

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

1 CHILDREN AT THAT LOCATION.

2 Q DID YOU, IN FACT, INTERVIEW ANY OF THE
3 CHILDREN?

4 A YES, MA'AM. I WAS ABLE TO INTERVIEW N.G.
5 H.G. WAS TOO YOUNG AND WASN'T ABLE TO SPEAK TO
6 ME.

7 Q AND AS A RESULT OF INTERVIEWING N.G. , WHAT
8 DID YOU DO NEXT?

9 A I THEN RETURNED BACK TO HEADQUARTERS AND
10 BRIEFED MY SUPERVISORS. SUBSEQUENTLY, WE
11 CONTACTED DEPUTY SOLICITOR JOHNNY GASSER, WHO HAD
12 APPROVED TO GET A WARRANT FOR ASSAULT AND BATTERY
13 WITH INTENT TO KILL, AND WE ALSO RECEIVED -- OR
14 APPLIED FOR A SEARCH WARRANT TO BE ABLE TO
15 PHOTOGRAPH THE HOME ITSELF AND TO POSSIBLY SECURE
16 A BELT THAT HAD BEEN MENTIONED TO ME EARLIER.

17 Q AND WHAT DID YOU DO ONCE YOU GOT THE SEARCH
18 WARRANT AND THE ARREST WARRANT FOR ASSAULT AND
19 BATTERY WITH INTENT TO KILL?

20 A I TOOK THOSE WARRANTS -- I TOOK THEM DOWN
21 BEFORE JUDGE WOMBLE AT BOND COURT, AND WE GOT THE
22 WARRANTS ISSUED. I THEN ATTEMPTED TO MAKE CONTACT
23 WITH THEM AT THE HOSPITAL, BUT I WAS INFORMED THAT
24 THEY HAD LEFT THE HOSPITAL AND WERE AT THEIR HOME
25 AT [REDACTED], SO I THEN WENT TO THAT

1 LOCATION ALONG WITH MY SUPERVISOR.

2 Q AND YOU SAID -- WHERE DID YOU GO, WHAT'S THE
3 RESIDENCE ADDRESS?

4 A [REDACTED].

5 Q IS THAT HERE IN RICHLAND COUNTY?

6 A YES, MA'AM, IT IS.

7 Q AND WHAT HAPPENED WHEN YOU GOT TO [REDACTED]
8 [REDACTED] THE RESIDENCE OF THE DEFENDANT?

9 A WHEN I GOT THERE I DON'T RECALL EXACTLY WHICH
10 ONE OF THEM MET ME AT THE DOOR, BUT THEY WERE THE
11 ONLY TWO HOME AT THE TIME. AGAIN, I INTRODUCED
12 MYSELF AND INTRODUCED THE SERGEANT AND ADVISED
13 THEM THAT I NEEDED TO TALK WITH THEM ABOUT WHAT
14 HAD HAPPENED AND ASKED IF THEY WOULD GIVE CONSENT
15 TO HAVE US COME IN AND DO THE PHOTOGRAPHS AND TO
16 ATTEMPT TO SECURE THIS BELT.

17 THEY AGREED TO DO SO, AND WE ACTUALLY DID A
18 WRITTEN CONSENT, WHICH THEY SIGNED WAIVING THE
19 RIGHT TO BE ABLE TO HAVE US COME IN AND DO THAT.

20 Q SO THEY AGREED FOR YOU TO COME INTO THEIR
21 RESIDENCE?

22 A THAT'S CORRECT.

23 Q YOU DID NOT ACTUALLY HAVE TO USE THE SEARCH
24 WARRANT AT ALL, DID YOU?

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

1 Q ONCE YOU GOT INTO THE RESIDENCE, WHAT DID YOU
2 BEGIN TO DO?

3 A I USED BOTH A 35-MILLIMETER AND A DIGITAL
4 CAMERA AND PHOTOGRAPHED THE ENTIRE RESIDENCE.

5 Q WHY WAS IT IMPORTANT TO PHOTOGRAPH THEIR
6 RESIDENCE?

7 A THIS IS THE LOCATION THAT WE HAD THAT -- AS
8 TO WHERE THE INCIDENT OCCURRED.

9 Q SO THIS WAS CONSIDERED A CRIME SCENE; IS THAT
10 CORRECT?

11 A THAT'S CORRECT.

12 Q I'M GOING TO SHOW YOU SOME PHOTOGRAPHS AND
13 ASK YOU IF YOU RECOGNIZE THEM.

14 A YES, MA'AM, I DO.

15 Q CAN YOU PLEASE INDICATE WHAT THEY ARE?

16 A THIS FIRST PHOTOGRAPH WOULD BE THE LIVING
17 ROOM OF THE --

18 MS. CAMPBELL: HOLD ON ONE SECOND.

19 MS. COGGIOLA: YOUR HONOR.

20 THE COURT: I'M SORRY.

21 BY MS. COOPER:

22 Q JUST GO THROUGH THEM AND LET ME KNOW AND THEN
23 WE'LL ...

24 A OKAY. THIS IS THE LIVING ROOM. THIS SHOWS
25 WHAT WOULD HAVE BEEN MINOR 'S CRIB, WHAT WOULD

1 HAVE BEEN N.G. S BED IN THE SAME ROOM AS
2 MINOR 'S CRIB, THE PARENT'S BED, AND A BATHROOM.

3 Q OKAY. AND THESE ARE PHOTOGRAPHS THAT YOU
4 TOOK WHEN?

5 A AT APPROXIMATELY 8:30 ON THAT SAME EVENING,
6 MARCH 30TH, 2000.

7 MS. COOPER: YOUR HONOR, AT THIS TIME WE SEEK
8 TO INTRODUCE THESE PHOTOGRAPHS OF THE RESIDENCE OF
9 THE DEFENDANT.

10 THE COURT: ANY OBJECTION?

11 MS. COGGIOLA: MAY WE APPROACH?

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD
13 IN THE PRESENCE OF THE JURY, BUT OUT OF
14 THE HEARING OF THE JURY.)

15 (WHEREUPON, STATE'S EXHIBIT'S 22 THROUGH
16 25 WERE ADMITTED INTO EVIDENCE.)

17 MS. COOPER: YOUR HONOR, THAT'S STATE'S
18 EXHIBIT 22 THROUGH 25.

19 BY MS. COOPER:

20 Q INVESTIGATOR JONES, COULD YOU PLEASE PUBLISH
21 THOSE TO THE JURY AND SHOW THEM WHICH ROOMS WERE
22 RELEVANT IN YOUR INVESTIGATION THAT YOU
23 PHOTOGRAPHED?

24 A YES, MA'AM, NUMBER EXHIBIT 22 WOULD BE THE
25 BATHROOM ITSELF WHERE IT HAD BEEN ALLEGED THAT THE

1 INCIDENT HAD INITIATED, ACCORDING TO SOME OF THE
2 INFORMATION WE RECEIVED, CONCERNING THE POTTY.

3 NUMBER 23 WOULD BE OF THE MASTER BEDROOM,
4 WHICH WOULD BE MR. AND MRS. MITCHELL'S BEDROOM
5 WHERE ALLEGEDLY PART OF THIS INCIDENT HAD
6 OCCURRED.

7 NUMBER 24 WOULD BE MINOR 'S BED, HER CRIB.

8 Q DO YOU SEE ANY LIGHT SWITCH NEAR HER CRIB?

9 A YES, MA'AM, IF SHE WOULD HAVE BEEN STANDING
10 UP, WHICH AT TWO YEARS OF AGE SHE WOULD HAVE BEEN
11 ABLE TO DO SO AND STILL EASILY HAVE BEEN ABLE TO
12 REACH THE LIGHT SWITCH.

13 THE LAST ONE, NUMBER 25, IS THE SAME ROOM
14 JUST AT A DIFFERENT ANGLE. THAT'S SHOWING HER
15 SISTER'S N.G. A'S BED ACROSS THE ROOM FROM WHERE
16 THE CRIB WAS.

17 Q SO THAT'S WHERE N.G. SLEPT? THEY SHARED A
18 ROOM TOGETHER?

19 A YES, MA'AM, THEY DID.

20 Q NOW, AFTER YOU PHOTOGRAPHED THE ROOM, WERE
21 YOU ABLE TO OBTAIN ANYTHING ELSE FROM THEIR
22 RESIDENCE?

23 A YES, MA'AM, WE ACTUALLY RECEIVED SEVERAL
24 DIFFERENT BELTS, ONE OF WHICH WAS IDENTIFIED AS
25 MR. MITCHELL'S BELT. THERE WERE ALSO SEVERAL

1 OTHER BELTS THAT THEY ALSO TURNED OVER TO US AT
2 THE TIME.

3 MS. COOPER: WE'D LIKE TO ADMIT THESE ALSO,
4 YOUR HONOR.

5 THE COURT: WITHOUT OBJECTION?

6 MS. COGGIOLA: NO OBJECTION.

7 (WHEREUPON, STATE'S EXHIBIT NUMBERS 26
8 AND 27 WERE ADMITTED INTO EVIDENCE.)

9 BY MS. COOPER:

10 Q INVESTIGATOR JONES, I'M GOING TO HAND YOU UP
11 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO. 26 AND
12 ASK YOU TO OPEN IT UP AND SEE IF YOU CAN IDENTIFY
13 IT AND TELL THIS JURY WHAT IT IS.

14 A YES, MA'AM, THIS WOULD BE THE BELT THAT WAS
15 IDENTIFIED AS NATHANIEL MITCHELL'S BELT. HE
16 INDICATED THAT WAS THE ONLY BELT HE HAD AT THE
17 TIME.

18 Q OKAY. AND I'M GOING TO HAND UP STATE'S
19 EXHIBIT NUMBER 27 AND ASK YOU TO IDENTIFY WHAT'S
20 IN THERE.

21 A THIS IS AN ARRAY OF VARIOUS OTHER BELTS THAT
22 WERE ALSO RETRIEVED FROM THAT SAME RESIDENCE.

23 Q AND AS A RESULT OF COLLECTING THESE BELTS,
24 WHAT, IF ANY, LAB WORK DID YOU HAVE DONE WITH
25 THEM? WHAT WERE YOU ABLE TO DO WITH THESE BELTS?

1 A WELL, WHAT WE DID IS, WITH THE INJURIES TO
2 THE BUTTOCKS AREA AND POSSIBLY ANY OTHER INJURIES
3 WHEN WE HAVE A CASE LIKE THIS, WE WANT TO BE ABLE
4 TO DETERMINE WHAT THE MECHANISM OF THE INJURY WAS
5 IF AT ALL POSSIBLE, SO WHAT WE WOULD DO IS ONCE
6 THE PHOTOGRAPHS WERE DONE, IF THEY WERE POSSIBLE
7 LATER TO DETERMINE TO SEE IF THE BELT MIGHT HAVE
8 BEEN USED, DUE TO THE SIZE OR PATTERN OR SOMETHING
9 LIKE THAT, SO THAT WOULD BE THE REASON FOR
10 SECURING THOSE ITEMS.

11 THEY WERE TESTED, BUT DUE TO THE PHOTOGRAPHS
12 AS YOU'VE ALREADY SEEN OF THE INJURIES AND SO
13 FORTH, WE WEREN'T ABLE TO MATCH ANYTHING
14 DEFINITELY AS TO WHAT IT WAS THAT CAUSED IT.

15 Q YOU INDICATED THE DEFENDANT TOLD YOU THAT WAS
16 HIS ONLY BELT AT THE TIME?

17 A THAT'S CORRECT.

18 Q NOW AFTER YOU SECURED THESE BELTS AND
19 PHOTOGRAPHED THE RESIDENCE OF THE MITCHELLS, WHERE
20 DID YOU GO NEXT?

21 A AT THAT TIME I ASKED BOTH MR. AND MRS.
22 MITCHELL IF THEY WOULD COME DOWN TO OUR
23 HEADQUARTERS TO SPEAK WITH US FURTHER ON THIS. I
24 ASKED MR. MITCHELL TO RIDE WITH ME AND
25 MRS. MITCHELL TO RIDE WITH LANCY WEEKS, ANOTHER

1 FEMALE OFFICER, AND THEY BOTH VOLUNTARILY AGREED
2 TO DO SO.

3 Q AND TELL THE JURY EXACTLY WHAT HAPPENED WHEN
4 YOU GOT TO THE SHERIFF'S DEPARTMENT WITH NATHANIEL
5 MITCHELL.

6 A WHEN I GOT TO THE SHERIFF'S DEPARTMENT, THE
7 OFFICES THAT WE HAVE -- I HAVE A SMALL CUBICLE
8 WHICH WOULD NOT BE COMPATIBLE WITH BEING ABLE TO
9 DO SOMETHING OF THIS NATURE SO WE HAVE A SMALL
10 CONFERENCE ROOM THAT WE USE FOR DOING INTERVIEWS
11 AND MS. GRANT FROM D.S.S. WAS ALSO ALREADY THERE.
12 SHE MET ME, AND WE WENT IN THAT ROOM AND I BEGAN
13 TO PREPARE TO DO AN INTERVIEW WITH MR. MITCHELL.
14 THE FIRST THING I DID WAS TO ADVISE HIM OF HIS
15 RIGHTS.

16 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT 1 FOR I.D. PURPOSES ONLY. DO YOU
18 RECOGNIZE THAT DOCUMENT?

19 A YES, MA'AM. THAT'S THE ADVISEMENT OF RIGHTS
20 THAT I GAVE MR. MITCHELL.

21 Q AND WHEN WAS IT DATED AND TIMED?

22 A THIS WAS ON MARCH 30TH, 2000, AT 2100, WHICH
23 WOULD BE 9:00 P.M.

24 Q DID YOU SIGN THAT?

25 A YES, MA'AM, I DID.

1 MS. COOPER: YOUR HONOR, AT THIS TIME, THE
2 STATE WISHES TO INTRODUCE THIS INTO EVIDENCE.

3 THE COURT: SUBJECT TO PRETRIAL RULING.

4 MS. COOPER: YES, SIR.

5 (WHEREUPON, STATE'S EXHIBIT NUMBER 1 WAS
6 ADMITTED INTO EVIDENCE.)

7 BY MS. COOPER:

8 Q INVESTIGATOR, PLEASE TELL THE JURY EXACTLY
9 WHAT YOU DO WITH THIS FORM -- IN THIS CASE WHAT
10 YOU DID WITH THAT FORM WITH MR. MITCHELL IN THIS
11 CASE?

12 A YES, MA'AM, ON THE TOP OF THE FORM WE
13 INDICATE HIS NAME, THE OFFICER'S NAME WHO IS
14 PRESENT AND THEN WE INDICATE THE LOCATION, WHICH
15 WAS AT 5620 TWO NOTCH ROAD, WHICH IS THE RICHLAND
16 COUNTY SHERIFF'S DEPARTMENT'S MAIN HEADQUARTERS
17 AND WE INDICATE THE DATE AND TIME. AS WE ALREADY
18 SAID THIS WAS MARCH 30TH OF 2000. THE TIME WAS
19 2100, WHICH WAS 9:00 P.M.

20 THE NEXT THING I DO IS THAT I ADVISE HIM OF
21 HIS RIGHTS. IT'S BROKEN DOWN SENTENCE BY
22 SENTENCE. I READ TO HIM, "BEFORE I ASK YOU ANY
23 QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS." ONCE
24 HE ACKNOWLEDGED THAT, I THEN PUT A CHECKMARK OFF
25 TO THE LEFT HAND SIDE OF THAT.

1 I THEN ASKED HIM, "YOU HAVE THE RIGHT TO
2 REMAIN SILENT." HE ACKNOWLEDGED THAT, AND SO I
3 PUT ANOTHER CHECKMARK DOWN.

4 I ADVISED HIM, "YOU HAVE ANYTHING" -- OR
5 RATHER, "ANYTHING YOU SAY CAN BE USED AGAINST YOU
6 IN COURT." HE ACKNOWLEDGED THAT AND I PUT A
7 CHECKMARK BY IT.

8 "YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR
9 ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND HAVE
10 THE LAWYER WITH YOU DURING ANY QUESTIONING."
11 AFTER HE ACKNOWLEDGED THAT I CHECKED THAT.

12 "IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE
13 APPOINTED FOR YOU BEFORE QUESTIONING IF YOU WISH."
14 AFTER HE ACKNOWLEDGED THAT, I CHECKED THAT.

15 THEN THE LAST QUESTION IN THAT SECTION IS,
16 "IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A
17 LAWYER PRESENT YOU STILL HAVE THE RIGHT TO STOP
18 ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT TO
19 STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A
20 LAWYER." AFTER HE ACKNOWLEDGED THAT, I CHECKED
21 THAT AND THEN HE SIGNED DIRECTLY BELOW THAT
22 INDICATING THAT HE UNDERSTOOD ALL OF THOSE RIGHTS
23 THAT I HAD JUST READ TO HIM.

24 Q AND WHO WITNESSED THAT PORTION?

25 A I WITNESSED IT AS WELL AS INVESTIGATOR GRANT

1 FROM D.S.S.

2 Q AND WHAT HAPPENED AFTER YOU EXPLAINED HIS
3 RIGHTS TO HIM?

4 A THE NEXT PORTION ON THIS FORM HAS THE WAIVER
5 OF RIGHTS DIRECTLY BELOW IT. I READ THAT
6 STATEMENT TO HIM. IT SAYS, "I HAVE READ THIS
7 STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY
8 RIGHTS ARE," WHICH HE HAD JUST SIGNED ABOVE.

9 "I AM WILLING TO TALK AND ANSWER QUESTIONS.
10 I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISE
11 HAS BEEN MADE TO ME, NO PRESSURE OR COERCION OF
12 ANY KIND HAS BEEN USED AGAINST ME."

13 AND COERCION -- SOMETIMES PEOPLE AREN'T QUITE
14 SURE WHAT THAT MEANS, SO I ASKED HIM, WHICH IS
15 TYPICALLY WHAT I DO, "DO YOU UNDERSTAND WHAT
16 COERCION IS? I'M NOT STANDING HERE WITH A RUBBER
17 HOSE HITTING YOU OVER THE HEAD GETTING YOU TO TALK
18 WITH ME OR ANYTHING OF THAT NATURE." HE INDICATED
19 THAT, YES, HE UNDERSTOOD AND SIGNED THAT WAIVING
20 HIS RIGHTS TO AN ATTORNEY AT THAT TIME.

21 Q AND WHO WITNESSED THAT WAIVER OF RIGHTS?

22 A I ALSO WITNESSED IT, ALONG WITH INVESTIGATOR
23 GRANT OF D.S.S.

24 Q DID YOU INQUIRE ANYTHING ABOUT HIS BACKGROUND
25 OR HIS EDUCATION TO MAKE SURE HE UNDERSTOOD ALL OF

1 HIS RIGHTS?

2 A YES, MA'AM, THE VERY FIRST PORTION OF ANY
3 STATEMENT I TAKE INDICATES THAT TYPE OF
4 INFORMATION.

5 Q AND WHAT INFORMATION DID YOU GET FROM
6 MR. MITCHELL CONCERNING HIS EDUCATION LEVEL?

7 A THE STANDARD THREE QUESTIONS THAT I ALWAYS
8 ASK FIRST ARE: ARE YOU ABLE TO READ AND WRITE.
9 HE INDICATED THAT, YES, HE WAS AND THAT HE WAS A
10 GRADUATE OF SPRING VALLEY HIGH SCHOOL.

11 THE SECOND ONE IS, WAS HE UNDER THE INFLUENCE
12 OF DRUGS OR ALCOHOL AT THAT PRESENT TIME. HE
13 INDICATED THAT HE WAS NOT.

14 THE THIRD WAS, WAS HE ABLE TO DISTINGUISH THE
15 DIFFERENCE BETWEEN THE TRUTH AND A LIE. HE
16 OBVIOUSLY INDICATED HE COULD.

17 Q AT ANY TIME DID YOU EVER THREATEN HIM OR
18 COERCE HIM TO GIVE YOU THIS STATEMENT?

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

20 Q DID YOU EVER DEPRIVE HIM OF ANY FOOD OR WATER
21 OR A RESTROOM BREAK?

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

23 Q DID YOU OFFER HIM A BREAK?

24 A YES, MA'AM, WE DID. AT LEAST ON ONE OCCASION
25 I CAN RECALL THAT WE TOOK A BREAK FOR ONE REASON

1 OR ANOTHER AND WE OFFERED FOR A BREAK OR IF HE
2 NEEDED A DRINK OR A COKE OR TO GO TO THE BATHROOM
3 OR ANYTHING LIKE THAT.

4 Q DID HE WISH TO TAKE YOU UP ON ANY OF THAT?

5 A NO, MA'AM.

6 Q WHAT ABOUT -- DID YOU EVER MAKE ANY PROMISES
7 OF A REWARD OR LENIENCY TO GET HIM TO TALK TO YOU?

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

9 Q DID HE MAKE A STATEMENT AFTER HE WAIVED HIS
10 RIGHTS?

11 A YES, MA'AM, HE DID.

12 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
13 STATE'S EXHIBIT 2 FOR IDENTIFICATION PURPOSES. DO
14 YOU RECOGNIZE THAT?

15 A YES, MA'AM THAT'S A COPY OF THE STATEMENT
16 THAT HE GAVE ME THAT EVENING.

17 MS. COOPER: YOUR HONOR, AT THIS TIME I WOULD
18 SEEK TO INTRODUCE IT INTO EVIDENCE.

19 THE COURT: SUBJECT TO THE PRETRIAL RULING.

20 MS. COGGIOLA: YOUR HONOR, WE WOULD OBJECT TO
21 THE COPY OF THE STATEMENT BEING ADMITTED INTO
22 EVIDENCE THAT INVESTIGATOR JONES CAN TESTIFY TO.

23 THE COURT: COPY OR ORIGINAL? WHAT'S YOUR...

24 MS. COOPER: CAN WE APPROACH?

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD

1 IN THE PRESENCE OF THE JURY, BUT OUT OF
2 THE HEARING OF THE JURY.)

3 THE COURT: OBJECTION OVERRULED.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 WAS
5 ADMITTED INTO EVIDENCE.)

6 BY MS. COOPER:

7 Q I ASKED YOU IF YOU RECOGNIZED THAT DOCUMENT.
8 WHAT IS THAT?

9 A YES, MA'AM. THAT IS THE STATEMENT THAT I
10 TOOK FROM MR. MITCHELL ON THAT EVENING.

11 Q AND HOW MANY PAGES IS IT?

12 A IT'S A TOTAL OF FIVE PAGES.

13 Q TELL THE JURY HOW YOU INTERVIEW A SUSPECT OF
14 A CRIME. WHAT EXACTLY DO YOU DO? DO YOU TYPE IT
15 ALONG WITH HIM OR -- JUST EXPLAIN WHAT YOU DO.

16 A BASICALLY WHAT I DO AFTER I GET THAT INITIAL
17 INFORMATION, GET HIS EDUCATIONAL BACKGROUND AND SO
18 FORTH, I SIT AND I TALK THROUGH THE WHOLE
19 SITUATION FIRST, WHAT HE WANTS TO TELL ME AND THAT
20 IS TO WHAT TRANSPIRED, AND I ASK QUESTIONS.

21 I WRITE SOME NOTES AND SO FORTH, BUT AFTER WE
22 HAVE TALKED IT ALL THE WAY THROUGH, THEN I'LL GO
23 BACK AND -- UNDER THE POSITION I WAS WORKING AT
24 THAT TIME I ACTUALLY HAD A LAPTOP COMPUTER AND I
25 WAS ABLE TO TAKE THAT WITH ME IN THAT ROOM, ALONG

1 WITH A PORTABLE PRINTER.

2 I WAS ABLE AFTER WE HAD DONE THE INTERVIEW TO
3 GO AHEAD AND TYPE IT OUT AND READ BACK THE
4 QUESTIONS TO MAKE SURE I HAD IT WORDED THE WAY HE
5 WANTED IT WORDED. AT THAT TIME I WOULD PRINT IT
6 OUT, ALLOW HIM AGAIN TO READ IT BEFORE HE WOULD GO
7 AHEAD AND SIGN IT.

8 Q SO TO CONFIRM THAT THIS IS EXACTLY THE WAY HE
9 WANTED HIS STORY RELAYED TO YOU, HE SIGNED IT TO
10 CONFIRM THAT THAT WAS HIS STATEMENT; IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 Q PLEASE PUBLISH THE STATEMENT TO THE JURY.

14 A AT THE VERY TOP OF THE STATEMENT IT INDICATES
15 HIS NAME, NATHANIEL MITCHELL AT [REDACTED]
16 [REDACTED] IN COLUMBIA, SOUTH CAROLINA, 29223. IT
17 INDICATES THAT HE IS A BLACK MALE, 36 YEARS OF AGE
18 WITH A DATE OF BIRTH OF [REDACTED]/36 (SIC), HIS SOCIAL
19 SECURITY NUMBER AND HIS PHONE NUMBER.

20 Q EXCUSE ME, YOU MEANT 63?

21 A OH, YES, EXCUSE ME, IT IS 1963.

22 Q OKAY.

23 A IT INDICATES THAT IT WAS MADE AT COLUMBIA,
24 SOUTH CAROLINA, ON THE 30TH DAY OF MARCH, 2000 AT
25 21:00 HOURS, WHICH AS I INDICATED IS 9:00 P.M. IN

1 THE PRESENCE OF INVESTIGATOR DALE JONES, JR. OF
2 THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

3 THE FIRST PARAGRAPH IS ACTUALLY ANOTHER
4 VERSION OF THE STATEMENT OF HIS RIGHTS WHICH WAS
5 READ. IT SAYS, "I, NATHANIEL MITCHELL, UNDERSTAND
6 THAT I HAVE THE RIGHT TO REMAIN SILENT. ANYTHING
7 I SAY CAN BE USED AGAINST ME IN COURT. I HAVE THE
8 RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE
9 ANSWERING ANY QUESTIONS OR HAVE A LAWYER WITH ME
10 DURING ANY QUESTIONING. IF I CANNOT AFFORD A
11 LAWYER, ONE WILL BE APPOINTED FOR ME BEFORE
12 QUESTIONING IF I WISH. IF I ANSWER QUESTIONS NOW
13 WITHOUT A LAWYER PRESENT, I STILL HAVE THE RIGHT
14 TO STOP ANSWERING AT ANY TIME UNTIL I TALK TO A
15 LAWYER."

16 THEN THE NEXT SENTENCE SAYS, "YOU DO MAKE THE
17 FOLLOWING STATEMENTS," AND THEN IT'S BROKEN DOWN.
18 IT'S A QUESTION AND ANSWER TYPE OF THING. THE "Q"
19 EQUALS MY QUESTION AND THE "A" EQUALS HIS ANSWER
20 AND THEN THERE'S THE LOCATION AGAIN, WHICH IS 5623
21 TWO NOTCH ROAD AT THE RICHLAND COUNTY SHERIFF'S
22 DEPARTMENT HEADQUARTERS.

23 THE COURT: SLOW DONE A JUST LITTLE BIT,
24 OKAY?

25 THE WITNESS: OH, OKAY. AS I SAID JUST

1 EARLIER, THE VERY FIRST SENTENCE -- THE QUESTIONS
2 THAT I ALWAYS ASK ARE, "ARE YOU ABLE TO READ AND
3 WRITE?" HE INDICATED HE WAS. HE SAID, "YES, I AM
4 A GRADUATE OF SPRING VALLEY HIGH SCHOOL."

5 "ARE YOU UNDER THE INFLUENCE OF ANY DRUGS OR
6 ALCOHOL?" "NO, SIR."

7 "ARE YOU ABLE TO DISTINGUISH THE DIFFERENCE
8 BETWEEN THE TRUTH AND A LIE?" HE SAID, "YES,
9 SIR."

10 I THEN ASKED HIM HOW LONG HE HAD BEEN MARRIED
11 TO SONYA. HE SAID THAT IT WAS GOING ON EIGHT
12 YEARS.

13 I ASKED HIM HOW -- OR "DO YOU HAVE ANY
14 CHILDREN OF YOUR OWN?" HE ADVISED ME THAT NO,
15 THEY HAD LOST THEIR FIRST CHILD IN 1993.

16 I THEN ASKED, "HOW LONG HAVE YOU BEEN A
17 LICENSED FOSTER PARENT WITH D.S.S.?" HE
18 INDICATED, "I THINK IT WAS MARCH OF 1997, WHEN I
19 GOT MY DAUGHTER. I'M NOT SURE WHEN WE WERE
20 ACTUALLY LICENSED."

21 I THEN ASKED WHEN DID THEY GET MINOR AND
22 HER SISTER N.G. HE ADVISED ME THAT
23 THEY GOT THEM ON -- OR HE SAID, "WE GOT THEM IN
24 JUNE OF 1999."

25 THE NEXT QUESTION WAS, "HAVE YOU -- HAVE ANY

1 OF THE CHILDREN HAD ANY PROBLEMS TO YOUR
2 KNOWLEDGE?" HE SAID, "NOT WHEN WE GOT THEM.
3 MINOR HAS BEEN ON A HEART MONITOR, BUT NOT WHEN
4 WE GOT HER AND N.G. WAS USING AN INHALER."

5 I ASKED THEN, "HOW DO YOU DISCIPLINE THE
6 CHILDREN WHEN THEY DON'T LISTEN?" HE SAID, "WE'VE
7 GOT A TIME-OUT CHAIR. IF THAT DOESN'T WORK, WE
8 TAKE AWAY TREATS AND PUT THEM TO BED EARLY."

9 THEN I ASKED, "HAVE YOU EVER HAD TO SPANK THE
10 CHILDREN?" HE INDICATED, "WE POP THEM ON THE
11 HAND." "WHAT ABOUT HITTING THEM ON THE BUTT?" HE
12 ANSWERED, "NO, SIR."

13 "DO BOTH YOU AND SONYA WORK OUTSIDE THE
14 HOME?" HE INDICATED, "YES."

15 "WHAT TIME DO YOU GET UP FOR WORK IN THE
16 MORNING?" HE SAID, "WELL, I DON'T HAVE TO BE AT
17 WORK UNTIL 8:30. SONYA GETS UP AT 5:00 A.M. I
18 GET UP ABOUT 6:00 TO 6:30 A.M. I GET THE KIDS UP
19 AT 7:15 A.M. TO GET THEM READY FOR THEIR REGULAR
20 ROUTINE. MY WIFE LEAVES FOR WORK ABOUT TEN
21 MINUTES TO 6:00. SHE'S RIGHT ACROSS THE STREET
22 FROM THE SCHOOL. I'M ON CALL. I WORK AT A
23 RESPIRATOR COMPANY. I'M A SERVICE TECHNICIAN."

24 "CAN YOU TELL ME WHAT THE CHILDREN'S NORMAL
25 MORNING ROUTINE IS?" HE INDICATED, "I GET H.G.

1 UP FIRST, PUT HIM ON THE POTTY. THEN I WAKE UP
2 THE GIRLS IN THEIR ROOM. N.G. WILL GO TO THE
3 BATHROOM AND USE THE BIG TOILET. THEN I'LL BRING
4 MINOR OUT AND PUT HER ON THE POTTY, AND THEY LET
5 ME KNOW WHEN THEY HAVE PEE-PEED. THEN N.G.
6 WILL GO BACK TO HER ROOM TO GET DRESSED WITH THE
7 CLOTHES THAT I'VE ALREADY DONE UP FOR THE WEEK. I
8 LAY THEM OUT FOR HER AND SHE DRESSES HERSELF.
9 NORMALLY I'LL BE DRESSING H.G. AT THAT TIME IN
10 OUR BEDROOM."

11 "WHEN MINOR GETS FINISHED USING THE POTTY
12 I'LL CALL HER INTO THE BEDROOM AND GET HER READY.
13 THEY EAT BREAKFAST AT SCHOOL ABOUT TEN MINUTES
14 AWAY AT THE EDUCATION EXPRESS ON TWO NOTCH ROAD.
15 WE HAVE TWO CAR SEATS, AND I DRIVE THEM TO SCHOOL
16 AND THEN I GO TO WORK OVER AT WEST COLUMBIA."

17 THEN I ASKED THE QUESTION, "CAN YOU TELL ME
18 ABOUT WHAT TIME YOU GET HOME FROM WORK?" HE
19 INDICATED, "I SOMETIMES GET HOME ABOUT 6:00, 6:30
20 P.M. OR SO. IT DEPENDS ON WHETHER I'M ON CALL OR
21 NOT."

22 THEN I ASKED, "WHO WOULD PICK THE CHILDREN UP
23 FROM DAYCARE?" HE INDICATED, "SONYA, AFTER HER
24 WORK, NORMALLY ABOUT 5:00 P.M. BECAUSE THEY HAVE
25 TO BE PICKED UP BY 6:00 P.M."

1 I THEN ASKED, "CAN YOU TELL ME ABOUT MONDAY
2 MARCH 27TH, THIS WEEK, WHAT TIME DID YOU GET HOME
3 FROM WORK?" HE SAID, "MONDAY, I THINK IT WAS
4 6:15. I MET HER AT SCHOOL."

5 QUESTION, "WHAT DID YOU DO WHEN YOU GOT
6 HOME -- WHAT DID YOU DO WHEN YOU GOT HOME?" HE
7 REPLIED, "WE ATE SUPPER AT SCHOOL. HER WORK, SHE
8 IS A MANAGER AT THE CAFETERIA. I WAS HELPING HER
9 DO THE END OF THE MONTH INVENTORY. WHEN WE GOT
10 HOME WE STARTED GETTING THE CHILDREN READY FOR
11 BED."

12 I ASKED, "WHO PUT WHO TO BED?" HE INDICATED,
13 "WE BOTH WORK TOGETHER TO PUT THEM TO BED BETWEEN
14 8:30 AND 9:00 P.M."

15 "DID ANY OF THE CHILDREN GET A BATH THAT
16 NIGHT?" HE INDICATED, "I THINK SHE WIPED THEM
17 OFF, BUT I'M NOT SURE."

18 I THEN ASKED, "WHEN WAS THE LAST TIME YOU
19 HELPED MINOR WITH A BATH?" HE INDICATED,
20 "NORMALLY SONYA TAKES THE GIRL TO BATHE. I TAKE
21 H.G. ."

22 I THEN ASKED, "I UNDERSTAND NORMALLY WHAT
23 HAPPENS, BUT WHEN WAS THE LAST TIME THAT YOU GAVE
24 MINOR A BATH?" HE SAID, "IT'S BEEN QUITE A
25 WHILE. THE ONLY TIME I GIVE HER A BATH IS IF SHE

1 STINK-STINKS ON HERSELF AND THEN I'LL CHANGE HER
2 PAMPERS."

3 I ASK, "WHEN WAS -- HAVE YOU AND SONYA BEEN
4 WORKING WITH POTTY TRAINING ON MINOR ?" HE SAID,
5 "YES, BOTH -- YES, WITH BOTH OF THEM FOR THE LAST
6 TWO TO THREE MONTHS."

7 "DID YOU SEE MINOR N'S BOTTOM THAT NIGHT
8 AFTER SHE CAME HOME FROM DAYCARE?" HE SAID, "NO,
9 SIR, SONYA HAD CLEANED THEM UP."

10 THEN I ASKED, "DID YOU SEE HER BOTTOM THE
11 NEXT MORNING, TUESDAY ON MARCH 28TH, WHEN YOU WERE
12 HELPING HER GET DRESSED?" HE INDICATED, "YEAH."

13 I THEN ASKED, "DID YOU SEE ANY MARKS?" HIS
14 ANSWER WAS THAT HE DIDN'T -- "WAIT, SHE HAD A
15 LITTLE POTTY RING AROUND HER."

16 I THEN ASKED, "DID YOU SEE ANY BRUISES?" HIS
17 ANSWER WAS, "NO, I DIDN'T."

18 "DO YOU HAVE ANY IDEA HOW LONG -- DO YOU HAVE
19 ANY IDEA HOW SHE COULD HAVE GOTTEN ANY BRUISES ON
20 HER BOTTOM?" HE INDICATED, "NO, I DO NOT -- OR
21 NO, I DON'T."

22 THEN I ASKED, "SONYA DIDN'T SPANK HER THAT
23 NIGHT?" HE SAID, "NOT THAT I KNOW OF."

24 I ASKED, "DID YOU SPANK MINOR AT ALL THAT
25 NIGHT OR THE NEXT MORNING?" HIS RELY WAS, "NO."

1 "WHEN WAS THE LAST TIME YOU HAD TO SPANK
2 MINOR FOR ANYTHING?" HE ANSWERED, "WE POP HER
3 ON THE HAND AND THEY WILL BE IN THE KITCHEN
4 THROWING FOOD AT EACH OTHER. I'M NOT SURE WHEN
5 THAT WAS. IT HAD BEEN LAST WEEK."

6 I SAID, "OKAY, ON TUESDAY, MARCH 28TH, THAT
7 MORNING, CAN YOU WALK ME THROUGH WHAT HAPPENED
8 FROM THE TIME YOU GOT UP?" HIS ANSWER WAS, "FROM
9 THE TIME I GOT UP, I GOT DRESSED. I WENT IN THE
10 BATHROOM AND BRUSHED MY TEETH, THE WHOLE NINE
11 YARDS. I THEN WENT IN AND GOT THE KIDS UP. I
12 SENT DEE" -- WHICH IS A NICKNAME HE USED FOR
13 HODARI -- "IN TO USE THE BATHROOM."

14 THEN WHEN HE GOT -- WHEN HE LET ME KNOW HE
15 WAS THROUGH, I SENT N.G. IN. THEN WHEN N.G.
16 WAS FINISHED, SHE WENT IN TO GET DRESSED AND I PUT
17 MINOR ON THE POTTY. THEN I WENT BACK IN AND
18 DRESSED H.G. ."

19 I ASKED, "WHAT HAPPENED NEXT?" HIS REPLY
20 WAS, "NORMALLY SHE LETS ME KNOW WHEN SHE'S USED
21 POTTY. I WENT IN AND CHECKED AND SAW SHE HAD ONLY
22 PEE-PEED AND WHILE I WAS EMPTYING IT SHE WENT OUT
23 OF THE BEDROOM. I CAME AROUND AND GOT A PAMPER
24 OUT OF THE ROOM AND WALKED BACK INTO OUR ROOM, SAT
25 DOWN ON THE BED AND STARTED TO PULL HER PULL-UP

1 OVER HER FOOT WHEN SHE STIFFENED UP."

2 "I TRIED TO GET HER TO RESPOND TO ME, BUT SHE
3 DIDN'T. I PULLED THE PAMPER ALL THE WAY UP. I
4 WALKED OVER TO THE OTHER SIDE OF THE BED AND
5 CALLED SONYA."

6 MY QUESTION WAS, "WHEN YOU SAID YOU CALLED
7 SONYA, YOU MEAN ON THE TELEPHONE?" HE REPLIED,
8 "YEAH, UH-HUH."

9 "WHEN WAS MINOR -- WHERE WAS MINOR WHEN
10 YOU WERE MAKING THIS CALL?" HE SAID SHE WAS IN
11 HIS ARMS.

12 "WHAT HAPPENED AFTER YOU CALLED SONYA?" HE
13 SAID, "I WAS TRYING TO GET HER TO RESPOND TO ME."

14 I ASKED, "WHAT DID YOU DO TO TRY TO GET HER
15 TO RESPOND?" HE SAID, "I WAS JUST CALLING HER BY
16 NAME."

17 I ASKED HIM THEN, "WERE STILL HOLDING HER?"
18 HE SAID, "YES."

19 I ASKED HIM, "WHERE WERE THE OTHER TWO
20 CHILDREN AT THE TIME?" HE ANSWERED, "IN THE
21 LIVING ROOM IN THEIR CHAIRS."

22 I SAID, "DURING THE WHOLE TIME WERE BOTH
23 N.G. AND H.G. IN THE LIVING ROOM?" HE SAID,
24 "YES."

25 "YOU NEVER SAW EITHER OF THEM COME BACK INTO

1 THE BEDROOM AREA BY YOU?" HE ANSWERED, "NO,
2 H.G. WAS HOLLERING OUT, 'WHAT WAS THE MATTER?'"
3 QUESTION, "WAS MINOR CRYING AT ALL DURING
4 THIS ACCIDENT?" HE RELIED, "NO."
5 "WHEN YOU WERE CALLING MINOR TO RESPOND TO
6 YOU, DID YOU SHAKE HER AT ALL TRYING TO WAKE HER
7 UP?" HIS REPLY WAS, "NO."
8 "HOW LONG DID IT TAKE SONYA TO GET BACK
9 HOME?" HIS REPLY WAS, "ABOUT FIVE MINUTES IF THAT
10 LONG. AS SHE WAS PULLING UP THE DRIVEWAY, I WAS
11 COMING DOWN THE HALLWAY HOLDING MINOR IN MY
12 ARMS. SHE TOOK HER FROM ME AND TOLD ME TO GET A
13 BLANKET AND GET THE KIDS."
14 I THEN ASKED, "DID YOU CALL 911?" HE SAID,
15 "NO, WE JUST RUSHED HER DOWN TO THE EMERGENCY ROOM
16 AT RICHLAND MEMORIAL."
17 I, THEN ASKED, "WHY DIDN'T YOU GO TO THE
18 CLOSER HOSPITAL AT PROVIDENCE NORTHEAST ON FARROW
19 ROAD?" HE SAID, "I DON'T KNOW WHY. WE HAD ONLY
20 BEEN TAKING THE KIDS DOWN TO THE CHILDREN'S CENTER
21 AT RICHLAND."
22 I ASKED HIM, "WHO WAS DRIVING?" HE ANSWERED,
23 "I WAS."
24 I THEN ASKED, "DID MINOR EVER RESPOND
25 BACK?" HIS REPLY WAS, "SONYA KEPT CALLING HER

1 NAME AND MINOR HOLLERED BACK 'MAMA' A COUPLE OF
2 TIMES."

3 QUESTION, "DID YOU HAVE ANY -- DID SHE HAVE
4 ANY BODY MOVEMENT AT ALL?" HE INDICATED, "NO,
5 JUST HER LEGS AND ARMS WERE STIFF."

6 I THEN ASKED, DO YOU KNOW IF SHE WAS STILL
7 BREATHING WHEN YOU GOT TO THE HOSPITAL?" HE
8 INDICATED, "YES."

9 I THEN QUESTIONED, "HAS THE HOSPITAL STAFF
10 TOLD YOU -- HAD THE HOSPITAL STAFF TOLD YOU WHAT
11 HAPPENED TO MINOR ?" HE ANSWERED, "I'M NOT SURE.
12 SONYA TOOK HER IN AND I WAS PARKING THE VAN. WHEN
13 I GOT THE OTHER TWO IN, WE WERE WAITING IN THE
14 WAITING ROOM."

15 I THEN ASKED, "WHAT SINCE THEN HAD THE
16 HOSPITAL STAFF TOLD YOU WAS WRONG WITH MINOR ?"
17 HE INDICATED, "WHAT DR. LENWOOD SMITH TOLD US
18 WAS -- TOLD US WE HAD TO DO EMERGENCY SURGERY AND
19 TOLD -- WE TOLD HIM WE DIDN'T KNOW. WE HAD TO
20 CALL THE D.S.S. CASEWORKER KIM KENNEDY. THE STAFF
21 WAS TRYING TO PAGE HER, TOO. THE DOCTOR SAID HE
22 WAS GOING TO DO THE SURGERY ANYWAY."

23 "SINCE THE SURGERY, WHAT HAD THE HOSPITAL
24 STAFF TOLD YOU ABOUT MINOR 'S CONDITION?" "THEY
25 TOLD US THAT THERE WAS A BLOOD CLOT, SWELLING

1 AROUND HER BRAIN. IT DIDN'T LOOK GOOD. WE JUST
2 WAITED AROUND THE CLOCK SINCE THEN."

3 "IS THERE ANYTHING ELSE YOU NEED TO ADD OR
4 CHANGE TO THIS STATEMENT?" HIS ANSWER WAS, "NO,
5 SIR."

6 I THEN ASKED, "IS THIS STATEMENT THE TRUTH
7 AND MADE OF YOUR OWN FREE WILL AND ACCORD?" HE
8 INDICATED, "YES, SIR, IT WAS."

9 I THEN PUT "END OF STATEMENT" ACROSS THE
10 BOTTOM OF IT, TIMED IT AS 22:50, WHICH WOULD BE
11 10:50 P.M. AND THEN THE FOLLOWING LINE RIGHT
12 UNDERNEATH THAT IS, "I MADE THIS FOREGOING
13 STATEMENT FREELY AND VOLUNTARILY WITHOUT FEAR,
14 THREAT, PROMISE OR REWARD OR HOPE OF REWARD OF ANY
15 KIND." HE THEN SIGNED IT.

16 DIRECTLY BELOW THERE IS WHERE -- ACTUALLY IT
17 HAS A NOTARY PUBLIC PLACE. I ALSO SWORE HIM UNDER
18 OATH THAT, "I CERTIFY THAT I HAVE READ -- OR HAVE
19 READ TO ME A FOREGOING STATEMENT CONSISTING OF
20 FIVE PAGES AND A TRUE COPY HAS BEEN GIVEN TO ME ON
21 THIS 30TH DAY OF MARCH, 2000," AND HE SIGNED THAT
22 AS WELL.

23 NOW AFTER HE PROVIDED YOU THIS STATEMENT, YOU
24 SAY IT ENDED AT 22:50?

25 A THAT'S CORRECT.

1 Q AND WHAT TIME DID IT BEGIN?

2 A IT BEGAN AT 21:00 HOURS.

3 Q OKAY. SO AN HOUR AND 15 MINUTES; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q SO BASED ON THE INFORMATION YOU HAD RECEIVED
7 FROM THE HOSPITAL AND THEN HEARING THIS STORY FROM
8 THE DEFENDANT, WHAT DID YOU DO NEXT?

9 A AFTER HEARING HIS STATEMENT, THE DENIAL OF
10 HAVING DONE ANYTHING, I WENT OUT AND BRIEFED MY
11 SUPERVISOR, SERGEANT WEEKS, AS TO WHAT HAD
12 TRANSPIRED.

13 ALSO PRESENT WAS THE EVENING SHIFT
14 INVESTIGATOR THAT WAS ABOUT TO GO OFF AND
15 INVESTIGATOR BRIAN METZS, AND BEING THAT I HAD
16 ACTUALLY SIGNED THE WARRANT FOR THE ASSAULT AND
17 BATTERY WITH INTENT TO KILL, I'M NOT THE OFFICER
18 THAT NORMALLY WOULD SERVE IT. WE WOULD HAVE
19 ANOTHER OFFICER SERVE IT, SO I ASKED INVESTIGATOR
20 METZS IF HE WOULD BE ABLE TO ENTER BACK INTO THE
21 ROOM WITH ME TO SERVE THAT WARRANT.

22 Q AND DID YOU DO SO?

23 A YES, MA'AM, I DID.

24 Q AND WHAT HAPPENED WHEN YOU REENTERED THE
25 ROOM?

1 A WHEN I REENTERED THE ROOM I INITIALLY
2 INFORMED HIM THAT I WOULD BE ABLE TO PROVE THAT
3 WHAT HE HAD TOLD ME AT THAT POINT WAS A LIE, THAT
4 WHAT HE SAID HAD TRANSPIRED, THE HISTORY OF WHAT
5 HE HAD GIVEN, MEDICALLY WE WOULD BE ABLE TO PROVE
6 HAD NOT HAPPENED.

7 HE STILL WANTED TO STICK WITH THAT STORY. AT
8 THAT TIME I ASKED INVESTIGATOR METZS TO GO AHEAD
9 AND SERVE HIM WITH THE WARRANT. HE THEN SERVED
10 HIM WITH THE WARRANT.

11 Q HOW DID THE DEMEANOR OF THE DEFENDANT CHANGE
12 ONCE HE WAS ARRESTED OR SERVED WITH THIS ARREST
13 WARRANT --

14 A ONCE HE --

15 Q -- FOR ASSAULT AND BATTERY WITH INTENT TO
16 KILL?

17 A YES, MA'AM. ONCE HE WAS SERVED WITH THE
18 WARRANT HIS DEMEANOR DID CHANGE. BASICALLY HIS
19 HEAD DROPPED. HE BASICALLY -- HOLD ON ONE SECOND
20 HERE, LET ME GET THE PAGE -- JUST ONE MOMENT.

21 (PAUSE)

22 HE LOWERED HIS HEAD AND BEGAN HEAVY BREATHING
23 AND OBVIOUSLY APPEARED TO BE SHOWING SIGNS OF
24 STRESS.

25 Q I NOTICED IT TOOK YOU A LITTLE WHILE TO

1 ANSWER THAT. DID YOU HAVE TO REFRESH WITH SOME
2 NOTES?

3 A YES, MA'AM. IT'S A LARGE CASE WITH A LOT OF
4 THINGS.

5 Q AND WHEN DID YOU PREPARE THE NOTES THAT YOU
6 JUST READ FROM?

7 A I PREPARED NOTES IMMEDIATELY AS THE CASE WAS
8 PROGRESSING.

9 Q SO YOU SAID -- SAY IT AGAIN WHAT HIS DEMEANOR
10 WAS.

11 A HIS DEMEANOR WAS THAT HE HAD CHANGED, THAT HE
12 LOWERED HIS HEAD, BEGAN HEAVY BREATHING AND
13 APPEARED TO BE SHOWING SIGNS OF STRESS.

14 Q AND WHAT DID THAT DEMEANOR INDICATE TO YOU?

15 A THAT INDICATED TO ME THAT HE WAS TRYING TO
16 HIDE SOMETHING.

17 Q NOW, AFTER THAT DID INVESTIGATOR METZS -- IN
18 FACT, DO YOU SEE INVESTIGATOR BRIAN METZS IN THE
19 COURTROOM?

20 A YES, MA'AM, HE'S SITTING RIGHT HERE IN THE
21 FRONT WITH THE BLUE JACKET AND RED TIE.

22 Q AFTER THAT DID INVESTIGATOR METZS SORT OF
23 TAKE OVER THIS INTERVIEW PROCESS?

24 A EXACTLY. AT THAT POINT HE SERVED THE
25 WARRANT. I BASICALLY STEPPED BACK, AND HE TURNED

1 AROUND AND TOOK OVER THE INTERVIEW PORTION AT THAT
2 TIME.

3 Q AND LET ME ASK YOU THIS, DID YOU EVER LEAVE
4 THE ROOM AT ANY TIME WHILE INVESTIGATOR METZS WAS
5 INTERVIEWING MR. MITCHELL?

6 A NO, MA'AM, I DIDN'T. I WAS IN THE ROOM ALONG
7 WITH INVESTIGATOR GRANT FROM D.S.S. THE WHOLE
8 TIME.

9 Q THE WHOLE TIME. PLEASE TELL THE JURY WHAT
10 TRANSPIRED NEXT.

11 A WHAT TRANSPIRED NEXT WAS AFTER HE HAD READ
12 HIM THE WARRANT --

13 Q WHEN WAS THE ARREST WARRANT SERVED ON THE
14 DEFENDANT, THAT WAS AT WHAT TIME AND WHAT DATE?

15 A THE WARRANT WAS ACTUALLY SERVED ON HIM THAT
16 NIGHT, WHICH WOULD HAVE BEEN THE -- THAT NIGHT,
17 MARCH 31ST, IT WAS NOW BECAUSE WE WERE ALREADY
18 INTO THE NEXT MORNING, BECAUSE IT WAS AFTER
19 MIDNIGHT. IT WAS AT 00:26, 26 MINUTES AFTER
20 MIDNIGHT WHEN THE WARRANT WAS ACTUALLY SERVE ON
21 HIM FOR THE ASSAULT AND BATTERY WITH INTENT TO
22 KILL.

23 Q WOULD IT ASSIST YOU TO DOCUMENT THE DATES AND
24 TIMES ON A CALENDAR?

25 A SURE.

1 Q SO WHEN WAS THIS INCIDENT REPORTED?

2 A THE INCIDENT WAS REPORTED TO THE SHERIFF'S
3 DEPARTMENT ON THE 29TH, BUT IT WAS ACTUALLY
4 REPORTED TO D.S.S. ON THE 28TH.

5 Q AND WHEN DID YOU GET INVOLVED IN THE CASE?

6 A I WAS ASSIGNED THE CASE ON THE MORNING OF THE
7 30TH, BUT IT WAS ACTUALLY -- THE REPORT WAS GIVEN
8 TO THE SHERIFF'S DEPARTMENT ON THE 29TH, THAT
9 EVENING.

10 Q OKAY. AND ON THE -- WHEN DID YOU INTERVIEW
11 THE DEFENDANT?

12 A THAT SAME DAY, ON THE 30TH.

13 Q WHAT TIME DID YOU --

14 A I STARTED AT 9:00 P.M.

15 Q 9:00. AND THE WARRANT FOR ASSAULT AND
16 BATTERY WITH INTENT TO KILL, WE CALL IT
17 A.B.W.I.K., WHEN WAS THAT SERVED?

18 A THAT WAS ACTUALLY THAT NEXT MORNING, THAT
19 SAME NIGHT AT 00:26.

20 Q OKAY. TELL THE JURY EXACTLY WHAT HAPPENED
21 NEXT ONCE INVESTIGATOR METZS BEGAN INTERVIEWING
22 HIM.

23 A ONCE -- INVESTIGATOR METZS BASICALLY STARTED
24 OUT THE SAME, THAT WE WERE ABLE TO SHOW THAT THIS
25 COULD NOT HAVE OCCURRED THE WAY HE HAD SAID.

1 INVESTIGATOR METZS WENT INTO SOME OTHER
2 THINGS. HE EVENTUALLY GAVE A SECOND STATEMENT
3 ADMITTING THAT HE HAD ACTUALLY SHAKEN THE CHILD
4 TRYING TO REVIVE HER.

5 Q NOW LET ME ASK YOU THIS, DID INVESTIGATOR
6 METZS REMIND THE DEFENDANT AND REFRESH HIS MEMORY
7 AS TO WHAT HIS MIRANDA RIGHTS WERE?

8 A YES, MA'AM. HE USED, INSTEAD OF THE TYPED
9 VERSION I HAVE, WE HAVE THE HANDWRITTEN VERSION
10 THAT'S THE SAME THING THAT HAS THE MIRANDA
11 WARNINGS, WHICH IS THE ADVISEMENT OF RIGHTS RIGHT
12 ON THE TOP OF IT. BEFORE HE STARTED HIS
13 STATEMENT, HE HAD HIM READ THAT STATEMENT HIMSELF
14 AND ACTUALLY HAD HIM INITIAL IT AT THE END OF THAT
15 PARAGRAPH.

16 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT NO. 3 FOR IDENTIFICATION PURPOSES.
18 DO YOU RECOGNIZE IT?

19 A YES, MA'AM. THAT WOULD BE THE STATEMENT MADE
20 BY MR. MITCHELL UNDER INVESTIGATOR METZS.

21 MS. COOPER: YOUR HONOR, AT THIS TIME THE
22 STATE SEEKS TO INTRODUCE THIS STATEMENT.

23 THE COURT: SUBJECT TO THE PRETRIAL RULING.

24 MS. COOPER: THANK YOU, YOUR HONOR.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER 3 WAS

1 ADMITTED INTO EVIDENCE.)

2 BY MS. COOPER:

3 Q AGAIN, READ VERBATIM EVERYTHING THAT APPEARS
4 ON THAT STATEMENT. WHAT TIME DID IT BEGIN?

5 A THIS STATEMENT BEGAN AT 00:36 HOURS ON MARCH
6 31ST OF 2000.

7 Q LET ME TAKE YOU BACK TO THE FIRST STATEMENT.
8 THE FIRST STATEMENT YOU SAID ENDED AT 22:50?

9 A THAT'S CORRECT.

10 Q 10:50 P.M.?

11 A THAT'S CORRECT.

12 Q OKAY. TELL THE JURY EXACTLY WHAT THAT FORM,
13 THE STATEMENT WAS.

14 A AGAIN, AT THE TOP IT WOULD HAVE HIS NAME,
15 ADDRESS, DATE OF BIRTH, SOCIAL SECURITY NUMBER, AS
16 I JUST INDICATED ON THE PREVIOUS ONE. IT AGAIN
17 STATES THAT IN COLUMBIA, SOUTH CAROLINA, ON THE
18 31ST DAY OF MARCH, 2000, AT 00:36 HOURS IN THE
19 PRESENCE OF, AND IT HAS INVESTIGATOR BRIAN METZS
20 AND DALE JONES OF THE RICHLAND COUNTY SHERIFF'S
21 DEPARTMENT.

22 THE NEXT PARAGRAPH READS, "I" AND IT'S
23 HANDWRITTEN IN, "NATHANIEL MITCHELL, UNDERSTAND
24 THAT I HAVE THE RIGHT TO REMAIN SILENT. ANYTHING
25 I SAY CAN BE USED AGAINST ME IN COURT.

1 I HAVE THE RIGHT TO TALK TO A LAWYER FOR
2 ADVICE BEFORE ANSWERING ANY QUESTIONS AND TO HAVE
3 A LAWYER WITH ME DURING ANY QUESTIONING. IF I
4 CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR
5 ME BEFORE ANY QUESTIONING IF I WISH.

6 IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A
7 LAWYER PRESENT, I STILL HAVE THE RIGHT TO STOP
8 ANSWERING AT ANY TIME.

9 I ALSO HAVE THE RIGHT TO STOP ANSWERING AT
10 ANY TIME UNTIL I TALK TO A LAWYER. I DO MAKE THIS
11 FOLLOWING STATEMENT," AND THEN IT HAS HIS
12 INITIALS, "N.M." FOR NATHANIEL MITCHELL.

13 Q OKAY. PLEASE CONTINUE.

14 A FIRST QUESTION HE WROTE HERE IS, "WHAT CAN
15 YOU TELL ME ABOUT WHAT HAPPENED TO MINOR
16 ON TUESDAY MORNING, THAT'S 03/28/2000, AT
17 7:15 A.M.?" HIS ANSWER WAS, "MINOR AND HER
18 BROTHER WERE PLAYING IN THEIR POTTY. I SPANKED
19 BOTH OF THEM WITH MY BELT. I THEN -- THEN HER
20 BROTHER H.G. KNOCKED HER DOWN FROM BEHIND.

21 WHEN I GOT TO MINOR , SHE WAS GAGGING FOR
22 AIR AND HER EYES WERE ROLLING. I SHOOK HER BACK
23 AND FORTH, SIDE TO SIDE TRYING TO GET" -- NEXT
24 PAGE -- "HER TO BREATHE."

25 THE QUESTION, "HOW LONG DID YOU SHAKE

1 MINOR ?" HIS ANSWER, "IT DIDN'T SEEM BUT LIKE A
2 COUPLE OF SECONDS. IT MAY HAVE BEEN LONGER."

3 THE NEXT QUESTION WAS, "HOW DID YOU SHAKE
4 MINOR ?" ANSWER, "I DIDN'T THINK I WAS SHAKING
5 HER HARD."

6 QUESTION, "WHAT HAPPENED NEXT?" HIS ANSWER,
7 "I CALLED MY WIFE AT WORK. SHE WORKS AT E.L.
8 WRIGHT SCHOOL."

9 QUESTION, "HOW LONG DID IT TAKE YOUR WIFE TO
10 GET HOME?" HIS ANSWER, "ABOUT FIVE MINUTES."

11 QUESTION, "IS THERE ANYTHING ELSE YOU WISH TO
12 TELL ME?" HIS ANSWER WAS, "IF YOU CHECK WITH THE
13 TEACHERS, YOU'LL FIND OUT THAT H.G. HAS BEEN
14 GOING AFTER MINOR EVER SINCE THEY TRANSFERRED
15 HER TO HIS CLASS."

16 QUESTIONS WERE BY INVESTIGATOR METZS, ANSWERS
17 WERE BY NATHANIEL MITCHELL AND THAT INDICATES THE
18 END OF THE STATEMENT, WHICH WAS -- IS INDICATED
19 HERE AS 00/30/2000. IT'S ACTUALLY 00/31/2000 AT
20 00:49, WHICH WOULD BE 49 MINUTES AFTER MIDNIGHT.

21 IT THEN HAS THE TYPED VERSION AGAIN, "I HAVE
22 MADE THE FOREGOING STATEMENT FREELY AND
23 VOLUNTARILY WITHOUT FEAR, THREAT, PROMISE OR
24 REWARD OR HOPE OF REWARD OF ANY KIND." IT'S
25 SIGNED BY NATHANIEL MITCHELL.

1 IT'S ALSO WITNESSED BY BOTH INVESTIGATOR
2 METZS AND MYSELF AND THEN IT HAS THE SECOND
3 PARAGRAPH AGAIN.

4 "THIS IS TO CERTIFY THAT I HAVE READ OR HAVE
5 HAD READ TO ME THE FOREGOING STATEMENT CONSISTING
6 OF TWO PAGES", THIS TIME, "A TRUE COPY HAS BEEN
7 GIVEN TO ME ON THIS 30TH DAY OF MARCH, 2000." HE
8 SIGNED IT AND I NOTARIZED IT.

9 Q THANK YOU. WAS INVESTIGATOR GRANT FROM
10 D.S.S. PRESENT, AS WELL?

11 A YES, SHE WAS.

12 Q DID SHE WITNESS THAT ALSO?

13 A THERE'S ONLY SPACE -- SHE WITNESSED IT ON THE
14 FRONT PAGE, AND SHE -- EXCUSE ME, SHE DID WITNESS
15 IT AS THE SECOND PERSON ON THE SECOND PAGE AS
16 WELL, YES.

17 Q SO THIS INTERVIEW LASTED APPROXIMATELY -- THE
18 SECOND INTERVIEW LASTED APPROXIMATELY HOW LONG?

19 A FIFTEEN MINUTES.

20 Q AND THE FIRST ONE?

21 A FIRST ONE WAS AN HOUR AND 50 MINUTES. THAT
22 WHOLE TIME WASN'T NECESSARILY THE STATEMENT. THAT
23 WAS UNTIL I INTERVIEWED, GOT IT PREPARED, TYPED IT
24 AND WE FINISHED IT ALL.

25 Q WHEN YOU CHARGE SOMEONE WITH A CRIME, IS IT

1 NECESSARY TO OBTAIN SOME INFORMATION CONCERNING
2 THEIR PHYSICAL APPEARANCE?

3 A YES, MA'AM, IT IS.

4 Q WERE YOU ABLE TO GET INFORMATION FROM THE
5 DEFENDANT CONCERNING HIS HEIGHT AND WEIGHT?

6 A YES, MA'AM. PART OF THE BOOKING AND
7 ARRESTING REPORT WOULD INDICATE HIS AGE, HEIGHT,
8 AND WEIGHT. HE WAS 36 YEARS OF AGE, HE WAS 6 FOOT
9 THREE, 289 POUNDS.

10 Q NOW AFTER HE GAVE THE SECOND STATEMENT, WHAT
11 HAPPENED TO THE DEFENDANT?

12 A AFTER THE SECOND STATEMENT WAS GIVEN, THE
13 PAPERWORK WAS COMPLETED AS FAR AS THE ARRESTING
14 AND BOOKING REPORT AND HE WAS TRANSPORTED BY THE
15 PADDY WAGON DOWN TO THE DETENTION CENTER FOR A
16 BOND HEARING THE NEXT MORNING ON THAT CHARGE.

17 Q DO YOU RECALL GETTING A NOTIFICATION FROM THE
18 HOSPITAL ABOUT MINOR 'S CONDITION?

19 A YES, MA'AM, THE NEXT MORNING I HAD BEEN AT
20 THE BOND HEARING IN THE AFTERNOON AT 2:55 P.M. AND
21 I RECEIVED A CALL FROM MARY JENNINGS, THE SOCIAL
22 WORKER AT PROVIDENCE -- EXCUSE ME, AT PALMETTO
23 RICHLAND MEMORIAL HOSPITAL IN THE PEDIATRIC AREA,
24 THAT MINOR HAD DECLARED TIME OF DEATH AS 2:30
25 THAT AFTERNOON.

1 Q SO THE FOLLOWING MORNING, WOULD THAT WOULD BE
2 THE 1ST OF APRIL?

3 A THIS WOULD HAVE ACTUALLY BEEN THE 31ST.

4 Q OKAY, SO AT 2:30 YOU SAID?

5 A YES, 2:30.

6 Q AND WHAT HAPPENED WITH THE CHARGE OF ASSAULT
7 AND BATTERY WITH INTENT TO KILL NOW THAT YOU
8 CONFIRMED FROM THE HOSPITAL THAT MINOR WAS
9 ACTUALLY DECLARED DEAD?

10 A AFTER SHE WAS DECLARED DEAD, I NOTIFIED THE
11 HEAD OF THE INVESTIGATION UNIT, MAJOR DAVID
12 WILSON, WHO -- WE ALSO CONTACTED DEPUTY SOLICITOR
13 JOHNNY GASSER OF THE SOLICITOR'S OFFICE, AND IT
14 WAS AGREED THAT WE WOULD MOVE THE CHARGE UP AT
15 THAT TIME TO HOMICIDE BY CHILD ABUSE, SO BASICALLY
16 THE OTHER CHARGE WAS DROPPED AND IT WAS UPGRADED
17 TO THE HOMICIDE BY CHILD ABUSE.

18 Q AND WHO SERVED THAT WARRANT?

19 A THAT WARRANT WAS FAXED DOWN TO THE BOND COURT
20 FOR THAT AFTERNOON. INVESTIGATOR METZS WAS GOING
21 TO BE WORKING THAT AFTERNOON, SO WHEN HE WENT DOWN
22 TO BOND COURT, HE ACTUALLY SIGNED THE BOND FORM
23 FOR ME.

24 Q THE ORIGINAL?

25 A THE ORIGINAL.

1 Q AND HE SERVED THAT FOR YOU?

2 A YES, MA'AM, HE SERVED IT FOR ME DOWN THERE AT
3 THE DETENTION CENTER.

4 Q DID YOU EVER LEARN WHEN MINOR WAS PUT TO
5 PEACE, IF YOU WILL?

6 A YES, MA'AM, HER FUNERAL SERVICES WERE ON
7 APRIL 6TH OF 2000.

8 Q WHEN WAS HER AUTOPSY?

9 A HER AUTOPSY WAS THE NEXT MORNING ON
10 APRIL 1ST, 2000. WE HAD LAB INVESTIGATOR EARLES
11 THAT WENT TO THAT LOCATION TO PHOTOGRAPH THAT.

12 Q NOW, THERE WERE A LOT OF LOCATIONS MENTIONED
13 BY THE DEFENDANT IN HIS STATEMENT. I'M GOING TO
14 SHOW YOU THIS AND ASK YOU IF YOU RECOGNIZE IT.

15 A YES, MA'AM, THAT WOULD BE A COPY OF A MAP OF
16 THE GENERAL COLUMBIA AREA, SPECIFICALLY IN THE
17 NORTHEAST AREA.

18 Q AND DOES IT ACCURATELY DEPICT THE CITY OF
19 COLUMBIA?

20 A YES, MA'AM, IT DOES.

21 Q AND ITS STREETS?

22 A YES, MA'AM, IT DOES.

23 MS. COOPER: YOUR HONOR, MAY I PLEASE MARK
24 THIS AS STATE'S EXHIBIT, I BELIEVE, IS IT NUMBER
25 30?

1 MR. STRICKLER: NO OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER 28
4 WAS ADMITTED INTO EVIDENCE.)

5 MS. COOPER: IT'S STATE'S EXHIBIT 28, YOUR
6 HONOR.

7 THE COURT: THANK YOU.

8 BY MS. COOPER:

9 Q TELL ME IF YOU CAN SEE THE MAP ALL RIGHT FROM
10 THIS LOCATION.

11 A OKAY.

12 Q IF YOU CAN SPEAK UP, SINCE YOU'LL HAVE TO USE
13 THAT SHORT POINTER. SHOW THE JURY WHERE THE
14 DEFENDANT'S RESIDENCE, [REDACTED] IS
15 LOCATED.

16 A (WITNESS COMPLIES.)

17 Q MAYBE IT WILL BE EASIER TO START WITH E.L.
18 WRIGHT MIDDLE SCHOOL.

19 A E.L. WRIGHT MIDDLE SCHOOL IS RIGHT HERE.
20 (INDICATING)

21 Q AND THAT IS WHERE THE DEFENDANT'S WIFE WAS
22 THIS MORNING, THE MORNING OF THE 28TH WHEN MINOR
23 SUFFERED THESE INJURIES?

24 A YES.

25 Q AND WERE YOU ABLE TO CONFIRM, BY THE WAY,

1 THAT SHE WAS AT WORK?

2 A YES, MA'AM.

3 Q OKAY. NOW SHOW THEM WHERE THE DEFENDANT'S
4 RESIDENCE WAS.

5 A THIS WOULD BE FORESTWOOD DRIVE RIGHT HERE,
6 AND THIS WOULD BE WHERE THE DEFENDANT'S RESIDENCE
7 WAS, RIGHT ABOUT THERE. (INDICATING)

8 Q IS THAT MARKED, THE NAME OF THE STREET, ON
9 THIS PARTICULAR MAP?

10 A NO, IT'S NOT MARKED ON THIS PARTICULAR MAP.

11 Q WERE YOU ABLE TO ORIENT YOURSELF THAT THIS IS
12 FORESTWOOD DRIVE?

13 A YES, MA'AM.

14 Q PLEASE POINT OUT TO THE JURY WHERE THE
15 NEAREST HOSPITAL IS.

16 A THE NEAREST HOSPITAL WOULD BE PROVIDENCE
17 NORTHEAST, WHICH IS -- THIS IS RABON ROAD HERE.
18 THIS WOULD BE FARROW ROAD, AND IT WOULD BE RIGHT
19 DOWN IN HERE. (INDICATING)

20 Q RIGHT THERE WHERE YOU'RE POINTING, RIGHT
21 THERE?

22 A YES.

23 Q PROVIDENCE YOU SAID?

24 A PROVIDENCE NORTHEAST, YES, MA'AM.

25 Q AND THIS IS THE DEFENDANT'S RESIDENCE?

1 (INDICATING)

2 A THAT'S CORRECT.

3 Q THAT'S THE MITCHELL RESIDENCE?

4 A YES.

5 Q AND THAT'S THE SCHOOL? (INDICTING)

6 A THAT'S CORRECT.

7 Q OKAY. TELL THE JURY WHERE THE DEFENDANT TOLD
8 YOU HE TOOK MINOR ?

9 A THAT WAS TO RICHLAND MEMORIAL EMERGENCY ROOM.

10 Q AND WHERE IS THAT?

11 A THIS ONE IS A LITTLE BIT BLURRY. IT SHOULD
12 BE RIGHT DOWN IN THIS AREA. IT'S RIGHT HERE.

13 (INDICATING)

14 Q PALMETTO RICHLAND MEMORIAL HOSPITAL?

15 A YES, MA'AM.

16 Q INVESTIGATOR JONES, AS PART OF YOUR
17 INVESTIGATION FOR THIS CASE, WERE YOU ABLE TO TAKE
18 THE OPPORTUNITY TO DRIVE THESE DISTANCES?

19 A YES, MA'AM, I DID.

20 Q CAN YOU TELL THE JURY WHAT YOUR ODOMETER TOLD
21 YOU?

22 A YES, MA'AM, THE DISTANCE FROM THE RESIDENCE
23 TO THE SCHOOL, THERE'S ACTUALLY TWO DIFFERENT
24 ROADS TO BE ABLE TO GET THERE, BUT EITHER ONE IS
25 WITHIN A TENTH OF A MILE OF EACH OTHER. IT WAS

1 1.3-MILES TO GET TO THE SCHOOL.

2 Q OKAY. 1.3 MILES TO THE SCHOOL. PLEASE
3 CONTINUE.

4 A TO DRIVE TO PROVIDENCE NORTHEAST, WHICH WOULD
5 BE THE CLOSEST EMERGENCY FACILITY FOR TREATMENT,
6 WOULD HAVE BEEN 2.4 MILES.

7 Q THIS IS NOT DIRECTLY LIKE A BIRD FLIES?

8 A NO, THIS WOULD BE TAKING -- BY RABON ROAD,
9 WHICH WOULD GIVE YOU THE MOST DIRECT ROUTE. YOU
10 COULD HAVE ALSO TAKEN, JUMPING DOWN TO 77, WHERE
11 YOU WOULD HAVE HAD MORE TRAFFIC LIGHTS AND MORE
12 CONGESTED TRAFFIC THAT TIME OF THE MORNING TO GET
13 THERE.

14 Q AND BY THE WAY, WHAT TIME OF THE MORNING DID
15 THE DEFENDANT INDICATE THIS OCCURRED?

16 A THIS WOULD HAVE BEEN ABOUT 7:30 GOING ON 8:00
17 IN THE MORNING, SO IT WOULD HAVE BEEN RIGHT AT
18 RUSH HOUR TRAFFIC.

19 Q TELL THE JURY HOW LONG OR THE DISTANCE
20 BETWEEN THE DEFENDANT'S HOME AND RICHLAND MEMORIAL
21 HOSPITAL.

22 A TO RICHLAND MEMORIAL HOSPITAL FROM THE
23 DEFENDANT'S HOME WOULD BE 9.6 MILES.

24 Q AND AGAIN, THAT'S NOT A DIRECT, AS THE BIRD
25 FLIES, BUT USING THESE DIRECT ROUTES AND ACCESS ON

1 THE ROADS?

2 A RIGHT. THAT'S USING THE MOST DIRECT ACCESS
3 ON THE ROAD, 7.2 MILES FURTHER TO THAT HOSPITAL
4 THAN IT WAS TO PROVIDENCE.

5 Q SO EXACTLY WHAT WAS THE DISTANCE?

6 A IT WAS 9.6 MILES.

7 Q 9.6 MILES, AND IN RUSH HOUR TRAFFIC FOR THE
8 MORNING RUSH HOUR TRAFFIC, 9.6 MILES, CAN YOU GIVE
9 THE JURY AN ESTIMATE AS TO HOW LONG THAT WOULD
10 TAKE YOU TO DRIVE?

11 A DEPENDING ON TRAFFIC AT THAT PARTICULAR TIME
12 OF THE DAY, IT WOULD EASILY BE A GOOD 25 MINUTES.

13 Q AND WHAT ABOUT TO PROVIDENCE?

14 A PROVIDENCE, THAT WOULD HAVE CUT CONSIDERABLE
15 TIME DOWN. IT STILL WOULD HAVE BEEN ABOUT MAYBE
16 FIVE TO TEN MINUTES TO GET THERE.

17 Q AND WHY DID THE DEFENDANT -- WHAT WAS HIS
18 EXPLANATION ABOUT GOING ALL THE WAY DOWN TO
19 PALMETTO RICHLAND MEMORIAL HOSPITAL?

20 A HE HAD INDICATED THAT IN THE PAST THAT'S
21 WHERE THEY HAD ALWAYS GONE TO THE CHILDREN'S
22 CENTER THERE AT RICHLAND.

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

24 (PAUSE)

25 BY MS. COOPER:

1 Q AGAIN INVESTIGATOR, THE RESIDENCE OF THE
2 DEFENDANT IS WHERE?

3 A THE RESIDENCE IS AT [REDACTED] IN
4 RICHLAND COUNTY.

5 Q THANK YOU.

6 ON THE NOTES THAT I TOOK ON THIS CALENDAR,
7 ARE THESE NOTES A SUMMARY OF WHAT YOU JUST
8 TESTIFIED TO?

9 A YES, MA'AM, THEY ARE.

10 MS. COOPER: YOUR HONOR, I'D LIKE TO MOVE
11 THIS INTO EVIDENCE.

12 MS. COGGIOLA: WE WOULD OBJECT TO THAT. HE'S
13 TESTIFIED TO THE DATES.

14 THE COURT: I'LL LET YOU USE IT IN THE
15 ARGUMENT. I'LL OVERRULE -- I MEAN, I SUSTAIN THE
16 OBJECTION.

17 MS. COOPER: OKAY. THANK YOU, YOUR HONOR.
18 INVESTIGATOR, PLEASE ANSWER ANY QUESTIONS
19 THAT MS. COGGIOLA MAY HAVE FOR YOU.

20 THE COURT: ALL RIGHT. MADAM FOREPERSON
21 LADIES AND GENTLEMEN, LET ME LET YOU GO TO THE
22 JURY ROOM AND TAKE A QUICK BREAK.

23 I NEED TO TAKE UP A COUPLE OF MATTERS WITH
24 YOU ALL.

25 (WHEREUPON, THE JURY LEFT OPEN COURT AT

1 APPROXIMATELY 3:11.)

2 THE COURT: DO YOU HAVE YOUR DOCTOR HERE?

3 MS. COGGIOLA: WE COULD GO CHECK.

4 THE COURT: WELL, WE HAVE A COUPLE OF
5 PROBLEMS. THE STATEWIDE GRAND JURY REPORT -- I
6 HAVE TO TAKE THAT AT 5:15. IF WE'RE GOING TO DO
7 THE DOCTOR TODAY, WE'RE GOING TO GET STARTED ON IT
8 NOW.

9 MS. COOPER: JUDGE, INVESTIGATOR JONES IS
10 GOING TO BE HERE THROUGHOUT THE ENTIRE TRIAL SO IF
11 YOU WANT TO DELAY THAT CROSS-EXAMINATION.

12 THE COURT: YOU CAN DO THAT. THERE'S NO NEED
13 TO CALL INVESTIGATOR METZS.

14 MS. COOPER: NO, YOUR HONOR, I JUST EXPLAINED
15 THAT WE WOULD NOT BE CALLING HIM.

16 THE COURT: WHO ELSE DO YOU HAVE LEFT?

17 MS. COOPER: THAT'S ALL, YOUR HONOR.

18 THE COURT: THAT'S IT? FIND OUT ABOUT YOUR
19 DOCTOR. LET'S TAKE A QUICK BREAK.

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 THE COURT: OKAY. BRING IN THE JURY.

22 MS. CAMPBELL: AND YOU'LL EXPLAIN TO THE
23 JURY.

24 THE COURT: I'M HOPING THEY'LL BE DONE BY
25 5:00. I'M THE ONLY ONE THAT CAN TAKE THE REPORT,

1 BUT I'LL BE GLAD TO HOLD HIM OVER, TOO.

2 (WHEREUPON, THE JURY CAME INTO OPEN

3 COURT AT APPROXIMATELY 3:24.)

4 THE BAILIFF: THE JURY'S ALL PRESENT, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. MADAM FOREPERSON,
7 LADIES AND GENTLEMEN, THE STATE ADVISES ME THAT
8 THE INVESTIGATOR ON THE STAND IS THEIR LAST
9 WITNESS, BUT HE HAS NOT BEEN CROSS-EXAMINED YET,
10 HOWEVER, BY CONSENT FROM BOTH THE STATE AND THE
11 DEFENSE WE'RE GOING TO TAKE A DEFENSE WITNESS OUT
12 OF ORDER. THIS IS NOT A STATE'S WITNESS. THIS IS
13 A DEFENSE WITNESS DUE TO SOME SCHEDULING PROBLEMS,
14 SO MR. STRICKLER, YOU MAY CALL YOUR WITNESS.

15 MR. STRICKLER: THANK YOU VERY MUCH, YOUR
16 HONOR. THE DEFENSE CALLS DR. WAYNE ROSS.

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

19 " DR. WAYNE ROSS,

20 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR
22 FULL NAME. SPELL YOUR LAST NAME.

23 THE WITNESS: WAYNE KENNETH ROSS, R-O-S-S.

24 DIRECT EXAMINATION

25 BY MR. STRICKLER:

1 Q DR. ROSS, WHAT'S THE NATURE OF YOUR
2 EMPLOYMENT AT THE PRESENT?

3 A EXCUSE ME?

4 Q WHAT'S THE NATURE OF YOUR EMPLOYMENT?

5 A PRESENTLY I WORK FOR THE CORONER'S OFFICE IN
6 THE STATE OF PENNSYLVANIA. I WORK FOR LANCASTER
7 COUNTY, AS WELL AS DAUPHIN COUNTY, THAT INCLUDES
8 THE CAPITAL, WHICH IS HARRISBURG.

9 Q YOU'RE A MEDICAL DOCTOR?

10 A YES, I AM.

11 Q COULD YOU PLEASE DESCRIBE BRIEFLY YOUR
12 SCHOOLING AFTER HIGH SCHOOL?

13 A I GRADUATED FROM CLARK UNIVERSITY IN
14 MASSACHUSETTS. I RECEIVED A DEGREE IN CHEMISTRY
15 AND IN ENGLISH.

16 I THEN SPENT FOUR YEARS AT JEFFERSON MEDICAL
17 COLLEGE IN PHILADELPHIA. I RECEIVED A DEGREE IN
18 MEDICINE IN '83. I SPENT SIX YEARS AT EMORY
19 UNIVERSITY, WHICH IS IN ATLANTA, IN ANATOMIC,
20 FORENSIC, AND NEUROPATHOLOGY. SINCE ABOUT '85 UP
21 TO THE PRESENT TIME I HAVE WORKED FOR THE MEDICAL
22 EXAMINER'S OFFICES IN ATLANTA, THE M.E.'S OFFICES
23 IN NEW JERSEY, AS WELL AS FOR NUMEROUS CORONER'S
24 OFFICES IN THE STATE OF PENNSYLVANIA.

25 I'M BOARD CERTIFIED IN ANATOMIC FORENSIC

1 PATHOLOGY. I'M ALSO -- SINCE I SPENT TWO YEARS IN
2 NEUROPATHOLOGY, PARTICULARLY IN FORENSIC
3 NEUROPATHOLOGY, I'M A FELLOW PARTICULARLY IN THE
4 AREA OF NEUROPATHOLOGY, AS WELL.

5 Q YOU MENTIONED A COUPLE OF -- WELL, IN
6 ADDITION TO YOUR TRAINING IN PATHOLOGY, YOU'RE
7 BOARD CERTIFIED IN FORENSIC PATHOLOGY?

8 A CORRECT.

9 Q YOU'RE A FELLOW IN NEURO-FORENSIC PATHOLOGY?

10 A IN NEUROPATHOLOGY, WHICH INCLUDES FORENSIC
11 NEUROPATHOLOGY, YES.

12 Q DO YOU HAVE ANY TRAINING IN THE AREA OF
13 BIOMECHANICAL ENGINEERING IN ADDITION TO THE
14 PATHOLOGY TRAINING?

15 A YES.

16 Q WHAT WOULD BE THE NATURE OF THAT?

17 A WELL, IT BEGINS WITH FORENSIC PATHOLOGY WHERE
18 WE ARE TRAINED SPECIFICALLY IN THE AREA OF
19 BIOMECHANICS. I SPENT A LOT OF TIME LEARNING FROM
20 THE FORENSIC SIDE, AS WELL AS FROM THE
21 NEUROPATHOLOGY SIDE.

22 I'M PRESENTLY PART OF THE GRADUATE FACULTY AT
23 PENN STATE, DEPARTMENT OF ENGINEERING, WHERE I
24 TRAIN PEOPLE, ENGINEERS, IN THE AREA OF
25 BIOMECHANICS. I AM ALSO A LECTURER, A

1 PROFESSORIAL LECTURER, AT GEORGE WASHINGTON
2 UNIVERSITY WHERE I LECTURE IN THE AREA OF
3 BIOMECHANICS.

4 BIOMECHANICS DEALS WITH UNDERSTANDING THE
5 FORCES THAT IT TAKES TO CAUSE INJURY TO SOMEONE.
6 NOT ONLY DO I GET INVOLVED AND HAVE AN
7 UNDERSTANDING FROM A TRAINING STANDPOINT, BUT I
8 HAVE BEEN INVOLVED IN A LOT OF AUTOMOTIVE RELATED
9 CASES WHERE PEOPLE GET INJURIES IN TRAFFIC
10 ACCIDENTS.

11 I HAVE A GOOD UNDERSTANDING OF WHAT KIND OF
12 FORCE IT TAKES TO CAUSE AN INJURY TO THE BRAIN OR
13 SPINAL CORD, OR TO CAUSE A SKULL FRACTURE OR A
14 SUBDURAL BLEED IN THE HEAD.

15 MR. STRICKLER: YOUR HONOR, AT THIS POINT I'D
16 OFFER HIM AS AN EXPERT --

17 BY MR. STRICKLER:

18 Q WELL, LET ME JUST ASK YOU ONE OTHER THING
19 FIRST. HAVE YOU HAD OCCASION IN THE PAST TO
20 TESTIFY IN THE AREA OF FORENSIC PATHOLOGY IN THE
21 COURTS OF THIS OR OTHER STATES?

22 A IN DEPOSITION IN THIS STATE, BUT CERTAINLY IN
23 OTHER STATES, INCLUDING PENNSYLVANIA, GEORGIA, NEW
24 JERSEY, WEST VIRGINIA AND OTHERS AS WELL.

25 Q HAVE YOU BEEN DECLARED AN EXPERT IN THAT

1 FIELD IN THOSE STATES?

2 A YES.

3 Q HAVE YOU HAD AN OCCASION TO TESTIFY IN THE
4 AREA OF NEUROPATHOLOGY --

5 A YES.

6 Q -- IN THIS OR OTHER STATES?

7 A YES.

8 Q HAVE YOU HAD OCCASION TO TESTIFY IN THE AREA
9 OF BIOMECHANICS IN THIS OR OTHER STATES?

10 A YES.

11 MR. STRICKLER: YOUR HONOR, I'D OFFER HIM AS
12 AN EXPERT IN THE AREAS OF FORENSIC PATHOLOGY,
13 NEUROPATHOLOGY, AND BIOMECHANICS.

14 THE COURT: DO YOU WISH TO EXAMINE THE
15 WITNESS?

16 MS. CAMPBELL: YES, I HAVE JUST A COUPLE OF
17 QUESTIONS, YOUR HONOR.

18 HI, MY NAME IS LUCK CAMPBELL, I'D JUST LIKE
19 TO SAY, YOU SAID YOU'VE TESTIFIED BEFORE IN
20 NEUROPATHOLOGY?

21 THE WITNESS: YES.

22 MS. CAMPBELL: BUT HE DIDN'T ASK YOU IF YOU
23 HAD BEEN QUALIFIED AS AN EXPERT IN THAT AREA.

24 THE WITNESS: I HAVE.

25 MS. CAMPBELL: YOU HAVE. OKAY, AND IN WHAT

1 STATES IS THAT, DOCTOR?

2 THE WITNESS: GEORGIA, PENNSYLVANIA, NEW
3 JERSEY, OHIO, IOWA, NEW YORK, IN NUMEROUS STATES.

4 MS. CAMPBELL: MORE STATES THAN THAT, IN
5 FACT?

6 THE WITNESS: YES.

7 MS. CAMPBELL: YOU ALSO TESTIFIED IN THE AREA
8 OF BIOMECHANICS?

9 THE WITNESS: YES.

10 MS. CAMPBELL: AND IN HOW MANY STATES HAVE
11 YOU TESTIFIED ABOUT BIOMECHANICS, DOCTOR?

12 THE WITNESS: NUMEROUS STATES.

13 MS. CAMPBELL: AND COULD YOU JUST NAME LIKE
14 HALF OF THEM FOR US?

15 THE WITNESS: AGAIN, NEW JERSEY,
16 PENNSYLVANIA, SOUTH CAROLINA, GEORGIA, AND
17 MULTIPLE OTHER STATES AS WELL.

18 MS. CAMPBELL: ALL RIGHT. SO WOULD YOU SAY
19 THAT THE NUMBER OF STATES YOU'VE TESTIFIED IN
20 THESE AREAS IS IN EXCESS OF 20?

21 THE WITNESS: MORE AROUND TEN TO TWENTY,
22 SURE.

23 MS. CAMPBELL: TWENTY?

24 THE WITNESS: YES, I DON'T KNOW THE EXACT
25 NUMBER, BUT CERTAINLY IN ALL THOSE DIFFERENT

1 AREAS.

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

3 I HAVE NOTHING ELSE.

4 THE COURT: YOU MAY PROCEED ON THAT BASIS.

5 MR. STRICKLER: THANK YOU, SIR.

6 BY MR. STRICKLER:

7 Q DOCTOR, CAN YOU TELL US THE DIFFERENCE
8 BETWEEN BEING A FORENSIC PATHOLOGIST AND BEING A
9 PATHOLOGIST WHO DEALS IN THE ANATOMICAL AND
10 CLINICALLY AREAS?

11 A SURE. AN ANATOMIC PATHOLOGIST IS A HOSPITAL
12 PATHOLOGIST. A FORENSIC PATHOLOGIST IS SOMEONE
13 WHO DEALS SPECIFICALLY WITH TRAUMA AND DEALS IN
14 THE MEDICAL/LEGAL SITUATION.

15 I GET INVOLVED ANALYZING SCENES, CRIME
16 SCENES, AUTOMOTIVE ACCIDENTS AND THE SORTS OF
17 INJURIES THAT OCCUR TO PEOPLE IN TRAFFIC
18 ACCIDENTS, HOMICIDES, AND CHILD ABUSE CASES ALL
19 THE TIME. I DO IT BOTH FROM AN AUTOPSY
20 PERSPECTIVE AND FROM AN INVESTIGATIVE STANDPOINT
21 FROM WORKING WITH THE POLICE DEPARTMENTS OR
22 DISTRICT ATTORNEY'S OFFICE AND/OR INVOLVED IN
23 OTHER TRAFFIC RELATED CASES.

24 Q SO THAT SHOULD GIVE YOU A GENERAL SORT OF
25 FEELING ABOUT THE DIFFERENCE BETWEEN THE TWO THAT

1 OCCURS?

2 A THE BOTTOM LINE IS WE GET INVOLVED IN TRAUMA
3 EVERY DAY. THE HOSPITAL PATHOLOGIST IS BASICALLY
4 THERE TO LOOK AT NATURAL DISEASES AND THINGS THAT
5 OCCUR FROM A NATURAL STANDPOINT.

6 Q ALL RIGHT, SIR. YOU MENTIONED TESTIFYING OR
7 DEALING WITH THE D.A. DO YOU TESTIFY FOR THE
8 STATE OR THE PROSECUTION IN YOUR POSITION AS A
9 PATHOLOGIST?

10 A YES. I WORK FOR THE CORONER'S OFFICE. I
11 ALSO WORK FOR THE DISTRICT ATTORNEY'S OFFICES IN
12 ALL THE COUNTIES I WORK WITH AND ABOUT 90 TO 95
13 PERCENT OF MY TESTIMONY IS ON BEHALF OF THE
14 PROSECUTION.

15 Q AND HAVE YOU EVER HAD OCCASION TO TESTIFY
16 REGARDING AND/OR INVESTIGATE OR BE INVOLVED IN THE
17 INVESTIGATION OF CHILD ABUSE CASES?

18 A YES.

19 Q CAN YOU DESCRIBE THAT -- DESCRIBE THE
20 PROCESS, PLEASE?

21 A YOU MEAN WHAT I SPECIFICALLY DO OR --

22 Q YES, SIR.

23 A -- JUST A GENERAL SORT OF DESCRIPTION?

24 Q WHAT DO YOU SPECIFICALLY DO.

25 A SPECIFICALLY, WE HAVE A CHILD ABUSE UNIT IN

1 THE DISTRICT ATTORNEY'S OFFICE. IF I GET A CHILD
2 ABUSE CASE FOR ANY REASON, I FIRST OF ALL TALK TO
3 THE INVESTIGATORS, TRY TO HAVE THE INVESTIGATORS
4 EITHER AT THE AUTOPSY, OR IF THE BABY IS STILL
5 ALIVE, I SPEAK WITH THE INVESTIGATORS.

6 I LOOK AT THE RADIOLOGY AND TRY TO FIGURE OUT
7 WHERE THE INJURIES ARE. ONCE I HAVE DETERMINED
8 THE INJURIES, I DIRECT THE DISTRICT ATTORNEY'S
9 OFFICE AND/OR THE INVESTIGATORS AS TO WHAT TO LOOK
10 FOR.

11 SPECIFICALLY, WE GO BACK ALL THE WAY TO THE
12 BEGINNING IF WE'RE DOING A CHILD ABUSE CASE. I GO
13 BACK TO THE TIME WHEN THE CHILD WAS BORN, AND I
14 WANT TO KNOW EXACTLY WHAT'S HAPPENED TO THAT CHILD
15 IN TERMS OF A TIMELINE FROM THE TIME IT'S BORN TO
16 THE TIME THAT IT EITHER EXPIRES OR UNTIL IT HAS
17 ITS INJURIES.

18 Q WHY WOULD YOU WANT TO KNOW THAT?

19 A WELL, PARTICULARLY IN CASES OF CHRONIC BLEEDS
20 IN THE BRAIN, THEY CAN EITHER BE DUE TO NATURAL
21 DISEASES OR TRAUMA. LOOKING AT IT -- FORGET ABOUT
22 THE MEDICAL SIDE FOR A MINUTE, FROM AN
23 INVESTIGATOR'S STANDPOINT, THE INVESTIGATOR HAS TO
24 GO AND LOOK AND TRY TO DETERMINE IN A CHRONIC
25 BLEED THAT'S BEEN THERE FOR WEEKS HOW THAT BLEED

1 OCCURRED.

2 NOW, THE INVESTIGATOR MAY NOT BE A DOCTOR,
3 BUT HE SHOULD BE ABLE TO LOOK INTO IT AND FIGURE
4 OUT IF IT'S TRAUMA OR A NATURAL DISEASE, AND
5 THAT'S CRITICAL, ESPECIALLY IN CASES SUCH AS THIS
6 WHERE YOU HAVE REBLEEDING GOING ON.

7 Q YOU CAN HAVE A CHRONIC BLEED, A CHRONIC
8 SUBDURAL FROM NATURAL CAUSES?

9 A YES.

10 Q OKAY. CAN YOU GIVE US SOME EXAMPLES PERHAPS?

11 A SURE. I'VE SEEN MULTIPLE CASES. AS A MATTER
12 OF FACT, A CASE WHERE YOU HAVE A BABY THAT COMES
13 IN WITH NO BRUISING TO THE SCALP, NO SKELETAL
14 FRACTURES, NO INJURIES ANYWHERE, NO SIGNIFICANT
15 INJURIES LIKE THE KID HAS BROKEN BONES OR BRUISES
16 OR ANYTHING, AND YOU HAVE A BLEED TO THE RIGHT
17 SIDE OF THE HEAD, IT'S PROBABLY ONE OF THE MOST
18 TECHNICALLY DIFFICULT CASES I GET INVOLVED IN
19 BECAUSE I KNOW THAT CHRONIC BLEEDS CAN BE DUE TO
20 PREVIOUS INFECTIONS, BLEEDING DISORDERS, EVEN BLOW
21 MONOPATHY, VITAMIN K DEFICIENCIES, PREVIOUS
22 INFECTIONS, FALLS FROM -- WHAT WE CALL ACCELERATED
23 FALLS FROM ACCIDENTAL INJURY, ALL SORTS OF THINGS
24 AND WEEKS LATER AFTER A CHILD HAS HAD A FALL, IT
25 CAN BE VERY DIFFICULT FOR SOMEBODY TO REMEMBER

1 WHEN THAT FALL OCCURRED.

2 I MEAN, DID THE FALL OCCUR IF A CHILD FELL
3 OFF THE SWING SET, OR DID IT OCCUR WHEN THIS
4 HAPPENED OR WHEN THAT HAPPENED. IT'S CRITICAL
5 THAT THE INVESTIGATOR GOES BACK AND TRIES TO
6 DETERMINE WHEN THAT CHRONIC BLEED OCCURRED.

7 NOW, BASED ON THE INFORMATION YOU HAVE, IN
8 SOME CASES YOU'D SAY IT GOES BACK A COUPLE OF
9 WEEKS. YOU'VE GOT TO GO BACK TO THAT TIME PERIOD
10 AND BEFORE THAT TIME PERIOD. YOU'VE GOT TO GO
11 BACK TO THE BIRTH AND SEE IF THERE'S A BIRTHING
12 PROBLEM.

13 YOU HAVE TO GO BACK AND TALK TO THE MOM AND
14 THE DAD AND EVERYBODY THERE AND TRY TO DETERMINE
15 HOW, IN FACT, THAT BLEED OCCURRED.

16 Q OKAY. HAVE YOU HAD THE OPPORTUNITY TO REVIEW
17 RECORDS ASSOCIATED WITH THIS CASE INVOLVING THE
18 DEATH OF MINOR ?

19 A YES.

20 Q OKAY. SPECIFICALLY HAVE YOU REVIEWED THE
21 C.T. SCANS IN THIS CASE?

22 A YES.

23 Q HAVE YOU REVIEWED THE AUTOPSY IN THIS CASE?

24 A YES.

25 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW HER

1 MEDICAL RECORDS IN THIS CASE?

2 A YES.

3 Q HAVE YOU HAD AN OPPORTUNITY TO REVIEW HER
4 RECORDS FROM HER BIRTH IN THIS PARTICULAR CASE?

5 A YES.

6 Q OKAY. LET ME ASK YOU THIS: WOULD YOU AGREE
7 OR DISAGREE THAT THIS CASE IS SUSPICIOUS FOR CHILD
8 ABUSE?

9 A I WOULD AGREE THAT IT'S SUSPICIOUS FOR CHILD
10 ABUSE.

11 Q IT WARRANTS INVESTIGATION?

12 A IT CERTAINLY DOES.

13 Q OKAY. WERE YOU TO DO THE INVESTIGATION, WHAT
14 WOULD BE DONE, JUST WHAT YOU'VE DESCRIBED, GO BACK
15 TO THE BEGINNING?

16 A I WOULD GO BACK TO THE BEGINNING, BUT I WOULD
17 SIT DOWN -- IF I WERE AT AUTOPSY, I WOULD, BEFORE
18 DOING THE AUTOPSY, KNOWING WHAT I KNOW FROM THE
19 C.A.T. SCAN THAT YOU HAVE A CHRONIC BLEED AND THAT
20 REBLEEDING CAN OCCUR. BY REBLEEDING I MEAN IF YOU
21 EVER CUT YOURSELF OR HAVE GOTTEN A SCAB OR
22 SOMETHING AND YOU BLEED, YOU GET A SCAB. IF YOU
23 GO BACK AND INJURY THAT AREA OR BUMP IT, IT CAN
24 REBLEED AND START BLEEDING AGAIN, ESPECIALLY
25 GETTING A NICK WHEN YOU'RE SHAVING OR SOMETHING

1 LIKE THAT, YOU BLEED ALL THE TIME.

2 CHRONIC SUBDURALS IN THE BRAIN TRY TO GET RID
3 OF THE BLEEDING. THE WAY THEY DO THAT IS THAT
4 THEY SEND BILLIONS OF BLOOD VESSELS, LITTLE TINY
5 BLOOD VESSELS, INTO THAT AREA OF THE BRAIN TRYING
6 TO CONTAIN THAT BLEED.

7 BUT WHAT HAPPENS IS THESE THINGS CAN
8 SPONTANEOUSLY BLEED FOR ACTUALLY NO REASON AT ALL.
9 IT HAPPENS, I'VE SEEN IT. I'VE SEEN PEOPLE IN
10 HOSPITALS OUT OF ANYBODY'S CUSTODY AND I'VE SEEN
11 THEM REBLEED.

12 Q NOW, YOU MENTIONED THE TERM SPONTANEOUS
13 REBLEED. IS THIS A TERM YOU MADE UP?

14 A NO.

15 Q OKAY. IS THIS A THEORY ON YOUR PART?

16 A NO.

17 Q IS THIS DOCUMENTED IN THE LITERATURE THAT YOU
18 REFER TO ON A DAILY BASIS?

19 A YES, IT'S WELL DOCUMENTED IN MEDICAL
20 LITERATURE. I MEAN, EVERYBODY KNOWS THAT REBLEEDS
21 CAN OCCUR AND THEY CAN OCCUR SPONTANEOUSLY.

