

Nos. 18-1323, 18-1460

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IN THE  
**Supreme Court of the United States**

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

v.

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

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

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**JOINT APPENDIX**

**VOLUME V**

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## TABLE OF CONTENTS

**Page**

### VOLUME I

Relevant Docket Entries, No. 3:14-cv-00525 (M.D. La.).....	1
Relevant Docket Entries, No. 17-30397 (5th Cir.) .....	12
Am. Compl. (Aug. 26, 2014), Dkt. 14.....	16
DHH Defs.’ Opp’n to Pls.’ Appl. for TRO and for Protective Order (Aug. 26, 2014), Dkt. 20.....	27
Pls. June Med. Servs. LLC, et al., Status Chart of Pending Applications (Oct. 8, 2014), Dkt. 50.....	48
Mem. Regarding Status of Pending Applications for Privileges (Oct. 8, 2014), Dkt. 51.....	53
Answer of Def. Kathy Kliebert (Nov. 17, 2014), Dkt. 64.....	56
Pls. June Med. Servs. LLC, et al., Status Chart of Pending Applications (Feb. 26, 2015), Dkt. 91.....	64
Pls. June Med. Servs. LLC, et al., Status Chart of Pending Applications (Mar. 19, 2015), Dkt. 121.....	69

## TABLE OF CONTENTS

	<b>Page</b>
Letter from Demme Doufekias to Judge John W. deGravelles Regarding Status of Pending Applications (Sept. 25, 2015), Dkt. 209 .....	75
Letter from Demme Doufekias to Judge John W. deGravelles Regarding Status of Pending Applications (Mar. 1, 2016), Dkt. 240.....	77
Letter from Demme Doufekias to Judge John W. deGravelles Regarding Status of Pending Applications (Apr. 1, 2016), Dkt. 245.....	78
Letter from Demme Doufekias to Judge John W. deGravelles Regarding Status of Pending Applications (May 2, 2016), Dkt. 246 .....	79
Letter from Demme Doufekias to Judge John W. deGravelles Regarding Status of Pending Applications (June 1, 2016), Dkt. 247.....	80
Letter from Demme Doufekias to Judge John W. deGravelles Regarding Status of Pending Applications (Aug. 1, 2016), Dkt. 249.....	81
Joint Stipulation and [Proposed] Order Regarding Causeway Med. Clinic (Sept. 15, 2016), Dkt. 255 .....	83

**TABLE OF CONTENTS**

	<b>Page</b>
Letter from David Brown to Judge John W. deGravelles Regarding Closure of Bossier City Med. Suite (Apr. 23, 2017), Dkt. 270.....	87
Decl. of Dr. John Doe 2, M.D. (Apr. 21, 2017), Dkt. 272 .....	88
<b>VOLUME II</b>	
Trial Tr. for June 22, 2015, Dkt. 190 .....	90
Testimony of Kathaleen Pittman .....	103
Testimony of Dr. John Doe 3 .....	196
Testimony of Dr. Christopher Estes.....	275
<b>VOLUME III</b>	
Trial Tr. for June 23, 2015, Dkt. 191 .....	359
Testimony of Dr. John Doe 2 .....	369
Testimony of Dr. Sheila Katz .....	465
Testimony of Sec’y Kathy Kliebert.....	551
<b>VOLUME IV</b>	
Excerpts of Trial Tr. for June 24, 2015, Dkt. 192.....	664
Testimony of Dr. John Doe 1 .....	669

**TABLE OF CONTENTS****Page****VOLUME V**

Trial Tr. for June 25, 2015, Dkt. 193 .....	798
Testimony of Dr. Robert Marier .....	801
Testimony of Dr. Tumulesh K.S. Solanky .....	922

**VOLUME VI**

Trial Tr. for June 29, 2015, Dkt. 195 .....	1020
Testimony of Dr. Eva Pressman.....	1030

**VOLUME VII**

Joint Ex. 54, Letter from Dr. John Doe 1 to Dr. Michael Harper, Univ. Health Shreveport, Dkt. 165-59.....	1117
Joint Ex. 109, Decl. of Sylvia Cochran in Supp. of Pls.' Mot. for Prelim. Inj. (Sept. 19, 2014), Dkt. 196-24 .....	1119
Joint Ex. 110, Decl. of John Doe 5, M.D. (Sept. 19, 2014), Dkt. 196-25 .....	1132
Joint Ex. 116, Decl. of Kathaleen Pittman in Supp. of Pls.' Appl. for TRO and Prelim. Inj. (Aug. 21, 2014), Dkt. 196-28.....	1140

## TABLE OF CONTENTS

	<b>Page</b>
Joint Ex. 117, Decl. of Robert Gross in Supp. of Pls.' Appl. for TRO and Mot. for Prelim. Inj. (Aug. 21, 2014), Dkt. 196-29.....	1252
Joint Ex. 135, Letter from Robert L. Marier, Exec. Dir., La. State Bd. of Med. Exam'rs, to Ms. Stephanie Toti, Staff Att'y, Domestic Legal Program, Ctr. for Reproductive Rights (July 11, 2008), Dkt. 196-32.....	1304
Joint Ex. 168, Decl. of John Doe 6, M.D. (Sept. 19, 2014), Dkt. 196-38.....	1307
Joint Ex. 186, Decl. of John Doe 1, M.D. in Supp. of Pls.' Appl. for TRO and Mot. for Prelim. Inj. (Aug. 21, 2014), Dkt. 196-39.....	1314
Joint Ex. 187, Decl. of John Doe 2, M.D. in Supp. of Pls.' Appl. for TRO and Mot. for Prelim. Inj. (Aug. 21, 2014), Dkt. 196-40.....	1317
Joint Ex. 188, Decl. of John Doe 3, M.D. in Supp. of Pls.' Appl. for TRO and Mot. for Prelim. Inj. (Aug. 21, 2014), Dkt. 202-11.....	1320

### VOLUME VIII (Sealed)

Excerpts of Tr. of Dep. of Dr. John Doe 5 (Jan. 30, 2015), Dkt. 168-06 .....	1324
---	------

## TABLE OF CONTENTS

	<b>Page</b>
Excerpts of Tr. of Dep. of Dr. Cecilia Mouton (Jan. 22, 2015), Dkt. 168-10.....	1350
Joint Stipulation Regarding Admitting Privileges of Dr. John Doe 5 (June 26, 2015), Dkt. 176.....	1397
Joint Ex. 71, Correspondence Between CHRISTUS Health Shreveport- Bossier and Dr. John Doe 1 (July 17, 2014), Dkt. 237-88.....	1404
Joint Ex. 75, Letter from Minden Med. Ctr. to Dr. John Doe 1 (Aug. 8, 2014), Dkt. 237-89.....	1434
Joint Ex. 89, Letter from WK Bossier Health Ctr. to Dr. John Doe 2 (Nov. 19, 2014), Dkt. 237-99.....	1435
Joint Ex. 128, Letter from Willis- Knighton to Dr. John Doe 1 (Mar. 11, 2015), Dkt. 237-109.....	1436
Joint Ex. 130, Abortion Care Training Plan and Checklist, Dr. John Doe 1, Dkt. 237-111.....	1437
Joint Ex. 144, Letter from Willis- Knighton to Dr. John Doe 2 (Aug. 11, 2014), Dkt. 237-116.....	1442
Joint Ex. 145, Email from Dr. John Doe 2 to Willis-Knighton (Aug. 16, 2014), Dkt. 237-117.....	1445

**TABLE OF CONTENTS**

	<b>Page</b>
Joint Ex. 169, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Mar. 14, 2014), Dkt. 237-140.....	1447
Joint Ex. 170, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (May 27, 2014), Dkt. 237-141.....	1448
Joint Ex. 171, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (May 28, 2014), Dkt. 237-142.....	1449
Joint Ex. 172, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (July 28, 2014), Dkt. 237-143.....	1451
Joint Ex. 173, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (July 28, 2014), Dkt. 237-144.....	1452

**TABLE OF CONTENTS**

	<b>Page</b>
Joint Ex. 174, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Aug. 5, 2014), Dkt. 237-145.....	1453
Joint Ex. 175, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Aug. 18, 2014), Dkt. 237-146.....	1454
Joint Ex. 176, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Aug. 26, 2014), Dkt. 237-147.....	1455
Joint Ex. 177, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Aug. 26, 2014), Dkt. 237-148.....	1456
Joint Ex. 178, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Nov. 19, 2014), Dkt. 237-149.....	1457

## TABLE OF CONTENTS

	<b>Page</b>
Joint Ex. 179, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Jan. 9, 2015), Dkt. 237-150.....	1458
Joint Ex. 180, Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Jan. 8, 2015), Dkt. 237-151.....	1459
Joint Ex. 181, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Feb. 23, 2015), Dkt. 237-152.....	1462
Joint Ex. 183, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (June 16, 2015), Dkt. 237-154.....	1463
Joint Ex. 184, Email Correspondence Regarding Dr. John Doe 2's Application to Tulane Med. Ctr. for Admitting Privileges (Mar. 5, 2015), Dkt. 237-155.....	1466
Joint Ex. 185, Letter from Univ. Health Shreveport to Dr. John Doe 2 (May 21, 2015), Dkt. 237-156 .....	1468

**TABLE OF CONTENTS**

	<b>Page</b>
Joint Ex. 189, Letter from Dr. John Doe 1 to Willis-Knighton (Mar. 24, 2015), Dkt. 237-157.....	1472
Joint Ex. 190, Email Correspondence Regarding Dr. John Doe 1's Application to CHRISTUS Health Shreveport-Bossier for Admitting Privileges (Jan. 8, 2015), Dkt. 237- 158 .....	1555

## TABLE OF CONTENTS

*The following opinions, decisions, judgments, orders, and record documents have been omitted from the joint appendix because they appear in the appendix to the petition in Case No. 18-1323 as follows:*

Appendix A: Opinion, United States Court of Appeals for the Fifth Circuit (Sept. 26, 2018) .....	1a
Appendix B: Opinion, United States Court of Appeals for the Fifth Circuit (Jan. 18, 2019).....	104a
Appendix C: Findings of Fact and Conclusions of Law, United States District Court for the Middle District of Louisiana (Apr. 26, 2017) .....	132a
Appendix D: Order, Supreme Court of the United States (Feb. 8, 2019).....	280a
Appendix E: U.S. Const. amend. XIV, § 1.....	285a
Appendix F: La. Rev. Stat. § 40:1061.10 (Act 620) (excerpted) .....	286a
Appendix G: La. Admin. Code., tit. 48, pt. I § 4423 (excerpted) .....	288a
Appendix H: La. Admin. Code., tit. 48, pt. I § 4401 (excerpted) .....	290a
Appendix I: La. Dep’t of Health, Notice to Licensed Outpatient Abortion Facilities.....	291a

**TABLE OF CONTENTS**

Appendix J: Emergency Mot. of Appellant  
for Stay Pending Appeal, United  
States Court of Appeals for the Fifth  
Circuit (Feb. 16, 2016) (excerpted) ..... 294a



1  
2  
3  
4  
5  
6  
7  
8  
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OFFICIAL COURT REPORTER: GINA DELATTE-RICHARD, CCR

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UNITED STATES DISTRICT COURT  
BATON ROUGE, LOUISIANA 70801  
(225) 389-3564

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21  
22  
23  
24  
25

I N D E X

***DEFENDANT'S WITNESSES:***

**ROBERT MARIER**

DIRECT EXAMINATION BY MIKE JOHNSON..... 4  
CROSS EXAMINATION BY ILENE JAROSLAW.....50  
REDIRECT EXAMINATION BY MIKE JOHNSON.....107

**TUMULESH K.S. SOLANKY**

DIRECT EXAMINATION BY KYLE DUNCAN.....125  
CROSS EXAMINATION BY ZOE LEVINE.....196  
REDIRECT EXAMINATION BY KYLE DUNCAN.....212  
RE-CROSS EXAMINATION BY ZOE LEVINE.....215

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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**JUNE MEDICAL V. KATHY KLIEBERT 14-CV-525-JWD 06-25-15**

**THE COURT:** GOOD MORNING. PLEASE BE SEATED.

ANY PRELIMINARY MATTERS WE NEED TO TAKE UP BEFORE WE  
TAKE OUR NEXT WITNESS?

**MR. DUNCAN:** I DON'T THINK SO, YOUR HONOR.

**THE COURT:** ALL RIGHT. THEN LET US PROCEED.

**MR. JOHNSON:** YOUR HONOR, DEFENDANTS CALL DR. ROBERT  
MARIER TO THE STAND.

**THE COURT:** ALL RIGHT.

DR. MARIER, IF YOU WOULD COME FORWARD AND BE SWORN.

(WHEREUPON, ROBERT MARIER, HAVING BEEN DULY SWORN,  
TESTIFIED AS FOLLOWS.)

**DIRECT**

**BY MR. JOHNSON:**

**Q** THANK YOU FOR BEING HERE, DR. MARIER. COULD YOU  
STATE YOUR FULL NAME FOR THE RECORD AND SPELL IT FOR THE COURT  
REPORTER?

**A** ROBERT L. MARIER, M-A-R-I-E-R.

**Q** AND WHAT IS YOUR PROFESSION?

**A** A MEDICAL DOCTOR.

**Q** AND HOW LONG HAVE YOU BEEN A MEDICAL DOCTOR?

**A** SINCE 1969.

**Q** AT WHAT UNIVERSITY DID YOU RECEIVE YOUR DEGREE?

1           A     YALE UNIVERSITY SCHOOL OF MEDICINE.

2           Q     AND COULD YOU TALK ABOUT YOUR POSTGRADUATE MEDICAL  
3 TRAINING?

4           A     I COMPLETED A RESIDENCY IN INTERNAL MEDICINE AT THE  
5 MASSACHUSETTS GENERAL HOSPITAL IN BOSTON, 1969 TO 1971. I WAS  
6 THEN IN THE PUBLIC HEALTH SERVICE FOR TWO YEARS AND THEN BEGAN  
7 A FELLOWSHIP IN INFECTIOUS DISEASE BACK AT YALE, WHICH I  
8 COMPLETED IN 1975.

9           Q     AND WHEN DID YOU MOVE TO LOUISIANA?

10          A     1978.

11          Q     CAN YOU TELL US ABOUT THE POSITIONS YOU'VE HELD AT  
12 THE LSU SCHOOL OF MEDICINE?

13          A     OVER THE YEARS, I'VE HELD A NUMBER OF POSITIONS.  
14 PROFESSOR OF MEDICINE, DEAN OF THE SCHOOL OF MEDICINE, DEAN OF  
15 THE SCHOOL OF PUBLIC HEALTH, MEDICAL DIRECTOR OF THE PUBLIC  
16 HOSPITAL IN NEW ORLEANS, AND DIRECTOR OF THE STATE PUBLIC  
17 HOSPITAL SYSTEM AT VARIOUS POINTS IN TIME.

18          Q     AND CAN YOU TELL US ABOUT YOUR SERVICE ON THE  
19 LOUISIANA STATE BOARD OF MEDICAL EXAMINERS?

20          A     IN 2006, I WAS APPOINTED TO BE THE EXECUTIVE  
21 DIRECTOR OF THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, A  
22 POSITION THAT I HELD UNTIL 2012.

23          Q     AND WHAT IS THE ROLE OF THE STATE BOARD OF MEDICAL  
24 EXAMINERS?

25          A     THE BOARD IS A STATE AGENCY WHOSE PRIMARY PURPOSE IS

1 TO ENSURE THAT THE HEALTH PROFESSIONS -- THAT THE HEALTH  
2 PROFESSIONALS UNDER ITS JURISDICTION ARE QUALIFIED, COMPETENT,  
3 TO PROVIDE FOR THE LICENSURE AND TO ENFORCE RULES THAT ARE  
4 DESIGNED TO PROTECT THE PUBLIC SAFETY.

5 Q AND AS THE EXECUTIVE DIRECTOR OF THE STATE BOARD,  
6 WHAT WAS -- WHAT WAS INVOLVED IN YOUR ROLE? WHAT WERE YOUR  
7 DUTIES?

8 A WELL, I OVERSAW THE STAFF, THE VARIOUS DIVISIONS,  
9 LICENSING, INVESTIGATIONS, COMMUNICATIONS. I ASSISTED WITH  
10 THE DRAFTING OF RULES AND WITH THE BOARDS' INTERACTIONS WITH  
11 THE LEGISLATURE AROUND RELATED MATTERS. THE DAY-TO-DAY  
12 OPERATIONS OF THE BOARD. I HIRED STAFF, DEVELOPED THE  
13 RESOURCES THAT WERE NEEDED FOR THE BOARD TO CONDUCT ITS  
14 BUSINESS.

15 Q AND WHAT POSITION DO YOU HOLD AT PRESENT?

16 A I'M CHAIRMAN OF THE DEPARTMENT OF HOSPITAL MEDICINE  
17 AT OCHSNER MEDICAL CENTER IN NEW ORLEANS.

18 Q AND WHAT ARE YOUR GENERAL DUTIES THERE AT OCHSNER IN  
19 THAT POSITION?

20 A WELL, AS A PHYSICIAN, A SENIOR PHYSICIAN ON THE  
21 MEDICAL STAFF OF THE HOSPITAL, MY RESPONSIBILITIES ARE TO CARE  
22 FOR THE PATIENTS THAT ARE ASSIGNED TO ME. AS CHAIRMAN OF THE  
23 DEPARTMENT, I'M RESPONSIBLE FOR RECRUITMENT AND SUPPORT OF THE  
24 OTHER PHYSICIANS IN THE GROUP AND STAFF. I SERVE AS A MEMBER  
25 OF THE EXECUTIVE COMMITTEE ON THE MEDICAL STAFF AND VARIOUS

1 OTHER COMMITTEES.

2 Q AND WHAT ARE YOUR DUTIES AT OCHSNER RELATED TO THE  
3 SUBJECT OF HOSPITAL CREDENTIALING AND PRIVILEGING?

4 A WELL, THE EXECUTIVE COMMITTEE OF THE MEDICAL STAFF  
5 OVERSEES THE APPOINTMENTS AND CREDENTIALING OF ALL OF THE  
6 MEDICAL STAFF.

7 Q AND ARE YOU A MEMBER OF ANY PROFESSIONAL SOCIETIES?

8 A I'M A MEMBER OF AN HONORARY MEDICAL SOCIETY, ALFA  
9 OMEGA ALFA. AND AT THE PRESENT, THAT'S THE ONLY ASSOCIATION  
10 THAT I BELONG TO.

11 Q ARE YOU BOARD CERTIFIED IN ANY FIELDS?

12 A IN INTERNAL MEDICINE, IN INFECTIOUS DISEASE, AND IN  
13 MEDICAL MANAGEMENT.

14 Q DO YOU HOLD ANY DEGREES IN HEALTH SYSTEMS  
15 ADMINISTRATION? IS THAT THE SAME THING AS YOUR CERTIFICATION?

16 A NO. I HOLD A MASTER'S DEGREE IN HEALTH SYSTEMS  
17 ADMINISTRATION FROM TULANE UNIVERSITY.

18 Q AND HAVE YOU PUBLISHED ANY ARTICLES IN PEER-REVIEWED  
19 MEDICAL JOURNALS?

20 A YES.

21 Q CAN YOU ESTIMATE HOW MANY?

22 A ABOUT 150.

23 Q COULD YOU SUMMARIZE THE GENERAL AREAS IN WHICH  
24 YOU'VE PUBLISHED IN PEER-REVIEWED MEDICAL JOURNALS?

25 A ALMOST ALL HAVE TO DO WITH MEDICAL TOPICS,

1 INFECTIOUS DISEASE MOSTLY, OR WITH MEDICAL EDUCATION. AND  
2 RECENTLY A FEW HAVING TO DO WITH REGULATION OF MEDICAL  
3 PRACTICE.

4 Q AND YOU'VE BEEN RETAINED BY THE DEFENSE TO PROVIDE  
5 AN EXPERT OPINION IN THIS LITIGATION; IS THAT RIGHT?

6 A YES.

7 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT IN LITIGATION  
8 IN THE PAST?

9 A YES.

10 Q AND IN WHAT FIELDS HAVE YOU BEEN QUALIFIED AS AN  
11 EXPERT?

12 A PRIMARILY IN INFECTIOUS DISEASE.

13 Q IN THIS LITIGATION, ON WHAT SUBJECT OR SUBJECTS HAVE  
14 YOU BEEN ASKED TO PROVIDE YOUR EXPERT OPINION?

15 A ON REGULATION OF HEALTH PROFESSIONS, PHYSICIANS IN  
16 PARTICULAR, AND ON THE STRUCTURE OF HOSPITAL MEDICAL STAFF  
17 ORGANIZATIONS, THEIR BYLAWS, THEIR CREDENTIALING PROCESS,  
18 APPOINTMENTS PROCESS, THAT SORT OF THING.

19 Q AND ARE YOU BEING COMPENSATED FOR YOUR TESTIMONY?

20 A NO.

21 Q IN PREPARING YOUR OPINION FOR THIS LITIGATION, WHAT  
22 LITIGATION DOCUMENTS DID YOU REVIEW?

23 A I REVIEWED THE TWO REPORTS THAT I SUBMITTED AND  
24 SEVERAL OF THE ARTICLES WHICH WERE EXHIBITS IN THE DEPOSITIONS  
25 THAT I PARTICIPATED IN.

1 Q AND WHAT STATUTES DID YOU REVIEW?

2 A WELL, I REVIEWED THE ACT, ACT 620, THAT'S THE  
3 SUBJECT OF THIS MATTER.

4 Q YES, SIR. IN PREPARING YOUR OPINION FOR THIS  
5 LITIGATION, DID YOU ALSO LOOK AT ANY REGULATIONS?

6 A YES. I LOOKED AT THREE REGULATIONS. THE OUTPATIENT  
7 SURGICAL REGULATIONS, TITLE 46, AND THEN THE AMBULATORY  
8 SURGICAL CENTER REGULATIONS AND THE OUTPATIENT ABORTION  
9 FACILITY REGULATIONS IN TITLE 48.

10 Q AND IN PREPARING YOUR OPINION FOR THIS LITIGATION,  
11 WHAT ASPECTS OF YOUR PROFESSIONAL EXPERIENCE HAVE YOU DRAWN  
12 UPON?

13 A WELL, ALL OF MY MEDICAL EXPERIENCE GOING BACK OVER  
14 MANY YEARS. AS I MENTIONED, I SERVED AS A MEDICAL DIRECTOR AT  
15 THE PUBLIC HOSPITALS IN NEW ORLEANS. IN THAT CAPACITY, I  
16 SERVED ON THE EXECUTIVE COMMITTEES AND OVERSAW THE  
17 APPOINTMENTS AND CREDENTIALING PROCESS AND OVERSAW THE CARE  
18 PROVIDED TO PATIENTS, WHATEVER IT MIGHT BE, OVER ALL OF THOSE  
19 YEARS. AND THEN, OF COURSE, WITH THE BOARD OF MEDICAL  
20 EXAMINERS, MORE SPECIFICALLY REGULATIONS EFFECTING THE  
21 PRACTICE OF MEDICINE, DISCIPLINARY MATTERS, AND THE WHOLE  
22 PROCESS OF RULE MAKING AND LAWMAKING.

23 Q THANK YOU.

24 MR. JOHNSON: YOUR HONOR, AT THIS TIME, THE  
25 DEFENDANT MOVES TO CERTIFY DR. MARIER AS AN EXPERT IN THREE

1 AREAS: INTERNAL MEDICINE, THE REGULATION OF PHYSICIANS AND  
2 OTHER HEALTH CARE PROFESSIONALS IN LOUISIANA, AND HOSPITAL  
3 ADMINISTRATION, PARTICULARLY THE CREDENTIALING AND PRIVILEGING  
4 OF PHYSICIANS BY HOSPITALS.

5 THE COURT: IS THERE ANY OBJECTION?

6 MS. JAROSLAW: FOR THE MOST PART, NO, YOUR HONOR. I  
7 BELIEVE MR. JOHNSON SAID THE REGULATION OF PHYSICIANS AND  
8 OTHERS. FOR THE REGULATION OF PHYSICIANS, I HAVE ABSOLUTELY  
9 NO OBJECTION. I DON'T KNOW WHO THE "OTHERS" ARE. SO WITH  
10 THAT CAVEAT, I HAVE NO OBJECTION.

11 THE COURT: ALL RIGHT. YOU WANT TO EXPLAIN,  
12 MR. JOHNSON, WHAT --

13 MR. JOHNSON: WELL, HE'S TESTIFIED FOR THE COURT  
14 THIS MORNING THAT HE'S BEEN INTIMATELY INVOLVED IN THE  
15 MANAGEMENT OF HEALTHCARE SYSTEMS IN HOSPITALS AND HE'S BOARD  
16 CERTIFIED IN MEDICAL MANAGEMENT, SO WE WOULD SUGGEST THAT'S  
17 CLEARLY WITHIN HIS SCOPE.

18 THE COURT: SORRY. GO AHEAD.

19 MS. JAROSLAW: I HAVE NO OBJECTION TO THAT, YOUR  
20 HONOR.

21 THE COURT: OH, OKAY. WELL, THEN THERE'S NO  
22 OBJECTION TO THE OFFER OF EXPERTISE AS TENDERED, AND HE WILL  
23 BE ACCEPTED AS TENDERED.

24 MR. JOHNSON: THANK YOU.

25 BY MR. JOHNSON:

1 Q SO, DOCTOR, A SERIES OF QUESTIONS FOR YOU THIS  
2 MORNING BEGINNING WITH THE GENERAL BACKGROUND ON HOSPITAL  
3 CREDENTIALING AND PRIVILEGING. I'D LIKE TO START WITH SOME  
4 GENERAL QUESTIONS ABOUT THAT SUBJECT AND ASK YOU TO EXPLAIN  
5 THE TERM "HOSPITAL CREDENTIALING." WHAT IS MEANT BY THAT  
6 TERM?

7 A WELL, CREDENTIALING IS A PROCESS THAT HOSPITALS  
8 EMPLOY OR OTHER HEALTH PROVIDER ORGANIZATIONS EMPLOY. IT  
9 ESTABLISHES THE QUALIFICATIONS THAT AN INDIVIDUAL MIGHT HAVE  
10 TO PERFORM A PARTICULAR TASK BASED ON THEIR TRAINING, THEIR  
11 FORMAL TRAINING, AND THEIR EXPERIENCE.

12 Q AND IS CREDENTIALING RELATED TO MEDICAL STAFF  
13 MEMBERSHIP AT A HOSPITAL?

14 A WELL, IT'S RELATED, BUT IT'S NOT THE SAME THING.  
15 PHYSICIANS AND OTHER HEALTH PROVIDERS MAY BE APPOINTED TO THE  
16 MEDICAL STAFF BASED ON SOME LEVEL OF CREDENTIALING. BUT THEN  
17 IN ORDER TO DO SPECIFIC TASKS, THERE'S A FURTHER CREDENTIALING  
18 PROCESS THAT'S UNDERTAKEN BY THE HOSPITAL AND PRIVILEGES ARE  
19 GRANTED TO DO ONE TYPE OF THING OR ANOTHER BASED, AGAIN, ON  
20 THE INDIVIDUAL'S TRAINING AND EXPERIENCE.

21 Q SO THERE'S A LOT OF TERMINOLOGY IN THIS AREA, AND  
22 WE'D LIKE YOU TO EXPLAIN FOR THE COURT JUST IN GENERAL TERMS  
23 DIFFERENT CATEGORIES OF MEDICAL STAFFS IN HOSPITALS IN  
24 LOUISIANA. AND I WOULD START WITH THE TERM "ACTIVE MEDICAL  
25 STAFF." COULD YOU EXPLAIN FOR US WHAT THAT IS?

1           A     WELL, THESE TERMS ARE DEFINED IN HOSPITAL'S BYLAWS  
2     AND, FOR THIS PURPOSE, IN ACT 620 IT'S DEFINED. BUT AS FAR AS  
3     THE HOSPITALS ARE CONCERNED, THE CATEGORIES OF MEDICAL STAFF  
4     MEMBERSHIP ARE DEFINED IN THE BYLAWS AND THEY VARY FROM ONE  
5     HOSPITAL TO ANOTHER. AND SO YOU WOULD HAVE TO LOOK TO THE  
6     BYLAWS OF A PARTICULAR HOSPITAL TO UNDERSTAND WHAT A  
7     PARTICULAR CATEGORY MEANT IN THAT CONTEXT.

8           Q     IN YOUR EXPERIENCE -- LET'S JUST TALK ABOUT OCHSNER,  
9     FOR EXAMPLE, BECAUSE I WOULD ASSUME YOU ARE FAMILIAR WITH THE  
10    WAY THEY DEFINE THESE TERMS; IS THAT RIGHT?

11          A     YES.

12          Q     AT OCHSNER, WHEN WE REFER TO "ACTIVE MEDICAL STAFF,"  
13    WHAT WOULD THAT MEAN IN THAT CONTEXT AT THAT HOSPITAL?

14          A     WELL, IT WOULD -- THERE ARE VARIOUS CATEGORIES OF  
15    MEMBERSHIP OF THE MEDICAL STAFF AT OCHSNER MEDICAL CENTER.  
16    FROM ACADEMIC ACTIVE TO COMMUNITY ACTIVE TO ADVANCED PRACTICE  
17    CLINICIANS TO ADMINISTRATIVE TO CONSULTING MEMBERSHIP TO OTHER  
18    TYPES -- HONORARY MEMBERSHIP. ALL OF THESE ARE DIFFERENT  
19    CATEGORIES OF THE MEDICAL STAFF AT OCHSNER MEDICAL CENTER, FOR  
20    EXAMPLE, AND EACH IS DEFINED IN ITS BYLAWS.

21          Q     SO SOME OF THE COMMON TERMS THAT WE'VE HEARD IN THIS  
22    LITIGATION ARE ACTIVE MEDICAL STAFF, COURTESY MEDICAL STAFF,  
23    AND CONSULTING MEDICAL STAFF.

24                   IS IT YOUR TESTIMONY THAT THE SPECIFIC DEFINITION OF  
25    THOSE TERMS MIGHT VARY WITH REGARD TO WHATEVER HOSPITAL IS

1 DEFINING THE TERM; IS THAT RIGHT?

2 A YES. NOT ONLY BY DEFINITION, BUT THE PRIVILEGES  
3 ASSOCIATED WITH MEMBERSHIP IN THOSE CATEGORIES.

4 Q AND IS THERE A WAY TO GENERALLY DEFINE WHAT  
5 PRIVILEGES MEAN? WHEN WE TALK ABOUT ADMITTING PRIVILEGES,  
6 WHAT DOES THAT ENTAIL?

7 A WELL, THAT MEANS THAT A PHYSICIAN -- WHATEVER  
8 CATEGORY OF MEDICAL STAFF THEY MIGHT BELONG TO IS PERMITTED TO  
9 ADMIT THE PATIENT TO THE HOSPITAL, THAT IS, TO WRITE AN ORDER  
10 "ADMIT PATIENT TO THE HOSPITAL," AND TO WRITE OTHER ORDERS  
11 THAT MAY BE REQUIRED TO CARE FOR THE PATIENT.

12 Q SO TO BE CLEAR, THERE'S A DISTINCTION BETWEEN WHAT  
13 KIND OF MEDICAL STAFF MEMBERSHIP A DOCTOR HAS AT A HOSPITAL  
14 AND WHAT KIND OF PRIVILEGES A DOCTOR HAS AT A HOSPITAL?

15 A YES, THOSE ARE DIFFERENT THINGS. BUT PEOPLE  
16 BELONGING -- PHYSICIANS BELONGING TO DIFFERENT CATEGORIES OF  
17 MEMBERSHIP WOULD HAVE DIFFERENT PRIVILEGES. BY WAY OF  
18 EXAMPLE, TYPICALLY COURTESY PRIVILEGES ARE GRANTED TO A  
19 PHYSICIAN WHO WOULD BE SEEING A LIMITED NUMBER OF PATIENTS IN  
20 THE HOSPITAL. LET'S SAY LESS THAN 12 ADMISSIONS PER YEAR.

21 THE PHYSICIAN WOULD BE ABLE TO PROVIDE ALL OF THE  
22 SERVICES THAT WOULD BE REQUIRED TO CARE FOR THE PATIENT  
23 SUBJECT TO THEIR PRIVILEGING, OF COURSE. BUT THEY'D BE  
24 LIMITED WITH RESPECT TO THE NUMBERS OF PATIENTS THAT THEY  
25 COULD ADMIT. WHEREAS SOMEONE IN ANOTHER CATEGORY OF MEDICAL

1 STAFF MEMBERSHIP WOULD NOT BE LIMITED WITH RESPECT TO THE  
2 NUMBER OF PATIENTS THAT THEY COULD BE -- THAT THEY COULD  
3 ADMIT.

4 AND THE REASON FOR THAT IS, IS THAT IF A PHYSICIAN  
5 IS NOT ADMITTING A LOT OF PATIENTS TO THE HOSPITAL, THEY  
6 SHOULDN'T BE ABLE TO SIT ON THE GOVERNING BODIES OF THE  
7 HOSPITAL BECAUSE THEY'RE NOT ENGAGED IN THE HOSPITAL'S  
8 ACTIVITIES TO AN EXTENT THAT WOULD BE APPROPRIATE FOR THEM  
9 THEN TO BE A PART OF THE GOVERNING STRUCTURE OF THE HOSPITAL.  
10 SO A MEMBERSHIP -- OFTEN THESE CATEGORIES ARE TIED TO THE  
11 ABILITY OF A PHYSICIAN TO PARTICIPATE IN COMMITTEES, TO SERVE  
12 ON VARIOUS GOVERNING STRUCTURES, TO PAY DUES AND...

13 SO THAT'S THE BASIC DIFFERENCE BETWEEN COURTESY AND  
14 ACTIVE MEDICAL STAFF MEMBERSHIP. IT'S PRIMARILY THE  
15 INTERACTION WITH THE MEDICAL STAFF ORGANIZATION.

16 THEN YOU HAVE CONSULTING. MANY HOSPITALS WILL HAVE  
17 A CATEGORY OF CONSULTING PHYSICIAN. AND CONSULTANTS ARE NOT  
18 AUTHORIZED TO ADMIT A PATIENT TO THE HOSPITAL, THEY CAN'T  
19 WRITE AN ADMIT ORDER, BUT THEY CAN CARE FOR THE PATIENTS WHO  
20 ARE THERE UPON THE REQUEST OF A PHYSICIAN WHO HAS ADMITTED THE  
21 PATIENT TO THE HOSPITAL.

22 Q SO A CONSULTING MEDICAL STAFF MEMBER MAY NOT ADMIT  
23 PATIENTS IN GENERAL TERMS?

24 A IN GENERAL TERMS.

25 Q BUT IN GENERAL TERMS, IF ONE IS A MEMBER OF ACTIVE

1 MEDICAL STAFF OR COURTESY MEDICAL STAFF, THEN THEY SHOULD BE  
2 ABLE TO ADMIT PATIENTS. IS THAT GENERALLY UNDERSTOOD?

3 A THAT'S GENERALLY CORRECT.

4 Q NOW, WE'VE BEEN TALKING IN THESE GENERAL TERMS AND  
5 THAT'S BECAUSE WE REALLY DON'T KNOW FOR SURE WHETHER A  
6 PARTICULAR STAFF MEMBERSHIP CATEGORY CAN ADMIT OR PROVIDE CARE  
7 TO PATIENTS AT A HOSPITAL, WE HAD TO LOOK AT EACH SPECIFIC  
8 HOSPITAL'S --

9 MS. JAROSLAW: OBJECTION. MR. JOHNSON IS  
10 TESTIFYING.

11 MR. JOHNSON: I'LL REASK THE QUESTION.

12 BY MR. JOHNSON:

13 Q WE'VE SPOKEN IN GENERAL TERMS AND I BELIEVE YOU  
14 TESTIFIED THAT IT'S NECESSARY TO LOOK AT A PARTICULAR  
15 HOSPITAL'S BYLAWS TO GET CLARITY ON EACH OF THESE ISSUES; IS  
16 THAT RIGHT?

17 A THAT'S CORRECT.

18 Q SO I WOULD ASK YOU, DOCTOR, TO LOOK WITH ME AT A  
19 COUPLE OF EXAMPLES, IF YOU WILL. THE FIRST IS JOINT  
20 EXHIBIT 138. AND THESE ARE THE BYLAWS OF TOURO HOSPITAL. AND  
21 THIS IS NOT A CONFIDENTIAL --

22 MR. JOHNSON: IS IT A CONFIDENTIAL DOCUMENT? I'M  
23 NOT SURE. IT IS? THE BYLAWS ARE CONFIDENTIAL? OKAY.

24 BY MR. JOHNSON:

25 Q WELL, IT WON'T BE UP ON THE BIG SCREEN IN THE

1 COURTROOM, DOCTOR, BUT IT WILL BE ON THE SCREEN IN FRONT OF  
2 YOU. AND I'M GOING TO PULL OUT THE EXHIBIT MYSELF AND ASK YOU  
3 TO LOOK AT A SPECIFIC PART OF THAT. I'M GOING TO ASK YOU TO  
4 LOOK AT PAGE 38 IF WE CAN GET TO THAT PART.

5 THE COURT: IS THAT THE BATES NUMBER, MR. JOHNSON,  
6 OR IS THAT THE --

7 MR. JOHNSON: THAT WOULD BE THE ORIGINAL -- ORIGINAL  
8 PAGE NUMBER ON THE DOCUMENT. LET ME PULL IT UP, AND I CAN  
9 TELL YOU THE BATES NUMBER.

10 THE COURT: OKAY. SO AT THE BOTTOM, IT SAYS PAGE  
11 2878.

12 MS. JAROSLAW: YOUR HONOR, I OBJECT TO THIS LINE OF  
13 QUESTIONING.

14 THE COURT: WHAT'S THE BASIS FOR THE OBJECTION?

15 MS. JAROSLAW: THERE'S NOTHING IN DR. MARIER'S  
16 EXPERT REPORT ABOUT TOURO PRIVILEGES. I DON'T BELIEVE WE WERE  
17 INFORMED THAT HE REVIEWED THEM.

18 MR. JOHNSON: WELL, COULD I ASK THE WITNESS?

19 MS. JAROSLAW: IT'S OUTSIDE THE SCOPE OF THE  
20 OPINIONS THAT WERE DESCRIBED TO US PURSUANT TO FEDERAL RULE OF  
21 CIVIL PROCEDURE 26. AND PURSUANT TO RULE 37(C)(1), "A  
22 WITNESS" -- "AN EXPERT WITNESS MAY NOT PROVIDE EXPERT OPINIONS  
23 THAT WERE NOT CONTAINED IN THE REPORT PROVIDED PURSUANT TO  
24 RULE 26."

25 THE COURT: WHY DON'T YOU JUST TELL ME WHAT YOUR

1 RESPONSE TO THAT IS. IF YOU NEED TO FURTHER VOIR DIRE THE  
2 WITNESS ON THIS QUESTION, I'LL LET YOU DO IT, BUT I'M TRYING  
3 TO FIND OUT WHAT -- HOW DO YOU RESPOND TO THE OBJECTION?

4 MR. JOHNSON: WELL, THE WAY WE RESPOND IS, YOUR  
5 HONOR, HE'S JUST BEEN ACCEPTED AND CERTIFIED AS AN EXPERT IN  
6 HOSPITAL ADMINISTRATION AND PARTICULARLY THE CREDENTIALING AND  
7 PRIVILEGING OF PHYSICIANS. WE WILL PRESENT TO HIM A DOCUMENT  
8 THAT HE HAS NOT REVIEWED PRIOR TO NOW. HE'S NEVER SEEN THIS  
9 DOCUMENT, SO THIS WOULD BE FOR PURPOSES OF OPEN COURT.

10 IT WAS NOT A PART OF HIS EXPERT REPORT. BUT WE  
11 WOULD LIKE TO, AS OUR EXPERT HERE IN COURT BEFORE YOUR HONOR,  
12 WE'D LIKE FOR HIM TO LOOK AT SOME OF THESE EXAMPLES AND  
13 EXPLAIN IN MORE DETAILS WHAT HE JUST SAID IN GENERAL TERMS  
14 BECAUSE IT'S NECESSARY TO THE ISSUES BEFORE THE COURT.

15 THE COURT: WELL, THE PROBLEM WITH THAT IS, IS THAT  
16 THAT TOTALLY CIRCUMVENTS THE REASON FOR EXPERT REPORTS. IF  
17 YOU DON'T HAVE THE OPINION IN THE REPORT, THEN YOU'RE OPPONENT  
18 CANNOT PREPARE FOR IT. AND THE FACT THAT THIS IS BEING SEEN  
19 FOR THE FIRST TIME BY THE DOCTOR IN COURT DOESN'T REALLY  
20 ADDRESS THE ISSUE HERE, WHICH IS THERE'S NO PROPER NOTICE.

21 AND SO UNLESS YOU CAN COME UP WITH SOMETHING BETTER  
22 THAN THAT, I'M GOING TO SUSTAIN THE OBJECTION.

23 MR. JOHNSON: WELL, COULD I HAVE A MOMENT TO CONFER  
24 WITH COUNSEL?

25 THE COURT: YOU MAY HAVE A MOMENT.

1           **MR. JOHNSON:** SO, YOUR HONOR, THE EXHIBITS THAT WE  
2 WOULD HAVE THE EXPERT REVIEW ARE JOINT EXHIBITS. THEY'VE BEEN  
3 AGREED UPON BY ALL COUNSEL, THEY'RE FULLY AWARE OF THE  
4 CONTENTS OF THEM. WE'VE BEEN TALKING ABOUT THE INTERPRETATION  
5 OF HOSPITAL BYLAWS FOR THE LAST FEW DAYS, AND HERE WE HAVE AN  
6 EXPERT WHO'S BEEN CERTIFIED IN THAT SPECIFIC AREA. WE THOUGHT  
7 IT MIGHT BE OF BENEFIT TO THE COURT AND ALL PARTIES TO ASK  
8 SOMEONE WHO HAS THAT BACKGROUND AND CERTIFICATION AND, OF  
9 COURSE, COUNSEL WILL HAVE THE OPINION -- THE OPPORTUNITY TO  
10 CROSS EXAMINE HIM ON EXACTLY THE FEW QUESTIONS THAT I'LL ASK.

11           **THE COURT:** MS. JAROSLAW?

12           **MS. JAROSLAW:** YOUR HONOR, THIS COMPLETELY  
13 CIRCUMVENTS THE CIVIL RULES. I HAVE SEVERAL CASES --

14           **THE COURT:** YOU DON'T NEED TO. HERE'S THE THING --  
15 THE COURT -- I WAS A TRIAL LAWYER FOR 40 YEARS. I KNOW THE  
16 PURPOSE OF THIS RULE, AND IT IS TO -- THERE'S NO QUESTION THAT  
17 THIS WITNESS IS IMMINENTLY QUALIFIED TO GIVE THE TESTIMONY  
18 ABOUT WHICH YOU ARE GOING TO ASK HIM. THAT'S NOT THE ISSUE.

19           THE ISSUE -- AND SHE CERTAINLY HAS A RIGHT TO CROSS  
20 EXAMINE. THAT'S NOT THE ISSUE. THE ISSUE IS SHE DOESN'T HAVE  
21 THE OPPORTUNITY TO PREPARE FOR A CROSS EXAMINATION. THAT'S  
22 THE REASON THE RULE REQUIRES THE OPINIONS TO BE IN THE REPORT,  
23 SO I'M GOING TO SUSTAIN THE OBJECTION.

24           **MR. JOHNSON:** THANK YOU, YOUR HONOR. UNDERSTOOD.

25 **BY MR. JOHNSON:**

1           **Q**     DOCTOR, I WAS GOING TO HAVE YOU LOOK AT A FEW  
2     EXAMPLES OF THOSE BYLAWS, BUT WE WON'T DO THAT THIS MORNING.  
3     INSTEAD LET ME TALK WITH YOU OR ASK YOU ABOUT GENERAL PURPOSES  
4     SERVED BY HOSPITAL CREDENTIALING AND PRIVILEGING.

5           **MR. JOHNSON:** YOUR HONOR, I WOULD LIKE TO OFFER INTO  
6     EVIDENCE THE TWO EXPERT REPORTS THAT DR. MARIER HAS PREPARED  
7     FOR THIS LITIGATION.

8           **THE COURT:** I THINK THEY'RE ALREADY IN. AREN'T THEY  
9     JOINT EXHIBITS?

10          **MR. JOHNSON:** WELL, THEY'RE NOT -- I DON'T BELIEVE.  
11     I THINK THESE ARE DEFENDANT'S EXHIBITS 146 AND 150.

12          **THE COURT:** ALL RIGHT.

13          ANY OBJECTIONS?

14          **MS. JAROSLAW:** THEY'RE NOT IN, BUT WE WON'T OBJECT,  
15     YOUR HONOR.

16          **THE COURT:** OKAY.

17          WELL, THEN LET THEM BE RECEIVED INTO EVIDENCE.

18          **MR. JOHNSON:** THANK YOU.

19     **BY MR. JOHNSON:**

20          **Q**     AND, DOCTOR, WE MAY OR MAY NOT NEED TO REFER TO  
21     THOSE REPORTS. I ASSUME YOU CAN DO MUCH OF THIS BY MEMORY.  
22     BUT YOU TALK ABOUT FOUR GENERAL PURPOSES IN YOUR REPORT THAT  
23     ARE SERVED BY HOSPITAL CREDENTIALING AND PRIVILEGING. AND I  
24     WONDER IF YOU COULD FIRST JUST LIST FOR US THOSE PURPOSES AND  
25     THEN MAYBE LET ME ASK YOU A FEW QUESTIONS ABOUT EACH ONE.

1 DO YOU RECALL WHAT THE FOUR PURPOSES WERE THAT YOU  
2 DISCUSSED?

3 A YES. THE FIRST IS TO ASSURE THE QUALIFICATIONS OF  
4 THE PHYSICIAN TO PROVIDE THE SERVICES IN QUESTION BASED ON  
5 TRAINING AND EXPERIENCE. THE SECOND IS TO ENABLE CONTINUITY  
6 OF CARE WHEN PATIENTS ARE ADMITTED TO THE HOSPITAL. THE THIRD  
7 IS TO FACILITATE COMMUNICATION AMONG THE PROVIDERS. AND THE  
8 FOURTH IS TO SUPPORT THE ETHICAL RESPONSIBILITY OF A PHYSICIAN  
9 TO CARE FOR HIS PATIENT, NOT TO ABANDON A PATIENT WHO MAY HAVE  
10 URGENT MEDICAL NEEDS.

11 Q THANK YOU, DOCTOR. NOW, I WANTED TO UNPACK EACH OF  
12 THOSE JUST IN A LITTLE MORE DETAIL. LET ME START WITH THE  
13 FIRST ONE. COULD YOU EXPLAIN IN A LITTLE MORE DETAIL HOW  
14 CREDENTIALING AND PRIVILEGING PROVIDES AN EVALUATION MECHANISM  
15 FOR PHYSICIAN COMPETENCY?

16 A WELL, CREDENTIALING OR PRIVILEGING, AND THE TERMS  
17 ARE SOMETIMES USED INTERCHANGEABLY, I THINK OF IT AS  
18 CREDENTIALING IS THE PROCESS THAT'S USED FOR GRANTING  
19 PRIVILEGES. BUT I THINK IT'S UNDERSTOOD WHAT THE PROCESS IS  
20 AND WHAT THESE TERMS MEAN, AND THAT IS THE REVIEW OF A  
21 PHYSICIAN'S TRAINING AND EXPERIENCE, INCLUDING SUBSPECIALTY  
22 TRAINING AND INCLUDING THEIR PRACTICE OVER THE YEARS FROM THE  
23 POINT WHEN THEY COMPLETED THEIR TRAINING.

24 AND THEN BASED ON THAT TRAINING AND EXPERIENCE A  
25 REVIEW OF ANY DISCIPLINARY MATTERS THAT MIGHT HAVE OCCURRED IN

1 THE PAST, MALPRACTICE, OTHER THINGS THAT ALL GO DIRECTLY TO  
2 THE COMPETENCY OF A PHYSICIAN ARE ALL CONSIDERED BY A  
3 COMMITTEE THAT IS RESPONSIBLE FOR GRANTING PRIVILEGES. AND SO  
4 THAT'S THE PURPOSE, IS TO THOROUGHLY VET THE QUALIFICATIONS OF  
5 AN INDIVIDUAL TO PROVIDE THE SERVICES, TO ENSURE THAT THE  
6 PHYSICIANS ARE COMPETENT TO PROVIDE THE SERVICES THAT ARE IN  
7 QUESTION.

8 Q NOW, IS THAT THE ONLY WAY TO ENSURE PHYSICIAN  
9 COMPETENCY OR IS IT ONE OF MANY?

10 A WELL, IT IS THE PRIMARY WAY OF DETERMINING  
11 COMPETENCY. IT'S A PROCESS USED BY HOSPITALS AND BY OTHER  
12 LARGE PROVIDER ORGANIZATIONS, INSURANCE COMPANIES, FOR  
13 INSTANCE. BUT IT IS A PROCESS THAT'S USED THAT -- FOR THE  
14 SAME PURPOSE BY ANY ORGANIZATION THAT IS CONSIDERING A  
15 PHYSICIAN FOR -- TO JOIN THE MEDICAL STAFF, TO PROVIDE A  
16 PARTICULAR SERVICE EITHER AT A HOSPITAL OR TO BE AUTHORIZED  
17 UNDER THE TERMS OF AN INSURANCE PLAN TO PROVIDE A PARTICULAR  
18 SERVICE.

19 Q THANK YOU, DOCTOR. AND THE SECOND -- THE SECOND  
20 REASON THAT YOU CITED, OR THE SECOND GENERAL PURPOSE IS WITH  
21 REGARD TO CONTINUITY OF CARE, AS YOU'VE PHRASED IT. SO COULD  
22 YOU EXPLAIN HOW CREDENTIALING AND PRIVILEGING HELPS TO ENSURE  
23 CONTINUITY OF CARE? FIRST OF ALL, WHAT DO WE MEAN BY  
24 CONTINUITY OF CARE?

25 A WELL, CONTINUITY OF CARE REFERS TO A SEQUENCE OF

1 DECISION-MAKING AND INTERVENTIONS THAT A PHYSICIAN MIGHT TAKE  
2 IN THE CARE OF A PATIENT. FROM AN ASSESSMENT OF A PROBLEM TO  
3 THE ADMINISTRATION OF SOME MEDICATIONS TO A SURGICAL  
4 INTERVENTION. IT'S THE SPECTRUM OF CARE THAT IS PROVIDED.  
5 THAT'S THAT'S -- AND SO WHEN A PATIENT IS HANDED OFF OR MOVES  
6 FROM ONE SETTING TO ANOTHER OR HANDED OFF FROM ONE PROVIDER TO  
7 ANOTHER, YOU HAVE TO BE SURE THAT THAT SEQUENCE IS NOT  
8 INTERRUPTED, THAT IF A PERSON IS TAKING OVER THE CARE, THAT  
9 THERE'S A DEEP UNDERSTANDING OF EVERYTHING THAT LED UP TO THAT  
10 POINT. IT'S REALLY BEST PROVIDED BY A SINGLE PERSON WHO, IN  
11 FACT, CARES FOR THE PATIENT ACROSS THE CONTINUUM IN WHATEVER  
12 SETTING A PATIENT MIGHT BE AT A PARTICULAR POINT IN TIME.

13 Q AND WHY WOULD THAT BE THE BEST CASE SCENARIO FOR A  
14 SINGLE PHYSICIAN TO PROVIDE THE CONTINUITY OF CARE?

15 A WELL, THERE ARE OFTEN DETAILS ABOUT THE PATIENT,  
16 ABOUT THE RISKS OF -- THE HOST FACTORS, THE PARTICULAR RISKS  
17 THAT THEY MIGHT -- THAT MIGHT BE -- THAT MIGHT EXIST FOR A  
18 PARTICULAR PATIENT, YOU KNOW, GIVEN SOME UNDERLYING MEDICAL  
19 CONDITION, LET'S SAY, OR SOME DETAIL OF THE TREATMENT, THE  
20 SPECIFICS OF A DIAGNOSTIC EVALUATION.

21 THERE'S A LOT OF INFORMATION THAT BECOMES PART OF  
22 THE EVALUATION OF THE MEDICAL PROBLEM AND SO THE PERSON WHO'S  
23 GATHERING THAT INFORMATION OR WHO'S PROVIDING THOSE SERVICES  
24 IS REALLY BEST ABLE TO PROVIDE THE CONTINUING CARE OF THAT  
25 PATIENT. WHENEVER THERE'S A HAND-OFF TO SOMEONE ELSE, OFTEN

1 INFORMATION IS LOST. IT'S NOT ALL PASSED ALONG. AND  
2 SOMETIMES, NOT ALWAYS, BUT SOMETIMES THAT LOSS OF CONTINUITY  
3 HAS AN AFFECT OR IMPACT ON AN OUTCOME.

4 Q WHY IS CONTINUITY OF CARE IMPORTANT TO PATIENT  
5 SAFETY WHERE A PATIENT IS BEING PROVIDED SURGERY IN AN  
6 OUTPATIENT SETTING?

7 A WELL, THERE MIGHT HAVE BEEN A PROBLEM WITH THE  
8 INTERVENTION IN THE OUTPATIENT SETTING. A PROBLEM DURING THE  
9 PROCEDURE THAT WAS NOTED BY THE OPERATOR. AND THE SPECIFICS  
10 WOULD BE IMPORTANT IN TERMS OF WHAT INTERVENTIONS MIGHT BE  
11 REQUIRED TO -- TO FIX OR ADDRESS THE PROBLEM, AND SO THE  
12 DETAILS MATTER. AND SO THE PERSON WHO DID THE PROCEDURE IS  
13 BEST POSITIONED TO UNDERSTAND WHAT -- EXACTLY WHAT HAPPENED  
14 AND IS BEST ABLE TO, YOU KNOW, CONFECT THE INTERVENTION NEEDED  
15 TO DEAL WITH IT.

16 Q NOW, YOU FORMALLY SERVED AS THE EXECUTIVE DIRECTOR  
17 OF THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS; IS THAT  
18 RIGHT?

19 A THAT'S CORRECT.

20 Q AND IN THAT EXPERIENCE AND IN ALL OF YOUR  
21 EXPERIENCE, IN YOUR EXPERT OPINION, DOES THE STATE HAVE A  
22 LEGITIMATE INTEREST IN TRYING TO ENSURE CONTINUITY OF CARE FOR  
23 PATIENTS?

24 A WELL, YES, IT DOES. IT DOES. IT HAS A  
25 RESPONSIBILITY -- THE BOARD HAS A RESPONSIBILITY UNDER THE --

1 UNDER THE MEDICAL PRACTICE ACT TO TAKE STEPS TO ENSURE THAT  
2 PATIENTS RECEIVE HIGH QUALITY MEDICAL CARE, THAT PROVIDERS ARE  
3 COMPETENT, AND THAT THE SETTINGS WHERE CARE IS PROVIDED ARE  
4 APPROPRIATE AND THAT PATIENTS DON'T GET LOST, THEY DON'T GET  
5 ABANDONED. YES, MOST DEFINITELY A STATE INTEREST IN THIS.

6 Q OKAY. NOW, THE THIRD GENERAL PURPOSE THAT YOU  
7 LISTED DEALT WITH COMMUNICATION, SO I WOULD ASK YOU TO EXPLAIN  
8 HOW CREDENTIALING AND PRIVILEGING ENHANCES COMMUNICATION  
9 BETWEEN PHYSICIANS AND THE TRANSFER OF PATIENT INFORMATION. I  
10 KNOW YOU SPOKE ABOUT IT HERE BRIEFLY, BUT IS THERE ANYTHING  
11 ELSE THAT YOU WOULD ADD TO THAT?

12 A WELL, A PHYSICIAN'S ABILITY TO PARTICIPATE IN THE  
13 CARE OF A PATIENT IN THE IN-PATIENT SETTING, WHICH CAN BE  
14 ACCOMPLISHED ONLY BY MEANS OF AN APPOINTMENT TO SOME CATEGORY  
15 OF MEDICAL STAFF. REMEMBER WHAT I SAID EARLIER THAT, THAT  
16 APPOINTMENT TO THE MEDICAL STAFF MAY BE ASSOCIATED WITH  
17 CERTAIN PRIVILEGES SUCH AS THE PRIVILEGE TO ADMIT A PATIENT OR  
18 THE PRIVILEGE TO PROVIDE SPECIFIC TYPES OF CARE. SO THESE ARE  
19 SEPARATE THINGS.

20 BUT IF YOU'RE A MEMBER OF THE MEDICAL STAFF, YOU'RE  
21 ALLOWED TO COME INTO THE HOSPITAL, TO SEE THE PATIENTS, TO  
22 REVIEW THE RECORDS, TO INTERACT WITH YOUR PROFESSIONAL  
23 COLLEAGUES. AND THEN DEPENDING ON WHAT PRIVILEGES YOU HAVE,  
24 TO WRITE ORDERS OR TO TAKE THE PATIENT TO THE OPERATING ROOM  
25 OR WHATEVER.

1           SO IF YOU'RE ABLE TO COME INTO THE HOSPITAL AND  
2 ENGAGE THE MEDICAL STAFF OF THE HOSPITAL, CONSULTANTS, IF  
3 NECESSARY, IF A PATIENT HAS A PARTICULAR COMPLICATION THAT  
4 REQUIRES THE ASSISTANCE OF A CONSULTANT, LET'S SAY A PATIENT  
5 WAS FEBRILE, YOU WERE CONCERNED THE PATIENT HAD AN INFECTION,  
6 YOU MIGHT WANT TO CONSULT AN EXPERT IN INFECTIOUS DISEASES,  
7 WHICH HAPPENS TO BE MY AREA. OR YOU MIGHT WANT TO ENGAGE THE  
8 CARDIOLOGIST IF THERE WERE HEART PROBLEMS OR OTHER SPECIALISTS  
9 DEPENDING ON THE NATURE. THAT'S THE WAY MEDICINE IS PRACTICED  
10 IN A HOSPITAL. TEAMS OF PEOPLE WITH EXPERTISE IN VARIOUS  
11 AREAS SORT OF BRING TO THE BEDSIDE THE EXPERTISE REQUIRED TO  
12 DEAL WITH A PARTICULAR PROBLEM.

