

Nos. 18-1323, 18-1460

IN THE
Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., et al.,
Petitioners-Cross-Respondents,

v.

REBEKAH GEE, SECRETARY, LOUISIANA DEPARTMENT
OF HEALTH AND HOSPITALS,
Respondent-Cross-Petitioner.

**On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

**JOINT APPENDIX
VOLUME III**

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2 MIDDLE DISTRICT OF LOUISIANA

3 JUNE MEDICAL SERVICES, L.L.C., CIVIL ACTION
4 ET AL

5 VERSUS NO. 14-525

6 KATHY KLIEBERT, ET AL HON. JOHN W. DEGRAVELLES

7 JUNE 23, 2015
8 VOLUME II OF VI

9 REDACTED

10 =====
11 BENCH TRIAL
12 HONORABLE JOHN W. DEGRAVELLES
13 =====

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1
2 **JUNE MEDICAL V. KATHY KLIEBERT 14-CV-525 06-23-15**

3 **THE COURT:** GOOD MORNING. EVERYONE BE SEATED.

4 I'M GOING TO TAKE UP A COUPLE OF PRELIMINARY MATTERS
5 BEFORE WE START WITH THE EVIDENCE. I DON'T KNOW THAT I DID
6 THIS ON THE RECORD YESTERDAY, BUT IN THE PRETRIAL CONFERENCE
7 IN CHAMBERS BEFORE WE BEGAN, WE TALKED ABOUT THE DEPOSITIONS,
8 WHICH AT THIS POINT I DON'T THINK HAVE BEEN FORMALLY OFFERED.
9 BUT THERE WERE DEPOSITIONS SUBMITTED TO ME PRETRIAL, WHICH I
10 REVIEWED AND I MADE SOME PRELIMINARY RULINGS ON THE INDIVIDUAL
11 OBJECTIONS, WHICH HAVE BEEN RAISED DURING THE COURSE -- WHICH
12 HAVE BEEN HIGHLIGHTED BY THE PARTIES WHEN THE DEPOSITIONS WERE
13 SUBMITTED TO ME PRETRIAL.

14 BUT WHAT I SAID IN CHAMBERS AND I REPEAT NOW, WITH
15 THE EXCEPTION OF THE TWO THAT WE'RE GOING TO TALK ABOUT, MS.
16 STEVENS AND DR. MOUTON, WHAT I SAID WAS, IT WAS DIFFICULT TO
17 RULE ON THESE INDIVIDUAL OBJECTIONS WITHOUT HEARING ALL OF THE
18 EVIDENCE AND IN ADVANCE OF TRIAL.

19 SOME OF THE OBJECTIONS RAISED WERE OBVIOUSLY OF THE
20 KIND THAT WENT TO THE GENERAL OBJECTIONS THAT HAD BEEN RAISED,
21 LIKE TO MEDICAL REASONABLENESS AND MEDICAL CERTAINTY, AND
22 THEREFORE IT WAS A RELEVANCE OBJECTION AND THOSE HAVE REALLY
23 BEEN -- THEY WERE RULED UPON AS A PART OF THE MOTIONS IN
24 LIMINE. THEY ARE IN ESSENCE IN LIMBO GIVEN THE SUBSEQUENT
25 MOTION FOR RECONSIDERATION FILED BY THE DEFENDANTS IN THIS

1 CASE. AND AS I EXPLAINED YESTERDAY, I JUST SIMPLY HAVE NOT
2 HAD TIME TO DO THAT, BUT WILL DO THAT EVENTUALLY.

3 SO ALL OF THE EVIDENCE COMING IN, INCLUDING THAT
4 DEPOSITION TESTIMONY, WILL COME IN SUBJECT TO THE DEFENDANT'S
5 MOTION FOR RECONSIDERATION OF BOTH THE SUMMARY JUDGMENT AND
6 THE IN LIMINE MOTIONS.

7 TO THE EXTENT THAT THESE OBJECTIONS RAISED
8 INDIVIDUALLY IN THE DEPOSITIONS DO NOT ADDRESS THOSE BROADER
9 ISSUES, FOR INSTANCE, NO PROPER FOUNDATION OR HEARSAY OR
10 SOMETHING LIKE THAT, THEY'RE SPECIFIC, I AM GOING TO RULE ON
11 THOSE AS A PART OF THE PROCESS OF DECIDING THIS CASE. SO
12 THOSE SORT ARE TAKEN -- THOSE OBJECTIONS ARE TAKEN UNDER
13 ADVISEMENT.

14 NOW, DURING THE COURSE OF THE CHAMBER'S MEETING
15 YESTERDAY MORNING WE TALKED ABOUT OBJECTIONS THAT WERE RAISED
16 TO TWO DEPOSITIONS IN THEIR ENTIRETY, ONE WAS DR. CECILIA
17 MOUTON THE OTHER ONE WAS JENNIFER STEVENS, AND IN BOTH CASES
18 DEFENDANT OBJECTS TO THE ENTIRETY OF THOSE DEPOSITIONS AND THE
19 REASONS FOR THOSE ARE STATED IN A LETTER FROM MR. DUNCAN TO
20 MS. DOUFEKIAS, WHICH WAS PROVIDED TO ME IN A LETTER DATED JUNE
21 3RD, 2015 AND THAT IS -- WE'RE GOING TO MAKE THAT A PART OF
22 THE RECORD AS DOCUMENT 160.

23 THE PLAINTIFFS' LETTER IN RESPONSE, DATED JUNE 18TH,
24 2015, IS DOCUMENT 159 AND I WAS ASKED NOT TO SORT OF PUT THOSE
25 OBJECTIONS IN LIMBO AND RULE, BECAUSE DEPENDING UPON MY RULING

1 THERE MIGHT BE SOME DIFFERENCE IN THE WAY THE PLAINTIFFS' CASE
2 WOULD BE PRESENTED. SO I DID TAKE A SECOND AND HARDER LOOK AT
3 THOSE TWO DEPOSITIONS, WITH RESPECT TO THE OBJECTIONS IN THEIR
4 ENTIRETY.

5 AND FOR THE REASONS GIVEN IN THE PLAINTIFFS' LETTER,
6 WHICH IS DOCUMENT 159, I AM OVERRULING THE OBJECTIONS TO THESE
7 DEPOSITIONS IN THEIR ENTIRETY.

8 AS I SAID INFORMALLY YESTERDAY IN THE CONFERENCE, IT
9 DIDN'T LOOK LIKE MS. STEVENS HAD MUCH TO SAY, WHICH MS.
10 DOUFEKIAS RESPONDED, THAT'S KIND OF THE POINT OF THE
11 DEPOSITION. BUT IN ANY EVENT, AND AS YOU PROBABLY HAVE
12 FIGURED OUT BY NOW, MY VIEW OF EVIDENCE IN CONNECTION WITH
13 THIS PRELIMINARY JUNCTION IS, I'M AIRING ON THE SIDE OF
14 LETTING THINGS IN, AS OPPOSED TO KEEPING THINGS OUT FOR A
15 VARIETY OF REASONS.

16 ONE OF WHICH IS THAT THIS IS A PRELIMINARY JUNCTION
17 AND THE JURISPRUDENCE IS TO THE EFFECT THAT YOU HAVE A RELAXED
18 STANDARD OF ADMISSIBILITY IN SUCH A HEARING.

19 THE SECOND THING, WHICH IS SORT OF RELATED TO THE
20 FIRST THING, IS THAT WE DON'T HAVE A JURY THAT I'M TRYING TO
21 PROTECT HERE. THIS IS A BENCH TRIAL. SO I WILL TEND TO VIEW
22 THESE THINGS REALLY AS MATTERS OF WEIGHT, AS OPPOSED TO
23 ADMISSIBILITY.

24 WITH RESPECT TO THE ISSUE OF DR. MOUTON, EVEN THOUGH
25 THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS IS NO LONGER A

1 PARTY, THE POINT RAISED BY MS. DOUFEKIAS I THINK IS A
2 LEGITIMATE ONE AND THAT IS THAT A PART OF THE STIPULATION THAT
3 WAS REACHED IN CONNECTION WITH THE DISMISSAL WITHOUT PREJUDICE
4 OF THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, WAS THAT
5 THE ISSUE OF THE ENFORCEABILITY OF THIS -- THE RIGHT OF THE
6 BOARD OF MEDICAL EXAMINERS TO HAVE SOME ENFORCEMENT DUTY OR
7 RIGHT WITH RESPECT TO ACT 620 IS STILL AN ISSUE. AND,
8 THEREFORE, I THINK FOR THAT REASON, AMONG THE OTHERS LISTED IN
9 THIS LETTER, I THINK IT SHOULD -- THAT THE OBJECTION SHOULD BE
10 OVERRULED AND THESE TWO DEPOSITIONS WILL COME IN.

11 NOW, ARE THERE ANY OTHER PRELIMINARY MATTERS THAT WE
12 NEED TO TAKE UP THIS MORNING BEFORE WE START THE EVIDENCE?

13 **MS. DOUFEKIAS:** YOUR HONOR, JUST ONE SMALL THING.
14 WE FILED A COPY OF THE JOINT CONSENT MOTION LAST NIGHT AND I
15 HAVE A COPY OF THAT WITH AN ORDER FOR YOU TO SIGN IF YOU WANT
16 IT IN PAPER.

17 **THE COURT:** THAT WOULD BE TERRIFIC AND I'LL SIGN IT
18 RIGHT NOW.

19 AND THIS IS ON THE PROTECTIVE ORDER?

20 **MS. DOUFEKIAS:** THAT'S RIGHT, THE CONFIDENTIAL
21 EXHIBITS.

22 **THE COURT:** AND WE TALKED ABOUT THAT YESTERDAY
23 MORNING IN CHAMBERS, SO I'M FAMILIAR WITH IT.

24 AND BOTH SIDES HAVE AGREED TO THIS OBVIOUSLY?

25 OKAY, THEN I WILL GO AHEAD AND SIGN IT.

1 **MR. DUNCAN:** THAT'S FINE.

2 **MS. DOUFEKIAS:** MAY I APPROACH?

3 **THE COURT:** YES.

4 THE RECORD WILL REFLECT THAT I'VE SIGNED IT AND IT'S
5 BEEN MADE A PART OF THE RECORD.

6 ONE OTHER QUESTION I HAD WAS THAT THE JOINT EXHIBITS
7 HAVE COME INTO EVIDENCE, AT LEAST THROUGH 185. I DON'T KNOW
8 ABOUT 186 THROUGH 189. I DON'T THINK THAT THAT'S BEEN
9 FORMALLY DONE AT THIS POINT. BUT THERE WERE EXHIBITS THAT
10 WERE INTRODUCED BY THE INDIVIDUAL PARTIES THAT WERE OBJECTED
11 TO.

12 BUT THERE WERE SOME PLAINTIFFS' EXHIBITS, I THINK,
13 AND DEFENSE EXHIBITS THAT WERE OFFERED, BUT HAVEN'T BEEN
14 OBJECTED TO. AND I DIDN'T KNOW WHETHER THAT WAS -- WHETHER
15 THOSE WERE GOING TO BE -- THE OBJECTIONS TO THOSE, WHILE NOT
16 EXPRESSED IN PRETRIAL FILINGS, NONE THE LESS, THOSE OBJECTIONS
17 WERE RESERVED OR THERE WEREN'T ANY OBJECTIONS AND THEY WERE
18 COMING IN, SO I JUST WANTED TO GET THE FEELINGS OF THE PARTIES
19 ON THAT.

20 **MS. DOUFEKIAS:** YOUR HONOR, I THINK WE'RE STILL
21 WORKING OUT SOME OF THE EXHIBIT ISSUES. I THINK THERE WILL BE
22 ADDITIONAL EXHIBITS THAT WILL BE JOINT IN THE SENSE THAT WE'LL
23 AGREE THAT THEY'RE STIPULATED INTO EVIDENCE. WE MAY KEEP THE
24 PLAINTIFFS AND THE EXHIBIT NUMBERS ONLY BECAUSE WE KEEP
25 RE-NUMBERING AND RE-NUMBERING AND RE-NUMBERING, SO PURELY FOR

1 LOGISTICAL PURPOSES.

2 BUT I -- WE'VE BEEN KEEPING TRACK OF WHAT'S COME IN
3 AND WHAT HASN'T COME IN AND OUR INTENTION WAS TO FILE BEFORE
4 THE CLOSE OF OUR CASE A COPY OF OUR EXHIBIT LIST -- THE
5 UPDATED JOINT EXHIBIT LIST AND ANY ADDITIONAL OBJECTIONS WE
6 MAY HAVE TO DEFENDANT'S EXHIBITS -- TO THEIR NEW EXHIBITS.

7 **THE COURT:** OKAY. THAT'S FINE.

8 **MR. DUNCAN,** YOU WANT TO COMMENT ON THAT?

9 **MR. DUNCAN:** NO, THAT'S MY UNDERSTANDING TOO, YOUR
10 HONOR. THERE ARE -- AS NEW EXHIBITS COME IN, DEMME AND I ARE
11 LOOKING AT THEM AND SORT OF ASSESSING DO WE HAVE OBJECTIONS TO
12 THEM? MOST OF THEM I WOULD THINK NO, MAYBE SOME OF THEM YES.
13 SO WE WILL WORK THAT OUT BETWEEN OURSELVES OR I GUESS, FOR
14 INSTANCE, IF THE DEFENDANT WANTS TO SAY I'LL INTRODUCE THIS
15 EXHIBIT THEN THEY CAN OBJECT AND YOU, YOUR HONOR, CAN RULE ON
16 IT.

17 **THE COURT:** OKAY, THAT SOUNDS GREAT.

18 ONE OTHER THING, HOPEFULLY, YOU CAN KEEP THE NUMBERS
19 THAT WERE REFERRED TO DURING THE TRIAL, OTHERWISE WE'RE GOING
20 TO HAVE SOME SORT OF TABLE THAT WE'LL HAVE TO GO TO OR THE
21 COURT OF APPEAL WILL HAVE SOME TABLE THEY'LL HAVE TO GO TO, TO
22 FIGURE OUT WHAT OBJECTION WE'RE TALKING ABOUT -- I MEAN WHAT
23 EXHIBIT WE'RE TALKING ABOUT THAT'S REFERENCED IN THE MIDDLE OF
24 THE TRIAL.

25 **MR. DUNCAN:** YEAH, WE DON'T WANT THAT EITHER.

1 **THE COURT:** OKAY. GREAT.

2 **MS. DOUFEKIAS:** YOUR HONOR, WE'RE BEING VERY CAREFUL
3 ABOUT, ESPECIALLY EXHIBITS THAT HAVE PLAINTIFFS' OR
4 DEFENDANT'S EXHIBIT AND A JOINT EXHIBIT NUMBER. AND OBVIOUSLY
5 WE WILL SHOW DEFENDANTS A COPY OF ANYTHING WE FILE BEFORE WE
6 FILE IT TO MAKE SURE THAT THEY AGREE WITH ALL OF THE NUMBERS.
7 BUT OUR INTENTION IS TO FILE SOMETHING WITH THE COURT THAT
8 SHOWS ALL OF THE JOINT EXHIBITS AND THE CORRESPONDING
9 PLAINTIFF OR DEFENSE EXHIBITS SO THAT THE RECORD IS CLEAR.

10 **THE COURT:** GREAT. GOOD. THANK YOU.

11 **MR. DUNCAN:** ONE OTHER MATTER, YOUR HONOR, ABOUT
12 SCHEDULING OF WITNESSES. IF WE SEE THAT THE PLAINTIFFS ARE
13 GOING FASTER TODAY AND -- FOR INSTANCE, I DON'T KNOW IF YOU'LL
14 BE ABLE TO PUT ON DOE 1 TODAY OR IF THAT'S TOMORROW MORNING.
15 WE'RE TRYING TO PLAN ON HOW WE CAN FOLD IN SOME OF OUR
16 WITNESSES IF WE HAVE TO GO EARLY.

17 SO I SAID CECILE CASTELLO, WE'RE MAKING INQUIRIES
18 RIGHT NOW. IF THINGS GO FASTER AND WE NEED TO PUT ON DR.
19 MARIER ON WEDNESDAY INSTEAD OF THURSDAY, WE'RE MAKING
20 INQUIRIES RIGHT NOW TO SEE IF HE CAN TESTIFY. HE'S A BUSY
21 MAN. WE'RE JUST GOING TO SEE.

22 **THE COURT:** GREAT. AND I UNDERSTAND VERY, VERY WELL
23 THE DIFFICULTIES OF THIS KIND OF THING. SO IF THERE ARE
24 PROBLEMS THAT ARISE BECAUSE YOU JUST CAN'T MAKE IT ALL WORK,
25 THEN WE'LL JUST TAKE SOME DOWNTIME IF WE NEED TO. I'D LIKE

1 THINGS TO GO SMOOTHLY AND I'D LIKE THINGS TO GO EFFICIENTLY,
2 BUT BLANK HAPPENS, SO WE'LL JUST DEAL WITH IT WHEN IT HAPPENS.

3 **MR. DUNCAN:** THANK YOU.

4 **THE COURT:** ALL RIGHT. READY TO PROCEED?

5 **MS. DOUFEKIAS:** WE ARE, YOUR HONOR.

6 PLAINTIFFS CALL DR. DOE NUMBER 3.

7 **MR. DUNCAN:** NUMBER 2?

8 **MS. DOUFEKIAS:** I APOLOGIZE, DR. DOE NUMBER 2.

9 **THE COURT:** ALL RIGHT. COME FORWARD DOCTOR AND
10 MS. CAUSEY IS GOING TO COME BACK AROUND AND SHE'S GOING TO
11 SWEAR YOU IN. YOU CAN STAY RIGHT THERE AND SHE'LL SWEAR YOU
12 IN AS SOON AS SHE GETS HERE.

13 ALL RIGHT. MS. CAUSEY, YOU WANT TO SWEAR THE DOCTOR
14 IN?

15 (WHEREUPON, DR. DOE NUMBER 2, HAVING BEEN DULY
16 SWORN, TESTIFIED AS FOLLOWS.)

17 **THE COURT:** ALL RIGHT. YOU MAY BE SEATED.

18 **DIRECT**

19 **BY MS. DOUFEKIAS:**

20 **Q** GOOD MORNING, DOCTOR. JUST LET ME KNOW WHEN YOU'VE
21 GOTTEN SETTLED.

22 **A** OKAY.

23 **Q** DOCTOR, BEFORE WE PROCEED THIS MORNING I JUST WANTED
24 TO ASK YOU, DO YOU WEAR ANY SORT OF HEARING AID TO ASSIST WITH
25 YOUR HEARING?

1 **A** YES, I DO, FOR APPROXIMATELY THE LAST FOUR TO FIVE
2 MONTHS.

3 **Q** OKAY. BECAUSE YOU ARE TESTIFYING FROM BEHIND A
4 SCREEN, IF AT ANY POINT YOU HAVE DIFFICULTY HEARING ME OR NEED
5 ME TO REPEAT, PLEASE JUST LET ME KNOW AND I WILL BE HAPPY TO
6 DO THAT.

7 **A** THANK YOU.

8 **THE COURT:** ALL RIGHT. AND LET ME JUST ALSO SAY THE
9 SCREEN PRESENTS A PROBLEM FOR OUR COURT REPORTER IN THAT IT'S
10 BLOCKING YOUR VOICE, SO IF YOU COULD TRY TO MAKE AN EFFORT TO
11 GET A LITTLE BIT CLOSER TO THE MIC WHEN YOU'RE TESTIFYING.

12 **THE WITNESS:** CAN I MOVE SOME OF THESE BINDERS?

13 **THE COURT:** YES. THEY'RE PROBABLY GOING TO ASK YOU
14 TO PULL SOME OF THOSE UP AT SOME POINT BUT, YEAH, JUST MAKE
15 YOURSELF MORE COMFORTABLE.

16 **THE WITNESS:** OKAY. CAN YOU HEAR ME NOW?

17 **BY MS. DOUFEKIAS:**

18 **Q** I CAN HEAR YOU. CAN YOU HEAR ME? CAN YOU HEAR ME,
19 DOCTOR?

20 **A** YES.

21 **Q** DOCTOR, ARE YOU TESTIFYING UNDER A PSEUDONYM THIS
22 MORNING?

23 **A** YES, I AM.

24 **Q** AND COULD YOU PLEASE EXPLAIN FOR THE COURT WHY IT IS
25 YOU'RE TESTIFYING UNDER A PSEUDONYM?

1 A CONSIDERING THAT I DO ELECTIVE ABORTIONS, WHICH IS
2 KIND OF A HOT BUTTON, HIGHLY CONTROVERSIAL ISSUE, I FEEL THAT
3 IT'S IN MY BEST INTEREST TO KEEP AS MUCH ANONYMITY AS I CAN
4 FOR MY OWN PERSONAL SAFETY.

5 Q HAVE YOU EVER HAD THREATS TO YOUR SAFETY?

6 A YES.

7 Q COULD YOU PLEASE DESCRIBE THOSE FOR THE COURT?

8 A I'VE HAD A COUPLE OF INSTANCES OF PHONE CALLS. I'VE
9 HAD PEOPLE FOLLOW ME TO RESTAURANTS ON OCCASION. FORTUNATELY,
10 NOT TOO OFTEN. A LOT OF THREATS ARE YELLED WHEN I CROSS THE
11 PICKET LINE, ESPECIALLY IN NEW ORLEANS.

12 Q ON THESE PHONE CALLS AND THESE THINGS THAT WERE
13 SHOUTED TO YOU, WHAT SORTS OF THINGS WERE SAID TO YOU IN THESE
14 EXCHANGES?

15 A USUALLY PROFANITY LADEN AND WITH A COMMON THING,
16 THAT I'M GOING TO HELL.

17 Q DOCTOR, HOW LONG -- WITHDRAWN. ARE YOU A BOARD
18 CERTIFIED OB/GYN?

19 A YES.

20 Q AND HOW LONG HAVE YOU BEEN A BOARD CERTIFIED OB/GYN?

21 A I'VE BEEN BOARD CERTIFIED SINCE 1981.

22 Q HAS THAT BOARD CERTIFICATION EVER BEEN RE-CERTIFIED?

23 A I'M WHAT YOU CALL GRANDFATHERED IN. I DON'T HAVE TO
24 RE-CERTIFY, BUT I VOLUNTARILY RE-CERTIFIED IN 1997.

25 Q WHERE DID YOU GO TO MEDICAL SCHOOL?

1 **A** AT LSU MEDICAL SCHOOL IN NEW ORLEANS.

2 **Q** AND WHERE DO YOU HOLD MEDICAL LICENSES?

3 **A** I HOLD MEDICAL LICENSES IN THE STATE OF LOUISIANA
4 AND ALSO IN WASHINGTON STATE.

5 **Q** ARE YOU A MEMBER OF ANY MEDICAL SOCIETIES?

6 **A** I'M A MEMBER OF THE ACOG, THE AMERICAN COLLEGE OF
7 OBSTETRICIANS AND GYNECOLOGISTS, ABOG, THE AMERICAN BOARD OF
8 OBSTETRICIANS AND GYNECOLOGISTS.

9 **Q** HAVE YOU BEEN A MEMBER OF ANY MEDICAL SOCIETIES IN
10 THE PAST?

11 **A** I HAVE BEEN IN THE PAST. I'VE BEEN A MEMBER OF THE
12 SHREVEPORT MEDICAL SOCIETY AND ALSO THE BOSSIER MEDICAL
13 SOCIETY.

14 **Q** BETWEEN 1980 AND 2004, HOW LONG DID YOU WORK --
15 WITHDRAWN. BETWEEN 1980 AND 2004, DID YOU WORK AT LSU?

16 **A** YES.

17 **Q** FOR APPROXIMATELY HOW MANY YEARS IN THAT PERIOD DID
18 YOU WORK AT LSU?

19 **A** IT WAS A CUMULATIVE TOTAL OF APPROXIMATELY 18 YEARS,
20 I BELIEVE.

21 **Q** AND WHAT DID YOU DO AT LSU?

22 **A** WELL, THE FIRST TWO YEARS FROM 19 -- I THINK IT WAS
23 LATE '79 TO 1981, I WAS A FULL-TIME ASSISTANT PROFESSOR OF
24 OBSTETRICS AND GYNECOLOGY. AND IN THE OTHER YEARS THAT I WAS
25 THERE, I WAS A PART-TIME ASSISTANT PROFESSOR OF GYNECOLOGY --

1 OF OBSTETRICS AND GYNECOLOGY.

2 Q WHAT SORTS OF WORK DID YOU DO WHEN YOU WERE EITHER A
3 FULL-TIME OR A PART-TIME PROFESSOR?

4 A I WAS PRIMARILY ON A CLINICAL TRACK, WHICH MEANS I
5 WAS ACTUALLY IN THE OPERATING ROOM FOR THE MOST PART WITH THE
6 RESIDENTS. I DID SOME LECTURING, BUT THE PRIMARY FOCUS WAS
7 HELPING THE RESIDENTS DEVELOP THEIR LAPAROSCOPIC SKILLS,
8 ACTUALLY DOING HYSTERECTOMIES WITH THEM, THAT SORT OF THING.

9 Q HOW MUCH TIME DID YOU SPEND IN THE OPERATING ROOM?

10 A AT LSU, THAT WAS REALLY THE MAJORITY OF MY TIME.

11 Q DURING THE 18 YEARS THAT YOU WORKED AT LSU DID YOU
12 COME INTO CONTACT WITH THE ER DOCTORS?

13 A VERY SELDOM. THE RESIDENTS WOULD HAVE COME INTO
14 CONTACT MORE THAN MYSELF, BUT OCCASIONALLY SOME CONTACT AND IT
15 USUALLY WAS BY TELEPHONE.

16 Q DID YOU HAVE A VIEW OF WHETHER OR NOT THE ER DOCTORS
17 HAD ACCESS TO OB/GYN DOCTORS AT LSU MEDICAL CENTER?

18 A AT LSU THEY HAD ACCESS REALLY 24/7.

19 Q AND WERE SPECIALISTS LIKE OB/GYN DOCTORS INVOLVED
20 WHEN GYNECOLOGICAL -- WHEN PATIENTS WITH GYNECOLOGICAL ISSUES
21 CAME INTO THE ER?

22 A I'M SORRY, COULD YOU REPEAT THAT?

23 Q WERE OB/GYN DOCTORS INVOLVED WHEN PATIENTS CAME INTO
24 THE ER WITH GYNECOLOGICAL ISSUES?

25 A YES. THE ER DOCTOR IN THOSE TYPE -- ESPECIALLY IN

1 OBSTETRICS, ALMOST ROUTINELY CALLED IN THE GYNECOLOGIST OR THE
2 OBSTETRICIAN/GYNECOLOGIST.

3 Q FOR VARIOUS YEARS WHEN YOU WEREN'T FULL-TIME AT LSU,
4 WERE YOU ALSO ON OCCASION BETWEEN 1980 AND 2004 IN PRIVATE
5 PRACTICE?

6 A FROM 1980 TO 2004 I WAS IN PRIVATE PRACTICE. FROM
7 ABOUT 1980 -- I BELIEVE LATE '81, TO EARLY 1987 WITH DRS. HART
8 AND MCCABE IN BOSSIER CITY, LOUISIANA.

9 Q AND WHY DID YOU LEAVE THAT PRACTICE?

10 A THE REASON I LEFT THAT PRACTICE -- WE HAD ALL
11 TRAINED TOGETHER. IT WAS REALLY A GOOD GROUP. I ENJOYED IT.
12 BUT I HAD -- I WAS ALSO AT THE TIME WITH THEIR KNOWLEDGE AND
13 BLESSING, WORKING PART-TIME AT HOPE MEDICAL GROUP DOING
14 ELECTIVE TERMINATIONS. I HAD A MALPRACTICE CASE INVOLVING A
15 PATIENT AT HOPE. THE GROUP INSURANCE WAS -- THE CARRIER WAS
16 ST. PAUL AND WHEN THAT CASE CAME ABOUT ST. PAUL BASICALLY SAID
17 THEY WOULD COVER ME FOR THAT CASE, BUT IF I CONTINUED DOING
18 ELECTIVE TERMINATIONS THEY WOULD NOT COVER ME FOR MALPRACTICE
19 INSURANCE.

20 DRS. HART AND MCCABE WERE COVERED WITH A GROUP
21 INSURANCE POLICY. WE TRIED TO STRIKE A DEAL WHERE I COULD
22 HAVE INDIVIDUAL COVERAGE AND THEY WOULD STILL COVER THEM.
23 THEY ADAMANTLY REFUSED TO COVER ANY OF US IF I CONTINUED TO DO
24 ELECTIVE TERMINATIONS. AT THAT POINT I HAD AN OFFER TO GO
25 BACK TO LSU I REALLY LIKED THE NEW HEAD OF THE DEPARTMENT OVER

1 THERE. I DIDN'T WANT TO CAUSE THEM ANYMORE HEADACHES, SO I
2 MADE THE DECISION TO LEAVE THE PRACTICE.

3 Q WHEN DID YOU BEGIN PERFORMING ABORTIONS?

4 A 1980.

5 Q AND DO YOU STILL PERFORM ABORTIONS TODAY?

6 A YES, I DO.

7 Q WHERE DO YOU CURRENTLY PROVIDE ABORTIONS?

8 A AT BOSSIER MEDICAL SUITE IN BOSSIER CITY, LOUISIANA
9 AND AT CAUSEWAY MEDICAL CLINIC IN METAIRIE, LOUISIANA.

10 Q WHEN DO YOU WORK AT BOSSIER MEDICAL SUITE?

11 A I WORK AT BOSSIER EVERY -- EXCUSE ME, EVERY WEEK AND
12 I WORK AT CAUSEWAY MEDICAL CLINIC TWO WEEKENDS A MONTH.

13 Q CAN YOU EXPLAIN FOR THE COURT HOW YOU MANAGE YOUR
14 WORK SCHEDULE BETWEEN CAUSEWAY AND BOSSIER?

15 A WELL, SUNDAYS AND MONDAYS ARE MY BASIC WEEKENDS.
16 TUESDAY THROUGH SATURDAY, WHEN I'M NOT GOING TO NEW ORLEANS --
17 TO METAIRIE, TO WORK, I WORK AT BOSSIER. ON WEEKS THAT I GO
18 TO THE CLINIC IN METAIRIE FOR FRIDAY AND SATURDAY WORK, I WORK
19 TUESDAY, WEDNESDAY AND THURSDAY AT BOSSIER MEDICAL -- BOSSIER
20 MEDICAL SUITE.

21 Q AND APPROXIMATELY HOW MANY PROCEDURES HAVE YOU
22 PERFORMED AT BOSSIER IN THE LAST YEAR?

23 A I BELIEVE LAST YEAR IT WAS AROUND 550.

24 Q ARE THERE ANY OTHER DOCTORS WHO PERFORM ABORTIONS AT
25 BOSSIER?

1 A NO.

2 Q APPROXIMATELY HOW MANY PROCEDURES DO YOU PERFORM AT
3 CAUSEWAY -- OR DID YOU PERFORM AT CAUSEWAY IN THE LAST YEAR?

4 A I BELIEVE IT WAS AROUND 450. THAT'S A BALL PARK
5 FIGURE.

6 Q DO YOU KNOW -- WHEN I REFER TO DR. DOE NUMBER 4, DO
7 YOU KNOW WHO THAT IS?

8 A YES.

9 Q DOES HE ALSO PERFORM ABORTIONS AT CAUSEWAY?

10 A YES.

11 Q AND TO YOUR KNOWLEDGE DOES HE CURRENTLY HAVE
12 ADMITTING PRIVILEGES AT A HOSPITAL WITHIN 30 MILES OF
13 CAUSEWAY?

14 A I DO NOT BELIEVE HE DOES, NO.

15 Q DO YOU KNOW WHETHER HE HAS APPLIED FOR PRIVILEGES?

16 A IT IS MY UNDERSTANDING THAT HE HAS, YES.

17 Q IS IT YOUR UNDERSTANDING THAT HE APPLIED FOR
18 PRIVILEGES AS A RESULT OF HOUSE BILL 388?

19 A THAT IS MY UNDERSTANDING.

20 Q WHEN I REFER TO HOUSE BILL 388, WHICH SOMETIMES IS
21 ALSO REFERRED TO AS ACT 620 IN THIS CASE, DO YOU KNOW WHAT I'M
22 TALKING ABOUT?

23 A YES.

24 Q COULD YOU DESCRIBE FOR THE COURT YOUR UNDERSTANDING
25 OF HOUSE BILL 388?

1 **A** WELL, HOUSE BILL 388, THE PART THAT I THINK IS MOST
2 APPLICABLE TO MY SITUATION -- TO DOCTORS' SITUATION IN THIS
3 INSTANCE, REGARDS THE ATTAINING OF ADMITTING PRIVILEGES TO A
4 HOSPITAL WITHIN 30 MILES OF THE CLINIC. IN THAT STATUTE, MY
5 READING OF IT, IT SAYS ACTIVE ADMITTING PRIVILEGES, WHICH IS
6 TO MY MIND SOMEWHAT OF A NEBULOUS TERM, BUT IT DOES DESCRIBE
7 THAT LATER IN SAYING THAT, MUST BE ABLE TO PERFORM DIAGNOSTIC
8 TESTS AND SURGERY ON PATIENTS ADMITTED.

9 **Q** DO YOU CURRENTLY HAVE ADMITTING PRIVILEGES AT A
10 HOSPITAL WITHIN 30 MILES OF BOSSIER?

11 **A** NO.

12 **Q** DOCTOR, COULD YOU PLEASE DESCRIBE THE PATIENTS THAT
13 YOU SEE AT CAUSEWAY IN BOSSIER?

14 **A** SINCE 1980 TO THE PRESENT, EVERY CLINIC I'VE WORKED
15 AT, IT IS -- THEY CUT ACROSS ALL SOCIO-ECONOMIC LINES. I
16 WOULD HAVE TO SAY THE MAJORITY ARE ON THE LOWER END OF THAT
17 SPECTRUM. BUT IT REALLY IS INDIVIDUAL AS THE PERSON THAT
18 COMES IN. ALL AGE GROUPS, ALL RACES, ALL OCCUPATIONS AND LIKE
19 I SAY, IT CUTS ACROSS ALL LINES.

20 **Q** HOW DO YOU KNOW THAT THESE PATIENTS ARE GENERALLY ON
21 THE LOWER END OF THE SOCIO-ECONOMIC SCALE?

22 **A** WELL, MANY OF THESE PATIENTS ARE MEDICAID PATIENTS,
23 MANY OF THEM IN MY COUNSELING OF THEM, DISCUSS HOW HARD IT IS
24 TO COME UP WITH THE MONEY. IS THERE ANYTHING WE CAN DO TO
25 HELP? SO IT BECOMES SOMEWHAT -- IT BECOMES QUITE APPARENT IN

1 MANY CASES.

2 Q DOES IT BECOME APPARENT IN YOUR DISCUSSIONS WITH THE
3 PATIENTS WHERE THEY COME FROM WHEN THEY TRAVEL TO THE CLINIC?

4 A YES.

5 Q AND WHERE DO YOUR PATIENTS COME FROM?

6 A OBVIOUSLY, I THINK THE PRIMARY SOURCE IS LOUISIANA,
7 BUT WE HAVE A GOOD NUMBER OF PATIENTS FROM ALL OF THE
8 SURROUNDING STATES; TEXAS, ARKANSAS, MISSISSIPPI. I'VE HAD
9 PATIENTS FROM MOBILE, ALABAMA. I'VE EVEN HAD PATIENTS FROM
10 WEST TEXAS, WHICH I HAD A PATIENT FROM AMARILLO. SO IT'S A
11 LARGE GEOGRAPHIC AREA.

12 Q DO YOUR PATIENTS EVER DISCUSS HOW THEY CAME TO THE
13 CLINIC?

14 A HOW THEY CAME TO THE CLINIC?

15 Q YES. LET ME ASK A BETTER --

16 A I'M NOT EXACTLY SURE WHAT YOU MEAN.

17 Q DO YOUR PATIENTS EVER DISCUSS WHETHER IT'S DIFFICULT
18 FOR THEM TO GET TO THE CLINIC?

19 A OH, YES. YES. I MEAN ESPECIALLY WITH THE
20 REQUIREMENTS FOR THE 24 HOUR COUNSELING PRIOR TO THE
21 PROCEDURE, MANY OF THESE PATIENTS, MOST OF THEM HAVE TO MAKE,
22 YOU KNOW, TWO TRIPS TO THE CLINIC OR COME IN, SPEND THE
23 NIGHT -- IT'S A TWO DAY PROCESS. SO A LOT OF THEM DISCUSS THE
24 HARDSHIPS OF JUST PHYSICALLY BEING ABLE TO GET TO THE CLINIC.

25 Q DOCTOR, WHERE DO YOU LIVE?

1 A I LIVE IN BOSSIER CITY, LOUISIANA.

2 Q AND HOW FAR IS THAT FROM THE CLINIC AT CAUSEWAY?

3 A APPROXIMATELY 330 MILES.

4 Q AND APPROXIMATELY HOW LONG DOES IT TAKE YOU TO MAKE
5 THAT DRIVE?

6 A DEPENDING ON THE TRAFFIC, ANYWHERE FROM FIVE HOURS
7 TO FIVE AND A HALF HOURS.

8 Q DO YOU OWN YOUR OWN CAR?

9 A YES.

10 Q WHAT KIND OF CAR DO YOU DRIVE?

11 A SINCE 2008, I HAVE BEEN DRIVING TOYOTA PRIUS'S.

12 Q IS ONE OF THE REASONS THAT YOU PURCHASED A PRIUS THE
13 FACT THAT YOU HAVE TO MAKE THIS DRIVE EVERY WEEK?

14 A THAT WAS ONE OF THE FACTORS. AND I ALSO LIKE THE
15 CAR AND I LIKE THE TECHNOLOGY.

16 Q WHAT PROCEDURES DO YOU PERFORM AT BOSSIER?

17 A ELECTIVE TERMINATIONS OF PREGNANCY, BOTH FIRST AND
18 SECOND TRIMESTER TERMINATIONS.

19 Q DO YOU PERFORM MEDICATION ABORTIONS?

20 A MEDICATION -- YES, I DO, AT BOSSIER MEDICAL SUITE.

21 Q AND DO YOU PERFORM ABORTIONS IN THAT SAME
22 GESTATIONAL TIME PERIOD AT CAUSEWAY?

23 A NO.

24 Q WHAT PERIOD DO YOU PERFORM ABORTIONS -- WHAT
25 GESTATIONAL PERIOD DO YOU PERFORM ABORTIONS AT CAUSEWAY?

1 A AT CAUSEWAY, THAT WOULD BE FROM SIX WEEKS LMP TO 21
2 WEEKS, SIX DAYS.

3 Q DO YOU PERFORM MEDICATION ABORTIONS AT CAUSEWAY?

4 A AT CAUSEWAY, NO, I DO NOT.

5 Q WHY IS THAT?

6 A IT'S A MORE TIME CONSUMING COUNSELING PROCESS AND
7 WHEN I GO TO CAUSEWAY, FRIDAY AND SATURDAY ARE USUALLY QUITE
8 BUSY. IT'S A PRETTY INTENSIVE TWO DAYS AND I JUST DON'T FEEL
9 LIKE I CAN GIVE THE AMOUNT OF TIME TO THOSE PATIENTS FROM A
10 COUNSELING ASPECT THAT THEY DESERVE. I JUST DON'T THINK THAT
11 I CAN DO AS GOOD A JOB WITHOUT -- WITHOUT MORE TIME.

12 Q TO YOUR KNOWLEDGE ARE YOU THE ONLY DOCTOR IN THE
13 STATE LOUISIANA THAT PERFORMS PROCEDURES THROUGH 21 WEEKS, SIX
14 DAYS LMP?

15 A TO MY KNOWLEDGE, YES.

16 Q WHY DO YOU PERFORM ABORTIONS UP TO THAT DATE?

17 A WELL, MANY YEARS AGO WHEN I STARTED DOING THIS, IT
18 WAS SOMEWHAT HEART BREAKING TO SEE WHAT PATIENTS WENT THROUGH
19 WHEN THEY HAD GENETIC ANOMALIES OF THE FETUS, SO I REALLY
20 WANTED TO DEVELOP THAT SKILL TO BE ABLE TO OFFER THEM THAT
21 SERVICE. I THINK THAT WAS PROBABLY THE INITIATOR. THERE ARE
22 MANY PATIENTS IN DIRE CIRCUMSTANCES FROM MAYBE MEDICAL
23 CONDITIONS THAT THEY HAVE, WHERE PREGNANCY IS NOT A GOOD IDEA,
24 THAT'S ANOTHER CATEGORY. MANY PATIENTS DO NOT HAVE SYMPTOMS
25 OF PREGNANCY OR REGULAR PERIODS, SO BY THE TIME THEY REALIZE

1 THEY'RE PREGNANT, THEY'RE FURTHER ALONG AND REQUIRE A SECOND
2 TRIMESTER PROCEDURE. THAT'S ACTUALLY MUCH MORE COMMON THAN
3 EVEN A LOT OF OB/GYNS REALIZE. SO IT'S A VARIETY OF REASONS.

4 Q WHEN YOU WORKED AT LSU DID YOU HAVE ADMITTING
5 PRIVILEGES?

6 A YES.

7 Q HOW WERE YOU ABLE TO MAINTAIN THOSE PRIVILEGES WHEN
8 YOU WORKED AT LSU?

9 A THROUGH MY BODY OF WORK AT LSU. I MEAN WE WERE --
10 WE HAD LOTS OF ADMISSIONS, LOTS OF SURGERY, IT WAS EASY TO
11 JUDGE MY PERFORMANCE IN THE DEPARTMENT.

12 Q WHEN YOU LEFT YOUR POSITION AT LSU, WHAT HAPPENED TO
13 YOUR ADMITTING PRIVILEGES?

14 A I NO LONGER HAD ADMITTING PRIVILEGES, BUT THEY
15 CONTINUED TO GIVE ME WHAT'S CALLED COURTESY PRIVILEGES.

16 Q AND WHAT ARE YOU ALLOWED TO DO UNDER THOSE COURTESY
17 PRIVILEGES?

18 A IT'S JUST CONSULTATION. IT DOES NOT ENCOMPASS
19 ADMITTING PRIVILEGES OR ACTUALLY DOING PROCEDURES WITHOUT
20 SPECIAL PERMISSION. BUT -- YEAH, IT DOES NOT ENCOMPASS
21 ADMITTING PRIVILEGES.

22 Q WAS IT YOUR CHOICE TO REDUCE YOUR PRIVILEGES FROM
23 ADMITTING TO COURTESY?

24 A I THINK THAT'S JUST STANDARD WHEN YOU'RE NOT WORKING
25 THERE ANY LONGER, BUT YOU HAD BEEN, YOU KNOW, WITH THE

1 DEPARTMENT AS LONG AS I HAD BEEN.

2 Q DO YOU CURRENTLY HAVE COURTESY PRIVILEGES AT LSU?

3 A YES.

4 Q HOW OFTEN ARE THOSE RENEWED?

5 A I BELIEVE -- I BELIEVE IT'S EVERY TWO YEARS.

6 Q HAVE YOU HAD ADMITTING PRIVILEGES AT OTHER HOSPITALS
7 THROUGHOUT YOUR CAREER?

8 A YES.

9 Q CAN YOU NAME SOME OF THOSE HOSPITALS?

10 A WELL, WHEN I WAS IN PRIVATE PRACTICE, ESPECIALLY, I
11 HAD PRIVILEGES AT BOSSIER MEDICAL HOSPITAL OR BOSSIER MEDICAL
12 CENTER, I THINK IT WAS CALLED THEN. I HAD PRIVILEGES AT
13 SCHUMPERT MEDICAL CENTER, EXCUSE ME, AT HIGHLAND MEDICAL
14 CENTER. I BELIEVE -- I THINK THERE WAS A SMALL HOSPITAL WE
15 OCCASIONALLY DID SOME CASES IN, RIVERSIDE HOSPITAL, WHICH
16 DOESN'T, I BELIEVE, EXIST ANY LONGER. SO A VARIETY OF PLACES.

17 Q HOW WERE YOU ABLE TO MAINTAIN PRIVILEGES AT THOSE
18 HOSPITALS?

19 A WELL, WE DID DELIVERIES THERE, NOT AS FREQUENTLY AS
20 WE DID AT BOSSIER HOSPITAL, THAT WAS OUR MAIN FOCUS. BUT WE
21 DID ENOUGH CASES THERE TO KEEP OUR, YOU KNOW -- TO KEEP OUR
22 PRIVILEGES INTACT.

23 Q DOCTOR, DID YOU ATTEMPT TO SECURE ADMITTING
24 PRIVILEGES AS A RESULT OF HB 388 BEING PASSED?

25 A YES, I DID.

1 **Q** WHERE DID YOU APPLY FOR PRIVILEGES?

2 **A** I APPLIED FOR PRIVILEGES -- WELL, THE FIRST PLACE I
3 ASKED, WHICH WOULD SEEM NATURAL, WAS I WENT TO THE HEAD OF THE
4 DEPARTMENT AT LSU MEDICAL CENTER OR I THINK IT WAS HEALTH
5 SCIENCE CENTER AT THAT TIME, AND JUST ASKED ABOUT THE
6 POSSIBILITY OF HAVING THE COURTESY PRIVILEGES UPGRADED. HE
7 WAS VERY RETICENT AND RELUCTANT TO CONSIDER THAT BECAUSE OF
8 THE POLITICAL NATURE OF THAT AT THE TIME.

9 **MR. DUNCAN:** OBJECTION, YOUR HONOR. HEARSAY.

10 **THE COURT:** HOLD ON, DOCTOR.

11 **MS. DOUFEKIAS:** I CAN REPHRASE THE QUESTION.

12 **THE COURT:** IT'S UP TO YOU.

13 **BY MS. DOUFEKIAS:**

14 **Q** DOCTOR, WHO DID YOU SPEAK WITH ABOUT UPGRADING YOUR
15 PRIVILEGES?

16 **A** THE HEAD OF THE DEPARTMENT OF OB/GYN, DR. GROOME.

17 **Q** WHAT'S YOUR UNDERSTANDING OF WHY YOU WERE NOT ABLE
18 TO UPGRADE YOUR PRIVILEGES?

19 **MR. DUNCAN:** OBJECTION, YOUR HONOR. HEARSAY. IT
20 CALLS FOR HEARSAY.

21 **MS. DOUFEKIAS:** I'M ASKING FOR HIS UNDERSTANDING,
22 I'M NOT ASKING --

23 **THE COURT:** THAT'S KIND OF A BACK DOORWAY. SO
24 UNLESS YOU CAN SHOW ME AN EXCEPTION TO THE HEARSAY RULE OR
25 THAT IT'S NOT HEARSAY, THEN I'M GOING TO --

1 **MS. DOUFEKIAS:** YOUR HONOR, I'M NOT ASKING FOR THE
2 TRUTH OF THE MATTER. IT'S HIS IMPRESSION. IT'S WHAT HIS VIEW
3 AND UNDERSTANDING WAS AND WHY HE THEN DIDN'T PROCEED WITH AN
4 APPLICATION TO LSU.

5 **THE COURT:** OKAY. I'M GOING TO OVERRULE THE
6 OBJECTION. YOU MAY ASK THE QUESTION.

7 **BY MS. DOUFEKIAS:**

8 **Q** DOCTOR, WHAT IS YOUR UNDERSTANDING OF WHY YOU
9 COULDN'T UPGRADE YOUR PRIVILEGES AT LSU?

10 **A** WELL, DR. GROOME TOLD ME THAT HE WAS RELUCTANT TO
11 EVEN CONSIDER THAT, BECAUSE IT WAS SUCH A CONTROVERSIAL TOPIC,
12 BUT HE WOULD TAKE IT TO THE DEAN AND ASK -- AND CALL ME, WHICH
13 IS WHAT HE DID AND HE ESSENTIALLY SAID THAT YOU'RE NOT GOING
14 TO GO BEYOND YOUR COURTESY PRIVILEGES.

15 **Q** WERE YOU SURPRISED BY THAT RESPONSE?

16 **A** NO.

17 **Q** WHY WEREN'T YOU SURPRISED?

18 **A** I WOULD HAVE -- I WOULD HAVE BEEN REALLY SURPRISED
19 IF IT HAD BEEN ANYTHING ELSE.

20 **Q** WHY IS THAT?

21 **A** JUST BECAUSE OF THE POLITICAL NATURE OF WHAT I DO
22 AND THE CONTROVERSY OF WHAT I DO.

23 **Q** WHERE ELSE DID YOU APPLY FOR PRIVILEGES?

24 **A** I APPLIED AT WILLIS-KNIGHTON IN BOSSIER CITY,
25 LOUISIANA.

1 **Q** AND AFTER YOU APPLIED FOR PRIVILEGES AT
2 WILLIS-KNIGHTON, DID THE HOSPITAL RESPOND TO YOUR APPLICATION?

3 **A** YES.

4 **Q** DID THEY RESPOND IN WRITING?

5 **A** INITIALLY THEY SENT ME THE APPLICATION AND WE
6 CORRESPONDED BACK AND FORTH WHEN I HAD QUESTIONS IN FILLING IT
7 OUT AND SO FORTH, SO, YES.

8 **Q** DID YOU EVENTUALLY RECEIVE A LETTER FROM
9 WILLIS-KNIGHTON?

10 **A** YES.

11 **Q** SO THERE ARE SOME BINDERS AT YOUR FEET AND I'M GOING
12 TO ASK YOU TO LOOK AT AN EXHIBIT. THE EXHIBIT
13 IS CONFIDENTIAL, SO I'M NOT GOING TO BE ABLE TO ASK YOU ABOUT
14 SPECIFIC LANGUAGE IN THE LETTER, BUT I'M GOING TO ASK YOU A
15 FEW GENERAL QUESTIONS ABOUT THE LETTER. SO JUST KEEPING THAT
16 IN MIND THAT BECAUSE THE LETTER IS CONFIDENTIAL, WE CAN'T --
17 BECAUSE OF AN ORDER OF THE COURT, WE CAN'T DISCUSS THE
18 SPECIFIC WORDS IN THE DOCUMENT. COULD YOU LOOK AT THE BINDERS
19 AT YOUR FEET? AND YOU'LL SEE THERE'S A SET OF FOUR --

20 **A** OKAY.

21 **Q** THAT HAVE JOINT EXHIBITS, IS WRITTEN ON THE SPINE.
22 I BELIEVE IN THE FIRST ONE -- IT MIGHT BE THE SECOND ONE, I'M
23 SORRY. BUT IF YOU COULD LOOK FOR THE BINDER THAT HAS JOINT
24 EXHIBIT 144?

25 **A** JOINT EXHIBIT 144?

1 **Q** IF YOU LOOK FOR THE TAB THAT HAS 144 ON IT?

2 **THE COURT:** IT'S GOING TO BE IN VOLUME FOUR.

3 WHAT'S THE EXHIBIT NUMBER? 144?

4 **MS. DOUFEKIAS:** 144.

5 **THE COURT:** YOU'RE GOING TO PUT IT ON THE SCREEN FOR
6 ME? IS SOMEBODY GOING TO PUT IT ON THE SCREEN? I CAN PULL IT
7 UP OFF THE BINDER, BUT --

8 **MS. DOUFEKIAS:** I'M SORRY, YOUR HONOR, WE'RE WORKING
9 ON SOME OF THE ADDITIONAL EXHIBITS AND THE COMPUTER THAT WE
10 HAVE, ALL OF THE EXHIBITS LOADED ON TO IT IS NOT IN THE
11 COURTROOM AT THE MOMENT.

12 **THE COURT:** I'VE GOT THE HARD COPY IN FRONT OF ME.

13 **MR. DUNCAN:** WE'LL LOOK AT THE HARD COPY, YOUR
14 HONOR. 144. IS THAT RIGHT?

15 **THE WITNESS:** I APOLOGIZE, I DO NOT SEE A 144 AT MY
16 FEET.

17 **THE COURT:** DOCTOR, I THINK SOMEBODY IS GOING TO GET
18 YOU A HARD COPY HERE MOMENTARILY.

19 **BY MS. DOUFEKIAS:**

20 **Q** DOCTOR, DO YOU SEE A BINDER LABELED JOINT EXHIBITS,
21 BINDER FOUR OF FOUR.

22 **A** YES.

23 **Q** IF YOU LOOK IN THAT BINDER YOU SHOULD FIND A NUMBER
24 TAB THAT SAYS 144.

25 **A** OKAY. LET ME GET THE OTHER BINDER OFF MY FOOT.

1 OKAY.

2 Q DO YOU REMEMBER RECEIVING THIS LETTER?

3 A ON 140 -- HERE WE GO. HERE WE GO. OKAY. YES, I
4 DO.

5 Q DOES THIS LETTER ASK YOU TO SUBMIT ADDITIONAL
6 INFORMATION TO WILLIS-KNIGHTON?

7 A YES, IT DOES.

8 Q DID YOU HAVE A SENSE OF WHETHER OR NOT YOU COULD
9 SUBMIT THE INFORMATION REQUESTED TO WILLIS-KNIGHTON?

10 A WELL, THEY WERE REQUESTING INFORMATION ON SPECIFIC,
11 YOU KNOW, PROCEDURES THAT I HAD DONE IN HOSPITALS, IN OTHER
12 HOSPITALS, IN THE PAST 12 MONTHS. IT WOULD HAVE BEEN
13 IMPOSSIBLE FOR ME TO SUBMIT THAT INFORMATION.

14 Q WHY IS IT IMPOSSIBLE FOR YOU TO ADMIT {SIC} THAT
15 INFORMATION, DOCTOR?

16 A WELL, BECAUSE I HAVEN'T DONE ANY IN-HOSPITAL WORK IN
17 TEN YEARS, SO THERE IS NO BODY OF HOSPITALIZED PATIENTS THAT I
18 HAVE TO DRAW FROM.

19 Q AND WHY HAVEN'T YOU DONE ANY IN-HOSPITAL WORK IN TEN
20 YEARS?

21 A WELL, BECAUSE IN 2004, I BELIEVE IT WAS 2004, I
22 DECIDED TO, AT THAT POINT, JUST -- I WAS WORKING AT LSU. I
23 WAS ALSO WORKING AT BOSSIER AND I WAS ALSO WORKING AT
24 CAUSEWAY, AND I WAS JUST GETTING OLDER. AND I WANTED TO SLOW
25 DOWN AND SO THAT'S WHAT I CHOSE TO ELIMINATE AND -- SO FOR TEN

1 YEARS, MY JOB AT THE CLINIC WAS BASICALLY TO KEEP PEOPLE OUT
2 OF THE HOSPITAL. SO I WAS NOT DOING THE TYPE OF PRACTICE THAT
3 WOULD LEND ITSELF TO HAVING HOSPITALIZED PATIENTS.

4 Q DOCTOR, DO YOU REMEMBER RECEIVING A SECOND LETTER
5 FROM WILLIS-KNIGHTON?

6 A YES.

7 Q WAS THAT LETTER SIMILAR TO THIS LETTER?

8 A YES. IN RESPONSE TO THEM I HAD SUBMITTED CASES THAT
9 I HAD DONE AT THE CLINIC IN BOSSIER.

10 MR. DUNCAN: OBJECTION, YOUR HONOR. I JUST NEED TO
11 KNOW IF WE'RE REFERRING TO AN EXHIBIT?

12 THE COURT: I WOULD LIKE TO KNOW ALSO.

13 IS THERE AN EXHIBIT HERE THAT YOU'RE REFERRING TO?

14 MS. DOUFEKIAS: YOUR HONOR, HE'S JUST -- I CAN
15 REPHRASE THE QUESTION, BUT I'M NOT USING AN EXHIBIT RIGHT NOW.

16 THE COURT: OKAY.

17 BY MS. DOUFEKIAS:

18 Q DOCTOR, DID YOU SUPPLY ANY ADDITIONAL INFORMATION TO
19 WILLIS-KNIGHTON AFTER YOU RECEIVED JOINT EXHIBIT 144?

20 A YES.

21 Q WHAT DID YOU GIVE THEM?

22 A I SENT THEM JUST THE OPERATIVE PAGE ON PATIENTS --
23 WITH THE PATIENTS' NAME BLACKED OUT OF COURSE, OPERATIVE PAGE
24 THAT WE DO ON THE PATIENTS -- ON REPRESENTATIVE PATIENTS THAT
25 I HAD DONE. BUT THEY DID NOT DEEM THAT SUFFICIENT TO SATISFY

1 THEIR REQUIREMENTS.

2 **MR. DUNCAN:** OBJECTION, YOUR HONOR. HEARSAY.

3 **THE COURT:** MS. DOUFEKIAS?

4 **MS. DOUFEKIAS:** YOUR HONOR, THAT INFORMATION IS
5 ALREADY IN EVIDENCE. I'M GLAD TO -- ALREADY IN EVIDENCE. I'M
6 HAPPY TO POINT TO AN EXHIBIT.

7 **MR. DUNCAN:** THAT'S WHY I ASKED ABOUT THE EXHIBIT
8 EARLIER, YOUR HONOR. I JUST WANT TO SEE --

9 **THE COURT:** YEAH, I WOULD LIKE FOR US ALL TO BE ON
10 THE SAME PAGE, SO WHY DON'T WE LOOK AT AN EXHIBIT, IF YOU'VE
11 GOT ONE.

12 **BY MS. DOUFEKIAS:**

13 **Q** DOCTOR, IF YOU COULD LOOK AT THOSE BINDERS AGAIN?

14 **A** YES.

15 **Q** I THINK YOU'RE GOING TO BE LOOKING AT BINDER TWO OF
16 FOUR THIS TIME. IF YOU COULD LOOK FOR JOINT EXHIBIT NUMBER
17 89. OH, I APOLOGIZE. IT'S BINDER THREE. I HAVE ALL OF MY
18 BINDERRING NUMBERING OFF, I'M SORRY.

19 **MR. DUNCAN:** DEMME, WE HAVE THAT IN OUR HARD COPY,
20 JUST SO YOU'LL KNOW.

21 **THE WITNESS:** IT'S BINDER NUMBER THREE OF FOUR?

22 **BY MS. DOUFEKIAS:**

23 **Q** THREE OF FOUR, JOINT EXHIBIT 89, AND THIS IS ALSO A
24 CONFIDENTIAL EXHIBIT.

25 **A** WAS THAT 1989 -- I'M SORRY, 89?

1 Q EIGHTY-NINE.

2 A YES.

3 Q AFTER YOU SUBMITTED ADDITIONAL DOCUMENTATION TO
4 WILLIS-KNIGHTON, DID YOU RECEIVE THIS LETTER?

5 A YES.

6 Q AND IS THIS LETTER WILLIS-KNIGHTON'S RESPONSE TO
7 WHAT YOU SENT THEM?

8 A YES.

9 Q DID YOU UNDERSTAND THIS LETTER TO MEAN THAT
10 WILLIS-KNIGHTON WAS NOT SATISFIED WITH WHAT YOU SENT THEM?

11 A YES.

12 Q HAVE YOU HEARD ANYTHING ELSE FROM WILLIS-KNIGHTON
13 SINCE YOU RECEIVED JOINT EXHIBIT 89?

14 A NO.

15 Q DO YOU ANTICIPATE BEING ABLE TO PROVIDE
16 WILLIS-KNIGHTON WITH THE KIND OF INFORMATION THAT THEY
17 REQUIRE?

18 A SINCE IT DOESN'T EXIST, NO.

19 Q WILL IT EXIST AT ANY TIME IN THE NEAR FUTURE?

20 A NO.

21 Q WHY IS THAT?

22 A BECAUSE I'M JUST NOT INTERESTED IN DOING A
23 HOSPITAL-BASED PRACTICE.

24 Q WHERE ELSE DID YOU APPLY FOR ADMITTING PRIVILEGES?

25 A I APPLIED AT TULANE MEDICAL CENTER IN NEW ORLEANS,

1 LOUISIANA.

2 Q AND DID YOU RECEIVE A RESPONSE FROM TULANE WHEN YOU
3 APPLIED?

4 A YES.

5 Q WHAT RESPONSE DID YOU RECEIVE FROM TULANE?

6 MR. DUNCAN: AGAIN, YOUR HONOR. OBJECTION. COULD
7 WE REFER TO AN EXHIBIT, PLEASE?

8 THE COURT: IS THERE AN EXHIBIT?

9 MS. DOUFEKIAS: SURE.

10 BY MS. DOUFEKIAS:

11 Q DOCTOR, IF YOU COULD TAKE A LOOK AT JOINT
12 EXHIBIT 183? THAT WILL BE IN BINDER FOUR, AGAIN.

13 A OKAY. I HAVE BINDER FOUR. WHAT WAS THAT AGAIN?

14 Q ONE EIGHTY-THREE.

15 A OKAY. GOT IT.

16 Q DO YOU RECOGNIZE THIS DOCUMENT?

17 A YES.

18 Q WITHOUT DESCRIBING THE SPECIFIC CONTENT OF THE
19 DOCUMENT, COULD YOU TELL US WHAT THIS DOCUMENT IS?

20 A I'M SORRY, TELL -- TELL YOU THE DOCUMENT WHAT?

21 Q TELL THE COURT WHAT THE DOCUMENT IS.

22 A THAT WAS A -- BASICALLY A LETTER FROM THE GOVERNMENT
23 INFORMING ME THAT THE GOVERNING BOARD OF TULANE HAD GRANTED ME
24 PRIVILEGES WITH CERTAIN RESTRICTIONS.

25 Q DID YOU SPEAK WITH ANYBODY ABOUT YOUR TULANE

1 PRIVILEGES DURING THE PROCESS OF YOUR APPLICATION?

2 A YES.

3 Q AND WITHOUT SAYING THE DOCTOR'S NAME, WHO DID YOU
4 SPEAK WITH?

5 A I SPOKE WITH THE HEAD OF THE OBSTETRICAL AND
6 GYNECOLOGICAL DEPARTMENT AT L -- EXCUSE ME, AT TULANE MEDICAL
7 CENTER.

8 MR. DUNCAN: YOUR HONOR, PARDON ME. I'M GOING TO
9 OBJECT AGAIN TO HEARSAY WITH RESPECT TO COMMUNICATIONS WITH
10 THE DOCTOR UNLESS WE CAN REFER TO AN EXHIBIT.

11 MS. DOUFEKIAS: YOUR HONOR --

12 THE COURT: I HAVEN'T HEARD THE QUESTION YET, BUT
13 I'M SURE IT'S COMING.

14 IS THERE A QUESTION, WHAT DID THE DOCTOR --

15 MS. DOUFEKIAS: NO.

16 THE COURT: OKAY. SINCE THERE'S NOTHING TO SUSTAIN
17 OR OVERRULE.

18 MR. DUNCAN: WITHDRAW, YOUR HONOR.

19 BY MS. DOUFEKIAS:

20 Q DID YOU COMMUNICATE WITH THE DOCTOR BY E-MAIL?

21 A YES.

22 Q AND IF I REFER TO, DOCTOR A, DO YOU KNOW WHO THAT
23 IS?

24 A YES.

25 Q IS THAT THE DOCTOR THAT YOU COMMUNICATED WITH BY

1 E-MAIL?

2 A YES.

3 Q WHAT IS YOUR UNDERSTANDING OF -- YOU TESTIFIED THAT
4 YOUR TULANE PRIVILEGES HAVE SOME CONDITIONS. WHAT IS YOUR
5 UNDERSTANDING ABOUT THE CONDITIONS THAT YOUR TULANE PRIVILEGES
6 COME WITH?

7 A YES. THEY FALL UNDER THE CATEGORY OF COURTESY
8 PRIVILEGES. I THINK EACH HOSPITAL DEFINES THEIRS SOMEWHAT
9 DIFFERENTLY. BUT I WILL GO ON -- IF I HAVE TO PUT A PATIENT
10 INTO TULANE MEDICAL CENTER, I WILL BE ON RECORD AS THE
11 ADMITTING PHYSICIAN, BUT THEY IMMEDIATELY TAKE OVER THE CARE
12 OF THAT PATIENT.

13 Q AND HAS TULANE IDENTIFIED DOCTORS WHO WILL TAKE OVER
14 THE CARE OF ANY PATIENTS YOU ADMIT --

15 A YES.

16 Q -- ONCE THEY'RE ADMITTED? ARE YOU AWARE DOCTOR --
17 OH, BEFORE I ASK THAT, WHAT DOES IT MEAN WHEN ONE
18 DOCTOR COVERS ANOTHER DOCTOR?

19 A WELL, THAT MEANS THAT -- EXACTLY AS IT'S IMPLIED.
20 YOU'RE TAKING OVER THE CARE OF ANOTHER DOCTOR'S PATIENT FOR A
21 PRESCRIBED PERIOD OF TIME.

22 Q ARE YOU AWARE THAT SECRETARY KLIEBERT HAS FILED AN
23 AFFIDAVIT IN THIS CASE ABOUT THE SUBJECT OF YOUR PRIVILEGES?

24 A I WAS MADE AWARE OF THAT RECENTLY, YES.

25 MR. DUNCAN: YOUR HONOR, I GUESS MY OBJECTION IS

1 THAT, MS. DOUFEKIAS HAS REFERRED TO THE DECLARATION AND IT'S
2 NOT IN EVIDENCE. IF WE'D LIKE TO MOVE IT TO BE IN EVIDENCE, I
3 WON'T OBJECT TO IT.

4 MS. DOUFEKIAS: THAT'S MY NEXT QUESTION.

5 MR. DUNCAN: OH, WITHDRAWN.

6 MS. DOUFEKIAS: YOU HAD YOUR COFFEE THIS MORNING,
7 MR. DUNCAN.

8 MR. DUNCAN: I HAD TOO MUCH COFFEE THIS MORNING.

9 THE COURT: LET THE RECORD REFLECT...

10 MS. DOUFEKIAS: YOUR HONOR, I'M NOT SURE, BECAUSE
11 THESE ARE DOCUMENTS THAT WE JUST EXCHANGED THIS MORNING. IS
12 THERE A COPY OF THIS IN THE BINDER? DO YOU HAVE A COPY YOU
13 CAN PUT UP ON THE SCREEN?

14 MR. DUNCAN: SO WE GAVE YOU THE HARD COPIES AND MS.
15 CAUSEY NEEDS THE COPIES --

16 THE COURT: SOMEWHERE AMONGST ALL OF THESE BINDERS I
17 HAVE IT --

18 MR. DUNCAN: WE WERE JUST EXCHANGING IT THIS
19 MORNING.

20 THE COURT: THAT WOULD BE GREAT IF I COULD HAVE
21 ANOTHER COPY.

22 MR. DUNCAN: LET'S DO THIS. PARDON ME.

23 MS. DOUFEKIAS: IF YOU DON'T HAVE A COPY FOR THE
24 WITNESS I CAN GIVE THE WITNESS MY COPY.

25 MR. DUNCAN: WELL, YOU CAN DO IT ELMO, RIGHT?

1 **MS. DOUFEKIAS:** THAT'S FINE. IF YOU CAN PUT IT ON
2 THE SCREEN, THAT WOULD BE GREAT.

3 **MR. DUNCAN:** 157? YOU GOT IT?

4 **MS. DOUFEKIAS:** YOUR HONOR, I BELIEVE DEFENDANT'S
5 EXHIBIT 157 IS AN AGREED EXHIBIT OR QUICKLY BECOMING ONE.

6 **THE COURT:** MINE IS LABELED 156.

7 **MR. DUNCAN:** THAT'S A DIFFERENT EXHIBIT, YOUR HONOR.

8 **THE COURT:** OKAY.

9 **MR. DUNCAN:** 157 IS ENTITLED, KLIEBERT DECLARATION.
10 DO YOU HAVE THAT?

11 **THE COURT:** I HAVE IT, BUT NOT HANDY.

12 **MR. DUNCAN:** WELL, WE NEED TO GET IT TO YOU.

13 **THE COURT:** YEAH, THAT WOULD BE GREAT.

14 **MS. DECKER:** YOUR HONOR, THE 157, DID YOU FIND THAT?
15 THEY'RE IN THE STACK THAT I JUST GAVE YOU GUYS. I'M SORRY, I
16 DIDN'T HAVE ANY EXTRA TABS.

17 **THE COURT:** I SEE. OKAY. HOLD ON.

18 **MS. DECKER:** I'M SORRY. THEY'RE IN THERE.

19 **THE COURT:** I THOUGHT THIS WAS ALL 156, BUT I HAVE
20 NOW COME UPON 157.

21 **MR. DUNCAN:** ARE YOU ABLE TO SHOW IT TO THE WITNESS,
22 MS. -- DEMME? ARE YOU ABLE TO SHOW IT TO THE WITNESS OR DO
23 YOU NEED IT?

24 **MS. DOUFEKIAS:** I HAVE A HARD COPY THAT I CAN GIVE
25 THE WITNESS OR IF YOU CAN PUT IT UP ON THE SCREEN, WE'LL PUT

1 IT UP ON THE SCREEN.

2 MR. DUNCAN: I'VE GOT IT.

3 MS. DOUFEKIAS: SO, YOUR HONOR, I'D MOVE DEFENDANT'S
4 EXHIBIT 157 IN AS A JOINT EXHIBIT.

5 MR. DUNCAN: NO OBJECTION, YOUR HONOR.

6 THE COURT: CAN WE GIVE IT A NUMBER; JOINT EXHIBIT
7 NUMBER? IS IT 190 IS THE NEXT ONE?

8 MS. DOUFEKIAS: I BELIEVE THAT'S JOINT EXHIBIT 191,
9 YOUR HONOR.

10 THE COURT: 191, OKAY.

11 YOU HAVE IT, DOCTOR, ON THE SCREEN?

12 THE WITNESS: YES.

13 THE COURT: OKAY.

14 BY MS. DOUFEKIAS:

15 Q DOCTOR, IF YOU COULD SCROLL DOWN OR IF SOMEBODY
16 COULD SCROLL DOWN FOR YOU, I BELIEVE IT'S PARAGRAPH 6.

17 A OKAY.

18 Q IS IT YOUR UNDERSTANDING THAT SECRETARY KLIEBERT HAS
19 STATED IN THIS DECLARATION THAT YOUR PRIVILEGES AT TULANE
20 SATISFY HB 388?

21 A LET ME TAKE A MOMENT TO READ THAT, PLEASE. CAN YOU
22 REPEAT THE QUESTION?

23 Q OF COURSE. IS IT YOUR UNDERSTANDING THAT IN
24 PARAGRAPH 6 OF JOINT EXHIBIT 191, SECRETARY KLIEBERT HAS TAKEN
25 THE POSITION THAT YOUR TULANE PRIVILEGES SATISFY THE

1 REQUIREMENT IN HB 388?

2 A THAT SEEMS TO BE WHAT SHE'S SAYING.

3 Q DO YOU HAVE ANY CONCERNS ABOUT THAT?

4 A YES.

5 Q COULD YOU PLEASE EXPLAIN YOUR CONCERNS?

6 A WELL, MY READING OF HOUSE BILL 388, WHERE THEY
7 SPECIFICALLY SAY THAT ACTIVE ADMITTING PRIVILEGES INCLUDES
8 BEING ABLE TO DO DIAGNOSTIC TESTS AND SURGERY ON THE PATIENT,
9 IS NOT WHAT I HAVE AT TULANE. SO I WOULD BE VERY CONCERNED
10 THAT REGARDLESS OF HER DECLARATION, THAT WHAT I HAVE DOES
11 NOT -- AT TULANE DOES NOT SATISFY HOUSE BILL 388.

12 Q AND IS IT YOUR UNDERSTANDING THAT YOU CAN NOT DO
13 SURGERY AT TULANE BASED ON YOUR CONVERSATIONS WITH PEOPLE --

14 MR. DUNCAN: OBJECTION, YOUR HONOR. HEARSAY. CAN
15 WE REFER TO AN EXHIBIT?

16 THE COURT: I MEAN IT IS HEARSAY UNLESS YOU TELL ME
17 AN EXCEPTION TO IT THAT I BUY.

18 MS. DOUFEKIAS: YOUR HONOR, WE'VE HAD THIS OBJECTION
19 BEFORE. I'M NOT OFFERING IT FOR THE TRUTH, I'M JUST OFFERING
20 IT FOR WHAT THE DOCTOR UNDERSTANDS.

21 THE COURT: IS THIS A STATE OF MIND?

22 MS. DOUFEKIAS: YES.

23 THE COURT: OKAY, WELL THEN FOR THAT PURPOSE AND
24 LIMITED PURPOSE, I'LL ALLOW IT.

25 MR. DUNCAN: THANK YOU.

1 **THE COURT:** LET ME ASK YOU THIS, JUST A POINT OF
2 CLARIFICATION FOR THE COURT. DOES THE LETTER FROM TULANE
3 DELINEATE THAT HE CAN PERFORM SURGERY?

4 **MS. DOUFEKIAS:** IT DOES NOT, YOUR HONOR.

5 **THE COURT:** OKAY.

6 **MR. DUNCAN:** YOUR HONOR, I BELIEVE THAT'S GOING TO
7 BE --

8 **THE COURT:** THAT'S AN ISSUE.

9 **MR. DUNCAN:** THAT'S APPARENTLY AN ISSUE.

10 **THE COURT:** I SEE.

11 **BY MS. DOUFEKIAS:**

12 **Q** DOCTOR, DO YOU HAVE ANY CONCERNS THAT THE POSITION
13 SECRETARY KLIEBERT HAS TAKEN IN THIS DECLARATION MAY CHANGE AT
14 ANY POINT IN TIME?

15 **A** YES, I DO.

16 **Q** COULD YOU PLEASE EXPLAIN THAT CONCERN?

17 **A** WELL, THE LETTER FROM TULANE I MEAN SPECIFICALLY
18 SAYS, THAT I WILL HAND OVER IMMEDIATELY MY CARE OF THE PATIENT
19 TO THEM, WHICH I THINK IS PROPER, ACTUALLY. AND SHE SEEMS TO
20 BE SAYING THAT THAT SATISFIES HOUSE BILL 388. WHAT I'M
21 READING SEEMS TO ME THAT IT DOESN'T. I WOULD BE VERY
22 CONCERNED THAT SOMEBODY WOULD COME UP IN THE FUTURE WITH A
23 DIFFERENT INTERPRETATION.

24 **Q** DOCTOR, DO YOU KNOW WHAT PATIENT CONTINUITY OF CARE
25 MEANS?

1 **A** YES.

2 **Q** WHAT DOES THAT MEAN?

