

1 A. Yes.

2 Q. And would you say that what he described as to the
3 dizziness, the confusion, the falling asleep, is that all
4 potentially related to his diabetes not being well controlled?

5 A. Yes, it is.

6 Q. And so when we look -- well, withdraw that.

7 Did he also talk to you about whether or not he suffers
8 from any other physical illnesses, like diarrhea?

9 A. Yes, he did.

10 Q. Okay. Did he -- did he explain to you that whether or
11 not he has a fear of eating snacks in court in front of a jury
12 because he doesn't know if he is going to get a bout of diarrhea
13 and not be able to go to the restroom because he is not
14 ambulatory?

15 A. Yes, he did express that.

16 Q. And what did he tell you exactly?

17 A. I don't remember exactly, but I remember him saying he
18 had some real discomfort about that and, you know, he just was
19 not comfortable eating even a snack provided by the medical
20 staff for fear that it might cause a bout of diarrhea. He has
21 not received any rehabilitative therapy that I know of that
22 would help him move around, negotiate with a wheelchair. So he
23 is very much immobilized.

24 Q. All right. Just one final check here.

25 And did you make a determination on whether or not he
26 is motivated to pay attention to trial proceedings when he is in
27 trial with his attorney?

28 A. Um, I believe that he's not motivated.

1 Q. And is that based on the major depressive disorder?

2 A. And my observation of his behavior.

3 MS. NGUYEN: Nothing further, Your Honor.

4 THE COURT: Mr. Zektser.

5 MR. ZEKTSER: Your Honor, I do have cross and I think I
6 can get done within 15 minutes, but I desperately need to take a
7 break real quick.

8 THE COURT: Okay. That's fine.

9 MR. ZEKTSER: Excuse me, Doctor.

10 (Pause.)

11 THE COURT: Okay. We're back on the record.

12 Mr. Zektser's returned.

13 Go ahead, Mr. Zektser, cross-examination.

14 MR. ZEKTSER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ZEKTSER:

17 Q. Good morning, Doctor.

18 A. Good morning.

19 Q. All right. One of the last things that you told us was
20 that Mr. Dominguez just is not motivated to engage. Do you
21 remember that testimony?

22 A. Yes.

23 Q. I mean, you described his demeanor today as just
24 sitting there and you said -- excuse me for the record -- but,
25 hmm, nothing, right?

26 A. Yes.

27 Q. I mean, that he basically doesn't assist, he doesn't
28 care. I mean, he's just there; is that right?

1 A. I didn't say that he doesn't exist.

2 Q. No. Assist.

3 A. Oh, assist. Yes.

4 Q. Okay. Now, you've been testifying for maybe a half an
5 hour, 45 minutes, right?

6 A. Yes.

7 Q. And your testimony, you would agree, it's not easy
8 stuff, it's kind of complicated, correct?

9 A. Yes.

10 Q. All right. In fact, I mean, how much schooling did you
11 have to go through to discuss these kind of things?

12 A. You know, I -- it frightens me to try and count up the
13 years. If we go back to kindergarten, I think it's something
14 like 30 plus years. Plus I have 30 or so years of experience,
15 counselor.

16 Q. Right. Complicated stuff?

17 A. Yes.

18 Q. Now, but despite the fact that you're talking about
19 this complicated stuff based on your 30 or so years of
20 schooling, and despite the fact that you've said this man is
21 just, hmm, nothing, he was actually trying to help you while
22 you were testifying, right?

23 A. I'm -- I don't know.

24 Q. Well, he yelled -- did you pay attention, did you see
25 him yell out an answer when you didn't know it?

26 A. I did not hear that.

27 Q. All right.

28 A. And I did not experience that.

1 Q. Well, you were giving us testimony based on your
2 appearance of him in court, right?

3 A. Yes.

4 Q. You testified that you've been looking at him this
5 entire time, at one point, right?

6 A. No. I've -- I've looked at him from time to time when
7 I was being questioned by the public defender. I was typically
8 making eye contact with him.

9 Q. Well, you said -- you told us, you know, that you
10 haven't seen him move at all. Remember that testimony?

11 A. I do.

12 Q. You said he hasn't even moved, right?

13 A. Yes.

14 Q. But your testimony also is that you weren't really
15 looking at him too much, correct?

16 MS. NGUYEN: Objection. Misstates the evidence as to
17 time. When he made the original statements, that was prior to
18 Mr. Dominguez's alleged -- well, not alleged, but own statement.

19 THE COURT: Overruled. I think the doctor -- if he
20 wants to clarify it or he disagrees, I think he will tell us.

21 THE WITNESS: Would you restate the question.

22 Q. BY MR. ZEKTSER: Sure. I mean, your testimony is that
23 he hadn't moved at all, but also your testimony is that you
24 haven't been paying attention to him the entire time. Is that
25 fair to say?

26 A. Yes.

27 Q. Because you didn't catch the fact that he yelled out
28 something, did you?

1 A. No, I didn't.

2 Q. I mean, you heard the Judge caught it, right?

3 A. Yeah. I heard people in the courtroom talking about
4 it, and I was unclear on what happened.

5 Q. Right. You heard defense call it, right? She said she
6 heard it?

7 A. Uh-huh.

8 Q. Correct? Is that a yes?

9 A. Yes.

10 Q. And of course you heard me say, Hey, for the record,
11 defendant just said this, right?

12 A. Right. Yes.

13 Q. All right. Now, if he was to engage and yell out to
14 you, Hey, this one over here, that would be assisting you,
15 wouldn't you agree?

16 A. Yes.

17 Q. I mean, that would be not just, hmm, nothing, correct?

18 A. Right.

19 Q. That would just be just existing sitting there,
20 correct?

21 A. Sorry. Would you repeat.

22 Q. Well, he would have to have been paying attention to
23 your difficulty in answering the question, right?

24 A. Yes.

25 Q. And he caught it and answered you during the same time
26 period, correct? It didn't take five minutes for him to say
27 that, did it?