13           AND IF YOU'RE A MEMBER OF THE MEDICAL STAFF, YOU CAN  
14 PARTICIPATE IN THAT PROCESS. YOU CAN INTERACT WITH THE OTHER  
15 PROVIDERS AND SEE TO IT THAT THE INFORMATION YOU HAVE ABOUT  
16 THE PATIENT IS BROUGHT TO BARE ON WHATEVER STEPS ARE TAKEN.

17           Q       NOW, IS WHAT YOU'VE JUST DESCRIBED, IS THAT THE ONLY  
18 WAY OF ENSURING GOOD COMMUNICATION INFORMATION TRANSFER?

19           A       WELL, IT'S NOT THE ONLY WAY, BUT IT'S THE BEST WAY.  
20 WRITTEN RECORDS ARE KIND OF A REDUCTIONIST THING. HOW MUCH  
21 CAN YOU WRITE DOWN? WE OFTEN TRANSFER NOTES OR A FEW  
22 PARAGRAPHS VERY HIGH LEVEL, MAYBE HIGHLIGHT THE MOST IMPORTANT  
23 THINGS, BUT OFTEN PHYSICIANS LIKE TO TALK TO THE DOCTORS WHO  
24 ARE CARING FOR A PATIENT TO MAKE SURE THEY REALLY UNDERSTAND  
25 IT AND NOT RELY SIMPLY ON A WRITTEN DOCUMENT.

1 Q IN YOUR EXPERT OPINION, DOES THE STATE HAVE AN  
2 INTEREST IN AT LEAST ATTEMPTING TO SECURE OR PROVIDE THE BEST  
3 WAY IN EACH OF THESE AREAS, FOR EXAMPLE, WITH THE TRANSFER,  
4 COMMUNICATION OF PATIENT INFORMATION?

5 A WELL, I'M NOT SO SURE ABOUT -- I THINK IT'S A  
6 LEGITIMATE INTEREST TO PROTECT THE -- TO PROMOTE WHATEVER'S IN  
7 THE BEST INTEREST OF PATIENTS AND TO PROMOTE THE ADOPTION OF  
8 BEST PRACTICES, YES.

9 Q RIGHT. NOW, THE FOURTH PRIMARY PURPOSE THAT YOU  
10 LISTED WAS, "CREDENTIALING AND PRIVILEGING HELP SUPPORT A  
11 PHYSICIAN'S ETHICAL DUTY OF CARE IN THE AREA OF PATIENT  
12 ABANDONMENT," AND YOU MENTIONED IT BRIEFLY A MOMENT AGO, BUT  
13 WHY IS THIS IMPORTANT WHERE A PATIENT IS BEING PROVIDED  
14 SURGERY IN AN OUTPATIENT SETTING?

15 A WELL, THE CONCERN HERE IS THAT A PATIENT WITH A  
16 MEDICAL PROBLEM WILL SIMPLY BE SENT TO THE HOSPITAL WITHOUT  
17 ENOUGH INFORMATION, JUST BROUGHT TO THE EMERGENCY ROOM, REALLY  
18 ABANDONED BY THE ORIGINAL PROVIDER, LEAVING THE HOSPITAL STAFF  
19 TO FIGURE OUT, YOU KNOW, WHAT'S GOING ON HERE WITHOUT THE  
20 BENEFIT OF ALL OF THE INFORMATION THAT THE PROVIDER MIGHT  
21 HAVE. SO THE PROVIDER DOESN'T HAVE TO CARE FOR -- CONTINUE  
22 CARING FOR A PATIENT AS LONG AS THEY CAN ASSURE AN ADEQUATE  
23 HANDOFF TO ANOTHER PROVIDER SO THAT THERE WOULD BE THIS  
24 COMMUNICATION AND CONTINUITY AND SO ON.

25 BUT YOU CAN'T JUST -- IF YOU HAVE AN ACUTELY ILL

1 UNSTABLE PATIENT YOU CAN'T JUST TELL THEM TO GO TO THE  
2 HOSPITAL IF THEY'RE IN YOUR OFFICE. YOU HAVE TO INTERVENE,  
3 SUPPORT THEM, YOU MIGHT HAVE TO ACCOMPANY THEM TO THE  
4 HOSPITAL. AGAIN, DEPENDING ON THE CIRCUMSTANCES. BUT IT'S  
5 NOT HARD FOR PHYSICIANS TO FIGURE THIS OUT. AND THAT'S REALLY  
6 WHAT'S MEANT. IT'S ONE OF THE PRINCIPLES OF ETHICAL CONDUCT  
7 PRACTICE OF MEDICINE ESTABLISHED BY THE AMA AND OTHER  
8 PROFESSIONAL GROUPS.

9 Q NOW, DOCTOR, I'D LIKE TO TURN TO THE SPECIFIC LAW  
10 THAT'S THE FOCUS OF THIS LITIGATION, ACT 620, AND, OF COURSE,  
11 YOU REFERENCED IT IN YOUR EXPERT REPORTS. ARE YOU FAMILIAR  
12 WITH THE PROVISIONS OF ACT 620?

13 A YES.

14 Q AND WHAT WAS YOUR INVOLVEMENT IN THE LEGISLATIVE  
15 PROCESS THAT LED TO THE PASSAGE OF THE ACT?

16 A I WAS ASKED BY THE -- REPRESENTATIVE JACKSON AND  
17 OTHERS TO ASSIST WITH THE DRAFTING OF THE LEGISLATION WHEN IT  
18 CAME OVER TO THE SENATE.

19 Q DOCTOR, I'M GOING TO PULL THE ACT UP ON THE SCREEN  
20 HERE. IT'S ONE OF THE JOINT EXHIBITS IN THIS MATTER. IT'S  
21 JOINT EXHIBIT NO. 115. AND, DOCTOR, CAN YOU SEE THAT ON THE  
22 SCREEN THERE?

23 A YES.

24 Q DOES THAT LOOK FAMILIAR TO YOU? DOES THAT LOOK LIKE  
25 A COPY OF THE ACT THAT WE'RE REFERRING TO?

1 A YES.

2 Q AND WHAT -- JUST IN GENERAL TERMS, WITHOUT READING  
3 THE ACT TOGETHER, WHAT DOES ACT 620 REQUIRE?

4 A WELL, IT REQUIRES THAT PHYSICIANS WHO PERFORM  
5 ABORTIONS TO BE COMPETENT, TO BE QUALIFIED. IT REQUIRES A  
6 MEANS OF ESTABLISHING THEIR COMPETENCY AND IT PROVIDES FOR  
7 ACCESS TO NEEDED FACILITIES IN THE PROXIMITY REQUIREMENT AND  
8 REQUIRES CERTAIN TYPES OF REPORTS SO THAT THE STATE CAN  
9 OVERSEE THE QUALITY OF CARE THAT'S BEING PROVIDED AND IT  
10 CREATES AN EXCEPTION FOR -- FOR -- BASICALLY FOR OB/GYNS WHO  
11 DO A LIMITED NUMBER OF ABORTIONS IN THEIR PRACTICES.

12 Q AND, DOCTOR, DO YOU RECALL HOW ACT 620 DEFINES  
13 ACTIVE ADMITTING PRIVILEGES? WE CAN LOOK AT THE LANGUAGE IN  
14 THE BILL.

15 MR. JOHNSON: LET'S SCROLL DOWN TO THE DEFINITION  
16 SECTION, IF WE CAN.

17 BY MR. JOHNSON:

18 Q MY APOLOGIES, DOCTOR. I CAN'T READ THE SCREEN, IT'S  
19 NOT CLEAR ENOUGH TO ME. I'M GOING TO HAVE TO LOOK IN THE  
20 PAPER COPY HERE. ARE YOU ABLE TO -- TO READ THE SCREEN OR IS  
21 IT CLEAR ENOUGH FOR YOU? I CAN GIVE YOU A HARD COPY OF THE  
22 ACT IF YOU NEED IT.

23 A THE SENTENCE ON LINE 13, I CAN'T READ.

24 Q AND YOU'RE REFERRING TO LINE 13 ON PAGE 1 OF THAT  
25 EXHIBIT?

1           A     CORRECT.

2           THE COURT:  WHAT'S THE EXHIBIT NUMBER?

3           MR. JOHNSON:  THIS IS JOINT EXHIBIT 115.  WE JUST  
4 HAVE A -- THE FONT IS SO SMALL ON THE SCREEN, I CAN...

5           THE COURT:  DOES THE DOCTOR HAVE A HARD COPY UP  
6 THERE?

7           MR. JOHNSON:  I'M SORRY.  YES.

8           THE COURT:  DOCTOR, WHY DON'T YOU GET JOINT EXHIBIT,  
9 IT'S BINDER 3 OF 4, AND THEN GO TO TAB 115 AND YOU'LL GET A  
10 HARD COPY OF THIS DOCUMENT.

11           THE WITNESS:  OKAY.

12 BY MR. JOHNSON:

13           Q     OKAY.  SO IF YOU'LL TURN TO PAGE 2 OF THAT DOCUMENT,  
14 THE LARGER PAGE NUMBER IS PAGE 2223, YOU'LL SEE ON THE BOTTOM.  
15 AND AROUND LINE 10, THERE'S A DEFINITION PROVIDED FOR THE TERM  
16 "ACTIVE ADMITTING PRIVILEGES."  DO YOU SEE THAT?

17           A     YES.

18           Q     I GUESS WHY DON'T YOU JUST READ THAT DEFINITION INTO  
19 THE RECORD FOR US?

20           A     "ACTIVE ADMITTING PRIVILEGES MEANS THAT THE  
21 PHYSICIAN IS A MEMBER IN GOOD STANDING OF THE MEDICAL STAFF OF  
22 A HOSPITAL THAT IS CURRENTLY LICENSED BY THE DEPARTMENT WITH  
23 THE ABILITY TO ADMIT A PATIENT AND TO PROVIDE DIAGNOSTIC AND  
24 SURGICAL SERVICES TO SUCH A PATIENT CONSISTENT WITH THE  
25 REQUIREMENTS OF PARAGRAPH A-1 OF THIS SUBSECTION."

1 Q THANK YOU, DOCTOR. NOW, DID YOU HAVE ANY  
2 INVOLVEMENT IN SUGGESTING THE LANGUAGE THAT WAS USED IN THE  
3 DEFINITION THAT YOU JUST READ?

4 A YES.

5 Q AND I WANT YOU TO FOCUS ON THE WORD "ACTIVE" IN THE  
6 PHRASE "ACTIVE ADMITTING PRIVILEGES." IN YOUR VIEW, WHAT DOES  
7 THAT MEAN? WHY IS THAT WORD IMPORTANT?

8 A WELL, THE AUTHOR WANTED TO BE SURE THAT THERE WAS NO  
9 MISUNDERSTANDING --

10 MS. JAROSLAW: OBJECTION, YOUR HONOR.

11 THE COURT: WHAT'S THE OBJECTION?

12 MS. JAROSLAW: IT'S THE SAME OBJECTION. THERE'S  
13 NOTHING ABOUT THIS IN DR. MARIER'S EXPERT REPORT AS TO WHY  
14 EXPERT -- I'M SORRY. WHY THE WORD "ACTIVE" IS IN THE STATUTE.

15 THE COURT: MR. JOHNSON?

16 MR. JOHNSON: WELL, HE WAS QUESTIONED EXTENSIVELY IN  
17 A LENGTHY -- IN DISCOVERY AND IN HIS DEPOSITION ABOUT HIS  
18 VIEWS ON THE ACT AND THE LANGUAGE OF THE ACT AND WHAT IT  
19 MEANS, AND HE'S JUST TESTIFIED THAT HE HAD A HAND IN CREATING  
20 THIS VERY DEFINITION, SO IT'S CLEARLY WITHIN THE SCOPE OF WHAT  
21 HE'S COMPETENT AND CAPABLE OF DISCUSSING BEFORE THE COURT.

22 MS. JAROSLAW: YOUR HONOR, DR. MARIER IS QUALIFIED  
23 TO TESTIFY WHAT IS IN THE ACT, HE'S NOT QUALIFIED TO STATE WHY  
24 OTHERS MIGHT HAVE INCLUDED THE WORD "ACTIVE ADMITTING  
25 PRIVILEGES."

1           **MR. JOHNSON:** YOUR HONOR, HE JUST TESTIFIED HE CAME  
2 UP WITH THIS DEFINITION.

3           **THE COURT:** WELL, I THINK, YOU KNOW -- OF COURSE, I  
4 DON'T HAVE HIS TWO REPORTS BEFORE ME. I'VE READ THEM IN  
5 PREPARATION FOR THIS -- FOR THIS TRIAL. BUT ESPECIALLY IF  
6 THIS SUBJECT, THAT IS TO SAY THE MEANING OF ACT 620 AND HIS  
7 INTERPRETATION OF IT WAS COVERED IN DEPOSITION, THEN I BELIEVE  
8 THAT -- THERE'S NO QUESTION ABOUT HIS QUALIFICATION TO DO IT.  
9 HE JUST SAID THAT HE PARTICIPATED IN THE DRAFTING OF IT. AND  
10 BESIDES THAT, EVEN IF HE HADN'T, HE HAS CERTAINLY EXTENSIVE  
11 QUALIFICATIONS THAT WOULD ALLOW HIM TO DO THIS. THE QUESTION  
12 IS WHETHER OR NOT THE FACT THAT HE WAS QUESTIONED ABOUT THIS  
13 IN HIS DEPOSITION -- AND I DON'T KNOW --

14           IS THERE SOMETHING IN THE REPORT THAT ADDRESSES THIS  
15 ISSUE?

16           **MS. JAROSLAW:** NOT IN THE REPORT, YOUR HONOR.

17           **THE COURT:** DO YOU CONCEDE THAT THIS WAS THE SUBJECT  
18 OF HIS DEPOSITION?

19           **MS. JAROSLAW:** WE ASKED HIM EXTENSIVELY ABOUT  
20 ACT 620, BUT THIS WITNESS IS NOT COMPETENT TO EXPLAIN WHY  
21 ACTIVE ADMITTING PRIVILEGES WAS PLACED IN THE ACT. HE CAN  
22 SPEAK FOR HIMSELF --

23           **THE COURT:** THAT'S NOT THE QUESTION HE WAS ASKED.  
24 WHAT HE WAS ASKED WAS WHAT, IN YOUR OPINION, DOES THE TERM  
25 "ACTIVE ADMITTING PRIVILEGES" MEAN. I'M GOING TO OVERRULE THE

1 OBJECTION.

2 MR. JOHNSON: THANK YOU, YOUR HONOR.

3 BY MR. JOHNSON:

4 Q SO, DOCTOR, YOU CAN ANSWER THAT QUESTION. I'LL ASK  
5 IT AGAIN. FOCUSING ON THE WORD "ACTIVE," IN YOUR VIEW, WHAT  
6 DOES THE WORD "ACTIVE" MEAN HERE? WHY WAS IT IMPORTANT TO  
7 INCLUDE?

8 A WELL, FIRST, IT'S THE PHRASE THAT'S IMPORTANT, AND  
9 THE MEANING OF THE PHRASE IS DEFINED IN THE ACT. PLAIN  
10 READING OF THE ACT, IT'S DEFINED. NOW, WHY THE WORD "ACTIVE"  
11 WAS INCLUDED, OFTEN THE WORD "ACTIVE" IS FOUND IN -- IN  
12 CATEGORIES OF MEDICAL STAFF AS A TERM. AND SO THAT WAS ONE  
13 REASON IT WAS INCLUDED, THAT IS TO BE INCLUSIVE OF A COMMON  
14 USAGE.

15 A SECOND REASON WAS THAT "ACTIVE" IMPLIES CURRENT OR  
16 ENFORCE OR ACTIVE. IT MEANS IT'S IN PLACE. THE PLAIN MEANING  
17 OF THE WORD. BUT I THINK IT WAS PRIMARILY TO USE A TERM THAT  
18 WAS COMMONLY FOUND. AND SO AS TO REMOVE ANY QUESTION ABOUT  
19 WHAT THE WORD OR WHAT THE PHRASE MEANT, IT WAS DEFINED. AND  
20 IT'S REALLY THE EFFECT OF THE CATEGORY OF MEDICAL STAFF  
21 MEMBERSHIP THAT MATTERS, NOT THE TERMS. WHAT IS THE EFFECT OF  
22 THE PRIVILEGES THAT HAVE BEEN GRANTED? IS THE EFFECT OF IT,  
23 WHATEVER TERMS ARE USED, SUCH THAT A PHYSICIAN, THEN CAN ADMIT  
24 A PATIENT TO A HOSPITAL AND PROVIDE THE SERVICES THAT THE  
25 PATIENT REQUIRES. THAT'S THE IMPORTANT POINT, AND THAT'S WHAT

1 WE WERE TRYING TO GET INTO THE ACT. AND THAT'S THE PART I  
2 PLAYED IN IT.

3 Q SO IF A PHYSICIAN'S ADMITTING PRIVILEGES AT A  
4 HOSPITAL HAD LAPSED OR BEEN REVOKED THEN HIS PRIVILEGES WOULD  
5 LONGER BE DEEMED ACTIVE; IS THAT A FAIR ASSESSMENT?

6 A WELL, HE WOULD NO LONGER HAVE PRIVILEGES OF ANY  
7 KIND. BUT, YES, I SUPPOSE YOU COULD SAY THAT THEY WOULD NO  
8 LONGER BE ACTIVE, BUT THERE'S NO SUCH THING AS INACTIVE  
9 MEMBERSHIP. YOU'RE EITHER A MEMBER OR YOU'RE NOT. IT'S A BIT  
10 REDUNDANT, REALLY.

11 Q BUT, AGAIN, THE REDUNDANCY AND THE PHRASEOLOGY WAS  
12 NECESSARY TO PROVIDE A GENERALLY UNDERSTOOD TERM; IS THAT WHAT  
13 YOU JUST --

14 A YES, THAT'S WHAT I JUST SAID.

15 Q AND THAT IS BECAUSE, AGAIN, AS YOU TESTIFIED  
16 EARLIER, VARIOUS HOSPITALS MAY HAVE INDIVIDUAL INTERPRETATIONS  
17 OF VARIOUS DIFFERENT KINDS OF TERMS; IS THAT RIGHT?

18 A VARIOUS DEFINITIONS OF DIFFERENT KINDS OF TERMS.

19 Q SO ALTHOUGH VARIOUS BYLAWS MAY VARY -- OR DIFFERENT  
20 BYLAWS MAY VARY, A TERM LIKE "ACTIVE" IS GENERALLY UNDERSTOOD?

21 MS. JAROSLAW: OBJECTION, YOUR HONOR. LEADING.

22 THE COURT: HE'S AN EXPERT WITNESS; HE CAN LEAD THE  
23 EXPERT WITNESS.

24 A I THINK THE PURPOSE WAS JUST TO PROVIDE SOME  
25 CLARITY. BUT WHAT'S THE INTENT OF THIS? TO TRY TO GET AROUND

1 SOME OF THE CONFUSION ASSOCIATED WITH THE WAY THESE TERMS ARE  
2 USED.

3 **BY MR. JOHNSON:**

4 Q THANK YOU. NOW, DO YOU RECALL EARLIER WE DISCUSSED  
5 THE DIFFERENT CATEGORIES OF MEDICAL STAFF MEMBERSHIP AND WE  
6 TALKED ABOUT THE TERM "COURTESY MEDICAL STAFF." DO YOU RECALL  
7 THAT?

8 A YES.

9 Q AND YOU EXPLAINED THAT GENERALLY SPEAKING A MEMBER  
10 OF THE COURTESY STAFF COULD HAVE ADMITTING PRIVILEGES; IS THAT  
11 RIGHT?

12 A YES.

13 Q SO IN TERMS OF ACT 620, IN YOUR VIEW, COULD A  
14 PHYSICIAN BE A MEMBER OF THE COURTESY STAFF OF A HOSPITAL AND  
15 BE ABLE TO ADMIT PATIENTS?

16 **MS. JAROSLAW:** OBJECTION, YOUR HONOR. THE WITNESS  
17 HAS ALREADY TESTIFIED IT VARIES HOSPITAL TO HOSPITAL PURSUANT  
18 TO THEIR BYLAWS.

19 **THE COURT:** OVERRULE THE OBJECTION. YOU MAY ANSWER  
20 IT.

21 **BY MR. JOHNSON:**

22 Q YOU CAN ANSWER, DOCTOR. I'LL ASK AGAIN. IN TERMS  
23 OF ACT 620, IN YOUR VIEW, COULD A PHYSICIAN BE A MEMBER OF A  
24 COURTESY STAFF OF A HOSPITAL AND STILL BE ABLE TO ADMIT  
25 PATIENTS?

1           A     HE COULD BE.  AGAIN, IT WOULD DEPEND ON WHAT WAS SET  
2 FORTH IN THE BYLAWS.

3           Q     DOCTOR, I'D LIKE TO ASK YOU BRIEFLY ABOUT THE  
4 RELATIONSHIP BETWEEN ACT 620 AND THE REGULATION OF AMBULATORY  
5 SURGICAL CENTERS IN LOUISIANA, BECAUSE IN YOUR TESTIMONY TO  
6 THE LEGISLATURE, YOU DEVOTED SOME OF THE TIME THERE TO A  
7 DISCUSSION OF THAT COMPARISON.  WHY DID YOU THINK THAT WAS  
8 IMPORTANT TO EXPLAIN?

9           A     I FELT THAT IT WAS IN THE PUBLIC INTEREST TO HAVE A  
10 SINGLE STANDARD OF CARE FOR PATIENTS UNDERGOING THESE TYPES  
11 OF -- FOR PATIENTS UNDERGOING PROCEDURES ASSOCIATED WITH SOME  
12 RISKS OF MAJOR COMPLICATIONS TO HAVE A SINGLE STANDARD THAT  
13 WOULD ENSURE THE SAFETY OF THE PATIENTS UNDERGOING THESE  
14 PROCEDURES.

15          Q     SO GENERALLY SPEAKING, HOW IS OUTPATIENT SURGERY  
16 REGULATED IN THE LOUISIANA ADMINISTRATIVE CODE?  IN OTHER  
17 WORDS, ARE THERE SEPARATE TITLES FOR THE VARIOUS TYPES, FOR  
18 EXAMPLE, AMBULATORY SURGICAL CENTERS, OFFICE-BASED SURGERY,  
19 ABORTION CLINICS?  ARE THEY IN SEPARATE TITLES OF THE  
20 ADMINISTRATIVE CODE?

21          A     WELL, OFFICE-BASED SURGERY IS IN TITLE 46.  THE  
22 OTHERS ARE IN TITLE 48.  YES, THERE ARE THREE SEPARATE  
23 REGULATIONS THAT COME INTO PLAY HERE.  ONE FOR OFFICE  
24 PRACTICE, THE OTHER -- AND THAT'S UNDER TITLE 46, THAT'S THE  
25 MEDICAL PRACTICE ACT.  AND THE OTHERS ARE FOR AMBULATORY

1 SURGICAL CENTERS AND OUTPATIENT ABORTION FACILITIES AND THOSE  
2 ARE, AS I SAID, IN TITLE 48.

3 Q AN AMBULATORY SURGICAL CENTER ALSO REFERRED TO AS AN  
4 ASC COMMONLY, WHAT KINDS OF SURGERY ARE PROVIDED, JUST  
5 GENERALLY SPEAKING, IN AN ASC?

6 A WELL, A GREAT MAJORITY OF CASES ARE ENDOSCOPIES,  
7 UPPER OR LOWER GI ENDOSCOPY, INJECTIONS INTO THE SPINAL CORD  
8 OFTEN FOR RELIEF OF CHRONIC PAIN, AND THEN ORTHOPAEDIC  
9 PROCEDURES INVOLVING MUSCLE COMPARTMENTS, FASCIA, JOINTS.

10 Q AND THERE ARE OTHERS, I'M SURE?

11 A THERE ARE OTHERS, BUT THAT'S THE GREAT MAJORITY OF  
12 THEM ARE IN ONE OF THOSE THREE CATEGORIES.

13 Q THE QUESTION IS, DOES THE LAW REQUIRE A PHYSICIAN  
14 WHO PROVIDES THOSE SURGICAL PROCEDURES IN AN ASC IN LOUISIANA  
15 TO HAVE SURGICAL PRIVILEGES AT A HOSPITAL?

16 A YES.

17 Q AND WHY IS THAT IMPORTANT?

18 A WELL, FOR THE REASONS I'VE ALREADY GIVEN: TO ENSURE  
19 CONTINUITY OF CARE, TO ENSURE THE PEOPLE ARE QUALIFIED, TO  
20 FACILITATE COMMUNICATION, AND TO PREVENT ABANDONMENT OF  
21 PATIENTS.

22 Q NOW, PRIOR TO THE PASSAGE OF ACT 620, DID THE LAW IN  
23 LOUISIANA REQUIRE PHYSICIANS PROVIDING SURGICAL ABORTIONS IN  
24 AN OUTPATIENT CLINIC TO HAVE ANY KIND OF PRIVILEGES AT A  
25 HOSPITAL?

1           A     NO.

2           Q     AND WAS THE REASON FOR THAT DIFFERENT TREATMENT  
3 BECAUSE OUTPATIENT ABORTION FACILITIES ARE REGULATED IN A  
4 DIFFERENT TITLE OF THE ADMINISTRATIVE CODE THAN ASCS?

5           MS. JAROSLAW: OBJECTION TO THE FORM OF THE  
6 QUESTION.

7           THE COURT: WHAT'S THE OBJECTION?

8           MS. JAROSLAW: MR. JOHNSON IS ASKING THE REASON  
9 BEHIND A CERTAIN STATUTORY SCHEME, AND DR. MARIER IS NOT  
10 COMPETENT TO COMMENT ON THAT.

11           THE COURT: WELL, I HAVEN'T HEARD A FOUNDATION LAID  
12 THAT HE HAS THE COMPETENCY TO ANSWER THE QUESTION, SO I'LL  
13 SUSTAIN THE OBJECTION FOR NOW.

14 BY MR. JOHNSON:

15           Q     PERHAPS I COULD ASK IT ANOTHER WAY. DOCTOR, IN  
16 TERMS OF AND IN THE CONTEXT OF YOUR TESTIMONY TO THE  
17 LEGISLATURE IN FAVOR OF ACT 620, DID YOU BELIEVE, IN YOUR  
18 OPINION, THAT THE REASON FOR THE DISPARATE TREATMENT BETWEEN  
19 ASCS AND ABORTION CLINICS IS BECAUSE THEY WERE IN DIFFERENT  
20 TITLES OF THE ADMINISTRATIVE CODE?

21           MS. JAROSLAW: OBJECTION, YOUR HONOR. THAT'S NOT IN  
22 DR. MARIER'S EXPERT REPORT.

23           THE COURT: MR. JOHNSON?

24           MR. JOHNSON: IT'S NOT IN HIS REPORT BUT, I MEAN, WE  
25 WOULD ARGUE IT'S AN APPROPRIATE LINE OF QUESTIONING FOR THE

1 TESTIMONY TODAY BECAUSE WE'RE TALKING ABOUT THE REASONING  
2 BEHIND THE LAW AND WHY HE TESTIFIED FOR THE STATUTE AND --

3 THE COURT: IN HIS REPORT, DOES IT RECITE HIS  
4 INVOLVEMENT IN THE DRAFTING IN THE TESTIMONY BEFORE THE  
5 LEGISLATURE?

6 MR. JOHNSON: IT DOES IN GENERAL TERMS.

7 THE COURT: WELL, YOU KNOW, I'M JUST GOING TO DO  
8 THIS ON A QUESTION-BY-QUESTION BASIS. I THINK THIS FAIRLY  
9 FALLS WITHIN THE GENERAL AREA THAT HE COVERED IN HIS -- IN HIS  
10 REPORT, SO I'M GOING TO OVERRULE THE OBJECTION.

11 ON THE OTHER HAND, DEPENDING UPON THE QUESTION, THAT  
12 MIGHT NOT BE MY RULING THE NEXT QUESTION. SO IN ANY EVENT, I  
13 OVERRULE THE OBJECTION.

14 MR. JOHNSON: UNDERSTOOD, YOUR HONOR.

15 BY MR. JOHNSON:

16 Q DID YOU UNDERSTAND THE QUESTION, DOCTOR?

17 A NO.

18 Q OKAY. SO THE QUESTION IS, WAS THE REASON FOR THE  
19 DIFFERENT TREATMENT BETWEEN ASCS AND OUTPATIENT ABORTION  
20 FACILITIES, THE REASON THEY'RE TREATED DIFFERENTLY WITH REGARD  
21 TO THE ADMITTING PRIVILEGES REQUIREMENT PRIOR TO THIS ACT, IS  
22 THAT BECAUSE THEY WERE IN DIFFERENT TITLES OF THE  
23 ADMINISTRATIVE CODE?

24 MS. JAROSLAW: OBJECTION, YOUR HONOR. THAT'S THE  
25 EXACT SAME QUESTION I OBJECTED TO BEFORE.

1           **THE COURT:** I UNDERSTAND. THAT'S THE ONE I  
2 OVERRULED. THE WITNESS SAID HE DID NOT UNDERSTAND IT, SO IT  
3 WAS REPEATED.

4           **MS. JAROSLAW:** I'M SORRY, YOUR HONOR.

5           **A** WELL, IT'S A FACT THAT THE REGULATIONS ARE IN  
6 SEPARATE SECTIONS OF THE LOUISIANA ADMINISTRATIVE CODE, BUT  
7 WHETHER OR NOT THAT'S THE REASON FOR THE DIFFERENCE, I  
8 WOULDN'T WANT TO VENTURE A GUESS.

9 **BY MR. JOHNSON:**

10           **Q** DOCTOR, I'M GOING TO PULL UP AN EXHIBIT ON THE  
11 SCREEN HERE THAT WE CAN ALL LOOK AT TOGETHER. AND THIS IS  
12 EXHIBIT 146, DEFENDANT'S EXHIBIT 146, THAT'S BEEN ADMITTED  
13 INTO EVIDENCE. AND THIS IS YOUR -- YOUR ORIGINAL DECLARATION  
14 SUBMITTED IN THIS MATTER. AND I'M GOING TO PUT IT ON THE  
15 SCREEN TO, PERHAPS, REFRESH YOUR MEMORY BECAUSE YOU DID THIS  
16 MANY MONTHS AGO.

17                    BUT IF WE CAN GO TO PAGE 5 OF THAT EXHIBIT WE'LL SEE  
18 KIND OF A SUBHEADING THERE AT THE MIDDLE OF THE PAGE THAT  
19 SAYS, "ACT 620 ENSURES UNIFORM STANDARDS." DO YOU SEE THAT?

20           **A** YES. YES.

21           **Q** COULD YOU JUST TAKE A MOMENT AND READ PARAGRAPHS 14,  
22 15 AND 16 JUST AS A WAY TO REFRESH YOUR MEMORY ABOUT THIS  
23 SUBJECT.

24           **A** DO YOU WANT TO TURN THE PAGE?

25           **Q** CAN YOU SCROLL DOWN? THANK YOU.

1           A     YES.  AS FAR AS -- YES, I DO.  AND THIS IS THE SAME  
2 LINE OF REASONING THAT I USED IN TESTIMONY BEFORE THE  
3 LEGISLATURE --

4           Q     SO I'M GOING TO JUST --

5           A     -- AS NOTED IN THE DECLARATION.

6           Q     RIGHT.  WOULD YOU JUST -- WOULD YOU MIND READING  
7 PARAGRAPH 16 INTO THE RECORD FOR ME?

8           A     "BELOW I WILL SET FORTH THE BASIS FOR MY OPINION  
9 THAT ACT 620 SIMPLY APPLIES THE SAME REQUIREMENTS WITH RESPECT  
10 TO ADMITTING PRIVILEGES FOR PHYSICIANS PERFORMING SURGICAL  
11 ABORTION THAT ARE APPLIED TO PHYSICIANS PERFORMING SURGERY IN  
12 AMBULATORY SURGICAL CENTERS, ASCS.  I PROVIDED THE SAME  
13 OPINION BEFORE LEGISLATIVE COMMITTEES CONSIDERING ACT 620,  
14 THEN LOUISIANA HOUSE BILL 388.

15                     IN THE GENERAL LEGISLATIVE SESSION OF 2014 I ALSO  
16 ADDRESSED THE PLAINTIFFS' OBJECTIONS REGARDING OFFICE-BASED  
17 SURGERY REGULATIONS, WHICH AS THEY FAILED TO NOTE, ALSO HOLD  
18 PHYSICIANS PERFORMING NONEXEMPT SURGICAL PROCEDURES TO A  
19 30-MILE ADMITTING PRIVILEGE STANDARD."

20           Q     THANK YOU, DOCTOR.  SO WITHOUT READING THROUGH ALL  
21 OF THE EXHAUSTIVE OPINION THERE, JUST IN SUMMARY, CAN YOU  
22 EXPLAIN WHY IN YOUR OPINION ACT 620 MAKES THE PROVISION OF  
23 SURGICAL ABORTION IN OUTPATIENT CLINICS CONSISTENT WITH THE  
24 PROVISION OF SURGICAL PROCEDURES IN ASCS?

25           A     WELL, BY REQUIRING HOSPITAL PRIVILEGES TO ADMIT A

1 PATIENT AND TO CARE FOR THE PATIENT AND BY REQUIRING A  
2 PROXIMITY TO ENSURE ACCESS TO THOSE SERVICES.

3 Q SO IN YOUR OPINION, WITH RESPECT TO REQUIRING  
4 ADMITTING PRIVILEGES IN THIS CONTEXT, IS ACT 620 SINGLING OUT  
5 ABORTION PROVIDERS FROM ALL OTHER PROVIDERS OF OUTPATIENT  
6 SURGERY IN LOUISIANA?

7 A NO. JUST THE OPPOSITE. THEY'RE GOING TO BE BROUGHT  
8 INTO THE SAME SET OF STANDARDS THAT APPLY TO PHYSICIANS  
9 PROVIDING SIMILAR TYPES OF SERVICES IN AMBULATORY SURGERY  
10 CENTERS.

11 Q AND, AGAIN, IN YOUR OPINION, IS IT MEDICALLY  
12 REASONABLE TO MAKE THE PRIVILEGES REQUIREMENT FOR OUTPATIENT  
13 ABORTION PROVIDERS CONSISTENT WITH THE PRIVILEGE'S REQUIREMENT  
14 FOR DOCTORS WHO PROVIDE SURGERY IN ASCS?

15 A YES.

16 Q NOW, DOCTOR, I'D LIKE TO ASK YOU ABOUT ACT 620 IN  
17 TERMS OF THE GENERAL PURPOSES SERVED BY HOSPITAL CREDENTIALING  
18 AND PRIVILEGING. AND -- EXCUSE ME -- EARLIER, WE DISCUSSED  
19 THE GENERAL PURPOSES OF CREDENTIALING AND PRIVILEGING IN TERMS  
20 OF YOUR -- THE FOUR MAIN REASONS OR FOUR IDEAS THAT YOU  
21 STATED. SO I'D LIKE TO APPLY THOSE GENERAL PURPOSES TO  
22 ACT 620.

23 SO FIRST, LET'S TALK ABOUT PROVIDING AN EVALUATION  
24 MECHANISM FOR PHYSICIAN COMPETENCY. IN YOUR OPINION, HOW DOES  
25 ACT 620 PROVIDE A MECHANISM FOR EVALUATING THIS COMPETENCY OF

1 PHYSICIANS WHO PROVIDE ABORTIONS IN AN OUTPATIENT CLINIC?

2 A WELL, THE CREDENTIALING PROCESS THAT'S PART OF  
3 JOINING A MEDICAL STAFF, PART OF BEING GRANTED PRIVILEGES IN A  
4 HOSPITAL, THE CREDENTIALING PROCESS THAT LEADS TO A PHYSICIAN  
5 BEING GRANTED THOSE PRIVILEGES PROVIDES THE ASSURANCE THAT WE  
6 WERE SEEKING THAT THEY BE COMPETENT AND WITH THE REQUIRED  
7 TRAINING AND REQUISITE EXPERIENCE.

8 Q AND WITH REGARD TO THE SECOND GENERAL PURPOSE BEING  
9 ENHANCING CONTINUITY OF CARE, IN YOUR OPINION, HOW DOES  
10 ACT 620 ENHANCE CONTINUITY OF CARE FOR PATIENTS WHO RECEIVE A  
11 SURGICAL ABORTION IN AN OUTPATIENT CLINIC?

12 A WELL, AS I'VE SAID BEFORE, IT HELPS TO -- IT HELPS  
13 WITH THE CONTINUITY BY ENABLING THE PHYSICIAN TO CARE FOR THE  
14 PATIENT IN THE HOSPITAL, NOT JUST IN THE CLINIC.

15 Q AND WOULD THE SAME BE TRUE FOR THE THIRD GENERAL  
16 PURPOSE, BEING PHYSICIAN COMMUNICATION AND PATIENT INFORMATION  
17 TRANSFER; ACT 620 WOULD ASSIST WITH THAT?

18 A YES.

19 Q AND, FINALLY, THE FOURTH GENERAL PURPOSE BEING A  
20 PHYSICIAN'S ETHICAL DUTY OF CARE AND THE ISSUES OF PATIENT  
21 ABANDONMENT. HOW DOES ACT 620 HELP TO REINFORCE ALL OF THESE  
22 CONCERNS?

23 A WELL, AS I'VE TESTIFIED BEFORE, IT PROVIDES A MEANS  
24 FOR ENSURING THAT THE PATIENTS ARE LOOKED AFTER, THEY GET THE  
25 CARE THAT THEY NEED.

1 Q SO, DOCTOR, DID YOU HAVE AN OPPORTUNITY TO READ ANY  
2 EXPERT REPORTS SUBMITTED IN REPLY TO YOUR EXPERT REPORTS, ANY  
3 OF THE CRITICISMS?

4 A I DID LOOK AT THEM MUCH EARLIER IN DECEMBER.

5 Q ONE WAS SUBMITTED BY A DR. ESTES AND ONE BY;  
6 PRESSMAN IS THAT -- DO YOU RECALL THAT?

7 A YES.

8 Q NOT HAVING THOSE REPORTS IN FRONT OF YOU, IS THERE  
9 ANY -- IS THERE ANYTHING YOU WOULD WANT TO COMMENT WITH REGARD  
10 TO THOSE CRITICISMS?

11 MS. JAROSLAW: OBJECTION, YOUR HONOR.

12 THE COURT: WHAT IS IT?

13 MS. JAROSLAW: WE DON'T KNOW WHAT DR. MARIER IS  
14 REBUTTING. THERE'S NOTHING IN FRONT OF HIM. THERE'S NO  
15 TESTIMONY.

16 THE COURT: THAT IS SORT OF A BROAD QUESTION --

17 MR. JOHNSON: OKAY. FAIR ENOUGH.

18 THE COURT: TELL ME EVERYTHING YOU DON'T LIKE ABOUT  
19 THE EXPERT --

20 MR. JOHNSON: FAIR ENOUGH.

21 BY MR. JOHNSON:

22 Q IS IT SAFE TO SAY YOU DON'T LIKE THOSE? OKAY.

23 MR. JOHNSON: I'LL WAIT ON THAT. I'LL WAIT ON THAT.

24 BY MR. JOHNSON:

25 Q DOCTOR, LET ME SORT OF DRAW THIS TO A SUMMARY. I'D

1 LIKE TO ASK YOU FOR THE RECORD, IN YOUR OPINION, IS THE  
2 ADMITTING PRIVILEGES REQUIREMENT IN ACT 620 A MEDICALLY  
3 REASONABLE REQUIREMENT?

4 A YES.

5 Q AND IN YOUR OPINION, DOES THE ADMITTING PRIVILEGES  
6 REQUIREMENT IN ACT 620 SINGLE OUT ABORTION PROVIDERS FROM ALL  
7 OTHER PHYSICIANS WHO PROVIDE OUTPATIENT SURGERY IN LOUISIANA?

8 A NO.

9 Q IN YOUR OPINION, DOES THE ADMITTING PRIVILEGES  
10 REQUIREMENT IN ACT 620 REASONABLY FURTHER THE HEALTH AND  
11 SAFETY OF WOMEN WHO RECEIVE SURGICAL ABORTIONS IN AN  
12 OUTPATIENT CLINIC?

13 A YES.

14 Q AND IN YOUR OPINION, DOES THE ADMITTING PRIVILEGES  
15 REQUIREMENT IN ACT 620 REASONABLY HELP TO ENSURE THE INTEGRITY  
16 OF THE MEDICAL PROFESSION IN LOUISIANA?

17 A YES.

18 Q ONE FINAL QUESTION, I THINK, DOCTOR. YESTERDAY,  
19 THERE WAS SOME DISCUSSION ABOUT A LETTER YOU WROTE BACK IN  
20 2008, AND I'D LIKE TO ASK YOU AN IMPORTANT QUESTION ABOUT THAT  
21 FOR CLARIFICATION. AND I'LL ASK THEM TO PUT ON THE SCREEN,  
22 IT'S CONFIDENTIAL DOCUMENT JOINT EXHIBIT 135. I'M NOT SURE  
23 HOW WELL IT WILL BE READ ON THE SCREEN, SO, DOCTOR, YOU MAY  
24 WANT TO PULL OUT THE HARD COPY. THIS IS JOINT EXHIBIT 135,  
25 WHICH I THINK IS IN -- I THINK IT'S BINDER NO. 3. IT SAYS,

1 "JOINT EXHIBITS."

2 THE COURT: IT'S IN FOUR.

3 A IT ONLY GOES TO 130.

4 BY MR. JOHNSON:

5 Q I'M SORRY. I'M SORRY. BINDER NO. 4 THERE.

6 A OKAY.

7 Q SO THIS A -- OR IT PURPORTS TO BE A LETTER WRITTEN  
8 BY YOU TO A MS. STEPHANIE TOTI, I THINK, WHO IS AT THE CENTER  
9 FOR REPRODUCTIVE RIGHTS DATED JULY 11, 2008. DOES THAT LOOK  
10 FAMILIAR TO YOU?

11 A YES.

12 Q AND IS THAT -- IS THAT YOUR SIGNATURE THERE ON  
13 PAGE 3 OF THE DOCUMENT?

14 A YES.

15 Q NOW, DO YOU RECALL THE CIRCUMSTANCES SURROUNDING  
16 YOUR DRAFTING SUBMISSION OF THIS LETTER?

17 A ONLY IN A VERY GENERAL WAY.

18 Q SO IT SUGGESTS THAT -- WELL, IT'S ENTITLED IN THE  
19 REFERENCE LINE, "ADVISORY OPINION CONCERNING THE MINIMUM  
20 TRAINING REQUIREMENTS FOR FIRST TRIMESTER ABORTION PROVIDERS";  
21 IS THAT RIGHT?

22 A YES.

23 Q AND IT LOOKS AS THOUGH IT WAS A RESPONSE FROM YOU TO  
24 THE CENTER FOR REPRODUCTIVE RIGHTS THAT MADE A REQUEST FOR  
25 THEIR CLIENT, WHICH WAS THE HOPE MEDICAL GROUP FOR WOMEN, FOR

1 AN ADVISORY OPINION CONCERNING THE MINIMUM TRAINING  
2 REQUIREMENTS FOR FIRST TRIMESTER ABORTION PROVIDERS; IS THAT  
3 RIGHT?

4 A THAT'S CORRECT.

5 MS. JAROSLAW: OBJECTION, YOUR HONOR. THERE'S  
6 NOTHING IN -- IN THE EXHIBIT THAT REFERS TO ANY CLINIC.

7 MR. JOHNSON: ACTUALLY, IT'S IN THE FIRST PARAGRAPH  
8 OF THE LETTER.

9 MS. JAROSLAW: WITHDRAWN.

10 BY MR. JOHNSON:

11 Q IS THAT RIGHT, DOCTOR?

12 A YES, THAT'S CORRECT.

13 Q SO WE CAN TAKE A MOMENT TO ALLOW YOU TO READ THE  
14 WHOLE LETTER IF NECESSARY, BUT I JUST WONDER, PRIOR TO DOING  
15 SO, DOES THIS LOOK TO BE A GENERAL ADVISORY OPINION OR DID IT  
16 CREATE SOME SORT OF NEW OR SPECIFIC PROHIBITION ON THE  
17 ABORTION PRACTICE IN LOUISIANA?

18 A NO. IT'S A FAIRLY STANDARD LETTER, STANDARD  
19 RESPONSE TO A REQUEST FOR AN ADVISORY OPINION ABOUT WHAT THE  
20 REQUIREMENTS WOULD BE FOR A PHYSICIAN TO PROVIDE A PARTICULAR  
21 SERVICE.

22 Q IN TERMS OF GENERAL LEVELS OF COMPETENCY, FOR  
23 EXAMPLE?

24 A YEAH. IT'S VERY -- IT'S VERY GENERAL AND BASICALLY  
25 PROVIDES FOR VARIOUS WAYS THAT A PHYSICIAN COULD ESTABLISH

1 THEIR QUALIFICATIONS.

2 Q AND --

3 A AND PROVIDES FOR A CASE-BY-CASE REVIEW IN THE EVENT  
4 THAT A PROVIDER DIDN'T MEET THE ESTABLISHED MEANS OF  
5 DEMONSTRATING THEIR COMPETENCE.

6 Q AND THERE'S NO SPECIFIC PROHIBITION ON ANY  
7 PARTICULAR PHYSICIAN IN THIS LETTER, IN FACT, NONE IS  
8 REFERENCED OR EVEN CONSIDERED HERE; IS THAT RIGHT?

9 A THAT'S CORRECT. WE WERE -- WE WERE ASKED A GENERAL  
10 QUESTION AND SO WE GAVE A GENERAL RESPONSE.

11 Q IN YOUR OPINION, SHOULD ANY DOCTOR IN LOUISIANA USE  
12 OR INTERPRET THIS 2008 LETTER BY YOU AS CREATING A LIMITATION  
13 ON THEIR PERSONAL PRACTICE?

14 MS. JAROSLAW: OBJECTION, YOUR HONOR. NOT IN THE  
15 EXPERT REPORT.

16 THE COURT: RESPONSE?

17 MR. JOHNSON: WELL, THIS IS A LETTER DRAFTED BY HIM.  
18 I'M ASKING HIM WHAT THE MEANING IS OF THIS LETTER IN HIS ROLE  
19 AS THE --

20 THE COURT: IF IT'S NOT IN THE REPORT, IT'S NOT A  
21 PROPER QUESTION. IS IT IN THE REPORT?

22 MR. JOHNSON: WELL, OF COURSE, THE REPORT'S  
23 GENERALLY DISCUSS THE ABORTION PRACTICE IN LOUISIANA AND HIS  
24 RELATION TO THAT IN HIS FORMER ROLE AS THE DIRECTOR OF THE  
25 STATE BOARD OF MEDICAL EXAMINERS. I MEAN IT'S CLEARLY WITHIN

1 THE SCOPE OF HIS EXPERIENCE AND HIS EXPERTISE IN THIS CASE.

2 THE COURT: NOBODY QUESTIONS THAT. THE QUESTION IS  
3 WHETHER OR NOT IT'S IN THE SCOPE OF THE REPORT, AND I'M NOT  
4 HEARING YOU SAY THAT IT IS. SO I SUSTAIN THE OBJECTION.

5 MR. JOHNSON: THANK YOU, YOUR HONOR.

6 BY MR. JOHNSON:

7 Q WELL, LET ME ASK YOU GENERALLY, NOT WITH RELATION TO  
8 THIS LETTER, BUT BASED UPON YOUR EXPERTISE AND INSIGHT, IS IT  
9 UNLAWFUL IN LOUISIANA FOR AN ABORTION PROVIDER TO GO BEYOND  
10 THE GESTATIONAL AGE OF 13 WEEKS, SIX DAYS?

11 A NO.

12 Q AND DOES THAT -- DOES THAT MATTER IN TERMS OF THEIR  
13 BACKGROUND OR THEIR EXPERTISE? IN OTHER WORDS, IS THERE A  
14 DIFFERENT STANDARD FOR A CERTIFIED -- BOARD CERTIFIED OB/GYN  
15 OR OTHER PRACTITIONERS?

16 MS. JAROSLAW: OBJECTION. IT'S, AGAIN, BEYOND THE  
17 SCOPE OF THE EXPERT OPINION.

18 THE COURT: OVERRULED.

19 A JUST IF I MIGHT BE PERMITTED TO PROVIDE A BETTER  
20 BACKGROUND HERE. A MEDICAL LICENSE IS GRANTED BY THE STATE.  
21 IT'S A RIGHT, NOT A PRIVILEGE. IT'S GRANTED BY THE STATE TO  
22 PEOPLE WHO MEET A CERTAIN SET OF REQUIREMENTS. IT'S NOT  
23 SPECIFIC WITH RESPECT TO THE EXPERTISE THAT A PHYSICIAN MIGHT  
24 HAVE IN ONE OR ANOTHER AREA. YOU GET A LICENSE THAT ALLOWS  
25 YOU TO DO ANYTHING THAT YOU'RE QUALIFIED TO DO, AND HOW YOU

1 ESTABLISH YOUR QUALIFICATIONS VARIES. IN A MEDICAL STAFF  
2 ORGANIZATION, YOU ESTABLISH YOUR QUALIFICATIONS THROUGH THIS  
3 CREDENTIALING PROCESS THAT WE'VE BEEN TALKING ABOUT.

4 WHEN THE BOARD IS ASKED A QUESTION ABOUT WHETHER OR  
5 NOT A GIVEN PHYSICIAN IS QUALIFIED TO ENGAGE IN A CERTAIN TYPE  
6 OF PRACTICE, AND THESE KINDS OF QUESTIONS WOULD COME UP FROM  
7 TIME TO TIME. YOU'D HAVE A FAMILY PRACTITIONER THAT'S DOING  
8 SURGERY, LET'S SAY. THE BOARD MIGHT BE ASKED, "IS THAT A  
9 VIOLATION OF THE MEDICAL PRACTICE ACT?"

10 AND THE BOARD THEN WOULD LOOK AT THE INDIVIDUAL'S  
11 TRAINING AND EXPERIENCE AND WOULD MAKE A DETERMINATION AS TO  
12 WHETHER OR NOT THIS INDIVIDUAL WAS QUALIFIED BASED ON THEIR  
13 TRAINING AND EXPERIENCE TO DO THE PROCEDURE IN QUESTION.  
14 BECAUSE THERE'S A GENERAL REQUIREMENT THAT YOU BE QUALIFIED TO  
15 DO THE THINGS YOU DO.

16 NOT JUST THAT YOU HOLD A LICENSE, BUT THAT YOU HAVE  
17 TRAINING AND EXPERIENCE TO PROVIDE THE CARE THAT YOU  
18 UNDERTAKE. THAT'S -- THAT'S A STANDARD AND IT'S A STANDARD  
19 THAT THE BOARD ENFORCES AND SOMETIMES ON A CASE-BY-CASE BASIS.  
20 IT REQUIRES SOME JUDGMENT, THAT'S WHY YOU HAVE THE BOARD,  
21 WHICH CONSISTS OF PHYSICIANS, TO SORT THESE THINGS OUT.

22 **BY MR. JOHNSON:**

23 Q AND SO --

24 A AND THAT'S THE RESPONSE IN THIS LETTER, ACTUALLY, AS  
25 WELL.

1 Q SO, AGAIN, JUST TO ANSWER MY QUESTION, THERE'S NO --  
2 HAVING A BOARD CERTIFICATION IN OB/GYN, DOES NOT NECESSARILY  
3 ENTITLE ONE TO PROVIDE LATER TERM ABORTIONS THAN ANY OTHER  
4 PHYSICIAN IN THE STATE OF LOUISIANA ON ITS FACE; CORRECT?

5 A WELL, "ENTITLE" -- I'M NOT SURE ABOUT "ENTITLE."  
6 CERTAINLY SOMEONE WHO'S BOARD CERTIFIED BY MEANS OF THEIR  
7 TRAINING HAS ESTABLISHED A LEVEL OF QUALIFICATION TO ENGAGE IN  
8 THIS KIND OF THING. BUT BY ITSELF WOULD NOT BE SUFFICIENT,  
9 BUT CERTAINLY IS RELEVANT AND WOULD BE ONE OF SEVERAL THINGS  
10 THAT A CREDENTIALING BODY MIGHT CONSIDER OR THAT THE BOARD  
11 MIGHT CONSIDER WHEN ASKED.

12 Q ALL RIGHT.

13 MR. JOHNSON: YOUR HONOR, I RECALLED AS THE WITNESS  
14 WAS TESTIFYING THAT THE LETTER THAT WE WERE JUST DISCUSSING  
15 WAS -- WELL, I'LL WITHDRAW THAT.

16 WE HAVE NO FURTHER QUESTIONS AT THIS TIME, YOUR  
17 HONOR.

18 THE COURT: THANK YOU. CROSS EXAMINATION?

19 MS. JAROSLAW: YOUR HONOR, MAY I TURN OFF THE ELMO  
20 SO I HAVE EXTRA SPACE FOR EXHIBITS? THANK YOU.

21 CROSS

22 BY MS. JAROSLAW:

23 Q GOOD MORNING, DR. MARIER.

24 A GOOD MORNING.

25 Q WE'VE MET BEFORE, HAVEN'T WE?

1 A YES.

2 Q YOU TESTIFIED AT A DEPOSITION THIS PAST JANUARY,  
3 JANUARY 28TH, 2015; CORRECT?

4 A YES.

5 Q AND THAT WAS IN NEW ORLEANS, AND IT WAS BEFORE A  
6 COURT REPORTER; CORRECT?

7 A CORRECT.

8 Q AND AT THAT DEPOSITION YOU SWORE TO TELL THE TRUTH  
9 SAME AS YOU DID HERE; CORRECT?

10 A CORRECT.

11 Q THIS WILL TAKE LESS TIME THAN THE DEPOSITION, BUT  
12 I'D LIKE TO FOLLOW-UP ON SOME OF THE MATTERS YOU TESTIFIED  
13 ABOUT.

14 NOW, YOU TESTIFIED THAT WHEN YOU WERE IN PRACTICE,  
15 YOUR FIELD WAS INTERNAL MEDICINE WITH A SPECIAL INTEREST IN  
16 INFECTIOUS DISEASE; CORRECT?

17 A YES.

18 Q YOU'VE NEVER PERFORMED A SECTION D&C, HAVE YOU?

19 A NO.

20 Q YOU'VE NEVER PERFORMED AN ABORTION; CORRECT?

21 A CORRECT.

22 Q AND, IN FACT, YOU'VE NEVER PERFORMED ANY OBSTETRIC  
23 OR GYNECOLOGICAL SURGERIES, HAVE YOU?

24 A I DID SOME DELIVERIES IN MEDICAL SCHOOL, BUT THAT'S  
25 THE EXTENT OF IT.

1 Q FAIR TO SAY THAT'S CLOSE TO 50 YEARS AGO?

2 A FAIR TO SAY.

3 Q NOW, YOU DO KNOW AS A HOSPITAL ADMINISTRATOR AND AS  
4 A PHYSICIAN, THAT IT'S ROUTINE IN OB/GYN PRACTICES FOR A GROUP  
5 OF DOCTORS TO CARE FOR PREGNANT WOMEN; IS THAT CORRECT?

6 A COULD YOU RESTATE THAT, PLEASE?

7 Q SURE. ARE YOU AWARE THAT THERE ARE PRACTICES OF  
8 OB/GYNS, GROUPS OF FOUR OR SIX OB/GYNS, WHO SHARE A PRACTICE  
9 AND THEY ALL CARE FOR A PREGNANT PATIENT OF THEIRS TOGETHER;  
10 CORRECT?

11 A CORRECT. YES.

12 Q AND EACH OF THOSE OB/GYNS MAY CHOOSE TO COVER ONE OR  
13 MORE NIGHTS FOR THE OTHER PHYSICIANS SO THAT NOT ALL OF THE  
14 PHYSICIANS ARE ON CALL ALL THE TIME IF A WOMAN GOES INTO  
15 LABOR; CORRECT?

16 A CORRECT.

17 Q AND THERE'S NO GUARANTEE WHEN A WOMAN GOES INTO  
18 LABOR THAT SHE'LL SEE THE DOCTOR IN THE PRACTICE WHO CARED FOR  
19 HER MOST OF THE TIME; CORRECT?

20 A YES.

21 Q NOW, WITH REGARD TO PATIENTS GETTING CARE IN A LIFE  
22 OR HEALTH-THREATENING EMERGENCY; IT'S A FACT, ISN'T IT, THAT  
23 HOSPITAL EMERGENCY ROOMS MUST TREAT PATIENTS WHO PRESENT WITH  
24 TRUE MEDICAL EMERGENCIES; CORRECT?

25 A THEY MUST STABILIZE THEM, IF THAT'S WHAT YOU MEAN BY

1 TREAT.

2 Q AND ONCE THEY STABILIZE THEM, THEY MAY TRANSPORT  
3 THEM TO ANOTHER HOSPITAL; CORRECT?

4 A IT'S ONE OF SEVERAL POSSIBILITIES.

5 Q WHAT ARE THE OTHER POSSIBILITIES?

6 A WELL, THEY COULD ADMIT THE PATIENT TO THEIR OWN  
7 HOSPITAL.

8 Q AND THE REQUIREMENT TO PROVIDE EMERGENT CARE TO  
9 PATIENTS WHO PRESENT WITH TRAUMA OR HEART ATTACK AND THE LIKE,  
10 THAT'S REQUIRED BY FEDERAL LAW; CORRECT?