3 **A** TO ME IT MEANS THAT YOU'RE GETTING THE BEST CARE
4 POSSIBLE FOR YOUR PATIENT IN A CONTINUING FASHION. THE
5 PATIENT DOES NOT HAVE TO HAVE THE SAME PHYSICIAN TO ACCOMPLISH
6 THAT. I THINK THE MOST IMPORTANT THING IN CONTINUITY OF CARE
7 IS IF YOU HAND A PATIENT OFF FOR WHATEVER REASON, IS
8 COMMUNICATION WITH THE PHYSICIAN THAT YOU'RE HANDING THEM TO.

9 THAT TO ME IS THE CRUX OF CONTINUITY OF CARE. FOR
10 INSTANCE, IN PRIVATE PRACTICE -- IN A GROUP PRIVATE PRACTICE,
11 AN OBSTETRICAL PATIENT IS OFTEN NOT DELIVERED BY HER DOCTOR IN
12 THAT GROUP BECAUSE SOMEONE ON CALL WILL DO IT. BUT
13 COMMUNICATION WITHIN THAT GROUP IS PARAMOUNT I THINK FOR THE
14 PATIENT TO GET THE BEST CARE.

15 SAME THING IN MY SITUATION WITH CONTINUITY OF CARE,
16 MEANS IF I DO HAVE A COMPLICATION THAT REQUIRES
17 HOSPITALIZATION, IS MAKING SURE THEY GET TO A FACILITY THAT
18 CAN PROVIDE THEM GOOD CARE AND COMMUNICATION WITH THAT
19 FACILITY FROM MY PART.

20 **Q** DOCTOR, HAVE YOU EVER -- DOCTOR, HAVE YOU EVER --
21 ACTUALLY, I'M SORRY, LET ME JUST ASK YOU ONE REAL QUICK
22 QUESTION. BEFORE WHEN WE WERE DISCUSSING YOUR TULANE
23 PRIVILEGES, YOU SAID THAT YOU THOUGHT IT WAS APPROPRIATE FOR
24 YOU TO HAND YOUR PATIENTS OFF TO A DOCTOR AT TULANE; IS THAT
25 CORRECT?

1 **A** YES.

2 **Q** WHY DO YOU HAVE THAT VIEW?

3 **A** WELL, YOU KNOW, I HAVEN'T DONE A HYSTERECTOMY IN TEN
4 YEARS, SINCE I BASICALLY RETIRED FROM MY SERVICES FROM LSU. I
5 STILL KNOW HOW TO DO ONE. I STILL KNOW HOW TO ROLLER SKATE,
6 BUT I'M NOT GOING TO BE AS GOOD AT IT AS I WAS WHEN I WAS
7 DOING A LOT OF THESE A YEAR. PLUS, ANY DOCTOR WILL TELL YOU
8 THAT THEY HAVE THEIR FAVORITE PLACES TO OPERATE. THE FIRST
9 QUESTION I ASKED MY SURGEON ON MY FOURTH NECK SURGERY IS WHERE
10 DO YOU FEEL MOST COMFORTABLE DOING THIS?

11 SO I THINK THE PATIENT IS MUCH BETTER SERVED IF I
12 HAVE A COMPLICATION THAT REQUIRES SURGERY, TO GET HER IN THE
13 HANDS OF SOMEONE, GIVE THAT SOMEONE ALL OF THE KNOWLEDGE I CAN
14 ABOUT THE SITUATION AND HAVE THEM DO THE APPROPRIATE SURGERY,
15 IF THAT'S WHAT'S REQUIRED.

16 **Q** DOCTOR, DO YOU HAVE THAT SAME VIEW OF YOUR ABILITY
17 TO PERFORM AN ABORTION?

18 **A** NO, I'M VERY GOOD AT DOING ABORTIONS BECAUSE I DO
19 THEM ALL THE TIME.

20 **Q** HAVE YOU HAD IN THE COURSE OF YOUR -- WITHDRAW. IN
21 THE PAST FIVE YEARS HAVE YOU HAD ANY PATIENTS THAT HAVE
22 REQUIRED HOSPITALIZATION?

23 **A** IN THE PAST FIVE YEARS, YES.

24 **Q** HOW MANY?

25 **A** TWO, I BELIEVE, THAT I CAN RECALL.

1 **Q** IN BOTH OF THOSE INSTANCES DID YOU SPEAK WITH THE
2 HOSPITAL DOCTOR WHEN THE PATIENT WAS TRANSFERRED TO THE
3 HOSPITAL?

4 **A** ABSOLUTELY.

5 **Q** WHY IS THAT?

6 **A** ONE OF MY BIGGEST GRIPES AND ONE THING I STAYED ON
7 THE RESIDENTS ABOUT WHEN I WAS TEACHING, IS DON'T JUST DUMP A
8 PATIENT OFF TO SOMEONE ELSE WITHOUT GIVING THAT SOMEONE ELSE
9 INFORMATION. I CAN HONESTLY SAY I HAVE NEVER SENT A PATIENT
10 TO ANOTHER INSTITUTION THAT I DID NOT CALL, SEND EVERY WRITTEN
11 RECORD THAT'S APPLICABLE AND APPROPRIATE THAT I COULD. AND
12 TRY TO SPEAK TO AS MANY PEOPLE INVOLVED IN THAT PATIENT'S CARE
13 AS POSSIBLE.

14 **Q** YOU MENTIONED THAT THERE WERE TWO PATIENTS THAT HAD
15 TO BE TRANSFERRED TO THE HOSPITAL. COULD YOU PLEASE DESCRIBE
16 THOSE TWO CASES?

17 **A** YES. ONE CASE WAS REALLY QUITE INTERESTING AND
18 REALLY, REALLY RARE. IT WAS SECOND A TRIMESTER PROCEDURE. I
19 BELIEVE SHE WAS APPROXIMATELY 18 WEEKS GESTATION LMP, HAD
20 REALLY AN UNCOMPLICATED PROCEDURE. IT WENT VERY EASILY. JUST
21 NO SENSE THAT ANYTHING HAD GONE AWRY FROM, YOU KNOW, MY END OF
22 THINGS AND YET WHEN I FINISHED EMPTYING THE UTERUS, THE
23 PATIENT STARTED HAVING DIS -- VAGINAL BLEEDING, BUT FROM AN
24 ABDOMINAL EXAM, IT BECAME APPARENT QUITE QUICKLY THAT THIS
25 PATIENT WAS HAVING INTRA-ABDOMINAL BLEEDING ON A LARGE SCALE.

1 WE IMMEDIATELY CALLED 911, GOT HER TO ACTUALLY, IN
2 THAT CASE, WILLIS-KNIGHTON IN BOSSIER. I CALLED THE EMERGENCY
3 ROOM PHYSICIAN. WE WERE IN -- WHILE THE EMTS WERE IN THE
4 PROCESS OF GETTING HER READY FOR TRANSPORT, WE WERE COPYING
5 THE CHART. I WAS WRITING MY NOTE TO SEND WITH THEM. I CALLED
6 THE DOCTOR THAT WAS GOING TO BE INVOLVED WHEN I FOUND OUT WHO
7 HE WAS, AND ASKED HIM TO PLEASE GIVE ME A FOLLOW-UP AFTER THEY
8 GOT OUT OF SURGERY. I STILL HAD PATIENTS TO ATTEND TO.

9 AND WHAT IT ENDED UP BEING, SHE HAD HAD ONE PREVIOUS
10 C-SECTION AND IT WAS ACTUALLY A LOW TRANSVERSE INCISION ON THE
11 UTERUS, WHICH IS THE LEAST LIKELY TO RUPTURE, BUT HER SCAR
12 JUST LET GO, IT WAS JUST GAPING WIDE OPEN.

13 NOT IN A TRAUMATIC FASHION. THE DOCTOR THAT DID THE
14 SURGERY, WE DISCUSSED IT AFTERWARDS, AND THAT IS -- YOU COULD
15 GO A WHOLE CAREER AND NEVER SEE ANYTHING LIKE THAT AT THAT
16 GESTATIONAL AGE. IT'S RARE EVEN IN PREGNANCIES THAT ARE
17 FURTHER ALONG AFTER MULTIPLE C-SECTIONS, BUT ALMOST UNHEARD OF
18 IN THIS SITUATION. VERY UNUSUAL. SHE DID REQUIRE A
19 HYSTERECTOMY AND SHE DID WELL. I DID GO TO THE HOSPITAL AND
20 TALKED TO HER FAMILY AND THEN LATER WENT BACK AND TALKED TO
21 HER AND FORTUNATELY SHE DID WELL.

22 Q BASED ON YOUR REVIEW OF THE CASE, WHAT WAS YOUR
23 UNDERSTANDING ABOUT WHETHER HER C-SECTION SCAR WOULD HAVE
24 BURST AT SOME POINT HAD SHE CARRIED TO TERM?

25 A IT'S ALMOST CERTAIN THAT IN AN IRONIC WAY, HAVING

1 THAT TERMINATION PROBABLY SAVED HER LIFE. BECAUSE AT SOME
2 POINT, IF IT HAD THINNED OUT THAT MUCH BY 18 WEEKS, THAT LOWER
3 UTERINE SEGMENT WHERE THE SCAR IS, IF IT HAD THINNED OUT TO
4 THAT POINT BY 18 WEEKS, IT WAS ALMOST CERTAINLY GOING TO
5 RUPTURE LATER IN PREGNANCY AND IF SHE HAD DONE THIS AT HOME,
6 QUITE FRANKLY I DON'T KNOW IF SHE WOULD HAVE MADE IT TO THE
7 HOSPITAL OR WOULD HAVE SURVIVED.

8 Q DID THE OPERATING SURGEON AGREE WITH YOUR
9 ASSESSMENT?

10 A YES.

11 Q YOU SAID THAT THERE WERE TWO CASES; CAN YOU PLEASE
12 DESCRIBE THE SECOND CASE?

13 A YES. THE OTHER CASE, SHE WAS A LADY THAT, ONCE
14 AGAIN, HAD A TWO DAY TERMINATION, A SECOND TRIMESTER
15 TERMINATION. I DON'T RECALL HOW FAR ALONG, BUT AN EASY CASE,
16 SUCCESSFUL COMPLETION. SHE WAS -- I BELIEVE HAD HAD SEVERAL
17 VAGINAL DELIVERIES AND HAD A CONDITION, WHAT WE CALL UTERINE
18 ATONY. IT'S JUST WHERE THE UTERUS DOESN'T CONTRACT ENOUGH TO
19 CLOSE OFF THE VESSELS THAT WERE SUPPLYING THE AFTERBIRTH OR
20 PLACENTA. AND IN THAT CASE, YOU KNOW, THEY KEEP BLEEDING FROM
21 THAT PLACENTAL BED. YOU CAN ADMINISTER DRUGS, WHICH WE DID,
22 AND UTERINE MASSAGE TO HELP THE UTERUS CLAMP DOWN.

23 SHE CONTINUED TO -- HER UTERUS WAS A LITTLE SLOWER
24 TO RESPOND THAN I LIKED. I DIDN'T FEEL LIKE IT WAS -- YOU
25 KNOW, SHE WAS IN A CRITICAL -- IT WASN'T TO THAT POINT IN A

1 CRITICAL ACUTE STATE OF BLEEDING, BUT IT WAS JUST MORE THAN I
2 WAS COMFORTABLE WITH. SO I MADE THE DECISION TO CALL 911 AND
3 GET EMTS OUT FOR TRANSPORT AND ONCE AGAIN, I BELIEVE THAT MAY
4 HAVE BEEN TO LSU. I DON'T RECALL SPECIFICALLY. BUT
5 INTERESTINGLY, BY THE TIME THEY GOT THERE, SHE HAD PRETTY MUCH
6 QUIT BLEEDING. I THINK ALL OF THE DRUGS WE HAD GIVEN AND THE
7 MESSAGE WORKED.

8 TOOK HER TO THE HOSPITAL ANY WAY. I THINK THEY
9 WATCHED HER. I DON'T EVEN THINK THEY ADMITTED HER AND YES, IT
10 WAS LSU, BECAUSE THE RESIDENT CALLED ME AND THEY DISCHARGED
11 HER SEVERAL HOURS LATER AND SHE DID FINE.

12 Q IN THE 35 YEARS THAT YOU PERFORMED ABORTIONS, HOW
13 MANY ABORTIONS DO YOU THINK YOU PERFORMED OVER THAT PERIOD OF
14 TIME?

15 A IN THE ENTIRETY? SOMEWHERE BETWEEN 30 AND 40,000, I
16 WOULD GUESS. NOT GUESS. SOMEWHERE BETWEEN 30 AND 40,000.

17 Q AND OF THAT NUMBER, HOW MANY CASES -- HOW MANY OF
18 YOUR PATIENTS DO YOU BELIEVE -- WITHDRAW. OF THAT NUMBER, HOW
19 MANY PATIENTS -- OF YOUR PATIENTS HAVE REQUIRED
20 HOSPITALIZATION TO YOUR KNOWLEDGE?

21 A I WOULD SAY MORE THAN 10, LESS THAN 20.

22 Q I HAVE NOTHING FURTHER.

23 THE COURT: CROSS EXAMINATION?

24 MR. DUNCAN: JUST GIVE ME ONE SECOND, I NEED TO LUG
25 SOME BINDERS UP THERE.

1 **THE COURT:** YOU BET.

2 **MR. DUNCAN:** OKAY, WE'RE READY TO GO, JUDGE?

3 **THE COURT:** READY TO GO.

4 **MR. DUNCAN:** GREAT.

5 **CROSS**

6 **BY MR. DUNCAN:**

7 **Q** DOCTOR, MY NAME IS KYLE DUNCAN. I REPRESENT THE
8 DEFENDANT IN THIS MATTER, WHO'S THE SECRETARY OF THE
9 DEPARTMENT OF HEALTH AND HOSPITALS NAMED KATHY KLIEBERT.
10 THANK YOU FOR BEING WITH US. I HAVE SOME QUESTIONS FOR YOU.
11 DOCTOR, LET'S START BY REVIEWING WHAT YOU'VE SAID SO FAR ABOUT
12 YOUR ADMITTING PRIVILEGES. JUST TO RECAP, YOU PROVIDE
13 ABORTION SERVICES AT TWO CLINICS, BOSSIER CITY MEDICAL SUITE
14 IN BOSSIER CITY AND CAUSEWAY MEDICAL CLINIC IN METAIRIE;
15 RIGHT?

16 **A** THAT'S CORRECT.

17 **Q** WITH RESPECT TO YOUR PRACTICE AT BOSSIER CITY
18 MEDICAL SUITE, YOU'VE APPLIED FOR PRIVILEGES AT
19 WILLIS-KNIGHTON IN BOSSIER CITY; RIGHT?

20 **A** THAT'S CORRECT.

21 **Q** YOU DID NOT APPLY FOR PRIVILEGES AT CHRISTUS
22 SCHUMPERT; CORRECT?

23 **A** THAT IS CORRECT.

24 **Q** YOU DIDN'T APPLY TO CHRISTUS BECAUSE CHRISTUS IS A
25 CATHOLIC HOSPITAL; IS THAT RIGHT?

1 **A** YES.

2 **Q** IT'S TRUE ISN'T IT THAT YOU THOUGHT IT WOULD NOT BE
3 WORTH THE PAPERWORK OR THE FEE TO APPLY TO CHRISTUS; ISN'T
4 THAT RIGHT?

5 **A** THAT WOULD BE ACCURATE.

6 **Q** ARE YOU NOT AWARE THAT DR. DOE 3 -- WHEN I SAY
7 DR. DOE 3, DO YOU KNOW WHO I'M TALKING ABOUT?

8 **A** YES, I DO.

9 **Q** GREAT. ARE YOU NOT AWARE THAT DR. DOE 3 HAS
10 ADMITTING PRIVILEGES AT CHRISTUS?

11 **A** I AM AWARE OF THAT.

12 **Q** YOU ALSO DID NOT APPLY FOR PRIVILEGES AT MINDEN
13 MEDICAL CENTER; IS THAT RIGHT?

14 **A** NO, DID NOT.

15 **Q** AND YOU HAVE NO INTENTION OF APPLYING THERE FOR
16 PRIVILEGES?

17 **A** NO, I DO NOT.

18 **Q** NOW, WITH RESPECT TO YOUR PRACTICE AT CAUSEWAY
19 MEDICAL CENTER IN METAIRIE, YOU APPLIED FOR PRIVILEGES AT
20 TULANE MEDICAL CENTER; RIGHT?

21 **A** THAT'S CORRECT.

22 **Q** AND TULANE IS THE ONLY NEW ORLEANS AREA HOSPITAL
23 WHERE YOU APPLIED FOR PRIVILEGES; CORRECT?

24 **A** THAT IS CORRECT.

25 **Q** NOW, WHEN I MENTION THE DR. JOHN DOE NUMBER 5; DO

1 YOU KNOW WHO I'M REFERRING TO?

2 A NO, I DO NOT.

3 Q OKAY. I'LL REPRESENT TO YOU -- I WON'T GIVE YOU THE
4 DOCTOR'S NAME, BECAUSE THE DOCTOR, LIKE YOU, IS PRECEDING
5 ANONYMOUSLY, I'LL REPRESENT TO YOU THAT DR. JOHN DOE 5 IS
6 ANOTHER OUTPATIENT ABORTION PROVIDER IN LOUISIANA. ARE YOU
7 AWARE THAT THIS OUTPATIENT ABORTION PROVIDER, DR. JOHN DOE 5,
8 WAS GRANTED ADMITTING PRIVILEGES AS A MEMBER OF THE COURTESY
9 MEDICAL STAFF AT ANOTHER HOSPITAL IN THE NEW ORLEANS AREA LAST
10 YEAR?

11 A NO, I WAS NOT AWARE OF THAT.

12 Q OKAY. NOW WE'VE JUST HEARD A NUMBER OF QUESTIONS
13 ABOUT YOUR APPLICATION TO TULANE AND THE PRIVILEGES THAT HAVE
14 BEEN GRANTED TO YOU AT TULANE, SO I'D LIKE TO ASK YOU SOME
15 QUESTIONS ABOUT THAT. IS THAT OKAY?

16 A SURE.

17 Q GREAT. NOW, IT'S TRUE, ISN'T IT, THAT TULANE THIS
18 PAST FEBRUARY GRANTED YOU ADMITTING PRIVILEGES AS A MEMBER OF
19 THE COURTESY MEDICAL STAFF, ISN'T IT?

20 A CORRECT.

21 Q NOW WE HAD A NUMBER OF QUESTIONS ABOUT
22 COMMUNICATIONS VIA E-MAIL THAT YOU HAD WITH A DOCTOR AT TULANE
23 NAMED, DR. A, I BELIEVE THAT'S WHAT WE'RE CALLING THE DOCTOR.
24 DO YOU KNOW WHO I'M REFERRING TO?

25 A I DO.

1 **Q** OKAY. I WANT YOU -- WE'RE GOING TO REFER TO SEVERAL
2 DOCUMENTS FROM THAT COMMUNICATION AND THESE ARE DOCUMENTS,
3 MAYBE YOU'VE BEEN IN THIS PART OF THE BINDER ALREADY, BUT I
4 JUST WANT TO ORIENT YOURSELF TO IT. THESE DOCUMENTS ARE
5 GENERALLY IN THE JOINT EXHIBIT BINDER NUMBER FOUR AND THEY GO
6 FROM DOCUMENTS 169 THROUGH 184. I'LL LET YOU JUST PAUSE AND
7 ORIENT YOURSELF AND LET THE COURT AND EVERYBODY ELSE DO THAT
8 FOR A SECOND. LET ME KNOW WHEN YOU'VE SORT OF PUT YOUR HANDS
9 ON THOSE, DOCTOR. ARE YOU THERE, DOCTOR?

10 **A** YOU SAID 164?

11 **Q** I'M SORRY; JOINT EXHIBIT 169, THAT'S WHERE WE'RE
12 GOING TO START AND THEY GO ALL THE WAY THROUGH 184. JUST
13 WANTED YOU TO SEE WHERE THEY ARE IN THE GENERAL UNIVERSE OF
14 DOCUMENTS. DO YOU SEE THAT?

15 **A** YES, I AM AT -- I AM AT THAT POINT. I DO SEE THAT.

16 **Q** GREAT.

17 **MR. DUNCAN:** NOW I BELIEVE THAT EVERYTHING I'M
18 REFERRING TO IS, FOR THE BENEFIT OF COURT AND COUNSEL, IS
19 GOING TO BE CONFIDENTIAL, SO IT SHOULDN'T BE DISPLAYED ON THE
20 GENERAL -- ON THE AUDIENCE DISPLAY, THE GALLERY, BUT IT CAN BE
21 DISPLAYED ON OUR COMPUTERS.

22 **THE COURT:** OKAY.

23 **BY MR. DUNCAN:**

24 **Q** LET'S START AT JX 169, DOCTOR.

25 **A** OKAY.

1 **Q** I'M GOING TO LOOK AT THAT ON MY HARD COPY, BECAUSE I
2 CAN NOT SEE. THIS SCREEN IS SO LIGHT THAT I CAN'T SEE IT, BUT
3 I'VE GOT THE HARD COPIES RIGHT HERE. NOW I'D LIKE YOU TO --
4 NOW, SINCE THIS IS CONFIDENTIAL, DOCTOR, WE'RE NOT GOING TO
5 READ VERBATIM FROM WHAT IT SAYS, WE'RE GOING TO REFER TO WHAT
6 IT SAYS AS CLEARLY AS WE CAN WITHOUT READING VERBATIM FROM IT.
7 SO I'D LIKE FOR YOU TO REVIEW THAT -- FIRST OF ALL, LET ME
8 SAY, DOES THAT LOOK LIKE AN E-MAIL EXCHANGE THAT YOU
9 RECOGNIZE?

10 **A** YES.

11 **Q** THAT'S BETWEEN YOU AND THE DR. A AT TULANE WE WERE
12 REFERRING TO; CORRECT?

13 **MS. DOUFEKIAS:** YOUR HONOR, I'M SORRY, TO INTERRUPT.
14 BUT THE VERSION THAT'S ON THE SCREEN IS NOT REDACTED PER THE
15 CONFIDENTIALITY AGREEMENT.

16 **THE COURT:** LET'S TAKE IT DOWN THEN.

17 **MR. DUNCAN:** TAKE THAT DOWN.

18 **THE COURT:** I'M LOOKING AT THE HARD COPY MYSELF AND
19 I THINK THE DOCTOR HAS A HARD COPY IN FRONT OF HIM.

20 **MR. DUNCAN:** OKAY, SO THESE WERE REDACTED AND WE'RE
21 NOW PUTTING UP THE CORRECT REDACTED ONE.

22 **MS. DOUFEKIAS:** I THINK IF WE JUST OPERATED ON THE
23 HARD COPIES, I THINK THAT IF THE WITNESS HAS A HARD COPY AND
24 MR. DUNCAN HAS A HARD COPY, I THINK THAT WOULD BE FINE.

25 **MR. DUNCAN:** I DON'T MIND DOING IT THAT WAY, JUDGE.

1 IT'S EASIER FOR ME TO LOOK AT THE HARD COPY.

2 THE COURT: LET'S DO IT THAT WAY THEN.

3 MR. DUNCAN: OKAY.

4 BY MR. DUNCAN:

5 Q SO REFERRING AGAIN TO JX 169, DOCTOR, YOU RECOGNIZE
6 THAT E-MAIL?

7 A YES.

8 Q WHY DON'T YOU JUST TAKE A LOOK AT IT, READ IT
9 THROUGH. NOW I JUST WANT TO ASK YOU A GENERAL QUESTION.

10 A OKAY.

11 Q DOES THIS E-MAIL REFLECT THE BEGINNING OF A
12 CONVERSATION, E-MAIL CONVERSATION, THAT YOU HAD WITH TULANE
13 MEDICAL CENTER OVER SEVERAL MONTHS REGARDING YOUR SEEKING
14 ADMITTING PRIVILEGES?

15 A CORRECT.

16 Q AND THAT EXCHANGE OF COMMUNICATIONS WAS INITIATED BY
17 YOU IN ORDER TO OBTAIN ADMITTING PRIVILEGES AND COMPLY WITH HB
18 388; RIGHT?

19 A THAT WOULD BE ACCURATE.

20 Q I'D LIKE TO GO NOW TO JOINT EXHIBIT 175?

21 A EXCUSE ME, 175?

22 Q YES, SIR, 175. YOU FIND THAT ONE, DOCTOR?

23 A I'M WORKING ON IT.

24 Q OKAY.

25 A OKAY, I HAVE JOINT EXHIBIT 175.

1 **Q** GREAT. NOW, I'D LIKE FOR YOU TO LOOK AT THAT.
2 REVIEW THAT ONE, PLEASE. DOCTOR, IS THIS AN E-MAIL EXCHANGE
3 SORT OF FURTHER DOWN IN THE LINE OF YOUR COMMUNICATIONS WITH
4 THIS DOCTOR AT TULANE REGARDING YOUR SEEKING ADMITTING
5 PRIVILEGES?

6 **A** YES.

7 **Q** OKAY. I'D JUST REFER YOU TO THE RESPONSE FROM DR. A
8 TO YOU GIVEN ON AUGUST 18TH, 2014. THAT'S THE TOP E-MAIL ON
9 THAT -- ON THAT EXHIBIT. DO YOU SEE THAT?

10 **A** YES.

11 **Q** NOW LET ME -- I'M NOT GOING TO READ VERBATIM FROM
12 THE E-MAIL, BUT I WANT TO REFER TO IT. IS IT FAIR TO SAY THAT
13 THIS E-MAIL DESCRIBES DR. A, THAT SHE'S WORKING ON AN APPROACH
14 WHERE YOU GET ADMITTING PRIVILEGES FOR YOUR ABORTION PATIENTS,
15 IN OTHER WORDS, WOMEN THAT HAVE, YOU KNOW, POSSIBLE
16 COMPLICATIONS FROM ABORTION. AND UNDER THAT ARRANGEMENT YOU
17 THEN CONSULT WITH THE DEPARTMENT FOR FURTHER CARE AND
18 FURTHER -- LET ME JUST STOP THERE. IS THAT A FAIR
19 CHARACTERIZATION?

20 **MS. DOUFEKIAS:** OBJECTION, YOUR HONOR. MR. DUNCAN
21 WAS OBJECTING TO THESE DOCUMENTS BECAUSE THEY'RE HEARSAY. SO
22 IF THEY'RE HEARSAY FOR ME, THEY'RE HEARSAY FOR HIM.

23 **THE COURT:** WE'RE TALKING ABOUT THE E-MAIL; WHAT'S
24 IN THE E-MAIL?

25 **MR. DUNCAN:** NO, I -- I'M SORRY.

1 **MS. DOUFEKIAS:** YES, YOUR HONOR.

2 **MR. DUNCAN:** I DID NOT OBJECT TO ANY OF THESE
3 DOCUMENTS AS HEARSAY. WHAT I OBJECTED TO WAS REFERENCE TO
4 COMMUNICATIONS THAT ARE NOT CONTAINED IN ANY EXHIBIT THAT WE
5 HAVE HERE.

6 **THE COURT:** NUMBER ONE, THESE ARE JOINT EXHIBITS.
7 THEY'RE ADMITTED. THEY'RE IN EVIDENCE, SO I'LL OVERRULE THE
8 OBJECTION.

9 **MR. DUNCAN:** THANK YOU.

10 **BY MR. DUNCAN:**

11 **Q** DOCTOR, DID YOU UNDERSTAND MY QUESTION OR WOULD YOU
12 LIKE ME TO REPHRASE IT?

13 **A** COULD YOU REPEAT IT PLEASE OR REPHRASE IT?

14 **Q** SURE. DOES THIS E-MAIL INDICATE THAT THE DOCTOR AT
15 TULANE WHO YOU'RE E-MAILING IS WORKING ON AN APPROACH WHERE
16 YOU CAN GET ADMITTING PRIVILEGES FOR YOUR ABORTION PATIENTS
17 AND THEN YOU WOULD CONSULT WITH THE DEPARTMENT AT TULANE FOR
18 THE CARE OF THOSE PATIENTS?

19 **A** I THINK THAT'S ACCURATE, YES.

20 **Q** THANK YOU. AND IT ALSO SAYS, YOU KNOW, AND AGAIN,
21 I'M JUST CHARACTERIZING THE DOCUMENT WITHOUT READING IT
22 VERBATIM. IT ALSO SAYS THAT YOU'D HAVE TO SHOW TULANE THAT
23 YOU KNOW HOW TO DIAGNOSE AND INITIALLY MANAGE ABORTION
24 COMPLICATIONS; CORRECT?

25 **A** CORRECT.

1 Q OKAY. THANK YOU. LET'S GO TO JX 183. I THINK
2 YOU'VE ALREADY LOOKED AT THIS DOCUMENT, SO TURN TO THAT ONE.
3 THAT'S THE ACTUAL LETTER AND THE DELINEATION FROM TULANE.
4 183. ARE YOU THERE, DOCTOR?

5 A I'M WORKING ON IT.

6 Q OKAY. SORRY. I'VE HAD A LOT OF COFFEE THIS
7 MORNING, AS WE'VE ESTABLISHED.

8 A I'M NOT AS FAST AS YOU YOUNGSTERS, BUT I'M GETTING
9 THERE.

10 Q THANK YOU, DOCTOR.

11 A OKAY. I HAVE EXHIBIT 183.

12 Q NOW, IF YOU LOOK AT THAT EXHIBIT IT LOOKS LIKE ONE
13 PAGE OF IT IS A LETTER FROM TULANE AND THEN THE NEXT PAGE OF
14 IT IS CALLED DELINEATION OF PRIVILEGES; DO YOU SEE THAT?

15 A CORRECT.

16 Q I WANT YOU TO LOOK AT THE DELINEATION OF PRIVILEGES
17 PAGE AND ASK YOU A COUPLE OF QUESTIONS ABOUT THAT. NOW THIS
18 DOCUMENT IS CONFIDENTIAL SO I'M NOT GOING TO READ VERBATIM
19 FROM IT, BUT I AM GOING TO CHARACTERIZE IT FOR YOU. DOES THIS
20 REFLECT THAT YOU HAVE BEEN GIVEN THE STATUS OF COURTESY
21 MEDICAL STAFF AT TULANE?

22 A YES.

23 Q AND DOES THIS INDICATE THAT YOU HAVE PRIVILEGES FOR
24 OBSTETRICS AND GYNECOLOGY AT TULANE?

25 A NO.

1 **Q** OKAY. WELL, DOCTOR, I'M JUST GOING TO -- AGAIN, I
2 CAN'T READ VERBATIM FROM THE DOCUMENT, BUT I'D JUST LIKE YOU
3 TO LOOK AT THE PART OF THE DOCUMENT THAT SAYS -- THAT REFLECTS
4 WHAT THE PRIVILEGES ARE FOR AND DOES IT REFLECT THAT THEY'RE
5 FOR OBSTETRICS AND GYNECOLOGY?

6 **A** I DON'T UNDERSTAND THE QUESTION. MY -- THE
7 CONDITION ON THIS LIMITS ME AND IT'S MY UNDERSTANDING THAT
8 CONDITION LIMITS ME TO WHAT I CAN DO.

9 **Q** I UNDERSTAND THAT, DOCTOR. I'M NOT ASKING ABOUT THE
10 LIMITATION ON THE PRIVILEGES. I'M JUST ASKING ABOUT THE
11 GENERAL CATEGORY OF PRIVILEGES THAT ARE REFLECTED ON THE
12 DOCUMENT. DOES IT NOT -- IS IT NOT THE CASE THAT THE GENERAL
13 CATEGORY OF PRIVILEGES REFLECTED ON THE DOCUMENT THAT YOU'VE
14 BEEN GRANTED AS A MEMBER OF THE COURTESY STAFF FOR OBSTETRICS
15 AND GYNECOLOGY?

16 **A** YES.

17 **Q** THANK YOU. NOW, YOU'LL SEE A COLUMN THERE, AGAIN,
18 I'M NOT GOING TO READ VERBATIM FOR IT -- FROM IT, BUT THE
19 COLUMN SAYS PRIVILEGE. RIGHT? DO YOU SEE THAT COLUMN?

20 **A** YES.

21 **Q** OKAY. AND THERE'S A NUMBER OF -- THERE'S THREE
22 PARAGRAPHS UNDER THAT COLUMN, WRITTEN IN VERY SMALL PRINT. DO
23 YOU SEE THAT?

24 **A** YES.

25 **Q** OKAY. LET ME ASK YOU THIS, DOES THIS DOCUMENT

1 REFLECT THAT CORE PRIVILEGES IN OBSTETRICS CAN INCLUDE THE
2 ABILITY TO ADMIT A PATIENT?

3 A YES.

4 Q AND DOES IT REFLECT THAT CORE PRIVILEGES IN
5 OBSTETRICS INCLUDE THE ABILITY TO DIAGNOSE A PATIENT?

6 A YES.

7 Q AND DOES IT REFLECT THAT CORE PRIVILEGES IN
8 OBSTETRICS CAN INCLUDE THE ABILITY TO PROVIDE MEDICAL AND
9 SURGICAL CARE FOR A PATIENT?

10 A YES.

11 Q THANK YOU.

12 A BUT I DON'T DO OBSTETRICS.

13 Q YES, THANK YOU, DOCTOR. I'LL ASK YOU ABOUT THE
14 LIMITATION NOW.

15 A OKAY.

16 Q SO YOU SEE WAY OVER ON THE RIGHT, THERE'S A
17 CONDITION ON THE PRIVILEGES?

18 A CORRECT.

19 Q SO IT DOES REFLECT THAT THE PRIVILEGES ARE LIMITED
20 TO SOMETHING; IS THAT RIGHT?

21 A CORRECT.

22 Q RIGHT. NOW IF YOU READ THAT, I KNOW WE CAN'T READ
23 IT VERBATIM, THE COURT CAN AND COUNSEL CAN.

24 THE COURT: AND THE COURT IS.

25 MR. DUNCAN: AND THE COURT IS READING IT, GOOD.

1 BY MR. DUNCAN:

2 Q DOCTOR, DOES THIS CONDITION, IS IT FAIR TO SAY FROM
3 WHAT IS SAID ON THAT PAGE, THAT THIS CONDITION ALLOWS YOU TO
4 ADMIT PATIENTS WITH REFERRAL OF THOSE PATIENTS TO AN ATTENDING
5 PHYSICIAN AT TULANE?

6 A CORRECT.

7 Q OKAY, THAT'S GREAT. THANK YOU. I'M JUST GOING TO
8 ASK YOU A COUPLE MORE QUESTIONS ABOUT THIS. I KNOW IT'S HARD
9 TO GO THROUGH THESE DOCUMENTS. LET'S LOOK -- LET'S GO BACK
10 TWO AND GO TO JX 181. THAT'S TWO BACK FROM 183.

11 A I WOULD HOPE SO.

12 Q WE'VE ESTABLISHED THAT. VERY GOOD. ALL RIGHT. DO
13 YOU SEE THAT, 181?

14 A YES, I HAVE 181.

15 Q GREAT. NOW, THAT'S -- WOULD YOU LOOK AT THAT
16 E-MAIL? YOU RECOGNIZE THAT?

17 A YES.

18 Q THAT'S FURTHER PART OF YOUR COMMUNICATIONS WITH THIS
19 DOCTOR AT TULANE, DR. A, REGARDING YOUR SEEKING ADMITTING
20 PRIVILEGES; CORRECT?

21 A CORRECT.

22 Q NOW THIS ONE IS DATED FEBRUARY 23RD, 2015; IS IT
23 NOT?

24 A YES.

25 Q THAT IS -- IN FACT, THAT'S RIGHT AROUND THE TIME

1 THAT YOU WERE ACTUALLY GRANTED THE PRIVILEGES AT TULANE, ISN'T
2 IT?

3 A YES.

4 Q OKAY. NOW, IF YOU LOOK AT THIS E-MAIL, I THINK WHAT
5 YOU'LL SEE THERE -- I'LL JUST ASK YOU. DO YOU SEE THERE THE
6 SAME LANGUAGE FROM YOUR DELINEATION OF PRIVILEGES THAT
7 REFLECTS THE LIMITATION ON THE PRIVILEGES?

8 A YES.

9 Q IN FACT, IT'S QUOTED. WE WON'T READ IT VERBATIM,
10 BUT IT'S QUOTED THERE. NOW, I WANT YOU TO LOOK AT THE
11 SENTENCE RIGHT UNDER THAT. I WANT YOU TO READ THAT SENTENCE.

12 A YOU WANT ME TO READ --

13 Q NO, I'M SORRY. DON'T READ IT OUT LOUD, JUST READ IT
14 TO YOURSELF.

15 A YOU'RE TALKING ABOUT THE SENTENCE UNDER WHAT?

16 Q UNDER WHERE -- THE E-MAIL IS QUOTING THE LIMITATION
17 ON YOUR PRIVILEGES FROM THE DELINEATION AND THEN RIGHT UNDER
18 IT -- LET ME JUST ASK YOU. RIGHT UNDER IT, IS THERE A
19 SENTENCE THAT EXPLAINS FURTHER WHAT THOSE PRIVILEGES MEAN?

20 A YES.

21 Q NOW, DOES THAT -- YOUR UNDERSTANDING OF THAT
22 SENTENCE, IS IT FAIR TO SAY THAT WHAT TULANE -- WHAT THE
23 DOCTOR AT TULANE IS SAYING IS BASICALLY YOU HAVE ADMITTING
24 PRIVILEGES, BUT YOU HAVE TO CONSULT WITH US RIGHT AWAY?

25 A MY UNDERSTANDING IS THAT I HAVE -- MY NAME WILL BE

1 AS THE ADMITTING PHYSICIAN, BUT THE CARE OF THE PATIENT IS
2 TURNED OVER TO THEM IMMEDIATELY. THAT'S MY UNDERSTANDING,
3 YES.

4 Q I UNDERSTAND THAT'S YOUR UNDERSTANDING, DOCTOR. BUT
5 I'M ASKING ABOUT THIS PARTICULAR COMMUNICATION WITH TULANE.
6 OKAY, NOW YOU'VE READ THAT SENTENCE, RIGHT? I CAN'T QUOTE IT
7 VERBATIM.

8 MS. DOUFEKIAS: OBJECTION, YOUR HONOR. COUNSEL IS
9 ASKING FOR THE WITNESS' UNDERSTANDING OF HIS PRIVILEGES BASED
10 ON THIS DOCUMENT AND THE WITNESS IS ANSWERING WITH HIS
11 UNDERSTANDING AND COUNSEL KEEPS ASKING THE QUESTION ABOUT HIS
12 UNDERSTANDING. IT'S ASKED AND ANSWERED.

13 MR. DUNCAN: YOUR HONOR, OF COURSE THE REASON THAT
14 I'M DOING -- I DON'T WANT TO DO THAT, YOUR HONOR. BUT THE
15 REASON I'M DOING THAT IS BECAUSE I CAN'T READ THE THING TO
16 HIM.

17 THE COURT: I UNDERSTAND. I UNDERSTAND. AND I AM
18 READING IT AND I'M LOOKING AT THE LANGUAGE AND UNDERSTAND THE
19 ISSUES, SO...

20 MR. DUNCAN: FINE. YOUR HONOR IS READING IT.

21 BY MR. DUNCAN:

22 Q SO, DOCTOR, IS YOUR ANSWER THAT YOUR UNDERSTANDING
23 OF THIS COMMUNICATION IS NOT THAT YOU HAVE ADMITTING
24 PRIVILEGES, BUT HAVE TO CONSULT WITH TULANE RIGHT AWAY?

25 A MY UNDERSTANDING IS THAT I WOULD BE THE ADMITTING

1 PHYSICIAN OF RECORD, BUT THEY WILL BE THE TREATING PHYSICIANS.

2 Q OKAY. IS YOUR UNDERSTANDING OF THIS SENTENCE, THAT
3 TULANE HAS NAMED A DOCTOR THAT HAS AGREED TO BE YOUR PRIMARY
4 CONSULTANT?

5 A YES.

6 Q ONE MORE E-MAIL, DOCTOR. JX -- JOINT EXHIBIT 184.
7 DO YOU SEE THAT ONE, DOCTOR?

8 A I JUST GOT THERE.

9 Q OKAY. THANK YOU. SO LOOK AT THAT. DO YOU
10 RECOGNIZE THAT E-MAIL EXCHANGE?

11 A YES.

12 Q OKAY. THIS E-MAIL EXCHANGE IS ALSO FROM DR. A AT
13 TULANE TO YOU REGARDING THE ADMITTING PRIVILEGES THAT HAVE
14 BEEN GRANTED; CORRECT?

15 A CORRECT.

16 Q AND THIS ONE IS DATED MARCH 5TH, 2015; IS IT NOT?

17 A YES.

18 Q OKAY. AND THAT'S, JUST TO BE CLEAR, THAT'S MAYBE
19 ALMOST TWO WEEKS, MAYBE TEN DAYS OR SO AFTER THE PRIVILEGES
20 WERE ACTUALLY GRANTED; RIGHT?

21 A YES.

22 Q OKAY. NOW, IS IT FAIR TO SAY THAT THIS E-MAIL
23 EXCHANGE IS TO FURTHER EXPLAIN THE NATURE OF YOUR PRIVILEGES
24 GRANTED AT TULANE?

25 A YES.

1 Q EVEN AFTER YOU RECEIVED THE DELINEATION IN THE
2 LETTER; CORRECT?

3 A CORRECT.

4 Q YOU SOUGHT FURTHER CLARIFICATION FROM TULANE VIA
5 THIS E-MAIL EXCHANGE; CORRECT?

6 A CONFIRMATION. YES. YES.

7 Q THANK YOU. AND READING THIS E-MAIL RESPONSE FROM
8 DR. A, DO YOU SEE THAT? THAT'S THE FIRST E-MAIL THERE? IT'S
9 REALLY JUST THREE SENTENCES, WHICH I WON'T READ VERBATIM. BUT
10 IS IT FAIR TO SAY THAT THIS E-MAIL REFLECTS THAT YOU WILL BE
11 THE ADMITTING PHYSICIAN AND THAT TULANE WILL BE THE CONSULTING
12 PHYSICIAN AND IT NAMES A DOCTOR?

13 A YES.

14 Q OKAY. IS THAT THE FINAL COMMUNICATION YOU HAVE
15 RECEIVED FROM TULANE REGARDING THE PRIVILEGES GRANTED TO YOU
16 ON FEBRUARY 24TH?

17 A I BELIEVE SO.

18 Q OKAY. NOW, LET ME ASK YOU, YOU WERE ASKED -- STRIKE
19 THAT. YOU WERE ASKED SOME QUESTIONS ABOUT A DECLARATION THAT
20 SECRETARY KLIEBERT HAS FILED IN THIS LITIGATION, WEREN'T YOU?

21 A YES.

22 Q LET'S MAKE SURE WE'RE ALL LOOKING AT THE
23 DECLARATION. FIRST OF ALL ME. THAT -- TO REFRESH YOUR
24 MEMORY, DOCTOR, THAT WAS DEFENDANT'S EXHIBIT 157. 157. DO
25 YOU HAVE THAT IN FRONT OF YOU, DOCTOR? WE ACTUALLY HAD THAT

1 UP ON THE SCREEN EARLIER, DIDN'T WE?

2 A 157?

3 Q 157, RIGHT. I JUST WANT TO MAKE SURE YOU WERE
4 LOOKING AT IT.

5 A I'M WORKING ON IT.

6 Q OKAY.

7 A YOU DID SAY ONE, FIVE, SEVEN?

8 Q RIGHT; ONE, FIVE, SEVEN. THE CONFUSION MAY BE
9 THAT'S DEFENDANT'S EXHIBIT 157. EARLIER I BELIEVE YOU WERE
10 LOOKING AT IT, MS. DOUFEKIAS WAS REFERRING TO A PARTICULAR
11 PARAGRAPH ON THAT DOCUMENT.

12 A IT'S ON THE COMPUTER SCREEN.

13 Q OKAY. YOU CAN SEE THAT OKAY?

14 A WELL, IT'S NOT ON THERE NOW. IT DROPPED OFF.

15 Q OKAY. IT'S BACK UP.

16 A YES, I SEE DECLARATION OF SECRETARY KATHY KLIEBERT?

17 Q YES. LET ME JUST ASK YOU A COUPLE OF QUESTIONS. DO
18 YOU KNOW WHO SECRETARY KLIEBERT IS? DO YOU KNOW OFFICIALLY
19 WHO SHE IS?

20 A YES.

21 Q AND SHE IS THE SECRETARY OF THE DEPARTMENT OF HEALTH
22 AND HOSPITALS; IS SHE NOT?

23 A YES.

24 Q AND YOU KNOW THAT SHE'S THE DEFENDANT IN THIS
25 LITIGATION?

1 **A** YES.

2 **Q** SO, NOT TO BE -- NOT TO BE UGLY ABOUT IT, BUT YOU
3 SUED HER, DIDN'T YOU?

4 **A** YES.

5 **Q** AND YOU SUED HER, DID YOU NOT, BECAUSE SHE'S IN
6 CHARGE OF ENFORCING HB 388?

7 **A** YES.

8 **Q** LET'S LOOK AT PARAGRAPH 6. I BELIEVE MS. DOUFEKIAS
9 WAS ASKING YOU SOME QUESTIONS ABOUT PARAGRAPH 6. WELL, I'M
10 SORRY, DOCTOR, JUST ONE FOLLOW-UP ON WHAT I JUST ASKED YOU.
11 ARE YOU AWARE OF ANYONE ELSE IN THE STATE OF LOUISIANA WHO
12 ENFORCES HB 388?

13 **A** I'M SORRY, COULD YOU REPEAT THAT?

14 **Q** ARE YOU AWARE OF ANY OTHER OFFICIAL IN THE STATE OF
15 LOUISIANA WHO ENFORCES HB 388?

16 **A** NO, I'M NOT.

17 **Q** ARE YOU AWARE OF ANY OTHER OFFICIAL IN THE STATE OF
18 LOUISIANA THAT ENFORCES ABORTION REGULATIONS?

19 **A** OUTSIDE OF THE DEPARTMENT OF HEALTH AND HOSPITALS?

20 **Q** CORRECT.

21 **A** NO, I'M NOT.

22 **Q** NOW, LET'S LOOK AT PARAGRAPH 6 AGAIN. THIS IS
23 SECRETARY KLIEBERT'S DECLARATION ABOUT YOUR PRIVILEGES AT
24 TULANE. DO YOU SEE THAT PARAGRAPH?

25 **A** YES, I'M READING IT AS WE SPEAK.

1 **Q** WONDERFUL. NOW, SINCE THIS ONE IS NOT A
2 CONFIDENTIAL DOCUMENT WE CAN READ ALONG TOGETHER, SO LET'S DO
3 THAT. SECRETARY KLIEBERT SAYS, "HAVING REVIEWED THE DOCUMENTS
4 REFERRED TO ABOVE IN PARAGRAPH 4" -- AND IF YOU'LL LOOK AT
5 PARAGRAPH 4 YOU'LL SEE THAT THE DOCUMENT SHE'S REFERRING TO
6 ARE THESE COMMUNICATIONS AND LETTERS FROM TULANE THAT WE'VE
7 BEEN TALKING ABOUT.

8 **A** RIGHT.

9 **Q** SHE SAYS, "I HAVE DETERMINED THAT THE ADMITTING
10 PRIVILEGES GRANTED TO DR. JOHN DOE 2 ARE SUFFICIENT TO COMPLY
11 WITH THE ACT." MORE SPECIFICALLY, SHE GOES ON TO SAY, "A, THE
12 HOSPITAL THAT HAS GRANTED DR. JOHN DOE 2 PRIVILEGES IS ONE
13 THAT PROVIDES OBSTETRICAL AND GYNECOLOGICAL HEALTH SERVICES
14 AND IS LICENSED BY THE DEPARTMENT." ALL RIGHT, DO YOU SEE
15 THAT?

16 **A** YES.

17 **Q** DO YOU AGREE WITH THAT? AS FAR AS YOU KNOW DO YOU
18 AGREE WITH THAT STATEMENT?

19 **A** YES.

20 **Q** AND THEN, B, IT SAYS, "THAT HOSPITAL HAS APPOINTED
21 DR. JOHN DOE 2 A MEMBER IN GOOD STANDING OF IT'S COURTESY
22 MEDICAL STAFF. DO YOU HAVE ANY REASON NOT TO AGREE WITH THAT?

23 **A** NO.

24 **Q** C, SHE SAYS, THE HOSPITAL'S GOVERNING BYLAWS PROVIDE
25 THAT MEMBERS OF THE COURTESY MEDICAL STAFF HAVE THE ABILITY TO

1 ADMIT PATIENTS. DO YOU HAVE ANY REASON TO DISAGREE WITH THAT?

2 A NO.

3 Q D, THE CLINICAL PRIVILEGES GRANTED ALLOW DR. JOHN
4 DOE TWO TO ADMIT HIS ABORTION PATIENTS TO A HOSPITAL WHERE
5 DIAGNOSTIC AND SURGICAL CARE CAN BE PROVIDED TO SUCH PATIENTS.
6 DO YOU AGREE WITH THAT STATEMENT?

7 A NO.

8 Q AND E, THE HOSPITAL IS WITHIN 30 MILES OF THE
9 LOCATION WHERE DR. JOHN DOE TWO PROVIDES OUTPATIENT ABORTION
10 SERVICES IN THE NEW ORLEANS AREA. DO YOU AGREE WITH THAT
11 STATEMENT?

12 A NO.

13 Q THANK YOU. NOW WHEN MS. DOUFEKIAS WAS ASKING YOU
14 QUESTIONS YOU EXPRESSED CONCERNS ABOUT PARAGRAPH SIX. DO YOU
15 REMEMBER THAT?

16 A YES.

17 Q AND IS IT FAIR TO SAY THAT YOUR CONCERNS ARE THAT
18 SECRETARY KLIEBERT MADE, OR SOME OTHER SECRETARY IN THE FUTURE
19 MAY CHANGE THEIR VIEW OF WHAT ACT 620 REQUIRES. DIDN'T YOU
20 TESTIFY TO THAT?

21 A YES.

22 Q DO YOU HAVE ANY REASON TO BELIEVE THAT SECRETARY
23 KLIEBERT WILL SOMEHOW CHANGE HER VIEW OF YOUR PRIVILEGES AT
24 TULANE?

25 A I WAS GOING BY MY READING OF HOUSE BILL 388.

1 **Q** I UNDERSTAND, DOCTOR. WHO'S RESPONSIBLE FOR
2 ENFORCING HOW BILL 388 BY LAW IN LOUISIANA?

3 **MS. DOUFEKIAS:** OBJECTION, YOUR HONOR. HE'S NOT A
4 LAWYER.

5 **THE COURT:** HE CAN ANSWER IF HE KNOWS.
6 **BY MR. DUNCAN:**

7 **Q** IF YOU KNOW?

8 **A** I'M SORRY.

9 **Q** WHO'S RESPONSIBLE FOR ENFORCING HB 388 IN LOUISIANA;
10 WHAT DEPARTMENT?

11 **A** DEPARTMENT OF HEALTH AND HOSPITALS.

12 **Q** AND SECRETARY KLIEBERT IS THE HEAD OF THAT
13 DEPARTMENT, IS SHE NOT?

14 **A** I ASSUME FOR NOW, YES.

15 **Q** WOULDN'T IT BE FAIR TO SAY THAT SHE HAS THE
16 AUTHORITY TO INTERPRET AND APPLY HB 388 TO PARTICULAR
17 SITUATIONS?

18 **A** WHILE SHE'S THE HEAD IF THE DHH, YES.

19 **Q** SO THE ANSWER IS YES?

20 **A** YES.

21 **Q** AND YOU UNDERSTAND THAT SHE'S FILED THIS DECLARATION
22 IN THIS LITIGATION; CORRECT?

23 **A** CORRECT.

24 **Q** AND YOU SUED HER BECAUSE YOUR -- IS IT FAIR TO SAY
25 YOU SUED HER BECAUSE YOU WERE CONCERNED THAT YOU WOULDN'T BE

1 ABLE TO COMPLY WITH 388 AND BE UNABLE TO CONTINUE TO PROVIDE
2 ABORTION SERVICES?

3 A I'M SORRY, CAN YOU REPEAT THAT?

4 Q SURE.

5 A I DON'T UNDERSTAND EXACTLY WHAT YOU'RE SAYING.

6 Q IS IT FAIR TO SAY THAT YOU SUED SECRETARY KLIEBERT
7 BECAUSE YOU WERE CONCERNED THAT HB 388 WOULD PREVENT YOU FROM
8 GAINING ADMITTING PRIVILEGES AND CONTINUING TO APPLY ABORTION
9 SERVICES?

10 MS. DOUFEKIAS: OBJECTION, YOUR HONOR. THE QUESTION
11 MAY SOLICIT PRIVILEGED INFORMATION.

12 THE COURT: WE CAN DO ONE OF TWO THINGS. EITHER PUT
13 THE HEAD PHONES ON OR YOU COULD REPHRASE THE QUESTION.

14 MR. DUNCAN: I'LL TRY TO REPHRASE THE QUESTION.

15 BY MR. DUNCAN:

16 Q YOU WERE AWARE THAT A COMPLAINT WAS FILED IN THIS
17 CASE ON YOUR BEHALF, CORRECT, DOCTOR?

18 A CORRECT.

19 Q AND THAT COMPLAINT CHALLENGED HB 388, DID IT NOT?

20 A YES.

21 Q CHALLENGED IT AS VIOLATING THE CONSTITUTION,
22 CORRECT?

23 A CORRECT.

24 Q AND ARE YOU AWARE THAT THE PURPOSE OF FILING THE
25 COMPLAINT WAS TO OVERTURN HB 388?

1 **A** YES.

2 **Q** AND YOU WERE AWARE OF THE COMPLAINT; CORRECT?

3 **A** YES.

4 **Q** AND IS IT FAIR TO SAY THAT YOUR REASON FOR JOINING
5 IN THE COMPLAINT WAS BECAUSE YOU WERE CONCERNED THAT HB 388
6 WOULD PREVENT YOU FROM OBTAINING ADMITTING PRIVILEGES AND
7 BEING ABLE TO CONTINUE TO PROVIDE ABORTION SERVICES IN NEW
8 ORLEANS?

9 **A** YES.

10 **Q** OKAY. ALL RIGHT, NO FURTHER QUESTIONS ABOUT THAT
11 DECLARATION. LET'S MOVE ON. I DON'T THINK I HAVE ANYTHING
12 ELSE ON IT. SORRY, LET ME JUST GET THESE PAPERS OUT OF THE
13 WAY.

14 DOCTOR, LET'S RETURN TO TALKING ABOUT YOUR
15 PRIVILEGES APPLICATION TO WILLIS-KNIGHTON IN BOSSIER CITY.
16 YOU TESTIFIED EARLIER THAT YOU APPLIED TO WILLIS-KNIGHTON WITH
17 RESPECT TO YOUR ABORTION PRACTICE AT BOSSIER CITY MEDICAL
18 SUITE; CORRECT?

19 **A** CORRECT.

20 **Q** NOW YOU WERE ASKED SOME QUESTIONS ABOUT YOUR
21 COMMUNICATIONS WITH WILLIS-KNIGHTON, WERE YOU NOT? BY MS.
22 DOUFEKIAS? DO YOU RECALL BEING ASKED QUESTIONS ABOUT YOUR
23 COMMUNICATIONS WITH WILLIS-KNIGHTON REGARDING YOUR
24 APPLICATION?

25 **A** YES.

1 **Q** OKAY. LET'S REFER TO JX 90. DOCTOR, THAT'S
2 PROBABLY IN BINDER ONE. JX 90? IT'S IN ONE OF THE EARLIER
3 BINDER?

4 **THE COURT:** IT'S TWO.

5 **BY MR. DUNCAN:**

6 **Q** WELL, NUMBER TWO, DOCTOR. NUMBER TWO. JX 90. THAT
7 IS -- WELL LET ME JUST CONFIRM WITH COUNSEL.

8 **MR. DUNCAN:** I DON'T THINK THAT ONE HAS BEEN MARKED
9 CONFIDENTIAL?

10 **THE COURT:** NO, I TAKE THAT BACK, THAT'S IN THREE.

11 **MR. DUNCAN:** I'M SORRY, BINDER THREE, JX 90.

12 **MS. DOUFEKIAS:** IT IS CONFIDENTIAL.

13 **MR. DUNCAN:** OH, IT IS CONFIDENTIAL. SO IT SHOULD
14 NOT GO UP ON THE GALLERY SCREEN.

15 **BY MR. DUNCAN:**

16 **Q** I JUST WANT TO ASK YOU A COUPLE OF BASIC QUESTIONS
17 ABOUT --

18 **A** DO I NEED TO FIND THAT ONE?

19 **Q** YES, SIR.

20 **A** BINDER THREE?

21 **Q** YES, BINDER THREE. IT'S JOINT EXHIBIT OF 90. I
22 KNOW IT'S DIFFICULT.

23 **A** YOU'RE KILLING MY BACK DOWN HERE. THESE ARE HEAVY,
24 NO WONDER LAWYERS HAVE SUCH STRONG BACKS. OKAY. EXHIBIT 90?
25 I HAVE IT, YES.

1 **Q** YES. THIS EXHIBIT SHOULD BE YOUR INITIAL
2 APPLICATION TO THE WILLIS-KNIGHTON HEALTH SYSTEM. AND I JUST
3 WANT YOU TO TAKE A LOOK AT THE EXHIBIT AND TELL ME IF YOU
4 RECOGNIZE IT OF AS YOUR APPLICATION INITIALLY AT
5 WILLIS-KNIGHTON.

6 **A** YES.

7 **Q** WOULD YOU REFER TO -- THERE'S SOME NUMBERS AT THE
8 BOTTOM OF THOSE PAGES AND UNFORTUNATELY THEY'RE LONG AND
9 COMPLICATED. BUT THE NUMBERS THAT I HAD ON THE JOINT EXHIBITS
10 WERE -- DO YOU SEE NUMBER 2052 AND THEN DASH 123? THIS SHOULD
11 BE AT THE BACK OF THIS EXHIBIT, SORT OF NEAR THE END OF THE
12 EXHIBIT. I'M SORRY, THIS IS SO COMPLICATED, DOCTOR. WE HAD
13 TO ADD PAGES TO THIS PARTICULAR EXHIBIT. I'VE GOT A HARD COPY
14 HERE, LET ME SEE IF I CAN HELP YOU FIND IT. IF YOU FLIP TO
15 THE BACK OF THIS EXHIBIT YOU'LL SEE -- YOU SEE THOSE PAGE
16 NUMBERS AT THE BOTTOM THAT SAY LIKE 2,000 SOMETHING?

17 **A** I MUST BE ON THE -- BINDER THREE --

18 **Q** -- 90?

19 **A** -- 90.

20 **Q** THAT'S RIGHT.

21 **THE COURT:** DOCTOR, IN THE CENTER OF THE PAGE, AT
22 THE BOTTOM, IT HAS THE BATES STAMPED NUMBERS AND THIS ONE IS
23 2052 HYPHEN ONE.

24 **MR. DUNCAN:** YOU GOT IT. THAT'S RIGHT. THANK YOU.

25 **THE WITNESS:** I'M SORRY, YOUR HONOR. I DON'T -- I'M

1 CONFUSED. I'M NOT -- I DON'T SEE THESE NUMBERS THAT YOU ALL
2 ARE REFERRING TO.

3 THE COURT: YOU WANT TO HELP MS. CAUSEY, SEE IF YOU
4 CAN HELP HIM FIND IT.

5 MR. DUNCAN: THIS IS THE ONE THAT WE HAD TO ADD THE
6 PAGES AT THE BACK TO IT.

7 THE COURT: IS IT POSSIBLE THAT IT'S NOT IN HIS
8 BINDER?

9 MR. DUNCAN: I DON'T KNOW.

10 THE COURT: IT'S IN MY MINE. I'M LOOKING AT IT AS
11 WE SPEAK.

12 MS. DOUFEKIAS: YOUR HONOR, I BELIEVE HIS BINDER WAS
13 CORRECTED.

14 MR. DUNCAN: WE'RE GOING TO GET YOU SOME HELP,
15 DOCTOR.

16 THE CLERK: WHAT PAGE?

17 MR. DUNCAN: IT'S 2052, ONE, TWO, AND THREE.

18 THE CLERK: I TURNED RIGHT TO IT.

19 THE WITNESS: OH, OKAY.

20 BY MR. DUNCAN:

21 Q WE GOT IT?

22 A I'M SORRY. THIS WAS NOT IN MY BINDER THREE.

23 Q I'M SORRY, DOCTOR.

24 A OKAY. HANG ON.

25 Q WE'RE AT THAT PAGE NOW 2052, ONE, 2052, TWO, 2052,

1 THREE.

2 A YES, 2052, ONE.

3 Q RIGHT. IT SHOULD LOOK LIKE A CHART?

4 A YES.

5 Q IT SAYS PRIVILEGES AND THEN IT LISTS A BUNCH OF
6 STUFF?

7 A YES, I HAVE THE ELUSIVE 2051 NOW.

8 Q VERY GOOD. DO YOU RECOGNIZE THIS AS A PRIVILEGE
9 REQUEST FORM TO WILLIS-KNIGHTON? DO YOU RECOGNIZE IT AS YOUR
10 PRIVILEGE REQUEST FORM?

11 A 2051?

12 THE COURT: NO, IT'S 2052 HYPHEN ONE.

13 BY MR. DUNCAN:

14 Q 2052, ONE?

15 A OKAY. HERE WE GO. 2052, ONE.

16 Q I'M SORRY, DOCTOR. IT'S GOING TO BE ANTICLIMACTIC
17 WHEN YOU HEAR THE QUESTIONS I'M GOING TO ASK ABOUT IT.

18 THE COURT: WE'RE WAITING WITH BATED BREATH.

19 THE WITNESS: MY BREATH IS BATED. YES. YES.

20 BY MR. DUNCAN:

21 Q THIS IS YOUR PRIVILEGES REQUEST FORM AT
22 WILLIS-KNIGHTON FROM MAY 12TH, 2014; IS IT NOT?

23 A YES.

24 Q GREAT. IF YOU LOOK AT THE CHART THERE, JUST LOOK AT
25 THE CHART AND YOU SEE YOU CHECKED SOME BOXES ON THAT PAGE AND

1 ON THE NEXT PAGE YOU CHECKED SOME MORE BOXES AND THEN ON THE
2 THIRD PAGE YOU CHECKED ANOTHER BOX; DO YOU SEE THAT?

3 A CORRECT.

4 Q IS IT FAIR TO SAY THAT IN YOUR INITIAL APPLICATION
5 YOU REQUESTED PRIVILEGES TO PERFORM CERTAIN KIND OF
6 GYNECOLOGICAL SURGERY AT WILLIS-KNIGHTON?

7 A CORRECT.

8 Q AND THE FORM LISTS ALL OF THOSE DIFFERENT KIND OF
9 SURGERY THAT YOU ASKED FOR?

10 A YES.

11 Q IT'S ALSO TRUE, ISN'T IT, THAT YOU REQUESTED
12 PRIVILEGES TO PERFORM CERTAIN KINDS OF LAPAROSCOPY --
13 LAPAROSCOPIC SURGERY?

14 A LAPAROSCOPY, YES.

15 Q LAPAROSCOPY. I HAVE TROUBLE WITH THAT. YES.
16 MOVING AWAY FROM THAT. WE'LL GO TO JOINT EXHIBIT 144, WHICH I
17 THINK YOU SHOULD HAVE BECAUSE YOU WERE ASKED QUESTIONS ABOUT
18 IT EARLIER. THIS IS ALSO A CONFIDENTIAL EXHIBIT. JOINT
19 EXHIBIT 144. 144, NOT 24. WAIT, I'M SORRY, I'M SEEING 24
20 COMING UP ON MY SCREEN. I NEED JOINT EXHIBIT 144, WHICH IS A
21 CONFIDENTIAL EXHIBIT?

22 A WHICH BINDER IS THAT IN?

23 THE COURT: IT'S IN BINDER FOUR.

24 BY MR. DUNCAN:

25 Q BINDER FOUR, DOCTOR. THIS IS, WHEN YOU TURN THERE,

1 I THINK YOU'LL SEE THAT THIS IS THE AUGUST 11TH, 2014 LETTER
2 THAT MS. DOUFEKIAS WAS ASKING YOU ABOUT?

3 A THAT WOULD BE PAGE 3445?

4 Q YOU GOT IT.

5 A YES.

6 Q YOU'RE LEARNING THE ELEGANT SYSTEM THAT WE HAVE
7 HERE. THAT'S GOOD. SO THIS IS -- AS YOU RECALL, THIS IS THE
8 LETTER FROM WILLIS-KNIGHTON TO YOU REQUESTING DOCUMENTATION IN
9 CONNECTION WITH YOUR APPLICATION FOR PRIVILEGES; IS IT NOT?

10 A YES.

11 Q AND SO THE HOSPITAL ASKED YOU TO PROVIDE SOME
12 DOCUMENTATION THERE AND I'D LIKE YOU TO REVIEW JUST THE FIRST
13 PARAGRAPH THERE IN THE LETTER AND PARTICULARLY FOCUSING ON THE
14 LAST TWO SENTENCES?

15 A THE LAST TWO SENTENCES OF THE FIRST PARAGRAPH?

16 Q YES, SIR.

17 A NOW, DOCTOR -- OKAY.

18 Q DID YOU READ THAT?

19 A YES.

20 Q THANK YOU. DOCTOR, IS IT YOUR UNDERSTANDING FROM
21 READING THAT, THAT WHAT WILLIS-KNIGHTON IS ASKING FOR IS
22 DOCUMENTATION, INCLUDING OPERATIVE NOTES AND OUTCOMES OF CASES
23 THAT YOU'VE PERFORMED IN THE LAST 12 MONTHS FOR THE SPECIFIC
24 PROCEDURES THAT YOU'RE REQUESTING PRIVILEGES FOR ON THE FORM?
25 ISN'T THAT WHAT THEY'RE ASKING FOR?

1 **A** YES.

2 **Q** OKAY. AND JUDGING FROM THAT PARAGRAPH, IS IT YOUR
3 UNDERSTANDING, YOU'RE ASKING FOR THAT DOCUMENTATION IN ORDER
4 TO DETERMINE WHETHER YOU HAVE THE ABILITY TO PERFORM THOSE
5 PROCEDURES, SO THAT, YOU KNOW, IN THE INTEREST OF PATIENT CARE
6 AND SAFETY?

7 **A** YES.

8 **Q** IS THAT A FAIR CHARACTERIZATION OF WHAT THAT SAYS?

9 **A** YES.

10 **Q** NOW, DOCTOR, I KNOW YOU TESTIFIED ABOUT YOUR
11 RESPONSE TO THIS LETTER, BUT I JUST WANT TO ASK YOU A FEW
12 QUESTIONS ABOUT IT. IS YOUR TESTIMONY THAT YOU COMPLIED WITH
13 THE HOSPITALS REQUEST FOR THAT DOCUMENTATION, THE
14 DOCUMENTATION IN THE AUGUST 11TH LETTER?

15 **A** I'M NOT EXACTLY SURE WHAT YOUR MEANING IS.

16 **Q** WELL, YOU UNDERSTAND IS THAT THE LETTER IS ASKING
17 YOU FOR DOCUMENTATION; RIGHT?

18 **A** RIGHT.

19 **Q** WHICH WE JUST TALKED ABOUT. NOW IS IT YOUR
20 TESTIMONY THAT YOU COMPLIED WITH THAT REQUEST FOR
21 DOCUMENTATION?

22 **A** I COMPLIED TO THE BEST OF MY ABILITY.

23 **Q** OKAY. LET'S LOOK AT JX 145, THAT'S THE NEXT
24 DOCUMENT. THIS IS ALSO CONFIDENTIAL, I BELIEVE. DO YOU SEE
25 THAT DOCUMENT, DOCTOR?

1 A 145.

2 Q 145. IT SHOULD BE THE ONE RIGHT AFTER 144. THIS IS
3 CONFIDENTIAL. YOU SEE THAT, DOCTOR? THAT'S AN E-MAIL, ISN'T
4 IT, FROM YOU --

5 A YES.

6 Q -- TO SOMEONE AT WILLIS-KNIGHTON?

7 A YES.

8 Q RIGHT?

9 A YES.

10 Q COULD YOU READ THAT E-MAIL TO YOURSELF, PLEASE?

11 A YES.

12 Q IS THIS E-MAIL INTENDED TO BE YOUR RESPONSE TO THE
13 AUGUST 11TH LETTER THAT WAS SENT REQUESTING THE DOCUMENTATION?

14 A YES.

15 Q NOW I'D LIKE TO FOCUS ON THE FIRST PARAGRAPH. I'M
16 NOT GOING TO READ IT VERBATIM. IS IT YOUR UNDERSTANDING FROM
17 THE FIRST PARAGRAPH THAT YOU'RE AMENDING THE PRIVILEGES THAT
18 YOU REQUESTED FROM WILLIS-KNIGHTON AND THAT NOW YOU'RE
19 REQUESTING COURTESY STAFF AND ALSO PRIVILEGES FOR PERFORMING
20 SUCTION D&C AND D&E?

21 A CORRECT.

22 Q SO YOU AMENDED YOUR PRIVILEGES APPLICATION THROUGH
23 THAT E-MAIL; IS THAT RIGHT?

24 A I BASICALLY ELIMINATED EVERYTHING BUT THOSE TWO
25 PROCEDURES. THAT WAS -- I JUST REQUESTED THOSE.

1 **Q** OKAY. AND JUST FOCUSING ON THE THIRD PARAGRAPH OF
2 THAT E-MAIL, I'D LIKE YOU TO READ THAT TO YOURSELF.

3 **A** OKAY.

4 **Q** IS IT FAIR TO STAY FROM THAT PARAGRAPH THAT YOU'RE
5 SAYING TO WILLIS-KNIGHTON THAT YOU ARE WELL QUALIFIED TO
6 PERFORM THE PROCEDURES FOR WHICH YOU'RE REQUESTING PRIVILEGES?

7 **A** THAT'S FAIR.

8 **Q** IS IT ALSO FAIR TO SAY THAT YOUR RESPONSE TO
9 WILLIS-KNIGHTON IS, I HAVE EXTENSIVE DOCUMENTATION TO SHOW
10 THAT, BUT WILLIS-KNIGHTON NEEDS TO SEND SOMEBODY TO THE CLINIC
11 TO LOOK AT THAT DOCUMENTATION?

12 **A** IT WAS JUST AN OFFER.

13 **Q** OKAY. NOW LET'S GO TO -- WELL JUST TO BE CLEAR,
14 DOCTOR, THAT PARAGRAPH IN YOUR E-MAIL IS INTENDED AS A
15 RESPONSE TO THE REQUEST FOR DOCUMENTATION ON AUGUST 11TH BY
16 WILLIS-KNIGHTON; IS IT NOT?

17 **A** YES.

18 **Q** AND IT'S FAIR TO SAY THAT WHAT YOU'RE SAYING THERE
19 IS NOT THAT YOU'D SEND THE DOCUMENTATION, BUT THAT SOMEONE
20 FROM WILLIS-KNIGHTON NEEDS TO COME LOOK AT THE DOCUMENTATION
21 AT YOUR CLINIC; IS THAT RIGHT?

22 **A** YES, BUT THAT'S NOT EXCLUSIVE, I DIDN'T REFUSE TO
23 SEND THEM THE DOCUMENTATION.

24 **Q** WELL, DOES THE E-MAIL THAT WE JUST LOOKED AT SAY
25 THAT YOU'RE GOING TO SEND THEM THE DOCUMENTATION?

1 **A** NO, NOT THIS -- NO, IT DOES NOT.

2 **Q** THANK YOU. DOCTOR, AT THAT POINT DID
3 WILLIS-KNIGHTON DENY YOUR REQUEST FOR PRIVILEGES?

4 **A** THEY HAVEN'T DENIED MY REQUEST FOR PRIVILEGES.

5 **Q** THEY HAVE NOT DENIED YOUR REQUEST FOR PRIVILEGES,
6 THAT'S YOUR TESTIMONY?

7 **A** WELL, IF YOU READ THE LETTERS OF WHEN THEY
8 RECEIVE -- MY UNDERSTANDING IS WHEN THEY RECEIVE THE
9 DOCUMENTATION THEY'RE REQUESTING, THEN THEY WILL CONTINUE WITH
10 MY APPLICATION.

11 **Q** OKAY. SO YOUR TESTIMONY IS THEY HAVEN'T YET DENIED
12 YOUR PRIVILEGES THEN, RIGHT?

13 **A** BUT I CAN'T PROVIDE THAT INFORMATION BECAUSE IT
14 DOESN'T EXIST.

15 **MS. DOUFEKIAS:** OBJECTION, YOUR HONOR. HE'S MISS
16 CHARACTERIZING THE WITNESS'S ANSWER.

17 **THE COURT:** I THINK HE JUST DID ANSWER IT,
18 CLARIFYING IT, BUT I WAS TRYING TO LISTEN TO THE OBJECTION AND
19 THE WITNESS'S TESTIMONY. COULD YOU REPEAT WHAT YOU JUST SAID,
20 DOCTOR?

21 **THE WITNESS:** YES, YOUR HONOR. YOU KNOW, THEY
22 HAVEN'T FORMALLY DENIED ME. THEY JUST -- WHEN THEY RECEIVE
23 INFORMATION ON HOSPITALIZED PATIENTS IN THE LAST 12 MONTHS,
24 THEY WILL CONTINUE IT, CONSIDERING MY APPLICATION, EVEN THOUGH
25 I'VE EXPLAINED THAT THAT INFORMATION DOESN'T EXIST. I'M IN A

1 CATCH 22 BASICALLY. I CAN'T PROVIDE INFORMATION I DON'T HAVE.

2 THE COURT: ALL RIGHT. I UNDERSTAND THE ANSWER.

3 BY MR. DUNCAN:

4 Q OKAY. LET'S LOOK, AGAIN, AT THE LETTER FROM
5 WILLIS-KNIGHTON THAT WE TALKED ABOUT EARLIER. LET ME SEE IF I
6 CAN FIND THE -- THAT WAS JX 89. WE HAVE TO GO BACK FOR THAT
7 ONE. JX 89. THAT IS ALSO CONFIDENTIAL. I BELIEVE YOU'VE
8 LOOKED AT THAT ALREADY, DOCTOR. THAT IS BINDER THREE.