28 MS. NGUYEN: Objection. That misstates what happened

1 and it misstates the evidence. It wasn't that fast.

2 THE COURT: Do you remember off the top of your head
3 what he said? I can't remember what he said. "This one over
4 here"?

5 MR. ZEKTSER: Yes, Your Honor. I will ask it in a
6 question if the Court needs me to. But Ms. Nguyen was asking,
7 Hey, do you know which foot, and he was having problems
8 remembering which toe it was, excuse me. And he said, This one
9 over here, dealing with his right or left toe regarding the
10 amputation.

11 MS. NGUYEN: I respectfully disagree with that
12 statement. I don't think that that's exactly how it took place.
13 It was not like that, unfortunately. I absolutely agree that
14 that did happen; I disagree with the precipitating events.

15 MR. ZEKTSER: We can get readback of it when we're
16 done, Your Honor.

17 THE COURT: Yes, we'll do that. We'll let Denise look
18 it up over lunch. Go ahead.

19 Q. BY MR. ZEKTSER: Regardless of the fact, that would --
20 if he was to say that, correct you or assist you in some way,
21 that would mean he was paying attention, correct?

22 A. At that moment, yes.

23 Q. That would mean that he does have an interest, doesn't
24 it?

25 A. At that moment, yes.

26 Q. All right. Now, Doctor, I'd like you to walk us
27 through what you did from the second you entered the jail. Did
28 you come with anyone?

1 MS. NGUYEN: Your Honor, I was just going to let the
2 Court know I believe one of the other examiners or witnesses is
3 present in court. I'm making a motion to exclude.

4 THE COURT: Oh, okay. Is that Dr. Jimenez?

5 DR. JIMENEZ: It is, Your Honor.

6 THE COURT: Okay. I'm sorry, Doctor, I will ask you to
7 step out because there's been a motion to exclude witnesses.

8 DR. JIMENEZ: Of course.

9 MR. ZEKTSER: I'm sorry, I had no idea. I never met
10 the gentleman so I wasn't sure.

11 THE COURT: All right. Go ahead.

12 Q. BY MR. ZEKTSER: So from the second you kind of walked
13 into the jail, did you come with anyone else?

14 A. No.

15 Q. Did you meet anyone else there?

16 A. Um, I believe so, but I don't remember who.

17 Q. Who was it? What was the purpose?

18 A. Another inmate.

19 Q. Okay.

20 A. I also met with a deputy behind the glass --

21 Q. Okay.

22 A. -- to check in.

23 Q. Okay. What about a translator?

24 A. No.

25 Q. No translator?

26 A. No.

27 Q. So you were asking -- or did you know that he uses a
28 translator in court?

1 A. I didn't until today as I was in court and met the
2 translator.

3 Q. You had no idea about that?

4 A. No.

5 Q. And yet you saw during break Ms. Nguyen was talking to
6 him, right?

7 A. I believe so, yes.

8 Q. And you saw that was through the translator, correct?

9 A. -- I was far away. I didn't see that.

10 Q. Did you see the translator kinda up in their business?

11 A. I saw three heads together.

12 Q. Okay.

13 MS. NGUYEN: I will object, Your Honor, because there
14 hasn't been any foundation that the gentleman in the pink tie
15 that was one of the three heads huddled together is actually a
16 translator and there would be no reason for Dr. Kaisch to know
17 that as well.

18 THE COURT: Well --

19 MR. ZEKTSER: I can ask another question.

20 THE COURT: Go ahead. He appears to be over there
21 translating.

22 Q. BY MR. ZEKTSER: Doctor --

23 THE COURT: I know he is a translator.

24 Q. BY MR. ZEKTSER: Doctor, you're a smart man. Does that
25 look like a translator to you?

26 A. I don't know what a translator looks like.

27 Q. Did you think that was one?

28 A. He introduced himself as a translator.

1 Q. Okay. So you knew he was a translator?

2 A. I did.

3 Q. Okay. And you can kind of see that he is translating
4 right now. Look at him.

5 MS. NGUYEN: Well, objection, Your Honor. He can't
6 hear the translator, and Dr. Kaisch is not familiar with --

7 MR. ZEKTSER: I'll move on. I'll move on.

8 THE COURT: Look, we're beating this. I can take
9 judicial notice he is a translator over there. That's so out of
10 any dispute. Go ahead.

11 Q. BY MR. ZEKTSER: All right. But regardless of the
12 fact, you did not use a translator when you were interviewing
13 for 60 minutes Mr. Dominguez, correct?

14 A. I did not.

15 Q. Okay. And you were asking him certain proverbs, right?

16 A. Yes.

17 Q. And you testified today, well, he didn't understand
18 some of those proverbs, right?

19 A. That's correct.

20 Q. Okay. Well, do you know if Mr. Dominguez's first
21 language is English?

22 A. I don't know.

23 Q. All right.

24 A. Um, I talked with --

25 MR. ZEKTSER: Objection. Nonresponsive at this point.

26 THE COURT: Sustained.

27 MR. ZEKTSER: He does not know.

28 THE COURT: Go ahead.

1 Q. BY MR. ZEKTSER: When you asked Mr. Dominguez the
2 proverb of a rolling stone gathers no moss, do you recall asking
3 him what that meant?

4 A. Yes.

5 Q. Okay. Do you know if he meant -- if he understood what
6 you were asking?

7 A. Um, I have no doubts about Mr. Dominguez's English
8 competence through the hour interview that we were together.

9 Q. All right. Well, my question, though, was do you know
10 if he understood that proverb?

11 A. He didn't understand the proverb.

12 Q. Okay. Do you know if he understood the language to
13 that proverb?

14 MS. NGUYEN: Objection. This is all speculation.

15 MR. ZEKTSER: I'm asking if he knows whether he did.

16 THE COURT: Okay. Overruled.

17 Q. BY MR. ZEKTSER: Do you know whether he understood the
18 English portion of that proverb?

19 A. I don't know for a certain fact.

20 Q. All right. But regardless of whether you know or not,
21 you said that he didn't understand it because of his intellect
22 or his situation; is that right?

