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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA BARBARA

3 SANTA MARIA BRANCH; COOK STREET DIVISION

4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

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7 THE PEOPLE OF THE STATE OF)

8 CALIFORNIA,)

9 Plaintiff,)

10 -vs-) No. 1133603

11 MICHAEL JOE JACKSON,)

12 Defendant.)

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17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 TUESDAY, MAY 24, 2005

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21 8:30 A.M.

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23 (PAGES 11686 THROUGH 11751)

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27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 BY: Official Court Reporter 11686

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1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff: THOMAS W. SNEDDON, JR.,

4 District Attorney -and-

5 RONALD J. ZONEN, Sr. Deputy District Attorney

6 -and- GORDON AUCHINCLOSS,

7 Sr. Deputy District Attorney 1112 Santa Barbara Street

8 Santa Barbara, California 93101

9

10

11 For Defendant: COLLINS, MESEREAU, REDDOCK & YU BY: THOMAS A.
MESEREAU, JR., ESQ.

12 -and- SUSAN C. YU, ESQ.

13 1875 Century Park East, Suite 700 Los Angeles, California 90067

14 -and-

15 SANGER & SWYSEN

16 BY: ROBERT M. SANGER, ESQ. 233 East Carrillo Street, Suite C

17 Santa Barbara, California 93101

18

19

20 For Witness GIBSON, DUNN & CRUTCHER, LLP Jay Leno: BY: THEODORE J.
BOUTROUS, JR., ESQ.

21 333 South Grand Avenue Los Angeles, California 90071

22 -and-

23 NBC UNIVERSAL TELEVISION GROUP

24 BY: JAMES M. LICHTMAN, Senior Vice President,

25 Litigation 330 Bob Hope Drive, Suite C-283

26 Burbank, California 91523

27

28 11687

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1 APPEARANCES OF COUNSEL (CONTINUED):

2

3 For Witness LAW OFFICES OF FELDMAN & ROTHSTEIN Mary Elizabeth BY:
4 THOMAS D. ROTHSTEIN, ESQ.

5 Holzer: 790 E. Colorado Boulevard, Suite 800 Pasadena, California 91101

6 -and-

7 OVERLAND BORENSTEIN SCHEPPER &

8 KIM LLP BY: MARK E. OVERLAND, ESQ.

9 300 South Grand Avenue, Suite 2750 Los Angeles, California 90071

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1 I N D E X

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3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"
on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on
index.

6 Mr. Sanger is listed as "SA" on index.

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9 DEFENDANT'S

10 WITNESSES DIRECT CROSS REDIRECT RECROSS

11 LENO, Jay 11691-M 11707-Z 11712-M 11713-Z

12 11717-M

13 (Further)

14 McCULLUGH,

15 Sulli 11718-SA 11723-A 11724-SA

16 WAKEFIELD, Monica

17 De La Santos 11726-SA 11738-SN 11740-SA 11742-SN

18 HOLZER, Mary

19 Elizabeth 11744-M

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1 E X H I B I T S

2 FOR IN DEFENDANT'S NO. DESCRIPTION I.D. EVID.

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1 Santa Maria, California

2 Tuesday, May 24, 2005

3 8:30 a.m.

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5 THE COURT: Good morning, everyone.

6 COUNSEL AT COUNSEL TABLE: (In unison)

7 Good morning, Your Honor.

8 THE JURY: (In unison) Good morning.

9 THE COURT: Call your next witness.

10 MR. MESEREAU: Your Honor, the defense will

11 call Mr. Jay Leno.

12 THE COURT: All right. Come forward, please.

13 When you get to the witness stand, remain standing.

14 Face the clerk here and raise your right

15 hand.

16

17 JAY LENO

18 Having been sworn, testified as follows:

19

20 THE WITNESS: Yes, I do.

21 THE CLERK: Please be seated. State and

22 spell your name for the record.

23 THE WITNESS: My name is Jay Leno. L-e-n-o.

24 THE CLERK: Thank you.

25

26 DIRECT EXAMINATION

27 BY MR. MESEREAU:

28 Q. Good morning, Mr. Leno. 11691

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1 A. How are you?

2 Q. Fine, thank you.

3 Mr. Leno, in your work, do you deal with

4 children's organizations?

5 A. Yes, quite a bit.

6 Q. And what do you do?

7 A. There are groups like Phone Friends,

8 Make-A-Wish. You'll get phone calls, children in

9 the hospital. "Could you give them a call?"

10 And they'll ask you questions about, you

11 know, "Oh, did you meet Britney Spears?" Whatever

12 it might be. But usually that type of thing.

13 It's usually kids that are maybe lonely or

14 sick or something, and they watch T.V. or they watch

15 it late at night, and you try to cheer them up. And

16 it usually goes through, as I said, organizations

17 like Phone Friends and Make-A-Wish.

18 Q. Do you have a specific procedure that you

19 typically follow to learn about a child's desire in

20 this regard?

21 A. Well, when it comes from a legitimate

22 organization, there's no procedure. We deal with

23 them on -- I would say maybe 15 a week sometimes,

24 20 a week.

25 So, "Oh, could you call" -- you'll get a

26 list of children, "These are some kids that would

27 like to hear from you today."

1 Sometimes they're in Minneapolis or --
2 they're all over the country. And you have a five-
3 or ten-minute phone call. And then sometimes you do
4 a follow-up, and you send a picture and hats, you
5 know, things like that.

6 Q. Now, do you have someone who screens these
7 calls for you?

8 A. Well, my assistant, who screens them. Not
9 necessarily those calls, but, you know, all calls,
10 yeah.

11 Q. And is there a particular number that people
12 get ahold of if they want to reach you or talk to
13 you about something like this?

14 A. I'm pretty accessible, either through the
15 main Tonight Show number or my number at the show.

16 Q. How many years have you been dealing with
17 children's organizations like the ones you've
18 described?

19 A. Well, I've been doing The Tonight Show about
20 13 years and -- certainly that long. And before
21 that, more informally.

22 Q. And does your work with children involve
23 simply talking to them on the phone, or do you make
24 visits and things of that sort?

25 A. Any of those things. Sometimes with
26 Make-A-Wish, you'll have a situation where -- those
27 are especially sad, because sometimes they're

28 terminally ill children. They'll say, "Oh, this 11693

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1 kid's 15, and he always wanted to go for a ride in a
2 Lamborghini," or something like that.

3 And sometimes kids will come over to the
4 garage and we'll take them for a ride. And maybe
5 they want a back-stage tour of The Tonight Show.
6 Maybe they want to sit at the desk and talk in the
7 microphone. So it varies. Sometimes it's just a
8 phone call, and sometimes it's a little more than
9 that.

10 Q. And if you decide to do something for a
11 child, or an organization of children, what are the
12 kinds of things you will do? What benefits will you
13 provide them?

14 A. Sometimes it's an auction-type deal to raise
15 money. Sometimes they'll say, "We're having" -- you
16 know, "This child was in a car accident," or
17 whatever it might be.

18 "The family is having an auction. Would you
19 sign some items or have celebrities sign items?"
20 Sometimes you'll make a donation. Sometimes
21 it's tickets to the show. It really varies on a
22 case-by-case basis.

23 Q. And if people want to raise money through
24 you, how do they go about it?

25 A. Well, you just sort of call and tell us what
26 the situation is, and if we can do something to
27 help, that's what we do. I mean, we try to do a

28 little something for everybody that calls. 11694

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1 Sometimes it's more; sometimes it's less.

2 Q. Do you sometimes reject requests from
3 parents or children?

4 A. I don't know if "reject" is quite the word.

5 I mean, sometimes -- you try to make -- if it goes
6 through a legitimate organization, no, you don't
7 reject them.

8 Sometimes you get the odd, you know, "I'm a
9 farmer. Our crops are" -- "our tractor's broken.
10 Our fields are not doing well," and the return
11 address is Brooklyn, New York.

12 So you go, "Hmm, that seems a little
13 suspicious." You know. So that one you kind of go,
14 "I don't really know how legitimate that one is."
15 So, you know, you take them on a
16 case-by-case basis.

17 Q. At times do people who want to reach you get
18 ahold of you directly?

19 A. Yes.

20 Q. And how does that happen?

21 A. They just call me. I'm pretty accessible.

22 I pick up the phone. I go, "Hi, this is
23 Jay."

24 And they go, "No, it's not."

25 And I go, "Yes, it is."

26 And then I spend ten minutes convincing them
27 it is me, so -- but, yeah.

28 Q. Will they call the studio to reach you 11695

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1 directly?

2 A. Yes, and I'll probably get a lot more calls

3 after this.

4 (Laughter.)

5 My phone will be ringing tomorrow.

6 Thank you for that.

7 (Laughter.)

8 Q. If they call the studio, can they get right

9 to you or do they go right --

10 A. Sometimes they can get right to me,

11 actually. Yes, they can. Up until today they could

12 get right to me.

13 (Laughter.)

14 Until just a few moments ago, you could

15 reach me quite easily.

16 (Laughter.)

17 Q. The numbers that might get right to you,

18 where do they get access to that?

19 A. Well, other performers, comedians, car guys.

20 I mean, my number is pretty much out there. I mean,

21 I wasn't even unlisted until a couple of years ago.

22 I was in the phone book.

23 Q. Do you know someone named Jamie Masada?

24 A. Yes, Jamie owns The Laugh Factory, a comedy

25 club in Hollywood.

26 Q. Have you known him for a long time?

27 A. Yes. I'm not -- I don't -- I tend to work

28 some of the other clubs. I don't work his club very 11696

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1 often. I've been doing this a long time, so I had
2 some clubs that I worked. And then he opened up,
3 and he was sort of the new club. And I kind of
4 stuck with the clubs that I worked all the time.
5 But, yes, I know him. Yeah.

6 Q. And would it be accurate to say he's a
7 friend of yours?

8 A. Well, an acquaintance, yeah. A "friend" is
9 all right. He's asked me for favors and things,
10 yeah. "Friend" is okay.

11 Q. Is he a close friend?

12 A. No, I wouldn't say close friend.

13 Q. Do you go to The Laugh Factory often?

14 A. No, not very often.

15 Q. When were you last there, if you remember?

16 A. Oh, maybe a year ago. Not quite a year ago.

17 A comedian, George Miller, had passed away, and
18 there was -- they had a little service for him with
19 a bunch of comics, and we all went down and told
20 some jokes. I think that was about a year or so
21 ago. Maybe a little bit longer.

22 And occasionally -- Jamie does a lot of
23 benefits, and he'll say, "Oh, could you come down
24 and do 15 minutes or something?"

25 And that's usually what it was. I don't
26 work there but I'll go down and do benefits and
27 things.

28 Q. Do you know someone named Louise Palanker? 11697

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1 A. Yeah, Louise is a comedian. Yeah.

2 Q. Is she a friend of yours?

3 A. Yes, I've known Louise for a long time.

4 Q. And would you describe her as a close
5 friend?

6 A. No, not a close friend, but an acquaintance.

7 She dated a friend of mine, and I got to know her
8 through him.

9 Q. Do you remember a couple of years ago
10 receiving a call from a child named Gavin?

11 A. Yes.

12 Q. And approximately when did that happen?

13 A. Well, let's see. It's quite a few years
14 ago. I guess 2000 maybe.

15 Q. And was it your understanding that Gavin had
16 cancer?

17 A. Yes.

18 Q. Okay.

19 A. That's what I was told.

20 Q. Did you ever talk to Gavin's mother?

21 A. I believe I did. The circumstance -- I had
22 gotten a number of calls, and I had -- you know,
23 there are ways to sort of legitimize this. I had
24 gotten these calls. And I called the hospital. I
25 was put through to a room. I believe if I -- I
26 believe I spoke to Gavin. And I think I spoke to
27 possibly his brother, and I think I spoke to his

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1 It's a little confusing, because these kind
2 of conversations do tend to run together. When you
3 make three or four of them a day, and you're calling
4 hospitals, especially when it's five years ago, it's
5 a little tricky.

6 But I'm told -- I was told by Louise that
7 they were really happy to hear from me, that I had
8 called the room. So that verified yes, I did call.

9 Because whenever I hear from a child, I
10 always try to follow up on it. So I'm sure I
11 called.

12 Q. Now, how did you learn about Gavin?

13 A. I had gotten a number of voice mails from
14 him. That's how I was made aware.

15 Q. Okay. And did the voice mails give you a
16 number to call the hospital?

17 A. I'm not sure if the voice mails gave me the
18 number or if I got the number from Louise, but
19 somehow I obtained the number. I can't be sure on
20 that point.

21 Q. And you've indicated, Mr. Leno, you think
22 you talked to Gavin's mother, right?

23 A. I think so. Yes.

24 Q. Okay. And do you recall whether she called
25 you or you called her?

26 A. No, I called. I called the hospital room.

27 I had gotten a number of voice mails from the child,

28 and I called the hospital room. 11699

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1 Q. And they put you through at Kaiser to Gavin?

2 A. I guess it was Kaiser. I can't remember
3 what hospital it was, but they put me through to the
4 room. Now, I'm not sure whether he was maybe a
5 little groggy. I spoke to someone. It might have
6 been the brother. And I believe I spoke to the
7 mother but I can't be 100 percent sure, but I think
8 I did.

9 Q. Do you recall what Gavin said to you?

10 A. The conversation in the hospital? Or any of
11 the voice mails?

12 Q. Well, let's start with the voice mails.

13 A. Okay. The voice mails I got were, "Oh, I'm
14 a big fan. You're the greatest." Overly effusive
15 for a 12-year-old.

16 Most of the times when you talk to children,
17 they talk like, "Hi, how are you doing. Uh, good to
18 see you."

19 Yeah, I mean, it's -- you kind of have to
20 pull it out of them: "Hi, how you feeling?"

21 "Good. Hi." I mean, you're talking to a
22 kid.

23 And this was -- sounded -- very adult-like
24 conversation. I thought -- it just, you know,
25 perked my interest at the time.

26 Q. When you say "overly effusive," what do you
27 mean?

28 A. "Jay Leno, you're the greatest." You know, 11700

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1 "I think you're wonderful. You're my hero," this
2 type of thing, which seemed a little odd to me at
3 the time, for someone so young. Why a comedian in
4 his mid-50s would be -- you know, I'm not Batman.
5 You know what I mean? It just seemed a little
6 unusual, but okay.

7 And then I got two or three more.

8 Q. Okay. Were the two or three more messages
9 from Gavin, as far as you know?

10 A. Yes.

11 Q. Did you ever get any messages from anyone
12 who claimed to be Gavin's mother?

13 A. No. I didn't get any from the mother. Just
14 from the child.

15 Q. Okay. And based on those messages you then
16 called the hospital?

17 A. Called the hospital. And I believe I sent,
18 you know, hat, T-shirts, that type of thing.

19 Q. Okay. And you spoke to Gavin at the
20 hospital, right?

21 A. Again, to the best of my knowledge, I did.

22 Whether he was groggy, or in bed, or "Hi, uh, uh."

23 And then I spoke to someone else. And then

24 I believe I spoke to the mother, who seemed very
25 pleased that I called.

26 Q. Do you recall what the mother said to you?

27 A. No. Very general. "Thank you so much."

28 And, you know, my conversation was along the 11701

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1 line, you know, "Our prayers are with you," that
2 type of thing. And, "If he gets out, and he'd like
3 to tour the Tonight Show studios...", you know, that
4 type of thing.

5 Q. Was that the only time you recall speaking
6 to Gavin?

7 A. Yes, I believe that is.

8 Q. And was that the only time you recall
9 speaking to the mother?

10 A. Yes, I believe so.

11 Q. Do you recall ever getting any messages
12 after that from Gavin or the mother?

13 A. No, I don't think I did. I don't think I
14 got any more after that.

15 Q. Okay. At some point, did you complain to
16 Louise Palanker about messages you were getting from
17 Gavin?

18 A. It wasn't so much a complaint. I just said
19 to her, "What's the story here? This" -- "This
20 doesn't sound like a 12-year-old. This sounds like
21 an adult person."

22 It seemed -- I -- I think the words I used
23 was, "It seemed a little scripted in his speech."
24 And then she said to me, you know, "That's
25 just the way he is. He wants to be a comic, so he
26 writes everything out before he says it, and then he
27 kind of reads it."

28 And I said, "Oh, okay." Well, that sort of 11702

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1 made sense at the time.

2 Q. Now, the child at the time was approximately
3 13, right?

4 A. No, I think he was younger than that.

5 Q. He was younger than that? Okay.

6 A. This is about, what, --

7 Q. 2000?

8 A. 2000, yeah.

9 This was just another typical day at the
10 office up to this point. I didn't think anything
11 unusual. So I guess he was younger than that,
12 wasn't he?

13 Q. What, about 10?

14 A. 10 or 11 possibly.

15 Q. Did you ever ask Louise Palanker who was
16 writing these questions out for Gavin?

17 A. No, I don't think I said that. I think I
18 just said, you know, it sounded real scripted. It
19 sounded like -- it didn't sound like....

20 And she said, "Well, he's very mature and he
21 wants to be a comic, and so he's very careful in
22 what he says."

23 And I said, "Oh, okay."

24 Q. Did that seem unusual to you?

25 A. Well, once I got that explanation, it didn't
26 seem unusual. It was just unusual for a child to
27 contact me directly, because usually, as I said, at

28 the very least, a parent, a doctor, a nurse, a 11703

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1 teacher, Phone Friends, Make-A-Wish, those people
2 call and say, "You'll be getting a call from this
3 young boy or this young girl."

4 "Oh, okay."

5 "Expect it at this time."

6 "Okay."

7 To just get a call out of the blue was a
8 little unusual.

9 Q. When you say it seemed scripted, do you mean
10 coached?

11 MR. ZONEN: I'm going to object as
12 speculative.

13 THE WITNESS: No, it just --

14 THE COURT: Just a moment.

15 THE WITNESS: Oh.

16 THE COURT: Sustained.

17 THE WITNESS: Okay. Sorry.

18 Q. BY MR. MESEREAU: Did Louise tell you
19 someone had written out what Gavin was supposed to
20 say?

21 MR. ZONEN: I'm going to object as hearsay,
22 Your Honor.

23 THE COURT: Sustained.

24 Q. BY MR. MESEREAU: At some point did you ask
25 that Gavin stop calling?

26 A. I asked Louise, I said, you know, "I've been
27 getting a lot" -- I don't think I said, "Stop

28 calling." But I said, you know, "I've been getting 11704

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1 a lot of these calls."

2 And she said, "Oh, I'll take care of it.

3 Don't worry about it."

4 And I said, "Okay."

5 Q. When you said that to Louise, was it your

6 desire that those calls stop?

7 A. Yes.

8 Q. And why was that?

9 A. Um, because it was kind of the same call,

10 sort of over and over again.

11 Q. Did the child seem to call more than most

12 do?

13 A. Well, most children don't call. You call

14 them, and you do follow-ups, and things like that.

15 Every now and then I will give a child a

16 private number if it seems especially -- I didn't do

17 that in this case. But I'm not saying I never get

18 calls directly from children, but this was a little

19 unusual.

20 Q. Do you recall the mother being in the

21 background of your call to Gavin?

22 A. I remember someone in the background, but

23 again, I couldn't say it was the mother. It could

24 have been a nurse. I just remember hearing someone

25 talking as he was talking.

26 Q. And after your last conversation with Gavin,

27 did you ever do anything for Gavin?

28 A. No. I never sent any money. Or -- I mean, 11705

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1 I sent, I think, Tonight Show paraphernalia, hats,
2 T-shirts, pictures. I wasn't asked for any money,
3 nor did I send any.

4 Q. In your conversation with Gavin, did you
5 decide at some point to terminate the call?

6 A. No, it wasn't -- whatever conversation we
7 had, the best of my recollection, it was very brief.

8 Because he was ill and I think he was, you know,
9 maybe in the hospital bed or something. And that
10 seemed more, "Hi, how are you?"

11 "Okay."

12 "Okay. Hey, listen, keep your hopes up,"
13 and this type of thing.

14 Q. And do you recall whether or not you ever
15 met Gavin?

16 A. No, I don't think I ever met him.

17 Q. Do you recall whether or not you ever met
18 the mother?

19 A. No, never met the mother.

20 Q. Okay. Did you tell any of your assistants
21 to try and stop the calls?

22 A. I don't believe so. I think I just spoke to
23 Louise about it. And I think Louise said, "Oh, I'll
24 take care of it. I'll speak to him."

25 Q. Did the calls stop?

26 A. Yes.

27 MR. MESEREAU: No further questions, Your

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1 THE COURT: Cross-examine?

2 MR. ZONEN: Thank you.

3

4 CROSS-EXAMINATION

5 BY MR. ZONEN:

6 Q. Mr. Leno, good morning.

7 A. How are you?

8 Q. Very well, thank you. How are you today?

9 A. Fine.

10 Q. Welcome to Santa Maria.

11 A. Why, thank you. It's a lovely town.

12 Q. Mr. Leno, is it fair to say that you

13 probably get calls, maybe 100 calls a year or even

14 more from children who are in distress?

15 A. A lot more than that. Yeah. Easily a

16 couple of hundred. Maybe three or four, maybe five,

17 six, seven a week. You know, one a day probably.

18 Q. Would you say that your recollection of your

19 conversation with Gavin was as clear as your

20 conversation with any of the other children you may

21 have spoken to over that same year?

22 A. Not much clearer, because, again, the

23 conversation was in 2000. I thought nothing unusual

24 until, what, three or four years later. So then I

25 was thinking back, you know.

26 Q. Three or four years later you did get a call

27 from law enforcement; is that correct?

28 A. Yes. 11707

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1 Q. And at that time they asked you about any
2 conversations you may have had with a young child
3 named Gavin?

4 A. Yes, they did.

5 Q. At the time of that conversation, were you
6 familiar with the content of a documentary that had
7 screened entitled, "Living with Michael Jackson"?

8 A. Yes, I had seen that.

9 MR. MESEREAU: Objection; beyond the scope.

10 MR. ZONEN: It deals with recollection and
11 familiarity with the name.

12 THE COURT: All right. Overruled.

13 Q. BY MR. ZONEN: That's the Bashir
14 documentary, Martin Bashir?

15 A. Yes. I saw that, yes.

16 Q. And the part that you actually saw of that
17 documentary, did it feature a child named Gavin?

18 A. Yes, it did.

19 Q. At the time that the police contacted you,
20 did you make an association between the name "Gavin"
21 and that feature with Michael Jackson?

22 A. Well, I had made it before that. The
23 feature was on, and I had heard from a friend of
24 mine --

25 MR. MESEREAU: Objection; hearsay.

26 THE COURT: Sustained.

27 THE WITNESS: Oh.

28 Q. BY MR. ZONEN: At that point in time, you 11708

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1 heard -- excuse me, let me try that one more time.

2 A. Okay.

3 Q. At some point in time you drew a correlation
4 between the Gavin who was in the documentary "Living
5 with Michael Jackson" and the Gavin who had called
6 you; is that correct?

7 A. Yes. Because the name "Gavin" is very
8 unusual. And I saw, "Gavin, cancer.... Hey, wait a
9 minute. I spoke to a Gavin that had cancer. I
10 wonder if it's the same one."

11 Q. All right. Did that cause you to believe at
12 the time law enforcement contacted you that that was
13 the same child?

14 A. Well, they didn't contact me until two years
15 later.

16 Q. Okay. All right. Now, in the course of the
17 conversations -- excuse me. In the course of the
18 phone calls that were made by Gavin to you --

19 A. Uh-huh.

20 Q. -- that went to your voice mail --

21 A. Right.

22 Q. -- do you have a sense of how many calls
23 those were?

24 A. Well, I think there were at least three or
25 four. I think it was some -- there were three or
26 four. And then I think we had gone on hiatus,
27 vacation. And when we had come back, there were a

28 few more. 11709

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1 And that's when I spoke to Louise and said,
2 "Um, what's going on? I keep getting a lot of these
3 calls."

4 And she said, "I'll take care of it. He
5 gets overanxious," whatever it might be.

6 I said, "Okay. It's not a big deal." And
7 then I didn't hear any more.

8 Q. Did she explain to you that Gavin was in and
9 out of the hospital dealing with chemotherapy?

10 A. Yes, she did.

11 Q. And had a fair amount of time on his hands?

12 A. Oh, yeah. Yeah.

13 Q. Did she tell you that he, in fact, did watch
14 your show every night?

15 A. She did. She went on to explain that he was
16 a big fan. You know, you just tend to be -- in my
17 position, as I said, there's a lot of odd -- you
18 don't know whether it's a radio station playing a
19 trick on you. So your first contacts sometimes are
20 very, Uh-huh, okay. How are you doing? Where are
21 you from? You know.

22 And then it wasn't until I called the
23 hospital, "Oh, this really a child who really is
24 sick. Okay." Then it got more real, you know.

25 Q. Were you aware -- did you become aware at
26 any time that Gavin Arvizo was a graduate of the
27 comedy camp at The Laugh Factory?

28 A. I found that out later, yeah. 11710

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1 Q. And you're familiar with the comedy camp,
2 are you not?

3 A. I know of it. I don't have -- I have never
4 been to it, but I know of it, yeah.

5 Q. You understand that's a Jamie Masada
6 creation?

7 A. Right, right, right, right.

8 Q. And that's for disadvantaged children?

9 A. Right.

10 Q. Were you aware that he had had kind of a
11 long association with comedians like Chris Tucker
12 and George Lopez and had even met Adam Sandler?

13 A. Yeah, I found that out later.

14 Q. Would that tend to suggest to you that he
15 really did have a sincere appreciation of comedians?

16 A. Yes, it did.

17 Q. Does that clarify, at least in your mind, to
18 some extent the motivation for the multiple voice
19 messages that he left?

20 A. Yes, it became clear.

21 Q. Did he ask you for money in any of these
22 calls?

23 A. No, no one ever asked me for anything. And
24 I'm sure of that, because if they had, I would have
25 sent something.

26 Q. Did Gavin ask you to do anything in these
27 calls other than speak with him?

28 A. I know I sent a picture and a hat and some 11711

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1 other things. I was told by Louise he had the
2 picture over his bed and he was thrilled to get it.
3 So other than that, no, I was never asked
4 for any, you know, financial things or anything like
5 that.

6 Q. All right. And so you never had occasion to
7 send them money; is that correct?

8 A. No.

9 Q. And he did not ask you for money; is that
10 right?

11 A. No, no one asked me for money.

12 MR. ZONEN: Thank you. I have no further
13 questions.

14 THE WITNESS: Okay.

15

16 REDIRECT EXAMINATION

17 BY MR. MESEREAU:

18 Q. Mr. Leno, when the police called you --

19 A. Uh-huh.

20 Q. -- did they call you at the studio?

21 A. Called me at the studio, yeah.

22 Q. Did you know you were being secretly
23 recorded?

24 A. No.

25 Q. Did you ever learn that?

26 A. Yeah, I did learn that actually.

27 Q. Do you remember when the police asked you if

28 they were looking for money, you said, "I think so"? 11712

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1 A. Yeah, I probably did say that. But they
2 never asked me for any money. But at the time when
3 I got the phone calls, originally, it sounded -- as
4 I said, it sounded suspicious. When a young person
5 that overly effusive, and, "Oh, Mr. Leno, you're the
6 greatest. And you're" --
7 I thought, really? Why would -- it just
8 didn't quite click for me, you know.

9 Q. And you thought they were looking for money,
10 right?

11 MR. ZONEN: I'm going to object as asked and
12 answered and improper opinion.

13 THE COURT: Sustained.

14 MR. MESEREAU: No further questions.

15

16 RE-CROSS-EXAMINATION

17 BY MR. ZONEN:

18 Q. Does the degree of effusiveness, is that
19 explained by his affection that you now understand
20 for comedians?

21 MR. MESEREAU: Objection; calls for
22 speculation.

23 THE COURT: Sustained.

24 MR. ZONEN: All right.

25 Q. You did not know at the time of those voice
26 messages that this is a child who had been a
27 graduate of The Laugh Factory, laugh academy; is

28 that correct? 11713

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1 A. No, I didn't know, because, as I said, it
2 was unusual to have a 12-year-old child leave you a
3 long voice message. In the kind of business I'm in,
4 you hear from a lot of crazy people, you know. And
5 things -- and you're reluctant sometimes to follow
6 up. But whenever it's a child, I always do follow
7 up. You kind of drop all your guard, and go, okay,
8 let me just -- because this might be real, you know.

9 So that's what I did here.

10 Q. When you actually had the conversation with
11 Gavin, was he gracious on the telephone?

12 A. Again, that recollection is not clear to me.

13 Because having spoken to a number of children in the
14 hospital, you know, four or five a week sometimes,
15 sometimes it kind of -- especially when children are
16 sick, you tend to have a very general conversation
17 along the lines of, you know, "Our prayers are with
18 you." And, you know, "Your parents love you." And,
19 you know, "When you get out," you know, "maybe
20 you'll be able to do this," or "Come to our show,
21 and we'll give you a VIP seat," and -- you know, so
22 you tend to talk in very general terms, so I can't
23 be real specific about that.

24 Q. Could you have been speaking with a nurse
25 when you were talking with Gavin at the hospital?

26 MR. MESEREAU: Objection; calls for
27 speculation.

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1 Q. BY MR. ZONEN: Well, you got on the
2 telephone with a female; is that correct?

3 A. Yes. It -- at the time I believe it was the
4 mother.

5 Q. Okay. There was no advance notice from you
6 that you would be placing that call; is that right?

7 A. No, I just -- I tend to be -- I like to take
8 care of things as they happen. You get a call, you
9 get a letter.

10 "Okay. Give me that number. Let me call
11 them right now," because if I put it down, there
12 will be three more, and, you know, you don't want to
13 leave a kid hanging. So, yeah, you take care of it
14 right away.

15 Q. And there had been a series of phone calls
16 over a period of time; is that correct?

17 A. Yes.

18 Q. And a vacation?

19 A. I believe so.

20 Q. Okay. And then a conversation with Louise
21 Palanker?

22 A. Right. Right.

23 Q. And then you called back?

24 A. Uh-huh.

25 Q. Okay. And there were no other calls after
26 that conversation; is that correct?

27 A. No.

28 MR. MESEREAU: Objection; misstates the 11715

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1 evidence.

2 THE WITNESS: Oh.

3 THE COURT: Overruled.

4 You may answer.

5 Q. BY MR. ZONEN: Is that true?

6 A. I'm --

7 Q. That there were no other calls from Gavin to

8 your voice message after your conversation?

9 A. Right. After my conversation with Louise

10 Palanker, she said, you know, "He gets real excited.

11 I'll take care of it."

12 And I said, "Okay."

13 Q. Then you called Gavin at the hospital

14 afterward, after your conversation with Louise

15 Palanker?

16 A. No, I think it was before. You know, again,

17 I -- I can't say for sure. Because it all tends to

18 blend together.

19 I remember I called -- I believe I called

20 the hospital. And then after that, there were -- I

21 think the messages came after that, but I would not

22 swear to it.

23 Q. And nobody from your office arranged that

24 telephone call in advance? In other words --

25 A. No, no. I just pick up the call and -- I

26 just pick up the phone and I make the call.

27 MR. ZONEN: Thank you. No further

28 questions. 11716

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1 FURTHER REDIRECT EXAMINATION

2 BY MR. MESEREAU:

3 Q. Mr. Leno, when you spoke to Gavin and his
4 mother --

5 A. Uh-huh.

6 Q. -- did you know the family was trying to get
7 money from various celebrities?

8 MR. ZONEN: I'm going to object as assuming
9 facts not in evidence, beyond the scope of
10 cross-examination.

11 THE COURT: Sustained.

12 Q. BY MR. MESEREAU: Did you know anything
13 about any fund-raisers at The Laugh Factory?

14 MR. ZONEN: Objection; irrelevant.

15 THE WITNESS: Oh.

16 THE COURT: Sustained.

17 MR. MESEREAU: No further questions.

18 MR. ZONEN: No further questions.

19 THE COURT: Thank you. You may step down.

20 THE WITNESS: We have Renee Zellweger on the
21 show tonight.

22 (Laughter.)

23 THE COURT: Call your next witness.

24 MR. SANGER: Could I have just a second to
25 make sure the next witness is there? Because I
26 believe he is.

27 Your Honor, with the Court's permission,

28 we'll call Suli McCullough. He's on our list, but 11717

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1 he's farther down the list.

2 THE COURT: That's fine, Counsel.

3 Come to the front of the courtroom, please.

4 When you get to the witness stand, I'd like you to

5 remain standing up there.