9 A CAN I JUST READ THIS OFF THE SCREEN.

10 Q YOU CAN -- IS IT UP THERE ON THE SCREEN, DOCTOR?

11 A YES.

12 Q ALL RIGHT. SURE. NOW YOU SEE THAT PARAGRAPH THERE,
13 THAT'S -- FIRST OF ALL, YOU RECOGNIZE THIS LETTER, RIGHT?

14 A YES.

15 Q THIS IS S LETTER FROM WILLIS-KNIGHTON ON
16 NOVEMBER 19TH, 2014, THAT YOU'VE ALREADY TESTIFIED ABOUT?

17 A YES.

18 Q JUST DRAWING YOUR ATTENTION TO THE BOTTOM OF THAT
19 FIRST LONG PARAGRAPH. DO YOU SEE THAT LAST SENTENCE THERE?
20 JUST READ IT TO YOURSELF, DON'T --

21 A YES, SIR.

22 Q DON'T READ IT OUT LOUD. IS IT FAIR TO SAY FROM THIS
23 SENTENCE THAT YOUR APPLICATION AT WILLIS-KNIGHTON REMAINS
24 INCOMPLETE AND CANNOT BE PROCESSED?

25 A THAT'S MY UNDERSTANDING.

1 **Q** OKAY. DOCTOR, I'D LIKE TO ASK YOU ONE OTHER
2 QUESTION ABOUT SOMETHING YOU SAID -- ABOUT YOUR PRIVILEGES
3 AT -- AND I'M PROBABLY GOING TO GET THE NAME WRONG AT THE LSU
4 SHREVEPORT SYSTEM. WHAT'S IT CALLED, DOCTOR? UNIVERSITY
5 HEALTH, IS THAT THE RIGHT WAY TO REFER TO IT?

6 **A** IT IS CURRENTLY UNIVERSITY HEALTH.

7 **Q** THAT'S LSU SHREVEPORT, IS THAT ANOTHER WAY OF
8 REFERRING TO IT?

9 **A** IT USED TO BE LSU HEALTH SCIENCE CENTER. BEFORE
10 THAT IT WAS LSU HEALTH CENTER. AND BEFORE THAT IT WAS
11 CONFEDERATE MEMORIAL MEDICAL CENTER.

12 **Q** OKAY. IS THE BEST WAY TO REFER TO IT NOW IS
13 UNIVERSITY HEALTH?

14 **A** I THINK THAT WOULD BE ACCURATE.

15 **Q** I JUST GET CONFUSED WITH ALL OF THE DIFFERENT NAMES.

16 **A** SO DO I.

17 **Q** YOU TESTIFIED EARLIER ABOUT THE PRIVILEGES THAT YOU
18 MAINTAIN AT UNIVERSITY HEALTH; CORRECT?

19 **A** CORRECT.

20 **Q** AND I BELIEVE -- YOU TESTIFIED EARLIER, DIDN'T YOU,
21 THAT YOU HAVE COURTESY PRIVILEGES THERE?

22 **A** THAT'S CORRECT.

23 **Q** AND DID YOU TESTIFY THAT THOSE -- THAT YOU WERE
24 UNABLE TO ADMIT PATIENTS BECAUSE YOU HAVE COURTESY PRIVILEGES
25 THERE?

1 **A** THAT'S CORRECT.

2 **Q** OKAY. FIRST, LET'S REFER TO JX 185. THAT SHOULD BE
3 NUMBER FOUR, BINDER FOUR. WAY IN THE BACK.

4 **THE COURT:** WHAT'S THE NUMBER?

5 **MR. DUNCAN:** 185, YOUR HONOR.

6 **THE WITNESS:** I'M READING IT.

7 **BY MR. DUNCAN:**

8 **Q** YOU'RE SEEING THAT ONE? IS THAT A LETTER FROM
9 UNIVERSITY HEALTH SHREVEPORT TO YOU -- SORRY.

10 **MR. DUNCAN:** FIRST OF ALL, IS THIS ONE CONFIDENTIAL?
11 IT SHOULD BE CONFIDENTIAL, RIGHT?

12 **MS. DOUFEKIAS:** YES.

13 **BY MR. DUNCAN:**

14 **Q** THIS IS UNIVERSITY HEALTH SHREVEPORT. IT'S A LETTER
15 TO YOU FROM MAY 21, 2015. DO YOU RECOGNIZE THAT?

16 **A** YES.

17 **Q** OKAY. I WANT YOU TO LOOK AT THE FIRST PARAGRAPH OF
18 THAT LETTER AND READ IT TO YOURSELF, PLEASE.

19 **A** OKAY.

20 **Q** IS IT FAIR TO SAY FROM THAT LETTER THAT YOU ARE A
21 MEMBER OF THE CONSULTING STAFF IN OB/GYN AT UNIVERSITY HEALTH?

22 **A** YES.

23 **Q** SO IT'S NOT ACCURATE TO SAY THEN, IS IT, THAT YOU'RE
24 A MEMBER OF THE COURTESY STAFF, IS IT? LET ME REPHRASE,
25 DOCTOR. YOU TESTIFIED EARLIER YOU HAVE COURTESY PRIVILEGES AT

1 LSU HEALTH, RIGHT?

2 A I'M A MEMBER OF THE COURTESY STAFF.

3 Q I GUESS LOOKING AT THE LETTER, THOUGH, DOCTOR, ISN'T
4 IT TRUE THAT YOU'RE A MEMBER OF THE CONSULTING STAFF, NOT
5 COURTESY STAFF?

6 A IT SAYS CONSULTING STAFF HERE --

7 Q SO IT DOES SAY THAT ON THE LETTER --

8 A YES.

9 Q -- CONSULTING STAFF?

10 A YES. I APOLOGIZE. I PROBABLY USED THAT
11 INTERCHANGEABLY IN MY MIND AND IT MAY NOT BE.

12 Q NO, THAT'S OKAY, DOCTOR. SO WHEN YOU SAID COURTESY
13 PRIVILEGES YOU MEANT CONSULTING?

14 A FOR UNIVERSITY HOSPITAL, YES.

15 Q FOR UNIVERSITY HOSPITAL.

16 A YES.

17 Q YOU DIDN'T MEAN COURTESY, YOU MEANT CONSULTING?

18 A CORRECT.

19 Q LET'S LOOK -- JUST ONE SECOND, DOCTOR. LET ME GO
20 GET YET ANOTHER BINDER. HOLD ON ONE SECOND. I'D LIKE YOU TO
21 REFER TO JX 79. THIS IS BINDER TWO. I'LL WAIT FOR YOU TO GET
22 THERE.

23 MR. DUNCAN: IS THIS MARKED CONFIDENTIAL? I
24 HONESTLY DON'T KNOW. IS THIS ONE --

25 THE WITNESS: THAT WAS JX 79?

1 BY MR. DUNCAN:

2 Q YES SIR, JX 79, BINDER TWO.

3 MR. DUNCAN: ARE WE CONFIDENTIAL ON THIS ONE? SOME
4 ARE AND SOME AREN'T.

5 MR. ADEN: IT'S NOT CONFIDENTIAL.

6 MR. DUNCAN: NOT CONFIDENTIAL? SO THIS ONE CAN GO
7 UP ON THE SCREEN AND I CAN READ FROM IT, RIGHT? OKAY, THANKS.

8 BY MR. DUNCAN:

9 Q DOCTOR, DID YOU FIND JX 79?

10 A YES.

11 Q WOULD YOU LOOK AT THE FIRST PAGE OF THAT, AND WE'VE
12 GOT THAT UP ON THE SCREEN. THAT'S THE MEDICAL STAFF BYLAWS OF
13 UNIVERSITY HEALTH SHREVEPORT. DO YOU RECOGNIZE THAT DOCUMENT?

14 A BY RECOGNIZE --

15 Q LET ME REPHRASE, DOCTOR. DO YOU RECOGNIZE THIS AS A
16 DOCUMENT THAT CONTAINS THE BYLAWS OF UNIVERSITY HEALTH
17 SHREVEPORT?

18 A YES.

19 Q YOU'VE REVIEWED BYLAWS BEFORE, CORRECT, DOCTOR?

20 A YES.

21 Q GENERALLY FAMILIAR WITH HOW BYLAWS ARE WRITTEN; THE
22 TERMS IN THEM; IS THAT RIGHT?

23 A YES.

24 Q I WANT YOU TO LOOK AT A PAGE IN THAT DOCUMENT. IT'S
25 PAGE 1707 OF THAT DOCUMENT, IF YOU'LL JUST FLIP IN IT, IT'S

1 QUITE A FEW PAGES INTO IT. IT'S MAYBE 50 PAGES INTO IT, 47
2 PAGES INTO IT. I GUESS THE NUMBER ON THE DOCUMENT IS --
3 THERE'S A PAGE 48 AND AT THE BOTTOM THERE'S PAGE 1707.

4 A YEAH, I HAVE IT.

5 Q THERE'S ABOUT FOUR DIFFERENT PAGE NUMBERS ON THE
6 DOCUMENT, BUT WE'LL FIND IT. HAVE YOU GOTTEN THERE?

7 A YES.

8 Q OKAY. GOOD. NOW THIS IS A PAGE -- LOOK AT THE TOP
9 OF THAT PAGE WHERE IT SAYS, ARTICLE FOUR, CATEGORIES OF THE
10 MEDICAL STAFF. DO YOU SEE THAT?

11 A YES.

12 Q SO IS IT FAIR TO SAY THIS ARTICLE OF THE BYLAWS IS
13 DISCUSSING THE DIFFERENT KINDS OF MEDICAL STAFF AT UNIVERSITY
14 HEALTH SHREVEPORT?

15 A YES.

16 Q OKAY. I WANT YOU TO LOOK ON THE NEXT PAGE AT
17 SECTION 4.4 THAT SAYS, COURTESY STAFF. DO YOU SEE THAT?

18 A YES.

19 Q OKAY. UNDER SECTION 4.4.1 IT SAYS, "REQUIREMENTS
20 FOR COURTESY STATUS." COURTESY STATUS, RIGHT? JUST READ
21 ALONG WITH ME THERE. "THE COURTESY STAFF CATEGORY SHALL
22 CONSIST OF PRACTITIONERS, INCLUDING TELEMEDICINE PHYSICIANS
23 AND PRACTITIONERS. AND NPPS DETERMINED BY THE BOARD TO BE
24 ELIGIBLE FOR STAFF MEMBERSHIP WHO ARE NOT ACTIVELY INVOLVED IN
25 MEDICAL STAFF AFFAIRS, ADMIT LESS THAN 20 PATIENTS ANNUALLY,

1 DO NOT ROUTINELY ADMIT PATIENTS, ATTEND PATIENTS OR PROVIDE
2 OTHER CLINICAL SERVICES FOR PATIENTS IN HOSPITAL AND ARE NOT
3 MAJOR CONTRIBUTORS TO FULFILLMENT OF MEDICAL STAFF FUNCTIONS
4 DUE TO PRACTICING PRIMARILY IN ANOTHER HOSPITAL OR IN AN
5 OFFICE-BASED SPECIALTY OR OTHER REASONS, BUT WISH TO REMAIN
6 AFFILIATED WITH THE HOSPITAL FOR CONSULTATION, CALL COVERAGE,
7 REFERRAL OF PATIENTS OR OTHER PATIENT CARE PURPOSES."

8 NOW, DOCTOR, MY QUESTION IS, GIVEN THAT DESCRIPTION
9 OF COURTESY STAFF, IS IT FAIR TO SAY THAT COURTESY STAFF CAN
10 ADMIT PATIENTS TO THE HOSPITAL?

11 A CANNOT?

12 Q CAN, CAN ADMIT PATIENTS.

13 A CAN?

14 Q YES, IS ABLE TO ADMIT PATIENTS.

15 A FROM MY READING OF THAT, YES, IN THIS CASE.

16 Q AND IT LOOKS LIKE THE LIMITATION ON IT HAS TO DO
17 WITH THE NUMBER OF PATIENTS ADMITTED; CORRECT?

18 A FOR THIS HOSPITAL, YES.

19 Q GREAT. AND THIS IS THE HOSPITAL WHERE WE'VE
20 ESTABLISHED YOU ARE A MEMBER OF THE CONSULTING STAFF; CORRECT?

21 A CORRECT.

22 Q LET'S LOOK AT THE NEXT SECTION 4.5, "CONSULTING
23 STAFF." DO YOU SEE THAT?

24 A YES.

25 Q OKAY. SO ON THE NEXT PAGE, 1709, AT THE TOP OF THE

1 PAGE, READ WITH ME. IT SAYS, "CONSULTING STAFF MEMBERS ARE
2 NOT PERMITTED TO ADMIT PATIENTS, ORDER OUTPATIENT DIAGNOSTIC
3 TESTS, VOTE, HOLD OFFICE OR SERVE ON ANY COMMITTEES WITH THE
4 EXCEPTION OF SPECIAL COMMITTEES." SO THAT'S YOUR STATUS AT
5 UNIVERSITY HEALTH, YOU'RE CONSULTING STAFF?

6 A CORRECT.

7 Q SO YOU CAN'T ADMIT PATIENTS?

8 A CORRECT.

9 Q BUT YOU ACKNOWLEDGE THAT THERE'S ANOTHER CATEGORY
10 CALLED COURTESY STAFF THAT CAN ADMIT PATIENTS; CORRECT?

11 A CORRECT.

12 Q SO JUST TO BE CLEAR, YOU ARE NOT A MEMBER OF THE
13 COURTESY STAFF AT UNIVERSITY HEALTH?

14 A CORRECT.

15 Q OKAY. THANK YOU. JUST A COUPLE MORE -- JUST
16 ANOTHER FEW QUESTIONS, DOCTOR. LET ME ASK A FEW QUESTIONS
17 ABOUT YOUR ABORTION PRACTICE AND I THINK THAT WILL BE IT.
18 JUST TO RE-CAP SOME OF WHAT YOU TESTIFIED ON DIRECT. YOU
19 PROVIDE SURGICAL ABORTIONS AT BOTH BOSSIER CITY MEDICAL SUITE
20 AND CAUSEWAY MEDICAL CENTER; THE FIRST IS IN BOSSIER, THE
21 SECOND IN METAIRIE 'RIGHT?

22 A THAT'S CORRECT.

23 Q AND AT BOSSIER AND CAUSEWAY YOU PROVIDE BOTH FIRST
24 AND SECOND TRIMESTER ABORTIONS?

25 A CORRECT.

1 Q AND YOU DO ABORTIONS UP TO 21 WEEKS SIX DAYS LMP?

2 A CORRECT.

3 Q AND OVER THE COURSE OF YOUR CAREER YOU'VE PERFORMED
4 SOMETHING LIKE 30 TO 40,000 ABORTIONS?

5 A BETWEEN 30 AND 40,000.

6 Q OKAY. AND AT BOSSIER CLINIC IN 2014, YOU DID
7 SOMEWHERE BETWEEN 300 AND 400 ABORTIONS; IS THAT RIGHT? OR
8 MAYBE YOU CAN BE MORE SPECIFIC?

9 A APPROXIMATELY 550.

10 Q OH, I'M SORRY, APPROXIMATELY 550, OKAY. AND ABOUT
11 MAYBE 80 TO 90 PERCENT OF THOSE ABORTIONS WERE FIRST
12 TRIMESTER; IS THAT CORRECT?

13 A AT LEAST 90 PERCENT, YES.

14 Q AT LEAST 90 PERCENT, THANKS. NOW, IT'S TRUE ISN'T
15 IT THAT BOSSIER CLINIC DOES A MUCH LESS -- MUCH LOWER VOLUME
16 OF ABORTIONS THAN CAUSEWAY; RIGHT?

17 A YES.

18 Q AND AT CAUSEWAY YOU PERSONALLY DO, I THINK YOU
19 TESTIFIED 450 ABORTIONS A YEAR, APPROXIMATELY?

20 A IT VARIES FROM YEAR TO YEAR, BUT APPROXIMATELY, YES.

21 Q OKAY. AND THE MAJORITY OF THOSE ARE FIRST TRIMESTER
22 ALSO; RIGHT?

23 A CORRECT.

24 Q AND YOUR INCOME DEPENDS ON HOW MANY ABORTIONS YOU
25 PERFORM; RIGHT?

1 A THAT'S CORRECT.

2 Q A COUPLE OF QUESTIONS ABOUT YOUR FOLLOW-UP PRACTICES
3 WITH PATIENTS, DOCTOR. WHEN PATIENTS HAVE AN ABORTION,
4 THEY'RE ENCOURAGED TO HAVE A POST-ABORTION CHECKUP; RIGHT?

5 A YES.

6 Q AND THOSE CHECKUPS WOULD ORDINARILY BE THREE TO FOUR
7 WEEKS AFTER THE PROCEDURE?

8 A YES.

9 Q NOW THOSE CHECKUPS ARE NOT MANDATORY; RIGHT?

10 A WE STRESS VERY STRONGLY TO THE PATIENTS THAT THEY
11 REALLY -- IT IS IN THEIR BEST INTEREST TO GET A CHECKUP IN
12 THREE TO FOUR WEEKS.

13 Q WHY DO YOU STRESS THAT SO STRONGLY, DOCTOR?

14 A JUST TO MAKE SURE THAT THEY HAVE NO COMPLICATIONS,
15 TO MAKE SURE, ESPECIALLY WITH THE YOUNGER PATIENTS, HOPEFULLY
16 GET ACCESS TO CONTRACEPTIVE COUNSELING, FOR THOSE SORTS OF
17 REASONS.

18 Q BUT IT'S TRUE, ISN'T IT, THAT IT'S UP TO THE PATIENT
19 WHETHER SHE COMES BACK; RIGHT?

20 A YES.

21 Q NOW IF A PATIENT DOESN'T COME BACK FOR THAT
22 POST-ABORTION CHECKUP, YOU WOULDN'T KNOW WHETHER THE PATIENT
23 HAD A POST-ABORTION COMPLICATION; RIGHT?

24 A CORRECT.

25 Q AND IT'S TRUE, ISN'T IT, THAT MOST ABORTION PATIENTS

1 DON'T RETURN FOR THEIR POST-ABORTION CHECKUP?

2 A I COULDN'T GIVE YOU A PERCENTAGE BECAUSE MANY OF
3 THEM RETURN TO THEIR OWN DOCTORS OR USE OTHER FACILITIES,
4 ESPECIALLY OUT OF STATE PATIENTS. WE OFFER A FREE CHECKUP AT
5 OUR CLINIC THAT THEY CAN AVAIL THEMSELVES OF.

6 Q SO IS IT YOUR TESTIMONY THAT YOU CAN'T GIVE US A
7 SPECIFIC PERCENTAGE ABOUT THE NUMBER OF PATIENTS THAT RETURN
8 FOR POST-ABORTION CHECKUPS?

9 A I CAN'T GIVE YOU AN EXACT PERCENTAGE, NO, SIR.

10 Q OKAY. DO YOU REMEMBER TAKING A DEPOSITION IN THIS
11 CASE, DOCTOR?

12 A YES.

13 Q AND OF COURSE WHEN YOU GAVE THE DEPOSITION YOU WERE
14 UNDER OATH; CORRECT?

15 A CORRECT.

16 Q LET ME -- NOW I'M GOING TO PUT DR. DOE'S DEPOSITION
17 UP. I HAVEN'T DONE THIS YET IN THIS LITIGATION, SO I'M GOING
18 TO USE THIS THING HERE.

19 THE COURT: THAT'S GREAT. SHE'LL SWITCH TO THE
20 ELMO.

21 BY MR. DUNCAN:

22 Q DOCTOR, I'M GOING TO PUT AS SOON AS --

23 MS. DOUFEKIAS: CAN I GET A PAGE AND LINE NUMBER,
24 PLEASE?

25 MR. DUNCAN: YES. YES, I WILL. I'M GOING TO PUT UP

1 PAGE 134 OF DR. DOE'S DEPOSITION. LET ME PUT THAT UP SO THAT
2 WE CAN GET IT ON THE SCREEN FIRST. LET ME JUST PUT THE ONE
3 PAGE UP AND SEE.

4 **BY MR. DUNCAN:**

5 Q PARDON ME, DOCTOR. OKAY. I'D LIKE FOR YOU TO
6 START -- DO YOU SEE THAT ON THE SCREEN, DOCTOR --

7 A YES, I DO.

8 Q -- THIS PAGE OF YOUR DEPOSITION?

9 A YES, I DO.

10 Q ARE YOU ABLE TO READ THAT?

11 A YES.

12 Q OKAY.

13 THE COURT: HANG ON ONE SECOND. THIS DEPOSITION IS
14 NOT CONFIDENTIAL IS IT?

15 MS. DOUFEKIAS: IT IS, YES.

16 THE COURT: OKAY. WELL THEN JUST KEEP IT OFF THE
17 SCREEN.

18 MR. DUNCAN: JUST TO UNDERSTAND, YOUR HONOR, THE
19 DEPOSITION IS CONFIDENTIAL, I'M TRYING TO --

20 THE COURT: OH, I UNDERSTAND. AND, LOOK, YOU CAN,
21 AS FAR AS I'M CONCERNED, I WILL -- I SEE THE TESTIMONY. I
22 HEARD HIS TESTIMONY. I UNDERSTAND WHERE YOU'RE GOING AND YOU
23 CAN ASK THE QUESTION.

24 MR. DUNCAN: BUT YOU DON'T WANT ME TO READ FROM THE
25 DEPOSITION?

1 **THE COURT:** THE DOCTOR CAN READ FROM THE TESTIMONY.
2 AND IF YOU NEED AT SOME POINT TO ACTUALLY READ FROM THE
3 TESTIMONY YOU CAN, BUT I THINK THE DOCTOR CAN READ THE SAME
4 THING I'M READING, SO...

5 **MR. DUNCAN:** I UNDERSTAND. THAT'S FINE.

6 **BY MR. DUNCAN:**

7 **Q** DOCTOR, I GUESS WOULD YOU READ TO YOURSELF FROM
8 LINES 7 THROUGH 13 ON THAT PAGE. DO YOU SEE THAT?

9 **A** YES.

10 **Q** JUST READ IT TO YOURSELF.

11 **A** OKAY. I'VE READ IT.

12 **Q** YOU READ THAT?

13 **A** YES.

14 **Q** IS IT TRUE THAT YOU TESTIFIED THAT ABOUT 20 TO
15 30 PERCENT AT MOST, RETURN FOR THEIR POST-ABORTION CHECKUP AT
16 BOSSIER CLINIC?

17 **A** I SAID I COULDN'T GIVE YOU AN ACCURATE PERCENTAGE
18 AND THAT IS A GUESS.

19 **Q** OKAY.

20 **A** AND IT MAY BE HIGH OR LOW, I'M ACTUALLY NOT SURE.
21 BUT I CAN'T GIVE YOU AN EXACT PERCENTAGE. I'M SORRY, I
22 THOUGHT YOU WERE ASKING FOR MORE OF AN EXACT PERCENTAGE.

23 **Q** RIGHT, DOCTOR. THAT'S FINE. THAT'S FINE. I GUESS,
24 DOCTOR, IS IT FAIR TO SAY THAT A CLEAR MAJORITY OF ABORTION
25 PATIENTS DO NOT RETURN?

1 **A** I WOULDN'T KNOW BECAUSE I DON'T KNOW HOW MANY SEEK
2 THEIR CHECKUP ELSEWHERE.

3 **Q** OKAY. THANK YOU. I'M TAKING THAT OFF THE ELMO NOW.
4 NEITHER CLINIC YOU WORK AT, DOCTOR, BOSSIER OR CAUSEWAY,
5 CONTACTS THE PATIENT IF SHE DOESN'T COME BACK FOR HER
6 POST-ABORTION CHECKUP; RIGHT?

7 **A** CORRECT.

8 **Q** NOW, YOU'RE FAMILIAR WITH THE FORM KNOWN AS THE ITOP
9 OR INDUCED TERMINATION OF PREGNANCY FORM; RIGHT?

10 **A** YES.

11 **Q** AND YOU FILL THOSE FORMS OUT, RIGHT, DOCTOR?

12 **A** THEY ARE FILLED OUT BY CLINIC PERSONNEL WITH MY
13 SUPERVISION.

14 **Q** OKAY. RIGHT. SO -- I SEE. THERE'S A PLACE ON THE
15 ITOP FORM IS THERE NOT --

16 **THE COURT:** MR. DUNCAN, CAN I INTERRUPT JUST A
17 SECOND? CAN I INTERRUPT FOR A SECOND? WE'VE BEEN GOING
18 CLOSING ON TWO HOURS AND --

19 **MR. DUNCAN:** I'M ABOUT DONE.

20 **THE COURT:** YOU'RE ABOUT DONE?

21 **MR. DUNCAN:** ABOUT DONE.

22 **THE COURT:** OKAY, WE'LL TAKE A BREAK BEFORE
23 REDIRECT.

24 **MR. DUNCAN:** OKAY. SURE. ABOUT DONE, DOCTOR.

25 **BY MR. DUNCAN:**

1 **Q** NOW, THERE'S A PLACE ON THAT ITOP FORM, DOCTOR, TO
2 KNOW WHETHER A WOMAN HAS A COMPLICATION FROM HER ABORTION;
3 RIGHT?

4 **A** CORRECT.

5 **Q** NOW, IF A WOMAN HAS AN ABORTION AND HAS NO
6 COMPLICATION AT THE TIME OF THE PROCEDURE, THEN DOESN'T IT
7 STAND TO REASON THAT THE ITOP FORM WOULD NOT REFLECT ANY
8 COMPLICATION?

9 **A** I'M SORRY, CAN YOU REPEAT THAT?

10 **Q** WELL, IF A WOMAN HAS AN ABORTION, AND SHE
11 EXPERIENCES NO COMPLICATION AT THE TIME OF THE PROCEDURE,
12 WOULDN'T IT STAND TO REASON THAT THE ITOP FORM REFLECTS NO
13 COMPLICATION?

14 **A** CORRECT.

15 **Q** NOW, IF A WOMAN CALLS BACK IN THE DAYS OR WEEKS
16 AFTER HER ABORTION AND COMPLAINS OF A COMPLICATION, YOU DON'T
17 AMEND THE ITOP FORM TO REFLECT THAT COMPLICATION, DO YOU?

18 **A** WELL, IT'S BEEN SENT IN -- NO. NO, I DON'T.

19 **MR. DUNCAN:** THANK YOU, DOCTOR. NO FURTHER
20 QUESTIONS.

21 **THE COURT:** ALL RIGHT. LET'S TAKE TEN MINUTES.

22 **(WHEREUPON COURT WAS IN RECESS.)**

23 **THE COURT:** YOU MAY BE SEATED. YOU MAY PROCEED WITH
24 REDIRECT. MS. CAUSEY IS GOING TO GET OUR WITNESS.

25 ALL RIGHT, DOCTOR, YOU MAY BE SEATED AND YOU'RE

1 STILL UNDER OATH. ARE YOU READY?

2 THE WITNESS: YES, SIR.

3 THE COURT: OKAY, YOU MAY PROCEED.

4 REDIRECT

5 BY MS. DOUFEKIAS:

6 Q DOCTOR, I JUST HAVE A FEW QUESTIONS FOR YOU ON
7 REDIRECT. MR. DUNCAN ASKED YOU IN CROSS EXAMINATION ABOUT
8 PRIVILEGES THAT DR. DOE NUMBER 3 HAS AT CHRISTUS SCHUMPERT
9 HOSPITAL?

10 A YES.

11 Q DOES DR. DOE NUMBER 3 HAVE A FULL OB/GYN PRACTICE?

12 A YES, HE DOES.

13 Q WHEN YOU HAD A FULL OB/GYN PRACTICE, DID YOU ALSO
14 HAVE PRIVILEGES AT CHRISTUS SCHUMPERT HOSPITAL?

15 A YES, I DID.

16 Q WHEN DID YOU STOP HAVING THOSE PRIVILEGES?

17 A WHEN I -- LET'S SEE -- I DON'T REMEMBER THE EXACT
18 YEAR I TERMINATED THOSE, BUT IT WOULD HAVE BEEN PROBABLY A
19 YEAR OR TWO AFTER CEASING TO HAVE A PRIVATE PRACTICE
20 AFFILIATION.

21 Q DOCTOR, WHY DID YOU APPLY TO THE HOSPITALS THAT YOU
22 APPLIED TO FOR PRIVILEGES TO MEET THE REQUIREMENTS OF HB 388?

23 A WELL, YOU KNOW, IT'S A LONG TEDIOUS AND NOT
24 INEXPENSIVE PROCESS, AND I WANTED TO -- I WANTED TO APPLY TO
25 HOSPITALS THAT I KNEW GAVE GOOD CARE AND THAT HAD A CLOSE

1 GEOGRAPHIC LOCATION TO THE CLINIC AND WHERE I KNEW PEOPLE AND
2 MIGHT FEEL MORE COMFORTABLE. WILLIS-KNIGHTON AND BOSSIER,
3 SEVERAL OF MY FORMER RESIDENTS PRACTICED THERE, THAT WAS ONE
4 REASON PLUS I KNOW IT IS A GOOD HOSPITAL AND IT'S VERY CLOSE
5 TO THE CLINIC.

6 OF COURSE LSU UNIVERSITY HOSPITAL NOW I'VE HAD A
7 LONG AFFILIATION WITH. I THINK MINDEN HOSPITAL WAS MENTIONED,
8 BUT, YOU KNOW, THAT'S VERY CLOSE TO THE LIMITS. IT'S A
9 SMALLER HOSPITAL. I DON'T REALLY KNOW ANYONE THERE. SO I
10 TRIED TO PICK PLACES THAT I THOUGHT MEANT SOMETHING.

11 Q IS IT FAIR TO SAY THAT YOU WERE LOOKING FOR
12 HOSPITALS WHERE YOU THOUGHT YOU'D HAVE THE HIGHEST LIKELIHOOD
13 OF SUCCESS?

14 A YES, THAT ALSO.

15 Q SO IF YOU COULD TAKE A LOOK AT BINDER FOUR OF FOUR,
16 I'D LIKE TO TAKE A LOOK AT JOINT EXHIBIT 178.

17 MS. DOUFEKIAS: THIS IS A CONFIDENTIAL EXHIBIT, IT
18 SHOULD NOT BE ON THE SCREEN.

19 A OKAY.

20 BY MS. DOUFEKIAS:

21 Q HAVE YOU HAD A CHANCE TO READ THAT EXHIBIT?

22 A YES.

23 Q YOU WERE ASKED A SERIES OF QUESTIONS ABOUT YOUR
24 DISCUSSIONS WITH DR. A IN ATTEMPTS TO GET PRIVILEGES AT
25 TULANE. DOES THIS E-MAIL SUMMARIZE SOME OF THE ADDITIONAL

1 CONCERNS THAT DR. A EXPRESSED ABOUT YOUR ABILITY TO GET
2 PRIVILEGES?

3 A IN MY OPINION, YES.

4 Q DOCTOR, WHAT DOES IT MEAN TO BE -- LET ME MAKE SURE
5 I HAVE THE PHRASE CORRECTLY. WHAT DOES IT MEAN WHEN A DOCTOR
6 WILL COVER FOR YOU?

7 A WELL, THAT MEANS IF -- IN A GROUP PRACTICE, YOU
8 KNOW, YOU HAVE -- YOU HAVE A ROTATING CALL SCHEDULE SO THAT
9 WHEN EVERYONE ELSE IS OFF YOU HAVE ONE DOCTOR COVERING THE
10 PRACTICE OR IF YOU'RE OUT OF TOWN, YOU HAVE TO HAVE SOMEBODY
11 COVER YOUR PRACTICE JUST TO MAKE SURE THAT YOUR PATIENTS ARE
12 TAKEN CARE OF IN THE EVENTUALITY YOU'RE NOT AVAILABLE TO TAKE
13 CARE OF THEM.

14 Q SO WHEN A DOCTOR IS COVERING FOR YOU, YOU'RE NOT
15 PROVIDING CARE; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q IF YOU COULD FLIP A COUPLE OF DOCUMENTS AHEAD IN
18 THAT BINDER TO EXHIBIT 170?

19 A 170?

20 Q YES, 170. JOINT EXHIBIT 170.

21 A IT'S PAGE 3546?

22 Q YES.

23 A YES.

24 Q DOES THIS E-MAIL SUMMARIZE ANOTHER CONCERN THAT
25 DR. A HAD ABOUT YOUR ABILITY TO GET PRIVILEGES?

1 A YES.

2 Q DO YOU KNOW WHAT THE JOINT COMMISSION IS?

3 A YES.

4 Q WHAT IS THE JOINT COMMISSION?

5 A THE JOINT COMMISSION BASICALLY IS TASKED I BELIEVE
6 WITH MAKING SURE THAT HOSPITALS MEET CERTAIN STANDARDS AND ARE
7 DOING A GOOD JOB AND IN TASK WITH EVALUATING THEM TO MAKE SURE
8 THAT THAT IS THE CASE.

9 Q AND DOES THE JOINT COMMISSION ESSENTIALLY GOVERN
10 HOSPITAL ADMITTING PRIVILEGES PROCESSES ACROSS THE COUNTRY?

11 A YES.

12 Q YOU WERE ALSO ASKED SOME QUESTIONS ABOUT YOUR
13 UNDERSTANDING OF WHETHER OR NOT SECRETARY KLIEBERT CAN ENFORCE
14 HB 388?

15 A YES.

16 Q AND YOU WERE ASKED SOME QUESTIONS ABOUT WHETHER OR
17 NOT YOU'RE AWARE OF ANYONE ELSE WHO CAN ENFORCE HB 388?

18 A YES, I WAS ASKED THOSE QUESTIONS.

19 Q DOCTOR, DO YOU HAVE A VIEW OF WHAT THE LOUISIANA
20 STATE BOARD OF MEDICAL EXAMINERS' REACTION WOULD BE IF YOU
21 WERE FOUND TO BE IN VIOLATION OF HB 388; WHAT WOULD THEIR
22 LIKELY RESPONSE BE AT THE BOARD?

23 A I WOULD THINK IT WOULD BE TO REVOKE MY LICENSE.

24 Q CAN YOU TAKE A LOOK -- YOU WERE SHOWN SECRETARY
25 KLIEBERT'S DECLARATION AND IF WE COULD SCROLL DOWN TO

1 PARAGRAPH 6, THAT'S THE PARAGRAPH YOU WERE ASKED ABOUT ON
2 CROSS EXAMINATION?

3 A YES.

4 Q DO YOU SEE ANYWHERE IN THIS PARAGRAPH THAT SECRETARY
5 KLIEBERT STATES THAT YOU ARE ALLOWED -- SPECIFICALLY THAT YOU
6 ARE ALLOWED TO PERFORM DIAGNOSTIC AND SURGICAL PROCEDURES AT
7 TULANE?

8 A NO, I DO NOT.

9 THE COURT: WHAT'S THE EXHIBIT NUMBER AGAIN, I'M
10 SORRY, OF THE DECLARATION? IS IT 191?

11 MS. DOUFEKIAS: YES, YOUR HONOR. IT'S 191.

12 THE COURT: OKAY. THANK YOU.

13 BY MS. DOUFEKIAS:

14 Q YOU WERE ASKED ABOUT YOUR RESPONSE TO
15 WILLIS-KNIGHTON -- TO SOME INQUIRIES FROM WILLIS-KNIGHTON
16 ABOUT DOCUMENTATION. I THINK MR. DUNCAN CHARACTERIZED IT AS
17 INFORMATION THAT WILLIS-KNIGHTON WANTED FROM YOU IN THE
18 CONTEXT OF YOUR APPLICATION FOR PRIVILEGES; DO YOU REMEMBER
19 THOSE QUESTIONS?

20 A YES.

21 Q DOES THE DOCUMENTATION THAT WILLIS-KNIGHTON SEEKS
22 FROM YOU EXISTS?

23 A NO, IT DOES NOT.

24 Q WHY DOESN'T IT EXIST?

25 A BECAUSE I HAVEN'T DONE A HOSPITAL-BASED PRACTICE IN

1 TEN YEARS.

2 Q IS THE KIND OF DOCUMENTATION THAT WILLIS-KNIGHTON
3 SEEKS LIKELY TO EXIST FOR ANY OB/GYN WHO PERFORMS ONLY
4 ABORTION SERVICES?

5 A IF THAT'S ALL THEY DO, NO, THAT WOULD NOT EXIST.

6 Q WHY IS THAT?

7 A BECAUSE, YOU KNOW, OUR JOB IS TO KEEP PATIENTS OUT
8 OF THE HOSPITAL, AND COMPLICATIONS REQUIRING HOSPITALIZATION
9 IN PRACTICE OR IN DOING ELECTIVE TERMINATIONS IS THANKFULLY
10 VERY, VERY UNUSUAL.

11 Q IF YOU COULD TAKE A LOOK -- I THINK WE'RE STILL ON
12 THE SAME BINDER, FOUR OF FOUR. IF YOU COULD LOOK AT JOINT
13 EXHIBIT 145? YOU WERE ASKED SOME QUESTIONS ABOUT THIS ONE.

14 A YES.

15 Q DO YOU SEE THE DATE OF THAT DOCUMENT?

16 A AUGUST 16TH, 2014.

17 Q WHY DID YOU REDUCE THE NUMBER -- THE SPECIFIC
18 PRIVILEGES THAT YOU WERE SEEKING -- WITHDRAW. WHY DID YOU
19 REDUCE THE SPECIFIC PROCEDURES THAT YOU WERE SEEKING
20 PRIVILEGES FOR?

21 A WELL, I HAD NOT APPLIED FOR HOSPITAL PRIVILEGES IN
22 MANY, MANY YEARS, YOU KNOW, FROM SCRATCH, SO THINGS HAD
23 CHANGED QUITE A BIT FROM THE OLD DAYS, WHERE YOU BASICALLY
24 APPLIED FOR, YOU KNOW, BASIC PRIVILEGES THAT ALL OB/GYNS WOULD
25 BE EXPECTED TO KNOW HOW TO PERFORM, WHETHER YOU WANTED TO

1 PERFORM THEM OR NOT. WHEN IT BECAME APPARENT THAT THEY WERE
2 ASKING FOR PATIENTS THAT I HAD DONE THESE PROCEDURES ON TO
3 JUDGE ME FOR COMPETENCY IN GIVING ME PRIVILEGES, THAT'S WHEN I
4 DECIDED TO MAKE IT A MUCH MORE NARROW FIELD.

5 Q I THINK THAT MR. DUNCAN ASKED YOU SOME QUESTIONS AND
6 YOU TESTIFIED THAT YOU INVITED THEM TO COME LOOK AT THE
7 RECORDS THAT YOU HAD AVAILABLE; IS THAT RIGHT?

8 A THAT'S RIGHT.

9 Q CAN YOU TAKE A LOOK -- WE'RE GOING TO HAVE TO SWITCH
10 BINDERS TO BINDER THREE OF FOUR. IF YOU COULD TAKE A LOOK AT
11 JOINT EXHIBIT 89?

12 A 89?

13 Q THAT'S RIGHT.

14 A THREE OF FOUR. I'VE GOT TWO OF FOUR. OKAY, HERE WE
15 GO. OKAY.

16 Q WHAT'S THE DATE OF THIS DOCUMENT?

17 A THE DATE OF THAT DOCUMENT IS NOVEMBER 19TH, 2014.

18 Q SO THIS IS ONE OF THE LETTERS THAT YOU RECEIVED FROM
19 WILLIS-KNIGHTON; IS THAT RIGHT?

20 A CORRECT.

21 Q AND THIS IS AFTER THE E-MAIL THAT WE JUST LOOKED AT?

22 A CORRECT.

23 Q DOES THIS LETTER -- IN THIS LETTER IS
24 WILLIS-KNIGHTON RESPONDING TO INFORMATION THAT YOU SUBMITTED?

25 A YES.

1 **Q** SO YOU DID MORE THAN JUST INVITE THEM TO COME TO THE
2 CLINIC; ISN'T THAT RIGHT?

3 **A** YES.

4 **Q** YOU WERE SHOWN A PAGE OF YOUR DEPOSITION, AND WE'RE
5 GOING TO PUT THAT UP ON THE SCREEN FOR YOU. YOU WERE ASKED
6 ABOUT THE PORTION ON THIS PAGE AT LINES 10 TO 13. IF YOU
7 COULD LOOK JUST A FEW QUESTIONS ABOVE. WHAT KINDS OF
8 PROCEDURES ARE YOU TALKING ABOUT HERE? WHAT KINDS OF
9 PATIENTS?

10 **A** POST-ABORTION PATIENTS, BOTH FIRST AND SECOND
11 TRIMESTER.

12 **Q** ARE YOU TALKING ABOUT SURGICAL PATIENTS OR
13 MEDICATION ABORTION PATIENTS?

14 **A** ACTUALLY BOTH.

15 **Q** IS IT YOUR -- AND YOUR TESTIMONY IS THAT YOU'RE
16 NOT -- YOU CAN'T BE 100 PERCENT CERTAIN WHAT PERCENTAGE COME
17 BACK; IS THAT RIGHT?

18 **A** THAT'S CORRECT. THAT 20 TO 30 PERCENT WAS STRICTLY
19 A GUESS. I APOLOGIZE. I THOUGHT HE WAS ASKING FOR AN EXACT
20 PERCENTAGE AND I DON'T HAVE AN EXACT PERCENTAGE, SO IT'S A
21 VERY ESTIMATED GUESS.

22 **Q** IS IT FAIR TO SAY THAT YOU ALSO CANNOT PROVIDE AN
23 EXACT PERCENTAGE FOR THE NUMBER OF PATIENTS WHO DON'T RETURN
24 TO THE CLINIC AND ARE ABSOLUTELY FINE?

25 **A** THAT'S TRUE.

1 **MS. DOUFEKIAS:** I HAVE NOTHING FURTHER, YOUR HONOR.

2 **THE COURT:** ALL RIGHT. THANK YOU.

3 DOCTOR, I HAVE JUST A FEW FOLLOW-UP QUESTIONS.

4 YOU MENTIONED IN RESPONSE TO SOMEBODY'S QUESTION
5 ABOUT SPECIAL PRIVILEGES AND I HAD, ACTUALLY IN MY PRIVATE
6 PRACTICE, HAD A CASE AND I THINK I UNDERSTAND WHAT YOU'RE
7 TALKING ABOUT. CAN YOU DESCRIBE WHAT SPECIAL PRIVILEGES MEAN,
8 THE CIRCUMSTANCES UNDER WHICH THEY'RE GIVEN?

9 **THE WITNESS:** I BELIEVE YOU'RE REFERRING TO THE
10 CONTEXT OF IF, SAY, A PATIENT, FOR INSTANCE, THEY HAD -- IF
11 SHE HAD A FETAL DEMISE AND THEY CALLED ME IN TO DO A D&E
12 BECAUSE NOTHING ELSE HAD WORKED, AND THAT'S OCCASIONALLY
13 HAPPENED, IT MAY BE AT A HOSPITAL WHERE I DON'T HAVE, YOU
14 KNOW, PRIVILEGES THAT ALLOW ME TO DO SURGERY. THEY COULD
15 GRANT ME TEMPORARY, SPECIAL PRIVILEGES TO DO THAT CASE. I
16 BELIEVE THAT'S --

17 **THE COURT:** THAT'S WHAT I WAS TALKING ABOUT. SO
18 JUST TO MAKE SURE I'VE GOT IT STRAIGHT IN MY HEAD, EVEN IF YOU
19 DIDN'T HAVE ORDINARY ADMITTING PRIVILEGES, IF YOU HAD A
20 PATIENT THAT YOU FELT IT IMPORTANT TO BE ABLE TO TREAT THAT
21 PATIENT IN A HOSPITAL SETTING, EITHER SURGICALLY OR OTHERWISE,
22 COULD YOU ON AN ADHOC, INDIVIDUALIZED BASIS ASK FOR ADMITTING
23 PRIVILEGES FOR THAT SPECIFIC PURPOSE ONLY?

24 **THE WITNESS:** YES, YOUR HONOR. I COULD ASK FOR THAT
25 AND IF IT'S A SPECIAL ENOUGH CIRCUMSTANCE, THEY WOULD USUALLY

1 GRANT THAT.

2 THE COURT: IS THAT UNUSUAL?

3 THE WITNESS: YES, IT IS UNUSUAL.

4 THE COURT: NOW, YOU MENTIONED, AND I THINK SEVERAL
5 OTHER WITNESSES HAVE, BUT I JUST WANT TO MAKE SURE I'M SURE
6 ABOUT THIS. THESE DEFINITIONS THAT I'VE SEEN FOR CONSULTING,
7 FOR ACTIVE, FOR COURTESY, IS THERE ANY -- DO THESE DEFINITIONS
8 VARY HOSPITAL TO HOSPITAL?

9 THE WITNESS: THEY SEEM TO, YES, SIR.

10 THE COURT: I TAKE IT FROM YOUR LAST -- THE LAST
11 SERIES OF QUESTIONS ASKED BY MS. DOUFEKIAS, THAT YOU DID
12 INDEED PROVIDE DOCUMENTATION TO WILLIS-KNIGHTON REGARDING YOUR
13 OUTPATIENT PROCEDURES?

14 THE WITNESS: YES, SIR. I ACTUALLY CALLED MS. --
15 THE LADY THAT HANDLED -- THAT WAS SORT OF MY CONTACT FOR THE
16 APPLICATION, AND SHE SAID SEND 20 REPRESENTATIVE CASES AND
17 THAT'S WHAT I DID. BUT THEY DEEMED THAT NOT SUFFICIENT FOR
18 THEIR PURPOSES.

19 THE COURT: OKAY. AND THEN I HAD ONE -- I THINK ONE
20 FINAL QUESTION. AND AS WE WERE GOING THROUGH THE DOCUMENTS --
21 AS I WAS GOING THROUGH THE DOCUMENTS AND FOLLOWING THE LAWYERS
22 AND THEIR QUESTIONING OF YOU, I SAW A DOCUMENT WHICH WAS NOT
23 REFERRED TO EITHER ON DIRECT OR CROSS AND I JUST WANTED TO ASK
24 YOU ABOUT. IF YOU COULD GO TO 178 -- I'M SORRY, IT'S 179.
25 AND 180.

1 **THE WITNESS:** I'M GETTING BETTER AT THIS.

2 **THE COURT:** BY THE TIME YOU'RE PROFICIENT, YOU'LL
3 LEAVE THE WITNESS STAND.

4 **THE WITNESS:** THAT'S OKAY.

5 **THE COURT:** TELL ME WHEN YOU HAVE IT.

6 **THE WITNESS:** THAT WOULD BE PAGE 3556, YOUR HONOR?

7 **THE COURT:** THAT'S IT. ALL RIGHT. CAN YOU
8 DESCRIBE -- AND AGAIN, WE DON'T WANT YOU TO -- I WANT YOU TO
9 READ BOTH 180 AND 181 AND THEN I'M GOING TO ASK YOU A COUPLE
10 OF QUESTIONS ABOUT IT. I DON'T WANT YOU TO READ OUT LOUD
11 ANYTHING SPECIFIC IN EITHER OF THESE DOCUMENTS.

12 **THE WITNESS:** YES, SIR.

13 **THE COURT:** OKAY. MY FIRST QUESTION IS, DOES 180 GO
14 WITH 181?

15 **THE WITNESS:** YES, YOUR HONOR.

16 **THE COURT:** ALL RIGHT. AND IT APPEARS THIS PERSON
17 WHO WROTE THE LETTER, I'M NOT GOING TO MENTION A NAME, BUT THE
18 TITLE IS CREDENTIALS COORDINATOR?

19 **THE WITNESS:** CORRECT.

20 **THE COURT:** AND THEN IN THE COVER NOTE IT SAYS, THAT
21 SHE'S WRITTEN IN THE PRIVILEGE THAT YOU'RE BEING CREDENTIALLED
22 FOR?

23 **THE WITNESS:** THAT'S CORRECT, YOUR HONOR. IT WAS
24 NOT SPECIFICALLY LAID OUT IN ALL OF THE PRIVILEGES THAT, YOU
25 KNOW, THAT ARE ON THAT FORM.

1 **THE COURT:** ALL RIGHT. THEN IF YOU COULD GO TO 3559
2 AND THERE'S NEXT TO, QUOTE, "OTHER," AND I DON'T WANT YOU TO
3 READ IT INTO THE RECORD, BUT IT'S A HANDWRITTEN ENTRY?

4 **THE WITNESS:** THAT'S CORRECT, YES, SIR.

5 **THE COURT:** IS THAT YOUR UNDERSTANDING OF THE
6 SPECIFIC PROCEDURES OR WHATEVER -- THE SPECIFIC THINGS THAT
7 YOU WERE BEING ALLOWED TO DO IN CONNECTION WITH THE PRIVILEGES
8 THAT YOU WERE GIVEN?

9 **THE WITNESS:** YES, YOUR HONOR.

10 **THE COURT:** OKAY. THAT'S ALL. THANK YOU.
11 ANY FOLLOW-UP QUESTIONS ON MY QUESTIONS?

12 **MR. DUNCAN:** NO, YOUR HONOR.

13 **THE COURT:** ALL RIGHT, MS. DOUFEKIAS?

14 **MS. DOUFEKIAS:** NO, YOUR HONOR.

15 **THE COURT:** OKAY.

16 THANK YOU, DOCTOR. YOU MAY STAND DOWN.

17 **THE WITNESS:** THANK YOU, YOUR HONOR. I'M TRYING TO
18 LEAVE THIS SO NOBODY WILL TRIP OVER IT.

19 **THE COURT:** OKAY. THANK YOU VERY MUCH. MAYBE AT
20 THE NOON BREAK WE CAN COME UP WITH SOME CART OR SOMETHING
21 WHERE ALL OF THIS STUFF CAN BE MORE EASILY MANAGED.

22 ALL RIGHT. ARE YOU READY FOR YOUR NEXT WITNESS?

23 **MS. DOUFEKIAS:** YOUR HONOR, PLAINTIFFS CALL
24 DR. SHEILA KATZ.

25 **THE COURT:** ALL RIGHT. THANK YOU.

1 YEAH, WE CAN MOVE THE DRAPE BACK NOW.

2 GOOD MORNING.

3 **THE WITNESS:** GOOD MORNING.

4 **THE COURT:** WOULD YOU STAND AND RAISE YOUR RIGHT
5 HAND AND MS. CAUSEY WILL SWEAR YOU IN?

6 **(WHEREUPON, SHEILA KATZ, HAVING BEEN DULY SWORN, TESTIFIED AS
7 FOLLOWS:)**

8 **DIRECT**

9 **BY MS. LEVINE:**

10 **Q** GOOD MORNING, DR. KATZ.

11 **A** GOOD MORNING.

12 **Q** WOULD YOU PLEASE STATE AND SPELL YOUR FULL NAME FOR
13 THE RECORD?

14 **A** SURE. MY NAME IS SHEILA, S-H-E-I-L-A, MARIE,
15 M-A-R-I-E, KATZ, K-A-T-Z.

16 **Q** DR. KATZ, PLEASE DESCRIBE YOUR EDUCATIONAL
17 BACKGROUND.

18 **A** SO MY EDUCATION, I RECEIVED A BACHELOR'S OF ARTS
19 FROM THE UNIVERSITY OF GEORGIA IN SOCIOLOGY IN WOMEN AND
20 GENDER STUDIES, AND THEN MY MASTER'S DEGREE AND DOCTORATE
21 DEGREE IN SOCIOLOGY FROM VANDERBILT UNIVERSITY.

22 **Q** AND WHAT IS YOUR AREA OF EXPERTISE?

23 **A** MY AREA OF EXPERTISE IS SOCIOLOGY OF GENDER AND
24 SOCIOLOGY OF POVERTY.

25 **Q** CAN YOU TELL THE COURT WHAT THE FIELD OF SOCIOLOGY

1 ENCOMPASSES?

2 **A** YES. SO IN THE FIELD OF SOCIOLOGY WE STUDY PEOPLE
3 IN SOCIETY. SO WE'RE INTERESTED IN HOW PEOPLE INTERACT IN
4 SOCIETY AT THE MICRO LEVEL. SO IN SMALL GROUPS, BETWEEN
5 INDIVIDUALS MAYBE WITHIN A FAMILY, AT THE MEZZO LEVEL IN
6 COMMUNITIES, CITIES, SMALL ORGANIZATIONS, AND THEN ALSO AT THE
7 MACRO LEVEL. SO WITHIN COUNTRIES AND LIKE WHOLE SOCIETIES, SO
8 AMERICAN SOCIETY.

9 **Q** WHAT APPLICATIONS DOES SOCIOLOGICAL RESEARCH HAVE?

10 **A** SO SOCIOLOGICAL RESEARCH HAS MANY APPLICATIONS. THE
11 AREA OF SOCIOLOGY THAT I DO THE MOST WORK IN HAS SOCIAL POLICY
12 IMPLICATIONS. I'M INTERESTED IN HOW FEDERAL AND STATE
13 POLICIES AFFECT PEOPLE'S LIVED EXPERIENCES AND HOW OUR SOCIAL
14 POLICIES ARE EITHER BASED ON ASSUMPTIONS ABOUT PEOPLE'S
15 EXPERIENCES OR AFFECT THEIR EXPERIENCES.

16 SOCIOLOGY ALSO HAS OTHER APPLICATIONS. PEOPLE USE
17 IT IN THE FIELD OF HUMAN RESOURCES. PEOPLE USE IT TO
18 UNDERSTAND ORGANIZATIONS. PEOPLE USE IT -- RECENTLY THERE'S
19 BEEN A DEVELOPING AREA OF SOCIOLOGY ABOUT RESPONSE TO NATURAL
20 DISASTERS, HOW PEOPLE REACT TO NATURAL DISASTERS, RECOVER FROM
21 NATURAL DISASTERS, THINGS LIKE THAT.

22 **Q** AND YOU MENTIONED THAT YOUR SPECIALIZATION IS IN THE
23 SOCIOLOGY OF GENDER AND THE SOCIOLOGY OF POVERTY. CAN YOU
24 EXPLAIN WHAT IS THE SOCIOLOGY OF GENDER?

25 **A** YES. SO THE SOCIOLOGY OF GENDER IS INTERESTED IN

1 STUDYING THE SOCIAL CONSTRUCTION OF GENDER IN SOCIETY. AND SO
2 HOW WE AS A SOCIETY CONSTRUCT WHAT IT MEANS TO BE A MAN, WHAT
3 IT MEANS TO A WOMAN, GENDER ROLES, ASSUMPTIONS ABOUT GENDER
4 ROLES, GENDER IDENTITY ISSUES. SOCIOLOGY OF GENDER LOOKS AT
5 HOW GENDER ROLES AND GENDER IN SOCIETY PLAY OUT IN DIFFERENT
6 INSTITUTIONS, SO SOCIOLOGY OF WORK, IN MAYBE THE INSTITUTION
7 OF EDUCATION, IN THE FAMILY, IN SOCIAL POLICY.

8 Q AND CAN YOU EXPLAIN WHAT IS SOCIOLOGY OF POVERTY?

9 A YEAH. SO ANOTHER MAIN AREA OF SOCIOLOGY IS LOOKING
10 AT HOW -- IN OUR SOCIETY THERE'S SEVERAL BIG ORGANIZING
11 FACTORS. GENDER IS DEFINITELY ONE OF THEM, SOCIAL CLASS IS
12 ANOTHER ONE OF THEM. AND SO SOCIAL POLICY LOOKS AT THE
13 INEQUALITIES BY DIFFERENT SOCIAL CLASS.

14 SO WHILE MOST OF OUR SOCIETY LOOKS AT MIDDLE CLASS
15 EXPERIENCE, SOCIOLOGY OF POVERTY IS REALLY INTERESTED IN HOW
16 LOW-INCOME PEOPLE'S EXPERIENCES ARE DIFFERENT THAN OTHER --
17 OTHER SOCIAL CLASS EXPERIENCES.

18 Q AND IS THERE ANY OVERLAP BETWEEN THE AREAS OF
19 SOCIOLOGY OF GENDER AND SOCIOLOGY OF POVERTY?

20 A YES, THERE'S A SIGNIFICANT OVERLAP. I THINK ONE OF
21 THE BIGGEST AREAS OF BOTH SOCIOLOGY OF GENDER AND SOCIOLOGY OF
22 POVERTY IS LOOKING AT LOW-INCOME WOMEN'S EXPERIENCES.

23 Q AND DO YOU HAVE ANY OTHER SPECIALTIES?

24 A YES. SO I HAVE SEVERAL OTHER AREAS THAT I WORK IN.
25 SOCIOLOGY OF SOCIAL POLICY, SOCIOLOGY OF INEQUALITY, VIOLENCE

1 AGAINST WOMEN, SOCIOLOGY OF DRUG AND ALCOHOL ABUSE AND
2 QUALITATIVE METHODOLOGIES.

3 Q DO YOU HAVE ANY EXPERIENCE WITH SOCIAL PSYCHOLOGY?

4 A YES. SO IN MY WORK BOTH IN SOCIOLOGY OF GENDER AND
5 IN THE WORK IN SOCIOLOGY OF POVERTY, ONE OF THE THINGS I'M
6 INTERESTED IN, BECAUSE I DO RESEARCH ABOUT LOW-INCOME WOMEN'S
7 LIVED EXPERIENCES IN POVERTY, PART OF THAT RESEARCH IS ABOUT
8 THEM TELLING ME THEIR MOTIVATIONS, THEIR BEHAVIORS, THEIR
9 ACTIONS AND THE STRESSES THAT THEY GO THROUGH. AND SO THAT'S
10 CONSIDERED THE SOCIAL PSYCHOLOGY OF POVERTY.

11 Q WHERE ARE YOU CURRENTLY EMPLOYED?

12 A I'M CURRENTLY EMPLOYED AT THE UNIVERSITY OF HOUSTON.
13 I JOINED THE FACULTY THERE IN AUGUST OF 2014.

14 Q AND WHAT IS YOUR POSITION THERE?

15 A I'M AN ASSISTANT PROFESSOR OF SOCIOLOGY.

16 Q AND CAN YOU BRIEFLY DESCRIBE YOUR PREVIOUS
17 PROFESSIONAL POSITIONS?

18 A SURE. SO FROM 2008 UNTIL TWO THOUSAND -- MAY OF
19 2014, I WAS AN ASSISTANT PROFESSOR OF SOCIOLOGY AT SONOMA
20 STATE UNIVERSITY AND I WENT UP FOR TENURE AND WAS GRANTED BOTH
21 TENURE AND PROMOTION AT SONOMA STATE IN MAY OF 2014. HOWEVER,
22 I LEFT TO TAKE THE UNIVERSITY OF HOUSTON POSITION BECAUSE IT'S
23 A MORE RESEARCHED FOCUSED POSITION AT A HIGHER RANKED
24 UNIVERSITY.

25 Q AND WHAT DOES YOUR WORK AS AN ASSISTANT PROFESSOR OF

1 SOCIOLOGY INVOLVE?

2 **A** SO MY WORK AT THE UNIVERSITY OF HOUSTON AS AN
3 ASSISTANT PROFESSOR OF SOCIOLOGY INVOLVES SEVERAL THINGS.
4 HALF OF MY TIME IS DEDICATED TO RESEARCH AND TO PUBLISHING MY
5 RESEARCH FINDINGS. I ALSO TEACH TWO CLASSES A SEMESTER AND
6 THEN I'M ALSO RESPONSIBLE FOR CONTRIBUTING SERVICE TO THE
7 UNIVERSITY, MY PROFESSION AND THE COMMUNITY.

8 **Q** WHAT KIND OF RESEARCH DO YOU CONDUCT AS A
9 SOCIOLOGIST?

10 **A** SO MY RESEARCH FOCUSES ON LOW-INCOME WOMEN'S LIVED
11 EXPERIENCES IN POVERTY. AND SO THE RESEARCH THAT I CONDUCT IS
12 QUALITATIVE RESEARCH WITH LOW-INCOME WOMEN, LOW-INCOME
13 COMMUNITIES AND LOW-INCOME FAMILIES ABOUT THEIR EXPERIENCES
14 UNDER VARIOUS SOCIAL POLICIES AND BEING POOR.

15 **Q** WHAT KIND OF METHODOLOGY DO YOU USE IN YOUR
16 RESEARCH?

17 **A** SO I USE QUALITATIVE METHODOLOGIES. I'M INTERESTED
18 IN IN-DEPTH INTERVIEWING, FOCUS GROUPS, PARTICIPANT
19 OBSERVATION, UNDERSTANDING PARTICIPANTS' EXPERIENCES IN THEIR
20 OWN WORDS.

21 **Q** AND WHAT IS QUALITATIVE RESEARCH?

22 **A** QUALITATIVE RESEARCH FOCUSES ON -- WITHIN THE FIELD
23 OF SOCIOLOGY THERE'S TWO MAIN WAYS TO SORT OF DIVIDE SOME OF
24 OUR RESEARCH AND THAT'S THE QUANTITATIVE OR MORE STATISTICAL
25 RESEARCH AND THE QUALITATIVE RESEARCH.

1 SO QUALITATIVE RESEARCH REALLY FOCUSES ON IN-DEPTH
2 INTERVIEWING, ASKING PEOPLE ABOUT THEIR EXPERIENCES,
3 CONDUCTING FOCUS GROUPS, CONDUCTING FIELD OBSERVATIONS,
4 CONDUCTING PARTICIPANT OBSERVATION.

5 Q AND IS QUALITATIVE RESEARCH AN ACCEPTED METHODOLOGY
6 IN YOUR FIELD?

7 A YES, IT IS.

8 Q WHY IS IT CONSIDERED AN ACCEPTED METHODOLOGY?

9 A THE ROOTS OF SOCIOLOGY GO BACK TO USING QUALITATIVE
10 METHODOLOGY FROM THE BEGINNING. SO WHILE OUR FIELD --
11 GRADUATE STUDENTS ARE TRAINED IN BOTH QUANTITATIVE AND
12 QUALITATIVE METHODS. MOST PEOPLE USUALLY PICK TO USE ONE OR
13 THE OTHER IN THEIR EXPERTISE. SO THE FIELD RESPECTS IT, JUST
14 AS WELL AS QUANTITATIVE METHODOLOGY.

15 Q AND CAN QUALITATIVE RESEARCH BE PEER REVIEWED?

16 A OH, YES, IT'S PUBLISHED IN PEER REVIEWED JOURNALS BY
17 SCHOLARLY PRESSES, ALONGSIDE ALL OF THE QUANTITATIVE RESEARCH.

18 Q WHAT DOES THE PEER REVIEW PROCESS ENTAIL IN BRIEF?

19 A IT ENTAILS OTHER EXPERTS IN YOUR FIELD READING YOUR
20 WORK. YOU SUBMIT IT TO A JOURNAL. YOU HAVE -- THE EDITOR OF
21 THE JOURNAL SENDS IT OUT USUALLY IN SOCIOLOGY FOR BLIND REVIEW
22 TO TWO, TO THREE, TO FOUR FACULTY OR OTHER PROFESSIONALS IN
23 THE FIELD. THEY SEND COMMENTS BACK AND THEN THE EDITOR
24 DECIDES TO ACCEPT THE PUBLICATION OR TO REVISE AND RESUBMIT OR
25 TO REJECT IT.

1 **Q** AND WHEN DURING YOUR CAREER HAVE YOU ENGAGED IN
2 QUALITATIVE RESEARCH METHODS?

3 **A** I'VE ENGAGED IN QUALITATIVE RESEARCH METHODS FROM
4 THE BEGINNING OF MY CAREER. SO SINCE I WAS AN UNDERGRADUATE
5 I'VE BEEN INTERESTED IN QUALITATIVE RESEARCH IN SOCIOLOGY OF
6 GENDER AND POVERTY. SO MY DISSERTATION RESEARCH, THE RESEARCH
7 I DID IN GRADUATE SCHOOL, THE RESEARCH THAT I'VE DONE SINCE
8 GRADUATE SCHOOL, I CONTINUE THE SAME PROJECT AND COLLECTED
9 ADDITIONAL ROUNDS OF DATA WITH THE SAME PARTICIPANTS AND IT'S
10 BEEN NATIONALLY FUNDED BY RECOGNIZED FUNDING ORGANIZATIONS.
11 AND I CURRENTLY AM CONDUCTING THREE QUALITATIVE PROJECTS.

12 **Q** CAN YOU DESCRIBE THE RESEARCH PROJECTS THAT YOU'RE
13 CURRENTLY INVOLVED IN?

14 **A** YES. SO THE PROJECT THAT STARTED WITH MY
15 DISSERTATION LOOKS AT WOMEN ON WELFARE WHO LIVE IN THE SAN
16 FRANCISCO BAY AREA, SPECIFICALLY SAN FRANCISCO COUNTY AND
17 ALAMEDA COUNTY, WHICH IS WHERE OAKLAND IS LOCATED, AND THEY
18 WERE WOMEN ON WELFARE WHO ARE ENROLLED IN HIGHER EDUCATION
19 PROGRAMS. SO COMMUNITY COLLEGE PROGRAMS AS THEIR WELFARE TO
20 WORK ACTIVITY.

21 I INTERVIEWED THEM FOR THE FIRST TIME IN 2006 AS
22 PART OF MY DISSERTATION. AFTER I FINISHED MY DISSERTATION AND
23 STARTED MY POSITION AT SONOMA STATE, I INTERVIEWED THE SAME
24 PARTICIPANTS AGAIN IN 2008, THE HEIGHT OF THE GREAT RECESSION,
25 AND THEN INTERVIEWED THEM AGAIN IN 2011 AFTER THE GREAT

1 RECESSION.

2 SO I'M CURRENTLY WRITING UP A BOOK MANUSCRIPTED
3 BASED ON THAT PROJECT THAT WILL BE UNDER REVIEW IN AN ACADEMIC
4 PRESS VERY SHORTLY. THE OTHER TWO PROJECTS THAT I'M WORKING
5 ON IS, ONE IS ABOUT STUDENT PARENTS ON COLLEGE CAMPUSES, SO
6 STUDENTS WHO HAVE CHILDREN WHO ARE COLLEGE STUDENTS AND IT'S A
7 MULTI-SITE ETHNOGRAPHY, WHICH MEANS THAT WE'RE DOING
8 INTERVIEWS AND FIELD RESEARCH AT ABOUT 15 UNIVERSITIES AND
9 NON-PROFITS ACROSS THE COUNTRY THAT HAVE PROGRAMS THAT SERVE
10 STUDENTS WITH CHILDREN. AND I'M DOING THAT IN COLLABORATION
11 WITH A PROFESSOR AT ENDICOTT COLLEGE, ALSO ASSISTANT PROFESSOR
12 OF SOCIOLOGY.

13 THE THIRD PROJECT IS -- LOOKS AT THE AMERICAN DREAM
14 IN DIFFERENT CONTEXTS. AND SO THE PIECE OF THAT PROJECT, I'M
15 THE LEAD CO-EDITOR ON THE BOOK, AND MY SPECIALTY IS THE
16 AMERICAN DREAM AMONG LOW-INCOME FAMILIES. AND SO MY CHAPTER
17 WILL BE ABOUT THE HISTORY OF THE AMERICAN DREAM, BUT ALSO WHAT
18 THE AMERICAN DREAM MEANS TO LOW-INCOME FAMILIES.

19 Q AND HAS THE RESEARCH YOU HAVE PREVIOUSLY CONDUCTED
20 EVER BEEN PUBLISHED?

21 A YES. I HAVE PEER REVIEW JOURNAL ARTICLES. I HAVE
22 POLICY REPORTS. I HAVE PUBLICATIONS BASED ON THESE PROJECTS,
23 IN ADDITION TO THE BOOK MANUSCRIPTS.

24 Q AND HAVE YOU SHARED THE RESULTS OF YOUR RESEARCH IN
25 ANY OTHER WAYS BESIDES PUBLICATIONS?

1 **A** YES. SO I AM VERY ACTIVE PROFESSIONALLY AND I
2 ATTEND PROFESSIONAL CONFERENCES, BOTH AT THE REGIONAL LEVEL
3 WITHIN SOCIOLOGY HERE IN THE SOUTH, BUT ALSO IN THE PACIFIC
4 SOCIOLOGICAL ASSOCIATION. I ATTEND THE AMERICAN SOCIOLOGICAL
5 ASSOCIATION AND PRESENT EVERY YEAR. I ALSO PRESENT IN POLICY
6 FORUMS. I PRESENTED MY RESEARCH ON CAPITAL HILL IN WASHINGTON
7 DC, AT LEAST THREE TIMES. AND I PARTICIPATE IN SEVERAL
8 WORKING GROUPS ON VARIOUS POVERTY AND GENDER ISSUES AND
9 PRESENT MY RESEARCH AS PART OF THE WORKING GROUPS AS WELL.

10 **Q** WHAT SOCIOLOGICAL RESEARCH METHODS DID YOU EMPLOY IN
11 DEVELOPING YOUR OPINIONS IN THIS CASE?

12 **A** SO I USED PUBLICLY AVAILABLE DATA SOURCES. I USED
13 INFORMATION THAT I WAS FAMILIAR WITH THROUGH MY OWN RESEARCH,
14 AND THEN I ALSO USED EXISTING RESEARCH IN THE FIELD ON THE
15 TOPICS IN ORDER TO DO THE PROJECT.

16 **Q** AND ARE THESE ACCEPTED METHODS IN THE FIELD OF
17 SOCIOLOGY?

18 **A** YES, THEY ARE.

19 **Q** HOW DO YOU KNOW THAT?

20 **A** FROM MY TRAINING AND MY BACKGROUND AND MY EXPERIENCE
21 IN THIS FIELD.

22 **Q** YOU MENTIONED YOUR SPECIALTY IN THE SOCIOLOGY OF
23 GENDER AND POVERTY. CAN YOU DESCRIBE THE RESEARCH AND
24 LITERATURE GENERALLY IN THOSE FIELDS?

25 **A** YES. SO THE RESEARCH IN BOTH SOCIOLOGY OF GENDER

1 AND SOCIOLOGY OF POVERTY, IT OVERLAPS QUITE SIGNIFICANTLY IN
2 THIS AREA OF LOW-INCOME WOMEN'S EXPERIENCES AND POVERTY. AND
3 SO THE RESEARCH COVERS A VARIETY OF TOPICS LOOKING AT MAYBE
4 WHY LOW-INCOME WOMEN ARE POOR, WHY MORE LOW -- WHY MORE WOMEN
5 ARE POOR THAN MAN ARE, HOW WOMEN HAVE CARETAKING
6 RESPONSIBILITIES FOR CHILDREN. AND WOMEN WHO ARE TRYING TO
7 GET OUT OF POVERTY, MAYBE THROUGH EDUCATION OR THROUGH GETTING
8 A BETTER JOB.

9 AND THEY ALSO -- THE LITERATURE LOOKS AT SORT OF
10 BARRIERS TO ESCAPING POVERTY. THAT LOW-INCOME WOMEN NEED
11 CHILD CARE AND TRANSPORTATION. LOW-INCOME WOMEN'S ACCESS TO A
12 VARIETY OF HEALTH AND HUMAN SERVICES, THEIR EXPERIENCES IN
13 POVERTY.

14 Q WHAT FORM DOES THIS RESEARCH AND LITERATURE
15 GENERALLY TAKE?

16 A IT'S USUALLY IN PEER REVIEWED JOURNAL ARTICLES OR
17 SCHOLARLY MANUSCRIPTS. IT MAY ALSO TAKE THE FORM OF POLICY
18 REPORTS. UM...

19 Q DO YOU STAY ABREAST OF THE RESEARCH AND LITERATURE
20 IN YOUR FIELD?

21 A YES, AND I DO THAT IN SEVERAL WAYS. ONE OF THEM IS
22 BY READING VERY WIDELY IN THE FIELD, BOTH JOURNALS AS THEY
23 COME OUT, THERE'S PROBABLY ABOUT EIGHT TO TEN JOURNALS THAT I
24 KEEP TRACK OF WHEN THERE'S NEW EDITIONS COMING OUT AND READING
25 ARTICLES. I'M ALSO ALWAYS LOOKING FOR NEW BOOKS BY SCHOLARLY

1 PRESSES, ESPECIALLY THE PRESSES THAT I KNOW PUBLISH THE MOST
2 IN THIS AREA.

3 I ATTEND CONFERENCES AND SESSIONS ON SEEING PEOPLE'S
4 PRESENTATIONS AND PAPERS IN THIS AREA AND TALKING TO THEM
5 AFTERWARDS ABOUT THEIR RESEARCH. AND THEN I ALSO PARTICIPATE
6 IN A COUPLE OF WORKING GROUPS WHERE WE'RE ALWAYS PRESENTING,
7 YOU KNOW, KIND OF THE RESEARCH THAT'S IN MOTION AND OUR
8 FINDINGS BEFORE THEY'RE PUBLISHED.

9 Q AND DOES THIS BODY OF RESEARCH ADDRESS LOW-INCOME
10 WOMEN'S ACCESS TO PARTICULAR HEALTH AND HUMAN SERVICES?

11 A YES, IT DOES.

12 Q HAVE YOU TAUGHT ANY COURSES THAT DEAL WITH ISSUES OF
13 GENDER AND POVERTY?

14 A YES. SO A COUPLE OF MY CLASSES DEAL IN THIS AREA.
15 SINCE 2002, I'VE BEEN TEACHING A SOCIOLOGY OF GENDER CLASS. I
16 TAUGHT AT VANDERBILT UNIVERSITY. I TAUGHT AT SONOMA STATE
17 UNIVERSITY AND NOW I'M TEACHING AT THE UNIVERSITY OF HOUSTON.

18 I ALSO TEACH A CLASS CALLED SOCIOLOGY OF POVERTY.
19 THIS PAST SPRING I TAUGHT IT AS A GRADUATE SEMINAR TO THE
20 MASTER'S DEGREE OF SOCIOLOGY STUDENTS AT THE UNIVERSITY OF
21 HOUSTON. AND WHILE I WAS AT SONOMA STATE UNIVERSITY I TAUGHT
22 A CLASS CALLED, WOMEN AND SOCIAL POLICY, THAT WAS ALL ABOUT
23 HOW AMERICAN SOCIAL POLICY IS GENDERED AND WOMEN'S EXPERIENCES
24 UNDER HEALTH CARE POLICY OR UNDER REPRODUCTIVE HEALTH POLICY
25 OR UNDER POVERTY POLICY, DOMESTIC VIOLENCE POLICY, ET CETERA.

1 Q HAVE YOU TAUGHT ANY COURSES ON QUALITATIVE RESEARCH?

2 A YES. I HAVE THREE CLASS THAT I TEACH ABOUT
3 QUALITATIVE RESEARCH. ONE IS A BASIC FOR SOCIOLOGY AND OTHER
4 SOCIAL SCIENCE MAJORS ON QUALITATIVE RESEARCH METHODS WITHIN
5 SOCIOLOGY. AND THEN AT SONOMA STATE UNIVERSITY THEIR PROGRAM
6 WAS SLIGHTLY DIFFERENT, SO I TAUGHT A VERY SPECIFIC CLASS
7 ABOUT FOCUS GROUPS. SO AS A SUBSET OF QUALITATIVE RESEARCH
8 METHODS MY STUDENTS LEARNED HOW TO CONDUCT FOCUS GROUP
9 RESEARCH AND DID THEIR OWN PROJECTS.