22 Q AND THESE ARE REBLEEDS RELATING TO THE
23 SUBDURAL HEMATOMAS?

24 A YES.

25 Q OKAY. WELL, LET ME JUST ASK YOU THIS

1 QUESTION AND ASK YOU WHETHER YOU CAN GIVE AN
2 ANSWER TO THIS QUESTION: IF YOU HAVE A SUBDURAL
3 HEMATOMA AND YOU ADD TO IT CEREBRAL EDEMA AND YOU
4 ADD TO THAT RETINAL HEMORRHAGE, OKAY? SUBDURAL
5 HEMATOMA, CEREBRAL EDEMA PLUS RETINAL HEMORRHAGE
6 EQUALS CHILD ABUSE; DO YOU AGREE OR DISAGREE WITH
7 THAT STATEMENT?

8 A I WOULD DISAGREE.

9 Q WHY WOULD YOU DISAGREE WITH THAT STATEMENT,
10 SIR?

11 A THAT STATEMENT IS TOO SIMPLISTIC. THIS CASE
12 IS FAR MORE COMPLICATED THAN THAT SIMPLISTIC
13 STATEMENT. YOU DON'T JUST -- FIRST OF ALL, YOU
14 HAVE A SUBDURAL HERE, BUT IT'S CHRONIC AND ACUTE
15 AND YOU'VE GOT TO FIGURE OUT WHERE THAT CHRONIC
16 BLEED COMES FROM AND THAT HASN'T BEEN DONE.

17 NO ONE KNOWS AT THAT POINT, BUT IF YOU TELL
18 ME THAT FAMILY MEMBERS HAVE BEEN SPOKEN TO AND
19 EVERYBODY ELSE SPEAKS TO WHOEVER AND INVESTIGATORS
20 COME AND SAY THERE'S NEVER BEEN ANY ACUTE
21 NEUROLOGIC PROBLEM WITH THIS KID BEFORE, NO OTHER
22 BRAIN PROBLEMS BEFORE, THEN YOU CAN BEGIN TO
23 CONCLUDE THAT THAT CHRONIC BLEED IN THE BRAIN IS
24 DUE TO A NATURAL DISEASE PROCESS.

25 NOW, HAVING SAID THAT IF YOU'RE STILL

1 CONCERNED ABOUT TRAUMA YOU'VE GOT TO CRITICALLY
2 ANALYZE AND SPEAK TO THESE PEOPLE AND FIND OUT
3 WHAT'S GOING ON AND IF SOMEBODY IS TELLING YOU THE
4 TRUTH OR NOT, WHETHER OR NOT THE KID HAS REALLY
5 HAD A NEUROLOGIC PROBLEM.

6 Q THIS IS AS TO THE CHRONIC SUBDURAL?

7 A THIS IS AS TO THE CHRONIC, BUT YOU'VE GOT TO
8 LOOK AT THE CHRONIC, AS WELL AS THE ACUTE.

9 Q WHY DO YOU HAVE TO LOOK AT THE CHRONIC AS
10 WELL AS THE ACUTE?

11 A BECAUSE WE KNOW THAT REBLEEDS CAN OCCUR. IT
12 CAN OCCUR AND SPONTANEOUSLY REOCCUR. IT CAN OCCUR
13 DURING MINOR FALLS, OR IT CAN OCCUR JUST DUE TO
14 ANY NUMBER OF REASONS. IT CAN OCCUR DUE TO
15 BLEEDING DISORDERS, BUT THEY DO REOCCUR.

16 Q BUT DO THEY ONLY REOCCUR IN OLD PEOPLE?

17 A NO. I MEAN, IT'S QUITE CLEARLY DOCUMENTED
18 THAT THEY OCCUR IN CHILDREN OF THIS AGE. IT'S
19 WELL DOCUMENTED IN THE MEDICAL LITERATURE THAT
20 REBLEEDS OCCUR IN CHILDREN.

21 I CAN TELL YOU FROM MY OWN PERSONAL
22 EXPERIENCE THAT I HAVE HAD CASES OF CHILDREN GOING
23 INTO THE HOSPITAL WITH NO BLEEDS AND THE NEXT DAY
24 THERE IS A BLEED OR THEY HAVE GONE TO THE HOSPITAL
25 WITH A CHRONIC BLEED OR THE NEXT DAY IN THE

1 HOSPITAL THERE IS A REBLEED.

2 I HAVE EVEN HAD CHILDREN WHERE THEY EVACUATED
3 THE BLEED IN THE BRAIN AND THREE OR FOUR OR FIVE
4 MONTHS LATER IT'S BLED AGAIN AND THEY HAVE NEW
5 RETINAL HEMORRHAGES AGAIN.

6 Q YOU JUST MENTIONED RETINAL HEMORRHAGES. LET
7 ME ASK YOU THIS, ARE RETINAL HEMORRHAGES SOLELY
8 ASSOCIATED WITH SHAKING OR SHAKING IMPACT? YOU'RE
9 FAMILIAR WITH THE SHAKEN BABY SYNDROME, THAT TERM,
10 CORRECT?

11 A YES, I AM.

12 Q ARE THOSE RETINAL HEMORRHAGES UNIQUE TO THAT
13 THEORY OR THAT THEORY OF INJURY?

14 A NO.

15 Q WHAT'S UP WITH RETINAL HEMORRHAGES?

16 A IT'S DIVIDED ON RETINAL HEMORRHAGES. YOU
17 HAVE ONE GROUP OF PEOPLE WHO SAYS IT'S PURELY FROM
18 SHAKING, THAT YOU CAN GENERATE -- WELL, YOU CAN'T,
19 BUT THEY BELIEVE YOU CAN GENERATE ENOUGH G-FORCES
20 IN THE BRAIN TO CAUSE BLEEDING IN THE BACK OF THE
21 RETINAS.

22 THERE IS ON THE OTHER SIDE, PEOPLE IN THE
23 NEURO FIELD WHO UNDERSTAND THAT INCREASED
24 INTRACRANIAL PRESSURE, WHICH THIS CHILD HAS AND
25 BLEEDING DISORDERS, WHICH THIS CHILD CLEARLY HAS

1 WHEN THIS CHILD GETS IN THE E.R., CLEARLY THIS
2 CHILD HAS A BLEEDING PROBLEM. IT'S PROBABLY
3 ORIGINATING FROM THE BRAIN, BUT CLEARLY THE CHILD
4 HAS A BLEEDING PROBLEM.

5 THOSE TWO THINGS TOGETHER CAN CAUSE RETINAL
6 HEMORRHAGES IN THE EYE APART FROM ANY TRAUMA. IT
7 DOESN'T HAVE TO BE TRAUMA. IT CAN BE SOLELY FROM
8 THE FACT THAT THE BLOOD FILLS UP IN THE BRAIN, THE
9 BRAIN SWELLS, AND THAT COMPRESSION CAN CAUSE
10 RETINAL HEMORRHAGES.

11 Q OKAY. DOES THE APPEARANCE OF RETINAL
12 HEMORRHAGES IN MANY LAYERS OF THE EYE AS OPPOSED
13 TO ONE LAYER OF THE EYE INDICATE THAT THOSE
14 HEMORRHAGES OCCUR FROM SHAKING AS OPPOSED TO
15 INCREASED PRESSURE?

16 A NO.

17 Q NO?

18 A NO.

19 Q AND AGAIN IS THIS A THEORY ON YOUR PART?

20 A NO.

21 Q WHAT DO YOU BASE THAT STATEMENT ON?

22 A MY EXPERIENCE, AS WELL AS MY KNOWLEDGE OF THE
23 MEDICAL LITERATURE THAT YOU CAN SEE RETINAL
24 HEMORRHAGES IN ALL AREAS OF THE RETINA, IN ALL
25 QUADRANTS OF THE RETINA, JUST FROM INCREASED

1 INTRACRANIAL PRESSURE, BUT ALSO FROM MY
2 EXPERIENCE, I LOOK AT THE EYES UNDER A MICROSCOPE
3 AND LOOK AT THE HEMORRHAGES IN THE RETINA, AND I
4 CAN SEE EXTENSIVE RETINAL HEMORRHAGES IN MANY OF
5 MY CASES, CHILD ABUSE CASES, AS WELL AS I'VE SEEN
6 IN CASES WHERE THEY ARE NOT CHILD ABUSE CASES.

7 I HAD A CASE OF A YOUNG AMISH CHILD, A COUPLE
8 OF YEARS OLD, WHO HAD AN ENZYME PROBLEM WHO HAD A
9 NEGATIVE C.A.T. SCAN, WHO HAD NEGATIVE RETINAL
10 HEMORRHAGES WHO WENT IN THE HOSPITAL AND THE CHILD
11 WAS GIVEN UNFORTUNATELY TOO MUCH SUGAR WATER. THE
12 SUGAR IN THE WATER WAS TOO MUCH.

13 WHAT HAPPENED WAS, WHEN THE CHILD GOT BACK IT
14 LED TO A BLEED IN THE BRAIN, A SUBDURAL BLEED, AND
15 LED TO RETINAL HEMORRHAGES IN THE EYES. I WAS
16 ABLE TO LOOK AT THOSE UNDER THE MICROSCOPE AND THE
17 HEMORRHAGES WERE VERY EXTENSIVE. SOME MIGHT SAY
18 SEVERE, BUT FROM MY PERSPECTIVE THEY WERE VERY
19 EXTENSIVE.

20 Q HE GOT EXTENSIVE RETINAL HEMORRHAGES FROM TOO
21 MUCH SUGAR WATER?

22 A YEAH, IT'S WHAT WE CALL HYPERTONIC GLUCOSE.
23 YOU CAN ONLY TAKE A CERTAIN AMOUNT OF SUGAR IN
24 WATER WHEN IT'S INJECTED INTO YOUR VEINS. IF THE
25 SUGAR IS TOO MUCH, THEN WHAT WILL HAPPEN IS IT CAN

1 CAUSE A BLEED IN THE BRAIN.

2 Q OKAY. CAN YOU -- SO IT'S A BLEED IN THE
3 BRAIN?

4 A CORRECT.

5 Q BUT THAT MAKES FOR RETINAL HEMORRHAGES?

6 A WELL, IT MAKES FOR INCREASED INTRACRANIAL
7 PRESSURE.

8 Q OKAY.

9 A BECAUSE THE BLEED WAS A SUBDURAL HEMATOMA
10 THAT LED TO INCREASED PRESSURE. THE HEAD IS LIKE
11 A BOX. ONCE YOU START FILLING UP THAT BOX WITH
12 BLOOD OR WITH SWELLING, THE BOX BEGINS TO COMPRESS
13 ON THE OPTIC NERVES OR THE VEINS LEADING TO THE
14 EYES.

15 WHEN YOU START COMPRESSING ON THOSE VEINS
16 THEN ALL THE BLOOD THAT'S PUMPED INTO THE EYES
17 CAN'T GET BACK OUT. SO WHAT HAPPENS IS IT'S
18 PUSHED INTO THE RETINAS AND IT GIVES YOU THOSE
19 HEMORRHAGES OR BLEEDS INTO THOSE AREAS.

20 Q DOES THE NATURE OF -- GIVEN THE SUBDURAL,
21 OKAY, DOES IT MATTER HOW THE SUBDURAL WAS INDUCED
22 AS TO WHETHER OR NOT RETINAL HEMORRHAGES OCCUR?

23 A NO. WHAT'S ALSO IMPORTANT IS, NOT ONLY IN
24 THIS CASE, YOU HAVE TO REMEMBER THIS CHILD HAS A
25 BLEEDING DISORDER.

1 Q I WANT TO ASK YOU ABOUT THAT. HOW CAN YOU
2 SAY THE CHILD HAS A BLEEDING DISORDER?

3 A WHEN THE CHILD ENTERS INTO THE EMERGENCY
4 ROOM, THERE ARE DISTINCTIVE CHANGES IN THE RED
5 BLOOD CELLS, WHAT WE REFER TO AS SCHISTOCYTES AND
6 THINGS OF THAT SORT THAT TELL YOU, AND THINGS
7 LATER ON THAT TELL YOU THAT THIS CHILD HAS A
8 CLOTTING DISORDER, AND THAT'S EVEN BEFORE ANY OF
9 THE DOCTORS SEE THIS CHILD, EVEN BEFORE THE E.R.
10 DOCTOR SEES HER OR EVEN BEFORE DR. CHRISTMANN -- I
11 DON'T KNOW IF THAT'S A HE OR A SHE, SEES THIS
12 CHILD, AS WELL.

13 SO ONCE YOU GET THAT BLEEDING DISORDER, ALL
14 BETS ARE OFF... IF YOU WANT TO TRY TO SAY IT'S
15 CLEARLY DUE TO SHAKING, YOU CAN'T SAY THAT BECAUSE
16 ONCE YOU GET A BLEEDING DISORDER YOU CAN BLEED
17 FROM EVERYWHERE AROUND THOSE EYES AND IT JUST
18 MAKES IT WORSE.

19 Q WHAT DO YOU BASE YOUR CONCLUSION THAT THERE
20 WAS A BLEEDING DISORDER ON?

21 A FROM THE MEDICAL RECORDS.

22 Q FROM THE MEDICAL RECORDS?

23 A FROM THE MEDICAL RECORDS, AND PARTICULARLY MY
24 BASIS WOULD BE ON ADMISSION THIS CHILD HAS WHAT WE
25 CALL SCHISTOCYTES AND LATER ON WHAT'S REFERRED TO

1 AS THE D-DIMER IS ELEVATED, WHAT'S CALLED THE
2 P.T.P.T.T. IS ALSO PROLONGED. THESE ARE JUST
3 SIMPLY LAB TESTS THAT TELL YOU YOU HAVE THE MAJOR
4 CLOTTING PROBLEM, AND CLEARLY THE MEDICAL RECORDS,
5 THEY CLEARLY STATE THAT THERE IS A COAGULOPATHY
6 HERE. THE DOCTORS CLEARLY NOTE THAT THERE IS A
7 BLEEDING PROBLEM, SO ANYBODY WHO HAS LOOKED AT
8 RETINAS AND HAS SEEN RETINAL HEMORRHAGES KNOWS
9 THAT BLEEDING DISORDERS CAUSE RETINAL HEMORRHAGES.

10 I THINK IT'S -- IT'S MY OPINION IN THIS CASE
11 THAT THE RETINAL HEMORRHAGES ARE DUE TO INCREASED
12 INTRACRANIAL PRESSURE AND DUE TO THE BLEEDING
13 DISORDER THAT THIS CHILD CLEARLY HAS.

14 Q OKAY. RETINAL HEMORRHAGES -- WHAT CAN CAUSE
15 SUBDURAL HEMATOMAS? SHAKING AND FROM BANGING A
16 BABY'S HEAD AGAINST THE WALL?

17 A I'M OF THE OPINION THAT YOU NEED THE IMPACT
18 AND WHAT WE REFER TO AS SUDDEN IMPACT SYNDROME. I
19 DON'T BELIEVE, IN A CASE WHERE YOU HAVE NO PRIOR
20 BLEED TO THE BRAIN THAT YOU CAN SHAKE A CHILD AND
21 CAUSE BLEEDING INSIDE THE BRAIN -- AND THERE HAVE
22 BEEN BIOMECHANICAL STUDIES DONE OUT THERE THAT
23 SHOW THE AMOUNT OF G-FORCES THAT IS GENERATED WHEN
24 YOU SHAKE A CHILD, THE MAXIMUM AMOUNT OF G-FORCES,
25 ARE NINE TO TEN G'S. I'VE ACTUALLY TAKEN CABBAGE

1 PATCH DOLLS MYSELF AND SHAKEN THEM, AND THE MOST
2 G'S I COULD DO, AND I WAS DOING IT AS VIOLENTLY AS
3 POSSIBLE WITH THAT, WAS ABOUT NINE G'S OF FORCE.

4 IT'S ALSO BEEN SHOWN QUITE CLEARLY THAT TO
5 CAUSE A SUBDURAL HEMATOMA OR OTHER INJURIES TO THE
6 BRAIN YOU NEED TO GENERATE HUNDREDS OF G'S OF
7 FORCE. EVEN THE FEDERAL GOVERNMENT RECOGNIZES
8 THIS BECAUSE THE FEDERAL MOTOR VEHICLE SAFETY
9 STANDARD 208 SAYS THAT IN A MOTOR VEHICLE ACCIDENT
10 CRASHING INTO A WALL AT 30-MILES PER HOUR MY BRAIN
11 CAN ENDURE UP TO 80 G'S FOR THREE MILLISECONDS
12 BEFORE I START GETTING A CONCUSSION. THAT'S 80
13 G'S VERSUS JUST SHAKING ALONE WHERE YOU CAN ONLY
14 GENERATE NINE G'S.

15 TYPICALLY IN THESE CRASH TESTS THAT'S WHAT
16 THEY LOOK AT, THE AMOUNT OF G-FORCE THAT'S
17 GENERATED. IN A CHILD THE AMOUNT OF G-FORCE IS
18 HIGHER THAN THAT, NINETY TO A HUNDRED TO A HUNDRED
19 AND TEN G'S BEFORE YOU GET A CONCUSSION. THAT'S
20 WHEN YOU KIND OF BLACK OUT OR IT BECOMES STIFLED
21 OR SOMETHING. WE'RE NOT EVEN TALKING ABOUT
22 SUBDURAL HEMATOMAS AT THIS POINT.

23 Q THE MECHANISM THROUGH SHAKING OR SHAKING WITH
24 IMPACT THAT PRODUCES A SUBDURAL HEMATOMA, WHAT IS
25 THAT MECHANISM?

1 A WELL, THE IMPACT IS WHERE I COME IN. IF YOU
2 SHAKE A CHILD OR IF YOU TAKE THE CHILD'S HEAD AND
3 IT IMPACTS ON AN OBJECT, WHATEVER THAT OBJECT IS,
4 THAT SORT OF DECELERATION, WHAT WE CALL A
5 DECELERATION INJURY, CAN CAUSE EITHER SUBDURAL
6 BLEEDING OR WHAT WE CALL A DIFFUSE AXONAL INJURY
7 TO THE BRAIN.

8 Q OKAY. ARE THERE ANY CAUSES OTHER THAN
9 VIOLENT INJURY TO THE HEAD THAT CAN CAUSE SUBDURAL
10 HEMATOMA?

11 A WELL, SURE.

12 Q WHAT WOULD THOSE BE? NAME A FEW.

13 A MENINGITIS, BLEEDING DISORDERS,
14 HEMOGLOBINOPATHY. A LOT OF THESE CASES ARE WHAT
15 WE REFER TO AS SUBDURAL HYGROMAS WHERE THE
16 RADIOLOGIST WILL THROW A C.T. SCAN UP ON A BOX AND
17 SEE AN OLD BLEED THERE, A CHRONIC BLEED, AND NO
18 ONE TRULY KNOWS THE ORIGIN OF THAT BLEED, BUT AT
19 LEAST THEY KNOW THAT OLD BLEED THERE IS A NATURAL
20 DISEASE PROCESS.

21 Q NOW, YOU'VE STATED YOU HAD AN OPPORTUNITY TO
22 GO AHEAD AND REVIEW THE C.T. SCANS IN THIS
23 PARTICULAR CASE?

24 A YES.

25 Q OKAY. WHAT CAN YOU TELL ME -- FIRST OF ALL,

1 IN YOUR EVERY DAY PRACTICE DO YOU HAVE AN
2 OPPORTUNITY TO GO AHEAD AND HAVE CONTACT WITH C.T.
3 SCANS?

4 A YES.

5 Q OKAY.

6 A C.T.'S, M.R. SCANS. I REVIEW THEM AND I HAVE
7 A NEURORADIOLOGIST THAT I WORK -- A COUPLE OF
8 PEOPLE THAT I WORK WITH THAT REVIEW THEM.

9 Q AND CAN YOU TELL US WHAT THE C.T. SCANS
10 SHOWED IN THIS PARTICULAR CASE?

11 A THE C.T. SCANS SHOW A FRESH BLEED, AS WELL AS
12 A CHRONIC BLEED.

13 Q OKAY. CAN YOU AGE THE CHRONIC BLEED? IS
14 THERE ANY WAY TO AGE IT?

15 A GENERALLY SPEAKING, YES. THE RADIOLOGIST
16 WILL THROW IT UP THERE AND LOOK AT IT. IN THIS
17 BLEED MOST WILL SAY IT'S SOMEWHERE BETWEEN TWO TO
18 THREE WEEKS.

19 IT'S BEEN MY EXPERIENCE THAT THERE'S ALWAYS
20 VARIATION OF A COUPLE OF WEEKS AMONGST
21 RADIOLOGISTS, IN MY OWN EXPERIENCE ANYWAY. WHEN
22 YOU SEE A WHITE OUT, THAT IS WHAT WE CALL A FRESH
23 BLEED. THEN THERE ARE OTHER AREAS WHICH ARE
24 DARKER. THOSE AREAS ARE WHAT WE REFER TO AS
25 EITHER HYPO DENSE OR ISODONT, BUT THEY'RE

1 RADIOLOGY TERMS.

2 THOSE DARKER AREAS REPRESENT CHRONIC BLEEDS.
3 THE WAY YOU KNOW IS YOU COMPARE THE DARKER AREAS,
4 BY DARKER I MEAN THE BLACKER AREAS WITH THE,
5 WHAT'S CALLED THE VENTRICLES, WHICH IS THE CENTER
6 OF THE BRAIN, AND YOU COMPARE IT WITH THE FLUID
7 GOING THROUGH THE VENTRICLES AND THAT TELLS YOU
8 HOW OLD OR FRESH THE BLEED IS.

9 Q OKAY. IN LOOKING AT THE C.T. SCANS IN THIS
10 CASE, DID YOU FIND EVIDENCE OF A CHRONIC BLEED?

11 A YES.

12 Q AND WHERE WAS THAT LOCATED?

13 A THE CHRONIC BLEED IS OVER THE RIGHT
14 CONVEXITY, OVER THE RIGHT SIDE OF THE BRAIN.
15 PARTICULARLY YOU CAN SEE IT IN THE RIGHT FRONTAL
16 PARIETAL REGION OF THE BRAIN. IT'S IN THE
17 SUBDURAL SPACE, THAT'S BETWEEN THE -- WELL,
18 BASICALLY UNDERNEATH THE SKULL. THERE'S TWO
19 MEMBRANES. THERE'S WHAT'S CALLED THE ARACHNOID
20 MEMBRANE AND THE DURA.

21 BASICALLY THERE'S LAYERS THAT KIND OF HOLD
22 THE BRAIN IN. BETWEEN THOSE AREAS YOU CAN SEE
23 THESE AREAS THAT ARE DARKER, NOT WHITE, DARKER AND
24 THOSE AREAS ARE THE CHRONIC BLEEDS.

25 Q OKAY.

1 A THE WHITE AREAS REPRESENT THE ACUTE BLEED OR
2 THE FRESH BLEED.

3 Q DO YOU HAVE AN OPINION, TO A REASONABLE
4 DEGREE OF MEDICAL CERTAINTY, AS TO THE
5 RELATIONSHIP BETWEEN THE NEW BLEED AND THE CHRONIC
6 BLEED?

7 A IT'S MY OPINION UPON EVERYTHING I HAVE HERE
8 PRESENTLY, THE INVESTIGATION AND EVERYTHING, THAT
9 THE NEW BLEED IS DUE TO A REBLEED FROM THE CHRONIC
10 BLEED.

11 WHAT HAPPENS IS, YOU'VE GOT TO REMEMBER YOU
12 HAVE BILLIONS OF BLOOD VESSELS IN A CHRONIC BLEED.
13 THOSE BLOOD VESSELS THAT CAN BREAK OFF FOR
14 WHATEVER REASON, SPONTANEOUSLY, AND THEY BREAK AND
15 BLEED.

16 Q THEY SPONTANEOUSLY BLEED?

17 A THEY SPONTANEOUSLY BLEED, AND WHEN THAT
18 HAPPENS, THE FRESH BLOOD CAN TRAVEL ANYWHERE. IT
19 CAN GO UP, IT CAN GO DOWN, IT CAN SPREAD ALL OVER
20 THE PLACE. AT AUTOPSY WE SEE MULTIPLE TIMES WHERE
21 THE BLOOD -- YOU'RE JUST SITTING THERE, ONCE YOU
22 REMOVE THE SKULL AND THE DURA AND YOU JUST SEE THE
23 BLOOD SORT OF SPREAD AROUND. IT WILL TEND TO
24 SPREAD WHEREVER IT CAN SPREAD.

25 YOU HAVE TO LOOK AT THE AREAS OF FRESH

1 BLEEDING RELATIVE TO THE AREAS OF CHRONIC
2 BLEEDING, BUT REMEMBER THE FRESH BLEEDING, BECAUSE
3 IT'S VERY SLIPPERY, THAT BLOOD CAN GO ANYWHERE AND
4 SPREAD ANYWHERE.

5 Q OKAY. ONCE THE CHRONIC SUBDURAL IS PRESENT,
6 WHAT'S THE POTENTIAL FOR REBLEEDING, IN YOUR
7 OPINION?

8 A THE POTENTIAL IS THERE AT ANY TIME. I MEAN,
9 WE KNOW THAT THESE THINGS CAN REBLEED EITHER
10 SPONTANEOUSLY OR DUE TO A SIMPLE FALL.

11 Q EVEN IN -- IN THAT SITUATION, EVEN A SIMPLE
12 FALL?

13 A EVEN A SIMPLE FALL, AND THAT SHOULD BE
14 DISTINGUISHED FROM AN ACCELERATED FALL.

15 Q OKAY. IS THERE ANY EVIDENCE OF, FROM THE
16 C.T. SCAN, THAT SHOWS BLEEDING FROM SITES
17 DISASSOCIATED WITH THE CHRONIC SUBDURAL?

18 A NO. I DON'T THINK YOU CAN MAKE THAT
19 DETERMINATION. THERE IS NO DISASSOCIATION.

20 YOU HAVE TO REMEMBER IF YOU HAVE A CHRONIC
21 BLEED -- YOU HAVE TO REMEMBER, THE BRAIN IS
22 INCREDIBLY SLIPPERY. IT'S ALL FAT. WHEN YOU
23 TOUCH THE BRAIN OR WHEN YOU PUT BLOOD IN THERE, IT
24 WILL JUST SLIDE EVERYWHERE AND SLIDE VERY EASILY.
25 WHAT HAPPENS IS, AS SOON AS IT BEGINS TO BLEED,

1 AND YOU HAVE A BLOOD VESSEL BLEEDING, IT WILL
2 SPREAD EVERYWHERE.

3 TO TRY TO LOCALIZE IT ON A C.A.T. SCAN AND
4 SAY, WELL, I HAVE FRESH BLEEDING HERE AND I HAVE
5 CHRONIC BLEEDING HERE AND FRESH BLEEDING HERE, YOU
6 REALLY CAN'T DO THAT. IT DOESN'T MAKE SENSE.

7 YOU HAVE TO REMEMBER THAT A CHRONIC BLEED,
8 ONCE THEY START -- ONCE THOSE BLOOD VESSELS START
9 BLEEDING, IT WILL SPREAD EVERYWHERE AND ALL OVER
10 THE PLACE. THE BEST YOU CAN DO IS LOCALIZE WHERE
11 THE FRESH BLEEDING IS, DETERMINE HOW LONG IT'S
12 BEEN THERE. IN THIS CASE IT WAS 48 HOURS OR SO,
13 AND THEN LOOK AT THAT RELATIVE TO THE CHRONIC
14 BLEED.

15 Q NOW, IF YOU WERE TO LOOK AT THE BRAIN AT
16 AUTOPSY, OKAY?

17 A YES.

18 Q WOULD YOU BE ABLE TO IDENTIFY DISTINCT AREAS
19 OF BLEEDING ON THE BRAIN EXAMINING IT IN THAT
20 FASHION?

21 A ABSOLUTELY.

22 Q ABSOLUTELY?

23 A YES. THERE'S TWO THINGS. WHEN YOU LOOK AT A
24 BRAIN SUCH AS THIS, YOU HAVE TO FIRST OF ALL
25 EXAMINE THE DURA MATTER, FLIP OPEN THE DURA, AFTER

1 YOU GO THROUGH THE SCALP AND THE SKULL, THE DURA
2 IS RIGHT THERE. YOU TAKE THE DURA AND YOU FLIP IT
3 UP ON THE RIGHT SIDE OF THE HEAD. YOU LOOK AT
4 THAT AND YOU HAVE TO LOOK UNDERNEATH AT THE DURA
5 AND SEE WHERE THE AREAS OF BLEEDING ARE.

6 BECAUSE IN A CASE SUCH AS THIS, YOU'VE GOT TO
7 FIND THE CHRONIC AREAS. THE REASON WHY IS YOU CAN
8 GO BACK AND LOOK AT THAT UNDER A MICROSCOPE AND
9 DATE HOW LONG THAT BLEED HAS BEEN THERE.
10 SOMETIMES WE DISAGREE WITH A RADIOLOGIST BECAUSE
11 WE LOOK UNDER THE MICROSCOPE AND WE SEE, HEY, THAT
12 BLOOD INDICATES THAT IT'S BEEN THERE FOR A WEEK,
13 THREE WEEKS, A MONTH, OR TWO MONTHS. YOU'VE GOT
14 TO LOOK AT THOSE AREAS.

15 THEN ALSO YOU HAVE TO LOOK ON THE BRAIN
16 ITSELF AT THOSE AREAS OF BLEEDING. WHAT I DO IS I
17 TAKE ALL THOSE AREAS, I PHOTOGRAPH IT AND THEN I
18 GO AHEAD AND SUBMIT AND LOOK AT IT UNDER
19 MICROSCOPIC SLIDES AND TRY TO DATE IT.

20 Q DO YOU KNOW WHETHER THAT WAS DONE IN THIS
21 PARTICULAR CASE?

22 A IT WASN'T DONE. THERE'S NO DURA. THE
23 PATHOLOGIST NEVER LOOKED AT THE DURA. HE ONLY
24 LOOKED AT SOME AREAS OF SUBDURAL THAT I COULD SEE,
25 AND IT'S CRITICAL IN A CASE SUCH AS THIS TO LOOK

1 AT THE DURA. YOU'VE GOT TO LOOK AT THE DURA AND
2 SEE IF YOU CAN DATE IT.

3 Q OKAY. IF THE DURA FROM THE AREA OF THE
4 CHRONIC BLEED WAS DISCARDED AT THE TIME OF THE
5 SURGERY, THE PATHOLOGIST WOULDN'T HAVE ANYTHING TO
6 LOOK AT, WOULD HE?

7 A THAT'S TRUE, BUT IF A NEUROSURGEON WERE
8 ACTUALLY GOING TO -- IN THIS CASE, HE DIDN'T EVEN
9 SAY HE REMOVED ANY DURA. HE SAID HE OPENED THE
10 DURA. THAT'S WHAT THE NEUROSURGEON SAYS IN HIS
11 REPORT. IF HE TOOK ANY DURA OUT, THE NEUROSURGEON
12 SHOULD HAVE SENT THAT SECTION TO THE PATHOLOGIST.

13 THERE WAS NO SECTION OF DURA EVER SENT TO THE
14 PATHOLOGIST AT THE HOSPITAL, SO THERE'S NO WAY A
15 NEUROSURGEON IS GOING TO GO IN THERE AND REMOVE
16 ALL THAT AREA OF THE DURA. THAT'S JUST NOT GOING
17 TO HAPPEN, SO THAT DURA WAS THERE.

18 Q DOCTOR, I'D LIKE TO HAVE YOU REFERENCE A FEW
19 THINGS. THERE'S BEEN TESTIMONY -- I'M GOING TO
20 SHOW YOU FIRST OF ALL WHAT'S BEEN MARKED AS
21 STATE'S EXHIBIT 4, WHICH DEMONSTRATES A BRUISE TO
22 THE BACK OF MINOR'S NECK. GIVEN THAT NO
23 NOTATION OF THAT WAS MADE UNTIL OVER 24 HOURS
24 SUBSEQUENT TO ADMISSION TO THE HOSPITAL, WHAT KIND
25 OF DETERMINATION CAN BE MADE AS TO THE NATURE OF

1 THAT BRUISE?

2 A IT CAN CERTAINLY BE DUE TO MEDICAL EFFECTS.

3 Q STATE'S 6, WHICH DEMONSTRATES A MINOR
4 BRUISE -- WHICH IS ALSO NOTED IN THE PATHOLOGY
5 REPORT --

6 A CORRECT.

7 Q -- ABOUT MIDLINE ON THE CHILD, AGAIN NOT
8 NOTED UNTIL WELL AFTER ADMISSION IN THE HOSPITAL,
9 IS THAT CONSISTENT WITH BRUISING ASSOCIATED WITH A
10 BLOW TO THE CHEST, FOR EXAMPLE BY AN ADULT FIST?

11 A A VIOLENT BLOW? NO, NO, NO.

12 Q CAN YOU GIVE US SOME EXAMPLES OR
13 POSSIBILITIES OF WHAT IT'S CONSISTENT WITH?

14 A I MEAN, ANYTIME YOU SEE A BRUISE -- A BRUISE
15 CAN BE FROM SOMEBODY BANGING A CHILD OR HITTING A
16 CHILD, OR A CHILD FALLING, SURE, KIDS GET BRUISES
17 ALL THE TIME FOR ANY NUMBER OF REASONS. COULD
18 THIS BRUISE HAVE OCCURRED IN THE HOSPITAL FROM A
19 MEDICAL EFFECT, SURE.

20 I MEAN, EVEN THE PATHOLOGIST'S REPORT SAYS HE
21 SEES THIS BRUISE AND SAYS IT'S OVER THE CARDIAC
22 REGION. I DON'T KNOW IF HE'S TRYING TO IMPLY IT'S
23 C.P.R. RELATED OR HEART RELATED, BUT ANY OF THOSE
24 ARE POSSIBLE.

25 Q OKAY. AND LASTLY I SHOW YOU WHAT'S MARKED AS

1 STATE'S 19. IT'S A PHOTOGRAPH OF THE CHILD'S FACE
2 DEMONSTRATING A SWOLLEN EYE, AGAIN NO NOTATION IN
3 THE MEDICAL RECORDS UNTIL A CONSULT DONE WELL OVER
4 24 HOURS AFTER ADMISSION, OF ANY SWELLING TO THE
5 EYE. CAN YOU RELATE THAT TO ANY PARTICULAR CAUSE
6 GIVING THAT AS A BACKGROUND FOR IT?

7 A AGAIN, THAT WAS PROBABLY MEDICAL EFFECTS. I
8 SPECIFICALLY LOOKED AT THE MEDICAL RECORDS AND THE
9 NURSES' NOTES AND THE NURSES OUTLINE WHETHER
10 THERE'S INJURIES THERE OR NOT. AS A MATTER OF
11 FACT THIS NURSE DID NOT NOTE ANY INJURIES TO THE
12 EYE OR THE CHEST OR ANYWHERE ON THE BODY.

13 Q OKAY. IS -- GIVEN RETINAL HEMORRHAGES, IS
14 THERE A POSSIBILITY OF A RELATIONSHIP BETWEEN THE
15 SUBDURAL AND/OR THE SURGERY AND THE SWELLING THAT
16 YOU SEE TO THE EYE IN THIS EXHIBIT?

17 A THAT'S POSSIBLE, OH, SURE.

18 Q OKAY. IS THERE ANY EVIDENCE THAT'S RELATED
19 -- THAT DIRECTLY RELATES IT TO PHYSICAL TRAUMA
20 CAUSED BY SOMEONE ELSE?

21 A PRIOR TO ADMISSION TO THE HOSPITAL, NO.

22 MR. STRICKLER: I BEG THE COURT'S INDULGENCE,
23 YOUR HONOR.

24 (PAUSE)

25 Q GIVEN THE INFORMATION DEVELOPED DURING THE

1 HOSPITAL COURSE OF TREATMENT IN THIS CASE AND
2 DEVELOPED DURING ANY INVESTIGATION IN THIS CASE,
3 CAN YOU FROM A FORENSIC PATHOLOGIST'S STANDPOINT
4 ARRIVE AT A CONCLUSION AS TO THE CAUSE OF DEATH?

5 A YES.

6 Q OKAY. WHAT WOULD BE YOUR CONCLUSION AS TO
7 THE CAUSE OF DEATH TO A REASONABLE DEGREE OF
8 MEDICAL CERTAINTY?

9 A BASED UPON EVERYTHING I HAVE NOW IT WOULD BE
10 COMPLICATIONS OF SUBDURAL BLEEDING/SWELLING OF THE
11 BRAIN.

12 Q OKAY. NOW FROM A FORENSIC PATHOLOGIST'S
13 STANDPOINT THERE'S A SECOND QUESTION THAT YOU'RE
14 CALLED UPON TO ANSWER IF YOU CAN, IS THERE NOT?

15 A CORRECT.

16 Q AND THAT WOULD NOT BE CAUSE OF DEATH, BUT
17 MANNER OF DEATH; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q WHAT CAN YOU TELL US THAT CAN BE SAID FROM
20 THE STANDPOINT OF A FORENSIC PATHOLOGIST AS TO
21 MANNER OF DEATH?

22 A YOU CAN'T SAY AT THIS TIME. THE
23 INVESTIGATION IS NOT COMPLETE. THEY HAVE NOT
24 INVESTIGATED THE CHRONIC SUBDURAL. YOU HAVE TO
25 FIGURE OUT WHERE THAT CHRONIC BLEED IS FROM,

1 KNOWING THAT RETINAL HEMORRHAGES, REBLEEDING CAN
2 ALL OCCUR DUE TO THAT.

3 YOU'VE GOT TO FIGURE THAT OUT. IF YOU DON'T
4 FIGURE THAT YOU, YOU CAN'T COME IN HERE AND STATE
5 CATEGORICALLY THIS ACUTE BLEEDING OCCURRED AT ONE
6 TIME COMPLETELY SEPARATE FROM THAT CHRONIC BLEED.
7 THAT'S NOT FAIR. THE FAIR THING TO DO IS TO GO
8 BACK AND INVESTIGATE THIS THOROUGHLY. YOU HAVE TO
9 TALK TO EVERYBODY. IF YOU BELIEVE IT'S TRAUMA AND
10 I -- YOU KNOW, IF I WERE THE FORENSIC PATHOLOGIST
11 ON THIS CASE I'D CERTAINLY PURSUE TWO AVENUES: ONE
12 IS NATURAL DISEASE, THE OTHER IS TRAUMA.

13 IF YOU BELIEVE IT'S TRAUMA, YOU'VE GOT TO
14 FIGURE OUT WHERE THAT CHRONIC BLEED IS COMING
15 FROM, AND IF IN FACT, YOU TALK TO EVERYBODY AND
16 YOU CANNOT DETERMINE WHERE THAT CHRONIC BLEED IS
17 COMING FROM OR IF THAT CHRONIC BLEED, THAT OLD
18 BLEED, OCCURS DUE TO MAYBE NATURAL DISEASES, I.E.
19 YOU CAN'T FIND ANY NEUROLOGIC PROBLEMS AT ALL,
20 THEN YOU HAVE TO LOOK AT THAT EVIDENCE AND YOU
21 HAVE TO REASONABLY CONCLUDE THAT IT IS EQUALLY
22 LIKELY THAT YOU'RE DEALING WITH A NATURAL DISEASE
23 PROCESS.

24 Q OKAY. AND THAT'S WHAT WE MEAN BY MANNER OF
25 DEATH, WHETHER IT WAS A NATURAL PROCESS,

1 ACCIDENTAL PROCESS, OR PROCESS INVOLVING ACTIONS
2 ON THE PART OF ANOTHER HUMAN BEING?

3 A OR A HOMICIDE, CORRECT, ANY OF THOSE THREE
4 THINGS.

5 Q THOSE ARE THE KINDS OF QUESTIONS, ADDITIONAL
6 QUESTIONS THAT YOU AS A FORENSIC PATHOLOGIST ARE
7 CALLED UPON TO ANSWER IF YOU CAN, CORRECT?

8 A IF YOU CAN, BUT ULTIMATELY YOU HAVE TO ANSWER
9 THOSE QUESTIONS. YOU HAVE TO INVESTIGATE IT, YOU
10 HAVE TO ANSWER THOSE QUESTIONS.

11 Q OKAY. I JUST WANT TO DROP BACK JUST FOR ONE
12 MOMENT AND ASK YOU AGAIN, IS SUBDURAL HEMATOMA
13 SOLELY ASSOCIATED WITH CHILD ABUSE? FIRST WE'LL
14 START THERE. IS IT SOLELY ASSOCIATED WITH CHILD
15 ABUSE?

16 A NO.

17 Q OKAY. IS IT ASSOCIATED WITH OTHER FORMS OF
18 TRAUMA TO THE HEAD?

19 A ACCIDENTAL FALLS AND THINGS OF THAT SORT,
20 YES.

21 Q OKAY. ARE THERE NATURAL BASES FOR SUBDURAL
22 HEMATOMA?

23 A YES.

24 Q MEDICALLY RECOGNIZED BASES?

25 A CORRECT.

1 Q HAVE THOSE BEEN ELIMINATED IN THIS CASE?

2 A NOT TOTALLY, NO.

3 Q RETINAL HEMORRHAGES, ARE THEY SOLELY
4 ASSOCIATED WITH SHAKING OF AN INFANT?

5 A NO.

6 Q DOES THE APPEARANCE AND LOCATION OF THE
7 RETINAL HEMORRHAGE INDICATE THAT IT'S SOLELY
8 ASSOCIATED WITH SHAKING OF AN INFANT?

9 A NO.

10 Q IS THIS YOUR OPINION?

11 A NO.

12 Q IS IT AN OPINION SHARED IN THE MEDICAL
13 COMMUNITY?

14 A YES.

15 Q CAN YOU SUPPORT THAT OPINION?

16 A YES.

17 Q OKAY.

18 Q CEREBRAL EDEMA, I REALLY HAVEN'T ASKED YOU
19 ABOUT THAT, BECAUSE THAT'S ONE OF THE THREE
20 THINGS, IF YOU HAVE SUBDURAL, CEREBRAL EDEMA, AND
21 RETINAL HEMORRHAGES THAT EQUALS CHILD ABUSE.

22 WHAT CAUSES CEREBRAL EDEMA?

23 A CEREBRAL EDEMA IS SWELLING OF THE BRAIN.
24 CEREBRAL EDEMA CAN OCCUR UNDER A LOT OF DIFFERENT
25 CIRCUMSTANCES. THE BRAIN IS A VERY PECULIAR

1 THING. IT'S NOT LIKE THE HEART OR THE LUNGS.

2 YOU CAN TOUCH THE HEART AND THE LUNGS IN
3 SURGERY AND THEY WON'T REACT. EVERY NEUROSURGEON
4 KNOWS THAT IF YOU GO IN AND OPERATE ON SOMEBODY'S
5 BRAIN, YOU WANT TO TRY TO AVOID TOUCHING THE BRAIN
6 AS MUCH AS POSSIBLE BECAUSE EVEN TOUCHING THAT
7 BRAIN ALONE CAN CAUSE IT TO REACT AND CAUSE WHAT
8 WE CALL VASO SPASM OR ARTERIAL SPASM. THE
9 ARTERIES AND VEINS DO NOT LIKE BEING TOUCHED.

10 BLEEDING CAN BE AN IRRITANT, AND A REBLEED IN
11 THE BRAIN CAN CAUSE SOME BLOOD VESSELS TO BEGIN TO
12 REACT. WHEN THOSE BLOOD VESSELS REACT, THEY CLOSE
13 UP AND IF THERE'S NOT ENOUGH OXYGEN GETTING TO
14 THAT SITE IN THE BRAIN, THAT BRAIN DOES NOT LIKE
15 IT AND WILL BEGIN TO SWELL.

16 THE SWELLING IN PARTICULAR IS WHAT CAUSED
17 THIS KID'S RETINAL HEMORRHAGES AND THE INCREASED
18 INTRACRANIAL PRESSURE AND THE DEATH. THE SWELLING
19 IS THE PROBLEM HERE.

20 Q NOW AS TO THE SUBDURAL HEMATOMA IN THIS CASE,
21 CAN REBLEEDING FROM A CHRONIC SUBDURAL PRODUCE
22 SUFFICIENT VOLUME OF BLOOD, ACUTE BLOOD, TO CAUSE
23 THE KIND OF SUBDURAL WE SEE HERE, THE KIND OF
24 CONSEQUENCES WE SEE HERE? CAN REBLEEDING ALONE AS
25 OPPOSED TO REBLEEDING AND ADDITIONAL TRAUMA BEING

1 NECESSARY -- CAN YOUR REBLEEDING CAUSE SUFFICIENT
2 ACCUMULATION OF BLOOD TO HAVE THE KIND OF SICK
3 PERSON MINOR WAS WHEN SHE WAS BORN?

4 A ABSOLUTELY. IT CAN ALSO CAUSE RETINAL
5 HEMORRHAGES. IT DOESN'T MATTER ABOUT THE ORIGIN
6 OF THE BLEED. ONCE YOU START FILLING UP THAT
7 COMPARTMENT WITH BLOOD AND IT STARTS EITHER
8 SWELLING OR COMPRESSION, THAT CAN LEAD TO RETINAL
9 HEMORRHAGES AND THE PROBLEMS WE HAVE HERE.

10 Q IS THERE ANY WAY IN THIS PARTICULAR CASE, IN
11 YOUR OPINION TO A REASONABLE DEGREE OF MEDICAL
12 CERTAINTY, THAT YOU CAN RULE OUT NATURAL CAUSES AS
13 A POSSIBILITY FOR THE SUBDURAL HEMATOMA IN THIS
14 CASE?

15 A NO. IT'S EITHER NATURAL OR TRAUMATIC.

16 Q IT'S EITHER NATURAL OR TRAUMATIC?

17 A RIGHT.

18 Q OKAY. IS THERE ANY WAY YOU CAN RULE OUT
19 ACCIDENTAL TRAUMA AS A SOURCE FOR THE REBLEED IN
20 THIS CASE?

21 A NO. IT'S MY UNDERSTANDING FROM ONE OF THE
22 STATEMENTS THAT THIS CHILD -- SOMEBODY WAS RUNNING
23 AT THIS CHILD AND THE CHILD FELL. THAT CERTAINLY
24 HAS TO BE CONSIDERED IN CONTEXT. IT ALMOST SOUNDS
25 LIKE AN ACCELERATED FALL.

1 Q OKAY. INDEED, IF I UNDERSTAND YOU CORRECTLY,
2 THE SUBDURAL HEMATOMA, THE CHRONIC -- IT COULD
3 JUST SPONTANEOUSLY REBLEED?

4 A YES.

5 Q WITH VERY LITTLE OR NO FORCE NECESSARY AT
6 ALL?

7 A CORRECT.

8 Q OKAY. IS THERE ANY WAY YOU CAN RULE OUT A
9 BLOOD DISORDER THAT CAN CAUSE BLEEDING IN THIS
10 PARTICULAR CASE?

11 A NO. BY BLOOD DISORDER, BASED UPON WHAT YOU
12 HAVE NOW, THE BLOOD DISORDER, IT'S MOST PROBABLY
13 COMING FROM THE BLEEDING IN THE BRAIN, THE BRAIN
14 RELEASES A TISSUE, IT'S A SUBSTANCE CALLED TISSUE
15 THROMBOPLASTIN THAT CAUSES CLOTTING.

16 COULD THERE BE ANOTHER UNDERLYING PROBLEM
17 HERE? IT'S POSSIBLE. IT'S POSSIBLE. I CAN'T SAY
18 TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, BUT
19 IT'S POSSIBLE.

20 Q LET ME ASK YOU THIS, ARE THE SUBDURAL, THE
21 EDEMA, AND THE RETINAL HEMORRHAGES, ARE THOSE ALL
22 LINKED -- I MEAN, CAUSALLY?

23 A SURE.

24 Q OKAY. THE SUBDURAL CAUSES THE BRAIN PROBLEMS
25 AND IT REACTS BY SWELLING?

1 A EXACTLY. IT CAUSES THE SWELLING WHICH CAUSES
2 INCREASED INTRACRANIAL PRESSURE AND LEADS TO THE
3 HEMORRHAGES.

4 Q AND LEADS TO THE HEMORRHAGES IN THE RETINA?

5 A CORRECT.

6 Q THE RETINAL HEMORRHAGES?

7 A THAT'S CORRECT.

8 Q ALL RIGHT, DOCTOR, YOU'VE INDICATED WHAT YOU
9 THOUGHT SHOULD BE DONE FOR AN INVESTIGATION IN
10 THIS CASE IN ORDER TO ANSWER THE QUESTIONS YOU
11 HAVE. ARE THERE ANY OTHER CONCLUSIONS THAT YOU
12 CAN SHARE WITH US REGARDING THE EVIDENCE THAT YOU
13 REVIEWED IN THIS MATTER?

14 A I HAVE NOTHING MORE THAT I CAN RECALL AT THIS
15 TIME.

16 MR. STRICKLER: ALL RIGHT. THANK YOU, SIR.
17 IF YOU WOULD PLEASE ANSWER ANY QUESTIONS THE
18 PROSECUTOR MAY HAVE.

19 THE WITNESS: THANK YOU.

20 THE COURT: CROSS-EXAMINATION, MADAM
21 SOLICITOR.

22 MS. CAMPBELL: THANK YOU.

23 CROSS-EXAMINATION

24 BY MS. CAMPBELL:

25 Q HELLO, DOCTOR. I'VE BEEN LOOKING FORWARD TO

1 MEETING YOU. I'M LUCK CAMPBELL. I'M WITH THE
2 SOLICITOR'S OFFICE AS THEY CALL IT DOWN HERE.

3 A NICE TO MEET YOU.

4 Q I THINK UP NORTH IT'S CALLED THE DISTRICT
5 ATTORNEY'S OFFICE. I DO HAVE QUITE A FEW
6 QUESTIONS FOR YOU, BECAUSE YOU'VE BEEN ABLE TO
7 ADDRESS A LOT OF DIFFERENT ISSUES BECAUSE THERE
8 ARE A LOT OF DIFFERENT ISSUES INVOLVED IN THIS
9 TRIAL, CORRECT?

10 A I AGREE.

11 Q IN FACT, IT TOOK ME SIX DOCTORS TO ADDRESS
12 THOSE ISSUES AND YOU WERE ABLE TO ADDRESS THEM ALL
13 IN ABOUT 32 MINUTES, AND I WANT TO TALK TO YOU A
14 LITTLE ABOUT THAT, BUT FIRST, I HAD GOTTEN -- THE
15 DEFENSE ATTORNEY WAS KIND ENOUGH TO PROVIDE ME
16 WITH A COPY OF YOUR RESUME LAST WEEK --

17 A YES.

18 Q -- BUT THEY DIDN'T GIVE ME YOUR REPORT. DO
19 YOU HAVE THAT WITH YOU?

20 A I DIDN'T GENERATE A REPORT.

21 Q YOU DIDN'T GENERATE A REPORT IN THIS CASE?

22 A CORRECT.

23 Q WHY WAS THAT, DOCTOR?

24 A I WASN'T ASKED TO.

25 Q YOU WEREN'T ASKED TO GENERATE A REPORT AND SO

1 YOU DIDN'T?

2 A CORRECT.

3 Q AND DOCTOR, WHEN WERE YOU FIRST CONTACTED IN
4 RELATION TO THIS CASE?

5 A A NUMBER OF MONTHS AGO.

6 Q A NUMBER OF MONTHS AGO?

7 A YES.

8 Q IT WOULDN'T HAVE BEEN LAST MONTH IN APRIL,
9 PERHAPS DOCTOR, WHEN YOU WERE FIRST CONTACTED?

10 A I AM NOT EXACTLY SURE, BUT THAT'S --

11 Q WHAT IF I WERE TO TELL YOU, DOCTOR, THAT YOU
12 WERE FIRST CONTACTED LAST MONTH, IN APRIL OF THIS
13 YEAR?

14 MS. COGGIOLA: YOUR HONOR, I WOULD OBJECT TO
15 THAT. I FIRST CONTACTED DR. WAYNE ROSS IN JANUARY
16 OF THIS YEAR.

17 THE COURT: OKAY.

18 MS. CAMPBELL: WE HAVE A MATTER WE NEED TO
19 APPROACH ON, YOUR HONOR.

20 THE COURT: SURE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD
22 IN THE PRESENCE OF THE JURY, BUT OUT OF
23 THE HEARING OF THE JURY.)

24 MS. CAMPBELL: I'LL MOVE ON.

25 BY MS. CAMPBELL:

1 Q DOCTOR, YOU'RE AWARE THIS CASE OCCURRED, THIS
2 CHILD DIED, BACK IN THE YEAR 2000?

3 A CORRECT.

4 Q AND DOCTOR, WHERE ARE YOU FROM?

5 A PENNSYLVANIA.

6 Q AND YOU MENTIONED EARLIER THAT YOU HAD
7 TESTIFIED IN SEVERAL DIFFERENT STATES; IS THAT
8 CORRECT?

9 A CORRECT.

10 Q AND YOU'VE TESTIFIED IN PENNSYLVANIA?

11 A CORRECT.

12 Q AND YOU'VE TESTIFIED IN NEW YORK?

13 A CORRECT.

14 Q AND NEW JERSEY?

15 A CORRECT.

16 Q AND SOUTH CAROLINA?

17 A BY TESTIMONY BY DEPOSITION.

18 Q BY DEPOSITION. AND GEORGIA?

19 A YES.

20 Q FLORIDA?

21 A YES.

22 Q UTAH?

23 A NO.

24 Q OH, I THOUGHT YOU SAID -- MAYBE YOU SAID
25 IOWA.

1 A IOWA, YES.

2 Q I GET THOSE STATES MIXED UP. SO YOU HAVE
3 TESTIFIED LITERALLY ALL THE WAY ACROSS THIS
4 NATION; IS THAT CORRECT?

5 A CORRECT.

6 Q AND IN WHAT CAPACITY HAVE YOU TESTIFIED,
7 DOCTOR?

8 A MOSTLY IN THE AREA OF BIOMECHANICS DEALING
9 WITH AUTOMOTIVE RELATED STUFF IN THE FAR END OF
10 THE COUNTIES INVOLVING CRASHES OF THE FORD
11 EXPLORERS OR VARIOUS OTHER VEHICLES, LOOKING AT
12 SEAT BELT DESIGN ISSUES, AND THINGS OF THAT SORT.

13 IN THE AREAS OF PENNSYLVANIA AND THE LIKE AND
14 SURROUNDING AREAS AND IN GEORGIA, MOSTLY ON THE
15 CRIMINAL SIDE FOR THE PROSECUTION.

16 Q AND THAT WAS BACK WHEN YOU USED TO WORK IN
17 GEORGIA FOR THE CRIMINAL SIDE AND THE PROSECUTION,
18 ISN'T THAT RIGHT, BACK IN THE EARLY '90S?

19 A I WORKED IN THE MEDICAL EXAMINER'S OFFICE,
20 YES.

21 Q BACK -- WHEN WAS THE LAST TIME YOU TESTIFIED
22 IN GEORGIA?

23 A THE '80S.

24 Q OH, THE '80S. AND SINCE THEN IT'S BEEN
25 PRETTY MUCH TESTIFYING IN PLAINTIFF'S CASES IN CAR

1 WRECKS; IS THAT CORRECT? FOR THE MOST PART?

2 A FOR THE MOST PART, I TESTIFY ON CRIMINAL
3 CASES. MOST OF MY CASES ARE CRIMINAL CASES, YES.

4 IN TERMS OF PLAINTIFF CASES, SLIGHTLY MORE --
5 IN CIVIL CASES SLIGHTLY MORE PLAINTIFF THAN
6 DEFENSE.

7 Q AND IN MOST OF YOUR CASES YOU TESTIFY -- IS
8 THAT GOING TO BE YOUR TESTIMONY HERE TODAY THAT
9 IT'S USUALLY IN CRIMINAL CASES?

10 A YES, IT WAS MY TESTIMONY THAT IT'S ON BEHALF
11 OF CRIMINAL CASES.

12 Q YOU HAVE TO BE IN ANOTHER COURT TOMORROW; IS
13 THAT CORRECT?

14 A MAYBE.

15 Q THAT'S NOT A CRIMINAL CASE, IS IT, DOCTOR?

16 A I DON'T RECALL.

17 Q AND THE ONE YESTERDAY, I BELIEVE YOU WERE
18 HELD UP YESTERDAY, BECAUSE TODAY WAS THE ONLY DAY
19 YOU WERE AVAILABLE. THAT WASN'T A CRIMINAL CASE,
20 WAS IT?

21 A I DIDN'T EVEN HAVE A CASE YESTERDAY IN COURT.

22 Q OKAY. AND I'VE GOT YOUR C.V. OR YOUR RESUME
23 HERE; IS THAT CORRECT?

24 A YES.

25 Q IT CAME TO ME A COUPLE OF DAYS AGO. I KIND

1 OF STARTED -- I KIND OF MADE SOME PHONE CALLS; I
2 HOPE YOU DON'T MIND.

3 A THAT'S FINE.

4 Q I WAS CHECKING ABOUT -- YOU KNOW, THAT YOU
5 PUT ON HERE THAT YOU WERE AN ADJUNCT GRADUATE
6 FACULTY OF PENN STATE UNIVERSITY.

7 A THAT'S CORRECT.

8 Q THAT'S A PRETTY PRESTIGIOUS UNIVERSITY.

9 A YES.

10 Q BUT WHEN WE CALLED UP THERE, DOCTOR, THEY HAD
11 NEVER HEARD OF YOU.

12 MR. STRICKLER: I OBJECT TO THE TESTIMONY.

13 THE COURT: ASK THE QUESTION.

14 BY MS. CAMPBELL:

15 Q IS THERE ANY REASON WHY THEY WOULDN'T HAVE
16 KNOWN YOUR NAME, DOCTOR?

17 A THEY SHOULD, AND YOU CAN CONTACT IN
18 PARTICULAR DR. RAY, WHO IS IN THE BIOMECHANICAL
19 DEPARTMENT. I COULD ALSO GET JANET CORKSON
20 (PHONETIC) ON THE PHONE RIGHT NOW WHO WAS THE
21 PERSON I INSTRUCTED IN THE AREA OF BIOMECHANICS,
22 SHE'S A GRADUATE OF PENN STATE UNIVERSITY. WE CAN
23 PUT HER ON THE PHONE RIGHT THIS MOMENT AND SHE CAN
24 TESTIFY.

25 Q IS THAT IN A TUTORIAL POSITION THEN, DOCTOR?

1 A NO. I WAS WORKING ON THE GRADUATE FACULTY IN
2 THE AREA OF BIOMECHANICS AND SPECIFICALLY TEACHING
3 HER IN THE AREA OF BIOMECHANICS.

4 Q SO YOU'VE HAD ONE GRADUATE STUDENT FROM PENN
5 STATE?

6 A ONE, YES, AND I HAVE DEALT WITH THE
7 BIOMECHANICAL ISSUES. I'M ALSO ON THE FACULTY AT
8 PENN STATE AS A -- I'M AN ASSISTANT CLINICAL
9 PROFESSOR IN PATHOLOGY AT HERSHEY MEDICAL CENTER
10 AND I TEACH PATHOLOGY RESIDENTS IN THE AREA OF
11 FORENSIC PATHOLOGY.

12 Q OH. I MISSED THAT.

13 MR. STRICKLER: I'LL OBJECT.

14 THE COURT: I SUSTAIN THAT. NO EDITORIAL
15 COMMENTS, MADAM SOLICITOR. YOU JUST ASK THE
16 QUESTIONS.

17 MS. CAMPBELL: I'LL MOVE ON.

18 BY MS. CAMPBELL:

19 Q OKAY. AND THEN YOU'VE GOT ON HERE, FROM 1997
20 TO THE PRESENT, THAT YOU'RE THE DEPUTY CORONER IN
21 DAUPHIN COUNTY?

22 A CORRECT.

23 Q AND THEY WOULDN'T HAVE ANY REASON TO SAY
24 YOU'RE JUST THE PATHOLOGIST ON STAFF DOWN THERE
25 AND NOT THE DEPUTY CORONER, WOULD THEY?

1 A NO, THEY WOULDN'T.

2 Q AND, DOCTOR --

3 A I'M SURE IF WE WERE TO CONTACT MR. GRAHAM
4 HEDRICK, WHO IS THE CORONER OF THE COUNTY, THAT HE
5 WOULD VERIFY I'M THE DEPUTY CORONER THERE, AS
6 WELL.

7 MS. CAMPBELL: OKAY.

8 MR. STRICKLER: YOUR HONOR, MAY WE APPROACH?

9 THE COURT: SURE.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD
11 IN THE PRESENCE OF THE JURY, BUT OUT OF
12 THE HEARING OF THE JURY.)

13 BY MS. COOPER:

14 Q DOCTOR, YOU'D TESTIFYING ON BEHALF OF THE
15 DEFENSE TODAY?

16 A CORRECT.

17 Q THEY CONTACTED YOU AND ASKED YOU TO COME DOWN
18 HERE, TO FLY DOWN HERE?

19 A CORRECT.

20 Q AND YOU ARE, OF COURSE, BEING COMPENSATED FOR
21 YOUR TIME AND YOUR EFFORT?

22 A CORRECT.

23 Q AND HOW MUCH HAVE YOU MADE SO FAR ON THIS
24 CASE?

25 A I DON'T KNOW EXACTLY. I SPENT ABOUT FIVE OR

1 SIX HOURS AT ABOUT \$325 AN HOUR.

2 Q SO YOU SPENT ABOUT FIVE OR SIX HOURS AT \$325
3 AN HOUR SO FAR?

4 A CORRECT.

5 Q BUT THAT DOESN'T COUNT FOR YOUR TIME TODAY,
6 DOES IT?

7 A CORRECT.

8 Q AND YOUR TIME TODAY, DOES IT COST MORE FOR
9 YOU TO TESTIFY IN COURT?

10 A NO, THE SAME THING, \$325 AN HOUR.

11 Q AND THAT'S FROM THE TIME -- WHEN DID YOU
12 LEAVE PENNSYLVANIA?

13 A WELL, I GOT TO THE AIRPORT ABOUT 6:30, 7:00
14 THIS MORNING.

15 Q YOU HAD TO GET UP EARLY, I'M SORRY. SO THAT
16 WOULD BE FOR HOW EVER MANY HOURS UNTIL YOU GET
17 BACK TONIGHT; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q SO HOW EVER MANY HOURS THAT IS, 18 WHATEVER
20 TIMES \$300, AND YOU HAVE COME TO THESE CONCLUSIONS
21 THAT YOU HAVE GIVEN THIS JURY YOUR EXPERT OPINION;
22 IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q I BELIEVE, AND I'M QUOTING YOU ON THIS,
25 DOCTOR, REFERRING TO YOUR TESTIMONY, YOU SAID THAT

1 YOU BASED THIS ON YOUR OWN EXPERIENCE AND YOUR OWN
2 KNOWLEDGE?

3 A CORRECT, AND THE MEDICAL LITERATURE.

4 Q AND THE MEDICAL LITERATURE.

5 A CORRECT.

6 Q DID YOU BRING THAT MEDICAL LITERATURE HERE
7 WITH YOU TODAY?

8 A YES, AS A MATTER OF FACT I DID.

9 Q AND THAT'S THE MEDICAL LITERATURE THAT THEY
10 HAVE PROVIDED ME A COPY OF OVER HERE?

11 MR. STRICKLER: IF SHE COULD SHOW IT TO HIM,
12 PERHAPS HE COULD ANSWER IT.

13 MS. CAMPBELL: I'M SORRY, YOUR HONOR.

14 BY MS. CAMPBELL:

15 Q I LEFT IT ON THE FLOOR.

16 A IT LOOKS LIKE THAT'S IT.

17 Q AND DOCTOR, YOU AGREE WITH ME THAT MEDICAL --
18 THAT THE MEDICAL FIELD IS A PROGRESSIVE FIELD;
19 IT'S GETTING BETTER EVERY DAY?

20 A YES, IT IS.

21 Q AND YOU WOULD AGREE WITH ME THAT THE MOST
22 RECENT RESEARCH, THE MOST RECENT ARTICLES ARE
23 USUALLY THE BEST?

24 A MAYBE. IT DEPENDS UPON THE ARTICLE AND THE
25 ORIGIN OF THE ARTICLE AND WHAT PARTICULAR ASPECT

1 OF THE MEDICAL FIELD.

2 Q AND THE RESEARCH THAT YOU WERE BASING YOUR
3 KNOWLEDGE ON TODAY, THIS -- THOSE CASES WERE FROM
4 THE 1960'S; IS THAT CORRECT?

5 A YES, BUT YOU'RE -- THERE ARE ABOUT 200 TO 300
6 ABSTRACTS THAT I REVIEWED. DO YOU HAVE THE UP-TO-
7 DATE ONES THERE?

8 Q YES. I HAVE EVERYTHING. YOU CAN LOOK AT
9 EVERYTHING.

10 A YOU DON'T HAVE THE ABSTRACTS. THERE ARE
11 ABOUT 200 TO 300 ABSTRACTS THAT I REVIEWED AS WELL
12 WHICH I DON'T SEEM TO SEE THOSE HERE.

13 Q OH, DO YOU HAVE THOSE?

14 A NOT WITH ME, BUT I PROVIDED THEM TO COUNSEL.

15 Q SO THIS ISN'T THE STUFF YOU REVIEWED?

16 A OH, NO, THIS IS --

17 Q THE 60'S, 70'S, AND 80'S?

18 A THIS IS ALL STUFF THAT I'VE REVIEWED AS WELL,
19 HUNDREDS OF ARTICLES AND ABSTRACTS.

20 Q AND NONE OF THEM ARE CURRENT?

21 A THEY'RE ALL VERY CURRENT. SOME OF THEM HAVE
22 WITHSTOOD THE BEST TEST OF TIME, ESPECIALLY THE
23 BIOMECHANICAL LITERATURE THAT DEALS PARTICULARLY
24 WITH G-FORCES AND INJURIES CAUSED BY THOSE.

25 Q AND DOCTOR, YOU'RE FAMILIAR WITH SHAKEN BABY

1 SYNDROME?

2 A YES.

3 Q AND YOU'VE REVIEWED THE LITERATURE ON SHAKEN
4 BABY SYNDROME, I'VE ASSUME?

5 A YES.

6 Q AND THE CURRENT LITERATURE?

7 A YES.

8 Q AND DO YOU HAVE THAT WITH YOU?

9 A WHAT DO YOU MEAN BY CURRENT? THE 200 TO 300
10 ABSTRACTS YOU MAY HAVE. I DON'T HAVE THEM IN
11 FRONT OF ME RIGHT NOW, BUT I REVIEWED THOSE.

12 Q OKAY.

13 A I DON'T HAVE THEM IN FRONT OF ME AS I AM
14 SITTING HERE.

15 Q SO YOU DON'T HAVE THEM?

16 A NOT WITH ME RIGHT HERE. I HAVE NOTHING WITH
17 ME RIGHT HERE.

18 Q AND SO THOSE WOULD BE BACK IN PENNSYLVANIA?

19 A CERTAINLY.

20 Q THE ONES YOU'VE REVIEWED?

21 A AS WELL AS THE ONES HERE.

22 Q AND DOCTOR, YOU DON'T HAVE ANY BOARD
23 CERTIFICATION IN PEDIATRICS, DO YOU?

24 A NO.

25 Q DO YOU HAVE ANY BOARD CERTIFICATION IN

1 PEDIATRIC INTENSIVE CARE?

2 A NO.

3 Q DO YOU HAVE ANY TRAINING IN THAT AREA?

4 A NOT OTHER THAN MEDICAL SCHOOL, NO.

5 Q LET ME ASK YOU THIS, DO YOU HAVE ANY TRAINING
6 IN THE FIELD OF PEDIATRIC OPHTHALMOLOGY?

7 A NOT FROM A PEDIATRICIAN'S STANDPOINT, BUT
8 CERTAINLY FROM A NEUROPATHOLOGIST'S STANDPOINT.

9 I'VE REVIEWED A LOT OF EYES, MICROSCOPICALLY, AS
10 WELL AS BEING TRAINED IN THOSE AREAS, AS WELL.

11 FROM THE PATHOLOGIST'S STANDPOINT -- IT
12 SHOULD BE UNDERSTOOD THAT PATHOLOGY IS THE
13 FOUNDATION FOR ALL MEDICINE, PEDIATRICS, INTERNAL
14 MEDICINE, NEUROSURGERY, EVERYTHING EMANATES FROM
15 PATHOLOGY, SO IN THAT SENSE -- AND OUR GOAL IS TO
16 TRY TO UNDERSTAND DISEASES AND TRAUMA AND THAT
17 SORT OF THING.

18 IN THAT SENSE, I HAVE TRAINING IN THE AREAS
19 OF PEDIATRIC OPHTHALMOLOGY, BUT I'M NOT HOLDING
20 MYSELF OUT HERE AS A PEDIATRICIAN OR A PEDIATRIC
21 OPHTHALMOLOGIST.

22 Q SO THE ANSWER IS NO, DOCTOR?

23 A CORRECT.

24 Q AND DOCTOR, DO YOU HAVE ANY TRAINING IN THE
25 FIELD OF RADIOLOGY?

1 A YES.

2 Q YOU DO HAVE TRAINING -- YOU'RE BOARD
3 CERTIFIED IN RADIOLOGY? I MISSED THAT.

4 A NO, I'M NOT.

5 Q AND DOCTOR, IN YOUR PRACTICE, HOW MANY DAYS A
6 WEEK DO YOU WORK ACTUALLY IN PENNSYLVANIA?

7 A ANYWHERE FROM SIX TO SEVEN DAYS A WEEK. I'M
8 ON CALL 365 DAYS OUT OF THE YEAR AND DO OVER 400
9 AUTOPSIES A YEAR.

10 Q YOU DO OVER 400 AUTOPSIES A YEAR, AND YOU
11 WOULD AGREE WITH ME THE MAJORITY OF THOSE
12 AUTOPSIES DON'T INCLUDE CHILDREN, DO THEY?

13 A CORRECT, THE MAJORITY DON'T, BUT MANY OF THEM
14 DO.

15 Q MANY?

16 A YES.

17 Q HOW MANY CHILDREN ARE KILLED THAT NEED
18 AUTOPSIES IN PENNSYLVANIA IN YOUR COUNTY?

19 A I WOULD SAY THAT BOTH COUNTIES, DAUPHIN AND
20 LANCASTER, INCLUDING ALL CHILD DEATHS, NATURAL AND
21 TRAUMA, IT'S SOMEWHERE BETWEEN 20, 30, 40, 50 A
22 YEAR, SOMEWHERE AROUND THERE.

23 Q 20, 30, 40, 50 A YEAR?

24 A YEAH.

25 Q SO ANYWHERE FROM 20 TO 50?

1 A CORRECT.

2 Q AND THOSE ARE CHILD DEATHS THAT REQUIRE
3 AUTOPSIES?

4 A CORRECT.

5 Q AND THOSE ARE AUTOPSIES THAT YOU PERFORM --
6 YOU PERFORM EVERY CHILD AUTOPSY?

7 A YES, WE DO.

8 Q YES, YOU DO OR YOUR OFFICE DOES?

9 A YES.

10 Q YOU DON'T?

11 A I DO.

12 Q YOU PERFORM EVERY ONE OF THOSE CHILD
13 AUTOPSIES?

14 A MOST OF THEM.

15 Q NO, SIR, THE QUESTION IS, DO YOU PERFORM
16 EVERY ONE OF THOSE AUTOPSIES?

17 A NOT EVERY SINGLE ONE OF THEM. WELL, EVERY
18 HOMICIDE, I DO IN MY OFFICE.

19 Q EVERY HOMICIDE. AND HOW MANY CHILDREN DO YOU
20 HAVE MURDERED A YEAR IN YOUR COUNTY?

21 A IN BOTH OF THE COUNTIES SOMEWHERE BETWEEN --
22 IT VARIES BETWEEN 10 AND 20 A YEAR.

23 Q AND YOU'VE REVIEWED THE RECORDS IN THIS CASE
24 -- BETWEEN HOW MANY?

25 A 10 TO 20 A YEAR.

1 Q 10 TO 20 CHILDREN A YEAR ARE MURDERED IN YOUR
2 COUNTY?

3 A IN THE COUNTIES THAT I DO, YEAH, WE GET THEM
4 FROM DAUPHIN COUNTY, LANCASTER COUNTY, YORK COUNTY
5 AND LEBANON COUNTY, AND BECAUSE HARRISBURG IS A
6 MAJOR METROPOLITAN AREA BECAUSE IT'S THE CAPITAL,
7 WHAT HAPPENS IS -- AND A LOT OF DEATHS GO TO
8 HERSHEY MEDICAL CENTER, ESPECIALLY CHILD DEATHS.
9 WHEN THEY GET THERE, WE DO THE AUTOPSIES, BECAUSE
10 IN PENNSYLVANIA YOU DO THE AUTOPSIES WHERE THE
11 CHILD ACTUALLY EXPIRES, NOT WHERE THE TRAUMA
12 ACTUALLY ORIGINATED FROM.

13 Q AND DOCTOR, YOU REVIEWED MANY RECORDS IN THIS
14 CASE, CORRECT?

15 A YES.

16 Q AND YOU ACTUALLY HAD THE C.T. SCANS SENT UP
17 TO YOU --

18 A YES.

19 Q -- SOMETIME EARLIER THIS YEAR?

20 A YES.

21 Q AND YOU WERE ABLE TO REVIEW THE AUTOPSY
22 FINDINGS?

23 A YES.

24 Q YOU WERE ABLE TO REVIEW DR. SMITH'S NOTES; IS
25 THAT CORRECT?

1 A YES.

2 Q AND DR. HUBBIRD'S NOTES?

3 A I BELIEVE SO, YES.

4 Q YOU SAW DR. ABEL'S REPORT?

5 A YES.

6 Q AND ALL OF THESE DOCTOR'S REPORTS, EVEN
7 DR. CHRISTMANN'S REPORT?

8 A YES.

9 Q AND --

10 A YES, WELL, I SAW THE PROGRESS NOTES. I
11 DIDN'T SEE A REPORT.

12 Q BUT SHE MADE NOTES. YOU DON'T HAVE ANY
13 NOTES; I ASKED FOR THOSE.

14 A NO, I DON'T.

15 Q IN THE FIVE OR SIX HOURS THAT YOU'VE HAD TO
16 REVIEW THIS CASE, YOU HAVE COME TO MANY
17 CONCLUSIONS; IS THAT CORRECT?

18 A SURE.

19 Q AND ONE OF YOUR CONCLUSIONS IS THAT YOU JUST
20 DON'T KNOW ENOUGH IN THIS CASE?

21 A NO ONE KNOWS ENOUGH IN THIS CASE.

22 Q NO ONE KNOWS ENOUGH IN THIS CASE?

23 A NO.

24 Q BECAUSE?

25 A BECAUSE THE CASE IS NOT COMPLETE.

1 Q BECAUSE THE CASE IS NOT COMPLETE, AND YOU
2 SAID YOU BASED THIS ON YOUR EXPERIENCE AND YOUR
3 OWN KNOWLEDGE?

4 A YES, MY EXPERIENCE, MY KNOWLEDGE, AS WELL AS
5 THE FACT THAT THE INVESTIGATION IS NOT COMPLETE.
6 I REVIEWED THE SHERIFF'S DEPARTMENT INVESTIGATIVE
7 RECORDS AND NO ONE HAS ADDRESSED THE CHRONIC
8 SUBDURAL BLEEDING.

9 Q AND YOU WOULD NOT AGREE WITH THE
10 NEUROSURGEON, DR. SMITH, WITH HIS ASSESSMENT?

11 MR. STRICKLER: I'LL OBJECT TO THAT. THAT'S
12 NOT IN EVIDENCE, HIS ASSESSMENT, HE HASN'T
13 TESTIFIED.

14 MS. CAMPBELL: BUT HE HAS REVIEWED HIS NOTES.

15 THE COURT: WAIT A MINUTE, I DIDN'T HEAR HIM
16 ANSWER THAT QUESTION.

17 MS. CAMPBELL: HE HADN'T.

18 THE WITNESS: I'M NOT SURE WHAT YOU'RE ASKING
19 ME TO AGREE OR DISAGREE WITH.

20 THE COURT: ASK HIM THE QUESTION ABOUT WHAT
21 HE REVIEWED.

22 MS. CAMPBELL: OKAY, YOUR HONOR.

23 BY MS. CAMPBELL:

24 Q DID YOU REVIEW DR. SMITH'S NOTES?

25 A HIS OPERATIVE REPORT, YES.

1 Q AND DO YOU DISAGREE WITH HIS --

2 THE COURT: WHAT'S YOUR QUESTION?

3 MR. STRICKLER: SHE -- HER NEXT QUESTION IS,
4 DO YOU AGREE OR DISAGREE WITH HIS ASSESSMENT. I'D
5 OBJECT TO THE QUESTION.

6 THE COURT: HE --

7 MR. STRICKLER: HE HASN'T TESTIFIED TO IT.

8 THE COURT: I UNDERSTAND THAT, BUT HE -- I
9 OVERRULE THE OBJECTION.

10 MR. STRICKLER: WELL, THEN I OBJECT IN THAT
11 THE QUESTION IS NOT CLEAR, WHAT ASSESSMENT, I MEAN
12 -- WITH THE REPORT?

13 THE COURT: UNDER 70 -- SHE CAN ASK HIM FOR
14 HIS UNDERLYING BASIS IN WHY HE GOT HIS --

15 MR. STRICKLER: YES, SIR.

16 THE COURT: AND THAT IS WHAT SHE INQUIRED OF
17 HIM.

18 MR. STRICKLER: THANK YOU.

19 THE COURT: I'LL OVERRULE IT.
20 GO AHEAD.

21 BY MS. CAMPBELL:

22 Q SO --

23 A IF YOU COULD BE A LITTLE BIT MORE SPECIFIC AS
24 TO WHAT I AGREE OR DISAGREE WITH. I MEAN, I AGREE
25 THAT HE WAS THERE AND DID THE OPERATION, OPENED UP

1 THE SKULL AND SOME BLOOD CAME OUT. I ALSO AGREE
2 WITH THE FACT HE COULDN'T MAKE A DETERMINATION
3 ABOUT WHETHER -- ABOUT THE CHRONIC SUBDURAL, AND
4 HE DEFERRED -- THERE WAS A HANDWRITTEN NOTE THAT
5 HE DEFERRED TO THE RADIOLOGIST ON THAT ISSUE.

6 Q ON THAT ISSUE, HE DEFERRED TO THE
7 RADIOLOGIST. DO YOU KNOW DR. CLOSE?

8 A NO.

9 Q YOU DON'T KNOW HIS REPUTATION IN THE
10 COMMUNITY EITHER, DO YOU?

11 A I'M NOT FAMILIAR WITH IT, NO.

12 Q AND SO YOUR TESTIMONY, AS I UNDERSTOOD IT ON
13 DIRECT EXAMINATION, DOCTOR, WAS EVEN, IN FACT,
14 THAT THE RETINAL HEMORRHAGES IN THIS CASE WERE
15 CAUSED BY THE SWELLING OF THE BRAIN IN THIS
16 PARTICULAR CASE BECAUSE THE NEUROSURGEON, A
17 RENOWNED NEUROSURGEON --

18 MR. STRICKLER: OBJECTION.

19 THE COURT: SUSTAINED AS TO A RENOWNED
20 NEUROSURGEON.

21 BY MS. CAMPBELL:

22 Q A NEUROSURGEON CLUMSILY TOUCHED THE BRAIN
23 CAUSING TO IT SWELL AND -- CAUSING IT TO SWELL.
24 DID I MISUNDERSTAND?

25 A YOU DID.

1 Q HOW DID I MISUNDERSTAND THAT, DOCTOR?

2 A I GAVE AS A GENERAL PROPOSITION THAT IF --
3 THE BRAIN IS A FUNNY SORT OF ANIMAL, FUNNY SORT OF
4 BEAST, AND MY POINT WAS THAT EVEN TOUCHING THE
5 BRAIN CAN CAUSE SWELLING. EVEN BEFORE THE
6 NEUROSURGEON HAD A CHANCE TO -- I DON'T EVEN KNOW
7 THAT HE EVER TOUCHED THE BRAIN IN THIS CASE, BUT I
8 KNOW THAT WHEN HE OPENED UP THE BRAIN AND SUCKED
9 OUT SOME OF THE BLOOD THAT THE BRAIN WAS SWELLING
10 AT THAT POINT. MY POINT WAS SIMPLY THAT SWELLING
11 OF THE BRAIN CAN CAUSE RETINAL HEMORRHAGES, ALONG
12 WITH THE FACT THAT A BLEEDING DISORDER HERE WOULD
13 CAUSE RETINAL HEMORRHAGES.

14 Q IF THE NEUROSURGEON TOUCHED THE BRAIN,
15 CAUSING THE SWELLING -- THAT'S WHAT YOU SAID UNDER
16 DIRECT EXAMINATION, DOCTOR, AND I CAN GET THE
17 COURT REPORTER TO READ --

18 MR. STRICKLER: I'LL OBJECT TO THAT
19 MISSTATEMENT OF HIS TESTIMONY.

20 THE COURT: SUSTAINED, REPHRASE YOUR QUESTION
21 ON THE EVIDENCE.

22 BY MS. CAMPBELL:

23 Q WASN'T THAT YOUR TESTIMONY?

24 A NO. IF THERE'S ANY SORT OF CONFUSION HERE AT
25 ALL, LET ME MAKE IT PERFECTLY CLEAR, I DON'T EVEN

1 THINK THE NEUROSURGEON TOUCHED THE BRAIN HERE. I
2 KNOW HE OBSERVED IT. I CERTAINLY DIDN'T MEAN TO
3 IMPLY THAT, SO IF THERE'S ANY CONFUSION HERE AT
4 ALL, I APOLOGIZE. I'M NOT TRYING TO SAY THE
5 NEUROSURGEON CAUSED ANY OF THE PROBLEMS HERE AT
6 ALL. I'M SAYING THAT THE SWELLING OF THE BRAIN
7 CAME FROM A REBLEED, WHICH CAME FROM A CHRONIC
8 BLEEDING IN THE HEAD.

9 Q OKAY. BECAUSE THE RETINAL HEMORRHAGES HAD
10 ALREADY BEEN SEEN AS SOON AS THE CHILD PRESENTED
11 IN THE E.R. YOU ARE AWARE OF THAT, YOU DID REVIEW
12 THAT, CORRECT?

13 A YES, I BELIEVE IT WAS DR. MOORE.

14 Q OKAY. LET'S TALK ABOUT THE REBLEED THEORY
15 YOU HAVE GOING, DOCTOR. DO YOU HAVE LITERATURE TO
16 BACK THAT UP?

17 A YES.

18 Q ON THAT REBLEED THEORY YOU ADMIT THERE IS AN
19 OLD TRAUMA IN THE BRAIN, ACCORDING TO THE C.T.
20 SCAN?

21 A I ADMIT THERE'S AN OLD BLEED TO THE BRAIN --
22 IT'S ALREADY BEEN STATED -- WE DON'T KNOW IF THAT
23 OLD BLEED IS DUE TO TRAUMA OR DUE TO A NATURAL
24 DISEASE AT THIS POINT.

25 Q AND, IN FACT, YOU TESTIFIED UNDER DIRECT

1 EXAMINATION, AND CORRECT ME IF I'M WRONG, THAT
2 THIS CHILD HAD A BLEEDING DISORDER OR A BLOOD
3 DISORDER; IS THAT CORRECT?

4 A THE CHILD DOES HAVE A BLOOD DISORDER, YES.

5 Q WHAT DO YOU BASE THAT ON?

6 A AGAIN, WHEN THE CHILD ENTERS INTO THE
7 EMERGENCY ROOM, YOU SEE -- IN FACT YOU HAVE THE
8 RETINAL HEMORRHAGES IN THE EYES, AND IF YOU LOOK
9 AT THE LABORATORY VALUES YOU'LL SEE THAT IN THE
10 RED BLOOD CELLS YOU HAVE SCHISTOCYTES AND
11 MICROCYTES.

12 ALSO, THE LABORATORY TESTS, WHAT'S REFERRED
13 TO D-DIMER AND P.T.P.T.T. -- AND EITHER OF THESE
14 ARE TERMS THAT MEANS THE CHILD IS HAVING PROBLEMS
15 WITH CLOTTING. THE DOCTORS ALSO DETERMINED THAT
16 THE CHILD DOES HAVE A COAGULOPATHY ISSUE, BOTH
17 THROUGH THE MEDICAL RECORDS AND THEY ALSO
18 DETERMINE THAT THE CHILD DOES HAVE A BLEEDING
19 DISORDER.

20 Q AND ALL THOSE DOCTORS WHO TREATED THIS CHILD
21 HERE AT THIS HOSPITAL JUST DISMISSED THAT?

22 A THEY DIDN'T DISMISS IT. THEY SAID THERE'S A
23 BLEEDING PROBLEM HERE. WELL, LET ME CLARIFY --
24 WELL, I'M NOT SAYING -- LET ME MAKE THIS SO IT'S
25 NOT CONFUSING. I'M SAYING THAT IN TERMS OF THE

1 RETINAL HEMORRHAGES, THE BLEEDING THAT YOU SEE IN
2 THOSE RETINAL HEMORRHAGES IS FROM A BLEEDING
3 PROBLEM.

4 MOST PROBABLY THE BLEEDING PROBLEM THAT THIS
5 CHILD HAS IS COMING FROM THE BLEEDING IN THE
6 BRAIN. IT RELEASES A SUBSTANCE CALLED TISSUE
7 THROMBOPLASTIN.

8 IT GOES THROUGHOUT THE BODY AND CAN CAUSE
9 BLEEDING PROBLEMS, AND THE SWELLING OF THE BRAIN
10 CAN ALSO CAUSE BLEEDING PROBLEMS. I'M SIMPLY
11 SAYING THE AMOUNT OF HEMORRHAGES YOU SEE IN THE
12 EYE ARE FROM A BLEEDING DISORDER THAT THE CHILD
13 ALREADY HAD BEFORE IT ENTERED THE EMERGENCY ROOM.

14 Q THAT'S YOUR OPINION?

15 A IT'S MY OPINION. YES, AND I BELIEVE IT'S
16 VERIFIED BY THE MEDICAL RECORDS.

17 Q AND DOCTOR, IN YOUR REVIEW OF THESE RECORDS
18 FOR FIVE OR SIX HOURS, WERE YOU ALSO -- YOU TALKED
19 ABOUT A SPONTANEOUS REBLEED, WHICH THIS COULD HAVE
20 BEEN TOO, RIGHT?

21 A YES.

22 Q AND YOU ALSO ADDRESSED THAT SWELLING COULD
23 HAVE MANY CAUSES?

24 A AS A GENERAL PROPOSITION, YES.

25 Q AND THE RETINAL HEMORRHAGES, WHICH AN EXPERT

1 IN THE FIELD OF PEDIATRIC OPHTHALMOLOGY LOOKED AT,
2 THOSE WERE FROM THE SWELLING?

3 A YES, AND I ALSO LOOKED AT THE RETINAL
4 HEMORRHAGES, AS WELL, UNDER THE MICROSCOPE AND I
5 COULD SEE THEM AS WELL.

6 Q YOU COULD SEE THEM, AS WELL?

7 A YES.

8 Q AND YOU LOOKED AT THEM, AND YOUR OPINION IS
9 DIFFERENT FROM AN EXPERT ON AN INTERNATIONAL BOARD
10 IN PEDIATRIC OPHTHALMOLOGY?

11 A I DO DISAGREE, AND I'D BE REMISS TO TELL YOU
12 THAT THE EXPERT THAT CAME IN HERE AND SAID THAT
13 THAT BLEEDING PROBLEM IN THE EYES COULD NOT BE DUE
14 TO AN INCREASED INTRACRANIAL PRESSURE, OR DUE TO A
15 BLEEDING DISORDER -- WELL, I WOULD BE A LITTLE BIT
16 TAKEN BY SURPRISE BY THAT.

17 Q AND FINALLY DOCTOR, YOU CAN ALSO EXPLAIN AWAY
18 THE BRUISING TO THE CHEST?

19 MR. STRICKLER: I'LL OBJECT TO HER
20 CHARACTERIZATION OF EXPLAINING AWAY.

21 THE COURT: SUSTAINED, REPHRASE.

22 BY MS. CAMPBELL:

23 Q YOU CAN EXPLAIN THE BRUISING TO THE CHEST?

24 A YES.

25 Q THE BRUISING TO THE BACK OF THE NECK, WHAT

1 WAS THAT?

2 A WELL, CERTAINLY IT COULD BE DUE TO POKING, TO
3 HOSPITAL AFFECTS, THESE SORTS OF THINGS.

4 Q THE BRUISING TO THE ARMS, THE SAME THING?

5 A NEEDLE PUNCTURE RELATED AS FAR AS WHAT I
6 COULD SEE, FROM THE PATHOLOGIST.

7 Q BUT YOU DIDN'T TALK ABOUT THE BRUISING ON THE
8 BUTTOCKS, DID YOU, DOCTOR?

9 A I WASN'T ASKED THAT QUESTION.

10 Q WELL, LET ME ASK YOU THEN. WHAT ABOUT THE
11 BRUISING ON THE BUTTOCKS?

12 A THAT IS FROM SPANKING.

13 Q THAT'S FROM SPANKING?

14 A THAT'S MY UNDERSTANDING.

15 Q WOULD IT BE CONSISTENT WITH SOMEONE BEING
16 BEATEN WITH A BELT?

17 A BEING SPANKED WITH A BELT, YES.

18 Q AND DOCTOR, WOULD YOU AGREE WITH ME AT LEAST
19 THAT THIS CHILD SUFFERED SOME GREAT TRAUMA TO HER
20 HEAD THAT CAUSED BRAIN INJURY?

21 A ABSOLUTELY NOT. I THINK IT'S QUITE CLEAR
22 THAT THE CHRONIC SUBDURAL HAS TO BE INVESTIGATED
23 AND THAT BLEEDING CAN OCCUR FROM EITHER A NATURAL
24 OR A TRAUMATIC PROCESS.

25 Q AND HOW DO YOU EXPLAIN THE SWELLING IN THE

1 BRAIN IF YOU JUST TAKE AWAY THE SUBDURAL HEMATOMA,
2 DOCTOR?

3 A WELL, THE SWELLING OF THE BRAIN IS TAKEN INTO
4 ACCOUNT WITH THE SUBDURAL HEMATOMA.

5 Q THAT'S NOT FROM THE SUGAR WATER THEORY?

6 A WELL, THE SUGAR WATER THEORY WAS TO POINT OUT
7 THE FACT THAT YOU CAN HAVE BLEEDING IN THE BRAIN
8 FROM OTHER PROBLEMS BESIDES TRAUMA, AND WE'RE
9 SIMPLY DISCUSSING THE ORIGIN OF SUBDURAL HEMATOMAS
10 OR BLEEDING IN THE BRAIN.

11 Q OKAY. AND, OF COURSE, THE RETINAL
12 HEMORRHAGES ARE FROM THE SWELLING OF THE BRAIN,
13 THAT'S NOT FROM TRAUMA; IS THAT CORRECT?

14 A FROM THE SWELLING OF THE BRAIN, AS WELL AS
15 THE BLEEDING PROBLEM THE CHILD HAS.

16 Q OKAY. DOCTOR, AND YOU REFERRED TO SOME
17 LITERATURE YOU HAVE BACK IN PENNSYLVANIA, AND I
18 WANT TO TALK ABOUT SOME LITERATURE ON SHAKEN BABY
19 SYNDROME. ARE YOU FAMILIAR WITH THIS -- THE THIRD
20 NATIONAL CONFERENCE ON SHAKEN BABY SYNDROME THAT
21 WAS HELD IN 2000, THE FALL OF 2000?

22 A I MAY HAVE SEEN THAT.

23 Q YOU MIGHT HAVE SEEN THAT?

24 A YES.

25 Q ARE YOU FAMILIAR WITH --

1 MR. STRICKLER: I'D ASK THAT HE BE GIVEN A
2 COPY TO TAKE A LOOK AT IT FIRST.

3 THE COURT: YES.

4 MS. CAMPBELL: I'M SORRY, YOUR HONOR.

5 BY MS. CAMPBELL:

6 Q OKAY.

7 A I MAY HAVE SEEN IT. I DON'T THINK I HAVE
8 THIS IN MY OWN COLLECTION, BUT I MAY HAVE SEEN IT
9 OR HEARD ABOUT IT.

10 Q YOU MAY HAVE SEEN IT OR HEARD ABOUT IT?
11 OKAY. WHAT ABOUT THE SHAKEN BABY SYNDROME AS THE
12 MULTI-DISCIPLINED APPROACH TO THE MOST RECENT BOOK
13 OUT ON THE SUBJECT?

14 A WHO WROTE THE BOOK?

15 Q ROBERT REESE.

16 A I'M NOT FAMILIAR WITH IT, NO.

17 Q OKAY. THEN I'LL JUST STICK TO THE OTHER ONE.
18 DID YOU ATTEND THIS CONFERENCE ON SHAKEN BABY
19 SYNDROME?

20 A NO.

21 Q ARE YOU A MEMBER OF ANY BOARDS ON SHAKEN BABY
22 SYNDROME?

23 A I HAVE BEEN A MEMBER OF BOARDS, AND I HAVE
24 LECTURED ON SHAKEN IMPACT SYNDROME, YES.

25 Q LET ME FIND THE RIGHT PAGE, DOCTOR, JUST BEAR

1 WITH ME. (PAUSE)

2 AND IN THIS IT TALKS ABOUT THE REBLEED THEORY
3 AS A DEFENSE, DOESN'T IT? I'LL JUST DIRECT YOU --
4 TO MAKE IT EASY, I'LL DIRECT YOU TO THE
5 HIGHLIGHTED PART.

6 A WHAT YOU'VE HIGHLIGHTED -- I UNDERSTAND WHAT
7 IT SAYS.

8 Q OKAY. AND DOCTOR, WHAT DOES IT SAY?

9 (PAUSE)

10 A IT STATES THAT THESE PEOPLE ARE OF THE BELIEF
11 THAT A REBLEED DOES NOT CAUSE RETINAL HEMORRHAGES.

12 Q WELL, MORE THAN THAT.

13 A OR WHATEVER. LET ME SEE.

14 (PAUSE)

15 Q I MEAN...

16 A RETINAL HEMORRHAGES AND EDEMA, ACCORDING TO
17 THIS AUTHOR, WHO I AM NOT AWARE OF OR FAMILIAR
18 WITH --

19 Q THERE ARE LIKE 60 OF THEM.

20 MR. STRICKLER: I'LL OBJECT TO THE CONFUSION
21 OF THIS.

22 THE COURT: SUSTAINED.

23 BY MS. CAMPBELL:

24 Q I'M SORRY.

25 A THAT'S WHAT THEY SAY, YES, I DISAGREE WITH IT

1 AND MEDICAL LITERATURE DISAGREES WITH IT, BUT I
2 UNDERSTAND WHAT THEY'RE SAYING.

3 Q IT'S SAYING THAT, "IN CHILDREN WITH CONFIRMED
4 EVIDENCE OF REBLEED IN EXACTLY THE SAME PLACE" --
5 THIS IS IN A DIFFERENT PLACE ON THIS ONE, ISN'T
6 IT, DOCTOR?

7 A IT'S IN EXACTLY THE SAME PLACE AND AROUND THE
8 PLACE, AS WELL.

9 Q -- "THE EXISTENCE OF RETINAL HEMORRHAGES OR
10 OTHER OCULAR TRAUMA, ESPECIALLY ACCOMPANIED BY
11 SEVERE EDEMA" -- AND YOU WOULD AGREE THE EDEMA IN
12 THIS CASE IS SEVERE, IS IT NOT, DOCTOR?

13 A YES, TO THE RIGHT SIDE OF THE BRAIN.

14 Q -- "IS NOT EXPLAINED BY THE REBLEED THEORY."

15 A I CATEGORICALLY DISAGREE. I PERSONALLY HAVE
16 SEEN CASES WHERE CHILDREN HAVE BEEN IN HOSPITALS,
17 APART FROM ANY TRAUMA, AND THERE'S BEEN A REBLEED
18 CLEARLY DOCUMENTED BY C.A.T. SCANS AND THEY HAVE
19 HAD REPEAT RETINAL HEMORRHAGES IN THEIR EYES, SO I
20 DISAGREE WITH THAT.

21 Q YOU DISAGREE WITH THE NATIONAL CONFERENCE ON
22 SHAKEN BABY SYNDROME, THE LEADING -- YOU WOULD
23 AGREE THESE ARE THE LEADING EXPERTS IN THE FIELD?

24 A NOT AT ALL. I THINK THE LEADING EXPERTS IN
25 THE FIELD OF SHAKEN IMPACT SYNDROME WOULD BE THE

1 FORENSIC PATHOLOGISTS AND NEUROPATHOLOGISTS AND
2 PEOPLE IN THE AREAS OF BIOMECHANICS, PEOPLE WHO
3 HAVE ACTUALLY HAD TRAINING IN AREAS OF TRAUMA.

4 Q DOCTOR, JUST A COUPLE OF MORE.

5 IT TALKS ALSO IN THIS ARTICLE ABOUT THE MAJOR
6 MEDICAL DEFENSES TO THE CLAIM OF SHAKING. ARE YOU
7 FAMILIAR WITH THAT?

8 A NOT AT ALL. IN FACT, IS THIS A LEGAL SORT OF
9 PRESENTATION? I'M TALKING ABOUT THE MEDICAL SIDE.
10 THERE MAY BE VARIOUS DEFENSES, BUT I'M NOT HERE --

11 Q YOU CAN LOOK -- THERE'S A BUNCH OF MEDICAL
12 PEOPLE HERE.

13 A I'M SURE THERE ARE, BUT I'M JUST SAYING FROM
14 MY PERSPECTIVE I'M LOOKING AT IT OBJECTIVELY FROM
15 A MEDICAL SIDE AS AN OBJECTIVE OBSERVER.

16 Q AND THAT WOULD BE YOUR OBJECTIVE OPINION FROM
17 PENNSYLVANIA?

18 A YES, IT IS.

19 Q AND THE FACT THAT THE MOST RECENT SHAKEN BABY
20 SYNDROME BOOK SAYS -- IT'S BASICALLY THE SAME
21 THING, THAT DOESN'T AFFECT YOUR OPINION EITHER?

22 A NO, AND IT SHOULD BE CLEARLY UNDERSTOOD THAT
23 THERE IS BIOMECHANICAL LITERATURE OUT THERE WHICH
24 IS DONE BY -- WHERE REAL SOUND SCIENTIFIC
25 EXPERIMENTATION HAS BEEN DONE TO CLEARLY DOCUMENT

1 THAT THESE SORTS OF THINGS CAN OCCUR AND IT'S FROM
2 IMPACT RELATED TRAUMA AND NOT FROM SHAKING.

3 SHAKING IN AND OF ITSELF, ACCORDING TO ALL
4 THE LITERATURE, DOES NOT IN AND OF ITSELF CAUSE
5 THESE SORTS OF INJURIES.

6 Q DOCTOR, FINALLY YOU TALK ABOUT HOW IT'S
7 IMPORTANT TO INVESTIGATE; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND IT'S ALSO IMPORTANT TO REVIEW ALL THE
10 RECORDS YOU HAVE?