6 Face the clerk over here and raise your

7 right hand.

8

9 SULI MCCULLOUGH

10 Having been sworn, testified as follows:

11

12 THE WITNESS: Yes.

13 THE CLERK: Please be seated. State and

14 spell your name for the record.

15 THE WITNESS: My name is Suli McCullough.

16 S-u-l-i. Last name, M-c-C-u-l-l-o-u-g-h.

17 THE CLERK: Thank you.

18

19 DIRECT EXAMINATION

20 BY MR. SANGER:

21 Q. Mr. McCullough, how are you?

22 A. Oh, good. How are you?

23 Q. I'm doing pretty well so far.

24 Now, you need to talk into the right -- the

25 other one. That one, yeah. It's kind of hard to

26 get close enough to it.

27 All right. First of all, what is your

28 occupation? 11718

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1 A. I'm a stand-up comedian, a writer and an
2 actor.

3 Q. There you go. And do you have any
4 connection from time to time with The Laugh Factory?

5 A. Yes, I perform there regularly. I've been a
6 regular there since 1989.

7 Q. All right. And do you know Jamie Masada?

8 A. Yes, I do.

9 Q. Okay. Now, have you ever met Michael
10 Jackson?

11 A. No, I have not.

12 Q. All right. At The Laugh Factory, did you
13 have occasion to meet a child by the name of Gavin
14 Arvizo?

15 A. Yes, I did.

16 Q. And did you have occasion to actually visit
17 him at the hospital from time to time?

18 A. Yes, I did.

19 Q. About how many times?

20 A. I would say about three or four times.

21 Q. All right. Did you have extensive dealings
22 with Gavin, or how would you describe it?

23 A. I would say, yeah, I did have extensive
24 dealings with Gavin. He was in my comedy camp.

25 Comedy camp is something we do for underprivileged
26 kids, and we teach them the fundamentals of
27 stand-up.

28 Q. All right. And have you -- for instance, 11719

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1 have you ever been to his house?

2 A. No, I have not.

3 Q. Has he ever been to your house?

4 A. No. They did call my house often. And I
5 invited the family -- I was on The Jamie Fox Show
6 for a couple seasons, and I invited the family to a
7 taping.

8 Q. Did they go?

9 A. Yes, they did.

10 Q. So at some point, you understood that Gavin
11 Arvizo became sick; is that right?

12 A. Yes, I did.

13 Q. Was there a fund-raiser that was organized
14 by Jamie Masada at The Laugh Factory?

15 A. Yes, there was. We actually did two
16 fund-raisers.

17 Q. I was going to ask you how many.

18 A. We did two, yes.

19 Q. Were you there at the fund-raisers?

20 A. I was there for both fund-raisers.

21 Q. Did you see how they were put on? In other
22 words, what happened?

23 A. Yes, I did see how they were put on. I also
24 participated in both of them.

25 Q. So you participated as a comedian on the
26 stage --

27 A. That's correct.

28 Q. -- is that correct? 11720

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1 And did you see the actual fund-raising, the
2 collecting of the money?

3 A. No, I did not.

4 Q. All right. Now, in the course of this
5 fund-raising, were you told by Jamie Masada what the
6 purpose of the fund-raisers were?

7 A. Yes, I was.

8 Q. And what did he tell you the purpose was?

9 A. He told me the purpose --

10 MR. AUCHINCLOSS: Objection; hearsay.

11 MR. SANGER: It's impeachment.

12 THE COURT: All right. Overruled.

13 THE WITNESS: Jamie told me that the purpose
14 of the fund-raisers were to raise money to help pay
15 for the medical expenses.

16 MR. AUCHINCLOSS: I'll object as irrelevant.

17 THE COURT: Overruled.

18 Q. BY MR. SANGER: And did you have occasion to
19 be at a press conference held by Jamie Masada on
20 January 5th, 2005? I think that was the date.

21 A. Yes, I was.

22 Q. All right. And did Mr. Masada at that press
23 conference indicate that the fund-raiser for Gavin
24 Arvizo was put on --

25 MR. AUCHINCLOSS: I'm going to object as
26 leading and hearsay.

27 THE COURT: Sus -- I didn't hear the whole

28 question. Do you want to -- 11721

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1 MR. SANGER: It may be leading. Rather than
2 just blurt it out, let me rephrase it.

3 THE COURT: Okay.

4 Q. BY MR. SANGER: Did Mr. Masada speak at that
5 press conference?

6 A. Yes, he did.

7 Q. And did he state the purpose of the
8 fund-raiser for Gavin Arvizo at that press
9 conference?

10 A. I don't remember if he did or not.

11 Q. And did you?

12 A. Did I state that? Yes, I did.

13 Q. And you stated at that time that it was for
14 raising money for medical bills, right?

15 A. That's correct.

16 MR. AUCHINCLOSS: Objection. Leading and
17 hearsay.

18 THE COURT: Sustained.

19 Q. BY MR. SANGER: All right. Did you state
20 the purpose of the fund-raiser at that time?

21 A. Yes, I did.

22 Q. All right. And what did you say it was?

23 A. I said --

24 MR. AUCHINCLOSS: Objection; hearsay.

25 THE COURT: Sustained.

26 THE WITNESS: Can I continue?

27 Q. BY MR. SANGER: Was Mr. Masada present at

28 the press conference when you spoke? 11722

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1 A. Mr. Masada was present, yes.

2 Q. And you stated the purpose of the
3 fund-raiser as you understood it, correct?

4 A. That's correct.

5 MR. SANGER: Okay. I have no further
6 questions.

7 THE COURT: Cross-examine?

8

9 CROSS-EXAMINATION

10 BY MR. AUCHINCLOSS:

11 Q. Good morning, Mr. McCullough. How are you?

12 A. I'm good, how are you?

13 Q. I'm just fine.

14 You had a conversation with Mr. Masada where
15 he told you that Gavin's fund-raiser was going to
16 help raise money for medical expenses?

17 A. Jamie asked me to participate in the
18 fund-raiser and he said that the money would be used
19 to go -- to help cover the medical expenses. That's
20 correct.

21 Q. Okay. Were you aware whether or not Gavin
22 was going to have any medical expenses after he got
23 out of the hospital?

24 A. From visiting him in the hospital, and
25 knowing that -- where the family came from, it was
26 pretty common knowledge that medical expenses are
27 expensive.

1 A. And yes, they were going to incur some
2 costs.

3 Q. Okay. Did you know that they were going to
4 have to prepare a safe room or a room that would be
5 germ-free for Gavin after he got out of the
6 hospital?

7 A. I was aware of that, yes.

8 Q. Would you consider that a medical expense?

9 A. I would, yes.

10 MR. AUCHINCLOSS: All right. Thank you. No
11 further questions.

12

13 REDIRECT EXAMINATION

14 BY MR. SANGER:

15 Q. Were you aware that the germ-free room was
16 paid for by Louise Palanker?

17 MR. AUCHINCLOSS: Objection. Hearsay,
18 foundation, and vague as to time, I would say.

19 THE COURT: The objection's sustained.

20 Q. BY MR. SANGER: Were you aware that -- as of
21 the time that you made this last statement in
22 January of 2005 about the fund-raiser being for
23 medical expenses, were you aware that Gavin Arvizo
24 had full medical coverage through Kaiser Permanente
25 as a result of his father's long-time employment at
26 Von's?

27 A. No, I was not aware of that.

28 MR. AUCHINCLOSS: Objection. Hearsay; 11724

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1 irrelevant.

2 THE COURT: Overruled. The answer is in.

3 MR. SANGER: Okay. Thank you. I have no

4 further questions.

5 MR. AUCHINCLOSS: No further questions.

6 THE COURT: All right. Thank you very much.

7 THE WITNESS: All right. Thank you.

8 THE COURT: Call your next witness, please.

9 BAILIFF CORTEZ: Judge, I'm sorry, one of

10 the jurors needs to go to the back room.

11 THE COURT: She had to step out for a second.

12 Can counsel approach? We can take up that issue

13 that we were going to have to take up.

14 MR. MESEREAU: Do you mean the motions?

15 THE COURT: Yeah.

16 MR. MESEREAU: Okay.

17 THE COURT: On your motion.

18 (Discussion held off the record at sidebar.)

19 THE COURT: (To Juror No. 5) Just so you

20 know, I used that time very effectively.

21 JUROR NO. 5: Thank you.

22 THE COURT: All right. Call your next

23 witness.

24 MR. SANGER: May I proceed?

25 THE COURT: Yes.

26 MR. SANGER: Okay. Monica Wakefield,

27 please.

28 THE COURT: Come to the witness stand, 11725

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1 please. When you get to the witness stand, please

2 remain standing.

3 Face the clerk over here and raise your

4 right hand.

5

6 MONICA DE LA SANTOS WAKEFIELD

7 Having been sworn, testified as follows:

8

9 THE WITNESS: Yes.

10 THE CLERK: Please be seated. State and

11 spell your name for the record.

12 THE WITNESS: I'm Monica De La Santos

13 Wakefield. Shall I spell my last name?

14 THE CLERK: Yes, please.

15 THE WITNESS: W-a-k-e-f-i-e-l-d.

16 THE CLERK: Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. SANGER:

20 Q. All right. Miss Wakefield, the first thing

21 we tell everybody is to lean into that right

22 microphone, the one on the right. It's a little

23 hard to do so --

24 A. Sorry.

25 Q. No, that's okay.

26 How are you employed?

27 A. I work for Kaiser Permanente Regional

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1 Q. And where is that located?

2 A. North Hollywood.

3 Q. All right. Now, at some point, you were
4 contacted by the Santa Barbara Sheriff's Department
5 to look into some medical records; is that correct?

6 A. That is correct.

7 Q. And you did that for them; is that correct?

8 A. Yes, sir.

9 Q. And you reported back your findings?

10 A. Yes.

11 Q. Okay. I'd like to refer to that same
12 incident. Before I do that, do you recall roughly
13 when it was that you talked to the sheriff's
14 department?

15 A. Yes.

16 Q. When was that?

17 A. I think that was a year ago, May or March.

18 One of the "M" months --

19 Q. Okay.

20 A. -- for sure.

21 Q. March or May. But sometime sort of the
22 spring of 2004; is that right?

23 A. Yes.

24 Q. And were you asked to look into your records
25 to see if a creatinine clearance test had been
26 conducted with regard to a patient, Gavin Arvizo?

27 A. Yes.

28 Q. Did you determine whether or not that had 11727

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1 occurred?

2 A. I don't understand what you mean. If that

3 had -- the test was taken?

4 Q. Whether or not the test was taken, yes. Did

5 you look into the records to determine what had

6 happened?

7 A. Yes.

8 Q. All right. Do you recall when the

9 procedure, the medical procedure, occurred; that is,

10 the sample was brought in?

11 A. I don't remember the date of collection,

12 because it was on microfiche when I received the

13 photocopy from microfiche.

14 Q. All right.

15 A. And so I don't remember the date of

16 collection. But I do remember that I think there

17 was - it's been a year, so I apologize - not enough

18 specimen for the test to be completed, I think.

19 Q. All right. Let me --

20 May I approach with --

21 Or let me ask you if it would refresh your

22 recollection to take a look at a police report that

23 was --

24 A. Certainly.

25 MR. SANGER: May I approach?

26 THE COURT: Yes.

27 Q. BY MR. SANGER: I'm going to leave this up

28 here. I have another copy. You can look at the 11728

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1 whole thing. And I think you might want to look
2 right around that area of the report.

3 Take a moment, read that over, and see if
4 that helps refresh your recollection as to what it
5 was that you reviewed when you looked at the
6 records, and then I'll ask the specific questions.

7 A. May I ask a question?

8 Q. Yeah.

9 A. Do you know who may have the microfiche copy
10 that I had sent? May I look at that if it's
11 available?

12 Q. If -- you sent it to the --

13 A. To Sergeant Robel.

14 Q. To Sergeant Robel. Well, you can ask that
15 question and I can't answer it.

16 A. Okay. Okay.

17 Q. Sergeant Robel happens to be in the
18 courtroom, but let's go on with what we've got here
19 as best you can.

20 A. Okay.

21 Q. If you need to look at the underlying
22 records, we'll take a break, call another witness,
23 and we can try to find those records.

24 Let's see how far we can get.

25 A. Sure.

26 Q. If this helps you refresh your recollection.

27 Does it at all?

28 A. Yes, it does. 11729

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1 Q. Okay. So do you recall when the -- the
2 original report for medical services was? In other
3 words, somebody came to Kaiser Permanente with
4 regard to this creatinine clearance on a particular
5 date. Do you recall what that date was?

6 A. I don't remember the date of collection. I
7 just remember the phone call.

8 Q. All right.

9 A. I think it was --

10 Q. Reviewing the report does not refresh your
11 recollection as to the date?

12 A. The date of collection where the specimen
13 could have been taken, is that what you mean?

14 Q. The outpatient summary report, the date that
15 something occurred at Kaiser Permanente.

16 A. Like on Tuesday, May 11th, right? Talking
17 about that one, when I received the fax?

18 Q. Yes. There's --

19 A. I do remember that, uh-huh.

20 Q. Okay. Now, there's a date of the actual
21 report that's in this report. Does that refresh
22 your recollection as to that date? If it does,
23 fine. And if it doesn't, that's okay.

24 A. Yes.

25 Q. What was the date that the actual summary
26 report occurred?

27 A. It was the 10th.

28 Q. March 10th of what year? 11730

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1 A. Of -- no, wait, last year, so it was 2004.

2 Last year. May. I think it was May 9th or 10th.

3 I'm looking back into my memory bank here, and -- of

4 the phone call, and of the date of the phone call

5 originally. And then when I had faxed it to

6 Sergeant Robel, I think it was May 11th.

7 Q. All right. It was May 11th, 2004, when you

8 faxed the report to Sergeant Robel?

9 A. Okay.

10 Q. So the question is, what was the date of the

11 original report?

12 A. The date of collection?

13 Q. You're saying date of report --

14 A. What I mean is when a patient comes in and

15 has their specimen drawn. Is that what you mean?

16 Q. Okay. All right.

17 A. That I don't recall.

18 Q. Okay. And looking at that paragraph doesn't

19 refresh --

20 A. It does not ring a bell.

21 Q. Okay. So you would be able to --

22 MR. SNEDDON: I may be able to help speed

23 this up a little bit. You may want to show her

24 this.

25 MR. SANGER: Okay. Thank you.

26 May I -- yes, okay. May I approach with

27 this document?

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1 Q. BY MR. SANGER: Let's see if that helps.

2 A. Oh, yeah.

3 Q. There you go.

4 MR. SNEDDON: I'm glad to help.

5 MR. SANGER: Thank you, Mr. Sneddon.

6 Q. Okay. All right. Now, take a look at that
7 and then see -- first of all, as soon as you're
8 finished looking at it, let me know and I'll ask you
9 a question.

10 A. Okay.

11 I do have a memo of that, uh-huh.

12 Q. All right. Now, was that a record that is
13 kept in the ordinary course of business at Kaiser
14 Permanente?

15 A. Not in our department, but it is on
16 microfiche. When it's in the system, there's a
17 certain amount of days that it's kept in the system
18 and then it's purged and then we have to request for
19 microfiche.

20 Q. And you are a client service advocate for
21 Kaiser Permanente; is that correct?

22 A. Yes.

23 Q. And so your job is to field issues and
24 problems that relate to services that are provided
25 for patients of Kaiser Permanente; is that correct?

26 A. Yes.

27 Q. And it's your job to routinely look into the

28 records of Kaiser Permanente to determine what 11732

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1 procedures were performed and report that to other
2 people; is that correct?

3 MR. SNEDDON: Your Honor --

4 THE WITNESS: Only to --

5 MR. SNEDDON: Excuse me.

6 Maybe I can speed this up, too. If counsel

7 is trying to establish the business records

8 exception, I'll stipulate that the exhibit can be

9 admitted into evidence.

10 MR. SANGER: I think I'll accept that.

11 May I take one more look at it, just to see?

12 THE WITNESS: We only speak to medical

13 staff.

14 MR. SANGER: Hold on one second.

15 All right. Before I accept that

16 stipulation, can I ask a few more questions?

17 THE COURT: Absolutely.

18 MR. SANGER: Thank you.

19 Q. When you look at that particular document --

20 THE COURT: Counsel, I'm sorry to interrupt

21 you. Would you mind -- let's put a number on it

22 right now.

23 MR. SANGER: I realized that just as I

24 started to talk. Defense next in order, please.

25 THE COURT: All right. What is that?

26 THE CLERK: That would be 5107.

27 THE COURT: That will be 5107.

1 Q. BY MR. SANGER: All right. Now, looking at
2 Exhibit 5107, does that indicate when the patient
3 came to Kaiser Permanente?

4 A. Yes. It says, "Date of collection."

5 Q. Was that March 10, 2003?

6 A. Yes.

7 Q. All right. And the patient in that case was
8 Gavin Arvizo; is that right?

9 A. It does say so.

10 Q. Okay. Now, it does not say on that report
11 that there is not an adequate specimen, does it?

12 A. It says, "No specimen received." So
13 according to this, the technologist who tested in
14 the chemistry department did not have a specimen to
15 test.

16 Q. Okay. Now, does it tell you whether or
17 not -- which specimen we're talking about, a urine
18 or a blood specimen?

19 A. Doesn't indicate to me.

20 Q. Does it show that there is a urine specimen
21 of 90 milliliters?

22 A. I think with that indication of "90 ML," I
23 think that means that they need at least that, or
24 they need that to complete the test.

25 But it says -- the "TV" is total volume. So
26 if it says "90 ML" and -- for the specimen container
27 to be in, and there's nothing in there, it's going

28 to say, "No specimen received." They will result it 11734

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1 out as "No specimen received" if it's an empty --

2 Q. Do you remember telling the Santa Barbara
3 sheriffs that it was noted in the results that
4 the -- that the urine sample contained 90
5 milliliters? So the question is whether or not you
6 recall telling the sheriff that?

7 A. I don't remember.

8 Q. Do you recall telling the sheriff -- let me
9 withdraw that. Do you recall, after faxing the
10 report to the sheriff's department, that you were
11 recontacted by telephone by the sheriff's officer?

12 A. Uh-huh. Uh-huh. I do remember that.

13 Q. And that was Sergeant Robel; is that
14 correct?

15 A. Yeah, uh-huh.

16 Q. And Sergeant Robel asked you why the
17 creatinine test was incomplete. Do you recall him
18 asking you that?

19 A. Yes.

20 Q. Okay. And do you recall telling him because
21 the lab technician failed to take blood from the
22 victim?

23 A. Not so much that they failed. I don't
24 remember saying that. But for a creatinine
25 clearance, I believe they need a serum and a urine,
26 and it looks like that it may be one or both
27 specimens. According to this report, as I look at

28 it, there was no specimen received for either. 11735

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1 Q. Okay. Now, again, do you recall telling
2 Sergeant Robel at that time that you need both the
3 blood and the urine to complete the test?

4 MR. SNEDDON: Object as asked and answered,
5 Your Honor.

6 THE COURT: Overruled.

7 You may answer.

8 THE WITNESS: I think, yeah, it rings a bell.

9 Q. BY MR. SANGER: And do you recall telling
10 them that you only needed 10 milliliters of urine to
11 conduct the test?

12 A. Yes, at least 10 ML. Yes, I do remember
13 that.

14 Q. I'm going to ask you to look at the report
15 that's in front of you, not the exhibit, but the
16 police report --

17 A. Okay.

18 Q. -- and look at the last three lines there
19 on page three, which I think is the one that you're
20 turned to. Just read it to yourself.

21 A. Uh-huh.

22 Q. And you can turn to page four and read the
23 rest of it if you want.

24 A. Okay. I do recall this, yes.

25 Q. Does that refresh your recollection that you
26 told Sergeant Robel that there was 90 milliliters of
27 urine that was brought in?

28 A. I still wouldn't remember. And the reason 11736

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1 why I say -- if I may say so, when --

2 Q. Well, the question, first of all, is --

3 A. Okay.

4 Q. -- does that refresh your recollection --

5 A. No.

6 Q. -- as to whether or not that's what you

7 told --

8 A. No, it still doesn't. It still doesn't.

9 But there's a reason why, though, that I would think

10 that's why. But I won't state it if it's not

11 necessary.

12 Q. All right. Let me ask another question. I

13 don't mean to keep you from talking, but let me ask

14 another question here.

15 A. Okay.

16 Q. And then just to be clear, if you look at

17 the paragraph before that -- and this may have been

18 asked and answered, and I will apologize in advance,

19 but I'm bit unsure at the moment.

20 Look at line 23 and 24 on that page three.

21 The sentence there.

22 A. Uh-huh. Uh-huh.

23 Q. Does that refresh your recollection that you

24 told Sergeant Robel that the reason the creatinine

25 test was incomplete was due to the lab technician

26 failing to take blood from the victim?

27 A. Rings a bell.

28 Q. So does that refresh your recollection that 11737

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1 that's what you told Sergeant Robel after reviewing
2 the records?

3 A. Yes.

4 Q. Okay.

5 A. But there's also an explanation with that,
6 too. But I won't add to it unless you want me to.

7 Q. Okay. Well, my question, is that what you
8 told Sergeant Robel?

9 MR. SNEDDON: Your Honor, asked and
10 answered. Object.

11 THE WITNESS: Yes.

12 THE COURT: Just a moment, I'm sorry.

13 Overruled. And the answer was, "Yes."

14 MR. SANGER: Okay. I have no further
15 questions.

16 THE COURT: Cross-examine?

17

18 CROSS-EXAMINATION

19 BY MR. SNEDDON:

20 Q. Would you like to tell the jury what it is
21 that you'd like to tell them about the explanation?

22 A. Yes, I would.

23 MR. SANGER: Objection. Calls for a
24 narrative.

25 THE WITNESS: If they want me to.

26 THE COURT: Overruled.

27 You may answer.

1 Q. BY MR. SNEDDON: That means you can go ahead
2 and tell the jury.

3 A. Okay. When we do research, you know, a
4 medical staff person, we do not speak to patients at
5 the regional reference lab. We only have their
6 specimens.

7 But in this particular one, when we receive
8 a phone call, as Sergeant Robel had called, what I
9 know I did was that I looked up in our reference
10 manual for the information of what a creatinine
11 clearance would require for a certain specimen.
12 There are hundreds of specimen tests that we
13 reference every day. You know, we'll get a phone
14 call, "What does the hepatitis surface antibody
15 need, or a surface antigen need? Virgin 2 or not
16 Virgin 2?" Things like that.

17 So if I remember in my mind back a year
18 ago - and I do apologize for the incomplete
19 explanation - but I do know that if -- when I
20 received the phone call, I looked up creatinine
21 clearance in one of our reference manuals. And it
22 spec -- it just gave an explanation of it needed
23 such and such specimen.

24 And I don't even know it now, you know, even
25 though we do creatinines every day. But it would
26 just say something and then we'd have to give it --
27 THE COURT: Just a moment.

28 Q. BY MR. SNEDDON: Okay. I'll ask you another 11739

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1 question.

2 A. Okay.

3 THE COURT: Go ahead.

4 Q. BY MR. SNEDDON: Let me just ask you this.

5 A. Okay.

6 Q. Looking at the document, 5107, --

7 A. Uh-huh.

8 Q. -- is it your -- as I understand, it is your

9 opinion, in reviewing that document, that from that

10 document, it indicates that neither one of the

11 specimens were sufficient to do the test, correct?

12 A. That is correct.

13 Q. Both the urine and the blood?

14 A. Uh-huh.

15 MR. SNEDDON: No further questions.

16 THE WITNESS: Yes.

17 THE COURT: Counsel?

18

19 REDIRECT EXAMINATION

20 BY MR. SANGER:

21 Q. All right. Now, you said you talked to

22 Sergeant Robel from the sheriff's department?

23 A. Yes.

24 Q. Last year, correct?

25 A. Yes.

26 Q. And then you talked to an investigator,

27 Scott Ross, on the 20th of this month, four days

28 ago, right? 11740

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1 A. Yes, Friday.

2 Q. And he went over what you had told Sergeant

3 Robel; is that correct?

4 A. Uh-huh. Yes. This is the same page.

5 Q. And you told him that you were -- you had

6 been in communication with Sergeant Robel, correct?

7 A. Yes.

8 Q. A year ago?

9 A. Yes.

10 Q. And you told him that --

11 A. Back in February, too. February.

12 Q. And you told him you received a subpoena in

13 February of this year from the prosecution; is that

14 right?

15 A. Yes.

16 MR. SNEDDON: I'm going to object as

17 immaterial and irrelevant. It's beyond the scope.

18 THE COURT: Overruled. Go ahead. The answer

19 was, "Yes." Next question.

20 MR. SANGER: Thank you.

21 Q. And when you talked to Mr. Ross four days

22 ago, you told him that your recollection was

23 correct -- I'm sorry, your recollection was

24 consistent with the police report; is that right?

25 A. Yes.

26 Q. And you told him that the specimen collected

27 was 90 milliliters; is that correct?

28 A. Yes. 11741

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1 Q. And you told Scott Ross that the amount
2 needed for the test was 10 milliliters, correct?

3 A. Yes.

4 Q. And you told him that the test was not
5 performed as a result of lab personnel's failure to
6 obtain blood; is that correct?

7 A. Yes, but that's with the explanation that I
8 was giving to the other gentleman there.

9 Q. That's -- you didn't give Scott Ross that
10 further explanation, did you?

11 A. No, it's all coming back to me, you know,
12 after a year.

13 Q. So you told Scott Ross that the test was not
14 performed as a result of lab personnel's failure to
15 obtain blood; right?

16 A. Yes, I did.

17 MR. SANGER: Okay. Thank you. No further
18 questions.

19

20 RE-CROSS-EXAMINATION

21 BY MR. SNEDDON:

22 Q. Thank you, by the way, for calling me a
23 gentleman.

24 When Mr. Ross interviewed you, he didn't
25 show you that report that's been marked for
26 identification?

27 A. This one?

28 Q. No, no, the lab report. 11742

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1 A. No. He didn't have it.

2 Q. He didn't show it to you?

3 A. No. But I asked him if you had it, I'd be
4 able to remember better, you know. Because I know
5 in line 22 or 23, or -- no, up here --

6 MR. SANGER: Objection; nonresponsive.

7 THE WITNESS: I'm sorry.

8 Q. BY MR. SNEDDON: That's okay. During the
9 interview you were not shown a copy of that, of the
10 lab --

11 A. No.

12 Q. -- of the report that you now have?

13 A. Huh-uh. No.

14 MR. SNEDDON: I have no further questions.

15 And I move that be admitted into evidence.

16 THE COURT: All right. Do you have any other
17 questions?

18 MR. SANGER: I have no further questions.

19 THE COURT: As to the motion?

20 MR. SANGER: I'll submit it, Your Honor.

21 THE COURT: And I'll admit the document.

22 You may step down. Thank you.

23 Call your next witness.

24 MR. MESEREAU: Thank you, Your Honor. The
25 defense will call Miss Mary Holzer.

26 THE COURT: Come forward, please. When you
27 get to the witness stand, remain standing.

28 Face the clerk here and raise your right 11743

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1 hand.

2

3 MARY ELIZABETH HOLZER

4 Having been sworn, testified as follows:

5

6 THE WITNESS: I do.

7 THE CLERK: Please be seated. State and

8 spell your name for the record.

9 THE WITNESS: Marry Elizabeth Holzer.

10 H-o-l-z-e-r.

11 THE CLERK: Thank you.

12

13 DIRECT EXAMINATION

14 BY MR. MESEREAU:

15 Q. Good morning, Miss Holzer.

16 A. Good morning.

17 Q. Miss Holzer, what kind of work do you do?

18 A. I am an office manager/paralegal for a law

19 firm.

20 Q. And which law firm is that?

21 A. Law Offices of Feldman & Rothstein.

22 Q. Is that in Los Angeles?

23 A. Pasadena.

24 Q. Okay. And where is your home, without

25 giving the address? Do you live in Los Angeles?

26 A. I live in Encino.

27 Q. Okay. Do you know someone -- actually,

28 before I go into that, please give a brief history 11744

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1 of your responsibilities at the firm.

2 A. I handle cases, clients.

3 Q. All right. Let me start a little better

4 than that.

5 A. Okay.

6 Q. When did you first start work at that law

7 firm?

8 A. I believe it was 1985 or '86. I'm not sure.

9 Q. And when you started work at the firm, what

10 were you doing?

11 A. I was originally hired as a personal

12 secretary to Mr. Rothstein.

13 Q. And Mr. Rothstein is a partner at the firm?

14 A. Yes, sir.

15 Q. Okay. And did you have any other

16 responsibilities at that firm from time to time?

17 A. Yes, I do the banking. I do supply

18 ordering. I handle clients that need assistance.

19 Occasionally, you know, I work the files.

20 Q. And have your job responsibilities changed

21 through the years?

22 A. I've gotten more responsibilities, yes, over

23 the years, of course.

24 Q. And what do you mean by that?

25 A. Well, when I first started out, I was just

26 as secretarial, and then it proceeded to -- I was

27 promoted to office manager, as our firm got larger.

28 And then I took on more responsibilities. 11745

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1 Q. Did you ever meet someone named Janet

2 Arvizo?

3 A. Yes.

4 Q. And do you know approximately when you met

5 Janet Arvizo?

6 A. I can't give you the year, I'm sorry.

7 Q. Do you know approximately when it may have

8 been?

9 A. Maybe 1999.

10 Q. Do you recall the circumstances under which

11 you met Janet Arvizo?

12 A. The family came to our office to retain us

13 to represent them in a case.

14 Q. And what case was that?

15 A. It was a case, assault and battery, against

16 J.C. Penney's.

17 Q. And did your firm represent the Arvizo

18 family in that case?

19 A. Yes.

20 Q. And do you know who in the Arvizo family you

21 represented?

22 A. David Arvizo, Janet Arvizo, Gavin Arvizo and

23 Star Arvizo.

24 Q. After your firm agreed to represent the

25 Arvizo family in the lawsuit against J.C. Penney,

26 did you have a lot of involvement with the Arvizos?

27 A. Yes.

28 Q. Would you please explain what you mean. 11746

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1 A. I was in charge of -- I don't want to call
2 it hand-holding, but pretty much -- they didn't have
3 a car, so I drove them to appearances. I sometimes
4 helped out when they didn't have child care, when
5 they needed -- if David or Janet needed to go
6 somewhere for the case. Not personal.

7 Q. And did you talk to Janet Arvizo from time
8 to time?

9 A. Daily.

10 Q. And what do you mean by that?

11 A. She would pretty much call several times a
12 day, yes.

13 Q. That was almost every day?

14 A. Close, yes.

15 Q. Would she call for you?

16 A. Yes.

17 Q. And did you develop a friendship with Janet
18 Arvizo?

19 A. That's kind of hard to explain. "A friendship"
20 as in did I like her and were we buddies?

21 Q. Yes.

22 A. She was a client.

23 Q. Was she a friend?

24 A. No.

25 Q. Did you talk to her children from time to
26 time?

27 A. Yes.

28 Q. And typically how would that happen? 11747

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1 A. They would come into the office. Usually
2 they would pop in every once in a while and the
3 children would come in my office, and sit on my lap,
4 and draw me pictures, tell me how much they loved
5 me, and write little notes and post it on my pin
6 board, and say how great I was, and that I was
7 helping their family.

8 Q. Would Janet tell you how great you were?

9 A. Yes.

10 Q. How would she do that?

11 A. She always would say when everything's over,
12 she wants to take me to Las Vegas and have a girls
13 weekend, and things like that.

14 Q. Did you ever go to Las Vegas with her?

15 A. No. No.

16 Q. Did you ever have a girls weekend with her?

17 A. No.

18 Q. Now, you indicated that you would drive the
19 family to various locations?

20 A. Yes.

21 Q. And you said you would drive them to
22 appointments?

23 A. Yes.

24 Q. What kind of appointments are you talking
25 about?

26 A. Defense Independent Medical Examinations,
27 mediation, the minors' comps, hearings, depositions.

28 Q. How many times do you think you drove the 11748

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1 family to these various appointments while your firm
2 was representing the Arvizos in the J.C. Penney
3 suit?