11 A CORRECT.

12 Q NOBODY IN THE EMERGENCY ROOM ASKS A HEART ATTACK  
13 VICTIM, "DO YOU HAVE A PHYSICIAN WITH ADMITTING PRIVILEGES  
14 HERE"; RIGHT?

15 A WELL, THEY MIGHT ASK THEM THAT.

16 Q HAVE YOU EVER WITNESSED THAT OCCUR?

17 A SURE. IF YOU HAVE A PHYSICIAN ON THE MEDICAL STAFF,  
18 IT WOULD BE BEST IF THAT PERSON WERE ENGAGED IN YOUR CARE.

19 Q NOW, IF THAT HEART ATTACK VICTIM SAID, "NO, I DON'T  
20 EVEN HAVE MY OWN DOCTOR," WHAT WOULD THE HOSPITAL DO?

21 A THEY'D FIND A CARDIOLOGIST TO TAKE CARE OF THEM.

22 Q AND COULD OCHSNER PROVIDE ADEQUATE CARE TO THAT  
23 HEART ATTACK VICTIM?

24 A IT WOULD BE BETTER IF THEY KNEW SOME MEDICAL  
25 HISTORY, BUT THEY COULD PROVIDE A LEVEL OF CARE. WOULD IT BE

1 ADEQUATE? IT WOULD REALLY DEPEND ON THE PATIENT'S HISTORY,  
2 WHAT THE PATIENT WAS ABLE TO PROVIDE IN TERMS OF THE  
3 MEDICATIONS THEY WERE TAKING, INTERVENTIONS THAT THEY HAD HAD.  
4 THEIR WHOLE MEDICAL HISTORY IS RELEVANT TO THE CARE THAT'S  
5 PROVIDED. SO IT WOULD DEPEND ON WHETHER OR NOT THAT  
6 INFORMATION WAS AVAILABLE TO THE NEW PROVIDER.

7 Q IS IT YOUR TESTIMONY THAT THE HOSPITAL WHERE YOU  
8 WORK, OCHSNER, COULD NOT PROVIDE THE STANDARD OF CARE IN AN  
9 EMERGENCY SITUATION TO A HEART ATTACK VICTIM WHO PRESENTS  
10 WITHOUT -- WITHOUT THEIR OWN PHYSICIAN ON THE STAFF OF  
11 OCHSNER?

12 MR. JOHNSON: OBJECTION, YOUR HONOR. THAT'S NOT  
13 WHAT THE WITNESS TESTIFIED.

14 THE COURT: WELL, THAT'S THE QUESTION THAT SHE'S  
15 ASKING, SO OVERRULED.

16 A THEY COULD PROVIDE -- THEY COULD STABILIZE THE  
17 PATIENT. THEY WOULD CERTAINLY BE ABLE TO DO SOME THINGS.  
18 WHETHER OR NOT THAT WOULD BE IDEAL WOULD DEPEND ON THE  
19 CIRCUMSTANCES. AND I'M NOT SURE WHAT YOU MEAN BY "STANDARD OF  
20 CARE" EITHER.

21 BY MS. JAROSLAW:

22 Q DR. MARIER, YOU REALIZE, DON'T YOU, THAT PEOPLE MAY  
23 HAVE HEART ATTACKS WHEN THEY'RE NOT CLOSEST TO THEIR OWN  
24 PHYSICIAN; CORRECT?

25 A CORRECT.

1 Q AND YOU REALIZE PEOPLE HAVE HEART ATTACKS WHEN  
2 THEY'RE OUT OF TOWN; CORRECT?

3 A CORRECT.

4 Q AND YOU REALIZE THAT PEOPLE -- POOR PEOPLE IN  
5 LOUISIANA MAY HAVE HEART ATTACKS AND THEY MAY NOT EVEN HAVE  
6 ANY DOCTOR OF THEIR OWN; CORRECT?

7 A CORRECT.

8 Q IS IT YOUR TESTIMONY THAT OCHSNER -- OCHSNER WOULD  
9 GIVE THEM LESSER CARE BECAUSE THEY DON'T HAVE A PHYSICIAN ON  
10 STAFF AT YOUR HOSPITAL?

11 A OCHSNER WOULD DO THE BEST THEY COULD UNDER THE  
12 CIRCUMSTANCES, BUT THAT MIGHT NOT BE WHAT WOULD BE BEST FOR  
13 THE PATIENT IF THEY HAD THEIR OWN PROVIDER.

14 Q SO THERE ARE TWO LEVELS AT OCHSNER OF CARE: ONE FOR  
15 THOSE PATIENTS WHO ARE FORTUNATE ENOUGH AND PERHAPS OF MEANS  
16 ENOUGH TO HAVE A DOCTOR ON STAFF AT OCHSNER AND THEN A SECOND  
17 STANDARD OF CARE FOR PATIENTS WHO HAVE NO CONNECTION WITH  
18 OCHSNER?

19 A I DON'T AGREE WITH YOUR USE OF THE TERM "STANDARD OF  
20 CARE." AND WHATEVER I SAID WOULD APPLY TO ANY HOSPITAL, NOT  
21 JUST OCHSNER. UNDER THE BEST CIRCUMSTANCES, THE NEW PROVIDER  
22 WOULD HAVE DETAILED INFORMATION ABOUT THE PATIENT'S HISTORY,  
23 ABOUT THE MEDICATIONS THEY WERE TAKING. THAT'S THE STANDARD  
24 OF CARE. NOW, IF A PROVIDER DOESN'T HAVE THAT INFORMATION,  
25 THEY DO THE BEST THEY CAN UNDER THE CIRCUMSTANCES. THAT'S THE

1 STANDARD OF CARE.

2 Q IN AN EMERGENCY ROOM, IT'S THE STANDARD OF CARE TO  
3 TAKE A MEDICAL HISTORY WHEN THE PATIENT IS ABLE TO GIVE ONE;  
4 ISN'T THAT RIGHT?

5 A YES.

6 Q AND NOBODY ASKS A STABBING VICTIM AS THEY'RE  
7 STAGGERING INTO THE EMERGENCY ROOM, "DO YOU HAVE A DOCTOR WITH  
8 ADMITTING PRIVILEGES," DO THEY?

9 A YEAH, THEY MIGHT. IT'S ALWAYS BEST IF -- IF THE  
10 PHYSICIAN -- IF YOUR PHYSICIAN IS ON THE MEDICAL STAFF OF THE  
11 HOSPITAL BECAUSE THEY KNOW YOUR MEDICAL HISTORY. LET'S SAY  
12 THE STABBING VICTIM ALSO HAD CORONARY DISEASE OR HAD DIABETES  
13 --

14 Q WHEN WAS THE LAST TIME --

15 A -- THAT WOULD BE RELEVANT.

16 Q WHEN WAS THE LAST TIME YOU WERE ON CALL IN AN  
17 EMERGENCY ROOM?

18 A YESTERDAY.

19 Q AND WHAT TYPE OF PATIENTS DO YOU SEE?

20 A MEDICAL PATIENTS WITH HEART ATTACKS, OTHER MEDICAL  
21 PROBLEMS, HEMORRHAGE, GI HEMORRHAGE, SHOCK, SEPSIS, STROKES.

22 Q APPROXIMATELY WHAT PROPORTION OF PATIENTS WHO  
23 PRESENT TO THE EMERGENCY ROOM WHO ARE IN YOUR CARE ACTUALLY  
24 HAVE PHYSICIANS ON STAFF AT OCHSNER?

25 A PROBABLY 60 TO 70 PERCENT.

1 Q AND THE OTHER 30 TO 40 PERCENT, THEY'RE JUST OUT OF  
2 LUCK?

3 A NO, THEY'RE NOT OUT OF LUCK. THEIR LUCKY THEY'VE  
4 COME TO US AND WE DO THE BEST WE CAN.

5 Q NOW, WHEN YOU WERE EXECUTIVE DIRECTOR OF THE  
6 LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, YOU WERE  
7 INTERVIEWED BY THE LOUISIANA MEDICAL NEWS; IS THAT CORRECT?

8 A I DON'T RECALL.

9 Q IN JULY OF 2012, WERE YOU INTERVIEWED REGARDING  
10 DEFINING PROFESSIONAL MISCONDUCT?

11 A I DON'T RECALL.

12 MS. JAROSLAW: YOUR HONOR, I'D LIKE TO MARK FOR  
13 IDENTIFICATION PLAINTIFFS' EXHIBIT 181, WHICH I HAVE IN HARD  
14 COPIES FOR EVERYONE.

15 BY MS. JAROSLAW:

16 Q DR. MARIER, DOES PLAINTIFFS' EXHIBIT 181 REFRESH  
17 YOUR RECOLLECTION AS TO WHETHER YOU GAVE AN INTERVIEW TO TED  
18 GRIGGS OF LOUISIANA MEDICAL NEWS?

19 A YEAH, I RECALL -- YOU KNOW, I'VE GIVEN A LOT OF  
20 THESE THINGS. I RECALL THIS.

21 Q NOW, IN THIS ARTICLE, DID YOU STATE THE FOLLOWING:  
22 "I THINK IT'S IMPORTANT FOR THE PUBLIC TO KNOW WHAT THE  
23 STANDARDS OF THE PROFESSION ARE AND WHAT THE BOARD CONSIDERS  
24 UNPROFESSIONAL CONDUCT. I THINK SOME OF THE AREAS THAT ARE  
25 MISUNDERSTOOD HAVE TO DO WITH BOUNDARY VIOLATIONS"? DID YOU

1 SAY THAT?

2 A YES.

3 Q AND THEN CONTINUING ON NOW TO THE THIRD COLUMN,  
4 SECOND PARAGRAPH. I'LL READ A PORTION OF THAT. "THE BOARD  
5 DEFINES UNPROFESSIONAL CONDUCT AS," QUOTE, "CONDUCT THAT  
6 INCLUDES, BUT IS NOT LIMITED TO, THE DEPARTURE FROM OR THE  
7 FAILURE TO CONFORM TO THE STANDARDS OF ACCEPTABLE AND  
8 PREVAILING MEDICAL PRACTICE WITH THE ETHICS OF THE MEDICAL  
9 PROFESSION INCLUDING, BUT NOT LIMITED TO, THE PRINCIPLES  
10 ESTABLISHED BY THE AMERICAN MEDICAL ASSOCIATION," AND IT GOES  
11 ON FROM THERE. DO YOU SEE THAT?

12 A YES.

13 Q AND WAS THAT YOUR STATEMENT?

14 A YES.

15 Q AND IT'S IMPORTANT FOR PHYSICIANS TO ADHERE TO BASIC  
16 MEDICAL STANDARDS THAT ARE PROMULGATED BY NATIONAL  
17 ORGANIZATIONS; CORRECT?

18 A THESE -- YEAH, IN GENERAL. IN GENERAL.

19 Q NOW, YOU DO KNOW, DON'T YOU, THAT THE AMERICAN  
20 MEDICAL ASSOCIATION HAS SAID THAT THERE'S ABSOLUTELY NO  
21 MEDICAL REASON OR MEDICAL BASIS FOR REQUIRING ADMITTING  
22 PRIVILEGES FOR PROVIDERS OF ABORTION? YOU'RE AWARE OF THAT;  
23 CORRECT?

24 A NO, I'M NOT.

25 Q YOU'RE AWARE THAT THE AMERICAN COLLEGE OF OBSTETRICS

1 AND GYNECOLOGISTS HAVE STATED PUBLICLY THAT THESE ADMITTING  
2 PRIVILEGES REQUIREMENTS ARE NOT MEDICALLY NECESSARY AND WOULD  
3 RESULT IN HARM TO WOMEN BECAUSE IT WILL RESULT IN FEWER  
4 PROVIDERS AVAILABLE TO THEM? YOU'RE AWARE THEY MADE THAT  
5 PUBLIC STATEMENT; AREN'T YOU?

6 MR. JOHNSON: OBJECTION, YOUR HONOR. THE DOCTOR HAS  
7 NOT HAD AN OPPORTUNITY TO SEE WHAT COUNSEL IS REPRESENTING.  
8 IF WE HAVE A DOCUMENT FOR HIM TO REVIEW, PERHAPS HE CAN  
9 COMMENT ON IT, BUT I MEAN...

10 THE COURT: I THINK THE QUESTION WAS, WAS HE AWARE,  
11 AND I'LL ALLOW HER TO ASK THAT QUESTION.

12 BUT IF YOU'RE GOING TO ASK ABOUT THE CONTENTS OF IT,  
13 THEN I THINK YOU NEED TO PROVIDE HIM WITH A COPY SO HE CAN  
14 REVIEW IT.

15 MS. JAROSLAW: SURE. LET --

16 MR. JOHNSON: AND --

17 THE COURT: WAIT. HOLD ON ONE SECOND.

18 WHAT, MR. JOHNSON?

19 MR. JOHNSON: NOR HAS COUNSEL EVEN ESTABLISHED THAT  
20 THESE STATEMENTS WERE ACTUALLY MADE. WE'VE NOT SEEN THIS  
21 DOCUMENT. THIS IS HER REPRESENTATION OF WHAT SOME ASSOCIATION  
22 SAID, BUT IT'S NOT IN THE RECORD.

23 MS. JAROSLAW: YOUR HONOR, BOTH STATEMENTS ARE IN  
24 THE RECORD --

25 THE COURT: I THOUGHT I HAD ASKED ABOUT THAT

1 EARLIER, WHETHER THEY WERE, BECAUSE THIS IS NOT THE FIRST TIME  
2 THIS HAS BEEN REFERENCED IN THIS TRIAL AND I CAN'T -- WAS IT  
3 136 OR 135? SOMEBODY GIVE ME THE EXHIBIT NUMBER WHERE THIS IS  
4 LOCATED.

5 MS. JAROSLAW: I'LL CHECK THE EXHIBIT NUMBER RIGHT  
6 NOW, YOUR HONOR.

7 MR. JOHNSON: THANK YOU, YOUR HONOR.

8 MS. JAROSLAW: YOUR HONOR, THE STATEMENT BY --  
9 EXCUSE ME. 136 IS -- JX136 IS THE ACOG STATEMENT THAT SAYS  
10 THAT ADMITTING PRIVILEGES HAVE NO MEDICAL BASIS. PLAINTIFF  
11 EXHIBIT -- HERE IT IS.

12 BY MS. JAROSLAW:

13 Q DOCTOR, WOULD YOU PLEASE TAKE A LOOK AT THIS?

14 MS. JAROSLAW: THE RECORD WILL REFLECT ON THE SCREEN  
15 IS JOINT EXHIBIT 136, THE STATEMENT ON STATE LEGISLATION  
16 REQUIRING HOSPITAL ADMITTING PRIVILEGES FOR PHYSICIANS  
17 PROVIDING ABORTION SERVICES. THIS IS IN EVIDENCE.

18 BY MS. JAROSLAW:

19 Q DOCTOR, HAVE YOU SEEN THIS BEFORE?

20 A NO.

21 Q HAVE YOU SEEN SOME VERSION OF THIS REPORTED  
22 SOMEWHERE?

23 A I'VE HEARD ABOUT IT. I HAVEN'T ACTUALLY SEEN THE  
24 STATEMENT.

25 Q ONE MOMENT. IT'S FAIRLY SHORT, WOULD YOU PLEASE

1 READ THAT ONE PARAGRAPH STATEMENT?

2 A THERE ARE TWO PARAGRAPHS, WHICH ONE ARE YOU  
3 REFERRING TO?

4 Q NOT THE IDENTIFYING PARAGRAPH AT THE BOTTOM, BUT THE  
5 PARAGRAPH THAT BEGINS, "THE AMERICAN COLLEGE OF OBSTETRICIANS  
6 AND GYNECOLOGISTS."

7 A "THE AMERICAN COLLEGE OF OBSTETRICIANS AND  
8 GYNECOLOGISTS, THE COLLEGE, A 501(C)(3) ORGANIZATION IS THE  
9 NATION'S LEADING GROUP OF PHYSICIANS PROVIDING HEALTHCARE FOR  
10 WOMEN" --

11 Q NO, THAT'S AT THE BOTTOM IDENTIFYING THE  
12 ORGANIZATION.

13 A "WASHINGTON, D.C., THE AMERICAN CONGRESS OF  
14 OBSTETRICIANS AND GYNECOLOGISTS, ACOG, BELIEVES PHYSICIANS WHO  
15 PROVIDE MEDICAL AND SURGICAL PROCEDURES, INCLUDING ABORTION  
16 SERVICES IN THEIR OFFICES, CLINICS, OR FREE-STANDING  
17 AMBULATORY CARE FACILITIES SHOULD HAVE A PLAN TO ENSURE PROMPT  
18 EMERGENCY SERVICES IF A COMPLICATION OCCURS AND SHOULD  
19 ESTABLISH A MECHANISM FOR TRANSFERRING PATIENTS WHO REQUIRE  
20 EMERGENCY TREATMENT.

21 HOWEVER, ACOG OPPOSES LEGISLATION OR OTHER  
22 REQUIREMENTS THAT SINGLE OUT ABORTION SERVICES FROM OTHER  
23 OUTPATIENT PROCEDURES. FOR EXAMPLE, ACOG OPPOSES LAWS OR  
24 OTHER REGULATIONS THAT REQUIRE ABORTION PROVIDERS TO HAVE  
25 HOSPITAL ADMITTING PRIVILEGES. ACOG ALSO OPPOSES FACILITY

1 REGULATIONS THAT ARE MORE STRINGENT FOR ABORTION THAN FOR  
2 OTHER SURGICAL PROCEDURES OF SIMILAR LOW RISK."

3 Q DR. MARIER, YOU WERE AWARE OF ACOG'S POSITION IN  
4 JANUARY 2015 AT THE TIME OF YOUR DEPOSITION; CORRECT?

5 A CORRECT.

6 Q WERE YOU AWARE OF THIS POSITION OF ACOG WHEN YOU  
7 ASSISTED IN DRAFTING ACT 620?

8 A I KNEW THAT ACOG WAS OPPOSED TO THE REQUIREMENTS. I  
9 JUST DON'T RECALL SEEING THIS STATEMENT. BY THE WAY, I SHOULD  
10 ADD THAT I DON'T BELIEVE THE STATEMENT --

11 Q THERE'S NO QUESTION PENDING, DOCTOR.

12 MS. JAROSLAW: YOUR HONOR, AT THIS TIME, I WOULD  
13 ALSO LIKE TO --

14 MR. JOHNSON: YOUR HONOR, CAN SHE ALLOW THE WITNESS  
15 TO COMPLETE HIS ANSWER?

16 THE COURT: THE WITNESS MAY BE ALLOWED TO COMPLETE  
17 THE ANSWER.

18 A WELL, YES, I WAS AWARE OF IT. AND I DON'T THINK  
19 THAT THE STATEMENT IS ENTIRELY INCONSISTENT WITH THE ACT --  
20 ACT 8 -- ACT 620 EITHER.

21 MS. JAROSLAW: YOUR HONOR, AT THIS TIME, THE  
22 PLAINTIFFS WOULD OFFER INTO EVIDENCE PLAINTIFF EXHIBIT 142,  
23 WHICH IS AN AMICUS BRIEF OF ACOG AND THE AMERICAN MEDICAL  
24 ASSOCIATION IN SUPPORT OF THE PLAINTIFFS IN THE TEXAS CASE OF  
25 PLANNED PARENTHOOD VERSUS ABBOTT.

1           **MR. JOHNSON:** YOUR HONOR, WE OBJECT TO THE EXHIBIT  
2 AS HEARSAY.

3           **THE COURT:** WHAT'S THE PURPOSE? IS THE PURPOSE  
4 TO --

5           **MS. JAROSLAW:** IT IS THE PURPOSE TO SHOW THAT THE  
6 AMA AND ACOG HAVE PUT FORTH A PUBLIC POSITION IN OPPOSITION TO  
7 ADMITTING PRIVILEGES.

8           **THE COURT:** TO BE SPECIFIC, IS THE PURPOSE TO PROVE  
9 THE TRUTH OF THE CONTENTS OF THE DOCUMENT?

10          **MS. JAROSLAW:** NO, IT IS NOT, YOUR HONOR.

11          **THE COURT:** IT'S OVERRULED.

12          **MR. JOHNSON:** THANK YOU.

13 **BY MS. JAROSLAW:**

14           **Q** DR. MARIER, I HAVE A HYPOTHETICAL FOR YOU. LET'S  
15 SAY THERE'S A PHYSICIAN WHO'S HAD A DECADES LONG CAREER AS A  
16 VERY HIGHLY-REGARDED OB/GYN. THIS PHYSICIAN HAS HAD ADMITTING  
17 PRIVILEGES AT NUMEROUS HOSPITALS. WITHIN THE LAST 10 TO 15  
18 YEARS, THIS VERY WELL-REGARDED PHYSICIAN HAS ONLY PROVIDED  
19 FIRST AND SECOND TRIMESTER ABORTIONS TO HIS PATIENTS IN  
20 LOUISIANA BECAUSE HE UNDERSTANDS THERE'S A LARGE UNMET NEED.

21           THIS HYPOTHETICAL DOCTOR DOES NOT HAVE ACTIVE  
22 SURGICAL PRIVILEGES IN ANY HOSPITAL NOR DOES HE THINK HE'S  
23 QUALIFIED FOR THEM BECAUSE, IN HIS WORDS, IN THIS HYPOTHETICAL  
24 SITUATION, "I HAVEN'T PERFORMED A HYSTERECTOMY IN TEN YEARS,  
25 AND I WOULD NOT BE THE BEST PERSON TO DO THAT."

1           NOW, LET'S SAY THIS PHYSICIAN WHO PROVIDES -- HAS  
2 LITERALLY PROVIDED TENS OF THOUSANDS OF ABORTIONS OVER THE  
3 COURSE OF HIS CAREER WITHOUT ANY SERIOUS PROBLEMS, THIS  
4 PHYSICIAN GETS PRIVILEGES AT A HOSPITAL, BUT THEY'RE  
5 RESTRICTED PRIVILEGES. THE HOSPITAL, WISHING TO HELP THE  
6 DOCTOR SAYS, "WE'LL GRANT YOU ADMITTING PRIVILEGES, BUT HERE'S  
7 THE RESTRICTIONS: YOUR NAME GOES ON THE DOCUMENTS AS THE  
8 ADMITTING PHYSICIAN, THE MOMENT THE INK IS DRY, THEY'RE OUR  
9 PATIENT, WE'LL HAVE COVERING DOCTORS IN THE HOSPITAL TAKE CARE  
10 OF THAT PATIENT THAT YOU TRANSFER." DOES THAT DOCTOR MEET THE  
11 REQUIREMENTS OF ACT 620?

12           A     NO.

13           Q     AND PLEASE EXPLAIN WHY.

14           A     WELL, BECAUSE THAT PHYSICIAN DOESN'T -- ISN'T  
15 AUTHORIZED TO TAKE CARE OF THE PATIENT IN THE HOSPITAL, WHICH  
16 THE ACT REQUIRES.

17           Q     AND I'D ALSO LIKE TO REFER YOU TO YOUR REPORT,  
18 DEFENSE EXHIBIT 146 THAT WE JUST LOOKED AT, PAGE 10, AND IF WE  
19 COULD SCROLL TO THAT PARAGRAPH 31. NOW, YOU RECOGNIZE THIS AS  
20 A SEGMENT OF YOUR REPORT; CORRECT?

21           A     YES.

22           Q     AND IT READS, IN PERTINENT PART, "FOR PURPOSES OF  
23 THIS SECTION, ACTIVE ADMITTING PRIVILEGES MEANS THAT THE  
24 PHYSICIAN IS A MEMBER IN GOOD STANDING OF THE MEDICAL STAFF OF  
25 A HOSPITAL THAT IS CURRENTLY LICENSED BY THE DEPARTMENT WITH

1 THE ABILITY TO ADMIT THE PATIENT AND TO PROVIDE DIAGNOSTIC AND  
2 SURGICAL SERVICES TO SUCH PATIENT CONSISTENT WITH THE  
3 REQUIREMENTS OF PARAGRAPH A1 OF THE SUBSECTION." DID I READ  
4 THAT ACCURATELY?

5 A YES.

6 Q AND WHEN I SAID "SURGICAL SERVICES," IS IT ACCURATE  
7 TO SAY THAT THAT'S IN BOLD IN YOUR REPORT?

8 A YES.

9 Q AND IS IT FAIR TO SAY THAT THE REASON MY  
10 HYPOTHETICAL PHYSICIAN WOULD NOT MEET THE REQUIREMENTS OF  
11 ACT 620 WOULD BE BECAUSE HE COULD NOT PROVIDE DIAGNOSTIC AND  
12 SURGICAL SERVICES IN THE HOSPITAL?

13 A YES.

14 Q DR. MARIER, PHYSICIANS -- FORGET OB/GYN. ALL  
15 PHYSICIANS ROUTINELY RELY ON ONE ANOTHER'S EXPERTISE IN  
16 ENSURING THE BEST QUALITY OF CARE FOR THEIR PATIENTS; IS THAT  
17 CORRECT?

18 A YES.

19 Q AND PATIENTS ALSO ROUTINELY PROVIDE COVERAGE FOR ONE  
20 ANOTHER'S PATIENTS; CORRECT?

21 A PHYSICIANS --

22 Q I'M SORRY.

23 A YES.

24 Q YES, PHYSICIANS. AND TRANSFERRING OR REFERRING A  
25 PATIENT TO ANOTHER PHYSICIAN EVEN WITHIN YOUR OWN FIELD OF

1 PRACTICE IS NOT PATIENT ABANDONMENT; CORRECT?

2 A CORRECT.

3 Q AND IT'S APPROPRIATE FOR PHYSICIANS, SAY, PRACTICING  
4 MEDICINE IN A MEDICAL SUITE, TO TRANSFER PATIENTS TO A  
5 HOSPITAL IF THEIR PATIENT EXPERIENCES A MEDICAL EMERGENCY; IS  
6 THAT RIGHT?

7 A YES.

8 Q NOW, TURNING TO PHYSICIANS WHO WOULD SEEK ADMITTING  
9 PRIVILEGES. IT MAKES SENSE FOR A PHYSICIAN TO HAVE HOSPITAL  
10 PRIVILEGES IF HE OR SHE INTENDS TO ADMIT PATIENTS INTO THE  
11 HOSPITAL; CORRECT?

12 A THAT'S A REQUIREMENT.

13 Q AND IF A DOCTOR HAD ADMITTING PRIVILEGES AT A  
14 HOSPITAL BUT THEN SUBSEQUENTLY DIDN'T ADMIT ANY PATIENTS INTO  
15 THE HOSPITAL OR PERFORM ANY PROCEDURES THERE, IS IT FAIR TO  
16 SAY THAT MOST HOSPITALS WOULD LET THE PRIVILEGES LAPSE AND NOT  
17 RENEW THEM?

18 A WELL, THEY MIGHT ALLOW THE PERSON TO CONTINUE ON AS  
19 A COURTESY MEMBER OF THE STAFF. IT REALLY WOULD DEPEND ON  
20 WHAT THE BYLAWS REQUIRED IN A GIVEN INSTANCE.

21 Q BUT WOULD IT BE FAIR TO SAY THAT THEIR SURGICAL  
22 PRIVILEGES WOULD LAPSE IF THE HOSPITAL HAS NOT OBSERVED IN ANY  
23 WAY THIS PHYSICIAN PERFORMING ANY SURGERIES IN THE HOSPITAL?

24 A NO, THAT'S NOT CORRECT.

25 Q I'D LIKE TO TURN YOUR ATTENTION NOW TO PAGE 93 OF

1 YOUR DEPOSITION. I'M LOOKING AT LINE 7. WERE YOU ASKED THIS  
2 QUESTION AND DID YOU GIVE THIS ANSWER: "IF DOCTORS NEVER  
3 ADMIT PATIENTS INTO THE HOSPITALS, SOME HOSPITALS WILL REVOKE  
4 THEIR PRIVILEGES OR LET THEM LAPSE WITHOUT RENEWING; ISN'T  
5 THAT RIGHT?"

6 ANSWER: "THAT'S CORRECT." WERE YOU ASKED THAT  
7 QUESTION --

8 A YES.

9 Q -- AND DID YOU GIVE THAT ANSWER?

10 A YES.

11 Q ON YOUR DIRECT TESTIMONY TODAY, YOU SAID THAT YOU  
12 BELIEVE IT'S IMPORTANT, WITH RESPECT TO ACT 620 IN ABORTION,  
13 IT'S IMPORTANT TO HAVE A SINGLE STANDARD FOR THESE PROCEDURES  
14 WHICH CARRY SOME RISK OF MAJOR COMPLICATIONS. THAT WAS YOUR  
15 TESTIMONY; CORRECT?

16 A CORRECT.

17 Q DR. MARIER, ANY SURGERY CARRIES SOME RISKS OF MAJOR  
18 COMPLICATIONS; CORRECT?

19 A NO, NOT CORRECT.

20 Q NAME SOME.

21 A MINOR SURGICAL PROCEDURES ON THE SKIN, FOR EXAMPLE.

22 Q AND IF THAT PATIENT HAD A HEART CONDITION THAT WAS  
23 PRE-EXISTING THAT THE TRAUMA OF THE SURGERY TRIGGERED, THAT  
24 PATIENT COULD GO INTO SOME TYPE OF EMERGENT SITUATION;  
25 CORRECT?

1 A CORRECT.

2 Q ANY SURGERY, PARTICULARLY SURGERY INVOLVING  
3 ANESTHESIA, HAS SOME RISK OF MAJOR COMPLICATIONS NO MATTER HOW  
4 LITTLE; RIGHT?

5 A I WAS REFERRING EARLIER TO DIRECT COMPLICATIONS OF  
6 THE SURGICAL PROCEDURE, NOT INCIDENTAL MEDICAL PROBLEMS THAT A  
7 PATIENT MIGHT HAVE.

8 Q BUT TO A PATIENT WHO IS IN AN EMERGENT CIRCUMSTANCE,  
9 IF THE SURGERY IS THE PROXIMATE CAUSE OF THE EMERGENCY, THEY  
10 NEED IMMEDIATE MEDICAL CARE ALL THE SAME; CORRECT?

11 A CORRECT.

12 Q AND YET IT'S TRUE, IS IT NOT, THAT PHYSICIANS  
13 PROVIDING IN-OFFICE SURGERIES IN LOUISIANA ARE NOT ALL  
14 REQUIRED TO HAVE ADMITTING PRIVILEGES?

15 A CORRECT.

16 Q DR. MARIER, WOULD OCHSNER GIVE ADMITTING PRIVILEGES  
17 TO A PHYSICIAN WHO NEVER TREATS PATIENTS IN A HOSPITAL?

18 A IN ANY HOSPITAL?

19 Q IN ANY HOSPITAL.

20 A THAT'S A GOOD QUESTION. I DON'T KNOW. IF THEY HAD  
21 NO INTENT TO EVER TREAT A PATIENT IN THE FUTURE, THEY  
22 WOULDN'T, BUT IF THEY WERE JUST COMING OUT OF TRAINING, FOR  
23 EXAMPLE, AND HAD NOT ESTABLISHED A PRACTICE, THEY'RE JUST  
24 MOVING INTO AN AREA, THEY WOULD. SO IT'S THE CIRCUMSTANCES  
25 THAT WOULD MATTER. IT'S THE INTENT, WHAT'S GOING TO HAPPEN

1 GOING FORWARD.

2 Q RIGHT. AND TO BE CLEAR, WE'VE TALKED ABOUT  
3 OCHSNER'S ADMITTING PRIVILEGES, ACTIVE, COURTESY, AND  
4 CONSULTING, BUT OCHSNER HAS MANY OTHER CATEGORIES SUCH AS  
5 EMERGENCY PRIVILEGES OR DISASTER PRIVILEGES AND THE LIKE;  
6 CORRECT?

7 A CORRECT.

8 Q SO IF A PHYSICIAN APPLIED FOR ADMITTING PRIVILEGES  
9 AND THAT PHYSICIAN HAD NO INTENTION OF TREATING PATIENTS IN  
10 THE HOSPITAL, OCHSNER WOULD NOT GIVE THEM HOSPITAL ADMITTING  
11 PRIVILEGES; CORRECT?

12 A CORRECT.

13 Q SO A PHYSICIAN IN FAMILY MEDICINE WHO PROVIDES SAFE  
14 FIRST TRIMESTER ABORTIONS BECAUSE THAT PHYSICIAN DOESN'T HAVE  
15 A PRACTICE THAT INVOLVES A HOSPITAL IN ANY WAY, IF THAT  
16 PHYSICIAN APPLIED FOR ACTIVE ADMITTING PRIVILEGES AND SURGICAL  
17 PRIVILEGES AT OCHSNER, HE OR SHE COULD NOT OBTAIN THEM;  
18 CORRECT?

19 A NO, NOT NECESSARILY. IF THE PHYSICIAN IN QUESTION  
20 HAD THE INTENT OF ADMITTING THE PATIENT OF HIS WHO MIGHT HAVE  
21 HAD A COMPLICATION AND REQUIRED IN-PATIENT CARE, AS LONG AS  
22 THE INTENT WAS FOR HIM TO CARE FOR THAT PATIENT, TO ADMIT THAT  
23 PATIENT, WHETHER OR NOT THAT OCCURRED OR NOT IS ANOTHER  
24 MATTER, BUT THE THING HERE IS DOES THE PHYSICIAN YOU'RE  
25 REFERRING TO, DOES HE INTEND TO ADMIT AND CARE FOR PATIENTS

1 THAT MIGHT HAVE COMPLICATIONS PURSUANT TO A PROCEDURE THAT HE  
2 DID IN HIS OFFICE.

3 Q UNDERSTOOD. I'LL FILL IN SOME MORE FACTUAL  
4 INFORMATION IN MY HYPOTHETICAL. THIS IS A FAMILY PRACTICE  
5 PHYSICIAN WHO FILLS OUT AN APPLICATION, SAY, TO OCHSNER FOR  
6 ADMITTING PRIVILEGES AND THERE'S A PART THAT SAYS, "HOW MANY  
7 PATIENTS DO YOU EXPECT TO ADMIT INTO THE HOSPITAL IN THE  
8 COMING YEAR?" AND THE PHYSICIAN WRITES ZERO AND THEN  
9 SOMEWHERE ELSE ON THE APPLICATION WHERE THERE'S AN AREA OF  
10 EXPLANATION THE PHYSICIAN RIGHTS, "I PERFORM FIRST" -- "FIRST  
11 TRIMESTER ABORTIONS. I'VE DONE SO FOR SEVEN YEARS, AND IN  
12 SEVEN YEARS I'VE HAD ONLY ONE PATIENT TRANSFERRED TO A  
13 HOSPITAL." WOULD THAT PHYSICIAN GET ACTIVE ADMITTING AND  
14 SURGICAL PRIVILEGES AT OCHSNER?

15 A I DON'T KNOW. IF THE PHYSICIAN SAID IN HIS  
16 APPLICATION THAT IT WAS HIS INTENT -- THE REASON HE WAS  
17 APPLYING FOR PRIVILEGES WAS TO ENABLE HIM TO CARE FOR THESE  
18 OCCASIONAL PATIENTS WHO HAD COMPLICATIONS REQUIRING  
19 HOSPITALIZATION, THEN THE HOSPITAL MIGHT WELL GRANT HIM  
20 PRIVILEGES.

21 Q WELL, PERHAPS YOU MISSED THE PART OF THE  
22 HYPOTHETICAL WHERE I MENTIONED THIS IS A PHYSICIAN WHO  
23 PRACTICED FAMILY MEDICINE. OTHER THAN PERFORMING FIRST  
24 TRIMESTER ABORTIONS, THIS PHYSICIAN DOES NOT DO ANY OTHER KIND  
25 OF SURGERY WHATSOEVER AND DOES NOT PURPORT TO HAVE EXPERTISE

1 IN ANY OTHER KIND OF SURGERY. UNDER THOSE CIRCUMSTANCES,  
2 WOULD OCHSNER GRANT THIS PHYSICIAN PRIVILEGES?

3 A WELL, THEY MIGHT ALLOW HIM TO DO AN D&C, THEY  
4 WOULDN'T ALLOW HIM TO DO A HYSTERECTOMY. I'D SAY HE COULD DO  
5 SOME THINGS, BUT HE COULDN'T, YOU KNOW, DO AN EX-LAP FOR A  
6 PERFORATED UTERUS. HE COULDN'T, PERHAPS, DO A HYSTERECTOMY,  
7 BUT HE COULD ADMIT THE PATIENT TO THE HOSPITAL. HE COULD  
8 ADMINISTER DRUGS. HE COULD DO A D&C IF THAT WAS REQUIRED. HE  
9 COULD ADMINISTER BLOOD TRANSFUSIONS. HE COULD DO A LOT OF  
10 THINGS. THERE'S NOTHING IN THE ACT THAT REQUIRES A PHYSICIAN  
11 TO PROVIDE ALL OF THE SERVICES THAT A PATIENT MIGHT NEED.

12 Q I'D LIKE TO TURN YOUR ATTENTION BACK TO YOUR REPORT,  
13 DEFENSE EXHIBIT 146, PARAGRAPH 31, PAGE 10.

14 NOW, "FOR A PHYSICIAN WHO PROVIDES FIRST TRIMESTER  
15 ABORTIONS AS A FAMILY PHYSICIAN, HE OR SHE WOULD HAVE TO BE A  
16 MEMBER IN GOOD STANDING OF THE MEDICAL STAFF OF A HOSPITAL  
17 THAT IS CURRENTLY LICENSED BY THE DEPARTMENT WITH THE ABILITY  
18 TO ADMIT A PATIENT AND TO PROVIDE DIAGNOSTIC AND SURGICAL  
19 SERVICES TO SUCH PATIENT CONSISTENT WITH THE REQUIREMENTS OF  
20 PARAGRAPH A1 OF THIS SUBSECTION." DO YOU SEE THAT?

21 A YES.

22 Q NOW, COULD THIS FAMILY PHYSICIAN WHO ONLY DOES  
23 SUCTION D&CS AS THE ONLY SURGERY, COULD THAT PHYSICIAN MEET  
24 THE REQUIREMENTS OF ACT 620?

25 A YES.

1 Q ARE YOU SAYING THAT IF THIS PHYSICIAN WERE TO APPLY  
2 TO OCHSNER AND HAD AN EXCELLENT RECORD, OCHSNER WILL GRANT  
3 THIS PHYSICIAN ACTIVE ADMITTING AND SURGICAL PRIVILEGES?

4 A WELL, AGAIN, IT WOULD -- IT WOULD -- I THINK IT'S  
5 LIKELY THAT OCHSNER WOULD CONSIDER SUCH AN APPLICATION  
6 FAVORABLY. THEY MIGHT LIMIT THE PERSON'S PRIVILEGES TO  
7 ADMITTING PRIVILEGES AND TO D&CS, BUT NOTHING MORE THAN THAT.

8 Q DOCTOR --

9 A D&C IS A SURGICAL PROCEDURE AND, AS YOU'VE SAID, HE  
10 DOES DO D&CS.

11 Q CORRECT. DR. MARIER, WHAT WOULD BE THE POINT OF  
12 GIVING THE PHYSICIAN PRIVILEGES TO DO D&CS WHEN THE PHYSICIAN  
13 HAS SAFELY DONE THEM IN OFFICE AND IN CLINIC FOR SEVEN YEARS?  
14 ISN'T THE PURPOSE OF ACT 620 SO THAT THE PHYSICIAN, AS YOU  
15 SAID, CAN SAFELY MANAGE COMPLICATIONS OF ABORTION?

16 A RIGHT. BUT COMPLICATIONS SOMETIMES MIGHT ENTAIL A  
17 D&C TO REMOVE A PARTIAL ABORTION, LET'S SAY THAT WAS CAUSING  
18 CONTINUING HEMORRHAGE. NOW, SUCH A PROVIDER COULD DO THAT. A  
19 LOT OF FAMILY DOCS HAVE PRIVILEGES TO DELIVER BABIES AND DO  
20 D&CS IN THE HOSPITALS. THAT'S ALL THAT'S REQUIRED BY THE ACT.  
21 THE ACT DOESN'T SAY THEY HAVE TO DO EX-LAPS OR HYSTERECTOMIES.  
22 IT JUST SAYS THEY NEED TO BE ABLE TO CARE FOR THE PATIENT AND,  
23 IF NECESSARY, TO ENGAGE THE SERVICES OF OTHER SPECIALISTS AND  
24 EXPERTS. IT'S DONE ALL THE TIME.

25 Q SO IF THIS FAMILY PHYSICIAN HAD SURGICAL PRIVILEGES

1 IN -- LET'S SAY IT WAS A FAMILY MEDICINE DOCTOR WHO HAD A  
2 DERMATOLOGY PRACTICE ON THE SIDE AND THE FAMILY MEDICINE  
3 SPECIALIST APPLIED FOR SURGICAL PRIVILEGES WITH REGARD TO  
4 DERMATOLOGY, THAT PHYSICIAN WOULD NOW SATISFY THE STATUTE?  
5 WOULD YOU AGREE WITH ME THAT IT'S UNCLEAR?

6 A YOUR QUESTION IS UNCLEAR.

7 Q I'LL REPHRASE IT. I'LL BE HAPPY TO. IN THE  
8 SCENARIO NOW, THE FAMILY PHYSICIAN FOUR DAYS A WEEK DOES FIRST  
9 TRIMESTER ABORTIONS WITHOUT INCIDENT. ONE DAY A WEEK HAS A  
10 DERMATOLOGY PRACTICE AND DOES, YOU KNOW, SIMPLE SKIN EXCISIONS  
11 AND SO FORTH AND IS ABLE TO MANAGE ANY COMPLICATIONS THAT  
12 OCCUR FROM THOSE SURGERIES. HE OR SHE APPLIES TO OCHSNER FOR  
13 SURGICAL ADMITTING PRIVILEGES BASED ON HIS OR HER EXPERTISE  
14 WITH DERMATOLOGICAL SURGERY. DOES THAT PHYSICIAN NOW MEET THE  
15 REQUIREMENTS OF ACT 620?

16 A YES. BUT NOT BECAUSE OF HIS DERMATOLOGY PRACTICE,  
17 BUT BECAUSE OF HIS EXPERIENCE DOING D&CS. LET ME -- A POINT  
18 OF CLARIFICATION HERE, THERE'S ACTUALLY NO SUCH THING AS  
19 SURGICAL PROCEDURES, MEANING YOU CAN DO ANY TYPE OF SURGERY  
20 YOU WANT. SURGICAL PRIVILEGES ARE GRANTED FOR VERY SPECIFIC  
21 THINGS. YOU CAN DO A D&C, BUT YOU CAN'T DO AN EX-LAP. YOU  
22 CAN'T DO A THORACOTOMY IF YOU'RE A GENERAL SURGEON. YOU CAN'T  
23 DO A NEUROSURGICAL PROCEDURE. YOU HAVE A TYPE OF SURGICAL  
24 PRIVILEGES.

25 BUT I THINK THE POINT THAT I'M TRYING TO MAKE HERE

1 IS THAT SURGICAL PRIVILEGES IS A GENERIC TERM. A HOSPITAL  
2 DOESN'T GRANT SOMEONE BLANKET SURGICAL PROCEDURES. THE  
3 PRIVILEGING IS FOR A SPECIFIC SURGICAL PROCEDURE BASED ON THAT  
4 PERSON'S EXPERIENCE AND QUALIFICATIONS. FAMILY DOCS MAY WELL  
5 BE QUALIFIED TO DO DELIVERIES, TO DEAL WITH COMPLICATIONS OF  
6 DELIVERIES, TO DO D&CS BUT NOT TO DO MORE THAN THAT AND THAT'S  
7 ALL THAT THE ACT REQUIRES.

8 Q NOW, OF COURSE, SURGICAL PRIVILEGES WILL BE  
9 DELINEATED SPECIFIC TO EACH PHYSICIAN; CORRECT?

10 A CORRECT.

11 Q OKAY. NOW, THE DIAGNOSTIC AND SURGICAL SERVICES  
12 THAT HAVE TO BE PROVIDED TO THE PATIENT HAVE TO BE CONSISTENT  
13 WITH THE REST OF THE ACT. SO IS IT FAIR TO SAY THAT IF THIS  
14 PHYSICIAN WITH GREAT EXPERTISE IN PROVIDING ABORTIONS TO  
15 WOMEN, IS IT FAIR TO SAY THAT IF -- IF HE OR SHE CANNOT DO ANY  
16 SURGERIES REGARDING COMPLICATIONS THEN THEY WILL NOT GET  
17 SURGICAL PRIVILEGES OF ANY KIND AT YOUR HOSPITAL?

18 A I JUST SAID SUCH A PERSON WOULD GET SURGICAL  
19 PRIVILEGES TO DO A D&C IN THE HOSPITAL.

20 Q ALL RIGHT.

21 A IF THE --

22 Q OF COURSE, THE D&C COULD BE DONE IN OFFICE OR IN  
23 CLINIC --

24 A NOT NECESSARILY. IF THERE WAS A LOT OF HEMORRHAGE  
25 ASSOCIATED WITH IT, YOU MIGHT WANT TO GIVE THE PATIENT BLOOD

1 TRANSFUSIONS TOO.

2 MR. JOHNSON: WE WOULD JUST OBJECT THAT COUNSEL HAS  
3 DEFINED RATHER THAN ASKED A QUESTION --

4 THE COURT: SUSTAINED.

5 BY MS. JAROSLAW:

6 Q I'D LIKE TO DRAW YOUR ATTENTION TO JOINT  
7 EXHIBIT 135, YOUR LETTER TO STEPHANIE TOTI THAT YOU WERE ASKED  
8 ABOUT ON DIRECT EXAMINATION. NOW, IN THAT LETTER, THE BOTTOM  
9 OF PAGE 1, YOU WRITE THE FOLLOWING: "THE BOARD RECOGNIZES  
10 THAT MOST FIRST TRIMESTER ABORTIONS ARE PERFORMED WITHOUT  
11 SERIOUS COMPLICATIONS." YOU WROTE THAT; CORRECT?

12 A CORRECT.

13 Q AND YOU BELIEVED IT WAS TRUE WHEN YOU WROTE IT;  
14 CORRECT?

15 A STILL DO.

16 Q AND NOW WE'LL GO TO THE TOP OF PAGE 2, SIX LINES  
17 DOWN. AND YOU'LL SEE THE SENTENCE THAT BEGINS WITH  
18 "ACCORDINGLY."

19 "ACCORDINGLY WHEN CONSIDERING THE LEVEL OF TRAINING  
20 APPROPRIATE FOR ABORTION PROVIDERS, THE BOARD BELIEVES IT IS  
21 IMPORTANT TO ENSURE THE PHYSICIAN HAS THE TECHNICAL SKILLS  
22 NECESSARY TO PERFORM SURGICAL ABORTIONS AS WELL AS SUFFICIENT  
23 KNOWLEDGE AND EXPERIENCE TO RECOGNIZE AND ADDRESS  
24 COMPLICATIONS FROM THE PROCEDURE."

25 DID YOU BELIEVE THAT TO BE TRUE AT THE TIME AND DO

1 YOU STILL BELIEVE IT TO BE TRUE?

2 A YES.

3 Q NOW, I'D LIKE TO GO TO THE NUMBERED PARAGRAPH 2, AND  
4 YOU CAN TAKE A MOMENT TO LOOK AT IT BEFORE YOU ANSWER MY  
5 QUESTION. BUT PARAGRAPH 2 PERTAINS TO PHYSICIANS WHO ARE NOT  
6 BOARD CERTIFIED OB/GYNS; CORRECT?

7 A CORRECT.

8 Q AND I'D LIKE TO READ AN EXCERPT FROM THAT. "A  
9 PHYSICIAN WHO DOES NOT HAVE THE CERTIFICATION, TRAINING, OR  
10 CREDENTIALS DESCRIBED ABOVE WOULD BEAR A HEAVIER BURDEN TO BE  
11 DEEMED COMPETENT. SUCH A PHYSICIAN MAY BE CONSIDERED TO HAVE  
12 SUFFICIENT TRAINING TO PERFORM FIRST TRIMESTER SURGICAL  
13 ABORTIONS PROVIDED HE OR SHE HAS COMPLETED AN ACGME OR AOA  
14 APPROVED RESIDENCY IN ONE OF THE INTERNAL MEDICINE  
15 SPECIALTIES, GENERAL SURGERY, OR ONE OF THE SURGICAL  
16 SPECIALTIES OR FAMILY OF MEDICINE, AND HAS COMPLETED  
17 APPROPRIATE EDUCATION AND CLINICAL TRAINING IN PERFORMING  
18 ABORTIONS WHERE HE OR SHE HAS DEMONSTRATED THE KNOWLEDGE,  
19 SKILLS, AND ABILITY REQUIRED TO PERFORM THE PROCEDURES."

20 IS IT FAIR SO SAY THAT WHEN YOU WROTE THIS LETTER IN  
21 JULY OF 2008 THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS  
22 DEEMED THE TRAINING DESCRIBED IN THE FIRST SENTENCE OF  
23 PARAGRAPH 2 TO BE SUFFICIENT TO PERFORM FIRST TRIMESTER  
24 ABORTIONS?

25 A YES.

1 Q I'D LIKE TO MOVE NOW TO PARAGRAPH 4. PARAGRAPH 4  
2 REFERS TO MEDICATION ABORTIONS; CORRECT?

3 A CORRECT.

4 Q AND ARE YOU AWARE THAT MEDICATION ABORTION INVOLVES  
5 A TWO-MEDICATION PROTOCOL OF MIFEPREX AND MISOPROSTOL?

6 A YES.

7 Q OKAY. NOW, I'M GOING TO READ PARAGRAPH 4.  
8 "REGARDING MEDICAL ABORTIONS, A PHYSICIAN WHO PRESCRIBES  
9 MEDICATIONS TO CAUSE AN ABORTION SHOULD HAVE SUFFICIENT  
10 EDUCATION AND TRAINING TO ALLOW HIM OR HER TO MAKE AN ACCURATE  
11 DETERMINATION OF GESTATIONAL AGE AS WELL AS TO UNDERSTAND THE  
12 INDICATIONS, CONTRAINDICATIONS, AND COMPLICATIONS OF THE  
13 INTERVENTION AND TO BE ABLE TO ASSESS THE OUTCOME AND DEAL  
14 EFFECTIVELY WITH THE COMPLICATIONS, INCLUDING RECOGNITION AND  
15 REFERRAL TO A COMPETENT PROVIDER FOR FURTHER CARE IF NEEDED.

16 SO WHILE A PHYSICIAN WHO PERFORMS MEDICAL ABORTIONS  
17 NEED NOT POSSESS COMPETENCE IN PERFORMING THE PROCEDURES OF  
18 SURGICAL ABORTION HE OR SHE SHOULD HAVE THE OTHER EDUCATION  
19 AND TRAINING DESCRIBED IN PARAGRAPHS 1 AND 2 ABOVE INSOFAR AS  
20 SUCH EDUCATION AND TRAINING RELATES TO MEDICAL ABORTIONS."  
21 YOU WROTE THAT IN JULY 2008; CORRECT?

22 A CORRECT.

23 Q AND IS IT FAIR TO SAY THAT IT WAS THE POSITION OF  
24 THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS THAT THE  
25 PROTOCOL DESCRIBED IN PARAGRAPH 4 WAS SUFFICIENT TRAINING FOR

1 A PHYSICIAN TO ADMINISTER MEDICATION ABORTION?

2 A THAT WAS THEIR OPINION AT THE TIME, YES.

3 Q NOW, YOU'RE AWARE, AREN'T YOU, THAT THIS LETTER WAS  
4 USED AS A GUIDE FOR DEVELOPING A TRAINING PROGRAM FOR A FAMILY  
5 PHYSICIAN WHO'S KNOWN AS DR. JOHN DOE 2 IN THIS LITIGATION;  
6 CORRECT?

7 A OH, I DON'T KNOW ABOUT DR. JOHN DOE --

8 Q JOHN DOE 1. I'M SORRY. JOHN DOE 1.

9 A I DON'T KNOW WHO THE DOCTORS ARE IN QUESTION HERE,  
10 BUT IT WAS USED TO GUIDE THE TRAINING OF SOMEBODY.

11 Q AND THAT SOMEBODY WAS NOT AN OB/GYN; CORRECT?

12 A CORRECT.

13 Q AND ARE YOU AWARE THAT FOR THE PAST SEVEN YEARS,  
14 SINCE YOU WROTE THAT LETTER IN JULY OF 2008, HE HAS SAFELY  
15 BEEN PROVIDING ABORTIONS TO THE WOMEN OF NORTHWEST LOUISIANA?

16 A NO, I'M NOT AWARE OF THAT.

17 Q AND ARE YOU AWARE THAT AS A FAMILY PHYSICIAN WHO  
18 PERFORMS ONLY FIRST TRIMESTER ABORTIONS IN A CLINIC SETTING  
19 AND WHO HAS NO HOSPITAL BASED PRACTICE THAT HE'S UNABLE TO GET  
20 ACTIVE ADMITTING PRIVILEGES FOR NO OTHER REASON THAT HE HAS NO  
21 SURGICAL OR HOSPITAL PRACTICE?

22 A IS THAT A QUESTION?

23 Q ARE YOU AWARE OF THAT?

24 A NO, I'M NOT.

25 Q EXPERTISE IN OUTPATIENT SURGERY IS NOT SUFFICIENT TO

1 OBTAIN ACTIVE ADMITTING PRIVILEGES; CORRECT? ACTIVE SURGICAL  
2 PRIVILEGES.

3 A NOT CORRECT.

4 Q A PHYSICIAN WHO ONLY DOES FIRST TRIMESTER ABORTIONS,  
5 IT'S YOUR TESTIMONY THAT THEY COULD GET ACTIVE SURGICAL  
6 PRIVILEGES SUFFICIENT TO SATISFY ACT 620?

7 A YES. I'VE ALREADY SPOKEN ABOUT WHAT THAT MEANS WITH  
8 RESPECT TO THE PARTICULAR SURGICAL PRIVILEGES IN QUESTION.

9 Q YOU TESTIFIED PREVIOUSLY THAT YOU'RE AWARE THAT EACH  
10 HOSPITAL HAS ITS OWN BYLAWS; CORRECT?

11 A CORRECT.

12 Q AND EACH HOSPITAL MAY HAVE ITS OWN CATEGORIES OF  
13 PRIVILEGE AND WHAT IT DEFINES AS ACTIVE, COURTESY, OR  
14 CONSULTING PRIVILEGES; CORRECT?

15 A THOSE ARE CATEGORIES OF MEMBERSHIP, NOT PRIVILEGES.

16 Q WELL, EACH HOSPITAL MAY SET -- MAY DETERMINE ITS OWN  
17 CATEGORIES OF MEMBERSHIP; CORRECT?

18 A CORRECT.

19 Q AND EACH HOSPITAL MAY SET ITS OWN CRITERIA IN  
20 DETERMINING WHICH KINDS OF SURGICAL PRIVILEGES IT WILL ACCORD  
21 A PHYSICIAN; CORRECT?

22 A CORRECT.

23 Q AND, OF COURSE, AS A THRESHOLD MATTER, ANY  
24 PHYSICIAN -- I'M SORRY. ANY HOSPITAL REQUIRES THAT THE  
25 PHYSICIAN IS COMPETENT; RIGHT?

1 A RIGHT.

2 Q AND IT REQUIRES THAT THE PHYSICIAN IS SKILLED IN THE  
3 PROCEDURES FOR WHICH THEY SEEK PRIVILEGES; RIGHT?

4 A RIGHT.

5 Q AND HOSPITALS REQUIRE THAT PHYSICIANS PROVIDE THEIR  
6 OWN MEDICAL HISTORY; RIGHT?

7 A YOU MEAN AS PART OF THE CARING FOR THE PATIENT --  
8 THE PATIENT'S HISTORY?

9 Q NO. I'LL REPHRASE THAT. IN THE HOSPITAL  
10 ADMITTING -- IN THE HOSPITAL APPLICATION FOR STAFF -- FOR  
11 MEMBERSHIP, HOSPITALS ASK FOR SUCH THINGS AS THE PHYSICIAN'S  
12 OWN HISTORY OF VACCINATIONS AND PRIOR ILLNESSES; CORRECT?

13 A PERSONAL MEDICAL HISTORY?

14 Q YES.

15 A ACTUALLY, I DON'T KNOW THAT ALL HOSPITALS DO THAT.

16 Q YOU DON'T BELIEVE THAT THE JOINT REQUIRES ALL  
17 PHYSICIANS WORKING IN A HOSPITAL BE UP ON THEIR IMMUNIZATIONS?

18 A HOSPITALS VARY SOMEWHAT ON THEIR IMMUNIZATION  
19 REQUIREMENTS. IT'S GETTING STRICTER. HOSPITALS WILL ASK  
20 PHYSICIANS GENERAL QUESTIONS ABOUT THEIR HEALTH TO THE EXTENT  
21 THAT ANY EXISTING HEALTH CONDITION WOULD IMPAIR THEIR ABILITY  
22 TO PRACTICE SAFELY AND COMPETENTLY.

23 HISTORIES OF DRUG ABUSE OR IMPAIRMENT, FOR INSTANCE,  
24 ARE RELEVANT, BUT THEY DON'T GO INTO DETAILS ABOUT A  
25 PATIENT'S -- A GIVEN PHYSICIAN'S PERSONAL MEDICAL HISTORY.

1 WHETHER OR NOT THEY HAVE DIABETES OR HEART DISEASE IS NOT A  
2 QUESTIONS THAT'S ASKED.

3 AS FAR AS IMMUNIZATIONS ARE CONCERNED, THAT WAS  
4 NEVER ASKED UNTIL FAIRLY RECENTLY. NOW A LOT OF HOSPITALS ARE  
5 TIGHTENING UP THEIR TB SKIN TESTING AND INFLUENZA VACCINE  
6 REQUIREMENTS, BUT IT'S NO MORE THAN THAT AT THE MOMENT.