10 Q YOU REFERRED TO THIS BRIEFLY ALREADY, BUT COULD YOU
11 DESCRIBE THE PROFESSIONAL ASSOCIATIONS OR LIST THE
12 PROFESSIONAL ASSOCIATIONS THAT YOU'RE A MEMBER OF IN YOUR
13 FIELD?

14 A YES. SO I'M A MEMBER OF THE AMERICAN SOCIOLOGICAL
15 ASSOCIATION GOING BACK TO PROBABLY 2004 AND WAS A CHAIR OF A
16 RECENT COMMITTEE FOR THAT ASSOCIATION. I'M ALSO A MEMBER OF
17 THE PACIFIC SOCIOLOGICAL ASSOCIATION AND I CHAIR THEIR
18 CLINICAL AND APPLIED SOCIOLOGY COMMITTEE.

19 I'M A MEMBER OF THE SOUTHERN SOCIOLOGICAL SOCIETY
20 AND I'M A MEMBER OF THEIR PERSISTENT POVERTY IN THE SOUTH
21 PROJECT COMMITTEE. AND I'M ALSO -- THE SOCIETY FOR THE STUDY
22 OF SOCIAL PROBLEMS, I'M A MEMBER OF THAT PROFESSIONAL
23 ASSOCIATION AND WILL BE PRESENTING AT THEIR CONFERENCE IN
24 AUGUST.

25 Q IN WHAT GEOGRAPHIC AREAS HAVE YOU WORKED?

1 **A** SO PRIMARILY MY RESEARCH HAS BEEN HERE IN THE SOUTH,
2 BOTH IN GEORGIA AND TENNESSEE, ALABAMA, TEXAS, LOUISIANA. MY
3 DISSERTATION RESEARCH WAS IN CALIFORNIA. I'VE ALSO DONE
4 PROJECTS WITH GROUPS IN OHIO, IN WASHINGTON STATE AND IN
5 HAWAII.

6 **Q** WHAT TYPES OF RESEARCH HAVE YOU CONDUCTED IN THOSE
7 STATES?

8 **A** SO GENERALLY SOCIOLOGICAL QUALITATIVE RESEARCH AND
9 RESEARCH ABOUT WOMEN'S EXPERIENCES IN POVERTY AND RESEARCH
10 ABOUT U.S., SORT OF, SOCIAL POLICIES THAT AFFECT LOW-INCOME
11 WOMEN.

12 **Q** AND HOW ARE YOU ABLE TO CONDUCT RESEARCH OR WORK ON
13 PROJECTS IN DIFFERENT REGIONS?

14 **A** SO BECAUSE MY EXPERTISE IS ABOUT WOMEN'S POVERTY IN
15 THE UNITED STATES, ONE OF THE THINGS THAT I'M REALLY
16 INTERESTED IN AND -- IS WHY WOMEN ARE POOR IN THE U.S. SO MY
17 EXPERTISE IS ABOUT WOMEN'S POVERTY IN THE U.S. GENERALLY. AND
18 SO THEN YOU NEED TO KNOW KIND OF SITE-SPECIFIC INFORMATION,
19 BUT UNDERSTANDING THE OVERALL UMBRELLA OF THE ISSUE AND THEN
20 YOU CAN APPLY IT OR UNDERSTAND WHAT MIGHT BE DIFFERENT ABOUT
21 VARIOUS SITES.

22 **Q** AND DOES YOUR TRAINING AND QUALITATIVE METHODS ALLOW
23 YOU TO CONDUCT RESEARCH THAT'S STATE SPECIFIC?

24 **A** YES.

25 **Q** AND HOW IS THAT DONE?

1 **A** ONE OF THE THINGS THAT YOU LEARN IN SOCIOLOGY, IS TO
2 TRY TO UNDERSTAND WHAT ARE THE THINGS THAT MIGHT BE COMMON
3 ACROSS THE DIFFERENT SETTINGS AND THEN WHAT ARE THE THINGS TO
4 MAYBE LOOK FOR THAT MIGHT BE SPECIFIC TO THE VARIOUS PLACES.

5 **Q** AND IS IT COMMON IN YOUR FIELD TO APPLY KNOWLEDGE
6 ABOUT U.S. POVERTY GENERALLY TO A SPECIFIC STATE?

7 **A** YES. AND SO THIS IS THE WAY THAT WE'RE TRAINED AND
8 THE WAY THAT WE LEARN TO DO RESEARCH, THIS IS A COMMONLY DONE
9 METHOD. FOR EXAMPLE, ONE OF THE BOOKS THAT I ACTUALLY TEACH
10 IN MY SOCIOLOGY OF POVERTY CLASS FOR THE GRADUATE STUDENTS IS
11 CALLED, *MAKING ENDS MEET* BY EDIN AND LIEN.

12 AND THEIR PROJECT LOOKS AT WOMEN'S POVERTY IN
13 CHARLESTON, SOUTH CAROLINA, IN SAN ANTONIO, TEXAS AND IN
14 CHICAGO, ILLINOIS. AND SO MANY OF US ARE INTERESTED IN
15 WOMEN'S POVERTY IN THE U.S. AND SO YOU HAVE TO UNDERSTAND
16 MAYBE WHAT MIGHT BE DIFFERENT FROM SAN ANTONIO, TO CHARLESTON,
17 TO CHICAGO, BUT THEN THE EXPERIENCE OF BEING POOR IN THE U.S.
18 IS QUITE SIMILAR.

19 **Q** AND DID YOU APPLY THE METHODOLOGY THAT YOU HAVE
20 DESCRIBED TO US IN FORMULATING YOUR OPINIONS IN THIS CASE
21 ABOUT LOW-INCOME WOMEN AND THEIR ACCESS TO ABORTION SERVICES?

22 **A** YES, I DID.

23 **Q** HAVE YOU PREVIOUSLY HAD OCCASION TO STUDY WOMEN IN
24 POVERTY IN LOUISIANA?

25 **A** YES. SO I DID WORK IN 2006, RIGHT IN THE YEAR AFTER

1 HURRICANE KATRINA, WITH SOME LOW-INCOME WOMEN'S ORGANIZATIONS.
2 THE GROUP THAT I WAS DOING RESEARCH WITH IN OAKLAND WAS
3 PARTNERING WITH ORGANIZATIONS IN HOUSTON, TEXAS, IN NEW
4 ORLEANS AND IN BILOXI, MENTORING THEM ON GRASS ROOTS
5 ORGANIZING AND GRASS ROOTS SORT OF ISSUES AROUND POVERTY. AND
6 SO I WAS PART OF THE TEAM THAT WAS WORKING WITH -- FROM
7 OAKLAND THAT WAS WORKING WITH THE GROUP HERE -- WELL, IN NEW
8 ORLEANS.

9 Q AND HOW DID THAT EXPERIENCE CONTRIBUTE TO YOUR
10 METHODOLOGY IN THIS CASE, IF AT ALL?

11 A IT CONTRIBUTED A GENERAL UNDERSTANDING OF -- OF THE
12 ISSUES IN LOUISIANA. AND SO AS I WAS PREPARING THE REPORT, MY
13 UNDERSTANDING OF THOSE ISSUES AND WHAT I WAS FINDING, IT JUST
14 CONTRIBUTED TO A GENERAL UNDERSTANDING.

15 Q HAVE YOU IN YOUR RESEARCH LOOKED AT THE IMPACT OF
16 DISTANCE OR THE NEED TO TRAVEL ON ACCESS TO SERVICES?

17 A YES, I HAVE. IN MY OWN RESEARCH, ONE OF THE THINGS
18 THAT I WAS INTERESTED IN THE SAN FRANCISCO BAY AREA WAS AROUND
19 WOMEN'S ACCESS TO EDUCATION, JOB SERVICES, AND A VARIETY OF
20 HEALTH AND HUMAN SERVICES, AND SO I ASKED WOMEN ABOUT THOSE
21 ISSUES.

22 Q AND HAVE YOU SEEN PEER REVIEWED PUBLICATIONS THAT
23 LOOKED AT THE IMPACT OF DISTANCE OR TRAVEL ON ACCESS TO
24 SERVICES?

25 A YES. WOMEN'S ACCESS TO SERVICES AND THEIR ABILITY

1 TO GET TRANSPORTATION TO THEM IS A PART OF THE SOCIOLOGICAL
2 LITERATURE.

3 Q CAN YOU GIVE US AN EXAMPLE OR TWO OF THAT?

4 A YES. AND SO IN THE SOCIOLOGICAL LITERATURE, THERE
5 IS A DISCUSSION AROUND HOW ACCESS TO TRANSPORTATION SERVICES,
6 SO WHETHER IT'S OWNING A CAR, HAVING ACCESS TO A CAR, OR
7 HAVING ACCESS TO PUBLIC TRANSPORTATION, IS ONE OF THE KEY
8 FACTORS IN WHETHER OR NOT A WOMAN IS ABLE TO USE THE HEALTH OR
9 HUMAN SERVICE OR IF SHE'S ABLE TO GET TO WORK OR GET TO MAYBE
10 A JOB TRAINING CLASS, GET TO THE WELFARE OFFICE TO COMPLY WITH
11 WELFARE REQUIREMENTS, ABLE TO ACCESS A REPRODUCTIVE HEALTH
12 SERVICE, ABLE TO ACCESS ANOTHER WOMEN'S HEALTH SERVICE.

13 Q AND HAVE YOU DONE RESEARCH ON ACCESS TO ABORTION
14 SERVICES?

15 A I HAVE NOT DONE RESEARCH ON THAT ISSUE SPECIFICALLY.
16 IT COMES UP IN MY RESEARCH UNDER THE UMBRELLA OF WOMEN'S
17 ACCESS TO REPRODUCTIVE HEALTH SERVICES.

18 Q DOES YOUR METHODOLOGY THAT YOU USED IN THIS CASE
19 REQUIRE KNOWLEDGE ABOUT ABORTION SERVICES OR ABORTION IN
20 LOUISIANA?

21 A IT DOESN'T REQUIRE SPECIFIC KNOWLEDGE, IT REQUIRES A
22 GENERAL UNDERSTANDING, WHICH I HAVE.

23 Q HAVE YOU BEEN RECOGNIZED PREVIOUSLY AS AN EXPERT BY
24 ANY OTHER COURT?

25 A YES. IN PLANNED PARENTHOOD VERSES SOUTH -- PLANNED

1 PARENTHOOD OF THE SOUTHEAST VERSES STRANGE IN THE MIDDLE
2 DISTRICT COURT OF ALABAMA, I WAS RECOGNIZED AS A WITNESS --
3 EXPERT WITNESS.

4 Q AND WHAT WERE YOUR ACTIVITIES IN THAT CASE?

5 A THEY WERE SIMILAR TO THE ACTIVITIES IN THIS CASE. I
6 DID RESEARCH ABOUT WOMEN'S POVERTY IN ALABAMA. I WROTE AN
7 EXPERT REPORT AND I HAD A DEPOSITION AND I GAVE LIVE TESTIMONY
8 AT TRIAL.

9 Q AND CAN YOU BRIEFLY DESCRIBE THE TESTIMONY THAT YOU
10 GAVE IN ALABAMA?

11 A SO I DESCRIBED --

12 MR. DUNCAN: OBJECTION. HEARSAY?

13 THE COURT: STRESS THE WORD GENERALLY. I'VE READ
14 THE OPINION. I'VE READ THE REFERENCE IN THE OPINION TO DR.
15 KATZ'S TESTIMONY. WE DON'T NEED TO REHASH WHAT HAPPENED IN
16 ALABAMA.

17 MS. LEVINE: OKAY, I'LL MOVE ON.

18 BY MS. LEVINE:

19 Q HOW DOES THE METHODOLOGY THAT YOU USED TO REACH YOUR
20 OPINIONS IN THE ALABAMA CASE COMPARE TO THE METHODOLOGY YOU
21 USED IN THIS CASE?

22 A IT'S QUITE SIMILAR.

23 MS. LEVINE: YOUR HONOR, AT THIS TIME WE WOULD
24 TENDER DR. KATZ AS AN EXPERT IN THE FIELD OF SOCIOLOGY OF
25 GENDER AND POVERTY UNDER RULE 702.

1 **THE COURT:** ALL RIGHT.

2 DO YOU WANT TO CROSS HER ON HER QUALIFICATIONS OR
3 YOU JUST WANT TO MAKE ARGUMENT?

4 **MR. DUNCAN:** IS IT OKAY IF I COME HERE?

5 **THE COURT:** YEAH, YOU BET.

6 **MR. DUNCAN:** YOUR HONOR, WE'RE AWARE THAT YOU'VE
7 ALREADY DENIED A DAUBERT MOTION WITH RESPECT TO THIS WITNESS,
8 SO I'M NOT GOING TO REHASH THAT. I'M NOT GOING TO GO OVER THE
9 QUALIFICATIONS. IT SEEMS TO ME SHE'S QUALIFIED IN THE FIELD
10 OF SOCIOLOGY OF GENDER AND POVERTY. I'D LIKE TO MAKE AN
11 OBJECTION FOR THE RECORD, HOWEVER.

12 I UNDERSTAND YOUR HONOR'S APPROACH TO LET ALL OF THE
13 EVIDENCE IN, I FULLY UNDERSTAND THAT, BUT I JUST WANT TO MAKE
14 AN OBJECTION FOR THE RECORD BASED ON THE *COLE* CASE, COULD I
15 JUST DO THAT? IT WILL TAKE ME TWO MINUTES.

16 **THE COURT:** OH, YEAH. SURE. ABSOLUTELY.

17 **MR. DUNCAN:** JUDGING FROM DR. KATZ'S EXPERT REPORT,
18 QUALIFICATIONS, HER DEPOSITION AND WHAT WE'VE JUST HEARD HERE,
19 THE DEFENDANT BELIEVES THAT THE SUBJECT MATTER OF THIS
20 TESTIMONY IS NOT MATERIAL TO THIS CASE UNDER THE FIFTH
21 CIRCUIT'S *COLE* DECISION. SPECIFICALLY *COLE* EXPLAINS, AND THIS
22 IS AT PAGE 20 OF THE OPINION, THAT EVIDENCE OF THE PRACTICAL
23 CONCERN THAT LOW-INCOME WOMEN MAY FACE IN TRAVELING TO OBTAIN
24 ABORTIONS, CONCERNS LIKE COST, AVAILABILITY OF TRANSPORTATION,
25 DIFFICULTY GETTING TIME OFF FROM WORK, AVAILABILITY OF CHILD

1 CARE, NO MATTER HOW REAL FOR THOSE WOMEN, CANNOT BE ATTRIBUTED
2 TO THE LAW, TO THE ABORTION REGULATION FOR PURPOSES OF THE
3 *CASEY* AFFECT'S TEST. AND IN HOLDING THAT, *COLE* FOLLOWS TWO
4 U.S. SUPREME DECISIONS IN SETTING DOWN THIS PRINCIPLE, *HARRIS*
5 *V. MCRAE* AND *MAHER V. ROE*.

6 SO BECAUSE BINDING FIFTH CIRCUIT PRECEDENT EXCLUDES
7 THIS KIND OF EVIDENCE FROM THE *CASEY* AFFECT TEST, AND I THINK
8 FROM THE WITNESS WE'VE HEARD A LOT OF QUALIFICATIONS. WE'VE
9 HEARD WHAT SHE'S GOING TO TESTIFY ABOUT. I HEARD HER JUST SAY
10 SHE'S GOING TO TESTIFY ABOUT THE GENERAL CHARACTERISTICS OF
11 POVERTY IN LOUISIANA. SO WE BELIEVE THAT UNDER THE *COLE*
12 DECISION THE COURT SHOULD EXCLUDE THIS TESTIMONY.

13 **THE COURT:** ALL RIGHT. THANK YOU, MR. DUNCAN. AND
14 I UNDERSTAND THE ARGUMENT AND I HAVE READ THE MOTION FOR
15 RECONSIDERATION. IT IS UNDER ADVISEMENT AND PER MY EARLIER
16 COMMENTS WE'RE GOING TO LET THIS TESTIMONY IN SUBJECT TO YOUR
17 EARLIER MOTION.

18 **MR. DUNCAN:** JUST TO MAKE THE RECORD CLEAR, YOUR
19 HONOR. THIS IS A DIFFERENT OBJECTION FROM THE MOTION TO
20 RECONSIDER. THIS IS BASED PURELY ON --

21 **THE COURT:** -- ON THE SPECIFIC LANGUAGE OF *COLE* THAT
22 YOU JUST READ.

23 **MR. DUNCAN:** THAT'S RIGHT.

24 **THE COURT:** I'M FAMILIAR WITH THE LANGUAGE AND I'M
25 FAMILIAR WITH THE ISSUE, SO IT'S UNDER ADVISEMENT WITH

1 EVERYTHING ELSE. SO HEARING NO OBJECTION TO HER
2 QUALIFICATIONS AS AN EXPERT, I WILL ACCEPT DR. KATZ AS AN
3 EXPERT IN THE SOCIOLOGY OF GENDER AND SOCIOLOGY OF POVERTY AND
4 YOU MAY PROCEED.

5 MS. LEVINE: THANK YOU.

6 BY MS. LEVINE:

7 Q DR. KATZ, HOW IS POVERTY DEFINED IN THE UNITED
8 STATES?

9 A SO POVERTY IS DEFINED IN THE UNITED STATES, MAINLY
10 ACCORDING TO THE DEPARTMENT OF -- U.S. DEPARTMENT OF HEALTH
11 AND HUMAN SERVICES. SO EVERY YEAR THEY ISSUE SOMETHING CALLED
12 THE FEDERAL POVERTY GUIDELINE OR THE FEDERAL POVERTY THRESHOLD
13 AND THEY SET A DOLLAR AMOUNT, IT'S AROUND 14,600 THIS YEAR, I
14 THINK, FOR ONE PERSON AND THEY ADD AN AMOUNT THAT'S
15 APPROXIMATELY ABOUT \$4,000 FOR EACH ADDITIONAL PERSON IN THE
16 HOUSEHOLD.

17 HOWEVER, THE FIELD OF SOCIOLOGY RECOGNIZES, THE
18 FIELD OF SOCIOLOGY, MANY OTHER RESEARCHERS AND EXPERTS IN THIS
19 AREA, RECOGNIZE AND THE U.S. DEPARTMENT OF HEALTH AND HUMAN
20 SERVICES ITSELF, RECOGNIZES THAT THIS STANDARD IS FAR TOO LOW.

21 AND SO MANY FEDERAL AND STATE, AND ALSO COMMUNITY
22 ORGANIZATIONS, BECAUSE THERE ARE PROBLEMS WITH THE FEDERAL
23 POVERTY GUIDELINE, SET AMOUNTS THAT ARE SLIGHTLY HIGHER. SO
24 125 PERCENT, 150 PERCENT OR 200 PERCENT OF THE FEDERAL POVERTY
25 GUIDELINES.

1 WHEN WE THINK OF WHO IS LOW-INCOME IN THE U.S.
2 THERE'S ONE GUIDELINE THAT'S SORT OF TOO LOW, BUT EVERYONE
3 THAT'S WITHIN ABOUT 200 PERCENT OF THAT FEDERAL POVERTY
4 GUIDELINE IS CONSIDERED LOW-INCOME.

5 **Q** SO BY WAY OF ILLUSTRATION, COULD YOU GIVE ME AN
6 EXAMPLE, LIKE WHAT 200 PERCENT OF THE FEDERAL POVERTY LEVEL IS
7 FOR A FAMILY OF THREE?

8 **A** IF -- I WOULD LIKE TO BE ABLE TO REFER TO MY REPORT
9 FOR THAT EXACT NUMBER.

10 **THE COURT:** LET ME JUST CLARIFY, HER CV IS IN THE
11 RECORD AS A JOINT EXHIBIT, AS IS HER REPORT?

12 **MS. LEVINE:** THAT'S CORRECT.

13 **THE COURT:** OKAY. THANK YOU.

14 **BY MS. LEVINE:**

15 **Q** DR. KATZ, YOUR REPORT IS JOINT EXHIBIT 124. YOU
16 SHOULD FIND IT IN THE BINDER MARKED THREE OF FOUR?

17 **A** OKAY. WHAT NUMBER WAS IT?

18 **Q** 124.

19 **A** 124, OKAY. SO IF WE'RE THINKING ABOUT, FOR EXAMPLE,
20 A SINGLE MOM WITH TWO CHILDREN, 200 PERCENT OF THE POVERTY
21 LINE IS APPROXIMATELY \$39,000.

22 **Q** AND WHAT DO YOU MEAN WHEN YOU USE THE TERM,
23 "LOW-INCOME"?

24 **A** WHEN I USE THE TERM, "LOW-INCOME," I DON'T
25 SPECIFICALLY JUST MEAN PEOPLE WHO ARE AT OR UNDER THE FEDERAL

1 POVERTY GUIDELINE, BUT I ALSO MEAN PEOPLE WHO ARE GENERALLY IN
2 THE AREA OF UNDER 200 PERCENT OF THE FEDERAL POVERTY LINE. SO
3 FOR A SINGLE MOTHER AND TWO CHILDREN, IF SHE MAKES LESS THAN
4 \$39,580 A YEAR, SHE WOULD GENERALLY BE CONSIDERED LOW-INCOME.

5 Q AND ARE YOU FAMILIAR WITH THE DATA ON POVERTY RATES
6 IN THE STATE OF LOUISIANA?

7 A YES, I AM. LOUISIANA IS THE THIRD POOREST STATE IN
8 THE U.S. ACCORDING TO OUR MOST RECENT CENSUS NUMBERS.

9 Q IF YOU COULD TURN TO WHAT HAS BEEN MARKED AS
10 PLAINTIFFS' EXHIBIT 167. SO IT WILL BE A DIFFERENT BINDER
11 THAT SAYS PLAINTIFFS' EXHIBITS.

12 A OKAY. I ONLY HAVE BINDERS MARKED JOINT EXHIBITS.
13 OH, HERE WE GO. AND WHAT NUMBER?

14 Q NUMBER 167.

15 A OKAY.

16 Q ARE YOU LOOKING AT THAT DOCUMENT?

17 A YES.

18 Q DO YOU RECOGNIZE THIS DOCUMENT?

19 A YES. IT'S A MAP OF THE UNITED STATES AND IT'S
20 SHOWING HOW POVERTY VARIES BY STATE.

21 Q AND WHAT IS THE SOURCE OF THE DATA FOR THE
22 INFORMATION IN THIS MAP.

23 A THE SOURCE OF THE DATA IS THE U.S. CENSUS BUREAU, A
24 CENSUS FROM 2010.

25 Q AND DO YOU HAVE ANY REASON TO BELIEVE THAT THIS MAP

1 DOES NOT ACCURATELY REFLECT THE CENSUS DATA?

2 A NO.

3 THE COURT: I'M SORRY, I MISSED THE EXHIBIT NUMBER.

4 COULD YOU GIVE IT TO ME AGAIN?

5 MS. LEVINE: SURE, IT'S PLAINTIFFS' 167?

6 THE COURT: IS THERE A JOINT EXHIBIT NUMBER?

7 MS. LEVINE: NO.

8 THE COURT: OKAY.

9 MS. LEVINE: AT THIS TIME I WOULD OFFER PLAINTIFFS'
10 EXHIBIT 167 INTO EVIDENCE.

11 THE COURT: ANY OBJECTION, SUBJECT TO YOUR EARLIER
12 OBJECTION?

13 MR. DUNCAN: RIGHT. NO OBJECTION. AND I HOPE THIS
14 DOESN'T RAISE THE PROBLEM WE WERE TALKING EARLIER ABOUT.

15 THE COURT: NO. I THINK THE RECORD IS CLEAR AND
16 LET'S MAKE SURE IT IS CLEAR THAT THESE KINDS OF OBJECTIONS ARE
17 GOING TO BE CONTINUING WITHOUT THE NECESSITY FOR MR. DUNCAN TO
18 REURGE THEM AT EVERY TURN.

19 MR. DUNCAN: I UNDERSTAND THAT, YOUR HONOR. I JUST
20 --

21 THE COURT: I JUST WANT TO MAKE SURE THAT THEY
22 UNDERSTAND AND AGREE TO THAT.

23 IS THAT AGREEABLE?

24 MS. DOUFEKIAS: YES, YOUR HONOR.

25 MR. DUNCAN: I JUST MEANT THE JX, PX STUFF.

1 **THE COURT:** OH, SORRY.

2 **MR. DUNCAN:** WE'LL WORK ALL OF THAT OUT.

3 **THE COURT:** OKAY. SO IN ANY EVENT, THIS IS
4 PLAINTIFFS' EXHIBIT 167.

5 **MS. LEVINE:** RIGHT.

6 **THE COURT:** AND IT WILL BE RECEIVED IN EVIDENCE AND
7 THEN WE'LL LATER FIGURE OUT WHETHER WE'RE GOING TO CHANGE THE
8 NUMBER TO A JOINT EXHIBIT.

9 **MS. LEVINE:** THANK YOU. AND IF WE COULD PUBLISH
10 THAT EXHIBIT?

11 **THE COURT:** OH, GOOD, BECAUSE MINE IS BLACK AND
12 WHITE.

13 **THE WITNESS:** IT'S EASIER TO SEE IN COLOR.

14 **BY MS. LEVINE:**

15 **Q** COULD YOU SUMMARIZE WHAT YOU CAN EXTRACT FROM THIS
16 MAP --

17 **A** YES. AND SO --

18 **Q** -- REGARDING POVERTY IN LOUISIANA?

19 **A** THE THING THAT I THINK IS MOST IMPORTANT FROM THIS
20 MAP IS THAT WHEN WE'RE THINKING ABOUT POVERTY IN LOUISIANA,
21 AND THINKING ABOUT POVERTY IN THE U.S IS THAT LOUISIANA IS ONE
22 OF THE POOREST STATES IN THE UNITED STATES AND IT'S PART OF,
23 YOU KNOW, THE PERSISTENT POVERTY THAT WE SEE THROUGHOUT THE
24 SOUTHERN PART OF THE U.S. BUT THAT THE POVERTY IN LOUISIANA
25 AND MISSISSIPPI SPECIFICALLY IS MUCH MORE SEVERE THAN POVERTY

1 IN OTHER AREAS. AND SO THIS MAP JUST SIMPLY KIND OF SHOWS
2 THAT IN A PICTURE TO HELP US UNDERSTAND THAT THE POVERTY HERE
3 IS DEEPER.

4 Q DO YOU HAVE THE FIGURE OF HOW THE POVERTY RATE IN
5 LOUISIANA COMPARES TO THE NATIONAL POVERTY RATE?

6 A YES. IF YOU DON'T MIND, I'M GOING TO REFER BACK TO
7 MY REPORT JUST FOR THE PERCENTAGE. FOR THE POVERTY RATE IN
8 LOUISIANA, FOR 2010, THE POVERTY RATE HAS BEEN --

9 MR. DUNCAN: YOUR HONOR, I'M SORRY, TO INTERRUPT.
10 THIS IS NOT BY THE WAY OF OBJECTION, BUT IT WOULD BE HELPFUL
11 TO ME IF WHEN THE EXPERT IS REFERRING TO HER REPORT THAT I
12 JUST KNOW WHERE SO THAT I COULD FOLLOW ALONG?

13 THE COURT: YEAH, IF YOU COULD JUST TELL US WHERE IN
14 THE REPORT YOU'RE REFERRING TO.

15 THE WITNESS: SURE.

16 THE COURT: BEFORE YOU MOVE, ONE QUESTION, WHO'S
17 WORSE, LOUISIANA OR MISSISSIPPI?

18 THE WITNESS: MISSISSIPPI IS WORSE.

19 THE COURT: WONDERFUL.

20 THE WITNESS: JUST BY A LITTLE BIT.

21 THE COURT: WELL WE'RE NOT LAST IN SOMETHING; RIGHT?

22 THE WITNESS: THEY'RE THE POOREST.

23 THE COURT: THANK YOU. SORRY. A LITTLE LEVITY
24 HERE.

25 THE WITNESS: IT'S POVERTY.

1 **A** SO I'M ON PAGE 3 OF MY REPORT ON NUMBER 7. THAT
2 POVERTY IN LOUISIANA IS RIGHT AROUND 19.8 PERCENT IN 2013
3 NUMBERS. THE NATIONAL POVERTY RATE IS RIGHT AROUND
4 15 PERCENT.

5 **BY MS. LEVINE:**

6 **Q** AND IF YOU COULD NOW TURN BACK --

7 **A** SURE.

8 **Q** -- PLAINTIFFS' BINDER, WHAT HAS BEEN MARKED AS
9 EXHIBIT 166?

10 **A** YES.

11 **Q** WE WON'T PUBLISH THAT JUST YET. IT'S NOT INTO
12 EVIDENCE. ARE YOU THERE, DR. KATZ?

13 **A** YES, I AM.

14 **Q** DO YOU RECOGNIZE THIS DOCUMENT?

15 **A** YES, IT'S A MAP FROM THE U.S. CENSUS BUREAU.

16 **Q** AND WHAT DOES IT SHOW?

17 **A** IT SHOWS THE STATE OF LOUISIANA AND THE DARKER
18 COLORS OR THE DARKER SHADING -- THE MAP'S IN BLACK AND WHITE,
19 BUT IT USED TO BE IN COLOR. THE DARKER SHADING IS THE POORER
20 PARISHES WITHIN LOUISIANA AND THE LIGHTER SHADING ARE THE
21 PARISHES WHERE THE POVERTY RATE IS LOWER.

22 **Q** DO YOU HAVE ANY REASON TO BELIEVE THIS MAP DOES NOT
23 ACCURATELY REFLECT CENSUS DATA?

24 **A** NO.

25 **MS. LEVINE:** AT THIS TIME I WOULD OFFER PLAINTIFFS'

1 EXHIBIT 166 INTO EVIDENCE.

2 THE COURT: OBJECTIONS OTHER THAN THOSE PREVIOUSLY
3 NOTED?

4 MR. DUNCAN: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. LET IT BE RECEIVED AND
6 PUBLISHED.

7 MS. LEVINE: THANK YOU.

8 BY MS. LEVINE:

9 Q AND COULD YOU EXPLAIN WHAT THIS MAP DEMONSTRATES
10 REGARDING REGIONAL DIFFERENCES IN POVERTY WITHIN THE STATE OF
11 LOUISIANA?

12 A YES. SO IF YOU'RE LOOKING AT THE MAP, IT'S A PARISH
13 BY PARISH MAP OF LOUISIANA, CENSUS DATA IS OFTEN DONE ON A
14 COUNTY BY COUNTY BASIS. SO THE PARISHES THAT ARE THE LIGHTEST
15 PURPLE SHADING ARE THE PARISHES THAT HAVE THE LOWEST POVERTY
16 RATE. SO WE SEE ACROSS MUCH OF THE SOUTHERN PART OF THE
17 STATE.

18 THE PARISHES THAT ARE DARKER PURPLE, SO ORLEANS
19 PARISH, SOME PARISHES IN THE MIDDLE OF THE STATE AND THE
20 PARISHES IN THE NORTH EASTERN CORNER OF THE STATE OR THE
21 DARKEST PURPLE HAVE THE HIGHEST RATES OF POVERTY, UPWARDS OF
22 34 TO 55 PERCENT OF POVERTY. SO THIS IS -- IT DEPICTS SORT OF
23 HOW POVERTY VARIES ACROSS THE STATE AND WHICH PARISHES ARE
24 POORER AND WHICH GEOGRAPHIC REGIONS OF THE STATE ARE POORER.

25 LOUISIANA IS -- SO 26 OF LOUISIANA'S PARISHES HAVE

1 BEEN CLASSIFIED AS PERSISTENTLY POOR BY THE U.S. DEPARTMENT OF
2 AGRICULTURE WHO ADMINISTERS THE FOOD STAMP PROGRAM, AND SO YOU
3 CAN SEE THAT THE DARKEST PURPLE PARISHES -- THIS ISN'T A MAP
4 OF PERSISTENT POVERTY IN LOUISIANA, BUT I ALSO KNOW THAT THE
5 PARISHES THAT ARE DARKEST PURPLE ARE SOME OF THE ONES THAT
6 ALSO QUALIFY AS PERSISTENTLY POOR PLACES. WHICH MEANS THAT
7 THEY HAVE ABOVE 20 PERCENT POVERTY FOR EVERY CENSUS GOING BACK
8 TO 1980.

9 Q AND CAN YOU COMMENT ON WHETHER THERE ARE DIFFERENCES
10 BETWEEN URBAN AND RURAL POVERTY IN LOUISIANA?

11 A YES. SO ESPECIALLY AMONG THIS PERSISTENTLY POOR
12 MEASURE, THAT DESPITE ONE OF THE PARISHES AROUND THE NEW
13 ORLEANS AREA, THAT MOST OF THE PERSISTENTLY POOR OR MOST OF
14 THE PARISHES THAT HAVE THE HIGHEST POVERTY LEVEL IN THE STATE
15 ARE THE RURAL PARISHES.

16 Q DO YOU HAVE ANY INFORMATION ABOUT POVERTY IN
17 LOUISIANA'S LARGEST CITIES?

18 A YES, I DO. SO I'M GOING TO REFER BACK TO MY EXPERT
19 REPORT FOR THOSE FIGURES AND I AM ON PAGE -- I HAVE TO FIND
20 IT. I'M ON PAGE 3 AGAIN IN NUMBER 7, THAT POVERTY IN BATON
21 ROUGE IS APPROXIMATELY 18.7 PERCENT, NEW ORLEANS IS
22 19.3 PERCENT. HOWEVER, THE POVERTY IN SHREVEPORT IS HIGHER
23 THAN THE STATE AVERAGE AND IT'S AT 20.4 PERCENT, WHICH IF YOU
24 THINK ABOUT THE MAP WOULD GO ALONG WITH WHAT WE'RE SEEING ON
25 THE MAP.

1 **Q** DO YOU HAVE ANY INFORMATION ABOUT THE POVERTY RATE
2 SPECIFICALLY AMONG WOMEN IN LOUISIANA?

3 **A** YES, I DO.

4 **Q** AND --

5 **A** SO WOMEN -- WOMEN IN THE U.S. BUT WOMEN IN LOUISIANA
6 SPECIFICALLY ARE POORER THAN MEN ARE, AND THEN IF WE -- I'M
7 JUST LOOKING OVER TO PAGE 5. SO OF PEOPLE BELOW THE POVERTY
8 LEVEL IN LOUISIANA, 57.4 PERCENT ARE WOMEN, WHEREAS ONLY
9 42.6 PERCENT ARE MEN. AND IF WE LOOK AT WOMEN'S POVERTY RATE,
10 SO AMONG WOMEN IN LOUISIANA, 21.9 PERCENT ARE POOR.

11 AND IF WE LOOK AT POVERTY AMONG MEN ONLY
12 17.4 PERCENT ARE POOR. SO POVERTY IS GENDERED AND THIS IS ONE
13 OF THE THINGS THAT I STUDY IS, WHY IS WOMEN'S POVERTY HIGHER
14 THAN MEN'S POVERTY?

15 **Q** AND CAN YOU APPROXIMATE HOW MANY WOMEN OF CHILD
16 BEARING AGE LIVE BELOW THE FEDERAL POVERTY LINE IN LOUISIANA?

17 **A** YEAH. SO IT'S APPROXIMATELY 230,000 WOMEN.

18 **Q** AND CAN YOU APPROXIMATE ABOUT HOW MANY FAMILIES
19 HEADED BY SINGLE MOTHERS ARE AT OR BELOW 125 PERCENT OF THE
20 POVERTY THRESHOLD IN LOUISIANA?

21 **A** IT'S AT OR BELOW -- CAN YOU REPEAT THE QUESTION?

22 **Q** SURE. ABOUT HOW MANY FAMILIES HEADED BY SINGLE
23 MOTHERS ARE AT OR BELOW 125 PERCENT OF THE POVERTY THRESHOLD
24 IN LOUISIANA?

25 **A** SO THAT'S AT ABOUT HALF. SO ABOUT 50.7 PERCENT OF

1 SINGLE MOTHERED FAMILIES ARE AT OR BELOW 125 PERCENT OF THE
2 POVERTY LINE. AND I BELIEVE THAT NUMBER IS ABOUT 530,000
3 FAMILIES.

4 Q ARE YOU FAMILIAR WITH THE DATA ON POVERTY RATES
5 AMONG ABORTION PATIENTS?

6 A YES, I AM. SO GENERALLY, AND I'M GOING TO JUST FLIP
7 A COUPLE OF PAGES. I'M ON PAGE 8. THAT ABOUT 42 PERCENT OF
8 WOMEN HAVING ABORTIONS ARE AT OR BELOW THE FEDERAL POVERTY
9 LINE AND ANOTHER 27 PERCENT ARE AT OR BELOW THE 200 PERCENT OF
10 THE FEDERAL POVERTY LINE. SO THAT'S UPWARD --

11 THE COURT: YOUR FIRST NUMBER WAS 42 PERCENT?

12 THE WITNESS: 42 PERCENT, AND THE SECOND NUMBER IS
13 27 PERCENT. SO THREE-QUARTERS APPROXIMATELY.

14 BY MS. LEVINE:

15 Q AND THESE ARE THE NATIONAL FIGURES?

16 A THESE ARE NATIONAL FIGURES.

17 Q DO YOU HAVE ANY INFORMATION ABOUT THE DEMOGRAPHIC
18 CHARACTERISTICS OF ABORTION PATIENTS IN LOUISIANA
19 SPECIFICALLY?

20 A SO THERE'S BEEN A RECENTLY PUBLISHED ARTICLE BY
21 *ROBERTS, ET AL* THAT HAS SOME DEMOGRAPHIC INFORMATION ABOUT
22 POVERTY AMONG -- NOT POVERTY, BUT DEMOGRAPHIC INFORMATION
23 AMONG ABORTION PATIENTS.

24 MR. DUNCAN: YOUR HONOR, I'M SORRY TO INTERRUPT. I
25 DO HAVE AN OBJECTION TO RELIANCE ON THAT ARTICLE, BECAUSE IT

1 WAS IN A SUPPLEMENT TO THE EXPERT REPORT THAT WAS SENT AFTER
2 THE EXPERT REPORT WAS PRODUCED AND AFTER THE DEPOSITION AND
3 IT'S SPECIFIC INFORMATION WITH RESPECT TO LOUISIANA. SO I DO
4 LODGE AN OBJECTION TO RELIANCE ON THAT PARTICULAR REPORT.

5 **THE COURT:** ALL RIGHT.

6 **MS. LEVINE:** WE SUBMITTED THE SUPPLEMENTAL REPORT
7 OUTLINING THAT SHE WAS ALSO RELYING ON THIS ARTICLE FOR HER
8 OPINIONS AND THIS IS THE FIRST WE'RE HEARING AN OBJECTION AND
9 IT WAS MY UNDERSTANDING THAT WE WOULD HAVE THE *ROBERTS'* STUDY
10 AS A JOINT EXHIBIT.

11 **THE COURT:** WHY DON'T YOU GUYS TRY TO WORK THIS OUT
12 DURING A BREAK? I'LL RECEIVE IT SUBJECT TO THE OBJECTION.

13 **MR. DUNCAN:** RIGHT. AND JUST TO BE CLEAR, YOUR
14 HONOR, THE REASON WHY IT'S A JOINT EXHIBIT IS, BECAUSE IF YOUR
15 HONOR IS GOING TO LET HER RELY ON IT, WHICH YOU MAY OR NOT,
16 BUT IF SHE'S GOING TO RELY ON IT MY EXPERT NEEDS TO --

17 **THE COURT:** I UNDERSTAND. DR. SOLANKY, YOU'RE
18 TALKING ABOUT?

19 **MR. DUNCAN:** CORRECT.

20 **THE COURT:** YEAH. WELL, I'M GOING TO LET IT IN AND
21 DR. SOLANKY CAN DEAL WITH IT, I'M SURE.

22 **MR. DUNCAN:** THAT'S FINE. THANK YOU. SUBJECT TO
23 THAT, YOUR HONOR, NO OBJECTION.

24 **MS. LEVINE:** WE'D JUST LIKE TO NOTE FOR THE RECORD
25 THAT THAT *ROBERTS'* STUDY WAS PUBLISHED IN MARCH OF THIS YEAR,

1 WHICH WAS SUBSEQUENT TO THE DEPOSITION FOR DR. KATZ.

2 THE COURT: ALL RIGHT. YOU MAY PROCEED.

3 MS. LEVINE: SO I'D LIKE TO OFFER THE *ROBERTS'* STUDY
4 AS AN EXHIBIT. IT'S BEEN MARKED I BELIEVE AS DEFENSE 159 AND
5 WE CAN CONTINUE TO REFER TO IT IN THAT WAY OR WE COULD GIVE IT
6 A JOINT NUMBER AT SOME POINT?

7 THE COURT: WELL, OUR NEXT JOINT EXHIBIT IS 192, IF
8 YOU WANT TO DO THAT.

9 RIGHT?

10 MR. DUNCAN: FINE WITH ME, NO OBJECTION.

11 THE WITNESS: WHICH BINDER IS IT IN?

12 THE COURT: I'M SORRY?

13 MS. LEVINE: I BELIEVE -- IF I MAY APPROACH THE
14 WITNESS TO PROVIDE COPIES?

15 THE COURT: YES, YOU MAY.

16 BY MS. LEVINE:

17 Q CAN YOU SUMMARIZE WHAT THE *ROBERTS'* STUDY REVEALS
18 ABOUT THE CHARACTERISTICS OF WOMEN SEEKING ABORTION IN
19 LOUISIANA.

20 A YES. SO THE *ROBERTS'* STUDY LOOKED AT WOMEN WHO HAD
21 AN ABORTION IN LOUISIANA IN 2013 AND '14 -- THE END OF '13 AND
22 BEGINNING PART OF '14, AND SOME OF THE FINDINGS -- THE
23 CHARACTERISTICS THAT WERE INTERESTING TO ME IS THAT OVER HALF
24 HAVE NO EDUCATION BEYOND HIGH SCHOOL AND THAT TWO-THIRDS ARE
25 BLACK, 62 PERCENT, 30 PERCENT ARE WHITE AND THAT THREE-FOURTHS

1 --

2 **MR. DUNCAN:** SORRY, TO INTERRUPT, YOUR HONOR. IT
3 WOULD AGAIN HELP IF THE WITNESS WOULD YOU SHOW ME WHERE
4 SHE'S --

5 **THE COURT:** AGREE. AND IT WOULD HELP IF I HAD --

6 **THE WITNESS:** SURE.

7 **THE COURT:** HOLD ON. IT WOULD HELP IF I HAD A COPY
8 OF THE EXHIBIT. THANK YOU.

9 WHAT PAGE WERE YOU ON, DOCTOR?

10 **THE WITNESS:** I'M ON THE THIRD PAGE OF THE REPORT OR
11 THE ARTICLE AND IT'S PAGE 370, IT'S UP IN THE UPPER LEFT-HAND
12 CORNER AND I'M IN NUMBER 3 THAT SAYS RESULTS, SAMPLE
13 DESCRIPTION.

14 **THE COURT:** OKAY. THANK YOU.

15 **A** ONE MORE PAGE ON THE SCREEN. YES. THE BOTTOM OF
16 THAT PAGE. THERE YOU GO. OKAY. SO WHAT I WAS SAYING WAS
17 THAT OVER HALF HAVE NO EDUCATION BEYOND HIGH SCHOOL AND THAT
18 TWO-THIRDS OR 62 PERCENT OF PATIENTS WERE BLACK AND ABOUT
19 THREE-FOURTHS HAD HAD A PREVIOUS LIVE BIRTH. AND SO THOSE
20 ALL, BECAUSE OF WHAT I KNOW ABOUT GENDER AND POVERTY, THOSE
21 WERE INTERESTING TO ME.

22 BY MS. LEVINE:

23 **Q** WHY IS THAT?

24 **A** BECAUSE WE KNOW THAT FAMILIES HEADED BY AFRICAN
25 AMERICAN WOMEN ARE MUCH MORE LIKELY TO BE POOR. AFRICAN

1 AMERICAN WOMEN'S POVERTY IS HIGHER THAN WHITE WOMEN'S POVERTY
2 AND IS HIGHER THAN AFRICAN AMERICAN MEN'S POVERTY. WE KNOW
3 THAT THOSE -- WE KNOW WOMEN WHO DON'T HAVE EDUCATION BEYOND
4 HIGH SCHOOL, THAT YOU CAN'T MAKE LIVING WAGES WITH HIGH SCHOOL
5 EDUCATION SO YOU'RE MORE LIKELY TO BE POOR. AND THAT WE ALSO
6 KNOW THAT IF YOU'VE PREVIOUSLY HAD A CHILD, THAT YOU'RE
7 OFTENTIMES RESPONSIBLE FOR THAT CHILD AND THAT LEADS TO
8 INCREASED WOMEN'S POVERTY AS WELL, WHETHER OR NOT YOU HAVE A
9 CHILD.

10 **THE COURT:** CAN I INTERRUPT JUST ONE SECOND?

11 DOES THIS ARTICLE COVER ALL WOMEN WHO HAVE ABORTIONS
12 FOR SOME PERIOD OF TIME?

13 **THE WITNESS:** NO.

14 **THE COURT:** WITHOUT REGARD TO POVERTY --

15 **THE WITNESS:** IT COVERED ALL WOMEN AT THREE
16 FACILITIES.

17 **THE COURT:** ALL WOMEN AT THREE FACILITIES, OKAY.
18 AND WHAT PERIOD OF TIME ARE WE TALKING ABOUT?

19 **THE WITNESS:** IN NUMBER 3, IT SAYS, 3.1. IT WAS
20 SEPTEMBER 1ST, 2013 THROUGH AUGUST 31ST OF 2014.

21 **THE COURT:** ALL RIGHT. DOES IT SAY WHAT FACILITIES?

22 **THE WITNESS:** I BELIEVE IT DOES IN THE FRONT. MAYBE
23 ON PAGE 2. IT MAY NOT SAY SPECIFICALLY, WHICH IT SAYS THREE
24 OF THE FIVE LOUISIANA ABORTION FACILITIES.

25 **THE COURT:** OKAY. THANK YOU.

1 **MR. DUNCAN:** YOUR HONOR, IT'S IN PARAGRAPH 2.1 THERE
2 ON PAGE 2.

3 **THE WITNESS:** OH, YEAH.

4 **THE COURT:** YOU WANT TO JUST SAVE ME SOME TIME AND
5 TELL ME WHAT FACILITIES?

6 **MR. DUNCAN:** WE HAVE NO -- I HAVE NO IDEA.

7 **THE COURT:** OH, I'M SORRY --

8 **THE WITNESS:** IT LIST THREE FACILITIES.

9 **MR. DUNCAN:** I'M JUST SAYING IT SAYS 3 --

10 **THE COURT:** -- I THOUGHT YOU SAID IT SHOWED WHAT
11 FACILITIES IN PARAGRAPH 2.1.

12 OKAY. I'M SORRY TO INTERRUPT. KEEP GOING.
13 BY MS. LEVINE:

14 **Q** DR. KATZ, WHAT ARE THE MAJOR EXPENSES THAT
15 LOW-INCOME WOMEN HAVE?

16 **A** THE MAJOR EXPENSES THAT LOW-INCOME WOMEN HAVE, THE
17 FIRST ONE IS HOUSING. LOW-INCOME FAMILIES PAY A MUCH HIGHER
18 PERCENTAGE OF THEIR INCOME TOWARDS HOUSING THAN MIDDLE INCOME
19 FAMILIES DO, SO WHILE MIDDLE INCOME FAMILIES PAY MAYBE
20 30 PERCENT OF OUR INCOMES TOWARDS HOUSES OR OUR MORTGAGES, OUR
21 LOW-INCOME FAMILIES PAY BETWEEN 40 AND 80 PERCENT OF THEIR
22 MONTHLY INCOME TOWARDS THEIR RENT. THEY ALSO HAVE UTILITIES,
23 FOOD AND THEN ALSO CHILD CARE, TRANSPORTATION.

24 **Q** AND WHAT DOES IT INVOLVE TO MAKE ENDS MEET WHILE
25 LIVING AT OR NEAR THE FEDERAL POVERTY LEVEL IN LOUISIANA?

1 **A** IT'S VERY DIFFICULT. MOST PEOPLE DO NOT MAKE ENOUGH
2 MONEY WORKING FULL-TIME AT OR NEAR MINIMUM WAGE JOBS IN ORDER
3 TO COVER ALL OF THEIR EXPENSES EVERY MONTH AND SO THERE'S
4 TOUGH CHOICES THAT NEED TO BE MADE. BUT IT'S LIVING VERY
5 PRECARIOUSLY, OFTEN NOT HAVING ENOUGH MONEY AT THE END OF THE
6 MONTH IN ORDER TO EAT OR TO PAY ALL OF YOUR BILLS, AND SO
7 BILLS GO UNPAID.

8 SINGLE MOTHERS FROM THE RESEARCH THAT I DO AND THEN
9 ALSO FROM THE EXISTING RESEARCH IN THE FIELD, THEY OFTEN MAKE
10 SURE THAT THEIR KIDS HAVE ENOUGH FOOD AS MUCH AS THEY CAN AND
11 SO THEY GO HUNGRY THEMSELVES, BUT IT'S VERY, VERY DIFFICULT.

12 **Q** ARE YOU FAMILIAR WITH DATA ON LOW-INCOME WOMEN'S
13 ACCESS TO VEHICLES?

14 **A** YES, I AM.

15 **Q** AND WHAT DOES THAT RESEARCH AND DATA SHOW?

16 **A** THE RESEARCH ABOUT LOW-INCOME WOMEN'S ACCESS TO
17 VEHICLES SHOWS THAT WOMEN HAVE LESS ACCESS TO RELIABLE,
18 PRIVATE VEHICLES THAN MEN DO. SO WOMEN ARE -- I'M GOING TO
19 REFER TO PAGES 9 AND 10 OF MY REPORT. BUT WOMEN ARE MORE
20 LIKELY TO LIVE IN HOUSEHOLDS THAT HAVE EITHER NO VEHICLES OR
21 ONLY ONE VEHICLE FOR, SAY, TWO OR MORE ADULTS THAT LIVE IN THE
22 HOUSEHOLD. AND THAT THEY ALSO ARE MORE LIKELY -- THEY'RE THE
23 LARGEST GROUP OF THE ADULT POPULATION TO RELY ON PUBLIC
24 TRANSPORTATION BECAUSE THEY HAVE NO ACCESS TO VEHICLES.

25 **Q** AND WHAT DOES THE RESEARCH SHOW ARE THE GREATEST

1 BARRIERS TO LOW-INCOME WOMEN'S ABILITY TO ACCESS HEALTH
2 SERVICES?

3 A THERE'S THREE MAIN BARRIERS THAT THE LITERATURE
4 SHOWS AND THAT'S -- THERE'S FOUR MAIN BARRIERS THAT THE
5 LITERATURE SHOWS. ONE IS TRANSPORTATION, ONE IS BEING ABLE TO
6 GET PAID OR UNPAID TIME OFF OF WORK, ONE IS BEING ABLE TO GET
7 CHILD CARE AND ANOTHER ONE IS SORT OF THE SOCIAL PSYCHOLOGICAL
8 STRESS FACTOR.

9 Q AND WHAT RESEARCH GENERALLY SHOWS THESE AS THE
10 PRIMARY BARRIERS?

11 A SO THERE'S A WIDE LITERATURE WITHIN GENDER AND
12 POVERTY THAT LOOKS AT HOW WOMEN ACCESS HEALTH AND HUMAN
13 SERVICES WHILE IN POVERTY. AND SO MY OWN RESEARCH DATING
14 BACK, YOU KNOW, FROM THE EARLY PART OF MY CAREER HAS ALWAYS
15 BEEN IN THIS AREA. SO MY OWN RESEARCH ASKING WOMEN ABOUT WHAT
16 THEIR BARRIERS ARE TO ACCESSING THESE SERVICES, WELL-KNOWN,
17 WELL-PUBLISHED RESEARCH IN OUR FIELD, THE KATHRYN EDIN AND
18 LAURA LIEN STUDY CALLED, *MAKING ENDS MEET*, THE SHARON HAYS
19 STUDY, *FLAT BROKE WITH CHILDREN*. RECENTLY PUBLISHED IS JUDITH
20 LEVINE'S WORK CALLED, *AIN'T NO TRUST*. SO THIS IS A WIDE BODY
21 OF LITERATURE PUBLISHED BY TOP ACADEMIC PRESSES SHOWING
22 CONSISTENTLY THESE FOUR BARRIERS.

23 THE COURT: I'M SORRY, I DIDN'T GET THE FOURTH ONE.

24 THE WITNESS: IT'S CALLED JUDITH LEVINE. HER BOOK
25 IS CALLED, *AIN'T NO TRUST*.

1 **THE COURT:** I'M SORRY, THE FOURTH FACTOR?

2 **THE WITNESS:** OH, SOCIAL PSYCHOLOGICAL FACTOR SUCH
3 AS ADDITIONAL STRESS.

4 **THE COURT:** OKAY.

5 BY MS. LEVINE:

6 **Q** DO THESE BARRIERS YOU'VE DESCRIBED ONLY AFFECT
7 LOW-INCOME WOMEN?

8 **A** NO, THESE BARRIERS AFFECT -- THESE BARRIERS CAN
9 AFFECT MIDDLE CLASS WOMEN, THESE BARRIERS CAN AFFECT
10 LOW-INCOME MEN, BUT THESE BARRIERS ARE MOST ACUTE -- NOT MOST
11 ACUTE. BUT THEIR MOST -- LOW-INCOME WOMEN'S LIVES ARE SO
12 PRECARIOUS THAT THESE BARRIERS ARE VERY SIGNIFICANT FOR
13 LOW-INCOME WOMEN.

14 **Q** CAN YOU CAN DESCRIBE WHAT QUESTIONS YOU LOOKED AT IN
15 FORMING YOUR OPINIONS IN THIS CASE?

16 **A** YES. SO FOR THIS REPORT, I LOOKED AT IF THE ACT IS
17 IMPLEMENTED AND CLINICS CLOSED WHAT ARE -- HOW WILL LOW-INCOME
18 WOMEN TRY TO ACCESS THESE SERVICES? WHAT ARE THE BURDENS OR
19 HURDLES THAT THEY MY EXPERIENCE TRYING TO ACCESS THESE
20 SERVICES?

21 **Q** AND YOU MADE CERTAIN ASSUMPTIONS IN FORMING YOUR
22 OPINIONS ABOUT WHICH CLINICS IN LOUISIANA WOULD STAY OPEN AND
23 WHICH WOULD BE CLOSED; RIGHT?

24 **A** YES. I LOOKED AT VARIOUS SCENARIOS ABOUT WHICH
25 CLINICS MAY STAY OPEN AND WHICH CLINICS MAY CLOSE.

1 **Q** AND WHAT WERE THE DIFFERENT SCENARIOS THAT YOU
2 EXAMINED IN TERMS OF CLINICS STAYING OPEN AND CLINICS CLOSING?

3 **A** YES. SO FOR THE REPORT THE SCENARIOS THAT I
4 ADDRESSED WAS IF THE CLINIC IN BATON ROUGE CLOSED AND THAT
5 WOMEN MAY HAVE TO TRAVEL TO EITHER METAIRIE OR BOSSIER CITY OR
6 IF THE CLINIC IN NEW ORLEANS CLOSED AND WOMEN WOULD HAVE TO
7 TRAVEL FROM THE NEW ORLEANS AREA TO BOSSIER CITY.

8 **Q** AND WOULD YOUR ANALYSIS ALSO APPLY FOR WOMEN
9 TRAVELING IN THE OTHER DIRECTION, MEANING FROM BOSSIER CITY TO
10 NEW ORLEANS?

11 **A** YES. I LOOKED AT WOMEN TRAVELING BOTH WAYS.

12 **Q** AND WHAT RESEARCH OR LITERATURE DID YOU CONSIDER IN
13 THE COURSE OF DEVELOPING YOUR OPINIONS IN THIS CASE?

14 **A** YES. SO I USED PUBLICLY AVAILABLE DATASETS, SUCH AS
15 THE U.S. CENSUS BUREAU'S DATA. I USED EXISTING DATA THAT IS
16 PRESENT IN THE FIELD. I USED INTERNET SITES, SUCH AS GOOGLE
17 MAPS, AND THEN I ALSO USED THE EXISTING LITERATURE THAT'S IN
18 THE FIELD IN ORDER TO FORM MY OPINIONS IN THE CASE.

19 **Q** IN YOUR ANALYSIS DID YOU FOCUS ON TRANSPORTATION
20 RELATED BURDENS?

21 **A** YES, I DID.

22 **Q** AND WHY DID YOU FOCUS ON THE TRANSPORTATION BURDENS?

23 **A** BECAUSE TRANSPORTATION IS ONE OF THE OFTEN CITED
24 BARRIERS OR BURDENS THAT LOW-INCOME WOMEN HAVE TO OVERCOME IN
25 ORDER TO ACCESS HEALTH OR HUMAN SERVICE, GET TO WORK, GET TO

1 CHILD CARE, ET CETERA.

2 Q AND IS TRANSPORTATION GENERALLY A COSTLY -- IS IT
3 GENERALLY COSTLY FOR LOW-INCOME WOMEN TO ACCESS
4 TRANSPORTATION?

5 A YES. IT'S BOTH AN ISSUE OF COST OF WHETHER OR NOT
6 THEY HAVE THEIR OWN CAR, WHETHER THE CAR IS IN WORKING ORDER,
7 BUT IT'S ALSO COSTLY TO RIDE PUBLIC TRANSPORTATION AND IT'S
8 ALSO THE ACCESSIBILITY OF THE SERVICE. SO BOTH, DO THEY HAVE
9 ACCESS TO A PRIVATE VEHICLE OR DO THEY HAVE ACCESS TO A PUBLIC
10 TRANSPORTATION NETWORK IN THEIR CITY OR STATE?

11 Q AND ARE TRANSPORTATION BURDENS SOMETHING THAT
12 SOCIOLOGISTS TYPICALLY CONSIDER?

13 A YES, IT'S ONE OF -- IT'S ONE OF THE AREAS WITHIN
14 SOCIOLOGY OF POVERTY. IT'S A FREQUENT CONVERSATION IN THIS
15 FIELD.

16 Q AND WHAT METHODOLOGY DID YOU USE TO STUDY THE
17 TRANSPORTATION BURDENS FOR THE DIFFERENT SCENARIOS THAT YOU
18 LOOKED AT?

19 A SO, AGAIN, I USED PUBLICLY AVAILABLE DATA, I USED
20 INTERNET MAPPING AND THEN I ALSO USED THE LITERATURE THAT'S
21 AVAILABLE IN THE FIELD ABOUT TRANSPORTATION SERVICES.

22 Q HOW DID YOU DETERMINE WHAT THE PUBLIC TRANSPORTATION
23 OPTIONS WERE FOR EACH SCENARIO?

24 A SO I USED GOOGLE AND I USED INTERNET SEARCH ENGINES
25 TRYING TO FIGURE OUT WHAT LOCAL TRANSPORTATION WAS IN THE NEW

1 ORLEANS AREA, IN THE SHREVEPORT/BOSSIER CITY AREA, IN ADDITION
2 TO WHAT INTRASTATE BUS SERVICES OR RAIL SERVICE WAS AVAILABLE.

3 Q AND HOW DID YOU ASSESS THE COST OF DRIVING FOR THOSE
4 WHO HAVE ACCESS TO A VEHICLE?

5 A SO I USED THE AMERICAN AUTOMOBILE ASSOCIATION'S FUEL
6 GAUGE REPORTS ABOUT THE AVERAGE AGE OF CARS AND HOW MUCH --
7 LIKE THE MILE PER GALLON FUEL EFFICIENCY THAT CARS WOULD GET
8 AND THEN I USED GOOGLE MAPS TO DETERMINE THE DISTANCES.

9 Q AND ARE THERE ANY OTHER TRANSPORTATION RELATED COSTS
10 THAT INCREASED DISTANCES WOULD IMPOSE ON LOW-INCOME WOMEN THAT
11 YOU DID NOT SPECIFICALLY ACCOUNT FOR?

12 A YES. SO THERE'S A COUPLE. I DIDN'T ACCOUNT FOR ANY
13 OF THE WAITING TIMES. SO IF A WOMEN HAS AN APPOINTMENT IN THE
14 CITY THAT'S NOT HER OWN AND SHE HAS TO TRAVEL TO THE
15 APPOINTMENT, THE WAITING TIME BETWEEN WHEN MAYBE THE BUS WOULD
16 ARRIVE AND WHEN HER APPOINTMENT TIME IS, THE APPOINTMENT TIME,
17 THE RECOVERY TIME AND THEN THE WAITING TIME FOR THE NEXT
18 AVAILABLE BUS BACK TO HER CITY.

19 SO SHE MIGHT HAVE AN APPOINTMENT AT SOME POINT IN
20 THE DAY AND THEN NOT BE ABLE TO GET THE LAST BUS BACK TO HER
21 CITY OR MISS THE LAST BUS AND SO SHE MIGHT HAVE TO SPEND THE
22 NIGHT. SO THAT WAITING TIME ISN'T ACCOUNTED.

23 THE OTHER PIECE OF IT THAT I DIDN'T ACCOUNT, IS IF
24 SHE HAS TO MAKE MULTIPLE TRIPS. THE SCENARIOS ARE FOR ONE
25 TRIP, BUT BECAUSE OF LOUISIANA'S 24-HOUR COUNSELING AND THEN

1 WAITING PERIOD BEFORE THE PROCEDURE, I DIDN'T ACCOUNT FOR
2 MULTIPLE TRIPS OR IF SOMEONE HAS TO ACCOMPANY HER TO THE
3 PROCEDURE.

4 Q WHAT OTHER TYPES OF BURDENS DID YOU EVALUATE ASIDE
5 FROM THESE TRANSPORTATION RELATED BURDENS FOR WOMEN IN
6 ACCESSING CARE?

7 A SO I ALSO LOOKED AT SEVERAL OTHER BURDENS. ONE
8 WOULD BE IF SHE HAS TO STAY OVERNIGHT, IF SHE NEEDS A HOTEL
9 ROOM, SO THAT COST. THE BURDEN OF NEEDING TIME OFF OF WORK TO
10 TRAVEL IN ORDER TO GET THE PROCEDURE AND THE WAITING TIME, SO
11 ADDITIONAL, A DAY OR TWO OFF OF WORK, PAID OR UNPAID AND CHILD
12 CARE AND THEN ALSO THE SOCIAL PSYCHOLOGICAL STRESS OF
13 TRAVELING.

14 Q WE'RE GOING TO TAKE THESE ONE BY ONE. WHY DID YOU
15 INCLUDE THE HOTEL COSTS IN YOUR ANALYSIS?

16 A BECAUSE OF THE 24-HOUR WAITING PERIOD IT SEEMS THAT
17 IF A WOMAN IS TRAVELING TO A CITY THAT'S NOT HER OWN, SHE MAY
18 NEED TO HAVE A HOTEL ROOM TO GET THE COUNSELING ON ONE DAY AND
19 THEN THE PROCEDURE 24-HOURS LATER.

20 Q AND DO SOCIOLOGISTS TYPICALLY CONSIDER HOTEL COSTS?

21 A THEY MAY NOT TYPICALLY CONSIDER IT, BUT IN A
22 SCENARIO SUCH AS THIS, YES, THEY WOULD NEED TO CONSIDER IT.
23 THE FIELD RECOGNIZES THAT WHEN YOU'RE TRAVELING A DISTANCE IN
24 ORDER TO ACCESS A HEALTH SERVICE, THAT OFTENTIMES EITHER
25 PATIENTS OR THEIR FAMILIES NEED TO STAY OVERNIGHT.

1 AND MANY OF US KNOW THIS, THERE'S OFTEN LIKE
2 COMMUNITY ORGANIZATIONS, LIKE THE RONALD MCDONALD HOUSE OR
3 SOMETHING, OR LOCAL HOTELS DONATE ROOMS SOMETIMES FOR CANCER
4 PATIENTS. BUT IN THIS INSTANCE, IT SEEMS THAT A WOMAN WOULD
5 BE PAYING OUT-OF-POCKET FOR IT.

6 **Q** AND WHAT METHODOLOGY DID YOU USE TO STUDY HOTEL
7 COSTS?

8 **A** SO I USED A COMMON TRAVEL INTERNET WEBSITE EXPEDIA
9 TO LOOK AT THE HOTEL COSTS. MY CONCERN WITH THAT METHODOLOGY
10 IS THAT I WAS JUST LOOKING AT AN AVERAGE HOTEL COST. IS THAT
11 LOW-INCOME WOMEN HAVE LOWER RATES OF ACCESS TO THE INTERNET
12 THAN OTHER POPULATIONS DO AND ALSO LOW-INCOME WOMEN MAY NOT
13 HAVE A CREDIT CARD IN ORDER TO BOOK A HOTEL ROOM AHEAD OF
14 TIME. AND SO I THINK THAT MY HOTEL COSTS MAY BE LOWER THAN
15 WHAT A WOMAN PAY FOR A HOTEL ROOM GIVEN THAT YOU CAN USUALLY
16 GET A BETTER RATE ON-LINE AHEAD OF TIME THAN YOU CAN AS A
17 WALK-UP RATE.

18 **Q** AND WHY DID YOU INCLUDE THE COST OF TIME AWAY FROM
19 WORK OR LOST WAGES IN YOUR ANALYSIS?

20 **A** SO I INCLUDED TIME AWAY FROM WORK AND LOST WAGES
21 BECAUSE WE KNOW THAT APPROXIMATELY 40 PERCENT OF LOW-INCOME
22 WORKING PARENTS DON'T HAVE ANY ACCESS TO PAID TIME OFF OF
23 WORK. AND SO IF YOU ARE TAKING TIME OFF OF WORK, IT'S NOT
24 LIKE MANY MIDDLE CLASS JOBS WHERE YOU HAVE PAID SICK LEAVE OR
25 PAID TIME AWAY, YOU WILL BE TAKING TIME OFF OF WORK AND THAT

1 WILL REDUCE THE AMOUNT OF MONEY YOU'RE ABLE TO BRING HOME AT
2 THE END OF THE WEEK OR AT THE END OF THE MONTH. SO TAKING ONE
3 DAY OR TWO DAYS OFF OF WORK WILL REDUCE HER MONTHLY INCOME.

4 **Q** AND DOES TAKING TIME OFF OF WORK HAVE ANY
5 RELATIONSHIP TO A LOW-INCOME WOMAN'S ABILITY TO RETAIN THAT
6 POSITION?

7 **A** YES. LOW-INCOME WOMEN WORK IN JOBS THAT IT IS VERY
8 DIFFICULT TO REQUEST SCHEDULES, AND SO LOW-INCOME WOMEN WORK
9 IN POSITIONS THAT TAKING ANY TIME OFF OF WORK AND REQUESTING A
10 SPECIFIC SCHEDULE WILL RISK THEIR JOB. SO YOU -- FOR
11 LOW-INCOME WOMEN THEY TALK ABOUT THAT THEY HAVE TO OFTEN
12 DISCLOSE WHY THEY'RE TAKING TIME OFF OF WORK TO THEIR EMPLOYER
13 AND THAT THEY'RE UNABLE TO GET MAYBE TWO DAYS OFF IN A ROW.

14 THE POSITIONS IN THE FIELDS THAT THEY WORK IN ARE
15 NOT OCCUPATIONS OR JOBS THAT YOU CAN PUT TWO DAYS TOGETHER OFF
16 OF WORK. AND SO THAT IF YOU'RE REQUESTING TWO DAYS TOGETHER
17 OFF OF WORK YOU COULD RISK LOSING YOUR JOB.

18 **THE COURT:** CAN I INTERRUPT JUST ONE SECOND? DO YOU
19 HAVE ANY IDEA OF HOW MUCH LONGER YOUR DIRECT IS GOING TO BE,
20 ROUGHLY?

21 **MS. LEVINE:** MAYBE 20 TO 30 MINUTES.

22 **THE COURT:** I THINK THIS IS A GOOD TIME TO TAKE A
23 LUNCH BREAK. IT'S 12:15 BY MY CLOCK. LET'S GET BACK TOGETHER
24 AT 1:30.

25 **(WHEREUPON COURT WAS IN RECESS.)**

1 (WHEREUPON COURT RESUMED AND ALL PARTIES WERE PRESENT.)

2 THE COURT: BE SEATED. OKAY, LET'S GET OUR WITNESS
3 BACK UP ON THE STAND.

4 ALL RIGHT. DR. KATZ, YOU'RE STILL UNDER OATH.
5 DIRECT

6 BY MS. LEVINE:

7 Q DR. KATZ, YOU WERE JUST SPEAKING ABOUT THE REASONS
8 FOR INCLUDING TIME AWAY FROM WORK AND LOST WAGES IN YOUR
9 ANALYSIS. DO SOCIOLOGISTS TYPICALLY CONSIDER THE COST OF LOST
10 WAGES AND TIME AWAY FROM WORK?

11 A YES. THIS IS A WIDELY RESEARCHED PART OF SOCIOLOGY
12 OF POVERTY AND INEQUALITY BECAUSE OF THE CONDITIONS OF LOW
13 WAGED WORKERS AND HOW THAT'S DIFFERENT THAN MIDDLE INCOME
14 WORKERS, SO THIS IS A CHIEF CONCERN IN THIS AREA OF RESEARCH.

15 Q WHAT METHODOLOGY DID YOU USE TO STUDY THE COST OF
16 TIME AWAY FROM WORK?

17 A SO I LOOKED AT COMMON OCCUPATIONS FOR LOW-INCOME
18 WORKERS AND I DIDN'T USE THE FEDERAL MINIMUM WAGE, INSTEAD I
19 USED A COMMON OCCUPATION. AND THEN I USED THE BUREAU OF LABOR
20 STATISTICS' WAGE DATA FOR THAT OCCUPATION IN LOUISIANA.

21 Q AND WHAT OCCUPATION DID YOU SELECT?

22 A I LOOKED AT A SERVER, BEING LIKE A SERVER IN A
23 RESTAURANT.

24 Q AND WHY DID YOU CHOOSE THAT?

25 A BECAUSE FOR LOW-INCOME WOMEN WORKING IN SERVICE

1 JOBS, SUCH AS RETAIL OR SERVING IN RESTAURANTS IS A COMMONLY
2 HELD POSITION.

3 Q AND WHY DID YOU INCLUDE THE COST OF CHILD CARE IN
4 YOUR ANALYSIS?

5 A SO I INCLUDED THE COST OF CHILD CARE IN MY ANALYSIS
6 BECAUSE THIS IS ONE OF THE CHIEF CONCERNS FOR LOW-INCOME
7 WOMEN, IS HAVING SOMEWHERE THAT THEY CAN TAKE THEIR CHILDREN
8 THAT THEY CAN AFFORD, THAT IS ACCESSIBLE TO THEM, AND IS ALSO
9 THAT THEY CAN TRUST. SO IT'S BOTH THE COST, BUT IT'S ALSO
10 FINDING SOMEWHERE THAT IS RELIABLE AND THAT THEY CAN TRUST.

11 Q AND IS THERE ANY DATA WITH REGARD TO THE POPULATION
12 OF WOMEN SEEKING ABORTIONS AND HAVING HAD CHILDREN PREVIOUSLY?

13 A YES. AND CAN I OPEN BACK UP TO MY REPORT?

14 Q LET US KNOW WHERE YOU ARE LOOKING.

15 A IS IT BINDER 3, 124? IS THAT --

16 Q THAT'S CORRECT.

17 A LET ME FIND BINDER 3. NOPE. HOLD ON. IT'S THE
18 FOURTH BINDER I PICKED UP OF COURSE. SO CAN YOU REPEAT THE
19 QUESTION, PLEASE?

20 Q SURE. IF THERE IS INFORMATION ABOUT ANY
21 RELATIONSHIP BETWEEN THE POPULATION OF WOMEN WHO ARE SEEKING
22 ABORTIONS AND HAVING PREVIOUSLY HAD A CHILD?

23 A YES. SO NATIONALLY -- SO NATIONALLY WE KNOW, I'M ON
24 PAGE 19, THAT MORE THAN HALF OF WOMEN WHO OBTAINED ABORTIONS
25 HAD AT LEAST ONE CHILD, AND I KNOW THAT FROM THE *ROBERTS* '

1 STUDY, THAT WITHIN LOUISIANA, THAT THAT NUMBER IS MUCH HIGHER.
2 IT'S MUCH CLOSER TO THREE-QUARTERS.

3 Q AND DO SOCIOLOGISTS TYPICALLY CONSIDER THE COST OF
4 CHILD CARE?

5 A YES. CHILD CARE, AGAIN, JUST LIKE TRANSPORTATION,
6 JUST LIKE TIME AWAY FROM WORK, IS A CHIEF CONCERN. IT'S A
7 PRIMARY AREA OF RESEARCH AMONG SOCIOLOGISTS WHO STUDY GENDER
8 AND POVERTY.

9 Q WHAT METHODOLOGY DID YOU USE TO STUDY CHILD CARE
10 COSTS?

11 A SO FOR CHILD CARE COSTS, THE COSTS VARY WIDELY
12 ACCORDING TO WHAT AGE THE CHILD IS AND SO WHAT I RELIED ON WAS
13 THE PREVIOUS RESEARCH IN THIS FIELD AND MY OWN RESEARCH
14 INSTEAD OF GIVING A NUMERIC VALUE.

15 Q WHY DID YOU INCLUDE SOCIAL PSYCHOLOGICAL HURDLES IN
16 YOUR ANALYSIS?

17 A BECAUSE THIS AREA OF RESEARCH IS A WELL-KNOWN AND
18 ALSO GROWING VERY RAPIDLY AREA OF RESEARCH WITHIN SOCIOLOGY
19 ABOUT THE SOCIAL PSYCHOLOGICAL FACTORS OF BEING LOW-INCOME,
20 THE ADDITIONAL STRESS THAT IT CAUSES IN PEOPLE'S LIVES.

21 AND ONE OF THE SOURCES THAT I USED, THE JUDITH
22 LEVINE'S, *AIN'T NO TRUST* BOOK, SHE REALLY LOOKS AT THE SOCIAL
23 PSYCHOLOGY OF POVERTY. SO I THINK THAT GIVEN THIS AREA'S
24 PREVALENCE, ESPECIALLY FOR LOW-INCOME WOMEN, I FELT LIKE IT
25 WAS AN IMPORTANT FACTOR IN THE ANALYSIS.

