS, AND WHAT HAPPENED. SHE
18 WASN'T -- YOU HAVE TO ALSO TAKE INTO CONSIDERATION
19 SHE'S BEEN UP HERE SINCE THIS MORNING AT 9:00.

20 YOU KNOW, OBVIOUSLY, THE JURY IS NOT GOING TO
21 HEAR WHAT SHE SAID THIS MORNING, BUT SHE WAS
22 PRETTY ANIMATED THIS MORNING ABOUT GOING IN THERE
23 AND SAYING, YOU KNOW, "WHAT ARE YOU DOING" AND
24 THAT KIND OF STUFF.

25 I MEAN, IF SHE'S BEING OFFERED TO PROVE A

1 FACT OF PHYSICAL ABUSE, YOU KNOW, IF SHE HAS BEEN
2 CONSISTENT ON THAT, I DON'T KNOW OF ANY OTHER
3 REASON WHY -- ANY OTHER REASON YOU'RE OFFERING
4 HER?

5 MS. CAMPBELL: THAT'S IT, YOUR HONOR.

6 THE COURT: OF COURSE, THE SPANKING ITSELF
7 DID NOT CAUSE THE CHILD'S DEATH ANYWAY.

8 THAT'S PART OF -- I WOULD DENY YOUR MOTION.

9 OBVIOUSLY, LISTENING TO THE INTERVIEW, AND
10 THEN SHE CAME IN HERE AND WAS ON THE STAND
11 HERSELF. I THINK ON THE ISSUE FOR WHICH SHE'S
12 BEING OFFERED, SHE'S COMPETENT TO TESTIFY.

13 MS. COGGIOLA: THANK YOU, YOUR HONOR.
14 NOTHING FURTHER.

15 THE COURT: NO OTHER MOTIONS?

16 MS. CAMPBELL: NO, SIR.

17 THE COURT: NO LYLE?

18 MS. CAMPBELL: NO LYLE, YOUR HONOR. WE'RE
19 READY TO MOVE FORWARD. VERY SIMILAR TO THE LAST
20 CASE I DID WITH YOU AS FAR AS THE MEDICAL
21 TESTIMONY UP FRONT.

22 THE COURT: I'LL DO MY BEST TO BE HERE BY
23 11:00, BUT IT'S OUT OF MY CONTROL.

24 MAY 14, 2002

25 THE COURT: I HAVE ONE OTHER QUESTION I NEED

1 YOU TO LOOK AT BEFORE WE BRING IN THE JURY. NOT A
2 QUESTION, A NOTE.

3 (WHEREUPON, THERE WAS A BENCH
4 CONFERENCE.)

5 THE COURT: MR. BAILIFF, BRING MR. DIETRICH.

6 THE BAILIFF: MR. DIETRICH?

7 THE COURT: BRING HIM RIGHT HERE.

8 (WHEREUPON, JUROR DIETRICH WAS BROUGHT
9 INTO THE COURTROOM.)

10 THE COURT: CAN YOU DEFINE FOR ME WHAT GORY
11 IS?

12 PROSPECTIVE JUROR: IT WILL JUST DEPEND ON
13 HOW IT STRIKES ME.

14 THE COURT: OKAY.

15 PROSPECTIVE JUROR: SOMETIMES IT AFFECTS ME
16 AND SOMETIMES IT DOESN'T.

17 THE COURT: I DON'T KNOW A LOT ABOUT THE
18 EVIDENCE. I DO KNOW THAT THERE WILL BE SOME
19 EVIDENCE OF SOME BRUISE MARKS FROM SPANKING OR
20 SOMETHING LIKE THAT.

21 PROSPECTIVE JUROR: THAT WON'T BOTHER ME.

22 THE COURT: ALL RIGHT. IF WE GET TO A POINT
23 THAT IT BOTHERS YOU, WE'LL JUST HAVE TO DEAL WITH
24 IT.

25 PROSPECTIVE JUROR: I JUST WANTED YOU TO BE

1 AWARE OF IT JUST IN CASE.

2 THE COURT: YOU FEEL LIKE YOU CAN GET THROUGH
3 IT...

4 PROSPECTIVE JUROR: I'LL DO MY BEST.

5 THE COURT: IF YOU HAVE A PROBLEM -- I DON'T
6 WANT TO SAY TOO MUCH MORE ABOUT IT BECAUSE I DON'T
7 KNOW EXACTLY WHAT THE EVIDENCE IS GOING TO BE, BUT
8 I DON'T THINK YOU PROBABLY WILL SEE ANYTHING THAT
9 REALLY BOTHERS YOU. OKAY.

10 ALL RIGHT. YOU CAN BRING THEM ALL IN.

11 MS. CAMPBELL: CAN WE APPROACH ABOUT
12 SCHEDULING?

13 (WHEREUPON, A BENCH CONFERENCE WAS
14 HELD.)

15 (WHEREUPON, COURT'S EXHIBIT NUMBER 3 WAS
16 MARKED FOR IDENTIFICATION ONLY.)

17 (WHEREUPON, THE JURY WAS BROUGHT INTO
18 OPEN COURT AT APPROXIMATELY 11:49.)

19 THE BAILIFF: THE JURY IS PRESENT, YOUR
20 HONOR.

21 THE COURT: MS. ROGERS, I UNDERSTAND THEY
22 SELECTED YOU AS THE FOREPERSON; IS THAT CORRECT?

23 THE FOREPERSON: YES.

24 THE COURT: I AFFIRM THAT. THERE WAS A
25 QUESTION OF WHETHER OR NOT YOU CAN TAKE NOTES.

1 I'LL ALLOW YOU DO THAT. WE'LL PASS OUT NOTEPADS
2 FOR YOU TO WRITE YOUR NOTES, BUT WHAT I SUGGEST
3 YOU DO IS WRITE YOUR NAME ON THE FRONT PAGE AND
4 JUST USE THAT AS A COVER SHEET AND THEN TAKE YOUR
5 NOTES ON THE PAGES BEHIND THAT. WE WILL TAKE
6 THOSE NOTE PADS UP AT EVERY BREAK, FOR EXAMPLE --
7 NOT BREAK, WHEN YOU GO TO LUNCH OR WHEN YOU GO
8 HOME AT NIGHT SO NOBODY WILL BE LOOKING AT THEM.
9 WE'LL THEN PASS THEM BACK UP TO YOU.

10 IT'S NOT A PROBLEM. NOW LET ME TELL YOU A
11 LITTLE BIT ABOUT NOTE TAKING. I'LL TELL YOU A
12 LITTLE FAMILY STORY BETWEEN ME AND MY WIFE. WE
13 HAVE A DISPUTE ABOUT WHO HAS THE BEST MEMORY. SHE
14 IS A NOTE TAKER AND I AM NOT. THERE ARE
15 ADVANTAGES TO TAKING NOTES. OBVIOUSLY, SOMETIMES
16 IF YOU'RE TAKING NOTES YOU MIGHT MISS SOMETHING OR
17 VICE VERSA. WHAT I'M TRYING TO SAY IS AT THE END
18 OF THE DAY WHEN YOU'VE GOT TO RESOLVE THIS
19 QUESTION BETWEEN YOURSELVES IS THAT SOME OF YOU
20 DON'T TAKE NOTES AND SOME OF YOU DO, AND YOU'RE
21 GOING TO HAVE TO FIGURE OUT HOW TO RESOLVE THIS
22 PROBLEM.

23 WELL, IT WAS SAID BECAUSE I WROTE IT DOWN.
24 WELL, IT MIGHT NOT BE, BECAUSE THE OTHER PERSON
25 MIGHT HAVE HEARD IT RIGHT AND YOU WROTE IT DOWN

1 WRONG. ALL I'M SAYING IS THEY'RE YOUR NOTES AND
2 YOU USE THEM FOR YOUR BENEFIT. ANY DISPUTES YOU
3 ALL HAVE ABOUT IT, YOU'VE GOT TO WORK IT OUT.

4 DID YOU GIVE THEM THE PADS ALREADY?

5 THE CLERK: YES, SIR.

6 THE COURT: OKAY. IF YOU WANT TO TAKE NOTES
7 THAT'S FINE. IF NOT THAT'S FINE, TOO. OKAY.

8 I APPRECIATE YOUR BEING PATIENT. THE CASES
9 DOWN THERE SOMETIMES RUN OVER A LITTLE LONGER AND
10 IT'S BEYOND MY CONTROL. THEY'RE MY BOSSES SO I
11 HAVE TO GO WHEN THEY SAY.

12 MADAM SOLICITOR, ARE YOU READY TO CALL YOUR
13 FIRST WITNESS?

14 MS. CAMPBELL: MAY IT PLEASE THE COURT, THE
15 STATE CALLS DR. ROBERT HUBBIRD.

16 THE CLERK: IF YOU'D COME FORWARD, PLEASE.
17 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
18 RIGHT HAND.

19 DR. ROBERT HUBBIRD,

20 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: STATE YOUR FULL NAME, SPELL YOUR
22 LAST NAME, DOCTOR.

23 THE WITNESS: MY NAME IS ROBERT D. HUBBIRD,
24 H-U-B-B-I-R-D.

25 DIRECT EXAMINATION

1 BY MS. CAMPBELL:

2 Q DR. HUBBIRD, WHERE ARE YOU EMPLOYED?

3 A PALMETTO CHILDREN'S HOSPITAL.

4 Q WHAT DO YOU DO THERE?

5 A I AM THE ATTENDING PHYSICIAN AT THE PEDIATRIC
6 INTENSIVE CARE UNIT.

7 Q AND AS THE ATTENDING PHYSICIAN AT THE
8 PEDIATRIC INTENSIVE CARE UNIT, WHAT IS YOUR JOB OR
9 YOUR DUTIES?

10 A I AM THE MEDICAL DIRECTOR OF THE I.C.U. AND
11 FOR CHILDREN THAT ARE CRITICALLY ILL OR INJURED, I
12 DIRECT THEIR MEDICAL CARE.

13 Q AND HOW LONG HAVE YOU BEEN WORKING IN THAT
14 CAPACITY AT PALMETTO RICHLAND MEMORIAL HOSPITAL?

15 A I'VE BEEN THERE ALMOST 11 YEARS, 11 YEARS
16 THIS COMING AUGUST.

17 Q CAN YOU TELL THE JURY ABOUT YOUR EDUCATION,
18 YOUR TRAINING?

19 A ~~I'M A PEDIATRIC CARE PHYSICIAN, AND THAT~~
20 ~~MEANS THAT I OBVIOUSLY WENT TO COLLEGE, TO MEDICAL~~
21 ~~SCHOOL, DID A PEDIATRIC RESIDENCY, THEN I DID MY~~
22 ~~TRAINING. I AM A PEDIATRIC INTENSIVE CARE~~
23 ~~PHYSICIAN, THAT IS A SUBSPECIALTY OF PEDIATRICS,~~
24 ~~SO I AM AN M.D., A PEDIATRICIAN FIRST, AND THEN AN~~
25 ~~INTENSIVE CARE PHYSICIAN FOR JUST CHILDREN AFTER~~

1 THAT.

2 Q WHERE DID YOU ATTEND MEDICAL SCHOOL?

3 A UNIVERSITY OF MIAMI, SCHOOL OF MEDICINE.

4 Q WHEN DID YOU GRADUATE WITH YOUR MEDICAL
5 DEGREE THERE?

6 A 1978.

7 Q AND AFTER THAT I BELIEVE YOU DID A RESIDENCY
8 IN PEDIATRICS?

9 A YES, RESIDENCY IN PEDIATRICS IN PENSACOLA,
10 FLORIDA.

11 Q AND SUBSEQUENT TO THAT YOU DID ADDITIONAL
12 TRAINING IN THE FIELD OF PEDIATRICS; IS THAT
13 CORRECT?

14 A I WAS ON THE FACULTY OF TEXAS STATE SCHOOL OF
15 MEDICINE IN AMARILLO, TEXAS, AND AT THAT POINT I
16 BECAME ELIGIBLE TO TAKE BOARDS.

17 Q AND IN FACT, ARE YOU BOARD CERTIFIED IN
18 PEDIATRICS?

19 A YES. I BECAME BOARD CERTIFIED IN PEDIATRICS
20 IN 1984, I THINK, AND I'M -- PEDIATRICS
21 SUBSPECIALTY CERTIFIED IN CRITICAL CARE MEDICINE,
22 FIRST IN 1992 AND THEN RECERTIFIED IN -- LET'S
23 SEE, 1999, I GUESS.

24 Q 1999?

25 A YES.

1 Q SO YOU'RE BOARD CERTIFIED AS A PEDIATRIC
2 CRITICAL CARE DOCTOR?

3 A YES.

4 Q WHICH TAKES ADDITIONAL TRAINING FROM BEING
5 JUST A PEDIATRICIAN?

6 A CORRECT.

7 Q WHICH IS ALSO A SUBSPECIALTY OF BEING A
8 MEDICAL DOCTOR?

9 A CORRECT.

10 Q DO YOU CURRENTLY HOLD ANY POSITIONS AT THE
11 MEDICAL UNIVERSITY?

12 A YES. AT THE UNIVERSITY OF SOUTH CAROLINA
13 SCHOOL OF MEDICINE I'M ASSOCIATE PROFESSOR OF
14 CLINICAL PEDIATRICS.

15 Q AND WHAT DOES THAT INVOLVE? WHAT ARE YOUR
16 DUTIES WITH THAT?

17 A AS A PROFESSOR AT THE MEDICAL SCHOOL I GIVE
18 MEDICAL STUDENT LECTURES. I PRECEPT MED STUDENTS
19 IN THE I.C.U., AND I TEACH PEDIATRIC RESIDENTS ON
20 A DAILY BASIS IN THE I.C.U. AND ALSO BY GIVING
21 LECTURES AND COURSES FOR THE RESIDENTS.

22 Q SO THEN YOU'RE ACTUALLY INVOLVED IN THE
23 TEACHING --

24 A OF PEDIATRICIANS-TO-BE.

25 Q OF PEDIATRICIANS?

1 A RIGHT.

2 Q AND HAVE YOU TESTIFIED BEFORE AS AN EXPERT AS

3 A PEDIATRICIAN?

4 A YES.

5 Q AND HAVE YOU TESTIFIED, BEEN QUALIFIED BEFORE

6 AS A PEDIATRIC INTENSIVE CARE DOCTOR?

7 A YES.

8 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D

9 OFFER HIM AS AN EXPERT IN PEDIATRIC INTENSIVE

10 CARE.

11 THE COURT: DO YOU WISH TO EXAMINE HIM,

12 MR. STRICKLER?.

13 MR. STRICKLER: WE HAVE NO PROBLEMS WITH

14 THAT.

15 THE COURT: ALL RIGHT, WE'LL PROCEED ON THAT

16 BASIS.

17 BY MS. CAMPBELL:

18 Q DR. HUBBIRD, BACK IN MARCH OF THE YEAR 2000,

19 WERE YOU WORKING AT RICHLAND PALMETTO MEMORIAL

20 HOSPITAL?

21 A YES, I WAS.

22 Q THERE ARE CERTAIN TERMS INVOLVED HERE AND

23 I'LL -- ONE OF THE TERMS I'VE HEARD YOU USE BEFORE

24 IS P.I.C.U. WHAT DOES THAT MEAN?

25 A P.I.C.U. IS THE PEDIATRIC INTENSIVE CARE

1 UNIT.

2 Q IN FACT, IS THAT THE UNIT WHERE YOU PRIMARILY
3 WORK?

4 A YES, IT IS.

5 Q AND TYPICALLY, NOT IN THIS CASE, BUT
6 TYPICALLY IN ANY CASE, HOW DO YOU BECOME INVOLVED
7 WHEN A CHILD WHO IS CRITICALLY ILL COMES TO THE
8 HOSPITAL?

9 A WE HAVE APPROXIMATELY 750 ADMISSIONS TO THE
10 P.I.C.U. A YEAR AND MY PARTNERS AND I TAKE CARE OF
11 THESE CHILDREN. I'M EITHER CONTACTED BY THE
12 EMERGENCY DEPARTMENT IF THEY COME INTO THE
13 EMERGENCY ROOM OR BY PEDIATRICIANS IN TOWN WHO
14 HAVE A CRITICALLY ILL CHILD WHO NEEDS TO COME IN,
15 OR BY SURROUNDING HOSPITALS LIKE IN SUMTER OR
16 ORANGEBURG OR BAMBERG OR SOMEPLACE WHO HAS A CHILD
17 IN THEIR HOSPITAL OR E.R. WHO NEEDS TO BE
18 TRANSPORTED TO US. WE HAVE A TRANSPORT SERVICE
19 THAT WE PROVIDE FOR CRITICALLY ILL CHILDREN.

20 Q AND ARE ALL HOSPITALS IN SOUTH CAROLINA, ARE
21 THEY ABLE TO PROVIDE THE TYPE OF CARE THAT YOU'RE
22 ABLE TO PROVIDE AT THE PEDIATRIC INTENSIVE CARE
23 UNIT HERE AT RICHLAND MEMORIAL?

24 A NO, MA'AM, THEY ARE NOT, THERE ARE FOUR
25 I.C.U.'S IN THE STATE, THREE WHAT I CALL FULL

1 I.C.U.'S, ONE IN GREENVILLE, ONE IN CHARLESTON,
2 AND ONE HERE.

3 Q SO STATEWIDE THERE ARE ONLY THREE UNITS THAT
4 PROVIDE THE INTENSIVE CARE YOU ARE ABLE TO PROVIDE
5 AT THE PEDIATRIC LEVEL?

6 A THAT WOULD BE CORRECT.

7 Q AND YOU'RE ONE OF THOSE, SO YOU ACTUALLY GET
8 CASES REFERRED IN FROM OTHER COUNTIES; IS THAT
9 CORRECT?

10 A ABSOLUTELY.

11 Q AND AGAIN, YOU AREN'T THE TYPE OF DOCTOR THAT
12 ACTUALLY SEES CHILDREN THAT ARE JUST COMING IN
13 WITH SAY, FLU SYMPTOMS OR SOMETHING OF THAT
14 NATURE?

15 A NO, I DO NOT TAKE CARE OF ROUTINE PEDIATRIC
16 CARE ANYMORE.

17 Q TURNING YOUR ATTENTION TO MARCH 28TH, THAT
18 MORNING, DID YOU HAVE -- WERE YOU CALLED IN TO THE
19 EMERGENCY ROOM?

20 A YES.

21 Q AND INVOLVING -- A CASE INVOLVING MINOR
22 ?

23 A YES, I WAS.

24 Q AND WHAT WAS THE INITIAL INFORMATION THAT WAS
25 RELAYED TO YOU ABOUT THIS CHILD?

1 A THE INITIAL INFORMATION WAS -- I WAS IN THE
2 I.C.U. AT THE TIME MAKING ROUNDS ON THE CHILDREN,
3 AND I WAS TOLD THERE WAS A CHILD IN EXTREMISTS,
4 MEANING THERE WAS A CHILD THAT WAS BEING INTUBATED
5 IN THE EMERGENCY ROOM. INTUBATED MEANS PUTTING A
6 PLASTIC TUBE THROUGH THE MOUTH INTO THE AIRWAY
7 BECAUSE THE CHILD WAS NOT BREATHING ADEQUATELY AND
8 THE CHILD WAS IN SHOCK, AND I NEEDED TO BE DOWN
9 THERE TO HELP WITH THE CARE AND RESUSCITATION OF
10 THIS CHILD.

11 Q AND ARE YOU AWARE OF APPROXIMATELY WHAT TIME
12 THE CHILD WAS BROUGHT TO THE E.R. THAT MORNING?

13 A APPROXIMATELY 7:30.

14 Q APPROXIMATELY HOW LONG DID IT TAKE BEFORE YOU
15 ACTUALLY RESPONDED AND WERE ABLE TO SEE THE CHILD;
16 DO YOU KNOW?

17 A I WAS THERE -- THEY PROBABLY CALLED ME ABOUT
18 10, 15 MINUTES AFTER THE CHILD GOT THERE. I'M
19 SURE I WAS THERE BEFORE 8:00.

20 Q WHEN YOU -- WHEN THE CHILD INITIALLY
21 PRESENTED, AGAIN YOU SAID THE CHILD HAD TO BE
22 INTUBATED?

23 A YES. THE CHILD ARRIVED TO THE EMERGENCY
24 DEPARTMENT DRIVEN BY -- IN A PRIVATE VEHICLE, NOT
25 BY AN AMBULANCE, AND WHEN THE CHILD SHOWED UP IN

1 THE E.R. THE INITIAL VITAL SIGNS SHOWED THE CHILD
2 TO BE IN SHOCK, MEANING THE BLOOD PRESSURE WAS
3 LOW, THE PATIENT WAS APNEIC, MEANING THE CHILD WAS
4 NOT BREATHING VERY WELL, ONLY A FEW TIMES A MINUTE
5 AND NOT ADEQUATELY BREATHING, AND THE HEART RATE
6 WAS LOW, SO ALL THREE THINGS NECESSITATED QUICK
7 INTERVENTION TO CONTINUE ITS SUPPORT.

8 Q AND YOU SAID THE CHILD HAD LOW BLOOD
9 PRESSURE?

10 A YES.

11 Q AND IT WAS ONLY BREATHING A FEW TIMES A
12 MINUTE?

13 A YES.

14 Q WHAT IS THE AVERAGE RATE FOR A CHILD, SAY FOR
15 A TWO YEAR OLD?

16 A A TWO YEAR OLD SHOULD BE BREATHING
17 APPROXIMATELY 25 TIMES A MINUTE.

18 Q AND WHAT DO THE RECORDS REFLECT THIS CHILD
19 HAD PRESENTED AT THE HOSPITAL, HOW OFTEN WAS IT
20 BREATHING?

21 A ~~THIS CHILD WAS BREATHING ONE TO TWO TIMES A~~
22 ~~MINUTE.~~

23 Q ONE TO TWO TIMES A MINUTE?

24 A ~~YES, AND THAT'S NOT ADEQUATE FOR ANY TYPE OF~~
25 ~~HUMAN.~~

1 Q AND YOU MENTIONED THAT THEY INTUBATED THE
2 CHILD, WHAT OTHER EMERGENCY ACTION WAS TAKEN BY
3 YOU OR BY OTHER PHYSICIANS THERE WHEN THE CHILD
4 INITIALLY PRESENTED?

5 A THE CHILD WAS INTUBATED QUICKLY. THE CHILD
6 -- SINCE THE CHILD WAS IN SHOCK, MEANING THE BLOOD
7 PRESSURE WAS LOW AND THE BABY WAS COLD -- NOT
8 COLD, BUT CLAMMY, THE BLOOD VESSELS WERE NOT
9 STICKING OUT LIKE YOU MIGHT SEE -- BIG VEINS, THEY
10 WERE NOT IN THIS BABY. THEY HAD TO GET SOME I.V.
11 FLUIDS INTO THE CHILD IN ORDER TO RESUSCITATE AND
12 HELP THE BLOOD PRESSURE, AND BESIDES THE I.V.
13 FLUIDS, YOU HAVE TO HAVE A WAY TO GET GOOD
14 MEDICINES IN.

15 SO THEY HAD TO TAKE A NEEDLE THAT IS MADE TO
16 BE PUT IN THE BONE IN THE LOWER LEG. THEY PUT THE
17 NEEDLE IN THE BONE IN THE LEFT TIBIA, THE LOWER
18 PART OF THE LEG. IT'S CALLED AN INTRA-OXY NEEDLE.
19 THESE NEEDLES ALLOW YOU TO GET FLUID, BLOOD,
20 MEDICINES INTO THE CHILD IN AN EMERGENCY SITUATION
21 WHILE YOU'RE WAITING TO ESTABLISH A BETTER
22 INTRAVENOUS LINE. THEY DID THAT AND THEY STARTED
23 BAGGING THE CHILD WITH 100 PERCENT OXYGEN THROUGH
24 THE INTUBATED TUBE AND THEN STARTED DRAWING SOME
25 LABS, JUST TRYING TO FIGURE OUT EXACTLY WHAT WAS

1 GOING ON.

2 Q AND WHAT OTHER PROCEDURES OR ASSESSMENTS WERE
3 MADE INITIALLY ON THE CHILD TO TRY TO DETERMINE
4 WHAT WAS CAUSING THIS CHILD NOT TO BREATHE?

5 A WELL, THE FIRST ASSESSMENT, ONCE THE CHILD
6 WAS ABLE TO BE ARTIFICIALLY BREATHING WAS A
7 PHYSICAL EXAM. THAT SHOWED, WITH THE NEUROLOGICAL
8 EXAM, THAT THE CHILD WAS SEVERELY OBTUNDED,
9 MEANING THE CHILD WAS NOT RESPONSIVE IN ANY
10 MEANINGFUL WAY TO PAIN, NOT MOVING AROUND, ITS
11 PUPILS WERE NOT RESPONDING AS THEY SHOULD, AND
12 ACTUALLY WHEN WE LOOKED AT THE BACK OF THE PUPILS,
13 ONE OF THE EMERGENCY PHYSICIANS DID, AND SAW
14 HEMORRHAGES IN THE RETINA, THE BACK PART OF THE
15 EYE, THEY -- AND SO THEN THE CHILD WAS SENT FOR A
16 C.T. SCAN. I WAS THERE BY THEN.

17 Q OKAY. AT THIS POINT, I BELIEVE YOU MADE AN
18 INITIAL NEUROLOGICAL EXAMINATION?

19 A YES, THE INITIAL NEUROLOGICAL EXAM SHOWED THE
20 CHILD -- WE HAVE WHAT WE CALL A GLASGOW COMA
21 SCALE. IT'S A SCALE WE USE TO DO A RAPID
22 NEUROLOGICAL EXAM. IF SOMEONE IS NOT BRIGHT AND
23 ALERT, THEN YOU DO A COMA SCALE TO SEE HOW BAD
24 THEY ARE. THE COMA SCALE GOES FROM THE NUMBER 3
25 TO THE NUMBER 15. A NORMAL PERSON IS A 15.

1 HOPEFULLY, I'M A NUMBER 15. NOW A 2X4 BLOCK OF
2 WOOD IS A 3. ~~THIS LITTLE CHILD HAD A 5 TO 6 COMA~~
3 ~~SCALE, VIRTUALLY NOT AWAKE AND ALERT AT ALL. IN A~~
4 DEEP, DEEP STATE, A DEEP COMA.

5 Q SO IN TERMS THAT I CAN UNDERSTAND, THIS CHILD
6 WAS IN A DEEP COMA AT THIS POINT?

7 A YES.

8 Q AND --

9 A THE CHILD WAS -- SHOWED MARKED NEUROLOGIC,
10 MARKED BRAIN ACTIVITY IMPAIRMENT.

11 Q SO THERE WAS SOMETHING WRONG WITH THIS
12 CHILD'S BRAIN?

13 A CORRECT.

14 Q AND YOU COULD TELL THAT ON THE INITIAL
15 ASSESSMENT, AND YOU SAID THAT WAS WHEN YOU ORDERED
16 WHAT WE CALL A C.T. SCAN?

17 A ~~YES. A C.T. SCAN IS COMPUTERIZED TOMOGRAPHY.~~
18 IT'S A SCAN WHERE WE GO AND LOOK AT THE BRAIN.
19 IT'S A COMPUTERIZED ENHANCED SCAN WHERE THEY JUST
20 TAKE SLICES OF THE BRAIN THIS WAY ABOUT EVERY HALF
21 AN INCH OR LESS, AND THEN THEY JUST SHOW THEM UP
22 ON THE SCREEN AND TELL WHAT'S GOING ON IN THE
23 BRAIN, THE ACTUAL ARCHITECTURE OF THE BRAIN AND
24 WHAT'S GOING ON IN THE BRAIN.

25 Q YOU SAY YOU TAKE SLICES OF BRAIN, YOU

1 ACTUALLY TAKE PICTURES OF DIFFERENT PARTS OF THE
2 BRAIN; IS THAT CORRECT?

3 A YES, IF YOU WERE TO TAKE A -- LIKE IF YOU
4 JUST CUT THE BRAIN IN A LITTLE SLICES THIS WAY AND
5 FLIP THEM UP ON THE SIDE THEN YOU CAN TELL WHAT'S
6 GOING ON WITH THE BRAIN.

7 Q THEY'RE ACTUAL PICTURES OF THAT?

8 A CORRECT.

9 Q AND IT'S A NON-INVASIVE PROCEDURE, IT'S KIND
10 OF LIKE AN X-RAY, CORRECT?

11 A KIND OF AN X-RAY; IT'S A VERY FANCY ONE.

12 Q AND THE REASON THE C.T. SCAN WAS ORDERED BY
13 YOU OR WHATEVER DOCTOR WAS WHAT REASON?

14 A THE C.T. SCAN WAS TO SEE IF THERE'S ANYTHING
15 GOING ON IN THE BRAIN THAT WOULD EXPLAIN WHY THE
16 CHILD IS NEUROLOGICALLY IMPAIRED, WHY THE CHILD IS
17 IN A COMA. IF THERE'S SOMETHING LIKE A BIG BLOOD
18 COLLECTION, SOMETHING THAT'S MESSING UP THE BRAIN,
19 THAT CAN BE SURGICALLY CORRECTED, AND THIS HAS TO
20 BE DONE QUICKLY BECAUSE ANY TIME YOU HAVE
21 SOMETHING GOING ON IN THE BRAIN, YOU HAVE VERY
22 LITTLE TIME IN ORDER TO MAKE A CORRECTION OF THAT
23 OR TRY TO TREAT THAT BEFORE THERE'S PERMANENT
24 IRREVOCABLE BRAIN DAMAGE OR DEATH.

25 Q ONCE THE C.A.T. SCANS, OR THE C.T. SCANS --

1 ARE THEY ALSO REFERRED TO AS C.A.T. SCANS?

2 A YES, THEY ARE.

3 Q AND THOSE ARE SIMPLY X-RAYS OF THE BRAIN; IS
4 THAT CORRECT?

5 A X-RAYS OF THE BRAIN, CORRECT.

6 Q AND THOSE ARE ACTUALLY REVIEWED BY OTHER,
7 DOCTORS IN THE HOSPITAL WITH SPECIALTIES?

8 A YES. BASICALLY C.T. SCANS ARE REVIEWED BY
9 RADIOLOGISTS. RADIOLOGISTS LOOK AT ALL X-RAYS AND
10 THERE ARE LOTS OF RADIOLOGISTS WHO HAVE EXPERTISE
11 JUST IN WHAT THEY CALL IT NEURORADIOLOGY FOR
12 THINGS LIKE C.T. SCANS, M.R.I.'S, STUFF LIKE THAT.
13 THEY WILL LOOK AT THOSE AND GIVE THE EXPERT
14 READING. SOMEONE LIKE ME WHO SEES A LOT OF
15 CHILDREN, I CAN LOOK AT A SCAN AND JUST GROSSLY
16 GET AN IDEA, BUT THEN I'LL REFER TO THE
17 RADIOLOGIST TO TELL ME EXACTLY THE SUBTLETIES OF
18 IT.

19 Q THAT MORNING WHEN YOU ARRIVED IN THE E.R.,
20 WERE YOU ACTUALLY ABLE TO PERFORM YOUR OWN
21 EXAMINATION ON THIS CHILD?

22 A YES, I WAS.

23 Q AND YOU MENTIONED EARLIER THAT THE INITIAL
24 DOCTORS HAD NOTED RETINAL HEMORRHAGES IN THE
25 CHILD'S EYES. DID YOU ALSO EXAMINE THE CHILD'S

1 EYES?

2 A ABSOLUTELY.

3 Q AND WHAT DID YOU NOTE?

4 A I LOOKED AT THE EYE -- FIRST OF ALL, I LOOKED
5 AT THE PUPILS, THE DARK SPOTS IN THE EYE.
6 NORMALLY WHEN YOU SHINE LIGHT IN SOMEONE'S EYE,
7 THE BLACK PART OF THE EYE IS GOING TO GO FROM
8 BIGGER TO SMALLER AND THAT IS NORMAL. PUT A LIGHT
9 IN ONE EYE, BOTH EYES GO DOWN, THE OPPOSITE
10 HAPPENS. THESE CHILD'S EYES WERE WIDELY DILATED,
11 THEY WERE 8 MILLIMETERS, AND 8 MILLIMETERS IS AS
12 WIDE AS THEY CAN BE DILATED, SO IT'S TOTALLY EASY
13 FOR ME TO LOOK PAST THE BLACK CIRCLE TO THE BACK
14 OF THE EYE, WHERE IMAGES ARE FORMED ON THE RETINA.
15 THE RETINA IS ON THE VERY BACK OF THE PART OF THE
16 EYE. I SAW HEMORRHAGES, AREAS OF BLEEDING INTO
17 THE RETINA ON BOTH EYES. IT WAS VERY EASY FOR ME
18 TO SEE.

19 Q IN ADDITION TO NOTING THE RETINAL
20 HEMORRHAGES, DID YOU ALSO NOTE WHAT THIS CHILD'S
21 HEART RATE WAS LIKE?

22 A WELL, YES, YOU KNOW THE HEART RATE WAS, YOU
23 KNOW, IT WAS LOW. BY THE TIME I GOT THERE, THE
24 HEART RATE WAS SOME BETTER, BECAUSE THE CHILD HAD
25 ~~NEW OXYGEN THERE FROM INTUBATION, SO THE HEART~~

1 RATE WAS BETTER BY THEN, BUT THE DEAL IS, THE MAIN
2 THING THAT I WAS NOTICING, I CAME INTO THE E.R.,
3 THE CHILD WAS IN THE EMERGENCY DEPARTMENT IN A BED
4 INTUBATED, NOT MOVING, AND THE PUPILS WERE WIDELY
5 DILATED SO NEUROLOGICALLY I ALREADY KNEW THE CHILD
6 WAS QUITE DEVASTATED.

7 THE GLASGOW COMA SCALE, WE ALREADY KNEW, WAS
8 LOW, SO LOOKING AT THE EYES WIDELY DILATED WITH
9 THE RETINAL HEMORRHAGES AND WITH THE HISTORY OF
10 THE CHILD COMING IN BASICALLY NOT BREATHING, HER
11 HEART RATE LOW, LOW BLOOD PRESSURE, I KNEW THIS
12 WAS A CRITICALLY ILL CHILD WHO HAD A MAJOR
13 NEUROLOGIC ATTACK GOING ON. WE LOOKED AT THE
14 CHILD QUICKLY, AND THEN SENT HER TO THE C.T. SCAN
15 TO SEE WHAT NEEDED TO BE DONE.

16 Q DID THE C.T. SCAN IN FACT CONFIRM THAT THE
17 CHILD HAD -- WHEN YOU SAY NEUROLOGICAL, DO YOU
18 MEAN BRAIN DAMAGE?

19 A BRAIN DAMAGE, YES.

20 Q AND WHAT DID THE C.T. SCAN SHOW?

21 A IT WAS PRETTY IMPRESSIVE. IT SHOWED WHAT WE
22 CALL A SUBDURAL HEMATOMA, MEANING THERE'S A
23 COLLECTION OF BLOOD. THE DURA IS THE COVERING OF
24 THE BRAIN. THE BRAIN IS THERE, THEN THERE'S THE
25 COVERING OF THE BRAIN, AND THEN THERE'S THE SKULL.

1 SO BELOW THE COVERING OF BRAIN, BELOW THE
2 DURA, THERE WAS A COLLECTION OF BLOOD CALLED A
3 HEMATOMA, SO IT'S CALLED A SUBDURAL HEMATOMA. IT
4 SHOWED THE SUBDURAL HEMATOMA AND IT SHOWED
5 SWELLING OF THE BRAIN ITSELF.

6 IN FACT, THERE WAS SO MUCH SWELLING ON THAT
7 SIDE OF THE BRAIN THAT THERE'S A MIDLINE OF THE
8 BRAIN WHEN YOU'RE LOOKING RIGHT SMACK ON -- LIKE
9 WHEN YOU ARE LOOKING THIS WAY, IT'S THE MIDLINE OF
10 THE BRAIN, AND THERE WAS SO MUCH SWELLING ON THE
11 RIGHT SIDE THAT THE BRAIN WAS PUSHED OVER AGAINST
12 THE LEFT, THERE WAS SOME MIDLINE SHIFT. MIDLINE
13 SHIFT IS VERY DANGEROUS. ANY SWELLING OF THE
14 BRAIN IS DANGEROUS, BUT MIDLINE SHIFT IN
15 PARTICULAR MEANS THAT THERE'S MASSIVE, MASSIVE
16 SWELLING AND THAT CAUSES MASSIVE DAMAGE.

17 Q SO THE C.T. SCAN REVEALED WHAT WE CALL A
18 SUBDURAL HEMATOMA?

19 A YES.

20 Q AND THAT'S ACTUALLY A BLOOD CLOT?

21 A YES.

22 Q AND THAT'S NOT IN THE BRAIN ITSELF, BUT UNDER
23 THE SKULL CAP?

24 A UNDER THE COVERING OF THE BRAIN.

25 Q UNDER THE COVERING OF THE BRAIN, BUT NOT IN

1 THE BRAIN?

2 A NOT IN THE BRAIN.

3 Q AND IN ADDITION TO THE SUBDURAL HEMATOMA AND
4 THE COVERING OF THE BRAIN, IN THE BRAIN ITSELF YOU
5 HAVE MASSIVE SWELLING IS HOW I THINK YOU
6 CHARACTERIZED IT?

7 A MASSIVE SWELLING. WE CALL IT EDEMA SWELLING.

8 Q SO MUCH SO THAT ONE SIDE OF THE BRAIN IS
9 PUSHED OVER INTO THE OTHER?

10 A CORRECT.

11 Q AND THAT INDICATED WHAT TO YOU?

12 A THAT INDICATED THE SUBDURAL -- YOU MEAN THE
13 WHOLE PHYSICAL EXAM OR WHAT?

14 Q YOUR EXAMINATION SO FAR.

15 A MY EXAMINATION, WITH THE SUBDURAL HEMATOMA,
16 WITH THE RETINAL HEMORRHAGES, AND THE ABNORMAL
17 NEUROLOGIC FINDINGS IS THE EVIDENCE OF BIG TIME
18 SWELLING AND NEUROLOGICAL DEFICIT, THAT INDICATED
19 CHILD ABUSE. THAT'S WHAT CAUSES IT, THAT'S WHAT
20 IT IS.

21 Q AFTER REVIEWING THE C.T. SCAN, OR IT WAS
22 REVIEWED BY THE RADIOLOGIST, YOU SAID THAT THE
23 CHILD WAS THEN RUSHED OFF TO THE OPERATING ROOM?

24 A CORRECT.

25 Q WAS AN OPERATION PERFORMED ON THIS CHILD'S

1 BRAIN?

2 A YES, AN OPERATION WAS PERFORMED TO REMOVE THE
3 SUBDURAL HEMATOMA, CORRECT, BY THE NEUROSURGEONS
4 AND --

5 Q AND --

6 A AND THEY REMOVED THE -- WHAT THEY DO -- THEY
7 SUCK THE -- THE PURPOSE IS GETTING RID OF THE
8 BLOOD -- IF YOU HAVE BLOOD PUSHING ON THE BRAIN
9 AND CAUSING INCREASED PRESSURE IN THE HEAD, THEN
10 THEY WANT TO SUCK OUT THAT BIG OLD BLOOD CLOT AND
11 GET IT OUT OF THERE SO THE BRAIN CAN EXPAND.

12 THERE WAS SO MUCH SWELLING OF THE BRAIN, IN ORDER
13 TO DO THAT YOU HAVE TO CUT OUT A PIECE OF SKULL,
14 RIGHT. NORMALLY YOU PUT THE SKULL BACK IN, PUT
15 THE SKIN BACK OVER IT, NO BIG DEAL.

16 THERE WAS SO MUCH SWELLING THERE THAT WHEN
17 THEY TOOK IT OUT AND SUCKED OUT THE BLOOD CLOT THE
18 BRAIN SWELLED SO THAT PIECE OF SKULL WAS JUST LEFT
19 OUT SO THE BRAIN COULD EXPAND AND NOT HAVE SO MUCH
20 PRESSURE. YOUR SKULL IS A BIG HARD BONY BOX.

21 IF THE BRAIN SWELLS, THEN THE PRESSURE IN THE
22 SKULL GOES UP. YOU DON'T WANT THE PRESSURE UP,
23 BECAUSE THERE'S ONLY TWO THINGS THAT REALLY KEEPS
24 THE BRAIN ALIVE. YOUR BRAIN ALWAYS HAS TO HAVE
25 OXYGEN AND THE BRAIN ALWAYS HAS TO HAVE GLUCOSE

1 FOR ENERGY. IF YOU HAVE BIG SWELLING, THE
2 PRESSURE GOES UP AND THE HEART CAN'T PUSH THE
3 BLOOD UP THERE TO DELIVER THE OXYGEN AND GLUCOSE.

4 SO THE PRESSURE IS A BAD THING AND IT'S
5 IMPORTANT TO KEEP THE PRESSURE DOWN. WHEN THEY
6 SAW THE BIG TIME SWELLING, THE NEUROSURGEON JUST
7 LEFT OFF THAT PART OF THE SKULL TO HELP THE
8 PRESSURE.

9 Q SO THE BRAIN CAN ACTUALLY SWELL OUTSIDE THE
10 SKULL?

11 A THE SKIN IS THERE, BUT THE SKULL IS NOT. THE
12 SKULL IS WHAT MAKES IT THE HARD BONY BOX,
13 OBVIOUSLY.

14 Q AND WERE YOU ABLE TO DETERMINE EXACTLY WHAT
15 WAS CAUSING THE SWELLING OF THE BRAIN?

16 A THE SUBDURAL HEMATOMA, THE SUBDURAL HEMATOMA
17 CAUSED THE DAMAGE TO THE BRAIN, AND WHEN YOU HAVE
18 DAMAGE TO THE BRAIN, IT SWELLS.

19 Q OKAY. DID YOU HAVE AN OPPORTUNITY TO -- IN
20 EVERY CASE, WHENEVER THERE IS ANY INJURY, IS IT
21 IMPORTANT FOR YOU TO GET A HISTORY AS TO WHAT HAS
22 HAPPENED TO THE CHILD?

23 A SURE.

24 Q AND IN THIS CASE DID YOU HAVE AN OPPORTUNITY
25 TO MEET WITH THE FOSTER PARENTS OF THIS CHILD?

1 A YES, I DID.

2 Q NATHANIEL MITCHELL AND HIS WIFE?

3 A YES, I DID.

4 Q AND DID YOU HAVE AN OPPORTUNITY SPECIFICALLY
5 IN THIS CASE TO TALK TO NATHANIEL MITCHELL ABOUT
6 THE EVENTS, ANY TRAUMATIC EVENTS IN THIS CHILD'S
7 LIFE?

8 A YES.

9 Q AND THAT WAS FOR PURPOSES OF YOUR MEDICAL
10 DIAGNOSIS?

11 A YES. THAT WAS --

12 Q AND WHAT WAS --

13 A -- IN THE EMERGENCY DEPARTMENT.

14 Q AND WHAT DID MR. MITCHELL RELATE TO YOU?

15 A BASICALLY THAT THE CHILD WAS SUPPOSEDLY IN A
16 USUAL STATE OF GOOD HEALTH AND DOING OKAY. THAT
17 MORNING ALL OF THE SUDDEN SHE JUST COLLAPSED WITH
18 A SEIZURE, A JERKY SEIZURE, AND THEN THEY BROUGHT
19 THE CHILD TO THE EMERGENCY ROOM.

20 I SPECIFICALLY ASK IN ANY KIND OF SITUATION
21 LIKE THIS WAS THERE ANY TRAUMA, ANY HEAD TRAUMA OF
22 ANY KIND, YOU KNOW, TO GIVE ME AN EXPLANATION, YOU
23 KNOW, TO SEE WHAT THE STORY IS.

24 A NEUROLOGIC -- MEANING, WHEN THE BRAIN IS
25 SHOWING ME DAMAGE, THE PUPILS AREN'T WORKING, THE

1 CHILD IS IN A COMA, YOU'VE GOT TO THINK THERE'S
2 GOT TO BE SOME KIND OF HISTORY. IS THERE A
3 POTENTIAL THAT YOU HAD INGESTED SOMETHING OR BEEN
4 IN A BIG TIME AUTOMOBILE ACCIDENT OR IS THERE A
5 BIG TRAUMATIC THING, A BIG HIT ON THE HEAD OR
6 SOMETHING. THAT WAS ALL DENIED, SO THE HISTORY
7 DID NOT FIT.

8 THE HISTORY OF WHAT HAPPENED TO THE CHILD
9 THAT WAS RELATED TO ME DID NOT FIT THE CHILD, SO
10 THAT'S A BIG RED FLAG TO ME.

11 THEN WHEN I SEE THAT THE PUPILS ARE UP,
12 DILATED, THERE'S RETINAL HEMORRHAGES, THE CHILD IS
13 IN A COMA, AND HAS A SUBDURAL HEMATOMA, THAT'S --
14 THAT WAS MY -- THAT WAS WHY I INITIALLY SAID THIS
15 WAS NOT AN ACCIDENTAL TRAUMA.

16 Q AND WHEN YOU SAY NOT AN ACCIDENTAL TRAUMA,
17 YOU MEAN ABUSE?

18 A THAT'S WHAT WE CALL CHILD ABUSE, WE CALL IT
19 NON-ACCIDENTAL TRAUMA.

20 Q DID YOU SPECIFICALLY -- DID THE FATHER
21 SPECIFICALLY RELATE TO YOU THAT EARLIER, THAT
22 MORNING THE CHILD WAS ALERT WALKING AROUND AND
23 AWAKE?

24 A YES.

25 Q AND THEN HE INDICATED WHAT, IF ANYTHING,

1 HAPPENED WITH THE CHILD THAT MORNING?

2 A TO ME HE JUST SAID THE CHILD HAD A SEIZURE.

3 Q DID HE INDICATE THE CHILD HAD SUFFERED FROM A
4 FALL OR ANYTHING ELSE?

5 A NO.

6 Q DID HE INDICATE WHETHER OR NOT THE CHILD HAD
7 BEEN IN AN AUTOMOBILE ACCIDENT OR ANYTHING OF THAT
8 NATURE?

9 A I ASKED IF THERE WAS ANY KNOWN HEAD TRAUMA.
10 HE SAID NO.

11 Q AND BASED ON YOUR INITIAL ASSESSMENT, WE'LL
12 TALK ABOUT HOW THAT WAS -- DID YOU CALL IN D.S.S.
13 IN THIS CASE OR WAS D.S.S. CALLED? I DON'T KNOW
14 THAT YOU DID IT.

15 A I DIDN'T CALL. THEY HAD ALREADY BEEN CALLED
16 IN. I ASSUME THEY WERE CALLED IN. I MEAN, THEY
17 WERE CALLED IN AT SOME POINT, BUT I DON'T KNOW WHO
18 DID IT.

19 Q AND THE OPERATION THAT WAS PERFORMED ON THIS
20 CHILD, WAS THAT PUT OFF FOR A PERIOD OF TIME OR
21 WHEN DID THAT OCCUR?

22 A OH NO, THAT HAPPENED RIGHT AWAY. AS SOON AS
23 THE CHILD WAS LOOKED AT AND GOTTEN, IF YOU WANT TO
24 CALL IT STABLE, WE GOT THE CHILD -- WE WERE
25 BREATHING FOR THE CHILD AND GIVING OXYGEN AND

1 GIVING FLUIDS AND GETTING SOME I.V. SITES. THEN
2 AS SOON AS WE GOT THE C.T. SCAN, THE CHILD WAS
3 SENT UP TO THE OPERATING ROOM TO TRY TO EVACUATE
4 THIS HEMATOMA SO WE COULD POTENTIALLY TRY TO SAVE
5 THIS CHILD.

6 Q AND SO THAT WAS THAT MORNING?

7 A YES.

8 Q AND WAS THE OPERATION -- WAS THE -- I GUESS
9 IT WOULD BE A NEUROLOGIST?

10 A THE NEUROSURGEON.

11 Q NEUROSURGEON. SORRY, WAS HE ABLE TO FIX THIS
12 CHILD'S BRAIN?

13 A HE WAS ABLE TO REMOVE THE HEMATOMA, BUT
14 UNABLE TO FIX THE BRAIN. ONCE THE BRAIN IS
15 DAMAGED, WHATEVER CAUSES THE INITIAL DAMAGE, THE
16 BRAIN DOESN'T RECOVER. YOU HIT THE LIVER OR MESS
17 WITH THE LIVER, IT CAN REGENERATE, THE BRAIN CAN'T
18 REGENERATE. THE PURPOSE OF REMOVING THE BLOOD
19 CLOT WAS NOT TO FIX THE PART THAT WAS DAMAGED, BUT
20 TO GET RID OF THE SPACE OCCUPIED BY THE BLOOD CLOT
21 SO THERE WOULDN'T BE SO MUCH PRESSURE IN THE HEAD
22 AND SO YOU WOULD NOT HURT ANY BRAIN THAT WAS STILL
23 ABLE TO SURVIVE.

24 Q AND WHEN -- THIS CHILD RETURNED TO YOUR UNIT
25 AFTER THE OPERATION; IS THAT CORRECT?

1 A CORRECT.

2 Q AND AT THAT POINT WHAT WAS THIS CHILD'S
3 PROGNOSIS?

4 A THIS CHILD'S PROGNOSIS WAS VIRTUALLY NIL.

5 Q WHEN YOU SAY VIRTUALLY NIL WAS THAT FOR A
6 MEANINGFUL LIFE? WHAT DOES THAT MEAN?

7 A SURVIVAL.

8 Q SO --

9 A MY EXPERIENCE FOR THIS CHILD'S POTENTIAL FOR
10 A MEANINGFUL LIFE WAS VIRTUALLY NONEXISTENT IN THE
11 EMERGENCY DEPARTMENT, BUT YOU ALWAYS HAVE TO TRY
12 EVERYTHING BECAUSE, WELL, YOU ALWAYS HAVE TO TRY
13 EVERYTHING.

14 Q AND THAT'S THE REASON FOR THE OPERATION, TO
15 TRY?

16 A CORRECT.

17 Q AND ONCE THE SURGEON GOT IN THERE AND THE
18 CHILD WAS RETURNED TO YOUR UNIT, DID THE PROGNOSIS
19 IMPROVE ANY?

20 A NO.

21 Q AND IN FACT, WHAT WAS THE PROGNOSIS AT THAT
22 POINT FOR THIS CHILD SURVIVING WHATEVER TRAUMA
23 HAPPENED TO ITS HEAD?

24 A THERE WAS ALMOST NO PROGNOSIS. THERE WAS
25 VERY HIGH -- THE OTHER THING A SURGEON CAN DO FOR

1 US BESIDES TAKING OUT THE BLOOD CLOT, HE CAN
2 ACTUALLY PUT A LITTLE MONITOR IN, A LITTLE TINY
3 ELECTRONIC MONITOR IN THE BRAIN TISSUE ITSELF SO
4 WE CAN MEASURE THE PRESSURE IN THE BRAIN. BY
5 KNOWING THE PRESSURE IN THE BRAIN AND THE PRESSURE
6 -- THE BLOOD PRESSURE, WE CAN GET AN IDEA IF YOU
7 CAN GET CIRCULATION TO THE BRAIN AND CIRCULATION
8 DELIVERS THE OXYGEN AND GLUCOSE I MENTIONED. SO
9 HE WAS ABLE TO PUT AN INTRACRANIAL PRESSURE
10 MONITOR IN. HE WAS ABLE TO GIVE US THAT SO THAT
11 GAVE US SOME NUMBERS TO LOOK AT IN ORDER TO LET US
12 WORK OUR TREATMENT IN ORDER TO TRY TO BRING THE
13 PRESSURE DOWN.

14 Q AND THIS CHILD WAS RETURNED TO YOUR UNIT, I
15 BELIEVE, IMMEDIATELY AFTER THE OPERATION?

16 A IT WAS -- YES, THE OPERATION WAS NOT A QUICK
17 THING. IT TAKES SOME HOURS.

18 Q BUT IT WAS LATER THAT DAY?

19 A YES, IT WAS THAT DAY.

20 Q AND WHEN THE CHILD RETURNED TO YOUR UNIT, WAS
21 SHE BREATHING ON HER OWN?

22 A NO.

23 Q AND WHAT KIND OF LIFE SUPPORT WAS THIS CHILD
24 ON AT THAT POINT AFTER THE OPERATION?

25 A THIS CHILD WAS ON BIG LIFE SUPPORT. WE WERE

1 DOING ALL THE BREATHING FOR THE CHILD WITH A
2 MECHANICAL VENTILATOR, WE WERE GIVING BLOOD
3 PRESSURE MEDICINES TO TRY TO MAKE THE BLOOD
4 PRESSURE GO UP, WE WERE GIVING OXYGEN, GIVING
5 MEDICINES TRYING TO SHRINK THE BRAIN, GIVING I.V.
6 FLUIDS THAT HAD GLUCOSE IN IT. WE WERE GIVING
7 BASICALLY MAXIMUM SUPPORT FOR THIS CHILD'S VITAL
8 SIGNS.

9 Q OVER THE NEXT THREE DAYS I BELIEVE THE CHILD
10 REMAINED IN YOUR UNIT?

11 A YES, THAT'S CORRECT.

12 Q AND WHAT SOURCE OF TREATMENT WERE YOU GIVING
13 HER OVER THAT PERIOD OF TIME?

14 A DURING THE COURSE OF THE NEXT COUPLE OF DAYS
15 WE WERE -- OUR TREATMENT WAS TO TRY TO DECREASE
16 THE PRESSURE INSIDE THE HEAD IN ORDER TO SAVE ANY
17 BRAIN THAT WAS POTENTIALLY VIABLE. SO WHAT WE DO
18 IS WE GIVE -- OBVIOUSLY, WE CONTINUE BREATHING FOR
19 THE CHILD. WE PLACED A SPECIAL I.V. IN THE
20 ARTERY. WE PLACED SPECIAL I.V.'S IN THE BIG VEINS
21 TO GO UP AND MEASURE PRESSURES AROUND THE HEART IN
22 ORDER TO KNOW HOW MUCH FLUIDS TO GIVE.

23 WE GIVE LOTS OF OXYGEN, WE BREATHE A CERTAIN
24 RATE TO DECREASE THE CARBON DIOXIDE IN THE BLOOD,
25 AND THAT DECREASES THE PRESSURE. WE GIVE I.V.

1 FLUIDS THAT HELP DECREASE THE PRESSURE. WE GIVE
2 MEDICINES TO HELP DECREASE THE PRESSURE, SEVERAL
3 DIFFERENT KINDS OF MEDICINES, AND WE ALSO GIVE
4 MEDICINES THAT HELP INCREASE THE BLOOD PRESSURE --
5 MEDICINES TO DECREASE THE BRAIN PRESSURE AND
6 MEDICINES TO INCREASE THE BLOOD PRESSURE TRYING TO
7 GET SOME FLOW THERE, SO WE DID THAT AS TREATMENT
8 FOR THE INCREASED INTRACRANIAL PRESSURE AND
9 TRYING -- THE THEORY IS TO DECREASE THE PRESSURE
10 INSIDE THE HEAD SO WE CAN GET PROFUSION, GETTING
11 BLOOD, OXYGEN, AND GLUCOSE TO THE BRAIN SO THAT
12 THOSE BRAIN CELLS THAT MAY NOT BE DAMAGED CAN
13 SURVIVE. THAT'S WHAT WE DID FOR THE NEXT SEVERAL
14 DAYS.

15 Q OVER THE COURSE OF THE NEXT TWO DAYS, DID YOU
16 ALSO BRING IN OTHER DOCTORS WITH SPECIALTIES TO
17 EXAMINE THIS CHILD?

18 A YES.

19 Q AND THAT WOULD INCLUDE DR. CHRISTMANN?

20 A ~~YES. I BROUGHT IN A PEDIATRIC~~
21 ~~OPHTHALMOLOGIST BECAUSE I COULD SEE HEMORRHAGES IN~~
22 ~~THE RETINA WITHIN FIVE MINUTES OF SEEING THE CHILD~~
23 ~~IN THE EMERGENCY ROOM. I LIKE TO BRING IN A~~
24 PEDIATRIC OPHTHALMOLOGIST WHO IS AN EXPERT IN
25 CHILDREN'S EYES FOR THEM TO LOOK AND TO CONFIRM

1 AND SO THEY CAN GET A BETTER IDEA. I LET THEM
2 LOOK AT THEM.

3 I BROUGHT IN DR. ABEL, WHO IS A CHILD ABUSE
4 SPECIALIST JUST TO CONFIRM THAT THAT'S WHAT IT
5 WAS, AND THAT'S WHO I BROUGHT IN.

6 I CONTINUED THE MEDICAL CARE. THEY WERE
7 THERE FOR MORE CONFIRMATORY -- TO LOOK AT THE
8 REASONS FOR THE CHILD BEING IN THAT CONDITION.

9 Q OKAY. AND HOW DID THE CHILD RESPOND TO YOUR
10 TREATMENT?

11 A THERE WAS VERY LITTLE RESPONSE. THE PRESSURE
12 INSIDE THE BRAIN INCREASED. THE INTRACRANIAL
13 PRESSURE CONTINUED TO BE HIGH AND DESPITE ALL OUR
14 BEST EFFORTS THERE WAS NO RESOLUTION. IN FACT,
15 WHEN AT SOME POINT, I GUESS IT WAS PROBABLY THE
16 31ST, WE STARTED DOING BRAIN DEATH EXAMINATIONS.

17 THESE ARE EXAMINATIONS THAT ARE VERY DETAILED
18 EXAMINATIONS TO SEE IF THERE'S ANY CLINICAL
19 FUNCTIONING BRAIN. IF THERE IS NO FUNCTIONING
20 BRAIN, THEN AS YOU CAN TELL BY THE NAME OF THE
21 EXAM, THE BRAIN EXAM, YOU CAN CONCLUDE THAT THE
22 BRAIN IS DEAD, AND WHEN THE BRAIN IS DEAD, THE
23 PATIENT IS DEAD, AND SO, YOU KNOW, IT'S NOT THE
24 HEART BEATS. THAT'S WHY YOU'VE HEARD ABOUT PEOPLE
25 ABLE TO DONATE ORGANS AND THINGS BECAUSE WHEN

1 THEY'RE DEAD IT'S BECAUSE THEIR BRAIN IS DEAD.

2 Q OKAY. AND YOU SAID THAT BASICALLY YOU'RE
3 TRYING TO SEE IF THERE'S ANY VIABILITY TO THIS
4 CHILD'S BRAIN. I BELIEVE YOU DID THE FIRST -- IS
5 IT CALLED A DEATH EXAM?

6 A IT'S CALLED A BRAIN DEATH EXAM.

7 Q BRAIN DEATH EXAM?

8 A YES.

9 Q AND THAT WAS PERFORMED ON THE 30TH, WHICH
10 WOULD HAVE BEEN A DAY-AND-A-HALF, TWO DAYS AFTER
11 THE CHILD PRESENTED?

12 A CORRECT, CORRECT.

13 Q AND THAT INTERVENING TIME FROM THE TIME SHE
14 CAME BACK FROM THE OPERATING ROOM, YOU ALL HAD
15 TRIED EVERYTHING YOU COULD TO SAVE ANY POSSIBLE --

16 A ABSOLUTELY, WE TRIED -- WE'RE NOT KEEPING
17 SOMEONE -- WE'RE DOING THE BEST WE CAN TO TRY TO
18 SAVE THE CHILD'S LIFE SO THEY'LL BE ABLE TO
19 SURVIVE.

20 Q AND BASED ON YOUR INITIAL ASSESSMENT AND YOUR
21 REVIEW OF THE C.A.T. SCANS AND YOUR REVIEW OF THE
22 SURGEON'S NOTES, DID THIS CHILD EVER HAVE ANY REAL
23 CHANCE AT SURVIVAL?

24 A NO, NO, NO.

25 Q AND THAT WAS BECAUSE OF THE TRAUMA INFLICTED

1 TO THIS CHILD'S BRAIN PRIOR TO HER COMING TO THE
2 EMERGENCY ROOM?

3 A THAT WOULD BE CORRECT.

4 Q WHEN YOU DID YOUR FIRST BRAIN DEATH
5 EXAMINATION, WHAT WERE YOUR RESULTS?

6 A ON MY VERY FIRST -- THE CHILD -- THE WAY THE
7 BRAIN DEATH EXAM WORKS, WE DO SEVERAL THINGS.
8 FIRST OF ALL YOU HAVE TO MAKE SURE THAT THE BLOOD
9 PRESSURE IS ACCEPTABLE AND NOT LOW, THE
10 TEMPERATURE IS NOT LOW, AND YOU HAVE TO MAKE SURE
11 THEY'RE ON NO MEDICINES AT ALL THAT WOULD HAVE AN
12 EFFECT ON THE BRAIN EXAM. ALL THE MEDICINES THAT
13 WOULD HAVE AFFECTED THAT HAVE BEEN STOPPED SEVERAL
14 HOURS BEFORE THEN. WITH THE VERY FIRST BRAIN
15 EXAM, WE DO QUITE A FEW DIFFERENT TESTS, AND ALL
16 -- JUST ONE SHOWED A MINIMAL RESPONSE. THAT WAS
17 AT 12:30.

18 I REPEATED THE EXAM SEVERAL HOURS LATER TO
19 SEE IF THAT WAS STILL LIKE THAT AND BY 5:30 THAT
20 EVENING THE CHILD WAS CLINICALLY BRAIN DEAD.

21 THERE WAS NO EVIDENCE AT ALL OF ANY BRAIN ACTIVITY
22 BOTH IN THE TOP PART OF THE BRAIN WHERE YOU'RE
23 THINKING AND FEELING AND ALL THAT HAPPENS, BUT
24 ALSO IN THE LOWER PART OF THE BRAIN CALLED THE
25 BRAIN STEM WHERE THE THINGS THAT CONTROL YOUR

1 ABILITY TO BREATHE -- IT TELLS YOU BODY YOU NEED
2 TO BREATHE. IF THAT'S NOT WORKING YOU'RE NOT
3 GOING TO BREATHE UNLESS YOU'RE -- YOU'RE NOT GOING
4 TO BREATHE AT ALL, IT TELLS YOUR CRANIAL NERVES IN
5 HERE, YOUR PUPILS, JUST MINIMAL RESPONSES TO LIFE.

6 ALL THIS THINGS ARE IN THE BRAIN STEM.
7 THAT'S A VERY BASIC FUNCTION. IF THE BRAIN STEM
8 IS DEAD, AND THE TOP PART OF THE BRAIN IS DEAD,
9 THEN WE CALL IT THAT THE WHOLE BRAIN IS DEAD AND
10 THAT MEANS YOU'RE DEAD. SO BY 5:30 ON THE 31ST, I
11 HAD DONE A COMPLETE EXAM. I HAD EVEN DONE A
12 CONFIRMATORY TEST, AN E.E.G., WHICH IS A BRAIN
13 WAVE TEST AND THAT'S JUST CONFIRMATORY, YOU DON'T
14 EVEN HAVE TO HAVE THAT TO MAKE THE DIAGNOSIS, BUT
15 EVEN THAT SHOWED THAT THE CHILD'S BRAIN, THE WHOLE
16 BRAIN, WAS DEAD.

17 THE DEAL IS, IN PEDIATRIC CRITICAL CARE, WHAT
18 WE DO IS WE DO SERIAL EXAMS. WE DO MORE THAN ONE
19 EXAM FOR CONFIRMATION OF THIS. SO, I WOULD WAIT
20 ANYWHERE FROM SIX TO TWELVE HOURS TO REPEAT THE
21 EXAMS, AND SO THAT'S WHAT WOULD HAPPEN.

22 Q AND THE FIRST BRAIN DEATH EXAMS YOU DID WERE
23 ON THE 30TH; IS THAT CORRECT?

24 A CORRECT.

25 Q AND YOU REPEATED, I THINK YOU DID TWO ON THE

1 30TH AND THEN YOU DOUBLE CHECKED AGAIN ON THE
2 31ST?

3 A I REPEATED THE EXAMS ON 31ST. NOT ONLY DID I
4 REPEAT THE EXAM, BUT I GAVE IT TO A SECOND
5 PHYSICIAN WHO HAS NEUROLOGIC EXPERTISE TO DO A
6 BRAIN EXAM INDEPENDENTLY OF ME AND THEN ALSO DO
7 ONE ON THE 31ST. THEIR EXAM WAS ALSO CONSISTENT
8 WITH BRAIN DEATH. SO WHAT I DID WITH MY LAST EXAM
9 FOR BRAIN DEATH, I DID IT ON THE 31ST. I GOT
10 ANOTHER E.E.G. THAT WAS ALSO FLAT LINED, PLUS I
11 HAD THE OTHER PHYSICIAN DO A BRAIN DEATH EXAM, SO
12 AT THAT POINT I DECLARED THE CHILD DEAD AT 2:30
13 P.M. ON 3/31.

14 Q SO ON MARCH 31ST, THREE DAYS AFTER THIS CHILD
15 PRESENTED TO THE EMERGENCY ROOM, IT WAS DEAD FROM
16 THE INJURIES TO ITS HEAD?

17 A THAT WOULD BE CORRECT.

18 Q AND YOU SAID --

19 A THAT WAS MY ASSESSMENT.

20 Q AND YOU ACTUALLY DID -- WHAT DID YOU SAY, AN
21 E.E.G. FLAT LINE? WHAT DOES THAT MEAN?

22 A AN E.E.G. OF THE BRAIN, WE DO ELECTRICAL
23 ACTIVITY OF THE BRAIN. I DID THAT BOTH ON THE
24 30TH AND THE 31ST. IT'S SUPPOSED TO HAVE A LOT
25 OF WIGGLES. IF YOU'VE EVER SEEN ONE, THERE'S

1 ABOUT EIGHT DIFFERENT CHANNELS AND THE BRAIN
2 WIGGLES. THE ELECTRIC ACTIVITY MAKES THE PRINTOUT
3 LOOK LIKE A BUNCH OF WIGGLES. IT TAKES A
4 NEUROLOGIST TO READ THESE THINGS. AND THEY WERE
5 COMPLETELY FLAT, MEANING THERE WAS NO ELECTRICAL
6 ACTIVITY IN THE BRAIN.

7 Q WHICH FURTHER CONFIRMED YOUR ASSESSMENT?

8 A THAT'S THE CONFIRMATORY TESTING FOR BRAIN
9 DEATH, CORRECT.

10 Q AND YOU SAID YOU REMOVED HER FROM THE
11 VENTILATOR AT 2:30 THAT AFTERNOON?

12 A I DECLARED HER DEAD AT 2:30, AND I REMOVED
13 HER FROM THE VENTILATOR AT 2:35.

14 Q SO UP UNTIL THAT POINT THE ONLY WAY SHE HAD
15 CONTINUED TO BREATHE WAS BECAUSE OF THE
16 VENTILATOR?

17 A THE VENTILATOR WAS ACTUALLY DOING THE
18 BREATHING. SHE WAS NOT BREATHING.

19 Q ONCE YOU HAD REMOVED THE VENTILATOR -- ONCE
20 YOU HAD DETERMINED THAT SHE HAD NO BRAIN ACTIVITY,
21 SHE WAS DEAD FOR ALL INTENTS AND PURPOSES?

22 A THAT WOULD BE CORRECT. ACTUALLY PART OF THE
23 BRAIN DEATH EXAM IS THAT WE ACTUALLY KEEP THEM ON
24 OXYGEN AND TAKE THEM OFF THE MECHANICAL
25 VENTILATOR, AND AS PART OF THE BRAIN DEATH EXAM I

1 WATCHED HER -- THAT'S WHAT YOU DO IS WATCH TO SEE
2 IF THEY WILL BREATHE AT ALL.

3 IN THE LAST BRAIN DEATH EXAM, I DID WHAT WE
4 CALL A SEVEN MINUTE APNEA TEST, MEANING I TAKE HER
5 OFF THE VENTILATOR FOR SEVEN MINUTES. THERE WAS
6 NO ACTIVITY OF HER TRYING TO BREATHE. WE DO THAT
7 TO MAKE SURE -- YOU KNOW, THAT'S JUST PART OF THE
8 BRAIN DEATH EXAM. SHE DID NOT BREATHE AT ALL.

9 Q SUBSEQUENT TO THAT DID YOU ACTUALLY FILL OUT
10 A DEATH CERTIFICATE?

11 A WHAT I DID, THERE ARE TWO THINGS ON A DEATH
12 CERTIFICATE, ONE IS A TIME OF DEATH AND THE SECOND
13 IS A CAUSE OF DEATH. ANY CHILD THAT DIES IN SOUTH
14 CAROLINA IT'S CALLED A CORONER'S CASE, SO WE CALL
15 THE CORONER, WE SAY THIS CHILD DIED, WHAT
16 HAPPENED, WHAT TIME. THEN WE SAY, "DO YOU WANT TO
17 TAKE THE CASE OR DO YOU WANT ME TO FILL OUT THE
18 DEATH CERTIFICATE?"

19 SO THERE ARE TWO PARTS TO THE DEATH
20 CERTIFICATE. THE FIRST PART IS THE TIME OF DEATH,
21 SO I FILLED THAT OUT AND SIGNED MY NAME AND ALL
22 THAT. THE SECOND PART IS THE CAUSE OF DEATH. I
23 TOLD THEM I WAS HAPPY TO FILL IT OUT OR THEY COULD
24 DO IT THEMSELVES. THEY SAID THEY WOULD DO IT, BUT
25 IN MY CHART I ALWAYS WRITE DOWN WHAT -- SOMETIMES

1 THEY COME BACK AND SAY, "NO, YOU DO IT," AND THEN
2 IT'S SIX MONTHS DOWN THE ROAD AND I HAVE TO TRY TO
3 REMEMBER WHAT HAPPENED, SO I WOULD WRITE IN THE
4 CHART WHAT I WOULD PUT DOWN FOR THE CAUSE OF DEATH
5 EVEN THOUGH THAT'S NOT LISTED ON THE DEATH
6 CERTIFICATE, BECAUSE THEY FILL THAT PART OUT AFTER
7 THEY DO THE AUTOPSY.

8 Q AND WHAT WAS THE CAUSE OF DEATH OF THIS CHILD
9 IN YOUR EXPERT OPINION?

10 A MY CAUSE OF DEATH WAS INCREASED INTRACRANIAL
11 PRESSURE, INCREASED PRESSURE OF THE BRAIN;
12 SECONDARY TO CLOSED HEAD INJURY, INJURY TO THE
13 HEAD; AND THAT WAS SECONDARY TO NON-ACCIDENTAL
14 TRAUMA, WHICH IS OUR TERM FOR CHILD ABUSE.

15 Q SO THIS CHILD DIED FROM HEAD INJURIES IT GOT
16 FROM CHILD ABUSE?

17 A YES. YES, THAT'S CORRECT.

18 Q AND HOW OLD WAS THIS CHILD WHEN SHE PRESENTED
19 TO THE E.R.?

20 A SHE WAS TWO YEARS AND THREE MONTHS OR
21 SOMETHING LIKE THAT.

22 Q TWO YEARS AND THREE MONTHS?

23 A LET ME GIVE YOU AN EXACT -- IT'S A LITTLE
24 OVER TWO YEARS. LET ME SEE, I PROBABLY WROTE IT
25 DOWN. IT WAS ABOUT TWO YEARS, THREE MONTHS.

1 Q WHAT WAS HER DATE OF BIRTH?

2 A [REDACTED]/97 AND THE INCIDENT WAS 3/28/97 (SIC),
3 THREE YEARS AND TWO MONTHS.

4 Q AND WE'VE HEARD YOU TALK, DOCTOR, A LITTLE
5 BIT ABOUT WHAT CAN CAUSE THESE TYPES OF INJURIES
6 AND WHAT ABUSE IS NECESSARY FOR THIS TYPE OF
7 INJURY. YOU'VE BEEN DOING THIS FOR HOW LONG?

8 A I'VE BEEN AN INTENSIVE CARE PHYSICIAN SINCE
9 1986.

10 Q AND PRIOR TO THAT YOU WERE A PEDIATRICIAN?

11 A I WAS A PEDIATRICIAN, A GENERAL PEDIATRICIAN,
12 FOR LIKE -- WELL, SINCE 1981.

13 Q AND IN THE COURSE OF WORKING IN THE CRITICAL
14 CARE UNIT OR THE INTENSIVE CARE UNIT UNFORTUNATELY
15 YOU SEE CASES OF ABUSE?

16 A I'VE SEEN THIS -- NOT ONLY DO I SEE CASES OF
17 ABUSE, BUT I SEE LOTS OF CASES OF HEAD INJURIES
18 FROM OTHER CAUSES, AUTOMOBILES, MOTORCYCLES, FALLS
19 OUT OF A BUILDING. I'VE SEEN LOTS OF THINGS.

20 Q AND IN THIS CASE YOU NOTED THERE WERE SEVERAL
21 DIFFERENT INJURIES OR YOU MADE SEVERAL ASSESSMENTS
22 AS TO THE INJURIES TO THIS CHILD'S HEAD. THE
23 FIRST, I BELIEVE THAT YOU MENTIONED WERE THE
24 RETINAL HEMORRHAGES?

25 A YES.

1 Q AND IN ADDITION TO THAT YOU HAVE THE SUBDURAL
2 HEMATOMA; IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q AND IN ADDITION TO THAT YOU HAVE THE SWELLING
5 OF THE BRAIN ITSELF; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q WHAT TYPE OF TRAUMA COULD CAUSE THESE
8 INJURIES?

9 A THIS IS -- THOSE THREE THINGS TOGETHER
10 VIRTUALLY IS DIAGNOSTIC, MEANING IT TELLS US WHAT
11 IT IS. THEY USED TO CALL IT -- AND A LOT OF
12 PEOPLE STILL CALL IT SHAKEN BABY SYNDROME.

13 Q AND WHEN YOU SAY SHAKEN BABY SYNDROME, WHAT
14 TYPE OF TRAUMA IS INFLICTED ON THIS CHILD TO CAUSE
15 THESE INJURIES?

16 A SHAKEN BABY SYNDROME IS VIOLENT WHIPLASH TYPE
17 SHAKING OF AN INFANT OR SMALL TODDLER. IT HAS TO
18 BE VERY VIOLENT. THE HUMAN BRAIN IS MEANT TO TAKE
19 A NICE -- YOU KNOW, IF YOU FALL YOU MIGHT BE A
20 LITTLE DAZED. WE ARE MEANT TO TAKE A QUICK
21 TRAUMA TO THE BRAIN, IF IT'S JUST A ONE TIME DEAL,
22 I MEAN, YOU WAKE UP LIKE THAT, AND IT DOESN'T
23 USUALLY CAUSE A BIG PROBLEM.

24 BUT BACK AND FORTH, SUSTAINED SHAKING AND
25 VIOLENT SHAKING, THE BRAIN IS NOT MEANT TO TAKE

1 THAT AND IT CAUSES BLEEDING, RETINAL HEMORRHAGES,
2 AND ALL THAT THEN CAUSES SWELLING OF THE BRAIN.

3 Q AND DOCTOR, IN YOUR EXPERT OPINION -- AND YOU
4 MENTIONED COULD A FALL, SAY FROM EVEN LIKE A
5 COUNTERTOP OR A BED OR EVEN FROM SEVERAL FEET,
6 COULD THAT CAUSE THESE TYPES OF INJURIES?

7 A NO. THE ONLY TRAUMA THAT I KNOW OF, AND I'VE
8 NEVER SEEN THIS, BUT FROM WHAT'S REPORTED, THAT
9 CAN CAUSE ANYTHING EVEN SIMILAR IS A BIG TIME
10 AUTOMOBILE ACCIDENT, EITHER HEAD-ON OR SIDE IMPACT
11 WHERE THE CHILD IS EJECTED FROM THE CAR. AND I
12 GUESS IT'S A POTENTIAL FROM A SEVERAL STORY FALL,
13 BUT THEN YOU'D SEE ASSOCIATED OTHER INJURIES AS
14 WELL.

15 WHEN YOU HAVE THESE THREE THINGS, THE
16 SWELLING OF THE BRAIN, THE SUBDURAL HEMATOMA, AND
17 THE RETINAL HEMORRHAGES, A LIGHT GOES ON, THAT'S
18 SHAKEN BABY SYNDROME. THEN IF YOU GET THE HISTORY
19 OF THERE'S NO TRAUMA, YOU KNOW, IF THE LIGHT'S ON
20 AND IF SOMEBODY IS HOME THEN, YOU KNOW WHAT
21 HAPPENED.

22 Q IN THIS CASE THE CHILD DIDN'T SUFFER ANY
23 OTHER KIND OF OTHER INJURIES, SUCH AS BROKEN BONES
24 OR A FRACTURE TO THE SKULL?

25 A NO.

1 Q AND AGAIN THAT WOULD INDICATE OR BE
2 CONSISTENT WITH SOMEONE VIOLENTLY SHAKING THE
3 BABY; IS THAT CORRECT?

4 A IT'S LIKE A BIG WHIPLASH INJURY.

5 Q COULD A CHILD CAUSE THESE TYPES OF INJURIES,
6 SAY A THREE YEAR OLD?

7 A NO, MA'AM. A THREE YEAR OLD WOULDN'T HAVE
8 THE STRENGTH. GENERALLY IN HEAD INJURIES, IT'S --
9 A SERIOUS INJURY IS CAUSED BY SERIOUS FORCES.
10 VIOLENT FORCES CAUSE BIG INJURIES.