11 A YES.

12 Q AND YOU ACTUALLY WENT THROUGH 200 OR 300
13 ABSTRACTS --

14 A YES.

15 Q -- IN YOUR REVIEW OF THIS CASE?

16 A YES, I DID.

17 Q AND YOU REVIEWED ALL THE MEDICAL RECORDS,
18 WHICH WERE EXTENSIVE, IN THIS CASE?

19 A YES.

20 Q AND THE C.T. SCANS, YOU WERE ABLE TO LOOK AT
21 THOSE?

22 A YES.

23 Q AND YOU REVIEWED THE AUTOPSY?

24 A YES.

25 Q DID YOU REVIEW ANYTHING ELSE? DID I LEAVE

1 ANYTHING OUT? IF I DID, I DIDN'T MEAN TO.

2 A YES, THE INVESTIGATIVE REPORTS, THE
3 INVESTIGATOR'S REPORTS, I REVIEWED THOSE. I
4 REVIEWED THE INITIAL MEDICAL RECORDS OF THE
5 CHILD'S BIRTH, AND I REVIEWED TWO SETS OF MEDICAL
6 RECORDS DEALING WITH THE MOTHER'S PRIOR HISTORY,
7 THE FACT THAT SHE -- THIS GIRL UNFORTUNATELY HAD
8 ANOTHER CHILD THAT DIED OF -- IT WAS AN APPARENT
9 S.I.D.S. DEATH, AND THE MOTHER WAS A COCAINE
10 ABUSER AND THINGS OF THIS SORT. I WENT THROUGH
11 ALL THOSE SORTS OF MEDICAL RECORDS.

12 Q OKAY. AND YOU WERE ABLE TO DO 200 TO 300
13 ARTICLES AND A LOT OF RECORDS IN, I BELIEVE IT WAS
14 BETWEEN THREE AND FIVE HOURS OR THREE AND SIX
15 HOURS?

16 A THE -- I HAD REVIEWED THE ABSTRACTS
17 PREVIOUSLY. I TRY TO KEEP UP TO DATE ON ALL THE
18 LITERATURE AND THEY WERE PARTICULAR ABSTRACTS,
19 THEY WEREN'T ACTUALLY ALL ARTICLES. THE ARTICLES
20 YOU HAVE HERE. THE ABSTRACTS ARE BASICALLY A
21 PARAGRAPH OR TWO AT A TIME, AND I WAS ABLE TO GO
22 THROUGH THOSE, YES.

23 Q SO THEY WERE LIKE CLIFF NOTES?

24 A I WOULDN'T REFER TO THEM AS CLIFF NOTES, BUT
25 IN THE MEDICAL LITERATURE, YOU CAN GET A GENERAL

1 IDEA OF SOME OF THE MOST UP TO DATE INFORMATION
2 OUT THERE BY REVIEWING THE ABSTRACTS.

3 Q AND, DOCTOR, IN THIS CASE TOO YOU WERE AWARE
4 AND YOU READ THE AUTOPSY REPORT ABOUT THE
5 HEMORRHAGE IN THE OPTIC NERVE AND EVERYTHING?

6 A YES, I DID.

7 Q AND YOU CAN EXPLAIN THAT, TOO?

8 A YES.

9 Q OKAY. GO AHEAD.

10 A THAT WOULD BE AN EXTENSION FROM THE
11 SUBARACHNOID SPACE. THE BLOOD WILL EXTEND AROUND
12 THAT. IF YOU'LL LOOK UNDER THE MICROSCOPE, YOU'LL
13 SEE ONCE THE BRAIN HAS HERNIATED THROUGH THE
14 SKULL, HEMORRHAGES FORM IN THAT AREA IN THE BRAIN
15 ITSELF. ONCE IT'S SWELLED OUT, WHEN THE
16 NEUROSURGEON OPENED THAT UP, THAT WILL ALSO LEAD
17 TO WHAT WE CALL SECONDARY BLEEDING PROCESSES. THE
18 BLOOD HAS THEN TRAVELED FROM THAT AREA DOWN INTO
19 THE OPTIC NERVE AREA.

20 Q DOCTOR, FINALLY, YOU WOULD AGREE WITH ME THAT
21 THE BLEEDING IN THIS CHILD'S HEAD WAS MASSIVE?

22 A SIGNIFICANT.

23 Q SIGNIFICANT?

24 A YES.

25 Q AND THAT THE SWELLING IN THIS CHILD'S HEAD

1 WAS -- I DON'T KNOW HOW TO CHARACTERIZE IT,
2 SIGNIFICANT?

3 A THAT WAS SIGNIFICANT AS WELL.

4 Q AND THAT FOR WHATEVER TRAUMA OR SPONTANEOUS
5 THING THAT TRIGGERED THIS, HOW LONG WOULD THIS
6 CHILD HAVE BEEN ABLE TO FUNCTION AT THE RATE THIS
7 CHILD'S HEAD WAS BLEEDING AND SWELLING?

8 A WELL, APPARENTLY FROM THE CHRONIC BLEED GOING
9 BACK A COUPLE OF WEEKS, THE CHILD HAS BEEN ABLE TO
10 FUNCTION, BASED ON WHAT WE KNOW RIGHT NOW,
11 ADEQUATELY. SO THE FACT THAT THE CHILD WAS ABLE
12 TO ENDURE THAT TYPE OF BLEEDING FOR WEEKS AT A
13 TIME, WOULD BE MORE A MORE ACUTE BLEEDING PROCESS
14 THAT WOULD OCCUR TYPICALLY. IF YOU'LL LOOK AT THE
15 LITERATURE, FRESH BLEEDING OF THIS SORT WILL LEAD
16 TO SOME SORT OF SIGNIFICANT PROBLEM WITHIN HOURS.
17 YOUR WINDOW, PARTICULARLY, IS FROM ZERO TO SIX
18 HOURS FOR A REBLEED OR A FRESH BLEED.

19 Q OKAY. AND THIS AGAIN IS YOUR OPINION BASED
20 ON YOUR EXPERIENCE?

21 A MY EXPERIENCE AND THE MEDICAL LITERATURE.

22 Q WITH YOUR PATIENTS?

23 A WITH EITHER MY PATIENTS WHO HAVE EXPIRED OR
24 IN CASES I DEAL WITH WHERE THE PATIENTS ARE STILL
25 ALIVE.

1 Q YOU'RE A PATHOLOGIST?

2 A A FORENSIC PATHOLOGIST.

3 Q A FORENSIC PATHOLOGIST --

4 A YES.

5 Q -- AND YOU HAVE LIVE PATIENTS?

6 A I HAVE LIVE PATIENTS. I FREQUENTLY WORK WITH
7 THE POLICE DEPARTMENTS, THE DISTRICT ATTORNEY'S
8 OFFICE AND GET INVOLVED IN TESTIFYING IN LIVE
9 CASES ALL THE TIME, AS WELL AS DOMESTIC RELATED
10 CASES, AS WELL.

11 Q FINALLY, DOCTOR IT'S IMPORTANT TO GET A
12 HISTORY OR WHAT HAPPENED, ISN'T IT?

13 A I AGREE.

14 Q DO AN INVESTIGATION?

15 A I AGREE.

16 Q AND YOU'RE AWARE THAT THERE WAS AN EYEWITNESS
17 IN THIS CASE?

18 A THERE ARE MULTIPLE WITNESSES IN THIS CASE, AS
19 I UNDERSTAND IT.

20 Q THERE ARE MULTIPLE WITNESSES. THERE WAS AN
21 EYEWITNESS TO THE BEATING THIS CHILD SUSTAINED;
22 ARE YOU AWARE OF THAT?

23 A TO THE SPANKING.

24 Q TO THE SPANKING? YES, TO THE SPANKING.

25 A IT'S MY UNDERSTANDING -- I HAVEN'T HEARD THE

1 TESTIMONY, BUT FROM WHAT I'VE READ, THE CHILD MAY
2 HAVE BEEN PRESENT AT THE TIME. THE CHILD IN ONE
3 TESTIMONY I SAW MAY NOT HAVE BEEN IN THE ROOM AT
4 THE TIME, SO I'M NOT SURE FROM WHAT I'VE READ FROM
5 THE WITNESS STATEMENTS WHETHER THE CHILD IS
6 PRESENT OR NOT, BUT BE THAT AS IT MAY, THERE IT
7 IS.

8 Q THERE IT IS?

9 A THERE IT IS -- I MEAN, IF THE CHILD IS
10 TESTIFYING AND SAID SHE -- THAT HE OR SHE WAS
11 PRESENT AND SAW IT, THAT'S FINE, BUT FROM WHAT I
12 READ FROM THE INVESTIGATIVE REPORTS, IT'S NOT
13 REALLY CLEAR TO ME WHETHER THE CHILD WAS PRESENT
14 OR NOT.

15 Q AND YOU GOT ALL THE REPORTS IN THIS CASE?

16 A YES, I DID.

17 Q AND YOU DON'T EVEN KNOW IF THAT'S CLEAR?

18 A EXCUSE ME.

19 Q YOU DON'T EVEN KNOW IF THAT'S CLEAR?

20 A CLEAR?

21 Q THAT'S NOT EVEN CLEAR TO YOU IN THIS CASE?

22 A WELL, IF THE CHILD WAS ASKED IF HE OR SHE
23 WERE PRESENT AND SKIRTED ON THE ISSUE AND WASN'T
24 CLEAR -- I COULDN'T TELL IF THE CHILD WAS PRESENT
25 OR NOT.

1 Q JUST AS YOU CAN'T TELL WHAT HAPPENED CLEARLY
2 IN THIS CASE?

3 A NO ONE KNOWS AT THIS POINT CLEARLY WHAT HAS
4 HAPPENED IN THIS CASE. I GAVE THEM THE BEST SORT
5 OF ANALYSIS THAT I COULD. I BELIEVE I'VE BEEN
6 OBJECTIVE AND REASONABLE. THAT'S WHAT I'M HERE TO
7 DO TODAY IS TO LOOK AT IT OBJECTIVELY, ESPECIALLY
8 AS IT RELATES TO THE CHRONIC BLEED.

9 MS. CAMPBELL: THANK YOU, DOCTOR.

10 THE COURT: DO YOU HAVE ANY REDIRECT?

11 MR. STRICKLER: YES, SIR, I DO.

12 REDIRECT-EXAMINATION

13 BY MR. STRICKLER:

14 Q SPANKING WITH THE BELT --

15 A YES.

16 Q DID THAT CAUSE A CHRONIC SUBDURAL HEMATOMA?

17 A NO.

18 Q OKAY. AND THAT'S THE THING THAT WE'RE
19 CONCERNED ABOUT BECAUSE THAT'S WHERE THE --
20 CERTAINLY WHERE POTENTIALLY THE REBLEEDING COMES
21 FROM WHICH LEADS TO THE INJURY IN THIS CASE; IS
22 THAT CORRECT?

23 A YEAH. IT'S MY OPINION TO A REASONABLE DEGREE
24 OF MEDICAL CERTAINTY THAT THE BLEEDING WE HAVE IN
25 THIS CASE IS REBLEEDING FROM THE CHRONIC SUBDURAL

1 HEMATOMA.

2 Q OKAY. IS IT YOUR OPINION TO A REASONABLE
3 DEGREE OF MEDICAL CERTAINTY THAT THE SPANKING IN
4 THIS CASE WOULDN'T CAUSE SHAKEN BABY SYNDROME?

5 A THAT IS MY OPINION.

6 Q OR SHAKEN IMPACT SYNDROME?

7 A THAT'S MY OPINION.

8 Q OKAY. IT COULD CAUSE BRUISING TO THE
9 BUTTOCKS?

10 A IT CERTAINLY COULD.

11 Q THAT'S ABOUT IT?

12 A YES.

13 Q OKAY. DID YOU COME DOWN HERE JUST TO MAKE
14 SOME MONEY?

15 A NO.

16 Q OKAY. JUST A HIRED GUN TRAVELING AROUND?

17 A NO. I WANT TO MAKE SURE I DON'T GIVE THAT
18 IMPRESSION. MOST OF THE CASES I LOOK AT, I DON'T
19 ACCEPT, ESPECIALLY ON THE CRIMINAL SIDE, AND I'M
20 ASKED TO LOOK AT THINGS ON THE PROSECUTION AND THE
21 DEFENSE SIDE, AND MANY CASES FROM THE DEFENSE SIDE
22 I CURTAIL AND GET RID OF.

23 I'VE ONLY TESTIFIED ON BEHALF OF THE DEFENSE
24 SOMEWHERE BETWEEN TEN AND FIFTEEN TIMES IN MY
25 WHOLE LIFE FOR CRIMINAL DEFENSE. I'VE ACCEPTED

1 THIS CASE BECAUSE I BELIEVE IT WARRANTS SOMEONE TO
2 ADDRESS ALL THE ISSUES OBJECTIVELY.

3 Q WHAT CONCERNS YOU ABOUT THIS CASE, DOCTOR,
4 WHAT CONCERNS YOU MOST ABOUT THIS CASE?

5 A THE FACT THAT YOU HAVE A CHRONIC BLEED, THE
6 INVESTIGATION IS NOT COMPLETE, AND IT HAS NOT BEEN
7 RESOLVED WHETHER OR NOT YOU HAVE A NATURAL OR
8 TRAUMATIC PROCESS, AND I BELIEVE THAT NEEDS TO BE
9 ADDRESSED.

10 Q LET ME ASK YOU THIS, HOW SIMPLE IS THE HUMAN
11 BODY; IS IT A SIMPLY LITTLE MECHANISM?

12 A NO, IT'S NOT SIMPLE AT ALL. IT'S VERY
13 COMPLEX AND -- OBVIOUSLY, IT'S COMPLEX.

14 Q HOW INTERCONNECTED ARE THE VARIOUS PROCESSES
15 IN THE HUMAN BODY?

16 A THEY'RE ALL INTERCONNECTED.

17 Q OKAY. SUBDURAL INTERCONNECTED WITH CEREBRAL
18 EDEMA?

19 A YES.

20 Q WHICH IS INTERCONNECTED WITH RETINAL
21 HEMORRHAGES?

22 A YES.

23 Q AND DO YOU NEED TO GET AT THE CAUSE, THE
24 INITIAL CAUSE OF THE SUBDURAL IN THIS CASE?

25 A YES, YOU DO.

1 Q HAS THIS BEEN DONE IN THIS CASE?

2 A NO, IT HASN'T.

3 Q WHAT WAS THE -- HOW OLD WAS THE INITIAL
4 SUBDURAL IN THIS CASE?

5 A IT'S --

6 Q APPROXIMATELY.

7 A IT'S AT LEAST A COUPLE OF WEEKS OLD, TWO TO
8 THREE WEEKS OLD OR SO.

9 Q ANYTHING YOU SEE IN YOUR REVIEW OF THE
10 EVIDENCE IN THIS CASE TO INDICATE ANY INFORMATION
11 ABOUT ANY TRAUMA TWO TO THREE WEEKS AGO, TWO TO
12 THREE WEEKS PRIOR TO THE HOSPITALIZATION?

13 A NOT AT THIS POINT, NO.

14 Q OKAY. BASED ON THAT CAN YOU RULE OUT NATURAL
15 CAUSATION AS A POSSIBLY?

16 A NO, YOU CAN'T RULE OUT NATURAL OR ACCIDENTAL
17 PROCESSES.

18 Q NOW, YOU WERE ASKED ABOUT CREATING A REPORT.
19 WE HEARD FROM DR. CLOSE, HE'S A RADIOLOGIST. HE
20 CAME IN HERE AND TESTIFIED TODAY. DID YOU EVER
21 SEE ANY REPORT FROM DR. CLOSE?

22 A NO.

23 Q DID IT SURPRISE YOU THAT HE NEVER SUBMITTED A
24 REPORT?

25 A NO. FREQUENTLY IN THESE CASES EITHER THE

1 PROSECUTION OR DEFENSE SIDE REPORTS ARE NOT
2 SUBMITTED.

3 Q NOW YOU WERE ALSO ASKED ABOUT NOT SUBMITTING
4 A REPORT YOURSELF, DOCTOR. YOU REVIEWED SOME
5 NOTES FROM DR. CHRISTMANN, THOSE ARE ON THE CHART,
6 RIGHT?

7 A YES.

8 Q OKAY. DID YOU EVER SEE ANY REPORT FROM
9 DR. CHRISTMANN?

10 A NO.

11 Q JUST THE PEDIATRIC OPHTHALMOLOGY, CORRECT?

12 A RIGHT.

13 Q OKAY.

14 A OTHER THAN THE PROGRESS NOTES, NO.

15 Q OTHER THAN THE PROGRESS NOTES. OKAY. LET ME
16 JUST ASK YOU THIS AND THEN I'M GOING TO GET DONE,
17 OKAY?

18 CAN YOU DEFINE PLEASE FOR US PATHOLOGY? YOU
19 MADE A PRETTY SWEEPING STATEMENT ABOUT PATHOLOGY
20 AS, IN ESSENCE, THE MOTHER OF ALL MEDICINE?

21 A IT IS.

22 Q WHAT IS PATHOLOGY?

23 A PATHOLOGY IS THE STUDY OF DISEASES OR THE
24 STUDY OF TRAUMA. PATHOLOGISTS THEMSELVES ARE
25 SOMEWHAT A PECULIAR BREED IN THE SENSE THAT WE

1 CARE ABOUT WHAT CAUSES -- WHAT IS THE ORIGIN OF
2 THE TRAUMA. FOR THAT WE GO INTO PAINSTAKING
3 DETAILS. WE GET DOWN UNDER THE MICROSCOPE. WE
4 LOOK AT THE BRAIN. I'VE SEEN THOUSANDS OF BRAINS.
5 I'VE EXAMINED THOUSANDS OF BRAINS. I'VE LOOKED AT
6 THEM GROSSLY UNDER THE MICROSCOPE. WE GET INTO
7 THOSE DETAILS. IF YOU LOOK AT THE PATHOLOGY TEXT,
8 NEUROPATHOLOGY TEXT, YOU'LL SEE -- I HAVE MULTIPLE
9 ARTICLES HERE THAT DEAL PARTICULARLY WITH THE
10 ORIGIN OF SUBDURAL HEMATOMAS AND THE ORIGIN OF HOW
11 THE BLOOD VESSELS PROLIFERATE AND EVERYTHING ELSE.
12 THAT'S WHAT THE PATHOLOGISTS DO. THEY LOOK AT
13 THOSE, AT THE NITTY GRITTY DETAILS.

14 PEDIATRICIANS DON'T DO THAT, NEUROSURGEONS
15 DON'T DO THAT. THAT'S NOT THEIR BAILIWICK.
16 THEY'RE OUT THERE ON THE TREATING SIDE. WE'RE
17 LOOKING AT IT FROM THE ORIGIN SIDE, SO WE THINK
18 ABOUT THESE THINGS CONSTANTLY AND ALL THE TIME.

19 THERE'S A LOT OF DEBATE EVEN IN OUR FIELD
20 ABOUT THE ORIGIN OF SUBDURAL HEMATOMAS AND ALL
21 THESE SORT OF THINGS AND WHAT CAUSES INJURY TO THE
22 BRAIN, THE AMOUNT OF G-FORCES AND THINGS OF THAT
23 SORT.

24 Q AND IN THE END, WE CAN'T SAY OR YOU CANNOT
25 RENDER AN OPINION AS TO THE MANNER OF DEATH IN

1 THIS PARTICULAR CASE, CORRECT?

2 A CORRECT, I CAN'T AND NO ONE CAN AT THIS
3 PARTICULAR POINT.

4 Q AND WHY WOULD THAT BE?

5 A BECAUSE THE INVESTIGATION IS NOT COMPLETE.
6 YOU'VE GOT TO FIGURE OUT THE ORIGIN OF THAT
7 CHRONIC SUBDURAL HEMATOMA. I BELIEVE I HAVE A
8 VERY REASONABLE ALTERNATIVE EXPLANATION TO ALL THE
9 OTHER -- I UNDERSTAND WHAT ALL THE OTHER EXPERTS
10 HAVE SAID, AND I HAVE A REASONABLE ALTERNATIVE
11 EXPLANATION THAT I BELIEVE NEEDS TO BE ADDRESSED.

12 Q DO YOU HAVE AN AX TO GRIND HERE?

13 A NO, I DON'T.

14 MR. STRICKLER: OKAY. DOCTOR, THANK YOU VERY
15 MUCH.

16 THE COURT: ANYTHING ON RECROSS?

17 MS. CAMPBELL: JUST A COUPLE OF QUESTIONS,
18 YOUR HONOR.

19 RECROSS-EXAMINATION

20 BY MS. CAMPBELL:

21 Q BUT YOU AREN'T DOING THIS FOR FREE?

22 A NO, I AM NOT. I AM BEING PAID FOR MY TIME.
23 I AM NOT SITTING HERE AS A HIRED GUN. I AM
24 SITTING HERE PAID BY MY CLIENT, WHICH IS VERY
25 REASONABLE. DOCTORS TESTIFY ALL THE TIME ON BOTH

1 SIDES. I TESTIFY FOR THE PROSECUTION AND I GET
2 PAID AND FOR THE DEFENSE. I'M HERE LOOKING AT IT
3 OBJECTIVELY.

4 Q AND DOCTOR, FINALLY, YOU ARE AWARE THAT THERE
5 WERE RADIOLOGY REPORTS IN THIS CASE?

6 A YES, AND I HAVE REVIEWED THOSE.

7 Q AND YOU AREN'T -- WE DON'T WANT TO MISLEAD
8 THE JURY, THERE ARE REPORTS GENERATED FROM
9 RADIOLOGY IN THIS CASE ON THE C.T. SCANS; ISN'T
10 THAT RIGHT?

11 A THAT'S CORRECT.

12 Q AND DR. CHRISTMANN DID NOTES IN THIS CASE,
13 DIDN'T SHE?

14 A SHE DID PROGRESS NOTES, YES.

15 Q AND YOU DON'T HAVE A REPORT AND YOU HAVE NO
16 NOTES?

17 A I HAVE NO NOTES, AND I DO NOT HAVE A REPORT;
18 THAT IS CORRECT.

19 MS. CAMPBELL: THAT'S ALL I HAVE.

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

21 ALL RIGHT, MADAM FOREPERSON AND LADIES AND
22 GENTLEMEN OF THE JURY, WE'LL STOP HERE AND PICK UP
23 IN THE MORNING AT 9:00.

24 PLEASE DON'T DISCUSS THE CASE WITH ANYONE OR
25 ALLOW ANYONE TO DISCUSS IT WITH YOU OR DON'T DO

1 ANY RESEARCH ABOUT ANY ISSUE IN THE CASE. WE'LL
2 SEE YOU IN THE MORNING AT 9:00. YOU ALL HAVE A
3 NICE EVENING.

4 (WHEREUPON, THE JURY LEFT OPEN COURT AT
5 APPROXIMATELY 4:50.)

6 THE COURT: IF YOU HAVE ANY REQUEST TO
7 CHARGE -- IT'S PRETTY STRAIGHT FORWARD. I'LL TAKE
8 THEM IN THE MORNING. I DON'T KNOW THAT YOU WILL.

9 THE COURT: OKAY. I GUESS I'M FISHING FOR
10 SOME COMMENT FROM YOU ALL ON A CHARGE ON
11 CAUSATION.

12 I'M NOT SURE -- JUST THINK ABOUT THAT. I
13 WON'T TELL YOU WHAT I'M THINKING ABOUT YET.

14 MAY 16, 2002

15 THE COURT: DO YOU ALL WANT TO COME UP HERE
16 JUST A MINUTE?

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD
18 OUT OF THE PRESENCE OF THE JURORS.)

19 THE COURT: YOU ALL HAVE A NICE HAPPY DAY.

20 (HANDS NOTE TO ATTORNEYS.)

21 THE COURT: NOW I'M GOING TO BRING HIM BACK
22 IN HERE AND HOPE TO GOD HE HASN'T TALKED TO ANY
23 OTHER JURORS, AND THEN I'M GOING TO EXPLAIN TO HIM
24 THE PROCESS. THERE'S NOTHING I CAN DO ABOUT IT.
25 THE WHOLE UNITED STATES JUDICIAL SYSTEM WORKS THAT

1 WAY. WE DON'T WANT PROFESSIONAL JURORS, OR DO I
2 JUST TAKE HIM OFF?

3 MS. COOPER: MAYBE HE WANTS TO BE OUSTED.

4 THE COURT: WELL.

5 MS. CAMPBELL: THE CONCERN I HAVE IS WHETHER
6 OR NOT HE'S TALKED TO ANYONE ELSE.

7 THE COURT: ABSOLUTELY.

8 MR. STRICKLER: THAT PLUS, I MEAN -- WHAT YOU
9 PROPOSE IS PERFECTLY APPROPRIATE IN THE CASE,
10 EXPLAIN THAT'S JUST HOW THE SYSTEM WORKS. I MEAN,
11 IF HE PERSISTS IN THAT ATTITUDE.

12 MS. CAMPBELL: HE'S ALREADY STATED IN THAT
13 LETTER THAT HE CANNOT BE FAIR IN THIS CASE.

14 THE COURT: HE'LL PROBABLY STAND BY IT, BUT
15 I'M CERTAINLY GOING TO ASK HIM.

16 THE COURT: BRING MR. MCCRAVY IN HERE,
17 PLEASE.

18 LET'S DO IT UP HERE RATHER THAN DOWN THERE.

19 (WHEREUPON, JUROR MCCRAVY CAME INTO THE
20 COURTROOM.)

21 THE COURT: MR. MCCRAVY, CAN YOU COME DOWN
22 HERE, I NEED TO TALK YOU ON THE RECORD. I'VE READ
23 THE LETTER.

24 THE JUROR: YEAH.

25 THE COURT: THE QUESTION IS -- LET ME EXPLAIN

1 TO YOU THAT EVERY JURY IN THE UNITED STATES
2 WHETHER IT'S IN THE FEDERAL COURT, STATE COURT,
3 LOCAL COURTS WHATEVER ARE COMPOSED OF LAY PEOPLE.
4 WE DON'T HAVE PROFESSIONAL JURORS ANYWHERE IN THE
5 COUNTRY.

6 THE JUROR: YEAH.

7 THE COURT: SOME REASONS FOR THAT IS, FOR
8 EXAMPLE, THE REASON WE HAVE JURORS IS THEY DON'T
9 LET ME TRY CASES BY MYSELF A LOT OF TIMES.

10 THE JUROR: NO.

11 THE COURT: BECAUSE I'M A PROFESSIONAL. I
12 KNOW I CAN DO THOSE KINDS OF THINGS, BUT WE TRUST
13 LAY PEOPLE TO MAKE DECISIONS . ARE YOU TELLING ME
14 YOU CAN'T DO THAT IN THIS CASE?

15 THE JUROR: NOT A MEDICAL DECISION.

16 THE COURT: WELL, THE QUESTION IS CAN YOU
17 MAKE IT THROUGH OR NOT?

18 THE JUROR: IT'S ON A MEDICAL DECISION, AND I
19 CAN'T MAKE MEDICAL DECISIONS.

20 THE COURT: HAVE YOU DISCUSSED THIS WITH ANY
21 OF THE OTHER JURORS?

22 THE JUROR: I MENTIONED THAT I GAVE YOU A
23 LETTER.

24 THE COURT: WHAT DID YOU TELL THEM IT WAS
25 ABOUT?

1 THE JUROR: I TOLD THEM THAT I THOUGHT IT WAS
2 NOT FAIR -- I TOLD THEM I GAVE YOU A LETTER, AND I
3 SAID -- WHAT DID I SAY? I SAID THAT IT WAS NOT
4 FAIR FOR ME TO HAVE TO SAY DR. A. IS WRONG AND
5 DR. B. IS RIGHT. I DID SAY THAT, BUT I DIDN'T
6 MENTION THE CASE OR ANYTHING. THAT WAS ALL I
7 SAID.

8 THE COURT: ALL RIGHT. HAVE THEY SENT THE
9 JURY HOME FOR THE WEEK?

10 THE BAILIFF: I'M NOT SURE, YOUR HONOR.

11 THE COURT: HATTIE IS AT THE DOCTOR.

12 THE JUROR: YOU SEE, YOUR HONOR, I'M
13 CONVINCED THAT IT'S A MEDICAL DECISION AND IT'S
14 NOT A LAYMAN'S PLACE BECAUSE I DON'T KNOW NO
15 MEDICINE.

16 THE COURT: WELL, I'M NOT GOING TO ARGUE WITH
17 YOU ABOUT THAT.

18 THE JUROR: I KNOW I NEED TO WRITE MY
19 CONGRESSMEN AND SO FORTH ABOUT THIS, AND I WILL DO
20 THAT.

21 THE COURT: WELL, YOU'LL HAVE TO CHANGE THE
22 ENTIRE CONSTITUTION OF THE UNITED STATES TO DO
23 THAT.

24 THE JUROR: THERE'S NO DOUBT ABOUT IT.
25 THERE'S JUST NO DOUBT ABOUT IT. I'M NOT QUALIFIED

1 AND NOBODY IN THAT JURY ROOM IS QUALIFIED TO SAY
2 THAT DR. A. IS WRONG AND DR. B. IS RIGHT. I CAN'T
3 DO THAT, I'M SORRY.

4 THE COURT: ALL RIGHT. WE'LL EXCUSE YOU FOR
5 CAUSE. THE PROBLEM IS I DON'T KNOW WHETHER OR NOT
6 TO TAKE YOU BACK TO THE JURY ASSEMBLY ROOM.

7 THE JUROR: AND, JUDGE, I'M NOT TRYING TO GET
8 OFF THE JURY, DON'T GET ME WRONG. THAT'S JUST MY
9 PERSONAL OPINION.

10 THE COURT: HANG ON JUST A MINUTE.

11 (PAUSE)

12 THE COURT: WE'LL LET YOU GO THROUGH THE
13 CLERK'S OFFICE AND GET YOU DISCHARGED.

14 THE JUROR: ALL RIGHT.

15 THE COURT: OKAY.

16 (WHEREUPON, COURT'S EXHIBIT NUMBER 5 WAS
17 MARKED FOR IDENTIFICATION ONLY.)

18 THE COURT: WELL, DO YOU WANT ME TO BRING
19 THEM OUT INDIVIDUALLY OR AS A GROUP, ASK THEM AS A
20 GROUP?

21 MR. STRICKLER: I WOULD PROPOSE TO ASK
22 WHETHER THEY HEARD THE COMMENT.

23 THE COURT: WHETHER THEY DID HEAR THE COMMENT
24 AND IF THERE WAS A COMMENT BACK THERE, IF THEY CAN
25 RENDER A FAIR AND IMPARTIAL DECISION IN THIS CASE.

1 YOU HAVE TO SHOW PREJUDICE. I MEAN, THE FACT
2 IS THEY HEARD SOMETHING INSIDE THE JURY ROOM. I'M
3 ENTITLED TO TAKE THEM ONE BY ONE OR AS A GROUP.

4 MR. STRICKLER: I THINK ONE BY ONE -- I WOULD
5 PREFER ONE BY ONE, BECAUSE I DON'T WANT A GROUP TO
6 ANSWER. I WANT ONE BY ONE.

7 THE COURT: LET'S AGREE ON THE QUESTION. THE
8 QUESTION WAS, DID YOU HEAR A COMMENT ABOUT ANY
9 CONCERNS THAT MR. MCCRAVY HAD ABOUT THE CASE? IF
10 YES, WOULD THAT AFFECT YOUR ABILITY TO LISTEN TO
11 THIS CASE AND RENDER A FAIR AND IMPARTIAL VERDICT
12 IN THE CASE?

13 MR. STRICKLER: I'D ASK A SECOND QUESTION
14 ABOUT WHAT WAS THAT COMMENT, BECAUSE I'M NOT SURE
15 THAT HE DELIVERED THE ENTIRE COMMENT RIGHT HERE.
16 CALL ME SKEPTICAL, IF YOU WILL, OKAY, BUT I REALLY
17 THINK -- I MEAN, THEIR OWN INTERPRETATION OF THAT
18 COMMENT IS GOING TO BE WHAT'S IMPORTANT. THAT
19 REVEALS WHAT THEY THINK.

20 THE COURT: ALL RIGHT. I PROPOSE TO PUT A
21 BAILIFF IN THE JURY ROOM AS SOON AS I BRING THEM
22 OUT HERE AND TELL THEM WE'RE GOING TO HAVE TO
23 BRING THEM OUT ONE BY ONE AND QUESTION THEM.

24 I DO NOT WANT ANY DISCUSSION ABOUT THIS CASE
25 AT ALL OR EITHER TRUST THE FOREPERSON TO DO THAT

1 BECAUSE WHEN I GET THROUGH WE'LL HAVE TO PUT THEM
2 IN ANOTHER JURY ROOM UNTIL WE GET ALL 12. I CAN'T
3 PUT THEM ALL IN THERE.

4 MR. STRICKLER: RIGHT. RIGHT.

5 THE COURT: OF COURSE, IT'S QUICK AND
6 PAINLESS. IF THE FIRST ONE SAYS NO, I CAN'T.

7 MS. COGGIOLA: YOU KNOW, THE BOTTOM LINE IS
8 EVEN IF YOU BUY WHAT HE SAID, HE'S COMMENTED ON
9 THE TESTIMONY IN THIS TRIAL.

10 THE COURT: PREMATURE DELIBERATIONS IS NOT
11 THE ISSUE.

12 MS. COGGIOLA: I UNDERSTAND.

13 THE COURT: YOU HAVE TO SHOW PREJUDICE.

14 MR. STRICKLER: WELL, I --

15 THE COURT: AFTER THEY'RE QUESTIONED --

16 MR. STRICKLER: I THINK THEY NEED TO BE
17 SEGREGATED AT THAT POINT IN TIME. I ALWAYS HAVE
18 CONCERNS WITH PUTTING ANYONE IN THE JURY ROOM WITH
19 THE JURY.

20 THE COURT: THEY'RE NOT DELIBERATING.

21 MR. STRICKLER: I UNDERSTAND THAT. I'M GOING
22 THROUGH THAT IN MY MIND ALSO. THERE IS NO
23 DELIBERATION GOING ON.

24 THE COURT: IT'S NO DIFFERENT FROM SENDING
25 THE CLERK IN THERE ASKING THEM WHAT THEY WANT TO

1 EAT.

2 MR. STRICKLER: WELL --

3 THE COURT: MAYBE I DON'T HAVE TO DO THAT.

4 MS. COGGIOLA: WHEN YOU'RE ASKING THEM THE
5 QUESTIONS, THAT WOULD ACTUALLY APPLY TO WHETHER
6 ANYTHING HAS BEEN SAID RIGHT NOW, IN OTHER WORDS,
7 WHETHER ANYTHING WAS SAID.

8 THE COURT: ALL RIGHT. BRING THE JURY IN.

9 THE BAILIFF: I'LL BE GLAD TO.

10 MR. STRICKLER: YOU'RE GOING TO QUESTION THEM
11 ONE AT A TIME.

12 THE COURT: I'M GOING TO TELL THEM WHAT WE'RE
13 GOING TO DO FIRST. I DON'T WANT THEM TO SIT BACK
14 THERE AND WONDER.

15 (WHEREUPON, THE JURY CAME INTO OPEN
16 COURT AT APPROXIMATELY 9:19.)

17 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR
18 HONOR.

19 THE COURT: ALL RIGHT. GOOD MORNING, MADAM
20 FOREPERSON, LADIES AND GENTLEMEN, MR. MCCRAVY HAS
21 BEEN REMOVED AS A JUROR FROM THIS CASE AND BASED
22 ON INFORMATION THAT HE GAVE TO ME IN TERMS OF HIS
23 FEELINGS, THE LAW REQUIRES ME TO INDIVIDUALLY VOIR
24 DIRE OR INDIVIDUALLY QUESTION EACH ONE OF YOU.

25 IT WILL TAKE A FEW MINUTES TO DO THAT. DON'T

1 FEEL LIKE YOU'RE ON TRIAL OR ANYTHING, I JUST NEED
2 TO KNOW A LITTLE BIT ABOUT -- YOU'LL UNDERSTAND
3 WHEN YOU HEAR THE QUESTION, SO DON'T BE OFFENDED
4 BY IT. THE LAW REQUIRES ME TO DO THAT. WE'LL DO
5 IT ONE AT A TIME, SO WHAT WE'LL DO IS SEND YOU
6 BACK TO THE JURY ROOM AND START WITH THE
7 FOREPERSON AND COME THROUGH EACH ONE.

8 NOW, PLEASE DO NOT DISCUSS ANYTHING THAT GOES
9 ON OUT HERE IN THIS COURTROOM WITH YOUR FELLOW
10 JURORS OR WHILE YOU'RE BACK THERE WAITING. PLEASE
11 DON'T SPECULATE ABOUT WHAT THE QUESTIONS ARE OR
12 TALK ABOUT ANYTHING HAVING TO DO WITH THIS CASE.

13 WE HAVE SPENT FOUR DAYS IN THIS THING, AND I
14 HAVE TO ENSURE A FAIR TRIAL TO BOTH SIDES.

15 I APOLOGIZE TO YOU FOR THE INCONVENIENCE, BUT
16 IT WILL TAKE A FEW MINUTES TO DO THAT. LET ME
17 ASK -- MADAM FOREPERSON, YOU CAN STAY THERE. IF
18 EVERYBODY ELSE WILL GO BACK TO YOUR JURY ROOM,
19 PLEASE.

20 (WHEREUPON, EVERYONE EXCEPT THE
21 FOREPERSON WENT BACK TO THE JURY ROOM
22 AT 9:21.)

23 THE COURT: SINCE WE HAVE --
24 ALL RIGHT. MADAM FOREPERSON, SINCE WE HAVE
25 TO TAKE A RECORD, CAN I GET YOU TO TAKE THE

1 WITNESS STAND SO THE COURT REPORTER CAN HEAR YOU,
2 PLEASE?

3 THE COURT: YOU'LL NEED TO SWEAR EVERYBODY
4 IN, MADAM CLERK.

5 THE CLERK: PLACE YOUR LEFT HAND ON THE
6 BIBLE, RAISE YOUR RIGHT HAND.

7 DOROTHY ROGERS,

8 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE COURT: ALL RIGHT. IF YOU'LL HAVE A SEAT
10 PLEASE, MA'AM.

11 ESSENTIALLY THERE ARE GOING TO BE THREE
12 QUESTIONS. NUMBER ONE, DID YOU HEAR A COMMENT
13 ABOUT ANY CONCERN THAT MR. MCCRAVY MAY HAVE MADE
14 ABOUT THE CASE?

15 THE JUROR: YES, SIR, I DID.

16 THE COURT: AND DID YOU -- COULD YOU TELL ME
17 WHAT YOU HEARD?

18 THE JUROR: YES, SIR. HE CAME IN THIS
19 MORNING AND SAID THAT HE HAD SOME CONCERNS
20 REGARDING BEING ABLE TO MAKE AN OPINION EITHER WAY
21 BASED ON TESTIMONY FROM DOCTORS FROM THE DEFENSE
22 AND THE PROSECUTION.

23 THE COURT: ANYTHING MORE THAN THAT?

24 THE JUROR: NO, SIR. I STOPPED HIM AT THAT
25 TIME AND TOLD HIM THAT WE WERE NOT SUPPOSED TO BE

1 DISCUSSING THE CASE.

2 THE COURT: ALL RIGHT.

3 THE JUROR: BECAUSE HE SAID -- AS SOON AS HE
4 WAS SAYING THAT, HE SAID THAT HE HAD WRITTEN A
5 LETTER THAT HE HAD SENT TO YOU.

6 THE COURT: ALL RIGHT. MA'AM, THE FACT THAT
7 YOU HEARD THAT COMMENT, WOULD THAT AFFECT YOUR
8 ABILITY TO CONTINUE AS A JUROR AND TO FAIRLY AND
9 IMPARTIALLY TRY THIS CASE AT THIS POINT?

10 THE JUROR: NO, SIR, IT WOULD NOT.

11 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
12 THE STATE?

13 MS. CAMPBELL: NO, SIR.

14 THE COURT: FROM THE DEFENSE?

15 MR. STRICKLER: MAY I APPROACH, YOUR HONOR?

16 THE COURT: SURE.

17 (WHEREUPON, THERE WAS A BENCH
18 CONFERENCE.)

19 THE COURT: I SAID THERE WERE THREE
20 QUESTIONS, BUT I HAVE FOUR QUESTIONS.

21 THE JUROR: THAT'S OKAY.

22 THE COURT: WAS THERE ANY -- TO YOUR
23 KNOWLEDGE, WAS THERE ANY FURTHER DISCUSSION
24 AMONGST THE JURORS ABOUT THAT?

25 THE JUROR: NO, SIR, THERE WAS NOT. I DO

1 WANT TO ADD ONE MORE THING THAT WAS NOT ASKED OF
2 ME. I CAN'T REMEMBER -- WHAT WAS HIS NAME?

3 THE COURT: MCCRAVY.

4 THE JUROR: HE ALSO HAD A ONE SHEET PIECE OF
5 PAPER THAT HE BROUGHT IN AND HANDED IT TO ME. IT
6 WAS SOMETHING HE HAD PULLED OFF OF THE INTERNET
7 REGARDING THE CHARGES IN THE CASE. IMMEDIATELY
8 WHEN I SAW WHAT IT WAS, I FOLDED IT IN HALF, GAVE
9 IT TO HIM AND TOLD HIM THAT THAT WAS IMPROPER
10 CONDUCT, AND I INSTRUCTED THE REST OF THE JURY
11 THAT THEY WERE NOT TO LOOK AT THAT. WE WERE NOT
12 TO DISCUSS THAT AND THAT NOBODY WAS TO BRING
13 THINGS LIKE THAT IN.

14 THE COURT: OKAY. MR. BAILIFF, WE NEED TO --
15 DO YOU STILL WANT TO SEGREGATE THEM?

16 EITHER PUT MADAM FOREPERSON IN A DIFFERENT
17 JURY ROOM UNTIL WE GET THROUGH AND THEN WE'LL
18 BRING THEM IN, JUST TAKE YOUR PICK.

19 THANK YOU.

20 THE WITNESS: ANYTHING ELSE?

21 (WHEREUPON, THE JUROR LEFT THE
22 COURTROOM.)

23 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
24 INTO THE COURTROOM.)

25 THE COURT: MS. ANDREWS, IF YOU'LL COME RIGHT

1 DOWN HERE AND LET THE CLERK SWEAR YOU IN. WE'RE
2 NOT GOING TO BITE YOU.

3 THE CLERK: PLACE YOUR LEFT HAND ON THE
4 BIBLE, RAISE YOUR RIGHT HAND.

5 RUTHI ANDREWS,

6 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: HAVE A SEAT IN THE WITNESS BOX,
8 MA'AM.

9 THE COURT: MA'AM, I'M ESSENTIALLY GOING TO
10 ASK YOU FOUR QUESTIONS, NUMBER ONE, DID YOU HEAR
11 ANY COMMENT MADE BY MR. MCCRAVY ABOUT HIS FEELINGS
12 IN THE CASE?

13 THE JUROR: YES, I SURE DID.

14 THE COURT: AND COULD YOU TELL ME WHAT YOU
15 HEARD?

16 THE JUROR: HE WAS TALKING ABOUT THE DOCTORS,
17 ABOUT THAT HE COULDN'T IN HIS -- THAT HE'S NOT
18 EDUCATED ENOUGH TO MAKE A DECISION ABOUT WHICH
19 DOCTOR WAS RIGHT.

20 THE COURT: WAS THERE ANY FURTHER DISCUSSION
21 AMONG THE JURORS AFTER THAT?

22 THE JUROR: NO. I EVEN PUT MY FINGERS IN MY
23 EARS AND WAS SAYING, "NO, NO, NO. WE NEED TO PUT
24 A SOCK IN HIS MOUTH."

25 THE COURT: MA'AM, THE FACT THAT YOU WERE

1 EXPOSED TO THAT COMMENT BY MR. MCCRAVY, WOULD THAT
2 AFFECT YOUR ABILITY TO LISTEN TO ALL THE EVIDENCE
3 AND FAIRLY AND IMPARTIALLY TRY THE CASE?

4 THE JUROR: WOULD IT WHAT?

5 THE COURT: WOULD IT AFFECT YOUR ABILITY TO
6 BE FAIR AND IMPARTIAL? IN OTHER WORDS, WHEN HE
7 SAID THAT, DID THAT AFFECT --

8 THE JUROR: OH, NO, SIR.

9 THE COURT: IN OTHER WORDS, IT DOESN'T AFFECT
10 YOU?

11 THE JUROR: NO, SIR.

12 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
13 THE STATE?

14 MS. CAMPBELL: NO.

15 THE COURT: FROM THE DEFENSE?

16 MR. STRICKLER: NO, YOUR HONOR.

17 THE COURT: MA'AM, WE'RE ACTUALLY SEPARATING
18 YOU ALL OUT, SO WE'LL PUT YOU BACK WITH THE
19 FOREPERSON AND CONTINUE ON.

20 THE JUROR: ALL RIGHT.

21 THE COURT: THANK YOU, MA'AM.

22 MR. BAILIFF, IF YOU'LL TELL ME THE NAME OF
23 THE NEXT ONE AS YOU BRING THEM IN.

24 (WHEREUPON, THE JUROR LEFT THE
25 COURTROOM.)

1 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
2 INTO THE COURTROOM.)

3 THE BAILIFF: THIS IS PATRICIA RANDOLPH, YOUR
4 HONOR.

5 THE COURT: MS. RANDOLPH, IF YOU'LL COME DOWN
6 AND PLEASE LET THE CLERK SWEAR YOU IN.

7 THE JUROR: ALL RIGHT.

8 THE CLERK: PLACE YOUR LEFT HAND ON THE
9 BIBLE, RAISE YOUR RIGHT HAND.

10 PATRICIA RANDOLPH,

11 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE CLERK: HAVE A SEAT IN THE WITNESS BOX,
13 PLEASE, MA'AM.

14 THE COURT: MS. RANDOLPH, I'M GOING TO ASK
15 YOU FOUR QUESTIONS, PRETTY STRAIGHT FORWARD
16 QUESTIONS. NUMBER ONE, DID YOU HEAR ANY OF THE
17 COMMENTS THAT MR. MCCRAVY MADE TO THE JURY THIS
18 MORNING?

19 THE JURY: TO THE JURY?

20 THE COURT: YES, OR ABOUT HIS SERVICE AS A
21 JUROR.

22 THE JUROR: IN THE JURY ROOM?

23 THE COURT: YES.

24 THE JUROR: YES.

25 THE COURT: ALL RIGHT. COULD YOU TELL ME

1 WHAT YOU HEARD?

2 THE JUROR: HE BASICALLY SAID THAT HE WAS
3 HAVING A PROBLEM DECIDING WHICH DOCTOR TO BELIEVE,
4 SO TO SPEAK.

5 THE COURT: ALL RIGHT. AFTER YOU HEARD THOSE
6 TYPES OF COMMENTS, WAS THERE ANY FURTHER
7 DISCUSSION AMONGST THE JURORS ABOUT THAT?

8 THE JUROR: I PRETTY MUCH TOLD HIM TO JUST
9 HUSH.

10 THE COURT: OKAY. I'M GLAD YOU DID. WELL,
11 LET ME ASK YOU THIS, COULD --

12 THE JUROR: IT DIDN'T INFLUENCE MY OPINION.

13 THE COURT: IT DID NOT?

14 THE JUROR: NO.

15 THE COURT: SO YOU COULD BE FAIR AND
16 IMPARTIAL?

17 THE JUROR: IF THAT'S WHAT YOU'RE GETTING AT,
18 YOU KNOW.

19 THE COURT: THAT'S WHAT I'M GETTING AT, YES.

20 THE JUROR: NO, IT DIDN'T AFFECT MY OPINION.

21 THE COURT: THANK YOU, MA'AM.

22 THE JUROR: OKAY.

23 THE COURT: WE'LL PUT YOU BACK IN ANOTHER
24 JURY ROOM FOR THE TIME BEING.

25 THE JUROR: OKAY.

1 (WHEREUPON, THE JUROR LEFT THE
2 COURTROOM.)

3 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
4 INTO THE COURTROOM.)

5 THE BAILIFF: THIS IS ARTHUR BROWN, YOUR
6 HONOR.

7 THE CLERK: MR. BROWN, IF YOU CAN COME DOWN
8 HERE AND LET THE CLERK SWEAR YOU IN PLEASE, SIR.

9 ARTHUR BROWN, JR.,

10 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: HAVE A SEAT IN THE WITNESS BOX.

12 THE BAILIFF: WATCH YOUR STEP AND SPEAK INTO
13 THE MICROPHONE.

14 THE COURT: MR. BROWN, I'M GOING TO ASK YOU
15 FOUR QUESTIONS AND THEY'RE PRETTY STRAIGHT
16 FORWARD. WERE YOU EXPOSED TO ANY COMMENTS MADE BY
17 MR. MCCRAVY ABOUT HIS FEELINGS ABOUT THE CASE?

18 THE JUROR: YES.

19 THE COURT: ALL RIGHT. COULD YOU TELL ME
20 WHAT YOU HEARD?

21 THE JUROR: I JUST HEARD HIM SAY THAT HE
22 SUBMITTED A LETTER TO THE JUDGE, AND THE NATURE OF
23 IT WAS THAT HE COULDN'T DISTINGUISH BETWEEN THE
24 DOCTORS.

25 THE COURT: ALL RIGHT. AFTER THAT WAS THERE

1 ANY FURTHER DISCUSSION AMONGST JURORS ABOUT THAT?

2 THE JUROR: NO.

3 THE COURT: SIR, HAVING HEARD THAT, WOULD
4 THAT AFFECT YOUR ABILITY TO LISTEN TO THE EVIDENCE
5 AND TO FAIRLY AND IMPARTIALLY DELIBERATE AND
6 DECIDE THIS CASE?

7 THE JUROR: NO.

8 THE COURT: YOU COULD BE FAIR AND IMPARTIAL?

9 THE JUROR: YES.

10 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
11 THE STATE?

12 MS. CAMPBELL: NO, SIR.

13 THE COURT: FROM THE DEFENSE?

14 MR. STRICKLER: NO, SIR.

15 THE COURT: THEY'RE GOING TO PUT YOU WITH THE
16 FIRST THREE JURORS THAT I'VE ALREADY INTERVIEWED,
17 OKAY?

18 THE JUROR: OKAY.

19 (WHEREUPON, THE JUROR LEFT THE
20 COURTROOM.)

21 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
22 INTO THE COURTROOM.)

23 THE BAILIFF: THIS IS WANDA HAYNES, YOUR
24 HONOR.

25 THE COURT: IF YOU'LL PLEASE COME DOWN AND

1 LET THE CLERK SWEAR YOU IN FIRST.

2 THE CLERK: PLACE YOUR LEFT HAND ON THE
3 BIBLE, RAISE YOUR RIGHT HAND.

4 WANDA HAYNES,

5 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE COURT: MS. HAYNES, I'M GOING TO ASK YOU
7 FOUR QUESTIONS. THEY'RE PRETTY STRAIGHT FORWARD.
8 WE'RE AWARE THAT MR. MCCRAVY MADE SOME COMMENTS IN
9 THE JURY ROOM TODAY. DID YOU HEAR THOSE?

10 THE JUROR: YES.

11 THE COURT: COULD YOU TELL ME WHAT YOU HEARD?

12 THE WITNESS: HE WAS SAYING THAT HE DIDN'T
13 FEEL HE WAS QUALIFIED TO STILL BE A JUROR,
14 SAYING -- HE DIDN'T FEEL LIKE HE WAS QUALIFIED TO
15 SAY WHICH DOCTOR WAS RIGHT VERSUS THE OTHER
16 DOCTOR.

17 THE COURT: ALL RIGHT. MA'AM, WAS THERE ANY
18 FURTHER DISCUSSION AMONGST THE JURORS AFTER HE
19 MADE THOSE COMMENTS?

20 THE JUROR: NO. WE JUST KIND OF WANTED HIM
21 TO BE QUIET. ONE OF US TOLD HIM TO GO BACK TO HIS
22 CROSSWORD PUZZLE.

23 THE COURT: OKAY. MA'AM, HAVING BEEN EXPOSED
24 TO THAT COMMENT, WOULD THAT AFFECT YOUR ABILITY TO
25 DECIDE THIS CASE FAIRLY AND IMPARTIALLY?

1 THE JUROR: NO, IT WOULDN'T.

2 THE COURT: YOU CAN STILL CONTINUE IN YOUR
3 DUTIES?

4 THE JUROR: YES.

5 THE COURT: ALL RIGHT. THANK YOU.
6 ANYTHING FURTHER FROM THE STATE?

7 MS. CAMPBELL: NO, SIR.

8 THE COURT: FROM THE DEFENSE?

9 MR. STRICKLER: NO, SIR.

10 THE COURT: THANK YOU, MA'AM.

11 (WHEREUPON, THE JUROR LEFT THE
12 COURTROOM.)

13 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
14 INTO THE COURTROOM.)

15 THE BAILIFF: THIS IS SUSAN WILSON, YOUR
16 HONOR.

17 THE COURT: COME ON UP HERE, MS. WILSON, LET
18 THE CLERK SWEAR YOU IN, PLEASE.

19 THE CLERK: PLACE YOUR LEFT HAND ON THE
20 BIBLE, RAISE YOUR RIGHT HAND.

21 SUSAN WILSON,

22 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: MS. WILSON, I'M ONLY GOING TO ASK
24 YOU FOUR QUESTIONS.

25 THE JUROR: THANK YOU.

1 THE COURT: WE ARE AWARE THAT MR. MCCRAVY
2 MADE SOME COMMENTS TO THE JURY THIS MORNING. WERE
3 YOU EXPOSED TO THOSE COMMENTS?

4 THE JUROR: NO, I WASN'T.

5 THE COURT: WERE YOU LATE?

6 THE JUROR: YES. I WAS ABOUT TWO OR THREE
7 MINUTES LATE THIS MORNING.

8 THE COURT: OKAY. LET ME ASK YOU THIS, ARE
9 YOU AWARE OF ANYTHING HE SAID?

10 THE JUROR: I'M AWARE THAT HE WAS VOICING HIS
11 OPINION IS WHAT I WAS TOLD BY THE OTHERS.

12 THE COURT: DO YOU KNOW WHAT THAT OPINION
13 WAS?

14 THE JUROR: I WASN'T THERE, NO, SO I REALLY
15 DON'T. .

16 THE COURT: MA'AM, IS THERE ANYTHING THAT HAS
17 OCCURRED DURING THE TRIAL THAT WOULD AFFECT YOUR
18 ABILITY TO CONTINUE AS A FAIR AND IMPARTIAL JUROR
19 IN THE CASE?

20 THE JUROR: NO, SIR.

21 THE COURT: OKAY. SO YOU COULD CONTINUE ON
22 AND BE FAIR AND IMPARTIAL?

23 THE JUROR: YES.

24 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
25 THE STATE?

1 MS. CAMPBELL: NO, SIR.

2 THE COURT: FROM THE DEFENSE?

3 MR. STRICKLER: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

5 THEY'RE GOING TO PUT YOU BACK WITH THE FOREPERSON,
6 AND THE OTHERS THAT WE'VE ALREADY TALKED TO.

7 (WHEREUPON, THE JUROR LEFT THE
8 COURTROOM.)

9 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
10 INTO THE COURTROOM.)

11 THE BAILIFF: BILLIE MCKIE, YOUR HONOR.

12 THE COURT: IF YOU'LL COME DOWN AND LET THE
13 CLERK SWEAR YOU IN.

14 THE CLERK: PLACE YOUR LEFT HAND ON THE
15 BIBLE, RAISE YOUR RIGHT HAND.

16 BILLIE MCKIE,

17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE COURT: MS. MCKIE, I'M GOING TO ASK YOU
19 FOUR QUESTIONS AND THEY'RE PRETTY STRAIGHT
20 FORWARD. WE ARE AWARE THAT MR. MCCRAVY MADE SOME
21 COMMENTS IN THE JURY ROOM THIS MORNING. WERE YOU
22 EXPOSED TO THOSE COMMENTS?

23 THE JUROR: NO, SIR.

24 THE COURT: YOU DIDN'T HEAR WHAT HE SAID?

25 THE JUROR: NO, SIR. I WAS RUNNING A BIT

1 LATE. I DIDN'T HEAR HIM.

2 THE COURT: BEING LATE HAS ITS ADVANTAGES.

3 THE JUROR: IT DOES, AT LEAST TODAY.

4 THE COURT: SO YOU DON'T KNOW ANYTHING AT ALL

5 ABOUT WHAT'S GOING ON?

6 THE JUROR: NO, SIR.

7 THE COURT: ALL RIGHT. SO IS THERE

8 ANYTHING -- NOW YOU'D BE ELEVATED TO THE STATUS OF

9 A REGULAR JUROR, AND NO LONGER THE ALTERNATE. MY

10 QUESTION TO YOU IS COULD YOU CONTINUE TO SERVE AS

11 A JUROR IN A FAIR AND IMPARTIAL MANNER?

12 THE JUROR: YES, SIR.

13 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM

14 THE STATE?

15 MS. CAMPBELL: NO, SIR.

16 THE COURT: FROM THE DEFENSE?

17 MR. STRICKLER: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

19 THEY'LL PUT YOU WITH THE JURORS WE'VE ALREADY

20 TALKED TO.

21 THE JUROR: OKAY.

22 (WHEREUPON, THE JUROR LEFT THE

23 COURTROOM.)

24 (WHEREUPON, THE NEXT JUROR WAS BROUGHT

25 INTO THE COURTROOM.)

1 THE BAILIFF: CHRISTOPHER BARKER, YOUR HONOR.

2 THE COURT: MR. BARKER, IF YOU'D COME DOWN
3 AND BE SWORN BY THE CLERK, PLEASE.

4 THE CLERK: PLACE YOUR LEFT HAND ON THE
5 BIBLE, RAISE YOUR RIGHT HAND.

6 CHRISTOPHER BARKER,

7 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE COURT: SIR, I'M GOING TO ASK YOU FOUR
9 QUESTIONS. WE ARE AWARE THAT MR. MCCRAVY MADE
10 SOME COMMENTS AS HE ENTERED THE JURY ROOM TODAY.
11 WERE YOU EXPOSED TO THOSE?

12 THE JUROR: YES, I WAS.

13 THE COURT: COULD YOU TELL ME WHAT YOU HEARD?

14 THE JUROR: WELL, HE MENTIONED THAT HE HAD
15 WRITTEN YOU A LETTER EXPLAINING HIS DIFFICULTIES
16 WITH THE CASE.

17 THE COURT: WERE THERE ANY FURTHER
18 DISCUSSIONS BY ANY OF THE JURORS AFTER THAT --
19 AFTER THE FOREPERSON TOLD HIM TO STOP?

20 THE JUROR: NO, THERE WAS NOT.

21 THE COURT: WOULD WHAT YOU HEARD AFFECT YOUR
22 ABILITY TO CONTINUE IN YOUR DUTY AS A FAIR AND
23 IMPARTIAL JUROR IN THIS CASE?

24 THE JUROR: NO, NOT AT ALL.

25 THE COURT: ANYTHING FURTHER FROM THE STATE?

1 MS. CAMPBELL: NO, SIR.

2 THE COURT: FROM THE DEFENSE?

3 MR. STRICKLER: NO, SIR.

4 THE COURT: THANK YOU, SIR. THEY'LL PUT YOU
5 IN WITH THE JURORS THAT WE'VE ALREADY TALKED TO.

6 (WHEREUPON, THE JUROR LEFT THE
7 COURTROOM.)

8 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
9 INTO THE COURTROOM.)

10 THE BAILIFF: THIS IS JANICE ABLE, YOUR
11 HONOR.

12 THE COURT: MA'AM, IF YOU'D COME RIGHT DOWN
13 HERE AND LET THE CLERK SWEAR YOU IN, PLEASE.

14 THE CLERK: PLACE YOUR LEFT HAND ON THE
15 BIBLE, RAISE YOUR RIGHT HAND.

16 JANICE ABEL,

17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE COURT: HAVE A SEAT IN THE WITNESS BOX.

19 MS. ABLE, I'M GOING TO ASK YOU BASICALLY FOUR
20 QUESTIONS. WE ARE AWARE THAT MR. MCCRAVY MADE
21 SOME COMMENTS IN THE JURY ROOM THIS MORNING. WERE
22 YOU EXPOSED TO THOSE COMMENTS?

23 THE JUROR: I HEARD THEM, YES.

24 THE COURT: OKAY. COULD YOU TELL ME WHAT YOU
25 HEARD?

1 THE JUROR: HE WAS VOICING HIS OPINIONS ABOUT
2 THE DOCTORS.

3 THE COURT: AND AFTER THAT -- WE UNDERSTAND
4 THE FOREPERSON TOLD HIM THAT HE COULD NOT SAY
5 THOSE KIND OF THINGS. WAS THERE ANY FURTHER
6 DISCUSSION BY ANY JURORS AFTER THE FACT ABOUT
7 THAT?

8 THE JUROR: MOST OF THE REST OF THEM JUST
9 KEPT SAYING, SHHHHH, YOU KNOW, WE'RE NOT SUPPOSED
10 TO TALK ABOUT THE CASE AT ALL.

11 THE COURT: WOULD WHAT YOU HEARD AFFECT YOUR
12 ABILITY TO CONTINUE AS A FAIR AND IMPARTIAL JUROR?
13 WOULD IT HAVE ANY AFFECT ON YOU IN ANY WAY?

14 THE JUROR: NO, SIR.

15 THE COURT: SO THEN YOU COULD BE FAIR AND
16 IMPARTIAL?

17 THE JUROR: YES, SIR.

18 THE COURT: ANYTHING FURTHER FROM THE STATE?

19 MS. CAMPBELL: NO, SIR.

20 THE COURT: ANYTHING FROM THE DEFENSE?

21 MR. STRICKLER: NO, SIR.

22 THE COURT: THANK YOU, MA'AM. THEY'LL PUT
23 YOU WITH THE JURORS WE'VE ALREADY INTERVIEWED.

24 (WHEREUPON, THE JUROR LEFT THE
25 COURTROOM.)

1 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
2 INTO THE COURTROOM.)

3 THE BAILIFF: THIS IS JEFF DIETRICH, YOUR
4 HONOR.

5 THE COURT: MR. DIETRICH, IF YOU'LL STEP
6 RIGHT HERE WHERE THE CLERK CAN SWEAR YOU IN
7 PLEASE, SIR.

8 THE CLERK: PLACE YOUR LEFT HAND ON THE
9 BIBLE, RAISE YOUR RIGHT HAND.

10 JEFF DIETRICH,

11 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE COURT: HAVE A SEAT IN THE WITNESS BOX.

13 MR. DIETRICH, I'LL ASK YOU BASICALLY FOUR
14 QUESTIONS. WE'RE AWARE THAT MR. MCCRAVY MADE SOME
15 COMMENTS IN THE JURY ROOM THIS MORNING. WERE YOU
16 EXPOSED TO THOSE COMMENTS, SIR?

17 THE JUROR: I WAS IN THE ROOM, BUT I WAS
18 DOING A CROSSWORD PUZZLE AND I WASN'T REALLY
19 PAYING ATTENTION TO MY SURROUNDINGS.

20 THE COURT: SO YOU DIDN'T REALLY HEAR
21 ANYTHING THAT WAS SAID?

22 THE JUROR: NO, SIR.

23 THE COURT: ARE YOU AWARE OF ANY FURTHER
24 DISCUSSIONS AMONG THE JURORS AFTER THE FOREPERSON
25 TOLD HIM TO BE QUIET?

1 THE JUROR: THE ONLY THING I KNEW IS WHEN HE
2 CAME BACK IN, HE SAID, I'M OUT OF HERE.

3 THE COURT: I'M GETTING READY TO HOLD HIM IN
4 CONTEMPT FOR THAT.

5 IS THERE ANYTHING THAT'S OCCURRED IN THE
6 TRIAL THAT WOULD AFFECT YOUR DUTY -- YOUR
7 CONTINUING DUTY TO ACT AS A FAIR AND IMPARTIAL
8 JUROR?

9 THE JUROR: NO, SIR.

10 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
11 THE STATE?

12 MS. CAMPBELL: NO, SIR.

13 THE COURT: FROM THE DEFENSE?

14 MR. STRICKLER: NO, YOUR HONOR.

15 THE COURT: THANK YOU, SIR. THEY'LL PUT YOU
16 WITH THE JURORS WHO WE'VE ALREADY INTERVIEWED.

17 (WHEREUPON, THE JUROR LEFT THE
18 COURTROOM.)

19 THE COURT: MR. GASSER, THE QUESTION IS
20 WHETHER YOU WANT -- EITHER I'LL CITE HIM AND LET
21 YOU SERVE HIM OR I'LL DO IT STRAIGHT UP; IT'S
22 THREE VIOLATIONS, HE SEARCHED THE INTERNET, WHEN
23 HE WENT IN THERE TO GET HIS STUFF, HE CLEARLY
24 VIOLATED HIS OATH BY TALKING, AS A JUROR. I DON'T
25 THINK HE CAN MAKE A DECISION. THINK ABOUT IT.

1 MR. GASSER: OKAY.

2 (WHEREUPON, THE NEXT JUROR WAS BROUGHT
3 INTO THE COURTROOM.)

4 THE BAILIFF: THIS IS ERIN GRADDICK, YOUR
5 HONOR.

6 THE COURT: MA'AM, COME RIGHT DOWN AND LET
7 THE CLERK SWEAR YOU IN, PLEASE.

8 THE CLERK: PLACE YOUR LEFT HAND ON THE
9 BIBLE, RAISE YOUR RIGHT HAND.

10 ERIN GRADDICK,

11 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE CLERK: HAVE A SEAT IN THE WITNESS BOX.

13 THE COURT: I'M GOING TO ASK YOU ESSENTIALLY
14 FOUR QUESTIONS. WE ARE AWARE THAT MR. MCCRAVY
15 MADE SOME COMMENTS IN THE JURY ROOM TODAY.

16 THE JUROR: YES.

17 THE COURT: WERE YOU EXPOSED TO THOSE
18 COMMENTS?

19 THE JUROR: YES, SIR.

20 THE COURT: COULD YOU TELL ME WHAT YOU HEARD?

21 THE JUROR: BASICALLY HE WAS SAYING THAT HE
22 COULDN'T MAKE A DECISION ON THE CASE BECAUSE HE
23 DIDN'T KNOW WHICH DOCTOR WAS MORE QUALIFIED,
24 THAT'S BASICALLY IT.

25 THE COURT: CORRECT, ME IF I'M WRONG. I

1 UNDERSTOOD THE FOREPERSON TOLD HIM TO STOP; IS
2 THAT RIGHT?

3 THE JUROR: RIGHT, UH-HUH.

4 THE COURT: AFTER THAT WAS THERE ANY FURTHER
5 DISCUSSION AMONGST THE JURORS ABOUT THAT?

6 THE JUROR: NO. BASICALLY IT WAS JUST ALL OF
7 US TELLING HIM HE NEEDED TO BE QUIET, WE DIDN'T
8 WANT TO HEAR IT.

9 THE COURT: IS THIS ANYTHING ABOUT THAT
10 COMMENT OR ANYTHING THAT'S OCCURRED DURING THE
11 TRIAL THAT WOULD AFFECT YOUR ABILITY TO CONTINUE
12 AS A FAIR AND IMPARTIAL JUROR?

13 THE JUROR: NO, SIR.

14 THE COURT: THANK YOU. ANYTHING FURTHER FROM
15 THE STATE?

16 MS. CAMPBELL: NO, YOUR HONOR.

17 THE COURT: FROM THE DEFENSE?

18 MR. STRICKLER: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. HE'LL TAKE YOU BACK
20 AROUND TO THE OTHER JURORS THAT WE'VE ALREADY
21 TALKED TO.

22 THE JUROR: OKAY.

23 (WHEREUPON, THE JUROR LEFT THE
24 COURTROOM.)

25 (WHEREUPON, THE NEXT JUROR WAS BROUGHT

1 INTO THE COURTROOM.)

2 THE BAILIFF: THIS IS WILLIAM DILLARD, YOUR
3 HONOR.

4 THE COURT: SIR, IF YOU COULD COME DOWN AND
5 PLEASE LET THE CLERK SWEAR YOU IN.

6 THE CLERK: PLACE YOUR LEFT HAND ON THE
7 BIBLE, RAISE YOUR RIGHT HAND.

8 WILLIAM DILLARD,

9 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: HAVE A SEAT IN THE WITNESS BOX.

11 THE BAILIFF: WATCH YOUR STEP FOR ME, PLEASE,
12 AND SPEAK INTO THE MICROPHONE.

13 THE COURT: I'M GOING TO ASK YOU ESSENTIALLY
14 FOUR QUESTIONS. WE'RE AWARE THAT MR. MCCRAVY MADE
15 SOME COMMENTS IN THE PRESENCE OF THE JURY TODAY.
16 WERE YOU A EXPOSED TO THOSE COMMENTS?

17 THE JUROR: I HEARD HIM SAY SOMETHING ABOUT
18 HE DIDN'T KNOW WHICH DOCTOR TO BELIEVE. THAT'S
19 ABOUT IT.

20 THE COURT: AFTER THE FOREPERSON TOLD HIM TO
21 HUSH OR BE QUIET, WAS THERE ANY FURTHER DISCUSSION
22 AMONGST THE JURORS ABOUT IT?

23 THE JUROR: NO, SIR.

24 THE COURT: SIR, HAVING BEEN EXPOSED TO THAT
25 COMMENT, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR

1 AND IMPARTIAL?

2 THE JUROR: NO, SIR, NOT AT ALL.

3 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM
4 THE STATE?

5 MS. CAMPBELL: NO, SIR.

6 THE COURT: FROM THE DEFENSE?

7 MR. STRICKLER: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT. THANK YOU, SIR.
9 WE'LL PUT YOU IN WITH THE OTHER JURORS WE'VE
10 INTERVIEWED.

11 THE BAILIFF: I BELIEVE THAT'S ALL OF THEM,
12 YOUR HONOR.

13 THE COURT: OKAY. ARE YOU SATISFIED?

14 MS. CAMPBELL: YES.

15 THE COURT: ALL RIGHT. ANY FURTHER ARGUMENT
16 FROM THE STATE ON THE ISSUE OF WHETHER THE TRIAL
17 SHOULD CONTINUE?

18 MS. CAMPBELL: NO, SIR.

19 THE COURT: FROM THE DEFENSE?

20 MR. STRICKLER: YOUR HONOR, WITH ALL DUE
21 RESPECT THE DEFENSE MOVES FOR A MISTRIAL IN THIS
22 MATTER. THERE CLEARLY HAS BEEN JURY POLLUTION. I
23 UNDERSTAND WHAT YOUR HONOR HAD TO SAY REGARDING
24 THE NECESSITY OF PREJUDICE IN THIS CASE, BUT WE
25 WOULD TAKE THE POSITION THAT THE JURY HAS BEEN

1 POLLUTED. STATEMENTS HAVE BEEN MADE, OPINIONS
2 HAVE BEEN VOICED PRIOR TO THE BEGINNING OF
3 DELIBERATION. I SAT HERE AND HEARD THE STATEMENTS
4 ON THE PART OF THE JURORS.

5 THOSE JURORS UNDOUBTEDLY FEEL, I WOULD
6 SUBMIT, THAT THERE'S TROUBLE AND THEY UNDOUBTEDLY
7 FEEL THAT THEY HAVE TO ANSWER THE QUESTIONS
8 CORRECTLY AND CONTINUE WITH THEIR SERVICE. I'LL
9 BE THE FIRST TO APPLAUD THEM FOR THAT.

10 HOWEVER, I THINK IN THIS CASE THAT WE JUST
11 CAN'T RELY ON THAT, THAT THIS JURY HAS BEEN
12 POLLUTED BY THE COMMENTS ON THE PART OF ONE OF
13 THEIR MEMBERS AND THAT THE ONLY APPROPRIATE ACTION
14 TAKEN IN THIS PARTICULAR CASE IS TO DECLARE A
15 MISTRIAL.

16 THE COURT: ALL RIGHT. I HAVE, PURSUANT TO
17 STATE VS. JOYNER, CONDUCTED AN INDIVIDUAL VOIR
18 DIRE OF EACH ONE OF THE JURORS UNDER OATH. THEY
19 WERE ASKED THE QUESTIONS THAT BOTH THE STATE AND
20 THE DEFENSE PROFFERED, PROPOSED SHOULD BE ASKED OF
21 THE INDIVIDUAL JURORS.

22 I WAS VERY IMPRESSED WITH THE STRENGTH OF THE
23 ANSWERS OF EVERY ONE OF THE JURORS, PARTICULARLY
24 THE FOREPERSON AND HER UNDERSTANDING OF HER ROLE
25 TO MAKE SURE NOBODY TALKED ABOUT THE CASE.

1 AS I UNDERSTAND THE PREJUDICE PRONG UNDER
2 JURY MISCONDUCT, THAT'S A PRETTY STIFF BURDEN FOR
3 THE DEFENSE TO OVERCOME. IN THIS RECORD I'M
4 SATISFIED YOU GOT 12 FAIR AND IMPARTIAL JURORS TO
5 CONTINUE IN THE DELIBERATIONS, SO I WOULD DECLINE
6 TO GRANT A MISTRIAL, NOR WOULD I ORDER A NEW TRIAL
7 IN THE CASE.

8 MR. STRICKLER: THANK YOU, SIR.

9 THE COURT: CAN YOU GET MR. GASSER BACK?

10 MS. CAMPBELL: I'LL BE RIGHT BACK.

11 (PAUSE)

12 THE COURT: I THINK IT'S TIME TO SEND A
13 MESSAGE.

14 MR. GASSER: OKAY.

15 THE COURT: SO WHAT I PROPOSE TO DO IS BRING
16 MR. MCCRAVY BACK IN HERE. I'M GOING TO PUT HIM ON
17 NOTICE THAT HE'S BEING CITED FOR CONTEMPT. WHEN
18 DO YOU WANT TO HEAR IT?

19 (WHEREUPON, THERE WAS A BENCH
20 CONFERENCE.)

21 THE COURT: ALL RIGHT, MR. BAILIFF, BRING
22 MR. MCCRAVY IN HERE, PLEASE, RIGHT THERE IN THE
23 FRONT.

24 THE BAILIFF: ALL RIGHT, SIR.

25 THE COURT: MR. MUELLER, WHERE'S MR. MCCRAVY?

1 THE BAILIFF: I TOOK HIM DOWN TO KIM HARPER.

2 THE COURT: ALL RIGHT. BRING HIM BACK UP
3 HERE.

4 (PAUSE)

5 THE BAILIFF: DO YOU WANT HIM UP FRONT?

6 THE COURT: YES, SIR. I WANT HIM RIGHT DOWN
7 HERE.

8 THE BAILIFF: AT THE MICROPHONE?

9 THE COURT: YES, SIR.

10 MR. MCCRAVY, I'M GOING TO GIVE YOU NOTICE --
11 STAND RIGHT THERE.

12 THE JUROR: OKAY.

13 THE COURT: I'M GOING TO GIVE YOU NOTICE THAT
14 I WANT YOU BACK HERE NEXT WEDNESDAY AT 9:30. YOU
15 MAY APPLY TO THE CLERK OF THE COURT FOR AN
16 ATTORNEY.

17 I'M INTENDING TO CITE YOU FOR CONTEMPT FOR
18 THE FOLLOWING GROUNDS, NUMBER ONE, YOU VIOLATED MY
19 INSTRUCTION NOT TO HAVE ANY OUTSIDE INFLUENCE.
20 WE'RE AWARE FROM CONDUCT OR INTERVIEWS FROM THE
21 JURORS THAT YOU GOT SOME INFORMATION OFF THE
22 INTERNET IN CONTRAVENTION OF ANY INSTRUCTION. I
23 TOLD YOU LAST NIGHT THAT NO OUTSIDE -- NO OUTSIDE
24 STUFF.

25 THE WITNESS: THIS IS JUST -- IT'S NOT

1 INTERNET. IT'S NOT ANYTHING EXCEPT THE NEWSPAPER.
2 IN OTHER WORDS, I --

3 THE COURT: THAT'S FINE. THAT'S STILL
4 CONTRARY TO MY INSTRUCTIONS.

5 THE SECOND THING YOU'RE BEING CITED FOR IS
6 VIOLATING THE INSTRUCTION FOR PREMATURE
7 DELIBERATIONS. YOU WERE TOLD OVER AND OVER AGAIN
8 NOT TO TALK ABOUT THIS CASE AMONG YOURSELVES.

9 AND NUMBER THREE, WHEN YOU WERE RELEASED, YOU
10 WALKED IN THERE AND YOU SAID TO THE JURY, I'M IN,
11 YOU'RE OUT.

12 YOU BE HERE AT 9:30 NEXT WEDNESDAY MORNING
13 FACING A CONTEMPT CITATION WHEREIN YOU COULD BE
14 SENTENCED UP TO SIX MONTHS AND FINED UP TO \$500.
15 IF YOU CANNOT AFFORD AN ATTORNEY, YOU GO TO THE
16 CLERK'S OFFICE AND MS. HARPER WILL BE GLAD TO
17 ASSIST YOU. OTHERWISE YOU COME WITH A LAWYER OR
18 YOU COME WITHOUT A LAWYER AT 9:30 NEXT WEDNESDAY
19 TO FACE THOSE THREE ALLEGATIONS. DO YOU
20 UNDERSTAND THAT?

21 THE JUROR: I DON'T UNDERSTAND WHY.

22 THE COURT: I'M TELLING YOU, YOU HAVE
23 VIOLATED -- I'M TELLING YOU THAT YOU'RE FACING A
24 CONTEMPT OF COURT CHARGE FOR VIOLATING MY
25 INSTRUCTIONS THROUGHOUT THIS TRIAL.

1 IT'S ALL RIGHT FOR YOU TO WRITE ME A LETTER,
2 BUT IT'S NOT ALL RIGHT FOR YOU TO TALK TO THE
3 JURY, SO YOU BE HERE AT 9:30 NEXT WEDNESDAY
4 MORNING.

5 (WHEREUPON, HIS HONOR LEFT THE COURTROOM
6 AT HIS CLERK'S REQUEST.)

7 (PAUSE)

8 THE COURT: JUST HANG ON A MINUTE.

9 (PAUSE)

10 THE COURT: ALL RIGHT. BRING THE JURY IN.

11 THE BAILIFF: I'LL BE GLAD TO, YOUR HONOR.

12 (WHEREUPON, THE JURY CAME INTO OPEN
13 COURT AT APPROXIMATELY 10:06.)

14 THE BAILIFF: THE JURY'S ALL PRESENT, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. MADAM FOREPERSON,
17 LADIES AND GENTLEMEN OF THE JURY, FIRST OF ALL LET
18 ME APOLOGIZE TO YOU FOR THAT INCONVENIENCE, BUT BY
19 NECESSITY, THE LAW REQUIRES THAT.

20 SECONDLY, I APPRECIATE YOUR CANDID REMARKS
21 AND RESPONSES THAT YOU GAVE, AND MADAM FOREPERSON,
22 PARTICULARLY FOR CARRYING OUT THE RESPONSIBILITY
23 OF CEASING ANY DISCUSSION.

24 I WOULD ALSO REMIND YOU OF THE THREE THINGS
25 THAT I TOLD YOU AT THE OUTSET OF THE TRIAL. FIRST

1 OF ALL, THERE SHOULD NOT BE ANY PREMATURE
2 DISCUSSIONS BY YOU THROUGHOUT THE TRIAL UNTIL YOU
3 ARE AUTHORIZED BY ME TO DO THAT, WHICH WILL BE
4 SOME TIME LATER TODAY I'M SURE.

5 SECONDLY, OBVIOUSLY THERE SHOULD NOT BE ANY
6 OUTSIDE INFLUENCE. YOU'VE BEEN CHOSEN TO DECIDE
7 THE CASE BASED UPON WHAT HAS BEEN PRESENTED AND
8 WHAT YOU BELIEVE OR DON'T BELIEVE ABOUT THE
9 EVIDENCE IN THIS CASE.

10 THIRDLY, THE UNITED STATES OF AMERICA IN ALL
11 50 STATES, WE HAVE -- IN THE HISTORY OF OUR
12 COUNTRY, IT HAS BEEN PREDICATED UPON THE USE OF
13 LAY JURORS.

14 THERE IS NO EXCEPTION TO THAT. IT IS A GOOD
15 SYSTEM THAT HAS WORKED FOR WELL OVER 200 AND SOME
16 YEARS, SO IT IS THE BEDROCK FOUNDATION OF OUR
17 JUDICIAL PROCESS THAT WE HAVE WHEN THERE ARE
18 DISPUTES OF FACT.

19 LAY JURORS LIKE YOURSELF COME IN HERE AND
20 LISTEN TO THE EVIDENCE. THERE'S ALWAYS BEEN A
21 RESISTANCE IN THIS COUNTRY TO ANY SUCH CONCEPT AS
22 A PROFESSIONAL JUROR. THERE ARE LOTS OF REASONS
23 FOR THAT. THANK YOU VERY MUCH FOR YOUR RESPONSES.
24 WE ARE READY TO CONTINUE WITH THE TRIAL.

25 MADAM SOLICITOR, I THINK INVESTIGATOR JONES

1 WAS ON THE STAND.

2 THE COURT: HE'S ALREADY BEEN SWORN AND
3 SUBJECT TO CROSS-EXAMINATION.

4 MS. COGGIOLA?

5 MS. COGGIOLA: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MS. COGGIOLA:

8 Q GOOD MORNING, INVESTIGATOR JONES.

9 A GOOD MORNING.

10 Q YOU ARE, IN FACT, THE -- YOU WERE THE CHIEF
11 INVESTIGATOR ON THIS CASE; IS THAT NOT CORRECT?

12 A THAT IS CORRECT, MA'AM.

13 Q SO YOU WERE RESPONSIBLE FOR COLLECTING AND
14 REVIEWING AND MANAGING ALL THE VARIOUS RECORDS AND
15 THINGS THAT WERE INVOLVED IN THE CASE?

16 A THAT WOULD BE CORRECT.

17 Q OKAY. AND I THINK YOU SAID THAT YOUR FIRST
18 CONTACT WITH THE CASE ACTUALLY WAS WHEN YOU WERE
19 CONTACTED TO GO TO RICHLAND MEMORIAL HOSPITAL; IS
20 THAT CORRECT?

21 A I ACTUALLY RECEIVED A REPORT AT 8:30 IN THE
22 MORNING ON THE 30TH. THEN ONCE I RECEIVED THE
23 REPORT, THAT WAS MY FIRST CONTACT WHEN I MADE
24 CONTACT WITH THE HOSPITAL, CORRECT.

25 Q AND DOES THAT REPORT COME FROM THE SHERIFF'S

1 DEPARTMENT TO YOU? IS THAT HOW YOU GET ASSIGNED
2 TO THIS CASE?

3 A CORRECT, THE REPORT WAS WHEN MS. GRANT
4 NOTIFIED ONE OF OUR OFFICERS, WHICH ACTUALLY WORKS
5 IN THE D.S.S. OFFICE. HE FORWARDED THE REPORT ON
6 TO THE DESK SERGEANT. THE DESK SERGEANT THEN
7 FORWARDED IT ON TO MY SUPERVISOR WHO FORWARDED IT
8 ON TO ME.

9 Q SO TO YOUR KNOWLEDGE, WAS THERE EVER A 911
10 CALL FROM THE HOME OF THE MITCHELL'S ON THE
11 MORNING OF MARCH 28TH?

12 A NOT THAT WE COULD FIND, NO.

13 Q AND DID THE POLICE EVER GO TO THE HOME OF THE
14 MITCHELL'S ON THE MORNING OF THE 28TH?

15 A NO, MA'AM. WE WERE NOT CALLED THERE.

16 Q AND I WOULD ASSUME FROM YOUR TESTIMONY
17 YESTERDAY THAT MR. MITCHELL WAS NOT ARRESTED AT
18 THAT TIME?

19 A NO, MA'AM, HE WAS NOT.

20 Q SO THE -- IT'S NOW THE 30TH AND YOU HAVE BEEN
21 BROUGHT INTO THE CASE. PRIOR TO GOING TO THE
22 MITCHELL'S HOME, THAT IS WHEN YOU GOT A SEARCH
23 WARRANT AND AN ARREST WARRANT DRAWN UP; IS THAT
24 CORRECT?

25 A CORRECT, PRIOR TO GOING TO THEIR HOME.

1 Q OKAY. AND SO YOU HAD THEM PRIOR TO
2 INTERVIEWING THE MITCHELLS?

3 A CORRECT.

4 Q AND THEN I THINK YOU TALKED ABOUT GOING TO
5 THE HOUSE AND THE TWO OF THEM WERE HOME. WAS
6 ANYBODY ELSE IN THE HOUSE WHEN YOU WENT THERE?

7 A NO, MA'AM. THEY WERE THE ONLY TWO PRESENT.

8 Q AND IN FACT, I THINK YOU SAID YOU DIDN'T NEED
9 THE SEARCH WARRANT BECAUSE THEY CONSENTED TO
10 LETTING YOU LOOK THROUGH THE HOUSE?

11 A CORRECT. THEY SIGNED A CONSENT FORM SO WE
12 DID NOT USE THE SEARCH WARRANT, CORRECT.

13 Q AND WHEN YOU ASKED THEM TO COME DOWN TO THE
14 SHERIFF'S DEPARTMENT TO TALK TO THEM, THEY WERE
15 COOPERATIVE?

16 A YES, MA'AM, THEY WERE.

17 Q OKAY. AND I BELIEVE YOU SAID THAT SERGEANT
18 WEEKS WAS WITH YOU?

19 A CORRECT.

20 Q AND DROVE WITH MS. MITCHELL AND YOU DROVE
21 WITH --

22 A OR MR. MITCHELL DROVE WITH YOU?

23 A CORRECT.

24 Q AND DID MR. MITCHELL KNOW AT THAT TIME THAT
25 HE WAS -- THAT THERE WAS A WARRANT DRAWN IN HIS

1 NAME?

2 A NO, HE DID NOT.

3 Q SO WHEN YOU GOT TO THE SHERIFF'S DEPARTMENT,
4 THAT'S WHEN YOU CONDUCTED THE FIRST INTERVIEW WITH
5 HIM?

6 A THAT IS CORRECT, AFTER HIS ADVISEMENT OF
7 RIGHTS.

8 Q AND I THINK YOU WENT THROUGH THE STATEMENTS
9 YESTERDAY, THE FIRST ONE APPROXIMATELY AN HOUR AND
10 50 MINUTES FROM START TO FINISH. I THINK YOU
11 TESTIFIED YESTERDAY THAT SOME OF THAT WAS GETTING
12 IT TYPED UP AND THE PREPARATION OF IT; IS THAT
13 RIGHT?

14 A THAT IS CORRECT, MA'AM.

15 Q AND DO YOU HAVE VIDEOTAPE CAPABILITY AT THE
16 SHERIFF'S DEPARTMENT?

17 A FOR INTERVIEWS?

18 Q FOR INTERVIEWS, YES.

19 A NO. WE'VE NEVER VIDEOTAPED ANY INTERVIEWS OF
20 ANY SUSPECTS OR VICTIMS AS FAR AS PRACTICE GOES AT
21 THE SHERIFF'S DEPARTMENT.

22 Q IS THAT BECAUSE YOU DON'T HAVE THE CAPABILITY
23 TO DO IT OR IS THAT JUST POLICY?

24 A I DON'T KNOW AS FAR AS ANY CAPABILITY -- AS
25 FAR AS WHETHER WE EVER HAD A VIDEO CAMERA IN THE

1 DEPARTMENT?

2 Q WELL, ARE THERE ANY VIDEO CAMERAS IN THE
3 ROOMS, THE INTERVIEW ROOMS, WHERE YOU DO
4 INTERVIEWS?

5 A NO, MA'AM, THERE ARE NOT.

6 Q AND SO AT THIS TIME WHEN YOU ARE INTERVIEWING
7 NATHANIEL MITCHELL, THERE WAS NO WAY WITHOUT A
8 VIDEOTAPE TO BE ABLE TO SHOW DEMEANOR, HIS
9 APPEARANCE, HIS EXACT ANSWERS TO YOUR QUESTIONS?

10 A VIDEO OR AUDIO, NO, MA'AM, WE DO NOT HAVE
11 THAT.

12 Q AND IN FACT, WHEN YOU INTERVIEW -- WHEN
13 YOU -- THE INVOLVEMENT WITH INTERVIEWING N.G. ,
14 THE CHILD WHOSE TESTIMONY WE SAW ON TAPE TODAY, DO
15 YOU REMEMBER ME ASKING HER WHETHER SHE HAD BEEN
16 INTERVIEWED IN A ROOM WITH A CAMERA, I THINK WE
17 CALLED IT THE FISH ROOM?

18 A YES, MA'AM.

19 Q SHE WAS, IN FACT, VIDEOTAPED FOR HER
20 INTERVIEW, RIGHT?

21 A NOT BY US, BY THE ADVOCACY CENTER.

22 Q SO THAT WAS THE ADVOCACY CENTER THAT
23 VIDEOTAPED HERS, BUT THAT WAS NOT DONE FOR
24 MR. MITCHELL?

25 A RIGHT.

1 Q THE -- AND THEN AFTER THE FIRST INTERVIEW, IS
2 THAT WHEN THE WARRANT WAS SERVED ON MR. MITCHELL?

3 A AFTER HIS FIRST STATEMENT THAT HE MADE ALL
4 THE DENIALS ON, CORRECT, THAT WAS WHEN THE WARRANT
5 WERE SERVED ON HIM.

6 Q THE FIRST ONE THAT YOU PUBLISHED YESTERDAY
7 AND READ TO THE JURY?

8 A YES, MA'AM.

9 Q OKAY. AND THEN YOU SAID THAT YOU LEFT THE
10 ROOM AND CAME BACK --

11 A NO, EXCUSE ME.

12 Q I'M SORRY.

13 A THE WARRANT WAS NOT SERVED ON HIM AT THAT
14 TIME. THE WARRANT WAS SERVED AFTER I REENTERED
15 THE ROOM.

16 Q OKAY. AND DID YOU -- DID HE READ THE
17 STATEMENT HIMSELF?

18 A YES, MA'AM, HE DID.

19 Q AND THEN IS THAT THE POINT AT WHICH HE SIGNED
20 IT?

21 A YES, MA'AM, HE DID.

22 Q AND IS THAT WHEN THE WARRANT WAS SERVED ON
23 HIM?

24 A NO, MA'AM.

25 Q WHEN WAS THE WARRANT WAS SERVED ON HIM?

1 A AFTER HE SIGNED THE WARRANT -- I MEAN, AFTER
2 HE SIGNED THE STATEMENT, I STEPPED OUT OF THE ROOM
3 AND BRIEFED MY SUPERVISOR AND ADVISED HIM OF WHERE
4 WE WERE AT THE PRESENT. AT THAT POINT IT WAS
5 AGREED THAT INVESTIGATOR METZS WOULD REENTER WITH
6 ME, JUST TO SEE IF HE WOULD CHANGE HIS STORY AT
7 ALL. WHEN HE DIDN'T, THEN WE DECIDED WE WOULD
8 SERVE THE WARRANT AND THAT'S WHEN INVESTIGATOR
9 METZS SERVED THE WARRANT ON HIM.

10 Q AND THAT'S WHEN THE SECOND -- THE SECOND PART
11 OF THE STATEMENT THAT WAS SIGNED SEPARATELY
12 OCCURRED?

13 A CORRECT.

14 MS. COGGIOLA: I HAVE NO FURTHER QUESTIONS.

15 THE COURT: ANYTHING ON REDIRECT?

16 MS. COOPER: BRIEFLY, YOUR HONOR.

17 REDIRECT EXAMINATION

18 BY MS. COOPER:

19 Q INVESTIGATOR JONES, IS IT THE POLICY OF THE
20 SHERIFF'S DEPARTMENT TO EVER VIDEOTAPE STATEMENTS
21 WHEN THEY ARE GIVING STATEMENTS?

22 A WE DON'T VIDEO OR AUDIO TAPE ANY STATEMENTS
23 THAT WE EVER TAKE.

24 Q AND WHO WAS PRESENT WHEN THE FIRST STATEMENT
25 WAS TAKEN OF THE DEFENDANT?

1 A NO ONE OTHER THAN MYSELF AND INVESTIGATOR
2 GRANT FROM D.S.S.

3 Q SO YOU HAD A WITNESS; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND WHAT ABOUT THE SECOND STATEMENT? WHO WAS
6 PRESENT WHEN HE PROVIDED THE SECOND STATEMENT?

7 A THE SECOND STATEMENT WAS ACTUALLY TAKEN BY
8 INVESTIGATOR METZS AND BOTH MYSELF AND
9 INVESTIGATOR GRANT FROM D.S.S. WERE PRESENT.

10 Q AND TO ENSURE THAT THE DEFENDANT -- WHAT HE
11 TELLS YOU, WHAT DO YOU HAVE HIM DO TO MAKE SURE
12 YOU WRITE IT DOWN CORRECTLY?

13 A I EITHER READ IT BACK TO THEM OR HAVE THEM
14 READ IT BACK, EITHER WAY, TO MAKE SURE THE WORDING
15 IS THE WAY THEY WANT IT WORDED.

16 Q AND WHAT DO YOU ASK THE DEFENDANT OR A
17 SUSPECT OF A CRIME TO DO TO MAKE SURE THAT THEY
18 AGREE THAT WHAT IS IN THE STATEMENT AND THAT IS
19 WHAT THEY SAID?

20 A AT THE VERY END OF THE STATEMENT, ONE OF THE
21 LAST SENTENCES THAT IT SAYS ON THERE IS, "ARE
22 THERE ANY CHANGES OR DELETIONS OR ANYTHING OF THAT
23 NATURE THAT YOU'D LIKE TO MAKE TO THIS STATEMENT,"
24 AND HE INDICATED NO.

25 Q YOU WERE ASKED BY MS. COGGIOLA ABOUT

1 INVESTIGATOR METZS BECOMING INVOLVED IN THE
2 INTERVIEW PROCESS. IS THAT A NORMAL PROCEDURE OF
3 INVESTIGATION?

4 A YES, MA'AM. THAT'S NORMAL PROCEDURE IN AN
5 INTERVIEW OF THAT TYPE.

6 Q TO CHANGE THE PERSON WHOSE BEING -- WHO IS
7 GIVING THE INTERVIEW; IS THAT CORRECT?

8 A CORRECT.

9 Q TO MAKE -- WHAT IS THE PURPOSE OF CHANGING
10 THE PERSON WHO IS CONDUCTING THE INTERVIEW?

11 A SOMETIMES JUST A DIFFERENT PERSON WILL HAVE A
12 DIFFERENT CHEMISTRY OR SOMETHING WITH THE
13 INDIVIDUAL THAT THEY'RE INTERVIEWING, AND THAT
14 COULD JUST BE THE CHANGE THAT MAKES A DIFFERENCE
15 ON WHETHER THE PERSON TELLS YOU ONE THING OR TELLS
16 YOU SOMETHING DIFFERENT.

17 Q AND DID INVESTIGATOR METZS IN ANY WAY COERCE
18 OR THREATEN THE DEFENDANT TO GIVE A SECOND
19 STATEMENT?

20 A NO, MA'AM, NOT AT ALL.

21 MS. COOPER: THANK YOU. I HAVE NO FURTHER
22 QUESTIONS, YOUR HONOR.

23 THE COURT: ANYTHING ELSE?

24 MS. COGGIOLA: NO.

25 THE COURT: THANK YOU, SIR. YOU MAY STEP

1 DOWN.

2 ANY FURTHER WITNESSES FROM THE STATE?

3 MS. COOPER: NO, YOUR HONOR.

4 THE COURT: THE STATE RESTS?

5 MS. COOPER: YES, SIR.

6 THE COURT: ALL RIGHT, MADAM FOREPERSON,
7 LADIES AND GENTLEMEN, I KNOW THAT YOU JUST GOT
8 BACK OUT HERE, BUT THERE'S ONE MATTER I HAVE TO
9 TAKE UP OUTSIDE YOUR PRESENCE FOR JUST A MOMENT,
10 SO LET ME ASK YOU TO GO BACK TO YOUR JURY ROOM
11 JUST A MOMENT, PLEASE.

12 (WHEREUPON, THE JURY LEFT OPEN COURT AT
13 APPROXIMATELY 10:17.)

14 THE COURT: ALL RIGHT. BY AGREEMENT
15 YESTERDAY, THE DEFENSE WAS ALLOWED TO CALL OUT OF
16 ORDER AN EXPERT WITNESS, SO FOR PURPOSES OF THIS
17 MOTION, THE TESTIMONY OF DR. ROSS WOULD NOT BE
18 CONSIDERED.

19 MOTIONS?

20 MS. COGGIOLA: YOUR HONOR, AT THIS TIME WE
21 WOULD MOVE FOR A DIRECTED VERDICT OF ACQUITTAL ON
22 THE GROUNDS THAT THE EVIDENCE PRESENTED BY THE
23 STATE THUS FAR ON THE CHARGE OF HOMICIDE BY CHILD
24 ABUSE IS INSUFFICIENT TO GO TO THE JURY, THAT THEY
25 HAVE NOT PROVED THE -- THEY HAVE NOT PRESENTED THE

1 LINK BETWEEN ALLEGED CHILD ABUSE AND THE HOMICIDE
2 OF THE CHILD.

3 THE COURT: I WILL RESPECTFULLY DENY THAT
4 MOTION. THERE ARE SUFFICIENT INFERENCES THAT CAN
5 BE DRAWN WITH THE EVIDENCE TO WARRANT PRESENTATION
6 TO THE JURY.

7 THE COURT: ANY ADDITIONAL MOTIONS?

8 MR. STRICKLER: ADDITIONAL MOTIONS TO THE
9 MOTION FOR DIRECTED VERDICT ARE IN REGARD TO THE
10 STATUTE IN THIS CASE, HOMICIDE BY CHILD ABUSE.
11 MR. MITCHELL WAS INDICTED UNDER SECTION 16-3-85 AS
12 THE INDICTMENT ALLEGES AND AS THE EVIDENCE HAS
13 COME BEFORE THIS COURT, THIS IS FOR AN ACT THAT IS
14 ALLEGED TO HAVE OCCURRED ON OR PRECEDING
15 MARCH 28TH OF THE YEAR 2000.

16 AT THAT POINT IN TIME THE STATUTE WAS AMENDED
17 TO ITS PRESENT FORM, EFFECTIVE MAY 1ST OF THE YEAR
18 2000.

19 PRIOR TO MAY 1ST THE STATUTE READ "GUILTY OF
20 HOMICIDE BY CHILD ABUSE IF CAUSE OF DEATH OF A
21 CHILD UNDER THE AGE OF 11 WHILE COMMITTING CHILD
22 ABUSE OR NEGLECT AS DEFINED IN SECTION 20-7-490."

23 THAT'S THE CHANGE I'M LOOKING AT RIGHT HERE.
24 AT THAT TIME, SECTION 20-7-490 DID NOT CONTAIN A
25 DEFINITION OF ABUSE AND NEGLECT.

1 AS IT APPEARS NOW, IT HAS NOT BEEN AMENDED
2 SINCE THAT POINT. IT CONTAINS THE DEFINITION OF
3 AN ABUSED OR NEGLECTED CHILD WHICH REFERENCES
4 FURTHER SUBSECTIONS, HOWEVER, IT DOES NOT DEFINE
5 ABUSE OR NEGLECT. THE BASIS FOR THE MOTION FOR
6 DIRECTED VERDICT IS THE STATE HAS ALLEGED AN
7 OFFENSE WHICH DOES NOT CONTAIN ANY DEFINITION AS
8 TO THE ELEMENTS OF THE OFFENSE.

9 IT REFERENCES AGAIN, "CAUSE OF DEATH OF A
10 CHILD UNDER THE AGE OF 11," WHICH I ADMIT HAS BEEN
11 PROVEN, "WHILE COMMITTING CHILD ABUSE OR NEGLECT"
12 AS DEFINED IN 20-7-490. 20-7-490 DEFINES ABUSE OR
13 NEGLECT OF A CHILD. IT DOES NOT DEFINE ABUSE OR
14 NEGLECT.