1 Q WHAT METHODOLOGY DID YOU USE TO STUDY SOCIAL
2 PSYCHOLOGICAL HURDLES?

3 A SO I RELIED ON THE EXISTING RESEARCH IN THE FIELD IN
4 THIS AREA.

5 Q I'D NOW LIKE TO GET INTO SOME DETAIL ABOUT THESE
6 BURDENS THAT YOU STUDIED.

7 A YES.

8 Q IF YOU LOOK IN BINDER 3 AT JOINT EXHIBIT 92, AND
9 THIS IS PUBLIC SO WE CAN PUT IT ON THE SCREEN.

10 A YES.

11 Q SO SPEAKING FIRST ABOUT WOMEN WITH ACCESS TO A CAR.
12 COULD YOU SUMMARIZE THE PRICE RANGE FOR TRAVEL BETWEEN BATON
13 ROUGE AND METAIRIE?

14 A FOR WOMEN WITH A CAR?

15 Q WITHOUT ACCESS --

16 A WITHOUT ACCESS TO A CAR. SO THE PRICE RANGE TO
17 TRAVEL FROM BATON ROUGE TO METAIRIE FOR WOMEN WITHOUT A CAR
18 WOULD RANGE FROM ABOUT \$15 TO ABOUT \$117.

19 Q AND WHAT ACCOUNTS FOR THAT SPAN OR THAT RANGE?

20 A SURE. SO TWO THINGS -- PRIMARY THINGS THAT COUNT
21 FOR THAT RANGE. THE FIRST ONE IS THE COST OF THE GREYHOUND
22 BUS TICKET. GREYHOUND BUS TICKETS VARY IN COST PRETTY WIDELY
23 ACCORDING TO IF YOU CAN BUY THE TICKET EITHER THREE DAYS OR
24 SEVEN DAYS IN ADVANCE, AND WHETHER YOU CAN BUY IT ON-LINE WITH
25 A CREDIT CARD OR WHETHER YOU WALK UP TO THE STATION AND BUY

1 THE TICKET IN-PERSON. SO FROM THE GREYHOUND WEBSITE I WAS
2 ABLE TO SEE THAT THE PRICE RANGED FROM \$12 TO ABOUT 55 AND A
3 HALF DOLLARS.

4 THE OTHER MAIN VARIATION IN THE COST IS WHETHER A
5 WOMAN, ONCE SHE GETS TO THE CITY SHE'S TRAVELING TO, WHICH IS
6 METAIRIE, THE GREYHOUND STATIONS IN NEW ORLEANS, SHE WOULD
7 THEN EITHER TAKE THE PUBLIC TRANSPORTATION, THE NEW ORLEANS
8 REGIONAL TRANSIT, FROM THE GREYHOUND BUS STATION TO THE CLINIC
9 OR SHE WOULD TAKE A TAXI. SO THE TAXI IS THE MUCH MORE
10 EXPENSIVE OPTION, BUT I'VE INCLUDED BOTH IN THE ANALYSIS.

11 Q HOW MUCH TIME WOULD IT TAKE TO COMPLETE THIS
12 JOURNEY?

13 A SO THE JOURNEY WOULD TAKE AT A MINIMUM OF ABOUT FOUR
14 HOURS AND THAT'S IF SHE'S TAKING THE MORE EXPENSIVE TAXI. IF
15 SHE TAKES THE CHEAPER OPTION OF TAKING THE BUS, FROM THE
16 GREYHOUND BUS STATION TO THE CLINIC AND THEN BACK AGAIN, IT'LL
17 TAKE A MINIMUM OF SIX HOURS.

18 Q AND THESE FIGURES ARE FOR ONE ROUND TRIP?

19 A ONE ROUND TRIP, BUT NOT INCLUDING ANY WAITING TIME
20 THAT SHE HAS TO WAIT FOR, SAY, THE NEXT BUS OR FOR HER
21 APPOINTMENT OR TO MAKE SURE THAT SHE GETS TO THE CLINIC IN
22 TIME BEFORE HER APPOINTMENT, RECOVERY TIME, ET CETERA. JUST
23 THE TRANSIT TIME.

24 Q PLEASE NOW LOOK AT JOINT EXHIBIT 94.

25 A YES.

1 Q COULD YOU SUMMARIZE THE PRICE RANGE FOR TRAVEL
2 BETWEEN BOSSIER CITY AND NEW ORLEANS?

3 A IT'S BETWEEN \$95 AND 183 AND A HALF DOLLARS.

4 Q AND DO THE SAME FACTORS THAT YOU JUST MENTIONED
5 ACCOUNT FOR THIS RANGE AS WELL?

6 A YES, THEY DO.

7 Q AND HOW MUCH TIME DO YOU ESTIMATE IT WOULD TAKE TO
8 COMPLETE THIS JOURNEY?

9 A THIS IS A MUCH LONGER JOURNEY. BY BUS IT WOULD TAKE
10 BETWEEN 15 AND A HALF HOURS TO, YOU KNOW, MORE THAN 16 HOURS
11 IF YOU'RE TAKING THE REGIONAL TRANSIT IN SHREVEPORT OR BOSSIER
12 CITY.

13 Q AND FOR WOMEN WHO DO HAVE ACCESS TO A CAR, HOW DID
14 YOU EVALUATE THE TRAVEL BURDENS FOR THOSE DIFFERENT SCENARIOS?

15 A SO I LOOKED AT THE MILEAGE BETWEEN THE CITY THAT THE
16 SERVICE HAD BEEN AVAILABLE IN AND THE SERVICE -- IN THE CITY
17 THAT THE CLINIC IN MY SCENARIOS WOULD BE IN. SO THE MILEAGE
18 AND THE COST OF GAS.

19 Q IF YOU COULD LOOK AT JOINT EXHIBIT 95, IT'S IN THE
20 SAME BINDER. WHAT WERE THE DRIVING TIMES AND COSTS YOU
21 CALCULATED FOR TRAVEL BETWEEN BATON ROUGE AND METAIRIE?

22 A SO BETWEEN BATON ROUGE AND METAIRIE, IT'S ABOUT
23 153 MILES ROUND TRIP. TWO HOURS AND 30 MINUTES IS MY ESTIMATE
24 FOR TIME AND THE ESTIMATED COST OF CAN GAS IS RIGHT AROUND
25 \$20.

1 Q AND GOING DOWN TO THE TRIP BETWEEN BOSSIER CITY AND
2 NEW ORLEANS, WHAT WERE YOUR DRIVING TIMES AND COSTS?

3 A MY ESTIMATE IS ROUND TRIP WOULD BE ABOUT 658 MILES,
4 A TEN HOUR DRIVING JOURNEY AND 85, \$86 IN GAS.

5 Q IN ADDITION TO THE FINANCIAL COSTS OF TRANSPORTATION
6 YOU HAD ALSO IDENTIFIED OTHER COSTS INCLUDING, HOTEL ROOM,
7 LOST WAGES AND CHILD CARE; CORRECT?

8 A YES.

9 Q WHAT DID YOU DETERMINE WAS THE HOTEL COST FOR
10 METAIRIE?

11 A SO I'M FLIPPING BACK TO MY EXPERT REPORT ON PAGE --
12 MY ESTIMATE FOR HOTEL COSTS IN METAIRIE IS APPROXIMATELY \$130
13 A NIGHT.

14 Q AND WHAT PAGE DID YOU SAY?

15 A OH, SORRY. PAGE 18.

16 Q AND DID YOU CALCULATE THE AMOUNT IN DOLLARS THAT A
17 WOMAN WOULD LOSE IF SHE WERE TO MISS ONE DAY OF WORK UNDER
18 YOUR METHODOLOGY?

19 A YES, I DID. I ESTIMATED THAT IF SHE'S MAKING THE
20 MEAN WAGE FOR SERVERS IN BATON ROUGE OF 8.85 AN HOUR, THAT SHE
21 WOULD LOSE, IF SHE LOST TWO EXTRA DAYS OF WORK, THAT SHE WOULD
22 LOSE ABOUT \$141 IN LOST WAGES.

23 Q SO THAT'S FOR TWO SHIFTS?

24 A TWO, EIGHT HOUR SHIFTS.

25 Q HOW WOULD IT AFFECT YOUR ANALYSIS IF THERE WERE

1 FEWER DOCTORS AVAILABLE IN NEW ORLEANS PROVIDING SERVICES?

2 A IN TERMS -- I DON'T THINK IT WOULD AFFECT MY
3 ANALYSIS. I THINK THAT WHAT IS LIKELY TO HAPPEN IS THAT IT
4 WOULD BE HARDER FOR A WOMAN TO BE ABLE TO GET TIME OFF OF
5 WORK. IT WOULD BE HARDER FOR HER TO GET AN APPOINTMENT AND
6 THEN AN APPOINTMENT THAT ALSO WORKS WITH HER WORK SCHEDULE OR
7 HER CHILD CARE ARRANGEMENTS. AND SO I THINK THAT THEN IT
8 WOULD MAKE IT EITHER MORE COSTLY OR MORE BURDENSOME IF THERE
9 WERE FEWER PROVIDERS.

10 Q WHAT OPTIONS DOES A LOW-INCOME WOMAN HAVE IF SHE CAN
11 NOT AFFORD THE COSTS ASSOCIATED WITH TRAVELING TO GET AN
12 ABORTION?

13 A SO A LOW-INCOME WOMAN FROM MY OWN RESEARCH FROM THE
14 EXISTING RESEARCH IN THE FIELD HAS THREE MAIN OPTIONS THAT
15 COMES UP OVER AND OVER AGAIN IF SHE CANNOT AFFORD TO -- FOR AN
16 UNEXPECTED EXPENSE. AND THOSE THREE OPTIONS: ONE, IS TO CUT
17 BACK IN OTHER AREAS IN HER LIFE. AND SO SHE MAY CUT BACK ON A
18 UTILITY, NOT PAY HER ELECTRIC BILL OR HER WATER BILL, MAYBE
19 CUT BACK ON THE AMOUNT OF MONEY SHE'S ABLE TO PAY IN RENT THAT
20 MONTH, OR EVEN NOT BE ABLE TO PAY RENT THAT MONTH, WHICH RISKS
21 EVICTION. LOW-INCOME FAMILIES DON'T LIVE IN HOUSING THAT IF
22 YOU MISS A RENT PAYMENT THAT THEY'RE GOING TO BE VERY LENIENT
23 ABOUT IT.

24 THE OTHER AREA WOULD BE HER FOOD EXPENSES, THAT THEY
25 WOULD CUT BACK SIGNIFICANTLY ON THE FOOD IN THE HOUSEHOLD OR

1 GET TO THE END OF THE MONTH BETWEEN HER LOST WAGES AND THE
2 MONEY SHE SPENT ON TRAVEL AND NOT HAVE ENOUGH FOOD FOR HER
3 FAMILY.

4 ANOTHER MAIN AREA THAT LOW-INCOME WOMEN USE WHEN
5 THERE'S UNEXPECTED EXPENSES, IS PAYDAY AND PREDATORY LOANS AND
6 SO A LOT OF US SEE THE CASH EXPRESS AND THINGS LIKE THAT. SO
7 SHE MAY BORROW A COUPLE HUNDRED DOLLARS AND HAVE TO PAY IT
8 BACK AT THE END OF THE MONTH, BUT THESE ARE AT INCREDIBLY HIGH
9 INTEREST RATES AND THAT'S IF SHE CAN PAY IT BACK AT THE END OF
10 THE MONTH, IF NOT THE INTEREST RATES KEEP BUILDING.

11 THE THIRD AREA IS MUCH MORE PROBLEMATIC. LOW-INCOME
12 WOMEN OFTEN TALK ABOUT THAT WHEN THEY CAN'T MEET ALL OF THEIR
13 BILLS OR WHEN THEY HAVE AN UNEXPECTED EXPENSE THAT THEY TRY TO
14 LOAN -- THEY TRY TO BORROW THE MONEY FROM EITHER A FAMILY
15 MEMBER OR A BOYFRIEND OR AN INTIMATE PARTNER OR AN
16 EX-BOYFRIEND AND THAT'S VERY DANGEROUS GIVEN THE HIGH RATES OF
17 DOMESTIC VIOLENCE AMONG LOW-INCOME WOMEN. AND THAT AREA IS --
18 HAS SHOWN UP OVER AND OVER AND OVER AGAIN IN THE RESEARCH,
19 THAT LOW-INCOME WOMEN TURN TO BORROWING MONEY FROM PARTNERS OR
20 EX-BOYFRIENDS, BUT THAT REALLY HAS GREAT RISKS FOR HER SAFETY.

21 Q CAN YOU EXPLAIN THE SOCIAL PSYCHOLOGICAL BARRIERS
22 YOU MENTIONED THAT WOMEN FACE IN TRAVELING TO ACCESS ABORTION
23 SERVICES?

24 A YES. SO PART OF THE RESEARCH THAT I DO AND PART OF
25 THE RESEARCH IN THE FIELD LOOKS AT THE SOCIAL PSYCHOLOGY OF

1 POVERTY, THAT IF YOU'RE POOR HOW DO YOU EXPERIENCE -- HOW IS
2 YOUR EXPERIENCE OF LIFE MAYBE DIFFERENT THAN MIDDLE CLASS
3 FAMILIES AND HOW IS -- I TALKED ABOUT JUDITH LEVINE'S BOOK,
4 *AIN'T NO TRUST*, A COUPLE OF MINUTES AGO AND SHE EXPLORES HOW
5 TRUST OPERATES DIFFERENTLY FOR LOW-INCOME FAMILIES.

6 AND SO A LOW-INCOME WOMAN, HOW SHE TRUSTS, IS
7 DIFFERENT THAN HOW MAYBE A MIDDLE CLASS PERSON TRUSTS. SO
8 PART OF MY RESEARCH AND PART OF THE RESEARCH IN THE FIELD IS
9 ABOUT THE SOCIAL PSYCHOLOGY OF POVERTY AND ABOUT HOW EVERYDAY
10 EXPERIENCES, BECAUSE LOW-INCOME WOMEN'S LIVES ARE INCREDIBLY
11 PRECARIOUS AND VERY STRESS-FILLED ON A DAY-TO-DAY BASIS IN A
12 WAY THAT MIDDLE CLASS LIVES AND UPPER CLASS LIVES AREN'T, THAT
13 ADDITIONAL STRESSORS, EVEN AS A MIDDLE CLASS PERSON WE MIGHT
14 THINK THEM TO BE VERY MINOR, HAVE A BIG IMPACT ON THE SOCIAL
15 PSYCHOLOGY OF A LOW-INCOME PERSON.

16 Q AND WHAT KIND OF SOCIAL PSYCHOLOGICAL BARRIERS ARE
17 ASSOCIATED WITH TRAVEL TO ANOTHER PART OF THE STATE?

18 A SO TRAVEL IS SIMILAR IN THIS WAY THAT MANY MIDDLE
19 CLASS PEOPLE AND UPPER CLASS PEOPLE TRAVEL MORE IN THEIR
20 DAY-TO-DAY LIVES OR YOU KNOW, GO ON VACATIONS, TRAVEL FOR
21 WORK, MAYBE TRAVEL FOR FAMILY REASONS MORE THAN SOME
22 LOW-INCOME PEOPLE DO. BUT ALSO THE EXPERIENCE OF TRAVEL.
23 WHILE I MIGHT THINK IT'S EXCITING TO GO ON VACATION TO A NEW
24 SPOT, THAT THE STRESS ASSOCIATED WITH THAT IS -- CAN BE
25 DIFFERENT THAN THE STRESS THAT MIGHT BE ASSOCIATED WITH TRAVEL

1 FOR A LOW-INCOME WOMAN, WHO MIGHT NOT HAVE THE EXPERIENCES
2 TRAVELING THAT I MAYBE DO OR THAT ANOTHER MIDDLE CLASS PERSON
3 DOES.

4 Q DR. KATZ, WHAT WAS THE OVERALL CONCLUSION OF YOUR
5 ANALYSIS?

6 A SO THE OVERALL CONCLUSION OF MY ANALYSIS IS THAT FOR
7 A LOW-INCOME WOMAN THE ADDITIONAL COSTS AND OTHER BURDENS THAT
8 ARE ASSOCIATED WITH HAVING TO TRAVEL TO SEEK A SERVICE THAT
9 HAS BEEN AVAILABLE IN HER CITY ARE SIGNIFICANT. AND THAT IN
10 MY RESEARCH AND IN THE RESEARCH THAT EXIST IN THE FIELD, THAT
11 WE KNOW THAT WHEN SERVICES ARE FURTHER TO GET TO, THAT THAT
12 COST MORE MONEY THAT MANY LOW-INCOME FAMILIES DON'T HAVE AND
13 THAT IT PRODUCES ADDITIONAL STRESS IN THEIR LIFE THAT MIGHT BE
14 INSURMOUNTABLE.

15 Q CAN YOU QUANTIFY HOW MANY WOMEN WOULD BE AFFECTED BY
16 THESE BARRIERS?

17 A NO.

18 Q AND WHY IS THAT?

19 A I THINK THAT TO ME THESE BARRIERS WILL AFFECT SOME
20 OR MOST OF THE WOMEN, WHICH WOMEN WILL BE UNABLE TO ACCESS AN
21 ABORTION IF THE LAW IS IMPLEMENTED, I DON'T HAVE AN EXACT
22 NUMBER, BUT I KNOW FROM MY RESEARCH AND THE EXISTING RESEARCH
23 IN THE FIELD THAT MANY LOW-INCOME WOMEN WILL BE GREATLY
24 AFFECTED BY THIS.

25 Q AND ARE THE BARRIERS YOU STUDIED FREQUENTLY CITED IN

1 YOUR FIELD AS INSURMOUNTABLE OBSTACLES IN ACCESSING CARE?

2 A YES, THEY ARE.

3 Q WHY IS THAT?

4 A BECAUSE IT'S -- BECAUSE THERE ARE FOUR BARRIERS,
5 AMONG OTHER THINGS, THAT IN THE LIVES OF LOW-INCOME WOMEN,
6 WHICH ARE ALREADY VERY COMPLEX, DELICATE, PRECARIOUS LIVES,
7 AND SO WHILE ONE, OR ONE ASPECT OF ONE MIGHT BE MANAGEABLE,
8 THE -- LIKE ALL OF THE BARRIERS TOGETHER MAKES THE OVERALL
9 TRIP POSSIBLY INSURMOUNTABLE.

10 MS. LEVINE: THANK YOU, NO FURTHER QUESTIONS.

11 THE COURT: CROSS EXAMINATION?

12 MR. DUNCAN: ARE WE READY, YOUR HONOR?

13 THE COURT: WE'RE READY.

14 CROSS EXAMINATION

15 BY MR. DUNCAN:

16 Q GOOD AFTERNOON, DR. KATZ.

17 A GOOD AFTERNOON.

18 Q THANKS FOR BEING WITH US. MY NAME IS KYLE DUNCAN.

19 I AM THE ATTORNEY -- ONE OF THE ATTORNEYS FOR THE DEFENDANT IN
20 THIS MATTER, WHO IS KATHY KLIEBERT, THE SECRETARY OF THE
21 DEPARTMENT OF HEALTH AND HOSPITALS. I JUST WANT TO ASK YOU A
22 FEW QUESTIONS ABOUT YOUR EXPERT REPORT AND YOUR EXPERT
23 TESTIMONY HERE TODAY. CAN YOU HEAR ME OKAY?

24 A YES.

25 Q MY VOICE IS GOING IN AND OUT. DOCTOR, YOU'VE

1 TESTIFIED THAT YOUR PH.D IS IN SOCIOLOGY; CORRECT?

2 A YES.

3 Q SO YOU ARE NOT HERE OFFERING AN OPINION AS A
4 STATISTICIAN, ARE YOU?

5 A NO.

6 Q OR AS A DEMOGRAPHER, ARE YOU?

7 A NO.

8 Q OR AS A MEDICAL DOCTOR?

9 A NO.

10 Q NOW YOU'VE SUBMITTED AN EXPERT REPORT AND YOU'VE
11 GIVEN AN EXPERT OPINION IN THIS LITIGATION AS, AT LEAST
12 ACCORDING TO YOUR REPORT, AN EXPERT IN ISSUES FACING WOMEN
13 LIVING IN POVERTY IN THE UNITED STATES; IS THAT CORRECT?

14 A YES.

15 Q AND YOU'VE BEEN OFFERED AS AN EXPERT IN, IF I'M NOT
16 MISTAKEN, THE SOCIOLOGY OF GENDER IN POVERTY?

17 A YES.

18 Q YOU'VE BEEN RETAINED BY THE PLAINTIFFS TO PROVIDE
19 THIS OPINION; CORRECT?

20 A YES.

21 Q YOU'VE PROVIDED SIMILAR REPORTS AND OPINIONS IN
22 OTHER LITIGATION INVOLVING ADMITTING PRIVILEGES LOST; CORRECT?

23 A YES.

24 Q FOR EXAMPLE, YOU MENTIONED THE ALABAMA CASE?

25 A YES.

1 Q CAN YOU SPECIFY WHICH OTHER CASES YOU'VE PROVIDED
2 TESTIMONY IN?

3 A I'M SURE MY CV IS PART OF THE EVIDENCE. I'VE ALSO
4 WORKED ON A CASE -- I SUBMITTED A DECLARATION IN A CASE IN
5 OHIO AND I'VE SUBMITTED A DECLARATION IN A CASE IN FLORIDA.

6 Q AND BOTH OF THOSE INVOLVED ADMITTING PRIVILEGES
7 LOST?

8 A YES. I THINK THEY BOTH DID. I WOULD HAVE TO DOUBLE
9 CHECK.

10 Q OKAY. NOW TO THE EXTENT YOU REMEMBER, THE REPORTS
11 IN OTHER CASES THAT YOU'VE SUBMITTED THAT INVOLVED ADMITTING
12 PRIVILEGES LOST, HAVE THOSE REPORTS ALWAYS BEEN ON BEHALF OF
13 THE PLAINTIFFS IN THOSE CASES?

14 A I BELIEVE SO.

15 Q NOW, YOUR OPINION IN THIS LITIGATION, YOU'VE
16 TESTIFIED, CONCERNS WHETHER THE POVERTY OF WOMEN IN LOUISIANA
17 WILL IMPACT THEIR ABILITY TO TRAVEL TO OBTAIN AN ABORTION; IS
18 THAT ACCURATE?

19 A YES.

20 Q TO BE CLEAR, HOWEVER, YOU'RE NOT OFFERING ANY EXPERT
21 OPINION AS TO WHETHER THE ACT HERE, ACT 620, IS MEDICALLY
22 REASONABLE?

23 A NO.

24 Q AND YOU'RE NOT OFFERING AN OPINION ABOUT WHETHER ANY
25 PARTICULAR ABORTION PROVIDER IN LOUISIANA CAN OBTAIN ADMITTING

1 PRIVILEGES CAN YOU -- ARE YOU?

2 A NO.

3 Q YOU'RE NOT OFFERING AN OPINION ABOUT WHETHER ANY
4 PARTICULAR CLINIC WILL BE FORCED TO CLOSE, ARE YOU?

5 A NO.

6 Q DOCTOR, ARE YOU CURRENTLY AWARE OF WHICH ABORTION
7 PROVIDERS IN LOUISIANA HAVE ADMITTING PRIVILEGES AND WHICH DO
8 NOT?

9 A NO.

10 Q I'D LIKE TO ASK YOU SOME QUESTIONS ABOUT YOUR
11 METHODOLOGY. YOU'VE OFFERED A LOT OF TESTIMONY, YOU'VE BEEN
12 ASKED A NUMBER OF QUESTIONS ABOUT THE METHODOLOGY THAT YOU
13 TYPICALLY EMPLOY IN YOUR FIELD; RIGHT? NOW THE FIELDS IN
14 WHICH YOU HAVE CONDUCTED RESEARCH ARE POVERTY, WOMEN'S
15 ECONOMIC STATUS AND SOCIAL POLICIES AT THE STATE AND FEDERAL
16 LEVEL IN THE UNITED STATES, IS THAT CORRECT; ACCORDING TO YOUR
17 DECLARATION?

18 A YES.

19 Q NOW, YOU'VE DESCRIBED THIS RESEARCH THAT YOU DO IN
20 THESE FIELDS AS QUALITATIVE RESEARCH --

21 A YES.

22 Q -- IS THAT RIGHT? AND YOU'VE USED THAT TERM A
23 NUMBER OF TIMES TODAY, QUALITATIVE RESEARCH. THAT'S A FAIR
24 DESCRIPTION OF THE METHODS THAT YOU EMPLOY IN YOUR FIELD?

25 A YES.

1 **Q** QUALITATIVE RESEARCH IS DIFFERENT FROM QUANTITATIVE
2 RESEARCH, IS IT NOT?

3 **A** YES.

4 **Q** IS IT FAIR TO SAY THAT QUANTITATIVE RESEARCH IS
5 CONCERNED PRIMARILY WITH PRESENTING DATA, LIKE NUMBERS OR
6 MILES OR FIGURES IN GENERAL; IS THAT FAIR?

7 **A** YES.

8 **Q** BY CONTRAST, QUALITATIVE RESEARCH USES DATA IN A
9 DIFFERENT WAY; ISN'T THAT RIGHT?

10 **A** YES.

11 **Q** OKAY. WOULD YOU AGREE THAT QUALITATIVE RESEARCH,
12 THE KIND OF RESEARCH YOU DO, IS INTERESTED IN PEOPLE'S LIVED
13 EXPERIENCES, IN THEIR OWN WORDS, THROUGH IN-DEPTH,
14 INTERVIEWING, FOCUS GROUPS AND PARTICIPANT OBSERVATION?

15 **A** YES.

16 **Q** SO WHEN YOU DO QUALITATIVE RESEARCH ON WOMEN'S
17 POVERTY ISSUES, YOUR RESEARCH USES THINGS LIKE FOCUS GROUPS,
18 IN-DEPTH INTERVIEWS, PARTICIPANT OBSERVATION, SO THAT YOU CAN
19 QUALITATIVELY UNDERSTAND THE LIVED EXPERIENCES OF THE WOMEN
20 YOU STUDY; IS THAT FAIR?

21 **A** YES.

22 **Q** SO, FOR EXAMPLE, YOU MENTIONED SOME ONGOING RESEARCH
23 PROJECTS --

24 **A** YES.

25 **Q** -- EARLIER IN YOUR TESTIMONY? SO LET'S GO THROUGH

1 THOSE QUICKLY, OR NOT QUICKLY, LET'S JUST GO THROUGH THEM.
2 THE FIRST ONE YOU MENTIONED WAS WOMEN -- RESEARCH WITH RESPECT
3 TO LOW-INCOME WOMEN AND WELFARE IN THE SAN FRANCISCO BAY AREA;
4 RIGHT?

5 A YES.

6 Q OKAY. I'M SORRY, FORGIVE ME. I JUST -- ONE MORE
7 GENERAL QUESTION ABOUT YOUR QUALITATIVE RESEARCH AND THEN
8 WE'LL GO TO THE CALIFORNIA STUDY. ANOTHER TERM FOR THE KIND
9 OF RESEARCH THAT YOU DO IS ETHNOGRAPHIC; ISN'T THAT RIGHT?

10 A YES.

11 Q IS ETHNOGRAPHIC AND QUALITATIVE MORE OR LESS SORT OF
12 SIMILAR SYNONYMS?

13 A THEY'RE NOT SYNONYMS EXACTLY. ETHNOGRAPHIC RESEARCH
14 FALLS UNDER QUALITATIVE RESEARCH, BUT QUALITATIVE RESEARCH IS
15 THE BROADER LABEL.

16 Q I SEE, THANK YOU. SO BACK TO THE CALIFORNIA
17 RESEARCH THAT YOU WERE TALKING ABOUT. THAT'S LISTED IN YOUR
18 CV, AM I RIGHT, UNDER I THINK CAL. WORKS, IS THE LISTING ON
19 YOUR CV?

20 A YEAH, CAL. WORKS AND HIGHER EDUCATION STUDY.

21 Q I SEE. AND THAT'S THE CALIFORNIA STUDY WE WERE
22 TALKING ABOUT WITH RESPECT TO LOW-INCOME WOMEN AND WELFARE?

23 A YES.

24 Q IN ORDER TO DO THAT QUALITATIVE RESEARCH IN THE
25 CALIFORNIA STUDY, YOU SPENT TWO YEARS IN THE PARTICULAR AREAS

1 THAT YOU WERE STUDYING, DIDN'T YOU?

2 A NO.

3 Q DID YOU SPEND MORE THAN TWO YEARS?

4 A YES.

5 Q HOW MANY YEARS DID YOU SPEND?

6 A 2003 UNTIL 2011, BUT I'M DOING FOLLOW-UP INTERVIEWS
7 WITH THEM NOW, SO 10 YEARS, 11 YEARS.

8 Q OKAY, 10 YEARS. FINE. IN THAT STUDY IS IT TRUE
9 THAT YOU ACTUALLY TRAVELED WITH THE WOMEN YOU WERE STUDYING?

10 A YES.

11 Q AND YOU DID THAT, AM I RIGHT, IN ORDER TO FORMULATE
12 YOUR VIEWS ABOUT THE POTENTIAL BARRIERS THOSE WOMEN MIGHT FACE
13 FROM THEIR ECONOMIC DIFFICULTIES?

14 A YES.

15 Q I THINK YOU MENTIONED IN YOUR EARLIER ANSWERS ON
16 DIRECT THAT YOU DID INTERVIEWS IN 2006, 2008, 2011, YOU WERE
17 TALKING FACE-TO-FACE WITH THE WOMEN?

18 A YES.

19 Q BECAUSE THAT'S WHAT QUALITATIVE ETHNOGRAPHIC
20 RESEARCH IS ALL ABOUT?

21 A IN-PERSON, OVER THE PHONE, YES.

22 Q OVER THE PHONE TOO, RIGHT. BECAUSE YOU WANT TO
23 UNDERSTAND THEIR LIVED EXPERIENCE SO YOU CAN -- I'M SORRY. SO
24 YOU WANT TO UNDERSTAND THEIR LIVED EXPERIENCES, THAT'S THE
25 POINT?

1 **A** YES.

2 **Q** AND DOING THAT KIND OF ON THE GROUND RESEARCH WAS
3 IMPORTANT IN ORDER TO GET TO KNOW THE FIELD THAT YOU WERE
4 STUDYING; ISN'T THAT RIGHT?

5 **A** YES.

6 **Q** DO YOU KNOW THE NUMBER OF INTERVIEWS THAT YOU
7 CONDUCTED IN THAT STUDY BY ANY CHANCE?

8 **A** YES.

9 **Q** HOW MANY?

10 **A** I DID 45 IN 2006. I DID 25 IN 2008 AND I DID 35 IN
11 2011.

12 **Q** OKAY. THANK YOU. YOU MENTIONED TWO OTHER AREAS OF
13 ONGOING RESEARCH. I'LL PROBABLY GET THIS WRONG AND YOU CAN
14 CORRECT ME, BUT ONE OF THEM I BELIEVE INVOLVED STUDENTS AND
15 PARENTS WITH RESPECT TO COLLEGE EDUCATION?

16 **A** STUDENTS WHO ARE PARENTS.

17 **Q** STUDENTS WHO ARE PARENTS, SORRY.

18 **A** YES.

19 **Q** IS THAT ALSO AN AREA IN WHICH YOU DID THIS KIND OF
20 QUALITATIVE ETHNOGRAPHIC RESEARCH?

21 **A** IT'S A CURRENT PROJECT THAT I'M WORKING ON AND IT'S
22 PRIMARILY QUALITATIVE, THERE'S SIGNIFICANT MIXED METHODS IN
23 THIS PROJECT AS WELL.

24 **Q** I SEE. EXPLAIN TO ME THE DIFFERENCE THERE. YOU'RE
25 DOING SOME QUALITATIVE METHODS BUT THEN YOU'RE DOING SOME

1 OTHER KINDS OF METHODS; WHAT ARE THOSE?

2 A THE OTHER METHODS IN THIS PROJECT, AND IT'S A
3 PROJECT THAT WE'RE IN -- WE'RE DEVELOPING. BUT WE'LL BE
4 LOOKING AT GRADUATION RATES OF STUDENTS WHO ARE PARENTS,
5 PERCENTAGES. AND WE'RE LOOKING AT THE PROGRAMS AT DIFFERENT
6 COLLEGES AND UNIVERSITIES AND THE COMMUNITY PROGRAMS THAT HELP
7 STUDENTS WHO ARE PARENTS. SO WE'LL BE LOOKING AT SOME OF
8 THEIR INTERNAL DATA AS WELL, SOME OF IT IS QUANTITATIVE.

9 Q OKAY. SO SOME OF IT -- IN OTHER WORDS, SOME OF IT IS
10 QUANTITATIVE, SOME OF IT IS QUALITATIVE?

11 A YES.

12 Q THAT'S WHAT YOU MEAN BY MIXED METHODS?

13 A YES.

14 Q I GOT YOU. THE LAST ONE YOU MENTIONED WAS THE
15 AMERICAN DREAM PROJECT, IN WHICH YOU'RE WORKING ON A BOOK
16 CHAPTER ON LOW-INCOME FAMILIES?

17 A YES, SO I'M DIRECTING, I'M THE LEAD CO-EDITOR OF THE
18 PROJECT WITH TWO OTHER COLLEAGUES WHO ARE AT UNIVERSITIES IN
19 THE WEST AND WE'RE WRITING -- WE'RE CO-WRITING THE FIRST
20 CHAPTER AND THE LAST CHAPTER AND I'LL BE WRITING THE CHAPTER
21 ON LOW-INCOME FAMILIES AND THE AMERICAN DREAM.

22 Q I SEE. DOES THAT ALSO INVOLVE QUALITATIVE METHODS
23 OF STUDY?

24 A THAT CHAPTER WILL BE BOTH QUALITATIVE AND SLIGHTLY
25 MIXED METHODS AS WELL.

1 **Q** SO IN OTHER WORDS, SOME HARD DATA -- I'M SORRY, I
2 REMEMBER FROM YOUR DEPOSITION YOU DON'T LIKE THAT TERM.
3 WHAT'S A BETTER TERM THAN, "HARD DATA" TO DIFFERENTIATE THE
4 TWO?

5 **A** IT'S QUANTITATIVE OR NUMERICAL DATA IN ADDITION TO
6 THE QUALITATIVE INTERVIEW EXCERPTS.

7 **Q** OKAY. SO IT'S MIXED METHODS, SOME NUMERICAL, SOME
8 QUALITATIVE?

9 **A** YES.

10 **Q** GREAT. SO LET'S TURN TO YOUR OPINION IN THIS
11 LITIGATION AND TALK ABOUT YOUR METHODOLOGY. NOW, YOU'RE
12 OFFERING AN OPINION BASED ON THE POVERTY OF WOMEN IN
13 LOUISIANA; CORRECT?

14 **A** YES.

15 **Q** AND GENERALLY SPEAKING, IS IT FAIR TO SAY YOUR
16 OPINION CONCERNS WHETHER THE POVERTY OF WOMEN IN LOUISIANA
17 PRESENTS A BARRIER TO THEIR ABILITY TO TRAVEL TO ACCESS
18 ABORTION SERVICES?

19 **A** YES.

20 **Q** IN ARRIVING AT YOUR OPINION IN THIS CASE, DID YOU
21 CONDUCT FOCUS GROUPS WITH LOUISIANA WOMEN IN ANY PARTICULAR
22 PART OF THE STATE?

23 **A** NO.

24 **Q** DID YOU CONDUCT ANY FOCUS GROUPS WITH LOUISIANA
25 WOMEN WHO HAD HAD ABORTIONS?

1 A NO.

2 Q DID YOU CONDUCT ANY FOCUS GROUPS WITH WOMEN WHO
3 MIGHT BE CONSIDERING HAVING AN ABORTION, BUT WHO WERE
4 CONCERNED ABOUT THE POTENTIAL BARRIERS?

5 A NO.

6 Q SO YOU DID NOT CONDUCT ANY FOCUS GROUPS AT ALL WITH
7 ANY LOUISIANA WOMEN?

8 A NO, NOT IN THIS PROJECT.

9 Q YOU DID MENTION, HOWEVER, THAT YOU DID SOME WORK
10 WITH LOUISIANA WOMEN POST KATRINA?

11 A YES.

12 Q RIGHT. WAS THAT A QUALITATIVE STUDY?

13 A SO THAT WORK WAS IN THE -- AS PART OF THE WORK THAT
14 I WAS DOING WITH THE COMMUNITY ORGANIZATION THAT I WAS DOING
15 MY DISSERTATION WORK WITH. IT WAS --

16 Q I'M SORRY, WHAT COMMUNITY ORGANIZATION WAS THAT?

17 A THE ORGANIZATION IS CALLED, LIFETIME. IT'S
18 LOW-INCOME FAMILIES EMPOWERMENT THROUGH EDUCATION.

19 Q SURE. I'M, SORRY. GO AHEAD.

20 A AND THAT WORK WAS SORT OF THE EARLY PART OF THE
21 WORK. THEY WERE TRYING TO FIGURE OUT -- THE LIFETIME HAD
22 GOTTEN A GRANT TO WORK WITH SOME YOUNGER NON-PROFIT -- THEY
23 WEREN'T FORMALLY ORGANIZED INTO NON-PROFIT STATUS YET, SO SOME
24 COMMUNITY GROUPS OF WOMEN IN THREE CITIES ALONG THE GULF
25 COAST, TO UNDERSTAND THEIR EXPERIENCES POST KATRINA, AND TO

1 SEE LIKE WHAT THEY NEEDED IN ORDER TO EITHER FORM AN
2 ORGANIZATION OR TO DO RESEARCH. SO IT WAS VERY PRELIMINARY
3 WORK, TRYING TO UNDERSTAND THEIR EXPERIENCES.

4 Q I SEE. THEIR EXPERIENCE IN ORGANIZING, COMMUNITY
5 ORGANIZING?

6 A NO, THEIR EXPERIENCES IN POVERTY, THEIR EXPENSES
7 POST KATRINA AFTER THE STORM, SO THEIR EXPERIENCES IN THEIR
8 COMMUNITY. WHY SOME OF THEM EVACUATED. WHY SOME OF THEM
9 DIDN'T.

10 Q DID IT INVOLVE FOCUS GROUPS WITH THOSE WOMEN?

11 A IT INVOLVED MANY IN-DEPTH CONVERSATIONS ON
12 CONFERENCE CALLS. IT WAS TOO PRELIMINARY TO CALL IT FOCUS
13 GROUPS, BUT THERE WAS A SERIES OF CONFERENCE CALLS OVER ABOUT
14 SIX MONTHS, IN WHICH ALL OF THE ORGANIZATIONS TALKED ABOUT THE
15 ISSUES TOGETHER.

16 Q AND WITH THE WOMEN WHO WERE THE SUBJECT OF THE
17 STUDY --

18 A YES.

19 Q -- I GATHER, ON THE CONFERENCE CALLS?

20 A YES. FROM ALL THREE CITIES AND FROM THE
21 ORGANIZATION THAT I WORKED WITH.

22 Q SO THIS WAS A WAY OF DOING THAT KIND OF, NOT
23 FACE-TO-FACE, BUT THAT KIND OF IN-DEPTH INTERVIEW AND TO
24 UNDERSTAND THE LIVED EXPERIENCE OF THESE WOMEN --

25 A YES.

1 **Q** -- RIGHT? OKAY. SO IN FORMULATING -- LET'S TURN
2 BACK TO THIS CASE. IN FORMULATING YOUR OPINION IN THIS CASE,
3 DID YOU CONDUCT INTERVIEWS WITH LOUISIANA WOMEN IN ANY
4 PARTICULAR PARTS OF THE STATE?

5 **A** NO.

6 **Q** DID YOU CONDUCT INTERVIEWS -- WELL, DID YOU CONDUCT
7 ANY CONFERENCE CALLS WITH LOUISIANA WOMEN?

8 **A** NO.

9 **Q** DID YOU CONDUCT ANY INTERVIEWS WITH LOUISIANA WOMEN
10 WHO HAD HAD ABORTIONS?

11 **A** NO.

12 **Q** SO DID YOU CONDUCT ANY INTERVIEWS WITH LOUISIANA
13 WOMEN WHO WERE CONSIDERING HAVING AN ABORTION SO YOU COULD
14 UNDERSTAND THEIR LIVED EXPERIENCES WITH RESPECT TO THE
15 POTENTIAL BARRIERS, TO ACCESS?

16 **A** NO, BUT THERE'S ALSO A RESEARCH PROBLEM WITH TRYING
17 TO FIND THAT POPULATION.

18 **Q** OKAY. I UNDERSTAND. SO IN FORMULATING YOUR OPINION
19 IN THIS CASE YOU DIDN'T CONDUCT ANY INTERVIEWS WITH ANY
20 LOUISIANA WOMEN AT ALL?

21 **A** NO.

22 **Q** NOW, IN YOUR OTHER RESEARCH, IN YOUR QUALITATIVE
23 ETHNOGRAPHIC RESEARCH THAT WE'VE BEEN TALKING ABOUT, I THINK
24 YOU TESTIFIED THAT YOU ACTUALLY SPENT TIME TRAVELING WITH
25 WOMEN, THAT WAS THE CAL. WORKS' STUDY?

1 **A** YES.

2 **Q** WHY DID YOU SPEND TIME TRAVELING WITH THE WOMEN?

3 **A** IT WAS BOTH PART OF THE RESEARCH, BUT IT WAS ALSO
4 PART OF THE WORK THAT I WAS DOING WITH THE NON-PROFIT. AND SO
5 I TRAVELED WITH THEM, EITHER FROM THE SAN FRANCISCO BAY AREA
6 TO SACRAMENTO, WHICH WAS ABOUT 60 MILES OR TRAVELED WITH THEM
7 TO WASHINGTON DC.

8 **Q** AND WHY WAS IT IMPORTANT THAT YOU TRAVEL WITH THEM,
9 TO YOUR STUDY?

10 **A** TO MY STUDY, THE TRAVELING PART WASN'T AS IMPORTANT
11 TO THE STUDY AS WHAT WE WERE GOING TO DO. AND SO I TRAVELED
12 WITH THEM BECAUSE I WAS GOING TO THE SAME PLACE THEY WERE AND
13 I WAS A RESEARCHER WORKING ON A PROJECT. BUT WHAT -- THE
14 FOCUS OF THE STUDY WAS WHEN WE GOT TO DC OR WHEN WE GOT TO
15 SACRAMENTO.

16 **Q** I SEE.

17 **A** BUT ALL OF IT'S PART OF, YOU KNOW --

18 **Q** I SEE. I MISUNDERSTOOD. I THOUGHT THE STUDY HAD TO
19 DO WITH SOME KIND OF TRAVEL BARRIER THAT THESE WOMEN WERE
20 FACING BECAUSE OF THEIR LOW-INCOME STATUS.

21 **A** OTHER PIECES OF THE STUDY DID, YES.

22 **Q** TRAVEL BARRIERS TO ACCESS WHAT?

23 **A** HEALTH AND HUMAN SERVICES, EDUCATION, JOB TRAINING
24 PROGRAMS, WORK --

25 **Q** BUT YOU --

1 A -- BUYING GROCERIES.

2 Q I'M SORRY. BUT YOU INTERVIEWED THOSE WOMEN?

3 A YES. INTERVIEWS AND FOCUS GROUPS AND PARTICIPANT
4 OBSERVATION.

5 Q OKAY. SO YOU INTERVIEWED THOSE WOMEN, YOU DID FOCUS
6 GROUPS WITH THOSE WOMEN AND YOU OBSERVED THEM --

7 A YES.

8 Q -- SO THAT YOU COULD UNDERSTAND THEIR LIVED
9 EXPERIENCES?

10 A YES.

11 Q LET'S RETURN TO YOUR OPINION IN THIS CASE. IN
12 FORMULATING YOUR OPINION IN THIS CASE, DID YOU SPEND ANY TIME
13 IN LOUISIANA TRAVELING WITH WOMEN SO THAT YOU COULD UNDERSTAND
14 THEIR LIVED EXPERIENCES?

15 A NO.

16 Q DID YOU SPEND ANY TIME TRAVELING WITH WOMEN IN
17 LOUISIANA FROM PARTICULAR PARTS OF THE STATE SO THAT YOU COULD
18 UNDERSTAND WHETHER THEY MIGHT EXPERIENCE ANY PARTICULAR
19 PROBLEMS?

20 A NO.

21 Q NOW IN FORMULATING YOUR OPINION IN THIS CASE DID YOU
22 RELY ON ANY STUDIES BY OTHER EXPERTS WHO HAD CONDUCTED FOCUS
23 GROUPS WITH LOUISIANA WOMEN ON THIS TOPIC?

24 A NO.

25 Q OKAY. HOW ABOUT, DID YOU RELY ON ANY STUDIES BY

1 OTHER EXPERTS WHO HAD CONDUCTED INTERVIEWS OR CONFERENCE CALLS
2 WITH ANY LOUISIANA WOMEN ON THIS TOPIC?

3 A NO.

4 Q IN FORMULATING YOUR OPINION IN THIS CASE, DID YOU
5 RELY ON ANY STUDIES BY OTHER EXPERTS WHO HAD, YOU KNOW, GOTTEN
6 ON THE GROUND AND TRAVELED WITH LOUISIANA WOMEN SO THEY COULD
7 UNDERSTAND THEIR LIVED EXPERIENCES OF BARRIERS TO ACCESS?

8 A NO.

9 Q SO, DOCTOR, I UNDERSTAND FROM TALKING WITH YOU THAT
10 QUALITATIVE RESEARCH IS A CORE PART OF YOUR STUDY; IS THAT
11 RIGHT?

12 A YES.

13 Q BUT IN FORMULATING YOUR OPINION IN THIS CASE, IS IT
14 FAIR TO SAY THAT YOU DID NOT PERSONALLY CONDUCT ANY
15 QUALITATIVE OR ETHNOGRAPHIC RESEARCH REGARDING WOMEN AND
16 POVERTY IN THE STATE OF LOUISIANA?

17 A NO.

18 Q OKAY. SO IN FORMULATING YOUR OPINION IN THIS CASE,
19 IS IT FAIR TO SAY THAT YOU DID NOT RELY ON ANY QUALITATIVE
20 ETHNOGRAPHIC RESEARCH BY OTHER EXPERTS REGARDING WOMEN AND
21 POVERTY IN THE STATE OF LOUISIANA?

22 A NO.

23 Q IN FORMULATING YOUR OPINION IN THIS CASE, DID YOU
24 RELY ON ANY QUALITATIVE ETHNOGRAPHIC RESEARCH BY OTHER EXPERTS
25 THAT FOCUSED ON THE ISSUE OF WOMEN'S POVERTY AND ABORTION

1 ACCESS?

2 A SO IN QUALITATIVE RESEARCH, ABORTION IS AN ISSUE
3 THAT COMES UP IN OTHER STUDIES. I KNOW THAT SHARON HAYS',
4 *FLAT BROKE WITH CHILDREN*, BRINGS UP THE ISSUE OF ABORTION AND
5 ELAINE BELL KAPLAN'S, *NOT OUR KIND OF GIRL*, BOTH ARE
6 ETHNOGRAPHIC QUALITATIVE STUDIES THAT BRING UP THE ISSUE OF
7 ABORTION ACCESS.

8 Q SO HAVE YOU EVER DONE IN YOUR ENTIRE CAREER -- I
9 BELIEVE YOU SAID YOU HAVE A 15-YEAR LONG CAREER?

10 A OF -- YEAH.

11 Q FIFTEEN YEARS. IN YOUR 15 YEARS OF QUALITATIVE
12 ETHNOGRAPHIC RESEARCH, HAVE YOU EVER DONE ANY SUCH RESEARCH
13 THAT FOCUSES ON THE ISSUE OF ABORTION ACCESS AND POVERTY?

14 A THE ISSUE OF ACCESS TO ABORTION AND WOMEN'S
15 REPRODUCTIVE HEALTH SERVICES IS UNDER THE RESEARCH -- THE
16 CALIFORNIA-BASED STUDY THAT I'VE DONE AND WILL BE PART OF SOME
17 OF THE OTHER PROJECTS MOVING FORWARD BECAUSE -- SO I HAVE
18 ASKED WOMEN ABOUT REPRODUCTIVE HEALTH SERVICES AND ACCESSING
19 HEALTH AND HUMAN SERVICES. I HAVE NOT DONE ONE STUDY THAT
20 SPECIFICALLY ASKED ABOUT ABORTION, BUT IT'S BEEN UNDER AN
21 UMBRELLA OF ISSUES THAT I'VE ASKED ABOUT IN MY OTHER RESEARCH.

22 Q I SEE. HAVE YOU PUBLISHED ANY OF THAT RESEARCH?

23 A SO I'VE PUBLISHED SOME OF THE RESEARCH. MOST OF IT
24 IS FROM THE CALIFORNIA-BASED STUDY IS BEING PREPARED IN A BOOK
25 MANUSCRIPT THAT WILL ALL GET PUBLISHED AT ONCE AS A BOOK.

1 Q SO IT WILL BE PUBLISHED IN THE FUTURE?

2 A YES. BUT THERE ARE TWO PIECES OF THAT THAT ARE
3 ALREADY PUBLISHED.

4 Q DO EITHER OF THE PIECES THAT ARE ALREADY PUBLISHED
5 ADDRESS THE ISSUES OF ABORTION IN A QUALITATIVE MANNER?

6 A NO.

7 Q I'D LIKE TO ASK YOU A FEW QUESTIONS ABOUT THE DATA
8 THAT YOU RELIED ON IN FORMULATING YOUR OPINION IN THIS CASE.
9 I THINK YOU'VE BEEN ASKED A NUMBER OF QUESTIONS ABOUT THE DATA
10 ALREADY AND I JUST WANT TO GO BACK OVER SOME OF THAT.

11 A OKAY.

12 Q NOW, EARLIER YOU TESTIFIED THAT YOU RELIED ON
13 NATIONAL STATISTICS ABOUT THE PERCENTAGE OF WOMEN HAVING
14 ABORTIONS IN THE UNITED STATES WHO ARE BELOW -- YOU KNOW, WHO
15 ARE AT CERTAIN FEDERAL POVERTY LEVELS; CORRECT?

16 A YES.

17 Q YOU WERE, I BELIEVE -- JUST SO YOU UNDERSTAND WHAT
18 I'M GETTING AT, YOU REFERRED TO PAGE 8, PARAGRAPH 14 OF YOUR
19 DECLARATION FOR THOSE. I'LL TURN TO THAT AS WELL.

20 A YES.

21 MR. DUNCAN: YOUR HONOR, DO I NEED TO PUT THAT UP ON
22 THE SCREEN?

23 THE COURT: YOU'RE AT 14?

24 MR. DUNCAN: YES, YOUR HONOR. PAGE 8, PARAGRAPH 14.

25 THE COURT: OKAY. NO, YOU DO NOT NEED TO DO THAT

1 FOR ME.

2 MR. DUNCAN: OKAY. THANK YOU.

3 BY MR. DUNCAN:

4 Q NOW, YOU DID NOT RELY ON ANY STATISTICS SHOWING THE
5 INCOME LEVEL OF WOMEN IN LOUISIANA WHO HAD HAD ABORTIONS;
6 RIGHT?

7 A NO.

8 Q AND YOU DID NOT RELY ON ANY STATISTICS SHOWING THE
9 RELATIVE INCOME OF WOMEN IN DIFFERENT GEOGRAPHICAL REGIONS OF
10 LOUISIANA WHO HAVE HAD ABORTIONS?

11 A I DID NOT.

12 Q AND YOU ALSO DID NOT RELY ON STATISTICS SHOWING THE
13 RELATIVE INCOME LEVEL OF WOMEN WHO HAVE HAD ABORTIONS AT THE
14 FIVE ABORTION CLINICS IN LOUISIANA, DID YOU?

15 A I DID NOT.

16 Q SO, FOR EXAMPLE, YOU DID NOT RELY ON STATISTICS
17 SHOWING THE RELATIVE INCOME LEVEL OF WOMEN WHO'VE HAD
18 ABORTIONS AT HOPE MEDICAL CENTER?

19 A I DID NOT.

20 Q OR AT CAUSEWAY?

21 A NO.

22 Q OR AT BOSSIER CITY?

23 A NO.

24 Q OR AT WOMEN'S HEALTH CENTER?

25 A NO.

1 Q OR AT DELTA CLINIC?

2 A NO.

3 Q AND YOU ALSO -- STRIKE THAT. YOU ALSO DIDN'T RELY
4 ON ANY DATA SHOWING THE RELATIVE INCOME LEVEL OF A SUBSET OF
5 WOMEN WHO HAVE HAD TO TRAVEL FROM OUT OF THE TOWN TO OBTAIN
6 ABORTIONS AT ANY OF THOSE CLINICS; RIGHT?

7 A I DID NOT.

8 Q COULD YOU TELL ME WHICH -- STRIKE THAT. WITH
9 RESPECT TO THE STUDIES THAT YOU RELIED ON IN YOUR REPORT, I
10 KNOW YOU HAVE A LIST OF STUDIES, COULD YOU TELL ME WHICH
11 STUDIES YOU RELIED ON THAT ANALYZE THE EFFECT OF INCREASED
12 TRAVEL DISTANCE ON WOMEN'S ABILITY TO OBTAIN AN ABORTION?

13 A SO I LOOKED AT -- IN THE REPORT, ONE OF THE THINGS
14 THAT I DID WAS CONSIDERED THE LITERATURE, THE WIDE LITERATURE,
15 ON WOMEN TRAVELING TO ACCESS HEALTH AND HUMAN SERVICES. AND
16 SO THERE'S A WHOLE LITERATURE ABOUT -- QUALITATIVE AND
17 QUANTITATIVE, ABOUT WOMEN TRAVELING TO ACCESS SERVICES.

18 SO IN WRITING THIS REPORT I THOUGHT ABOUT THOSE
19 STUDIES AND USED, YOU KNOW, A COUPLE OF EXAMPLES IN THE
20 REPORT. BUT THERE ARE DEFINITELY MANY IN THE FIELD THAT
21 THINKS ABOUT WHAT BARRIERS EXIST AND WHAT BURDENS EXIST FOR
22 LOW-INCOME WOMEN TO TRAVEL TO ACCESS ANY VARIETY OF HEALTH AND
23 HUMAN SERVICES.

24 Q I UNDERSTAND. SO WHICH EXAMPLES DID YOU USE?

25 A IN THE REPORT I USED THE *SHELTON* ARTICLE AS AN

1 EXAMPLE AND I ALSO MADE REFERENCE TO A *DOBIE* ARTICLE.

2 Q OKAY.

3 A THESE ARE TWO QUANTITATIVE ARTICLES, BUT THERE IS A
4 WIDE BODY OF QUALITATIVE RESEARCH THAT'S DISCUSSED THROUGHOUT
5 THE ARTICLE THAT ALSO SPEAKS TO THESE ISSUES.

6 Q OKAY. SO JUST TO BE CLEAR, THE *SHELTON* ARTICLE THAT
7 YOU'RE REFERRING TO IS AT PARAGRAPH 15 OF YOUR DECLARATION?

8 A YES.

9 Q THAT'S THE *JAMES D. SHELTON, ET AL*, ARTICLE?

10 A YES.

11 Q AND THEN THE *DOBIE* ARTICLE THAT YOU'RE REFERRING TO
12 IS ALSO IN PARAGRAPH 15 ON THE NEXT PAGE, *SHARON A. DOBIE, ET*
13 *AL*?

14 A YES.

15 Q AND AS WE TALKED ABOUT ALREADY YOU ALSO RELIED ON
16 THE *ROBERTS'* REPORT AS WELL?

17 A NOT IN WRITING THIS REPORT BECAUSE THIS REPORT I
18 SUBMITTED IN NOVEMBER/DECEMBER AND THE *ROBERTS'* ARTICLE CAME
19 OUT IN MAY?

20 Q WELL, LET'S SEE. THE *ROBERTS'* ARTICLE I'VE GOT IT
21 HERE IN FRONT OF ME. WELL, IT SAYS, ACCEPTED 03,
22 FEBRUARY 2015.

23 A I READ IT IN MARCH. I THINK THE FINAL VERSION CAME
24 OUT IN THE MAY ISSUE OF *CONTRACEPTION*.

25 Q OKAY. SO IT CAME OUT IN MAY, OKAY. SO YOU RELIED

1 ON THAT AFTERWARDS?

2 A YES.

3 Q NOW IS THE *SHELTON* ARTICLE A QUALITATIVE ARTICLE?

4 A NO.

5 Q SO THE *SHELTON* ARTICLE DOESN'T CONSIDER THE LIVED
6 EXPERIENCES OF WOMEN AND HOW THAT REFLECTS THE BARRIERS THEY
7 FACE IN ACCESSING AN ABORTION?

8 A IT DOES NOT.

9 Q IT'S A NUMERICAL ARTICLE, IT'S A QUANTITATIVE
10 ARTICLE?

11 A YES.

12 Q AND THE *DOBIE* STUDY IS ALSO NOT A QUALITATIVE
13 ARTICLE?

14 A I BELIEVE THAT.

15 Q AND THE *ROBERTS'* STUDY IS NOT A QUALITATIVE ARTICLE?

16 A NO.

17 Q CAN YOU IDENTIFY BY NAME ANY STUDY YOU RELIED ON
18 THAT IS A QUALITATIVE STUDY ABOUT WOMEN'S LIVED EXPERIENCES
19 WITH ABORTION POVERTY AND ACCESS -- TRAVEL ACCESS?

20 A NO.

21 Q LET ME ASK YOU -- SORRY, ONE SECOND. OKAY. I'D
22 LIKE TO ASK YOU JUST SOME MORE SPECIFIC QUESTIONS ABOUT THE
23 OPINION YOU ARE OFFERING IN THIS CASE. NOW, I UNDERSTAND FROM
24 YOUR DECLARATION, I'M SPECIFICALLY LOOKING AT PARAGRAPH 6.

25 A GIVE ME JUST ONE MINUTE.

1 Q SURE. SURE. THAT'S FINE.

2 A YES.

3 Q SO AS I UNDERSTAND YOUR OPINION YOU'RE SAYING THAT
4 BECAUSE OF THE DISTANCES THAT ACT 620 WILL REQUIRE LOW-INCOME
5 WOMEN IN LOUISIANA TO TRAVEL TO OBTAIN ABORTION SERVICES, THAT
6 THE ACT WILL PREVENT MANY LOWER INCOME WOMEN IN LOUISIANA FROM
7 OBTAINING ABORTIONS THAT THEY OTHERWISE WOULD HAVE BEEN ABLE
8 TO OBTAIN; ISN'T THAT A FAIR SUMMARY OF YOUR OPINION?

9 A YES.

10 Q TO BE CLEAR, HOWEVER, YOU'RE NOT OFFERING AN OPINION
11 THAT ANY SPECIFIC PERCENTAGE OF LOUISIANA WOMEN WILL BE
12 PREVENTED BY THEIR POVERTY FROM OBTAINING AN ABORTION?

13 A NO.

14 Q IN FACT, YOU'RE ABLE TO SAY ONLY THAT YOU BELIEVE
15 MANY WOMEN IN LOUISIANA WILL BE PREVENTED BY POVERTY FROM
16 OBTAINING AN ABORTION?

17 A YES.

18 Q AND YOU CAN'T DEFINE THE TERM, "MANY," IN TERMS OF
19 THE SPECIFIC PERCENTAGES, CAN YOU?

20 A NO.

21 Q AND THAT'S BECAUSE YOU DON'T HAVE ANY DATA TO SHOW
22 HOW MANY WOMEN IN LOUISIANA WILL ACTUALLY BE PREVENTED BY
23 POVERTY FROM TRAVELING TO OBTAIN AN ABORTION?

24 A NO. AND I THINK THAT THAT DATA WOULD BE VERY HARD
25 TO OBTAIN.

1 **Q** HAVE YOU THOUGHT ABOUT HOW TO EVEN CONSTRUCT A
2 METHODOLOGY TO GET AT THAT DATA?

3 **A** YES.

4 **Q** HAVE YOU COME UP WITH AN ANSWER?

5 **A** NO. I'VE COME UP WITH MANY ANSWERS, BUT UNTIL I TRY
6 TO DO IT...

7 **Q** OKAY. YOU'VE THOUGHT ABOUT POSSIBILITIES, BUT YOU
8 HAVEN'T DONE ANY?

9 **A** NO. I HAVE THREE BOOKS IN PROGRESS. I NEED TO
10 FINISH ONE OF THEM.

11 **Q** I FEEL YOUR PAIN. OKAY. YOU'D AGREE WITH ME THAT
12 SOME WOMEN IN LOUISIANA ARE ALREADY HAVING TO TRAVEL TO OBTAIN
13 ABORTION SERVICES?

14 **A** YES.

15 **Q** BUT YOU CAN'T TELL THE COURT HOW MANY WOMEN WHO ARE
16 SEEKING ABORTIONS ARE ACTUALLY POOR, CAN YOU?

17 **A** I CAN'T GIVE YOU AN EXACT NUMBER. I THINK BASED ON
18 THE DATA THAT'S AVAILABLE NATIONALLY AND THE HIGH POVERTY RATE
19 IN LOUISIANA, THAT THE OVERWHELMING MAJORITY OF THE WOMEN WHO
20 ARE SEEKING ABORTIONS IN LOUISIANA ARE VERY POOR.

21 **Q** OKAY, DOCTOR. YOU JUST SAID IN YOUR OPINION THE
22 OVERWHELMING MAJORITY OF WOMEN IN LOUISIANA?

23 **A** YES.

24 **Q** THAT'S YOUR TESTIMONY?

25 **A** YES.

1 Q YOU RECALL TAKING A DEPOSITION IN THIS CASE?

2 A YES.

3 Q AND IN THAT DEPOSITION YOU WERE UNDER OATH?

4 A YES.

5 Q LET'S TAKE A LOOK AT YOUR DEPOSITION. HERE WE GO
6 WITH THE ELMO PROCESS.

7 MR. DUNCAN: WOULD SOMEONE -- IS DR. KATZ'S
8 DEPOSITION CONFIDENTIAL?

9 MS. JAROSLOW: IT IS NOT, YOUR HONOR.

10 MR. DUNCAN: THANK YOU.

11 BY MR. DUNCAN:

12 Q WE'RE GOING TO GO THROUGH THIS EXERCISE, DOCTOR, OF
13 LOOKING AT THIS DEPOSITION. HAVE YOU REVIEWED YOUR DEPOSITION
14 TRANSCRIPT?

15 A YES.

16 Q OKAY. I'LL GIVE YOU A PAGE NUMBER IN JUST A SECOND.
17 I JUST WANT TO MAKE SURE YOU RECOGNIZE THE FIRST PAGE OF YOUR
18 DEPOSITION. LET'S MAKE SURE YOU CAN SEE THIS AND READ THIS.

19 A YES.

20 Q THIS IS THE FIRST PAGE OF YOUR DEPOSITION; DO YOU
21 RECOGNIZE THAT?

22 A YES.

23 Q OKAY. GREAT. NOW, LET'S GO TO PAGE 84 OF YOUR
24 DEPOSITION. SORRY, BEAR WITH ME FOR A SECOND. 84, LINES 1
25 THROUGH 6. DO YOU SEE THAT?

1 **A** YES.

2 **Q** OKAY.

3 **MR. DUNCAN:** YOUR HONOR, IS IT OKAY IF I READ THE
4 DEPOSITION OR WOULD YOU PREFER THAT THE WITNESS READ IT?

5 **THE COURT:** I SEE IT. I'M READING ONE THROUGH FIVE
6 AND YOU CAN JUST ASK HER ABOUT IT.

7 **MR. DUNCAN:** OKAY.

8 **BY MR. DUNCAN:**

9 **Q** WHY DON'T YOU READ LINES -- WHAT DID I SAY, ONE
10 THROUGH SIX?

11 **THE COURT:** ONE THROUGH SIX.

12 **A** SO THE QUESTION IS, "DO YOU KNOW HOW MANY WOMEN WHO
13 ARE SEEKING ABORTIONS IN LOUISIANA CURRENTLY ARE POOR?" I
14 SAID, "I DON'T KNOW." THE QUESTION IS, "WOULD YOU HAVE NO WAY
15 OF TO KNOWING THAT, WOULD YOU?" "NO."

16 **BY MR. DUNCAN:**

17 **Q** OKAY.

18 **A** I BELIEVE THE ANSWER THAT I GAVE YOU JUST NOW IS THE
19 SAME ANSWER.

20 **Q** YOU BELIEVE -- I'M SORRY, DOCTOR. YOU BELIEVE
21 SAYING THAT THE OVERWHELMING NUMBER OF WOMEN WHO ARE SEEKING
22 ABORTIONS ARE POOR IS THE SAME ANSWER AS NO AND I DON'T KNOW?

23 **A** NO. I SAY -- I THINK THAT I DON'T HAVE AN EXACT
24 NUMBER FOR YOU, BUT I THINK THAT GIVEN NATIONAL DATA, WHICH IS
25 WHAT I SAID A MINUTE AGO, AND THE POVERTY RATE, THAT I WOULD

1 THINK THAT THE NUMBER WOULD BE OVERWHELMING MAJORITY. BUT DO
2 I HAVE AN EXACT NUMBER? NO, I DON'T HAVE THAT EXACT NUMBER.

3 Q I UNDERSTAND, DOCTOR. IN YOUR DEPOSITION OF COURSE
4 YOU SAID, I DON'T KNOW.

5 A OKAY.

6 Q THANK YOU. JUST BEAR WITH ME JUST A SECOND. JUST
7 ONE SECOND. DOCTOR, YOU ALSO DON'T HAVE DATA REGARDING THE
8 INCOME STATUS OF THE PATIENT BASE AT ANY PARTICULAR ABORTION
9 CLINIC IN LOUISIANA, DO YOU?

10 A I DO NOT.

11 Q SO, FOR EXAMPLE, YOU DID NOT RELY ON DATA SHOWING
12 WHAT PERCENTAGE OF THE WOMEN WHO OBTAINED ABORTIONS AT HOPE
13 MEDICAL IN THE PAST YEAR ARE BELOW THE FEDERAL POVERTY LEVEL?

14 A I DO NOT.

15 Q OR BELOW 200 PERCENT OF THE FEDERAL POVERTY LEVEL?

16 A I DO NOT.

17 Q AND YOU DID NOT RELY ON DATA OF THAT NATURE FOR ANY
18 OTHER ABORTION CLINIC IN LOUISIANA; CORRECT?

19 A NO.

20 Q NOW, DOCTOR, YOU ALSO DID NOT RELY ON DATA SHOWING
21 THAT WOMEN SEEKING ABORTIONS AT ANY PARTICULAR CLINIC IN
22 LOUISIANA EXPERIENCED PARTICULAR OBSTACLES IN GETTING TO THOSE
23 CLINICS? AND BY PARTICULAR OBSTACLES, I MEAN OBSTACLES THAT
24 ARE NOT SHARED BY WOMEN IN OTHER PARTS OF THE STATE.

25 A NO.

1 **Q** FOR INSTANCE, YOU DIDN'T RELY ON DATA THAT WOMEN WHO
2 LIVE, SAY, IN SOUTHWEST LOUISIANA EXPERIENCED SPECIAL OR
3 PARTICULAR BURDENS IN TRAVELING TO OBTAIN ABORTIONS, BURDENS
4 THAT WOMEN IN OTHER PARTS OF THE STATE DON'T?

5 **A** NO.

6 **Q** YOU ALSO DON'T HAVE DATA, DO YOU, FROM ANY
7 PARTICULAR CLINIC DOCUMENTING THE SPECIAL OBSTACLES OBSERVED
8 WITH THEIR PARTICULAR PATIENT BASE IN OBTAINING ABORTIONS?

9 **A** I DON'T.

10 **Q** NOW, JUST TO GO BACK TO YOUR GENERAL OPINION. YOUR
11 GENERAL OPINION IS THAT LOW-INCOME STATUS CAN PREVENT WOMEN
12 FROM TRAVELING TO OBTAIN AN ABORTION; IS THAT RIGHT?

13 **A** YES.

14 **Q** JUST TO UNDERSTAND YOUR OPINION A LITTLE BETTER, ARE
15 YOU OFFERING AN OPINION THAT THERE'S A PARTICULAR LEVEL OF
16 POVERTY BEYOND WHICH A WOMAN WOULD BE PREVENTED FROM OBTAINING
17 AN ABORTION?

18 **A** COULD YOU REPHRASE THAT?

19 **Q** SURE. ARE YOU OFFERING AN OPINION THAT THERE'S A
20 PARTICULAR LEVEL OF POVERTY BEYOND WHICH IS SORT OF THE
21 TIPPING POINT, IT WILL PREVENT A WOMAN AT THAT POINT, LET'S
22 SAY 150 PERCENT OF THE POVERTY LEVEL?

23 **A** OKAY. I THINK HOW YOU'RE PHRASING IT MAKES IT
24 CONFUSING.

25 **Q** OKAY, FAIR ENOUGH. I'LL JUST MOVE ON. DOCTOR, AS

1 YOU SIT HERE TODAY ARE YOU ABLE TO TELL THE COURT IN YOUR
2 OPINION WHAT SPECIFIC -- WHAT SPECIFIC PERCENTAGE OF LOUISIANA
3 WOMEN WOULD HAVE THEIR ACCESS TO ABORTION IMPEDED BY ACT 620
4 BECAUSE OF THEIR POVERTY?

5 A NO.

6 MR. DUNCAN: NO FURTHER QUESTIONS.

7 THE COURT: REDIRECT?

8 MS. LEVINE: NO REDIRECT, YOUR HONOR.

9 THE COURT: OKAY. I ONLY HAVE A COUPLE OF
10 QUESTIONS, DOCTOR. ONE, ON PARAGRAPH 14 OF YOUR REPORT, PAGE
11 8, WHICH IS PAGE 2480; COULD YOU TURN TO THAT?

12 THE WITNESS: PARAGRAPH 14, ON PAGE 8?

13 THE COURT: RIGHT.

14 THE WITNESS: OKAY.

15 THE COURT: ARE YOU THERE?

16 THE WITNESS: YES, I AM.

17 THE COURT: YOU'VE GOT NATIONALLY 2008, 42 PERCENT
18 OF THE WOMEN HAVING ABORTIONS IN THE U.S. HAD INCOMES BELOW
19 THE FEDERAL POVERTY LEVEL AND ANOTHER 27 PERCENT HAD INCOMES
20 BELOW 200 PERCENT OF THE FEDERAL POVERTY LEVEL. IS THE
21 27 PERCENT INCLUDED IN THE 42 PERCENT?

22 THE WITNESS: NO. IT'S 42 PLUS 27.

23 THE COURT: ALL RIGHT. SO IF YOU TOOK 42 AND 27,
24 WHAT WOULD THE COMBINED NUMBER -- HOW WOULD YOU DESCRIBE THE
25 COMBINED NUMBER?

1 **THE WITNESS:** SIXTY-NINE PERCENT.

2 **THE COURT:** I KNOW, I CAN EVEN DO THAT MATH.

3 **THE WITNESS:** ALMOST THREE-QUARTERS.

4 **THE COURT:** ALMOST THREE-QUARTERS EQUALS WHAT? HOW
5 WOULD YOU DESCRIBE THOSE THREE-QUARTERS?

6 **THE WITNESS:** I WOULD THINK THAT THAT'S THE
7 MAJORITY.

8 **THE COURT:** OF?

9 **THE WITNESS:** OF WOMEN WHO ARE SEEKING -- ARE HAVING
10 ABORTIONS IN THE UNITED STATES HAVE INCOMES BELOW 200 PERCENT
11 OF THE POVERTY LINE.

12 **THE COURT:** WHAT IS IT THAT MAKES YOU BELIEVE THAT
13 THAT -- AS YOU SAY, I WOULD EXPECT THE PERCENTAGE TO BE MUCH
14 HIGHER IN LOUISIANA -- FIRST OF ALL, THE 69 PERCENT IS OF
15 WOMEN OF REPRODUCTIVE AGE? OR WOMEN --

16 **THE WITNESS:** THE 69 PERCENT IS OF WOMEN WHO HAD
17 ABORTIONS.

18 **THE COURT:** WHO HAD ABORTIONS.

19 **THE WITNESS:** WHO HAD ABORTIONS WERE UNDER THE
20 200 PERCENT OF THE FEDERAL POVERTY LINE. AND THIS IS OF THE
21 UNITED STATES AS A WHOLE.

22 **THE COURT:** RIGHT.

23 **THE WITNESS:** SO IF WE THINK ABOUT THE FACT THAT
24 LOUISIANA IS THE THIRD POOREST STATE IN THE COUNTRY AND THAT
25 WE KNOW OVERALL IN THE U.S. THAT 69 PERCENT OF WOMEN WHO ARE

1 HAVING ABORTIONS HAVE INCOMES BELOW 200 PERCENT OF THE POVERTY
2 LINE. THIS IS WHY I'M SAYING THAT I THINK THAT THE NUMBER FOR
3 LOUISIANA WOULD BE AN OVERWHELMING MAJORITY.

4 WHEN I'VE HAD DATA FROM OTHER STATES, THOSE NUMBERS
5 HAVE BEEN -- THAT HAVE LOWER POVERTY RATES THAN LOUISIANA, BUT
6 CLOSE, THAT NUMBER HAS BEEN BETWEEN 85 AND 90 PERCENT OF WOMEN
7 WHO HAD ABORTIONS IN THOSE STATES HAD POVERTY -- HAD AN INCOME
8 BELOW 200 PERCENT OF THE POVERTY LINE. SO LOUISIANA IS EVEN
9 POORER THAN THOSE STATES.

10 THE COURT: OKAY. AND -- THAT'S ALL. THANK YOU.

11 THE WITNESS: OKAY. THANK YOU.

12 THE COURT: ANY FOLLOW-UP QUESTIONS?

13 MR. DUNCAN: NO, YOUR HONOR.

14 THE COURT: THANK YOU, MA'AM. YOU MAY STAND DOWN.

15 THE WITNESS: THANK YOU.

16 THE COURT: CALL YOUR NEXT WITNESS.

17 MR. DUNCAN: YOUR HONOR, I BELIEVE WE'RE GOING TO
18 CALL THE SECRETARY?

19 MS. DOUFEKIAS: YES.

20 MR. DUNCAN: MAY I JUST GO OUT AND SEE -- I HAD THE
21 SECRETARY OUTSIDE.

22 THE COURT: ABSOLUTELY.

23 MR. DUNCAN: MR. JOHNSON JUST -- DIDN'T WANT HER TO
24 COME IN.

25 THE COURT: COME FORWARD, SECRETARY KLIEBERT AND MS.

1 CAUSEY WILL SWEAR YOU IN.

2 (WHEREUPON, KATHY KLIEBERT, HAVING BEEN DULY SWORN,
3 TESTIFIED AS FOLLOWS.)