4 A. Multiple, multiple times. I -- more than I
5 could count.

6 Q. Now, do you recall at some point Janet
7 Arvizo being in a driveway?

8 A. Yeah.

9 Q. What do you recall about that?

10 A. Well, it depends on which driveway you're
11 speaking of.

12 Q. Well, what do you recall about her being in
13 a driveway and falling down?

14 A. Throwing herself down on the ground?

15 Q. Yes.

16 MR. ZONEN: I'll object as relevance, Your
17 Honor.

18 THE COURT: Overruled.

19 THE WITNESS: She had an Independent Medical
20 Examination with a physician for her injuries. I
21 don't know if you want me to tell you --

22 MR. MESEREAU: Yes, please.

23 THE WITNESS: -- the whole story.

24 Q. BY MR. MESEREAU: Yes, please.

25 MR. ZONEN: I'll object to the narrative
26 answer.

27 THE COURT: Sustained.

28 Q. BY MR. MESEREAU: What did Janet Arvizo do 11749

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1 in the driveway when she was there for that
2 examination?

3 A. She threw herself down on the ground,
4 started kicking and screaming, carrying on that the
5 doctor was the devil, and the nurses were the devil,
6 and they were all out to get her.

7 And I explained to her that they were only
8 asking her standard questions that they ask in an
9 Independent Medical Examination; that -- the history
10 of her injuries and how she obtained the injuries.
11 And she was very defensive. And they asked
12 us to leave because she was so irate.

13 Q. Did you leave?

14 A. Yes, I took her out.

15 THE COURT: Counsel? Let's take our break.

16 MR. MESEREAU: Oh. Yes, Your Honor.

17 (Recess taken.)

18 --o0o--

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE)

5 OF CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR,

13 CSR #3304, Official Court Reporter, do hereby

14 certify:

15 That the foregoing pages 11691 through 11750

16 contain a true and correct transcript of the

17 proceedings had in the within and above-entitled

18 matter as by me taken down in shorthand writing at

19 said proceedings on May 24, 2005, and thereafter

20 reduced to typewriting by computer-aided

21 transcription under my direction.

22 DATED: Santa Maria, California,

23 May 24, 2005.

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA BARBARA
3 SANTA MARIA BRANCH; COOK STREET DIVISION
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF)

8 CALIFORNIA,)

9 Plaintiff,)

10 -vs-) No. 1133603

11 MICHAEL JOE JACKSON,)

12 Defendant.)

13

14

15

16

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 TUESDAY, MAY 24, 2005

20

21 8:30 A.M.

22

23 (PAGES 11752 THROUGH 11940)

24

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26

27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff: THOMAS W. SNEDDON, JR.,

4 District Attorney -and-

5 RONALD J. ZONEN, Sr. Deputy District Attorney

6 -and- GORDON AUCHINCLOSS,

7 Sr. Deputy District Attorney 1112 Santa Barbara Street

8 Santa Barbara, California 93101

9

10

11 For Defendant: COLLINS, MESEREAU, REDDOCK & YU BY: THOMAS A.
MESEREAU, JR., ESQ.

12 -and- SUSAN C. YU, ESQ.

13 1875 Century Park East, Suite 700 Los Angeles, California 90067

14 -and-

15 SANGER & SWYSEN

16 BY: ROBERT M. SANGER, ESQ. 233 East Carrillo Street, Suite C

17 Santa Barbara, California 93101

18

19

20 For Witness LAW OFFICES OF FELDMAN & ROTHSTEIN Mary Elizabeth BY:
THOMAS D. ROTHSTEIN, ESQ.

21 Holzer: 790 E. Colorado Boulevard, Suite 800 Pasadena, California
91101

22 -and-

23 OVERLAND BORENSTEIN SCHEPPER &

24 KIM LLP BY: MARK E. OVERLAND, ESQ.

25 300 South Grand Avenue, Suite 2750 Los Angeles, California 90071

26

27

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1 I N D E X

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A"
on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on
index.

6 Mr. Sanger is listed as "SA" on index.

7

8

9 DEFENDANT'S

10 WITNESSES DIRECT CROSS REDIRECT RECROSS

11 HOLZER, Mary

12 Elizabeth 11763-Z 11782-M

13 RANIERI, Anthony 11791-M

14 BRANDO,

15 Karen 11797-M

16 BRANDO, Prudence 11804-SA

17 ESPLIN,

18 Phillip W. 11810-SA 11847-SA 11863-SA 11867-Z

19 AVILA, Julio 11868-M 11886-A

20 LESSIE,

21 Dean Wraggs 11894-M 11903-A

22 KENNEDY,

23 Arlene 11908-M 11914-A

24 TUCKER, Chris 11917-M

25

26

27

28 11754

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1 MR. MESEREAU: Thank you, Your Honor.

2 Q. Miss Holzer, you indicated that your law
3 firm was representing the Arvizo family in a lawsuit
4 against J.C. Penney, right?

5 A. Correct.

6 Q. And that was a civil lawsuit, correct?

7 A. Correct.

8 Q. That was a lawsuit in which the Arvizo
9 family were seeking money from J.C. Penney, correct?

10 A. Correct.

11 Q. And the money they were seeking was
12 allegedly based upon personal injuries they claim
13 they had received from J.C. Penney security guards,
14 right?

15 MR. ZONEN: Objection, Your Honor. Leading.

16 THE COURT: Overruled.

17 You may answer.

18 THE WITNESS: Yes.

19 Q. BY MR. MESEREAU: Would you please speak
20 into the microphone to your right, if you can. That
21 one, yeah.

22 A. Yes.

23 Q. Thanks.

24 The purpose of medical examinations was to
25 determine the extent of injuries, correct?

26 A. Correct.

27 Q. Without injuries, there would be no claim

28 for money, right? 11755

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1 A. Correct.

2 Q. Now, did Ms. Arvizo ever tell you that she
3 was the victim of domestic abuse by her husband?

4 A. Yes.

5 Q. And was it your understanding her husband's
6 name was David?

7 A. Yes.

8 Q. And was David also a claimant, a plaintiff,
9 in that lawsuit?

10 A. Originally.

11 Q. And originally was David also suing J.C.
12 Penney for damages?

13 A. Yes.

14 Q. And the children, Star and Gavin, were also
15 suing for damages, true?

16 A. True.

17 Q. Okay. Did Ms. Arvizo ever tell you that her
18 children were abused by David, to your knowledge?

19 A. Determine "abused."

20 Q. Did she ever use the word?

21 A. She never used the word "abused."

22 Q. Did she say the children were mistreated by
23 David?

24 A. Yes.

25 Q. Okay. Now, at one point in the course of
26 your responsibilities, you were shown photographs of
27 Janet with bruises, true?

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1 Q. And who first showed you those photographs?

2 A. I believe Anthony Ranieri.

3 Q. And was it your understanding those
4 photographs were to be used in the lawsuit against
5 J.C. Penney?

6 A. Yes.

7 Q. And was it your understanding that the
8 photographs were supposed to show injuries inflicted
9 on Ms. Arvizo by J.C. Penney security guards?

10 A. Yes.

11 Q. Did you ever have a chance to discuss with
12 Janet Arvizo those photographs?

13 A. Yes.

14 Q. And what did she tell you about those
15 photographs while that lawsuit was going on?

16 A. She told me that the bruises that were on
17 her body were inflicted by David that night after
18 the altercation at J.C. Penney's.

19 Q. And what was your response to her telling
20 you that?

21 A. Well, it scared me.

22 Q. Why?

23 A. Well, I represent my law firm, and when a
24 client admits to fraud, it's kind of scary.

25 Q. And did you say anything to Mrs. Arvizo in
26 response?

27 A. Yes, I did.

28 Q. What did you say to Ms. Arvizo about that? 11757

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1 A. I told her that she couldn't do that, that
2 that was wrong, and that, you know, she needed to
3 retract that, and that she needed to speak to Mr.
4 Rothstein about it.

5 Q. Did you tell her that was fraudulent?

6 A. I don't know whether I used that word. I
7 told her it was wrong; that "You can't do that."

8 Q. And --

9 A. I was very upset.

10 Q. And what did she say to you in response?

11 A. She said, "Well, don't say anything to
12 anybody," because she was at that time in a custody
13 battle with David, and that -- I -- I don't know.
14 I'm sorry. I lost my train of thought.

15 Q. Did she threaten you?

16 A. Yes, she did.

17 Q. How?

18 A. She told me that David's brother Ray is in
19 the Mexican mafia and runs drugs between Los Angeles
20 and Las Vegas, and that she knows where I live,
21 because she had been to my house on several
22 occasions, and they would come and kill me and my
23 nine-year-old daughter.

24 Q. Did this terrify you?

25 A. Yes.

26 Q. Did you ever tell anyone at the law firm
27 about what Janet had told you?

28 A. No, I did not. 11758

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1 Q. And why didn't you do that?

2 A. Because she told me not to.

3 Q. Did you have any additional discussions with
4 Janet Arvizo about these fake injuries?

5 A. Well, her injuries weren't fake. She had
6 injuries.

7 Q. Or, let me rephrase it. Did you ever have
8 any further discussions with her about the fake
9 claims against J.C. Penney?

10 A. I did. I tried to get her to speak to Mr.
11 Rothstein about it. I asked her if I could speak to
12 Mr. Rothstein about it, because we run a clean law
13 firm, and I really didn't feel that we should be
14 involved in something like that.

15 And she proceeded to call me daily and tell
16 me she had told David, and David was raging mad, and
17 that he was going to come after me, and that I
18 better watch my back.

19 Q. How many times do you think Janet Arvizo
20 threatened you and your daughter?

21 A. I'd say about eight, nine times.

22 Q. Are there any other -- are there any other
23 things you haven't described that she said to you
24 when she threatened you?

25 A. She just said she was scared for me and my
26 daughter; that she didn't want to see anything bad
27 happen to us, because she considered me her dear

28 friend. 11759

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1 Q. Did you consider her to be your dear friend?

2 A. Not at all. I was just doing my job.

3 Q. At some point did you learn that Janet

4 Arvizo and her family obtained approximately

5 \$152,000 from that lawsuit?

6 A. Yes.

7 Q. And was it your understanding that that

8 money was distributed to various members of the

9 family?

10 A. Yes.

11 Q. And at some point, did you stop representing

12 Janet Arvizo, "you" being the firm?

13 A. No.

14 Q. At some point, did the lawsuit end?

15 A. Yes.

16 Q. And did your responsibilities as far as the

17 Arvizos go end at some point?

18 A. Once I made the blocked minors' accounts

19 with the bank.

20 Q. And what do you mean by that?

21 A. Well, it's my responsibility to -- when a

22 child under the age of 18 gets a settlement, it's my

23 duties to purchase certificates of deposit at the

24 bank so that they roll over until they're 18.

25 Q. Did Janet Arvizo ever talk to you about

26 Michael Jackson?

27 A. Oh, yes.

28 Q. What did she say about him? 11760

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1 A. She would invite me and my daughter to come
2 with them, and how wonderful he was, and what a
3 great time my daughter would have at his ranch.

4 Q. Did you ever accept her invitation?

5 A. No.

6 Q. Did Janet Arvizo ever tell you anything
7 about her children being in acting classes?

8 A. Yes.

9 Q. What did she say?

10 A. She told me she had them in comedy --
11 stand-up comedy classes and acting classes. I don't
12 know how far in detail you want me to go.

13 Q. I do.

14 A. All the way?

15 MR. ZONEN: I'll object to the narrative
16 form of the answer.

17 THE COURT: Sustained.

18 Q. BY MR. MESEREAU: What did Janet Arvizo tell
19 you about her children learning to act?

20 A. She said she wanted them to become good
21 actors so she could tell them what to say and how to
22 behave.

23 Q. Did she ever say anything to you about Gavin
24 getting his stories straight in the J.C. Penney
25 case?

26 A. Yes.

27 Q. What did she say?

28 A. She said she wasn't worried. This was at 11761

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1 the Independent Medical Examination for psychiatric
2 of all three, Gavin, Star and Janet. And when we
3 were at the doctor's office, she was very concerned
4 about them completing general forms, you know, like,
5 "Generally do you feel happy?" "Generally do you
6 feel sad?" You know, "What kind of days" -- "How do
7 you feel when you wake up?" Those kind of forms.
8 And she refused to have the children fill them out.

9 And then she wanted to participate in the
10 medical examinations with the doctor and the
11 children.

12 And I asked her, you know, I said, you know,
13 "It doesn't work that way." You know, "The doctor
14 sees the children on their own." You know, "You
15 can't go in there."

16 And she said, "Well, I'm pretty sure Gavin
17 will get the story straight, but I'm not sure Star
18 will remember what we practiced and what I told him
19 to say."

20 Q. Now, at any point in time, did Janet Arvizo
21 ever tell you words to the effect, "Call up J.C.
22 Penney or their lawyers and tell them I lied under
23 oath"?

24 A. Never.

25 Q. At any time did Janet Arvizo ever tell you
26 words to the effect, "Call up J.C. Penney or their
27 lawyers and give the money back"?

1 Q. Did Janet Arvizo ever tell you words to the
2 effect, "Let the other side know I perjured myself"?

3 A. No.

4 MR. MESEREAU: I have no further questions.

5 THE COURT: Cross?

6 MR. ZONEN: Thank you.

7

8 CROSS-EXAMINATION

9 BY MR. ZONEN:

10 Q. Ms. Holzer, during the time that you were
11 working at this law firm and this case was in your
12 office, you had an opportunity to be able to have
13 numerous conversations with Miss Arvizo and other
14 members of her family; is that correct?

15 A. That is correct.

16 Q. And your file became extensive at your law
17 firm; is that right?

18 A. Yes, sir.

19 Q. All right. And it included a lot of the
20 information about the incident and depositions and
21 police reports and medical reports; is that correct?

22 A. Correct.

23 Q. In fact, the Arvizos never got anything
24 close to \$152,000, did they?

25 MR. MESEREAU: Objection; foundation.

26 THE COURT: Overruled.

27 Q. BY MR. ZONEN: Is that true?

1 THE WITNESS: Okay.

2 Well, I believe that was the gross

3 settlement.

4 Q. BY MR. ZONEN: And from that settlement was

5 spent all the expenses, was paid for the expenses;

6 is that correct?

7 A. Some of it was expenses. There was attorney

8 fees. There was expert fees.

9 Q. Yes.

10 A. The children received a portion.

11 Q. Yes.

12 A. And David rejected any portion. And, you

13 know, he had dropped out of the case, so....

14 Q. David Arvizo was paid nothing?

15 A. Paid nothing.

16 Q. Are you certain?

17 A. Yes.

18 Q. Okay. Janet Arvizo got about \$32,000; is

19 that right?

20 A. I would say that's about right.

21 Q. All right. Gavin Arvizo got about what,

22 \$28,000?

23 A. I think 25 maybe.

24 Q. Okay. 25. That went into an account and

25 will stay there until he's 18?

26 A. Correct.

27 Q. Star Arvizo got about 5,000, 6,000?

28 A. I think it was eight. 11764

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1 Q. About \$8,000?

2 A. Yeah.

3 Q. That was because of a concussion that he
4 had; is that right?

5 A. Correct.

6 Q. Gavin's injury was a broken elbow, fractured
7 elbow; is that correct?

8 A. Correct.

9 Q. And that is an injury that he received at
10 that particular event; is that right?

11 MR. MESEREAU: Objection; foundation.

12 THE COURT: Sustained.

13 Q. BY MR. ZONEN: Well, your law firm certainly
14 represented that that was an injury that was
15 received in the J.C. Penney's event?

16 A. That's what we were told at the time.

17 Q. And that was the basis of the injury; is
18 that correct?

19 A. That's what we were told at the time.

20 Q. And in fact, did he have a broken elbow?

21 A. Correct.

22 Q. Did Janet ever tell you that David broke
23 that elbow?

24 A. Janet told me that David pushed Gavin and
25 Star away from her when they tried to protect her --

26 Q. All right.

27 A. -- as he was beating Janet that evening.

28 Q. All right. But do you remember telling us 11765

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1 in an interview at your attorney's office --

2 A. Yes.

3 Q. -- that Janet did not tell you --

4 A. No.

5 Q. -- that Gavin -- hold on, that Gavin's

6 injury was caused by her husband?

7 A. No, she did not tell me that.

8 Q. At any time?

9 A. At any time.

10 Q. All right. So you're telling us that at

11 some later time she told you that her injuries were

12 caused by her husband?

13 A. Correct.

14 Q. Now, among the information that you had in

15 your law firm was the information about the arrest

16 and release of both David and Janet Arvizo from

17 county jail; is that right?

18 A. Could you repeat that, please?

19 Q. At the time of their arrest on that date,

20 back in 1998, and I believe this was on August 27th,

21 1998, the date of the incident at J.C. Penney's,

22 both of them were arrested and taken to jail; is

23 that right?

24 A. Correct.

25 Q. All right. Janet was released a few hours

26 before David, and David was released just after

27 midnight; is that correct?

28 A. That sounds correct. 11766

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1 Q. All right. Janet checked into the ER room
2 about an hour and ten minutes later after David's
3 release; is that right?

4 A. Not to my knowledge.

5 MR. MESEREAU: Objection; foundation.

6 THE COURT: Sustained.

7 Q. BY MR. ZONEN: You have medical records from
8 that, don't you?

9 A. Well, yeah, but I haven't looked at them in
10 years.

11 Q. All right. I understand that. But it is
12 true that Janet went to the ER room that night after
13 her release and after the release of her husband?

14 MR. MESEREAU: Objection; foundation.

15 THE COURT: Sustained.

16 Q. BY MR. ZONEN: Are you familiar -- are you
17 aware of whether or not she sought medical treatment
18 that night?

19 MR. MESEREAU: Objection.

20 THE WITNESS: No, I believe she sought
21 medical treatment the next day.

22 Q. BY MR. ZONEN: Would the next day be after
23 midnight?

24 A. I guess so.

25 MR. MESEREAU: Objection; argumentative.

26 THE COURT: Overruled.

27 Q. BY MR. ZONEN: You don't know how long it

28 was? 11767

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1 A. I don't know the hour.

2 Q. All right. But do you know how much time
3 went by from the time of David's release to the time
4 that she checked herself into a clinic?

5 A. No, I do not.

6 Q. If you were to learn it was an only an hour,
7 would that be consistent with her statement to you
8 that it was David who beat her up and caused those
9 injuries?

10 A. Well, no. Maybe. I don't know.

11 Q. All right. Did she tell you, in fact,
12 during this conversation where she revealed to you
13 that it was her husband who inflicted those
14 injuries, did she tell you that the children were
15 there?

16 A. Yes.

17 Q. All right. Now, you know that the children,
18 in fact, were taken from J.C. Penney's by their
19 grandparents?

20 MR. MESEREAU: Objection; foundation.

21 THE COURT: Sustained.

22 Q. BY MR. ZONEN: Do you know how the children
23 left J.C. Penney's?

24 A. No, I do not.

25 Q. You know that the children were at J.C.
26 Penney's at the time of this incident?

27 A. Yes, they were.

28 Q. And in fact, they were two of the 11768

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1 complainants, two of the plaintiffs in this lawsuit?

2 A. Correct.

3 Q. Both of them were injured; is that correct?

4 A. Correct.

5 Q. All right. And that was the cause of action

6 for a settlement of this case; is that right?

7 A. Correct.

8 Q. Now, did you ever ask her how the children

9 left J.C. Penney's given the fact that she and her

10 husband were arrested?

11 A. No, I did not.

12 Q. Did you ever ask her how these children came

13 back into her possession in time for her to be

14 beaten in their presence?

15 MR. MESEREAU: Objection; foundation.

16 MR. ZONEN: I asked if she asked.

17 MR. MESEREAU: Relevance.

18 THE COURT: The objection's overruled.

19 You may answer.

20 Q. BY MR. ZONEN: Did you ever?

21 A. No.

22 Q. Did she tell you that she went home and

23 picked up the children first?

24 A. She told me that when they got -- she said

25 when they got home -- these were her words. When

26 they got home, David was raging mad and accused her

27 of creating the chaos at J.C. Penney's and Tower

28 Records. 11769

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1 Q. Which home are we talking about?

2 A. I'm not sure.

3 Q. Did she have more than one residence she
4 stayed at at the time?

5 A. Well, they lived someplace prior to where
6 they lived later in the case.

7 Q. All right. This was not the Soto Street
8 address?

9 A. I don't believe so.

10 Q. All right. But they had a separate
11 residence at the time?

12 A. Well, they lived somewhere.

13 Q. But do you know if they went to the
14 grandparents' residence in El Monte?

15 A. I don't believe so, no. They were living on
16 their own, because they had a neighbor that you had
17 to call because they didn't have a telephone.

18 Q. All right. Now, these children were small
19 at the time, weren't they?

20 A. Star's pretty hefty. He's -- he was a --

21 Q. Let me ask that question. I meant young.

22 They were young?

23 A. They were young, yeah.

24 Q. They were seven and eight, weren't they?

25 A. Yeah.

26 Q. Now, seven- and eight-year-olds taken away
27 from J.C. Penney's would have been taken from J.C.

28 Penney's by some adult; is that right? 11770

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1 MR. MESEREAU: Objection. Calls for
2 speculation and no foundation.

3 THE COURT: Foundation, sustained.

4 Q. BY MR. ZONEN: All right. Well, your
5 understanding is that an adult came and picked them
6 up while their parents went to jail?

7 A. I have no understanding. I have no
8 understanding of any of that.

9 Q. Do you know how they joined up with their
10 children that night in the period of time from the
11 time of the release of David Arvizo from jail to the
12 time that she checked herself into a clinic?

13 A. No, I do not.

14 Q. But she told you that the children were
15 present when David went into a rage; is that right?

16 A. Correct.

17 Q. So she ended up back in the presence of both
18 of the children?

19 A. Correct.

20 Q. And then David got angry and inflicted
21 injuries?

22 A. Correct.

23 Q. Now, you've seen the photographs of her
24 injuries, haven't you?

25 A. Yes.

26 Q. All right. They were photographs that were
27 furnished to your law firm at some time later; is

28 that right? 11771

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1 A. Correct.

2 Q. And your law firm did not become involved in
3 this case until after the criminal matter had long
4 been dismissed; is that true?

5 A. Correct.

6 Q. So there was no pending criminal matter at
7 all by the time she became involved in your law firm
8 and this suit started; is that right?

9 A. That is correct.

10 Q. Isn't it true that in those injuries that
11 were shown to you, those injuries on those
12 photographs, they go from the bottom of each leg
13 right at the ankle, all the way up to the top of
14 each thigh, both front and back, up to close to the
15 buttocks on both legs? Is that true?

16 A. Correct.

17 Q. And is it true that the injuries on her arms
18 go all the way from the wrist, all the way to the
19 shoulder on each arm, both front and back; is that
20 true?

21 A. That is correct.

22 Q. And it is true that they are rather large,
23 substantial black and blue marks --

24 A. Yes.

25 Q. -- that extend all the way from literally
26 the wrist to the shoulder on both arms, and large,
27 substantial black and blue marks that go all the way

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28 from the ankle to the buttocks on both legs? Is 11772

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1 that true?

2 A. That's true.

3 Q. In addition, there was an injury to her

4 face; is that true?

5 A. I don't recall.

6 Q. In addition, there was an injury to her

7 wrist; is that right?

8 A. Yes.

9 Q. And that would be consistent with somebody

10 putting handcuffs on her at the time of a struggle;

11 is that right?

12 A. That's correct.

13 Q. In fact, all of those injuries that you saw

14 depicted in those photographs are completely

15 consistent with her being forced down to the ground

16 by three or four different people who are either on

17 top of her, using their knees to put pressure on the

18 backs of her legs, the front of her legs, and on her

19 arms and wrists; is that right?

20 MR. MESEREAU: Objection.

21 THE WITNESS: That's what I believe --

22 MR. MESEREAU: Calls for speculation; lack

23 of foundation.

24 THE COURT: Sustained.

25 Q. BY MR. ZONEN: Did you believe, based on

26 your observation of those injuries, that they were

27 perfectly consistent with what you were representing

28 in your lawsuit? 11773

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1 A. At that time I did.

2 Q. All right. Now, did she at a later time
3 come to you and ask you to go with her to an
4 attorney named Michael Manning?

5 A. Did he own the cigar shop? If he owned a
6 cigar shop, yes. I don't remember his name.

7 Q. Do you remember telling us in an interview
8 that she came to you and asked you to go with her to
9 her --

10 A. Divorce attorney.

11 Q. -- family law lawyer?

12 A. Her what?

13 Q. Family law lawyer.

14 A. Yes.

15 Q. Okay. And she showed you injuries; is that
16 right?

17 A. Yes. Well, she showed them to me in my
18 office.

19 Q. These were not injuries sustained in the
20 J.C. Penney's suit?

21 A. This was after the case was settled.

22 Q. This was years and years later?

23 A. Yes.

24 Q. All right. But you described injuries that
25 are very consistent, in your opinion, with the
26 injuries that she received in these photographs?

27 A. They looked exactly the same.

28 Q. They're identical injuries? 11774

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1 A. Pretty much, except for the handcuffs.

2 Q. All right. So she had bruises that were
3 intense and huge and deep blue that went all the way
4 from the ankle to her buttocks, the front of her
5 leg, the back of her leg, both legs; is that right?

6 A. Yes.

7 Q. She had injuries that went all the way from
8 her wrist to her shoulders, the front of her arms,
9 the back of her arms, both arms; is that correct?

10 A. That's correct.

11 Q. It was identical to the injuries that you
12 had seen three years earlier?

13 A. How identical do you want me to get? They
14 were very consistent.

15 Q. But they were as close as you can describe
16 in the sense that they were consistent, large, very
17 large, very deep, dark blue, black and blue marks,
18 bruises --

19 A. Yes.

20 Q. -- that ran, again, all the way from her
21 ankles to her buttocks, and all the way from her
22 wrist to her shoulders in a consistent fashion to
23 those --

24 MR. MESEREAU: Objection. Pardon me.

25 Q. BY MR. ZONEN: -- to those photographs that
26 you saw three years earlier; is that true?

27 MR. MESEREAU: Objection. Foundation and

28 misstates the evidence. 11775

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1 MR. ZONEN: She saw it.

2 THE COURT: The objection is overruled.

3 Do you understand the question?

4 Q. BY MR. ZONEN: Is that true?

5 A. That's true.

6 Q. Now, you then went with her to an attorney

7 in Pasadena; is that right?

8 A. Well, I first asked her to speak to Mr.

9 Rothstein. First I asked her if I could take her to

10 a shelter, her and the children, because she should

11 not subject herself or her children to that.

12 Q. Miss Holzer, did you go with her to an

13 attorney in Pasadena?

14 A. Yes, I did.

15 Q. That attorney was represented to you by her

16 as being her family law lawyer?

17 A. That is correct.

18 Q. She was already separated from David Arvizo

19 at that time?

20 A. That is correct.

21 Q. And you went, and you went up into the

22 office with her; is that right?

23 A. That is correct.

24 Q. All right. Now, this is a person who had

25 threatened to kill you and your child?

26 A. No, she didn't threaten to kill me. She

27 threatened to have the Mexican mafia, her

28 brother-in-law, kill me. 11776

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1 Q. But she -- you believed that she was the
2 person who was going to be instrumental in arranging
3 the assassination of your child; is that right?

4 A. That's correct.

5 Q. So --

6 A. Well, no, she said it was her husband.

7 Q. Well, ma'am, did you just tell Mr. Mesereau
8 on direct -- wait till the question is asked.

9 Did you just tell Mr. Mesereau on direct
10 exam that she had threatened to have your child
11 killed?

12 A. She warned me.

13 Q. All right. So you're telling us now that
14 she did not threaten to have your child killed?

15 A. What she said was David is going to send his
16 brother over to take me and my daughter out.

17 Q. All right. So you -- you did not interpret
18 that as meaning that she was going to --

19 A. No.

20 Q. -- arrange to have that done?

21 A. Not her. She was saying that -- she had
22 told David that he had beat her that night and
23 pushed the children out of the way when they tried
24 to protect her.

25 Q. All right. Now, Mr. Mesereau asked you
26 questions about whether or not she threatened to
27 have your child killed, and you said, "Yes."

28 A. I guess I misunderstood. 11777

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1 Q. You misunderstood his question?

2 A. I suppose I did.

3 Q. All right. Your testimony at this moment is
4 she did not threaten to have your child killed; is
5 that correct?

6 A. What she said was, "I'm worried for you and
7 your child. I don't know what David's going to do.
8 His brother's in the Mexican mafia. He runs drugs
9 between Las Vegas and Los Angeles. David is mad
10 that I told you that he beat me that day."

11 Q. So this is a subsequent conversation to the
12 first conversation that she had about --

13 A. That was every conversation. She said the
14 same thing every time.

15 Q. All right. And now she comes back into the
16 office after the lawsuit with J.C. Penney's has
17 concluded; is that right?

18 A. That's correct.

19 Q. You no longer have any business with Janet
20 Arvizo whatsoever; is that right?

21 A. No, that is not correct. She still hadn't
22 done the minors' compromise.

23 Q. All right. So she comes back to the office
24 and she shows you now, in the privacy of your
25 office, all of these injuries that David had
26 inflicted on her; is that correct?

27 A. Correct.

28 Q. Did she tell you that she was no longer with 11778

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1 David at that point?

2 A. Yes.

3 Q. All right. Did she tell you how it was that
4 she -- that he inflicted those injuries on her if
5 she was no longer with him?

6 A. No.

7 Q. Well, did you ask her that?

8 A. Well, she just said, "He," you know, "came
9 over, like he usually does, and beat me up again."

10 Q. All right. And beat her from head to toe?

11 A. Head to toe, yeah. She said she'd be on the
12 floor, and he'd be kicking her, stepping on her,
13 kicking her, stepping on her.

14 Q. And you were very concerned about her
15 well-being?

16 A. Yes, I was.

17 Q. So you went with her to her family law
18 lawyer, and in fact, you told the family law lawyer
19 that he should do something about this, because this
20 is a terrible situation?

21 A. I did. I asked him if he was going to file
22 a TRO.

23 Q. All right. A TRO would be a legal
24 proceeding, a temporary restraining order; is that
25 right?

26 A. That's correct.

27 Q. Now, you did not feel that by doing that you

28 would somehow activate David Arvizo's wrath and 11779

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1 cause your child to be murdered; is that right?

2 A. Well, at that point I was -- I felt bad for
3 her. I mean, I felt bad for the kids.

4 Q. You were no longer concerned about whether
5 or not you and your child would be assassinated; is
6 that true?

7 A. No, I was still worried.

8 Q. All right. You did not call the police?

9 A. No, I did not.

10 Q. You never called the police?

11 A. No, I did not.

12 Q. You worked for two attorneys that you'd been
13 working for for about 15 years; is that right?

14 A. More than 20.

15 Q. More than 20. And you understand that
16 between an attorney and a client, there's a
17 confidential relationship; is that true?

18 A. That's correct.

19 Q. And you could have gone to either one of
20 those lawyers that you knew and say, "I'm now
21 talking to you as a client, and this is in
22 confidence"; is that right?

23 A. No, I didn't want to involve my boss.

24 Q. You didn't want to involve your boss, the
25 person who's prosecuting the civil suit?

26 A. That's correct.

27 Q. Ma'am, have you returned the money yet to

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1 A. No.

2 Q. The conversation that you had with Mr.

3 Manning, that was his name; is that right?

4 A. I don't remember his name.

5 Q. But he's the attorney who has an office

6 above a cigar store?

7 A. That's correct.

8 Q. And you sat in that office with him and with

9 Janet Arvizo?

10 A. That's correct.

11 Q. All right. And you had her remove enough of

12 her clothing in your presence so that he could see

13 those injuries; is that right?

14 A. That's correct.

15 Q. And you told him that he should do something

16 about those injuries; is that right?

17 A. Yes. He's her family attorney.

18 Q. And you were pretty insistent about that; is

19 that right?

20 A. Of course.

21 Q. And you did that knowing that that would

22 activate some kind of a legal action against David

23 Arvizo?

24 A. She already had a legal action against him.

25 Q. Did you tell Mr. Manning, or whoever that

26 lawyer was, that you did not want to have your name

27 included in any report? Did you tell him that?

1 Q. Did you tell him under no circumstances
2 should he mention to the other party of that family
3 law matter, David Arvizo, or to David Arvizo's
4 lawyer, that you were in any way instrumental in
5 having those injuries depicted to him?

6 A. No. I was there about three minutes.

7 Q. You were there long enough for him to see
8 the injuries?

9 A. Yeah.

10 Q. And you were there long enough to give him
11 direction as to what he should be doing on behalf of
12 this woman; is that right?

13 A. I wouldn't say give him direction. I just
14 said, you know, "What are you going to do? Are you
15 going to file a TRO?" I mean, it's just common
16 sense.