11 Q COULD SAY A GROWN MAN SHAKING A BABY -- THIS
12 IS A TWO YEAR OLD CHILD IS IT NOT?

13 A YES.

14 Q COULD A GROWN MAN SHAKING A TWO YEAR OLD
15 VIOLENTLY CAUSE THESE TYPES OF INJURIES?

16 A YES. THAT'S THE DOCUMENTED WAY TO DO IT.

17 Q WHAT ABOUT JUST -- IF I, AS A GROWN PERSON,
18 WERE PICKING THE CHILD UP IN THE AIR AND ITS HEAD
19 GOES BACK, COULD THAT CAUSE THESE TYPES OF
20 INJURIES? COULD THIS BE ACCIDENTAL IN ANY WAY?

21 A NO, THIS WAS NOT ACCIDENTAL.

22 Q SO TAKING A CHILD AND LIFTING IT IN THE AIR
23 OR SLIGHTLY SHAKING IT WOULDN'T CAUSE THIS?

24 A NO, THIS WOULD BE VIOLENT, VIOLENT SHAKING.
25 THE THING ABOUT IT IS, WHEN YOU HAVE THIS VIOLENT

1 SHAKING, THE CHILD DOESN'T STAY AWAKE AND ALERT
2 AND HANGING OUT FOR A LONG TIME. HE'S PRETTY MUCH
3 -- WITHIN JUST A FEW MINUTES IT WOULD BE IN AND
4 OUT AND NOT ACTING RIGHT.

5 Q OKAY. THAT WAS GOING TO BE MY NEXT QUESTION.
6 AS SOON AS THE SHAKING OCCURRED, THEN THIS CHILD
7 WOULDN'T ABLE TO FUNCTION FOR A LONG PERIOD OF
8 TIME?

9 A NO. THIS CHILD WOULDN'T BE WALKING OR
10 TALKING OR DOING ANYTHING. IT WOULD QUICKLY
11 DETERIORATE.

12 Q AND THAT WOULD BE BECAUSE OF THE SWELLING OR
13 THE BRAIN DAMAGE?

14 A CORRECT.

15 Q THAT WAS CAUSED BY THE SHAKING?

16 A CORRECT.

17 Q DOCTOR, IN YOUR INITIAL NOTES YOU INITIALLY
18 NOTED CHILD ABUSE FOR THE REASONS WE HAVE STATED?

19 A YES, MA'AM.

20 Q AND AS YOU CONTINUED TO CARE FOR THE CHILD
21 AND ASSESS THE C.T. SCAN, THE NOTES FROM THE
22 SURGEON, AND ANYTHING ELSE THAT CAME TO YOUR
23 ATTENTION WHILE YOU CARED FOR THIS CHILD OVER A
24 THREE DAY PERIOD BEFORE HAVING TO DECLARE IT DEAD,
25 DID ANYTHING CHANGE YOUR OPINION AS TO WHAT CAUSED

1 THIS?

2 A NO. MY OPINION STAYED THE SAME. THIS WAS A
3 NON-ACCIDENTAL TRAUMA. THIS WAS CHILD ABUSE AND
4 IT WAS BASICALLY SHAKEN BABY TYPE SYNDROME, OR
5 SHAKEN BABY SYNDROME.

6 MS. CAMPBELL: THAT'S ALL I'VE HAVE, DOCTOR.
7 PLEASE ANSWER ANY QUESTIONS.

8 THE COURT: CROSS-EXAMINATION, MR. STRICKLER.

9 MR. STRICKLER: THANK YOU, SIR.

10 CROSS-EXAMINATION

11 BY MR. STRICKLER:

12 Q DR. HUBBIRD, MY NAME IS DOUG STRICKLER. I'M
13 ONE OF THE ATTORNEYS REPRESENTING MR. MITCHELL. I
14 HAVE A FEW QUESTIONS I'D LIKE TO ASK YOU IF I
15 COULD, OKAY?

16 A YES, SIR.

17 Q YOU FIRST BECAME INVOLVED IN THIS CASE
18 SHORTLY AFTER THE CHILD WAS BROUGHT TO THE
19 EMERGENCY ROOM, CORRECT?

20 A YES, SIR.

21 Q YOU WERE NOT ACTUALLY PRESENT AT THE TIME SHE
22 ARRIVED, BUT I BELIEVE YOU SAID IT WAS WITHIN 15
23 MINUTES?

24 A PROBABLY ABOUT THEN. THE CHILD WAS INTUBATED
25 BY THE TIME I GOT THERE AND THEY HAD STARTED THE

1 I.V. LINE.

2 Q I GOT YOU. NOW, YOU HAVE SOME DOCUMENTS WITH
3 YOU ON THE STAND, SIR?

4 A I JUST HAVE THE MEDICAL RECORDS, YES.

5 Q COULD I TAKE A QUICK LOOK AT THOSE, PLEASE?

6 A SURE. I HAVE SOME NOTES AND THINGS IN THERE,
7 TOO.

8 Q THANK YOU. (PAUSE)

9 NOW, UPON ADMISSION OF THE CHILD -- UPON YOUR
10 FIRST CONTACT WITH THE CHILD, YOU PERSONALLY, YOU
11 CONDUCTED A PHYSICAL EXAM OF THE CHILD?

12 A THAT'S CORRECT.

13 Q AND YOU DESCRIBED SOME FINDINGS OF YOUR
14 PHYSICAL EXAM, SPECIFICALLY WHAT YOU SAW AS FAR AS
15 THE EYES GO, RIGHT?

16 A RIGHT.

17 Q NOW AS PART OF THAT PHYSICAL EXAM, I TAKE IT
18 THAT YOU DID ALSO A GENERAL PHYSICAL. YOU LOOK AT
19 THE WHOLE BODY AT THAT POINT IN TIME, CORRECT?

20 A THAT WOULD BE NOT EXACTLY CORRECT.

21 Q NO?

22 A NO. WHAT I DO IS, I DO A GENERAL EXAM IN
23 THAT I DO THE THINGS THAT ARE ESSENTIAL FOR
24 RESUSCITATION, AND SINCE THIS CHILD WAS IN URGENT
25 NEED TO GO TO GET A C.T. SCAN, I WOULD LOOK AT THE

1 EYES -- WHAT I ATTEMPT TO DO IS LOOK AT THE EYES,
2 LISTEN TO THE LUNGS, MAKE SURE THE TUBE IS IN THE
3 RIGHT SPOT, THE HEART, THE BELLY, AND DO A QUICK
4 NEUROLOGIC EXAM, AND I MAY NOT BE ABLE TO DO EVERY
5 SINGLE THING I'D DO IF IT WAS NOT A CHILD IN
6 EXTREMIST. IF THE CHILD WASN'T TRYING TO DIE
7 RIGHT THEN I COULD TAKE MORE TIME AND LOOK AT THE
8 EARS AND EYES. LIKE I COULDN'T EXAMINE THE THROAT
9 AND STUFF LIKE THAT.

10 Q SO BECAUSE OF THE CHILD'S CIRCUMSTANCES, YOUR
11 EXAM OF THE REST OF THE BODY WAS PERHAPS NOT AS
12 THOROUGH AS YOU COULD HAVE DONE IN ANOTHER
13 SITUATION?

14 A ABOUT ALL I DIDN'T EXAMINE, I DIDN'T EXAMINE
15 THE GENITALIA VERY CAREFULLY AND I DIDN'T EXAMINE
16 THE SKIN.

17 Q OKAY.

18 A BUT THAT'S ABOUT IT.

19 Q NOW, AS TO YOUR EXAMINATION OF THE EYES,
20 OBVIOUSLY, YOU WERE LOOKING DIRECTLY AT HER FACE
21 AT THAT TIME, CORRECT?

22 A CORRECT.

23 Q YOU DON'T NOTE ANY BRUISING TO HER FACE,
24 CORRECT?

25 A I DID NOT NOTE THAT IN MY NOTES, NO, I DID

1 NOT. THINGS WERE MOVING VERY QUICKLY.

2 Q RIGHT. AND WHEN DURING THIS -- DURING THE
3 COURSE OF THINGS MOVING VERY QUICKLY DID YOU
4 CONDUCT THIS CONVERSATION WITH MR. MITCHELL?

5 A PROBABLY WHEN I EXAMINED THE CHILD. I WENT
6 OUT TO -- WHEN THEY WERE PACKAGING THE CHILD TO
7 TAKE HER TO THE C.T. SCAN, TO THE X-RAY.

8 Q OKAY. AND AT THAT POINT IN TIME YOU MADE
9 NOTATIONS THAT HE DENIED ANY BLOW TO THE HEAD, AND
10 YOU MAKE NOTATIONS THAT THE CHILD HAD HAD
11 SEIZURES, CORRECT?

12 A NO, SIR. NOT AT THAT POINT IN TIME. I MADE
13 MY -- AFTER THE CHILD HAD GONE DOWN TO THE C.T.
14 SCAN AND THE OPERATING ROOM, I WENT BACK TO MY
15 UNIT AND DID THE WHOLE THING, SO IT WAS PROBABLY
16 AN HOUR OR SO LATER. THE TIME I NOTED WAS 9:15.
17 THIS IS ALL AROUND -- I PROBABLY WENT DIRECTLY
18 UPSTAIRS AND WROTE MY NOTES, BECAUSE YOU KNOW I DO
19 THINGS SO THAT I CAN WRITE IT DOWN AND GET IT DONE
20 SO I CAN GO ON TO MY NEXT PATIENT.

21 Q OKAY. SO IN ADDITION TO NO NOTATION OF ANY
22 BRUISING TO THE FACE, WOULD IT BE CORRECT, SIR,
23 THAT THERE IS ALSO NO NOTATION OF ANY RECORDS, AND
24 I DON'T BELIEVE YOU TESTIFIED TO ANY OBSERVATION
25 ON YOUR PART OF ANY BRUISING OF ANY PART OF THE

1 CHILD'S BODY, CORRECT?

2 A I DIDN'T NOTE THE BRUISING OF THE SKIN. I
3 DIDN'T WRITE IT DOWN.

4 Q WELL, YOU DIDN'T WRITE IT DOWN OR DIDN'T NOTE
5 IT?

6 A I DIDN'T NOTE IT, BECAUSE I WASN'T LOOKING AT
7 IT, THAT'S CORRECT. THE ONLY PART -- IN LOOKING
8 AT MY NOTES, THE ONLY PART OF THE SKIN THAT I
9 NOTED WAS THERE WAS A BONE MARROW NEEDLE STICKING
10 IN THE LEFT SHIN.

11 Q RIGHT. SO THE ONLY THING OF SIGNIFICANCE
12 THAT YOU SAW UPON YOUR OBSERVATION OF THE REST OF
13 THE BODY WAS THAT NOTATION ITSELF?

14 A THAT'S ALL I WROTE ABOUT THE SKIN.

15 Q WELL, AS A LONG TIME PRACTITIONER, A
16 PEDIATRIC INTENSIVE CARE PHYSICIAN, YOU WERE
17 CERTAINLY ATTUNED TO VARIOUS INDICIA OF ABUSE TO A
18 CHILD INDEPENDENT OF WHAT YOU DESCRIBED, SUBDURAL
19 HEMATOMA, RETINAL HEMORRHAGING, AND CEREBRAL
20 EDEMA, CORRECT?

21 A CORRECT.

22 Q OKAY. THAT WOULD BE BONE BREAKS?

23 A IF IN EVIDENCE, YES.

24 Q YOU HAVE THOSE OFTEN IN CONJUNCTION WITH THIS
25 SHAKING THAT YOU'VE DESCRIBED?

1 A NOT USUALLY, NO.

2 Q NO? OKAY.

3 A THAT'S USUALLY NOT PART OF IT.

4 Q YOU USUALLY DON'T HAVE THAT?

5 A NO.

6 Q AND CERTAINLY AS TO MANY FORMS OF ABUSE, YOU
7 WOULD NOTE BRUISING OF A CHILD, CORRECT?

8 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

9 Q OKAY. NOW, DURING YOUR CARE OF MINOR
10 , DID YOU HAVE AN OPPORTUNITY DURING THAT
11 PERIOD OF TIME TO REVIEW HER BIRTH RECORDS?

12 A NO, SIR, I DID NOT.

13 Q OKAY. SO YOU WOULDN'T BE ABLE TO TAKE THE
14 FACT THAT SHE WAS A PREMATURE BABY INTO
15 CONSIDERATION IN MAKING YOUR EVALUATION, RIGHT?

16 A THAT WOULD BE CORRECT.

17 Q YOU COULDN'T TAKE INTO ACCOUNT THE FACT THAT
18 FROM THE TIME OF BIRTH AND FOR A PERIOD OF TIME
19 AFTERWARDS SHE WAS APNEIC AND BEING TREATED FOR
20 SLEEP APNEA, CORRECT?

21 A THAT WOULD BE CORRECT.

22 Q AND ONCE AGAIN THAT'S A PROBLEM WITH
23 BREATHING, THE CESSATION OF BREATHING?

24 A CORRECT. PREMATURE BABIES HAVE THAT.

25 Q THAT SHE WAS A CHILD BORN OF A COCAINE

1 DEPENDANT MOTHER?

2 A THAT'S CORRECT.

3 Q YOU DIDN'T HAVE ANY ACCESS TO THAT KNOWLEDGE?

4 A WELL, I THINK THE D.S.S. PEOPLE OR SOMEONE
5 TOLD ME THAT SHE WAS A CRACK BABY.

6 Q SO YOU GOT THAT NOT FROM A REVIEW OF THE
7 MEDICAL RECORDS, BUT THROUGH D.S.S. WHAT ABOUT
8 THAT AT THE TIME OF BIRTH SHE WAS DIAGNOSED WITH
9 VENTRICULAR HEMORRHAGE?

10 A I DID NOT HAVE ACCESS TO THE BIRTH RECORDS.

11 Q SO YOU WERE UNAWARE OF THAT FACT?

12 A LET'S SEE. I DO, THAT'S CORRECT.

13 Q AND I'M SORRY, DOCTOR. I DON'T MEAN TO
14 RESTRICT YOU TO ANY PARTICULAR SOURCE FOR THAT.

15 I'M TRYING TO INQUIRE OF YOU OF THE INFORMATION
16 THAT YOU HAD REGARDING HER AT THE TIME YOU ARRIVED
17 AT THIS DIAGNOSIS OF CHILD ABUSE, OKAY?

18 A ABSOLUTELY. AND THE THING -- I GUESS, YOU'LL
19 ASK MY OPINION ABOUT SOMETHING IN A MINUTE.

20 Q SO YOU'VE REFERENCED INFORMATION THAT YOU
21 RECEIVED FROM COMMUNICATIONS FROM D.S.S. DURING
22 THE COURSE OF THIS DAY, I TAKE IT, RIGHT?

23 A I GUESS SO. I'M SURE THAT'S WHERE I GOT THE
24 INFORMATION. I KNEW THAT THE CHILD WAS FROM
25 FOSTER PARENTS, SO, YOU KNOW, WE HAD D.S.S. THERE.

1 Q SO THIS INFORMATION WASN'T COMMUNICATED TO
2 YOU. THIS INFORMATION WAS COMMUNICATED TO SOMEONE
3 ELSE INVOLVED IN THE CARE OF MINOR AND YOU AS A
4 SUPERVISING PHYSICIAN HAD ACCESS TO THAT AND
5 REVIEWED THAT ITSELF; IS THAT CORRECT?

6 A I WAS TOLD THAT THE CHILD WAS FROM A COCAINE
7 EXPOSURE.

8 Q OKAY. YOU WEREN'T THE ONLY PERSON INVOLVED
9 IN THE CARE OF THE CHILD, RIGHT?

10 A NO, NOT AT ALL.

11 Q WE KNOW FOR EXAMPLE THAT MINOR WAS TAKEN IN
12 FOR NEUROSURGERY AND I TAKE IT THAT DR. LENWOOD
13 SMITH CONDUCTED THE NEUROSURGERY; IS THAT CORRECT?

14 A SURE, THAT'S CORRECT.

15 Q WERE YOU PRESENT DURING THE NEUROSURGERY?

16 A NO.

17 Q NO?

18 A THAT WOULD NOT BE MY ROLE.

19 Q AND YOU'VE TESTIFIED THAT MINOR HAD A C.T.
20 SCAN CONDUCTED. RADIOLOGISTS DO THAT, CORRECT?

21 A THEY INTERPRET THAT, CORRECT.

22 Q OKAY. AND YOU MAKE NO CLAIM, AS I UNDERSTAND
23 IT, TO BE A RADIOLOGIST, RIGHT?

24 A NO, I'M NOT A RADIOLOGIST.

25 Q YOU CERTAINLY DEAL WITH RADIOLOGISTS AND DEAL

1 WITH THE PRODUCT OF RADIOLOGY ON A DAILY BASIS; IS
2 THAT CORRECT?

3 A I LOOK AT THE X-RAYS, MAKE MY OWN
4 DETERMINATION, BUT FOR THE MORE SOPHISTICATED
5 X-RAYS, I DEPEND ON THE RADIOLOGISTS TO GIVE ME
6 THEIR INTERPRETATION.

7 Q AND INDEED IN THIS PARTICULAR CASE THE
8 RADIOLOGIST WAS DR. HUDSON; IS THAT CORRECT?

9 A THERE'S A WHOLE GROUP AND THEY ALL LOOK AT
10 THEM. YOU KNOW, HE WAS ONE OF THEM. THAT'S A
11 NEURORADIOLOGIST.

12 Q YOU'RE FAMILIAR WITH THE RESULTS OF THE C.T.
13 SCAN?

14 A OH SURE.

15 Q AND YOU'RE FAMILIAR WITH THE FINDINGS ON THE
16 PART OF RADIOLOGIST OF THE SUBDURAL HEMATOMA,
17 CORRECT?

18 A CORRECT.

19 Q AND YOU'RE FURTHER FAMILIAR WITH THE FACT
20 THAT THE SUBDURAL HEMATOMA WAS CHARACTERIZED BY
21 THE RADIOLOGIST AS CHRONIC AND ACUTE; IS THAT
22 CORRECT?

23 A YES, THAT'S CORRECT.

24 Q CHRONIC AND ACUTE, THOSE TWO TERMS ARE
25 MATERIAL AS FAR AS MEDICINE GOES, CORRECT? I MEAN

1 THOSE ARE SCRIPTED TERMS, RIGHT?

2 A YES, I GUESS WHAT IT IS, YOU ARE LOOKING AT
3 THE C.T. SCAN AND WHAT YOU'RE LOOKING AT IS TO SEE
4 WHAT BLOOD LOOKS LIKE THERE.

5 Q RIGHT.

6 A IF THE BLOOD, BECAUSE IT'S HEMOGLOBIN AND
7 HEMOGLOBIN BREAKS DOWN, WHEN IT'S ACUTE IT'S
8 BRIGHT WHITE ON THE C.T. SCAN. IF IT'S NOT BRIGHT
9 WHITE, THEN IT'S OLDER THAN ACUTE.

10 Q AND THAT'S WHAT YOU'RE DEALING WITH IS THE
11 GRADATIONS IN COLOR IN TERMING WHETHER YOU HAVE
12 OLD BLOOD PRESENT OR NEW BLOOD PRESENT, CORRECT?

13 A WELL, NEW BLOOD IS BRIGHT WHITE. IT'S EASY
14 TO SEE.

15 Q AND NEW BLOOD, WHEN I USE THE TERM ACUTE,
16 THAT WOULD BE NEW BLOOD, RIGHT?

17 A YES.

18 Q AND CHRONIC MEANS BLOOD THAT HAS BEEN,
19 SPECIFICALLY IN REFERENCE TO A SUBDURAL HEMATOMA,
20 CHRONIC IS BLOOD THAT HAS BEEN PRESENT FOR SOME
21 PERIOD OF TIME, CORRECT?

22 A I GUESS THAT'S CORRECT.

23 Q WHAT PERIODS OF TIME ARE WE TALKING ABOUT?
24 CAN YOU DEFINE FOR ME FIRST OF ALL AS TO A
25 SUBDURAL HEMATOMA, HOW LONG IS A FINDING BY

1 RADIOLOGY OF ACUTE BLOOD -- WHAT PERIOD OF TIME
2 DOES THAT COVER?

3 A I KNOW WHAT I THINK, BUT A RADIOLOGIST CAN
4 GIVE YOU A MORE PRECISE ANSWER. IF YOU WANT ME TO
5 TELL YOU WHAT I THINK...

6 Q TELL ME WHAT YOU THINK, YES SIR, PLEASE.

7 A USUALLY IT'S HAPPENED RIGHT AWAY, BUT
8 GENERALLY BRIGHT WHITE BLOOD BECOMES LESS DENSE
9 AND NOT BRIGHT WHITE AFTER AROUND SEVEN DAYS.

10 Q SO SOMETHING IS ACUTE FOR UP TO SEVEN DAYS?

11 A IT SHOWS UP AS A NEW BLEED, CORRECT, BRIGHT
12 WHITE. AND THAT'S AN AVERAGE; IT MAY BE FIVE IN
13 SOME, SIX OR SEVEN, EIGHT IN ANOTHER.

14 Q HOW LONG A PERIOD DOES THE SUB-ACUTE PHASE OF
15 A HEMATOMA COVER?

16 A I HAVE NO WAY TO KNOW THAT. IT CAN BE -- YOU
17 KNOW, IT WILL BE THERE FOR A WHILE.

18 Q THEN I WOULD TAKE IT THAT CHRONIC IS A TERM
19 WHICH YOU WOULD APPLY TO A HEMATOMA THAT IS
20 ROUGHLY LONGER THAN SEVEN DAYS IN AGE?

21 A YES.

22 Q AND PERHAPS A RADIOLOGIST WHO ACTUALLY
23 SPECIALIZES IN READING C.A.T. SCANS AND M.R.I.'S
24 AS OPPOSED TO PEDIATRIC INTENSIVE CARE COULD
25 PROVIDE MORE DEFINITE ANSWERS AS TO TIME; IS THAT

1 CORRECT?

2 A I WOULD THINK SO, YES, THAT WOULD BE CORRECT.

3 Q BUT THE RADIOLOGISTS WHO INTERPRETED THE

4 C.A.T. SCANS, THE C.A.T. SCANS YOU LOOKED AT,

5 PROVIDED YOU WITH THE REPORT AT THAT TIME,

6 CORRECT?

7 A THEY LOOKED AT IT, CORRECT.

8 Q THEY FOUND CHRONIC AND ACUTE, IS THAT RIGHT?

9 A YES. WHAT RADIOLOGY REPORTED TO ME WAS AN

10 ACUTE SUBDURAL WITH EVIDENCE OF OLDER SUBDURAL

11 THERE, IT SHOWED MASSIVE EDEMA, AND EVIDENCE OF

12 SHIFTING OF THE BRAIN.

13 Q OKAY. ACUTE AND OLDER, AND BY OLDER THAT'S

14 THAT CHRONIC TERM, RIGHT?

15 A YES.

16 Q OLDER EQUALS CHRONIC. OKAY. SO THERE'S

17 EVIDENCE OF BLOOD BEING ON THE BRAIN AT AN EARLIER

18 TIME, AND YOU CAN TELL THAT BECAUSE THE COLOR ON

19 THE C.T. SCAN HAS STARTED TO CHANGE, RIGHT?

20 A IT'S CHANGED, YES.

21 Q IT'S CHANGED. OKAY. AND THEN THERE'S

22 EVIDENCE OF NEW BLOOD --

23 A CORRECT.

24 Q -- IN THE SAME AREA, CORRECT?

25 A YOU KNOW, I DON'T RECALL OFFHAND. I KNOW

1 THERE WAS -- IT COULD BE THE SAME AREA, BUT IT WAS
2 IN THAT PART OF THE BRAIN, ON THAT SIDE OF THE
3 BRAIN. YOU HAVE TO BEAR IN MIND THAT THE BRAIN IS
4 A PRETTY BIG AREA. THE SCAN IS JUST LOOKING AT
5 LITTLE SLICES, SO YOU KNOW IT'S ON THE SAME SIDE
6 OF THE HEAD.

7 Q OKAY. SO THERE IS A -- THERE IS BLOOD ON THE
8 BRAIN -- THAT WOULD BE -- IF I SAY ON THE BRAIN,
9 WE'VE GOT LAYERS UNDERNEATH, LAYERS BASICALLY,
10 BEFORE YOU GET TO THE INTERIOR OF THE BRAIN,
11 CORRECT?

12 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

13 Q YOU'VE GOT THE SKULL. YOU HAVE A COVERING OF
14 THE SKULL, CORRECT?

15 A WELL, THE COVERING OF THE BRAIN IS CALLED THE
16 DURA.

17 Q RIGHT, WELL, I'M GOING WAY OUTSIDE THE SKULL.

18 A YEAH.

19 Q COVERING THE SKULL.

20 A OKAY.

21 Q SKIN?

22 A OKAY.

23 Q IS THERE AN AREA UNDERNEATH THAT?

24 A YEAH, YOU HAVE THE PERIOSTOMA, SKULL, AND THE
25 SKULL BONE.

1 Q OKAY. IMMEDIATELY BENEATH THE SKULL AND
2 ADHERING TO IT IS THE DURA ITSELF, THE DURA
3 MATTER, CORRECT?

4 A YES.

5 Q THAT'S A THICK, RELATIVELY SPEAKING, THICK
6 MEMBRANE SUBSTANCE THAT COVERS THAT AREA OF THE
7 HEAD, RIGHT?

8 A IT'S A COVERING OF THE BRAIN. I DON'T KNOW
9 IF I COULD SAY IT'S THICK, YES.

10 Q IT'S A RELATIVE TERM. YOU HAVE SOME OTHER
11 LAYERS THAT ARE THIN IN RELATION TO THAT.

12 UNDERNEATH THE DURA MATTER IS THE ARACHNOID
13 MEMBRANE; IS THAT CORRECT?

14 A IT'S A SPACE, ARACHNOID SPACE.

15 Q ARACHNOID SPACE AND THERE'S THE ARACHNOID
16 MEMBRANE UNDERNEATH THAT AND THEN THE PIA MATER
17 OVER THE BRAIN?

18 A WELL, YEAH, BASICALLY, YOU KNOW, A NEUROMAP
19 CAN GIVE YOU ALL THE DIFFERENT LAYERS. YOU KNOW,
20 BASICALLY YOU HAVE -- THE EASY WAY FOR ME TO THINK
21 ABOUT IT IS YOU HAVE THE COVERING OF THE BRAIN,
22 WHICH IS IMPOSED BETWEEN THE BRAIN AND THE SKULL.

23 THERE IS THE SUBARACHNOID SPACE AND THE
24 SUBDURAL SPACE. THE SUBDURAL SPACE IS THAT SPACE
25 BETWEEN THE DURA AND THE BRAIN ITSELF. YOU HAVE

1 THAT SPACE THERE.

2 Q OKAY. BUT I'M INTERESTED IN ALL THE SPACES
3 UNDERNEATH THERE.

4 A WELL --

5 Q WE'VE GOT THE SKULL ITSELF, THE BONE. WE
6 HAVE THE DURA --

7 A AND AS I SAID BEFORE, I HATE TO INTERRUPT
8 YOU, BUT I'M NOT A NEUROLOGIST.

9 Q WELL, TRUST ME, NEITHER AM I, SIR. YOU HAVE
10 THE DURA. THERE IS A SPACE BETWEEN THE DURA AND
11 THE BRAIN, CORRECT?

12 A CORRECT.

13 Q THERE'S A CEREBRAL SPINAL FLUID IN THAT
14 SPACE?

15 A CORRECT.

16 Q OKAY. SO THE BRAIN -- WE'RE NOT TALKING, AS
17 WE UNDERSTAND LARGE, WE'RE NOT TALKING A LARGE
18 SPACE, BUT IT'S A QUALIFIABLE SPACE, RIGHT?

19 A IT'S A TINY LITTLE AREA ON THE C.T. SCAN.

20 Q ALL RIGHT. AND THE BRAIN IN ESSENCE IS
21 SUSPENDED IN THAT CEREBRAL SPINAL FLUID IN THAT
22 SPACE; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q OKAY. NOW THE NEXT MEMBRANE WOULD BE THE
25 ARACHNOID; IS THAT CORRECT?

1 A YOU KNOW, I'M NOT GOING TO -- I DON'T KNOW.
2 I DON'T EVER EVEN THINK ABOUT THE ARACHNOID. I
3 DON'T KNOW. I WOULD HATE TO SAY SOMETHING I'M NOT
4 SURE OF.

5 Q OKAY. SO YOU ARE FAMILIAR WITH SUBDURAL
6 HEMATOMA?

7 A CORRECT.

8 Q THAT IS A HEMATOMA UNDERNEATH THE DURA; IS
9 THAT CORRECT?

10 A CORRECT.

11 Q WHAT'S AN EPIDURAL HEMATOMA?

12 A THAT'S ABOVE.

13 Q THAT WOULD BE BETWEEN THE --

14 A THE DURA --

15 Q -- THE CRANIUM ITSELF AND THE SKULL, PART OF
16 THE SKULL ITSELF IN THE DURA?

17 A THEY'RE DIFFERENT ON THE C.T. SCAN.

18 Q RIGHT. THEY ARE VERY DIFFERENT AND THEY
19 WOULD PROBABLY HAVE DIFFERENT EFFECTS, CORRECT?

20 A IT CAN HAVE THE SAME EFFECT, TOO, BUT IT CAN
21 ALSO HAVE DIFFERENT EFFECTS, TOO.

22 Q OKAY. SO YOU HAVE THE EPIDURAL IF THE
23 BLEEDING IS BETWEEN THE DURA AND THE SKULL, RIGHT?

24 A CORRECT.

25 Q YOU HAVE A SUBDURAL IF THE BLEEDING IS

1 BETWEEN THE DURA AND --

2 A THE BRAIN.

3 Q -- THE BRAIN. WELL, YOU'RE ALSO FAMILIAR
4 WITH A FORM OF HEMORRHAGE CALLED SUBARACHNOID,
5 CORRECT?

6 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

7 Q OKAY. THAT IS BETWEEN WHAT?

8 A THAT'S IN THE SUBARACHNOID SPACE. THAT'S
9 USUALLY -- I'M BLANKING OUT HERE. THE
10 SUBARACHNOID BLEED, WE CAN SEE THAT RIGHT OVER
11 THE -- IF I HAD A C.T. SCAN I COULD SHOW YOU.
12 YOU'LL HAVE TO HAVE THE RADIOLOGIST POINT THAT
13 OUT, I DON'T KNOW EXACTLY HOW TO EXPLAIN THAT.

14 Q THAT IS THEN BETWEEN THEN THE DURA AND THE
15 BRAIN, OR BETWEEN THE ARACHNOID AND THE BRAIN?

16 A YOU KNOW, I DON'T KNOW EXACTLY. I CAN'T SAY,
17 AND I WOULDN'T WANT TO SAY SOMETHING I DON'T KNOW
18 FOR SURE.

19 Q NOW, YOU HAVE RENDERED YOUR OPINION WITH WHAT
20 YOU SAW, AND THE INJURIES YOU SAW WERE CHILD
21 ABUSE, CORRECT?

22 A CORRECT.

23 Q AS I UNDERSTAND YOUR TESTIMONY ON DIRECT
24 EXAMINATION?

25 A CORRECT.

1 Q NOW, IF YOU SEE WHAT YOU SUSPECT TO BE CHILD
2 ABUSE AS A MEDICAL PROFESSIONAL AND YOU FAIL TO
3 REPORT THAT, THERE ARE LEGAL CONSEQUENCES, IS THAT
4 CORRECT?

5 A WE'RE JUST SUPPOSED TO REPORT IT. I ASSUME
6 THERE ARE LEGAL CONSEQUENCES, BUT I DON'T KNOW IF
7 THERE ARE.

8 Q NOW, ARE YOU ACQUAINTED WITH, IN RELATION TO
9 SUBDURAL HEMATOMAS, THE CONCEPT OF REBLEEDING?

10 A YES.

11 Q OKAY. DESCRIBE FOR US WHAT YOU UNDERSTAND
12 THAT CONCEPT TO BE, SIR.

13 A TYPICALLY IT'S SOMETHING, FROM MY
14 UNDERSTANDING -- SOMETIMES IT'S SEEN IN OLDER
15 PEOPLE, OLDER PEOPLE THAT FALL DOWN AND INJURE
16 THEIR HEAD AND HAVE A LITTLE SUBDURAL BLEEDING AND
17 THEY'RE CONFUSED, MAYBE THEY FALL AND HIT THEIR
18 HEAD AGAIN AND THEY GET A LITTLE MORE CONFUSED.
19 IT'S A VERY GRADUAL PROCESS. IT'S THE KIND OF
20 THING THAT DOESN'T CAUSE A MASSIVE CHANGE IN THE
21 NEURO STATUS.

22 I KNOW THAT IT'S USUALLY A GRADUAL THING. WE
23 DON'T CONSIDER IN CHILDREN THAT THAT IS AN ISSUE
24 BECAUSE CHILDREN HAVE NOT BEEN REPORTED TO BE A
25 BIG TIME REBLEEDING POPULATION; OLD PEOPLE TEND

1 TO, CHILDREN DON'T.

2 Q OLD PEOPLE REBLEED AND CHILDREN DON'T?

3 A YES.

4 Q THAT'S YOUR STATEMENT?

5 A THAT'S MY STATEMENT.

6 Q ISN'T THE BASIS FOR MUCH REBLEEDING BREAKING
7 OF THE TINY CAPILLARIES THAT FIRST INFUSE A
8 SUBDURAL IN THE BODY'S ATTEMPT TO GO AHEAD AND GET
9 RID OF THE SUBDURAL, VERY DELICATE CAPILLARIES
10 THAT ENTER THE SUBDURAL AND ARE VERY EASILY BROKEN
11 THEMSELVES AND THEREFORE ARE SITES FOR ADDITIONAL
12 BLEEDING?

13 A I DON'T UNDERSTAND WHAT YOU'RE SAYING.

14 Q THAT'S VERY GOOD, SIR.

15 Q CAN YOU DESCRIBE FOR US PLEASE THE COURSE BY
16 WHICH A SUBDURAL RESOLVES ITSELF.

17 LET ME BACK UP JUST A SECOND. YOU WOULD
18 AGREE, I TAKE IT, THAT MANY SUBDURAL HEMATOMAS
19 OCCUR AND THE BODY ITSELF TAKES CARE OF THEM AND
20 ACTUALLY DISSOLVES THEM AWAY. THAT'S A PROCESS
21 THAT OCCURS, CORRECT?

22 A THAT WOULD BE CORRECT.

23 Q OKAY. SO MY QUESTION FOR YOU, SIR, IS TO
24 PLEASE DESCRIBE FOR US YOUR UNDERSTANDING OF THAT
25 PROCESS.

1 A A SUBDURAL HEMATOMA IS A BLOOD CLOT. A BLOOD
2 CLOT IS MADE UP MOSTLY OF RED BLOOD CELLS AND
3 MATERIAL THAT LETS IT FORM TOGETHER. THE BLOOD
4 CELLS THEMSELVES BREAK DOWN. AS THE PRODUCTS ARE
5 BROKEN DOWN, THE BODY CAN REABSORB. IT HAS TO BE
6 -- THERE'S NOT MUCH SPACE IN THE SKULL, SO IF THE
7 HEMATOMA IS OF ANY SIZE, THAT DOESN'T HAPPEN. IT
8 HAS TO BE EVACUATED BECAUSE YOU'LL HAVE ACUTE
9 DETERIORATION OF THE PATIENT.

10 THE WAY WE MOSTLY RESOLVE ANY HEMATOMAS OF
11 ANY SIZE IS FOR THE SURGEONS TO TAKE THEM OUT.

12 Q SO THE POINT OF THE PROCESS THAT I'M TRYING
13 TO GET AT IS, WHAT PROCEDURE DOES THE BODY USE TO
14 RESOLVE THESE HEMATOMAS TO BREAK DOWN THE CELLS
15 AND CARRY THEM AWAY FROM THE HEMATOMA?

16 A WELL, THE CELLS BREAK DOWN THEMSELVES ON A
17 NATURAL BASIS. RED BLOOD CELLS ONLY LAST A
18 CERTAIN PERIOD OF TIME. AS THEY BREAK DOWN, THE
19 PRODUCTS THEMSELVES ARE BROKEN DOWN AND THEN
20 REABSORBED.

21 Q HOW IS IT REABSORBED?

22 A WELL, YOU KNOW, YOU HAVE THE CIRCULATED SPACE
23 WHERE THERE'S SPINAL FLUID AND THE PRODUCTS OF
24 SPINAL FLUID ARE REABSORBED AND THEY GO AND THEY
25 ARE ABSORBED -- SPINAL FLUID IS A TOTALLY

1 RECIRCULATING PROCESS AND THE PRODUCTS OF THAT
2 HEMATOMA WILL BE REABSORBED.

3 Q SO THE HEMATOMA WILL BE REABSORBED JUST BY
4 CIRCULATING WITH THE SPINAL FLUID?

5 A (THERE WAS NO RESPONSE.)

6 Q OKAY. YOU ARE AWARE, SIR, THAT THERE IS A
7 SUBSTANTIAL BODY OF MEDICAL LITERATURE OUT THERE
8 WHICH INDICATES THAT REBLEEDING CAN OCCUR
9 SPONTANEOUSLY?

10 A (THERE WAS NO RESPONSE.)

11 Q IF YOU DON'T KNOW, THAT'S FINE.

12 A NO. I'M NOT AWARE OF THAT.

13 Q YOU'RE NOT AWARE OF THE BODY OF LITERATURE
14 WHICH INDICATES THAT SPONTANEOUS REBLEEDING IS A
15 COMMON OCCURRENCE?

16 A NO, I'M NOT AWARE OF THAT, NO.

17 Q OKAY. ARE YOU ACQUAINTED WITH THE TREATISE
18 ENTITLED "GREENFIELD'S NEUROPATHOLOGY?"

19 A NO.

20 Q NO. ARE YOU ACQUAINTED WITH THE TREATISE
21 "FORENSIC NEUROPATHOLOGY?"

22 A NO.

23 Q NO. ARE YOU ACQUAINTED WITH THE TREATISE
24 "THE PATHOLOGY OF HOMICIDE?"

25 A NO, I'M NOT.

1 Q ARE YOU ACQUAINTED WITH THE TREATISE
2 "FORENSIC PATHOLOGY" BY DOMINICK DIMAIO AND
3 VINCENT J. DIMAIO, A FATHER AND SON?

4 A NO, NO, I'M NOT.

5 Q ARE YOU ACQUAINTED -- STRIKE THAT, STRIKE
6 THAT. (PAUSE) ARE YOU ACQUAINTED WITH THE
7 ARTICLE, "THE ORIGIN OF SUBDURAL NEO-MEMBRANES, A
8 FINE STRUCTURE OF NEO-MEMBRANES?"

9 A NO, I'M NOT.

10 Q IT'S FROM THE AMERICAN JOURNAL OF PATHOLOGY
11 IN 1978.

12 A I'M STILL NOT.

13 Q SO YOU ARE -- AS I UNDERSTAND IT, UNAWARE OF
14 ANY LITERATURE RELATING TO SPONTANEOUS REBLEEDING;
15 IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND BY SPONTANEOUS, THAT WOULD BE REBLEEDING
18 THAT -- SPONTANEOUS REBLEEDING OF A SUBDURAL
19 HEMATOMA, JUST SO I'M COMPLETE WITH IT, OKAY?

20 A YES.

21 Q OKAY. AND THAT WOULD BE REBLEEDING, WHICH IS
22 THE PRODUCT OF NO SIGNIFICANT FORCE WHATSOEVER.
23 YOU'RE UNAWARE OF THE LITERATURE REGARDING THAT?

24 A I'M UNAWARE OF THAT BEING A CAUSE OF
25 SIGNIFICANT BRAIN DAMAGE, CORRECT. I'M UNAWARE OF

1 THE LITERATURE, CORRECT.

2 Q OKAY. NOW, LET ME ASK YOU A FEW QUESTIONS.

3 THIS CHRONIC, WHICH I BELIEVE YOU'VE -- IN YOUR
4 OPINION, YOU DIDN'T MAKE ANY -- I'M SORRY, YOU
5 DIDN'T MAKE ANY ATTEMPT TO ACTUALLY DATE THE AGE
6 OF THE SUBDURAL HEMATOMA THAT WAS OBSERVED BY THE
7 RADIOLOGIST IN THIS CASE?

8 A THAT WOULD BE CORRECT.

9 Q SO YOU MADE NO INDEPENDENT ATTEMPT TO DATE
10 IT, CORRECT?

11 A THAT WOULD BE CORRECT.

12 Q YOU ARE OF THE OPINION THAT THERE WAS AN
13 ELEMENT OF IT THAT WAS OLDER THAN ANOTHER ELEMENT,
14 CORRECT?

15 A ~~THAT'S WHAT WAS REPORTED TO ME, CORRECT.~~

16 Q AND I BELIEVE FOR YOU THE TERM CHRONIC WOULD
17 BE SOMETHING OVER SEVEN DAYS, CORRECT?

18 A ~~YES.~~

19 Q SO WHEN DID THE INITIAL SUBDURAL HEMATOMA
20 OCCUR, THE ONE THAT'S OVER SEVEN DAYS OLD?

21 A YOU JUST ASKED ME IF I TRIED TO DETERMINE
22 THAT. I DID NOT.

23 Q OKAY. WELL, SOMETHING IN EXCESS OF SEVEN
24 DAYS, RIGHT?

25 A THAT'S CORRECT.

1 Q YOU CAN'T GET ANY MORE SPECIFIC THAN THAT?

2 A THAT'S CORRECT.

3 Q AND UNDER WHAT CIRCUMSTANCES DID THE INITIAL
4 SUBDURAL HEMATOMA OCCUR? YOU HAVE NO IDEA,
5 CORRECT?

6 A I HAVE NO IDEA.

7 Q WHO WAS PRESENT WHEN THE INITIAL SUBDURAL
8 HEMATOMA OCCURRED? YOU HAVE NO IDEA AS TO THAT,
9 CORRECT?

10 A I HAVE NO IDEA.

11 Q AND IT WOULD BE EQUALLY FAIR TO SAY, I TAKE
12 IT, THAT YOU HAVE NO IDEA WHERE IT OCCURRED, WHERE
13 MINOR WAS LOCATED SPATIALLY WHEN IT
14 OCCURRED?

15 A THAT WOULD BE CORRECT.

16 Q OKAY. NOW, MY UNDERSTANDING IS THAT WHEN ONE
17 RECEIVES A SUBDURAL HEMATOMA, THAT'S A MAJOR
18 INJURY TO THE BRAIN, ISN'T IT?

19 A IF IT'S A SIGNIFICANT SUBDURAL

20 Q A SIGNIFICANT SUBDURAL?

21 A ONE THAT CAUSES NEUROLOGICAL CHANGE IN YOUR
22 CURRENT NEUROLOGIC STATUS, THAT WOULD BE A
23 SIGNIFICANT INJURY, CORRECT.

24 Q OKAY. SO YOU CAN HAVE -- AND I'M A LAYMEN,
25 YOU CAN HAVE A SUBDURAL THAT'S BLEEDING VERY HARD

1 AND VERY FAST AND THERE'S A QUICK ACCUMULATION OF
2 BLOOD; IS THAT CORRECT?

3 A THAT WOULD BE CORRECT.

4 Q OKAY. AND YOU CAN HAVE A SUBDURAL THAT'S
5 STILL BLEEDING WHERE IT'S NOT SUPPOSED TO BLEED,
6 BUT THAT'S BLEEDING AT A FAR SLOWER RATE?

7 A NOT MORE THAN ANY PERIOD OF TIME VERY
8 QUICKLY -- UNLESS IT'S JUST TINY -- THE BODY HAS
9 MECHANISMS TO STOP BLEEDING SO THAT IT DOESN'T --
10 IF THE BODY IS WORKING RIGHT, THEN THE BLEEDING
11 STOPS.

12 Q OKAY. SO WE HAVE BLEEDING ON THE BRAIN THAT
13 BY YOUR BEST -- BY THE ONLY ESTIMATE YOU'RE
14 WILLING TO GO AHEAD AND GIVE WAS IS THAT IT WAS
15 SOMETHING IN EXCESS OF SEVEN DAYS OLD.

16 WHAT REPORTS ARE YOU AWARE OF TO INDICATE
17 THAT MINOR WAS SUFFERING ANY ILL EFFECTS
18 OF THE BLEEDING ON THE HER BRAIN FOR A PERIOD OF
19 AT LEAST A WEEK PRIOR TO ADMISSION TO THE
20 HOSPITAL?

21 A THE REPORT I HAD WAS THAT SHE WAS HER USUAL
22 SELF UNTIL RIGHT AT THAT MORNING.

23 Q OKAY. AND YOU'RE UNAWARE OF ANY OTHER
24 REPORTS THAT CONTRAINDICATE THAT, CORRECT?

25 A CORRECT.

1 Q NOW, AS TO -- YOU'VE GIVEN US A TRILOGY OF
2 SYMPTOMS THAT YOU DESCRIBE AS -- THAT MEANS THAT
3 IT'S CHILD ABUSE, OR AT LEAST THAT'S HOW I
4 INTERPRET WHAT YOU SAID, SUBDURAL HEMATOMA,
5 RETINAL HEMORRHAGE, AND THE CEREBRAL EDEMA. I
6 MEAN, IS THAT A FAIR CHARACTERIZATION OF YOUR
7 TESTIMONY?

8 A THAT WOULD BE CORRECT.

9 Q OKAY. I DON'T WANT TO PUT WORDS IN YOUR
10 MOUTH. NOW, WOULD YOU OR WOULD YOU NOT AGREE THAT
11 THERE ARE CAUSES OF SUBDURAL HEMATOMA OTHER THAN
12 VIOLENT TRAUMA TO THE HEAD?

13 A OFFHAND I CANNOT THINK OF ANY.

14 Q WOULD YOU AGREE OR DISAGREE THAT THERE ARE
15 CAUSES OF RETINAL HEMORRHAGE OTHER THAN CHILD
16 ABUSE? I BELIEVE YOU'RE FOCUSING ON THAT BEING
17 INDICATIVE OF SHAKING, CORRECT? IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q OKAY. I'M SORRY. I GOT TWO QUESTIONS THERE.
20 I'LL HAVE TO DROP BACK. IF I UNDERSTAND YOUR
21 TESTIMONY CORRECTLY, YOU'RE FINDINGS, YOUR
22 OBSERVATION OF RETINAL HEMORRHAGES EQUATES WITH
23 SHAKING AS OPPOSED TO ANY OTHER METHOD OR ANY
24 OTHER VEHICLE FOR PRODUCING THAT EFFECT; IS THAT
25 CORRECT?

1 A WHEN I SEE RETINAL HEMORRHAGE IN ASSOCIATION
2 WITH SUBDURALS AND WITH SEVERE EDEMA, SWELLING OF
3 THE BRAIN, THAT IS CHILD ABUSE ME.

4 Q OKAY. NOW -- WELL, I MEAN, AREN'T THEY ALL
5 JUST PART OR CAN'T THEY ALL JUST REALLY BE PART
6 AND PARCEL WITH THE SAME THING? YOU HAVE A
7 SUBDURAL, OKAY, THIS BLOOD UNDERNEATH THE DURA
8 MATTER CAUSED HOWEVER, OKAY? THAT CAN RESULT IN
9 INCREASED INTRACRANIAL PRESSURE, CORRECT?

10 A THAT'S CORRECT.

11 Q I THINK YOU USED THAT TERM. THAT'S WHAT
12 ACTUALLY ENDS UP OFTEN KILLING IS THE PRESSURE
13 IMPACTS ON THE PARTS OF THE BRAIN THAT CONTROL THE
14 AUTONOMOUS CENTRAL NERVOUS SYSTEM AND JUST SHUT
15 THINGS DOWN, RIGHT?

16 A THAT'S CORRECT.

17 Q OKAY. SO AS AN ADJUNCT TO THE SUBDURAL, YOU
18 GET INCREASED INTRACRANIAL PRESSURE, MORE PRESSURE
19 INSIDE THE HEAD THAN THERE SHOULD BE?

20 A THAT'S CORRECT.

21 Q OKAY. ISN'T IT TRUE THAT RETINAL HEMORRHAGES
22 CAN RESULT FROM INCREASED INTRACRANIAL PRESSURE?

23 A MY EXPERIENCE WITH INCREASED INTRACRANIAL
24 PRESSURE, WHICH I SEE QUITE A LOT OF, DOES NOT
25 CAUSE RETINAL HEMORRHAGES. I -- THE THING IS THAT

1 RETINAL HEMORRHAGES THAT ARE WIDESPREAD AND MULTI
2 LAYERS AND THINGS LIKE THAT, THAT'S CAUSED BY
3 SHAKING A BABY. THAT'S CAUSED BY WHIPLASH TYPE
4 INJURY.

5 Q OKAY. SO YOUR STATEMENT IS THAT INCREASED
6 INTRACRANIAL PRESSURE DOES NOT CAUSE RETINAL
7 HEMORRHAGES?

8 A MY EXPERIENCE IS THAT IT'S NOT THE THING THAT
9 CAUSES RETINAL HEMORRHAGES LIKE YOU SEE IN
10 WIDESPREAD RETINAL HEMORRHAGES, THAT'S CORRECT.

11 Q WIDESPREAD. SO --

12 A NO, NOW LET ME --

13 Q I'M SORRY.

14 A LET ME QUALIFY THAT IN THAT I HAVE SEEN SOME
15 INCREASED INTRACRANIAL PRESSURE IN CHILDREN FROM
16 BIG TRAUMAS THAT HAD RETINAL HEMORRHAGES AND
17 INCREASED INTRACRANIAL PRESSURE FROM BEING EJECTED
18 FROM -- FROM BEING IN A MAJOR MOTOR VEHICLE
19 ACCIDENT. I HAVE SEEN THAT. NOW, YOU KNOW,
20 SOMETIMES I'LL SEE IT IN ONE EYE OR MAYBE IN BOTH
21 EYES. THEY ARE USUALLY MORE CENTRAL, BUT
22 WIDESPREAD TYPICALLY IT'S SECONDARY TO THE BIG
23 TIME WHIPLASH INJURY LIKE YOU'D SEE WITH THE
24 SHAKING.

25 Q SO IT'S TYPICALLY ASSOCIATED WITH SHAKING.

1 DOES TYPICALLY MEAN EXCLUSIVELY, SIR?

2 A TYPICALLY MEANS TYPICALLY, VIRTUALLY EVERY
3 TIME I'VE SEEN IT, CORRECT, AND THAT'S WHAT'S
4 REPORTED TO ME IN TERMS OF THE CARE OF CASES LIKE
5 THAT.

6 Q OKAY. AND AS TO THE EDEMA OF THE BRAIN, THE
7 SWELLING OF THE BRAIN, WHAT CAUSES THAT?

8 A YOU KNOW, THAT'S INDICATIVE OF INJURY TO THE
9 BRAIN. THAT'S PROBABLY FROM -- THE THOUGHT ON
10 THAT IS THAT THE CELLS ARE DAMAGED FROM THE -- HOW
11 DO I SAY IT? THE ROTATIONAL FORCES OF THE BRAIN,
12 THE EXTERNAL INJURY OF THE BRAIN, THE BRAIN THAT
13 IS -- IT'S NOT NECESSARILY BRUISED BECAUSE THAT
14 WOULD IMPLY BLOOD IN THE BRAIN CELLS THEMSELVES,
15 BUT THE BRAIN CELLS BEING SHAKEN AROUND VIOLENTLY
16 THAT KILLS THE BRAIN CELLS, THE CELLS ARE KILLED
17 AND DEAD CELLS TYPICALLY SWELL AND THEY CAN BE
18 KILLED INITIALLY OR THEY CAN BE KILLED BY THE
19 PRESSURE AND NOT GETTING OXYGEN OR GLUCOSE.

20 Q OKAY. SO IF THE -- IF THE SUBDURAL HEMATOMA
21 IS CAUSING INJURY TO THE BRAIN, IT WOULD NOT BE
22 UNUSUAL NECESSARILY TO FIND EDEMA ASSOCIATED WITH
23 THAT, CORRECT?

24 A I'M SORRY. COULD YOU REPEAT YOUR QUESTION?

25 THE COURT: MR. STRICKLER.

1 MR. STRICKLER: YES, SIR.

2 THE COURT: A JUROR NEEDS A BREAK. HOW MUCH
3 LONGER WILL YOU BE? I'LL EITHER LET YOU CONTINUE
4 ON AFTER LUNCH OR FINISH NOW IF YOU'D LIKE.

5 MR. STRICKLER: BEG THE COURT'S INDULGENCE
6 ONE MOMENT, SIR.

7 (PAUSE)

8 THE COURT: YOU TAKE ALL THE TIME YOU NEED.
9 I JUST NEED TO KNOW FOR THE JURY.

10 MR. STRICKLER: YES, SIR, OKAY.

11 THE COURT: WOULD YOU RATHER FINISH UP AFTER
12 LUNCH?

13 MR. STRICKLER: TEN MORE MINUTES MAYBE.

14 THE COURT: I'VE GOT ONE THAT NEEDS TO TAKE A
15 BREAK NOW.

16 MR. STRICKLER: OKAY. I DO HAVE SOME MORE.

17 THE COURT: I ASSUME YOU HAVE SOME RECROSS?

18 MS. CAMPBELL: YES, SIR.

19 THE COURT: I MEAN REDIRECT. YOU'RE PROBABLY
20 AT A POINT WHERE YOU CAN TRANSITION.

21 MR. STRICKLER: YES, SIR.

22 THE COURT: ALL RIGHT. WE'LL TAKE A LUNCH
23 BREAK AT THIS POINT IN TIME AND ASK YOU TO COME
24 BACK AT 2:15. DON'T BEGIN ANY COMMENT OR
25 DISCUSSION ABOUT THE CASE, AND WE'LL WRAP UP AT

1 THIS POINT IN TIME.

2 (WHEREUPON, THE JURY LEFT OPEN COURT AT
3 APPROXIMATELY 1:15.)

4 THE COURT: AND DOCTOR, YOU CAN'T TALK TO
5 ANYONE ELSE ABOUT YOUR TESTIMONY.

6 ALL RIGHT. THE DOCTOR HAS BEEN INSTRUCTED HE
7 CAN'T DISCUSS HIS TESTIMONY WITH ANYONE. WE'LL
8 PICK BACK UP AFTER LUNCH.

9 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

10 MS. CAMPBELL: YOUR HONOR, I HAVE TO TAKE UP
11 ONE MATTER. AS I WAS WALKING OUT OF THE COURTROOM
12 I NOTICED THAT THE JURY, ONE OF THE MEMBERS OF THE
13 JURY, WAS ATTEMPTING TO GET ON THE ELEVATOR AND
14 THE DEFENDANT'S FAMILY WAS KIND OF CROWDED AROUND
15 THEM. I DON'T KNOW IF SHE DECIDED NOT TO GET ON
16 THE ELEVATOR OR WHAT, BUT...

17 THE COURT: ACTUALLY THE CLERK GOT ON THE
18 ELEVATOR WITH HER.

19 MS. CAMPBELL: WELL, I JUST DIDN'T WANT --

20 THE COURT: LET ME CAUTION EVERYONE THAT
21 THESE JURORS HAVE BADGES ON THEM, STAY AWAY FROM
22 THEM. WHAT I'LL DO IS I'LL MAKE EVERYBODY STAY IN
23 HERE --

24 MS. CAMPBELL: I DON'T KNOW IF SHE FELT
25 UNCOMFORTABLE OR WHAT, BUT SHE DID WALK AWAY. I

1 JUST DIDN'T WANT IT TO BE AN UNCOMFORTABLE
2 SITUATION.

3 THE COURT: ALL RIGHT. I THINK THE CLERK
4 TOOK CARE OF THAT.

5 BRING THE JURY IN.

6 (WHEREUPON, THE JURY CAME INTO OPEN
7 COURT AT APPROXIMATELY 2:29.)

8 THE BAILIFF: THE JURY IS PRESENT, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT. MR. STRICKLER, YOU
11 MAY RESUME YOUR CROSS-EXAMINATION.

12 MR. STRICKLER: THANK YOU, YOUR HONOR. MAY
13 IT PLEASE THE COURT. JUST A FEW MORE QUESTIONS OF
14 THE DOCTOR, IF YOU PLEASE.

15 CROSS EXAMINATION

16 CONTINUED

17 BY MR. STRICKLER:

18 Q IF I REMEMBER YOUR TESTIMONY ON DIRECT
19 CORRECTLY, DOCTOR, YOU INDICATE OR YOU ARE OF THE
20 OPINION THAT A FALL COULD NOT CAUSE A SUBDURAL
21 HEMATOMA SUCH AS EXISTED IN THIS CASE; IS THAT
22 CORRECT?

23 A IT WOULD TAKE A FALL FROM A SEVERAL STORY
24 BUILDING, YES.

25 Q AND OF THE HEMATOMA THAT WAS PRESENT, OF THE

1 SUBDURAL, WHAT PORTION OF IT WAS CHRONIC AND WHAT
2 PORTION OF IT WAS ACUTE, IF YOU KNOW?

3 A I HAVE NO WAY TO KNOW THAT.

4 Q AND ONCE AGAIN BY CHRONIC WE MEAN SOMETHING
5 WHICH OCCURRED IN THE PAST AT SOME PERIOD, SEVEN
6 DAYS OR SO, ACCORDING TO YOUR BEST ESTIMATE?

7 A THAT'S WHAT I REFER TO AS CHRONIC, THAT'S
8 CORRECT.

9 Q AND ACUTE IS SOMETHING THAT HAS JUST
10 OCCURRED?

11 A CORRECT.

12 Q STILL IN THE PROCESS OF OCCURRING, I GUESS?

13 A COULD BE, YES.

14 MR. STRICKLER: JUST A MOMENT. BEG THE
15 COURT'S INDULGENCE, YOUR HONOR.

16 (PAUSE)

17 BY MR. STRICKLER:

18 Q AND AGAIN, YOUR OPINION IS THAT SUCH AN
19 INJURY COULDN'T HAVE BEEN CAUSED BY AN ACCIDENT,
20 COULDN'T HAVE BEEN CAUSED BY A FALL OTHER THAN ONE
21 FROM SEVERAL STORIES, I BELIEVE WAS YOUR
22 TESTIMONY?

23 A THAT'S WHAT I JUST SAID, CORRECT.

24 Q ALL RIGHT. SO ARE YOU ACQUAINTED WITH THE
25 ARTICLE ENTITLED "FATAL PEDIATRIC HEAD INJURIES

1 CAUSED BY SHORT DISTANCE FALLS" BY JOHN PLUNKETT,
2 M.D. IN THE AMERICAN JOURNAL OF FORENSIC MEDICINE
3 AND PATHOLOGY FROM LAST YEAR?

4 A NO, I AM NOT.

5 Q YOUR TESTIMONY ALSO ON DIRECT, I BELIEVE, WAS
6 THAT IN ADDITION TO ACCIDENTAL INJURIES NOT
7 PRODUCING -- ACCIDENTS NOT PRODUCING INJURIES SUCH
8 AS THESE, THAT WITH THE SUBDURAL WITHIN A FEW
9 MINUTES, THE CHILD WOULD BE -- I WROTE DOWN "CHILD
10 IS OUT." SO IT WOULD BE UNCONSCIOUS OR VISIBLY
11 IMPAIRED?

12 A A SEVERE INJURY IS ONLY ASYMPTOMATIC IF THAT'S
13 FOR JUST A FEW MINUTES. FOR A SEVERE INJURY LIKE
14 THIS THE CHILD WOULD BE ON SYMPTOMATIC, BEING
15 OBTUNDED, COMATOSE, NOT WANTING TO BREATHE RIGHT
16 IN JUST A FEW MINUTES.

17 Q OKAY. NOW, IS YOUR TESTIMONY, SIR, THAT AN
18 EARLIER INJURY RESULTING IN A SLOW BLEED INTO THE
19 HEMATOMA, WHICH HAD STARTED TO RESOLVE ITSELF AND
20 THEN REBLED COULD NOT ACCOUNT FOR THE INJURY IN
21 THIS CASE?

22 A I DON'T BELIEVE IT COULD FOR THIS INJURY, NO.

23 Q AND WHEN YOU SAY YOU DO NOT BELIEVE IT COULD,
24 THAT IS YOUR OPINION, CORRECT?

25 A EVERYTHING I SAY IS MY OPINION, THAT'S

1 CORRECT.

2 Q OKAY.

3 Q AND WHEN YOU TESTIFIED WITH REGARD TO SHAKING
4 IN THIS INSTANCE, YOU DESCRIBE IT AS A VIOLENT
5 SHAKING. WHERE DO YOU FALL ON THE SHAKEN BABY AS
6 OPPOSED TO THE SHAKEN WITH IMPACT BABY DEBATE
7 WITHIN THE RELEVANT COMMUNITY?

8 A MY OPINION IS THAT YOU DO NOT HAVE TO HAVE
9 THE FULL SYNDROME. YOU DO NOT HAVE TO HAVE IMPACT
10 TO HAVE THE FULL SYNDROME. IT'S JUST SHAKING
11 WITHOUT IMPACT. CERTAINLY IF YOU HAVE IMPACT, YOU
12 CAN HAVE THAT, TOO.

13 Q I'M CLEAR; WE UNDERSTAND EACH OTHER. MAYBE
14 WE'RE TALKING CODE. THERE IS A DEBATE WITHIN THE
15 COMMUNITY AS TO WHETHER OR NOT IMPACT IS NECESSARY
16 IN ADDITION TO SHAKING, ISN'T THERE?

17 A YES, THAT'S BEEN BROUGHT FORTH, MEANING YOU
18 CAN EITHER SHAKE THE BABY REALLY HARD AND CAUSE
19 THIS AND THAT'S WHAT THE MAJORITY OF PEOPLE
20 BELIEVE, OR YOU HAVE TO SHAKE THE BABY AND SMASH
21 THE HEAD ON THE WALL --

22 Q WEREN'T WE -- I'M SORRY, I DIDN'T MEAN TO CUT
23 YOU OFF. WERE YOU THROUGH? ON THE WALL OR INTO A
24 SOFT PILLOW? THERE'S NO LITERATURE IN THAT
25 REGARD?

1 A I DON'T RECALL IT. JUST IMPACT ONTO

2 SOMETHING THAT WOULD BE HARD.

3 Q BUT YOU'RE OF THE OPINION THAT IMPACT IS

4 UNNECESSARY, BUT THE SHAKING IN AND OF ITSELF IS

5 SUFFICIENT?

6 A THAT'S CORRECT.

7 Q AND THE SHAKING THAT CAUSES THE SUBDURAL

8 HEMATOMA, THAT RESULTS FROM A SHEERING OF BRIDGING

9 VESSELS IN THE BRAIN; IS THAT CORRECT?

10 A THAT'S ONE OF THE THINGS THAT'S BEEN SAID,

11 CORRECT.

12 Q NOW WHAT'S A BRIDGING VESSEL?

13 A IT'S JUST THE LITTLE VEINS THAT ARE IN THE

14 SPACE, THE TINY VENULES, TINY VEINS AND VESSELS

15 THAT ARE IN THAT SPACE.

16 Q I'M SORRY. WHICH SPACE ARE WE TALKING ABOUT?

17 A THE SUBDURAL SPACE. YOU CAN HAVE THE

18 SUBDURAL SPACE THAT'S ANYTHING BELOW THE SKULL.

19 Q OKAY. AND THE MOMENTUM GENERATED BY A BACK

20 AND FORTH MOTION IN THE SHAKING CAUSES SOME OF

21 THOSE -- IT'S THEORIZED TO GO AHEAD AND BREAK?

22 A YES, THEY CAN TEAR BECAUSE WHEN YOU'RE DOING

23 THAT THE BRAIN IS NOT JUST SITTING THERE GOING IN

24 ONE DIRECTION, IT'S LIKE RICOCHETING IN THE SKULL,

25 IS MY UNDERSTANDING.

1 Q ALL RIGHT, SIR. YOU WERE THE ATTENDING
2 PHYSICIAN IN THIS CASE; IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q LET ME ASK YOU A FEW MORE QUESTIONS AND THEN
5 I'M DONE.

6 AS THE ATTENDING PHYSICIAN IN THIS CASE, YOU
7 HAVE ACCESS TO WHAT WAS DONE BY YOU IN THE CASE,
8 WHAT WAS DONE BY OTHER DOCTORS AND HOSPITAL STAFF
9 IN THE CASE; IS THAT CORRECT?

10 A YES, THAT'S CORRECT.

11 Q SO YOU'VE REALLY GOT NOT ONLY YOUR PERSONAL
12 INVOLVEMENT, BUT ALSO THE BIG PICTURE?

13 A YES.

14 Q STUDIES THAT WERE DONE, LAB STUDIES, DOES THE
15 TERM P.I.V.K.A. MEAN ANYTHING TO YOU?

16 A NO.

17 Q NO?

18 A NO.

19 Q WHAT STUDIES WERE CONDUCTED TO DETERMINE
20 BLEEDING TIME AS FAR AS MINOR ?

21 A WE LOOK AT THE COAGULATION, WE LOOK AT THE
22 C.B.C., WHICH IS THE COMPLETE BLOOD COUNT, WE LOOK
23 AT THE PLATELET COUNT AND THEN WE LOOK AT P.T.
24 WHICH IS PROTHROMBIN TIME, WHICH IS A TEST FOR THE
25 COAGULATION SYSTEM, AND THE PARTIAL THROM TIME,

1 WHICH IS THE P.P.T., AND WE TRY TO CORRECT THOSE
2 OR PROLONG BLEEDING.

3 Q I TAKE IT AN M.R.I. -- MAGNETIC RESONANCE
4 IMAGING, AN M.R.I. SCAN, WAS NOT DONE IN THIS
5 CASE?

6 A NO, IT WAS NOT DONE.

7 Q AND AGAIN THAT'S A RADIOLOGICAL EXAM THAT CAN
8 BE DONE THAT IS DIFFERENT FROM THE C.T. SCAN,
9 CORRECT?

10 A THAT'S CORRECT, AN M.R.I. EXAM TAKES
11 APPROXIMATELY ONE HOUR. A C.T. SCAN CAN BE DONE
12 IN JUST A FEW SECONDS, AND THE CHILD WAS FAR TOO
13 UNSTABLE TO TRY TO GET AN M.R.I.

14 Q WHAT GENETIC STUDIES WERE UNDERTAKEN IN THIS
15 CASE?

16 A I'M NOT AWARE OF ANY GENETIC STUDIES.

17 Q WAS THE SUBDURAL, THE CLOT THAT COMPOSED THE
18 SUBDURAL HEMATOMA, SUBMITTED TO THE LAB FOR
19 CEREBRAL SPINAL FLUIDS?

20 A NOT FOR CEREBRAL SPINAL FLUID BECAUSE IT'S
21 NOT CEREBRAL SPINAL FLUID. THEY PROBABLY SENT IT
22 TO PATHOLOGY TO LOOK AT THE CLOT. ANY TIME THEY
23 DO A SURGICAL PROCEDURE, IT'S SUBMITTED TO
24 PATHOLOGY SO THEY CAN LOOK AT THE TISSUE.

25 Q OKAY. AND CAN YOU CONFIRM THAT WAS SENT TO

1 PATHOLOGY?

2 A I BELIEVE I SAW THAT IN THE RECORD. IN FACT,
3 I RECALL READING THAT, BUT I DON'T KNOW WHERE IT
4 IS RIGHT NOW.

5 MR. STICKLER: ALL RIGHT. THANK YOU VERY
6 MUCH?

7 THE COURT: REDIRECT?

8 MS. CAMPBELL: YES, SIR.

9 REDIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q DOCTOR, I'M GOING TO NEED YOUR HELP A LITTLE
12 BIT. MAYBE I'M A LITTLE DENSE OR MAYBE I'M JUST
13 NOT VERY CLEVER. HE ASKED YOU ABOUT THIS
14 PATHOLOGY REPORT, AND I'LL SHOW YOU THIS COPY THAT
15 YOU HAD IN YOUR RECORDS. IS THAT A COPY OF WHERE
16 THE BLOOD CLOT WAS SENT TO PATHOLOGY AND IN THE
17 APPROPRIATE MANNER IN THIS CASE?

18 A YES, IT IS.

19 Q AND I NEED TO GO BACK OVER SOME STUFF ABOUT
20 SUBSPECIALTIES IN MEDICINE. EVERYONE GETS WHAT'S
21 KNOWN AS AN M.D.; IS THAT CORRECT?

22 A CORRECT.

23 Q AND THERE ARE MANY DIFFERENT SUBSPECIALTIES;
24 IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND YOU ARE FAMILIAR WITH THE SUBSPECIALTY OF
2 RADIOLOGY?

3 A YES. DOCTORS WHO LOOK AT X-RAYS AND ALL
4 KINDS OF X-RAY IMAGING, IMAGING STUDIES, LIKE C.T.
5 SCANS, M.R.I.'S, THINGS LIKE THAT.

6 Q AND THERE WERE RADIOLOGISTS THAT WERE
7 INVOLVED THIS CASE, INCLUDING DR. CLOSE; IS THAT
8 CORRECT?

9 A THAT'S CORRECT.

10 Q AND THEN THERE'S ANOTHER SPECIALTY WHICH IS
11 SURGERY?

12 A THAT'S CORRECT.

13 Q AND A SUBSPECIALTY OF THAT WOULD BE
14 NEUROSURGERY?

15 A CORRECT.

16 Q AND IN THIS CASE THERE WAS SURGERY PERFORMED
17 OR ATTEMPTED ON THIS CHILD AND THAT WAS DONE BY
18 DR. SMITH; IS THAT CORRECT?

19 A THAT'S RIGHT.

20 Q AND THEN THERE IS ANOTHER SUBSPECIALTY THAT
21 WAS INVOLVED IN THIS CASE, AND THAT IS THE
22 PEDIATRIC OPHTHALMOLOGIST; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q AND THE PERSON THAT WAS INVOLVED THIS CASE
25 THAT WAS CALLED IN AS A SPECIALIST IN THAT AREA,

1 JUST AS THESE WERE CALLED IN AS SPECIALISTS IN
2 THEIR OWN AREA, WAS DR. CHRISTMANN, I BELIEVE, WHO
3 IS IN THE COURTROOM?

4 A THAT'S CORRECT.

5 Q AND IN YOUR HOSPITAL, WHICH WAS SOMEWHAT
6 UNIQUE AT THE TIME, BUT IN YOUR HOSPITAL -- I
7 BELIEVE YOUR HOSPITAL HAS A PEDIATRIC RESIDENCY
8 PROGRAM?

9 A YES, IT DOES.

10 Q AND, IN FACT, THAT RESIDENCY PROGRAM, THAT
11 PEDIATRIC RESIDENCY PROGRAM, WHICH YOU HAVE HERE
12 IN COLUMBIA IS AT RICHLAND MEMORIAL, RIGHT?

13 A THAT'S CORRECT.

14 Q IN CONJUNCTION WITH THE UNIVERSITY, RIGHT?

15 A THAT'S CORRECT.

16 Q IT HAS BEEN RECENTLY EVALUATED, IS THAT NOT
17 TRUE?

18 A THAT'S CORRECT.

19 Q AND IN THE NATION, OF THE SEVERAL HUNDRED
20 THAT EXIST, IT WAS RANKED, I BELIEVE, IN THE TOP
21 TEN; IS THAT CORRECT?

22 MR. STRICKLER: I'M SORRY, YOUR HONOR. I
23 OBJECT TO THE LEADING.

24 THE COURT: SUSTAIN AS TO LEADING.

25 BY MS. CAMPBELL:

1 Q HOW WAS IT RANKED NATIONWIDE?

2 A WE JUST HAD A REPORT RECENTLY ON OUR TRAINING
3 PROGRAM, AND I'M PART OF THE TRAINING PROGRAM. WE
4 ~~WERE IN THE TOP THREE PROGRAMS~~ IN THE COUNTRY FOR
5 PEDIATRIC TRAINING AS FAR AS TRAINING OUR PEOPLE
6 AND THEIR PASSING THE BOARDS IMMEDIATELY. ALL OF
7 OUR PEOPLE PASSED THE BOARDS, ONE HUNDRED PERCENT.

8 Q AND LET ME GET THIS STRAIGHT. YOU ARE A PART
9 OF THAT TRAINING; IS THAT CORRECT?

10 A ABSOLUTELY.

11 Q AND DR. CHRISTMANN, WHO IS SITTING HERE IN
12 THE COURTROOM, SHE IS ALSO PART OF THAT TRAINING?

13 MR. STRICKLER: OBJECTION TO THE LEADING.

14 THE COURT: PLEASE REPHRASE.

15 BY MS. CAMPBELL:

16 Q IS SHE ALSO PART OF THAT?

17 A YES, MA'AM. THE PEDIATRIC RESIDENTS WHO WERE
18 INVOLVED THIS CASE AND EVERY DOCTOR THEY COME IN
19 CONTACT WITH IS PART OF THEIR TRAINING.

20 Q AND IN THIS CASE, ALSO I BELIEVE THAT THERE
21 WAS A CHILD ABUSE SPECIALIST BROUGHT IN; IS THAT
22 CORRECT?

23 A THAT'S CORRECT, DR. ANNE ABEL.

24 Q AND THEN, OF COURSE, THERE IS YOUR SPECIALTY.

25 A YES, PEDIATRIC CRITICAL CARE.

1 Q INTENSIVE CARE?

2 A THAT'S CORRECT.

3 Q AND THESE ARE JUST SOME OF THE DOCTORS AND
4 SOME OF THE SPECIALTIES THAT WERE INVOLVED IN
5 ASSESSING THIS CASE; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q AND THE DEFENSE ATTORNEY HAD ASKED YOU THIS
8 ABOUT, YOU KNOW, DID YOU HAVE ALL THE NOTES AND
9 DID YOU REVIEW EVERYTHING IN MAKING YOUR
10 DETERMINATION.

11 A THAT'S CORRECT.

12 Q AND IN THIS CASE, BASED ON THE INFORMATION
13 YOU GOT FROM RADIOLOGY AND THE OTHER INFORMATION,
14 IS THAT CONSISTENT OR INCONSISTENT WITH YOUR
15 FINDINGS IN THIS CASE?

16 A CONSISTENT.

17 Q AND THE SURGEON, DR. SMITH, WHO ATTEMPTED TO
18 PERFORM SURGERY ON THIS CHILD'S BRAIN, WERE HIS
19 FINDINGS THE SAME OR INCONSISTENT WITH YOURS?

20 A CONSISTENT.

21 Q AND THE PEDIATRIC OPHTHALMOLOGIST, WHO WAS
22 BROUGHT IN, DR. CHRISTMANN, WERE HER FINDINGS
23 CONSISTENT OR INCONSISTENT WITH YOUR FINDINGS OF
24 CHILD ABUSE?

25 A CONSISTENT.

1 Q AND THE CHILD ABUSE SPECIALIST, DR. ABEL, WHO
2 WAS BROUGHT INTO THIS CASE, WERE HER FINDINGS
3 CONSISTENT OR INCONSISTENT WITH YOUR FINDINGS OF
4 CHILD ABUSE IN THIS CASE?

5 A CONSISTENT.

6 Q AND IN FACT, IN FORMULATING YOUR OPINION, DID
7 YOU RELY ON THESE DIFFERENT SPECIALISTS?

8 A I RELIED ON THEM FOR CONFIRMATION OF MY
9 OPINION, CORRECT.

10 Q AND NOTHING IN ANY OF THEIR REPORTS OR ANY OF
11 THEIR OPINIONS IS DIFFERENT FROM YOURS?

12 A THAT'S CORRECT.

13 Q AND AGAIN, DR. CLOSE WOULD BE THE PERSON WHO
14 WOULD BE BEST ABLE TO INTERPRET THE C.T. SCANS; IS
15 THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND AGAIN, DR. SMITH, HE IS GOING TO BE THE
18 EXPERT ON THE BRAIN?

19 MR. STRICKLER: OBJECTION TO THE LEADING.

20 THE COURT: SUSTAINED AS TO LEADING.

21 BY MS. CAMPBELL:

22 Q DOCTOR, WHO WOULD BE THE EXPERT ON THE BRAIN
23 AND DIFFERENT DURAS OR WHATEVER OF THE BRAIN?

24 A DR. SMITH IS MORE FAMILIAR WITH NEUROANATOMY,
25 THE NEUROANATOMY ABOUT THE DIFFERENT LAYERS. THIS

1 IS SOMETHING YOU LEARN DURING MEDICAL SCHOOL, AND
2 FOR CLINICAL TREATMENT OF THESE THINGS, IT'S
3 ABSOLUTELY NOT NECESSARY FOR ME TO KNOW THAT.

4 Q OKAY. THE DEFENSE ATTORNEY ALSO ASKED YOU A
5 SERIES OF QUESTIONS ABOUT YOUR OBSERVATIONS OF THE
6 CHILD'S SKIN AND SOME BRUISING IN THIS CASE?

7 A YES, MA'AM.

8 Q LET ME ASK YOU SOMETHING, DOCTOR. IF I HIT
9 MYSELF RIGHT NOW, AND IT'S GOING TO LEAVE A
10 BRUISE, DOES THAT BRUISE FORMULATE IMMEDIATELY OR
11 WILL IT TAKE A PERIOD OF TIME?