4 DIRECT

5 BY MS. DOUFEKIAS:

6 Q GOOD AFTERNOON, SECRETARY KLIEBERT. MY NAME IS
7 DEMME DOUFEKIAS AND I HAVE SOME QUESTIONS FOR YOU THIS
8 AFTERNOON. IF I SPEAK TOO QUICKLY, BECAUSE I DO THAT
9 SOMETIMES, PLEASE FEEL FREE TO ASK ME TO SLOW DOWN AND IF I
10 ASK YOU ANY QUESTIONS THAT YOU DON'T UNDERSTAND, PLEASE LET ME
11 KNOW AND I WILL DO MY BEST TO ASK YOU BETTER QUESTIONS.

12 A WILL DO.

13 Q COULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

14 A KATHY HAWKINS KLIEBERT.

15 Q COULD YOU SPELL YOUR LAST NAME FOR THE COURT
16 REPORTER?

17 A K-L-I-E-B-E-R-T.

18 MS. DOUFEKIAS: YOUR HONOR, I WOULD ASK THAT
19 PLAINTIFFS BE ALLOWED TO EXAMINE SECRETARY KLIEBERT AS AN
20 ADVERSE WITNESS UNDER RULE 611 (C)(2)?

21 THE COURT: ANY OBJECTIONS?

22 MR. DUNCAN: NO OBJECTION, YOUR HONOR.

23 THE COURT: YOU MAY PROCEED.

24 MR. JOHNSON: I'M JUST NOT SURE WHY SHE SHOULD BE
25 DECLARED AN ADVERSE WITNESS WHEN SHE HASN'T EVEN BECOME YET?

1 **THE COURT:** YOU'RE A MUCH BETTER TRIAL LAWYER THAN
2 THAT MR. JOHNSON. YOU'RE A MUCH BETTER TRIAL LAWYER THAN
3 THAT.

4 **MR. JOHNSON:** I WITHDRAW.

5 **THE COURT:** SHE'S THE DEFENDANT IN THE CASE.

6 **MR. JOHNSON:** I WITHDRAW THE OBJECTION.

7 **THE COURT:** HE WITHDRAWS THE OBJECTION.

8 **BY MS. DOUFEKIAS:**

9 **Q** SECRETARY KLIEBERT, WHAT IS YOUR CURRENT ROLE AT
10 DHH?

11 **A** I'M THE SECRETARY OF THE DEPARTMENT WHICH OVERSEES
12 ALL OF THE PROGRAM POLICIES FOR THE HEALTH DEPARTMENT, WHICH
13 IS A MULTIPLE OF DIFFERENT ENTITIES WITHIN THE HEALTH
14 DEPARTMENT.

15 **Q** YOU GAVE A LITTLE BIT OF A DESCRIPTION, BUT COULD
16 YOU GIVE JUST A LITTLE BIT MORE OF A DESCRIPTION OF WHAT YOUR
17 RESPONSIBILITIES ARE AS THE SECRETARY OF DHH?

18 **A** CERTAINLY. AGAIN, I OVERSEE ALL OF THE PROGRAMS AND
19 POLICIES. WE HAVE FOUR PROGRAM OFFICES, OFFICE FOR CITIZENS
20 WITH DEVELOPMENTAL DISABILITIES, OFFICE OF AGING AND ADULT
21 SERVICES, OFFICE OF BEHAVIORAL HEALTH, OFFICE OF PUBLIC
22 HEALTH. IN ADDITION, WE OVERSEE THE MEDICAID PROGRAM. WE
23 ALSO -- I ALSO OVERSEE OUR BUREAU OF LEGAL SERVICES, AS WELL
24 AS OTHER BUREAUS, COMMUNICATIONS, LEGAL AFFAIRS WITHIN THE
25 DEPARTMENT AS WELL.

1 Q AND SOMEWHERE IN ALL OF THAT IS THE HEALTH STANDARD
2 SECTION, IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q AND THE HEALTH STANDARD SECTION IS THE SECTION OF
5 DHH THAT HAS ULTIMATE AUTHORITY FOR REGULATING ABORTION
6 CLINICS IN THE STATE OF LOUISIANA; IS THAT RIGHT?

7 A YES. AGAIN, THEY ARE WITHIN OUR DEPARTMENT. THE
8 DEPARTMENT HAS THE ULTIMATE AUTHORITY, BUT THE HEALTH
9 STANDARDS SURVEYS REVIEWS THOSE FACILITIES.

10 Q IS YOUR POSITION AN APPOINTED POSITION?

11 A YES.

12 Q AND WHO APPOINTED YOU TO YOUR POSITION?

13 A IN THE CURRENT POSITION, GOVERNOR JINDAL.

14 Q HOW LONG HAVE YOU BEEN SECRETARY OF DHH?

15 A SECRETARY OF DHH, FOR A LITTLE OVER THREE YEARS --
16 TWO YEARS, I'M SORRY. TWO YEARS. SINCE 2013.

17 Q AND BEFORE THAT YOU WERE DEPUTY SECRETARY; IS THAT
18 RIGHT?

19 A THAT'S CORRECT.

20 Q AND HOW LONG WERE YOU IN THE DEPUTY SECRETARY
21 POSITION?

22 A A LITTLE OVER TWO YEARS.

23 Q IT'S COMMON FOR THE HEADS OF AGENCIES TO CHANGE IF
24 THE ADMINISTRATION CHANGES; IS THAT RIGHT?

25 A THAT'S CORRECT.

1 Q HAS IT BEEN YOUR EXPERIENCE THAT THE HEAD OF DHH HAS
2 CHANGED EVERY FEW YEARS?

3 A IN MY EXPERIENCE, IN MY TIME AT DHH, THE HEAD HAS
4 CHANGED, YES.

5 Q SECRETARY KLIEBERT, IF I REFER TO HB 388 WHAT DOES
6 THAT MEAN TO YOU?

7 A YOU'LL HAVE TO REFRESH MY MEMORY, I'M NOT REALLY
8 GOOD ON NUMBERS.

9 Q WOULD IT HELP YOU IF I REFERRED TO ACT 620?

10 A YES, ACT 620, YES.

11 Q SO IF I REPRESENTED TO YOU THAT HB 388 IS ANOTHER
12 WAY OF REFERRING TO ACT 620, WHAT DOES ACT 620 MEAN TO YOU?

13 A ACT 620 IS THE LEGISLATION THAT WAS PASSED LAST YEAR
14 REGARDING ABORTION FACILITIES, CHANGING SOME OF THE
15 REGULATIONS AND STATUTES FOR ABORTION FACILITIES.

16 Q IS ONE OF THOSE REGULATIONS AN ADMITTING PRIVILEGES
17 REQUIREMENT?

18 A YES.

19 Q WHAT'S YOUR UNDERSTANDING AS THE SECRETARY OF DHH OF
20 WHAT THE ADMITTING PRIVILEGES REQUIREMENT REQUIRES OF ABORTION
21 CLINICS AND ABORTION PROVIDERS?

22 A IT REQUIRES THAT A PHYSICIAN THAT OPERATES IN THE
23 ABORTION FACILITIES TO HAVE ADMITTING PRIVILEGES IN A HOSPITAL
24 WITHIN 30 MILES OF THAT -- OF THE ABORTION CLINIC.

25 Q DOES ACT 620 SAY ANYTHING ABOUT WHAT IT MEANS TO

1 HAVE ACTIVE ADMITTING PRIVILEGES?

2 A IT INDICATES ADMITTING PRIVILEGES AND I THINK
3 THERE'S A STATEMENT IN THERE, AND DON'T QUOTE ME EXACTLY, BUT
4 SOMETHING ABOUT HAVING TO BE ABLE TO PROVIDE DIAGNOSTIC AND
5 SURGICAL SERVICES.

6 Q ACTUALLY, LET'S TAKE A LOOK. SO I'M GOING TO TRY TO
7 DO THIS ELECTRONICALLY. FOR SOME OF THE DOCUMENTS THAT I MAY
8 WANT TO TALK TO YOU ABOUT THAT ARE A FEW MORE PAGES, I MAY ASK
9 YOU TO LOOK IN ONE OF THE BINDERS SORT OF CLUTTERING YOUR
10 SPACE AT THE MOMENT. BUT IF WE COULD PUT UP JOINT
11 EXHIBIT 166? SECRETARY KLIEBERT, I WILL DIRECT YOU TO THE
12 SCREEN IN FRONT OF YOU. DO YOU RECOGNIZE THIS LANGUAGE?

13 A YES.

14 Q AND DO YOU SEE THERE WHERE IT STARTS, FOR THE
15 PURPOSES OF THIS SECTION ABOUT -- IN SUBSECTION A, ABOUT THREE
16 LINES DOWN?

17 A YES.

18 Q IF YOU'LL FOLLOW ALONG WITH ME. "FOR THE PURPOSES
19 OF THIS SECTION, ACTIVE ADMITTING PRIVILEGES MEANS THAT THE
20 PHYSICIAN IS A MEMBER IN GOOD STANDING OF THE MEDICAL STAFF OF
21 A HOSPITAL THAT IS CURRENTLY LICENSED BY THE DEPARTMENT WITH
22 THE ABILITY TO ADMIT A PATIENT AND TO PROVIDE A DIAGNOSTIC AND
23 SURGICAL" -- EXCUSE ME, "TO PROVIDE DIAGNOSTIC AND SURGICAL
24 SERVICES TO SUCH PATIENT CONSISTENT WITH THE REQUIREMENTS OF
25 PARAGRAPH A-1 OF THIS SUBSECTION." IS THAT YOUR UNDERSTANDING

1 OF WHAT THE ADMITTING PRIVILEGES REQUIREMENT OF ACT 620
2 REQUIRES OF ABORTION CLINICS AND ABORTION PROVIDERS?

3 A YES.

4 Q SECRETARY KLIEBERT, IT'S YOUR CONSIDERED JUDGMENT
5 THAT DHH HAS THE PRIMARY AUTHORITY FOR ENFORCING HB 388; ISN'T
6 THAT RIGHT?

7 A YES, FOR THE MAJORITY OF THE STATUTE, YES.

8 Q BUT DHH IS NOT THE SOLE AUTHORITY ENFORCING HB 388;
9 ISN'T THAT RIGHT?

10 A I'M NOT SURE.

11 Q IF WE COULD TAKE A LOOK AT JOINT EXHIBIT 108.
12 ACTUALLY, IF YOU COULD TAKE A LOOK AT THE FIRST PAGE OF THAT
13 DOCUMENT. WE CAN SCROLL THROUGH IT. DO YOU RECOGNIZE THIS
14 DOCUMENT?

15 A YES.

16 Q THIS IS A DECLARATION THAT YOU SUBMITTED IN THIS
17 CASE IN AUGUST OF 2014. IF I DIRECT YOUR ATTENTION TO
18 PARAGRAPH 3, ABOUT FIVE LINES DOWN. DOES IT SAY THERE, "IT IS
19 MY CONSIDERED JUDGMENT THAT THE DEPARTMENT HAS THE PRIMARY
20 AUTHORITY FOR ENFORCING THE ACT"?

21 A YES.

22 Q "INCLUDING THE AUTHORITY TO IMPOSE FINES UNDER THE
23 ACT;" IS THAT WHAT THAT SAYS?

24 A YES.

25 Q BUT IN THIS DECLARATION YOU DID NOT AT ANY POINT

1 STATE THAT DHH IS THE ONLY PART OF THE LOUISIANA STATE
2 GOVERNMENT THAT IS AUTHORIZED TO ENFORCE ACT 620; IS THAT
3 RIGHT?

4 A THAT'S CORRECT.

5 Q YOU'VE MET WITH YOUR STAFF TO DISCUSS ACT 620; ISN'T
6 THAT RIGHT?

7 A YES.

8 Q AND YOU'VE MET WITH PEOPLE LIKE CECILE CASTELLO; IS
9 THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND DORA KANE; IS THAT RIGHT?

12 A YES.

13 Q AND THEY'RE BOTH IN THE HEALTH STANDARDS SECTION?

14 A THAT'S CORRECT.

15 Q YOU'VE ALSO MET WITH STAKEHOLDERS; ISN'T THAT RIGHT?

16 A YES.

17 Q DO YOU UNDERSTAND WHAT I MEAN BY STAKEHOLDERS?

18 A YEAH. I CONSIDER STAKE -- AGAIN, I'LL GIVE YOU MY
19 DEFINITION OF STAKEHOLDERS. THEY ARE INDIVIDUALS THAT ARE
20 VESTED IN A PARTICULAR POLICY PROGRAM OF THE DEPARTMENT, IS
21 WHAT I CONSIDER STAKEHOLDERS OF THE DEPARTMENT.

22 Q AND THE STAKEHOLDERS THAT YOU MET WITH ABOUT H --
23 EXCUSE ME. I APOLOGIZE. IF I SAY HB 388, BECAUSE WE'VE
24 REFERRED TO IT BOTH WAYS, IF I SAY HB 388, I MEAN ACT 620 AND
25 VICE VERSA. THE STAKEHOLDERS THAT YOU'VE MET WITH ABOUT ACT

1 620 INCLUDE DORINDA BORDLEE; ISN'T THAT RIGHT?

2 A THAT'S CORRECT.

3 Q YOU'RE AWARE THAT MS. BORDLEE IS AFFILIATED WITH AN
4 ABORTION OPPOSITION GROUP NAMED, "THE BIOETHICS DEFENSE LINE;"
5 IS THAT RIGHT?

6 A YES.

7 Q MS. BORDLEE HAS NEVER BEEN AN EMPLOYEE OF DHH; IS
8 THAT RIGHT?

9 A NOT THAT I'M AWARE OF.

10 Q AND SHE'S NEVER BEEN A CONSULTANT WITH DHH; ISN'T
11 THAT RIGHT?

12 A NOT THAT I'M AWARE OF.

13 Q BUT YOU WORKED WITH MS. BORDLEE ON MATTERS RELATING
14 TO ACT 620; IS THAT RIGHT?

15 A ALONG WITH OTHER STAKEHOLDERS, YES.

16 Q AND YOU'RE AWARE THAT MS. BORDLEE ACTUALLY DRAFTED
17 ACT 620, AREN'T YOU?

18 A MY UNDERSTANDING IS, AGAIN, THE DRAFTING OF THE LAW
19 IS TYPICALLY DONE BY THE LEGISLATIVE STAFF WITH THE ASSISTANCE
20 OF OUTSIDE PARTIES. IT'S MY UNDERSTANDING MS. BORDLEE WAS
21 INVOLVED IN THAT, YES.

22 Q WELL, YOU'RE AWARE THAT SHE'S TAKING CREDIT FOR
23 DRAFTING ACT 620 OF WEBSITES AFFILIATED WITH HER ORGANIZATION?

24 A I WAS NOT AWARE OF THAT.

25 Q ARE YOU AWARE THAT MEMBERS OF YOUR STAFF ROUTINELY

1 PROVIDE DHH DOCUMENTS RELATED TO LOUISIANA ABORTION CLINICS TO
2 MS. BORDLEE?

3 A I'M AWARE THAT MY STAFF PROVIDES DOCUMENTS TO ANY
4 PARTIES THAT ASK FOR ANY PUBLICLY AVAILABLE DOCUMENTS AND SHE
5 IS A PARTY THAT HAS RECEIVED SOME OF THOSE DOCUMENTS, YES.

6 Q AND YOU'RE AWARE THAT YOUR STAFF HAS PROVIDED TO HER
7 COPIES OF DHH DEFICIENCY REPORTS AND OTHER INSPECTION
8 DOCUMENTS OF LOUISIANA ABORTION CLINICS; ISN'T THAT RIGHT?

9 A YES, AS WE DO TO OTHER PARTIES AS WELL.

10 Q BENJAMIN CLAPPER IS ANOTHER STAKEHOLDER THAT YOU'VE
11 WORK WITH; ISN'T THAT RIGHT?

12 A YES.

13 Q AND YOU'VE MET WITH HIM PROBABLY THREE OR FOUR TIMES
14 IN THE LAST YEAR AND A HALF; IS THAT RIGHT?

15 A AT THE MOST, YES.

16 Q MR. CLAPPER HAS NEVER BEEN AN EMPLOYEE OF DHH; IS
17 THAT CORRECT?

18 A NOT THAT I'M AWARE OF.

19 Q AND HE'S NEVER BEEN A CONSULTANT WITH DHH?

20 A NOT THAT I'M AWARE OF.

21 Q YOU ARE AWARE THAT MR. CLAPPER IS AFFILIATED WITH
22 ANOTHER ANTI-ABORTION GROUP, THE LOUISIANA RIGHT TO LIFE; IS
23 THAT RIGHT?

24 A YES.

25 Q AND YOU MET WITH MS. BORDLEE AND MR. CLAPPER AS

1 RECENTLY AS FEBRUARY OF LAST YEAR; ISN'T THAT RIGHT?

2 A THAT'S CORRECT.

3 Q SECRETARY KLIEBERT, YOU DON'T EVER RECALL DISCUSSING
4 EGREGIOUS ISSUES RELATED TO ABORTION FACILITIES IN THE CONTEXT
5 OF DHH MAKING SOME SORT OF A REFERRAL TO ANOTHER AGENCY FOR
6 ACTION; DO YOU?

7 A I RECALL SOME LETTERS THAT WERE SENT TO US, IN THAT
8 WE DID MAKE SOME REFERRALS TO OTHER ENTITIES. BUT, AGAIN,
9 THAT'S REALLY DONE AT THE LEVEL OF MY STAFF, NOT THAT I WOULD
10 BE DIRECTLY INVOLVED IN THOSE REFERRALS.

11 Q AND YOU DON'T REMEMBER ANY SORT OF EGREGIOUS
12 ACTIVITY AT THE CENTER OF THOSE REFERRALS; IS THAT CORRECT?

13 A AGAIN, THAT WOULD BE -- MY STAFF WOULD KNOW THAT
14 INFORMATION AND WOULD MAKE THOSE REFERRALS. NO, I WOULDN'T BE
15 AWARE OF THOSE.

16 Q I UNDERSTAND THAT, BUT WHAT I'M ASKING YOU,
17 SECRETARY KLIEBERT, IS WHAT YOU RECALL. DO YOU RECALL THAT
18 EVER HAVING HAPPENED?

19 A I RECALL THAT THERE WERE REFERRALS MADE TO OTHER
20 AGENCIES.

21 Q BUT DO YOU -- YOU DON'T RECALL THE BASIS OF THOSE
22 REFERRALS BEING SOMETHING YOU WOULD CHARACTERIZE AS EGREGIOUS;
23 IS THAT RIGHT?

24 A MY UNDERSTANDING WAS THE BASIS OF THE REFERRALS WERE
25 ALLEGATIONS BY OUTSIDE PARTIES.

1 **Q** IS THAT A YES OR A NO TO MY ANSWER -- TO MY
2 QUESTION?

3 **A** I DON'T RECALL THEM -- THE SPECIFIC INSTANCE WERE
4 THEY EGREGIOUS OR NOT.

5 **Q** SECRETARY KLIEBERT, YOU'RE NOT AWARE OF WHAT TYPES
6 OF HOSPITAL ADMITTING PRIVILEGES WILL MEET ACT 620'S
7 REQUIREMENTS, ARE YOU?

8 **A** NO. EVERY HOSPITAL, MY UNDERSTANDING, HAS DIFFERENT
9 ADMITTING PRIVILEGES THAT THEY DECIDE WHAT WOULD MEET THAT
10 ADMITTING PRIVILEGES OR NOT. SO WE DEPEND ON THE HOSPITALS TO
11 TELL US THAT THEY DO OR DO NOT HAVE ADMITTING PRIVILEGES.

12 **Q** SO YOU'RE NOT -- WITHDRAW. FOR EXAMPLE, YOU DON'T
13 KNOW IF COURTESY PRIVILEGES WILL MEET THE LAW'S REQUIREMENTS;
14 ISN'T THAT RIGHT?

15 **A** AGAIN, MY UNDERSTANDING IS, IF THE COURTESY
16 PRIVILEGES ALLOW ADMISSIONS, THEN IT WOULD MEET THE
17 REQUIREMENT OF THE LAW. SO IT DEPENDS -- AGAIN, I THINK
18 DIFFERENT HOSPITALS DEFINE THOSE COURTESY PRIVILEGES
19 DIFFERENTLY. SO WE WOULD DEPEND ON SOMETHING THAT INDICATED
20 THAT THEY DID HAVE THE ABILITY TO ADMIT A PATIENT.

21 **Q** SO IS IT YOUR TESTIMONY THAT THE ONLY THING THE
22 PRIVILEGES MUST REQUIRE IS THE ADMISSION OF A PATIENT IN ORDER
23 TO MEET OTHER REQUIREMENTS OF ACT 620; IS THAT --

24 **A** THAT IS WHAT -- WHEN I LOOK AT -- AND, AGAIN, IT
25 DEPENDS ON THE INFORMATION THAT'S GIVEN TO US, THAT IF THE

1 INFORMATION INDICATES THAT THEY HAVE ADMITTING PRIVILEGES,
2 THAT WAS THE INTENT TO ASSURE HEALTH AND SAFETY, THAT WAS THE
3 INTENT OF THE LAW.

4 Q I UNDERSTAND THAT. WHAT I'M ASKING IS, IS IT
5 YOUR -- IS IT YOUR TESTIMONY -- I THINK YOU JUST TESTIFIED
6 THAT IF THE PRIVILEGES ALLOW THE DOCTOR TO ADMIT PATIENTS,
7 THAT'S ENOUGH; IS THAT WHAT YOU'RE TESTIFYING?

8 A YES. I'LL QUALIFY THAT BY SAYING, AS LONG AS THEY
9 ALSO CAN ASSURE THAT THERE ARE OTHER SERVICES AVAILABLE. BUT
10 BASICALLY, YES, ADMITTING PRIVILEGES, ONCE I SEE VERIFICATION,
11 THAT THEY HAVE ADMITTING PRIVILEGES, I CONSIDER THAT TO MEET
12 THE INTENT OF THE HEALTH AND SAFETY THAT WAS -- THAT WAS
13 INTENDED BY THE LAW.

14 Q SO WHAT DO YOU MEAN BY OTHER SERVICES IN YOUR
15 ANSWER?

16 A WELL, AGAIN, I THINK IN THE LAW IT TALKS ABOUT THE
17 ABILITY FOR DIAGNOSTIC AND SURGICAL SERVICES AND AS LONG AS
18 THERE IS THAT ABILITY TO HAVE THOSE SERVICES AT THAT HOSPITAL
19 THAT THE DOCTOR CAN ADMIT TO THEN, YES, I WOULD CONSIDER THAT
20 MEETING THE REQUIREMENTS OF THE LAW.

21 Q SO IS IT YOUR TESTIMONY THAT THE DOCTOR DOES NOT
22 NEED TO BE THE PERSON PROVIDING THOSE DIAGNOSTIC AND SURGICAL
23 SERVICES?

24 A THAT'S CORRECT.

25 Q SO AS LONG AS THE DOCTOR CAN ADMIT A PATIENT TO A

1 HOSPITAL WHERE THE PATIENT CAN RECEIVE DIAGNOSTIC AND SURGICAL
2 SERVICES, YOUR VIEW IS THAT THAT DOCTOR HAS MET THE
3 REQUIREMENTS OF HB 388; IS THAT RIGHT?

4 A YES. BECAUSE THE INTENT WAS TO ASSURE CONTINUITY OF
5 CARE AND I BELIEVE THAT THAT ASSURES THAT CONTINUITY OF CARE.

6 Q IF WE COULD JUST GO BACK TO -- EXCUSE ME, JOINT
7 EXHIBIT 166. WE ARE -- THIS IS ACT 620. SO IS IT YOUR
8 TESTIMONY THAT THE LANGUAGE, "WITH THE ABILITY TO ADMIT A
9 PATIENT AND TO PROVIDE DIAGNOSTIC AND SURGICAL SERVICES TO
10 SUCH PATIENT," THAT THE ABILITY IS THE HOSPITAL'S NOT THE
11 DOCTOR'S; IS THAT WHAT YOU'RE TESTIFYING TO?

12 A FOR THE DIAGNOSTIC AND SURGICAL, YES, THAT IS
13 CORRECT.

14 Q SO ALL THAT ACT 620 REQUIRES IS THAT A DOCTOR ENSURE
15 THAT THE PATIENT IS ADMITTED TO THE HOSPITAL; IS THAT YOUR
16 TESTIMONY?

17 A WELL, AGAIN, I THINK THE ACT HAS A LOT MORE THAN
18 JUST THAT PARTICULAR PART IN TERMS OF OTHER STIPULATIONS OF
19 THE ACT. BUT IN TERMS OF THE PHYSICIAN, MY UNDERSTANDING IS
20 THAT IF THEY CAN HAVE THE ADMITTING PRIVILEGES AND GET THAT
21 INDIVIDUAL ADMITTED A HOSPITAL WITHIN 30 MILES OF THE ABORTION
22 FACILITY, IT WOULD MEET THE ATTEMPT TO PROTECT THE HEALTH AND
23 SAFETY.

24 Q SECRETARY KLIEBERT, YOU DON'T KNOW WHAT TYPES OF
25 HOSPITAL ADMITTING PRIVILEGES ARE OFFERED BY HOSPITALS; IS

1 THAT RIGHT?

2 A NO, I CAN ONLY ATTEST TO WHAT IS GIVEN TO ME FROM
3 THOSE HOSPITALS.

4 Q AND YOU AREN'T FAMILIAR WITH THE HOSPITAL ADMITTING
5 PRIVILEGES PROCESS AT ALL, ARE YOU?

6 A OTHER THAN, LIKE I SAID, WHAT IS GIVEN TO ME IN
7 TERMS OF THE INFORMATION THEY SUBMIT TO US.

8 Q AND YOU BELIEVE THAT ACT 620 WILL HELP IN TERMS OF
9 MAKING SURE THAT A PATIENT WILL GET APPROPRIATE TREATMENT IF
10 THERE ARE COMPLICATIONS THAT REQUIRE THE PATIENT TO BE
11 TRANSFERRED TO A HOSPITAL; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q BUT YOU'RE NOT AWARE OF ANY CASES WHERE A PERSON WHO
14 HAD AN ABORTION IN LOUISIANA HAD TO BE TRANSFERRED IMMEDIATELY
15 TO A HOSPITAL; ISN'T THAT RIGHT?

16 A AGAIN, THOSE COMPLICATIONS WOULD NOT COME UP TO ME
17 IN MY POSITION, SO I WOULD NOT BE AWARE OF THOSE.

18 Q IS THE ONLY WAY YOU'D BECOME AWARE OF A CASE WHERE A
19 PATIENT HAD TO BE TRANSFERRED TO A HOSPITAL IN YOUR OFFICIAL
20 POSITION, THERE'S NO OTHER WAY THAT YOU MIGHT BECOME AWARE OF
21 THAT?

22 A NOT TYPICALLY. AGAIN, WE HAVE THOUSAND -- WE
23 LICENSE THOUSANDS OF, I MEAN, HOSPITALS AND FACILITIES, HEALTH
24 CARE FACILITIES ACROSS THE STATE. SO WHEN INCIDENTS HAPPEN IN
25 THOSE HOSPITALS WHERE -- I AM CERTAINLY NOT AWARE OF ALL OF

1 THE INCIDENTS THAT HAPPEN TO INDIVIDUAL PATIENTS THROUGHOUT
2 THE STATE.

3 Q BUT YOU'RE NOT AWARE OF ANY OF THESE INCIDENTS AT
4 ALL?

5 A NONE THAT HAVE BEEN REPORTED TO ME.

6 Q AND YOU'RE NOT AWARE OF WHAT REGULATIONS EXISTED
7 REGARDING THE TRANSFER OF EMERGENCY PATIENTS TO THE HOSPITAL
8 BEFORE ACT 620 WAS PASSED; ISN'T THAT RIGHT?

9 A THAT'S CORRECT.

10 Q YOU BELIEVE THAT IF THERE ARE COMPLICATIONS HAVING
11 CLOSE ACCESS TO A HOSPITAL WITH A DOCTOR HAVING ADMITTING
12 PRIVILEGES IS A SAFETY MECHANISM; ISN'T THAT RIGHT?

13 A THAT IS CORRECT.

14 Q AND THAT SAFETY MECHANISM WOULD ASSIST IN ENSURING
15 THE HEALTH AND SAFETY OF THE PATIENT; ISN'T THAT RIGHT?

16 A THAT'S CORRECT.

17 Q BUT YOU'RE NOT FAMILIAR WITH ANY SITUATION IN WHICH
18 A TRANSFER AGREEMENT WASN'T SUFFICIENT TO MEET THAT GOAL, ARE
19 YOU?

20 A NO.

21 Q SECRETARY KLIEBERT, WHEN I SAY, "TRANSFER
22 AGREEMENT," DO YOU KNOW WHAT I'M TALKING ABOUT?

23 A I ASSUME YOU MEAN AN AGREEMENT FROM ONE HOSPITAL TO
24 TAKE A TRANSFER OF A PATIENT FROM A DOCTOR THAT DOESN'T HAVE
25 ADMITTING PRIVILEGES TO THAT HOSPITAL.

1 **Q** AND YOU AGREE THAT THERE ARE MECHANISMS OTHER THAN
2 ADMITTING PRIVILEGES THAT CAN ACCOMPLISH THE GOAL OF A PATIENT
3 BEING ADMITTED TO A HOSPITAL; IS THAT RIGHT?

4 **A** NO. I BELIEVE THAT ADMITTING PRIVILEGES IS AN
5 IMPORTANT PART OF BEING ABLE TO ASSURE THAT CONTINUITY OF
6 CARE. SO I THINK IT'S PART OF A GROUP OF THINGS THAT CAN
7 ENSURE HEALTH AND SAFETY, BUT I WOULD NOT SAY THAT YOU CAN
8 ACCOMPLISH THE SAME THING WITH OTHER MECHANISMS.

9 **Q** I ASKED A SLIGHTLY DIFFERENT QUESTION.

10 **A** OKAY.

11 **Q** MY QUESTION WAS THAT YOU AGREE THAT THERE ARE
12 MECHANISMS OTHER THAN ADMITTING PRIVILEGES THAT WILL ENSURE
13 THAT A PATIENT IS ADMITTED TO A HOSPITAL IN ORDER TO GET CARE;
14 IS THAT RIGHT?

15 **A** THAT I'M NOT SURE OF. NO, I'M NOT.

16 **Q** DO YOU REMEMBER TAKING YOUR DEPOSITION IN THIS CASE?

17 **A** YES.

18 **Q** AND DO YOU REMEMBER THAT TESTIMONY BEING SWORN?

19 **A** YES.

20 **Q** AND DO YOU REMEMBER THE COURT REPORTER WRITING DOWN
21 EVERYTHING -- TAKING DOWN EVERYTHING THAT YOU SAID?

22 **A** YES.

23 **Q** AND ARE YOU AWARE THAT A TRANSCRIPT OF THAT
24 TESTIMONY WAS CREATED?

25 **A** YES.

1 **Q** I'D LIKE TO SHOW YOU PAGE 133, LINES 13 TO 19, OF
2 YOUR DEPOSITION TESTIMONY. AND IF YOU'LL JUST FOLLOW ALONG
3 WITH ME. AT LINE -- I APOLOGIZE, THAT'S WRONG. IT SHOULD BE
4 20 TO 25 -- 20 TO A LITTLE BIT OVER ON THE NEXT PAGE.

5 "ARE THERE OTHER WAYS -- ARE YOU AWARE OF ANY OTHER
6 WAYS TO ACCOMPLISH SAFE EMERGENCY TRANSFER OF PATIENTS FROM AN
7 ABORTION CLINIC TO A HOSPITAL OTHER THAN ADMITTING PRIVILEGES?
8 AGAIN, I THINK HAVING ADMITTING PRIVILEGES IS THE BEST WAY TO
9 ASSURE THAT. AGAIN, I AM AWARE OF OTHERS WAYS TO MAKE SURE
10 THAT PERSON CAN HAVE ACCESS. I THINK THERE ARE POSSIBLE OTHER
11 WAYS. I'M NOT SAYING THERE ARE NOT, BUT, AGAIN, THE
12 LEGISLATURE FELT, YOU KNOW, WE FEEL IN OUR REGULATIONS THIS IS
13 THE BEST WAY TO ASSURE IT." DO YOU REMEMBER TESTIFYING THAT
14 YOU'RE AWARE OF OTHER WAYS THAT PATIENTS CAN BE TRANSFERRED TO
15 THE HOSPITAL WITHOUT ADMITTING PRIVILEGES?

16 **A** I THINK I SAID I THINK THERE ARE POSSIBLE OTHER
17 WAYS, BUT I DON'T THINK I WAS CONFIDENT THERE WERE OTHER WAYS
18 TO ASSURE THAT SAME LEVEL OF SAFETY, AND I THINK THAT'S WHAT I
19 SAID IN MY ORIGINAL TESTIMONY.

20 **Q** RIGHT. IN YOUR TESTIMONY YOU SAID THAT YOU'RE SURE
21 THERE ARE OTHER WAYS; IS THAT RIGHT?

22 **A** NO. IN MY TESTIMONY I SAID, I THINK. I THINK THERE
23 ARE POSSIBLE OTHER WAYS. I DID NOT SAY I WAS SURE OF THAT. I
24 DON'T SEE IN MY TESTIMONY WHERE I DID SAY THAT. I CERTAINLY
25 DON'T SEE ANYTHING IN THERE THAT SAYS THAT.

1 Q BUT YOU THINK THERE ARE OTHER WAYS?

2 A I SAID I THINK THERE ARE POSSIBLE OTHER WAYS TO
3 ASSURE THAT THE TRANSFER, BUT I WASN'T SURE OF THOSE OTHER
4 WAYS, WHICH IS WHY THE ADMITTING PRIVILEGES WERE WHAT THE
5 LEGISLATURE DECIDED WAS THE APPROPRIATE VEHICLE TO ASSURE THAT
6 HEALTH AND SAFETY.

7 Q DIDN'T YOU JUST DESCRIBE ANOTHER VEHICLE FOR US WHEN
8 I ASKED YOU WHAT A TRANSFER AGREEMENT WAS?

9 A WELL, AGAIN, I'M NOT SURE -- AS I TESTIFIED EARLIER,
10 THAT TRANSFER AGREEMENTS -- I DON'T KNOW ALL OF THE
11 STIPULATIONS OF TRANSFER AGREEMENTS. MY UNDERSTANDING OF A
12 TRANSFER AGREEMENT IS WHAT I SAID I THOUGHT IT WAS. I'M NOT
13 SURE THAT THOSE TRANSFER AGREEMENTS -- I DON'T KNOW IF THOSE
14 TRANSFER AGREEMENTS, HOW EFFECTIVE THEY WERE, HOW ENFORCED
15 THEY WERE. I DON'T KNOW ANYTHING ABOUT THE TRANSFER
16 AGREEMENTS THAT WERE IN EFFECT PRIOR TO THIS ACT.

17 Q SO YOU DON'T KNOW HOW A TRANSFER AGREEMENT WORKS; IS
18 THAT RIGHT?

19 A OTHER THAN WHAT I TOLD YOU WAS MY GENERAL
20 UNDERSTANDING OF WHAT A TRANSFER AGREEMENT IS. I DON'T KNOW
21 HOW THEY WERE PUT IN PLACE, HOW THEY WERE IMPLEMENTED PRIOR TO
22 THIS ACT.

23 Q AND THAT INCLUDES YOU NOT KNOWING IF THEY'RE
24 EFFECTIVE; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 **Q** SECRETARY KLIEBERT, ARE YOU AWARE THAT THE AMERICAN
2 CONGRESS OF OBSTETRICIANS AND GYNECOLOGISTS AND THE AMERICAN
3 MEDICAL SOCIETY, BOTH OPPOSE STATE LEGISLATION THAT REQUIRES
4 HOSPITAL ADMITTING PRIVILEGES FOR ABORTION PROVIDERS?

5 **A** ACTUALLY, NO, I'M NOT AWARE OF THAT.

6 **Q** I'D LIKE TO CHANGE TOPICS FOR A MINUTE. DO YOU
7 RECALL GIVING TESTIMONY BEFORE THE HOUSE COMMITTEE ON HEALTH
8 AND WELFARE IN SUPPORT OF ACT 620?

9 **A** WE GIVE TESTIMONY FOR INFORMATION PURPOSES AND I
10 GAVE TESTIMONY THAT PROVIDED INFORMATION ABOUT THE ACT AND
11 WHAT THE DEPARTMENT BELIEVED ITS AFFECT WOULD BE ON OUR
12 REGULATIONS AND ON ACCESS FOR INDIVIDUALS.

13 **Q** DID YOU GIVE SIMILAR TESTIMONY BEFORE THE SENATE?

14 **A** I DID.

15 **Q** DORINDA BORDLEE ARRANGED FOR YOU TO GIVE THAT
16 TESTIMONY, DIDN'T SHE?

17 **A** MY TESTIMONY FOR ANY OF THE LEGISLATION THAT THE
18 DEPARTMENT IS INVOLVED IN IS ARRANGED THROUGH OUR LEGISLATIVE
19 DEPARTMENT. THEY GET WITH EITHER THE AUTHOR -- THE AUTHOR OR
20 HIS STAFF TYPICALLY ARE THE ONES THAT MAKE THE REQUEST. THEY
21 MAY ALSO THEN INCLUDE OUTSIDE PARTIES, OTHER STAKEHOLDERS, IN
22 DISCUSSING THAT TESTIMONY. BUT THE TESTIMONY -- THE REQUEST
23 FOR THE TESTIMONY FROM ME COMES TYPICALLY FROM A LEGISLATIVE
24 STAFF. SOMETIMES IT DOES COME FROM OUTSIDE PARTIES AS WELL.

25 **Q** IF WE COULD PUT UP ON THE SCREEN JOINT EXHIBIT 17.

1 IS THIS AN E-MAIL TO YOU AND OTHER PEOPLE?

2 A I THINK ACTUALLY I DID NOT RECEIVE THAT E-MAIL
3 BECAUSE IT WAS SENT TO MY WRONG ADDRESS.

4 Q SECRETARY KLIEBERT, IS YOUR E-MAIL ADDRESS LISTED IN
5 THIS DOCUMENT?

6 A NO. THE NAME IS SPELLED WRONG ON IT. IT'S K-L-E-I
7 ON THE DOCUMENT AND I DON'T BELIEVE I RECEIVED THAT E-MAIL,
8 BUT I'M NOT DENYING THAT THAT E-MAIL -- YOU KNOW, IT MAY HAVE
9 WORKED ITS WAY THROUGH, BUT I DON'T RECALL GETTING THAT E-MAIL
10 DIRECTLY.

11 Q THIS IS AN E-MAIL FROM MS. BORDLEE TO -- AT LEAST
12 ATTEMPTED TO YOU, DR. ROBERT MARIER, DR. DAMON CUDIHY AND
13 CINDY COLLINS; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q DO YOU KNOW WHO CINDY COLLINS IS?

16 A YES.

17 Q WHO IS CINDY COLLINS?

18 A I KNOW HER BECAUSE SHE WORKS -- SHE'S PART OF
19 ANOTHER COMMITTEE THAT I'VE BEEN LEGISLATIVE MANDATED TO BE A
20 PART OF, A HUMAN TRAFFICKING COMMITTEE, SO I KNOW THAT SHE
21 WORKS IN COUNSELING AND THAT'S ABOUT ALL I KNOW ABOUT HER.
22 SHE DOES COUNSELING. MY UNDERSTANDING IS SHE WORKS FOR AN
23 AGENCY THAT PROVIDES COUNSELING AND HAS PRO-LIFE STANCE.

24 Q ARE YOU FAMILIAR WITH DR. ROBERT MARIER?

25 A I HAVE MET HIM BEFORE AND I'M FAMILIAR -- SOMEWHAT

1 FAMILIAR WITH HIM, NOT CLOSELY FAMILIAR WITH HIM.

2 Q ARE YOU AWARE THAT HE'S BEEN IDENTIFIED AS AN EXPERT
3 IN THIS CASE?

4 A YES.

5 Q ARE YOU AWARE THAT HE TESTIFIED IN FRONT OF THE
6 LEGISLATURE ON ACT 620 AS WELL?

7 A YES.

8 Q ARE YOU FAMILIAR WITH DR. DAMON CUDIHY?

9 A YEAH. I MET HIM, I BELIEVE, AT THE LEGISLATURE,
10 THAT'S THE FIRST TIME I HAD MET HIM.

11 Q ARE YOU AWARE THAT HE IS AN EXPERT IN THIS CASE?

12 A YES.

13 Q AND ARE YOU AWARE THAT HE GAVE TESTIMONY AT THE
14 LEGISLATURE AS WELL ON ACT 620?

15 A YES.

16 Q IN THIS E-MAIL IS MS. BORDLEE PROVIDING INFORMATION
17 ABOUT THE DATE OF THE HEARING BEFORE THE SENATE?

18 A YES.

19 Q AND IF YOU'LL FOLLOW ALONG THE LAST THREE LINES,
20 DOES THIS E-MAIL SAY, "I WANTED TO GET THE WEDNESDAY,
21 APRIL 30TH DATE FOR SCHEDULING PURPOSES FOR THOSE WHO MAY
22 TESTIFY;" IS THAT WHAT THAT SAYS?

23 A YES.

24 Q SO MS. BORDLEE IS PROVIDING INFORMATION FOR PEOPLE
25 WHO ARE GOING TO TESTIFY; IS THAT RIGHT?

1 **A** I ASSUME SHE'S PROVIDING INFORMATION FOR INDIVIDUALS
2 WHO MAY BE -- WHO MAY BE ASKED TO TESTIFY. I DON'T KNOW --
3 AGAIN, I DON'T RECALL THAT PARTICULAR E-MAIL, NOR THE INTENT,
4 BUT I WOULD ASSUME THAT IS WHAT SHE'S TRYING TO DO, IS GET
5 INFORMATION ABOUT INDIVIDUALS WHO MIGHT BE TESTIFYING.

6 **Q** WE CAN PUT THAT DOCUMENT ASIDE. CAN WE TAKE A LOOK
7 AT JOINT EXHIBIT 6. IF YOU COULD TAKE A LOOK AT THE SECOND
8 E-MAIL FROM THE TOP, SO THE ONE DATED MAY 6TH OF 2014.

9 **A** YES.

10 **Q** WHO IS KIMBERLY HUMBLE?

11 **A** SHE IS MY GENERAL COUNSEL FOR THE AGENCY.

12 **Q** AND WHO IS STEVEN RUSSO?

13 **A** HE'S THE EXECUTIVE COUNSEL FOR THE AGENCY.

14 **Q** DOES MS. HUMBLE WRITE TO MR. RUSSO, "JUST LET ME
15 KNOW WHEN YOU GET BACK AND WE WILL CALL DORINDA, SEE WHAT HER
16 QUESTIONS ARE. KATHY JUST E-MAILED ME AND SHE WILL BE
17 AVAILABLE TO TESTIFY TOMORROW." IS THAT WHAT THAT SAYS?

18 **A** YES.

19 **Q** DID MS. HUMBLE AND MR. RUSSO HELP PREPARE YOU FOR
20 YOUR TESTIMONY?

21 **A** NOT THAT I RECALL. AGAIN, FROM MY TESTIMONY, IT IS
22 USUALLY PREPARED BY OUR COMMUNICATIONS' DEPARTMENT, WITH THE
23 LEGISLATIVE BUREAU. THEY USUALLY GET WITH THE STAFF THAT ARE
24 THE AUTHOR OF THE BILL AND, YOU KNOW, DISCUSS WHAT POINTS THEY
25 WOULD LIKE COVERED BASED, AGAIN, ON ITS AFFECT ON OUR

1 DEPARTMENT. AND THEN I WILL, ONCE I GET THAT FROM THEM, I'LL
2 REVIEW IT FOR, YOU KNOW, FOR TONE IN TERMS OF -- I WANT TO
3 MAKE SURE IT'S MY TONE WHEN I TESTIFY AS WELL AS THE ACCURACY
4 OF THE STATEMENTS TO THE BEST OF MY KNOWLEDGE.

5 Q DID MR. RUSSO AND MS. HUMBLE KNOW YOU WERE
6 TESTIFYING --

7 A YES.

8 Q -- ON ACT 620?

9 A I WOULD ASSUME, YES. BASED ON THAT, YES, THEY WOULD
10 KNOW. THEY WOULD KNOW WHEN I'M TESTIFYING BEFORE ANY
11 LEGISLATIVE COMMITTEE ANYHOW.

12 Q AND YOU'RE AWARE THAT MR. RUSSO AND MS. HUMBLE
13 ROUTINELY SPEAK WITH MEMBERS OF RIGHT TO LIFE GROUPS IN
14 LOUISIANA?

15 A AGAIN, YOU WOULD HAVE TO TALK WITH THEM ABOUT HOW
16 ROUTINELY THEY SPEAK WITH THEM. BUT, YES, AGAIN, WE SPEAK
17 WITH LOTS OF STAKEHOLDERS THROUGHOUT -- YOU KNOW, ON A DAILY
18 BASIS, SO I'M QUITE SURE THEY HAVE CONVERSATIONS WITH THOSE
19 INDIVIDUALS AS WELL.

20 Q AND IF WE COULD ALSO -- JUST ONE MORE ON THIS TOPIC.
21 JOINT EXHIBIT 8. THIS IS AN E-MAIL DATED MARCH 26 OF 2014
22 FROM MS. BORDLEE TO YOU; IS THAT RIGHT?

23 A THAT'S CORRECT.

24 Q IS THAT YOUR E-MAIL ADDRESS IN THE DOCUMENT?

25 A YES, THAT'S CORRECT.

1 **Q** AND IF I'LL JUST DIRECT YOU TO THE FIRST SENTENCE
2 UNDER, DEAR SECRETARY KLIEBERT. "THANK YOU AGAIN FOR YOUR
3 OUTSTANDING TESTIMONY ON HB 388, BY KATRINA JACKSON." IS THAT
4 WHAT THAT SAYS?

5 **A** YES.

6 **Q** SO MS. BORDLEE IS E-MAILING YOU AND THANKING YOU FOR
7 YOUR TESTIMONY; IS THAT RIGHT?

8 **A** THAT'S CORRECT.

9 **Q** I APOLOGIZE, I ACTUALLY HAVE ONE MORE. IF WE COULD
10 TAKE A LOOK AT JOINT EXHIBIT 9. IF YOU COULD LOOK AT THE
11 SECOND E-MAIL.

12 **A** YES.

13 **Q** AGAIN, THIS IS AN E-MAIL FROM DORINDA BORDLEE TO YOU
14 ON AUGUST 8TH, 2014. MS. KLIEBERT, WHEN WAS THIS LAWSUIT
15 FILED?

16 **A** I'M NOT SURE.

17 **Q** WAS THE LAWSUIT FILED IN THE SUMMER OF LAST YEAR?

18 **A** I HONESTLY DO NOT KNOW THE DATE THAT THE LAWSUIT WAS
19 FILED.

20 **Q** DOES THAT SOUND ABOUT RIGHT?

21 **A** THE SUMMER OR FALL LAST YEAR IS PROBABLY WHAT I
22 WOULD THINK, YES.

23 **Q** AND DO YOU SEE HERE MS. BORDLEE AGAIN WRITES TO YOU
24 AND TO DR. MARIER AND DR. CUDIHY AND MS. COLLINS? AND IF
25 YOU'LL FOLLOW ALONG WITH ME, "IN ANTICIPATION OF A COURT

1 CHALLENGE TO LOUISIANA'S ADMITTING PRIVILEGES LAW, WE WOULD
2 LIKE TO ASSIST BY HELPING TO PREPARE THE FIRST DRAFT OF
3 DECLARATIONS THAT CAN BE READY TO FILED WITH THE COURT. THESE
4 DECLARATIONS WOULD BASICALLY ATTEST TO THE INFORMATION THAT
5 EACH OF YOU TESTIFIED TO IN THE HOUSE AND SENATE COMMITTEE.
6 IT WOULD BE VERY HELPFUL IF YOU COULD PLEASE FORWARD YOUR
7 TESTIMONY TO ME IF YOU HAVE IT SAVED ON YOUR COMPUTERS." IS
8 THAT WHAT THAT SAYS?

9 A YES. BUT, AGAIN, I'LL SAY THIS WAS ALSO NOT SENT TO
10 MY CORRECT E-MAIL. I DO NOT RECALL GETTING THAT. I'M NOT
11 SAYING I DIDN'T, BUT IT WAS NOT SENT TO MY CORRECT E-MAIL.

12 Q OKAY. DID YOU SUBMIT A DECLARATION IN THIS LAWSUIT
13 LAST AUGUST?

14 A YES, I ASSUME IT WAS AUGUST. AGAIN, I DON'T
15 REMEMBER THE DATES. BUT I KNOW I SENT IT --

16 Q WHEN THE LAWSUIT WAS FILED?

17 A YES.

18 Q OKAY. THANK YOU. SO LET'S TALK A LITTLE BIT ABOUT
19 THE TESTIMONY THAT YOU GAVE BEFORE THE HOUSE COMMITTEE. DID
20 YOU STATE -- YOU STATED IN YOUR TESTIMONY THAT ACT 620 WOULD
21 HELP STRENGTHEN THE DEPARTMENT'S ABILITY TO HELP PROTECT
22 MOTHERS AND UNBORN CHILDREN; IS THAT RIGHT?

23 A THAT'S CORRECT.

24 Q SO ONE OF THE GOALS OF PASSING ACT 620 --

25 THE COURT: HOLD ON ONE SECOND.

1 **MR. JOHNSON:** IT MAY BE HELPFUL FOR ALL OF US IF SHE
2 HAS A TRANSCRIPT OF HER TESTIMONY. WE HAVE THAT AS AN EXHIBIT
3 IN THE CASE IF YOU WOULD LIKE TO INTRODUCE IT AND THEN WE CAN
4 ALL LOOK AT IT AND SEE EXACTLY WHAT SHE SAID.

5 **MS. DOUFEKIAS:** WE'LL GET THERE IN A MINUTE.

6 **THE COURT:** WELL, HANG ON. I DO THINK IT'S A FAIR
7 POINT. IF YOU'RE GOING TO QUESTION ABOUT THE SPECIFIC
8 TESTIMONY, I THINK IT WOULD BE APPROPRIATE FOR HER TO HAVE
9 THAT AVAILABLE.

10 **MR. JOHNSON:** IT'S DEFENDANT'S EXHIBIT 119, YOUR
11 HONOR.

12 **THE COURT:** IS THAT IN EVIDENCE?

13 **MR. JOHNSON:** IT HAS NOT BEEN ENTERED YET.

14 **MS. DOUFEKIAS:** THAT'S NOT, BUT JOINT EXHIBIT 40 HAS
15 BEEN AND THAT'S HER TESTIMONY.

16 **THE COURT:** OKAY. SO JOINT EXHIBIT 40 DOES
17 CONTAIN --

18 SO IF THEY ASK YOU, SECRETARY KLIEBERT, ABOUT
19 SOMETHING THAT YOU NEED TO REFER TO, YOUR ACTUAL TESTIMONY
20 IT'S AVAILABLE AND I'M ASSUMING SOMEBODY WILL MAKE THAT
21 AVAILABLE TO THE SECRETARY TO ASSIST HER IF NECESSARY.

22 ANYTHING ELSE, MR. JOHNSON?

23 **MR. JOHNSON:** WELL, I WOULD JUST SUGGEST TO THE
24 COURT THAT DEFENDANT'S EXHIBIT 119 IS THE ENTIRETY OF THE
25 TESTIMONY THAT WAS PRESENTED IN THAT COMMITTEE AND IF WE

1 WANTED THE FULL CONTEXT IT WOULD PROBABLY BE HELPFUL FOR
2 EVERYONE TO HAVE THAT ALTOGETHER.

3 **THE COURT:** WELL, SHE HASN'T ASKED REALLY A QUESTION
4 YET.

5 **MR. JOHNSON:** OKAY. FAIR ENOUGH.

6 **THE COURT:** SO WE'RE GOING TO TAKE IT QUESTION BY
7 QUESTION.

8 **MR. JOHNSON:** FAIR ENOUGH.

9 **MS. DOUFEKIAS:** AND I DON'T ACTUALLY PLAN ON ASKING
10 HER ABOUT ANYBODY ELSE'S TESTIMONY. I'M JUST GOING TO ASK HER
11 ABOUT HER'S.

12 **THE COURT:** OKAY.

13 **BY MS. DOUFEKIAS:**

14 **Q** SECRETARY KLIEBERT, IS THIS A COPY OF THE TESTIMONY
15 THAT YOU GAVE ON MARCH 19TH, 2014 IN FRONT OF THE HOUSE
16 COMMITTEE ON HEALTH AND WELFARE?

17 **A** YEAH. I BELIEVE IT IS, YES.

18 **Q** AND DO YOU SEE ABOUT THREE LINES -- I'M SORRY, THE
19 SECOND LINE, IT SAYS -- THE WHOLE SENTENCE STARTS ON THE FIRST
20 LINE. I APOLOGIZE. "THANK YOU FOR ALLOWING ME TO JOIN YOU
21 TODAY TO PROVIDE YOU WITH SOME INFORMATION ABOUT HOUSE BILL
22 388 AND HOW IT WOULD HELP STRENGTHEN THE DEPARTMENT'S ABILITY
23 TO PROTECT MOTHERS AND UNBORN CHILDREN." DO YOU SEE THAT?

24 **A** YES.

25 **Q** AND THE NEXT SENTENCE SAYS, "OUR STATE HAS A STRONG

1 RECORD OF ENACTING STRONG LAWS TO REGULATE ABORTION AND
2 PROTECT THE LIVES OF MOTHERS AND UNBORN CHILDREN." IS THAT
3 RIGHT?

4 A YES.

5 Q SO ONE OF THE GOALS OF HB 388, ACCORDING TO YOUR
6 TESTIMONY, IS TO PROTECT UNBORN CHILDREN; IS THAT RIGHT?

7 A TO PROTECT BOTH MOTHERS AND UNBORN CHILDREN, YES.

8 Q IF YOU CAN LOOK DOWN TO THE FOURTH PARAGRAPH, DO YOU
9 SEE THERE WHERE YOU REFER TO THE WORK OF DR. JOHN THORP,
10 PROFESSOR OF OBSTETRICS, OB/GYN AT THE UNIVERSITY OF NORTH
11 CAROLINA, CHAPEL HILL?

12 A YES.

13 Q SCHOOL OF MEDICINE?

14 A YES.

15 Q AND YOU TALK ABOUT FOUR KEY BENEFITS TO ENSURING
16 ADMITTING PRIVILEGES THAT DR. THORP HAS IDENTIFIED IN HIS
17 WORK; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q ARE YOU AWARE THAT DR. THORP WAS IDENTIFIED AS AN
20 EXPERT IN THIS CASE?

21 A I AM NOW, YES.

22 Q DR. THORP IS AN OB/GYN WHO PRACTICES IN NORTH
23 CAROLINA; ISN'T THAT RIGHT?

24 A THAT'S MY UNDERSTANDING.

25 Q HE DOESN'T PRACTICE IN LOUISIANA; CORRECT?

1 **A** THAT'S MY UNDERSTANDING.

2 **Q** AND YOU IN YOUR TESTIMONY, YOU TRUSTED DR. THORP'S
3 OPINION WHEN YOU CITED IT IN YOUR TESTIMONY; IS THAT RIGHT?

4 **A** THAT'S CORRECT.

5 **Q** ARE YOU AWARE THAT A FEDERAL DISTRICT COURT JUDGE
6 CONSIDERING AN ADMITTING PRIVILEGES REQUIREMENT SIMILAR TO THE
7 ONE -- SIMILAR TO ACT 620 FOUND THAT DR. THORP'S TESTIMONY
8 ABOUT WHAT IS NECESSARY TO CARE FOR COMPLICATIONS OF ABORTION
9 WAS NOT CREDIBLE?

10 **A** I'M NOT AWARE OF THAT.

11 **Q** ARE YOU AWARE THAT DR. THORP TESTIFIED IN A
12 DEPOSITION IN THIS CASE THAT HE HAS NO KNOWLEDGE OF PHYSICIAN
13 CREDENTIALING IN THE STATE OF LOUISIANA?

14 **A** AGAIN, I'M NOT AWARE OF THAT.

15 **Q** THERE WERE ALSO TALKING POINTS -- THERE WERE TALKING
16 POINTS PREPARED FOR YOU BY REPRESENTATIVE KATRINA JACKSON'S
17 OFFICE; IS THAT RIGHT?

18 **A** AGAIN, TALKING POINTS AND YOU'RE SAYING THEY WERE
19 PREPARED BY KATRINA JACKSON'S OFFICE, IT WAS PROBABLY DONE IN
20 CONJUNCTION WITH MY OFFICE AS WELL AND OTHER ENTITIES. THAT'S
21 TYPICALLY HOW WE DO IT, YES.

22 **Q** I APPRECIATE THAT SHE MAY NOT HAVE JUST SENT IT ON
23 OVER AND YOU READ IT WITHOUT LOOKING AT IT AND HAVING SOME
24 PEOPLE IN YOUR OFFICE LOOK AT IT. BUT REPRESENTATIVE
25 JACKSON'S OFFICE WAS INVOLVED IN THE TALKING POINTS?

1 A TYPICALLY, AGAIN, IF A LEGISLATURE -- WHENEVER A
2 LEGISLATOR-- A PARTICULAR LEGISLATOR IS PROPOSING A LAW, WE
3 WILL PROVIDE INFORMATION TO THEM, THEY WILL PROVIDE
4 INFORMATION TO US. IT'S A BACK AND FORTH IN TERMS OF WHAT
5 THEY'RE LOOKING FOR IN TERMS OF PRESENTATION AND INFORMATION.
6 AGAIN, WE PROVIDE INFORMATION, THEY ASK US FOR THE TYPE OF
7 INFORMATION THEY WOULD LIKE US TO PRESENT.

8 Q AND JUST TO MAKE CLEAR FOR THE RECORD,
9 REPRESENTATIVE JACKSON SPONSORED ACT 620; IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q IF WE COULD PUT UP JOINT EXHIBIT 24. AND IF WE
12 COULD -- IF YOU COULD SCROLL DOWN TO THE THIRD E-MAIL. DO YOU
13 SEE WHERE THE TEXT OF THE E-MAIL SAYS, "PLEASE SEE THE TALKERS
14 FOR KATHY BELOW?"

15 A YES.

16 Q ARE YOU KATHY?

17 A I AM KATHY.

18 Q AND TALKERS IS TALKING POINTS; IS THAT RIGHT?

19 A TALKING POINTS, THAT'S CORRECT.

20 Q IF WE COULD FLIP TO THE NEXT PAGE OF THE DOCUMENT,
21 THE LAST BULLET. THE LAST SOLID BULLET. AGAIN, THERE WE SEE
22 ACCORDING TO DR. THORP. IS THAT THE SAME DR. THORP THAT YOU
23 RELIED ON IN YOUR TESTIMONY?

24 A YES.

25 Q AND THEN IF YOU COULD SCROLL DOWN -- AND THIS IS

1 GOING TO GO ACROSS TWO PAGES. IF WE COULD SCROLL DOWN TO THE
2 BOTTOM OF THE SECOND PAGE. THAT BULLET STARTS AT THE BOTTOM
3 OF THIS PAGE AND GOES TO THE NEXT PAGE. IT READS, "WE ARE
4 FIRMLY COMMITTED TO WORKING WITH REPRESENTATIVE JACKSON AND
5 THE LEGISLATURE TO CONTINUE TO WORK TO PROTECT THE SAFETY AND
6 WELLBEING OF LOUISIANA AND THE MOST VULNERABLE AMONG US,
7 UNBORN CHILDREN." IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q THE VIEWS IDENTIFIED IN YOUR TESTIMONY, IN YOUR
10 TALKING POINTS, ARE CONSISTENT WITH GOVERNOR JINDAL'S
11 STATEMENTS ON ACT 620; ISN'T THAT RIGHT?

12 A AGAIN, YOU'D HAVE TO ASK GOVERNOR JINDAL AND HIS
13 STAFF. BUT, YES, I THINK THAT THEY'RE PRETTY SIMILAR IN TERMS
14 OF THE INTENT OF THE LEGISLATION.

15 MS. DOUFEKIAS: YOUR HONOR, I HAVE AN EXHIBIT,
16 PLAINTIFFS' EXHIBIT 174, AND PLEASE DON'T PUT THIS UP BECAUSE
17 IT'S NOT IN EVIDENCE YET. I HAVE HARD COPIES AS WELL, IF
18 ANYBODY WOULD LIKE TO LOOK AT THEM. SO IF WE COULD PUT THIS
19 ON THE SCREEN JUST FOR THE LAWYERS AND THE JUDGE AND THE
20 WITNESS THAT WOULD BE GREAT.

21 MR. JOHNSON: I'M SORRY, YOUR HONOR. WHICH EXHIBIT
22 IS IT; WHAT NUMBER?

23 MS. DOUFEKIAS: PLAINTIFFS' EXHIBIT 174. I'VE GOT A
24 HARD COPY IF YOU WANT TO SEE IT, MIKE, IF IT'S EASIER.

25 MR. JOHNSON: I MIGHT DO THAT.

1 MS. DOUFEKIAS: SURE.

2 BY MS. DOUFEKIAS:

3 Q AGAIN, IF YOU COULD TAKE A LOOK AT THE TOP OF THIS
4 DOCUMENT. IS THIS AN E-MAIL THAT YOU RECEIVED?

5 A YES, I WOULD ASSUME I DID, YES. MY E-MAIL IS ON
6 THERE, YES.

7 Q WHO IS CECILE CASTELLO?

8 A CECILE CASTELLO IS OVER OUR LICENSING HEATH
9 STANDARDS DIVISION.

10 Q STEVEN RUSSO WE MENTIONED IS IN THE GENERAL
11 COUNSEL'S OFFICE AT DHH?

12 A THAT'S CORRECT. EXECUTIVE COUNSEL.

13 Q I APOLOGIZE.

14 A THERE'S A SLIGHT DIFFERENCE, THAT'S FINE.

15 Q WHO IS CHRISTINA STEVENS?

16 A SHE WAS PREVIOUSLY OUR COMMUNICATIONS' DIRECTER.

17 Q AND AS COMMUNICATIONS' DIRECTOR WAS IT HER JOB TO
18 FORWARD PRESS RELEASES FROM THE GOVERNOR'S OFFICES?

19 A SHE FORWARDS PRESS RELEASES FROM ALL OVER, YES.

20 Q SO IS RECEIVING A PRESS RELEASE FROM CHRISTINA
21 STEVENS ROUTINE?

22 A PRETTY TYPICAL, YES.

23 Q DO YOU RECOGNIZE THIS AS A PRESS RELEASE THAT WAS
24 SENT FROM GOVERNOR JINDAL'S OFFICE?

25 A CERTAINLY, YES, IT LOOKS LIKE A PRESS RELEASE FROM

1 GOVERNOR JINDAL'S OFFICE.

2 MS. DOUFEKIAS: YOUR HONOR, I'D LIKE TO MOVE
3 PLAINTIFFS' EXHIBIT 174 INTO EVIDENCE.

4 THE COURT: ANY OBJECTIONS?

5 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

6 THE COURT: ALL RIGHT, LET IT BE RECEIVED.

7 BY MS. DOUFEKIAS:

8 Q IF WE COULD TAKE A LOOK AT THE TITLE -- FIRST OF
9 ALL, THE DATE OF THIS PRESS RELEASE IS MARCH 7TH, 2014; IS
10 THAT RIGHT?

11 A THAT'S CORRECT.

12 Q AND THE TITLE OF THIS PRESS RELEASE IS, *GOVERNOR*
13 *JINDAL ANNOUNCES LEGISLATION TO FURTHER PROTECT LIFE IN*
14 *LOUISIANA*; IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q STARTING AT THE TOP -- AND I APOLOGIZE, AT THE TOP,
17 AS MOST PRESS RELEASES DO, IT SAYS, "FOR IMMEDIATE RELEASE"?

18 A YES.

19 Q SO BEGINNING AT THE TOP, THE PRESS RELEASE READS,
20 "TODAY GOVERNOR JINDAL ANNOUNCED LEGISLATIVE PROPOSALS AIMED
21 AT CONTINUING TO PROTECT LIFE IN LOUISIANA. THESE REFORMS
22 WILL BUILD UPON THE WORK GOVERNOR JINDAL HAS DONE TO MAKE
23 LOUISIANA THE MOST PRO-LIFE STATE IN THE NATION. GOVERNOR
24 JINDAL SAID, 'PROMOTING A CULTURE OF LIFE IN LOUISIANA HAS
25 BEEN AN IMPORTANT PRIORITY OF MINE SINCE TAKING OFFICE AND I

1 AM PROUD TO SUPPORT THESE BILLS THIS LEGISLATIVE SESSION. IN
2 THIS STATE WE UPHOLD THE CULTURE OF LIFE THAT VALUES HUMAN
3 BEINGS AS UNIQUE CREATURES WHO WERE MADE BY OUR CREATOR.
4 THESE BILLS WILL BUILD UPON ALL WE HAVE DONE IN THE PAST SIX
5 YEARS TO PROTECT" UNBORN -- "TO PROTECT THE UNBORN," EXCUSE
6 ME. IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q AND THEN IN THE NEXT PARAGRAPH UP, REPRESENTATIVE
9 KATRINA JACKSON IS QUOTED; IS THAT RIGHT?

10 A YES.

11 Q IF YOU SEE THERE THE SECOND LINE WHERE IT SAYS, "THE
12 UNSAFE ABORTION PROTECTION ACT," IS THAT ANOTHER NAME FOR ACT
13 620?

14 A YES.

15 Q AND IN THE LAST LINE OF THAT PARAGRAPH DOES IT SAY,
16 THAT THE" UNBORN -- "THE UNSAFE ABORTION PROTECTION ACT WILL
17 BUILD ON OUR PAST WORK TO PROTECT LIFE IN OUR STATE;" IS THAT
18 WHAT THAT SAYS?

19 A YES.

20 Q AND THAT'S A QUOTE FROM REPRESENTATIVE JACKSON; IS
21 THAT CORRECT?

22 A YES.

23 Q AND, FINALLY, AT THE END OF THE PAGE, IT SAYS,
24 "SINCE GOVERNOR JINDAL HAS TAKEN OFFICE HE HAS SIGNED OVER A
25 DOZEN PIECES OF LEGISLATION AIMED AT PROTECTING THE CULTURE OF

1 LIFE IN LOUISIANA;" IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q IF YOU'LL FLIP TO THE SECOND PAGE, YOU'LL SEE THAT
4 THERE ARE TWO HOUSE BILLS ON THE SECOND PAGE, UNDER THE TITLE
5 *PROPOSALS TO FURTHER PROTECT LIFE IN LOUISIANA?*

6 A YES.

7 Q AND ONE OF THOSE IS HB 388; IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q IF WE COULD TAKE A LOOK AT JOINT EXHIBIT 15.
10 SECRETARY KLIEBERT, ARE YOU FAMILIAR WITH THE CONCEPT THAT ACT
11 620 WAS MODELED AFTER A SIMILAR ADMITTING PRIVILEGES LAW THAT
12 WAS PASSED IN TEXAS?

13 A I HAVE SEEN INDICATION THAT IT WAS.

14 Q AND IS THIS AN E-MAIL FROM DORINDA BORDLEE TO
15 HERSELF AND TO KATRINA JACKSON IN MAY OF 2014?

16 A YES.

17 Q AND DOES IT SAY AT THE TOP, "LA HB 388 FOLLOWS THIS
18 MODEL"?

19 A YES. BUT I WOULD LIKE TO CLARIFY THAT WHILE I HAVE
20 SEEN INDICATION OF THAT, CERTAINLY, AT THE TIME OF LEGISLATION
21 I WAS NOT AWARE AT ALL THAT IT MODELED ANOTHER STATE'S
22 LEGISLATION.

23 Q SO WHEN YOU WERE TALKING ABOUT THE BILL YOU WEREN'T
24 AWARE THAT IT MODELED AN ALMOST IDENTICAL STATUTE IN TEXAS?

25 A NO, I DID NOT KNOW THAT.

1 **Q** SO WHEN YOU WERE TESTIFYING ABOUT THE BILL YOU WERE
2 NOT FAMILIAR WITH THE FACT THAT PRO-LIFE ORGANIZATIONS IN
3 LOUISIANA WERE TRYING TO MODEL THE BILL AS CLOSELY TO THE
4 TEXAS BILL, WHICH WAS ALREADY BEING TESTED IN THE COURTS; YOU
5 WEREN'T AWARE OF THAT?

6 **A** AGAIN, I DID NOT KNOW IT WAS MODELING EXACTLY THOSE.
7 LEGISLATION TYPICALLY DOES GET -- DOES MODEL OTHER STATES, I
8 JUST WAS NOT SPECIFICALLY AWARE OF THAT.

9 **Q** AND SO YOU WERE NOT AWARE, FOR EXAMPLE, IN THE THIRD
10 PARAGRAPH HERE, WHERE IT SAYS, "THE LAW HAS ALREADY HAD --"
11 AND THEY'RE REFERRING TO THE TEXAS LAW. "THE LAW HAS ALREADY
12 HAD TREMENDOUS SUCCESS IN CLOSING ABORTION CLINICS AND
13 RESTRICTING ABORTION ACCESS IN TEXAS." YOU WERE NOT AWARE OF
14 THAT FACT?

15 **A** AGAIN, NOT THAT I RECALL. AND UNDERSTAND, MY ROLE
16 IN THESE LEGISLATION -- I MEAN I DON'T -- WE'RE INVOLVED IN
17 NUMEROUS PIECES OF LEGISLATION THROUGHOUT THE SESSION AND SO
18 FOR EVERY PIECE OF LEGISLATION, I DON'T KNOW ALL OF THE
19 DETAILS ABOUT EVERY PIECE OF LEGISLATION THAT I'M ASKED FOR
20 ADDITIONAL INFORMATION ON.

21 **Q** AND YOU WEREN'T AWARE, FOR EXAMPLE, THAT THE TEXAS
22 LAW WAS SHUTTING DOWN CLINICS AND AS IT SAYS HERE, "THOSE
23 SUCCESSES APPEAR ALL BUT CERTAIN TO STICK WITH OR WITHOUT
24 SUPREME COURT'S APPROVAL OF THE LAW THAT CREATED THEM;" THAT
25 WASN'T SOMETHING THAT YOU WERE AWARE OF?

1 **A** AGAIN, IF I WERE AWARE OF IT, IT WAS ONLY SOMETHING
2 I PROBABLY WOULD HAVE READ IN THE PAPER SOMEWHERE.

3 **Q** SECRETARY KLIEBERT, LAST FRIDAY, SO THE LAST
4 BUSINESS DAY BEFORE THIS TRIAL STARTED, YOU FILED ANOTHER
5 AFFIDAVIT IN THIS CASE; IS THAT RIGHT?

6 **A** THAT'S CORRECT.

7 **Q** AND THAT AFFIDAVIT CONCERNS WHETHER OR NOT TWO OF
8 THE DOCTORS WHO PERFORM ABORTIONS IN LOUISIANA HAVE PRIVILEGES
9 THAT SATISFY ACT 620; IS THAT RIGHT?

10 **A** THAT'S CORRECT. AND WE FILED THE AFFIDAVIT BECAUSE
11 WE JUST RECEIVED -- I JUST RECEIVED THE INFORMATION THE DAY
12 BEFORE.

13 **Q** OKAY. ARE YOU AWARE THAT YOUR COUNSEL SERVED A
14 SUBPOENA ON TULANE MEDICAL CENTER, WHICH IS ONE OF THE
15 HOSPITALS WHERE THESE PRIVILEGES ARE -- IT'S ONE OF THE
16 HOSPITALS IN THE PRIVILEGES WE'RE GOING TO BE TALKING ABOUT,
17 SERVED A SUBPOENA ON TULANE; ARE YOU FAMILIAR WITH THAT?

18 **A** NO.

19 **Q** SO YOU'RE NOT AWARE THAT YOUR COUNSEL GOT A COPY --
20 EVEN BEFORE I COULD SEND A COPY OF THOSE DOCUMENTS, YOUR
21 COUNSEL GOT A COPY, YOU KNOW, SHORTLY AFTER SERVING THAT
22 SUBPOENA?

23 **A** AGAIN, NO. I JUST KNOW WHEN I RECEIVED THE
24 DOCUMENTS.

25 **Q** OKAY. SO YOU GOT A BUNCH OF DOCUMENTS AND YOU

1 LOOKED AT THEM AND BASED ON THOSE DOCUMENTS YOU FILED A
2 DECLARATION. WE CAN TAKE A LOOK AT IT. IT'S JOINT
3 EXHIBIT 191. WE CAN SCROLL THROUGH IT OR YOU --

4 A I'M FAMILIAR WITH IT, YES.

5 Q AND IF YOU TAKE A LOOK AT PARAGRAPH 6 THIS IS THE
6 PARAGRAPH THAT CONCERNS DR. JOHN DOE'S -- JOHN DOE 2'S
7 PRIVILEGES; IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q AND JOHN DOE 2 HAS SOME PRIVILEGES AT TULANE MEDICAL
10 CENTER; IS THAT RIGHT?

11 A THAT'S CORRECT.

12 Q AND IN THIS PARAGRAPH IF WE COULD GO DOWN TO
13 SUBPARAGRAPH D; DO YOU SEE WHAT THAT SAYS?

14 A YES.

15 Q "THE CLINICAL PRIVILEGES GRANTED ALLOW DR. JOHN DOE
16 NUMBER 2 TO ADMIT HIS ABORTION PATIENTS TO A HOSPITAL WHERE
17 DIAGNOSTIC AND SURGICAL CARE CAN BE PROVIDED TO SUCH
18 PATIENTS." IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q SO YOUR AFFIDAVIT, ALONG WITH YOUR PRIOR TESTIMONY
21 THAT YOU JUST GAVE, SUPPORTS THE VIEW THAT THE DOCTOR WHO IS
22 TRYING TO GET THE PRIVILEGES OR HAS THE PRIVILEGES DOESN'T
23 ACTUALLY HAVE TO BE ABLE TO PERFORM THE SURGICAL OR DIAGNOSTIC
24 PROCEDURES ON THE PATIENT THAT'S BEING ADMITTED; IS THAT
25 RIGHT?