17 Q. Ma'am, are you taking any medications at
18 this time?

19 A. No.

20 MR. ZONEN: I have no further questions.

21

22 REDIRECT EXAMINATION

23 BY MR. MESEREAU:

24 Q. Prosecutor Zonen asked you questions about
25 those photographs that show injuries on Ms. Arvizo,
26 okay?

27 A. Uh-huh.

28 Q. Did you know that Ms. Arvizo had those 11782

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1 photos taken a week after the J.C. Penney incident?

2 A. No, I don't, because she came to our office
3 well after the fact.

4 Q. Did Janet Arvizo ever show you her -- oops,
5 excuse me. Did Janet ever show you her booking
6 photos at the jail which show no injuries?

7 MR. ZONEN: Objection. Assumes facts not in
8 evidence, and leading.

9 THE COURT: Sustained.

10 Q. BY MR. MESEREAU: Did you ever see the
11 booking photos at the jail which were taken when
12 Janet Arvizo was arrested the day of the J.C. Penney
13 events?

14 A. I believe I did. She was sitting in a
15 chair. I'm not sure. It was many years ago. I'm
16 not sure.

17 Q. They don't show any injuries, do they?

18 A. No.

19 Q. Do you recall ever asking her, "When did you
20 take the photograph that shows the injuries?" that
21 Prosecutor Zonen just described?

22 A. No, I never asked her.

23 Q. And just to clarify, how long after the J.C.
24 Penney incident did your law firm get involved with
25 the Arvizos, if you know?

26 A. I would say nine months maybe.

27 Q. Okay. Now, you talked about a minor's

28 compromise, and would you please explain what that 11783

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1 is?

2 A. Well, when a minor under the age of 18
3 receives any form of settlement or financial gain -
4 I believe they call it the Jimmy Coogan Law - it's
5 to be blocked until the minor becomes 18, unless
6 it's an annuity.

7 Q. And does that mean the money sits in an
8 account and earns interest for the child until they
9 turn 18?

10 A. That's correct.

11 Q. Okay. And is the account in the child's
12 name?

13 A. The account is in the mother's name as legal
14 guardian of the child.

15 Q. Okay. So to your knowledge, was that
16 account in Janet Arvizo's name?

17 A. Yes.

18 Q. Okay. So Janet Arvizo would have had full
19 notice and knowledge about the existence of that
20 account, correct?

21 A. Oh, yes. She went with me to the bank.

22 Q. There's no question that Janet Arvizo knew
23 about the existence of that account, correct?

24 A. Yes, she knew about the existence of that
25 account.

26 Q. Did you help her set up that account?

27 A. Yes, I did. I filled all the paperwork out

28 myself. 11784

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1 Q. And to your knowledge, was that account
2 earning interest for Gavin?

3 A. Yes.

4 Q. Was there also an account for Star?

5 A. Yes.

6 Q. Did you help set that account up for Janet?

7 A. Yes.

8 Q. And to your knowledge, was that account in
9 Janet's name?

10 A. Yes, it's Janet Arvizo as legal guardian of
11 Gavin Arvizo, a minor.

12 Q. Okay. And which bank were those accounts
13 set up at, if you know?

14 A. City National Bank.

15 Q. Okay. Now, was it part of your
16 responsibilities at the firm to continue to gather
17 information about those accounts after they were set
18 up?

19 A. No.

20 Q. To your knowledge, did the accounts then
21 simply appear in Janet's name, right?

22 A. Correct.

23 Q. And the statements would go to Janet,
24 correct?

25 A. Correct.

26 Q. And Janet would essentially take control of
27 those accounts, right?

28 A. Well, she can't touch them. She can't take 11785

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1 the money out.

2 Q. But she's in charge of them, right?

3 A. Yeah, she gets -- the statement is in her
4 name.

5 Q. Okay. Okay. So approximately when do you
6 think those accounts were set up?

7 A. It was a long time before I could get her
8 in. I really had to really get on her. As a matter
9 of fact, the checks had expired and I had to have
10 the checks reissued.

11 Q. And you set up the account for her?

12 A. Right. And I had to set the accounts up
13 again.

14 Q. Did she tell you where to send the
15 statements?

16 A. Yes.

17 Q. Do you know where they were sent?

18 A. To her mother's address in El Monte.

19 Q. Did she tell you why she wanted them sent to
20 that address instead of the home address?

21 A. No.

22 Q. Did you think she was trying to hide those
23 accounts?

24 MR. ZONEN: Objection; speculative.

25 THE COURT: Sustained.

26 Q. BY MR. MESEREAU: Did Janet ever tell you
27 she had used her mother's account to funnel moneys?

28 MR. ZONEN: I'll object to the term "funnel 11786

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1 moneys," argumentative.

2 THE COURT: Sustained.

3 Q. BY MR. MESEREAU: Did Janet ever tell you
4 about her mother's bank account?

5 A. No.

6 Q. Did you ever know what bank her mother's
7 accounts were at?

8 A. No.

9 Q. Did she ever tell you about a Washington
10 Mutual account?

11 A. Gavin's donation account?

12 Q. Yes.

13 A. Yes.

14 MR. ZONEN: I'm going to object as exceeding
15 the scope of the cross-examination

16 THE COURT: Sustained.

17 Q. BY MR. MESEREAU: When did you last talk to
18 Janet Arvizo?

19 MR. ZONEN: Objection; exceeding the scope
20 of the cross-examination.

21 THE COURT: Overruled.

22 You may answer.

23 THE WITNESS: She called me, I would say,
24 about three, four months ago.

25 Q. BY MR. MESEREAU: Do you know why?

26 A. She wanted to be friends.

27 Q. What did you say?

28 A. I said I was very busy. 11787

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1 Q. Did she say anything else?

2 A. She asked me to call her. She'd like to get
3 together and maybe have a girls' weekend. And that
4 she had just had a baby and she was remarried.

5 And I felt like --

6 MR. ZONEN: I'll object as to her personal
7 feelings as irrelevant.

8 THE COURT: Sustained.

9 Q. BY MR. MESEREAU: Did she say anything about
10 this case at any time?

11 A. No.

12 Q. Did she say anything about the J.C. Penney
13 case?

14 A. Well, yes, she did. I rephrase that. Yes,
15 she did.

16 Q. Did she talk about the J.C. Penney case?

17 A. No, she talked about this case.

18 Q. Did she remind you of her threats?

19 A. No. She proceeded to tell me that Michael
20 Jackson was no longer her savior. He was now the
21 devil.

22 Q. Did that remind you of her calling the
23 doctor the devil?

24 MR. ZONEN: I'll object as leading and
25 argumentative.

26 THE COURT: Sustained.

27 Q. BY MR. MESEREAU: Was that the first time

28 you heard her use the word "devil"? 11788

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1 A. No.

2 Q. Did she use that word many times?

3 MR. ZONEN: I'll object as exceeding the
4 scope of the cross-examination.

5 THE COURT: Sustained.

6 MR. MESEREAU: I have no further questions.

7 MR. ZONEN: I have no further questions.

8 THE COURT: All right. Thank you. You may
9 step down.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 Do you want to check that microphone? Is
13 there a connection that -- look at the connection.
14 There's something causing static there.

15 THE BAILIFF: I can turn it down a little.

16 THE COURT: It didn't do that before. I
17 don't think it's the volume. I think the lawyers
18 have beat my poor microphone to death.

19 BAILIFF CORTEZ: If you want, we can switch
20 this one out with that one.

21 THE BAILIFF: We can switch microphones, if
22 that's all right.

23 THE COURT: Okay. Yeah, try that.

24 (To Mr. Ranieri) If you'd just stand there
25 for a moment, we're switching microphones.

26 MR. RANIERI: No problem.

27 THE COURT: Why don't you -- don't plug that

28 in there. 11789

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1 BAILIFF CORTEZ: No?

2 THE COURT: Let's leave that alone and let's

3 have a technician look at it on the break.

4 Take a seat.

5 BAILIFF CORTEZ: No, not yet, Your Honor.

6 THE COURT: Test that for me.

7 MR. MESEREAU: Hello, hello, hello.

8 THE BAILIFF: It's not working.

9 THE COURT: Okay. That's perfect.

10 (Laughter.)

11 THE COURT: Let's put the other --

12 MR. MESEREAU: Hello.

13 THE COURT: Put the other microphone back and

14 have a technician come over on the break, please.

15 BAILIFF CORTEZ: Okay, it's off. So make

16 sure you turn it back on.

17 THE BAILIFF: It is the connection.

18 THE COURT: We'll get some help here on the

19 break.

20 MR. MESEREAU: Hello, hello, hello.

21 MR. ZONEN: Mr. Mesereau was there last.

22 (Laughter.)

23 MR. MESEREAU: Hello.

24 I'm not going to touch it, Your Honor.

25 THE BAILIFF: Okay. No touching.

26 THE COURT: Would you have the technicians

27 come and check?

1 THE COURT: Now, I'm sorry, raise your right
2 hand.

3

4 ANTHONY RANIERI

5 Having been sworn, testified as follows:

6

7 THE WITNESS: I do.

8 THE CLERK: Please be seated. State and
9 spell your name for the record.

10 THE WITNESS: My name is Anthony Ranieri.

11 R-a-n-i-e-r-i.

12 THE CLERK: Thank you.

13

14 DIRECT EXAMINATION

15 BY MR. MESEREAU:

16 Q. Good morning, Mr. Ranieri.

17 A. Good morning.

18 Q. Do you know someone named Janet Arvizo?

19 A. I do.

20 Q. And when did you first meet her?

21 A. My best recollection was probably in 1998.

22 Q. And what were the circumstances under which
23 you met her?

24 A. I was contacted by her and her family
25 relating to a lawsuit against J.C. Penney's.

26 Q. And what kind of work do you do?

27 A. I'm a personal injury attorney.

28 Q. What kind of work were you doing at that 11791

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1 time?

2 A. Personal injury trial work.

3 Q. And did you meet with Janet Arvizo?

4 A. I did.

5 Q. Approximately when did you meet with her?

6 A. At the same time that I got the first call.

7 It was at a colleague's office, and I met her and

8 two children at that time.

9 Q. And what did you discuss with her?

10 THE WITNESS: Your Honor, I just want to

11 make sure that since I have not been served with any

12 of the orders concerning the waiver of the

13 privilege, and it's my understanding that the

14 privilege, as between myself and all of the family

15 members, has been waived unconditionally, and if

16 that's the case, I'll go ahead and proceed.

17 THE COURT: Can you help me on that?

18 MR. MESEREAU: I believe that was the

19 Court's order.

20 THE COURT: All right.

21 Counsel, you agree?

22 Who's on this case?

23 MR. AUCHINCLOSS: That's mine, Your Honor.

24 And we will agree with that.

25 THE COURT: All right. I will find there is

26 a total waiver of the confidential attorney-client

27 privilege, and you may testify.

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1 THE COURT: I'll make it different. And I'll
2 order you to testify.

3 THE WITNESS: Thank you.

4 Could you please repeat your question?

5 Q. BY MR. MESEREAU: Yes. When you first met
6 with Janet Arvizo, what was discussed?

7 A. She related to me the circumstances of the
8 incident that formed the lawsuit against J.C.

9 Penney's in which there was an altercation between
10 herself, the children, her husband and J.C. Penney's
11 security guards.

12 Q. And approximately when was this?

13 A. The altercation or the meeting?

14 Q. The meeting.

15 A. I believe in 1998. That's my best
16 recollection.

17 Q. To your knowledge, how long after these
18 alleged events happened did you have this meeting?

19 A. Probably within a couple of weeks. That was
20 my recollection.

21 Q. And did you agree to represent her?

22 A. I did.

23 Q. Okay. Did you represent the Arvizo family
24 in the J.C. Penney's lawsuit?

25 A. I did as a member of the law firm, yes.

26 Q. What firm was that?

27 A. Feldman & Rothstein.

28 Q. Okay. Do you recall attending a deposition 11793

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1 of Janet Arvizo?

2 A. Yes, I do.

3 Q. And in a deposition, someone testifies under
4 oath, correct?

5 A. That's correct.

6 Q. Someone is asked questions by the other side
7 with a court reporter, true?

8 A. That's correct.

9 Q. And at the beginning of the questioning, the
10 person being deposed is told they are testifying
11 under oath, right?

12 A. That's correct.

13 Q. Was it your understanding that Janet Arvizo
14 was testifying under oath, under penalty of perjury,
15 in that deposition?

16 A. It was my understanding and my instruction
17 to her.

18 Q. And did she agree to abide by the oath in
19 that deposition?

20 A. I -- my recollection is that in the
21 deposition, when she was sworn by the reporter, that
22 she understood the meaning of the oath she was
23 taking.

24 Q. Do you recall in that deposition, under
25 oath, Janet Arvizo denying that she'd ever been
26 beaten by her husband David?

27 A. I don't specifically recall that question.

28 But I do remember in general that that was -- that 11794

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1 she always had denied that, yes.

2 Q. Okay. And to your knowledge, did she always
3 maintain that any physical injuries she had had come
4 from J.C. Penney's security guards?

5 A. Yes.

6 Q. Did she ever tell you that wasn't true?

7 A. No, she did not.

8 Q. Did you ever learn at some point that wasn't
9 true?

10 MR. AUCHINCLOSS: Objection. Foundation;
11 hearsay.

12 THE COURT: Sustained.

13 Q. BY MR. MESEREAU: Do you recall in that
14 deposition Janet Arvizo saying that she was fondled
15 approximately 25 times by J.C. Penney's security
16 guards on that particular day?

17 MR. AUCHINCLOSS: Objection. Hearsay;
18 relevance; and Court's order.

19 THE COURT: Overruled.

20 You may answer.

21 THE WITNESS: Yes, I recall that.

22 Q. BY MR. MESEREAU: And had she ever told you
23 that before?

24 A. She had not.

25 Q. Was that the first time you ever heard Janet
26 tell that story?

27 A. It was.

28 Q. How many times do you think you had met 11795

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1 her -- excuse me, let me rephrase that. How many
2 times do you think you had discussed these alleged
3 events with Janet before that deposition?

4 A. No less than 25. I talked to her quite
5 often.

6 Q. And you're saying that in those
7 approximately 25 discussions, she never told you
8 about her being fondled 25 times by J.C. Penney
9 security guards?

10 MR. AUCHINCLOSS: Objection. Asked and
11 answered; argumentative.

12 THE COURT: Asked and answered, sustained.

13 Q. BY MR. MESEREAU: Were you surprised when
14 she said that under oath?

15 A. Yes.

16 Q. Do you recall ever learning about a
17 fund-raiser for Gavin Arvizo?

18 A. Yes.

19 Q. How did you learn about that fund-raiser?

20 A. I believe all of my recollection is that
21 Janet informed me that there was some sort of
22 fund-raiser going on to raise funds for Gavin's
23 medical treatment and living expenses.

24 Q. Were you invited to the fund-raiser?

25 A. No. I don't recall it being a formal
26 fund-raiser. I thought it was just sort of a
27 solicitation of money.

28 Q. Did she ask you for money directly? 11796

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1 A. She did.

2 Q. Did you give her any money?

3 A. I did not.

4 MR. MESEREAU: I have no further questions.

5 THE COURT: Cross-examine?

6 MR. AUCHINCLOSS: No questions, Your Honor.

7 THE COURT: Thank you. You may step down.

8 Call your next witness.

9 MR. MESEREAU: Yes, Your Honor, the defense

10 will call Miss Karen Brando.

11 THE COURT: Come forward. When you get to

12 the witness stand, please remain standing.

13 Face the clerk here and raise your right

14 hand.

15

16 KAREN BRANDO

17 Having been sworn, testified as follows:

18

19 THE WITNESS: Yes.

20 THE CLERK: Please be seated. State and

21 spell your name for the record.

22 THE WITNESS: My name is Karen Brando.

23 K-a-r-e-n, B-r-a-n-d-o.

24 THE CLERK: Thank you.

25

26 DIRECT EXAMINATION

27 BY MR. MESEREAU:

28 Q. Good morning, Mrs. Brando. 11797

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1 A. Good morning.

2 Q. Mrs. Brando --

3 THE COURT: Your mike.

4 MR. MESEREAU: Oh. Okay. Pardon me.

5 Q. Mrs. Brando, are you related to Marlon

6 Brando?

7 A. Yes.

8 Q. How so?

9 A. Daughter-in-law.

10 Q. Okay. And do you have any children?

11 A. Yes.

12 Q. And who are they?

13 A. Faustif, Franco, Shane, Nelson and Prudence.

14 Q. And have you ever been to Neverland Ranch?

15 A. Yes.

16 Q. How many times do you think you've been

17 there?

18 A. Several. Maybe 10, 15.

19 Q. Do you know the fellow seated at counsel

20 table on my right?

21 A. Yes.

22 Q. And who is he?

23 A. Michael Jackson.

24 Q. Is he a friend of yours?

25 A. Yes.

26 Q. Did you ever meet a person named Janet

27 Arvizo?

1 Q. Do you know approximately when you met Janet

2 Arvizo?

3 A. It was a couple years ago at the ranch.

4 Q. And were you staying at the ranch?

5 A. Yes.

6 Q. To your knowledge, was Janet staying at the

7 ranch?

8 A. Yes.

9 Q. And do you recall where you met Janet Arvizo

10 at the ranch?

11 A. In the kitchen.

12 Q. And what do you recall her doing in the

13 kitchen?

14 A. She came up to me and told me she was going

15 home with me.

16 Q. She told you she was going home with you?

17 A. Yes.

18 Q. Is this the first time you ever spoke to

19 her?

20 A. Yes.

21 Q. Were you surprised by that comment?

22 A. No, because I was going with the driver.

23 Q. How long had you been at the ranch at that

24 point?

25 A. Two days.

26 Q. And were your children there as well?

27 A. Yes.

28 Q. Who of your children were at the ranch? 11799

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1 A. Prudence was there. And I'm not sure if

2 Shane was there.

3 Q. Okay. Now, how old was Prudence at that

4 point?

5 A. Seven.

6 Q. And how about Shane?

7 A. 14.

8 Q. Okay. And had you arranged or had someone

9 arranged for a driver to take you home?

10 A. Yes.

11 Q. And how was that arranged, if you remember?

12 A. My husband Miko came up to me and told me

13 that he was going to stay and that Gary would drive

14 me home.

15 Q. Okay. Was your husband Miko at the ranch at

16 that point?

17 A. Yes.

18 Q. Okay. This wasn't the first time you'd

19 visited Neverland, right?

20 A. No.

21 Q. You'd been there many times before this?

22 A. Yes.

23 Q. So what were you doing in the kitchen when

24 Janet Arvizo came up to you?

25 A. I was standing -- I was just standing there.

26 I was standing kind of in the hallway right between

27 the kitchen and the breakfast nook.

28 Q. And do you know about what time of day this 11800

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1 was?

2 A. It was early evening, around six o'clock.

3 Q. And do you recall the date being March 12th,

4 2003?

5 A. I don't remember.

6 Q. Okay. Do you recall if it was March of

7 2003? Don't know?

8 A. I'm sorry.

9 Q. Okay. All right. So Janet Arvizo came up

10 to you and said, "I'm going home with you"?

11 A. Yes.

12 Q. And had you met her any other time before

13 that?

14 A. No.

15 Q. Did she introduce herself?

16 A. No.

17 Q. What did you say when she -- when this

18 stranger walked up and said, "I'm going home with

19 you"?

20 A. I didn't say anything to her. I couldn't.

21 I wasn't driving.

22 Q. Did you and she have a conversation?

23 A. No.

24 Q. How long did she talk to you about going

25 home?

26 A. She just told me she was going home with me.

27 Q. And after she said that, what do you recall

28 her doing? 11801

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1 A. She just walked off.

2 Q. And what did you do after that?

3 A. I went to Miko and told him I didn't want
4 her going home with me. But he said, "It's okay.
5 Just make sure she gets dropped off at her house
6 first so she doesn't know where we live."

7 Q. And did you go home that evening?

8 A. Yes.

9 Q. Did she go with you?

10 A. No, she came up to me about an hour later
11 and said she changed her mind, she was going to
12 stay.

13 Q. Did you say anything to her in response to
14 her statement?

15 A. Nothing.

16 Q. Can you describe Janet Arvizo's demeanor
17 when you first met her?

18 A. I watched her in the kitchen and she was
19 very abrupt. She was very hyper, demanding.
20 Someone that you don't trust.

21 MR. SNEDDON: Your Honor, I'm going to
22 object to the last --

23 THE COURT: Stricken.

24 MR. SNEDDON: Move to strike.

25 THE COURT: It's stricken.

26 Q. BY MR. MESEREAU: Did she demand anything of
27 you?

28 A. Just to go home with me. 11802

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1 Q. Okay. How much time elapsed, if you
2 remember, between the time she came up to you and
3 said, "I'm going home with you," and when she came
4 up to you and said, "I've changed my mind. I'm
5 staying"?

6 A. About an hour.

7 Q. Okay. Can you describe her demeanor when
8 she came up to you and said she was going to stay?

9 A. Calmer. She was calmer than she was
10 earlier. Earlier it was like she was frantic.

11 Q. Did you ever see her after that, that
12 moment?

13 A. No.

14 Q. Ever talk to her after that moment?

15 A. No.

16 MR. MESEREAU: No further questions.

17 MR. SNEDDON: No questions.

18 THE COURT: All right. Thank you. You may
19 step down.

20 MR. SANGER: We'll call Prudence Brando.

21 THE COURT: Please remain standing. Look
22 over here and raise your right hand. Face the
23 clerk.

24

25 PRUDENCE BRANDO

26 Having been sworn, testified as follows:

27

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1 THE COURT: All right. You may be seated.

2 THE CLERK: Please be seated. State and

3 spell your name for the record.

4 THE WITNESS: P-r-u-d-e-n-c-e.

5 MR. SANGER: Okay? Last name okay?

6 THE COURT: That's fine.

7 MR. SANGER: All right. Okay.

8

9 DIRECT EXAMINATION

10 BY MR. SANGER:

11 Q. Prudence, hello. I'm going to ask you some

12 questions, okay?

13 A. (Nods head up and down.)

14 Q. Now, we need you to talk right into that

15 microphone on the right, right there, the one you're

16 right in front of. Good.

17 How old are you?

18 A. Nine.

19 Q. Okay. And you go to school?

20 A. Yeah.

21 Q. Okay. What grade are you in?

22 A. Fourth.

23 Q. Fourth grade?

24 A. (Nods head up and down.)

25 Q. Do you like it?

26 A. Yeah.

27 Q. Okay. Who's your dad?

1 Q. And who's your mom?

2 A. Karen.

3 Q. Okay. Did your mom just come into court
4 here?

5 A. Yeah.

6 Q. All right. Now, do you remember spending
7 some time at Neverland Ranch?

8 A. Yes.

9 Q. Okay. How often do you go there?

10 A. A lot.

11 Q. Okay. Do you know the gentleman seated
12 right here?

13 A. Yes.

14 Q. And who's that?

15 A. Michael.

16 Q. Okay. Is he a friend of yours?

17 A. Yes.

18 Q. All right. When you were at Neverland

19 Ranch, do you recall some kids whose last name was
20 Arvizo?

21 A. Yeah.

22 Q. Do you remember their first names?

23 A. Yeah.

24 Q. What are their first names?

25 A. Star and Gavin.

26 Q. All right. And did you see them around the
27 ranch while you were there?

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1 Q. Can you tell me what you remember them doing
2 around the ranch?

3 A. Driving the golf carts and going on rides.

4 Q. Okay. How were they at driving the golf
5 carts? What did they do with the golf carts?

6 A. They were crashing them.

7 Q. Now, you say "crashing them." Was it like
8 by mistake, or what did you think they were doing?

9 A. I think on purpose, because they were
10 driving all crazy and going -- they were just
11 driving crazy.

12 Q. Okay. Did they ever say anything to you
13 when they were driving the golf carts and they
14 were -- let me ask you this: Did you ever see them
15 crash the golf carts?

16 A. A couple of times.

17 Q. And what did they crash into; do you
18 remember?

19 A. Like when they turned, they would, like,
20 skin the side of it.

21 Q. Okay. Do you know if the Arvizo kids, Star
22 and Gavin, would hang out around the zoo sometimes?

23 A. Yes, they would.

24 Q. And were they good to the animals at the
25 zoo?

26 A. Yeah.

27 Q. They were okay?

28 Did you see them at the theater? 11806

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1 A. Yeah.

2 Q. What would you see them doing at the
3 theater?

4 A. They would be watching movies and stuff.

5 Q. And did they get stuff while they were at
6 the theater?

7 A. Yes.

8 Q. What would they get?

9 A. Like candy, popcorn.

10 Q. Okay. And that was there for people to
11 have, right?

12 A. Yes.

13 Q. Okay. Did they go on the rides at the
14 amusement park?

15 A. Yeah.

16 Q. What would you see them doing on the rides?

17 A. Throwing candy off the rides.

18 Q. Okay. Would they throw it at people?

19 A. No.

20 Q. Do you know -- when they were at the
21 theater, do you remember them doing anything with
22 the candy and popcorn while they were at the theater
23 besides eating it?

24 A. No.

25 Q. Do you remember if they'd throw it or
26 anything?

27 MR. SNEDDON: Your Honor, I'm going to

28 object as leading. He answered the question. It's 11807

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1 asked and answered.

2 THE COURT: Sustained. I will allow some

3 leading. That is an asked-and-answered question, so --

4 MR. SANGER: Okay. Very well.

5 Q. Do you recall the Arvizo kids, Star and

6 Gavin, doing anything with the telephones that are

7 in the theater?

8 A. No.

9 Q. Don't recall? Okay. Now, when you saw them

10 doing stuff they weren't supposed to do, did you

11 ever tell them to knock it off?

12 MR. SNEDDON: Your Honor, I'm going to

13 object to that question, the use of the words "they

14 weren't supposed to do."

15 THE COURT: Sustained.

16 MR. SNEDDON: It's editorial.

17 Q. BY MR. SANGER: Did you ever see Star and

18 Gavin doing anything they weren't supposed to do?

19 A. Sometimes.

20 Q. Did you ever talk to them about that? Did

21 you ever say anything to them?

22 A. No.

23 Q. Do you recall talking to Mr. Jackson at any

24 time, to Michael? Did you ever tell Michael the

25 kids were doing something?

26 A. No. I'd just hang out with him sometimes,

27 but --

28 Q. Okay. Do you recall Davellin Arvizo? Do 11808

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1 you know who she is?

2 A. Yeah.

3 Q. Okay. And is that the sister of Star and

4 Gavin?

5 A. Yeah.

6 Q. Do you recall -- do you recall if Davellin

7 used to tell Star and Gavin to stop doing things?

8 A. I don't think so, no.

9 Q. You don't recall? Okay. Okay. And then

10 have you been in Michael's private room in his

11 house?

12 A. Yeah.

13 Q. And you know Prince and Paris, right?

14 A. Yeah.

15 Q. Who are Prince and Paris?

16 A. His kids.

17 Q. Michael's kids?

18 A. Yeah.

19 Q. Okay. Have you gone in there with Prince

20 and Paris?

21 A. Yeah.

22 Q. And what do you do when you go into his

23 room?

24 A. He just showed us around his room.

25 Q. Did you watch T.V. in there?

26 A. Yeah, for a couple minutes.

27 MR. SANGER: Okay. All right. I have no

28 further questions. 11809

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1 MR. SNEDDON: No questions.

2 THE COURT: All right. Thank you. You may
3 step down.

4 MR. SANGER: May I have just a moment to see
5 who's --

6 THE COURT: You may.

7 MR. SANGER: We'll call Phillip Esplin to
8 the stand.

9 THE COURT: When you get to the witness
10 stand, please remain standing.

11 Face the clerk over here. Raise your right
12 hand.

13

14 PHILLIP W. ESPLIN

15 Having been sworn, testified as follows:

16

17 THE WITNESS: I do.

18 THE CLERK: Please be seated. State and
19 spell your name for the record.

20 THE WITNESS: My name is Phillip W. Esplin.

21 E-s-p-l-i-n.

22 THE CLERK: Thank you.

23 MR. SANGER: May I proceed, Your Honor?

24 THE COURT: Yes, you may.

25

26 DIRECT EXAMINATION

27 BY MR. SANGER:

28 Q. Okay. Dr. Esplin, what is your profession? 11810

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1 A. I'm a forensic psychologist.

2 Q. All right. I'm going to ask you to move
3 that right microphone up a little higher. Just
4 bring it up higher, like that, and try to talk into
5 the right microphone, if you can.

6 All right. A forensic psychologist?

7 A. That's correct.

8 Q. And what does a forensic psychologist do?

9 A. It's a psychologist that tends to focus on
10 psychological or social science issues that are
11 related to various judicial proceedings. It could
12 be a dependency matter, a juvenile court. It could
13 be a competency to stand trial. It could be study
14 relative to children and witnesses, things of that
15 nature.

16 Q. Okay. And where do you practice? Where is
17 your office right now?

18 A. Phoenix, Arizona.

19 Q. All right. Now, I'd like you to go back and
20 give us a brief description of your educational
21 background starting with college.

22 A. I have a bachelor's degree obtained in 1967.

23 I then spent three years in the United States Marine
24 Corps. When I was released from active duty, I went
25 back to graduate school, obtained my master's degree
26 in 1973. I continued on with my doctoral studies.

27 Finished my doctoral dissertation in late summer of

28 1978. 11811

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1 I took the national examination, psychology,
2 in the fall of 1978, was licensed by the Arizona
3 Board of Psychologist Examiners in November of 1978,
4 and I've been licensed since that time.

5 I did an internship in child psychology in
6 Tempe, Arizona, in 1974-75.

7 Q. All right. Let me go back. What is your
8 bachelor's degree in, what subject?

9 A. Sociology was my major. Psychology was my
10 minor.

11 Q. And your master's degree is in what subject?

12 A. Psychology.

13 Q. And your Ph.D.?

14 A. Psychology.

15 Q. Now, is that clinical psychology or --

16 A. No, I came from a psychoeducational
17 background. And my interest and dissertation had to
18 do with studying brain-injured children, that may
19 have had an injury, an acute injury or an injury
20 secondary to a congenital condition. So I was
21 interested in how children learn, how children -- to
22 help them remember things that they learn.

23 Q. All right. And since 1974 and 19 -- I'm
24 sorry, 1975, when you concluded your internship, how
25 have you been engaged?

26 A. My career's been divided into two parts.

27 From beginning roughly 1976 until 1988, I worked

28 predominantly in a clinical area. I worked with a 11812

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1 hospital system where I had some responsibilities
2 for a child program, inpatient program, an
3 adolescent program.

4 I also assessed and treated children that
5 had been removed from their homes by the state for
6 either sexual maltreatment, neglect or physical
7 maltreatment.

8 I also, during that period of time, worked
9 extensively with the courts in Arizona relative to
10 evaluating children and families that were going
11 through a divorce.

12 In 1988, I began my relationship with the
13 National Institute of Child Health and Human
14 Development in Washington, D.C. They began what's
15 called The Child Witness Project, research project,
16 which began the -- the planning began in 1988. We
17 began the first field study in 1989.

18 And that series of studies involves children
19 ages 3 through 14 who may have been the victim of a
20 crime or a witness to a crime. And I've
21 participated as part of that team effort to try to
22 understand how children go about accommodating
23 adversity in an environment, how their memories
24 operate, whether there's age effects of memory, and
25 how can we develop procedures that will increase the
26 accuracy of information that we can obtain from
27 children during the course of an investigation.

28 Q. All right. So let's go back over this in 11813

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1 just a little more detail. From 19 -- in 1974 and
2 '75, when you did your internship, did that involve
3 children?

4 A. Yes.

5 Q. And how did that involve children?

6 A. I was involved in a re -- my internship was
7 under the auspices of a federal demonstration
8 project that was attempting to develop what's called
9 engineered classrooms for mentally challenged
10 children, for brain-injured children, for deaf
11 children, and for children that were designated as
12 severely emotionally disturbed.

13 Q. Okay. Now, in part, your graduate education
14 related to brain-injured children; is that right?

15 A. Well, I -- my independent research, my
16 dissertation, I was interested in developing a
17 method for examining sensory suppression effects and
18 if there's hemispheric damage. Once I got out and
19 started practice, that got left, frankly, by the
20 wayside.

21 Q. So after the internship, is it correct to
22 say that you began to work more with children who
23 were maltreated, or at least that became a --
24 allegedly maltreated or actually maltreated, that
25 became a predominant part of your practice?