23 A. Because of his mental disease, yes.

24 Q. Okay. It couldn't be because he speaks Spanish and
25 English as a second language? Is that your testimony?

26 MS. NGUYEN: Objection. Misstates the testimony.

27 MR. ZEKTSER: I'm asking if it could have been.

28 THE COURT: I will sustain that.

1 MR. ZEKTSER: All right.

2 THE COURT: I don't know how he is supposed to answer
3 that. I don't think he knows about the various skills in
4 English -- Spanish as to this gentleman.

5 MR. ZEKTSER: That's my point.

6 Q. BY MR. ZEKTSER: Now, my next question, sir, is you
7 were asking him numbers, right?

8 A. Yes.

9 Q. You were asking him to subtract seven from a hundred,
10 correct?

11 A. Yes.

12 Q. Are you familiar with how good he is with the English
13 language regarding numbers?

14 A. No.

15 Q. Did you ask, Hey, can you count to a hundred even in
16 English?

17 A. No.

18 Q. No?

19 A. No.

20 Q. Okay. You, in fact, said in your report that because
21 of his situation, it is impossible for him to cooperate; is that
22 right?

23 A. Yes.

24 Q. Okay. During the break you saw him talking to his
25 attorney, right?

26 A. Yes.

27 Q. Okay. And again, I asked you earlier, you said that
28 you didn't hear him but he actually answered for you or was

1 directing you which foot, right?

2 A. I don't know.

3 Q. Okay. But if he was, that would be cooperating, right?

4 A. It would.

5 Q. And that would make your report incorrect because you
6 said it was "impossible" for this man, right?

7 A. Right.

8 Q. Okay. You also said that Mr. Dominguez has lost
9 interest in food, right?

10 A. I'm sorry. I didn't hear.

11 Q. You said that he had lost interest in food?

12 A. Yes.

13 Q. In eating. Did he tell you that?

14 A. No.

15 Q. Have you ever ate the food in the jail?

16 A. Thankfully, no.

17 Q. Okay. So I mean, that is a complete assumption,
18 wouldn't you agree, that he has just lost interest in food as
19 opposed to he hates the food in the jail and he's lost weight?

20 A. No.

21 Q. It's not an assumption?

22 A. No.

23 Q. Okay. Did you ask him if he enjoys eating that food?

24 A. I did not.

25 Q. All right.

26 A. On the other hand --

27 Q. No question -- no question pending.

28 THE COURT: Go ahead, Mr. Zektser.

1 Q. BY MR. ZEKTSER: When you interviewed him, you needed
2 his assistance to complete your task; is that right?

3 A. Yes.

4 Q. Okay. I mean, that was kind of essential; is that
5 right?

6 A. Yes.

7 Q. Okay. And you described him as just kind of no motor
8 functions, just sitting there for 60 minutes listening to you
9 leaning up against the wall or the glass; is that right?

10 A. No. He was leaning against the desk or the -- you
11 know, whatever it was, the table.

12 Q. Okay. And you said there was like no emotion
13 whatsoever; is that right?

14 A. It was his affect was flat, yes.

15 Q. Affect flat.

16 Now, crying would be change in affect; is that right?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes.

20 Q. Okay. In fact, if someone was to cry then stop crying,
21 then cry and stop crying, that would be a change in affect,
22 right?

23 A. Yes.

24 Q. But you didn't see that, did you?

25 A. I don't believe that I saw him cry.

26 Q. Do you believe he would do that?

27 A. I don't know.

28 Q. All right.

1 A. I make my observations of his behavior that I -- that I
2 see.

3 Q. Right. And you said that he really just didn't have an
4 interest. Is that fair to say?

5 A. That's fair.

6 Q. Okay. But actually, you testified that at the very end
7 he thanked you, right?

8 A. Yes.

9 Q. He thanked you for your help, correct?

10 A. No. For my interest.

11 Q. Oh, he thanked you for your interest. He was thankful?

12 A. Yes.

13 Q. And he participated in your evaluation, correct?

14 A. He did.

15 Q. For 60 minutes he answered your questions, right?

16 A. Yes.

17 Q. He -- you testified that, you know, during trial he may
18 have difficulty with some of the facts or remembering some of
19 the facts or stuff like that, correct?

20 A. Yes.

21 Q. Okay. But you asked his family history, didn't you?

22 A. I did.

23 Q. And he gave it to you, correct?

24 A. In a very minimal way, yes.

25 Q. Okay. Did you ask for more details?

26 A. Um, I don't remember --

27 Q. Okay.

28 A. -- if I did.

1 Q. All right. You asked for his job background, right?
2 A. Yes.
3 Q. What he does, correct?
4 A. Yes.
5 Q. He gave it to you?
6 A. Yes.
7 Q. You asked what he takes pride in or something?
8 A. No. He volunteered that.
9 Q. Oh, he gave you additional information?
10 A. Yes.
11 Q. Without even questioning him?
12 A. Yes.
13 Q. He wanted you to know more. Is that fair to say?
14 A. He was proud of that part of his life.
15 Q. And so he wanted you to know that, right?
16 A. Yes.
17 Q. He saw that you were interested in that subject,
18 correct?
19 A. Yes.
20 Q. And he provided the answer to you?
21 A. Yes.
22 Q. And more?
23 A. And more.
24 Q. In fact, you would describe him being open with you,
25 correct?
26 A. Yes.
27 Q. And you would actually describe him as being quite
28 candid, wouldn't you?