12 A IT WILL TAKE A PERIOD OF TIME.

13 Q AND IN THIS CASE IN ORDER TO DOCUMENT THE
14 BRUISING ON THIS CHILD, DID YOU BRING IN A
15 SPECIALIST?

16 A NO, MA'AM, I DID NOT.

17 Q YOU DIDN'T BRING IN DR. ABEL?

18 A YES, I DID. DR. ABEL, THAT IS HER SPECIALTY
19 FOR ALL ASPECTS OF CHILD ABUSE, CORRECT.

20 Q AND WERE YOU AWARE IN THIS CASE, DOCTOR, THAT
21 CERTAIN PHOTOGRAPHS WERE TAKEN OF THIS CHILD TO
22 DOCUMENT THE BRUISING?

23 A YES, I AM AWARE OF THAT.

24 Q HE ALSO ASKED YOU A SERIES OF QUESTIONS ABOUT
25 WHETHER OR NOT YOU HAD REVIEWED THIS CHILD'S BIRTH

1 RECORDS; IS THAT CORRECT?

2 A YES.

3 Q AND YOU DID NOT REVIEW THOSE, RIGHT?

4 A RIGHT.

5 Q AND HE ASKED YOU ABOUT THIS BEING A PREMATURE
6 COCAINE BABY WHEN SHE WAS BORN, CORRECT?

7 A YES.

8 Q AND THE FACT THAT SHE SUFFERED FOR A MONTH, I
9 BELIEVE -- DOES THAT IN ANY WAY, THAT KNOWLEDGE OF
10 WHICH YOU HAD MOST OF IT, IN ANY WAY AFFECT YOUR
11 FINDINGS OF THIS TWO YEARS AND THREE MONTHS OLD
12 BABY?

13 A ~~ABSOLUTELY NOT. IT HAS NOTHING TO DO WITH~~
14 ~~IT.~~

15 Q HE ALSO ASKED YOU ABOUT SUBDURAL HEMATOMAS.
16 ~~IN THIS CASE THE RADIOLOGIST FOUND THAT THERE WAS~~
17 ~~AN OLD ONE, AS WELL AS A NEW ONE?~~

18 A THAT'S CORRECT.

19 Q IN ADDITION TO THE SUBDURAL HEMATOMA OF WHICH
20 HE ASKED YOU A LOT OF QUESTIONS IN THIS CASE,
21 THERE WAS NO QUESTION THAT THERE WAS AN ACUTE OR
22 CURRENT NEW HEMATOMA IN THIS CHILD; IS THAT
23 CORRECT?

24 A ABSOLUTELY.

25 Q SO WE HAVE AN OLD ONE. SO THIS IS OLD, AND

1 THEN WE GET ANOTHER ONE. THOSE WERE TWO OF THE
2 INJURIES THAT THIS CHILD SUFFERED; IS THAT
3 CORRECT?

4 A THERE ARE TWO DIFFERENT HEMATOMAS, THAT WOULD
5 BE CORRECT.

6 Q LET'S TALK ABOUT THE OTHER INJURIES ON THIS
7 CHILD, WHICH IN ADDITION TO THAT WHICH HE WAS
8 FOCUSED ON, YOU'VE ALSO GOT RETINAL HEMORRHAGES,
9 RIGHT?

10 A THAT'S CORRECT.

11 Q I DON'T KNOW IF I CAN SPELL THAT -- AND
12 THAT'S IN THE EYES?

13 A THAT'S IN THE BACK OF THE EYES, CORRECT.

14 Q AND IN ADDITION TO THE BLOOD JUST UNDER ITS
15 SKULL --

16 MR. STRICKLER: YOUR HONOR, AT THIS POINT I
17 WILL OBJECT.

18 THE COURT: SUSTAINED AS TO LEADING. IS THAT
19 THE OBJECTION?

20 MR. STRICKLER: YES, YOUR HONOR, THE
21 OBJECTION IS TO THE LEADING.

22 THE COURT: I'M GOING TO 403 ON BOTH OF YOU
23 NOW.

24 BY MS. CAMPBELL:

25 Q THE OTHER INJURIES --

1 A DO YOU WANT ME TO JUST DESCRIBE THE OTHER
2 INJURIES?

3 Q YES, DESCRIBE THE OTHER INJURIES.

4 A THE OTHER INJURIES WERE BRAIN EDEMA, RETINAL
5 HEMORRHAGES, SUBDURAL HEMATOMA. THOSE WERE THE
6 BIG THREE THAT LED TO MY DIAGNOSIS.

7 Q EDEMA, IS THAT SWELLING OF THE BRAIN?

8 A THAT'S SWELLING OF THE BRAIN.

9 Q WHAT WOULD THIS CHILD'S ABILITY TO FUNCTION
10 HAVE BEEN AFTER SUSTAINING THE KIND OF TRAUMA THAT
11 CAUSED THE SWELLING, AS WELL AS THE RETINAL
12 HEMORRHAGES?

13 MR. STRICKLER: I'LL OBJECT AS TO IMPROPER
14 REDIRECT.

15 THE COURT: OVERRULED.

16 MS. CAMPBELL: THANK YOU.

17 BY MS. CAMPBELL:

18 Q GO AHEAD.

19 A COULD YOU RESTATE? I'M SORRY.

20 Q WHAT WOULD THIS CHILD'S ABILITY TO FUNCTION
21 HAVE BEEN AFTER IT HAD SUSTAINED THE INJURY THAT
22 CAUSES THE SWELLING AND THE RETINAL HEMORRHAGES
23 AND THE HEMATOMAS?

24 A THIS CHILD HAD LITTLE TO NO CHANCE IN MY
25 OPINION TO HAVE ANY FUNCTION OR RESIDUAL -- ANY

1 ABILITY TO FUNCTION IN ANY KIND OF MEANINGFUL WAY
2 AFTER THIS KIND OF INJURY, IF THIS CHILD COULD
3 HAVE SURVIVED. THIS WOULD HAVE BEEN THE TYPE OF
4 CHILD TO BE IN A VEGETATIVE STATE IF IT COULD HAVE
5 SURVIVED.

6 Q THE DEFENSE ALSO ASKED YOU A SERIES OF
7 QUESTIONS ABOUT SOME ARTICLES AND WHETHER OR NOT
8 YOU HAD READ THOSE ARTICLES?

9 A YES, MA'AM.

10 Q AND THOSE WERE ARTICLES, I THINK THOSE HAD TO
11 DO WITH PATHOLOGY?

12 A THESE WERE A BUNCH OF TEXTBOOKS AND TREATISES
13 AND FORENSIC PATHOLOGY. I AM NOT A PATHOLOGIST.
14 THESE WOULD IN NO WAY AFFECT MY ABILITY TO TREAT
15 INTENSIVE CARE PROBLEMS IN PEDIATRICS.

16 Q AND THE PATHOLOGY IS, IN FACT, ANOTHER
17 SPECIALTY; IS THAT CORRECT?

18 A YES, IT IS, AND THE PATHOLOGISTS ARE THE ONES
19 WHO DO THE AUTOPSY AND THEY'RE THE ONES IN CHARGE
20 OF THE LABS FOR CASES LIKE THIS.

21 Q FINALLY, ARE YOU AWARE THAT THERE HAS BEEN
22 SOME LITERATURE, A GOOD BIT OF LITERATURE, ABOUT
23 SHAKEN BABY SYNDROME PUBLISHED?

24 A YES, THERE HAS BEEN.

25 Q AND I DON'T KNOW IF I MENTIONED IT, BUT DID

1 HE ASK YOU ABOUT ANY OF THOSE ARTICLES?

2 A I DON'T RECALL. I DON'T THINK SO.

3 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR HONOR.

4 THE COURT: ANYTHING ELSE ON RECROSS?

5 MR. STRICKLER: NO, SIR.

6 THE COURT: THANK YOU, SIR. YOU MAY STEP
7 DOWN.

8 ANY OBJECTION TO THE DOCTOR BEING RELEASED
9 FROM THE SUBPOENA?

10 MR. STRICKLER: NO, SIR.

11 THE COURT: OKAY, YOU MAY CALL YOUR NEXT
12 WITNESS.

13 MS. CAMPBELL: THE STATE WOULD CALL DR. LINDA
14 CHRISTMANN.

15 YOUR HONOR, MAY WE APPROACH JUST ONE SECOND?

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD
17 IN THE PRESENCE OF THE JURY, BUT OUT OF
18 THE HEARING OF THE JURY.)

19 THE CLERK: IF YOU'D PLACE YOUR LEFT HAND ON
20 THE BIBLE AND RAISE YOUR RIGHT HAND, PLEASE.

21 DR. LINDA CHRISTMANN,

22 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR
24 FULL NAME, SPELL YOUR LAST NAME.

25 THE WITNESS: MY NAME IS LINDA MEWIS

1 CHRISTMANN. MY MAIDEN NAME IS MY MIDDLE NAME,
2 M-E-W-I-S. MY LAST NAME IS CHRISTMANN, SPELLED
3 C-H-R-I-S-T-M-A-N-N.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q DR. CHRISTMANN, WHERE ARE YOU EMPLOYED?

7 A I'M SELF-EMPLOYED THROUGH OUR CORPORATION,
8 PEDIATRIC EYE CARE AND SURGERY.

9 Q AND HOW LONG HAVE YOU BEEN A PEDIATRIC
10 OPHTHALMOLOGIST?

11 A SINCE 1983.

12 Q CAN YOU TELL THIS JURY A LITTLE BIT ABOUT
13 YOUR EDUCATION AND YOUR TRAINING IN THE MEDICAL
14 FIELD?

15 A YES, MA'AM. I COMPLETED A MEDICAL DEGREE AT
16 THE UNIVERSITY OF TEXAS MEDICAL SCHOOL AT HOUSTON.
17 I DID A RESIDENCY IN OPHTHALMOLOGY AT THE SAME
18 INSTITUTION AND A YEAR IN TRAINING IN PEDIATRIC
19 OPHTHALMOLOGY AND ADULT STRABISMUS.

20 Q DID YOU ALSO HAVE A PERIOD OF TIME WHERE YOU
21 WERE AN OPHTHALMOLOGIST, A PEDIATRIC OPHTHALMOLOGY
22 CONSULTANT, WITH THE AIR FORCE?

23 A YES. AFTER MY TIME IN SCHOOL I HAD A PAY
24 BACK TO DO FOR THE MILITARY FOR MY MEDICAL SCHOOL,
25 SO I WAS AN AIR FORCE OPHTHALMOLOGIST FOR FIVE

1 YEARS AND CONSULTED IN PEDIATRIC OPHTHALMOLOGY.
2 AT THE CONCLUSION OF THAT TIME, I JOINED THE
3 FACULTY AT THE UNIVERSITY OF SOUTH CAROLINA SCHOOL
4 OF MEDICINE IN THE DEPARTMENTS OF OPHTHALMOLOGY
5 AND PEDIATRICS. I WAS A FULL-TIME FACULTY MEMBER
6 THERE IN 1992 AND THEN ESTABLISHED MY PRIVATE
7 PRACTICE AND BECAME A CLINICAL ASSISTANT PROFESSOR
8 AT THAT TIME.

9 Q OKAY, A CLINICAL ASSISTANT PROFESSOR. SO,
10 YOU'RE STILL INVOLVED IN THE PEDIATRIC AND
11 OPHTHALMOLOGY PROGRAMS?

12 A YES, MA'AM. I AM NOW A CLINICAL PROFESSOR IN
13 THE FIELD OF OPHTHALMOLOGY AND PEDIATRICS.

14 Q HAVE YOU TESTIFIED BEFORE AS AN EXPERT IN THE
15 AREA OF PEDIATRIC OPHTHALMOLOGY?

16 A YES, I HAVE.

17 Q AND IN FACT, YOU HAVE BEEN QUALIFIED IN THAT
18 AREA ON MULTIPLE TIMES?

19 A YES, I HAVE.

20 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
21 OFFER DR. CHRISTMANN AS AN EXPERT IN THE FIELD OF
22 PEDIATRIC OPHTHALMOLOGY.

23 THE COURT: ANY QUESTIONS?

24 MR. STRICKLER: NONE ON THAT.

25 THE COURT: ALL RIGHT. YOU MAY PROCEED ON

1 THAT BASIS.

2 BY MS. CAMPBELL:

3 Q DOCTOR, CAN YOU TELL THIS JURY, WHAT IS
4 PEDIATRIC OPHTHALMOLOGY?

5 A PEDIATRIC OPHTHALMOLOGY IS THE DIAGNOSIS AND
6 MANAGEMENT OF EYE DISEASE IN BABIES AND CHILDREN
7 AND THAT'S WHAT WE DO WITH ABOUT 98 PERCENT OF OUR
8 TIME.

9 Q AND PEDIATRIC OPHTHALMOLOGY, THAT'S A PRETTY
10 SMALL SPECIALTY?

11 A IT IS A RELATIVELY SMALL SPECIALTY. THERE
12 ARE ABOUT 750 IN THE UNITED STATES.

13 Q AND APPROXIMATELY HOW MANY HERE IN SOUTH
14 CAROLINA THAT ARE ACTUALLY IN YOUR SPECIALIZED
15 FIELD?

16 A I BELIEVE THERE ARE 12 OF US NOW.

17 Q CURRENTLY UNDER YOUR CARE, HOW MANY CHILDREN
18 ARE YOU CURRENTLY SEEING FOR DIFFERENT EYE
19 PROBLEMS?

20 A OUR PRACTICE HAS APPROXIMATELY 25 TO 30,000
21 PATIENTS ENROLLED.

22 Q AND TELL THIS JURY AS PART OF YOUR PRACTICE
23 TYPICALLY WHAT KIND OF SERVICE YOU RENDER AND WHAT
24 KIND OF TREATMENT YOU PROVIDE CHILDREN WITH?

25 A WE PARTICIPATE IN THE DIAGNOSIS AND

1 MANAGEMENT OF BABIES AND SMALL CHILDREN FROM BIRTH
2 UNTIL ADULTHOOD. THAT INCLUDES MANAGEMENT OF
3 RETINOPATHY PREMATURITY, WHICH IS A DISEASE IN
4 PREMATURE BABIES, MANAGEMENT OF CROSSED EYES AND
5 LAZY EYES, TEARING PROBLEMS IN BABIES, TUMORS
6 AROUND THE EYE, MANAGEMENT OF EYE DISEASE IN
7 CHILDREN WITH CANCER, AND CHILD ABUSE CASES.

8 Q SO YOU ARE A CONSULTANT IN CHILD ABUSE CASES?

9 A YES, I AM.

10 Q CAN YOU EXPLAIN TO THE JURY ABOUT THE
11 INTERACTION BETWEEN THE EYES AND THE BRAIN AND HOW
12 IT AFFECTS THE VISION?

13 A VISION IS BASED ON TWO DIFFERENT PARTS OF
14 YOUR BODY, ONE PART THAT EVERYONE IS FAMILIAR WITH
15 IS THE EYE, BUT THE EYE IS LIKE THE CAMERA AND THE
16 MESSAGE ABOUT WHAT YOU SEE IS SENT TO THE BRAIN
17 VIA THE OPTIC NERVE. SO BOTH THE EYE AND THE
18 BRAIN HAVE TO FUNCTION APPROPRIATELY FOR YOU TO
19 SEE.

20 Q AND YOU'RE FAMILIAR WITH THE TERM SHAKEN BABY
21 SYNDROME?

22 A YES, I AM.

23 Q AND WHAT IS SHAKEN BABY SYNDROME?

24 A SHAKEN BABY SYNDROME IS A CONSTELLATION OF
25 BOTH HISTORICAL FACTS AND FACTS ABOUT THE PHYSICAL

1 FINDINGS OF THE BABY.

2 THEY INCLUDE BLEEDING AROUND THE BRAIN,
3 RETINAL HEMORRHAGES, POSSIBLY OTHER INJURIES TO
4 THE BABY, AND MORE IMPORTANTLY AN ABSENCE OF
5 HISTORY OF SIGNIFICANT TRAUMA OR INJURY.

6 Q AND, IN FACT, DOCTOR, YOU'VE DONE -- YOU ARE
7 QUITE ACTIVE IN THE FIELD THAT HAS DONE A LOT OF
8 RESEARCH --

9 MR. STRICKLER: I'LL OBJECT TO LEADING AT
10 THIS POINT.

11 THE COURT: SUSTAINED.

12 BY MS. CAMPBELL:

13 Q HAVE YOU BEEN INVOLVED IN THE FIELD THAT HAS
14 DONE RESEARCH INTO SHAKEN BABY SYNDROME?

15 A YES, I'M CURRENTLY INVOLVED WITH A GROUP
16 CALLED THE INTERNATIONAL RETINAL HEMORRHAGE
17 RESEARCH NETWORK, WHICH IS LOOKING INTO RETINAL
18 HEMORRHAGES AND HOW THEY RELATE TO VARIOUS OTHER
19 FINDINGS IN CHILD ABUSE CASES.

20 Q CAN YOU TELL THIS JURY WHAT ARE SOME OF THE
21 TYPICAL INDICATORS OF SHAKEN BABY?

22 A STARTING WITH HISTORY, MOST IMPORTANTLY IS
23 THE ABSENCE OF ANY SIGNIFICANT HISTORY OF INJURY.
24 THEN THE PRESENTATION OF THE BABY TO THE DOCTOR;
25 WAS THE BABY BROUGHT IN A TIMELY FASHION? WHAT

1 WAS THE BABY'S CONDITION AT PRESENTATION? WERE
2 THERE ANY OTHER KNOWN DISEASES IN THE BABY PRIOR
3 TO THE TIME OF THE INJURY?

4 SECONDLY, THE PHYSICAL FINDINGS, BOTH ON MY
5 EXAMINATION OF THE EYES, BUT ALSO THE OTHER
6 PHYSICIANS INVOLVED IN THE CARE OF THE BABY
7 INCLUDING THE NEUROSURGEON, THE CHILD ABUSE
8 SPECIALIST, THE PEDIATRIC INTENSIVIST, SOMETIMES
9 ORTHOPEDISTS, CERTAINLY IN SOME CASES THE
10 PATHOLOGISTS, AND THE RADIOLOGISTS, AND THEN LOOK
11 AT THE RESULTS OF ALL OF THAT TESTING IN
12 CONJUNCTION WITH THE PHYSICAL FINDINGS.

13 Q AND, DOCTOR, IN CHILD ABUSE CASES, ESPECIALLY
14 WHEN THEY'RE SUSPECTED OF SHAKEN BABY SYNDROME,
15 ARE YOU CALLED THEN TO DETERMINE THE PRESENCE OR
16 ABSENCE OF RETINAL HEMORRHAGES?

17 A THAT'S CORRECT.

18 Q AND WHY IS THAT SO SIGNIFICANT WITH THIS TYPE
19 OF INJURY?

20 A IT'S VERY SIGNIFICANT IN THIS TYPE OF INJURY
21 BECAUSE RETINAL HEMORRHAGES OCCUR MUCH MORE
22 FREQUENTLY IN BABIES WHO ARE SHAKEN OR
23 INTENTIONALLY INJURED AS COMPARED TO THOSE WHO ARE
24 INJURED ACCIDENTALLY.

25 Q AND AT MY REQUEST IS THERE A PRESENTATION, A

1 FAIRLY SHORT PRESENTATION, THAT COULD HELP YOU
2 ILLUSTRATE TO THE JURY WHAT TYPES OF THINGS YOU'RE
3 LOOKING FOR WHEN YOU DO AN EXAMINATION ON A CHILD?

4 A YES, THERE IS.

5 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE
6 WOULD JUST ASK PERMISSION FOR HER TO -- SHE CAN
7 NARRATE IT, AND WE HAVE SOMEBODY JUST TO RUN IT.

8 THE COURT: THAT'S FINE.

9 BY MS. CAMPBELL:

10 Q OKAY, DOCTOR.

11 A SHALL I PROCEED WITH THE DESCRIPTION?

12 Q YES.

13 A THIS FIRST ONE JUST SHOWS THE ANATOMY OF THE
14 EYE, THE EYE ITSELF, SITTING IN THE ORBIT, THE
15 BONES AROUND THE EYE. YOU CAN SEE THE EYEBALL.
16 YOU SEE THE OPTIC NERVE WHICH LEADS TO THE BRAIN.
17 YOU SEE BLOOD VESSELS BRANCHING OUT OVER THE
18 RETINA HERE IN THE BACK OF THE EYE, AND THIS WOULD
19 BE THE FRONT OF THE EYE, AND HERE ARE THE EYELIDS.

20 NEXT.

21 THIS SLIDE IS TO ILLUSTRATE HOW THE EYE
22 FUNCTIONS LIKE A CAMERA, WITH A LENS IN THE FRONT
23 OF THE EYE AND A FILM IN THE BACK OF THE EYE. IT
24 TAKES A PICTURES THAT'S IMPACTED UPON THE FILM.

25 NEXT.

1 AND TO SHOW YOU HOW THE EYE FUNCTIONS IN A
2 SIMILAR MANNER, WITH THE LENS IN THE FRONT OF THE
3 EYE AND THE RETINA IN THE BACK OF THE EYE, WHICH
4 IS THE FILM AND THE PICTURE AND WHAT YOU SEE IS
5 THEN IMAGED ONTO THE RETINA.

6 NEXT.

7 THIS SHOWS THAT THE OPTIC NERVE CONNECTS TO
8 THE EYE IN THE BACK.

9 NEXT.

10 THERE ARE ALSO SPECIAL PARTS OF THE RETINA
11 CALLED THE CHORIOIDEA.

12 NEXT.

13 THIS CAUSES THE KIND OF SHAKING THAT WE
14 BELIEVE CAUSES INJURIES OF THE NATURE SEEN IN THIS
15 PATIENT.

16 NEXT.

17 AND THIS ANIMATION SHOWS THAT WHEN SHAKING
18 OCCURS THERE'S MOVEMENT OF THE BRAIN, BUT ALSO
19 MOVEMENT OF THE EYE AND THE VITREOUS JELLY WHICH
20 FILLS THE BACK OF THE EYE, THE OPTIC NERVE, AND
21 BLOOD MAY COLLECT IN THE EYE AND VARIOUS LAYERS OF
22 THE RETINA, AS WELL AS IN THE OPTIC NERVE AND
23 BEHIND THE EYE.

24 NEXT.

25 AND THIS JUST DOCUMENTS A LITTLE BIT MORE,

1 THESE MECHANICAL FORCES.

2 NEXT.

3 THIS PARTICULARLY POINTS OUT BLEEDING IN THE
4 OPTIC NERVE ITSELF, BUT ESPECIALLY WITHIN THE
5 COVERINGS AROUND THE OPTIC NERVE AND THESE
6 COVERINGS AROUND THE OPTIC NERVE ARE, IN FACT,
7 CONNECTED TO THE COVERINGS AROUND THE BRAIN IN THE
8 DURA. AND THIS IS WHERE THE NERVE ENDS INSIDE THE
9 EYE AND YOU CAN SEE BLEEDING AT THAT CONNECTION
10 BETWEEN THE OPTIC NERVE AND THE EYE IN SHAKEN
11 BABY.

12 NEXT.

13 THIS IS ACTUALLY A CROSS SECTION TAKEN FROM A
14 BABY WHO HAD DIED OF A SHAKING INJURY SHOWING THE
15 BACK WALL OF THE EYE. THIS IS THE WHITE PORTION.
16 THIS IS THE OPTIC NERVE. THIS IS THE LAYER AROUND
17 THE OPTIC NERVE. YOU CAN SEE BLOOD WITHIN THE
18 COVERINGS AROUND THE OPTIC NERVE AT THE JUNCTION
19 AND THEN BLEEDING WITHIN THE RETINA. THIS
20 CRUMPLED LOOKING LAYER IS THE RETINA, WHICH
21 FREQUENTLY SEPARATES FROM THE BACK OF THE EYE AS A
22 RESULT OF HAVING THE EYES REMOVED AND FIXED FOR A
23 POSTMORTEM SPECIMEN, AND THIS SHOWS BOTH THE
24 RETINAL HEMORRHAGES AND BLEEDING AROUND THE NERVE
25 COMMONLY SEEN IN SUCH BABIES AND ALSO SEEN IN THIS

1 CHILD.

2 NEXT.

3 THIS SHOWS A DIFFERENT KIND OF RETINAL
4 HEMORRHAGE THAT INSTEAD OF EXTENDING WELL OUT INTO
5 THE RETINA FAR AWAY FROM THE OPTIC NERVE THERE ARE
6 LITTLE RETINAL HEMORRHAGES CLUSTERED RIGHT AROUND
7 THE OPTIC NERVE. THIS WOULD BE THE KIND OF
8 BLEEDING WE WOULD SEE ON THE RETINA IF THE
9 PRESSURE ON THE BRAIN WERE INCREASED FROM ANY
10 CAUSE AND NOT SPECIFICALLY FROM SHAKEN BABY.

11 THANK YOU.

12 Q SO BASED ON WHAT YOU JUST SAID, THERE CAN BE
13 HEMORRHAGING CAUSED BY PRESSURE ON THE BRAIN?

14 A THAT'S CORRECT.

15 Q BUT IT APPEARS DIFFERENT FROM THE TYPES OF
16 HEMORRHAGES YOU SEE IN A SHAKEN BABY CASE?

17 A NOT IN EVERY CASE, BUT IN THIS PATIENT, YES.

18 Q ALL RIGHT. ARE YOU FAMILIAR WITH A LITTLE
19 GIRL NAMED MINOR ?

20 A YES, I AM.

21 Q AND WHEN DID YOU FIRST COME IN CONTACT WITH
22 MINOR ?

23 A I HAVE HER MEDICAL RECORD IN FRONT OF ME. IF
24 YOU'LL LET ME REFER BACK TO THAT.

25 Q YES, MA'AM.

1 (PAUSE)

2 A MY FIRST EXAMINATION OF HER WAS JANUARY 15TH
3 1998.

4 Q AND WHAT WAS THE PURPOSE OF YOU SEEING HER
5 BACK IN JANUARY OF 1998, WHEN SHE WOULD HAVE BEEN
6 ABOUT ONE MONTH OLD?

7 A I WAS CALLED TO SEE THE BABY WHILE SHE WAS IN
8 THE NEONATAL INTENSIVE CARE UNIT. SHE HAD BEEN
9 BORN EARLY AND BECAUSE OF THAT WE ARE FREQUENTLY
10 CONSULTED DURING THE HOSPITALIZATION TO LOOK FOR
11 THE PRESENCE OR ABSENCE OF THE DISEASE I ALLUDED
12 TO EARLIER CALLED RETINOPATHY PREMATUREITY.

13 Q AND WHEN YOU EXAMINED HER BACK IN JANUARY OF
14 1998, WHAT WERE YOUR FINDINGS?

15 A SHE DID NOT HAVE RETINOPATHY OR PREMATUREITY
16 OR OTHER SIGNIFICANT EYE FINDINGS.

17 Q DID YOU HAVE ANOTHER OPPORTUNITY TO EXAMINE
18 HER AS A LITTLE BABY?

19 A YES, I DID.

20 Q WHEN WAS THAT?

21 A I EXAMINED HER ON FEBRUARY 9TH, 1998. AGAIN
22 AT THAT EXAMINATION, THE EXAMINATION WAS NORMAL
23 FOR HER AGE, EXCEPT THAT SHE WAS VERY FARSIGHTED.

24 FARSIGHTEDNESS IN BABIES CAN LEAD TO OTHER
25 KINDS OF EYE PROBLEMS, SO I ASKED THAT SHE SEE ME

1 AGAIN IN A YEAR.

2 Q AND AFTER SEEING HER, I GUESS TWICE WITHIN
3 THE FIRST TWO MONTHS OF HER BIRTH, DID YOU HAVE AN
4 OPPORTUNITY TO SEE HER AGAIN ABOUT A YEAR,
5 YEAR-AND-A-HALF LATER?

6 A I EXAMINED HER AGAIN DECEMBER 15TH, 1999.

7 Q DECEMBER OF 1999?

8 A YES, THAT'S CORRECT.

9 Q OKAY.

10 A SHE WAS TWO YEARS OLD.

11 Q TWO YEARS OLD. WHAT WAS THE PURPOSE OF YOU
12 SEEING HER IN DECEMBER OF 1999?

13 A IT WAS TO REEVALUATE HER FOR THE
14 FARSIGHTEDNESS I HAD DETECTED AT THE PREVIOUS
15 OFFICE EXAMINATION. AT THAT TIME HER EXAMINATION
16 WAS NORMAL. HER FARSIGHTEDNESS HAD DIMINISHED AND
17 THE REMAINDER OF THE EXAMINATION FROM AN EYE
18 STANDPOINT WAS COMPLETELY NORMAL.

19 I RECOMMENDED FOLLOW-UP CARE FOR HER IN
20 ANOTHER TWO YEARS.

21 Q AND WHEN YOU SAY THAT THAT EXAMINATION AND
22 THE PREVIOUS TWO WERE NORMAL, DID YOU SEE ANY
23 RETINAL HEMORRHAGES WHEN YOU SAW HER IN DECEMBER
24 OF 1999?

25 A THERE WERE NO RETINAL HEMORRHAGES.

1 Q AND YOU RECOMMENDED THAT SHE COME BACK AND
2 SEE YOU, I BELIEVE YOU SAID IN TWO YEARS?

3 A THAT'S CORRECT.

4 Q NOW, DOCTOR, DID YOU HAVE ANOTHER OCCASION TO
5 SEE MINOR ABOUT THREE MONTHS AFTER THAT?

6 A YES, I DID.

7 Q AND WHEN WAS THAT?

8 A I EXAMINED HER ON MARCH 29TH, 2000.

9 Q WHERE WAS SHE WHEN YOU WERE EXAMINING HER AT
10 THAT TIME?

11 A IN THE PEDIATRIC INTENSIVE CARE UNIT AT
12 RICHLAND MEMORIAL.

13 Q AND WHO CALLED YOU IN FOR THAT EXAMINATION?

14 A DR. HUBBIRD.

15 Q AND WHAT WAS THE PURPOSE OF YOU COMING IN TO
16 EXAMINE MINOR WHEN SHE WAS IN THE INTENSIVE CARE
17 UNIT AT RICHLAND MEMORIAL?

18 A TO EXAMINE HER FOR EYE SIGNS CONSISTENT WITH
19 SHAKEN BABY SYNDROME.

20 Q WHAT, IF ANYTHING, DID YOU DO PRIOR TO DOING
21 YOUR EXAMINATION OR HAD DONE?

22 A I ADDED A COPY OF MY PREVIOUS EXAMINATION TO
23 THE CHART AT THAT TIME. I REVIEWED THE RECORDS
24 THAT WERE ALREADY IN THE CHART. SHE HAD BEEN
25 ADMITTED APPROXIMATELY 48 HOURS -- 24 HOURS PRIOR

1 TO THE TIME I SAW HER. I REVIEWED THE NOTES FROM
2 DR. LENWOOD SMITH, THE PEDIATRIC NEUROSURGEON, AND
3 THE HISTORY GIVEN TO THE ADMITTING PEDIATRICIAN.

4 Q AFTER MAKING THOSE REVIEWS, DID YOU HAVE AN
5 OPPORTUNITY TO PERFORM AN EXAMINATION ON THIS
6 CHILD?

7 A YES, I DID.

8 Q WHAT WAS HER CONDITION OR HER STATE OF
9 CONSCIOUSNESS WHEN YOU SAW HER?

10 A I DOCUMENTED IN MY NOTES THAT SHE WAS
11 INTUBATED. THAT MEANS SHE WAS NOT BREATHING ON
12 HER OWN. SHE HAD A BREATHING TUBE IN PLACE AND I
13 NOTED THAT SHE WAS UNRESPONSIVE. THAT MEANS SHE
14 DID NOT MOVE OR RESPOND AT ALL WHILE I EXAMINED
15 HER.

16 Q TELL THIS JURY HOW YOU WENT ABOUT EXAMINING
17 THIS CHILD.

18 A OUR EXAMINATION HAS TWO PARTS. ONE IS AN
19 EXTERNAL INSPECTION OF THE EYES, WHETHER THERE
20 WERE SIGNS OF BRUISING AROUND THE EYES OR REDNESS
21 OF THE WHITE PART OF THE EYE OR ANY OTHER FINDINGS
22 THAT YOU COULD SEE WITH A FLASHLIGHT, AND ALL OF
23 THAT PART WAS NORMAL EXCEPT SHE HAD SOME SWELLING
24 ON THE RIGHT SIDE OF HER FACE.

25 THEN WE USED TWO INSTRUMENTS TO EXAMINE THE

1 INTERIOR OF THE EYE, THE RETINA AND THE OPTIC
2 NERVE. ONE IS CALLED DIRECT OPHTHALMOSCOPE AND
3 ONE IS AN INDIRECT OPHTHALMOSCOPE. TO USE THE
4 INDIRECT OPHTHALMOSCOPE EFFECTIVELY, YOU HAVE TO
5 DILATE THE PUPILS WITH DROPS. PROBABLY MANY OF
6 YOU HERE KNOW WHAT THAT MEANS SINCE YOU MAY HAVE
7 HAD THAT DONE, SO THAT THE PUPIL OPENS VERY WIDELY
8 AND GIVES US A GOOD VIEW OF THE RETINA AND OPTIC
9 NERVE AND THAT WAS DONE IN THIS CASE.

10 Q AFTER THOSE THINGS WERE DONE IN THIS CASE,
11 DID YOU HAVE AN OPPORTUNITY TO OBSERVE HER
12 RETINAS?

13 A YES. THE RETINAL EXAM, THE FRONT PART OF THE
14 EYE WAS NORMAL AS I STATED. THE RETINAL
15 EXAMINATION SHOWED MULTIPLE HEMORRHAGES IN
16 DIFFERENT LAYERS OF THE RETINA AND ALL OF THE
17 RETINA IN BOTH EYES.

18 Q OKAY. SO LET ME GET THIS STRAIGHT. YOU'VE
19 GOT MULTIPLE LAYERS OF HEMORRHAGING?

20 A YES, THAT'S CORRECT.

21 Q AND WHAT DID YOU SAY?

22 A IN ALL OF THE DIFFERENT AREAS OF THE EYES, SO
23 ALL FOUR QUADRANTS, IF YOU DIVIDED THE EYE INTO A
24 CLOCK FACE AND SAID, ONE QUADRANT, TWO QUADRANTS,
25 THREE QUADRANTS, FOUR QUADRANTS, ALL OF THOSE WERE

1 INVOLVED.

2 Q IN BOTH EYES?

3 A IN BOTH EYES.

4 Q AND DOCTOR, WE SAW SOME DIAGRAMS OF HOW THE
5 HEMORRHAGING CAN APPEAR DIFFERENT. IN THIS CASE,
6 HOW DID THE HEMORRHAGES APPEAR TO YOU?

7 A THE HEMORRHAGES WERE NOT THE KIND OF
8 HEMORRHAGES THAT OCCUR WHEN THERE'S PRESSURE ON
9 THE BRAIN ONLY. THERE ARE HEMORRHAGES THAT ARE
10 VERY CHARACTERISTICALLY SEEN IN SHAKEN BABY
11 SYNDROME.

12 Q AND IN REVIEWING YOUR NOTES, I ALSO NOTE THAT
13 YOU DESCRIBED IT, I BELIEVE, AS DISTINCT -- IS
14 THAT THE WORD YOU USED?

15 A THAT'S CORRECT.

16 Q IS THAT OF ANY SIGNIFICANCE TO YOU IN
17 ASSESSING THESE HEMORRHAGES?

18 A THAT MEANS THAT THE HEMORRHAGES HAD OCCURRED
19 VERY RECENTLY. WHEN BLEEDING OCCURS IN THE RETINA
20 IN BABIES, JUST LIKE FOR ALMOST EVERYTHING ELSE
21 WITH BABIES, WE TEND TO HEAL VERY QUICKLY AS A
22 BABY AND THE RETINAL HEMORRHAGES DON'T PERSIST
23 VERY LONG, SO THE FACT THAT THEY WERE VERY
24 DISTINCT AND DARK SHOWED ME THAT THEY HAD OCCURRED
25 VERY, VERY RECENTLY.

1 Q SO IN YOUR OPINION AS AN EXPERT IN THIS AREA,
2 WHEN YOU SAY RECENTLY, WOULD THAT HAVE BEEN
3 CONSISTENT WITH INJURIES THAT WOULD HAVE OCCURRED
4 THE MORNING BEFORE YOU SAW HER?

5 A YES, THEY WOULD.

6 Q SO THOSE INJURIES COULD HAVE OCCURRED ABOUT
7 24 TO 48 HOURS PRIOR THIS?

8 A THAT'S CORRECT.

9 Q DID YOU CHARACTERIZE -- YOU SAID THAT YOU SAW
10 THEM IN SEVERAL LAYERS AND STUFF. DID YOU
11 CHARACTERIZE THE NUMBERS OR JUST THE AMOUNT IN ANY
12 WAY IN THIS CASE?

13 A I DESCRIBED BOTH DOT AND BLOT AND FLAME
14 SHAPED HEMORRHAGES AND ALSO MENTIONED THAT THERE
15 WERE MANY MORE PRESENT IN THE ONE EYE AS COMPARED
16 TO THE OTHER EYE.

17 Q DOCTOR, IN YOUR OPINION, COULD THE
18 HEMORRHAGES -- YOU'VE ALREADY STATED THEY COULDN'T
19 BE CAUSED BY JUST SWELLING OF THE BRAIN; IS THAT
20 CORRECT?

21 A THAT'S CORRECT.

22 Q BUT THEY WOULD BE CAUSED BY SHAKING?

23 A THAT'S CORRECT.

24 Q COULD THESE HEMORRHAGES THAT YOU SAW HAVE
25 BEEN CAUSED BY ANY TYPE OF FALL?

1 A I WOULD AGREE WITH WHAT DR. HUBBIRD SAID
2 EARLIER THAT A VERY SEVERE FALL FROM SEVERAL
3 STORIES, YES.

4 Q BUT OTHER THAN THAT, SAY A FALL FROM A
5 HIGHCHAIR OR SOMETHING LIKE THAT, IT WOULD NOT BE
6 CONSISTENT WITH THAT?

7 A NO, IT WOULD NOT.

8 Q AND THE INJURIES YOU SAW IN THESE EYES, COULD
9 IT HAVE BEEN CONSISTENT WITH INJURIES INFLICTED BY
10 A THREE YEAR OLD CHILD?

11 A NO, THEY WOULD NOT.

12 Q AND IN FACT, DOCTOR, THE HEMORRHAGES THAT YOU
13 SAW, COULD THEY HAVE EVEN BEEN CAUSED BY FALLING
14 DOWN SAY A FLIGHT OF STAIRS?

15 A NO, THEY COULD NOT.

16 Q WHAT TYPE OF SHAKING MOTION WOULD BE
17 NECESSARY TO CAUSE ALL THE HEMORRHAGES THAT YOU
18 SAW?

19 A VERY VIOLENT SHAKING WITH A PENDULUM TO AND
20 FRO MOVEMENT OF THE HEAD AND ALLOWING THAT MOTION
21 TO OCCUR WITHIN THE HEAD, OF THE BRAIN, AND WITHIN
22 THE EYES.

23 Q DOCTOR, IN YOUR OPINION, COULD THIS HAVE BEEN
24 AN ACCIDENTAL SHAKING?

25 A NO.

1 Q IF A PERSON WERE PLAYING WITH A CHILD OR
2 TOSSING A CHILD UP IN THE AIR OR TRYING TO REVIVE
3 IT EVEN, WOULD THAT HAVE CAUSED THIS TYPE OF
4 INJURY?

5 A NO.

6 Q TYPICALLY, DOCTOR, IN SHAKEN BABY SYNDROME,
7 TYPICALLY HOW OLD IS A SHAKEN CHILD?

8 A USUALLY UNDER AGE TWO. IT REQUIRES THAT MANY
9 DIFFERENT THINGS, THE NECK MUSCULATURE CAN'T BE
10 VERY WELL DEVELOPED. IN OTHER WORDS, YOU WON'T
11 SEE IT IN 10, 11 YEAR OLDS. YOU'LL ONLY SEE IT IN
12 RELATIVELY SMALL CHILDREN WHO HAVE BEEN SHAKEN AND
13 WHOSE HEADS ARE RELATIVELY LARGE COMPARED TO THEIR
14 BODIES.

15 Q HAVE YOU SEEN IT CHILDREN OLDER THAN TWO?

16 A YES, I HAVE.

17 Q AND TO WHAT AGE HAVE YOU ACTUALLY SEEN IT
18 WHERE AN ADULT COULD ACTUALLY INFLECT THIS KIND OF
19 SHAKING ON A CHILD?

20 A THE OLDEST I'VE SEEN WAS EIGHT OR NINE YEARS
21 OLD.

22 Q BUT AGAIN A THREE YEAR OLD WOULD NOT BE ABLE
23 TO SHAKE A CHILD IN THIS MANNER?

24 A NO.

25 Q OR A FOUR YEAR OLD?

1 A NO.

2 Q DOCTOR, RETINAL HEMORRHAGES, ARE THOSE A
3 FAIRLY RARE OCCURRENCE?

4 A IN THE SPECTRUM OF ALL THINGS THAT OCCUR IN
5 BABIES, YES.

6 Q AND WE'VE HEARD A LOT ABOUT AUTOMOBILE WRECKS
7 WHEN THOSE HEMORRHAGES SHOW UP. WAS THERE
8 ANYTHING IN YOUR FINDINGS WITH THIS CHILD THAT
9 WOULD INDICATE ANYTHING BUT SHAKEN BABY SYNDROME?

10 A NO.

11 Q DID YOU HAVE AN OPPORTUNITY TO REVIEW THE
12 PATHOLOGIST'S REPORT IN THIS CASE?

13 A YES, I DID.

14 Q AND WAS THE PATHOLOGIST ACTUALLY ABLE TO --
15 OR TELL HOW HE WAS ABLE TO LOOK AT THE EYES?

16 A YES.

17 Q AND CAN YOU EXPLAIN TO THE JURY WHAT HE DID
18 AND WHAT THOSE FINDINGS -- HOW THEY'RE
19 SIGNIFICANT?

20 A YES. GENERALLY THE PATHOLOGIST WILL REMOVE
21 THE EYES AND THE OPTIC NERVE IN ONE BLOCK AND LOOK
22 NOT ONLY FOR EVIDENCE OF BLEEDING WITHIN THE
23 RETINA, WHICH I SHOWED YOU BUT ALSO WILL LOOK AT
24 THE CONNECTION BETWEEN THE OPTIC NERVE AND THE EYE
25 ITSELF FOR BLEEDING THERE, WHICH SUGGESTS THAT

1 MOVEMENT THAT I DESCRIBED, AND WILL ALSO LOOK FOR
2 BLOOD INSIDE THE COVERINGS AROUND THE OPTIC NERVE,
3 AND HE FOUND BOTH IN THIS CASE.

4 Q AND DOCTOR, WERE THOSE FINDINGS, THOSE
5 ADDITIONAL FINDINGS, CONSISTENT WITH YOUR
6 ASSESSMENT OF SHAKEN BABY SYNDROME?

7 A YES.

8 Q I ASKED YOU ABOUT THE FORCE NECESSARY, HAVE
9 YOU ALSO GOT A LITTLE PRESENTATION THAT WILL HELP
10 DESCRIBE TO THE JURY WHAT THE SHAKEN BABY SYNDROME
11 IS AND HOW IT HAS TO BE INFLICTED?

12 A YES, I DO.

13 MS. CAMPBELL: YOUR HONOR, AT THIS TIME I'D
14 LIKE TO ASK PERMISSION FOR THE JURY TO SEE THAT.

15 MR. STRICKLER: AT THIS TIME I WOULD OBJECT.

16 THE COURT: LET ME HAVE THE JURY GO OUT FOR
17 JUST A MINUTE AND LET ME TAKE A LOOK AT IT MYSELF
18 FIRST.

19 (WHEREUPON, THE JURY LEFT OPEN COURT AT
20 APPROXIMATELY 3:18.)

21 THE COURT: I HAVEN'T SEEN IT SO I DON'T KNOW
22 WHAT THE BASIS OF THE OBJECTION IS.

23 MR. STRICKLER: THE FIRST BASIS IS THAT I
24 HAVEN'T SEEN IT EITHER; THAT'S THE FIRST BASIS.
25 THE SECOND BASIS IS, SHE'S NOT BEEN QUALIFIED AS

1 AN EXPERT ON SHAKEN BABY SYNDROME. AND SHE'S NOT
2 BEEN QUALIFIED AS AN EXPERT IN THE FIELD OF
3 BIOMECHANICAL ENGINEERING, WHICH IS WHAT IT TAKES
4 TO DESCRIBE THE FORCES INVOLVED TO PRODUCE THE
5 EFFECTS SHE'S TALKING ABOUT, AND SO I'D OBJECT ON
6 THE BASIS OF THE QUALIFICATION.

7 THE COURT: OKAY. HOW LONG IS IT?

8 MS. CAMPBELL: NOT LONG AT ALL, YOUR HONOR,
9 WE CAN SHOW IT TO YOUR HONOR REAL QUICKLY.

10 THE COURT: LET ME SEE IT.

11 (WHEREUPON, THE COURT REVIEWED THE
12 PRESENTATION.)

13 OKAY. WELL, SHE TESTIFIED AND SHE GAVE AN
14 OPINION THEN THAT, BASED UPON HER DIAGNOSIS, THAT
15 THIS CHILD SUFFERED FROM SHAKEN BABY SYNDROME.
16 SHE CAN DEMONSTRATE THAT FOR YOU AND ALSO PUT IT,
17 AS FAR AS HER EXPERTISE, IN TERMS AS AN
18 OPHTHALMOLOGIST.

19 MR. STRICKLER: AS AN OPHTHALMOLOGIST, SHE
20 TESTIFIED REGARDING WHAT SHE'S TRAINED TO. YOUR
21 HONOR, SHE -- FIRST OF ALL, AS THE INITIAL COUPLE
22 OF SEGMENTS WHICH SHOW THE CHILD BEING SHAKEN,
23 THERE'S NO BASIS FOR ESTABLISHING THAT THAT IS
24 WHAT HAPPENED IN THIS CASE, BUT TOO IS THAT A FAIR
25 AND ACCURATE REPRESENTATION OF WHAT A CHILD LOOKS

1 LIKE WHEN IT'S BEING SHAKEN.

2 THERE'S NO FOUNDATION LAID FOR THAT
3 WHATSOEVER.

4 THE COURT: I DON'T MEAN TO BE QUIBBLE, BUT
5 HOW MANY WAYS CAN YOU SHAKE A BABY OTHER THAN HOLD
6 THEM UNDER THEIR ARMS AND DO THAT? I MEAN, HOW
7 ELSE WOULD YOU DO IT?

8 MR. STRICKLER: YOUR HONOR, LIKE I SAY, I
9 CERTAINLY CLAIM NO EXPERTISE IN THAT AREA MYSELF.
10 I JUST --

11 THE COURT: WELL, I MEAN, WE CAN'T HAVE A
12 LIVE DEMONSTRATION, BUT AS A PRACTICAL MATTER, HOW
13 ELSE WOULD YOU DO IT?

14 MR. STRICKLER: BUT WE'VE GOT NO TESTIMONY
15 AND NO FOUNDATION LAID. THE THING THAT SHOWS IS
16 THE HEAD FLOPPING AROUND. WE'VE GOT NO --

17 THE COURT: THAT'S A DIFFERENT ANALYSIS
18 THOUGH FROM WHAT YOU'RE ASKING.

19 MR. STRICKLER: WELL, THEN I GUESS I'M
20 SHIFTING GEARS. IT DOES NOT -- THERE IS NO
21 FOUNDATION LAID FOR THAT BEING A FAIR AND ACCURATE
22 REPRESENTATION OF HOW A CHILD WOULD APPEAR WHEN IT
23 IS SHAKEN.

24 THE COURT: ALL RIGHT. MADAM SOLICITOR, SEE
25 WHAT YOU CAN DO WITH YOUR WITNESS.

DIRECT OF CHRISTMANN BY CAMPBELL-I/C 252
CROSS OF CHRISTMANN BY STRICKLER-I/C

DIRECT EXAMINATION

(IN CAMERA)

BY MS. CAMPBELL:

Q DOCTOR, YOU REVIEWED THESE SLIDES AT AN
EARLIER TIME?

A YES, I HAVE.

Q AND THE MOTION OF THE BABY BEING SHAKEN, IS
THAT A FAIR AND ACCURATE DEPICTION OF HOW A BABY
WOULD HAVE TO BE SHAKEN TO SUSTAIN THE INJURIES IN
THIS CASE?

A YES, I BELIEVE IT'S TRUE, AS A PROFESSIONAL.

Q YES?

A YES.

THE COURT: DO YOU WANT TO EXAMINE HER IN ANY
WAY?

MR. STRICKLER: IF I COULD PLEASE.

CROSS-EXAMINATION

(IN CAMERA)

BY MR. STRICKLER:

Q FIRST OF ALL, HOW OLD DOES THE CHILD APPEAR
TO BE THAT'S DEPICTED IN THE PRESENTATION YOU
HAVE?

A I WOULD SAY UNDER A YEAR.

Q UNDER A YEAR. THE CHILD IN THIS PARTICULAR
CASE IS TWO YEARS AND THREE MONTHS OLD --

CROSS OF CHRISTMANN BY STRICKLER 253
(IN CAMERA)

1 A THAT'S CORRECT.

2 Q -- ROUGHLY SPEAKING, CORRECT?

3 A CORRECT.

4 Q NOW, HOW MANY PICTURES OF, SLOW MOTION
5 PICTURES OF CHILDREN BEING SHAKEN TO THE EXTENT
6 THAT SUBDURAL HEMATOMAS ARE CAUSED HAVE YOU BEEN
7 ABLE TO VIEW?

8 A NONE.

9 Q NONE. OKAY. IN FACT, CARRYING OUT SUCH A
10 TEST IN A CLINICAL SETTING WOULD BE NOT ONLY
11 CRIMINAL BUT MEDICALLY UNETHICAL, CORRECT?

12 A THAT'S CORRECT.

13 Q OKAY. SO AM I TO UNDERSTAND YOU CORRECTLY
14 THAT TO YOUR KNOWLEDGE THERE ARE NO PICTURES WHICH
15 CAN BE USED TO COMPARE THAT WHICH IS BEING
16 PRESENTED HERE WITH THAT WHICH HAS OCCURRED IN
17 REAL LIFE, NOT IN THIS CASE?

18 A ~~THERE ARE NO PICTURES. WE HAVE DESCRIPTIONS~~
19 OF --

20 Q VIOLENT SHAKING?

21 A -- OF VIOLENT SHAKING OF OTHER PEOPLE, YES.

22 Q WHICH YOU'VE ALREADY TESTIFIED TO WOULD BE A
23 VIOLENT SHAKING. OKAY. SO EXACTLY HOW THE CHILD
24 WOULD APPEAR AND PRECISELY HOW THE HEAD WOULD MOVE
25 DURING THE COURSE OF THAT SHAKING IS A BEST

CROSS OF CHRISTMANN BY STRICKLER
(IN CAMERA)

254

1 ESTIMATE, BEST GUESSTIMATE, ON YOUR PART AND THE
2 PART OF WHOEVER PUT THIS TOGETHER, CORRECT?

3 A FOR THIS EXACT PATIENT, YES THAT'S TRUE.
4 HOWEVER, I HAVE SEEN VIDEOTAPED TESTIMONY OF
5 PERPETRATORS IN CHILD ABUSE CASES WHO DEMONSTRATED
6 WITH A DOLL HOW THEY SHOOK THE CHILD.

7 Q OKAY. I'LL GRANT YOU HOW THEY SHOOK THE
8 CHILD. YOU'VE ALREADY TESTIFIED THAT IT TAKES A
9 VIOLENT SHAKING. I'M TALKING ABOUT THE APPEARANCE
10 OF THE HEAD AS THE SHAKING OCCURS, THE MOTION OF
11 THE HEAD AS THE SHAKING OCCURS.

12 A I'M SORRY, I DON'T FOLLOW YOU.

13 Q DO YOU HAVE ANY TESTIMONY TO SAY THE HEAD
14 WOULD MOVE IN ONE DIRECTION AT ONE TIME AND THEN
15 ANOTHER DIRECTION ANOTHER TIME AND THEN BACK AND
16 FORTH? I MEAN --

17 A I SEE NO REASON WHY IT WOULD NOT.

18 Q WELL...

19 A IT SEEMS LOGICAL.

20 Q OKAY. HAS IT BEEN EMPIRICALLY PROVEN THAT IS
21 THE COURSE OF ACTION THAT A HUMAN CHILD'S HEAD
22 TAKES UPON SHAKING?

23 A EMPIRICALLY PROVEN, I WOULD AGREE, NO.

24 Q OKAY. AND BY EMPIRICALLY, WE UNDERSTAND EACH
25 OTHER AS FAR EMPIRICALLY PROVEN GOES. OKAY. IT

1 HAS NOT BEEN -- OKAY. THAT'S ALL I HAVE.

2 THE COURT: BUT TO OBTAIN YOUR SPECIALTY YOU
3 HAVE AN M.D. DEGREE, AS WELL?

4 THE WITNESS: YES, SIR.

5 THE COURT: ANATOMICALLY, IS THAT THE
6 DEPICTION OF A CHILD -- THAT FILM, IS THAT
7 MEDICALLY CORRECT?

8 THE WITNESS: FOR THIS PATIENT, YOUR HONOR?

9 THE COURT: YES.

10 THE WITNESS: NO.

11 THE COURT: AND WHY WOULD IT NOT BE CORRECT?

12 THE WITNESS: BECAUSE THE FEATURES OF THE
13 CHILD WOULD HAVE LOOKED A LITTLE BIT OLDER IN A
14 CHILD TWO YEARS AND THREE MONTHS.

15 IT IS POSSIBLE THAT THERE WOULD BE MORE
16 RESISTANCE OF THE BABY'S NECK TO BEING SHAKEN THAT
17 VIOLENTLY. IT'S THEORETICALLY POSSIBLE.

18 MS. CAMPBELL: WE'LL WITHDRAW THOSE TWO
19 SLIDES AT THIS POINT. WE'LL JUST GO TO -- CAN WE
20 JUST SKIP TO THE PART WHERE IT'S JUST -- WE'LL
21 SKIP THE FIRST TWO WITH THE MOTION AND START.

22 THE COURT: WHAT'S THE REST OF IT?

23 MS. CAMPBELL: THERE'S NO MORE MOVEMENT. I
24 THINK THAT IT'S THE SHAKING THAT HE HAD THE
25 PROBLEM WITH.

1 THE COURT: OKAY. THEY AGREE TO WITHDRAW IT.

2 MR. STRICKLER: I OBJECT THAT ANY OF THIS
3 COMPLIES WITH RULE FIVE. I HADN'T SEEN IT BEFORE
4 AND HAVEN'T HAD AN OPPORTUNITY TO GET ANYONE TO
5 POSSIBLY REBUT WHAT MAY BE SAID TO THIS
6 DEMONSTRATION.

7 MS. CAMPBELL: IN RELATION TO THIS
8 DEMONSTRATION OF THESE SLIDES?

9 MR. STRICKLER: YES.

10 THE COURT: HOW DO YOU THINK IT'S A RULE FIVE
11 VIOLATION BEING OFFERED FOR THE MONITORING
12 PURPOSES, NOT FOR EVIDENCE? YOU'VE ASKED THE
13 QUESTIONS YOURSELF ABOUT THE DURA AND THE -- I
14 MEAN, IT'S NO MORE OF A DEMONSTRATION THAN
15 ANSWERING THE QUESTIONS WHICH YOU HAVE ALREADY
16 ASKED THE DOCTOR ABOUT.

17 MR. STRICKLER: OKAY. WELL, GRANTED THAT
18 THESE PICTURES ARE NOT BEING INTRODUCED INTO
19 EVIDENCE, THEY ARE BEING INTRODUCED AS
20 DEMONSTRATIVE EVIDENCE, AND I WAS NOT PROVIDED
21 WITH THEM PRIOR TO THE TRIAL, SO I OBJECT TO THAT.

22 THE COURT: I WILL OVERRULE YOUR OBJECTION.
23 I THINK RULE FIVE CONTEMPLATES EVIDENCE GOING IN
24 FOR THE JURY'S CONSIDERATION. IT IS AN ANIMATION
25 AND NO MORE DIFFERENT THAN DRAWING ON A CHALK

1 BOARD OR A PIECE OF PAPER FOR PURPOSES OF THE
2 TRIAL, SO I WILL FIND THAT WILL NOT BE
3 DISCOVERABLE UNDER THE RULE.

4 MR. STRICKLER: ALL RIGHT, SIR. THEN IN THAT
5 CASE, I'D ASK THAT THIS EVIDENCE BE MARKED SO THAT
6 IT CAN BE MADE A PART OF THE RECORD IN THIS CASE.

7 THE COURT: I'LL AGREE TO DO THAT. MAKE NO
8 MISTAKE ABOUT IT. IT'S PURELY DEMONSTRATIVE, JUST
9 LIKE THAT PIECE OF PAPER THERE. YOU CAN MARK YOUR
10 DRAWINGS SO THAT THE APPELLATE COURT WILL
11 UNDERSTAND WHAT I'M TALKING ABOUT.

12 MS. CAMPBELL: I'LL GET HARD COPIES DONE, AND
13 WE'LL PUT THEM INTO THE RECORD.

14 THE COURT: OKAY. WHILE WE HAVE THE JURY OUT
15 DO YOU WANT TO TAKE A QUICK BREAK?

16 MR. STRICKLER: WE'RE DOING ALL RIGHT.

17 THE COURT: BRING THE JURY IN.

18 (WHEREUPON, THE JURY CAME INTO OPEN
19 COURT AT APPROXIMATELY 3:30.)

20 THE BAILIFF: ~~THE JURY'S ALL PRESENT, YOUR~~
21 HONOR.

22 THE COURT: ALL RIGHT. YOU MAY PROCEED.

23 MS. CAMPBELL: THANK YOU, YOUR HONOR.

24 DIRECT EXAMINATION

25 CONTINUED

1 BY MS. CAMPBELL:

2 Q DR. CHRISTMANN, JUST TO GO BACK A LITTLE
3 BEFORE WE BROKE, YOU STATED EARLIER IN YOUR
4 TESTIMONY THAT YOU WERE ABLE TO REVIEW, ALONG WITH
5 THE PATHOLOGY REPORT, SOME OTHER REPORTS IN THIS
6 CASE?

7 A THAT'S CORRECT.

8 Q AND ALSO THE HISTORY OF THIS CHILD IN THIS
9 CASE WAS MADE AVAILABLE TO YOU?

10 A THAT'S CORRECT.

11 Q AND IS ALL OF THAT INVOLVING -- ALSO THE
12 RETINAL HEMORRHAGES IN YOUR REPORT MADE IN YOUR
13 ASSESSMENT AS TO THE SHAKEN BABY SYNDROME?

14 A YES, IT IS.

15 Q AND SPECIFICALLY AND IN THIS CASE, THE
16 SHAKING HAS A CERTAIN EFFECT NOT ONLY ON THE EYES
17 BUT ON THE BRAIN; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q AND IN THIS PRESENTATION, WE HAVE THE FIRST
20 SLIDE UP NOW, CAN YOU JUST SHOW THE JURY TYPICALLY
21 WHAT PARTS OF BRAIN CAN BE AFFECTED?

22 A YES. THIS JUST SHOWS THE CHILD'S HEAD FROM
23 THE SIDE WITH THE BONY SKULL ON THE OUTSIDE AND
24 THE BRAIN UNDERNEATH.

25 AND LOOKING FROM THE TOP DOWN THE HEAD,

1 THERE'S THE DURA MATTER, UNDERNEATH IS THE
2 ARACHNOID, THE SUBDURAL SPACE IS THERE, AND THEN
3 UNDERNEATH THE ARACHNOID IS THE BRAIN. YOU SEE
4 THIS LARGE SAGITTAL VEIN AND LITTLE VEINS COMING
5 OFF OF IT.

6 THIS IS AGAIN A SIDE VIEW WITH THE SKULL OPEN
7 SHOWING THE SAGITTAL VEIN AT THE TOP AND THE
8 BRIDGING VEINS.

9 THIS SHOWS IT IN CROSS SECTION WITH THE
10 LITTLE BRIDGING VEINS AND THE LAYERS LYING OVER
11 THE BRAIN INSIDE THE SKULL.

12 THIS IS DEMONSTRATING THAT WHEN THE VEINS ARE
13 BROKEN, WHICH IS WHAT WE THINK HAPPENS IN SHAKEN
14 BABY, BLEEDING BEGINS TO OCCUR AND CAUSES A
15 SUBDURAL HEMATOMA OR COLLECTION OF BLOOD IN THE
16 SUBDURAL SPACE.

17 Q AND IN THIS CASE, CONSISTENT WITH WHAT YOU
18 SAID EARLIER, THERE WAS A SUBDURAL HEMATOMA, AN
19 ACUTE ONE --

20 MR. STRICKLER: I'LL OBJECT. THAT'S NOT HER
21 OBSERVATION.

22 THE COURT: LET ME HEAR THE QUESTION AGAIN.

23 BY MS. CAMPBELL:

24 Q IN THIS CASE, BASED ON YOUR REVIEW, WAS THERE
25 A SUBDURAL HEMATOMA?

1 A THE C.T. SCAN --

2 MR. STRICKLER: WITHDRAW THE OBJECTION ON
3 REPHRASING THE QUESTION.

4 THE COURT: YES, SIR.

5 BY MS. CAMPBELL:

6 Q GO AHEAD.

7 A THE C.T. SCAN DOCUMENTED THE PRESENCE OF THE
8 SUBDURAL HEMATOMA.

9 Q DOCTOR, IN MAKING YOUR ASSESSMENT, IS IT
10 IMPORTANT TO LOOK AT ALL ASPECTS OF THE CHILD?

11 A YES, IT IS.

12 Q AND DID YOU DO THAT IN THIS CASE?

13 A YES, I DID.

14 Q THE RETINAL HEMORRHAGES, TURNING BACK TO
15 THOSE ONE MORE TIME, COULD THE SUBDURAL HEMATOMA
16 CAUSE RETINAL HEMORRHAGES?

17 A IT CAN.

18 Q IN THIS CASE, DID THE SUBDURAL HEMATOMA OR
19 SHAKING CAUSE THESE HEMORRHAGES?

20 A IN THIS CASE IT WAS SHAKEN BABY.

21 Q AND IN YOUR OPINION THERE'S NOT A QUESTION
22 ABOUT THAT?

23 A NO, THERE'S NOT A QUESTION IN MY MIND.

24 Q WE'VE HEARD SOME TALK ABOUT A SUBDURAL
25 HEMATOMA AND A REBLEED. WOULD THAT HAVE CAUSED

1 THE RETINAL HEMORRHAGES IN THIS CASE?

2 A I HAVE NEVER HEARD OF THAT OCCURRING.

3 Q AND AGAIN, DOCTOR, FINALLY I'LL SIT DOWN, BUT
4 IN THIS CASE, IN YOUR REVIEW OF THE RECORDS AND
5 YOUR PERSONAL OBSERVATIONS AND YOUR EXAMINATIONS
6 OF THIS CHILD, IS THERE ANY QUESTION IN YOUR MIND
7 THAT THIS CHILD WAS A SHAKEN BABY?

8 A NO, THERE IS NOT.

9 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

10 MR. STRICKLER, LET ME SAY BEFORE WE BEGIN, I DID A
11 403 ANALYSIS ON THE PHOTOGRAPHS, EVEN THOUGH IT
12 WOULD NOT BE REQUIRED FOR DEMONSTRATIVE EVIDENCE.

13 MR. STRICKLER: YES, SIR. THANK YOU, YOUR
14 HONOR.

15 CROSS-EXAMINATION

16 BY MR. STRICKLER:

17 Q GOOD AFTERNOON, DR. CHRISTMANN.

18 A GOOD AFTERNOON.

19 Q JUST A COUPLE OF THINGS ACTUALLY. YOU
20 INDICATED THAT YOU DO AGREE THAT YOU CAN HAVE
21 RETINAL HEMORRHAGES RESULTING FROM INCREASED OR
22 ELEVATED CRANIAL PRESSURE; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q OKAY. BUT THEY DON'T LOOK LIKE THE ONES YOU
25 SAW IN THIS CASE?

1 A THAT'S CORRECT.

2 Q AND THAT IS YOUR OPINION?

3 A THAT'S CORRECT.

4 Q I MEAN, YOU UNDERSTAND THE CONCEPT OF PROVING
5 SOMETHING IN AN EMPIRICAL FASHION, RIGHT?

6 A I BELIEVE I DO.

7 Q THAT CONCEPT IS CENTRAL TO THE SCIENTIFIC
8 METHOD, CORRECT?

9 A YES.

10 Q OKAY. YOU POSTULATE SOMETHING, YOU ATTEMPT
11 TO GO AHEAD AND PROVE YOUR THESIS EMPIRICALLY BY
12 DOING TESTS, PUBLISH THOSE, HAVE THEM REVIEWED BY
13 THE PEOPLE WHO ARE THEN ABLE TO REPLICATE OR NOT
14 REPLICATE THE CONCLUSION THAT YOU'VE ATTAINED, AND
15 THE COMMUNITY ARRIVES AT A CONSENSUS IN THAT
16 REGARD; IS THAT CORRECT?

17 A RIGHT.

18 Q AND THAT'S MY LAYMEN'S DESCRIPTION OF IT.
19 SECOND TO THAT IS THE CONCEPT OF GENERATING
20 EMPIRICAL DATA TO SUPPORT THE THESIS, RIGHT?

21 A THAT'S CORRECT.

22 Q OKAY. AND CENTRAL TO BEING ABLE TO -- WELL,
23 LET ME APPROACH IT THIS WAY: HOW MUCH DO WE KNOW
24 AT THIS POINT IN TIME ABOUT HOW THE HUMAN BODY
25 FUNCTIONS?

1 A WE KNOW QUITE A LOT.

2 Q WE KNOW MUCH MORE THAN WE DID SAY 100 YEARS
3 AGO, RIGHT?

4 A THAT'S CORRECT.

5 Q ALMOST EXPONENTIALLY MORE THAN WE DID 100
6 YEARS AGO.

7 A THAT'S CORRECT.

8 Q OKAY. IS THERE ANY BASIS TO BELIEVE THAT,
9 WITH LUCK, IF WE'RE STILL AROUND 100 YEARS FROM
10 NOW, WE'LL KNOW THAT MUCH MORE THEN THAN WE KNOW
11 NOW?

12 A I CERTAINLY HOPE SO.

13 Q THE HUMAN BODY IS A -- I BELIEVE I CAN GAUGE
14 IT AN UNDERSTATEMENT IF I WANTED TO REFER TO IT AS
15 A FAIRLY COMPLEX ORGANISM?

16 A I WOULD AGREE WITH THAT.

17 Q RIGHT. THE BRAIN ITSELF IS A FAIRLY COMPLEX
18 SUB-STRUCTURE OF THE HUMAN BODY, CORRECT?

19 A YES.

20 Q IN ORDER TO TRULY BE ABLE TO SAY RETINAL
21 HEMORRHAGES OF A CERTAIN APPEARANCE, OF ONE
22 APPEARANCE, COULD BE ASSOCIATED WITH A NON-SHAKING
23 HEMATOMA AND OF ANOTHER APPEARANCE ARE ASSOCIATED
24 WITH SHAKING, ISN'T IT TRUE THAT YOU HAVE TO
25 THEN -- IN ORDER TO GO AHEAD AND DEMONSTRATE THAT,

1 IN ORDER TO GO AHEAD AND BE ABLE TO PROVE THAT
2 SCIENTIFICALLY, YOU'D HAVE TO SET UP A STUDY WHERE
3 YOU SHOOK A BUNCH OF HEADS AND THEN CHECKED THE
4 EYES TO SEE WHAT KIND OF HEMORRHAGES OCCURRED AND
5 THEN ANOTHER GROUP, THIS WOULD BE THE CONTROL
6 GROUP, WHERE YOU SMACK THEM IN THE HEAD HARD
7 ENOUGH TO CAUSE A HEMATOMA AND SEE WHETHER THE
8 HEMORRHAGES IN THE EYES LOOK DIFFERENT IN THAT
9 CASE.

10 A NO. I DON'T AGREE WITH YOUR STATEMENT.

11 Q YOU DON'T AGREE WITH THAT?

12 A I DON'T AGREE WITH YOUR STATEMENT BECAUSE IT
13 HAPPENS ALL THE TIME. PEOPLE DO IT FOR US. THEY
14 HAVE ACCIDENTS. THEY'RE SHAKEN AND SOMETIMES THEY
15 COME IN WITH ONE HISTORY AND THEN ADMIT TO
16 ANOTHER.

17 Q ALL RIGHT. AND THOSE REPORTS THAT YOU GET
18 ARE TAKEN OUTSIDE OF A CONTROLLED ENVIRONMENT,
19 CORRECT?

20 A ALMOST ALL HUMAN RESEARCH IS. WE WOULDN'T BE
21 ABLE TO PRACTICE MEDICINE IF WE ABSOLUTELY
22 REQUIRED EMPIRIC PROOF. IT'S NOT ETHICAL TO
23 RESEARCH HUMANS.

24 Q I'LL GRANT YOU THAT. THAT SORT OF RESEARCH
25 WOULD NOT BE ETHICAL, CORRECT?

1 A CORRECT.

2 Q SO WHAT WE COME DOWN TO IS ANECDOTAL
3 RESEARCH. YOU COLLECT A BUNCH OF CASES, AND YOU
4 MAKE A BUNCH OF OBSERVATIONS, AND YOU COME TO THE
5 OPINION THAT THE APPEARANCE OF -- BY YOU, I DON'T
6 RESTRICT IT JUST TO YOU. I'M SURE MANY OTHERS IN
7 YOUR FIELD HAVE COME TO THE OPINION THAT A RETINAL
8 HEMORRHAGE OF A PARTICULAR SHAPE IS ASSOCIATED
9 WITH SHAKING AND OTHER APPEARING RETINAL
10 HEMORRHAGES MAY BE ASSOCIATED WITH SOME OTHER
11 MECHANISM. YOU COME TO THAT OPINION BY ANECDOTAL
12 RESEARCH, CORRECT?

13 A THAT'S TRUE.

14 Q AND ANECDOTAL RESEARCH IS RESEARCH THAT
15 OPERATES OUTSIDE OF A CONTROLLED ENVIRONMENT WHERE
16 YOU CAN'T CONTROL ALL THE FACTORS INVOLVED; IS
17 THAT CORRECT?

18 A THAT'S CORRECT.

19 Q ALL RIGHT. I JUST WANT TO MAKE SURE I'M
20 RIGHT ON THE TERMS.

21 Q AND WHAT IS -- JUST SO I'M CLEAR ON THIS, HOW
22 DO RETINAL HEMORRHAGES ASSOCIATED WITH SHAKING
23 APPEAR? WHAT DO THEY LOOK LIKE?

24 A THEY GENERALLY OCCUR OVER WIDESPREAD AREAS OF
25 THE RETINA.

1 Q OKAY.

2 A THEY ARE GENERALLY INVOLVING MULTIPLE LAYERS
3 OF THE RETINA, THE SUPERFICIAL LAYERS AS WELL AS
4 THE DEEP LAYERS AND POSSIBLY EVEN IN FRONT OF THE
5 RETINA.

6 Q OKAY.

7 A AND THEY ARE -- THEY OCCUR IN CONJUNCTION
8 WITH A HISTORY COMPATIBLE WITH THE KINDS OF DAMAGE
9 THAT YOU EXPECT IN A SHAKEN BABY.

10 Q OKAY.

11 A THAT IS, SUBDURAL HEMATOMA, POSSIBLY
12 UNEXPLAINED INJURIES AND NO HISTORY OF SIGNIFICANT
13 TRAUMA.

14 Q OKAY. SO THAT DEFINES IT -- I MISSPOKE
15 MYSELF WHEN I SAY THE SHAPE OF THEM LOOKS
16 DIFFERENT FOR HEMORRHAGES ASSOCIATED WITH SHAKING,
17 AND I APOLOGIZE FOR THAT.

18 IS THAT WHAT YOU SAW? YOU SAY THEY GENERALLY
19 APPEAR OVER A WIDESPREAD AREA. YOU SAW IT IN THIS
20 CASE, AND IT'S DOCUMENTED IN YOUR NOTES THAT YOU
21 DID AT THE HOSPITAL.

22 A THAT'S CORRECT.

23 Q THEY'RE GENERALLY IN MULTIPLE LAYERS. NOW,
24 COULD YOU DISTINGUISH MULTIPLE LAYERS BY DOING THE
25 OPHTHALMOLOGICAL EXAMINATION THAT YOU DID AT THE

1 HOSPITAL?

2 A YES, WE CAN AND WE DO.

3 Q CAN YOU PHOTOGRAPH THAT STUFF?

4 A YES, YOU CAN.

5 Q WAS THAT DONE IN THIS CASE?

6 A WE DON'T HAVE PHOTOGRAPHIC EQUIPMENT IN OUR
7 HOSPITAL.

8 Q THE ANSWER WOULD BE NO THEN, IT WAS NOT
9 PHOTOGRAPHED IN THIS CASE?

10 A NO.

11 Q OKAY. AND THE THIRD COMPONENT OF THESE
12 DISTINCT ~~RETINAL~~ HEMORRHAGES IS THAT THEY OCCUR IN
13 CONJUNCTION WITH A HISTORY OF WHICH INCLUDES NO
14 REPORT OF SERIOUS TRAUMA, RIGHT?

15 A THAT'S CORRECT.

16 Q OKAY. NOW, JUST A COUPLE OF THINGS, AND I
17 DON'T WANT TO HARP ON WORDS, BUT I WILL.

18 YOU INDICATE FIRST OF ALL THAT THESE RETINAL
19 HEMORRHAGES THAT ARE ASSOCIATED WITH SHAKING
20 GENERALLY OCCUR OVER A WIDESPREAD AREA. WHAT DOES
21 GENERALLY MEAN TO YOU? I KNOW WHAT IT MEANS TO
22 ME, BUT WHAT DOES IT MEAN TO YOU?

23 A THE MAJORITY OF THE TIME.

24 Q OKAY. THEN WE'RE IN AGREEMENT AS TO THE
25 DEFINITION OF THAT. THAT WOULD IMPLY THEN, MADAM,

1 THAT IN SOME OCCASIONS THAT'S NOT THE CASE,

2 CORRECT? ON SOME OCCASIONS THEY ARE NOT OVER A

3 WIDESPREAD AREA?

4 A THAT'S CORRECT.

5 Q OKAY.

6 A IT'S ONLY SIGNIFICANT WHEN THEY ARE. IT'S

7 ONLY SIGNIFICANT TO THE DIAGNOSIS WHEN THEY ARE

8 OVER A WIDESPREAD AREA.

9 Q WELL, NOW -- SO -- I'M SORRY. I'M GETTING
10 CONFUSED. SO YOU CAN HAVE SHAKING WHEN THEY ARE

11 NOT DISTRIBUTED OVER A WIDESPREAD AREA?

12 A THAT'S CORRECT.

13 Q YOU CAN'T HAVE SOME OTHER CAUSE FROM SHAKING

14 IF THEY ARE OVER A WIDESPREAD AREA?

15 A EXTRAORDINARILY RARELY.

16 Q WHAT PERCENTAGE OF THE TIME COULD WE HAVE

17 SOME OTHER CAUSE THAN SHAKING IN WHICH YOU WOULD

18 HAVE WIDESPREAD HEMORRHAGES?

19 A I'VE SEEN ONE CASE.

20 Q OKAY. CAN YOU TELL US WHAT PERCENTAGE OF THE

21 TIME STATISTICALLY THIS OCCURS THROUGH TRAUMA

22 OTHER THAN RETINAL HEMORRHAGE?

23 A NO.

24 Q NO, OKAY. NOW, THE SECOND PORTION OF YOUR

25 STATEMENT WAS THAT THESE HEMORRHAGES WHEN THEY ARE

1 THE RESULT OF A SHAKING ARE AGAIN, GENERALLY IN
2 MULTIPLE LAYERS, SAME DEAL HERE. I WOULD TAKE IT
3 THEN THAT THERE ARE OCCASIONS IN WHICH THEY'RE NOT
4 IN MULTIPLE LAYERS, CORRECT?

5 A THAT'S CORRECT.

6 Q AND SOME OF THOSE OCCASIONS MAY BE ASSOCIATED
7 WITH SHAKING?

8 A THAT'S CORRECT.

9 Q OKAY. AND WHAT PERCENTAGE OF THE TIME DO YOU
10 FIND A BABY WHO HAS BEEN SHAKEN IN WHICH THE
11 RETINAL HEMORRHAGES, IF THEY'RE PRESENT, ARE NOT
12 IN MULTIPLE LAYERS?

13 A I CAN'T QUOTE A PERCENTAGE, AND I CAN'T
14 RECALL A PARTICULAR PATIENT, BUT IT IS
15 THEORETICALLY POSSIBLE.

16 Q OKAY. NOW, ACTUALLY THE DIAGNOSIS IN THIS
17 CASE, IF I READ THINGS CORRECTLY, IS YOU FOUND
18 MULTIPLE RETINAL HEMORRHAGES, CORRECT?