26 A. Yes. There was -- I was the clinical
27 director of a day-treatment program that was run by

28 the State of Arizona. That program had 150 families 11814

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1 in the program. Those children had been removed
2 from their home and placed in a psychiatric
3 facility.

4 And the objective of the program was, where
5 feasible, to return them home, or in the
6 alternative, to consider parental termination and
7 placement in a long-term either adoptive home or
8 a -- what was called then a therapeutic foster home.

9 The majority of those children had been maltreated
10 in some capacity.

11 Q. And this would have been during your
12 experience from 1976 to 1988?

13 A. That's correct.

14 Q. All right. So at that point you began to
15 have -- go ahead and take your time. Get some water
16 there first.

17 A. Excuse me. I've got a little bit of a cold.

18 Q. Okay. At that point, you began to have
19 fairly regular contact with children who either were
20 or claimed to have been sexually abused; is that
21 correct?

22 A. That's correct.

23 Q. Now, you mentioned in the course of this,
24 that -- oh, thank you.

25 You mentioned in the course of this that
26 the -- some of the children were involved in legal
27 proceedings, or maybe all of them?

28 A. They all were involved in one way or another 11815

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1 with legal proceedings.

2 Q. All right. And so the court was supervising
3 what happened with these children pending a
4 placement or some other resolution of their
5 situation; is that right?

6 A. Correct.

7 Q. Now, in 1988, you talked about The National
8 Institute of Child Health. Can you describe that in
9 a little more detail? What is The National
10 Institute of Child Health? I think there's more to
11 the name than that, but --

12 A. Well, there's National Institutes of Health.

13 That's a government-sponsored series of research
14 institutes. There's The Center For Medicine, The
15 Center For Cancer, The Center For Retardation.

16 Within it, The National Institute of Health,
17 there's a section called the section on children's
18 social and emotional development within the
19 Institute on Child Health and Human Development.

20 Q. All right.

21 A. So it was within that section that The Child
22 Witness Project was funded.

23 Q. All right. So you were working within that
24 section on a child witness project?

25 A. That's correct.

26 Q. And what specifically was the mission of
27 this particular funded section?

28 A. I had presented a pilot study at a NATO 11816

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1 conference in 1988 in Italy in which I had compared
2 two groups of children, one group in which we felt
3 we had strong independent evidence that they had
4 been sexually abused, a second group in which we
5 felt that there was substantial indication they had
6 not been abused. And I was interested in seeing to
7 what degree could you develop information that would
8 help you categorize those two groups.

9 That field study then led to me going back,
10 spending a couple of days with Dr. Lamb and his
11 colleagues at NICHD, and out of that then came The
12 Child Witness Project.

13 What our mission has been is to work -- we
14 conduct what's called field studies, and that's a
15 little different than laboratory studies.
16 Laboratory studies occur when you can control all
17 the conditions in the laboratory. So you subject a
18 child to certain experiences. You videotape it.
19 You then can question them in various ways and you
20 can measure precisely the accuracy that may come
21 from different types of questions and so on.

22 Q. Let me interrupt you right there.

23 That type of laboratory experiment does not
24 lend itself to sexual abuse experimentation; is that
25 correct?

26 A. Well, it's -- it's very important work to
27 establish theoretical principles about how memory

28 operates. But you cannot recreate the circumstance 11817

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1 in a laboratory that may exist for a child who has
2 been subjected to sexual maltreatment.
3 So the laboratory studies, in and of
4 themselves, are insufficient. So it requires taking
5 those principles in the laboratory about memory,
6 motivation, how to question witnesses, and then
7 apply it in field studies in which there are live
8 investigations of potential crimes against children,
9 and see how that data converges. The degree to
10 which the principles in the laboratory you can
11 replicate in the field, the more confidence you can
12 have that your methods are sound.

13 Q. Now, in addition to the laboratory studies,
14 you mentioned, then, the field studies. Can you
15 describe the field studies?

16 A. Those are studies that are conducted in
17 cooperation with law enforcement and/or Child
18 Protective Services.
19 So we would go to a site, and we would spend
20 X number of years there. We would be training the
21 sex crime investigators in interviewing procedures.
22 We work with them on trying to collect corroborating
23 evidence, and we then measure how well that
24 interview and investigative protocol works compared
25 to whatever they were doing before we began our
26 research.

27 So we've been -- we just finished up a

28 five-year project with the Salt Lake Police 11818

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1 Department and the Utah Sheriff's Department or Salt
2 Lake County Sheriff's Department. We've been in
3 Israel nationally since 1990. We had a five-year
4 project with the West Palm Beach Sheriff's
5 Department, and with the Marian County Sheriff's
6 Department. We have an ongoing project with The
7 Children's Justice Center in Salt Lake, which is an
8 advocacy center in which children are questioned and
9 it's videotaped. And they are implementing our
10 procedures there at that site.

11 Q. Now, is it the object of these projects that
12 you are conducting with law enforcement, both
13 internationally and throughout the country as you
14 described, is it the object to develop techniques to
15 try to avoid false claims?

16 A. Well, it's -- the answer is yes. It's
17 intended to try and develop methods that maximize
18 the opportunity of, number one, obtaining accurate
19 information. And number two, probably motivating
20 the child to try to be accurate, because you have
21 problems. You have some children that deny because
22 the event did not occur. You have some children
23 deny, which is a false denial, for whatever motives
24 they may have for withholding the information.
25 So you have kind of a two-pronged problem.
26 The other difficulty is, in the majority of
27 these kinds of cases, oftentimes it's the word of

28 the child against the word of the defendant, and 11819

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1 oftentimes there isn't the kind of corroborative
2 evidence that would be nice to have. Consequently,
3 the child becomes a central player in the process.
4 So it's -- our efforts have been geared to
5 trying to adopt strategies that will maximize
6 accurate information from the children and then also
7 understand dynamics that occur when a child, for
8 whatever motive, may not be forthright with you.

9 Q. And in that regard - I asked about one side
10 of it - you are looking to see if you can develop
11 techniques that will maximize the ability to get the
12 truth, is that right, get to the truth in your
13 investigation?

14 A. To get accurate, forthright information.

15 Q. So that could go either way. You've got
16 children who are denying when something did happen.
17 And you've got children saying things happened when
18 they didn't happen; is that correct?

19 A. That's correct.

20 Q. All right. Now, it sounds like your
21 involvement with the National Institute of Child
22 Health has continued from 1988 to the present; is
23 that correct?

24 A. That's correct.

25 Q. All right. In addition to that, have you
26 continued on in working with children in other
27 respects?

28 A. Yes, I have. 11820

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1 Q. And what regard is that?

2 A. I evaluate children who have been -- in
3 civil matters, who have been the victim of abuse,
4 relative to treatment needs, short and long term.
5 I consult with institutions that provide
6 care to children so that their environment lessens
7 the opportunity for a child to be exploited at the
8 hands of an adult.

9 And I also continue to look at cases that
10 are unusual and do retrospective analysis where we
11 know what the ground truth is.

12 So I also will do some training. I do some
13 instruction about children's competency, factors
14 that can affect their competence.

15 Q. All right. Now, you mentioned -- just to
16 clear up a couple things, you mentioned you're
17 licensed as a psychologist in the State of Arizona.
18 And that license you obtained in 1978; is that
19 correct?

20 A. Yes.

21 Q. And you have been continuously licensed and
22 in good-standing there?

23 A. That's correct.

24 Q. All right. Now, are you licensed in the
25 State of California?

26 A. No, I am not.

27 Q. So you would not be permitted to practice

28 clinical psychology and see patients without going 11821

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1 to open -- or going to -- I'm sorry, would not be
2 able to open an office for doing that in California
3 without getting a license?

4 A. Well, most states have a guest provision, so
5 I could come in the State of California to do an
6 assessment, something of that nature, so many days a
7 year, just like a California psychologist could come
8 into Arizona, if there's provision.

9 If I was going to move here and set up a
10 practice, I would need to get a license through the
11 California Board.

12 Q. All right. And you do not -- at this time,
13 you haven't moved here. You don't intend to
14 practice here?

15 A. There's too many people.

16 Q. And evidently the dry air is better for your
17 respiratory system.

18 The -- now, is there anything that prevents
19 you from offering -- either ethically,
20 professionally or license-wise, from offering your
21 forensic services and your opinions in courts in
22 states within which you do not have a license?

23 A. No.

24 Q. All right. Now, you have -- in addition to
25 the educational background and history you gave us,
26 so on, you have written a number of articles; is
27 that correct?

28 A. Yes. 11822

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1 Q. And are a number of these articles -- let me
2 ask you this: Do you know how many articles you've
3 written on the issue of child psychology in general?

4 A. I believe there's 25 articles on child
5 witnesses that have been published in peer-reviewed
6 journals.

7 Q. Okay.

8 A. I think there's eight book chapters.

9 Q. Okay. So the 25 articles in peer-reviewed
10 journals, can you tell us what that means? What is
11 a peer-reviewed journal?

12 A. That would -- it refers to a professional
13 journal in which, when you submit the article, the
14 article is blindly reviewed by other experts in the
15 field, who make editorial comments, recommend either
16 acceptance or rejection of the article, and provide
17 you feedback if they feel that the article needs to
18 be modified, rewritten, for -- you know, if it's not
19 clear, whether there's confusing areas.

20 So it's an attempt to increase the quality
21 of scientific publications. So most scientific
22 journals are what they call peer-reviewed journals.

23 Q. And that would be true for, say, physicists
24 who are publishing articles in their peer-reviewed
25 journals as well?

26 A. That's correct. That would be in contrast,
27 say, if I wrote an article for Newsweek magazine, it

28 wouldn't be peer-reviewed. 11823

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1 Q. All right. So in these peer-reviewed
2 journals, how recently is your most recent
3 publication?

4 A. I have a publication that was accepted
5 December of '04 in the -- I believe it was The
6 Journal of Developmental Sciences.

7 Q. And you have published articles -- without
8 going into each one, but you've published articles
9 pretty much each year over the last --

10 A. I believe the first --

11 Q. -- ten years or so?

12 A. Well, the first article was 1991. And I
13 believe I've published pretty much annually since
14 that time.

15 Q. Have you published in The Developmental
16 Review?

17 A. Yes.

18 Q. And who is the -- what organization sponsors
19 that review?

20 A. APA. American Psychological Association, I
21 believe.

22 Q. All right. And you've published in The
23 Journal of Consulting and Clinical Psychology; is
24 that correct?

25 A. Correct.

26 Q. Applied Developmental Science?

27 A. Correct.

28 Q. A publication called Child Development? 11824

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1 A. Correct.

2 Q. A publication called Child Abuse and

3 Neglect?

4 A. Correct.

5 Q. A publication called Legal and

6 Criminological Psychology?

7 A. Correct.

8 Q. Another one called Family and Conciliation

9 Courts Review?

10 A. Correct.

11 Q. Another one called Learning and Individual

12 Differences?

13 A. Correct.

14 Q. International Journal of Behavioral

15 Development?

16 A. Correct.

17 Q. Psychology, Public Policy and the Law?

18 A. Well, that's a law review journal published

19 jointly by the University of Miami and the

20 University of Arizona Law School. But I have

21 published in that law review journal.

22 Q. All right. And then do you recall the books

23 to which you contributed chapters?

24 A. First chapter was in a book put out by the

25 APA, the American Psychological Association, called

26 The Suggestibility of Children's Recollections.

27 Actually, the first one was a book put out

28 by NATO called Credibility Assessment. Then there 11825

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1 was a chapter in a book on -- a forensic handbook.

2 I'd have to look. I don't --

3 Q. We don't have to go over all of them, but
4 these are -- these are books that are respected in
5 the field of psychology, for the most part?

6 A. They're books that are sponsored by the
7 Office of Scientific Affairs for the American
8 Psychological Association.

9 Q. All right.

10 A. I believe all but one.

11 Q. And in order to be asked to write a chapter
12 for that, you have to be accepted among your peers
13 as to somebody who's qualified to write such a
14 chapter?

15 A. Whoever is editing the book has got to
16 believe you have something to contribute to the
17 book.

18 Q. All right. Now, have you also given
19 seminars? Do you speak at seminars from time to
20 time?

21 A. Yes, I do.

22 Q. All right. And do you speak on the issue of
23 child witnesses and the general subject matter
24 you've been talking about?

25 A. Yes.

26 Q. And when I said seminars, that would include
27 also presenting scientific papers at symposiums?

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1 Q. Okay. Now --

2 THE COURT: Do you want to take the break?

3 MR. SANGER: I was just going to get to the
4 next big subject. So that would be fine. Thank
5 you.

6 (Recess taken.)

7 THE COURT: Counsel?

8 MR. SANGER: Thank you.

9 Q. All right. Dr. Esplin, there's one other
10 little detail I want to clear up before we go on to
11 the more substantive part of your testimony.

12 Do you charge for your services?

13 A. Yes, I do.

14 Q. All right. And what do you charge for the
15 services in a case like this?

16 A. My standard rate is \$400 per hour for the
17 time I spend in my office. \$3600 per day, plus
18 expenses, if I have to leave Arizona.

19 Q. All right. And are you charging the defense
20 in this case those amounts?

21 A. Yes, I am.

22 Q. Now, I'd like to ask you, first of all, if
23 you were asked to see any patients or do any
24 clinical evaluations of anybody involved in this
25 case?

26 A. No, I was not.

27 Q. Were you sent a transcript of the testimony

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1 A. Yes, I was.

2 Q. Other than that, were you sent any other
3 information?

4 A. No, I was not.

5 Q. Now, I'd like to ask you if you had an
6 opportunity in the course of your studies and your
7 practice over the years to hear the term "Child
8 Sexual Abuse Accommodation Syndrome"?

9 A. Yes, I have.

10 Q. And are you familiar with the person who
11 developed that work on that syndrome?

12 A. Yes.

13 Q. And who was that?

14 A. Roland Summit.

15 Q. Was he a doctor?

16 A. Dr. Summit was an adult psychiatrist that
17 worked in the Los Angeles area at I believe it's
18 Harbor View, consulted with Los Angeles County
19 relative to maltreatment issues.

20 Q. All right. And did he -- what was the
21 primary thrust of his work with people who are
22 allegedly mistreated?

23 A. I believe that his -- that -- that the
24 experiences that underlie the paper, the 1983 paper
25 where he discussed the syndrome, were female
26 patients who had been subjected to chronic incest or
27 that they were individuals who had been sexually

28 abused over an extended period of time by the 11828

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1 father. And that -- and so it was not brief
2 encounters. It was not encounters of short
3 duration. It was encounters in which there was
4 other facets to the relationship that was very
5 important.

6 Q. All right. Now, you mentioned 1983, a paper
7 written by Dr. Summit. Is that where he basically
8 came up with the phrase "Child Abuse Accommodation
9 Syndrome" or "Child Sexual Abuse Accommodation
10 Syndrome"?

11 A. Yes. That was the first paper -- that's
12 what people attribute to when he wrote that initial
13 position.

14 Q. All right. And in Dr. Urquiza's testimony,
15 he actually referred to Dr. Summit; is that correct?

16 A. Yes.

17 Q. All right. Now, to further understand what
18 you just said, Dr. Summit's work was based primarily
19 on adult females who were reporting incest by their
20 fathers; is that right?

21 A. It's my understanding as of the time that he
22 wrote that initial paper.

23 Q. Now, was this -- did he develop this Child
24 Sexual Abuse Accommodation Syndrome as a diagnostic
25 tool, or what?

26 A. No, he -- it was -- as I understand it, it
27 was written to assist professionals and other

28 people, other general population, in understanding 11829

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1 the dynamics in which a child who has been subjected
2 to a sexualized relationship goes about making the
3 best of it.

4 Q. All right.

5 A. So to help therapists trying to understand
6 that there's dynamics there that are complex.

7 Q. So a female child who is sexually molested
8 by her father from a young age and was in later life
9 dealing with this, is that the sort of situation
10 that would be core to what Dr. Summit was dealing
11 with?

12 A. I think the essence of it was, number one,
13 the chronicity, and number two, the complexity of
14 the relationship that existed independent of the
15 sexual aspect.

16 Q. All right.

17 A. If you have a child and they're in a family
18 system, and the father is sexually exploiting the
19 child, the child -- that's a complex circumstance
20 for the child to react to. The child may love the
21 father dearly, the child may recognize the
22 importance of the father to the family's survival
23 economically, and so the child is presented with a
24 dilemma, and oftentimes the dilemma is they don't
25 want this aspect of the relationship to continue.
26 They don't want to have a sexual
27 relationship with their father, but at the same

28 time, they may love him dearly, and they may not 11830

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1 want the family system to come apart, so they're put
2 in a difficult spot. And oftentimes they -- in
3 fact, in those circumstances, more often than not, I
4 think they try to accommodate it.

5 Q. All right.

6 A. So make the best of it, and -- until
7 something happens where it comes out or they get
8 older and separate from the family.

9 Q. All right. And so when you say
10 "accommodate," that's one of the words in the title
11 that he gave to this.

12 Are there validation studies -- let me ask
13 you first. What are validation studies in general
14 in a way that would apply to this sort of thing?

15 A. I think it's important to distinguish
16 between a circumstance where we know abuse occurred
17 so -- and how does the person that's in this
18 situation make the best of it, and looking at how we
19 make a determination about whether abuse has or has
20 not occurred. So the accommodation syndrome is best
21 suited for helping us to understand how a known
22 victim accommodates that victimization.

23 That's separate from the utility of the
24 syndrome in trying to determine whether an event
25 occurred or did not occur. Then it has less
26 utility. It wasn't intended for that purpose, and
27 it can lead to mistakes.

28 Q. So let me just stop you -- break this up a 11831

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1 little bit.

2 So when you're saying CSAAS, Child Sexual
3 Abuse Accommodation Syndrome, may lead to mistakes
4 when you're trying to use it to predict whether or
5 not somebody's telling the truth, is that what
6 you're saying?

7 A. When you're trying to decide whether an
8 event's occurred or not occurred, it has very
9 limited value.

10 Q. Okay.

11 A. Now, it has value. For example, one of the
12 factors, the delay in reporting, that factor does
13 have substantial scientific support, meaning that
14 there are a lot of reasons why children that are in
15 the circumstances don't tell anybody else for some
16 substantial period of time.

17 Now, but having said that, the timing of the
18 outcry is not related to the validity of the
19 allegation. So a person can come forward
20 immediately. Maybe that's true; maybe it is not. A
21 person can make the allegation after a period of
22 delay. Maybe it's true; maybe it is not. So that
23 it's a mistake if you used the timing of when the
24 person first tells somebody else as suggesting that
25 means it's more likely that it happened or did not
26 happen.

27 Q. Okay. In other words, there are -- there

28 are certain things that are predictors and there are 11832

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1 other things that are not necessarily predictors; is
2 that correct?

3 A. That's correct. And the other problem is,
4 the absence of any of those factors would not
5 suggest that the child had not been victimized.

6 Q. All right. So let's take delay, first of
7 all, one of the factors in Roland Summit's original
8 work. What you're saying is, delay -- I'm sorry,
9 let me withdraw that.

10 What you're saying is actual abuse, sexual
11 abuse, could end up resulting in a delay in
12 reporting or not; is that correct?

13 A. Correct.

14 Q. And whether there's a delay or there's not a
15 delay, that doesn't, in and of itself, help you to
16 predict whether or not the person is telling the
17 truth about the sexual misconduct; is that correct?

18 A. That's correct.

19 Q. All right. And other than delay, have the
20 other factors been subject to validation studies
21 using control groups and scientific method?

22 A. No.

23 Q. So, what are some of the other factors that
24 are often quoted following Dr. Summit's original
25 work?

26 A. He talks -- they talk about secrecy, so that
27 there will be a process in which the child is

28 engaged. And in a lot of these cases, these are 11833

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1 crimes of intent, not of impulse. So the person
2 wants to lessen the probability of the child
3 reporting, so there's some process in which they
4 will convince the child, either directly or subtly,
5 that it's something you have to keep to yourself.
6 So that was the first phase, which was called
7 secrecy.

8 The second was called helplessness, and that
9 related to a circumstance in which the child's not
10 equipped, because of the power imbalance, to respond
11 to the overtures in the way they might if it was an
12 age mate, so that there's a sense of helplessness in
13 that regard that they're more dependent. They're
14 less capable of standing up for themselves.

15 The third stage had to do with the process
16 of accommodation, making the best of it, living with
17 it.

18 The fourth stage had to do with disclosure,
19 or unconvincing disclosures, incomplete disclosures.

20 And the fifth had to do with recantation,
21 taking back.

22 So those five factors are looked at as
23 constituting the syndrome.

24 Q. Have there been validation studies to
25 validate any of those five factors?

26 A. The only one that has received validation is
27 the delay in reporting. There are cases in which --

28 there are cases that occur in which the acts are 11834

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1 acts of impulse. They're not acts of deliberation.

2 A person gets intoxicated. He's a stepfather. The

3 child is there, and he acts out those impulses.

4 There are cases where the -- there is an

5 engagement process, a seduction process that does

6 involve secrecies. But the difficulty is the

7 concept -- it's a heterogeneous group of kids that

8 get maltreated, so the secrecy hasn't been borne out

9 as in substantiated cases. That doesn't mean that

10 there are occasions in which some process is

11 undertaken by a perpetrator to lessen the likelihood

12 the child's going to tell somebody, but it's just

13 that it hasn't stood out and been validated.

14 Q. So in the research, this has not been

15 validated; is that correct?

16 A. That's correct.

17 Q. And therefore, the presence or the absence

18 of any or all of these elements that you've just got

19 through talking about wouldn't really have any

20 diagnostic utility; is that correct?

21 A. That's -- none of the five factors have been

22 subjected to ground truth studies in which you have

23 three groups. You have one group of children which

24 have indisputable evidence that the abuse occurred.

25 You have a second group of children in which there's

26 no abuse. And you have a third group of children of

27 false allegations.

28 Q. All right. 11835

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1 A. And then you see to what degree do those
2 concepts assist you in identifying accurately which
3 group the child should be in. And there has not
4 been that type of validation study.

5 Q. So in your training of law enforcement and
6 your multi-year process working with various law
7 enforcement agencies both internationally and
8 throughout the country, have you taken the position
9 that their procedures should not rely on these
10 particular factors for diagnostic purposes?

11 A. Yes, with the caveat that they need to be
12 aware that there are circumstances that could
13 involve one or more of these. But the absence
14 wouldn't mean it didn't, and they don't want to
15 think that, for example, that a delay suggests that
16 it's not accurate. So that you need to inform them
17 so they don't have beliefs that are incorrect.

18 Q. All right. So it doesn't -- it doesn't act
19 as a predictor. It's just information?

20 A. That's correct.

21 Q. All right. Now, with regard to
22 contradictory reports, is there a difference when
23 you're dealing with small children who might be, you
24 know, three or four years old or five years old, and
25 children in other age groups?

26 A. Yes.

27 Q. All right. Can you tell us about children

28 who would be in the 10- to 14-year age group, what 11836

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1 you look for in reports?

2 A. If you examine the studies that's relating
3 to the age effects on memory, and you look at the
4 different effects, and you look at, say, three- to
5 six-year-olds, six to nine, ten and up, what the
6 developmental literature suggests is that by age
7 ten, ten years, kids ten and up, have roughly the
8 equivalent qualities of memory as it relates to
9 reporting events, what happened. They're less
10 sophisticated when interpreting the meaning of what
11 happened.

12 As you move below ten, then you begin to see
13 age effects in the amount of information reported,
14 the different categories of details that they
15 report. You see differences in what is meaningful
16 to them versus older-aged children, important.
17 So it's important to know that with regard
18 to event memory, what happened, where they were,
19 other things that were occurring preceding the event
20 and after the event, what's called contextual
21 embedding, children are quite capable, from ten up,
22 to report that and to remember that quite well.

23 Q. So in the 10 to 14 area, let us take that as
24 an age group, would it be correct to say that
25 incomplete reports would be fairly common, but
26 contradictions of key details would not be expected?

27 A. That's what the literature would suggest.

28 What that means is that it would not be uncommon, 11837

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1 whether it is an adult or a child, if they've had a
2 complex relationship in which sexual encounters have
3 occurred on a frequent basis, to not give you all
4 the information at one setting.

5 The key is, as you look at what they say
6 across time, is on what kind of details are they
7 being consistent, and on what kind of details may
8 there be omissions or additions upon each telling.

9 The core elements, the central features of the event
10 should remain steadfast.

11 Q. Now, again, you were talking about over time
12 where you have the chronic abuse that may go over a
13 period of years. Is that the sort of situation
14 you're talking about?

15 A. Yes.

16 Q. If you have a situation that occurred
17 involving a number of days at the most, within
18 recent memory, would you expect children in the area
19 of 10 to 14 to not only have key details right, but
20 also to be fairly consistent in their report?

21 A. Yes.

22 Q. Okay. Now, I'm going to ask you about --

23 A. Now, I'm sorry, let me just add something.

24 Q. Sure.

25 A. That assumes that they are motivated to
26 disclose to you.

27 Q. All right.

28 A. It assumes you have a motivated child. It 11838

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1 assumes that the events had distinctiveness or they
2 were important to the person, and that they were
3 alert at the time the events were occurring.

4 Q. All right. Now, Dr. Urquiza offered some
5 anecdotal testimony about the rate of false claims.

6 A. Yes.

7 Q. Do you recall that?

8 A. Yes, I do.

9 Q. And do you think it's appropriate in your
10 scientific background and your experience in working
11 with this area to measure false claims rates using
12 anecdotal experiences?

13 A. I think that you could fit that in, into the
14 scheme, but that would not be wise to rely on that.

15 Q. All right. And if somebody only had
16 interaction, excuse me, with children who had been
17 adjudicated to have been abused, and that was their
18 experience for evaluating whether or not false
19 claims occur, would that be an adequate experience
20 base to make such an accurate determination?

21 A. Well, I think you'd need to point out that
22 your sample were children that had previously been
23 adjudicated, so that the rate of false alarms in
24 that population you would expect to be less than if
25 you were looking at children on the front end, where
26 there was an ongoing investigation.

27 Q. All right.

28 A. Because there's an investigation, there's 11839

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1 been an evidentiary hearing, there's been a sorting
2 out of the evidence, so that the likelihood that you
3 have a false alarm in that population would be less.
4 It wouldn't be nonexistent, but it would be expected
5 to be substantially less than if you were looking at
6 substantiation of the first reports. Those are much
7 higher in unsubstantiated cases.

8 Q. All right. Now, there are studies -- there
9 have been studies to determine a range of false
10 claims, a range of percentage of false claims; is
11 that correct?

12 A. Well, let me just respond this way: To
13 begin with, the base rate of true cases and false
14 cases is not static. It's not the same -- you might
15 have different rates in 1985 than you have in 1995.
16 You might have different rates of false alarms in
17 2000 than you had in 1995. Because as you're
18 increasing public awareness, as you were doing
19 programs with children to encourage reporting, those
20 affect your base rates. So you can't -- that's one
21 problem.

22 The second problem is the estimation of the
23 base rates varies depending upon what criteria
24 you've used to substantiate a case as being true or
25 false, and so that makes it complex.

26 I think the important thing is to be
27 concerned not about the magnitude of the problem,

28 but acknowledging that there are false cases of sex 11840

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1 abuse. There are true cases of sex abuse, and there
2 are false denials of sex abuse. And there are true
3 denials. That's a fact. And then we could -- to
4 try to argue about its frequency or infrequency is
5 counterproductive scientifically.

6 Q. Well, without arguing about it, let me ask
7 you, have there been studies that have shown a false
8 report rate somewhere between the 15 to 40 percent
9 range?

10 A. Yes, I think if you looked at the survey
11 studies, you'd see the estimates ranging from 2
12 percent to over 40 percent.

13 Q. On the one hand, the 2 percent, do you
14 believe that those -- that the -- that that's an
15 accurate overall number?

16 A. That there are 2 percent of false allegation
17 cases?

18 Q. Right.

19 A. I do not agree with that. In 1992, there
20 were 500,000 reports of sex abuse. There were -- in
21 the United States. There were 128,000 that they
22 determined were substantiated or indicated.

23 Now, they could be making mistakes both
24 ways, but if you use that data, you would have a
25 false alarm rate or a nonsubstantiated rate of over
26 50 percent. So you have to be very careful, you
27 know, when you talk about some absolute rate.

28 Q. Who conducted that study, by the way? 11841

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1 A. The Center For Child Abuse/Neglect, National
2 Center For Child Abuse and Neglect. It was based on
3 1992 U.S. Department of Health and Human Services
4 data on reports.

5 Q. Okay. Would it be correct to say, do you
6 feel, the actual rate of false reports is somewhere
7 between that on the high side and 2 percent on the
8 low side?

9 A. Well, I think that's way -- here's my
10 problem: I think that you have to look at the
11 context in which you're trying to evaluate the
12 report. So you have a different rate of false
13 alarms when you're looking at a divided family
14 issue. So someone going through a divorce, that
15 rate would be higher than the general population
16 rate.

17 The rate of false alarms would be lower when
18 a child is left to their own devices than it would
19 be if the child was subjected to external influences
20 by someone in a position of authority.

21 So you can't just take a rate out here as an
22 absolute rate. You have to look at what are the
23 contexts in which those classes of cases occur.

24 Q. All right. Let's talk about the person in
25 position of authority. Would that include a mother?

26 A. Could well include a mother.

27 Q. Now, there are different types of false

28 claims; is that correct? 11842

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1 A. Yes.

2 Q. Can you describe the types of false claims?

3 A. One type, which is more often seen with the
4 three- to six-year-olds than the older-aged kids, is
5 a circumstance where the child has a genuine but
6 mistaken belief. So the child believes what it is
7 they're telling you, they're just incorrect.

8 That's one type of false belief.

9 Q. Ah -- go ahead.

10 A. Another type of false belief is an older
11 child who is reporting a belief that something
12 happened in the fore-distant past. So a 12-year-old
13 is telling you about an event that happened when
14 they were three. The 12-year-old may believe that,
15 but they could be incorrect. So that's the second
16 type.

17 You have a type where if the event under
18 investigation is vague, so that the actions are not
19 distinct and complex, that can be subject to
20 confusion. So a witness could have a genuine
21 belief, but because of the simplicity or vagueness
22 of the event, that belief could be mistaken.

23 The other category is where the child is
24 being deceptive, either by omission or commission,
25 meaning the child is saying this did not happen,
26 when, in fact, it did, as being deceptive by
27 omission, not telling you. Commission would be

28 telling you something that they know is not correct. 11843

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1 Q. Now, let me ask you about that last
2 category. Would that be an intentional false claim?

3 A. Yes.

4 Q. All right. And do intentional false claims
5 occur most often in a particular age group?

6 A. Ten and up.

7 Q. Now, is this still relatively rare if the
8 child is left to his or her own devices?

9 A. Yes, in the absence of external influences,
10 the base rate with which a child, on their own,
11 would come up with a false allegation would be
12 significantly lower than it would be in the
13 absence -- or in the presence of external
14 influences.

15 Q. So in a situation where a parent was pushing
16 the child to make a false claim for gain, would that
17 be a circumstance under which an intentional false
18 claim might be found?

19 A. Yes.

20 Q. Now, is there anything that -- any other
21 factors that would affect that, such as the
22 truthfulness, the general truthfulness of the parent
23 or the person who is in a position of authority?

24 A. I don't believe scientifically we've figured
25 out yet how to separate valid from invalid accounts
26 based upon what a child or adolescent may tell you
27 alone, without considering other types of evidence.

28 We haven't been able to figure that out. 11844

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1 Having said that, the -- and the other
2 concern is, is that there's a point where children
3 come to know the power of certain statements or
4 information. So there is circumstances where they
5 can understand that and use that for manipulation.
6 You would want to look at the environment,
7 the world of that child. You'd want to look at what
8 are the ethical standards of the caretakers, what is
9 their customs, what's their belief about the
10 importance of forthrightness, or, in the
11 alternative, lack of forthrightness. The primary
12 influence on forthrightness or integrity comes from
13 children watching how their parents conduct
14 themselves.

15 So if you want your child to have a good
16 work ethic, you have one. If you want your child to
17 be forthright, you try to be forthright. So it has
18 a powerful influence. You want -- you'd want to
19 look carefully at the environment of the child.

20 Q. So that environment would include whether or
21 not the parents or parent that is in the child's
22 environment is a truthful and forthright person; is
23 that correct?