15 THE COURT: I'M LOOKING AT 20-7-490, AND I
16 ONLY HAVE THE SUPPLEMENT IN FRONT OF ME.

17 MR. STRICKLER: THE SUPPLEMENT REFLECTS THE
18 STATUTE AS IT EXISTED ON THE OPERATIVE DATE.

19 THE COURT: SECTION (2) OF 20-7-490 SAYS AN
20 ABUSED OR NEGLECTED CHILD MEANS A CHILD WHOSE
21 DEATH RESULTS FROM -- WHOSE PHYSICAL AND MENTAL
22 HEALTH AND WELFARE IS HARMED OR THREATENED BY HARM
23 AS DEFINED BY --

24 MR. STRICKLER: YES, SIR.

25 THE COURT: -- ACTS OR OMISSIONS OF THE

1 CHILD'S PARENT, ET CETERA.

2 MR. STRICKLER: YES, SIR, AND THAT DEFINES AN
3 ABUSED OR NEGLECTED CHILD. THE STATUTE DOES NOT
4 SAY -- THE STATUTE 16-3-85 MAKES NO REFERENCE TO
5 THE DEFINITION OF AN ABUSED OR NEGLECTED CHILD, IT
6 SAYS A PERSON WHO COMMITS CHILD ABUSE OR NEGLECT
7 WHILE COMMITTING CHILD ABUSE OR NEGLECT AS DEFINED
8 IN 20-7-490.

9 20-7-490 DOES NOT DEFINE CHILD ABUSE OR
10 NEGLECT. IT DEFINES WHAT ABUSE AND NEGLECT OF A
11 CHILD IS. THAT'S A DIFFERENT DEFINITION. I'D
12 SUBMIT THAT ONE, WE HAVE NO DEFINITION AS TO WHAT
13 CHILD ABUSE OR NEGLECT IS. THAT'S BASIS FOR THE
14 DIRECTED VERDICT, AND TWO THAT THE INDICTMENT IN
15 THIS CASE FAILS TO GO AHEAD AND SET FORTH AN
16 OFFENSE. I THINK THAT'S...

17 THE COURT: MADAM CLERK, MAY I HAVE THE
18 INDICTMENT?

19 (PAUSE)

20 WELL, ACTUALLY, MR. STRICKLER, WHAT YOU'RE
21 ASKING IS TO STRIKE "UNDER CIRCUMSTANCES
22 MANIFESTING EXTREME INDIFFERENCE TO LIFE," AND YOU
23 JUST PUT A PERIOD RIGHT THERE WHERE "WHILE
24 COMMITTING CHILD ABUSE OR NEGLECT," YOU GO OVER TO
25 20-7-490.

1 UNDER THE OLD STATUTE --

2 MR. STRICKLER: YES, SIR.

3 THE COURT: -- ALL THEY WOULD HAVE TO ALLEGE
4 IS THE SENTENCE THROUGH THE QUESTION -- PUT A
5 PERIOD AT -- ON THE THIRD LINE AS TO NEGLECT, AND
6 THAT WOULD BE SUFFICIENT UNDER THE OLD STATUTE,
7 WOULDN'T IT?

8 MR. STRICKLER: I MAY BE WRONG. I BELIEVE
9 THE OLD STATUTE ALSO CONTAINS EXTREME INDIFFERENCE
10 TO HUMAN LIFE.

11 THE COURT: I KNOW THAT. I MEAN, IF IT DOES,
12 THERE'S NO PROBLEM.

13 MR. STRICKLER: WELL, I BELIEVE IT DOES. MY
14 UNDERSTANDING IS THAT WHAT WAS DONE WAS -- ALL
15 THAT WAS DONE WAS THE REFERENCE TO, "AS DEFINED IN
16 SECTION 20-7-490," WHICH WAS CONTAINED IMMEDIATELY
17 AFTER "WHILE COMMITTING CHILD ABUSE OR NEGLECT."

18 THE COURT: I MEAN, WHAT'S YOUR POINT?

19 I MEAN, BECAUSE YOU -- FIRST OF ALL, THERE
20 WAS NO MOTION RAISED TO THE EFFECTIVENESS OF THE
21 INDICTMENT PRIOR TO THE SWEARING OF THE JURY.

22 MR. STRICKLER: OF COURSE, THE MOTION IS AS
23 TO SUBJECT MATTER JURISDICTION.

24 THE COURT: I UNDERSTAND YOU'RE RAISING THAT
25 NOW, BUT 16-3-5 -- RATHER 16-3-85 IS THE HOMICIDE

1 BY CHILD ABUSE SECTION.

2 MR. STRICKLER: YES, SIR. I MAKE NO ISSUE
3 WITH THAT.

4 THE COURT: SO THE FACT THAT THE INDICTMENT
5 DOES NOT MAKE REFERENCE TO 20-7-490 -- IS THAT
6 YOUR CONTENTION, THAT IT'S DEFECTIVE?

7 MR. STRICKLER: NO, SIR. MY CONTENTION IS
8 THE STATUTE ITSELF IS DEFECTIVE AS TO THE FACT
9 THAT IT INTERNALLY REFERENCES SOMETHING, WHICH I
10 SUBMIT -- HAS A DEFINITION, WHICH I SUBMIT DOES
11 NOT DEFINE ANYTHING.

12 THE COURT: MADAM SOLICITOR?

13 MS. CAMPBELL: YOUR HONOR, CLEARLY THE INTENT
14 IS THE DEFINITION OF ABUSE OR NEGLECT TO BE
15 CONTAINED IN THAT SUBSECTION SIMILAR TO THE
16 DEFINITION OF SEXUAL BATTERY AND A DIFFERENT
17 SECTION FROM THE VIOLATION OF THE LAW ITSELF, AND
18 I THINK HIS ARGUMENT IS OVER THE SEMANTICS BECAUSE
19 IT DOESN'T SAY ABUSE AND NEGLECT OF A CHILD VERSUS
20 ABUSE AND NEGLECT AS DEFINED.

21 I THINK THAT'S WHERE -- IF I UNDERSTAND
22 MR. STRICKLER'S ARGUMENT, THAT'S WHAT HE'S SAYING.

23 MR. STRICKLER: MY ARGUMENT IS VERY SIMPLY
24 THAT THE STATUTE REFERENCES ABUSE OR NEGLECT AS
25 DEFINED IN 20-7-490. 20-7-490, SEARCHING IT FOR

1 SOME SUCH DEFINITION IS -- THE CLOSEST I FIND IS
2 THE DEFINITION OF AN ABUSED OR NEGLECTED CHILD.

3 THE COURT: WELL, I'LL TELL YOU THE SIMPLEST
4 WAY, GO TAKE A BREAK, BRING ME THE STATUTE AS IT
5 EXISTED ON THE DAY THIS QUESTION -- THIS INCIDENT
6 ALLEGEDLY OCCURRED AND LET ME LOOK AT IT.

7 MS. CAMPBELL: OKAY.

8 THE COURT: I CAN'T --

9 MS. CAMPBELL: YOUR HONOR, OUR POSITION WOULD
10 BE JUST THE REFERENCE TO ABUSE AND NEGLECT, IT
11 WOULD BE THE ABUSE AND NEGLECT OF A CHILD AS IN
12 20-7-WHATEVER.

13 THE COURT: LET ME SEE THE STATUTE.

14 MR. STRICKLER: YES, SIR. I ATTEMPTED TO DO
15 THAT PRIOR TO GETTING UP HERE AND ALL OF OUR OLD
16 UPDATES HAVE ALREADY BEEN TOSSED. I HAVE THE
17 SUPPLEMENT.

18 THE COURT: I HAVE A SUPPLEMENT UP HERE.

19 MR. STRICKLER: WELL --

20 MS. CAMPBELL: YOUR HONOR, I'M GETTING ONE.
21 THERE SHOULD BE ONE AT MY OFFICE.

22 MS. CAMPBELL: THE LANGUAGE IS THE SAME UNDER
23 16-3-85.

24 THE COURT: HANG ON JUST A MINUTE.

25 ALL RIGHT. WHAT'S THE STATUTE ARGUMENT?

1 MS. CAMPBELL: YOUR HONOR, CLEARLY UNDER THE
2 OLD STATUTE AND THE NEW STATUTE, I THINK THE FACE
3 OF THE INDICTMENT ITSELF IS CORRECT, I DON'T THINK
4 THERE'S ANY QUESTION ABOUT THAT. I THINK THE PART
5 MR. STRICKLER HAS A PROBLEM WITH IS THE DEFINITION
6 OF ABUSE OR NEGLECT IN SUBSECTION 20-7-490. YOUR
7 HONOR, I'VE PROVIDED YOU WITH THE LAW THAT WAS IN
8 EFFECT.

9 I BELIEVE HIS ARGUMENT IS THAT IT REFERENCES
10 ABUSE OR NEGLECT AND HIS ARGUMENT IS THAT THERE IS
11 NO DEFINITION OF ABUSE OR NEGLECT IN THE STATUTE.
12 CLEARLY, YOUR HONOR, THAT, I THINK, IS A PLAY ON
13 SEMANTICS AND CLEARLY AN ABUSED OR NEGLECTED CHILD
14 IS DEFINED IN THAT SECTION. I BELIEVE THAT'S WHAT
15 HIS ARGUMENT IS.

16 MR. STRICKLER: SHE IS CORRECT. I WOULD
17 SUBMIT THAT, YOU KNOW, SOMEONE DIDN'T THINK IT WAS
18 DEFINED IN THAT STATUTE BECAUSE THE CHANGE MADE IN
19 2000 WENT INTO EFFECT IN MAY OF 2000, IT DELETED
20 JUST THE LANGUAGE I'VE REFERENCED FROM SECTIONS
21 (A) AND (B) AND -- OR EXCUSE ME, (A-1) AND (A-2)
22 AND ADDED SECTION (B), WHICH DEFINES CHILD ABUSE
23 OR NEGLECT AND DEFINES HARM, OKAY?

24 SO I WOULD SUBMIT THAT IF MY ARGUMENT HAD NO
25 MERIT THE LEGISLATURE WOULD NOT HAVE FELT THE

1 NECESSITY TO AMEND THE VERY STATUTE WE'RE TALKING
2 ABOUT TO ADDRESS THE VERY ISSUE THAT I HAVE
3 RAISED.

4 MS. CAMPBELL: YOUR HONOR, OUR POSITION WOULD
5 BE THAT IT IS NOT UNUSUAL FOR STATUTES TO KIND OF
6 GET REVISED TO INCLUDE DEFINITIONS WITHIN THE
7 STATUTE ITSELF TO MAKE IT EASIER TO REFERENCE,
8 ESPECIALLY WHEN YOU REFERENCE SOMETHING IN ANOTHER
9 TITLE. THAT IS NOT UNUSUAL. CLEARLY THERE IS
10 NOTHING WRONG WITH ABUSE OR NEGLECTED CHILD.

11 IT IS CLEARLY DEFINED IN 20-7-490 AS WAS THE
12 INTENT AND THAT OF THE LANGUAGE OF 16-3-85.

13 THE COURT: WELL, WHAT IS YOUR THEORY OF THE
14 CASE? IS IT A CORPORAL PUNISHMENT VIOLATION?

15 MS. CAMPBELL: YOUR HONOR, OUR THEORY OF THE
16 CASE -- I DON'T THINK -- I MEAN, IT DOESN'T
17 MATTER. IT IS ABUSE OR NEGLECT AS DEFINED IN 20-7
18 OR ANY OTHER WAY.

19 THE COURT: I UNDERSTAND THAT, BUT HARM HAS
20 BEEN DEFINED. IT SAYS IT INFLECTS OR ALLOWS TO
21 INFLECT MENTAL INJURY AS A RESULT OF EXCESSIVE
22 CORPORAL PUNISHMENT AND THEN IT DEFINES THAT, SO
23 IT IS -- IT DOES GO INTO THEORY.

24 WHEN I CHARGE -- IN OTHER WORDS, ACCEPTING
25 YOUR ARGUMENT, WHICH IT HAS SOME MERIT TO IT, BUT

1 I HAVE TO -- IF I TELL THE JURY ABUSE AND
2 NEGLECTED CHILD MEANS A CHILD WHOSE DEATH RESULTS
3 FROM OR WHOSE PHYSICAL OR MENTAL HEALTH AND
4 WELFARE IS HARMED OR THREATENED HARM, AS DEFINED
5 BY ITEMS THREE AND FOUR...

6 MS. CAMPBELL: YES, SIR.

7 THE COURT: ALL RIGHT. THREE IS HARM. THREE
8 IS ESSENTIAL FOR THE CORPORAL PUNISHMENT STATUTE.

9 MS. CAMPBELL: THREE IS -- YES, SIR.

10 THE COURT: FOUR.

11 MS. CAMPBELL: -- IT MEANS A SUBSTANTIAL RISK
12 OF HARM.

13 THE COURT: AS DEFINED BY ITEM THREE.

14 MS. CAMPBELL: WHICH WOULD HAVE ALREADY BEEN
15 DEFINED FOR THE JURY.

16 THE COURT: YES.

17 MS. CAMPBELL: YES, SIR.

18 THE COURT: SO WHAT I'M SAYING IS -- THERE'S
19 NO ARGUMENT ABOUT FAILURE TO SUPPLY FOOD,
20 CLOTHING, SHELTER, ET CETERA OR FINANCIAL, SO IT'S
21 REALLY -- THERE'S NO ABANDONMENT. THERE'S NO
22 CONDEMNATION IN THE CASE. IT'S CLEARLY A QUESTION
23 OF WHETHER HE VIOLATED 20-7-490 (3A) 1 THROUGH 5,
24 RIGHT?

25 MS. CAMPBELL: YES, SIR, AND THEN SUBSECTION

1 FOUR.

2 THE COURT: FOUR WOULD BE SUPERFLUOUS, WON'T
3 IT? HE DIDN'T THREATEN.

4 MS. CAMPBELL: OKAY. IT'S A SUBSTANTIAL RISK
5 OF HARM?

6 THE COURT: UH-HUH. HE'S NOT CHARGING WITH
7 THREATENING HARM. HE'S CHARGED WITH DOING HARM.

8 MS. CAMPBELL: THAT'S FINE, YOUR HONOR, WE
9 COULD DO THAT.

10 THE COURT: NOW, MR. STRICKLER, YOUR ARGUMENT
11 IS YOU THINK THAT -- YOU THINK THAT THE STATUTE IS
12 EFFECTIVE BECAUSE -- THE INDICTMENT IS DEFECTIVE;
13 IS THAT RIGHT?

14 MR. STRICKLER: YES, SIR.

15 THE COURT: BECAUSE IT DOESN'T SAY AS DEFINED
16 IN 20-7-490?

17 MR. STRICKLER: THAT'S ONE BASIS, YES, SIR.
18 IT'S NOT DEFINED -- IT DOESN'T REFERENCE THAT.
19 THAT'S AN ELEMENT OF THE OFFENSE, OKAY, SO I'D
20 SUBMIT IT'S DEFECTIVE IN THAT REGARD.

21 I'D ALSO SUBMIT THAT EVEN IF YOU FIND THAT
22 THAT CAN BE REFERENCED BY INFERENCE TO THE CODE
23 SECTION OF THE STATUTE, THAT THE SECTION THAT IS
24 REFERENCED, 20-7-490, DOESN'T DEFINE THAT WHICH
25 THE STATUTE REQUIRES TO BE DEFINED. PERHAPS

1 THAT'S A CONFUSING WAY TO STATE IT. IT'S THE SAME
2 PROBLEM, THE SAME INITIAL PROBLEM I HAVE AT THIS
3 TIME.

4 THE COURT: THERE'S NO QUESTION THAT 20-7-492
5 CONTEMPLATES THAT A CHILD CAN BE KILLED BY
6 CORPORAL PUNISHMENT.

7 MR. STRICKLER: YES, SIR.

8 THE COURT: IN THIS CASE, THE STATE IS SAYING
9 YOU SPANK AND, OBVIOUSLY, SHAKE TO TRY TO KEEP
10 FROM -- WHATEVER THE PROBLEM WAS AND, I MEAN,
11 DEATH OCCURRED.

12 MR. STRICKLER: YES, SIR, BUT I THINK I'VE
13 EXPRESSED MY PROBLEMS AS FAR AS THE DEFINITION OF
14 THE STATUTE. I WOULD JUST SUBMIT IT DOESN'T
15 DEFINE THAT WHICH 16-3-85 CLAIMS IT DEFINES.

16 AND I UNDERSTAND THAT WE'RE IN DISAGREEMENT
17 ON THAT.

18 THE COURT: NO, I DIDN'T SAY WE'RE IN
19 DISAGREEMENT. I HAVEN'T RULED YET.

20 MR. STRICKLER: YES, SIR.

21 THE COURT: WHAT ABOUT THAT CASE THAT JUDGE
22 HOUSTON HAD?

23 MS. CAMPBELL: UNDER HOUSTON, YOUR HONOR, WE
24 COULD NEVER GO FORWARD ON THE MURDER INDICTMENT
25 BECAUSE MALICE IS NOT DEFINED IN THE MURDER

1 INDICTMENT EITHER. WHETHER OR NOT IT REFERENCES A
2 CODE SECTION TO HELP DEFINE A TERM, WHEREAS EVEN
3 IN THE MURDER INDICTMENT WE HAVE TO PROVE MALICE,
4 BUT THAT IS NOT REFERENCED TO WHERE WE COULD
5 DEFINE IT, BUT THERE ARE DEFINITIONS GIVEN BY THE
6 COURT EVERY DAY AND WE GO FORWARD WITH THAT.

7 MR. STRICKLER: IT'S A STATUTORY --

8 MS. CAMPBELL: MURDER IS STATUTORY.

9 MR. STRICKLER: MURDER IS COMMON LAW.

10 MS. CAMPBELL: MURDER IS IN THE BOOK.

11 MR. STRICKLER: I'VE READ THE BOOK.

12 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN.

13 ALL RIGHT. I WOULD DENY YOUR MOTION.

14 MR. STRICKLER: YES, SIR.

15 THE COURT: THE INDICTMENT SUFFICIENTLY PUT
16 YOU ON NOTICE THAT WE ARE TALKING ABOUT ABUSE OR
17 NEGLECT, THE FACT THAT IT OCCURRED BEFORE THEY
18 AMENDED THE STATUTE -- I THINK, I -- WHAT 16-3-85
19 UNDER THE OLD VERSION IS TELLING ME, AS FAR AS
20 DEFINING ABUSE AND NEGLECT, I HAVE TO DEFINE IT AS
21 PROVIDED IN 20-7-490, AND NOT LEAVE IT TO THE
22 IMAGINATION OF THE JURY.

23 MR. STRICKLER: YES, SIR.

24 THE COURT: I'LL DENY THE MOTION.

25 MR. STRICKLER: YES, YOUR HONOR, AND I

1 UNDERSTAND THAT, WITH THE COURT'S -- YOU'VE
2 ALREADY GOTTEN ONE STEP AHEAD OF ME, WHICH IS NOT
3 UNUSUAL GIVEN THE SPEED I TRAVEL.

4 THE NEXT QUESTION THEN BECOMES WHAT
5 DEFINITIONS DO WE APPLY AND HOW DO WE WORK OUR WAY
6 THROUGH 20-7-490? THAT IS THE OPERATIVE
7 DEFINITION.

8 THE COURT: OH, ABSOLUTELY. I THINK THE
9 STATE IS RESTRICTED FROM 20-7-492.

10 MR. STRICKLER: WHICH REFERENCES THREE AND
11 FOUR.

12 THE COURT: TWO, THREE, FOUR IS NOT AN
13 ELEMENT.

14 MR. STRICKLER: FOUR --

15 THE COURT: THERE IS NO THREAT OF HARM IN
16 THIS CASE.

17 MR. STRICKLER: YES, SIR.

18 THE COURT: EITHER IT DID OR IT DID NOT
19 HAPPEN.

20 MR. STRICKLER: OKAY. THANK YOU, SIR. THIS
21 IS JUST AS GOOD OF A TIME AS ANY, IN MY OPINION,
22 TO GO AHEAD AND FIGURE THAT OUT.

23 LASTLY, YOUR HONOR, AS LONG AS WE HAVE THE
24 JURY OUT, YOU ASKED FOR OUR THOUGHTS ON PROPOSED
25 INSTRUCTIONS REGARDING CAUSATION YESTERDAY.

1 THE COURT: SURE.

2 MR. STRICKLER: YOUR HONOR, THAT IS
3 PROPOSED -- I'LL GIVE A COPY TO MADAM CLERK AND
4 ASK THAT SHE FILE IT WITH THE RECORD IN THIS CASE
5 AND A COPY TO MADAM COURT REPORTER AND ASK THAT
6 SHE MARK IT AS AN EXHIBIT, A COURT'S EXHIBIT, IN
7 THIS MATTER AND, OF COURSE, A COPY TO THE
8 SOLICITORS.

9 I CERTAINLY DON'T MEAN TO DEAL WITH IT NOW.
10 I'M JUST SUPPLYING IT AS EARLY AS POSSIBLE.

11 MR. GASSER: YOUR HONOR, I APOLOGIZE FOR
12 INTERRUPTING, BUT I BELIEVE WE HAVE SOME GOOD NEWS
13 FOR YOU --

14 THE COURT: OH, THANK YOU SO MUCH.

15 MR. GASSER: -- ON A MATTER TOTALLY UNRELATED
16 TO THIS CASE THAT THE COURT KNOWS ABOUT.

17 (WHEREUPON, MR. GASSER HAD A DISCUSSION
18 WITH HIS HONOR ABOUT THE UNRELATED
19 MATTER.)

20 (WHEREUPON, COURT'S EXHIBIT NUMBER 6 WAS
21 MARKED FOR IDENTIFICATION ONLY.)

22 THE COURT: OKAY. ARE YOU READY TO GO?

23 MR. STRICKLER: YES, SIR.

24 THE COURT: ALL RIGHT. BRING THE JURY IN.

25 MS. COGGIOLA: YES, SIR.

1 (WHEREUPON, THE JURY CAME INTO OPEN
2 COURT AT APPROXIMATELY 10:57.)

3 THE BAILIFF: THE JURY IS PRESENT.

4 THE COURT: MADAM FOREPERSON, LADIES AND
5 GENTLEMEN, I'D LIKE FOR THE JURORS TO KNOW THAT
6 WE'RE NOT SITTING OUT HERE WASTING YOUR TIME. AS
7 THE ADMINISTRATIVE JUDGE, I'M ALSO RESPONSIBLE FOR
8 THE GRAND JURY. WE HAD A PROBLEM THAT WE HAD TO
9 DEAL WITH, WITH THE GRAND JURY THAT HAS BEEN
10 MEETING FOR THE LAST COUPLE OF DAYS. WE'VE TAKEN
11 CARE OF THAT AND ARE NOW READY TO PROCEED.

12 MS. COGGIOLA, YOU MAY PROCEED.

13 MS. COGGIOLA: THANK YOU, YOUR HONOR. MAY IT
14 PLEASE THE COURT.

15 THE DEFENSE WOULD CALL MARY TATE.

16 MARY TATE,

17 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: HAVE A SEAT IN THE WITNESS BOX,
19 STATE YOUR FULL NAME FOR THE RECORD.

20 DIRECT EXAMINATION

21 BY MS. COGGIOLA:

22 Q PLEASE SAY YOUR FULL NAME FOR THE COURT
23 REPORTER.

24 A MARY M. TATE.

25 Q MS. TATE, WHERE DO YOU LIVE?

1 A [REDACTED] STEPHEN CAMPBELL ROAD, ELGIN.

2 Q AND DO YOU KNOW NATHANIEL MITCHELL?

3 A I DO.

4 Q HOW LONG HAVE YOU KNOWN MR. MITCHELL?

5 A SINCE THE EARLY 90'S -- I MEAN, EARLY 1990.

6 Q AND CAN YOU TELL US HOW YOU CAME TO KNOW HIM?

7 A HIS FIANCEE AT THAT TIME, WHO BECAME HIS

8 WIFE, WORKED WITH ME.

9 Q OKAY. AND WHERE WERE YOU WORKING AT THE

10 TIME?

11 A AT RICHLAND SCHOOL DISTRICT TWO AT E.L.

12 WRIGHT SCHOOL.

13 Q AND ARE YOU STILL WORKING TODAY?

14 A NO, NOT TODAY. I HAVE JUST VERY RECENTLY

15 RETIRED.

16 Q IN FACT, YOUR RETIREMENT PARTY IS TODAY,

17 ISN'T IT?

18 A RIGHT.

19 Q AND DID YOU RETIRE FROM THE SCHOOL DISTRICT?

20 A YES, I DID.

21 Q AND SO YOU FIRST MET NATE THROUGH HIS WIFE?

22 A I DID.

23 Q AND HER NAME WAS?

24 A SONYA.

25 Q AND --

1 A SHE WAS SONYA GREEN BEFORE SHE MARRIED NATE.

2 Q DID YOU KNOW NATE MITCHELL'S FAMILY, HIS OWN
3 FAMILY?

4 A YES, I THINK, DURING THE YEARS I'VE MET MOST
5 ALL OF THEM.

6 Q AND IN THE PERIOD OF TIME THAT YOU KNEW SONYA
7 AND NATE, CAN YOU TELL US WHEN YOU LAST SAW SONYA?

8 A UH...

9 Q APPROXIMATELY?

10 A APPROXIMATELY -- THE WEEK BEFORE THE SIXTH OF
11 DECEMBER, SO THE FIRST OF DECEMBER.

12 Q AND WHY HAVE YOU NOT SEEN HER AFTER THAT?

13 A BECAUSE SHE HAD A MASSIVE STROKE AND PASSED
14 AWAY.

15 Q AND THAT WAS THIS PAST DECEMBER?

16 A THIS PAST DECEMBER.

17 Q DO YOU KNOW OF YOUR OWN KNOWLEDGE HOW OLD SHE
18 WAS AT THE TIME?

19 A THIRTY-SIX.

20 Q OKAY. IN THE PERIOD OF TIME SINCE THE EARLY
21 90'S, DID YOU CONTINUE TO WORK WITH SONYA THAT
22 ENTIRE TIME?

23 A THE ENTIRE TIME.

24 Q SO DURING THE PERIOD OF TIME FROM THE EARLY
25 90'S UNTIL RECENTLY, DID YOU SPEND TIME WITH NATE

1 AND SONYA AS A FAMILY?

2 A YES, WE DID.

3 Q AND DID YOU KNOW THE CHILDREN, THE G.

4 CHILDREN, H.G. , N.G. , AND MINOR ?

5 A I DID.

6 Q AND DID YOU SPEND TIME WITH THE CHILDREN, AS

7 WELL?

8 A I DID.

9 Q - OKAY. CAN YOU JUST TELL US A LITTLE BIT

10 ABOUT HOW YOU SPENT TIME WITH THEM, WHAT SORTS OF

11 THINGS YOU DID?

12 A WELL, THEY VISITED MY HOME, AND MY DAUGHTER

13 ALSO HAS A LITTLE GRANDDAUGHTER AND SHE WOULD -- I

14 MEAN, GRANDSON. SHE WOULD BRING THEM OVER AND LET

15 THEM PLAY WITH THEM, AND SOME MORNINGS NATE WOULD

16 BRING THEM BY SCHOOL AND LET THEM TELL US HELLO

17 BEFORE HE TOOK THEM TO DAYCARE.

18 Q SO YOU -- DID YOU-- WHAT TIME DID YOU GO TO

19 WORK IN THE MORNING?

20 A I WAS USUALLY THERE AROUND 6:00 TO 6:15.

21 Q AND WAS SONYA THERE WITH YOU?

22 A YES. SHE CAME IN USUALLY JUST A LITTLE LATER

23 THAN I DID.

24 Q AND ON THE WAY TO DAYCARE HE WOULD SOMETIMES

25 STOP BY WITH THE CHILDREN?

1 A HE WOULD.

2 Q DID YOU EVER VISIT THEIR HOME?

3 A I HAVE.

4 Q WHEN THE CHILDREN WERE THERE?

5 A YES.

6 Q AND YOU ACTUALLY KNEW THEM FOR A NUMBER OF
7 YEARS BEFORE THEY HAD THE CHILDREN; ISN'T THAT
8 TRUE?

9 A YES.

10 Q SO YOU SPENT TIME WITH THEM DURING THOSE
11 YEARS, AS WELL, CORRECT?

12 A I DID.

13 Q MS. TATE, YOU DON'T HAVE ANY INFORMATION
14 ABOUT WHAT HAPPENED ON MARCH 28TH OF 2000
15 REGARDING THIS FAMILY, DO YOU?

16 A NO.

17 Q BUT YOU DID SPEND TIME WITH NATE AND SONYA
18 AND THE CHILDREN?

19 A I DID.

20 Q FROM YOUR OWN OBSERVATIONS, CAN YOU DESCRIBE
21 FOR US HOW NATE WAS WITH THESE CHILDREN?

22 A TO ME HE ACTED LIKE A NORMAL FATHER, YOU
23 KNOW, HE WAS PROTECTIVE. HE SPENT A LOT OF TIME
24 WITH THE CHILDREN.

25 Q CAN YOU DESCRIBE MINOR FOR US?

1 A MINOR WAS JUST A SWEET LITTLE GIRL. SHE
2 SEEMED, EVEN WHEN THEY FIRST GOT HER, SHE WAS
3 JUST -- SHE WAS VERY QUIET, NOT AS TALKATIVE AS
4 THE OTHERS.

5 Q AND YOU DID OBSERVE NATE WITH MINOR ?

6 A OH, YES.

7 MS. COGGIOLA: THAT'S ALL THE QUESTIONS I
8 HAVE.

9 THE COURT: CROSS-EXAMINATION?

10 MS. CAMPBELL: JUST A FEW QUESTIONS, YOUR
11 HONOR.

12 CROSS-EXAMINATION

13 BY MS. CAMPBELL:

14 Q HI, MS. TATE, MY NAME IS LUCK CAMPBELL. I
15 JUST HAVE A FEW QUESTIONS FOR YOU. YOU SAID THAT
16 YOU WERE ABLE TO OBSERVE MR. MITCHELL WITH THE
17 CHILDREN?

18 A RIGHT.

19 Q AND ABOUT HOW MANY TIMES -- DO YOU KNOW HOW
20 LONG THEY ACTUALLY HAD THOSE CHILDREN BEFORE
21 MINOR DIED?

22 A MINOR PROBABLY WHAT, I'M THINKING LIKE SIX
23 OR EIGHT MONTHS.

24 Q SIX OR EIGHT MONTHS?

25 A YES.

1 Q AND YES, MA'AM, JUST APPROXIMATE. I'M NOT
2 TRYING TO, YOU KNOW -- DURING THAT TIME PERIOD,
3 MA'AM, APPROXIMATELY HOW MANY TIMES DID YOU GET TO
4 OBSERVE MR. MITCHELL INTERACTING WITH HIS
5 CHILDREN, DO YOU REMEMBER? WAS IT ON A DAILY
6 BASIS?

7 A NOT ON A DAILY BASIS, BUT THERE WERE NOT MANY
8 WEEKS THAT I WOULD NOT HAVE SEEN THEM AT LEAST
9 ONCE OR TWICE DURING THE WEEK.

10 Q BECAUSE HE WOULD BRING THE CHILDREN BY THE
11 SCHOOL WHERE SHE WAS?

12 A UH-HUH.

13 Q AND THEN APPROXIMATELY HOW MANY TIMES HAD YOU
14 BEEN IN THE HOME, MA'AM?

15 A WELL, OVER THE YEARS QUITE A FEW.

16 Q QUITE A FEW?

17 A UH-HUH.

18 Q SO IT WOULD BE MORE THAN THREE; IS THAT
19 CORRECT?

20 A YES.

21 Q BUT NOT THAT MANY MORE THAN THREE; IS THAT
22 CORRECT, JUST APPROXIMATELY MA'AM, I'M NOT TRYING
23 TO BE TRICKY, I PROMISE.

24 A I KNOW. I'M JUST TRYING TO PUT A NUMBER TO
25 IT. I WOULD SAY QUITE A FEW MORE THAN TEN.

1 Q QUITE A FEW MORE THAN TEN?

2 A QUITE A FEW MORE THAN THREE.

3 Q MAYBE EVEN UP TO TEN?

4 A AT LEAST TEN, PROBABLY MORE.

5 Q PROBABLY MORE. OKAY, AND DURING THOSE TIME

6 PERIODS AND THOSE VISITS, YOU CHARACTERIZED

7 MINOR AS BEING A SWEET LITTLE GIRL; IS THAT

8 TRUE?

9 A UH-HUH.

10 Q AND SHE WAS KIND OF TIMID THOUGH ALMOST,

11 WASN'T SHE?

12 A SHE WAS. SHE WAS NOT -- THE OTHER TWO WERE

13 VERY PLAYFUL AND TALKATIVE. SHE WAS JUST MORE

14 QUIETER.

15 Q SHE WAS KIND OF A SHY CHILD, WOULD YOU AGREE

16 THAT?

17 A YES. SHE WOULD COME TO YOU AND LET YOU HOLD

18 HER. I MEAN, SHE WASN'T SHY IN THAT WAY. SHE WAS

19 JUST QUIET.

20 Q JUST A QUIET CHILD, NOT ONE PRONE TO CAUSE

21 DISTURBANCES OR ANYTHING?

22 A (THERE WAS NO RESPONSE.)

23 Q YOU DON'T KNOW BECAUSE YOU WEREN'T THERE

24 ENOUGH, RIGHT?

25 A I DON'T KNOW.

1 Q OKAY. BUT IN YOUR OBSERVATION OF MINOR ,
2 SHE WAS A SHY LITTLE GIRL, A QUIET LITTLE GIRL?

3 A WHEN I WAS AROUND THERE.

4 Q AND DURING THE TIMES YOU WERE ABLE TO OBSERVE
5 MR. MITCHELL BEING A FATHER AROUND THESE CHILDREN
6 DID YOU EVER HAVE AN OCCASION TO SEE HIM
7 DISCIPLINE THESE CHILDREN?

8 A NO.

9 Q WERE YOU AWARE OF HOW HE DISCIPLINED HIS
10 CHILDREN?

11 A NO, I WAS NOT.

12 Q AND DID YOU KNOW THAT WHEN HIS CHILDREN DID
13 THINGS THAT HE DID NOT LIKE, HE WOULD TAKE A BELT
14 AND BEAT THEM?

15 A NO, I DID NOT.

16 MS. COGGIOLA: OBJECTION.

17 THE COURT: SUSTAINED AS TO FORM OF QUESTION.

18 BY MS. CAMPBELL:

19 Q YOU DON'T KNOW HOW HE DISCIPLINED HIS
20 CHILDREN?

21 A NO, MA'AM, I DON'T.

22 Q AND DURING THE TIMES YOU'VE KNOWN HIM, HAVE
23 YOU EVER SEEN HIM LOSE HIS TEMPER?

24 A NO.

25 MS. CAMPBELL: THANK YOU, I HAVE NOTHING

1 FURTHER.

2 THE COURT: ANYTHING ELSE ON REDIRECT?

3 MS. COGGIOLA: NO.

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

5 PLEASE CALL YOUR NEXT WITNESS.

6 MS. COGGIOLA: YOUR HONOR, WE WOULD CALL CARL
7 BROWN.

8 CARL BROWN,

9 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

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

12 THE WITNESS: MY NAME IS CARL BROWN, JR.

13 DIRECT EXAMINATION

14 BY MS. COGGIOLA:

15 Q GOOD MORNING, MR. BROWN.

16 A GOOD MORNING.

17 Q WHERE DO YOU LIVE?

18 A I LIVE AT [REDACTED] GLENN JACOBS ROAD IN PONTIAC.

19 Q AND DO YOU CURRENTLY WORK?

20 A YES, MA'AM.

21 Q AND WHAT DO YOU DO?

22 A I'M A SALESMAN FOR A SPECIAL METALS AND
23 WELDING COMPANY.

24 Q HOW LONG HAVE YOU BEEN WITH THEM?

25 A THIRTY-TWO YEARS.

1 Q MR. BROWN, DO YOU KNOW NATHANIEL MITCHELL?

2 A YES, MA'AM.

3 Q AND HOW LONG HAVE YOU KNOWN MR. MITCHELL?

4 A I'VE KNOWN THE MITCHELL FAMILY SINCE 1975.

5 Q HOW DID YOU COME TO KNOW THE MITCHELL FAMILY?

6 A I KNEW HIS MOTHER AND HIS FATHER AND ALL OF
7 HIS SIBLINGS.

8 Q WERE YOU -- DID YOU LIVE WITH THEM? I MEAN,
9 WERE YOU NEIGHBORS OF THEIRS?

10 A WE WEREN'T NEIGHBORS, BUT THEY WERE -- YOU
11 KNOW, I WAS IN THEIR HOME ON A WEEKLY BASIS, WHEN
12 THE KIDS WERE GROWING UP. I HELPED HIS MOTHER IN
13 MANY WAYS. SHE HAD A LOT OF CHILDREN. SHE HAD A
14 VERY TOUGH TIME MEETING THE NEEDS OF MANY OF THOSE
15 CHILDREN AND MY FAMILY TOOK THOSE CHILDREN AND
16 HELPED THEM AS MUCH AS WE COULD HELP THEM.

17 Q SO IN 1975, CAN YOU RECALL APPROXIMATELY HOW
18 OLD NATE WAS AT THE TIME?

19 A I GUESS NATE MUST HAVE BEEN 10 OR 11, 12 AT
20 THAT TIME.

21 Q SO YOU HAVE CERTAINLY KNOWN HIM ALL OF HIS
22 ADULT LIFE?

23 A YES, MA'AM.

24 Q AND DO YOU KNOW -- DID YOU KNOW SONYA, HIS
25 WIFE?

1 A YES, MA'AM, YES, MA'AM.

2 Q DID YOU KNOW HER FAMILY?

3 A I DID NOT KNOW HER FAMILY. I KNEW SONYA, BUT
4 DID NOT KNOW HER FAMILY.

5 Q SO YOU MET HER THROUGH NATE?

6 A YES, MA'AM.

7 Q AND DO YOU KNOW HOW LONG SONYA AND NATE WERE
8 TOGETHER BEFORE THEY GOT MARRIED? HOW LONG THEY
9 WENT TOGETHER?

10 A THEY WENT TOGETHER A LONG TIME BEFORE THEY
11 GOT MARRIED. THEY HAD KNOWN ONE ANOTHER FOR A
12 LONG TIME. I DON'T KNOW THE EXACT TIME, BUT I
13 KNOW THEY HAD KNOWN ONE ANOTHER BECAUSE I SAW
14 THEM -- THEY WERE TOGETHER A LONG TIME EVEN BEFORE
15 THEY GOT MARRIED AS FAR AS DATING AND THOSE KINDS
16 OF THINGS.

17 Q AND DID YOU -- YOU SAY YOU SPENT TIME WITH
18 THE MITCHELL FAMILY AS NATE WAS GROWING UP?

19 A YES, MA'AM.

20 Q THE -- AFTER NATE GOT MARRIED, DID YOU SPEND
21 TIME WITH NATE AND HIS WIFE?

22 A I ALWAYS SPEND TIME WITH NATE AND SAW NATE.
23 OF COURSE, HE AND HIS WIFE WERE IN OUR HOME, AND I
24 WAS IN HIS MOTHER'S HOME, MRS. MITCHELL, EVA
25 MITCHELL AND ALSO IN HIS SISTER'S HOME, BECKY

1 MITCHELL. THAT'S WHERE I PROBABLY SPEND MOST OF
2 THE TIME WITH HIM AND THE CHILDREN AND SONYA.

3 Q SO YOU REMEMBER WHEN HE GOT THE CHILDREN?

4 A YES, MA'AM.

5 Q AND I THINK YOU SAID YOU SPENT TIME AT HIS
6 MOTHER'S HOME AND SISTER'S HOME?

7 WHAT SORTS OF THINGS DID YOU -- DID YOUR
8 FAMILY GET TOGETHER WITH NATE'S FAMILY?

9 A WELL, WE HAD THEM IN OUR HOME A LOT OF TIMES.

10 WE WERE THERE CARRYING FOOD THERE, TOO. THEY
11 WERE BRINGING FOOD IN OUR HOME AND OTHER THINGS.
12 MY OBSERVANCE HAS ALWAYS BEEN SOMEWHERE ELSE WITH
13 THEM. I NEVER WAS IN NATE AND SONYA'S HOME. I'VE
14 NEVER BEEN IN THEIR HOME. THEY'VE BEEN IN MY
15 HOME. I'VE ALWAYS BEEN IN HIS MOTHER'S HOME AND
16 THEIR SISTER'S HOME, WHERE THEY SEEM TO BE MOST OF
17 THE TIME.

18 Q DO YOU HAVE CHILDREN YOURSELF?

19 A YES, MA'AM.

20 Q ALL RIGHT. HOW OLD ARE THEY NOW? THEY'RE
21 GROWN?

22 A WELL, WE HAVE THEM FROM 8 TO 30. SOME OF
23 THEM ARE ADOPTED, SOME ARE OUR BIRTH CHILDREN.

24 Q ARE YOU A FOSTER PARENT, AS WELL?

25 A YES, MA'AM.

1 Q OKAY. HOW LONG HAVE YOU BEEN INVOLVED IN
2 THAT?

3 A SINCE 1974, WE CARED FOR 109 CHILDREN DURING
4 THAT PERIOD.

5 Q DID YOU AND NATE EVER DISCUSS BEING A FOSTER
6 PARENT?

7 A YES, MA'AM.

8 Q AND WHAT WAS THE OUTCOME OF THAT?

9 A WELL, HE BECAME LICENSED TO BE A FOSTER
10 PARENT. HE AND SONYA COULDN'T HAVE ANY CHILDREN.
11 THAT WAS THEIR DESIRE, TO HAVE CHILDREN. HE
12 BECAME LICENSED AS A FOSTER PARENT.

13 Q SO DID YOU ASSIST HIM IN THAT PROCESS?

14 A I CERTAINLY TOLD HIM WHAT HE NEEDED TO DO AS
15 FAR AS APPLYING WITH THE DEPARTMENT OF SOCIAL
16 SERVICES AND THOSE KINDS OF THINGS.

17 Q IN THE TIME THAT YOU SAID THAT YOU VISITED
18 WITH NATE AND SONYA AND THE CHILDREN AT VARIOUS
19 HOMES, YOURS AND OTHERS, WERE YOU ABLE TO OBSERVE
20 NATE WITH HIS CHILDREN?

21 A YES, MA'AM, MANY TIMES.

22 Q AND JUST FROM YOUR OWN OBSERVATIONS, HOW
23 WOULD YOU DESCRIBE HIS INTERACTIONS WITH HIS
24 CHILDREN?

25 A JUST AS ANY NORMAL GOOD FATHER SHOULD, I

1 THINK, INTERACT WITH THEIR CHILDREN.

2 I NEVER SAW ANYTHING DIFFERENT FROM THAT.

3 THE CHILDREN ALWAYS SEEMED TO BE HANGING ON NATE
4 NO MATTER WHERE HE WAS, WHETHER HE WAS OUTSIDE
5 CHANGING A TIRE OR SITTING DOWN EATING, THERE WAS
6 ALWAYS ONE WAS THERE WITH HIM.

7 Q WOULD THAT BE TRUE OF OTHER CHILDREN THAN THE

8 G. CHILDREN?

9 A CHILDREN SEEMED TO LIKE NATE, SORT OF LIKE A
10 SPONGE, I GUESS.

11 Q AND CAN YOU DESCRIBE MINOR FOR US?

12 A WELL, MINOR SEEMED TO BE A LITTLE GIRL WHO
13 I WOULD PROBABLY DESCRIBE AS WITHDRAWN, BUT, YOU
14 KNOW, I CAN'T DESCRIBE HER PROFESSIONALLY,
15 NATURALLY, BUT SHE WAS A WITHDRAWN TYPE OF CHILD.

16 I THINK -- YOU KNOW, I DON'T KNOW WHETHER IT
17 WAS SADNESS, OR -- I DON'T KNOW WHAT CAUSED THAT
18 WITHDRAWN FEELING, I DON'T KNOW.

19 Q AND YOUR OBSERVATIONS OF NATE AND MINOR ?

20 A JUST A NORMAL FATHER-DAUGHTER RELATIONSHIP,
21 WAS ALL I EVER SAW.

22 Q AND YOU DON'T HAVE ANY KNOWLEDGE YOURSELF OF
23 ANY EVENTS THAT HAPPENED ON MARCH 28TH OF 2000,
24 ISN'T THAT CORRECT?

25 A NO, MA'AM, NONE.

1 MS. COGGIOLA: THANK YOU. I HAVE NO FURTHER
2 QUESTIONS. PLEASE ANSWER ANY QUESTIONS.

3 THE COURT: CROSS-EXAMINATION?

4 MS. CAMPBELL: THANK YOU, YOUR HONOR.

5 CROSS-EXAMINATION

6 BY MS. CAMPBELL:

7 Q SO YOU NEVER EVEN BEEN TO THE HOME WHERE THE
8 CHILDREN LIVED?

9 A I BEG YOUR PARDON?

10 Q SO YOU NEVER HAVE BEEN IN THEIR HOME,
11 NATHANIEL MITCHELL'S HOME?

12 A NO. I NEVER WENT INTO NATE'S HOME, BUT I
13 ALWAYS SAW HIM AT HIS MOTHER'S, BECAUSE THAT'S
14 WHERE THEY WERE MOST OF THE TIME IT SEEMED. HIS
15 MOTHER WAS VERY ILL AND NATE SPENT MUCH, MUCH
16 TIME, HE AND SONYA, THERE. SHE WAS ILL FOR -- IN
17 A WHEELCHAIR THE LAST TWO YEARS OF HER LIFE.

18 Q BUT IN ANSWER TO MY QUESTION, YOU'VE NEVER
19 BEEN TO THEIR HOUSE?

20 A NO.

21 Q AND DURING THE TIME PERIOD WHEN YOU'VE BEEN
22 ABLE TO OBSERVE HIM, DID YOU SEE HIM PUNISH THE
23 CHILDREN?

24 A NO, MA'AM.

25 Q AND DURING THE TIME PERIOD THAT YOU OBSERVED

1 NATE, DID YOU EVER SEE HIM USE A BELT IN ANY
2 MANNER ON THE CHILDREN?

3 A NO, MA'AM.

4 Q FINALLY, YOU DESCRIBED MINOR AS WITHDRAWN.
5 I THINK YOU CHARACTERIZED IT AS IT WAS ALMOST AS
6 IF SHE HAD A SADNESS IN HER, AND YOU DON'T KNOW
7 WHAT CAUSED THAT?

8 A I THINK ANY TIME THAT YOU HAVE A CHILD THAT'S
9 WITHDRAWN, THEY ACT SAD, IN ALL MY DEALINGS
10 PROFESSIONALLY WITH CHILDREN. THAT'S THE WAY I
11 WOULD DESCRIBE IT.

12 MS. CAMPBELL: THANK YOU. I DON'T HAVE
13 ANYTHING ELSE, YOUR HONOR.

14 THE COURT: THANK YOU. REDIRECT?

15 MS. COGGIOLA: I DON'T HAVE ANYTHING.

16 THE COURT: THANK YOU. STEP DOWN. CALL YOUR
17 NEXT WITNESS, PLEASE.

18 MS. COGGIOLA: I CALL MARIE KEITT.

19 THE CLERK: PLACE YOUR LEFT HAND AND RAISE
20 YOUR RIGHT HAND.

21 MARIE KEITT,

22 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: HAVE A SEAT IN THE WITNESS BOX,
24 STATE YOUR FULL NAME FOR THE RECORD.

25 THE BAILIFF: WATCH YOUR STEP FOR ME, PLEASE

1 AND SPEAK INTO THIS MICROPHONE HERE.

2 THE WITNESS: MARIE C. KEITT.

3 DIRECT EXAMINATION

4 BY MS. COGGIOLA:

5 Q GOOD MORNING, MS. KEITT.

6 A GOOD MORNING.

7 Q WHERE DO YOU LIVE?

8 A [REDACTED] BOMBING RANGE ROAD, COLUMBIA, SOUTH
9 CAROLINA.

10 Q AND DO YOU CURRENTLY WORK?

11 A NO, MA'AM. I'M RETIRED.

12 Q OKAY. AND WHAT SORT OF WORK DID YOU DO?

13 A I WORKED AS A PHARMACY TECHNICIAN FOR THE
14 DEPARTMENT OF MENTAL HEALTH.

15 Q AND WHEN DID YOU RETIRE?

16 A 1999.

17 Q AND MS. KEITT, DO YOU KNOW NATHANIEL
18 MITCHELL?

19 A YES, MA'AM, I DO.

20 Q AND HOW LONG HAVE YOU KNOWN HIM?

21 A TWENTY-FIVE YEARS.

22 Q HOW DID YOU FIRST MEET NATE MITCHELL?

23 A HE WAS MY NEIGHBOR. HE LIVED APPROXIMATELY
24 THREE DOORS DOWN FROM ME.

25 Q AND SO DID YOU KNOW HIS -- THE MITCHELL

1 FAMILY?

2 A YES, MA'AM.

3 Q OKAY. YOU KNEW HIS MOTHER AND FATHER?

4 A HIS MOTHER AND FATHER, AND ALL THE SIBLINGS.

5 Q AND DID YOU SPEND TIME IN THEIR HOME?

6 A YES, MA'AM. I SPENT A LOT OF TIME IN THEIR
7 HOME. THEY SPENT A LOT OF TIME IN MY HOME.

8 Q DID YOU KNOW SONYA MITCHELL?

9 A YES, MA'AM, SONYA WAS MY VERY NEXT DOOR
10 NEIGHBOR. SHE LIVED RIGHT NEXT DOOR TO ME.

11 Q SHE WAS SONYA GREEN AT THE TIME?

12 A SHE WAS SONYA GREEN, YES.

13 Q AND SO YOU KNEW HER BEFORE SONYA AND NATE
14 WERE MARRIED?

15 A YES, MA'AM, SONYA WAS ABOUT 12, I THINK, WHEN
16 I MET HER.

17 Q AND DID YOU SPEND TIME WITH SONYA AND NATE
18 PRIOR TO THEM GETTING MARRIED?

19 A YES, MA'AM, A LOT OF TIME. I SPENT A LOT OF
20 TIME WITH THEM. I SAW THEM PROBABLY ALMOST EVERY
21 DAY.

22 Q AND DID YOU -- YOU HAVE CHILDREN, CORRECT?

23 A YES, MA'AM, I HAVE TWO CHILDREN.

24 Q AND ARE THEY GROWN NOW?

25 A YES, MA'AM, THEY'RE 19 AND 24.

1 Q AND DID NATE AND SONYA SPEND TIME WITH YOUR
2 CHILDREN?

3 A YES, MA'AM, THEY SPENT NUMEROUS HOURS WITH MY
4 CHILDREN. THEY VISITED ME A LOT IN ORDER TO SEE
5 THE BABY. WHEN I FIRST MET THEM I DIDN'T HAVE ANY
6 CHILDREN. I BECAME PREGNANT. THEY BOTH -- THEY
7 WOULD COME TO SEE THE BABY. THEY WOULD COME TO
8 SEE ME AND COME TO SEE THE BABY. THAT'S ACTUALLY
9 HOW THEY MET, COMING TO SEE THE BABY.

10 Q AND SPECIFICALLY NATE, TELL US A LITTLE BIT
11 ABOUT THE TIME HE SPENT WITH YOUR CHILDREN?

12 A HE SPENT A LOT OF TIME WITH MY SONS. DURING
13 THE TIME I KNEW NATE, I BECAME DIVORCED. HE WAS
14 LIKE A BIG BROTHER. HE WALKED WITH MY CHILDREN.
15 HE, A LOT OF TIMES, HE WOULD CARRY MY BABY. MY
16 BABY WAS BIG. HE WOULD CARRY MY CHILDREN. HE
17 WOULD CUT MY CHILDREN'S HAIR. HE BABYSAT FOR ME
18 AND HE WAS WONDERFUL FOR MY SONS, A VERY GOOD ROLE
19 MODEL FOR MY SONS. THEY LOVED HIM.

20 Q AND DO YOU REMEMBER WHEN SONYA AND NATE WERE
21 MARRIED?

22 A YES, MA'AM.

23 Q AND DID YOU CONTINUE TO SPEND TIME WITH THEM
24 AFTER THAT?

25 A YES, MA'AM, I DID.

1 Q AND THEN DO YOU RECALL WHEN THEY GOT THE
2 G. CHILDREN?

3 A YES, MA'AM, I CAN REMEMBER WHEN THEY WERE IN
4 THE PROCESS OF BEING LICENSED. I HAD RECOMMENDED
5 THEM REALLY -- I THINK THEY WOULD BE GOOD FOR
6 CHILDREN, AFTER HAVING A STILLBORN CHILD, THAT
7 THEY WOULD DO REALLY WELL WITH CHILDREN BECAUSE
8 THEY HAD SUCH A LOVE FOR MY CHILDREN.

9 Q ARE YOU A FOSTER PARENT?

10 A YES, MA'AM, I'VE BEEN A FOSTER PARENT FOR TEN
11 YEARS, A THERAPEUTIC FOSTER PARENT.

12 Q WHAT'S A THERAPEUTIC FOSTER PARENT?

13 A YOU GET INTO A LOT OF PARTICULARS, THERAPIES,
14 BEHAVIORS, AND THIS TYPE OF THING, TAKING THEM AND
15 WATCHING THEM INTERACT, BEHAVING.

16 Q AND HOW MANY CHILDREN HAVE YOU HAD IN YOUR
17 HOME?

18 A EIGHT OR TEN, AND I'VE HAD A LOT OF CHILDREN
19 FOR A RESPITE. SOMETIMES I DO RESPITE FOR THE
20 CHILDREN.

21 Q IF THEY HAVE SPECIAL NEEDS?

22 A YES, MA'AM. I DO THAT FOR MEDICALLY FRAGILE
23 CHILDREN AND I STILL DO RESPITE WITH THE CHILDREN,
24 THE MEDICALLY FRAGILE CHILDREN.

25 Q AFTER THE CHILDREN CAME TO LIVE WITH NATE AND

1 SONYA, DID YOU SPEND TIME WITH THEM AND THEIR
2 CHILDREN?

3 A YES, MA'AM, I SPENT SOME TIME WITH THEM AND
4 THEIR CHILDREN.

5 Q OKAY. CAN YOU TELL US A LITTLE BIT ABOUT THE
6 SORTS OF TIMES THAT YOU SPENT TIME WITH THEM?

7 A I SPENT TIME WITH THEM. THEY WOULD BRING THE
8 CHILDREN TO SEE ME, YOU KNOW, FROM TIME TO TIME.
9 I NEVER SPENT TIME WITH THE CHILDREN ALONE, BUT I
10 SPENT TIME WITH THEM BRINGING THE CHILDREN TO SEE
11 ME. I SPENT A LITTLE BIT OF TIME WITH THEM IN
12 THEIR HOME AND AT FAMILY GATHERINGS I SPENT SOME
13 TIME WITH THEM, WITH THE CHILDREN.

14 Q AND WOULD THAT BE WITH ALL THE MITCHELLS AND
15 THE --

16 A YES, THE FAMILY GATHERINGS, EVERYBODY.

17 Q AND YOU KNEW SONYA'S FAMILY, AS WELL, THE
18 GREENS?

19 A YES, MA'AM, VERY WELL.

20 Q AND IN THE PERIOD OF TIME THAT THE CHILDREN
21 WERE WITH THE MITCHELLS, CAN YOU JUST FROM YOUR
22 OWN OBSERVATION TELL US -- DESCRIBE NATE'S
23 INTERACTION WITH HIS CHILDREN?

24 A FROM MY OBSERVATION, I OBSERVED NATE TO BE A
25 VERY LOVING, CARING, COMPASSIONATE FATHER WITH HIS

1 CHILDREN, AND VERY VERY PROUD TO HAVE CHILDREN.

2 Q AND DID YOU SEE HIM DISCIPLINE HIS CHILDREN?

3 A THE DISCIPLINE -- THE DISCIPLINARY PERSON I
4 SAW OF HIM, I NEVER SAW HIM SPANK THEM. I SAW HIM
5 TELL THEM, "NO, NO, STOP, DON'T DO THAT." THAT'S
6 THE DISCIPLINE I SAW.

7 Q AND MOST OF THE TIMES YOU WERE WITH HIM WERE
8 FAMILY EVENTS; IS THAT RIGHT?

9 A YES, MA'AM, OTHER THAN THE TIMES THAT HE WAS
10 IN MY HOME PROBABLY WITH JUST THE THREE OF US WITH
11 THE CHILDREN, OR THE FOUR OF US.

12 Q CAN YOU DESCRIBE FROM THE TIMES YOU SPENT
13 WITH THEM, CAN YOU DESCRIBE MINOR TO US, WHAT
14 SHE WAS LIKE AS A LITTLE GIRL?

15 A MINOR TO ME WAS A BEAUTIFUL LITTLE GIRL
16 WHOM I THOUGHT WAS POSSIBLY DEVELOPMENTALLY
17 DELAYED, MAYBE AN ALCOHOLIC (SIC) SYNDROME BABY OR
18 SOMETHING OF THAT NATURE. SHE WOULDN'T LET ME
19 HOLD HER OR HOLD HER ON MY LAP. SHE WAS, I
20 THOUGHT, A LITTLE BIT DEVELOPMENTALLY DELAYED OR A
21 LITTLE BIT SLOW.

22 Q MS. KEITT, YOU HAVE, OF YOUR OWN KNOWLEDGE,
23 YOU HAVE NO INFORMATION ABOUT WHAT HAPPENED ON
24 MARCH 28TH, 2000, THE DAY THAT MINOR WENT TO THE
25 HOSPITAL, DO YOU?

1 A NO, MA'AM, NONE WHATSOEVER.

2 MS. COGGIOLA: THANK YOU, MS. KEITT, PLEASE
3 ANSWER ANY QUESTIONS.

4 THE COURT: CROSS-EXAMINATION, MS. SOLICITOR?

5 MS. CAMPBELL: JUST A COUPLE OF QUESTIONS.

6 CROSS-EXAMINATION

7 BY MS. CAMPBELL:

8 Q SO YOU'VE GOT A LOT OF EXPERIENCE CARING WITH
9 CHILDREN, MEDICALLY FRAGILE CHILDREN EVEN,
10 CORRECT?

11 A YES, MA'AM, I HAVE.

12 Q AND YOU WERE VERY CLOSE WITH THE MITCHELLS;
13 IS THAT CORRECT?

14 A YES, MA'AM.

15 Q I BELIEVE YOU STATED ON DIRECT EXAMINATION
16 THAT THEY NEVER LEFT YOU WITH THESE CHILDREN
17 ALONE?

18 A I'VE NOT BEEN ALONE WITH THEM, NO. I WORK
19 WITH A DIFFERENT AGENCY.

20 Q BUT YOU WERE NEVER ALONE WITH THE MITCHELL
21 CHILDREN?

22 A NO, MA'AM.

23 Q SO YOU NEVER BABYSAT THEM OR THEY DIDN'T
24 LEAVE THE CHILDREN WITH YOU?

25 A NO, MA'AM.

1 Q BUT YOU WERE VERY CLOSE WITH THEM?

2 A YES, MA'AM.

3 Q AND YOU DESCRIBED MINOR FOR US.

4 A TO ME MINOR WAS A PRETTY LITTLE GIRL, WHO I
5 WOULD THINK FROM FOSTERING WAS DEVELOPMENTALLY
6 DELAYED, POSSIBLY AN ALCOHOLIC (SIC) SYNDROME
7 BABY, A LITTLE BIT SLOW.

8 Q SO WOULD SHE HAVE BEEN A DIFFICULT CHILD,
9 UNLIKE THE OTHER TWO?

10 A MAYBE NOT.

11 Q AND I DON'T MEAN TO PUT WORDS IN YOUR MOUTH,
12 BUT YOU TELL ME.

13 A WELL, MAYBE NOT FOR ME.

14 Q BUT MAYBE FOR SOMEONE NOT WITH YOUR TRAINING
15 AND EXPERIENCE?

16 A BUT MAYBE, YES, SOMEONE NOT WITH MY
17 EXPERIENCE, MAYBE YES.

18 Q SHE WOULD HAVE BEEN DIFFICULT FOR SOMEONE
19 WITHOUT EXPERIENCE?

20 A SHE COULD HAVE BEEN.

21 Q AND FINALLY, YOU SAID THAT YOU HAVE SEEN
22 MR. MITCHELL DISCIPLINE HIS CHILDREN?

23 A YES.

24 Q OKAY. BUT YOU HAVE NEVER SEEN MR. MITCHELL
25 DISCIPLINE HIS CHILDREN WITH A BELT, HAVE YOU?

1 A NO, MA'AM, I HAVE NOT.

2 MS. CAMPBELL: THANK YOU. I HAVE NOTHING
3 FURTHER.

4 THE COURT: REDIRECT?

5 MS. COGGIOLA: NOTHING ON REDIRECT.

6 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
7 DOWN.

8 CALL YOUR NEXT WITNESS.

9 MS. COGGIOLA: THE DEFENSE WOULD CALL CYNTHIA
10 GREEN.

11 CYNTHIA GREEN,

12 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: HAVE A SEAT IN THE WITNESS BOX,
14 STATE YOUR FULL NAME FOR THE RECORD.

15 THE WITNESS: CYNTHIA E. GREEN.

16 DIRECT EXAMINATION

17 BY MS. COGGIOLA:

18 Q GOOD MORNING, MS. GREEN.

19 MS. CAMPBELL: YOUR HONOR, MAY WE JUST
20 APPROACH ON ONE MATTER REAL QUICK?

21 THE COURT: SURE.

22 MS. CAMPBELL: I'M SORRY.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD
24 IN THE PRESENCE OF THE JURY, BUT OUT OF
25 THE HEARING OF THE JURY.)

1 BY MS. COGGIOLA:

2 Q GOOD MORNING, MS. GREEN.

3 A GOOD MORNING.

4 Q WHERE DO YOU LIVE?

5 A [REDACTED] GRISTMILL ROAD, LOT 53.

6 Q HOW LONG HAVE YOU LIVED THERE?

7 A ABOUT 15 YEARS.

8 Q DO YOU CURRENTLY WORK?

9 A YES, I DO.

10 Q AND WHAT DO YOU DO?

11 A I'M A SECRETARY AT THE MIDLANDS CENTER.

12 Q AND DO YOU KNOW NATE MITCHELL?

13 A YES, I DO.

14 Q CAN YOU TELL US HOW YOU KNOW NATE MITCHELL?

15 A HE MARRIED MY SISTER.

16 Q IT'S YOUR SISTER, SONYA GREEN?

17 A SONYA GREEN.

18 Q AND SONYA IS NO LONGER LIVING; IS THAT

19 CORRECT?

20 A THAT'S CORRECT.

21 Q OKAY. HOW MANY ARE IN YOUR FAMILY MS. GREEN?

22 HOW MANY SIBLINGS WERE IN YOUR FAMILY?

23 A I HAVE THREE CHILDREN.

24 Q OKAY. IN YOUR OWN FAMILY YOU HAVE THREE

25 CHILDREN?

1 A RIGHT.

2 Q AND HOW OLD ARE THEY?

3 A 27, 25, AND 20.

4 Q AND HOW MANY SISTERS AND BROTHERS DO YOU
5 HAVE?

6 A I HAVE ONE BROTHER AND THREE SISTERS.

7 Q AND WAS SONYA ONE OF YOUR SISTERS?

8 A YES.

9 Q CAN YOU TELL US WHEN SHE DIED?

10 A DECEMBER 10TH, 2000.

11 Q THIS PAST --

12 A YES.

13 Q THIS PAST DECEMBER?

14 A YES.

15 Q SO IT'S BEEN FIVE MONTHS?

16 A RIGHT.

17 Q AND DO YOU KNOW HOW SHE DIED?

18 A YES, I KNOW.

19 Q HOW DID SHE DIE?

20 A SHE HAD A MASSIVE STROKE.

21 Q EXCUSE ME?

22 A SHE HAD A MASSIVE STROKE.

23 Q SHE HAD A MASSIVE STROKE. AND DID YOU MEET
24 NATE THROUGH YOUR SISTER OR DID YOU KNOW THE
25 MITCHELLS PRIOR TO THAT?

1 A I KNEW THEM PRIOR TO -- WHEN THEY WERE GOING
2 TOGETHER.

3 Q SO YOU MET HIM WHEN THEY WERE GOING TOGETHER?

4 A YES.

5 Q DO YOU KNOW HOW OLD THEY WERE AT THAT TIME,
6 APPROXIMATELY?

7 A NOT REALLY. I MEAN, IT'S -- SO MUCH HAS
8 HAPPENED.

9 Q DID THEY GO TOGETHER FOR A LONG TIME BEFORE
10 THEY GOT MARRIED?

11 A YES.

12 Q WERE THEY IN SCHOOL TOGETHER?

13 A YES. THEY WENT THROUGH SCHOOL TOGETHER, AND
14 THEY HAD BEEN GOING TOGETHER EVER SINCE THEN.

15 Q AND DID YOU SPEND A LOT OF TIME WITH THEM
16 PRIOR TO THEM GETTING MARRIED?

17 A NO, BECAUSE I WAS RAISING MY OWN CHILDREN. I
18 ONLY SAW THEM WHEN I SAW THEM -- ONLY AT FAMILY
19 GATHERINGS.

20 Q SO WHEN THERE WERE BIG FAMILY GATHERINGS YOU
21 WOULD SEE THEM, RIGHT?

22 A YES.

23 Q AFTER THEY GOT MARRIED, DID YOU SPEND TIME
24 WITH NATE AND SONYA?

25 A YES, I DID.

1 Q . AND WHERE WOULD YOU SPEND TIME WITH THEM?

2 WHAT ARE SOME OF THE THINGS THAT YOU ALL DID

3 TOGETHER?

4 A - WELL, A LOT OF TIMES NATE WOULD BABY-SIT FOR

5 ME. MY SON WAS SMALL. I JUST HAD HIM, SO UP TO

6 HIS HOUSE -- I WOULD GO TO HIS HOUSE AND I WOULD

7 TAKE MY SON OR WE WOULD JUST GO OUT TO DINNER AND

8 HAVE -- JUST ANYTIME THAT WE'D HAVE TO GO OUT OR

9 GO TO A MOVIE AND WE'D GO TOGETHER.

10 Q AND WAS THIS PRIOR TO THEM HAVING THE

11 CHILDREN?

12 A YES.

13 Q THIS WAS BEFORE THEY HAD --

14 A UH-HUH.

15 Q -- THE G. CHILDREN LIVING WITH THEM?

16 A RIGHT.

17 Q AND DO YOU REMEMBER WHETHER YOUR -- WHETHER

18 NATE AND YOUR SISTER HAD PLANNED TO HAVE THEIR OWN

19 CHILDREN?

20 A YES, BECAUSE I USED TO TEASE THEM ABOUT IT.

21 Q AND DO YOU KNOW WHETHER THEY EVER DID HAVE

22 CHILDREN?

23 A THEY HAD ONE, BUT IT WAS STILLBORN.

24 Q ONE CHILD THAT WAS STILLBORN?

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

1 Q DO YOU REMEMBER HOW LONG AGO THAT WAS?

2 A NO, MA'AM.

3 Q ONCE THE G. CHILDREN CAME TO LIVE WITH
4 SONYA AND NATE, DID YOU SPEND TIME WITH THEM WITH
5 THE CHILDREN?

6 A YES, I DID.

7 Q OKAY. AND I THINK H.G. CAME FIRST; IS THAT
8 RIGHT?

9 A YES, MA'AM.

10 Q DO YOU KNOW HOW LONG HE WAS THERE BEFORE THE
11 GIRLS CAME?

12 A I DON'T KNOW.

13 Q BUT YOU WOULD SPEND TIME WITH THEM WITH THE
14 CHILDREN. WHERE WOULD THAT BE?

15 A AT THEIR HOUSE.

16 Q AT THEIR HOME. OKAY. DID THEY EVER COME TO
17 YOUR HOME?

18 A YES, THEY DID.

19 Q AND WERE THERE FAMILY EVENTS WHEN EVERYBODY
20 WAS TOGETHER?

21 A YES.

22 Q CAN YOU DESCRIBE FOR US FROM YOUR OWN
23 OBSERVATIONS ON THESE OCCASIONS WHEN YOU WERE WITH
24 THEM HOW THEY WERE WITH THE CHILDREN IN GENERAL?

25 A WELL, THEY WERE HAPPY. I MEAN, THEY WERE

1 HAVING FUN. WE USED TO GO OUT AND EAT A LOT.

2 SUNDAY WOULD BE OUR BEST DAY TO GO BECAUSE WE'D

3 ALL BE OFF. THAT'S WHEN WE'D ALWAYS BE GOING TO

4 LIKE CHINESE AND EAT OUT ON SUNDAYS. WE'D JUST

5 ALL HAVE A GOOD FAMILY GET TOGETHER.

6 Q WOULD THE CHILDREN GO OUT TO EAT WITH YOU?

7 A YES.

8 Q DID YOU EVER TAKE CARE OF THE CHILDREN AT

9 ALL? DID YOU EVER CARE FOR THE G. CHILDREN?

10 A NO.

11 Q SO WHENEVER YOU WERE WITH THEM, SONYA AND

12 NATE WERE WITH THEM?

13 A YES.

14 Q AND CAN YOU TELL US YOUR IMPRESSION OF

15 MINOR AS A LITTLE GIRL?

16 A MINOR WAS -- SHE WAS A LOVING CHILD. SHE

17 WAS QUIET, BUT SHE WAS LOVING. ONCE YOU GOT TO

18 KNOW HER, YOU JUST FELL IN LOVE WITH HER. SHE

19 DIDN'T TALK MUCH, BUT SHE WAS VERY LOVING. YOU

20 KNOW, YOU JUST FELL FOR HER.

21 Q AND BY YOUR OWN OBSERVATIONS, CAN YOU TELL US

22 A LITTLE BIT ABOUT NATE'S INTERACTION WITH

23 MINOR ?

24 A HE LOVED HER. I MEAN, HE WOULD ALWAYS CUDDLE

25 UP. HE WAS JUST A LOVING FATHER.

1 Q MS. GREEN, YOU DON'T HAVE ANY INFORMATION OF
2 YOUR OWN KNOWLEDGE ABOUT WHAT HAPPENED AT THEIR
3 HOME ON THE 28TH OF MARCH, 2000, DO YOU?

4 A NO, I DON'T.

5 Q AND DID YOU SEE THEM DISCIPLINE THESE
6 CHILDREN?

7 A YES. THEY HAVE THESE THREE LITTLE CHAIRS
8 THEY USED TO KEEP IN THE LIVING ROOM. WHENEVER
9 THEY DID SOMETHING, THEY'D TELL THEM TO SIT THERE
10 AND THEY SAT.

11 Q DID THEY EACH HAVE A CHAIR?

12 A YES, THEY EACH HAD A CHAIR.

13 MS. COGGIOLA: THANK YOU VERY MUCH. I HAVE
14 NO FURTHER QUESTIONS.

15 THE COURT: CROSS-EXAMINATION?

16 MS. CAMPBELL: JUST A FEW QUESTION, JUDGE, IF
17 I COULD.

18 CROSS-EXAMINATION

19 BY MS. CAMPBELL:

20 Q HI, MS. GREEN, I JUST HAVE A FEW QUESTIONS,
21 OKAY. YOU SAID THEY HAD THREE LITTLE CHAIRS
22 SITTING UP IN THE LIVING ROOM?

23 A YES, MA'AM.

24 Q IS THAT WHAT THEY USED FOR DISCIPLINE?

25 A YES, MA'AM.

1 Q SO THE CHILDREN WOULD HAVE TO GO SIT THERE
2 FOR DISCIPLINE?

3 A YES.

4 Q THAT WAS THE PURPOSE OF THE CHAIRS WAS FOR
5 WHEN THE CHILDREN WERE BEING BAD AND BEING PUT
6 THERE?

7 A YES, THE TV WAS IN WHERE THE CHAIRS WERE.

8 Q THE CHAIRS IN THE AREA WHERE THE TV WAS, BUT
9 THOSE CHAIRS WERE USED AS A DISCIPLINE AREA?

10 A OKAY.

11 Q AND THAT WAS THEIR FUNCTION IN THE LIVING
12 ROOM?

13 A UH-HUH.

14 Q SO YOU NEVER SAW NATHANIEL MITCHELL SPANK HIS
15 CHILDREN?

16 A I DIDN'T.

17 Q AND YOU NEVER SAW NATHANIEL MITCHELL USE A
18 BELT ON THESE CHILDREN?

19 A NO, I DID NOT.

20 Q AND YOU ALSO STATED ON DIRECT TESTIMONY, TOO,
21 MA'AM, THAT, WHEN YOU WOULD SEE THE CHILDREN, THEY
22 WOULD BE WITH THEIR PARENTS?

23 A YES.

24 MS. CAMPBELL: I HAVE NOTHING FURTHER.

25 THE COURT: REDIRECT?

1 MS. COGGIOLA: NO.

2 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
3 DOWN.

4 CALL YOUR NEXT WITNESS.

5 MS. COGGIOLA: THANK YOU, YOUR HONOR.. WE
6 CALL PATRICIA SMITH.

7 PATRICIA SMITH,

8 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: HAVE A SEAT IN THE WITNESS STAND.
10 STATE YOUR FULL NAME FOR THE RECORD.

11 THE BAILIFF: WATCH YOUR STEP FOR ME, PLEASE
12 AND SPEAK INTO THE MICROPHONE.

13 THE WITNESS: MY NAME IS PATRICIA A. SMITH.

14 DIRECT EXAMINATION

15 BY MS. COGGIOLA:

16 Q GOOD MORNING, PATRICIA.

17 A GOOD MORNING.

18 Q WHERE DO YOU LIVE?

19 A I LIVE AT [REDACTED] CHATSWORTH ROAD, APARTMENT [REDACTED].
20 I JUST MOVED THERE.

21 Q OKAY. SO YOU HAVEN'T LIVED THERE VERY LONG?

22 A NO. I LIVED WITH NATE AFTER SONYA DIED.

23 Q YOU'RE LIVING WITH NATE?

24 A I LIVED WITH NATE AFTER SONYA DIED.

25 Q OKAY. NATE IS YOUR --

1 A BROTHER.

2 Q BROTHER, OKAY. SO WAS YOUR NAME MITCHELL?

3 A MITCHELL, YES, MA'AM.

4 Q AND HOW MANY MITCHELL CHILDREN ARE THERE?

5 A ALTOGETHER, EIGHT.

6 Q AND YOU WERE RAISED -- WHAT PART OF COLUMBIA

7 DID YOU GROW UP IN?

8 A COLUMBIA, SOUTH CAROLINA.

9 Q AND WHAT PART OF TOWN?

10 A WE LIVED IN PONTIAC FOR -- I THINK, I WAS

11 MAYBE 12 OR 11 WHEN WE MOVED FROM UP IN THAT AREA.

12 THEN WE LIVED AROUND NORTHEAST COLUMBIA WHERE WE

13 PRETTY MUCH LIVED FROM THEN ON.

14 Q WHERE DID YOU GO TO HIGH SCHOOL?

15 A SPRING VALLEY HIGH SCHOOL.

16 Q AND WHAT NUMBER CHILD ARE YOU OF THE

17 SIBLINGS?

18 A I'M THE BABY.

19 Q OKAY. AND DO YOU KNOW WHAT NUMBER NATE IS?

20 A HE'S NEXT TO THE BABY.

21 Q SO YOU TWO WERE THE LITTLEST?

22 A RIGHT.

23 Q AND YOU GREW UP WITH YOUR MOTHER AND YOUR

24 FATHER; IS THAT CORRECT?

25 A YES, MA'AM.

1 Q WHEN DID YOUR FATHER DIE?

2 A HE DIED APRIL 14TH, 1993, OF CANCER.

3 Q AND YOUR MOTHER?

4 A MY MOTHER DIED JANUARY 5TH, 2000.

5 Q OKAY. AND SO YOU HAVE KNOWN NATE YOUR WHOLE
6 LIFE?

7 A YES, MA'AM.

8 Q DID YOU KNOW THE GREEN FAMILY?

9 A YES, MA'AM.

10 Q OKAY. AND HOW DID YOU MEET THEM?

11 A WE WERE NEIGHBORS, BUT I CAME TO KNOW THEM
12 BECAUSE SONYA AND I -- WE USED TO FIGHT AT SCHOOL.
13 I USED TO PICK AT HER A LOT.

14 Q AND SHE -- SO SHE WAS A FRIEND?

15 A YES.

16 Q RIGHT. AND DO YOU REMEMBER WHEN SHE STARTED
17 DATING YOUR BROTHER?

18 A YES.

19 Q AND DID YOU SPEND A LOT OF TIME WITH THE TWO
20 OF THEM?

21 A YES.

22 Q DID BOTH FAMILIES SPEND TIME WITH EACH OTHER?

23 A YES, MA'AM.

24 Q OKAY. WHAT SORTS OF THINGS WOULD YOU DO AS
25 TWO FAMILIES?

1 A WELL, LIKE WE WOULD BE INVITED TO DIFFERENT
2 CHURCHES, YOU KNOW, TO GO TO DIFFERENT CHURCHES,
3 FAMILY GATHERINGS, WHETHER IT WAS BREAKFAST OR
4 DINNER, OR THE MOVIES.

5 Q DID SONYA'S FAMILY CONTINUE TO LIVE NEXT DOOR
6 TO YOUR FAMILY OR DID ONE OF YOU MOVE?

7 A WE LIVED THERE MAYBE A YEAR TOGETHER, AND
8 THEN WE MOVED TO ANOTHER ZONE, SCHOOL ZONE.

9 Q BUT DID YOU CONTINUE YOUR FRIENDSHIP WITH
10 SONYA?

11 A YES, MA'AM.

12 Q AND DO YOU KNOW HOW LONG SONYA AND NATE DATED
13 BEFORE THEY GOT MARRIED?

14 A WELL, I WAS 13 YEARS OLD WHEN I CAME TO FIND
15 OUT THAT MY BROTHER WAS DATING SONYA FROM AN
16 INCIDENT AT SCHOOL.

17 SHE TOLD ME THAT SHE HAD A BOYFRIEND THAT WAS
18 GOING TO MEET ME AT THE BUS STOP WHEN WE GOT HOME.
19 WHEN I GOT OFF THE BUS I HAD NO IDEA THAT IT WAS
20 MY BROTHER THAT SHE WAS TALKING ABOUT.

21 Q AND HOW LONG WAS IT THEN BEFORE THEY GOT
22 MARRIED?

23 A THEY GOT MARRIED JUNE 18TH OF 1993, THE SAME
24 YEAR MY FATHER DIED.

25 Q SO THEY WERE WELL OUT OF HIGH SCHOOL BY THAT

1 TIME?

2 A YES, MA'AM.

3 Q SO AFTER THEY GOT MARRIED, DID YOU CONTINUE
4 TO SPEND TIME WITH THEM AS A COUPLE?

5 A YES, MA'AM.

6 Q DID YOU VISIT THEIR HOME?

7 A FREQUENTLY.

8 Q AND WHAT OTHER SORTS OF ACTIVITIES DID YOU
9 ALL SHARE?

10 A I USED TO DO COMPUTER WORK IN THEIR HOME, YOU
11 KNOW, HELPING SONYA WITH THE INVENTORY. THEY
12 HELPED ME RAISE MY CHILDREN AS A SINGLE PARENT. I
13 WAS A SINGLE PARENT.

14 Q HOW MANY CHILDREN DO YOU HAVE?

15 A I HAD TWO.

16 Q WHEN YOU SAY THEY HELPED YOU RAISE THEM.
17 WHAT DID THEY DO?

18 A BEING THAT I HAD TO WORK ODD HOURS, SOMETIMES
19 TWO JOBS, YOU KNOW, LIKE WHEN JASON WAS IN
20 PRE-SCHOOL, THEY WOULD HELP ME AS FAR AS PICKING
21 HIM UP ON TIME AND STUFF OF THAT NATURE.

22 Q DID NATE EVER BABY-SIT FOR YOUR CHILDREN?

23 A OF COURSE, YES.

24 Q SO HE SPENT TIME WITH THEM. DID YOUR
25 CHILDREN EVER STAY IN THEIR HOME?

1 A YES, JUST RECENTLY WE MOVED FROM OUT OF THE
2 HOME.

3 Q AND DO YOU RECALL WHEN THEY DID HAVE THEIR
4 CHILD?

5 A YES, MA'AM.

6 Q AND IT WAS A STILLBORN BABY, CORRECT?

7 A YES, MA'AM, [REDACTED], 1994.

8 Q AND WHAT WAS YOUR IMPRESSION OF THEIR
9 FEELINGS AT THAT TIME?

10 A THEY WERE CRUSHED. I REMEMBER MY BROTHER'S
11 CRY THAT HE JUST WISHED GOD WOULD GRANT HIM
12 CHILDREN, YOU KNOW.

13 Q SO THAT WAS IN 1994; IS THAT CORRECT?

14 A YES, MA'AM.

15 Q AND WERE YOU AWARE OF ANY ATTEMPTS ON THEIR
16 PART TO HAVE A FAMILY AFTER THAT?

17 A YES, MA'AM. THEY TRIED. WE JUST DON'T KNOW
18 WHY THEY COULDN'T HAVE ANY MORE AFTER THAT.

19 Q SO THEY WERE NOT ABLE TO HAVE THEIR OWN
20 CHILDREN?

21 A RIGHT.

22 Q NOW, YOU -- SPENDING THIS MUCH TIME WITH
23 THEM, DO YOU RECALL WHEN THE G. CHILDREN
24 MOVED IN?

25 A YES, MA'AM.

1 Q AND H.G. MOVED IN FIRST?

2 A YES, IN 1997.

3 Q DO YOU KNOW HOW LONG HE WAS THERE BEFORE THE
4 GIRLS CAME?

5 A I WANT TO SAY RIGHT AT A YEAR, MAYBE.

6 Q SO ABOUT A YEAR?

7 A YEAH.

8 Q AND THEY WERE SIBLINGS?

9 A CORRECT.

10 Q AND DID YOU SPEND TIME WITH SONYA AND NATE
11 AND H.G. DURING THAT YEAR?

12 A YES, MA'AM.

13 Q AND HOW WOULD YOU DESCRIBE HIS RELATIONSHIP
14 WITH H.G. ?

15 A NORMAL AS ANY FATHER WOULD LOVE A CHILD.

16 Q AND THEN YOU REMEMBER WHEN THE GIRLS CAME?

17 A YES, MA'AM.

18 Q OKAY. AND WHAT SORT OF TIME DID YOU SPEND
19 WITH THEM AS A FAMILY?

20 A I MEAN, WE JUST SPENT TIME TOGETHER. I
21 REMEMBER ONE INCIDENT ONE SATURDAY NATE WAS
22 BRAIDING -- UNBRAIDING THE GIRLS' HAIR, AND IT GOT
23 TO A POINT WHERE HE HAD TO CALL ME OVER TO FINISH
24 IT, BECAUSE HE WAS KIND OF -- HE DIDN'T KNOW WHAT
25 ELSE TO DO WITH IT AFTER TAKING IT LOOSE.

1 Q AND HOW WOULD YOU DESCRIBE MINOR ?

2 A A BEAUTIFUL CHILD. JUST HER NAME SAID IT
3 ALL, SHE WAS PASSIONATE, BUT VERY WITHDRAWN.

4 Q SHE WAS WITHDRAWN?

5 A UH-HUH.

6 Q AND FROM YOUR OBSERVATIONS WHEN YOU WERE WITH
7 NATE AND HIS CHILDREN AND SPECIFICALLY MINOR ,
8 JUST FROM YOUR OBSERVATIONS, HOW DID YOU SEE HIS
9 INTERACTION WITH HER?

10 A LOVING. WHENEVER MINOR WAS WITH NATE, WE
11 HAD TO BRIBE HER IN ORDER FOR US TO HOLD HER, WE
12 HAD TO GIVE HER SOMETHING IN ORDER FOR HER TO, YOU
13 KNOW, JUST LEAVE NATE.

14 Q DID YOU SEE HIM DISCIPLINE THESE CHILDREN?

15 A NO, MA'AM.

16 Q AND YOU DON'T HAVE ANY KNOWLEDGE ABOUT WHAT
17 HAPPENED AT SONYA AND NATE'S HOUSE ON THE 28TH OF
18 MARCH, DO YOU?

19 A NO.

20 MS. COGGIOLA: THANK YOU. PLEASE ANSWER ANY
21 QUESTIONS.

22 THE COURT: CROSS-EXAMINATION?

23 MS. CAMPBELL: NO, YOUR HONOR.

24 THE COURT: THANK YOU, MA'AM. YOU MAY STEP
25 DOWN.

1 CALL YOUR NEXT WITNESS, PLEASE.

2 MS. COGGIOLA: THE DEFENSE CALLS KIMBERLY
3 KENNEDY.

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

6 KIMBERLY KENNEDY,

7 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: HAVE A SEAT. STATE YOUR FULL
9 NAME FOR THE RECORD.

10 THE WITNESS: MY NAME IS KIMBERLY A. KENNEDY.

11 DIRECT EXAMINATION

12 BY MS. COGGIOLA:

13 Q GOOD MORNING, MS. KENNEDY.

14 A GOOD MORNING.

15 Q WHERE DO YOU WORK?

16 A SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES.

17 Q AND WHAT IS YOUR POSITION NOW AT D.S.S.?

18 A I'M AN ADOPTION SPECIALIST. I HANDLE ALL THE
19 INTERSTATE COMPACT CASES.

20 Q AND HOW LONG HAVE YOU BEEN DOING THAT?

21 A I'VE BEEN DOING INTERSTATE COMPACT FOR MAYBE
22 ABOUT EIGHT MONTHS NOW.

23 Q AND WHAT WERE YOU DOING BEFORE THAT?

24 A I DID REGULAR ADOPTIONS, FOSTER CARE ADOPTION
25 CASES.

1 Q DO YOU KNOW WHEN YOU FIRST STARTED WORKING IN
2 THE ADOPTION SECTION OF D.S.S.?

3 A ABOUT AUGUST OF '99.

4 Q AND PRIOR TO THAT, HAD YOU BEEN WITH D.S.S.?

5 A I HAVE BEEN WITH THE AGENCY SINCE 1994.

6 Q ALL RIGHT. AND WERE YOU IN THE FOSTER CARE
7 SECTION?

8 A I WAS. I WAS FOSTER CARE TREATMENT, YOUTH
9 COUNSELOR, ALWAYS DOING SOMETHING IN HUMAN
10 SERVICES INVOLVING FAMILIES AND CHILDREN.

11 Q AND IN AUGUST OF 1999, YOU SAY THAT YOU WERE
12 AT THAT POINT YOU WERE GOING TO BE WORKING WITH
13 ADOPTIONS. BASICALLY WHAT WERE YOUR
14 RESPONSIBILITIES?

15 A MY RESPONSIBILITY AS AN ADOPTION WORKER WAS
16 TO GO OUT AND ASSESS THE NEEDS OF CHILDREN AND AS
17 THEY WOULD BE APPROPRIATELY PLACED WITH THE
18 FAMILY, MAKING SURE THAT THE FAMILIES WERE GOOD
19 FOR THE KIDS AND THE KIDS FIT IN WELL WITH THE
20 FAMILIES.

21 Q HAD THE FAMILIES USUALLY STARTED THE PROCESS
22 OF ADOPTION BY THE TIME YOU WERE APPOINTED TO
23 THEM? IN OTHER WORDS, HAD THEY MADE A REQUEST TO
24 BE CONSIDERED FOR ADOPTION?

25 A NORMALLY IF IT WAS A CASE WHERE THE FOSTER

1 PARENT WAS INTERESTED IN ADOPTING THEM, MANY TIMES
2 THEY'RE ALREADY IN THE HOME PRIOR TO ME RECEIVING
3 THE CASE TO START THE ADOPTION PROCESS.

4 Q SO OFTEN THE CHILDREN WERE ALREADY IN FOSTER
5 CARE IN THE HOME?

6 A EXACTLY.

7 Q AND THEY WERE LOOKING TO MAKE IT A FULL
8 ADOPTION?

9 A EXACTLY.

10 Q AND WHEN YOU GO INTO THESE HOMES, WHAT SORTS
11 OF THINGS ARE YOU LOOKING FOR?

12 A WHEN I ENTER A HOME, I'M ASSESSING THE
13 CHILDREN'S NEEDS, EDUCATIONALLY, MEDICALLY,
14 SOCIALLY. I'M MAKING SURE THAT THE HOME IS AN
15 APPROPRIATE ENVIRONMENT, SAFE AND NURTURING FOR
16 THE CHILDREN, AND THAT THE FAMILIES UNDERSTAND THE
17 CHILDREN'S NEEDS AND THAT THEY ARE WELL EQUIPPED
18 AND READY TO CARE FOR THESE CHILDREN.

19 Q ARE YOU GIVEN ANY REPORTS FROM FOSTER CARE
20 PRIOR TO THIS? IN OTHER WORDS, IF THEY'VE ALREADY
21 BEEN IN FOSTER CARE FOR A WHILE, DO YOU REVIEW
22 THAT BEFORE YOU GO INTO THE HOME OR DO YOU START
23 FROM WHERE YOU'RE ASSIGNED TO THE CASE?

24 A MANY TIMES WE DO HAVE THE OPPORTUNITY TO --
25 IF IT'S A CHILD THAT MAY HAVE A SPECIAL NEED AND

1 ESPECIALLY IF THEY'RE IN FOSTER CARE, YOU MAY WANT
2 TO LOOK AND SEE EXACTLY WHAT'S GOING ON WITH THE
3 CASE.

4 Q DO YOU RECALL BEING ASKED TO CONTACT
5 NATHANIEL AND SONYA MITCHELL?

6 A I DO.

7 Q AND WHEN WAS THAT, APPROXIMATELY?

8 A ABOUT AUGUST OF 1999.

9 Q AND WHEN WAS YOUR FIRST CONTACT WITH THEM?

10 A I BELIEVE TO SAY ABOUT SEPTEMBER, GIVE OR
11 TAKE. SOMETIMES IT TAKES MAYBE TWO OR THREE WEEKS
12 TO REALLY GET A VISIT SET UP ONCE YOU RECEIVE A
13 CASE.

14 Q AND HAD YOU MET THEM PRIOR TO THAT?

15 A I HAD NEVER MET THEM PRIOR TO THAT.

16 Q SO YOUR JOB WAS TO GO IN BECAUSE THEY WERE
17 BEING CONSIDERED AS ADOPTIVE PARENTS?

18 A EXACTLY.

19 Q AND YOUR INFORMATION WAS THAT THEY WERE
20 ALREADY FOSTER PARENTS?

21 A YES.

22 Q AND THE -- DO YOU RECALL THE FIRST TIME YOU
23 VISITED THEIR HOME?

24 A I DO.

25 Q CAN YOU TELL US A LITTLE BIT ABOUT THAT?

1 A MY -- OF COURSE, MY FIRST VISIT WOULD HAVE
2 BEEN MORE OF AN INTRODUCTORY VISIT. I INQUIRED ON
3 THEIR INTEREST IN ADOPTING THE THREE CHILDREN THAT
4 HAD BEEN ASSIGNED TO ME IN THE CASE LOAD.

5 I RECALL THEM EXPRESSING INTEREST IN ADOPTING
6 ALL THREE KIDS AND A WILLINGNESS TO HAVE THEM IN
7 THEIR HOME PERMANENTLY.

8 Q AND THEN AFTER THAT HOW OFTEN -- IN YOUR ROLE
9 WITH THIS ASSESSMENT, ABOUT HOW OFTEN DO YOU VISIT
10 THE HOME?

11 A I'M REQUIRED TO VISIT THE HOME OR MAKE SOME
12 TYPE OF CONTACT AT LEAST MONTHLY WITH THE FAMILY.

13 Q AND DESCRIBE JUST IN GENERAL WHAT THOSE
14 VISITS ARE LIKE. DO YOU CALL THEM AHEAD OF TIME?
15 DO YOU JUST STOP IN? DO THE CHILDREN NEED TO BE
16 THERE?

17 A WELL, WE HOPE THAT -- WE WOULD LIKE FOR THE
18 KIDS TO BE THERE SO WE DON'T HAVE TO MAKE AN EXTRA
19 TRIP, BUT THE VISITS ARE -- WE CAN CALL THEM AND
20 ARRANGE WITH THEM PRIOR TO COMING, BUT WE DON'T
21 HAVE TO. THE MITCHELL FAMILY WAS ONE OF THE
22 FAMILIES THAT I DID NOT HAVE TO CALL THEM TO MAKE
23 AN ARRANGED VISIT.

24 Q SO YOU WOULD JUST STOP BY AT YOUR
25 CONVENIENCE?

1 A UH-HUH.

2 Q AND WERE THE CHILDREN THERE WHEN YOU GOT
3 THERE?

4 A THEY WERE ALWAYS THERE WHEN I GOT THERE.

5 Q SO YOU GOT TO OBSERVE THE CHILDREN AND THE
6 MITCHELLS TOGETHER?

7 A EXACTLY.

8 Q AND DO YOU RECALL WHEN THE VISITS ENDED
9 APPROXIMATELY? WHEN YOU STOPPED VISITING THE
10 HOME? WAS IT PRIOR TO MINOR 'S DEATH?

11 A IT WAS AFTER THE DEATH OF MINOR .

12 Q OKAY. BUT RIGHT UP UNTIL MARCH OF 2000, YOU
13 WERE MAKING THESE VISITS TO THE HOME?

14 A YES, I WAS.

15 Q AND WHAT WAS GOING ON WITH THE ADOPTION
16 PROCESS, AS WELL AS THESE HOME VISITS
17 PROCEDURALLY? WERE OTHER THINGS OCCURRING?

18 A THE PART THAT I WAS WORKING WITH WAS
19 COMPLETING THE ADOPTION PAPERWORK. IN THE
20 ADOPTION PROCESS, THE PAPERWORK IS -- WELL,
21 THERE'S A GOOD BIT OF PAPERWORK. EACH TIME I
22 VISIT THE HOME WE WERE DISCUSSING NEEDED PAPERWORK
23 THAT WE NEEDED. THAT WAS MY PART OF THE CASE.

24 Q SO THERE'S PAPERWORK BEYOND FOSTER CARE
25 PAPERWORK WHEN IT COMES TO ADOPTIONS?

(1 A IT'S A GOOD BIT, YES.

2 Q ARE THERE OTHER REQUIREMENTS THAT THE
3 FAMILIES MUST MEET FOR ADOPTION?

4 A THEY MUST -- BESIDES BEING LICENSED AS FOSTER
5 -- WELL, YOU DON'T HAVE TO BE LICENSED AS A FOSTER
6 PARENT, BUT WE DO THE CRIMINAL BACKGROUND CHECKS
7 AND WE CHECK THE CENTRAL REGISTRY AND WE LOOK --
8 YOU KNOW, LOOK AT THE TOTAL PERSON, TOTAL PICTURE,
9 BUT OTHER THAN THAT THERE'S NO OTHER REQUIREMENTS,
10 NO.

11 Q AND FROM YOUR OBSERVATIONS IN VISITING THESE
12 HOMES -- AND I THINK YOU'VE STATED THAT YOUR ROLE
13 WAS TO ASSESS WHETHER THIS WOULD BE A GOOD MATCH
14 BOTH FOR THE CHILDREN AND THE MITCHELLS, WOULD
15 THAT BE FAIR TO SAY?

16 A YES, THAT'S CORRECT.

17 Q OKAY. WHAT WERE YOUR OBSERVATIONS OF THE
18 RELATIONSHIPS BETWEEN THE CHILDREN AND SONYA AND
19 NATE MITCHELL?

20 A I SAW THAT THE CHILDREN WERE WELL ADJUSTED TO
21 THE HOME. THE PARENTS WERE -- WE WERE ACTUALLY
22 LOOKING AT GOING AND COMPLETING THE ADOPTION
23 PROCESS WITH THEM.

24 Q ALL RIGHT. DID YOU SEE IN THE COURSE OF THAT
25 PERIOD, I GUESS PROBABLY SORT OF SEPTEMBER TO

1 MARCH, SIX OR SEVEN MONTHS MAYBE, DID YOU SEE ANY
2 CHANGE IN THE CHILDREN'S RELATIONSHIP WITH THE
3 MITCHELLS?

4 A NO, I DID NOT.

5 Q AND HOW WOULD YOU HAVE DESCRIBED THE
6 ADJUSTMENT THAT WAS GOING ON?

7 A THE CHILDREN APPEARED TO BE ADJUSTING WELL IN
8 THE HOME, TO THEIR NEW HOME, THE FOSTER HOME.

9 Q IF IN THE COURSE OF THAT TIME IF YOU HAD
10 OBSERVED ANYTHING THAT YOU FELT WAS DETRIMENTAL OR
11 ANYTHING THAT WAS PUTTING THE CHILDREN AT RISK,
12 WHAT WOULD YOU HAVE HAD TO DO?

13 A ANYTIME THAT I GO INTO A HOME AND ASSESS A
14 SITUATION THAT MIGHT PUT THE KIDS AT RISK, I'D
15 HAVE TO COME BACK AND INFORM MY SUPERVISOR AND
16 THEN WE'D HAVE TO MAKE A REPORT.

17 Q DID YOU AT ANY TIME FIND A SITUATION THAT YOU
18 FELT YOU NEEDED TO REPORT?

19 A NO, I DID NOT.

20 Q AND NOT JUST IN THAT JOB, HOW MANY YEARS AT
21 THAT POINT HAD YOU BEEN VISITING IN FAMILY'S
22 HOMES?

23 A SINCE 1994, SO MAYBE ABOUT SEVEN,
24 SEVEN-AND-A-HALF YEARS OR SO.

25 Q SO SINCE 1994 YOU HAD BEEN VISITING FAMILY'S

1 HOMES LOOKING AT CHILDREN AND PARENTS?

2 A YES, EXACTLY.

3 Q AND IN THE COURSE OF THIS PERIOD OF TIME YOU
4 DID NOT SEE ANYTHING THAT YOU FELT YOU NEEDED TO
5 REPORT?

6 A NO, I DID NOT.

7 Q AND APPROXIMATELY HOW MANY TIMES DO YOU THINK
8 YOU WENT INTO THE HOME BETWEEN THAT FIRST VISIT,
9 SAY AT THE BEGINNING OF SEPTEMBER AND THE LAST
10 VISIT AND WHEN MINOR DIED?

11 A ABOUT EIGHT TIMES PRIOR TO HER DEATH. I
12 NEVER ENTERED THE HOME AGAIN AFTER HER DEATH.

13 Q BUT IN THAT PERIOD OF TIME WHEN SHE WAS
14 THERE?

15 A IT WAS ABOUT EIGHT TIMES.

16 Q ABOUT EIGHT TIME, OKAY.

17 MS. COGGIOLA: BEG THE COURT'S INDULGENCE
18 JUST ONE MOMENT.

19 (PAUSE)

20 BY MS. COGGIOLA:

21 Q ONE LAST QUESTION, WHEN YOU WERE IN THE HOME,
22 DID BOTH OF THE PARENTS SPEND TIME WITH THE
23 CHILDREN?

24 A BOTH PARENTS WERE PRESENT.

25 Q EACH OF THE PARENTS?

1 A BOTH PARENTS WERE ALWAYS PRESENT FOR MY
2 VISITS.

3 Q SO YOU WERE NOT ONLY ABLE TO SEE SONYA WITH
4 THE CHILDREN, BUT YOU WERE ALSO ABLE TO SEE NATE'S
5 INTERACTION WITH THE CHILDREN?

6 A YES.

7 Q AND YOUR OBSERVATIONS OF NATE WITH THE
8 CHILDREN WERE?

9 A WELL, PRETTY MUCH LIKE WHEN I'M THERE IT'S
10 MORE OF A VISIT, SO THE KIDS WERE -- WE WERE
11 PRETTY MUCH IN THE DEN, AND HIS INTERACTIONS WITH
12 THE KIDS WERE ALWAYS APPROPRIATE AT THE TIME OF MY
13 VISIT.