19 A YES.

20 Q AND THE DIAGNOSIS 2, OR NUMBER 2, IS CHILD
21 ABUSE MOST LIKELY IN CHILD WITH UNEXPLAINED
22 SUBDURAL HEMATOMA, CORRECT?

23 A ACTUALLY HE --

24 Q DID I LEAVE SOMETHING OUT?

25 A YOU READ IT IN THE WRONG CONJUNCTION.

1 Q OH.

2 A IT SHOULD BE NUMBER 1 MULTIPLE RETINAL
3 HEMORRHAGES IN A CHILD WITH UNEXPLAINED --

4 Q OKAY. I GOT YOU. OKAY. AND THEN YOUR
5 SECOND FINDING IS CHILD ABUSE MOST LIKELY?

6 A THAT'S CORRECT.

7 Q I APOLOGIZE FOR THAT. THANK YOU. CHILD
8 ABUSE MOST LIKELY, WHICH MEANS YOU DO NOT RULE OUT
9 OTHER POTENTIAL CAUSES --

10 A I DID NOT AT THAT TIME.

11 Q -- FOR RETINAL HEMORRHAGES.

12 A NOT AT THAT TIME.

13 Q NOW, THE LAST FACTOR IS, DO THESE RETINAL
14 HEMORRHAGES OCCUR IN RELATION TO OR IN CONJUNCTION
15 WITH THE HISTORY THAT IS -- MY TERM, RAISES
16 SUSPICIONS, UNEXPLAINED OR NO HISTORY OF SERIOUS
17 TRAUMA, LIKE THAT; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q NOW, THAT HAS NOTHING TO DO WITH AN
20 OPHTHALMOLOGICAL FINDING, CORRECT?

21 A THAT'S CORRECT.

22 Q ALL RIGHT. THAT HAS TO DO WITH SOME THEORY
23 AS TO WHAT YOU CAN LOOK FOR IN ORDER TO FIND CHILD
24 ABUSE, RIGHT?

25 A NO. IT HAS TO DO WITH MAKING A CORRECT

1 DIAGNOSIS. YOU TAKE IN CONJUNCTION THE HISTORY
2 AND THE PHYSICAL FINDINGS.

3 Q NOW, YOU HAVE INDICATED THAT RETINAL
4 HEMORRHAGE IS A FAIRLY RARE OCCURRENCE, CORRECT?

5 A YES.

6 Q HOW ABOUT IN THE NEWBORN RETINAL HEMORRHAGE
7 THAT MAY RESULT FROM BIRTH TRAUMA HAVING BEEN
8 REPORTED IN 14.2 PERCENT OF SPONTANEOUS VAGINAL
9 DELIVERIES AND 8/10THS OF ONE PERCENT OF CAESARIAN
10 DELIVERIES? WOULD YOU AGREE WITH THAT?

11 A CERTAINLY.

12 Q OKAY. SO FAIRLY RARE, BUT IT OCCURS IN OVER
13 14 PERCENT OF VAGINAL DELIVERS AT BIRTH; IS THAT
14 CORRECT?

15 A I BELIEVE I WAS BEING QUESTIONED AT THAT TIME
16 ABOUT MY EXPERIENCE AND MY PRACTICE. I MAY BE
17 MISTAKEN, MR. STRICKLER, BUT WE DON'T GENERALLY
18 SEE ABSOLUTELY HEALTHY NEWBORNS, SO I WOULD NOT
19 HAVE PERSONAL EXPERIENCE AND EXTENSIVE EXAMINATION
20 OF NEWBORNS. ALTHOUGH I DO TRUST YOUR STATISTICS
21 AND HAVE HEARD STUDIES QUOTING AS MANY AS
22 40 PERCENT OF TERM NEWBORNS HAVING RETINAL
23 HEMORRHAGES AT BIRTH.

24 THAT WAS DONE BY AN OPHTHALMOLOGIST WHO TOOK
25 ALL THESE TERM BABIES AND DILATED THEIR PUPILS AND

1 LOOKED AT THEIR RETINAS, BUT THAT'S NOT GENERALLY
2 WHAT OPHTHALMOLOGISTS DO.

3 Q RIGHT. JUST A FEW MORE QUESTIONS.

4 YOU INDICATE THAT IN YOUR OPINION THE
5 HEMORRHAGES, THE RETINAL HEMORRHAGES, THAT YOU
6 OBSERVED -- AND THIS WAS ON THE 29TH AT 8:15 A.M.,
7 THAT THEY WERE RECENT, CORRECT?

8 A YES.

9 Q AND THEN MS. CAMPBELL, I BELIEVE, SAID SO
10 SOMETHING BETWEEN 24 AND 48 HOURS PRIOR TO YOUR
11 SEEING THE CHILD AS FAR AS DATING THE HEMORRHAGES.
12 THAT'S WHAT SHE SAID. HOW RECENT DOES RECENT MEAN
13 TO YOU?

14 A I WOULD SAY YOU COULD STRETCH THAT OUT A
15 LITTLE BIT MORE, MAYBE EVEN TO 72 HOURS, BUT IT'S
16 CERTAINLY NOT THE SEVEN DAYS MENTIONED EARLIER.

17 Q OKAY. NOW, WE SAW UP HERE A PICTURE, A
18 SERIES OF PICTURES OF THE BRAIN AND -- BEG THE
19 COURT'S INDULGENCE, YOUR HONOR.

20 (PAUSE)

21 -- AND A SUBDURAL HEMATOMA, IN THAT SERIES OF
22 PICTURES?

23 A YES.

24 Q OR IT SHOWED A REPRESENTATION OF A SUBDURAL
25 HEMATOMA. IT COVERED A WHOLE -- ALMOST THE WHOLE

1 SIDE OF THE HEAD. HOW LARGE WAS THE SUBDURAL
2 HEMATOMA IN THIS CASE?

3 A I COULD REVIEW THE NOTES BY DR. SMITH, BUT I
4 DON'T KNOW TO TELL YOU OTHERWISE. WOULD YOU LIKE
5 FOR ME TO DO THAT?

6 Q SURE.

7 (PAUSE)

8 A THE DISCHARGE SUMMARY DOCUMENTED BRIGHT ACUTE
9 SUBDURAL HEMATOMA MEASURING 12 MILLIMETERS IN
10 DEPTH, WITH A MIDLINE SHIFT OF 15 MILLIMETERS.

11 Q OKAY. AND HOW LARGE WAS THE HEMATOMA? WE
12 HAVE DEPTH. WE HAVE MIDLINE SHIFT.

13 A OKAY. IN ORDER TO TELL YOU THAT I'D HAVE TO
14 REVIEW THE C.T. REPORT.

15 (PAUSE)

16 THIS WAS PERFORMED ON MARCH 28TH, AND IT SAYS
17 THERE IS A SUBDURAL COLLECTION OVERLYING THE RIGHT
18 HEMISPHERE.

19 Q OKAY. HOW LARGE? SO MANY CENTIMETERS OR...

20 A THE RIGHT HEMISPHERE MEANS THE RIGHT HALF OF
21 THE BRAIN.

22 Q SO IT'S OVER THE ENTIRE RIGHT HALF OF THE
23 BRAIN?

24 A THAT'S WHAT RIGHT HEMISPHERE MEANS.

25 Q OKAY.

1 A IT EXTENDS OVER THE RIGHT FRONTAL REGION,
2 ALSO POSTERIOR TO THE OCCIPITAL LOBE AND INFERIOR
3 TO THE TEMPORAL LOBE, SO IT MOST DEFINITELY COVERS
4 HALF THE BRAIN.

5 Q HOW LONG DID YOU SPEND EVALUATING MINOR
6 ON THE 29TH?

7 A ACTUALLY LOOKING AT HER EYES?

8 Q RIGHT.

9 A PROBABLY 15 MINUTES.

10 Q NOW, THIS THING THAT WAS SHOWN LAST, IT SHOWS
11 A SKULL, AND THEN THIS IS A CRANIUM. UNDERNEATH
12 THAT, AS I UNDERSTAND IT, THERE IS THIS DURA; IS
13 THAT CORRECT?

14 A THAT'S CORRECT.

15 Q THE NEXT LAYER. THEN THE PICTURE, IT TALKS
16 ABOUT SOMETHING CALLED THE ARACHNOID?

17 A YES.

18 Q OKAY. AND THAT'S A MEMBRANE, RIGHT?

19 A YES. IT'S A VERY POROUS MEMBRANE.

20 Q OKAY. A VERY POROUS MEMBRANE. IT'S CALLED
21 ARACHNOID BECAUSE SOMEONE THINKS IT RESEMBLES
22 SPIDER WEBS?

23 A EXACTLY.

24 Q THAT'S WHERE YOU GET THE ARACHNOID NAME,
25 RIGHT?

1 A YES.

2 Q NOW, THEN THE NEXT THING IT SHOWED WAS THE
3 BRAIN ITSELF. ACTUALLY THERE'S ANOTHER LAYER
4 RIGHT THERE. THERE IS A LAYER IN BETWEEN THE
5 ARACHNOID AND THE SURFACE OF BRAIN CALLED THE PIA,
6 CORRECT?

7 A ACTUALLY THE PIA IS NOT A SEPARATE LAYER. IT
8 IS INTIMATELY ATTACHED TO THE BRAIN.

9 Q IT'S ATTACHED TO THE BRAIN? OKAY. RIGHT.

10 A IT IS VERY, VERY DIFFICULT TO SEPARATE THE
11 MEMBRANE AWAY FROM THE BRAIN.

12 Q IT IS A MEMBRANE.

13 A YES, IT IS A MEMBRANE.

14 Q THAT WASN'T UP THERE, BUT I JUST WANTED TO
15 MAKE SURE I HAD ALL THE LAYERS RIGHT, OKAY?

16 A ABSOLUTELY.

17 Q SO WHEN YOU GET A SUBDURAL HEMATOMA, IT
18 OCCURS BETWEEN THE DURA AND THE ARACHNOID
19 MEMBRANE, CORRECT?

20 A THAT'S CORRECT.

21 Q OKAY. I JUST WANTED TO MAKE SURE THAT THERE
22 ACTUALLY WAS SUCH A THING AS THE ARACHNOID
23 MEMBRANE. AND YOU'RE ACQUAINTED WITH THE
24 SUBARACHNOID HEMORRHAGE, CORRECT?

25 A YES.

1 Q OKAY. AND THAT WOULD OCCUR BETWEEN THE
2 ARACHNOID MEMBRANE AND THE PIA ON THE SURFACE OF
3 THE BRAIN?

4 A THAT'S CORRECT.

5 Q OKAY. SO I JUST GOT THE EDUCATIONAL SLIDE
6 WAS LEFT OUT IN FRONT OF THE SURFACE OF THE BRAIN.

7 THANK YOU VERY MUCH, MA'AM. THAT'S ALL I
8 HAVE.

9 THE COURT: ANYTHING ON REDIRECT?

10 MS. CAMPBELL: JUST A FEW QUESTIONS, JUDGE.

11 THE COURT: ALL RIGHT.

12 REDIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q THIS WAS A SUBDURAL HEMATOMA IN THIS CASE?

15 A YES.

16 Q AND HE ASKED YOU ABOUT PHOTOGRAPHING THE
17 RETINAL HEMORRHAGES AS YOU SAW THEM?

18 A YES.

19 Q AND I SHOW YOU THIS DIAGRAM. ARE THESE
20 ACTUALLY NOTES THAT YOU MADE THAT DAY WHEN YOU SAW
21 THE CHILD?

22 A YES.

23 Q AND THOSE -- DO YOU HAVE A DEPICTION OF THE
24 HEMORRHAGES AS YOU SAW THEM?

25 A YES, I DO.

1 Q AND IN THOSE YOU SAY THE HEMORRHAGES ARE
2 DISTINCT AND IN ALL FOUR QUADRANTS; IS THAT
3 CORRECT?

4 A YES, IT IS.

5 Q SO YOU DOCUMENTED THESE SO THAT TWO YEARS
6 LATER YOU WOULD KNOW HOW THOSE HEMORRHAGES
7 APPEARED, CORRECT?

8 A CORRECT.

9 Q AND BASED ON YOUR FINDINGS, JUST FROM
10 EXAMINING THE CHILD THAT DAY, YOU SAID THAT CHILD
11 ~~ABUSE WAS MOST LIKELY~~, AND THAT WAS YOUR DIAGNOSIS
12 AT THAT POINT?

13 A ~~YES.~~

14 Q AND DID YOU RECEIVE FURTHER INFORMATION AT A
15 LATER POINT IN TIME THAT CHANGED THAT DIAGNOSIS
16 SOMEWHAT?

17 A WELL, IT MADE IT MORE CERTAIN.

18 Q MADE IT MORE CERTAIN?

19 A YES.

20 Q AND TELL THE JURY WHAT THAT WAS.

21 A ~~THE POSTMORTEM EXAMINATION.~~

22 Q AND HOW DID THE POSTMORTEM EXAMINATION AFFECT
23 YOUR OPINION AS TO NOT JUST MAKING THE CHILD ABUSE
24 MOST LIKELY, BUT MAKING IT CHILD ABUSE?

25 A TWO THINGS. ONE WAS THE PRESENCE OF BLOOD

1 AROUND THE OPTIC NERVE, WHICH I MENTIONED EARLIER
2 AND THE OTHER WAS THE PRESENCE OF BRUISING.

3 Q IN YOUR EXPERT OPINION IN THIS FIELD, THIS
4 WAS CHILD ABUSE?

5 A YES.

6 Q TELL ME, DOCTOR, HE ASKED YOU ABOUT THE
7 SHAKING AND THE DIFFERENCE OF APPEARANCE, WAS
8 THERE ANYTHING IN THIS CASE THAT INDICATES THAT
9 THIS IS ANYTHING OTHER THAN CHILD ABUSE AS SHAKEN
10 BABY?

11 MR. STRICKLER: I OBJECT. IT'S IMPROPER
12 CROSS-EXAMINATION.

13 THE COURT: ~~SUSTAINED.~~

14 BY MS. CAMPBELL:

15 Q HE ASKED YOU SPECIFICALLY ABOUT THE
16 WIDESPREAD AREA OF THE RETINAL -- THE MULTIPLE
17 LAYERS OF RETINAL HEMORRHAGES, AND HE SAID THAT IT
18 COULD POSSIBLY BE IN THE FRONT AREA OF THE RETINA
19 AS WELL. YOUR FINDINGS IN THIS CASE, WERE THEY
20 ALL CONSISTENT ONLY WITH SHAKEN BABY?

21 MR. STRICKLER: YOUR HONOR, I'LL OBJECT
22 AGAIN. THAT WAS HER TESTIMONY ON DIRECT.

23 THE COURT: OVERRULE THAT OBJECTION.

24 MS. CAMPBELL: THANK YOU.

25 BY MS. CAMPBELL:

1 Q GO AHEAD, I'M SORRY, DOCTOR.

2 A THE CONSTELLATION OF FINDINGS ON THE RETINAL
3 EXAMINATION, THE POSTMORTEM EXAMINATION, AND THE
4 ABSENCE OR SIGNIFICANT TRAUMA MEAN THIS WAS CHILD
5 ABUSE.

6 Q FINALLY DOCTOR, HE ASKED YOU AT THE BEGINNING
7 OF HIS QUESTIONING SOMETHING ABOUT SETTING UP SOME
8 TYPE OF -- IF YOU FAKED LIKE SYMPTOMS OR SOMETHING
9 OR SET UP TESTS TO SIMULATE REAL LIFE; IS THAT
10 RIGHT?

11 A THAT'S RIGHT.

12 Q AND HE REFERRED TO THE TERM EMPIRICAL DATA OR
13 SOMETHING?

14 A YES.

15 Q DOCTOR, YOU'RE BASING YOUR FINDINGS, YOU'RE
16 BASING -- YOUR CONCLUSIONS TODAY ARE BASED ON REAL
17 FINDINGS, REAL LIFE; IS THAT CORRECT?

18 A YES.

19 MS. CAMPBELL: THANK YOU, DOCTOR.

20 THE COURT: ANYTHING FURTHER OF THIS WITNESS?

21 MR. STRICKLER: I'M SORRY, NO, YOUR HONOR.

22 THE COURT: THANK YOU. YOU MAY STEP DOWN.

23 ANY OBJECTION TO HER BEING RELEASED FROM THE
24 SUBPOENA?

25 MR. STRICKLER: NO OBJECTION.

1 MS. CAMPBELL: WE'D ASK THAT SHE BE RELEASED.

2 THE COURT: LET ME GET A FEEL AS FAR AS TO
3 YOUR NEXT WITNESS ON TIME.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD
5 IN THE PRESENCE OF THE JURY, BUT OUT OF
6 THE HEARING OF THE JURY.)

7 THE COURT: ALL RIGHT. CALL YOUR NEXT
8 WITNESS.

9 MS. CAMPBELL: THANK YOU, DOCTOR -- I MEAN,
10 JUDGE.

11 THE STATE WOULD CALL DR. ANNE ABEL.

12 THE CLERK: COME FORWARD, PLEASE. PLACE YOUR
13 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

14 DR. ANNE ABEL,

15 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE STATE YOUR FULL NAME AND
17 SPELL YOUR LAST NAME.

18 THE WITNESS: I'M ANNE ABEL AND MY LAST NAME
19 IS SPELLED A-B-E-L.

20 MS. CAMPBELL: I SPELLED IT WRONG. OKAY.
21 A-B-E-L. I'M SORRY.

22 DIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q WHERE ARE YOU EMPLOYED?

25 A CHILDREN'S HOSPITAL IN WASHINGTON, D.C.

1 Q IN WASHINGTON, D.C.?

2 A YES.

3 Q AND WHAT CHILDREN'S HOSPITAL IS THAT?

4 A THE PROPER TITLE IS CHILDREN'S NATIONAL
5 MEDICAL CENTER.

6 Q AND WHAT DO YOU DO IN WASHINGTON, D.C. AT THE
7 CHILDREN'S NATIONAL MEDICAL CENTER?

8 A I'M THE DIRECTOR OF THE FREDDIE MAC
9 FOUNDATION: CHILD AND ADOLESCENT PROTECTION
10 CENTER.

11 Q AND AS DIRECTOR OF THAT CENTER, WHAT ARE YOUR
12 DUTIES TYPICALLY?

13 A I'M A -- AS A FORENSIC PEDIATRICIAN, I SEE
14 CASES IN THE HOSPITAL AND IN OUR CLINIC. I
15 SUPERVISE RESIDENTS AND MEDICAL STUDENTS. I TEACH
16 RESIDENTS AND MEDICAL STUDENTS.

17 I GO TO COURT FOR CASES OF SUSPECTED ABUSE
18 AND NEGLECT. I GO TO TEAM MEETINGS WITH THE
19 ADVOCACY CENTER IN OUR CITY. I ADMINISTER GRANTS.
20 I APPLY FOR GRANTS. I SUPERVISE A TEAM OF 17
21 EMPLOYEES.

22 Q DOCTOR, TELL THIS JURY A LITTLE BIT ABOUT
23 YOUR EDUCATION AND YOUR TRAINING IN THE MEDICAL
24 FIELD.

25 A I RECEIVED MY MEDICAL DEGREE FROM INDIANA

1 UNIVERSITY SCHOOL OF MEDICINE. I DID RESIDENCY
2 TRAINING IN PEDIATRICS AT METHODIST HOSPITAL AND
3 THEN I DID MY FINAL YEAR AT RICHLAND MEMORIAL HERE
4 IN COLUMBIA, SOUTH CAROLINA.

5 Q AND AFTER YOU DID YOUR FINAL YEAR RESIDENCY
6 HERE IN COLUMBIA, SOUTH CAROLINA, DID YOU CONTINUE
7 ON AT RICHLAND MEMORIAL?

8 A NO, I WAS A FULL-TIME PEDIATRICIAN FOR THE
9 ARMY FOR FOUR YEARS.

10 Q FOR FOUR YEARS AFTER THAT?

11 A YES.

12 Q AT SOME POINT AFTER THAT DID YOU RETURN TO
13 SOUTH CAROLINA?

14 A WELL, I WAS AT THE ARMY HOSPITAL SO I NEVER
15 LEFT.

16 I STARTED TEACHING MEDICAL STUDENTS AND
17 RESIDENTS. I JOINED THE CLINICAL FACULTY AT THE
18 SCHOOL OF MEDICINE IN THE DEPARTMENT OF
19 PEDIATRICS.

20 I WENT ON TO GET FURTHER TRAINING AT THE
21 WILLIAM S. HALL PSYCHIATRIC INSTITUTE.

22 I SPENT PART OF MY TRAINING TIME AT THE
23 UNIVERSITY OF SOUTH CAROLINA AT COLUMBIA. I CAME
24 BACK TO HALL INSTITUTE AND COMPLETED THAT
25 TRAINING.

1 THEN I MAINTAINED MY ACADEMIC AFFILIATION
2 WITH THE MEDICAL SCHOOL, BOTH WITH THE PSYCHIATRIC
3 DEPARTMENT AND THE PEDIATRIC DEPARTMENT AND DID A
4 WIDE VARIETY OF WORK IN PRIVATE PRACTICE, AND I
5 CAME BACK TO THE MEDICAL SCHOOL WITH HALL
6 INSTITUTE AS A -- WHAT WAS I? AT THAT TIME I WAS
7 AN ASSOCIATE PROFESSOR OF NEUROPSYCHOLOGY AND
8 PEDIATRICS. THEN I WENT FOR A FELLOWSHIP TRAINING
9 IN FORENSIC PEDIATRICS APPROXIMATELY TWO YEARS AGO
10 AT THE WOOD CHILDREN'S HOSPITAL IN PROVIDENCE,
11 RHODE ISLAND. THEN I OBTAINED MY CURRENT POSITION
12 AT WASHINGTON, D.C.

13 Q AND HOW LONG HAVE YOU ACTUALLY BEEN IN
14 WASHINGTON, D.C.?

15 A SINCE SEPTEMBER 4TH OF 2001.

16 Q AND PRIOR TO SEPTEMBER 4TH OF LAST FALL, I
17 GUESS, IS THAT RIGHT?

18 A YES.

19 Q I'M SORRY. I'M MESSING UP MY YEARS.

20 YOU WERE AVAILABLE ON A CONSULTING BASIS AT
21 RICHLAND MEMORIAL HOSPITAL?

22 A YES, FOR APPROXIMATELY TWO YEARS BEFORE I
23 LEFT THE COLUMBIA AREA, I WAS AN ASSOCIATE
24 PROFESSOR OF PEDIATRICS. I WAS A MEDICAL DIRECTOR
25 OF THE ASSESSMENT RESOURCE CENTER. I DID CONSULTS

1 AT RICHLAND MEMORIAL WHEN QUESTIONS OF CHILD ABUSE
2 WERE RAISED, AND I ALSO SUPERVISED RESIDENTS AND
3 SAW CLINICAL PATIENTS AT THE ASSESSMENT RESOURCE
4 CENTER, WHICH IS A CLINIC FOR THE EVALUATION OF
5 ABUSED CHILDREN.

6 Q SO PRIOR TO GETTING PROMOTED TO THE
7 CHILDREN'S NATIONAL MEDICAL CENTER, YOU WERE DOING
8 THE SAME TYPE OF WORK HERE?

9 A YES, I WAS.

10 Q AND AS PART OF YOUR DUTIES YOU WERE ASKED TO
11 ASSESS WHETHER OR NOT CHILD ABUSE IS LIKELY,
12 UNLIKELY, AND THINGS OF THAT NATURE?

13 A YES, THAT'S PART OF MY DUTIES.

14 Q AND HAVE YOU TESTIFIED BEFORE AS AN EXPERT AS
15 A FORENSIC PEDIATRICIAN?

16 A YES, I HAVE.

17 Q AND HOW MANY TIMES APPROXIMATELY HAVE YOU
18 BEEN QUALIFIED, DO YOU KNOW?

19 A I'M GUESSING 50 TO 75 TIMES.

20 Q AS AN EXPERT IN FORENSIC PEDIATRICS?

21 A YES.

22 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
23 OFFER HER AS AN EXPERT IN FORENSIC PEDIATRICS.

24 THE COURT: DO YOU WISH TO EXAMINE THE
25 WITNESS?

1 MR. STRICKLER: I HAVE NO VOIR DIRE ON THAT
2 BASIS.

3 THE COURT: YOU MAY PROCEED ON THAT BASIS.

4 MS. CAMPBELL: THANK YOU, YOUR HONOR.

5 BY MS. CAMPBELL:

6 Q DOCTOR, I WANT TO TALK TYPICALLY FIRST.
7 TYPICALLY WHEN YOU'RE CALLED IN FOR A CASE, THEY
8 ARE CALLING YOU IN TO ASK YOUR OPINION AS TO
9 WHETHER OR NOT CHILD ABUSE IS PRESENT?

10 A YES.

11 Q SO YOU'RE CALLED IN WHENEVER THERE IS A
12 SUSPECTED CASE IN ORDER TO RULE IN OR TO RULE OUT
13 CHILD ABUSE?

14 A RIGHT.

15 Q AND IN FACT, IN THE CASES YOU HAVE BEEN
16 CONSULTED ON YOU INDICATED THERE WAS CHILD ABUSE
17 AND INDICATED THERE WAS NOT?

18 A THAT'S CORRECT.

19 Q AND IN THIS CASE BACK ON MARCH THE 29TH OR
20 30TH -- I BELIEVE ON MARCH 30TH, YOU WERE CALLED
21 IN ON A CASE BY DR. HUBBIRD, I BELIEVE?

22 A I WAS CALLED ON THE MORNING OF THE 29TH TO DO
23 A CONSULT BY DR. HUBBIRD.

24 Q AND WHAT PATIENT WAS HE CONCERNED ABOUT?

25 A MINOR

1 Q AND TYPICALLY WHEN YOU'RE CALLED IN TO DO A
2 CONSULT, WHAT TYPES OF THINGS ARE YOU LOOKING FOR
3 AND TELL THIS JURY HOW YOU GO ABOUT MAKING YOUR
4 DETERMINATIONS?

5 A FIRST I FIND OUT WHAT THE REFERRING DOCTOR
6 EXACTLY IS CONCERNED ABOUT, AND I READ THE CHART.
7 I EVALUATE ALL THE RECORDS I HAVE. I DO A
8 PHYSICAL EXAMINATION ON THE PATIENT. IF THE
9 FAMILY IS AVAILABLE, I TALK WITH THE FAMILY.

10 I GO STUDY THE X-RAYS THAT WERE DONE ON THE
11 CHILD. I LOOK AT ALL THE LAB WORK, AND IF THERE
12 HAVE BEEN OTHER CONSULTANTS INVOLVED IN THE CASE,
13 I MAY OR MAY NOT TALK TO THEM DIRECTLY, AS WELL AS
14 READ THEIR OPINION.

15 Q AND IN THIS CASE SPECIFICALLY INVOLVING
16 MINOR, WERE YOU ABLE TO COLLECT A NUMBER
17 OF RECORDS AND REVIEW THOSE?

18 A THE RECORDS THAT I HAD WERE THE HOSPITAL
19 GENERATED RECORDS, WHICH ARE THE EMERGENCY ROOM
20 REPORT FROM WHERE SHE WAS ADMITTED, AND THE I.C.U.
21 REPORT, AND THE SURGICAL REPORT. I HAD A VERBAL
22 REPORT FROM THE D.S.S. SUPERVISOR FOR CHILDREN IN
23 FOSTER CARE ABOUT PREVIOUS MEDICAL ISSUES, BUT
24 THAT WAS VERBAL.

25 Q AND IN ADDITION TO THAT, DID YOU INTERVIEW A

1 NUMBER OF DOCTORS IN THIS CASE YOURSELF?

2 A YES, I DID.

3 Q AND WHAT DOCTORS? NAME SOME OF THOSE.

4 A I TALKED TO THE SURGEON. I TALKED TO --

5 EXCUSE ME, I MADE A LIST. I TALKED TO

6 DR. HUBBIRD; I TALKED TO DR. CLOSE, THE

7 RADIOLOGIST; DR. LENWOOD SMITH, THE NEUROSURGEON;

8 I TALKED TO DIANE REED, MEDICAL SOCIAL WORKER WHO

9 WAS ASSIGNED AT THAT TIME TO THE P.I.C.U.; I

10 TALKED TO AN INDIVIDUAL AT D.S.S. THAT I HAD BEEN

11 PREVIOUSLY REFERRED TO THAT GAVE ME SOME

12 INFORMATION ABOUT THE PREVIOUS MEDICAL RECORD.

13 Q AFTER GATHERING THAT, DID YOU ALSO -- IS IT

14 IMPORTANT IN YOUR WORK TO HAVE A HISTORY OF HOW

15 THE CHILD PRESENTED AT THE E.R.?

16 A YES. I CAREFULLY REVIEWED THE RECORD FOR

17 WHAT THE FAMILY -- THE FOSTER FAMILY'S STATEMENTS

18 TO THE MEDICAL TEAM HAD BEEN BOTH IN THE EMERGENCY

19 DEPARTMENT AND THEN LATER IN THE P.I.C.U.

20 Q AND IMPORTANT IN ASSESSING CHILD ABUSE, IS IT

21 ALSO IMPORTANT TO RULE OUT ANY POSSIBLE CAUSE FOR

22 ANY TRAUMA OR ABUSE?

23 A YES. I SCANNED THE RECORDS CAREFULLY TO LOOK

24 FOR MEDICAL CONDITIONS THAT CAN BE CONFUSED WITH

25 THAT TO SEE IF THE TESTS WERE DONE TO RULE THOSE

1 OUT.

2 Q WERE YOU ABLE TO ACTUALLY DO AN EXAMINATION
3 OF THIS CHILD YOURSELF?

4 A YES.

5 Q AND WHAT STATE WAS THE CHILD? -- DID YOU SEE
6 HER ON THE 29TH?

7 A I SAW HER ON THE 29TH. I BELIEVE I SAW HER
8 THE NEXT DAY. THE NOTE I LEFT ON THE CHART IS THE
9 29TH AND THEN I MADE A FORMAL DICTATED SUMMATION
10 REPORT.

11 Q SO YOU SAW HER THE 29TH?

12 A THE 29TH.

13 Q THE 29TH IS WHEN YOU ACTUALLY SAW HER?

14 A YES.

15 Q AND YOU MADE AN EXAMINATION OF THE CHILD?

16 A YES, I DID.

17 Q AND YOU ALWAYS DO THAT IN ANY CASE THAT
18 YOU'RE CONSULTING?

19 A ~~IF THE CHILD IS ALIVE, YES.~~

20 Q AND IN THIS CASE WHAT WAS THE CHILD'S
21 CONDITION WHEN YOU FIRST CAME IN CONTACT WITH HER
22 ON THE 29TH?

23 A WELL, SHE WAS IN CRITICAL CONDITION. SHE WAS
24 IN A COMA. SHE WAS INTUBATED, SHE HAD A TUBE, YOU
25 KNOW, CONNECTED TO THE RESPIRATOR. SHE HAD AN

1 I.V. GOING IN, AND SHE WASN'T MOVING ANYTHING.

2 Q WHAT TYPES OF THINGS WERE YOU EXAMINING HER
3 FOR IN YOUR EXAMINATION OF HER?

4 A WELL, I WAS LOOKING FOR THE GENERAL STATE OF
5 HOW HER BRAIN WAS FUNCTIONING, AND THE WAY YOU CAN
6 TELL THAT IS TO CHECK FOR REFLECTIONS, CHECK FOR
7 WHAT SHE DOES ON HER OWN SPONTANEOUSLY. I LOOKED
8 AT HER SKIN ALL OVER. I LOOKED IN HER EYES. I
9 LISTENED TO HER HEART. I FELT HER BELLY. I
10 LOOKED AT HER FRONT AND BACK. I WAS ABLE TO GET
11 THE NURSE TO HELP ME TO TURN HER, EVEN THOUGH SHE
12 WAS ON THE -- I GOT TO TURN HER SO I GOT A GOOD
13 LOOK AT EVERY ASPECT OF HER BODY.

14 Q AND YOU SAID YOU HAD TO HAVE HELP TURNING
15 HER; SHE WAS BASICALLY IN A COMA?

16 A SHE WAS IN A COMA, AND SHE WAS ON A
17 RESPIRATOR, YES.

18 Q ABOUT THIS CHILD, SHE OLD WAS SHE WHEN YOU
19 SAW HER?

20 A TWO YEARS, THREE OR FOUR MONTHS.

21 Q AND HOW BIG A CHILD WAS SHE?

22 A SHE WAS A BIG GIRL. SHE WAS 12-KILOS, WHICH
23 IS BETWEEN 25 AND 30 POUNDS.

24 Q SO SHE WAS A FAIRLY HEALTHY SIZE TWO YEAR
25 OLD?

1 A YES.

2 Q AND WHEN YOU SAW HER AND EXAMINED HER, WHAT,
3 IF ANY, FINDINGS DID YOU MAKE?

4 A WELL, IN ADDITION TO THE GENERAL STATE I
5 DESCRIBED, SHE ALSO HAD BRUISES ON HER BODY. THEY
6 WERE BROWN BRUISES. THEY WEREN'T RED, THEY WERE
7 BROWN, WHICH IS SIGNIFICANT. THEY WERE ON BOTH OF
8 HER BUTTOCKS AND THE UPPER ARM. SHE HAD SOME
9 SWELLING ABOUT ONE OF HER EYES, BUT I DID NOT SEE
10 BRUISING ABOUT THE EYE.

11 Q AND THAT WOULD HAVE BEEN ON THE 29TH, WHICH
12 WOULD HAVE BEEN APPROXIMATELY 24 TO 30 HOURS?

13 A MY EXAMINATION WAS ABOUT 28 HOURS AFTER
14 ADMISSION.

15 Q ABOUT 28 HOURS AFTER ADMISSION YOU NOTICED
16 SOME BRUISING YOURSELF AT THAT POINT?

17 A YES, I SAW BRUISING.

18 Q DOCTOR, TYPICALLY WHEN BRUISING IS SUSTAINED
19 AS A CHILD OR AN ADULT, IS IT -- DOES IT SHOW UP
20 IMMEDIATELY?

21 A IT DEPENDS ON THE SEVERITY OF THE FORCE AND
22 WHAT THE UNDERLYING STRUCTURES ARE. IF A BLOW
23 OCCURS TO A PART OF BODY WHERE THERE IS VERY
24 LITTLE PADDING, SUCH AS YOUR SHINS, THE BRUISE
25 MIGHT OCCUR RIGHT AWAY, BUT IF A BLOW OCCURS AT A

1 VERY PADDED PART, SUCH AS THE BUTTOCKS, THEN
2 BRUISING -- BRUISING IS CAUSED BY BLEEDING IN THE
3 SKIN, SO IF A PADDED PART OF THE BODY IS HIT,
4 THERE'S A BLOW TO THAT PART OF THE BODY, IT
5 EVENTUALLY RESULTS IN A BRUISE THAT MAY NOT SHOW
6 UP RIGHT AWAY. IT TAKES TIME FOR THE BLOOD
7 PIGMENTS THAT CAUSE THE BRUISED COLOR THAT WE CAN
8 SEE TO BRUISE UP TOWARD THE SURFACE, CLOSE ENOUGH
9 TO THE SURFACE THAT WE CAN START TO SEE THE
10 BRUISE.

11 Q SO SAY IF A -- IN THIS CASE YOU NOTED THAT
12 THE BRUISES YOU SAW AFTER 28 HOURS WERE WHAT
13 COLOR?

14 A BROWN.

15 Q AND THAT, YOU SAID, WAS SIGNIFICANT?

16 A YES.

17 Q TELL THE JURY WHY THAT'S SIGNIFICANT?

18 A IT'S SIGNIFICANT BECAUSE BRUISES -- IT'S VERY
19 HARD TO DATE BRUISES 100 PERCENT ACCURATELY.

20 WE DO KNOW FROM RESEARCH THAT IT TAKES AT
21 LEAST 18 HOURS FOR A BRUISE TO GET ANY COLOR THAT
22 INCLUDES YELLOW. I DON'T KNOW IF YOU REMEMBER
23 FROM GRAMMAR SCHOOL, BUT IT TAKES -- TO MAKE GREEN
24 YOU HAVE TO HAVE BLUE AND YELLOW.
25 TO MAKE A BROWN COLOR YOU HAVE TO INCLUDE

1 SOME YELLOW, SO ANY OF THE COLORS THAT, IF YOU
2 REMEMBER FROM YOUR GRAMMAR SCHOOL, PRIMARY COLORS
3 INCLUDE YELLOW, AND IT TAKES AT LEAST 18 HOURS TO
4 GET THAT. NOW SOME PEOPLE CAN GET A BRUISE THAT
5 STAYS RED OR BLUE AND IT NEVER TURNS GREEN,
6 YELLOW, OR BROWN. WE CAN'T DATE THOSE VERY WELL,
7 BUT BRUISES THAT GET YELLOW, GREEN, OR BROWN, WE
8 KNOW THAT THAT BRUISE IS AT LEAST 18 HOURS OLD.

9 Q AND THE BRUISES THAT YOU SAW, AGAIN IN WHAT
10 AREAS DID YOU SEE THEM?

11 A I SAW THEM ON THE BUTTOCKS, ON THE UPPER
12 ARMS, AND MID-ANTERIOR CHEST.

13 Q AND THOSE YOU'RE SAYING, BECAUSE OF THE
14 COLOR, YOU CAN SAY WERE AT LEAST 18 HOURS OLD?

15 A RIGHT.

16 Q THEY COULD HAVE BEEN OLDER?

17 A THEY COULD HAVE BEEN EVEN AS OLD AS TWO WEEKS
18 OLD.

19 Q WOULD THEY HAVE BEEN CONSISTENT WITH BRUISING
20 THAT OCCURRED RIGHT BEFORE SHE WAS PRESENTED TO
21 THE HOSPITAL?

22 A YES, BECAUSE WHEN I SAW HER 28 HOURS
23 AFTERWARDS, AFTER SHE GOT ADMITTED, THE BRUISES
24 HAD TO BE AT LEAST 18 HOURS OLD, BUT THEY COULD
25 HAVE BEEN AS OLD AS TWO WEEKS SO, SO YES, THEY

1 COULD HAVE OCCURRED THE MORNING OF MY EXAMINATION
2 OF HER.

3 Q AND I'M GOING TO SHOW YOU THIS SERIES OF
4 PICTURES THAT I'VE SHOWN YOU BEFORE AND ASK YOU TO
5 REVIEW THEM, DO YOU RECOGNIZE THOSE?

6 A YES.

7 Q DO THEY CLEARLY AND ACCURATELY DEPICT THE
8 CONDITION OF THE CHILD WHEN YOU SAW HER ON THE
9 29TH?

10 A YES.

11 Q AND THAT'S WHILE SHE WAS STILL BEING KEPT
12 ALIVE?

13 A YES, YOU CAN SEE THAT SHE'S CONNECTED TO THE
14 RESPIRATOR HERE. (INDICTING)

15 MS. CAMPBELL: YOUR HONOR, WE'D OFFER THESE
16 AT THIS TIME.

17 MR. STRICKLER: CAN WE APPROACH, YOUR HONOR?

18 THE COURT: SURE.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD
20 IN THE PRESENCE OF THE JURY, BUT OUT OF
21 THE HEARING OF THE JURY.)

22 MS. CAMPBELL: MARK 4 THROUGH 9.

23 (WHEREUPON, STATE'S EXHIBITS 4 AND 5
24 WERE MARKED FOR IDENTIFICATION ONLY.)

25 (WHEREUPON, STATE'S EXHIBITS 6, 7, 8,

1 AND 9 WERE ADMITTED INTO EVIDENCE.)

2 BY MS. CAMPBELL:

3 Q DOCTOR, I'M GOING TO SHOW YOU STATE'S
4 EXHIBITS 6, 7, 8 AND 9. ON STATE'S EXHIBIT 6, YOU
5 MENTIONED THAT THERE IS A BRUISE ON THE CHEST. IS
6 THAT DEPICTED IN THAT PHOTO?

7 A THERE'S A SMALL BRUISE THAT I CAN SEE THERE.

8 Q AND IT'S -- IS MY FINGER IN THE RIGHT PLACE,
9 SO I CAN SHOW --

10 A THAT'S THE ONE I CAN SEE.

11 Q SO HERE MY FINGER POINTS TO THE BRUISE THAT
12 YOU NOTED WHEN YOU DID YOUR PHYSICAL EXAMINATION
13 OF THE CHILD WHEN SHE WAS IN THE HOSPITAL?

14 (INDICATING)

15 A YES.

16 Q AND YOU ALSO NOTED SOME BRUISING TO SOME
17 OTHER AREAS INCLUDING THE BUTTOCKS IN THIS CASE?

18 A YES.

19 Q AND I SHOW YOU THESE THREE PHOTOGRAPHS,
20 STATE'S 7, 8, AND 9. WHAT DO THOSE REPRESENT?

21 A THOSE ARE THE PHOTOS OF THE BUTTOCKS OF
22 MINOR . ONE PHOTO -- A RULER IS BEING
23 HELD UP SO THE SIZE OF THE BRUISING IS EASIER TO
24 DETERMINE. IN ONE PHOTO, THE CHILD IS A LITTLE
25 MORE ROTATED THAN THE OTHER, SO YOU CAN SEE BOTH

1 BUTTOCKS BETTER. ONE IS A MORE FAR AWAY VIEW.

2 Q AND IN THESE -- DO THESE INDICATE THE
3 BRUISING THAT YOU NOTED IN YOUR RECORDS?

4 A YES.

5 Q AND HOW DID YOU DESCRIBE THAT BRUISING?

6 A EXTENSIVE BRUISING ON BOTH BUTTOCKS.

7 Q ON BOTH OF HER BUTTOCKS?

8 A YES.

9 Q AND, DOCTOR, WOULD THAT KIND OF BRUISING, THE
10 BRUISING THAT YOU NOTED THAT'S DEPICTED IN THESE
11 PICTURES, WOULD THAT BE CONSISTENT WITH SOMEONE
12 HAVING BEEN BEATEN WITH A BELT?

13 MR. STRICKLER: OBJECTION AS TO THE LEADING.

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

16 BY MS. CAMPBELL:

17 Q WHAT WOULD THAT BE CONSISTENT WITH, DOCTOR?

18 A BLUNT FORCE TRAUMA.

19 Q BLUNT FORCE TRAUMA?

20 A YES.

21 Q AND WHEN YOU SAY A BLUNT FORCE TRAUMA, CAN
22 YOU DEFINE THAT AS BEATINGS, OR HOW DO YOU DEFINE
23 THAT?

24 A BEATINGS COULD DO IT. IF SOMEBODY HAD BEEN
25 THROWN UP AGAINST A WALL AND IF SOMEHOW THE

1 BUTTOCKS HAD HIT FIRST, THAT WOULD DO IT, LIKE IF
2 SOMEONE WAS HOLDING THEIR SHOULDERS AND SLUNG
3 THEM. IT'S CONCEIVABLE THAT WITH AN AUTOMOBILE
4 WRECK YOU COULD GET SOMETHING LIKE THAT, IF YOU'RE
5 NOT SEAT BELTED IN.

6 Q AFTER YOU DID YOUR PHYSICAL EXAMINATION OF
7 THE CHILD YOU ALSO REVIEWED, I BELIEVE, YOU SAID
8 SOME OTHER LAB REPORTS, AS WELL AS C.T. SCANS AND
9 THINGS OF THAT NATURE?

10 A YES, I REVIEWED THE LAB TEST REPORTS THAT
11 WERE IN THE CHART, AND I WENT TO THE RADIOLOGY
12 DEPARTMENT AND REVIEWED THE FILMS.

13 Q DOCTOR, IN YOUR EXPERT OPINION -- AND THIS IS
14 YOUR EXPERT FIELD, CORRECT?

15 A I'M A FORENSIC PEDIATRICIAN, YES.

16 Q A FORENSIC PEDIATRICIAN. AND AS A FORENSIC
17 PEDIATRICIAN, WHAT DO YOU DO?

18 A I EVALUATE CHILDREN WHEN THERE'S A SUSPICION
19 OF ABUSE OR NEGLECT, AND I GATHER THE DATA AND I
20 WILL TRY TO MAKE AN INFORMED OPINION TO GIVE TO
21 THE PERSON THAT'S ASKING ME THE OPINION ON WHAT IT
22 MEANS.

23 Q AND IN THIS CASE INVOLVING THIS CHILD
24 SPECIFICALLY, DID YOU COME TO ANY CONCLUSION OR TO
25 ANY OPINION IN THIS CASE WHETHER OR NOT THERE WAS

1 CHILD ABUSE?

2 A YES. I CAME TO THE CONCLUSION THAT SHE HAD
3 EVIDENCE OF INFLECTED HELD TRAUMA, WHICH IS A FORM
4 OF PHYSICAL CHILD ABUSE. SHE HAD EVIDENCE OF
5 BLUNT FORCE TRAUMA TO HER BUTTOCKS, PHYSICAL ABUSE.
6 BEING THE PRIME LIKELIHOOD THERE. SHE HAD SOME
7 BRUISES ON HER CHEST THAT WOULD BE SUSPICIOUS FOR
8 CHILD ABUSE BECAUSE OF THEIR LOCATION. IT'S AN
9 AREA THAT DOESN'T USUALLY BRUISE, AND THEN THE
10 BRUISES ON THE ARMS, THEY'RE NONSPECIFIC. YOU CAN
11 GET BRUISES ON YOUR ARMS FROM ANY NUMBER OF
12 REASONS OTHER THAN ABUSE. PUTTING IT ALL
13 TOGETHER, SHE LOOKED LIKE A VICTIM OF MULTIPLE
14 FORMS OF PHYSICAL ABUSE.

15 Q SPECIFICALLY, DOCTOR, IN THIS CASE, DID YOU
16 COME TO ANY CONCLUSIONS AS TO WHAT CAUSED THIS
17 CHILD'S DEATH?

18 A CAUSE OF DEATH IS USUALLY DETERMINED BY THE
19 CORONER, BUT WHILE SHE WAS STILL ALIVE HER
20 INJURIES TOLD ME THAT SHE HAD SIGNS AND SYMPTOMS
21 OF SHAKEN BABY SYNDROME, AS WELL AS A BATTERED
22 CHILD. HER BODY WAS BATTERED.

23 Q SO IN THIS CASE YOUR CONCLUSIONS ARE TWOFOLD?

24 A YES.

25 Q SHE WAS A BATTERED CHILD, BUT SHE WAS ALSO --

1 A SHAKEN BABY SYNDROME.

2 Q AND WHEN YOU SAY SHAKEN BABY SYNDROME, TELL
3 THIS JURY WHAT YOU MEAN.

4 A IT'S A SYNDROME. IT MEANS IT'S A GROUP OF
5 HISTORY AND PHYSICAL FINDINGS THAT GO TOGETHER.
6 YOU DON'T MAKE A DIAGNOSIS BY JUST ONE THING. YOU
7 GO BY THE COLLECTION OF THE EVIDENCE. SHE HAD
8 SWELLING OF THE BRAIN, SHE HAD RETINAL
9 HEMORRHAGES, AND SHE HAD SUBDURAL HEMATOMA, AN
10 ACUTE SUBDURAL HEMATOMA. AND THE CAUSE OF HER
11 HORRIBLE MEDICAL CONDITION WHEN I FIRST SAW HER
12 WAS RELATED TO THE ACUTE SUBDURAL HEMATOMA RELATED
13 TO SHAKING, BECAUSE THE EYE FINDINGS WERE FRESH
14 AND THEY COULD NOT BE ATTRIBUTED TO SHAKING THREE
15 WEEKS AGO.

16 Q AND DOCTOR, WE'VE HEARD A LOT ABOUT ACUTE AND
17 CHRONIC SUBDURAL HEMATOMA, WHICH MAY IN AND OF
18 ITSELF BE INDICATIVE OF SOMETHING, BUT IN THIS
19 CASE YOU LOOK AT EVERYTHING, CORRECT?

20 A YES.

21 Q AND BASED ON YOUR OPINION OF LOOKING AT
22 EVERYTHING, IS THERE ANY DOUBT IN YOUR MIND THAT
23 THIS CHILD WAS A SHAKEN BABY?

24 A THERE'S NO DOUBT IN MY MIND.

25 Q AND TELL THIS JURY WHAT TYPE OF FORCE IT

1 TAKES TO INFLICT THIS KIND OF TRAUMA?

2 A THE BRAIN INJURY REQUIRES SEVERE FORCES. THE
3 MAXIMUM UPPER ARM STRENGTH THAT MOST ADULTS COULD
4 MUSTER, VIGOROUS RAPID SHAKING OF THE CHILD AS
5 HARD AS THEY COULD SHAKE FOR A PERIOD OF TIME, NOT
6 JUST ONE SHAKE, IT'S USUALLY MULTIPLE SHAKES.

7 IT'S A -- THERE'S A SIZE DIFFERENTIAL BETWEEN
8 THE VICTIM AND THE PERSON DOING IT. THE PERSON
9 DOING IT HAS TO HAVE SUFFICIENT UPPER BODY
10 STRENGTH TO SHAKE VERY HARD AND VERY LONG.

11 Q WOULD A GROWN MAN OVER SIX FEET TALL AND
12 MUSCULAR BE ABLE TO INFLICT THESE WOUNDS ON THIS
13 CHILD?

14 A YES. AND THERE HAVE BEEN REPORTS OF WOMEN
15 NORMAL SIZE HAVING SUFFICIENT STRENGTH TO DO THIS
16 ALSO, SO BASICALLY IT TAKES WELL DEVELOPED UPPER
17 MUSCULATURE, UPPER BODY MUSCULATURE, AND A BIG
18 SIZE DIFFERENTIAL BETWEEN THE VICTIM AND THE
19 PERSON DOING IT.

20 Q COULD THIS HAVE BEEN AN ACCIDENTAL SHAKING?

21 A NO.

22 Q COULD THIS CAN BE CAUSED BY SOME TYPE OF
23 FALL?

24 A NO.

25 Q IN YOUR OPINION, WAS IT CAUSED BY ANYTHING

1 BUT WHAT YOU JUST DESCRIBED?

2 A NO.

3 Q DOCTOR, TYPICALLY SHAKEN BABY IS SEEN AT WHAT
4 AGE CHILDREN?

5 A TYPICALLY IN INFANTS OR YOUNG TODDLERS. IT
6 CAN OCCUR UP INTO THE OLDER AGE RANGE. THERE'S
7 EVEN BEEN ONE REPORT OF, I BELIEVE, A PALESTINIAN
8 PRISONER THAT WAS VIOLENTLY SHAKEN REPEATEDLY THAT
9 DIED AND THE AUTOPSY FINDINGS ARE IDENTICAL TO
10 WHAT HAPPENS TO THESE BABIES, AND THE PERSON DOING
11 THE SHAKING WAS A LOT BIGGER. THE PRISONER WAS
12 LIKE 90 POUNDS.

13 Q BUT TYPICALLY IN A SMALLER CHILD WOULD THE
14 FORCE NECESSARY TO INFLICT THESE INJURIES BE LESS
15 OR MORE?

16 A RIGHT. IF THE VICTIM IS LESS THAN A
17 90-POUNDER, IF THE VICTIM IS A BABY, IT DOESN'T
18 TAKE AS MUCH UPPER ARM STRENGTH. IF THE VICTIM IS
19 A TODDLER, IT TAKES MORE UPPER ARM STRENGTH TO DO
20 THIS.

21 Q AND THIS CHILD WAS TWO YEARS AND THREE MONTHS
22 OLD, SO SHE WAS A TODDLER?

23 A YES, SHE WAS.

24 Q SO IT WOULD BE HARDER TO PUT THESE INJURIES
25 ON AN OLDER CHILD --

1 MR. STRICKLER: OBJECTION TO THE LEADING.

2 THE COURT: SUSTAINED AS TO LEADING.

3 BY MS. CAMPBELL:

4 Q HOW WOULD YOU CHARACTERIZE IT?

5 A EXCUSE ME?

6 Q WHAT TYPE OF FORCE WOULD IT TAKE VERSUS A
7 SMALLER BABY?

8 A IT WOULD TAKE --

9 MR. STRICKLER: I OBJECT.

10 THE COURT: OVERRULED.

11 MS. CAMPBELL: THANK YOU.

12 THE COURT: YOU CAN ANSWER THE QUESTION.

13 BY MS. CAMPBELL:

14 Q GO AHEAD.

15 A YOUR QUESTION IS -- SHOULD I ANSWER THE
16 QUESTION?

17 Q YES.

18 A OKAY. IT WOULD TAKE MORE STRENGTH TO INFLECT
19 THAT KIND OF FORCE.

20 Q IN THIS CHILD?

21 A IN THIS CHILD, YES, BECAUSE THIS CHILD WAS
22 BETWEEN 25 AND 30 POUNDS.

23 Q AND DOCTOR, IN COURT TODAY THERE HAVE BEEN
24 SOME REFERENCES TO SOME DIFFERENT, I THINK,
25 PATHOLOGICAL REPORTS AND LITERATURE.

1 A YES.

2 Q AND IS THAT LITERATURE SOMEWHAT DATED THAT
3 WAS REFERRED TO EARLIER?

4 A I BRIEFLY SAW COVER SHEETS ON THE LITERATURE
5 AND SOME OF THE LITERATURE WAS FROM THE 1970'S.
6 SOME OF IT WAS FROM THE 1980'S AND THE 90'S.

7 Q IS THERE CURRENT LITERATURE AVAILABLE
8 HOWEVER, DOCTOR, ON SHAKEN BABY SYNDROME?

9 A THERE IS A GROWING BODY OF LITERATURE
10 AVAILABLE, YES.

11 Q AND YOU ARE FAMILIAR WITH THAT LITERATURE?

12 A YES.

13 Q AND DOCTOR, IN SHAKEN BABY SYNDROME, WE'VE
14 HEARD TODAY ABOUT SUBDURAL HEMATOMAS AND REBLEEDS.
15 CAN YOU EXPLAIN THAT TO THE JURY? HOW IS THAT --
16 DOES THAT AFFECT YOUR OPINION HERE TODAY IN ANY
17 WAY OR COULD IT?

18 A THERE IS SUCH A THING AS REBLEEDS INTO
19 SUBDURAL HEMATOMAS IN CHILDREN. IT'S SOMETHING
20 THAT NEUROSURGEONS DEAL WITH. IT'S A -- WHAT
21 HAPPENS IS THAT THERE'S A SUBDURAL HEMATOMA AND
22 WITH JUST MINOR JOSTLES THERE'S MORE BLEEDING INTO
23 THE SAME SPOT.

24 NOW, THE LITERATURE AND MY CONVERSATIONS WITH
25 NEUROSURGEONS ABOUT THIS TOPIC IS THAT THIS IS

1 VERY RARELY EVEN A PROBLEM THAT REQUIRES A SECOND
2 SURGERY. IT TAKES CARE OF ITSELF, AND THE REASON
3 IS THAT THE BLEEDING WE'RE TALKING ABOUT, NOT IN
4 SHAKEN BABY, BUT IN A BABY THAT HAS A SUBDURAL FOR
5 ANOTHER REASON AND HAS A REBLEED, IT'S A VEIN
6 THAT'S BLEEDING AND THERE'S NO CRANIAL EDEMA GOING
7 ON AT ALL, JUST THE VEIN JUST BREAKS.

8 THE BLEEDING GOES INTO THE OLD CLOT, AND THE
9 CLOT HAS A MEMBRANE AROUND IT, AND THE MEMBRANE
10 ACTS LIKE A COMPRESSION AND IT HOLDS IT, AND IT
11 KEEPS IT FROM BEING VERY BIG AND IT KEEPS IT FROM
12 BOTHERING THE CHILD. THE NEUROSURGEONS THAT I
13 TALKED TO AND THE LITERATURE I HAVE READ INDICATES
14 THE USUAL WAY TO MANAGE THIS IS JUST TO FOLLOW THE
15 CASE AND TO WATCH THAT THE CHILD IS NOT STARTING
16 TO ACT DIZZY OR GETTING SUDDENLY WORSE IN ANY WAY,
17 WORSENING IN ANY WAY.

18 Q AND THE INJURIES THAT WERE INFLICTED IN THIS
19 CASE, ARE THEY DUE TO ANY REBLEEDING?

20 A QUITE -- WELL, THE THINGS THAT LEAD ME AWAY
21 FROM THE CONCLUSION THAT THIS CHILD'S CONDITION IS
22 DUE TO A REBLEEDING IS THAT THIS CHILD HAS BRAIN
23 EDEMA. SHE HAD THE BRAIN TISSUE ITSELF THAT IS
24 INJURED ACUTELY AND THERE'S FRESH BLEEDING OF THE
25 RETINA AND OF THE -- WE LEARN LATER OF THE

1 ORBITAL, THE PERIORBITAL NERVE -- I CAN'T TALK.

2 ALSO THE BRUISING ON THE CHILD'S BODY. ALL
3 THOSE THINGS LEAD US AWAY FROM ANY BENIGN MINOR
4 REBLEED TO AN ACUTE VIOLENT HEAD INJURY.

5 Q AND THIS WAS AN ACUTE VIOLENT HEAD INJURY?

6 A YES.

7 Q AND WHEN YOU SAY ACUTE, YOU MEAN RECENT?

8 A YES.

9 Q DOCTOR, THE INJURIES TO THIS CHILD'S BRAIN,
10 THE SWELLING, THE ACUTE SUBDURAL, THE RETINAL
11 HEMORRHAGES, WOULD SHE HAVE BEEN ABLE TO FUNCTION
12 AFTER RECEIVING THESE INJURIES IN ANY SIGNIFICANT
13 WAY FOR ANY PERIOD OF TIME?

14 A SHE HAD SO MUCH SWELLING AND SO MUCH BLEEDING
15 THAT MY CLINICAL OPINION IS THAT SHE WOULD HAVE
16 GONE UNCONSCIOUS WITHIN SECONDS TO MINUTES AFTER
17 THE SHAKING.

18 MS. CAMPBELL: THAT'S ALL I HAVE.

19 THE COURT: CROSS-EXAMINATION, MR. STRICKLER?

20 MR. STRICKLER: YES, SIR. THANK YOU.

21 CROSS-EXAMINATION

22 BY MR. STRICKLER:

23 Q GOOD AFTERNOON, DOCTOR.

24 A GOOD AFTERNOON.

25 Q I'M SORRY. I WAS NOT FOCUSED COMPLETELY WHEN

1 YOU FIRST TOOK THE STAND. YOU ARE CURRENTLY
2 EMPLOYED WHERE?

3 A CHILDREN'S NATIONAL MEDICAL CENTER.

4 Q CHILDREN'S NATIONAL MEDICAL CENTER, SO THAT'S
5 A HOSPITAL?

6 A THAT'S THE CHILDREN'S HOSPITAL IN WASHINGTON,
7 D.C.

8 Q OKAY. AND IN WHAT POSITION ARE YOU EMPLOYED
9 THERE?

10 A I AM THE DIRECTOR OF THE CHILD AND ADOLESCENT
11 PROTECTION CENTER FOR THE HOSPITAL.

12 Q OKAY. DIRECTOR OF THE CHILD AND ADOLESCENT
13 PROTECTION CENTER OF THAT HOSPITAL, RIGHT?

14 A YES.

15 Q OKAY. AND DURING THE LATTER PART OF YOUR
16 DIRECT TESTIMONY, YOU WERE TALKING ABOUT MINOR 'S
17 CONDITION. I BELIEVE YOU USED THE TERM "THE CAUSE
18 OF HER HORRIBLE MEDICAL CONDITION." DO YOU
19 REMEMBER USING THAT TERM?

20 A YES, I DO.

21 Q THAT IS A GOOD CLINICAL TERM TO USE, CORRECT?

22 A THAT'S NOT A CLINICAL TERM.

23 Q THAT IS A GOOD CLINICAL TERM?

24 A ~~THAT IS NOT A GOOD CLINICAL TERM, NO.~~

25 Q THAT'S NOT AN ATTEMPT ON YOUR PART TO INJECT

1 BIAS, YOUR BIAS, INTO THE TESTIMONY?

2 MS. CAMPBELL: OBJECTION, YOUR HONOR.

3 THE COURT: OVERRULED.

4 BY MR. STRICKLER:

5 Q YOU CAN ANSWER, DOCTOR.

6 A OKAY. THE QUESTION IS, I WAS TRYING TO
7 INJECT BIAS?

8 Q YES. THAT -- MY QUESTION SPECIFICALLY WAS
9 THAT NOT AN ATTEMPT ON YOUR PART TO INJECT BIAS
10 INTO YOUR TESTIMONY?

11 A NO.

12 Q NO, OF COURSE NOT. OKAY. THE FACT IS,
13 MADAM, THAT YOU ARE AN ADVOCATE FOR CHILDREN?

14 A AS ARE ALL PEDIATRICIANS.

15 Q RIGHT. ALL PEDIATRICIANS ARE ADVOCATES FOR
16 CHILDREN. YOU HAVE MADE IT, IN ESSENCE, YOUR
17 PROFESSION TO BE AN ADVOCATE FOR CHILDREN EVER
18 SINCE YOU SPECIALIZED IN THE AREA THAT YOU'RE
19 SPECIALIZING IN, RIGHT?

20 A YES.

21 Q OKAY. SO YOUR LIFE AS A DOCTOR IS ADVOCATING
22 FOR CHILDREN, CORRECT?

23 A MY LIFE AS A DOCTOR IS TO GET TO THE TRUTH
24 ACCORDING TO THE KNOWLEDGE I HAVE, AND THE CARE OF
25 A CHILD AND THE WELL-BEING OF A CHILD IS ON THE

1 TOP OF MY LIST. IF YOU WANT TO CALL THAT
2 ADVOCACY, IT IS ADVOCACY, YES.

3 Q OKAY. CAN YOU -- I TAKE IT THEN THAT YOU
4 WOULD FALL ON THE SIDE OF THE DEBATE THAT SAYS
5 THAT SHAKING ALONE CAN CAUSE AN INJURY SUFFICIENT
6 TO CAUSE SUBDURAL HEMATOMAS AND NO IMPACT IS
7 NEEDED, CORRECT?

8 A YES.

9 Q OKAY. SHAKING ALONE. ARE YOU WILLING TO
10 ADMIT THAT THERE IS DISAGREEMENT AMONG THE
11 RELEVANT COMMUNITY AS TO WHETHER THAT'S CORRECT OR
12 NOT?

13 A THERE IS VERY LITTLE DISAGREEMENT AMONG
14 FORENSIC PEDIATRICS OF WHOM I AM THAT SHAKING
15 ALONE CAN CAUSE SHAKEN BABY SYNDROME. SOMETIMES
16 IT IS ASSOCIATED WITH IMPACT ALSO, BUT NOT ALWAYS.

17 Q VERY LITTLE DISAGREEMENT AMONG FORENSIC
18 PEDIATRICIANS, OKAY. NOW, WHEN DID YOU SEE
19 MINOR ?

20 A I BELIEVE WE DISCUSSED THAT. IT WAS --

21 Q I'M SORRY, I HAVEN'T --

22 A -- ON MARCH 29TH.

23 Q I HAVEN'T DISCUSSED IT WITH YOU, OKAY? ON
24 MARCH 29TH. WHAT TIME OF THE DAY OR NIGHT?

25 A 1:15 P.M.

1 Q 1:15 P.M. I'M SORRY, MA'AM, DO YOU HAVE YOUR
2 NOTES FROM THAT VISIT?

3 A YES.

4 Q COULD I TAKE JUST A QUICK LOOK AT THEM?

5 A (THE WITNESS COMPLIES.)

6 Q THANK YOU.

7 (PAUSE)

8 AND HOW LONG WAS THE TIME THAT YOU SPENT WITH
9 MINOR AS OPPOSED TO THE TIME YOU SPENT REVIEWING
10 OTHER STUFF? HOW LONG DID YOUR ACTUAL PHYSICAL
11 EXAMINATION OF MINOR ?

12 A THE PHYSICAL EXAMINATION DIDN'T TAKE MORE
13 THAN TEN MINUTES, BUT I SPENT AN HOUR OR TWO ON
14 THE FLOOR, AND THEN I SPENT MANY HOURS DOWN IN THE
15 RADIOLOGY DEPARTMENT TAKING TO OTHER DOCTORS.

16 Q I GOT YOU. SO YOUR PHYSICAL EXAM TOOK
17 ROUGHLY TEN MINUTES?

18 A UH-HUH.

19 Q AND THEN YOU SPENT A SUBSTANTIAL AMOUNT OF
20 TIME COLLECTING INFORMATION FROM OTHER
21 INDIVIDUALS?

22 A YES, FROM THE CHART, FROM THE MEDICAL
23 RECORDS, FROM THE STUDIES.

24 Q AND IN YOUR REVIEW OF THE CHART, YOU WOULD
25 HAVE SEEN THE NOTATION FROM MARCH 28TH AS TO THE

1 SKIN WITHOUT OBVIOUS BRUISING OR LACERATIONS? YOU
2 SAW THAT NOTATION?

3 A I SAW THAT NOTATION.

4 Q AND IF THE BRUISES THAT WERE YELLOWISH IN
5 COLOR OR HAD THAT -- EXCUSE ME, BROWNISH IN COLOR,
6 HAD THAT YELLOW COMPONENT THAT ALLOWS YOU TO SAY
7 THAT THERE ARE AT LEAST 18 HOURS OLD, THOSE WERE
8 PRESENT AT 1:15 IN THE AFTERNOON OF THE 29TH?

9 A RIGHT.

10 Q SOMETIME PRIOR TO -- EXCUSE ME. SOMETIME
11 PRIOR TO 5:00 P.M. ON THE 28TH THEN?

12 A THAT WOULD BE THE FRESHEST THAT IT COULD
13 POSSIBLY BE.

14 Q OKAY.

15 A BUT THE WINDOW OF HOW OLD --

16 Q UP TO --

17 A -- IT WOULD BE BACKWARD UP TO TWO WEEKS.

18 Q RIGHT. SO IT COULDN'T HAVE OCCURRED AFTER
19 5:00 IN THE AFTERNOON --

20 A RIGHT.

21 Q -- ON THE 28TH, THE DAY PRECEDING?

22 A RIGHT.

23 Q NOW, YOU NOTED A SWOLLEN EYE?

24 A YES, I DID.

25 Q OKAY. THERE WAS NO NOTATION BY ANYONE IN

1 YOUR REVIEW OF THE RECORDS PRIOR TO YOU BEING
2 THERE OF A SWOLLEN EYE, CORRECT?

3 A I DON'T RECALL.

4 Q YOU DON'T RECALL READING IT?

5 A I DON'T RECALL SEEING THAT. IT MAY BE THERE;
6 I DON'T RECALL.

7 Q IT'S ENTIRELY POSSIBLE THAT THE SWOLLEN EYE
8 COULD HAVE BEEN NOTHING MORE THAN A REACTION TO
9 THE TRAUMA OF THE SURGERY?

10 A IT'S POSSIBLE.

11 Q I MEAN, SURGERY TO THE BRAIN IS TRAUMA IN AND
12 OF ITSELF, CORRECT?

13 A YES.

14 Q IT'S TRAUMA INFLECTED OR CARRIED OUT UNDER
15 VERY CONTROLLED CIRCUMSTANCES, BUT TRAUMA
16 NEVERTHELESS, RIGHT?

17 A YES.

18 Q NOW, AMONG THINGS THAT YOU REVIEWED WHEN YOU
19 WENT THROUGH THIS ON DIRECT WERE THE REPORTS OF
20 THE VARIOUS DOCTORS. YOU ACTUALLY TALKED WITH
21 SOME OF THE DOCTORS INVOLVED?

22 A YES.

23 Q AND YOU REVIEWED THE CASE FILE OR THE
24 PATIENT'S CHART?

25 A YES.

1 Q YOU ALSO REVIEWED STATEMENTS THAT ARE ALLEGED
2 TO HAVE BEEN MADE BY THE PARENTS AT THE TIME OF
3 THE ADMISSION OF THE CHILD?

4 A THE FOSTER PARENT'S STATEMENTS ARE A PART OF
5 THE MEDICAL RECORD AND TWO DIFFERENT MEDICAL
6 PERSONNEL MADE NOTES IN THEIR MEDICAL RECORD OF
7 WHAT THEY WERE TOLD BY THE FOSTER PARENTS.

8 Q OKAY.

9 A MAYBE MORE THAN TWO, BUT AT LEAST TWO.

10 Q WHICH TWO INDIVIDUALS WERE THEY?

11 A I DON'T RECALL THE NAMES. I COULD FISH IT
12 OUT OF THE CHART. IT WAS FROM THE EMERGENCY ROOM
13 DOCTOR'S NOTES, AND FROM THE RESIDENT'S NOTES UP
14 IN P.I.C.U.

15 Q COULD YOU PLEASE DRAW THOSE OUT?

16 A THIS CHART IS 2 INCHES THICK. IT'S GOING TO
17 TAKE A WHILE TO FIND IT.

18 Q THAT'S PERFECTLY ALL RIGHT.

19 A MAYBE IF I COULD HAVE SOME ASSISTANCE.

20 MS. CAMPBELL: YOUR HONOR, I HAVE THIS. IT
21 MIGHT SAVE SOME TIME.

22 THE COURT: THANK YOU.

23 MS. CAMPBELL: YOU CAN HAND HER THOSE.

24 BY MR. STRICKLER:

25 Q I DON'T KNOW IF THAT'S WHAT YOU'RE REFERRING

1 TO, BUT MS. CAMPBELL HAD THOSE.

2 A IN THE EMERGENCY ROOM RECORD, IT NOTES THERE
3 IS NO HISTORY OF ANY PRECEDING ILLNESS OR TRAUMA.

4 Q OKAY. AND THE OTHER RECORD IS FROM --

5 A THE OTHER RECORD IS FROM THE P.I.C.U.
6 RESIDENT. IT SAYS, "THE FOSTER FATHER SAYS THE
7 CHILD WAS IN THE BATHROOM THIS MORNING AND
8 AND SUBSEQUENTLY WENT TO THE BATHROOM AND FELL OUT
9 AND WAS UNRESPONSIVE. HE DENIES ANY HISTORY OF
10 TRAUMA, ABNORMAL BEHAVIOR OR SIGNS OF INFECTION.

11 Q OKAY. NOW, FIRST AS TO THE E.R. NOTE?

12 A UH-HUH.

13 Q WHO GAVE YOU THAT -- WHO PROVIDED THAT
14 INFORMATION TO THE PERSON IN THE EMERGENCY ROOM?

15 A THIS --

16 Q IF YOU DON'T KNOW --

17 A WHO PROVIDED THE INFORMATION THAT'S RECORDED
18 HERE?

19 Q YES.

20 A I DON'T KNOW.

21 Q ASSUMING THAT INFORMATION WAS PROVIDED BY
22 SOMEONE WHO WAS RESPONSIBLE FOR --

23 A OH, I CORRECT MYSELF.

24 Q I'M SORRY?

25 A IT SAYS, "PER FOSTER PARENTS, NO HISTORY OF

1 UNSEEN ILLNESS OR TRAUMA."

2 Q ALL RIGHT. FINE. WHICH OF THE FOSTER
3 PARENTS PROVIDED THAT INFORMATION?

4 A IT SAYS PARENTS, PLURAL.

5 Q OKAY. DOES THAT MEAN THEY BOTH SPOKE TO THE
6 PERSON?

7 A THAT'S WHAT I WOULD ASSUME FROM READING THIS.

8 Q DO YOU KNOW?

9 A NO.

10 Q WHAT WAS THE PHYSICAL CONDITION OF THE
11 PARENTS WHEN THEY WERE IN THE EMERGENCY ROOM?

12 A I DON'T RECALL SEEING THAT.

13 Q WHAT WAS THEIR EMOTIONAL STATE?

14 A I DON'T THINK THAT'S RECORDED HERE.

15 Q OKAY. YOU DO KNOW THE PARENTS BROUGHT THE
16 CHILD TO THE EMERGENCY ROOM?

17 A THE RECORD SAYS THEY WERE THERE EXPLAINING
18 THINGS TO THE DOCTOR.

19 Q HOW LONG DID THE PERSON IN THE EMERGENCY ROOM
20 SPEAK WITH THE PARENTS TO OBTAIN THIS CLINICAL
21 HISTORY THAT'S INCONSISTENT WITH ANYTHING BUT
22 CHILD ABUSE?

23 A I WASN'T THERE --

24 Q OKAY.

25 A -- SO I CAN'T HELP YOU DOCUMENT HOW LONG THIS

1 TOOK.

2 Q OKAY.

3 A I KNOW THE KID WAS IN CRITICAL CONDITION, AND
4 THEY WERE TRYING TO SAVE THE KID'S LIFE.

5 Q YES, MA'AM. I'M NOT TAKING ISSUE WITH THAT
6 AT ALL. HOW ACCURATE IS THAT NOTE AS TO WHAT WAS
7 ACTUALLY SAID BY THE PERSON OR PERSONS WHO
8 PROVIDED THAT INFORMATION TO THE PERSON AT THE
9 EMERGENCY ROOM? HOW ACCURATELY DOES IT REFLECT
10 WHAT WAS SAID TO THEM?

11 A I HAVE NO REASON TO THINK THAT IT'S
12 INACCURATE. I HAVE NO REASON TO SUSPECT THAT THE
13 MEDICAL PERSON WRITING THIS DOWN WOULD WRITE DOWN
14 A FALSEHOOD, BUT I CAN'T SPEAK TO IT ANY MORE THAN
15 THAT.

16 Q BECAUSE YOU DON'T KNOW.

17 A I WASN'T THERE.

18 Q YOU WEREN'T THERE.

19 A NO.

20 Q OTHER THAN WRITING DOWN A FALSEHOOD, ANOTHER
21 POSSIBLE EXPLANATION IS WRITING DOWN INACCURATELY
22 BECAUSE OF THE STRESS OF THE MOMENT, CORRECT?

23 A YEAH, THAT MAY BE POSSIBLE.

24 Q ONE NEED NOT ALWAYS JUMP TO THE CONCLUSION
25 THAT A FALSEHOOD IS INVOLVED, RIGHT?

1 NOW WHEN DID YOU CONDUCT YOUR INTERVIEW OF
2 THE MOTHER OF THE CHILD, THE FOSTER MOTHER OF THE
3 CHILD?

4 A I DO NOT RECALL PERSONALLY INTERVIEWING
5 EITHER THE FOSTER MOTHER OR THE FOSTER FATHER. I
6 DON'T RECALL SEEING THEM.

7 MR. STRICKLER: BEG THE COURT'S INDULGENCE
8 ONE MOMENT, YOUR HONOR.

9 (PAUSE)

10 BY MR. STRICKLER:

11 Q AS TO THE BRUISING ON THE BUTTOCKS THAT YOU
12 NOTE, YOU NOTE THAT THAT IS PERIPHERAL TO A
13 CENTRAL MONGOLIAN SPOT?

14 A YES.

15 Q CAN YOU DESCRIBE FOR US, PLEASE, WHAT A
16 MONGOLIAN SPOT IS?

17 A YES. A MONGOLIAN SPOT IS A BIRTH MARK THAT
18 IS PRESENT IN A CERTAIN PERCENTAGE OF AFRICAN
19 AMERICAN AND ASIAN CHILDREN AND ONLY RARELY IN
20 CAUCASIAN CHILDREN. ~~IT IS USUALLY BLUTSH.~~ IT
21 DOESN'T HARM THE CHILD AT ALL. SOMETIMES IT FADES
22 WITH TIME. SOMETIMES IT'S THERE ITS WHOLE LIFE.
23 THE COMMON LOCATION IS BETWEEN THE CLEFTS OF THE
24 BUTTOCKS AND THE LOWER BACK.

25 Q OKAY. SO MINOR , IN THIS CASE, HAD SUCH A

1 MONGOLIAN SPOT?

2 A YES, SHE DID.

3 Q SO WHAT'S MARKED AS STATE'S 9 AND STATE'S 8,
4 THESE TWO PHOTOGRAPHS?

5 A YES.

6 Q CAN YOU SHOW US WHERE THE MONGOLIAN -- JUST
7 TAKE ONE OF THEM -- TAKE, DOES THIS DEMONSTRATE
8 IT, NUMBER 8?

9 A ALL RIGHT. THE MONGOLIAN SPOT WOULD BE THE
10 CENTRAL PART HERE. THE PART HERE TO ME LOOKED
11 LIKE BRUISING. (INDICATING)

12 Q LIKE BRUISING? OKAY. SO THE CENTRAL PART,
13 YOU FELT WAS THE MONGOLIAN SPOT?

14 A YES, I DID.

15 Q AND THIS PART HERE LOOKED TO BE BRUISING TO
16 YOU; IS THAT CORRECT? (INDICATING)

17 A YES.

18 Q OKAY. THE MONGOLIAN SPOT, THAT'S NOT
19 SOMETHING THAT INVOLVES ANY PERSON. THAT'S REALLY
20 JUST A -- THAT'S JUST SOMETHING THAT HAPPENS?