24 A. Whether or not they have a character of
25 being accurate and candid and forthright about
26 important matters.

27 Q. And basically, if they don't have that

28 character, if they aren't forthright about important 11845

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1 matters on a regular basis, that could increase the
2 chance that a child, age ten or older, could engage
3 in intentional false claims?

4 A. Well, it lessens the child's appreciation
5 for forthrightness. It provides them an opportunity
6 to model behavior where you may decide not to tell
7 the truth because it suits your purposes. So it
8 would increase the likelihood that a child may adopt
9 that type of pattern in their relationships.

10 Q. Now, is it possible that false claims can
11 occur in situations where there is a motive on the
12 part of the influential adult?

13 A. Yes. It's very important to look at the
14 context of the original outcry, look at the key
15 players, and look to see whether there exists any
16 stake in the outcome or any potential gain by people
17 who are significant in the child's world. You'd
18 want to rule that out as a matter of investigative
19 course.

20 Q. And would financial gain be a potential
21 motive on the part of the influential adult?

22 A. Could be.

23 Q. And a desire to seek retribution against
24 somebody on the part of the influential adult?

25 A. Could be.

26 Q. Would that also be a motive?

27 A. Revenge.

28 MR. SANGER: Okay. Thank you. I have no 11846

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1 further questions at this time.

2 CROSS-EXAMINATION

3 BY MR. ZONEN:

4 Q. Doctor, you mentioned a -- good afternoon.

5 Excuse me.

6 A. Hi.

7 Q. Doctor, you mentioned that there was -- am I

8 on?

9 Okay. You mentioned there was a study that

10 you had reviewed that talked about 500,000 different

11 accusations in a period of time and only so many

12 substantiated. Do you have that study with you?

13 A. I don't have the study. I have the

14 citation.

15 Q. You didn't bring the study with you?

16 A. No.

17 Q. Would you tell us the citation on that,

18 please?

19 A. Yeah, it was published by The National

20 Center For Child Abuse and Neglect, 1994. It

21 covered the reporting period of 1992. The data came

22 from the U.S. Department of Health and Human

23 Services statistics on child maltreatment. So there

24 was physical abuse, emotional abuse and sex abuse,

25 reported incidents in that data.

26 Q. We're not talking about exclusively sexual

27 abuse, then?

28 A. No. I think there were 200 and -- 2.8 11847

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1 million cases reported. Of that 2.8 million,
2 500,000 were sexual maltreatment.

3 Q. And when you talk about validated or
4 substantiated, what do you mean?

5 A. They were simply whoever did an
6 investigation, the investigative agency classified
7 them as indicated or substantiated, or not indicated
8 or not substantiated.

9 Q. If a child makes an allegation of sexual
10 abuse and then recants it, would that be indicated,
11 substantiated or otherwise?

12 A. I don't know whether they would substantiate
13 it and then remove it. I have a problem with the
14 concepts "substantiate" and "indicated," because I
15 think there's errors on both using that concept.
16 It's a concept that was developed out of Protective
17 Services, which is reason to believe, but there's a
18 lot of errors both ways when you look at what
19 criteria they're using for, quote, "indicated," or,
20 quote, "substantiated."

21 Q. It's hard to make sense of such a figure if
22 we don't know what exactly it is they do to
23 substantiate an accusation, right?

24 A. That's correct.

25 Q. Would it be fair to say that the
26 substantiation of those accusations would be
27 different depending on whether they're sexual abuse,

28 physical abuse or emotional abuse? 11848

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1 A. Yes, I would put very little stake in that
2 data, because it didn't define ground truth
3 sufficiently. I would not put any data on saying,
4 well, that means there's 128,000 true cases, and the
5 balance false. I think that would be incorrect. So
6 how I use it was to show the extremes of the
7 estimates --

8 Q. Okay.

9 A. -- and the limitations of the estimates.

10 Q. You view the 2 percent rate to be a little
11 bit silly?

12 A. Yes.

13 Q. And you view the 50 percent rate to be a
14 little bit silly?

15 A. I would view it that way, yes.

16 Q. It's somewhere in there, but nobody knows
17 quite where; is that right?

18 A. Again, left to their own devices, I would
19 say with children below 13 it would be a lot less.

20 Q. And in -- you mean false accusations?

21 A. Yes.

22 Q. Do you believe that they are -- there are
23 fewer false accusations the younger the child goes?

24 A. Six to ten, left to their own devices, I
25 think the rate of false alarms, where that child
26 would come up with it on their own, would be very
27 low, compared to the 13-plus group or the 3 to 6

28 group. With the 3 to 6 group, I don't believe the 11849

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1 majority are intentionally lying. I think they may
2 have mistaken beliefs due to concerns of suspicions
3 on the part of people that have influence on them.

4 Q. All right. Doctor, in terms of disclosures,
5 you agree with Dr. Urquiza that you really can't
6 draw any conclusion from a child reporting late; is
7 that right?

8 A. Yes.

9 Q. We're talking about reporting allegations of
10 sexual abuse?

11 A. Correct.

12 Q. And is it a true statement that most
13 children never report?

14 A. Well, if they never report it, we wouldn't
15 know they were abused. So I think that the more
16 accurate statement would be there are a number of
17 people that wait an awfully long time to come
18 forward. They may not come forward during their
19 minority. If they never come forward, we wouldn't
20 know whether they were abused or not.

21 Q. But are there figures that speak in terms of
22 the numbers or percentages of occasions that victims
23 of childhood sexual abuse report, either during
24 their adolescence, during their teen years, during
25 their young adult years or at any time during their
26 adult years?

27 A. Yes.

28 Q. And are those figures such that you're able 11850

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1 to say that there are substantially large numbers of
2 people who never report, ever?

3 A. I think it would allow you to say -- to
4 estimate there would be a sizable number that do not
5 share that with another person.

6 Q. I mean, we can't conclude that the number of
7 people who ultimately do report stand for the entire
8 population of those who have ever been abused; is
9 that correct?

10 A. No, that's right. And I agree. I think we
11 agree. Given the fact that a sizable do not report
12 as children but report later in life, would allow
13 you to assume there's also a sizable number that
14 haven't reported yet.

15 Q. And you would agree with Dr. Urquiza when he
16 says that the time and even the manner in which
17 one discloses is not necessarily reflective of
18 whether -- of the truth of the allegation?

19 A. Yes.

20 Q. And in fact, children often report in
21 piecemeal. They'll give a little information now,
22 and a little information later, and more information
23 after that. Would that be true, that's not unusual?

24 A. I would agree with that if, by that, you're
25 talking about that they don't tell you everything
26 there is to tell you on the initial disclosure.

27 Q. Uh-huh.

28 A. I would agree with that. 11851

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1 Q. And that kids don't necessarily know what's
2 important to tell or not to tell?

3 MR. SANGER: I'm going to object. It's
4 vague, because -- as to the age of the kids.

5 THE COURT: Overruled.

6 Q. BY MR. ZONEN: Go ahead.

7 A. I think what they would view as important
8 would not be the same as what we may view as
9 important.

10 Q. And that's the distinction that you made
11 when you told us that children from about ten on
12 have memories that are fairly comparable to adults?

13 A. Event memories.

14 Q. Event memories, yes. But they don't
15 necessarily know what's important to say?

16 A. That's correct. They -- they're less
17 capable of giving meaning to the event as it's
18 occurring.

19 Q. All right.

20 A. And they're less capable of determining how
21 important it may be to tell versus not tell. And
22 they become indecisive, so they don't take any
23 action because they're -- you know, when I talked
24 about their capacities, it was for event memory, not
25 understanding and developing a strategy for their
26 own best interest.

27 Q. And, Doctor, sometimes it's dependent upon

28 age and gender of the child in terms of the 11852

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1 likelihood that they would be disclosing at all;
2 would that be correct? Those are factors to weigh
3 in consideration?

4 A. Yes.

5 Q. All right. And if you're talking about a
6 male adolescent child and a male offender, that
7 could be very difficult for a child to reveal that
8 kind of abuse; is that correct?

9 A. Do you mean a male offender or a -- a male
10 offender, male victim?

11 Q. Male offender, male victim, male adolescent
12 victim.

13 A. Yes.

14 Q. And by "adolescent," we're talking about,
15 you know, age 10 to 13, 14, around there.

16 A. Yes.

17 Q. And one of the reasons that that's
18 particularly difficult is because of the stigma of
19 being labeled homosexual; would that be correct?

20 A. Yes.

21 Q. And in fact, children from 10 to 14 really
22 do appreciate the significance of that label, don't
23 they?

24 A. I think they appreciate by third grade.

25 Q. All right. So --

26 A. So you have a greater denial rate on
27 validated cases with males than females.

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28 Q. All right. An adolescent child walking up 11853

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1 to another boy in the school ground is not
2 particularly inclined to tell that other boy or
3 group of boys that they were molested by a man;
4 would that be true?

5 A. I would agree with that.

6 Q. All right. Now, Doctor, in assessing
7 credibility of victims, I mean, one of the things
8 you do is just look at what they say, right, see if
9 it makes sense?

10 A. You would want to examine how the
11 information was obtained and the different
12 categories of details --

13 Q. Uh-huh.

14 A. -- to the statement.

15 Q. Uh-huh. You'd want to see if those
16 interviews are tape-recorded, would you not?

17 A. Yes.

18 Q. Because that would tend to resolve a lot of
19 questions about what exactly was said or not said to
20 the child?

21 A. Help you do a systematic analysis of that
22 interview.

23 Q. And, Doctor, when we're dealing with
24 compliant victims particularly, you're looking to
25 the extent of the relationship between the victim
26 and the offender; is that right?

27 A. Yes.

28 Q. All right. I mean, as opposed to a victim 11854

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1 who simply comes upon an offender on the street and
2 is forcibly abducted or forcibly molested. Those
3 are different kinds of cases, are they not?

4 A. Yes.

5 Q. And in dealing with compliant victims,
6 there's usually a relationship that exists or occurs
7 or is developed between the offender and the victim?

8 A. Yes. You're talking about outside of the
9 sexual elements?

10 Q. Yes.

11 A. Yes.

12 Q. Yes. And that relationship establishes or
13 the activities that lead to that relationship are
14 what allow this act to take place, is that correct,
15 the sexual act?

16 A. If the person -- if the acts were
17 intentional, purposeful, then there would be -- it
18 would be quite usual for there to be aspects to the
19 development of the relationship, the development of
20 other aspects to it, that would set the stage for
21 the sexualization of it and potentially lessen the
22 probability of disclosure.

23 Q. Yes. Children around the age of, oh, 9
24 to 13, are really not inclined to engage in sexual
25 activity with an adult unless they've been groomed
26 for it; would that be correct?

27 MR. SANGER: I'm going to object. That's

28 beyond the scope of the direct. 11855

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1 THE COURT: Sustained.

2 MR. ZONEN: I believe that what leads to
3 these acts are exactly what was asked in direct.
4 Certainly in the context of the activity and
5 evaluating it.

6 MR. SANGER: I would object to speaking
7 responses.

8 THE COURT: Sustained.

9 Q. BY MR. ZONEN: Doctor, would you expect
10 that, in dealing with a compliant victim or a victim
11 who knows the person and has some level of
12 relationship, that if a child tells you that he was
13 befriended by this person, that would certainly be
14 consistent with establishing that kind of
15 relationship; is that right?

16 A. Correct.

17 Q. If the child tells you that he or she has
18 spent a great deal of time with that person, perhaps
19 an inordinate amount of time than one might expect
20 an adult to be spending with a nonrelated child,
21 that would be consistent with the establishment of
22 that type of relationship; is that right?

23 A. Could be.

24 Q. If a child tells you that he or she was
25 given gifts or privileges beyond what an adult would
26 normally give a child, that would be consistent with
27 the establishment of this type of relationship; is

28 that right? 11856

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1 MR. SANGER: I'm going to object. This is

2 beyond the scope of direct.

3 THE COURT: Overruled.

4 Q. BY MR. ZONEN: Is that correct?

5 A. I would agree.

6 Q. All right. If the gifts are particularly
7 personal in the sense of a gift of something that's
8 literally taken off the person of the adult, a watch
9 or jacket, and given to the child, that they may
10 then put it on themselves, that's a particularly
11 personal gift, that could be consistent with the
12 development of that kind of relationship; is that
13 right?

14 MR. SANGER: I'm going to object to the
15 relevance; "could be consistent."

16 THE COURT: Overruled.

17 Q. BY MR. ZONEN: You can answer.

18 A. The greater -- the greater the value of the
19 gift to the recipient, to the child, the more
20 persuasive the gift would have, the more
21 persuasiveness.

22 Q. Taking a child to fun places and occupying
23 that child's time with fun events would be
24 consistent with the development of that type of
25 relationship; is that true?

26 A. It could.

27 Q. Giving a child money would be consistent

28 with that, would it not? 11857

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1 A. It could.

2 Q. Having a child share intimate moments with
3 the adult such as, oh, staying in his room for long
4 periods of time, would be consistent with it, would
5 it not?

6 A. It could be.

7 Q. Having a child share a bed with the adult
8 would be consistent with the establishment and
9 creation of that type of relationship, would it not?

10 A. Could be.

11 Q. Getting a child's parents to trust the
12 person, making efforts to really become close to the
13 child's parent and even telling them that they have
14 to trust the person would be consistent with that,
15 would it not?

16 A. Could be.

17 MR. SANGER: I'm going to object. This is
18 speculative and -- at this point.

19 THE COURT: Overruled.

20 Q. BY MR. ZONEN: Allowing a child to do
21 grown-up things, such as drinking or swearing, would
22 be consistent with the establishment of the kind of
23 relationship that would sexualize a child or reduce
24 inhibitions; would that be true?

25 A. It would develop a specialized relationship.

26 Yes, I would agree with that.

27 Q. Okay. Hugging a child, kissing a child, I

28 don't mean in a sexual way, but just allowing a 11858

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1 child to become comfortable with physical contact,
2 so touching a child and kissing a child more
3 frequently than what an adult would do with a
4 nonrelated child, that could be consistent with the
5 establishment of that kind of relationship; is that
6 right?

7 A. It could.

8 Q. Letting a child stay up late or even up all
9 night long?

10 A. Again, if it was a special entitlement or a
11 special privilege, that could relate to the process.

12 Q. Undressing or being naked in front of a
13 child is a way of sexualizing a child; is that
14 right?

15 MR. SANGER: I'm going to object. That's
16 beyond the scope of direct.

17 THE COURT: Sustained.

18 Q. BY MR. ZONEN: Showing a child sexually
19 graphic material is a way of sexualizing a child; is
20 that right?

21 MR. SANGER: Objection; beyond the scope of
22 direct.

23 THE COURT: Sustained.

24 Q. BY MR. ZONEN: Well, Doctor, wouldn't you
25 want to look at statements of children who talk
26 about, or who complain of being victims of sexual
27 abuse and who would fit into the category of the

28 compliant victim, wouldn't you want to see if, in 11859

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1 fact, there is that kind of a relationship that had
2 been established that would accommodate the
3 commission of those kinds of acts on a child?

4 A. Yes, you'd want to look at that within the
5 investigation, both with information you may have
6 obtained from the child and other sources of -- to
7 see whether or not there was materials that were
8 sexually toned.

9 Q. Because it's exactly that type of behavior
10 that allows a child to be party to those types of
11 behaviors; is that right?

12 A. Well, it would -- it could serve to
13 desensitize the child to sexually toned materials
14 that could lead to more sexually toned acts.

15 Q. And it's that type of behavior that would,
16 to the greatest extent possible, guarantee that a
17 child would not report those types of events; is
18 that true?

19 MR. SANGER: I object to that question.

20 It's ambiguous and argumentative.

21 THE COURT: Overruled.

22 Q. BY MR. ZONEN: Is that true?

23 A. To the extent that the child comes to
24 perceive they were a party to it and had a stake in
25 it, it could -- it could lessen their motive to
26 report.

27 Q. Children don't always understand what is

28 happening to them when they are being subjected to 11860

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1 sexual behavior by an adult, do they?

2 A. No, but what I was trying to point -- the
3 point I was trying to make is if they come to think
4 they've got some responsibility, so they've gone
5 along, and if they're aware that that would not be
6 sanctioned by, say, the parents, then if they then
7 participated, they may have a motive to not disclose
8 out of fear of consequences for themselves.

9 Q. Is that unusual, that a child would have or
10 experience some level of self blame; that they would
11 think that they're responsible for what happens?

12 A. No. That's not uncommon.

13 Q. That's not uncommon. Okay.

14 A. When the -- when the participants are known
15 to each other, it would be less common if it would
16 be a stranger assault circumstance.

17 Q. Doctor, is it your expectation that a child
18 who has been molested would immediately report that
19 molestation to that child's parent, mother or
20 father?

21 A. No.

22 Q. In fact, isn't it the case that the parents
23 are often the last ones to know; that they don't
24 want their parents to know?

25 MR. SANGER: Objection, Your Honor, it's
26 argumentative.

27 THE COURT: Overruled.

28 You may answer. 11861

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1 THE WITNESS: Okay. With ten and up, I
2 would say that the like -- with younger-aged
3 children, the more likely to go to parents. They
4 may not know they've been abused; that -- they may
5 not appreciate the circumstances. I think the
6 older-aged kids are more likely to go to a friend,
7 not the parents.

8 Q. BY MR. ZONEN: Are children concerned about
9 not being believed?

10 A. Yes, if they --

11 MR. SANGER: Objection. That's ambiguous as
12 phrased; overbroad.

13 THE COURT: Sustained.

14 Q. BY MR. ZONEN: Are children concerned that
15 they will not be believed if they disclose that they
16 have been molested?

17 A. The older-aged children, I would agree with
18 that statement.

19 Q. By "older-aged," are you referring to ten
20 and older?

21 A. Eight and up for that question.

22 Q. That's one of the issues that they deal
23 with, "Will I be believed?" in terms of whether or
24 not to come forward with this disclosure?

25 A. Correct.

26 Q. And if the person who committed these acts,
27 if that person is a respected person in the

28 community, highly regarded person in the community, 11862

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1 do children intuitively understand that and
2 understand that that factors into the question of
3 whether or not they'll be believed?

4 A. The older children, yes. The younger -- the
5 children below age, not as willing. Over ten, I
6 think they can appreciate -- they can weigh that
7 possibility clearer than the five-year-old can.

8 Q. Are children concerned, even at age eight,
9 with the stigma of sexual abuse?

10 A. Yes.

11 Q. And does that factor into their decision as
12 to when to disclose?

13 A. Yes.

14 MR. ZONEN: I have no further questions.

15

16 REDIRECT EXAMINATION

17 BY MR. SANGER:

18 Q. Okay. As a scientist, you were asked a
19 bunch of questions there that started out, "Could it
20 be consistent with." Do you understand what those
21 questions meant? In other words, "consistent with"?

22 A. Well, could you see it occurring in a
23 particular case; not see it in another case.

24 Q. In other words, if somebody says, is it
25 consistent with somebody going into a 7-Eleven and
26 committing an armed robbery in broad daylight, is it
27 consistent with that that the person got up in the

28 morning, the answer would be, "Yes," wouldn't it? 11863

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1 A. That's correct.

2 Q. "Consistent with" questions prove too much,
3 don't they?

4 MR. ZONEN: I'll object as argumentative.

5 THE COURT: Sustained.

6 MR. SANGER: Okay.

7 Q. What Mr. Zonen asked you about, taking
8 people to fun places, does that mean if a person
9 takes children to fun places that they are therefore
10 molesters?

11 A. No. And that's why you have to be quite
12 careful when you develop investigative leads which
13 would come from patterns of conduct that might have
14 that motive, because -- but you don't want to base
15 your determination about whether a crime's occurred
16 based upon what might be consistent with.

17 You could have a Boy Scout leader or a
18 Little League coach that was a pedophile, a
19 predatory pedophile, that was seeking opportunities
20 to exploit those kids that were under their care.

21 You could also have a wonderful human being that was
22 trying to shape the personality development of those
23 kids.

24 And you have to be pretty careful, because
25 you -- you know, there's things to be -- to take
26 note of, but they don't constitute the kind of
27 corroboration that allows you to have increased

28 certainty about whether a sexually motivated act has 11864

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1 occurred.

2 Q. There are people who are just nice, caring,
3 loving people who love children; is that right?

4 A. That's correct.

5 Q. And they're not molesters, right?

6 A. That's correct.

7 Q. All right. Now, you indicated in response
8 to some of the questions of the District Attorney
9 that children may make one kind of report or another
10 kind of report. Again, the question is whether or
11 not the actual event occurred; is that correct?

12 A. Yes.

13 Q. Now, you were asked about some indicators.

14 Let me ask you about some other indicators. You
15 were asked about some specific things that I stayed
16 away from, but I'm going to ask you now in response
17 to the D.A.'s questions.

18 If a child who is in that age of 10 to 14
19 were to report that his grandmother told him that he
20 had to masturbate, because boys get to a certain
21 level, and if they --

22 MR. ZONEN: I'm going to object as exceeding
23 the scope of direct examination; assuming facts not
24 in evidence.

25 THE COURT: What's the direction here?

26 MR. SANGER: I'm going to ask if that
27 statement has been made consistently, under oath and

28 then in prior statements and then in court, the 11865

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1 defendant is accused of making that statement, is
2 that consistent with children directly lying?

3 THE COURT: All right. I'll sustain the
4 objection.

5 MR. SANGER: All right.

6 Q. When you look at the category of cases where
7 there's a potential for intentional false
8 statements - okay? - because I know you've told us
9 about everything else, but let's just focus on
10 intentional false statements by minors - are the
11 factors that you want to look at, do they include
12 whether or not a minor makes a directly
13 contradictory statement about something that was
14 said or done?

15 A. Yes.

16 Q. And when you look at intentionally false
17 claims cases, is it important to look to see whether
18 or not the parents of that minor engaged in a long
19 course of deceptive and lying behavior?

20 A. Yes.

21 Q. And would it be important to look at whether
22 or not the parents of that minor child actively
23 engaged the minor child in supporting them in their
24 deceptive behavior to people?

25 A. Yes, that would be particularly important.

26 MR. SANGER: Okay. Thank you. No further
27 questions.

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1 RE-CROSS-EXAMINATION

2 BY MR. ZONEN:

3 Q. But Mr. Sanger asked you about nice people
4 who generally love -- genuinely love children as
5 being people that would tend to do the types of
6 things that I read to you earlier.

7 You would not include among that category,
8 nice people who genuinely love children, those who
9 show children sexually explicit material, would you?

10 A. I would not.

11 MR. ZONEN: Thank you. No further
12 questions.

13 MR. SANGER: And I have no further
14 questions, Your Honor.

15 THE COURT: Thank you. You may step down.

16 THE WITNESS: May I be excused, Your Honor?

17 THE COURT: You're not excused. You may step
18 down. You are to remain on call until the
19 completion of this trial --

20 THE WITNESS: Okay.

21 THE COURT: -- which is not very much
22 longer.

23 THE WITNESS: Thank you, sir.

24 MR. SANGER: But he may go --

25 THE COURT: He certainly may go back to
26 Arizona. He remains on call.

27 THE WITNESS: Thank you.

28 THE COURT: Call your next witness. 11867

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1 MR. MESEREAU: The defense will call Mr.

2 Julio Avila.

3 THE COURT: When you get to the witness

4 stand, please remain standing.

5 Face the clerk here and raise your right

6 hand.

7

8 JULIO AVILA

9 Having been sworn, testified as follows:

10

11 THE WITNESS: Yes.

12 THE CLERK: Please be seated. State and

13 spell your name for the record.

14 THE WITNESS: My name's Julio Avila. Julio,

15 J-u-l-i-o. Avila, A-v-i-l-a.

16

17 DIRECT EXAMINATION

18 BY MR. MESEREAU:

19 Q. Good afternoon, Mr. Avila.

20 A. Good afternoon.

21 Q. Mr. Avila, where are you employed?

22 A. Neverland Ranch.

23 Q. And how long have you been working there?

24 A. About four years and six months, seven

25 months.

26 Q. What kind of work do you do there?

27 A. Right now I'm working as security.

28 Q. And what other jobs have you had at 11868

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1 Neverland?

2 A. I worked in the park.

3 Q. What did you do?

4 A. I was a park operator.

5 Q. Okay. Is that the amusement park?

6 A. Yes.

7 Q. What were you doing as an amusement park

8 operator?

9 A. Maintenance, run the rides for guests, and

10 run the small trains.

11 Q. Any other jobs you've had at Neverland?

12 A. No, those are the only two.

13 Q. Those two?

14 A. Yes.

15 Q. And currently you're in security?

16 A. Yes.

17 Q. What do you do in the area of security?

18 A. I work in the night shift. On the night

19 shift we just do our perimeter checks, walk around

20 the property to make sure everything is good.

21 Q. And do you know the fellow seated at counsel

22 table to my right?

23 A. Yes.

24 Q. Who is he?

25 A. That's Mr. Jackson, my boss.

26 Q. Okay. Do you recall ever meeting a family

27 by the name of Arvizo?

28 A. Yes. 11869

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1 Q. And when do you think you first met them?

2 A. I met them maybe a couple of months after I
3 started working there. It was maybe like -- like
4 five months after they had, like, the blood drive.

5 Q. And approximately when do you think that
6 was; do you know?

7 A. I'm guessing maybe like -- like in December,
8 January of 2000, I think. No, January 2001.

9 Q. Now, you mentioned a blood drive. What
10 blood drive are you talking about?

11 A. I think it was a blood drive that they had
12 for Gavin.

13 Q. Did you participate in that?

14 A. No, I started working maybe, like, three
15 weeks after that.

16 Q. Okay. So when you first met -- let me
17 rephrase that.

18 Did you meet Janet Arvizo at some point?

19 A. Janet. I met her, but I hardly talked to
20 her.

21 Q. Did you ever meet Gavin Arvizo?

22 A. Yes.

23 Q. And do you recall when you first met him?

24 A. It was like a regular guest. Comes to the
25 park and wants to ride some rides.

26 Q. Did you meet Star Arvizo?

27 A. Yes.

28 Q. Where did you meet him? 11870

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1 A. In the park.

2 Q. How about Davellin Arvizo?

3 A. Same. In the park.

4 Q. Met her in the park, too. And that's the

5 amusement park, right?

6 A. The amusement park, yes.

7 Q. When you first met Gavin Arvizo, what was he

8 doing?

9 A. When I first met him, he -- I think he drove

10 up on, like, one of the golf carts that the guests

11 use, and just came up and he wanted to run some

12 rides, so I run some rides.

13 Q. Now, did he just come up to you and ask you

14 to let him on the amusement rides?

15 A. Yeah. They'll come up and they just say, "I

16 want to get on" -- "on the Ferris wheel."

17 "Okay." So I'll go over there and I run it

18 for them.

19 Q. If there aren't a lot of children at

20 Neverland, can whoever is there just come up to you

21 and ask you if you'll turn a ride on and let him do

22 it?

23 A. If he could turn them on himself?

24 Q. No, if you will.

25 A. Oh, yes, yes.

26 Q. Typically if there aren't a lot of children

27 on the rides, will a child come up to you and say,

28 "Could you please start the Ferris wheel," or "Could 11871

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1 you please start the carousel," that kind of thing?

2 A. Yes.

3 Q. And normally would you try and accommodate

4 them?

5 A. Yes.

6 Q. And what hours were you working when you

7 were working in the amusement park?

8 A. Usually there's two shifts. Usually I would

9 work the 7:00 to 3:30, and sometimes I would switch

10 off from like 1:30 to 10:00. The park usually

11 closes at ten o'clock.

12 Q. Okay.

13 A. The amusement park.

14 Q. Okay. Now, did you operate some rides for

15 Gavin?

16 A. Yes.

17 Q. Did you operate some of the rides for Star?

18 A. Yes.

19 Q. How about Davellin?

20 A. Yes.

21 Q. Okay. And what rides did you observe them

22 to be on?

23 A. They were mostly on the big rides, which was

24 The Zipper, The Spider, the Ferris wheel, Sea

25 Dragon, the bumper cars, and the swings.

26 Q. How many times do you think you accommodated

27 Gavin when he wanted to get on an amusement park

28 ride? 11872

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1 A. Wow. A lot. Numbers, like 60, 70, 80. A

2 lot of times.

3 Q. And how many times do you think you

4 accommodated Star Arvizo when he wanted to take a

5 ride?

6 A. About the same.

7 Q. And how many times do you think you

8 accommodated Davellin Arvizo when she wanted to get

9 on one of the rides?

10 A. About the same.

11 Q. All right. Now, did you have a chance to

12 observe the behavior of Gavin on those rides?

13 MR. AUCHINCLOSS: I'll object. Vague as to

14 time.

15 MR. MESEREAU: I'll rephrase.

16 THE COURT: All right.

17 Q. BY MR. MESEREAU: At any time did you have a

18 chance to observe Gavin on those rides?

19 A. Not really in the beginning to observe him,

20 because they were just regular guests that would

21 come, and then they would just leave somewhere else

22 after they were done with the rides.

23 Q. But did you ever see them do anything that

24 bothered you?

25 A. At first, no.

26 Q. At any time?

27 A. After a while, they would -- you know, they

28 would -- their behavior would get like more - how 11873

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1 can I say it? - confident to do other stuff that we
2 didn't approve of.

3 Q. What didn't you approve of that they did?

4 MR. AUCHINCLOSS: Objection; relevancy.

5 THE COURT: Overruled.

6 THE WITNESS: Like spit at myself and a
7 co-worker. Stuff like that. Like when they would
8 be on the rides, they would, you know, either spit
9 at us when we were -- like on The Wave Swinger, when
10 they would be all the way on the top, they would
11 spit at us down, take off their shoes and throw it
12 at us. Stuff like that.

13 Q. BY MR. MESEREAU: Did you see Gavin do that
14 often?

15 A. Yes.

16 Q. Did you see Star do that often?

17 A. Yes.

18 Q. Did you ever see Davellin do anything like
19 that?

20 A. No. She -- no.

21 Q. You said they dropped things from the rides?

22 A. Yes.

23 Q. What did they drop?

24 A. It was mostly like when they would throw
25 stuff. That would be their shoes. Their shoes, and
26 they would spit and stuff like that.

27 Q. Did you see them spit on you?

28 A. Yes. 11874

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1 Q. Did you see them drop shoes on you?

2 A. Yes.

3 Q. Now, what did you do -- excuse me, let me
4 rephrase that. What was your response to Gavin and
5 Star spitting on you?

6 A. I would just tell them to stop or I wouldn't
7 run any rides for them.

8 Q. And did they seem to respond to your
9 statements?

10 A. Yes. When I would tell them to stop, they
11 would.

12 Q. And what was your response when they'd throw
13 their shoes at you?

14 A. Same thing. I would tell them to stop, and
15 they stopped.

16 Q. Did you ever see them spit on anyone besides
17 yourself?

18 A. Yes. My co-worker.

19 Q. Who was your coworker?

20 A. His name is Javier Velasco.

21 Q. And did you ever see them throw shoes at
22 anyone else?

23 A. On anyone else, no.

24 Q. Was there any time of day that you would
25 tend to operate the rides for Gavin and Star?

26 A. What was that again?

27 Q. Was there any particular time of day when

28 you tended to operate the rides for the Arvizo 11875

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1 children?

2 A. Just whenever they would get there.

3 Sometimes they would get there early. You know,
4 then they'd leave. A couple hours later they would
5 come back. So just whenever they would want to ride
6 the amusement park, we would run the rides.

7 Q. You mentioned one other employee, Mr.

8 Velasco, right?

9 A. Yes.

10 Q. To your knowledge, did any other employees
11 complain about the Arvizo children's behavior in the
12 amusement park?

13 A. I'm not -- maybe the other co-workers that
14 work in the park, they seen stuff like that. But
15 the ones that interacted more with them was myself
16 and Javier Velasco.

17 Q. Did you ever see Gavin and Star operate one
18 of the rides themselves?

19 A. Yes.

20 Q. And describe what you're talking about,
21 please.

22 A. I was running The Zipper, which is at one
23 side of the park, and -- and then when I looked to
24 the other side of the park, I noticed that the swing
25 was running and I was the only one there. So I had
26 to stop this ride and run over to the ride that was
27 running and figure out what was going on, and I

28 guess Star was turning on the rides by himself 11876

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1 without any supervision of an employee.

2 Q. So what did you do in response?

3 A. I just stopped it right away, and I told
4 them, "You can't be doing that, because it's" -- you
5 know, "someone could get in an accident."