7 Q WELL PERHAPS AFTER THE TRIAL YOU CAN TELL ME WHICH  
8 HOSPITALS DON'T REQUIRE MEDICAL HISTORY, SO WE CAN AVOID THEM.

9 MR. JOHNSON: OBJECTION.

10 A EVERY ONE THAT I KNOW OF THAT I'VE --

11 THE COURT: SUSTAINED. SUSTAINED.

12 MS. JAROSLAW: ALL RIGHT.

13 BY MS. JAROSLAW:

14 Q YOU DO KNOW BECAUSE OF THE LOW RATE OF COMPLICATIONS  
15 FROM ABORTIONS THAT YOU REFERENCED IN YOUR LETTER MOST  
16 PHYSICIANS WOULD HAVE ONLY THE RAREST OF OCCASIONS TO ADMIT  
17 THEIR ABORTION PATIENTS INTO THE HOSPITAL; CORRECT?

18 A WELL, I DON'T KNOW ABOUT THE WORD "RARE."

19 Q I'LL BE SPECIFIC. ONCE IN SEVEN YEARS; IS THAT  
20 RARE?

21 A WELL, THE STATISTICS ARE THAT IT'S BETWEEN -- IT'S  
22 AROUND .5 PERCENT OF PATIENTS UNDERGOING SURGICAL ABORTIONS  
23 HAVE SOME TYPE OF MAJOR MEDICAL COMPLICATION.

24 Q AND WHAT'S THE SOURCE OF THAT STATISTIC?

25 A WELL, THE MOST RECENT PUBLICATION, AND ACTUALLY I

1 THINK IT'S A PRETTY GOOD REPORT, APPEARED IN THE *JOURNAL OF*  
2 *OBSTETRICS AND GYNECOLOGY* BASED ON A WAIVER REQUEST IN  
3 CALIFORNIA WHERE THEY LOOKED AT BILLING FOR EMERGENCY MEDICINE  
4 SERVICES.

5 Q THE MEDI-CAL STUDY?

6 A YES.

7 MS. JAROSLAW: YOUR HONOR, I RESERVE THE RIGHT TO  
8 CALL A REBUTTAL WITNESS REGARDING THE MEDI-CAL STUDY, AND I'LL  
9 MOVE ON.

10 THE COURT: WE'LL TAKE IT UP AT THE APPROPRIATE  
11 TIME.

12 MS. JAROSLAW: THANK YOU.

13 BY MS. JAROSLAW:

14 Q IF A PHYSICIAN PERFORMS THOUSANDS OF SURGICAL  
15 PROCEDURES AND HAS A COMPLICATION ONCE IN SEVEN YEARS, DO YOU  
16 CONSIDER THAT RARE?

17 A IT WOULD BE RARE FOR THAT PHYSICIAN.

18 Q AND WHAT ABOUT FOUR TIMES IN 20 YEARS?

19 A PHYSICIANS DON'T RECALL THEIR COMPLICATIONS, AND  
20 SOMETIMES THEY DON'T EVEN KNOW ABOUT THEM.

21 Q THAT WASN'T MY QUESTION, DOCTOR.

22 A NO, I WOULDN'T CALL IT RARE BECAUSE I DON'T -- THE  
23 PREMISE FOR IT I DON'T ACCEPT.

24 Q OKAY. DR. MARIER, YOU'RE AWARE THAT SOME HOSPITALS,  
25 PARTICULARLY TEACHING HOSPITALS, MAY CHOOSE NOT TO EXTEND

1 PRIVILEGES TO A PHYSICIAN WHO DOES NOT ALSO HAVE A TEACHING  
2 APPOINTMENT AT ITS AFFILIATED MEDICAL SCHOOL; CORRECT?

3 A CORRECT.

4 Q AND SOME HOSPITALS THAT FOLLOW HOSPITALIST MODEL MAY  
5 GRANT PRIVILEGES ONLY TO ITS PHYSICIANS ON STAFF, THAT IS TO  
6 SAY, ITS OWN EMPLOYEES; CORRECT?

7 A CORRECT.

8 Q AND SOME HOSPITALS, PARTICULARLY SOME RELIGIOUSLY  
9 AFFILIATED HOSPITALS, MAY REFUSE TO EXTEND PRIVILEGES TO A  
10 PHYSICIAN SIMPLY BECAUSE HE OR SHE PERFORMS ABORTIONS; ISN'T  
11 THAT RIGHT?

12 A I DON'T KNOW ABOUT THAT.

13 Q I'D LIKE TO SHOW YOU AN EXHIBIT THAT I WILL MARK  
14 AS --

15 MS. JAROSLAW: PLAINTIFFS' 185 IS IT? WHAT'S THE  
16 NEXT EXHIBIT? 182.

17 YOUR HONOR, I'M GOING TO MARK 182 AND 183 AND  
18 PROVIDE EVERYBODY WITH COPIES.

19 BY MS. JAROSLAW:

20 Q DR. MARIER, I'D ACTUALLY LIKE TO START WITH  
21 EXHIBIT 183. DO YOU HAVE THAT IN FRONT OF YOU?

22 A YES.

23 Q AND THIS IS A COPY OF LOUISIANA REVISED STATUTE  
24 TITLE 40, SECTION 1299.32. DO YOU SEE THAT?

25 A YES.

1 Q PLEASE READ THAT ALOUD.

2 A "NO HOSPITAL, CLINIC, OR OTHER FACILITY OR  
3 INSTITUTION OF ANY KIND SHALL BE HELD CIVILLY OR CRIMINALLY  
4 LIABLE, DISCRIMINATED AGAINST, OR IN ANY WAY PREJUDICED OR  
5 DAMAGED BECAUSE OF ANY REFUSAL TO PERMIT OR ACCOMMODATE THE  
6 PERFORMANCE OF AN ABORTION IN SAID FACILITY OR UNDER ITS  
7 AUSPICES."

8 Q SO, DR. MARIER, AS AN ADMINISTRATOR AT OCHSNER,  
9 ISN'T IT FAIR TO SAY THAT A HOSPITAL, IF IT CHOOSES TO, MAY  
10 DISCRIMINATE AGAINST AN ABORTION PROVIDER WITH NO CONSEQUENCE  
11 UNDER LOUISIANA LAW?

12 A CORRECT.

13 Q PLEASE TURN YOUR ATTENTION TO 182.

14 MS. JAROSLAW: AND I'D LIKE TO OFFER BOTH  
15 PLAINTIFFS' 182 AND 183 IN EVIDENCE, YOUR HONOR.

16 THE COURT: ANY OBJECTIONS?

17 MR. JOHNSON: NONE, YOUR HONOR.

18 THE COURT: OKAY. I'M SORRY. LET THEM BE ADMITTED.

19 BY MS. JAROSLAW:

20 Q DR. MARIER, PLAINTIFFS' EXHIBIT 182 IS SECTION  
21 1299.33 OF LOUISIANA REVISED STATUTES TITLE 40; IS THAT  
22 CORRECT?

23 A CORRECT.

24 Q AND I'M TURNING YOUR ATTENTION NOW TO PARAGRAPH C.  
25 WOULD YOU READ THAT?

1           A     "NO HOSPITAL, CLINIC, OR OTHER MEDICAL OR HEALTH  
2 FACILITY, WHETHER PUBLIC OR PRIVATE, SHALL EVER BE DENIED  
3 GOVERNMENTAL ASSISTANCE OR OTHERWISE" -- "OR BE OTHERWISE  
4 DISCRIMINATED AGAINST OR OTHERWISE BE PRESSURED IN ANY WAY FOR  
5 REFUSING TO PERMIT ITS FACILITY, STAFF, OR EMPLOYEES TO BE  
6 USED IN ANY WAY FOR THE PURPOSE OF PERFORMING ANY ABORTION."

7           Q     SO I ASK YOU, A HOSPITAL MAY, IN ITS DISCRETION,  
8 CHOOSE NOT TO OFFER ADMITTING AND SURGICAL PRIVILEGES TO AN  
9 ABORTION PROVIDER FOR NO OTHER REASON THAT THE HOSPITAL IS  
10 AGAINST ABORTION; CORRECT?

11           MR. JOHNSON: YOUR HONOR, WE WOULD JUST OBJECT TO  
12 THE EXTENT THAT SHE'S ASKING THE WITNESS TO PROVIDE A LEGAL  
13 OPINION. HE'S OBVIOUSLY NOT A LAWYER.

14           THE COURT: I UNDERSTAND. I'LL OVERRULE THE  
15 OBJECTION.

16 BY MS. JAROSLAW:

17           Q     YOU MAY ANSWER.

18           A     WELL, I THINK THESE REGULATIONS ALLOW A HOSPITAL TO  
19 REFUSE TO DO ABORTIONS. IT DOESN'T SAY THAT AN ABORTION  
20 PROVIDER COULDN'T BE A MEMBER OF THE MEDICAL STAFF.

21           Q     LET ME --

22           A     IT SIMPLY SAYS THE HOSPITAL IS NOT GOING TO DO AN  
23 ABORTION. AM I MISSING SOMETHING?

24           Q     LET ME DRAW YOUR ATTENTION AGAIN TO PLAINTIFFS'  
25 EXHIBIT 183 IN EVIDENCE, AND PARTICULARLY THE CLAUSE AT THE

1 END. I'LL READ IT AT THE BEGINNING AND THE END. "NO HOSPITAL  
2 SHALL BE CIVILLY OR CRIMINALLY LIABLE BECAUSE OF ANY REFUSAL  
3 TO PERMIT OR ACCOMMODATE THE PERFORMANCE OF AN ABORTION IN  
4 SAID FACILITY OR UNDER ITS AUSPICES."

5 DOCTOR, IT'S FAIR TO SAY THAT IF A HOSPITAL BELIEVED  
6 THAT BY GRANTING ADMITTING PRIVILEGES IT WOULD ENABLE A  
7 PHYSICIAN TO PROVIDE ABORTIONS, THAT WOULD BE UNDER ITS  
8 AUSPICES; CORRECT?

9 A NO, NOT CORRECT.

10 MR. JOHNSON: OBJECTION TO THE FORM OF THE QUESTION.

11 MS. JAROSLAW: I'LL MOVE ON, YOUR HONOR.

12 THE COURT: DID YOU WITHDRAW IT?

13 MR. JOHNSON: SHE'S MOVING ON. I'M HAPPY.

14 THE COURT: OKAY.

15 LET ME ASK YOU, MS. JAROSLAW, IT'S 10:40. WE'VE  
16 BEEN GOING TWO HOURS. HOW MUCH LONGER DO YOU HAVE? IS THIS  
17 TIME TO TAKE A BREAK OR SHALL WE --

18 MS. JAROSLAW: A BREAK MIGHT BE A GOOD IDEA. I HAVE  
19 MORE THAN A FEW QUESTIONS TO GO.

20 THE COURT: ALL RIGHT. LET'S TAKE A TEN MINUTES.

21 DOCTOR, YOU MAY STAND DOWN FOR TEN MINUTES.

22 (WHEREUPON THE COURT WAS IN RECESS.)

23 (WHEREUPON COURT RESUMED AND ALL PARTIES WERE PRESENT.)

24 THE COURT: YOU MAY BE SEATED.

25 BY MS. JAROSLAW:

1 Q DR. MARIER, YOU REALIZE YOU'RE STILL UNDER OATH;  
2 CORRECT?

3 A YES.

4 Q NOW, YOU AGREE THAT IT MAKES NO SENSE TO REQUIRE A  
5 PHYSICIAN WHO ONLY DISPENSES MEDICATION IN THEIR OFFICE AND  
6 NEVER PERFORMS SURGERY, IT MAKES NO SENSE TO REQUIRE SUCH A  
7 PHYSICIAN TO GET HOSPITAL ADMITTING PRIVILEGES; CORRECT?

8 A CORRECT.

9 Q AND OTHER THAN PHYSICIANS PROVIDING MEDICATION  
10 ABORTION MEDICATIONS, ARE YOU AWARE OF ANY OTHER PHYSICIANS  
11 WHO ONLY PERFORM EXAMINATIONS AND DISPENSE MEDICATION WHO ARE  
12 REQUIRED TO HAVE HOSPITAL ADMITTING PRIVILEGES?

13 A NO.

14 Q INDEED, SUCH PHYSICIANS COULD NEVER GET ACTIVE  
15 ADMITTING AND SURGICAL PRIVILEGES AT A HOSPITAL; CORRECT?

16 A WELL, THEY COULD IF THEY APPLIED FOR THEM. IF THEY  
17 WANTED TO TAKE CARE OF IN-PATIENTS.

18 Q IF A PHYSICIAN -- LET'S TAKE A SITUATION OF A  
19 PHYSICIAN WHO IT'S THE LATER PART OF HIS OR HER LIFE AND AT  
20 THIS POINT ONLY DOES EXAMINATIONS AND DISPENSES MEDICATIONS  
21 FOR MEDICATION ABORTION. THIS DOCTOR EXAMINES AND SPEAKS TO  
22 PATIENTS AND COUNSELS THEM AND GIVES THEM MEDICATION. COULD  
23 THIS PHYSICIAN GET ACTIVE ADMITTING AND SURGICAL PRIVILEGES AT  
24 A HOSPITAL?

25 A PROBABLY NOT.

1 Q YOU TESTIFIED IN YOUR DEPOSITION IF A PROVIDER, AN  
2 ABORTION PROVIDER, IS WORKING IN A CLINIC IN LOUISIANA IT'S  
3 UNLIKELY THEY WOULD BE DOING JUST MEDICAL ABORTIONS. DO YOU  
4 RECALL THAT?

5 A YES.

6 Q ARE YOU AWARE THAT ONE OF THE SIX PHYSICIANS WHO  
7 PERFORMS ABORTIONS IN LOUISIANA, DR. JOHN DOE 6, PROVIDES ONLY  
8 MEDICATION ABORTION TO WOMEN?

9 A NO, I'M NOT AWARE OF THAT.

10 Q DR. MARIER, YOU HAD A SHORT DISCUSSION WITH  
11 MR. JOHNSON DURING THE BREAK, DIDN'T YOU?

12 A YES, I DID.

13 Q AND YOU HAD A SHORT DISCUSSION WITH MR. DUNCAN  
14 OUTSIDE THE COURTROOM DURING A BREAK AS WELL; CORRECT?

15 A NO. I DON'T RECALL THAT. I MEAN, I SAID HELLO TO  
16 HIM, BUT I DIDN'T TALK -- I WAS LOOKING FOR MY PHONE. I  
17 WANTED TO SEE IF I HAD ANY TEXT MESSAGES. I'M ON CALL TODAY,  
18 SO...

19 Q SO IT'S YOUR TESTIMONY YOU DIDN'T DISCUSS THE CASE  
20 WITH MR. DUNCAN WHEN YOU CHATTED WITH HIM OUTSIDE OF THE  
21 COURTROOM?

22 A YES, THAT'S CORRECT.

23 Q BUT YOU DISCUSSED THE CASE WITH MR. JOHNSON;  
24 CORRECT?

25 A I DID ASK HIM A QUESTION. THAT WAS MY FAULT. I

1 DIDN'T REALIZE THAT WASN'T PERMITTED.

2 Q DR. MARIER, YOU'VE STATED PUBLICLY THAT THE  
3 STATUTORY LANGUAGE OF THE ADMITTING PRIVILEGES LAW COULD BE  
4 CLEARER THAN IT IS; CORRECT?

5 A YES, I HAVE TESTIFIED TO THAT.

6 Q AND WHEN REFERRED TO TESTIMONY, YOU'VE TESTIFIED IN  
7 SUPPORT OF ACT 620 IN THE STATE CAPITOL; CORRECT?

8 A CORRECT.

9 Q AND YOU TESTIFIED BEFORE THE LOUISIANA HOUSE OF  
10 REPRESENTATIVES IN MARCH 2014; RIGHT?

11 A RIGHT.

12 Q AND YOU TESTIFIED IN SUPPORT OF ACT 620 BEFORE THE  
13 LOUISIANA SENATE IN MAY 2014; CORRECT?

14 A CORRECT.

15 Q AT THIS TIME, I'D LIKE TO BRING UP YOUR SENATE  
16 TESTIMONY. I BELIEVE IT'S IN ONE OF THE DEFENSE EXHIBITS THAT  
17 WE'LL PULL UP.

18 MR. JOHNSON: IT'S DEFENSE EXHIBIT 119, I BELIEVE.  
19 YEAH.

20 MS. JAROSLAW: THANK YOU, MR. JOHNSON.

21 THE COURT: WHILE WE'RE WAITING, I JUST WANT TO  
22 COUNSEL ALL ATTORNEYS IN THIS CASE THAT IF THERE'S A BREAK  
23 DURING THE COURSE OF TESTIMONY, IT IS IMPROPER TO SPEAK TO THE  
24 WITNESS ABOUT ANYTHING THAT HAS TO DO WITH THE TESTIMONY.

25 MR. JOHNSON: YES, YOUR HONOR.

1 BY MS. JAROSLAW:

2 Q OKAY. IF WE CAN TURN NOW TO PAGE 115, AND YOU'LL  
3 SEE THIS IS A TRANSCRIPT --

4 A EXCUSE ME. WHAT EXHIBIT IS THIS?

5 Q WE'RE LOOKING AT DEFENSE EXHIBIT 119, AND WE'RE  
6 TURNING TO PAGE 115.

7 A I'M SORRY. EXCUSE ME. WHAT BINDER IS THAT? IS  
8 THAT 3?

9 Q IT'S ON THE SCREEN.

10 THE COURT: IT'S IN THE DEFENSE EXHIBIT BINDER WHICH  
11 IS SEPARATE FROM THE JOINT EXHIBIT BINDERS, DOCTOR.

12 MS. JAROSLAW: I MAY HAVE A WRONG PAGE NUMBER  
13 BECAUSE THIS EXHIBIT IS DESIGNED DIFFERENTLY. IF YOU DO A  
14 SEARCH FOR SENATOR HEITMEIER, H-E-I-T-M-E-I-E-R, WE'LL FIND  
15 THE TESTIMONY.

16 BY MS. JAROSLAW:

17 Q NOW, SO WE'RE ALL ON THE SAME PLACE, IT LOOKS LIKE  
18 WE'RE ON PAGE 38 OF THE DOCUMENT, THE PAGE HAS A PAGE 2 AT THE  
19 TOP AND IT SAYS, "BY SENATOR DAVID HEITMEIER." I JUST WANT TO  
20 MAKE SURE WE'RE ALL THERE. IT'S ON THE SCREEN IF YOU'D LIKE  
21 TO SEE IT, DOCTOR. AND I'D LIKE TO START READING FROM THE  
22 PART THAT SAYS -- WHERE SENATE HEITMEIER SAYS, "THANK YOU, I  
23 THINK, SENATOR MILLS." THIS WOULD BE PERTAINING TO MARIER'S  
24 TESTIMONY.

25 MS. JAROSLAW: I'M SORRY, YOUR HONOR, I'M NOT AS

1 FAMILIAR NAVIGATING THE DEFENSE EXHIBIT, BUT WE'RE LOOKING FOR  
2 DR. MARIER'S TESTIMONY.

3 **BY MS. JAROSLAW:**

4 Q THERE WE SEE THE BEGINNING -- WE SEE THE BEGINNING  
5 THERE OF YOUR TESTIMONY, DR. MARIER, AND DO YOU RECOGNIZE THAT  
6 TRANSCRIPT AS TRANSCRIBING YOUR TESTIMONY BEFORE THE SENATE  
7 COMMITTEE ON HEALTH AND WELFARE WITH REGARD TO HB388 ALSO  
8 KNOWN AS ACT 620?

9 A YES.

10 Q OKAY. AND NOW LET'S SCROLL THROUGH YOUR TESTIMONY  
11 AND GET TO WHERE THERE ARE QUESTIONS. HERE WE GO. ALL RIGHT.  
12 WE'RE LOOKING NOW, IT'S PAGE 49 OF THE DOCUMENT, THE PAGE SAYS  
13 48 IN THE CORNER. I'M SORRY. THE PREVIOUS PAGE. IT'S  
14 CONFUSING, BUT, YES, IT STARTS WITH "BY SENATOR DAVID  
15 HEITMEIER, I HAVE A QUESTION FROM SENATOR MILLS." AND THEN  
16 WE'LL MOVE DOWN AND YOU'LL SEE, "BY SENATOR FRED MILLS."

17 "DOCTOR, WHAT WOULD DENY AN ACTIVE ADMITTING  
18 PRIVILEGE? WHAT WOULD BE GROUNDS TO SAY -- FOR A HOSPITAL TO  
19 SAY, I DENY YOU ACTING PRIVILEGES?"

20 AND YOUR RESPONSE, "WELL, A HOSPITAL MIGHT NOT GRANT  
21 AN ACTIVE MEDICAL STAFF CATEGORY. THAT'S NOT DIFFERENT --  
22 CATEGORIES AND MEDICAL STAFF ARE DIFFERENT FROM PRIVILEGES."  
23 DO YOU SEE THAT TESTIMONY?

24 A YES.

25 Q SO I SEE I'M NOT ALONE IN CONFUSING THE TWO BETWEEN

1 CATEGORIES AND PRIVILEGES. ALL RIGHT. WE'LL GO A LITTLE BIT  
2 FURTHER DOWN WHERE IT SAYS, "I THINK SENATOR MILLS WOULD LIKE  
3 YOU TO CLARIFY THE ACTIVE COMPONENT." LET'S SCROLL DOWN A  
4 LITTLE FURTHER. AGAIN, I APOLOGIZE FOR NOT BEING AS FLUENT  
5 WITH THIS EXHIBIT. A LITTLE BIT FURTHER. WE'RE LOOKING FOR  
6 SENATOR HEITMEIER ASKING -- ASKING FOR -- ABOUT SENATOR MILLS.

7 MS. JAROSLAW: IS IT POSSIBLE FOR ME TO CONTROL THE  
8 SCROLLING? I MIGHT FIND IT -- NO.

9 BY MS. JAROSLAW:

10 Q YES, WE'RE LOOKING NOW AT 53, 54, AND 55. I'M  
11 LOOKING FOR -- LET'S GO TO 54 FOR JUST A MOMENT. OKAY. THERE  
12 WE GO. FINALLY. AGAIN, I APOLOGIZE FOR THE DELAY. LOOK AT  
13 WHERE IT SAYS, "BY SENATOR HEITMEIER. "I THINK SENATOR MILLS  
14 WOULD WANT YOU TO CLARIFY THE ACTIVE COMPONENT. WHAT I THINK  
15 THE CONCERN IS, IS THAT TO HAVE AN ACTIVE -- ACTIVE PRIVILEGE  
16 IN A HOSPITAL, YOU WOULD HAVE TO ADMIT SO MANY PEOPLE AND HE  
17 WANTS TO MAKE SURE THE BAR IS NOT SO HIGH THAT IT'S  
18 UNATTAINABLE SO THAT -- AND MAYBE YOU COULD COMMENT,  
19 DR. MARIER, ON THAT WITH YOUR REGULATORY EXPERIENCE."

20 BY DR. ROBERT MARIER: "LOOK I THINK THAT THE  
21 LANGUAGE COULD BE CLEARER. I THINK YOU COULD SAY ADMITTING  
22 PRIVILEGES AND SURGICAL PRIVILEGES BECAUSE THE TERM ACTIVE  
23 MAY -- AND USUALLY DOES APPLY TO BOTH BUT IN SOME CASES MIGHT  
24 NOT." DO YOU SEE THAT, DR. MARIER?

25 A YES.

1 Q AND WAS THAT YOUR TESTIMONY?

2 A YES.

3 Q AND THEN I'LL CONTINUE ON. BY SENATOR DAVID  
4 HEITMEIER. "AND YOU THINK THAT WOULD BE TO WHERE IT WOULD BE  
5 SOMETHING THAT WOULD BE ATTAINABLE TO WHERE THE MEDICAL CARE  
6 WOULD BE APPROPRIATE?" BY DR. MARIER: "YES, I DO. I DO."  
7 SENATOR DAVID HEITMEIER: "OKAY." BY DR. ROBERT MARIER: "AND  
8 I CAN PROVIDE THE COMMITTEE WITH EXAMPLES OF MEDICAL STAFF  
9 BYLAWS, FOR EXAMPLE, I HAVE A SET WITH ME THAT ILLUSTRATES  
10 THIS POINT, THAT IS THAT THERE ARE VARIOUS CATEGORIES AND  
11 PEOPLE IN THE VARIOUS CATEGORIES ARE GRANTED BOTH ADMITTING  
12 PRIVILEGES AND SURGICAL PRIVILEGES."

13 BY SENATOR DAVID HEITMEIER: "SENATOR MILLS?" BY  
14 SENATOR FRED MILLS: "THAT WAS MY POINT FROM YOUR TESTIMONY  
15 AND HAVING DIFFERENT LEVELS. I JUST DIDN'T WANT TO GET THROWN  
16 OUT IN COURT IF YOU COULDN'T -- A BAR YOU CAN'T -- YOU CAN'T  
17 ATTAIN." BY DORINDA BORDLEE: "COULD I OFFER THIS?" BY  
18 SENATOR DAVID HEITMEIER: "PLEASE." DO YOU SEE THAT TESTIMONY?

19 A YES.

20 Q DOES THAT TRANSCRIBE WHAT YOU RECALL OCCURRED THERE?

21 A I ACTUALLY DON'T RECALL DORINDA BORDLEE'S COMMENT.

22 Q DO YOU RECALL YOUR OWN STATEMENTS IN RESPONSE --

23 A YES, I DO.

24 Q -- TO QUESTIONS BY SENATORS?

25 A YES.

1 Q OKAY. NOW, YOU TESTIFIED -- I'M DONE WITH THAT  
2 EXHIBIT FOR NOW. YOU TESTIFIED ON DIRECT EXAMINATION, QUOTE,  
3 "I WAS ASKED BY REPRESENTATIVE JACKSON AND OTHERS TO ASSIST  
4 WITH THE DRAFTING OF ACT 620." WAS THAT YOUR TESTIMONY ON  
5 DIRECT?

6 A CORRECT.

7 Q THOSE OTHERS INCLUDED LAWYERS FROM TWO  
8 ANTI-REPRODUCTIVE RIGHTS ORGANIZATIONS; CORRECT?

9 A NOT CORRECT.

10 Q IT DID NOT INCLUDE LAWYERS FROM THE BIOETHICS  
11 DEFENSE FUND?

12 A NO, IT DID NOT. NOT WITH RESPECT TO DRAFTING THE  
13 LANGUAGE IN THE BILL.

14 Q IT'S YOUR TESTIMONY THAT DORINDA BORDLEE DID NOT  
15 ASSIST YOU IN DRAFTING THE BILL?

16 A SHE DID NOT.

17 Q AND WHAT ABOUT BENJAMIN CLAPPER OF THE LOUISIANA  
18 RIGHT TO LIFE?

19 A HE DID NOT.

20 Q I'D LIKE TO DRAW YOUR ATTENTION TO PAGE 16 OF YOUR  
21 SWORN DEPOSITION OF JANUARY 28TH, 2015. LOOKING AT LINE 17  
22 AND 18. DR. MARIER, WERE YOU ASKED THIS QUESTION AND DID YOU  
23 GIVE THIS ANSWER: "DID YOU WORK WITH MS. BORDLEE?" ANSWER:  
24 "I DID, ON THE LEGISLATION."

25 DID YOU TESTIFY LIKE THAT AT THE DEPOSITION ON

1 JANUARY 28TH, 2015?

2 A WELL, SHE HAD SPOKEN TO ME --

3 Q I'M NOT ASKING -- I'M ASKING YOU A YES OR NO  
4 QUESTION. WAS THAT YOUR TESTIMONY AT THE DEPOSITION?

5 A YES, THAT IS.

6 MR. JOHNSON: OBJECTION. THE WITNESS NEEDS TO BE  
7 ABLE TO FINISH HIS ANSWER.

8 THE COURT: I THINK HE DID ANSWER, BUT IF YOU WANT  
9 TO --

10 THE WITNESS: THAT'S OKAY.

11 A I SAID THIS. THAT'S CORRECT.

12 BY MS. JAROSLAW:

13 Q DORINDA BORDLEE IS AFFILIATED WITH THE BIOETHICS  
14 DEFENSE FUND; CORRECT?

15 A CORRECT.

16 Q AND THE BIOETHICS DEFENSE FUND OR BDF IS AN  
17 ORGANIZATION DEDICATED TO STOPPING ABORTION; CORRECT?

18 A I BELIEVE SO.

19 Q AND YOU MET DORINDA BORDLEE FOR THE FIRST TIME AT A  
20 MEETING WITH STATE REPRESENTATIVE KATRINA JACKSON; CORRECT?

21 A YOU KNOW, I DON'T RECALL WHEN I FIRST MET HER.

22 Q OKAY. LET'S TAKE A LOOK AT YOUR DEPOSITION, THEN.

23 LET'S TURN TO PAGE 17, LINE 18. I'M GOING TO READ FROM 18 TO  
24 21. QUESTION: "HOW DID YOU MEET MS. BORDLEE?"

25 ANSWER: "I THINK I MET HER AT A MEETING THAT

1 REPRESENTATIVE KATRINA JACKSON ASKED ME TO ATTEND WHEN THE  
2 LEGISLATION WAS BEING DRAFTED."

3 WERE YOU ASKED THAT QUESTION AND DID YOU GIVE THAT  
4 ANSWER AT YOUR DEPOSITION?

5 A YEAH. THAT'S THE FIRST -- I DON'T KNOW ABOUT THE  
6 FIRST TIME, BUT I DID SAY THAT.

7 Q YOU MET WITH DORINDA BORDLEE AND STATE  
8 REPRESENTATIVE KATRINA JACKSON DURING THE PERIOD WHEN THE  
9 STATUTE WAS BEING WRITTEN; CORRECT?

10 A YES, VERY EARLY.

11 Q AND YOU MET WITH HER SEVERAL TIMES; CORRECT?

12 A I DON'T RECALL.

13 Q DO WE NEED TO GO BACK TO YOUR DEPOSITION?

14 A I DON'T RECALL MEETING WITH HER SEVERAL TIMES. IT  
15 COULD HAVE BEEN.

16 Q KATRINA JACKSON IS THE LEGISLATOR WHO SPONSORED HB  
17 38 --

18 A EXCUSE ME. DID I MEET WITH KATRINA JACKSON SEVERAL  
19 TIMES?

20 Q YES.

21 A YES. I'M SORRY.

22 Q DID YOU MEET WITH DORINDA BORDLEE MORE THAN THAT  
23 TIME WITH REPRESENTATIVE JACKSON?

24 A I DON'T RECALL IF SHE WAS THERE AT ALL OF THOSE  
25 MEETINGS OR NOT.

1 Q YOU'VE SEEN HER MORE THAN ONCE? YOU'VE MET WITH  
2 HER; CORRECT?

3 A YES. YES, I HAVE.

4 Q AND KATRINA JACKSON IS THE LEGISLATOR WHO SPONSORED  
5 HB 38 IN THE LOUISIANA HOUSE OF REPRESENTATIVES; CORRECT?

6 A CORRECT.

7 Q AND THE MEETING THAT YOU HAD IN PERSON WITH KATRINA  
8 JACKSON AND DORINDA BORDLEE WAS TO DISCUSS THE DRAFTING OF  
9 WHAT WOULD BECOME ACT 620; CORRECT?

10 A CORRECT.

11 Q DORINDA BORDLEE ASKED YOU FOR A COPY OF YOUR  
12 TESTIMONY IN THE CAPITOL AND YOU PROVIDED IT; CORRECT?

13 A OH, GOLLY. I JUST DON'T RECALL. I JUST DON'T  
14 RECALL.

15 Q I'D LIKE TO SHOW YOU JOINT EXHIBIT 9 IN EVIDENCE.  
16 WE'LL HAVE THAT UP ON THE SCREEN IN A MOMENT. OH, I BELIEVE  
17 IT'S DESIGNATED AS CONFIDENTIAL.

18 MS. JAROSLAW: THANK YOU. OH, IT'S NOT  
19 CONFIDENTIAL?

20 BY MS. JAROSLAW:

21 Q NOT CONFIDENTIAL.

22 A COULD I OFFER A COMMENT OR --

23 Q NO. IT'S QUESTION AND ANSWER.

24 A OKAY.

25 Q IF THERE'S ANYTHING MORE TO ADD, ON REDIRECT YOUR

1 COUNSEL CAN ASK QUESTIONS.

2 A OKAY.

3 Q ALL RIGHT. READING NOW THE E-MAIL FROM DORINDA  
4 BORDLEE DATED AUGUST 8TH, 2014 AT 12:21 CENTRAL TIME. DO YOU  
5 SEE THAT E-MAIL?

6 A YES.

7 Q AND IT'S TO KATHY KLIEBERT. YOU KNOW HER TO BE THE  
8 HEAD OF DHH; CORRECT?

9 A CORRECT.

10 Q AND IT'S TO YOU; CORRECT?

11 A CORRECT.

12 Q AND WHO'S DAMON CUDIHY?

13 A HE'S AN OB/GYN WHO WAS WORKING ON THE LEGISLATION AS  
14 WELL.

15 Q AND WHO'S CINDY COLLINS?

16 A I DON'T RECALL.

17 Q AND IT'S COPIED STEVEN RUSSO. STEVEN RUSSO IS  
18 EXECUTIVE COUNSEL AT DHH; CORRECT?

19 A CORRECT.

20 Q AND KIMBERLY HUMBLES IS GENERAL COUNSEL AT DHH;  
21 CORRECT?

22 A CORRECT.

23 Q AND I'M NOW GOING TO READ THAT BRIEF E-MAIL. "DEAR,  
24 SECRETARY KLIEBERT, DR. MARIER, DR. CUDIHY AND MS. CINDY  
25 COLLINS. IN ANTICIPATION OF A COURT CHALLENGE TO LOUISIANA'S

1 ADMITTING PRIVILEGES LAW, WE WOULD LIKE TO ASSIST BY HELPING  
2 TO PREPARE THE FIRST DRAFT OF DECLARATIONS THAT CAN BE READY  
3 TO BE FILED WITH THE COURT. THESE DECLARATIONS WOULD  
4 BASICALLY ATTEST TO THE INFORMATION THAT EACH OF YOU TESTIFIED  
5 TO IN THE HOUSE AND SENATE COMMITTEE. IT WOULD BE VERY  
6 HELPFUL IF YOU COULD PLEASE FORWARD YOUR TESTIMONY TO ME IF  
7 YOU HAVE SAVED IT ON YOUR COMPUTERS. I REALIZE IT IS IN THE  
8 PUBLIC RECORD IN THE HEALTH COMMITTEES, BUT REQUESTS TO GET  
9 THAT INFORMATION TRANSCRIBED ALWAYS TAKES QUITE A BIT OF  
10 TIME." DID YOU RECEIVE THAT E-MAIL, DR. MARIER?

11 A I THINK SO.

12 Q AND YOU PROVIDED HER WITH YOUR TESTIMONY; CORRECT?

13 A HONESTLY, I JUST DON'T REMEMBER. I MAY HAVE.

14 Q DR. MARIER, YOU'RE ALSO ACQUAINTED WITH BENJAMIN  
15 CLAPPER; CORRECT?

16 A CORRECT.

17 Q AND HE'S EXECUTIVE DIRECTOR OF LOUISIANA RIGHT TO  
18 LIFE, ISN'T HE?

19 A CORRECT.

20 Q HE ALSO WORKED WITH YOU AND DORINDA BORDLEE AND  
21 KATRINA JACKSON ON DRAFTING THE ADMITTING PRIVILEGES LAW,  
22 DIDN'T HE?

23 A ON THE EARLIER STAGES. ON THE OUTSIDE.

24 Q AND IT'S A FACT THAT YOU ALSO MET WITH BENJAMIN  
25 CLAPPER SEVERAL TIMES IN THE MONTHS PRECEDING HB 388'S

1 ENACTMENT?

2

3 A IN THE SUMMER. WELL BEFORE THE MATTER WAS TAKEN UP  
4 IN THE LEGISLATURE.

5 Q YOU SPOKE WITH MR. CLAPPER ABOUT EXISTING STATE LAWS  
6 AND REGULATIONS THAT AFFECT ABORTION, DIDN'T YOU?

7 A AT ONE POINT, YES, I DID.

8 Q AND YOU SPOKE WITH MR. CLAPPER ABOUT HIS VIEWS ON  
9 ABORTION AND WHAT NEEDED TO CHANGE IN THE LAW; CORRECT?

10 A YEAH, HE TOLD ME WHAT HIS VIEWS WERE.

11 Q AND HE TOLD YOU WHAT NEEDED TO CHANGE IN THE LAW,  
12 DIDN'T HE?

13 A HE DID.

14 Q MR. CLAPPER TOLD YOU THAT IN HIS VIEW THE ADMITTING  
15 PRIVILEGES LAW WOULD SHUT DOWN AT LEAST SOME OF LOUISIANA'S  
16 ABORTION CLINICS; CORRECT?

17 A HE PROBABLY SAID THAT.

18 Q NOW, ON DIRECT EXAMINATION, YOU TESTIFIED ABOUT  
19 SEVERAL REASONS WHY ACTIVE ADMITTING PRIVILEGES ARE REQUIRED  
20 IN ACT 620. DO YOU RECALL THAT LINE OF QUESTIONING?

21 A YES.

22 Q AND YOU SAID ONE REASON IS TO BE INCLUSIVE OF COMMON  
23 USAGE; CORRECT?

24 A CORRECT.

25 Q AND ANOTHER REASON IS BECAUSE ACTIVE MEANS CURRENT

1 OR ENFORCE; CORRECT?

2 A CORRECT.

3 Q AND ISN'T IT A FACT THAT ANOTHER REASON IT SAYS  
4 ACTIVE ADMITTING PRIVILEGES IS BECAUSE THE STATUTE WAS MODELED  
5 ON THE TEXAS LAW THAT CLOSED DOZENS OF CLINICS IN TEXAS?

6 A YES, THAT'S CORRECT.

7 Q DR. MARIER, YOU'VE KNOWN GOVERNOR JINDAL FOR MANY  
8 YEARS; RIGHT?

9 A YES.

10 Q IN FACT, YOU'VE KNOWN HIM SINCE HE WAS SECRETARY OF  
11 DHH; CORRECT?

12 A CORRECT.

13 Q HE WAS ABOUT 24 YEARS OLD WHEN HE TOOK THAT JOB?

14 A SOMETHING LIKE THAT.

15 Q AND THAT'S THE SAME POSITION THAT KATHY KLIEBERT NOW  
16 HOLDS; ISN'T IT?

17 A YES.

18 Q AND YOU DO KNOW THAT THE GOVERNOR IS AGAINST WOMEN  
19 CONTROLLING THEIR REPRODUCTIVE OPTIONS WITH REGARD TO  
20 ABORTION; CORRECT?

21 MR. JOHNSON: OBJECTION. FIRST OF ALL, IT'S  
22 IRRELEVANT. SECOND OF ALL, THIS WITNESS MAY OR MAY NOT HAVE  
23 ANY PERSONAL -- I MEAN, THIS IS NOT WITHIN THE SCOPE OF HIS  
24 EXPERT TESTIMONY.

25 THE COURT: OKAY. THIS IS CROSS EXAMINATION AND HE

1 CAN ANSWER YES OR NO DEPENDING UPON WHAT HE HAS IN HIS  
2 PERSONAL INFORMATION. AND I DO THINK IN A BROAD SENSE IT IS  
3 RELEVANT. THIS IS REALLY THE SUBJECT TO THE MOTION IN LIMINE  
4 WHICH IS WHY I LET IN ALL OF THE DEFICIENCY REPORTS AND WHY I  
5 LET IN ALL OF THESE E-MAILS. I THINK IN A BROAD SENSE,  
6 DEPENDING ON WHAT THE FIFTH CIRCUIT MEANS IN THE COLE  
7 DECISION, THIS MAY OR MAY NOT BE RELEVANT. BUT IN ANY EVENT,  
8 AT THIS POINT, WE'RE GOING TO LET IT IN.

9 I'LL OVERRULE THE OBJECTION.

10 MR. JOHNSON: THANK YOU, YOUR HONOR.

11 A COULD YOU REPEAT THE QUESTION, PLEASE?

12 BY MS. JAROSLAW:

13 Q SURE. I'LL REPHRASE IT TOO. YOU KNOW THAT THE  
14 GOVERNOR IS AGAINST ABORTION BEING LEGAL IN LOUISIANA;  
15 CORRECT?

16 A CORRECT.

17 Q AND THAT HE WANTS LOUISIANA TO BE WHAT HE CONSIDERS  
18 THE MOST PRO-LIFE STATE IN THE NATION; CORRECT?

19 A I DON'T KNOW.

20 Q AND HE IS PROUD OF THE LAWS IN LOUISIANA THAT MAKE  
21 IT DIFFICULT FOR PROVIDERS OF ABORTION TO SERVE THE WOMEN IN  
22 THIS STATE; ISN'T THAT RIGHT?

23 A I DON'T KNOW THAT EITHER.

24 Q SPECIFICALLY, HE WAS PROUD OF YOUR EFFORTS AND  
25 MS. JACKSON'S AND MS. BORDLEE IN PREPARING THE ADMITTING

1 PRIVILEGES LEGISLATION; ISN'T THAT RIGHT?

2 A HE MIGHT BE, BUT HE NEVER SAID THAT TO ME.

3 Q I'D LIKE TO SHOW YOU WHAT'S IN EVIDENCE AS  
4 PLAINTIFFS' EXHIBIT 174. LET'S SCROLL DOWN. ACTUALLY -- I'M  
5 SORRY. WE'LL START AT THE TOP AND YOU'LL SEE THAT THIS IS AN  
6 E-MAIL. AND DO YOU KNOW WHO CHRISTINA STEVENS IS?

7 A NO.

8 Q OKAY. IF YOU SCROLL DOWN FURTHER, YOU'LL SEE  
9 THERE'S A PRESS RELEASE. YOU SEE THAT'S A PRESS RELEASE FROM  
10 THE OFFICE OF THE GOVERNOR?

11 A CORRECT.

12 Q OKAY. AND I'D LIKE TO READ SOME OF THAT TO YOU.  
13 FIRST PARAGRAPH, "TODAY, GOVERNOR JINDAL ANNOUNCED LEGISLATIVE  
14 PROPOSALS AIMED AT CONTINUING TO PROTECT LIFE IN LOUISIANA.  
15 THESE REFORMS WILL BUILD UPON THE WORK THAT GOVERNOR JINDAL  
16 HAS DONE TO MAKE LOUISIANA THE MOST PRO-LIFE STATE IN THE  
17 NATION."

18 DOES THAT REFRESH YOUR RECOLLECTION AS TO WHETHER  
19 GOVERNOR JINDAL WANTS TO MAKE LOUISIANA THE MOST, QUOTE,  
20 "PRO-LIFE STATE IN THE NATION," UNQUOTE?

21 A NO, I DIDN'T SEE THIS PRESS RELEASE. I DON'T HAVE  
22 ANY RECOLLECTION OF THIS.

23 Q ARE YOU AWARE THAT LOCAL NEWSPAPERS ROUTINELY PRINT  
24 GOVERNMENT PRESS RELEASES IN THE NEWSPAPER?

25 A I GUESS SO. *THE ADVOCATE* DOES.

1 Q DO YOU HAVE TIME TO LOOK AT THE NEWSPAPER IN YOUR  
2 POSITION?

3 A NOT OFTEN.

4 THE COURT: I'M NOT GOING TO WAIT FOR AN OBJECTION  
5 ON THAT.

6 MS. JAROSLAW: I'LL MOVE ON, YOUR HONOR.

7 A I DIDN'T SEE IT.

8 BY MS. JAROSLAW:

9 Q OKAY. FAIR ENOUGH. FAIR ENOUGH. BUT YOU'VE KNOWN  
10 GOVERNOR JINDAL FOR AT LEAST 20 YEARS; CORRECT?

11 A RIGHT.

12 Q AND HIS POSITION ON ABORTION IS NO SECRET TO YOU;  
13 RIGHT?

14 A RIGHT.

15 Q OKAY. SO LET'S TURN TOWARDS THE BOTTOM OF THAT. IT  
16 SAYS, "SINCE GOVERNOR JINDAL HAS TAKEN OFFICE, HE'S SIGNED  
17 OVER A DOZEN PIECES OF LEGISLATION AIMED AT PROTECTING THE  
18 CULTURE OF LIFE IN LOUISIANA." DO YOU SEE THAT IN THE PRESS  
19 RELEASE?

20 A YES.

21 Q AND YOU WERE HEAD OF LSBME BETWEEN 2006 AND 2012;  
22 CORRECT?

23 A CORRECT.

24 Q AND SO GOVERNOR JINDAL WAS ELECTED IN 2007; IS THAT  
25 RIGHT?

1 A YEAH, I GUESS SO.

2 Q SO YOU WERE HEAD OF LSBME FOR AT LEAST SOME OF THE  
3 TIME WHEN GOVERNOR JINDAL WAS GOVERNOR; CORRECT?

4 A CORRECT.

5 Q AND WERE YOU AWARE WHEN YOU WERE HEAD OF LSBME THAT  
6 GOVERNOR JINDAL WAS SIGNING A NUMBER OF LAWS DESIGNED TO  
7 RESTRICT THE ACCESS OF ABORTION IN THE STATE LOUISIANA?

8 A IN A GENERAL WAY, YES.

9 Q I'M DONE WITH THAT EXHIBIT. NOW, DR. MARIER, YOU  
10 SAID THAT IN YOUR BELIEF ACT 620 ADVANCES WOMEN'S HEALTH;  
11 CORRECT?

12 A CORRECT.

13 Q ISN'T IT A FACT THAT THE HEALTH OF MANY MORE WOMEN  
14 IN LOUISIANA COULD BE ADVANCED IF GOVERNOR JINDAL EXPANDED  
15 MEDICAID?

16 MR. JOHNSON: OBJECTION.

17 THE COURT: SUSTAINED.

18 BY MS. JAROSLAW:

19 Q ARE YOU FAMILIAR WITH SOMETHING CALLED THE HUMAN  
20 LIFE PROTECTION ACT?

21 A NO.

22 Q AS HEAD OF THE LOUISIANA STATE BOARD OF MEDICAL  
23 EXAMINERS, YOU WEREN'T AWARE WHEN THIS HUMAN LIFE PROTECTION  
24 ACT, ALSO CALLED A TRIGGER LAW, WAS PASSED IN 2006?

25 A NO, I WASN'T.

1 Q REGARDLESS OF WHAT IT'S CALLED, ARE YOU AWARE THAT  
2 SHOULD THE SUPREME COURT REVERSE ROE V WADE AND PLANNED  
3 PARENTHOOD VERSUS CASEY THAT IMMEDIATELY IT WILL BE A FELONY  
4 FOR DOCTORS TO PERFORM ABORTION IN LOUISIANA PUNISHABLE FOR UP  
5 TO TEN YEARS OF IMPRISONMENT? WERE YOU AWARE OF THAT?

6 MR. JOHNSON: OBJECTION. YOUR HONOR, THIS IS --

7 THE COURT: THIS IS ARGUMENT. THIS IS GOOD STUFF  
8 FOR THE BRIEFS, YOU KNOW, BUT THIS IS NOT FOR THIS WITNESS.

9 MS. JAROSLAW: I'LL FINISH UP RIGHT NOW.

10 BY MS. JAROSLAW:

11 Q DR. MARIER, YOU BELIEVE ABORTION SHOULD BE OUTLAWED  
12 IN THE U.S.; RIGHT?

13 MR. JOHNSON: OBJECTION.

14 MS. JAROSLAW: IT GOES TO BIAS, YOUR HONOR.

15 THE COURT: I OVERRULE THE OBJECTION.

16 A YES, I BELIEVE IT SHOULD BE OVER -- OUTLAWED, I DO.

17 BY MS. JAROSLAW:

18 Q AND YOU BELIEVE ABORTION IS LIKE, QUOTE, "GETTING  
19 RID OF A NEWBORN THAT WAS TOO MUCH TROUBLE," CLOSE QUOTE; IS  
20 THAT CORRECT?

21 A IN SOME CASES.

22 Q AND YOU SAID THAT IN YOUR DEPOSITION; CORRECT?

23 A IN SOME CASES, YES.

24 Q AND YOU BELIEVE THE MORNING AFTER PILL OR PLAN B  
25 SHOULD BE OUTLAWED IN THE UNITED STATES; CORRECT?

1 A CORRECT.

2 Q AND IF IT WERE UP TO YOU INTRAUTERINE DEVICES OR  
3 IUDS WOULD BE ILLEGAL; CORRECT?

4 A NOT CORRECT.

5 Q I'D LIKE TO SHOW YOU YOUR DEPOSITION, PAGE 52,  
6 LINE 3 TO LINE 10. I'M GOING TO ASK IF YOU WERE ASKED THIS  
7 QUESTION AND IF YOU GAVE THAT ANSWER. QUESTION --

8 A I'M GOING TO AMEND MY -- I DID SAY THAT.

9 Q LET ME -- FOR THE RECORD, I NEED TO DO THIS. "HELP  
10 ME UNDERSTAND. MAYBE I SHOULD PARSE THAT. YOU BELIEVE THAT  
11 CONTRACEPTION SHOULD BE LEGAL, NOTWITHSTANDING THE FACT THAT  
12 IT MAY RESULT IN A ZYGOTE NOT DEVELOPING INTO A HUMAN;  
13 CORRECT? INTO A BABY?"

14 ANSWER: "WELL, IF BY CONTRACEPTION YOU MEAN --  
15 YOU'RE INCLUDING IUDS, THE MORNING AFTER PILLS, I DON'T  
16 BELIEVE THOSE SHOULD BE LEGAL."

17 WERE YOU ASKED THAT QUESTION AND DID YOU GIVE THAT  
18 ANSWER?

19 A YES.

20 MS. JAROSLAW: NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: THANK YOU.

22 REDIRECT?

23 REDIRECT

24 BY MR. JOHNSON:

25 Q THANK YOU, DOCTOR. I HAVE A FEW QUESTIONS TO

1 REDIRECT ON SOME OF THE QUESTIONS YOU WERE ASKED BY COUNSEL.  
2 I'M GOING TO ASK YOU, FIRST, TO TURN TO JOINT EXHIBIT 136.  
3 THIS WAS THE ONE-PAGE DOCUMENT FROM ACOG THAT WAS DISCUSSED  
4 EARLIER. JOINT EXHIBIT 136. AND I THINK WE'RE GOING TO PUT  
5 IT ON THE SCREEN FOR YOU. DOCTOR, DO YOU RECALL BEING ASKED  
6 QUESTIONS ABOUT THIS DOCUMENT?

7 A CORRECT, I DO.

8 Q AND THE FIRST PARAGRAPH OF THIS DOCUMENT WAS READ  
9 INTO THE RECORD, DO YOU RECALL THAT?

10 A YES.

11 Q YOU WERE NOT PROVIDED AN OPPORTUNITY TO ANSWER MORE  
12 COMPLETELY ABOUT YOUR VIEW OF THIS DOCUMENT, AND SO I WANTED  
13 TO ASK YOU SPECIFICALLY ABOUT THE LAST TWO SENTENCES OF THAT  
14 PARAGRAPH. IT SAYS, "ACOG OPPOSES LEGISLATION OR OTHER  
15 REQUIREMENTS THAT SINGLE OUT ABORTION SERVICES FROM OTHER  
16 OUTPATIENT PROCEDURES." DOCTOR, IN YOUR VIEW, DOES ACT 620 DO  
17 THAT?

18 A NO, IT DOESN'T. IT APPLIES THE SAME STANDARD TO  
19 ABORTION PROVIDERS THAT CURRENTLY EXIST FOR PATIENTS  
20 UNDERGOING SIMILAR PROCEDURES IN AMBULATORY SURGERY CENTERS.

21 Q AND THE LAST SENTENCE OF THAT PARAGRAPH SAYS, "ACOG  
22 ALSO OPPOSES FACILITY REGULATIONS THAT ARE MORE STRINGENT FOR  
23 ABORTION THAN FOR OTHER SURGICAL PROCEDURES OF SIMILAR RISK."

24 DOCTOR, IN YOUR VIEW, DOES ACT 620 MAKE A MORE  
25 STRINGENT REQUIREMENT FOR ABORTION PROVIDERS THAN FOR OTHERS?

1 A NO, IT DOESN'T.

2 Q DOCTOR, YOU WERE -- IS THERE ANYTHING ELSE ABOUT  
3 THIS DOCUMENT THAT YOU WANTED TO RESPOND TO?

4 MS. JAROSLAW: OBJECTION.

5 MR. JOHNSON: WELL, HE BEGAN A RESPONSE, AND WAS CUT  
6 OFF EARLIER, SO THAT WAS --

7 THE COURT: WELL, IN FACT, COUNSEL SAID YOU COULD  
8 TAKE IT UP ON REDIRECT, SO THIS IS YOUR OPPORTUNITY TO TAKE IT  
9 UP ON REDIRECT.

10 OVERRULED.

11 MR. JOHNSON: THANK YOU, YOUR HONOR.

12 A THERE WAS ONE EARLIER SENTENCE THAT SAYS IF A  
13 COMPLICATION OCCURS THAT THERE SHOULD BE A MECHANISM FOR  
14 TRANSFERRING PATIENTS AND SO ON. THIS ACT CREATES A MECHANISM  
15 FOR CARING FOR PATIENTS. THAT'S WHAT IT DOES. IT CREATES A  
16 MECHANISM TO DO JUST THAT.

17 BY MR. JOHNSON:

18 Q THANK YOU, DOCTOR. YOU WERE ALSO ASKED A SERIES OF  
19 QUESTIONS ABOUT A PHYSICIAN WHO MIGHT BE INVOLVED AS A -- OR  
20 MIGHT BE A PART OF A GROUP OB/GYN PRACTICE. DO YOU RECALL  
21 THOSE QUESTIONS?

22 A YES.

23 Q AND ISN'T IT TRUE THAT ALL OF THE INDIVIDUAL DOCTORS  
24 IN AN OB/GYN GROUP PRACTICE WOULD NEED TO HAVE PRIVILEGES  
25 THEMSELVES OR OTHERWISE THEY CAN'T COVER ONE ANOTHER'S

1 PATIENTS?

2 A THAT'S CORRECT.

3 Q NOW, DOCTOR, YOU WERE ALSO ASKED A SERIES OF  
4 HYPOTHETICALS, AND ONE LENGTHY HYPOTHETICAL IN PARTICULAR,  
5 ABOUT A SCENARIO WITH A DOCTOR APPLYING FOR PRIVILEGES. THE  
6 QUESTION I HAD ABOUT THAT HYPOTHETICAL FOR YOU IS, IS THERE  
7 ANY REASON THAT THE DOCTOR IN THAT LONG HYPOTHETICAL COULD NOT  
8 SECURE ADMITTING PRIVILEGES TO SATISFY THE ACT DESPITE HAVING  
9 AN EXCLUSIVELY OUTPATIENT ABORTION PRACTICE?

10 A NO. HE COULD -- HE COULD MEET THE REQUIREMENTS. HE  
11 COULD GET PRIVILEGES IF IT WAS HIS INTENT TO PROVIDE  
12 IN-PATIENT CARE IF NEEDED.

13 Q OKAY. LET ME GIVE YOU A NEW HYPOTHETICAL THAT'S  
14 SLIGHTLY DIFFERENT FROM THE ONE THAT COUNSEL PRESENTED YOU. A  
15 PHYSICIAN IS GRANTED MEMBERSHIP ON THE COURTESY MEDICAL STAFF  
16 OF A LOCAL HOSPITAL. THE PHYSICIAN IS GRANTED CORE OB/GYN  
17 PRIVILEGES WHICH INCLUDE THE ABILITY TO ADMIT, DIAGNOSE, AND  
18 PROVIDE SURGICAL CARE. THE HOSPITAL, HOWEVER, LIMITS HIS  
19 PRIVILEGES IN THE SENSE THAT UPON ADMITTING THE PATIENT HE  
20 MUST CONSULT WITH ANOTHER DOCTOR AT THAT HOSPITAL. IN OTHER  
21 WORDS, THE PHYSICIAN WOULD BE THE ADMITTING PHYSICIAN AND THE  
22 OTHER DOCTOR WOULD BE THE CONSULTING PHYSICIAN. DOES THAT  
23 SCENARIO SATISFY THE REQUIREMENTS OF ACT 620?

24 A YES, IT DOES.

25 Q AND YOU TESTIFIED EARLIER THAT -- OR LET ME ASK YOU,

1 IS THE REASON THAT IT WOULD -- THAT IT WOULD QUALIFY -- OR ONE  
2 OF THE REASONS IT WOULD QUALIFY UNDER THE ACT IS BECAUSE, I  
3 BELIEVE YOU TESTIFIED EARLIER, IT IS FAIRLY ROUTINE OR COMMON  
4 IN A HOSPITAL SETTING FOR A TEAM OF CARE PROVIDERS TO BE  
5 INVOLVED; IS THAT RIGHT?

6 A THAT'S RIGHT.

7 Q AND JUST AGAIN, BRIEFLY, WHAT DOES THAT MEAN IN YOUR  
8 EXPERIENCE?

9 A WELL, IT MEANS IF A PATIENT -- IT DEPENDS ON WHAT  
10 COMPLICATION THE PATIENT MIGHT HAVE AND IT MIGHT BE IF THERE  
11 WAS A PERFORATION, THE PATIENT HAD PERITONITIS, THEY MIGHT  
12 WANT TO CONSULT WITH A GENERAL SURGEON TO DO AN EXPLORATORY  
13 LAPAROTOMY. OR THEY MIGHT WANT TO CONSULT WITH AN INFECTIOUS  
14 DISEASE EXPERT OR AN INTERNIST TO CARE FOR SOME MEDICAL  
15 COMPLICATION.