21 A THAT'S RIGHT.

22 Q SO IT'S JUST THERE?

23 A YES, IT HAS NOTHING TO DO WITH ABUSE.

24 Q OKAY. WHERE WERE THE BRUISES TO THE ANTERIOR
25 CHEST LOCATED? WHERE ON THE ANTERIOR CHEST?

1 ANTERIOR IS FRONT, CORRECT?

2 A RIGHT.

3 Q AS OPPOSED TO POSTERIOR, WHICH IS IN THE
4 BACK?

5 A RIGHT.

6 Q SO WHERE ABOUTS --

7 A CENTRAL CHEST.

8 Q CENTRAL CHEST?

9 A YES.

10 Q WHAT SORTS OF RESUSCITATIVE EFFORTS WERE
11 CONDUCTED ON THE CHILD, EITHER BY EMERGENCY
12 MEDICAL PERSONNEL, BY THE FOSTER PARENTS, OR BY
13 PERSONNEL AT THE HOSPITAL AFTER THE CHILD ARRIVED
14 AT THE HOSPITAL?

15 A THE BEST I COULD DEDUCE FROM LOOKING AT THE
16 EMERGENCY HANDLING OF THIS IS THAT SHE REQUIRED
17 IMMEDIATE INTUBATION AND THAT ONCE THEY INTUBATED
18 HER AND STARTED BAGGING HER WITH OXYGEN, SHE
19 PINKED UP.

20 I COULDN'T FIND ANYTHING IN THE RECORD WHERE
21 HER HEART ACTUALLY HAD STOPPED, SO I DON'T THINK
22 SHE REQUIRED A POUNDING ON HER CHEST.

23 Q WHAT EMERGENCY RESUSCITATIVE MEASURES WERE
24 CARRIED OUT BY PEOPLE OUTSIDE OF THE HOSPITAL?
25 YOU DON'T KNOW, RIGHT?

1 A NO.

2 Q RIGHT.

3 A THERE'S NO RECORD FOR ME TO REVIEW.

4 Q NOW, YOU INDICATE IN YOUR REPORT AS TO YOUR
5 THIRD IMPRESSION THERE MAY OR MAY NOT HAVE BEEN
6 PREVIOUS HEAD INJURIES, CHRONIC AND ACUTE SUBDURAL
7 SEEN ON THE INITIAL C.T. SCAN OF THE HEAD PRIOR TO
8 THE CRANIOTOMY. DO YOU SEE WHERE I AM?

9 A YES.

10 Q WELL, IS IT NOT THE CASE THAT THERE WERE
11 PREVIOUS HEAD INJURIES? YOU HAVE A CHRONIC
12 SUBDURAL HEMATOMA.

13 A WELL, SHE MOSTLY HAD AN ACUTE SUBDURAL
14 HEMATOMA. THE RADIOLOGIST'S REPORT ALSO HAD SEEN
15 EVIDENCE OF OLD SUBDURAL AND THE NEUROSURGEON'S
16 STATEMENTS TO ME WERE THAT THEY SAW ONE BIG CLOT,
17 AND IT'S HARD TO DIFFERENTIATE, SO I MADE SURE
18 THAT A PATHOLOGIST WAS AWARE OF THE DILEMMA ABOUT
19 THAT AND ASKED FOR HELP FROM THE PATHOLOGIST WHEN
20 THEY DID THE AUTOPSY TO SEE --

21 Q HOW -- I'M SORRY. GO AHEAD.

22 A I DON'T THINK I COULD CLARIFY THAT ANY
23 FURTHER.

24 Q HOW DO YOU DATE A SUBDURAL HEMATOMA?

25 A IT IS DONE USUALLY WITH M.R.I. SCANS.

1 Q THAT'S SOMETHING A RADIOLOGIST DOES, RIGHT?

2 A YES, RADIOLOGISTS DO THAT, AND YOU CAN'T DO
3 THAT STUDY WHEN PEOPLE ARE TOO CRITICALLY ILL
4 BECAUSE THEY CAN'T TOLERATE BEING MOVED TO THE
5 RADIOLOGY SUITE FOR IT.

6 Q RIGHT.

7 A YOU CAN ROUGHLY DO IT WITH C.T. SCANS.

8 Q AS WAS DONE IN THIS CASE?

9 A YES, IT WAS.

10 Q AND AT THE CONCLUSION, THE RADIOLOGIST WAS --

11 A THE RADIOLOGIST CONCLUDED THAT THERE WERE
12 ACUTE SUBDURALS WITH EVIDENCE OF FRESH INJURY,
13 BRAIN EDEMA, AND THAT'S ON THE RADIOLOGY REPORT
14 AND AS WELL, THERE WAS EVIDENCE OF AN OLD SUBDURAL
15 HEMATOMA.

16 Q SO YOU HAVE A COMBINATION OF ACUTE AND
17 CHRONIC SUBDURAL HEMATOMA, CORRECT?

18 A (THE WITNESS NODS HEAD IN THE AFFIRMATIVE.)

19 Q AS I UNDERSTAND -- WELL -- NEVER MIND.

20 MR. STRICKLER: THAT'S ALL, THANK YOU.

21 THE COURT: ANYTHING ELSE ON REDIRECT, MADAM
22 SOLICITOR?

23 MS. CAMPBELL: JUST A COUPLE OF QUESTIONS.

24 REDIRECT EXAMINATION

25 BY MS. CAMPBELL:

1 Q SO THE M.R.I. WAS NOT A POSSIBILITY IN THIS
2 CASE?

3 A THAT'S CORRECT.

4 Q ALSO HE REFERRED TO TWO PLACES WHERE YOU
5 RELIED ON THE HISTORY. I REFER YOU TO
6 DR. HUBBIRD'S NOTES. DID HE ALSO GIVE A HISTORY
7 IN THIS CASE?

8 A DR. HUBBIRD'S NOTES ARE HERE REFLECTING HIS
9 CONVERSATION, I PRESUME, WITH THE FOSTER FATHER,
10 AND IT'S DESCRIBING A TONIC SEIZURE OF THE CHILD
11 AND THEN COLLAPSE AT HOME AFTER INITIALLY BEING
12 AWAKE AND WALKING.

13 Q SO THE HISTORY WAS DOCUMENTED IN SEVERAL
14 PLACES THROUGH THE NOTES?

15 A YES.

16 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR HONOR.

17 THE COURT: ANYTHING ELSE ON RECROSS?

18 MR. STRICKLER: COULD I HAVE JUST ONE SECOND
19 IF YOUR HONOR PLEASES?

20 (PAUSE)

21 MR. STRICKLER: NO, SIR, THANK YOU.

22 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

23 YOU MAY STEP DOWN. ANY OBJECTION TO THE DOCTOR
24 BEING RELEASED FROM THE SUBPOENA?

25 MR. STRICKLER: NO OBJECTION.

1 MS. CAMPBELL: NO OBJECTION.

2 THE COURT: ALL RIGHT, MADAM FORELADY, LADIES
3 AND GENTLEMEN, WE'RE GOING TO STOP THERE FOR THE
4 DAY AND WE'LL PICK BACK UP IN THE MORNING AT 9:00.
5 I KNOW SOME OF YOU STRUGGLED IN. OF COURSE, IT
6 WAS LATE, BUT I'D LIKE FOR ALL OF YOU TO BE HERE
7 TOMORROW AT 9:00. WE HAVE A PRETTY FULL DAY
8 TOMORROW, SO GET A GOOD NIGHT'S SLEEP.

9 DON'T DISCUSS THE CASE WITH ANYONE, DON'T
10 ALLOW ANYONE TO DISCUSS IT WITH YOU. WE'LL SEE
11 YOU ALL AT 9:00 IN THE MORNING. HAVE A GOOD
12 NIGHT.

13 (WHEREUPON, THE JURY LEFT OPEN COURT AT
14 APPROXIMATELY 4:57 P.M.)

15 THE COURT: ALL RIGHT. AT A BENCH
16 CONFERENCE -- WELL, FIRST OF ALL, LET ME BACK UP.

17 ON THE DEMONSTRATIVE EVIDENCE, I DON'T KNOW
18 IF THERE'S ANY CASE LAW ON IT, BUT I PROBABLY DO
19 NEED A 403 ANALYSIS DEPENDING ON THE DIFFERENCE IN
20 THE TECHNOLOGY.

21 I DID A 403 ANALYSIS ON IT AND FOUND THAT
22 THOSE -- THAT PRESENTATION WAS MORE PROBATIVE THAN
23 PREJUDICIAL ON THE ISSUE OF SHOWING THE
24 CONSTRUCTION OF THE BRAIN AND VARIOUS THINGS THAT
25 HAD BEEN ISSUES IN THE CASE.

1 SUBSEQUENT TO -- THERE WAS ANOTHER BENCH
2 CONFERENCE WITH REGARD TO THE STATE'S OFFERING
3 EXHIBIT 4 AND 5, AND I EXCLUDED THOSE OR RATHER
4 THE STATE AGREED TO WITHDRAW THEM AT THE TIME, SO
5 THEY'RE MARKED FOR IDENTIFICATION ONLY.

6 AS TO STATE'S EXHIBIT 8 AND 9 -- 8 AND 9, AS
7 I BELIEVE I'M RIGHT, THOSE TWO WERE -- THERE WAS
8 NO OBJECTION TO THOSE.

9 MR. STRICKLER: MY STATEMENT TO THE BENCH WAS
10 I HAD NO OBJECTION TO THEM OTHER THAN THE
11 CUMULATIVE NATURE BECAUSE I THINK THEY REPRESENT
12 THE SAME ALLEGED INJURY.

13 THE COURT: WELL, I CAN'T -- IT MAY GO TO THE
14 MONGOLIAN SPOT ISSUE TOO, BUT 8 AND 9 ARE IN
15 NOTWITHSTANDING WHATEVER COMMENT HE HAD AND
16 THEY'RE MORE PROBATIVE THAN PREJUDICIAL ON THE
17 ISSUE.

18 7 -- 6 AND 7 WERE OBJECTED TO BY THE DEFENSE;
19 IS THAT RIGHT?

20 MR. STRICKLER: YES, SIR.

21 THE COURT: AND THE BASIS OF THE OBJECTION?

22 MR. STRICKLER: BASICALLY THE OBJECTION IS
23 WHATEVER PROBATIVE VALUE THEY MIGHT HAVE IS
24 CERTAINLY OUTWEIGHED BY THE PREJUDICIAL EFFECT
25 YOUR HONOR HAS BEFORE YOU.

1 ANY INJURIES ALLEGED TO HAVE -- OR WHICH THEY
2 PURPORT TO DEMONSTRATE OR PORTRAY AND HAVE BEEN
3 TESTIFIED TO, AND THOSE INJURIES WERE NOT EVEN
4 CONTESTED BY THE DEFENSE, SO I SUBMIT THEY'RE
5 COMPLETELY UNNECESSARY.

6 THE COURT: WELL, AT THE TIME, I DIDN'T HAVE
7 THAT ARGUMENT BEFORE ME AS TO 6 AND 7, BUT
8 HOWEVER, THE BRUISE ON 6 WAS CONTESTED BY THE
9 DEFENSE AS TO THE CHEST SITUATION, AND I FOUND
10 THEM TO BE MORE PROBATIVE THAN PREJUDICIAL. IT'S
11 JUST A LITTLE BABY LAYING IN THE HOSPITAL AND
12 EVERYBODY KNOWS SHE'S SEVERELY ILL. THERE'S NOT A
13 LOT OF GORE TO IT, SO I ALLOWED THOSE IN.

14 MR. STRICKLER: THANK YOU, YOUR HONOR. I
15 UNDERSTAND YOUR RULING. I'M NOT ARGUING WITH YOU.

16 THE COURT: SURE.

17 MR. STRICKLER: I WOULD SIMPLY SUBMIT THAT
18 THE QUESTION OF PREJUDICE DOES NOT HINGE ON GORE,
19 AND I'D SUBMIT THAT A YOUNG INFANT ON A VENTILATOR
20 WITH ITS HEAD SWATHED IN BANDAGES AND TUBES COMING
21 OUT OF EVERY PLACE YOU CAN COME OUT OF IS ABOUT AS
22 PREJUDICIAL AS YOU CAN GET, BUT THANK YOU, YOUR
23 HONOR.

24 THE COURT: ALL RIGHT. I UNDERSTAND YOUR
25 POSITION. ALL RIGHT. WE'LL SEE YOU AT 9:00 IN

1 THE MORNING.

2 MS. CAMPBELL: YOUR HONOR, THE ONLY OTHER
3 THING I'D ASK IS HE MENTIONED ONE OTHER ARTICLE --
4 JUST BECAUSE HE CROSSED ONE WITNESS I THINK I'M
5 ENTITLED TO IT.

6 THE COURT: WELL, THEY KEEP SAYING THAT THEY
7 DON'T KNOW IF THEY CAN'T CROSS THEM ON IT.

8 MS. CAMPBELL: THAT'S IN THE RECORD.

9 MR. STRICKLER: I PROVIDED HER THE NAME
10 DURING MY EXAMINATION.

11 MS. CAMPBELL: BUT I DIDN'T WRITE IT DOWN.

12 MR. STRICKLER: YOU DIDN'T WRITE IT DOWN?

13 THE COURT: ALL RIGHT. I'LL SEE YOU ALL IN
14 THE MORNING.

15 MAY 15, 2002

16 THE COURT: EVERYBODY READY TO GO? BRING
17 THEM IN.

18 MR. STRICKLER: I'M SORRY, YOUR HONOR. AS
19 MS. COGGIOLA HAS ALREADY TOLD THE COURT, WE'VE HAD
20 ONE LITTLE SNAG ON ONE OF OUR EXPERTS WHO WILL BE
21 HERE THIS AFTERNOON. ALL THE FLIGHTS GOT
22 CANCELLED OUT OF PHILLY THIS MORNING FOR SOME
23 REASON. HE WILL NOT BE ON THE GROUND, ASSUMING
24 THE FLIGHT IS ON TIME, UNTIL 2:15 THIS AFTERNOON.

25 THE COURT: OKAY.

1 MR. STRICKLER: I JUST WANTED TO LET YOU
2 KNOW, AS WELL AS THE STATE.

3 THE COURT: OKAY.

4 THE BAILIFF: THE JURY'S ALL PRESENT, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. GOOD MORNING, MADAM
7 FORELADY, LADIES AND GENTLEMEN. WE'RE READY TO
8 CONTINUE WITH OUR CASE AND WITH TAKING THE
9 TESTIMONY.

10 MADAM SOLICITOR, CALL YOUR NEXT WITNESS.

11 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE
12 STATE CALLS DR. TIMOTHY CLOSE.

13 THE CLERK: COME FORWARD, PLEASE. IF YOU'D
14 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
15 RIGHT HAND.

16 DR. TIMOTHY CLOSE,
17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR
19 FULL NAME, SPELL YOUR LAST NAME.

20 THE WITNESS: MY NAME IS TIMOTHY PATRICK
21 CLOSE, C-L-O-S-E.

22 DIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q DR. CLOSE, WHERE ARE YOU EMPLOYED?

25 A I WORK AT PALMETTO RICHLAND MEMORIAL

1 HOSPITAL.

2 Q AND WHAT DO YOU DO THERE?

3 A I AM A RADIOLOGIST SPECIALIZING IN VASCULAR
4 INTERVENTIONAL RADIOLOGY AND ALSO NEURORADIOLOGY.

5 Q AND AS A RADIOLOGIST, CAN YOU TELL THIS JURY
6 WHAT YOU DO?

7 A WHAT I DO PRIMARILY IS MULTI-FOLD. PRIMARILY,
8 I START BY INTERPRETATION OF X-RAYS, AND BY THAT I
9 MEAN IN GENERAL C.A.T. SCANS, PLAIN X-RAYS,
10 ULTRASOUNDS, M.R.I.'S, AND NUCLEAR MEDICINE.
11 THESE ARE DIFFERENT WAYS OF PRODUCING MEDICAL
12 IMAGES TO EVALUATE FOR STATES OF HEALTH AND STATES
13 OF DISEASE WITHIN PATIENTS, LIKE YOURSELVES OR
14 YOUR FAMILIES.

15 Q DOCTOR, CAN YOU TELL THIS JURY A LITTLE ABOUT
16 YOUR EDUCATION AND YOUR TRAINING IN THE MEDICAL
17 FIELD?

18 A YES. I TRAINED IN MEDICAL SCHOOL AT THE
19 UNIVERSITY OF ILLINOIS IN CHICAGO. I GRADUATED
20 THERE. I DID AN INTERNSHIP IN MEDICINE AND
21 SURGERY AT THE ST. FRANCIS HOSPITAL WHICH IS
22 ASSOCIATED WITH THE NORTHWESTERN UNIVERSITY. I
23 DID A FOUR YEAR RESIDENCY IN DIAGNOSTIC RADIOLOGY
24 INCLUDING ADDITIONAL CONCENTRATION IN
25 NEURORADIOLOGY AND VASCULAR INTERVENTIONAL

1 RADIOLOGY FOR FOUR YEARS AT THE RUSH PRESBYTERIAN
2 ST. LUKE'S MEDICAL CENTER IN CHICAGO. I FOLLOWED
3 THAT WITH A FELLOWSHIP IN VASCULAR AND
4 INTERVENTIONAL RADIOLOGY AT THE GEORGE WASHINGTON
5 UNIVERSITY IN DOWNTOWN WASHINGTON, D.C. SINCE
6 THEN I HAVE BEEN AT PALMETTO RICHLAND MEMORIAL
7 HOSPITAL.

8 Q AND AT PALMETTO RICHLAND MEMORIAL HOSPITAL,
9 DO YOU ALSO HAVE OTHER DUTIES INVOLVING A TEACHING
10 POSITION THERE?

11 A I AM A VOLUNTEER PROFESSOR WITH THE
12 UNIVERSITY OF SOUTH CAROLINA SCHOOL OF MEDICINE,
13 WHICH MEANS I PARTICIPATE IN THE EDUCATION AND
14 OCCASIONALLY THE WRITING OF PAPERS WITH THE
15 RESIDENTS AND WITH THE MEDICAL STUDENTS; IT'S A
16 VOLUNTARY POSITION. I HOLD THAT POSITION, AND
17 I'VE PREVIOUSLY HELD THE POSITION OF CHIEF AT THE
18 DEPARTMENT OF RADIOLOGY FOR A THREE YEAR PERIOD.

19 Q AND ARE YOU BOARD CERTIFIED IN ANY AREAS,
20 DOCTOR?

21 A YES. I'M BOARD CERTIFIED IN DIAGNOSTIC
22 RADIOLOGY. I'VE ALSO HELD A CERTIFICATE OF
23 ADDITIONAL AND ADDED QUALIFICATION IN THE
24 SPECIALTY OF VASCULAR AND INTERVENTIONAL
25 RADIOLOGY.

1 Q DOCTOR, HAVE YOU TESTIFIED BEFORE AS AN
2 EXPERT IN THE FIELD OF RADIOLOGY?

3 A YES, I HAVE.

4 Q AND YOU'VE BEEN QUALIFIED AS AN EXPERT?

5 A YES, I HAVE BEEN.

6 MS. CAMPBELL: YOUR HONOR, WE WOULD OFFER
7 DR. CLOSE AS AN EXPERT AS A MEDICAL DOCTOR WITH A
8 SPECIALTY IN THE FIELD OF RADIOLOGY.

9 THE COURT: DO YOU HAVE ANY VOIR DIRE?

10 MR. STRICKLER: NO, NOT ON THAT BASIS.

11 THE COURT: YOU MAY PROCEED ON THAT BASIS.

12 MS. CAMPBELL: THANK YOU.

13 BY MS. CAMPBELL:

14 Q DOCTOR, TYPICALLY WHEN YOU'RE REVIEWING --
15 WHAT IS A C.T. SCAN OR A C.A.T. SCAN? CAN YOU
16 TELL THE JURY THAT?

17 A A C.T. SCAN IS COMPUTERIZED TOMOGRAPHY. THE
18 TERM "C.A.T." CAME FROM COMPUTERIZED AXIAL
19 TOMOGRAPHY. AXIAL JUST MEANS IT GOES ON THIS
20 PLANE --IT JUST GOES ACROSS THIS WAY.

21 WE CAN NOW DO C.A.T. SCANS IN MORE THAN ONE
22 DIRECTION, SO WE USE THE TERM COMPUTERIZED
23 TOMOGRAPHY OR C.T. TOMOGRAPHY MEANS -- IT
24 BASICALLY MEANS THAT YOU'RE LOOKING AT A SLICE OR
25 JUST A PIECE OF SOMETHING WITH AN X-RAY OR AN

1 M.R.I. OR SOMETHING. YOU'RE LOOKING AT A PIECE OF
2 IT.

3 BY USING THE COMPUTER, WE GET A LOT MORE
4 DETAIL. THAT'S BEEN GOING ON NOW FOR CLOSE TO 30,
5 35 YEARS THAT WE'RE DOING C.A.T. SCANS. THEY'RE
6 GETTING BETTER ALL THE TIME. I THINK PEOPLE
7 NOWADAYS HEAR ABOUT THEM AND THEY SEE THEM ON
8 TELEVISION.

9 Q AND IF YOU REVIEW A C.A.T. SCAN OR C.T. SCAN
10 OF SOMEONE'S HEAD, WHAT TYPE OF THINGS ARE YOU
11 LOOKING FOR TYPICALLY?

12 A WHEN WE'RE LOOKING AT A C.A.T. SCAN, OR C.T.
13 SCAN OR SOMETHING, THE MOST COMMON REASON WE'RE
14 DOING IT IS THAT WE'RE LOOKING FOR BLOOD. AFTER
15 THAT WE LOOK FOR OTHER THINGS. WE LOOK FOR
16 TUMORS. WE LOOK FOR WHETHER THE PERSON HAS
17 ATROPHY OR SHRINKAGE OF THE BRAIN THAT MIGHT BE
18 ASSOCIATED WITH SENILITY OR THAT SORT OF THING.
19 WE LOOK FOR CONGENITAL ABNORMALITIES, SOMETHING
20 SOMEONE WAS BORN WITH. WE LOOK FOR ABNORMAL BLOOD
21 VESSELS OR OTHER ABNORMAL FORMATIONS WITHIN THE
22 BRAIN.

23 Q TURNING YOUR ATTENTION TO THE CASE WE'RE HERE
24 ON, WERE YOU ASKED TO REVIEW SOME C.T. SCANS
25 INVOLVING A TWO YEAR OLD CHILD NAMED MINOR

1 ?

2 A YES, I WAS. THEY WERE INTERPRETED EARLIER,
3 AND I WAS BROUGHT BY THE CHIEF -- THE PERSON
4 TAKING CARE OF THE BABY, THE TODDLER, THE
5 RESIDENTS, AND THEIR STAFF, TO LOOK AT THE FILMS
6 ON THIS CHILD.

7 Q AND YOU SAID THAT THEY WERE INITIALLY
8 REVIEWED BY ANOTHER DOCTOR?

9 A YES, THEY WERE.

10 Q AND WHAT DOCTOR WAS THAT?

11 A DR. KENT HUDSON.

12 Q AND BECAUSE OF YOUR EXPERTISE YOU WERE ALSO
13 ASKED TO REVIEW THEM?

14 A YES. THEY ASKED FOR JUST ANOTHER PERSON'S
15 OPINION. IT COULD BE THAT DR. HUDSON WASN'T THERE
16 AT THAT TIME WHEN THEY CAME LOOKING FOR ME.

17 Q AND WHEN YOU REVIEWED THESE -- AND THAT WOULD
18 BE BACK IN MARCH, I BELIEVE, OF 2000 --

19 A TO THE BEST OF MY RECOLLECTION.

20 Q -- THAT YOU INITIALLY REVIEWED THESE?

21 A YES.

22 Q WHAT, IF ANYTHING, DID YOU OBSERVE WHEN
23 REVIEWING THE C.T. SCANS FOR MINOR ?

24 A THE FIRST THING I NOTICED WAS THAT THERE WAS
25 BLOOD INSIDE THE SKULL, OUTSIDE OF THE BRAIN, AND

1 THAT IT WAS PRESSING ON THE BRAIN AND IT WAS
2 PUSHING THE RIGHT SIDE OF THE BRAIN AND THAT THE
3 BLOOD LOOKED LIKE IT WAS NEW; IT LOOKED LIKE IT
4 WAS PROBABLY VERY NEW. IT LOOKED LIKE THERE WAS
5 PROBABLY A VERY SMALL AMOUNT OF OLD BLOOD THAT WAS
6 ON THE SAME SIDE, BUT A LITTLE BIT SEPARATED FROM
7 THE NEW BLOOD.

8 THERE WAS ALSO AN NORMAL APPEARANCE OF THE
9 BRAIN. WHEN THE BRAIN IS HEALTHY, IT HAS A
10 CERTAIN LOOK ON A C.A.T. SCAN. YOU CAN TELL WHERE
11 THE GRAY MATTER IS AND THE WHITE MATTER IS. THEY
12 DO DIFFERENT FUNCTIONS IN THE BRAIN. ONE RELAYS
13 MESSAGES -- THE WHITE MATTER RELAYS MESSAGES FROM
14 ONE PART OF THE BRAIN TO THE OTHER OR ELSE FROM
15 YOUR BRAIN DOWN TO YOUR ARMS AND LEGS TO YOUR
16 SPINAL CORD.

17 THE GRAY MATTER IS INVOLVED WITH THE CREATION
18 OF THOUGHT OR THE STORAGE OF MEMORY OR OF MOTOR
19 SKILLS OR SOMETHING LIKE THAT, AND WE CAN TELL
20 THAT.

21 NOW, WHEN THE BRAIN IS INJURED, THERE CAN BE
22 A TEMPORARY LOSS IN THAT DISTINCTION. THE MORE
23 SEVERELY THE BRAIN IS INJURED, THE MORE THAT
24 DISTINCTION IS LOST. I NOTICED THAT WAS TRUE. I
25 ALSO NOTICED THAT THINGS WERE BEING PUSHED AROUND

1 INSIDE THE SKULL.

2 THE BRAIN IS RELATIVELY SOFT. THE SKULL,
3 FORTUNATELY IS VERY HARD, SO IF THE BRAIN SWELLS,
4 THERE'S NO ROOM FOR IT TO GO. THERE'S NO SPACE
5 FOR IT TO GO, SO IF SOMETHING LIKE BLOOD TAKES UP
6 SPACE, IT'S GOING TO PUSH ON THE BRAIN AND IT'S
7 GOING TO PUSH THINGS WHERE THEY OUGHT NOT TO BE.
8 IT'S GOING TO PUSH ON IT AND CREATE EXTRA
9 PRESSURE.. IF THERE'S ALREADY INJURY TO THE BRAIN,
10 IT WILL MAKE THAT INJURY WORSE.

11 Q AND IN THIS CASE, I BELIEVE THE FIRST THING
12 YOU NOTED WHEN HAD YOU OBSERVED THE C.T. SCANS WAS
13 THAT THERE WAS BLOOD ACTUALLY IN THE BRAIN AREA?

14 A THERE WAS BLOOD OVER THE SURFACE OF THE
15 BRAIN.

16 Q AND THAT WOULD BE OVER THE SURFACE OF THE
17 BRAIN?

18 A CORRECT.

19 Q AND HOW DO YOU, IN YOUR TERMINOLOGY,
20 CHARACTERIZE THE BLOOD YOU VIEWED IN THIS C.T.
21 SCAN THAT WAS OVER THE SURFACE OF THE BRAIN?

22 A IN THIS CASE IT WAS A SUBDURAL HEMATOMA. IN
23 MEDICAL TERMS, THE DURA, DURA MEANS TOUGH.
24 THERE'S A TOUGH MATERIAL THAT'S OVER THE SURFACE
25 OF THE BRAIN THAT'S KIND OF ATTACHED TO THE INSIDE

1 OF THE SKULL. THEY USE THE TERM SUBDURAL BECAUSE
2 IT WAS WRITTEN BY A NEUROSURGEON OR BY ANATOMISTS
3 OR PATHOLOGISTS THAT WENT INTO THE BRAIN. IF YOU
4 LIFT THE BONE OFF, THE NEXT THING YOU RUN INTO IS
5 THE DURA, THE TOUGH MATERIAL.

6 JUST BELOW THAT WOULD BE SUBDURAL, SO SUB
7 MEANS BELOW AND DURA, SO THIS WAS A SUBDURAL
8 HEMATOMA.

9 Q SO THE BLOOD YOU SAW WAS ACTUALLY ON THE
10 SURFACE OF THE BRAIN NOT IN THE BRAIN ITSELF?

11 A IT WAS COVERING THE SURFACE OF THE BRAIN.

12 Q OKAY.

13 A NOW, VERY TINY AMOUNTS OF BLOOD MIGHT BE SEEN
14 UNDER A MICROSCOPE, AND TINY AMOUNTS OF BLOOD THAT
15 MIGHT BE SEEN UNDER A MICROSCOPE ARE NOT ALWAYS
16 SEEN ON A C.A.T. SCAN IF THEY'RE TOO SMALL, BUT
17 THIS WAS CERTAINLY NOT TOO SMALL. IT WAS VERY
18 OBVIOUS.

19 Q AND YOU, I BELIEVE YOU TOLD THIS JURY THAT
20 YOU CHARACTERIZED THAT YOU SAW TWO TYPES OF BLOOD
21 INJURIES IN THIS C.T. SCAN. WHAT WAS THE
22 DIFFERENCE WITH THOSE?

23 A ONE WOULD BE -- THERE'S ONE AREA -- THERE'S A
24 COLLECTION THAT LOOKS THE WAY BLOOD WOULD LOOK,
25 SAY AFTER A MONTH. THE RED BLOOD CELLS BREAK

1 DOWN, THE PROTEIN STARTS TO BREAK DOWN. THERE'S
2 SOME FLUID, AND ON THE C.A.T. SCAN IT'S A LITTLE
3 BIT DARKER. NEWER BLOOD, IF IT HAS HAD TIME TO
4 CLOT, WILL CONCENTRATE. IF THE FLUID GETS
5 ABSORBED BEFORE THE RED BLOOD CELLS AND PROTEINS
6 BREAK DOWN, THAT'S WHITER ON A C.A.T. SCAN.

7 NEW BLOOD THAT'S ACTUALLY FLOWING IN IS A
8 LITTLE BIT DARKER, NOT AS DARK AS SAY THE BLOOD
9 THAT'S BEEN THERE A MONTH, BUT CERTAINLY DARKER
10 THAN THE BLOOD THAT'S HAD A CHANCE TO HAVE THE
11 FLUID ABSORBED AND THE RED BLOOD CELLS -- KIND OF
12 LIKE WHEN A CLOT FORMS. EVENTUALLY A SCAB SHRINKS
13 DOWN AS THE WATER IS ABSORBED AND THE PROTEINS
14 KIND OF MESH TOGETHER AND THE RED BLOOD CELLS ALL
15 GET MIXED TOGETHER. IT GETS DARKER -- OR I SHOULD
16 SAY, IT GETS DENSER, AND DENSER ON A C.A.T. SCAN
17 MEANS WHITER.

18 Q IN ADDITION TO THE ONE AREA -- I BELIEVE YOU
19 SAID IT WAS SITUATED IN ONE PART OF THE BRAIN WITH
20 THE OLDER BLOOD, ABOUT A MONTH OLDER OR MORE?

21 A YES.

22 Q AND THEN YOU HAVE THE ACUTE BLEEDING. I
23 THINK ACUTE -- WHAT DOES ACUTE MEAN?

24 A ACUTE MEANS NEW OR SUDDEN.

25 ACUTE IS A RELATIVE BASIS, SO AN ACUTE

1 ILLNESS WHERE YOU MIGHT HAVE AN ACUTE RESPIRATORY
2 INFECTION MIGHT MEAN, YOU KNOW, SEVERAL DAYS TO A
3 WEEK. WHEN WE TALK ABOUT ACUTE BLEEDING IN THE
4 BRAIN, WE'RE TALKING ABOUT SOMETHING IN THE ORDER
5 OF A FEW HOURS TO SAY A DAY OR TWO.

6 Q SO YOU'VE GOT OLD BLEEDING OR CLOTTING,
7 YOU'VE GOT THE NEW BLEED. IN ADDITION TO THAT
8 WERE THERE OTHER INJURIES YOU NOTED IN THE BRAIN
9 ITSELF?

10 A WELL, THE BIGGEST THING I SAW IN THE BRAIN IS
11 THAT THE BRAIN WAS PUSHED. IT WAS MORE OR LESS
12 SMASHED. THE BRAIN THAT WAS IN THE RIGHT SIDE OF
13 THE SKULL WAS BEING PUSHED, SO THE MIDDLE OF THE
14 BRAIN WHICH IS NORMALLY IN THE MIDDLE OF YOUR HEAD
15 WAS PUSHED TO THE LEFT, AND YOU HAD A SITUATION
16 WHERE THE BRAIN WAS SWOLLEN. THAT DISTINCTION
17 BETWEEN THE THINKING BRAIN, THE GRAY MATTER, AND
18 THE INFORMATION BRAIN, THE WHITE MATTER, THAT
19 DISTINCTION WAS LOST TO A DEGREE.

20 THAT USUALLY COMES FROM SEVERE BRAIN INJURY.
21 IT CAN COME FROM SWELLING, THE BRAIN IS JUST
22 BRUISED THAT BAD. IT CAN COME FROM NOT ENOUGH
23 BLOOD FLOW. IF THE BRAIN IS SQUEEZED SO HARD, THE
24 BLOOD CAN'T COME IN. IT'S LIKE IF YOU SQUEEZE
25 YOUR FINGER YOU CAN ACTUALLY GET IT SO THAT IT

1 TURNS WHITE; IT GETS LIGHTER.

2 THAT FINGER GETS THAT WAY BECAUSE YOU SQUEEZE
3 THE BLOOD OUT AND NO NEW BLOOD CAN COME IN. SO
4 WHEN THE BRAIN IS SQUEEZED, THE BRAIN IS SOFT AND
5 THE BLOOD CLOT CAN ACTUALLY BE MORE FIRM THAN THE
6 BRAIN TISSUE. YOU CAN ACTUALLY HAVE A SLOWING
7 DOWN OF BLOOD FLOW, WHICH CAUSES MORE BRAIN INJURY
8 WHICH CAUSES MORE SWELLING. IT BECOMES
9 UNFORTUNATELY A VICIOUS CYCLE.

10 Q IN THIS CASE AFTER REVIEWING THE C.T. SCANS
11 INVOLVING MINOR , WAS THIS CHILD TAKEN TO
12 SURGERY?

13 A MY UNDERSTANDING IS YES, FROM THE CHART AND
14 FROM WHAT I KNEW AT THE TIME, THE BABY WENT TO
15 SURGERY.

16 Q AND THE ATTEMPTED SURGERY WAS TO DO WHAT?

17 A THE FIRST THING YOU WANT TO DO IS YOU WANT TO
18 ~~GET THAT EXTRA PRESSURE OFF THE BRAIN. SO THE~~
19 FIRST THING THAT YOU WANT TO DO IS YOU WANT TO GET
20 ALL THAT EXTRA BLOOD OFF THE BRAIN, AND YOU WANT
21 TO LOOK AT THE BRAIN TISSUE AND SEE HOW IT'S
22 DOING.

23 IF THERE'S ANY MORE BLEEDING THAT'S
24 OCCURRING, YOU WANT TO STOP THE BLEEDING. YOU
25 TAKE OUT THAT BLOOD, WHICH IS PUSHING ON THE SOFT

1 BRAIN, GET THAT OUT, GET OUT WHAT'S CAUSING IT.

2 IF THERE'S A BLEEDING VEIN, IF THERE ARE TORN

3 VEINS IN THERE, YOU WANT TO CLIP THOSE OFF.

4 THE BODY WILL USUALLY OTHER FIND WAYS TO GET

5 THE BLOOD AROUND IT IF YOU CLIP OFF SOME VEINS

6 BECAUSE YOU DON'T WANT ANY MORE BLEEDING INTO THAT

7 AREA. SO THESE ARE THE FIRST TWO THINGS THAT YOU

8 DO. THEN YOU ASSESS THE SITUATION TO SEE WHAT

9 ELSE IS GOING ON. YOU MAY ALSO PUT A PRESSURE

10 MONITOR IN TO SEE HOW MUCH PRESSURE IS INSIDE THE

11 SKULL.

12 THE FIRST TWO THINGS, GET RID OF THE BLOOD,

13 STOP ANY MORE BLEEDING, AND THEN YOU TAKE A LOOK

14 AND SEE WHAT ELSE NEEDS TO BE DONE.

15 Q DOCTOR, I HAND YOU A SERIES OF C.T. SCANS AND

16 ASK IF YOU RECOGNIZE THESE.

17 A THESE ARE PICTURES FROM THE C.A.T. SCAN

18 SERIES THAT WAS OBTAINED ON MARCH 28TH, 2000.

19 WHAT I LOOKED AT INITIALLY WOULD HAVE BEEN ON A

20 COMPUTER AND THEN I WOULD HAVE LOOKED AT FILMS.

21 THESE HAVE BEEN BLOWN UP ON A BIGGER FORMAT SO

22 THAT THEY'RE EASY TO SEE AND TO MAKE IT EASIER FOR

23 ALL OF YOU TO SEE. WE COULD PUT IT ON A COMPUTER

24 DISK. IT WOULD BE THE SAME PICTURES. WHAT WE CAN

25 DO IS, THIS IS ALL STORED ON -- THIS IS ALL

1 DIGITAL INFORMATION, SO WE CAN SEND IT TO THE
2 DIGITAL CAMERA AND SHOOT THE PICTURE THIS WAY. WE
3 CAN ALSO PUT THAT ON A DISK, ON A COMPACT DISK,
4 AND SHOW THAT ON A PROJECTION, BUT I CAN GO
5 THROUGH THESE.

6 Q I NOTE ON THESE THAT THE DATE IS 3/28 OF
7 2000?

8 A CORRECT. THAT'S THE DATE.

9 Q AND THE TIME ALSO ON THERE IS 8:28 IN THE
10 MORNING?

11 A YES, THAT WOULD BE MILITARY TIME, SO IT'S
12 08:28 HOURS.

13 Q AND CAN -- YOU WERE TALKING ABOUT THE C.T.
14 SCAN AND WHAT IT SHOWS IN THE BRAIN. CAN YOU VIEW
15 A COUPLE OF THESE AND JUST SHOW THE JURY WHAT YOU
16 WERE TALKING ABOUT GENERALLY ABOUT HOW THE BRAIN
17 IS PHOTOGRAPHED?

18 A SURE.

19 MR. STRICKLER: YOUR HONOR, I HAVE NO
20 OBJECTION TO THIS, ASSUMING SHE'S MOVING TO
21 INTRODUCE IT.

22 MS. CAMPBELL: I'M SORRY, YOUR HONOR. AT
23 THIS TIME WE MOVE TO INTRODUCE ALL OF THESE INTO
24 EVIDENCE.

25 MR. STRICKLER: OF COURSE, THAT'S WITHOUT

1 OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 (WHEREUPON, STATE'S EXHIBITS 10 THROUGH
4 17 WERE ADMITTED INTO EVIDENCE.)

5 BY MS. CAMPBELL:

6 Q SO, DOCTOR --

7 A IT WOULD PROBABLY BE EASIER IF YOU COULD
8 PROJECT THE -- START WITH THE FIRST SLIDE. I'M
9 GOING TO SHOW THEM UP HERE AND THEY WILL BE UP
10 THERE AS WELL FOR ALL OF YOU TO SEE. THIS FIRST
11 ONE IS AN OVERVIEW, AND WE'LL PUT UP THE SLIDES
12 HERE, THE FILMS HERE, AS WELL.

13 THIS IS -- UP HERE YOU SEE THIS IS NINE ON
14 ONE --

15 MR. STRICKLER: I APOLOGIZE, YOUR HONOR,
16 COULD I ASK FOR THE EXHIBIT NUMBER?

17 THE WITNESS: THIS IS STATE'S EXHIBIT 12. I
18 BELIEVE THAT'S 12.

19 MR. STRICKLER: YES, SIR, THANK YOU.

20 THE WITNESS: THIS IS JUST HOW I MIGHT SEE
21 THEM IF I WERE REVIEWING THEM. THESE WOULD BE A
22 LITTLE BIT MORE BLOWN UP AND UP ON A TELEVISION
23 TYPE SCREEN, A COMPUTER SCREEN. IT'S USUALLY A
24 HIGH RESOLUTION SCREEN THAT'S ABOUT 2,000 X 4,000
25 PIXELS, SO IT'S NOT YOUR AVERAGE TELEVISION

1 SCREEN. IT'S KIND OF LIKE WHAT H.G.T.V. IS
2 COMPARED TO SOMETHING THAT YOUR PARENTS WATCHED IN
3 THE 50'S -- OR SOMETHING I WATCHED IN THE 50'S.

4 ANYWAY, WHAT I HAVE HERE IS THE SAME THING.
5 DOWN BELOW WE SEE THAT THE BONE IS WHITE. WHEN I
6 SAY DENSE HERE, WHITE MEANS IT STOPS A LOT OF
7 X-RAYS. THE BRAIN TISSUE ITSELF IS MORE GRAY.
8 THE DIFFERENT AREAS LOOK DIFFERENTLY. THIS IS
9 FLUID IN THIS BLACK AREA HERE -- COULD YOU GO TO
10 THE NEXT SLIDE?

11 THIS ONE, IT'S JUST FURTHER UP FROM THE SAME
12 EXAM -- IS IT POSSIBLE TO DIM THE LIGHTS SLIGHTLY
13 OR NOT?

14 THE COURT: YES.

15 THE WITNESS: IT WOULD BE EASIER TO SEE.

16 IF YOU'LL LOOK HERE ON THIS -- UP HERE AND
17 YOU'LL BE ABLE TO SEE IT UP THERE, YOU SEE THIS
18 DARK STUFF? THAT'S THE FLUID, THAT'S THE NORMAL
19 FLUID IN THE BRAIN. THAT'S CALLED YOUR VENTRICLES
20 IN THE BRAIN. YOU SEE ON THIS SLIDE THAT YOU CAN
21 SEE IT ON THE LEFT, BUT YOU CAN'T SEE IT ON THE
22 RIGHT. YOU CAN SEE IT ON THE LEFT SIDE, BUT NOT
23 ON THE RIGHT SIDE. WE'LL GO A LITTLE BIT FURTHER,
24 I'LL SHOW THESE ONE BY ONE IN JUST A MINUTE.

25 GO TO THE NEXT SLIDE, PLEASE.

1 MR. STRICKLER: WHAT WAS THAT EXHIBIT NUMBER?

2 THE WITNESS: THIS WAS EXHIBIT NUMBER ELEVEN.

3 MR. STRICKLER: THANK YOU.

4 THE WITNESS: YOU SEE A VERY THIN LAYER OF
5 DARKER -- IT'S DARK OUT HERE, JUST INSIDE THE
6 WHITE BONE AND THERE'S ANOTHER WHITE LAYER. THE
7 DARK STUFF HERE IS A LITTLE BIT WHITER, A LITTLE
8 BIT MORE GRAY THAN THE BLACK STUFF HERE, WHICH
9 TELLS YOU THAT IT'S LIGHT FLUID.

10 COULD WE GO TO THE NEXT SLIDE?

11 LOOKING HERE -- THIS IS LOWER DOWN IN THE
12 BRAIN FROM THE PICTURE. IT'S ONE OF THE ONES THEY
13 SHOWED BEFORE THIS.

14 NEXT ONE, PLEASE.

15 OKAY. YOU'RE STARTING TO SEE A LITTLE BIT OF
16 DIFFERENCE. THE BRAIN -- IF YOU DRAW A LINE DOWN
17 THE MIDDLE, IT SHOULD BE FAIRLY SYMMETRIC. NO ONE
18 IS PERFECT. SOMETIMES OUR SKULL WILL BE
19 DIFFERENT. SOMETIMES WHERE THIS BONY PROMINENCE
20 IS HERE WILL BE DIFFERENT, BUT THIS LITTLE DARK
21 THING HERE SHOULD HAVE SOMETHING OVER THE OTHER
22 SIDE. YOU SEE THIS WHITE STUFF RIGHT HERE, THAT
23 SHOULDN'T BE THERE.

24 NEXT SLIDE.

25 THAT'S THIS SLIDE HERE. IT'S THE SAME.

1 WE SEE NOW THERE'S EVEN MORE OF A DIFFERENCE.
2 YOU GET KIND OF A HINT THAT THERE'S A DARKER AREA
3 IN HERE, THAT'S PART OF THE WHITE MATTER IN THE
4 BRAIN STEM. THIS DARK STUFF IS FLUID, OKAY. THEN
5 THERE'S THIS WHITE MATERIAL RIGHT HERE. THAT
6 DOESN'T BELONG THERE. YOU DON'T SEE IT ON THE
7 OTHER SIDE. IF YOU LOOK, YOU CAN SEE SOME FAINT
8 INTERDIGITATION OF GRAY WITH DARKER GRAY. YOU'RE
9 LOSING IT ON THE OTHER SIDE, ON THE RIGHT SIDE.

10 NEXT SLIDE, PLEASE.

11 SAME THING YOU CAN SEE HERE. SEE THAT WHITE
12 STUFF, SEE SOME FAINT INTERDIGITATION ON ONE SIDE;
13 IT'S KIND OF LIKE LITTLE FINGERS WHICH IS GRAY
14 MATTER, WHICH IS LIGHTER GRAY, AND THE WHITE
15 MATTER IS THE DARKER GRAY. YOU SEE IT AGAIN HERE.
16 YOU SEE IT FAIRLY WELL DEFINED ON THIS SIDE AND IT
17 BECOMES A LITTLE LESS DEFINED HERE. THIS BECOMES
18 MORE PROMINENT THE HIGHER WE GO. WHAT I WAS
19 TALKING ABOUT EARLIER, THERE'S A DARKER, ALMOST
20 BLACK, AND THEN EVEN DARKER BLACK. THIS IS FLUID,
21 SPINAL FLUID, AND THAT'S THE WAY THAT IT SHOULD
22 LOOK.

23 THIS IS A GRAY MATERIAL, AND THAT'S WHERE THE
24 BLOOD IS PROBABLY FOUR WEEKS OLD OR A LITTLE BIT
25 OLDER. THE RED BLOOD CELLS ARE BROKEN DOWN, THE

1 PROTEINS ARE BROKEN DOWN, THE IRON HAS BEEN
2 REABSORBED, AND THEN JUST INSIDE IT, YOU SEE
3 WHITE. THAT WHITE IS BLOOD THAT'S GOTTEN OUTSIDE
4 THE BLOOD VESSELS; IT'S OUTSIDE THE BRAIN. IT'S
5 KIND OF CAKED OVER INSIDE THE BRAIN. THIS WHITE,
6 ON THE OTHER HAND, IS THAT STUFF I CALLED DURA,
7 THAT TOUGH MATTER, OKAY, DURA MATER OR TOUGH
8 MOTHER IS WHAT IT ACTUALLY STANDS FOR.

9 THIS IS THE SAME STUFF. THERE'S A LOT OF
10 BLOOD VESSELS IN SO IT'S GOING TO BE WHITE, PLUS
11 IT'S JUST TOUGH FIBROUS PROTEINS AND COLLAGEN AND
12 THAT JUST SHOWS UP THAT WAY.

13 NEXT SLIDE.

14 SO WE GET UP A LITTLE BIT HIGHER AND WE SEE
15 MORE OF THAT. WE SEE THAT THIS LITTLE STRUCTURE
16 HERE SHOULD BE RIGHT DOWN THE MIDDLE. IT SHOULD
17 BE OVER HERE, BUT IT'S SHIFTED BY ABOUT 10, 12, 15
18 MILLIMETERS, OKAY? IN THE BRAIN THERE'S NOT A LOT
19 OF SPACE. LIKE I SAID, THE BRAIN TISSUE IS SOFT,
20 BUT THE SKULL IS HARD. THE OLDER A CHILD GETS,
21 THE HARDER THE SKULL GETS. A NEWBORN BABY HAS THE
22 FONTANEL, THE SOFT SPOT IN THE FRONT AND BACK,
23 THOSE ARE CLOSING UP. WE DON'T SEE ANY OF THAT.
24 WE DON'T SEE ANY INDICATION OF THAT HERE. WE SEE
25 AGAIN THAT DARKER STUFF AND THE WHITER STUFF. NOW

1 AS WE GET HIGHER YOU'LL NOTE THIS WHITE STUFF KIND
2 OF HAS SOME MEDIUM GRAY MIXED IN.

3 NEXT SLIDE.

4 THAT MEDIUM GRAY THAT'S MIXED IN IS PROBABLY
5 ACTIVE BLEEDING, OKAY? WHEN THE BLOOD FIRST COMES
6 IN, THE BLOOD IS MOSTLY WATER. IT'S GOT SOME
7 SALTS IN IT, IT'S GOT SOME PROTEINS IN IT, IT'S
8 GOT SOME RED BLOOD CELLS, BUT VERY NEW BLOOD
9 THAT'S COMING OUT RIGHT NOW, ON THE C.A.T. SCAN,
10 IS NOT AS WHITE AS BLOOD THAT'S BEEN THERE, YOU
11 KNOW, FOR A FEW HOURS OR MAYBE EVEN A DAY THAT'S
12 HAD SOME OF THE FLUID ABSORBED OUT OF IT FROM
13 THOSE RED BLOOD CELLS THAT HAVE CLUMPED TOGETHER
14 IN A CLOT.

15 AGAIN, JUST A LITTLE BIT OF THAT DARK STUFF
16 HERE HAS STARTED TO FADE AWAY, BUT AGAIN, AND THIS
17 IS MORE APPARENT ON THIS FILM, ON THIS SLIDE, AND
18 THAT WOULD CORRESPOND TO ONE OF THESE PICTURES ON
19 EXHIBIT 10.

20 AS YOU GET TOWARD THE TOP OF THE BRAIN,
21 THAT'S THE SAME AS THIS FIRST PICTURE HERE. WE
22 SEE MORE OF THAT MIXED BLOOD. THIS IS ACUTE
23 BLOOD, WHICH MEANS WITHIN A FEW DAYS OLD. OKAY,
24 IT'S NOT CHANGING YET. IT MAY ONLY BE A FEW HOURS
25 OLD, AS IN TWELVE OR LESS.

1 WE SEE THE MIXED IN, THE FRESH BLEEDING AT
2 THE SAME TIME, THE OLD BLOOD. IT'S ALL WHITER
3 THAN THIS DARK FLUID IN THE VENTRICLE. YOU NOTICE
4 HERE HOW WELL YOU SEE THAT INTERDIGITATION ON THIS
5 SIDE AND YOU DON'T HERE, ESPECIALLY UP HERE
6 BECAUSE YOU'RE LOSING IT. THAT'S BRAIN THAT'S
7 STARTING TO SWELL. THAT'S BRAIN THAT'S VERY SICK.
8 I CAN'T TELL FROM THIS IF IT'S DEAD BRAIN OR NOT,
9 BUT I CAN TELL IT'S HEADED IN THE WRONG DIRECTION
10 FAST.

11 NEXT SLIDE.

12 YOU SEE THAT EVEN MORE SO HERE. IT BECOMES
13 DARKER AND DARKER. THAT MEANS THIS BRAIN, THE
14 HIGHER UP WE GO, LOOKS MORE AND MORE INJURED.
15 AGAIN, NOW YOU'RE SEEING THE MIXTURE OF THE GRAY
16 AND THE WHITE, AND THAT'S JUST ACTIVE BLEEDING
17 INSIDE THERE. YOU SEE THE SHIFT. NOW YOU CAN
18 EASILY SEE HOW THAT'S BOWED LIKE BOWING A STRING
19 AND A BOW FOR A BOW AND ARROW. THAT'S JUST
20 SWELLING IN THE BRAIN, BUT IT'S NOT JUST SWELLING,
21 IT'S ALSO GOT SOMETHING ELSE PUSHING THERE.

22 IF YOU HAVE A LITTLE BIT OF BLOOD OVER A LOT
23 OF THE BRAIN, IT'S LIKE TRYING TO STICK YOUR
24 FINGER INTO A TIGHT SPOT. YOUR HAND MAY NOT BE
25 THICK, AND THE SPACE MAY BE BIGGER, BUT THERE'S

1 ENOUGH OF A VOLUME OF YOUR HAND OR IN THIS CASE
2 ENOUGH OF THE VOLUME OF THE BLOOD OVER THAT WHOLE
3 CURVATURE THAT IT'S PUSHING ON THE BRAIN AND THE
4 BRAIN IS SWELLING.

5 NEXT SLIDE.

6 YOU SEE THE SAME THING ON THESE SLIDES, ON
7 THESE PICTURES. THIS IS JUST HIGHER UP SHOWING
8 MORE OF THE SAME THING.

9 AS DOCTORS, WE OFTEN USE MORE THAN ONE
10 TECHNIQUE TO LOOK AT SOMETHING. ONE OF THE THINGS
11 WE'LL OFTEN DO IS MANIPULATE THE COMPUTER TO SHOW
12 THIS BETTER, SO I HAVE SOME SLIDES THAT SHOW THIS
13 JUST A LITTLE BIT BETTER, AND THAT'S WHERE -- THIS
14 IS EXHIBIT 14.

15 THIS IS WHAT WE CALL A BLOOD WINDOW. WE HAVE
16 ALL THIS INFORMATION ON DIGITAL COMPUTERS, ON THE
17 C.A.T. SCAN COMPUTERS. IT CAN EVEN BE TRANSFERRED
18 TO US AT HOME, SO IF THIS IS AT 2:00 IN THE
19 MORNING WE CAN BE LOOKING AT IT JUST A FEW MINUTES
20 AFTER IT HAPPENS FASTER THAN DRIVING IN. IT
21 ALLOWS US TO HAVE SPECIALISTS COVERING C.A.T.
22 SCANS OF THE HEAD AND THE BODY SEPARATELY WITHOUT
23 HAVING ALL THESE DOCTORS IN THE HOSPITALS ALL
24 NIGHT LONG OR WHATEVER.

25 BUT ANYHOW, WE CAN USE THE COMPUTER TO

1 MANIPULATE IT SO THAT WE CAN SEE THAT BLOOD TO A
2 GREATER VANTAGE HERE. WE CAN USE THE SAME THING
3 TO LOOK FOR FRACTURES IN THE SKULL. WE CAN CHANGE
4 THE WIDTH OR WE CAN CHANGE THE CONTRAST. WE CAN
5 CHANGE THE WAY THAT DIGITAL INFORMATION IS
6 PORTRAYED.

7 I THINK -- IS THERE'S ONE MORE?

8 THE TECHNICIAN: TWO MORE, I THINK.

9 THE WITNESS: TWO MORE, OKAY.

10 JUST GETTING UP A LITTLE BIT HIGHER, WE SEE
11 MORE OF THE SAME THING. IT'S MORE APPARENT HERE.
12 THIS IS WHITE MATTER THAT'S DARKER, THE GRAY
13 MATTER IS GRAY, AND WE'RE DEFINITELY LOSING THAT
14 DISTINCTION HERE. WE COME UP HIGHER, WE CAN SEE
15 THAT ACTIVE BLEEDING IN SEVERAL SPOTS, OKAY? THAT
16 BLOOD IS PROBABLY SWIRLING A LITTLE BIT MIXING IN
17 THERE WITH BLOOD THAT'S A LITTLE BIT OLDER THAT'S
18 STARTING TO THICKEN UP.

19 NEXT.

20 NOW, THIS IS THE TOP PICTURE. AS YOU CAN
21 SEE, THERE'S CERTAINLY A DIFFERENCE FROM SIDE TO
22 SIDE. SOME OF THAT BLOOD HAS COME ALL THE WAY
23 OVER THE TOP. IT'S COMING DOWN THAT TOUGH
24 SEPARATION IN THE MIDDLE, THE DURA IN THE MIDDLE,
25 WHICH IS CALLED THE FALX, BUT IT'S THE SAME STUFF,

1 IT'S THE DURA SO IT'S INSIDE THE DURA.

2 IF THE SURGEON WERE COMING THROUGH -- HE'S
3 GOING THROUGH THE SKULL, HE RUNS INTO THE DURA,
4 THE TOUGH MATTER AND THEN IT GETS TO THE BLOOD AND
5 THAT'S THE SUBDURAL. SOME OF THAT IS TRACKING
6 ALONG HERE. IT'S KIND OF ACTING LIKE A CAT. IT'S
7 PUSHING DOWN THE RIGHT SIDE OF THAT BRAIN AND THE
8 BRAIN IS INJURED AND THAT'S WHAT WE'RE SEEING
9 HERE.

10 Q THANK YOU, DOCTOR.

11 A ALL OF THOSE ARE ON THESE PICTURES HERE.

12 Q AND DOCTOR, IN OBSERVING THESE C.T. SCANS,
13 YOU STATED EARLIER THAT THE BRAIN IS SUPPOSED TO
14 BE SYMMETRICAL?

15 A IT SHOULD BE PRETTY SYMMETRIC UNDER NORMAL
16 CIRCUMSTANCES, YES.

17 Q AND AS I ABSORBED THESE SLIDES OF THE C.T.
18 SCANS AS YOU WERE SHOWING THEM, ONE SIDE OF THE
19 BRAIN APPEARED TO BE LARGER THAN THE OTHER; IS
20 THAT CORRECT?

21 A WELL, IT'S SWELLING, SO IT'S PUSHING TO THE
22 SIDE. YES, THE RIGHT SIDE IS SWELLING AND IT'S
23 CROSSING THE MIDLINE. THAT SHOULDN'T BE.

24 Q AND WHEN YOU SAY IT'S CROSSING THE MIDLINE, I
25 NOTICED THERE WAS A LINE KIND OF DOWN THE MIDDLE

1 THAT CURVED OVER INTO THE LEFT SIDE OF THE BRAIN.

2 IS THAT HOW IT'S SUPPOSED TO APPEAR?

3 A NO. THAT SHOULD BE PRETTY STRAIGHT. UNLESS
4 YOU'VE HAD SURGERY OR YOU'RE BORN WITH SOME KIND
5 OF CONGENITAL ABNORMALITY, THAT SHOULD BE
6 STRAIGHT.

7 Q AND YOU'VE HEARD THE TERM MIDLINE SHIFT IN
8 THE BRAIN?

9 A YES, THIS IS WHAT THEY CALL MIDLINE SHIFT.
10 IN DOCTOR TERMS IT MEANS THAT THERE IS INCREASED
11 PRESSURE ON ONE SIDE OF THE BRAIN AS COMPARED TO
12 THE OTHER.

13 IT CAN HAVE OTHER CAUSES. IF ONE OF YOUR
14 VENTRICLES COULDN'T DRAIN AND IT GOT TOO BIG, THAT
15 COULD CAUSE MIDLINE SHIFT. IF THERE'S A TUMOR
16 THAT'S TAKING UP SPACE, THAT COULD CAUSE MIDLINE
17 SHIFT. NONE OF THOSE ARE TRUE HERE, THOUGH. HERE
18 IT'S BLOOD AND SWELLING OF THE BRAIN. AS THE
19 BRAIN SWELLS IT GETS BIGGER. IT TAKES UP MORE
20 SPACE AS THE BLOOD ON THE OUTSIDE PUSHES IT DOWN
21 AND OVER AND IT SHIFTS THE MIDLINE.

22 Q AND DOCTOR, WE'VE HEARD THE TERMINOLOGY IN
23 THIS COURTROOM OF WHAT'S CALLED THE A REBLEED OF
24 AN OLD SUBDURAL HEMATOMA.

25 A YES.

1 Q AND ARE YOU FAMILIAR WITH THOSE TERMS?

2 A YES.

3 Q IN THIS CASE, IN YOUR OPINION, THERE IS
4 DEFINITELY AN OLDER SUBDURAL HEMATOMA?

5 A THERE IS A VERY SMALL AMOUNT OF MATERIAL THAT
6 LOOKS EXACTLY HOW I'D EXPECT A BLEED OF FOUR WEEKS
7 OR MORE, MAYBE THREE AT THE EARLIEST, BUT MORE
8 LIKELY FOUR OR MORE WEEKS OLD THAT'S BEEN THERE.
9 IT COULD BE TWO MONTHS OLD, BUT THIS IS -- THERE'S
10 REBLEEDING, MEANING THAT THERE'S BLOOD ON THE SAME
11 SIDE.

12 Q AND THE OLDER SUBDURAL HEMATOMA, YOU
13 CHARACTERIZE AS BEING A MONTH TO TWO MONTHS?

14 A ~~IT'S AT LEAST A MONTH OLD.~~

15 Q AT LEAST A MONTH OLD OR OLDER?

16 A YES.

17 Q COULD IT BE AS OLD AS SIX MONTHS?

18 A IT COULD BE AS OLD AS SIX MONTHS, YES.

19 Q THAT INJURY WOULD BE CAUSED BY WHAT KIND OF
20 TRAUMA?

21 A ~~IT CAN BE CAUSED BY A DIRECT BLOW TO THE~~
22 HEAD. SUBDURAL BLOOD CAN BE CAUSED BY SHAKING A
23 BABY. THE BABY'S BRAIN IS NOT AS FIRM AS AN
24 ADULT'S AND THOSE VEINS CAN TEAR AND CAUSE A
25 SUBDURAL BLEED. IT'S A SMALL BLEED. I CAN'T TELL

1 YOU THE EXACT MECHANISM, BUT IT'S NOT TRIVIAL, SO
2 YOU DON'T NORMALLY BLEED. I MEAN, EVERYBODY HAS
3 SEEN CHILDREN OR THEY'VE BEEN A CHILD AND THEY'VE
4 FALLEN DOWN AND MOST OF US DON'T HAVE SUBDURAL
5 HEMATOMAS AND -- I SURE HOPE I DON'T. I TOOK A
6 LOT OF HARD BLOWS PLAYING FOOTBALL, WRESTLING, AND
7 EVERYTHING ELSE.

8 IT WAS SOMETHING ENOUGH TO CAUSE TEARING OF
9 VEINS. TEARING OF VEINS IN A CHILD, YOU KNOW,
10 WHILE THE BRAIN ISN'T FIRM, IT'S MADE TO TAKE
11 BASIC BLOWS. WE'RE ALL CREATED IN A WAY THAT WE
12 CAN SURVIVE DAILY LIFE, OR WE SHOULD BE ABLE TO,
13 SO THAT WAS ENOUGH TRAUMA THAT IT WOULD TEAR
14 VEINS. NOW, THAT CAN BE CAUSED BY VIOLENT
15 SHAKING. IT CAN BE CAUSED BY A DIRECT BLOW, A
16 HARD HIT TO THE HEAD. IT DOESN'T REQUIRE A SKULL
17 FRACTURE.

18 Q AND YOU CHARACTERIZED THE OLDER BLOOD YOU
19 SAW, THE OLDER SUBDURAL HEMATOMA AS A SMALLER
20 AMOUNT OF BLOOD IN THIS CASE?

21 A CORRECT.

22 Q WOULD THE CHILD, IF SHE HAD SUSTAINED THAT A
23 MONTH OR TWO MONTHS OR SIX MONTHS BEFORE, HAVE
24 REQUIRED TREATMENT WHEN SHE INCURRED THAT TRAUMA?

25 A SHE MIGHT NOT HAVE REQUIRED SURGERY, BUT MOST

1 OF THE TIME IF YOU GET ENOUGH OF AN INJURY TO
2 CAUSE THAT KIND OF ACCUMULATION OF BLOOD, THAT
3 PERSON SHOULD USUALLY BE SEEN. THEY'LL USUALLY
4 HAVE SOME SYMPTOMS.

5 IT MAY BE SYMPTOMS JUST OF A BABY WHO BECOMES
6 VERY GROGGY AND TIRED. IT'S KIND OF LIKE IF A
7 PARENT ALWAYS SAID IF YOU HAVE A CONCUSSION, YOU
8 HAVE TO WATCH AND MAKE SURE THAT THEY DON'T FALL
9 INTO A DEEP SLEEP, THAT SORT OF THING. IT MAY
10 HAVE BEEN SOMETHING LIKE THAT OR IT MAY HAVE BEEN
11 SOMETHING MORE. THE TENDENCY IS FOR THAT OLD
12 BLOOD TO BE EVENTUALLY ABSORBED BY THE BODY SO
13 THAT IF IT WERE LARGER SIX MONTHS AGO, IT COULD BE
14 THAT SIZE TODAY OR AT THE TIME OF THE PICTURE.

15 IF IT WERE SMALL, IT MIGHT JUST BE A MONTH
16 OLD, BUT THE BODY WILL ABSORB IT. THE BODY HAS
17 THE ABILITY TO ABSORB THAT FLUID AND PUT THINGS
18 BACK IN BALANCE.

19 Q AND YOU'VE HEARD THE TERM "SPONTANEOUS
20 REBLEED?"

21 A WELL, SPONTANEOUS REBLEED OFTEN OCCURS IN
22 PEOPLE THAT HAVE SOMETHING ABNORMAL TO START WITH,
23 WHETHER THEY'RE ON A BLOOD THINNER, WHETHER THEY
24 HAVE A SHRUNKEN BRAIN, WHETHER THEY HAVE ABNORMAL
25 FORMATION OF BLOOD VESSELS OR THAT SORT OF THING

1 THEN SPONTANEOUS REBLEED CAN OCCUR. THAT'S NOT
2 THE TYPE OF THING THAT CAN HAPPEN IN A CHILD
3 THAT'S HEALTHY. IT'S NOT A NORMAL AMALGAM, AND IF
4 IT IS, IT'S USUALLY IN SIMILAR DEGREE TO THE FIRST
5 BLEED.

6 THERE'S NO REASON TO THINK THAT IF YOU HAVE A
7 SMALL BLEED FROM A SMALL VEIN BEING TORN THE FIRST
8 TIME DO YOU TEAR MULTIPLE VEINS THE SECOND TIME
9 AROUND, NOT JUST ON ITS OWN.

10 Q AND YOU CHARACTERIZE THE OLDER SUBDURAL AS A
11 SMALL BLEED?

12 A YES.

13 Q BUT THE ACUTE SUBDURAL IN THIS CASE, YOU
14 DIDN'T CHARACTERIZE THAT AS A SMALL BLEED?

15 A OH, NO, THAT'S A LARGE BLEED. THAT'S ENOUGH
16 OF A BLEED TO PUSH THE BRAIN OVER FROM THE RIGHT
17 TO THE LEFT. IT'S ENOUGH OF A BLEED EITHER TO
18 SQUEEZE THE BRAIN OR CAUSE IT TO BE INJURED WHERE
19 WE LOSE THAT DISTINCTION WHERE THE BRAIN IS IN THE
20 PROCESS OF DYING. THAT'S A SIGNIFICANT BLEED.

21 Q SO THE ACUTE, THE NEW BLEED, WOULD HAVE TO BE
22 CAUSED BY ADDITIONAL OR NEW TRAUMA TO THIS CHILD?

23 A THAT -- YEAH, I WOULD NOT EXPECT THIS TO
24 HAPPEN JUST BECAUSE THERE WAS AN OLD BLEED, NO.
25 THAT WOULDN'T -- THIS -- FIRST OF ALL, IF YOU USE

1 THE TERM EPICENTER -- IN OTHER WORDS, YOU HEAR THE
2 TERM EPICENTER, ANYTIME YOU HEAR ON THE NEWS SAY
3 OF THE EPICENTER OF AN EARTHQUAKE IN CALIFORNIA,
4 RIGHT, WELL, THE EPICENTER WAS IN SAUSALITO OR
5 SOMETHING.

6 IF YOU LOOK AT WHERE THE OLD BLOOD IS, IT'S
7 DOWN LOW ON THE RIGHT SIDE TOWARD THE FRONT. IF
8 YOU LOOK WHERE THE NEW BLEED IS, IT'S UP HIGHER
9 WHERE THAT BLOOD IS SWIRLING. IT'S UP HIGHER,
10 IT'S MORE POSTERIOR, AND IT'S CERTAINLY OF LARGER
11 VOLUME, SO I WOULD NOT EXPECT THAT TO BE JUST
12 BLEEDING SPONTANEOUSLY. IF I HAD -- IF I SAW A
13 SPONTANEOUS BLEED, I WOULD EXPECT IT IN THE SAME
14 AREA.

15 Q AND THESE ARE IN TWO DIFFERENT AREAS, EVEN IF
16 THEY ARE ON THE SAME SIDE OF THE BRAIN?

17 A THEY OVERLAP. IF YOU LOOK AT WHERE THEY'RE
18 CENTERED AND WHERE THE BLOOD HAS ACCUMULATED,
19 WHERE YOU SEE THAT SWIRLING OF THE MIXTURE OF THE
20 NEWEST BLOOD TO THE NEW, BUT NOT QUITE AS NEW
21 BLOOD, THOSE ARE CENTERED A LITTLE BIT
22 DIFFERENTLY.

23 Q SO THESE TWO INJURIES WERE CAUSED BY TWO
24 SEPARATE TRAUMATIC EVENTS?

25 A THAT WOULD BE MY OPINION.

1 Q AND DOCTOR, YOU ALSO INDICATED THAT REBLEEDS
2 ARE NOT NORMAL UNLESS THERE'S SOMETHING WRONG WITH
3 THE BRAIN. IN THIS CASE WERE YOU ABLE TO REVIEW
4 SOME RECORDS INVOLVING MINOR WHEN SHE
5 WAS A NEWBORN?

6 A YES. A LOT OF TIMES BABIES WILL BE -- YOU
7 HAVE ULTRASOUNDS PERFORMED WHEN THEY'RE NEWBORN.
8 WE CAN USE THE SOFT SPOT ON THE HEAD, FRONT AND
9 BACK, TO LOOK AT THE BRAIN. IF THE BABY OR THE
10 MOM HAD ANY DIFFICULTY DURING PREGNANCY, IF THE
11 BABY HAD ANY TROUBLE DURING BIRTH, OR FOR WHATEVER
12 REASON, THEY DO ULTRASOUNDS BECAUSE IT'S FAST,
13 IT'S EASY. IT DOESN'T USE ANY IONIZING RADIATION.
14 THERE'S NO WORRY ABOUT RADIATION RISK.

15 THEY CAN DO IT WITH THE BABY STILL IN THE
16 BASSINET IN THE NURSERY. THEY BRING UP THE
17 ULTRASOUND MACHINE, THEY LOOK IN THERE. HER BRAIN
18 LOOKED FINE. WHAT IT LOOKED LIKE -- IT HAD SOME
19 FUNNY SPOTS THAT WERE DOWN DEEP INSIDE THE BRAIN
20 TISSUE THAT RAISED THE POSSIBILITY OF A SMALL
21 HEMORRHAGE IN THE BRAIN TISSUE, FAR UNRELATED TO
22 THIS IN A PLACE CALLED THE GERMATAL-MATRIX
23 (PHONETIC), I BELIEVE. WITHOUT SENDING YOU OFF TO
24 MED SCHOOL AND RESUMING THIS IN FOUR YEARS, IT'S
25 IN AN AREA IN THE BRAIN WHERE THE VESSELS ARE

1 FRAGILE IN A NEWBORN BABY.

2 WE SEE A LOT OF SMALL TINY HEMORRHAGES.

3 THESE ARE CALLED GRADE ONE, WHICH MEANS THEY WERE
4 MINIMAL AND THEY WERE SUGGESTED NOT DIAGNOSTIC.

5 IN OTHER WORDS, THE FUNNY SPOT COULD BE NORMAL OR
6 A SMALL RECOVERING GRADE ONE HEMORRHAGE AND PLENTY
7 OF CHILDREN HAVE THOSE.

8 Q AND THOSE WERE THE C.T. SCANS OR ULTRASOUNDS?

9 A THOSE WERE ULTRASOUNDS.

10 Q AND THOSE WERE DONE WHEN SHE WAS JUST A MONTH
11 OR TWO OLD; IS THAT CORRECT?

12 A I THINK THOSE WERE DONE WITHIN THE FIRST
13 MONTH, I BELIEVE.

14 Q AND THOSE ARE IN NO WAY CONTRIBUTING TO THE
15 INJURIES YOU SEE HERE?

16 A WELL, ~~THEY'RE REMOTE FROM THEM.~~ IF YOU LOOK
17 AT THE STRUCTURES WE'RE TALKING ABOUT, THE MIDLINE
18 SHIFT, THESE ARE STRUCTURES THAT ARE NEXT TO THE
19 VENTRICLE, THAT DARK AREA THAT I SHOWED YOU INSIDE
20 THE BRAIN TISSUE, THE VENTRICLE, THE CHOROID
21 PLEXUS IS IN THE VENTRICLE AND BELOW THAT, JUST
22 UNDERNEATH THE LINING OF THE VENTRICLE IS THE
23 GERMATAL-MATRIX (PHONETIC).

24 YOU KNOW, THERE CAN BE SMALL HEMORRHAGES
25 THERE AND THAT'S WAY ON THE INSIDE, NOT ON THE

1 SURFACE OF THE BRAIN, AND THOSE GET BETTER AS YOU
2 GET OLDER AND THE LIKELIHOOD OF THOSE BLEEDING
3 DROPS SIGNIFICANTLY AS YOU GET OLDER.

4 Q AND, IN FACT, IN YOUR VIEW OF THESE C.T.
5 SCANS WHEN SHE'S TWO YEARS AND THREE MONTHS OLD,
6 THERE IS NO EVIDENCE OF ANY OF THOSE -- OF ANY OF
7 THAT?

8 A THERE'S NO EVIDENCE OF EVER HAVING HAD
9 ANYTHING WRONG AT THE GERMATAL-MATRIX AND THAT'S
10 NORMAL FOR TINY HEMORRHAGES THERE.

11 Q DOCTOR, DO YOU HAVE AN OPINION AS TO WHETHER
12 OR NOT THE INJURIES, THE OLD SUBDURAL HEMATOMA,
13 THE NEW SUBDURAL HEMATOMA, AND THE SWELLING, WHAT
14 KIND OF TRAUMA -- WHAT COULD CAUSE THAT? COULD
15 YOU EXPLAIN THAT TO THE JURY?

16 A WELL, IF YOU HAVE A TINY SUBDURAL HEMATOMA
17 THAT HAS BEEN REPORTED WITH A SHAKEN BABY -- WHAT
18 I MEAN BY SHAKEN BABY, I DON'T MEAN WHEN SOMEBODY,
19 YOU KNOW, BOUNCES THE BABY ON THEIR KNEE. WHAT
20 I'M TALKING ABOUT IS WHEN THEY'RE VIOLENTLY
21 SHAKING THE BABY OUT OF ANGER, FRUSTRATION, LOSS
22 OF CONTROL, THAT SORT OF THING, AND VIOLENTLY BACK
23 AND FORTH SHAKING, IT CAN OCCUR FROM THAT. IT CAN
24 OCCUR FROM SOMEBODY GETTING MAD AT A CHILD AND
25 JUST GOING UP SIDE THE HEAD VERY HARD, ENOUGH TO

1 CAUSE A SUDDEN JARRING OF THE BRAIN THAT IT TEARS
2 SOME VEINS ON THE SURFACE.

3 NOW, NOT KNOWING WHAT THIS OLD BLOOD WAS OR
4 THE DAY IT OCCURRED, IT COULD HAVE BEEN BIGGER AND
5 BEEN ABSORBED BY THE BODY, OR IT COULD HAVE BEEN
6 THE SAME SIZE AND JUST A MONTH OLD. I CAN'T TELL
7 YOU WHAT CAUSED THAT.

8 I CAN TELL YOU THAT IT WAS ENOUGH TRAUMA TO
9 CAUSE TEARING OF VEINS INSIDE THE BRAIN OF A CHILD
10 THAT WASN'T NECESSARILY BRUISING ALL OVER THE
11 BODY, THAT HAD NO TENDENCY TO BLEED ALL OVER THEIR
12 BRAIN WHEN THEY WERE YOUNG AND NEWBORN WHEN THE
13 BRAIN WAS EVEN MORE VENERABLE.

14 COMING OUT OF THE BIRTH CANAL IS PROBABLY THE
15 COMMON CAUSE -- THE STRESS RELATED TO THE BIRTH
16 CANAL AND RIGHT AROUND YOUR FIRST BREATHING CAUSES
17 SOME OF THESE GERMATAL-MATRIX HEMORRHAGES. IT'S
18 ONE OF THE HARDEST THINGS WE EVER DO IN OUR LIFE
19 AND WE DON'T EVEN REMEMBER IT.

20 THE BABY DIDN'T HAVE ANY OTHER PROBLEMS FROM
21 THAT BIRTH, BUT YET THERE WAS ENOUGH BLOOD THAT
22 ACCUMULATED AND SHOWED UP IN A C.A.T. SCAN LATER,
23 SO THAT'S TRAUMA. MORE RECENTLY WE SEE BLOOD
24 THAT'S NEW. IT'S THE WHITE STUFF. IT HAS THAT
25 MIXED IN SWIRLING STUFF THAT INDICATES THAT IT'S

1 NEW BLOOD, LESS THAN A FEW DAYS OLD.

2 IT'S GOT ADDITIONAL BLOOD COMING IN, GETTING
3 IN THERE, MIXING IT IN. IT HADN'T EVEN HAD A
4 CHANCE TO BECOME ALL THE SAME WHITE COLOR.
5 THAT'S -- WHILE THAT COULD HAPPEN FROM A SHAKEN
6 BABY, THAT WOULD TAKE MUCH MORE IMMENSE PRESSURE
7 THAN I WOULD EVER ASSUME FROM A SHAKEN BABY. THAT
8 IS MORE COMMONLY THE KIND OF TRAUMA THAT OCCURS
9 FROM A HARD BLOW TO THE HEAD.