14 MS. COGGIOLA: THANK YOU VERY MUCH

15 MS. KENNEDY. I HAVE NO FURTHER QUESTIONS.

16 THE COURT: CROSS-EXAMINATION.

17 MS. CAMPBELL: YES, SIR.

18 CROSS-EXAMINATION

19 BY MS. CAMPBELL:

20 Q HI, MS. KENNEDY.

21 A HI.

22 Q I HAVE A FEW QUESTIONS ON THIS, YOU SAID THAT
23 WHEN YOU WOULD VISIT -- HOW LONG WOULD YOUR
24 AVERAGE VISIT LAST?

25 A ANYWHERE BETWEEN AN HOUR, HOUR-AND-A-HALF. I

1 THINK I MIGHT HAVE HAD A COUPLE, THAT WERE MAYBE
2 AN HOUR AND 45 MINUTES.

3 Q AND DURING THAT TIME YOU SAID BOTH PARENTS
4 WERE PRESENT?

5 A YES.

6 Q AND THE THREE CHILDREN, YOU MENTIONED, WOULD
7 BE IN THE DEN AREA?

8 A YES. I THINK I HAD A VISIT WHERE THE
9 CHILDREN WERE IN THE KITCHEN EATING DINNER.

10 Q OKAY. AND YOU SAID THAT SOMETIMES YOU WOULD
11 CALL AHEAD?

12 A YEAH, SOMETIMES, BUT NOT -- WE DON'T ALWAYS
13 HAVE TO -- WE'RE NOT REQUIRED TO CALL AHEAD.

14 Q SO YOU WOULD VISIT AT NIGHT?

15 A UH-HUH.

16 Q OKAY. AND MS. KENNEDY, IN YOUR VISITS, DID
17 YOU EVER HAVE AN OPPORTUNITY TO TALK TO, SAY
18 N.G. BY YOURSELF?

19 A NEVER.

20 Q DID YOU EVER HAVE AN OPPORTUNITY TO TALK TO
21 H.G. BY YOURSELF?

22 A NO, I NEVER TALKED TO THEM BY MYSELF.

23 Q SO YOU WERE NEVER ALONE WITH ANY OF THE
24 CHILDREN?

25 A NO.

1 Q AND THE PARENTS WERE BOTH ALWAYS THERE?

2 A YES.

3 Q OKAY. YOU MENTIONED THAT YOU STARTED
4 VISITING IN SEPTEMBER AND WOULD VISIT
5 APPROXIMATELY ONCE A MONTH?

6 A YES, EXACTLY.

7 Q AND THOSE VISITS CEASED AFTER FEBRUARY OF THE
8 YEAR 2000?

9 A I BELIEVE IT WAS MARCH, AFTER THE DEATH OF
10 MINOR .

11 Q OKAY. N.G. AND H.G. , THOUGH, YOU'RE NOT
12 SAYING THAT THEY REMAINED IN THE HOUSEHOLD AFTER
13 THIS HAPPENED WITH MINOR ?

14 A NO, THEY WERE REMOVED FROM THEM IMMEDIATELY.

15 Q IMMEDIATELY?

16 A YES.

17 A AND WHAT SINCE THEN DO YOU KNOW HAS HAPPENED
18 TO N.G. AND H.G. ?

19 MS. COGGIOLA: YOUR HONOR, I WOULD OBJECT.

20 THE COURT: RELEVANCE?

21 MS. CAMPBELL: SHE BROUGHT UP WHEN THE VISITS
22 CEASED, I JUST WANTED TO MAKE IT CLEAR TO THE JURY
23 THAT THEY WERE NO LONGER THERE.

24 THE COURT: OKAY.

25 MS. CAMPBELL: I THINK THAT WAS THE INFERENCE

1 THAT WAS LEFT.

2 THE COURT: YOU MAY PROCEED.

3 BY MS. CAMPBELL:

4 Q GO AHEAD.

5 A AFTER MINOR 'S DEATH THE KIDS WERE MOVED AND
6 PLACED IN OTHER FOSTER HOMES.

7 Q AND THEY HAVE NOT BEEN RETURNED?

8 A THEY HAVE NOT BEEN RETURNED.

9 Q YOU WERE FAMILIAR WITH MINOR ?

10 A I WAS.

11 Q AND HOW WOULD YOU DESCRIBE MINOR AS

12 A CHILD?

13 A MINOR WAS A QUIET CHILD. SHE BASICALLY WAS
14 NOT VERBAL OR DID A LOT OF VERBALIZING, BUT SHE
15 HAD A DEVELOPMENTAL DELAY AND SHE REQUIRED THE
16 ATTENTION OF A BABY, SO SHE WAS VERY QUIET AND SHE
17 WAS NOT VERBAL AT ALL.

18 Q SO UNLIKE H.G. AND N.G. WHO DID NOT HAVE
19 THOSE PROBLEMS, SHE WAS A MORE DIFFICULT CHILD TO
20 CARE FOR?

21 A SHE WOULD HAVE BEEN.

22 Q AND H.G. , WE'VE HEARD ABOUT HIM. HE WAS A
23 YEAR OLDER THAN N.G. -- I MEAN THAN MINOR ,
24 I'M SORRY.

25 A YES.

1 Q SO A YEAR OLDER THAN MINOR AND A YEAR
2 YOUNGER THAN N.G. ; IS THAT CORRECT?

3 A EXACTLY.

4 Q AND DESCRIBE H.G. FOR US. THEY HAVEN'T
5 HEARD ABOUT THAT.

6 A H.G. IS A REAL ACTIVE LITTLE BOY. I WOULD
7 SAY LOVING AND CARING. I EVEN REMEMBER A TIME
8 WHEN HE, YOU KNOW, AFTER MINOR 'S DEATH AND I
9 VISITED WITH HIM, HE WOULD BE CONCERNED ABOUT MY
10 CAR BECAUSE I REMEMBER TELLING HIM IT WAS BREAKING
11 DOWN, BUT HE'S A VERY CARING AND ACTIVE LITTLE
12 BOY. A LOT OF TIMES HE WOULD PLAY BALL AND WOULD
13 WANT ME TO PLAY BALL WHEN I'D COME, YOU KNOW,
14 BOUNCING THE BALL AND STUFF. HE WAS A REAL ACTIVE
15 LITTLE BOY, FULL OF ENERGY.

16 Q DID YOU EVER OBSERVE OR WERE YOU EVER MADE
17 AWARE OF ANY DESTRUCTIVE BEHAVIOR HE HAD TOWARDS
18 HIS TWO YEAR OLD SISTER?

19 MS. COGGIOLA: YOUR HONOR, I'M GOING TO
20 OBJECT.

21 THE COURT: WELL, THE QUESTION, IF PHRASED
22 CORRECTLY, THAT IS FROM THE DEFENDANT, I'LL ALLOW
23 THAT.

24 MS. CAMPBELL: YOUR HONOR, I --

25 THE COURT: YOU ALL COME UP HERE JUST A

1 SECOND.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD
3 IN THE PRESENCE OF THE JURY, BUT OUT OF
4 THE HEARING OF THE JURY.)

5 BY MS. CAMPBELL:

6 Q LET ME REPHRASE MY QUESTION. WERE YOU AWARE
7 OF ANY -- OF H.G. EVER BEING, EVER ACTING OUT
8 TOWARDS HIS LITTLE SISTER, BEING VENGEFUL TOWARD
9 HIS LITTLE SISTER OR ANYTHING LIKE THAT?

10 A I HAVE NO KNOWLEDGE OF THAT.

11 Q AT THE TIMES IN THESE EIGHT TIMES THAT YOU
12 VISITED THE HOME, DID YOU EVER HAVE THE
13 OPPORTUNITY TO SEE THE MITCHELLS DISCIPLINE THEIR
14 CHILDREN?

15 A NEVER.

16 Q AND WERE YOU AWARE OF THE THREE LITTLE CHAIRS
17 THAT WERE IN THE DEN AREA, OR THE LIVING ROOM?

18 A I DO RECALL THE THREE CHAIRS THAT WERE IN THE
19 LIVING ROOM.

20 Q YOU DIDN'T KNOW WHAT THEIR PURPOSE WAS?

21 A NO, ACTUALLY THE CHILDREN WOULD SIT IN THOSE
22 LITTLE CHAIRS WHEN I WOULD COME AND THE TV WAS
23 LIKE IN FRONT OF THEM.

24 Q OKAY. AND WERE YOU AWARE THAT MR. MITCHELL
25 SPANKED MINOR AND H.G. ?

1 A I WAS NOT AWARE OF ANYTHING.

2 Q AND WERE YOU AWARE THAT MR. MITCHELL TOOK A
3 BELT TO BOTH OF THEM?

4 A NO, I HAVE NO KNOWLEDGE OF THAT.

5 Q HE DIDN'T SHARE THAT WITH YOU?

6 A NEVER.

7 Q WHEN YOU DESCRIBED H.G. , YOU DESCRIBED HIS
8 PERSONALITY, TELL THEM ABOUT HIS PHYSICAL --
9 H.G. , HOW BIG IS HE?

10 A H.G. IS A TINY CHILD. THAT'S ONE OF THE
11 THINGS AS AN AGENCY WE'VE BEEN MONITORING IS HIS
12 WEIGHT FOR A PERIOD OF TIME. HE TENDS TO EAT, BUT
13 HE DOESN'T -- HE'S STILL SMALL, WHAT YOU WOULD
14 CONSIDER TO BE AN UNDERWEIGHT CHILD. HE HAS A
15 SMALL BUILD, VERY TINY.

16 Q SO HE'S VERY SMALL FOR HIS AGE?

17 A UH-HUH.

18 Q AND FINALLY, YOU DIDN'T -- IN THE TIME
19 PERIODS WHEN YOU WERE IN THE HOME, YOU DIDN'T
20 PERSONALLY OBSERVE ANY DISCIPLINING OR ANYTHING OF
21 THESE CHILDREN; IS THAT CORRECT?

22 A NEVER.

23 Q BUT MINOR WAS DEVELOPMENTALLY DELAYED AND
24 SOMEWHAT OF A MORE DIFFICULT CHILD THAN THE OTHER
25 TWO?

1 A I WOULD SAY DIFFICULT, AS FAR AS IN THE
2 RESPECT THAT SHE WOULD HAVE DELAYS AND WOULD
3 NATURALLY REQUIRE MORE ATTENTION.

4 Q AND UNFORTUNATELY IN YOUR EXPERIENCE AT
5 D.S.S., SOMETIMES EVEN THOUGH YOU TRY AS HARD AS
6 YOU CAN, YOU SIMPLY CAN'T PREDICT THESE TYPES OF
7 THINGS HAPPENING, CAN YOU?

8 A THAT'S CORRECT.

9 Q AND THAT HAPPENS?

10 A THAT'S CORRECT.

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

12 THE COURT: REDIRECT?

13 MS. COGGIOLA: JUST ONE QUESTION.

14 REDIRECT EXAMINATION

15 BY MS. COGGIOLA:

16 Q MS. KENNEDY, WHEN YOU REFER TO -- YOU SAID
17 THAT MINOR WAS DEVELOPMENTALLY DELAYED AND YOU
18 REFER TO DIFFICULTIES, YOU MEAN THERE WERE, FROM
19 WHAT I HEAR YOU TESTIFYING TO, AND CORRECT ME IF
20 I'M WRONG, THERE ARE MORE ISSUES TO BE DEALT WITH
21 IF THE CHILD IS DEVELOPMENTALLY DELAYED; IS THAT
22 CORRECT?

23 A THAT'S CORRECT.

24 Q NOT THAT THEIR BEHAVIOR IS NECESSARILY BETTER
25 OR WORSE?

1 A THAT'S CORRECT.

2 MS. COGGIOLA: THANK YOU. THAT'S ALL I HAVE.

3 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

4 YOU MAY STEP DOWN.

5 CALL YOUR NEXT WITNESS.

6 MS. COGGIOLA: THE DEFENSE CALLS HOPE
7 DEAMBROGIO.

8 THE CLERK: IF YOU'D COME FORWARD, PLEASE.
9 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
10 RIGHT HAND.

11 HOPE DEAMBROGIO,

12 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE BAILIFF: HAVE A SEAT FOR ME PLEASE AND
14 SPEAK INTO THE MICROPHONE.

15 THE WITNESS: MY NAME IS HOPE DEAMBROGIO,
16 D-E-A-M-B-R-O-G-I-O.

17 DIRECT EXAMINATION

18 BY MS. COGGIOLA:

19 Q GOOD MORNING, MS. DEAMBROGIO.

20 A GOOD MORNING.

21 Q CAN YOU TELL US WHERE YOU WORK, PLEASE?

22 A I WORK FOR RICHLAND COUNTY DEPARTMENT OF
23 SOCIAL SERVICES. I'M A FOSTER CARE LICENSING
24 WORKER.

25 Q AND HOW LONG HAVE YOU BEEN DOING THAT?

1 A IT WILL BE TEN YEARS THIS AUGUST.

2 Q OKAY. IS THAT THE WHOLE TIME YOU'VE BEEN AT
3 D.S.S. OR WERE YOU THERE PRIOR TO BEING IN FOSTER
4 CARE LICENSING?

5 A IT'S THE WHOLE TIME I'VE BEEN THERE.

6 Q SO YOU'VE BEEN DOING THIS FOR TEN YEARS?

7 A YES.

8 Q AND CAN YOU DESCRIBE FOR US WHAT YOUR ROLE IS
9 IN FOSTER CARE LICENSING?

10 A MY ROLE IS TO DETERMINE IF A FAMILY SHOULD BE
11 LICENSED AS A FOSTER PARENT. WE DO BACKGROUND
12 CHECKS, HOME STUDIES, INSPECTIONS, D.H.E.C., FIRE
13 INSPECTIONS, JUST MAKE SURE THAT THE FOSTER FAMILY
14 MEETS ALL OUR REQUIREMENTS.

15 Q DO YOU VISIT ALL THE FAMILIES YOURSELF?

16 A YES. WELL, THERE ARE FIVE OF US, AND WE EACH
17 HAVE A CASE LOAD. I VISIT MY HOMES.

18 Q OKAY. SO THE HOMES THAT YOU'RE LOOKING AT
19 FOR LICENSING, YOU ACTUALLY ARE THE PERSON THAT
20 VISITS THE HOME PRIOR TO LICENSING?

21 A CORRECT, ALONG WITH THE D.H.E.C. INSPECTOR
22 AND THE FIRE MARSHAL.

23 Q SO THERE ARE A NUMBER OF PEOPLE THAT YOU RELY
24 ON FOR OTHER INSPECTIONS AND EXAMINATIONS. WOULD
25 THAT BE FAIR TO SAY?

1 A CORRECT.

2 Q AND WHEN A FAMILY IS -- DO THEY PETITION TO
3 BE A FOSTER FAMILY? HOW IS IT THAT THAT PROCESS
4 IS STARTED?

5 A THEY CALL THE COUNTY AND SAY THAT THEY'RE
6 INTERESTED, AND WHAT WE DO IS CONTACT THEM AND GO
7 OUT AND MAKE A HOME VISIT, TALK TO THEM, GIVE THEM
8 THE -- YOU KNOW, GO OVER WHAT THE PROGRAM IS,
9 WHAT'S EXPECTED, GIVE THEM THE FORMS THAT NEED TO
10 BE FILLED OUT AND WHEN THEY SUBMIT ALL THE FORMS
11 AND WE'VE DONE ALL THE CHECKS, WE SEND THEM TO
12 TRAINING. THEY HAVE 12 HOURS OF TRAINING TO GO
13 THROUGH, AND THEN WHEN EVERYTHING HAS BEEN
14 COMPLETED WE DO A HOME STUDY AND DETERMINE IF
15 THEY'RE SUITABLE TO BECOME FOSTER PARENTS.

16 Q AND YOU SAID BEFORE, AS WELL AS A HOME STUDY
17 YOU DO BACKGROUND CHECKS?

18 A RIGHT.. WE'LL DO S.L.E.D., FINGERPRINTS,
19 CENTRAL REGISTRY, SEX OFFENDERS. WE DO ALL THOSE
20 BACKGROUND CHECKS ON THE FOSTER PARENTS.

21 Q ALONG WITH D.H.E.C. AND THE FIRE MARSHAL?

22 A YES, THEN D.H.E.C. DOES A HOME INSPECTION,
23 AND THE FIRE MARSHAL DOES A HOME INSPECTION.

24 Q YOU SAID THERE ARE SOME CLASSES THAT ARE
25 REQUIRED. ARE THOSE REQUIRED JUST THE FIRST TIME

1 YOU'RE LICENSED OR ARE THERE CONTINUING
2 REQUIREMENTS?

3 A THERE'S 12 HOURS REQUIRED INITIALLY AND THEN
4 THEY DO FIVE HOURS CONTINUING EACH YEAR.

5 Q IN ORDER TO BE -- IF THEY APPLY TO BE
6 RELICENSED?

7 A YES, TO BE RELICENSED THEY HAVE TO HAVE THAT.

8 Q SO HOW LONG IS A LICENSE?

9 A FOR ONE YEAR.

10 Q DO YOU RECALL THE FIRST TIME YOU ENCOUNTERED
11 THE MITCHELL FAMILY?

12 A PRETTY MUCH. I READ OVER MY RECORD, YES. IT
13 WAS IN DECEMBER OF 1997.

14 Q AND THAT -- WHAT WAS THE REASON THAT YOU MET
15 THE MITCHELLS?

16 A THEY HAD CALLED AND SAID THAT THEY WERE
17 INTERESTED IN BECOMING FOSTER PARENTS, AND I WENT
18 OUT TO, YOU KNOW, INTERVIEW THEM AND GO OVER THE
19 PROCESS WITH THEM.

20 Q AND WHEN DID THEY FIRST -- DID THEY
21 ULTIMATELY BECOME LICENSED TO BE FOSTER PARENTS?

22 A I BELIEVE IT WAS MARCH OF '98 WAS THEIR
23 INITIAL LICENSING.

24 Q AND THE PROCEDURES THAT YOU'VE JUST BEEN
25 DESCRIBING FOR US IN GENERAL FOR FOSTER FAMILIES,

1 WOULD THEY HAVE BEEN GOING THROUGH THEM FROM SAY
2 DECEMBER OF '97 UNTIL MARCH OF '98?

3 A RIGHT. IT TAKES AT LEAST THREE MONTHS TO GET
4 LICENSED. BY THE TIME YOU HAVE ALL THE
5 INSPECTIONS, ALL THE PAPERWORK COMES BACK, THE
6 FINGERPRINTS, IT TAKES AT LEAST -- AND THE
7 TRAINING, IT CAN TAKE ANYWHERE FROM THREE TO FIVE
8 MONTHS TO GET LICENSED.

9 Q AND DURING THAT PERIOD OF TIME, DO YOU VISIT
10 THE FAMILY?

11 A I VISITED THEM TWICE, AND THAT WOULD HAVE
12 BEEN IT, YOU KNOW.

13 Q AND AT THAT POINT HAD THEY EVER HAD ANY
14 FOSTER CHILDREN IN THE PAST?

15 A NO, NOT THAT I WAS AWARE OF.

16 Q DO YOU KNOW WHETHER THEY HAD ANY BIRTH
17 CHILDREN?

18 A NO, THEY DIDN'T HAVE ANY BIRTH CHILDREN.

19 Q SO IT WAS JUST --

20 A JUST THE TWO OF THEM WERE IN THE HOME.

21 Q AND SO IN MARCH OF 1998 THEY WERE ISSUED
22 THEIR FIRST LICENSE?

23 A CORRECT.

24 Q DO YOU RECALL WHEN THEY RECEIVED THEIR FIRST
25 CHILD INTO THEIR HOME?

1 A THEY WERE LICENSED ON MARCH THE 2ND. THEY
2 RECEIVED THEIR FIRST CHILD MARCH 5TH. WE FILL
3 THEM UP REAL QUICK.

4 Q AND DO YOU KNOW WHO THAT CHILD WAS?

5 A THAT WAS H.G.

6 Q AND AT THE TIME -- WHAT WERE THE
7 CIRCUMSTANCES THAT PLACED H.G. IN THEIR
8 PARTICULAR HOME?

9 A I DON'T DO PLACEMENT. I REALLY DON'T KNOW.

10 Q OKAY.

11 A HOW IT USUALLY WORKS IS A CHILD COMES INTO
12 CARE. THE PLACEMENT WORKER CALLS AND SAYS WE HAVE
13 THE -- THEY LOOK TO SEE WHAT HOMES HAVE OPENINGS.
14 THEY MATCH THE CHILD WITH THE OPENING. THEY CALL
15 THE FOSTER PARENT AND SAY WE HAVE A THREE YEAR OLD
16 LITTLE BOY. YOU KNOW, DESCRIBE THEM AND ASK IF
17 THEY'RE INTERESTED AND IF THEY ARE, THEY MAKE THE
18 PLACEMENT.

19 Q HOW MANY CHILDREN WERE THEY LICENSED TO HAVE?

20 A ORIGINALLY TWO.

21 Q AND SO AFTER YOU PUT -- AFTER H.G. WAS
22 PLACED THEIR HOME, DO YOU HAVE ANYTHING
23 PARTICULARLY TO DO WITH THE FAMILY AT THAT POINT?

24 A I MAKE QUARTERLY VISITS TO MAKE SURE THAT THE
25 HOME IS MEETING ALL THE REQUIREMENTS AND THAT

1 THERE'S NO PROBLEMS GOING ON AS FAR AS THE HOME
2 SITUATION, THAT THEY'RE GETTING WHAT THEY NEED
3 FROM D.S.S. I'M KIND OF LIKE THE LIAISON BETWEEN
4 THE FOSTER FAMILY AND THE AGENCY, TO MAKE SURE
5 THAT THE CHECKS, CHECKS ARE COMING, THAT THEY'RE
6 GETTING THEIR MEDICAID TIMELY, THAT THEY'RE NOT
7 HAVING ANY PROBLEMS, YOU KNOW, DEALING WITH THE
8 AGENCIES, THAT THEIR WORKER IS COMING MONTHLY, AND
9 ANYTHING ELSE THAT THEY MAY NEED, YOU KNOW, WE DO
10 A QUARTERLY CHECK UP.

11 Q SO YOU'RE SORT OF THE LIAISON BETWEEN THE
12 PROGRAM AND THE FAMILY?

13 A RIGHT.

14 Q AND IN THE COURSE OF THAT YEAR, PRIOR TO THE
15 RELICENSING, WHICH WOULD HAVE BEEN A YEAR LATER,
16 RIGHT?

17 A RIGHT.

18 Q WERE THERE ANY PROBLEMS NOTED?

19 A NO.

20 Q AND THEN IN ORDER TO BE RELICENSED, THEY
21 WOULD HAVE TO HAVE ADDRESSED THAT THE NEXT YEAR;
22 IS THAT CORRECT?

23 A RIGHT. WE DO ANOTHER FIRE INSPECTION. THE
24 FIRE MARSHAL GOES OUT ANNUALLY. THEY HAVE TO DO
25 THEIR FIVE HOURS OF TRAINING.

1 WE DO ALL THE BACKGROUND CHECKS AGAIN EXCEPT
2 THE FINGERPRINTS. WE DO CENTRAL REGISTRY, SEX
3 OFFENDER, S.L.E.D. AGAIN ON ALL MEMBERS.

4 Q SO IT'S A SLIGHTLY ABBREVIATED VERSION OF THE
5 FIRST TIME?

6 A RIGHT, RIGHT.

7 Q OKAY. AND ONCE THEY COMPLETE ALL THAT, THEY
8 CAN BE RELICENSED?

9 A CORRECT.

10 Q AND DID THAT HAPPEN IN THE CASE OF THE
11 MITCHELLS?

12 A YES, IT DID.

13 Q DO YOU RECALL WHEN THEY WERE RELICENSED?

14 A THE FIRST TIME?

15 Q THE FIRST TIME I THINK YOU SAID THEY WERE
16 LICENSED IN MARCH OF '98?

17 A AND THEN THEY WOULD HAVE BEEN RELICENSED IN
18 MARCH OF '99 AND THEN IN MARCH OF 2000 THEY WERE
19 RELICENSED.

20 Q AND AT THAT TIME WERE THEY STILL LICENSED FOR
21 TWO CHILDREN?

22 A NO. IN THE MEANTIME, IN JUNE OF '99 N.G.
23 AND MINOR WAS PLACED IN THEIR HOME DUE TO THE
24 DEATH OF THEIR PREVIOUS FOSTER MOM, SO THEY PLACED
25 THE TWO LITTLE GIRLS WITH THE MITCHELLS TO KEEP

1 THE FAMILY TOGETHER, AND WE INCREASED THEIR
2 LICENSE TO THREE TO COVER THE THREE CHILDREN THAT
3 NOW WERE IN THE HOME.

4 PREVIOUSLY EVEN THOUGH THEY WERE LICENSED FOR
5 TWO, THEY ONLY HAD H.G. , JUST THE ONE, BUT THEN
6 THE TWO GIRLS WERE PLACED THERE.

7 Q SO H.G. MOVED IN WITH THE MITCHELLS IN
8 MARCH OF '98?

9 A RIGHT.

10 Q AND THEN IN JUNE OF '99 --

11 A N.G. AND MINOR WERE PLACED THERE.

12 Q AND THEY WOULD BEEN WITH SOMEBODY ELSE?

13 A RIGHT.

14 Q OKAY. AND I THINK YOU SAID THEIR FOSTER
15 MOTHER DIED?

16 A YES, SUDDENLY.

17 Q AND SO THE GIRLS WERE THEN TAKEN TO BE WITH
18 THEIR BROTHER --

19 A YES.

20 Q -- AND WITH THE MITCHELLS AND THEN YOU
21 INCREASED THE NUMBER?

22 A RIGHT, YES.

23 Q LET ME JUST ASK YOU IF YOU CAN IDENTIFY THIS.

24 A THIS IS A COPY OF THE MITCHELL'S LICENSE THAT
25 WAS DONE FOR MARCH OF 2000.

1 Q OKAY. AND HAD -- WAS THAT SOMETHING THAT YOU
2 PRODUCED?

3 A YES, AND THEN IT GOES ON TO STATE OFFICE TO
4 BE SIGNED OFF ON.

5 MS. CAMPBELL: YOUR HONOR --

6 THE COURT: ANY OBJECTION?

7 MS. CAMPBELL: I JUST NEED TO SEE WHAT IT IS.
8 I DON'T KNOW WHAT IT IS.

9 (PAUSE)

10 THE COURT: OKAY. WITHOUT OBJECTION.

11 (WHEREUPON, DEFENSE EXHIBIT 1 WAS
12 ADMITTED INTO EVIDENCE.)

13 BY MS. COGGIOLA:

14 Q AND CAN YOU GIVE US THE DATE ON THAT -- ON
15 WHEN THAT LICENSE WAS ISSUED?

16 A IT SAYS THE ISSUE DATE WAS THE 2ND DAY OF
17 MARCH, 2000. PROBABLY IT WAS -- THERE'S ANOTHER
18 FORM THAT GOES ALONG WITH THIS.

19 Q OKAY. AND I HAVE THAT. I'LL ASK IF YOU CAN
20 IDENTIFY THAT.

21 A AND THAT HAS THE ACTUAL DATE THAT THEY SIGNED
22 OFF ON IT.

23 Q SO THIS IS THE DATE THAT IT IS ULTIMATELY
24 SIGNED AS A LICENSE; IS THAT CORRECT?

25 A RIGHT.

1 Q AND IT EXPIRES?

2 A ONE YEAR FROM THAT DATE, MARCH 2ND, 2001.

3 Q AND THAT'S PART OF THE PROCESS OF THE YEARLY
4 RENEWAL --

5 A RIGHT.

6 Q -- RENEWAL OF THE LICENSE?

7 A CORRECT.

8 Q CAN I ASK YOU IF YOU CAN IDENTIFY THIS?

9 A THIS IS A 1513, WHICH IS ALSO PART OF THE
10 LICENSING PROCESS THAT THE STATE OFFICE SIGNS OFF
11 ON, AND IT GIVES MORE DETAIL OR AGAIN THE SAME
12 THING, REALLY.

13 Q OF THE RELICENSING, CORRECT?

14 A RIGHT.

15 Q IS THAT YOUR SIGNATURE ON THE BOTTOM OF THAT?

16 A YES, IT IS.

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: WE'LL PROCEED ON -- SHE'S GOT A
22 COPY.

23 MS. COGGIOLA: THANK YOU.

24 BY MS. COGGIOLA:

25 Q I THINK I ASKED YOU ABOUT A FORM AND ASKED

1 YOU TO IDENTIFY IT. WHAT IS THAT USED FOR?

2 A THE 1513?

3 Q YES.

4 A THAT'S JUST A REQUIRED FORM TO HAVE THE CASE
5 FOR LICENSING. THOSE ARE THE TWO REQUIRED FORMS
6 THAT SHOWS THE HOME IS LICENSED.

7 Q AND THE INFORMATION IN THIS FORM, IS THAT
8 BASED ON YOUR OBSERVATIONS OF HAVING VISITED THE
9 FAMILY?

10 A I DON'T KNOW. WELL, IT TELLS THE AGE OF
11 THE -- THE AGE RANGE OF THE CHILD THAT THEY'RE
12 LICENSED FOR, THE AMOUNT OF CHILDREN, WHAT SEX,
13 THEIR ADDRESS, AND THE DATES. THAT'S ALL IT
14 REALLY STATES.

15 Q AND THE SECTION -- THERE ARE SECTIONS
16 ENTITLED FOSTER FAMILY'S RELATIONSHIP?

17 A THAT'S A DIFFERENT FORM.

18 Q AND PERMANENCE?

19 A THAT'S ANOTHER FORM. THOSE ARE NOT THE SAME
20 FORMS.

21 Q OKAY.

22 A THAT'S THE 1513, WHICH GOES INTO THE CASE.
23 THE 1513 IS THE LICENSE PART.

24 Q OKAY.

25 A AND THE 3014 IS THE RENEWAL FORM THAT WE HAVE

1 TO COMPLETE TO DO A RENEWAL.

2 Q IS THAT A RENEWAL FORM?

3 A YES. THAT'S THE REAPPLICATION, RELICENSING
4 APPLICATION.

5 Q OKAY. AND IS THAT SOMETHING THAT -- IS THAT
6 YOUR SIGNATURE ON IT?

7 A YES, I DID THAT.

8 Q SO THAT'S SOMETHING THAT YOU FILL OUT?

9 A RIGHT. THAT'S DONE ANNUALLY. WE GO TO THE
10 FOSTER FAMILY'S HOME. WE SIT THERE AND DISCUSS
11 THESE TOPICS, AND THEN, YOU KNOW, WRITE IT UP AND
12 THEY SIGN, YOU KNOW, THAT THAT'S THEIR
13 INFORMATION.

14 Q AND WITHOUT REFERENCING ANYTHING THAT THEY
15 SAID TO YOU, FROM YOUR OBSERVATIONS, AND THESE ARE
16 YOUR OBSERVATIONS, WHAT WERE YOUR OBSERVATIONS
17 REGARDING THE FAMILY RELATIONSHIPS AT THAT TIME OF
18 SONYA AND NATHANIEL MITCHELL AND THE CHILDREN?

19 A THAT THEY HAD A LOVING RELATIONSHIP, THAT
20 THEY WERE A CLOSE HUSBAND AND WIFE, THAT THEY
21 SPENT TIME TOGETHER. THEY DID THINGS AS A FAMILY
22 TOGETHER, AND THAT THEY SEEMED TO BE A NORMAL,
23 HAPPY FAMILY. THEY WERE REALLY HAPPY TO HAVE
24 THREE CHILDREN THERE.

25 Q AND DO YOU KNOW AT THAT POINT -- AND

1 UNDERSTANDING THAT YOUR RESPONSIBILITY IS ONLY IN
2 THE LICENSING AND FOSTER CARE, DO YOU KNOW OF YOUR
3 OWN KNOWLEDGE WHAT THE PLANS WERE FOR THESE
4 CHILDREN OF THE MITCHELLS?

5 A ADOPTION, THAT THEY HAD WANTED TO ADOPT ALL
6 THREE.

7 Q AND THAT WASN'T YOUR RESPONSIBILITY AT
8 D.S.S.; IS THAT CORRECT?

9 A NO. I'M NOT AN ADOPTION WORKER.

10 Q SO YOU'RE BASICALLY GOING IN TO MAKE YOUR
11 OBSERVATIONS ABOUT WHETHER THEY SHOULD BE
12 RELICENSED?

13 A AS A FOSTER FAMILY.

14 Q AS A FOSTER CARE FAMILY. OKAY. AND IN YOUR
15 OPINION, WERE THEY MEETING ALL THE REQUIREMENTS OF
16 A FOSTER CARE FAMILY?

17 A YES, THEY WERE. THEY MET ALL THE
18 REQUIREMENTS.

19 Q AND BEYOND THAT, YOUR OBSERVATIONS OF THE
20 RELATIONSHIPS, THE RELATIONSHIP OF THE CHILDREN
21 WITH MR. AND MRS. MITCHELL?

22 A I DIDN'T SEE THE CHILDREN ALL THE TIME. I
23 GOT TO SEE H.G. MORE BECAUSE HE WAS THERE THE
24 LONGEST, AND WHEN I WOULD GO TO VISIT, HE WOULD
25 USUALLY BE THERE IN THE BEGINNING, BUT THEN WHEN

1 THE TWO LITTLE GIRLS CAME, WHENEVER I CAME, THEY
2 WERE USUALLY AT DAYCARE, I GUESS, EXCEPT FOR ONE
3 TIME N.G. WAS HOME BECAUSE THEY HAD JUST TAKEN
4 HER TO A DOCTOR'S APPOINTMENT, SO SHE WAS AT HOME
5 WHILE THE OTHER TWO WERE AT DAYCARE.

6 Q HAD YOU, IN THE COURSE OF YOUR REVIEW AND
7 YOUR VISITS AND YOUR CONSIDERATION OF RELICENSING,
8 HAD YOU LEARNED OF ANYTHING THAT WAS PUTTING THESE
9 CHILDREN AT RISK, WHAT WOULD YOU HAVE DONE?

10 A I WOULD HAVE REPORTED IT TO MY SUPERVISOR WHO
11 WOULD HAVE REPORTED IT ABOVE THEM, AND THEY WOULD
12 HAVE DETERMINED TO REMOVE THE CHILDREN.

13 Q AND THAT WOULD HAVE BEEN YOUR OBLIGATION,
14 CORRECT?

15 A ABSOLUTELY.

16 Q UNDER THE LAW?

17 A ABSOLUTELY.

18 MS. COGGIOLA: I DON'T HAVE ANY FURTHER
19 QUESTIONS. THANK YOU VERY MUCH.

20 THE COURT: CROSS-EXAMINATION, MADAM
21 SOLICITOR.

22 MS. CAMPBELL: THANK YOU.

23 CROSS-EXAMINATION

24 BY MS. CAMPBELL:

25 Q I WAS LOOKING AT THIS FORM. SO BASICALLY YOU

1 NEVER ACTUALLY VISITED WITH THE MITCHELLS AND SEEN
2 ALL THREE OF THE CHILDREN TOGETHER?

3 A NO.

4 Q SO YOU NEVER SAW HIM INTERACT WITH -- IN
5 FACT, YOU NEVER SAW HIM WITH MINOR ?

6 A NO, I NEVER DID.

7 Q AND WHEN PLACING CHILDREN IN FOSTER CARE, OF
8 COURSE, YOU LOOK AT THEIR MEDICAL NEEDS, AS WELL
9 AS THE OTHER NEEDS?

10 A I DON'T DO THE PLACEMENT, BUT THAT'S WHAT
11 THEY SHOULD BE DOING.

12 Q BUT, AND I'M REFERRING TO THIS FORM, YOU'RE
13 AWARE OF THE MEDICAL CONDITION OF THE CHILDREN IN
14 THIS CASE AS REFLECTED IN THE FORM?

15 A YES.

16 Q AND MINOR DIDN'T SUFFER FROM ANY
17 BLOOD DISEASES OR BLEEDING DISORDERS OR ANYTHING
18 LIKE THAT?

19 A NO, NOT THAT I WAS AWARE OF.

20 Q AND YOU ALSO, IN MAKING YOUR ASSESSMENT AND
21 IN YOUR YEARLY ASSESSMENT -- I BELIEVE THIS LAST
22 ONE WAS DONE -- YOU SIGNED OFF ON IT IN FEBRUARY
23 OF 2000?

24 A RIGHT. WE ALWAYS DO IT EARLIER THAN THE
25 RENEWAL SO IT CAN GET TO STATE OFFICE.

1 Q AND YOU ALWAYS INQUIRE ABOUT HOW THESE
2 CHILDREN ARE BEING DISCIPLINED; ISN'T THAT TRUE?
3 A YES.
4 Q AND TO YOUR KNOWLEDGE HOW WERE THESE CHILDREN
5 BEING DISCIPLINED?
6 A TIME-OUT.
7 Q THEY DIDN'T MENTION SPANKING?
8 A NO.
9 Q BEATING?
10 A NO.
11 Q BELTS?
12 A NO.
13 Q YOU ALSO MENTIONED THAT IN ORDER TO BECOME A
14 FOSTER FAMILY, YOU'VE GOT TO HAVE THE FIRE MARSHAL
15 COME TO YOUR HOUSE?
16 A YES.
17 Q AND YOU'VE GOT TO QUALIFY AND UNDERSTAND HOW
18 THEY'RE SUPPOSED TO SPEND THE MONEY AND THINGS
19 LIKE THAT?
20 A RIGHT.
21 Q AND THERE'S SOME TRAINING INVOLVED?
22 A RIGHT.
23 Q WHAT KIND OF TRAINING?
24 A WELL, THEY LEARN ABOUT GRIEF AND SEPARATION,
25 THE REQUIREMENTS, WHAT TO DO IN CERTAIN SITUATIONS

1 AND --

2 Q SUCH AS MEDICAL EMERGENCIES?

3 A YES, ALSO DISCIPLINE.

4 Q SO THEY ARE GIVEN ACTUAL MEDICAL TRAINING
5 IN -- BECAUSE THEY'RE NEW PARENTS. THEY MIGHT NOT
6 KNOW HOW TO REACT IF A MEDICAL EMERGENCY ARISES,
7 RIGHT?

8 A I DON'T KNOW WHAT YOU MEAN BY TRAINING.
9 THEY'RE TOLD IF THEY NEED TO GET MEDICAL CARE THEY
10 HAVE TO GET IT AND THEN NOTIFY D.S.S.

11 Q OKAY.

12 A YOU KNOW, THAT THEY CAN'T SIGN OFF ON MAJOR
13 THINGS.

14 Q OKAY. AND ARE THEY GIVEN ANY TRAINING AS TO
15 THE CARE AND HEALTH AND MEDICAL WELL-BEING OF THE
16 CHILDREN?

17 A NO, NOT REALLY.

18 Q NOT REALLY?

19 A HUH-UH.

20 Q AND YOU MENTIONED THAT THEY WERE LICENSED
21 ORIGINALLY IN MARCH OF 1998 AND GOT H.G. WITHIN
22 FOUR OR FIVE DAYS?

23 A THAT'S CORRECT.

24 Q THAT'S BECAUSE, I THINK YOU MENTIONED IT,
25 THAT FOSTER FAMILIES ARE SCARCE. THE GOOD PEOPLE

1 THAT DO IT, THERE JUST AREN'T ENOUGH OF THEM,
2 CORRECT?

3 A CORRECT.

4 Q SO IT'S IMPORTANT THAT WHENEVER POSSIBLE, IF
5 A FOSTER FAMILY -- IF A FAMILY IS WILLING TO
6 BECOME A FOSTER FAMILY, THAT THEY GET LICENSED SO
7 THAT THEY CAN START TAKING IN CHILDREN?

8 A NO, I WOULDN'T SAY THAT.

9 Q OKAY. YOU WOULDN'T SAY THAT FOSTER FAMILIES
10 ARE SCARCE?

11 A I'D SAY THEY'RE SCARCE, BUT WE'RE VERY
12 SELECTIVE, TOO.

13 Q VERY SELECTIVE. OKAY. AND THEY WENT THROUGH
14 THE WHOLE PROCESS AND EVERYTHING WAS DONE
15 CORRECTLY IN THIS CASE?

16 A ABSOLUTELY.

17 Q AND THEN IN THE SUMMER OF '99, THE SUMMER
18 BEFORE THIS HAPPENED, THERE BECAME KIND OF AN
19 IMMEDIATE, EMERGENCY SITUATION SO THEIR FOSTER
20 CARE LICENSING WAS UPPED TO THREE; IS THAT
21 CORRECT?

22 A CORRECT.

23 Q AND THEN THE THREE CHILDREN WERE PLACED IN
24 THE HOME. WERE YOU AWARE THAT MINOR WAS
25 DEVELOPMENTALLY DELAYED?

1 A NO.

2 Q AND UNFORTUNATELY FOR ALL OF US, SOMETIMES IN
3 YOUR EXPERIENCE IN DEALING WITH FAMILIES AND
4 DEALING WITH EVERYTHING, SOMETIMES THINGS JUST
5 AREN'T AS THEY APPEAR, CORRECT?

6 A TRUE.

7 MS. CAMPBELL: THANK YOU.

8 THE COURT: REDIRECT?

9 MS. COGGIOLA: NOTHING.

10 THE COURT: YOU MAY STEP DOWN.

11 MS. COGGIOLA: YOUR HONOR, MAY THE PERSON
12 FROM THE DEPARTMENT OF THE SOCIAL SERVICES BE
13 EXCUSED?

14 THE COURT: ANY OBJECTION?

15 MS. CAMPBELL: NO OBJECTION.

16 THE COURT: ALL RIGHT. MADAM FOREPERSON,
17 LADIES AND GENTLEMEN OF THE JURY, THE DEFENSE
18 ADVISES ME THE LAST WITNESS WILL BE MR. MITCHELL
19 AND THAT WILL BE A FAIRLY LENGTHY WITNESS, SO AS
20 TO NOT BREAKUP THE EXAMINATION, WE'LL TAKE A LUNCH
21 BREAK HERE AND ASK YOU TO BE BACK AT 1:30 AND
22 WE'LL ASK YOU TO PROCEED FROM THERE.

23 PLEASE DO NOT ALLOW ANYONE TO DISCUSS THE
24 CASE, DISCUSS THE CASE WITH ANYONE OR DO ANY
25 INVESTIGATION OR DISCUSS THE CASE AMONGST

1 YOURSELVES.

2 WE'LL SEE YOU BACK AT 1:30.

3 (WHEREUPON, THE JURY LEFT OPEN COURT AT
4 APPROXIMATELY 12:28.)

5 THE COURT: WE HAVE TO TALK A LITTLE BIT
6 ABOUT CAUSATION. I'M NOT SURE WHAT YOUR
7 INDEPENDENT CAUSATION ISSUE IS.

8 MR. STRICKLER: YES, SIR. THAT WOULD ALL
9 REFERENCE DR. ROSS'S TESTIMONY YESTERDAY.

10 THE COURT: YES, I UNDERSTAND THAT.

11 MR. STRICKLER: ALL RIGHT. THAT'S NOT
12 INDEPENDENT CAUSATION FROM ANY OTHER INDIVIDUAL,
13 INDEPENDENT CAUSATION. I HOPE I PHRASED IT IN
14 THAT MANNER.

15 THE COURT: IF THAT'S THE CASE, THEN YOU ALL
16 CAN MAKE A COPY OF THIS PROXIMATE CHARGE CAUSE.
17 IT'S 54, 55, ON THE BACK 56. I THINK THAT
18 ADDRESSES THE ISSUE OF MY CHARGE, BUT I'M NOT SURE
19 I UNDERSTOOD WHAT YOU'RE SAYING.

20 DON'T LOSE THAT, MS. CAMPBELL.

21 MS. CAMPBELL: I'LL BRING IT RIGHT BACK.

22 THE COURT: OKAY. JUST PUT IT UP HERE.

23 MR. STRICKLER: WOULD YOU MAKE TWO COPIES?

24 THE COURT: YES, THAT'S WHAT I SAID.

25 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

1 THE COURT: THERE AREN'T ANY 609 ISSUES, I
2 ASSUME? NOBODY HAS SAID ANYTHING ABOUT IT.

3 MS. COGGIOLA: I DON'T --

4 THE COURT: I'M JUST ASKING.

5 THE STATE SAYS NO.

6 MS. CAMPBELL: HE HAS NO PRIOR RECORD.
7 YOU'LL TALK ABOUT A PRIOR RECORD?

8 THE COURT: YES.

9 MS. CAMPBELL: NO PRIOR RECORD.

10 MS. COGGIOLA: NO PRIOR RECORD.

11 THE COURT: OKAY. THAT'S WHAT I WAS ASKING
12 ABOUT. OKAY. BRING THE JURY IN.

13 (WHEREUPON, THE JURY CAME INTO OPEN

14 COURT AT APPROXIMATELY 1:44.)

15 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR
16 HONOR.

17 THE COURT: ALL RIGHT. MS. COGGIOLA, YOU MAY
18 CALL YOUR NEXT WITNESS.

19 MS. COGGIOLA: THANK YOU, YOUR HONOR. MAY IT
20 PLEASE THE COURT. THE DEFENSE CALLS NATHANIEL
21 MITCHELL.

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

24 NATHANIEL MITCHELL,

25 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

1 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR
2 FULL NAME.

3 THE BAILIFF: WATCH YOUR STEP FOR ME PLEASE
4 AND SPEAK INTO THIS MICROPHONE.

5 THE WITNESS: NATHANIEL MITCHELL.

6 DIRECT EXAMINATION

7 BY MS. COGGIOLA:

8 Q NATE, DID YOU VIOLENTLY SHAKE MINOR

9 ?

10 A NO, I DIDN'T.

11 Q DID YOU SHAKE MINOR ?

12 A NO.

13 Q HOW OLD ARE YOU?

14 A I'M 38.

15 Q 38 NEXT MONTH?

16 A NO, I'M 38 NOW.

17 Q NOW?

18 A NOW.

19 Q AND FOR THE RECORD, HOW TALL ARE YOU?

20 A ABOUT 6'2" AND A HALF.

21 Q OKAY. AND HOW MUCH DO YOU WEIGH,

22 APPROXIMATELY?

23 A ABOUT 285, MAYBE A LITTLE MORE NOW.

24 Q NATE, WHERE DID YOU GROW UP?

25 A RIGHT HERE IN COLUMBIA, SOUTH CAROLINA.

1 Q YOU'VE LIVED HERE ALL YOUR LIFE?

2 A YES.

3 Q AND TELL US A LITTLE BIT ABOUT YOUR FAMILY?

4 A WELL, I'M FROM A BIG FAMILY.

5 Q YOU GREW UP WITH A MOTHER AND FATHER?

6 A YEAH.

7 Q AND WHAT DID THEY DO FOR A LIVING?

8 A MY FATHER WORKED AT CAROLINA CERAMICS. HE
9 RETIRED FROM THERE. MY MOTHER, SHE WAS A
10 HOUSEWIFE.

11 Q SHE WAS A HOUSEWIFE?

12 A YES.

13 Q AND DID SHE EVER WORK OUTSIDE THE HOME?

14 A YES.

15 Q WHAT DID SHE DO?

16 A SHE WOULD BABY-SIT AND CLEAN HOUSES.

17 Q HELP OTHER FAMILIES?

18 A YES.

19 Q AND HOW MANY SISTERS AND BROTHERS DO YOU
20 HAVE?

21 A I'VE GOT SIX SISTERS, ONE BROTHER.

22 Q AND ARE YOU -- I THINK YOUR SISTER TESTIFIED
23 EARLIER TODAY; IS THAT CORRECT?

24 A UH-HUH.

25 Q AND YOU ARE SECOND FROM THE BOTTOM?

- 1 A NEXT TO THE BOTTOM.
- 2 Q SECOND YOUNGEST?
- 3 A YES.
- 4 Q AND ARE ALL YOUR SISTERS AND YOUR BROTHER
- 5 LIVING TODAY?
- 6 A YES, THEY ARE.
- 7 Q TELL US A LITTLE BIT ABOUT YOUR EDUCATION?
- 8 HOW FAR DID YOU GO IN SCHOOL?
- 9 A I CAME THROUGH THE 12TH GRADE.
- 10 Q TWELFTH GRADE. AND WHERE DID YOU ATTEND HIGH
- 11 SCHOOL?
- 12 A SPRING VALLEY.
- 13 Q AND YOU GRADUATED?
- 14 A YES, I DID.
- 15 Q CAN YOU READ AND WRITE?
- 16 A YEAH, I'M A LITTLE SLOW AT READING, AND MY
- 17 SPELLING IS NOT UP TO DATE.
- 18 Q YOUR SPELLING IS NOT UP TO DATE?
- 19 A YES.
- 20 Q BUT YOU CAN PRETTY WELL READ AND WRITE?
- 21 A YES.
- 22 Q HAS IT BEEN NECESSARY TO DO SOME READING AND
- 23 WRITING IN THE VARIOUS WORK THAT YOU'VE DONE?
- 24 A YES, IT HAS.
- 25 Q AND WHAT TYPE OF WORK HAVE YOU DONE?

1 A WELL, I WAS WORKING WITH AMERICAN HOME
2 PATIENT, AND THAT REQUIRED A LOT OF PAPERWORK.

3 Q OKAY. AMERICAN HOME PATIENT?

4 A YES.

5 Q WHAT KIND OF A BUSINESS IS THAT?

6 A IT'S DELIVERING HOSPITAL EQUIPMENT. MOST OF
7 THE PAPERWORK WOULD BE ALREADY DONE. THE ONLY
8 THING I'D HAVE TO DO IS JUST DELIVER THE
9 EQUIPMENT, GO OVER IT AND HAVE THEM SIGN OFF ON
10 IT.

11 Q IS THAT YOUR MOST RECENT JOB?

12 A WELL, NOW, THAT WAS ONE OF THE FIRST ONES.
13 THE MOST RECENT ONE, I WAS WORKING WITH LINCARE
14 DOING THE SAME THING.

15 Q LINCARE?

16 A YES.

17 Q AND THEY HAVE VARIOUS MEDICAL EQUIPMENT,
18 RIGHT?

19 A YES.

20 Q DID YOU ALSO DELIVER FOR THEM?

21 A YES, I DID.

22 Q DO YOU HAVE ANY OTHER -- YOU'VE OBVIOUSLY
23 BEEN WORKING WITH MEDICAL EQUIPMENT AS A
24 TECHNICIAN. HAVE YOU DONE ANYTHING ELSE IN THE
25 PAST IN THE FORM OF EMPLOYMENT?

1 A YES. I'VE BEEN PULLING COMPUTER CABLES, JUST
2 INSTALLMENT, NOT SETTING IT UP, A LOT OF YARD
3 WORK, AND I ALSO WORKED THERE AT THE CAROLINA
4 CERAMICS.

5 Q HAVE YOU WORKED PRETTY MUCH SINCE YOU WERE
6 OUT OF HIGH SCHOOL?

7 A YES.

8 Q AND WERE YOU IN THE SERVICE?

9 A NO, I WASN'T.

10 Q SO SINCE YOU GRADUATED FROM HIGH SCHOOL, HAVE
11 YOU HAD ANY FURTHER EDUCATION?

12 A NO. I TOOK ONE CLASS OVER AT -- RIGHT DOWN
13 HERE OFF OF ATLAS ROAD. IT'S AN EDUCATIONAL
14 SCHOOL.

15 Q WAS THAT RELATED TO YOUR WORK?

16 A YES.

17 Q COMING FROM A LARGE FAMILY, WHAT DOES FAMILY
18 MEAN TO YOU?

19 A EVERYTHING.

20 Q TELL ME A LITTLE BIT MORE ABOUT THAT.

21 A WELL, SOMETIMES WHEN THINGS DIDN'T GO RIGHT,
22 THERE WAS ALWAYS MY SISTER I COULD TALK TO, AND MY
23 BROTHER, MY FATHER AND MY MOTHER.

24 Q ARE ALL YOUR SIBLINGS IN THE COLUMBIA AREA?

25 A YES -- NO, EXCEPT FOR THE ONE. I'VE GOT THE

1 ONE NEXT HIGHER THAN ME, SHE STAYS IN BOSTON --
2 WELL, MARYLAND.

3 Q MARYLAND. OKAY. AND THE REST ARE HERE IN
4 COLUMBIA?

5 A YES.

6 Q AND YOUR -- I THINK YOUR SISTER TESTIFIED
7 THAT YOUR FATHER DIED; IS THAT CORRECT?

8 A YES, HE DID.

9 Q AND YOUR MOTHER, AS WELL?

10 A YES.

11 Q OKAY. WHEN DID SHE DIE?

12 A SHE DIED...

13 (PAUSE)

14 Q WAS IT JUST A FEW YEARS AGO?

15 A YES. ACTUALLY I THINK IT'S BEEN ALMOST A
16 YEAR BETWEEN MY WIFE'S DEATH.

17 Q BETWEEN YOUR WIFE'S DEATH. OKAY. AND I
18 THINK YOUR SISTER TESTIFIED THAT SHE HAD BEEN ILL?

19 A YES, SHE WAS.

20 Q DID YOU HELP WITH HER CARE AT ALL?

21 A YES.

22 Q AND ARE YOU CURRENTLY MARRIED?

23 A NO, I'M NOT.

24 Q HAVE YOU BEEN MARRIED?

25 A YES.

1 Q WHAT WAS YOUR WIFE'S NAME?

2 A SONYA G. MITCHELL.

3 Q WHEN DID YOU MEET SONYA?

4 A WHEN WE WAS IN THE EIGHTH GRADE.

5 Q YOU WERE BOTH IN THE EIGHTH GRADE?

6 A WELL, I WAS IN THE EIGHTH. SHE WAS IN THE
7 SEVENTH.

8 Q AND HOW LONG DID YOU AND SONYA DATE BEFORE
9 YOU GOT MARRIED?

10 A WE DATED 15 YEARS BEFORE WE GOT MARRIED.

11 Q HOW OLD WERE YOU WHEN YOU MARRIED HER?

12 A TWENTY-NINE.

13 Q TWENTY-NINE. WERE YOU TOGETHER ALL THAT
14 TIME?

15 A YES, WE WAS.

16 Q AND YOUR FAMILIES, THE GREENS AND THE
17 MITCHELLS, DID YOU ALL LIVE IN THE SAME AREA?

18 A MAINLY, YEAH.

19 Q AND WERE THE TWO FAMILIES FRIENDS?

20 A OVER A PERIOD OF TIME THEY DID BECOME THAT.

21 Q WHILE YOUR WIFE WAS LIVING, DID YOU AND YOUR
22 WIFE HAVE ANY CHILDREN?

23 A YES, WE HAD ONE, AND IT WAS STILLBORN.

24 Q ONE STILLBORN?

25 A YES.

1 Q AND DO YOU REMEMBER WHEN THAT WAS
2 APPROXIMATELY?
3 A YES, THAT WAS JANUARY 12TH OF '94.
4 Q IN '94?
5 A YES.
6 Q AND HOW DID THAT -- THE LOSS OF THAT CHILD
7 AFFECT YOU AND YOUR WIFE?
8 A TRAGIC.
9 Q HAD YOU WANTED CHILDREN?
10 A YES, WE DID.
11 Q HAD YOU PLANNED TO HAVE MORE CHILDREN?
12 A WE TRIED, YEAH.
13 Q AND WHAT HAPPENED?
14 A WE JUST COULDN'T.
15 Q YOU WERE NOT ABLE TO HAVE CHILDREN?
16 A RIGHT.
17 Q AT SOME POINT DID YOU AND SONYA TALK ABOUT AN
18 ALTERNATIVE IF YOU WERE UNABLE TO HAVE CHILDREN?
19 A YES, WE DID.
20 Q OKAY. WHAT WAS THAT?
21 A BEING FOSTER PARENTS.
22 Q HOW DID YOU LEARN ABOUT FOSTER CARE? DID
23 YOUR FAMILY TAKE IN FOSTER CHILDREN?
24 A NO, WE DIDN'T.
25 Q AND DID YOU --

1 A WELL, EXCUSE ME, MY BROTHER DID, HIM AND HIS
2 WIFE DID.

3 Q OKAY. YOUR PARENTS DIDN'T?

4 A NO.

5 Q BUT YOUR BROTHER AND HIS WIFE HAD FOSTER
6 CHILDREN?

7 A YES.

8 Q OKAY. AND SO BASED ON THE FACT THAT YOU AND
9 YOUR WIFE THOUGHT ABOUT IT, WHAT DID YOU DO?

10 A WELL, WE STARTED LOOKING INTO IT. WE SEEN
11 ADVERTISEMENTS ON TV. WE DIDN'T REALLY KNOW HOW
12 TO GO ABOUT STARTING -- MR. BROWN KIND OF
13 INSTRUCTED US HOW WE NEEDED TO GO ABOUT GETTING
14 STARTED ON IT.

15 Q IS THAT MR. CARL BROWN --

16 A YES.

17 Q -- THAT TESTIFIED EARLIER TODAY?

18 A YES, MR. CARL BROWN.

19 Q AND YOU KNEW HIM DURING THIS PERIOD OF TIME?

20 A YES.

21 Q AND HE HELPED YOU GET THE PROCESS STARTED?

22 A YES.

23 Q AND TELL ME A LITTLE BIT ABOUT HOW THAT CAME
24 ABOUT?

25 A WELL, HE EXPLAINED TO US WHO TO CALL, AND

1 THAT THEY WOULD FOLLOW-UP.

2 Q DID THEY TELL YOU WHAT YOU NEEDED TO DO TO BE
3 QUALIFIED AS A FOSTER FAMILY?

4 A YES, THEY DID.

5 Q AND WHAT WERE SOME OF THE THINGS THAT YOU AND
6 SONYA WERE GOING TO HAVE TO DO?

7 A WELL, WE WENT THROUGH EVERYTHING THAT WAS
8 SAID. WE WENT THROUGH THE S.L.E.D. CHECK, WE WENT
9 THROUGH THE WHOLE NINE YARDS OF IT.

10 Q AND LET'S GO BACK FOR ONE MINUTE. YOU'RE NO
11 LONGER MARRIED TO SONYA?

12 A NO, I'M NOT.

13 Q WHAT HAPPENED?

14 A SHE HAD A MASSIVE STROKE.

15 Q WHEN WAS THAT?

16 A DECEMBER 10TH.

17 Q OF THIS PAST DECEMBER?

18 A YES, MA'AM.

19 Q SO SINCE DECEMBER, YOU HAVE BEEN WITHOUT YOUR
20 WIFE?

21 A YES.

22 Q HAS ANYBODY LIVED WITH YOU SINCE DECEMBER?

23 A YES, MY BABY SISTER MOVED IN WITH ME.

24 Q PATRICIA?

25 A YES.

1 Q AND I THINK SHE SAID THAT SHE'S JUST MOVED
2 INTO HER OWN PLACE?

3 A YES, SHE DID.

4 Q AND SO YOU'VE ALWAYS HAD A SISTER TO --

5 A YEAH, NOW MY OLDEST SISTER HAS MOVED IN WITH
6 ME.

7 Q HAD SONYA BEEN ILL?

8 A NOT TO MY KNOWLEDGE.

9 Q SO THIS WAS UNEXPECTED?

10 A YES.

11 Q DO YOU REMEMBER TESTIMONY THIS MORNING THAT
12 IT WAS, I BELIEVE IN MARCH OF 1998 THAT YOU
13 QUALIFIED AS A FOSTER FAMILY?

14 A YES.

15 Q AND DO YOU REMEMBER GETTING THE CALL ABOUT
16 THE FACT THAT YOU WERE GOING TO HAVE A CHILD
17 BROUGHT TO YOUR HOME?

18 A YES.

19 Q OKAY. TELL US A LITTLE BIT ABOUT THAT.

20 A WELL, THAT NIGHT IT WAS ALMOST JUST PLAIN
21 JOY.

22 WE BOTH GREETED THEM AT THE DOOR WHEN THEY
23 WERE BRINGING HIM IN. HE WAS GIVEN TO SONYA AND
24 THEN TO ME.

25 Q AND WHO IS THAT CHILD?

1 A H.G.

2 Q NATE, HAD YOU BEEN AROUND CHILDREN WHILE YOU
3 WERE GROWING UP?

4 A YES, I HAVE.

5 Q AND YOU WERE THE YOUNGEST OF THE CLAN IN YOUR
6 HOUSE, BUT HAD YOU SPENT A LOT OF TIME WITH FAMILY
7 CHILDREN?

8 A YES.

9 Q UNDER WHAT CIRCUMSTANCES?

10 A FAMILY MEETINGS, BABY-SITTING, THAT SORT OF
11 THING.

12 Q DID YOU DO A LOT OF BABY-SITTING?

13 A YES, I HAVE.

14 Q WAS IT FOR FAMILY MEMBERS OR FRIENDS?

15 A FAMILY MEMBERS AND FRIENDS.

16 Q DID YOU EVER GO WITH YOUR MOTHER WHEN SHE WAS
17 CARING FOR CHILDREN?

18 A I -- ACTUALLY I WENT AND DID YARD WORK WHILE
19 SHE WAS BABY-SITTING, CLEANING UP.

20 Q FOR THE SAME FAMILIES?

21 A YES.

22 Q SO YOU HAD BEEN AROUND A NUMBER OF CHILDREN?

23 A YES, I HAVE.

24 Q AND ACTUALLY HAD DONE BABY-SITTING ON YOUR
25 OWN?

1 A YES.

2 Q WHAT WERE THE CIRCUMSTANCES THAT YOU WERE
3 TOLD ABOUT WHY H.G. WAS COMING TO LIVE WITH YOU
4 IN FOSTER CARE?

5 MS. CAMPBELL: OBJECTION.

6 THE COURT: SUSTAINED.

7 BY MS. COGGIOLA:

8 Q WERE -- HE WAS THE ONLY CHILD THAT CAME TO
9 YOU AT THAT TIME?

10 A AT THAT TIME, YES.

11 Q AND WERE YOU AWARE OF WHETHER HE HAD
12 SIBLINGS?

13 A YES, BUT WE WEREN'T QUALIFIED AT THE TIME TO
14 ACCEPT THEM IN OUR HOUSEHOLD.

15 Q OKAY. WHY WERE YOU NOT QUALIFIED TO ACCEPT
16 THEM?

17 A I THINK SHE WAS ON -- MINOR WAS ON A HEART
18 MONITOR AND NAUTIA WAS ON AN INHALER.

19 Q AN INHALER?

20 A YES, AN INHALER.

21 Q AND WHEN YOU SAY YOU WERE NOT QUALIFIED, WERE
22 THERE CERTAIN REQUIREMENTS OF D.S.S. YOU HAD TO
23 COMPLETE?

24 A YES.

25 Q WERE YOU IN THE PROCESS OF DOING THAT?

1 A YES, WE WAS.

2 Q BUT AT THAT TIME YOU WERE NOT QUALIFIED FOR
3 THE GIRLS TO COME LIVE WITH YOU?

4 A NO.

5 Q FOR THE PERIOD OF TIME THAT H.G. WAS WITH
6 YOU, WAS HE ABLE TO SEE HIS SISTERS?

7 A YES.

8 Q AND WAS THAT WITH YOU?

9 A WELL, WITH ME AND MY WIFE. WE ACTUALLY
10 CALLED MR. TURNER, THAT'S WHERE THE GIRLS WERE AND
11 THAT'S WHERE WE SET UP THE TIME THAT WE COULD ALL
12 MEET WHERE THEY COULD VISIT.

13 IF I'M NOT MISTAKEN, MY WIFE WOULD TAKE THEM
14 TO D.S.S. AND THEY WOULD MEET DOWN THERE.

15 Q AND SO IT WAS ARRANGED THROUGH D:S.S.
16 GENERALLY?

17 A YES.

18 Q HOW OFTEN DID THE THREE CHILDREN GET
19 TOGETHER? DO YOU RECALL? HOW LONG WAS H.G.
20 THERE BEFORE THE GIRLS CAME?

21 A THEY CAME IN --

22 Q YOU SAID THEY CAME IN MARCH OF '98 IS WHEN
23 H.G. CAME; IS THAT RIGHT?

24 A YES, AND I THINK THE GIRLS CAME IN -- IF I'M
25 NOT MISTAKEN, IT WAS JUNE OF '99.

1 Q OF '99, OKAY. SO BASICALLY H.G. , WAS HE
2 THE ONLY CHILD THAT LIVED WITH YOU IN THAT YEAR
3 AND THREE MONTHS?

4 A YES.

5 Q AND DURING THAT PERIOD OF TIME, YOU SAID YOU
6 HAD AN OPPORTUNITY FOR THE CHILDREN TO GET
7 TOGETHER?

8 A YES.

9 Q THROUGH D.S.S.?

10 A RIGHT.

11 Q DO YOU KNOW APPROXIMATELY HOW MANY TIMES THEY
12 ALL GOT TOGETHER?

13 A ACTUALLY, I DON'T BECAUSE A LOT OF THAT WAS
14 WHEN I WAS AT WORK AND SHE, MY WIFE, WAS THE ONE
15 THAT TOOK THEM.

16 Q BUT DID YOU SEE THE GIRLS AT ALL DURING THAT
17 PERIOD?

18 A AT THAT PERIOD, ACTUALLY WHEN WE WOULD CALL
19 THE TURNERS AND ASK THEM IF WE COULD BRING H.G.
20 OVER.

21 Q SO YOU WOULD CALL THEM AND SEE IF YOU COULD
22 JUST BRING HIM OVER?

23 A YES.

24 Q AND AT SOME POINT DID YOU LEARN THAT THE
25 GIRLS WERE GOING TO MOVE IN WITH YOU?

1 A WELL, WE DIDN'T KNOW THAT UNTIL AFTER
2 MRS. TURNER HAD GOTTEN SICK.

3 Q OKAY. AND SHE WAS THEIR FOSTER MOTHER?

4 A YES.

5 Q SO YOU HAD H.G. , AND THE GIRLS WERE LIVING
6 WITH THE TURNERS. OKAY, AND WHAT HAPPENED -- FROM
7 YOUR STANDPOINT, HOW DID THE GIRLS END UP COMING
8 TO YOUR HOUSE TO LIVE?

9 A WELL, WHEN SHE GOT SICK IF I'M NOT MISTAKEN,
10 WHEN SHE PASSED, THEY CALLED AND ASKED US COULD WE
11 TAKE THE TWO OTHERS.

12 Q AND THIS IS D.S.S.?

13 A YEAH.

14 Q AND I THINK THIS MORNING THE FOSTER
15 LICENSING -- THE WOMAN IN CHARGE OF FOSTER CARE
16 LICENSING --

17 A YES.

18 Q -- STATED AT THAT TIME YOU WERE ONLY -- YOU
19 HAD BEEN LICENSED FOR TWO; IS THAT CORRECT?

20 A TWO, THAT'S CORRECT.

21 Q AND WERE YOU -- HOW DID YOU FEEL ABOUT --
22 INSTEAD OF HAVING TWO CHILDREN HAVING THREE
23 CHILDREN LIVE WITH YOU?

24 A WELL, I ENJOYED IT. WE WANTED TO GET THEM
25 ALL ALONG TO BE WITH EACH OTHER.

1 Q SO YOU HAD WANTED THE GIRLS TO LIVE WITH YOU
2 ALL ALONG?

3 A YES.

4 Q BUT YOU HADN'T BEEN QUALIFIED AT THE
5 BEGINNING?

6 A RIGHT.

7 Q WERE YOU QUALIFIED AT THIS POINT? WAS THAT
8 STILL AN ISSUE WHEN THE GIRLS WERE BROUGHT TO YOU?

9 A IF I'M NOT MISTAKEN, WE WAS ALREADY
10 QUALIFIED. THEY REDID IT. IT WAS COMING UP TO BE
11 REDONE BEFORE.

12 Q YOUR LICENSE?

13 A YES.

14 Q OR RATHER, YOUR QUALIFICATION?

15 A YES.

16 Q AND ACTUALLY, WHEN MINOR MOVED IN WITH YOU,
17 WAS SHE STILL ON A HEART MONITOR?

18 A NO, SHE WAS NOT.

19 Q AND DID THEY TELL YOU WHY SHE HAD BEEN?

20 A NO.

21 Q OR HAD YOU BEEN TOLD BY D.S.S. OR ANYBODY?

22 A NO, WE WEREN'T TOLD NOTHING ABOUT THE KIDS.

23 Q AND WAS N.G. STILL USING AN INHALER?

24 A AN INHALER, YES, MA'AM.

25 Q AND YOU WERE MADE AWARE OF WHATEVER THE

1 REASONS WERE THAT SHE NEEDED THIS EXTRA MEDICAL
2 CARE?

3 A YES.

4 Q BUT WERE YOU INFORMED OF ANY SPECIAL MEDICAL
5 NEEDS FOR MINOR WHEN SHE MOVED IN WITH YOU?

6 A NO, MA'AM.

7 Q AND DID -- SO THEY DIDN'T TELL YOU ANYTHING
8 PARTICULARLY ABOUT WHY SHE HAD BEEN ON THE
9 MONITOR?

10 A NO, MA'AM.

11 Q WHY WAS IT IMPORTANT TO YOU TO HAVE THESE
12 THREE CHILDREN TOGETHER? YOU SAID YOU WANTED THEM
13 TOGETHER. WHY WAS THAT IMPORTANT TO YOU?

14 A I JUST WANTED TO KEEP THEM ALL TOGETHER.
15 IT'S HARD ENOUGH JUST TAKING HIM OVER THERE TO
16 VISIT THE GIRLS, AND KNOWING HE HAD TO LEAVE.

17 Q KNOWING THAT HE HAD TO LEAVE HIS SISTERS?

18 A YEAH.

19 Q HE WOULD CRY, SHE WOULD CRY, ALL -- BOTH OF
20 THEM AND MR. AND MRS. TURNER AND ME AND MY WIFE
21 WOULD CRY BECAUSE IT WAS TIME TO GO.

22 Q SO IT WAS IMPORTANT TO YOU FOR THESE CHILDREN
23 TO ALL BE TOGETHER?

24 A YES.

25 Q AND WAS THERE ANY PROBLEM IN BEING RELICENSED

1 FOR THREE CHILDREN RATHER THAN TWO?

2 A NO, MA'AM.

3 Q SO NOW IN JUNE OF 1999, THE GIRLS HAD MOVED
4 IN?

5 A YES.

6 Q AND THE ROUTINE MUST HAVE CHANGED SOME IN
7 YOUR HOUSE?

8 A IT WAS A BIG CHANGE, BUT IT WAS WORTH IT.

9 Q TELL US A LITTLE BIT ABOUT HOW YOU AND YOUR
10 WIFE DIVIDED THE RESPONSIBILITIES OF YOUR HOME,
11 SORT OF THE ROUTINE OF YOUR HOME, AND WHO HAD WHAT
12 RESPONSIBILITIES?

13 A WELL, BEDTIME -- FEEDING, WE BOTH TOOK THE
14 RESPONSIBILITY IN THE FEEDING OF THE KIDS, MAKING
15 SURE THEY WAS FED. CLEAN-UP TIME, I WOULD CLEAN
16 H.G. AND MY WIFE WOULD CLEAN THE GIRLS.

17 BEDTIME, EITHER ONE OF US WOULD PUT THEM IN
18 THEIR BEDS.

19 Q AND WHAT -- HOW LARGE WAS YOUR -- HOW MANY
20 BEDROOMS WERE IN YOUR APARTMENT -- IN YOUR HOME.

21 A IN MY HOUSE WE HAD THREE BEDROOMS.

22 Q THREE BEDROOMS?

23 A YES.

24 Q AND YOU AND YOUR WIFE SHARED ONE?

25 A YES.

1 Q AND WHO WAS IN THE OTHER TWO BEDROOMS?

2 A H.G. WAS IN HIS OWN ROOM AND MINOR AND
3 N.G. WAS IN THEIR ROOM.

4 Q AND FROM THE TIME YOU HAD ALL THREE CHILDREN,
5 WHAT WERE YOUR -- WERE YOUR WORK SCHEDULES PRETTY
6 STABLE? IN OTHER WORDS, SONYA'S HOURS WERE WHAT
7 THEY WERE AND YOURS WERE THE SAME. I MEAN, DID
8 YOU HAVE THE SAME WORKING HOURS OR WHAT?

9 A NO, WE DIDN'T.

10 Q OKAY. WHAT WERE SONYA'S WORKING HOURS?

11 A SHE WOULD GO IN TO WORK FROM -- I THINK, IT
12 WAS LIKE -- SHE WOULD LEAVE BY 6:30 TO MAYBE 2:30
13 UNLESS INVENTORY COMES UP OR SOMETHING LIKE THAT
14 COMES UP.

15 Q AND WHERE DID SHE WORK?

16 A E.L. WRIGHT CAFETERIA.

17 Q SO SHE HAD TO BE THERE EARLY IN THE MORNING.
18 WHAT WAS YOUR WORK SCHEDULE?

19 A MY WORK SCHEDULE STARTED AT ABOUT 8:30. THE
20 WEEKS THAT I WAS ON CALL, I MIGHT HAVE TO LEAVE
21 OUT EARLY, 6:00 IN THE MORNING. SOMETIMES THEN
22 COME BACK HOME UNTIL 11:00, 11:30, SOMETIMES 12:00
23 AT NIGHT.

24 Q AND DURING THAT PERIOD OF TIME, WERE THE
25 CHILDREN IN DAYCARE?

1 A DURING THE DAY TIME, YES.

2 Q WHO WOULD HELP OUT IF YOU BOTH -- IF YOU HAD
3 TO GO IN EARLY OR STAY LATE?

4 A IF I WAS ON CALL, IF I'M NOT MISTAKEN, SHE
5 WORKED IT OUT WITH HER MANAGER AT E.L. WRIGHT THAT
6 SHE WOULD JUST TAKE THE KIDS AND THEN COME ON IN
7 TO WORK.

8 Q OKAY.

9 A AND THEN SHE WOULD PICK THEM UP AFTER SHE GOT
10 OFF.

11 Q BUT IF YOU WERE NOT ON CALL, AND YOU WERE
12 BOTH MAINTAINING YOUR FAIRLY NORMAL WORK
13 SCHEDULES, TELL US WHAT THE ROUTINE WAS IN THE
14 MORNING.

15 A ALL RIGHT, YES, SHE WOULD LEAVE AT HER
16 REGULAR TIME, AND I WOULD GET THE KIDS UP, GET
17 THEM READY TO GO TO SCHOOL AND FEED THEM. ON THE
18 MORNINGS THAT WE WAS RUNNING LATE, THEY WOULD EAT
19 AT THE DAYCARE, YES.

20 Q SO THEY COULD EITHER EAT AT THE DAYCARE OR AT
21 HOME?

22 A YEAH.

23 Q AND NOW YOU'VE GOT THREE -- HOW OLD WERE THEY
24 THAT YEAR?

25 A FOUR, THREE --

1 Q MINOR WAS TWO, RIGHT?

2 A FOUR, THREE, AND TWO.

3 Q SO, THEY WERE FOUR, THREE, TWO. COULD ANY OF
4 THEM DRESS THEMSELVES?

5 A YES.

6 Q WHO WOULD DRESS THEMSELVES?

7 A N.G. , WE WOULD LAY HER CLOTHES OUT ON THE
8 BED AND THEN SHE WOULD TAKE THE RESPONSIBILITY TO
9 DRESS HERSELF.

10 Q AND HOW ABOUT H.G. ?

11 A NO. I HAD TO DRESS HIM AND MINOR .

12 Q AND SO WERE THE CHILDREN STILL IN BED WHEN
13 SONYA LEFT FOR WORK IN THE MORNING?

14 A YES, THEY WERE.

15 Q SO YOU REALLY HAD THE RESPONSIBILITY FOR THE
16 MORNING?

17 A YES.

18 Q AND THEN HOW ABOUT WHO PICKED THEM UP AT
19 DAYCARE IN THE AFTERNOON?

20 A SONYA WOULD PICK THEM UP UNLESS SHE CALLED ME
21 AND LET ME KNOW THAT SHE NEEDED ME TO PICK THEM
22 UP.

23 Q WHO HANDLED THE BUSINESS SIDE OF YOUR
24 MARRIAGE?

25 A I LEFT ALL THAT TO MY WIFE SONYA.

1 Q SO SHE HANDLED THE BILLS AND THE FINANCES AND
2 EVERYTHING?

3 A YES.

4 Q DID YOU GET BOARD PAYMENTS FOR HAVING FOSTER
5 CHILDREN?

6 A RIGHT.

7 Q FOR THE PERIOD OF TIME YOU HAD FOSTER
8 CHILDREN?

9 A RIGHT.

10 Q DO YOU KNOW HOW MUCH YOU RECEIVED FOR THE
11 CHILDREN?

12 A NO. MY WIFE TOOK CARE OF ALL OF THAT, YOU
13 KNOW.

14 Q AND I THINK WE HEARD THIS MORNING FROM
15 MS. DEAMBROGIO THAT YOU WERE IN THE PROCESS OF
16 ATTEMPTING TO ADOPT THESE CHILDREN?

17 A YES, YES, WE WAS.

18 Q AT WHAT POINT DID YOU -- YOU HAD ONE CHILD
19 AND THEN THE TWO SISTERS ARRIVED, AT WHAT POINT
20 DID YOU DECIDE THAT YOU WANTED THIS TO BE AN
21 ADOPTION?

22 A AFTER H.G. WAS MOVED IN WITH US, AND AFTER
23 A COUPLE OF VISITS OF TAKING THEM OVER THERE, WE
24 JUST -- WE TALKED ABOUT IT OURSELVES. WE TOOK THE
25 ADOPTION ACTION AFTER THE GIRLS GOT IN THE HOME

1 WITH US.

2 Q AND YOU KNEW THAT ADOPTION MEANT THIS WOULD
3 BE A PERMANENT FAMILY FOR YOU?

4 A YES.

5 Q IF THE ADOPTION HAD BEEN COMPLETED, WOULD YOU
6 HAVE CONTINUED TO GET BOARD PAYMENTS FOR THEM?

7 A NOT AS FAR AS I KNOW OF, NO.

8 Q SO THAT DIDN'T HAVE ANYTHING TO DO WITH IT?

9 A NO.

10 Q DID YOU TAKE THESE CHILDREN INTO YOUR FAMILY
11 SO THAT YOU COULD GET MONEY?

12 A NO.

13 Q WHY DID YOU AND SONYA TAKE CHILDREN INTO YOUR
14 FAMILY?

15 A BECAUSE I GUESS AFTER OUR CHILD DIED WE FELT
16 EMPTY AGAIN.

17 Q AND THAT WAS THE BEGINNING OF THE PROCESS?

18 A YES.

19 Q NATE, DESCRIBE IN YOUR WORDS WHAT MINOR WAS
20 LIKE.

21 A A SWEET LITTLE, INNOCENT CHILD. SHE WAS
22 ALWAYS QUIET. SHE WOULD PLAY. IF SHE DIDN'T WANT
23 TO PLAY WITH THE OTHER ONES, SHE WOULD JUST GO TO
24 HER -- SHE WOULD GET HER FAVORITE LITTLE TOY AND
25 JUST SIT DOWN AND PLAY WITH HERSELF.

1 Q DID SHE HAVE HER OWN TOYS?

2 A WELL, SOME OF THE ONES THAT SHE TOOK AN
3 INTEREST IN, YOU KNOW. WE DIDN'T TRY TO BUY THEM
4 ANYTHING THAT THEY DIDN'T NEED, BUT...

5 Q WHEN YOU SAY QUIET, WAS THAT THE ENTIRE TIME
6 THAT SHE LIVED WITH YOU? WOULD YOU DESCRIBE HER
7 AS A QUIET CHILD?

8 A YEAH, UNLESS IT WAS LIKE BIRTHDAYS, STUFF
9 LIKE THAT, SHE WOULD GET REAL HYPER, WOULD WANT TO
10 PLAY, BUT I WOULD SAY THAT SHE WAS A LITTLE QUIET
11 LITTLE GIRL. ALWAYS WANTED TO JUST BE TO HERSELF
12 AT TIMES.

13 Q THERE HAS BEEN TESTIMONY THAT YOU'VE HEARD
14 ABOUT THE FACT THAT SHE MAY HAVE BEEN
15 DEVELOPMENTALLY DELAYED, AS THE TERM HAS BEEN
16 USED. I GUESS MY FIRST QUESTION IS WHEN MINOR
17 CAME TO YOU, WERE YOU TOLD THAT THERE WERE ANY
18 DEVELOPMENTAL DELAYS?

19 A NO, WE WAS NOT. WE WASN'T TOLD NONE OF THE
20 RECORDS -- NO. THEY SAID THEY COULDN'T DISCUSS
21 NONE OF THE MEDICAL RECORDS WITH US UNTIL AFTER
22 THE ADOPTION.

23 Q OKAY. AND YOU HAVE TESTIFIED TODAY THAT YOU
24 HAVE BABYSAT, AND THAT YOUR SISTERS AND BROTHERS
25 HAVE CHILDREN AND YOU'VE BEEN AROUND CHILDREN.

1 SHE WAS TWO YEARS OLD, RIGHT?

2 A UH-HUH, YEAH.

3 Q HOW DID SHE SEEM TO YOU IN TERMS OF THE TYPES
4 OF THINGS THAT A TWO YEAR OLD DOES?

5 A NORMAL. SHE --

6 Q SHE SEEMED NORMAL?

7 A SHE SEEMED NORMAL. LIKE I SAY, SHE WOULD
8 JUST GET HER A LITTLE TOY. IF THE OTHER ONES --
9 WELL, N.G. WAS ALWAYS THE TALKATIVE TYPE.
10 H.G. WAS HIGH SPIRITED. YOU KNOW, SHE WAS JUST
11 QUIET.

12 Q DID SHE WALK?

13 A YEAH, SHE RAN.

14 Q DID SHE TALK?

15 A SHE WAS AT THE POINT THAT SHE WAS TRYING.

16 Q IN HER OWN LANGUAGE?

17 A YEAH.

18 Q AND I THINK THIS MORNING WHEN THE D.S.S.
19 CASEWORKER WAS SPEAKING, THERE WERE QUESTIONS
20 ABOUT HER BEING DIFFICULT.

21 A UH-HUH.

22 Q AND I THINK THAT WE QUESTIONED WHETHER THAT
23 MEANT BECAUSE OF SOME OF THE MEDICAL ISSUES. IN
24 YOUR EXPERIENCE WITH MINOR , WAS SHE A DIFFICULT
25 CHILD?

1 A TO ME, I COULDN'T TELL.

2 Q WAS HER BEHAVIOR DIFFICULT?

3 A IF YOU WOULD CALL JUST WANTING TO PLAY WITH

4 YOUR OWN TOYS.

5 Q SO SHE WAS INCLINED TO BY HERSELF MORE?

6 A AT TIMES, YEAH.

7 Q WHAT DID YOU ALL DO AS A FAMILY FOR FUN?

8 WHAT DID YOU DO WITH THE CHILDREN, YOU AND SONYA,

9 WHAT SORT OF ACTIVITIES?

10 A READ BOOKS, PLAY WITH THE TOYS WITH THEM, GET

11 ON THE FLOOR AND DRAW, AND THEY HAD COLORING

12 BOOKS. WE WOULD LOOK AT LITTLE BARNEY TAPES OR

13 WHATEVER.

14 Q YOU HAD VCR TAPES?

15 A YEAH.

16 Q DID YOU TAKE THE CHILDREN PLACES?

17 A YES.

18 Q WHERE WOULD YOU GO WITH THEM?

19 A WE TOOK THEM TO THE MOVIES, MCDONALD'S WHERE

20 THEY COULD PLAY ON THE PLAY TOYS, THE VISITS TO

21 FAMILY AND STUFF.

22 Q AND I THINK THERE'S BEEN TESTIMONY THAT YOU

23 SPENT TIMES WITH YOUR SISTERS AND OTHER MEMBERS OF

24 THE FAMILY?

25 A YES.

1 Q YOU WOULD TAKE THEM THERE?

2 A YES, WE DID.

3 Q HOW DID YOU DISCIPLINE THE CHILDREN?

4 A WE WOULD PUT THEM IN A TIME-OUT CHAIR AND
5 START -- THEN IT WAS JUST -- WE WOULD PUT THEM IN
6 THERE FOR JUST TAKING TIME AWAY. IF THEY WOULD
7 ACT UP IN SCHOOL, WE'D GET A NOTICE THAT, YOU
8 KNOW, THEY WOULD SEND A LITTLE NOTE HOME. WE'D
9 PUT THEM IN THE CHAIR ABOUT TEN OR FIFTEEN
10 MINUTES. WE --

11 Q DID THEY EACH HAVE A CHAIR?

12 A YES.

13 Q WHERE WERE THE CHAIRS?

14 A WE WOULD PUT THEM IN THE LIVING ROOM.

15 Q AND WHAT ELSE WOULD YOU DO? IF THE TIME-OUT
16 DIDN'T WORK, WHAT WOULD YOU DO?

17 A WE WOULD TAKE THEIR SNACKS FROM THEM.

18 BASICALLY WE WOULD JUST START OUT TAKING THEIR
19 SNACKS, PUTTING THEM TO BED A LITTLE BIT EARLIER,
20 YOU KNOW.

21 Q AND IF THAT DIDN'T WORK, NATE, WHAT DID YOU
22 DO?

23 A WELL, WE WOULD DISCIPLINE THEM.

24 Q HOW?

25 A WE WOULD POP THEM ON THE HAND.

1 Q DID YOU SPANK YOUR CHILDREN?

2 A YES.

3 Q DID YOU BOTH SPANK THE CHILDREN?

4 A YES, WE DID.

5 Q AND WHAT DID YOU USE TO SPANK THE CHILDREN?

6 A WELL, WE WOULD POP THEM ON THE HAND. WE USED
7 THE BELT.

8 Q AND WHEN YOU USED THE BELT, WHERE WOULD YOU
9 SPANK THEM?

10 A WE WOULD POP THEM ON THE HAND TO MAKE THEM
11 MIND AND THEY WOULD.

12 Q DID YOU SPANK THEM ANYWHERE ELSE WITH A BELT?

13 A YES.

14 Q WHERE WAS THAT?

15 A I SPANKED HER ON THE BUTT THAT MORNING.

16 Q SO ON OCCASION DID ALL THREE CHILDREN AT
17 VARIOUS TIMES GET SPANKINGS?

18 A YES.

19 Q OKAY. AND DID THEY GET SPANKINGS FROM BOTH
20 YOU AND SONYA?

21 A YES, THEY DID.

22 Q AND DID EACH OF YOU ON OCCASION USE THE BELT
23 FOR A SPANKING?

24 A I DON'T KNOW ABOUT MY WIFE, BUT MOST OF THE
25 TIME I WASN'T HOME.

1 Q SO MUCH OF THE TIME WHEN SHE WAS DOING THE
2 DISCIPLINE YOU WEREN'T THERE?

3 A RIGHT.

4 Q LET'S JUST TALK ABOUT WHEN YOU WERE THERE.

5 A OKAY.

6 Q AND WHEN YOU DID THE DISCIPLINING, IF THE
7 TIME-OUT DIDN'T WORK AND TAKING AWAY SNACKS AND
8 PRIVILEGES, DID YOU SPANK THEM WITH A BELT?

9 A NO, NOT ALL THE TIME, NO, WE DIDN'T. WE
10 WOULD POP THEM ON THE HAND WITH OUR HAND, AND THEY
11 WOULD MIND.

12 Q DID YOU EVER SPANK ANY OF YOUR CHILDREN TO
13 THE POINT THAT YOU BELIEVED YOU WERE GOING TO
14 INFLECT INJURY ON THEM?

15 A NO.

16 Q BUT DID YOU SPANK THEM ON THEIR BOTTOMS WITH
17 A BELT?

18 A YEAH.

19 Q DID YOU HAVE ANY REASON OR INFORMATION -- YOU
20 SAID YOU JUST TESTIFIED A MINUTE AGO THAT YOU WERE
21 TOLD YOU COULD NOT GET ANY PRIOR MEDICAL
22 INFORMATION ON THE CHILDREN UNTIL THE ADOPTION.
23 IS THAT TRUE?

24 A CORRECT.

25 Q AND THAT WAS PER D.S.S.?

1 A YES.

2 Q DID YOU HAVE ANY KNOWLEDGE OR REASON TO
3 BELIEVE THAT MINOR OR ANY OF THE CHILDREN HAD
4 ANY PRIOR INJURIES, PRIOR HEAD INJURIES?

5 A NO, WE DID NOT.

6 Q SO YOU HAVE NO INFORMATION ABOUT THAT
7 WHATSOEVER?

8 A NO.

9 Q WHETHER THEY DID OR DIDN'T?

10 A NO, WE DIDN'T HAVE NO INFORMATION ON THAT.

11 Q OKAY. THE MORNING OF MARCH 28TH, CAN YOU
12 TELL US, STARTING WITH WHEN YOU GOT THE CHILDREN
13 UP, WHAT HAPPENED THAT MORNING?

14 A YES. YES. MY WIFE HAD LEFT TO GO TO WORK.
15 IT WAS THE NORMAL ROUTINE. I GOT THEM UP. I
16 WOULD GET N.G. UP FIRST AND THEN SHE WOULD GO TO
17 THE BATHROOM. SHE WOULD LET ME KNOW WHEN SHE WAS
18 THROUGH. I WOULD LAY OUT HER CLOTHES. SHE WOULD
19 BE GETTING DRESSED. I WOULD SEND H.G. IN. HE
20 WOULD LET ME KNOW WHEN HE WAS THROUGH, THEN I
21 WOULD SEND MINOR IN.

22 Q NOW, THIS IS SPECIFICALLY THAT DAY?

23 A YES.

24 Q OKAY. NOW YOU'RE SPEAKING AS IF IT'S THE
25 ROUTINE AND THAT'S FINE -- I JUST WANT TO BE SURE

1 THAT YOU'RE TALKING ABOUT MARCH 28TH,
2 SPECIFICALLY.

3 A OH, OKAY.

4 Q SO YOU SENT H.G. -- WHEN YOU SAY SENT HIM
5 IN, SENT HIM IN WHEN?

6 A IN HIS ROOM WHERE HIS CLOTHES WERE.

7 Q OKAY.

8 A AND THEN WHILE MINOR ON WAS THE POTTY, I
9 WOULD GO IN THERE AND DRESS HIM.

10 Q OKAY. LET ME STOP YOU A MINUTE. WERE YOU
11 GOING THROUGH POTTY TRAINING AT THE TIME WITH ANY
12 OF THESE CHILDREN?

13 A YEAH, BOTH H.G. AND MINOR .

14 Q THE TWO OF THEM?

15 A YEAH.

16 Q SO H.G. IS IN HIS ROOM YOU'RE DRESSING HIM.
17 GO AHEAD.

18 A MINOR , SHE WOULD GET UP AND LET YOU KNOW
19 WHEN SHE WAS THROUGH. THAT MORNING SHE WAS IN THE
20 BATHROOM PLAYING.

21 Q OKAY. SHE WAS IN THE BATHROOM -- WHEN YOU
22 SAY IN THE BATHROOM PLAYING...

23 A IN THE POTTY.

24 Q SHE WAS PLAYING IN THE POTTY?

25 A YES.

1 Q OKAY. WAS SHE IN THERE ALONE?

2 A NO. AT THAT TIME, ME AND -- I WENT IN THERE
3 AND H.G. CAME IN, TOO.

4 Q SO YOU HAD BEEN DRESSING H.G. . THEN YOU
5 WENT INTO THE BATHROOM AND SHE CAME -- AND H.G.
6 CAME IN WITH YOU?

7 A YES.

8 Q OKAY. AND THEN WHAT HAPPENED?

9 A WELL, HE CLAIMED HE HAD TO PEE-PEE, SO I
10 PULLED HIS PAMPER DOWN AND PUT HIM ON THE POTTY,
11 TOO.

12 Q OKAY. AND THEN WHAT HAPPENS? THE TWO OF
13 THEM ARE IN THE BATHROOM, RIGHT?

14 A YES.

15 Q ARE YOU IN THERE WITH THEM?

16 A WELL, I STEPPED BACK OUT TO SEE IF N.G. WAS
17 THROUGH. WHEN I STEPPED BACK IN, THEY WERE BOTH
18 PLAYING IN THE POTTY THEN.

19 Q SO THE BOTH -- THE TWO OF THEM ARE PLAYING IN
20 THE POTTY?

21 A YEAH.

22 Q SO WHAT DID YOU DO?

23 A I SPANKED THEM.

24 Q HOW DID YOU SPANK THEM?

25 A I POPPED THEM ON THE BUTT.

1 Q YOU POPPED THEN ON THE BUTT?

2 A YEAH.

3 Q AND WHAT DID YOU USE?

4 A I USED MY BELT.

5 Q AND THEY WERE --

6 A YEAH, THEY WERE IN --

7 Q AND THEY WERE STILL IN THE BATHROOM AT THAT

8 POINT?

9 A YES.

10 Q SO YOU SPANKED BOTH OF THEM AND THEN WHAT

11 HAPPENED?

12 A THEN MINOR AND H.G. RAN OUT WHILE I WAS

13 CLEANING UP THE POTTY, AFTER I HAD CLEANED THEM

14 UP.

15 Q SO YOU CLEANED THEN UP, AND THEN YOU WERE

16 CLEANING...

17 A THE POTTY.

18 Q THE POTTY, AND THEN THEY LEFT THE BATHROOM?

19 A YEAH.

20 Q WHAT HAPPENED NEXT?

21 A WELL, AT THAT TIME H.G. BACKED UP IN THE

22 DOOR AND SAID, "PAPA, LOOK."

23 Q AND WHAT DID YOU SAY?

24 A I WALKED DOWN IN THE HALLWAY, AND SHE WAS

25 LAYING DOWN IN THE HALL.

1 Q SO H.G. CAME BACK AND SAID, "PAPA LOOK?"

2 A YES.

3 Q NOW, THE HALLWAY, WHERE DOES THAT GO? FROM
4 THE BATHROOM --

5 A FROM THE BATHROOM -- IT GOES BACK TO OUR
6 BEDROOM AND THE GIRL'S BEDROOM.

7 Q OKAY. SO IT HEADS BACK TO THE BEDROOM AREA?

8 A YES.

9 Q AND SO YOU WENT DOWN THE HALL TO LOOK AND
10 WHAT DID YOU SEE?

11 A I SEEN MINOR ON THE FLOOR.

12 Q OKAY. DESCRIBE HOW SHE WAS ON THE FLOOR.

13 A SHE WAS FACE DOWN.

14 Q OKAY.

15 A SHE WASN'T CRYING. SHE WASN'T MOVING, BUT
16 WHEN I PICKED HER UP, SHE STILL --

17 Q HOW DID SHE SEEM?

18 A SHE WASN'T CRYING, YOU KNOW. SHE NEVER --
19 SHE WAS ALWAYS THE QUIET TYPE, YOU KNOW.

20 Q SO WHAT DID YOU DO?

21 A WHEN I PICKED HER UP, AS I WAS TURNING HER
22 OVER AND SHE STILL WASN'T CRYING, I JUST WENT ON
23 IN THE BEDROOM AND WAS PUTTING ON HER PULL-UP.

24 Q SO YOU CARRIED -- DID YOU CARRY HER BACK IN
25 THERE?

1 A YES.

2 Q AND WHEN YOU GOT BACK TO THE BEDROOM, THIS IS
3 WHEN YOU WERE GOING TO PUT ON HER PULL-UP?

4 A YES, I SAT DOWN ON THE BED WITH HER IN MY
5 ARMS.

6 Q SO YOU SAT ON THE BED?

7 A YES.

8 Q WHERE WAS SHE?

9 A SHE WAS STILL IN MY ARMS.

10 Q AND YOU WERE PULLING ON THE PULL-UP AND THEN
11 WHAT HAPPENED?

12 A SHE JUST STIFFENED UP ON ME.

13 Q SHE STIFFENED UP?

14 A YES.

15 Q DESCRIBE THAT.

16 A HER LEGS GOT REAL STIFF, HER ARMS A LITTLE
17 BIT AT FIRST, AND THEN THEY BOTH DID, YOU KNOW,
18 SHE GOT REAL STILL.