1 **A** THAT IS CORRECT.

2 **Q** AND IS IT YOUR UNDERSTANDING BASED ON YOUR REVIEW OF
3 THE DOCUMENTS THAT WE WERE JUST TALKING ABOUT, THAT THOSE
4 DOCUMENTS DON'T -- THE RESULT OF THOSE DOCUMENTS IS THAT
5 DR. JOHN DOE NUMBER 2 DOESN'T HAVE THE ABILITY TO PERFORM
6 DIAGNOSTIC AND SURGICAL SERVICES AT THE HOSPITAL?

7 **A** AND, AGAIN, I DON'T KNOW THAT HE DOESN'T. I JUST
8 DON'T THINK IT WAS SPECIFICALLY GRANTED IN THE DOCUMENTATION.
9 SO I DON'T THINK IT WAS -- I DON'T KNOW THAT IT DENIES HIM
10 FROM DOING THAT. I JUST KNOW IT WASN'T SPECIFICALLY GRANTED
11 IN THE SPECIFIC -- IN THE INFORMATION THAT WE RECEIVED.

12 **Q** OKAY. BUT WHETHER HE HAS IT OR NOT IT DOESN'T
13 MATTER?

14 **A** IT DOESN'T MATTER, CORRECT.

15 **Q** OKAY. ARE YOU ALSO AWARE ON THE SAME DAY THAT YOU
16 FILED THIS AFFIDAVIT YOU TOOK ACTION TO RESCIND WHAT I'LL
17 REFER TO AS FNR REGULATIONS FOR ABORTION FACILITIES?

18 **A** THAT IS CORRECT.

19 **Q** WHAT ARE FNR REGULATIONS?

20 **A** FACILITY NEED REVIEW REGULATIONS. IT'S RULES THAT
21 WE HAVE REGARDING FACILITY NEED REVIEW. THESE PARTICULAR
22 REGULATIONS WERE PUT INTO EFFECT IN 2012.

23 **Q** AND WHAT IS THE PURPOSE OF -- OR I GUESS WHAT WAS
24 THE PURPOSE OF THE FNR REGULATIONS?

25 **A** FACILITY NEED REVIEW, WE HAVE IT FOR SEVERAL

1 FACILITIES UNDER OUR PURVIEW. WE DO IT FOR PEDIATRIC DAY
2 HEALTH CENTERS, WE DO IT FOR HOME AND COMMUNITY-BASED SERVICE
3 PROVIDERS. SO TYPICALLY FACILITY NEED REVIEW PROCESSES ARE
4 PUT IN PLACE TO DETERMINE IF THERE IS A VERY SPECIFIC NEED FOR
5 A TYPE OF A VERY SPECIFIC SERVICE, WHETHER THAT'S, YOU KNOW, A
6 PERSONAL CARE ATTENDANT SERVICE OR -- AND IS EVER IN THE CASE
7 OF THE PEDIATRIC DAY HEALTH CENTERS, PEDIATRIC DAY HEALTH
8 CENTER SERVICES. SO IT BASICALLY DETERMINES WHETHER OR NOT
9 THERE IS A NEED FOR THOSE SERVICES. THE APPLICANT HAS TO SHOW
10 THAT WITHOUT THOSE SERVICES THERE WOULD BE ADVERSE
11 CONSEQUENCES FOR THE PATIENTS.

12 Q AND SO IN 2012 ABORTION CLINICS WERE ADDED TO THE
13 LIST OF FACILITIES THAT ARE REQUIRED TO HAVE A FACILITY NEED
14 REVIEW BEFORE A NEW FACILITY THAT OFFERS THOSE SERVICES CAN BE
15 OPENED; IS THAT RIGHT?

16 A THAT IS CORRECT.

17 Q AND THAT WAS DONE, THE ADDITION OF ABORTION CLINICS
18 TO THAT LIST WAS DONE AS AN EMERGENCY RULE; IS THAT RIGHT?

19 A AGAIN, I WAS NOT THE SECRETARY AT THAT TIME, BUT
20 THAT IS WHAT I RECALL, YES.

21 Q I'D LIKE TO PUT ON THE MONITOR, BUT PLEASE DON'T
22 PUBLISH IT BECAUSE IT'S NOT IN EVIDENCE YET, I'D LIKE TO PUT
23 ON THE MONITOR WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 175.
24 ARE YOU FAMILIAR WITH A BHSF RULE MAKING JUSTIFICATION FORM?

25 A YES.

1 Q WHAT IS A BHSF RULE MAKING JUSTIFICATION FORM?

2 A BASICALLY IT GIVES JUSTIFICATION FOR A RULE FOR THE
3 DEPARTMENT.

4 Q I THOUGHT SO, BUT I DIDN'T WANT TO ASSUME.

5 A YES.

6 Q AND THIS ONE IS DATED MARCH 13TH, 2012?

7 A YES.

8 Q HAVE YOU SEEN THIS KIND OF RULE FOR, YOU KNOW, OTHER
9 EMERGENCY RESUMES OR OTHER -- OR NONEMERGENCY RULES I SUPPOSE
10 THAT HAVE BEEN ISSUED OR PROMULGATED BY DHH?

11 A I'M SORRY, HAVE I SEEN --

12 Q ARE YOU FAMILIAR WITH THIS KIND OF FORM?

13 A YES.

14 Q AND THE PURPOSE OF THIS KIND OF FORM?

15 A YES.

16 Q AND IN THE COURSE OF YOUR WORK AT DHH AS, YOU KNOW,
17 BOTH THE SECRETARY AND THE ASSISTANT SECRETARY HAVE YOU -- ARE
18 YOU FAMILIAR WITH HOW THESE FORMS ARE PREPARED?

19 A YES. I MEAN, AGAIN, NOT TYPICALLY DIRECTLY, BUT
20 YES.

21 Q OKAY.

22 MS. DOUFEKIAS: YOUR HONOR, I'D LIKE TO OFFER
23 PLAINTIFFS' EXHIBIT 175?

24 THE COURT: ANY OBJECTIONS?

25 MR. JOHNSON: NO OBJECTION, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. LET IT BE RECEIVED.

2 **BY MS. DOUFEKIAS:**

3 **Q** SO IF WE COULD TAKE A LOOK AT THE TOP. THE SECTION
4 NAME HERE IS, *HEALTH STANDARDS*. THAT'S THE SECTION THAT HAS
5 SORT OF IMMEDIATE OVERSIGHT OF ABORTION CLINICS; IS THAT
6 RIGHT?

7 **A** THAT'S CORRECT.

8 **Q** AGAIN, THE DATE IS MARCH 13TH, 2012?

9 **A** YES.

10 **Q** OKAY. THEN IF YOU COULD TAKE A LOOK -- I GUESS
11 QUESTION NUMBER 1 WHICH IS, "BRIEFLY SUMMARIZE THE PROPOSED
12 RULE." SO IF YOU LOOK IN HERE, THE PROPOSED RULE THAT THEY'RE
13 TALKING ABOUT HERE IS THE RULE THAT WE'VE BEEN DISCUSSING,
14 WHICH IS JUST ADDING ABORTION CLINICS TO THAT LIST OF
15 FACILITIES THAT NEED TO GO THROUGH A FACILITY NEED REVIEW
16 BEFORE NEW FACILITIES CAN OPEN; IS THAT RIGHT?

17 **A** THAT'S CORRECT.

18 **Q** AND IF WE CAN SCROLL TO THE SECOND PAGE TO THE BOX
19 MARKED NUMBER 7 WHICH ASKS, "IF THIS IS AN EMERGENCY RULE WHY
20 IS IT AN EMERGENCY?" AND IT SAYS THAT, "THIS IS AN EMERGENCY
21 RULE. THE RULE IS NECESSARY TO AVOID EMINENT PERIL TO THE
22 PUBLIC HEALTH, SAFETY OR WELFARE. THE SECRETARY HAS
23 DETERMINED THAT PATIENT HEALTH, SAFETY AND WELFARE WILL BE
24 PROTECTED BY A PROCESS WHICH DETERMINES WHETHER ADDITIONAL
25 ABORTION CLINICS ARE NECESSARY IN EACH ADMINISTRATIVE REGION

1 OF THE STATE OF LOUISIANA BEFORE THEY ARE ALLOWED TO BE
2 LICENSED WITHIN THE STATE." IS THAT RIGHT?

3 A YES.

4 Q NOW I APPRECIATE THAT YOU WERE NOT SECRETARY AT THIS
5 TIME. YOU WERE ASSISTANT SECRETARY?

6 A AT THAT TIME I WAS DEPUTY SECRETARY, YES.

7 Q I APOLOGIZE. IS ESSENTIALLY THE REASON THAT'S BEING
8 GIVEN FOR THIS BEING PASSED AS AN EMERGENCY RULE, THAT IT IS
9 NECESSARY TO LOOK AT EVERY FACILITY AND WHERE IT'S BEING
10 OPENED AND THE ADMINISTRATIVE REGION OF THE STATE IN ORDER TO
11 DETERMINE IF THERE IS ACTUALLY A NEED FOR IT IN ORDER TO AVOID
12 EMINENT PERIL TO THE PUBLIC HEALTH?

13 A SO IF YOU'RE ASKING ME IF THAT'S -- I MEAN, AGAIN, I
14 DON'T KNOW WHAT THE SECRETARY WAS THINKING AT THAT POINT IN
15 TERMS OF THE NECESSITY FOR THIS RULE, SO I DON'T KNOW THAT I
16 CAN ANSWER HIS INTENT.

17 Q SO IF AN ACTION IS TAKEN LIKE THIS TO EITHER
18 PROMULGATE A RULE OR CHANGE A RULE, IF SOME SORT OF RULE
19 MAKING LIKE THIS IS UNDERTAKEN, CAN THE SECRETARY ACT ALONE?

20 A TYPICALLY IT IS NOT. I ASSUME THE SECRETARY CAN
21 MAKE SOME UNILATERAL DECISIONS BUT TYPICALLY DOES NOT.

22 Q SO IT'S NOT -- IT'S NOT NECESSARILY THE SECRETARY'S
23 INTENT THAT'S REFLECTS HERE, IS IT? IT'S WHAT THE FORM IS
24 SAYING THE PURPOSE OF THE RULE MAKING IS; IS THAT RIGHT?

25 A THAT'S CORRECT.

1 Q AND IF YOU LOOK AT BOX 8 IT SAYS THAT, "THE
2 DEPARTMENT HAS NOT CONSULTED OTHER PARTIES IN ORDER TO
3 EXPEDITE THIS RULE." WHAT IS DHH'S DISCRETION TO PROMULGATE
4 RULES OR TO ENGAGE IN RULE MAKING WITHOUT CONSULTING OTHER
5 PARTIES?

6 A AGAIN, IF IT MEETS ONE OF THOSE QUALIFICATIONS THEN
7 IT CAN BE PUBLISHED AS AN EMERGENCY RULE. IT THEN HAS TO GO
8 THROUGH THE REGULAR RULE MAKING PROCESS THOUGH WHICH DOES HAVE
9 PUBLIC INPUT AND INVOLVEMENT FROM STAKEHOLDERS.

10 Q BUT AT LEAST INITIALLY DHH --

11 A INITIALLY AN EMERGENCY RULE BASED -- AGAIN, I THINK
12 THEY LIST THEM EARLIER, THE REASONS THAT YOU CAN MOVE FORWARD
13 WITH AN EMERGENCY RULE, AND IF THE SECRETARY BELIEVES IT MEETS
14 ONE OF THOSE REQUIREMENTS, THEN THEY CAN MOVE FORWARD WITH
15 INITIAL PUBLICATION OF THE RULE AND THEN CAN -- AND THEN WOULD
16 MOVE FORWARD WITH FULL RULE MAKING WHICH WOULD REQUIRE THE
17 PUBLIC INPUT.

18 Q ARE YOU AWARE OF ANY FACILITIES THAT WERE PART OF A
19 FACILITY NEEDS REVIEW APPLICATION; ANY ABORTION CLINICS?

20 A THROUGHOUT THIS -- THROUGHOUT THIS TIME PERIOD THE
21 ONLY ONE THAT I'M AWARE OF IS PLANNED PARENTHOOD IN NEW
22 ORLEANS.

23 Q AND YOU'RE AWARE THAT PLANNED PARENTHOOD'S
24 APPLICATION WAS REJECTED IN JANUARY OF THIS YEAR?

25 A WAS ORIGINALLY REJECTED, YES.

1 **Q** IF WE COULD PUT UP WHAT'S BEEN MARKED AS PLAINTIFFS'
2 EXHIBIT 176, BUT PLEASE DON'T PUBLISH IT BECAUSE IT'S NOT IN
3 EVIDENCE YET. SECRETARY KLIEBERT, DO YOU RECOGNIZE THIS
4 DOCUMENT?

5 **A** YES.

6 **Q** IF YOU COULD SCROLL TO THE BOTTOM. IS THAT YOUR
7 SIGNATURE AT THE BOTTOM OF THIS DOCUMENT?

8 **A** YES.

9 **Q** IS CECILE CASTELLO ALSO A CC ON THIS DOCUMENT?

10 **A** YES.

11 **Q** IS DORA KANE ALSO A CC ON THIS DOCUMENT?

12 **A** YES.

13 **Q** WHO IS DORA KANE?

14 **A** SHE WORKS IN THE HEALTH STANDARDS SECTION.

15 **Q** OKAY.

16 **MS. DOUFEKIAS:** YOUR HONOR, I'D LIKE TO MOVE THE
17 ADMISSION OF -- TO MOVE PLAINTIFFS' EXHIBIT, WHAT DID I SAY;
18 176? YES, 176 INTO EVIDENCE.

19 **THE COURT:** ANY OBJECTION?

20 **MR. JOHNSON:** NO OBJECTION, YOUR HONOR.

21 **THE COURT:** ALL RIGHT. LET IT BE RECEIVED.

22 **BY MS. DOUFEKIAS:**

23 **Q** IS THIS THE LETTER THAT DHH SENT TO PLANNED
24 PARENTHOOD REJECTING THEIR INITIAL FACILITY'S NEEDS REVIEW
25 APPLICATION?

1 **A** YES.

2 **Q** WHERE IS THE FACILITY THAT PLANNED PARENTHOOD WAS
3 ASKING TO HAVE REVIEWED GOING TO BE LOCATED?

4 **A** IN NEW ORLEANS.

5 **Q** AND IS IT A LARGE FACILITY?

6 **A** YES.

7 **Q** AND --

8 **A** AGAIN, LARGE DEPENDING ON -- I DON'T KNOW WHAT
9 YOU'RE COMPARISON IS. I DON'T KNOW. BUT, YEAH, I WOULD
10 CONSIDER IT A LARGE FACILITY.

11 **Q** DO YOU KNOW APPROXIMATELY HOW MANY SQUARE FEET IT
12 IS?

13 **A** I DO NOT.

14 **Q** DOES IT SOUND FAMILIAR IF I TOLD YOU ABOUT 6,000
15 SQUARE FEET?

16 **A** I REALLY WOULDN'T KNOW. I'M SORRY.

17 **Q** OKAY. SO WHAT WAS THE PROCESS OF REVIEWING THE
18 APPLICATION SUBMITTED BY PLANNED PARENTHOOD BEFORE THE
19 APPLICATION WAS REJECTED ON JANUARY 8TH?

20 **A** ALL OF OUR FACILITY NEED REVIEW PROCESSES FOR ANY OF
21 OUR FACILITY NEEDS REVIEW WE APPOINT A COMMITTEE, TYPICALLY
22 THREE INDIVIDUALS, THAT HAS SOME EXPERTISE IN THE AREA OF THE
23 FACILITY THAT IS BEING -- THE APPLICANT, THE TYPES OF
24 FACILITIES THAT -- WHOEVER THE APPLICANT IS.

25 SO ONCE WE APPOINT THAT COMMITTEE THEY REVIEW ANY

1 INFORMATION THAT'S BEEN SUBMITTED. IT'S ALL INFORMATION
2 SUBMITTED BY THE APPLICANT THAT IS REVIEWED IN TERMS OF
3 DETERMINING A NEED. ONCE THEY REVIEW THAT INFORMATION THEY
4 MAKE A DECISION WHETHER OR NOT THEY BELIEVE IT MEETS THE
5 FACILITY NEED REVIEW REQUIREMENTS. AT THIS POINT THEY DID
6 NOT.

7 THEY MADE -- THEY GAVE ME A DECISION THAT THEY DID
8 NOT THINK IT DID. I MAKE -- AT THAT POINT WILL REVIEW AND
9 MAKE THE FINAL DECISION AS TO WHETHER OR NOT IT MEETS FACILITY
10 NEED REQUIREMENT BASED ON THEIR RECOMMENDATION. I TOOK THE
11 RECOMMENDATION AND DENIED THE FACILITY NEED REVIEW.

12 Q SO ONE OF THE FORTUNATE OR UNFORTUNATE ASPECTS OF
13 YOUR JOB IS YOU GET TO MAKE THE FINAL DECISION WHETHER IT'S
14 DENIED OR ACCEPTED?

15 A IN THIS PARTICULAR CASE. NOT IN EVERY CASE, BUT
16 YES. IN THIS CASE, YES.

17 Q WHO WAS ON THE COMMITTEE THAT REVIEWED PLANNED
18 PARENTHOOD'S APPLICATION?

19 A THE FIRST -- THE FIRST TIME, BECAUSE WE HAD A CHANGE
20 IN A POSITION, THE FIRST COMMITTEE WAS COURTNEY PHILLIPS,
21 WHO'S THE DEPUTY SECRETARY, DR. REBECCA GEE, WHO IS THE OB/GYN
22 OR MEDICAID DIRECTOR AND DR. TAKEISHA DAVIS, WHO IS OUR PUBLIC
23 HEALTH MEDICAL DIRECTOR.

24 Q AND WHAT WAS THE CHANGE THAT YOU JUST MENTIONED?

25 A IN THE SECOND COMMITTEE COURTNEY -- COURTNEY

1 PHILLIPS WAS -- SHE TOOK ANOTHER JOB OUT OF STATE, SO HER
2 POSITION, WHICH WAS THE DEPUTY SECRETARY POSITION, WAS
3 REPLACED BY SOMEBODY NAMED HUGH ELEY. HE THEN TOOK THE -- I
4 APPOINTED HIM TO THE COMMITTEE THAT REVIEWED THE SECOND
5 APPLICATION OR THE ADDITIONAL MATERIAL. IT WASN'T REALLY A
6 SECOND APPLICATION.

7 Q SO PLANNED PARENTHOOD SUBMITTED AN INITIAL
8 APPLICATION AND THREE PEOPLE REVIEWED IT, THE FIRST THREE
9 PEOPLE YOU MENTIONED; IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND THEN PLANNED PARENTHOOD SUBMITTED ADDITIONAL
12 INFORMATION AND THE SECOND THREE PEOPLE REVIEWED THAT?

13 A YEAH. AND, AGAIN, IT WAS THE SAME TWO, DR. DAVIS,
14 DR. GEE AND HUGH ELEY, WAS THE ONLY DIFFERENT PERSON.

15 THE COURT: MS. DOUFEKIAS, LET ME INTERRUPT FOR A
16 SECOND. WE'RE AT 3:30. WE'VE BEEN GOING TWO HOURS. HOW MUCH
17 LONGER DO YOU HAVE?

18 MS. DOUFEKIAS: I MIGHT BE 15 MINUTES, I'LL SAY 20
19 JUST TO BE --

20 THE COURT: LET'S TAKE TEN MINUTES.

21 (WHEREUPON COURT WAS IN RECESS.)

22 (COURT RESUMED.)

23 THE COURT: ALL RIGHT. YOU MAY BE SEATED.

24 BY MS. DOUFEKIAS:

25 Q SECRETARY KLIEBERT, WE'RE ALMOST DONE. THIS IS THE

1 LAST TOPIC THAT I HAVE ACTUALLY. OKAY. SO WE WERE TALKING
2 ABOUT PLANNED PARENTHOOD'S FACILITY'S NEED REVIEW APPLICATION?

3 A YES.

4 Q AND YOU, I BELIEVE, HAD JUST TESTIFIED THAT THERE
5 WERE TWO REVIEWS BECAUSE THERE WERE, I'LL CALL THEM TWO
6 APPLICATIONS, BUT IT MIGHT ALSO JUST BE A SUPPLEMENT? DOES
7 THAT --

8 A YEAH, IT WAS A SUPPLEMENT. THEY HAD GONE TO THE
9 ADMINISTRATIVE LAW JUDGE AND THEY ASKED -- THE ADMINISTRATIVE
10 LAW JUDGE ASKED THAT THEY BE ALLOWED TO SUBMIT SOME
11 SUPPLEMENTAL INFORMATION TO US, WHICH IS WHAT THEY DID.

12 Q WAS THERE ANY OTHER REQUESTS TO PLANNED PARENTHOOD
13 FOR ADDITIONAL INFORMATION?

14 A YES. WE MADE AN ADDITIONAL REQUEST AT THE BEGINNING
15 OF LAST WEEK FOR SOME ADDITIONAL INFORMATION ABOUT SOURCES OF
16 FUNDING.

17 Q SO ABOUT MONDAY, TUESDAY --

18 A IT WAS MONDAY OR TUESDAY, YES.

19 Q -- DHH CALLED OF LAST WEEK?

20 A RIGHT.

21 Q WAS ADDITIONAL INFORMATION PROVIDED?

22 A IT WAS.

23 Q SO I THINK --

24 MS. DOUFEKIAS: AND I BELIEVE I HAD MOVED
25 PLAINTIFFS' EXHIBIT 176 INTO EVIDENCE. HAVE I DONE THAT?

1 **THE COURT:** I DON'T THINK SO.

2 **MS. DOUFEKIAS:** MY APOLOGIES.

3 **THE COURT:** YEAH, YOU DID. I'M SORRY.

4 AND THERE WAS NO OBJECTION IF I RECALL CORRECT,
5 MR. JOHNSON?

6 **MR. JOHNSON:** THAT'S CORRECT. YES, SIR.

7 **THE COURT:** OKAY.

8 **BY MS. DOUFEKIAS:**

9 **Q** SO IF WE COULD TAKE A LOOK AT PLAINTIFFS'
10 EXHIBIT 176. I THINK WE HAD SPOKEN A LITTLE BIT BEFORE THE
11 BREAK, BUT THIS IS THE LETTER THAT YOU SIGNED INFORMING
12 PLANNED PARENTHOOD THAT THEIR FACILITY'S NEED REVIEW
13 APPLICATION HAD BEEN DENIED; IS THAT RIGHT?

14 **A** THAT'S CORRECT. THAT'S CORRECT.

15 **Q** AND IF YOU LOOK AT THE FIRST PARAGRAPH IT SAYS,
16 "THAT THE DEPARTMENT," AND I ASSUME THAT MEANS THAT DHH, "HAS
17 REVIEWED YOUR APPLICATION FOR FACILITY NEED REVIEW APPROVAL TO
18 APPLY FOR LICENSURE AS AN OUTPATIENT ABORTION FACILITY AND HAS
19 REVIEWED YOUR APPLICATION TO DETERMINE IF THERE IS A NEED FOR
20 AN ADDITIONAL OUTPATIENT ABORTION FACILITY IN THE SERVICE
21 AREA." WHERE IS THE SERVICE AREA FOR THIS FACILITY?

22 **A** REGION 1. WE USE OUR DEPARTMENTAL REGIONS. SO
23 REGION 1 IS CONSIDERED THE SERVICE AREA, WHICH IS NEW ORLEANS
24 AND -- IT'S ACTUALLY ORLEANS, PLAQUEMINES -- PLAQUEMINES, ST.
25 BERNARD IS THE PARISHES IN THAT CATCHMENT AREA, IN THE

1 REGIONAL AREA. AND ACTUALLY JEFFERSON IS INCLUDED AS WELL.
2 FOR DIFFERENT SERVICES WE HAVE DIFFERENT REGIONS FOR THOSE
3 SERVICES AND IT ALSO INCLUDES JEFFERSON PARISH. I'M PRETTY
4 POSITIVE ON THAT.

5 Q IF YOU LOOK AT THE SECOND PARAGRAPH. THE SECOND
6 PARAGRAPH DESCRIBES THE CIRCUMSTANCES UNDER WHICH THE
7 DEPARTMENT WILL GRANT A FACILITY NEED REVIEW APPROVAL. AND IT
8 SAYS, "THAT IT WILL DO THAT ONLY IF THE DATA CONTAINED IN THE
9 APPLICATION AND THE OTHER EVIDENCE EFFECTIVELY ESTABLISHES THE
10 PROBABILITY OF SERIOUS ADVERSE CONSEQUENCES TO" INDIVIDUAL --
11 "INDIVIDUALS' ABILITY TO ACCESS OUTPATIENT ABORTION FACILITY
12 SERVICES IF THE PROVIDER IS NOT ALLOWED TO BE LICENSED."

13 SO IN EFFECT THE LETTER IS SAYING THAT ONLY IF THERE
14 ARE SERIOUS ADVERSE CONSEQUENCES WILL A FACILITY NEED REVIEW
15 APPLICATION BE APPROVED; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND THE LETTER GOES ON TO SAY THAT THE APPLICATION
18 FAILED TO ESTABLISH THAT THIS WAS THE CASE FOR AN OUTPATIENT
19 ABORTION FACILITY IN THAT REGION. AND IF YOU LOOK DOWN TO THE
20 THIRD PARAGRAPH THE LETTER SAYS, "ADDITIONALLY, IN REVIEWING
21 YOUR APPLICATION THE DEPARTMENT CONSIDERED THE NUMBER OF OTHER
22 OUTPATIENT ABORTION FACILITIES IN THE SAME GEOGRAPHIC"
23 REGION -- EXCUSE ME, "SAME GEOGRAPHIC LOCATION, REGION AND
24 SERVICE AREA SERVICING THE SAME POPULATION." DO YOU SEE THAT?

25 A YES.

1 Q WHAT WAS DHH'S ANALYSIS OF OTHER ABORTION --
2 OUTPATIENT ABORTION FACILITIES IN THAT REGION?

3 A AGAIN, WE DON'T REALLY DO AN ANALYSIS. WE LOOK AT
4 THE OTHER FACILITIES. THERE ARE TWO OTHER FACILITIES. WE
5 DON'T DO ANY ANALYSIS. WE -- FOR THE FACILITY NEED REVIEW IT
6 IS COMPLETELY DEPENDENT ON WHAT THE APPLICANT SUBMITS TO US
7 OTHER THAN GENERALLY AVAILABLE INFORMATION; LIKE THERE ARE TWO
8 OTHER FACILITIES IN THAT REGION.

9 Q SO DHH DIDN'T DO ANYTHING ON ITS OWN TO DETERMINE
10 WHETHER OR NOT THERE WAS ACTUALLY A NEED FOR OUTPATIENT
11 ABORTION FACILITIES -- A NEW FACILITY IN THE NEW ORLEANS
12 REGION?

13 A THAT'S CORRECT.

14 Q AND --

15 A THAT'S BASED ON OUR RULE, WHICH IS THAT THE
16 APPLICANT IS RESPONSIBLE FOR SUBMITTING ANY INFORMATION TO
17 DETERMINE NEED.

18 Q AND DHH DID NOT CONSIDER, FOR EXAMPLE, WHETHER OR
19 NOT DOCTORS AT THOSE CURRENT FACILITIES WERE IN A POSITION TO
20 HAVE ADMITTING PRIVILEGES THAT WOULD MEET HB -- EXCUSE ME, ACT
21 620; IS THAT RIGHT?

22 A AGAIN, WHAT WE CONSIDER ARE THE INFORMATION
23 SUBMITTED TO US BY THE APPLICANT.

24 Q SO EVEN IF DHH HAS INFORMATION THAT IT IS AWARE OF
25 AS A RESULT OF THIS LAWSUIT ABOUT THE STATE OF APPLICATIONS,

1 DHH JUST LOOKED AT WELL, THERE'S THREE FACILITIES AND --

2 A WELL, AGAIN, CERTAINLY FOR DHH, EVEN IN THAT
3 PARTICULAR CASE, WE WOULDN'T HAVE MADE A DETERMINATION THAT
4 THAT WOULD HAVE LIMITED ACCESS AT THIS POINT BECAUSE WE DON'T
5 KNOW THAT. BUT, AGAIN, WE BASE -- I'LL GO BACK TO WHAT WE DO,
6 WHICH IS WE BASE THE INFORMATION ON WHAT IS SUBMITTED TO US.

7 Q OKAY. WE'LL GET BACK TO THAT. ALL RIGHT. SO IN
8 JANUARY OF 2015, WHETHER OR NOT DOCTORS HAD OBTAINED ADMITTING
9 PRIVILEGES THAT WOULD SATISFY ACT 620 HAD NO BEARING
10 WHATSOEVER ON THIS DECISION; IS THAT RIGHT?

11 A THAT'S CORRECT.

12 Q YOU SAID THAT AFTER THE APPLICATION WAS DENIED
13 PLANNED PARENTHOOD FILED AN APPEAL; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q AND SUBMITTED ADDITIONAL INFORMATION; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q IF WE COULD PUT UP ON THE SCREEN -- ACTUALLY -- THIS
18 IS A RELATIVELY BIG DOCUMENT SO MY QUESTION TO YOU, SECRETARY
19 KLIEBERT, IS WOULD YOU RATHER LOOK AT IT ON THE SCREEN OR HAVE
20 A COPY IN YOUR HAND? YOU COULD DO IT EITHER WAY.

21 A PROBABLY HAVE A COPY IN MY HAND.

22 Q I THOUGHT THAT MIGHT BE MORE QUICK.

23 MS. DOUFEKIAS: YOUR HONOR, MAY I APPROACH?

24 THE COURT: YES, YOU MAY.

25 MS. DOUFEKIAS: YOUR HONOR, WOULD YOU LIKE A HARD

1 COPY?

2 THE COURT: THAT WOULD BE GREAT IF YOU'VE GOT ONE.

3 MS. DOUFEKIAS: ABSOLUTELY.

4 BY MS. DOUFEKIAS:

5 Q DO YOU RECOGNIZE THIS DOCUMENT? AND, PLEASE, DON'T
6 PUBLISH IT BECAUSE IT HASN'T BEEN -- IT DOESN'T MATTER IF WE
7 PUBLISH IT BECAUSE WE'RE LOOKING AT HARD COPIES. DO YOU
8 RECOGNIZE THIS DOCUMENT?

9 A YES.

10 Q WHAT IS THIS DOCUMENT?

11 A THIS DOCUMENT IS THE APPLICATION PROVIDED BY PLANNED
12 PARENTHOOD. AND, AGAIN, WHAT I'M NOT SURE IS IF THIS IS THE
13 DOCUMENTATION WITH THE SUPPLEMENTAL INFORMATION OR JUST THE
14 ORIGINAL ONE. I'M NOT POSITIVE ON THAT.

15 Q LET ME HELP YOU WITH THAT A LITTLE BIT. IF YOU CAN
16 SCROLL --

17 MR. JOHNSON: YOUR HONOR, AS SHE'S SCROLLING I JUST
18 WANT TO STATE A GENERAL OBJECTION TO THIS LINE OF QUESTIONING
19 AND THESE DOCUMENTS, NOT SPECIFICALLY BECAUSE WE'RE -- I DON'T
20 KNOW WHAT YOU'RE GOING TO ASK ABOUT IT. BUT THE FACILITY'S
21 NEEDS REVIEW IS NOT DIRECTLY RELEVANT TO THE ISSUE IN THIS
22 CASE WOULD BE OUR POSITION.

23 THE COURT: I UNDERSTAND.

24 MR. JOHNSON: IT'S A RELEVANCY OBJECTION.

25 THE COURT: MS. DOUFEKIAS?

1 **MS. DOUFEKIAS:** YOUR HONOR, DHH IN ITS REJECTION
2 LETTER SPECIFICALLY SAID THAT IT LOOKED AT -- LET ME GET THIS
3 RIGHT. THAT IT CONSIDERED THE NUMBER OF OTHER OUTPATIENT
4 ABORTION FACILITIES IN THE SAME REGION. SO I THINK IT HAS
5 BEARING ON THE CAPACITY ISSUES THAT ARE VERY CENTRAL TO THIS
6 CASE AND WHAT IS GOING TO HAPPEN TO ACCESS TO ABORTION IF
7 DOCTORS AT NEW ORLEANS FACILITIES DON'T GET ADMITTING
8 PRIVILEGES.

9 **THE COURT:** OKAY. IT'S OVERRULED.

10 **BY MS. DOUFEKIAS:**

11 **Q** SO, SECRETARY KLIEBERT, IF YOU COULD LOOK AT THE
12 BOTTOM OF THE FIRST PAGE OF THE DOCUMENT I JUST HANDED YOU,
13 THERE'S A PAGE NUMBER. IT SAYS PAGE 226?

14 **A** YES.

15 **Q** IF YOU COULD FLIP TO PAGE 304?

16 **A** OKAY.

17 **Q** I BELIEVE THAT IS --

18 **A** THAT'S THE SUPPLEMENTAL INFORMATION --

19 **Q** -- THAT'S THE SUPPLEMENTAL?

20 **A** -- WHERE IT BEGINS, RIGHT.

21 **MS. DOUFEKIAS:** I WOULD MOVE THE ADMISSION OF
22 PLAINTIFFS' EXHIBIT 178.

23 **THE COURT:** ANY OBJECTION, OTHER THAN THE ONE YOU
24 VOICED?

25 **MR. JOHNSON:** WELL, OTHER THAN THE ONE WE VOICED,

1 I'M NOT SURE THERE'S BEEN A PROPER FOUNDATION FOR IT. WE'RE
2 NOT SURE OF THE CONTENT OF IT OR THE VERACITY OF THE CONTENT.
3 THAT WOULD BE OUR OBJECTION.

4 **THE COURT:** ALL RIGHT.

5 MS. DOUFEKIAS?

6 **MS. DOUFEKIAS:** I CAN ASK A FEW MORE QUESTIONS IF
7 YOU'D LIKE?

8 **THE COURT:** YES, WHY DON'T YOU DO THAT.

9 **MS. DOUFEKIAS:** SURE.

10 **BY MS. DOUFEKIAS:**

11 **Q** SECRETARY KLIEBERT, IS THIS THE MATERIAL THAT WAS
12 SUBMITTED TO DHH BY PLANNED PARENTHOOD INITIALLY FOR THE
13 FACILITY NEED REVIEW APPLICATION AND ALSO THE SUPPLEMENTAL
14 AFTER THE INITIAL PACKAGE WAS DENIED?

15 **A** AGAIN, I BELIEVE IT IS. I MEAN BASED ON -- I DON'T
16 REMEMBER EVERY PAGE THAT WAS INCLUDED IN ALL OF THESE -- IN
17 THESE DOCUMENTS, BUT I WOULD ASSUME THAT YOU HAVE THEM ALL
18 INCLUDED. I DON'T KNOW THAT FOR SURE, BUT IT'S BASICALLY --
19 YES.

20 **Q** IF YOU COULD TAKE A LOOK AT THE BOTTOM OF THE
21 RIGHT-HAND CORNER THERE'S ANOTHER NUMBER. THERE'S LOTS OF
22 NUMBERS ON THESE DOCUMENTS, WHICH IS DHH S-U-P-P-L LOTS OF
23 ZEROS AND THEN A ONE. IF I REPRESENT TO YOU THAT DHH PRODUCED
24 THIS DOCUMENT TO US DOES THAT GIVE YOU MORE COMFORT THAT THIS
25 IS THE ENTIRE DOCUMENT YOU RECEIVED?

1 **A** YES.

2 **Q** AND IF YOU'LL LOOK AT THE FRONT PAGE THERE'S A
3 STAMP. IT SAYS "RECEIVED OCTOBER 20TH, 2014 HEALTH
4 STANDARDS"?

5 **A** YES.

6 **Q** DOES THAT INDICATE TO YOU THAT THIS IS THE PACKAGE
7 THAT WAS RECEIVED BY HEALTH STANDARDS?

8 **A** YES.

9 **Q** IF YOU FLIP TO PAGE 304 THERE'S A SIMILAR STAMP THAT
10 SAYS, "RECEIVED APRIL 23RD, 2015 HEALTH STANDARDS." DOES THAT
11 ALSO INDICATE TO YOU THAT THIS IS THE PACKET OF MATERIALS THAT
12 WAS RECEIVED ON THAT DAY --

13 **A** YES.

14 **Q** -- BY DHH?

15 **A** YES.

16 **MS. DOUFEKIAS:** YOUR HONOR, I'D MOVE THAT
17 PLAINTIFFS' EXHIBIT 178 BE ACCEPTED INTO EVIDENCE.

18 **MR. JOHNSON:** YOUR HONOR, I'D MAKE A HEARSAY
19 OBJECTION TO THE MATTERS CONTAINED HERE, BECAUSE IT WAS
20 PRESENTED BY A THIRD PARTY, WHO'S NOT HERE AND IT'S THEIR --
21 OBVIOUSLY, IT'S THE INTERPRETATION OF PLANNED PARENTHOOD ABOUT
22 WHATEVER THE MATTERS ARE THAT ARE ADDRESSED. THEY'RE NOT HERE
23 TO SUBSTANTIATE THAT, SO IT'S A GENERAL HEARSAY OBJECTION.

24 **MS. DOUFEKIAS:** YOUR HONOR, I'M NOT OFFERING IT FOR
25 THE TRUTH. I'M OFFERING IT FOR WHAT DHH LOOKED AT AND

1 REJECTED IN THE FACILITY NEEDS REVIEW APPLICATION.

2 THE COURT: OVERRULED.

3 BY MS. DOUFEKIAS:

4 Q SO IF WE COULD TAKE A LOOK -- AGAIN, I JUST WANT TO
5 MAKE SURE I UNDERSTAND. I BELIEVE YOUR TESTIMONY IS THAT
6 PLANNED PARENTHOOD PROVIDED THIS INFORMATION AND THIS IS THE
7 INFORMATION THAT THE COMMITTEE OF THREE LOOKED AT AND SAID, WE
8 DON'T THINK THERE'S A NEED, AND YOU ULTIMATELY ACCEPTED
9 THAT -- THAT RECOMMENDATION; IS THAT RIGHT?

10 A YES, THE FIRST PART. NOT ALL OF THIS. THE FIRST
11 PART OF THIS, YES.

12 Q RIGHT, THE FIRST PART?

13 A YES.

14 Q SECRETARY KLIEBERT, WHAT WAS THE BASIS FOR DHH'S
15 DETERMINATION THAT THERE WASN'T A NEED?

16 A AGAIN, OUR FACILITY NEED REVIEW PROCESS IS PRETTY
17 SPECIFIC ABOUT US LOOKING FOR VERY SPECIFIC INFORMATION TO
18 DETERMINE WHETHER OR NOT THERE ARE ADVERSE CONSEQUENCES,
19 SPECIFICALLY IN THE REGION.

20 I THINK ONE OF THE ISSUES THAT CAME UP IN THE FIRST
21 APPLICATION WAS THAT IT WAS PRIMARILY REFERRING TO THE
22 CATCHMENT AREA, WHICH IS NOT WHAT WE USE AS PART OF THE RULE
23 IN TERMS OF DETERMINATION OF NEED.

24 ALSO, THAT THE INFORMATION IS PRIMARILY
25 THEORETICALLY BASED ON DATA AND POTENTIAL NUMBER OF ABORTIONS,

1 WHICH IS, AGAIN, A VERY DIFFERENT TYPE OF DATA THAT WE LOOK --
2 THAN WHAT WE TYPICALLY GET IN TERMS OF OUR FACILITY NEED
3 REVIEW PROCESS.

4 OUR FACILITY NEED REVIEW PROCESS IS REALLY TRYING TO
5 GET DATA LIKE PROVIDERS SAYING, HEY, I DON'T -- I CAN'T FIND
6 PROVIDERS TO DO THIS. AND INDIVIDUALS SAYING, I CAN'T RECEIVE
7 THOSE SERVICES. THAT'S NOT THE TYPE OF DATA WE RECEIVED.

8 Q WHERE ARE THESE GUIDELINES AND REQUIREMENTS YOU'RE
9 REFERRING TO LAID OUT FOR APPLICANTS?

10 A FOR -- THEY'RE IN THE FACILITY NEED REVIEW RULE.
11 THAT'S -- AND, AGAIN, THEY'RE NOT -- YOU KNOW, IT'S BASED ON,
12 I MEAN, A LOT OF WHAT YOU SAW IN THE LETTER IN TERMS OF A VERY
13 GENERAL STATEMENT ABOUT WHAT WE LOOK FOR IN TERMS OF NEED, IN
14 TERMS OF BEING ABLE TO SHOW, AGAIN, THAT THERE ARE -- THERE IS
15 A GAP IN SERVICES IN THAT PARTICULAR AREA.

16 Q SO WHEN DHH SAYS THAT IT CONSIDERED THE NUMBER OF
17 THEIR OUTPATIENT ABORTION FACILITIES IN THE SAME GEOGRAPHIC
18 AREA WHAT DOES DHH MEAN BY THAT?

19 A AGAIN, THE GEOGRAPHIC AREA IS THE REGION THAT
20 THEY'RE APPLYING IN. SO IT WOULD BE REGION 1.

21 Q SO DID DHH SIMPLY LOOK AT REGION 1 AND SAY, WELL
22 THERE'S TWO OTHER FACILITIES WHO DON'T --

23 A NO. AGAIN, WE LOOK AT THE DATA THAT THEY SUBMITTED.
24 AND WHAT THE COMMITTEE MEMBERS FELT -- AND, AGAIN, UNDERSTAND
25 I'M LISTENING TO MY COMMITTEE MEMBERS WHO LOOK AT THIS AND WHO

1 HAVE DONE THIS WITH OTHER FACILITIES, THEY HAVE DONE IT IN
2 PEDIATRIC DAY HEALTH CENTER REVIEWS AND OTHER FACILITY
3 REVIEWS.

4 SO THEY LOOK AT IT TO DETERMINE IF THERE IS INDEED A
5 QUANTIFIABLE NEED BASED ON EITHER TESTIMONY OF PROVIDERS OR
6 INDIVIDUALS WHO CAN'T GET THOSE SERVICES. AGAIN, THAT'S
7 TYPICALLY WHAT WE LOOK FOR.

8 THE DIFFICULTY IN THIS CASE IS THAT THAT'S NOT THE
9 TYPE OF INFORMATION THAT WE GOT FROM PLANNED PARENTHOOD, WHICH
10 ACTUALLY ULTIMATELY LED TO MY DECISION THAT THIS RULE WAS NOT
11 ADMINISTRABLE BECAUSE THE TYPE OF INFORMATION THAT WE WERE
12 ASKING FOR COULD NOT REALLY BE PROVIDED IN THE SAME MANNER
13 THAT WE PROVIDED IT IN OUR OTHER FACILITY NEED REVIEW
14 PROCESSES. WHICH, AGAIN, MADE IT TO ME A RULE THAT REALLY
15 WASN'T ABLE TO BE ADMINISTERED. SO BASED ON THAT THAT WAS
16 WERE THE DECISION WAS MADE TO RESCIND THE RULE.

17 Q SO IF I UNDERSTAND YOUR TESTIMONY, YOU'RE SAYING
18 THAT YOU RESCINDED THE RULE BECAUSE THERE'S NO WAY TO
19 DEMONSTRATE THAT THERE'S AN UNMET NEED SPECIFICALLY FOR
20 ABORTION FACILITIES?

21 A WE FELT LIKE IT WAS EXTREMELY DIFFICULT TO SUBMIT
22 THE TYPE OF INFORMATION THAT WE -- OUR FACILITY NEED REVIEW
23 PROCESS IS REALLY AT -- PART OF IT IS GETTING AT COST
24 CONTAINMENT IN AN AREA, IT'S LOOKING AT MAKING SURE THERE ARE
25 NOT TOO MANY PROVIDERS IN A PARTICULAR AREA.

1 FOR THE ABORTION FACILITIES IT JUST DOESN'T FIT.
2 IT'S A SENSITIVE SUBJECT. YOU'RE NOT GOING TO HAVE PARENTS
3 THAT ARE GOING TO, YOU KNOW, TESTIFY, HEY, I WANTED AN
4 ABORTION AND I COULDN'T GET ONE. WHERE AS IN PEDIATRIC DAY
5 HEALTH CENTER THAT'S WHAT WE GET. WE GET INDIVIDUALS WHO SAY,
6 YOU KNOW, I CAN'T GET SERVICES IN THIS AREA. I REALLY NEEDED
7 THESE SERVICES. OR YOU GET PROVIDERS WHO SAY, YOU KNOW, WE
8 HAVE A NEED FOR PERSONAL CARE ATTENDANTS AND THEY'RE NOT
9 AVAILABLE.

10 IN THIS PARTICULAR INCIDENT -- ISSUE WITH ABORTION
11 FACILITIES, IT'S A SENSITIVE SUBJECT. YOU'RE NOT GOING TO GET
12 THE PROVIDERS. YOU'RE NOT GOING TO GET FAMILY MEMBERS. SO
13 WHAT YOU GET IS THEORETICAL EVIDENCE ABOUT WHAT MAY BE THE
14 POTENTIAL NEED AND NOT WHAT WE TYPICALLY USE.

15 SO, AGAIN, BASED ON THAT IT SEEMED VERY CLEAR TO ME
16 THAT IT WAS NOT A RULE THAT WE COULD ENFORCE. AND, THEREFORE,
17 THE RIGHT COURSE OF ACTION WAS TO LET PLANNED PARENTHOOD MOVE
18 FORWARD WITH THEIR APPLICATION PROCESS FOR THEIR FACILITY.

19 Q OKAY. SO YOU'VE REFERRED TWICE NOW TO THE KIND OF
20 INFORMATION THAT YOU TYPICALLY WANT TO SEE -- ONE OF THE
21 THINGS YOU'RE USED TO SEEING IS PROVIDERS SORT OF TALKING
22 ABOUT AN INABILITY TO PROVIDE THE SERVICES?

23 A CORRECT.

24 Q IS THAT RIGHT?

25 A CORRECT.

1 **Q** SO YOU HAVE THE INDIVIDUALS WHO NEED THE SERVICES
2 WHO ARE SAYING WE CAN'T GET THE SERVICES AND THE PROVIDER
3 SAYING THAT WE CAN'T ACTUALLY GIVE -- PROVIDE THE SERVICES.

4 SO IF YOU COULD PLEASE TURN TO PAGE 279 OF THE
5 EXHIBIT? AND THIS IS PART OF AN AFFIDAVIT THAT WAS PROVIDED
6 BY DR. LORI FREEDMAN AN ASSISTANT PROFESSOR IN THE DEPARTMENT
7 OF OBSTETRICS AND GYNECOLOGY AND REPRODUCTIVE SERVICES AT UCSF
8 IN CALIFORNIA, WHO I BELIEVE SPOKE WITH A NUMBER OF PROVIDERS
9 IN THE COMMUNITY.

10 **A** BUT THE PROVIDERS THEY SPOKE WITH WERE NOT IN THE
11 NEW ORLEANS COMMUNITY. THEY'RE IN MIDWEST COMMUNITIES,
12 PRIVATE PRACTICES IN DIFFERENT AREAS. THESE WEREN'T PROVIDERS
13 FROM THAT PARTICULAR AREA.

14 **MR. JOHNSON:** AGAIN, YOUR HONOR, WE HAVE TO MAKE A
15 HEARSAY OBJECTION TO THIS. WHOMEVER THIS -- WHOEVER PREPARED
16 THIS AFFIDAVIT IS NOT HERE. THEY'RE NOT PRESENT. WE DON'T
17 KNOW ANYTHING ABOUT THE SUBSTANCE OF IT; WHAT HIS BASIS WAS,
18 WHO HE SPOKE TO AND NO ONE HERE TO TESTIFY TO THAT.

19 **THE COURT:** HERE'S WHAT I UNDERSTOOD MS. DOUFEKIAS
20 TO SAY. THAT THIS IS NOT BEING OFFERED FOR THE TRUTH OF THE
21 CONTENTS. THEREFORE, WHETHER HE'S HERE OR NOT HERE IS NOT THE
22 ISSUE. IT'S NOT HEARSAY IF IT'S NOT BEING PRESENTED FOR THE
23 TRUTH OF THE MATTER.

24 **MR. JOHNSON:** I JUST WANTED HER TO VERIFY.

25 **THE COURT:** IS THAT RIGHT? AM I CORRECT?

1 **MS. DOUFEKIAS:** THAT'S WHAT I SAID ON THE RECORD,
2 YOUR HONOR.

3 **THE COURT:** OKAY.

4 **MR. JOHNSON:** THANK YOU.

5 **A** SO, AGAIN, IF YOU LOOK AT THE -- I MEAN HIS -- THE
6 INFORMATION THAT HE SUBMITTED, IT'S INTERVIEWS WITH PHYSICIANS
7 IN MIDWESTERN TOWNS. WHEN I LOOKED -- AGAIN, WHAT WE
8 TYPICALLY GET ARE ACTUAL PROVIDERS IN THOSE REGIONS GIVING US
9 INFORMATION ABOUT THE LACK OF PROVIDERS IN THOSE REGIONS.

10 **BY MS. DOUFEKIAS:**

11 **Q** SECRETARY KLIEBERT, WOULD IT SURPRISE YOU IF I TOLD
12 YOU THERE'S BEEN A SIGNIFICANT AMOUNT OF TESTIMONY IN THE LAST
13 TWO DAYS BY DOCTORS IN LOUISIANA ABOUT THE FACT THAT THEY FACE
14 INTIMIDATION AND OTHER THINGS THAT MAKE IT VERY DIFFICULT FOR
15 THEM TO PERFORM THESE KINDS OF SERVICES IN ALL PARTS OF THE
16 STATE; WOULD YOU BE SURPRISED BY THAT?

17 **A** AGAIN, I DIDN'T HEAR THE TESTIMONY SO WOULD I BE
18 SURPRISED? I DON'T KNOW. AGAIN, NOT -- IT'S NOT TESTIMONY
19 THAT'S BEING GIVEN DIRECTLY TO ME.

20 **Q** OKAY. BUT AT THE SAME TIME, ACCORDING TO DHH'S
21 REJECTION LETTER, DHH CONSIDERED FACILITIES IN THE AREA. SO
22 DHH -- THE REJECTION LETTER DOESN'T SAY, WE ONLY LOOKED AT
23 WHAT YOU GAVE US AND WE DON'T THINK IT'S GOOD ENOUGH. THAT'S
24 NOT WHAT THEIR REJECTION LETTER SAYS.

25 **A** AGAIN, IF YOU LOOK AT OUR FACILITY NEED REVIEW RULE

1 THAT IS WHAT OUR RULE STATES AND THAT IS WHAT WE DO AND WE DO
2 THAT FOR ALL OF OUR FACILITY NEED REVIEW PROCESSES.

3 Q BUT ACCORDING TO THE LETTER THAT YOU SIGNED AND SENT
4 TO PLANNED PARENTHOOD, YOU SAID ONE OF THE THINGS THAT THE
5 DEPARTMENT CONSIDERED IS THE NUMBER OF OUTPATIENT ABORTION
6 FACILITIES IN THE SAME GEOGRAPHIC REGION. AND ALSO, B,
7 ALLEGATIONS INVOLVING ISSUES OF ACCESS TO OUTPATIENT ABORTION
8 SERVICES. SO ACCORDING TO YOUR LETTER DHH CONSIDERED
9 ALLEGATIONS THAT PEOPLE DO NOT HAVE ACCESS TO THESE SERVICES
10 IN THIS REGION?

11 A THAT'S NOT -- THOSE -- THOSE PARTICULAR THINGS THAT
12 YOU'RE READING ARE DIRECTLY FROM OUR RULE. THOSE ARE THE
13 THINGS THAT WE CONSIDER. THEY'RE NOT SPECIFIC TO THIS CASE.
14 MEANING THAT THOSE ARE NOT THINGS WE SAW IN THIS CASE AND
15 LOOKED AT.

16 AGAIN, ALL I CAN TELL YOU IS WHAT OUR PROCESS IS.
17 WHAT WE ACTUALLY DO IN TERMS OF FACILITY NEED REVIEW IS WE
18 REVIEW THE INFORMATION THAT IS SUBMITTED TO US. AND THAT'S
19 DONE IN EVERY CASE IN ALL OF THE FACILITY NEED REVIEW
20 PROCESSES THAT WE DO. SO WHAT WAS QUOTED IN THE LETTER IS
21 SIMPLY A REITERATION OF WHAT IS ALREADY IN OUR RULE.

22 Q SO THE RULE SAYS THAT WHEN YOU THINK ABOUT FACILITY
23 NEED REVIEW WE'RE GOING TO CONSIDER ALLEGATIONS OF ACCESS,
24 THAT'S WHAT THE RULE SAYS. THE RULE SAYS, WE'RE GOING TO LOOK
25 AT THESE THINGS WHEN WE MAKE OUR DETERMINATION. BUT YOU'RE

1 TELLING ME, WE DIDN'T LOOK AT ANYTHING. WE JUST LOOKED AT
2 WHAT PLANNED PARENTHOOD TOLD US AND THOSE ARE TWO DIFFERENT
3 THINGS?

4 A AGAIN, WHAT WE ASK OF A PROVIDER -- THE PROVIDER HAS
5 THESE RULES. THEY KNOW WHAT THEY NEED TO SUBMIT. WE ASK THAT
6 THE PROVIDER GIVE US INFORMATION THAT WILL MEET THE
7 REQUIREMENTS OF THAT RULE, WHICH INCLUDES THOSE TWO THINGS YOU
8 JUST READ. SO THAT'S WHAT WE LOOK FOR BASED ON WHAT THE
9 PROVIDERS -- ONLY BASED ON WHAT THE PROVIDER SUBMITS, NO MORE
10 THAN THAT.

11 Q SO EVEN THOUGH IN THIS LETTER IT DOES NOT SAY, WE
12 CONSIDERED THE EVIDENCE OF THE NUMBER OF OUTPATIENT ABORTION
13 FACILITIES THAT YOU PROVIDED AND THE EVIDENCE OF ALLEGATIONS
14 INVOLVING ISSUES OF ACCESS THAT YOU PROVIDED, THAT'S WHAT YOU
15 MEAN EVEN THOUGH THAT'S NOT WHAT YOU SAY?

16 A WELL, AGAIN, I DON'T KNOW THAT IT'S NOT WHAT WE SAY.
17 WE QUOTED OUR RULE, THAT'S WHAT WE DO. AND, AGAIN, WE'VE DONE
18 IT CONSISTENTLY. THIS IS NOT AN INCONSISTENT PRACTICE. WE'VE
19 DONE IT CONSISTENTLY IN ALL OF OUR FACILITY NEED REVIEW
20 PROCESSES.

21 Q LET'S TAKE A LOOK AT -- ACTUALLY, I'M SORRY, ONE
22 MORE QUESTION. SO THE FACT THAT THERE ARE PROVIDERS IN
23 LOUISIANA WHO FEEL THAT THERE IS AN ACCESS PROBLEM IN
24 LOUISIANA IS NOT SOMETHING THAT DHH PAYS ATTENTION TO -- OR
25 NOT SOMETHING THAT DHH PAYS ATTENTION TO IN THIS INSTANCE?

1 A AGAIN, AS I MENTIONED BEFORE, PART OF THE DIFFICULTY
2 IN THIS SITUATION IS OUR RECOGNITION AS A DEPARTMENT THAT WE
3 WERE ASKING FOR INFORMATION THAT IS NOT TYPICALLY FOUND FOR
4 THIS TYPE OF PROVIDER. THIS IS THE VERY FIRST TIME WE'VE
5 IMPLEMENTED THIS RULE. IT'S NOT THAT WE'VE IMPLEMENTED IT
6 PREVIOUSLY. WE'VE NOT HAD PREVIOUS APPLICATIONS.

7 THIS WAS OUR FIRST TIME IN DOING THIS. AND THEN
8 CLEARLY FOR US THE RECOGNITION WAS -- AND CERTAINLY FOR ME,
9 THAT THIS RULE WAS NOT ADMINISTRABLE BECAUSE OF THE FACT THEY
10 WERE ASKING FOR INFORMATION THAT THOSE -- THAT THAT TYPE OF
11 PROVIDER WOULD HAVE IT VERY DIFFICULT TO PROVIDE IN THE
12 TYPICAL FORMAT AND MAKING IT A VERY DIFFICULT DECISION THEN,
13 THEREFORE, FOR US TO DETERMINE.

14 SO OUR DECISION WAS WE WILL -- WE WILL RESCIND THE
15 RULE -- AND, ACTUALLY, WE'RE REPEALING THE RULE. IT'S A
16 LITTLE DIFFERENT IN TERMS OF RESCINDING AND REPEALING. WE'RE
17 REPEALING THE RULE AND BECAUSE OF THAT THEY CAN MOVE FORWARD
18 WITH THEIR APPLICATION. THEY WILL HAVE TO MEET THE LICENSURE
19 REQUIREMENTS, BUT THEY CAN MOVE FORWARD WITH THE APPLICATION.

20 WE FELT THAT THAT WAS A MUCH BETTER DECISION BASED
21 ON THE DIFFICULTY THAT WE FOUND OURSELVES IN, IN TERMS OF
22 BEING ABLE TO ADMINISTER A RULE THAT WE THOUGHT JUST WAS
23 IMPOSSIBLE TO DO.

24 Q OKAY. SO IT'S YOUR TESTIMONY THAT DHH'S POSITION IS
25 THAT IT'S ESSENTIALLY IMPOSSIBLE, I THINK IS THE WORD YOU JUST

1 USED, TO DEMONSTRATE HOW MUCH NEED THERE IS FOR ABORTION
2 SERVICES IN LOUISIANA?

3 A I THINK, AGAIN, BASED ON WHAT WE HAVE TO LOOK AT IN
4 TERMS OF -- WHAT WE LOOK AT IN TERMS OF DEMONSTRATING NEED,
5 YES, I THINK IT'S IMPOSSIBLE FOR THEM TO BE ABLE TO PROVIDE
6 THAT TYPE OF INFORMATION.

7 Q AND THIS IS A DECISION THAT YOU MADE ON THE SAME DAY
8 THAT YOU FILED A DECLARATION IN THIS CASE SAYING THAT ONE OF
9 THE DOCTORS -- TWO OF THE DOCTORS HAVE ADMITTING PRIVILEGES IN
10 THE EXACT REGION THAT THIS APPLICATION IS GEARED TOWARDS?

11 A AGAIN, IN TERMS OF THE TIMING OF THIS -- THE TIMING
12 OF IT, CERTAINLY WE WOULD HAVE MADE A DECISION EARLIER ON THE
13 ADMITTING PRIVILEGE HAD WE HAD THAT INFORMATION EARLIER. I
14 JUST GOT IT THE DAY BEFORE. THE TIMING IN TERMS OF THE
15 FACILITY NEED REVIEW PROCESS WE HAD ASKED -- WE WERE PLANNING
16 TO GIVE A DECISION ON MONDAY. WE LOOKED FOR SOME ADDITIONAL
17 INFORMATION AS WE CONSIDERED THIS DECISION AND, AGAIN, WHEN
18 ASKING FOR THE ADDITIONAL INFORMATION WE TOLD PLANNED
19 PARENTHOOD THAT WE WOULD HAVE A DECISION BY THE END OF THE
20 WEEK AND THAT'S WHAT WE DID.

21 Q SECRETARY KLIEBERT, ARE YOU AWARE OF THE FACT THAT
22 IN THIS CASE DOCUMENTS PRODUCED BY DHH IN THIS CASE
23 DEMONSTRATE THAT PEOPLE LIKE CECILE CASTELLO AND I BELIEVE
24 JENNIFER STEVENS REACHED OUT TO HOSPITALS AND ASKED FOR
25 DOCUMENTS AND GOT THEM IN LESS THAN A WEEK; ARE YOU AWARE OF

1 THAT?

2 A AGAIN, I'M NOT SURE WHAT YOU'RE ASKING.

3 Q ARE YOU AWARE THAT CECILE CASTELLO IN A NUMBER OF
4 INSTANCES E-MAILED HOSPITALS FOR COPIES OF THEIR BYLAWS AND
5 OTHER ADMITTING PRIVILEGES RELATED DOCUMENTS AND GOT THEM
6 WITHIN THREE DAYS; ARE YOU AWARE OF THAT?

7 A NO.

8 Q SO IF DHH WANTED TO KNOW THE STATUS OF PEOPLE'S
9 APPLICATIONS WAS THERE ANYTHING STOPPING DHH FROM REACHING OUT
10 TO THE HOSPITALS AND ASKING?

11 A AGAIN, I DON'T KNOW. I DO KNOW THAT THESE DOCUMENTS
12 WERE BROUGHT TO ME ON THURSDAY. I WAS NOT ASKED FOR ANY
13 DISCUSSION OR DECISION MAKING PRIOR TO THEM AND THAT'S WHEN I
14 RECEIVED THE DOCUMENTS AND MY UNDERSTANDING THAT THE
15 DEPARTMENT RECEIVED THE DOCUMENTS.

16 Q OKAY. ALL RIGHT. SO I JUST WANT TO TAKE A QUICK
17 LOOK AT THE KINDS OF INFORMATION THAT YOU'VE TESTIFIED YOU
18 FELT WAS NOT ADEQUATE TO DEMONSTRATE THAT THERE WAS A NEED IN
19 THE APPLICATION THAT YOU HAVE IN FRONT OF YOU. OKAY?

20 A AND, AGAIN, I'D LIKE TO CLARIFY BY SAYING THAT IT
21 WAS NOT WHAT WE TYPICALLY RECEIVE IN TERMS OF A NEED REVIEW
22 PROCESS.

23 Q I UNDERSTAND THAT.

24 A OKAY.

25 Q BUT I ALSO UNDERSTAND FROM YOUR TESTIMONY THAT YOU

1 EVALUATED WHAT WAS IN FRONT OF YOU? SO EVEN IF --

2 A THAT'S CORRECT.

3 Q -- IT LOOKED DIFFERENT THAN WHAT YOU WERE USED TO,
4 YOU LOOKED AT WHAT WAS IN FRONT OF YOU AND SAID IT'S
5 IMPOSSIBLE BASED ON THIS INFORMATION FOR US TO DETERMINE
6 WHETHER OR NOT THERE'S A NEED; IS THAT CORRECT?

7 A WHETHER OR NOT -- THE DECISION THAT WAS MADE WAS
8 DETERMINED THAT OUR RULE WAS NOT ADMINISTRABLE. NOT
9 NECESSARILY THAT THERE WASN'T -- AND, AGAIN, I'LL AGREE WITH
10 WHAT YOU SAID IN TERMS OF THE FACT THAT WE DID NOT HAVE
11 INFORMATION THAT WE FELT MET THE REQUIREMENTS OF THE FACILITY
12 NEED REVIEW PROCESS.

13 Q SO I JUST -- IT'S NOT WHAT I SAID, RATHER IT'S YOUR
14 TESTIMONY IS THE IMPORTANT THING HERE AND I JUST WANT TO MAKE
15 SURE THAT I UNDERSTAND WHAT YOUR TESTIMONY IS. MY
16 UNDERSTANDING OF YOUR TESTIMONY IS THAT DHH RECEIVED AN
17 APPLICATION FROM PLANNED PARENTHOOD, CONFINED ITS ANALYSIS TO
18 THE INFORMATION PROVIDED BY PLANNED PARENTHOOD. AFTER
19 REVIEWING -- IS THAT CORRECT SO FAR?

20 A YES. YES.

21 Q AFTER REVIEWING THE INFORMATION PROVIDED BY PLANNED
22 PARENTHOOD DHH'S DETERMINATION WAS THAT IT WOULD BE IMPOSSIBLE
23 TO GET THE KIND OF INFORMATION THAT DHH WOULD EXPECT IN ORDER
24 TO QUANTIFY NEED IN AN AREA FOR ABORTION SERVICES?

25 A THAT'S CORRECT.

1 Q AND THIS WAS SPECIFIC TO ABORTION; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q AND THAT WHATEVER IS IN THIS STACK OF PAPERS WE'RE
4 GOING TO LOOK AT, SUPPORTED THINKING AT DHH, THAT IT'S NOT
5 LIKELY THAT ANYONE WILL EVER BE ABLE TO PROVIDE INFORMATION
6 THAT WILL TELL DHH WHETHER OR NOT THERE'S A NEED FOR SERVICES
7 IN A PARTICULAR AREA WHEN YOU'RE TALKING ABOUT ABORTION; IS
8 THAT RIGHT?

9 A AGAIN, I THINK IT'S PROBABLY WHEN YOU'RE TALKING
10 ABOUT ANY TYPE OF ELECTIVE SERVICE. I THINK THAT'S PART OF
11 THE ISSUE. I MEAN THE OTHER SERVICES THAT WE'RE TALKING ABOUT
12 IN FACILITY NEED REVIEW ARE NOT ELECTIVE SERVICES. THESE ARE
13 SERVICES THAT ARE CLEARLY NEEDED BY THE INDIVIDUAL THROUGH
14 MEDICAL NECESSITY. SO, AGAIN, I THINK AN ELECTIVE SERVICE IS
15 VERY HARD TO QUANTIFY NEED.

16 Q SO, SECRETARY KLIEBERT, THIS DETERMINATION THAT
17 HAPPENED THREE DAYS AGO; RIGHT? IS VASTLY DIFFERENT THAN THE
18 DETERMINATION NEED THREE YEARS AGO, THAT ON AN EMERGENCY BASIS
19 THERE WAS -- IT WAS NECESSARY TO PUT ABORTION CLINICS IN THIS
20 CATEGORY IN ORDER TO AVOID EMINENT PERIL TO THE PUBLIC HEALTH,
21 SAFETY OR WELFARE?

22 A AND, AGAIN, I CAN'T REALLY ATTEST TO THE THINKING OF
23 THE SECRETARY AT THAT TIME.

24 Q RIGHT. BUT -- I'M NOT ASKING YOU TO ATTEST TO WHAT
25 HE'S THINKING, BUT IT'S CLEAR FROM THE DOCUMENTS THAT THERE

1 WAS THINKING THAT IT WAS AN EMINENT PERIL TO THE PUBLIC HEALTH
2 IF ABORTION CLINICS WERE NOT BEING LOOKED AT THIS WAY; IS THAT
3 RIGHT?

4 A YES. AND, AGAIN, I THINK FOR ANY RULES THAT WE PUT
5 IN PLACE THAT SOMETIMES IT'S VERY DIFFICULT TO TELL UNTIL YOU
6 HAVE TO ACTUALLY IMPLEMENT THOSE RULES AND THIS WAS OUR FIRST
7 OPPORTUNITY TO DO THAT.

8 Q WHAT HAPPENED ON FRIDAY IS A COMPLETE TURNAROUND
9 FROM WHAT WAS GOING ON IN 2012; IS THAT RIGHT?

10 A AGAIN, I DON'T KNOW THE THINKING. I'M JUST SAYING
11 THAT I THINK ONCE YOU TRY TO ADMINISTER RULES IT BECOMES VERY
12 DIFFERENT IN TERMS OF THE THINKING THAT MAY HAVE GONE INTO THE
13 INITIAL PROMULGATION OF THE RULE.

14 Q DO YOU THINK THAT BY RESCINDING THIS RULE YOU ARE
15 EXPOSING THE PUBLIC TO EMINENT PERIL TO THE PUBLIC HEALTH,
16 SAFETY OF WELFARE?

17 A CERTAINLY, I DON'T. I'M THE HEALTH SECRETARY AND I
18 WOULD NOT RESCIND A RULE THAT I THOUGHT WOULD EXPOSE THE
19 PUBLIC TO EMINENT DANGER.

20 Q SO IT'S FAIR TO SAY THAT YOUR THINKING TODAY IS VERY
21 DIFFERENT THAN THE THINKING --

22 A AGAIN, I THINK THAT'S VERY HARD FOR ME TO ANSWER.
23 YOU KNOW, DIFFERENT -- YOU KNOW, IT'S VERY HARD TO GO BACK IN
24 TIME AND DETERMINE WHAT WAS GOING ON, WHAT PEOPLE WERE
25 THINKING OR WHAT OTHER EVENTS WERE OCCURRING THAT MAY HAVE

1 INFLUENCED THE DECISION AT THAT TIME. ALL OF US HAVE, AT
2 DIFFERENT POINTS IN TIME, MAY CONSIDER SOMETHING DANGEROUS AT
3 ONE POINT AND THEN CHANGE THAT PERCEPTION ONCE THOSE EVENTS
4 CHANGE.

5 Q BUT WE KNOW FROM THE FORM THAT AT ONE POINT IN TIME
6 IT WAS CONSIDERED DANGEROUS; IS THAT RIGHT?

7 A AGAIN, BASED ON THE FORM.

8 Q ALL RIGHT. SO IF WE COULD TAKE A LOOK AT PAGE 229.
9 IS THERE A REQUIREMENT THAT ABORTIONS BE REPORTED TO DHH IN
10 THE STATE OF LOUISIANA?

11 A YES.

12 Q SO DHH PUBLISHES NUMBERS OF ABORTIONS THAT OCCUR
13 EVERY YEAR; IS THAT RIGHT?

14 A YES.

15 Q SO WOULD YOU AGREE WITH ME THAT PLANNED PARENTHOOD
16 USED NUMBERS PUBLISHED BY DHH WHEN THEY TALKED ABOUT THE
17 NUMBER OF ABORTIONS THAT ACTUALLY OCCURRED IN THE STATE?

18 A I MEAN IT SAYS THAT THEY -- ACCORDING TO DATA BY DHH
19 SO, YES.

20 Q SO ONE OF THE THINGS THAT THEY RELIED ON IN
21 DISCUSSING NEED WAS THE NUMBERS THAT DHH PUBLISHES?

22 A YES.

23 Q AND THEN IF YOU TAKE A LOOK, FOR EXAMPLE, AT THE
24 FIRST FULL PARAGRAPH ON THE TOP OF PAGE 229 IT SAYS, "ALTHOUGH
25 THIS DATA INDICATES THAT IN 2010, 3,598 WOMEN RESIDING IN DHH

1 REGION 1 WOULD BE EXPECTED TO ACCESS ABORTION CARE SERVICES IN
2 THAT YEAR, THE DATA PROVIDED BY DHH SHOWS THAT A MUCH SMALLER
3 NUMBER OF WOMEN RESIDING IN DHH REGION 1 WERE ABLE TO ACCESS
4 ABORTION SERVICES IN THAT YEAR; IS THAT RIGHT?

5 A THAT'S WHAT IT SAYS, YES.

6 Q SO ESSENTIALLY WHAT THEY'RE SAYING IS, IS THAT IF
7 YOU LOOK AT NATIONAL AVERAGES YOU WOULD EXPECT IN AN AREA OF
8 THIS SIZE WITH THIS MANY PEOPLE THAT A CERTAIN NUMBER OF WOMEN
9 WOULD SEEK ABORTIONS. BUT BASED ON DHH'S NUMBERS FAR FEWER
10 ARE -- ARE ACTUALLY HAVING ABORTIONS?

11 A AND THAT'S PART OF THE DIFFICULTY WITH THE DATA
12 BECAUSE, YOU KNOW, IT'S THEORETICAL. YOU DON'T KNOW IN A
13 PARTICULAR AREA WHAT RELIGIOUS BELIEFS OR CONSERVATIVE BELIEFS
14 MIGHT MAKE THOSE NUMBERS BE DIFFERENT. SO, AGAIN, PART OF THE
15 ISSUE THAT WE HAD WHEN YOU USE THAT THEORETICAL DATA, HOW DO
16 YOU REALLY KNOW IN THAT AREA THAT THIS IS THE NEED THAT
17 EXISTS? AGAIN, I'LL GO BACK TO WHY WE RESCINDED THE RULE,
18 BECAUSE IT'S VERY, VERY DIFFICULT FOR PROVIDERS AND
19 INDIVIDUALS TO ACTUALLY SAY, I NEEDED THIS IN THIS AREA.

20 Q SO YOU ASSUMED THAT THERE WOULD BE RELIGIOUS VIEWS
21 OR OTHER VIEWS THAT WOULD MAKE THAT ANALYSIS INCORRECT; IS
22 THAT RIGHT?

23 A I DON'T ASSUME THAT. I JUST -- AGAIN, IT'S FACTORS
24 THAT YOU NEED TO LOOK AT AND WHAT MAKES THEORETICAL DATA HARD
25 TO MAKE IT AS CLEAR AS, HEY, I'VE GOT THIS MANY PEOPLE IN THIS

1 REGION THAT NEEDED THIS SERVICE AND I DON'T HAVE ENOUGH
2 PROVIDERS TO PROVIDE IT. THAT'S WHAT WE LOOK FOR.

3 Q OKAY. I'M ASKING ABOUT A SLIGHTLY DIFFERENT
4 STATISTIC THOUGH. I'M ASKING ABOUT BASED ON NATIONAL AVERAGES
5 THE NUMBER OF WOMEN WHO LIKELY NEED THE SERVICE.

6 A AGAIN --

7 Q I UNDERSTAND. I'M ASKING ABOUT -- SO IT'S YOUR
8 POSITION THAT NATIONAL AVERAGES OF WOMEN WHO RECEIVE ABORTIONS
9 IN THE UNITED STATES CAN NOT RELIABLY BE APPLIED TO THE STATE
10 OF LOUISIANA; IS THAT RIGHT?

11 A AGAIN, NO. THAT'S NOT CORRECT. I'M SAYING THAT
12 IT'S DATA THAT, YOU KNOW, WOULD HAVE TO HAVE LOTS OF -- A LOT
13 OF DIFFERENT QUALIFIERS IN IT BEFORE YOU COULD INDICATE THAT
14 THAT DATA WAS TOTALLY ACCURATE FOR LOUISIANA.

15 Q BUT YOU'RE JUST REJECTING IT OUT OF HAND. YOU'RE
16 NOT EVEN CONSIDERING THAT IT --

17 A AGAIN, I'M NOT REJECTING IT. THE DECISION WAS MADE
18 TO RESCIND THE RULE BECAUSE OF THAT VERY ISSUE. I MEAN THAT'S
19 WHY WE MADE THE DECISION TO RESCIND THE RULE.

20 Q SO YOUR VIEW IS THAT ALL OF THOSE FACTORS THAT YOU
21 WOULD WANT TO CONSIDER, THOSE DON'T EFFECT WOMEN ELSEWHERE IN
22 THE UNITED STATES AND THOSE FACTORS AREN'T REPRESENTED IN THE
23 NATIONAL AVERAGE IN OTHER WORDS?

24 MR. JOHNSON: OBJECTION. THIS HAS BEEN ASKED AND
25 ANSWERED --

1 **THE COURT:** THIS HORSE IS NOT ONLY DEAD, IT IS
2 BLOODY AND DEAD. THIS IS ENOUGH NOMOS.