16 CONSULTANTS ARE ROUTINELY BROUGHT IN TO CARE FOR  
17 PATIENTS WITH LIFE-THREATENING ILLNESS, PEOPLE WITH DIFFERENT  
18 EXPERTISES. SO THE ACT DOESN'T -- AS I SAID EARLIER, DOESN'T  
19 LIMIT THE PHYSICIAN -- IT DOESN'T REQUIRE THAT THE ABORTION  
20 PROVIDER PROVIDE ALL OF THE PATIENT -- ALL OF THE SERVICES  
21 THAT A PATIENT NEEDS IN THE HOSPITAL BUT JUST THAT HE HAD  
22 PRIVILEGES TO ADMIT A PATIENT AND TO PROVIDE SOME DIAGNOSTIC  
23 AND SURGICAL SERVICES, NOT NECESSARILY EVERYTHING THAT A  
24 PATIENT MIGHT REQUIRE.

25 Q SO IN YOUR VIEW, WAS ACT 620 DRAFTED IN SUCH A WAY

1 THAT IT WOULD ALLOW FOR THAT KIND OF FLEXIBILITY?

2 A YEAH, THAT WAS THE INTENT, WAS TO CREATE A -- A  
3 STANDARD, A THRESHOLD, IF YOU WILL, BUT NOT TO LIMIT THE  
4 OPTIONS THAT A PHYSICIAN MIGHT HAVE WHEN CARING FOR A VERY  
5 SICK PATIENT.

6 Q DOCTOR, ARE YOU AWARE -- OR HAVE YOU HAD AN  
7 OPPORTUNITY TO REVIEW THE DECLARATION OF SECRETARY KATHY  
8 KLIEBERT THAT'S BEEN FILED INTO THIS MATTER? IT WAS DATED  
9 JUNE 19TH, 2015.

10 A YES.

11 MR. JOHNSON: IF I CAN PULL THAT UP ON THE SCREEN;  
12 JOINT EXHIBIT 191.

13 MS. JAROSLAW: OBJECTION, YOUR HONOR. BEYOND THE  
14 SCOPE OF WHAT'S IN DR. MARIER'S EXPERT REPORT. HE'S BEING  
15 ASKED TO COMMENT ON ANOTHER WITNESSES' AFFIDAVIT.

16 THE COURT: SUSTAINED.

17 MR. JOHNSON: FAIR ENOUGH.

18 BY MR. JOHNSON:

19 Q LET ME NOT SHOW YOU THE DOCUMENT, BUT LET ME READ  
20 YOU A HYPOTHETICAL. IF A DOCTOR IN LOUISIANA WAS GRANTED  
21 PRIVILEGES AT A HOSPITAL THAT -- AND HIS BACKGROUND WAS  
22 OB/GYN, AND HE WAS A MEMBER IN GOOD STANDING OF THE COURTESY  
23 MEDICAL STAFF, GRANTED COURTESY PRIVILEGES, AND THE HOSPITAL'S  
24 GOVERNING BYLAWS PROVIDE THAT MEMBERS OF THE COURTESY MEDICAL  
25 STAFF HAVE THE ABILITY TO ADMIT PATIENTS AND THE CLINICAL

1 PRIVILEGES GRANTED TO THIS DOCTOR TO ADMIT HIS ABORTION  
2 PATIENTS TO A HOSPITAL WERE -- WERE ACKNOWLEDGED AND THE  
3 HOSPITAL WAS WITHIN 30 MILES OF THE LOCATION OF HIS ABORTION  
4 CLINIC, WOULD THAT -- UNDER THOSE CRITERIA, WOULD THAT MEET  
5 THE REQUIREMENTS OF ACT 620?

6 A WELL, IS THE -- IN THIS HYPOTHETICAL, IS THE  
7 PHYSICIAN GIVEN PRIVILEGES TO PROVIDE ANY MEDICAL SERVICES FOR  
8 THE PATIENT, ANY DIAGNOSTIC OR SURGICAL SERVICES?

9 Q YES, IN THIS HYPOTHETICAL HE WOULD BE.

10 A WELL, THEN, THAT WOULD MEET THE REQUIREMENTS OF THE  
11 ACT.

12 Q SO NOT -- JUST SO THAT WE'RE CLEAR ABOUT YOUR  
13 TESTIMONY, AND YOU'VE EXPLAINED IT A FEW TIMES. I WANT TO  
14 MAKE SURE WE HAVE THIS RIGHT. NOT EVERY SERVICE HAS TO BE  
15 PROVIDED BY A PHYSICIAN HIMSELF IN TERMS OF THE PROCEDURES AT  
16 THE HOSPITAL; RIGHT?

17 A CORRECT.

18 Q AND IT'S OFTEN THE CASE THAT DOCTORS -- OTHER  
19 DOCTORS MAY BE INVOLVED IN A PATIENT'S CARE BECAUSE OTHER  
20 PROBLEMS MIGHT BECOME INVOLVED. YOU GAVE THE EXAMPLE OF THE  
21 INFECTIOUS DISEASE SITUATION; RIGHT?

22 A RIGHT.

23 Q AND SO PROVIDING SERVICES IN CONJUNCTION WITH OTHER  
24 PHYSICIANS IS NOT INCONSISTENT WITH THE STATUTE, ACT 620, OR  
25 WITH COMMON PRACTICE?

1 A CORRECT.

2 Q I'M GOING TO SHOW YOU JOINT EXHIBIT 135, WHICH IS A  
3 DOCUMENT YOU WERE ASKED TO READ, AND WE'LL PUT IT ON THE  
4 SCREEN. AND THIS WAS THE -- WE'VE LOOKED AT IT A COUPLE OF  
5 TIMES. THIS WAS THE LETTER THAT YOU WROTE BACK IN 2008. AND  
6 COUNSEL ASKED YOU TO READ A COUPLE OF CHOSEN EXCERPTS, BUT I  
7 WANTED YOU TO BE ABLE TO READ THOSE EXCERPTS IN THEIR FULL  
8 CONTEXT. SO AT THE BOTTOM OF PAGE 1, SHE ASKED YOU -- SHE  
9 ASKED YOU TO READ THE FIRST SENTENCE OF THE THIRD PARAGRAPH;  
10 DO YOU RECALL THAT?

11 A YES.

12 Q WHY DON'T WE READ THAT AGAIN, BUT I'LL ASK YOU TO  
13 CONTINUE READING BEYOND THAT SENTENCE SO THAT THE NEXT FEW  
14 SENTENCES ARE INCLUDED WITH IT. SO COULD YOU BEGIN THERE  
15 READING PARAGRAPH 3.

16 A WELL, THIS COPY IS HARD TO READ, BUT I THINK I CAN  
17 MAKE IT OUT. "NEVERTHELESS, THE VERIFICATION OF GESTATIONAL  
18 AGE, THE USE OF ANESTHESIA, AND THE INTRODUCTION AND  
19 MANIPULATION OF INSTRUMENTS IN THE PREGNANT UTERUS DO PRESENT  
20 RISKS TO PATIENTS SUCH AS PELVIC INFECTION, INCOMPLETE  
21 ABORTION, BLOOD CLOTS TO THE UTERUS, HEAVY BLEEDING, CUT OR  
22 TORN CERVIX, PERFORATION OF THE UTERUS WALL,  
23 ANESTHESIA-RELATED COMPLICATIONS AND OTHERS.

24 SOME OF THESE COMPLICATIONS, IF THEY OCCUR, MAY  
25 PRESENT IMMEDIATE LIFE-THREATENING CONDITIONS TO THE PATIENT

1 AND MAY COMPROMISE FUTURE CHILDBEARING. THE RISK OF  
2 COMPLICATION INCREASES WITH GESTATIONAL AGE" --

3 Q OKAY, DOCTOR, YOU CAN STOP THERE. DO YOU STILL  
4 AGREE WITH THE STATEMENTS THAT WERE PRESENTED THERE?

5 A YES.

6 Q AND WERE THOSE STATEMENTS -- WERE THOSE DRAFTED JUST  
7 BASED UPON YOUR OWN EXPERIENCE OR DID YOU LOOK AT OTHER  
8 LEARNED TREATISES OR JOURNALS?

9 A OH, NO, THEY'RE REFERENCES TO LEARNED TREATISES AND  
10 JOURNALS.

11 Q NOW, YOU WERE ASKED ABOUT DR. DOE NUMBER 1 WHO  
12 OSTENSIBLY WAS TRAINED FOLLOWING THIS LETTER THAT YOU WROTE IN  
13 2008; DO YOU RECALL THAT?

14 A YES.

15 Q ARE YOU AWARE THAT THAT DOCTOR PERFORATED A UTERUS  
16 AND REQUIRED EMERGENCY -- THAT REQUIRED EMERGENCY SERVICE AND  
17 SURGERY WHICH INCLUDED A HYSTERECTOMY?

18 A I'M NOT AWARE OF THAT.

19 Q OKAY, DOCTOR, DIFFERENT SUBJECT. YOU WERE ASKED  
20 ABOUT RELIGIOUSLY AFFILIATED HOSPITALS AND YOU WERE SHOWN TWO  
21 NEW EXHIBITS, PLAINTIFFS' EXHIBITS WHICH WERE EXCERPTS OF  
22 LOUISIANA STATUTES. DO YOU RECALL THAT?

23 A YES.

24 Q FIRST OF ALL, I WANTED TO ASK YOU, ARE YOU AWARE  
25 THAT ONE OF LOUISIANA'S LONGEST AND MOST PROLIFIC ABORTION

1 PROVIDERS HAS MAINTAINED ADMITTING PRIVILEGES FOR MANY YEARS  
2 AT CHRISTUS SCHUMPERT WHICH IS A RELIGIOUSLY AFFILIATED  
3 HOSPITAL?

4 MS. JAROSLAW: OBJECTION.

5 THE COURT: WHAT'S THE OBJECTION?

6 MS. JAROSLAW: IT'S, AGAIN, BEYOND THE SCOPE.

7 THE COURT: YOU BROUGHT IT UP ON CROSS. I'M GOING  
8 TO LET IT...

9 BY MR. JOHNSON:

10 Q WERE YOU AWARE OF THAT?

11 A NO.

12 Q WERE YOU AWARE THAT DR. DOE NUMBER 1 HAS BEEN  
13 INVITED TO SUBMIT AN APPLICATION TO PARTICIPATE AT THAT  
14 RELIGIOUSLY AFFILIATED HOSPITAL?

15 A NO.

16 Q DOCTOR, TO YOUR KNOWLEDGE, DO PRIMARY CARE  
17 FACILITIES SUCH AS HOSPITALS GENERALLY RECEIVE FEDERAL FUNDS?

18 A WELL, HOSPITALS AREN'T PRIMARY CARE FACILITIES,  
19 GENERALLY SPEAKING, BUT HOSPITALS RECEIVE FEDERAL FUNDS, YES.

20 Q AND ARE YOU AWARE THAT THERE IS A PROVISION OF  
21 FEDERAL LAW KNOWN AS THE CHURCH AMENDMENT THAT PROSCRIBES  
22 DISCRIMINATION AGAINST PHYSICIANS IF THEY PARTICIPATE IN  
23 ABORTIONS?

24 A YES.

25 MR. JOHNSON: I WOULD LIKE TO INTRODUCE INTO

1 EVIDENCE A COPY OF THAT STATUTE. IT'S 42 USC SECTION 300  
2 (A)(7).

3 THE COURT: ANY OBJECTION?

4 MS. JAROSLAW: I'D JUST LIKE TO SEE -- NO OBJECTION.

5 THE COURT: LET IT BE ADMITTED. THAT'S DEFENSE 162?

6 MR. JOHNSON: THAT'S RIGHT, YOUR HONOR.

7 BY MR. JOHNSON:

8 Q AND, DOCTOR, I DON'T -- OH, I DO HAVE IT ON THE  
9 SCREEN FOR YOU. DO YOU SEE THAT STATUTE ON THE SCREEN THERE?

10 A YES.

11 Q AND COULD YOU JUST READ IT TO YOURSELF VERY QUICKLY.

12 A OKAY.

13 Q SO IN YOUR VIEW, THEN, WHAT DOES THAT STATUTE  
14 PROSCRIBE OR PREVENT?

15 MS. JAROSLAW: OBJECTION, YOUR HONOR.

16 THE COURT: I SUSTAIN THAT. IT SAYS WHAT IT SAYS.

17 MR. JOHNSON: IT SAYS WHAT IT SAYS. ALL RIGHT.

18 I'LL MOVE ON. THANK YOU.

19 BY MR. JOHNSON:

20 Q DOCTOR, YOU WERE ASKED ABOUT THE INVOLVEMENT OF  
21 OTHER PARTIES IN THE DRAFTING OF HOUSE BILL 388 WHICH BECAME  
22 ACT 620. DO YOU RECALL THAT?

23 A YES.

24 Q SPECIFICALLY ASKED ABOUT A COUPLE OF INDIVIDUALS,  
25 DORINDA BORDLEE AND BENJAMIN CLAPPER, PERHAPS SOME OTHERS. DO

1 YOU RECALL THAT?

2 A YES.

3 Q AND YOU WERE ASKED -- OR IT WAS ASKED OF YOU, DID  
4 DORINDA BORDLEE REQUEST A COPY A YOUR -- A WRITTEN COPY OF  
5 YOUR TESTIMONY TO THE LEGISLATURE AND DID YOU PROVIDE IT. DO  
6 YOU RECALL BEING ASKED THAT QUESTION?

7 A YES.

8 Q AND I THINK YOU ANSWERED THAT YOU BELIEVE YOU  
9 REMEMBER THAT YOU DID PROVIDE IT TO HER; IS THAT RIGHT?

10 A I THOUGHT I SAID I HONESTLY DIDN'T RECALL IF I SENT  
11 IT TO HER OR NOT.

12 Q OKAY. THE PRIMARY POINT IS THIS, AND THIS IS THE  
13 QUESTION, DOCTOR. IS YOUR DECLARATION IN THIS CASE YOUR OWN  
14 WORDS OR IS IT SOMEONE ELSE'S WORDS?

15 A THE DECLARATION?

16 Q RIGHT. WELL, YOUR EXPERT REPORT AND WHAT'S BEEN  
17 PRESENTED IN THIS CASE? ARE THOSE TRUTHFUL AND ACCURATE TO  
18 THE BEST OF YOUR KNOWLEDGE?

19 A YES. COULD I MAKE A COMMENT --

20 Q PLEASE.

21 A -- WITH RESPECT TO THIS DRAFTING QUESTION. IT IS  
22 TRUE THAT I MET WITH THESE PEOPLE IN THE SUMMER BEFORE THE  
23 LEGISLATION WAS INTRODUCED. I DID MEET WITH REPRESENTATIVE  
24 JACKSON AND MS. BORDLEE AND SOME OTHERS. WE TALKED ABOUT THE  
25 CONCEPT OF THE ACT. I HAD NO HAND IN THE DRAFTING OF THE

1 LEGISLATION THAT WAS INTRODUCED IN THE HOUSE. I DID HAVE A  
2 HAND IN DRAFTING AMENDMENTS THAT CAME UP IN THE SENATE AROUND  
3 THE DEFINITION OF ACTIVE HOSPITAL PRIVILEGES.

4 AND WHEN I ANSWERED THE QUESTION ABOUT WERE OTHER  
5 PEOPLE INVOLVED IN DRAFTING, I WAS REFERRING TO THAT. I WAS  
6 SIMPLY ASKED BY SENATE HEITMEIER AND SOME OTHERS, AND SENATOR  
7 MILLS, TO DEAL WITH THIS QUESTION ABOUT WHAT DO THESE TERMS  
8 MEAN. SO I GAVE THEM SOME SUGGESTED LANGUAGE, AND THAT'S WHAT  
9 I MEANT BY MY INVOLVEMENT IN THE DRAFTING PROCESS. AND BY  
10 DRAFTING, I MEAN IN THE WRITING OF THE LEGISLATION.

11 I DID NOT ACTUALLY SEE THE HOUSE VERSION OF THIS  
12 BILL, WHICH WAS THE ORIGINAL VERSION UNTIL IT APPEARED ON THE  
13 HOUSE CALENDAR. SO THAT'S -- THAT'S BY WAY OF CLARIFICATION  
14 OF MY EARLIER REMARKS. I DIDN'T MEAN TO SUGGEST THAT I NEVER  
15 MET WITH THESE PEOPLE OR I DIDN'T KNOW WHAT THEIR POSITIONS  
16 WERE. BUT ONCE WE GOT INTO THE LEGISLATIVE PROCESS, I WAS  
17 DEALING WITH SENATE STAFF PRIMARILY.

18 Q THANK YOU FOR THAT CLARIFICATION. SO THIS  
19 LEGISLATION WAS NOT YOUR INITIAL IDEA?

20 A NO, IT WAS NOT.

21 Q AND THIS WAS NOT SOMETHING THAT YOU INITIALLY  
22 PROPOSED TO THE LEGISLATURE, IT WAS SOMETHING YOU WERE  
23 CONSULTED ON AS AN EXPERT IN THE FIELD; IS THAT RIGHT?

24 A THAT'S CORRECT.

25 Q AND SO AT SOME POINT AFTER -- OR ABOUT HALFWAY

1 THROUGH THE PROCESS, IN FACT, IS WHEN YOU BECAME INVOLVED IN  
2 THE DRAFTING -- IN THE FINE TUNING OF THE LANGUAGE?

3 A IF BY DRAFTING YOU MEAN ACTUALLY PUTTING WORDS ON  
4 PAPER, YES.

5 Q THANK YOU. YOU WERE ASKED SOME QUESTIONS ABOUT  
6 GOVERNOR JINDAL'S POLITICAL VIEWS, AND IT WAS POINTED OUT THAT  
7 YOU BECAME THE EXECUTIVE DIRECTOR OF THE LOUISIANA STATE BOARD  
8 OF MEDICAL EXAMINERS IN 2006; IS THAT RIGHT?

9 A CORRECT.

10 Q AND GOVERNOR JINDAL WAS ELECTED SUBSEQUENT TO THAT  
11 APPOINTMENT; IS THAT RIGHT?

12 A YES.

13 Q SO YOU DID NOT COME TO THAT POSITION BECAUSE OF  
14 BOBBY JINDAL, DID YOU?

15 A NO, NOT AT ALL.

16 Q YOU WERE ALSO ASKED ABOUT YOUR PERSONAL VIEWS ABOUT  
17 ABORTION, DOCTOR, AND YOU WERE ASKED IF YOU BELIEVE ABORTION  
18 SHOULD BE OUTLAWED AND YOU SELF-IDENTIFY AS A PRO-LIFE  
19 INDIVIDUAL; CORRECT?

20 A CORRECT.

21 Q THE QUESTION IS, DOES THAT AFFECT YOUR ABILITY TO  
22 PERFORM YOUR PROFESSIONAL DUTIES IN A HOSPITAL SETTING?

23 A NOT AT ALL.

24 Q AND DID IT AFFECT YOUR ABILITY TO PERFORM YOUR  
25 PROFESSIONAL DUTIES WHEN YOU WERE THE EXECUTIVE DIRECTOR OF

1 THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS?

2 A NOT AT ALL.

3 Q AND DOES YOUR PERSONAL VIEW ON THE ISSUE OF ABORTION  
4 OR BEING A PRO-LIFE INDIVIDUAL, DOES THAT HAVE ANYTHING AT ALL  
5 TO DO WITH THE LANGUAGE OR THE NECESSITY OF ACT 620?

6 A NO. MY VIEW ABOUT THIS IS THAT THE ACT IS --

7 MS. JAROSLAW: OBJECTION.

8 THE COURT: HOLD ON ONE SECOND.

9 WHAT'S YOUR OBJECTION?

10 MS. JAROSLAW: OBJECTION, YOUR HONOR. THE WITNESS  
11 WAS INVOLVED IN WRITING THE LEGISLATION -- I'M SORRY. COULD I  
12 HEAR THE QUESTION AGAIN, YOUR HONOR?

13 THE COURT: SURE.

14 BY MR. JOHNSON:

15 Q DOES YOUR PERSONAL VIEW ON THE ISSUE OF ABORTION  
16 HAVE ANYTHING TO DO WITH THE LANGUAGE OR THE NECESSITY OF  
17 ACT 620?

18 THE COURT: DO YOU HAVE AN OBJECTION?

19 MS. JAROSLAW: NO, YOUR HONOR.

20 THE COURT: OKAY. NO OBJECTION.

21 YOU MAY ANSWER.

22 A NOT AT ALL. THERE'S ONE OTHER POINT OF  
23 CLARIFICATION WITH RESPECT TO MY OWN VIEWS, CAN I BRING THAT  
24 UP NOW?

25 MS. JAROSLAW: YOUR HONOR, THERE'S NO QUESTION

1 PENDING.

2 BY MR. JOHNSON:

3 Q IS THERE ANOTHER CLARIFICATION YOU WOULD LIKE TO  
4 MAKE ABOUT YOUR PERSONAL VIEWS ON ABORTION?

5 A THANK YOU, COUNSEL. YES, THERE IS. WITH RESPECT TO  
6 MY POSITION ON CONTRACEPTIVES, I MISSPOKE WHEN I REFERRED TO  
7 THE IUDS. I WAS THINKING ABOUT BARRIER MEANS. I'M NOT  
8 OPPOSED PERSONALLY TO CONDOMS AND BARRIER MEANS, BUT AN IUD  
9 CAN BE AN ABORTIVE FASHION, AND I AM OPPOSED TO THAT. I  
10 MISSPOKE EARLIER.

11 Q THANK YOU, DOCTOR. I THANK YOU FOR YOUR SERVICE TO  
12 THE STATE.

13 MR. JOHNSON: I HAVE NO FURTHER QUESTIONS.

14 A THANK YOU.

15 THE COURT: DOCTOR, BEFORE YOU STAND DOWN, I HAVE  
16 ONE OR TWO QUESTIONS. AND, IF YOU COULD, GO TO DEFENSE  
17 EXHIBIT 146, WHICH IS YOUR DECLARATION WE'VE BEEN TALKING  
18 ABOUT. AND, UNFORTUNATELY, THIS IS NOT YOUR FAULT AND IT'S  
19 NOT THE LAWYERS' FAULT. I'M SURE THIS IS MY FAULT. BUT I'M  
20 STILL CONFUSED, AND I'M HOPING YOU CAN GET SOME CLARITY FOR  
21 ME. SO IF YOU COULD FIND -- DO YOU HAVE 146 IN FRONT OF YOU?

22 AND I SPECIFICALLY -- LET'S SEE. I'M LOOKING FOR  
23 THE DEFINITION OF "ACTIVE ADMITTING PRIVILEGES."

24 MAYBE Y'ALL CAN HELP ME FIND THIS.

25 OH, HERE IT IS. IT'S IN -- IT'S IN PARAGRAPH 31, I

1 BELIEVE. YEAH. SO IF YOU WOULD TAKE A LOOK AT THAT. AND IF  
2 YOU NEED A HARD COPY, THAT'S FINE AS WELL.

3 THE WITNESS: I CAN READ IT WELL ENOUGH.

4 THE COURT: OKAY. GOOD. ALL RIGHT.

5 SO I UNDERSTOOD YOUR TESTIMONY TO BE THAT YOU HAVE  
6 TO BE, NUMBER ONE, A MEMBER OF GOOD STANDING OF THE MEDICAL  
7 STAFF THAT IS CURRENTLY LICENSED BY THE DEPARTMENT, I GOT THAT  
8 PART. THEN THE SECOND PART IS, WITH THE ABILITY TO ADMIT A  
9 PATIENT, GOT THAT PART. THEN IT SAYS, AND TO PROVIDE  
10 DIAGNOSTIC AND SURGICAL SERVICES TO SUCH PATIENT, DOT, DOT,  
11 DOT.

12 AND I UNDERSTOOD YOU TO SAY THAT THE DOCTOR IN ORDER  
13 TO MEET ACT 620 WOULD HAVE TO -- WOULD NOT HAVE TO BE ABLE TO  
14 PERFORM ALL DIAGNOSTIC AND SURGICAL SERVICES, BUT WOULD HAVE  
15 TO PERFORM SOME DIAGNOSTIC AND SURGICAL SERVICES. DID I  
16 UNDERSTAND THAT CORRECTLY?

17 THE WITNESS: YES. YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. WELL, THAT CLARIFIES THE  
19 POINT FOR ME THEN. THAT'S THE ONLY QUESTION I HAVE. THANK  
20 YOU, SIR.

21 THE WITNESS: THANK YOU.

22 THE COURT: ANY OTHER QUESTIONS BASED ON MY  
23 QUESTIONS?

24 MS. JAROSLAW: NO. BUT MAY I RE-CROSS BRIEFLY?

25 THE COURT: ON WHAT?

1 MS. JAROSLAW: ON MR. JOHNSON'S QUESTIONS.

2 THE COURT: NO. I MADE ONE EXCEPTION FOR MR.  
3 DUNCAN, AND I'VE REGRETTED IT EVER SINCE. IT'S DIRECT, CROSS,  
4 REDIRECT, AND THAT'S THE END OF IT.

5 YOU MAY STAND DOWN, DOCTOR. THANK YOU.

6 OKAY. IT'S 11:40. WHO IS THE NEXT WITNESS?

7 MR. DUNCAN: YOUR HONOR, THE NEXT WITNESS IS  
8 DR. SOLANKY, WHO IS OUR DEFENSE EXPERT. HE'S OUTSIDE. WE CAN  
9 START OR WE CAN BREAK, WHATEVER YOUR PREFERENCE IS.

10 THE COURT: WELL, I PROBABLY TOLD -- SHARED THIS  
11 WITH EVERYONE. I'VE SHARED IT WITH ALL OF MY FRIENDS AND EVEN  
12 THOSE WHO ARE NOT MY FRIENDS, I HATE MATH. I'M VERY BAD AT  
13 MATH. AND, IN FACT, I THINK I ENCOURAGED ALL OF YOU TO  
14 PROVIDE AS MANY GRAPHICS AS YOU COULD POSSIBLY PROVIDE IN  
15 CONNECTION WITH DR. SOLANKY'S TESTIMONY. SO I WOULD PREFER TO  
16 BRACE MYSELF WITH A LUNCH HOUR BEFORE DR. SOLANKY COMES TO  
17 TESTIFY. SO SHALL WE BREAK UNTIL 1:00 P.M.?

18 MR. DUNCAN: YES. AND I'LL SPEAK TO MS. DOUFEKIAS  
19 ABOUT ADMITTING THOSE HELPFUL DEMONSTRATIVES SO THAT WE CAN  
20 ALL NOT HAVE TO UNDERSTAND THE MATH ALL THAT DEEPLY.

21 THE COURT: ALL RIGHT. THANK YOU.

22 (WHEREUPON COURT WAS IN RECESS.)

23 (WHEREUPON COURT RESUMED AND ALL PARTIES WERE PRESENT.)

24 THE COURT: PLEASE BE SEATED. READY FOR THE NEXT  
25 WITNESS?

1           **MR. DUNCAN:** YES, YOUR HONOR. THE DEFENSE CALLS  
2 DR. TUMULESH SOLANKY.

3           **THE COURT:** ALL RIGHT. DR. SOLANKY, COME FORWARD.

4           (WHEREUPON, TUMULESH SOLANKY, HAVING BEEN DULY  
5 SWORN, TESTIFIED AS FOLLOWS.)

6 **DIRECT**

7 **BY MR. DUNCAN:**

8           **Q** GOOD AFTERNOON, DR. SOLANKY.

9           **A** GOOD AFTERNOON.

10          **Q** YOU'RE COMFORTABLE UP THERE? YOU CAN SPEAK INTO THE  
11 MICROPHONE.

12          **MR. DUNCAN:** MAYBE IS HIS MICROPHONE ON? I CAN'T  
13 HEAR HIM.

14 **BY MR. DUNCAN:**

15          **Q** DR. SOLANKY, PLEASE STATE YOUR FULL NAME AND SPELL  
16 IT FOR THE COURT REPORTER.

17          **A** MY FULL NAME IS TUMULESH KUMAR SINGH SOLANKY,  
18 T-U-M-U-L-E-S-H, K-U-M-A-R, S-I-N-G-H, S-O-L-A-N-K-Y.

19          **Q** THANK YOU.

20          **MR. DUNCAN:** YOUR HONOR, AS A PRELIMINARY MATTER,  
21 I'D LIKE TO INTRODUCE INTO EVIDENCE DR. SOLANKY'S REPORT WITH  
22 ITS ACCOMPANYING EXHIBITS. THIS IS NOW -- I TALKED TO -- I  
23 TALKED TO THE OTHER SIDE. I WAS GOING TO TRY TO INTRODUCE HIS  
24 DEMONSTRATIVE EXHIBITS AT THE OUTSET, BUT THERE'S GOING TO BE  
25 A COUPLE OF OBJECTIONS TO THOSE, SO I PREFER TO DO THAT AFTER

1 I OFFER DR. SOLANKY AS AN EXPERT AND WE CAN TALK ABOUT THE  
2 DEMONSTRATIVES.

3 THE COURT: OKAY.

4 MR. DUNCAN: FOR THE TIME BEING, IF IT'S OKAY, LET'S  
5 INTRODUCE DX 148, WHICH IS DR. SOLANKY'S REPORT.

6 THE COURT: ALL RIGHT. ANY OBJECTION?

7 MS. LEVINE: YOUR HONOR, WE'RE NOT OBJECTING TO THE  
8 REPORT ONLY INSOFAR AS WE MAINTAIN OUR OBJECTION AS STATED IN  
9 THE MOTION IN LIMINE, SO WE OBJECT TO THE ENTIRETY OF HIS  
10 TESTIMONY AND THE REPORT AS STATED IN THE MOTION.

11 THE COURT: I UNDERSTAND.

12 AND THE COURT'S PREVIOUSLY RULED ON THAT, SO  
13 DR. SOLANKY CAN GO FORWARD.

14 MR. DUNCAN: THANK YOU, YOUR HONOR. SO JUST TO BE  
15 CLEAR, WE'VE INTRODUCED NOW DEFENDANT'S EXHIBIT 148, WHICH IS  
16 DR. SOLANKY'S REPORT. IS THAT RIGHT, YOUR HONOR, THAT'S IN  
17 EVIDENCE?

18 THE COURT: YES, CORRECT. THAT'S BEEN RECEIVED INTO  
19 EVIDENCE.

20 BY MR. DUNCAN:

21 Q OKAY. SO, DR. SOLANKY, DURING YOUR REPORT -- DURING  
22 YOUR TESTIMONY, YOU MAY REFER TO YOUR REPORT IF IT'S NECESSARY  
23 TO REFRESH YOUR RECOLLECTION OR SEE FIGURES AND THAT SORT OF  
24 THING. SO LET'S MAKE SURE DR. SOLANKY HAS HIS REPORT. YOU'RE  
25 GOING TO HAVE CHOICES, DOCTOR. YOU CAN HAVE IT UP ON THE

1 SCREEN OR YOU CAN HAVE A HARD COPY OF YOUR REPORT. IF YOU SEE  
2 THAT LARGE EXHIBIT BINDER THERE, THE ONE ON TOP --

3 A OKAY. NO, I'LL PREFER TO HAVE IT ON THE SCREEN.

4 Q OKAY. THAT'S FINE. THAT'S FINE.

5 MR. DUNCAN: IS IT UP THERE ON THE SCREEN; JUST FOR  
6 HIS REFERENCE?

7 I APOLOGIZE, YOUR HONOR.

8 THE COURT: THAT'S OKAY. NO PROBLEM. IT'S BETTER  
9 THAN MATH, THAT'S ALL I CAN SAY. THAT'S A JOKE. FOR THE  
10 RECORD, THAT'S A JOKE.

11 MR. DUNCAN: I HAVE WARNED DR. SOLANKY ABOUT --

12 THE COURT: I'M SORRY. NOTHING AGAINST YOU,  
13 DR. SOLANKY, UNDERSTAND.

14 THE WITNESS: NO PROBLEM.

15 MR. DUNCAN: OKAY. WE CAN PUT A -- I -- I DON'T  
16 HAVE A CLEAN HARD COPY HERE. IF YOU COULD HAND ME ONE. IT  
17 SOUNDS LIKE WE'RE HAVING COMPUTER DIFFICULTIES, SO WE CAN PUT  
18 A HARD COPY ON THE ELMO.

19 THE COURT: OKAY. WELL, I'LL JUST PULL -- I'LL PULL  
20 MY HARD COPY, WHICH I HAVE HERE AT THE --

21 MS. LEVINE: WE DO HAVE AN ELECTRONIC COPY IF -- IF  
22 YOU WISH TO PROVIDE IT, WE CAN --

23 THE COURT: HOWEVER YOU ALL WANT TO DO IT IS FINE  
24 WITH ME.

25 MR. DUNCAN: LET'S SEE IF NATALIE CAN PULL IT UP.

1 BY MR. DUNCAN:

2 Q OKAY. DR. SOLANKY, LET'S ADAPT -- OH, I SEE IT  
3 THERE. OKAY. DO YOU SEE IT NOW UP ON YOUR SCREEN, DOCTOR?

4 A YES, I DO.

5 Q YOU RECOGNIZE THAT AS THE REPORT THAT YOU FILED IN  
6 THE CASE?

7 A YES. AND CAN I --

8 Q AND AS I SAID, YOU MAY REFER TO THE REPORT.

9 A OKAY. IS IT TOUCHSCREEN? CAN I SCROLL IT DOWN?  
10 SOMEBODY WILL HAVE TO SCROLL IT DOWN?

11 Q THERE IS APPARENTLY SCROLLING. I HAVEN'T BEEN UP  
12 THERE TO SEE WHAT IT IS. DO YOU SEE HOW TO SCROLL?

13 A YES, I SEE SOMETHING. HOW DO I CONTROL THAT? I  
14 CANNOT CONTROL IT?

15 MS. DECKER: NO. IF YOU CAN TELL ME, I CAN SCROLL.

16 BY MR. DUNCAN:

17 Q WELL, WITH THAT AUSPICIOUS BEGINNING, DR. SOLANKY, I  
18 WANT TO ASK YOU SOME QUESTIONS ABOUT YOUR BACKGROUND AND  
19 QUALIFICATIONS. WHAT IS YOUR OCCUPATION?

20 A I'M A PROFESSOR OF MATHEMATICS AND THE CHAIR OF THE  
21 MATHEMATICS DEPARTMENT AT THE UNIVERSITY OF NEW ORLEANS.

22 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND, DOCTOR?

23 A I HAVE A BACHELOR'S DEGREE IN MATHEMATICS, A  
24 MASTER'S DEGREE IN MATHEMATICS, AND A DOCTORATE DEGREE IN  
25 STATISTICS FROM THE UNIVERSITY OF CONNECTICUT.

1 Q THANK YOU. WHAT DO YOU TEACH AT THE UNIVERSITY OF  
2 NEW ORLEANS?

3 A AT THE UNIVERSITY OF NEW ORLEANS, I ESSENTIALLY  
4 TEACH UNDERGRADUATE AND GRADUATE COURSES IN THE AREA OF  
5 STATISTICS.

6 Q AND HOW LONG HAVE YOU TAUGHT THERE?

7 A I JUST COMPLETED 25 YEARS AT UNO.

8 Q DO YOU EDIT ANY SCHOLARLY JOURNALS?

9 A YES, I DO.

10 Q AND IN WHAT FIELD ARE THOSE SCHOLARLY JOURNALS?

11 A I CURRENTLY SERVE AS ASSOCIATE EDITOR OF FIVE  
12 SCHOLARLY JOURNALS IN THE AREA OF MATHEMATICS AND STATISTICS.

13 Q AND IN THAT ROLE AS -- DID YOU SAY ASSOCIATE EDITOR?  
14 I'M SORRY, DOCTOR.

15 A CORRECT.

16 Q IN THAT ROLE AS ASSOCIATE EDITOR, WHAT KIND OF WORK  
17 DOES THAT INVOLVE?

18 A THE JOB OF ASSOCIATE EDITOR IS TO ENSURE THAT THE  
19 PAPERS WHICH ARE GETTING PUBLISHED IN SCHOLARLY JOURNALS --  
20 I'M TALKING IN GENERAL HERE, AND IT HOLDS FOR THOSE FIVE  
21 JOURNALS FOR WHICH I WORK, TO MAKE SURE THAT THE SCHOLARLY  
22 WORK WHICH IS GETTING PUBLISHED HAS SCIENTIFIC MERIT AND IT  
23 MERITS PUBLICATION.

24 Q HAVE YOU, YOURSELF, PUBLISHED ANY BOOKS OR BOOK  
25 CHAPTERS?

1           A     YES, I HAVE. I PUBLISHED A SCHOLARLY BOOK IN  
2 STATISTICS IN 1994. I HAVE PUBLISHED TWO SCHOLARLY BOOK  
3 CHAPTERS AS WELL.

4           Q     AND WERE THOSE BOOK CHAPTERS ALSO IN THE FIELD OF  
5 STATISTICS?

6           A     YES.

7           Q     HAVE YOU PUBLISHED ANY RESEARCH ARTICLES AND PEER  
8 REVIEWED JOURNALS?

9           A     I HAVE PUBLISHED ABOUT 24 ARTICLES IN THE AREA OF  
10 STATISTICS IN PEER REVIEWED SCHOLARLY JOURNALS IN STATISTICS.

11          Q     ARE THESE PUBLICATIONS LISTED IN YOUR CV?

12          A     YES, THEY ARE.

13          Q     IN THE PAST, HAVE YOU BEEN QUALIFIED AS AN EXPERT  
14 WITNESS IN FEDERAL AND STATE COURT?

15          A     YES, I HAVE BEEN.

16          Q     IN WHAT GENERAL FIELDS HAVE YOU BEEN QUALIFIED AS A  
17 EXPERT WITNESS?

18          A     AS A STATISTICIAN -- AS A STATISTICAL EXPERT. I'M  
19 SORRY.

20          Q     SURE. COULD YOU EXPLAIN SORT OF THE STATISTICAL  
21 MODELING AND ANALYSIS THAT YOU'VE DONE AS A STATISTICAL EXPERT  
22 IN THESE CASES?

23          A     IN -- I HAVE BEEN ASSOCIATED WITH A NUMBER OF CASES,  
24 AND IF I HAVE TO GIVE AN OVERVIEW OF MY WORK, IT WOULD BE TO  
25 COLLECT DATA, LOOK AT THE DATA, DO STATISTICAL MODELING,

1 STATISTICAL PREDICTION, DATA ANALYSIS OF SUCH THINGS.

2 Q CAN THIS STATISTICAL MODELING AND DATA ANALYSIS THAT  
3 YOU HAVE DONE AS AN EXPERT BE APPLIED ACROSS A WIDE VARIETY OF  
4 FIELDS?

5 A THAT IS RIGHT.

6 Q COULD YOU EXPLAIN WHY FOR THE COURT?

7 A STATISTICS IS A FIELD WHICH DEALS WITH APPLICATIONS.  
8 STATISTICIANS APPLY THE THEME, STATISTICAL TOOLS LITERALLY  
9 MORE OR LESS IN ENGINEERING, IN MEDICINE, ALL THE DRUGS WHICH  
10 GO THROUGH CLINICAL TRIALS LITERALLY GO THROUGH THE SAME  
11 STATISTICAL STEPS, SOCIAL SCIENCE. WHAT I'M TRYING TO SAY IS  
12 STATISTICS IS A TOOL, IT'S A SCIENTIFIC TOOL WHICH PEOPLE  
13 APPLY ACROSS DIFFERENT SCIENTIFIC FIELDS.

14 Q COULD YOU GIVE US AN IDEA OF SOME OF THE DIFFERENT  
15 FIELDS IN WHICH YOU'VE APPLIED THOSE TOOLS?

16 A I HAVE APPLIED THESE TOOLS, FOR EXAMPLE, NASA WAS  
17 CONDUCTING SOME EXPERIMENTATION OF THE CHALLENGER DISASTER, SO  
18 I WAS THE STATISTICIAN ON THE TEAM. AND MY JOB WAS TO PROVIDE  
19 STATISTICAL EXPERTISE TO THOSE ENGINEERS. I HAVE PROVIDED MY  
20 STATISTICAL EXPERTISE TO BANKS, HOSPITALS, SCHOOL BOARDS, A  
21 NUMBER OF SUCH --

22 Q THANK YOU.

23 A -- APPLICATIONS.

24 Q IN THE CASES IN WHICH YOU'VE BEEN QUALIFIED AS A  
25 STATISTICAL -- AN EXPERT IN STATISTICS, A STATISTICAL EXPERT,

1 HAVE YOU PROVIDED THAT EXPERTISE TO BOTH PLAINTIFFS AND  
2 DEFENDANTS?

3 A I HAVE.

4 Q HAVE YOU ALSO PROVIDED IT AS A COURT-APPOINTED  
5 EXPERT?

6 A I HAVE SERVED AS THE COURT-APPOINTED EXPERT AS WELL  
7 IN ONE OF THE LITIGATION CASES.

8 Q COULD YOU DESCRIBE THAT CASE FOR THE COURT?

9 A THAT CASE, IT'S IN MY CV. CAN I SCROLL DOWN,  
10 PLEASE?

11 Q CERTAINLY, DOCTOR. LET ME HELP YOU. THAT IS -- I  
12 BELIEVE THAT IS PAGE -- THAT IS PAGE 20, ITEM NO. 17 OF YOUR  
13 CV.

14 A RIGHT. EXCUSE ME.

15 Q OKAY. DO YOU SEE THAT?

16 A YES. IT WAS JUST THERE.

17 Q THERE YOU GO.

18 A THIS WAS THE CASE OF CHARLES FOTI VERSUS JANSSEN  
19 PHARMACEUTICALS. NOW, THIS WAS A VERY COMPLEX LITIGATION  
20 MATTER. CHARLES FOTI HAD HIS OWN STATISTICIANS WHO WERE  
21 LOOKING AT DATA. AND I CAN TELL YOU WHAT THE DATA WAS. NOW,  
22 THIS CASE WAS ABOUT A DRUG, RISPERDAL, AND HOW IT HAD BEEN  
23 USED OFF-LABEL. MEANING THE DRUG WAS APPROVED FOR ADULTS, BUT  
24 THE DOCTORS HAVE THE AUTHORITY, HAVE THE DISCRETION TO  
25 PRESCRIBE IT TO CHILDREN. SO THE DATA WAS THAT HOW THIS DRUG

1 HAD BEEN PRESCRIBED OFF-LABEL, MEANING TO CHILDREN, FOR WHICH  
2 IT WAS -- IT DID NOT GO THROUGH CLINICAL TRIALS BY FOOD AND  
3 DRUG ADMINISTRATION AND HOW IT HAS IMPACTED THE CHILDREN.

4 AND QUITE A BIT OF HOW IT HAS IMPACTED THE CHILDREN  
5 IN LOUISIANA IS A STATISTICAL MATTER, MEANING YOU COLLECT THE  
6 DATA, HOW THE DRUG HAS BEEN DISPENSED, HOW THESE CHILDREN HAVE  
7 SUFFERED. BOTH THE SIDES HAD A NUMBER OF STATISTICIANS.  
8 CHARLES FOTI HAD HIS STATISTICAL EXPERTS, JANSSEN HAD THEIR  
9 OWN STATISTICAL EXPERTS. AND MY ROLE WAS TO HELP THE COURT  
10 WITH UNDERSTANDING WHAT STATISTICAL RESULTS ARE BEING  
11 PRESENTED TO THE COURT BY THE TWO SIDES, WHICH RESULTS ARE  
12 RELIABLE, WHICH RESULTS ARE THERE JUST TO CONFUSE THE JUDGE,  
13 THAT SORT OF THING.

14 Q I SEE. THANK YOU. THANK YOU, DOCTOR. AND THE  
15 CASES -- JUST TO BE SURE. THE CASES IN WHICH YOU HAVE BEEN  
16 QUALIFIED AS AN EXPERT WITNESS ARE LISTED IN THESE PAGES IN  
17 YOUR CV; CORRECT?

18 A CORRECT.

19 Q OKAY. LET'S SHIFT SUBJECTS. DR. SOLANKY, HAVE YOU  
20 BEEN RETAINED BY THE DEFENDANT IN THIS MATTER TO PROVIDE AN  
21 EXPERT OPINION?

22 A YES.

23 Q ARE YOU BEING COMPENSATED FOR THAT OPINION BY THE  
24 DEFENDANT?

25 A YES.

1 Q AT WHAT RATE?

2 A MY HOURLY RATE IS \$200 AN HOUR.

3 Q WHAT IS YOUR UNDERSTANDING OF THE SUBJECT MATTER OF  
4 THIS LITIGATION?

5 A THE SUBJECT MATTER OF THIS LITIGATION IS, LAST YEAR  
6 THE LOUISIANA LEGISLATORS PASSED A LAW, I BELIEVE IT IS  
7 REFERRED TO AS ACT 620, UNDER WHICH THE ABORTION PROVIDING  
8 PHYSICIANS IN ABORTION CLINICS MUST HAVE ACTIVE ADMITTING  
9 PRIVILEGES WITHIN 30 MILES OF THE CLINIC AND WHAT IMPACT THIS  
10 IS HAVING ON -- IN THE STATE OF LOUISIANA.

11 Q AND WHAT IS THE NATURE OF THE EXPERT OPINION YOU'VE  
12 BEEN ASKED BY THE DEFENDANT TO PROVIDE IN THIS MATTER?

13 A THE COUNSEL HAD ASKED ME TO LOOK AT THE ABORTION  
14 CLINICS IN LOUISIANA WHERE LOUISIANA WOMEN GO TO SEEK  
15 ABORTIONS AND WHAT IMPACT WILL THIS HAVE UNDER VARIOUS  
16 HYPOTHETICAL OR OTHER SCENARIOS IF SOME OF THE ABORTION  
17 CLINICS CLOSED AND LIKE THAT.

18 Q AND YOU WERE ASKED SPECIFICALLY TO LOOK INTO WHAT  
19 ASPECT OF THIS --

20 A TO LOOK AT WHAT THE DRIVING DISTANCES WOULD BE TO  
21 THE NEAREST CLINIC.

22 Q THANK YOU. DOCTOR, I'D LIKE TO ASK YOU NOW ABOUT  
23 THE FACTS AND DATA YOU RELIED ON IN FORMING YOUR OPINION. I  
24 GUESS, FIRST OF ALL, DID YOU REVIEW SOME LITIGATION DOCUMENTS  
25 IN THIS CASE?

1           A     I REVIEWED A NUMBER OF DOCUMENTS RELATED TO THIS,  
2     AND I HAVE THOSE SUMMARIZED IN MY REPORT.

3           Q     RIGHT.  AND I'LL DRAW YOUR ATTENTION TO PARAGRAPH 5  
4     OF YOUR REPORT ON PAGE 2.  DO YOU SEE THAT?

5           A     THAT'S -- THIS IS -- THIS SUMMARIZES THE DOCUMENTS  
6     THAT I REVIEWED.

7           Q     RIGHT.  THE LITIGATION DOCUMENTS THERE?

8           A     CORRECT.

9           Q     OKAY.  NOW SOME OTHER FACTS.  DID YOU CONSIDER THE  
10    LOCATION OF OUTPATIENT ABORTION CLINICS?

11          A     YES, I DID.

12          Q     AND IN WHAT CITIES AND STATES DID YOU CONSIDER THOSE  
13    CLINICS?

14          A     I LOOKED AT THE ABORTION CLINICS IN LOUISIANA AND  
15    ABORTION CLINICS SURROUNDING LOUISIANA; IN TEXAS; MISSISSIPPI;  
16    MOBILE, ALABAMA.

17          Q     AND HOW DID YOU IDENTIFY THE CLINICS THAT YOU  
18    CONSIDERED?

19          A     THE CLINICS THAT ARE -- WHEN I READ ALL OF THESE  
20    DOCUMENTS THAT WE JUST REFERRED TO IN ITEM NO. 5, THE ABORTION  
21    CLINICS, THOSE FIVE ARE REFERRED TO IN THOSE DOCUMENTS.

22          Q     I'M SORRY.  THE FIVE LOUISIANA CLINICS?

23          A     FIVE ABORTION -- LOUISIANA ABORTION CLINICS.  SO  
24    THEY WERE MENTIONED IN THOSE REPORTS.  AND THEN FOR OUTSIDE  
25    LOUISIANA, I DID SOME SEARCH ON MY OWN, SO WHAT ALL ABORTION

1 CLINICS ARE AVAILABLE FOR LOUISIANA WOMEN. JUST PLAIN, SIMPLE  
2 INTERNET SEARCH AND I CALLED THEM. I JUST PICKED UP THE  
3 PHONE -- THEY ALL PROVIDE YOU A PHONE NUMBER TO SEE IF THEY  
4 ARE OPERATING AND FUNCTIONAL OR NOT.

5 Q AND HOW DID YOU VERIFY THE LOCATIONS OF EACH OF THE  
6 CLINICS THAT YOU CONSIDERED FOR YOUR REPORT?

7 A INTERNET PROVIDES THEIR PHONE NUMBERS, THEIR  
8 LOCATIONS, THE DIRECTIONS, SO ALL OF THAT IS REALLY READILY  
9 AVAILABLE. FOR THE LOUISIANA CLINICS, I THINK THE ADDRESSES  
10 WERE EVEN AVAILABLE IN THE REPORTS.

11 Q OKAY. GREAT. THANK YOU.

12 A IN THOSE LITIGATION REPORTS.

13 Q THANK YOU. OKAY. LET'S TALK ABOUT SOME OF THE  
14 OTHER DATA. I WOULD REFER YOU TO PARAGRAPHS 9 THROUGH 12 OF  
15 YOUR EXPERT REPORT. THAT'S ON PAGE 5 OF YOUR REPORT, WHICH  
16 YOU MAY REFER TO IF YOU NEED TO?

17 A OKAY.

18 Q LET'S TALK FIRST ABOUT PARAGRAPH 9. DO YOU SEE THAT  
19 PARAGRAPH, DOCTOR?

20 A YES, I DO.

21 Q WHAT DATA DOES THAT PARAGRAPH DISCUSS?

22 A IN NUMBER 9 I'M REFERRING TO THE U.S. CENSUS DATA.  
23 NOW, U.S. CENSUS CONDUCTS A COMPLETE CENSUS EVERY TEN YEARS,  
24 SO THE LAST COMPLETE CENSUS WAS IN YEAR 2010. AND THAT IS THE  
25 DATA I'M TALKING ABOUT. SO LITERALLY, IN CENSUS, EVERY SINGLE

1 PERSON IS COUNTED AND REPORTED AND THEY COLLECT A NUMBER OF  
2 OTHER CHARACTERISTICS WHILE THEY COLLECT THIS DATA.

3 Q THANK YOU. LET'S LOOK AT PARAGRAPH 10 ON THE SAME  
4 PAGE. THERE YOU TALK ABOUT ANOTHER SET OF DATA. WHY DON'T  
5 YOU EXPLAIN THAT?

6 A IN NO. 9, I'M REFERRING TO THE COMPLETE CENSUS,  
7 WHICH WAS IN 2010. AND WHAT THE U.S. CENSUS BUREAU DOES IS --  
8 TEN YEARS IS A LONG TIME, SO IF THE LAST CENSUS IS IN 2010,  
9 THE NEXT ONE WOULD BE IN 2020. WHAT U.S. CENSUS BUREAU DOES  
10 IS IT UPDATES THOSE ESTIMATES FOR THE IN-BETWEEN YEARS.

11 SO WHEN I WROTE THIS REPORT, THE MOST CURRENT DATA  
12 WHICH WAS AVAILABLE WAS FOR THE YEAR 2013, AND THAT'S WHAT I  
13 HAVE REFERRED TO HERE, "COUNTY CHARACTERISTICS RESIDENT  
14 POPULATION ESTIMATES." AND THAT'S THE NAME OF THE FILE. AND  
15 IT GIVES THE RESIDENT POPULATION BY AGE, SEX, RACE, AND SO ON.  
16 AND THAT DATA, I THINK, I HAVE SUMMARIZED IN THE REPORT AS  
17 WELL IN THE EXHIBIT -- EXHIBIT B OF THE REPORT.

18 Q VERY GOOD. THANK YOU. IN PARAGRAPH 11, COULD YOU  
19 TALK ABOUT THE DATA THAT THAT PARAGRAPH REFERS TO?

20 A NOW, IN NUMBER 9, I LOOKED AT --

21 Q NUMBER 11. I'M SORRY.

22 A NUMBER 11 -- LET ME START WITH NO. 9. IN NO. 9, I  
23 HAD ALL OF THE CENSUS. AND THEN IN NO. 10, WE ARE TALKING  
24 ABOUT 2013 ESTIMATES. IN NO. 11 I WANTED TO SEE WHAT WOMEN  
25 OF -- WOMEN OF WHAT AGE ACTUALLY GO OUT AND SEEK ABORTION. IN

1 NO. 10, I HAD THE DATA AVAILABLE ON ALL WOMEN IN EACH PARISH,  
2 IN EACH OF THE 64 PARISHES IN LOUISIANA, BUT THAT COULD BE A  
3 BIT SKEWED. THE CORRECT ITEM FOR ME TO LOOK AT WAS TO LOOK AT  
4 THE WOMEN OF REPRODUCTIVE AGE. AND BEFORE I COULD EVEN JUST  
5 ASSUME SOME NUMBERS, I LOOKED AT THIS ITOP DATA WHICH IS  
6 SUMMARIZED ON DHH'S WEBSITE AND I SAW LITERALLY NEARLY ALL,  
7 99 POINT SOMETHING PERCENT OF THE WOMEN WHO SEEK ABORTION TEND  
8 TO BE BETWEEN THE AGES OF 15 TO 44 YEARS.

9 IN ITEM 11, I HAVE SUMMARIZED THEM BY THE YEAR.  
10 MEANING I THOUGHT IT WOULD BE MORE PRECISE THAT NOT ONLY I  
11 LOOK AT ALL OF THE WOMEN IN LOUISIANA BUT AS WELL I MIGHT LOOK  
12 AT THE WOMEN WHO ARE LIKELY TO SEEK ABORTION. THE SUBGROUP OF  
13 ALL WOMEN WHO ARE LIKELY TO SEEK ABORTION.

14 Q THANK YOU, DOCTOR. NOW, THE LAST ONE ON THIS POINT  
15 IS PARAGRAPH 12 OF YOUR REPORT. COULD YOU DESCRIBE THAT DATA?

16 A IN NO. 12, ON THIS -- IN THIS -- THE ESTIMATES WHICH  
17 I TALKED ABOUT, THEY GIVE YOU THE POPULATION OF WOMEN BY  
18 DIFFERENT AGE GROUPS. SO WHAT I'M TALKING ABOUT IN NO. 12 IS  
19 HOW DID I -- WHAT ALL COLUMNS I ADDED UP TO GET THE NUMBER OF  
20 WOMEN IN AGE GROUP OF 15 TO 44 YEARS.

21 Q I'M SORRY IF I MISSED THIS, DOCTOR. BUT WHAT'S THE  
22 SOURCE OF THE DATA --

23 A THE SOURCE OF THE DATA IS U.S. CENSUS BUREAU.

24 Q OKAY. IN PARAGRAPH 12 AS WELL?

25 A RIGHT. IN PARAGRAPH 12, U.S. CENSUS BUREAU PROVIDES

1 THE NUMBER OF WOMEN OF DIFFERENT AGE GROUP. AND THEY HAVE  
2 LISTED THEM BY CERTAIN CODES. THE CODES WHICH REFER TO THE  
3 AGE GROUP BETWEEN 15 TO 44 YEARS WERE THE CODES. AND THEY  
4 CALL THIS VARIABLE -- NAMED TO BE A-G-E, G-R-P, AGE GROUP I  
5 BELIEVE IT STANDS FOR. SO I ADDED THE VALUES OF 4 THROUGH 9  
6 TO ADD AND ARRIVE AT THE NUMBER OF WOMEN IN THIS AGE GROUP OF  
7 15 TO 44.

8 Q JUST TO BE CLEAR FOR THE RECORD, DOCTOR, WHERE DID  
9 YOU ACCESS THIS U.S. CENSUS DATA THAT YOU DISCUSS IN  
10 PARAGRAPHS 9, 10 AND 12?

11 A THE U.S. CENSUS BUREAU PROVIDES -- PUBLICIZES THIS  
12 DATA. AND THAT IS ONE OF THE JOBS OF THE U.S. CENSUS BUREAU  
13 DUTIES, TO MAKE THIS DATA READILY AVAILABLE TO ANYBODY WHO  
14 WANTS TO USE IT. IT'S ON THE WEBSITE OF THE U.S. CENSUS  
15 BUREAU.

16 Q THANK YOU, DOCTOR. THE NEXT KIND OF DATA I'D LIKE  
17 TO ASK YOU ABOUT -- OR I GUESS THIS IS MORE OF A CALCULATION.  
18 HOW DID YOU CALCULATE THE DRIVING DISTANCE FROM EACH PARISH TO  
19 VARIOUS ABORTION FACILITIES? COULD YOU DESCRIBE THE PROCESS  
20 THAT YOU USED FOR THE COURT?

21 A OKAY. CAN WE SCROLL JUST A BIT?

22 Q I'M SORRY. I'LL REFER YOU TO PARAGRAPH 13 OF YOUR  
23 REPORT ON PAGE 6.

24 A NOW, IN NO. 13, ITEM NO. 13, THE NEXT THING WHICH I  
25 DID WAS TO SEE HOW FAR A PARTICULAR ABORTION CLINIC IS FROM A

1 PARISH. AND FOR THIS -- TO DETERMINE HOW FAR A PARTICULAR  
2 CLINIC IS, I DID WHAT I DO EVEN OTHERWISE. IF I NEED TO GO  
3 SOMEPLACE, I GO TO GOOGLE OR ONE OF THESE WEBSITES AND I TYPE  
4 IN THE ADDRESS AND THEN THAT IS THE INFORMATION I USED.

5 SO I USED GOOGLE.COM BY TYPING IN THE ADDRESS OF THE  
6 FACILITY AND THE NAME OF THE PARISH, GOOGLE WAS ABLE TO  
7 PROVIDE ME HOW FAR A PARTICULAR PARISH IS FROM A PARTICULAR  
8 ABORTION FACILITY.