19 Q AND WHAT DID YOU DO?

20 A WHAT I ALWAYS DID, I ALWAYS CALLED MY WIFE
21 FOR ANYTHING THAT HAPPENED TO THE KIDS. I CALLED
22 HER.

23 Q OKAY. AND SHE WAS AT WORK, RIGHT?

24 A YES.

25 Q DID YOU REACH HER?

1 A YES, I DID.

2 Q AND WHAT DID YOU SAY TO HER?

3 A I TOLD HER SHE HAD STIFFENED UP, AND I DIDN'T

4 KNOW WHAT TO DO. SHE SAID, "I'LL BE RIGHT THERE."

5 Q DID YOU CALL ANYBODY ELSE?

6 A NO, I DIDN'T.

7 Q DID YOU CALL 911?

8 A NO, I DIDN'T.

9 Q WHY DID YOU CALL SONYA?

10 A I ALWAYS CALLED SONYA IF THE KIDS GOT UP WITH

11 A COUGH OR SOMETHING, I ALWAYS CALLED HER.

12 Q WHEN YOU HAD SONYA IN THE BEDROOM WHEN THIS

13 WAS GOING ON, DID YOU -- I MEAN, I'M SORRY -- NOT

14 SONYA, MINOR , EXCUSE ME, YOU HAD MINOR IN THE

15 BEDROOM, DID YOU SHAKE MINOR ?

16 A NO, I DID NOT.

17 Q WHAT HAPPENED NEXT? YOU CALLED SONYA. WHAT

18 HAPPENED NEXT?

19 A I WAS CALLING HER NAME TRYING TO GET HER TO

20 RESPOND, AND SHE NEVER DID.

21 SHE TOLD ME NOT -- SONYA HAD TOLD ME TO PUT

22 HER IN A BLANKET AND HAVE HER READY TO GO.

23 Q SO -- TO PUT HER IN A BLANKET?

24 A YES.

25 Q SO WHAT HAPPENED THEN?

1 A I WAS IN THE HALLWAY AND SHE WAS COMING IN
2 THE DOOR.

3 Q SONYA?

4 A YEAH. SHE TOLD ME TO PUT MINOR IN HER ARMS
5 AND GET H.G. AND N.G. AND FOR US TO LET'S GO.

6 Q AND SO ALL OF YOU WERE AT THAT POINT LEAVING,
7 RIGHT?

8 A YES.

9 Q WHO WAS DRIVING?

10 A I WAS DRIVING.

11 Q OKAY. AND WHO HAD MINOR ?

12 A SONYA.

13 Q WHERE DID YOU TAKE MINOR ?

14 A WE TOOK HER TO RICHLAND MEMORIAL.

15 Q WHY DID YOU GO TO RICHLAND MEMORIAL HOSPITAL?

16 A WE ALWAYS TOOK THE KIDS THERE.

17 Q HAD THEY BEEN THERE BEFORE TO THE DOCTORS?

18 A YES. THAT'S WHERE ALL THEIR APPOINTMENTS
19 WAS.

20 Q THAT'S WHERE ALL THEIR DOCTOR APPOINTMENTS
21 WERE?

22 A YEAH, AS FAR AS I KNOW, THAT'S WHERE THEY ALL
23 WAS.

24 Q DID IT OCCUR TO YOU TO GO ANYWHERE ELSE?

25 A NO.

1 Q WERE YOU -- ARE YOU AWARE OF THE DIFFERENT
2 FUNCTIONS OF THE DIFFERENT HOSPITALS AROUND WHERE
3 YOU LIVE?

4 A WELL, AT THE TIME WE JUST WANTED TO GET HER
5 TO THE HOSPITAL.

6 Q AND THAT WAS THE HOSPITAL THAT YOU KNEW?

7 A YES, THAT WAS THE ONE THAT WE ALWAYS TOOK
8 THEM TO.

9 Q AND WHEN YOU ARRIVED AT RICHLAND MEMORIAL,
10 WHAT HAPPENED?

11 A WELL, SONYA TOOK THEM IN WHILE I WAS PARKING
12 THE CAR.

13 Q SONYA TOOK MINOR IN?

14 A MINOR , YEAH.

15 Q WHERE WERE THE OTHER TWO CHILDREN?

16 A THEY WAS STILL IN THE VAN.

17 Q OKAY.

18 A WHEN WE PARKED THE CAR, THEN I WENT IN.

19 Q AND BY THE TIME YOU GOT IN, WHERE WAS
20 MINOR ?

21 A THEY HAD ALREADY TOOK HER IN THE BACK.

22 Q AND WHERE WAS SONYA?

23 A SHE WAS IN THE WAITING AREA.

24 Q AND YOU HAD THE OTHER TWO CHILDREN WITH YOU
25 THERE? ~

1 A YES.

2 Q DO YOU KNOW APPROXIMATELY WHAT TIME THAT WAS?

3 THIS WAS MARCH 28TH, RIGHT?

4 A YES, IT WAS.

5 Q DO YOU KNOW ABOUT WHAT TIME YOU WENT TO THE
6 HOSPITAL?

7 A IT WAS EARLY IN THE MORNING.

8 Q IT WAS EARLY MORNING? IT WAS AFTER YOU WERE
9 GETTING THEM READY TO LEAVE THE HOUSE?

10 A RIGHT.

11 Q AND OVER THE NEXT 48 HOURS, WHERE WERE YOU
12 AND SONYA?

13 A WE WAS RIGHT THERE AT THE HOSPITAL.

14 Q YOU STAYED AT THE HOSPITAL?

15 A YES.

16 Q AND HOW WERE YOU FEELING?

17 A TORE UP.

18 Q WERE YOU BEING KEPT INFORMED AS TO WHAT WAS
19 GOING ON --

20 A YES.

21 Q -- BY THE MEDICAL STAFF?

22 A YES.

23 Q AT WHAT POINT DID YOU LEAVE THE HOSPITAL TO
24 GO HOME?

25 A THEY ASKED US TO LEAVE BECAUSE THEY WERE

1 BRINGING IN THE BIOLOGICAL MOTHER.

2 Q AND WHEN YOU REFER TO THEY, ARE YOU REFERRING
3 TO D.S.S.?

4 A D.S.S., I'M SORRY.

5 Q OKAY. THEY HAD CONTACTED D.S.S. FROM THE
6 HOSPITAL?

7 A YES.

8 Q AND YOUR UNDERSTANDING WAS THE BIOLOGICAL
9 MOTHER WAS COMING IN?

10 A OH, NO, WE DIDN'T KNOW.

11 Q OH, I THOUGHT YOU SAID THEY ASKED YOU TO
12 LEAVE BECAUSE THE BIOLOGICAL MOTHER --

13 A OH, THAT WAS AT --

14 Q TWO DAYS LATER?

15 A YES.

16 Q SO THAT'S WHEN YOU LEFT THE HOSPITAL. WOULD
17 THAT HAVE BEEN ON THE 30TH?

18 A YES, MA'AM.

19 Q AND WHERE DID YOU AND SONYA GO AT THAT POINT?

20 A AT THAT POINT WE WENT HOME.

21 Q AND WHERE WERE -- NOT WHERE, BUT WERE N.G.
22 AND H.G. STILL WITH YOU?

23 A NO, NO. THEY WAS -- MY SISTER-IN-LAW HAD
24 CAME DOWN TO THE HOSPITAL AND SHE TOOK THEM ON TO
25 THE DAYCARE.

1 Q SHE TOOK THEM TO DAYCARE?

2 A YES.

3 Q ON THE DAY OF THE 28TH?

4 A YES.

5 Q AND DID THEY EVER LIVE BACK IN YOUR HOUSE

6 AGAIN?

7 A NO, THEY DIDN'T.

8 Q OKAY. ON THE 30TH WHEN YOU AND SONYA HAD

9 GONE HOME, IS THAT WHEN INVESTIGATOR JONES, DALE

10 JONES, CAME TO YOUR HOME?

11 A YES, MA'AM.

12 Q AND I BELIEVE THERE WAS AN INVESTIGATOR WEEKS

13 WITH HIM?

14 A WEEKS, YES, MA'AM.

15 Q WAS ANYBODY THERE EXCEPT YOU AND SONYA?

16 A NO, MA'AM, JUST ME AND SONYA.

17 Q AND WHEN THEY INDICATED THEY WANTED TO LOOK

18 THROUGH YOUR HOUSE, WHAT WAS YOUR RESPONSE TO

19 THAT?

20 A WE DIDN'T HAVE NO PROBLEM WITH IT.

21 Q DO YOU RECALL SIGNING A CONSENT?

22 A YES.

23 Q A CONSENT FORM?

24 A YES.

25 Q OKAY. DID THEY GO THROUGH YOUR HOUSE?

1 A YES, THEY DID.

2 Q OKAY. AND WHAT DID THEY TAKE WITH THEM? DO
3 YOU REMEMBER?

4 A THEY TOOK PICTURES, AND INVESTIGATOR JONES
5 ASKED ME DID I HAVE ANY BELTS. I GAVE THEM THE
6 BELTS THAT I HAD AND MY WIFE HAD.

7 Q AND AFTER THAT I BELIEVE, DID YOU GO WITH
8 THEM?

9 A YES, WE DID.

10 Q DID YOU COOPERATE?

11 A YES.

12 Q WERE YOU WILLING TO GO DOWN TO THE SHERIFF'S
13 DEPARTMENT?

14 A YES.

15 Q AND YOU ACTUALLY RODE DOWN WITH THEM, I
16 BELIEVE?

17 A YES, WE DID. MY WIFE RODE WITH HER, AND I
18 RODE WITH HIM.

19 Q NATE, HAVE YOU EVER BEEN ARRESTED BEFORE?

20 A NO, MA'AM.

21 Q HAVE YOU -- DO YOU HAVE ANY CRIMINAL RECORD
22 WHATSOEVER?

23 A NO, MA'AM.

24 Q HAVE YOU EVER BEEN TO -- HAVE YOU EVER BEEN
25 QUESTIONED BY --

1 MS. CAMPBELL: OBJECTION, YOUR HONOR. CAN WE
2 APPROACH?

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD
4 IN THE PRESENCE OF THE JURY, BUT OUT OF
5 THE HEARING OF THE JURY.)

6 THE COURT: YOU MAY PROCEED.

7 BY MS. COGGIOLA:

8 Q YOU DON'T HAVE ANY CRIMINAL RECORD?

9 A NO, I DON'T.

10 Q AND YOU'VE NEVER BEEN QUESTIONED BY THE
11 POLICE?

12 A NO.

13 Q HAVE YOU EVER BEEN TO AN INTERVIEW ROOM AT
14 THE POLICE DEPARTMENT?

15 A NO.

16 Q SO THIS IS THE FIRST TIME YOU'VE EVER HAD
17 THIS EXPERIENCE, RIGHT?

18 A YES.

19 Q AND I THINK WE'VE HAD TESTIMONY ABOUT HOW
20 LONG YOU WERE THERE DURING THE COURSE OF THAT
21 EVENING?

22 A YES.

23 Q YOU SAID THAT YOU CAME HOME FROM THE HOSPITAL
24 THAT DAY?

25 A RIGHT.

1 Q DO YOU KNOW HOW LONG YOU HAD BEEN AT HOME
2 BEFORE INVESTIGATOR JONES CAME TO YOUR HOUSE?

3 A WELL, WE WERE THERE ABOUT 20 MINUTES.

4 Q OKAY. YOU HAD JUST COME HOME FROM THE
5 HOSPITAL?

6 A ABOUT 20 TO 30 MINUTES.

7 Q SO FOR THE PRIOR 48 HOURS OR EVEN MORE, I
8 GUESS, YOU HAD BEEN AT RICHLAND MEMORIAL HOSPITAL?

9 A YES.

10 Q HOW WERE YOU FEELING?

11 A REALLY TORE UP.

12 Q PHYSICALLY?

13 A NERVOUS.

14 Q AND EMOTIONALLY?

15 A SAD.

16 Q AND YOU HEARD THE TESTIMONY ABOUT THE
17 STATEMENT --

18 A YES.

19 Q -- THAT INVESTIGATOR JONES TOOK FROM YOU.
20 DID YOU READ IT?

21 A YES, I DID.

22 Q YOU HAD SIGNED THE ADVICE OF RIGHTS, WHAT WE
23 CALL THE ADVICE OF RIGHTS. WE'VE BEEN THROUGH
24 THAT HERE IN COURT. YOU SIGNED THAT?

25 A YES.

1 Q AND YOU DID READ THE STATEMENT, AND I THINK
2 THAT INVESTIGATOR JONES SAID THAT YOU AGREED WITH
3 EVERYTHING IN IT?

4 A YES, HE ASKED.

5 Q AND WHAT WAS YOUR RESPONSE?

6 A I DON'T KNOW IF HE HEARD ME. I SAID, "NO"
7 BECAUSE HE WAS -- HE WAS -- WHEN HE WAS ASKING ME
8 THE QUESTIONS, HE WOULD JUMP TO ANOTHER QUESTION.

9 Q WHEN YOU SAY JUMP TO ANOTHER QUESTION, YOU
10 MEAN GOING QUESTION, QUESTION, QUESTION OR WHAT DO
11 YOU MEAN BY JUMPING, DESCRIBE THAT.

12 A WHEN HE WAS ASKING ME ABOUT THE MORNING OF
13 WHAT HAPPENED, I'M NOT SURE IF HE HEARD ME, BUT HE
14 DIDN'T PUT EVERYTHING IN.

15 Q IS IT YOUR TESTIMONY THEN THAT THERE WERE
16 THINGS IN THAT THAT YOU HAD NOT SAID?

17 A YES.

18 Q THE THINGS THAT WERE NOT IN, THAT YOU HAD
19 SAID?

20 A (THERE WAS NO RESPONSE.)

21 Q WAS THAT REASONABLY ACCURATE?

22 A ACCURATE, YES, MA'AM.

23 Q BUT YOU TOLD HIM THERE WERE THINGS THAT WERE
24 NOT IN THERE THAT YOU HAD SAID?

25 A RIGHT.

1 Q AT THAT POINT, WERE THEY PUT IN?

2 A NO.

3 Q WHAT WAS NOT INCLUDED THAT YOU COULD SEE?

4 A WELL, IT WASN'T INCLUDED WHEN I TOLD THEM
5 WHEN H.G. BACKED UP AND SAID, "PAPA, LOOK." HE
6 DIDN'T PUT IN THERE WHEN THEY WERE RUNNING OUT OF
7 THE BATHROOM.

8 Q AND HAD YOU TOLD HIM ANYTHING ABOUT SPANKING
9 THEM?

10 A YES.

11 Q AND WHAT HAD YOU TOLD HIM?

12 A I TOLD HIM I HAD SPANKED HER THAT MORNING.
13 HE DIDN'T PUT THAT IN THERE ON THAT ONE.

14 Q IT WAS AFTER THAT STATEMENT WAS MADE THAT YOU
15 WERE GIVEN A WARRANT; IS THAT CORRECT?

16 A YES.

17 Q AND I BELIEVE INVESTIGATOR METZS AND
18 INVESTIGATOR JONES ACTUALLY BOTH CAME BACK IN; IS
19 THAT CORRECT?

20 A YES.

21 Q AND YOU WERE ASKED A FEW MORE QUESTIONS?

22 A YES.

23 Q DID YOU SIGN THAT?

24 A THEY TOLD ME I HAD TO SIGN THAT ONE BEFORE I
25 COULD TELL THEM THE OTHER ONE.

1 Q THAT YOU HAD TO SIGN THE SECOND --

2 A THE FIRST STATEMENT.

3 Q THIS FIRST STATEMENT?

4 A YES.

5 Q BEFORE YOU COULD ADD ANYTHING?

6 A YES.

7 Q NATE, DID YOU TELL INVESTIGATOR JONES OR
8 INVESTIGATOR METZS THAT YOU SHOOK MINOR ?

9 A NO, I DID NOT.

10 Q YOU NEVER SAID THAT YOU SHOOK HER?

11 A NO.

12 Q HOW DID YOU FEEL ABOUT MINOR ?

13 A I LOVED MINOR . I LOVED ALL THREE KIDS LIKE
14 THEY WERE MY OWN THAT I LOST.

15 Q DID YOU VIOLENTLY SHAKE MINOR ?

16 A NO, I DID NOT.

17 Q DID YOU SHAKE MINOR ?

18 A NO.

19 MS. COGGIOLA: BEG THE COURT'S INDULGENCE
20 JUST A MOMENT.

21 (PAUSE)

22 MS. COGGIOLA: NATE, PLEASE ANSWER ANY
23 QUESTIONS THAT MS. CAMPBELL HAS FOR YOU.

24 THE WITNESS: SURE.

25 THE COURT: CROSS-EXAMINATION.

1 MS. CAMPBELL: THANK YOU, YOUR HONOR.

2 CROSS-EXAMINATION

3 BY MS. CAMPBELL:

4 Q MR. MITCHELL, I DO HAVE SOME QUESTIONS FOR
5 YOU.

6 A YES.

7 Q YOU TESTIFIED THAT YOU GREW UP HERE IN THE
8 COLUMBIA AREA?

9 A YES, I DID.

10 Q AND YOU GREW UP ACTUALLY IN THE NORTHEAST
11 AREA; IS THAT CORRECT?

12 A IN PONTIAC.

13 Q IN PONTIAC? WELL, YOUR SISTER TESTIFIED
14 EARLIER THAT YOU ALL GREW UP IN NORTHEAST AREA AND
15 SHE WENT TO HIGH SCHOOL AT THE SPRING VALLEY HIGH
16 SCHOOL.

17 A WE MOVED TO THE NORTHEAST AREA, YES, WE DID.

18 Q YOU WOULD AGREE THAT'S WHEN YOU WERE 11, 12,
19 13 YEARS OLD?

20 A I WAS IN MIDDLE SCHOOL.

21 Q AND FROM THEN ON, SIR, YOU DID LIVE IN THE
22 NORTHEAST AREA?

23 A YES.

24 Q UP UNTIL THE TIME YOU WERE 36 YEARS OLD?

25 A YES.

1 Q THAT WOULD BE IN EXCESS OF 20 YEARS?
2 A YES.
3 Q SO YOU'RE FAMILIAR WITH THAT AREA OF TOWN?
4 A YES, I AM.
5 Q SO YOU'RE FAMILIAR WITH THE AREA INCLUDING
6 RABON ROAD?
7 A YES, I AM.
8 Q YOU'RE FAMILIAR WITH THE AREA INCLUDING
9 FARROW ROAD?
10 A YES.
11 Q OF COURSE, YOU DO KNOW WHERE PROVIDENCE
12 NORTHEAST HOSPITAL IS, DON'T YOU?
13 A YES.
14 Q AND IN FACT, YOU DON'T LIVE TOO FAR FROM
15 THERE, DO YOU?
16 A NO, I DON'T.
17 Q IN THAT AREA -- YOU TALKED FOR A WHILE ABOUT
18 HOW YOUR HOUSEHOLD WAS SET UP AND YOUR WIFE WAS
19 BASICALLY IN CHARGE OF THE BILLS; IS THAT CORRECT,
20 SIR?
21 A YES.
22 Q SHE KIND OF RAN THE HOUSEHOLD?
23 A YES.
24 Q AND YOUR WIFE WANTED CHILDREN VERY BADLY; IS
25 THAT CORRECT?

1 A YES, WE BOTH DID.

2 Q YOU BOTH DID, BUT YOUR WIFE ESPECIALLY WANTED

3 CHILDREN, RIGHT?

4 A WE BOTH DID.

5 Q WAS IT IMPORTANT TO HER, SIR?

6 A IT WAS IMPORTANT TO BOTH OF US.

7 Q IT WAS IMPORTANT TO BOTH OF YOU, SO I ASSUME

8 IT WAS VERY IMPORTANT TO HER ALSO?

9 A YOU COULD PUT IT THAT WAY.

10 Q I COULD PUT IT THAT WAY?

11 A YES.

12 Q WOULD THAT BE TRUE, SIR? I DON'T WANT TO PUT

13 WORDS IN YOUR MOUTH.

14 A WELL, IT WAS ESPECIALLY IMPORTANT TO BOTH OF

15 US THEN.

16 Q IT WAS IMPORTANT TO YOU?

17 A YES.

18 Q AND IT WAS IMPORTANT TO HER?

19 A YES.

20 Q AND IN FACT, WAS SHE THE ONE THAT INITIATED

21 THE PROCEEDINGS SO THAT YOU ALL COULD GET

22 LICENSED IN FOSTER CARE?

23 A WE BOTH DID.

24 Q MRS. MITCHELL WAS THE ONE THAT MADE THE

25 INITIAL INVESTIGATION; ISN'T THAT CORRECT?

1 A WE TALKED ABOUT IT, YES.

2 Q YOU BOTH TALKED ABOUT IT, BUT SHE KIND OF DID
3 THE LEG WORK?

4 A YEAH.

5 Q THAT'S KIND OF HOW YOUR FAMILY WOULD WORK?

6 A YES.

7 Q AND IN AREAS SUCH AS THAT, SHE WOULD KIND OF
8 MAKE A LOT OF THOSE DECISIONS; IS THAT CORRECT?

9 A YES, SHE DID.

10 Q AND THEN YOU GOT H.G. IN, I BELIEVE, IN
11 MARCH OF 1998; IS THAT CORRECT?

12 A YEAH.

13 Q SUBSEQUENT TO THAT, IT WAS KIND OF AN
14 EMERGENCY SITUATION WITH THE OTHER TWO GIRLS
15 COMING, RIGHT?

16 A YES, MA'AM.

17 Q BECAUSE IN THEIR PRIOR FOSTER FAMILY, THE
18 FOSTER MOTHER HAD DIED UNEXPECTEDLY.

19 A YES.

20 Q AT THAT POINT THEN, YOU WENT FROM HAVING ONE
21 CHILD, A LITTLE BOY, TO HAVING THREE CHILDREN; IS
22 THAT CORRECT?

23 A CORRECT.

24 Q AND YOU TESTIFIED THAT WHEN YOU GOT THE TWO
25 GIRLS YOU DIDN'T GET ANY INFORMATION ABOUT THEIR

1 MEDICAL SITUATION OTHER THAN YOU KNEW THAT N.G.

2 WAS ON AN INHALER; IS THAT CORRECT, SIR?

3 A THAT'S BECAUSE WE KNEW WE COULDN'T GET THEM
4 WHEN THEY FIRST CAME.

5 Q YOU KNEW SHE HAD AN INHALER WHEN SHE FIRST
6 CAME?

7 A WELL, THAT'S THE REASON WE COULDN'T GET THEM
8 ALL, I GUESS.

9 Q AND DID YOU HAVE KNOWLEDGE AT THAT POINT THAT
10 MINOR HAD BEEN ON A HEART MONITOR?

11 A WELL, WE SEEN HER.

12 Q WITH A HEART MONITOR?

13 A YES.

14 Q SO YOU KNEW THAT AT LEAST SHE HAD THAT
15 CONDITION GOING ON?

16 A YES.

17 Q BUT THEY NEVER TOLD YOU ABOUT THE REST OF HER
18 PROBLEMS, DID THEY?

19 A NO.

20 Q AND YOU DESCRIBED MINOR AS A SWEET, LOVING
21 CHILD; IS THAT CORRECT, SIR?

22 A YES.

23 Q AND IN YOUR OPINION, YOU DIDN'T NOTICE
24 ANYTHING WRONG WITH THIS CHILD, THAT SHE WAS
25 SLIGHTLY DELAYED IN ANYWAY?

1 A NOT TO MY KNOWLEDGE.

2 Q YOU MISSED THAT?

3 A NO.

4 Q YOU WERE HERE EARLIER, SO YOU HEARD YOUR

5 FRIEND TESTIFY THAT SHE HAD OBSERVED THE CHILD WAS

6 DEVELOPMENTALLY DELAYED, BUT YOU DIDN'T SEE THAT

7 AT ALL?

8 A NO.

9 Q OKAY.

10 A I HAD NOTHING BUT LOVE FOR ALL THREE OF THEM.

11 Q I UNDERSTAND, SIR.

12 A YES.

13 Q AND BEING DELAYED -- OF COURSE, POTTY

14 TRAINING WITH ANY CHILD IS A RATHER CHALLENGING

15 THING, RIGHT?

16 A CORRECT.

17 Q AND IT CAN BE SOMEWHAT FRUSTRATING; IS THAT

18 CORRECT?

19 A YEAH, BUT...

20 Q AND EVEN WITH H.G. IT WAS SOMEWHAT

21 CHALLENGING, RIGHT?

22 A YEAH.

23 Q AND WITH MINOR , WHO WAS DEVELOPMENTALLY

24 DELAYED, IT WAS EVEN HARDER, WASN'T IT?

25 A NO HARDER THAN H.G. ..

1 Q IT WASN'T, BECAUSE YOU HADN'T NOTICED HER
2 BEING DELAYED IN ANYWAY, RIGHT?

3 A RIGHT.

4 Q AND THAT WAS YOUR TESTIMONY HERE TODAY.

5 A RIGHT.

6 Q I HEARD YOU SAY EARLIER, THESE CHILDREN, THEY
7 REFERRED TO YOU AS PAPA; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q AND N.G. WOULD HAVE CALLED YOU PAPA; IS
10 THAT RIGHT?

11 A THAT'S CORRECT.

12 Q MINOR 'S HEALTH PROBLEM, HOWEVER, SHE HAD
13 LIVED WITH YOU -- FROM THE TIME SHE DIED, SHE HAD
14 BEEN WITH YOU SINCE JUNE OF THE YEAR BEFORE?

15 A YES, THAT'S CORRECT.

16 Q AND WHAT WERE HER HEALTH PROBLEMS, THE THINGS
17 SHE WAS BEING TREATED FOR AT THE DOCTOR?

18 A (THERE WAS NO RESPONSE.)

19 Q DO YOU KNOW?

20 A NOT REALLY, NO, I DON'T.

21 Q YOU DIDN'T KNOW WHETHER OR NOT SHE SUFFERED
22 FROM ANY BLOOD CLOTTING DISEASES?

23 A NO, WE DIDN'T.

24 Q YOU DIDN'T KNOW WHETHER OR NOT SHE SUFFERED
25 FROM ANY OTHER ILLNESSES, SIR?

1 A NO.

2 Q AND YOUR TESTIMONY WAS, I BELIEVE ON DIRECT
3 EXAMINATION, THAT YOU PARTICIPATED FULLY IN
4 RAISING THESE CHILDREN; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q BUT YOU JUST DIDN'T KNOW ABOUT HER HEALTH?

7 A WELL, NOTHING WAS TOLD TO US ABOUT THEIR
8 HEALTH WHEN THEY CAME TO OUR HOUSEHOLD.

9 Q DURING THE TIME PERIOD SHE WAS IN YOUR
10 HOUSEHOLD, THOUGH, SIR, DID SHE SUFFER FROM ANY
11 AILMENTS SUCH AS BLOOD CLOTTING DISEASES OR
12 ANYTHING ELSE THAT REQUIRED TREATMENT?

13 A NOT THAT I KNOW OF.

14 Q AND YOU TOOK HER TO THE DOCTOR ON A REGULAR
15 BASIS AS YOU DID WITH ALL YOUR CHILDREN?

16 A MY WIFE DID.

17 Q AND YOU WOULD HAVE BEEN INFORMED IF THERE
18 WERE ANY PROBLEMS WITH MINOR S HEALTH, I WOULD
19 ASSUME?

20 A APPARENTLY, YES.

21 Q AND THERE WERE NONE THAT YOU KNEW OF?

22 A NOT THAT I KNEW OF, NO.

23 Q AND YOU HADN'T NOTICED THAT SHE WAS
24 DEVELOPMENTALLY DISABLED IN ANYWAY?

25 A NO.

1 Q AND I WANT TO TALK TO YOU A LITTLE ABOUT YOUR
2 HOUSEHOLD AND HOW IT WAS SET UP. IT'S CORRECT,
3 ISN'T IT, THAT THERE WERE THREE BEDROOMS IN YOUR
4 HOUSE?

5 A CORRECT.

6 Q AND YOU AND YOUR WIFE, OF COURSE, STAYED IN
7 ONE?

8 A CORRECT.

9 Q AND I'M GOING TO SHOW YOU STATE'S EXHIBIT 23.
10 IS THAT A PHOTOGRAPH OF YOUR BEDROOM, SIR?

11 A YES, IT IS.

12 Q AND IS THAT HOW IT APPEARED AROUND THE TIME
13 THAT MINOR DIED?

14 A YOU CAN SEE IT, YES.

15 Q AND YOU MENTIONED THAT THE TWO GIRLS STAYED
16 TOGETHER IN ANOTHER ROOM, AND I SHOW YOU STATE'S
17 EXHIBIT 24 AND 25. I WANT TO MAKE SURE I'M
18 TALKING ABOUT THE RIGHT STUFF. WHOSE ROOMS WERE
19 THOSE?

20 A THAT'S THE GIRL'S ROOM, N.G. AND MINOR .
21 (INDICATING)

22 Q N.G. OR N.G. AS YOU CALLED HER?

23 A YES.

24 Q AND WHO? STATE'S EXHIBIT 24 AND 25, WHICH
25 BED IN THESE PICTURES WAS MINOR S?

1 A THE CRIB.

2 Q THE CRIB. OKAY. AND I NOTICE RIGHT HERE
3 NEXT TO THE CRIB, IS THAT THE LIGHT SWITCH TO THAT
4 ROOM?

5 A YES, IT IS.

6 Q AND THEN THIS BED OVER HERE IN STATE'S
7 EXHIBIT 25, WHO SLEPT IN THAT BED?

8 A N.G. .

9 Q N.G. ?

10 A N.G. .

11 Q OR N.G. , AS YOU CALLED HER?

12 A YEAH.

13 Q AND SO THAT'S WHERE THESE TWO GIRLS SLEPT.
14 YOU ALSO STATED ON DIRECT EXAMINATION -- AND LET
15 ME GET ONE OTHER THING STRAIGHT, TOO, JUST FOR THE
16 RECORD. AFTER THE DAY THAT YOU TOOK MINOR TO
17 THE HOSPITAL, THESE CHILDREN NEVER LIVED WITH YOU
18 AGAIN?

19 A NO.

20 Q NO CHILDREN EVER LIVED WITH YOU AGAIN?

21 A CORRECT.

22 Q LET ME FIND THE QUOTE. (PAUSE)

23 BEFORE I GET INTO THAT TOO, THE RELATIONSHIP
24 BETWEEN THE THREE CHILDREN, YOU DESCRIBED IN
25 DETAIL TO THE JURY ABOUT HOW THEY WOULD CRY IF

1 THEY HAD TO BE TAKEN APART LIKE AFTER A VISIT AND
2 STUFF LIKE THAT?

3 A YES.

4 Q AT ANY POINT DID H.G. OR N.G. OR MINOR
5 START DISPLAYING OR SHOWING SOME ANIMOSITY TOWARDS
6 THE OTHER ONE?

7 A NOT AT THAT POINT, NO.

8 Q NOT AT THAT POINT. DID THAT DEVELOP LATER,
9 THAT ONE OF THEM DEVELOPED SOME KIND OF HATRED OR
10 DISLIKE FOR THE OTHER?

11 A IT WASN'T HATRED.

12 Q WELL, TELL ME WHAT IT WAS, SIR.

13 A IT WAS JUST NORMAL PLAYING.

14 Q NORMAL PLAYING?

15 A TAKING EACH OTHER TOYS.

16 Q TAKING EACH OTHER'S TOYS?

17 A YEAH.

18 Q DID H.G. EVER DEVELOP ANY CERTAIN FEELINGS
19 FOR N.G. OR FOR MINOR ?

20 A NO.

21 Q DID HE EVER TARGET ANY ONE OF THEM AS THE
22 FOCUS OF HIS ANGER?

23 A NOT TO MY KNOWLEDGE, NO.

24 Q NOT TO YOUR KNOWLEDGE?

25 A NO.

1 Q YOU TALKED A LITTLE ABOUT YOUR DISCIPLINE
2 ROUTINE AND HOW YOU DISCIPLINED THEM. OF COURSE,
3 IT'S IMPORTANT IN EVERY HOUSEHOLD FOR BOTH THE
4 MOTHER AND FATHER TO SOMEWHAT AGREE ON HOW THE
5 CHILDREN ARE DISCIPLINED; IS THAT CORRECT, SIR?

6 A YES.

7 Q AND YOU ALL AGREED ON THAT, DIDN'T YOU?

8 A YES.

9 Q AND YOU MENTIONED BEFORE IF THEY HAD A NOTE
10 SENT HOME FOR SOMETHING YOU MIGHT PUT THEM IN
11 TIME-OUT; IS THAT CORRECT?

12 A YES.

13 Q AND YOU MENTIONED THERE WERE SOME CHAIRS
14 WHERE TIME-OUT WAS; IS THAT CORRECT?

15 A YES.

16 Q AND THOSE WERE CHAIRS IN WHAT ROOM OF THE
17 HOUSE?

18 A IN THE LIVING ROOM.

19 Q I'M GOING TO SHOW YOU TWO PHOTOGRAPHS AND ASK
20 IF YOU CAN RECOGNIZE THOSE, SIR.

21 A YES.

22 Q AND DOES THAT FAIRLY AND ACCURATELY DEPICT
23 THE CHAIRS AS THEY WERE IN THE LIVING ROOM AT THAT
24 TIME?

25 A YES.

1 MS. CAMPBELL: YOUR HONOR, WE'D OFFER THESE
2 INTO EVIDENCE.

3 THE COURT: ANY OBJECTION?

4 MS. CAMPBELL: THESE ARE THE TIME-OUT CHAIRS.

5 MS. COGGIOLA: NO OBJECTION.

6 THE COURT: WITHOUT OBJECTION.

7 (WHEREUPON, STATE'S EXHIBITS 29 & 30
8 WERE ADMITTED INTO EVIDENCE.)

9 MS. CAMPBELL: MAY I PUBLISH THEM TO THE
10 JURY, YOUR HONOR?

11 THE COURT: YES, MA'AM.

12 BY MS. CAMPBELL:

13 Q AND TYPICALLY IF THE CHILDREN GOT IN SOME
14 TROUBLE, TYPICALLY YOU WOULD JUST SEND THEM TO
15 TIME-OUT AND PUT THEM IN THEIR CHAIRS; IS THAT
16 RIGHT?

17 A IF THEY WOULD ACT UP IN SCHOOL.

18 Q THAT WAS THE PURPOSE OF THOSE TIME-OUT
19 CHAIRS, AND THEY KNEW THEY HAD TO GO THERE WHEN
20 THEY WERE BEING PUNISHED?

21 A YES.

22 Q AND THAT'S WHEN THEY WENT TO THOSE CHAIRS; IS
23 THAT CORRECT?

24 A OR SITTING THERE LOOKING AT THE TV.

25 Q SITTING THERE LOOKING AT THE TV, TOO?

1 A YEAH.

2 Q YOU ALSO MENTIONED THAT IF THAT DIDN'T WORK,
3 IF THE TIME-OUT DIDN'T WORK -- WAS THAT WHAT YOU
4 USUALLY USED AS A FIRST RESORT?

5 A YES.

6 Q OR DID IT JUST DEPEND ON WHAT THE PROBLEM
7 WAS, WHAT THEY WERE DOING?

8 A NO.

9 Q THAT WAS ALWAYS YOUR FIRST RESORT?

10 A YES.

11 Q AND IF THAT DIDN'T WORK AND THEY KEPT ACTING
12 UP, THEN WHAT WOULD YOU DO?

13 A WE'D TAKE AWAY THEIR SNACKS.

14 Q TAKE THEIR SNACKS AWAY FROM THEM?

15 A YEAH.

16 Q SO IF THEY'D BEEN TO TIME-OUT AND THEIR
17 SNACKS DIDN'T WORK, THEN WHAT WOULD YOU DO TO
18 THEM, SIR?

19 A SEND THEM TO BED A LITTLE EARLY AND THEY
20 WOULDN'T GET TO WATCH SOMETHING ON TV.

21 Q TYPICAL THINGS YOU DO TO GET CHILDREN TO
22 LISTEN; IS THAT CORRECT?

23 A YEAH.

24 Q AND THEN IF YOU TOOK THEIR SNACKS, AND YOU
25 PUT THEM IN TIME-OUT, AND YOU SENT THEM TO BED

1 EARLY, AND THAT DIDN'T WORK, WHAT TYPICALLY WOULD
2 YOU DO?

3 A WE'D POP THEM ON THE HAND.

4 Q WHEN YOU SAY YOU POPPED THEM ON THE HAND,
5 SIR, WHAT DO YOU MEAN?

6 A A LITTLE TAP ON THE HAND.

7 Q A LITTLE TAP ON THE HAND?

8 A YEAH.

9 Q A LITTLE TAP ON THE HAND LIKE WITH YOUR OTHER
10 HAND, (INDICATING) SOMETHING LIKE THAT?

11 A YEAH.

12 Q AND I BELIEVE YOU TESTIFIED ON DIRECT
13 EXAMINATION, THAT WOULD GET THEIR ATTENTION,
14 WOULDN'T IT?

15 A YEAH.

16 Q AND THAT WOULD TAKE CARE OF THE PROBLEM,
17 WOULDN'T IT?

18 A MOST OF THE TIME.

19 Q MOST OF THE TIME. IN FACT, YOU TESTIFIED
20 THESE WERE GOOD CHILDREN, RIGHT?

21 A YES, THEY WAS.

22 Q AND THEY DIDN'T HAVE ANY RADICAL PROBLEMS OR
23 ANYTHING THAT WOULD REQUIRE MORE FORCE THAN THAT
24 TO GET THEIR ATTENTION, DID THEY?

25 A NOT THAT I KNOW OF.

1 Q NOT THAT YOU KNOW OF, BUT THERE WERE
2 OCCASIONS NO MATTER WHAT YOU JUST TESTIFIED TO
3 SIR, THAT IT WAS NECESSARY TO SPANK THEM; IS THAT
4 RIGHT?

5 A YES.

6 Q AND WHEN YOU SPANKED THEM ON THE BOTTOM, AT
7 LEAST WHEN I WAS GROWING UP, YOU GOT SPANKED WITH
8 A HAND, CORRECT?

9 A NO.

10 Q YOU DIDN'T SPANK THEM WITH YOUR HAND?

11 A YEAH, WE WOULD POP THEM AT TIMES, YES, WE
12 DID.

13 Q NOW YOU POPPED THEM ON THE HAND WITH YOUR
14 HAND?

15 A YEAH.

16 Q AND YOU ALSO POPPED THEM OTHER TIMES ON THE
17 BUTTOCKS AREA?

18 A YES.

19 Q AND THAT WOULD REALLY GET THEIR ATTENTION,
20 WOULDN'T IT?

21 A SOMETIMES IT DID, YEAH.

22 Q AND WHEN YOU POPPED THEM ON THE BUTT TO GET
23 THEIR ATTENTION, SOMETIMES -- AND, I MEAN, YOU
24 KNOW, IT WAS NORMAL, AND YOU'D POP THEM PRETTY
25 GOOD WITH YOUR HAND, WOULDN'T YOU?

1 A NOT THAT HARD.

2 Q NOT THAT HARD, THOUGH. OKAY. NOT HARD
3 ENOUGH TO CAUSE ANY DAMAGE OR ANYTHING, RIGHT?

4 A RIGHT.

5 Q OKAY. I WANTED TO MAKE SURE. SO NOT HARD
6 ENOUGH -- OKAY, BUT IT WOULD GET THEIR ATTENTION,
7 WOULDN'T IT?

8 A YEAH.

9 Q BECAUSE THEY KNEW AT THAT POINT THEY WERE IN
10 TROUBLE BECAUSE YOU WERE USING THAT KIND OF
11 PUNISHMENT, RIGHT?

12 A I WOULDN'T CALL IT PUNISHMENT.

13 Q OKAY. YOU WERE USING THAT AS A TOOL TO
14 ENFORCE?

15 A I COULDN'T CALL THAT A TOOL EITHER.

16 Q OKAY. SIR, I'M SORRY. THEN YOU TELL ME WHAT
17 YOU WOULD CALL IT.

18 A THAT IS -- IT'S JUST A SPANKING.

19 Q A SPANKING. OKAY. YOU WERE USING --

20 A A LITTLE POP.

21 Q A POP?

22 A YEAH.

23 Q AND YOU MENTIONED ON DIRECT EXAMINATION YOU
24 WOULD SPANK THESE CHILDREN, AND I BELIEVE SPANKING
25 INVOLVES REPEATED POPS; IS THAT CORRECT? IF MY

1 DEFINITION IS WRONG, YOU TELL ME, SIR.

2 (PAUSE)

3 A YEAH.

4 Q I DON'T WANT TO PUT WORDS IN YOUR MOUTH; IS
5 THAT RIGHT?

6 A WELL, SPANKING, YEAH.

7 Q AND THAT WOULD BE WITH YOUR HAND AGAIN, SIR?

8 A WITH THE BELT, TOO.

9 Q WITH THE BELT, TOO. AND WHERE WOULD YOU HIT
10 THEM WITH THE BELT WHEN YOU SPANKED THEM AND HIT
11 THEM WITH THE BELT, SIR?

12 A ON THE BACKSIDE.

13 Q ON THE BACKSIDE. AND THAT WOULD BE AGAIN ON
14 THE BUTTOCKS AREA?

15 A YES.

16 Q AND WHEN YOU WOULD HIT THEM WITH THE BELT ON
17 THE BACKSIDE, HOW MANY TIMES WOULD YOU HIT THEM?

18 A NO MORE THAN THREE OR FOUR.

19 Q AND THESE CHILDREN WERE TWO YEARS OF AGE,
20 THREE YEARS OF AGE, AND FOUR YEARS OF AGE?

21 A YES.

22 Q AND WE'VE HEARD TESTIMONY THAT MINOR
23 WEIGHED MAYBE 25, 30 POUNDS?

24 A YES.

25 Q AND H.G. IS VERY, VERY SMALL FOR HIS SIZE.

1 HE WEIGHED ABOUT THE SAME?

2 A YES.

3 Q AND N.G. IS REALLY NOT MUCH BIGGER?

4 A NOT MUCH.

5 Q SO WHEN USING -- AND I SHOW YOU STATE'S

6 EXHIBIT 27, DO YOU KNOW WHICH BELT YOU WOULD USE

7 OR WOULD JUST ANY OF THESE BE FINE?

8 A NONE OF THOSE.

9 Q NONE OF THESE?

10 A NO.

11 Q YOU HAD A SPECIAL BELT?

12 A NO, IT WASN'T SPECIAL, NO.

13 Q WAS IT THIS BELT, STATE'S EXHIBIT 26?

14 A YES, THAT WAS THE ONE.

15 Q THIS IS THE BELT THAT YOU USED, NOT -- NOW

16 THIS IS A LEATHER BELT AND THESE ARE CLOTH BELTS;

17 IS THAT CORRECT, SIR?

18 A YES.

19 Q THIS IS THE BELT YOU WOULD USE ALWAYS TO

20 SPANK WITH?

21 A NOT ALWAYS, NO.

22 Q NOT ALWAYS, JUST NONE OF THOSE OTHER BELTS,

23 BUT THAT ONE WAS DEFINITELY USED?

24 A YES, THAT ONE WAS.

25 Q AND THESE CHILDREN WEREN'T REALLY VERY BIG.

1 YOU WOULD AGREE WITH ME ON THAT, WOULDN'T YOU,
2 SIR?

3 A YES.

4 Q SO IT WASN'T -- IT'S NOT LIKE YOU WERE
5 HITTING VERY HARD THOUGH, RIGHT?

6 A NO, I WAS NOT.

7 Q AND NOT HARD ENOUGH TO LEAVE ANY MARKS OR
8 ANYTHING OF THAT NATURE, WOULD YOU?

9 A I DIDN'T THINK I WAS.

10 Q YOU DIDN'T THINK YOU WERE? BECAUSE YOU WOULD
11 AGREE WITH ME THAT IT WOULD TAKE A PRETTY STRONG
12 POP TO LEAVE A MARK EVEN ON A SMALL CHILD WITH
13 THAT BELT?

14 A NOT REALLY.

15 Q IT WOULDN'T?

16 A NOT THAT I KNOW OF, NO, BUT I DIDN'T THINK I
17 WAS HITTING THEM THAT HARD.

18 Q YOU DIDN'T THINK YOU WERE HITTING THEM THAT
19 HARD?

20 A YEAH.

21 Q AND DURING THIS TIME PERIOD ALSO, SIR, YOU
22 TESTIFIED YOU NEVER INJURED THE CHILDREN WHILE
23 THEY WERE IN YOUR CARE?

24 A WHAT DO YOU MEAN, EXCUSE ME?

25 Q YOU NEVER INJURED THESE CHILDREN WHILE THEY

1 WERE IN YOUR CARE?

2 A NO.

3 Q YOU NEVER DID ANYTHING TO CAUSE THEM ANY
4 HARM?

5 A NO.

6 Q AND, OF COURSE, YOU NEVER ALLOWED ANYONE OR
7 EVER SAW ANY MARKS OR ANYTHING ON THESE CHILDREN;
8 IS THAT CORRECT?

9 A NO.

10 MS. CAMPBELL: YOUR HONOR, AT THIS TIME I
11 NEED TO APPROACH ON A POINT OF LAW.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD
13 IN THE PRESENCE OF THE JURY, BUT OUT OF
14 THE HEARING OF THE JURY.)

15 BY MS. CAMPBELL:

16 Q DURING THE TIME PERIOD THAT THESE CHILDREN
17 WERE IN YOUR CARE DURING THE FALL OF THE YEAR
18 1999, SPECIFICALLY OCTOBER THROUGH FEBRUARY OF THE
19 YEAR 2000, THEY WENT TO DAYCARE EVERY DAY IS THAT
20 CORRECT?

21 A YES.

22 Q AND YOU'RE AWARE AT DAYCARE THAT THEY
23 DOCUMENT BRUISING AND DIFFERENT THINGS THEY SEE ON
24 CHILDREN?

25 A YES.

1 Q AND TURNING YOUR ATTENTION -- AND I HAD ASKED
2 YOU -- YOU SAID THAT THESE CHILDREN WERE NEVER
3 INJURED AND YOU NEVER SAW ANY MARKS ON THEM WHILE
4 THEY WERE IN YOUR CARE?

5 A YOU SAID MARK; BUG BITES, IS THAT A MARK?

6 Q I'M GOING TO ASK YOU ABOUT BUG BITES IN A
7 MINUTE, SIR.

8 A OKAY.

9 Q ON OCTOBER 27TH, DID YOU NOTICE BRUISES ON
10 THE -- BOTH SIDES OF MINOR 'S UPPER AND LOWER
11 THIGHS? DO YOU REMEMBER THAT ON OCTOBER 27TH OF
12 1999?

13 A BRUISES?

14 Q YES, BRUISES.

15 A NO.

16 Q BUT YOU KNEW THAT THE DAYCARE SHE WENT TO,
17 THEY WOULD DOCUMENT THINGS ON THESE CHILDREN?

18 A AS FAR AS I KNEW THEY WOULD, YEAH.

19 Q SO YOU DIDN'T NOTICE ANY BRUISING ON THAT
20 DAY?

21 A NOT THAT I KNOW OF.

22 Q OKAY, WELL, LET'S MOVE ON TO, HOW ABOUT
23 JANUARY 18TH OF THE YEAR 2000. DID YOU NOTICE

24 A -- ON MINOR , AGAIN, A LONG MARK ON THE SIDE OF
25 HER JAW?

1 A A LONG MARK?

2 Q A LONG MARK ON THE SIDE OF HER JAW?

3 A NO.

4 Q AND THAT WAS IN JANUARY OF THE YEAR 2000. ON
5 THAT SAME DATE THAT SHE HAD THE MARK ON HER JAW,
6 DID YOU NOTICE, SIR, WHILE SHE WAS IN YOUR CARE,
7 BRUISES ON HER BOTTOM?

8 A I DIDN'T.

9 Q AND THEN THE NEXT DAY, ON THE 19TH, THE
10 BRUISES WOULD HAVE STILL BEEN THERE ON HER BOTTOM.
11 DID YOU NOTICE THOSE, SIR?

12 A NO.

13 Q MOVING ON TO JANUARY 21ST OF THAT YEAR, 2000,
14 DID YOU NOTICE BRUISING ON MINOR 'S UPPER THIGH?

15 A UPPER THIGH, NO.

16 Q YOU DIDN'T NOTICE THAT EITHER, SIR?

17 A NO.

18 Q AND THEN ON FEBRUARY 21ST, FOR EXAMPLE, DID
19 YOU NOTICE ON MINOR BRUISES ON HER THIGHS AND
20 HER LEGS?

21 A NOT THAT I KNOW OF, NO.

22 Q AND JUST TO BE SURE AND SO THE JURY
23 UNDERSTANDS, DURING THIS TIME PERIOD, MINOR WAS
24 IN YOUR CARE AND YOU CARED FOR HER ON A DAILY
25 BASIS?

1 A YES, I DID.

2 Q SO IF ANYONE HAD BEEN INJURING HER, IF YOU
3 NOTICED INJURIES WHILE SHE WAS IN YOUR CARE, YOU
4 WOULD HAVE DONE SOMETHING ABOUT IT?

5 A YES.

6 Q AND YOU NEVER SAW ANYTHING?

7 A NO, BECAUSE LIKE I TOLD YOU, I DIDN'T CLEAN
8 THE GIRLS UP.

9 Q YOU DIDN'T CLEAN THE GIRLS UP?

10 A NO.

11 Q WHAT ABOUT -- DID YOU LOOK AT HER FACE, LIKE
12 HER JAW? WOULD YOU HAVE NOTICED THAT?

13 A YEAH, YEAH.

14 Q DID YOU EVER SEE HER LEGS? WOULD YOU HAVE
15 NOTICED BRUISES ON THOSE?

16 A YEAH.

17 Q BUT YOU DIDN'T, THAT'S YOUR TESTIMONY?

18 A NO, I DIDN'T.

19 Q MOVING TO THE MORNING, AS YOU TESTIFIED TO,
20 OF THE 28TH, YOUR WIFE WOKE UP THAT MORNING AS
21 USUAL AND LEFT FOR WORK EARLY; IS THAT CORRECT?

22 A YES.

23 Q AND SHE LEFT EVERY MORNING BY 6:30?

24 A YES.

25 Q SHE HAD TO BE AT SCHOOL BY ABOUT 6:30, ISN'T

1 THAT ABOUT RIGHT?

2 A YES.

3 Q AND WHAT DID SHE DO AT E.L. WRIGHT, SIR?

4 A SHE WAS A CAFETERIA MANAGER.

5 Q SO THEY WERE YOUR DUTIES EXCLUSIVELY, YOU'D
6 HAVE TO GET THE CHILDREN READY AND GET THEM TO THE
7 DAYCARE?

8 A YES.

9 Q AND THREE CHILDREN ALL UNDER THE AGE OF FIVE,
10 OR FOUR, CAN BE A HANDFUL, YOU WOULD AGREE WITH
11 ME, SIR?

12 A YEAH.

13 Q AND IN THE MORNING, THE FIRST PERSON YOU'D
14 WAKE UP WOULD BE WHO?

15 A N.G. .

16 Q AND ON THE MORNING OF MARCH 28TH, OF THE YEAR
17 2000, YOU WENT IN AND WOKE UP N.G. OR N.G. ,
18 WHATEVER YOU CALL HER?

19 A N.G. .

20 Q AND AT THAT POINT WHERE DID N.G. GO?

21 A TO THE BATHROOM.

22 Q AND N.G. WAS POTTY TRAINED; IS THAT
23 CORRECT?

24 A YES, SHE WAS POTTY TRAINED.

25 Q HOW LONG DID SHE STAY IN THE BATHROOM THAT

1 MORNING?

2 A SHE WOULD JUST LET ME KNOW WHEN SHE GOT
3 THROUGH.

4 Q AND DID SHE DO THAT THAT MORNING?

5 A YES, SHE DID.

6 Q AND AFTER SHE CAME OUT OF THE BATHROOM, WHAT
7 DID YOU DO?

8 A SHE WENT BACK TO HER ROOM.

9 Q OKAY. SHE WENT BACK TO HER ROOM, AND THAT
10 WAS IN ORDER FOR HER TO GET DRESSED?

11 A YEAH.

12 Q BECAUSE SHE COULD DRESS HERSELF?

13 A RIGHT.

14 Q AND AT THAT POINT WAS MINOR STILL IN BED?

15 A SHE WAS IN HER CRIB, YES.

16 Q IN HER CRIB. AND THAT NIGHT BEFORE OR DURING
17 THE NIGHT, YOU DIDN'T HEAR HER FALL OUT OF HER
18 CRIB OR ANYTHING LIKE THAT, DID YOU?

19 A THE NIGHT BEFORE, NO.

20 Q NOTHING LIKE THAT HAPPENED?

21 A NO.

22 Q WHEN YOU WENT IN TO WAKE UP MINOR AFTER
23 N.G. WENT TO THE BATHROOM AND THEN WENT BACK TO
24 HER ROOM, ABOUT WHAT TIME WAS THAT, SIR?

25 A EXCUSE ME, I DIDN'T HEAR YOU.

1 Q WHAT TIME WAS IT?
2 A (THERE WAS NO RESPONSE.)
3 Q OKAY. IF YOU DON'T KNOW, YOU DON'T KNOW.
4 A I DON'T KNOW.
5 Q OKAY. YOU DON'T KNOW THE TIME, BUT N.G.
6 HAS JUST GONE TO THE BATHROOM AND GONE BACK IN.
7 MINOR IS STILL IN HER CRIB. IS MINOR STILL
8 ASLEEP AT THIS POINT?
9 A NO.
10 Q MINOR WAS AWAKE?
11 A YES.
12 Q OKAY. WHAT WAS MINOR DOING WHEN YOU WALKED
13 BACK IN?
14 A SHE WAS IN HER CRIB.
15 Q WAS MINOR IN HER CRIB WHEN YOU ORIGINALLY
16 WENT IN AND GOT N.G. UP?
17 A YES.
18 Q WAS SHE STANDING UP AT THAT POINT?
19 A NO.
20 Q SHE WAS ASLEEP?
21 A NO, SHE WASN'T ASLEEP.
22 Q SHE WAS LYING DOWN?
23 A SHE WAS SITTING UP IN THE CRIB.
24 Q SO SHE WAS SITTING UP IN THE CRIB?
25 A YES.

1 Q OKAY. AND THEN ONCE N.G. GOT BACK INTO
2 HER ROOM, WHO DID YOU TAKE CARE OF NEXT, MINOR
3 OR H.G. ?

4 A H.G. .

5 Q OKAY. SO YOU STILL HAVE MINOR STANDING
6 THERE IN HER CRIB AWAKE; IS THAT RIGHT?

7 A LIKE I SAID, SHE WAS SITTING IN HER CRIB.

8 Q OH, I'M SORRY. THIS IS AFTER N.G. GOES
9 BACK IN TO GET DRESSED. DID YOU GO BACK IN THE
10 ROOM WITH HER?

11 A NO.

12 Q I'M SORRY, SIR.

13 A I GOT H.G. .

14 Q OKAY. SO AT THAT POINT YOU WENT TO H.G. 'S
15 ROOM?

16 A YES.

17 Q AND YOU GET H.G. UP?

18 A RIGHT.

19 Q WHEN IS IT -- NEVER MIND. OKAY. . YOU GET
20 H.G. UP. DOES H.G. HAVE A REAL BED OR IS HE
21 IN A CRIB?

22 A HE'S IN A REAL BED.

23 Q HE'S IN A REAL BED?

24 A YES.

25 Q OKAY. AND THEN YOU GET H.G. UP AND WHAT DO

1 YOU DO WITH HIM?

2 A I SEND HIM IN TO THE BATHROOM.

3 Q WHAT DID HE DO THAT MORNING? DID YOU GO WITH

4 HIM INTO THE BATHROOM?

5 A I SENT HIM IN, YEAH.

6 Q IS HE POTTY TRAINED?

7 A HE'S BEING POTTY TRAINED AT THE TIME.

8 Q OKAY, HE'S BEEN POTTY TRAINED?

9 A --NO, HE IS BEING POTTY TRAINED.

10 Q AS A CHILD BEING POTTY TRAINED HE DIDN'T NEED

11 YOU IN THERE WITH HIM?

12 A HE COULD PULL DOWN HIS PULL-UPS.

13 Q HIS PULL-UPS. AND YOU SENT HIM IN THERE, BUT

14 YOU DIDN'T ACTUALLY GO INTO THE BATHROOM WITH HIM

15 THEN?

16 A I WENT TO THE DOOR AND LOOKED WHILE HE WAS

17 SITTING DOWN.

18 Q AND WAS HE -- DID HE GO TO THE BATHROOM?

19 A YES, HE DID.

20 Q AND AT THAT POINT HE WASN'T PLAYING IN THE

21 POTTY, WAS HE?

22 A NO.

23 Q SO THEN HE PULLED HIS PANTS BACK UP AND CAME

24 BACK OUT OF THE BATHROOM?

25 A HE PULLED THEM UP AS CLOSE AS HE COULD.

1 Q AND THEN DID YOU HELP HIM WITH THEM THE REST
2 OF THE WAY?

3 A YES.

4 Q AND THAT WAS IN THE BATHROOM?

5 A YES.

6 Q AND IN THE BATHROOM -- BECAUSE YOU HAD TWO
7 THAT WERE BEING POTTY TRAINED, DID YOU HAVE TWO
8 LITTLE POTTIES?

9 A UH-HUH.

10 Q SO HE'S DONE HIS BUSINESS AT THAT POINT,
11 RIGHT?

12 A YES.

13 Q SO THEN WHERE DO YOU AND H.G. GO AT THAT
14 POINT?

15 A IN HIS ROOM.

16 Q AND WHAT DO YOU DO WITH HIM?

17 A I PUT HIM IN THERE.

18 Q AND JUST LEAVE HIM?

19 A NO, I PUT HIM IN THERE ON THE BED AND I WENT
20 AND GOT MINOR AND PUT HER ON THE POTTY.

21 Q AND WHERE IS N.G. AT THAT POINT?

22 A GETTING DRESSED.

23 Q OKAY. AND SO YOU SEE N.G. AGAIN WHEN YOU
24 GO AND GET MINOR OUT OF THE CRIB; IS THAT
25 CORRECT?

- 1 A YES.
- 2 Q OKAY. COULD MINOR GET OUT OF HER CRIB BY
- 3 HERSELF?
- 4 A NO.
- 5 Q ONCE YOU GET MINOR OUT OF HER CRIB, WHERE
- 6 DO YOU TAKE HER?
- 7 A TO THE BATHROOM.
- 8 Q AND WHAT DO YOU DO ONCE YOU GET IN THE
- 9 BATHROOM?
- 10 A I PUT HER ON THE POTTY.
- 11 Q YOU PUT HER ON HER POTTY, RIGHT?
- 12 A RIGHT.
- 13 Q AND SO -- SHE'S TWO YEARS OLD, RIGHT?
- 14 A RIGHT.
- 15 Q SHE'S JUST STARTING TO GET POTTY TRAINED?
- 16 A YES.
- 17 Q SO YOU STAY WITH HER, RIGHT?
- 18 A NO.
- 19 Q NO?
- 20 A NO, I WENT TO GET H.G. DRESSED.
- 21 Q YOU LEFT THE TWO YEAR OLD ON A POTTY IN THE
- 22 BATHROOM AND YOU WENT IN AND DRESSED H.G. ?
- 23 A YES.
- 24 Q BUT YOU HAD STAYED WITH H.G. WHEN HE HAD
- 25 GONE, RIGHT?

1 A I WAS AT THE DOOR.

2 Q OKAY. BUT YOU CHOSE NOT TO STAY WITH
3 MINOR , THE TWO YEAR OLD. THEN YOU WENT IN AND
4 GOT H.G. DRESSED; IS THAT RIGHT?

5 A YES.

6 Q THEN WHERE DO YOU GO?

7 A EXCUSE ME? WHAT DO YOU MEAN?

8 Q WHERE DID YOU GO AFTER YOU GOT H.G.
9 DRESSED?

10 A I WENT BACK TO THE BATHROOM.

11 Q THAT'S WHERE MINOR WAS, RIGHT?

12 A RIGHT.

13 Q AND I BELIEVE YOU TESTIFIED UNDER DIRECT
14 EXAMINATION THAT AT THAT POINT WHEN YOU WALKED IN,
15 SHE WAS PLAYING IN THE POTTY?

16 A YEAH, SHE WAS PLAYING IN THE POTTY.

17 Q PLAYING IN THE POTTY. SO SHE'S A MESS,
18 RIGHT?

19 A JUST HER HANDS.

20 Q JUST HER HANDS, AND YOU DIDN'T TESTIFY TO
21 THIS BEFORE, BUT DID YOU CLEAN HER UP THEN OR WHAT
22 DID YOU DO?

23 A AT THAT TIME H.G. CAME IN AND SAID HE HAD
24 TO USE THE BATHROOM.

25 Q OKAY. SO AT THAT POINT DID YOU SAY ANYTHING

1 TO MINOR OR DID YOU JUST CLEAN HER UP?
2 A NO, I PUT H.G. ON HIS POTTY. AS I WAS
3 CLEANING HER UP --
4 Q I'M CONFUSED SOMEWHAT, SIR. I THOUGHT YOU
5 TESTIFIED ON DIRECT THAT SHE WAS PLAYING IN THE
6 POTTY, THEN H.G. CAME IN, HE WANTED TO USE THE
7 BATHROOM AND SO YOU PUT HIM ON THE POTTY; IS THAT
8 CORRECT?
9 A YES.
10 Q AND THEN DID YOU LEAVE AGAIN?
11 A YES. I WENT TO CHECK ON --
12 Q SO WHEN YOU FIRST FOUND MINOR PLAYING IN
13 THE POTTY WITH HER HANDS MESSED UP, YOU DIDN'T
14 REPRIMAND HER?
15 A EXCUSE ME?
16 Q YOU DIDN'T REPRIMAND HER?
17 A NO.
18 Q YOU WEREN'T MAD AT THAT POINT?
19 A I WASN'T MAD AT ALL.
20 Q YOU WEREN'T MAD AT ALL THAT MORNING?
21 A NO.
22 Q THINGS HAPPEN?
23 A RIGHT.
24 Q SO THE FIRST TIME SHE'S BEEN PLAYING IN THE
25 POTTY, YOU GET HER UP OFF OF IT -- DID YOU CLEAN

1 HER UP OR NOT? I KEEP MISSING THAT.

2 A YES.

3 Q YOU CLEANED HER UP --

4 A JUST HER HANDS. THEN I PUT HER BACK ON THE
5 POTTY.

6 Q AND H.G. COMES IN AND HE'S GOT TO GO AGAIN,
7 RIGHT?

8 A YES.

9 Q AND THEN YOU LEAVE THE TWO OF THEM IN THERE
10 TOGETHER KNOWING SHE'S JUST BEEN PLAYING IN THE
11 POTTY. SHE ALREADY DONE WHAT SHE'S BEEN DOING,
12 RIGHT?

13 A YES.

14 Q WHY DIDN'T YOU TAKE HER AND GET HER DRESSED?

15 A BECAUSE I DIDN'T THINK SHE WAS FINISHED.

16 Q SO KNOWING SHE'S JUST BEEN PLAYING IN THE
17 POTTY, YOU PUT HER IN THERE WITH H.G. , HER
18 LITTLE BROTHER, AND YOU LEAVE THEM BOTH IN THERE.
19 WHERE DO YOU GO?

20 A I STEPPED IN THE HALLWAY AND LOOKED INTO
21 THEIR ROOM AT N.G. .

22 Q AT N.G. ?

23 A YES, TO SEE IF SHE WAS FINISHED DRESSING.

24 Q THAT'S YOUR TESTIMONY HERE TODAY?

25 A THEN I TURNED RIGHT BACK AROUND AND WENT BACK

1 INTO THE BATHROOM.

2 Q AND THAT'S WHEN YOU FOUND THEM PLAYING IN THE

3 POTTY TOGETHER?

4 A YES.

5 Q AND THAT'S WHEN THINGS GOT A LITTLE MORE

6 SERIOUS?

7 A YES.

8 Q WHAT DID YOU SAY TO THEM?

9 A I TOLD THEM TO STOP.

10 Q AND DID THEY STOP?

11 A YEAH.

12 Q AND AT THAT POINT ONCE THEY HAD STOPPED, YOU

13 FELT IT WAS APPROPRIATE TO GO INTO SOME FORM OF

14 DISCIPLINE, RIGHT?

15 A NO. I CLEANED THEM UP.

16 Q YOU CLEANED THEM UP BECAUSE THEY HAD THEIR

17 HANDS DIRTY?

18 A YES.

19 Q DID THEY HAVE THEIR FACES DIRTY?

20 A NO.

21 Q JUST THEIR HANDS?

22 A YEAH.

23 Q SO AT THAT POINT YOU TELL THEM TO STOP, WHICH

24 THEY COMPLY WITH WHAT YOU SAY, RIGHT?

25 A YES.

1 Q THEY DID WHAT YOU SAID, RIGHT?

2 A YES.

3 Q AND YOU CLEAN THEM UP AND AT WHAT POINT DID
4 IT THEN BECOME NECESSARY TO GET THE BELT AND HIT
5 THEM?

6 A I DIDN'T HIT THEM. I SPANKED THEM.

7 Q OKAY. AT WHAT POINT WAS IT THEN APPROPRIATE
8 OR NECESSARY IN THIS CASE TO GET THE BELT AND
9 SPANK THEM?

10 A I WAS LETTING THEM KNOW THAT THAT WAS A NO-
11 NO.

12 Q YOU WERE LETTING THEM KNOW THAT WAS A NO-NO?

13 A YES.

14 Q THIS ISN'T ONE OF THOSE TIMES WHERE TIME-OUT,
15 TAKING THEIR SNACKS, PUTTING THEM TO BED EARLY,
16 POPPING THEM ON THE HAND OR SPANKING THEM WITH
17 YOUR HAND WAS APPROPRIATE?

18 A NO.

19 Q BUT YOU DIDN'T FEEL IT WAS NECESSARY TO
20 REPRIMAND MINOR WHEN SHE FIRST DID IT, BUT WHEN
21 SHE AND H.G. DID IT, THAT WAS OVER THE LIMIT; IS
22 THAT RIGHT?

23 A (THERE WAS NO RESPONSE.)

24 Q DON'T LET ME PUT WORDS IN YOUR MOUTH. THIS
25 IS YOUR STORY.

1 A I DON'T UNDERSTAND WHAT YOU'RE SAYING.

2 Q THAT'S OKAY. WHEN YOU SPANKED MINOR , YOU

3 DIDN'T SPANK HER ANY HARDER THAN USUAL, DID YOU?

4 A NO.

5 Q YOU DIDN'T SPANK H.G. ANY HARDER THAN

6 USUAL, DID YOU?

7 A NO.

8 Q YOU DIDN'T SEE ANY WELTS AFTER YOU SPANKED

9 HER, DID YOU?

10 A NO.

11 Q WHEN YOU SPANKED HER, DID YOU SPANK HER WITH

12 THE PULL-UPS UP OR DOWN?

13 A IT WAS DOWN.

14 Q SO IT WAS HER BARE BOTTOM?

15 A YES.

16 Q AND WHEN YOU SPANKED H.G. , DID YOU SPANK

17 HIM WITH HIS PULLS-UP UP OR DOWN?

18 A DOWN.

19 Q AND DID YOU DO THAT -- WHEN YOU DID THAT,

20 WHERE DID THAT TAKE PLACE, SIR?

21 A IN THE BATHROOM.

22 Q IN THE BATHROOM?

23 A YEAH, IN THE BATHROOM.

24 Q YOU TESTIFIED EARLIER, THOUGH, THAT AFTER YOU

25 SPANKED THEM IN THE BATHROOM -- WAS THE BELT THERE

1 HANDY?

2 A IT WAS IN THERE.

3 Q IT WAS IN THERE?

4 A YEAH.

5 Q SO YOU KEEP A BELT IN THE BATHROOM?

6 A NO.

7 Q IT WAS JUST IN THERE THAT DAY?

8 A YES.

9 Q WHOSE BELT IS THAT?

10 A THAT'S MY BELT.

11 Q SO NORMALLY THAT WOULD BE KEPT IN YOUR

12 BEDROOM PERHAPS?

13 A YES.

14 Q BUT THAT DAY IT WAS IN THE BATHROOM?

15 A YEAH.

16 Q WHEN IT WAS -- WHERE IT WAS NEEDED. AFTER

17 THAT YOU TAKE -- YOU SAID THE TWO CHILDREN RAN

18 OUT. WHAT WAS H.G. -- WHICH ONE DID YOU SPANK

19 FIRST?

20 A MINOR .

21 Q AND DID MINOR CRY WHEN YOU SPANKED HER?

22 A NO.

23 Q WHAT WAS H.G. DOING WHILE YOU SPANKED

24 MINOR ?

25 A NOTHING.

1 Q HE WASN'T TRYING TO GET AWAY OR ANYTHING?

2 A NO.

3 Q AND ONCE YOU SPANKED MINOR -- SHE WASN'T

4 CRYING OR DOING ANYTHING, WAS SHE?

5 A NO.

6 Q BECAUSE YOU DIDN'T HIT HER THAT HARD SO IT

7 DIDN'T HURT.

8 A RIGHT.

9 Q AND YOUR TESTIMONY IS THAT SHE WASN'T CRYING,

10 RIGHT?

11 A RIGHT.

12 Q WHAT DID YOU DO WITH MINOR WHILE YOU TOOK

13 THE BELT TO H.G. ?

14 A WHAT DID I DO WITH HER?

15 Q YES, SIR.

16 A SHE WAS JUST STANDING THERE.

17 Q JUST STANDING THERE? DID YOU TELL HER TO

18 STAY THERE?

19 A YEAH.

20 Q YOU TOLD HER TO STAY AND WATCH WHILE YOU HIT

21 H.G. WITH THE BELT?

22 A NO, SPANKED.

23 Q SPANKED, I'M SORRY.

24 A RIGHT.

25 Q AND WHEN YOU SPANKED H.G. DID IT HURT HIM?

1 A NO MORE THAN I GUESS IT HURT MINOR .

2 Q SO HE DIDN'T CRY EITHER?

3 A NO.

4 Q SO THIS DIDN'T MAKE -- THIS FORM OF
5 PUNISHMENT DIDN'T MAKE MUCH OF AN IMPRESSION ON
6 HIM. IT CERTAINLY DIDN'T LEAVE ANY BRUISES ON
7 HIM?

8 A NOT THAT I KNOW OF AT THAT TIME.

9 Q BECAUSE IF YOU HIT SOMEONE HARD ENOUGH WITH A
10 BELT THAT IT WOULD LEAVE BRUISES, IT WOULD HURT,
11 YOU WOULD AGREE WITH ME, WOULDN'T YOU?

12 A YEAH.

13 Q SO ONCE THESE TWO CHILDREN HAD BEEN SPANKED
14 WITH THE BELT, THEY'RE STILL HAPPY?

15 A NO.

16 Q THEY'RE NOT HAPPY?

17 A NO.

18 Q BUT THEY AREN'T CRYING?

19 A NO.

20 Q N.G. , WHERE IS SHE AT THIS POINT? SHE
21 HADN'T COME INTO THE ROOM?

22 A NO.

23 Q AND THEN YOU SAID BOTH OF THE CHILDREN RAN
24 OUT IN THE HALLWAY?

25 A YES.

1 Q WHERE DID THEY GO SIR, DO YOU KNOW?

2 A THEY WENT OUT OF THE BATHROOM, TO THE RIGHT,
3 TO THEIR ROOM.

4 Q TO WHOSE ROOM?

5 A I GUESS MINOR AND N.G. S ROOM.

6 Q DID THEY GO INTO MINOR AND N.G. A'S ROOM?

7 A NO.

8 Q AND WHAT WERE YOU DOING IN THE BATHROOM AFTER
9 THEY LEFT?

10 A I WAS CLEANING UP THE POTTIES.

11 Q CLEANING UP THE POTTIES. OKAY. AND THEN ALL
12 OF A SUDDEN YOU SAID H.G. CAME IN AND SAID,
13 "PAPA", RIGHT?

14 A YES, HE BACKED UP INTO THE DOOR AND HE SAID,
15 "PAPA."

16 Q HOW LONG WAS THAT BETWEEN THE TIME THEY LEFT
17 THE BATHROOM --

18 A RIGHT AFTER.

19 Q RIGHT AFTER. SECONDS?

20 A I WOULDN'T SAY SECONDS, BUT IT WAS RIGHT
21 AFTER.

22 Q MINUTES?

23 A RIGHT AFTER.

24 Q YOU WOULD SAY MINUTES?

25 A ABOUT A MINUTE.

1 Q NOT HOURS?

2 A NO.

3 Q ABOUT A MINUTE?

4 A ABOUT A MINUTE.

5 Q AND WHEN HE CAME BACK IN HE SAID WHAT TO YOU,

6 SIR?

7 A HE SAID, "PAPA LOOK."

8 Q AND WHAT DID YOU THINK WHEN HE SAID, "PAPA

9 LOOK." DID YOU ASK HIM LOOK AT WHAT?

10 A NO. I LOOKED OUT THE DOOR.

11 Q AND WHAT DID YOU SEE WHEN YOU LOOKED OUT THE

12 DOOR, SIR?

13 A I SEEN MINOR DOWN THE HALLWAY.

14 Q SHE WAS IN THE HALLWAY?

15 A YES.

16 Q FACE DOWN?

17 A FACE DOWN.

18 Q AND WAS IT USUAL FOR MINOR TO LIE DOWN IN

19 THE HALLWAY FACE DOWN?

20 A NO.

21 Q AND YOU SAID YOU WENT OVER TO HER AND YOU

22 PICKED HER UP?

23 A YES.

24 Q AND AT A POINT WHERE DID YOU TAKE HER?

25 A INTO THE BEDROOM, MY BEDROOM.

1 Q AND WHAT WERE YOU SAYING TO HER WHILE YOU
2 CARRIED HER INTO YOUR BEDROOM?

3 A I DIDN'T REALLY SAY NOTHING. I WAS JUST
4 ASKING SEEING IF SHE WAS OKAY. SHE WASN'T CRYING
5 OR NOTHING.

6 Q SHE WASN'T CRYING OR NOTHING, SO SHE WAS
7 AWAKE AND ALERT?

8 A I WOULDN'T SAID SHE WAS AWAKE, NO.

9 Q SO SHE WAS UNCONSCIOUS?

10 A I WOULDN'T -- AT THAT TIME I DIDN'T KNOW SHE
11 WAS UNCONSCIOUS.

12 Q SLEEPY?

13 A I DON'T KNOW.

14 Q SHE WASN'T SLEEPY, RIGHT? YOU DON'T USUALLY
15 FIND MINOR PASSED OUT IN THE HALLWAY FACE DOWN,
16 DO YOU?

17 A NO.

18 Q SO THIS WAS AN UNUSUAL EVENT FOR YOU?

19 A YES.

20 Q AND YOUR REACTION TO PICKING HER UP, DID YOU
21 SAY HER NAME?

22 A YES, I CALLED HER NAME.

23 Q DID SHE RESPOND?

24 A NO.

25 Q AND AS YOU PICKED HER UP, DID SHE LIKE CURL

1 UP LIKE A PERSON THAT'S AWAKE AND NORMAL WOULD DO
2 OR WAS SHE LIMP?

3 A SHE WASN'T LIMP.

4 Q SHE WASN'T LIMP?

5 A NO.

6 Q SO SHE WAS UNCONSCIOUS, BUT SHE WASN'T LIMP?
7 THAT'S YOUR TESTIMONY, SIR?

8 A I'M NOT SAYING SHE WAS UNCONSCIOUS. SHE WAS
9 JUST...

10 Q I'M SORRY, I DON'T MEAN TO BE PICKY, BUT THIS
11 IS IMPORTANT. DO YOU UNDERSTAND THAT?

12 A YES.

13 Q SO SHE WASN'T RESPONSIVE TO YOU. WERE HER
14 EYES OPEN OR CLOSED?

15 A THEY WAS OPEN AND THEN THEY WENT CLOSED.

16 Q THEY WERE OPEN AND THEN THEY WENT CLOSED.
17 WHILE YOU WERE CARRYING HER?

18 A YES.

19 Q AND THIS WAS AFTER YOU HAD TURNED HER OVER?

20 A RIGHT.

21 Q SO WHEN YOU TURNED HER OVER AFTER SHE WAS
22 FACE DOWN ON THE FLOOR IN THE HALLWAY, SHE LOOKED
23 UP AT YOU?

24 A NO, SHE DIDN'T.

25 Q SHE DIDN'T LOOK UP AT YOU. WHAT DID SHE DO,

1 SIR?

2 A WHEN I TURNED HER OVER, HER EYES WOULDN'T
3 SHUT. THEY WERE OPEN AND THEY WOULDN'T SHUT.

4 Q SO WHEN YOU WENT TO PICK HER UP, HER EYES
5 WERE SHUT?

6 A THEY WENT SHUT.

7 Q THEY WEREN'T SHUT?

8 A THEY WENT SHUT.

9 Q THEY WENT SHUT. AND THEN WHEN YOU CARRIED
10 HER INTO THE NEXT ROOM, DID SHE RESPOND TO YOU,
11 OPEN HER EYES, OR DO ANYTHING?

12 A NO. AT THAT TIME I SAT HER DOWN ON THE BED
13 AND I --

14 Q AND YOU WERE GOING TO PUT HER PULL-UPS ON,
15 RIGHT?

16 A YEAH.

17 Q AND YOU STARTED PUTTING HER PULL-UPS ON. AT
18 WHAT POINT DID IT OCCUR TO YOU THAT PERHAPS THIS
19 CHILD'S BEHAVIOR WASN'T QUITE WHAT IT SHOULD BE?

20 A WELL, WHEN SHE ALWAYS WAS A QUIET CHILD.

21 Q A QUIET CHILD?

22 A EXCUSE ME?

23 Q I'M SORRY. LET ME REPHRASE THE QUESTION. SO
24 IT WASN'T UNTIL -- AND YOUR TESTIMONY IN FRONT OF
25 THIS JURY HERE TODAY -- IS THAT IT WASN'T UNTIL

1 AFTER YOU PICKED THIS CHILD UP FROM BEING FACE
2 DOWN ON THE FLOOR WITH HER EYES THEN CLOSED AND
3 SHE IS NON-RESPONSIVE TO YOU AND YOU CARRY HER TO
4 THE NEXT ROOM AND YOU'RE PUTTING ON HER PULL-UPS,
5 AND YOU DIDN'T THINK THERE WAS ANYTHING ODD UNTIL
6 HER ARMS STIFFENED?

7 A HER LEGS STIFFENED UP.

8 Q HER LEGS STIFFENED UP. WHEN HER LEGS
9 STIFFENED UP, TELL ME WHAT DO YOU MEAN BY THAT?

10 A THEY JUST GOT A LITTLE STIFF.

11 Q A LITTLE STIFF?

12 A YEAH.

13 Q SO THEY WERE LIMP BEFORE. AM I WRONG?

14 A THEY WASN'T WHAT YOU WOULD CALL LIMP.

15 Q SO THEY STIFFENED UP, LIKE THIS, LIKE LOCKING
16 THE KNEES? YOU TELL ME.

17 A WELL, THEY STIFFENED UP, YEAH.

18 Q SO YOU'RE TRYING TO PULL THE PANTS UP ON HER
19 LEGS, AND THAT WAS WHEN YOU NOTICED THE LEGS,
20 RIGHT?

21 A YEAH.

22 Q AND THEN THEY STIFFENED UP. WHAT DID YOU
23 THINK?

24 A AT THAT TIME, I DIDN'T KNOW WHAT TO THINK. I
25 CALLED MY WIFE.

1 Q OKAY. SO AT THIS POINT YOU'RE PANICKED
2 ENOUGH TO CALL YOUR WIFE, RIGHT?

3 A YES.

4 Q AND YOU CALL YOUR WIFE. SHE'S WORKING AT THE
5 SCHOOL. HOW MANY MINUTES AWAY FROM YOUR HOUSE IS
6 IT?

7 A ABOUT FIVE.

8 Q ABOUT FIVE MINUTES. OKAY. SIR, WHAT DID YOU
9 TELL YOUR WIFE ON THE PHONE ABOUT THIS CHILD WHO
10 IS STIFFENING UP IN YOUR ARMS?

11 A I TOLD HER THAT SHE HAD STIFFENED UP.

12 Q YOU TOLD HER THAT SHE HAD STIFFENED UP. AND
13 WHAT DID YOUR WIFE ASK YOU AT THAT POINT,
14 ANYTHING?

15 A NO. SHE SAID TO GET A BLANKET, AND SHE'LL BE
16 RIGHT ON IN.

17 Q SO LET ME GET THIS STRAIGHT FOR THIS JURY
18 BECAUSE THEY NEED TO CALL KNOW. YOU CALL YOUR
19 WIFE. YOUR CHILD HAS BEEN DOWN ON THE FLOOR FACE
20 DOWN, HER EYES ARE CLOSED, AND SHE STIFFENS UP, SO
21 SHE'S UNCONSCIOUS AT THIS POINT? WOULD YOU
22 CHARACTERIZE IT THAT WAY?

23 A I COULDN'T REALLY --

24 Q YOU CAN'T? AND YOU'RE THEN ALARMED ENOUGH TO
25 CALL YOUR WIFE BECAUSE THAT'S WHAT YOU NEED TO DO,

1 RIGHT?

2 A I ALWAYS CALLED MY WIFE.

3 Q IF THERE'S ANY PROBLEM WITH THE CHILDREN YOU
4 ALWAYS CALLED YOUR WIFE?

5 A YES.

6 Q AND THEN YOU TOLD YOUR WIFE -- AND I THINK
7 THIS IS THE QUOTE, "MINOR STIFFENED UP."

8 A YES.

9 Q AND THAT'S WHEN SHE DECIDED TO COME HOME?

10 A YEAH.

11 Q THERE WAS NO MORE CONVERSATION?

12 A NO. SHE HUNG UP AND CAME STRAIGHT HOME.

13 Q AND THAT'S THE EXTENT OF WHAT YOU SAID TO
14 YOUR WIFE --

15 A OUTSIDE OF HER TELLING ME TO GET A BLANKET.

16 Q YOU SAID, "MINOR STIFFENED UP." HER
17 RESPONSE WAS FOR YOU TO GET A BLANKET AND SHE'D BE
18 RIGHT HOME?

19 A YES.

20 Q YOU DIDN'T TELL HER ANYTHING ELSE?

21 A NO.

22 Q BUT SHE THOUGHT, BASED ON THAT STATEMENT YOU
23 MADE TO HER, THAT IT WAS TIME TO COME HOME?

24 A YEAH.

25 Q THEN SHE GOT HOME WITHIN FIVE MINUTES; IS

1 THAT CORRECT?

2 A YEAH.

3 Q AND DURING THAT FIVE MINUTES THAT IT TOOK HER
4 TO GET HOME, WHAT IS IT THAT YOU ARE DOING WITH
5 MINOR ?

6 A I STILL HAD HER IN MY ARMS.

7 Q ARE YOU PERFORMING C.P.R. ON HER?

8 A NO.

9 Q WAS SHE BREATHING? COULD YOU TELL?

10 A I WOULDN'T TELL.

11 Q YOU'VE HAD C.P.R. TRAINING, HAVEN'T YOU?

12 A NO.

13 Q YOU HAVEN'T?

14 A WE WERE GOING THROUGH THAT COURSE.

15 Q YOU HAD THAT COURSE. DO YOU REMEMBER TALKING
16 TO INVESTIGATOR METZS ABOUT HOW YOU'VE HAD C.P.R.
17 TRAINING?

18 A I WENT TO A COURSE.

19 Q SO YOU DIDN'T REALLY HAVE ANY TRAINING, YOU
20 JUST WENT TO A COURSE. IN THAT COURSE DID YOU
21 LEARN HOW TO DO C.P.R.?

22 A I SEEN IT PERFORMED.

23 Q SO THIS CHILD HAS STIFFENED UP, UNCONSCIOUS,
24 IN YOUR ARMS, NOT BREATHING, BUT YOU DIDN'T THINK
25 IT WAS A GOOD TIME TO TRY C.P.R.?

1 A I DIDN'T KNOW...

2 Q YOU DIDN'T FEEL GOOD ENOUGH ABOUT TRYING TO
3 DO IT?

4 A (THERE WAS NO RESPONSE.)

5 Q YOU DIDN'T KNOW WHAT YOU WERE DOING?

6 A SURE.

7 Q SO IN THAT CASE, AS ANY NORMAL PERSON WOULD,
8 THEN YOU CALLED 911, BECAUSE THE CHILD IS
9 UNCONSCIOUS, STIFFENED UP IN YOUR ARMS, AND NOT
10 BREATHING?

11 A WELL, BY THAT TIME MY WIFE WAS COMING IN.

12 Q NO, SIR. THAT'S FIVE MINUTES LATER. FIVE
13 MINUTES AT LEAST.

14 A YEAH.

15 Q BECAUSE THIS IS EARLY MORNING, RUSH HOUR
16 TRAFFIC; IS THAT RIGHT?

17 A YES.

18 Q AND SO FOR FIVE MINUTES YOU'RE SITTING THERE
19 WITH THIS UNCONSCIOUS, STIFF CHILD IN YOUR ARMS?

20 A I WAS TRYING TO GET HER TO RESPOND.

21 Q WHAT ARE YOU DOING WITH THE OTHER KIDS?
22 WHERE ARE THEY?

23 A THEY WERE IN THE LIVING ROOM.

24 Q IN THEIR CHAIRS, WEREN'T THEY?

25 A YES.

1 Q WHY WERE THEY IN THEIR CHAIRS THAT MORNING
2 WHILE YOU WERE DEALING WITH MINOR ?

3 A THEY WERE GOING TO LOOK AT THE TV.

4 Q THEY WERE GOING TO LOOK AT THE TV? THEY
5 WEREN'T BEING TOLD TO GO THERE AS PUNISHMENT OR TO
6 GET THEM OUT OF THE WAY?

7 A NO.

8 Q WHEN YOUR WIFE GOT THERE, WHAT, IF ANYTHING,
9 DID YOU SAY TO HER?

10 A WHEN SHE WAS COMING DOWN THE HALLWAY, SHE
11 GRABBED HER OUT OF MY ARMS.

12 Q AND SHE DIDN'T EVEN SAY ANYTHING TO YOU, DID
13 SHE?

14 A NO. SHE GRABBED THE BABY AND SAID TO GET THE
15 OTHER TWO KIDS AND LET'S GO.

16 Q AND THEN YOU DROVE TO THE HOSPITAL?

17 A YES.

18 Q DID YOU ALL HAVE ANY CONVERSATIONS ABOUT WHAT
19 THE FASTEST WAY TO THE HOSPITAL WAS?

20 A NO.

21 Q DID YOU HAVE ANY CONVERSATIONS ABOUT WHERE
22 THE NEAREST WAY TO THE HOSPITAL WAS?

23 A NO, BECAUSE WE ALWAYS JUST TOOK THEM TO
24 RICHLAND.

25 Q AT ANY POINT DID SHE SUGGEST THAT YOU CALL

1 911?

2 A NO. WHEN SHE'S COMING DOWN THE HALLWAY SHE
3 GRABBED BABY AND WE LEFT.

4 Q WERE YOU AWARE AT THAT POINT THAT MORNING
5 THAT N.G. TRIED TO CALL 911?

6 A NO.

7 Q YOU WERE NOT AWARE OF THAT?

8 A NO.

9 Q AND THEN YOU GOT TO THE HOSPITAL. I WANT TO
10 TALK TO YOU A LITTLE BIT ABOUT YOUR STATEMENTS.

11 DO YOU REMEMBER WHEN YOU WENT TO THE
12 EMERGENCY ROOM AND YOU TOOK THE TWO CHILDREN IN
13 AFTER YOUR WIFE WENT IN FIRST?

14 A YEAH.

15 Q DO YOU REMEMBER THE EMERGENCY ROOM PERSONNEL,
16 SPECIFICALLY THE EMERGENCY ROOM DOCTOR, COMING OUT
17 AND TALKING TO YOU ABOUT MINOR 'S HISTORY, WHAT
18 HAD BEEN GOING ON WITH HER; IS THAT CORRECT?

19 A YES. HE CAME OUT.

20 Q AND HE ASKED YOU SPECIFICALLY ABOUT MINOR ,
21 RIGHT? DO YOU REMEMBER WHAT YOU TOLD HIM?

22 A I'M NOT SURE.

23 Q DO YOU REMEMBER TELLING HIM THAT MINOR WAS
24 NORMAL?

25 A EXCUSE ME?

1 Q THAT MINOR HAD BEEN NORMAL THAT DAY, THE
2 DAY BEFORE?

3 A YEAH.

4 Q DO YOU REMEMBER TELLING HIM THAT SHE HAD NO
5 PRIOR ILLNESS, NO PRIOR TRAUMA OF ANY SORT?

6 A YEAH.

7 Q YOU DIDN'T TELL HIM ABOUT THE BELT INCIDENT,
8 DID YOU?

9 A NO, I DIDN'T.

10 Q YOU DIDN'T PUT IT TOGETHER AT THAT POINT?

11 A NO.

12 Q YOU ALSO TALKED TO DR. HUBBIRD, THE PERSON
13 THAT WAS TAKING CARE OF YOUR CHILD THAT DAY. DO
14 YOU REMEMBER THAT?

15 A I THINK. I SEEN PLENTY OF THEM. I'M NOT
16 SURE WHICH ONES.

17 Q I KNOW. YOU TOLD HIM THAT MINOR HAD HAD A
18 SEIZURE AND COLLAPSED THAT DAY. SHE HAD BEEN UP
19 AND WALKING EARLIER; DO YOU REMEMBER THAT?

20 A A SEIZURE?

21 Q THAT'S HOW YOU PUT IT TO HIM.

22 A I MIGHT HAVE SAID SEIZURE, BUT NO...

23 Q SO THAT WOULD HAVE BEEN YOUR WORD, SEIZURE,
24 BUT WHAT POINT DID SHE HAVE A SEIZURE THAT DAY,
25 WHEN SHE STIFFENED UP?

1 A WHAT I THOUGHT WAS A SEIZURE WAS WHEN SHE
2 STIFFENED UP.

3 Q OKAY. SO SHE ACTUALLY COLLAPSED FIRST AND
4 THEN HAD THE SEIZURE; IS THAT CORRECT?

5 A YEAH.

6 Q AND THEN WHEN YOU -- DO YOU REMEMBER TALKING
7 TO DR. RABON, HE WAS ALSO IN THE INTENSIVE CARE
8 UNIT, THAT YOUNG DOCTOR?

9 A (THERE WAS NO RESPONSE.)

10 Q HE ASKED YOU ABOUT ANY PRIOR TRAUMA, WAS
11 ANYTHING ABNORMAL OR WRONG WITH MINOR , AND YOU
12 TOLD HIM NO.

13 A JUST NORMAL.

14 Q SO YOU TOLD HIM NOTHING WAS ABNORMAL BECAUSE
15 SHE WAS JUST NORMAL THAT DAY, WASN'T SHE?

16 A YEAH.

17 Q DID YOU TELL HIM THAT MINOR WAS IN THE
18 BATHROOM?

19 A YES.

20 Q THAT SHE WENT IN YOUR BEDROOM AND FELL OUT?

21 A I TOLD HIM WHERE I PICKED HER UP FROM.

22 Q YOU TOLD HIM ABOUT THE HALLWAY?

23 A I'M NOT SURE.

24 Q OKAY. AND THAT DAY WAS PRETTY HECTIC, I
25 WOULD SAY?

1 A YES.

2 Q AND I THINK YOU CHARACTERIZED THAT YOU WERE
3 NERVOUS THAT DAY OR THAT NIGHT?

4 A YEAH.

5 Q TWO DAYS LATER YOU -- YOU STATED THAT YOU
6 STAYED AT THE HOSPITAL WITH YOUR WIFE THE NEXT TWO
7 DAYS; IS THAT CORRECT, SIR?

8 A YES.

9 Q AND TWO DAYS LAYER YOU HAD AN OPPORTUNITY TO
10 MEET WITH THE POLICE?

11 A CORRECT.

12 Q AND ACCORDING TO YOUR TESTIMONY YOU WERE
13 THERE. YOU MET UP WITH THEM AND YOU WERE TIRED,
14 RIGHT?

15 A YEAH.

16 Q I THINK THAT'S WHAT YOU SAID -- DON'T LET ME
17 PUT WORDS IN YOUR MOUTH, SIR. IS THAT WHAT YOU
18 TESTIFIED TO EARLIER?

19 A I THINK.

20 Q IS THAT TRUE OR NOT?

21 A YEAH, WE WERE THERE FOR TWO DAYS DOWN AT THE
22 HOSPITAL.

23 Q OKAY. AND THOSE -- THAT EVENING OF THE 30TH,
24 YOU WENT DOWN WITH THEM AND YOU WERE COOPERATIVE,
25 RIGHT?

1 A YES.

2 Q AND YOU ACTUALLY TOOK HIM AND SHOWED HIM THE
3 BELT AND EVERYTHING, RIGHT?

4 A NO, HE ASKED.

5 Q HE ASKED YOU SO YOU TOLD HIM. YOU DIDN'T
6 VOLUNTEER IT. THEN THEY TOOK YOU DOWN TO THE
7 POLICE STATION. YOU WENT WITH THEM, RIGHT?

8 A YES.

9 Q AND THAT'S WHEN THEY ADVISED YOU OF YOUR
10 RIGHTS, RIGHT?

11 Q YES. AND I SHOW YOU STATE'S EXHIBIT 1.
12 THERE'S NO DISPUTE THAT THEY ADVISED YOU WHAT YOUR
13 RIGHTS WERE AND YOU UNDERSTOOD WHAT THOSE RIGHTS
14 WERE; IS THAT CORRECT?

15 A YEAH.

16 Q AND YOU AGREED TO TALK TO THEM VOLUNTARILY?

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

18 Q SO THERE'S NO DISPUTE THEY DID EVERYTHING
19 RIGHT?

20 A YEAH.

21 Q AND THEN YOU TESTIFIED THAT YOU GAVE YOUR
22 FIRST STATEMENT, RIGHT, TO INVESTIGATOR JONES.
23 THIS IS INVESTIGATOR JONES SITTING RIGHT HERE,
24 RIGHT?

25 A SURE.

1 Q AND THEN JUST SO WE DON'T HAVE TO DO THIS
2 LATER, THIS IS INVESTIGATOR METZS?

3 A YES.

4 Q DO YOU REMEMBER A LADY NAMED MS. GRANT BEING
5 THERE?

6 A YEAH.

7 Q OKAY. AND THEY WERE ALL THERE WHILE YOU WERE
8 MAKING THESE STATEMENTS?

9 A SURE.

10 Q RIGHT?

11 A TRUE.

12 Q AND YOU GAVE THIS STATEMENT BASICALLY, AND
13 THE FIRST THING YOU SAY IN THIS FIRST STATEMENT
14 WHEN THE POLICE FIRST ASKED YOU ABOUT WHAT
15 HAPPENED THAT MORNING, YOU SAID YOU DID NOT SPANK
16 MINOR .

17 A THAT I DID NOT?

18 Q UH-HUH.

19 A (THERE WAS NO RESPONSE.)

20 Q AND I BELIEVE YOUR QUOTE WAS -- THEY ASKED
21 YOU, "HAVE YOU EVER HAD TO SPANK ANY OF THE
22 CHILDREN?" AND YOUR ANSWER WAS, "WE POP THEM ON
23 THE HAND."

24 "WHAT ABOUT HITTING THEM ON THE BUTT?" "NO,
25 SIR."

1 THAT WAS YOUR INITIAL STATEMENT TO THE
2 POLICE. DO YOU REMEMBER THAT, MR. MITCHELL?

3 A WELL, I'M NOT SURE.

4 Q AND THERE WOULD BE NO REASON THAT YOU WOULD
5 HAVE TO TRY TO CONCEAL FROM THE POLICE WHAT HAD
6 HAPPENED THAT MORNING, WOULD THERE?

7 A NO.

8 Q DO YOU REMEMBER WHEN THEY ASKED, "DID YOU
9 SPANK MINOR ALL THAT NIGHT OR THE NEXT
10 MORNING?", MEANING THE NIGHT BEFORE OR THE MORNING
11 WHEN THIS OCCURRED. DO YOU REMEMBER WHAT YOUR
12 ANSWER WAS?

13 A I TOLD THEM NO. THAT NIGHT THEY ASKED ME AND
14 I TOLD THEM NO.

15 Q NOR THAT MORNING, YOU TOLD THEM NO.

16 A WELL, HE MIGHT NOT HAVE HEARD ME.

17 Q THAT'S RIGHT. HE COULDN'T HEAR WHAT YOU WERE
18 SAYING. HE HEARD A LOT OF WHAT YOU WERE SAYING
19 THOUGH. YOU WOULD AGREE THAT EVERYTHING HE'S GOT
20 IN HERE CAME FROM YOU?

21 A YEAH.

22 Q BUT HE CHOSE TO LEAVE THAT OUT? WELL, HE
23 DIDN'T LEAVE THAT PART OUT. YOU JUST -- YOU
24 DIDN'T HEAR HIM MAYBE?

25 A HE MIGHT NOT HAVE UNDERSTOOD.

1 Q DO YOU REMEMBER WHEN YOU GAVE THIS VERSION OF
2 WHAT HAPPENED, AND YOU SAID THAT SHE WENT TO THE
3 POTTY, THAT SHE WAS PUTTING ON HER PULL-UPS AND
4 SHE STIFFENED UP?

5 A NO.

6 Q DO YOU REMEMBER DENYING ANY SPANKING THAT
7 MORNING? DENYING EVER SPANKING HER, FOR THAT
8 MATTER?

9 A DENYING IT? NO.

10 Q OKAY. YOU DIDN'T DO THAT. DO YOU REMEMBER
11 TELLING HIM THAT THERE WERE NO BRUISES ON MINOR ?

12 A THAT EVENING OR WHAT?

13 Q AND JUST TO MAKE SURE NOW, LET ME MAKE SURE,
14 THIS IS YOUR STATEMENT, RIGHT, I DON'T WANT TO MIX
15 IT UP, OKAY?

16 A YES.

17 Q AND THAT'S YOUR SIGNATURE ON ALL FIVE PAGES,
18 RIGHT?

19 A YES.

20 Q LET ME MAKE SURE IT'S FIVE. YES, FIVE.
21 THERE'S A LOT OF INFORMATION, BACKGROUND
22 INFORMATION. THEY WERE THOROUGH. THEY WROTE DOWN
23 A LOT OF WHAT YOU SAID.

24 A YES.

25 Q BUT NOW YOUR TESTIMONY IS THAT THEY JUST LEFT

1 OUT THE PART ABOUT HOW YOU ADMITTED TO THEM
2 INITIALLY ABOUT THE SPANKING?

3 A YES.

4 Q OKAY. AND YOU WOULD AGREE, THOUGH, IT'S
5 TYPED, RIGHT?

6 A YES, IT IS.

7 Q WHICH HELPS ME BECAUSE I CAN'T READ PEOPLE'S
8 WRITING. SO YOU WERE ABLE TO READ THIS; IS THAT
9 CORRECT?

10 A SOME OF IT, YEAH.

11 Q OKAY. AND DID YOU READ IT?

12 A TO MY KNOWLEDGE, YES.

13 Q AND WHEN YOU READ THAT STATEMENT, WHAT WAS IN
14 IT WAS TRUE ABOUT WHAT YOU HAD TOLD THEM, RIGHT?

15 A NO.

16 Q NO. NOW YOUR TESTIMONY IS HERE TODAY, SIR --
17 I'M GETTING TOWARDS THE END OF THIS, OKAY, IS THAT
18 YOU TOLD HIM, NO, IT WASN'T TRUE?

19 A YES.

20 Q AND YOU UNDERSTOOD WHAT YOUR RIGHTS WERE, AND
21 YOU WERE VOLUNTEERING TO TALK TO THEM, SO YOU
22 WOULD HAVE REFUSED TO SIGN THIS IF IT WASN'T TRUE,
23 RIGHT?

24 A WELL, HE TOLD ME I HAD TO SIGN IT.

25 Q HE TOLD YOU THAT YOU HAD TO SIGN IT, AND SO

1 YOU SIGNED A FALSE DOCUMENT?

2 A HE SAID I HAD TO SIGN IT BEFORE THEY COULD
3 TAKE THE NEXT ONE.

4 Q BEFORE YOU COULD GIVE ANOTHER STATEMENT?

5 A YES.

6 Q YOU MADE THE SECOND STATEMENT, SO MAYBE YOU
7 COULD TELL A LITTLE BIT MORE ABOUT WHAT HAD
8 HAPPENED?

9 A YES.

10 Q SO YOUR TESTIMONY IS TODAY THAT DALE JONES
11 AND MS. GRANT, A D.S.S. WORKER WHO IS NOT EVEN
12 PART OF THE POLICE DEPARTMENT, WERE MISTAKEN.

13 DID YOU READ THIS PAST PART WHERE IT SAYS,
14 "IS THERE ANYTHING WE NEED TO ADD OR CHANGE TO
15 THIS STATEMENT?" AND YOUR ANSWER?

16 A OH, AT THE TIME HE WAS READING IT TO ME, AND
17 I...

18 Q AND IT'S, NO, SIR. HE FORCED YOU TO SIGN
19 THIS?

20 A HE TOLD ME I HAD TO SIGN IT BEFORE I COULD
21 TAKE THE NEXT STATEMENT.

22 Q AND YOU WANTED TO GIVE ANOTHER STATEMENT?

23 A YES, BECAUSE HE WAS LEAVING OUT PART OF IT.

24 Q OKAY. SO YOU WANTED TO CORRECT IT WITH A
25 SECOND STATEMENT IS YOUR STORY TODAY?

1 A YES.

2 Q LET'S TALK ABOUT YOUR SECOND STATEMENT.

3 AGAIN, HERE ON THE BOTTOM OF THIS IS YOUR

4 SIGNATURE, RIGHT?

5 A YES.

6 Q AND IT'S A TWO PAGE STATEMENT?

7 A YES.

8 Q IT'S A LOT SHORTER; IS THAT CORRECT?

9 A YES.

10 Q DO YOU REMEMBER INVESTIGATOR METZS BEING

11 THERE?

12 A YES.

13 Q WAS HE ONE OF THE MEN THAT FORCED YOU TO SIGN

14 THE FIRST ONE?

15 A FORCED? NO, HE TOLD ME. THEY TOLD ME I

16 NEEDED TO SIGN IT BEFORE I COULD GIVE THE NEXT

17 STATEMENT.

18 Q SO BOTH OF THESE MEN WERE GETTING YOU TO SIGN

19 SOMETHING THAT WASN'T TRUE, AND YOU SIGNED IT?

20 A WELL, HE TOLD ME I HAD TO SIGN IT BEFORE THE

21 NEXT STATEMENT.

22 Q OKAY. AND IN THE SECOND STATEMENT YOU TALK A

23 LITTLE BIT ABOUT WHAT YOU TALKED ABOUT HERE TODAY,

24 DIDN'T YOU?

25 A YES.

1 Q BUT IN THIS ONE YOU ADMITTED THAT THEY WERE
2 BOTH PLAYING IN THE POTTY; IS THAT CORRECT?

3 A YES.

4 Q THAT YOU SPANKED BOTH THE CHILDREN WITH A
5 BELT?

6 A YES.

7 Q AND THEN THE NEXT THING YOU TOLD THEM -- DO
8 YOU REMEMBER WHAT THE NEXT THING WAS THAT YOU TOLD
9 THEM WAS, SIR?

10 A (THERE WAS NO RESPONSE.)

11 Q H.G. KNOCKED MINOR OVER FROM BEHIND; IS
12 THAT WHAT YOU TOLD THEM?

13 A I SAID THEY RAN OUT OF THE ROOM.

14 Q OKAY. SO YOU DIDN'T SAY, H.G. KNOCKED
15 MINOR OVER FROM BEHIND? I'LL GET IT FROM THE
16 STATEMENT. THESE ARE MY NOTES.