10 IT'S NOT WITHIN ANYTHING THAT I HAVE EVER
11 SEEN OR READ ABOUT FOR A SHAKEN BABY TO SEE
12 MULTIPLE SITES OF ACTIVE BLEEDING ACCUMULATING IN
13 AN AREA OF BLOOD. IN A BRAIN THAT'S ALREADY
14 SWOLLEN THAT HAS INCREASED PRESSURE -- THE USUAL
15 SHAKEN BABY IS SMALL VEINS THAT ARE TORN. IT'S
16 NOT BIG VEINS TORN THAT KEEP ACTIVELY BLEEDING AND
17 ACCUMULATING MORE AND MORE PRESSURE INSIDE THE
18 BRAIN.

19 Q DOCTOR, YOU'RE AWARE IN THIS CASE, AND YOU'VE
20 REVIEWED THE MEDICAL RECORDS IN THIS CASE --

21 A I HAVE.

22 Q AND YOU ARE AWARE IN THIS CASE THAT THIS
23 CHILD ALSO HAD RETINAL HEMORRHAGES AND BLEEDING OF
24 THE OPTIC NERVE?

25 A YES.

1 Q AND YOU'RE ALSO AWARE THAT THIS CHILD HAD
2 SWELLING OF THE BRAIN?

3 A YES.

4 Q AND YOU'RE ALSO AWARE IN THIS CASE THAT THIS
5 CHILD HAD SUBDURAL HEMATOMAS?

6 A YES.

7 Q AND WOULD YOU CONCUR WITH THE OPINION THAT
8 THIS CHILD WAS SHAKEN?

9 A I BELIEVE THIS BABY WAS SHAKEN AND THEN SOME.
10 RETINAL HEMORRHAGES ARE VERY TYPICAL, THE OPTIC
11 NERVE HEMORRHAGES ARE VERY TYPICAL, ALMOST TO THE
12 POINT OF BEING KEPT IN LINE OF SHAKEN BABY.
13 BECAUSE IF YOU GET ONE BLOW, YOU MAY HAVE A FEW
14 BLEEDS, BUT WHEN YOU GET SHAKEN OVER AND OVER
15 AGAIN, VIOLENTLY SHAKEN, THOSE BLEEDS START
16 OCCURRING IN A LOT OF DIFFERENT PLACES, INSIDE THE
17 BACK OF THE EYE, BUT I THINK THAT GIVEN THE AMOUNT
18 OF BLEEDING AND THE FACT THAT THERE WAS STILL
19 ACTIVE BLEEDING INSIDE THE RIGHT SIDE OF THE HEAD,
20 THIS HAD TO BE MORE THAN THAT.

21 IT'S -- WELL, LIKE I SAID, IF YOU TAKE OFF A
22 SCAB, THE NEW SCAB FORMS ABOUT THE SAME. IF YOU
23 HAVE AN AREA THAT BLED AND YOU'RE JUST GOING TO
24 DISRUPT IT AGAIN, IT USUALLY BLEEDS THE SAME WAY.
25 IT BLEEDS IN THE SAME PLACE. IT DOESN'T GO

1 ELSEWHERE IN THE BRAIN TO BLEED. IT DOESN'T GO
2 HIGHER. IT DOESN'T ACCUMULATE TO SO MUCH MORE OF
3 A DEGREE THAT YOU'VE ACTUALLY CAUSED A COMPROMISE
4 IN BLOOD FLOW TO THE BRAIN.

5 Q SO YOUR OBSERVATION OF THE ACUTE SUBDURAL, OF
6 THE NEW SUBDURAL HEMATOMA AND THE SWELLING IN THE
7 BRAIN, THAT WOULD HAVE BEEN RECENT TRAUMA TO THE
8 BRAIN, DIFFERENT TRAUMA TO THE BRAIN?

9 A ADDITIONAL, YES.

10 Q AND, DOCTOR, HOW WOULD YOU CHARACTERIZE THE
11 TYPE OF SHAKING AND/OR TRAUMA THAT WOULD BE
12 NECESSARY TO INFLICT THIS ON A TWO YEAR OLD, THREE
13 MONTH CHILD?

14 A ~~THAT WOULD BE BRUTAL.~~ I'VE SEEN CHILDREN
15 FALL. KIDS COME TO THE HOSPITAL AFTER FALLING OUT
16 OF SHOPPING CARTS AND THINGS LIKE THAT. YOU DON'T
17 SEE BLEEDS FROM THAT KIND OF TRAUMA. YOU SEE THIS
18 BLEED FROM BAD CAR WRECKS. YOU SEE IT -- WHEN I
19 WAS A RESIDENT, WHEN A CHILD THAT HAD FALLEN OUT
20 OF A WINDOW -- ~~A THIRD FLOOR WINDOW.~~ IT'S
21 SIGNIFICANT TRAUMA.

22 THOSE CHILDREN THAT COME IN FROM CAR WRECKS
23 YOU KNOW BECAUSE THERE'S A HISTORY OF IT.
24 CHILDREN THAT FALL OUT OF A WINDOW, YOU KNOW
25 BECAUSE THERE ARE OTHER BRUISES AND BREAKS. THIS

1 COULD TAKE A VERY HARD BLOW FROM THE CUFF, FROM
2 THE HEEL OF THE HAND, AND THE REST OF THE INJURIES
3 ARE MORE LIKELY FROM SHAKEN BABY THAN ANYTHING
4 ELSE, THAN ANY OTHER POSSIBILITY.

5 Q WOULD A LARGE MAN, SAY OVER 6 FEET, MUSCULAR
6 IN BUILD, BE ABLE TO INFLICT ON THIS TWO YEAR OLD
7 CHILD THESE TYPES OF INJURIES?

8 A THAT DESCRIPTION OF A PERSON COULD DO THAT IF
9 THEY WERE SO INCLINED.

10 Q IN YOUR EXPERIENCE, DOCTOR, IN YOUR OPINION,
11 YOUR EXPERT OPINION, COULD THESE INJURIES TO THIS
12 BRAIN HAVE BEEN ACCIDENTAL?

13 A MEANING WHAT? IF YOU FELL OUT OF A THIRD
14 FLOOR BY ACCIDENT, YES, FOR A CHILD FALLING DOWN,
15 FOR A CHILD BEING PUSHED DOWN BY A SISTER OR
16 BROTHER OR TRIPPING OVER SOMETHING WHILE THEY'RE
17 WALKING, NO, THAT'S NOT COMPATIBLE WITH THIS.

18 Q EVEN IF A CHILD -- IF SOMEONE WERE TO SHAKE
19 IT TO TRY TO REVIVE A CHILD IF, SAY IT HAD
20 COLLAPSED, COULD THAT HAVE CAUSED THESE TYPES OF
21 INJURIES?

22 A WELL, HAVING SEEN CHILDREN BEING GENTLY
23 SHAKEN, THAT'S DIFFERENT. I'M MEAN, YOU KNOW,
24 THAT'S WHY -- THERE'S A DISTINCTION BETWEEN
25 SHAKING SOMEBODY TO WAKE THEM UP WHEN THEY'RE

1 SLEEPY, SHAKING SOMEBODY WHEN YOU'RE ROCKING THEM.
2 ON YOUR KNEE OR THAT SORT OF THING, AND THE KIND
3 OF VIOLENT SHAKING THAT OCCURRED TO CAUSE THESE
4 KINDS OF BLEEDINGS.

5 Q AND THIS WOULD BE VIOLENT SHAKING?

6 A YES, THIS WOULDN'T BE ACCIDENTAL. THIS
7 WOULDN'T BE THE FALL FROM THE HEIGHT OF A TWO YEAR
8 OLD, A TODDLER.

9 Q AND YOU'RE AWARE, DOCTOR, THAT THE INJURIES
10 SHE SUFFERED ULTIMATELY CAUSED HER DEATH?

11 A YES, I'M AWARE OF THAT.

12 MS. CAMPBELL: I DON'T HAVE ANYTHING ELSE OF
13 THIS WITNESS.

14 THE COURT: CROSS-EXAMINATION, MR. STRICKLER.

15 MR. STRICKLER: THANK YOU, SIR.

16 CROSS-EXAMINATION

17 BY MR. STRICKLER:

18 Q GOOD MORNING, DR. CLOSE. MY NAME IS DOUG
19 STRICKLER. I'M ONE OF THE ATTORNEYS REPRESENTING
20 NATHANIEL MITCHELL.

21 A GOOD MORNING.

22 Q I HAVE JUST A FEW THINGS FOR YOU IF I COULD.
23 YOU DESCRIBED THE PROCEDURE THAT WAS USED OR
24 THE RADIOLOGICAL PROCEDURE THAT YOU REVIEWED IN
25 THIS CASE, THE C.T. SCAN, CORRECT?

1 A CORRECT.

2 Q YOU ALSO MENTIONED, KIND OF IN PASSING,
3 ANOTHER COMMONLY USED PROCEDURE, AS I UNDERSTAND
4 IT, WHAT'S CALLED AN M.R.I. SCAN?

5 A CORRECT.

6 Q THE MAGNETIC RESONANCE IMAGINING?

7 A CORRECT.

8 Q OKAY. THIS IS ALSO USED TO IMAGE THE HEAD --

9 A CORRECT.

10 Q -- ALONG WITH OTHER PARTS OF THE BODY. IT'S
11 A SOMEWHAT DIFFERENT PROCEDURE THAN THE C.T. SCAN
12 OR SOMEWHAT DIFFERENT IN NATURE, AS I UNDERSTAND
13 IT?

14 A WELL, IT'S SIGNIFICANTLY DIFFERENT.

15 Q RIGHT.

16 A IT'S BASED ON A WHOLE DIFFERENT PART OF
17 PHYSICS. IF WE HAVE TWO OR THREE WEEKS, WE CAN
18 TALK ABOUT THAT.

19 Q I'M NOT -- I DON'T REALLY THINK WE NEED TO
20 GET INTO THE PHYSICS SENSE OF IT.

21 A RIGHT.

22 Q ARE THERE ADVANTAGES TO EMPLOYING M.R.I. AS
23 OPPOSED TO C.T. IN ANALYZING INJURIES TO THE HEAD
24 PARTICULARLY?

25 A OH, ABSOLUTELY.

1 Q OKAY.

2 A AN M.R.I. --

3 Q WHICH IS BETTER? GO AHEAD, SIR. I'M SORRY.

4 A THE M.R.I. AND C.A.T. SCAN ARE TWO DIFFERENT
5 -- THEY'RE VERY COMPLIMENTARY. ONE GIVES YOU
6 INFORMATION THAT THE OTHER DOESN'T. ONE HAS
7 ADVANTAGES THAT THE OTHER DOESN'T, BUT THERE ARE
8 CERTAINLY DIFFERENCES.

9 Q OKAY. WELL, THAT'S WHAT I'D LIKE TO FIND
10 OUT. IN WHAT WAY -- WHAT ARE -- WHAT ADVANTAGES

11 DOES THE M.R.I. HAVE OVER THE C.A.T. SCAN?

12 A THE M.R.I. LETS US SEE THE BRAIN IN MORE THAN
13 ONE WAY. WE CAN SEE SWELLING IN MORE THAN ONE
14 WAY. WE CAN HELP AGE BLEEDING A LITTLE BIT
15 DIFFERENTLY, NOT ALWAYS BETTER. THE NEWEST BLOOD
16 IS SOMETIMES BETTER SEEN WITH THE C.A.T. SCAN THAN
17 M.R.I. IN THE VERY ACUTE STAGE, BUT IT CAN HELP US
18 AGE THE AMOUNT OF BLOOD -- RATHER, I SHOULD SAY,
19 AGE THE BLOOD THAT'S INSIDE THE BRAIN. IT CAN
20 HELP TELL US ABOUT HOW BADLY INJURED THE BRAIN
21 TISSUE IS. IT CAN SHOW US SOME OF THE SAME
22 THINGS, WHETHER OR NOT THERE'S MIDLINE SHIFT, THAT
23 SORT OF STUFF.

24 SO THE M.R.I. HAS THAT ADVANTAGE. IT SHOWS
25 BRAIN INJURY, SOMETIMES AT AN EARLIER STAGE. IT

1 CAN SHOW TINY HEMORRHAGES, TINY AMOUNTS OF BLOOD
2 WHERE THERE'S JUST SPECKLES THAT MAY BE IN THE
3 BRAIN THAT DON'T SHOW UP ON A C.A.T. SCAN, SO IN
4 THAT WAY IT HAS SOME ADVANTAGES.

5 Q OKAY.

6 A BUT THAT'S -- YOU KNOW, THE C.A.T. SCAN ON
7 THE OTHER HAND HAS THE ADVANTAGE THAT WE CAN SEE
8 THE CALCIUM, WE CAN SEE THE BONE, WE CAN SEE
9 FRACTURES, AND THERE'S A DIFFERENCE IN HOW MUCH
10 TIME THESE TAKE.

11 Q WE'VE ALREADY HEARD TESTIMONY REGARDING THAT.
12 I UNDERSTAND THAT THE C.T. SCAN CAN BE DONE FAR
13 MORE EXPEDITIOUSLY THAN THE M.R.I.

14 A WELL, MORE TO THE POINT IS THAT THE C.A.T.
15 SCAN -- EACH OF THE PICTURES YOU SAW UP THERE TOOK
16 TWO SECONDS TO OBTAIN. IF WE'RE IN A REAL HURRY,
17 WE CAN ACTUALLY GET THOSE IN ABOUT A HALF SECOND
18 PER PICTURE. WITH AN M.R.I., ON THE OTHER HAND,
19 YOU ACCUMULATE A SERIES OF PICTURES AT ONCE AND
20 THOSE SERIES MAY TAKE THREE MINUTES, FIVE MINUTES,
21 OR SEVEN MINUTES TO OBTAIN THE SERIES BY ITSELF.

22 THE TIME TO SET IT UP IN BETWEEN IS LONGER,
23 TO THE POINT THAT WHEN WE SCHEDULE PATIENTS FOR AN
24 M.R.I., AN M.R.I. OF THE BRAIN, WE USUALLY
25 SCHEDULE IT FOR A 30 MINUTE TO ONE HOUR SLOT.

1 THAT'S HOW LONG IT TAKES.

2 THE M.R.I. MACHINE -- YOU CAN'T SIT A BUNCH
3 OF PEOPLE IN THERE WATCHING THE PATIENT. YOU
4 CAN'T USE THE SAME MONITORING EQUIPMENT. IT'S
5 LIKE YOU'RE INSIDE A TUNNEL. IT'S THE DIFFERENCE
6 BETWEEN BEING INSIDE A TUNNEL AND INSIDE A DONUT,
7 WITH THE C.A.T. SCAN BEING THE DONUT. THE TOTAL
8 TIME TO TAKE A C.A.T. SCAN OF THE BRAIN WHERE THE
9 BABY IS INSIDE, IN AND OUT, WILL BE IN THIS CASE
10 LESS THAN A MINUTE, WHEREAS THE FASTEST PICTURES
11 YOU CAN TAKE WITH AN M.R.I. ARE MORE ON THE ORDER
12 OF THREE MINUTES.

13 Q YOU DESCRIBED, IN GOING THROUGH THE SERIES OF
14 SLICES FROM THE C.T., OLD BLOOD AND NEW BLOOD.
15 YOU'VE CHARACTERIZED THE OLD BLOOD AS A SMALLER
16 AMOUNT THAN THE NEW BLOOD, A FAR SMALLER AMOUNT?

17 A CORRECT.

18 Q I THINK THAT'S A FAIR SUMMATION OF YOUR
19 TESTIMONY. YOU HAVE TESTIFIED THAT THE OLD BLOOD
20 COULD BE -- THAT THE NEW COULD BE FROM A FEW HOURS
21 TO A DAY OR TWO IN AGE?

22 A CORRECT.

23 Q CORRECT?

24 A WELL, I WANT TO QUALIFY THAT BECAUSE THE
25 WHITE BLOOD THAT WE SAW IS WITHIN A FEW HOURS TO A

1 DAY OR TWO.

2 Q OKAY.

3 A BUT THE BLOOD THAT'S MIXED IN THE MIDDLE IS
4 NEW ENOUGH --

5 Q OKAY. I HAVEN'T GOTTEN THERE.

6 A -- SO THAT IT'S WITHIN HOURS TO MINUTES.

7 Q WELL, I HAVEN'T GOTTEN TO THAT PART YET, BUT
8 OKAY, THAT'S FINE. OKAY, AND THE OLDER BLOOD
9 LOOKS LIKE IT WOULD BE AFTER A MONTH, MAYBE THREE
10 WEEKS, COULD BE LONGER IF IT WERE A LARGER,
11 INITIAL ACCUMULATION THAT HAD BEGUN TO RESOLVE
12 WITHIN THE BODY?

13 A COULD HAVE BEEN.

14 Q OKAY. YOU CAN'T MAKE A DETERMINATION ON THAT
15 BASED ON --

16 A I CAN'T BY THAT ALONE. I CAN TELL YOU THAT
17 THERE'S NOT -- IF SOMEBODY HAD -- WE SEE PEOPLE
18 THAT MAY HAVE HAD SUBDURAL BLOOD THAT'S YEARS OLD
19 AND THE BODY BUILDS A RIND, KIND OF A THICK
20 COMPARTMENT AROUND THAT. CHILDREN DON'T BUILD
21 THAT RIND; THEY MORE OFTEN ABSORB THE BLOOD, BUT
22 THEY CAN.

23 THERE'S NO APPARENT RIND IN THIS CASE, SO I'M
24 THINKING IT'S PROBABLY NOT A YEAR OLD OR SIX MONTH
25 OLD BLEED THAT'S HAD A CHANCE TO FORM A RIND.

1 IT'S PROBABLY A SMALL BLEED THAT'S CLOSER TO THE
2 SHORT END OF THIS, MAYBE A MONTH, MAYBE TWO
3 MONTHS.

4 Q MAYBE JUST A FEW WEEKS?

5 A WELL, IT CAN'T BE -- IT REALLY CAN'T BE
6 ANYTHING LESS THAN THREE WEEKS OR SO. THERE ARE
7 CERTAIN CHANGES THAT YOU WILL SEE THAT HAVE TO DO
8 WITH NORMAL PHYSIOLOGY.

9 Q OKAY AND THAT'S ALL -- THE LOW END OF YOUR
10 ESTIMATE ON THE NEW BLOOD -- OR THE OLD BLOOD, WAS
11 THREE WEEKS, CORRECT?

12 A THAT'S KIND OF SQUEEZING IT AT THREE WEEKS,
13 FOUR WEEKS.

14 Q AND YOU MAKE THIS DETERMINATION BY, AS I
15 UNDERSTAND IT, BY LOOKING AT CHANGES IN THE COLOR
16 OF THE FLUID THAT YOU SEE; IS THAT CORRECT?

17 A WELL, THE WAY IT LOOKS LIKE ON THE C.A.T.
18 SCAN. THAT HAS TO DO WITH WHAT'S LEFT IN THE
19 FLUID, WHAT'S LEFT AFTER THE RED BLOOD CELLS BREAK
20 DOWN, THE PROTEIN BREAKS DOWN, THE IRON IS
21 ABSORBED. THE THINGS THAT MAKE IT WHITER ON A
22 C.A.T. SCAN START DISAPPEARING, SO WE'RE ABLE TO
23 ASSESS THAT WE KNOW THE TIMEFRAME THAT THIS OCCURS
24 FROM HAVING SEEN MANY PEOPLE.

25 Q RIGHT.

1 A WE SEE PEOPLE THAT WE KNOW THEIR BLEED
2 HAPPENS FROM A CAR WRECK OR FROM A FALL, AND WE
3 CAN FOLLOW THOSE OUT, SO WE KNOW HOW IT LOOKS.

4 Q AND AGAIN, YOU MAKE THESE ESTIMATES AS TO
5 TIME BASED ON CHANGE IN COLOR BECAUSE THE CHANGE
6 IN COLOR REFLECTS A CHANGE IN DENSITY OF THE
7 MATERIAL THAT YOU'RE LOOKING AT; IS THAT CORRECT?

8 A ROUGHLY. IT'S NOT DENSITY. WITHOUT GOING
9 INTO THE PHYSICS OF IT, THERE ARE THINGS THAT STOP
10 X-RAY BEAMS BETTER THAN OTHERS. YOU CAN'T TELL
11 FROM THE LOOK OF IT. IODINE AND FLUID STOPS A LOT
12 OF THINGS, OKAY.

13 Q OKAY.

14 A WHEREAS WATER DOESN'T, AS FAR AS X-RAY BEAMS,
15 SO IT REFLECTS A DENSITY OF THOSE THINGS IN THE
16 BODY THAT STOP X-RAY BEAMS. THAT ACTUALLY HAS TO
17 DO WITH THE NUCLEUS AND ELECTRONS IN EACH OF YOUR
18 ATOMS.

19 Q AND AS THE BLOOD IN A SUBDURAL -- DEALING
20 SPECIFICALLY WITH THAT AS FAR AS WHAT YOU'RE
21 LOOKING AT ON A C.T. SCAN --

22 A OKAY.

23 Q AS THAT AGES, IT GETS -- GOES FROM WHITER TO
24 DARKER, I GUESS WITH THE EXCEPTION OF THAT NEW
25 BLEEDING?

1 A THE NEWEST BLOOD.

2 Q RIGHT.

3 A IT STILL HAS MORE WATER --

4 Q RIGHT.

5 A -- THAN IT HAS PROTEIN OR RED BLOOD CELLS.

6 IT GOES FROM WHITE TO LAYERING.

7 Q RIGHT.

8 A WHERE THE RED BLOOD CELLS SETTLE OUT, THE

9 PROTEIN SETTLES OUT, IT ACTUALLY KIND OF LOOKS

10 LIKE WHERE YOU HAVE MIXED OIL AND VINEGAR FOR A

11 SALAD DRESSING, IT LAYERS OUT. THAT OCCURS OVER

12 TIME. THERE ARE CHANGES THAT OCCUR THAT ARE

13 PREDICTABLE.

14 Q AND THE CHANGES THAT ARE PREDICTABLE -- THEY

15 ARE PREDICTABLE WITHIN SOME GENERALIZED LIMITS --

16 I MEAN --

17 A CORRECT.

18 Q -- YOU WOULD EXPECT TO SEE A BEGINNING ON A

19 BLEED OF THE SUBSTANCE BEGINNING TO GET DARKER AT

20 A PERIOD OF ROUGHLY --

21 A WELL, IT DEPENDS.

22 Q IF THERE'S NO NEW BLEEDING.

23 A IF THERE'S NO NEW BLEEDING, IT WILL START

24 GETTING LIGHTER AFTER A WEEK, A LITTLE BIT, OKAY.

25 IT MAY EVEN START GETTING LIGHTER AFTER FIVE DAYS,

1 AND THAT'S PARTLY DEPENDENT ON EVERYBODY. THEY'RE
2 DIFFERENT, YOU KNOW. WE HAVE DIFFERENT AMOUNTS OF
3 CERTAIN PROTEINS IN OUR BLOOD. WE HAVE -- SO THAT
4 HOW FAST YOUR CLOT ABSORBS VERSUS SOMEONE ELSE'S
5 CLOT OR MY CLOT --

6 Q RIGHT.

7 A -- IS GOING TO BE A LITTLE BIT DIFFERENT. SO
8 THAT'S WHY WE SAY A RANGE. I MEAN, I CAN'T TELL
9 YOU DOWN TO THE MINUTE. I CAN TELL YOU DOWN TO,
10 YOU KNOW, WITHIN A FEW DAYS AND THE FARTHER OUT WE
11 GO, THE WIDER THAT RANGE GETS.

12 Q GOT YOU. OKAY, AT THAT POINT BE IT A WEEK OR
13 BE IT FIVE DAYS, BLOOD THAT IS YOUNGER THAN THAT
14 POINT, WHEN YOU CAN START TO DISTINGUISH IT MAKE
15 CHANGES, IS THAT WHAT IS TERMED TO BE ACUTE?

16 A ACUTE BLOOD IS WITHIN A FEW DAYS. THEY SAY
17 WITHIN TWO OR THREE DAYS BECAUSE THAT'S THE MOST
18 COMMON TIME WE SEE IT, BUT ACUTE -- THERE'S ACUTE
19 CLINICALLY, WHICH DOCTORS SAY "ACUTE PRESENTATION"
20 MEANS A SUDDEN PRESENTATION, A NEW PRESENTATION,
21 AND THEN THERE'S ACUTE PATHOLOGICALLY WHEN A
22 PATHOLOGIST LOOKS IN A MICROSCOPE AND DETERMINES
23 THIS HAS CHANGES THAT ARE DEFINED AS ACUTE.

24 THERE ARE OVERLAPS THAT HAVE TO DO WITH --
25 AND THEN THERE'S ACUTE THE WAY IT LOOKS ON A

1 C.A.T. SCAN. SOMEONE WHO HAS A BLOOD CLOT THAT
2 BREAKS DOWN SLOWLY AND A LOT OF RED BLOOD CELLS IS
3 GOING TO HAVE A CLOT THAT CHANGES DIFFERENTLY THAN
4 SOMEONE WHO IS ANEMIC AND HAS BLEEDING TENDENCIES.

5 Q OKAY. IN THIS CASE THE BEST YOU CAN SAY AS
6 FAR AS THE ACUTE PORTION OF THE SUBDURAL THAT YOU
7 VISUALIZED IS THAT IT IS YOUNGER THAN A COUPLE OF
8 DAYS?

9 A YOUNGER THAN A COUPLE OF DAYS, BUT, YOU KNOW,
10 ONE WOULD LOOK AT THE FACT THERE'S NEW BLOOD
11 ACCUMULATING AT THE SAME TIME.

12 IF THIS WERE TWO DAYS OLD AND IT'S BLEEDING
13 FOR TWO DAYS STRAIGHT, I WOULD EXPECT IT TO BE
14 BIGGER AND I WOULD EXPECT THIS CHILD TO HAVE NOT
15 SURVIVED THAT LONG, IF IT'S ACCUMULATING AT THAT
16 SAME RATE.

17 ON THE OTHER HAND, IF IT'S NEW AND THE BABY
18 SHOWED A SUDDEN CHANGE IN HOW SHE BEHAVED AND HOW
19 SHE INTERACTED WITH HER WORLD, THEN I EXPECT IT TO
20 BE CERTAINLY YOUNGER. WHEN THERE'S STILL BLOOD
21 ACCUMULATING, AND AT THAT RATE, THEN I'M GOING TO
22 EXPECT ALL OF IT TO BE LESS THAN 12 HOURS OLD.

23 THAT'S BASED ON THE COMBINATION OF NOT JUST
24 ITS LOOK, BUT THE COMBINATION OF THE CIRCUMSTANCES
25 AROUND IT, THE FACT THAT THERE'S STILL BLOOD

1 ACCUMULATING, AND THE FACT THERE'S A SWOLLEN
2 BRAIN.

3 Q OKAY. I WOULD LIKE TO TURN THOSE AREAS AWAY
4 FROM WHAT YOU DISTINGUISH AS THE OLDER CHRONIC
5 SUBDURAL --

6 A CORRECT.

7 Q -- WHERE YOU SEE THE MIXTURE OF ACUTE
8 SUBDURAL AND VERY ACUTE SUBDURAL, IF MY TERMS MAKE
9 ANY SENSE TO YOU.

10 A THAT'S A FAIR CHARACTERIZATION.

11 Q THE MIXTURE OF THE DARKER BLOOD WITH THE
12 WHITER BLOOD --

13 A RIGHT.

14 Q -- CHARACTERIZES AS IF NOT ACTIVE BLEEDING,
15 THEN VERY, VERY RECENT BLEEDING?

16 A CORRECT.

17 Q IS THAT FAIR?

18 A YEAH. I CALL IT RECENT AND VERY RECENT OR
19 ONGOING.

20 Q NOW, IF YOU GET A BLEED WHERE THE CHRONIC
21 SUBDURAL IS LOCATED, OKAY?

22 A CORRECT.

23 Q AND YOU GET NEW BLOOD -- I'M TRYING TO FIND
24 THE RIGHT WORD -- NEW BLOOD INTRODUCED IN THE AREA
25 WHERE THE CHRONIC SUBDURAL IS, OKAY. IT BEGINS TO

1 ACCUMULATE IN THAT AREA. IT BEGINS TO EXERT THE
2 PRESSURE ON THE BRAIN THAT YOU'VE TALKED ABOUT,
3 CORRECT?

4 A CORRECT.

5 Q YOU BEGIN TO GET DISPLACEMENT OF THE BRAIN
6 THAT ENDS UP RESULTING IN THAT MIDLINE SHIFT YOU
7 DESCRIBED.

8 A YES.

9 Q FIRST OF ALL, THAT IS BACKGROUND -- FIRST OF
10 ALL, WHAT WOULD YOU POSTULATE TO BE THE NATURE OF
11 THE VERY RECENT BLEEDS? WOULD THESE BE BLEEDS OF
12 BRIDGING VEINS?

13 A WELL, IT COULD BE -- I CAN'T TELL FROM THE
14 C.A.T. SCAN WHAT IT'S COMING FROM.

15 Q OKAY.

16 A BRIDGING VEINS ARE GENERALLY SMALL.

17 Q RIGHT.

18 A BRIDGING EMISSARY VEINS ARE A LOT OF DOCTOR
19 WORDS, BASICALLY GOING FROM THE SURFACE OF THE
20 SKULL -- SURFACE OF THE BRAIN OUT TOWARD THE
21 LINING --

22 Q RIGHT.

23 A -- WHICH ISN'T A LONG DISTANCE IN A BABY. I
24 MEAN, THERE'S NOT ANY ATROPHY. THERE'S NOT ANY
25 SHRINKAGE OF THE BRAIN THAT YOU MIGHT SEE IN AN 85

1 YEAR OLD. I CAN'T TELL YOU THE CAUSE FOR IT, BUT
2 WHEN YOU HAVE BLEEDING THAT'S ACTIVE, I WOULD
3 EXPECT IT TO BE MORE THAN JUST ONE OR TWO BRIDGING
4 VINES. I EXPECT IT TO BE MAYBE FROM SOME CORTICAL
5 VEINS. IT COULD BE, IT COULD BE.

6 Q COULD BE --

7 A IF SOMEONE HAS LARGE BRIDGING VEINS FOR SOME
8 REASON, YES, I SUPPOSE IT COULD BE.

9 Q AND YOU CAN'T TELL THAT?

10 A I CAN'T TELL YOU THE SOURCE, WHICH VEIN IS
11 BLEEDING, BY THE C.A.T. SCAN.

12 Q OKAY.

13 A I MEAN, IF I DID SURGERY AND LOOKED AT IT,
14 YEAH, I COULD TELL YOU WHICH VEINS WERE BLEEDING.

15 Q OR IF YOU HAD THE OPPORTUNITY TO GO AHEAD AND
16 EXAMINE THE BRAIN PATHOLOGICALLY, POTENTIALLY?

17 A YES, AFTER THE FACT YOU MAY BE ABLE TO TELL
18 WHICH ONE WAS ACTUALLY BLEEDING, WHICH ONE HAD THE
19 VEIN WALL TORN, YOU KNOW, WHICH -- THE MUSCLE AND
20 THE LINING AND THE TISSUE AROUND THE VEIN WALL,
21 THAT ALL HAS TO TEAR FOR IT TO BLEED.

22 Q OKAY. OKAY. AND THAT'S CONTINGENT ON THE
23 WAY THE BRAIN IS AT THE TIME, I SUPPOSE, THAT ONE
24 HAS AN OPPORTUNITY TO EXAMINE IT PATHOLOGICAL?

25 A HOW FAR AFTERWARDS?

1 Q RIGHT.

2 A WELL, NO, I MEAN, YOU'RE GOING TO TELL A TORN
3 VEIN.

4 Q OKAY.

5 A YOU CAN TELL A TORN VEIN, YOU KNOW, IF YOU
6 DID THE AUTOPSY TODAY OR THE NEXT DAY UNLESS, YOU
7 KNOW, OBVIOUSLY NOT MONTHS FROM NOW IF SOMEONE
8 WERE LOST IN THE FIELD OR SOMETHING.

9 Q OKAY. IF THEY COULD BE BRIDGING VEINS, AS
10 THE BRAIN IS DISPLACED BY THE SUBDURAL THAT IS IN
11 THE SAME AREA AS THE CHRONIC THAT YOU'VE DESCRIBED
12 AS THE BRAIN IS DISPLACED, THOSE BRIDGING VEINS
13 ARE STRETCHED, CORRECT?

14 A THEY CAN BE.

15 Q THEY CAN BE?

16 A YES.

17 Q AND IF THEY STRETCH FAR ENOUGH THEY CAN
18 BREAK?

19 A YES, BUT LET'S GO BACK. BRIDGING VEINS ARE
20 USUALLY SMALLER.

21 Q OKAY.

22 A IF YOU START TO ACCUMULATE ENOUGH PRESSURE
23 THAT YOU PUSH THE BRAIN, YOU'LL OFTEN EXERT ENOUGH
24 PRESSURE THAT YOU PINCH OFF THE BRIDGING VEIN. I
25 MEAN, IF YOU HAVE A BLEED IN YOUR HAND THAT'S

1 BLEEDING FAST AND IT'S NOT PUMPING LIKE IT OUGHT
2 TO BE, YOU PUSH ON IT, IT STOPS, OKAY.

3 SO IF WE HAVE SMALL VEINS LIKE EMISSARY OR
4 BRIDGING VEINS, AS LONG AS THEY'RE A GENERAL CLASS
5 OF BRIDGING VEINS, IF YOU START ACCUMULATING A
6 SUBDURAL, USUALLY YOU CAN ASSERT ENOUGH PRESSURE
7 SO THAT THEY'RE NOT BLEEDING ANY FURTHER. THAT'S
8 WHY I THINK IF YOU HAVE ACTIVE BLEEDING IN THE
9 FACE OF THE BRAIN THAT HAS MIDLINE SHIFT, A BRAIN
10 THAT'S BEEN PUSHED ON HARD ENOUGH THAT IT'S
11 SHOWING SIGNS OF BRAIN TISSUE DEATH, YOU'RE
12 EXERTING ENOUGH PRESSURE TO TAMPONADE. THAT'S THE
13 MEDICAL TERM FOR HOLDING PRESSURE TO STOP
14 SOMETHING FROM BLEEDING OR STOP SOMETHING FROM
15 DOING SOMETHING.

16 YOU KNOW, TAMPONADE ON THE HEART STOPS THE
17 HEART FROM PUMPING. TAMPONADE ON A BLEEDING VEIN
18 STOPS THE VEIN FROM BLEEDING. I DON'T EXPECT
19 BRIDGING VEINS TO CONTINUE BLEEDING IN THE FACE OF
20 ENOUGH MASS EFFECT AND PRESSURE THAT YOU'RE
21 CAUSING MIDLINE SHIFT AND BRAIN DEATH, NUMBER ONE.

22 NUMBER TWO IS WE'VE GOT A CHRONIC SUBDURAL
23 THAT'S IN THE FRONT DOWN LOW. WE HAVE BLEEDING
24 VEINS THAT ARE UP HIGHER. GENERALLY THE BLOOD IS
25 GOING TO -- IT'S GOING TO ACCUMULATE OUT ON THE

1 SIDES. IT'S JUST EMISSARY VEINS OR BRIDGING VEINS
2 THAT KIND OF CROSS OVER. YOU KNOW, THAT BLOOD IS
3 NOT USUALLY GOING TO ACCUMULATE IN THE SAME MASS
4 -- IT'S NOT GOING TO ACCUMULATE IN THE FIRST PLACE
5 WITH THE MASS EFFECT AS TEARING OF LARGER VEINS.

6 THAT'S -- YOU KNOW, THAT'S THE USUAL CASE
7 UNLESS SOMEBODY HAS ABNORMAL VEINS FROM BEFORE
8 THAT THEY'RE BORN WITH, BUT WE KNOW SHE WASN'T
9 BORN WITH BIG OLD VEINS LIKE THAT. I MEAN, THE
10 ULTRASOUND IS AS NORMAL IN THAT PART OF THE BRAIN
11 AS IT CAN BE. THE ONLY PLACE THAT WE SEE ANYTHING
12 THAT APPROACHES ABNORMALITY IS DOWN DEEP INSIDE
13 THE BRAIN, AND WHAT WE SEE ON THE SURFACE OF THE
14 BRAIN RIGHT AFTER SHE WAS BORN IS NORMAL.

15 Q CAN YOU TELL US WHERE -- CAN YOU TELL US
16 PRECISELY WHEN THE RECENT TRAUMA OCCURRED?

17 A I CAN'T TELL YOU WITHIN THE MINUTE. I CAN'T
18 TELL YOU WITHIN THE HOUR. I CAN SAY THAT IT'S
19 WITHIN A COUPLE OF DAYS, MORE LIKELY WITHIN THE
20 LAST 12 HOURS, BECAUSE I SEE WHAT LOOKS TO BE
21 ACTIVE BLEEDING IN THE FACE OF ACUTE BLOOD, AND I
22 SEE A SWOLLEN BRAIN.

23 IF YOU HAD THAT KIND OF BRAIN SWELLING FOR
24 TWO DAYS, YOU WOULDN'T BE WITH US ANY MORE. IF
25 YOU HAD THAT KIND OF A RATE OF ACCUMULATION OF

1 BLOOD, YOU WOULDN'T MAKE IT TWO DAYS; IT'S
2 ACCUMULATING THAT FAST. YOU KNOW, IT'S JUST --
3 YOU'RE NOT GOING TO MAKE IT THAT FAR.

4 IF THE BLOOD IS COMING OUT THAT FAST AND YOUR
5 BRAIN IS ALREADY THAT SWOLLEN, IT'S GOING TO BE
6 NEWER, BECAUSE YOU CAN'T LIVE WITH A BRAIN THAT'S
7 THAT WAY. SOONER OR LATER IT STOPS FUNCTIONING
8 AND DOING THINGS LIKE -- YOUR BREATHING SLOWS DOWN
9 AND THAT SORT OF THING. YOU START BREATHING ONE
10 OR TWO TIMES A MINUTE LIKE THIS BABY DID WHEN SHE
11 CAME IN, SO THIS IS SOMETHING THAT IS -- WELL, WE
12 KNOW BY THE TIME SHE GOT TO THE EMERGENCY ROOM SHE
13 WAS BREATHING A COUPLE OF TIMES A MINUTE AND
14 THAT'S ADNEURAL (PHONETIC) BREATHING. THAT'S A
15 SIGNAL THE BRAIN IS TELLING THE OUTSIDE WORLD THAT
16 WE'RE ABOUT TO GIVE UP. YOU KNOW, THE BRAIN IS
17 ABOUT TO GIVE UP WHEN YOU GET TO ADNEURAL
18 BREATHING ONE OR TWO TIMES A MINUTE.

19 SO AFTER THE BLEEDING, THE NEW BLOOD,
20 ADNEURAL BREATHING, WE KNOW THIS HAS ACCUMULATED
21 FAIRLY FAST. THE BRAIN IS SWELLING. WE'RE LOSING
22 DISTINCTION OF THE GRAY AND WHITE MATTER JUNCTION,
23 BUT WE HAVEN'T HAD FRANK BRAIN DEATH, YOU KNOW,
24 BUT IT'S CLOSE TO IT.

25 Q NOW, YOU CAN VISUALIZE, I BELIEVE, IN SOME

1 GROSS SENSE THE DURA ON THE C.T. SCAN; IS THAT
2 CORRECT?

3 A WE CAN. WE CAN VISUALIZE THE DURA UNDER
4 CERTAIN CIRCUMSTANCES. WE CAN ALWAYS VISUALIZE
5 THE DURA WHEN IT MAKES UP THE FALX, WHICH IS A
6 PARTIAL -- IT'S A PARTIAL SEPARATION THAT GOES
7 PART WAY IN BETWEEN THE LEFT AND RIGHT HEMISPHERE.
8 IT DOESN'T GO ALL THE WAY DOWN, IT JUST GOES PART
9 WAY THROUGH.

10 WE CAN ALSO VISUALIZE IT WHEN IT SEPARATES
11 THE TOP OF YOUR BRAIN, CALLED YOUR CEREBELLUM --
12 OR RATHER YOUR CEREBRUM, THE CEREBELLUM WHICH IS
13 UNDERNEATH, THAT'S CALLED THE TENTORIUM AND THOSE
14 ARE TOUGH STRUCTURES, THIS DURA, THIS MATERIAL.
15 THE ONLY OTHER WAY THAT YOU SEE THE DURA THAT'S
16 OVER THE TOP IS IF SOMETHING GETS BETWEEN THE
17 SKULL AND THE DURA. THAT WOULD BE AN EPIDURAL
18 HEMATOMA.

19 Q RIGHT. EVEN WHEN YOU CAN VISUALIZE IT, YOU
20 CANNOT, JUST AS WITH ANYTHING ELSE, YOU CAN'T
21 VISUALIZE IT MICROSCOPICALLY, OBVIOUSLY?

22 A I DON'T SEE MICROSCOPICALLY -- A C.A.T. SCAN
23 DOESN'T SHOW UP WHAT SHOWS UP MICROSCOPICALLY, BUT
24 IT DOES REFLECT, SAY THE GENERAL HEALTH.

25 Q YOU INDICATE THAT THE OLD BLEED COULD HAVE

1 BEEN CAUSED BY A BLOW TO THE HEAD OR A VIOLENT
2 SHAKING?

3 A COULD HAVE.

4 Q I ASSUME THE SAME COULD BE TRUE OF THE NEWER
5 BLEED?

6 A THE NEW BLEED LOOKS TO BE CERTAINLY MUCH MORE
7 VIGOROUS BLEEDING. IT'S NOT THE KIND I'D EXPECT
8 FROM SHAKEN BABY. YOU CAN GET REBLEED FROM SHAKEN

9 BABY, YES. THAT PART OF THE ANSWER IS YES. CAN

10 YOU GET THIS KIND OF BLEEDING FROM SHAKEN BABY

11 THAT'S A DIFFERENT -- MOVING TO A DIFFERENT

12 EPICENTER, MUCH MORE RAPID BLEEDING, MUCH MORE

13 SEVERE INJURY TO THE BRAIN FROM SHAKEN BABY, I

14 DON'T EXPECT THAT JUST FROM SHAKEN BABY.

15 Q YOU'D EXPECT SOME FORM OF BLOW?

16 A SHAKEN BABY AND A BLOW.

17 Q OKAY.

18 A WE KNOW THERE'S A SHAKEN BABY BECAUSE OF WHAT

19 I REVIEWED IN THE CHART AS FAR AS THE RETINAL

20 HEMORRHAGES, BUT I EXPECT MORE THAN THAT.

21 Q YOU'RE OF THE OPINION THAT RETINAL

22 HEMORRHAGES ARE ONLY ASSOCIATED WITH SHAKEN BABY?

23 A NOT ONLY.

24 Q OKAY.

25 A BUT THE CORRECT SETTING.

1 Q ARE YOU OF THE OPINION THAT RETINAL
2 HEMORRHAGES MAY BE DUE TO INCREASED INTRACRANIAL
3 PRESSURE?

4 A IT DEPENDS ON THE PATTERNS. THAT'S NOT MY
5 FIELD OF EXPERTISE, SO I'M NOT GOING TO GO THERE
6 ALL THE WAY, BUT RETINAL HEMORRHAGES CERTAINLY
7 HAVE MORE THAN ONE CAUSE. NOW SOME THINGS WE KNOW
8 ARE NOT THERE. IT'S NOT A CHILD THAT HAS
9 HARDENING OF THE ARTERIES OR OF THE RETINAL
10 ARTERIES.

11 IT'S NOT A BABY THAT HAS HEMOPHILIA. THIS IS
12 A BABY THAT HAS OTHER SIGNS AND SYMPTOMS THAT
13 WOULD GO ALONG WITH SHAKEN BABY, SO I'D SAY IT'S
14 IN THE CORRECT SETTING.

15 Q YOU REVIEWED OR HAD THE OPPORTUNITY TO REVIEW
16 THE BIRTH RECORDS ON MINOR CORRECT?

17 A I DON'T BELIEVE I REVIEWED THE -- I REVIEWED
18 THE CHART FROM THE CURRENT HOSPITALIZATION, OR THE
19 LAST HOSPITALIZATION, AND I REVIEWED THE ULTRA
20 SOUNDS FROM INITIALLY --

21 Q SO YOU ONLY --

22 A I DID NOT REVIEW ALL OF HER RECORDS FROM
23 BIRTH.

24 Q OKAY. BECAUSE YOU MADE THE STATEMENT THAT
25 THERE WAS NO OTHER TRAUMA OTHER THAN THIS GREAT

1 ONE --

2 A THERE'S NO OTHER CHANGES IN THE BRAIN OTHER
3 THAN THE GREAT ONE HEMORRHAGE.

4 Q YOU LIMIT YOUR OBSERVATIONS AS TO BIRTH
5 RECORDS SIMPLY TO OBSERVATIONS REGARDING THE
6 BRAIN?

7 A THE ULTRASOUND OF THE BRAIN.

8 Q THE ULTRASOUND OF THE BRAIN, OKAY, I'M SORRY.

9 A CORRECT.

10 Q NOW, I'M JUST ABOUT DONE.

11 YOU ALSO INDICATED IN DESCRIBING THE FORCE
12 NECESSARY THROUGH SHAKING OR THROUGH A BLOW THAT A
13 LARGE MAN COULD DELIVER THE NECESSARY FORCE TO
14 CAUSE THE SUBDURAL -- CERTAINLY A SMALLER MAN
15 COULD DELIVER THE NECESSARY FORCE?

16 A CERTAINLY. IN FACT, THE GUY -- HERCULES, WHO
17 LIFTED MANY TIMES HIS OWN WEIGHT. SIZE DOESN'T
18 MATTER; IT'S STRENGTH. BUT THIS WAS NOT SOMETHING
19 THAT'S GOING TO BE CAUSED BY ANOTHER TODDLER.

20 Q IT COULD BE --

21 A IT'S GOING TO BE CAUSED BY SOMEONE STRONG
22 ENOUGH TO -- IT'S NOT ONE SHAKE. SHAKEN BABY IS
23 REPEATED, AND IT STARTS TEARING AND INJURING AND
24 THAT SORT OF THING.

25 Q AND IF IT'S SHAKING WITH A BLOW, IT IS A

1 SHAKE AND THEN THE BLOW?

2 A I DON'T KNOW THE ORDER OF IT.

3 Q RIGHT.

4 A I MEAN, BLOW THEN SHAKE. I CAN'T TELL YOU
5 THE ORDER OF IT.

6 Q WELL, LET ME ASK YOU THIS, THEN, ARE YOU
7 TRAINED IN BIOMECHANICAL ENGINEERING?

8 A I'M NOT TRAINED IN BIOMECHANICAL ENGINEERING.
9 I HAVE SOME EXPERIENCE AS A PHYSICS MINOR IN
10 COLLEGE IN ROTATING THROUGH SOME OF THE CLASSES
11 WITH ENGINEERING PEOPLE, BUT I AM NOT TRAINED IN
12 BIOMECHANICAL ENGINEERING.

13 Q AND BIOMECHANICAL ENGINEERING, AMONG OTHER
14 THINGS, WOULD BE THE FIELD THAT WOULD ATTEMPT TO
15 QUANTIFY THE FORCE NECESSARY TO CAUSE THE KIND OF
16 INJURIES THAT WE'RE TALKING ABOUT HERE, RIGHT?

17 A IT MAY BE ONE FIELD THAT WOULD BE INVOLVED IN
18 IT. I'M SURE-FORENSICS OF ANY SORT, YOU KNOW, IT
19 CROSSES OVER, LIKE MANY THINGS.

20 Q OKAY. THE POINT AS TO THE SIZE OF AN
21 INDIVIDUAL NECESSARILY DOESN'T REQUIRE NECESSARILY
22 A LARGE MAN, IT DOESN'T NECESSARILY REQUIRE A MAN,
23 CORRECT?

24 A SOMEONE STRONG ENOUGH TO DO IT.

25 Q SOMEONE STRONG ENOUGH THAT THEY COULD DO IT,

1 CORRECT?

2 A CORRECT.

3 Q AND AS TO -- I'M ABOUT DONE.

4 AS TO THE OLDER, THE CHRONIC SUBDURAL WHICH
5 YOU OBSERVED, IF IT WERE LARGER -- IF IT WERE
6 LARGER INITIALLY AND HAD BEGUN TO BE REABSORBED,
7 IT COULD BE OLDER THAN THE THREE TO FOUR WEEKS?

8 A IT COULD BE.

9 Q IT COULD BE. OKAY. YOU LEAN TO THAT NOT
10 BEING THE CASE?

11 A THERE'S -- JUST BASED ON WHERE IT IS AND THAT
12 SORT OF THING, I THINK IT MAY HAVE BEEN LARGER,
13 BUT I CAN'T TELL YOU. BASED ON THE WAY IT LOOKS,
14 THE LONGER IT'S BEEN THERE THE DARKER IT GETS. IF
15 THIS WERE SIX MONTHS OLD I WOULD EXPECT IT TO BE
16 ALMOST AS DARK AS THE FLUID IN THE VENTRICLE, IF
17 NOT THE SAME DARKNESS.

18 WE SEE PLENTY OF PEOPLE THAT HAVE A SUBDURAL
19 THAT WE KNOW IS SIX MONTHS OLD. IT IS VIRTUALLY
20 THE SAME ON THE C.A.T. SCAN AS THEIR SPINAL FLUID
21 INSIDE THE VENTRICLE. THAT MAKES ME THINK THAT
22 IT'S CLOSER TO THE ONE TO TWO MONTH RANGE BECAUSE
23 OF THE LOOKS OF IT, THE WAY IT LOOKS ON C.A.T.
24 SCAN, THE C.T. DENSITY, THAT REFLECTION OF
25 NUCLEONIC ELECTRONS THAT GIVES US C.T. DENSITY, IS

1 MORE -- IT STILL HAS PROTEINS THAT HAVEN'T ALL THE
2 WAY ABSORBED.

3 Q AND YOU ARE OF THE OPINION, I TAKE IT, THAT
4 THE TYPE OF SUBDURAL, THE INJURY THAT YOU'VE SEEN
5 REFLECTED BY THE SUBDURAL, IS NOT SOMETHING THAT
6 COULD BE CAUSED BY A FALL OFF A SWING, FOR
7 EXAMPLE?

8 A NO.

9 Q NO?

10 A NOT -- NOW, IF SOMEONE FELL OFF THE SWING AND
11 THEY GOT THAT, YOU'D BE SEEING THE INJURIES ON THE
12 OUTSIDE GENERALLY IF THEY FELL ON A HARD CONCRETE
13 PAD OR SOMETHING LIKE THAT, YOU'D SEE THINGS THAT
14 ARE COMPATIBLE WITH THAT. NO, THE USUAL FALL FROM
15 TWO TO THREE, FOUR OR FIVE FEET EVEN, A CHILD OF
16 TWO YEARS OLD ON A SWING IS NOT GOING TO BE UP
17 18 FEET IN THE AIR. THEY'RE MORE LIKELY TO BE
18 THREE OR FOUR FEET OFF THE GROUND.

19 Q OKAY.

20 A WE SEE A LOT OF CHILDREN THAT FALL THAT
21 DISTANCE AND WE DON'T SEE THIS KIND OF COMBINATION
22 OF BRAIN INJURY, SUBDURAL HEMATOMA, CONTINUED
23 ACTIVE BLEEDING. I'VE NEVER SEEN THAT IN TRAUMA
24 AS TRIVIAL AS A FALL FROM A SWING.

25 Q ARE YOU ACQUAINTED WITH THE ARTICLE FROM THE

1 AMERICAN JOURNAL OF FORENSIC MEDICINE AND
2 PATHOLOGY FROM 2001 ENTITLED "FATAL PEDIATRIC HEAD
3 INJURIES CAUSED BY SHORT DISTANCE FALLS" BY
4 DR. JOHN PLUNKETT?

5 A NO, I AM NOT FAMILIAR WITH THAT.

6 MR. STRICKLER: THANK YOU VERY MUCH.

7 THE COURT: ANYTHING ON REDIRECT?

8 MS. CAMPBELL: YOUR HONOR, MAY I REVIEW THE
9 ARTICLE?

10 THE COURT: SURE.

11 MS. CAMPBELL: HE JUST ASKED ABOUT THE
12 ARTICLE, SO I'D LIKE TO TAKE A LOOK AT IT.

13 THE COURT: SURE.

14 MS. CAMPBELL: IF I COULD ALSO MAKE A COPY OF
15 IT. HE'S ASKED TWO WITNESSES ABOUT IT.

16 THE COURT: WE'LL TAKE THAT UP.

17 ANYTHING ON REDIRECT?

18 MS. CAMPBELL: JUST A COUPLE OF QUESTIONS.

19 REDIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q DOCTOR, YOU'RE OPINION THAT YOU'VE BEEN ABLE
22 TO GIVE TODAY ABOUT THIS NEW INJURY, IT WOULD HAVE
23 REQUIRED A SEPARATE TRAUMA FROM THE MONTH OR OLDER
24 INJURY?

25 A YES.

1 Q AND THAT TRAUMA WOULD NOT HAVE BEEN, IN YOUR
2 OPINION, ACCIDENTAL IN THIS CASE?

3 A NO.

4 Q AND THE TYPE OF FORCE NECESSARY TO INFLICT
5 THAT TRAUMA WAS WHAT?

6 A ~~IT'S CALLED VIOLENT OR BRUTAL FORCE.~~

7 Q HE ALSO ASKED YOU ABOUT AN M.R.I. AND THAT
8 WAS NOT ABLE TO BE DONE IN THIS CASE, CORRECT?

9 A WELL, WHETHER IT WAS -- TECHNICALLY IT WOULD
10 HAVE BEEN ABLE TO HAVE BEEN DONE, I THINK THAT
11 WOULD BE FOLLOWING. LIKE I SAID, THE FASTEST
12 SEQUENCE OF PICTURES YOU GET ON AN M.R.I. IS THREE
13 MINUTES. THE REASON WE DO M.R.I.'S IS THAT WE
14 ALWAYS DO MORE THAN ONE SEQUENCE BECAUSE THE
15 INFORMATION YOU GET FROM ONE IS ACTUALLY -- THE
16 FASTEST SEQUENCE I WOULD DO IS CALLED THE T-1, AND
17 WE DON'T NEED TO GO INTO IT, BUT THE T-1 WITHOUT
18 ANY OTHER SEQUENCE, MAY -- ESPECIALLY IF AGING
19 BLEEDING AND DETERMINING BRAIN INJURY, IT'S
20 PROBABLY LESS HELPFUL THAN A C.A.T. SCAN.

21 SO, I'M GOING TO DO A T-2 STUDY. I'M GOING
22 TO DO A FLARE STUDY. IF I JUST DO THOSE THREE
23 BASIC ONES, WE'RE ALREADY LOOKING AT ABOUT A 20
24 MINUTE EXAM ON A CHILD WHO IS BREATHING JUST ONE
25 OR TWO TIMES A MINUTE, WHOSE C.A.T. SCAN HAS

1 ALREADY SHOWN THE BRAIN IS EITHER DYING OR IN THE
2 PROCESS OF DYING, HAS ALREADY STARTED TO DIE.

3 THE BREATHING TELLS US THAT. THE C.A.T. SCAN
4 TELL US THAT. IF IT'S MY BABY, I WANT IT TO BE IN
5 THE OPERATING ROOM GETTING THAT BLOOD OUT. I
6 DON'T WANT TO BE DOING ANOTHER TEST THAT'S GOING
7 TO TELL ME WHAT I ALREADY KNOW.

8 Q SO THE C.T. SCAN, IN THIS CASE, TELLS YOU
9 EVERYTHING YOU NEED TO KNOW?

10 A IT TELLS ME ABOUT EVERYTHING I NEED TO KNOW
11 ABOUT WHAT I NEED TO DO NOW IF I'M THE SURGEON OR
12 A DOCTOR TAKING CARE OF THAT PATIENT.

13 MS. CAMPBELL: THANK YOU, DOCTOR.

14 I DON'T HAVE ANYTHING ELSE.

15 THE COURT: ANYTHING ELSE?

16 MR. STRICKLER: NO, SIR.

17 THE COURT: THANK YOU, DOCTOR. YOU MAY STEP
18 DOWN.

19 WHO IS YOUR NEXT WITNESS, MADAM SOLICITOR?

20 MS. CAMPBELL: DR. BURNS, THE PATHOLOGIST.

21 THE COURT: ANOTHER DOCTOR?

22 MS. CAMPBELL: YES, SIR.

23 THE COURT: LET ME LET YOU TAKE A SHORT BREAK
24 AND WE'LL COME BACK AND CONTINUE ON.

25 (WHEREUPON, THE JURY LEFT OPEN COURT AT

1 APPROXIMATELY 10:25.)

2 THE COURT: EVERYONE TAKE A QUICK BREAK.

3 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

4 THE COURT: ALL RIGHT. BRING IN THE JURY.

5 THE BAILIFF: I'LL BE GLAD TO, YOUR HONOR.

6 MR. STRICKLER: YOUR HONOR, IF WE COULD,
7 BEFORE THE JURY COMES IN, I JUST WANT TO SEEK
8 GUIDANCE FROM THE COURT AS TO WHETHER I NEED TO
9 SUPPLY THESE ARTICLES TO MS. CAMPBELL.

10 THE COURT: WELL, IT HAPPENED OUT IN FRONT OF
11 THE JURY. I FRANKLY DON'T THINK YOU'RE ENTITLED
12 TO THEM. YOU CAN TAKE NOTES UNTIL HE ACTUALLY
13 CHALLENGES THEM. HE JUST ASKED THE QUESTION DO
14 YOU KNOW, AND THEY SAY NO, THEN THERE'S NOTHING TO
15 IT, BUT IF YOU USE IT TO IMPEACH A WITNESS, THEN
16 THEY'RE ENTITLED TO IT.

17 MR. STRICKLER: THAT'S WHAT I THOUGHT.

18 THE COURT: HE HASN'T IMPEACHED ANYBODY YET.
19 HE WAS JUST ASKING IF THEY KNEW.

20 MS. CAMPBELL: OKAY.

21 THE COURT: ONCE THEY KNOW, THEN YOU CAN DO
22 WHATEVER YOU WANT TO DO ABOUT IT.

23 MR. STRICKLER: ALL RIGHT. THANK YOU, SIR.

24 THE BAILIFF: ARE YOU READY FOR THE JURY,
25 YOUR HONOR?

1 THE COURT: WAIT A MINUTE.

2 THAT'S KIND OF A PHILOSOPHICAL ARGUMENT, TOO.

3 I'M NOT SURE THE DEFENSE IS ENTITLED TO
4 IMPEACHMENT EVIDENCE OTHER THAN AS PROVIDED BY THE
5 RULE, SOMETHING THAT COMES UP IN REPLY, I DON'T
6 KNOW ON THAT. IT'S KIND OF THE SAME THING.

7 MR. STRICKLER: YES, SIR.

8 THE COURT: ALL RIGHT. WE'RE READY FOR THE
9 JURY NOW.

10 THE BAILIFF: I'LL GET THEM.

11 (WHEREUPON, THE JURY CAME INTO OPEN
12 COURT AT APPROXIMATELY 10:44.)

13 THE BAILIFF: THE JURY'S ALL PRESENT.

14 THE COURT: ALL RIGHT. YOU MAY CALL YOUR
15 NEXT WITNESS.

16 MS. CAMPBELL: MAY IT PLEASE THE COURT. THE
17 STATE CALLS DR. BURNS.

18 THE CLERK: COME FORWARD, PLEASE. RAISE YOUR
19 RIGHT HAND, PLACE YOUR LEFT HAND ON THE BIBLE.

20 DR. RONALD BURNS

21 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR
23 NAME FOR THE RECORD.

24 THE WITNESS: RONALD GIBSON BURNS.

25 DIRECT EXAMINATION

1 BY MS. CAMPBELL:

2 Q DR. BURNS, WHERE ARE YOU EMPLOYED?

3 A RICHLAND MEMORIAL HOSPITAL.

4 Q WHAT DO YOU DO THERE?

5 A I'M A PATHOLOGIST.

6 Q AND AS A PATHOLOGIST, WHAT DO YOU DO?

7 A PATHOLOGY IS THE PORTION OF MEDICINE THAT HAS
8 TO DO WITH THE EXAMINATION OF TISSUES IN THE BODY.

9 Q AND AS PART OF YOUR DUTIES AS A PATHOLOGIST,
10 DO YOU OFTEN -- DO YOU ALSO PERFORM ON-CALL
11 AUTOPSIES?

12 A YES, WE DO AUTOPSIES.

13 Q AND WHAT'S THE PURPOSE OF AN AUTOPSY WHEN
14 IT'S PERFORMED?

15 A AN AUTOPSY IS AN EXAMINATION OF SOMEONE WHO
16 HAS EXPIRED FOR THE PURPOSE OF DETERMINING THE
17 PRESENCE OF DISEASE AND/OR IN FORENSIC CASES
18 TRAUMA WHICH MAY HAVE OCCURRED.

19 Q CAN YOU TELL THIS JURY A LITTLE BIT ABOUT
20 YOUR EDUCATION AND YOUR TRAINING IN THE MEDICAL
21 FIELD?

22 A YES, MEDICAL SCHOOL WAS DOWN IN CHARLESTON AT
23 M.U.S.C. THEN I DID MY RESIDENCY WITH THE
24 MILITARY. AFTER THAT I WAS BOARD CERTIFIED IN
25 ANATOMIC AND CLINICAL PATHOLOGY. I WORKED AT

1 EISENHOWER MEDICAL CENTER FOR THREE YEARS, AND I
2 WAS ON THE TEACHING FACULTY, AND HAVE BEEN IN
3 COLUMBIA SINCE 1983. I'M WORKING AT RICHLAND AND
4 ALSO TEACHING OVER AT THE MEDICAL SCHOOL.

5 Q SO YOU WORK AT RICHLAND MEMORIAL HOSPITAL AS

6 A PATHOLOGIST?

7 A YES.

8 Q AND YOU ALSO TEACH OVER AT THE MEDICAL
9 SCHOOL?

10 A YES.

11 Q AND IN WHAT FIELD DO YOU TEACH AT THE MEDICAL
12 SCHOOL?

13 A IT HAS TO DO WITH MUSCLE PATHOLOGY AND SOFT
14 TISSUE PATHOLOGY.

15 Q AND YOU SAID EARLIER THAT YOU HAD BEEN BOARD
16 CERTIFIED IN PATHOLOGY?

17 A THAT'S CORRECT.

18 Q AND HOW LONG HAVE YOU BEEN CERTIFIED AS AN
19 EXPERT IN PATHOLOGY?

20 A SINCE 1980.

21 Q YOU'VE ALSO BEEN QUALIFIED BEFORE AS AN
22 EXPERT IN THE FIELD OF PATHOLOGY?

23 A YES.

24 Q ON HOW MANY OCCASIONS?

25 A MANY DOZENS, I DON'T KNOW HOW MANY.

1 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
2 OFFER HIM AS AN EXPERT IN THE FIELD OF PATHOLOGY.

3 THE COURT: DO YOU HAVE ANY QUESTIONS?

4 MR. STRICKLER: I HAVE NOTHING ON THAT BASIS.

5 THE COURT: YOU MAY PROCEED.

6 MS. CAMPBELL: THANK YOU.

7 BY MS. CAMPBELL:

8 Q DR. BURNS, TURNING YOUR ATTENTION BACK TO
9 APRIL 1ST OF THE YEAR 2000, DID YOU HAVE AN
10 OCCASION TO PERFORM AN AUTOPSY ON A LITTLE GIRL
11 THAT HAD DIED AT THE HOSPITAL?

12 A YES, I DID.

13 Q AND WHAT WAS THAT PATIENT'S NAME?

14 A THAT WAS MINOR

15 Q AND WHAT WAS THE CIRCUMSTANCES FOR WHICH AN
16 AUTOPSY WAS REQUESTED IN THIS CASE?

17 A I'M NOT SURE EXACTLY WHAT YOU REFER TO. IT
18 WAS A REQUEST BY THE CORONER'S OFFICE TO EXAMINE
19 THIS CHILD.

20 Q AND WHEN DOING AN AUTOPSY EITHER ON AN ADULT
21 OR A CHILD, CAN YOU TELL THE JURY JUST GENERALLY
22 WHAT STEPS YOU GO THROUGH AND HOW IT'S PERFORMED?

23 A YES. THE FIRST THING WE DO IS DO AN EXTERNAL
24 EXAMINATION, WHICH IS TO NOTE THE PRESENCE OF ANY
25 CLOTHING, ANY MEDICAL DEVICES AND ALSO THE

1 PRESENCE OF ANY BRUISING, BLOOD, OTHER WOUNDS THAT
2 ONE MIGHT SEE ON THE OUTSIDE OF THE BODY AND THEN
3 WE WILL OPEN THE BODY UP AND EXAM INDIVIDUALLY
4 EACH OF THE ORGANS OF THE BODY AND LOOK INTO THE
5 INTERIOR OF EACH OF THE ORGANS. WE ALSO TAKE
6 SMALL PIECES WHICH WE WILL USE FOR MICROSCOPIC
7 EXAMINATION. WHEN WE COMPLETE THAT, WE GENERATE A
8 WRITTEN REPORT OF THAT.

9 Q SO YOU LOOK AT THE OUTSIDE OF THE BODY FIRST?

10 A YES.

11 Q AND THEN YOU ACTUALLY OPEN THE BODY UP
12 THROUGH WHAT CAVITY?

13 A WELL, WE'LL OPEN THE CHEST WITH WHAT WE CALL
14 A Y-SHAPED INCISION TO LOOK AT THE THORAX AND THE
15 ABDOMEN, AND THE HEAD IS A DIFFERENT PART OF THE
16 EXAMINATION WHERE WE MOVE THE SCALP OUT OF THE WAY
17 AND TAKE PART OF THE BONE OUT.

18 Q AND THAT'S IN ORDER TO EXAMINE THE BRAIN?

19 A YES.

20 Q IN THIS CASE WHEN YOU DID YOUR EXTERNAL
21 EXAMINATION INVOLVING THIS CHILD, WHAT WERE YOUR
22 FINDINGS?

23 A WELL, THE MAJOR FINDING WAS THAT SHE HAD A
24 LARGE BANDAGE THAT WAS WRAPPED AROUND THE UPPER
25 PART OF HER HEAD. WE REMOVED THE BANDAGE AND

1 BELOW THAT ON THE RIGHT SIDE SHE HAD A SURGICAL
2 SITE WHICH HAD BEEN SUTURED AND HAD SOME BRUISING
3 AROUND IT. ALSO AT THAT SITE THERE WERE SOME
4 PORTIONS OF BRAIN MATTER AND BLOOD THAT WERE JUST
5 LITERALLY EXUDING FROM THE SURFACE OF THE WOUND.

6 SHE ALSO HAD WHAT APPEARED TO BE A BRUISE OR
7 CONTUSION OF THE LEFT EYELID. SHE HAD A SMALL
8 BRUISE AT THE BASE OF HER NECK ON HER LEFT SIDE,
9 TWO SMALLER LESIONS THAT WOULD HAVE BEEN DIFFICULT
10 TO CHARACTERIZE, WHICH WERE A LITTLE BIT HIGHER UP
11 ON HER NECK. SHE HAD TWO SMALL, WHAT LOOKED LIKE
12 BRUISES BASICALLY, OVER THE HEART AREA OF THE LEFT
13 CHEST.

14 ALSO WHEN WE TURNED HER OVER TO LOOK AT THE
15 OPPOSITE SIDE OF THE BODY, SHE HAD WHAT APPEARED
16 TO BE WHAT'S CALLED A MONGOLIAN SPOT, AN AREA OF
17 PIGMENTATION IN THE CENTRAL LOWER BACK. ALSO ON
18 THE RIGHT AND LEFT SIDE SHE HAD WHAT APPEARED TO
19 BE BRUISING OR CONTUSIONS ON THE BUTTOCKS ON BOTH
20 SIDES.

21 Q SO BASICALLY WHEN YOU MADE YOUR ASSESSMENT
22 WHEN SHE PRESENTED TO YOU, YOU MENTIONED THAT SHE
23 HAD A LARGE BANDAGE AROUND HER HEAD?

24 A YES.

25 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S

1 EXHIBIT 6. IS THAT THE TYPE OF BANDAGE YOU'RE
2 TALKING ABOUT?

3 A YES.

4 Q YOU MENTIONED THAT WHEN YOU REMOVED THIS
5 BANDAGE THAT UNDERNEATH IT WAS A SURGICAL SITE?

6 A YES.

7 Q AND HOW WOULD YOU DESCRIBE THE SURGICAL SITE?

8 A WELL, IT WAS SUTURED, BUT THERE APPEARED TO
9 BE SOME BRAIN AND SOME BLOOD TISSUE THAT WAS
10 LITERALLY EXUDING OUT BECAUSE OF THE PRESSURE.

11 Q AND WAS THERE ACTUALLY A GAP IN HER SKULL AT
12 THAT POINT?

13 A WELL, WHEN THEY HAD GONE IN SURGICALLY THEY
14 HAD REMOVED A WINDOW OF BONE, SO THERE WAS AN AREA
15 THAT DID NOT HAVE BONE OVER IT ANY LONGER, BUT IT
16 WAS COVERED WITH A FLAP OF SKIN.

17 Q AND THAT'S WHERE THE BRAIN MATTER WAS
18 EXUDING?

19 A YES.

20 Q YOU ALSO MENTIONED SOME DIFFERENT AREAS WHERE
21 YOU SAW BRUISING IN THIS CASE?

22 A YES.

23 Q TAKING THOSE ONE AT A TIME, I BELIEVE THE
24 FIRST PLACE YOU MENTIONED WAS --

25 A WELL, SHE HAD AN AREA OF BRUISING OR WE OFTEN

1 CALL IT CONTUSION AROUND THE SURGICAL SITE AND
2 THAT WOULD BE A COMMON THING TO INCUR AT THE SITE
3 OF SURGERY.

4 Q AND THAT WOULD BE CONSISTENT WITH HER HAVING
5 SURGERY?

6 A RIGHT. AND --

7 Q IN ADDITION TO THAT -- GO ON, I'M SORRY.

8 A OKAY. SHE ALSO HAD CONTUSIONS OR BRUISING OF
9 THE LEFT EYELID. CONTUSIONS ARE ALWAYS CAUSED
10 BECAUSE OF HEMORRHAGE IN THE TISSUES DOWN DEEP, SO
11 THAT CAN BE CAUSED FROM A BLOW TO THE HEAD OR
12 SOMETIMES FROM OTHER INTERNAL TYPES OF TRAUMA.

13 THEN SHE HAD BRUISING ALSO AT THE BASE OF THE
14 NECK, AGAIN PROBABLY A PRESSURE TRAUMA AND
15 BRUISING THAT WAS ON THE CHEST OVER THE HEART AREA
16 ON THE LEFT, AGAIN PROBABLY FROM PRESSURE.

17 Q AND YOU ALSO NOTICED BRUISING TO THE -- YOU
18 MENTIONED THE MONGOLIAN SPOT?

19 A YES. AND THEN ON EITHER SIDE OF THE
20 MONGOLIAN SPOT SHE HAD BRUISING ON BOTH BUTTOCKS.

21 Q AND I SHOW YOU -- YOU MENTIONED A BRUISE TO
22 THE CHEST AREA. I SHOW YOU STATE'S EXHIBIT 6,
23 THERE IN THE CENTER OF HER CHEST, DO YOU NOTE A
24 BRUISE?

25 A ACTUALLY, I DON'T NOTE ONE ON THIS.

1 Q I'M SORRY, RIGHT THERE. (INDICATING)

2 A PERHAPS. IT'S FAINT, BUT YES.

3 Q AND YOU ALSO MENTIONED BRUISING TO THE
4 BUTTOCKS AREA. I SHOW YOU STATE'S EXHIBITS 8 AND
5 9. IS THAT -- THOSE WERE TAKEN THE DAY BEFORE,
6 BUT IS THAT HOW SHE PRESENTED?

7 A YES.

8 Q YOU ALSO MENTIONED A BRUISE TO THE FACIAL
9 AREA OR TO THE EYE. I SHOW YOU THIS PHOTOGRAPH.
10 DO YOU RECOGNIZE THAT?

11 A YES, I DO.

12 Q AND DOES THAT DEPICT THE BRUISE YOU NOTED IN
13 YOUR REPORT?

14 A IT DOES.

15 Q AND THAT WAS THE BRUISE TO THE FACE?

16 A YES.

17 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
18 OFFER IT INTO EVIDENCE.

19 MR. STRICKLER: ~~I WOULD OBJECT.~~

20 THE COURT: COME UP HERE JUST A MINUTE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD
22 IN THE PRESENCE OF THE JURY, BUT OUT OF
23 THE HEARING OF THE JURY.)

24 THE COURT: ALL RIGHT. SUBJECT TO 403 I'LL
25 ALLOW ANOTHER PHOTOGRAPH IN AS OPPOSED TO THE ONE

1 THE STATE WISHED TO OFFER.

2 MS. CAMPBELL: YOUR HONOR, IF I COULD SHOW
3 HIM TO MAKE A FOUNDATION.

4 THE COURT: OKAY.

5 BY MS. CAMPBELL:

6 Q DOCTOR, I SHOW YOU THIS OTHER PHOTOGRAPH THAT
7 IS SIMILAR TO ANOTHER ONE; DOES THAT ALSO DEPICT
8 THE SAME BRUISE WE TALKED ABOUT?

9 A YES, IT DOES.

10 MS. CAMPBELL: YOUR HONOR, I'D MARK THIS ONE.

11 THE COURT: THAT'S FOR I.D., AND THE OTHER IS
12 ADMITTED UNDER 403.

13 (WHEREUPON, STATE'S EXHIBIT 19 WAS
14 ADMITTED INTO EVIDENCE.)

15 (WHEREUPON, STATE'S EXHIBIT 18 WAS
16 MARKED FOR IDENTIFICATION ONLY.)

17 MS. CAMPBELL: YOUR HONOR, MAY WE APPROACH?

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD
19 IN THE PRESENCE OF THE JURY, BUT OUT OF
20 THE HEARING OF THE JURY.)

21 THE COURT: ALL RIGHT. STATE'S 4 FOR I.D. IS
22 OBJECTED TO UNDER 403 BY THE DEFENSE. OVERRULED
23 SUBJECT TO THE CROPPING THAT THE STATE WILL DO
24 WITH THE PHOTOGRAPH.

25 BY MS. CAMPBELL:

1 Q DOCTOR, I SHOW YOU WHAT HAS NOW BEEN ADMITTED
2 AS STATE'S EXHIBIT NUMBER 19. YOU MENTIONED THAT
3 THERE WAS BRUISING TO THE EYE. WHAT EYE IS THAT
4 ON?

5 A YES, THAT WOULD BE TO THE LEFT EYE.

6 Q AND THAT IS DEPICTED THERE IN THAT
7 PHOTOGRAPH?

8 A YES.

9 Q AND, DOCTOR, WITH BRUISING, DOES BRUISING
10 NECESSARILY SHOW UP RIGHT AWAY WHEN A BRUISE IS --
11 WHEN A BLOW IS INFLICTED?

12 A NO. I THINK THAT'S, AS PRACTICALLY EVERYBODY
13 HAS EXPERIENCED, YOU CAN STRIKE YOURSELF AND THEN
14 IT WILL TAKE SEVERAL HOURS TO SOMETIMES SEVERAL
15 DAYS BEFORE A BRUISE WILL SHOW.

16 Q SO EVEN IF A PERSON WERE TO SUSTAIN A SEVERE
17 BLOW, SAY TO THE FACIAL AREA, IT MIGHT TAKE
18 SEVERAL DAYS FOR THAT BRUISE TO SHOW --

19 A YES.

20 Q -- AND MANIFEST ITSELF SUCH AS HERE IN
21 STATE'S EXHIBIT 19?

22 A THAT'S CORRECT.

23 Q YOU ALSO MENTIONED A BRUISE TO THE BACK OF
24 THE NECK, AND I SHOW YOU A SMALLER VERSION OF
25 STATE'S EXHIBIT 4.

1 A YES.

2 Q AND DOES THAT SHOW THE BRUISE YOU WERE
3 TALKING ABOUT TO THE BACK OF THE NECK?

4 A YES, IT DOES.

5 Q AND THAT BRUISE IS SHOWN RIGHT THERE?

6 (INDICATING)

7 A YES, WHERE YOU HAVE YOUR FINGER.

8 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
9 ~~OFFER STATE'S EXHIBIT 4 AS THE VERSION WE HAVE NOW~~
10 HAVE.

11 THE COURT: ADMITTED OVER THE OBJECTION BY
12 THE DEFENSE.

13 (WHEREUPON, THE CROPPED VERSION OF
14 STATE'S EXHIBIT NUMBER 4 WAS ADMITTED
15 INTO EVIDENCE.)