1 A. Yes.

2 Q. He recalled the exact date of when he was arrested,
3 didn't he?

4 A. He did.

5 Q. He said it was February 15th, right?

6 A. Right.

7 Q. He told you where he was arrested, correct?

8 A. Yes.

9 Q. He said which jail he was taken to immediately, right?

10 A. Yes.

11 Q. He remembered those facts, didn't he?

12 A. He did.

13 Q. And he actually remembered the exact day that he split
14 his toe open, right?

15 A. I believe so. The day after he was arrested and the
16 day he was transported to Banning.

17 Q. Quite the historian on that, wouldn't you agree?

18 A. Yes.

19 Q. He even remembered how he felt during that day after he
20 stubbed his toe, didn't he?

21 A. I don't remember.

22 Q. Do you remember saying that he was dizzy and in bad
23 shape at the time?

24 A. Yes. Right. He did say that.

25 Q. Okay. In your report it says when a nurse finally
26 check him several months later, his blood sugar was over 300; is
27 that right?

28 A. That's what he said.

1 Q. He remembered the exact number of what his blood sugar
2 was?

3 A. Yes. When you're diabetic, you tend to do that.

4 Q. Okay. Well, because it's important, right?

5 A. Yes.

6 Q. And it's a serious thing in life, right?

7 A. It's your life.

8 Q. It's your life. And same with being -- when you're on
9 trial for child rape, it's also important for those facts;
10 wouldn't you agree?

11 MS. NGUYEN: Objection. I don't know that they've
12 filed a child rape. I believe that he is charged with child
13 molestation.

14 MR. ZEKTSER: 269(a)(5) is child rape.

15 THE COURT: Overruled.

16 THE WITNESS: Could you repeat the question.

17 Q. BY MR. ZEKTSER: Sure. You were saying how important
18 it is that you don't forget things when you are diabetic, right?
19 If you're at that number, you're going to remember that number.

20 A. No. I didn't say things, I was talking about the
21 number of over 300.

22 Q. Okay. But that's something that you remember, right?

23 A. Yes.

24 Q. And you said it's dealing with your life, correct?

25 A. Yes.

26 Q. This case is dealing with his life, correct?

27 A. Yes.

28 Q. And you talked to him about this case a little bit,

1 didn't you?

2 A. A little bit, yes.

3 Q. And he gave you some details about how these people are
4 accusing him, correct?

5 A. Yes.

6 Q. Okay. He kinda acted surprised and said -- he added,
7 My lawyer says it's three now. Right?

8 A. Yes.

9 THE COURT: I was looking at the time. Okay. We're
10 going to take our noontime recess. Folks, we will start up
11 again right at 1:30.

12 Doctor, if you can just be available right at 1:30
13 again to testify.

14 THE WITNESS: Okay.

15 THE COURT: Okay. Thank you, Doctor.

16 MS. NGUYEN: Thank you.

17 THE COURT: Court's in recess.

18 (Lunch recess.)

19 THE COURT: Okay. We're back on the record in People
20 versus Dominguez. We've got both counsel and Mr. Dominguez
21 here, and the doctor's up on the witness stand.

22 Well, thank you, Doctor.

23 Go ahead, Mr. Zektser.

24 MR. ZEKTSER: Thank you.

25 Q. BY MR. ZEKTSER: Hello, Doctor. I'm almost done.

26 We were talking a little bit about how Mr. Dominguez
27 assisted you and how he was going into all the different details
28 of all your questions. Do you recall that questioning prior to

1 the break?

2 A. Yes.

3 Q. I just wanted to go into some of the details that he
4 had given to you that he was able to remember and that he was
5 able to be a historian regarding, all right, sir.

6 Isn't it true that Mr. Dominguez was able to tell you
7 when he was transferred to the Southwest Detention Center?

8 A. I know he was able to tell me he was transferred to
9 Banning. I don't recall that he told me the date that he went
10 to Southwest.

11 Q. Okay. Isn't it true that on page 2 of your report you
12 wrote, Mr. Dominguez was transferred to Southwest Detention
13 Center in June? Did you say that? You can go ahead and look.

14 A. If it's there, then he told me that.

15 Q. It's in the bottom paragraph.

16 A. Yes, I saw it.

17 Q. Do you see it?

18 A. Yes.

19 Q. All right. So he was able to give you the facts
20 surrounding that; is that right?

21 A. Yes.

22 Q. Okay. In fact, he said that he actually had difficulty
23 getting into the top bunk. He recalled that as well, correct?

24 A. Yes.

25 Q. He said that he had met with the nurse, correct?

26 A. Yes.

27 Q. And he actually was able to remember specifically
28 statements that the nurse had said to him, right?

1 A. "Oh, my God."

2 Q. Right. I mean, you put quotes around that; is that
3 right?

4 A. That's what I did. It's a direct quote.

5 Q. He was able to tell you then he was referred to a head
6 nurse; is that right?

7 A. That is correct.

8 Q. And that he then had an appointment at the county
9 hospital, correct?

10 A. Yes.

11 Q. And he was able to tell you or he was able to be a good
12 enough historian to say when he had that appointment at the
13 county hospital, correct?

14 A. I don't recall.

15 Q. Isn't it true that he said, Look, it was in mid-June?
16 Is that accurate?

17 A. I believe so, yes.

18 Q. He remembered his emotional state when he learned of
19 the news that he was going to have to have an amputation,
20 correct?

21 A. Yes.

22 Q. He told you he remembered crying when he heard it?

23 A. Yes.

24 Q. Isn't that true?

25 A. Yes. And that was the amputation of his toe, I
26 believe.

27 Q. Correct.

28 He remembered what happened with his stitches as he

1 walked out of the hospital that night, correct?

2 A. He did.

3 Q. He was a good historian regarding that, true?

4 A. He was.

5 Q. He remembered exactly that some of the stitches were
6 coming out during that time, right?

7 A. Yes.

8 Q. And then he was able to tell you how long it was until
9 someone changed the dressing in his foot; isn't that true?

10 A. Yes.

11 Q. He said it took until sometime in July, correct?

12 A. That's right.

13 Q. Eventually he was given insulin; is that right?

14 A. Yes.

15 Q. And he told you that this meant something to him,
16 correct?

17 A. Yes.

18 Q. Okay. He was able to tell you that, you know what, now
19 the fact that I'm on insulin, I am no longer going to be able to
20 be -- perform my job, correct?