3 **MS. DOUFEKIAS:** ALL RIGHT, YOUR HONOR. I'LL MOVE
4 ON.

5 **BY MS. DOUFEKIAS:**

6 **Q** SECRETARY KLIEBERT, DO YOU NEED -- DID YOU SEND A
7 LETTER TO PLANNED PARENTHOOD INFORMING THEM THAT THE RULE WAS
8 BEING RESCINDED?

9 **A** YES.

10 **Q** CAN YOU PUT UP PLAINTIFFS' EXHIBIT 179? DO YOU
11 RECOGNIZE THIS DOCUMENT?

12 **A** YES.

13 **Q** IS THIS THE LETTER YOU SENT TO PLANNED PARENTHOOD?

14 **A** YES.

15 **MS. DOUFEKIAS:** I'D MOVE PLAINTIFFS' EXHIBIT 179
16 INTO EVIDENCE.

17 **THE COURT:** ANY OBJECTION?

18 **MR. JOHNSON:** NO OBJECTION.

19 **THE COURT:** OKAY. LET IT BE RECEIVED.

20 **BY MS. DOUFEKIAS:**

21 **Q** SO IT SAYS, AS WE'VE BEEN DISCUSSING, THAT DHH HAS
22 DECIDED TO RESCIND THE FACILITY NEED REVIEW REQUIREMENTS
23 EFFECTIVELY IMMEDIATELY?

24 **A** THAT'S CORRECT.

25 **Q** CAN YOU MAKE -- AS SECRETARY OF DHH, CAN YOU MAKE

1 THAT DECISION UNILATERALLY?

2 A YES, I CAN MAKE A DECISION TO DO THAT. BUT, AGAIN,
3 I DON'T MAKE IT UNILATERALLY. I TALK TO COUNSEL AND OTHERS
4 BEFORE MAKING ANY DECISIONS.

5 Q RIGHT. BUT ULTIMATELY IT'S YOUR DECISION?

6 A YES.

7 Q AND I APPRECIATE THAT YOU SPOKE TO COMMITTEE
8 MEMBERS, BUT ULTIMATELY YOU DECIDED TO RESCIND THE
9 REGULATIONS; IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q AND THAT'S SOMETHING THAT YOU CAN DO BECAUSE YOU'RE
12 THE SECRETARY OF DHH?

13 A YES.

14 Q AND THERE ARE OTHER KINDS OF DECISIONS THAT YOU CAN
15 UNILATERALLY CHANGE AFTER DISCUSSING WITH YOUR COUNSELORS
16 BECAUSE YOU ARE SECRETARY OF DHH; IS THAT RIGHT?

17 A THAT IS CORRECT.

18 MS. DOUFEKIAS: I HAVE NOTHING FURTHER.

19 THE COURT: DIRECT?

20 MR. JOHNSON: READY, YOUR HONOR?

21 THE COURT: YES.

22 DIRECT

23 BY MR. JOHNSON:

24 Q MADAM SECRETARY, IT'S BEEN A LONG DAY. THIS IS THE
25 END OF IT. I'LL TRY TO BE EFFICIENT AND AS BRIEF AS I CAN.

1 BUT THERE ARE A FEW THINGS THAT WE WANTED TO GO OVER WITH YOU,
2 THIS IS A DIRECT EXAMINATION BECAUSE, OF COURSE, WE ARE YOUR
3 COUNSEL. BUT A LOT OF FOUNDATION WAS LAID, A LOT OF IMPORTANT
4 INFORMATION WAS SET FORTH, WE MIGHT JUST NEED TO SORT OF
5 CLARIFY A FEW OF THOSE THINGS SO I'LL BE ASKING YOU SOME
6 QUESTIONS IN THAT REGARD.

7 A LITTLE BIT ABOUT YOUR BACKGROUND. YOU SAID A
8 LITTLE IN THE BEGINNING BUT WHAT WAS YOUR UNDERGRADUATE DEGREE
9 IN?

10 A SOCIAL WORK -- SOCIOLOGY, I'M SORRY. MY GRADUATE
11 DEGREE WAS SOCIAL WORK.

12 Q THAT WAS AT LSU?

13 A LSU.

14 Q AND YOU'RE A BOARD CERTIFIED SOCIAL WORKER; IS THAT
15 RIGHT?

16 A YES.

17 Q HOW MANY YEARS HAVE YOU SPENT AT DHH?

18 A TWENTY-SEVEN.

19 Q AND IN THAT TIME YOU SERVED IN A COUPLE OF DIFFERENT
20 CAPACITIES; IS THAT RIGHT?

21 A YES. STARTED OUT AS A SOCIAL WORKER, THEN DID
22 QUALITY ASSURANCE, WAS A FACILITY ADMINISTRATOR, WORKED IN THE
23 COMMUNITY WITH THE DIVERSIFICATION PROGRAM FOR PEOPLE WITH
24 DEVELOPMENTAL DISABILITIES, WORKED AS ASSISTANT SECRETARY FOR
25 THE OFFICE FOR CITIZENS FOR DEVELOPMENTAL DISABILITIES AND

1 THEN ASSISTANT SECRETARY FOR OFFICE OF BEHAVIORAL HEALTH, THEN
2 DEPUTY SECRETARY, THEN SECRETARY.

3 Q SO IS IT ACCURATE TO SAY THAT YOUR PRIMARY
4 BACKGROUND IS IN AREAS LIKE BEHAVIORAL HEALTH AND
5 DEVELOPMENTAL DISABILITIES?

6 A YES. THE MAJORITY OF MY CAREER I'VE SPENT IN
7 DEVELOPMENTAL DISABILITIES AND BEHAVIORAL HEALTH.

8 Q SO YOU TESTIFIED EARLIER YOU'VE BEEN THE SECRETARY
9 FOR ABOUT TWO YEARS; IS THAT RIGHT?

10 A YES, SIR.

11 Q AND YOU'VE WORKED UNDER -- AT DHH AND DURING YOUR
12 TENURE BOTH AS A DEPUTY SECRETARY AND ASSISTANT SECRETARY, YOU
13 WORKED UNDER DEMOCRATIC GOVERNORS AND A REPUBLICAN GOVERNOR AS
14 WELL?

15 A THAT'S CORRECT. I WAS INITIALLY APPOINTED AS
16 ASSISTANT SECRETARY UNDER GOVERNOR BLANCO.

17 Q IN YOUR ESTIMATION IS DHH A PARTICULARLY POLITICAL
18 DIVISION OF STATE GOVERNMENT?

19 A NO. DHH HAS THE RESPONSIBILITY, JUST LIKE ANY OTHER
20 STATE AGENCY, THE RESPONSIBILITY OF ENFORCING RULES AND
21 REGULATIONS THAT ARE EITHER LEGISLATIVE OR DETERMINED BASED ON
22 GOOD POLICY TO PROTECT THE HEALTH AND SAFETY OF INDIVIDUALS.

23 Q SO DO YOU REGARD YOUR POSITION AS SECRETARY TO
24 ADVANCE POLITICAL POLICY OR JUST AS YOU'VE SAID?

25 A TO -- ABSOLUTELY. JUST TO ASSURE THAT THE RULES AND

1 REGULATIONS ARE FOLLOWED AND THAT WE DO WHAT WE CAN TO MEET
2 OUR MISSION OF IMPROVING THE HEALTH OUTCOMES FOR INDIVIDUALS
3 IN LOUISIANA.

4 Q AND IN YOUR BACKGROUND OF YOUR 27 YEARS AT DHH DID
5 YOU EVER WORK IN THE HEALTH STANDARDS' SECTION?

6 A NO.

7 Q DID YOU HAVE ANY PARTICULAR BACKGROUND IN THE
8 REGULATION OF ABORTION PROVIDERS?

9 A NO.

10 Q DESCRIBE YOUR ROLE AS SECRETARY, JUST GENERALLY WHAT
11 YOUR DUTIES ARE.

12 A AGAIN, PRIMARILY JUST OVERSEEING POLICY AND PROGRAM
13 DIRECTION, MAKING SURE THAT, YOU KNOW, DECISIONS THAT WE MAKE
14 ARE THE RIGHT DECISIONS TO PROMOTE HEALTH AND SAFETY, TO
15 PROMOTE HEALTH OUTCOMES, ASSURING THAT WE'RE FOLLOWING RULES
16 AND REGULATIONS THAT WE HAVE EITHER PROMULGATED OR STATUTES
17 THAT HAVE BEEN GIVEN TO US BY THE LEGISLATURE TO ENFORCE.

18 Q IS DHH THE LARGEST STATE AGENCY?

19 A IT IS.

20 Q HOW MANY EMPLOYEES DO YOU HAVE APPROXIMATELY?

21 A A LITTLE OVER 6,000 EMPLOYEES.

22 Q YOU CAN'T POSSIBLY KNOW THEM ALL; CORRECT?

23 A NO, I DON'T.

24 Q AND DHH HANDLES A BROAD SCOPE OF RESPONSIBILITIES
25 FOR THE STATE?

1 **A** LARGE SCOPE. ANYTHING FROM PUBLIC HEALTH WATER
2 INSPECTIONS, RESTAURANT INSPECTIONS, HOSPITAL INSPECTIONS
3 DEVELOPMENTAL DISABILITIES, AGING AND ADULT SERVICES, NURSING
4 HOMES, HOSPITALS MEDICAID SERVICES, A VERY, VERY -- IT'S ONE
5 OF THE AGENCIES NATIONALLY THAT IS CONSIDERED A MEGA AGENCY
6 BECAUSE OF ALL OF THE DIFFERENT -- DIFFERENT TYPES OF SERVICES
7 THAT WE PROVIDE.

8 **Q** THAT MAKES YOU A MEGA SECRETARY?

9 **A** I DON'T KNOW ABOUT THAT.

10 **Q** COULD ANY SECRETARY, BY THE NATURE OF THE BROAD
11 SCOPE OF WHAT DHH DOES, HAVE A PARTICULAR EXPERTISE IN EVERY
12 AREA UNDER ITS UMBRELLA?

13 **A** ABSOLUTELY NOT.

14 **Q** SO IF THAT'S TRUE DO YOU RELY HEAVILY UPON YOUR
15 DIVISION HEADS AND THE VARIOUS EXPERTS IN EACH OF THOSE
16 ARENAS?

17 **A** YEAH. AND I'M A SECRETARY THAT HAS ALWAYS ASKED FOR
18 INPUT FROM ALL OF OUR DIFFERENT AREAS. AGAIN, THERE'S NO WAY
19 I COULD POSSIBLY KNOW ALL I NEED TO KNOW ABOUT WATER SAFETY,
20 ALL I NEED TO KNOW ABOUT, YOU KNOW, RESTAURANT INSPECTIONS OR
21 ABORTION.

22 **Q** RIGHT. SO WITH REGARD TO THAT, THE PROCESS OF
23 ABORTION CLINIC LICENSING IN LOUISIANA AND THE SURVEYS THAT
24 ARE DONE WITH REGARD TO THAT, YOU DON'T HAVE ANY DIRECT OR
25 PERSONAL INVOLVEMENT IN THAT; DO YOU?

1 **A** NO, I DO NOT.

2 **Q** DO YOU HAVE ANY DIRECT INVOLVEMENT IN WHO IS
3 APPOINTED TO INSPECT THE CLINICS AND SERVE AS A SURVEYOR?

4 **A** NO.

5 **Q** DO YOU HAVE ANY PARTICULAR INVOLVEMENT IN THE EARLY
6 PROMULGATION OR DRAFTING OF THE DETAILS OF SPECIFIC
7 ADMINISTRATIVE RULES WITH REGARD TO THE ABORTION PRACTICE IN
8 LOUISIANA?

9 **A** NO.

10 **Q** AND FOR THAT MATTER, FOR ANY OF THE PARTICULAR DHH?

11 **A** ANY OF THE RULES. AGAIN, I WOULD ONLY BE INVOLVED
12 AT A LATER STAGE IF THERE'S ANY GRAY AREAS OR AREAS WHERE
13 THERE'S SOME, YOU KNOW, DISCUSSION THAT THERE CAN'T BE A
14 CONSENSUS.

15 **Q** WHO IS CECILE CASTELLO?

16 **A** SHE IS THE DIRECTOR OF HEALTH STANDARDS FOR THE
17 DEPARTMENT.

18 **Q** WOULD SHE BE ONE OF THOSE DIVISION HEADS THAT YOU
19 WOULD RELY HEAVILY UPON FOR HER EXPERTISE?

20 **A** ABSOLUTELY.

21 **Q** AND SHE'S BEEN AT DHH A NUMBER OF YEARS?

22 **A** I THINK 19 YEARS SHE'S BEEN AT DHH.

23 **Q** ON AVERAGE HOW OFTEN DO YOU MEET WITH CECILE
24 CASTELLO BEING ONE OF THESE DIVISION HEADS?

25 **A** IT REALLY DEPENDS. IF THERE ARE ISSUES GOING ON

1 THAT, AGAIN, THAT ARE GRAY AREAS OR THAT -- A FACILITY THAT IS
2 HAVING PROBLEMS THAT WE NEED TO CORRECT, YOU KNOW, WE MIGHT
3 MEET, YOU KNOW, ONCE A WEEK. BUT MORE OFTEN IT'S MORE LIKE
4 ONCE A MONTH. IT COULD BE, AGAIN, ONCE A WEEK OR MORE OFTEN.
5 SOMETIMES IT MIGHT BE THREE TIMES A WEEK IF WE'RE DEALING WITH
6 A PARTICULAR ISSUE FOR A FACILITY.

7 Q BUT IN AN AVERAGE --

8 A AVERAGE ABOUT ONCE A MONTH.

9 Q -- MONTH ONCE OR TWICE? OKAY.

10 A YEAH, ONCE OR TWICE A MONTH.

11 Q AND WOULD THAT BE TRUE OF ALL OF YOUR DIVISION
12 HEADS? IN OTHER WORDS, YOU HAVE SO MUCH TO MANAGE YOU CAN
13 ONLY MEET WITH THEM SO OFTEN; CORRECT?

14 A THAT'S CORRECT.

15 Q NOW, WITH REGARD TO THE PROMULGATION OF SPECIFIC
16 ADMINISTRATIVE RULES UNDER DHH, YOU MENTIONED EARLIER YOUR
17 EMPHASIS UPON THE IMPORTANCE OF STAKEHOLDERS. AND JUST VERY
18 BRIEFLY EXPLAIN AGAIN WHO IS A STAKEHOLDER; WHO DOES THAT
19 REFER TO?

20 A A STAKEHOLDER, AGAIN, IS ANYBODY THAT'S INVESTED IN
21 A PARTICULAR RURAL REGULATION OR PROGRAM. WE, AGAIN, AT DHH
22 BECAUSE WE HAVE SUCH A LARGE SCOPE OF DUTIES, WE HAVE A LOT OF
23 ADVOCATES, SELF-ADVOCATES, FAMILY MEMBERS, INDIVIDUALS WHO
24 HAVE A CERTAIN POSITION ON ONE ISSUE OR ANOTHER, THAT ASK TO
25 BE INVOLVED IN THE PROCESS AND I'M A SECRETARY THAT HAS ALWAYS

1 INVOLVED INDIVIDUALS IN THE PROCESS, WHETHER THEY'RE OPPOSED
2 TO A POLICY OR THEY'RE IN AGREEMENT WITH THE POLICY. I
3 LEARNED A LONG TIME AGO IN DEVELOPMENTAL DISABILITIES THAT YOU
4 NEED TO GET ALL OF THE PARTIES TO THE TABLE BEFORE YOU MAKE A
5 DECISION; A PROGRAM AND A POLICY DECISION.

6 Q AND IN AN AGENCY AS LARGE AS DHH THERE ARE A NUMBER
7 OF CONTROVERSIAL ISSUES THAT DHH MIGHT ENCOUNTER; IS THAT
8 RIGHT?

9 A THAT IS CORRECT.

10 Q I MEAN YOU MENTIONED, FOR EXAMPLE, THE REGULATION OF
11 WATER. EVEN THE REGULATION OF WATER COULD BE A VERY
12 CONTROVERSIAL --

13 A IT IS A VERY CONTROVERSIAL ISSUE. THERE'S ALWAYS
14 DIFFERENT WAYS TO HANDLE THINGS AND, YOU KNOW, DIFFERENT
15 ENGINEERING AND TECHNOLOGY THAT PEOPLE THINK WE SHOULD
16 CONSIDER AND OTHERS THAT THINK IT'S NOT A GOOD IDEA, SO IT IS.
17 IT'S A VERY, VERY CONTROVERSIAL SUBJECT.

18 Q SO, FOR EXAMPLE, IN THAT ARENA YOU WOULD HAVE AN
19 OPEN DOOR POLICY TO ADVOCATES ON ALL SIDES OF AN ISSUE;
20 CORRECT?

21 A THAT'S CORRECT. AS A MATTER OF FACT, I JUST
22 RECENTLY MET WITH A BUNCH OF ADVOCATES ON WATER ISSUES JUST
23 LAST WEEK.

24 Q THAT'S IRONIC.

25 A YES.

1 **Q** WITH REGARD TO HB 388 WHICH BECAME ACT 620, THE
2 ABORTION REGULATIONS, WAS THAT SAME GENERAL POLICY OF YOURS IN
3 PLAY HERE? IN OTHER WORDS, DID YOU HEAR FROM A NUMBER OF
4 STAKEHOLDERS FROM ALL SIDES OF THE ISSUE?

5 **A** YES, WE DID. ON BOTH SIDES OF THE ISSUE.

6 **Q** AND YOU ACTUALLY MET IN-PERSON WITH BOTH SIDES ON
7 THIS ONE, DIDN'T YOU?

8 **A** WE DID. WE MET IN-PERSON WITH BOTH PRO-ABORTION AND
9 PRO-LIFE INDIVIDUALS.

10 **Q** AND YOU RECEIVED DOCUMENTS THAT WERE SUBMITTED FROM
11 THE BOTH SIDES OF THE ISSUE; CORRECT?

12 **A** CORRECT. WE SENT THE RULES OUT TO BOTH SIDES, ASKED
13 THEM TO COMMENT AND GIVE US FEEDBACK ON THOSE DOCUMENTS.

14 **Q** NOW, WHY DID YOU FEEL IT WAS IMPORTANT FOR YOU
15 PERSONALLY AS THE SECRETARY, THE TOP OF THE MOUNTAIN SO TO
16 SPEAK AT DHH, WHY WAS IT IMPORTANT FOR YOU TO MEET WITH BOTH
17 SIDES AND HEAR ALL OF THIS INPUT?

18 **A** AGAIN, YOU KNOW, WHEN WE HAVE ISSUES THAT ARE -- AS
19 I MENTIONED EARLIER, I LEARNED A LONG TIME AGO, IF YOU WANT TO
20 HAVE REALLY GOOD RULES AND REGULATIONS THE BEST WAY TO DO IT
21 IS TO HEAR FROM BOTH SIDES AND TO GET FEEDBACK FROM THOSE
22 ENTITIES SO YOU CAN MAKE THE RIGHT DECISION AND PROCEED IN A
23 WAY THAT EVERYBODY CAN, MAYBE THEY MIGHT NOT ALL AGREE WITH
24 IT, THEY CAN AT LEAST LIVE WITH THE DECISIONS THAT YOU'VE
25 MADE.

1 **Q** NOW, YOU'RE HEAVILY INVOLVED IN THE RULE MAKING
2 PROCESS WHEN YOU WALK INTO THE ROOM AND YOU ACTUALLY HEAR FROM
3 STAKEHOLDERS, WHICH I WOULD ASSUME OVERALL IS A RARE USE OF
4 YOUR TIME; RIGHT?

5 **A** YEAH. MOST OF THE TIME I'M NOT THAT INVOLVED, BUT
6 THERE ARE TIMES, AND THERE HAVE BEEN QUITE A FEW TIMES, THAT I
7 HAVE TO BE THAT INVOLVED.

8 **Q** THIS PARTICULAR SET OF RULES WAS ENABLED BY THE
9 LEGISLATION THAT WAS HB 388; IS THAT RIGHT?

10 **A** THAT'S CORRECT.

11 **Q** NOW, IN TERMS OF THE LEGISLATION ITSELF, THE
12 ENABLING LEGISLATION, WERE YOU INVOLVED IN THE CRAFTING OF
13 THAT LEGISLATION AT ALL?

14 **A** NO, I WAS NOT.

15 **Q** DID YOU HAVE ANY INVOLVEMENT WHATSOEVER IN THE
16 DRAFTING OF HB 388 OR EVEN THE IDEA OF IT?

17 **A** NO, I DID NOT.

18 **Q** DID YOU OR YOUR DEPARTMENT ENGAGE IN LOBBYING FOR OR
19 AGAINST THIS PIECE OF LEGISLATION?

20 **A** NO. AGAIN, AS A DEPARTMENT WE ARE VERY, VERY
21 CAREFUL IN TERMS OF THAT OUR ROLE IS TO PROVIDE INFORMATION
22 WHEN REQUESTED AND TO GIVE OBJECTIVE, NEUTRAL INFORMATION.

23 **Q** AND YOU DID THAT IN THIS CASE; CORRECT?

24 **A** YES.

25 **Q** SO WHEN YOU WENT TO TESTIFY TO THE COMMITTEE YOU

1 WENT FIRST TO THE HOUSE; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q WAS THAT THE COMMITTEE ON HEALTH --

4 A HEALTH AND WELFARE.

5 Q HEALTH AND WELFARE. SO YOU TESTIFIED IN THE HOUSE
6 COMMITTEE; CORRECT?

7 A YES.

8 Q AND THEN LATER TESTIFIED ON THE SENATE SIDE AS WELL;
9 IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q NOW, IN EACH OF THOSE CASES DID YOU SUBMIT WHAT'S
12 KNOWN AS A GREEN CARD, WHICH WOULD BE FOR LEGISLATION, A RED
13 CARD, WHICH WOULD BE AGAINST, OR A WHITE CARD, WHICH IS FOR
14 INFORMATION ONLY IN THOSE COMMITTEE HEARINGS?

15 MS. DOUFEKIAS: OBJECTION, YOUR HONOR.

16 THE COURT: WHAT'S YOUR OBJECTION?

17 MS. DOUFEKIAS: I'M GOING TO OBJECT TO THE FORM. I
18 REALIZE WE'VE ALL BEEN LENIENT, BUT I DON'T THINK HE'S ASKED A
19 SINGLE QUESTION THAT'S NOT LEADING.

20 THE COURT: WELL, THAT ONE WAS NOT LEADING, SO
21 OVERRULED.

22 MR. JOHNSON: I'M JUST TRYING TO BE EFFICIENT, YOUR
23 HONOR.

24 THE COURT: I UNDERSTAND. I DID NOT CONSIDER THAT.
25 YOU GAVE HER THREE CHOICES, OKAY? SO YOU DIDN'T LEAD HER TO

1 THE WATER, BUT IN ANY EVENT GO FORWARD.

2 OVERRULED.

3 A WHITE CARD.

4 BY MR. JOHNSON:

5 Q BY WHITE CARD YOU MEAN...

6 A WHITE CARD IS FOR INFORMATION PURPOSES ONLY.

7 Q AND THAT'S THE STANDARD PRACTICE AND PROCEDURE IN
8 THE LEGISLATIVE COMMITTEE?

9 A FOR OUR DEPARTMENT AND WE ALWAYS SUBMIT ONLY WHITE
10 CARDS FOR INFORMATIONAL PURPOSES ONLY.

11 Q AND THE WHITE CARD REPRESENTS NEUTRALITY?

12 A THAT'S CORRECT.

13 Q WITH REGARD TO YOUR TESTIMONY, YOU WERE ASKED SOME
14 QUESTIONS ABOUT WHAT YOU PRESENTED EARLIER WHEN COUNSEL WAS
15 ASKING YOU THE QUESTIONS ORIGINALLY; YOU RECALL THAT?

16 A YES.

17 Q WE DO HAVE --

18 MR. JOHNSON: I WOULD LIKE TO OFFER THIS INTO
19 EVIDENCE AT THIS TIME, YOUR HONOR, IF WE COULD. WE HAVE
20 DEFENDANT'S EXHIBIT 119 WHICH IS THE FULL TRANSCRIPT OF THOSE
21 COMMITTEE HEARINGS BECAUSE I NEED TO ASK THE WITNESS ABOUT
22 SOME SPECIFIC THINGS THAT WERE SAID?

23 THE COURT: ANY OBJECTIONS?

24 MS. DOUFEKIAS: NO OBJECTION, YOUR HONOR.

25 THE COURT: ALL RIGHT. LET IT BE RECEIVED.

1 AND THIS IS JOINT EXHIBIT -- NO. THIS IS DEFENSE
2 EXHIBIT 119?

3 **MR. JOHNSON:** DEFENSE EXHIBIT 119, THAT'S RIGHT.

4 **BY MR. JOHNSON:**

5 **Q** AND, MADAM SECRETARY, I THINK IT'S THE NOTEBOOK
6 RIGHT THERE UP ON THE TOP OF THE SHELF THERE.

7 **A** THIS ONE?

8 **Q** THAT ONE, YES, MA'AM. I THINK THERE'S A TAB THAT
9 SAYS 119. WHILE YOU'RE TURNING THERE I'LL TELL YOU THAT THIS
10 IS A TRANSCRIPT OF ALL OF THE HEARINGS, THE LEGISLATIVE
11 HISTORY OF ACT 620. AND AS YOU MAY KNOW, AND FOR INFORMATION
12 OF THE COURT, JUST FOR THE SAKE OF EFFICIENCY, THERE ARE NO
13 TRANSCRIPTION SERVICES PROVIDED IN THE LEGISLATURE; IS THAT
14 RIGHT, MADAM SECRETARY? NO ONE IS STANDING THERE TYPING
15 EVERYTHING YOU SAY?

16 **A** NO, IT'S VIDEOED.

17 **Q** IT'S ALL BY VIDEO.

18 **A** VIDEO.

19 **Q** SO THERE'S A PERMANENT RECORD OF LEGISLATIVE
20 HEARINGS AVAILABLE ON THE LEGISLATURE'S WEBSITE; IS THAT
21 RIGHT, MADAM SECRETARY?

22 **A** THAT'S CORRECT.

23 **Q** SO THIS IS A TRANSCRIPTION SERVICE THAT LITERALLY
24 WATCHED THAT VIDEO AND TYPED IT VERBATIM, WORD FOR WORD, SO I
25 WANTED YOU TO LOOK AT THIS. TAKE A MOMENT AND LOOK AT YOUR

1 TESTIMONY, WHICH BEGINS ON PAGE 2 OF THAT DOCUMENT. JUST
2 BRIEFLY REVIEW THAT AND MAKE SURE IT IS AN ACCURATE REFLECTION
3 OF EXACTLY WHAT YOU'VE SAID.

4 A YES, THAT LOOKS ACCURATE.

5 Q AND WAS THAT THE SUB -- I'M SORRY. WAS THAT THE
6 FULL SUBSTANCE OF WHAT YOU PRESENTED TO THE HOUSE COMMITTEE
7 THEN; DO YOU RECALL THAT?

8 A I BELIEVE SO, YES.

9 Q AND YOUR TESTIMONY THERE, EFFECTIVELY, WE WON'T GO
10 THROUGH IT LINE BY LINE FOR THE SAKE OF TIME, BUT IT'S IN THE
11 RECORD NOW, BUT JUST BRIEFLY PARAPHRASE FOR ME, WHAT WERE THE
12 MAIN REASONS THAT YOU SUGGESTED WOULD BE THE EFFECT OF THIS
13 LAW WERE IT ENACTED?

14 A I THINK THE BIGGEST -- THE REASON THAT WE FELT LIKE
15 -- I MEAN THE BIGGEST EFFECT THAT WE THOUGHT IT WOULD HAVE IS
16 ON THE CONTINUITY OF CARE FOR INDIVIDUALS, SO THAT IT WOULD
17 PROVIDE AN INDIVIDUAL, IF THERE WAS A COMPLICATION, THE
18 ABILITY TO HAVE FOLLOW-UP CARE WITH THAT PHYSICIAN AT AN
19 ADMITTING HOSPITAL, AS WELL AS THERE WERE OTHER PROVISIONS IN
20 THE LAW THAT ASKED FOR 24-HOUR -- MAKING SURE THERE WAS A
21 24-HOUR NUMBER THAT PEOPLE COULD REACH, AGAIN, TO ALSO ASSURE
22 THAT CONTINUITY OF CARE.

23 Q AND HOUSE BILL 388 HAD SOME PROVISIONS WITH REGARD
24 TO THE ADMITTING PRIVILEGES OF COURSE, BUT IT HAD A FEW OTHER
25 BELLS AND WHISTLES AS WELL; IS THAT RIGHT?

1 **A** THAT'S CORRECT.

2 **Q** SO WERE THERE OTHER PROVISIONS OF HOUSE BILL 388
3 THAT YOU THOUGHT WOULD BE USEFUL TO, I'M QUOTING YOU HERE,
4 "STRENGTHEN THE DEPARTMENT'S ABILITY TO PROTECT MOTHERS AND
5 CHILDREN"?

6 **A** AND, AGAIN, THE ONE THAT I REMEMBER MOST STRONGLY IS
7 ALSO HAVING THE ABILITY FOR SOMEBODY TO BE 24-HOUR AVAILABLE
8 FOR THAT INDIVIDUAL AFTER THE PROCEDURE SO THAT IF THERE WAS
9 AN ISSUE, A QUESTION, THAT THEY HAD THE ABILITY TO MAKE THAT
10 CONTACT.

11 **Q** ALL RIGHT. DURING THE TESTIMONY PERIOD THERE WERE
12 OTHERS WHO CAME TO THE TABLE AND SPOKE IN FAVOR OF THE
13 LEGISLATION AS WELL; IS THAT RIGHT?

14 **A** THAT'S CORRECT.

15 **Q** NOW, WOULD SOME OF THOSE OTHERS HAVE PLACED GREEN
16 CARDS OR WERE THEY ONLY WHITE?

17 **A** THEY PROBABLY WOULD HAVE BEEN -- AGAIN, I DON'T KNOW
18 SPECIFICALLY. THEY PROBABLY WOULD HAVE PLACED GREEN CARDS IF
19 THEY WERE NOT A STATE AGENCY.

20 **Q** SO, FOR EXAMPLE, WE SEE ON PAGE 2 THERE -- WELL,
21 YEAH, ON PAGE 2 DR. MARIER'S NAME IS MENTIONED; DO YOU SEE
22 THAT AT THE BOTTOM --

23 **A** YES.

24 **Q** -- RIGHT CORNER?

25 **A** YES.

1 **Q** AND HE PROVIDED LENGTHY TESTIMONY TO THE COMMITTEE;
2 IS THAT RIGHT?

3 **A** THAT'S CORRECT.

4 **Q** AND YOU FLIP OVER THERE'S A DR. CUDIHY; RIGHT?

5 **A** YES.

6 **Q** SO THE SUBSTANCE OF THOSE EXPERTS' TESTIMONY WAS
7 THAT THEY FELT IN ESSENCE THE LEGISLATION WOULD BE IMPORTANT
8 TO PROTECT HEALTH AND SAFETY; IS THAT AN ACCURATE SUMMATION --

9 **A** YES.

10 **Q** -- FOR THE SAKE OF TIME? NOW, THERE WAS SOME
11 DISCUSSION ABOUT -- LET ME SAY, I FELT THERE WAS SOME
12 IMPLICATION THAT YOU HAD UNDUE INFLUENCE IN THE CREATION OF
13 THIS LAW. IS THAT HOW YOU REGARDED SOME OF THE QUESTIONS THAT
14 YOU WERE ASKED EARLIER?

15 **MS. DOUFEKIAS:** OBJECTION, YOUR HONOR.

16 **THE COURT:** SUSTAINED.

17 **BY MR. JOHNSON:**

18 **Q** CAN YOU EXPLAIN THE LEGISLATIVE PROCESS, JUST
19 BASICALLY HOW IT WORKS? IN OTHER WORDS, MORE SPECIFICALLY, IF
20 A LAW IS SUGGESTED TO LAWMAKERS OR TO A DIVISION OF STATE
21 GOVERNMENT, WHO IS TYPICALLY THE PARTY WHO BRINGS THE
22 SUGGESTION?

23 **A** IT TYPICALLY IS, AGAIN, ONE OF THOSE STAKEHOLDER
24 GROUPS AND ADVOCACY GROUPS, SOMETHING ELSE, WHETHER IT BRINGS
25 IT TO US AS A DEPARTMENT, BRINGS IT TO ANOTHER -- YOU KNOW,

1 ANOTHER AGENCY OR BRINGS IT STRAIGHT TO THE AUTHOR, THE
2 LEGISLATIVE AUTHOR. IT IS TYPICALLY ONE OF THOSE STAKEHOLDER
3 GROUPS THAT HAS A VESTED INTEREST IN A PROGRAM, POLICY OR RULE
4 OR REGULATION AND THEY WANT TO SEE A CHANGE OR THEY WANT TO
5 SEE A NEW POLICY OR RULE IN PLACE OR STATUTE IN PLACE.

6 SO IT'S TYPICALLY THOSE INDIVIDUALS THAT GO TO, LIKE
7 I SAID, EITHER THE DEPARTMENT OR ANOTHER AGENCY OR STRAIGHT TO
8 THE LEGISLATIVE AUTHOR, AND AT THAT POINT THEY'LL -- THEY WILL
9 TYPICALLY THEN, YOU KNOW, DRAFT THE LEGISLATION USUALLY
10 THROUGH A COMBINATION OF THOSE INDIVIDUALS THAT ARE INVOLVED
11 AT THAT POINT. ONCE THAT LEGISLATION IS DRAFTED IT GOES
12 THROUGH A NUMBER OF LEGAL REVIEWS AND OTHER REVIEWS.

13 AGAIN, WHEN IT COMES TO US IF IT'S NOT A
14 DEPARTMENTAL INITIATED LEGISLATION AND IT COMES TO US IT'S AN
15 ALREADY DRAFTED DOCUMENT THAT WE RESPOND TO.

16 Q AND IF AN ADVOCACY GROUP -- LET'S NOT TALK ABOUT
17 ABORTION. LET'S SAY IN WATER REGULATION SINCE IT'S COME UP.
18 IF A GROUP BROUGHT A SUGGESTED PIECE OF LEGISLATION TO DHH AND
19 SAID, WOW, THIS WOULD REALLY BE AN IMPORTANT PROVISION FOR THE
20 SAFETY OF WATER REGULATION; IS THAT SOMETHING THAT YOU ALL
21 WOULD DULY CONSIDER?

22 A ABSOLUTELY.

23 Q AND YOU WOULD LISTEN TO ALL STAKEHOLDER GROUPS WHO
24 MIGHT HAVE AN INTEREST IN THAT; CORRECT?

25 A THAT'S CORRECT.

1 Q IF THEY FOUND A SPONSORING LEGISLATOR AND IT BECAME
2 A BILL THAT WAS PRESENTED IN THE LEGISLATURE, MIGHT YOU BE
3 CALLED TO TESTIFY ON THAT?

4 A I WOULD TYPICALLY DEFINITELY BE CALLED TO TESTIFY ON
5 IT.

6 Q AND IF YOU DID YOU WOULD PRESENT A WHITE CARD?

7 A A WHITE CARD, YES.

8 Q WOULD IT BE POSSIBLE IF THE STAKEHOLDER GROUP WHO
9 INITIALLY CAME UP WITH THE IDEA WAS, IN ESSENCE, SHEPHERDING
10 IT THROUGH THE LEGISLATIVE PROCESS, THEY WOULD HAVE AN
11 INTEREST IN IT, WOULD THEY NOT?

12 A YEAH. AGAIN, THOSE STAKEHOLDER GROUPS ARE TYPICALLY
13 WHO DO SHEPHERD IT THROUGH THE ENTIRE PROCESS.

14 Q SO THEY WOULD BE WATCHING VERY CLOSELY FOR WHEN
15 THEIR BILL WOULD BE SCHEDULED IN, I DON'T KNOW, A HOUSE
16 COMMITTEE, FOR EXAMPLE; RIGHT?

17 A YES. THEY WOULD KNOW WHEN IT WAS SCHEDULED AND THEY
18 WOULD BE WORKING TO GET PEOPLE THERE THAT WERE SUPPORTIVE OR
19 TO GIVE INFORMATION ON THEIR BILL.

20 Q AND HAVE THERE BEEN OCCASIONS IN A SCENARIO LIKE
21 THAT WHERE THOSE INTEREST GROUPS WOULD HAVE BEEN SENDING
22 E-MAILS TO DHH --

23 A YES.

24 Q -- AND MAYBE EVEN TO YOUR TOP GENERALS TO SAY, HEY,
25 THE HEARING IS COMING UP ON A CERTAIN DATE AND TIME?

1 **A** CERTAINLY. WHEN -- IN WORKING IN DEVELOPMENTAL
2 DISABILITIES I WORKED WITH THE DD COUNSEL, THEY HAD
3 LEGISLATION. THEY WANTED US TO BE THERE TO GIVE INFORMATION
4 ON OR TO EXPLAIN ITS EFFECTS AND CERTAINLY THEY WOULD E-MAIL
5 ME DIRECTLY ON THOSE -- IN THOSE INSTANCES, ESPECIALLY SINCE
6 IT WAS SOMETHING THAT I WAS CLOSELY INVOLVED IN.

7 **Q** SO IT SOUNDS LIKE YOU'RE IN A POSITION WHERE YOU
8 RECEIVE A HIGH VOLUME OF E-MAILS FROM A LOT OF INTEREST GROUPS
9 ON A LOT OF SUBJECTS; IS THAT ACCURATE TO SAY?

10 **A** THAT IS CORRECT.

11 **Q** SPECIFICALLY, YOU WERE ASKED ABOUT A COUPLE OF
12 INDIVIDUALS, NAMELY, DORINDA BORDLEE AND BENJAMIN CLAPPER; DO
13 YOU RECALL THOSE QUESTIONS?

14 **A** YES.

15 **Q** YOU MENTIONED THAT YOU KNOW WHO THEY ARE AND WHAT
16 ORGANIZATIONS THEY WORK FOR; IS THAT RIGHT?

17 **A** THAT'S CORRECT.

18 **Q** BEYOND THIS, IN THIS CONTEXT, HOW MUCH DO YOU KNOW
19 PERSONALLY ABOUT THOSE INDIVIDUALS AND THEIR ORGANIZATIONS?

20 **A** VERY LITTLE.

21 **Q** HAVE YOU SPENT TIME WITH THEM PERSONALLY OUTSIDE
22 YOUR ROLE AS SECRETARY?

23 **A** NO.

24 **Q** HAVE YOU EVER WORKED WITH THEM ON MATTERS RELATING
25 TO ABORTION REGULATION? I MEAN OUTSIDE OF THIS BILL.

1 A NO. OTHER THAN I -- WITH DORINDA SHE IS ON A
2 COMMITTEE SIMILAR, AS I MENTIONED EARLIER, WITH CINDY COLLINS
3 ON A HUMAN TRAFFICKING COMMITTEE THAT I'M LEGISLATIVELY
4 MANDATED TO BE A PART OF.

5 Q SO YOU WOULD ASSOCIATE WITH HER AT THOSE COMMITTEE
6 MEETINGS?

7 A AT THOSE COMMITTEE -- BUT NOT OUTSIDE OF THAT.

8 Q YOU ALSO RECEIVED QUITE A BIT OF INPUT WITH REGARD
9 TO HOUSE BILL 388, SPEAKING OF STAKEHOLDER GROUPS, FROM THE,
10 YOU MENTIONED EARLIER, THE PRO-ABORTION SIDE OF THE EQUATION;
11 CORRECT?

12 A THAT'S CORRECT.

13 Q DOES THE NAME ELLIE SCHILLING RING A BELL TO YOU?

14 A CORRECT.

15 Q WHO IS ELLIE SCHILLING?

16 A SHE'S PART OF THE PRO-ABORTION. I DON'T KNOW THE
17 NAME OF THE ORGANIZATION THAT SHE WORKS WITH.

18 Q BUT SHE SUBMITTED INFORMATION TO YOU WITH REGARD TO
19 THIS BILL?

20 A THAT'S CORRECT. SHE SUBMITTED AND WE MET WITH HER
21 AS WELL.

22 Q AND SHE WAS OPPOSED TO THE BILL?

23 A YES.

24 Q AND ARE YOU AWARE THAT SHE WAS INITIALLY COUNSEL IN
25 THIS CASE?

1 **A** I DID HEAR THAT.

2 **Q** I'LL MOVE ON. ON GENERAL LEGAL MATTERS, GIVEN THAT
3 YOUR BACKGROUND IS SOCIAL WORK, BEHAVIORAL HEALTH AND
4 DISABILITIES AND THE LIKE, WHO DO YOU TYPICALLY RELY UPON FOR
5 YOUR LEGAL COUNSEL IN YOUR OFFICE?

6 **A** MY EXECUTIVE COUNSEL AND MY GENERAL COUNSEL.

7 **Q** AND THE GENERAL COUNSEL IS STEVE RUSSO?

8 **A** MY EXECUTIVE COUNSEL IS STEVE RUSSO. GENERAL
9 COUNSEL IS KIMBERLY HUMBLER.

10 **Q** AND BOTH OF THOSE INDIVIDUALS HAVE BEEN WITH DHH FOR
11 A NUMBER OF YEARS; CORRECT?

12 **A** YES.

13 **Q** ALMOST 20 YEARS EACH?

14 **A** YES, I THINK 19.

15 **Q** SO YOU REASONABLY RELY UPON THEIR COUNSEL ON A LOT
16 OF THESE MATTERS; IS THAT RIGHT?

17 **A** YES, I DO.

18 **Q** AND ON INTERPRETING AND ADMINISTERING VARIOUS DHH
19 REGULATIONS YOU RELY, AS YOU SAID EARLIER, ON YOUR VARIOUS
20 DIVISION HEADS WHO HAVE SPECIALTIES IN THOSE AREAS; IS THAT
21 RIGHT?

22 **A** THAT IS CORRECT.

23 **Q** AND IF THERE IS A GRAY AREA IN TERMS OF
24 INTERPRETATION, THAT IS WHAT WOULD ULTIMATELY FALL TO THE
25 DECISION OF THE SECRETARY; IS THAT RIGHT?

1 **A** THAT'S RIGHT. AND LOTS OF, YOU KNOW, EVERYDAY
2 DECISIONS ARE MADE BY THE DEPARTMENTAL HEADS OR INDIVIDUAL
3 LICENSING -- THE HEAD OF LICENSING. BUT IF THERE'S A GRAY
4 AREA, THINGS THAT ARE SUBJECT TO INTERPRETATION, THEN THAT
5 WOULD BE BROUGHT TO ME FOR DISCUSSION WITH MY COUNSEL.

6 **Q** ALL RIGHT. JOINT EXHIBIT 191 IS YOUR DECLARATION
7 THAT WE WERE ALL LOOKING AT A FEW MOMENTS AGO. IF YOU WOULD
8 PUT THAT IN FRONT OF YOU AGAIN. THAT'S THE DECLARATION WE
9 BROUGHT HERE LAST WEEK.

10 **THE COURT:** Y'ALL ARE GOING TO PUT IT ON THE SCREEN?

11 **MR. JOHNSON:** THAT WOULD BE HELPFUL. IT'S NOT --

12 **THE WITNESS:** IT'S NOT IN THIS BOOK.

13 **MR. JOHNSON:** OH, IT'S NOT?

14 **THE WITNESS:** I ONLY GO UP TO 150 --

15 **MR. JOHNSON:** IF WE COULD PUT IT ON THE SCREEN IT'S
16 NOT A CONFIDENTIAL DOCUMENT.

17 **BY MR. JOHNSON:**

18 **Q** HERE WE GO. DO YOU SEE THAT, MADAM SECRETARY?

19 **A** YES.

20 **Q** IF YOU WOULD -- IF WE COULD SCROLL DOWN TO PAGE 2 OF
21 THAT DOCUMENT, PARAGRAPH 4. NOW, YOUR DECLARATION STATES THAT
22 YOU'RE AWARE THAT OVER THE PAST WEEK IT SAYS, PLAINTIFFS
23 PRODUCED DOCUMENTS RELEVANT TO THE ADMITTING PRIVILEGES
24 GRANTED ON FEBRUARY 24TH, 2015, TO DR. JOHN DOE NUMBER 2 BY A
25 HOSPITAL IN NEW ORLEANS; IS THAT RIGHT?

1 A THAT'S CORRECT.

2 Q "THE OVER THE PAST WEEK," LANGUAGE IS WHAT I WANTED
3 TO ASK YOU ABOUT. ARE YOU AWARE THAT YOUR COUNSEL HAD TO
4 SUBPOENA THE HOSPITAL THERE TO OBTAIN THOSE DOCUMENTS?

5 A NO, I WASN'T UNTIL TODAY.

6 Q OKAY. ARE YOU AWARE THAT COUNSEL HAD REQUESTED
7 THOSE DOCUMENTS A NUMBER OF TIMES GOING BACK SEVERAL MONTHS?

8 A I UNDERSTOOD THAT, YES.

9 Q AND YOU WERE -- AS YOU SAID EARLIER, YOU WERE JUST
10 GIVEN THOSE DOCUMENTS LITERALLY THE DAY BEFORE YOUR
11 DECLARATION WAS MADE; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q AND IT SAYS HERE IN YOUR STATEMENT THAT YOU BASED
14 YOUR ANALYSIS AND YOUR ULTIMATE DECISION ON THESE TWO
15 INDIVIDUALS, DR. DOE NUMBER 2 AND DOE NUMBER 5, BASED UPON
16 THESE DOCUMENTS THAT YOU RECEIVED AND THEN DULY CONSIDERED; IS
17 THAT RIGHT?

18 A THAT IS CORRECT.

19 Q AND IT GOES HERE AND SPECIFIES STEP BY STEP EXACTLY
20 WHAT YOUR FINDINGS WERE ON PAGE 3, PARAGRAPH 6, WHICH YOU WERE
21 ASKED ABOUT EARLIER. YOU HAVE IT IN FRONT OF YOU, AND I DON'T
22 NEED YOU TO READ THROUGH IT, BUT GENERALLY IT LOOKS LIKE
23 SUBPARTS A, B, C, D, E, THERE WERE FIVE INDEPENDENT
24 EVALUATIONS THAT YOU MADE BASED UPON THESE DOCUMENTS; IS THAT
25 RIGHT?

1 **A** THAT IS CORRECT.

2 **Q** AND BASED UPON YOUR OWN DISCRETION AND YOUR
3 UNDERSTANDING OF THE LAW, THE INTERPRETATION OF THE STATUTE,
4 HAVING CHECKED OFF THOSE FIVE BOXES YOU DETERMINED THAT
5 DR. JOHN DOE NUMBER 2 DOES SUFFICIENTLY COMPLY WITH THE ACT;
6 IS THAT RIGHT?

7 **A** THAT IS CORRECT.

8 **Q** AND YOU MADE THE SAME DETERMINATION OVER ON PAGE 4,
9 PARAGRAPH 8 WITH REGARD TO DR. JOHN DOE NUMBER 5; IS THAT
10 RIGHT?

11 **A** THAT'S CORRECT.

12 **Q** NOW, THIS WAS AN IMPORTANT QUESTION TO CLARIFY
13 SOMETHING THAT WAS SAID EARLIER. YOU MENTIONED THAT EVERY
14 HOSPITAL HAS ITS OWN STANDARDS; IS THAT RIGHT?

15 **A** YES. THEIR OWN --

16 **Q** WITH REGARD --

17 **A** -- DEFINITIONS OF WHAT ADMITTING PRIVILEGES AND
18 OTHER PRIVILEGES ARE.

19 **Q** RIGHT. SO THE TERM, "COURTESY," WAS DISCUSSED
20 EARLIER. THE PHRASE OR THE TERM, "COURTESY PRIVILEGE," IS A
21 SUBJECTIVE TERM; IS THAT RIGHT?

22 **A** THAT'S THE WAY I UNDERSTAND IT, YES.

23 **Q** SO EACH HOSPITAL MIGHT SUBJECTIVELY DEFINE THAT TERM
24 DIFFERENTLY AND SPELL IT OUT AS SUCH IN THEIR BYLAWS; IS THAT
25 RIGHT?

1 **A** THAT'S CORRECT.

2 **Q** SO THERE'S NOT -- THERE'S NOT A PARTICULAR TERM OF
3 ART THAT WOULD BE UNIVERSALLY UNDERSTOOD ACROSS THE HEALTH
4 CARE INDUSTRY WITH REGARD TO THAT TERM?

5 **A** THAT IS MY UNDERSTANDING, YES.

6 **Q** SO IT, BY NECESSITY, HAS TO BE INTERPRETED
7 INDIVIDUALLY IN EACH PARTICULAR CASE; IS THAT RIGHT?

8 **A** THAT'S CORRECT.

9 **Q** SO IS IT YOUR TESTIMONY, BECAUSE I THINK THIS IS THE
10 SUBSTANCE OF YOUR DECLARATION, CORRECT ME IF I'M WRONG, BUT
11 YOU MADE AN INDIVIDUAL DETERMINATION BASED UPON THE SPECIFIC
12 DOCUMENTS PRESENTED TO YOU IN THE CASES OF EACH OF THESE
13 DOCTORS IN THIS CASE?

14 **A** THAT'S RIGHT.

15 **MS. DOUFEKIAS:** OBJECTION, YOUR HONOR. HE CAN ASK
16 ABOUT THE DECLARATION, BUT HE'S JUST CHARACTERIZING IT.

17 **THE COURT:** NOW YOUR LEADING OBJECTION IS IN FACT
18 SUSTAINED.

19 **MS. DOUFEKIAS:** THANK YOU.

20 **MR. JOHNSON:** I'M JUST GETTING IN A HURRY, JUDGE.
21 I'M TRYING TO GET US OUT OF HERE. SORRY.

22 **THE COURT:** WELL, I'M IN A HURRY TOO, BUT DON'T --

23 **MR. JOHNSON:** I'LL DO IT THE RIGHT WAY.

24 **BY MR. JOHNSON:**

25 **Q** WHY DON'T YOU CHARACTERIZE FOR ME -- I THINK -- DOES

1 THE DECLARATION SAY THAT YOU MADE AN INDIVIDUAL, SPECIFIC
2 DETERMINATION IN EACH OF THESE CASES?

3 A YES. WHAT I DID WAS TAKE THE DOCUMENTATION THAT WAS
4 GIVEN TO ME LOOK AT IT, LOOK AT THE STATUTE, REVIEW EACH OF --
5 WHAT WAS SPECIFICALLY IN THE DOCUMENTS, COMPARE IT WITH WHAT
6 WAS IN THE STATUTE, MADE THE DECISION, AND, AGAIN, IN
7 CONSULTATION ALSO WITH MY COUNSEL, BUT MADE A VERY INDEPENDENT
8 DECISION THAT I FELT IT MET THE REQUIREMENTS THAT WERE IN THE
9 STATUTE.

10 Q AND IF ONE OR MORE OF THE DOCUMENTS PRESENTED TO YOU
11 HAD DIFFERED IN TERMS OF A DEFINITION OR A SPECIFIC TERM THE
12 OUTCOME MIGHT HAVE CHANGED?

13 A YES. I MEAN DEPENDING ON WHAT THOSE -- WHAT WAS IN
14 THERE, YES.

15 Q SO YOU HAVE A GENERAL UNDERSTANDING OF WHAT THE LAW
16 PROVIDES ACT 620; CORRECT?

17 A CORRECT.

18 Q AND THEN YOU UNDERSTAND THAT IT'S YOUR ROLE AS
19 SECRETARY TO INTERPRET THAT SPECIFICALLY IN EACH INDIVIDUAL
20 CASE; IS THAT RIGHT?

21 A THAT'S CORRECT.

22 Q AND SO DEPENDING UPON ALL OF THE VARIOUS ENUMERABLE
23 FACTORS YOUR OUTCOME OR YOUR DECISION MIGHT BE DIFFERENT BASED
24 UPON ONE CHANGE AND A LITTLE FACT; IS THAT RIGHT?

25 A THAT IS CORRECT.

1 **MS. DOUFEKIAS:** OBJECTION, YOU'RE HONOR. EVERY
2 QUESTION HAS BEEN LEADING SINCE MY LAST ONE.

3 **THE COURT:** SUSTAINED.

4 **MR. JOHNSON:** APOLOGIES. I'LL MOVE ON.

5 **BY MR. JOHNSON:**

6 **Q** WE'RE ALMOST FINISHED. THERE WERE SOME QUESTIONS
7 ABOUT THE REPEAL OF THE FNR PROCESS, THE DECISION YOU MADE AT
8 THE END OF LAST WEEK, AND I THOUGHT YOU EXPLAINED YOUR
9 DECISION WELL. BUT ONE THING I JUST WANTED TO CLARIFY, YOU
10 DIDN'T -- OR DID YOU MAKE A DETERMINATION ABOUT THE TRUTH,
11 ACCURACY OR VERACITY OF THE DOCUMENTS THAT WERE PRESENTED BY
12 PLANNED PARENTHOOD, THE EXHIBIT THAT WE ALL REVIEWED HERE,
13 WHICH WOULD BE PLAINTIFFS' EXHIBIT 178?

14 **A** NO.

15 **MS. DOUFEKIAS:** OBJECTION, YOUR HONOR. IT'S LEADING
16 AND COUNSEL DOESN'T NEED TO COMMENT ON WHAT HE THOUGHT OF THE
17 ANSWER.

18 **THE COURT:** I DO THINK IT'S INAPPROPRIATE TO COMMENT
19 ABOUT WHAT HER TESTIMONY WAS, WELL OR NOT WELL OR GOOD OR BAD
20 OR INDIFFERENT, THAT'S NOT YOUR ROLE, MR. JOHNSON, BUT --

21 **MR. JOHNSON:** SORRY, YOUR HONOR. YOU'RE RIGHT.

22 **BY MR. JOHNSON:**

23 **Q** THE QUESTION I JUST ASKED, DID YOU UNDERSTAND WHAT I
24 WAS ASKING? DID YOU -- FOR PURPOSES OF CLARIFICATION, DID YOU
25 MAKE A DETERMINATION ABOUT THE TRUTH, ACCURACY OR VERACITY OF

1 THE INFORMATION OR THE DOCUMENTS THAT WERE PRESENTED BY
2 PLANNED PARENTHOOD?

3 A NO.

4 MS. DOUFEKIAS: OBJECTION, YOUR HONOR.

5 THE COURT: IT'S BEEN ASKED AND ANSWERED. IT'S
6 GOING TO COME SOONER OR LATER BY HOOK OR BY CROOK.

7 MR. JOHNSON: OKAY.

8 THE COURT: SO OVERRULED.

9 BY MR. JOHNSON:

10 Q MADAM SECRETARY, IS REPEALING AN ADMINISTRATIVE RULE
11 UNCOMMON?

12 A NO. WE'VE DONE IT -- WE'VE DONE IT -- I MEAN THAT'S
13 NOT THE MOST COMMON THING THAT HAPPENS ALL THAT OFTEN, BUT
14 ABSOLUTELY IT'S NOT UNCOMMON. WE HAVE TO DO IT WHEN THINGS
15 CHANGE, WHEN PROGRAMS CHANGE, WE HAVE TO REPEAL OR RESCIND.
16 SOMETIMES WE PUT OUT EMERGENCY RULES, RECOGNIZE THAT THEY'RE
17 NOT THE RULES THAT -- YOU KNOW, AFTER WE GET PUBLIC COMMENT
18 THEY'RE NOT WHAT WE WANTED AND RESCIND THOSE RULES, SO IT IS
19 DEFINITELY NOT UNCOMMON.

20 Q IN GENERAL AND IN CLOSING, HOW DO YOU REGARD YOUR
21 ROLE AS THE LEADER OF DHH? IN TERMS OF THE POLITICS THAT GET
22 INVOLVED IN BATON ROUGE?

23 A AGAIN --

24 MS. DOUFEKIAS: OBJECTION, YOUR HONOR.

25 THE COURT: WHAT'S THE OBJECTION?

1 **MS. DOUFEKIAS:** IT'S LEADING. IT WAS GOOD UNTIL THE
2 IN TERMS OF POLITICS.

3 **THE COURT:** OKAY.

4 **MR. JOHNSON:** I'M TIRED, YOUR HONOR.

5 BY MR. JOHNSON:

6 **Q** IS NEUTRALITY AN IMPORTANT PRINCIPLE TO YOU.

7 **A** ABSOLUTELY.

8 **Q** CAN YOU EXPLAIN THAT SO THAT I'M NOT LEADING?

9 **A** CERTAINLY. EVERYTHING THAT -- EVERY DECISION I MAKE
10 IS NOT BASED ON MY PERSONAL BELIEFS OR ON, YOU KNOW, THE
11 BELIEFS OF ANY ONE GROUP OR ANOTHER. IT'S BASED ON WHAT I
12 BELIEVE IS THE RIGHT THING TO DO FOR THE HEALTH AND SAFETY OF
13 INDIVIDUALS IN LOUISIANA. I DO HEAR -- LISTEN TO MY STAFF,
14 WHAT THEY'RE -- WITH THEIR EXPERTISE AND THEIR KNOWLEDGE AND
15 THEN MAKE DECISIONS THAT ARE VERY OBJECTIVE AS A NEUTRAL PARTY
16 TO MAKE SURE I'M ENFORCING THE RULES AND REGULATIONS THAT I
17 WAS GIVEN THE RESPONSIBILITY TO ENFORCE.

18 **Q** ARE YOUR STAFF AND CHIEF ADVISERS, IS THAT A DIVERSE
19 GROUP OF PEOPLE?

20 **A** YES, ABSOLUTELY.

21 **Q** DID THEY ALL -- STRIKE THAT. DO YOU HAVE ANY
22 PARTICULAR INVOLVEMENT IN ANY POLITICAL ORGANIZATIONS?

23 **A** NO.

24 **Q** ANY ADVOCACY GROUPS OF ANY KIND?

25 **A** NO.

1 **MR. JOHNSON:** NO FURTHER QUESTIONS.

2 **THE COURT:** RE CROSS?

3 **RE CROSS**

4 **BY MS. DOUFEKIAS:**

5 **Q** SECRETARY KLIEBERT, I PROMISE I HAVE VERY FEW
6 QUESTIONS. YOU TESTIFIED ON YOUR DIRECT ABOUT WHAT YOU
7 THOUGHT WAS THE MOST IMPORTANT PART OF HB 388 WAS THAT DOCTORS
8 WERE AVAILABLE 24 HOURS A DAY.

9 **A** I DIDN'T SAY THAT WAS THE MOST IMPORTANT PART. I
10 SAID THAT WAS ANOTHER PORTION -- ANOTHER PART OF THAT
11 LEGISLATION THAT ADDED TO HEALTH AND SAFETY.

12 **Q** I APOLOGIZE. IS THAT A PART OF THE STATUTE THAT'S
13 IMPORTANT TO YOU?

14 **A** YES.

15 **Q** ARE YOU AWARE THAT DOCTORS IN THIS CASE HAVE
16 TESTIFIED THAT THEY ARE AVAILABLE TO THEIR PATIENTS 24 HOURS A
17 DAY?

18 **A** I AM NOT AWARE OF THAT, BUT I WOULD ASSUME THAT
19 SINCE IT'S REGULATION THAT THAT'S BEING FOLLOWED, BUT I WASN'T
20 AWARE OF THE TESTIMONY IN THE TRIAL.

21 **Q** AND ACCORDING TO YOUR EARLIER TESTIMONY A DOCTOR
22 UNDER THE PRIVILEGES THAT YOU'VE DESCRIBED AS MEETING THE ACT
23 WOULDN'T BE AVAILABLE 24/7 BECAUSE THAT DOCTOR ISN'T PROVIDING
24 DIAGNOSTIC AND SURGICAL CARE; ISN'T THAT RIGHT?

25 **A** AGAIN, THE STATUTE REFERS TO THE CLINIC HAVING A

1 HEALTH CARE PROFESSIONAL AVAILABLE 24/7. NOW, I DON'T BELIEVE
2 IT'S REFERRING TO THE PHYSICIAN -- THAT PHYSICIAN BEING
3 AVAILABLE. AGAIN, I'M NOT REALLY SURE WHAT YOU'RE ASKING,
4 BECAUSE ONCE THEY GO TO THE ADMITTING HOSPITAL THAT HOSPITAL
5 HAS RESPONSIBILITY FOR CARE.

6 Q SO AS LONG AS THE PATIENT CAN SEE SOMEONE AT A
7 HOSPITAL AND GET THAT CARE 24 HOURS A DAY THAT'S -- THAT'S
8 WHAT'S IMPORTANT TO YOU?

9 A AGAIN, I'M NOT REAL SURE WHAT YOU'RE ASKING.
10 THERE'S NUMEROUS THINGS THAT ARE IMPORTANT TO ME ABOUT THE
11 HEALTH CARE OF ANYBODY THAT IS RECEIVING SERVICES, SO SAYING
12 THAT'S WHAT -- YOU KNOW, THAT PARTICULAR THING IS MOST
13 IMPORTANT TO ME, I CAN'T SAY THAT.

14 Q THAT IS AN IMPORTANT PART OF HB 388 TO YOU?

15 A RIGHT. IT IS AN IMPORTANT PART.

16 Q THAT THE PATIENT CAN GO TO THE HOSPITAL AND GET
17 THOSE SERVICES 24 HOURS A DAY?

18 A YES.

19 Q YOU WERE ASKED -- I THINK AT ONE POINT COUNSEL
20 CHARACTERIZED THAT YOU GET LOTS OF E-MAILS FROM LOTS OF
21 DIFFERENT ADVOCACY GROUPS?

22 A THAT'S CORRECT.

23 Q AND WE WENT THROUGH A BUNCH OF E-MAILS WHERE PEOPLE
24 IN YOUR OFFICE WERE PROVIDING DIFFERENT INFORMATION BACK AND
25 FORTH WITH CERTAIN INDIVIDUALS WHO ARE INVOLVED IN ADVOCACY

1 GROUPS; DO YOU REMEMBER THAT?

2 A YES.

3 Q WOULD IT SURPRISE YOU THAT DHH HAS NOT PRODUCED A
4 SINGLE E-MAIL IN THIS CASE OF THAT NATURE WITH DHH PROVIDING
5 INFORMATION LIKE THAT TO SOMEONE IN A PRO-CHOICE GROUP ABOUT
6 HB 388?

7 A THAT WOULD SURPRISE ME BECAUSE I HAVE -- THERE ARE
8 E-MAILS THAT HAVE THAT. THAT HAVE -- THAT THERE WAS QUESTIONS
9 AND FEEDBACK PROVIDED BY THOSE ANTI -- BY THOSE PRO-ABORTION
10 GROUPS. SO I'M NOT SURE WHAT THE DISCOVERY ASKS FOR OR
11 THAT -- BUT, AGAIN, YES, THAT WOULD VERY MUCH SURPRISE ME
12 BECAUSE I KNOW THERE ARE E-MAILS THAT EXIST THAT SUPPORT THOSE
13 CONVERSATIONS.

14 Q OKAY.

15 A AGAIN, I WANT TO VERIFY -- I MEAN I WANT TO CLARIFY
16 THAT E-MAILS -- I KNOW THE CONVERSATIONS OCCURRED AND I'M
17 PRETTY POSITIVE THERE ARE E-MAILS THAT VERIFY IT, BUT I DON'T
18 WANT TO SAY THAT WITH NO UNCERTAINTY. I KNOW THE
19 CONVERSATIONS OCCURRED AND I KNOW WE RECEIVED WRITTEN FEEDBACK
20 FROM THOSE GROUPS AND CERTAINLY WE CAN VERIFY THAT.

21 Q HOW MANY TIMES HAVE YOU RESCINDED A RULE IN THE PAST
22 YEAR?

23 A WE RESCINDED A RULE -- RESCIND AND REPEAL, BECAUSE
24 THEY ARE TWO DIFFERENT THINGS. WE'VE PROBABLY, IN THE PAST
25 YEAR, PROBABLY TWO REPEALS, ONE RECENT -- ONE RESCINDED. A

1 LITTLE BIT DIFFERENT IN TERMS OF -- THE RULE IS NOT
2 ACTUALLY -- IF IT'S AN EMERGENCY RULE IT'S NOT ACTUALLY A
3 RULE, YOU RESCIND. IF IT'S ACTUALLY A RULE YOU REPEAL.

4 Q I JUST --

5 A SO THREE ADDITIONAL TIMES IN THE LAST YEAR, YEAR AND
6 A HALF.

7 Q OKAY. AND YOU WERE -- YOU SAID A COUPLE OF TIMES ON
8 YOUR DIRECT THAT DHH -- IT'S IMPORTANT THAT DHH SHOULD BE
9 NEUTRAL --

10 A CORRECT.

11 Q -- AND THERE WERE A NUMBER OF QUESTIONS BACK AND
12 FORTH ABOUT THAT?

13 A YES.

14 Q AND THEN IN THE TESTIMONY THAT WE LOOKED AT ON YOUR
15 CROSS YOU TESTIFIED THAT THE -- HB 388 PROTECTS THE UNBORN;
16 ISN'T THAT RIGHT?

17 A YES.

18 Q JUST ONE LAST QUESTION. IF WE COULD PUT UP JOINT
19 EXHIBIT -- CAN WE PUT UP JOINT EXHIBIT 77? IF YOU COULD TAKE
20 A LOOK FIRST AT PAGE, IF YOU LOOK AT THE PAGE NUMBERS AT THE
21 BOTTOM, 1521. AT THE VERY BOTTOM IT SAYS, THERE'S PAGE --

22 A IT'S NOT UP.

23 THE COURT: IT'S NOT ON MY SCREEN. IT IS NOW.

24 MS. DOUFEKIAS: YOU KNOW WHAT, IT'S ACTUALLY SUBJECT
25 TO THE PROTECTIVE ORDER, SO IT SHOULDN'T BE ON YOUR SCREEN.

1 BY MS. DOUFEKIAS:

2 Q IT CAN BE ON YOUR SCREEN, SECRETARY KLIEBERT, IT
3 JUST CAN'T BE ON THE GALLEY SCREEN.

4 A OKAY.

5 Q DO YOU SEE THAT THIS IS A FAX TO CECILE CASTELLO?

6 A YES.

7 Q AND IF WE COULD SCROLL DOWN TO THE NEXT PAGE. DO
8 YOU SEE THERE'S A COVER LETTER FROM ONE OF THE HOSPITALS --

9 A YES.

10 Q -- THAT WE'VE BEEN DISCUSSING?

11 A YES.

12 Q AND IF YOU CAN LOOK IT ASKS FOR CERTAIN DOCUMENTS?

13 A WHERE --

14 Q I APOLOGIZE. LET ME REPHRASE THAT QUESTION. IF YOU
15 LOOK AT THE COVER LETTER SOMEONE FROM THAT HOSPITAL IS
16 PROVIDING CERTAIN DOCUMENTS TO MS. CASTELLO; IS THAT RIGHT?

17 A YES. THAT'S WHAT IT APPEARS, YES.

18 Q AND IF YOU COULD TAKE A LOOK AT THE DATE AT THE TOP
19 OF THAT DOCUMENT?

20 A YES.

21 Q IF YOU COULD SCROLL DOWN TO THE NEXT DOCUMENT. AND
22 I APOLOGIZE, BECAUSE THIS IS A CONFIDENTIAL DOCUMENT I CAN'T
23 TESTIFY ABOUT ITS CONTENTS, SO IF YOU'LL BEAR WITH ME A LITTLE
24 BIT. DO YOU SEE THAT THIS NEXT PAGE IS THE ORIGINAL LETTER
25 REQUESTING THOSE DOCUMENTS -- WHERE MS. CASTELLO REQUESTED

1 THOSE DOCUMENTS FROM THE HOSPITAL?

2 A YES.

3 Q AND DO YOU SEE IN THE SECOND TO LAST PARAGRAPH OF
4 THAT LETTER SHE ASKS TO RECEIVE THOSE DOCUMENTS BY THE CLOSE
5 OF BUSINESS ON A CERTAIN DAY?

6 A YES.

7 Q AND IF YOU WILL LOOK AT THE DATE OF THIS PAGE IT'S
8 THREE DAYS BEFORE SHE GOT -- SHE ASKED FOR THE DOCUMENTS.
9 I'LL REPRESENT TO YOU THAT THE YEAR --

10 A -- IS WRONG.

11 Q -- IS LIKELY A TYPO.

12 A YES.

13 Q SO IS IT FAIR TO SAY THAT MS. CASTELLO WANTED
14 DOCUMENTS FROM A HOSPITAL AND SHE WROTE TO THAT HOSPITAL AND
15 ASKED THAT HOSPITAL FOR DOCUMENTS AND SHE GOT THEM IN THREE
16 DAYS?

17 A AGAIN, I DON'T KNOW WHEN SHE GOT THEM. I KNOW THAT
18 SHE REQUESTED THEM BY THEN. DOES IT SHOW THAT SHE GOT THEM --

19 Q CAN WE LOOK BACK -- IF YOU LOOK BACK --

20 A SORRY.

21 Q -- AT THE PAGE BEFORE? YES, SOMETIMES PAPER IS
22 ACTUALLY EASIER. DO YOU SEE THE DATE ON THAT SECOND LETTER --
23 ON THAT FIRST LETTER?

24 A YES.

25 Q THE COVER LETTER?

1 **A** YES.

2 **Q** IS THAT THE DATE SHE WANTED THE DOCUMENTS BY?

3 **A** YES.

4 **Q** SO SHE ASKED FOR DOCUMENTS FROM THE HOSPITAL AND SHE
5 GOT THEM WITHIN THREE DAYS; IS THAT RIGHT?

6 **A** THAT'S CORRECT.

7 **MS. DOUFEKIAS:** I HAVE NOTHING FURTHER, YOUR HONOR.

8 **THE COURT:** THANK YOU, MA'AM. YOU MAY STAND DOWN.

9 **THE WITNESS:** I'M DONE?

10 **THE COURT:** YOU'RE DONE.

11 **THE WITNESS:** THANK YOU.

12 **THE COURT:** WELL, IT'S 4:59 EXACTLY SO VERY NICE
13 TIMING.

14 WHAT'S THE LINEUP FOR TOMORROW?

15 **MS. DOUFEKIAS:** THE LINEUP FOR TOMORROW IS DR. DOE 1
16 AND THEN WE HAVE -- THEN I BELIEVE WE ARE DONE, YOUR HONOR,
17 AND IT IS MR. DUNCAN AND MR. JOHNSON'S TURN.

18 **THE COURT:** OKAY.

19 **MR. DUNCAN:** SO, JUDGE, HERE'S WHERE WE ARE. AND,
20 AGAIN, WE'VE MADE EVERY EFFORT TO MAKE SURE THAT THERE'S NOT
21 ANY DEAD SPACE, BUT I THINK IT'S INEVITABLE THAT THERE'S GOING
22 TO BE, SO HERE'S WHAT WE CAN DO. WE CAN START OUT WITH CECILE
23 CASTELLO, WHICH IS OUT OF ORDER FOR US, BUT WE'LL PUT HER ON
24 TO GET SOMETHING DONE.

25 I JUST DON'T THINK IT'S GOING TO WORK FOR DR. MARIER

1 TO TRY TO START AT SOME POINT TOMORROW, BECAUSE HE MAY TESTIFY
2 FOR A LONG TIME AND IT WOULD BE MUCH BETTER I THINK -- IT'S
3 DIFFICULT FOR HIM TO BE HERE.

4 **THE COURT:** I UNDERSTAND.

5 **MR. DUNCAN:** AND IT WOULD BE MUCH EASIER FOR HIM TO
6 START EARLY THURSDAY AND WE COULD KNOCK OUT HIM. WE COULD
7 KNOCK OUT, AND SOMEBODY CORRECT ME IF I'M WRONG, DR. SOLANKY
8 AND THEN WE COULD FINISH UP WITH DR. CUDIHY ON FRIDAY AND
9 HOPEFULLY GET DONE FAIRLY EARLY ON FRIDAY. NOW, I WISH DR. C
10 COULD COME ON FRIDAY AND THEN WE WOULD TRULY BE DONE.

11 **THE COURT:** I UNDERSTAND WE HAVE AT LEAST, I SAY AT
12 LEAST, MY UNDERSTANDING IS WE HAVE TWO DOCTORS, ONE FOR THE
13 PLAINTIFFS -- PLAINTIFFS, ONE FOR THE DEFENDANT THAT HAVE TO
14 GO ON MONDAY JUST BECAUSE OF SCHEDULING ISSUES; RIGHT?

15 **MR. DUNCAN:** THAT'S RIGHT. SO THAT'S WHY I SAY IT'S
16 INEVITABLE THAT THERE'S GOING TO BE SOME DEAD TIME.

17 **THE COURT:** RIGHT.

18 **MR. DUNCAN:** I MEAN, I THINK IF IT'S GOING TO BE
19 MAYBE SOME TOMORROW THEN INSTEAD OF -- AND THEN GET THE
20 TESTIMONY DONE ON THURSDAY AND FRIDAY.

21 **THE COURT:** YEAH, THAT'S NO PROBLEM. IT SOUNDS LIKE
22 WE'LL BE ABLE TO GET SOME GOOD WORK DONE TOMORROW AND WE'LL
23 ROLL ALONG.

24 **MR. DUNCAN:** AND IT'LL ALSO ALLOW US TO DO SOME
25 HOUSEKEEPING STUFF LIKE GETTING THE EXHIBITS ATTACHED TO THE

1 DEPOSITION DESIGNATIONS AND WHATEVER ELSE IS STACKED UP TO DO.

2 THE COURT: TERRIFIC. THAT SOUNDS GREAT. OKAY.

3 ANYTHING FURTHER?

4 MS. DOUFEKIAS: JUST ONE THING. MR. DUNCAN AND I
5 SPOKE DURING THE BREAK AND WE CAME TO AN AGREEMENT THAT BOTH
6 PARTIES ARE WILLING TO WAIVE CLOSINGS.

7 THE COURT: OKAY. WELL THAT SOUNDS -- GOOD NEWS TO
8 THE COURT.

9 SO THAT'S GOOD FOR TODAY. WE'LL SEE YOU GUYS
10 TOMORROW AT 8:30 IN THE MORNING.

11 (WHEREUPON COURT WAS IN RECESS.)

12 C E R T I F I C A T E

13 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
14 FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED
15 NUMBERED MATTER.

16 S/ GINA DELATTE-RICHARD

17 GINA DELATTE-RICHARD, CCR

18 OFFICIAL COURT REPORTER
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