17 "THEN HER BROTHER HODARI KNOCKED HER DOWN
18 FROM BEHIND." RIGHT?

19 A I DON'T THINK I --

20 Q THAT'S NOT WHAT YOU SAID, RIGHT? THAT'S JUST
21 WHAT'S IN HERE. OKAY. I JUST WANT TO CLARIFY
22 WHAT YOU SAID AND WHAT'S IN HERE. THEN YOU TOLD
23 THEM WHEN YOU GOT TO MINOR SHE WAS GAGGING FOR
24 AIR AND HER EYES WERE ROLLING. DO YOU REMEMBER
25 SAYING THAT?

1 A WELL, I --

2 Q YOU DON'T REMEMBER SAYING THAT?

3 A I TOLD HER -- I TOLD THEM THAT I PICKED HER

4 UP AND TURNED HER OVER.

5 Q OKAY. SO THEY MISUNDERSTOOD YOU WHEN YOU

6 SAID THAT.

7 A (THERE WAS NO RESPONSE.)

8 Q DO YOU REMEMBER SAYING, "I SHOOK HER BACK AND

9 FORTH, SIDE TO SIDE --

10 A NO.

11 Q -- TRYING TO GET HER TO BREATHE?"

12 A NO.

13 Q YOU DIDN'T SAY THAT EITHER?

14 A NO.

15 Q DO YOU REMEMBER THEM ASKING YOU HOW LONG YOU

16 SHOOK MINOR ?

17 A NO.

18 Q AND YOU SAID, "IT SEEMED LIKE A COUPLE OF

19 SECONDS. IT MIGHT HAVE BEEN LONGER." DO YOU

20 REMEMBER SAYING THAT?

21 A NO, I DON'T.

22 Q OKAY. AND THEN THEY ASKED YOU HOW HARD YOU

23 SHOOK MINOR .

24 A I'M NOT SURE WHAT THEY ASKED ME.

25 Q AND THEN YOU SAID, "I DIDN'T THINK I WAS

1 SHAKING HER HARD." THEN THEY ASKED YOU WHAT HAD
2 HAPPENED NEXT. DO YOU REMEMBER THEM ASKING YOU
3 THAT, SIR?

4 A YES.

5 Q AND THEN YOU TOLD THEM, "I CALLED MY WIFE AT
6 WORK. SHE WORKS AT E.L. WRIGHT SCHOOL." THAT YOU
7 DID SAY, RIGHT?

8 A RIGHT.

9 Q SO THEN IT'S JUST THE SHAKING PART THAT YOU
10 DIDN'T SAY?

11 A RIGHT.

12 Q THEN YOU SAID -- THEY ASKED YOU, "HOW LONG
13 DID IT TAKE YOUR WIFE TO GET HOME?" AND YOU SAID,
14 "ABOUT FIVE MINUTES." YOU SAID THAT, DIDN'T YOU?

15 A YES.

16 Q THEN THEY SAID, "IS THERE ANYTHING ELSE YOU
17 WISH TO TELL ME?"

18 A YES.

19 Q DO YOU REMEMBER THAT?

20 A YES.

21 Q AND YOU TOLD THEM, "IF YOU CHECK WITH THE
22 TEACHERS, YOU WILL FIND OUT THAT H.G. HAS BEEN
23 GOING AFTER MINOR EVER SINCE THEY TRANSFERRED
24 HER TO HIS CLASS."

25 A AND THAT'S WHAT SHE TOLD US.

1 Q THAT WOULD BE MS. WILSON, WHO TESTIFIED
2 EARLIER?

3 A YES.

4 Q AND SHE TOLD YOU THAT?

5 A YES.

6 Q HOW LONG HAD THAT CHILD BEEN TRANSFERRED INTO
7 HER BROTHER'S CLASS?

8 A THE DAY BEFORE.

9 Q SO YOU WERE ABLE TO GIVE YOUR SECOND
10 STATEMENT, BUT ONCE AGAIN THEY DIDN'T HEAR YOU AND
11 THEY WROTE IT DOWN WRONG, AND ALL THIS STUFF
12 HAPPENED SO YOU SIGNED IT AGAIN?

13 A YES.

14 Q BUT YOU KNEW THIS ONE HAD SOME STUFF THAT WAS
15 REALLY NOT TRUE?

16 A RIGHT.

17 Q SO WHY DID YOU SIGN IT?

18 A THEY TOLD ME I HAD TO SIGN IT.

19 Q AND AGAIN, SIR, YOU UNDERSTOOD WHAT YOUR
20 RIGHTS WERE?

21 A YEAH.

22 Q DO YOU REMEMBER ON DIRECT TESTIMONY YOUR
23 LAWYER ASKED YOU ABOUT WHY YOU HAD SIGNED THESE
24 STATEMENTS AND YOU SAID EVERYTHING IN THIS FIRST
25 STATEMENT WAS ACCURATE?

1 A ACCURATE?

2 Q THAT'S YOUR WORD, NOT MINE.

3 A NO. I MIGHT HAVE, BUT...

4 Q AND YOU KNEW THEY WERE FORCING YOU TO SIGN
5 THAT FIRST STATEMENT, IS YOUR TESTIMONY HERE NOW,
6 BUT YOU WENT AHEAD AND SIGNED A SECOND ONE THAT
7 WAS EVEN WORSE?

8 A THEY TOLD ME I HAD TO SIGN IT.

9 MS. CAMPBELL: I DON'T HAVE ANYTHING ELSE,
10 YOUR HONOR.

11 THE COURT: ANYTHING ON REDIRECT?

12 MS. COGGIOLA: THREE VERY QUICK QUESTIONS,
13 YOUR HONOR.

14 REDIRECT EXAMINATION

15 BY MS. COGGIOLA:

16 Q YOU SAID THAT WHEN YOU GOT THE CHILDREN YOU
17 WERE NOT ENTITLED TO GET THEIR WHOLE MEDICAL
18 HISTORIES UNTIL THE ADOPTION WAS COMPLETED; IS
19 THAT TRUE?

20 A TRUE.

21 Q DID YOU TAKE THE CHILDREN FOR REGULAR MEDICAL
22 CARE, COLDS AND FLU, AND EXAMS?

23 A NO.

24 Q YOU OR YOUR WIFE?

25 A YEAH.

1 Q WERE THE CHILDREN TAKEN IN FOR MEDICAL CARE?

2 A YES, SHE TOOK THEM IN.

3 Q DID ANYBODY TELL YOU IN THE COURSE OF THAT
4 MEDICAL CARE THAT THERE WERE ANY MAJOR HEALTH
5 PROBLEMS GOING ON WITH YOUR CHILDREN?

6 A NO.

7 Q AND SO THE MORNING THAT THIS HAPPENED WITH
8 MINOR , HAD YOU EVER SEEN THIS BEFORE IN A CHILD,
9 THE WAY SHE WAS ACTING?

10 A NO.

11 Q DID YOU KNOW WHAT YOU WERE DEALING WITH? DID
12 YOU KNOW AT THAT POINT WHAT WAS GOING ON WITH
13 MINOR 'S HEALTH?

14 A NO.

15 Q AND SO YOU CALLED YOUR WIFE?

16 A YES.

17 Q DID YOU DESCRIBE THIS AT THE HOSPITAL THE
18 BEST WAY YOU KNEW HOW?

19 A YES, I DID.

20 Q AND WHEN WE TALKED ABOUT THE STATEMENTS, YOU
21 SAID THAT WHEN YOU WERE ASKED IF THERE WERE THINGS
22 THAT WERE LEFT OUT, THAT YOU TOLD THEM THERE WERE
23 THINGS THAT WERE LEFT OUT?

24 A YES.

25 Q DID YOU TELL THEM THAT YOU SPANKED THE

1 CHILDREN?

2 A YES, I DID.

3 MS. COGGIOLA: OKAY. I HAVE NOTHING FURTHER.

4 THE COURT: ANYTHING ELSE.

5 RE CROSS-EXAMINATION

6 BY MS. CAMPBELL:

7 Q BUT YOU NEVER TOLD ANYBODY AT THE HOSPITAL

8 THAT YOU HAD SPANKED YOUR CHILDREN, DID YOU,

9 MR. MITCHELL?

10 A I'M NOT SURE IF I DID OR DIDN'T.

11 MS. CAMPBELL: THANK YOU.

12 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU

13 MAY STEP DOWN.

14 ANY FURTHER WITNESSES FROM THE DEFENSE?

15 MS. COGGIOLA: NO, SIR.

16 THE COURT: DEFENSE RESTS.

17 REPLY FROM THE STATE?

18 MS. COOPER: YES, SIR, YOUR HONOR. THE STATE

19 CALLS --

20 THE COURT: WE'RE GOING TO TAKE A BREAK.

21 I'LL LET YOU TAKE A SHORT BREAK. DON'T BEGIN ANY

22 COMMENT OR DISCUSSION ABOUT THE CASE.

23 (WHEREUPON, THE JURY LEFT OPEN COURT AT
24 APPROXIMATELY 3:34.)

25 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

892

1 THE COURT: ALL RIGHT. BRING THE JURY IN.

2 (WHEREUPON, THE JURY CAME INTO OPEN

3 COURT AT APPROXIMATELY 3:57.)

4 THE BAILIFF: THE JURY'S ALL PRESENT, YOUR

5 HONOR.

6 THE COURT: ALL RIGHT. MADAM SOLICITOR, CALL

7 YOUR NEXT WITNESS.

8 MS. CAMPBELL: YES, SIR, THE STATE CALLS

9 DR. NICHOLS.

10 THE CLERK: PLACE YOUR LEFT HAND ON THE BIBLE

11 AND RAISE YOUR RIGHT HAND.

12 DR. CLAY NICHOLS,

13 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: PLEASE HAVE A SEAT. STATE YOUR

15 FULL NAME, SPELL YOUR LAST NAME.

16 THE WITNESS: CLAY NICHOLS, N-I-C-H-O-L-S.

17 DIRECT EXAMINATION

18 (REPLY)

19 BY MS. CAMPBELL:

20 Q WHERE ARE YOU EMPLOYED?

21 A I'M A FORENSIC PATHOLOGIST AT RICHLAND

22 MEMORIAL HOSPITAL.

23 Q AND AS A FORENSIC PATHOLOGIST, WHAT DO YOU

24 DO?

25 A I DO AUTOPSIES ON PEOPLE WHO DIE A SUSPICIOUS

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

893

1 OR UNNATURAL DEATH.

2 Q HOW LONG HAVE YOU BEEN A FORENSIC
3 PATHOLOGIST?

4 A SINCE 1990.

5 Q CAN YOU TELL THIS JURY A LITTLE ABOUT YOUR
6 EDUCATION AND YOUR TRAINING IN THE MEDICAL FIELD?

7 A I RECEIVED MY BACHELORS OF SCIENCE DEGREE
8 FROM THE UNIVERSITY OF OKLAHOMA IN 1981. IN 1985
9 I RECEIVED MY MEDICAL DEGREE ALSO FROM THE
10 UNIVERSITY OF OKLAHOMA. AFTER THAT I ENTERED A
11 RESIDENCY PROGRAM IN FORENSIC PATHOLOGY; I
12 COMPLETED THAT IN 1990.

13 AFTER THAT I WAS ON THE FACULTY AT M.U.S.C.,
14 BOTH AS AN ASSISTANT AND ASSOCIATE PROFESSOR,
15 WHERE I TAUGHT IN BOTH PLACES IN PATHOLOGY AS WELL
16 AS FORENSIC PATHOLOGY TO MEDICAL STUDENTS,
17 DOCTORS, AND FORENSIC FELLOWS. SINCE DECEMBER OF
18 2000, I'VE BEEN ON STAFF AT PALMETTO RICHLAND.

19 Q ARE YOU BOARD CERTIFIED IN ANY AREAS?

20 A I'M BOARD CERTIFIED IN BOTH ANATOMIC AND
21 FORENSIC PATHOLOGY.

22 Q AND HAVE YOU BEEN APPOINTED IN ANY SPECIAL
23 CAPACITIES?

24 A YES. EARLIER THIS YEAR I WAS APPOINTED BY
25 GOVERNOR HODGES TO SIT ON THE CHILD FATALITY

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

894

1 ADVISORY COMMITTEE FOR THE STATE.

2 Q DOCTOR, YOU MENTIONED THAT YOU TAUGHT, WHEN
3 YOU WERE DOWN AT CHARLESTON, AT THE UNIVERSITY
4 DOWN THERE?

5 A THAT'S CORRECT.

6 Q DO YOU ALSO PARTICIPATE IN ANY OTHER TEACHING
7 PROGRAMS?

8 A YES. I ALSO TEACH AT THE NATIONAL DISTRICT
9 ATTORNEY'S ASSOCIATION WHERE I TEACH DISTRICT
10 ATTORNEYS FROM AROUND THE COUNTRY THE ESSENTIALS
11 OF CHILD ABUSE.

12 Q YOU TEACH THEM ABOUT CHILD ABUSE?

13 A CHILD ABUSE, YES, MA'AM.

14 Q AND THAT IS AN AREA YOU ARE VERY FAMILIAR
15 WITH?

16 A YES, SIR.

17 MR. STRICKLER: I'LL OBJECT TO THE LEADING AS
18 SHE QUALIFIES HIM.

19 THE COURT: SUSTAINED.

20 MS. CAMPBELL: YOUR HONOR, AT THIS TIME WE'D
21 OFFER HIM AS AN EXPERT IN FORENSIC PATHOLOGY.

22 THE COURT: DO YOU WISH TO QUESTION HIM?

23 MR. STRICKLER: I HAVEN'T SEEN HIS C.V., SO I
24 DON'T KNOW IF I NEED TO QUESTION HIM OR NOT SO --
25 NO QUESTIONS AT THIS POINT.

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

895

1 THE COURT: YOU MAY PROCEED.

2 MS. CAMPBELL: THANK YOU.

3 BY MS. CAMPBELL:

4 Q DOCTOR, HAVE YOU HAD AN OPPORTUNITY TO REVIEW
5 SOME RECORDS INVOLVING A CHILD NAMED MINOR

6 ?

7 A YES, I HAVE.

8 Q AND, IN FACT, PRIOR TO THIS TRIAL YOU WERE
9 CONSULTED, I BELIEVE, BY DR. BURNS IN THIS CASE?

10 A YES, I WAS.

11 Q AND IN WHAT CAPACITY WERE YOU CONSULTED BY
12 HIM?

13 A HE PERFORMED THE AUTOPSY, I BELIEVE, IN MARCH
14 OR THE FIRST OF APRIL OF 2000, AND HE WANTED ME --

15 MR. STRICKLER: OBJECT. IMPROPER REPLY
16 TESTIMONY.

17 THE COURT: SUSTAINED AT THIS POINT.

18 DO YOU WANT TO COME UP HERE AND TELL ME ABOUT
19 IT?

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD
21 IN THE PRESENCE OF THE JURY, BUT OUT OF
22 THE HEARING OF THE JURY.)

23 THE COURT: ALL RIGHT. THE REPLY IS LIMITED
24 TO ANY REPLY TO THE DEFENSE WITNESSES.

25 BY MS. CAMPBELL:

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

896

1 Q DOCTOR, FORENSIC PATHOLOGISTS, ARE THERE
2 OTHER FORENSIC PATHOLOGISTS HERE IN SOUTH
3 CAROLINA?

4 A YES, THERE.

5 Q AND ARE THERE OTHER FORENSIC PATHOLOGISTS
6 ALSO IN GEORGIA?

7 A YES.

8 Q NORTH CAROLINA?

9 A YES.

10 Q TENNESSEE?

11 A YES.

12 Q FLORIDA?

13 A YES.

14 Q ALABAMA?

15 A YES.

16 Q VIRGINIA?

17 A YES.

18 Q SO IN ORDER TO CONSULT WITH ANOTHER FORENSIC
19 PATHOLOGIST, YOU DON'T HAVE TO GO TO ANOTHER PART
20 OF THE COUNTRY?

21 MR. STRICKLER: I'LL OBJECT TO THE LEADING.

22 THE COURT: SUSTAINED AS TO THE LEADING.

23 BY MS. CAMPBELL:

24 Q SO THERE ARE OTHER FORENSIC PATHOLOGISTS HERE
25 IN --

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

897

1 MR. STRICKLER: OBJECTION, YOUR HONOR. ASKED
2 AND ANSWERED.

3 THE COURT: OVERRULED.

4 MS. CAMPBELL:

5 Q GO AHEAD, DOCTOR.

6 A WHAT WAS THE QUESTION?

7 Q THERE ARE OTHER FORENSIC PATHOLOGISTS,
8 REPUTABLE FORENSIC PATHOLOGISTS, HERE IN THE
9 SOUTHEAST?

10 MR. STRICKLER: I OBJECT TO THE LEADING.

11 THE COURT: OVERRULED.

12 BY MS. CAMPBELL:

13 Q DOCTOR, SPECIFICALLY A DR. ROSS FROM
14 PENNSYLVANIA CAME IN AND TESTIFIED ABOUT CERTAIN
15 ISSUES, AND I WANT YOU TO ADDRESS THOSE SPECIFIC
16 ISSUES NOW.

17 A YES, MA'AM.

18 Q THE FIELD OF BIOMECHANICS, IS THAT A MEDICAL
19 FIELD?

20 MR. STRICKLER: I'M JUST WAITING, YOUR HONOR.

21 THE COURT: ALL RIGHT. GO AHEAD.

22 IF YOU HAVE AN OBJECTION, STATE IT. IF NOT,
23 SIT DOWN.

24 MR. STRICKLER: I DON'T HAVE AN OBJECTION
25 YET.

1 THE COURT: ALL RIGHT.

2 MS. CAMPBELL:

3 Q GO AHEAD.

4 A WHILE SOME PHYSICIANS DO PARTICIPATE IN
5 BIOMECHANICS, BIOMECHANICS IS ESSENTIALLY AN
6 ENGINEERING FIELD.

7 Q IT'S AN ENGINEERING FIELD?

8 A YES, MA'AM.

9 Q ARE YOU FAMILIAR WITH THE TERM REBLEEDING?

10 A YES, MA'AM.

11 Q CAN IT OCCUR SPONTANEOUSLY IN A TODDLER?

12 A NO.

13 Q IS THERE A DIFFERENCE BETWEEN OLDER PEOPLE,
14 SUCH AS PEOPLE THAT ARE IN THEIR 60'S, 70'S, AND
15 80'S VERSUS YOUNGER PEOPLE IN REBLEEDING?

16 A YES.

17 Q CAN YOU EXPLAIN THAT TO THE JURY FOR ME,
18 PLEASE?

19 A THE AREA WHICH IS UNDER DISCUSSION IS
20 REBLEEDING IN THE SUBDURAL HEMATOMA. I BELIEVE
21 THERE HAS BEEN A FAIR AMOUNT OF DISCUSSION ABOUT
22 THAT ALREADY. IN OLDER PEOPLE'S BRAINS AND IN
23 PEOPLE WHO HAVE SENILE DEMENTIA, ALZHEIMER'S
24 DISEASE, AND OTHER PROBLEMS OF THE BRAIN WHERE
25 THERE'S ACTUALLY SHRINKING IN THE BRAIN, SUCH AS

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

899

1 ALCOHOLICS, THERE'S MORE ROOM FOR THE BRAIN TO
2 MOVE AROUND.

3 PEOPLE OFTEN GET A SUBDURAL HEMATOMA AS A
4 RESULT OF AN INJURY, BECAUSE OF THAT THE BRAIN IS
5 STILL SMALLER, THE BRAIN CAN STILL MOVE AROUND TO
6 SOME DEGREE, THEN GET A REBLEED ON TOP OF THAT.
7 FOR SOMEBODY WITH A NORMAL SIZE BRAIN, A NORMAL
8 INFANT, THIS REALLY DOESN'T OCCUR TO ANY
9 SIGNIFICANT DEGREE.

10 Q DR. ROSS ALSO TESTIFIED ABOUT REBLEEDING CAN
11 BE CAUSED BY INFECTIONS, BY GLUCOSE -- HE SAID
12 SOMETHING ABOUT SUGAR WATER AND SHORT FALLS
13 CAUSING THEM. YOU REVIEWED THE RECORDS IN THIS
14 CASE, CORRECT?

15 A YES, I HAVE.

16 Q IS THERE ANY SIGN OF THAT IN THIS CASE?

17 A NO. IN FACT, I'M RATHER AMAZED THAT ALTHOUGH
18 PEOPLE HAVE BROUGHT UP THE FACT OF OTHER DISEASES
19 AFTER A CHILD WAS ADMITTED FOR FOUR DAYS IN THE
20 HOSPITAL AND SEEN BY NUMEROUS PHYSICIANS AND AN
21 AUTOPSY WAS PERFORMED, NO SUCH OTHER DISEASES WERE
22 EVER IDENTIFIED.

23 Q THIS CHILD DIDN'T HAVE ANY OTHER DISEASES?

24 A NO.

25 Q IS THERE ANY EVIDENCE OF ANY KIND OF A

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

900

1 BLEEDING DISORDER OR A BLOOD DISORDER WITH MINOR

2 ?

3 A THE EVIDENCE FOR A BLEEDING DISORDER OR
4 COAGULOPATHY COMES FROM THE FACT THAT SHE DID HAVE
5 A HEAD INJURY. IT WAS MENTIONED, I BELIEVE, IN
6 TESTIMONY YESTERDAY THAT AMONG OTHER THINGS THAT
7 HAPPEN WHEN A BRAIN IS INJURED, A COMPONENT KNOWN
8 AS THROMBOPLASTIN IS RELEASED WHICH WILL TEND TO
9 INTERFERE WITH CLOTTING. YOU GET THE FORMATION OF
10 RED BLOOD CELLS AND SCHISTOCYTES. THERE ARE ALSO
11 PROBLEMS WITH CERTAIN ENZYMES AND CLOTTING FACTORS
12 THAT CAN ALSO AFFECT BLEEDING TIME. THAT DID NOT
13 CAUSE THIS INJURY. THAT WAS CAUSED AS A RESULT OF
14 THE BRAIN INJURY.

15 Q IT WAS CAUSED AS A RESULT OF THE BRAIN
16 INJURY?

17 A THAT'S CORRECT.

18 Q DR. ROSS ALSO DENIED THAT THERE WAS AN ACUTE
19 SUBDURAL HEMATOMA IN THIS CASE INVOLVING MINOR

20 --

21 MR. STRICKLER: OBJECTION. THAT COMPLETELY
22 MISSTATES HIS TESTIMONY.

23 THE COURT: I DON'T RECALL MYSELF. JUST
24 REPHRASE THE QUESTION.

25 BY MS. CAMPBELL:

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

901

1 Q CAN YOU ADDRESS THE ISSUE OF THE ACUTE
2 SUBDURAL HEMATOMA IN THIS CASE?

3 A YES, THERE WAS AN ACUTE SUBDURAL HEMATOMA IN
4 THIS CASE.

5 Q THERE WAS ONE?

6 A YES, MA'AM.

7 Q AND WAS THAT A SEPARATE SUBDURAL HEMATOMA
8 FROM THE ONE DR. CLOSE CHARACTERIZED AS ABOUT A
9 MONTH OLD?

10 A YES, THERE WAS.

11 Q AND WAS THERE A SIGNIFICANT DIFFERENCE IN THE
12 SIZE ON THESE TWO?

13 A IT WAS MY UNDERSTANDING THAT THE OLDER OR
14 WHAT'S CALLED THE CHRONIC HEMATOMA WAS SMALLER AND
15 SOMEWHAT INSIGNIFICANT. THE NEWER ONE WAS MORE
16 SIGNIFICANT AND WAS LARGER IN SIZE.

17 Q WERE THESE TWO SEPARATE TRAUMATIC EVENTS?

18 A I FEEL THAT THEY WERE, YES, MA'AM.

19 Q HE ALSO TALKED ABOUT THE SWELLING IN THE
20 BRAIN OR THE PRESSURE IN THE BRAIN CAUSING RETINAL
21 HEMORRHAGES.

22 IN THIS CASE, DID THE CEREBRAL EDEMA CAUSE
23 THE RETINAL HEMORRHAGES IN THIS CASE?

24 A NO, THEY DID NOT. IN FACT, IT'S MORE THAN
25 JUST RETINAL HEMORRHAGES. THE HEMORRHAGE WAS

1 THROUGH ALL LAYERS OF THE RETINA INTO THE RETRO-
2 ORBITAL SPACE, THROUGH THE OPTIC NERVE, AND
3 ACTUALLY TO WHERE THE OPTIC NERVES CROSS ONE
4 ANOTHER AND ACTUALLY SERVE TO THE BRAIN IN WHAT'S
5 KNOWN AS THE OPTIC HYAST (PHONETIC).

6 Q AND THE RETINAL HEMORRHAGES IN THIS CASE --
7 YOU CAN GET RETINAL HEMORRHAGES FROM BRAIN
8 SWELLING, CAN YOU NOT?

9 A TO SOME DEGREE, YES.

10 Q NOT IN THIS CASE?

11 A NO, NOT IN THE THIS CASE, NOT AT ALL.

12 Q AND, DOCTOR, YOU DON'T NEED TO REPEAT
13 EVERYTHING THAT DR. CHRISTMANN SAID, BUT FOR WHAT
14 REASONS IS THAT?

15 A WHAT I MENTIONED BEFORE IS THAT THE
16 SIGNIFICANCE IS THAT THE HEMORRHAGE IS ALL
17 THROUGHOUT THE EYE, ALL THE WAY THROUGH THE OPTIC
18 NERVE, ALL THE WAY TO THE BACK OF THE BRAIN.
19 WE'RE NOT TALKING ABOUT A LITTLE BIT OF SPOTTING
20 HEMORRHAGE HERE AND THERE AS AN INCIDENTAL
21 SECONDARY EFFECT OF BRAIN SWELLING. THIS IS
22 CLEARLY A TRAUMATIC EVENT.

23 Q IN HIS REVIEW OF THE AUTOPSY OF THE RECORDS
24 OF MINOR AND THE C.T. SCANS AND EVERYTHING,
25 DR. ROSS TESTIFIED THAT THIS CASE IS MERELY

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

903

1 SUSPICIOUS OF CHILD ABUSE. WHAT IS YOUR OPINION,
2 DOCTOR?

3 A NO. THIS IS CLEARLY CHILD ABUSE.

4 Q DR. ROSS ALSO SAID THAT SUBDURAL HEMATOMA
5 PLUS RETINAL HEMORRHAGES PLUS THE EDEMA, OR
6 SWELLING, DOES NOT EQUAL CHILD ABUSE.

7 A IN THIS CASE IT CERTAINLY DOES. IF YOU WERE
8 LOOKING ABOUT SOMEBODY WHO WAS IN AN AUTOMOBILE
9 ACCIDENT, A PLANE WRECK, A SIGNIFICANT FALL, SOME
10 OTHER BIG TRAUMATIC EVENT, WE'D HAVE TO BACK OFF
11 OF THAT, BUT IN THIS CASE THERE'S NO HISTORY OF
12 THAT, NO. MINOR CLEARLY DIED AS A
13 RESULT OF CHILD ABUSE.

14 Q HE ALSO DECIDED HE WOULD NOT BE ABLE TO MAKE
15 ANY CONCLUSIONS IN THIS CASE WITHOUT KNOWING WHAT
16 CAUSED THE OLDER HEMATOMA. IS THAT TRUE?

17 A NO.

18 Q DOES IT HAVE ANY EFFECT ON THE ACUTE OR THAT
19 RECENT TRAUMA IN THIS CASE?

20 A NO, IT DOESN'T, BUT IT ALSO ADDS CREDENCE TO
21 THE FACT THAT IT SHOULD NOT BE THERE, AND WITH THE
22 ABSENCE OF ANY OTHER NATURAL DISEASES, THAT IS
23 MORE THAN LIKELY A TRAUMATIC EVENT ALSO.

24 Q BUT IN YOUR OPINION THE ACUTE HEMATOMA,
25 COMBINED WITH THE RETINAL HEMORRHAGES COMBINED

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

904

1 WITH THE SWELLING OF THE BRAIN IS DEFINITELY CHILD
2 ABUSE?

3 A OH, ABSOLUTELY.

4 Q AND THE OTHER ONE IS SUSPICIOUS OF PRIOR
5 CHILD ABUSE?

6 A YES.

7 Q WOULD SHE HAVE NECESSARILY HAD TO HAVE
8 TREATMENT FOR THE OLDER HEMATOMA?

9 A OBVIOUSLY, NOT. IT'S ESTIMATED TO BE WEEKS
10 OLD. SHE SEEMED TO FUNCTION SOMEWHAT NORMALLY,
11 BUT IT'S STILL A SIGNIFICANT EVENT. AS A RESULT
12 OF WHATEVER CAUSED THAT, MEDICAL TREATMENT SHOULD
13 HAVE BEEN SOUGHT.

14 Q MINOR 'S MEDICAL RECORDS, WHERE YOU REVIEWED
15 THEM, DOES IT INDICATE THAT SHE WAS EXPERIENCING
16 HYPERTONIC GLUCOSE OR THAT SUGAR WATER THING?

17 A NO.

18 Q DR. ROSS ALSO SAID SHE HAD A CLOTTING
19 DISORDER. IS THERE ANY EVIDENCE OF THAT IN THE
20 MEDICAL RECORDS IN THIS CASE?

21 A ONCE AGAIN, THE PROBLEMS COME AS A RESULT OF
22 THE BRAIN INJURY. YOU GET THE SCHISTOCYTE
23 FORMATION, THE D-DIMER CLOTTING ABNORMALITY THAT
24 DID NOT CAUSE THIS INJURY, DID NOT IN ANY WAY
25 PRECIPITATE THIS. THE CLOTTING DISORDER WAS

DIRECT OF NICHOLS BY CAMPBELL. 905
(REPLY)

1 | PRECIPITATED BY THE BRAIN INJURY ITSELF.

2 Q DR. ROSS HAD ALSO INDICATED THAT IN A SHAKEN
3 BABY CASE SOME KIND OF IMPACT IS NECESSARY TO
4 CAUSE THE TYPE OF INJURIES SEEN IN THIS CASE. IS
5 THAT TRUE?

6 A THAT'S WHAT HE MENTIONED YESTERDAY. FIRST
7 OFF, I DON'T BELIEVE THAT'S NECESSARILY SO, BUT
8 ALSO IN MINOR 'S CASE THERE IS EVIDENCE OF
9 IMPACT, THERE'S BRUISING AROUND THE BASE OF THE
10 SKULL, PLUS THERE'S ALSO A CONTUSION ON THE RIGHT
11 EYE, BRUISING OVER THE EYE.

12 Q SO IN YOUR OPINION, DOCTOR, IN THIS CASE
13 THERE WOULD BE SHAKEN BABY, AS WELL AS SOME KIND
14 OF BLOW TO THE HEAD AREA?

15 | A THAT'S CORRECT.

16 Q DR. ROSS ALSO TESTIFIED ABOUT SOME
17 BIOMECHANICS EXAMPLE THAT IT WOULD TAKE 80 G'S OF
18 FORCE TO CAUSE THE TRAUMA.

19 MR. STRICKLER: I'LL OBJECT ON THAT POINT,
20 YOUR HONOR. SHE'S ASKING HIM TO COMMENT ON
21 BIOMECHANICS. HE'S NOT QUALIFIED. I QUALIFIED
22 DR. ROSS IN MY DIRECT.

23 THE COURT: YOU ALL COME UP HERE JUST A
24 SECOND.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

906

1 IN THE PRESENCE OF THE JURY, BUT OUT OF
2 THE HEARING OF THE JURY.)

3 THE COURT: FOUNDATION.

4 MS. CAMPBELL: THANK YOU.

5 BY MS. CAMPBELL:

6 Q DOCTOR, WHEN I REFER TO G'S, IS THAT
7 GRAVITATIONAL FORCE?

8 A YES.

9 Q IS THAT THE AMOUNT OF FORCE NECESSARY?

10 A I DON'T THINK THAT'S NECESSARILY TRUE. THERE
11 MIGHT BE PAPERS INDICATING THAT IT MIGHT BE A
12 CERTAIN AMOUNT OF FORCE TO CAUSE THAT, BUT WHEN IT
13 COMES TO PEOPLE, SOMETIMES SMALLER FORCES CAN
14 CAUSE MORE SIGNIFICANT INJURIES. SOME PEOPLE CAN
15 SURVIVE BIGGER IMPACTS. RATHER TO ACTUALLY SAY
16 THAT IT ONLY TAKES 80 G'S OR EXACTLY 80 G'S TO
17 CAUSE A PARTICULAR INJURY, THAT IS A FARFETCHED
18 NOTION.

19 Q IN THIS CASE, IT WOULD TAKE A SIGNIFICANT
20 FORCE TO CAUSE THAT?

21 A YES.

22 Q AND WOULD THAT BE CONSISTENT WITH SOME TYPE
23 OF ACCIDENTAL TRAUMA INFLICTED ON THE CHILD?

24 A NOT IN THIS CASE.

25 Q HE ALSO INDICATED THAT HE HAD DONE SOME

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

907

1 EXPERIMENTATION HIMSELF WITH A CABBAGE PATCH DOLL;

2 IS THAT APPROPRIATE?

3 A NO.

4 Q YOU ARE A FORENSIC PATHOLOGIST, DOCTOR?

5 A UH-HUH.

6 Q HOW MANY LIVE PATIENTS DO YOU HAVE?

7 A NONE.

8 Q DR. ROSS ALSO SAID SOMETHING ABOUT THAT THERE
9 WAS NO DURA OVER THE BRAIN AT THE AUTOPSY AND THAT
10 YOU'D HAVE TO LOOK AT THE DURA IN ORDER TO DATE AN
11 INJURY SUCH AS THIS; IS THAT TRUE?

12 A I THINK THE DURA WOULD HAVE BEEN SOMEWHAT
13 HELPFUL, BUT THE CLOT WAS EVACUATED. IF I
14 REMEMBER DR. ROSS'S TESTIMONY FROM YESTERDAY, HE
15 SAID THERE WOULD BE BILLIONS OF BLOOD VESSELS
16 WORKING THROUGHOUT TRYING TO HEAL IT. WHEN THE
17 CLOT ITSELF WAS EXTRACTED THERE WERE NO BLOOD
18 VESSELS IDENTIFIED.

19 Q AND THAT INDICATES WHAT, DOCTOR?

20 A IT WAS A FRESH CLOT, FRESH ACUTE SUBDURAL
21 HEMATOMA.

22 Q SO YOU'RE ABLE TO DATE IT IN THAT MANNER?

23 A YES.

24 Q THERE WAS BRUISING TO THE CHEST AND THE EYE
25 THAT WEREN'T NOTED ON THE INITIAL ADMISSION FORM,

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

908

1 BUT THEY WERE NOTED FOUR DAYS LATER. WHY WERE
2 THOSE NOTED LATER, DOCTOR?

3 A THEY WERE DOCUMENTED AT AUTOPSY. IF I
4 REMEMBER THE FORM CORRECTLY, THERE WERE NO
5 INJURIES DOCUMENTED ON THE FORM. NOT THAT IT SAID
6 THERE ARE NO INJURIES, BUT IT'S A STANDARD FORM
7 WHERE SOMEONE CIRCLES AN AREA THAT SAID THERE'S
8 BRUISING OR SOMETHING LIKE THAT. I THINK THEY
9 SAID IT'S VERY SIGNIFICANT THE FACT THAT NOT EVEN
10 THE BUTTOCKS BRUISE WAS INDICATED. MORE THAN
11 LIKELY, THIS FORM JUST WASN'T FILLED OUT IN THE
12 COURSE OF TRYING TO SAVE THE CHILD'S LIFE ON A
13 BUSY DAY RATHER THAN NO INJURIES BEING PRESENT.

14 Q YOU MENTIONED THE BRUISE ON MINOR 'S EYE.
15 COULD THAT HAVE BEEN CAUSED DUE TO THE RETINAL
16 HEMORRHAGE?

17 A NO, THAT'S CLEARLY -- TO ME THAT'S FROM A
18 STRIKE TO THE EYE.

19 Q AND THE SWELLING OF THE BRAIN, THAT WOULDN'T
20 HAVE BEEN CAUSED BY RETINAL HEMORRHAGES?

21 A NO, THE SWELLING IN THE BRAIN IS A DIRECT
22 RESULT OF THE VIOLENT SHAKING.

23 Q AFTER REVIEWING THESE RECORDS, DO YOU HAVE A
24 CAUSE OF DEATH, AN OPINION?

25 A YES, I DO.

DIRECT OF NICHOLS BY CAMPBELL
(REPLY)

909

1 Q WHAT IS YOUR OPINION?

2 A EDEMA OF THE BRAIN TISSUE ASSOCIATED WITH THE
3 HEMATOMA, AND THIS IS A DIRECT RESULT OF VIOLENT
4 SHAKING.

5 Q IN FORENSIC PATHOLOGY, YOU ALSO HAVE WHAT WE
6 CALL THE MANNER OF DEATH?

7 A THAT'S CORRECT.

8 Q HOW WOULD YOU CHARACTERIZE THIS CASE?

9 A THIS IS CLEARLY A HOMICIDE. SHE DIED AS A
10 DIRECT RESULT OF SOMEBODY ELSE'S ACTIONS ON HER.

11 Q DR. ROSS CONCLUDED THAT THE SUBDURAL HEMATOMA
12 WAS NOT SOLELY CAUSED BY CHILD ABUSE. THAT WAS
13 HIS TESTIMONY. HE ALSO TESTIFIED THAT THE RETINAL
14 HEMORRHAGES WERE NOT SOLELY CAUSED BY CHILD ABUSE,
15 AND THE CEREBRAL EDEMA WAS NOT SOLELY CAUSED BY
16 CHILD ABUSE. WHAT IF ALL OF THREE OF THESE ARE
17 PRESENT?

18 A THIS IS A CLASSIC CASE OF SHAKEN BABY
19 SYNDROME. WE HAVE AN INDIVIDUAL TWO YEAR OLD THAT
20 HAS SUBDURAL HEMATOMAS. YOU HAVE THE CEREBRAL
21 EDEMA CAUSED BY BRAIN INJURY. YOU HAVE THE
22 RETINAL HEMORRHAGES, WHICH IN THIS CASE IS NOT
23 JUST RETINAL HEMORRHAGE, BUT ALL THE WAY BACK TO
24 THE BRAIN. IT DOESN'T GET MY MORE CLASSIC AS FAR
25 AS THE DEFINITION FOR SHAKEN BABY.

CROSS OF NICHOLS BY STRICKLER
(REPLY)

910

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

2 (PAUSE)

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

4 THE COURT: CROSS-EXAMINATION, MR. STRICKLER?

5 MR. STRICKLER: YES, SIR, THANK YOU.

6 CROSS-EXAMINATION

7 BY MR. STRICKLER:

8 Q SO YOU GOT APPOINTED TO WHAT, THIS CHILD
9 REVIEW DEATH COMMITTEE IN THIS STATE? WHAT IS IT
10 THAT YOU JUST GOT APPOINTED TO?

11 A THE STATE CHILD FATALITY ADVISORY COMMITTEE.

12 Q OKAY. SO I THINK THAT WOULD BE KIND OF THE
13 STATE EQUIVALENT OF THE YORK COUNTY CHILD DEATH
14 AND INJURY REVIEW PANEL, OF WHICH DR. ROSS HAS
15 BEEN A MEMBER SINCE 1995, RIGHT?

16 A I DON'T KNOW THAT.

17 Q OKAY. THEY BOTH HAVE CHILD FATALITY REVIEW
18 IN THEM. I JUST FIGURED THEY MIGHT BE RELATED,
19 YOU KNOW, CONCEPTUALLY IN SOME MANNER.

20 A WELL, I DON'T KNOW.

21 Q YOU DON'T KNOW?

22 A NO.

23 Q OKAY. THAT'S FINE. NOW LET ME SEE. YOU
24 REVIEWED THIS INFORMATION IN PREPARATION FOR THIS
25 TRIAL, AND YOU TALKED WITH DR. BURNS; IS THAT

CROSS OF NICHOLS BY STRICKLER
(REPLY)

911

1 RIGHT?

2 A YES.

3 Q WHEN DID YOU CONSULT WITH DR. BURNS?

4 A I CONSULTED WITH DR. BURNS SEVERAL TIMES --

5 Q WHEN?

6 A EARLIER THIS YEAR.

7 Q WHEN?

8 A I DON'T REMEMBER EXACTLY.

9 Q WHAT DO YOUR NOTES REVEAL, SIR, FROM THIS
10 CONSULTATION?

11 A I DID NOT PREPARE ANY FORMAL NOTES FOR THIS
12 CONSULTATION.

13 Q OKAY. AND HOW LONG DID YOUR CONSULTATION
14 WITH DR. BURNS LAST, EARLIER THIS YEAR, AT SOME
15 INDETERMINATE PERIOD OF TIME?

16 A ABOUT TWENTY TO THIRTY MINUTES.

17 Q TWENTY-THREE MINUTES?

18 A TWENTY TO THIRTY.

19 Q OKAY. SO YOU SPENT TWENTY TO THIRTY MINUTES
20 WITH DR. BURNS. OKAY. AND YOU CONSULTED WITH HIM
21 ON SEVERAL OCCASIONS. THAT'S ONE.

22 A UH-HUH.

23 Q WHAT WOULD BE THE NEXT ONE SIR, WHEN?

24 A LAST WEEK.

25 Q LAST WEEK YOU TALKED TO DR. BURNS. AND HOW

CROSS OF NICHOLS BY STRICKLER
(REPLY)

912

1 LONG DID YOU CONSULT WITH DR. BURNS LAST WEEK OR
2 RATHER FOR HOW LONG DID YOU CONSULT WITH DR. BURNS
3 LAST WEEK?

4 A ABOUT TWENTY TO THIRTY MINUTES.

5 Q TWENTY TO THIRTY MINUTES?

6 A YES.

7 Q OKAY. AND THEN YOU CONSULTED WITH HIM ON
8 ANOTHER OCCASION?

9 A YES, ALSO AGAIN LAST WEEK.

10 Q AGAIN, A THIRD -- A SECOND TIME LAST WEEK.

11 A YES.

12 Q AND FOR HOW LONG DID YOU CONSULT WITH HIM AT
13 THAT POINT IN TIME, SIR?

14 A APPROXIMATELY 15 MINUTES.

15 Q ABOUT 15 MINUTES?

16 A YES.

17 Q OKAY. AND AGAIN WITH DR. BURNS?

18 A THIS WEEK.

19 Q THIS WEEK?

20 A YES.

21 Q AND FOR HOW LONG DID YOU CONSULT WITH HIM
22 THEN, SIR?

23 A APPROXIMATELY TEN MINUTES.

24 Q OKAY. TEN OR SO MINUTES. OKAY. AND AGAIN?

25 DID YOU CONSULT WITH HIM SOME MORE?

CROSS OF NICHOLS BY STRICKLER
(REPLY)

913

1 A NO.

2 Q AND THEN YOU REVIEWED THE RECORDS IN THIS
3 CASE?

4 A YES.

5 Q WHEN DID YOU CONDUCT THE REVIEW OF THESE
6 RECORDS?

7 A THE RECORDS WERE MADE AVAILABLE LAST WEEK.

8 Q LAST WEEK, LAST WEEK THE RECORDS WERE GOTTEN
9 TO YOU. OKAY. AND WHAT PERTINENT RECORDS WERE
10 PROVIDED TO YOU, SIR?

11 A THE MEDICAL RECORDS --

12 Q WHICH MEDICAL RECORDS, SIR?

13 A THE ADMISSION RECORDS.

14 Q THE ADMISSION RECORDS. THAT'S THE FULL CHART
15 IN THIS CASE?

16 A IT WAS.

17 Q OKAY. WHAT ELSE?

18 A THE X-RAYS, IF NECESSARY.

19 Q THE X-RAYS OR C.T. SCANS?

20 A WELL, TO ME THEY'RE THE SAME.

21 Q OKAY. BUT THERE WEREN'T -- WERE THERE
22 ADDITIONAL X-RAYS TAKEN?

23 A NO, C.T. SCANS.

24 Q I JUST WONDERED. WHAT ELSE, SIR?

25 A THAT'S ABOUT IT.

CROSS OF NICHOLS BY STRICKLER
(REPLY)

914

1 Q SO YOU REVIEWED THE ADMISSION RECORDS, WHICH
2 WOULD INCLUDE THE CHILD'S CHART FROM ADMISSION TO
3 THE TIME SHE WAS DECLARED; IS THAT, CORRECT?

4 A YES.

5 Q AND THE C.T.'S?

6 A YES.

7 Q AND I WOULD ASSUME THAT IN YOUR CONVERSATIONS
8 WITH DR. BURNS YOU HAD ACCESS TO THE AUTOPSY
9 REPORT ALSO?

10 A OH, YES.

11 Q AND THE CONCLUSIONS IN THAT REGARD, RIGHT?

12 A YES.

13 Q VERY GOOD, SIR. AND YOUR REVIEW OF THESE
14 RECORDS -- NOW YOU SAID THESE WERE PROVIDED LAST
15 WEEK, AND HOW LONG DID YOU SPEND REVIEWING THESE
16 RECORDS, SIR?

17 A AN HOUR OR TWO.

18 Q ONE TO TWO HOURS?

19 A UH-HUH.

20 Q OKAY. AND THEN I NOTICED YOU CAME AND CAMPED
21 OUT IN THE COURTROOM YESTERDAY WHILE DR. ROSS WAS
22 TESTIFYING; IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q SO YOU REVIEWED HIS TESTIMONY, TOO, LIVE,
25 RIGHT?

CROSS OF NICHOLS BY STRICKLER
(REPLY)

915

1 A YES.

2 Q HOWEVER LONG THAT WAS. THAT WAS PROBABLY
3 JUST SOMETHING SHORT OF TWO HOURS, I GUESS, ON THE
4 DIRECT AND CROSS. SO YOU SPENT TWO HOURS FINDING
5 OUT WHAT THE OTHER SIDE WAS GOING TO HAVE TO SAY
6 SO YOU COULD SIT DOWN AND PREPARE WHAT YOU HAVE TO
7 SAY IN RESPONSE TO IT, RIGHT? OKAY. WHAT OTHER
8 PREPARATION HAVE YOU DONE, SIR?

9 A THAT'S ABOUT IT.

10 Q OKAY. SO AS I UNDERSTAND IT, YOU AS A
11 FORENSIC PATHOLOGIST DISAGREE WITH DR. ROSS, A
12 FORENSIC PATHOLOGIST AS TO THE FACT -- AS TO THE
13 CONCLUSION THAT REBLEEDING CAN OCCUR SPONTANEOUSLY
14 IN AN INFANT?

15 A YES.

16 Q SO YOU ALL DISAGREE?

17 A YES.

18 Q FIRST TIME IN THE HISTORY OF MEDICINE THAT
19 TWO MEMBERS OF THE SAME FIELD DISAGREE?

20 A NO.

21 Q NO. OKAY. YOU FIND NO EVIDENCE OF OTHER
22 DISEASE?

23 A NO.

24 Q OKAY. IN PARTICULAR, DR. ROSS SPOKE OF OTHER
25 DISEASE BEING BLOOD DISORDERS, CORRECT?

1 A YES.

2 Q OKAY. YOU SPEAK OF -- YOU SPOKE OF THE
3 EXISTENCE OF THE BLOOD DISORDERS AND CERTAINLY SAW
4 INDICATIONS OF BLOOD DISORDERS AND YOU TIE THOSE
5 AS A CONSEQUENCE OF THE BRAIN INJURY, NOT AS A
6 CAUSE OF THE BRAIN INJURY; IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q OKAY. I JUST WANTED TO MAKE SURE I GOT IT
9 STRAIGHT. SO YOU ALL DISAGREE -- YOU DON'T
10 DISAGREE THAT THERE ARE INDICATIONS OF THE
11 PROBLEMS WITH THE BLOOD IN THE CASE. YOU DISAGREE
12 AS TO WHETHER IT IS A CONSEQUENCE OF THE INJURY TO
13 THE HEAD OR A POTENTIAL CAUSAL FACTOR TO THE
14 INJURY TO THE HEAD?

15 A CORRECT.

16 Q NOW DID YOU TAKE DR. ROSS'S TESTIMONY TO BE
17 THAT THE INJURY TO THE HEAD, THE ACUTE SUBDURAL,
18 COULD NOT HAVE BEEN THE RESULT OF ANY OTHER TYPE
19 OF INJURY, PHYSICAL INJURY?

20 A SUCH AS...I'M SORRY.

21 Q A BLOW TO THE HEAD?

22 A WE HAVE NO HISTORY OF THAT. WE HAVE NO
23 HISTORY OF AN ACCIDENT OR ANYTHING ELSE OTHER THAN
24 WHAT WE HAVE.

25 Q THAT'S FINE, OKAY. YOU SAID THAT THERE WAS A

CROSS OF NICHOLS BY STRICKLER
(REPLY)

917

1 SEPARATE CHRONIC SUBDURAL, IT WAS YOUR
2 UNDERSTANDING THAT IT WAS SEPARATE FROM THE ACUTE
3 SUBDURAL?

4 A YES.

5 Q HOW DID YOU ARRIVE AT THAT UNDERSTANDING,
6 SIR?

7 A THE UNDERSTANDING THROUGH -- I FORGET THE
8 RADIOLOGIST WHO TESTIFIED, BUT WE HAVE A --

9 Q DR. -- GO AHEAD, I'M SORRY.

10 A YOU HAVE A SUBDURAL, WHICH MAY BE OVERLAPPING
11 TO SOME DEGREE, BUT CLEARLY THEY'RE SEPARATE.

12 Q OKAY. SO DR. EMERY SAID THEY WERE SEPARATE,
13 SO THEY'RE SEPARATE. THAT'S YOUR TESTIMONY,
14 BECAUSE THAT'S THE BASIS FOR YOUR UNDERSTANDING,
15 RIGHT?

16 A YES.

17 Q OKAY. JUST AS YOU INDICATED THAT THE CLOT
18 WAS EVALUATED BY DR. EMERY AND THAT THERE WAS
19 NO -- AND THAT IT WAS NEW BLOOD?

20 A RIGHT.

21 Q NOW, THIS EVALUATION OF THE CLOT -- AND WE
22 MEAN SUBDURAL HEMATOMA, I TAKE IT?

23 A YES.

24 Q AND THE EVALUATION OF THAT CLOT BY DR. EMERY
25 WAS DONE BY C.T. SCAN, CORRECT?

CROSS OF NICHOLS BY STRICKLER
(REPLY)

918

1 A NO. DR. EMERY ACTUALLY LOOKED AT THAT CLOT
2 WITH -- THERE'S A SLIDE, A MICROSCOPIC SLIDE IN
3 THE PATH REPORT.

4 Q I'M SORRY, DR. EMERY, I THOUGHT HE WAS THE
5 RADIOLOGIST?

6 A NO. DR. EMERY IS A PATHOLOGIST.

7 Q OH, HE IS A PATHOLOGIST?

8 A SHE IS A PATHOLOGIST.

9 Q SHE IS A PATHOLOGIST. DID SHE TESTIFY HERE?

10 A I DON'T REALLY --

11 Q OKAY. OKAY. SO SOME UNKNOWN PERSON WHO
12 HASN'T APPEARED IN COURT SAYS THAT THERE'S NO
13 CLOT?

14 A NO, THERE IS A CLOT, BUT THERE IS --

15 Q THERE IS A CLOT?

16 A YES.

17 Q OKAY. WELL, OKAY. I WON'T WORRY ABOUT THAT,
18 BECAUSE SHE HASN'T COME AND TESTIFIED UNLESS I
19 MISSED SOMETHING.

20 AND I TAKE IT AGAIN THAT YOU AND DR. ROSS
21 DISAGREE AND DISAGREE RATHER DRAMATICALLY AS TO
22 WHETHER OR NOT YOU CAN GET LAYERED MULTI-FOCAL
23 RETINAL HEMORRHAGES FROM ANYTHING OTHER THAN
24 SHAKEN BABY?

25 A NO.

CROSS OF NICHOLS BY STRICKLER
(REPLY)

919

1 Q BECAUSE HE SAYS YOU CAN AND YOU SAY YOU
2 CAN'T?

3 A I DIDN'T SAY THAT AT ALL.

4 Q NO?

5 A NO, I SAID IN THIS CASE.

6 Q IN THIS CASE?

7 A I SAID IN THIS CASE IT'S SHAKEN BABY.

8 Q SO IN THIS CASE IT IS SHAKEN BABY.

9 A YES.

10 Q AND THAT IS BECAUSE...

11 A BECAUSE WE HAVE SUBDURAL HEMATOMA, WE HAVE

12 THE BRAIN SWELLING, WE HAVE RETINAL HEMORRHAGES

13 MULTI-LAYERED ALL THE WAY TO THE OPTIC NERVE.

14 Q I UNDERSTAND. IN THIS CASE. AND THEN YOU

15 ALL DISAGREE THAT THAT MUST BE THE RESULT OF

16 SHAKING AS OPPOSED TO THE RESULT OF INCREASED

17 CRANIAL -- INTRACRANIAL PRESSURE, WHICH I BELIEVE

18 IS WHAT DR. ROSS POSTULATES AS A CAUSE?

19 A OH, ABSOLUTELY I DISAGREE WITH IT.

20 Q SO TWO EXPERTS IN THE SAME FIELD DISAGREE.

21 OKAY. NOW YOU WERE PRESENT IN COURT WHEN DR. ROSS

22 SAID HE HAS MATERIAL READY TO DEFEND HIS POSITION,

23 HAD THE ARTICLES, READY TO SIT AND FULLY EXPLAIN

24 HIS POSITION TO MADAM PROSECUTOR?

25 A YES.

1 Q DID YOU HEAR ANY SUCH EXPLANATION, SIR?

2 A YES.

3 Q DID YOU HEAR ANY REQUEST THAT HE SUPPORT HIS
4 POSITION WITH MEDICAL LITERATURE?

5 A ON OCCASION, YES.

6 Q OH, YOU DID?

7 A YES.

8 Q ALL RIGHT.

9 A I BELIEVE THERE WAS A RATHER LARGE STACK OF
10 LITERATURE PRESENTED AT SOME POINT, WAS THERE NOT?

11 Q RIGHT. AND HE WAS ASKED TO GO AHEAD AND
12 SUPPORT HIS POSITION FROM THAT.

13 A YES.

14 Q I'LL MOVE ON. DO YOU BELIEVE THERE'S IMPACT
15 NECESSARY OR DO YOU BELIEVE SHAKING ALL BY ITSELF
16 CAN GO AHEAD AND RATTLE A CHILD'S BRAIN OUT AND
17 KILL THEM?

18 A I BELIEVE THAT ALL BY ITSELF SHAKING THEM CAN
19 RATTLE A CHILD'S BRAIN OUT AND KILL THEM.

20 Q YOU ARE NOT A BIOMECHANICAL ENGINEER?

21 A NO, SIR, I'M A FORENSIC PATHOLOGIST.

22 Q I TAKE IT YOU WOULD AGREE THAT YOU AND
23 DR. ROSS DISAGREE ON THAT, TOO?

24 A OH, ABSOLUTELY.

25 Q AND AS A FORENSIC PATHOLOGIST, PERHAPS YOU

CROSS OF NICHOLS BY STRICKLER
(REPLY)

921

1 WOULD, HOWEVER, EVEN RECOGNIZE THAT THERE IS A
2 SPLIT OF OPINION AS TO WHETHER THAT'S NECESSARY OR
3 NOT. I DON'T KNOW, MAYBE YOU WON'T.

4 A THERE IS A FRAGMENT OF PATHOLOGISTS THAT
5 BELIEVES THAT SHAKEN BABY DOESN'T EVEN EXIST. ON
6 THE OTHER HAND, THE VAST MAJORITY OF FORENSIC
7 PATHOLOGISTS, SOCIAL WORKERS, AND OTHER MEDICAL
8 CARE PROFESSIONALS WHO --

9 MS. CAMPBELL: OBJECTION, YOUR HONOR.

10 MR. STRICKLER: I DON'T CARE ABOUT SOCIAL
11 WORKERS.

12 THE COURT: NO, HE'S ENTITLED TO ANSWER THE
13 QUESTION, 403.

14 BY MR. STRICKLER:

15 Q GO AHEAD -- WHAT DO SOCIAL WORKERS THINK?
16 LAWYERS --

17 A YES.

18 Q I WOULDN'T DANG TO SPEAK FOR LAWYERS, EXCUSE
19 ME, SIR. I APOLOGIZE, YOUR HONOR.

20 AND YOU AND DR. ROSS DISAGREE ABOUT THE
21 GENESIS OF THE SWOLLEN EYE, CORRECT?

22 A YES.

23 Q OKAY. NOW, YOU TALKED ABOUT THE MEDICAL
24 RECORDS NOT SHOWING THAT, YOU KNOW, THERE'S JUST A
25 QUICK LOOK OVER THE BODY AND THERE WAS NO THOROUGH

CROSS OF NICHOLS BY STRICKLER
(REPLY)

922

1 LOOK. THEY PROBABLY JUST DIDN'T NOTE THAT THERE
2 WERE NO BRUISES. THEY JUST DIDN'T LOOK FOR
3 BRUISES.

4 WELL, LET'S SEE HERE. DO YOU HAVE A COPY OF
5 THOSE RECORDS IN FRONT OF YOU?

6 A NO, I DON'T.

7 Q THAT'S FINE. I JUST HAPPEN TO HAVE THEM.

8 A THANK YOU.

9 Q I'LL PRESENT YOU WITH THIS PAGE. THIS IS
10 FROM DR. RABON, I BELIEVE. HE IS A RESIDENT UNDER
11 MR. HUBBIRD, OR DR. HUBBIRD, THE GUY WHO WAS IN
12 CHARGE. NOW, DO YOU RECOGNIZE THOSE?

13 A THEY ARE THE PROGRESS NOTES FROM THE
14 P.I.C.U., WHICH IS THE PEDIATRIC INTENSIVE CARE.

15 Q RIGHT. YOU MIGHT NOT BE ABLE TO READ THE
16 SIGNATURE ON THE BOTTOM. I DON'T KNOW WHETHER
17 YOU -- CAN YOU RELATE THEM TO MINOR ?

18 FIRST OF ALL, DO YOU HAVE AN INDEPENDENT
19 RECOLLECTION THAT THESE ARE THE RECORDS YOU
20 REVIEWED?

21 A YES. IN FACT, MINOR 'S NAME IS
22 STAMPED UP AT THE TOP.

23 Q ALL RIGHT. NOW, I BELIEVE THE PAGE I TURNED
24 TO --

25 A YES.

CROSS OF NICHOLS BY STRICKLER
(REPLY)

923

1 Q -- AND PASSED TO YOU IS LABELED AT THE TOP
2 "3/28/00 CONTINUED?"

3 A YES.

4 Q OKAY. THAT WOULD BE -- IF YOU TURN TO THE
5 PREVIOUS PAGE OF THAT, AND YOU'LL SEE THE
6 BEGINNING OF WHAT APPEARS TO BE THE BEGINNING OF
7 THE NOTES?

8 A YES.

9 Q AND THAT'S THE P.I.C.U. RESIDENT?

10 A YES.

11 Q ALL RIGHT. NOW, THE MIDDLE OF THE PAGE THAT
12 I PASSED TO YOU, SKIN?

13 A YES.

14 Q WITHOUT OBVIOUS BRUISING OR LACERATIONS?

15 A YES.

16 Q OKAY.

17 A YES.

18 Q ALL RIGHT. NOW, THIS ISN'T JUST A LITTLE
19 BODY IMAGE THAT PEOPLE CIRCLE WHERE THEY SEE
20 BRUISES. THIS IS THE RESIDENT PHYSICIAN OF THE
21 PEDIATRIC INTENSIVE CARE UNIT CONDUCTING A -- A
22 WHAT'S AN H AND P?

23 A HISTORY AND PHYSICAL.

24 Q HISTORY AND PHYSICAL EXAMINATION OF THE
25 CHILD.

1 A UH-HUH.

2 Q OKAY. SO HE JUST GLANCED AT HER BODY AND
3 DIDN'T SEE ANY BRUISES, JUST GLANCED AT HER FACE
4 AND DIDN'T SEE A HUGE OLD SHINER?

5 A THAT'S CORRECT.

6 Q THAT WAS -- JUST HAPPENED TO BE FIRST NOTED
7 WELL OVER 24 HOURS AFTER HER ADMISSION INTO THE
8 HOSPITAL, AND YOUR CONTENTION IS THAT IT'S THE
9 RESULT OF --

10 A A BLOW.

11 Q A BLOW?

12 A YES.

13 Q SOMEONE HIT HER IN THE FACE?

14 A YES.

15 Q AND THE REST OF THE PEOPLE JUST DIDN'T SEE IT
16 IN THE INTERVENING -- LET'S SEE, CALL IT 8:00 IN
17 THE MORNING UNTIL -- OH, IT WAS FIRST NOTED AFTER
18 3:00 THE NEXT AFTERNOON, I BELIEVE, BY ONE OF THE
19 IMPARTIAL OBSERVERS, DR. ABEL, MAYBE? YEAH,
20 DR. ABEL. THAT'S 8:00 A.M., TO 8:00 A.M. IS 24,
21 FOUR AND THREE -- SO THAT'S 31 HOURS AFTER
22 ADMISSION?

23 A YES.

24 Q OKAY. SO 31 HOURS AFTER ADMISSION IS THE
25 FIRST TIME THIS SHINER, FIRST TIME THIS, DEPICTED

CROSS OF NICHOLS BY STRICKLER
(REPLY)

925

1 ON STATE'S 19, THAT'S WHAT I'M TALKING ABOUT,
2 RIGHT? (INDICATING)

3 A ABSOLUTELY.

4 Q THAT'S THE FIRST TIME THAT'S NOTED, 31 HOURS
5 AFTER ADMISSION AND YOU INDICATE THAT THAT IS THE
6 RESULT OF A BLOW TO THE FACE PRIOR TO THE CHILD'S
7 ADMISSION IN THE HOSPITAL?

8 A YES.

9 Q THAT'S YOUR TESTIMONY?

10 A YES.

11 Q ALL RIGHT. THAT'S GREAT. THANK YOU, SIR.

12 AND YOU CHARACTERIZE DR. RABON'S HISTORY AND
13 PHYSICAL THAT HE CONDUCTED AS WHAT, A CASUAL LOOK
14 OVER THE CHILD AND MAYBE FORGET TO CIRCLE AN AREA
15 WHERE YOU SEE BRUISES. THAT'S WHAT THAT IS?

16 A THIS IS HIS CHART; THIS IS NOT MY CHART.

17 Q RIGHT.

18 A RIGHT. FOR ME TO CHARACTERIZE WHAT HE DID, I
19 CANNOT DO THAT.

20 Q RIGHT.

21 A WHAT I AM HERE TO SAY -- IN FACT, EVEN IF YOU
22 LOOK AT THE BRUISING THAT'S DESCRIBED ON AUTOPSY,
23 THOSE TEND TO BE SMALL, BUT NEVERTHELESS PRESENT.

24 Q OKAY. BUT I JUST WANT TO UNDERSTAND WHAT
25 YOU'RE SAYING IS -- AND IF I UNDERSTOOD YOUR

1 TESTIMONY ON DIRECT, YOU KNOW, YOU HAVE YOUR
2 LITTLE BOX FIGURE AND YOU HAVE AN AREA WITH A
3 BRUISE ON IT CIRCLED, SO IT WASN'T THAT IT WASN'T
4 SEEN, IT JUST WASN'T NOTED. NOW, HOW ABOUT --
5 IT'S WHAT, TWO PAGES WORTH OF HANDWRITTEN NOTES
6 DR. RABON HAD DURING THIS HISTORY AND PHYSICAL
7 CONDUCTED UPON ADMISSION OR SHORTLY AFTER
8 ADMISSION?

9 A IT GOES ON FOR AN EXTENSIVE PERIOD OF TIME,
10 YEAH.

11 Q EXTENSIVE PERIOD OF TIME. LET ME SEE. THIS
12 IS THE RESIDENT PHYSICIAN AT THE -- THIS IS THE
13 SAME PLACE DR. HUBBIRD AND THE OTHER GUYS WORK AT
14 THE PEDIATRIC INTENSIVE CARE UNIT, AS I UNDERSTAND
15 YOUR TESTIMONY, ONE OF THREE IN THE STATE, THREE
16 FULL ONES AND THERE'S ONE THAT'S NOT SO FULL, I
17 GUESS, ONE OF THREE COMPLETE PEDIATRIC INTENSIVE
18 CARE UNITS IN THE STATE, RIGHT?

19 A RIGHT.

20 Q YES?

21 A YES.

22 Q THE GUY THAT MAKES HIS LIVING TAKING CARE OF
23 VERY SICK BABIES, RIGHT?

24 A RIGHT.

25 Q THE GUY THAT IS AT LEAST AS ATTUNED AS EVERY

CROSS OF NICHOLS BY STRICKLER
(REPLY)

927

1 OTHER PEDIATRICIAN AND PEDIATRIC RELATED
2 INDIVIDUAL IN THIS CASE TO THE POTENTIAL FOR CHILD
3 ABUSE, RIGHT?

4 A RIGHT.

5 Q AND HE JUST DOESN'T NOTICE THIS SHINER.
6 WELL, THE SHINER DEVELOPED AND IT TOOK 31 HOURS TO
7 DEVELOP?

8 A AS YOU HAVE PROBABLY HEARD THE SAYING, IF YOU
9 GET HIT IN THE EYE JUST WAIT UNTIL YOU WAKE UP IN
10 THE MORNING.

11 Q YES, SIR. WELL, I'VE NEVER HEARD THAT
12 SAYING. NOW, OF COURSE, YOU PRACTICE WITH
13 DR. BURNS, RIGHT?

14 A YES, SIR.

15 Q THERE IS A GROUP OF PATHOLOGISTS THAT
16 BASICALLY SERVICES RICHLAND MEMORIAL HOSPITAL, AND
17 ALL OF YOU SERVICE RICHLAND MEMORIAL HOSPITAL?

18 A YES.

19 Q RIGHT. HOW MANY OF YOU ARE THERE IN THAT
20 GROUP?

21 A RIGHT NOW THERE ARE ELEVEN.

22 Q ELEVEN, OKAY. LET ME ASK YOU THIS. I ASSUME
23 THAT UNLIKE DR. ROSS, YOU'RE APPEARING HERE IN
24 COURT OUT OF THE GOODNESS OF YOUR HEART TO JUST
25 RENDER ASSISTANCE TO THE REST OF US IN OUR SEARCH

REDIRECT OF NICHOLS BY CAMPBELL 928
(REPLY)

1 FOR THE TRUTH IN THIS MATTER?

2 A ACTUALLY, THAT'S CORRECT. I'M HERE PROVIDING
3 MY SERVICES FREE OF CHARGE TO THE PEOPLE OF THIS
4 STATE.

5 Q YOU'RE VOLUNTEERING TO COME INTO COURT AND
6 GIVE YOUR OPINIONS IN THIS CASE?

7 A YES.

8 MR. STRICKLER: THANK YOU VERY MUCH, SIR.

9 THE COURT: REDIRECT?

10 MR. STRICKLER: IF I COULD HAVE MY RECORDS
11 BACK, PLEASE.

12 THE WITNESS: SURE.

13 MS. CAMPBELL: ONE QUICK ONE, I PROMISE.

14 MS. CAMPBELL: ARE YOU DONE?

15 MR. STRICKLER: YES, MA'AM, I AM.

16 REDIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q DOCTOR, YOU KNOW, THEY SAY A PICTURE IS WORTH

19 A 1,000 WORDS?

20 A YES.

21 Q HE ASKED YOU ABOUT WHETHER OR NOT THE
22 RESIDENT NOTED THE BRUISING. I SHOW YOU A PICTURE
23 OF THE BABY --

24 MR. STRICKLER: I OBJECT. THAT'S NOT PROPER
25 REDIRECT. I ASKED ABOUT THE BRUISING OF THE FACE.

REDIRECT OF NICHOLS BY CAMPBELL 929
(REPLY)

1 MS. CAMPBELL: AND THAT'S WHAT I'M ASKING
2 HIM ABOUT.

3 THE COURT: OVERRULED.

4 MR. STRICKLER: THANK YOU.

5 MS. CAMPBELL: THANK YOU.

6 BY MS. CAMPBELL:

7 Q STATE'S EXHIBIT 6, THAT'S A PHOTO OF THE BABY
8 IN THE HOSPITAL?

9 A YES.

10 Q AND THEN STATE'S EXHIBIT 19 IS A PHOTO OF THE
11 CHILD'S FACE AT THE AUTOPSY?

12 A YES.

13 Q AND YOU CAN CLEARLY SEE THE BRUISING AT
14 AUTOPSY, BUT IT'S NOT EVIDENT IN STATE'S 6; IS
15 THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND YOU EXPLAINED, YOU SAID A LITTLE BIT
18 ABOUT IT, BUT YOU DID NOT EXPLAIN TO THE JURY
19 ABOUT HOW LONG -- WHY DOES IT TAKE A BRUISE A
20 COUPLE OF DAYS TO COME UP?

21 A IT JUST DOES. AFTER A WHILE THE BLOOD WILL
22 JUST HAVE TO SETTLE IN ORDER TO COME TO THE
23 SURFACE, AND BLACK EYES ARE NOTORIOUS FOR THAT.
24 IF YOU GET HIT IN THE FACE, IT LOOKS BAD. IT
25 HURTS. THE NEXT MORNING IT'S OFTEN SWOLLEN SHUT,

DIRECT OF METZS BY CAMPBELL
(REPLY)

930

1 BLACK AND BLUE.

2 Q AND I NOTE THERE IS SOME SWELLING TO THIS
3 CHILD'S FACE, BUT THE BRUISE IS READILY EVIDENT
4 WITH THIS PICTURES?

5 A YES.

6 MS. CAMPBELL: I HAVE NOTHING FURTHER.

7 THE COURT: ANYTHING ELSE ON RECROSS IN.

8 MR. STRICKLER: I HAVE NO FURTHER QUESTIONS
9 FOR THIS WITNESS.

10 THE COURT: THANK YOU, SIR. YOU MAY STEP
11 DOWN.

12 THE WITNESS: THANK YOU, YOUR HONOR.

13 MS. COOPER: INVESTIGATOR BRIAN METZS.

14 BRIAN METZS,

15 AFTER BEING DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE WITNESS: IT'S BRIAN METZS, M-E-T-Z-S.

17 DIRECT EXAMINATION

18 (REPLY)

19 BY MS. COOPER:

20 Q CAN YOU PLEASE TELL THE JURY WHERE YOU ARE
21 EMPLOYED?

22 A AT THE RICHLAND COUNTY SHERIFF'S DEPARTMENT.

23 Q AND HOW LONG HAVE YOU BEEN THERE?

24 A NEXT MONTH IT WILL BE 20 YEARS.

25 Q WHAT IS YOUR TITLE THERE?

DIRECT OF METZS BY COOPER
(REPLY)

931

1 A I AM A CRIMINAL INVESTIGATOR.

2 Q AND HOW LONG HAVE YOU BEEN AN INVESTIGATOR?

3 A I HAVE BEEN AN INVESTIGATOR SINCE 1990.

4 Q AND WHAT ARE YOUR DUTIES AS AN INVESTIGATOR
5 AT THE SHERIFF'S DEPARTMENT?

6 A GENERAL INVESTIGATIONS AND RIGHT NOW I AM I'M
7 ASSIGNED TO A SUBSECTION OF THE MAJOR CRIMES UNIT,
8 WHICH IS MISSING PERSONS AND RUNAWAYS.

9 Q CAN YOU TELL THE JURY ABOUT HOW YOU BECAME
10 INVOLVED THIS CASE WITH MINOR ?

11 A YES, MA'AM, I WAS WORKING THE EVENING SHIFT.
12 THE SHERIFF'S DEPARTMENT EACH DAY HAS SEVERAL
13 INVESTIGATORS THAT ARE ASSIGNED TO WORK THE
14 EVENING SHIFT AND ONE INVESTIGATOR THAT'S ASSIGNED
15 THE MIDNIGHT SHIFT. THAT WEEK I WAS ASSIGNED TO
16 WORK THE EVENING SHIFT, WHICH MEANS I WOULD BE
17 GETTING OFF AT MIDNIGHT.

18 Q AND WHO DID YOU ENCOUNTER ON THAT EVENING
19 SHIFT?

20 A I WAS AWARE THAT INVESTIGATOR JONES WAS IN
21 THE SHERIFF'S DEPARTMENT CONDUCTING AN INTERVIEW.

22 Q AND EXPLAIN FOR THE JURY HOW -- WHAT HE ASKED
23 YOU TO DO IN THIS CASE.

24 A WE HAD SPOKEN EARLIER, SO I WAS AWARE OF THE
25 CASE THAT HE WAS WORKING. BEFORE I WENT TO LEAVE

1 THAT EVENING, I ASKED THEM IF THERE WAS ANYTHING I
2 COULD HELP HIM WITH, HE ASKED IF I WOULD SERVE
3 THE WARRANT THAT HE HAD FOR MR. MITCHELL.

4 Q AND WHY WAS IT NECESSARY FOR SOMEONE ELSE TO
5 SERVE IT OTHER THAN INVESTIGATOR JONES?

6 A INVESTIGATOR JONES HAD SIGNED THE WARRANT
7 HIMSELF IN FRONT OF THE JUDGE, SO YOU USE AN
8 INDEPENDENT OFFICER, SOMEBODY BESIDES THE OFFICER
9 THAT SIGNED THE WARRANT, TO SERVE THE WARRANT.

10 Q AND SO WHEN HE ASKED YOU TO SERVE THIS
11 WARRANT, WHAT WAS THE CHARGE?

12 A I CAN LOOK AT THE WARRANT. I BELIEVE IT'S
13 ASSAULT AND BATTERY WITH INTENT.

14 Q AND DID YOU GO AND IN FACT SERVE IT ON THE
15 DEFENDANT?

16 A I DID.

17 Q WERE YOU AWARE AT THAT POINT THAT
18 INVESTIGATOR JONES HAD ALREADY GOTTEN A STATEMENT
19 FROM THIS DEFENDANT?

20 A I WAS.

21 Q EXPLAIN FOR THE JURY HOW YOU LEARNED THAT.

22 A WHEN HE ASKED ME TO SERVE THE WARRANT ON HIM
23 AND I READ THE WARRANT, HE BASICALLY BRIEFED ME ON
24 THE CHARGES AND TOLD ME THAT HE HAD TAKEN A
25 STATEMENT FROM HIM. I BRIEFLY READ THE STATEMENT

DIRECT OF METZS BY COOPER
(REPLY)

933

1 AND WAS AWARE OF WHAT WAS IN THE STATEMENT AT THAT
2 POINT AND WHAT THE CASE WAS ABOUT.

3 Q AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
4 AS STATE'S EXHIBIT NO. 2. DO YOU RECOGNIZE THAT?

5 A YES, MA'AM, I DO.

6 Q AND WHAT IS IT?

7 A THAT'S THE ORIGINAL STATEMENT THAT
8 INVESTIGATOR JONES HAD TAKEN FROM MR. MITCHELL
9 THAT EVENING.

10 Q AND YOU SAID THAT YOU HAD AN OPPORTUNITY TO
11 REVIEW THIS STATEMENT?

12 A I DID.

13 Q AND WAS IT SIGNED?

14 A IT WAS.

15 Q TELL THE JURY WHAT HAPPENED WHEN YOU WENT TO
16 SERVE THAT ARREST WARRANT FOR ASSAULT AND BATTERY
17 WITH INTENT TO KILL?

18 A INVESTIGATOR JONES AND I DISCUSSED THAT HE
19 WASN'T SATISFIED THAT HE HAD THE ENTIRE TRUTH IN
20 HIS STATEMENT. BEING HIS CASE, I WOULDN'T ATTEMPT
21 TO INTERVIEW THE INDIVIDUAL UNLESS HE AGREED TO
22 IT. HE SAID YES, HE'D LIKE ME TO INTERVIEW HIM IF
23 THAT WAS POSSIBLE, SO I HAD GATHERED HANDWRITTEN
24 SHEETS TO USE AND GONE IN THERE TO SERVE THE
25 WARRANT ON MR. MITCHELL.

1 I TOLD HIM I UNDERSTOOD HE HAD GIVEN A
2 STATEMENT TO INVESTIGATOR JONES AND ASKED HIM IF
3 HE WAS SATISFIED WITH THAT STATEMENT. HE SAID
4 THAT HE WAS.
5 Q SO YOU ASKED HIM IF HE WISHED TO ADD ANYTHING
6 OR MAKE A NEW STATEMENT?
7 A THAT'S CORRECT.
8 Q AND WHAT DID HE SAY TO YOU?
9 A HE WAS SATISFIED THAT STATEMENT.
10 Q HE DID NOT WANT TO GIVE ANY MORE STATEMENTS;
11 IS THAT CORRECT?
12 A THAT'S CORRECT.
13 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
14 STATE'S EXHIBIT NUMBER 3. DO YOU RECOGNIZE THAT?
15 A YES, MA'AM, I DO.
16 Q AND WHAT IS THAT?
17 A THIS IS THE HANDWRITTEN STATEMENT THAT I TOOK
18 FROM MR. MITCHELL THAT EVENING, THAT MORNING.
19 Q AND HOW DID YOU GO ABOUT GETTING ANOTHER
20 STATEMENT FROM NATHANIEL MITCHELL?
21 A I BEGAN SPEAKING TO HIM, AND ORIGINALLY
22 MR. MITCHELL STATED PRETTY MUCH THE SAME STATEMENT
23 THAT HE HAD GIVEN INVESTIGATORS.
24 Q AND WHAT WAS THAT?
25 A THAT AT ONE POINT HIS DAUGHTER -- HE HAD GONE

DIRECT OF METZS BY COOPER
(REPLY)

935

1 TO PUT ON A PAMPER AND SHE HAD JUST STIFFENED UP.
2 WHEN SHE STIFFENED UP, THAT WAS ALL THERE WAS TO
3 IT. I TOLD HIM AT THAT POINT THAT, YOU KNOW, I
4 HAD A PROBLEM WITH THAT. HE MAINTAINED THAT
5 STATEMENT, SO I WENT AHEAD AT THAT POINT AND
6 SERVED A WARRANT ON HIM FOR THE ASSAULT WITH
7 INTENT TO KILL.

8 Q AND DESCRIBE HIS Demeanor, IF YOU NOTED ANY
9 CHANGES.

10 A WHEN I ORIGINALLY CAME IN, HE WAS QUIET. YOU
11 COULD TELL HE WAS UNDER AN EXTREME AMOUNT OF
12 STRESS. HE WAS BREATHING PRETTY HEAVY. HE WAS
13 SITTING PRETTY MUCH AS I AM IN A CHAIR AT THE END
14 OF A CONFERENCE TABLE.

15 I READ THE STATEMENT TO HIM. I READ THE
16 WARRANT TO HIM AND BEGAN ASKING HIM IF HE HAD
17 SPANKED HIS CHILDREN. HE DENIED THAT.

18 Q SO HE DENIED THAT; IS THAT CORRECT?

19 A HE DID.

20 Q PLEASE PROCEED. WHAT HAPPENED NEXT?

21 A AT THAT POINT I BEGAN ASKING HIM ABOUT HIS
22 OTHER CHILDREN, AND HAD HE TAUGHT THEM THE
23 DIFFERENCE BETWEEN THE TRUTH AND A LIE. HE STATED
24 THAT HE HAD. WE TALKED ABOUT THAT FOR SEVERAL
25 MINUTES.

1 I THEN TOLD HIM THAT I TALKED TO HIS CHILDREN
2 AND THAT N.G. , THE DAUGHTER, HAD SAID THAT
3 SOMEONE HAD GOTTEN A SPANKING THAT DAY.

4 Q AND WHAT HAPPENED WHEN HE HEARD THAT?

5 A WHEN HE HEARD THAT THAT INFORMATION HAD COME
6 FROM N.G. , HE PRETTY MUCH SLUMPED OVER AND
7 LOOKED STRAIGHT DOWN AT THE GROUND, AND I NOTICED
8 THEN HE WAS CRYING.

9 Q AND PLEASE CONTINUE. WHAT HAPPENED NEXT?

10 A IT WAS REAL QUIET FOR A FEW MINUTES. I
11 DIDN'T WANT TO BE THE FIRST ONE TO SPEAK.

12 Q BY THE WAY, WHO WAS PRESENT DURING THIS
13 ENTIRE TIME?

14 A INVESTIGATOR JONES WAS PRESENT AND MS. GRANT
15 FROM THE DEPARTMENT OF THE SOCIAL SERVICES WAS
16 PRESENT.

17 Q SO THEY WITNESSED ALL OF THIS; IS THAT
18 CORRECT?

19 A THAT'S CORRECT.

20 Q OKAY. PLEASE PROCEED.

21 A A FEW MINUTES LATER, OR A FEW SECONDS LATER,
22 HE SAT BACK UP AND WE CONTINUED TO TALK. HE SAID
23 THAT IT STARTED OFF THAT THEY HAD BEEN PLAYING IN
24 THE POTTY AND THAT HE HAD SPANKED BOTH OF THEM FOR
25 PLAYING IN THE POTTY.

DIRECT OF METZS BY COOPER
(REPLY)

937

1 Q AND GO AHEAD AND REVIEW THE STATEMENT THAT
2 YOU TOOK FROM HIM. DID YOU, IN FACT, ASK HIM TO
3 INITIAL THE FIRST PARAGRAPH?

4 A I DID.

5 Q AND WHAT DOES THAT PARAGRAPH CONSISTENT OF?

6 A THE PARAGRAPH IS THE PARAGRAPH FORM OF THE
7 ADVICE OF RIGHTS, WHICH WE NORMALLY READ TO A
8 SUSPECT.

9 Q AND DID YOU ASK -- DID YOU READ IT TO HIM OR
10 DID HE READ IT HIMSELF?

11 A HE READ THAT HIMSELF AND THEN INITIALED IT.

12 Q AND THAT'S HIS "N" AND "M" ON THAT INITIAL?

13 A THAT'S CORRECT. I ASKED HIM TO INITIAL IT TO
14 ACKNOWLEDGE THAT HE HAD READ IT.

15 Q AND DESCRIBE FOR THE JURY HOW YOU WENT ABOUT
16 DISCUSSING WHAT HAPPENED WITH MINOR ?

17 A ONCE HE ADMITTED THAT HE HAD SPANKED HIS
18 CHILDREN, I BEGAN TO, WHAT WE REFER TO AS A
19 QUESTION AND ANSWER STATEMENT. I WOULD ASK HIM A
20 QUESTION AND THEN HE WOULD RESPOND.

21 WE WOULD DISCUSS HIS ANSWER TO MAKE SURE THAT
22 WHAT I WAS WRITING WAS WHAT HE WAS SAYING. I
23 WOULD WRITE THAT DOWN AND THEN READ IT, AND WE'D
24 GO TO THE NEXT QUESTION.

25 Q AND WHAT WAS THE FIRST QUESTION YOU ASKED

DIRECT OF METZS BY COOPER
(REPLY)

938

1 HIM?

2 A THE FIRST QUESTION WAS, "CAN YOU TELL ME
3 ABOUT WHAT HAPPENED TO MINOR ON TUESDAY
4 MORNING?" IN PARENTHESIS, I PUT 03/28/2000.

5 Q AND BY THE WAY, WHAT TIME DID YOU BEGIN
6 TAKING HIS STATEMENT?

7 A I BEGAN TAKING HIS STATEMENT SHORTLY AFTER I
8 SERVED HIM THE WARRANT WHICH WAS 00:26, TWENTY SIX
9 MINUTES AFTER MIDNIGHT.

10 Q SO YOU SERVED THE ARREST WARRANT AT 26
11 MINUTES AFTER MIDNIGHT?

12 A YES, MA'AM.

13 Q AND THIS BEGAN AT 36 MINUTES AFTER MIDNIGHT?

14 A YES.

15 Q NOW, PLEASE CONTINUE WITH WHAT HE TOLD YOU.

16 MS. COGGIOLA: YOUR HONOR.

17 THE COURT: YES, MA'AM.

18 MS. COGGIOLA: I WOULD OBJECT TO THIS AS
19 IMPROPER REPLY.

20 THE COURT: SUSTAINED.

21 MS. COOPER: OKAY. YES, SIR.

22 BY MS. COOPER:

23 Q INVESTIGATOR METZS, CAN YOU TELL THE JURY,
24 AFTER HE GAVE YOU THE SECOND STATEMENT, DID YOU
25 AFFORD HIM AN OPPORTUNITY TO REVIEW WHAT YOU HAD

DIRECT OF METZS BY COOPER
(REPLY)

939

1 WRITTEN DOWN?

2 A HE DID. WE REVIEWED EACH QUESTION OR ANSWER
3 AS WE WENT OVER IT, AND THEN AT THE END I READ THE
4 ENTIRE STATEMENT TO HIM AND ASKED HIM IF HE HAD
5 ANYTHING TO ADD.

6 Q IN FACT, WHAT WAS LAST QUESTION YOU ASKED HIM
7 IN THE STATEMENT?

8 A THE LAST QUESTION IS, "IS THERE ANYTHING ELSE
9 YOU WISH TO TELL ME?"

10 Q AND WERE YOU PRESENT WHEN THE DEFENDANT
11 TESTIFIED?

12 A I WAS FOR PART OF IT, YES, MA'AM.

13 Q HE TESTIFIED THAT HE WAS BASICALLY MADE TO
14 SIGN THESE STATEMENTS. TELL THE JURY WHY HE
15 SIGNED THE STATEMENT?

16 A HE SIGNED THE STATEMENT BECAUSE HE SAID IT
17 WAS THE TRUTH.

18 Q DID YOU FORCE HIM IN ANY WAY TO SIGN IT?

19 A NO, MA'AM.

20 Q WAS HE COOPERATIVE DURING THIS WHOLE
21 PROCEEDING?

22 A OTHER THAN HIS INITIAL LYING TO ME, THEN HE
23 WAS AFTER THAT.

24 Q AND AFTER HE SIGNED THIS WARRANT, I MEAN THIS
25 STATEMENT, WHO WITNESSED IT?

1 A IT WAS WITNESSED BY MYSELF, BY MS. GRANT,
2 COOKIE GRANT FROM THE DEPARTMENT OF THE SOCIAL
3 SERVICES, AND THEN IT WAS NOTARIZED BY
4 INVESTIGATOR JONES.

5 Q SO WHEN ASKED IF HE WANTED TO CHANGE ANYTHING
6 IN THIS STATEMENT, WHAT DID HE INDICATE?

7 A I ASKED HIM IF THERE WAS ANYTHING ELSE HE
8 WISHED TO ADD, AND HE DID ADD SOMETHING.

9 Q AND WHAT WAS THAT THAT HE ADDED?

10 MS. COGGIOLA: YOUR HONOR, THE STATEMENT HAS
11 BEEN PUBLISHED. I WOULD OBJECT.

12 THE COURT: I'D OVERRULE THAT OBJECTION.
13 HE'S NOT PUBLISHING THE WHOLE STATEMENT, RIGHT,
14 ONLY THE --

15 MS. COOPER: NO, JUST SUMMARY.

16 BY MS. COOPER:

17 Q JUST SUMMARY, SUMMARY PLEASE.

18 A HE BASICALLY TOLD ME THEN THAT I COULD TALK
19 TO THE TEACHERS AT THE SCHOOL, THAT THEY COULD
20 TELL ME THAT H.G. HAD BEEN AFTER HIS SISTER THE
21 WHOLE TIME.

22 MS. COOPER: THANK YOU, INVESTIGATOR METZS.

23 THE COURT: CROSS-EXAMINATION MS. COGGIOLA?

24 MS. COGGIOLA: VERY BRIEFLY.

25 CROSS-EXAMINATION

CROSS OF METZS BY COGGIOLA
(REPLY)

941

1 BY MS. COGGIOLA:

2 Q YOU WERE NOT PRESENT FOR THE TAKING OF THE
3 FIRST STATEMENT; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q SO WHEN YOU CAME IN, YOU HAD THE WARRANT?

6 A YES, MA'AM.

7 Q AND DID YOU READ HIM THE WARRANT OR DID YOU
8 GIVE IT TO HIM TO READ?

9 A NOT INITIALLY. WHEN I SERVED THE WARRANT ON
10 HIM, I ACTUALLY READ THE WARRANT TO HIM.

11 Q OKAY. AND YOU -- DID YOU REVIEW THE FIRST
12 STATEMENT? WHEN WAS THAT -- YOU SAID YOU
13 INITIALLY ASKED HIM IF THERE WAS ANYTHING HE
14 WANTED TO ADD TO THAT?

15 A I DID NOT REVIEW THE FIRST STATEMENT. I
16 ASKED HIM IF HE WAS SATISFIED WITH IT AND WAS THAT
17 THE TRUTH, AND DID HE HAVE ANYTHING TO ADD. HE
18 SAID THAT HE DID NOT.

19 Q HE SAID HE DID NOT, AND THEN CAME THE
20 WARRANT?

21 A CORRECT.

22 Q AND THEN THE SECOND STATEMENT?

23 A THAT'S CORRECT.

24 MS. COGGIOLA: I HAVE NO FURTHER QUESTIONS.

25 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU

1 MAY STEP DOWN.

2 ANY FURTHER REPLY WITNESSES?

3 MS. CAMPBELL: NO, SIR.

4 THE COURT: ALL RIGHT. MADAM FOREPERSON,
5 LADIES AND GENTLEMEN OF THE JURY, WE'LL DO THE
6 ARGUMENTS AND CHARGE IN THE MORNING. IT TAKES A
7 LITTLE WHILE TO DO THAT. WE'RE DOWN TO 12 JURORS,
8 SO EVERYBODY TAKE CARE OF THEMSELVES AND BE
9 CAREFUL. WE'LL SEE YOU IN THE MORNING AT 9:00.
10 PLEASE DON'T DISCUSS THE CASE WITH ANYONE OR ALLOW
11 ANYONE TO DISCUSS IT WITH YOU OR DO ANY
12 INDEPENDENT INVESTIGATION. WE'LL SEE YOU AT 9:00
13 IN THE MORNING. YOU ALL HAVE A NICE EVENING.

14 EVERYONE ELSE REMAIN SEATED UNTIL THE JURY
15 LEAVES.

16 (WHEREUPON, THE JURY LEFT OPEN COURT AT
17 APPROXIMATELY 4:47.)

18 THE COURT: MOTIONS? ANY MOTIONS?

19 MS. COGGIOLA: YOUR HONOR, AT THIS TIME WE
20 WOULD RENEW OUR MOTION FOR A DIRECTED VERDICT OF
21 ACQUITTAL ON THE GROUNDS THAT THE TESTIMONY AS
22 PRESENTED DURING THE COURSE OF THIS TRIAL SHOULD
23 NOT GO TO THE JURY.

24 THE COURT: I WOULD DENY THOSE MOTIONS.

25 MS. COGGIOLA: AND RENEW.

1 THE COURT: MR. STRICKLER?

2 MR. STRICKLER: AND, YOUR HONOR, I'D JUST ASK
3 THAT YOUR HONOR, IN ADDITION TO CONSIDERING THE
4 EVIDENCE THAT IS AVAILABLE BEFORE YOU AT THE TIME
5 OF CONSIDERING THE MOTION AFTER THE STATE'S CASE,
6 NOW CONSIDER THE TESTIMONY OF DR. ROSS IN MAKING
7 THE DETERMINATION THAT THE EVIDENCE IS NOT
8 SUFFICIENT.

9 FURTHERMORE, THAT AFTER CONSIDERING THE
10 TESTIMONY OF DR. ROSS, THE PATHOLOGIST FOR THE
11 DEFENSE, THAT WE SUBMIT TO YOUR HONOR THAT LETTING
12 THIS CASE GO TO THE JURY IN THAT SITUATION LEAVES
13 THINGS UNANSWERED THAT HE BROUGHT UP IN HIS
14 TESTIMONY AND INVITES THE JURY TO GO AHEAD TO
15 RENDER A VERDICT BASED UPON SPECULATION.

16 THE COURT: I WILL DENY THAT. AS YOU PUT IT
17 IN YOUR QUESTIONING, PEOPLE OFTEN DISAGREE. THE
18 FACT THEY DISAGREE CREATES THE QUESTION OF FACT
19 FOR THE JURY. I'M NOT REQUIRED TO WEIGH THE
20 EVIDENCE OR CONSIDER THE EXISTENCE OF IT. I'LL
21 DENY THAT MOTION.

22 ALL RIGHT. NOW ON THE ISSUE OF -- THE ONLY
23 ISSUE THAT I'M SET ON MY MIND IS ON THE ISSUE OF
24 PROXIMATE CAUSATION. I NEED TO KIND OF UNDERSTAND
25 FROM THE DEFENSE STANDPOINT WHAT IT IS YOU

1 CONSIDER AN INTERVENING CAUSE.

2 MR. STRICKLER: THE INTERVENING CAUSE IS THE
3 PREEXISTING CONDITION, THE CHRONIC SUBDURAL
4 HEMATOMA.

5 THE COURT: NOT THE CARE OR THE PHYSICIANS?

6 MR. STRICKLER: ABSOLUTELY NOT. I THINK
7 DR. ROSS WAS VERY CLEAR ABOUT THAT ON THE STAND,
8 THAT HE WAS NOT INDICTING THE PHYSICIANS FOR THEIR
9 TREATMENT.

10 IN FACT, I HAD A MEDICAL -- A GROSS
11 NEGLIGENCE MEDICAL CHARGE AND I DIDN'T SUBMIT THAT
12 TO YOU, BECAUSE I DON'T THINK THAT APPLIES IN THIS
13 CASE.

14 THE COURT: SO IF I UNDERSTAND, IF WE WERE IN
15 A CIVIL CONTEXT, YOU WOULD BE SAYING THAT BECAUSE
16 OF THIS CHILD'S DEMISE, THERE'S A PREEXISTING
17 INJURY?

18 MR. STRICKLER: IF I COULD, SIR, WHAT I AM
19 SAYING IS PRECISELY WHAT DR. ROSS SAID. YOU KNOW,
20 IT CAN BE -- THERE WAS A PREEXISTING CONDITION.
21 EVERYONE AGREES ON THAT, FIRST OF ALL.

22 THE COURT: NO, THEY DON'T.

23 MR. STRICKLER: WELL, EVERYONE AGREES THERE
24 WAS CHRONIC SUBDURAL HEMATOMA.

25 THE COURT: OKAY.

1 MR. STRICKLER: EVERYONE AGREES THAT EXISTS.
2 THAT'S THE CONDITION I'M TALKING ABOUT.

3 THE COURT: ALL RIGHT.

4 MR. STRICKLER: OKAY.. EVERYONE AGREES THAT
5 IT EXISTS. THEY MAY DISAGREE AS TO HOW THAT HAD
6 TO HAVE OCCURRED, OKAY, BUT THEY AGREE THAT IT
7 EXISTS. THAT'S PREEXISTING CONDITION. THERE IS
8 -- THERE COULDN'T BE A MORE DIFFERENCE OF OPINION
9 AS TO WHAT THE CONSEQUENCES OF THAT ARE, BUT UNDER
10 DR. ROSS'S TESTIMONY, ONE OF THE CONSEQUENCES OF
11 THAT CAN BE SPONTANEOUS REBLEEDING WITHOUT ANY
12 ACTIONS ON THE PART OF THE DEFENDANT AT ALL, OKAY.

13 THE COURT: WELL, THEN LET ME -- GO AHEAD.
14 GO AHEAD.

15 MR. STRICKLER: ANOTHER CONSEQUENCE OF THAT
16 CAN BE REBLEEDING UPON VERY MINOR MOVEMENT, OKAY.
17 IF THE JURY WERE TO BELIEVE THAT THERE WAS SOME
18 SHAKING THAT WASN'T VIOLENT AND WHICH WOULD NOT
19 ARISE TO THE LEVEL OF CHILD ABUSE AND IN WHICH --
20 THEN THAT COULD CAUSE IT, OKAY.

21 SO WE HAVE A SITUATION WHERE THE INTERVENING
22 CAUSE CAN ONE, JUST BE -- IT COULD BE BASED ON
23 NOTHING HE DID WHATSOEVER; TWO, IT CAN BE BASED
24 ON -- IT COULD BE TRIGGERED BY ACTIONS OF HIS
25 WHICH, SINCE EVERYONE AGREES THERE WERE NO

1 PHYSICAL MANIFESTATIONS OF THE PRIOR INJURY, OKAY
2 -- THERE'S BEEN NO TESTIMONY THAT THE CHILD WAS
3 ACTING SICK IN THE WEEKS PRECEDING THE 28TH, SO
4 THIS GENTLEMAN RIGHT HERE HAS NO KNOWLEDGE THAT
5 HE'S DEALING WITH A SICK CHILD, OKAY. HE'S GOT NO
6 KNOWLEDGE OF A PREEXISTING CONDITION, AND HE CAN'T
7 BE HELD TO A STANDARD THAT -- OF ADDITIONAL CARE
8 THAT MIGHT BE IMPOSED ON HIM GIVEN SUCH A
9 SITUATION.

10 THE COURT: WELL, WHAT I'M TRYING TO DO IS
11 CRAFT A CHARGE.

12 MR. STRICKLER: YES, SIR.

13 THE COURT: SO I ASK YOU ALL TO LOOK AT PAGE
14 54. WHAT I WOULD ASK IS, IF I CHARGE THE FIRST
15 PARAGRAPH, THE SECOND PARAGRAPH, AND THEN I WOULD
16 MAKE A MOLLIFICATION TO THE THIRD PARAGRAPH, WHICH
17 STARTS, "THERE MAY BE MORE THAN ONE PROXIMATE
18 CAUSE" AND THAT I WOULD DELETE --

19 MS. CAMPBELL: THE ACT OF TWO OR MORE --

20 THE COURT: YES. THAT THE DEFENDANT'S ACT
21 MAY BE REGARDED AS A PROXIMATE CAUSE IF IT IS A
22 CONTRIBUTING CAUSE OF DEATH TO THE VICTIM. THE
23 FACT THAT OTHER CAUSES ALSO CONTRIBUTED TO THE
24 DEATH OF THE VICTIM WOULD NOT RELIEVE THE
25 DEFENDANT OF RESPONSIBILITY.

1 THE DEFENDANT'S ACTS COULD NOT BE THE SOLE
2 CAUSE OF DEATH, IT MUST BE A PROXIMATE CAUSE OR
3 CONTRIBUTING TO THE DEATH OF THE VICTIM.

4 THAT WAY I DON'T COMMENT ON ANYBODY'S
5 EVIDENCE. IF YOU ARGUE TO THE JURY WHAT YOU --
6 YOU KNOW, IF THEY BELIEVE THAT THE PREEXISTING
7 HEMATOMA WAS -- THAT REBLEEDING -- AND THAT IS
8 WHAT CAUSED THE CONDITION, THEN THAT WOULD BE A
9 PROXIMATE CAUSE OR CONTRIBUTING CAUSE.

10 MR. STRICKLER: I UNDERSTAND WHAT YOU'RE
11 SAYING.

12 THE COURT: WELL, HELP ME OUT.

13 MR. STRICKLER: YOUR HONOR, WITH ALL DUE
14 RESPECT, I THINK WE'RE HALFWAY THERE.

15 THE COURT: ALL RIGHT.

16 MR. STRICKLER: AGAIN, WE WOULD STRIKE THE
17 REST OF IT FROM THAT DOWN. IT -- WE'RE NOT
18 ALLEGING MEDICAL MALPRACTICE.