9 Q AND DO YOU HAVE AN EXAMPLE THERE OF ONE OF THOSE  
10 CALCULATIONS IN THIS PARAGRAPH, DOCTOR?

11 A IN MY REPORT, I INCLUDED A SCREEN-SHOT FOR ONE OF  
12 SUCH PARISHES, FOR THE WINN PARISH, AND HOW FAR THAT WINN  
13 PARISH IS FROM A FACILITY IN DALLAS, TEXAS. I INCLUDED THAT  
14 SCREEN-SHOT IN MY REPORT.

15 Q AND THAT'S IN EXHIBIT C OF YOUR REPORT?

16 A CORRECT.

17 Q DOCTOR, YOU SAY YOU USED GOOGLE TO CALCULATE THE  
18 DISTANCE. IS THERE ANY PROBLEM WITH USING GOOGLE TO SET A  
19 LOCATION IN EACH PARISH? DOES THAT PRESENT ANY PROBLEM FOR  
20 YOUR ANALYSIS?

21 A MORE OR LESS, IT DID NOT. GOOGLE PROVIDES THIS  
22 INFORMATION. IT'S VERY EASY TO OBTAIN. JUST TYPE THE NAME OF  
23 THE FACILITY -- THE ADDRESS OF THE FACILITY, THE NAME OF THE  
24 PARISH, AND THEN GOOGLE WILL TELL YOU HOW FAR THAT PARTICULAR  
25 FACILITY IS.

1           THERE WERE THREE PARTICULAR PARISHES FOR WHICH I  
2 COULD NOT OBTAIN THE DISTANCE OF AN ABORTION FACILITY FROM A  
3 PARISH. AND GOOGLE TELLS YOU THAT THIS PARISH DISTANCE IS NOT  
4 AVAILABLE AND THEN GOOGLE PROVIDES YOU A CHOICE OR TWO OR  
5 THREE THAT YOU CANNOT GET THE DISTANCE OF THIS PARISH, BUT YOU  
6 CAN USE THIS LOCATION WITHIN A PARISH AND GET THAT DISTANCE,  
7 AND THAT'S WHAT I DID. IN MY REPORT, I HAVE CLEARLY  
8 IDENTIFIED THOSE THREE INSTANCES AND WHAT ADDRESSES I USED.

9           Q       THANK YOU, DOCTOR. LET'S TALK ABOUT THE METHODOLOGY  
10 THAT YOU USED FOR YOUR OPINION. WHEN YOU GOT THESE FACTS AND  
11 DATA AS YOU'VE JUST DESCRIBED, WHAT DID YOU DO WITH THEM?

12           A       NOW, BASED ON THE ITEMS WHICH WE HAVE GONE THROUGH,  
13 WHAT WE -- WHAT I HAD AT THIS POINT WAS HOW MANY WOMEN LIVE IN  
14 EACH PARISH, HOW MANY WOMEN OF REPRODUCTIVE AGE LIVE IN EACH  
15 PARISH, AND HOW FAR EACH PARISH IS FROM A PARTICULAR ABORTION  
16 FACILITY. AND WHAT I DID WAS I PRESENTED DIFFERENT SCENARIOS  
17 IN MY REPORT, COMPUTING THE WEIGHTED AVERAGE. MEANING IF SOME  
18 PARISH HAS MORE WOMEN, THAN THAT --

19           Q       LET ME STOP YOU THERE, DOCTOR. I DON'T MEAN TO  
20 INTERRUPT YOU, BUT I WANT THE COURT TO BE ABLE TO FOLLOW THIS.  
21 SO I WANT TO REFER THE COURT TO PARAGRAPH 15 WHERE YOU'RE  
22 TALKING ABOUT THIS IDEA OF WEIGHTED AVERAGE JUST FOR THE SAKE  
23 OF CLARITY. PLEASE GO AHEAD, DOCTOR.

24           A       GIVE ME ONE SECOND. NOW, IN NO. 15 -- I THINK THE  
25 BEST WOULD BE IF I JUST GO SLOW AND EXPLAIN THE MATHEMATICAL

1 EXPRESSION.

2 Q SURE.

3 A SO I'M WRITING DOWN -- LET ME PRETEND  $X^1$  IS HOW MANY  
4 WOMEN ARE THERE IN PARISH NO. 1 AND LET ME PRETEND THAT  $D^1$  IS  
5 THE DISTANCE FROM THAT PARISH TO A PARTICULAR ABORTION  
6 FACILITY. SIMILARLY,  $X^2$  WOULD BE HOW MANY WOMEN ARE IN THAT  
7 PARISH, AND  $D^2$  WOULD BE HOW FAR THE PARTICULAR ABORTION  
8 FACILITY IS FROM THAT PARISH.

9 Q SORRY TO INTERRUPT AGAIN, DOCTOR. WHEN YOU SAY  
10 "PRETEND," YOU DON'T MEAN YOU'RE JUST MAKING UP THE NUMBERS;  
11 RIGHT?

12 A NO. I'M PRETENDING THAT -- WHEN I SAY "PRETEND," I  
13 MEAN THE VARIABLE  $X$ .

14 Q THANK YOU. I JUST WANT TO BE --

15 A I HAVE THE EXACT DISTANCES -- IN MATHEMATICS, YOUR  
16 HONOR, WE REFER TO THESE AS THE VARIABLES, SO I'M JUST  
17 DEFINING SOME  $X$ 'S, WHICH DENOTE HOW MANY WOMEN ARE IN THE  
18 PARISHES, AND I ALSO AM CALLING  $D$ 'S AS THE DISTANCES. AND  
19 THEN ON THE NEXT PAGE, I HAVE THE MATHEMATICAL FORMULA,  
20 STATISTICAL FORMULA, FOR THE WEIGHTED DISTANCE.

21 Q DOCTOR, THANK YOU. SO LET'S PAUSE A SECOND ON THIS  
22 IDEA OF AVERAGE DISTANCE BECAUSE I WANT THE COURT TO  
23 UNDERSTAND WHAT YOU MEAN AS A STATISTICIAN BY "AVERAGE  
24 DISTANCE" HAVING DONE THIS CALCULATION. COULD YOU EXPLAIN  
25 THAT CONCEPT?

1           A     THE CONCEPT IS THE WEIGHTED AVERAGE, MEANING THE  
2 MORE THE NUMBER OF WOMEN IN A PARISH, THE MORE THE WEIGHT I'M  
3 ASSIGNING TO THAT PARISH. THE WEIGHT IS THE NUMBER OF WOMEN  
4 IN THAT PARISH.

5           Q     SO WHEN THE NUMBER IS SORT OF PRODUCED BY THIS  
6 CALCULATION, COULD YOU TALK ABOUT WHAT IT DESCRIBES?

7           A     LET ME EXPLAIN BY AN EXAMPLE. LET ME JUST CREATE A  
8 HYPOTHETICAL SITUATION. SUPPOSE THERE ARE 100 WOMEN WHO ARE  
9 DRIVING 1 MILE AND THEN THERE IS ONE WOMAN WHO IS DRIVING  
10 20 MILES, MEANING 100 WOMEN ARE DRIVING 1 MILE AND THERE IS  
11 ONE WOMAN WHO IS DRIVING 20, THEN THE AVERAGE DISTANCE SHOULD  
12 NOT BE CLOSE TO 20. WHY? BECAUSE THERE WERE 100 OF THEM  
13 DRIVING ONLY 1 MILE. AND WEIGHTED AVERAGE TAKES THIS INTO  
14 ACCOUNT. SO IT GIVES YOU AN IDEA THAT ON THE AVERAGE, IN  
15 GENERAL, WHAT WOULD BE THE DRIVING DISTANCE.

16          Q     THANK YOU, DOCTOR. IS THIS METHODOLOGY THAT YOU  
17 USED IN FORMULATING THESE WEIGHTED AVERAGE DISTANCES, IS THIS  
18 AN ACCEPTED METHOD IN THE FIELD OF STATISTICS?

19          A     YES. WEIGHTED AVERAGE IS A VERY INTUITIVE  
20 EXPRESSION. ALL STANDARD TEXTBOOKS TALK ABOUT THAT. ALL  
21 STANDARD STATISTICAL SOFTWARES HAVE THIS. YES, I MEAN, THIS  
22 IS -- THIS IS A VERY COMMONLY USED CONCEPT.

23          Q     IS THIS A METHODOLOGY THAT CAN BE TESTED BY OTHER  
24 STATISTICIANS THROUGH REPETITION?

25          A     ABSOLUTELY. I HAVE PROVIDED THE EXPRESSION HERE IN

1 THE REPORT AND IT'S A WELL-ACCEPTED, WELL-USED MATHEMATICAL  
2 EXPRESSION.

3 Q AND, FINALLY, IS THIS A METHODOLOGY WIDELY  
4 ACKNOWLEDGED IN THE FIELD OF STATISTICAL ANALYSIS IN PEER  
5 REVIEWED LITERATURE?

6 A YES.

7 Q THANK YOU. JUST BEFORE I OFFER YOU, I'D LIKE TO  
8 TALK ABOUT THE LIMITATIONS AND ASSUMPTIONS OF YOUR REPORT, AND  
9 I'LL REFER YOU TO PARAGRAPH 30. BEFORE I DO THAT, THAT MAY  
10 SOUND STRANGE TO A LAY PERSON THAT WE'RE TALKING ABOUT THE  
11 LIMITATIONS AND ASSUMPTIONS OF THE REPORT, RIGHT; BUT WHY IS  
12 THAT IMPORTANT TO NOTE THOSE?

13 A ANY SCIENTIFIC STUDY YOU PRESENT, YOU HAVE TO  
14 CLARIFY WHAT YOU DID, HOW IT WAS DONE, AND WHAT ARE THE  
15 ASSUMPTIONS YOU MEET. IF YOU DON'T SPECIFY THESE, THEN HOW  
16 CAN SOMEBODY REPRODUCE AND RECALCULATE FOR THEIR OWN WORK OR  
17 TO VERIFY. THIS IS STANDARD IN SCIENTIFIC LITERATURE.

18 Q SO WHY DON'T YOU DISCUSS FOR THE COURT THE THREE  
19 LIMITATIONS AND ASSUMPTIONS THAT YOU HAVE THERE LISTED IN  
20 PARAGRAPH 30, PLEASE, DOCTOR?

21 A LET ME GO THROUGH THOSE ONE BY ONE. THE NUMBER ONE  
22 IN ITEM 30 IS THE REPORT ASSUMES THAT ANY WOMAN IN LOUISIANA  
23 IS EQUALLY LIKELY TO SEEK AN ABORTION FACILITY REGARDLESS OF  
24 THE PARISH IN WHICH SHE RESIDES. SO THIS IS ONE OF THE  
25 ASSUMPTIONS. MEANING WITHOUT ANY ADDITIONAL INFORMATION, IT

1 WOULD BE UNFAIR FOR ME AS A STATISTICIAN TO ASSUME THAT MORE  
2 WOMEN IN THIS PARTICULAR PARISH ARE SEEKING ABORTION COMPARED  
3 TO SOME OTHER PARISH.

4 Q AND WHAT ABOUT THE SECOND ONE?

5 A MEANING THE FIRST ONE IS A FAIR ASSUMPTION, THAT  
6 EVERYBODY IS EQUALLY LIKELY. THE SECOND ONE IS THE REPORT  
7 ASSUMES THAT THE DISTANCE TRAVELED IS THE ONLY CRITERIA FOR  
8 SELECTING AN ABORTION FACILITY FROM A LIST OF AVAILABLE  
9 ABORTION CLINICS. SO, AGAIN, THIS SETS THE GROUND TO BE  
10 LEVEL. MEANING MY REPORT IS FOCUSING ON DISTANCE, AND I'M  
11 BASING IT ON THE BASIS OF THIS, THAT DISTANCE IS THE ONLY  
12 CRITERIA.

13 Q SO, DOCTOR, DOES THAT MEAN THAT YOU DID NOT CONSIDER  
14 A WOMAN'S SOCIO-ECONOMIC LEVEL OR THEIR LOW-INCOME STATUS AS A  
15 FACTOR?

16 A NO, I DID NOT.

17 Q AND THE THIRD LIMITATION ASSUMPTION?

18 A THE THIRD IS THE DISTANCE TRAVELED TO AN ABORTION  
19 FACILITY IS COMPUTED FROM THE PARISH TO A PARTICULAR ABORTION  
20 FACILITY. NOW, LET ME EXPLAIN THIS. NOW, THE DATA WHICH IS  
21 SCIENTIFICALLY AVAILABLE, RELIABLE DATA ABOUT LOUISIANA, ABOUT  
22 LOUISIANA'S 64 PARISHES IS PARISH-BASED. THERE IS NO DATA  
23 WHICH IS SCIENTIFICALLY AVAILABLE, RELIABLE DATA, WHICH IS AT  
24 ZIP CODE LEVEL OR EVEN INDIVIDUAL PERSON.

25 SO THAT IS THE ASSUMPTION I HAD TO MAKE, THAT I'M

1 LOOKING AT WOMEN IN A PARISH AND I ASSUME THAT ALL OF THEM  
2 LIVE IN THAT PARISH AND THEY ALL WILL DRIVE THE SAME DISTANCE.  
3 IF YOU WANT, I CAN EXPLAIN THIS MORE.

4 Q IT MIGHT COME UP LATER, DOCTOR, BUT I THINK THAT'S  
5 SUFFICIENT NOW. THANK YOU.

6 MR. DUNCAN: YOUR HONOR, AT THIS TIME, THE DEFENDANT  
7 OFFERS DR. SOLANKY AS AN EXPERT IN THE FIELD OF MATHEMATICS  
8 AND STATISTICAL ANALYSIS.

9 THE COURT: THANK YOU.

10 ANY OBJECTIONS?

11 MS. LEVINE: JUST THE OBJECTION AS STATED IN THE  
12 MOTION.

13 THE COURT: I UNDERSTAND.

14 HE WILL BE ACCEPTED IN THE FIELDS TENDERED.

15 MR. DUNCAN: THANK YOU, YOUR HONOR. NOW, AT THIS  
16 TIME, I WANT TO OFFER SOME DEMONSTRATIVE EXHIBITS TO HELP  
17 DR. SOLANKY PRESENT HIS OPINION. WE'RE GOING TO GET SOME  
18 OBJECTIONS TO THIS, SO I GUESS MAYBE WE SHOULD DO THEM ONE AT  
19 A TIME? LET'S DO IT THAT WAY. IS THAT OKAY?

20 THE COURT: YES.

21 MR. DUNCAN: SO THE FIRST IS DEFENDANT'S EXHIBIT  
22 THAT'S MARKED 151. AND SINCE THESE ARE NOT IN EVIDENCE,  
23 REMIND ME HOW WE DO THIS, YOUR HONOR? WE JUST PUT IT UP ON  
24 THE SCREEN AND I EXPLAIN WHAT IT IS AND THEN WE SEE IF THERE'S  
25 AN OBJECTION; IS THAT HOW --

1 THE COURT: AND ALL OF THIS IS -- NONE OF THIS, I  
2 SHOULD SAY, IS CONFIDENTIAL I TAKE IT?

3 MR. DUNCAN: NO, I DON'T THINK SO, YOUR HONOR. NO.

4 THE COURT: OKAY. SO THE ONLY DIFFERENCE BETWEEN  
5 PUBLISHING IT TO ME FOR ACCEPTANCE OR NOT AS AN EXHIBIT AND IT  
6 BEING ACCEPTED IS IT WOULD GO UP ON THE SCREEN, SO IF -- YOU  
7 KNOW, I MEAN, WE HAVE SOME PEOPLE IN THE AUDIENCE WHO MIGHT  
8 WANT TO SEE IT SO...

9 MR. DUNCAN: OKAY.

10 THE COURT: SO I'LL RULE ON IT. IF IT'S ACCEPTED,  
11 THEN IT CAN BE PUBLISHED TO EVERYBODY.

12 MR. DUNCAN: THAT'S FINE. MAYBE IT WOULD BE HELPFUL  
13 TO HAVE DR. SOLANKY EXPLAIN EACH ONE?

14 THE COURT: YOU BET.

15 MR. DUNCAN: OKAY.

16 BY MR. DUNCAN

17 Q SO, DR. SOLANKY, WE'RE ATTEMPTING TO OFFER SOME  
18 DEMONSTRATIVE EXHIBITS TO HELP YOU PRESENT YOUR TESTIMONY.  
19 HERE'S THE FIRST ONE, EXHIBIT A, PLEASE EXPLAIN WHAT THAT IS  
20 AND HOW YOU PUT IT TOGETHER?

21 THE COURT: MR. DUNCAN, THIS IS DEFENDANT 161?

22 MR. DUNCAN: I'M SORRY, YOUR HONOR, IT'S DEFENDANT  
23 151.

24 THE COURT: 151?

25 MR. DUNCAN: ONE, FIVE, ONE.

1 BY MR. DUNCAN

2 Q GO AHEAD, DOCTOR.

3 A THIS IS THE DATA WE TALKED ABOUT EARLIER IN MY  
4 REPORT THAT -- THE ESTIMATES FOR THE YEAR 2013. WHAT I HAVE  
5 IN EXHIBIT A IS THE NAME OF THE PARISH, ACADIA PARISH, AND THE  
6 TOTAL POPULATION OF THE PARISH, WHICH IS 62,204, WHICH I GOT  
7 FROM THE U.S. CENSUS BUREAU'S WEBSITE, AND THE NUMBER OF WOMEN  
8 IN THE AGE OF 15 TO 44, AND I EXPLAINED THAT BEFORE. AND THE  
9 LAST COLUMN IS TOTAL NUMBER OF WOMEN IN THAT PARISH. AND I  
10 HAVE DONE THIS FOR ALL THE 64 PARISHES IN LOUISIANA.

11 Q THANK YOU.

12 MR. DUNCAN: THE DEFENDANT OFFERS AS DEMONSTRATIVE  
13 EXHIBIT DX 151.

14 THE COURT: ANY OBJECTION?

15 MS. LEVINE: NO OBJECTION.

16 THE COURT: ALL RIGHT. LET IT BE RECEIVED.

17 BY MR. DUNCAN:

18 Q LET'S GO TO THE NEXT ONE, IS DX 152. IS THAT UP ON  
19 THE SCREEN?

20 A NOT YET.

21 Q IT SHOULD BE A COLORED MAP. THERE WE GO. DO YOU  
22 SEE THAT EXHIBIT, DOCTOR?

23 A YES, I DO.

24 Q DID YOU PREPARE THAT EXHIBIT?

25 A I PREPARED THIS EXHIBIT.

1 Q EXPLAIN WHAT IT DEPICTS.

2 A NOW, THIS IS ESSENTIALLY THE SAME EXHIBIT AS BEFORE;  
3 WHAT WE JUST SAW A SECOND AGO. WHAT I HAVE DONE IS THIS IS  
4 CALLED A HEAT MAP. I HAVE RECORDED THESE PARISHES WITH HIGHER  
5 PERCENTAGE, HIGHER -- I'M SORRY. THAT'S WRONG. THE HIGHER  
6 NUMBER OF WOMEN IN A DARKER COLOR AND THE LIGHTER SHADE IS THE  
7 PARISHES. IT'S NOT VERY CLEAR ON MY SCREEN, BUT I HAVE A  
8 SCALE THERE, YOUR HONOR, ON THE RIGHT SIDE. I CAN BARELY READ  
9 IT HERE, BUT THE DARKER THE COLOR --

10 BY MR. DUNCAN:

11 Q YOUR SCREEN IS KIND OF LIGHT. IF WE HAVE TO REFER  
12 TO THIS, DOCTOR, YOU'LL HAVE THE HARD COPY THERE THAT YOU CAN  
13 LOOK AT THAT SHOWS --

14 A IT'S HERE NOW. SO THE DARKEST COLOR OF RED, THAT'S  
15 THE SHADE FOR, SAY, 231,000 OR SO, AND IT GOES LIGHTER AS THE  
16 NUMBER OF WOMEN DECREASE. THIS IS JUST A VISUAL DEPICTION OF  
17 THE SAME EXHIBIT. SIMILARLY, I HAVE FILLED IN THE NUMBERS IN  
18 SORT OF CREATING A TABLE WHICH I HAD IN EXHIBIT A. I'M JUST  
19 FILLING IN THOSE NUMBERS IN EACH PARISH BY THE COLOR. THIS IS  
20 JUST A BETTER VISUALIZATION.

21 Q THANK YOU, DOCTOR.

22 MR. DUNCAN: DEFENDANT OFFERS EXHIBIT 152 INTO  
23 EVIDENCE.

24 THE COURT: OBJECTION?

25 MS. LEVINE: NO OBJECTION.

1 THE COURT: ALL RIGHT. LET IT BE ADMITTED.

2 BY MR. DUNCAN:

3 Q ALL RIGHT. LET'S MOVE ON TO 153. DOCTOR, DO YOU  
4 SEE THAT EXHIBIT 153 ON YOUR SCREEN?

5 A I DO.

6 Q DID YOU PREPARE THIS EXHIBIT?

7 A YES, I DID.

8 Q EXPLAIN TO THE COURT WHAT IT DEPICTS.

9 A AGAIN, SAME IDEA, SAME CONCEPT. I HAVE VISUALIZED  
10 TWO PARTICULAR ABORTION CLINICS, ONE IN SHREVEPORT AND ONE IN  
11 NEW ORLEANS. AND USING A VERY POPULAR WEBSITE, ALL I HAVE  
12 DONE IS DRAWN A CIRCLE OF RADIUS 100 MILES AND AN INNER CIRCLE  
13 OF 100, 150 MILES JUST TO SEE HOW FAR IS 150 MILES FROM THIS  
14 PARTICULAR LOCATION AND HOW FAR IS 100 MILES FROM EACH OF  
15 THESE TWO ABORTION CLINICS.

16 Q AND HOW DID YOU DETERMINE -- I THINK WE'VE ALREADY  
17 BEEN OVER THIS EARLIER, BUT HOW DID YOU DETERMINE THE LOCATION  
18 OF THE TWO CLINICS?

19 A NOW, THESE ARE THE TWO CLINICS WHICH I HAD IN MY  
20 REPORT AS WELL. ONE IS IN SHREVEPORT; ONE IS IN NEW ORLEANS.

21 Q AND HOW DID YOU GO BACK MAKING SURE THAT THE CIRCLES  
22 THAT YOU DREW AROUND THEM HAVE THE PROPER RADIUS?

23 A THIS WEB- -- IF YOU SCROLL DOWN, PLEASE. NOW, THIS  
24 IS THE WEBSITE. SO WHAT IT DOES IS IF YOU FEED IN AN ADDRESS,  
25 IN WHICH I DID, YOU TYPE IN THE ADDRESS OF THE SHREVEPORT

1 CLINIC, AND IF YOU ZOOM IN YOU CAN LITERALLY SEE THE STREET  
2 AND WHICH SIDE OF STREET THAT THE CLINIC IS ON.

3 SO THE TWO THINGS WHICH YOU NEED TO PROVIDE IS THE  
4 ADDRESS AND HOW MANY MILES. FOR ME IT WAS 100 AND 150, AND IT  
5 DRAWS THE CIRCLES FOR YOU. THIS, AGAIN, IS THE SAME MAP OF  
6 LOUISIANA. JUST VISUALIZATION OF WHAT IS 100 MILE AROUND THIS  
7 CLINIC? WHAT IS 150 MILE AROUND THIS CLINIC? JUST SIMPLE  
8 CIRCLES.

9 MR. DUNCAN: DEFENDANT OFFERS EXHIBIT 153 INTO  
10 EVIDENCE.

11 THE COURT: OBJECTION?

12 MS. LEVINE: WE DO OBJECT TO THIS DEMONSTRATIVE,  
13 YOUR HONOR, AS THIS INFORMATION WAS NOT INCLUDED IN THE EXPERT  
14 REPORT AND IT APPEARS THAT THIS INVESTIGATION OF THE MAPPING  
15 AND THE CIRCLES WAS DONE SUBSEQUENT TO THE REPORT AND THE  
16 DEPOSITION.

17 THE COURT: ALL RIGHT.

18 MR. DUNCAN?

19 MR. DUNCAN: THIS IS A DEMONSTRATIVE EXHIBIT. IT  
20 DEPICTS AS A -- THE SAME INFORMATION THAT'S IN THE REPORT  
21 SIMPLY IN A DIFFERENT VISUAL WAY TO MAKE IT EASIER FOR  
22 DR. SOLANKY TO EXPLAIN HIS REPORT AND MAKE IT EASIER FOR THE  
23 COURT TO UNDERSTAND IT. IT'S BASED ON THE SAME DATA THAT'S IN  
24 THE REPORT, IT'S JUST PRESENTED IN A DIFFERENT WAY.

25 THE COURT: OKAY.

1 ANY FURTHER FOLLOW-UP ON THAT?

2 MS. LEVINE: WE DISAGREE THAT THIS INFORMATION IS  
3 CLEARLY AVAILABLE ON THE REPORT.

4 THE COURT: BUT THE UNDERLYING DATA THAT IT'S BASED  
5 ON IS -- DO YOU DISAGREE THAT THE UNDERLYING DATA THAT THE  
6 VISUAL IS BASED ON IS IN THE REPORT?

7 MS. LEVINE: I DON'T -- I DISAGREE. I DON'T BELIEVE  
8 THAT THIS EXACT DATA IS IN THE REPORT.

9 THE COURT: MR. DUNCAN?

10 MR. DUNCAN: I THINK IT IS, YOUR HONOR. I THINK THE  
11 ADDRESSES OF THE CLINICS ARE IN THERE, AND ALL DR. SOLANKY HAS  
12 DONE IS TAKEN A MAP, JUST LIKE HE DID IN THE LAST ONE, PUT  
13 THEM ON THERE AND --

14 THE COURT: WHY DON'T YOU ASK THE WITNESS SO THAT  
15 I'M CLEAR AS FAR AS THE RECORD IS CONCERNED BEFORE I RULE.

16 MR. DUNCAN: SURE.

17 BY MR. DUNCAN:

18 Q DR. SOLANKY, COULD YOU EXPLAIN, AGAIN, WHAT YOU DID,  
19 WHERE --

20 THE COURT: NOT WHAT YOU DID. WHERE DID YOU GET THE  
21 INFORMATION?

22 BY MR. DUNCAN:

23 Q WHERE DID YOU GET THE INFORMATION AT?

24 A ALL OF THE INFORMATION I NEED IN CREATING THIS WAS  
25 THE TWO ADDRESSES, AND THOSE TWO ADDRESSES ARE IN MY REPORT.

1 THEY ARE EVERYWHERE IN THE LITIGATION DOCUMENTS. OTHER THAN  
2 THOSE TWO ADDRESSES, ALL I NEED IS NUMBER 100 AND NUMBER 150.  
3 THIS WEBSITE, I COULD HAVE DRAWN ANY NUMBER, 38 MILES, 40 --

4 **THE WITNESS:** YOUR HONOR, THIS IS JUST SO THAT THE  
5 COURT CAN VISUALIZE WHAT 100 MILE AROUND THE CIRCLE LOOKS  
6 LIKE. AND ON THIS MAP, YOU CAN EVEN SEE SOME NAMES. IN  
7 PARTICULAR, YOU CAN SEE IF I GO 150 MILES FROM THE SHREVEPORT  
8 CLINIC AND 150 MILES FROM THE NEW ORLEANS CLINIC, THOSE TWO  
9 CIRCLES OVERLAP. MEANING FROM EITHER OF THOSE -- MEANING  
10 PEOPLE LIVING IN THIS INTERSECTING AREA LITERALLY ARE WITHIN  
11 150 MILES OF BOTH THE CLINICS. SO THIS HELPS FOR ME TO  
12 EXPLAIN TO THE COURT THAT -- HOW BIG LOUISIANA IS AND HOW FAR  
13 THESE CLINICS ARE FROM ONE ANOTHER.

14 **THE COURT:** OKAY. I'M GOING TO LET THIS IN, AND I'M  
15 NOT MAKING A RULING THAT EVERY DOCUMENT THAT WASN'T PRESENTED  
16 IN THE REPORT IS COMING IN NECESSARILY. BUT WITH RESPECT TO  
17 THIS SPECIFIC ONE, YEAH, I THINK IT IS BASED ON DATA THAT WAS  
18 IN THE REPORT AND IT WILL CERTAINLY -- IT DOES CERTAINLY GIVE  
19 THE COURT SOME VISUAL IDEA OF THE DATA.

20 AND SO I'M GOING TO OVERRULE THE OBJECTION.

21 **MR. DUNCAN:** THANK YOU, YOUR HONOR.

22 **BY MR. DUNCAN**

23 **Q** LET'S MOVE TO 154. DR. SOLANKY, DO YOU RECOGNIZE  
24 THIS EXHIBIT? DID YOU PREPARE THIS ONE?

25 **A** YES, I DID.

1 Q COULD YOU EXPLAIN TO THE COURT HOW YOU DID IT AND  
2 WHERE YOU GOT THE DATA TO PREPARE THIS EXHIBIT?

3 A NOW, THE DATA WHICH I HAD IS THE SAME DATA WHICH I  
4 HAD IN THE REPORT, MEANING HOW MANY WOMEN IN EXHIBIT -- FIRST  
5 EXHIBIT RIGHT NOW. I FORGOT THE NUMBER. WE TALKED ABOUT HOW  
6 MANY WOMEN OF AGE 15 TO 44 YEARS LIVE IN A PARTICULAR PARISH,  
7 SO WE HAD -- I HAD THAT DATA IN MY REPORT, AND I ALSO HAD THE  
8 DATA OF THE DRIVING DISTANCE.

9 IN MY REPORT I PROVIDED THE WEIGHTED DRIVING  
10 DISTANCE TO A CLINIC. IN THIS EXHIBIT, I'M PRESENTING IT IN A  
11 DIFFERENT FORM. THE SAME DATA, JUST PRESENTING IT -- THIS IS  
12 NOT EVEN COMPLICATED. ALL I DID WAS LOOKED AT HOW MANY OF  
13 THOSE DISTANCES WERE LESS THAN 50. I HAD ALL OF THE DISTANCES  
14 IN MY REPORT. I JUST LOOKED AT HOW MANY OF THOSE ARE LESS  
15 THAN 50 AND REPORT THAT AS A PERCENT. HOW MANY OF THEM OR  
16 LESS THAN 100, I REPORTED AS A PERCENT.

17 AND THE IDEA IS THIS IS ANOTHER WAY TO VISUALIZE TO  
18 SEE WHAT THOSE NUMBERS ARE, HOW MUCH WOMEN ARE ACTUALLY  
19 DRIVING, WHAT PERCENTAGE. SO THIS IS AN EASIER REPRESENTATION  
20 OF THE SAME DATA, THE DATA BEING HOW MANY WOMEN LIVE IN THE  
21 PARISH AND HOW FAR EACH PARTICULAR ABORTION CLINIC IS.

22 Q DOCTOR, WITH REFERENCE TO THE LAST EXHIBIT THAT WE  
23 LOOKED AT, THE CIRCLES, ESSENTIALLY THESE PERCENTAGES ARE SORT  
24 OF THE NUMBER OF WOMEN IN LOUISIANA INSIDE THOSE CIRCLES. IS  
25 THAT A WAY OF THINKING ABOUT IT?

1           A     ABSOLUTELY.  NOW, IF WE GO BACK TO THE EXHIBIT, I  
2     CAN LITERALLY OBTAIN THE DATA IN THIS EXHIBIT, YOUR HONOR,  
3     BY -- I HAVE THE PARISH NAME, I HAVE THE PARISH POPULATION,  
4     AND I KNOW HOW MUCH IS 100 MILES AROUND, HOW MUCH IS  
5     150 MILES.  I COULD JUST SIT HERE AND ADD THOSE NUMBERS AND  
6     DIVIDE BY TOTAL WOMEN AND LITERALLY COME UP WITH SIMILAR  
7     NUMBERS.

8           Q     THIS IS -- DOCTOR, I THINK YOU SAID THIS IS SOMEWHAT  
9     OF A -- MAYBE A LOT MORE SIMPLE THAN THE WEIGHTED AVERAGE  
10    EQUATION THAT YOU --

11          A     THE WEIGHTED AVERAGE IS A MATHEMATICAL FORMULA, AND  
12    I MUST SAY THAT'S WHAT EVERYBODY USES IN THE REAL WORLD TO  
13    REPORT.  BUT THIS IS JUST A SIMPLER WAY TO LOOK AT THE SAME  
14    DATA.

15          Q     OKAY.

16          MR. DUNCAN:  YOUR HONOR, WE OFFER THIS FOR  
17    DEMONSTRATIVE PURPOSES AS EXHIBIT 154.

18          THE COURT:  OBJECTION?

19          MS. LEVINE:  WE DO OBJECT TO THIS EXHIBIT GIVEN THAT  
20    IT INVOLVES, AS THE WITNESS HAS JUST TESTIFIED, CALCULATIONS  
21    THAT WERE MADE SUBSEQUENT TO THE REPORT.  SO THESE  
22    CALCULATIONS ARE NOT INCLUDED IN THE REPORT.  WE DIDN'T HAVE  
23    AN OPPORTUNITY TO DEPOSE THIS WITNESS OR PREPARE FOR CROSS  
24    EXAMINATION FOR THESE CALCULATIONS.

25          THE COURT:  THAT DOES CONCERN ME.  AND I WAS GOING

1 TO ASK WHETHER OR NOT THE WITNESS HAS BEEN DEPOSED.

2 HAS THE WITNESS BEEN DEPOSED AT ALL?

3 MR. DUNCAN: YES, YOUR HONOR.

4 THE COURT: THE WITNESS WAS DEPOSED? WERE THESE  
5 CALCULATIONS IN THIS -- WAS THE DOCUMENT PREPARED AFTER THE  
6 WITNESS WAS DEPOSED?

7 MR. DUNCAN: YES, YOUR HONOR, IT WAS. IT'S SIMPLY A  
8 DIFFERENT -- A SIMPLER VISUAL DEMONSTRATION OF ALL OF THE DATA  
9 THAT'S IN HIS REPORT ON WHICH HE WAS DEPOSED.

10 THE COURT: YOU SAY THAT, OKAY, AND MAYBE HE SAYS  
11 THAT, BUT I DON'T -- THAT DOESN'T MEAN I HAVE TO ACCEPT IT.  
12 THE PROBLEM IS SHE HASN'T HAD A CHANCE TO CHALLENGE IT. AND  
13 IF IT'S NOT GIVEN PRIOR TO -- IT'S NOT -- IT'S SUPPOSED TO BE  
14 GIVEN, OBVIOUSLY, AS A PART OF THE REPORT. BUT IF IT'S NOT  
15 GIVEN PRIOR TO THE REPORT -- IF IT'S GIVEN PRIOR TO A  
16 DEPOSITION AND THE PERSON HAS AN OPPORTUNITY TO TEST IT IN A  
17 DEPOSITION FORM, THEN I'M PRETTY FORGIVING ON THE FACT THAT IT  
18 WASN'T IN THE REPORT ITSELF. BUT HERE THE DOCUMENT IS  
19 PROVIDED AFTER THE DEPOSITION WHICH -- AND SO I'M STRUGGLING  
20 AS TO WHY THIS DOESN'T PREJUDICE THE PLAINTIFFS.

21 MR. DUNCAN: I UNDERSTAND, YOUR HONOR. ONE THING  
22 I'D ADD IS THAT THE PLAINTIFFS SUPPLEMENTED THEIR EXPERT  
23 REPORT WITH NOT JUST DIFFERENT DATA BUT AN ENTIRELY DIFFERENT  
24 ARTICLE AND CALCULATION, THIS IS THE ROBERTS' REPORT, THAT  
25 CAME AFTER THE DEPOSITION OF KATZ, SO... AND THAT EXPRESSES,

1 YOU KNOW -- IT EXPRESSES THESE KINDS OF PERCENTAGES BY MILES  
2 FROM THE CLINIC OF POPULATION AND THAT WAS DONE AFTER THEIR  
3 REPORT AND AFTER THEIR DEPOSITION, SO IT SEEMS ONLY FAIR TO  
4 ALLOW US TO PRESENT THE SAME DATA IN OUR REPORT IN THAT SAME  
5 FORM.

6 THE COURT: RESPONSE?

7 MS. LEVINE: YOUR HONOR, WE MADE A SUPPLEMENT TO OUR  
8 EXPERT REPORT AS THE RULES REQUIRE. AND AT THAT POINT, WHICH  
9 WAS MARCH 11TH OF 2015, THE DEFENDANT MAY HAVE WISHED TO  
10 SUPPLEMENT THEIR REPORT, REQUEST FURTHER DEPOSITION, SOME  
11 OTHER REMEDY. AT THIS POINT, WE HAVE RECEIVED THIS  
12 INFORMATION ON JUNE 12TH, JUST BEFORE TRIAL, AND THEY'RE  
13 CALCULATIONS THAT WERE DONE SUBSEQUENT TO THE DEPOSITION, SO  
14 WE HAVEN'T HAD SUFFICIENT OPPORTUNITY.

15 THE COURT: WELL, SOMETHING ELSE OCCURS TO ME IS  
16 THAT, IF MY MEMORY IS CORRECT, THE ARTICLE -- THE ROBERTS'  
17 ARTICLE WAS PUBLISHED IN MARCH OF 2015, WAS IT NOT? SO IT WAS  
18 UNAVAILABLE TO GIVE PRIOR TO THAT TIME.

19 MS. LEVINE: THAT'S CORRECT.

20 MR. DUNCAN: MAY WE OFFER IT FOR DEMONSTRATIVE  
21 PURPOSES ONLY SIMPLY TO ALLOW DR. SOLANKY TO EXPLAIN WHAT HE  
22 JUST EXPLAINED TO THE COURT IN TERMS OF NUMBERS OF PEOPLE IN  
23 PARISHES, YOUR HONOR?

24 THE COURT: YES. I THINK YOU -- I MEAN, HE COULD  
25 TAKE A BOARD AND PUT THESE SAME NUMBERS ON A BOARD AND THAT'S

1 A DEMONSTRATIVE, WHICH IS DIFFERENT FROM AN EXHIBIT. IF THE  
2 UNDERLYING DATA IN HIS REPORT UPON WHICH THIS IS BASED, THEN I  
3 WILL LET IT BE INTRODUCED FOR DEMONSTRATIVE PURPOSES ONLY.

4 MR. DUNCAN: THANK YOU, YOUR HONOR.

5 BY MR. DUNCAN:

6 Q AND THEN THE LAST ONE IS DX 155. COULD WE GO THERE?  
7 NOW, DOCTOR, DO -- WELL, WE'RE NOT THERE YET. DOCTOR, DO YOU  
8 RECOGNIZE THIS EXHIBIT, THIS FINAL ONE?

9 A YES, I DO.

10 Q AND EXPLAIN TO THE COURT WHAT IT IS, HOW YOU  
11 PREPARED IT AND WHERE YOU OBTAINED THE DATA FROM.

12 A THIS IS -- THIS IS DIRECTLY OUT OF MY REPORT. I  
13 JUST CUT AND PASTED THIS. AND WHAT I HAVE IN THIS EXHIBIT  
14 IS -- LET ME GO ONE BY ONE. IN THE FIRST COLUMN, I HAVE  
15 AVAILABILITY OF ABORTION CLINICS TO LOUISIANA RESIDENTS. IN  
16 THE SECOND ONE IS THE AVERAGE DISTANCE TRAVELED BY ALL WOMEN.  
17 AND THEN THE LAST COLUMN IS THE AVERAGE DISTANCE TRAVELED BY  
18 ALL WOMEN IN THE AGE GROUP OF 15 TO 44 YEARS. AND I HAVE  
19 PRESENTED DIFFERENT SCENARIOS.

20 THE FIRST SCENARIO IS, YOUR HONOR, IF HOPE  
21 SHREVEPORT IS THE ONLY CLINIC, IF THAT IS THE ONLY CLINIC  
22 WHICH IS AVAILABLE TO LOUISIANA WOMEN --

23 Q I DON'T MEAN TO INTERRUPT YOU, DR. SOLANKY, BUT WE  
24 HAVEN'T INTRODUCED THIS INTO EVIDENCE YET, SO --

25 A OKAY. I'M SORRY.

1           **Q**    -- I WANT TO MAKE SURE THAT WE CAN -- I THINK YOU'VE  
2 EXPLAINED WHAT IT IS AND WHERE IT COMES FROM.

3           **MR. DUNCAN:** SO THE DEFENDANT WOULD LIKE TO  
4 INTRODUCE THIS ONE INTO EVIDENCE AS 155.

5           **THE COURT:** OBJECTION?

6           **MS. LEVINE:** ONLY THE OBJECTION INSOFAR AS WE HAVE  
7 TO RELEVANCE AS STATED IN OUR MOTION.

8           **THE COURT:** OKAY. IT'S OVERRULED AND IT WILL BE  
9 ADMITTED.

10           **MS. LEVINE:** YOUR HONOR, I'M SORRY, ONE POINT OF  
11 CLARIFICATION, IF I MAY, REGARDING YOUR PRIOR RULING. WILL  
12 THE WITNESS BE ABLE TO TESTIFY AS TO THE CALCULATIONS ACHIEVED  
13 OR DISPLAYED IN 154, THE PERCENTAGES THAT WERE REACHED  
14 SUBSEQUENT TO REPORT AND THE DEPOSITION?

15           **THE COURT:** IF THE CALCULATIONS WERE MADE EITHER --  
16 WELL, IF THE CALCULATIONS WERE MADE IN THE REPORT, AND I'LL  
17 STRETCH THE RULE A LITTLE BIT, IF THE CALCULATIONS WERE MADE  
18 PRIOR TO THE TIME OF THE DEPOSITION AND YOU HAD THE  
19 OPPORTUNITY TO EXPLORE THE CALCULATIONS IN HIS DEPOSITION,  
20 THEN I WILL ALLOW THE CALCULATIONS TO COME INTO EVIDENCE. IF  
21 THE CALCULATIONS WERE NOT MADE UNTIL AFTER THE  
22 REPORT/DEPOSITION, THEN THE ANSWER IS IT WILL NOT BE ALLOWED.

23           **MR. DUNCAN:** THE TESTIMONY WILL NOT BE ALLOWED, YOUR  
24 HONOR?

25           **THE COURT:** HIS TESTIMONY WILL NOT BE ALLOWED WITH

1 RESPECT TO THOSE CALCULATIONS.

2 MR. DUNCAN: OKAY. THANK YOU, YOUR HONOR.

3 BY MR. DUNCAN:

4 Q DOCTOR, LET'S GO TO YOUR OPINION. AND, AGAIN, YOU  
5 CAN REFER TO YOUR REPORT IF NECESSARY. I'M SORRY. ONE  
6 SECOND. OKAY. I WANT US JUST TO REFRESH THE RECOLLECTION OF  
7 THE COURT ABOUT WHERE WE WERE COMING FROM. LET'S GO BACK TO  
8 THE POPULATION DISTRIBUTION CHART IN YOUR REPORT AND TAKE A  
9 LOOK AT THE EXHIBIT THAT SHOWS THAT, THAT'S WHAT WE'VE NOW  
10 CALLED DX 151, THAT'S THE CHART.

11 A OKAY.

12 Q DOCTOR, JUST SORT OF BRIEFLY -- I KNOW YOU'VE GONE  
13 OVER THIS ALREADY. JUST EXPLAIN FOR THE COURT, YOU KNOW, WHAT  
14 THIS CHART IS SHOWING.

15 A WHAT THIS CHART IS SHOWING IS THE 64 PARISHES IN  
16 LOUISIANA AND HOW MANY TOTAL POP- -- WHAT TOTAL POPULATION IS  
17 IN EACH PARISH, THE TOTAL NUMBER OF WOMEN IN EACH PARISH, AND  
18 NUMBER OF WOMEN IN THE AGE GROUP OF 15 TO 44, SO THAT THE  
19 COURT IS AWARE OF THE NUMBER OF WOMEN LIVING BY EACH PARISH.

20 Q GREAT. LET'S LOOK AT SORT OF A VISUAL DEMONSTRATION  
21 OF THAT IN 152. THIS IS THE -- I THINK YOU CALLED IT A HEAT  
22 MAP?

23 A RIGHT. AND THIS IS THE EXACT SAME DATA. THE ONLY  
24 DIFFERENCE IS I HAVE COLOR-CODED IT. THE DARKER SHADE OF THIS  
25 COLOR RED MEANS MORE WOMEN LIVE IN THAT PARISH AND THE LIGHTER

1 SHADE MEANS LESS WOMEN LIVING IN THAT PARISH.

2 Q COULD YOU JUST SORT OF GIVE US SOME GENERAL COMMENTS  
3 ON WHICH PARISHES, YOU KNOW, FROM THAT MAP TEND TO HAVE THE  
4 MORE CONCENTRATED POPULATION?

5 A IF YOU LOOK AROUND THE NEW ORLEANS AREA, THESE  
6 PARISHES HAVE A VERY HIGH NUMBER OF WOMEN, VERY LARGE NUMBER  
7 OF WOMEN LIVING THERE. THEN THE SECOND POCKET WHICH YOU SEE  
8 AROUND IS THE BATON ROUGE AREA AND THEN AROUND THE  
9 SHREVEPORT/BOSSIER CITY AREA. SO THOSE THREE STAND OUT AS  
10 HIGHLY-POPULATED AREAS IN THAT AGE GROUP FOR WOMEN.

11 Q OKAY. NOW, DOCTOR, LET'S GO TO THE AVERAGE  
12 DISTANCES, NO. 155, THE LAST EXHIBIT. AND SO THE COURT -- YOU  
13 CAN TALK TO THE COURT ABOUT WHAT THIS CHART MEANS, AND  
14 WE'LL -- TELL YOU WHAT, LET'S GO THROUGH IT TOGETHER FROM THE  
15 TOP TO THE BOTTOM. DO YOU SEE THAT EXHIBIT?

16 A YES, I DO.

17 Q OKAY. NOW, LET'S GO TO THE FIRST COLUMN THAT SAYS,  
18 "AVAILABILITY OF ABORTION CLINICS TO LOUISIANA RESIDENTS."  
19 NOW, GO DOWN THROUGH THAT CHART AND EXPLAIN TO US, YOU KNOW,  
20 WHAT YOU'RE TRYING TO GET ACROSS BY LISTING THESE CLINICS.

21 A OKAY. NOW, WHAT I'M TRYING TO SHOW HERE IS THAT --  
22 THE FIRST ENTRY IS HOPE SHREVEPORT, MEANING IF THIS WAS THE  
23 ONLY CLINIC WHICH WAS AVAILABLE TO LOUISIANA WOMEN, JUST THIS  
24 ONE, HOPE SHREVEPORT, THEN THE AVERAGE DISTANCE TRAVELED BY  
25 ALL WOMEN WOULD BE 228.1 MILES AND THE AVERAGE DISTANCE

1 TRAVELED BY WOMEN IN THE AGE GROUP OF 15 TO 44 WOULD BE 229.3  
2 MILES.

3 Q LET'S PAUSE HERE AGAIN OVER THE TERM "AVERAGE" TO  
4 MAKE SURE WE UNDERSTAND STATISTICALLY WHAT THAT MEANS.

5 A THAT IS THE WEIGHTED AVERAGE, MEANING IT TAKES INTO  
6 ACCOUNT HOW MANY WOMEN LIVE IN A PARTICULAR PARISH. AND IN  
7 SIMPLER TERMS, THIS IS WHAT A TYPICAL DRIVING DISTANCE WOULD  
8 BE ON THE AVERAGE IF HOPE SHREVEPORT WAS THE ONLY CLINIC OPEN.

9 Q AND SOME DRIVING DISTANCES COULD BE MORE AND SOME  
10 COULD BE LESS; IS THAT RIGHT, DOCTOR?

11 A THE AVERAGE TELLS YOU WHAT HAPPENS ON THE AVERAGE.  
12 LIKE IF I HAVE TEN PEOPLE IN THE ROOM AND I SAY THE AVERAGE  
13 AGE IS 38, THEN IT TELLS YOU ON THE AVERAGE WHAT THE AGE  
14 GROUPS ARE. SOME COULD BE YOUNGER THAN 38, SOME COULD BE  
15 OLDER, BUT THAT'S WHERE THE MOST OF THE MASS IS CENTERED. AND  
16 THAT'S WHAT I HAVE IN THIS PARTICULAR TABLE.

17 Q FOR PURPOSES OF STATISTICS, DR. SOLANKY, IS AVERAGE  
18 SORT OF THE MOST DESCRIPTIVE KIND OF TERM THAT ONE COULD USE?

19 A STATISTICALLY, MATHEMATICALLY IN THIS WORLD WE LIVE  
20 IN, AVERAGE IS THE MOST COMMONLY USED STATISTIC.

21 Q AND EXPLAIN WHY THAT IS.

22 A AVERAGE JUST TELLS YOU WHAT IS HAPPENING IN GENERAL,  
23 ON THE AVERAGE, MEANING WHAT A TYPICAL THING IS. WHEN THE  
24 CENSUS BUREAU SAYS THE AVERAGE AGE, WHEN THE FEDERAL  
25 GOVERNMENT SAYS THE AVERAGE INCOME, AVERAGE EXPENDITURE, IT'S

1 JUST GIVING SOME IDEA WHAT'S HAPPENING IN GENERAL, IN A BROAD  
2 SENSE.

3 Q OKAY. THANK YOU, DOCTOR. LET'S GO DOWN THE CHART.  
4 LET'S GO TO THE NEXT ROW. IT SAYS, "WHCC NEW ORLEANS."  
5 EXPLAIN THAT ONE, PLEASE.

6 A SO IN THE SECOND ROW THERE, I'M PRETENDING THAT WHCC  
7 IS THE ONLY CLINIC WHICH IS OPERATING IN THE STATE OF  
8 LOUISIANA. IF THAT WAS THE ONLY CLINIC, THEN, ROUGHLY, THE  
9 AVERAGE DISTANCE DRIVEN BY ALL WOMEN WOULD BE 138.7 MILES AND  
10 THE NUMBER FOR THE AGE GROUP 15 TO 44 IS VERY, VERY SIMILAR;  
11 EXACTLY 137 MILES.

12 Q THANK YOU, DOCTOR. WHAT'S THE NEXT ONE, THE GREEN  
13 ROW THERE? EXPLAIN THAT ONE.

14 A THE THIRD ENTRY IS PRETENDING THAT -- ASSUMING THAT  
15 THESE TWO CLINICS ARE THE ONES WHICH ARE OPEN, MEANING  
16 AVAILABLE FOR LOUISIANA WOMEN TO SEEK ABORTION, THE HOPE  
17 CLINIC IN SHREVEPORT AND THE WOMEN'S HEALTHCARE IN NEW  
18 ORLEANS. IF THESE TWO CLINICS ARE OPEN, THEN, ON THE AVERAGE,  
19 THE DRIVING -- DRIVEN DISTANCE WOULD BE 82.7 MILES FOR ALL OF  
20 THE WOMEN. AND THE WOMEN IN THE AGE GROUP OF 15 TO 44, THAT  
21 NUMBER BECOMES 82.0 MILES.

22 Q THANK YOU. NOW, IN THE NEXT YOU'VE CONSIDERED SOME  
23 OUT-OF-STATE CLINICS, AND COULD YOU SAY WHAT THOSE CLINICS  
24 ARE, DOCTOR?

25 A NOW, IN THE NEXT BLOCK I HAVE LOOKED AT A NUMBER OF

1 CLINICS IN HOUSTON, DALLAS, MOBILE, AND JACKSON.

2 Q SO LET'S MAKE SURE WE UNDERSTAND. YOU'VE GOT A  
3 CLINIC THERE IN HOUSTON, YOU'VE GOT -- THE NEXT ONE, TSC  
4 DALLAS, I BELIEVE THAT'S A TYPO --

5 A THAT'S A TYPO.

6 Q -- THAT SHOULD BE TSC HOUSTON?

7 A RIGHT. YEAH. I APOLOGIZE. THE TSC IS NOT IN  
8 DALLAS. TSC IS IN HOUSTON.

9 Q RIGHT. AND JUST TO BE CLEAR ABOUT THAT, LET'S LOOK  
10 BACK AT YOUR REPORT WHERE YOU LIST THE OUT-OF-STATE CLINICS.  
11 THAT'S ON PAGE 4, PARAGRAPH 8 OF YOUR REPORT. LET'S GO THERE  
12 JUST REAL QUICK AND THEN WE'LL FLIP BACK TO THE CHART. THAT'S  
13 PAGE 4, PARAGRAPH 8. OKAY. HERE'S THE LIST, I GUESS, JUST TO  
14 EXPLAIN THE CHART BETTER.

15 A ALL RIGHT. IN NO. 3, WHEN I WAS WRITING THIS  
16 REPORT, I DIDN'T FEEL LIKE TYPING THE ENTIRE ADDRESS OTHERWISE  
17 THE TABLE BECOMES TOO MESSY TO LOOK AT, SO I WANTED TO GIVE  
18 EACH CLINIC A NICKNAME, SORT OF. AND BY MISTAKE, INSTEAD OF  
19 FOR TEXAS SURGICAL CENTER, I WROTE DALLAS INSTEAD OF HOUSTON.

20 Q DOES THAT AFFECT THE OUTCOME AT ALL?

21 A IT DOES NOT. WHAT I USED WAS THE ADDRESS. THE  
22 NICKNAME I GAVE HAS NO BEARING ON THE DISTANCE.

23 Q JUST FOR THE COURT'S INFORMATION, GOING DOWN THAT  
24 LIST, JUST TALK ABOUT THE OUT-OF-STATE CLINICS THAT YOU LOOKED  
25 AT, PLEASE.

1           A     THE OUT-OF-STATE CLINICS ARE -- THE FIRST ONE IS  
2 TEXAS SURGICAL CENTER IN HOUSTON. THE NEXT ONE IS PLANNED  
3 PARENTHOOD IN -- AGAIN, IN HOUSTON. AND THEN SOUTHWESTERN  
4 WOMEN'S SURGERY CENTER IN DALLAS. PLANNED PARENTHOOD IN  
5 DALLAS. JACKSON'S WOMEN'S HEALTH ORGANIZATION IN JACKSON.  
6 AND PLANNED PARENTHOOD IN MOBILE, ALABAMA.

7           Q     THANKS. WHY DON'T WE GO BACK TO THE CHART NOW.  
8 THAT'S BACK TO DX 155. OKAY. WE WERE ON THE ROW CALLED  
9 "OUT-OF-STATE CLINICS," AND JUST START GOING BACK THROUGH  
10 THAT -- THAT ROW, PLEASE.

11          A     WHAT I HAVE NEXT IS UNDER OUT-OF- -- EXCUSE ME --  
12 OUT-OF-STATE CLINICS IS I HAVE LOOKED AT THESE -- THESE  
13 CLINICS. I THINK THERE ARE SIX; RIGHT? ONE, TWO, THREE,  
14 FOUR, FIVE, SIX. YEAH. SO I'M ASSUMING THAT NONE OF THE  
15 LOUISIANA CLINICS IS OPEN, NONE, AND THE ONLY ONES AVAILABLE  
16 ARE THESE SIX WHICH ARE OUTSIDE OF LOUISIANA.

17                   SO IN THIS HYPOTHETICAL SITUATION, IF NOTHING IN  
18 LOUISIANA IS OPEN, ONLY THE ONES OUTSIDE SURROUNDING LOUISIANA  
19 ARE OPEN, THEN THE AVERAGE DISTANCE DRIVEN BY LOUISIANA WOMEN  
20 OF ANY AGE GROUP WOULD BE 171.4 MILES AND IT BECOMES 170.8 FOR  
21 WOMEN IN THE AGE GROUP OF 15 TO 44.

22          Q     GREAT. OKAY. LET'S GO DOWN. AND LOOK AT THIS NEXT  
23 ROW WHICH IS CALLED "IN-STATE AND OUT-OF-STATE." PLEASE  
24 EXPLAIN THAT ONE, DOCTOR.

25          A     IN THIS LAST ONE, IN IN-STATE AND OUT-STATE, I TOOK,

1 AGAIN, THOSE FIVE OUT OF LOUISIANA AND I INCLUDED THE ONE --  
2 TWO IN LOUISIANA, THE ONE IN SHREVEPORT AND THE ONE IN NEW  
3 ORLEANS, SO FOR THESE SEVEN CLINICS WHAT A TYPICAL AVERAGE  
4 DRIVING DISTANCE WOULD BE, AND THAT CAME OUT TO BE 79.2 MILES  
5 FOR ALL WOMEN AND 78.6 MILES FOR THE WOMEN IN THE AGE GROUP 15  
6 TO 44.

7 THE COURT: CAN I JUST GET CLARI- --

8 MR. DUNCAN: YES.

9 THE COURT: WHAT YOU'RE SAYING IN THE LAST ONE IS  
10 THAT IF THE CLINICS, WHICH ARE SHOWN IN THE BLOCK, REMAINED  
11 THIS WOULD BE THE AVERAGE DISTANCE?

12 THE WITNESS: CORRECT. CORRECT, YOUR HONOR.

13 BY MR. DUNCAN:

14 Q AND YOU'VE GOT SOME FOOTNOTES THERE WHERE YOU  
15 ADDRESS THE ISSUE OF CONFIDENCE INTERVAL. COULD YOU BRIEFLY  
16 ADDRESS THAT?

17 A CAN WE JUST SCROLL DOWN JUST A BIT? YEAH. HERE ARE  
18 THE TWO CONFIDENCE INTERVALS. SO THIS GIVES YOU SOME IDEA  
19 ABOUT THE VARIATION IN THOSE NUMBERS. 95 PERCENT CONFIDENCE  
20 INTERVAL GIVES YOU SOME SORT OF A PROBABILITY THAT THE  
21 DISTANCE YOU'RE DRIVING WOULD RANGE FROM THIS NUMBER TO THAT  
22 NUMBER.