6 Q. Did you actually see them begin to operate
7 that ride?

8 A. No, but when I was getting there, he was
9 sitting down in the control panel.

10 Q. Where is the control panel in relation to
11 the actual ride?

12 A. It's right in the middle of the ride. So
13 the swings are going, and he's like in the middle.
14 The control panel's right in front right here.

15 Q. So was he sitting down in the control area?

16 A. He was sitting down, yes.

17 Q. And operating the ride?

18 A. Yes.

19 Q. Was anyone actually riding on the ride --

20 A. Yes.

21 Q. -- while he operated it?

22 A. The sister was on the ride.

23 Q. So Davellin's on the ride, and Star is
24 operating it at the control panel?

25 A. Yes.

26 Q. Did you see Gavin anywhere at that point in
27 time?

28 A. No, not at that moment. 11877

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1 Q. Okay. Did you determine how long Star had
2 been operating that ride on that occasion?

3 A. About -- maybe like 30 seconds before I got
4 there.

5 Q. And where did you have to come from to stop
6 that behavior?

7 A. I was running The Zipper, which is, let's
8 see, about maybe like 60, 70 yards away.

9 Q. Okay. Did you -- excuse me. Let me
10 rephrase that.

11 Is there a part of Neverland called the
12 control room?

13 A. Control room, yes. That's a room that turns
14 on all the lights -- well, most of the lights for
15 the amusement park.

16 Q. And where is the control room located?

17 A. It is -- as soon as you come in towards the
18 park, it's by, like, a tree, castle kind of thing,
19 like treehouse, and it's right under that.

20 Q. And what does the control room look like?

21 A. There's some stereo equipment and then
22 there's a lot of breaker boxes that turn on the
23 lights.

24 Q. Is the control room a big area?

25 A. No. It's maybe like -- like from right here
26 to like right there, something like that. It's kind
27 of small.

28 Q. And how do you get into the control room? 11878

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1 A. There's a door that -- you open up a door

2 and you just go right in.

3 Q. Is the door ever locked?

4 A. When we're there it's open all the time.

5 But when we leave, we lock it.

6 Q. Okay. And how do you lock the door to the

7 control room?

8 A. It's just a simple knob, you know. Hit the

9 switch and close it.

10 Q. Do you have a key?

11 A. Yes.

12 Q. Okay. Does anyone else work in the

13 amusement area with you?

14 A. That has a key?

15 Q. Yeah. Does everybody have a key to that?

16 A. Yes.

17 Q. Is that everybody who works in the amusement

18 ride area?

19 A. It's -- amusement ride area and security has

20 one key.

21 Q. Now, when you're operating those rides, you

22 say you leave the door open?

23 A. Yes.

24 Q. Okay. Are you generally far away from that

25 control room door?

26 A. No, it's usually pretty close.

27 Q. Okay. So you're not far away from it when

28 you're doing your work in the amusement park, right? 11879

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1 A. Oh, no, no.

2 Q. Okay. Did you ever have a chance to find

3 Star Arvizo in the control room?

4 A. Yes.

5 Q. Please explain what you mean.

6 A. Well, I was using the telephone and -- well,

7 then Star or Gavin would just know where to find us

8 sometimes. When they couldn't find us -- when they

9 couldn't find us around the park, they would check

10 the control room, if we were there.

11 Q. Did you have a chance to watch Star's

12 behavior in the control room?

13 A. Yes.

14 Q. What did you see?

15 A. He was writing on the control room, like on

16 the -- by where the phone's at, the words, "You suck

17 dick."

18 Q. You saw him write that?

19 A. Yes.

20 Q. And what time of day was this?

21 A. Mid-afternoon.

22 Q. And did you walk into the control room and

23 see him doing this?

24 A. When I was using the phone, he was doing it.

25 And when I turned around and saw, I asked him, like,

26 "What are you doing?" You know, "You can't be

27 writing that kind of stuff here."

28 And he kept on doing it. And when he was 11880

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1 done, I just kind of like, with another pen, just
2 kind of went over it, take out the words.

3 Q. Did you say anything to him?

4 A. Yeah, I told him not to be writing that kind
5 of stuff here.

6 Q. Did he say anything back to you?

7 A. No, he just laughed.

8 Q. Did he leave the control room after that?

9 A. Yeah.

10 Q. Okay. Was that the only time you ever saw
11 him in the control room?

12 A. He would go some other times, like, too, but
13 he wouldn't write anything no more.

14 Q. Okay. Now, did you ever see Star with any
15 adult magazine?

16 A. Yes.

17 Q. Explain what you saw.

18 A. Like one time in The Zipper, in the control
19 panel, which is -- the ride's here. The control
20 panel's right in front to run the ride. There was a
21 magazine in there. And then Star came up and he saw
22 it, he's like, "Oh, that's mine."

23 Q. And did he tell you where he got the
24 magazine?

25 A. Yeah, he said he brought it from home.

26 Q. From his home?

27 A. Yes.

28 Q. What did you see him do with that magazine? 11881

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1 A. He was just looking at it. And when he
2 would, you know, walk away, he would just stash it
3 like in the pant area, like tuck it in.

4 Q. Did you ever see him put it anywhere to hide
5 it?

6 A. Not put it, but I would find -- I found it
7 in The Zipper and I think someone else from the park
8 found one like where the swings are at.

9 Q. Okay. And did they say anything to him, to
10 your knowledge?

11 A. To my knowledge, no. I don't know.

12 Q. Yes. Now, after he told you he brought it
13 from his home --

14 A. Uh-huh.

15 Q. -- what did he do with the magazine?

16 A. He was just looking at it. And then I'm
17 like, "Well, you know what? Just put it away,
18 because there's" -- you know, "There's other guests
19 here, and just don't be bringing it to the park."

20 Q. And what part of the park did you find Star
21 with the magazine he said he brought from his home?

22 A. Where The Zipper's at, which is closer to
23 the -- to like where the theater area is at.

24 Q. Was Gavin with him at this point in time?

25 A. No, not at that point.

26 Q. Was Davellin with him at this point in time?

27 A. I think she was.

28 Q. And what were they doing when you caught 11882

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1 Star with that magazine?

2 A. I think she was in the -- on the ride, the
3 one I was running, while Star was looking at it.

4 Q. Okay. Now, which ride was she on, if you
5 know?

6 A. The Zipper.

7 Q. Okay. So are you at the control panel?

8 A. Yes, I'm in the control panel.

9 Q. You're operating The Zipper for Davellin,
10 right?

11 A. Yes.

12 Q. And where is Star standing at that point?

13 A. The control panel's here, and then there's a
14 fence area, just like small, right here, and he was
15 right here on this side, to the right.

16 Q. When you first saw his magazine, where did
17 you see it?

18 A. It was -- the control panel, there's two
19 doors that you open up, like two little black doors
20 you open up, and it was tucked in there.

21 Q. And did he admit it was his?

22 A. Yes, he did.

23 Q. Did he then take it from that area?

24 A. Yeah, he took it away, and he started
25 looking at it, and then he -- when I told him to put
26 it away, he just tucked it in his pants.

27 Q. Now, was this sometime in the year 2003, do

28 you think? 11883

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1 A. Yes, yes.

2 Q. Was it February or March of 2003; do you
3 know?

4 A. You know what? I'm not sure exactly what
5 month.

6 Q. Okay. When you talked to Star about the
7 adult magazine, was Davellin still on the ride?

8 A. Yes.

9 Q. Had they arrived together, to your
10 knowledge, for the ride?

11 A. I think she arrived first, and then she got
12 on, and then -- I think -- because each one had
13 different cars, I think. And when she got on, Star
14 was right behind her.

15 Q. Okay. Now, you've described one incident
16 where you caught Star trying to operate a ride --

17 A. Uh-huh.

18 Q. -- with Davellin on the ride, right?

19 A. Yes.

20 Q. Did you ever see any of the Arvizo children
21 do that again?

22 A. Maybe before that, Gavin would try to start
23 them, too.

24 Q. And describe what you mean, please.

25 A. For example, let's say him -- Gavin, Star
26 and his sister would come up and they would be, "I
27 want to" -- "Can we ride The Zipper?"

1 As we were walking, maybe Gavin was already
2 at the control panel trying to start it.

3 Q. And you saw this happen?

4 A. Yes.

5 Q. What did you do when you saw that happen?

6 A. I told them, like, not to be doing that,
7 because, you know, only the employees can be running
8 the rides.

9 Q. Did you ever see Gavin or Star driving quads
10 on the property?

11 A. Yes.

12 Q. And please describe what a quad is.

13 A. That's a -- a quad is like a four-wheel --
14 like a motorcycle where you can take to the
15 mountains and drive them around there, around the
16 property.

17 Q. How fast do they go?

18 A. How fast do they go? Maybe like 30 miles
19 per hour, I guess. 40.

20 Q. Did you observe them driving those quads?

21 A. Yes.

22 Q. What did you notice about it?

23 A. Destructive. Run over the grass. Just
24 almost -- I mean, Gavin almost tried to -- like, he
25 almost ran over, like, my co-worker, Javier Velasco.
26 If he wasn't paying attention, he would have gotten
27 hit, but he was aware of how they were driving, so --

28 Q. And when you saw them driving like this, did 11885

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1 you say anything?

2 A. No. We did at first, but after a while they
3 would keep on doing it, and, you know, we would just
4 stay out of the way.

5 Q. Did you see the mother around while they
6 were driving the quads in this fashion?

7 A. I hardly saw the mother.

8 Q. Did you ever see the mother at the amusement
9 area?

10 A. Rarely. Maybe like once. Let's say if they
11 were there for a week, maybe she would come down
12 once for, like, a couple minutes and that's it.

13 MR. MESEREAU: No further questions, Your
14 Honor.

15 THE COURT: All right. We'll take our break.

16 (Recess taken.)

17 THE COURT: Counsel?

18 MR. AUCHINCLOSS: Thank you, Your Honor.

19

20 CROSS-EXAMINATION

21 BY MR. AUCHINCLOSS:

22 Q. Good afternoon, Mr. Avila.

23 A. Good afternoon.

24 Q. You've worked at Neverland for about five
25 years. Is that about right?

26 A. A little bit less than five years, yes.

27 Q. You're in security now?

1 Q. How long have you been a security guard?

2 A. Like four months, five months.

3 Q. And you testified that the Arvizo boys

4 became more and more rowdy as their stay increased

5 at Neverland; is that right?

6 A. Yes.

7 Q. So when they first came there, they were --

8 would you say that they were fairly well behaved?

9 A. I would say fairly well. It was quick.

10 They would come, get on the rides, and leave.

11 Q. But as they stayed there more and more,

12 their behavior became more and more rowdy?

13 A. Yes.

14 Q. Would you say that's a common pattern among

15 children at Neverland?

16 MR. MESEREAU: Objection.

17 THE WITNESS: Yes, among children --

18 THE COURT: Just -- overruled.

19 Q. BY MR. AUCHINCLOSS: So the longer kids stay

20 at Neverland, the more rowdy they tend to become; is

21 that fair to say?

22 A. Rowdy --

23 Q. Misbehaving, that type of thing.

24 A. Misbehaving. A little bit. Not a lot.

25 Q. Okay. You were interviewed about these

26 facts by the Santa Barbara Sheriff's Office; is that

27 correct?

28 A. Yes. 11887

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1 Q. And during that interview, you had some
2 problem determining whether the sheriff's department
3 was talking about the Cascio kids or the Arvizo
4 kids; isn't that true?

5 MR. MESEREAU: Objection.

6 THE WITNESS: Yes.

7 MR. MESEREAU: Objection; foundation.

8 THE COURT: Overruled. The answer is, "Yes."

9 Next question.

10 Q. BY MR. AUCHINCLOSS: All right. And the
11 reason for that is because the Cascio kids, who stay
12 there quite often at Neverland, are quite rowdy
13 themselves; is that fair to say?

14 A. They would stay there a lot, but they
15 weren't rowdy.

16 Q. Didn't you say they were rowdy? Didn't you
17 tell the sheriff's department that they were?

18 A. No, they weren't. Not the Cascios.

19 Q. None of the Cascio kids misbehaved?

20 A. No.

21 Q. As far as this magazine that you said was
22 found in Star's possession, I believe your testimony
23 is he was standing beside you and leafing through a
24 magazine with pictures of nude women?

25 A. Yes.

26 Q. And that was one magazine, correct?

27 A. Yes, just one magazine.

28 Q. Okay. Now, you signed a declaration in this 11888

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1 case for the defense; isn't that correct?

2 A. Yes, I did.

3 Q. And who prepared that declaration?

4 A. I think it was Eric Mason. I think he first
5 interviewed me.

6 Q. A private investigator?

7 A. Yes.

8 Q. All right. Now, in that declaration, it
9 says that Star had pornographic "magazines." Was
10 that a misprint?

11 A. That I have seen, it was just one magazine.

12 Q. Okay.

13 A. Someone else said they found one. Maybe
14 that's why it's "magazines."

15 Q. But you have no direct knowledge of this
16 other magazine that was found?

17 A. No. Other magazines, no.

18 Q. So Star -- if I'm picturing this correctly,
19 Star is standing next to you, and he's just casually
20 looking at this magazine?

21 A. Yes, I'm running the ride here, and he's
22 about maybe like right here, this far away, to my
23 right.

24 Q. Okay. Indicating maybe about three or four
25 feet?

26 A. Yeah.

27 Q. And just casually looking at the magazine?

28 A. Yes. 11889

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1 Q. Like it's no big deal to look at a nude

2 magazine at Neverland?

3 A. Yeah. Yeah. Well --

4 MR. MESEREAU: Objection; assumes facts not

5 in evidence.

6 THE COURT: Argumentative.

7 MR. MESEREAU: Argumentative.

8 THE COURT: I'll strike it. Sustained.

9 MR. AUCHINCLOSS: Okay.

10 (Laughter.)

11 Q. BY MR. AUCHINCLOSS: So let's move on to

12 the -- well, before we move off that subject, is

13 it -- did you know that Mr. Jackson kept nude

14 magazines at Neverland?

15 MR. MESEREAU: Objection; foundation.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 Q. BY MR. AUCHINCLOSS: Didn't you tell the

19 sheriff's department that you had knowledge that Mr.

20 Jackson had nude magazines at Neverland?

21 A. No. No. No.

22 Q. You're sure about that?

23 A. Yeah.

24 Q. Didn't you tell Detective Vic Alvarez that

25 this magazine might have come from Mr. Jackson?

26 MR. MESEREAU: Objection; misstates the

27 evidence.

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1 THE WITNESS: No.

2 Q. BY MR. AUCHINCLOSS: As far as this ride
3 that was started by Star, you said that you were in
4 a different part of the park?

5 A. Yes.

6 Q. And you were operating The Zipper?

7 A. Yes.

8 Q. Didn't you also state in one of your
9 interviews that the Arvizo children were the only
10 three children at Neverland during that time?

11 A. There was times that they were. And then
12 there was times that, you know, after a day or two,
13 there was more people there.

14 Q. But didn't you specifically state that
15 during this incident that Star operated the swing
16 ride, the Arvizo children were the only three
17 children at Neverland? Didn't you specifically
18 state that?

19 A. I can't remember if I specifically said it,
20 but I know that it was -- it was them three that
21 were there during that time.

22 Q. So they were the only three at the amusement
23 park at that time?

24 A. At the amusement park, yeah.

25 Q. Why were you operating The Zipper if the
26 Arvizo children were the only three people at
27 Neverland and they were in a different part of the

28 park? 11891

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1 A. Well, they were in the park. They -- you
2 know, they split up. Let's say one wants to ride on
3 this ride, one wants to ride on this ride. Okay,
4 "Well, let me go run this ride first," and then if
5 there's, you know, one person, two other -- the
6 other two people are somewhere else. I don't know
7 where they're at.

8 Q. Well, didn't you just say Gavin wasn't
9 anywhere to be seen during this time; he wasn't
10 around?

11 A. When was this at?

12 Q. When Star and Davellin were over on the
13 swing ride and Star was operating it.

14 A. No, Gavin was not -- when Star started the
15 ride, Gavin was not there.

16 Q. Gavin was not at the amusement park at that
17 time?

18 A. I don't know if he was in the amusement
19 park, but I didn't see him there where the swing was
20 at.

21 Q. Okay. So do you know who was on The Zipper
22 at that time?

23 A. The Zipper -- what time?

24 Q. During the time that Star was operating the
25 swing ride.

26 A. Okay. You know what? I'm not sure.

27 Q. Okay. Now, do these rides have keys that

28 prevent their operation by children? 11892

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1 A. Some do.

2 Q. And there are very young children that stay
3 at Neverland; is that correct?

4 A. Yeah.

5 Q. And the swing ride does have a key, correct?

6 A. The swing ride has a key, yeah, I think it
7 does.

8 Q. Didn't you tell that to investigators, that
9 it had a key?

10 A. Yeah, I think it has a small key on the left
11 corner.

12 Q. So don't you remove those keys when those
13 rides are not being operated?

14 A. No.

15 Q. You just leave the keys there, and if
16 someone comes up and operates them, you'll try and
17 stop them, I guess?

18 A. Yeah.

19 MR. AUCHINCLOSS: Thank you, Mr. Avila. I
20 have no further questions.

21 MR. MESEREAU: No further questions, Your
22 Honor.

23 THE COURT: Thank you. You may step down.

24 Call your next witness.

25 MR. MESEREAU: Yes. The defense will call

26 Ms. Lessie Dean Wraggs.

27 THE COURT: When you get to the witness

28 stand, please remain standing. 11893

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1 Face the clerk here and raise your right
2 hand.

3

4 LESSIE DEAN WRAGGS

5 Having been sworn, testified as follows:

6

7 THE WITNESS: Yes, I do.

8 THE CLERK: Please be seated. State and
9 spell your name for the record.

10 THE WITNESS: My name is Lessie Wraggs.

11 Lessie Dean Wraggs. It's L-e-s-s-i-e, D-e-a-n,
12 W-r-a-g-g-s.

13 THE CLERK: Thank you.

14 MR. MESEREAU: Thank you, Your Honor.

15

16 DIRECT EXAMINATION

17 BY MR. MESEREAU:

18 Q. Good afternoon, Miss Wraggs.

19 A. Hi.

20 Q. Miss Wraggs, you live in the Compton area?

21 A. Yes.

22 Q. And that's in Los Angeles County, right?

23 A. Yes.

24 Q. Have you ever met someone named Janet

25 Arvizo?

26 A. Yes.

27 Q. And when do you think you met Janet Arvizo

28 for the first time? 11894

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1 A. I think it was like '98. I'm not for sure.

2 Q. And what are the circumstances under which
3 you met her?

4 A. She came to Universal Dance to bring her
5 kids.

6 Q. And what is Universal Dance?

7 A. It's a dance -- tap school, ballet and jazz.

8 Q. Okay. You may want to just put the
9 microphone a little closer if you can. Thank you
10 very much.

11 You said it's a school for what?

12 A. Dance.

13 Q. Okay. And were you working at that school?

14 A. Yes. Receptionist.

15 Q. What was the name of it?

16 A. Universal Dance.

17 Q. Okay. And where was the Universal Dance
18 school located?

19 A. 6009 West Olympic Boulevard in Los Angeles.

20 Q. And you were the receptionist?

21 A. Yes.

22 Q. Okay. When you first met Janet Arvizo, was
23 she with her children?

24 A. Yes.

25 Q. And where did you meet this family?

26 A. She came up to me and asked me about classes
27 for her kids, but she wanted free classes, and I

28 told her that she would have to talk to the owner. 11895

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1 Q. Okay. She wanted free classes?

2 A. Yes.

3 Q. And did you send her to the owner?

4 A. Yes.

5 Q. And who was the owner of the school at that
6 time?

7 A. Paul and Arlene Kennedy.

8 Q. Okay. Now, do you still work at the school?

9 A. Part time. I go up and help out.

10 Q. Okay. And so for how many years have you --

11 I received a note to ask you to try and raise
12 your voice a little bit.

13 A. Okay.

14 Q. Thank you very much.

15 How many years now have you worked at that
16 school?

17 A. About 13 or 14 years.

18 Q. Now, when Janet asked you if her kids could
19 go to the school for free, did you have the
20 authority to tell her they could?

21 A. No.

22 Q. And that was the owners' responsibility,
23 right?

24 A. Yes.

25 Q. Okay. You sent her to the owner?

26 A. Yes.

27 Q. And what's the next thing you recall about

28 Miss Arvizo? 11896

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1 A. She -- he talked to her. I don't know what
2 he said to her. And Arlene talked to her. They
3 decided to let them have some free classes.

4 Q. Do you know why?

5 A. Do I know why?

6 Q. Yes.

7 A. She said she couldn't afford to pay for the
8 classes, and that she had been passing by looking at
9 the school and saw some of the kids dancing, and she
10 was interested in her kids dancing.

11 Q. Now, to your knowledge, did the Arvizo
12 children attend the school?

13 A. Attend Universal?

14 Q. Yes.

15 A. Yes.

16 Q. How long do you recall their doing that?

17 A. They were there like about maybe three
18 years.

19 Q. Okay. So this would be starting in
20 approximately when?

21 A. Eighty -- '98.

22 Q. Okay. Okay. And would you see them often?

23 A. Yes, I used to see them. Well, I was seeing
24 them every weekend.

25 Q. Do you ever recall whether or not Janet
26 asked anyone for money at the school?

27 A. Yes. Mr. Kennedy. Paul Kennedy.

28 Q. How do you know that? 11897

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1 A. I had heard. Well, he said something to me
2 about it.

3 MR. AUCHINCLOSS: I'll object and move to
4 strike based on multiple hearsay.

5 THE COURT: Sustained. Stricken.

6 Q. BY MR. MESEREAU: Would you see the children
7 with the mother from time to time?

8 A. Yes.

9 Q. And can you describe the mother's demeanor?

10 A. She -- she had control of the kids. She
11 controlled the kids very well. The father, he
12 didn't have control like she did.

13 Q. And when you say "control," what do you
14 mean?

15 A. Okay. We had advanced classes and beginner
16 classes and intermediate classes, and she wanted her
17 kids in the advanced class and they wasn't ready,
18 and she would tell her kids to go on and go into the
19 classes anyway.

20 And I would tell them that they couldn't go,
21 but when I would turn away, she would try to send
22 them in. After sending them in, Miss Kennedy would
23 have to go and pull them out.

24 Q. Okay. Did that happen often?

25 A. Quite a few times.

26 Q. Were the kids well behaved, to your
27 knowledge?

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1 Q. What do you mean by that?

2 A. They would be all over the dance school,
3 into things that they didn't have no business being
4 into, going to the shoe boxes. Like we had tap
5 shoes that were, like, behind me or either in the
6 closet. They would be in the closet. They would
7 just go all over the desk and just do whatever.

8 Q. Did you try and stop them from time to time?

9 A. Yes. They always talked smart. The two
10 boys especially.

11 Q. That's Gavin and Star?

12 A. Yes.

13 Q. And what would they say to you?

14 MR. AUCHINCLOSS: I'm going to object as
15 hearsay.

16 THE WITNESS: "We're doing what we want to
17 do."

18 THE COURT: Just a moment.

19 The objection is overruled.

20 Q. BY MR. MESEREAU: What did Gavin and Star
21 say to you that you thought was smart?

22 A. "We're doing what we want to do."

23 Q. And what would you say to them?

24 A. I would tell them they have to get off the
25 shoe boxes. Sometimes I have to move them out of
26 their way to make them leave them alone.

27 Q. Now, did this kind of smart behavior happen

28 right from the start? 11899

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1 A. I think about the second time they came,
2 that's when I noticed how they were. And I
3 mentioned to Paul and Arlene Kennedy that, "These
4 kids are out of control, and I think they're only
5 here because the mother want to use you. I think
6 they have money to pay for their classes." I told
7 her that.

8 MR. AUCHINCLOSS: I'll object. Improper
9 opinion; no foundation.

10 THE COURT: Sustained.

11 MR. AUCHINCLOSS: Move to strike.

12 THE COURT: Stricken.

13 Q. BY MR. MESEREAU: Do you recall how the
14 Arvizo family would arrive at the dance school?

15 A. The only time that I really recall is when
16 they came in with a new car.

17 Q. And what kind of car was it?

18 A. It was like an SUV.

19 Q. Do you know approximately when they arrived
20 with the SUV?

21 A. She told us about -- well, he told us first
22 about that they had had a problem at J.C. Penney's;
23 that the security guards beat --

24 MR. AUCHINCLOSS: I'll object as
25 nonresponsive.

26 THE COURT: Sustained.

27 Q. BY MR. MESEREAU: Let me just first focus on

28 the car. 11900

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1 A. Okay.

2 Q. When they first started coming to the
3 school, were they arriving in an SUV?

4 A. No.

5 Q. One day you saw them arrive in an SUV,
6 right?

7 A. Uh-huh.

8 Q. And approximately when was that, do you
9 think?

10 A. I'm not for sure when. It might have been
11 like --

12 BAILIFF CORTEZ: You need to speak up.

13 THE WITNESS: I'm not for sure what year it
14 was.

15 Q. BY MR. MESEREAU: And did it seem to be new?

16 A. It was new.

17 Q. Okay. Did you ask Janet where they got this
18 new SUV?

19 A. No, I didn't ask her.

20 Q. Did you see them arrive in that brand-new
21 SUV after that?

22 A. Yes.

23 Q. How many times do you think they arrived in
24 that brand-new SUV?

25 A. At least three or four times.

26 Q. Okay. Now, did you ever talk to Janet about
27 an incident that happened at J.C. Penney's?

28 A. Yes. 11901

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1 Q. And did she tell you about that incident?

2 A. Yes.

3 Q. What did she tell you?

4 A. That the security there jumped on her for no
5 reason at all, and her kids was running trying to
6 help her, and as they was running trying to help
7 her, the security guard beat her to the ground.

8 That's about it. She --

9 Q. Did she ever say anything about the race of
10 those security guards?

11 A. Black.

12 MR. AUCHINCLOSS: Objection. 352; relevance.

13 MR. MESEREAU: I think it's impeachment,

14 Your Honor.

15 THE COURT: The objection's overruled. The
16 answer was, "Black." Next question.

17 Q. BY MR. MESEREAU: Did she say anything more
18 about the race of those security guards to you?

19 A. She just said that they were black, all of
20 them were black.

21 Q. And did she say she was concerned about
22 something coming out of that incident?

23 A. She said the reason they hadn't been back to
24 dance school is because her kids were scared to
25 death of black people and that they hated blacks
26 now.

27 Q. Do you recall whether or not Janet ever said

28 that her family was homeless? 11902

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1 A. Yes.

2 Q. Did she say that?

3 A. Yes.

4 Q. Do you know approximately when Janet said
5 that her family was homeless?

6 A. It was after that incident.

7 Q. Did you believe her?

8 A. No.

9 MR. MESEREAU: No further questions.

10

11 CROSS-EXAMINATION

12 BY MR. AUCHINCLOSS:

13 Q. Good afternoon, Miss Wraggs.

14 A. Hi.

15 Q. Hi. Now, you began your testimony by
16 telling us about how Janet stopped by the dance
17 school and asked about free classes.

18 A. Yes.

19 Q. Do you know if that dance school ever gave
20 scholarships to students before that time?

21 A. Yes, they gave scholarships to certain kids.

22 Q. Okay. Did Janet ask for a scholarship?

23 A. No.

24 Q. When she came in, tell me about how she
25 asked for the free classes. How did that
26 conversation come about?

27 A. First she stood around and looked at the

28 kids dance. 11903

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1 Q. I'm sorry?

2 A. She went around and went to each class and
3 was watching the kids dance.

4 Q. Did she have any children with her?

5 A. Yes, she had her kids with her.

6 Q. All three?

7 A. All three.

8 Q. Okay.

9 A. And then she came to the desk and asked me
10 about free classes.

11 Q. If there were any free classes?

12 A. Yes.

13 Q. Did she know whether or not -- were there
14 any signs posted that this dance school was maybe a
15 community-service-oriented enterprise, or was for
16 pay? Does it have anything like -- you know, like
17 pricing sheets on the wall, anything like that?

18 A. Yeah, we have -- we had schedules, and it
19 showed how much the classes cost. Gave her a
20 schedule.

21 Q. Where are those schedules?

22 A. They were at my desk.

23 Q. All right. And you referred her to Paul
24 Kennedy?

25 A. Yes.

26 Q. And he's the owner of that school, right?

27 A. Paul and Arlene Kennedy. She talked to both

28 of them. 11904

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1 Q. And the Kennedys agreed to allow Miss
2 Arvizo's children to attend that dance school for
3 free?

4 A. Yes.

5 Q. Were you present during that conversation
6 that she had with the Kennedys?

7 A. Yes.

8 Q. All right. And the Kennedys continued to
9 allow the Arvizo children to have free classes at
10 their school for three years?

11 A. Yes. I don't know how many years, but they
12 were there.

13 Q. For three years?

14 A. They were free. They were free.

15 Q. Well, didn't you testify just a few moments
16 ago that it was three years?

17 A. I told you also I'm not for sure about the
18 years, but she was there taking free classes. It
19 was probably about three years.

20 Q. All right. And the Kennedys could have
21 terminated those classes at any time that they
22 wanted?

23 A. Yes.

24 Q. As far as this remark about the children not
25 attending dance class because they were afraid of
26 black people, you didn't believe that, did you?

27 MR. MESEREAU: Objection. That misstates

1 THE WITNESS: Pardon?

2 THE COURT: Overruled. You may continue.

3 Q. BY MR. AUCHINCLOSS: My question was, you
4 didn't believe that the children disliked black
5 people, did you?

6 A. No, I didn't believe it.

7 Q. Okay. Janet was concerned that that was
8 their perception; that they might have a problem
9 with black people. She was worried about that,
10 wasn't she?

11 A. No. I don't think so, because the kids --

12 Q. Did she express it?

13 A. No, because the kids had come before Janet
14 brought them back. She didn't know that her husband
15 had already brought them there, and they had been
16 playing with the kids. But when she came, she said
17 the reason they hadn't been back was because the
18 kids were scared of blacks and that they hated
19 blacks now.

20 Q. Okay. So that was Janet, what Janet
21 thought, but Janet was wrong?

22 A. Yes.

23 Q. Now, how old were the children when they
24 started this dance school?

25 A. Let's see. I think one was about eight.

26 Q. Do you know which one that was?

27 A. I think -- well, the baby boy might have

28 been seven or eight, and then Gavin was about nine. 11906

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1 I think. And I'm not for sure how old the girl was.

2 She might have been 10 or 11.

3 Q. Did Gavin have cancer during the period of
4 time they attended the school?

5 A. No.

6 Q. Was this before he had cancer or after he
7 had cancer?

8 A. Before.

9 MR. AUCHINCLOSS: All right. Thank you. No
10 further questions.

11 MR. MESEREAU: No further questions, Your
12 Honor.

13 THE COURT: All right. Thank you. You may
14 step down.

15 Next witness, please.

16 MR. MESEREAU: Defense will call Ms. Arlene
17 Kennedy.

18 THE COURT: When you get to the witness
19 stand, please remain standing.

20 THE WITNESS: Sure.

21 THE COURT: I'm going to ask you to face the
22 clerk right here and raise your right hand.

23

24 ARLENE KENNEDY

25 Having been sworn, testified as follows:

26

27 THE WITNESS: I do.

28 THE CLERK: Please be seated. State and 11907

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1 spell your name for the record.

2 THE WITNESS: My name is Arlene Kennedy.

3 A-r-l-e-n-e, K-e-n-n-e-d-y.

4 THE CLERK: Thank you.

5

6 DIRECT EXAMINATION

7 BY MR. MESEREAU:

8 Q. Good afternoon, Miss Kennedy.

9 A. Good afternoon.

10 Q. Miss Kennedy, do you run a dance school?

11 A. Yes, I do.

12 Q. And how long have you done that?

13 A. I'm in my 25th year.

14 Q. What is the name of the school?

15 A. Universal Dance Design.

16 Q. And where is it located?

17 A. In Los Angeles.

18 Q. And do you teach there as well?

19 A. Yes, I do.

20 Q. Have you taught during the entire time that

21 you've owned the school?

22 A. Yes, I have.

23 Q. Okay. Do you know someone named Janet

24 Arvizo?

25 A. Yes, I do.

26 Q. And how do you know her?

27 A. Janet came to my school with her family, her

28 husband and her three children, when her youngest 11908

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1 was about -- Star was about five years old. And
2 they came into my school and they asked my brother
3 and I -- they said they couldn't afford to take
4 lessons, so they asked if we could give them a
5 scholarship that they could take free lessons, and
6 my brother said yes, they could.