19 THE COURT: I UNDERSTAND.

20 MR. STRICKLER: I DO THINK WE NEED AT LEAST
21 DEFENDANT'S THREE, WHICH IS A NATURAL OR PROBABLE
22 CONSEQUENCES, FORESEEABILITY, YOUR HONOR, BECAUSE
23 THAT DEALS SPECIFICALLY WITH THE FACT, AND I DON'T
24 NECESSARILY ASK YOU TO CHARGE ANY OF -- BUT
25 FORESEEABILITY DOES NEED TO BE CHARGED. IF YOU'VE

1 GOT THIS CONDITION OUT THERE AND NO ONE KNOWS
2 ABOUT IT...

3 MS. CAMPBELL: I'M SORRY, YOUR HONOR, NUMBER
4 THREE?

5 MR. STRICKLER: I'M SORRY, YOUR HONOR. I
6 HAVE THIS -- MINE IS LABELED NUMBER THREE. I
7 COULD HAVE WRITTEN DOWN NUMBER 3.

8 THE COURT: IT SAYS FORESEEABILITY.

9 MS. CAMPBELL: BUT YOUR HONOR THAT'S NOT WHAT
10 THE STATUTE EVEN SAYS. HE DOESN'T HAVE TO PROCEED
11 IF HE'S GOING TO SHAKE THIS BABY AND IT'S GOING TO
12 DIE AS A RESULT THEREOF. THAT'S NOT WHAT THE
13 STATUTE EVEN SAYS. I DON'T HAVE A PROBLEM WITH
14 THE REST OF YOUR PROXIMATE CAUSE BECAUSE THAT'S
15 THE ONE THAT'S BEEN USED BEFORE, BUT TO SAY THAT
16 HE COULD HAVE PERCEIVED THE DEATH OF MINOR

17 FROM THE OTHER -- I COULD JUST SAY
18 NEGLECT, NOT EVEN SPECULATING DEATH IN THIS CASE.
19 THAT'S THE STATUTE.

20 THEREFORE I CAN'T BE HELD TO A HIGHER
21 STANDARD BY HIS CHARGE THAT HE KNOWS IT'S GOING TO
22 CAUSE THE DEATH. IT'S SIMPLY -- JUDGE, THAT'S NOT
23 THE LAW, NOR IS THAT THE LAW --

24 THE COURT: WELL, THE STATEMENT IN THE TOP
25 DOES NOT NECESSARILY CORRESPOND WITH THE

1 FOOTNOTES. IN FACT, WE CAN'T FIND STATE VS.
2 TORRANCE, BUT IN SUCH LANGUAGE -- BUT THERE IS
3 SOME LANGUAGE IN STATE VS. PETERSON. THE BOTTOM
4 LINE THERE ON THE ANNOTATION, THE TEST OF
5 PROXIMATE CAUSE IN CRIMINAL LAWS IS AN UNINTENDED
6 CONSEQUENCE BY REASONS NOT FORESEEN.

7 MR. STRICKLER: AND THAT'S THE CASE I DROP
8 BACK, THE 1923 CASE IS ALWAYS WHERE I LIKE TO
9 START.

10 THE COURT: BUT ON THE OTHER HAND, AREN'T WE
11 TRYING --

12 MS. CAMPBELL: I MEAN, JUDGE, OUR POSITION
13 ISN'T THAT HE INTENDED TO KILL THIS CHILD.

14 THE COURT: WELL --

15 MS. CAMPBELL: I MEAN, THAT'S NOT EVEN OUR
16 POSITION. I'M NOT SAYING HE FORESAW -- HE JUST
17 ACTED IN AN ABUSIVE OR NEGLECTFUL MANNER; THAT'S
18 ALL I'VE GOT TO PROVE ACCORDING TO THE STATUTE.

19 MR. STRICKLER: WELL, WOULD A --

20 MS. CAMPBELL: AND, YOUR HONOR, YOUR CHARGE
21 AND THE CHARGE I PULLED FROM IRVIN'S BOOK ON
22 PROXIMATE CAUSE ARE VERY SIMILAR, AND THEY BOTH
23 HAVE ALL THE LANGUAGE NECESSARY TO COVER HIS
24 CONCERNS.

25 MR. STRICKLER: WELL, PERISH THE THOUGHT THAT

1 I MAKE THINGS OVERLY COMPLICATED.

2 MS. CAMPBELL: JUDGE, EVEN IN A MURDER CASE,
3 I DON'T --

4 MR. STRICKLER: WELL, I --

5 THE COURT: ONE AT A TIME; I CAN'T LISTEN TO
6 MORE THAN ONE AT A TIME.

7 MR. STRICKLER: SORRY.

8 MS. CAMPBELL: EVEN IN A MURDER CASE, I DON'T
9 HAVE TO PROVE THAT THEY INTENDED TO KILL THEM.

10 MR. STRICKLER: YOU HAVE TO PROVE, I WOULD
11 SUBMIT, IF IT'S NOT INTENT AND IT'S NOT MALICE,
12 IT'S A HAIR'S BREATH AWAY. IT'S EXTREME
13 INDIFFERENCE TO HUMAN LIFE.

14 MS. CAMPBELL: AND I DO HAVE TO --

15 MR. STRICKLER: EXCUSE ME, I BELIEVE I'M
16 TALKING NOW -- WHICH SOUNDS LIKE MALICE TO ME. I
17 MEAN, NOT THE SAME WORDS, BUT IT SURE SOUNDS LIKE
18 IT TO ME, AND YOU'RE RIGHT, IT'S NOT INTENT. IT'S
19 NEGLECT AT BEST. ABUSE, I DON'T THINK -- YOU
20 KNOW, ABUSE IS COMING CLOSE TO SOMETHING THAT'S
21 GOING TO HAVE TO BE AN INTENTIONAL ACT, BUT YOU'VE
22 GOT ABUSE OR NEGLECT. I'LL GIVE HER NEGLECT. SO
23 WE'RE INTO THE MENTAL STATE, WHICH IS GOING TO GET
24 INTO SOMETHING ELSE WE'RE GOING TO HAVE TO
25 DISCUSS, BUT MENTAL STATUS INVOLVES NEGLECT.

1 CERTAINLY EXTREME INDIFFERENCE TO HUMAN LIFE SAYS
2 I'VE GOT TO KNOW I'M BEING INDIFFERENT TO HUMAN
3 LIFE.

4 THE COURT: THAT'S WHAT THE STATE'S CASE IS.

5 MR. STRICKLER: WELL, OKAY.

6 THE COURT: WHETHER THEY BELIEVE THAT OR THEY
7 DON'T --

8 MR. STRICKLER: THEN IF THE ONLY -- I MEAN,
9 THEIR CASE IS NOT THAT THE CHILD GOT SPANKED AND
10 THAT KILLED THEM, OKAY.

11 THE COURT: THAT'S CORRECT.

12 MR. STRICKLER: THEIR CASE IS SOMETHING
13 HAPPENED TO HER HEAD OF A VIOLENT NATURE AND THAT
14 KILLED HER. I DON'T THINK YOU CAN SELL IT ANY
15 OTHER WAY, OKAY.

16 THAT MEANS THAT IF SOMETHING -- THAT THEY
17 NEED TO PROVE THAT FACT, AND THE FACT IS THAT IF
18 THERE'S A PREEXISTING CONDITION UP THERE OF WHICH
19 HE WAS UNAWARE AND OF WHICH ANYONE ELSE IN SOCIETY
20 AT LARGE WAS UNAWARE, THAT IN ESSENCE CAUSED THE
21 DEATH, ACTION OR NO ACTION ON HIS PART WHATSOEVER.
22 THEY'VE GOT TO PROVE --

23 THE COURT: WELL, YOU KNOW, MR. STRICKLER, IN
24 CIVIL LAW WE HAVE AN EGGSHELL ARGUMENT. YOU TAKE
25 THE PERSON AS YOU FIND THEM.

1 MR. STRICKLER: OH, I UNDERSTAND THAT YOU
2 TAKE THEM --

3 THE COURT: YOU DON'T KNOW WHEN YOU HIT THEM
4 WITH YOUR AUTOMOBILE THAT THEY'RE CRIPPLED AND YOU
5 FURTHER CRIPPLE THEM. I MEAN, YOU KNOW, IN A
6 CIVIL CONTEXT THE EGGSHELL ARGUMENT WORKS AGAINST
7 YOU, DOESN'T IT?

8 MR. STRICKLER: LET ME SEE, I'VE ARGUED THREE
9 CIVIL CASES IN MY LIFE. YOU HAVE ME AT A BIT OF A
10 DISADVANTAGE ON THIS ONE.

11 THE COURT: THE ARGUMENT IS PREEXISTING
12 INJURY. YOU KNOW, IT SAYS A PLAINTIFF -- A
13 DEFENDANT CANNOT AVOID LIABILITY BASED UPON A
14 PREEXISTING CONDITION IF THAT CONDITION IS
15 AGGRAVATED OR OTHERWISE REINJURED.

16 MR. STRICKLER: YES, SIR.

17 THE COURT: SO --

18 MR. STRICKLER: WELL.

19 THE COURT: I'M STILL OPEN MINDED ABOUT IT,
20 BUT I'M TRYING TO FIGURE OUT HOW YOU DO THAT
21 WITHOUT COMMENTING ON THE FACTS AND HOW YOU -- YOU
22 KNOW, THE STATE'S THEORY IS THAT HE VIOLENTLY
23 SHOOK THIS BABY. THAT'S THE ONLY WAY HE CAN BE
24 CONVICTED. I MEAN, JUST BECAUSE THERE WAS A
25 SHAKING --

1 MR. STRICKLER: WELL, YOU KNOW, I --

2 THE COURT: I'M NOT SAYING IT WAS A VIOLENT
3 SHAKING.

4 MR. STRICKLER: AT THIS POINT I'VE HEARD SO
5 MUCH ABOUT SPANKING THAT I'M UNDER THE IMPRESSION
6 THAT THE JURY IS UNDER THE IMPRESSION THAT'S
7 ENOUGH TO PUT SOMEONE IN PRISON FOR THE REST OF
8 THEIR LIFE.

9 MS. CAMPBELL: JUDGE, IF I MAY.

10 THE COURT: SURE.

11 MS. CAMPBELL: IN THE PROXIMATE CAUSE THERE
12 HAS TO BE AN ACT FROM WHICH THIS DEATH RESULTED,
13 BUT THEIR FORESEEABILITY IS THEY ARE SAYING THAT
14 HE WOULD HAVE TO PERCEIVE THAT THE CHILD WOULD DIE
15 AND THAT'S NOT WHAT THE STANDARD IS. I MEAN,
16 WE'RE NOT ALLEGING -- WE'RE ALLEGING THERE WAS AN
17 INTENTIONAL ACTION HERE. THERE'S NO QUESTION
18 ABOUT THAT.

19 THE COURT: YOU'RE ALLEGING WHAT?

20 MS. CAMPBELL: THAT THERE WAS AN INTENTIONAL
21 ACT HERE OF VIOLENCE, BUT JUST AS IN WITH MURDER,
22 WE DON'T HAVE TO PROVE THAT HE FORCED -- I MEAN,
23 THIS SAYS FORESEEABILITY THAT DEATH WOULD RESULT
24 FROM THE SHAKING. THAT'S WHAT THEY'RE TRYING TO
25 SAY HERE, AND THAT SIMPLY -- I MEAN, EVEN IN CIVIL

1 LAW THEY DON'T THINK THAT.

2 THE COURT: ALL RIGHT. I'LL THINK ABOUT IT
3 OVERNIGHT. BOTH OF YOU MAY HAVE TO BE ABLE TO
4 DANCE AROUND THE PINHEAD TOMORROW ON SHORT NOTICE
5 ONCE I MAKE UP MY MIND.

6 MR. STRICKLER: YES, SIR, THERE'S ONE OTHER
7 QUESTION I HAVE FOR YOU, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. STRICKLER: THAT IS, WHAT WOULD BE THE
10 NATURE OF INVOLUNTARY MANSLAUGHTER, MANSLAUGHTER
11 IN THIS CASE.

12 THE COURT: NATURE OF THE INVOLUNTARY
13 MANSLAUGHTER?

14 MR. STRICKLER: YOU'RE CHARGING IT, I WOULD
15 ASSUME.

16 THE COURT: I HAVEN'T THOUGHT ABOUT IT.

17 MR. STRICKLER: OH, I WOULD SUBMIT THAT YOU
18 DO.

19 THE COURT: WHY?

20 MR. STRICKLER: WELL, IF YOU START STRIKING
21 ELEMENTS FROM HOMICIDE BY CHILD ABUSE YOU COME UP
22 WITH PERSONS GUILTY OF HOMICIDE BY CHILD ABUSE IF
23 THE PERSON CAUSES DEATH.

24 THE COURT: I DIDN'T STRIKE ANY ELEMENTS.

25 MR. STRICKLER: WELL, I MEAN, I'M JUST TRYING

1 TO GO THROUGH THE ANALYSIS THAT YOU GET TO A
2 LESSER INCLUDED OFFENSE.

3 THE COURT: I DON'T SEE HOW YOU CAN -- IT'S
4 NOT A LESSER INCLUDED.

5 MR. STRICKLER: WHY?

6 THE COURT: INVOLUNTARY MANSLAUGHTER.

7 MR. STRICKLER: IT'S A LESSER INCLUDED OF
8 HOMICIDE.

9 THE COURT: BUT INVOLUNTARY MANSLAUGHTER IS
10 THE UNLAWFUL KILLING OF ANOTHER PERSON IN SUDDEN
11 HEAT AND MINOR . THERE'S NO EVIDENCE THAT HE --

12 MR. STRICKLER: I'M SORRY, THAT'S VOLUNTARY.

13 THE COURT: INVOLUNTARY IS RECKLESS DISREGARD
14 FOR LIFE AND SAFETY, BUT IT'S STILL NOT A
15 VOLUNTARY -- INVOLUNTARY -- THAT'S NOT A LESSER
16 INCLUDED OF HOMICIDE.

17 MR. STRICKLER: OH, I'D SUBMIT THAT, YOU
18 KNOW -- I TRIED TO GO THROUGH AND LOOK AT THE
19 ELEMENTS OF HOMICIDE BY CHILD ABUSE, AND IT'S GOT
20 TO BE A DEATH -- IT'S GOT TO BE AN UNLAWFUL DEATH.
21 I MEAN, TO BE AN UNLAWFUL DEATH, YOU HAVE TO HAVE
22 A CHILD UNDER 11. YOU'VE GOT TO HAVE ABUSE OR
23 NEGLECT, AND YOU HAVE TO HAVE CIRCUMSTANCES
24 MANIFESTING EXTREME INDIFFERENCE TO HUMAN LIFE.

25 I MEAN, I DON'T KNOW WHAT THE ELEMENTS ARE AS

1 YOU DEFINE THEM, BUT THAT'S THE WAY I READ THEM.

2 THE COURT: WELL, THE REASON IT'S NOT A
3 LESSER INCLUDED -- THIS IS A SPECIFIC STATUTE
4 UNDER WHICH YOUR CLIENT IS BEING TRIED.

5 ONE THING THE JURY WOULD PONDER IS THAT HE IS
6 NOT DIRECTLY OR GROSSLY NEGLIGENT BY BEHAVIOR OF
7 THE PARENTS -- YOU KNOW, I DON'T BELIEVE YOU CAN
8 ARGUE TO THE JURY THAT HE WASN'T RECKLESS AND
9 GROSSLY NEGLIGENT IN ANY WAY AND THEREFORE HE
10 SHOULD BE ACQUITTED.

11 IN OTHER WORDS, THE STATE HAS TO PROVE EACH
12 ONE OF THESE ELEMENTS OF CORPORAL PUNISHMENT IN
13 ORDER TO PREVAIL. YOUR ARGUMENT THAT BY
14 SUGGESTING THAT YOU COULD HAVE INVOLUNTARY
15 MANSLAUGHTER, THE CONCEPT OF RECKLESSNESS IS
16 EMBODIED IN THIS STATUTE. THEY HAVE TO OVERCOME
17 THAT.

18 MR. STRICKLER: I --

19 THE COURT: I WILL DECLINE.

20 MR. STRICKLER: I UNDERSTAND THAT. JUST NOTE
21 THAT YOU DENY MY REQUEST.

22 THE COURT: BECAUSE IT'S A STATUTORY SCHEME,
23 I WOULD DECLINE TO -- OR UNDER THE ELEMENTS TEST,
24 I WOULD DECLINE TO DO THAT.

25 MR. STRICKLER: THANK YOU, SIR. THAT'S

1 ACTUALLY ALL I HAVE.

2 THE COURT: OKAY. IT'S BEEN A LONG DAY. SEE
3 YOU ALL IN THE MORNING.

4 MAY 17, 2002

5 THE COURT: I DIDN'T HEAR, MS. CAMPBELL,
6 WHETHER OR NOT YOU HAD AN ARGUMENT WITH THE
7 INVOLUNTARY MANSLAUGHTER.

8 MS. CAMPBELL: YOUR HONOR, IN THIS CASE, I
9 THINK IT'S FAIRLY STRAIGHTFORWARD THAT THE
10 ELEMENTS ARE ESSENTIALLY DIFFERENT. THE ELEMENTS
11 IN HOMICIDE BY CHILD ABUSE INVOLVE A CHILD UNDER
12 11, WHICH THAT IN AND OF ITSELF IS NOT -- THAT
13 ELIMINATES INVOLUNTARY TO THE LESSER.

14 IN ADDITION TO THAT, IT'S BY ABUSE OR
15 NEGLECT, WHICH IN AND OF ITSELF AGAIN, I THINK
16 ELIMINATES INVOLUNTARY FROM BEING ANY POSSIBLE
17 LESSER INCLUDED OFFENSE IN THIS CASE.

18 I MEAN, I DON'T KNOW THAT I NEED TO GO MUCH
19 FURTHER THAN THAT, YOUR HONOR. THE LANGUAGE ALONE
20 EXCLUDES IT FROM BEING A POSSIBLE LESSER.

21 THE COURT: WELL, I JUST WANTED TO HEAR WHAT
22 YOU HAD TO SAY. THE OTHER REASON IS I THINK THE
23 FACTS IN THIS CASE WILL NOT SUPPORT IT. HE CLAIMS
24 HE DIDN'T DO ANYTHING RECKLESS AT ALL.

25 FOR THAT REASON I WOULD DENY IT.

1 MS. CAMPBELL: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT. ON THE PROXIMATE
3 CAUSE, THIS IS NOT AN INTERVENING CAUSE CASE, SO
4 I'M GOING TO EITHER CHARGE WHAT I GAVE YOU OR I'M
5 GOING TO CHARGE A SHORTER VERSION AS CONTAINED IN
6 IRWIN'S BOOK. IT'S ESSENTIALLY, BUT FOR THE TEST,
7 AND THE REASON FOR THAT IS THE STATE'S THEORY IN
8 THIS CASE IS SHAKEN BABY SYNDROME.

9 IF THE STATE CANNOT CONVINCE THAT JURY THAT
10 THERE WAS A VIOLENT SHAKING OF THIS CHILD, YOUR
11 CLIENT PREVAILS, AND -- OR ON ANOTHER THEORY THAT
12 YOUR CLIENT PREVAILS, AND THAT IS IF THERE WAS THE
13 PREEXISTING INJURY AND THE REBLEEDING, WHICH COULD
14 BE CAUSED BY ANYTHING, SOMETHING HE DID OR A FALL
15 OR WHATEVER, IF THE JURY BELIEVES THAT, THEN HE
16 WALKS.

17 THAT IS A BUT-FOR. YOU CAN ARGUE THE
18 BUT-FOR'S TO THE JURY. MY CLIENT -- MY CLIENT
19 WITHOUT QUESTION THAT HE COULDN'T HAVE FORESEEN
20 ANYTHING, THE CONDITION WAS THERE AND ANYTHING WAS
21 THERE, A FALL ON THE FLOOR, WHATEVER, SO STICK TO
22 THE TRADITIONAL PROXIMATE CAUSE LANGUAGE IN THE --
23 AND YOU CAN ARGUE TO THE JURY ABOUT THAT
24 SITUATION.

25 ALL RIGHT.

1 MS. COOPER: YOUR HONOR, IF I MAY.

2 THE COURT: YES.

3 MS. COOPER: I FOUND A CASE YESTERDAY WHEN I
4 WAS RESEARCHING THE FORESEEABILITY ISSUE. IT'S
5 CALLED STATE VS. JARRELL. IT HAS NOT BEEN
6 PUBLISHED. IT WAS JUST DECIDED ON MONDAY BY THE
7 SUPREME COURT. IN IT, YOUR HONOR, IT GIVES A
8 GREAT DEFINITION OF EXTREME INDIFFERENCE. IT
9 CITES STATE VS. ROWELL, WHICH THE CITING IS 587 --
10 I MEAN, 487 S.E.2ND 185. IT ALSO CITES A
11 DEFINITION FOR DUTY OF A PARENT.

12 LASTLY, YOUR HONOR, DUE TO THE FACT THAT
13 THERE IS A PREEXISTING CONDITION IN THIS CASE, THE
14 CHRONIC HEMATOMA, THE STATE WOULD RESPECTFULLY
15 REQUEST THAT YOU CHARGE ON THE LAW THAT THE
16 DEFENDANT TAKES THE VICTIM AS THEY ARE. I HAVE
17 THE DEFINITION OF BOTH THAT FROM LAFAVE AND SCOTT,
18 IF I MAY HAND THAT UP TO THE COURT.

19 THE COURT: YES, MA'AM.

20 MR. STRICKLER: YOUR HONOR, AS TO -- I GUESS,
21 LAST THINGS FIRST, A REQUEST AS TO THE DEFENDANT
22 TAKING THEIR VICTIM AS THEY ARE. FIRST LET'S FIND
23 YOUR LANGUAGE, BY THE COURT, ON THE FACTS OF THIS
24 CASE. THERE MAY VERY WELL NOT BE A VICTIM IN THIS
25 CASE.

1 THE COURT: I WON'T USE THE WORD VICTIM
2 ANYWAY.

3 MR. STRICKLER: AND AGAIN, OF COURSE, THAT'S
4 A PREEXISTING CONDITION. YOU'VE GOT TO GO AHEAD
5 AND GET HIM TO -- I REQUEST, REGARDING NATURAL
6 FORESEEABLE CONSEQUENCES OF FORESEEABILITY,
7 BECAUSE YOU CAN'T TAKE -- I UNDERSTAND THE CONCEPT
8 OF THE EGGSHELL PLAINTIFF, ET CETERA.

9 THE COURT: I MEAN, I'M NOT SO SURE I'M GOING
10 TO CHARGE THAT, BECAUSE WE WERE TALKING ABOUT THE
11 ARGUMENT YESTERDAY.

12 MR. STRICKLER: YES, SIR.

13 THE COURT: I'M NOT GOING TO CHARGE
14 FORESEEABILITY. WE'RE TALKING ABOUT PROXIMATE,
15 DIRECT, REAL EFFICIENT CAUSE.

16 MR. STRICKLER: YES, SIR. AND IF I
17 UNDERSTAND YOU CORRECTLY, SINCE YOUR HONOR WON'T
18 CHARGE FORESEEABILITY, THEN THERE'S NO NECESSITY
19 TO CHARGE -- I WOULD SUBMIT THERE'S NO NECESSITY
20 TO CHARGE TAKING YOUR VICTIM AS THEY ARE.

21 THE COURT: I WILL AGREE WITH YOU AT THIS
22 MOMENT. I'LL THINK ABOUT IT.

23 MR. STRICKLER: ALL RIGHT.

24 THE COURT: ALL RIGHT. WHAT ELSE?

25 MR. STRICKLER: I SEE THE CHARGE OF -- HAVE

1 THESE COPIES BEEN SUBMITTED TO THE COURT REPORTER?
2 ARE THESE COPIES PART OF RECORD IN THIS CASE?

3 MS. COOPER: I JUST HANDED THEM UP TO YOUR
4 HONOR.

5 MR. STRICKLER: WELL, OKAY. AS TO EXTREME
6 INDIFFERENCE, I SEE A DEFINITION OF INDIFFERENCE,
7 I DON'T SEE A DEFINITION OF EXTREME INDIFFERENCE,
8 WHEN YOU DEFINE EXTREME YOU'RE GETTING INTO
9 DEFINING INDIFFERENCE -- I WAS JUST GOING WITH THE
10 LANGUAGE IN THE STATUTE.

11 THE PROBLEM WITH INDIFFERENCE IS FAILURE TO
12 EXERCISE ORDINARY AND DUE CARE. YOU'LL HAVE TO
13 MODIFY THAT BY EXTREME, I THINK.

14 IF INDIFFERENCE IS THE FAILURE TO EXERCISE
15 ORDINARY AND DUE CARE, THEN EXTREME INDIFFERENCE
16 WOULD HAVE TO BE WHAT OTHER CARE.

17 THE COURT: I MAY NOT GET INTO THAT EITHER.
18 I THINK THE JURY CAN DETERMINE WHAT EXTREME
19 INDIFFERENCE IS.

20 MR. STRICKLER: I MEAN, I THINK EXTREME IS A
21 WORD THAT'S COMPREHENDIBLE IN ITS EXTREME ORDINARY
22 USAGE. INDIFFERENCE IS TO -- AS THE DUTY OF A
23 PARENT -- YOU KNOW, I CAN'T ARGUE ABOUT THAT. THE
24 PARENT HAS A SPECIFIC DUTY TO SERVE THE BEST
25 INTEREST OF HIS CHILD AND SHOULD MAKE EVERY EFFORT

1 NOT TO KNOWINGLY PLACE HIS CHILD IN HARM'S WAY.

2 CERTAINLY I DON'T HAVE A PROBLEM WITH THAT.

3 THE COURT: OKAY. BRING THE JURY IN.

4 MR. STRICKLER: YOUR HONOR, I JUST WANT THE
5 RECORD TO REFLECT, OF COURSE, AND NOTE THAT MY
6 REQUESTS HAVE BEEN MARKED WITH COPIES WITH MADAM
7 COURT REPORTER AS PART OF THE EXHIBITS IN THIS
8 CASE, AND I WOULD HAVE TO ACCEPT YOUR DENIAL OF MY
9 REQUEST TO CHARGE.

10 THE COURT: BRING THEM IN.

11 MR. STRICKLER: THANK YOU, SIR.

12 (WHEREUPON, THE JURY CAME INTO OPEN
13 COURT AT APPROXIMATELY 9:24.)

14 THE BAILIFF: THE JURY IS ALL PRESENT, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. MADAM FOREPERSON AND
17 LADIES AND GENTLEMEN OF THE JURY. YOU'VE NOW
18 HEARD ALL THE TESTIMONY UPON WHICH YOU ARE
19 ENTITLED TO BE ABLE TO BASE YOUR DECISION. FOR
20 THE NEXT LITTLE WHILE THE ATTORNEYS GET AN
21 OPPORTUNITY TO MAKE A CLOSING SUMMATION TO YOU.
22 DURING THAT TIME THEY CAN DISCUSS THEIR VIEW OF
23 THE FACTS AND THE EVIDENCE IN THE CASE. THEY CAN
24 ALSO DISCUSS WITH YOU THEIR OPINION ABOUT THE
25 LEGAL PRINCIPLES IN THE CASE.

1 WHAT THEY HAVE TO SAY TO YOU MIGHT WELL HELP
2 YOU ANALYZE THE CASE. I WILL ASK YOU TO LISTEN TO
3 THEM CAREFULLY, HOWEVER, LET ME POINT OUT A COUPLE
4 OF THINGS ABOUT ATTORNEY'S CLOSING SUMMATIONS TO
5 YOU.

6 FIRST OF ALL, WHAT THEY SAY TO YOU DOES NOT
7 CONSTITUTE EVIDENCE. IT'S MERELY THEIR OPINION OF
8 THE EVIDENCE. THE ONLY EVIDENCE YOU'RE ENTITLED
9 TO CONSIDER IS WHAT YOU HEARD OR DID NOT HEAR FROM
10 THE WITNESS STAND.

11 SECONDLY -- AND IF THEIR VERSION OF THE FACTS
12 IN THE CASE DIFFERS FROM YOUR UNANIMOUS VERSION,
13 OBVIOUSLY, YOURS COUNTS BECAUSE YOU'RE ENTITLED TO
14 JUDGE THE FACTS IN THIS CASE.

15 SECONDLY, IF THEIR DISCUSSIONS WITH YOU ABOUT
16 THE LEGAL PRINCIPLES DIFFERS FROM MY INSTRUCTIONS,
17 THEN I WOULD ASK YOU TO DISREGARD THEIR ARGUMENT
18 AND FOLLOW MY INSTRUCTIONS. JUST LIKE YOU'RE
19 ENTITLED TO JUDGE THE FACTS OF THE CASE, I'M
20 ENTITLED TO JUDGE THE LAW IN THE CASE.

21 THE ORDER OF ARGUE IS -- IS THE STATE GOING
22 TO OPEN AND CLOSE?

23 MS. CAMPBELL: YES.

24 THE COURT: THE ORDER OF ARGUMENT IS THE
25 STATE OPENS ON THE LAW. THEN THE DEFENSE GETS AN

1 OPPORTUNITY TO ARGUE AND THEN THE STATE GETS AN
2 OPPORTUNITY TO CLOSE.

3 DEPENDING ON HOW LONG THEY ARE, WE'LL TAKE A
4 BREAK AT SOME POINT OR WE MAY WAIT AND GET THROUGH
5 BOTH ARGUMENTS.

6 MADAM SOLICITOR.

7 OPENING ON THE LAW

8 MS. CAMPBELL: MAY IT PLEASE THE COURT.

9 LADIES AND GENTLEMEN, THE FIRST THING I WANT
10 TO DO THIS MORNING IS TO TAKE THIS OPPORTUNITY TO
11 THANK YOU FOR YOUR SERVICE IN THIS CASE AND FOR
12 YOUR ATTENTION TO THIS CASE. THIS CASE HAS LASTED
13 ALL WEEK. ON BEHALF OF THE STATE OF SOUTH
14 CAROLINA AND ON BEHALF OF MINOR , WE
15 THANK YOU.

16 AS YOU HAVE REALIZED DURING THIS WEEK, THIS
17 IS AN EXTREMELY IMPORTANT CASE, BECAUSE THIS IS
18 NATHANIEL MITCHELL'S DAY IN COURT.

19 THE ONLY THING I ASK YOU TO CONSIDER, LADIES
20 AND GENTLEMEN -- AND I'M GOING TO TALK TO YOU FOR
21 A LITTLE WHILE, AND THEN I'M GOING TO SIT DOWN AND
22 MS. COGGIOLA IS GOING TO TALK TO YOU, THEN I'M
23 GOING TO GET BACK UP AND TALK TO YOU A LITTLE BIT
24 ABOUT THE FACTS AND THE LAW.

25 THE ONLY THING I ASK YOU TO CONSIDER AS YOU

1 LISTEN TO US IS THAT THIS IS ALSO MINOR

2 DAY IN COURT.

3 NOW, YOU HAVE HEARD ALL THE RELEVANT EVIDENCE
4 THE STATE IS ALLOWED TO PRESENT, AND THAT'S THE
5 EVIDENCE UPON WHICH YOU MUST DETERMINE WHAT THE
6 FACTS ARE IN THIS CASE AND UPON WHAT YOU MUST BASE
7 YOUR VERDICT, THE EVIDENCE LADIES AND GENTLEMEN,
8 THE TESTIMONY, THE PHYSICAL EVIDENCE, NOT
9 QUESTIONS BY EITHER ME OR THE DEFENSE ABOUT SOME
10 ARCANE ARTICLE FROM 1960, BUT THE EVIDENCE, THE
11 TESTIMONY AND WHAT THE WITNESSES SAID.

12 I ALSO WANT TO TAKE THIS OPPORTUNITY, AND AS
13 THE JUDGE JUST TOLD YOU, IF I GET UP HERE -- AND
14 I'M GOING TO TALK TO YOU A LITTLE ABOUT THE LAW
15 RIGHT NOW. IF I MISQUOTE IT, IT'S NOT INTENTIONAL
16 ON MY PART. YOU TAKE THE LAW AS THE JUDGE GIVES
17 IT TO YOU.

18 IF I TALK ABOUT THE FACTS -- WHEN I TALK
19 ABOUT THE FACTS, IF I MISQUOTE THOSE, YOU ARE THE
20 SOLE JUDGE OF THE FACTS IN THIS CASE, LADIES AND
21 GENTLEMEN, BECAUSE THERE ARE DIFFERENT ROLES IN
22 THIS COURTROOM, THE STATE'S ROLE IS TO PRESENT THE
23 RELEVANT EVIDENCE UPON WHICH YOU CAN BASE A
24 VERDICT.

25 THE DEFENSE'S ROLE, IT'S OBVIOUS, TO DEFEND

1 HER CLIENT TO THE BEST OF HER ABILITY, AND THE
2 JUDGE'S ROLE IS TO DETERMINE WHAT'S ADMISSIBLE,
3 WHAT YOU CAN HEAR, AND TO RULE ON THE LAW AND TO
4 ADVISE YOU WHAT THE LAW IS.

5 BUT THE MOST IMPORTANT ROLE, LADIES AND
6 GENTLEMEN, THERE'S NO DISPUTE, AND THAT'S YOUR
7 ROLE BECAUSE YOU INDIVIDUALLY AND THEN
8 COLLECTIVELY, THE 12 OF YOU, ARE THE SOLE FINDERS
9 OF THE FACTS IN THIS CASE BECAUSE, LADIES AND
10 GENTLEMEN, IT IS CRUCIAL, IN THIS CASE YOU MUST
11 DETERMINE WHAT HAPPENED TO MINOR ON THE
12 MORNING OF MARCH 28TH, TWO YEARS AGO.

13 I WANT TO ALSO APOLOGIZE IF I'VE DONE
14 ANYTHING TO OFFEND ANYONE. SOMETIMES I GET SO
15 CAUGHT UP IN TRYING TO GET THINGS OUT THAT MY
16 QUESTIONING GETS CLUMSY, THERE ARE TECHNICALITIES
17 THAT WE HAVE TO FOLLOW. I'VE BEEN SLOPPY AT
18 TIMES. PLEASE DON'T HOLD THAT AGAINST THE STATE,
19 AND PLEASE DON'T HOLD THAT AGAINST MINOR

20 . AND THEN I'VE GOT ALLERGY PROBLEMS THIS
21 MORNING, SO IF MY VOICE STARTS TO GO A LITTLE BIT,
22 PLEASE JUST BEAR WITH ME.

23 IN A CRIMINAL CASE IT IS SOMEWHAT UNIQUE,
24 BECAUSE IN A CRIMINAL CASE, THE DEFENDANT HAS THE
25 ABSOLUTE RIGHT TO CONFRONT ALL THE WITNESSES IN

1 THE CASE. OUR CONSTITUTION ENSURES THAT. SO IN A
2 CRIMINAL CASE, YOU HEAR LIVE TESTIMONY. IN
3 CERTAIN CASES WITH CHILDREN UNDER THE AGE OF 11,
4 YOU CAN HEAR A DEPOSITION, BUT THAT'S PRETTY MUCH
5 THE ONLY TIME.

6 YOU HEARD LIVE TESTIMONIES. YOU HEARD ABOUT
7 STATEMENTS IN THIS CASE, POLICE REPORTS. WE'VE
8 HEARD A LOT ABOUT MEDICAL RECORDS THAT AREN'T
9 ADMISSIBLE BECAUSE IT'S UP TO YOU AND YOU MUST
10 JUDGE THE CREDIBILITY OF EACH AND EVERY WITNESS.
11 THAT'S WHY WE HAVE TO BRING IN ALL THOSE SEPARATE
12 DOCTORS.

13 ALSO, IN CRIMINAL CASES WE CAN BRING IN
14 CERTAIN PEOPLE TO SAY DIFFERENT THINGS. YOU HEARD
15 ALL THE RELEVANT DOCTORS IN THIS CASE. WE BROUGHT
16 IN -- I BELIEVE IN THE END, THE STATE PUT UP SIX
17 DIFFERENT, SEVEN DIFFERENT DOCTORS.

18 EACH ONE OF THOSE HAD TO COME BEFORE YOU
19 BECAUSE THEY HAD SOMETHING TO CONTRIBUTE IN THIS
20 CASE. THE OPHTHALMOLOGIST COULD TALK ABOUT MORE
21 SPECIFICALLY THE EYE. THE RADIOLOGIST COULD TALK
22 ABOUT VERY SPECIFICALLY THE C.T. SCANS. THEY EACH
23 CONTRIBUTED IN A DIFFERENT WAY. YOU DIDN'T HAVE
24 TO HEAR FROM THE BRAIN SURGEON IN THIS CASE,
25 BECAUSE THERE'S NO DISPUTE OVER WHAT THE INJURIES

1 TO THE BRAIN WERE, AND THAT IS WHY YOU HAVE TO
2 HEAR FROM A SERIES OF DOCTORS, BUT YOU DIDN'T HEAR
3 FROM EVERY SINGLE DOCTOR WHO SAW MINOR .

4 IN THIS COUNTRY, THE BURDEN OF PROOF IS ON
5 THE STATE, AS IT SHOULD BE, TO PROVE THIS
6 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, AND
7 THAT IS EXACTLY THE WAY IT SHOULD BE.

8 IN OUR COUNTRY, THE BURDEN IS ON US, BUT LET
9 ME BE THE FIRST TO TELL YOU, LADIES AND GENTLEMEN,
10 IN THIS CASE, PERHAPS MORE THAN ANY OTHER, THAT IS
11 A BURDEN THE STATE WELCOMES. I WANT TO TALK TO
12 YOU A LITTLE ABOUT GUILT BEYOND A REASONABLE
13 DOUBT. WHAT DOES THAT MEAN?

14 THE JUDGE IS GOING TO DEFINE THIS FOR YOU.
15 WHAT IS REASONABLE DOUBT? IN OUR COURTS, THEY
16 HAVE DEFINED IT IN DIFFERENT WAYS.

17 IN ONE OF THE CASES IT DEFINES REASONABLE
18 DOUBT IN THE FOLLOWING MANNER, BECAUSE PROOF
19 BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
20 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT AND THE
21 LAW RECOGNIZES, LADIES AND GENTLEMEN, THAT THERE
22 ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW
23 WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE
24 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY
25 POSSIBLE DOUBT.

1 IF, BASED ON YOUR CONSIDERATION OF THE
2 EVIDENCE, YOU ARE FIRMLY CONVINCED, JUST FIRMLY
3 CONVINCED, OF THE DEFENDANT'S GUILT IN THE CRIME
4 CHARGED, YOU MUST FIND HIM GUILTY.

5 IF, ON THE OTHER HAND, YOU THINK THERE IS A
6 REAL POSSIBILITY THAT HE IS NOT GUILTY, THEN FIND
7 HIM NOT GUILTY.

8 THE JUDGE WILL CHARGE YOU ON THIS LATER, BUT
9 THAT IS THE DEFINITION THAT THE COURTS HAVE TO
10 HELP YOU UNDERSTAND WHAT REASONABLE DOUBT IS, NOT
11 BEYOND ANY POSSIBLE DOUBT, EVIDENCE THAT LEAVES
12 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

13 LADIES AND GENTLEMEN, YOU HAVE BEFORE YOU IN
14 THIS CASE ONE INDICTMENT. THAT INDICTMENT IS FOR
15 THE STATUTORY CHARGE OF HOMICIDE BY CHILD ABUSE,
16 IN OUR CODE OF LAWS, SECTION 16-3-85. AND WHAT IS
17 HOMICIDE BY CHILD ABUSE IN OUR STATE?

18 IN THIS STATE, "A PERSON IS GUILTY OF
19 HOMICIDE BY CHILD ABUSE IF THE PERSON CAUSES THE
20 DEATH OF A PERSON UNDER THE AGE OF 11," AND NOBODY
21 IS DISPUTING MINOR WAS TWO YEARS OLD,
22 "WHILE COMMITTING CHILD ABUSE OR NEGLECT," ABUSE
23 OR NEGLECT, NOT BOTH, ALTHOUGH I SUBMIT ABUSE IS
24 NEGLECT. "CHILD ABUSE OR NEGLECT, AND THE DEATH
25 RESULTS IN CIRCUMSTANCES MANIFESTING AN EXTREME

1 INDIFFERENCE TO HUMAN LIFE."

2 NOW, THE STATE AND THE JUDGE IS GOING TO TELL
3 YOU, WE DON'T HAVE TO GET UP AND PROVE THAT THAT
4 MORNING HE INTENDED TO KILL HER. WHAT WE HAVE TO
5 PROVE IS THAT HE ABUSED HER OR NEGLECTED HER IN
6 SUCH A MANNER THAT IT WAS AN EXTREME INDIFFERENCE
7 TO HUMAN LIFE.

8 AND, LADIES AND GENTLEMEN, I SUBMIT THAT WHEN
9 YOU BEAT A TWO YEAR OLD WITH A BELT, THAT WHEN YOU
10 SHAKE A TWO YEAR OLD SO HARD HER BRAIN BECOMES
11 MUSH, THAT IS EXTREME INDIFFERENCE, AND I DON'T
12 THINK ANYBODY IS GOING TO GET UP HERE AND SAY IT
13 ISN'T.

14 ABUSED OR NEGLECTED CHILD IS DEFINED IN THE
15 FOLLOWING MANNER -- AND THE JUDGE WILL ALSO TELL
16 YOU ABOUT THIS, WHAT IS AN ABUSED OR NEGLECTED
17 CHILD? "THE CHILD WHOSE DEATH RESULTS FROM OR
18 WHOSE PHYSICAL OR MENTAL HEALTH OR WELFARE IS
19 HARMED." IT JUST HAS TO BE HARMED. IN THIS CASE,
20 SHE'S DEAD -- "OR THREATENED WITH HARM BY ACTS OR
21 OMISSIONS." IT DOESN'T EVEN HAVE TO BE AN OVERT
22 ACT ON THE PART OF THE DEFENDANT, ALTHOUGH IN THIS
23 CASE IT DOESN'T GET ANY MORE OVERT. IT DOESN'T
24 GET ANY WORSE.

25 IT CAN BE AN ACT OR OMISSION ON THE PART OF

1 THE CHILD'S PARENT, OR GUARDIAN IN THIS CASE, HER
2 FOSTER FATHER. AN ACT OR OMISSION, THE VERY ACT
3 IN AND OF ITSELF OF THE BEATING WITH THE BELT.
4 OMISSION, NOT PROVIDING PROPER CARE, MEDICAL CARE
5 AS SHE LAY GASPING, WITH HER EYES ROLLING BACK,
6 ACT OR OMISSION. THAT'S ALL THE STATE HAS TO
7 PROVE.

8 WHAT IS HARM? "HARM TO A CHILD'S HEALTH OR
9 WELFARE CAN OCCUR WHEN THE PARENT OR GUARDIAN OR
10 OTHER PERSON RESPONSIBLE," AND THERE'S NO DISPUTE
11 HERE THAT HE WAS THE PERSON RESPONSIBLE THAT
12 MORNING. HE WAS THE ONLY PERSON OVER FIVE YEARS
13 OLD IN THAT HOUSE -- "INFLICTS OR ALLOWS TO BE
14 INFLECTED UPON THE CHILD PHYSICAL OR MENTAL
15 INJURY." IT JUST HAS TO BE MENTAL, LADIES AND
16 GENTLEMEN. IT DOESN'T GET ANY MORE PHYSICAL THAN
17 THIS CASE. "SUSTAINED AS A RESULT OF EXCESSIVE
18 CORPORAL PUNISHMENT," AND THE LAW TAKES INTO
19 ACCOUNT -- YOU DON'T GET PUNISHED FOR SPANKING
20 YOUR CHILDREN IN THIS STATE OR IN THIS COUNTRY.

21 "CORPORAL PUNISHMENT IS ALLOWED WHEN IT IS
22 PERPETRATED" -- THESE ARE THE EXCEPTIONS OF WHEN
23 YOU CAN DO IT, BECAUSE IT'S PERFECTLY FINE IN THIS
24 COUNTRY, LADIES AND GENTLEMEN, TO DISCIPLINE YOUR
25 CHILDREN IN THE MANNER YOU THINK IS APPROPRIATE AS

1 LONG AS YOU DON'T KILL THEM. BECAUSE IT'S OKAY TO
2 DO IT IF IT'S BEING PERPETRATED FOR THE PURPOSE,
3 BUT IT HAS TO BE "FOR THE PURPOSE OF RESTRAINING
4 OR CORRECTING," RESTRAINING OR CORRECTING.

5 WHY WAS HE BEATING HER, SHAKING HER THAT
6 MORNING, THE TWO YEAR OLD, FOR WETTING THE BED?
7 SHE WASN'T VERY GOOD AT POTTY TRAINING.

8 I SUBMIT, LADIES AND GENTLEMEN, THAT EXCLUDES
9 HIM FROM USING THAT, BECAUSE THAT ALONE -- EVEN
10 ASSUMING HE DOESN'T SPANK THE CHILD, HE DIDN'T
11 HAVE THE RIGHT TO BEAT HER FOR PEEING IN THE BED.

12 IT ALSO HAS TO BE IN A REASONABLE MANNER, AND
13 IN MODERATE DEGREE. THE INJURIES IN THIS CASE,
14 LADIES AND GENTLEMEN, WELL, IT DOESN'T GET ANY
15 WORSE.

16 NOT ONLY DOES HE FALL OFF FROM THE FIRST
17 PRONG THAT THIS WAS REASONABLE CORPORAL
18 PUNISHMENT, BUT GET TO SECOND PRONG. WHAT TYPE OF
19 FORCE DID HE USE? IT IS UNCONTRADICTED EVEN BY
20 HIS OWN OMISSION, BECAUSE YOU HAVE THE PICTURES OF
21 THE BRUISES, THAT HE BEAT THE CHILD WITH THE BELT
22 SO HARD THAT IT LEFT DEEP BRUISES ON A TWO YEAR
23 OLD WHO WEIGHED 25 POUNDS.

24 AND, LADIES AND GENTLEMEN, IT'S OKAY AS LONG
25 AS IT HAS NOT BROUGHT ABOUT PERMANENT OR LASTING

1 DAMAGE TO THE CHILD, AND IT DOESN'T GET ANY MORE
2 LASTING THAN THE DAMAGE HE DID TO THIS CHILD, OR
3 IT IS NOT RECKLESS OR GROSSLY NEGLIGENT BEHAVIOR
4 BY THE PARENTS.

5 WE ARE NOT HERE TO CONDEMN PARENTS FOR
6 SPANKING THEIR CHILDREN. THE STATE SUBMITS THAT'S
7 NEVER BEEN OUR ATTEMPT. WE ARE HERE TODAY TO HOLD
8 NATHANIEL MITCHELL RESPONSIBLE FOR THE CHOICES HE
9 MADE WHEN HE PICKED UP THAT CHILD AND HE BEAT HER
10 WITH A BELT AND HE SHOOK HER SO VIOLENTLY THAT HER
11 BRAIN WAS LITERALLY TORN AWAY FROM THE SKULL.

12 THE JUDGE WILL ALSO TELL YOU THAT YOU MUST
13 FIND THAT THE DEFENDANT'S ACTIONS THAT MORNING
14 CONTRIBUTED OR CAUSED THE DEATH OF A CHILD.
15 THAT'S NOT IN DISPUTE IN THIS CASE.

16 PROXIMATE CAUSE, THE DEFENDANT'S ACTS MAY BE
17 REQUIRED AS THE PROXIMATE CAUSE, IF IT IS A
18 CONTRIBUTING CAUSE TO THE VICTIM. THE FACT THAT
19 OTHER CAUSES ALSO CONTRIBUTED TO THE CAUSE OF
20 DEATH TO THE VICTIM DOES NOT RELIEVE THE DEFENDANT
21 OF RESPONSIBILITY.

22 THE DEFENDANT'S ACTS NEED NOT BE THE SOLE
23 CAUSE OF THE DEATH, BUT IT MUST BE A PROXIMATE
24 CAUSE CONTRIBUTING TO THE DEATH OF THE VICTIM, AND
25 THE BEATING AND THE SHAKING THAT THAT CHILD

1 SUSTAINED ON THE 28TH, LADIES AND GENTLEMEN,
2 THERE'S NOT MUCH OF A DISPUTE, KILLED HER.

3 NOW, IN THIS CASE, LADIES AND GENTLEMEN,
4 YOU'RE GOING TO HEAR FROM THE JUDGE THAT THERE ARE
5 TWO KINDS OF EVIDENCE YOU CAN CONSIDER. ONE IS
6 WHAT WE CALL DIRECT EVIDENCE, AND ONE IS WHAT WE
7 CALL CIRCUMSTANTIAL EVIDENCE OR INDIRECT EVIDENCE.

8 WHAT ARE THE DEFINITIONS OF THOSE? DIRECT
9 EVIDENCE, LADIES AND GENTLEMEN, IN THIS CASE, IT'S
10 WHAT TYPICALLY IS REFERRED TO AS EYEWITNESS
11 TESTIMONY. SOMEONE SEES A CRIME COMMITTED, THEY
12 COME BEFORE YOU, IN THIS CASE ON A VIDEOTAPE AND
13 TESTIFY WHAT THEY SAW TO THE BEST OF THEIR
14 ABILITY, WHAT'S PERCEIVED THROUGH THE EYES,
15 THROUGH THE SENSES. YOU HEAR, YOU SEE, YOU FEEL,
16 YOU TASTE, COME BEFORE YOU AND TELL YOU ABOUT
17 THAT.

18 LADIES AND GENTLEMEN, IN THIS CASE THE STATE
19 BROUGHT TO YOU A SIX YEAR OLD WHO TALKED ABOUT
20 WHAT SHE SAW THAT MORNING, AND SHE TOLD YOU AS
21 BEST SHE COULD WHAT SHE SAW HAPPEN.

22 THAT'S DIRECT TESTIMONY. WHAT MAKES HER
23 CREDIBLE, LADIES AND GENTLEMEN? THAT WOULD BE THE
24 CIRCUMSTANTIAL EVIDENCE IN THIS CASE. BY THE WAY,
25 YOU DON'T HAVE TO HAVE BOTH. YOU CAN REPLY ON ONE

1 OR THE OTHER, BUT LUCKILY IN THIS CASE, WE HAVE A
2 TON OF CIRCUMSTANTIAL EVIDENCE, AND IT IS ALL
3 POINTING TO THE GUILT OF ONE PERSON, THAT MAN,
4 NATHANIEL MITCHELL.

5 THE CIRCUMSTANTIAL EVIDENCE, THE BRUISES, THE
6 MEDICAL CONDITION, HIS STORIES AS THEY CHANGE, HIS
7 DENIAL, HIS THEN ADMISSIONS.

8 MS. COGGIOLA: YOUR HONOR, I WOULD OBJECT TO
9 THE ARGUMENT AT THIS POINT.

10 THE COURT: I SUSTAIN THE OBJECTION IN THIS
11 STAGE OF THE ARGUMENT. IT'S LIMITED TO THE LEGAL
12 ISSUES.

13 MS. CAMPBELL: THE CIRCUMSTANTIAL EVIDENCE IN
14 THIS CASE CORROBORATES WHAT N.G. SAW
15 THAT MORNING, SO IN THIS CASE YOU DON'T HAVE TO
16 DEPEND ON ONE OR THE OTHER. YOU'VE GOT BOTH,
17 BECAUSE THE EVIDENCE IN THIS CASE, LADIES AND
18 GENTLEMEN, IS OVERWHELMING.

19 YOU ALSO HEARD FROM A SERIES OF EXPERT
20 WITNESSES. IN THE COURTS WHEN A PERSON HAS A
21 CERTAIN AMOUNT OF TRAINING, SUCH AS A MEDICAL
22 DOCTOR IN THIS CASE, THEY'RE ALLOWED TO COME
23 BEFORE YOU AND GIVE OPINIONS.

24 IN THIS CASE YOU'VE HEARD FROM SIX DOCTORS
25 FROM THE STATE, AND YOU'VE HEARD FROM ALSO AN

1 EXPERT, FROM THAT MAN FROM PENNSYLVANIA, WHO IS
2 ALSO A DOCTOR.

3 THE JUDGE IS GOING TO TELL YOU THAT YOU ALONE
4 ARE THE JUDGES OF THEIR CREDIBILITY. I WANT TO
5 TALK ABOUT THAT, BECAUSE YOU JUDGE AN EXPERT THE
6 SAME WAY YOU JUDGE A LAY WITNESS. THAT'S THE
7 PURPOSE, THAT'S THE REASON THAT THEY COME BEFORE
8 YOU.

9 YOU'VE GOT TO JUDGE CREDIBILITY IN THIS CASE.
10 WHEN YOU LOOK AT THOSE EXPERTS, YOU JUDGE THEM THE
11 SAME WAY YOU DO ANYONE ELSE.

12 WHEN JUDGING FACTORS IN DETERMINING THE
13 CREDIBILITY OF A WITNESS, THE JUDGE IS GOING TO
14 TELL YOU THERE'S A LOT OF FACTORS INVOLVED, YOU
15 CAN BELIEVE ALL OF WHAT A WITNESS SAYS, PART,
16 NONE, WHATEVER YOU WANT, ONE AGAINST MANY, MANY
17 AGAINST ONE.

18 WHEN JUDGING THE CREDIBILITY OF THE WITNESSES
19 IN THIS CASE, LADIES AND GENTLEMEN, WHAT WAS THE
20 DEMEANOR OF THE WITNESS ON THE STAND? WERE THEY
21 FORTHRIGHT? WERE THEY HESITANT? WAS THE
22 WITNESS -- WAS THE TESTIMONY OF THE WITNESS
23 CONSISTENT WITH THE EVIDENCE, WITH THE PHYSICAL
24 EVIDENCE, OR INCONSISTENT? WAS THE TESTIMONY OF A
25 WITNESS INCONSISTENT WITH OTHER WITNESSES, WAS THE

1 TESTIMONY CORROBORATED, BUT MOST IMPORTANTLY,
2 LADIES AND GENTLEMEN, IN THIS CASE, DID THEY HAVE
3 A BIAS OR A PREJUDICE? DID THEY HAVE A REASON TO
4 COME INTO COURT AND TO SAY SOMETHING, A BIAS OR
5 PREJUDICE.

6 AND LASTLY WHEN CONSIDERING CREDIBILITY, AND
7 I'M GOING TO SIT DOWN IN A MINUTE, YOU CONSIDER
8 THIS, DID THEY SAY THE SAME THING EVERY TIME WHEN
9 THEY WERE CONFRONTED? DID THEIR STORY CHANGE AS
10 THEY WERE CONFRONTED WITH MORE EVIDENCE? WAS
11 THEIR STORY CONSISTENT? WAS IT EVEN PLAUSIBLE?
12 DID THE WITNESS HAVE A REASON TO BE BIASED?

13 I'M GOING TO SIT DOWN NOW AND TALK TO YOU A
14 LITTLE BIT AFTER MS. COGGIOLA DOES ABOUT THE FACTS
15 IN THIS CASE.

16 ALL I ASK IS, AS YOU CONSIDER THIS CASE
17 BEFORE YOU GO BACK -- BECAUSE AT THE END OF ALL
18 THIS, YOU'RE GOING TO GO BACK IN YOUR JURY ROOM.
19 WHEN YOU GO BACK THERE, YOU'RE GOING TO BE ASKED
20 TO REACH A VERDICT, A UNANIMOUS VERDICT TO WHICH
21 ALL 12 OF YOU MUST AGREE. LADIES AND GENTLEMEN,
22 THE WORD VERDICT COMES FROM A LATIN PHRASE,
23 VEREDICTO, WHICH VERY SIMPLY MEANS TO SPEAK THE
24 TRUTH.

25 LADIES AND GENTLEMEN, IN THIS CASE ALL THE

1 STATE ASKS IS THAT YOU COME TO A VERDICT THAT DOES
2 SPEAK THE TRUTH ABOUT WHAT HAPPENED IN THIS CASE.

3 THE COURT: MS. COGGIOLA.

4 CLOSING STATEMENT

5 MS. COGGIOLA: MAY IT PLEASE THE COURT.

6 GOOD MORNING, LADIES AND GENTLEMEN. THE
7 DEATH OF A CHILD IS ONE OF LIFE'S GREATEST
8 TRAGEDIES, AND IT IS THE DEATH OF TWO YEAR OLD
9 MINOR THAT HAS BROUGHT ALL OF US
10 TOGETHER IN THIS ROOM THIS WEEK.

11 MADAM FORELADY AND LADIES AND GENTLEMEN OF
12 THE JURY, NATE MITCHELL DID NOT VIOLENTLY SHAKE
13 MINOR CAUSING HER DEATH. NATE MITCHELL
14 DID NOT VIOLENTLY SHAKE MINOR AND CAUSE
15 HER DEATH. THAT IS THE BURDEN THE STATE MUST
16 MEET.

17 WINSTON CHURCHILL SAID THAT THE BEST MEASURE
18 OF THE QUALITY OF A SOCIETY IS THE QUALITY OF ITS
19 JUSTICE. YOU HAVE ALL BEEN PARTICIPANTS IN THAT
20 THIS WEEK.

21 IN FACT, EVEN MORE THAN OFTEN HAPPENS, YOU
22 HAVE SEEN HOW JUSTICE PREVAILS WHEN IT IS TAMPERED
23 WITH AND IT IS THEN RESTORED AS IN THE REPLACEMENT
24 OF THE JUROR.

25 JUDGE FLOYD TOOK IT SERIOUSLY AND SAID THERE

1 MUST BE JUSTICE IN THIS COURTROOM AND IT WAS
2 RESTORED. THAT'S IMPORTANT. YOU HAVE BEEN
3 IMPORTANT PARTICIPANTS IN WHAT WE ALL DO WHEN WE
4 COME INTO THIS ROOM.

5 YOU HEARD THE TESTIMONY -- I COUNTED THEM,
6 THERE WERE ACTUALLY NINE DOCTORS ALL TOGETHER
7 BETWEEN THE STATE AND THE DEFENSE THAT TESTIFIED
8 IN THIS COURTROOM, AND I'M HAPPY TO TELL YOU I'M
9 NOT GOING TO GO OVER THE TESTIMONY OF ALL NINE
10 DOCTORS.

11 THERE HAS BEEN A TREMENDOUS AMOUNT OF DETAIL,
12 BUT THERE'S SOME THINGS THAT CAN BE EASILY
13 SUMMARIZED.

14 THE FIRST IS THAT THESE DOCTORS HAVE
15 DIFFERENCES OF OPINION, DRAMATIC DIFFERENCES OF
16 OPINIONS IN SOME CASES, WHETHER THEY ARE
17 OPHTHALMOLOGISTS, RADIOLOGISTS, FORENSIC
18 PATHOLOGISTS, PEDIATRIC INTENSIVE CARE UNIT
19 PHYSICIANS, THEY COME AT IT FROM DIFFERENT ANGLES.
20 THEY SEE DIFFERENT THINGS, BUT WHEN IT ALL CAME
21 DOWN, AFTER YOU HAD HEARD ALL NINE DOCTORS, THERE
22 WAS NO QUESTION THERE WERE DIFFERENCES OF OPINION,
23 HOWEVER, THERE WAS ONE MEDICAL FINDING THAT THEY
24 ALL AGREED ON, AND THAT MEDICAL FINDING WAS THAT
25 MINOR HAD TWO SUBDURAL HEMATOMAS, TWO,

1 AN OLD ONE AND A NEW ONE, ACUTE AND CHRONIC, WORDS
2 THAT ARE PROBABLY MORE FAMILIAR TO YOU THAN YOU
3 EVER EXPECTED THEM TO BE WHEN YOU WALKED IN HERE
4 ON MONDAY.

5 NOBODY DISPUTED THAT. THE RADIOLOGISTS
6 DIDN'T DISPUTE IT, THE PHYSICIAN FROM THE
7 INTENSIVE CARE UNIT, AND DR. ROSS, THAT WAS NEVER
8 A QUESTION.

9 YOU SAW CHARTS, VIDEOS, C.T. SCANS, POWER
10 POINT PRESENTATIONS. THERE WERE VARIOUS
11 DESCRIPTIONS OF THE BRAIN, QUESTIONS ABOUT
12 DIFFERENT LAYERS, BUT WHEN ALL WAS SAID AND DONE,
13 WHEN ALL WAS SAID AND DONE THROUGH THOSE
14 PRESENTATIONS, THERE WAS NO DISPUTE THAT THERE WAS
15 A CHRONIC SUBDURAL HEMATOMA OR AN OLD ONE AND A
16 NEW ONE.

17 THERE WAS THE EPICENTER. HOW CLOSE WERE
18 THEY? WHAT WERE THE SIZES? WHAT WERE THE AGES?
19 THOSE WERE THE QUESTIONS THAT KEPT COMING UP.
20 WHAT DIDN'T COME UP WAS WHAT WAS THERE, WHETHER --
21 WHY EACH ONE WAS THERE.

22 NOW, WHY IS THAT IMPORTANT? WHY IS THAT SO
23 CRITICALLY IMPORTANT IN THIS PARTICULAR CASE?
24 BECAUSE NO ONE, NOT THE DOCTORS THAT THE STATE PUT
25 ON THE WITNESS STAND, NOT DR. ROSS, NO ONE COULD

1 IDENTIFY THE ORIGIN OF THE OLD SUBDURAL HEMATOMA.

2 NOW, WHAT DO WE MEAN BY ORIGIN? WE MEAN
3 WHERE DID IT COME FROM. WHAT WAS THE CAUSE? HOW
4 DID IT OCCUR? WHEN DID IT OCCUR? WHY DID IT
5 OCCUR?

6 THERE WERE VARIOUS POSSIBILITIES. THEY WERE
7 NOT EVEN THEORIES, THEY WERE POSSIBILITIES. THERE
8 WAS THE POSSIBILITY OF A NATURAL DISEASE OR
9 DISORDER. THERE WAS A POSSIBILITY OF AN
10 ACCIDENTAL INJURY AT SOME TIME WITH THIS CHILD,
11 AND THERE WAS A POSSIBILITY OF AN INFLICTED INJURY
12 AT SOME POINT ON THIS CHILD.

13 DR. CLOSE, THE RADIOLOGIST, REFERRED TO IT AS
14 NOT TRIVIAL. THERE WAS SOMETHING THERE.
15 SOMETHING OF SIGNIFICANCE THERE. HOW OLD WAS IT?
16 WHEN DID IT HAPPEN? AND HOW -- WHAT WAS THE CAUSE
17 OR WHO WAS THE CAUSE? WE SIMPLY DON'T HAVE THE
18 ANSWERS.

19 HOW OLD WAS IT? WE HEARD EVERYTHING FROM TWO
20 TO THREE WEEKS TO THE POSSIBILITY OF SIX MONTHS.
21 WE DON'T KNOW. THAT QUESTION WAS NOT ANSWERED.
22 WE DO NOT KNOW THE ORIGIN. WE DO NOT KNOW THE
23 CAUSE. WE DO NOT KNOW HOW IT GOT THERE, WHICH
24 GETS US TO THE CRITICAL QUESTION WHICH IS, HOW
25 DOES THAT CHRONIC OR OLD SUBDURAL HEMATOMA RELATE

1 TO WHAT HAPPENED TO MINOR ON MARCH 28TH,
2 2000. HOW DOES IT RELATE? WE DON'T KNOW. YOU
3 DON'T KNOW. THE FACT FINDERS DON'T KNOW. THE
4 DOCTORS DIDN'T KNOW.

5 THERE WAS DISCUSSION ABOUT THAT THE REASON
6 THEY DIDN'T KNOW WAS BECAUSE THERE WASN'T ENOUGH
7 INVESTIGATION. NOW, WHAT DOES THAT MEAN? WE'RE
8 NOT TALKING ABOUT LAW ENFORCEMENT. WE'RE NOT
9 TALKING ABOUT INVESTIGATOR JONES OR INVESTIGATOR
10 METZS. WE'RE TALKING ABOUT SOME THINGS THAT
11 CONCEIVABLY COULD HAVE BEEN DONE IN THE MEDICAL
12 PROFESSION TO LEARN MORE ABOUT IT. YOU DON'T JUST
13 IGNORE THE ELEPHANT IN THE LIVING ROOM. YOU DON'T
14 JUST WALK AROUND IT.

15 YOU HAVE GOT THE DEATH OF A CHILD FROM AN
16 ACUTE SUBDURAL HEMATOMA. THAT WAS WHAT THEY SAID.
17 THAT WAS THE MOST RECENT EVENT. THAT WAS WHAT
18 CAUSED BLEEDING AND THE SWELLINGS, BUT WHAT WAS
19 THE CAUSE? WHAT ABOUT THAT ELEPHANT IN THE LIVING
20 ROOM? AND, WHAT WAS UNDERLYING THAT SUBDURAL
21 HEMATOMA?

22 DR. ROSS'S THEORY WAS THAT IT WAS A REBLEED
23 OF THE OLD HEMATOMA, BUT HE DID SAY, "WE DON'T
24 KNOW BECAUSE NOBODY FOUND OUT." NOBODY FOUND OUT
25 WHAT THAT WAS FROM.

1 THE RADIOLOGIST SAYS IT WAS NOT TRIVIAL.
2 THAT MEANS IN SOME RESPECT IT WAS IMPORTANT, IT
3 WAS THERE. THERE WAS DISCUSSION ABOUT THE FACT
4 THAT CHILDREN DON'T JUST SUDDENLY GET A SUBDURAL
5 HEMATOMAS FOR NO REASON. THERE'S A CAUSE.
6 THERE'S SOME CAUSE FOR IT, UNDERLYING DISEASE,
7 ACCIDENT, INFLECTED INJURY BY SOMEONE. WE CAN'T
8 SAY BECAUSE WE JUST DON'T KNOW.

9 LADIES AND GENTLEMEN, AS LONG AS THAT
10 QUESTION, AS LONG AS THAT QUESTION REMAINS
11 UNANSWERED, NO CONCLUSIONS CAN BE DRAWN AS TO THE
12 CAUSE OF DEATH OF MINOR . ALL THAT CAN
13 BE DONE WOULD BE BASED ON SPECULATION, AND THAT IS
14 SOMETHING THAT IS JUST NOT ALLOWED IN THIS ROOM.

15 THERE CAN BE NO CONCLUSIONS DRAWN UNLESS
16 THERE CAN BE SOMETHING MORE AS TO THE ORIGIN OF
17 THAT OLD CHRONIC SUBDURAL HEMATOMA. IF
18 CONCLUSIONS ARE DRAWN WITHOUT THAT KNOWLEDGE, THEN
19 THAT'S CALLED SPECULATION, AND WE DON'T ALLOW THAT
20 IN THIS ROOM.

21 THEORIES ARE THEORIES BASED ON THE MEDICAL
22 EVIDENCE, AND THE MEDICAL EVIDENCE IS THAT -- IT'S
23 A THEORY, IT'S A THEORY OF SHAKEN BABY, AND
24 EVERYONE IN THIS ROOM WOULD AGREE THAT WE CAN'T
25 PROVE THAT THEORY. WE DIDN'T, THEY CAN'T, WHY?

1 BECAUSE WE CAN'T. IT WOULD BE UNETHICAL, IT WOULD
2 BE MEDICALLY UNETHICAL TO PROVE SHAKEN BABY, SO IT
3 IS A THEORY.

4 THERE IS CLEAR -- I'M SURE BY THIS TIME ALL
5 OF YOU HAVE HEARD THAT THERE ARE DIFFERENCES TO
6 THIS THEORY. YOU'VE HEARD SHAKEN IMPACT, SHAKEN
7 BABY ALONE, G-FORCES, THINGS LIKE THAT. THESE ARE
8 THEORIES AND THEY ARE DISPUTED BY THE DIFFERENT
9 PEOPLE IN THE MEDICAL PROFESSION.

10 EVEN, EVEN IF YOU ARE ASKED TO CONSIDER THOSE
11 THEORIES, AND THE CREDIBILITY OF THE PEOPLE THAT
12 PRESENTED THEM TO YOU, THE THEORY DOES NOT REPLACE
13 SPECULATION THAT IS MISSING A FOUNDATION OF FACT,
14 SO LET'S NOT CONFUSE THEORIES WITH CONCLUSIONS AS
15 TO WHAT HAPPENED TO MINOR ON MARCH 28TH,
16 WHICH IS MISSING, MISSING SOME UNDERLYING FACTS OF
17 EXTREME IMPORTANCE THAT NONE OF US CAN SAY, AND
18 WITHOUT THAT ANSWER WE CAN ONLY GO BY SPECULATION,
19 AND THAT'S NOT ALLOWED IN THIS ROOM.

20 THE STATE TOLD YOU IN THEIR INITIAL OPENING
21 ARGUMENT THAT THEY HAD A EYEWITNESS, AND YOU SAW
22 THE DEPOSITION OF N.G. . SHE'S SIX YEARS OLD
23 NOW. SHE WAS FOUR YEARS OLD AT THE TIME, AND I
24 THINK DR. DEFELICE THAT SAID, OBVIOUSLY, CHILDREN,
25 SMALL CHILDREN WHO ARE WITNESSES ARE DIFFERENT.

1 THEY'RE DIFFERENT BECAUSE THEY'RE CHILDREN.
2 THEY'RE DIFFERENT BECAUSE THEIR MEMORIES SOMETIMES
3 -- THEY DON'T REMEMBER DETAILS THE SAME WAY, BUT
4 SHE SAID THEY DO REMEMBER IMPORTANT THINGS.

5 YOU WERE ABLE TO HEAR THIS WITNESS. N.G.
6 HAD SOME FACTS THAT WERE NOT CONSISTENT WITH THE
7 OTHER EVIDENCE PUT FORTH. FOR INSTANCE, BY LAW
8 ENFORCEMENT -- SHE CALLED 911, THAT THE POLICE
9 CAME TO THE HOUSE THAT MORNING AND TOOK HIM AWAY,
10 THAT THE MOTHER KICKED PAPA OUT THAT DAY, AND I
11 THINK INVESTIGATOR JONES SAID, NO, THERE WAS NO
12 RECORD OF A 911 CALL, AND, IN FACT, THE POLICE HAD
13 NOT GONE AND ARRESTED NATE MITCHELL THAT MORNING,
14 BUT ALL THAT ASIDE, WHAT SHE DID SAY AS THE
15 EYEWITNESS WAS THAT PAPA, NATE MITCHELL, HAD
16 SPANKED, HAD SPANKED MINOR THAT MORNING
17 FOR PEEING IN HER BED AND FLICKING THE LIGHTS,
18 EITHER ONE. THAT DETAIL IS NOT IMPORTANT.

19 WHAT'S IMPORTANT IS THAT THE EYEWITNESS IN
20 THIS CASE, THIS CHILD, SAID THAT NATE MITCHELL
21 SPANKED TWO YEAR OLD MINOR WITH A BELT ON THE
22 BED FOR PEEING IN THE BED.

23 I MUST REMIND YOU THAT NATE MITCHELL MUST
24 HAVE VIOLENTLY SHAKEN MINOR ON THE
25 MORNING OF MARCH 28TH TO HAVE CAUSED HER DEATH TO

1 BE FOUND GUILTY OF THIS CHARGE. NO ONE, NO ONE I
2 REMIND YOU HAS ALLEGED THAT THIS CHILD DIED FROM A
3 SPANKING.

4 THE ALLEGATIONS AGAINST NATE MITCHELL ARE
5 THAT HE VIOLENTLY SHOOK THIS CHILD, VIOLENTLY
6 SHOOK THIS CHILD AND CAUSED HER DEATH THAT DAY.
7 SPANKING IS NOT IT. NOBODY HAS SAID THIS CHILD
8 DIED OF A SPANKING. THAT WAS THE EYEWITNESS.

9 WE PRESENTED A NUMBER OF RELATIVELY SHORT
10 WITNESSES FOR YOU YESTERDAY. SOME WERE FRIENDS
11 AND FAMILY MEMBERS. DON'T JUST DISCARD THAT.
12 THESE WERE PEOPLE WHO HAD KNOWN NATE HIS WHOLE
13 LIFE.

14 IS HIS CHARACTER AT STAKE HERE? YOU BET.
15 YOU BET IT IS. HIS CHARACTER IS VERY MUCH AT
16 QUESTION. THAT'S WHY THEY CAME IN. THESE ARE
17 PEOPLE WHO HAVE KNOWN HIM FOR 17, 20, 25 YEARS,
18 AND THEY GREW UP WITH HIS FAMILY, THEY LET HIM
19 CARE FOR THEIR CHILDREN. YOU TAKE THEM -- THE
20 WITNESSES YOU HEARD FROM THE WITNESS STAND, THEY
21 CAME IN HERE TO TELL YOU WHAT THEY THOUGHT OF NATE
22 MITCHELL AS A PERSON.

23 WE HAD TWO PEOPLE FROM D.S.S. WHY WERE THEY
24 IMPORTANT? THEY WERE IMPORTANT BECAUSE DURING
25 THIS PERIOD OF TIME NATE AND SONYA MITCHELL, NATE

1 AND SONYA MITCHELL WERE TRYING TO DEVELOP A
2 FAMILY.

3 THEY HAD APPLIED TO BE FOSTER PARENTS TO
4 CHILDREN WHO WOULD NOT OTHERWISE HAVE PARENTS.
5 THEY TOLD YOU THE REASON THEY DID THAT IS BECAUSE
6 THEY WERE NOT ABLE TO HAVE CHILDREN. THEY LOST A
7 BABY. THEY HAD A STILLBORN CHILD AND AFTER THAT
8 THEY WERE UNABLE TO HAVE CHILDREN, SO THEY HAD
9 APPLIED FOR FOSTER CHILDREN.

10 SO THE TWO PEOPLE WHO CAME IN, ONE WAS
11 RESPONSIBLE FOR BEING SURE THAT THIS WAS A HOME
12 THAT WAS SAFE FOR CHILDREN, THAT THIS WAS A HOME
13 THAT MET THE CRITERIA. THIS WAS A HOME THAT
14 CHILDREN COULD BE PLACED IN, AND THAT WAS HER
15 RESPONSIBILITY, TO SEE THAT THAT HAPPENED, TO
16 LICENSE THEM, TO RELICENSE THEM, TO CONTINUE TO
17 CHECK THE HOME.

18 SHE VISITED THE HOME. SHE OBSERVED WHAT SHE
19 SAW IN THE HOME BETWEEN THE MITCHELLS AND THESE
20 CHILDREN.

21 I HAVE TO TELL YOU, IT IS TRAGICALLY SAD THAT
22 A WITNESS YOU DID NOT HEAR DURING THIS TRIAL IS,
23 SONYA MITCHELL. AT 37, SONYA MITCHELL HAD A
24 STROKE LAST DECEMBER, SO SHE'S CLEARLY NOT ABLE TO
25 BE HERE.

1 BUT THE PEOPLE THAT CHECKED THE HOME, THE
2 PEOPLE THAT TALKED TO THEM, THE PEOPLE WHO WENT IN
3 THERE, THE CASE MANAGER, KIMBERLY KENNEDY, WHO --
4 THE WOMAN FROM D.S.S., WHO FROM SEPTEMBER UNTIL
5 MARCH MADE MONTHLY VISITS TO THE HOME AND THE
6 CHILDREN NEEDED TO BE THERE TO TELL YOU ABOUT THE
7 BONDING AND THE ATTACHMENT AND WHAT THEY SAW IN
8 THE DEVELOPMENT OF A LOVING FAMILY. TO TELL YOU
9 WHY THEY LOOKED AT THIS FAMILY NOT JUST FOR FOSTER
10 CARE.

11 THEY WEREN'T JUST ATTEMPTING TO CARE FOR
12 CHILDREN THAT DIDN'T HAVE HOMES AT THAT TIME, ONE
13 AFTER THE OTHER, WHICH IS A PERFECTLY WONDERFUL
14 THING TO DO, AND SOMETHING THAT FORTUNATELY MANY
15 PEOPLE DO STEP UP TO. THEY WANTED THEIR OWN
16 FAMILY.

17 THEY WERE ATTEMPTING TO ADOPT THREE CHILDREN,
18 THREE SIBLINGS TO KEEP THEM TOGETHER BECAUSE
19 FAMILY WAS IMPORTANT.

20 THAT'S WHAT THEY WERE DOING. THEY WERE IN
21 THE ADOPTION PROCESS OF THESE THREE CHILDREN.
22 NATE SAID IT WAS IMPORTANT BECAUSE WHEN THE GIRLS
23 WERE IN ONE HOME AND H.G. WAS IN ANOTHER HOME
24 AND THEY WOULD VISIT AND THEN HAVE TO GO BACK TO
25 THEIR SEPARATE HOMES, EVERYONE CRIED. THEY WANTED

1 THE CHILDREN TOGETHER.

2 THESE PEOPLE WANTED CHILDREN, AND THE CASE
3 WORKER WENT IN TO BE SURE THAT THAT WAS THE RIGHT
4 THING TO DO. THAT'S WHAT WAS IMPORTANT.

5 AND YOU HEARD FROM NATE. NATE IS QUIET, NATE
6 IS SHY. YOU MAY HAVE OBSERVED HIM DURING THE
7 COURSE OF THIS WEEK. HE DOESN'T MOVE MUCH. HE
8 SITS VERY QUIETLY. HE LISTENS. IT'S NOT EASY TO
9 TAKE THE WITNESS STAND.

10 IT'S NOT EASY FOR A LOT OF PEOPLE TO TAKE THE
11 WITNESS STAND. IT WASN'T EASY FOR NATE. HE IS
12 NOT A VERY PUBLIC PERSON. HE'S VERY MUCH OF A
13 FAMILY PERSON. HE GREW UP IN A LARGE FAMILY,
14 WHERE FAMILY MATTERS. FAMILY MEMBERS HAVE BEEN
15 HERE WITH HIM, AND HE TALKED TO YOU ABOUT HIS
16 FAMILY AND ABOUT HOW FAMILY WAS IMPORTANT.

17 HE TALKED ABOUT THE LOSS OF HIS WIFE AND THE
18 LOSS OF THEIR BABY AND THE LOSS OF THE ABILITY TO
19 HAVE THEIR OWN CHILDREN, AND THEIR DESIRE TO ADOPT
20 THESE CHILDREN.

21 HE ALSO TOLD YOU THAT HE SPANKED THE CHILDREN
22 WITH A BELT. IF YOU ASKED AN ENTIRE GROUP OF
23 PEOPLE ABOUT SPANKING CHILDREN WITH BELTS, YOU
24 PROBABLY WOULD GET A LOT OF DIFFERENT ANSWERS.

25 IN SOME FAMILIES, THAT'S NOT OKAY. IN SOME

1 FAMILIES THAT'S PERFECTLY ROUTINE. THOSE ARE THE
2 CHOICES OF THOSE FAMILIES. WHEN IS IT A PROBLEM?
3 IT'S A PROBLEM WHEN IT IS EXCESSIVE.

4 HE TOLD YOU THAT THEY TRIED TIME-OUT, AND
5 THEY TRIED TAKING AWAY PRIVILEGES AND TAKING AWAY
6 TREATS. THEN HE SAID -- THEN HE POPPED THEIR
7 HAND. THEN HE SAID HE SPANKED THEM WITH HIS BELT.

8 NATE MITCHELL, EVERY WORKING MORNING, GOT UP
9 WITH THREE CHILDREN, AGE TWO, THREE, AND FOUR.
10 HIS WIFE HAD ALREADY GONE TO WORK. TWO OF THEM
11 WERE IN THE PROCESS OF BEING POTTY TRAINED AND BY
12 HIMSELF HE GOT THEM UP, POTTIED AND FED THEM MOST
13 MORNINGS AND GOT THEM OFF TO DAYCARE BEFORE HE
14 WENT TO WORK AT 8:30. MANY PARENTS WOULD AGREE
15 THAT THAT IS NOT ALWAYS EASY. THAT IS NOT ALWAYS
16 EASY.

17 THREE CHILDREN, TWO, THREE, AND FOUR, ALL
18 HAVING TO BE READY FOR THE DAY, DROPPED AT THEIR
19 DAYCARE BEFORE YOU GO TO WORK.

20 THAT DOESN'T JUSTIFY KILLING A CHILD, OF
21 COURSE, IT DOESN'T. THERE'S NO ARGUMENT TO IT,
22 BUT MIGHT YOU SPANK THEM ON OCCASION? POSSIBLY,
23 POSSIBLY. FRUSTRATION MAYBE, BUT BAD PARENTING?
24 A LOT OF PARENTS DEFEND THEMSELVES IN SIMILAR
25 SITUATIONS, BUT NO ONE HAS SAID THAT MINOR

1 DIED FROM BEING SPANKED. THAT IS NOT WHAT
2 THIS CASE IS ABOUT.

3 THIS CASE IS NOT ABOUT THE DEATH OF A CHILD
4 FROM SPANKING. THIS CASE IS ABOUT THE ALLEGATION
5 THAT NATE MITCHELL, A MAN THAT WAS GETTING THESE
6 CHILDREN OUT IN THE MORNING, THAT WAS ATTEMPTING
7 TO ADOPT THESE CHILDREN INTO HIS FAMILY, VIOLENTLY
8 SHOOK MINOR AND CAUSED HER DEATH BY
9 DOING THAT. THAT IS WHAT THE CASE IS ABOUT.

10 YOU HEARD THE INVESTIGATORS AND ME TALK ABOUT
11 THE STATEMENTS THAT HE MADE AT THE POLICE STATION.
12 HE HAD BEEN AT THE HOSPITAL FOR TWO DAYS. HE'S
13 NEVER BEEN ARRESTED. HE HAS NO CRIMINAL RECORD,
14 NEVER BEEN QUESTIONED BY THE POLICE. HERE WE HAVE
15 A DISPUTE.

16 THE INVESTIGATORS HAVE TESTIFIED THAT AFTER
17 THE FIRST STATEMENT THAT THEY CAME BACK IN, THAT
18 HE THEN ADMITTED HE HAD SPANKED THE CHILD, AS HE
19 HAD INITIALLY. THIS IS WHAT HE TESTIFIED TO.

20 THEN AFTER SERVING HIM WITH A WARRANT FOR
21 ASSAULT AND BATTERY WITH INTENT TO KILL, THEY HAD
22 A SECOND -- THE STATEMENTS WILL BE COMING IN TO
23 THE JURY, THEY HAVE A SECOND STATEMENT WHERE THEY
24 SAY THAT HE ADMITTED TO HAVING SHAKEN HER TO
25 REVIVE HER. YOU'LL GET TO READ THOSE STATEMENTS

1 YOURSELF.

2 NATE HAS TOLD YOU THAT HE DID NOT TELL THEM
3 THAT HE HAD SHAKEN MINOR . THAT IS A
4 DISPUTE FOR THE FACT FINDERS. HE TOLD THEM HE
5 SPANKED HER. HE TOLD THEM HE SPANKED HER WITH A
6 BELT.

7 YOU HEARD ME ASK A NUMBER OF QUESTIONS OF THE
8 INVESTIGATORS ABOUT VIDEOTAPING. WHEN WE HAVE AN
9 EYEWITNESS WHO IS A CHILD, WE VIDEOTAPE, NOT THE
10 SHERIFF'S DEPARTMENT, ADMITTEDLY, NOT THE
11 SHERIFF'S DEPARTMENT. THAT WAS DONE AT A RESOURCE
12 CENTER, BUT IT WAS IMPORTANT ENOUGH TO VIDEOTAPE
13 WHEN WE HAVE A MAN WHOSE BEING ACCUSED OF AN
14 INCREDIBLY SERIOUS CRIME.

15 WE DON'T VIDEOTAPE. WE WOULD BE ABLE TO SEE
16 THE DEMEANOR, THE EXACT WORDS. I ASKED
17 INVESTIGATOR JONES, AND HE SAID THAT THEY DO NOT
18 VIDEOTAPE INTERVIEWS. IT WASN'T JUST ME. HE SAID
19 THAT THEY DO NOT VIDEOTAPE INTERVIEWS. HOW OFTEN
20 HAVE WE WISHED THAT THEY DO.

21 SO WHAT WE HAVE ARE THE INVESTIGATORS, WHO
22 ARE ALREADY INFORMED THAT THIS CHILD WAS IN
23 CRITICAL CONDITION FROM HAVING BEEN SHAKEN, WHICH
24 WAS THE DOCTOR'S CONCLUSION, AND NATE BEING
25 QUESTIONED, AND THAT IS A FACT THAT GOES TO YOU

1 AGAIN.

2 WHAT THEY HAVE PROVED IN THIS CASE IS THAT
3 NATE MITCHELL SPANKED MINOR . THEY THINK
4 THEY HAVE PROVED THAT. WE DON'T DISPUTE THAT.
5 WHAT THEY HAVE PROVED IS THAT MINOR
6 WHEN SHE WAS TAKEN TO THE HOSPITAL, HAD AN ACUTE,
7 THAT'S NEW, AND A CHRONIC, THAT'S OLD, SUBDURAL
8 HEMATOMA. THAT ALSO IS NOT UP FOR DISPUTE. THOSE
9 TWO FACTS ARE THERE.

10 THERE HAS BEEN NO PROOF THAT NATE MITCHELL
11 VIOLENTLY SHOOK MINOR AND CAUSED HER
12 DEATH. THERE HAS BEEN NO PROOF THAT NATE
13 MITCHELL -- WE DON'T LOOK AT THEORY OR SPECULATION
14 OR CONCLUSIONS. WE LOOK AT FACTS AND EVIDENCE.

15 IN FACT, THERE WAS A FAMOUS TRIAL LAWYER,
16 EDWARD BENNETT WILLIAMS, WHO TALKED ABOUT BURDEN
17 OF PROOF AND REASONABLE DOUBT. HE SAID THAT THE
18 JURY MUST BE ALLOWED TO LOOK AT THE FACTS AND
19 EVIDENCE THROUGH A CRYSTAL CLEAR WINDOW IN ORDER
20 FOR THE STATE TO HAVE MET THEIR BURDEN OF PROOF.

21 IF THAT WINDOW IS SMUDGED OR DIRTY OR
22 STREAKED AND THEY CAN'T SEE THROUGH IT CLEARLY,
23 THEN THERE IS REASONABLE DOUBT AND THE DEFENDANT
24 MUST BE ACQUITTED.

25 THEY'RE ASKING YOU TO LOOK THROUGH WINDOWS

1 THAT ARE SMUDGED AND DIRTY WITH THE FACTS IN THIS
2 CASE. IT WAS THEIR RESPONSIBILITY. IT IS THEIR
3 BURDEN TO PROVE TO YOU NUMBER ONE, THAT NATE
4 MITCHELL VIOLENTLY SHOOK MINOR CAUSING
5 HER DEATH AND THAT THAT WAS THE CAUSE OF THE
6 DEATH.

7 THEY HAVE NOT DONE THAT. THEY HAVE NOT DONE
8 THAT. THE WINDOW IS VERY SMUDGED, AND YOU MUST
9 FIND NATHANIEL MITCHELL NOT GUILTY OF THIS CHARGE.

10 THANK YOU.

11 THE COURT: MADAM SOLICITOR.

12 MS. CAMPBELL: THANK YOU, YOUR HONOR.

13 CLOSING STATEMENT

14 MS. CAMPBELL: LADIES AND GENTLEMEN, IN EVERY
15 CASE AS A PROSECUTOR I TRY TO ANTICIPATE WHAT THE
16 DEFENSE IN THE CASE MAY BE.

17 TYPICALLY IN HOMICIDE CASE DEFENSES, IT'S A
18 HE DONE IT, I DIDN'T DO IT, SOMEBODY ELSE DID IT.
19 IT WAS AN ACCIDENT. IT HAPPENED IN SELF-DEFENSE.
20 ANY ONE OF THOSE WILL BE POSSIBLE DEFENSES, BUT
21 THIS CASE IS UNIQUE, BECAUSE AS I LISTENED TO THE
22 DEFENSE AND THE DEFENDANT, THIS CASE IS A
23 COMBINATION OF DEFENSES. HE DIDN'T DO IT, BECAUSE
24 HE SAID HE DIDN'T. H.G. DID IT, THE THREE YEAR
25 OLD, BLAME HIM WHEN CONFRONTED WITH THE EVIDENCE.

1 YOU CAN'T CONVICT NATHANIEL MITCHELL BECAUSE
2 THIS CHILD HAD A PRIOR INJURY AND THAT MEANS IT'S
3 OUT OF THE DEFENSES JUST BECAUSE THIS CHILD HAD
4 CHRONIC CHILD ABUSE, BUT THEY USE THAT AS AN
5 EXCUSE TO SAY HE DIDN'T DO IT.

6 BECAUSE THIS CHILD HAD BEEN INJURED A MONTH
7 EARLIER, THEY TRY AND CREATE REASONABLE DOUBT FROM
8 PRIOR ABUSE. THAT'S THEIR DEFENSE.

9 IT'S KIND OF LIKE THE OLD THEORY, YOU GET A
10 BUNCH OF THEM TOGETHER, THROW THEM UP AGAINST THE
11 WALL AND SEE WHAT STICKS. BUT LADIES AND
12 GENTLEMEN, SHE TALKED ABOUT THE WINDOW. I'M GOING
13 TO TALK A LITTLE BIT ABOUT THE FACTS, BECAUSE
14 THERE'S AN OLD JOKE IN THE LEGAL COMMUNITY.

15 I DON'T KNOW OF A LOT OF SAYINGS ABOUT FAMOUS
16 PEOPLE, BUT THERE'S AN OLD JOKE ABOUT A LAWYER AND
17 A PRIEST. I LEARNED THIS IN LAW SCHOOL A LONG
18 TIME AGO.

19 THE LAWYER AND THE PRIEST WERE WALKING DOWN
20 THE ROAD. THE PRIEST LOOKED DOWN. IT HAD RAINED
21 BEFORE. THERE WAS A PUDDLE OF MUD AND NEXT TO IT,
22 NEAR THAT PUDDLE OF MUD, WAS SOME WATER. AT THE
23 BOTTOM WAS A SILVER DOLLAR. THE PRIEST SAID TO
24 THE LAWYER, LOOK THERE'S A SILVER DOLLAR AND THE
25 LAWYER PICKED UP A STICK AND HE CHURNED UP THE MUD

1 AND IT ALL BECAME CLOUDY. SMUDGED WINDOW. AND HE
2 SAID, WHAT SILVER DOLLAR?

3 LADIES AND GENTLEMEN, THIS DEFENDANT HAS
4 GOTTEN UP HERE, AND HE'S TOLD YOU STORIES. HE'S
5 GOT A PROBLEM BECAUSE NONE OF IT WORKS.

6 I WANT TO TALK TO YOU RIGHT NOW ABOUT FACTS,
7 NOT INNUENDO, NOT SPECULATION, NOT CONJECTURE,
8 LADIES AND GENTLEMEN. LET'S TALK ABOUT THE FACTS
9 AND NOT WISHFUL THINKING ON THE PART OF THAT
10 DEFENDANT.

11 NOW, THE STATE GOT UP HERE AND THEY PRESENTED
12 MULTIPLE DOCTORS. UNFORTUNATELY FOR NATHANIEL
13 MITCHELL, AND I'M SURE HE DIDN'T KNOW THIS IN
14 MARCH OF 2000, BUT FORTUNATELY FOR MINOR

15 , WE HAPPEN TO HAVE HERE IN COLUMBIA, SOUTH
16 CAROLINA, AT RICHLAND MEMORIAL HOSPITAL ONE OF THE
17 BEST PEDIATRIC PROGRAMS IN THE NATION.

18 WE HAPPEN TO HAVE SOME OF THE MOST HIGHLY
19 REGARDED EXPERTS IN THE NATION RIGHT HERE IN
20 COLUMBIA. HE DIDN'T KNOW THAT. YOU HEARD FROM A
21 NUMBER OF THOSE, AND AS I TOLD YOU EARLIER, THOSE
22 THAT COULD COME IN HERE AND GIVE AN OPINION ABOUT
23 WHAT HAPPENED. AND WHAT DID THOSE EXPERTS, TOP
24 EXPERTS IN THEIR FIELD, TELL YOU?

25 YOU HEARD FROM DR. HUBBIRD, THIS CHILD

1 PRESENTED TO THE EMERGENCY ROOM. IN ASSESSING HER
2 CARE, SHE WASN'T EVEN BREATHING, ONE BREATH PER
3 MINUTE.

4 THEY DIDN'T HAVE TIME TO EVEN TRY TO
5 RESUSCITATE HER BECAUSE THEY HAD TO STICK A TUBE
6 DOWN HER THROAT TO KEEP HER FROM BEING TOTALLY
7 BRAIN DEAD. AT THAT POINT THEY DIDN'T KNOW HOW
8 BAD HER BRAIN WAS ANYWAY. AND WHAT DID THEY DO?
9 SHE GOT TOP OF THE LINE TREATMENT. SHE WENT DOWN.
10 YOU HAVE THESE C.T. SCANS. THEY HAVE GOT THE DATE
11 AND THE TIME.

12 THOSE C.T. SCANS WERE SAYING -- AND WHAT DID
13 THEY NOTE? THEY NOTED THAT THIS CHILD HAD SEVERE
14 BRAIN INJURIES, NO DISPUTE, LADIES AND GENTLEMEN,
15 AND THESE INJURIES WEREN'T CAUSED BY A SPANKING,
16 SO SHE'S RIGHT, SEVERE BRAIN INJURIES.

17 WHAT DID HE TELL YOU? THIS IS IMPORTANT IN
18 THIS CASE AS TIMING GOES WHEN WE GET TO WHAT HE
19 SAID, BECAUSE ONCE THAT CHILD SUSTAINED THOSE
20 BRAIN INJURIES, SHE WASN'T UP AND TALKING. SHE
21 WASN'T UP AND TALKING AND EVEN THEIR DEFENSE
22 ATTORNEY (SIC) THEY FLEW IN HERE FROM FIVE STATES
23 AWAY DIDN'T DISPUTE THAT. IT WAS IMMEDIATE WHEN
24 SHE SUSTAINED THESE INJURIES. SHE WENT DOWN.

25 WHAT WERE THOSE INJURIES? THIS IS WHAT WE'VE

1 HEARD OVER AND OVER, LADIES AND GENTLEMEN. LET ME
2 GET ONE THING STRAIGHT. WE AREN'T SPECULATING
3 HERE. THESE ARE THE INJURIES. EVEN THEIR DEFENSE
4 ATTORNEY CAN'T GET AROUND THEM BECAUSE WE'VE GOT
5 POOP SHEETS ON THEM.

6 WHAT INJURIES DID THIS CHILD HAVE, AND EVERY
7 SINGLE PERSON, EVEN OTHER SPECIALTIES, IN
8 DIFFERENT AREAS, SAID THE SAME THING, NO DISPUTE.
9 WHAT INJURIES DID THIS CHILD HAVE? SHE HAD A
10 SUBDURAL HEMATOMA, A NEW ONE AND AN OLD ONE.

11 YOU HEARD AND YOU CAN LOOK ON THE C.T. SCAN
12 YOURSELF AND EVEN THOUGH I'M NOT AN EXPERT, YOU
13 CAN SEE TWO SEPARATE INJURIES.

14 AS MUCH AS THEY WISH IT WAS TRUE, AS MUCH AS
15 THEY WANT TO SAY IT, LIKE SAYING IT ENOUGH TIMES
16 MAKES IT TRUE, ONE DOESN'T HAVE ANYTHING TO DO
17 WITH THE OTHER.

18 THE CHRONIC SUBDURAL HEMATOMA IS ABOUT A
19 MONTH OLD. WHAT DOES THAT INDICATE -- AND I THINK
20 IT'S IMPORTANT IN THIS CASE. IT DOESN'T EXCUSE
21 HIM. SHE GOT BUMPED IN THE HEAD THE MONTH BEFORE.
22 COULD IT HAVE BEEN ACCIDENTAL? YEAH, IT COULD
23 HAVE. WE AREN'T HERE ABOUT THAT, AND WE AREN'T
24 HERE TO SPECULATE.

25 THEY TALK ABOUT HOW WE DON'T KNOW WHAT

1 HAPPENED. WE CAN'T TELL. WELL, MINOR
2 IS DEAD. SHE CAN'T TELL US AND THE PERSON WHOSE
3 CARE SHE WAS IN GOT UP HERE AND YOU JUDGE HIS
4 CREDIBILITY.

5 BUT AS MUCH AS THEY WISH IT COULD EXCUSE THIS
6 ABUSE, AND MAKE IT AN EXCUSE, IT DOESN'T. I FIND
7 IT IRONIC THAT THEY TRY TO MAKE IT AN EXCUSE. IT
8 HAS NOTHING TO DO WITH THE INJURIES THAT CAUSED
9 HER DEATH, NOTHING.

10 THIS ISN'T A REBLEED. THEIR EXPERT WHEN
11 CONFRONTED WITH LITERATURE, WHICH HE DIDN'T KNOW
12 ABOUT -- HE HAD SOME FROM THE 60'S. HE'S NOT EVEN
13 AN EXPERT IN THE PEDIATRIC FIELD, AND EVEN HE
14 COULDN'T DISPUTE THAT WHEN YOU HAVE SUBDURAL
15 HEMATOMA, PLUS BRAIN EDEMA OR SWELLING, PLUS
16 RETINAL HEMORRHAGES IN BOTH EYES, MULTI-LAYERED,
17 RETRO-ORBITAL HEMORRHAGE TO THE LEFT EYE, OPTICAL
18 NERVE HEMORRHAGE -- OH, AND BY THE WAY, YOU HAVE A
19 PICTURE OF HER LEFT EYE WHERE SHE HAD A BAD BLOW,
20 ALONG WITH THE BRUISES, BECAUSE AS DR. ABEL TOLD
21 YOU, THIS ISN'T A CASE WHERE THIS CHILD JUST WAS
22 SHAKEN.

23 LET ME BE CLEAR, LADIES AND GENTLEMEN, YOU
24 HEARD THE TESTIMONY. YOU HEARD THE TESTIMONY AND
25 ANY ONE OF THESE THINGS IS AN INDICATOR OF SHAKEN

1 BABY, BUT IT IS UNDISPUTED EVEN IF YOU TAKE THEIR
2 OWN GUY. IT IS UNDISPUTED THAT WHEN YOU HAVE ALL
3 THREE OF THESE, IT IS SHAKEN BABY SYNDROME.

4 I REMIND YOU, GO BACK TO WHEN THE DEFENSE
5 COUNSEL WAS ASKING THEIR OWN EXPERT QUESTIONS AT
6 THE VERY END OF HIS TESTIMONY, AND IT WAS VERY
7 ARTFUL, YOU KNOW, DOES SUBDURAL HEMATOMA ALONE OR
8 SOLELY, I CAN'T REMEMBER THE EXACT WORDS, INDICATE
9 SHAKEN BABY? NO.

10 DOES BRAIN EDEMA ALONE INDICATE SHAKEN BABY?
11 NO.

12 DOES RETINAL HEMORRHAGES ALONE CONCLUSIVELY
13 POINT TO SHAKEN BABY? NO.

14 THE STATE AGREES WITH THAT. BUT HE NEVER
15 ASKED HIM, AND HE DIDN'T DISPUTE WHEN YOU'VE GOT
16 ONE, TWO, THREE, NO DISPUTE IN THIS CASE. WHEN
17 YOU HAVE ALL THREE, LADIES AND GENTLEMEN, IT'S
18 CONCLUSIVELY SHAKEN BABY. THERE'S NO DISPUTE
19 THERE.

20 WHAT DO YOU HAVE IN ADDITION IN THIS CASE?
21 YOU HEARD FROM OTHER DOCTORS. I WANT TO TALK
22 ABOUT THIS. YOU HEARD ABOUT RETINAL HEMORRHAGES,
23 AND YOU HEARD SOMETHING TOO -- AND I'M NOT GOING
24 TO REHASH ALL THIS MEDICAL STUFF ABOUT HOW RETINAL
25 HEMORRHAGES COULD HAVE BEEN CAUSED BY THIS OR