23 Q AND EXPLAIN THE SIGNIFICANCE OF THE 95 PERCENT  
24 CONFIDENCE INTERVAL, DOCTOR.

25 A YOUR HONOR, ANY STATISTICAL TERM HAS SOME ERROR IN

1 IT, SOME VARIATION IN IT. SO TYPICALLY STATISTICIANS LIKE TO  
2 INCLUDE SUCH A CONFIDENCE INTERVAL TO SEE HOW FAR THAT NUMBER  
3 COULD VARY.

4 THE COURT: FIVE EITHER WAY?

5 THE WITNESS: RIGHT.

6 THE COURT: FIVE PERCENT EITHER WAY?

7 THE WITNESS: RIGHT.

8 A SO THIS ONE IS LIKE 95 PERCENT CONFIDENCE INTERVAL  
9 AND THIS GOES FROM 67.4 MILES TO ABOUT 91 MILES OF CONFIDENCE  
10 INTERVAL. SORT OF LIKE IN THE POLLS WHEN THEY SAY THAT THIS  
11 CANDIDATE HAS APPROVAL OF 53 PERCENT WITH AN ERROR MARGIN OF  
12 3 PERCENT, SO THEY MEAN --

13 THE COURT: SAME THING AS ERROR OF MARGIN?

14 THE WITNESS: RIGHT.

15 A SO MEANING THE TWO NUMBERS IS IN BETWEEN THOSE TWO.

16 MR. DUNCAN: YOUR HONOR, COULD YOU JUST GIVE ME ONE  
17 SECOND FOR ME TO CONFER WITH CO-COUNSEL?

18 THE COURT: SURE.

19 MR. DUNCAN: YOUR HONOR, I'D LIKE TO ADDRESS ONE  
20 THING. I UNDERSTAND THAT YOUR HONOR HAS RULED THAT  
21 DR. SOLANKY MAY NOT TESTIFY ABOUT THE CALCULATIONS THAT HE  
22 USED FOR EXHIBIT D. I UNDERSTAND THAT, BECAUSE -- AND WHILE,  
23 YOU KNOW, DEFENDANT DISAGREES WITH THAT, WE WOULD LIKE TO MAKE  
24 A PROFFER OF WHAT HIS TESTIMONY WOULD HAVE BEEN. WOULD YOUR  
25 HONOR PERMIT THAT?

1 THE COURT: ABSOLUTELY.

2 MR. DUNCAN: THANK YOU.

3 BY MR. DUNCAN:

4 Q DR. SOLANKY, LET'S GO NOW -- WE'VE FINISHED TALKING  
5 ABOUT THE AVERAGE DRIVING DISTANCES. AND LET'S GO -- I TELL  
6 YOU WHAT, FOR EXPLANATORY PURPOSES --

7 MR. DUNCAN: AND, YOUR HONOR, I ALSO REALIZE -- OH,  
8 I THINK YOU DID LET THIS ONE IN, YOUR HONOR. YOU DID LET 153  
9 IN? AM I CORRECT THERE?

10 THE COURT: I THINK THE ONLY ONE WE EXCLUDED --

11 MR. DUNCAN: 154, I BELIEVE.

12 THE COURT: -- IS 154.

13 BY MR. DUNCAN:

14 Q OKAY. SO 153, LET'S GO THERE, DR. SOLANKY, AND TALK  
15 ABOUT THE MAP WITH THE CIRCLES. THAT WOULD BE DX 153. YOU'VE  
16 GOT THAT?

17 A YEAH.

18 Q I JUST WANT YOU TO EXPLAIN AGAIN FOR THE RECORD THE  
19 IDEA THAT IS TRYING TO BE VISUALLY EXPRESSED HERE AROUND THE  
20 TWO CLINICS.

21 A NOW, THE IDEA HERE IS --

22 THE COURT: JUST SO THE RECORD IS CLEAR, THIS IS NOT  
23 ON THE PROFFER; RIGHT?

24 MR. DUNCAN: YOU'RE RIGHT, YOUR HONOR. I APOLOGIZE.  
25 THIS IS NOT ON THE PROFFER BECAUSE HE CAN --

1 THE COURT: RIGHT.

2 MR. DUNCAN: HE'S NOT GOING TO TESTIFY ABOUT  
3 CALCULATIONS. HE'S JUST GOING TO TESTIFY ABOUT VISUALLY  
4 SPEAKING WHAT THIS IS SUPPOSED TO REPRESENT.

5 BY MR. DUNCAN:

6 Q GO AHEAD, DOCTOR.

7 A NOW, IN THIS I HAVE SHOWN THE CLINIC IN SHREVEPORT  
8 AND WHAT 100 MILE RADIUS AROUND IT LOOKS LIKE IN A PREVIOUS  
9 EXHIBIT. THE FIRST EXHIBIT I HAVE SHOWN -- I HAVE MENTIONED  
10 WHAT THE WOMEN POPULATION IS IN EACH OF THESE PARISHES WHICH  
11 ARE COVERED BY THE CIRCLE HERE. AND THE IDEA WAS THAT -- WHEN  
12 I WAS PREPARING THIS EXHIBIT, MY GOAL WAS TO SEE WHAT  
13 PERCENTAGE OF THE WOMEN WOULD BE INSIDE THE CIRCLE HERE,  
14 100 MILE.

15 USING THE HEAT MAP AND THE FIRST EXHIBIT, I STARTED  
16 COUNTING THEM ONE BY ONE. YOU COULD JUST ADD THE WOMEN OF THE  
17 PARISHES WHICH FALL INSIDE THE 100 MILE, DIVIDE IT BY THE  
18 TOTAL DISTANCE, THE TOTAL NUMBER OF WOMEN IN LOUISIANA, AND  
19 THAT WOULD TELL YOU THE PERCENTAGE OF WOMEN WHO LIVE WITHIN  
20 100 MILE OF THE CLINIC, OF THIS PARTICULAR CLINIC.

21 Q AND JUST TO BE CLEAR, DOCTOR, I'M NOT ASKING YOU TO  
22 TESTIFY AS TO THE CALCULATION THAT YOU ACTUALLY MADE THAT  
23 YOU'RE DESCRIBING.

24 A BUT THE IDEA WAS TO VISUALIZE, TO SEE HOW MANY --  
25 WHAT PERCENTAGE OF WOMEN ARE LIVING WITHIN 100 AND 150 MILES

1 OF THE CLINIC.

2 THE COURT: WHAT YOU DID HERE, IF I'M UNDERSTANDING,  
3 I COULD HAVE TAKEN -- WHAT'S THE INSTRUMENT WHERE YOU HAVE A  
4 LITTLE POINT AND YOU'VE GOT A PENCIL AND YOU -- WHAT'S IT?

5 MR. JOHNSON: PROTRACTOR.

6 THE COURT: PROTRACTOR. OKAY. YOU COULD DO THE  
7 SAME THING WITH A PROTRACTOR AND JUST GET THE SCALE, RIGHT,  
8 THE MAP AND YOU CAN DO EXACTLY THE SAME THING; RIGHT?

9 THE WITNESS: ABSOLUTELY, YOUR HONOR. AND THAT  
10 HELPS IN VISUALIZING. LOUISIANA IS NOT SUCH A LARGE STATE.  
11 AND LITERALLY WE CAN SEE THAT A CIRCLE OF 150 MILE AROUND  
12 SHREVEPORT AND A CIRCLE OF 150 MILE AROUND THE NEW ORLEANS  
13 CLINIC, THEY OVERLAP.

14 THE COURT: OKAY.

15 A JUST SO THAT I COULD VISUALIZE IT, I COULD PRESENT  
16 IT TO THE COURT, THE SIZE OF LOUISIANA, AND EVEN -- AND AS I  
17 SAID BEFORE, I STARTED COUNTING THOSE, THAT THIS PARISH IS  
18 TOTALLY INSIDE OF LOUISIANA, TOTALLY INSIDE 150 MILE, AND  
19 20,000 WOMEN LIVE HERE. THE NEXT PARISHES, AGAIN, WITHIN THE  
20 CIRCLE, THE TENTH PARISH IS HALF INSIDE THE CIRCLE, SO LET ME  
21 PRETEND HALF OF THEM. SO THIS WAS JUST A VERY INTUITIVE WAY  
22 TO VISUALIZE.

23 BY MR. DUNCAN:

24 Q THANK YOU, DOCTOR. NOW, LET'S GO TO --

25 MR. DUNCAN: NOW, THIS IS PART OF THE PROFFER, YOUR

1 HONOR.

2 THE COURT: ALL RIGHT.

3 MR. DUNCAN: AND JUST FOR THE RECORD, DEFENDANT  
4 DISAGREES WITH YOUR HONOR'S RULING, WITH ALL RESPECT, AND  
5 BELIEVES THAT THIS PRESENTATION OF DATA HERE IN THIS EXHIBIT  
6 IS SIMPLY A DIFFERENT WAY OF PRESENTING THE SAME DATA THAT WAS  
7 IN THE REPORT.

8 BY MR. DUNCAN:

9 Q OKAY. DR. SOLANKY, LET'S GO TO THAT EXHIBIT THAT IS  
10 NOT IN EVIDENCE, BUT THIS IS PART OF A PROFFER, SO IT IS DX  
11 154.

12 A NOW, IN THE -- YOUR HONOR, IN THE LAST EXHIBIT, I  
13 HAD THE SHREVEPORT CLINIC AND 150 MILE RADIUS AROUND IT AND I  
14 WAS COUNTING WHAT PERCENTAGES OF WOMEN LIVE IN THAT 150 MILE  
15 RADIUS, BUT I HAD AVAILABLE TO ME THE ACTUAL DRIVING DISTANCE,  
16 THAT WAS IN MY ORIGINAL REPORT, THE ACTUAL DRIVING DISTANCE  
17 FROM A CLINIC. SO I DIDN'T HAVE TO DO THAT, DRAW A CIRCLE AND  
18 COUNT THE POPULATIONS IN THE PARISHES. I KNOW EXACTLY IN MY  
19 REPORT HOW FAR A PARTICULAR WOMAN -- PARISH IS FROM A CLINIC.  
20 AND ALL I DID WAS USED THE DATA AND THE NUMBER OF TIMES IT IS  
21 LESS THAN 50, THAT'S 33 PERCENT, FOR ALL OF THE WOMEN IN  
22 LOUISIANA.

23 SO THE SAME DATA AND THE SAME IDEA BUT NOW I'M NOT  
24 LOOKING AT THE RADIUS AROUND THE CLINIC. I KNOW THE DISTANCE.  
25 THAT'S IN MY REPORT. I JUST COMPUTED IT -- REPORTED IT AS A

1 PERCENTAGE AND THAT'S WHAT I HAVE.

2 Q AND JUST FOR -- I'M SORRY.

3 A SO LET ME --

4 Q DOCTOR, JUST ONE SECOND. SORRY TO INTERRUPT. JUST  
5 FOR PURPOSES OF THE PROFFER, COULD YOU STATE WHAT YOUR  
6 CONCLUSIONS WERE WITH RESPECT TO EACH SCENARIO THERE THE SAME  
7 WAY YOU DID WITH THE AVERAGE DRIVING DISTANCES.

8 MR. DUNCAN: IS THAT OKAY, YOUR HONOR?

9 THE COURT: YES, IT IS.

10 MR. DUNCAN: THANK YOU.

11 A THE FIRST SCENARIO WHICH I HAVE IS IF THE AVAILABLE  
12 CLINICS ARE THOSE TWO CLINICS WHICH I HAD IN THE PREVIOUS  
13 EXHIBIT AS CIRCLES, THE WHCC IN NEW ORLEANS AND HOPE  
14 SHREVEPORT, IF THOSE ARE THE TWO AVAILABLE CLINICS --

15 THE COURT: ONLY TWO.

16 THE WITNESS: ONLY TWO.

17 A -- THEN 33.2 PERCENT OF LOUISIANA WOMEN IN THE AGE  
18 GROUP OF 15 TO 44 YEARS WILL DRIVE 50 MILES OR LESS. SO  
19 33 PERCENT OF WOMEN IN THAT AGE GROUP WILL DRIVE 50 MILES OF  
20 LESS -- OR LESS IF THOSE ARE THE ONLY TWO CLINICS WHICH ARE  
21 AVAILABLE. 67.6 PERCENT WILL DRIVE 100 MILES OR LESS.

22 YOUR HONOR, IT'S THE SAME IDEA. LOUISIANA, THOSE  
23 TWO CLINICS DRAWING A CIRCLE, BUT THIS TIME I'M USING THE DATA  
24 FROM MY REPORT, THE EXTRA DRIVING DISTANCE, AND CHECKING IF IT  
25 IS LESS THAN 100 OR NOT AND REPORTING IT AS A PERCENT. AND

1 THEN 150 MILES OR LESS WOULD BE 89.4 PERCENT.

2 BY MR. DUNCAN:

3 Q OKAY. WHY DON'T YOU GO THROUGH THE NEXT ONE JUST  
4 FOR THE PURPOSES OF THE RECORD.

5 A YOUR HONOR, LET ME TAKE ONE SECOND HERE. LET'S LOOK  
6 AT THIS LAST NUMBER, 150 MILES OR LESS. IF YOU RECALL FROM  
7 THE LAST EXHIBIT, THOSE TWO CIRCLES, 150 MILES, THEY COVER ALL  
8 OF LOUISIANA. SO THE PROPORTION OF WOMEN WHICH ARE LEFT  
9 OUTSIDE THOSE TWO CIRCLES IS LITERALLY ABOUT 10 PERCENT. SO  
10 MY IDEA WAS THAT FIRST I VISUALIZE IT, MAKE IT EASY TO  
11 UNDERSTAND. AND THIS IS THE SAME DATA PRESENTED AS A  
12 PERCENTAGE.

13 Q DOCTOR, IF YOU COULD JUST GO THROUGH THE NEXT FEW  
14 BOXES, AND THEN WE'LL --

15 A IN THE NEXT BOX I HAVE THREE CLINICS, MEANING THE  
16 ONE IN NEW ORLEANS, WHCC, THE CAUSEWAY MEDICAL IN METAIRIE,  
17 AND HOPE SHREVEPORT, 50 MILES OR LESS WOULD BE DRIVEN BY  
18 38.4 PERCENT OF LOUISIANA WOMEN IN THAT AGE GROUP. 67.6 WILL  
19 DRIVE 15 TO -- WILL DRIVE 100 MILES OR LESS. 99 -- I'M SORRY.  
20 I MESSED UP. 90.6 WOULD DRIVE 150 MILES OR LESS.

21 THE COURT: JUST SO I'M CLEAR, THAT'S IF, IN BLOCK  
22 TWO, THOSE THREE CLINICS WERE THE ONLY CLINICS LEFT?

23 THE WITNESS: YES, YOUR HONOR.

24 BY MR. DUNCAN:

25 Q THANK YOU. IF YOU COULD JUST GO THROUGH THE REST.

1           A     AND THEN I PICKED THREE OTHER CLINICS, NEW ORLEANS,  
2     BATON ROUGE AND SHREVEPORT, AND I PRESENTED 50 MILES OR LESS  
3     AS 52.3 PERCENT, 100 MILES OR LESS AS 81 PERCENT AND 150 MILES  
4     OR LESS AS 99.5 PERCENT.

5           Q     AND THE NEXT ONE, DOCTOR.

6           A     YOUR HONOR, FOR THESE THREE, IF I BROUGHT IN THE  
7     SAME EXHIBIT, IF I DRAW ANOTHER CIRCLE AROUND BATON ROUGE WITH  
8     150 MILES, THEN YOU WOULD SEE THAT ALL OF LOUISIANA IS  
9     COVERED. IN THE NEXT ONE, I HAVE WHCC NEW ORLEANS, CAUSEWAY  
10    MEDICAL METAIRIE, DELTA BATON ROUGE, AND HOPE SHREVEPORT.  
11    50 MILES OR LESS IS 57.2 PERCENT, 100 MILES OR LESS IS  
12    81 PERCENT AND 99.5 PERCENT FOR 150 MILES OR LESS.

13          Q     AND THE LAST ONE, DOCTOR?

14          A     IN THE LAST ONE I HAVE THE FIVE CLINICS IN  
15    LOUISIANA. IF THOSE FIVE ARE AVAILABLE, 57.2 PERCENT WOULD  
16    DRIVE 50 MILES OR LESS, 84.8 PERCENT WOULD DRIVE 100 MILES OR  
17    LESS, AND 99.5 PERCENT WOULD DRIVE 100 MILES OR LESS -- OR  
18    150 MILES OR LESS.

19          Q     THANK YOU, DOCTOR.

20                MR. DUNCAN: YOUR HONOR, MAY WE MAKE THE EXHIBIT  
21    PART OF THE PROFFER AS WELL?

22                THE COURT: YES.

23                MR. DUNCAN: THANK YOU.

24    BY MR. DUNCAN:

25          Q     OKAY, DOCTOR. LET'S MOVE ON TO ANOTHER SUBJECT.

1           **THE COURT:** WE'RE OFF THE PROFFER NOW, JUST SO  
2 THE RECORD IS CLEAR?

3           **MR. DUNCAN:** WE'RE OFF THE PROFFER NOW, YES. THANK  
4 YOU.

5           **THE COURT:** OKAY.

6 **BY MR. DUNCAN:**

7           **Q** DOCTOR, I'D LIKE TO TALK ABOUT THE EXPERT REPORT OF  
8 THE PLAINTIFFS' EXPERT, DR. SHEILA KATZ.

9           **MS. LEVINE:** YOUR HONOR, WE'D LIKE TO POSE AN  
10 OBJECTION, IF WE MAY, TO THIS LINE OF QUESTIONING, WHICH I  
11 ANTICIPATE WILL RELATE TO DR. KATZ'S OPINIONS BECAUSE THERE  
12 WAS NO REBUTTAL REPORT OFFERED BY DR. SOLANKY IN ACCORDANCE  
13 WITH THE RULES FOR EXPERT REPORTS AND, OF COURSE, DEADLINES  
14 FOR EXPERT REPORTS. SO ANY REBUTTAL TESTIMONY TO DR. KATZ'S  
15 OPINIONS WOULD BE IMPROPER.

16           **THE COURT:** WHAT IS -- FORGIVE ME FOR NOT KNOWING  
17 THIS, WHAT IS OUR RULE ON SUPPLEMENTAL OR REBUTTAL REPORTS?  
18 DO WE HAVE A RULE ON REBUTTAL REPORTS?

19           **MS. LEVINE:** THE CIVIL RULES PROVIDE FOR  
20 DEADLINES -- STANDARD DEADLINES, FOR EXPERT REPORTS FOLLOWED  
21 BY REBUTTAL REPORTS AND IN THIS COURT'S SCHEDULING ORDER THERE  
22 WAS A DEADLINE FOR EXPERT REPORTS AND FOR REBUTTAL REPORTS.  
23 REBUTTAL REPORTS WERE DUE ON DECEMBER 1ST.

24           **THE COURT:** OKAY. AND DID DR. SOLANKY DO A REBUTTAL  
25 REPORT?

1           **MR. DUNCAN:** ONE MOMENT, YOUR HONOR.

2           YOUR HONOR, I GUESS A FEW RESPONSES TO THIS, IF I  
3 MAY. WE CERTAINLY DON'T SEE THAT THE RULE WOULD FORBID  
4 DR. SOLANKY FROM REFUTING ATTACKS MADE ON HIS REPORT BY  
5 DR. KATZ IN HER OWN REPORT IN OPEN COURT. I THINK THAT WOULD  
6 HELP THE COURT UNDERSTAND DR. KATZ'S REPORT.

7           THE SECOND POINT IS, IS DURING DR. SOLANKY'S  
8 DEPOSITION, HE EXPRESSED CRITICISMS OF DR. KATZ'S REPORT,  
9 QUITE EXTENSIVE CRITICISMS DURING THE DEPOSITION, SO THERE'S  
10 NO QUESTION OF A LACK OF NOTICE.

11           THE THIRD POINT IS, IS THAT WITH RESPECT TO THE  
12 ROBERTS' REPORT, WHICH WAS ONLY PRODUCED IN MARCH -- I  
13 UNDERSTAND IT WASN'T PUBLISHED THEN -- BUT CONSIDERING THAT IT  
14 IS A REPORT SPECIFICALLY DIRECTED TO EVIDENCE PURPORTEDLY FROM  
15 THREE ABORTION CLINICS IN LOUISIANA RELATED TO INCREASED  
16 DRIVING DISTANCES I THINK, IN FAIRNESS, DR. SOLANKY OUGHT TO  
17 BE ABLE TO RESPOND TO THAT LATE BREAKING REPORT.

18           **THE COURT:** ANY RESPONSE?

19           **MS. LEVINE:** YOUR HONOR, JUST THAT THE RULES PROVIDE  
20 FOR A PROCEDURE FOR THIS AND RAISING IT IN A DEPOSITION WHERE  
21 THERE WAS NOT OPPORTUNITY TO PREPARE FOR THE DEPOSITION IS NOT  
22 CONTEMPLATED BY THE RULES. THE RULES PROVIDE FOR A PROCEDURE  
23 WHEREBY THERE'S EXPERT REPORTS FOLLOWED BY REBUTTAL REPORTS,  
24 IF THE EXPERT WITNESS WISHES TO OFFER OPINIONS -- EXPERT  
25 OPINIONS IN REBUTTAL TO ANOTHER EXPERT AND THAT PROCEDURE

1 WASN'T FOLLOWED. THERE WAS ONLY AN INITIAL REPORT FROM  
2 DR. SOLANKY. AND SO WE DID NOT HAVE THE OPPORTUNITY TO REVIEW  
3 HIS OPINIONS PRIOR TO THE DEPOSITION REGARDING ANYTHING  
4 INVOLVED IN DR. KATZ'S TESTIMONY.

5 AND WITH REGARDS TO THE DISCLOSURE ON OUR PART OF  
6 THE ROBERTS' STUDY, WE DID DISCLOSE THAT IN ACCORDANCE WITH  
7 THE RULES WHEN THE STUDY BECAME AVAILABLE. AND, AGAIN, THERE  
8 WAS NO REBUTTAL OR SUPPLEMENTATION FROM DR. SOLANKY. SO THESE  
9 ARE NEW REBUTTAL OPINIONS FROM AN EXPERT THAT WE HAVEN'T HAD A  
10 PROPER OPPORTUNITY TO PREPARE FOR CROSS FOR.

11 THE COURT: WELL, I THINK IN -- YOU KNOW, NUMBER 1,  
12 THE FACT THAT THE PLAINTIFFS HAD THE OPPORTUNITY TO DEPOSE HIM  
13 ON DR. KATZ'S REPORT -- I MEAN HIS CRITICISMS OF DR. KATZ'S  
14 REPORT BECAUSE THAT WAS -- I'M ASSUMING MR. DUNCAN'S  
15 REPRESENTING CORRECTLY THAT THAT WAS A SUBJECT OF HIS  
16 DEPOSITION AND THAT HE WAS -- WAS HE QUESTIONED ABOUT  
17 DR. KATZ'S REPORT AND DID HE EXPRESS OPINIONS AND DID THE  
18 PLAINTIFFS HAVE AN OPPORTUNITY TO EXPLORE THAT IN THE  
19 DEPOSITION?

20 MR. DUNCAN: MR. JOHNSON TOOK THE DEPOSITION. I'VE  
21 READ EXTENSIVE DISCUSSION OF DR. KATZ'S REPORT IN THE  
22 DEPOSITION.

23 THE COURT: AND DO YOU AGREE WITH THAT?

24 MR. DUNCAN: I AGREE. BUT IF YOUR HONOR WANTS TO  
25 SEE --

1 THE COURT: I DON'T WANT TO SEE IT.

2 MR. DUNCAN: YOU'RE RIGHT.

3 THE COURT: IF I CAN GET SOME -- YOU KNOW, SOME  
4 CONSENSUS HERE. BECAUSE IF YOU -- I UNDERSTAND IT MAY NOT  
5 TECHNICALLY BE THE RULE. I'M NOT A, "GOTCHA" KIND OF GUY.  
6 THE SUBSTANCE OF THE RULE, AS FAR AS I'M CONCERNED, PROTECTS  
7 LAWYERS FROM BEING UNFAIRLY NOTICED. AND IF YOU HAD THE  
8 OPPORTUNITY TO DO THE DEPOSITION AND QUESTION HIM ABOUT HIS  
9 CONCERNS OF DR. KATZ, THEN I'M GOING TO LET HIM TESTIFY ABOUT  
10 THAT. THE OTHER THING IS THAT HE -- I AM CONCERNED A LITTLE  
11 BIT ABOUT THE ROBERTS' REPORT, THOUGH. THAT CAME TO YOU GUYS  
12 IN MARCH; RIGHT?

13 MR. DUNCAN: THAT'S RIGHT.

14 THE COURT: AND THEY HAVE ZERO KNOWLEDGE RIGHT NOW,  
15 AS I UNDERSTAND IT, OF WHAT HE'S GOING TO SAY ABOUT  
16 DR. ROBERTS' REPORT AND THAT'S BECAUSE THERE WAS NO  
17 SUPPLEMENTAL REPORT.

18 AND DO YOU AGREE, MR. DUNCAN, THAT A SUPPLEMENTAL  
19 REPORT, ACCORDING TO THE RULES, SHOULD HAVE BEEN GIVEN ONCE  
20 THEY GAVE YOU THE ROBERTS' REPORT PUBLISHED IN MARCH?

21 MR. DUNCAN: I'M NOT PREPARED TO SAY WHAT THE RULE  
22 PROVIDES. THAT CERTAINLY WOULD HAVE BEEN BETTER TO DO, YOUR  
23 HONOR.

24 THE COURT: THAT'S WHAT CONCERNS ME THE MOST. I  
25 THINK WITH RESPECT TO HIS CRITICISMS OF DR. KATZ GIVEN IN HIS

1 DEPOSITION, ALBEIT NOT IN A REPORT FORM, AND PERHAPS NOT  
2 CROSSING THE T'S AND DOTTING THE I'S, I THINK THAT HE WILL BE  
3 ALLOWED TO TESTIFY TO THAT.

4 THE ROBERTS' REPORT, HOWEVER, I'M CONCERNED ABOUT  
5 BECAUSE THERE WAS NO QUESTIONING OF THAT. GRANTED HIS  
6 DEPOSITION WAS TAKEN BEFORE THAT, BUT THAT'S WHAT THE RULE IS  
7 FOR, FOR PURPOSES OF SUPPLEMENTATION.

8 I WILL SAY THAT WE'RE GOING TO TAKE A BREAK BECAUSE  
9 I WANT TO BE ABSOLUTELY CERTAIN ABOUT WHAT THIS RULE IS BEFORE  
10 I MAKE A FINAL RULING.

11 I'M GOING TO LET YOU, MR. DUNCAN, ASK DR. SOLANKY  
12 QUESTIONS ABOUT HIS CRITICISMS OF DR. KATZ'S TESTIMONY AS  
13 EXPRESSED IN HIS DEPOSITION AND THEN WE'LL TAKE A BREAK AND WE  
14 CAN GET -- I WANT TO MAKE SURE I'M CORRECT ON THE RULE. AND  
15 IF THE RULE IS, IS THAT YOU SHOULD HAVE SUPPLEMENTED THE  
16 REPORT WITH HIS CRITICISMS OF THE ROBERTS' REPORT, THEN I'M  
17 NOT GOING TO LET HIM TESTIFY ABOUT IT.

18 MR. DUNCAN: I UNDERSTAND, YOUR HONOR. JUST FOR THE  
19 RECORD, I'M LOOKING AT THE INDEX TO THE DEPOSITION OF  
20 DR. SOLANKY AND THERE'S NUMEROUS REFERENCES TO DR. KATZ IN THE  
21 DEPOSITION, THROUGHOUT THE DEPOSITION, SO JUST TO MAKE THAT  
22 REPRESENTATION TO THE COURT.

23 THE COURT: ALL RIGHT. THANK YOU.

24 MR. DUNCAN: HOW WILL WE PROCEED, YOUR HONOR?

25 THE COURT: I WOULD SAY, THEN, I'VE OVERRULED THE

1 OBJECTION WITH RESPECT TO THE QUESTIONS YOU'RE ABOUT TO ASK AS  
2 TO HIS CRITICISMS OF DR. KATZ'S TESTIMONY AS EXPRESSED AND  
3 EXPLORED IN HIS DEPOSITION.

4 MR. DUNCAN: THANK YOU, YOUR HONOR.

5 BY MR. DUNCAN:

6 Q DR. SOLANKY, I'D LIKE TO TURN TO DR. KATZ'S REPORT,  
7 WHICH IS JX 124. LET ME -- THAT WILL COME UP ON YOUR SCREEN.  
8 DO YOU SEE THAT, DOCTOR?

9 A YES, I DO.

10 Q HAVE YOU REVIEWED DR. KATZ'S EXPERT REPORT?

11 A I HAVE.

12 Q SO DO YOU RECALL THAT DR. KATZ SUBMITTED A REPORT IN  
13 THIS CASE AND OFFERED THE OPINION THAT WOMEN'S LOW-INCOME  
14 STATUS MAY PREVENT THEM FROM TRAVELING TO OBTAIN ABORTIONS?

15 A YES.

16 Q AND YOU JUST SAID YOU REVIEWED THE REPORT, DOCTOR?

17 A YES.

18 Q LET'S TURN TO PARAGRAPH 15 OF THAT REPORT. THAT'S  
19 ON PAGE 8. WOULD YOU READ THAT PARAGRAPH -- I GUESS JUST READ  
20 IT TO YOURSELF RIGHT NOW, JUST PARAGRAPH 15, AND REFRESH YOUR  
21 RECOLLECTION ABOUT IT. HAVE YOU READ IT, DOCTOR?

22 A I'M NOT THERE YET.

23 THE COURT: SO I CAN HAVE THE HARD COPY, WHAT IS THE  
24 EXHIBIT?

25 MR. DUNCAN: I'M SORRY, YOUR HONOR, IT'S JOINT

1 EXHIBIT 124. DO I HAVE THAT RIGHT? I DON'T THINK THAT'S --  
2 IS THAT A CONFIDENTIAL EXHIBIT? I DON'T THINK IT IS. ARE WE  
3 ALL THERE?

4 BY MR. DUNCAN:

5 Q READY?

6 A I HAVE READ THIS PART, YES.

7 Q OKAY.

8 A THERE IS MORE, I THINK, ON THE NEXT PAGE.

9 Q RIGHT. THAT'S RIGHT. PARAGRAPH 15, DID YOU GET A  
10 CHANCE TO READ IT, DOCTOR?

11 A YES, I DID.

12 Q IS DR. KATZ REFERRING TO AN ARTICLE BY SHELTON, ET.  
13 AL?

14 A YES, SHE IS.

15 Q AND CAN YOU TELL US WHAT CLAIM SHE IS MAKING BEST ON  
16 SHELTON?

17 A LET ME READ THIS. I'M READING THIS NO. 15, THE  
18 SECOND SENTENCE. "THIS RESEARCH SHOWS THAT INCREASING THE  
19 DISTANCE THAT WOMEN MUST TRAVEL TO ACCESS ABORTION SERVICES  
20 PREVENTS SOME WOMEN FROM OBTAINING ABORTIONS THAT THEY WOULD  
21 HAVE OTHERWISE OBTAINED."

22 Q AND IN SUPPORT OF THAT STATEMENT, DOES SHE CITE AND  
23 DISCUSS AN ARTICLE BY SHELTON, ET AL?

24 A YES, SHE DOES. SO SHE'S CONCLUDING THAT SOMEHOW  
25 THIS -- INCREASING THE DISTANCE IS PREVENTING SOME WOMEN FROM

1 OBTAINING ABORTIONS, SO THAT IS THE CONCLUSION HERE.

2 Q IF YOU SCROLL DOWN AND JUST READ THE REST OF THE  
3 PARAGRAPH ON THE NEXT PAGE, PLEASE.

4 A AND SHE'S QUOTING FROM THE PAPER BY SHELTON SAYING  
5 THAT, "AND THERE WAS A DECLINE OF 6.7 ABORTIONS PER 1,000 LIVE  
6 BIRTHS FOR EVERY 10 MILES OF DISTANCE FROM ATLANTA."

7 Q OKAY. DOCTOR, IN YOUR OPINION, IS DR. KATZ USING  
8 THE SHELTON STUDY TO SUPPORT THE CLAIM OF CAUSE, IN OTHER  
9 WORDS, THAT INCREASED TRAVEL DISTANCE CAUSES A DECREASE IN  
10 ABORTION RATES?

11 A THAT IS CORRECT.

12 Q DO YOU THINK THAT IS A PROPER USE OF THE SHELTON  
13 REPORT?

14 A NO, IT'S NOT.

15 Q SO WHY DON'T WE GO TO THE SHELTON REPORT, WHICH I  
16 BELIEVE IS IN EVIDENCE. THAT IS -- SORRY.

17 MS. LEVINE: OBJECTION. I DON'T BELIEVE IT IS IN  
18 EVIDENCE.

19 MR. DUNCAN: I THOUGHT WE HAVE IT AS A JOINT  
20 EXHIBIT.

21 MS. LEVINE: THAT'S FINE. WITHDRAWN.

22 MR. DUNCAN: OKAY. COULD SOMEONE GIVE ME THE  
23 NUMBER, PLEASE, FOR THE JOINT EXHIBIT? I HAD IT WRITTEN DOWN.  
24 OH, I'VE GOT IT. SORRY. JOINT EXHIBIT 160; IS THAT RIGHT?  
25 OR IS IT PLAINTIFFS? I'M SORRY, YOUR HONOR.

1           **THE COURT:** THAT'S NO PROBLEM. LET'S JUST FIND IT.  
2 IS IT PLAINTIFF OR JE?

3           **MR. DUNCAN:** I HAVE A 160 WRITTEN HERE. IT DOESN'T  
4 SAY "D" OR "J" OR "P." DEFENDANT'S 160. LET'S GET THAT UP ON  
5 THE SCREEN FOR DR. SOLANKY. I THOUGHT WE -- JUST FOR A  
6 SECOND, YOUR HONOR, I THOUGHT WE HAD AGREED TO PUT SHELTON  
7 INTO EVIDENCE?

8           **MS. LEVINE:** THAT'S CORRECT.

9           **MR. DUNCAN:** OKAY. SO IT IS IN EVIDENCE.

10 **BY MR. DUNCAN:**

11           **Q** OKAY, DOCTOR. LET'S SCROLL DOWN SO YOU CAN --

12           **MR. DUNCAN:** COULD WE SCROLL DOWN SO DR. SOLANKY  
13 COULD LOOK AT THE -- THANK YOU.

14 **BY MR. DUNCAN:**

15           **Q** I'VE LOST TRACK OF WHAT I JUST ASKED YOU, DOCTOR.  
16 LET ME JUST REPEAT. WHAT IS YOUR OPINION OF DR. KATZ'S USE OF  
17 THE SHELTON REPORT THAT YOU SEE BEFORE YOUR WITH RESPECT TO  
18 THAT QUESTION I JUST ASKED YOU ABOUT CAUSE?

19           **A** ANSWERING YOUR QUESTION, THE WAY DR. KATZ HAS  
20 CHARACTERIZED THIS WORK BY SHELTON IS THAT ADDITIONAL DRIVING  
21 DISTANCE IS PREVENTING, MEANING CAUSING WOMEN TO NOT HAVE  
22 ABORTION. VARIOUS AUTHORS HAVE NOT MADE THAT CLAIM. THE  
23 AUTHORS ARE TALKING ABOUT THEY HAVE ESTABLISHED A CORRELATION  
24 BETWEEN THE DISTANCE DRIVEN AND THE NUMBER OF ABORTIONS.  
25 STATISTICALLY THERE'S A HUGE DIFFERENCE BETWEEN THE TWO.

1 CORRELATION DOES NOT MEAN CAUSATION. CORRELATION DOES NOT  
2 PROVE CAUSATION. THAT'S A VERY STANDARD PHRASE. LITERALLY  
3 ALL STATISTICAL BOOKS CLARIFY THAT.

4 YOUR HONOR, THERE ARE BOOKS WITH THE TITLE, *PROVING*  
5 *CAUSATION* AND THEY OUTLINE HOW CAUSATION NEEDS TO BE PROVED  
6 SCIENTIFICALLY TO HAVE A MEANING. AND A CORRELATION DOES NOT  
7 PROVE --

8 **THE COURT:** LET ME MAKE SURE I UNDERSTAND. ARE YOU  
9 SAYING THAT THE SHELTON -- ARE YOU SAYING THAT HER  
10 CHARACTERIZATION OF THE SHELTON ARTICLE IS WRONG OR ARE YOU  
11 SAYING THE SHELTON ARTICLE IS WRONG OR ARE YOU SAYING BOTH?

12 **THE WITNESS:** IN SOME SENSE I'M SAYING BOTH, BUT  
13 RIGHT NOW ALL I'M SAYING IS HER CHARACTERIZATION USING  
14 SHELTON'S REPORT AND CLAIMING THAT IT'S PROVING CAUSATION IS  
15 WRONG. SHELTON DID NOT CLAIM CAUSATION.

16 **BY MR. DUNCAN:**

17 **Q** WE'LL MOVE ON TO, I THINK, THE NEXT THING YOUR HONOR  
18 IS SUGGESTING, THAT ASIDE FROM THAT PROBLEM, WHICH WAS WITH  
19 THE USE OF THE SHELTON REPORT, DO YOU SEE ANY OTHER PROBLEMS  
20 WITH THE STATISTICAL METHODOLOGY EMPLOYED BY THE SHELTON  
21 STUDY?

22 **A** INSTEAD OF ASKING YOU THAT BROAD QUESTION, LET ME  
23 JUST ZERO IN ON A FEW THINGS. THERE IS A NUMBER 6.7 THAT IS  
24 USED IN THE SHELTON REPORT. LET ME SEE IF I CAN FIND WHERE  
25 THAT IS -- OH, I'M SORRY. 6.7 IS THE NUMBER THAT IS CLAIMED

1 TO BE THE DECLINE OF 6.7 ABORTIONS PER 1000 LIVE BIRTHS. LET  
2 ME JUST FIND WHERE THAT IS IN THE REPORT, DOCTOR. FORGIVE ME  
3 FOR ONE SECOND. OH, THERE IT IS.

4 LOOK AT TABLE 1, DOCTOR. TABLE 1. THAT'S ON THE  
5 SECOND PAGE OF THE SHELTON REPORT. THIS INCLUDES THE NUMBER  
6 NEGATIVE .67. AND COULD YOU JUST GENERALLY TALK ABOUT THE  
7 STATISTICAL METHODOLOGY EMPLOYED IN THAT TABLE AND WHAT YOUR  
8 VIEW OF IT IS?

9 A TABLE 2; RIGHT?

10 Q OH, I'M SORRY, YOU'RE RIGHT. TABLE 2. TABLE 2.

11 A YOUR HONOR, STATISTICIANS FIT {SIC} REGRESSION  
12 MODELS ALL THE TIME. REGRESSION MODELS ESTABLISH CORRELATION  
13 OR RELATIONSHIP BETWEEN TWO VARIABLES. WHAT WE HAVE IN  
14 TABLE 2 IS THE SLOPE OF THE LINE. COUNSEL, CAN WE SCROLL THIS  
15 UP JUST TO SHOW THAT PICTURE ABOVE? YEAH, THIS FIGURE 2.

16 SO APART FROM ALL OF THE STATISTICS, THE SLOPE OF  
17 THIS LINE IS NEGATIVE .67. SLOPE OF THE HORIZONTAL LINE IS  
18 ZERO. SLOPE OF A VERTICAL LINE IS ONE. SO FROM ZERO AS THE  
19 SLOPE CHANGES, INCREASES, THIS NUMBER INCREASES. IF IT IS  
20 INCREASING, THEN SLOPE BECOMES FROM ZERO TO ONE. IF THE LINE  
21 IS GOING DOWN, THEN THE SLOPE IS NEGATIVE. SO THIS LINE RIGHT  
22 NOW YOU SEE IS GOING DOWN IN FIGURE 2. MEANING AS THE  
23 DISTANCE FROM ATLANTA IS INCREASING, THERE ARE LESS ABORTIONS  
24 PER 1,000 LIVE BIRTHS. SO THAT IS THE SIGNIFICANCE OF THIS  
25 NUMBER. NEGATIVE .67 IS THE SLOPE OF THIS LINE. AND THAT IS

1 A FUNCTION OF THE CORRELATION.

2 Q AND, DOCTOR, DO YOU HAVE AN OPINION ABOUT THAT  
3 NUMBER THAT'S USED FOR THE SLOPE, THE 6.7?

4 A LET ME TAKE A STEP BACK AND SHARE WITH THE COURT,  
5 YOUR HONOR, HOW THIS NUMBER IS DERIVED. NOW, FIRST OF ALL, WE  
6 ARE TALKING ABOUT 1974. THE ERA WHEN THERE WERE LITERALLY NO  
7 COMPUTERS. THERE WAS NO GOOGLE IN 1974. THERE WAS NO SPREAD  
8 OF INFORMATION. THE AUTHORS WHICH WROTE THIS ARTICLE HAD VERY  
9 LIMITED RESOURCES, AND I UNDERSTAND THAT. I HAVE SEEN  
10 ARTICLES WHICH GO BACK IN TIME AND THERE WERE NO COMPUTERS TO  
11 DO PROPER ANALYSIS, COMPLETE ANALYSIS. NOW, CAN WE GO UP JUST  
12 A BIT TO THE FIRST PAGE, PLEASE?

13 Q SURE. GO BACK TO THE FIRST PAGE, PLEASE.

14 A THIS IS GOOD. THIS IS GOOD. THIS IS GOOD. I WANT  
15 TO TALK ABOUT THE METHOD. NOW, YOUR HONOR, IN 1974, THERE  
16 WERE ABOUT 22,000 ABORTIONS IN GEORGIA. 22,000. AND  
17 10 PERCENT OF THOSE ABORTIONS WERE OUTSIDE OF ATLANTA. TEN  
18 PERCENT OF 22,000 IS 2,200 ABORTIONS. SO WHAT THE AUTHORS  
19 HAVE DONE IS THEY HAVE JUST IGNORED THOSE 2,200 ABORTIONS.  
20 AND THEY WERE ALL CARRIED OUT OUTSIDE OF ATLANTA.

21 WHY IS THIS RELEVANT? I'LL EXPLAIN IN A SECOND.  
22 BUT THE AUTHORS JUST IGNORED 2,200 ABORTIONS IN GEORGIA. THEY  
23 JUST IGNORED THE DATA ON 2,200 -- 2,200 ABORTIONS. AND ALL  
24 THE AUTHORS DID WAS THEY COMPUTED THE DISTANCE FROM ATLANTA.  
25 SO THEY LOOKED AT EACH PARISH THE WAY I HAVE DONE IN MY

1 REPORT, DISTANCE OF A PARISH FROM A FACILITY. NOW, IN THIS  
2 CASE THEY LOOKED AT THE DISTANCE OF A PARISH FROM ATLANTA.  
3 THEY ARE PRETENDING ALL OF THE ABORTIONS WERE CARRIED OUT IN  
4 ATLANTA, WHICH IS NOT THE CASE. 2,200 OF THEM WERE CARRIED  
5 OUTSIDE OF THE GREATER ATLANTA AREA. CAN WE GO DOWN A BIT,  
6 PLEASE, NOW TO FIGURE --

7 Q WHERE DO YOU WANT TO GO, DOCTOR?

8 A JUST -- JUST -- HERE IS GOOD. A LITTLE MORE.  
9 THAT'S GOOD. SO WHAT AUTHOR -- YOUR HONOR, IF YOU LOOK AT  
10 FIGURE 2. NOW, IN THIS FIGURE 2, AUTHORS ARE LOOKING AT THE  
11 DISTANCE FROM ATLANTA, THE MILES FROM ATLANTA. WHY? BECAUSE  
12 THEY IGNORED THOSE 2,200 ABORTIONS WHICH WERE CARRIED OUTSIDE  
13 OF ATLANTA.

14 IF THE AUTHORS HAD TAKEN INTO ACCOUNT THOSE 2,200  
15 ABORTIONS IN GEORGIA, THEN SOME OF THOSE DRIVING DISTANCE  
16 WOULD BE LESS. MEANING, IN THIS GRAPH, THERE WOULD BE SOME  
17 POINTS WHICH WOULD BE CLOSER TO THE .00, OR SOMEWHERE CLOSE TO  
18 IT.

19 Q DOCTOR, LET ME JUST INTERRUPT YOU FOR A SECOND AND  
20 TRY TO ASK A CLARIFYING QUESTION. HAD THE 2200 ABORTIONS BEEN  
21 INCLUDED IN THE SAMPLE --

22 A NO.

23 Q I HEAR YOU SAYING THEY WERE NOT. HAD THEY BEEN  
24 INCLUDED, WHAT WOULD THAT HAVE DONE TO THE CONCLUSIONS?

25 A WHAT THAT WOULD DO WOULD BE, THERE WOULD BE SOME

1 POINTS IN THIS GRAPH WHICH WOULD PUT THIS LINE DOWN. THERE  
2 ARE 2,000 -- LOOKING FROM ATLANTA MAKES NO SENSE. IT'S  
3 MEANINGLESS WHEN THERE ARE ABORTIONS CARRIED OUT THROUGHOUT  
4 GEORGIA. TEN PERCENT OF THOSE ABORTIONS WERE CARRIED OUT  
5 OUTSIDE OF ATLANTA. SO THE CORRECT WAY -- A PROPER WAY WOULD  
6 BE TO LOOK AT DISTANCE FROM AN ABORTION CLINIC AND THEN CLAIM  
7 IF WE ARE GOING FAR AWAY FROM ABORTION CLINIC, ARE THE NUMBER  
8 OF ABORTIONS DECREASING OR NOT.

9 BUT THE AUTHORS HAVE JUST IGNORED THOSE 2,200  
10 ABORTIONS. IF THOSE ABORTIONS ARE INCLUDED IN THIS GRAPH,  
11 THEN THE SLOPE OF THIS LINE -- THIS LINE WOULD BE PULLED DOWN.

12 YOUR HONOR, IF YOU LOOK AT THE FIGURE 2 RIGHT NOW,  
13 THESE TWO POINTS, IF YOU LOOK AT DEKALB AND FULTON, THOSE TWO  
14 POINTS ARE ABOVE THE LINE. THEY ARE PULLING THE LINE UP. IN  
15 STATISTICS WE HAVE A CONCEPT OF INFLUENTIAL OBSERVATION. YOUR  
16 HONOR, THERE ARE BOOKS. I TEACH A GRADUATE CLASS IN WHICH I  
17 USE A BOOK AND THE TITLE OF THE BOOK IS *REGRESSION*  
18 *DIAGNOSTICS*, MEANING HOW FEW POINTS CAN PULL THE LINE FAR AWAY  
19 AND EVEN INTUITIVELY.

20 THE FRIGID LINE HERE, YOUR HONOR, THE LINE THAT IS  
21 DRAWN, IS DRAWN USING LEAST SQUARES REGRESSION. WHAT LEAST  
22 SQUARES DOES IS IT LOOKS AT THE DISTANCE AND SQUARES IT. SO  
23 IN THIS GRAPH HERE, THESE TWO POINTS BEING FAR UP HERE, THE  
24 FULTON COUNTY, LOOK AT THE DISTANCE SQUARED. SO IT HAS A HUGE  
25 IMPACT IN PULLING THE LINE UP. IF THE AUTHORS HAD INCLUDED

1 THOSE 2,200 ABORTIONS, THERE WOULD BE SOME POINTS BELOW THIS  
2 LINE HERE AND THEY WOULD PULL THE LINE DOWN.

3 VERY, VERY INTUITIVE STATISTICAL CONCEPT THE  
4 *REGRESSION DIAGNOSTICS*, BUT THE AUTHORS HAVE NOT DONE THAT.  
5 AND THAT'S THE REASON THIS LINE IS WAY UP. THE AUTHORS SHOULD  
6 INCLUDE THOSE 2,200 ABORTIONS AND THEN THIS LINE WOULD BECOME  
7 FLAT BECAUSE THOSE OBSERVATIONS WOULD PULL THIS LINE DOWN.

8 Q DOCTOR, IF I UNDERSTAND WHAT YOU'RE SAYING, YOU'RE  
9 MAKING TWO POINTS. LET ME SEE IF I CAN ASK YOU ABOUT THEM TO  
10 CLARIFY. THE FIRST POINT YOU'RE MAKING IS THIS ARTICLE ON ITS  
11 OWN TERMS DOES NOT CLAIM CAUSATION BETWEEN DISTANCE TRAVELED  
12 AND ABORTION; RIGHT?

13 A RIGHT.

14 Q DID I UNDERSTAND THAT CORRECTLY?

15 A YEAH. I TALKED ABOUT THAT FIRST AND THEN I MOVED  
16 ON, YES, YOU'RE RIGHT.

17 Q AND THE SECOND POINT IS, ON ITS OWN TERMS THE  
18 CORRELATION BETWEEN TRAVEL DISTANCE AND ABORTION THAT THE  
19 ARTICLE REPORTS IS FLAWED?

20 A CORRECT.

21 Q BECAUSE OF THE SAMPLE USED?

22 A BECAUSE -- NOW, THAT'S THE FIRST ISSUE. THE AUTHORS  
23 HAVE JUST THROWN AWAY 2,200 ABORTIONS WHICH WERE CARRIED OUT  
24 IN 1974 IN GEORGIA.

25 Q OKAY. IS THERE ANY OTHER ISSUE THERE?

1           A     NO.

2           Q     YOU INDICATED THERE WAS ANOTHER ISSUE ON STATISTICAL  
3     METHODOLOGY THAT YOU --

4           A     I HAVE TWO MORE ISSUES.  THE NEXT ONE IS ANY COUNTY  
5     WHICH HAD FEWER THAN TEN ABORTIONS -- CAN WE FIND THAT,  
6     PLEASE, IN THE PAPER?  GO TO THE FIRST PAGE, PLEASE.  THIS IS  
7     GOOD.  THIS IS GOOD.

8                     YOUR HONOR, UNDER THE "METHOD" COLUMN, UNDER THE  
9     "METHOD" HEADING, IF YOU LOOK AT THIS LONG PARAGRAPH, THE LAST  
10    FOUR LINES IS WHERE THEY TALK ABOUT.  "THEFORE, WHENEVER  
11    SUBGROUPS OF THE POPULATIONS WERE COMPARED, COUNTIES WERE  
12    EXCLUDED IN WHICH THERE HAD BEEN FEWER THAN 10 BIRTHS."  
13    STATISTICIANS DON'T THROW ANY DATA AWAY.  THIS IS  
14    MORE INFORMATIVE.  ANY COUNTY --

15                    **MS. LEVINE:**  YOUR HONOR, IF WE COULD JUST POSE AN  
16    OBJECTION.  WE'VE NOW HEARD A SERIES OF NEW OPINIONS THAT WE  
17    HAVE NOT HEARD BEFORE, AND WE WOULD LIKE THE OPPORTUNITY TO  
18    MAKE OUR RECORD AND RESTATE OUR OBJECTION WITH REGARD TO THIS  
19    ENTIRE LINE OF TESTIMONY.

20                    **THE COURT:**  WELL, WHAT I INTENDED TO RULE, MY  
21    INTENTION WAS, AND I HAVEN'T READ THE DEPOSITION, SO I'M NOT  
22    IN A POSITION TO SAY WHAT WAS AND WHAT WAS NOT COVERED IN THE  
23    DEPOSITION, BUT BECAUSE OF THE REASON WE HAVE THE NOTICE  
24    REQUIREMENT IS TO BE ABLE TO ALLOW THE OPPONENT TO PREPARE FOR  
25    THE TRIAL TESTIMONY.

1 I INTENDED TO RULE THAT ANYTHING THAT WAS COVERED IN  
2 THE DEPOSITION IS FAIR GAME. ANYTHING THAT WASN'T, IS NOT  
3 FAIR GAME. AND WHAT I'M HEARING COUNSEL SAY IS THAT WHAT  
4 DR. SOLANKY IS NOW DOING IS WANDERING INTO NEW TERRITORY. AND  
5 SO I'M NOT IN A POSITION TO SAY THAT'S RIGHT OR NOT.

6 I'M JUST SAYING MY RULING IS THAT HE CAN TESTIFY ON  
7 THE SUBJECT AREAS THAT HE GAVE TESTIMONY IN HIS DEPOSITION BUT  
8 NOT OTHERWISE.

9 MR. DUNCAN: I UNDERSTAND, YOUR HONOR. IF YOU'LL  
10 GIVE ME ONE SECOND, LET ME JUST LOOK AT THE DEPOSITION.

11 MS. LEVINE: IF I MAY, I JUST HAVE AN ASPECT OF THE  
12 DEPOSITION THAT I'D LIKE TO BRING TO YOUR HONOR'S ATTENTION  
13 AND ESTABLISH FOR THE RECORD, IF I MAY?

14 THE COURT: WELL, LET'S GET ONE THING DONE AT A  
15 TIME. WHY DON'T YOU GO AHEAD AND LOOK AT DR. SOLANKY'S  
16 DEPOSITION AND SEE IF YOU WANT TO RESPOND TO WHAT COUNSEL HAS  
17 RAISED.

18 MR. DUNCAN: I THINK THERE'S JUST ONE MORE THING I'D  
19 LIKE TO ASK ABOUT THAT THAT I SEE WAS COVERED IN THE  
20 DEPOSITION.

21 THE COURT: THEN THE OBJECTION IS SUSTAINED.

22 WHAT'S YOUR NEXT OBJECTION?

23 MS. LEVINE: I WOULD FIRST POINT OUT THAT AT THE  
24 OUTSET OF THE DEPOSITION THE WITNESS WAS ASKED IF HE HAD  
25 LOOKED AT ANY ADDITIONAL SOURCES. HE MENTIONED TWO. AND THEN

1 HE SAID -- I ASKED: "DO YOU INTEND TO MAKE ANY MODIFICATIONS  
2 TO YOUR REPORT?" HE SAID, "NO, NOT AT THIS TIME." AND THE  
3 ENTIRE DEPOSITION, THESE SUBJECTS WERE NOT COVERED UNTIL AT  
4 THE VERY END, MR. JOHNSON, IN HIS PORTION OF THE DEPOSITION,  
5 ASKED A CERTAIN AMOUNT OF QUESTIONS ABOUT THIS STUDY.

6 AND UNDER THE RULE 26 (A)(2)(D), LITTLE 2, "EVIDENCE  
7 THAT IS INTENDED TO REBUT OPINIONS ON THE SAME SUBJECT MATTER  
8 THAT ARE IDENTIFIED BY AN EXPERT MUST BE DISCLOSED WITHIN 30  
9 DAYS." AND STATING AT THE BEGINNING OF A DEPOSITION THAT  
10 THOSE OPINIONS WEREN'T GOING TO BE DISCLOSED AND THEN  
11 ANSWERING QUESTIONS OF YOUR OWN COUNSEL AT THE END --

12 THE COURT: WELL, I UNDERSTOOD -- AND ASSUMPTIONS  
13 ARE DANGEROUS THINGS. I ASSUMED --

14 MR. DUNCAN: LET ME -- I'M SORRY.

15 THE COURT: I ASSUMED THAT THE DEPOSITION QUESTIONS  
16 ABOUT DR. KATZ'S REPORT CAME FROM PLAINTIFFS' COUNSEL, AND I'M  
17 HEARING YOU SAY THAT, NO, THIS -- SO THAT SORT OF -- THAT SORT  
18 OF ACTS AS AN ADDENDUM TO THE REPORT AND, AGAIN, I THINK THAT  
19 DEFEATS THE PURPOSE.

20 BUT IN ANY EVENT, MR. DUNCAN, I WANT YOU TO REPLY  
21 AND RESPOND.

22 MR. DUNCAN: OKAY. YOUR HONOR, I DON'T ACTUALLY  
23 THINK I HAVE ANYMORE QUESTIONS FOR DR. SOLANKY. I WOULD ADD,  
24 HOWEVER, I'M LOOKING AT THE DEPOSITION WHERE DR. SOLANKY SAYS  
25 AT THE BEGINNING OF THE DEPOSITION THAT HE REVIEWED DR. KATZ'S

1 REPORT. SO I DON'T THINK IT WOULD BE FRUITFUL TO HAVE ANYMORE  
2 QUESTIONS ABOUT THAT, SO I'M FINISHED WITH THE WITNESS, YOUR  
3 HONOR.

4 THE COURT: ALL RIGHT. THAT'S GOOD.

5 LOOK, WE'VE BEEN GOING CLOSE TO TWO HOURS. LET'S  
6 TAKE TEN MINUTES.

7 (WHEREUPON COURT WAS IN RECESS.)

8 (WHEREUPON COURT WAS RESUMED.)

9 THE COURT: YOU MAY BE SEATED.

10 CROSS EXAMINATION?

11 MS. LEVINE: AND, YOUR HONOR, WE WOULD LIKE TO MAKE  
12 THE MOTION TO STRIKE THE PRIOR TESTIMONY. I COULD GO THROUGH  
13 THAT NOW OR SUBSEQUENTLY, AS YOU PREFER.

14 THE COURT: GO AHEAD NOW. GO AHEAD AND DO IT.

15 MS. LEVINE: OKAY. WE MOVE TO STRIKE THE ENTIRETY  
16 OF THE WITNESSES' TESTIMONY WITH REGARDS TO ANY OPINIONS  
17 OFFERED BY DR. KATZ AND THE CONTENTS OF THE SHELTON STUDY.  
18 THE QUESTIONS -- WE DID NOT HAVE THESE SUPPLEMENTAL OPINIONS  
19 EVER DISCLOSED TO COUNSEL FOR THE PLAINTIFFS.