21 A. That's correct.

22 Q. He was able to put that together in his head?

23 A. Yes.

24 Q. Correct?

25 A. Yes.

26 Q. He told you that he had a certain plan of when he was
27 going to work until, correct?

28 A. Yes.

1 Q. Okay.

2 A. In general terms.

3 Q. He said that he wanted to work until he was 65; is that
4 right?

5 A. Something like that.

6 Q. Okay. But then he said, You know what, based on the
7 fact I have to take insulin now, I'm not going to be able to do
8 that anymore; is that right?

9 A. Right.

10 Q. Now, you testified that you've never actually been a
11 defendant in trial; is that right?

12 A. That's correct.

13 Q. But if you -- you've been in trial, right?

14 A. Yes.

15 Q. And if you can imagine, a trial is kind of an exciting
16 thing. Would you agree?

17 A. (No audible response.)

18 Q. There's a lot going on?

19 A. It depends on your perspective.

20 Q. Sure. Exciting --

21 A. I expect the bailiff isn't terribly excited right now.

22 Q. All right. Well, I mean, you would agree that there is
23 a lot going on during trial?

24 A. Oh, yes.

25 Q. So for you, when you learned that he had fallen asleep
26 during trial, that meant something to you, correct?

27 A. It did.

28 Q. Well, did you ask him, Hey, what part of the trial was

1 it that you fell asleep? Which part of the excitement was it
2 that you fell asleep?

3 A. I did not ask him that.

4 Q. Okay. Were you aware of the fact that his trial hadn't
5 actually begun yet? Did you know that?

6 A. I didn't know that.

7 MS. NGUYEN: Objection. Misstates the facts. I
8 believe he had been sent out to trial on February 22nd, which is
9 the date that Dr. Kaisch was informed that he fell asleep. He
10 was technically in trial according to how we characterize
11 trials.

12 MR. ZEKTSER: Well, I can rephrase that then.

13 THE COURT: Go ahead and do that.

14 MR. ZEKTSER: Okay.

15 Q. BY MR. ZEKTSER: So technically he was in trial, but if
16 you're just sitting there doing nothing, that doesn't sound like
17 anything exciting for anyone. You would agree, right?

18 A. Somebody sitting there doing nothing is not exciting.

19 Q. Are you aware of the fact that when he fell asleep
20 nothing was going on during the trial? Did you know that?

21 A. I was not aware of that.

22 Q. Were you aware of the fact that no one was even talking
23 to him at the time? Were you aware of the that?

24 A. I was not.

25 Q. Were you aware that although counsel's right
26 technically it was sent out to trial, no trial was actually
27 going on? Were you aware of that?

28 A. I wasn't there, Counselor.

1 Q. Right. And that's because you have to base your
2 opinions and your beliefs and what you put in your report on
3 what he tells you. Is that fair to say?

4 A. What he tells me, what the written record says, what
5 other people involved in the case might tell me, such as
6 yourself and defense counsel.

7 Q. But most of the information that you got regarding
8 this, in your opinion, was straight from his mouth, right?

9 A. Most of the information, yes.

10 Q. It wasn't from my mouth, right?

11 A. No.

12 Q. Okay. And it wasn't from the defense attorney's mouth,
13 right, Ms. Nguyen? The majority --

14 A. No.

15 Q. -- of the information.

16 A. Of the information.

17 Q. And so you relied on --

18 MR. ZEKTSER: Oh, you know what, Your Honor?

19 THE COURT: I'm sorry, Doctor.

20 MR. ZEKTSER: I need you to wait outside just for a
21 little bit.

22 THE COURT: Wait. Can we give Dr. Jimenez perhaps an
23 estimate so he doesn't just have to sit out there?

24 MR. ZEKTSER: Yes. I told him about 1:45.

25 THE COURT: Well, you have Ms. Williams coming next.
26 Why don't we tell him about 2:30. Is that possible?

27 MR. ZEKTSER: Okay. I will go out there.

28 THE COURT: If you can go tell him quickly just so he

1 doesn't have to sit out there.

2 MS. NGUYEN: And if Your Honor wishes to allow him to
3 use the back room while he waits. I don't know if the Court
4 wishes to allow that.

5 THE COURT: No, that's fine if he wants to use that.

6 We're off the record.

7 (Pause.)

8 THE COURT: Okay. Let's go back on the record.

9 Q. BY MR. ZEKTSER: All right. Doctor, where I left off
10 was we were talking about where you gained most of your
11 information from. And I think what you said was the bulk of it
12 was from Mr. Dominguez?

13 A. Yes.

14 Q. Is that right?

15 A. Yes.

16 Q. And you had to rely on a lot of information, correct?

17 A. Yes.

18 Q. Did you look to see if any of his information were lies
19 to you?

20 A. That's a hard question to answer. Um, in a forensic
21 setting, I always reserve, you know, kind of an open question,
22 and I do that not necessarily in a formal way but simply paying
23 attention to inconsistencies, discrepancies, things that seem
24 unusual or outside of the norm.

25 Q. All right. So my question was, did you look into
26 seeing if he was lying about anything?

27 A. In an informal way, yes.

28 Q. Okay. And you did this using what you just described

1 for us to see if he was contradicting himself and stuff like
2 that; is that right?

3 A. Yes.

4 Q. Okay. Did you find any?

5 A. I didn't.

6 Q. And so you continued to ask questions and you continued
7 to rely on a lot of the things he said. Is that fair to say?

8 A. I did.

9 Q. He told you that he was shocked that his lawyer was now
10 telling him there are three people accusing him of molest?

11 A. As I recall he said "surprised."

12 Q. "Surprised." Okay.

13 Well, did you know that he admitted to molesting three
14 different girls?

15 A. Um, he had told me that he was under pretty severe
16 police interrogation and he said some things that weren't true.