16 BY MS. CAMPBELL:

17 Q AND AGAIN, DOCTOR, LET ME PUT MY FINGER
18 POINTING TO THE PLACE WHERE THE BRUISE WAS NOTED.
19 IS THAT THE CORRECT SPOT? (INDICATING)

20 A YES.

21 Q RIGHT ABOUT WHERE MY FINGER IS ON THAT
22 PHOTOGRAPH?

23 A YES.

24 Q DOCTOR, IN LOOKING AT THE BRUISING ON THE
25 BUTTOCKS AREA, YOU NOTED THAT THERE WAS AN AREA

1 KNOWN AS A MONGOLIAN SPOT. IS THAT PREVALENT IN
2 SMALL CHILDREN?

3 A YES, AND IT'S MOST COMMON IN AFRICAN AMERICAN
4 CHILDREN.

5 Q AND IN THESE PHOTOGRAPHS, WHERE WOULD THAT
6 MONGOLIAN SPOT HAVE BEEN? I SHOW YOU STATE'S
7 EXHIBITS 9 AND 8.

8 A I DON'T BELIEVE IT SHOWS IT ESPECIALLY WELL,
9 BUT IT WOULD BE RIGHT AT THE TOP OF THE GLUTEAL
10 FOLD.

11 Q RIGHT AT THE TOP OF THE GLUTEAL --

12 A YES.

13 Q THAT WOULD BE THE MIDDLE?

14 A YES.

15 Q AND YOU NOTED THAT YOU -- YOU TESTIFIED
16 EARLIER AS TO BRUISING ON EITHER BUTTOCKS -- ON
17 BOTH BUTTOCK AREAS?

18 A YES.

19 Q AND IS THAT DEPICTED IN THESE PICTURES?

20 A YES, I DON'T THINK IT SHOWS IT VERY WELL
21 THOUGH.

22 Q HOW ABOUT ON STATE'S EXHIBIT 8; THAT'S A
23 LITTLE --

24 A THAT'S SLIGHTLY BETTER. SHALL I SHOW THIS?

25 Q YES, SIR.

1 A THESE AREAS HERE THAT LOOK SOMEWHAT DARKER
2 AND FLARE OFF TO THE CENTER, AND I BELIEVE -- THIS
3 IS ON THE OPPOSITE SIDE, AND YOU CAN SEE THE
4 BRUISING RIGHT THERE. (INDICATING)

5 Q SO EACH OF THESE SHOWS ONE SIDE A LITTLE
6 BETTER THAN THE OTHER?

7 A YES.

8 Q DOCTOR, IN CHECKING ON THE BRUISING ON THE
9 BUTTOCKS, BECAUSE OF THE MONGOLIAN SPOT, DID YOU
10 TAKE SOME FURTHER STEPS TO MAKE SURE THAT WAS
11 ACTUALLY BRUISING AND NOT JUST DISCOLORATION?

12 A RIGHT, YES, BECAUSE MONGOLIAN SPOTS CAN HAVE
13 VARIATION IN THEIR SIZE AND SHAPE, WHAT WE DID WAS
14 WE CUT OR INCISED INTO THE SKIN JUST A LITTLE BIT
15 TO SEE IF THERE WAS HEMORRHAGE INTO THE SKIN, AND
16 WE DID SEE HEMORRHAGING.

17 Q AND THE HEMORRHAGE THAT YOU SAW WHEN YOU CUT
18 INTO THE SKIN IN THE BUTTOCKS AREA, THAT WOULD
19 INDICATE BRUISING OR BLUNT FORCE TRAUMA TO THAT
20 AREA; IS THAT CORRECT?

21 A THAT'S CORRECT, YES.

22 Q SO THAT WAS BRUISING AND NOT JUST A MONGOLIAN
23 SPOT?

24 A RIGHT.

25 Q AND AS FAR AS ANY SIGNIFICANT OTHER FINDINGS

1 EXTERNALLY, THOSE WERE THE SIGNIFICANT ONES?

2 A YES.

3 Q DOCTOR, AFTER DOING YOUR EXTERNAL
4 EXAMINATION, THEN DID YOU HAVE THE OPPORTUNITY TO
5 LOOK AT THIS CHILD'S ORGANS?

6 A YES, I DID.

7 Q AND TELL THE JURY HOW THAT TOOK PLACE AND
8 WHAT YOUR FINDINGS WERE INTERNALLY AS FAR AS HER
9 BODY GOES, FIRST.

10 A OKAY. AS I RECALL, THE LUNGS WERE FAIRLY
11 UNREMARKABLE FOR POSTMORTEM LUNGS, AS WAS THE
12 HEART. THE HEART HAD A SMALL AMOUNT OF CONTUSION
13 ON THE PORTION OF CHAMBERS, WHICH IS NOT AN
14 UNCOMMON THING FOR CHILDREN PARTICULARLY IF
15 THERE'S BEEN ANY RESUSCITATION INVOLVED. THE
16 LIVER, THE KIDNEY, THE OTHER INTERNAL ORGANS WERE
17 UNREMARKABLE APPEARING.

18 Q AND YOU SAID THERE WAS SOME BRUISING TO THE
19 HEART, WHICH WOULD NOT BE UNCOMMON WITH
20 RESUSCITATIVE EFFORTS?

21 A RIGHT.

22 Q AND YOU'RE AWARE THERE WERE NO RESUSCITATIVE
23 EFFORTS DONE AT THE HOSPITAL?

24 A NO, I'M NOT AWARE OF THAT.

25 Q BUT YOU DON'T KNOW IF ANY RESUSCITATIVE

1 THINGS WERE DONE OUTSIDE THE HOSPITAL?

2 A NO, I DON'T.

3 Q SO THAT BRUISING COULD BE CONSISTENT WITH
4 SOMEONE SAY PUSHING ON THE CHEST IN AN EFFORT TO
5 REVIVE A CHILD?

6 A YES.

7 Q OR IT WOULD BE CONSISTENT WITH SOME OTHER
8 TYPE OF BLOW TO THE CHEST?

9 A ALSO, YES.

10 Q DOCTOR, THIS CHILD WHEN SHE PRESENTED -- AND
11 WE'RE GOING TO EXCLUDE THE HEAD AREA AND THE
12 BRUISING, OTHER THAN THAT, THIS CHILD WAS TWO
13 YEARS AND THREE MONTHS OLD. DID SHE APPEAR TO BE
14 HEALTHY, AND IN YOUR EXAMINATION OF HER INTERNAL
15 ORGANS, TO BE A HEALTHY, NORMAL CHILD?

16 A YES.

17 Q YOU ALSO SAID YOU DID AN EXAMINATION OF THE
18 BRAIN IN THIS CASE; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q TELL THIS JURY WHAT YOUR FINDINGS WERE AS TO
21 THE BRAIN.

22 A OKAY. WHEN WE ELEVATED THE BONE OFF THE
23 SKULL, WE CALL IT THE CRANIAL CAP, THE BRAIN
24 UNDERNEATH SHOWED A LOT OF DISRUPTION, THAT IS, IT
25 WAS TORN. IT WAS NO LONGER INTACT ON THE RIGHT

1 SIDE AND THERE WAS A GOOD DEAL OF CLOT THAT WAS
2 STUCK ON THAT SURFACE OF THE BRAIN. ALSO YOU
3 COULD TELL OBVIOUSLY THAT THERE WAS SWELLING ON
4 THE BRAIN ON THAT SIDE. THE LEFT SIDE OF THE
5 BRAIN, THE OPPOSITE SIDE SHOWED SWELLING, BUT DID
6 NOT SHOW ANY CLOT PRESENT.

7 Q AND DOCTOR, WERE YOU AWARE THAT THIS CHILD
8 HAD UNDERGONE AN OPERATION TO REMOVE A SUBDURAL
9 HEMATOMA?

10 A YES, YES.

11 Q AND IN YOUR EXPERIENCE, DOCTOR, HOW WOULD YOU
12 CHARACTERIZE THE DAMAGE DONE TO THIS CHILD'S BRAIN
13 WHEN YOU SAW IT?

14 A WELL, THE BRAIN WAS VERY BADLY DISEASED IN
15 THAT THE RIGHT HEMISPHERE, WHICH WAS RATHER SOFT.
16 -- THE SUBSTANCE OF THE BRAIN IS A SOFT THING
17 ANYWAY, BUT AT AUTOPSY, WE CAN GENERALLY HANDLE IT
18 WITH RELATIVE EASE, BUT IN THIS CASE THE BRAIN
19 TENDED TO FRAGMENT AND FALL APART, WHICH IS
20 TYPICALLY A SIGN OF BRAIN DEATH.

21 Q DID YOU ALSO HAVE AN OPPORTUNITY TO OBSERVE
22 THIS CHILD'S EYES?

23 A YES, I DID.

24 Q AND WHAT WERE YOUR FINDINGS WHEN YOU SAW --
25 AND TELL THE JURY EXACTLY HOW YOU EXAMINED THE

1 EYES AND WHAT YOUR FINDINGS WERE.

2 A OKAY. BECAUSE WE WANT TO PRESERVE THE
3 APPEARANCE AFTER DEATH, WE APPROACH THE EYES FROM
4 BEHIND, SO WHEN WE'RE ALREADY INSIDE THE SKULL AND
5 THERE'S A SMALL THIN PIECE OF BONE THAT CAN BE
6 REMOVED BEHIND EACH EYE IN ORDER TO GET ACCESS TO
7 THE BACK OF THE EYE, SO WE REMOVED THAT ON BOTH
8 SIDES. WE TOOK JUST THE BACK PORTION OF EACH OF
9 THE OPTIC GLOBES OR EYEBALLS.

10 AT LEAST EXTERNALLY THE RIGHT ONE DIDN'T LOOK
11 REMARKABLE. EXTERNALLY THE LEFT ONE SHOWED
12 HEMORRHAGING AROUND THE TISSUE THAT WAS AROUND
13 WHERE THE OPTIC NERVE WENT INTO THE EYEBALL.

14 Q SO YOU HAD HEMORRHAGING AROUND THE OPTIC
15 NERVE?

16 A YES, THE LEFT.

17 Q DID YOU ALSO NOTICE ANY HEMORRHAGING IN THE
18 LAYERS OF THE RETINAL TISSUES?

19 A WELL, WHEN WE DID THE MICROSCOPIC EXAMINATION
20 WE COULD SEE HEMORRHAGING INTO THE RETINAL TISSUES
21 ON BOTH SIDES.

22 Q I THINK IN YOUR REPORT YOU CHARACTERIZE THAT
23 AS MULTIFOCAL INTER -- WHAT IS THAT WORD,
24 INTERSTITIAL?

25 A YES, INTERSTITIAL.

1 Q MULTIFOCAL INTERSTITIAL HEMORRHAGES NOTED IN
2 ALL LAYERS OF RETINAL TISSUE AND INTERSTITIALLY
3 WITHIN THE OPTIC DISC?

4 A YES, RIGHT, THE OPTIC DISK WOULD BE THE AREA
5 WHERE THE NERVE COMES INTO THE EYE AND THE NERVES
6 ARE KIND OF SPREAD OUT.

7 Q AND DOCTOR, WOULD YOU CHARACTERIZE THIS AS
8 WIDESPREAD HEMORRHAGING THROUGHOUT BOTH OF HER
9 EYES?

10 A YES.

11 Q SO, DOCTOR, IN YOUR FINDINGS IN THIS CASE,
12 YOU KNEW THAT THERE WAS A SUBDURAL HEMATOMA THAT
13 WAS REMOVED?

14 A CORRECT.

15 Q AND THAT WAS CONSISTENT WITH THE SURGERY SITE
16 YOU FOUND?

17 A AND THE OTHER FINDINGS.

18 Q AND YOU WERE ALSO AWARE THAT THE BRAIN HAD
19 SWELLING GOING ON?

20 A YES.

21 Q AND I BELIEVE YOU CHARACTERIZED IT AS PRETTY
22 MUCH DEAD WHEN IT GOT TO YOU, RIGHT?

23 A YES.

24 Q AND IN ADDITION TO THAT YOU FOUND RETINAL
25 HEMORRHAGES?

1 A YES.

2 Q AND DOCTOR, IN YOUR EXPERIENCE, YOUR
3 FINDINGS, WERE THOSE CONSISTENT WITH A BABY THAT
4 HAD BEEN SHAKEN VIOLENTLY?

5 A IT'S CONSISTENT WITH ALL THE LITERATURE
6 DESCRIPTIONS OF THAT, YES.

7 Q AND DOCTOR, IN YOUR EXPERIENCE YOU ALSO NOTED
8 MULTIPLE BRUISES ALL OVER THIS CHILD'S BODY.
9 WOULD THAT ALSO BE CONSISTENT WITH CHILD ABUSE?

10 A CERTAINLY THE BRUISING AROUND THE NECK IS
11 DESCRIBED IN CASES OF SHAKEN BABY AND THE BRUISING
12 TO THE BUTTOCKS IS SOMETHING THAT IS TYPICAL IN
13 CHILD ABUSE IN GENERAL AND NOT SPECIFIC TO SHAKEN
14 BABY.

15 Q SO THOSE WOULD BE TWO DIFFERENT FORMS
16 INDEPENDENT OF EACH OTHER?

17 A YES.

18 Q DOCTOR, WHEN THIS CHILD PRESENTED TO YOU, THE
19 OPERATION HAD ALREADY BEEN PERFORMED; IS THAT
20 CORRECT?

21 A YES.

22 Q SO WERE YOU ABLE TO TELL THE NATURE OF THE
23 SUBDURAL HEMATOMAS THAT WERE PRESENT IN THAT
24 CHILD?

25 A I DID NOT FIND ANY EVIDENCE INDICATING OLDER

1 AGE IF THAT'S WHAT YOU'RE GETTING AT. EVERYTHING
2 THAT I SAW APPEARED TO BE FRESH, BUT AGAIN I WAS
3 LOOKING AT A SITE THAT HAD ALREADY BEEN OPERATED
4 ON, AND I DON'T KNOW EXACTLY WHAT THEY DID.

5 Q AND THE HEMATOMA HAD ALREADY BEEN EVACUATED?

6 A I WOULD PRESUME SO. THAT'S THE PURPOSE OF
7 THE SURGERY.

8 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR
9 HONOR.

10 THE COURT: CROSS-EXAMINATION, MR. STRICKLER.

11 MR. STRICKLER: THANK YOU, SIR.

12 CROSS-EXAMINATION

13 BY MR. STRICKLER:

14 Q GOOD MORNING, DOCTOR.

15 A GOOD MORNING.

16 YOU ARE QUALIFIED AS A PATHOLOGIST, HAVE BEEN
17 SO QUALIFIED HERE IN COURT TODAY, AND HAVE
18 TESTIFIED IN THIS COURT ON A NUMBER OF TIMES IN
19 THE PAST, CORRECT?

20 A YES.

21 Q OKAY. I'VE HAD THE OCCASION TO SPEAK WITH
22 YOU BEFORE, I BELIEVE?

23 A YES, WE HAVE.

24 Q MY UNDERSTANDING IS THAT YOU ARE BOARD
25 CERTIFIED IN THE AREAS OF ANATOMICAL AND CLINICAL

1 PATHOLOGY; IS THAT CORRECT?

2 A YES.

3 Q THERE IS A FURTHER SUBSPECIALTY OF PATHOLOGY
4 DEFINED AS FORENSIC PATHOLOGY, IF I UNDERSTAND
5 CORRECTLY?

6 A THAT'S CORRECT.

7 Q ALL RIGHT. AND IT IS ALSO CORRECT THAT YOU
8 ARE NOT BOARD CERTIFIED IN FORENSIC PATHOLOGY?

9 A YOU ARE CORRECT, YES.

10 Q I'D LIKE TO TALK WITH YOU A LITTLE BIT ABOUT
11 THE BRUISES THAT YOU NOTED IF I COULD. I'D LIKE
12 TO APPROACH IT IN THIS FASHION, IF I COULD: CAN
13 WE DATE BRUISES?

14 A I'D SAY IT'S POSSIBLE TO DATE OR AT LEAST
15 GIVE AN ESTIMATE OF AGE.

16 Q AND THAT WAS THE NEXT THING. THE DATING
17 DEGREE IS NOT THE KIND OF THING THAT ONE MIGHT GET
18 IF WE WATCHED TV, IT'S A RANGE?

19 A THAT'S CORRECT, YES.

20 Q AND CAN YOU TELL US HOW WE GO ABOUT DATING
21 BRUISES FROM A PATHOLOGICAL SENSE?

22 A THE MOST USEFUL, MOST OBJECTIVE METHOD IS TO
23 LOOK AT A TISSUE SECTION OF THE BRUISE AND SEE
24 MICROSCOPICALLY WHAT'S GOING ON.

25 Q AND IF WE MOVE UP THE SCALE OF USEFULNESS ON

1 DATING, WHAT WOULD BE THE NEXT MOST VALID OR
2 USEFUL TECHNIQUE?

3 A WELL, ONE CAN -- LET'S SAY IN A CLINICAL
4 SETTING, WITHOUT DOING ANY BIOPSY, SIMPLY LOOK AT
5 COLOR CHANGES AND THE BRUISES.

6 Q RIGHT. AND IN LOOKING AT COLOR CHANGES AND
7 BRUISES, YOU GET SOME RANGES AS FAR AS AGES OF
8 BRUISES; IS THAT CORRECT?

9 A RIGHT, YES.

10 Q CAN YOU JUST BRIEFLY OUTLINE FOR US THE
11 SEQUENCE OF COLOR CHANGE IN A NORMAL BRUISE?

12 A IN GENERAL, AND WE'RE TAKING A BRUISE AS A
13 RESULT OF TRAUMA, THAT IS A BLOW OR A SLAP, WHAT
14 ONE SEES FIRST IS JUST A REDDENING USUALLY OF THE
15 SKIN AND TISSUES ASSOCIATED WITH THAT AREA.

16 Q OKAY.

17 A AND THEN SUBSEQUENTLY, AND THE TIME CAN VARY,
18 ONE SEES A BLuish CHANGE OCCURRING.

19 Q OKAY.

20 A THEN USUALLY SEVERAL DAYS AFTER THAT WE BEGIN
21 TO SEE A YELLOWISH HUE COME ABOUT. THAT WILL
22 USUALLY SPREAD TOWARDS THE PERIPHERY OF THE EDGE
23 OF THE BRUISE. THAT'S FOLLOWED BY RESOLUTION
24 USUALLY CENTRALLY, SO IT BEGINS TO CLEAR UP
25 NORMALLY IN THE CENTER.

1 Q CAN YOU GIVE US ANY -- I UNDERSTOOD THESE ARE
2 GENERAL TIMEFRAMES, ANY GENERAL NUMBERS TO USE IN
3 ASSESSING RED AND BLUE OR...

4 A WELL, RED CAN APPEAR IMMEDIATELY OR SOMETIMES
5 BE LATE. USUALLY BLUISHNESS MANY TIMES CAN OCCUR
6 WITHIN AN HOUR OR TWO. IT DEPENDS ON THE KIND OF
7 INJURY, THE SITE OF THE INJURY.

8 Q OKAY.

9 A BUT USUALLY WITHIN 24 HOURS ONE BEGINS TO SEE
10 SOME BLUISH CHANGE. THEN THE YELLOW ACTUALLY
11 CORRESPONDS TO THE PRODUCTION OF HEMOSIDERIN
12 PIGMENT, IF YOU LOOK AT IT MICROSCOPICALLY, AND
13 IT'S GOING TO BECOME APPARENT AROUND DAY THREE OR
14 SO, BUT IT CAN TAKE LONGER.

15 Q OKAY. A HEMOSIDERIN PIGMENT, THAT'S A
16 FUNCTION OF THE BREAK DOWN OF THE IRON IN BLOOD?

17 A THAT'S CORRECT, YES, THANK YOU -- THE RED
18 CELLS BREAK DOWN AND THE BODY ACTUALLY HAS LITTLE
19 CELLS THAT COLLECT THE HEMOGLOBIN AND THE RED
20 CELLS IN ORDER TO KEEP THAT IRON IN THE BODY AND
21 PROCESS IT INTO A PIGMENT THAT WE CALL
22 HEMOSIDERIN.

23 Q OKAY. AND A BRUISE IS IN ESSENCE A
24 COLLECTION OF BLOOD IN THE SITE?

25 A YES, IT IS.

1 Q ALL RIGHT. OKAY. AND I ASKED YOU THAT IN
2 ONE SENSE -- IN YOUR NOTE AS FAR AS THE CHEST GOES
3 -- I'M NOT SURE WHICH PHOTO WAS PRESENTED TO YOU.
4 MAYBE IT'S STATE'S -- THIS ONE. YOU NOTE IN THE
5 AUTOPSY REPORT A COUPLE OF BRUISES IN THE CHEST
6 AREA?

7 A YES.

8 Q I BELIEVE, IN THE CENTRAL CHEST OF TWO SMALL
9 CIRCULAR CONTUSIONS, AND CONTUSION IS A FANCY WORD
10 FOR BRUISE, RIGHT?

11 A RIGHT.

12 Q ONE SOMEWHAT BLUE AND ONE SOMEWHAT RED AND
13 AROUND ONE CENTIMETER IN SIZE OVER THE CARDIAC
14 AREA; IS THAT CORRECT?

15 A RIGHT, THAT'S CORRECT.

16 Q ONE CENTIMETER IN SIZE, 2.54 CENTIMETERS PER
17 INCH, SO THAT'S SOMETHING LESS THAN HALF AN INCH
18 IN SIZE?

19 A YES, LESS THAN HALF AN INCH.

20 Q ANYTHING -- I KNOW ONE IS SOMEWHAT BLUE AND
21 ONE IS SOMEWHAT RED, THESE ARE GOING TO BE FAIRLY
22 RECENT IN ORIGIN, I TAKE IT?

23 A I WOULD EXPECT THAT, YES.

24 Q ANY THOUGHTS ON ANYTHING IN THE HOSPITAL THAT
25 MIGHT CAUSE A REDDENING OR...

1 A I THINK THAT THERE POTENTIALLY ARE A NUMBER
2 OF THINGS, YES.

3 Q OKAY.

4 A AS I MENTIONED, CARDIAC RESUSCITATION,
5 COMPRESSION ON THE CHEST IS GOING TO OCCUR EXACTLY
6 IN THAT AREA, SO IT WOULD NOT BE UNCOMMON TO SEE
7 SUCH BRUISING ASSOCIATED WITH CARDIAC
8 RESUSCITATION, NOT FIVE MINUTES BEFORE DEATH, BUT
9 A DAY OR SO PRIOR TO DEATH. BUT ANYTHING THAT
10 CAUSED EXCESS PRESSURE OR A BLOW EITHER COULD
11 PRODUCE IT, AND AGAIN, ONE WOULD HAVE TO BE AROUND
12 THE INTENSIVE CARE ENVIRONMENT THAT THE CHILD IS
13 IN TO KNOW THAT OTHER MEDICAL TRAUMA DIDN'T CREATE
14 THOSE.

15 Q OKAY. WHERE WOULD THE BRUISES THAT YOU
16 NOTICED ON THE CHEST, THOSE TWO HALF-INCH SIZE
17 BRUISES IN THE CHEST AREA, WHERE WOULD THOSE BE
18 LOCATED IN RELATION TO THE DIAPHRAGM?

19 A THEY APPEAR TO BE PROBABLY A LITTLE BIT
20 HIGHER THAN WHERE THE DIAPHRAGM IS LOCATED.

21 Q THE GENERAL AREA?

22 A RIGHT. YOU KNOW, HERE ON THIS PHOTOGRAPH IF
23 YOU WANT -- ANATOMICALLY THE NIPPLES ARE LOCATED
24 HERE, AND THE ONE FAINT BRUISE THAT YOU CAN SEE IS
25 CENTRAL, HERE IN THE PHOTOGRAPH. AGAIN, IT'S VERY

1 DIFFICULT TO MAKE OUT HERE. AGAIN THIS IS EARLIER
2 THAN WHERE I EXAMINED IT AND BRUISES PROGRESS WITH
3 AGING. (INDICATING)

4 Q OKAY.

5 A BUT IT'S ABOUT THAT LEVEL, AND THAT'S A
6 LITTLE HIGHER THAN THE DIAPHRAGM.

7 Q OKAY. NOW, LET'S SEE IF I'VE GOT THIS
8 STRAIGHT. YOU HAVE AN INJURY TO FLESH SUCH THAT
9 IT CAUSES AN ACCUMULATION OF BLOOD IN THE AREA
10 THAT SHOWS UP AS A BRUISE, RIGHT?

11 A YES.

12 Q AND THAT BRUISE RESOLVES ITSELF AS YOU'VE
13 DESCRIBED OVER TIME, CORRECT?

14 A YES.

15 Q GIVING YOU THE COLOR CHANGES OVER TIME,
16 RIGHT?

17 A YES.

18 Q AND THE PROCESS OF THAT -- THERE'S BLOOD
19 CIRCULATING THROUGH THAT AREA, THROUGH THE BRUISE?

20 A WELL, AGAIN WE'RE TAKING AS A HYPOTHETICAL
21 SITUATION A SINGLE BLOW TO AN AREA.

22 Q OKAY.

23 A AND WHAT THAT BLOW CAN DO IS DAMAGE THE BLOOD
24 VESSELS SUCH THAT THEY LEAK AND THAT'S WHERE THE
25 HEMORRHAGE COMES INTO THE TISSUE.

1 Q RIGHT.

2 A SO ASSUMING THAT NO FURTHER BLOWS HAVE
3 OCCURRED, WHAT WE SEE IS A GRADUAL RESOLUTION.
4 FIRST, THOSE SMALL ENDING VESSELS WILL BE EITHER
5 CLOTTED OFF OR SEALED BY A CLOT, SUCH THAT THERE'S
6 NO MORE BLEEDING. SOME FLUID WILL COME INTO THE
7 AREA BECAUSE OF ASSOCIATED TISSUE DAMAGE.

8 Q OKAY.

9 A AND INFLAMMATORY CELLS WILL BEGIN TO MAKE
10 THEIR WAY INTO THE AREA. SOME OF THOSE
11 INFLAMMATORY CELLS ARE THE ONES THAT WILL ACTUALLY
12 CONSUME THE RED BLOOD CELLS AND THEN REPROCESS THE
13 HEMOGLOBIN FROM THE RED BLOOD CELLS IN THE
14 HEMA-SERUM, WHICH IS THEN INJECTED BACK INTO THE
15 BODY'S SYSTEM FOR REPRODUCING RED CELLS. IT'S
16 VERY CONSERVATIVE.

17 Q AND THIS PROCESS OF RESOLVING THE BRUISE, IF
18 YOU WILL --

19 A YES.

20 Q -- THIS PROCESS OF CHANGING IT, THE PROCESS
21 OF THE COLOR CHANGING AND BRUISE GOING AWAY
22 EVENTUALLY, THAT CONTINUES WHILE THE PERSON LIVES;
23 IS THAT CORRECT?

24 A YES.

25 Q OKAY. THAT PROCESS CEASES AT THE TIME OF

1 DEATH I WOULD TAKE IT, CORRECT?

2 A YES, IT DOES, RIGHT.

3 Q NOW, DOCTOR, IN ADDITION TO PERFORMING THE
4 AUTOPSY YOURSELF, DID YOU HAVE THE OPPORTUNITY TO
5 REVIEW ANY MEDICAL RECORDS IN ASSOCIATION WITH
6 THIS CASE?

7 A YOU KNOW, LOOKING AT MY NOTES I PRESUME I MAY
8 HAVE SEEN SOME OF THE MEDICAL RECORDS ON THE CHILD
9 DURING HER CARE, BUT I REALLY CAN'T BE SURE. NO,
10 THERE WAS NO COMPREHENSIVE REVIEW OF HER RECORDS.

11 Q OKAY. WHAT CAN YOU MAKE, FROM A
12 PATHOLOGIST'S STANDPOINT, OF THE FACT THAT THE
13 FIRST NOTATION OF THE SWOLLEN EYE SUCH AS IS
14 DEPICTED IN ONE OF THESE PHOTOGRAPHS IS THE CHILD
15 IS ADMITTED ON ABOUT THE EARLY MORNING HOURS OF
16 THE...

17 A THE 28TH, I BELIEVE.

18 Q -- THE 28TH, THE FIRST NOTATION OF SEEING THE
19 SWOLLEN EYE IS 3:00 P.M. THE AFTERNOON OF THE
20 28TH. INTERVENING IN THAT TIME PERIOD IS THE
21 SURGERY ON THE BRAIN THAT YOU SEE THE RESULTS OF.
22 DOES THAT HELP YOU AS FAR AS GAUGING TIME FOR THE
23 BRUISING OF THE EYE?

24 A WELL, THERE ARE TWO POTENTIAL POSSIBILITIES
25 FOR THE BRUISING ON THE EYE, AT LEAST TWO, I WOULD

1 SAY. ONE WOULD BE THE MORE TYPICAL BLOW TO THE
2 EYE, YOU KNOW, WITH SUBSEQUENT ACCUMULATION OF
3 BLOOD.

4 Q RIGHT.

5 A IN THIS CASE, WE'D HAVE TO SAY THE VERY SLOW
6 APPEARANCE OF ANY COLOR CHANGE THAT WAS NOTED BY
7 THE MEDICAL PERSONNEL, THIS OTHER POSSIBILITY IS
8 THAT THIS WOULD BE ON THE LEFT SIDE, AND IT WAS
9 ALSO ON THE LEFT SIDE THAT I SAW A HEMORRHAGE
10 BEHIND THE EYEBALL.

11 Q RIGHT.

12 A AND MUCH IN A SIMILAR WAY IN THE WAY THAT
13 SOMEBODY CAN GET A SHINER FROM A BROKEN NOSE, IT
14 DOESN'T APPEAR IN MINUTES, BUT IT'S USUALLY THE
15 NEXT DAY OR TWO DAYS LATER BEFORE IT BECOMES VERY
16 APPARENT BECAUSE THERE WAS A DEEP HEMORRHAGE IN
17 THE TISSUES NEARBY.

18 PART OF THE WAY THAT THE BODY DEALS WITH
19 BLOOD PRODUCTS IS THESE CELLS WERE MOBILE, SO
20 THEY'LL GRAB A LITTLE BIT OF SOMETHING AND THEY'LL
21 DRAG IT TO A NEW LOCATION AND PART OF THE
22 CIRCULATORY SYSTEM OR LYMPHATIC SYSTEM TENDS TO
23 DISTRIBUTE THIS STUFF OUT OVER TIME, SO THE
24 POSSIBILITY OF THE DEVELOPMENT WAS A SLOW ONE FROM
25 THE RETRO-ORBITAL HEMORRHAGE ON THE LEFT.

1 Q OKAY, THE RETRO-ORBITAL HEMORRHAGE ON THE
2 LEFT IS RELATED TO THE INJURY TO THE BRAIN?

3 A YES.

4 Q SO WHAT YOU -- ANOTHER EXPLANATION OTHER THAN
5 A BLOW TO THE EYE IS A DIFFUSION OF THE HEMORRHAGE
6 IN THE LEFT EYE THAT -- AND THE HEMORRHAGE IN THE
7 LEFT EYE BEING TIED IN TO THE DAMAGE TO THE BRAIN.
8 DO I HAVE YOU STRAIGHT ON THAT?

9 A YES, THAT'S WHAT I'M SAYING.

10 Q OKAY. NOW YOU SAW A HEMORRHAGE TO THE LEFT
11 EYE, CORRECT?

12 A WHEN YOU SAY THE LEFT EYE, DO YOU MEAN THE
13 EYELID?

14 Q I'M SORRY. YOU SAW A RETINAL HEMORRHAGE TO
15 THE LEFT EYE?

16 A WELL, RETINAL HEMORRHAGE AND RETRO-ORBITAL,
17 SO A HEMORRHAGE INTO THE SOFT TISSUE BEHIND THE
18 EYEBALL.

19 Q OKAY.

20 A ALL THAT ON THE LEFT.

21 Q AND ON THE RIGHT?

22 A ON THE RIGHT SIDE WE HAD NO RETRO-ORBITAL
23 HEMORRHAGE, JUST INTRARETINAL HEMORRHAGE, SO
24 HEMORRHAGE INTO THE TISSUE OF THE EYE WHERE WE SEE
25 THE RETINA AND ALSO INTO THAT PART OF OPTIC NERVE

1 THAT COMES INTO THE EYE.

2 Q YOU WERE NOT ABLE TO VISUALIZE ANY OLD
3 SUBDURAL HEMORRHAGE AT THE TIME YOU CONDUCTED THE
4 AUTOPSY, CORRECT?

5 A RIGHT, THAT'S CORRECT.

6 Q GIVEN WHAT YOU KNOW ABOUT THE PROCEDURE THAT
7 WAS CONDUCTED AT THE HOSPITAL, YOU DON'T FIND THAT
8 SURPRISING, DO YOU?

9 A WELL, IT'S QUITE LIKELY THAT THEY WOULD HAVE
10 DONE THEIR BEST TO REMOVE WHATEVER THEY COULD OF
11 THE OLD HEMATOMA BECAUSE THAT ALSO OCCUPIED SPACE
12 AND WAS A THREAT TO THE CHILD'S LIFE.

13 Q CAN YOU DATE SUBDURAL HEMATOMAS?

14 A YES, YES, THERE ARE -- AGAIN, USING
15 MICROSCOPIC CRITERIA, THERE ARE SCHEMA LAID OUT
16 AGAIN TO MAKE ROUGH -- OR LET'S SAY ESTIMATES
17 ABOUT THE AGES OF HEMATOMAS, RIGHT.

18 Q AND YOU GOT AN ACUTE HEMATOMA AND THERE'S A
19 SECOND CATEGORY?

20 A RIGHT.

21 Q IS THAT SUBACUTE HEMATOMA THAT SOME PEOPLE
22 USE?

23 A YES, AND I DON'T KNOW EXACTLY HOW PEOPLE
24 BREAK THEM DOWN, AND SO SOMETIMES WE WILL TEND TO
25 USE TERMINOLOGY IN ITS INEXACTNESS BECAUSE IT

1 GIVES US SOME INEXACT SAFETY.

2 Q SO THEN YOU HAVE FLEXIBILITY?

3 A YES, BUT THEN IF YOU LOOK AT HOURLY
4 PROGRESSIONS, THERE ARE PUBLISHED CHANGES
5 MICROSCOPICALLY BASED UPON GROUPS OF HOURS.

6 Q AND YOU SAY MICROSCOPICALLY, THAT'S A LOT OF
7 WHAT PATHOLOGISTS DO WITH PEOPLE THAT ARE DEALING
8 WITH A LIVE PATIENT MAY NOT HAVE THE LUXURY OF
9 DOING?

10 A THAT'S ABSOLUTELY CORRECT.

11 Q AND YOU CAN TAKE THINGS AND COMPARE THEM
12 AGAINST WHAT YOUR COLLEAGUES HAVE DONE OVER MANY,
13 MANY YEARS?

14 A RIGHT.

15 Q NOW, IN ATTEMPTING TO DATE A HEMATOMA, A
16 SUBDURAL HEMATOMA, CAN THERE BE CHANGES IN THE
17 DURA, MICROSCOPICALLY, ASSOCIATED WITH THE
18 SUBDURAL HEMATOMA?

19 A YES, AND ALMOST BY DEFINITION THEY WOULD BE
20 ASSOCIATED, BECAUSE THE BLEEDING HAS OCCURRED
21 BETWEEN THE DURA.

22 Q RIGHT.

23 A WHICH IS A TOUGH FIBROUS WHITE LOOKING
24 COVERING AND THE BRAIN TISSUE UNDERNEATH IT, SO
25 THE HEMORRHAGE IS GOING TO HAVE TO BE IN CONTACT

1 WITH IT. IN WHAT WE'RE TALKING ABOUT THE DATING
2 OR THE AGING IF YOU WOULD, OF SUBDURAL HEMATOMAS,
3 WHAT WE'RE TALKING ABOUT IS JUST TRYING TO MAP THE
4 PROGRESSION OF THE BODY'S HEALING PROCESS.

5 Q RIGHT.

6 A HEALING CAN ONLY COME FROM TISSUE THAT'S
7 ALIVE. THE BLOOD THAT'S IN THE SPACE IS NO LONGER
8 IN DIRECT COMMUNICATION WITH ANYTHING. IT IS
9 ESSENTIALLY DEAD, IF YOU WILL. IT TYPICALLY IS
10 FROM THE DURA SURFACE, THE ACTUAL VASCULARITY THAT
11 THE BODY WILL BEGIN TO SEND SMALL CELLS THAT START
12 THE HEALING PROCESS, AND IT'S VERY MUCH LIKE THE
13 SCARRING PROCESS THAT OCCURS ANYWHERE ON THE BODY,
14 FROM THE LIVE TISSUE THE BODY SENDS OUT SMALL
15 CELLS THAT BEGIN TO CREATE FIBROUS TISSUE, OR WHAT
16 WE CALL SCAR TISSUE, AND ALSO BEGIN TO CREATE
17 BLOOD VESSELS TO NOURISH THAT SCAR TISSUE. SO
18 WHEN IT COMES FROM THE DURA ITSELF IT WILL
19 TYPICALLY PROVIDE THAT INFORMATION.

20 Q OKAY. LET ME ASK YOU THIS, WAS THE DURA IN
21 THIS PARTICULAR CASE PRESERVED AT AUTOPSY?

22 A THE AREA OVER THE SITE OF SURGERY WAS ABSENT.

23 Q IT WAS ABSENT?

24 A RIGHT.

25 Q SO YOU DIDN'T HAVE IT?

1 A THAT'S HOW THEY GOT IN TO DRAIN THE SUBDURAL
2 HEMATOMA, YES.

3 Q AND THAT WOULD BE THE AREA THAT YOU'D BE MOST
4 INTERESTED IN LOOKING AT, I TAKE IT?

5 A WELL, IF THE INTEREST WERE IN DATING, YES,
6 UH-HUH.

7 Q WERE SECTIONS OF THE BRAIN TAKEN AS A PART OF
8 THE AUTOPSY?

9 A YES.

10 Q PERHAPS -- I'M SORRY.

11 MR. STRICKLER: JUST ONE MOMENT, YOUR HONOR.

12 (PAUSE)

13 MR. STRICKLER: ALL RIGHT. THANK YOU VERY
14 MUCH. THAT'S ALL.

15 THE COURT: REDIRECT?

16 MS. CAMPBELL: YES, SIR.

17 REDIRECT EXAMINATION

18 BY MS. CAMPBELL:

19 Q DOCTOR, LET ME CLEAR UP ONE THING, IN THIS
20 CASE WHEN YOU EXAMINED THE EYES OF THE CHILD, YOU
21 FOUND MULTIPLE LAYERS OF RETINAL HEMORRHAGES IN
22 BOTH EYES; IS THAT CORRECT?

23 A YES.

24 Q BUT THEN IN THE LEFT EYE YOU FOUND ADDITIONAL
25 TRAUMA; IS THAT CORRECT?

- 1 A THAT'S CORRECT.
- 2 Q AND WHAT WAS THAT TRAUMA?
- 3 A THAT WAS HEMORRHAGE INTO THE SOFT TISSUE
- 4 RIGHT BEHIND THE EYEBALL.
- 5 Q EXCUSE ME, I'M KIND OF -- WHAT DOES
- 6 HEMORRHAGE MEAN, BLEEDING?
- 7 A BLEEDING, YES.
- 8 Q AND BLEEDING SUCH AS THIS IS CONSISTENT WITH
- 9 SOME KIND OF TRAUMA?
- 10 A LIKE SOMETHING HAS TO TEAR A BLOOD VESSEL FOR
- 11 THIS BLEEDING TO OCCUR.
- 12 Q AND THE MULTIPLE LAYERS OF RETINAL
- 13 HEMORRHAGES, THAT WOULD BE CONSISTENT WITH THE
- 14 SHAKING?
- 15 A YES.
- 16 Q AND THE OPTIC NERVE, WOULD THAT ALSO BE
- 17 CONSISTENT WITH SHAKING, AS WELL AS TRAUMA TO THAT
- 18 EYE?
- 19 A YES.
- 20 Q WHICH WOULD ALSO BE CONSISTENT, AS I SHOW YOU
- 21 IN STATE'S EXHIBIT 19, WITH BRUISING; IS THAT
- 22 RIGHT?
- 23 A YES.
- 24 Q AND YOU EXPLAINED THAT THERE WERE TWO
- 25 POSSIBLE WAYS THAT BRUISE COULD HAVE APPEARED. IT

1 COULD HAVE BEEN FROM THE DAMAGE TO THE EYE ITSELF;
2 IS THAT CORRECT?

3 A I'M NOT SURE WHAT YOU MEAN BY DAMAGE TO THE
4 EYE ITSELF.

5 Q YOU TALKED ABOUT HOW THE HEMORRHAGING IN THE
6 EYE COULD HAVE MANIFESTED ITSELF IN THAT BRUISE;
7 IS THAT CORRECT?

8 A THE RETINAL HEMORRHAGE WOULD NOT HAVE
9 MANIFESTED THAT WAY.

10 Q BUT THE OPTIC HEMORRHAGING?

11 A BUT THE RETRO-ORBITAL --

12 Q THE RETRO-ORBITAL SITE. OKAY.

13 A THE BLEEDING BEHIND THE EYE.

14 Q THE BLEEDING BEHIND THE EYE?

15 A YES.

16 Q AND IT WOULD ALSO BE CONSISTENT WITH A BLOW
17 TO THAT EYE?

18 A YES.

19 Q THAT WOULD BE AN OUTSIDE FORCE TRAUMA TO THAT
20 EYE?

21 A YES.

22 Q HE ALSO HAD ASKED YOU ABOUT BRUISING AND
23 AGING AND EVERYTHING?

24 A YES.

25 Q DOCTOR, I BELIEVE IT WAS YOU WHO EXPLAINED TO

1 THE JURY THAT IT'S DEPENDANT ON HOW THE BRUISE IS
2 DELIVERED?

3 A YES.

4 Q DEPENDING ON THE PERSON, THE BRUISES MANIFEST
5 THEMSELVES AT DIFFERENT TIMES, SO IT'S SOMEWHAT
6 HARD TO --

7 A YES.

8 Q BUT IN THIS CASE YOU TALKED ABOUT THAT ON THE
9 BUTTOCKS AREA YOU TOOK AN EXTRA STEP AND YOU
10 LOOKED AT THAT BRUISING MORE CLOSELY; IS THAT
11 CORRECT?

12 A RIGHT, UNDER THE MICROSCOPE.

13 Q AND YOU ACTUALLY WENT INTO THE BUTTOCKS AND
14 LOOKED AT IT UNDER THE SKIN?

15 A YES.

16 Q AND AS YOU TESTIFIED EARLIER THAT'S THE BEST
17 WAY TO DO THAT?

18 A RIGHT.

19 Q I SHOW YOU THIS PHOTOGRAPH. DOES THAT SHOW
20 HOW YOU ACTUALLY EXAMINED THE BRUISING --- ONE OF
21 THE PLACES YOU EXAMINED THE BRUISING ON THE
22 BUTTOCKS OF THIS CHILD?

23 A YES.

24 Q AND THAT ACCURATELY DEPICTS WHAT YOU SAW?

25 A IT DOES.

1 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
2 OFFER IT INTO EVIDENCE.

3 MR. STRICKLER: I'D OBJECT, 403.

4 THE COURT: SUSTAINED UNDER 403.

5 MR. STRICKLER: THANK YOU, SIR.

6 BY MS. CAMPBELL:

7 Q DOCTOR, YOU'VE HAD A CHANCE TO EXAMINE THIS
8 PHOTOGRAPH, RIGHT?

9 A YES.

10 Q AND IT ACCURATELY REFLECTS YOUR FINDINGS THAT
11 DAY?

12 A IT DOES.

13 Q AND WERE YOUR FINDINGS, DOCTOR, CONSISTENT
14 WITH A CHILD HAVING BEEN BEATEN SHORTLY BEFORE HER
15 ADMISSION TO THE HOSPITAL?

16 A IT DEPENDS UPON YOUR DEFINITION OF SHORTLY.

17 Q HOURS, UP TO DAYS?

18 A POSSIBLY LONGER UNLESS THERE WERE REPEATED
19 EPISODES. THE MICROSCOPIC EXAMINATION SHOWED NOT
20 ONLY, YOU KNOW, FRESH BLOOD WITHIN THE TISSUE BUT
21 ALSO THE PRESENCE OF SOME HEMOCONIA AND THAT
22 TYPICALLY REQUIRES SEVERAL DAYS FOR ITS
23 APPEARANCE.

24 Q SO IT SHOWED BOTH FRESH AND OLD BLEEDING?

25 A YES.

1 MS. CAMPBELL: I HAVE NOTHING FURTHER.

2 MR. STRICKLER: JUST ON THAT VERY LAST POINT,
3 YOUR HONOR.

4 THE COURT: RECROSS.

5 RECROSS-EXAMINATION

6 BY MR. STRICKLER:

7 Q DOES IT NECESSARILY LITTLE SHOW FRESH AND OLD
8 BLEEDING OR DOES IT SHOW A BRUISE -- OR CAN IT
9 ALSO SHOW A BRUISE IN THE PROCESS OF RESOLVING
10 ITSELF?

11 A WELL, TECHNICALLY LOOKING AT A BRUISING
12 PROCESS OF RESOLVING ITSELF, NOT IDENTIFYING THE
13 EXACT CAUSE.

14 Q OKAY. SO WHAT YOU'RE COMFORTABLE IN SAYING
15 AS A PATHOLOGIST IS THAT THERE WERE BRUISES TO THE
16 BUTTOCKS AS YOU DESCRIBED THAT WERE IN THE PROCESS
17 OF RESOLVING THEMSELVES?

18 A YES.

19 MR. STRICKLER: THANK YOU, THAT'S ALL.

20 THE COURT: THANK YOU, SIR. YOU MAY STEP
21 DOWN.

22 ANY OBJECTION TO THE DOCTOR BEING RELEASED?

23 MS. CAMPBELL: NO.

24 THE COURT: ALL RIGHT. CALL YOUR NEXT
25 WITNESS.

1 MS. CAMPBELL: THE STATE CALLS DR. RABON.

2 THE CLERK: IF YOU'D PLEASE COME FORWARD.

3 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
4 RIGHT HAND.

5 DR. BRYAN RABON,

6 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: PLEASE HAVE A SEAT AND STATE YOUR
8 NAME FOR THE RECORD.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q DR. RABON, WHERE ARE YOU EMPLOYED?

12 A I AM A RESIDENT AT RICHLAND MEMORIAL
13 HOSPITAL, THE CHILDREN'S HOSPITAL.

14 Q THE RICHLAND MEMORIAL CHILDREN'S HOSPITAL?

15 A YES.

16 Q AND AS A RESIDENT AT RICHLAND MEMORIAL
17 CHILDREN'S HOSPITAL, WHAT DO YOU DO?

18 A WE ARE -- MY FIRST AND PRIMARY RESPONSIBILITY
19 IS PATIENT CARE. I TAKE CARE OF CHILDREN AND IN
20 THE PROCESS, I AM LEARNING ABOUT GENERAL
21 PEDIATRICS, AND I ESSENTIALLY HAVE AN ON-THE-JOB
22 TYPE TRAINING.

23 Q OKAY. SO, DOCTOR, YOU'VE ALREADY RECEIVED
24 YOUR MEDICAL DEGREE; IS THAT CORRECT?

25 A YES.

1 Q WHEN DID YOU RECEIVE THAT?

2 A IN 1999.

3 Q AND WHERE DID YOU GO TO SCHOOL FOR THAT?

4 A THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF
5 MEDICINE.

6 Q AND HOW LONG HAVE YOU BEEN IN THE RESIDENCY
7 PROGRAM AT RICHLAND MEMORIAL CHILDREN'S HOSPITAL?

8 A I'M COMPLETING MY THIRD YEAR.

9 Q YOU'RE COMPLETING YOUR THIRD YEAR, SO, IN
10 FACT, YOU'LL BE MOVING ON THIS SUMMER?

11 A YES.

12 Q AND AS PART OF YOUR RESIDENT DUTIES, YOU
13 MENTIONED THAT IT'S KIND OF AN ON-THE-JOB
14 TRAINING?

15 A CORRECT.

16 Q AND AS PART OF YOUR DUTIES, DO YOU ASSIST
17 CERTAIN DOCTORS -- CERTAIN EXPERTS IN CERTAIN
18 FIELDS?

19 A YES.

20 Q ARE YOU FAMILIAR WITH DR. HUBBIRD?

21 A YES.

22 Q BACK IN MARCH OF 2000, WERE YOU WORKING WITH
23 HIM?

24 A I WAS.

25 Q AND IN WHAT CAPACITY WERE YOU WORKING WITH

1 DR. HUBBIRD BACK THEN?

2 A I WAS THE INTERN RESIDENT WHO WAS ASSIGNED TO
3 THE P.I.C.U., THE PEDIATRIC INTENSIVE AREA UNIT,
4 FOR THAT MONTH.

5 Q SO THAT WAS YOUR ASSIGNMENT FOR THAT MONTH?

6 A YES.

7 Q AND WERE YOU WORKING WHEN A SMALL CHILD NAMED
8 MINOR WAS ADMITTED TO YOUR UNIT?

9 A YES, I WAS.

10 Q AND TELL THE JURY HOW THAT CAME ABOUT?

11 A I'M NOT SURE I UNDERSTAND THE QUESTION.

12 Q FOR WHAT REASON WAS SHE ADMITTED TO YOUR
13 UNIT?

14 A SHE WAS ADMITTED TO OUR UNIT BECAUSE SHE WAS
15 CRITICALLY ILL. SHE WAS ON A VENTILATOR. SHE WAS
16 HEMODYNAMICALLY UNSTABLE AND SHE HAD JUST COME
17 BACK FROM THE OPERATING ROOM.

18 Q SO YOU FIRST CAME IN CONTACT WITH THIS
19 PATIENT ON THE AFTERNOON OF THE 28TH?

20 A YES.

21 Q AND AS PART OF YOUR DUTIES AS A RESIDENT, DO
22 YOU MAKE ANY ATTEMPTS TO GET A HISTORY AS TO WHAT
23 MAY HAVE HAPPENED TO A CHILD?

24 A CORRECT.

25 Q AND DID YOU DO THAT IN THIS CASE?

1 A YES, I DID.

2 Q AND SPECIFICALLY IN THIS CASE THAT AFTERNOON
3 OF THE 28TH, DID YOU HAVE AN OPPORTUNITY TO TALK
4 TO NATHANIEL MITCHELL, THE FOSTER FATHER OF THIS
5 CHILD?

6 A YES, I DID. I DO NOT RECALL THE EXACT TIMING
7 OF IT, BUT I DID IN MY NOTES DOCUMENT THAT I
8 SPOKE WITH THE FOSTER FATHER.

9 Q AND AGAIN THE PURPOSE IN YOU SPEAKING WITH
10 HIM IS FOR WHAT?

11 A TO OBTAIN HISTORY THAT MAY BE RELEVANT TO
12 HELPING IN THE CARE OF THE CHILD.

13 Q AND SPECIFICALLY IN THIS CASE, WERE YOU
14 TRYING TO ASCERTAIN IF THIS CHILD HAD SUFFERED ANY
15 ACCIDENT, FALLS, BLOWS OR THINGS OF THAT NATURE?

16 A CORRECT, AND IN ADDITION ANY OTHER THINGS
17 THAT COULD CAUSE THE CHILD TO BE ILL, ANY
18 PRECEDING ILLNESSES OR ANY TYPE OF BEHAVIOR OR
19 ANYTHING THAT COULD HAVE POSSIBLY EXPLAINED THE
20 CHILD'S STATE.

21 Q AND WHEN YOU SPOKE TO THE FATHER, WHAT DID HE
22 SAY TO YOU ABOUT THIS CHILD? DO YOU HAVE YOUR
23 NOTES WITH YOU?

24 A YES, YES.

25 Q SO YOU DID MAKE NOTES IN THIS CASE?

1 A I DID. IN MY HISTORY AND PHYSICAL ON
2 ADMISSION, I NOTED, "THE FOSTER FATHER SAYS CHILD
3 WAS IN THE BATHROOM THIS MORNING AND SUBSEQUENTLY
4 WENT TO THE BATHROOM AND FELL OUT AND WAS
5 UNRESPONSIVE."

6 Q THAT WAS HIS EXPLANATION OF HOW THE CHILD HAD
7 BEEN ACTING THAT DAY?

8 A THAT'S WHAT I DOCUMENTED, YES.

9 Q THAT THE CHILD HAD GONE TO THE BATHROOM AND
10 THEN FELL OUT?

11 A YES.

12 Q AND THAT'S THE EXTENT OF WHAT HE TOLD YOU
13 ABOUT THE CHILD'S BEHAVIOR THAT MORNING?

14 A THAT IS WHAT I HAD DOCUMENTED AS TO WHAT HE
15 TOLD ME, YES.

16 MS. CAMPBELL: I HAVE NOTHING ELSE.

17 THE COURT: CROSS-EXAMINATION, MR. STRICKLER?

18 MR. STRICKLER: YES, SIR. THANK YOU. JUST
19 VERY BRIEFLY.

20 CROSS-EXAMINATION

21 BY MR. STRICKLER:

22 Q GOOD MORNING, DR. RABON. MY NAME IS DOUG
23 STRICKLER. I'M ONE OF THE ATTORNEYS REPRESENTING
24 MR. MITCHELL.

25 A GOOD MORNING.

1 Q WE'VE NEVER HAD THE CHANCE TO SPEAK BEFORE,
2 HAVE WE?

3 A NO, WE HAVEN'T.

4 Q I'LL TRY TO KEEP IT BRIEF. YOU TESTIFIED
5 REGARDING THE CONVERSATION THAT YOUR NOTES
6 REVEALED THAT YOU HAD WITH THE FOSTER FATHER?

7 A CORRECT.

8 Q THAT'S JUST WHAT YOU TESTIFIED TO. DO YOU
9 HAVE ANY INDEPENDENT RECOLLECTION OF THAT
10 CONVERSATION YOURSELF?

11 A I DO NOT.

12 Q YOU DO NOT?

13 A NO.

14 Q THAT WAS OVER TWO YEARS AGO?

15 A CORRECT.

16 Q YOU HAVE SEEN, I TAKE IT, AND IT'S FAIR TO
17 SAY, A NUMBER OF PATIENTS AND PARENTS OF PATIENTS
18 IN THAT TIME?

19 A YES.

20 Q CAN YOU SUPPLY US WITH ANY MORE INFORMATION
21 REGARDING THAT OF YOUR OWN MEMORY OTHER THAN WHAT
22 YOU'VE TESTIFIED TO?

23 A WITH REGARDS TO --

24 Q TO THE CONVERSATION THAT YOU HAD?

25 A NO, I CAN'T.

1 Q OKAY. SO YOU'RE RELYING EXCLUSIVELY ON THE
2 NOTES THAT YOU HAD MADE, THE BRIEF NOTES THAT YOU
3 MADE AT OR NEAR THAT TIME; IS THAT CORRECT?

4 A CORRECT.

5 Q ALL RIGHT. THAT'S FINE.

6 YOU MAKE A NUMBER OF NOTES. YOU WERE
7 ACTUALLY INVOLVED AS THE RESIDENT FOR, IF NOT THE
8 DURATION, THEN A SUBSTANTIAL PORTION OF THE TIME
9 THAT MINOR WAS BEING TREATED AT THE HOSPITAL,
10 CORRECT?

11 A YES, SIR.

12 Q I'D LIKE TO PRESENT YOU WITH IT LOOKS LIKE
13 FOUR OR FIVE PAGES OF HOSPITAL RECORDS AND ASK IF
14 YOU RECOGNIZE THOSE.

15 A YES, I DO. THESE ARE ALL MY NOTES.

16 Q COPIES OF YOUR NOTES?

17 A YES, COPIES OF MY NOTES.

18 Q I THOUGHT SO. YOUR HANDWRITING IS A LITTLE
19 BETTER THAN MINE. I THOUGHT I COULD MAKE OUT YOUR
20 NAME ON THAT. I'D LIKE TO ASK YOU REALLY ABOUT
21 ONE THING IN PARTICULAR. YOU SAW THE CHILD ON A
22 NUMBER OF OCCASIONS OVER A PERIOD OF A COUPLE OF
23 DAYS; IS THAT CORRECT?

24 A YES, I DID.

25 Q I'M REFERRING TO THIS THIRD PAGE HERE THAT

1 SAYS 3/28/2000, 14:00, THAT WOULD BE MILITARY
2 TIME, 2:00; IS THAT RIGHT?

3 A RIGHT.

4 Q OKAY. THIRD LINE FROM THE BOTTOM, THE
5 BEGINNING OF THAT SENTENCE THERE SAYS, "K.U.B."
6 FOR THE LIFE OF ME, I CAN'T FIGURE OUT WHAT THAT
7 IS.

8 A K.U.B. IS JUST AN ABBREVIATION THAT WE USE
9 FOR AN X-RAY FOR KIDNEY, URETHRA, AND BLADDER.
10 IT'S BASICALLY JUST AN X-RAY OF THE LOWER ABDOMEN.

11 Q OKAY. SO --

12 A WE OBTAINED THAT TO ENSURE ADEQUATE PLACEMENT
13 OF OUR INTRAVENOUS CATHETER.

14 Q WHERE WAS THE INTRAVENOUS CATHETER PLACED;
15 WAS THAT THE FEMORAL CATHETER?

16 A IT WAS A RIGHT FEMORAL CENTRAL VENOUS LINE
17 AND INITIALLY THE X-RAY SHOWED IT TO BE ONE
18 CENTIMETER ABOVE THE DIAGRAM. I NOTED THAT WE
19 REMOVED IT ONE CENTIMETER AND REFASTENED IT.

20 MR. STRICKLER: OKAY. THANK YOU VERY MUCH.

21 THE COURT: ANYTHING ELSE ON REDIRECT?

22 MS. CAMPBELL: JUST ONE THING.

23 REDIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q THESE NOTES THAT YOU MADE AT THE TIME, THOSE

1 WOULD ACCURATELY REFLECT WHAT HE TOLD YOU; IS THAT
2 CORRECT?

3 A YES, THAT'S CORRECT.

4 THE COURT: THANK YOU. STEP DOWN.

5 THE STATE MAY CALL THEIR NEXT WITNESS,
6 PLEASE.

7 MS. CAMPBELL: YOUR HONOR, HE MAY GO NOW.

8 MR. STRICKLER: WITHOUT OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 YOU MAY STEP DOWN. THANK YOU, DOCTOR.

11 MR. STRICKLER: YOUR HONOR, MAY WE APPROACH
12 BRIEFLY?

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD
14 IN THE PRESENCE OF THE JURY, BUT OUT OF
15 THE HEARING OF THE JURY.)

16 THE COURT: ALL RIGHT, MADAM SOLICITOR, YOU
17 MAY CALL YOUR NEXT WITNESS, PLEASE.

18 MS. COOPER: THE STATE CALLS MRS. SHARI
19 JONES.

20 THE CLERK: IF YOU'D COME FORWARD, PLEASE.
21 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
22 RIGHT HAND.

23 SHARI JONES,

24 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR

1 FULL NAME AND SPELL YOUR LAST NAME.

2 THE WITNESS: MY NAME IS SHARI ALYCIA JONES,
3 SPELLED J-O-N-E-S.

4 DIRECT EXAMINATION

5 BY MS. COOPER:

6 Q GOOD MORNING, MRS. JONES, HOW ARE YOU TODAY?

7 A GOOD, THANK YOU.

8 Q CAN YOU TELL THE JURY A LITTLE ABOUT
9 YOURSELF, FOR INSTANCE, WHERE ARE YOU EMPLOYED?

10 A I'M THE OWNER AND PROGRAM DIRECTOR OF
11 EDUCATION EXPRESS EARLY LEARNING CENTER IN
12 NORTHEAST COLUMBIA. I'VE BEEN THERE FOUR YEARS,
13 AND I OPENED THAT FACILITY. OVER THE LAST 15
14 YEARS I'VE WORKED IN EARLY CHILDHOOD DEVELOPMENT.
15 I GOT MY BACHELOR'S DEGREE IN CHILD DEVELOPMENT
16 AND MY CERTIFICATION IS IN EARLY CHILDHOOD
17 DEVELOPMENT.

18 Q AND HOW LONG HAVE YOU -- DO YOU OWN YOUR
19 BUSINESS, EDUCATION EXPRESS, WITH ANYONE?

20 A MY HUSBAND.

21 Q HOW LONG HAVE YOU OWNED YOUR BUSINESS?

22 A SINCE AUGUST OF 1998.

23 Q AND WHAT ARE YOUR DUTIES AS BEING THE
24 DIRECTOR OF THIS DAYCARE?

25 A TO OVERSEE THE OVERALL PROGRAM, ENROLL

1 STUDENTS, PRETTY MUCH CARRY OUT THE DAILY DUTIES
2 OF GENERAL OPERATION.

3 Q OKAY. AND HOW MANY CHILDREN ARE IN YOUR
4 DAYCARE?

5 A AT THIS TIME ABOUT 130.

6 Q AND HOW MANY PEOPLE ARE ON YOUR STAFF?

7 A WITH PART TIME AND FULL-TIME, APPROXIMATELY
8 18.

9 Q OKAY. CAN YOU TELL THE JURY A LITTLE ABOUT
10 THE ROUTINE DAY THAT TAKES PLACE IN YOUR DAYCARE?

11 A WE OPEN AT 6:30. PARENTS BRING THEIR
12 CHILDREN IN, THE STAFF MEETS THEM, TAKES THE
13 CHILDREN AND THE PARENTS AND SIGNS THEM IN.

14 AT THAT POINT, USUALLY TEACHERS BEGIN
15 WHATEVER ACTIVITIES AT THE TIME THEY'RE ARRIVING.
16 IT MAY BE BREAKFAST, PLAYING WITH TOYS, OBSERVING
17 THE CHILDREN UNTIL IT'S TIME TO START THE ACTUAL
18 ACADEMIC DAY, WHICH IS USUALLY 9:00.

19 Q AND ARE THESE CHILDREN SPLIT UP INTO AGE
20 GROUPS?

21 A YES.

22 Q CAN YOU TELL THE JURY WHAT AGES THE CHILDREN
23 ARE SPLIT UP IN?

24 A OUR INFANTS ARE ZERO TO 12 MONTHS OLD AND
25 THEY HAVE A CLASSROOM. THEN WE HAVE ANOTHER GROUP

1 WHO ARE FROM 13 MONTHS TO 24 MONTHS AND THEY ALSO
2 HAVE A CLASSROOM. THEN WE HAVE A TWO YEAR OLD
3 CLASS, A THREE YOUR OLD CLASS, A FOUR YEAR OLD
4 CLASS, AND KINDERGARTEN.

5 Q SO ALONG WITH PROVIDING CARE FOR THESE
6 CHILDREN YOU ALSO EDUCATE THEM?

7 A YES.

8 Q AND TELL THIS JURY A LITTLE BIT ABOUT WHAT
9 YOU DO TO EDUCATE THEM?

10 A WE TRY TO USE APPROPRIATE DEVELOPMENTAL
11 ACTIVITIES FOR EACH AGE GROUP. MY KINDERGARTEN
12 TEACHER IS CERTIFIED. I'M ALSO CERTIFIED. I WORK
13 WITH OUR PRE-K. THE OTHER TEACHERS ARE USUALLY
14 TRAINED FOR THE OTHER AGE GROUP THEY'RE WORKING
15 WITH, AS REQUIRED THROUGH D.S.S., THROUGH CLASSES
16 THAT ARE OFFERED THROUGH MIDLANDS TECH AND SUCH.

17 Q AND DO YOU KNOW VALERIE WILSON AND IRENE
18 DESSOW?

19 A YES.

20 Q WHO ARE THEY?

21 A ONE IS CURRENTLY OUR PRESCHOOL TEACHER AND
22 THE OTHER ONE IS OUR TWO YEAR OLD TEACHER.

23 Q WHICH ONE IS THE PRESCHOOL TEACHER?

24 A VALERIE WILSON.

25 Q AND SO THEY WORK FOR YOUR DAYCARE THEN; IS

1 THAT CORRECT?

2 A YES.

3 Q DO YOU KNOW N.G. , H.G. , AND DID YOU KNOW
4 MINOR ?

5 A YES.

6 Q AND TELL THE JURY HOW YOU GOT TO KNOW THESE
7 CHILDREN?

8 A THEY ATTENDED OUR SCHOOL FOR MAYBE RIGHT AT A
9 YEAR, A LITTLE UNDER. MINOR WAS IN OUR TODDLER
10 CLASS AND JUST MOVED TO OUR TWO YEAR OLD CLASS.
11 H.G. WAS IN OUR TWO YEAR OLD CLASS AND CAME IN,
12 AND N.G. WAS IN OUR THREE YEAR OLD CLASS.

13 Q AND DO YOU KNOW WHERE THESE CHILDREN WERE
14 LIVING AT THE TIME WHEN THEY ATTENDED YOUR DAYCARE
15 -- OR WHO THEY WERE LIVING WITH, I'M SORRY, WHO
16 THEY WERE LIVING WITH?

17 A YES.

18 Q AND WHO DID THEY LIVE WITH?

19 A THE FOSTER PARENTS THAT HAD GUARDIANSHIP OVER
20 THEM. THAT WAS MR. AND MRS. MITCHELL.

21 Q AND DO YOU KNOW THE DEFENDANT, NATHANIEL
22 MITCHELL?

23 A YES.

24 Q NOW CAN YOU TELL THE JURY A LITTLE BIT ABOUT
25 WHAT -- YOU SAID THAT MINOR WAS IN THE PRE-TOD

1 CLASS; IS THAT CORRECT, PRE-TODDLER?

2 A TODDLER.

3 Q TODDLER. OKAY. TELL THE JURY A LITTLE BIT
4 ABOUT HOW SHE PERFORMED AND HOW MUCH YOU WOULD
5 INTERACT WITH HER.

6 A I PERSONALLY WOULDN'T INTERACT WITH HER A
7 WHOLE LOT, NOT BEING HER TEACHER. I WALKED
8 THROUGH ALL THE CLASSROOMS TO OBSERVE, GET TO KNOW
9 THE CHILDREN AND ALSO JUST TO GET A COMMON FEEL OF
10 WHAT'S HAPPENING IN THE CLASSES THROUGHOUT THE
11 DAY.

12 DURING THAT TIME, I USUALLY OBSERVE THE
13 TEACHERS AND HOW THEY INTERACT WITH THE CHILDREN.
14 PART OF MY JOB, EVEN THOUGH I'M THE OWNER I'M ALSO
15 THE PROGRAM DIRECTOR, AND PART OF MY JOB IS TO
16 HELP THE STAFF IN DEVELOPING THEM TO PERFORM THEIR
17 JOB TO THE UTMOST OF THE PROFESSION. I DO
18 TRAINING THROUGH D.S.S. I'M APPROVED FOR CHILD
19 CAREGIVERS, NOT JUST MINE, BUT ANY CHILD
20 CAREGIVERS.

21 SO IN DOING THAT, I LOOK AT WHAT NEEDS THE
22 STAFF MAY HAVE IN DEVELOPMENT, ANYTHING THAT I CAN
23 GIVE THEM ON TIPS ON HOW TO BETTER OPERATE IN
24 THEIR CLASSROOMS AND, AGAIN, JUST TO GET A GENERAL
25 FEEL OF WHAT'S GOING ON SO IF PARENTS HAVE

1 QUESTIONS CONCERNING THINGS THROUGHOUT THE DAY,
2 I'M ABREAST OF WHAT'S GOING ON IN EACH ROOM.

3 Q AND MRS. JONES, I FORGOT TO ASK YOU THIS, BUT
4 IS YOUR DAYCARE CENTER LICENSED?

5 A YES, IT IS.

6 Q AND BEING A LICENSED DAYCARE CENTER HERE IN
7 SOUTH CAROLINA, ARE THERE CERTAIN REGULATIONS YOU
8 HAVE TO FOLLOW?

9 A YES, WE HAVE A GROUP OF REGULATIONS THAT COME
10 FROM LICENSING THROUGH D.S.S.

11 Q OKAY. AND IS ONE OF THOSE REGULATIONS --
12 WHAT DO YOU DO IF YOU NOTICE ANY INJURIES ON A
13 CHILD?

14 A NORMALLY ANYTHING THAT -- WHEN A CHILD COMES
15 INTO OUR FACILITY, IF WE OBSERVE ANYTHING, WE HAVE
16 WHAT WE CALL AN INCIDENT REPORT THAT WE COMPLETE.
17 THIS IS FOR VARIOUS REASONS, LEGALITIES TO COVER
18 OURSELVES, AS WELL AS TO REPORT TO PARENTS
19 ANYTHING THAT WE MAY HAVE SEEN OR OBSERVED ON THAT
20 CHILD THAT WE MAY NOT BE AWARE OF WHEN IT
21 HAPPENED, HOW IT HAPPENED. WE USUALLY DOCUMENT
22 THOSE REPORTS, SIGN THEM, AND USUALLY I'LL LET THE
23 PARENTS KNOW WHAT WE HAVE FOUND.

24 Q AND YOU SAID EARLIER TO COVER YOURSELVES; IS
25 THAT SO A PARENT WON'T ACCUSE YOU OF INFLECTING

1 HARM ON ONE OF THEIR CHILDREN?

2 A YES.

3 Q NOW, IN THIS CASE DID YOU INSTRUCT IRENE
4 DESSOW AND VALERIE WILSON TO PAY CLOSER ATTENTION
5 TO MINOR AND HER BROTHER H.G. ?

6 A YES, I DID AFTER SOME INCIDENT REPORTS WERE
7 GIVEN TO ME TO SIGN.

8 Q AND EXACTLY -- EXPLAIN TO THE JURY WHAT
9 INCIDENT REPORTS WE'RE TALKING ABOUT.

10 A WELL --

11 THE COURT: YOU ALL HANG ON JUST A MINUTE.
12 YOU ALL COME UP HERE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD
14 IN THE PRESENCE OF THE JURY, BUT OUT OF
15 THE HEARING OF THE JURY.)

16 THE COURT: LADIES AND GENTLEMEN, LET ME LET
17 YOU GO TO YOUR JURY ROOM JUST A MOMENT.

18 (WHEREUPON, THE JURY LEFT OPEN COURT AT
19 APPROXIMATELY 11:47.)

20 THE COURT: YOU EITHER ARE OFFERING LYLE
21 EVIDENCE OR RES GESTAE EVIDENCE ON COURSE OF
22 CONDUCT EVIDENCE. THAT'S WHAT I PERCEIVE YOU'RE
23 ABOUT TO DO.

24 NOW, AT THE BENCH CONFERENCE YOU TOLD ME THAT
25 YOU WERE NOT IDENTIFYING WHO THE PERPETRATOR WAS,

1 BUT THERE'S ONLY ONE PERSON IN THE COURTROOM ON
2 TRIAL, SO IF THAT EVIDENCE COMES IN, THE JURY
3 OBVIOUSLY COULD INFER THAT HE DID IT, SO YOU'VE
4 GOT TO HAVE SOME EVIDENCE THAT HE DID IT.

5 MS. COOPER: JUDGE, BASICALLY MRS. JONES
6 INSTRUCTED TWO OF HER DAYCARE WORKERS THAT WORKED
7 CLOSELY WITH MINOR AND HER BROTHER H.G. TO
8 JUST MONITOR THEM CLOSELY, AND THERE WERE
9 INCIDENTS OF DOCUMENTATION OF BRUISES ON MINOR
10 BEGINNING IN OCTOBER OF '99, SPORADICALLY THROUGH
11 JANUARY AND FEBRUARY AND THEN LASTLY THE DAY
12 BEFORE SHE WAS SENT TO THE EMERGENCY ROOM, SO THE
13 LAST DOCUMENTATION WOULD BE MARCH 27TH OF 2000,
14 THE DAY BEFORE SHE WAS TAKEN TO THE EMERGENCY
15 ROOM.

16 THE COURT: AND WHAT ARE YOU ALLEGING? WHO
17 DID THAT?

18 MS. COOPER: WELL, YOUR HONOR WE'RE ALLEGING
19 THE DEFENDANT AT LEAST DID THE ONE BEFORE, THE DAY
20 BEFORE ON MARCH 27TH. WE HAVE ANOTHER WITNESS
21 HERE WHO DOCUMENTED IT AND ASKED HIM ABOUT IT, AND
22 HE INDICATED IT WAS A BUG BITE IN MARCH.

23 THE COURT: ALL RIGHT. NOW WE'RE MAKING
24 PROGRESS ON THAT ISSUE. THAT DOESN'T BOTHER ME.

25 MS. COOPER: OKAY.

1 THE COURT: NOW, IF YOU'RE TALKING ABOUT TWO
2 YEARS OR A YEAR BEFORE OR SOMETHING LIKE THAT AND
3 YOU CAN'T TIE IT UP -- YOU'VE GOT TO MEET THE
4 CLEAR AND CONVINCING EVIDENCE STANDARD BEFORE YOU
5 CAN GET THAT IN.

6 NOW, ARE YOU SURE THAT THE WITNESSES TO
7 FOLLOW CAN DOCUMENT THEY HAD A CONVERSATION?

8 MS. COOPER: WE HAVE WRITTEN DOCUMENTATION AS
9 TO THAT, YOUR HONOR. IN FACT, IN VALERIE WILSON'S
10 NOTES THAT SHE WROTE RIGHT AFTER SHE --

11 THE COURT: IS SHE GOING TO BE HERE?

12 MS. COOPER: SHE'S RIGHT THERE, YOUR HONOR.

13 THE COURT: BECAUSE I'M NOT GOING TO GIVE YOU
14 ANOTHER BITE AT THE APPLE FOR A MISTRIAL.

15 MS. COOPER: NO, SIR, SO IF I COULD MAKE IT
16 AND UNDERSTAND THAT --

17 THE COURT: I WOULD ALLOW THE TESTIMONY AS TO
18 THE COURSE OF CONDUCT AS TO THE DAY BEFORE
19 PREDICATED UPON TYING UP THAT HE MADE A STATEMENT
20 OR COMMENT ABOUT IT THAT COULD BE INCONSISTENT
21 WITH THE RULES.

22 MS. COOPER: YES, SIR.

23 THE COURT: I'M ASSUME THAT'S WHAT YOU'RE
24 GOING TO SAY.

25 MS. COOPER: YES, SIR. JUDGE, THERE IS

1 ANOTHER WITNESS AVAILABLE. HER NAME IS IRENE
2 DESSOW THAT MRS. JONES HAS ALREADY SPOKEN ABOUT,
3 AND HER LAST WRITTEN DOCUMENTATION AS TO BRUISING
4 ON MINOR WAS FEBRUARY 21ST OF 2000. WOULD I BE
5 PERMITTED TO GO INTO THAT?

6 THE COURT: HOW DO YOU TIE IT TO HIM? THAT'S
7 THE PROBLEM.

8 MS. COOPER: OKAY. THEN WE'LL SKIP THAT,
9 YOUR HONOR.

10 THE COURT: ANY OTHER BASIS OF OBJECTIONS,
11 MS. COGGIOLA?

12 MS. COGGIOLA: BASED ON -- MY UNDERSTANDING
13 IS THAT SHE IS ONLY GOING TO TESTIFY ABOUT --

14 THE COURT: MARCH 27TH.

15 MS. COGGIOLA: THAT THE PERSON, THAT THE
16 INDIVIDUAL THAT OBSERVED THE BRUISING ON THE 27TH
17 OF MARCH WILL BE TESTIFYING ABOUT THAT.

18 THE COURT: AND A CONVERSATION.

19 MS. COGGIOLA: AND A CONVERSATION WITH
20 MR. MITCHELL.

21 MS. COOPER: THAT'S CORRECT.

22 MS. COGGIOLA: BUT OTHER THAN THAT NO OTHER
23 BRUISING AND NOBODY ELSE THAT SAW IT.

24 MS. COOPER: THAT'S CORRECT.

25 THE COURT: AND I'M ASSUMING YOUR ARGUMENT IS

1 THAT THE INSECT BITE MARK IS INCONSISTENT WITH
2 WHAT THEY SAW.

3 MS. COOPER: EXACTLY, YOUR HONOR.

4 THE COURT: ALL RIGHT.

5 MS. COOPER: MRS. JONES, LET'S NOT TALK ABOUT
6 ANY OTHER REPORTED INCIDENTS EXCEPT MARCH 27TH.

7 THE COURT: YOU GO RIGHT TO THAT.

8 MS. COOPER: YES, SIR.

9 THE COURT: DON'T EVEN GIVE HER A CHANCE TO
10 TALK ABOUT IT.

11 THE COURT: ALL RIGHT. EVERYBODY DOING ALL
12 RIGHT? SEE IF THE JURY IS READY.

13 THE BAILIFF: I'LL BE GLAD TO, YOUR HONOR.

14 THE COURT: IF THEY ARE WE'LL BE READY FOR
15 THEM.

16 (WHEREUPON, THE JURY CAME INTO OPEN
17 COURT AT APPROXIMATELY 11:52.)

18 THE BAILIFF: THE JURY'S ALL PRESENT, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT. YOU MAY PROCEED.

21 MS. COOPER: THANK YOU, YOUR HONOR. MAY IT
22 PLEASE THE COURT.

23 BY MS. COOPER:

24 Q MRS. JONES, I'M JUST GOING TO ASK YOU A BRIEF
25 QUESTION. CAN YOU TELL THE JURY A LITTLE BIT

1 ABOUT THE PROCEDURES THAT YOU INSTRUCT YOUR STAFF
2 TO FOLLOW WHEN THERE ARE SIGNS OF INJURIES ON A
3 CHILD? WHAT ARE THEY INSTRUCTED TO DO?