7 Q. Do you know approximately when this was?

8 A. Star was about five years old. That's the
9 only -- I can't tell you, you know, what year it
10 was, because I don't know how old he is now, but he
11 was about five -- he was five years old.

12 Q. Now, were the father and the mother together
13 when they asked for free classes?

14 A. Yes, they were.

15 Q. Did you ask whether or not the father was
16 employed?

17 A. I didn't. My brother actually did talk to
18 the family, and my brother actually made that
19 decision.

20 Q. And did you know whether or not the father
21 worked for Von's?

22 A. I didn't know where he worked.

23 Q. Did you know whether or not the mother
24 worked?

25 A. The mother I don't think worked at that
26 time.

27 Q. Okay. Did anyone tell you that they were

28 homeless? 11909

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1 A. No.

2 Q. Okay. Did they tell you they had no money?

3 A. They said they didn't have any money. They
4 said they didn't have any money. They couldn't
5 afford dancing classes.

6 Q. Okay. And you and your brother agreed to
7 give them free classes, right?

8 A. Yes.

9 Q. And how long did the free classes go for, if
10 you know?

11 A. Well, they went in and out, because there
12 was like a series of events. So, let's say that
13 they would take the classes for this period of time,
14 and then they were gone. And then when they came
15 back, there was -- the father was telling me about
16 the issue of J.C. Penney's. And so they were back
17 for a short time, and then they were gone again, and
18 then Gavin got cancer.

19 And so when -- all during the time when he
20 had cancer, I was up, you know, at the hospital
21 visiting him and what have you, and then they were
22 gone. So they were gone during that time and then
23 after he got healed, they came back again.
24 And then after, they were -- they were back
25 again for a short period of time, and then they were
26 gone again, and I guess it was during the time of
27 her divorce. And then they came back again.

28 And the last time that I saw them, they were 11910

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1 in middle school, and they rode a bike. Star and
2 the girl rode bikes to my school from East L.A., and
3 they had to go back at night, and I said, "If this
4 is your best way of traveling," you know, "as young
5 as you are," I said, "that's very dangerous for you
6 to be going from L.A. to East L.A. on a bike at
7 night."

8 And I said, "If you don't have an adult,"
9 you know, "coming with you," I said, "I don't think
10 you should come like that."

11 And that was the last that I saw them for
12 dance classes.

13 Q. Now, your description of the children being
14 on bikes, was that after Gavin had recovered from
15 cancer?

16 A. Yes. Yes.

17 Q. Okay. Did the children tell you they had no
18 car?

19 A. They didn't -- they didn't say that they
20 didn't have a car, because they didn't discuss that.

21 I know that while they were in the hospital, I know
22 that Carol Lamir asked Michael to give them a car so
23 that they can get back and forth to the hospital. I
24 remember that.

25 Q. And to your knowledge, did that happen?

26 A. Yes, it did.

27 Q. Now, during the entire period of time that

28 you've described, were the Arvizos going to your 11911

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1 school for free?

2 A. Yes.

3 Q. Did you ever charge them a dime to go to
4 your school?

5 A. Never.

6 Q. And this is for how long a period of time?

7 A. Well, I would say from Star being five years
8 old until they were in middle school.

9 Q. And did you ever learn whether or not during
10 that period of time the father was employed?

11 A. The father was employed, yes, prior to
12 Gavin's being sick. And I know once Gavin was sick,
13 stricken with cancer, the father became unemployed
14 because he stayed at the hospital night and day with
15 his son. So he gave up his job to stay at the
16 hospital with his son.

17 Q. Now, did you discuss the alleged events at
18 J.C. Penney with Janet?

19 A. When Janet came back. But the father and I
20 discussed it first, because I said, "Well, where
21 have the kids been?"

22 And he said, "Oh, Miss Kennedy," he said,
23 you know, "It's been crazy." And he started telling
24 me about J.C. Penney's, but when Janet came back, it
25 was a different story than what he had told me.

26 Q. What did Janet tell you?

27 A. Janet told me that the event happened in the

28 alley, and it was some black guys that, you know, 11912

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1 jumped on her and what have you, and that she said
2 that she hoped that her children wouldn't grow up to
3 hate black people.

4 But the father, on the other hand, had told
5 me that it happened in the middle of the mall.

6 MR. AUCHINCLOSS: Object as to hearsay, the
7 statements of Mr. Arvizo.

8 THE COURT: Sustained.

9 Q. BY MR. MESEREAU: And were you told that the
10 children were not attending the school because of
11 the J.C. Penney incident?

12 A. Yes.

13 Q. Okay. Now, at some point while you were
14 giving free lessons to the Arvizo children, did you
15 ever learn that the family had obtained \$152,000
16 from J.C. Penney and another company?

17 MR. AUCHINCLOSS: I'll object as vague as to
18 time.

19 THE COURT: Sustained.

20 Q. BY MR. MESEREAU: At any time did Janet
21 Arvizo ever tell you, "We don't have to get free
22 lessons anymore. We just got \$152,000 from the J.C.
23 Penney lawsuit"?

24 MR. AUCHINCLOSS: I'll object as to
25 relevancy, without foundation.

26 THE COURT: Sustained.

27 Q. BY MR. MESEREAU: Did you ever learn whether

28 or not the Arvizos obtained money from J.C. Penney? 11913

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1 A. Yes, I did.

2 Q. When was that?

3 A. Janet told me that the last time. I think
4 it was after the -- when they came back to dancing
5 school, she said that she had a lot -- they got a
6 large settlement, and she said that the only thing
7 that they really got was these bicycles. That's the
8 way she put it.

9 Q. All they got was the bicycles from J.C.

10 Penney?

11 A. That's what she said. "We got a lot of
12 money, but the only thing that we got that we can
13 show for it was the bicycles."

14 Q. And did you continue to give the children
15 free lessons after that?

16 A. I did. I did.

17 MR. MESEREAU: I have no further questions,

18 Your Honor.

19

20 CROSS-EXAMINATION

21 BY MR. AUCHINCLOSS:

22 Q. Good afternoon, Miss Kennedy.

23 A. Good afternoon.

24 Q. So, the information that Janet gave you
25 about the J.C. Penney settlement, she didn't hide
26 from you that she got some money out of that
27 settlement; is that true?

28 A. That's true. 11914

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1 Q. Okay. And as far as the time that the
2 Arvizos were attending your dance school on
3 scholarship, if I understand it correctly, there was
4 a period of time that they attended, and then they
5 left, they came back, they left, they came back
6 again?

7 A. That's true.

8 Q. Okay. And how long were these two periods
9 where they left your dance school for a period of
10 time?

11 A. Well --

12 Q. Let's go with the first one.

13 A. I would say the first one probably was --
14 was months, I would say.

15 Q. All right.

16 A. I want to say that.

17 Q. And was that around the time that -- when
18 they left at that point, was that around the time
19 that the J.C. Penney's incident occurred?

20 A. Yes. Yes.

21 Q. Okay. When Janet was talking to you about
22 the alley incident that you just described, are you
23 certain that she was talking to you about the J.C.
24 Penney's incident at the same time?

25 A. Yes. Yes.

26 Q. She said an alley?

27 A. Yes.

28 Q. But in either event, she indicated that she 11915

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1 was attacked and assaulted and injured?

2 A. Yes.

3 Q. All right. Did you ever attend church with

4 Miss Arvizo?

5 A. Yes.

6 Q. On more than one occasion?

7 A. Well, it's the reverse. Actually, she

8 attended with me.

9 Q. On more than one occasion?

10 A. Yes.

11 Q. And the decision to give this family a

12 scholarship, was that just a thing that you and your

13 brother did out of the kindness of your heart?

14 A. Yes.

15 Q. Did you ever feel like you shouldn't have

16 done that?

17 A. No.

18 Q. All right. And you've done that for other

19 people as well?

20 A. Of course.

21 MR. AUCHINCLOSS: Thank you. No further

22 questions.

23 MR. MESEREAU: No further questions, Your

24 Honor.

25 THE COURT: Thank you. You may step down.

26 THE WITNESS: Okay.

27 THE COURT: Call your next witness.

28 MR. MESEREAU: Yes. 11916

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1 Defense will call Mr. Chris Tucker.

2 THE COURT: When you get to the witness

3 stand, would you remain standing.

4 Face the clerk here and raise your right

5 hand.

6

7 CHRIS TUCKER

8 Having been sworn, testified as follows:

9

10 THE WITNESS: Yes.

11 THE CLERK: Please be seated. State and

12 spell your name for the record.

13 THE WITNESS: My name is Chris Tucker.

14 C-h-r-i-s, T-u-c-k-e-r.

15 THE CLERK: Thank you.

16

17 DIRECT EXAMINATION

18 BY MR. MESEREAU:

19 Q. Good afternoon, Mr. Tucker.

20 A. Good afternoon.

21 Q. Mr. Tucker, do you know the fellow seated at

22 counsel table to my right?

23 A. Yes.

24 Q. Who is he?

25 A. Michael Jackson.

26 Q. Is he a friend of yours?

27 A. Yes.

28 Q. How long have you known Michael Jackson? 11917

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1 A. Probably four, three years. Four to three
2 years.

3 Q. And what are the circumstances during which
4 you met Michael Jackson for the first time?

5 A. What are the circumstances?

6 Q. Yeah. How did you meet him?

7 A. It's funny; I met him through Gavin Arvizo.

8 And we talked on the phone one time, but of course I
9 knew of him for years. And we talked on the phone,
10 and again we met -- we talked, and we met in New
11 York City, and we -- from then, we met a few other
12 times and went from there.

13 Q. Now, how did you meet Gavin Arvizo?

14 A. I met Gavin at The Laugh Factory. And I'm a
15 stand-up comedian, so I went to The Laugh Factory
16 and I met his father. His father approached me and
17 told me that his kid -- he had a kid that loved me
18 and he was dying of cancer.

19 And I met him -- he told me he was doing a
20 benefit at The Laugh Factory. I told him, "I don't
21 know if I can make it, because I'm always in and out
22 of town, but I'll try to make it," because, you
23 know, he said his kid was dying. So I met him at
24 The Laugh Factory, and that's how I met him.

25 Q. Okay. Do you remember the first time you
26 met Gavin at The Laugh Factory?

27 A. The first time was at a benefit.

28 Q. Okay. And what do you know about that 11918

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1 benefit?

2 A. The benefit was a camp for kids that they
3 put on, they said, every year for kids that wanted
4 to act and do comedy, I guess.

5 Q. And was the benefit, to your knowledge, for
6 the purpose of raising money?

7 A. Oh, yes. Yes. It was for raising money,
8 and there was -- it was, I guess, to like -- for the
9 doctor bills and stuff. I don't know. Something
10 like that. But it was definitely for raising money.

11 Q. And who invited you to the benefit?

12 A. The father. Gavin Arvizo's father, his
13 father.

14 Q. Okay. So the father told you there was
15 going to be a benefit to raise money for medical
16 bills for Gavin?

17 A. Yes.

18 Q. Okay. And you attended that benefit, right?

19 A. Yes.

20 Q. Who else did you see there, if you remember?

21 A. I seen -- I met a lot of kids, and I met his
22 brother Star. And it was kind of dark in the comedy
23 club, but from what I can recall, that's where I met
24 a few of the -- I think it was Star and his father
25 and that was it.

26 Q. Do you recall whether or not you contributed
27 money on that occasion?

28 A. I don't -- not that night, but I did 11919

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1 contribute some money, yes.

2 Q. And explain that, if you would.

3 A. I was asked a few days later to give some
4 money, because they didn't raise any money. They
5 didn't make any money. So I did. I wired some
6 money to their foundation.

7 Q. Okay. Who told you they hadn't raised any
8 money at the benefit?

9 A. Gavin told me, and his father -- well, Gavin
10 told me. Gavin told me.

11 Q. So Gavin told you they didn't make a dime at
12 that fund-raiser?

13 A. Yeah, they said they didn't make any money,
14 and they needed some money. They couldn't -- you
15 know, they needed some money. So --

16 Q. And you then wired them some money?

17 A. Yeah, I wired them some money.

18 Q. How much did you send them; do you know?

19 A. It was probably 1500 or more.

20 Q. Okay. And you believe that was for medical
21 expenses?

22 A. Yes, I was hoping it was for that.

23 Q. Okay. Now, did you see the father from time
24 to time?

25 A. Yeah, only with the kids.

26 Q. Okay. And where would you see the father?

27 A. When they visited. I took them to Knott's

28 Berry Farm one time. I took them to the mall a few 11920

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1 times to buy them clothes and stuff. Those were the
2 times I seen them. Only with the kids.

3 Q. Okay. Now, you say you took them to Knott's
4 Berry Farm?

5 A. Yeah.

6 Q. And please explain what you did.

7 A. Well, I took them also with my son, went to
8 some rides to make him, you know, have a good time.

9 We rode rides, and that was -- that was about it.

10 Q. And who -- who was on that trip, that you
11 can remember, every person that was there?

12 A. It was my son, Star, Gavin's brother,
13 Davellin, I think my son's mother, and -- yeah, that
14 was -- yeah, my son's mother, and David, the father.

15 Q. And who arranged that trip?

16 A. I did.

17 Q. And did you arrange for transportation?

18 A. Yes, I think we went in my car and they
19 followed us in a car.

20 Q. Okay. Was that an all day type of trip?

21 A. Excuse me?

22 Q. Was that an all-day affair?

23 A. I think so, yes. I think it was nighttime.

24 It went into the night, yeah.

25 Q. Now, you said you bought clothes for the
26 Arvizo children at a mall; is that correct?

27 A. Yeah. Yeah. Yeah.

28 Q. And explain what you did, if you would. 11921

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1 A. We went to, like, a sports store. They
2 liked the Raiders, and bought them Raiders stuff,
3 shirts and hats and shoes and stuff like that.

4 Q. And who was with you when you bought these
5 clothes for the Arvizo children?

6 A. The father.

7 Q. Okay.

8 A. And -- David.

9 Q. Did you ever meet the mother?

10 A. I met her in -- the first time in -- in Las
11 Vegas.

12 Q. Okay. And her name was Janet?

13 A. Janet, yes.

14 Q. Okay. And please explain the circumstances
15 under which you met Janet Arvizo in Las Vegas.

16 A. Yeah, it was real brief a few times, because
17 I was filming, and it was -- I didn't really have a
18 lot of time so it was real brief. So, it was just,
19 "Hello," "Hello," because we was filming a movie the
20 first time.

21 Q. Was this on the set that you met Janet
22 Arvizo?

23 A. On the set, yes.

24 Q. Who was with her, if you remember?

25 A. I think David, her husband, and all the kids
26 came up to Las Vegas on a road trip to visit me on
27 the set. I invited them to the set.

28 Q. To your knowledge, who arranged for that 11922

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1 trip? Was it David or the mother?

2 A. I don't know. I think it was David, because
3 at that time I never met her. It was always the
4 kids and the father.

5 Q. And approximately what year do you think
6 this was?

7 A. I think it was 2001.

8 Q. Okay.

9 A. I think.

10 Q. And they came to the lot, right?

11 A. Yes.

12 Q. You met them there?

13 A. Yes.

14 Q. To your knowledge, did they stay very long?

15 A. To my knowledge, I heard they stayed a
16 while, and they was -- they was trying to get them
17 to leave, but I didn't know because I was so busy.
18 That they did stay a couple of -- a week or two. I
19 don't know.

20 Q. And you say they were trying to get them to
21 leave. Who are you talking about?

22 MR. SNEDDON: Your Honor, I'm going to
23 object. Lack of foundation; calls for hearsay.

24 THE COURT: Sustained.

25 Q. BY MR. MESEREAU: To your knowledge, did the
26 Arvizo family remain on the set while you were
27 filming?

28 A. Only the kids, they came. The father -- I 11923

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1 think they came with the father, and they was on the
2 set for a while, and then they was doing stuff
3 around town, but they was on the set a few times,
4 yes.

5 Q. During that trip to Las Vegas when you first
6 met Janet, did you ever see the family again after
7 the day they came to the set?

8 A. Yes. I seen -- after that day, I think -- I
9 think it was the day they came to my house, and I
10 met the mother again when we went to Miami, I think.

11 Q. Now, let me -- maybe -- I may not have asked
12 you a very good question.

13 You're in Las Vegas, you're filming, and you
14 meet the Arvizos on the set, correct?

15 A. Uh-huh.

16 Q. That's the first time you meet the mother,
17 right?

18 A. Yes, uh-huh.

19 Q. Do you see them again in Las Vegas on that
20 trip?

21 A. Yeah, I see them in and out several times,
22 because I was filming long hours, so I'd -- I
23 definitely seen the kids because they'd come to the
24 set and they would be at the set, and I would -- and
25 I think the mother came a few times, too, and the
26 father. So I seen them, but I was so busy. So it
27 was definitely several times I seen them again,

28 yeah. 11924

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1 Q. And did you help them stay on the set? I
2 mean, did you give them a pass or anything of that
3 sort?

4 A. Yes, I told them that -- I told the people
5 that this was okay for them to be there. They were
6 my guests.

7 Q. Okay. And did you consider them friends of
8 yours at the time?

9 A. Yes. Yes.

10 Q. Now, after that Las Vegas trip, did you see
11 the Arvizos again?

12 A. After that, I seen them -- I think it was at
13 the house that time. And any other time I can't
14 think of it, but it was at the house that time.

15 Q. Is this at your house?

16 A. My house.

17 Q. Was this in Los Angeles?

18 A. In Los Angeles, yes.

19 Q. Okay. Now, why were they at your house in
20 Los Angeles?

21 A. Well, they called me, because they wanted to
22 go out of town, and they wanted to -- and they
23 wanted to find out where Michael was, because they
24 always wanted to find out -- they wanted to find out
25 where Michael was, and they wanted to go out of
26 town.

27 Q. Okay. Now, you say "they wanted to go out

28 of town." Are you referring to Janet? 11925

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1 A. I'm saying the kids, because most of the
2 time I talked to Gavin.

3 Q. Okay.

4 A. And --

5 MR. SNEDDON: Your Honor, I'm going to move
6 to strike as hearsay.

7 MR. MESEREAU: It's impeachment.

8 MR. SNEDDON: I don't think there's --

9 THE COURT: Sustained. You'll need to be
10 more direct about who's speaking.

11 MR. MESEREAU: Okay.

12 Q. I won't use the term "they" when I ask you
13 questions about who's speaking. I'll just use
14 individual names, okay?

15 You said the Arvizo family was at your home
16 after the Las Vegas trip, right?

17 A. Yes.

18 Q. And who in the Arvizo family was at your
19 home?

20 A. Gavin, Davellin, Star and Janet, the mother.

21 Q. Was the father there on that occasion?

22 A. No.

23 Q. Did you invite them to your home?

24 A. Yes.

25 Q. Who did you invite specifically to visit you
26 at your house?

27 A. Star -- Gavin and his family, whoever was

28 with him. At the time, I didn't know who was with 11926

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1 him at the time. David, Davellin, Star and Gavin.

2 Q. Now, before Janet and her children visited
3 you at your home in Los Angeles, did you speak to
4 Janet on the phone?

5 A. I did speak to her before that --

6 MR. SNEDDON: Vague as to time.

7 THE COURT: Sustained.

8 Q. BY MR. MESEREAU: Okay. What year was the
9 Las Vegas trip?

10 A. I guess it was 2001.

11 Q. And how long after the Las Vegas trip did
12 Janet and the children come to your home in Los
13 Angeles?

14 A. It had to be -- I was filming, so it had to
15 be a couple of months, a few months.

16 Q. So do you think we're still in 2001?

17 A. I think so.

18 Q. Okay. Did Janet call you on the phone after
19 the Las Vegas trip?

20 A. Yes.

21 Q. And did you speak to her on the phone?

22 A. Yes.

23 Q. Did -- what did she say to you?

24 A. I talked to her one morning, and I remember
25 because we was promoting a movie and we was talking
26 about something, and she started crying on the
27 phone, was crying, crying, crying, and, you know,

28 she always said I was their brother, the kids' 11927

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1 brother, and all that stuff.

2 And we -- you know, I can remember this

3 phone call, because she was crying. And I was --

4 you know, I was always saying, you know,

5 "Everything's going to be all right," because that's

6 about as much as I could do. And that phone call

7 was kind of confusing, so I don't remember what was

8 said and all that stuff.

9 Q. But you remember her crying?

10 A. Yeah.

11 Q. Okay. Did you invite her to your home

12 during that phone conversation?

13 A. No. No, that was another conversation.

14 Q. Okay. After that first conversation, did

15 she call you again?

16 A. I don't recall.

17 Q. Okay. Do you recall whether or not you ever

18 called Janet?

19 A. No, I never called her.

20 Q. Did you ever call David on the phone, to

21 your knowledge?

22 A. Never called him, no.

23 Q. Did he ever call you on the phone?

24 A. Not that I can recall. It was mostly Gavin.

25 Q. So Gavin would call you on the phone?

26 A. Yes.

27 Q. Did he call you often?

1 Q. And I'm talking now about the time period

2 after the Las Vegas trip, okay?

3 A. Okay.

4 Q. How did Gavin get your phone number?

5 A. I gave him my number at The Laugh Factory

6 the first time I met him. He asked for it, and I

7 gave it to him.

8 Q. Okay. And is there any particular reason

9 why you gave Gavin Arvizo your phone number at The

10 Laugh Factory?

11 A. Because, I mean, I felt like, you know,

12 whatever I could do to help him out. You know, he

13 didn't have any hair. He was going through, you

14 know, all this what they say, you know, he was going

15 through, whatever. But, you know, he was a kid, and

16 whatever I could do, you know, I'd say, you know,

17 "Here."

18 Q. Was he going through chemotherapy?

19 A. Yes. That's what they said, yeah.

20 Q. Did they tell you he was undergoing cancer

21 treatment?

22 A. That's what they said.

23 Q. This was at the fund-raiser, right?

24 A. Yes.

25 Q. All right. Now, after that fund-raiser, Mr.

26 Tucker, did he start calling you on a regular basis?

27 A. Yes, he did. Yes.

28 Q. And when you say "a regular basis," like how 11929

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1 often would Gavin Arvizo call you on the phone?

2 A. He called -- he called a lot. And then --
3 and then -- he called a lot. It wasn't my main
4 number, but I knew it was -- I checked all the time,
5 because I was always different places. So I checked
6 it so I can tell how many times he called. But I
7 always called him back when I got a chance, because
8 I wanted to let him -- you know, just to call him
9 and say hello.

10 Q. And when Gavin would call you, did you ever
11 believe his mother was on the line?

12 A. No. I didn't -- no, I only talked to him.

13 I didn't think nobody was on the line, no.

14 Q. Did Star ever call you?

15 A. Star, he called sometimes with Gavin, yes.

16 Q. Okay. How about Davellin?

17 A. Davellin never called, no.

18 Q. How many times did the Arvizos visit your
19 home in Los Angeles?

20 A. Probably once -- probably three times.

21 Probably three times, yes.

22 Q. Were all of these visits after the Las Vegas
23 trip?

24 A. No. They was before. I think one of them
25 was afterwards, but the rest of them was before.

26 Q. Okay. Now -- now, the first time they
27 visited your home, was that after the fund-raiser?

1 Q. And that was after you gave Gavin your phone
2 number at the fund-raiser, right?

3 A. Yes. Yes.

4 Q. Okay. Was that the only fund-raiser you
5 ever attended for Gavin?

6 A. Yes.

7 Q. Okay. Who do you recall seeing at that
8 fund-raiser besides the Arvizo family?

9 A. A lot of young kids. A lot of comedians
10 that I didn't know their names, but a lot of
11 comedians, but a lot of kids. That was -- and I was
12 like the only, like, I think, comedian, known
13 comedian there, yeah.

14 Q. And was it your understanding that everyone
15 was there to raise money for Gavin?

16 A. That's what I was told, yes.

17 Q. Okay. Did you see Gavin in the lobby of The
18 Laugh Factory, if you recall?

19 A. I met him upstairs after -- well, I think
20 right after, right after it was over, I met him
21 upstairs in The Laugh Factory.

22 Q. Do you recall, when you entered The Laugh
23 Factory, if Gavin was at a table?

24 A. Don't know. Don't know.

25 Q. Do you recall if any member of the Arvizo
26 family was at a table in the lobby of The Laugh
27 Factory collecting money?

28 A. I don't know. 11931

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1 Q. Okay. So after it was over, you say you met

2 Gavin upstairs?

3 A. Yes.

4 Q. Was anybody with Gavin?

5 A. I think his father and his brother was there

6 when I was introduced to them.

7 Q. Okay. And did you spend time talking to

8 Gavin upstairs?

9 A. Yes. I was talking to him.

10 Q. Is that when you gave him your number?

11 A. I gave him my number and a pair of shoes,

12 Nike shoes that I got.

13 Q. How did you end up buying Nike shoes from

14 them?

15 A. I get them for free from NikeTown, so I

16 called them and told them I was meeting a kid, and I

17 wanted to get him something, a gift.

18 Q. His father was there when you gave him the

19 shoes?

20 A. Yes.

21 Q. And Star and Davellin were there also?

22 A. Star was there, yes. Yes.

23 Q. Was Davellin there, if you know?

24 A. I think she was. I don't know.

25 Q. Okay. So was the first visit to your home

26 shortly after that fund-raiser?

27 A. Yes.

28 Q. Okay. 11932

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1 A. Yes.

2 Q. And what was the purpose of the first visit
3 to your home, if you know?

4 A. Just visiting.

5 Q. Okay.

6 A. Just visiting.

7 Q. Did they spend a lot of time there?

8 A. I think so. Just -- they wanted to know
9 where I lived and where I stayed, so I told them to
10 come over.

11 Q. And did they spend a lot of time on that
12 visit?

13 A. I think they just stopped by probably an
14 hour or so. They might have been somewhere. I
15 don't know.

16 Q. Do you recall what they did in your house?

17 A. I showed them around. And I got a small
18 basketball court, so we probably shot basketball.
19 Just -- you know, a pool table. That's about it.

20 Q. And did they continue to call you after that
21 first visit to your home?

22 A. Yes.

23 Q. And who -- when I say "they" --

24 MR. SNEDDON: Your Honor, I'm going to --
25 that's why I was going to object.

26 MR. MESEREAU: I asked the wrong question.

27 Q. Did any member of the Arvizo family call you

28 after that first visit to your home? 11933

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1 A. Gavin. Gavin called.

2 Q. Okay. Did he call you a lot between the
3 first visit to your home and the second visit to
4 your home?

5 A. Yes.

6 THE COURT: Counsel? I need to stop a couple
7 minutes early because there's an issue, so would
8 this be a good point?

9 MR. MESEREAU: Yes, Your Honor.

10 THE COURT: All right. I'll excuse the jury,
11 and we'll see you tomorrow morning at 8:30.

12 THE COURT: And Mr. Tucker, you may step
13 down.

14

15 (The following proceedings were held in
16 open court outside the presence and hearing of the
17 jury:)

18

19 THE COURT: All right. I understood you had
20 an issue, Mr. Sneddon.

21 MR. SNEDDON: Yes, Your Honor. Thank you
22 very much for accommodating me.

23 What I was going to ask the Court, if the
24 Court recalls, during the course of the testimony of
25 the trial, Detective Bonner, he indicated in his
26 testimony that we had obtained from the telephone
27 company not only the subscriber information for Mr.

28 Geragos, but also had obtained the telephone records 11934

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1 for Mr. Geragos, but that those records had not been
2 looked at and would remain sealed.

3 In light of Mr. Geragos's testimony in the
4 courtroom last week and the waiver of the
5 attorney-client privilege, we are now requesting the
6 Court for authorization for us to look into those
7 telephone records with regard to the communications
8 between Mr. Geragos, Mr. Miller and other members of
9 the indicted -- the mentioned co-conspirators in the
10 Indictment. So I'm asking the Court's permission
11 for us to be able to do that now.

12 THE COURT: Wish to be heard?

13 MR. SANGER: Well, just briefly.

14 May I?

15 MR. SNEDDON: Sure.

16 MR. SANGER: It's a little late in the game
17 to do this, but aside from that issue, I also see
18 there being an issue about phone records of a law
19 firm involving other confidential matters. It's --
20 that's not necessarily our issue per se, but since
21 Mr. Geragos isn't here, I think it's fair to say, as
22 an officer of the court, that that would be an
23 issue.

24 THE COURT: How would you propose to review
25 the records? Or do you agree there's an
26 attorney-client privilege involved?

27 MR. SNEDDON: No, there's nothing

28 confidential in the communications. It's a 11935

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1 telephone conversation. I don't think there would
2 be a problem, because we're only looking for
3 specific numbers that we already have as evidence in
4 this case, and those would be the only numbers we
5 would be looking at.

6 THE COURT: So you'll just look at the --

7 MR. SNEDDON: We're not fishing for new
8 information. We're fishing -- we're not fishing at
9 all, but we're only looking for those numbers that
10 have already been put in evidence in this case, Your
11 Honor.

12 MR. SANGER: And I object the District
13 Attorney is fishing.

14 MR. SNEDDON: Maybe that's where I wanted to
15 be. It was a Freudian slip.

16 THE COURT: All right. I'll order them
17 released with the proviso that you only look for the
18 numbers that have been mentioned and you not look to
19 see what other numbers there are.

20 MR. SNEDDON: Yes, Your Honor.
21 One other minor matter. I just wanted to
22 let you know, consistent with our conversation in
23 chambers, that I anticipate the defense will be
24 finished tomorrow morning sometime. We will have
25 witnesses ready to go tomorrow. I cannot guarantee
26 to the Court that we will have a whole day, though,
27 because we have at least five or six people coming

28 from Los Angeles, some of which had previous 11936

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1 commitments, but I will tell the Court we should be
2 done on Thursday.

3 So I wanted to let you know that, and I
4 think that's what I told you right from the get-go,
5 and we've done what we can.

6 THE COURT: Okay.

7 MR. SANGER: Your Honor, I just have -- I
8 know you want to go. I have one question.

9 THE COURT: You know I want to go? Do I look
10 anxious to you?

11 MR. SANGER: The fact that you were jumping
12 out of your chair was circumstantial evidence.

13 Your Honor, with regard to the records, I'm
14 just a little unclear. I understand you've resolved
15 the privilege issue, but we should also have the
16 records.

17 I'm not interested in looking at anybody
18 else's records, but if they're going to look at the
19 records, we should have the records, so we can see
20 if there's some information that's beneficial to the
21 defense. And I don't know how the Court would
22 propose to do that.

23 THE COURT: Well, I think I'll let them look
24 at them, and then you can follow. The problem
25 really arises because of the late waiver of the
26 attorney-client privilege by Mr. Jackson with Mr.
27 Geragos, so -- we had all of those protective

28 records. So I think the -- I'll just let them look 11937

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1 at them first, and when they're through they'll give
2 them to you.

3 MR. SNEDDON: I don't mind making a copy for
4 them, if the Court would authorize me to do that. I
5 would be more than glad to do that this afternoon,
6 Your Honor.

7 THE COURT: All right. And both sides are
8 under the same order to only look for the numbers
9 that are in evidence, and neither side is to reveal
10 any other numbers to anybody.

11 MR. SANGER: Yes, sir. Thank you.

12 MR. SNEDDON: That's fine. Thank you.

13 THE COURT: Is this -- you know, I'm going
14 by the list you gave me, and by the list you gave
15 me, this would not be your last witness. Is this
16 your last witness?

17 MR. MESEREAU: This would be our last
18 witness.

19 THE COURT: This is your last witness?

20 MR. MESEREAU: Yes.

21 THE COURT: So the other name that was there,
22 you're not --

23 MR. SANGER: There was another name
24 that's --

25 THE COURT: They can't hear you in the back.

26 MR. MESEREAU: This is our last witness.

27 THE COURT: So this is the last witness.

28 MR. MESEREAU: Yes. 11938

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1 THE COURT: All right. See you tomorrow
2 morning.

3 MR. MESEREAU: Thank you.

4 THE COURT: Notice how slowly I'm leaving.

5 (The proceedings adjourned at 2:30 p.m.)

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1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR, CSR

13 #3304, Official Court Reporter, do hereby certify:

14 That the foregoing pages 11755 through 11939

15 contain a true and correct transcript of the

16 proceedings had in the within and above-entitled

17 matter as by me taken down in shorthand writing at

18 said proceedings on May 25, 2005, and thereafter

19 reduced to typewriting by computer-aided

20 transcription under my direction.

21 DATED: Santa Maria, California,

22 May 25, 2005.

23

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

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