17 Q. Oh, he said some things that were untrue due to severe
18 police interrogation. Is that your testimony?

19 A. Yes.

20 Q. That's what he told you?

21 A. That's what he told me.

22 Q. Were you aware that he told the police he wanted
23 freedom from his past and that he had a weakness and agreed he
24 should not have touched them inappropriately?

25 A. I was unaware of that.

26 MS. NGUYEN: Objection. Relevance.

27 MR. ZEKTSER: It goes to this witness's opinion, Your
28 Honor.

1 THE COURT: Overruled. Go ahead.

2 Q. BY MR. ZEKTSER: Okay. Were you aware that he gave
3 detail after detail after detail how he touched the first
4 victim?

5 A. I have not seen the police report. No, I'm not aware
6 of that.

7 Q. Okay. Are you aware of how he gave detail after detail
8 after detail of where, when, and how he touched the second
9 victim?

10 A. I'm not.

11 Q. Okay. And the same for the third, were you aware of
12 that?

13 A. I'm not.

14 Q. What he told you was he was under extreme
15 interrogation; is that right?

16 A. Yes.

17 Q. And because you had nothing to check that against, you
18 had to take it for its worth?

19 A. Yes.

20 Q. He told you he was never alone with these girls, right?

21 A. Yes.

22 Q. But you did describe him as being oriented for person,
23 correct?

24 A. Yes.

25 Q. Place, right?

26 A. Yes.

27 Q. And time, correct?

28 A. That's correct.

1 Q. He appeared alert to you, right?

2 A. Yes.

3 Q. He was able to recite to you the last five presidents,
4 correct?

5 A. That's correct.

6 Q. And that's when you were asking him in English, right?

7 A. That's correct.

8 Q. And he was answering you that in English, correct?

9 A. Yes. I didn't speak Spanish, Counselor, so it's
10 probably unlikely I will ask questions in Spanish.

11 Q. All right.

12 He described his imprisonment as a total removal of his
13 freedom, correct?

14 A. Yes.

15 Q. That's what imprisonment is; wouldn't you agree?

16 A. I would agree.

17 Q. You asked him whether he understood the charges, right?

18 A. I believe so.

19 Q. Okay. And he did understand the charges against him;
20 isn't that true?

21 A. As far as I remember, yes.

22 Q. Okay. Would it refresh your memory if you looked at
23 your report?

24 A. It would.

25 MR. ZEKTSER: With the Court's permission?

26 THE COURT: Yes.

27 Q. BY MR. ZEKTSER: Direct you to page 5, second
28 paragraph.

1 A. Yes.

2 Q. He was -- he remembered what he was on trial for,
3 right?

4 A. Yes.

5 Q. And, in fact, he gave you, you wrote, "very clear
6 responses"; isn't that true?

7 A. Yes.

8 Q. And when asked what his attorney does, did he tell you,
9 I don't know, I don't care?

10 A. He did not.

11 Q. Okay. He told you that her role is to defend him,
12 right?

13 A. Correct.

14 Q. And he said what the prosecutor does, right?

15 A. Yes.

16 Q. He said he "presses the charges against me," correct?

17 A. Yes.

18 Q. I mean, that's a direct quote, right, "Presses the
19 charges against me"?

20 A. I believe so.

21 Q. Okay.

22 A. If it's in quotations, I always, you know --

23 Q. You would agree with me, Doctor, that's not the
24 greatest English, wouldn't you?

25 A. Yeah.

26 Q. "Presses the charges against me"?

27 A. I would agree.

28 Q. And you expected him to know the -- what it means or to

1 interpret the, What is the moss on the rolling stone, or
2 whatever the proverb you said; is that right?

3 A. Rolling stone gathers no moss.

4 Q. All right. And then he said the judge hears the case
5 and makes the judgment, right?

6 A. Yes.

7 Q. Then you would agree that he is absolutely correct on
8 each and every one of those things?

9 A. I would not.

10 Q. You would not agree?

11 A. Uh-huh.

12 Q. All right. Well, would you say that the defense
13 attorneys defends him in court?

14 A. Yes.

15 Q. Would you say that one the roles of the prosecutor is
16 to press the charges against him?

17 A. Sure.

18 Q. And one of the roles of the judge is to hear the case
19 and make certain judgments?

20 A. If there's no jury, yes.

21 Q. You said that he was able to enter into a collaborative
22 relationship with his attorney, correct?

23 A. Yes.

24 Q. And you finish that paragraph by saying, While he
25 thought that he could handle the stress of trial proceedings,
26 that appeared to the examiner to be doubtful given that he fell
27 asleep during his initial half-day appearance in court, right?

28 A. Yes.

1 Q. But you're not aware if I gave an opening statement in
2 that portion, right?

3 A. That's right.

4 Q. Or if he was even necessary whatsoever during that
5 portion to assist his counsel, right?

6 A. I'm sorry. I didn't understand.

7 Q. Were you aware of whether that portion that he fell
8 asleep he was supposed to be helping his attorney?

9 A. I'm not aware of --

10 MS. NGUYEN: Objection. Asked and answered. I think
11 we've already gone through the fact that Dr. Kaisch wasn't
12 there.

13 THE COURT: Yeah, I will sustain that. It's getting a
14 little repetitive. He's already said that he does not know what
15 happened at the time he fell asleep, Mr. Zektser.

16 Q. BY MR. ZEKTSER: You described him in your report as
17 coherent, correct?

18 A. Yes.

19 Q. And you described in your report that he was rational,
20 correct?

21 A. Yes. The impression does not necessarily take away a
22 person's --

23 MR. ZEKTSER: Objection. Nonresponsive. No question
24 pending. Move to strike.

25 THE COURT: I will allow the answer to stand.

26 Just wait for a question, Doctor, please.

27 THE WITNESS: Thank you.

28 MR. ZEKTSER: I have nothing further. Thank you,

1 Doctor.

2 THE COURT: Ms. Nguyen.

3 MS. NGUYEN: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. NGUYEN:

6 Q. Mr. -- or Dr. Kaisch. I apologize.

7 Dr. Kaisch, a person who suffers from major depressive
8 disorder isn't robbed of their core intellect, correct?

9 A. That's correct.

10 Q. They're robbed of their ability to care about what's
11 happening, correct?

12 MR. ZEKTSER: I'm going to continuously object to
13 leading. Despite the fact that it's her witness, there is no
14 leading for any witness unless they're a child.