20 AT THE DEPOSITION, DR. SOLANKY STATED THAT HE DID  
21 NOT INTEND TO MAKE ANY MODIFICATIONS OF HIS REPORT, THAT'S AT  
22 DEPOSITION PAGE 9-15 THROUGH 10-5. ALL OF THE QUESTIONS ASKED  
23 AT DEPOSITION WITH REFERENCE TO DR. KATZ'S OPINIONS AND THE  
24 SHELTON STUDY WERE ASKED BY COUNSEL FOR THE DEFENDANT AT THE  
25 CONCLUSION OF THE DEPOSITION. WITH REGARD TO THE ROBERTS'

1 ARTICLE, THAT ARTICLE WAS MADE PUBLIC IN MARCH --

2 THE COURT: THAT'S BEEN RULED ON. THE ROBERTS'  
3 ARTICLE WAS ALREADY RULED ON, SO THAT DOES NOT NEED TO BE A  
4 PART OF YOUR MOTION TO STRIKE.

5 MS. LEVINE: UNDERSTOOD.

6 ANY REBUTTAL OPINIONS RELATED TO DR. KATZ AND THE  
7 SHELTON STUDY WERE NOT PROPERLY DISCLOSED UNDER FEDERAL RULE  
8 OF CIVIL PROCEDURE 26(A)(2)(D), SMALL 2, AND THE PLAINTIFFS'  
9 DID NOT HAVE THE OPPORTUNITY TO HEAR THE NEW OPINIONS AND  
10 PREPARE CROSS EXAMINATION ON THOSE OPINIONS.

11 THE COURT: ALL RIGHT. THANK YOU.

12 MR. DUNCAN?

13 MR. DUNCAN: YOUR HONOR, AT THE BEGINNING OF HIS  
14 DEPOSITION, DR. SOLANKY REVEALED THAT HE HAD READ THE REPORT  
15 BY DR. KATZ AND INCLUDING THE *SHELTON* AND *DOBIE* PAPERS IN THAT  
16 PARAGRAPH THAT WE WERE DISCUSSING AND, THEREFORE, THE  
17 PLAINTIFFS HAVE HAD NOTICE OF WHAT DR. SOLANKY'S OPINION IS  
18 WITH RESPECT NOT ONLY TO DR. KATZ'S REPORT BUT SPECIFICALLY  
19 WITH RESPECT TO THE SHELTON STUDY, WHICH WE WERE DISCUSSING IN  
20 HIS TESTIMONY.

21 THE COURT: I'M GOING TO GRANT THE MOTION TO STRIKE.  
22 AND, YOU KNOW, WHEN YOU SAY AT THE BEGINNING OF THE DEPOSITION  
23 HE SAYS HE READ DR. KATZ'S DEPOSITION. IF I'M SITTING IN THE  
24 PLAINTIFF'S CHAIR, I'M NOT GOING TO ASK A SINGLE QUESTION  
25 BECAUSE THE ONLY QUESTION I WANT TO KNOW IS, "ARE YOU GOING TO

1 SUPPLEMENT YOUR REPORT?" HE SAID, "NO." THE FACT THAT HE'S  
2 READ ADDITIONAL MATERIALS DOESN'T GIVE RISE TO THE OBLIGATION  
3 ON THE PART OF THE PLAINTIFF TO ASK QUESTIONS ABOUT IT. THE  
4 OBLIGATION IS ON THE PART OF THE EXPERT OR COUNSEL FOR EXPERT  
5 TO SUPPLEMENT THE REPORT THEN GIVE HIM RISE TO THE OPPORTUNITY  
6 TO TAKE A SUPPLEMENTAL DEPOSITION OR DO WHATEVER. THAT WAS  
7 NOT DONE IN THIS CASE.

8 AND DURING THE BREAK, I LOOKED AT THE SCHEDULING  
9 ORDER, WHICH WAS AN AGREED SCHEDULING ORDER, I SIGNED IT  
10 BECAUSE EVERYBODY AGREED TO IT, SO I DIDN'T IMPOSE THIS ON  
11 ANYBODY. THIS WAS SELF-IMPOSED AMONG THE PARTIES, WAS THAT  
12 REBUTTAL EXPERT REPORTS WOULD BE FILED ON OR BEFORE  
13 SEPTEMBER 1ST, 2014.

14 AND, OF COURSE, SORT OF THE TWIST TO THIS -- AND THE  
15 ROBERTS' REPORT HAS ALREADY BEEN RULED UPON, BUT THAT WAS  
16 REVEALED IN MARCH, BUT I ALSO LOOKED AT (26)(A)(2)(D), WHICH  
17 DOES SAY THAT IF THERE IS A SUPPLEMENTAL DISCLOSURE, WHICH  
18 COULDN'T HAVE BEEN MADE PRIOR TO THE TIME THE ARTICLE WAS  
19 PUBLISHED, THEN THERE IS A REQUIREMENT THAT THERE BE A  
20 SUPPLEMENTAL REPORT AT LEAST 30 DAYS BEFORE THE TRIAL.

21 WELL, THERE WAS NO SUPPLEMENTAL REPORT WITH RESPECT  
22 TO DR. ROBERTS -- NOT DR. ROBERTS -- THE ROBERTS' REPORT. SO,  
23 YOU KNOW, I DON'T LIKE GOTCHAS. I DON'T LIKE TECHNICAL RULES  
24 THAT TRAP LAWYERS, BUT IN THIS CASE -- WHAT I LOOK TO IN MY  
25 DECISIONS ON THIS KIND OF THING WAS SOMEBODY ACTUALLY

1 PREJUDICED AND I THINK THAT IS THE CASE HERE AND THAT'S WHY I  
2 THINK THE MOTION TO STRIKE IS WELL-FOUNDED AND THAT IS WHY I'M  
3 GOING TO GRANT IT.

4 MR. DUNCAN: THANK YOU, YOUR HONOR.

5 CROSS EXAMINATION

6 BY MS. LEVINE:

7 Q GOOD AFTERNOON, DR. SOLANKY. I'M ZOEY LEVINE. I  
8 REPRESENT THE PLAINTIFFS IN THIS MATTER.

9 A GOOD AFTERNOON.

10 Q YOU TESTIFIED EARLIER THAT YOUR TESTIMONY IN THIS  
11 CASE AND YOUR OPINIONS IN THIS CASE ARE FOCUSED ON THE TRAVEL  
12 DISTANCE IN MILES BETWEEN LOUISIANA PARISHES AND ABORTION  
13 CLINICS; RIGHT?

14 A RIGHT.

15 Q AND THERE'S NOTHING IN YOUR TESTIMONY ABOUT THE  
16 IMPACT OF ACTUAL TRAVEL TIME OR COSTS ON A WOMAN'S ABILITY TO  
17 REACH A CLINIC?

18 A THE STATISTICS WHICH I HAVE PRODUCED ARE FOR THE  
19 DISTANCE. REGARDING TRAVEL TIME, TRAVEL TIME IS MORE OR LESS  
20 A FUNCTION OF THE DISTANCE.

21 Q HAVE YOU OFFERED AN OPINION IN THIS CASE ABOUT  
22 TRAVEL TIME?

23 A NO, I HAVE NOT.

24 Q HAVE YOU OFFERED AN OPINION IN THIS CASE ABOUT COST  
25 OF TRAVEL?

1           A     AGAIN, I HAVE NOT AND COST, AGAIN, IS A FUNCTION OF  
2 THE TRAVEL DISTANCE.

3           Q     THERE'S NOTHING IN YOUR TESTIMONY OR YOUR OPINIONS  
4 ABOUT THE IMPACT OF ACCESS TO A CAR ON A WOMAN'S ABILITY TO  
5 REACH A CLINIC?

6           A     NO.

7           Q     THERE'S NOTHING IN YOUR TESTIMONY ABOUT THE IMPACT  
8 OF GAS PRICES ON A WOMAN'S ABILITY TO REACH A CLINIC?

9           A     NO.

10          Q     THERE IS NOTHING IN YOUR TESTIMONY ABOUT THE  
11 AVAILABILITY OR COST OF PUBLIC TRANSPORTATION; RIGHT?

12          A     RIGHT.

13          Q     YOU OFFER NO OPINION ABOUT THE IMPACT OF WAITING  
14 PERIODS ON A WOMAN'S ABILITY TO REACH A CLINIC?

15          A     YES.

16          Q     THERE'S NOTHING IN YOUR TESTIMONY ABOUT THE IMPACT  
17 OF POTENTIAL LOST WAGES ON A WOMAN'S ABILITY TO REACH A  
18 CLINIC?

19          A     CORRECT.

20          Q     YOU HAVE NO OPINION ON THE IMPACT OF CHILDCARE COSTS  
21 ON A WOMAN'S ABILITY TO REACH A CLINIC?

22          A     CORRECT.

23          Q     YOU HAVE NO OPINION ON THE IMPACT OF HAVING TO MAKE  
24 TWO TRIPS OR THE COST OF AN OVERNIGHT STAY ON A WOMAN'S  
25 ABILITY TO REACH A CLINIC?

1 A CORRECT.

2 Q YOU ALSO TESTIFIED THAT YOU ASSUME THAT TRAVEL  
3 DISTANCE IS THE ONLY CRITERIA FOR A WOMAN IN SELECTING AN  
4 ABORTION FACILITY; RIGHT?

5 A CORRECT. I'M TALKING ABOUT THE TRAVEL DISTANCE, AND  
6 THAT'S THE ASSUMPTION.

7 Q SO YOU DIDN'T CONSIDER WHETHER THE GIVEN ABORTION  
8 FACILITY WOULD OFFER THE SERVICES THAT THE WOMAN REQUIRED?

9 A I DON'T UNDERSTAND THE QUESTION, PLEASE.

10 Q FOR EXAMPLE, YOU DIDN'T CONSIDER WHETHER THE  
11 ABORTION FACILITY NEAREST TO THE WOMAN'S PARISH WOULD PROVIDE  
12 A SECOND TRIMESTER ABORTION IF THAT'S WHAT SHE NEEDED?

13 A I'M NOT UNDERSTANDING THE QUESTION. I LOOKED AT THE  
14 TRAVEL DISTANCE -- THE DISTANCE. YOU'RE TALKING ABOUT SECOND  
15 TRIMESTER ABORTION HERE?

16 Q LET ME PUT IT THIS WAY. DO YOU HAVE ANY INFORMATION  
17 ABOUT WHAT SERVICES ARE OFFERED AT ANY GIVEN ABORTION  
18 FACILITY?

19 A NO. I'M JUST ASSUMING THEY PROVIDE ABORTION.

20 Q AND YOU ALSO ASSUMED THAT ANY WOMAN IN LOUISIANA IS  
21 EQUALLY LIKELY TO SEEK AN ABORTION REGARDLESS OF THE PARISH IN  
22 WHICH SHE RESIDES?

23 A CORRECT.

24 Q AND IN FORMING YOUR OPINIONS, YOU DIDN'T CONSIDER  
25 DATA ON THE AGES AND PARISH OF RESIDENCE OF ACTUAL ABORTION

1 PATIENTS IN LOUISIANA?

2 A NO. I LOOKED AT THE DATA WHICH WAS AVAILABLE ON THE  
3 DHH SITE. I COULD NOT MAKE ANY SUCH CONCLUSIONS BASED ON THAT  
4 DATA.

5 Q SO THERE WAS AVAILABLE DATA -- DATA AVAILABLE TO YOU  
6 ABOUT THE AGES AND PARISHES OF RESIDENCE OF ACTUAL ABORTION  
7 PATIENTS?

8 A LET'S TAKE THEM ONE BY ONE.

9 Q I JUST WANT TO KNOW IF THAT DATA WAS AVAILABLE TO  
10 YOU.

11 A YOU ASKED ME A NUMBER OF THINGS. I THINK IF YOU  
12 LOOK AT THE DHH WEBSITE THEY PROVIDE THE DATA BASED ON AGES.  
13 BUT THERE ARE A NUMBER OF OTHER THINGS YOU JUST MENTIONED IN  
14 THAT ONE SENTENCE.

15 Q SO THERE'S DATA AVAILABLE ON THE AGES OF ACTUAL  
16 ABORTION PATIENTS IN LOUISIANA?

17 A CORRECT.

18 Q IS THERE INFORMATION AVAILABLE ABOUT THE PARISH OF  
19 RESIDENCE OF ACTUAL ABORTION PATIENTS?

20 A THAT'S NOT PUBLICLY AVAILABLE ANYWHERE, OR AT LEAST  
21 I COULD NOT FIND IT.

22 Q IF WE COULD -- YOU WERE DEPOSED IN THIS CASE IN  
23 JANUARY OF THIS YEAR; CORRECT?

24 A CORRECT.

25 Q AND YOU TESTIFIED UNDER OATH AT THAT DEPOSITION;

1 CORRECT?

2 A YES.

3 Q AND YOUR ANSWER REGARDING THIS ISSUE WAS DIFFERENT  
4 AT THAT TIME, WAS IT NOT?

5 THE COURT: HE NEEDS TO BE SHOWN A COPY OF THE  
6 DEPOSITION.

7 THE WITNESS: YEAH.

8 BY MS. LEVINE:

9 Q IF WE COULD LOOK AT DEPOSITION PAGE 22, LINE 8.

10 A WHERE AM I LOOKING AT, PLEASE?

11 Q SO PAGE 22, YOU SHOULD LOOK AT LINE 8, AND I'M JUST  
12 GOING TO READ A BIT OF IT. YOU WERE ASKED: "SO THERE WAS A  
13 DATA SET THAT WAS PROVIDED TO YOU THAT YOU DID NOT ANALYZE?"

14 YOU SAID: "THAT I COULD NOT ANALYZE DUE TO TIME  
15 CONSTRAINTS, CORRECT."

16 QUESTION: "WHAT WAS THAT DATA SET?"

17 "IT'S DHH DATA SET TALKING ABOUT ABORTIONS IN  
18 LOUISIANA."

19 QUESTION: "WHAT ABOUT ABORTIONS IN LOUISIANA?"

20 ANSWER: "IT TALKS ABOUT THE PATIENT'S RESIDENCE, IT  
21 TALKS ABOUT PATIENT'S AGE, IT TALKS ABOUT COMPLICATIONS, ET  
22 CETERA."

23 WERE THOSE THE QUESTIONS AND WERE THOSE YOUR  
24 ANSWERS?

25 A YOU KNOW, AS I MENTIONED IN MY DEPOSITION, I DIDN'T

1 HAVE THE TIME TO LOOK AT IT. IF YOU GO TO DHH'S WEBSITE,  
2 THERE'S QUITE A BIT OF DATA THERE BUT THIS DATA IS NOT  
3 AVAILABLE PUBLICLY, AND I CAN TELL YOU THAT RIGHT NOW. I  
4 HAVEN'T THE TIME TO GO BACK, LOOK AT IT CAREFULLY. THIS DATA  
5 IS NOT AVAILABLE. MAYBE AT THAT TIME I WAS UNDER TIME RUSH  
6 AND I'M TALKING ABOUT I DID NOT HAVE TIME. SO I COULD HAVE  
7 MISCHARACTERIZED MY RESPONSE THERE. BUT THIS I COULD -- EVEN  
8 AS I SIT HERE, I COULD NOT SEE THE DATA ON THESE THINGS THERE  
9 ON THE DHH'S WEBSITE.

10 Q WAS THERE A DATA SET PROVIDED TO YOU THAT YOU DID  
11 NOT ANALYZE?

12 A THERE'S QUITE A BIT OF DATA SET ON DHH'S WEBSITE,  
13 WHICH I DIDN'T HAVE THE TIME TO LOOK AT THEN, AND I HAVE NOT  
14 EVEN ANALYZED IT NOW.

15 Q YOU ALSO ASSUMED THAT ANY WOMAN AGE 15 TO 44 IS  
16 EQUALLY LIKELY TO SEEK AN ABORTION; CORRECT?

17 A THAT IS RIGHT.

18 Q YOUR OPINION RELATES ONLY TO THE AVERAGE DISTANCE  
19 WOMEN WILL HAVE TO TRAVEL ONE WAY; ISN'T THAT RIGHT?

20 A LET ME COME BACK AND ANSWER THIS LAST QUESTION WHICH  
21 YOU ASKED ME.

22 Q WE'VE MOVED ON.

23 THE COURT: I'M SORRY. HE'S ENTITLED TO EXPLAIN HIS  
24 ANSWER. GO AHEAD AND EXPLAIN IT, DOCTOR.

25 THE WITNESS: YOUR HONOR, THE WEBSITE HAS SOME DATA

1 ON AGES, AND I LOOKED AT THE DATA, I DON'T SEE -- I DID NOT  
2 SEE ANY PATTERN WHICH I COULD USE IN MY ANALYSIS ANY FURTHER.

3 THE COURT: THE QUESTION I HAD TOO, WHEN YOU WERE  
4 TESTIFYING, YOU'VE TAKEN A GROUP OF WOMEN FROM 15 TO 44 --

5 THE WITNESS: RIGHT.

6 THE COURT: LOOK, I WILL CONFESS TO YOU AS I'VE  
7 CONFESSED TO ALL, MY CLASS IN STATISTICS IS WHAT GOT ME TO  
8 CHANGE MY MAJOR, OKAY? SO THIS COULD BE A STUPID QUESTION.  
9 BUT IF I UNDERSTOOD HER QUESTION, IT'S THE SAME AS MINE, WHICH  
10 IS, YOU HAVE ASSUMED THAT A 15 YEAR OLD HAS THE SAME ABILITY  
11 OR THE SAME PROPENSITY TO GET AN ABORTION THAT A 30 YEAR OLD  
12 AND A 44 YEAR OLD; CORRECT?

13 THE WITNESS: YOUR HONOR, BASED ON THE DATA, I COULD  
14 NOT SEE A PATTERN THAT A 15 YEAR OLD IS LESS LIKELY. THE DATA  
15 DOES NOT GIVE A 15 YEAR OLD, IT GIVES AN INTERVAL, THAT IN  
16 THIS AGE INTERVAL AND THAT OTHER AGE INTERVAL, AND I COULD NOT  
17 SEE ANY PATTERN THERE.

18 THE COURT: ARE YOU SAYING THERE'S INFORMATION --  
19 THAT THE INFORMATION THERE SHOWS THAT IT'S ALL THE SAME OR  
20 THERE'S SIMPLY NOT ENOUGH INFORMATION TO SAY WHETHER THERE ARE  
21 SUBSETS OF PEOPLE WITHIN THAT 15 TO 44 THAT WOULD BE MORE  
22 LIKELY TO HAVE AN ABORTION THAN OTHERS?

23 THE WITNESS: THE SECOND ONE, YOUR HONOR.

24 THE COURT: OKAY. ALL RIGHT. THANK YOU.

25 BY MS. LEVINE:

1 Q SO YOUR OPINION RELATES ONLY TO THE AVERAGE  
2 DISTANCES WOMEN WILL HAVE TO TRAVEL ONE WAY; CORRECT?

3 A CORRECT.

4 Q AND YOU AGREE THAT YOUR NUMBERS ON AVERAGE DISTANCE  
5 WOULD HAVE TO BE DOUBLED TO REPRESENT A ROUNDTRIP TRIP?

6 A CORRECT.

7 Q AND YOUR NUMBERS ON AVERAGE DISTANCE WOULD HAVE TO  
8 BE QUADRUPLED TO REPRESENT TWO ROUNDTRIPS?

9 A CORRECT.

10 Q AND YOU GAVE TESTIMONY ABOUT THE AVERAGE DISTANCES  
11 FOR WOMEN IN LOUISIANA TO TRAVEL TO FACILITIES AND SEVERAL  
12 HYPOTHETICAL SCENARIOS; RIGHT?

13 A CORRECT.

14 Q AND IN YOUR DESCRIPTION OF WEIGHTED AVERAGE, YOU  
15 ACKNOWLEDGE THAT THAT FIGURE MEANS THAT SOME WOMEN WILL DRIVE  
16 FARTHER THAN THAT DISTANCE; RIGHT?

17 A CORRECT. THAT'S THE MEANING OF AVERAGE. THAT WHAT  
18 IS HAPPENING ON THE AVERAGE -- A BIGGER PICTURE OF WHAT IS  
19 HAPPENING. IF I SAY THE AVERAGE AGE IN A PARTICULAR ROOM IS  
20 38, THAT DOES NOT MEAN EVERY SINGLE PERSON IN THAT ROOM IS 38  
21 YEARS OLD. SOME COULD BE MORE; SOME COULD BE LESS, BUT IT  
22 GIVES YOU THE IDEA OVERALL OF THE AGE GROUP.

23 Q NOW, YOU GAVE SOME TESTIMONY IN THE FORM OF A  
24 PROFFER. I'M GOING TO ASK A FEW QUESTIONS ABOUT THAT  
25 TESTIMONY.

1 THE COURT: OKAY. THIS QUESTIONING IS ON THE  
2 PROFFER?

3 MS. LEVINE: CORRECT.

4 THE COURT: I JUST WANT TO THE RECORD TO BE CLEAR.  
5 OKAY.

6 BY MS. LEVINE:

7 Q THE CALCULATIONS THAT YOU DID REGARDING THE  
8 PERCENTAGE OF WOMEN THAT LIVED OUTSIDE, 50, 100, OR 150 MILES  
9 OF A PARTICULAR CLINIC, THOSE CALCULATIONS WERE DONE AFTER YOU  
10 SUBMITTED YOUR REPORT; CORRECT?

11 A TWO THINGS. FIRST OF ALL, I HAVE PROVIDED THE  
12 PERCENTAGE OF WOMEN WHO WOULD DRIVE 50 MILES OR LESS,  
13 100 MILES OR LESS, AND 150 MILES OR LESS. AND AS SUCH, THERE  
14 ARE NO CALCULATIONS. THAT DATA IS ALREADY THERE. ALL SIMPLY  
15 I DID WAS LOOKED AT THE PERCENTAGE OF THE NUMBERS WHICH ARE  
16 LESS THAN 50.

17 Q ARE THESE PERCENTAGES IN THE REPORT?

18 A THEY ARE NOT IN THE REPORT AS A PERCENTAGE.

19 Q AND WHEN DID YOU MAKE THE CALCULATIONS TO ARRIVE AT  
20 THESE PERCENTAGE NUMBERS? AFTER YOU SUBMITTED YOUR REPORT?

21 A ACTUALLY, I NEVER SAID -- THAT'S JUST THERE. CAN  
22 YOU ASK THE QUESTION AGAIN?

23 Q SURE. THE PERCENTAGES THAT YOU SPOKE ABOUT,  
24 50 MILES OR LESS, 100 MILES OR LESS, 150 MILES OR LESS THAT  
25 ARE IN THE EXHIBIT THAT YOU WENT OVER WITH COUNSEL --

1 A OKAY. NOW I UNDERSTAND.

2 Q -- THOSE FIGURES, WHEN WERE THOSE CALCULATED?

3 A I CALCULATED THOSE WHEN I WAS CREATING THESE  
4 EXHIBITS.

5 Q THAT WOULD HAVE BEEN WITHIN THE PAST COUPLE OF  
6 WEEKS?

7 A NO. WHEN I WAS CREATING THESE EXHIBITS IN MY  
8 TESTIMONY, I WENT STEP BY STEP. THAT I LOOKED AT THE GRAPH OF  
9 THE MAP OF LOUISIANA, I DREW THESE CIRCLES AROUND THE TWO  
10 ABORTION CLINICS AND THEN IN MY REPORT, I HAD PROVIDED WHAT  
11 THOSE NUMBERS ARE BY CLEAR -- BY PARISH. AND ALL I DID WAS  
12 ADDED UP THOSE NUMBERS BY PERCENTAGES. SO TO ANSWER YOUR  
13 QUESTION, I DID THAT WHEN I WAS CREATING THOSE EXHIBITS.

14 Q AND WHEN WERE YOU CREATING THOSE EXHIBITS?

15 A A FEW DAYS BEFORE -- SOME TIME -- I THINK BEGINNING  
16 OF JUNE SOME TIME.

17 Q BEGINNING OF JUNE?

18 A RIGHT. ALL THOSE GRAPHS, THAT'S WHEN I WAS CREATING  
19 THE EXHIBITS, THAT'S WHEN I DID THAT.

20 Q OKAY. AND IN THE MAP THAT YOU SPOKE ABOUT WHERE  
21 THERE'S CIRCLES AROUND THE TWO CLINICS, I'D LIKE TO ASK YOU A  
22 QUESTION ABOUT THAT. THE CIRCLES THAT YOU DREW, DO THOSE  
23 CIRCLES REFLECT -- AND PARDON THE COLLOQUIAL TERM -- DISTANCE  
24 AS THE CROW FLIES OR DOES IT REFLECT DISTANCES AS YOU  
25 EXTRACTED FROM GOOGLE REPRESENTING DRIVING DISTANCES?

1 A THE FIRST ONE.

2 Q AS THE CROW FLIES?

3 A CORRECT.

4 Q SO THE PROTRACTOR EXAMPLE THAT THE JUDGE OFFERED WAS  
5 APPROPRIATE?

6 A ABSOLUTELY. WHAT THE JUDGE SAID IS ABSOLUTELY  
7 RIGHT. PUT A PROTRACTOR, DRAW A CIRCLE. AND IN MY TESTIMONY  
8 EARLIER I EXPLAINED THAT I DREW THESE CIRCLES JUST TO  
9 VISUALIZE THAT HOW MUCH OF THE DISTANCE THESE TWO CLINICS, THE  
10 ONE IN SHREVEPORT AND THE ONE IN NEW ORLEANS COVER. AND THEN  
11 I STARTED ADDING THOSE NUMBERS IN THOSE PARISHES TO SEE WHAT  
12 PERCENTAGE OF LOUISIANA WOMEN WOULD FALL IN THAT. AND I  
13 EXPLAINED EARLIER THAT I HAD THOSE ACTUAL DRIVING DISTANCES  
14 ALSO AVAILABLE, AND I REPORTED THOSE AS WELL.

15 Q SO THE REMAINDER OF YOUR REPORT DEALS WITH DRIVING  
16 DISTANCES AS PROVIDED BY GOOGLE WHEREAS THE CIRCLE CHARTS  
17 REFLECT DISTANCE AS THE CROW FILES, NOT ACCOUNTING FOR --

18 A THAT IS ONLY A VISUALIZATION OF WHAT I STATE IN MY  
19 REPORT SO THAT JUDGE CAN BETTER UNDERSTAND.

20 Q BUT YOUR REPORT, ASIDE FROM THIS, REFLECTS DRIVING  
21 DISTANCE ACCORDING TO GOOGLE; CORRECT?

22 A CORRECT.

23 Q SO THE CIRCLES REFLECT THE DRIVING DISTANCE  
24 ACCORDING TO GOOGLE OR THEY REFLECT THE DISTANCE AS THE CROW  
25 FILES?

1           **MR. DUNCAN:** OBJECTION, YOU HONOR. ASKED AND  
2 ANSWERED.

3           **THE COURT:** YEAH. I UNDERSTOOD HIM TO SAY THAT IT  
4 WAS AS THE CROW FILES ON THE GRAPH, IT'S GOOGLE PER, I  
5 SUPPOSE, A ROAD MAP ON HIS OTHER CALCULATION.

6 **BY MS. LEVINE:**

7           **Q**     AND FOR THE EXHIBIT, AND IT'S EXHIBIT 154, WE CAN  
8 LOOK AT IT IF YOU WANT, BUT THE ONE YOU'LL RECALL THAT  
9 INVOLVES THE PERCENTAGES OF 50 MILES OR LESS, 100 MILES OR  
10 LESS, 150 MILES OR LESS, DOES THIS REFLECT DATA FROM GOOGLE  
11 DRIVING DISTANCES OR DOES IT REFLECT DATA FROM THE CROW FLIES?

12           **A**     THIS INVOLVES THE DATA FROM MY REPORT, THE GOOGLE  
13 DRIVING DISTANCES. LET ME SAY THIS JUST TO CLARIFY. I LOOKED  
14 AT THE LOUISIANA MAP, I DREW THOSE CIRCLES JUST TO VISUALIZE  
15 WHERE IS 100 MILES FROM THESE TWO CLINICS, WHERE IS 150 MILES,  
16 AND I COULD SEE WHICH COUNTIES FALL WITHIN THAT 100 MILE,  
17 WHICH COUNTIES FALL WITHIN 150 MILE. AND I DID NOT STOP THERE  
18 BECAUSE I HAD THIS DATA AVAILABLE IN MY REPORT, THE ACTUAL  
19 DRIVING DISTANCE WHICH GOOGLE GIVES, AND THAT IS PRESENTED  
20 HERE IN THIS EXHIBIT D.

21           **Q**     AND IN THIS EXHIBIT, EVERY SCENARIO THAT YOU'VE  
22 ADDRESSED INVOLVES THE HOPE CLINIC; CORRECT?

23           **A**     CORRECT.

24           **Q**     DR. SOLANKY, YOU DON'T KNOW ANYTHING ABOUT WHICH  
25 DOCTORS WHO PROVIDE ABORTION SERVICES HAVE ADMITTING

1 PRIVILEGES, DO YOU?

2 A I DON'T.

3 Q AND YOU DON'T KNOW ANYTHING ABOUT WHICH CLINICS WILL  
4 REMAIN OPEN IF ACT 620 TAKES EFFECT, DO YOU?

5 A I DON'T. I DON'T HAVE ANY OPINION ON THAT.

6 Q AND YOU DON'T HAVE ANY OPINION ABOUT HOW MANY  
7 PROCEDURES CAN BE PERFORMED AT THESE CLINICS FOR THE LAW TO  
8 TAKE EFFECT?

9 A I DON'T HAVE OPINION ON THAT EITHER.

10 Q AND ARE YOU AWARE THAT HOPE CLINIC MAY NOT HAVE A  
11 DOCTOR THAT PERFORMS ABORTIONS AND MAY CLOSE AS A RESULT OF  
12 THE ACT?

13 A AS I SAID, I DON'T HAVE OPINION ON THAT.

14 Q AND IF HOPE CLINIC WERE CLOSED, WOULD YOUR  
15 CALCULATIONS IN EXHIBIT 154 STILL BE ACCURATE?

16 A NOW, YOU ARE PROVIDING A TOTALLY NEW SCENARIO FOR ME  
17 WHICH I HAVE NOT PRESENTED IN THIS. IF YOU REALLY, REALLY  
18 WANT ME TO ANSWER THAT, I'LL GO BACK TO MY EXHIBITS AND I'LL  
19 START COUNTING -- YOU TELL ME WHICH SCENARIO YOU WANT ME TO  
20 WORK WITH AND I CAN LITERALLY, AS I SIT HERE, I CAN GIVE YOU  
21 PERCENTAGES.

22 Q YOU'VE NOT OFFERED AN OPINION IN THIS CHART ABOUT  
23 THE SCENARIO -- ANY SCENARIO IN WHICH HOPE CENTER IS CLOSED?

24 A NO. I PICKED A FEW SCENARIOS AND I HAVE PRESENTED  
25 THOSE HERE TO THE COURT, BUT I COULD NOT POSSIBLY LOOK AT

1 EVERY POSSIBLE SCENARIO OUT THERE.

2 MS. LEVINE: LET ME HAVE ONE MOMENT.

3 YOUR HONOR, THERE WERE A NUMBER OF OPINIONS THAT ARE  
4 INCLUDED WITHIN THE REPORT, BUT THAT WERE NOT SOLICITED DURING  
5 DIRECT TESTIMONY AND WE ARE WONDERING WHETHER WE NEED TO COVER  
6 THOSE ON CROSS OR WHETHER THEY'RE NOT BEING OFFERED AS  
7 EVIDENCE.

8 THE COURT: THE REPORTS ARE IN EVIDENCE. THE  
9 REPORTS ARE IN EVIDENCE. AND THE FACT THAT MR. DUNCAN DIDN'T  
10 ASK A QUESTION ABOUT IT DOESN'T MEAN THEY'RE NOT IN EVIDENCE.

11 MS. LEVINE: OKAY. ALSO, JUST TO CLARIFY FOR THE  
12 RECORD, I AM NO LONGER ASKING QUESTIONS REGARDING PROFFERED  
13 TESTIMONY.

14 THE COURT: THANK YOU.

15 BY MS. LEVINE:

16 Q IN A PORTION OF YOUR REPORT, YOU COMPARED THE  
17 AVERAGE TRAVEL DISTANCES TO ABORTION FACILITIES TO TRAVEL  
18 DISTANCES TO OTHER TYPES OF MEDICAL FACILITIES THAT INCLUDED  
19 TRAUMA CENTERS, BREAST CARE CENTERS, AND BURN CENTERS;  
20 CORRECT?

21 A THAT IS CORRECT.

22 Q AND IN SELECTING THESE SPECIALTY FACILITIES TO  
23 COMPARE TO ABORTION FACILITIES, YOU DID NOT EVALUATE THE  
24 RELATIVE DEMAND FOR EACH OF THESE SPECIALTY FACILITIES;  
25 CORRECT?

1 A CORRECT.

2 Q YOU DID NOT EVALUATE THE TYPICAL MEANS BY WHICH  
3 PATIENTS REACH THESE SPECIALTY FACILITIES; CORRECT?

4 A CORRECT.

5 Q AND YOU DIDN'T CONSIDER WHETHER PATIENTS ARE  
6 TRANSPORTED TO THESE FACILITIES OR WHETHER THEY ARRANGE THEIR  
7 OWN TRANSPORTATION?

8 A CORRECT.

9 Q AND WHETHER SPECIALTY CARE IS AVAILABLE AT OTHER  
10 KINDS OF FACILITIES BESIDES THE SPECIALTY FACILITIES WAS NOT  
11 CONSIDERED; CORRECT?

12 A CORRECT. I DIDN'T FULLY UNDERSTAND THE QUESTION,  
13 BUT...

14 Q LET ME CLARIFY. FOR EXAMPLE, YOU DIDN'T CONSIDER  
15 WHETHER BREAST CANCER TREATMENT IS AVAILABLE OUTSIDE OF A  
16 BREAST CANCER CENTER?

17 A CORRECT.

18 Q AND THAT IS TRUE FOR TRAUMA CENTERS?

19 A CORRECT.

20 Q AND IT'S ALSO TRUE FOR BURN CENTERS?

21 A RIGHT. NOW, I HAVE EXPLAINED THIS BEFORE. MY GOAL  
22 WHEN I LOOKED AT THESE OTHER FACILITIES, OTHER TYPES OF  
23 CLINICS, WAS JUST TO ESTABLISH, JUST FOR EVEN MY OWN SAKE,  
24 THAT PEOPLE DO DRIVE TO OTHER CLINICS. AND THAT IS WHAT I  
25 REPORTED IN MY REPORT.

1 Q SO YOU DIDN'T CONSIDER THE AVERAGE LENGTH OF STAY AT  
2 THESE SPECIALITY FACILITIES?

3 A I DID NOT. AGAIN, LET ME -- I LOOKED AT THE DRIVING  
4 DISTANCES TO OTHER SUCH CLINICS.

5 Q SO YOU DIDN'T LOOK AT THE NUMBER OF VISITS THAT ARE  
6 REQUIRED FOR TREATMENT AT THESE SPECIALITY FACILITIES?

7 A NO, I DID NOT.

8 Q YOU DIDN'T LOOK AT WHETHER CARE IS PROVIDED WITHOUT  
9 REGARD TO ABILITY TO PAY IN CHOOSING THESE CLINICS?

10 A I DID NOT.

11 Q YOU -- IN SELECTING THESE FACILITIES TO COMPARE TO  
12 ABORTION FACILITIES, YOU DIDN'T CONSIDER THE COST OF CARE AT  
13 ANY OF THE FACILITIES?

14 A I DID NOT. I WAS LOOKING AT ONLY DRIVING DISTANCES.

15 Q ALMOST THERE. IN SELECTING THE FACILITIES, YOU  
16 DIDN'T CONSIDER THE AVAILABILITY OF INSURANCE COVERAGE FOR  
17 CARE OR FOR TRANSPORTATION AT THE SPECIALTY FACILITIES?

18 A NO, I DIDN'T INCLUDE THAT.

19 Q YOU DIDN'T CONSIDER WHETHER THE SPECIALTY FACILITIES  
20 PROVIDE CARE ON AN INPATIENT OR OUTPATIENT BASIS?

21 A CORRECT.

22 Q YOU DIDN'T CONSIDER, IN SELECTING THESE FACILITIES  
23 FOR COMPARISON, THE CRITERIA FOR ADMISSION FOR A PATIENT?

24 A CORRECT.

25 Q YOU ALSO DID NOT LOOK AT THE RELATIVE DIFFICULTY OR

1 EASE OF OPENING A NEW SPECIALTY CENTER OF ANY OF THESE KINDS?

2 A CORRECT.

3 Q IN FACT, YOU DIDN'T HAVE ANY PARTICULAR CRITERIA FOR  
4 CHOOSING THE THREE SPECIALTY FACILITIES TO COMPARE TO ABORTION  
5 FACILITIES; CORRECT?

6 A NOW, THESE ARE THE THREE TYPES OF FACILITIES I COULD  
7 THINK OF AND I INCLUDED THOSE.

8 Q AND IF YOU HAD HAD MORE TIME, YOU WOULD HAVE SPENT  
9 MORE TIME RESEARCHING THE DATA ON THESE SPECIALTY CENTERS;  
10 RIGHT?

11 A IF I HAD MORE TIME? I DON'T UNDERSTAND.

12 Q IF YOU HAD HAD MORE TIME TO PREPARE YOUR REPORT AND  
13 MORE TIME TO RESEARCH THESE SPECIALTY CENTERS, YOU WOULD HAVE,  
14 TO DETERMINE IF THEY'RE APPROPRIATE TO COMPARE?

15 A I DON'T KNOW HOW TO ANSWER THAT QUESTION. IF I HAD  
16 MORE TIME, WHAT WOULD I DO? I CANNOT ANSWER THAT QUESTION.  
17 NOW, WHAT I DID WAS, I LOOKED AT OTHER CENTERS AND HOW MUCH  
18 PEOPLE DRIVE TO THOSE. IF I HAD MORE TIME, WOULD I HAVE  
19 RESEARCHED MORE? MAYBE, YES. I DON'T KNOW WHAT THE ANSWER TO  
20 GIVE TO YOU HERE.

21 MS. LEVINE: MAY I HAVE ONE MOMENT, PLEASE?

22 I HAVE NO FURTHER QUESTIONS.

23 THE COURT: THANK YOU.

24 REDIRECT?

25 REDIRECT

1 BY MR. DUNCAN:

2 Q DOCTOR, JUST A COUPLE OF QUESTIONS. JUST TO BE  
3 CLEAR, YOU WERE ASKED TO LOOK AT AVERAGE DRIVING DISTANCES TO  
4 ABORTION CLINICS BY WOMEN OF CHILDBEARING AGE? THAT'S WHAT  
5 YOU WERE ASKED TO LOOK AT IN YOUR REPORT?

6 A RIGHT.

7 Q AND YOU WERE NOT ASKED TO LOOK AT OTHER FACTORS --  
8 AND I BELIEVE YOU WERE ASKED A SERIES OF QUESTIONS ABOUT THE  
9 OTHER FACTORS THAT YOU DID NOT CONSIDER SUCH AS POVERTY,  
10 AVAILABILITY OF CHILDCARE, AVAILABILITY OF A CAR OR PUBLIC  
11 TRANSPORTATION, THESE ITEMS. YOU DID NOT -- YOU WERE NOT  
12 ASKED TO LOOK AT THESE ITEMS?

13 A CORRECT.

14 Q RIGHT. MY QUESTION TO YOU IS, IF YOU HAD BEEN ASKED  
15 TO LOOK AT VARIABLES SUCH AS THIS, SUCH AS POVERTY OR  
16 AVAILABILITY OF CHILDCARE, AVAILABILITY OF A CAR, COULD YOU  
17 HAVE EVEN ATTEMPTED TO DO A STATISTICAL ANALYSIS OF SUCH  
18 THINGS?

19 A NO SUCH DATA IS AVAILABLE. AND I'M NOT ALLOWED TO  
20 TALK ABOUT THE REPORT BY ROBERTS.

21 Q I'M NOT ASKING ABOUT THE REPORT BY ROBERTS.

22 A BUT I'M ANSWERING THAT NO SUCH DATA IS AVAILABLE, SO  
23 THEY ARE JUST HYPOTHETICAL ASSUMPTIONS BEING MADE. AS SUCH IF  
24 YOU ASK ME THAT, OKAY, YOU GO AHEAD AND DESIGN A STUDY. I CAN  
25 DESIGN A STUDY, AND IF THE DATA CAN BE COLLECTED, THEN THERE

1 ARE PROPER WAYS TO ESTABLISH THAT.

2 MR. DUNCAN: THANK YOU, DOCTOR. NO FURTHER  
3 QUESTIONS.

4 THE COURT: DOCTOR, JUST A QUESTION OR TWO. WHEN  
5 YOU MEASURED THE DISTANCE FROM THE PARISH TO THE ABORTION  
6 FACILITY, WHERE DID YOU -- WHERE WAS YOUR STARTING POINT IN  
7 THE PARISH? WAS IT THE CENTER OF THE PARISH? THE EDGE OF THE  
8 PARISH?

9 A YOUR HONOR, GOOGLE PICKS SORT OF A CENTRAL LOCATION,  
10 AND THAT'S THE LOCATION I WENT WITH. NOW, IF A PARISH WAS A  
11 SYMMETRICAL FIGURE, LIKE A CIRCLE, A SQUARE, THEN THERE IS A  
12 DEFINITION OF PROPER CENTER. BUT IN AWKWARD LOOKING PARISH  
13 SHAPES, GOOGLE PICKS SORT OF A CENTRALIZED LOCATION, AND I  
14 STAYED WITH THAT ONE.

15 THE COURT: HOW DO YOU KNOW GOOGLE PICKS A  
16 CENTRALIZED --

17 THE WITNESS: YOUR HONOR, I LOOKED AT LOTS OF  
18 PARISHES TO SEE THE EXACT LOCATION WHICH GOOGLE IS PICKING TO  
19 VERIFY THAT.

20 THE COURT: OKAY. ALL RIGHT. WHEN YOU CHOSE THE  
21 CLINICS OUTSIDE THE STATE OF LOUISIANA, DID YOU CHOOSE ALL OF  
22 THE CLINICS?

23 THE WITNESS: YOUR HONOR, I LOOKED -- I GOOGLED THE  
24 CLINICS WHICH ARE AVAILABLE IN THE HOUSTON AREA, DALLAS AREA,  
25 JACKSON AREA, AND MOBILE AREA, AND THE ONES WHICH I COULD FIND

1 THEM AND THE ONES WHICH LOOKED OPEN, I COULD CALL THEM AND  
2 THEY CONFIRMED TO ME THAT, YES, WE ARE OPERATING I INCLUDED  
3 THOSE.

4 THE COURT: AS FAR AS YOU KNOW, DID YOU -- DID YOU  
5 INCLUDE THE ABORTION FACILITIES OUTSIDE THE STATE OF LOUISIANA  
6 WHICH ARE CLOSEST TO THE STATE OF LOUISIANA?

7 THE WITNESS: YES, THAT TOO. I LOOKED AT THE ONES  
8 WHERE POTENTIALLY LOUISIANA RESIDENTS COULD DRIVE TO. LIKE  
9 THERE WERE LOTS OF -- SOME ABORTION FACILITIES IN SAN ANTONIO.  
10 I DID NOT INCLUDE THOSE BECAUSE THEN THEY WOULD OBVIOUSLY NOT  
11 CONTRIBUTE TOWARDS THE SMALLEST DRIVING DISTANCE.

12 THE COURT: OKAY. THANK YOU, SIR.

13 ANY OTHER QUESTIONS? MR. DUNCAN SAYS NO.

14 MS. LEVINE: I'M SORRY. MAY I HAVE ONE MOMENT?  
15 JUST ONE QUESTION, IF I MAY.

16 THE COURT: IF IT'S A QUESTION ARISING OUT OF A  
17 QUESTION THAT I ASKED, NOT A GRATUITOUS ONE MORE SHOT -- ONE  
18 MORE BITE AT THE APPLE.

19 MS. LEVINE: YES, IT'S WITHIN THE SCOPE.

20 THE COURT: OKAY.

21 **REXCROSS**

22 **BY MS. LEVINE**

23 Q DR. SOLANKY, WOULD YOUR OPINIONS OFFERED IN THIS  
24 CASE CHANGE IF ANY CLINIC FROM OUT OF STATE THAT YOU'VE  
25 REFERRED TO IN YOUR REPORT IN TEXAS OR MISSISSIPPI CLOSED

1 BECAUSE A FEDERAL INJUNCTION WAS LIFTED?

2 A NOW, I HAVE PROVIDED A BASIC MECHANISM TO LOOK AT  
3 THE DRIVING DISTANCE, AND I HAVE GIVEN SEVERAL SCENARIOS. IF  
4 ONE OF THEM CLOSED, THEN, OF COURSE, THAT CAN BE TAKEN OUT.

5 Q SO IT WOULD AFFECT YOUR OPINIONS BECAUSE YOU'D HAVE  
6 TO TAKE OUT A CLINIC?

7 A I DON'T UNDERSTAND WHICH OPINION YOU'RE TALKING  
8 ABOUT HERE. IF YOU MEAN THAT I HAVE INCLUDED, SAY, PLANNED  
9 PARENTHOOD IN HOUSTON AND THAT CLOSES, WOULD NUMBERS CHANGE?  
10 PROBABLY NOT BECAUSE THERE ARE OTHER CLINICS IN HOUSTON.

11 SO IN THAT SENSE, THOSE NUMBERS WOULD HAVE MINIMAL  
12 OR NO CHANGE BECAUSE THERE ARE OTHER CLINICS IN THE HOUSTON  
13 AREA. I DON'T KNOW HOW TO EXACTLY ANSWER YOUR QUESTION. IF  
14 YOU HAVE MORE SPECIFIC, I CAN ANSWER IT BETTER.

15 Q IF THE CLINIC IN JACKSON, MISSISSIPPI CLOSED, WOULD  
16 THAT AFFECT YOUR ANALYSIS?

17 A A CLINIC IN JACKSON, MISSISSIPPI, THAT WOULD HAVE  
18 SOME IMPACT.

19 Q THANK YOU.

20 THE COURT: OKAY. THANK YOU, DOCTOR. YOU MAY STAND  
21 DOWN.

22 THE WITNESS: THANK YOU, YOUR HONOR.

23 THE COURT: I ASSUME WE DON'T HAVE ANYMORE WITNESSES  
24 TODAY?

25 MR. DUNCAN: THAT'S RIGHT. BECAUSE OF HIS ON-CALL

1 SCHEDULE, DR. CUDIHY WILL BE HERE TOMORROW MORNING.

2 THE COURT: OKAY. THAT'S GOOD.

3 MR. DUNCAN: THAT'S ALL WE'LL HAVE TOMORROW MORNING.

4 AS I UNDERSTAND IT, THE PARTIES HAVE A COUPLE OF WITNESSES ON  
5 MONDAY. WE HAVE DR. -- THE DOCTOR FROM THE HOSPITAL WE'RE NOT  
6 SUPPOSED TO MENTION AND THEN WE'LL REST AND THEN I UNDERSTAND  
7 THEY'RE PUTTING ON A REBUTTAL.

8 THE COURT: OKAY. BUT ALL OF THAT WILL BE ON  
9 MONDAY?

10 MR. DUNCAN: THAT'S CORRECT.

11 THE COURT: SO ONLY ONE WITNESS TOMORROW?

12 MR. DUNCAN: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: THAT'S FINE.

14 IS THERE ANY OTHER HOUSEKEEPING WE CAN DO THIS  
15 AFTERNOON EITHER WITH ASSISTANCE OF YOURS TRULY OR WITH THE  
16 ASSISTANCE OF MS. CAUSEY OR JUST AMONG THE PARTIES?

17 MS. DOUFEKIAS: YOUR HONOR, I JUST HAD A QUICK  
18 QUESTION, AND I RAISED IT WITH MS. CAUSEY, AND I THINK SHE'S  
19 RAISED IT WITH YOU, BUT I AM NOT EXACTLY SURE WHAT FINAL  
20 VERSION YOU WOULD LIKE IN THE RECORD OF THE DEPOSITION  
21 DESIGNATIONS BECAUSE WE CAN HAVE HIGHLIGHTED COPIES, WE CAN  
22 HAVE NONHIGHLIGHTED COPIES, BUT MY BIGGER CONCERN IS I MAY NOT  
23 KNOW IN ORDER TO PROVIDE YOU WITH THE APPROPRIATE COPY WHAT  
24 HAS STAYED IN AND WHAT HAS GONE OUT. I MAY NOT KNOW WHAT YOUR  
25 RULING IS.

1           **THE COURT:** RIGHT. AND IN SOME CASES, I'M NOT GOING  
2 TO RULE UNTIL I WRITE THE REASONS. AND SO WHAT I WOULD LIKE  
3 IN THE RECORD IS -- Y'ALL CAN THINK WHAT YOU WOULD LIKE FOR  
4 PURPOSES OF THE FIFTH CIRCUIT. YOU MAY WANT THE FIFTH CIRCUIT  
5 TO HAVE A CLEAN COPY. OKAY? AND THAT'S FINE WITH ME, IF YOU  
6 WANT TO PUT ON A CLEAN COPY.

7           FOR MY PURPOSES, I WANT THE COLOR-CODED COPIES THAT  
8 HAVE EVERYONE'S OBJECTIONS SO THAT IT CONTINUES TO ASSIST ME  
9 IN RULING ON THE INDIVIDUAL OBJECTIONS.

10          **MR. DUNCAN:** YOUR HONOR, FOR OUR PART, WE ARE JUST  
11 ACCUMULATING THE EXHIBITS THAT GO ALONG WITH OR DESIGNATIONS  
12 RIGHT NOW AND WE PLAN TO SUBMIT THOSE -- IN OTHER WORDS, THE  
13 COLOR -- IT'S REALLY HARD FOR ME TO TALK LIKE THIS.

14          **THE COURT:** I'M SORRY. ESPECIALLY YOU, MR. DUNCAN.  
15 I HATE TO SEE THIS. WE HAVE TO DO SOMETHING BETTER ABOUT THIS  
16 BECAUSE YOU'RE FACED WITH TWO CHASES GIVEN THE RULES OF THIS  
17 DISTRICT. YOU ARE TO STAND TO ADDRESS THE COURT, AND I'M  
18 GOING TO ENFORCE THAT RULE. BUT ON THE OTHER HAND, YOU'RE  
19 GOING TO GET A BACKACHE DOING SO.

20          **MR. DUNCAN:** I'M SORT OF STOOPING TO ADDRESS THE  
21 COURT, YOUR HONOR.

22          AND SO THE DESIGNATIONS THAT WE HAVE, I'VE GOT SOME  
23 FOLKS WORKING ON FINDING THE EXHIBITS THAT CORRESPOND TO THOSE  
24 DESIGNATIONS. I SEE NO REASON TO JUST DUMP IN A BUNCH OF  
25 EXHIBITS, JUST THE EXHIBITS THAT CORRESPOND WITH THE

1 DESIGNATIONS; IS THAT RIGHT?

2 THE COURT: YES, THAT'S RIGHT. THAT'S RIGHT.

3 MR. DUNCAN: SO WE'LL SUBMIT THOSE.

4 THE COURT: THAT'S EXACTLY RIGHT. I DON'T WANT  
5 EXHIBITS THAT AREN'T --

6 MR. DUNCAN: EXACTLY. THAT WOULDN'T MAKE ANY SENSE.  
7 SO WE'LL HAVE THOSE BEFORE THE END OF TRIAL.

8 THE COURT: THAT'S TERRIFIC.

9 MS. DOUFEKIAS: SO TWO QUICK POINTS, YOUR HONOR.  
10 FIRST OF ALL, I THINK WE GAVE A BINDER TO MS. CAUSEY THIS  
11 MORNING THAT ACTUALLY HAS ALL EXHIBITS FOR ALL DESIGNATIONS,  
12 SO I DON'T THINK YOU HAVE TO WORRY ABOUT IT, KYLE.

13 MR. DUNCAN: I APPRECIATE THAT. I'LL BUY  
14 MS. DOUFEKIAS A CUP OF COFFEE OR SOMETHING.

15 MS. DOUFEKIAS: I BELIEVE YOUR HONOR ALREADY HAS  
16 THAT BECAUSE I WAS CONCERNED THAT YOU DIDN'T HAVE IT SOONER,  
17 FRANKLY, THAT'S NUMBER ONE.

18 NUMBER TWO, THE HIGHLIGHTING IN THE HIGHLIGHTED  
19 COPIES YOU HAVE IDENTIFIES AFFIRMATIVE AND COUNTER  
20 DESIGNATIONS. IT DOES NOT SPECIFICALLY IDENTIFY OBJECTED TO  
21 TESTIMONY. SO, FOR EXAMPLE, IF I -- IF WE IDENTIFIED  
22 AFFIRMATIVE DESIGNATIONS AND THE DEFENDANT OBJECTED TO  
23 SOMETHING AND THEN IDENTIFIED A COUNTER DESIGNATION, YOU'LL  
24 SEE PLAINTIFFS' AFFIRMATIVE TESTIMONY, DEFENDANT'S COUNTER  
25 TESTIMONY, BUT YOU WILL NOT NECESSARILY KNOW EXACTLY WHAT

1 DEFENDANT OBJECTED TO.

2 I THINK THE WAY TO SOLVE THIS PROBLEM IS THAT WE  
3 HAVE TO -- RECORD OF THE OBJECTIONS IS IN THE PLEADING; RIGHT?  
4 ACCOMPANYING THE HIGHLIGHTED TRANSCRIPTS IS THE PLEADING THAT  
5 WE HAVE THAT LISTS THE TESTIMONY BY PAGE AND LINE NUMBER THAT  
6 EVERYBODY EITHER DESIGNATED OR OBJECTED TO. IF YOU USE THOSE  
7 TWO TOGETHER, YOU WILL KNOW WHAT ALL THE OBJECTED TO TESTIMONY  
8 IS.

9 THE COURT: MS. PALMINTIER SPENT A LOT OF TIME  
10 TAKING THOSE AND PUTTING THEM TOGETHER FOR MY COPY, SO I HAVE  
11 IN THE DEPOSITION WHAT THE OBJECTIONS ARE.

12 NOW, I WAS A LITTLE CONFUSED ABOUT THIS, THERE WERE  
13 OBJECTIONS TO THE COUNTER DESIGNATIONS BECAUSE THEY DIDN'T --  
14 I WASN'T QUITE SURE WHAT THAT WAS ALL ABOUT.

15 MS. DOUFEKIAS: I THINK THERE WERE INSTANCES IN  
16 WHICH THE COUNTER DESIGNATED TESTIMONY IS EITHER HEARSAY OR IT  
17 WAS OUTSIDE THE SCOPE OF THE ORIGINAL DESIGNATION.

18 THE COURT: WELL, THE HEARSAY I UNDERSTAND. THE  
19 OUTSIDE THE ORIGINAL DESIGNATION, THE WAY I LOOK AT IT,  
20 IT'S -- THE TESTIMONY WHETHER YOU DESIGNATE IT ROUND ONE, YOU  
21 DESIGNATE IT ROUND TWO, IT'S GOING TO COME IN UNLESS THERE'S  
22 AN OBJECTION TO HEARSAY OR SOMETHING THAT WOULD PREVENT IT.

23 THE FACT THAT IT'S OUTSIDE THE SCOPE OF THE  
24 DESIGNATION OR SOMETHING DOESN'T MAKE ANY SENSE TO ME AND IT'S  
25 GOING TO EITHER BE ADMISSIBLE -- BECAUSE, YOU KNOW, AS FAR AS

1 I'M CONCERNED, Y'ALL COULD SAY PUT THE WHOLE DEPOSITION. I'M  
2 GLAD YOU DIDN'T. THANK YOU. BUT YOU HAVE THE RIGHT TO PUT  
3 WHATEVER PART OF THE DEPOSITION YOU WANT IN. SO THE FACT THAT  
4 IT DOESN'T FALL WITHIN THE FIRST DESIGNATION IS NOT GOING TO  
5 HAVE ANY BEARING TO ME. I'M GOING TO RULE ON THE OTHER  
6 OBJECTIONS LIKE HEARSAY, RELEVANCE, AND SO ON.

7 **MS. DOUFEKIAS:** AND I THINK THAT IF -- AND I HAVE NO  
8 DOUBT THAT YOUR HONOR WILL DO THIS, BUT IF THERE'S A RECORD  
9 OF, YOU KNOW, YOU ACCEPTED A HEARSAY OBJECTION OR YOU DIDN'T,  
10 THEN I THINK IT WOULD BE VERY CLEAR WHAT IS ACTUALLY IN THE  
11 RECORD OR NOT. MY CONCERN IS THAT BECAUSE WE'RE NOT DOING  
12 THIS ON THE RECORD IN FRONT OF YOUR HONOR THAT THERE WON'T BE  
13 A CLEAR RECORD AS TO WHICH OBJECTIONS, YOU KNOW, YOU SUSTAINED  
14 AND WHICH OBJECTIONS YOU OVERRULED.

15 AND I APPRECIATE THAT YOUR HONOR MAY NOT DO THAT  
16 UNTIL DOWN THE ROAD WHEN YOU HAVE EVERYTHING IN FRONT OF YOU,  
17 INCLUDING OUR BRIEFS. THAT'S REALLY MY ONLY CONCERN IS TO  
18 MAKE SURE THAT THE RECORD IS CLEAR.

19 **THE COURT:** I UNDERSTAND. AND THEN I INTEND TO DO  
20 THAT.

21 **MS. DOUFEKIAS:** THANK YOU, YOUR HONOR.

22 **THE COURT:** ANYTHING ELSE? ALL RIGHT.

23 WELL, SINCE WE HAVE ONE WITNESS TOMORROW, I'LL LET  
24 Y'ALL SLEEP ANOTHER 30 MINUTES. WE WILL START AT 9:00 IN THE  
25 MORNING.

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MR. DUNCAN: THANK YOU, JUDGE.

(WHEREUPON COURT WAS IN RECESS.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED  
NUMBERED MATTER.

S:/GINA DELATTE-RICHARD

GINA DELATTE-RICHARD, CCR

OFFICIAL COURT REPORTER