4 A JUST TO DOCUMENT THOSE, ANY OBSERVATIONS THEY
5 MADE, ANY COMMENTS THE STUDENT OR PARENTS MADE, IF
6 THEY HAD AN OPPORTUNITY TO INTERVIEW THEM, AND TO
7 HAVE THAT SIGNED BY AN OFFICIAL DIRECTOR, THAT
8 WOULD BE MYSELF OR JEROME JONES.

9 Q AND JEROME JONES IS YOUR HUSBAND?

10 A YES.

11 Q I'M GOING TO SHOW YOU A DOCUMENT AND ASK YOU
12 IF YOU RECOGNIZE YOUR HUSBAND'S SIGNATURE?

13 A YES.

14 Q IS THAT HIS SIGNATURE?

15 A YES, IT IS.

16 Q AND CAN YOU -- IS THIS A REPORT OF ABUSE --
17 OR A REPORT OF AN INJURY?

18 A YES. IT'S A REPORT OF AN OBSERVATION OF THE
19 CHILD'S PHYSICAL CONDITION UPON ARRIVAL.

20 Q AND WHO SIGNED THAT? WHO MADE THAT REPORT?

21 A THAT WAS MS. VALERIE WILSON.

22 Q AND WHAT DATE AND TIME WAS THAT DOCUMENTED?

23 A MARCH 27TH, 8:05 IN THE MORNING.

24 Q AND ONCE YOU RECEIVE A REPORT LIKE THIS FROM
25 AN EMPLOYEE OF YOURS, WHAT DO YOU DO WITH IT?

1 A WE JUST FILE THOSE TO KEEP ON RECORD.

2 Q OKAY. DID YOU SEE MINOR ON
3 MARCH 27TH OF 2000?

4 A I HONESTLY CANNOT RECALL. I WAS NOT IN THE
5 FACILITY A LOT THAT DAY. I WAS IN AND OUT.

6 MS. COOPER: OKAY. THANK YOU. I HAVE NO
7 FURTHER QUESTIONS.

8 THE COURT: CROSS-EXAMINATION, MS. COGGIOLA?

9 MS. COGGIOLA: THANK YOU. VERY BRIEFLY.

10 CROSS-EXAMINATION

11 BY MS. COGGIOLA:

12 Q GOOD MORNING, MRS. JONES.

13 THE NOTATION THAT MS. COOPER JUST SHOWED YOU,
14 THAT'S PART OF HOW YOU KEEP REPORTS ON EVERY CHILD
15 IN THE DAYCARE; IS THAT CORRECT?

16 A YES, IT IS.

17 Q OKAY. AND I BELIEVE YOU SAID IT WAS SIGNED
18 BY MS. WILSON, ONE OF YOUR STAFF AT THE CENTER?

19 A THAT'S CORRECT.

20 Q AND YOUR HUSBAND JEROME JONES?

21 A UH-HUH.

22 Q SO DID YOU SEE THE MARK YOURSELF OR YOU ARE
23 SORT OF THE CARETAKER OF THE RECORDS?

24 A I AM THE CARETAKER OF THE RECORDS.

25 Q OKAY. SO THEY SIGNED IT BECAUSE THEY SAW

1 THIS MARK; IS THAT CORRECT?

2 A THAT'S CORRECT.

3 Q AND YOU SAID YOU DON'T REALLY RECALL THAT DAY
4 SPECIFICALLY SEEING MINOR AT ALL; IS THAT
5 CORRECT?

6 A I CAN'T RECALL A SPECIFIC INCIDENT ON THAT
7 PARTICULAR DAY. I WAS IN AND OUT OF THE OFFICE.

8 Q DO YOU REMEMBER BEING INTERVIEWED ABOUT THAT
9 AT SOME POINT AND ASKED WHETHER YOU THOUGHT IT WAS
10 A BUG BITE?

11 A I KNOW I WAS INTERVIEWED. WHAT ALL QUESTIONS
12 THEY ASKED, I DON'T REMEMBER.

13 Q YOU DON'T RECALL SAYING THAT IT LOOKED LIKE A
14 BUG BITE?

15 A ME PERSONALLY?

16 Q YES.

17 A NO, I DON'T RECALL.

18 MS. COGGIOLA: THANK YOU. I HAVE NO FURTHER
19 QUESTIONS.

20 THE COURT: ANYTHING ELSE OF THIS WITNESS?

21 MS. COOPER: NO, YOUR HONOR.

22 THE COURT: YOU MAY STEP DOWN.

23 CALL YOUR NEXT WITNESS, PLEASE.

24 MS. COOPER: THE STATE CALLS VALERIE WILSON.

25 THE CLERK: IF YOU'D COME FORWARD PLEASE.

1 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
2 RIGHT.

3 VALARIE WILSON,

4 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR
6 FULL NAME FOR THE RECORD.

7 THE WITNESS: MY NAME IS VALERIE WILSON,
8 W-I-L-S-O-N.

9 DIRECT EXAMINATION

10 BY MS. COOPER:

11 Q GOOD MORNING, MS. WILSON.

12 A GOOD MORNING.

13 Q CAN YOU TELL THE JURY WHERE YOU'RE EMPLOYED?

14 A I'M EMPLOYED AT EDUCATION EXPRESS.

15 Q AND WHAT DO YOU DO THERE?

16 A I'M A PRESCHOOL TEACHER AND THE CURRICULUM
17 COORDINATOR.

18 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

19 A IT WOULD BE FOUR YEARS IN AUGUST.

20 Q AND WHAT ARE YOUR DUTIES AS THE CURRICULUM
21 COORDINATOR AND A TEACHER?

22 A I TEACH EARLY THREE YEAR OLDS AND THEN AS THE
23 CURRICULUM COORDINATOR -- I'M JUST A LITTLE
24 NERVOUS, SORRY. I CHECK ALL THE TEACHER'S LESSON
25 PLANS.

1 Q AND DID YOU EVER HAVE AN OCCASION TO BE A
2 CAREGIVER FOR MINOR ?

3 A YES.

4 Q AND CAN YOU TELL THE JURY A LITTLE BIT ABOUT
5 WHAT YOU REMEMBER OF MINOR ?

6 A MINOR WAS A QUIET LITTLE PERSON, YOU KNOW.
7 SHE GOT ALONG WITH EVERYBODY. SHE WAS REAL MEEK
8 AND JUST -- YOU KNOW, REAL LOVABLE.

9 Q DO YOU REMEMBER SEEING MINOR ON MARCH 27TH
10 OF 2000?

11 A YES, MA'AM.

12 Q AND TELL THE JURY ABOUT THE CIRCUMSTANCES
13 THAT YOU ENCOUNTERED HER.

14 A MR. MITCHELL BROUGHT HER IN, WHICH HE WAS THE
15 FOSTER FATHER.

16 Q THE DEFENDANT, NATHANIEL MITCHELL?

17 A YEAH, NATHANIEL MITCHELL.

18 Q AND WHO WOULD NORMALLY DROP THE KIDS OFF?
19 WOULD SHE BE DROPPED OFF WITH HER SIBLINGS?

20 A EXCUSE ME, SAY THAT AGAIN.

21 Q WOULD MINOR BE DROPPED OFF AT
22 DAYCARE WITH HER SIBLINGS, N.G. AND H.G. ?

23 A YES.

24 Q WHO NORMALLY, ROUTINELY DROPPED THEM OFF?

25 A MR. MITCHELL.

1 Q OKAY. WHO NORMALLY PICKED THEM UP?

2 A MRS. MITCHELL.

3 Q PLEASE CONTINUE, YOU WERE DESCRIBING MEETING
4 MINOR THAT MORNING.

5 A YOU KNOW, DAD DROPPED HER OFF THAT MORNING.
6 THAT WAS HER FIRST DAY IN MY CLASSROOM BECAUSE SHE
7 HAD GRADUATED FROM THE TODDLER ROOM. I WAS THE
8 TWO YEAR OLD TEACHER AT THAT TIME. HE DROPPED HER
9 OFF THAT MORNING. YOU KNOW, WE HAD A LITTLE
10 CONVERSATION, AND THEN, YOU KNOW, SHE WAS A FAIR
11 SKINNED, KIND OF LIGHT SKINNED. I KIND OF NOTICED
12 LIKE TWO LIKE BLUE MARKS ON HER LEFT CHEEK.

13 I JUST ASKED DAD, I SAID, "DAD, WHAT HAPPENED
14 TO HER FACE?" HE SAID, "OH, IT MUST BE A BUG
15 BITE." I SAID, "OH, OKAY." THAT WAS THE END OF
16 OUR CONVERSATION AND HE WENT ON.

17 Q NOW, WERE YOU SATISFIED HIS ANSWER?

18 A I WAS, BUT THEN I HAD TO STILL WRITE IT UP,
19 YOU KNOW, BECAUSE THAT'S HOW WE'RE TRAINED TO DO
20 THINGS THAT WE SEE ON SITE, YOU KNOW, WE HAVE TO
21 REPORT IT OR THEY HAVE TO AT THE DAYCARE, SO I
22 JUST WENT AHEAD AND WROTE IT UP.

23 Q LET ME SHOW YOU A DOCUMENT AND ASK YOU IF YOU
24 RECOGNIZE THIS. DO YOU RECOGNIZE THAT?

25 A YES, MA'AM.

1 Q AND CAN YOU TELL THE JURY WHAT THAT IS?

2 A THIS IS THE OBSERVATION OF WHAT I SAW THAT
3 WAS ON MINOR 'S FACE.

4 Q AND DID YOU SIGN THAT?

5 A YES, MA'AM.

6 MS. COOPER: YOUR HONOR, AT THIS TIME THE
7 STATE SEEKS TO INTRODUCE THIS INTO EVIDENCE.

8 MS. COGGIOLA: NO OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER 20
11 WAS ADMITTED INTO EVIDENCE.)

12 MS. COOPER: THAT'S STATE'S NUMBER 20, YOUR
13 HONOR.

14 BY MS. COOPER:

15 Q NOW, MS. WILSON, I NOTICED THERE'S SOME
16 WRITING ON THE TOP LEFT CORNER OF THIS DOCUMENT.
17 CAN YOU EXPLAIN WHAT THAT IS? IN THE TOP LEFT
18 CORNER.

19 A I REALLY --

20 Q ARE THOSE YOUR INITIALS?

21 A YEAH, THAT'S MY INITIALS.

22 Q IS THERE A DATE AND TIME ON THAT?

23 A YES, MA'AM.

24 Q AND WHAT IS THE DATE AND TIME?

25 A 3/31/2000.

1 Q OKAY, MARCH 31ST, 2000?

2 A YES.

3 Q OKAY, WHAT TIME?

4 A 11:45.

5 Q WERE YOU EVER CONTACTED BY ANYONE FROM THE
6 RICHLAND COUNTY SHERIFF'S DEPARTMENT IN THIS CASE?

7 A YES.

8 Q AND DID YOU PROVIDE A STATEMENT TO THE
9 SHERIFF'S DEPARTMENT CONCERNING WHAT YOU KNEW?

10 A YES, I DID.

11 MS. COOPER: YOUR HONOR, AT THIS TIME I'D
12 REQUEST THAT SHE PUBLISH HER STATEMENT, HER
13 WRITTEN REPORT.

14 THE COURT: OKAY.

15 BY MS. COOPER:

16 Q CAN YOU PLEASE READ YOUR STATEMENT TO THE
17 JURY?

18 MS. COGGIOLA: YOUR HONOR.

19 THE COURT: I'M SORRY?

20 MS. COGGIOLA: COULD WE APPROACH FOR A
21 MOMENT?

22 THE COURT: SURE.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD
24 IN THE PRESENCE OF THE JURY, BUT OUT OF
25 THE HEARING OF THE JURY.)

1 (PAUSE)

2 THE COURT: YOU MAY PROCEED.

3 BY MS. COOPER:

4 Q GO AHEAD, SORRY.

5 A "MARCH 27TH, 8:05, MINOR ARRIVED
6 THIS MORNING WITH A BRUISE ON HER LEFT CHEEK. I
7 ASKED DAD ABOUT IT, AND HE SAID IT WAS A BUG BITE.
8 SIGNED MS. WILSON."

9 Q AND WHO DID YOU TURN THAT IN TO?

10 A I TURNED IT IN TO MR. JEROME JONES.

11 Q AND DO YOU KNOW THE DIFFERENCE BETWEEN A BUG
12 BITE AND A BRUISE?

13 A PRETTY MUCH, YES, MA'AM.

14 Q AND WHAT DID THIS MARK ON MINOR 'S CHEEK
15 APPEAR TO BE TO YOU?

16 A YOU KNOW, IT WAS BRUISED, YOU KNOW, LIKE IF
17 YOU HIT SOMETHING OR SOMETHING.

18 Q WAS IT A BUG BITE?

19 A I DON'T REALLY WANT TO SAY IT WAS OR IT
20 WASN'T, BUT IT JUST -- TO ME, IT WAS A BRUISE.

21 Q AND AGAIN, WHAT DATE DID YOU DOCUMENT THIS?

22 A MARCH 27TH.

23 Q AND ARE YOU AWARE IF THERE'S ANY MOSQUITOES
24 IN SOUTH CAROLINA IN MARCH?

25 A NO, I'M NOT. I WASN'T AWARE OF THAT.

1 Q NOW, YOU STATED SHE WAS DROPPED OFF THAT
2 MORNING BY NATHANIEL MITCHELL; IS THAT CORRECT?

3 A YES, MA'AM.

4 Q DO YOU REMEMBER WHO PICKED HER UP THAT
5 AFTERNOON?

6 A MRS. SONYA MITCHELL.

7 Q AND APPROXIMATELY WHAT TIME DID SHE PICK
8 MINOR UP THAT AFTERNOON?

9 A I'D SAY ANYWHERE BETWEEN 3:30, MAYBE 4:00.

10 Q 3:30 TO 4:00?

11 A YES, MA'AM.

12 Q AND WHO USED TO TEACH MINOR BEFORE SHE
13 GRADUATED TO YOUR CLASS?

14 A IRENE DESSOW.

15 Q AND DID MINOR SEE IRENE OR DID YOU SEE
16 MINOR WITH IRENE THAT DAY?

17 A YES, MA'AM.

18 Q DESCRIBE THAT ENCOUNTER FOR THE JURY, IF YOU
19 WOULD.

20 A THIS PARTICULAR DAY WE WERE -- THE WAY THE
21 TWO YEAR OLDS ROOM IS DESIGNED, IT'S SPLIT. YOU
22 KNOW, YOU HAVE THE FRONT PART AND IT'S SPLIT UP
23 AND YOU HAVE ANOTHER ROOM. WE WALKED FROM THE
24 ROOM THAT I WAS TEACHING IN THROUGH THE OTHER
25 TWO'S ROOM AND WE WERE GOING TO THE POTTY.

1 WHEN I OPENED UP THE DOOR, I LET -- A FEW
2 WENT BEFORE HER, AND, YOU KNOW, AND I MONITOR THEM
3 IN THE POTTY. THEN IT WAS HER TURN. THEN THE WAY
4 THE ROOM WAS DESIGNED COMING THROUGH THE OTHER
5 TWO'S ROOM STRAIGHT DOWN THE LITTLE -- IT'S LIKE A
6 HALLWAY AND THERE'S THE OTHER DOOR DOWN THERE
7 WHICH IS THE TODDLER ROOM.

8 MS. DESSOW SO HAPPENED TO BE IN THE DOOR. WE
9 KIND OF SPOKE TO ONE ANOTHER AND MINOR SAW HER.
10 SHE CAME AND SHE CAME UP FROM BEHIND ME AND SHE
11 YELLED OUT, "MS. DESSOW", AND YOU KNOW SHE WAS
12 JUST SO FREE SPIRITED AND TOOK OFF RUNNING AND
13 RUNNING AND RUNNING. SHE DIDN'T STOP UNTIL SHE
14 GOT TO MS. DESSOW.

15 SHE HUGGED HER AND KISSED HER AND MS. DESSOW,
16 YOU KNOW, SHE WAS LAUGHING. WE WERE LAUGHING, AND
17 I JUST SAT LOOKING AT HER AND SAYING THAT IS JUST
18 THE CUTEST THING AND THEN WITH HER COMING BACK
19 THROUGH, WE STILL HAD THE THREE YEAR OLDS THAT
20 WERE OUT IN THE LITTLE HALL, AND LIKE I SAY,
21 THAT'S THEIR ROOM AREA.

22 SHE STOPPED AND SHE HUGGED EACH TEACHER AS WE
23 GOT THERE AND SHE SAID, "I LOVE YOU." THEN SHE
24 RAN BACK AND GAVE ME THE BIGGEST HUG. THEN SHE
25 WENT TO THE POTTY AND WE WENT OUTSIDE.

1 Q DID ANYTHING APPEAR DIFFERENT OR ABNORMAL
2 WITH HER HEALTH THAT DAY?

3 A NO. SHE WAS WIDE OPEN. SHE WAS -- LIKE I
4 SAID, SHE WAS QUIET AND MEEK, BUT WHEN IT WAS TIME
5 TO PLAY, YOU KNOW, SHE HAD FUN. SHE HAD LOTS OF
6 FUN.

7 MS. COOPER: BEG THE COURT'S INDULGENCE.

8 (PAUSE)

9 MS. COOPER: PLEASE ANSWER ANY QUESTIONS THAT
10 MS. COGGIOLA MAY HAVE.

11 THE COURT: CROSS-EXAMINATION, MS. COGGIOLA.

12 MS. COGGIOLA: THANK YOU.

13 CROSS-EXAMINATION

14 BY MS. COGGIOLA:

15 Q GOOD MORNING, MS. WILSON.

16 A GOOD MORNING.

17 Q WAS THE 27TH THE FIRST DAY THAT MINOR WAS
18 ACTUALLY IN YOUR ROOM?

19 A YES, MA'AM.

20 Q SHE HAD JUST BEEN MOVED INTO -- WAS IT CALLED
21 THE TODDLER ROOM?

22 A SHE HAD GRADUATED OVER FROM THE TODDLER ROOM
23 INTO THE TWO'S ROOM.

24 Q OKAY. FROM THE TODDLER ROOM TO THE TWO'S
25 ROOM, SO THAT WAS THE FIRST DAY THAT YOU ACTUALLY

1 HAD HER UNDER YOUR SUPERVISION; IS THAT RIGHT?

2 A YES, MA'AM.

3 Q I THINK YOU JUST TESTIFIED THAT SHE SEEMED
4 SORT OF FULL OF BEANS AND HAPPY THAT DAY?

5 A YES, MA'AM.

6 Q AND MS. DESSOW WAS THE TEACHER WHOSE ROOM SHE
7 HAD JUST LEFT?

8 A YES, MA'AM.

9 Q AND THAT WAS THE INDIVIDUAL THAT SHE RAN UP
10 TO AND HUGGED AND KISSED?

11 A YES, MA'AM.

12 Q AND THAT MORNING WHEN MR. MITCHELL BROUGHT
13 MINOR IN, THAT WAS WHEN YOU SAW THE MARK ON HER
14 FACE; IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q AND YOU ASKED HIM ABOUT IT?

17 A YES, MA'AM.

18 Q THE -- WHAT WAS THE DAY LIKE? DID YOU --
19 WHAT DID YOU DO IN THE COURSE OF THAT DAY IN THE
20 ROOM?

21 A WELL, UPON ARRIVAL, THE CHILDREN WERE COMING
22 IN, YOU KNOW ANY TIME BETWEEN 6:30 AND 8:30, YOU
23 KNOW, COMING IN, EATING BREAKFAST, BECAUSE WE
24 USUALLY WERE SERVING BREAKFAST IN OUR ROOM.

25 Q SO MOST OF THE CHILDREN -- DO MOST OF THE

1 CHILDREN EAT BREAKFAST THERE?

2 A YES, MA'AM, THE MAJORITY OF THEM. AT 9:00 WE
3 START THE CIRCLE TIME. THAT'S THEIR LEARNING
4 TIME. WE GO OVER THE ALPHABET, THE PLAN FOR THE
5 DAY, AND THEN THE CHILDREN SPLIT UP AFTER 15
6 MINUTES OF CIRCLE TIME TO GO INTO THEIR CENTERS.
7 IT'S MADE OF HOUSEKEEPING, WHERE THEY LAY BLOCKS,
8 DO MANIPULATIVE STUFF, FINGER PAINTING, ART, AND
9 THEY DO --

10 Q JUST DIFFERENT ACTIVITIES?

11 A YES, MA'AM.

12 Q OKAY.

13 A AND HER DAY WAS JUST WONDERFUL. BY HER BEING
14 NEW IN THE ROOM, SHE PRETTY MUCH KNEW WHAT TO DO
15 BECAUSE THE TODDLER ROOM KIND OF FOLLOWS THE SAME
16 LINE OF ORDER, YOU KNOW, AS THE TWO'S ROOM SO, SHE
17 WAS JUST HER HAPPY LITTLE SELF --

18 Q DO YOU ALL --

19 A -- YOU KNOW, WHEREVER I ASKED HER TO GO SHE
20 WENT. YES, MA'AM?

21 Q DO YOU ALL GO OUTSIDE DURING THE COURSE OF
22 THE DAY?

23 A YES, MA'AM, WE DO GO OUTSIDE.

24 Q THIS WAS IN MARCH. DO YOU RECALL WHETHER YOU
25 ALL WENT OUTSIDE THAT DAY?

1 A NO, MA'AM.

2 Q IF YOU CAN'T REMEMBER SPECIFICALLY --

3 A NO, MA'AM. I KNOW WE DIDN'T GO OUT THAT
4 MORNING. WE DIDN'T GO OUT UNTIL LIKE DURING THE
5 EVENING TIME, LIKE AFTER SNACK AND STORY TIME AND
6 POTTY TIME AND THAT'S WHEN --

7 Q SO WHEN YOU SAY EVENING, DO YOU MEAN
8 AFTERNOON?

9 A AFTERNOON.

10 Q OKAY. WAS MINOR STILL THERE WHEN YOU WERE
11 OUTSIDE?

12 A YES, MA'AM.

13 Q AND WHAT DO THEY DO OUTSIDE? DO YOU HAVE
14 PLAY EQUIPMENT?

15 A YES, MA'AM, WE DO. WE HAVE A SAND BOX AREA.
16 WE HAVE SWINGS. WE HAVE DIFFERENT RIDING THINGS,
17 BALLS, YOU KNOW, ALL OTHER KINDS OF DIFFERENT
18 THINGS OUTSIDE.

19 Q OKAY. I'M UNDERSTANDING THIS IS TWO YEARS
20 AGO. DO YOU REMEMBER MINOR OUTSIDE THAT DAY?

21 A YES, MA'AM. SHE PLAYED A LOT WITH HER
22 BROTHER IN THE SAND BOX, HER AND H.G. BECAUSE
23 BOTH OF THEM WERE IN THE SAME ROOM. SHE PRETTY
24 MUCH LIKED THE SAND BOX AND LIKED TO SWING.

25 Q DO YOU REMEMBER WHETHER SHE WAS SWINGING THAT

1 DAY?

2 A NOW THAT I DON'T REMEMBER.

3 Q OKAY. AND YOU SAID, I THINK, THAT

4 MRS. MITCHELL PICKED THEM UP REGULARLY; IS THAT

5 CORRECT?

6 A YES, MA'AM.

7 Q AND YOU DO RECALL IF SHE PICKED HER UP THAT

8 DAY?

9 A YES, MA'AM.

10 Q PICKED UP ALL THE CHILDREN UP THAT DAY?

11 A YES, MA'AM.

12 Q SO HAVING SPENT THE WHOLE DAY WITH HER, SHE

13 SEEMED HEALTHY?

14 A YES, MA'AM.

15 Q AND ACTUALLY, ISN'T IT TRUE THAT YOU -- YOU

16 GO TO CHURCH WITH THE MITCHELLS, DON'T YOU?

17 A YES, MA'AM.

18 Q SO YOU'VE SEEN MINOR AT OTHER TIMES OTHER

19 THAN THE DAYCARE; IS THAT CORRECT?

20 A YES, MA'AM.

21 Q AND SHE SEEMED LIKE HERSELF THAT DAY?

22 A YES, MA'AM.

23 MS. COGGIOLA: THANK YOU, MS. WILSON.

24 THE COURT: ANYTHING ELSE ON REDIRECT?

25 MS. COOPER: JUST BRIEFLY, YOUR HONOR.

REDIRECT OF WILSON BY COOPER
DIRECT OF GRANT BY COOPER

468

REDIRECT EXAMINATION

BY MS. COOPER:

Q DID MINOR FALL FROM A SWING SET OR DID SHE
HURT HERSELF IN ANY WAY ON MARCH 27TH?

A NO, MA'AM.

Q IF SHE HAD FALLEN WOULD YOU HAVE DOCUMENTED
IT?

A YES, MA'AM, THAT'S A REQUIREMENT.

MS. COOPER: THANK YOU, YOUR HONOR. NO
FURTHER QUESTIONS.

THE COURT: THANK YOU, MA'AM. YOU MAY STEP
DOWN.

CALL YOUR NEXT WITNESS, PLEASE.

MS. COOPER: INVESTIGATOR GRANT.

THE CLERK: COME FORWARD, PLEASE. PLACE YOUR
LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

FARY GRANT,

AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE HAVE A SEAT, STATE YOUR
FULL NAME, SPELL YOUR LAST.

THE WITNESS: I'M FARY NANCY GRANT, ALSO
KNOWN AS COOKIE GRANT.

DIRECT EXAMINATION

BY MS. COOPER:

Q WHERE ARE YOU EMPLOYED?

1 A AT THE STATE DEPARTMENT OF SOCIAL SERVICES.

2 Q AND WHAT IS YOUR TITLE THERE?

3 A I'M A PROGRAM MANAGER.

4 Q AND WHAT WAS YOUR TITLE BACK IN MARCH OF
5 2000?

6 A SAME THING. I WAS A PROGRAM MANAGER.

7 Q AND WHAT ARE YOUR DUTIES?

8 A I INVESTIGATE ALLEGATIONS OF ABUSE AND
9 NEGLECT IN FOSTER HOMES AND GROUP HOMES.

10 Q AND HOW LONG HAVE YOU BEEN DOING THIS?

11 A THAT PARTICULAR JOB, SIX YEARS.

12 Q HOW LONG HAVE YOU BEEN WITH THE STATE D.S.S.
13 ALL TOGETHER?

14 A THE STATE D.S.S., SIX YEARS, BUT I'VE BEEN
15 WITH D.S.S. FOR ALMOST 14.

16 Q OKAY. AND WHEN DID YOU BECOME -- FIRST
17 BECOME INVOLVED IN THIS CASE WITH MINOR ?

18 A MARCH 28TH OF 2000.

19 Q AND DESCRIBE FOR THE JURY HOW YOU ARE
20 INFORMED THAT YOU NEED TO INVESTIGATE SOMETHING?

21 A OKAY. I WAS GIVEN A REPORT ON THAT DAY, AND
22 I BELIEVE IT WAS LATE MORNING, SOMEWHERE AROUND
23 11:30 IN THE MORNING, I WAS GIVEN A REPORT FROM MY
24 SUPERVISOR.

25 Q AND WHO IS YOUR SUPERVISOR?

1 A DIANE CORLEY.

2 Q AND WHAT DID SHE INSTRUCT YOU TO DO?

3 A WELL, THIS REPORT HAPPENED TO BE ONE THAT I
4 HAD TO RESPOND TO WITHIN TWO HOURS BECAUSE IT
5 INVOLVED A CHILD WHO HAD A -- WHAT WAS ASSUMED TO
6 BE A VERY SERIOUS INJURY, AND SO I WENT STRAIGHT
7 FROM MY OFFICE TO RICHLAND MEMORIAL, AND I
8 PROBABLY GOT THERE ABOUT 12:30 THAT DAY.

9 Q AND BEING AN INVESTIGATOR WITH THE DEPARTMENT
10 OF SOCIAL SERVICES, YOU HAVE ACCESS TO ANY AND ALL
11 INFORMATION CONCERNING CHILDREN IN THE CARE OF
12 D.S.S.; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND THAT IS ACCESSIBLE TO YOU TO ASSIST YOU
15 IN YOUR INVESTIGATION; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q MS. GRANT, CAN YOU TELL THE JURY WHY MINOR
18 WAS IN D.S.S. AND WHEN SHE WAS PLACED IN D.S.S.
19 CUSTODY?

20 A SHE WAS TAKEN INTO CUSTODY ON MARCH THE 6TH
21 OF 1998.

22 Q AND WHERE HAD SHE REMAINED FROM HER DATE OF
23 BIRTH, WHICH WAS DECEMBER 1ST OF '97, UNTIL MARCH
24 OF '98?

25 A SHE WAS WITH HER MOTHER, BIOLOGICAL MOTHER AS

1 FAR AS I KNOW.

2 Q AND WHO IS HER MOTHER?

3 A MS. TOLBERT.

4 Q AND EXPLAIN FOR THE JURY WHY D.S.S. WOULD GO
5 TO THE EXTREME OF TAKING A CHILD FROM THEIR
6 MOTHER?

7 A IF D.S.S. GETS INFORMATION THAT A CHILD IS
8 NOT SAFE IN THEIR ENVIRONMENT, THEN THE CHILD MAY
9 BE TAKEN INTO CUSTODY TO PROTECT THE CHILD'S
10 SAFETY.

11 Q AND WHAT HAPPENED IN THIS CASE? WHY WAS SHE
12 TAKEN AWAY FROM --

13 A AS FAR AS I CAN DETERMINE, MINOR HAD A
14 BREATHING PROBLEM. SHE WAS ON A -- AN APNEA
15 MONITOR, I BELIEVE, AND WHEN THEY WENT TO THE
16 HOME -- AS FAR AS I CAN UNDERSTAND, THE HOME WAS
17 NOT CLEAN AND IT WAS CROWDED.

18 I THINK SHE WAS IN THE CARE OF POSSIBLY
19 ANOTHER RELATIVE A LOT WHO WAS NOT KNOWLEDGEABLE
20 ABOUT WHAT TO DO ABOUT THE MONITOR AND HOW TO CARE
21 FOR A CHILD WITH THAT PARTICULAR PROBLEM.

22 THE CHILD WAS -- SEEMED TO BE AT RISK.

23 Q AND WHAT, IF ANYTHING, ABOUT LAURA TOLBERT
24 ALERTED D.S.S. THAT IT WAS TIME TO TAKE MINOR
25 AWAY FROM HER?

1 A AS FAR AS I KNOW -- I'M NOT REAL FAMILIAR
2 WITH THAT PART OF THE CASE, BUT AS FAR AS I KNOW,
3 SHE WAS -- HAD BEEN USING DRUGS AT SOME POINT IN
4 THE PAST. I'M NOT SURE IF SHE WAS AT THAT TIME OR
5 NOT.

6 Q NOW, ONCE MINOR WAS TAKEN AWAY FROM HER
7 BIOLOGICAL MOTHER AND PLACED IN FOSTER CARE, WHO
8 DID SHE LIVE WITH FROM MARCH OF '98 UNTIL JUNE OF
9 '99?

10 A SHE LIVED WITH TWO OTHER FOSTER PARENTS. THE
11 FIRST ONE WAS MARY DRAKE AND THE NEXT ONES WERE
12 RALPH AND JULIA TURNER.

13 Q AND WHEN WAS SHE PLACED IN THE CARE OF THE
14 MITCHELLS?

15 A ON JUNE 20TH OF '99.

16 Q AND WHO ELSE LIVED WITH HER? WERE HER
17 SIBLINGS PERMITTED TO LIVE WITH HER?

18 A YES, THEY WERE.

19 Q AND WHY IS THAT SO IMPORTANT FOR D.S.S. TO
20 KEEP SIBLINGS TOGETHER?

21 A YOU TRY TO KEEP A SIBLING GROUP TOGETHER SO
22 THEY CAN BE WITH EACH OTHER AND HOPEFULLY STAY
23 WITH EACH OTHER SO THAT THEY WILL NOT BE SPLIT UP
24 BECAUSE THE PURPOSE OF FOSTER CARE IS ALWAYS TO
25 REUNITE FAMILIES IF THAT IS A POSSIBILITY, AND IF

1 SIBLINGS STAY TOGETHER, IT'S EASIER TO REUNITE THE
2 FAMILY THAN IF EVERYBODY IS SPLIT UP.

3 Q SO REUNIFICATION IS THE GOAL; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q WHY WAS THAT NOT POSSIBLE IN THIS CASE?

7 A BECAUSE THE BIOLOGICAL MOTHER WAS NOT
8 FOLLOWING THROUGH ON TREATMENT.

9 Q WHAT KIND OF TREATMENT WAS SHE DOING?

10 A I THINK IT WAS A DRUG TREATMENT PROGRAM THAT
11 SHE WAS SUPPOSED TO BE GOING THROUGH AND SHE HAD
12 NOT FOLLOWED THROUGH WITH THAT COMPLETELY, AND SHE
13 WASN'T VISITING WITH THE CHILDREN LIKE SHE WAS
14 SUPPOSED TO DO.

15 Q AND AS A RESULT OF THE MOTHER'S CONDUCT,
16 FAILING TO ATTEND DRUG COUNSELING AND FAILING TO
17 VISIT HER CHILDREN, WHAT DID THE DEPARTMENT OF
18 SOCIAL SERVICES PLAN TO DO?

19 A THERE WERE PLANS TO TERMINATE PARENTAL RIGHTS
20 ON ALL THREE CHILDREN SO THAT THEY COULD BE
21 ADOPTED.

22 Q WERE THERE ANY PROSPECTIVE ADOPTIVE PARENTS
23 IN THIS CASE?

24 A YES, SONYA AND NATHANIEL MITCHELL HAD
25 EXPRESSED AN INTEREST IN ADOPTING ALL THREE

1 CHILDREN.

2 Q NOW I'M GOING TO TAKE YOU BACK TO YOUR
3 INVESTIGATION. AFTER -- WHEN YOU ORIGINALLY WENT
4 TO THE RICHLAND MEMORIAL HOSPITAL, WHO DID YOU
5 MEET WITH THERE TO SORT OF GET BRIEFED ON THIS
6 CASE?

7 A I MET WITH A SOCIAL WORKER, DIANE REED, WHO I
8 HAD CONTACTED BECAUSE SHE WAS THE PERSON THAT
9 COULD TELL ME A LITTLE BIT ABOUT THE BACKGROUND OF
10 WHAT HAD HAPPENED UP TO THAT POINT THAT DAY, AND
11 SHE TOOK ME INTO THE PEDIATRIC INTENSIVE CARE UNIT
12 TO ACTUALLY SEE MINOR.

13 Q AND DESCRIBE FOR THE JURY EXACTLY WHAT WAS
14 GOING ON WITH MINOR IN THE INTENSIVE CARE UNIT.

15 A SHE WAS IN A -- SHE WAS IN A BED. I GUESS
16 YOU WOULD SAY A CRIB. I THINK IT HAD SIDES ON IT.
17 SHE WAS -- AS FAR AS I KNOW SHE WAS IN A COMA.
18 SHE WAS VERY, VERY STILL.

19 HER EYES WERE CLOSED. THEY WERE SWOLLEN.
20 SHE HAD TUBES EVERYWHERE. IN FACT, IF I REMEMBER,
21 A LOT OF HER BODY WAS SWOLLEN. I DID NOT KNOW
22 MINOR BEFORE THIS INVESTIGATION, SO I DON'T KNOW
23 WHAT SHE LOOKED LIKE, BUT I REMEMBER WHAT SHE
24 LOOKED LIKE THAT DAY.

25 THERE WAS A LOT OF ACTIVITY IN THE ROOM.

1 THIS WAS MAYBE FIVE HOURS AFTER SHE HAD BEEN
2 BROUGHT INTO THE HOSPITAL, AND IT SEEMED LIKE
3 PEOPLE WERE RUSHING EVERYWHERE TRYING TO DO
4 EVERYTHING THEY COULD TO SAVE THIS CHILD'S LIFE.

5 Q AND WHEN YOU WERE BRIEFED BY THE CASEWORKER
6 AT THE HOSPITAL, DID THEY INDICATE WHAT KIND OF --
7 WHAT THEY SUSPECTED HAPPENED TO THIS CHILD?

8 A WELL...

9 Q OR DID THEY KNOW?

10 A WELL, THEY REALLY DIDN'T KNOW WHAT HAD
11 HAPPENED TO HER, BUT THE SOCIAL WORKER TOLD ME
12 THAT SHE HAD --

13 MS. COGGIOLA: YOUR HONOR, I WOULD OBJECT --

14 THE COURT: ~~SUSTAINED~~ YOU ALL COME UP HERE
15 JUST ONE MOMENT.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD
17 IN THE PRESENCE OF THE JURY, BUT OUT OF
18 THE HEARING OF THE JURY.)

19 BY MS. COOPER:

20 Q DID YOU HAVE AN OCCASION AT THE HOSPITAL TO
21 MEET WITH MR. MITCHELL?

22 A YES, I DID.

23 Q AND DID YOU DOCUMENT YOUR DISCUSSIONS WITH
24 HIM?

25 A YES, I DID.

1 Q AND WHAT DID YOU -- WHAT WAS THE PURPOSE OF
2 MEETING WITH MR. MITCHELL AND HIS WIFE AT THE
3 HOSPITAL?

4 A WELL, I WANTED TO FIND OUT WHAT THEY SAID
5 ABOUT WHAT HAPPENED TO MINOR , BECAUSE
6 MR. MITCHELL WAS THE PERSON THAT WAS WITH MINOR
7 JUST PRIOR TO HER BEING BROUGHT TO THE HOSPITAL,
8 AND HE'S THE ONLY ONE THAT WOULD KNOW WHAT
9 HAPPENED TO HER.

10 Q AND SO THEN DID YOU TALK WITH MR. AND
11 MRS. MITCHELL AT THE HOSPITAL?

12 A YES, YES, I DID.

13 Q AND WERE THERE ANY -- WAS ANYONE ELSE PRESENT
14 WHEN YOU MET WITH THEM?

15 A NO.

16 Q OKAY. TELL THE JURY WHAT MR. MITCHELL TOLD
17 YOU HAPPENED.

18 A MR. MITCHELL SAID THAT HE GOT MINOR UP IN
19 THE MORNING. HE TOOK HER TO THE BATHROOM JUST
20 LIKE HE DID EVERY MORNING, AND WHEN HE TOOK HER TO
21 PUT HER PAMPER ON, THAT SHE HAD A SEIZURE.

22 Q DID HE INDICATE WHETHER OR NOT HIS WIFE WAS
23 AT HOME WHEN THIS HAPPENED?

24 A NO, SHE WAS NOT AT HOME.

25 Q AND WHERE WAS SHE?

1 A MRS. MITCHELL WAS AT WORK.

2 Q WERE THERE ANY OTHER ADULTS IN THE HOME? DID
3 HE INDICATE THAT?

4 A AT -- THAT MORNING?

5 Q THE MORNING THAT THIS HAPPENED.

6 A NO.

7 Q NOW, AFTER YOU MET WITH THE MITCHELLS, WHERE
8 DID -- DID YOU EVENTUALLY GET IN TOUCH WITH
9 INVESTIGATOR DALE JONES WITH THE RICHLAND COUNTY
10 SHERIFF'S DEPARTMENT?

11 A YES, I DID.

12 Q AND WHAT WAS THE PURPOSE OF MEETING WITH HIM?

13 A WELL, WHEN WE HAVE A CASE WHERE A CHILD HAS A
14 SEVERE INJURY AND PARTICULARLY IF IT'S A LIFE
15 THREATENING INJURY, THE SHERIFF'S DEPARTMENT OR
16 WHOEVER THE LAW ENFORCEMENT OFFICER IS THAT WOULD
17 BE INVOLVED IS CONTACTED AND AS BEST WE CAN, WE
18 TRY TO COORDINATE THE INVESTIGATIONS SO THAT SO
19 MANY PEOPLE AREN'T TALKING, ESPECIALLY TO THE
20 CHILDREN.

21 WE DON'T WANT THE CHILDREN TO HAVE TO BE
22 INTERVIEWED OVER AND OVER AND OVER, SO I WAS
23 TRYING TO COORDINATE WITH INVESTIGATOR JONES SO
24 THAT WE COULD POSSIBLY INTERVIEW THE CHILDREN
25 TOGETHER.

1 Q AND DID YOU INTERVIEW N.G. ?

2 A YES, I DID. MY --

3 Q WITHOUT GOING INTO WHAT SHE SAID -- BUT YOU
4 DID INTERVIEW HER; IS THAT CORRECT?

5 A YES.

6 Q AND AFTER YOU INTERVIEWED N.G.
7 DID YOU MEET WITH INVESTIGATOR JONES AT THE
8 SHERIFF'S DEPARTMENT ALONG WITH THE DEFENDANT?

9 A YES.

10 Q OKAY. TELL THE JURY WHEN AND WHAT TIME THAT
11 WAS.

12 A THAT WAS ON THAT SAME DAY -- WAIT A MINUTE,
13 LET ME LOOK AT MY NOTES JUST TO MAKE SURE. IT
14 WASN'T ON THAT SAME DAY, I'M SORRY. (PAUSE)

15 OKAY. I'M SORRY. IT WAS ON MARCH 30TH OF
16 2000. I DID MEET WITH INVESTIGATOR JONES AND
17 MR. NATHANIEL MITCHELL AT THE SHERIFF'S
18 DEPARTMENT.

19 Q AND WHAT TIME WAS THAT?

20 A IT WAS ABOUT 8:30 IN THE EVENING.

21 Q OKAY. AND WERE YOU PRESENT WHEN MR. MITCHELL
22 WAS MIRANDIZED BY INVESTIGATOR JONES?

23 A YES.

24 Q AND DID YOU HEAR HIM RESPOND TO THE QUESTIONS
25 POSED BY INVESTIGATOR JONES?

1 A YES, I DID.

2 Q AND DID HE APPEAR TO YOU TO UNDERSTAND
3 EXACTLY WHAT HIS MIRANDA WARNINGS WERE?

4 A YES.

5 Q DID HE INDICATE IN ANY WAY WHETHER OR NOT HE
6 HAD ANY QUESTIONS OR DESIRE TO INVOKE HIS MIRANDA
7 RIGHTS?

8 A NO.

9 Q DID HE, IN FACT, GIVE A STATEMENT?

10 A YES, HE DID.

11 Q DID YOU WITNESS THAT STATEMENT?

12 A YES, I DID.

13 Q AND WERE YOU PRESENT WHEN INVESTIGATOR METZS
14 LATER CAME AND INTERVIEWED THE DEFENDANT? WERE
15 YOU PRESENT FOR THAT?

16 A YES.

17 Q DID YOU WITNESS HIS MIRANDA WARNINGS THAT HE
18 READ TO HIM, AS WELL?

19 A YES.

20 Q DID YOU WITNESS THAT STATEMENT, AS WELL?

21 A YES.

22 MS. COOPER: BEG THE COURT'S INDULGENCE..

23 (PAUSE)

24 BY MS. COOPER:

25 Q AND YOUR SIGNATURE -- YOU SIGNED BOTH

1 STATEMENTS SHOWING THAT YOU WITNESSED EVERYTHING;

2 IS THAT CORRECT?

3 A YES.

4 Q AND DID THE DEFENDANT IN ANY WAY -- WAS HE
5 DEPRIVED IN ANY WAY OF ANY ACCOMMODATIONS SUCH AS
6 FOOD, WATER, OR RESTROOM?

7 A NO.

8 Q AND WAS HE EVER COERCED IN ANYWAY OR WAS HE
9 EVER THREATENED IN ANY WAY TO GIVE A STATEMENT?

10 A NO.

11 MR. COOPER: OKAY. I HAVE NO FURTHER
12 QUESTIONS, YOUR HONOR.

13 THE COURT: CROSS-EXAMINATION, MS. COGGIOLA?

14 MS. COGGIOLA: THANK YOU.

15 CROSS-EXAMINATION

16 BY MS. COGGIOLA:

17 Q GOOD MORNING, INVESTIGATOR GRANT.

18 A GOOD MORNING.

19 Q JUST A FEW QUESTIONS. YOU TALKED ABOUT THE
20 FACT THAT MINOR HAD BEEN REMOVED FROM HER BIRTH
21 MOTHER AND THAT SHE WAS HAVING SOME BREATHING
22 PROBLEMS AND THERE WAS A SENSE FROM D.S.S. THAT
23 THE CHILD WAS AT RISK?

24 A NOW, I WAS NOT INVOLVED IN THE CASE AT THAT
25 POINT. I CAN ONLY SAY WHAT THE INFORMATION WAS

1 THAT I GOT FROM THE RECORDS, SO I'M NOT REALLY
2 AWARE FIRSTHAND OF WHAT WAS GOING ON AT THAT
3 POINT.

4 Q OKAY. THAT WAS -- I THINK YOU SAID THAT,
5 THAT YOU JUST REVIEWED THE RECORDS TO GET THE
6 HISTORY OF THIS CHILD?

7 A RIGHT.

8 Q AND THAT THERE WERE -- THEY WERE LOOKING AT
9 THE POSSIBILITY OF ADOPTION?

10 A YES.

11 Q AND THAT THE MITCHELL'S, MR. AND MRS.
12 MITCHELL, NATHANIEL AND SONYA MITCHELL, WERE
13 POTENTIAL ADOPTIVE PARENTS?

14 A THAT'S WHAT I UNDERSTOOD, YES.

15 Q AND YOU WERE NOT INVOLVED IN ANY OF THE
16 PROCESS OF ANY OF THE ADOPTION PROCEEDINGS OR
17 ANYTHING?

18 A OH, NO, NO.

19 Q OKAY. AND SO YOU DIDN'T BECOME INVOLVED
20 UNTIL THE 28TH, AND THEN YOU MET WITH MR. MITCHELL
21 THAT DAY AND THEN AGAIN ON THE 30TH?

22 A THAT'S CORRECT.

23 MS. COGGIOLA: I DON'T HAVE ANY FURTHER
24 QUESTIONS.

25 THE COURT: ANYTHING ON REDIRECT?

1 MS. CAMPBELL: NO, YOUR HONOR.

2 THE COURT: WHO IS YOUR NEXT WITNESS?

3 MS. COOPER: INVESTIGATOR JONES. I THINK IT
4 MIGHT BE LENGTHY.

5 THE COURT: I THINK WE'LL BREAK HERE.

6 MADAM FOREPERSON, LADIES AND GENTLEMEN OF THE
7 JURY, I'LL LET YOU GO TO LUNCH. BE BACK AT 1:30.
8 WE'LL PICK BACK UP WITH THE TESTIMONY. DON'T
9 DISCUSS THE CASE WITH ANYONE OR ALLOW ANYONE TO
10 DISCUSS IT WITH YOU. SEE YOU AT 1:30.

11 MS. COOPER: MAY THE WITNESS BE EXCUSED, YOUR
12 HONOR?

13 THE COURT: SURE.

14 (WHEREUPON, THE JURY LEFT OPEN COURT AT
15 APPROXIMATELY 12:26.)

16 THE COURT: ALL RIGHT. WE'LL SEE YOU ALL AT
17 1:30.

18 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

19 MS. CAMPBELL: YOUR HONOR, TWO HOUSEKEEPING
20 MATTERS, WE WANTED TO MAKE A COPY OF THE C.D., THE
21 PRESENTATION WE DID YESTERDAY WITH THE DIRECT
22 EXAMINATION OF CHRISTMANN. THIS IS THE ENTIRE
23 PRESENTATION, INCLUDING THE TWO THAT WERE NOT
24 PRESENTED.

25 MS. COOPER: APPARENTLY THE SHAKING PART IS

1 IN THERE THAT WAS NOT PRESENTED, SO IT DOES
2 INCLUDE THOSE TWO SEQUENCES THAT WERE NOT
3 PRESENTED, AND I WOULD MAKE THAT AS A COURT'S
4 EXHIBIT.

5 (WHEREUPON, COURT'S EXHIBIT NUMBER 4 WAS
6 MARKED FOR IDENTIFICATION ONLY.)

7 MS. COOPER: AND THEN, YOUR HONOR, AT THIS
8 TIME, IT NOW MIGHT BE A GOOD TIME FOR US TO PUT IN
9 N.G. S VIDEO TESTIMONY.

10 THE COURT: YOU CAN MARK IT.

11 MS. CAMPBELL: AND I GUESS WE WOULD MARK THIS
12 AS A STATE'S EXHIBIT?

13 THE COURT: YES, STATE'S EXHIBIT.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 21
15 WAS ADMITTED INTO EVIDENCE.)

16 (WHEREUPON, THE JURY CAME INTO OPEN
17 COURT AT APPROXIMATELY 1:41.)

18 THE BAILIFF: THE JURY IS ALL PRESENT,
19 YOUR HONOR.

20 THE COURT: ALL RIGHT. LET'S PUT IT ON THE
21 RECORD UP HERE.

22 YES, YOU ALL COME UP HERE.

23 MR. PAULING, I NEED TO HAVE YOU ON THE
24 RECORD.

25 I WANT TO REITERATE TO YOU ALL -- THERE IS

1 ANOTHER JURY HERE AND THEY WEREN'T FOLLOWING
2 INSTRUCTIONS AND SOMEBODY KIND OF THOUGHT IT MIGHT
3 BE THIS JURY THAT WAS TALKING ABOUT THINGS OVER
4 LUNCH AND -- JUST BE CAREFUL, WE'VE GOT A LOT
5 INVESTED IN THIS CASE AND IT'S IMPORTANT THAT YOU
6 FOLLOW MY INSTRUCTIONS NOT TO DISCUSS THE CASE,
7 NOT EVEN AMONG YOURSELVES. A SITUATION LIKE THAT
8 -- IT COULD RESULT IN A RE-TRIAL IF WE HAVE A
9 SITUATION LIKE THAT. IT WAS NOT YOU ALL, IT'S
10 ANOTHER JURY, AND WE'RE ALL GLAD OF THAT.

11 SO, ALL RIGHT. WE HAVE BROUGHT THE JURY IN.
12 MR. PAULING HAS LOOKED AT THE JURORS TO MAKE SURE
13 THAT THE PEOPLE HE THOUGHT WERE TALKING, IF HE
14 COULD IDENTIFY THEM. HE COULD NOT IDENTIFY ANY OF
15 THEM ON THIS PANEL SO IT MUST HAVE BEEN ANOTHER
16 JURY AND NOT US.

17 DO YOU AGREE WITH THAT, MR. PAULING?

18 MR. PAULING: YES, I DO.

19 THE COURT: AND EVERYBODY HAS NO OBJECTION?

20 MS. COOPER: NO OBJECTION.

21 MR. STRICKLER: NO OBJECTION.

22 MS. COGGIOLA: NO.

23 THE COURT: ALL RIGHT. THANK YOU.

24 MS. CAMPBELL: MAY WE PROCEED, YOUR HONOR?

25 THE COURT: YES, MA'AM, CALL YOUR NEXT

1 WITNESS.

2 MS. CAMPBELL: AT THIS TIME THE STATE WOULD
3 PRESENT EVIDENCE FROM N.G. , AND I
4 BELIEVE IN THIS CASE IT'S STATE'S EXHIBIT 21 THAT
5 WOULD BE HER VIDEOTAPED TESTIMONY.

6 THE COURT: ALL RIGHT. MADAM FOREPERSON,
7 LADIES AND GENTLEMEN OF THE JURY, THERE'S A
8 STATUTORY PROVISION THAT ALLOWS A WITNESS'S
9 TESTIMONY, UNDER CERTAIN CIRCUMSTANCES, TO BE
10 TAKEN BY VIDEO DEPOSITION. THAT VIDEO DEPOSITION
11 WAS TAKEN IN THIS COURT ON MONDAY. YOU ARE TO
12 CONSIDER THAT PERSON'S TESTIMONY JUST LIKE YOU'D
13 GIVE ANY OTHER PERSON'S TESTIMONY. YOU'RE
14 ENTITLED TO GIVE IT WHATEVER WEIGHT YOU'D CHOOSE
15 ON THE ISSUE OF CREDIBILITY AND BELIEVABILITY AND
16 YOU SHOULD CONSIDER VIDEO TESTIMONY AS IF THAT
17 PERSON WERE SITTING ON THAT STAND TESTIFYING LIVE.

18 MS. CAMPBELL: THANK YOU, YOUR HONOR.

19 (WHEREUPON, THE VIDEOTAPED TESTIMONY OF
20 N.G. WAS PLAYED FOR THE
21 JURY.)

22 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

23 MS. CAMPBELL: THE STATE WOULD CALL
24 DR. DEFELICE.

25 DR. ALLISON DEFELICE,

1 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE HAVE A SEAT, STATE YOUR
3 FULL NAME, SPELL YOUR LAST NAME.

4 THE WITNESS: ALL RIGHT. MY FULL NAME IS
5 ALLISON FOSTER DEFELICE. DEFELICE IS SPELLED
6 CAPITAL D-E CAPITAL F-E-L-I-C-E.

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q DR. DEFELICE, WHERE ARE YOU EMPLOYED?

10 A I'M EMPLOYED AT THE A.R.C., THE ASSESSMENT
11 RESOURCE CENTER, WHICH IS A NATIONALLY ACCREDITED
12 CHILDREN'S ADVOCACY CENTER.

13 Q AND AT THIS CHILDREN'S ADVOCACY CENTER, WHAT
14 IS YOUR JOB SPECIFICALLY?

15 A I'M THE CLINICAL DIRECTOR, THE MENTAL HEALTH
16 DIRECTOR OF THE PROGRAM, SO MY JOB IS TO CONDUCT
17 WHAT WE CALL FORENSIC INTERVIEWS, WHICH ARE FACT
18 FINDING INTERVIEWS OF CHILDREN SUSPECTED OF BEING
19 ABUSED OR WITNESSING VIOLENT CRIMES.

20 I ALSO SUPERVISE THE TEAM OF MENTAL HEALTH
21 PROFESSIONALS WHO ALSO CONDUCT THESE KINDS OF
22 INTERVIEWS. ALSO, WE PROVIDE THERAPY ON SITE AND
23 WE PROVIDE STATEWIDE TRAINING TO LAW ENFORCEMENT
24 AND D.S.S. AND OTHER AGENTS, GUARDIANS AD LITEM,
25 PEOPLE WHO ARE INVOLVED IN TALKING TO CHILDREN.

1 Q DR. DEFELICE, CAN YOU TELL THIS JURY A LITTLE
2 BIT ABOUT YOUR TRAINING, YOUR EDUCATION IN THIS
3 AREA?

4 A SURE. I GRADUATED FROM EMORY UNIVERSITY IN
5 ATLANTA, GEORGIA, IN 1988 AND THAT WAS FOR MY
6 BACHELOR'S DEGREE IN PSYCHOLOGY AND ENGLISH
7 LITERATURE. THEN I CAME TO THE UNIVERSITY OF
8 SOUTH CAROLINA IN 1989 TO GET MY PH.D. IN CLINICAL
9 COMMUNITY PSYCHOLOGY AND I GRADUATED IN 1996.

10 AS PART OF GETTING A DOCTORATE DEGREE YOU DO
11 AN INTERNSHIP, SO I DID A DOCTORAL INTERNSHIP AT
12 WILLIAM S. HALL PSYCHIATRIC INSTITUTE, AND THAT'S
13 ONE OF THE PARTNERS THAT MAKES THE A.R.C., SO I
14 INTERNED AT THE A.R.C. FOR A FULL YEAR UNDER THE
15 MENTAL HEALTH DIRECTOR AT THE TIME, WHO WAS
16 DR. ANNE ABEL. THEN I TOOK DR. ABEL'S JOB IN
17 1995, AND BECAME THE MENTAL HEALTH DIRECTOR.

18 IN ADDITION TO THAT EDUCATION, WHICH IS A
19 MORE GENERAL TRAINING IN HOW TO BE A PSYCHOLOGIST,
20 I'VE BEEN SPECIFICALLY, SINCE 1990, I HAVE TAKEN
21 CONTINUING EDUCATION, PROFESSIONAL TRAINING
22 SPECIFICALLY IN THE AREA OF FORENSIC INTERVIEWING
23 OF CHILDREN, THERAPY OF TRAUMATIZED CHILDREN,
24 CHILD SEXUAL ABUSE, AND THOSE KINDS OF ISSUES.

25 Q DOCTOR, HAVE YOU TESTIFIED BEFORE AS AN

1 EXPERT BEFORE IN THE AREA OF CHILD PSYCHOLOGY AND
2 FORENSIC INTERVIEWING?

3 A YES.

4 Q AND YOU'VE BEEN QUALIFIED ON NUMEROUS
5 OCCASIONS IN BOTH OF THOSE AREAS?

6 A YES.

7 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE
8 WOULD OFFER HER AS AN EXPERT IN CHILD PSYCHOLOGY
9 AND FORENSIC INTERVIEWING.

10 MS. COGGIOLA: NO ADDITIONAL VOIR DIRE.

11 THE COURT: NO VOIR DIRE? YOU MAY PROCEED.

12 MS. CAMPBELL: THANK YOU.

13 BY MS. CAMPBELL:

14 Q DOCTOR, TYPICALLY WHEN A CHILD IS REFERRED TO
15 YOUR CLINIC AND YOU'RE DOING AN INTERVIEW, TELL
16 THE JURY WHAT TYPES OF THINGS YOU'RE TRYING TO
17 RULE IN OR RULE OUT.

18 A SURE. WHEN CHILDREN COME TO OUR CLINIC,
19 THEY'RE USUALLY REFERRED BY EITHER LAW ENFORCEMENT
20 OR D.S.S. OR BOTH. WE'RE BEING ASKED TO ASSIST IN
21 DETERMINING WHETHER OR NOT SOME KIND OF ABUSE HAS
22 OCCURRED SO THAT IS MOST OFTEN GOING TO BE SEXUAL
23 ABUSE OR SEVERE PHYSICAL ABUSE AND LESS OFTEN IT
24 WILL BE AN EYEWITNESS TO A VIOLENT CRIME.

25 Q AND IN THESE CASES, OF COURSE, YOU'RE AWARE

1 THAT SOME CHILDREN, ESPECIALLY OLDER CHILDREN ARE
2 TYPICAL IN FABRICATING ALLEGATIONS AGAINST PEOPLE?

3 A CERTAINLY, YES.

4 Q AND ARE YOU TRAINED -- DO YOU HAVE ANY
5 SPECIALIZED TRAINING IN LOOKING FOR ANY EVIDENCE
6 OF FABRICATION OR STORY TELLING?

7 A YES.

8 Q AND DOCTOR, IN YOUNGER CHILDREN, THOUGH,
9 CHILDREN UNDER THE AGES OF THREE, FOUR, FIVE, AND
10 SIX, FABRICATION, IS THAT A REALITY WITH CHILDREN
11 THAT AGE?

12 A WELL, THE ISSUES ARE DIFFERENT WITH PRESCHOOL
13 CHILDREN. THEY CAN'T APPRECIATE THE CAUSE AND
14 EFFECT RELATIONSHIP. IN OTHER WORDS, IF I SAY
15 CERTAIN THINGS, WHAT -- HOW THE GROWNUPS WILL
16 REACT OR WHAT WILL HAPPEN, SO THEY'RE NOT
17 MOTIVATED IN THE SAME WAY OLDER CHILDREN ARE. THE
18 MAIN ISSUE WITH YOUNGER CHILDREN IS HOW WE ASK THE
19 QUESTIONS TO ELICIT THE CORRECT, THE TRUE,
20 INFORMATION.

21 Q AND, OF COURSE, WHENEVER YOU INTERVIEW A
22 SMALL CHILD WHERE FABRICATION IS NOT A REAL
23 CONCERN, YOU'RE ALWAYS CONCERNED WITH ANY KIND OF
24 COACHING OR SUGGESTION MADE TO THE CHILD?

25 A EXACTLY, YES.

1 Q AND YOU'RE ALSO TRAINED TO LOOK FOR SIGNS OF
2 THAT; IS THAT CORRECT?

3 A YES.

4 Q IN THIS CASE SPECIFICALLY YOU NEVER CAME IN
5 CONTACT WITH MINOR , DID YOU?

6 A I DID NOT.

7 Q BUT AS A RESULT OF WHAT HAPPENED WITH
8 MINOR , THERE WERE TWO OTHER CHILDREN IN THE HOME
9 THAT DAY?

10 A YES.

11 Q DID YOU HAVE OCCASION TO MEET SPECIFICALLY
12 WITH N.G. ?

13 A YES, I DID.

14 Q AND WHEN DID YOU MEET N.G. ?

15 A THE FIRST TIME I MET HER WAS APRIL 7TH OF
16 2000.

17 Q APRIL 7TH, 2000, SO THAT WOULD BE
18 APPROXIMATELY A WEEK-AND-A-HALF AFTER MINOR HAD
19 TO GO TO THE HOSPITAL?

20 A YES.

21 Q WHAT WAS THE PURPOSE OF YOUR MEETING WITH HER
22 THAT SOON AFTER WHAT HAD HAPPENED TO MINOR ?

23 A THE MAIN FOCUS OF MY INTERVIEWING N.G. AT
24 THAT TIME WAS TO INQUIRE AS TO WHETHER OR NOT SHE
25 HERSELF HAD BEEN THE VICTIM OF PHYSICAL ABUSE,

1 GIVEN THE CONCERNS ABOUT MINOR 'S DEATH, AND
2 THERE WERE PHYSICAL INDICATORS --

3 MS. COGGIOLA: YOUR HONOR, I WOULD OBJECT TO
4 ANY --

5 MS. CAMPBELL: LET'S TALK ABOUT N.G. JUST
6 AS A WITNESS IN THIS CASE.

7 THE COURT: SUSTAINED. I'M GOING TO HAVE
8 LOTS OF PROBLEMS WITH HEARSAY IF I UNDERSTAND
9 WHERE YOU'RE HEADED.

10 MS. CAMPBELL: NO, SIR. I'M NOT GOING INTO
11 THE SUBSTANCE OF WHAT SHE WAS SAYING, BUT JUST THE
12 FACT THAT SHE CONDUCTED THE INTERVIEW.

13 UNLESS SHE GETS INTO IT, OF COURSE.

14 THE COURT: ALL RIGHT.

15 BY MS. CAMPBELL:

16 Q DID YOU DO A FORENSIC INTERVIEW WITH HER AT
17 THAT TIME?

18 A I DID.

19 Q AND YOU CAN'T TALK ABOUT WHAT SHE SAID TO YOU
20 THEN SPECIFICALLY, OKAY?

21 A RIGHT, I UNDERSTAND.

22 Q BUT DURING THE COURSE OF THAT INTERVIEW, DID
23 YOU SEE ANY EVIDENCE OF ANY COACHING OR DECEPTION
24 ON THE PART OF THE CHILD?

25 A NO, NONE.

1 Q AND WAS HER ACCOUNT OF WHAT HAD HAPPENED AS
2 IT WAS GIVEN TO YOU, NOT WHAT IT WAS, CONSISTENT
3 FROM WHAT SHE HAD SAID FROM THE OUTSET?

4 A YES.

5 Q SUBSEQUENT TO THAT, OVER THE NEXT TWO YEARS,
6 IN FACT UP TO THE CURRENT TIME, HAS N.G. BEEN
7 SEEN IN A TREATMENT CAPACITY AT YOUR RESOURCE
8 CENTER?

9 A YES, SHE HAS BEEN.

10 Q AND IN WHAT -- IS SHE SEEING YOU?

11 A NO.

12 Q AND WHY IS THAT NOT?

13 A OKAY. WHOEVER DOES THE FORENSIC INTERVIEW,
14 WHICH IS AS I SAID A FACT FINDING INTERVIEW, THAT
15 SAME INDIVIDUAL WILL NOT BE THE THERAPIST FOR THE
16 CHILD SO SOMEBODY ELSE ON THE TEAM BECOMES THE
17 THERAPIST. THERE'S VERY DIFFERENT ROLES IN TERMS
18 OF MISSIONS, SO SHE SAW TWO DIFFERENT THERAPISTS
19 BETWEEN MAY OF 2000 AND THE END OF 2001 ROUGHLY,
20 AND THEN I INTERVIEWED HER AGAIN IN APRIL OF 2002.

21 Q AND THAT WAS JUST IN THE LAST MONTH?

22 A CORRECT.

23 Q AND THAT WAS AT MY REQUEST?

24 A YES.

25 Q AND WHAT WAS I REQUESTING YOU TO DO AS AN

1 ASSESSMENT ON N.G. -- NOT WHAT SHE TOLD YOU?

2 A RIGHT.

3 Q WHAT WAS YOUR --

4 A YOU REFERRED HER BACK TO ME WITH THREE
5 PRINCIPAL QUESTIONS, THE FIRST BEING A QUESTION OF
6 COMPETENCY, WHICH HAS TO DO WITH WHETHER OR NOT A
7 CHILD DEMONSTRATES AN UNDERSTANDING OF THE TRUTH
8 VERSUS A LIE AND THE IMPORTANCE OF TELLING THE
9 TRUTH, ALSO WHETHER OR NOT, YOU KNOW, TWO YEARS
10 LATER WHETHER OR NOT N.G. HAD MEMORIES ABOUT
11 THE EVENTS SURROUNDING HER SISTER'S DEATH, AND
12 THIRDLY, HOW EMOTIONALLY SHE WAS FUNCTIONING AND
13 WHAT THE POTENTIAL IMPACT WOULD BE OF RENDERING
14 TESTIMONY IN FRONT OF THE DEFENDANT.

15 Q AND SPECIFICALLY, LIMITING WHAT WE CAN TALK
16 ABOUT HERE TODAY --

17 A UH-HUH.

18 Q -- YOU WERE ABLE TO CONDUCT AN INTERVIEW TO
19 THAT EFFECT?

20 A YES, I WAS.

21 Q AND DOCTOR, WAS N.G. -- OR DID SHE
22 INDEPENDENTLY IN YOUR EXPERT OPINION, WAS SHE ABLE
23 TO REMEMBER THE EVENTS SURROUNDING HER SISTER'S
24 DEATH?

25 A YES.

1 Q AND DOCTOR, EXPLAIN TO THIS JURY, SHE WAS
2 FOUR AT THE TIME MINOR WAS KILLED; IS THAT
3 CORRECT?

4 A YES.

5 Q IS A FOUR YEAR OLD CAPABLE OF REMEMBERING AS
6 SHE DID INITIALLY AND THEN TWO YEARS LATER?

7 A CERTAINLY, YES. THE ISSUE WITH HOW LITTLE
8 CHILDREN REMEMBER THINGS IS THAT THEY'RE NOT
9 NECESSARILY GOING TO PAY ATTENTION TO THE AMOUNT
10 OF CIRCUMSTANCES THAT GROWNUPS WOULD. IN FACT,
11 ~~THEY WILL NOT BE ABLE TO DO THAT.~~ THEY'RE GOING
12 TO FOCUS IN ON A SMALLER NARROWER RANGE OF
13 INFORMATION, BUT CHILDREN CAN, AS SOON AS THEY
14 HAVE ENOUGH LANGUAGE SKILLS, THEY CAN ENCODE
15 MEMORIES AND THEY CAN HOLD ONTO THEM AND THEY CAN
16 RECALL THINGS YEARS LATER.

17 Q AND TYPICALLY IN SMALL CHILDREN, ARE THEY
18 MORE CAPABLE OF REMEMBERING TRAUMATIC EVENTS OR
19 WOULD A TRAUMATIC EVENT MAKE MORE OF AN IMPRESSION
20 AND STAY WITH THEM LONGER TYPICALLY?

21 A ~~TRAUMATIC MEMORIES CERTAINLY CAN STICK.~~ THEY
22 HAVE A PARTICULARLY EMOTIONAL LOADING, SO BECAUSE
23 SOMETHING IS VERY SALIENT AND THERE ARE TRAUMATIC
24 INTERACTIONS AROUND IT, THEY'RE MORE LIKELY TO
25 REMEMBER THAT, BUT THEY ALSO CAN REMEMBER THINGS

1 JUST BECAUSE THEY HAPPEN A LOT OR ARE MUNDANE,
2 WHICH IT JUST KIND OF REFLECTS WHAT HAPPENS IN
3 THEIR LIFE.

4 Q AND AFTER INTERVIEWING HER IN APRIL, IN YOUR
5 OPINION, DOES SHE STILL HAVE AN INDEPENDENT MEMORY
6 OF WHAT HAPPENED?

7 A OH, ABSOLUTELY, YES.

8 Q MOVING ON TO THE TESTIMONY WE'VE SEEN TODAY,
9 TELL THIS JURY WHAT EFFECT, IF ANY, DOES BRINGING
10 A SIX YEAR OLD INTO A COURTROOM, SUCH AS THIS WITH
11 A ROOM FULL OF STRANGERS, HAVE ON HER ABILITY TO
12 RELATE?

13 MS. COGGIOLA: YOUR HONOR, CAN WE APPROACH?

14 THE COURT: YES, WE NEED TO TALK ABOUT THIS.

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD
16 IN THE PRESENCE OF THE JURY, BUT OUT OF
17 THE HEARING OF THE JURY.)

18 BY MS. CAMPBELL:

19 Q LET ME BE MORE SPECIFIC, WOULD IT BE
20 DIFFICULT FOR SAY A SIX YEAR OLD TO COME IN THIS
21 COURTROOM AND TESTIFY IN FRONT OF A ROOM FULL OF
22 STRANGERS?

23 A YES.

24 MS. CAMPBELL: THAT'S ALL I HAVE, YOUR
25 HONOR.

1 THE COURT: CROSS-EXAMINATION, MS. COGGIOLA?

2 MS. COGGIOLA: THANK YOU.

3 CROSS-EXAMINATION

4 BY MS. COGGIOLA:

5 Q GOOD AFTERNOON, DOCTOR, JUST VERY BRIEFLY.

6 YOU DID NOT KNOW MINOR ; ISN'T THAT TRUE?

7 A CORRECT.

8 Q SO YOUR INVOLVEMENT WAS WITH HER SISTER?

9 A THAT'S RIGHT, AND HER BROTHER WHO I
10 INTERVIEWED ONE TIME.

11 Q AND HER BROTHER. OKAY. AND YOUR EXPERTISE
12 IS IN INTERVIEWING CHILDREN AND WHETHER THEY BE
13 VICTIMS OR WITNESSES OR HAVING HAD SOME TRAUMATIC
14 EVENT IN THEIR LIFE; IS THAT CORRECT?

15 A YES.

16 MS. COGGIOLA: I HAVE NO FURTHER QUESTIONS.

17 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
18 DOWN.

19 ANY OBJECTION TO HER BEING RELEASED?

20 MS. COGGIOLA: NONE.

21 MS. CAMPBELL: THANK YOU. I APPRECIATE IT.

22 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

23 MS. COOPER: THANK YOU, YOUR HONOR. THE
24 STATE CALLS INVESTIGATOR DALE JONES.

25 THE CLERK: COME FORWARD, PLEASE. PLACE YOUR

1 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

2 DALE JONES,

3 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: HAVE A SEAT AND STATE YOUR FULL
5 NAME INTO THAT MICROPHONE.

6 DIRECT EXAMINATION

7 BY MS. COOPER:

8 Q INVESTIGATOR JONES, COULD YOU PLEASE STATE
9 YOUR FULL NAME?

10 A DALE JONES, J-O-N-E-S.

11 Q INVESTIGATOR JONES, WHERE ARE YOU EMPLOYED?

12 A THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

13 Q AND WHAT IS YOUR CURRENT TITLE?

14 A I'M CURRENTLY THE ADMINISTRATIVE SERGEANT OF
15 THE DESK AREA OF THE MAIN HEADQUARTERS, WHICH IS
16 BASICALLY THE CENTRAL HUB OF ALL THE ACTIVITIES OF
17 THE DEPARTMENT.

18 AT THE TIME OF THIS PARTICULAR CASE, I WAS A
19 CRIMINAL INVESTIGATOR WITH OVER 500 HOURS OF
20 SPECIALIZED TRAINING IN CHILD AND ELDER ABUSE. I
21 WAS ASSIGNED THROUGH A GRANT PROGRAM WHERE MY
22 DUTIES INVOLVED THE SPECIAL INVESTIGATION AND
23 REVIEWING OF OVER 1500 CASES INVOLVING THESE TYPES
24 OF INVESTIGATIONS OVER A FIVE YEAR PERIOD.

25 I WORKED IN BOTH THE JUVENILE AND SEXUAL

1 ASSAULT AREAS AT THE SHERIFF'S DEPARTMENT AT THAT
2 TIME.

3 Q AND HOW LONG HAVE YOU BEEN IN LAW
4 ENFORCEMENT, TOTAL YEARS?

5 A I'VE BEEN IN LAW ENFORCEMENT A TOTAL OF 25
6 YEARS, WITH THE LAST 14 BEING WITH THE RICHLAND
7 COUNTY SHERIFF'S DEPARTMENT.

8 Q AND WHEN DID YOU GET ASSIGNED TO THIS CASE
9 INVOLVING MINOR ?

10 A I WAS ASSIGNED TO IT AT THE MORNING BRIEFING
11 AT 8:30 IN THE MORNING OF THE 30TH -- MARCH 29TH,
12 2002.

13 Q AND WHEN, IN FACT, WAS THIS CRIME REPORTED?

14 A THIS CRIME WAS ACTUALLY REPORTED TO THE
15 SHERIFF'S DEPARTMENT ON THE 29TH THROUGH ONE OF
16 OUR OFFICERS THAT WORKS IN D.S.S. HE RECEIVED THE
17 REPORT FROM MS. GRANT AND IT WAS SUBSEQUENTLY SENT
18 ON TO BE FORWARDED TO ME.

19 Q AND WHAT DID YOU -- WHAT DO YOU FIRST DO WHEN
20 YOU BEGAN YOUR INVESTIGATION IN THIS CASE?

21 A THE FIRST THING I DID WAS TO CONTACT
22 MS. GRANT FROM D.S.S. TO CONFIRM WHAT INFORMATION
23 SHE HAD AND THEN I CONTACTED THE SOCIAL WORKER AT
24 RICHLAND MEMORIAL TO CONFIRM WHAT THE STATUS OF
25 THE CHILD WAS AT THAT POINT.

1 Q AND WHAT WERE YOU ABLE TO LEARN?

2 A I WAS ABLE TO LEARN SHE WAS STILL IN THE
3 COMATOSE STATE, WHO THE DOCTORS WERE THAT WERE
4 INVOLVED, AND SO FORTH AND THAT THEY WERE ALREADY
5 PLANNING ON DOING THE BRAIN SCAN LATER THAT DAY SO
6 I KNEW IT WAS IMPERATIVE THAT WE HAD TO GET THERE
7 AS QUICKLY AS POSSIBLE TO DO WHAT WE HAD TO GET
8 DONE.

9 Q DID YOU GET TO THE HOSPITAL?

10 A YES, MA'AM.

11 Q AND WHO DID YOU TAKE WITH YOU?

12 A I TOOK ONE OF OUR LAB INVESTIGATORS WITH ME,
13 INVESTIGATOR PHIL MCCALL.

14 Q AND FOR WHAT PURPOSE WAS THAT?

15 A THAT WAS TO GET A PHOTOGRAPH OF THE CHILD AND
16 THE CONDITION SHE WAS IN AT THAT CURRENT TIME.

17 Q AND I'M GOING TO SHOW YOU THESE PHOTOGRAPHS
18 OF MINOR , STATE'S EXHIBIT 7, 9, 8, AND 6. DO
19 YOU RECOGNIZE THOSE?

20 A YES, MA'AM, THOSE WERE ALL PHOTOGRAPHS THAT I
21 WAS PRESENT WHEN THEY WERE TAKEN.

22 Q AND WHAT DATE AND TIME WERE THESE PHOTOGRAPHS
23 TAKEN?

24 A THEY WOULD HAVE BEEN TAKEN ON MARCH 30TH AT
25 10:15 IN THE MORNING.

1 Q DO YOU KNOW WHEN SHE WAS ADMITTED TO THE
2 HOSPITAL?

3 A SHE WAS ADMITTED ON THE 28TH. IT WAS AROUND
4 7:30, 8:00 IN THE MORNING.

5 Q SO APPROXIMATELY WITHIN 48 HOURS OF HER
6 ADMISSION?

7 A THAT IS CORRECT.

8 Q NOW, AT THE HOSPITAL AFTER YOU PHOTOGRAPHED
9 HER, WHAT DID YOU DO NEXT?

10 A I THEN MADE CONTACT WITH THE FOSTER PARENTS,
11 MR. AND MRS. MITCHELL, TO OBTAIN INFORMATION ON
12 THE OTHER TWO CHILDREN, N.G. AND H.G. AS TO
13 THEIR LOCATION AND ANY BACKGROUND INFORMATION I
14 COULD ON THAT AND JUST TO INFORM THEM THAT I
15 WASN'T ASKING ANY QUESTIONS AT THAT TIME ABOUT IT,
16 BUT I WOULD BE GETTING BACK WITH THEM AT A LATER
17 TIME.

18 Q OKAY. AND AFTER YOU MET WITH THEM WHERE DID
19 YOU GO?

20 A AT THAT TIME MS. GRANT WAS ALREADY AT THE
21 HOSPITAL WITH ME. I WENT TO THE LOCATION WHERE
22 BOTH THE CHILDREN HAD BEEN REMOVED BY D.S.S. AND
23 PLACED IN ANOTHER FOSTER HOME, WHICH WAS IN
24 HOPKINS -- ON CABIN CREEK IN HOPKINS.

25 I WENT DOWN THERE TO ATTEMPT TO INTERVIEW THE