15 THE COURT: Well, no. Actually, if you look at the
16 comments behind Evidence Code -- whatever the expert witness
17 Evidence Code Section is, which escapes me right now, leading
18 questions are permitted with an expert. At this point here I
19 just kind of want to get to the point and go on.

20 MR. ZEKTSER: That's fine.

21 THE COURT: So go ahead. Overruled.

22 Q. BY MS. NGUYEN: So the fact that -- I'm sorry.

23 They're not robbed of their intellect, they're robbed
24 of their ability to care about what's happening, correct?

25 A. Right.

26 Q. They're --

27 A. Excuse me. The intellectual functioning will be
28 depressed. It won't be functioning at the same level that it

1 was.

2 Q. But for very basic things like remembering really
3 important facts, a person with major depressive disorder can
4 remember important facts and still be suffering from major
5 depressive disorder, correct?

6 A. Yes.

7 Q. And that wouldn't be uncommon, correct?

8 A. Correct.

9 Q. And when you were speaking to Mr. Dominguez in the hour
10 that you had with him, he had plenty of time to think about his
11 responses and answer you, correct?

12 A. He did. His responses were slow. I would ask a
13 question; oftentimes there was a pause as he kind of pulled
14 himself together to answer the question.

15 Q. And did you give him all the time that he needed to
16 respond to your questions?

17 A. Of course.

18 Q. And so would it be fair to say that your examination of
19 him was at his pace?

20 A. Definitely, yes.

21 Q. Which in your opinion of how trial works here today, of
22 how you see a trial going with the pace of the questioning and
23 the evidence coming in, what's the difference between the pace
24 of your evaluation with him and the pace at trial?

25 A. There is a difference in pacing. There's also a
26 difference in intensity and there is a difference in what the
27 outcome might be. When I'm sitting there in the attorney booth
28 talking to Mr. Dominguez, we're going at his pace, not at

1 someone else's pace. The intensity is relatively low. I'm not
2 pressing him. At times I might ask somebody questions that will
3 be very confrontational, but I did not do that with
4 Mr. Dominguez. It wasn't necessary, in my view.

5 And I forgot the third thing now, but...

6 Q. And the reason that it wasn't necessary for you to
7 press him for answers was because he was forthcoming with you;
8 is that fair to say?

9 A. Correct.

10 Q. And with respect to what counsel had asked you about
11 prior to the break relating to Mr. Dominguez saying thank you to
12 you before you left and thank you for taking an interest in
13 him --

14 A. Yes.

15 Q. -- the fact that he has good manners and says thank
16 you, does that mean that he does not suffer from major
17 depressive disorder?

18 A. It does not.

19 Q. Does it factor into your analysis of him, what you had
20 seen the 59 minutes before he said thank you?

21 A. No. It -- he struck me all through our interview as a
22 very well-mannered individual, and so I didn't have a sense that
23 he was -- that this was out of character.

24 Q. But also when you were having the interview with him,
25 he never struck you as somebody who was malingering, did he?

26 A. He did not.

27 Q. And with respect to counsel's questioning earlier about
28 the food in jail and suggesting that perhaps he lost 60 pounds

1 in a year because he just didn't like the food, can I pose a
2 hypothetical to you related to that.

3 Would somebody, hypothetically speaking, who does not
4 suffer from major depressive disorder, who didn't like the food
5 in jail while they were incarcerated show -- be likely to show a
6 25 percent drop in their weight over the course of that year
7 just because they didn't enjoy the food?

8 A. No.

9 Q. And why is that?

10 A. Because people are built -- we are wired to be hungry
11 when we don't have adequate nutrition. And so that wiring is
12 going to have you eat whatever is available if you're hungry
13 enough and self-protective. If you're not self-protective, on
14 the other hand, if you just don't care, then why bother to eat.

15 Q. And so in your professional opinion, with respect to
16 the reason why he lost 25 percent of his body weight in a year,
17 it's still your opinion that it was because of his loss of
18 interest relating to his major depressive disorder?

19 A. Yes.

20 MS. NGUYEN: And Your Honor, there is one area that I
21 didn't cover during direct. I'm wondering --

22 MR. ZEKTSER: I won't object. That's fine.

23 THE COURT: Yeah, that's fine.

24 MS. NGUYEN: Thank you.

25 Q. BY MS. NGUYEN: When you spoke to Mr. Dominguez, you
26 went through all of the criteria associated with diagnosing
27 somebody with major depressive disorder, correct?

28 A. That's correct. That's the purpose of the structured

1 interview.

2 Q. And the one area in which you felt that he was lacking
3 was the suicidal ideation or the thought of self-harm or
4 preoccupation with death; is that correct?

5 A. Correct.

6 Q. And is it necessary for somebody to feel suicidal in
7 order for them to be suffering from major depressive disorder?

8 A. Oh, certainly not.

9 Q. And how -- if you have an opinion. I don't know if you
10 do. But in your professional capacity, how does Mr. Dominguez's
11 deeply religious belief affect the likelihood of him engaging in
12 suicidal behavior?

13 A. It decreases it markedly. One of the things that as I
14 recall we touched on were his religious beliefs and he said that
15 he's a very religious man. Because I was asking him about
16 self-harm, and he said, No, I could never do that, because of
17 his belief system.

18 MS. NGUYEN: Nothing further, Your Honor.

19 THE COURT: Anything?

20 MR. ZEKTSER: Yeah, just very briefly.

21 RECROSS-EXAMINATION

22 BY MR. ZEKTSER:

23 Q. The Bible and the Torah and whatever else is out there
24 also says you don't touch children, right?

25 THE COURT: Okay. That's not really that helpful.

26 MR. ZEKTSER: Well --

27 THE COURT: You don't have to answer that, Doctor.

28 THE WITNESS: Yes, sir.

1 Q. BY MR. ZEKTSER: Now, Doctor, you said that -- you told
2 us that he was kind of hunched over leaning against the table,
3 right?

4 A. Yes.

5 Q. Okay. Kinda like as I'm sitting here kind of in a
6 bend; is that right?

7 A. No. It was like this with one -- you know, with the
8 phone up against his ear like that (demonstrating).

9 Q. All right. And you described him as erect in your --
10 in your report?

11 A. When he initially sat down, he was erect, and that's
12 one of the first questions that I checked in the mental status
13 examination.

14 Q. Okay.

15 A. And then he was bent over.

16 Q. You said -- you put: Assessment findings, behavioral
17 observations: He sat with an erect posture. Right?

18 A. Yes.

19 Q. And you told us before that he had kind of his face
20 down. Do you recall testifying to that?

21 A. He didn't have his face down. He was down like this
22 and he was maintaining eye contact.

23 Q. Okay. So he was looking at you the whole time?

24 A. Yes.

25 Q. Okay. It's not like he was looking away like he had no
26 interest, correct?

27 A. Correct.

28 Q. In fact, he maintained eye contact with you, right?

1 A. Pretty much.

2 Q. He wasn't looking off in the distance or to his right
3 or to his left, correct?

4 A. Correct.

5 Q. In fact, you described his face as looking composed?

6 A. Yes.

7 MR. ZEKTSER: Correct. All right. Nothing further.

8 THE COURT: Okay.

9 MS. NGUYEN: Nothing further.

10 THE COURT: I actually have one or two questions.

11 EXAMINATION

12 BY THE COURT:

13 Q. Now, Doctor, he had two amputations, his big toe and
14 then his foot all the way up to below his knee. And what I've
15 been hearing is that he engaged in self-protective behavior
16 before the loss of his big toe, that he was -- by complaining
17 constantly to the jail.

18 A. Yes.

19 Q. And I've been hearing that he didn't do that before the
20 next -- he lost his foot. Is that what he told you? I'm trying
21 to figure out where that came from, that he never told anybody
22 he was having problems with his leg.

23 A. Okay.

24 Q. Go ahead.

25 A. My understanding was he told people that he was having
26 problems with his foot.

27 Q. Okay.

28 A. And he was simply disregarded. And my -- my

1 speculation is that he began a kind of depressive slide that
2 gradually worsened over his time in jail and with the various
3 things that occurred to him with the amputations.

4 Q. Okay. Between the first amputation of his big toe and
5 the second amputation of his foot up to some of his leg, do you
6 know what he did to inform the jail of the problems?

7 A. Um --

8 Q. I mean, did he tell you what he did to inform the jail
9 of the problems?

10 A. I don't remember.

11 Q. Okay.

12 A. I know he had talked about talking to staff and putting
13 in written requests for medical attention.

14 Q. Okay. Is this before the first one or the second one?

15 A. Before the first one. I don't recall what he said
16 before the second one.

17 Q. Now, are some types of -- or some individuals that have
18 major depressive disorder, are there some of them that just
19 can't give you any reason why they feel like that; they're just
20 depressed and there seems to be no cause in their life? I mean,
21 is that one category of people who suffer from this mental
22 illness?

23 A. The worst that I have seen is somebody who just lies in
24 bed and they don't move for anything. If they need to urinate
25 or defecate, they do it right there and lay in it.

26 Q. But are there some people who are suffering from this
27 and you really can't even point to anything? I mean, there's
28 nothing going on in their lives, they're just depressed and

1 nobody -- they can't even give you a reason why they feel so
2 majorly depressed? I know perhaps that's not a good term. But
3 what I mean is are there some people who situationally have
4 things going on in their life and they're depressed, and then
5 there's other people who maybe it's some genetic or chemical
6 imbalance or something?

7 A. It strikes them out of the blue. Yes.

8 Q. Okay. I assume he -- he seems to be able to point to
9 specific things that are causing him to be depressed, the
10 criminal charges and the amputation and loss of his career?

11 A. Yes.

12 Q. Am I right when I say that?

13 A. Yes.

14 Q. In your opinion, is that why he is depressed?

15 A. Yes.

16 THE COURT: Okay. Ms. Nguyen, any questions based on
17 mine?

18 MS. NGUYEN: No, Your Honor.

19 MR. ZEKTSER: I have a couple.

20 THE COURT: Okay. Go ahead.

21 MR. ZEKTSER: Thank you.

22 FURTHER RECROSS-EXAMINATION

23 BY MR. ZEKTSER:

24 Q. The beginning questions the Judge asked you about
25 how -- Ms. Nguyen has been asking you questions about how much
26 he tried to get help for the first time, right?

27 A. Yes.

28 Q. Compared to how much he tried to get help the second

1 time, right?

2 A. Yes.

3 Q. And it's your testimony that you don't know how much
4 help he tried to get for the second time? Is that fair to say?

5 A. That's correct.

6 Q. I mean, because you didn't put anything in your report
7 about the difference, right?

8 A. That's correct.

9 Q. Okay. It wasn't noteworthy for even your report. Is
10 that fair to say?

11 A. No. It just means that I didn't think to ask questions
12 about that concern.

13 Q. Okay. Well, you're a trained physician, right?

14 A. No. I'm a trained psychologist.

15 Q. Even better. And how long have you been doing this
16 for?

17 A. Um, again, as a licensed psychologist in August of '88.

18 Q. All right. And nothing that he said made you question
19 or ask those questions, right?

20 A. Typically there are far more questions that I don't ask
21 than I do. I go through a kind of decision tree in my head in
22 terms of relevance to what I'm trying to assess.

23 Q. Right. And you're trying to assess whether he has
24 depression and the type of depression, correct, or one of the
25 things?

26 A. That was part of it, yes.

27 Q. All right. And you asked no questions regarding the
28 difference between the first time of him reporting and the